BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

DEPARTMENT OF LAND CONSERVATION
AND DEVELOPMENT,
Petitioner,

vs.

KLAMATH COUNTY,
Respondent,

and

PARADISE HILLS, LLC,
Intervenor-Respondent.

LUBA No. 2000-071

FINAL OPINION
AND ORDER

Appeal from Klamath County.

Richard M. Whitman, Assistant Attorney General, Salem, filed the petition for review. With him on the brief were Hardy Myers, Attorney General, and Michael D. Reynolds, Solicitor General. Steven Shipsey, Assistant Attorney General, argued on behalf of petitioner.

No appearance by Klamath County.

Michael L. Spencer, Klamath Falls, filed the response brief and argued on behalf of intervenor-respondent. With him on the brief was Spencer and LeBourveau, LLP.

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

REMANDED 10/05/2000

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

Opinion by Briggs.

NATURE OF THE DECISION

Petitioner appeals a county decision to amend the Klamath County zoning map to change the designation of a 680-acre tract from Non-Resource (NR) to Rural Residential five-acre minimum (R-5).

MOTION TO INTERVENE

Paradise Hills, LLC (intervenor), the applicant below, moves to intervene on the side of respondent. There is no opposition to the motion and it is allowed.

FACTS

The subject property is east of U.S. Highway 97 (Highway 97), approximately two and one-half miles north of the urban growth boundary of the City of Klamath Falls. This tract of land is surrounded by lands zoned and planned for nonresource and rural residential use. Of the lands surrounding the tract that are zoned R-5, the average lot size is between 2.11 and 3.54 acres. About half of these lots are developed with homes.

The terrain on the subject property is hilly with an average slope of approximately 18 percent. However, some slopes are as steep as 30 percent. The soil types are mostly gravelly loam with underlying rock. The water table is several hundred feet below the ground surface. According to testimony from intervenor's expert, there are 54 domestic wells in the area ranging in depth from 25 to 250 feet.

Shady Pine Road lies to the north of the property and intersects with Highway 97. The decision anticipates that access to the interior roads on the subject property will be from Shady Pine Road. South Wocus Road lies to the south of the subject property and also intersects with Highway 97.

In 1995, the county approved an 830-acre subdivision project known as Paradise Hills, Tract 1316, on the subject property. This subdivision created 36 20-acre residential lots. In 1998, an application to change the zoning on the subject property from NR to R-5

was denied. In 1999, intervenor submitted new applications to the county to amend the designation on the comprehensive plan map designation from NR to Rural Residential and the zoning map designation from NR to R-5. Intervenor also submitted an application requesting approval for either a planned unit development (PUD) or a 118-lot subdivision.

Various county and state departments and the planning commission recommended denial of the three applications.[1] Despite these recommendations, on April 11, 2000, the board of commissioners orally voted to approve both the comprehensive plan and the zoning map amendments.[2] On May 2, 2000, the county adopted a written order amending the zoning map designation from NR to R-5. In the order, the county found that the change "will not result in urbanization and therefore an exception to Goal 14 is not required." Record 3. The order also concluded that the proposed change will not significantly affect transportation facilities.

This appeal followed.

FIRST ASSIGNMENT OF ERROR

Petitioner argues that the county's decision must be reversed or remanded because the decision rezones land without adopting a corresponding amendment to the county's comprehensive plan map. Petitioner asserts that, although the board of commissioners voted to approve both the comprehensive plan and zoning map amendments, only the zone change

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[1]The county planning commission and planning department recommended denial of the application due to the large amount of available developable land within the UGB and concerns with access issues. Record 49, 62. The Oregon Department of Transportation (ODOT) also recommended denial due to concerns regarding the potential adverse effects upon Highway 97 and the inadequacies of the transportation facilities. Record 500-503. The Klamath County Department of Public Health recommended denying the application due to perceived potential problems with on-site sewage disposal systems. Record 490-91. The Oregon Department of Fish and Wildlife (ODFW) expressed its concerns and recommended denial as well due to the potential increase of residential densities and the potential effect residential development would have on wildlife. Record 389-90. Petitioner joined in recommending denial of the applications, asserting that the proposed amendments to the comprehensive plan and zoning designation are inconsistent with both the Klamath County Comprehensive Plan (KCCP) and the statewide planning goals, and do not satisfy Klamath County Land Development Code (KCLDC) 48.030(B). Record 395.

[2]The application for the proposed PUD is pending.

from NR to R-5 was approved by the board of commissioners' written decision. Petitioner concedes that the caption of the county's decision describes the decision as an amendment to both the comprehensive plan and zoning ordinance, but argues that the body of the decision refers only to the zoning map amendment. Petitioner asks that the county's decision be reversed or, in the alternative, remanded so the county can correct the error and amend the comprehensive plan designation to be consistent with the amended zoning map designation.

Intervenor concedes that the county's order, by its terms, only approves the zone change. Intervenor asserts, however, that the county can take formal action to amend the comprehensive plan at a later time. Intervenor also contends that the zone change order cannot be implemented until the county approves the comprehensive plan amendment.[3]

ORS 215.050(2) requires that "[z]oning, subdivision or other ordinances or regulations and any revisions or amendments thereof shall be designed to implement the adopted county comprehensive plan." KCLDC 47.030(B)(1) requires a showing that "[t]he proposed change of zone designation is in conformance with the Comprehensive Plan * * *." KCCP Goal 11 (Public Facilities and Services), Policy 12 requires an amendment to the comprehensive plan whenever land zoned NR is rezoned to allow greater residential densities.[4] The challenged zoning designation does not conform with the comprehensive plan regarding density.

We agree with petitioner that the county's written decision only changes the zoning map designation and does not amend the comprehensive plan designation. Intervenor's

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[3]Intervenor asserted at oral argument that the county intended to amend the comprehensive plan designation and that the board of commissioners' failure to do so in its written decision was inadvertent.

[4]KCCP Goal 11, Policy 12 provides, in relevant part:

> "The County shall require a plan amendment to change from a 'Non-Resource' designation (1 dwelling unit/20 acres) to a higher density rural designation (1 dwelling unit/5 acres). A change from rural service center or built and committed area (1 dwelling unit/5 or 1 acre) to a rural community designation (1 dwelling unit/5,000 sq. ft.) will require a plan amendment and exception to Goal 14 (Urbanization). * * *"

argument that the failure to change the comprehensive plan designation is harmless and can be corrected after the fact is inconsistent with the requirement that changes in zoning designation must be made in accordance with the comprehensive plan.

The first assignment of error is sustained.[5]

SECOND ASSIGNMENT OF ERROR

Petitioner argues that the county erred in concluding that the challenged decision will not result in the urbanization of rural lands. Petitioner concedes that the rezoning to a five-acre density does not, by itself, result in urban densities. However, petitioner contends that if the 680-acre property is rezoned to R-5, a PUD may be approved for it. Klamath County's PUDs have no minimum parcel size and, in the R-5 zone, commercial uses may be allowed as part of the PUD development. Petitioner explains that the PUD application intervenor submitted in conjunction with the zone change application proposes an area for commercial uses and lot sizes as small as 2.2 acres. In addition, petitioner argues that other factors, including (1) the proximity of the subject property to the Klamath Falls UGB and its potential impacts on the effectiveness of that UGB; (2) the use of Highway 97 as a major access road; and (3) the potential for the establishment of community water and sewer systems on the subject property all point to the possibility that urban uses will be established on the subject property, in contravention of Goal 14 and KCCP policies implementing that goal.

As we have already noted, under KCCP Goal 11, Policy 12, the county is required to amend its acknowledged comprehensive plan where it changes the zoning designation for a property that is zoned NR "to a higher density rural designation." *See* n 4. We have already determined the county did not adopt the required comprehensive plan amendment. Had the

[5]Although our disposition of the first assignment of error requires remand, in accordance with ORS 197.835(11)(a) we nevertheless consider petitioner's remaining assignments of error to provide guidance to the parties on remand.

county adopted the required comprehensive plan amendment, it would have been required to demonstrate compliance with Goal 14. ORS 197.175(2)(a).[6] Petitioner contends that because the challenged decision cannot be made without a corresponding plan amendment, we should take this opportunity to review the zone change for compliance with Goal 14.

Intervenor responds that petitioner's concerns regarding potential development are premature. According to intervenor, the correct question is whether, in the absence of other approvals, the challenged decision will result in urban uses being established on rural lands. Intervenor argues that the intensity of development, and whether the uses being considered for the subject property are urban or rural, are more properly addressed when those uses are being proposed, *i.e.*, at the PUD application stage.[7]

It may be that, notwithstanding ORS 197.175(2)(d), under the county's acknowledged comprehensive plan and zoning ordinance individual development proposals must nevertheless demonstrate compliance with Goal 14 at the time development is proposed, as intervenor suggests is the case.[8] However, nothing cited by intervenor clearly provides that such is the case, and we will not assume that it is. *See Byrd v. Stringer*, 295 Or 311, 316-17, 666 P2d 1332 (1983) (after acknowledgment individual land use decisions generally are not

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[6]ORS 197.175(2)(a) requires that every city in Oregon shall:

> "[A]mend * * * comprehensive plans in compliance with goals approved by the [Land Conservation and Development Commission.]"

[7]In support of this proposition, intervenor cites to KCCP Goal 11, Policy 9, which includes an implementation provision requiring that:

> "[P]rior to the proposed development's approval, it must be shown that all other existing public facilities (schools, police, roads, etc.) in the area could adequately accommodate the proposed development with little or no impact on the level of service in the area. All other applicable goals shall be addressed as well."

[8]ORS 197.175(2)(d) provides:

> "If its comprehensive plan and land use regulations have been acknowledged [a county must] make land use decisions * * * in compliance with the acknowledged plan[.]"

reviewed for compliance with statewide planning goals but rather are reviewed for compliance with the acknowledged comprehensive plan and land use regulations).

The county adopted the following findings, which we assume were its attempt to explain why the disputed rezoning decision does not violate Goal 14:

> "The proposed zone change will not result in urbanization and therefore an exception to Goal 14 is not required. The zone change is to a five (5) acre zone. Such a density is clearly established as a rural use by the acknowledged [KCLDC]. Urban densities within Klamath County are typically around 0.25 acres. The creation of a community water system or a community sewer system will be specifically prohibited so urban services are not being provided to this rural subdivision." Record 3.

These findings are inadequate to demonstrate that the proposed rezoning will not result in the establishment of urban uses on the subject property. The decision does not explain why, where a higher density could be allowed through a PUD, the R-5 zoning designation will ensure the retention of rural densities. *Kaye/DLCD v. Marion County*, 23 Or LUBA 452, 462-64 (1992). That problem aside, the county's findings make no attempt to explain why the county believes developing a 680-acre tract at a density of one unit per five acres (which could result in as many as 136 residential units) is properly viewed as a permissible use of rural land under Goal 14, so long as it is not served by community water and sewer. Finally, as explained below, without further explanation by the county, we cannot agree with intervenor that, under the county's comprehensive plan and zoning ordinance, it would not be possible to provide community water and sewer to the subject property.

The Klamath County plan and code permit the establishment of community sewer and water systems in rural areas. *See* KCCP Goal 11, Policies 9 and 10 (providing that the coordinated development of services must include water, sewage and fire protection and relying on provisions in the KCLDC to implement the policy); KCLDC 75.010(A) (permitting the establishment of a "central water supply system or individual wells [in rural areas] at the option of the developer"); and KCLDC 75.020 (permitting central sanitary sewer systems in rural areas under certain circumstances). Both parties agree that the

county's land use regulations do not allow conditions to be attached to a zone change. The county's conclusory statement in its findings that "the creation of a community water system or a community sewer system will be specifically prohibited" does not explain how, in light of these policies and implementing code provisions, the proposed zone change will nevertheless not result in urban services being provided to rural lands.

Intervenor argues that KCCP Goal 11, Policy 11 clearly demonstrates that community sewer and community water systems are not permitted on R-5 zoned land. KCCP Goal 11, Policy 11 states that "[t]he County shall establish appropriate [densities] and corresponding levels of services for rural lands." The policy is followed by an "Implementation" section. The "Implementation" section includes a table setting forth the various zoning districts, the minimum allowable lot size, and two additional columns. One column asks the question: "Is a Community Sewer System [Appropriate?]" The next column asks the question: "Is a Community Water System [Appropriate?]" Each listed zoning district contains a "Yes" or "No" answer to those questions. For the R-5 district, both columns indicate that neither a community sewer system nor a community water system is appropriate. However, in explanatory notes following the table, the plan explains what it means by the "No" answer:

> "A 'No' indicates that the proposed development of a community water (or sewer) system may be appropriate and that a plan amendment may be required prior to approval of the development and an exception to Goal 11 and Goal 14 may be required." KCCP 74.

Given the equivocal nature of the plan policy and implementation provision, and given that the county adopted no findings interpreting the policy in such a way as to make it clear that community water and sewer systems will not be constructed on the subject property if it is zoned R-5, we cannot assume such is the case. We agree with petitioner that the county's findings are inadequate to demonstrate compliance with Goal 14.[9]

[9]Because we conclude the findings are inadequate, we need not address petitioner's substantial evidence arguments. *McNulty v. City of Lake Oswego*, 14 Or LUBA 366, 373 (1986).

The second assignment of error is sustained.

THIRD ASSIGNMENT OF ERROR

According to petitioner, the county's decision fails to demonstrate that the redesignation of this parcel to R-5 complies with KCCP policies implementing Statewide Land Use Planning Goal 11 (Public Facilities and Services). Petitioner contends that prior to rezoning the subject property, the county must find that (1) water and sewage disposal are adequate for the proposed use of the property and (2) the public facilities and services providing for water and sewage disposal will be limited to the types and levels of services "suitable and appropriate solely for the needs of rural lands." Goal 11; KCCP Goal 11; KCLDC 47.030(B)(3).[10] Petitioner argues that the county failed to adopt findings or adopted inadequate findings to show that individual water and septic systems can be installed on the property to serve the proposed development densities. Petitioner further argues that the evidence that the county relied upon to conclude that individual water wells and individual septic systems can be feasibly developed is undermined by other evidence demonstrating that service feasibility is much more limited.

Intervenor responds that the county's findings are adequate to demonstrate that the rezoning application satisfies the relevant KCCP policies and KCLDC 47.030(B)(3) regarding water and domestic sewage disposal on rural lands. Intervenor contends that neither Goal 11 nor the county's land use regulations requires a demonstration at the rezoning stage that every single lot within a development proposed as a result of the zone change has sufficient water or an adequate subsurface sewage disposal system. Intervenor contends that the proper time to determine whether these services can be provided to

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[10]KCLDC 47.030(B) contains the criteria for reviewing and approving quasi-judicial zone change applications. KCLDC 47.030(B)(3) provides:

> "The property affected by the proposed change of zone designation [must be] properly related to streets and roads and to other public facilities and infrastructure to adequately serve the types of uses allowed in conjunction with such zoning."

individual lots is at the time of final subdivision plat review. According to intervenor, state subdivision laws and the KCLDC require that, insofar as domestic sewage disposal is concerned, each lot in a subdivision must be able to sustain a septic system. If a lot is not approved for a septic system, it is combined with other lots until sufficient area is available to support the septic system.[11] With regard to water, intervenor cites to testimony indicating that water would not be difficult to obtain.

A. Sewage Disposal

We agree with intervenor that neither Goal 11 nor the county plan policies implementing Goal 11 requires lot-by-lot approvals of individual septic systems at the time the property is rezoned. In this case, however, there are serious questions as to whether on-site septic systems are feasible at densities allowed under the R-5 zoning designation. The county's decision relies on testimony indicating that 35 lots have been approved for on-site septic systems. However, the county health department testified that those 35 on-site septic systems were approved for the 20-acre lots created as a result of the 1995 subdivision approval and that those approvals are not valid for denser development.[12]

The county's findings are inadequate to demonstrate that it is feasible to provide adequate individual sewage disposal systems for the property, and that the sewage disposal

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[11]Neither party identifies and we are unable to find either a statutory or KCLDC provision that requires the consolidation of lots in a subdivision if some of those lots cannot support an individual subsurface sewage disposal system. The closest references we can find are KCLDC 46.090(D)(5)(f) and ORS 92.090(5)(c), which establish that a plat for a proposed subdivision cannot be approved until the local government has received and accepted certification from a city-owned or regulated private sewage disposal service that a sewage disposal system will be available to the lot line of each and every lot depicted on the proposed subdivision plat. In lieu of that requirement, the subdivider may provide the local government with a statement that no sewage disposal facility will be provided to the purchaser of any lot within a subdivision where an alternative sewage disposal system has been approved.

[12]In a letter dated August 14, 1998, the Klamath County Department of Public Health, the entity charged with regulating subsurface sewage disposal in Klamath County, stated that the approvals of the on-site sewage disposal systems for the 20-acre lots were limited, and changes in the subdivision configuration "will require a separate site evaluation and the further subdividing of the property will void all prior approvals." The letter also indicated that one of the 20-acre lots approved as part of the 1995 subdivision could not be serviced by an individual subsurface sewage disposal system due to "a lack of soil, steep slopes and unfractured bedrock." Record 490-91.

systems that may be installed to serve residential uses at R-5 densities are "available" and "appropriate" for rural lands as required by KCCP Goal 11, Policies 9 and 10, and KCLDC 47.030(B)(3).

B. Water Availability

Petitioner and opponents of the application testified that developing the subject property into a 118-lot subdivision would adversely affect water availability in the vicinity. According to the neighbors, water is difficult to obtain in the area, and additional water demands may require connections to the city water system.[13]

Intervenor responds that the county relied upon expert testimony to determine that adequate water is available.[14] This testimony points to a "water study inventory" that identifies the location and depth of the wells within the vicinity of the subject property.[15]

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[13]Residents of the Shady Pine Subdivision located to the north of the subject property contended in a letter to the county commissioners that:

> "[W]e fear contamination of the existing wells in the community [caused by] inadequate drainage and failed septic fields. We also don't know if geologists have been consulted to determine the size and extent of the aquifer that supplies our wells. * * *
>
> "If the development were put on city water and sewer * * * would the city's Wocus well be used, and would the city pick up the expense of converting the Wocus residents to city water, since some wells would most likely go dry due to the increased demand on the Wocus aquifer? One well did go dry during the city's test of the Wocus well's capacity." Record 497.

[14]The evidence relied upon by intervenor and the county is testimony from Doug Adkins, president of Adkins Consulting Engineers. Mr. Adkins represented intervenor with regard to technical issues arising from the proposed development application. In a hearing before the board of commissioners, Mr. Adkins testified:

> "* * * There's been some concerns raised about the depth and the ability to get water in the area. We did submit a water study inventory of the water wells in the area. There's 54 wells in the area, ten to the north, two to the east, 42 [to] the south, and the well depths could range…these wells range from 25 to 250 feet deep. We do not expect any problems getting water. I have been in contact with a local well driller that we do anticipate getting water at approximately lake level, and I think that's typical throughout the area. We understand that the lots on top will require deep wells, but those are the norm in certain areas of the county anyway and the well driller was not concerned about getting water at those depths." Record 21.

[15]The zone change application states that, "an inventory of the wells in the immediate area" is attached. Record 68. However, we are unable to locate such an attachment.

However, we are unable to locate the study in the record, and the parties do not provide citations to the record where the study may be found. In addition, the county also stated in its decision that there is evidence which shows that there will not be any impact on other water wells in the area, but again, points to nothing in the record to support this contention.

We agree with petitioner there is not substantial evidence in the record to support the county's findings that sufficient water is available to serve the subject property. The county has not adopted adequate findings to demonstrate compliance with the KCCP and KCLDC 47.030(B)(3).

The third assignment of error is sustained.

FOURTH ASSIGNMENT OF ERROR

Petitioner argues that the zoning map amendment violates the Transportation Planning Rule (TPR) by incorrectly concluding that the redesignation will not "significantly affect" transportation facilities. OAR 660-012-0060(2). Petitioner also asserts that, by failing to adopt conditions of approval or require modifications to the application to ensure mitigation is carried out to limit the effects on transportation, the county's decision does not comply with the TPR.

The TPR requires that amendments to comprehensive plans or land use regulations which "significantly affect a transportation facility shall assure that allowed land uses are consistent with the identified function, capacity, and performance standards * * * of the facility." OAR 660-012-0060(1). OAR 660-012-0060(2) states that such an amendment "significantly affects" a transportation facility if it:

> "(a) Changes the functional classification of an existing or planned transportation facility;
>
> "(b) Changes standards implementing a functional classification system;
>
> "(c) Allows types or levels of land uses which would result in levels of travel or access which are inconsistent with the functional classification of a transportation facility; or

> "(d) Would reduce the performance standards of the facility below the minimum acceptable level identified in the TSP."

A. County Finding Regarding the Level of Service

The intersection of most concern to the parties is Highway 97 and South Wocus Road. A Transportation Impact Study prepared by Hardey Engineering & Associates, Inc. (traffic study) documents the current level of service at Level C. The traffic study predicts that the current level of service will fall to Level D as a result of the zone change. The traffic study projects that, without the proposed rezoning, the level of service will fall to Level E by 2015. With the project at full build-out by 2015, the traffic study predicts a Level of Service F. Record 178. According to the traffic study, a Level of Service D is the minimum acceptable level of service. Record 174.

Petitioner argues that the county's findings are in error as to the impact of the proposed rezoning at full build-out, because the findings conclude that the level of service will only be reduced from a C to a D, rather than an E to an F, as the traffic study predicts.

The county's decision in reference to the intersection of Highway 97 with South Wocus Road concludes that:

> "* * * The traffic study submitted by the applicant and approved by ODOT representatives shows that with the increased traffic of this proposal at complete buildout (15+ years) the Level of Service of that intersection will drop from a C level to a D level. Both levels are within acceptable ranges. Pursuant to OAR 660-012-0060(2), this zone change will not 'significantly affect a transportation facility' since it will not reduce the level of service below the minimum acceptable level. * * *" Record 2.

Intervenor explains the inconsistency in the county's finding by pointing to portions of the record that show that the level of service at this intersection could change either from C to D or from E to F. In particular, intervenor points to testimony asserting that the change by 2015 will actually be from C to D.[16] Intervenor argues that because Level of Service D is

[16]Intervenor cites testimony by the county's public works director and the applicant's engineer where, despite the traffic study's estimation of a three percent annual increase in background traffic on Highway 97,

acceptable, the proposed zone change will not "significantly affect" transportation facilities and, therefore, despite the error in the county's description of the predicted level of service, the county's ultimate conclusion is correct.

We might be more inclined to accept intervenor's explanation of the findings if the county's decision did not explicitly and exclusively rely on the traffic study. It may be that the conclusions in the traffic study were modified by other testimony, and that the board of commissioners accepted the traffic study in light of the implicit modification. However, the decision does not make that explanation, and we will not intuit the board of commissioners' rationale in the absence of such an explanation.

B. "Significantly Affects"

Petitioner points to the reduction in the 2015 level of service as a result of the zone change and asserts that this reduction in the level of service is a "significant effect" as that term is used in OAR 660-012-0060(2)(d). Therefore, petitioner contends, the county must use the process set out in OAR 660-012-0060(1) to address this impact.

Intervenor responds that even if the level of service is reduced from an E to an F by 2015, the proposed rezoning does not "significantly affect" the Highway 97/South Wocus Road interchange because the level of service by that time will already be below the acceptable level. Intervenor cites *Dept. of Transportation v. Coos County*, 158 Or App 568, 976 P2d 68 (1999), for the proposition that if an intersection is already below the minimum acceptable level of service, development that causes further degradation does not "significantly affect a transportation facility" within the meaning of OAR 660-012-0060(2)(d).

In *Dept. of Transportation v. Coos County*, the Court of Appeals concluded that, if an increase in traffic does not result in an actual change in the level of service, the proposed

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both predict no major increase in background traffic on that segment of Highway 97 over the next 15 years. Record 16, 22.

development will not "significantly affect a transportation facility" within the meaning of OAR 660-012-0060(2)(d). However, in this case, there is evidence that the rezoning will result in a change in the level of service at some point prior to 2015, and will "reduce the performance standards of the facility below the minimum acceptable level identified in the TSP." Therefore, the amendment does "significantly affect" a transportation facility. The county must address that effect by the process set out in OAR 660-012-0060(1).

We further agree with petitioner that the county cannot consider potential mitigation measures that could reduce or eliminate the challenged decision's impact on the transportation facility in order to avoid a determination that the rezoning will "significantly affect" a transportation facility as that term is used in OAR 660-012-0060. As we said in *DLCD v. City of Warrenton*, 37 Or LUBA 933, 941-42 (2000):

> "* * * OAR 660-012-0060(1) and (2) contemplate that mitigation [measures] necessary to ensure that land uses allowed by amendments remain consistent with a facility's function, capacity and performance standards are considered once the local government has determined that the amendment significantly affects that facility. It is inconsistent with that scheme to consider such mitigation as a means of avoiding the conclusion that an amendment significantly affects a transportation facility."

If it is determined that the challenged redesignation "significantly affects" the transportation facility absent the proposed mitigations, under OAR 660-012-0060(1) the county must consider what mitigation is necessary to ensure that the allowed uses are consistent with the "function, capacity, and performance standards" of this facility.

The fourth assignment of error is sustained.

The county's decision is remanded.