

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3  
4 1000 FRIENDS OF OREGON,  
5 FRIENDS OF YAMHILL COUNTY,  
6 JIM MORRISON, CHARLIE HARRIS  
7 and FAIR HOUSING COUNCIL OF OREGON,  
8 *Petitioners,*

9  
10 vs.

11  
12 CITY OF NEWBERG,  
13 *Respondent,*

14  
15 and

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

20  
21 LUBA Nos. 2004-168 and 2004-174

22  
23 FINAL OPINION  
24 AND ORDER

25  
26 Christine M. Cook, Portland, filed a petition for review and argued on behalf of 1000  
27 Friends of Oregon, Friends of Yamhill County, and Jim Morrison.

28  
29 Charlie Harris, Portland, filed a petition for review and argued on behalf of himself and Fair  
30 Housing Council. With him on the brief was Community Development Law Center.

31  
32 Terrence D. Mahr, City Attorney, Newberg, filed a joint response brief and argued on  
33 behalf of respondent.

34  
35 Kathryn Lincoln, Assistant Attorney General, Salem, filed a joint response brief and argued  
36 on behalf of intervenor-respondent. With her on the brief was Bonnie Heitsch.

37  
38 DAVIES, Board Chair; BASSHAM, Board Member; HOLSTUN, Board Member,  
39 participated in the decision.

40  
41 AFFIRMED

07/21/2005

42  
43 You are entitled to judicial review of this Order. Judicial review is governed by the

1 provisions of ORS 197.850.

**NATURE OF THE DECISION**

Petitioners appeal the city’s adoption of Ordinance No. 2004-2602, an ordinance amending the Newberg Comprehensive Plan and Development Code to specify the location of a corridor and two interchanges for the Newberg-Dundee Bypass within and around the City of Newberg (city).

**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. The cities of Dayton and Newberg, and Yamhill County, also adopted ordinances related to approving the bypass.<sup>1</sup> The purpose of the bypass is to alleviate congestion on Highway 99. Currently, Highway 99 runs through central Newberg. The bypass will redirect traffic south of the current highway and intersect Highway 219 at the southeast corner of the city’s urban growth boundary (UGB). East of the proposed Highway 219 interchange, the bypass temporarily exits the city across county EFU land, briefly reenters Newberg, and then terminates east of the Newberg UGB at the East Newberg Interchange where the bypass rejoins existing Highway 99. The city has cooperated with ODOT in the planning process and in 1994 amended its transportation system plan (TSP) to include a bypass corridor through the southern part of the city. The challenged decision amends the comprehensive plan and adopts ordinances to add policies in support of the bypass and plans for creation of an interchange area management plan, among other objectives. The decision amends the existing comprehensive plan text and TSP that already includes a bypass corridor alignment in the southern location. The bypass corridor was adjusted southward slightly through the Riverfront area to avoid direct impacts

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<sup>1</sup> 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 to Scott Levitt Park and also to reduce potential housing displacements. The city approved the  
2 proposed bypass after extensive local hearings. This appeal followed.

3 **FIRST ASSIGNMENT OF ERROR (FHC)**

4 Petitioners Charlie Harris and Fair Housing Council of Oregon (collectively FHC) argues  
5 that the challenged decision violates ORS 197.307(6) because it “attaches standards and  
6 procedures for approval which are not clear and objective and which may have the effect of  
7 discouraging needed housing through unreasonable cost or delay.”<sup>2</sup> FHC Petition for Review 4.

8 Goal 4 of the Newberg Comprehensive Plan provides: “Minimize the impact of regional  
9 traffic on the local transportation system.” The challenged decision adds the following policies to  
10 Goal 4:

11 “h. The City actively supports the development of the Bypass in the southern  
12 location corridor described as Modified 3J in the Location Environmental  
13 Impact Statement.

14 “\* \* \* \* \*

15 “p. The City of Newberg will coordinate with ODOT on any development  
16 proposal within the Bypass location corridor and interchange management  
17 areas through the City’s established Site Design Review process.  
18 Development planning should consider and complement the intended  
19 function of the bypass. Land use decisions should consider the planned  
20 corridor location and avoid conflicts where feasible.” Record 8, 10.

21 FHC argues that the vague nature of the coordination requirement and the discretionary nature of  
22 the language in policy “p” requiring (1) that “[d]evelopment planning should consider and  
23 complement the intended function of the bypass,” and (2) that “[l]and use decisions should consider  
24 the planned corridor location and avoid conflicts where feasible,” violate ORS 197.307(6) because  
25 they are not clear and objective. FHC contends:

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<sup>2</sup> ORS 197.307(6) provides:

“Any approval standards, special conditions and the procedures for approval adopted by a local government shall be clear and objective and may not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay.”

1            “[N]othing is said as to what ODOT’s actual role will be, what the process for  
2            coordination will entail, how long the coordination process could take, or what will  
3            happen if ODOT and the City disagree on the acceptability of a proposed land use  
4            action. The developer is faced with, and no doubt discouraged by, a process which  
5            is vague and of indeterminate length.” FHC Petition for Review 5.

6            First, respondents argue that the mere requirement that the city coordinate with ODOT  
7            does not violate ORS 197.307(6). Respondents explain that “‘coordination’ merely requires that  
8            the city and ODOT discuss a proposed development and confer as to its impact on the bypass  
9            corridor outlined in the city’s transportation system plan.” Combined Response Brief 22. We  
10           agree with respondents that coordination is a common requirement in Oregon’s land use system,  
11           and that FHC has not demonstrated how the coordination requirement quoted above unreasonably  
12           increases the cost of a project or would cause undue delay.

13           Respondents also argue that the quoted policies are comprehensive plan policies, not zoning  
14           code criteria, and that petitioners must therefore demonstrate that the provisions are “categorically  
15           incapable of being clearly and objectively applied under any circumstance where they might be  
16           applicable.” Combined Response Brief 21 (citing *Rogue Valley Assoc. of Realtors v. City of*  
17           *Ashland*, 158 Or App 1, 970 P2d 685 (1999)).<sup>3</sup> Respondents’ argument appears to be that the  
18           challenged decision, specifically the amendment of the comprehensive plan, is a legislative action,  
19           and as such, petitioners can only raise a facial challenge. Whether the challenged decision is  
20           legislative or quasi-judicial, the “clear and objective” requirement of ORS 197.307(6) only applies  
21           to “approval standards, special conditions and the procedures for approval.” We have held that  
22           code provisions that do not apply as approval criteria, such as purpose and applicability provisions,  
23           are not “approval standards” within the meaning of ORS 197.307(6), and therefore are not required  
24           to be “clear and objective.” *Home Builders Assoc. v. City of Eugene*, 41 Or LUBA 370, 385-86  
25           (2002).

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<sup>3</sup> *Rogue Valley* was legislatively overruled, but that fact does not disturb our disposition of the matter.

1 The last two sentences of policy “p” require that certain actions “should” consider the  
2 function of the bypass and “should consider the planned corridor location and avoid conflicts where  
3 feasible.” It appears that the language merely imposes considerations, and is not a mandatory  
4 approval criterion. See *Mazeski v. Wasco County*, 28 Or LUBA 159, 168 (1994), *aff’d* 133 Or  
5 App 258, 890 P2d 455 (1995) (where a local government interprets a comprehensive plan  
6 provision using the word “should” as imposing a nonmandatory consideration, findings  
7 demonstrating compliance with the plan provision are not required). FHC has not demonstrated  
8 that the policies quoted above qualify as “approval standards,” “special conditions” or “procedures  
9 for approval” and therefore has not demonstrated that the requirements of ORS 197.307(6) apply.

10 FHC’s first assignment of error is denied.

## 11 **SECOND AND THIRD ASSIGNMENTS OF ERROR (FHC)**

12 FHC argues that the challenged decision violates Statewide Planning Goal 10 (Housing),  
13 ORS 197.307 and the housing element of Newberg’s comprehensive plan because the city has not  
14 demonstrated that the challenged actions leave an adequate supply of medium density residential  
15 buildable land.<sup>4</sup> The challenged decision states:

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<sup>4</sup> Goal 10 requires local governments to plan to “encourage the availability of adequate numbers of needed housing units at price ranges and rent levels which are commensurate with the financial capabilities of Oregon households.” See also *Opus Development Corp. v. City of Eugene*, 28 Or LUBA 670, 694-95 (1995) (city required to maintain an adequate inventory of buildable lands).

ORS 197.307(3)(a) provides:

“When a need has been shown for housing within an urban growth boundary at particular price ranges and rent levels, needed housing \* \* \* shall be permitted in one or more zoning districts or in zones described by some comprehensive plans as overlay zones with sufficient buildable land to satisfy that need.”

See *Mulford v. Town of Lakeview*, 36 Or LUBA 715, 724-25 (1999) (city’s findings must explain why the current inventory of land is adequate to comply with Goal 10).

Newberg’s Comprehensive Plan, Goal I, Housing provides that the city shall:

“provide for diversity in the type, density and location of housing within the City to ensure there is an adequate supply of affordable housing units to meet the needs of City residents of various income levels.” Record 21.

1 “The Bypass is expected to displace about 112 acres within Newberg’s UGB,  
2 including 38 acres designated for Medium Density Residential (MDR) development  
3 and 6 acres designated for Low Density Residential development (LDR). Table  
4 IV-6 of the Newberg Comprehensive Plan summarizes a supply and demand  
5 analysis for residential land for the year 2010. Data in the table shows that  
6 Newberg’s existing UGB contains a surplus of 100 acres of designated LDR land  
7 to meet projected needs, and a surplus of 24 acres of MDR land to meet projected  
8 needs. The UGB is based upon a projected population of 27,000.” Record 22-  
9 23.

10 FHC argues that because the bypass corridor will displace 38 acres of medium density  
11 residential land and the city has a buildable land supply of only 24 acres of such land, the city has an  
12 insufficient supply of buildable land to meet the identified need and thus violates Goal 10 and the  
13 comprehensive plan. FHC also argues that the city erred in relying on an unadopted inventory and  
14 in deferring Goal 10 compliance to a later stage.<sup>5</sup>

15 In their response brief, respondents do not argue that the city has an adequate supply of  
16 land or that it was justified in relying on a future buildable lands study. Rather, they counter that a  
17 demonstration that the bypass and policies comply with Goal 10 is not required at this stage.<sup>6</sup>  
18 According to respondents, “[t]he City’s decision was not about whether a southern bypass route  
19 should be adopted, but rather was a refinement of a decision already reached, and acknowledged,  
20 in the Newberg TSP and Comprehensive Plan text.” Combined Response Brief 23.<sup>7</sup> Respondents

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<sup>5</sup> The city’s findings state:

“Further, the City Council takes notice of the project that is currently underway to update Newberg’s buildable land inventory and land need requirements for the next 20 years. The Land Needs Study is scheduled for completion in June 2005 and it will include consideration [of] potential housing displacement impacts associated with the Bypass project. A potential outcome of that study could include plan map changes and/or expansion of the Newberg UGB to ensure that there is an adequate supply of affordable housing units to meet the needs of City residents of various income levels.” Record 23.

<sup>6</sup> Although respondents do not explicitly state that Goal 10 findings are not required, we assume that is essentially their position from the following quotation: “Petitioners had the opportunity to address Goal 10 issues at that earlier date, and will again at the end of the design phase when an alignment is selected.” Combined Response Brief 23.

<sup>7</sup> The findings state:

1 argue that Goal 10 compliance could have and should have been challenged when the city’s TSP  
2 was amended to provide for the original corridor. *See Friends of Eugene v. City of Eugene*, 44  
3 Or LUBA 239, 250, *aff’d* 189 Or App 335, 75 P3d 922 (2003) (Goal 12 rules do not require  
4 “that a decision to modify a highway corridor, which has already been approved and included in a  
5 plan that is acknowledged to comply with the statewide planning goals, must completely rejustify  
6 that already approved highway corridor”).

7 In *Friends of Eugene*, we did not conclude that the goals do not apply at all to a plan  
8 amendment adopting a modified transportation corridor. Accordingly, to the extent respondents  
9 argue that Goal 10 does not apply, their position is inconsistent with our opinion in *Friends of*  
10 *Eugene*. However, we did hold in *Friends of Eugene* that only the modification or amendment of  
11 the previously adopted corridor required justification under the goals. *Id.* at 250-51. We  
12 specifically limited our analysis in that case to impacts attributable to the *modification* of the  
13 corridor that were different from or went beyond those impacts that could already be anticipated  
14 from the original approved project. *See id.* at 252, 258-59. Accordingly, in this case the city’s  
15 Goal 10 findings need only justify the modification of the corridor.

16 The city’s findings provide:

17 “The City of Newberg finds that the southerly adjustment of the corridor (Modified  
18 3J) would displace 18 fewer existing homes in south Newberg when compared with  
19 3J (49 vs. 67).” Record 22.

20 Because the modified corridor has less impact on the housing supply than the original alignment,  
21 petitioners have failed to demonstrate that the impacts attributable to the modification go beyond  
22 those Goal 10-related impacts from the approval of the original corridor. Even if the original  
23 corridor violated Goal 10 in some way, petitioners cannot collaterally attack that original violation  
24 now.

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“This southerly corridor in Newberg is consistent with the conceptual alignment in Newberg’s  
Transportation System Plan (TSP), adopted and acknowledged in 1994. The TSP is the  
acknowledged transportation element of the Newberg Comprehensive Plan and is deemed to  
be consistent with state planning requirements, including the Housing Goal.” Record 22.



1 FHC's second and third assignments of error are denied.

2 **FIRST ASSIGNMENT OF ERROR (FRIENDS)**

3 1000 Friends of Oregon, Friends of Yamhill County and Jim Morrison (collectively Friends)  
4 argue that the city violated Statewide Planning Goal 9 (Economic Development) and its  
5 implementing administrative rules by adopting a plan amendment that dedicates 56 acres of land that  
6 are planned and zoned for industrial use for use as a transportation facility. OAR 660-009-  
7 0010(4).<sup>8</sup> The rule, by its terms, only applies where a jurisdiction changes its plan designation of  
8 lands in excess of two acres to or from commercial or industrial designations.

9 The city argues that the cited rule does not apply because the challenged decision does not  
10 change any of the underlying city plan or zoning designations.<sup>9</sup> See n 8. The city is correct that the  
11 challenged decision does not increase or decrease the amount of land designated commercial or  
12 industrial. The city did not violate or misconstrue Goal 9 or its implementing rules because it did  
13 not, as Friends assert, change plan designations for any land to or from commercial or industrial use.

14 Friends' first assignment of error is denied.

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<sup>8</sup> OAR 660-010-0010(4) provides:

“Notwithstanding paragraph (2), above, a jurisdiction which changes its plan designations of lands in excess of two acres to or from commercial or industrial use, pursuant to OAR 660, Division 18 (a post acknowledgment plan amendment), must address all applicable planning requirements; and:

“(a) Demonstrate that the proposed amendment is consistent with the parts of its acknowledged comprehensive plan which address the requirements of this division; or

“(b) Amend its comprehensive plan to explain the proposed amendment, pursuant to OAR 660-009-0015 through 660-009-0025; or

“(c) Adopt a combination of the above, consistent with the requirements of this division.”

<sup>9</sup> The challenged decision creates a Bypass Interchange Overlay zone. However, as the city notes, “all uses permitted in the parent zone shall be allowed within the Bypass Interchange Overlay.” Combined Response Brief 7; see Record 13.

1 **SECOND ASSIGNMENT OF ERROR (FRIENDS)**

2 Friends argue that the city erred by adopting certain comprehensive plan amendments  
3 without providing the required notice. The challenged decision adopted the following amendments  
4 to comprehensive plan policies under Goal 12 of the plan’s Transportation element (deletions shown  
5 in ~~strikeout type~~; revised or new policy text shown in underline type):

6 “a. ~~If the Southern bypass route is chosen, it should be no closer to the~~  
7 ~~Willamette River than 11<sup>th</sup> Street. The bypass should be located within the~~  
8 study area as far from the Willamette River as practical.

9 “b. ~~If the Southern bypass route is chosen, an at grade intersection should be~~  
10 ~~considered in the Riverfront District to give auto access to the area at the~~  
11 ~~outside edge of the riverfront area beyond the below grade area.~~

12 “\* \* \* \* \*

13 “e. ~~If the Southern bypass route is chosen, the bypass route should not bisect~~  
14 ~~the medium or low density zones in the Riverfront District. The bypass~~  
15 route should be located as far north as practical within the study area to  
16 consolidate the Riverfront District residential and commercial land on the  
17 south side of the bypass.” Record 11.

18 Friends assert that the challenged decision essentially eliminates the existing requirements  
19 and that the city failed to identify these plan policy amendments in the notices that were sent to the  
20 Director of the Department of Land Conservation and Development (DLCD) prior to the adoption  
21 of the challenged decision, in violation of ORS 197.610.<sup>10</sup> It asserts that the public, and specifically  
22 petitioner Jim Morrison, was “prevented from knowing that protections for Newberg’s Riverfront  
23 District were to be altered to accommodate the Bypass facilities.” Friends’ Petition for Review 11.

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<sup>10</sup> ORS 197.610(1) provides:

“A proposal to amend a local government acknowledged comprehensive plan or land use regulation or to adopt a new land use regulation shall be forwarded to the Director of the Department of Land Conservation and Development at least 45 days before the first evidentiary hearing on adoption. The proposal forwarded shall contain the text and any supplemental information that the local government believes is necessary to inform the director as to the effect of the proposal. The notice shall include the date set for the first evidentiary hearing. The director shall notify persons who have requested notice that the proposal is pending.”

1 The notice that the city mailed to DLCD provides:

2 “The proposal includes new plan policies (Exhibit A) to support development of the  
3 Bypass and protect the planned function and capacity of the Bypass and  
4 interchanges to serve primarily longer-distance through trips. The proposal also  
5 includes a new Interchange Overlay (Exhibit B) to retain existing zoning within ¼  
6 mile of the interchanges in the interim period before Interchange plans (IAMP) are  
7 adopted.” Record 1030.

8 Exhibit A is entitled “Recommended Amendments to Newberg Comprehensive Plan.”  
9 Record 1031-36. It contains numerous amendments to the plan, but does not include the actual  
10 proposed text amendments that are addressed in this assignment of error. As respondents point  
11 out, however, several maps and an aerial photo were attached to the notice that clearly show the  
12 bypass intersecting the riverfront area. Record 1035, 1041-42. Respondents argue that legislative  
13 hearings are not governed by the procedural requirements of ORS 197.763 requiring individualized  
14 notice to property owners affected by the proposed changes. The notice the city sent to DLCD,  
15 they assert, was subject only to the requirements of ORS 197.610. The requirements of ORS  
16 197.610 are aimed at informing the director of DLCD of the general nature of the proposed action,  
17 and do not require the level of specificity required for notices under ORS 197.763.

18 Although neither of the exhibits attached to the notice spells out the text of the proposed  
19 plan policies at issue, the graphics attached to the notice make clear the “effect of the proposal.”  
20 Any error the city made in failing to include the full text of the proposed amendments is a procedural  
21 error, the city asserts, that requires remand only if petitioners demonstrate prejudice to a substantial  
22 right. *See Stallkamp v. City of King City*, 43 Or LUBA 333, 351-52 (2002), *aff’d* 186 Or App  
23 742, 66 P3d 1029 (2003) (“not every deviation from the requirements of ORS 197.610(1) or its  
24 implementing rule is a ‘substantive’ error that must result in remand”).<sup>11</sup> In *Stallkamp*, the city failed

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<sup>11</sup> The city alleges that petitioner Morrison’s rights are not prejudiced because this is a legislative proceeding, which is not limited to those issues raised below, and that he may raise any concerns with the proposed changes in this appeal. However, we recently rejected this argument. *See Hammons v. City of Happy Valley*, \_\_\_ Or LUBA \_\_\_ (LUBA No. 2004-117, March 10, 2005) slip op 9 (a petitioner’s substantial right to an adequate opportunity to prepare and submit his case and the right to a full and fair hearing refers to petitioner’s

1 to identify in its notice to DLCD certain property that it proposed to rezone from rural residential  
2 zoning to a recreational open space (ROS) zone. The materials submitted to DLCD, however,  
3 included a map depicting the properties that would be subject to the ROS zone. We held that any  
4 error in failing to include the proposals to amend the comprehensive plan map designations in the  
5 notice was procedural error, and the petitioners' failure to attempt to demonstrate prejudice to a  
6 substantial right precluded remand. *Id.* at 352.

7 Petitioners in this case allege that petitioner Morrison would have appeared at the public  
8 hearing to offer evidence if he had known that the disputed policy amendments were under  
9 consideration. Friends' Petition for Review 11. In this case, as in *Stallkamp*, however, the notice  
10 included maps clearly showing the proposed location of the bypass that reasonably described the  
11 nature of the proposed action. If petitioner Morrison had read the notice, he would have seen the  
12 attached graphics and would have realized the potential impact of the proposed corridor on the  
13 waterfront area. Accordingly, petitioner Morrison's substantial rights were not prejudiced by any  
14 error in failing to include the exact text amendments in the DLCD notice.<sup>12</sup>

15 Friends' second assignment of error is denied.

16 **THIRD ASSIGNMENT OF ERROR (FRIENDS)**

17 Friends argue that the challenged decision effectively amends the city's Transportation  
18 System Plan (TSP). They allege that the city failed to amend its transportation financing program  
19 when it amended its TSP, in violation of OAR 660-012-0040.<sup>13</sup>

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participation at the *local* level). A petitioner's ability to raise an issue on appeal to LUBA does not necessarily cure a procedural error that interferes with a petitioner's right to participate at the local level.

<sup>12</sup> In an order dated January 13, 2005, we denied ODOT's motion to dismiss petitioner Morrison because he had not appeared below, relying on Morrison's assertion that the notice at issue in this assignment of error "did not reasonably describe the nature of the local government action." *1000 Friends v. City of Newberg*, \_\_\_ Or LUBA \_\_\_ (LUBA Nos. 1004-168, 2004-174, Order, January 13, 2005) slip op. 2; ORS 197.620(2). We do not see that that conclusion is inconsistent with our disposition of this assignment of error because (1) ODOT had failed to respond to petitioners' characterization of the notice and we were not made aware of the attached map, and (2) the standard under ORS 197.620(2) and the prejudice to substantial rights standard require different analyses.

<sup>13</sup> OAR 660-012-0040 provides, in relevant part:

1 Even assuming the challenged decision amends the city’s TSP, Friends’ assertion that 660-  
2 012-0040 requires the city to amend its financing program is mistaken. We do not find anything in  
3 the language of the rule that suggests that anytime a TSP is amended, no matter how insignificant  
4 that amendment, the financing program must also be amended. OAR 660-012-0040 simply states  
5 that a TSP must include a financing program. Friends does not allege that the city does not currently  
6 have a financing program. Nor do they argue that the challenged decision alters or impacts the  
7 current financing program in any way.

8 Since 1994, Newberg’s TSP has provided for a bypass corridor alignment through the city.  
9 The challenged decision adjusts slightly the location of the corridor that was adopted in 1994. The  
10 city’s findings in support of the challenged decision contain general estimates for both the timing and  
11 financing of the bypass project.<sup>14</sup> Friends fail to demonstrate why an amendment to the financing  
12 program was required or why the findings are insufficient.

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“For areas within an urban growth boundary containing a population greater than 2,500 persons, the TSP shall include a transportation financing program.

- “(1) A transportation financing program shall include the items listed in (a)-(d):
  - “(a) A list of planned transportation facilities and major improvements;
  - “(b) A general estimate of the timing for planned transportation facilities and major improvements;
  - “(c) A determination of rough cost estimates for the transportation facilities and major improvements identified in the TSP; and
  - “(d) In metropolitan areas, policies to guide selection of transportation facility and improvement projects for funding in the short-term \* \* \*. Such policies shall consider, and shall include among the priorities, facilities and improvements that support mixed-use, pedestrian friendly development and increased use of alternative modes.”

<sup>14</sup> The challenged findings provide, in pertinent part:

“The preliminary cost estimate for the Bypass is approximately \$311 million as referenced in the goal exception application to Yamhill County. Funding for the Bypass will come from a variety of sources, including federal, state, and local governments. Innovative financing methods, including but not limited to tolling and various forms of public/private partnerships, are also being explored. Because of the magnitude of the cost of this project, it is expected that special actions outside the normal transportation revenue stream will be needed. This project

- 1 Friends' third assignment of error is denied.
- 2 The city's decision is affirmed.

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currently shares with the proposed Woodburn Interchange the number one priority ranking for funding as determined by the Mid-Willamette Valley Area Commission on Transportation.

“\* \* \* \* \*

“Despite its high priority, the large cost of the Bypass project makes it difficult to specify when full construction funding will become available. To date, ODOT has identified approximately \$9.8 million for project development and right-of-way acquisition. Given the priority of this project and the on-going efforts to secure its funding, ODOT is hopeful that full funding can be secured upon completion of final design in the 2008-2010 timeframe with construction completed within the 15-20 year time horizon.” Record 41.