

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

3
4 1000 FRIENDS OF OREGON and
5 FRIENDS OF YAMHILL COUNTY,
6 *Petitioners,*

7
8 vs.

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10 CITY OF DAYTON,
11 *Respondent,*

12 and

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15 OREGON DEPARTMENT
16 OF TRANSPORTATION,
17 *Intervenor-Respondent.*

18
19 LUBA No. 2004-146

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21 FINAL OPINION
22 AND ORDER

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24 Appeal from City of Dayton.

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26 Christine M. Cook, Portland, filed the petition for review and argued on behalf petitioners.

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28 Pamela J. Beery, Portland, filed a joint response brief and argued on behalf of respondent.
29 With her on the brief was Beery Elsner and Hammond, LLP.

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31 Bonnie E. Heitsch, Assistant Attorney General, Salem, filed a joint response brief and
32 argued on behalf of intervenor-respondent. With her on the brief was Kathryn A. Lincoln.

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34 DAVIES, Board Chair; BASSHAM, Board Member; HOLSTUN, Board Member,
35 participated in the decision.

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37 AFFIRMED

 07/21/2005

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

NATURE OF THE DECISION

Petitioners 1000 Friends of Oregon and Friends of Yamhill County (Friends) appeal a city decision adopting new comprehensive plan policies relating to the proposed Newberg-Dundee bypass.

FACTS

Intervenor-respondent Oregon Department of Transportation (ODOT) is developing a Highway 99 bypass between the cities of (from southwest to northeast) Dayton, Dundee, and Newberg to relieve severe traffic congestion in the area. All three cities, as well as Yamhill County, adopted ordinances related to approving the bypass.¹ The westernmost part of the bypass will be at the intersection of Highway 99 and Highway 18. Those highways currently intersect at McDougal Corner, which is located in Yamhill County just outside the City of Dayton’s city limits and urban growth boundary (UGB). The interchange will be built during a second-tier design phase, but it is anticipated that ramp terminals may require widening of Highway 18 inside the city limits of Dayton. This is the only part of the bypass that will directly affect land within the city limits of Dayton. In the challenged decision, the city amended its comprehensive plan to support development of the bypass in the corridor chosen as the preferred alternative. The city held hearings on the amendments and adopted them over petitioners’ objections. This appeal followed.

FIRST ASSIGNMENT OF ERROR

A. Evidence of the Bypass in the Record

Friends argue that the city made a decision not supported by substantial evidence because the selected bypass facility location is not set forth in the record. The city adopted Policy 2A, which “supports the development of the Bypass in the southern location corridor described as Alternative

¹ For a more complete discussion of the facts regarding the bypass, see our final opinion and order in a companion case issued this date in *1000 Friends of Oregon v. Yamhill County*, ___ Or LUBA ___ (LUBA Nos. 2004-169 et al. July 21, 2005).

1 3J (Modified) in the Location Impact Environmental Document.” Record 7. The city
2 acknowledges that the term “Modified 3J” is not found in the Location Draft Environmental Impact
3 Statement (LDEIS) that was submitted into the record. As the city explains, however, the term
4 Modified 3J was adopted after the LDEIS was issued, but identification of the selected bypass
5 alignment was consistent throughout the proceedings.

6 Friends argue that the decision is not supported by substantial evidence because “it is not
7 possible to ascertain exactly what Dayton is supporting.” Petition for Review 6. We disagree. We
8 do not see that there is any confusion as to where the bypass alignment will be located. The LDEIS
9 shows eight southern bypass alternatives. All of the southern bypass alternatives are identical
10 between Dundee and Dayton. Those alignments are identical to the southern alignment of Modified
11 3J. The challenged decision includes a map of the segment of the bypass and interchange involving
12 Dayton that identifies the affected area. The location of the bypass was described in the initial
13 application and in the notice to property owners. The map and location did not change during the
14 proceedings, and the location was repeated in the staff report and the findings. Despite the absence
15 of the term Modified 3J in the record, there is no doubt where the bypass will be located and that
16 the city supports its development. Therefore, the decision concerning the location of the bypass is
17 supported by substantial evidence.

18 This subassignment of error is denied.

19 **B. City’s Decision Based on Other Jurisdictions**

20 To the extent we understand the argument in this subassignment of error, it appears that
21 Friends argue that the city erred because the decision “presupposes the location of the facility, not
22 just in Dayton, but also in Dundee, Newberg and all points in between.” Petition for Review 7.
23 Friends do not explain why this provides a basis for reversal or remand, and we do not see that it
24 does. The city explains that it acted in compliance with the state agency coordination program.
25 OAR 731-015-0075(3) provides that cities should make such amendments after completion of the

1 draft environmental impact statement and before completion of the final environmental impact
2 statement. That is what the city did. We see no error in the city's decision-making process.

3 This subassignment of error is denied.

4 The first assignment of error is denied.

5 **SECOND ASSIGNMENT OF ERROR**

6 Friends argue that the city violated Statewide Planning Goals 3 (Agricultural Lands), 11
7 (Public Facilities), and 14 (Urbanization) by failing to take an exception to those goals to site the
8 bypass interchange on rural lands outside the city's UGB. The simple answer is that the city is not
9 required, nor is it even authorized, to take exceptions on land outside of its jurisdiction. Friends also
10 argue that the city somehow erred by not siting the interchange inside the city's UGB. Again, the
11 simple answer is that the intersection of Highway 99 and Highway 18 is outside of the city limits and
12 the UGB. Friends' arguments do not provide a basis for reversal or remand.

13 The second assignment of error is denied.

14 The city's decision is affirmed.