

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3
4 BICYCLE TRANSPORTATION ALLIANCE,)
5 an Oregon nonprofit corporation,)
6 FRIENDS OF CEDAR MILL, an Oregon)
7 nonprofit corporation, and)
8 SENSIBLE TRANSPORTATION OPTIONS)
9 FOR PEOPLE, an Oregon nonprofit)
10 corporation,)
11)

12 Petitioners,) LUBA Nos. 92-213, 92-214
13) and 92-215

14 and)

15) FINAL OPINION
16 DEPARTMENT OF LAND CONSERVATION) AND ORDER
17 AND DEVELOPMENT,)
18)

19 Intervenor-Petitioner,)

20)
21 vs.)
22)

23 WASHINGTON COUNTY,)
24)

25 Respondent.)
26
27

28 Appeal from Washington County.

29
30 Keith A. Bartholomew and Jay W. Beattie, Portland,
31 filed a petition for review and argued on behalf of
32 petitioners. With them on the brief was Lindsay, Hart, Neil
33 & Weigler.

34
35 Larry Knudsen, Assistant Attorney General, Salem, filed
36 a petition for review and argued on behalf of intervenor-
37 petitioner. With him on the brief were Theodore Kulongoski,
38 Attorney General; Thomas A. Balmer, Deputy Attorney General;
39 and Virginia L. Linder, Solicitor General.

40
41 David C. Noren, Assistant County Counsel, Hillsboro,
42 filed the response brief. David C. Noren and Daniel Olsen
43 argued on behalf of respondent.
44

1 HOLSTUN, Referee; KELLINGTON, Chief Referee; SHERTON,
2 Referee, participated in the decision.

3

4 REMANDED (LUBA No. 92-213) 12/21/93

5 AFFIRMED (LUBA Nos. 92-214 and 92-215)

6

7 You are entitled to judicial review of this Order.
8 Judicial review is governed by the provisions of ORS
9 197.850.

1 Opinion by Holstun.

2 **NATURE OF THE DECISION**

3 Petitioners appeal three ordinances which amend the
4 Washington County Comprehensive Plan. Ordinance 419 adopts
5 textual and map amendments to the Transportation Plan
6 Element of the county comprehensive plan (hereafter
7 Transportation Plan). Ordinance 420 amends portions of 11
8 community plans. Ordinance 421 adds a new article to the
9 Washington County Community Development Code (CDC) and
10 amends existing transportation-related provisions of the
11 CDC.¹

12 **MOTION TO INTERVENE**

13 The Oregon Department of Land Conservation and
14 Development (DLCD) moves to intervene in this proceeding on
15 the side of petitioners. There is no opposition to the
16 motion, and it is allowed.

17 **FIRST ASSIGNMENT OF ERROR²**

18 One of the maps adopted as part of the county's
19 Transportation Plan by Ordinance 419 is the East Washington
20 County Functional Classification System. That map includes

¹The county's comprehensive plan includes "the Comprehensive Framework Plan which includes the following components: the individual Community Plans, the Rural Natural Resource Plan, the Community Development Code, the Transportation Plan and the Capital Improvement Plan." CDC 106-43.

²The first three assignments of error are contained in the petition for review filed by petitioners Bicycle Transportation Alliance, Friends of Cedar Mill, and Sensible Transportation Options for People. The fourth assignment of error is contained in the petition for review submitted by intervenor-petitioner DLCD.

1 a chart establishing design standards (hereafter design
2 standards chart). The design standards chart establishes 27
3 separate road designations under three general categories:
4 (1) Arterials, (2) Collectors and Transit Roads, and (3)
5 Commercial and Industrial Roads. The design standards chart
6 provides that "bike lanes" will be provided for eight of the
7 27 road designations, but will not be provided for 19 of the
8 27 road designations.

9 Under their first assignment of error, petitioners
10 contend the design standards chart violates the Oregon
11 Bicycle Bill (ORS 366.514).³ Petitioners contend the design

³ORS 366.514 provides, in relevant part, as follows:

"(1) Out of the funds received by the [Oregon Department of Transportation (ODOT)] or by any county or city from the State Highway Fund reasonable amounts shall be expended as necessary to provide footpaths and bicycle trails, including curb cuts or ramps as part of the project. Footpaths and bicycle trails, including curb cuts or ramps as part of the project, shall be provided wherever a highway, road or street is being constructed, reconstructed or relocated. Funds received from the State Highway Fund may also be expended to maintain footpaths and trails along other highways, roads and streets and in parks and recreation areas.

"(2) Footpaths and [bicycle] trails are not required to be established under subsection (1) of this section:

"(a) Where the establishment of such [trails] and paths would be contrary to public safety;

"(b) If the cost of establishing such paths and trails would be excessively disproportionate to the need or probable use; or

"(c) Where scarcity of population, other available ways or other factors indicate an absence of any need for such paths and trails.

1 standards chart improperly states that for 19 of the 27 road
2 designations, the county will not provide bicycle facilities
3 as required by the Bicycle Bill. Petitioners point out the
4 Bicycle Bill includes criteria that would permit the county
5 to construct, reconstruct or relocate highways, roads and
6 streets without providing bicycle facilities. See ORS
7 366.514(2), quoted supra at n 3. However, petitioners
8 contend Ordinance 419 neither justifies a decision not to
9 provide bicycle facilities for certain roadways under these
10 criteria nor requires that these criteria be addressed on a
11 case-by-case basis. Therefore, petitioners contend,
12 Ordinance 419 is inconsistent with the Bicycle Bill and must
13 be remanded.

14 **A. Introduction**

15 We briefly address two points raised by the parties
16 before turning to petitioners' arguments.

17 **1. Consistency With the Oregon Bicycle Bill**

18 First, the requirement of ORS 366.514(1) is a statutory
19 obligation and, therefore, binds the county notwithstanding
20 the requirements of Ordinance 419. As respondent correctly
21 notes, it is not required to incorporate each of the
22 requirements of the Oregon Bicycle Bill into its

** * * * *

"(5) As used in this section, 'bicycle trail' means a publicly owned and maintained lane or way designated and signed for use as a bicycle route." (Emphases added.)

1 Transportation Plan. Nevertheless, the county may not adopt
2 amendments to its Transportation Plan which conflict with
3 Oregon Bicycle Bill, even though the statutory obligations
4 imposed by the Oregon Bicycle Bill would control in any
5 event.⁴ See Kenagy v. Benton County, 112 Or App 17, 20, 826
6 P2d 1047 (1992) (statutory Exclusive Farm Use (EFU) zoning
7 provisions govern in case of conflict with more permissive
8 county EFU zoning provisions). Therefore, if the roadways
9 permitted under Ordinance 419 conflict with the requirements
10 of ORS 366.514(1), the county exceeded its jurisdiction and
11 Ordinance 419 must be reversed or remanded.

12 **2. Scope of the Oregon Bicycle Bill Requirement**
13 **for Provision of Bicycle Facilities**

14 The county next argues that the requirement of
15 ORS 366.514(1) for provision of bicycle trails only applies
16 where a highway, road or street project is funded by the
17 State Highway Fund (hereafter State Highway Fund projects).

⁴As discussed later in this opinion, DLCDC's Transportation Planning Rule (OAR Chapter 660, Division 12) imposes on the county a number of transportation planning obligations. One of those obligations is to adopt a transportation system plan (TSP). One of the required elements of a TSP is "a bicycle and pedestrian plan for a network of bicycle and pedestrian routes * * * consistent with ORS 366.514."

Under the first assignment of error, we do not consider whether the county has adequately performed its bicycle and pedestrian planning obligations under the Transportation Planning Rule. As we explain infra, the deadline for the county to adopt a TSP has not yet passed, and the challenged ordinances were not adopted to comply with the Transportation Planning Rule bicycle and pedestrian planning requirements. Our inquiry under the first assignment of error is limited to whether Ordinance 419 conflicts with the requirements of the Oregon Bicycle Bill.

1 ORS 366.514(1) is set out in full at n 3, supra. The
2 first sentence of ORS 366.514(1) requires that, out of funds
3 received from the State Highway Fund, reasonable amounts
4 must be expended on footpaths and bicycle trails. This
5 sentence is directed at State Highway Fund projects. The
6 third sentence makes it clear that state highway funds may
7 be expended to provide and maintain footpaths and bicycle
8 trails along non-State Highway Fund facilities. The second
9 sentence of ORS 366.514(1) simply requires that footpaths
10 and bicycle trails "shall be provided wherever a highway,
11 road or street is being constructed, reconstructed or
12 relocated."

13 The requirement expressed in the second sentence does
14 not appear to be limited by its language to State Highway
15 Fund projects. No party has provided legislative history
16 bearing on respondent's argument that the obligation under
17 the second sentence of ORS 366.514(1) to provide bicycle
18 trails is limited to State Highway Fund projects. Our own
19 limited review of the legislative history of the 1971
20 legislation adopting the Oregon Bicycle Bill sheds no light
21 on whether such a limitation was intended.

22 However, we need not determine here whether application
23 of the second sentence of ORS 366.514(1) is limited in the
24 way respondent argues, because even if respondent is
25 correct, that alone would not resolve the first assignment
26 of error in its favor. The portion of Ordinance 419

1 challenged under the first assignment of error does not
2 distinguish between State Highway Fund projects and projects
3 that do not receive such funds. In other words, Ordinance
4 419 does not exempt State Highway Fund Projects and,
5 therefore, if the limits on provision of bike lanes in
6 Ordinance 419 violate the dictates of ORS 366.514(1), as
7 petitioners allege, the ordinance at least would violate
8 ORS 366.514(1) with regard to projects funded by the State
9 Highway Fund.

10 **B. Compliance with the Oregon Bicycle Bill**
11 **Requirement for Bicycle Trails**

12 The relevant questions under this assignment of error
13 are (1) what bicycle facilities are required by the Oregon
14 Bicycle Bill, and (2) whether Ordinance 419 conflicts with
15 that requirement.

16 **1. Requirement for Bicycle Trails**

17 ORS 366.514(1) requires that the county provide
18 "bicycle trails." ORS 366.514(5) defines "bicycle trails"
19 as including "bicycle lanes" and "bicycle ways."⁵
20 Therefore, the requirement of ORS 366.514(1) for provision
21 of bicycle trails can be satisfied by providing either a
22 "[bicycle] lane or [a bicycle] way designated and signed for
23 use as a bicycle route." (Emphasis added.)

⁵ORS 366.514(5) provides that a "'bicycle trail' means a publicly owned and maintained lane or way designated and signed for use as a bicycle route."

1 No definition of "bicycle lane" or "bicycle way" is
2 provided in ORS chapter 366. The 1992 Oregon Bicycle Plan
3 adopted by ODOT contains a glossary of bicycle terms which
4 includes a number of relevant definitions.⁶ The 1992 Oregon
5 Bicycle Plan provides that state and local bicycle planning
6 efforts are "developed under the premise that all roadways
7 and streets are bikeways, but only the most important ones
8 are designated as bicycle routes." 1992 Oregon Bicycle Plan
9 20. It appears that under the 1992 Oregon Bicycle Plan, the
10 term "bicycle way" encompasses a number of facilities
11 including, at a minimum, the following: (1) bike paths, (2)
12 bike lanes, (3) shoulder bikeways, and (4) shared roadways.
13 1992 Oregon Bicycle Plan 48-49. The text of the 1992 Oregon
14 Bicycle Plan describes these facilities as follows:

15 **"Bike Paths** - On some designated bicycle routes,
16 it may be preferable to construct bike paths
17 separated from the roadway and motorized vehicles.
18 Separated bike paths along limited access
19 roadways, such as freeways, may be considered if
20 motor vehicle crossings can be kept to a minimum.
21 Desirable widths of two-directional bike paths are
22 10 to 12 feet." 1992 Oregon Bicycle Plan 22.

23 **"Bike Lanes** - In urban areas and other areas where
24 there is considerable bicycle use, a portion of
25 the roadway shall be designated as a bike lane for
26 preferential use by bicyclists. Where adequate
27 roadway width is available, bike lanes can easily
28 be striped and signed. If not, the roadway must

⁶Petitioners request that we take official notice of the 1992 Oregon Bicycle Plan. Respondent does not object, and we take official notice. ORS 40.090(2) (Oregon Evidence Code Rule 202); Foland v. Jackson County, 18 Or LUBA 731, 739-40, aff'd 101 Or App 632 (1990), aff'd 308 Or 592 (1991).

1 be widened to accommodate bike lanes. Bike lanes
2 are separated from motor vehicle lanes by an 8-
3 inch solid white line, and must be well marked and
4 signed. The standard width for a bike lane is 6
5 feet." Id.

6 "**Shoulder Bikeways** - On many rural highways and
7 roads, the shoulders can be widened to provide a
8 smooth, paved shoulder area to accommodate
9 cyclists. Shoulder widths of 6 feet or greater
10 are desirable, but shoulders as narrow as 4 feet
11 may be acceptable in restricted areas (e.g., close
12 buildings, environmentally sensitive areas).
13 Normally, a 4-inch shoulder stripe is painted on
14 the roadway of shoulder bikeways. When bicycle
15 use is significant, the designated route may be
16 signed as a bicycle route." Id.

17 "**Shared Roadways** - Where it is not feasible to
18 provide bike lanes on urban and suburban bicycle
19 routes because of physical constraints (e.g.,
20 close buildings, environmentally sensitive areas),
21 wide outside lanes can provide for bicycle travel.
22 The standard width for a wide outside lane is 14
23 feet. Bike lanes should be built where
24 constraints end." Id.

25 Respondent argues that for 17 of the road designations
26 where Ordinance 419 states bike lanes will not be provided,
27 the specifications in Ordinance 419 call for an outside lane
28 of 14 feet, which could accommodate a "shared roadway" type
29 of bike trail. Two of the 19 road designations do not
30 provide for a 14 foot outside lane. However, respondent
31 argues these two designations are not currently applied by
32 the Transportation Plan to any existing roads or streets.

33 It appears that for 17 of the 19 road and street
34 designations that Ordinance 419 provides will not include
35 bike lanes, a shared roadway could be accommodated within

1 the standards specified in Ordinance 419 for those roadways.
2 So long as the county actually provides such a shared
3 roadway where ORS 366.514(1) requires a bicycle trail, there
4 will be no conflict with ORS 366.514(1). Petitioners have
5 not shown that such shared roadways could not be provided
6 and we, therefore, will not assume the county cannot or will
7 not provide such shared roadways in circumstances where ORS
8 366.514(1) requires that a bicycle trail of some type be
9 provided.

10 For two of the 19 road designations that will not
11 include bike lanes, it is uncertain that a shared roadway
12 could be provided, because a 12 foot rather than a 14 foot
13 outside lane is required for those two designations under
14 the applicable standards of Ordinance 419.⁷ However, the
15 above quoted 1992 Oregon Bicycle Plan description of shared
16 roadways specifies a 14 foot outside lane as the "standard
17 width" rather than an absolute requirement. In addition,
18 petitioners do not specifically argue that neither shared
19 roadways nor shoulder bikeways could be accommodated under
20 the specifications established by Ordinance 419 for these
21 two road designations. The specifications for these two
22 road designations apparently could accommodate at least a
23 shoulder bikeway. Consequently, we will not assume that

⁷We reject the county's contention that because no roads currently carry these two designations ORS 366.514(1) is not violated. These two designations easily could be applied to roads in the future and, presumably, will be.

1 these two types of road could not accommodate either a
2 shared roadway or shoulder bikeway in circumstances where
3 ORS 366.514(1) requires provision of bicycle trails.

4 Petitioners have failed to show the 27 roadway
5 designations included in Ordinance 419 could not accommodate
6 some form of bicycle trail where ORS 366.514(1) requires
7 that they be provided. Ordinance 419 therefore does not
8 conflict with the Oregon Bicycle Bill.

9 The first assignment of error is denied.

10 **SECOND ASSIGNMENT OF ERROR**

11 Under the second assignment of error, petitioners
12 contend Ordinances 419 and 421 violate a number of statewide
13 planning goals, OAR Chapter 660 Division 12 (the
14 Transportation Planning Rule) and OAR Chapter 660 Division
15 11 (the Public Facilities Planning Rule).

16 We first discuss the Transportation Planning Rule
17 (TPR), and its relevance in this matter, before turning to
18 petitioner's subassignments of error.

19 **A. Transportation Planning Rule**

20 The TPR was adopted by the Land Conservation and
21 Development Commission (LCDC) in 1991. The TPR purpose
22 statement, OAR 660-12-000, explains that the rule serves the
23 following purposes:

- 24 1. To implement Statewide Planning Goal 12
25 (Transportation).

- 1 2. To explain how local and state transportation
2 planners may demonstrate compliance with the
3 statewide planning goals.

- 4 3. To identify how transportation facilities may
5 be provided on rural lands, consistent with
6 the statewide planning goals.

- 7 4. To set "requirements for coordination among
8 affected levels of government for
9 preparation, adoption, refinement,
10 implementation and amendment of
11 transportation system plans."

- 12 5. To establish that transportation system plans
13 adopted under the TPR "fulfill the
14 requirements for public facilities planning
15 required under ORS 197.712(2)(e), Goal 11 and
16 OAR Chapter 660, Division 11, as they relate
17 to transportation facilities.

18 Generally, transportation planning under the TPR is
19 divided into two phases: (1) preparation of transportation
20 system plans (TSPs), and (2) transportation project
21 development. Under OAR 660-12-015, coordinated state,
22 regional and local TSPs are required.⁸ The required
23 elements for TSPs are set out at OAR 660-12-020.⁹ Local
24 governments are required to amend their land use regulations
25 as necessary to implement the applicable TSPs. OAR 660-12-
26 045. The transportation project development phase is

⁸The state TSP is prepared by ODOT. As relevant here, the regional TSP is prepared by the Metropolitan Service District. The county is responsible for preparing its own local TSP.

⁹The planning effort required by OAR 660-12-020 is extensive. It requires, among other things, an assessment of transportation needs, consideration of and planning for a variety of different modes of transportation, collection and development of supporting background and technical data, and development of implementing measures.

1 governed by OAR 660-12-050 and may occur concurrently with,
2 or after, development of the TSP.

3 There is no dispute that compliance with some parts of
4 the TPR was required from the date those provisions were
5 adopted.¹⁰ However, the deadlines for preparing TSPs and
6 certain TSP implementing measures have not yet passed.
7 OAR 660-12-055. As relevant in this appeal, those deadlines
8 are as follows:

- 9 1. May 8, 1994. By this date, respondent must
10 "adopt land use and subdivision ordinances or
11 amendments required by OAR 660-12-045(3),
12 (4)(a)-(e) and (5)(d)."¹¹ OAR 660-12-055(3).
- 13 2. May 8, 1995. By this date, designated
14 Metropolitan Planning Organizations (here the
15 Metropolitan Service District) are required
16 to complete regional TSPs. OAR 660-12-
17 055(1).
- 18 3. May 8, 1996. By this date, respondent must
19 adopt a local TSP and implementing measures.
20 Id.

21 While the deadlines for adoption of TSPs and the TSP
22 implementing measures required by OAR 660-12-045(3), (4)(a)-
23 (e) and (5)(d) have not yet arrived, local governments may

¹⁰For example, respondent does not dispute that the TPR provisions limiting transportation improvements on rural lands apply to the challenged ordinances. OAR 660-12-065. We address petitioners' arguments that the challenged ordinances violate the requirements of OAR 660-12-065, infra.

¹¹OAR 660-12-045(3), (4)(a)-(e) and (5)(d) require adoption of land use regulations concerning bicycle, pedestrian, transit and parking facilities.

1 adopt their local TSPs and the required implementing
2 measures anytime before that date.¹²

3 It is not entirely clear how local governments are to
4 go about adopting TSPs. OAR 660-12-010(2) provides as
5 follows:

6 "It is not the purpose of this division to cause
7 duplication of or to supplant existing applicable
8 plans and programs. Where all or part of an
9 acknowledged comprehensive plan, TSP * * *,
10 capital improvement program, regional functional
11 plan, or similar plan or combination of plans
12 meets all or some of the requirements of this
13 division, those plans or programs may be
14 incorporated by reference into the TSP required by
15 this division. Only those referenced portions of
16 such documents shall be considered to be a part of
17 the TSP and shall be subject to the administrative
18 procedures of this division and ORS Chapter 197."

19 OAR 660-12-010(2) specifically envisions that a local
20 government may designate existing "plans or programs" as
21 part or all of its TSP. However, as the last two sentences
22 of OAR 660-12-010(2) make clear, some reasonably definite
23 and specific action by the local government to designate or
24 incorporate those "plans or programs" as part or all of its
25 TSP is contemplated by the TPR. In this way, it can be
26 determined when the local government adopts its TSP and

¹²The TSP requirements apply directly to local government land use decisions if a local government fails to adopt its TSP on or before the required date. ORS 197.646(3). In addition, LCDC may initiate enforcement order proceedings to require that local governments adopt plan and land use regulation amendments necessary to comply with the TPR. Id.

1 which documents constitute the TSP and implementing
2 measures.

3 Under OAR 660-12-010(2), when the local government
4 adopts its TSP, it must clearly identify the new, amended or
5 existing documents that it adopts as its TSP and explain why
6 those new, amended or existing documents satisfy the TPR
7 requirements for a TSP and TSP implementing measures. The
8 documents adopted and designated as the TSP and TSP
9 implementing measures are subject to review to determine
10 whether they satisfy the TPR requirements for those
11 documents. That review apparently could occur through an
12 appeal to this Board or through periodic review.
13 OAR 660-12-055(6).¹³

14 **B. Compliance with TSP Requirements**

15 Petitioners quote findings adopted by the county in
16 support of Ordinances 419 and 421. The quoted findings, and
17 other findings not quoted by petitioners, identify TPR
18 requirements and explain how the county believes the
19 challenged ordinances parallel or are consistent with those
20 requirements.¹⁴ In short, petitioners contend the

¹³OAR 660-12-055(6) provides as follows:

"Portions of TSPs and implementing measures adopted as part of comprehensive plans prior to the responsible jurisdiction's periodic review shall be reviewed pursuant to OAR 660, Division 18, Post Acknowledgement [sic] Procedures."

¹⁴For example, petitioners cite the following finding concerning Ordinance 419:

1 challenged ordinances constitute action by the county to
2 adopt its TSP and implementing measures, as required by the
3 TPR. Petitioners cite several instances in which they
4 contend the county's comprehensive plan, as amended by the
5 challenged ordinances, fails to satisfy several TSP and
6 implementing measure requirements.

7 At the outset, we note petitioners do not argue that in
8 adopting ordinances amending its Transportation Plan prior
9 to the May 1996 deadline for TSPs the county must adopt its
10 TSP and implementing measures. But see Sunnyside
11 Neighborhood v. Clackamas Co. Comm., 280 Or 3, 569 P2d 1063
12 (1977), (holding statewide planning goals adopted by LCDC in
13 1974 rather than interim planning goals adopted by the
14 legislature in 1969, applied to a quasi-judicial plan
15 amendment adopted prior to the deadline for the
16 comprehensive plan as a whole to comply with the 1974
17 statewide planning goals). Indeed, petitioners concede the
18 county explicitly found that in adopting the challenged
19 ordinances it was not attempting to comply with the TPR
20 requirements for which a May 1994 deadline is established by
21 OAR 660-12-055(3).

"ORS 197.015(5) and the Transportation Planning Rule * * *
emphasize sewer, water and transportation systems as the focus
of comprehensive planning. Consistent with this, A-Engrossed
Ordinance No. 419 amends the adopted Transportation Plan and
plan amendment criteria to sharpen the focus on need, mode,
function and general locational aspects of the facilities and
services that comprise the transportation system." Record 180.

1 We first consider whether the challenged ordinances
2 adopt a TSP or TSP implementing measures. Respondent
3 contends the challenged ordinances do not constitute present
4 action by the county to adopt a TSP and implementing
5 measures. Respondent concedes the findings cited by
6 petitioners and other documents in the record take the
7 position that the amendments adopted by the challenged
8 ordinances are consistent with or satisfy certain TSP
9 requirements.¹⁵ However, respondent contends it is one
10 thing to adopt findings expressing confidence that the
11 changes adopted by the challenged ordinances are consistent
12 with TSP and TSP implementing requirements that do not yet
13 apply; it is another to take the required action to comply
14 with those requirements.

15 "Certainly, the county desired to avoid adopting
16 provisions that would later have to be amended or
17 repealed due to conflicts once the TPR became
18 applicable. That is not the same as binding
19 itself to demonstrate compliance at this early
20 stage. The scattered references to the term
21 'systems' or 'systems planning' cited by
22 petitioners do not declare such an intent."
23 Respondent's Brief 8.

24 Respondent also argues that where the county did intend
25 to take action to comply with applicable TPR requirements,
26 it did so explicitly. As noted earlier, all parties agree

¹⁵A staff report dated September 4, 1992 sets out in some detail how the challenged ordinances and existing planning documents fit into the planning structure required by the TPR, including the TPR requirements for a TSP and implementing measures and transportation project development. Record 192-214.

1 the TPR requirements governing transportation improvements
2 on rural land currently apply. In its findings concerning
3 roadway project plan regulations in rural areas, the county
4 explicitly found those requirements are met.

5 Respondent also argues the county explicitly found the
6 challenged ordinances are not intended to constitute the
7 county's effort to comply with future requirements of the
8 TPR. Respondent cites the following finding:

9 "OAR 660-12 includes bicycle requirements, some of
10 which must be complied with by May of [1994]. It
11 is not the County's intent that A-Engrossed
12 Ordinances 419 and 421 meet the future
13 requirements of the Transportation Planning Rule."
14 (Emphasis added.) Record 192.

15 Respondent goes on to explain in its brief as follows:

16 "* * * The bicycle requirements were referenced in
17 this context only because they were the standards
18 imminently applicable. Nothing limits the
19 [county's] finding to those provisions. Certainly
20 the [county] would have made that clear had anyone
21 contended that the Ordinances were intended to
22 comply with provisions applicable even further in
23 the future. The explicit * * * findings that the
24 ordinances comply with the currently applicable
25 TPR requirements for the rural area must be
26 contrasted sharply with the absence of such a
27 finding as regards the other * * * TPR
28 provisions." Respondent's Brief 8.

29 We do not agree with respondent that there is an
30 obvious or sharp contrast in the findings adopted by the
31 county addressing TSP requirements for which the compliance
32 date is delayed and other TPR requirements with no delayed

1 compliance date.¹⁶ However, while the question is a close
2 one, we agree with respondent that the challenged ordinances
3 do not constitute a current attempt by the county to adopt
4 the TSP and implementing measures required by OAR Division
5 660, Chapter 12.

6 The county could have eliminated any doubt on the
7 point, as it did with regard to compliance with the bicycle,
8 pedestrian and transit planning and implementation
9 requirements deadline set forth at OAR 660-12-055(3), by
10 explicitly stating it was not attempting to satisfy the TSP
11 requirements imposed by OAR 660-12-055(1).¹⁷ However, we
12 accept the county's explanation that while its existing
13 transportation-related comprehensive plan provisions, as
14 amended by the challenged ordinances, may ultimately be
15 adopted or designated as part of the county's TSP and
16 implementing measures required by OAR 660-12-010 through
17 660-12-050, the challenged ordinances are not a current
18 attempt to comply with the deadline established by
19 OAR 660-12-055(1).

¹⁶We also agree with petitioners that the findings can be read to constitute a current expression of belief by the county that the challenged ordinances and some existing planning documents are consistent with both the planning framework and at least some of the substantive requirements expressed in the TPR.

¹⁷In view of the county's argument, we assume the most a remand under this subassignment of error would accomplish is an amendment of the challenged ordinances to make such a clarification.

1 In reaching this conclusion, we rely primarily on the
2 above quoted and emphasized finding that the county did not
3 intend, by adopting the challenged ordinances, to take
4 action to satisfy future TPR requirements. We accept the
5 county's explanation that the finding was not limited to the
6 bicycle, pedestrian and transit planning deadline in OAR
7 660-12-055(3). Action by the county specifically to
8 designate existing plans and regulations as its TSP in the
9 manner required by OAR 660-12-010(2) presumably will occur
10 at some point in the future, prior to the deadline
11 established by OAR 660-12-055(1). The adequacy of any new
12 plans and regulations, or existing plans and regulations
13 designated and incorporated as part of the TSP, to comply
14 with TPR requirements may be challenged at that time. The
15 current challenge based on failure to comply with the TPR
16 requirements concerning TSPs is premature.

17 Because we conclude the county did not, in adopting the
18 challenged ordinances, take action to adopt a TSP or
19 designate and incorporate existing documents as a TSP,
20 petitioners' arguments under this subassignment of error
21 provide no basis for reversal or remand.

22 **C. Road Alignment Corridors**

23 **1. Compliance with Statewide Planning Goals**

24 The Transportation Plan map designates existing and
25 proposed road alignments. Under the Transportation Plan
26 (Plan Monitoring Policy 21.0) as it existed prior to

1 adoption of the challenged ordinances, "major modifications
2 of existing [road] alignments" required a legislative plan
3 amendment, "modifications to existing proposed road
4 alignments that affect only subject property or other
5 properties in the immediate vicinity" required a quasi-
6 judicial plan amendment, and "insignificant adjustments to
7 proposed road alignments" were processed administratively
8 without requiring a plan amendment. Ordinance 419 amends
9 the Transportation Plan to allow selection of road
10 alignments within 1/2 mile of the existing or proposed
11 roadway centerlines designated on the Transportation Plan
12 map (outside the urban growth boundary) or within 800 feet
13 of the existing or proposed roadway centerlines designated
14 on the Transportation Plan map (inside the urban growth
15 boundary). Thus, in both urban and rural areas, alignments
16 within the specified distance of existing or proposed
17 roadway centerlines could be selected without requiring a
18 comprehensive plan amendment.

19 In adopting amendments to its acknowledged
20 Transportation Plan, the county must demonstrate the
21 amendments comply with the Statewide Planning Goals (goals).
22 ORS 197.175(2)(a); 1000 Friends of Oregon v. Jackson County,
23 79 Or App 93, 97, 718 P2d 753 (1986). Petitioners argue the
24 above described change in the Transportation Plan will allow
25 the county to approve alignments within the specified urban
26 and rural corridors, without being required to demonstrate

1 that the particular alignment ultimately selected complies
2 with the goals. Petitioners assert the general legislative
3 findings adopted by the county in support of its decision
4 are inadequate to identify and address specific goal issues
5 that could be presented by selection of a particular
6 alignment within the allowable corridor.¹⁸

7 Respondent does not dispute that Ordinance 419 means
8 that, in some circumstances, modifications of existing or
9 proposed alignments will be allowed without plan amendments
10 where the prior Transportation Plan would have required a
11 plan amendment. Where future alignment decisions do not
12 require a plan amendment, because the alignment remains
13 within the specified corridor, the goals will not be applied
14 at the time an alignment is selected or modified.

15 Ordinance 419 is supported by findings which address
16 the goals and identify numerous plan policies adopted to
17 address statewide planning goal concerns. Record 176-95.
18 Respondent points out that while future selection of
19 particular alignments within the allowed corridors will not
20 require direct application of the goals, Ordinance 421

¹⁸Petitioners explain their argument on this point as follows:

"* * * For example, a new road might be built, or an existing road relocated, in a manner that conflicts with lands protected under Goal 5. Such a road might also bisect a large industrial or commercial site leaving the remainders too small to meet identified needs under Goal 9. Similarly, the location eventually selected may affect the county's ability to maintain air or water quality and the carrying capacity of those resources as required by Goal 6." Petition for Review 26.

1 amends the CDC to require that such alignment decisions be
2 based on an alternatives analysis report. CDC Section
3 708.¹⁹ In addition, respondent contends individual
4 alignment decisions remain subject to certain development
5 review standards. CDC Sections 715-718.

6 Anticipating and addressing all goal issues potentially
7 raised by locating a road anywhere within the broad
8 corridors adopted by Ordinance 419 presents an enormous

¹⁹CDC 708-2.3 requires "[a] description of anticipated impact, if any, of each alignment alternative as relates to the following:

- "a. Built and planned environment;
- "b. Air quality;
- "c. Noise (Arterials only);
- "d. Hydrology and hydraulics;
- "e. Water quality;
- "f. Aquatic resources;
- "g. Wetlands;
- "h. Terrestrial ecology;
- "i. Natural hazards;
- "j. Hazardous materials;
- "k. Cultural resources;
- "l. Visual resources;
- "m. Historic resources;
- "n. Recreational resources; and
- "o. Transportation System and Traffic.

"* * * * *"

1 task. The legislative findings adopted by the county
2 neither do so nor purport to do so. Furthermore, we cannot
3 agree with respondent's suggestion that the CDC provisions
4 it cites are sufficient to assure that such alignment
5 decisions will comply with the goals. We do not mean to
6 suggest that application of CDC standards at the time an
7 alignment is selected within a corridor designated in the
8 Transportation Plan cannot be substituted for application of
9 the goals. However, without more of an explanation for why
10 application of those CDC standards is adequate to substitute
11 for direct application of the goals, we cannot agree the CDC
12 standards are sufficient to assure alignments selected under
13 the Transportation Plan, as amended by Ordinance 419, will
14 comply with the goals.

15 If the county wishes to establish such broad alignment
16 corridors and adopt provisions eliminating the need to
17 address the goals at the time a particular alignment is
18 selected within those corridors, it must explain in its
19 decision why selection of an alignment anywhere within the
20 adopted alignment corridors will be consistent with the
21 goals. The challenged decision does not provide that
22 explanation.²⁰

²⁰We have recognized that the findings adopted in support of a legislative decision generally need not be as detailed as those required to support quasi-judicial land use decisions. In Von Lubken v. Hood River County, 22 Or LUBA 307, 313-14 (1991), we explained that where legislative land use decision findings are inadequate to demonstrate compliance with the goals, the required explanation may be supplied in respondent's brief.

1 **2. Compliance with the TPR**

2 The TPR requires that a TSP include a "map showing the
3 general location of proposed transportation facilities."
4 OAR 660-12-020(3). While the TPR does not define what is
5 meant by "general location," petitioners contend it is clear
6 from the rule that corridors of the width allowed by
7 Ordinance 419 are not envisioned.²¹

8 We conclude above that the challenged ordinances do not
9 adopt the TSP required by OAR Chapter 660, Division 12. We
10 therefore do not consider whether the road alignment
11 corridor provisions adopted by Ordinance 419 comply with the
12 TPR requirements for TSPs.

13 **3. Compliance with the Public Facilities**
14 **Planning Rule**

15 Petitioners argue the broad corridors adopted by
16 Ordinance 419 violate the Public Facilities Planning Rule.

17 "Under the Public Facilities Planning Rule, the
18 county is required to develop a transportation
19 system planning map that shows the general
20 location of all proposed and existing roads. OAR
21 660-11-020, 660-11-045.

However, beyond citing the noted CDC provisions in its brief, respondent does not attempt to explain why the cited CDC provisions are adequate to assure alignment selection will comply with the goals.

²¹Petitioners point out the TPR allows deferral of decisions concerning the general location of proposed transportation facilities in certain circumstances, provided certain findings are made. OAR 660-12-025. In addition, the TPR specifically envisions that goal findings may be required during the transportation project development phase to address unresolved goal issues, despite the fact statewide planning goal findings must be made when the TSP is adopted. OAR 660-12-050(2)(c).

1 "The map must identify the location of the
2 facility 'in specificity appropriate for the
3 facility. Location of facilities anticipated in
4 the short run can be specified more precisely than
5 the locations of projects anticipated for
6 development in the long term.' OAR 660-11-030(1).
7 If the location must be modified, the rule
8 provides a mechanism for making the change, and it
9 provides that modifications require a
10 comprehensive plan amendment unless the changes
11 are 'administrative' ('minor in nature' and
12 without a significant impact on the location) or
13 'technical and environmental' (final engineering
14 or NEPA based changes). OAR 660-11-045.

15 "The county's plan amendments are inconsistent
16 with the Public Facilities Planning Rule because
17 they adopt broad corridors for all roads, even
18 existing roads, without regard to 'the specificity
19 appropriate for the facility.' Further, the
20 amendments allow for changes - including those
21 that are not administrative or technical - without
22 a plan amendment." Petition for Review 27-28.

23 Respondent's only response to petitioners' argument is
24 that "[t]he broad scale functional plan map element of the
25 plan is not the 'public facilities' element of
26 transportation planning required by Goal 11." Respondent's
27 Brief 12-13. Respondent contends that "the Recommended
28 Roadways Improvements Map [discussed infra] is the kind of
29 public facility description anticipated by the Goal 11
30 rule." Id. at 13.

31 Respondent's answer is not responsive to petitioners'
32 argument, because whatever map the county intends as its
33 response to the Public Facilities Planning Rule, the
34 provisions adopted by the challenged ordinances grant the
35 county significant geographic flexibility in selecting

1 particular alignments without amending the map. We agree
2 with petitioners that the broad alignment corridors allowed
3 under the challenged ordinances for both existing and
4 proposed roads do not satisfy the specificity in mapping
5 called for under the Public Facilities Planning Rule.

6 This subassignment of error is sustained, in part.

7 **D. New Roads and Expanded Roads**

8 The TPR "identifies transportation facilities, services
9 and improvements which may be permitted on rural lands
10 consistent with Goals 3, 4, 11 and 14 without a goal
11 exception." OAR 660-12-065(1). OAR 660-12-065 establishes
12 a number of limitations on the facilities, services and
13 improvements that may be allowed on rural lands without goal
14 exceptions. Petitioners argue as follows:

15 "In the Functional Classification Map for the
16 rural portion of Washington County, adopted as
17 part of Ordinance 419, the county included three
18 rural road improvements that do not fall within
19 the categories listed in [OAR] 660-12-065: (1) a
20 new road extending 185th to Cornelius Pass Road,
21 (2) a new road connecting Beef Bend, Elsner and
22 Scholls/Sherwood roads, and (3) an expansion of
23 Scholls Ferry Road from 2 lanes to 5 lanes for the
24 section between the metropolitan UGB and Tile Flat
25 Road. * * *" Petition for Review 32-33.

26 According to petitioners, the first two facilities are
27 designated as minor arterials and the third is designated as
28 a major arterial. Petitioners contend such designations are
29 inconsistent with the standards set out at OAR 660-12-065(5)
30 to (7).

1 Respondent answers that the map adopted by Ordinance
2 419 is a large scale map which is based on the rural area
3 portion of the county Functional Classification Map that had
4 been adopted as part of the existing Transportation Plan.
5 Respondent contends Ordinance 419 makes no changes to the
6 roads identified by petitioners. Neither, argues
7 respondent, were those roadways reapproved or readopted,
8 "[t]hey were merely left as is, with no amendments."
9 Respondent's Brief 14. Respondent contends it therefore was
10 not required to apply OAR 660-12-065.

11 Petitioners do not dispute respondent's position that
12 the three challenged roadways were designated in the same
13 way on the prior Transportation Plan Functional
14 Classification Map. Petitioners do suggest that because
15 actual alignments of those roads may now occur within the
16 broad alignment corridors discussed supra, there may be
17 resulting effects on these roads which require that the
18 county address Goals 3, 4, 11 and 14 as well as OAR 660-12-
19 065.

20 For the reasons explained in our discussion of the
21 prior subassignment of error under C above, we agree with
22 petitioners. However, the county's resolution on remand of
23 the alignment corridor issue discussed under the prior
24 subassignment of error will also resolve the only issue
25 petitioners raise under this subassignment of error.

1 Therefore, this subassignment of error provides no
2 additional basis for remand.

3 This subassignment of error is denied.

4 **E. Recommended Roadway Improvements Map**

5 Under this subassignment of error, petitioners contend
6 Ordinance 419 authorizes construction of projects that are
7 not included in the comprehensive plan. Petitioners cite
8 the following language added to the Recommended Roadway
9 Improvements Map, which is included in the Transportation
10 Plan:

11 "This map provides general information about
12 significant roadway improvements. It is not the
13 intent of the map to preclude projects not on the
14 map for which unanticipated funding has been
15 obtained, preclude project specifications and
16 location decisions made according to the National
17 Environmental Policy Act, preclude projects that
18 are determined to be warranted through development
19 review, or to preclude projects that have been
20 omitted due to mapping errors." Record 45.

21 Petitioners contend the above language authorizes
22 construction of facilities that are not contained in the
23 comprehensive plan and that such authorization is clearly
24 improper. 1000 Friends of Oregon v. Washington County, 17
25 Or LUBA 671 (1989).

26 Respondent answers as follows:

27 "The Recommended Roadway Improvements Map was
28 amended to add language clarifying that a project
29 that is consistent with the Transportation Plan
30 but not listed on the Recommended Roadway
31 Improvements Map is not precluded due to the fact
32 that it is not on that Map. This map is a list of
33 road facilities of the sort contemplated by the

1 public facilities goal and rules, and much of the
2 language to which petitioners object is drawn from
3 the Goal 11 rule OAR 660-11-045(2)." Respondent's
4 Brief 15.

5 We agree with respondent. The challenged language
6 simply clarifies that other maps and provisions of the
7 Transportation Plan may allow projects that are not shown on
8 the Recommended Roadway Improvements Map. This
9 subassignment of error is denied.

10 The second assignment of error is sustained in part.

11 **THIRD ASSIGNMENT OF ERROR**

12 Petitioners describe the county's acknowledged
13 regulatory scheme for protecting Goal 5 resources as
14 follows:

15 "Goal 5 resources located in Washington County are
16 inventoried in the Washington County Resource
17 Document ('Resource Document'). The Resource
18 Document prescribes the level of protection
19 afforded each resource as well as the
20 justification for that protection. The specific
21 programs to achieve Goal 5 resource protection are
22 contained in the Resource Document and the Design
23 Elements of the eleven Community Plans. The
24 Community Plans are implemented by the [CDC] which
25 contains specific procedures and development
26 standards. See CDC § 422 et seq." Petition for
27 Review 38.

28 Petitioners argue that in adopting Ordinance 420, the
29 county amended certain design elements contained in two
30 community plans in ways that allow additional conflicting
31 uses and diminish the level of protection previously
32 afforded two resource areas. Petitioners contend the county

1 failed to justify reducing the level of protection afforded
2 these two areas under Goal 5.

3 The two design element amendments challenged by
4 petitioners are set forth below, with the new language
5 adopted by Ordinance 420 underlined:

6 "Design Element No. 2 for Southwest of Sherwood
7 Sub-area of the Sherwood Community Plan shall be
8 amended as follows:

9 "2. Cedar Creek, its tributaries and their
10 immediately adjacent riparian zone, as
11 defined in the Community Development Code,
12 shall be retained in their natural condition,
13 including topography and vegetation
14 consistent with the provisions of the
15 Community Development Code. This land shall
16 be dedicated as public open space for
17 pedestrian access and recreational purposes
18 whenever feasible." Record 56-57.

19 "Design Element No. 6 for Summit and Slopes Sub-
20 area of the Bull Mountain Community Plan shall be
21 amended as follows:

22 "6. Streams, seasonal waterways and immediately
23 adjacent riparian zones, as defined in the
24 Community Development Code, shall be
25 preserved in their natural condition
26 including topography and vegetation,
27 consistent with the provisions of the
28 Community Development Code. Where roads are
29 required, bridges shall be preferred means of
30 crossing streams and waterways rather than
31 infill and piping or channelization of
32 waterflow." Record 53.

33 According to petitioners, by including the reference to
34 consistency with the CDC, the county has lessened the

1 protection previously provided by those elements by allowing
2 uses that previously would not have been allowed.²²

3 Respondent contends petitioners misread both the
4 previously existing Goal 5 program and the nature of the
5 amendment adopted by Ordinance 420:

6 "[T]he Goal 5 program protections set out in the
7 various community plans intend that transportation
8 and other public facilities required by the
9 Comprehensive Framework Plan and identified in
10 acknowledged functional plans would be permitted
11 uses subject to regulation by CDC 422. Ordinance
12 420 merely clarifies that intent; it is an effort
13 to identify the regulatory 'shell' --- CDC 422 ---
14 in which the 'pea' of specific approval standards

²²Petitioners' particular concern is CDC 422-3.3.A, which provides, in part, as follows:

"No new or expanded alteration of the vegetation or terrain of the Riparian Zone * * * or a significant water area or wetland * * * shall be allowed except for the following:

- "(1) Crossings for streets, roads or other public transportation facilities.
- "(2) Construction or reconstruction of streets, roads or other public transportation facilities.
- "(3) Installation or construction of the following utilities: sewer and water lines, electric, communication and signal lines; and gas distribution and transmission lines.

** * * * *

- "(6) Detached dwellings and accessory structures on a lot of record, provided there is insufficient suitable, existing buildable land area to permit construction outside the riparian zone * * * or a significant water are or wetland * * * and all required local, state or federal permits are obtained.

** * * * *

1 and protections is contained." Respondent's Brief
2 18-19.

3 Respondent points out the community plans themselves
4 explicitly recognize that the policies contained in the
5 Comprehensive Framework Plan and community plans will be
6 implemented through the CDC and other implementing
7 measures.²³ Similarly, the Comprehensive Framework Plan
8 includes Policy 10, "to protect and enhance significant
9 natural areas," and an implementing strategy under that
10 policy states that:

11 "The County will:

12 "* * * * *

13 "b. Through the Community Development Code,
14 review and regulate proposed activities in
15 identified Significant Natural Resource
16 areas. The review process shall adhere
17 closely to provisions in applicable Community
18 Plans which direct the manner and extent to
19 which the area shall be protected[.]

20 "* * * * *"

21 Respondent goes on to note that CDC 422-1 specifically
22 provides that:

23 "The intent and purpose of these standards is to
24 permit limited and safe development in areas with
25 significant natural resources, while providing for

²³The Sherwood Community Plan Overview states, in part, as follows:

"Implicit throughout the Sherwood Community Plan is the assumption that policies in the Comprehensive Framework Plan will be implemented through the Community Development Code, the Unified Capital Improvements Plan, and the Transportation and other functional plans. * * *"

1 the identification, protection, enhancement and
2 perpetuation of natural sites, features, objects
3 and organisms within the County * * *."

4 Respondent also notes that CDC 422-3 establishes "Criteria
5 for Development," and CDC 422-3.1 explicitly states "[t]he
6 required master plan and site analysis for a site which
7 includes an identified natural resource shall * * * [a]pply
8 the design elements of the applicable community plan[.]"

9 Finally, respondent disputes petitioners'
10 characterization of the above quoted community plan design
11 elements as providing "absolute" or "virtually guaranteed"
12 protection. Petition for Review 39. The first of the above
13 quoted design elements is followed by another design element
14 which envisions transportation facilities crossing the
15 identified resource area. The second of the above quoted
16 design elements, itself, refers to roads.

17 For the reasons presented by respondent, outlined
18 above, we agree the challenged amendments to the two design
19 elements do not reduce the protection that was extended to
20 the areas covered by those design elements prior to the
21 adoption of Ordinance 420.

22 The third assignment of error is denied.

23 **FOURTH ASSIGNMENT OF ERROR**

24 OAR 660-12-065 identifies transportation improvements
25 that may be allowed on rural lands consistent with the
26 goals. As relevant, OAR 660-12-065(4) provides as follows:

1 "The following transportation facilities and
2 improvements are consistent with Goals 11 and 14
3 and may be located on rural lands:

4 "* * * * *

5 "(i) Turn refuges at existing street
6 intersections;

7 "(j) Transportation system management measures,
8 including medians which limit or prevent
9 turning movements, but not including the
10 creation of additional travel lanes or median
11 turn lanes;

12 "* * * * *." (Emphasis added.)

13 Ordinance 419 amends note 1 on the existing Functional
14 Classification System Map to read as follows:

15 "LANES EXISTING/PROPOSED - The number of proposed
16 lanes indicated on this map reflects the current
17 prediction of the future lane requirements along
18 roadway sections. Where center turn lanes are not
19 indicated (e.g. 2/2) there may still be turn lanes
20 at intersections with existing roadways and
21 elsewhere as necessary to serve local needs.
22 Where center lanes are indicated (e.g. 2/3, they
23 will generally be intermittent and as necessary to
24 accommodate turn movements at existing
25 intersections or to serve local needs.

26 "* * * * *" Record 43.

27 Intervenor contends the above quoted note authorizes
28 "continuous turn lanes" which are the same thing as "median
29 turn lanes." Because median turn lanes are prohibited under
30 OAR 660-12-065(4)(j), quoted supra, intervenor argues the
31 amended note violates OAR 660-12-065(4)(j).

32 Roads designated "2/2" on the Functional Classification
33 Map may have center turn lanes only "at intersections with

1 existing roadways and elsewhere as necessary to serve local
2 needs." We understand respondent to argue that the center
3 turn lanes for this road designation are limited to single
4 intersections and for that reason are neither "median turn
5 lanes" nor "continuous turn lanes."²⁴ However, for roads
6 designated 2/3, the authorized center turn lanes "will
7 generally be intermittent and as necessary to accommodate
8 turn movements at existing intersections or to serve local
9 needs." (Emphasis added.) The qualifying language leaves
10 open the possibility that center turn lanes may not be
11 intermittent and may extend continuously between
12 intersections. Such center turn lanes would constitute
13 "continuous turn lanes" (as defined by Ordinance 421, see n
14 24, supra) and "median turn lanes" (which are prohibited by
15 OAR 660-12-065(4)(j)).

16 We address below two of respondent's arguments that the
17 turn lanes authorized for roads designated 2/3 do not
18 violate OAR 660-12-065(4)(j).

19 **A. Facilities Authorized By ORS 215.213(1) or (2) or**
20 **215.283(1) or (2)**

21 As relevant, OAR 660-12-065(3) provides as follows:

22 * * * * *

23 "The following transportation facilities and
24 improvements are consistent with Goals 3 and 4 and

²⁴Ordinance 421 defines "continuous turn lane" as follows: "A turn lane extending continuously at full width between two or more public street intersections."

1 may be sited on rural agricultural and forest
2 lands;

3 "(a) On land zoned for agricultural use,
4 transportation facilities and improvements
5 permitted outright or conditionally under ORS
6 215.213(1) or (2) or ORS 215.283(1) or (2)
7 * * * [.]

8 " * * * * " (Emphasis added.)

9 Respondent contends several subsections of ORS 215.213
10 authorize the type of center lanes allowed on 2/3 designated
11 roads by the above quoted note.²⁵

12 It is not clear to us whether all rural land with 2/3
13 roads is zoned for exclusive farm use. Moreover, it is not
14 clear whether all center lanes allowed on 2/3 designated
15 roads would fall within one or more of the general types of
16 facilities permitted under the subsections of ORS 215.213
17 noted by respondent. See n 25, supra. However, even if

²⁵Respondent contends the disputed center lanes can be considered as falling within the following "facilities and improvements authorized by ORS 215.213(1) or (2)":

"Reconstruction or modification of public roads and highways, not including the addition of travel lanes, where no removal or displacement of buildings would occur, or no new land parcels result." ORS 215.213(1)(n).

"Minor betterment of existing public roads." ORS 215.213(1)(p).

"Construction of additional passing and travel lanes requiring the acquisition of right of way but not resulting in the creation of new land parcels." ORS 215.213(2)(q).

"Reconstruction or modification of public roads * * * not resulting in the creation of new land parcels." ORS 215.213(2)(r).

1 they do, that does not mean DLCD may not prohibit a
2 particular type of facility under OAR 660-12-065(4)(j) that
3 might otherwise be permissible under ORS 215.213(1) or (2)
4 or ORS 215.283(1) or (2).²⁶ See Newcomer v. Clackamas
5 County, 94 Or App 33, 37, 764 P2d 927 (1988) (Land
6 Conservation and Development Commission empowered to adopt
7 rules refining statutory land use standards).

8 By prohibiting median turn lanes in rural areas, DLCD
9 has precluded utilization of the general statutory authority
10 for certain transportation facilities on EFU zoned lands
11 that might otherwise have provided such authority.
12 Respondent's reliance on Washington Co. Farm Bureau v.
13 Washington Co., 17 Or LUBA 861, 878 (1989) for a contrary
14 result is misplaced. All we said in Washington Co. Farm
15 Bureau was that goal exceptions are not required to allow
16 the uses specified in ORS 215.213(1) and (2). However,
17 there was no rule at issue in that case specifically
18 prohibiting a particular facility that would otherwise be
19 allowable as falling within a general category of uses
20 allowed by the statute. There is such a prohibition here,
21 and it must be given effect. See Newcomer v. Clackamas
22 County, supra.

²⁶Although OAR 660-12-065(3) refers to "rural agricultural and forest land," we do not believe that reference means the facilities discussed in that section of the rule necessarily are also consistent with Goals 11 and 14. OAR 660-12-065(3) addresses Goal 3 and 4 concerns; OAR 660-12-065(4) addresses Goal 11 and 14 concerns. Both sections of OAR 660-12-065 must be considered together to assure compliance with Goals 3, 4, 11 and 14.

1 **B. Other Transportation Facilities, Services and**
2 **Improvements Serving Local Needs**

3 Respondent's second argument depends on the meaning of
4 OAR 660-12-065(4)(s). As already discussed above,
5 OAR 660-12-065(4) lists the facilities and improvements that
6 may be allowed on rural lands consistent with Goals 11 and
7 14. OAR 660-12-065(4)(a) through (r) list specific
8 facilities and improvements and, as noted in the above
9 discussion, prohibit certain uses. OAR 660-12-065(4)(s)
10 adds a general category of transportation facilities and
11 improvements that may be allowed on rural lands:

12 "Other transportation facilities, services and
13 improvements serving local needs as defined in
14 subsection (7) of this section."

15 Respondent argues that even if the type of center lanes
16 allowed on 2/3 designated roads are prohibited by
17 OAR 660-12-065(4)(j), they are allowed by
18 OAR 660-12-065(4)(s).

19 Intervenor disputes respondent's reading of
20 OAR 660-12-065(4)(s) as allowing any transportation
21 facility, so long as it serves local needs as defined in
22 OAR 660-12-065(7). Intervenor argues that
23 OAR 660-12-065(4)(s) does not extend to allowing an
24 improvement serving local needs if the facility is one of
25 the types that is specifically prohibited by one or more of
26 the subsections of OAR 660-12-065(4) immediately preceding
27 OAR 660-12-065(4)(s).

1 Both DLCD's narrower construction of
2 OAR 660-12-065(4)(s) and respondent's broader reading of
3 that subsection are possible. DLCD's construction is
4 entitled to some deference. See 1000 Friends of Oregon v.
5 LCDC (Lane Co.), 305 Or 384, 389-90, 752 P2d 271 (1988). We
6 defer to DLCD's interpretation of the scope of
7 OAR 660-12-065(4)(s).

8 For the reasons explained above, we agree with DLCD
9 that the type of center lanes allowed on 2/3 designated
10 roads under Ordinance 419 are prohibited by
11 OAR 660-12-065(4)(j) and are not allowable under
12 OAR 660-12-065(4)(s). That portion of Ordinance 419
13 therefore violates the TPR.

14 The fourth assignment of error is sustained.

15 Ordinance 419 is remanded. Ordinances 420 and 421 are
16 affirmed.