

BEFORE THE LAND CONSERVATION AND DEVELOPMENT COMMISSION OF THE
STATE OF OREGON

IN THE MATTER OF CRITERIA)
FOR LAND USE DECISIONS)
REGARDING THE SOUTHWEST) LCDC Order 001887
CORRIDOR MAX LIGHT RAIL)
PROJECT IN THE PORTLAND)
METRO REGION)

This matter came before the Land Conservation and Development Commission (the commission) on September 22, 2017, pursuant to Section 4 of House Bill 3202 enacted by the 2017 Legislature (HB 3202). The commission having fully considered the Southwest Corridor MAX Light Rail Project criteria, timely comments, and reports of the Department of Land Conservation and Development (the department), now enters the Findings of Fact, Conclusions of Law, and Order of the Commission set forth below.

FINDINGS OF FACT

1. The 79th Legislative Assembly enacted HB 3202, relating to the siting of the Southwest Corridor MAX Light Rail Project in the Portland Metro region. On August 15, 2017, Governor Kate Brown signed HB 3202 and, subject to the emergency clause in Section 15, it is in effect.
2. Section 4 of HB 3202 directs the commission to establish criteria to be used by the Metro Council in approving a land use final order for a Southwest Corridor MAX Light Rail Project to be located in the cities of Portland, Tigard, and Tualatin and Multnomah and Washington Counties. Remaining decisions concern the light rail route, stations, park-and-ride lots, maintenance facilities and highway improvements for the Southwest Corridor MAX Light Rail Project, including their locations.
3. Paragraphs (b) and (c) of subsection (8) of Section 4 of HB 3202 require the commission to base the criteria on “statewide planning goals and plan policies that are relevant to decisions regarding the project improvements and their locations.” Subsection (4) of section 2 of HB 3202 makes a legislative finding that using the criteria will be “equivalent in spirit and substance to the land use procedures that otherwise would be applicable.”
4. TriMet prepared and submitted proposed criteria to the commission by letter dated September 1, 2017. The submittal from TriMet explained how the criteria reflect statewide land use goals and applicable acknowledged local comprehensive plan policies.

5. The department reviewed the proposed criteria and prepared a report to the commission dated September 14, 2017, which recommended a set of criteria similar to criteria proposed by TriMet, and described the modifications.
6. The commission conducted a public hearing on September 22, 2017. The City of Tigard, the City of Portland, and the Multnomah Neighborhood Association (MNA) submitted written testimony prior to the meeting. The commission received oral testimony from Mark Greenfield on behalf of TriMet and from Roger Alfred on behalf of Metro.
7. The written testimony from the City of Tigard generally supported the criteria presented in the September 14, 2017 staff report, and requested minor modifications to Criteria (3) and (11). The commission considered the requests and approved the minor modifications for the reasons set forth in the Conclusions of Law section below.
8. The written testimony from MNA provided background information on the adopted Portland 2035 Comprehensive Plan, and on how MNA has objections to the middle housing amendment adopted as part of that plan. The testimony raised three points relevant to the proposed criteria. First, the testimony expressed a preference for stronger protection for single-family housing in the “inner neighborhood”. Second, the testimony expressed a desire to balance redevelopment with impacts to congestion. Third, the testimony objected to using the adopted, but not yet acknowledged, Portland 2035 Comprehensive Plan as a basis for the criteria because the plan is still under review by the department which includes consideration of the objections to the plan MNA has filed with the department. The testimony also proposed a new criterion (3), and requested modification to criterion (3)(A). The commission did not accept submittal of the new criterion (3), and did not approve the modification to Criterion (3)(A) for the reasons set forth in the Conclusions of Law section below.
9. The written testimony from the City of Portland supported the criteria presented in the staff report. The testimony also explained the 2035 Comprehensive Plan was used to prepare the proposed criteria because it has been adopted by the city, and the city anticipates that the plan will be in effect by the time that the criteria are used to evaluate a land use final order. The testimony also provided policies from the acknowledged 1980 Comprehensive Plan, which is currently in effect. The testimony demonstrated that the proposed criteria also reflect policies from the 1980 plan. The testimony did not request any modifications to the criteria.
10. The oral testimony for TriMet explained the criteria originally proposed by TriMet, supported the modified criteria presented in the staff report, and supported the modifications proposed by the City of Tigard. The oral testimony for Metro explained the broader process within which the land use final order will occur, supported the criteria presented in the staff report, and supported the modifications proposed by the City of Tigard.
11. The commission, finding the staff report and submitted testimony adequate as evidence that the 13 criteria reasonably reflect the statewide land use planning goals and plan

policies that are relevant to decisions regarding the project improvements and their locations, unanimously passed a motion to “establish the criteria in Attachment A of the staff report with the addition of the City of Tigard’s clarifying language in their letter, dated September 21, 2017, and direct the department to prepare and execute an order implementing the commission’s decision.” Commissioners Cribbins, Lamb, Lidz, McArthur, and Morrow voted aye. Commissioners Macpherson and Eberwein were excused.

CONCLUSIONS OF LAW

HB 3202, section 4(8)(c) requires the commission to provide a brief statement explaining the criteria. The following conclusions of law address how the individual criterion reasonably reflect both statewide land use planning goals and plan policies that are relevant to decisions regarding the SW Corridor MAX Light Rail Project improvements and their locations.

Criterion (1)

Coordinate with and provide an opportunity for TriMet, the Oregon Department of Transportation and the affected local governments to submit testimony on the light rail route, light rail stations, park-and-ride lots, vehicle maintenance facilities, and the highway improvements, including their locations, proposed to be included in the Southwest Corridor MAX Light Rail Project (Project).

Criterion (2)

Hold a public hearing to provide an opportunity for the public to submit testimony on the light rail and highway improvements, including their locations, proposed to be included in the Project.

Rationale: Criteria (1) and (2) above are procedural and, similar to the local comprehensive plan policies, promote intergovernmental coordination and cooperation. Criterion (1) reflects Statewide Planning Goal 2, Land Use Planning, Part I, which requires city, county, state, federal agency and special districts plans and actions related to land use to be consistent and coordinated with the plans of affected governmental units. Criterion (2) also reflects Statewide Planning Goal 2, Land Use Planning, Part I which requires opportunities for review and comment by citizens and affected governmental units during preparation, review and revision of plans and implementation ordinances. Criterion (2) provides an opportunity for citizen participation and information that enables citizens to identify and comprehend the issues related to the Project.

Criterion (3)

Identify economic, social, urban form, safety and traffic impacts in affected residential neighborhoods, commercial districts, industrial districts, and mixed-use centers. Identify measures that could increase beneficial impacts or reduce adverse impacts, and that

could be imposed as conditions of approval during processes required by the National Environmental Policy Act of 1969, 42 U.S.C. 4321 et seq. (NEPA), or, if reasonable and necessary, by affected local governments during the local development approval and permitting processes.

- (A) *Provide for a light rail route, stations, lots and maintenance facilities, including their locations, balancing*
 - (1) *the need for light rail proximity and service to present or planned residential, employment and recreational areas that are capable of enhancing transit ridership;*
 - (2) *the likely contribution of light rail proximity and service to improved economic opportunities, to development of an efficient and compact urban form, and to improved safety; and*
 - (3) *the need to protect affected neighborhoods, districts, and centers from identified adverse impacts.*
- (B) *Provide for highway improvements, including their locations, balancing the need to improve the highway system with the need to protect affected neighborhoods, districts, and centers from the identified adverse impacts.*

Rationale: The commission received written testimony from the City of Tigard requesting modifications within criterion (3) to add “districts, and centers” following “neighborhoods” in (3)(A)(3) and (3)(B). The commission determined that the request was a minor clarification to a criterion previously submitted by TriMet, and therefore included the request in its deliberation. The commission received oral testimony from TriMet and Metro supporting the request. The department also supported the request. The commission determined that the clarification improved criterion (3) because it made it clear that all types of urban areas should be protected from adverse impacts, and not just residential neighborhoods. The commission therefore approved the request.

The commission received written testimony from the MNA proposing a new criterion to replace criterion (3). The department received the MNA letter on September 22, 2017, which was after the statutory deadline for submitting proposed criteria (September 10, 2017); therefore the commission was legally precluded from consideration of the proposed criterion.

The commission also concludes that the text proposed by MNA for criterion (3) does not address statewide planning goals and plan policies. Instead, it makes a factual statement about a federal requirement to balance adverse impacts with beneficial impacts. The proposed text includes a list of six very general of impacts that could be considered. The proposed text would not provide any mechanism for the Metro Council to determine whether a proposed land use final order met the criterion or not. Therefore the text would not have been useable as a criterion even if it had been received prior to the deadline for proposing criteria.

The commission did consider written testimony from MNA that proposed a minor modification to criterion (3)(A)(2) to remove the phrase “development of an efficient and compact urban form.” The commission did not approve this request because the phrase reflects a fundamental objective of Statewide Planning Goal 14: efficient use of land.

Criterion (3), as approved by the commission, reflects statewide planning goals and local plan policies listed below by topic.

Economic: Criterion (3) reflects the statewide and local requirements and policies listed below by including consideration of economic impacts. These plans and policies primarily consider beneficial impact from additional transportation options that increase the economic opportunities for residents and businesses along the corridor. The final three policies consider adverse impacts that may occur from construction of new transportation facilities.

Statewide Planning Goal 9, Economic Development

“provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon’s citizens.”

Oregon Transportation Planning Rules, OAR 660-012-0030(1)(c)

Transportation plans must identify transportation needs to “support industrial and commercial development planned for pursuant to OAR chapter 660, division 9 and Goal 9 (Economic Development).”

Oregon Transportation Plan, Goal 3, Policy 3.3

“It is the policy of the State of Oregon to provide transportation improvements to support downtowns and to coordinate transportation and economic development strategies.”

Oregon Public Transportation Plan, Goal 1, Policy 1C: Economic Prosperity

“The public transportation system should strengthen economic opportunities by providing travel options that increase access to jobs.”

Oregon Highway Plan Policy 1B: Land Use and Transportation

“State and local government must work together to provide safe and efficient roads for livability and economic viability for all citizens...”

“It is the policy of the State of Oregon to coordinate land use and transportation decisions to efficiently use public infrastructure investments to...”

“Enhance livability and economic competitiveness”

Metro Regional Framework Plan, Chapter 2 Transportation, Goal 2: Sustain Economic Competitiveness and Prosperity

“Multi-modal transportation infrastructure and services support the region’s well-being and a diverse, innovative, sustainable and growing regional and state economy.”

Portland 2035 Comprehensive Plan, Goal 8.B: Multiple benefits

“Public facility and service investments ... support economic prosperity,”

Portland 2035 Comprehensive Plan, Goal 9.G: Opportunities for prosperity

“The transportation system supports a strong and diverse economy, enhances the competitiveness of the city and region... by providing... multimodal access to employment areas.”

Portland 1980 Comprehensive Plan, Policy 5.4 Transportation System.

“Promote a multi-modal regional transportation system that stimulates and supports long term economic development and business investment.”

Tigard 2027 Goal 12.2, Policy 2.

“The City shall manage the transportation system to support desired economic development activities.”

Oregon Transportation Planning Rules, OAR 660-012-0035(3)(c)

“The transportation system shall minimize adverse economic... consequences.”

Portland 2035 Comprehensive Plan, Policy 2.4 Eliminate burdens

“Ensure plans and investments eliminate associated disproportionate burdens (e.g. adverse environmental, economic, or community impacts) for communities of color, low-income populations, and other underserved or under-represented groups impacted by the decision.”

Portland 1980 Comprehensive Plan, Policy 5.2 Business Development, Objective C

“Advocate with Metro, Tri-Met, and other agencies conducting regional planning to consider economic concerns in their land use and transportation planning activities.”

Social: Criterion (3) reflects statewide and local requirements and policies listed below by including consideration of social impacts.

Oregon Transportation Planning Rules, OAR 660-012-0035(3)(c)

“The transportation system shall minimize adverse ... social ... consequences.”

Portland 2035 Comprehensive Plan, Goal 2.B: Social justice and equity

“The City of Portland seeks social justice by expanding choice and opportunity for all community members. ... The City actively works to improve its planning and investment-related decisions to achieve equitable distribution of burdens and benefits and address past injustices.”

Portland 2035 Comprehensive Plan, Goal 3.A: A city designed for people

“public investments reduce disparities and encourage social interaction to create a healthy connected city.”

Portland 1980 Comprehensive Plan, Policy 3.2 Social Conditions.

“Provide and coordinate programs to promote neighborhood interest, concern and security and to minimize the social impact of land use decisions.”

Urban form: Transportation investment decisions can have a significant impact on urban form because the proximity and level of service of light rail transit affects the amount of development that will occur in specific areas. The following goals and policies require or promote consideration of these impacts and are reflected in criterion (3).

Statewide Planning Goal 14

“to ensure efficient use of land”

Statewide Planning Goal 14, Guideline A.4.

“Comprehensive plans and implementing measures for land inside urban growth boundaries should encourage the efficient use of land and the development of livable communities.”

Oregon Transportation Planning Rules, OAR 660-012-0000(3)(c)

“Within metropolitan areas, coordinated land use and transportation plans are intended to improve livability and accessibility by promoting changes in the transportation system and land use patterns.”

Oregon Public Transportation Plan, Goal 1, Policy 1D

“The public transportation system and local land use planning should be complementary and coordinated. Public transportation should be both responsive to and facilitate implementation of land use laws.”

Metro Regional Framework Plan Chapter 2 Transportation, Objective 1.1 Compact Urban Form and Design

“Use transportation investments to focus growth in and provide multi-modal access to 2040 Target Areas and ensure that development in 2040 Target Areas is consistent with and supports the transportation investments.”

Portland 2035 Comprehensive Plan, Policy 3.15

“Encourage public and private investment in infrastructure, economic development and community services in centers to ensure that all centers will support the populations they serve.”

Portland 1980 Comprehensive Plan, Policy 6.17 Coordinate Land Use and Transportation

“Implement the Comprehensive Plan Map and the 2040 Growth Concept through long-range transportation and land use planning and the development of efficient and effective transportation projects and programs.”

Portland 1980 Comprehensive Plan, Policy 5.4 Transportation System, Objective B

“Use transportation system improvements as a catalyst for attracting industrial and employment development.”

Safety: Criterion (3) reflects a focus on safety that is fundamental in state goals.

Statewide Planning Goal 12: Transportation

“To provide and encourage a safe, convenient and economic transportation system.”

Oregon Transportation Plan, Goal 5: Safety and Security

“To plan, build, operate and maintain the transportation system so that it is safe and secure.”

Safety is also prominent in local plan policies. There are roughly 40 references to safety in the plan policies submitted by TriMet. Examples include:

Oregon Highway Plan Policy 1B: Land Use and Transportation

“coordinate land use and transportation decisions to efficiently use public infrastructure investments to maintain the mobility and safety of the highway system”

Metro Regional Framework Plan, Chapter 2 Transportation, Goal 5: Enhance Safety and Security

“Multi-modal transportation infrastructure and services are safe and secure for the public and goods movement.”

Portland 2035 Comprehensive Plan, Goal 9.A: Safety

“The City achieves the standard of zero traffic-related fatalities and serious injuries.”

Tualatin Development Code Chapter 11: Transportation, Section 11.610 Transportation Goals and Objectives. (4)(b)

“Create a variety of safe options for transportation needs including bicycles, pedestrians, transit, freight, and motor vehicles”

Tigard 2027, Goal 12.4.

“Maintain and improve transportation system safety”

Traffic: A balanced multimodal transportation system can reduce the adverse impacts of traffic because people riding light rail transit can avoid traffic, and can avoid contributing to traffic. The following goals and policies require or promote consideration of that impact, and are reflected in criterion (3).

Statewide Planning Goal 12, Transportation

“A transportation plan shall... (4) avoid principal reliance upon any one mode of transportation;”

Oregon Transportation Planning Rules, OAR 660-012-0000(2)

“avoid the air pollution, traffic and livability problems faced by other large urban areas of the country through measures designed to increase transportation choices”

Oregon Public Transportation Plan, Goal 1 Purpose of the Public Transportation System, Policy 1E: Reduce Highway Demand

“The public transportation system, especially in urbanized areas and large cities, should function as an integral component of and reduce pressure on the overall transportation system.”

Portland, Southwest Community Plan Vision, Policies and Objectives - Transportation

“Provide a balanced, multimodal transportation system in Southwest Portland that encourages increases in transit use and pedestrian accessibility and connectivity, discourages non-local traffic in residential areas, manages congestion...”

Criterion (4)

Identify adverse noise impacts and identify measures to reduce noise impacts that could be imposed as conditions of approval during processes required by NEPA or, if reasonable and necessary, by affected local governments during the local development approval and permitting processes.

Rationale: Light rail transit can create noise impacts including vibration and wheel squeal. Highway improvements can change traffic volumes and create noise from internal combustion engines and from tires on the roadways. Criterion (4) reflects Statewide Planning Goal 6, “Air, Water and Land Resource Quality,” which includes noise in the definition of “waste and process

discharges” that must not be allowed to degrade the environment. Criterion (4) also reflects local plan policies related to noise, examples of which are listed.

Portland 2035 Comprehensive Plan, Policy 4.33 Off-site impacts

“Limit and mitigate public health impacts, such as... noise... that public facilities, land uses, or development may have on adjacent residential or institutional uses”

Tualatin Development Code, Chapter 05: Residential Planning Growth, Section 5.030 General Objectives (15)

“Protect adjacent land uses from noise impacts by adopting industrial noise standards.”

Criterion (5)

Identify Project improvements in areas subject to natural hazards (including landslide areas, areas of severe erosion potential, areas subject to earthquake damage and lands within the 100-year floodplain) and demonstrate that adverse impacts to persons or property can be reduced or mitigated through design or construction techniques that could be imposed during processes required by NEPA or, if reasonable and necessary, by local governments during the local development approval and permitting processes.

Rationale: Criterion (5) reflects Statewide Planning Goal 7, “Areas Subject to Natural Hazards,” which is intended to “reduce risk to people and property from natural hazards.” Goal 7 lists six categories of hazards that local governments must address: floods, landslides, earthquakes, tsunamis, coastal erosion, and wildfires. Three of these (floods, landslides and earthquakes) are relevant in the SW Corridor, and are therefore listed in the criterion. Criterion (5) also reflects local plan policies, examples of which are listed below.

Metro Regional Framework Plan, Chapter 2 Transportation, Objective 5.3 Terrorism, Natural Disasters and Hazardous Material Incidents

“Reduce vulnerability of the public, goods movement and critical transportation infrastructure to... natural disasters”

Portland 2035 Comprehensive Plan, Goal 8.C: Reliability and resiliency

“Public facilities and services are reliable, able to withstand or recover from catastrophic natural and manmade events”

Tigard 2027, Goal 7.1, Policy 4

“The City shall design and construct public facilities to withstand hazardous events”

Tualatin Development Code, Chapter 04: Community Growth, Section 4.050 General Growth, Objective (12)

“Adopt measures protecting life and property from natural hazards such as flooding, high groundwater, weak foundation soils and steep slopes.”

Criterion (6)

Identify adverse impacts on significant fish and wildlife, scenic and open space, riparian, wetland, and park and recreational areas that are protected in acknowledged local

comprehensive plans or functional plans and, where adverse impacts cannot practicably be avoided, encourage the conservation of natural resources by demonstrating that there are measures to reduce or mitigate impacts that could be imposed as conditions of approval during processes required by NEPA or, if reasonable and necessary, by local governments during the local development approval and permitting processes.

Rationale: Criterion (6) reflects Statewide Planning Goal 5, “Natural Resources, Scenic and Historic Areas, and Open Spaces” which requires local governments to inventory a wide range of resources, and then adopt policies and regulations that balance development with conservation of these resources. Criterion (6) also reflects plan policies (examples listed below) that address those resources.

Oregon Public Transportation Plan, Goal 1, Policy 1B: Environmental Protection

“The public transportation system should be designed... [to] lessen... impact on... the natural environment”

Metro Regional Framework Plan, Chapter 2 Transportation, Objective 6.1 Natural Environment

“Avoid or minimize undesirable impacts on fish and wildlife habitat conservation areas, wildlife corridors, significant flora and open spaces.”

Portland 2035 Comprehensive Plan, Policy 7.23 Impact evaluation

“Evaluate the potential adverse impacts of proposed development on significant natural resources, their functions, and the ecosystem services they provide to inform and guide development design and mitigation”

Tigard 2027 Goal 12.1

“Policy 7. The City shall strive to protect the natural environment from impacts derived from transportation facilities.

“Policy 8. The City shall mitigate impacts to the natural environment associated with proposed transportation construction or reconstruction projects.”

Tualatin Development Code Chapter 11: Transportation, Section 11.610 Transportation Goals and Objectives, Goal 6: Health/Environment, Objective (e)

“Consider positive and negative effects of potential solutions on the natural environment (including wetlands and habitat areas).”

Criterion (7)

Identify adverse impacts associated with stormwater runoff and demonstrate that there are measures to provide adequate stormwater drainage retention or removal and protect water quality that could be imposed as conditions of approval during processes required by NEPA or, if reasonable and necessary, by local governments during the local development approval and permitting processes.

Rationale: Criterion (7) reflects Statewide Planning Goal 6, “Air, Water and Land Resource Quality” which requires local governments to maintain and improve water quality. Constructing light rail transit and highway improvements can increase impervious surface, which can increase

the quantity of stormwater runoff and increase the pollution in that stormwater. Criterion (6) also reflects plan policies (examples listed below) that address those impacts.

Oregon Public Transportation Plan, Goal 1, Policy 1B: Environmental Protection

“The public transportation system should be designed... [to] lessen... impact on... water quality”

Metro Regional Framework Plan, Chapter 2 Transportation, Objective 6.3 Water Quality and Quantity

“Protect the region’s water quality and natural stream flows.”

Portland 2035 Comprehensive Plan, Policy 8.42 Stormwater management function

“Improve rights-of-way to integrate green infrastructure and other stormwater management facilities to meet... environmental objectives.”

Tigard 2027 Goal 6.2, Policy 3.

“The City shall encourage the use of low impact development practices that reduce stormwater impacts from new and existing development.”

Tualatin Development Code Chapter 14: Drainage Plan and Surface Water Management, Section 14.040, Objective (3)

“Reduce sediment and other pollutants reaching the public storm and surface water system... manage surface water runoff and improve surface water quality.”

Criterion (8)

Identify adverse impacts on significant historic and cultural resources protected in acknowledged comprehensive plans and, where adverse impacts cannot practicably be avoided, identify local, state or federal review processes that are available to address and to reduce adverse impacts to the affected resources.

Rationale: Criterion (8) reflects Statewide Planning Goal 5, “Natural Resources, Scenic and Historic Areas, and Open Spaces” which requires local governments to inventory cultural areas and historic resources, and then adopt policies and regulations that balance development with conservation of these resources. Criterion (6) also reflects plan policies (examples listed below) that address those resources.

Portland 2035, Policy 4.28

“Identify, protect, and encourage the use and rehabilitation of historic resources in centers and corridors”

Tualatin Development Code, Section 16.030(14)

“Review the impacts on landmarks when public improvement projects are proposed.”

Tigard 2027, Goal 5.2

“Promote the preservation and protection of historically and culturally significant resources.”

Criterion (9)

Identify general or anticipated impacts on air pollution, greenhouse gas emissions, and energy usage from project improvements that would help meet state, regional, and local reduction goals.

Rationale: Criterion (9) reflects two statewide planning goals:

Statewide Planning Goal 6, Air, Water and Land Resource Quality

“To maintain and improve the quality of the air, water and land resources”

Statewide Planning Goal 13, Energy Conservation

“To conserve energy”

Greenhouse gases as a specific category of air pollution are not listed separately in the Statewide Planning Goals. The legislature has, however, enacted a goal specifically for greenhouse gases.

ORS 468A.205(c)

“By 2050, achieve greenhouse gas levels that are at least 75 percent below 1990 levels.”

The commission has adopted administrative rules in OAR chapter 660, division 44 that translate the general legislative goal into specific targets for reductions in emissions per capita from passenger vehicles in the Portland metropolitan area. The target for the year 2035 is a 20 percent reduction, and for the 2050, a 35 percent reduction. Criterion (9) reflects both the broad statewide pollution goals and specific greenhouse gas targets.

Criterion (9) also reflects general policies adopted by the Oregon Transportation Commission, and specific strategies to reduce greenhouse gas emissions.

Oregon Transportation Plan, Goal 4 Sustainability, Policy 4.1, Strategy 4.1.2

“Encourage the development and use of technologies that reduce greenhouse gases.”

Oregon Public Transportation Plan, Goal 1, Purpose of the Public Transportation System, Policy 1B: Environmental Protection

“The public transportation system should... lessen the transportation system’s impact on air and water quality, the natural environment and energy consumption.”

Oregon Statewide Transportation Strategy, Strategy 9 – Intracity Transit Growth and Improvements

“9.7 Increasing transit service within MPO areas.”

The administrative rules in division 44 also created a process for Metro to adopt a scenario plan that is projected to meet the reduction target. Metro carried out a cooperative process and adopted a preferred land use and transportation scenario as part of the regional framework plan and the regional growth concept. Increasing transit, especially high capacity transit such as light rail, is a key component of the preferred scenario. Criterion (9) reflects this local planning work.

Criterion (9) also reflect local plan policies that address pollution, greenhouse gases, and energy, as shown in the examples listed below.

Metro Regional Transportation Plan, Objective 6.5

“Reduce transportation-related greenhouse gas emissions.”

Metro Regional Framework Plan, Chapter 2 Transportation, Goal 4: Emphasize Effective and Efficient Management of the Transportation System

“Existing and future multi-modal transportation infrastructure and services are well-managed to... address air quality and greenhouse gas emissions reduction goals.”

Portland 2035 Comprehensive Plan, Policy 4.69 Reduce carbon emissions

“Encourage a development pattern that minimizes carbon emissions from building and transportation energy use.”

Tigard 2027, Goal 13.1, Policy 1

“promote the reduction of energy consumption associated with vehicle miles travelled through... public transit that is reliable, connected, and efficient”

Tualatin Development Code, Chapter 11: Transportation, Section 11.610, Goal 6, Objective (d)

“Consider air quality effects of potential transportation solutions.”

Criterion (10)

Consider a light rail route connecting Portland’s Central City with Southwest Portland neighborhoods along or near the Barbur Boulevard corridor.

Rationale: Criterion (10) reflects local plan policies in the Barbur Concept Plan adopted by the Portland City Council in 2013. The plan identifies how investment in transit along Barbur Boulevard would achieve community aspirations for a more walkable, vibrant Barbur Boulevard. The plan classifies Barbur Boulevard as a Major Transit Priority Street and identifies locations for transit stops.

Criterion (11)

Consider a light rail route in Tualatin within an area identified as a Transit Ready Place, and in Tigard within an area identified in Tigard’s High Capacity Transit Land Use Plan that maintains Downtown Tigard as the city’s primary transit center for rail and bus, and that does not cause light rail related park-and-ride activity to dominate the downtown area.

Rationale: The commission received testimony from the City of Tigard requesting that the phrase “maintains Downtown Tigard as the city’s primary transit center for rail and bus” be added to this criterion, and rearranging the order of elements of the criterion to accommodate the addition. The commission received oral testimony from TriMet and Metro supporting the request. The department also supported the request. The commission determined that the addition improved criterion (11) because it added an important policy from the Tigard High Capacity Land Use Plan. The commission therefore approved the request.

Criterion (11), as approved by the commission, reflects policies in local plans. Tualatin adopted the Linking Tualatin Plan, which identifies seven “Transit Ready Places.” Tigard adopted the Tigard High Capacity Transit and Land Use Plan, which identifies Downtown Tigard as an area with current conditions ready for high capacity transit. Two comprehensive plan policies addressing transit in Downtown Tigard are listed below.

Tigard 2027, Goal 15.1, Policy 2.

“The downtown shall be Tigard’s primary transit center for rail and bus transit service and supporting land uses.”

Tigard 2027, Goal 15.1, Policy 3

“The City, in conjunction with TriMet, shall plan for and manage transit user parking to ensure the downtown is not dominated by ‘park and ride’ activity.”

Criterion (12)

If future phases or extensions are proposed, then consider light rail routes as identified in applicable plans and policies of affected local governments in effect at that time.

Rationale: HB 3202 defines “Project” broadly, and would allow the Metro Council to adopt land use final orders for future phases of the Southwest Corridor MAX Light Rail Project:

HB 3202, Section 1, Subsection (14)

“‘Project’ means the portion of the Southwest Corridor MAX Light Rail Project within Metro’s urban growth boundary. ‘Project’ includes: ...

“(b) All phases and extensions of the Southwest Corridor MAX Light Rail Project”

The overall Southwest Corridor Plan (as distinct from the current MAX light rail project) considers a broader corridor that includes additional cities (Durham, King City and Sherwood). If future extensions are proposed, there may be specific geographic policies that would be applicable to that extension. Those policies may not be captured in criteria (10) and (11) because these criteria are based on the light rail routes currently under consideration in Portland, Tigard and Tualatin. This additional criterion reasonably reflects the relevant statewide land use planning goals and plan policies because it would apply the relevant plans and policies at the time of a future extension.

Criterion (13)

Identify the major elements of the Project improvements; however, the Land Use Final Order and findings addressing these criteria need not identify all of the ancillary facilities as defined in House Bill 3202 enacted by the Oregon State Legislature in 2017.

Rationale: Criterion (13) reasonably reflects the relevant statewide land use planning goals and plan policies because the statewide goals and local policies are not intended to make every local decision a land use decision. Many of the items listed in the definition of “ancillary facilities” could be designed and constructed without a land use action by the local government. The intent of HB 3202 is to provide a regional process for the land use decision on the overall alignment,

not to apply land use decision making processes to minor elements that would not otherwise require land use approval.

ORDER OF THE COMMISSION

The criteria in Attachment A are hereby adopted.

DATED THIS 2nd DAY OF NOVEMBER 2017.

FOR THE COMMISSION:



Jim Rue, Director
Department of Land Conservation and Development

You may be entitled to judicial review of this order. Judicial review may be obtained by filing a petition for review with the State Court Administrator within seven days from the service of this order. Judicial review is pursuant to Section 5 of HB 3202.

Attachments:

- Attachment A: Criteria for a Land Use Final Order
- Attachment B: House Bill 3202 (2017)

**Criteria for a Land Use Final Order
to be used by the Metro Council in Making Decisions on the
Project Improvements for the Southwest Corridor MAX Light Rail Project**

Definitions: The definitions in Section 1 of House Bill 3202 enacted by the Oregon State Legislature in 2017 apply within these criteria.

When adopting a Land Use Final Order for the Southwest Corridor MAX Light Rail Project, the Metro Council shall:

- (1) Coordinate with and provide an opportunity for TriMet, the Oregon Department of Transportation and the affected local governments to submit testimony on the light rail route, light rail stations, park-and-ride lots, vehicle maintenance facilities, and the highway improvements, including their locations, proposed to be included in the Southwest Corridor MAX Light Rail Project (Project).
- (2) Hold a public hearing to provide an opportunity for the public to submit testimony on the light rail and highway improvements, including their locations, proposed to be included in the Project.
- (3) Identify economic, social, urban form, safety and traffic impacts in affected residential neighborhoods, commercial districts, industrial districts, and mixed-use centers. Identify measures that could increase beneficial impacts or reduce adverse impacts, and that could be imposed as conditions of approval during processes required by the National Environmental Policy Act of 1969, 42 U.S.C. 4321 et seq. (NEPA), or, if reasonable and necessary, by affected local governments during the local development approval and permitting processes.
 - (A) Provide for a light rail route, stations, lots and maintenance facilities, including their locations, balancing
 - (1) the need for light rail proximity and service to present or planned residential, employment and recreational areas that are capable of enhancing transit ridership;
 - (2) the likely contribution of light rail proximity and service to improved economic opportunities, to development of an efficient and compact urban form, and to improved safety; and
 - (3) the need to protect affected neighborhoods, districts, and centers from identified adverse impacts.

- (B) Provide for highway improvements, including their locations, balancing the need to improve the highway system with the need to protect affected neighborhoods, districts, and centers from the identified adverse impacts.
- (4) Identify adverse noise impacts and identify measures to reduce noise impacts that could be imposed as conditions of approval during processes required by NEPA or, if reasonable and necessary, by affected local governments during the local development approval and permitting processes.
- (5) Identify Project improvements in areas subject to natural hazards (including landslide areas, areas of severe erosion potential, areas subject to earthquake damage and lands within the 100-year floodplain) and demonstrate that adverse impacts to persons or property can be reduced or mitigated through design or construction techniques that could be imposed during processes required by NEPA or, if reasonable and necessary, by local governments during the local development approval and permitting processes.
- (6) Identify adverse impacts on significant fish and wildlife, scenic and open space, riparian, wetland, and park and recreational areas that are protected in acknowledged local comprehensive plans or functional plans and, where adverse impacts cannot practicably be avoided, encourage the conservation of natural resources by demonstrating that there are measures to reduce or mitigate impacts that could be imposed as conditions of approval during processes required by NEPA or, if reasonable and necessary, by local governments during the local development approval and permitting processes.
- (7) Identify adverse impacts associated with stormwater runoff and demonstrate that there are measures to provide adequate stormwater drainage retention or removal and protect water quality that could be imposed as conditions of approval during processes required by NEPA or, if reasonable and necessary, by local governments during the local development approval and permitting processes.
- (8) Identify adverse impacts on significant historic and cultural resources protected in acknowledged comprehensive plans and, where adverse impacts cannot practicably be avoided, identify local, state or federal review processes that are available to address and to reduce adverse impacts to the affected resources.
- (9) Identify general or anticipated impacts on air pollution, greenhouse gas emissions, and energy usage from project improvements that would help meet state, regional, and local reduction goals.
- (10) Consider a light rail route connecting Portland's Central City with Southwest Portland neighborhoods along or near the Barbur Boulevard corridor.
- (11) Consider a light rail route in Tualatin within an area identified as a Transit Ready Place, and in Tigard within an area identified in Tigard's High Capacity Transit Land Use Plan

that maintains downtown Tigard as the city's primary transit center for rail and bus, and that does not cause light rail related park-and-ride activity to dominate the downtown area.

- (12) If future phases or extensions are proposed, then consider light rail routes as identified in applicable plans and policies of affected local governments in effect at that time.
- (13) Identify the major elements of the Project improvements; however, the Land Use Final Order and findings addressing these criteria need not identify all of the ancillary facilities as defined in House Bill 3202 enacted by the Oregon State Legislature in 2017.

79th OREGON LEGISLATIVE ASSEMBLY--2017 Regular Session

Enrolled
House Bill 3202

Sponsored by Representative HELM, Senator BURDICK, Representative LININGER, Senator DEVLIN; Representatives DOHERTY, VIAL

CHAPTER

AN ACT

Relating to a Southwest Corridor MAX light rail project; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. As used in sections 1 to 12 of this 2017 Act, unless the context requires otherwise:

(1) "Affected local governments" means the cities and the counties within which the project improvements will be located.

(2) "Criteria" means the land use criteria established by the Land Conservation and Development Commission as provided in section 4 of this 2017 Act.

(3) "Development approval" means approval of a proposed development of land based on discretionary standards designed to regulate the physical characteristics of a use permitted outright, including but not limited to site review and design review.

(4) "Draft Statement" means the Draft Environmental Impact Statement for the project, as may be amended from time to time, and any supplementary assessments or statements prepared pursuant to regulations implementing the National Environmental Policy Act, 42 U.S.C. 4321 et seq.

(5) "Final Statement" means the Environmental Impact Statement for the project, as may be amended from time to time, or any supplementary assessments or statements, prepared pursuant to regulations implementing the National Environmental Policy Act, 42 U.S.C. 4321 et seq.

(6) "Full Funding Grant Agreement" means the contractual agreement entered into between the federal government and the local grant recipient establishing the maximum federal financing contribution for construction of the project and setting forth terms, conditions and limitations for federal financing of the project.

(7) "Highway improvements" means improvements to the highway, street and other ancillary facilities for the project and improvements related to construction or operation of the project. As used in this subsection:

(a) "Ancillary facilities" includes retaining walls, bridges, signals, electrification equipment, lighting equipment, staging areas, facilities for bus or rail travel, stormwater facilities, wetland mitigation facilities and facilities designed for vehicle, pedestrian and bicycle traffic.

(b) "Improvement" includes any development or alteration to land related to the project.

(8) "Land use final order" means a written order or orders of the Metro Council deciding the project improvements for the project, including their locations.

(9) “Light rail route” means the light rail alignment selected from among light rail alignment alternatives described in a Draft Statement or Final Statement to be included in the project.

(10) “Locally Preferred Alternative Report” means a decision adopted in accordance with federal requirements determining or amending an earlier decision whether or not to build the Southwest Corridor MAX Light Rail Project and, if the decision adopted is to build, recommending the project improvements, including their locations, to be included in the Southwest Corridor MAX Light Rail Project.

(11) “Locations” means the boundaries within which the project improvements will be located.

(12) “Measures” includes any mitigation measures, design features or other amenities or improvements associated with the project.

(13) “Metro Council” means the elected governing body of Metro.

(14) “Project” means the portion of the Southwest Corridor MAX Light Rail Project within Metro’s urban growth boundary. “Project” includes:

(a) All project improvements described in the Locally Preferred Alternative Report, as may be amended from time to time by a Draft Statement, Final Statement, Full Funding Grant Agreement or similar document for the Southwest Corridor MAX Light Rail Project; and

(b) All phases and extensions of the Southwest Corridor MAX Light Rail Project as described in a Locally Preferred Alternative Report, Draft Statement, Final Statement, Full Funding Grant Agreement or similar document.

(15) “Project improvements” means the light rail route, stations, lots and maintenance facilities and the highway improvements related to the project as described in the Locally Preferred Alternative Report, as may be amended from time to time by a Draft Statement, Final Statement, Full Funding Grant Agreement or similar document for the Southwest Corridor MAX Light Rail Project.

(16) “Stations, lots and maintenance facilities” means the light rail stations, light rail park-and-ride lots and light rail vehicle maintenance facilities to be selected from among alternatives described in a Draft Statement, Final Statement or similar document to be included in the project.

(17) “TriMet” means the Tri-County Metropolitan Transportation District of Oregon, a mass transit district created under ORS chapter 267.

SECTION 2. (1) The Legislative Assembly finds that there is a compelling state interest in obtaining maximum federal funding for the Southwest Corridor MAX Light Rail Project in order to:

- (a) Enhance the statewide transportation network;
- (b) Ensure the viability of the transportation system planned for the Portland metropolitan area;
- (c) Complete construction of the project in a timely and cost-effective manner;
- (d) Implement a significant portion of the Legislative Assembly’s air quality and energy efficiency strategies for the area; and
- (e) Ensure that affected local governments will be able to implement significant parts of their comprehensive plans.

(2) The Legislative Assembly further finds that, to maximize the ability of this state and the Portland metropolitan area to obtain the highest available level of federal funding for the Southwest Corridor MAX Light Rail Project, it is necessary to establish:

- (a) A process to be used to establish criteria, make decisions and adopt a land use final order related to the light rail route and other project improvements to be included in the Southwest Corridor MAX Light Rail Project, including their locations;
- (b) An expedited process for appellate review of a land use final order; and
- (c) An exclusive process for appellate review.

(3) The Legislative Assembly further finds that residents of neighborhoods within TriMet affected by land use decisions, limited land use decisions or land divisions resulting from the siting, construction or operation of any light rail route or other project improvements, either as individuals or through their neighborhood associations, shall have the opportunity to participate in those decisions and divisions.

(4) The Legislative Assembly deems the procedures and requirements provided for in sections 1 to 12 of this 2017 Act, under the unique circumstances of the Southwest Corridor MAX Light Rail Project, to be equivalent in spirit and substance to the land use procedures that otherwise would be applicable.

(5) Sections 1 to 12 of this 2017 Act shall be liberally construed to address the findings enumerated in subsection (1) of this section.

SECTION 3. Notwithstanding ORS chapters 183, 192, 195, 197, 215 and 227 or any other provision of law, the procedures and requirements provided for in sections 1 to 12 of this 2017 Act expressly preempt any vote requirements imposed by the charter of a local government and are the only land use procedures and requirements to which land use decisions and land use approvals of any kind related to the construction or operation of the project shall be subject.

SECTION 4. (1) The Land Conservation and Development Commission shall establish criteria, according to the procedure described in this section, to be used by the Metro Council to make decisions in a land use final order on the project improvements for the project, including their locations.

(2) The commission shall hold a public hearing on the criteria to be established by the commission.

(3) The commission shall publish notice of a public hearing on criteria to be established by the commission in a newspaper of general circulation within the Portland metropolitan area at least 20 days prior to the public hearing. The notice shall state:

(a) The general subject matter of the hearing and the date, time and place of the hearing;

(b) That any criteria to be proposed to the commission must be filed at the Salem office of the Department of Land Conservation and Development at least 10 days prior to commencement of the hearing and will be available for public inspection following filing;

(c) That notice of adoption of an order establishing criteria will be provided only to persons who provide oral or written testimony at the hearing and who also provide, in writing, a request for written notice and a mailing address to which notice shall be sent;

(d) That persons whose names appear on petitions submitted into the public hearing record will not be considered by that action to have provided oral or written testimony at the hearing;

(e) That failure by a person to raise an issue at the hearing in person or in writing, or failure to provide sufficient specificity to afford the commission an opportunity to respond to the issue raised, shall preclude appeal by that person on that issue; and

(f) That appeals from an order establishing criteria must be filed within seven days following the date written notice of the order is mailed to the persons described in subsection (9)(b) of this section.

(4) The commission may provide additional notice as it deems appropriate to inform interested persons of the public hearing.

(5) A copy of the staff report, if any, must be made available for public inspection at least four days prior to the public hearing.

(6) At the commencement of the hearing, a statement shall be made to those in attendance that:

(a) Identifies the general subject matter of the hearing;

(b) Submittal of proposed criteria at the hearing will not be accepted unless the proposed criteria were filed at the Salem office of the department at least 10 days prior to the commencement of the hearing;

(c) Failure by a person to raise an issue at the hearing in person or in writing, or failure to raise an issue with sufficient specificity to afford the commission an opportunity to respond to the issue raised, shall preclude appeal by that person on that issue;

(d) Notice of adoption of an order establishing criteria will be provided only to persons who provide oral or written testimony at the hearing and who also provide a written request for notice and a mailing address to which notice shall be sent;

(e) Persons whose names appear on petitions submitted into the public hearing record will not be considered by that action to have provided oral or written testimony at the hearing; and

(f) Appeals from an order establishing criteria must be filed within seven days following the date written notice of the order is mailed.

(7)(a) The commission shall allow for the submission of oral and written testimony at the hearing, subject to any hearing procedures that the commission deems necessary.

(b) The commission may exclude irrelevant, immaterial or unduly repetitious testimony.

(c) The commission may allow only the submission of proposed criteria at the hearing that were filed at the Salem office of the Department of Land Conservation and Development at least 10 days prior to the commencement of the hearing.

(d) The commission shall designate an individual to take minutes of the hearing.

(8)(a) Within 14 days following commencement of the hearing, the commission shall close the hearing.

(b) The commission shall consider all statewide planning goals and plan policies that are relevant to decisions regarding the project improvements and their locations in establishing the criteria.

(c) The commission shall adopt an order establishing the criteria. The commission's order must include a brief statement explaining how the criteria established reasonably reflect the statewide land use planning goals and plan policies that are relevant to decisions regarding the project improvements and their locations.

(9) As soon as reasonably practicable following establishment of the criteria, the commission shall:

(a) Make copies of the order and the criteria available for public inspection at both the Salem and Portland offices of the Department of Land Conservation and Development; and

(b) Provide notice of the order and the criteria to:

(A) The Metro Council;

(B) TriMet;

(C) The Department of Transportation;

(D) Each affected local government; and

(E) Any person who provided oral or written testimony at the hearing and who also provided a written request for notice and a mailing address to which notice shall be sent.

SECTION 5. (1) Notwithstanding ORS 183.400, 183.482, 183.484, 197.825 or any other law or regulation, exclusive jurisdiction to review a Land Conservation and Development Commission order establishing criteria under section 4 of this 2017 Act is conferred on the Supreme Court.

(2) Proceedings for review of an order by the commission shall be initiated when any person who is adversely affected by the order files a petition for judicial review with the State Court Administrator. The petition must:

(a) Be filed within seven days following the date of the written notice of the order;

(b) State the nature of the order and the manner in which the commission rejected the position raised by the petitioner before the commission; and

(c) Contain an affidavit stating facts that show how the petitioner is adversely affected by the order.

(3) The petitioner shall personally deliver copies of the petition for judicial review to:

(a) The commission, at the Salem office of the Department of Land Conservation and Development;

(b) The Salem office of the Department of Transportation;

(c) The Attorney General;

(d) The Metro Council, at the office of Metro's executive officer;

(e) TriMet, at the office of TriMet's general manager; and

(f) Each affected local government.

(4) Within seven days following filing of the petition for judicial review, the commission shall personally deliver or electronically submit to the State Court Administrator a certified copy of the record of the criteria proceedings. The record shall include only:

(a) The published notice of public hearing;

(b) The proposed criteria submitted as described in section 4 (6)(b) of this 2017 Act and by written testimony submitted to the commission at the hearing;

(c) Any written report received by the commission from the Department of Land Conservation and Development at the hearing;

(d) Minutes of the hearing;

(e) The order establishing the criteria; and

(f) Proof of mailing to persons entitled to written notice of the order and the criteria under section 4 (9)(b) of this 2017 Act.

(5) Within 14 days following the filing of the petition for judicial review, the petitioner shall file a petitioner's brief with the State Court Administrator. The brief must comply with the specifications for opening briefs set forth in the rules of appellate procedure. The petitioner shall personally deliver a copy of the brief to:

(a) The Attorney General;

(b) The Metro Council, at the office of Metro's executive officer;

(c) TriMet, at the office of TriMet's general manager; and

(d) Each affected local government.

(6) The court shall consider the petitioner to be adversely affected if:

(a) The petitioner provided oral or written testimony at the hearing; and

(b) The petitioner proposed criteria in the manner described in section 4 (6)(b) of this 2017 Act that the commission rejected in its order or the petitioner, in the petitioner's testimony at the hearing, opposed the criteria that the commission established in its order.

(7) Within 28 days following the filing of the petition for judicial review, an answering brief complying with the rules of appellate procedure may be filed by any of the following:

(a) The commission;

(b) Metro, unless Metro is the petitioner;

(c) TriMet, unless TriMet is the petitioner;

(d) The Department of Transportation, unless the Department of Transportation is the petitioner; or

(e) Any affected local government, unless the local government is the petitioner.

(8) The court shall decide the matter at its earliest practicable convenience, consistent with sections 1 to 12 of this 2017 Act. The court may decide the matter on the briefs or it may hold oral arguments.

(9)(a) The court may reverse or remand the order only if the court finds that the order:

(A) Violates constitutional provisions;

(B) Exceeds the statutory authority of the commission; or

(C) Was adopted by the commission without substantial compliance with the procedures in section 4 of this 2017 Act or in a manner that prejudiced the substantial rights of the petitioner.

(b) Failure of the commission to notify a person entitled to written notice under section 4 (9)(b) of this 2017 Act is not grounds for reversal or remand if the commission provides evidence of mailing the notice to that person.

(c) The court may not substitute its judgment for that of the commission as to any issue of fact or as to any issue within the discretion of the commission.

(10) The court may not stay any action by the Metro Council under sections 1 to 12 of this 2017 Act pending the court's review under this section.

SECTION 6. (1)(a) On or before the date the Land Conservation and Development Commission adopts the order establishing the criteria under section 4 of this 2017 Act, Metro shall establish a steering committee, the initial membership of which shall include a representative from each of the following:

- (A) Metro;
- (B) TriMet;
- (C) The Department of Transportation; and
- (D) Each affected local government.

(b) The membership of the steering committee shall, at all times, include at least the members described in paragraph (a) of this subsection. The steering committee may approve additional members by majority vote.

(c) Metro shall staff the steering committee until the adoption of the initial land use final order for the project.

(2)(a) The steering committee shall issue recommendations for the siting of the light rail route and other project improvements and their locations to TriMet.

(b) TriMet shall apply to the Metro Council for a land use final order approving the project improvements and their locations. The applied for locations must provide sufficient boundaries to accommodate adjustments to the specific placements of the project improvements for which need commonly arises upon the development of more detailed environmental or engineering data following approval of a Full Funding Grant Agreement.

(3) The council shall apply the criteria established by the Land Conservation and Development Commission under section 4 of this 2017 Act when making decisions in a land use final order on the applied for project improvements, including their locations. The council shall follow the procedures described in this section when adopting a land use final order.

(4) The council shall hold a public hearing on the project improvements, including their locations, for which decisions will be made in the land use final order.

(5)(a) At least 14 days prior to the hearing, the council shall publish notice of a public hearing on the project improvements, including their locations, in a newspaper of general circulation within Metro's jurisdictional area. The notice shall state:

(A) The general subject matter of the hearing and all matters scheduled for consideration at the hearing;

(B) The date, time and place of the hearing;

(C) The street address where a staff report and the criteria may be found;

(D) That failure by a person to raise an issue at the hearing in person or in writing, or failure to provide sufficient specificity to afford the council an opportunity to respond to the issue raised, shall preclude appeal by that person to the Land Use Board of Appeals based on that issue;

(E) That persons whose names appear on petitions submitted into the public hearing record will not be considered by that action to have provided oral or written testimony at the hearing;

(F) That notice of adoption of the land use final order will be provided only to persons who provide oral or written testimony at the hearing and who also provide a written request for notice and a mailing address to which notice shall be sent; and

(G) That appeals from decisions in a land use final order must be filed within 14 days following the date the land use final order is reduced to writing and bears the necessary signatures.

(b) The council also shall provide such other notice as the council deems necessary to give notice to persons who may be substantially affected by its decision. No other form of notice is required.

(6)(a) At least seven days prior to the hearing, the council shall make a copy of the staff report available for public inspection. The staff report shall:

(A) Set forth the criteria established under section 4 of this 2017 Act;

(B) Include a description of the proposed boundaries within which the project improvements will be located, as applied for by TriMet under subsection (2) of this section; and

(C) Address how the proposed boundaries comply with the criteria.

(b) Without providing additional notice, the council may amend the staff report prior to the hearing as the staff considers necessary or desirable.

(7) At the commencement of the hearing, a statement shall be made to those in attendance that:

(a) Lists the criteria or directs those present to a place at the hearing location where any person may obtain a list of the criteria at no cost;

(b) Lists generally the project improvements, including their locations, for which decisions will be made in the land use final order;

(c) Testimony shall be directed toward the application of the criteria to the project improvements, including their locations, to which decisions will be made in the land use final order;

(d) Failure by a person to raise an issue at the hearing, in person or in writing, or failure to raise an issue with sufficient specificity to afford the council an opportunity to respond to the issue raised, shall preclude appeal by that person to the board based on that issue;

(e) Persons whose names appear on petitions submitted into the public hearing record will not be considered by that action to have provided oral or written testimony at the hearing;

(f) Notice of adoption of the land use final order will be provided only to the affected local governments and to the persons who have provided oral or written testimony at the hearing and who also have provided a written request for notice and a mailing address to which notice shall be sent; and

(g) Appeals from decisions in a land use final order on the project improvements, including their locations, must be filed within 14 days following the date the land use final order is reduced to writing and bears the necessary signatures.

(8)(a) The council shall allow for the submission of oral and written testimony at the hearing, subject to any hearing procedures the council deems necessary or appropriate for the adoption of a land use final order.

(b) The council may exclude irrelevant, immaterial or unduly repetitious testimony.

(9) The council may take official notice at the hearing of any matter identified in ORS 40.065 and 40.090 or as authorized by resolution of the council establishing hearing procedures for the adoption of land use final orders.

(10) The council is not required to provide any opportunities in addition to those described in this section for interested persons to participate in the proceedings of the council in adopting a land use final order. The council may establish by resolution additional procedures to govern its proceedings in adopting a land use final order, subject to the provisions of this section.

(11) The council shall close the hearing and shall adopt a land use final order by resolution or continue the matter as provided in section 7 (1) of this 2017 Act or as the council otherwise considers necessary for the purpose of adopting a land use final order.

SECTION 7. (1)(a) Following a public hearing as provided in section 6 of this 2017 Act, the Metro Council shall either:

(A) Adopt a land use final order establishing the project improvements and locations applied for by TriMet; or

(B) Continue the public hearing and refer the proposed project improvements and locations back to TriMet for further review.

(b) If the council refers the proposed locations back to TriMet for further review, TriMet shall consider amendments to its proposed project improvements and locations and forward the amended application to the council for hearing and adoption as described in this subsection.

(2)(a) The council shall adopt a land use final order establishing the project improvements, including their locations, as provided in this section and section 6 of this 2017 Act.

(b) The council shall include with the land use final order a statement of findings demonstrating how the decisions on the project improvements, including their locations, comply with the criteria.

(c) Following adoption of a land use final order, the council as soon as reasonably practicable shall:

(A) Publish notice of the adoption in a newspaper of general circulation within Metro's jurisdictional area;

(B) Provide notice of the adoption to each affected local government; and

(C) Provide notice of the adoption to persons who:

(i) Provided oral or written testimony at the hearing; and

(ii) Provided at the hearing a written request for notice and a mailing address to which written notice shall be sent. Persons whose names appear on petitions submitted into the public hearing record are not considered by that action to have provided oral or written testimony at the hearing.

(3) The notice of adoption required under subsection (2) of this section shall:

(a) Include the date of adoption of the land use final order;

(b) Identify the place at and time during which a copy of the land use final order may be obtained; and

(c) State that appeals from decisions in the land use final order must be filed within 14 days following adoption of the land use final order.

(4) Upon adoption of the initial land use final order, TriMet shall staff the steering committee until the completion of the Southwest Corridor MAX Light Rail Project.

(5) A land use final order issued under this section and section 6 of this 2017 Act is effective upon adoption.

(6) An amended land use final order or a new land use final order adopted in accordance with the process provided for in this section is required for:

(a) Any siting of a project improvement outside the locations established in the land use final order; or

(b) Any new project improvement.

SECTION 8. (1) The state, Metro, all affected local governments and any affected special districts and political subdivisions shall:

(a) Amend their comprehensive, functional or regional framework plans, including public facility plans, transportation system plans and all applicable land use regulations, as necessary to be consistent with a land use final order adopted under sections 6 and 7 of this 2017 Act; and

(b) Issue the appropriate development approval, permit, license, certificate or other approval necessary for the construction of the project or project improvements to implement a land use final order as necessary to avoid significantly delaying the completion or implementation of the project. Development approvals, permits, licenses, certificates or other approvals may be subject only to reasonable and necessary conditions of approval but those conditions may not, by themselves or cumulatively, prevent implementation of a land use final order.

(2) For the purposes of subsection (1)(b) of this section:

(a) An approval condition is not reasonable or necessary, or is considered to prevent implementation of a land use final order, if the approval condition applies to a measure, improvement or development that:

- (A) Is not included in the scope of the project in the Full Funding Grant Agreement;
- (B) Does not qualify for federal New Starts funding pursuant to 49 U.S.C. 5309;
- (C) Is not physically and functionally necessary for the project; or
- (D) The steering committee established under section 6 of this 2017 Act has determined:
 - (i) To be infeasible using the federal, state and local funds within the project budget;
 - (ii) Will significantly delay the completion or otherwise prevent the timely implementation of the project; or
 - (iii) Will have a significant negative impact on the operations of the project.

(b) In the event that a land use approval is delayed causing significant delay of the completion or implementation of the project, TriMet may pursue any remedy available in law or equity. Not less than 10 days prior to commencing an action for relief under this section, TriMet shall provide written notice to each local government to which TriMet submitted an application for a land use decision relating to the project.

(3)(a) If the state, Metro or an affected local government, special district or political subdivision does not take final action on an application for a development approval, permit, license, certificate or other approval as required under subsection (1) of this section, TriMet may file a petition for a writ of mandamus according to the procedures for cities described in ORS 227.179.

(b) Notwithstanding ORS 227.179 (5), the court shall issue a peremptory writ unless the governing body or any intervenor shows that the approval would violate the criteria adopted by the Land Conservation and Development Commission under section 4 of this 2017 Act.

(4) Each affected local government, special district or political subdivision that issues a development approval, permit, license, certificate or other approval for the project under subsection (1)(b) of this section shall continue to exercise enforcement authority over the development approval, permit, license, certificate or other approval.

(5) An amendment to the plan or a land use regulation required under subsection (1)(a) of this section is not subject to review by any court or agency.

(6)(a) Development approvals issued under subsection (1)(b) of this section shall be treated as land use decisions, but not as limited land use decisions.

(b) Development approvals, permits, licenses, certificates and other approvals issued under subsection (1)(b) of this section may be the subject of administrative and judicial review as provided by law.

(7) Steering committee determinations made under subsection (2)(a)(D) of this section shall control in the event of a conflict and are not subject to review.

SECTION 9. (1) Notwithstanding ORS 183.482, 183.484 or 197.825 and as provided by sections 1 to 12 of this 2017 Act, the Land Use Board of Appeals and the Supreme Court have exclusive jurisdiction for review of a land use final order adopted under section 7 of this 2017 Act relating to the project.

(2) Proceedings for review of a land use final order shall be initiated with the Land Use Board of Appeals when any person with standing petitions for review under subsection (3) of this section.

(3) The board shall consider a person to have standing if the person:

(a) Appeared before the Metro Council orally or in writing at the hearing described in section 6 of this 2017 Act on the project; and

(b) Personally delivered a notice of intent to appeal the land use final order as described by subsection (5) of this section within 14 days following the adoption of the land use final order as described in section 6 (11) of this 2017 Act.

(4) A person's failure to raise an issue at the land use final order hearing, in person or in writing, or failure to raise an issue with sufficient specificity to afford the council an op-

portunity to respond to the issue raised, shall preclude that person from petitioning for review based on that issue.

(5)(a) A notice of intent to appeal shall:

(A) Contain an affidavit stating the facts that support the petitioner's standing as required by subsection (3) of this section;

(B) State with particularity the grounds on which the petitioner assigns error; and

(C) State the residence or business address of the petitioner to which documents may be delivered and the telephone number where the petitioner may be reached during normal business hours.

(b) The petitioner shall personally deliver copies of the notice of intent to appeal to:

(A) The board;

(B) Metro, at the office of Metro's executive officer; and

(C) Each affected local government.

(6) Only the following persons may intervene in and thereby be made a party to the review proceedings:

(a) The board;

(b) Metro;

(c) TriMet;

(d) The Department of Transportation; and

(e) Any affected local government.

(7)(a) Within seven days following delivery of a notice of intent to appeal as required by subsection (5) of this section, Metro shall personally deliver a certified copy of the record of the council's land use final order proceedings to the board. The record shall consist of:

(A) The land use final order;

(B) The statement of findings included with the land use final order;

(C) The notice of public hearing on the land use final order;

(D) Audio recordings of the hearing, if any;

(E) A statement of matters that were officially noticed at the hearing;

(F) The staff report and any amendments thereto; and

(G) All documents accepted into the public hearing record.

(b) Metro shall make available a copy of the record for inspection by petitioners, and shall provide a copy of the record to any petitioner upon request. Metro may not charge a petitioner an amount greater than the actual copying costs for a copy of the record.

(8)(a) Within four days following delivery of the record to the board, a petitioner may object to the record by personal delivery to the board and the residence or business addresses of the intervening parties.

(b) Within four days following delivery of the objections to the record, Metro shall respond to the objections by personal delivery to the board and the residence or business addresses of the petitioners objecting.

(c) After delivery of the objections and the response, the board shall rule expeditiously on the objections. The board's ruling on the objections does not affect the briefing schedule or decision timelines set forth in sections 1 to 12 of this 2017 Act.

(9) Stays or continuances of proceedings are not permitted for the proceedings described in this section.

(10)(a) Within 14 days following the filing of the notice of intent to appeal, a petitioner shall personally deliver a petition for review and brief to each entity listed in subsection (6) of this section that has filed a motion to intervene on the entity's own behalf in the review proceedings.

(b) The petition for review and brief shall:

(A) Set out in detail each assignment of error; and

(B) Identify those portions of the record in which the petitioner raised the issues as to which error is assigned during the land use final order hearing.

(c) The petition for review and brief shall comply with the specifications for opening briefs set forth in the rules of appellate procedure.

(11)(a) Within 28 days following the filing of the notice of intent to appeal, Metro and any intervening party shall personally deliver their briefs in response to a petition for review and brief to the board and to any petitioner at the petitioner's residence or business address.

(b) Responding briefs shall comply with the specifications for answering briefs set forth in the rules of appellate procedure.

(12)(a) Within 35 days following the filing of the notice of intent to appeal, the board shall hear oral argument in the manner provided for in its administrative rules.

(b) Neither the board nor the court may substitute its judgment for that of the council as to any issue of fact or any issue within the discretion of the council.

(13)(a) Within 28 days following oral argument, the board shall issue a final opinion affirming or remanding the council's land use final order and stating the reasons for the decision.

(b) The board may remand the land use final order only if the board finds that the council:

(A) Improperly construed the criteria;

(B) Exceeded its statutory or constitutional authority; or

(C) Made a decision in the land use final order on the project improvements, including their locations, that was not supported by substantial evidence in the record.

(c) The existence in the record of substantial evidence supporting a different decision on the project improvements, including their locations, is not grounds for remand if there was also substantial evidence in the record supporting the land use final order.

(d) Failure to comply with statutory procedures, including notice requirements, is not grounds for invalidating a land use final order.

(e) The board shall affirm all portions of the land use final order that it does not remand.

(14) Upon issuance of its final opinion under subsection (13) of this section, the board shall:

(a) Transmit copies of the final opinion to the parties; and

(b) Inform the parties of the filing of the final opinion by telephone.

(15) Within seven days following issuance of its final opinion, the board shall personally deliver or electronically submit a copy of the record of the board with the State Court Administrator.

SECTION 10. (1)(a) Review of the final opinion of the Land Use Board of Appeals shall be initiated when any person that appeared before the Land Use Board of Appeals under section 9 of this 2017 Act petitions the Supreme Court to review the board's final opinion as provided in this section.

(b) Within 14 days following the board's issuance of its final opinion, the petitioner shall file a petition for judicial review and a brief with the State Court Administrator and serve copies of the petition and the brief on the board and all parties.

(c) The petition must state a request for relief and include a copy of the board's final opinion. The brief must state, with particularity and supporting authority, each reason asserted for remand of the board's final opinion.

(d) Upon request by the court, the board shall personally deliver or electronically submit a transcript of the board's record.

(2)(a) Within 14 days after the petition filing date, any other person that appeared before the board may, but need not, file a response in the form of a brief to the petition and brief with the State Court Administrator and shall serve the response on the board and all parties.

(b) In the absence of a response, the court shall consider a person's brief before the board to be the person's response.

(3) The court shall decide the matter at its earliest practicable convenience, consistent with sections 1 to 12 of this 2017 Act. The court shall apply the standards for review set forth in section 9 of this 2017 Act.

(4)(a) The court may decide the matter on the briefs or hold oral argument.

(b) The court may affirm or remand the land use final order, in whole or in part. The court shall affirm all parts of the land use final order that it does not remand.

(5)(a) If the court affirms, the court may adopt the board's final opinion, affirm without opinion or issue a separate opinion.

(b) If the court remands, the Metro Council shall:

(A) Respond as to those matters remanded by adopting by resolution a land use final order on remand according to the provisions of sections 6 and 7 of this 2017 Act;

(B) Immediately file the land use final order on remand and the record of the council with the State Court Administrator;

(C) Personally deliver copies of its land use final order on remand to the parties before the court; and

(D) Inform the parties by telephone of the filing of the land use final order on remand.

(6) The court shall retain jurisdiction over any matters remanded.

(7) Within 14 days following adoption of a land use final order on remand, the parties before the court may submit briefs to the court in response to the land use final order on remand. Parties that submit briefs shall personally deliver copies of the briefs to other parties before the court. The court may limit the length of briefs submitted under this subsection.

(8) The court shall affirm or remand the land use final order on remand according to the standards for review set forth in section 9 of this 2017 Act.

SECTION 11. (1) Following execution of a Full Funding Grant Agreement, the Metro Council shall amend the land use final order to be consistent with the terms and conditions of the Full Funding Grant Agreement.

(2) The council shall remove, modify or defer one or more project improvements or measures if:

(a) The federal government requires the removal, modification or deferral of portions of the approved project, or the removal, modification or deferral of measures is expressly provided for in a Final Statement as a condition of executing a Full Funding Grant Agreement; or

(b) Subsequent to execution of a Full Funding Grant Agreement, the steering committee determines that additional removals, modifications or deferrals are appropriate due to insufficient funds in the budget for the project.

(3) The following amendments to a land use final order are not subject to review by any court or agency:

(a) Amendments resulting from adoption of a Final Statement;

(b) Amendments required to ensure consistency with an executed Full Funding Grant Agreement; and

(c) Amendments to remove, modify or defer a portion of the project as provided for in subsection (2) of this section.

SECTION 12. An action taken by the Land Conservation and Development Commission, the Metro Council, the Land Use Board of Appeals or the Supreme Court under sections 1 to 12 of this 2017 Act is not invalid due to a failure to meet a timeline established under sections 1 to 12 of this 2017 Act.

SECTION 13. The Land Conservation and Development Commission shall adopt the order establishing the criteria described in section 4 (8) of this 2017 Act within 90 days following the effective date of this 2017 Act.

SECTION 14. Notwithstanding any other provision of law, the limitation on expenditures established by section 4 (7), chapter __, Oregon Laws 2017 (Enrolled Senate Bill 5540), for

the biennium beginning July 1, 2017, as the maximum limit for payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts and federal funds received as reimbursement from the United States Department of Transportation, but excluding lottery funds and federal funds not described in section 4, chapter __, Oregon Laws 2017 (Enrolled Senate Bill 5540), collected or received by the Department of Transportation, is increased by \$205,157 for the purpose of carrying out the provisions of this 2017 Act.

SECTION 15. This 2017 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect on its passage.

Passed by House July 6, 2017

.....
Timothy G. Sekerak, Chief Clerk of House

.....
Tina Kotek, Speaker of House

Passed by Senate July 7, 2017

.....
Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2017

Approved:

.....M.,....., 2017

.....
Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2017

.....
Dennis Richardson, Secretary of State