

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3
4 WITHAM PARTS AND EQUIPMENT
5 COMPANY, INC., ROGUE REGENCY INC.,
6 ROGUE VALLEY CENTER LLC,
7 ROGUE CORNER PROPERTY LLC and
8 SONMAR INN OF MEDFORD, INC.,
9 *Petitioners,*

10
11 vs.

12
13 OREGON DEPARTMENT OF
14 TRANSPORTATION,
15 *Respondent.*

16
17 LUBA Nos. 2001-176, 2001-177 and 2001-178

18
19 FINAL OPINION
20 AND ORDER

21
22 Appeal from Oregon Department of Transportation.

23
24 Michelle Rudd, Portland, filed the petition for review. With her on the brief was
25 Stoel Rives LLP. Robert D. Van Brocklin and Michelle Rudd argued on behalf of
26 petitioners.

27
28 Bonnie Heitsch, Assistant Attorney General, Salem, filed the response brief and
29 argued on behalf of respondent. With her on the brief was Hardy Myers, Attorney General.

30
31 HOLSTUN, Board Chair; BASSHAM, Board Member; BRIGGS, Board Member,
32 participated in the decision.

33
34 AFFIRMED

08/14/2002

35
36 You are entitled to judicial review of this Order. Judicial review is governed by the
37 provisions of ORS 197.850.

NATURE OF THE DECISION

Petitioners appeal a decision statement granting design approval for proposed highway improvements to a state and interstate highway interchange.

FACTS

Oregon State Highway 62 (Hwy 62) runs northeast from Medford to Crater Lake. Hwy 62 serves as a primary traffic artery in North Medford. The section of Hwy 62 that runs from Oregon State Highway 99 to Interstate Highway 5 (I-5) to Oregon State Highway 140 in White City (Hwy 62 corridor) is an extremely congested and accident-prone area. In 1997, the Oregon Department of Transportation (ODOT) formed a Solutions Team to evaluate possible solutions for the Hwy 62 corridor. Between the fall of 1998 and May 2000, the Solutions Team considered corridor length improvements to Hwy 62. Because at least a portion of the project will receive federal funding, development of the project must comply with the National Environmental Policy Act (NEPA) and Federal Highway Administration (FHWA) regulations. In accordance with these regulations, ODOT decided to prepare a draft environmental impact statement.

In the fall of 2000, several circumstances affected the scope of the project. Most significantly, the Rogue Valley Council of Governments (RVCOG), in its periodic update of the regional transportation plan (RTP), removed a portion of Hwy 62 from its “financially constrained” list.¹ This action was taken because there was dedicated construction funding for only the Hwy 62/I-5 interchange portion of the Hwy 62 corridor project. With the reduced scope of the project, ODOT decided to perform a less-extensive environmental

¹The Federal Transportation Act requires metropolitan areas with more than 50,000 persons to designate Metropolitan Planning Organizations. RVCOG serves as the Rogue Valley Metropolitan Planning Organization (RVMPO).

1 assessment instead of an environmental impact statement. The reduced-scope project is
2 referred to as the North Medford Interchange (NMI).

3 The draft environmental assessment (DEA) was issued on April 9, 2001. The DEA
4 relied upon numerous technical reports and memos including a land use technical report
5 (LUR). After receiving comments from the public, including petitioners, ODOT revised the
6 original build alternative and issued a revised environmental assessment (REA) in September
7 2001. The NMI project would substantially alter the existing interchange to allow traffic
8 from Highway 62 to access I-5 directly without having to use Biddle Road as is presently
9 required. A number of businesses will be completely displaced or parts of their property will
10 be taken to make room for the enlarged interchange. On September 20, 2001, the FHWA
11 found that the NMI project would not cause a significant impact on the human or natural
12 environment and signed a finding of no significant impact. On October 5, 2001, ODOT
13 issued its decision statement granting design approval, and published the REA on October
14 18, 2001. This appeal followed.

15 **MOTIONS TO TAKE OFFICIAL NOTICE**

16 Petitioners request that we take official notice of portions of the Oregon Highway
17 Plan. Respondent does not object to petitioners' request, but requests that we take official
18 notice of the entire Oregon Highway Plan. Respondent's request is granted.

19 The challenged decision became final on October 18, 2001. At that time the 2000-
20 2020 Interim RTP was in effect. Respondent attaches to its brief the current 2001-2023 RTP,
21 which was adopted by the RVMPO on April 25, 2002, several months after the decision that
22 is the subject of this appeal became final. Respondent asks that we take official notice of the
23 2001-2023 RTP. Petitioners object that respondent is improperly seeking to have LUBA
24 take official notice of the 2001-2023 RTP for its evidentiary value. *Fleck v. Marion County*,
25 25 Or LUBA 745, 753 (1993). We understand ODOT to offer the 2001-2023 RTP to show
26 that certain projects that were anticipated at the time of the challenged decision subsequently

1 were included in the 2001-2023 RTP. Although we fail to see how the subsequent inclusion
2 of those projects is relevant in this appeal, we agree with petitioners that ODOT offers the
3 2001-2023 RTP as evidence, and we therefore do not take official notice of the 2001-2023
4 RTP.²

5 **MOTION TO STRIKE**

6 In addition to the 2001-2023 RTP, respondent also attaches two affidavits to its brief
7 to establish the authority of the author of a May 2, 2001 letter in the record to speak on
8 behalf of the RVCOG and RVMPO.³ We agree with petitioners that the affidavits are
9 offered as evidence in support of arguments that respondent makes in its brief. As such, they
10 are not subject to official notice and petitioners’ motion to strike the affidavits is granted.

11 **MOTION TO ALLOW REPLY BRIEF**

12 OAR 661-010-0039 permits petitioners to request permission to file a reply brief, but
13 reply briefs must be “confined solely to new matters raised in the respondent’s brief.”
14 Respondent objects that the assertions in the reply brief “are really reconstituted arguments
15 which were raised or could have been raised” in the petition for review. Response to
16 Petitioner’s Motion Requesting a Reply Brief 1.

17 We agree with respondent that the portion of the reply brief that appears on pages 1
18 and 2 simply elaborates on an argument that is presented in support of the first assignment of
19 error. That part of the reply brief does not respond to new issues in the respondent’s brief,
20 and we do not consider that part of the reply brief. We agree with petitioners that the
21 remaining parts of the reply brief respond to new issues in the respondent’s brief.⁴ We have
22 considered those parts of the reply brief in this opinion.

²Petitioners’ separate motion to strike the 2001-2003 RTP is granted.

³We discuss the significance of the May 2, 2001 letter later in this opinion.

⁴In Part II of the reply brief, petitioners respond to arguments that LUBA should limit its scope of review in this case in several ways. In Part III, petitioners respond to arguments that OAR 731-015-0075(2) should be

1 **FIRST ASSIGNMENT OF ERROR**

2 Petitioners argue that ODOT exceeded its authority by approving the proposed
3 interchange improvements before necessary amendments to the Medford Comprehensive
4 Plan and RTP were adopted by the city.

5 **A. Compatibility with Medford Comprehensive Plan**

6 ORS 197.180(1) requires that state agency land use decisions must comply with the
7 statewide planning goals and be compatible with applicable comprehensive plans. To
8 implement ORS 197.180, the Land Conservation and Development Commission (LCDC) has
9 adopted rules that govern its review of state agency coordination programs to ensure that
10 they are compatible with the statewide planning goals and local comprehensive plans. OAR
11 chapter 660, division 30. OAR 660-030-0065(2) provides that state agencies may
12 demonstrate compliance with the statewide planning goals by showing compatibility with the
13 applicable comprehensive plans. ODOT’s coordination rule sets out the procedure that
14 ODOT follows to ensure that “Class 3 Projects,” like the one at issue in this appeal, comply
15 with the statewide planning goals and are compatible with local comprehensive plans.⁵ As
16 relevant, OAR 731-015-0075 provides:

17 “(1) The Department shall involve affected cities, counties, metropolitan
18 planning organizations, state and federal agencies, special districts and
19 other interested parties in the development of project plans. The
20 Department shall include planning officials of the affected cities,
21 counties and metropolitan planning organization on the project
22 technical advisory committee.

23 “(2) Goal compliance and plan compatibility shall be analyzed in
24 conjunction with the development of the Draft * * * Environmental
25 Assessment. The environmental analysis shall identify and address

interpreted in a particular way. In Part IV of the reply brief, petitioners dispute ODOT’s contention that OAR chapter 340, division 252 does not apply directly to the challenged decision. Finally, Part V of the reply brief disputes ODOT’s contention that its findings supporting the challenged decision include a May 2001 Air Quality Technical Report Update that was omitted from the record by mistake.

⁵The parties agree that the NMI is a Class 3 project. OAR 731-015-0015(6).

1 relevant land use requirements in sufficient detail to support
2 subsequent land use decisions necessary to authorize the project.

3 “(3) [ODOT] shall rely on affected cities and counties to make all plan
4 amendments and zone changes necessary to achieve compliance with
5 the statewide planning goals and compatibility with local
6 comprehensive plans after completion of the Draft * * *
7 Environmental Assessment and before completion of the * * * Revised
8 Environmental Assessment. These shall include the adoption of
9 general and specific plan provisions necessary to address applicable
10 statewide planning goals.

11 “* * * * *

12 “(7) The [Oregon Transportation] Commission or its designee shall adopt
13 findings of compatibility with the acknowledged comprehensive plans
14 of affected cities and counties when it grants design approval for the
15 project. Notice of the decision shall be mailed out to all interested
16 parties.

17 “(8) [ODOT] shall obtain all other land use approvals and planning permits
18 prior to construction of the project.”

19 As the above-quoted administrative rule illustrates, the NMI project must be
20 compatible with the Medford Comprehensive Plan. If the NMI project is not compatible
21 with the Medford Comprehensive Plan, any comprehensive plan amendments that are
22 necessary to make the project compatible must be adopted *before* the REA is issued.
23 According to petitioners, the project is not compatible with the comprehensive plan because
24 the REA assumes the existence of seven transit-oriented developments (TODs) when only
25 three of the TODs are adopted as part of the comprehensive plan.⁶ Petitioners assert that the

⁶The RTP includes the following description of TOD centers:

“Transit-oriented design (TOD) is a general description of a set of development strategies that are designed to encourage the use of public transit by creating an atmosphere that is safe, convenient, and easily accessible by foot, bicycle and transit. One purpose of transit-oriented design is to increase ridership by shaping and intensifying land use through the integration of transit stops with other activities of the community such as banking and shopping.

“Urban design strategies associated with transit-oriented development also support and encourage bicycle and walk travel modes. By reducing reliance on single-occupant vehicles, TOD improves air quality by reducing the number of vehicle trips. Another benefit of TOD

1 LUR states that the NMI will fail prematurely unless certain assumptions are made, but that
2 those assumptions have not been adopted as part of the comprehensive plan. The LUR
3 states:

4 “Land use changes which have higher trip generation rates, if they were to
5 continue, would create congestion in the interchange area and have an adverse
6 impact on the operation of the ramp terminals at Biddle. * * * Increasing land
7 use intensities beyond those included in the forecast would possibly result in
8 the design’s premature failure.” Record 985.

9 According to petitioners, the land use intensities in the forecast assume the existence
10 of TODs that the RTP recommends for consideration but the City of Medford has not
11 adopted. ODOT responds that petitioners misread the LUR. ODOT asserts that the quoted
12 portion of the LUR is not referring to TODs, but rather noting possible impacts under the
13 city’s planned unit development (PUD) ordinance.⁷ The PUD ordinance allows the intensity
14 of development that is permitted by the underlying zoning district to be increased on 20
15 percent of the parcel. Approximately 175 acres of vacant industrial-zoned land is within one
16 mile of the NMI. Record 979. Under the PUD provision, 20 percent of those lands could be
17 developed with commercial uses, which would generate higher trip volumes than the
18 industrial uses that were assumed in the 2020 forecast. If those increased intensities are
19 approved, the LUR suggests those increased intensities could lead to premature failure of the
20 NMI.

is the promotion of economic development by attracting businesses and consumers to the area surrounding the transit stop. By encouraging mixed-use development, transit-oriented design strategies can also increase housing options.” Record 4230.

Three of the TOD centers identified in the RTP—Central Point Center, Phoenix Center, and South East Medford—have been adopted by those cities. The remaining four TOD centers—East Medford, West Medford, Medford South-Stage Road, and Medford Delta Waters—have not yet been adopted by the City of Medford. None of the TOD centers identified in the RTP include the NMI, although three of the not yet adopted TOD centers appear to be within two miles of the NMI. Record 4231.

⁷The LUR discusses the PUD ordinance in the paragraphs that precede the quoted language. Record 983-85.

1 We agree with ODOT that the quoted discussion addresses the potential for more
2 intense development of land in the immediate vicinity of the NMI under the city’s PUD
3 provisions, which could have an impact on the longevity of the NMI. However, petitioners
4 do not challenge the decision regarding the potential increased congestion that might result
5 from future application of the PUD ordinance. Rather, as ODOT points out, petitioners
6 misread the quoted LUR language as referring to the seven TODs.

7 Even if the above-quoted paragraph were referring to TODs, we do not believe
8 ODOT improperly relied upon TODs that are not in the city’s comprehensive plan. Local
9 planning regulations require 20-year land use planning forecasts. OAR 660-012-0030(3)(a).
10 The forecast developed to meet this requirement is referred to as either the “planned growth
11 scenario” or 2020 forecast. Federally funded projects must also include a forecast that
12 extends the planning horizon to at least 20 years after the project is completed. The NMI
13 was estimated to be completed in 2004, and the federally required forecast is referred to as
14 the 2024 or 2030 forecast.

15 Three TODs are already incorporated in the Medford Comprehensive Plan: Medford
16 SE Plan, Central Point, and Phoenix City Center. Four TODs are contemplated for future
17 implementation, but have not yet been adopted as part of the Medford Comprehensive Plan:
18 Delta Waters, Medford Downtown, West Medford, and South Stage. Record 4230-31.
19 Petitioners point out language in the record that appears to indicate that both the 2020
20 forecast, which was relied on for determining comprehensive plan compatibility, and the
21 federally mandated 2030 forecast, assume the existence of seven TODs:

22 “The 2020 and 2030 land use *forecasts* were utilized in the * * *
23 transportation model to derive future traffic forecasts. These *forecasts* relied
24 upon local government comprehensive plans except where:

25 “(1) The [RTP] provides for development of transit oriented development,
26 and

27 “(2) The Oregon Office of Economic Analysis population forecasts for
28 2030 (as these were sub-allocated to local jurisdictions within Jackson

1 County) exceeded the build-out capacity of the urban growth
2 boundaries.

3 “The RTP and land use *forecasts* provide for the development of seven transit
4 oriented developments (TOD) within the MPO boundary; west Central Point,
5 Delta Waters, Medford Downtown, West Medford, East Medford, South
6 Stage and Downtown Phoenix. The Central Point, East Medford and Phoenix
7 TODs have been reflected in the local comprehensive plans. The other
8 centers are reflected in the *forecasts* but have not been officially reflected in
9 the local jurisdictions’ plans.” Record 969 (emphases added).

10 The above-quoted language appears to say that both the 2020 forecast and the 2030
11 forecast assume the existence of all seven TODs, while only three have been adopted in the
12 local comprehensive plans. The quoted language, however, combines its discussion of the
13 2020 forecast and the 2030 forecast. Other language in the RTP cited by the parties makes it
14 reasonably clear that the 2020 forecast relies only on the three adopted TODs.

15 “* * * First was the planned growth scenario. This includes growth for each
16 jurisdiction as it appears in the comprehensive plans in the region. This
17 scenario includes three Transit Oriented Development areas: Central Point,
18 Medford SE Plan area and the Phoenix City Center Plan. The second land use
19 structure that was used was an expanded TOD scenario in which a total of
20 seven TOD areas were included. Further analysis on this scenario will be
21 completed upon the adoption of the RTP. When this is completed the RTP
22 may be amended according to the results of this analysis.” Record 4132.

23 Although the LUR is less than clear, we agree with ODOT that the parts of the LUR
24 cited by the parties do not demonstrate that the LUR incorrectly assumes the existence of
25 seven TODs in finding that the NMI proposal is consistent with the Medford Comprehensive
26 Plan.

27 **B. Compatibility with Regional Transportation Plan**

28 The January 30, 2001 LUR includes the following discussion regarding whether the
29 NMI conforms with the RTP:

30 “The project and its development would be consistent with the relevant local
31 and state land use and transportation policies except for the air quality
32 conformity statement of the [RTP]. * * *

1 “The RTP describes the Highway 62 Corridor Solutions (Unit 1), project
2 numbers 121a, 121b, and 121c, as a five-lane facility. The project, through
3 most of its length, would include six travel lanes. In order to determine
4 consistency with the RTP, the [RVMPO’s] regional travel demand model
5 would need to be updated to reflect the project’s characteristics including new
6 roadway connections. Following that update, the [RVMPO] will perform a
7 regional air quality conformity to determine the project’s consistency with the
8 RTP.” Record 971.

9 The above position was also reflected in the April 9, 2001 DEA. Record 394.⁸

10 Although it is not entirely clear from the parties’ arguments and the parts of the
11 record they cite in making those arguments, the referenced sixth lane of the project appears
12 to be an exit lane that begins on the north side of Hwy 62 where it crosses Biddle Road and
13 continues a distance of several hundred meters to the exit from westbound Hwy 62 onto the
14 southbound lanes of I-5. Record 21.

15 Subsequent to the preparation of the LUR and issuance of the DEA, RVMCOG
16 submitted a letter that responds to the above concern. A May 2, 2001 letter signed by Dan
17 Moore, RVMCOG Planning Program Manager, takes the position that the proposed NMI is
18 properly viewed as a five-lane facility rather than a six-lane facility:

19 “I have looked into the question of whether or not the [NMI] Project is
20 consistent with the [RTP]. After consultation with ODOT and the project
21 consultant team, I have determined that the project is consistent with the
22 [RTP] and the RVMPO regional travel demand model. The RVMPO will not
23 need to amend the [RTP] or the regional travel demand model, or perform a
24 regional air quality conformity analysis for this project. The project was
25 included in the [RTP] so the regional air quality conformity analysis included
26 this project.

27 “The rationale for this determination is that the [RTP] project description is to
28 ‘construct *five lane overpasses*, widen bridge, re-configure interchange.’ The
29 [NMI] Project is technically only five through lanes. One of the westbound
30 lanes is an auxiliary lane starting at Biddle Road and ending as a trap right
31 turn lane for the southbound loop ramp. On a regional level, the five-lane
32 overpass description in the [RTP] is consistent with the project. All of the

⁸We set out the relevant DEA language and the revisions to that language that are included in the REA later in this opinion.

1 other improvements that are within the project area are part of the interchange
2 reconfiguration. Therefore, the [RTP] and the regional travel demand model
3 are consistent with the improvements that are being proposed.” Record 319
4 (emphasis added).

5 Based on the May 2, 2001 letter, the REA included the following changes to the
6 DEA:

7 ~~“The project is described in RVCOG’s RTP as a five lane facility. The~~
8 ~~project would include six through lanes east of the Highway 62/I-5~~
9 ~~interchange. In order to determine consistency with the RTP, RVCOG’s~~
10 ~~regional travel demand model would need to be updated to reflect the~~
11 ~~project’s characteristics, including new roadway connections. Following that~~
12 ~~update, RVCOG would perform a regional air quality conformity to determine~~
13 ~~consistency with the RTP. *consistent with the RVCOG regional model and the*~~
14 ~~*RTP. No further planning action is required at the [RVMPO] level.*”~~ Record
15 41 (strikethrough indicates deletion; italics indicates addition).

16 The substantive legal issue is relatively straightforward. The RTP provisions for the
17 NMI include specific references to “five lane overpasses.” Record 4175. Does the NMI
18 project propose “five lane overpasses”? If the RTP’s reference to “lanes” is a reference to
19 through lanes, the answer is yes. If the RTP’s reference to lanes encompasses all lanes,
20 whether they be through lanes or relatively short exit lanes, the answer is no.

21 The May 2, 2001 letter is an expression of opinion by RVMPO staff concerning the
22 correct way to interpret the RTP. We agree with the interpretation and reasoning expressed
23 in that letter, and we conclude that ODOT did not err in determining that the sixth exit lane
24 did not make the NMI project something different from the five-lane overpass that was
25 already included in the RTP.

26 Petitioners also argue that the challenged decision must be remanded because ODOT
27 did not specifically adopt the interpretation and reasoning set out in the May 2, 2001 letter,
28 making ODOT’s findings inadequate. We believe the revisions that ODOT adopted in the
29 REA set out above, when viewed in context with the May 2, 2001 letter, are sufficient to
30 show that ODOT adopted the interpretation of the RTP set out in the May 2, 2001 letter.

1 Petitioners also argue that ODOT may not rely on the letter because ODOT did not
2 consult with the RVMPO regarding the NMI project, following the procedures required by
3 OAR 340-252-0050(4) and 340-252-0060. Petitioners explain:

4 “[ODOT] was required to consult with the MPO prior to approving the
5 Project. OAR 340-252-0050(4).

6 “OAR 340-252-0060(1)(a) provides procedures for interagency consultation
7 and resolution of conflicts. Consultation ‘shall be undertaken by * * * the
8 Oregon Department of Transportation * * * before making conformity
9 determinations * * *.’ *Id.* Metropolitan areas are required to establish a
10 standing committee for purposes of consultation required under the rule by an
11 MPO. OAR 340-252-0060(2)(b). For the Rogue Valley Council of
12 Governments the Technical Advisory Committee is the standing committee.
13 OAR 340-252-0060(2)(b)(A)(iv). The standing committee is responsible for
14 consultation on ‘whether a project’s design concept and scope have changed
15 significantly since the plan and [Transportation Improvement Program]
16 conformity determination.’ OAR 340-252-0060(2)(b)(D)(ii). “‘Design
17 scope’ means the design aspects of a facility which will affect the proposed
18 facility’s impact on regional emissions, usually as they relate to vehicle or
19 person carrying capacity and control, *e.g.*, *number of lanes* or tracks to be
20 constructed or added, length of project, signalization, [and] access control * *
21 *.’ OAR 340-252-0030(9).

22 “The standing committee is also responsible for ‘[m]aking a determination, as
23 required by OAR 340-252-0220(2), whether the project is included in the
24 regional emissions analysis supporting the currently conforming TIP’s
25 conformity determination, even if the project is not strictly “included” in the
26 TIP for the purposes of MPO project selection or endorsement, and whether
27 the project’s design concept and scope have not changed significantly from
28 those which were included in the regional emissions analysis, or in a manner
29 which would significantly impact use of the facility[.]’ OAR 340-252-
30 0060(2)(b)(D)(vii). The standing committee advises the MPO. OAR 340-
31 252-0060(2)(b)(F)-(G). The MPO makes the determination. *Id.*

32 “The RTP acknowledges that the RVMPO ‘must make conformity
33 determinations according to the consultation procedures in OAR 340-252-
34 0060. (Record at 4038, 4036.) The MPO and [Technical Advisory
35 Committee] are the coordination bodies for the implementation of the RTP.
36 (Record at 4270.)

37 “The RTP contains projects for which the air quality conformity
38 determination has already been made. (Record at 4271) The highway project
39 described in the RTP is five lanes. (Record at 4175.) The ODOT Project is
40 six lanes. (Record at 1047.) This is a change in scope required to be

1 reviewed by the MPO and [Technical Advisory Committee]. OAR 340-252-
2 0030(8), 340-252-0060.” Reply Brief 6-7 (emphasis in original).

3 Respondent contends that the required consultation occurred before the NMI project
4 was included in the RTP and that no additional consultation was necessary. Respondent does
5 not directly respond to the above argument that additional consultation under OAR 340-252-
6 0060 was required to resolve the question that arose in the LUR concerning the number of
7 lanes in the proposed overpasses, and petitioners appear to be correct that OAR 340-252-
8 0060(2)(b)(D)(ii) requires that ODOT engage in consultation with the RVMPO Technical
9 Advisory Committee in conducting an environmental assessment of a project like the NMI.

10 Nevertheless, we reject petitioners’ argument based on OAR 340-252-0060 for two
11 reasons. First, we do not understand petitioners to assign ODOT’s alleged failure to follow
12 the consultation process dictated by OAR 340-252-0060 as an error that requires LUBA to
13 remand the REA. Rather, petitioners appear to take the position that unless the REA and the
14 record establish that the particular consultation process that appears to be required by the rule
15 was followed, ODOT may not assume that the position set out in the May 2, 2001 letter
16 represents the view of RVMPO and its Technical Advisory Committee and conclude that the
17 NMI project conforms with the project descriptions in the RTP. Petitioners cite no authority
18 for that proposition, and we reject it.

19 Second, even if the first assignment of error could be read to assign error based on
20 ODOT’s failure to follow the procedures in OAR 340-252-0060, petitioners do not
21 adequately explain why any failures on ODOT’s part to follow the procedures required by
22 the rule would warrant remand. There can be no serious question that ODOT consulted with
23 RVMPO in this matter, in the sense that RVCOG and RVMPO staff were well aware of the
24 project and were active participants in the planning and environmental review process.⁹

⁹According to the decision statement:

1 Given that level of involvement in the NMI decision making process, it is difficult to see
2 how actual deviations from the procedures required by OAR 340-252-0060 could be of such
3 significance that a remand would be warranted. Moreover, it seems equally plausible that
4 any failures to follow the procedures required by OAR 340-252-0060 are attributable to
5 RVMPO rather than ODOT. In sum, even if petitioners do assign error based on their
6 allegations that ODOT failed to consult with RVMPO in the manner required by OAR 340-
7 252-0060, their arguments in support of that position are insufficiently developed to identify
8 a basis for remand.

9 The first assignment of error is denied.

10 **SECOND ASSIGNMENT OF ERROR**

11 Petitioners contend that the REA must be remanded because it is not supported by
12 findings. In the alternative, petitioners contend that any findings ODOT may have adopted
13 are inadequate and, for that reason, the decision must be remanded.

14 **A. The Requirement for Findings**

15 In cases where there is no specific legal requirement that a legislative decision must
16 be supported by findings, LUBA has indicated on many occasions that the failure of a
17 decision maker to adopt findings in support of such legislative decisions “is not, in itself, a
18 basis for reversal or remand[.]” *Redland/Viola/Fischer’s Mill CPO v. Clackamas County*, 27
19 Or LUBA 560, 563-64 (1994) (and cases cited therein).¹⁰ Even in such cases, however, if

“The Highway 62 Corridor Solutions project team consisted of two committees and a supporting team of consultants and local government officials. The primary decision making body was the Solutions Team, which consists of professional staff from Federal Highway Administration * * *, [ODOT], [RVCOG], [RVMPO], Rogue Valley Transit District * * *, Jackson County, and the City of Medford, as well as representatives from affected organizations and local transportation advocates.” Record 220.

Professional staff from RVMPO and RVCOG are specifically identified as having been part of the Solutions Team.

¹⁰In *Redland/Viola/Fischer’s Mill CPO*, we explained that in reviewing a legislative land use decision we review whatever findings may have been adopted to support the legislative decision, but also consider argument

1 LUBA and the appellate courts cannot perform their review function to determine whether
2 applicable decision making criteria are satisfied without the missing findings, the legislative
3 decision may have to be remanded. *Citizens Against Irresponsible Growth v. Metro*, 179 Or
4 App 12, 16 n 6, 38 P3d 956 (2002).

5 In this case, ODOT’s legislative decision clearly must be supported by findings,
6 because ODOT is legally required to support its REA with findings. ODOT’s State Agency
7 Coordination Rules were referenced earlier in this opinion and relevant portions of OAR
8 731-015-0075 were quoted in the text. Those rules were adopted to ensure that ODOT’s
9 “land use programs are carried out in compliance with the statewide planning goals and in a
10 manner compatible with acknowledged comprehensive plans.” OAR 731-015-0005. The
11 disputed facility qualifies as a “Class 3” project, as that term is defined by OAR 731-015-
12 0015(6). The challenged decision grants design approval for the disputed NMI. When
13 adopting Class 3 project plans, OAR 731-015-0075(7) expressly requires that ODOT “shall
14 adopt findings of compatibility with the acknowledged comprehensive plans of affected
15 cities and counties when it grants design approval for [Class 3] project[s].”

16 The question then becomes whether ODOT adopted the requisite findings and, if so,
17 whether those findings, together with the explanation of those findings and the record
18 citations in respondent’s brief, are adequate to demonstrate compliance with applicable legal
19 standards.

20 **B. Identifying ODOT’s Findings**

21 Petitioners cite the following language from the REA:

22 **“Consistency with Land Use, Transportation and other Planning**
23 **Regulations**

24 “The Build Alternative is consistent with the Medford Comprehensive Plan
25 and Transportation System Plan, and the interchange improvements are

and citations to facts in the record to determine whether the legislative decision complies with applicable legal standards.

1 encompassed within the City’s roadway classification system. The Build
2 Alternative has been determined to be consistent with the [RTP].” Record 27.

3 Although the above-quoted language from the REA might constitute findings, and
4 therefore literally comply with the findings requirement in OAR 731-015-0075(7), we agree
5 with petitioners that such conclusory findings are clearly inadequate to allow LUBA to
6 perform its review function.

7 ODOT contends that its findings are included in a number of documents that
8 culminated in the REA. According to ODOT, those documents include: (1) the REA itself,
9 (2) the DEA, and (3) the technical reports that support the REA, particularly the LUR. We
10 agree with ODOT.

11 Citing the following language from *Gonzalez v. Lane County*, 24 Or LUBA 251, 259
12 (1992), petitioners argue ODOT did not adequately indicate that it relied on the cited
13 documents as findings to support its decision:

14 “[T]he local government decision maker is in a unique position to *know* what
15 it believes to be the facts and reasons supporting its decision. Therefore, we
16 hold that if a local government decision maker chooses to incorporate all or
17 portions of another document by reference into its findings, it must clearly (1)
18 indicate its intent to do so, and (2) identify the document or portions of the
19 document so incorporated. A local government decision will satisfy these
20 requirements if a reasonable person reading the decision would realize that
21 another document is incorporated into the findings and, based on the decision
22 itself, would be able both to identify and to request the opportunity to review
23 the specific document thus incorporated.” (Emphasis in original; footnote
24 omitted.)

25 *Gonzalez* involved a quasi-judicial land use decision that changed the comprehensive
26 plan and zoning map designations for a single 20-acre parcel. Although our decision in
27 *Gonzalez* may have some bearing on what ODOT must do to identify the findings it relies on
28 in adopting an REA, it does not apply full force in the manner petitioners assume. There are
29 significant differences between legislative land use *proceedings* and quasi-judicial land use
30 *proceedings*. Quasi-judicial land use proceedings are frequently more formal and focused
31 than legislative land use proceedings. Unlike parties in legislative proceedings, parties in

1 quasi-judicial proceedings must raise issues with specificity or those issues are waived and
2 such issues need not be addressed in the decision maker’s findings. In view of that
3 requirement, requiring that a quasi-judicial decision maker clearly identify the findings it
4 relies on and ensure that those findings specifically respond to relevant issues is warranted.

5 There can also be significant differences in the *decisions* themselves. Although some
6 quasi-judicial land use decisions can be quite lengthy and complicated, legislative decisions
7 often address a large number of topics and properties and affect large numbers of individuals.
8 We believe it is appropriate to recognize these fundamental differences between quasi-
9 judicial and legislative land use proceedings and decisions in deciding whether the findings a
10 legislative decision maker adopts have been adequately identified.

11 Borrowing from our reasoning in *Gonzalez*, we believe that ODOT may rely on the
12 documents it cites as its findings, if “a reasonable person reading the decision would realize
13 that” ODOT intended to rely on those documents to support its decision. We believe a
14 reasonable person would understand that ODOT intended to rely on the REA, the unamended
15 parts of the DEA and the technical reports that were prepared to support the DEA and REA
16 as its findings in this matter, particularly the LUR.¹¹ As we have already explained, we also
17 believe the DEA and REA, read together, demonstrate that ODOT changed its mind about
18 whether the proposed overpasses are consistent with the five-lane overpasses described in the
19 RTP. We believe the record is sufficient to establish that the *reason* ODOT changed its mind
20 is the May 2, 2001 letter.¹² We next consider petitioners challenges to the adequacy of those
21 findings.

¹¹Although we believe ODOT could rely on the May 2001 Air Quality Technical Report update as findings, if that update was included in the record in this appeal, as petitioners point out in their reply brief, the update is not included in the record.

¹²We do not believe a reasonable person would understand that ODOT was relying on the correspondence from the City of Medford that ODOT cites on page 15 of its brief should be viewed as findings.

1 **C. Adequacy of ODOT’s Findings**

2 **1. OAR 731-015-0075(2)**

3 We first address and reject respondent’s argument that only cursory findings are
4 required in this case. Respondent contends that the OAR 731-015-0075(7) requirement for
5 findings must be read with OAR 731-015-0075(2), which provides:

6 “Goal compliance and plan compatibility shall be analyzed in conjunction
7 with the development of the Draft Environmental Impact Statement or
8 Environmental Assessment. The environmental analysis shall identify and
9 address relevant land use requirements *in sufficient detail to support*
10 *subsequent land use decisions necessary to authorize the project.*” (Emphasis
11 added.)

12 Relying on the above-emphasized language, respondent contends that because ODOT
13 ultimately concluded that no comprehensive plan amendments are needed, the OAR 731-
14 015-0075(2) requirement for “sufficient detail” does not apply.

15 We do not agree with ODOT’s argument that only cursory findings are needed so
16 long as ODOT concludes that no comprehensive plan amendments are needed. OAR 731-
17 015-0075(2) imposes an additional or more extensive findings obligation where ODOT
18 concludes that “subsequent land use decisions [are] necessary to authorize the project.”
19 However, even where ODOT concludes that no comprehensive plan amendments are needed,
20 the findings that are required by OAR 731-015-0075(2) and (7), along with the evidentiary
21 record and the arguments of the parties, must be sufficient to establish that the NMI project is
22 consistent with the Medford Comprehensive Plan and the RTP.

23 **2. Changed Design**

24 The existing intersection configuration is depicted at Record 617. The original build
25 alternative that was analyzed in the LUR and the other technical reports appears at Record
26 627. The modified build alternative that was ultimately selected appears at Record 21.
27 Petitioners argue that because the LUR and other technical reports addressed the original

1 build alternative, which was not selected, they are inadequate to justify the modified build
2 alternative that was ultimately selected in the REA.¹³

3 Respondent identifies a number of pages in the REA that were revised to address the
4 impacts of the modifications to the build alternative. Petitioners make no attempt to explain
5 why the fact of the change in design, in and of itself, renders the analyses in the LUR and
6 other technical reports, along with the revised discussion in the REA, inadequate. Without a
7 more developed argument that the change in design should have that consequence, we reject
8 the argument.

9 3. Conclusory Findings

10 Petitioners argue that the LUR findings addressing certain Medford Comprehensive
11 Plan Environmental Element Goals are inadequate because they are conclusory.¹⁴ After
12 identifying the environmental element goals, the LUR includes the following findings:

13 “Discussion: The analyses contained within the environmental reports
14 entitled wetlands, air quality, water quality, historic and archaeological

¹³The build alternative selected in the REA will require condemnation of a number of additional businesses that would not have been condemned under the original build alternative. The original build alternative required condemnation of approximately 5.7 acres; the selected build alternative will require approximately 11.39 acres.

¹⁴The Environment Element Goals that petitioners cite are as follows:

“Goal 3: To enhance the livability of Medford by achieving and maintaining compliance with National Ambient Air Quality Standards (NAAQS).” Record 1023.

“Goal 7: To preserve and protect plants and wildlife habitat in Medford.” *Id.*

“Goal 8: To minimize erosion and hazards relating to slope and soil characteristics by assuring that urban land use activities in Medford are planned, located, and conducted consistently with prevailing soil limitations. Record 1024.

“Goal 9: To assure that future urban growth in Medford occurs in a compact manner that minimizes the consumption of land, including class I through IV agricultural land.” *Id.*

“Goal 10: To assure that urban land use activities are planned, located, and constructed in a manner that maximizes energy efficiency.” *Id.*

“Goal 11: To preserve and protect archaeological and historic resources in Medford for their aesthetic, scientific, educational, and cultural value.” *Id.*

1 resources, fish and wildlife, land use and energy provide a detailed analysis of
2 these topics. The project would not include changes in land use other than
3 those associated with direct impacts associated with transportation facilities
4 (*i.e.* right-of-way impacts) and thereby reinforce the existing land use pattern
5 in the project area. The project would include access control measures to
6 limit access from state facilities to adjoining properties (*see* Traffic section of
7 the environmental documents). The project would also include the addition of
8 bicycle facilities as part of the project improvements.” Record 1025.

9 Respondent cites discussion in the REA, the DEA and several of the technical reports
10 that addresses the substance of each of the Environmental Element Goals that petitioners cite.
11 Respondent’s Brief 18-22. We have reviewed the cited discussion. Recognizing the
12 aspirational and general nature of the operative language in the cited Environmental Element
13 Goals, we conclude that the cited discussion in the REA and DEA is adequate to demonstrate
14 that the NMI is compatible with those goals.

15 Petitioners also cite Medford Comprehensive Plan Economic Element Goal 2, which
16 provides as follows:

17 “Goal 2: To assure that an adequate commercial and industrial land base
18 exists to accommodate the types and amount of economic development and
19 growth anticipated in the future, while encouraging efficient use of land and
20 public facilities within the city of Medford.” Record 1025-26.

21 Petitioners contend the LUR does not adequately explain why the NMI project impact on
22 existing businesses does not violate this goal. Petitioner also faults the LUR for only
23 considering the impacts that will result from loss of the land to be condemned for interchange
24 improvements and failing to consider the additional impacts that will result from the design
25 that was ultimately selected in the REA. In addition, petitioners complain that the LUR does
26 not adequately address the Medford Comprehensive Plan “Housing Element Goal 3[, which]
27 is intended ‘[t]o ensure a coordinated balance among the provision of public services, the
28 location of *employment centers*, and the production of appropriate housing within the City of
29 Medford.” Petition for Review 16 (emphasis added). According to petitioners the LUR
30 describes the affected area as a “vital business district,” but fails to explain why bisecting “an

1 existing shopping center” and eliminating “180 jobs” and “12 businesses” and adversely
2 affecting other businesses is warranted. Petition for Review 17.

3 Respondent argues that the substance of Economic Element Goal 2 was adequately
4 addressed in the LUR and REA:

5 “[T]he LUR extensively studied and summarized the loss of commercial and
6 industrial land in the study area cause[d] by the project. The alignment
7 proposed by the DEA found that 5.7 acres of land would be impacted. The
8 design revisions requested by several of the Petitioners[,] which relocated the
9 jug handle ramp, increased the impacts to 11.39 acres of land. The social and
10 economic impacts resulting from the modification were updated in the REA.
11 It was found that the revised alignment of the jug handle ramp increased job
12 loss slightly from 119 to 165. It was also found that the jobs created from this
13 project were substantially higher[,] offsetting the impacts caused by the
14 project.

15 “The LUR also found that the study area contains 120.4 acres of vacant land,
16 the majority of which is zoned light industrial. The city maintained a 766-
17 acre supply of industrial land equivalent to a 60-plus year supply. It also
18 found that the City of Medford land use inventory included 106 acres of
19 vacant commercial land. The findings analyzed the data and concluded that
20 even with the conversion of commercial and industrial land to right of way
21 that the City would have an adequate supply of available land. * * *

22 “Petitioners also argue that the findings mischaracterize the project impacts to
23 the study area because the findings did not appropriately consider the balance
24 of housing to impacts to employment centers as suggested by Housing
25 Element Goal 3. The LUR developed findings focused upon the impacts of
26 housing to the project, and found none. The effects on employment [are]
27 covered in another goal objective associated with [the] Goal 2 Economic
28 Element. While notable that this project will remove businesses and jobs, the
29 document contained findings stating that ‘this loss might be temporary, as
30 businesses would possibly relocate to different location[s] in the project area.’
31 If the displaced firms reopen outside the area, or do not reopen, the local
32 economy could be adversely affected over the short time, due to lost jobs,
33 income and property tax revenues. This job loss would be offset by the short-
34 term jobs created by the construction of the project. This project estimated it
35 would create 200 to 220 short-term jobs over the two-year construction phase.

36 “Moreover, the location of ‘employment centers’ has not changed and the
37 project would enhance and reinforce existing employment centers. The need
38 for the project is described:

1 “‘The [NMI] is vital to the economy of the Rogue Valley,
2 linking the White City industrial complexes, an area containing
3 40 percent of the manufacturing activity in the county and over
4 7,500 jobs. * * * With the decline of the timber industry,
5 tourism has become the second largest industry in the Rogue
6 Valley. According to the Chamber of Commerce, tourism
7 contributes \$50 million a year to Medford alone, and over 200
8 million a year to the county as a whole. * * * The visual
9 character of the [NMI] and the highway’s roadside
10 environment does not reflect the scenic beauty of the Rogue
11 Valley and the recreation area it serves. There is a strong
12 desire to improve the aesthetic appeal of the [NMI] by
13 establishing a gateway for the Rogue Valley and the outlying
14 recreation areas, through the use of landscaping and providing
15 clear and consistent signage.’

16 “‘Contrary to Petitioners’ assertion, the overall project enhances these
17 employment centers. ‘The Build Alternative would contribute to the local
18 economy by providing improvements that facilitate the movement of freight
19 and making the interchange area more user friendly.’ * * *” Respondent’s
20 Brief 23-25 (record citations omitted).¹⁵

21 Petitioners’ arguments understandably focus on the negative impacts that the NMI
22 will have on their properties. That narrow focus is understandable. However, the general
23 focus of the cited Medford Comprehensive Plan Economic Element Goal 2 is broader. The
24 impacts of the proposed project on petitioners’ businesses are not ignored in the LUR and
25 REA. Those impacts are simply viewed in context with the larger city and region and the
26 benefits that will accrue to that larger city and region if the NMI improvements are made.
27 The documents ODOT cites are adequate to demonstrate that the NMI is consistent with
28 Medford Comprehensive Plan Economic Element Goal 2 and Housing Element Goal 3’s
29 directive to coordinate a balance between public services, the location of employment
30 centers, and production of housing.

31 The second assignment of error is denied.

¹⁵We have reviewed the parts of the record that respondent cites in making the above response to petitioners’ arguments and the record supports respondent’s response.

1 **THIRD ASSIGNMENT OF ERROR**

2 Petitioners challenge the evidentiary support for the challenged decision.

3 **A. ORS 197.835(11)(b)**

4 Under ORS 197.835(11)(b), where LUBA concludes that the findings supporting a
5 decision are inadequate, LUBA will nevertheless affirm the challenged decision if LUBA
6 concludes that the evidence “clearly supports the decision.” We explained in *Waugh v. Coos*
7 *County*, 26 Or LUBA 300, 307 (1993) that the evidentiary burden imposed by ORS
8 197.835(11)(b) is higher than the general evidentiary burden that is imposed by ORS
9 197.835(9)(a)(C), which requires that a land use decision be supported by substantial
10 evidence. Petitioners argue the challenged decision is supported by inadequate findings and
11 is not affirmable under ORS 197.835(11)(b), because the evidentiary record in this matter
12 does not meet the heightened evidentiary burden that must be met under that statute.

13 Petitioners’ argument under this subassignment of error assumes that the second
14 assignment of error challenge to the adequacy of ODOT’s findings is sustained. Because that
15 assumption is erroneous, this subassignment of error is denied.

16 **B. Segmentation of the Hwy 62 Corridor**

17 Although petitioners’ argument under this subassignment of error is styled as an
18 evidentiary challenge, it is at best an indirect evidentiary challenge. If we understand
19 petitioners’ argument correctly, they contend that the evidence that the decision relies on to
20 conclude the NMI project is consistent with the city’s comprehensive plan environmental
21 goals is inadequate, because the NMI project fails to consider possible impacts of the NMI
22 on the parts of the larger original Hwy 62 corridor project. Originally, the project was to
23 have two phases. The NMI represents a part of the original first phase. Petitioners contend
24 the evidence supporting the challenged decision is insufficient because there is no analysis of
25 the impact of first constructing the NMI on the remainder of part of the first phase (which is

1 referred to as the “Big Y” intersection between Hwy 62 and Hwy 99) or remainder of the
2 original Phase II of the Hwy 62 corridor project.

3 If there is some technical reason why the larger project must be studied and justified
4 as a whole, rather than in discrete subparts such as the NMI, petitioners do not explain why
5 that is the case. Petitioners’ point may be that an improved NMI project will allow more
6 vehicles to pass through the remainder of the existing facilities covered by the original Hwy
7 62 corridor two-phase project, and negatively impact those facilities until planned
8 improvements are made to that part of the Hwy 62 corridor, and that the challenged decision
9 must address those impacts. However, petitioners cite no legal requirement that those
10 specific interim impacts must have been addressed in this decision.¹⁶ We do not see that
11 failure to address that specific question leaves the evidence supporting the challenged
12 decision something less than substantial evidence, *i.e.*, evidence a reasonable person would
13 rely on to support the challenged decision.

14 This subassignment of error is denied.

15 **C. Evidence Concerning Compatibility with the City’s Economic and**
16 **Housing Comprehensive Plan Elements**

17 We have already determined that ODOT’s findings addressing these plan provisions
18 are adequate. Under their third and fourth subassignments of error, it is not entirely clear
19 whether petitioners are contending here that the evidentiary weaknesses they identify mean
20 the evidence ODOT relied on fails to meet the “clearly supports” standard of ORS

¹⁶In responding to a related argument, respondent explains:

“* * * Petitioners question how this project will address the balance of transportation objectives when intersections outside the project area will fail. ODOT acknowledges that intersections outside the project area will still be congested even after the project improvements. Improvements to this interchange will add needed capacity, and improve safety to an area currently ensnared in congestion. The RTP identifies additional projects that will address other capacity issues outside the project area. Like world hunger, improvements to a transportation system can only be made one bite at a time.” Respondent’s Brief 25 (record citations omitted).

1 197.835(11)(b), which does not apply here, or whether petitioners argue the evidence ODOT
2 relied on does not qualify as “substantial evidence.”¹⁷ Because the substantial evidence
3 standard of ORS 197.835(9)(a)(C) is the applicable standard of review, we assume that the
4 latter argument is the one that petitioners advance under this subassignment of error.

5 As we have already concluded, the REA and DEA consider the impact of both the
6 original and revised build alternative on existing business properties in the NMI project area.
7 The REA and DEA conclude that the NMI project is consistent with the cited plan provisions
8 despite those impacts. ODOT’s findings are supported by substantial evidence even though
9 (1) the evidentiary record is not as fully developed concerning those impacts as petitioners
10 believe it should be and (2) petitioners clearly would assign those impacts more weight than
11 ODOT did in the challenged decision’s findings addressing these plan provisions.

12 These subassignments of error are denied.

13 The third assignment of error is denied.

14 **FOURTH ASSIGNMENT OF ERROR**

15 Petitioners argue the challenged decision violates the requirement of Statewide
16 Planning Goal 2 (Land Use Planning), that “actions related to use of land” be supported by
17 an “adequate factual base.” *1000 Friends of Oregon v. City of North Plains*, 27 Or LUBA
18 372, 377-78, *aff’d* 130 Or App 406, 882 P2d 1130 (1994). Under this assignment of error,
19 petitioners reassert their arguments concerning erroneous assumptions concerning TODs and
20 the number of overpass lanes that have already been addressed and rejected. Those
21 arguments are equally unavailing in petitioners’ evidentiary challenge here.

22 With regard to the May 2, 2001 letter discussed earlier, petitioners contend that the
23 letter is internally inconsistent and therefore cannot be relied on to establish that the

¹⁷One of petitioners’ main points appears to be that ODOT failed to adequately consider economic impacts on businesses that are close to lands that will be taken to construct the NMI project, but will not themselves be taken. In particular petitioners complain that bisecting an existing shopping center will change the existing employment center.

1 approved facility is consistent with the five-lane facility described in the RTP. Two
2 paragraphs of that May 2, 2001 letter were set out and discussed earlier in this opinion. In
3 those paragraphs the author explains why he believes the proposed facility with five through-
4 lanes and a sixth exit lane is the same as the “five lane” facility described in the RTP. The
5 following paragraph appears later in the May 2, 2001 letter:

6 “The RVMPO is currently updating the [RTP] and the regional travel demand
7 model to reflect changes in our financial forecasts. We will be including the
8 North and South Interchange Solutions Projects in our [RTP] and regional
9 travel demand model updates. Following that update, the RVMPO will be
10 performing a regional air quality conformity analysis to determine consistency
11 with the [RTP].” Record 321.

12 If we understand petitioners correctly, they contend that the reference to future
13 revisions in the RTP including the North and South Interchange Solutions Projects is
14 inconsistent with the earlier paragraphs of the letter that take the position that the NMI
15 project is already included in the RTP. ODOT points out that the RTP and traffic demand
16 models are in a “constant state of revision” and that the reference to future “updates” and a
17 future “regional air quality conformity analysis” simply reflects that fact. Respondent’s
18 Brief 28. The above-quoted paragraph, while somewhat ambiguous, need not be read to
19 conflict with the conclusions reached in the earlier paragraphs. We therefore do not agree
20 with petitioners that the May 2, 2001 letter is internally inconsistent.

21 The fourth assignment of error is denied.

22 **FIFTH ASSIGNMENT OF ERROR**

23 As noted earlier in this opinion, OAR 731-015-0075(2) requires that the REA must
24 “identify and address relevant land use requirements in sufficient detail to support
25 subsequent land use decisions necessary to authorize the project.” Petitioners repeat their
26 arguments that the LUR is based on a different intersection design from the one that was
27 ultimately adopted and erroneous assumptions concerning the number of adopted TOD
28 centers and whether the approved facility is the same as the five-lane facility in the RTP.

1 Petitioners reason that the errors identified in those arguments establish that “ODOT’s
2 environmental analysis lacked sufficient detail to support later land use decisions and the
3 [REA] should be remanded.” Petition for Review 26.

4 We have already rejected petitioners’ arguments regarding the TODs and the five-
5 lane facility specified in the RTP. We also have noted that the REA recognized and
6 discussed the design changes in the build alternative. The fifth assignment of error provides
7 no basis for reversal or remand.

8 The fifth assignment of error is denied.

9 ODOT’s decision is affirmed.