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August 20, 2010

TO: Land Conservation and Development Commission

FROM: Richard Whitman, Director
Robert Cortright, Land Use-Transportation Planning Specialist

SUBJECT: **Agenda Item 4, September 1–2, 2010 LCDC Meeting**

ODOT HOUSE BILL 3379 RULEMAKING BRIEFING

I. AGENDA ITEM SUMMARY

Section 1 of House Bill (HB) 3379 (2009) directs the Oregon Transportation Commission (OTC) to adopt administrative rules to allow for local governments to apply for extensions or exemptions from meeting the funding requirements in the Transportation Planning Rule (TPR; OAR 660, division 12). Oregon Department of Transportation (ODOT) staff will brief the commission on work thus far to develop an administrative rule.

The department also anticipates testimony from local governments related to this item. A number of local governments have encouraged the commission to consider making amendments to the TPR to provide additional flexibility.

A. Type of Action and Commission Role

The report is informational and intended to advise the commission about the status of work by ODOT. No commission action is recommended at this time. The commission has identified changes to the TPR as a possible issue to be addressed as part of the commission's policy agenda, depending on the outcome of the OTC's work implementing HB 3379.

B. Staff Contact Information

For additional information about this agenda item please contact Bob Cortright at 503-373-0050 ext. 241, or by e-mail at bob.cortright@state.or.us.

II. RECOMMENDATION

As noted above, no formal action is required or recommended at this time.

The department will continue its participation in ODOT's HB 3379 rulemaking advisory committee. Depending on the results of that effort, and input from local governments, the department will continue to assess whether amendments to TPR to provide additional options or flexibility for local governments to address TPR Section 0060 requirements should be considered. The department expects to make a final recommendation to the commission on this matter by January 2011.

III. BACKGROUND

A. HB 3379

In 2009, the Oregon Legislature adopted HB 3379. According to ODOT's website:

...the Oregon Transportation Commission (OTC) was directed to adopt an administrative rule to establish an application process that local governments may use if they are not able to meet the funding requirements of the Transportation Planning Rule (TPR). The administrative rule must allow and describe the following:

- Time extensions to meet TPR requirements;
- Plans proposing alternative methods of funding to meet OTC standards;
- Adjustments to traffic performance measures for an interim period prior to completion of construction of the development for a period of no more than 20 years; and
- Various types of traffic performance measures other than volume-to-capacity ratios (v/c).

The legislation includes limitations on the process to be described in the administrative rule, including OTC approval of no more than four applications for extensions or alternative plans in each ODOT Region per calendar year.

Attachment B to this report includes information provided by ODOT describing its work to implement HB 3379, including a proposed administrative rule. Additional information about ODOT's work on HB 3379 is available on ODOT's website:

<http://www.oregon.gov/ODOT/TD/TP/HB3379.shtml>

B. Transportation Planning Rule Section 0060

As noted above, HB 3379 directs ODOT to adopt rules for granting extensions to meeting funding requirements in the TPR. The relevant section of the TPR is OAR 660-012-0060, which applies to local government consideration of plan or land use regulation amendments (including zone changes). In general terms, the provisions of section 0060 require that local governments assess whether the transportation facilities and services included in the Transportation System Plan (TSP) will be adequate to support the land uses that would be allowed by a proposed plan amendment or zone change.

The text of section 0060 is included in Attachment C. A summary of the key provisions of section 0060 is provided below.

- Section 0060 applies only to plan and land use regulation amendments (including zone changes). It does not apply to other types of land use decisions that do not involve a plan or land use regulation amendment – such as a conditional use development review.
- Section 0060 requires detailed analysis of transportation impacts only where a proposed use would allow more intense development than is allowed by existing planning and zoning. (In other words, a plan or zone change that does not allow more traffic than is allowed by existing zoning does not trigger a TPR “significant effect”).
- Where a plan amendment would allow more traffic than current planning and zoning, local governments must assess whether planned improvements have adequate capacity to support the planned land uses.
- When state highways would be affected, local governments must coordinate with ODOT to assess whether ODOT’s performance standards for state highways – set forth in the Oregon Highway Plan (OHP) – will be met.
- To determine whether planned improvements are adequate, local governments must consider whether improvements that are planned and expected to be constructed over the planning period (typically the next 15–20 years) will have adequate capacity to support the proposed land uses.
- Expected transportation improvements are those that are included in or allowed by adopted transportation system plans and that have some level of funding commitment.
- The rule lists qualifying funding commitments. They include:
 - projects that are scheduled for funding in local capital improvement programs or are scheduled for funding;
 - improvements that local governments (for local roads) and ODOT (for state highways) agree are “reasonably likely” to be provided during the planning period; and
 - Improvements that are required to be built as a condition of approval.
- Where planned improvements are not adequate to support the planned land use, local governments¹ have several options to put land use and transportation in balance:
 - They can limit the allowed land uses to match available capacity;
 - They can amend the TSP to expand transportation capacity; or
 - They can amend the TSP to change performance standards to accept increased congestion.

Detailed information about this section of the rule, including reports and recommendations from the Joint OTC-LCDC Transportation Subcommittee and department staff, as well as related guidance materials, are available on the department’s website:
http://www.oregon.gov/LCD/docs/rulemaking/090110/item4_tpr.pdf

¹ As noted above, when a state highway is affected, the local government must coordinate its decision with ODOT, and may need to have ODOT agree to a local TSP amendment or, in some cases, seek an amendment to the Oregon Highway Plan.

C. Stakeholder Interests and Concerns

The provisions of TPR section 0060 have received close attention by the commission over the last several years. The current provisions of the rule were adopted by the commission in March 2005 following an extensive evaluation of the TPR and work by a joint subcommittee of LCDC and OTC. HB 3379 and ODOT's rulemaking is an outgrowth of efforts to provide more flexibility to meet TPR requirements and to better coordinate land use and transportation planning decisions.

Overall, there is broad support for the basic principle in TPR section 0060: that local governments should consider and address the transportation impacts of plan and zone changes at the time they are making decisions about what types of land uses to allow in an area. At the same time, disagreement remains about whether additional changes to the TPR or the OHP are needed to accomplish this objective, and potential tension between this objective and other important planning objectives.

Local governments and other stakeholders have raised several interrelated concerns about the TPR and related provisions of the OHP:

- Whether TPR requirements in combination with ODOT highway performance standards interfere with local efforts to accommodate important economic development opportunities, especially efforts to attract family wage jobs and traded-sector development.
- Whether ODOT's standards for highway performance are consistent with state and local land use objectives to promote compact, mixed-use development in urban areas. (Metro and several other communities have expressed concern that OHP mobility standards create a barrier to local efforts to plan land for more intense uses that carry out broader directives in the TPR to promote land use patterns that reduce reliance on the automobile.)
- Whether local governments should be able to defer detailed transportation analysis and identification of mitigation measures to the time of review of specific development proposals.
- Whether local governments should be able to count improvements as "planned" when the improvement is included in its TSP, regardless of whether the project is funded.
- Whether zone changes that are consistent with and carry out terms of an adopted comprehensive plan should be subject to section 0060 requirements.
- Whether standards for transportation performance, especially for state highways in urban areas, are financially realistic or attainable given likely transportation funding.

- Whether TPR requirements place an unfair burden on plan amendment applicants as “the last one in” to address transportation deficiencies that are also the result of traffic from other development.
- Whether TPR requirements are consistent with constitutional limits on development exactions which requires mitigation be “roughly proportionality” to a developments impacts.

IV. DEPARTMENT ANALYSIS

The OTC’s rulemaking to implement HB 3379 will provide ODOT and local governments with additional flexibility to accommodate economic development opportunities through extensions of time to meet TPR funding requirements, through approval of alternative funding arrangements, and through changes to highway performance standards.

ODOT’s proposal to amend the OHP to help implement the HB 3379 rulemaking should also be helpful. It would create a faster track for ODOT to change its performance standards on a case-by-case basis to accommodate economic development projects.

The fact that many streets and highways in larger urban areas are at or approaching capacity, given our current methods of measuring acceptable performance, constitutes to a major land use-transportation problem. This problem is compounded by a large “funding gap.” That is, TSPs often identify a combination of improvements as “needed,” but these improvements greatly exceed the amount of funding that is expected to be available during the planning period. Plan and zone changes that allow more intense development and resulting traffic and that would worsen this imbalance obviously warrant careful consideration. This situation is most apparent on state highways because the funding gap there is widest and because local governments must coordinate plan and zone changes with ODOT to address OHP standards for highway performance.

The department expects that discussion of HB 3379 will prompt further input from local governments and other stakeholders on two key policy issues:

- Whether TPR section 0060 and relevant provisions of the OHP provide sufficient flexibility to enable local governments to strike a reasonable balance between land use objectives and transportation needs.
- Whether more needs to be done to make it easier for local governments to accomplish plan amendments and zone changes to promote important economic development opportunities, as well as compact, mixed use pedestrian friendly development.

It is important to keep in mind that the TPR and the OHP establish a range of options for local governments to achieve a balance between land use and transportation. These options are often adequate to meet local government needs. In addition, DLCD and ODOT staffs work with local

governments to help them use the options that are available in the rule. At same time, the department recognizes concerns remain and that further changes to either the OHP or TPR, or both, may be needed to expand the range of available tools for balancing land use and transportation or to better achieve objectives to promote compact, mixed use development.

V. DEPARTMENT RECOMMENDATION

No formal action by the commission is recommended at this time. The commission should wait until the results of the HB 3379 rulemaking are known before deciding whether to consider amendments to the TPR.

The department should continue its participation in ODOT's HB 3379 rulemaking advisory committee, and through work with the committee and local governments, department staff will continue to assess whether amendments to the TPR to provide additional options or flexibility for local governments to address TPR section 0060 requirements should be considered.

The department notes that the commission will address a related issue in December 2010 in its review of Metro's 2035 Regional Transportation Plan (RTP). The RTP proposes additional measures to enable local governments to approve plan and zone changes consistent with the OHP and the TPR.

ATTACHMENTS

- A. HB 3379
- B. ODOT Report
- C. OAR 660-012-0060

Enrolled
House Bill 3379

Sponsored by Representatives D EDWARDS, HUFFMAN, WHISNANT, Senator TELFER; Representatives BEYER, HOLVEY, SCHAUFLEER, STIEGLER, Senators FERRIOLI, STARR

CHAPTER

AN ACT

Relating to transportation; and declaring an emergency.

Whereas in March 2005, the Land Conservation and Development Commission, responding in part to a decision of the Oregon Court of Appeals, amended OAR 660-012-0060, the transportation planning rule, to require assurance of planned transportation system projects and reasonably likely funding mechanisms to ensure that the transportation system's mobility standards are satisfied if a proposed comprehensive plan or land use regulation amendment would result in an existing or planned transportation facility failing to meet adopted performance standards at any time during the local jurisdiction's 15- to 20-year planning period; and

Whereas lack of state funding for transportation system projects has precluded state participation in funding mechanisms and funding responsibility for necessary improvements to the state highway system identified in the transportation system plans of local jurisdictions seeking to expand urban growth boundaries or rezone parcels necessary to increase land supply to accommodate economic development projects; and

Whereas local government entities are limited in their ability to provide the transportation infrastructure necessary to support economic development associated with amendments to their comprehensive plans, including zone changes and urban growth boundary expansions, because of the limited availability of federal, state and local funding for planned transportation projects as called for in the transportation planning rule, and these limitations have led to a loss in jobs and a failure to attract needed economic development projects in many communities throughout Oregon; now, therefore,

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

SECTION 1. (1) Subject to the limitations in subsection (2) of this section, if a local government is unable to meet the funding requirements of the transportation planning rule adopted by the Land Conservation and Development Commission, the local government may:

- (a) Apply for an extension of time to meet the requirements;
- (b) Submit a plan to the Oregon Transportation Commission and the Department of Transportation proposing alternative methods of funding that will meet the standards adopted by the Oregon Transportation Commission; or
- (c) Apply to the Department of Transportation:
 - (A) To adjust various traffic performance measures during an interim period prior to completion of construction of the development in question for a period of no more than 20 years; or

(B) To allow various types of traffic performance measures other than a volume to capacity ratio.

(2) The Oregon Transportation Commission may not approve more than four applications for extension or alternative plans in each Department of Transportation region in a calendar year. For purposes of this subsection, the regions are as follows:

(a) Region one consists of Clackamas, Columbia, Hood River, Multnomah and Washington Counties.

(b) Region two consists of Benton, Clatsop, Lane, Lincoln, Linn, Marion, Polk, Tillamook and Yamhill Counties.

(c) Region three consists of Coos, Curry, Douglas, Jackson and Josephine Counties.

(d) Region four consists of Crook, Deschutes, Gilliam, Jefferson, Klamath, Lake, Sherman, Wasco and Wheeler Counties.

(e) Region five consists of Baker, Grant, Harney, Malheur, Morrow, Umatilla, Union and Wallowa Counties.

(3) The Oregon Transportation Commission shall adopt rules for the administration of this section. In adopting rules, the commission may not define under what circumstances a local government is considered to be able to meet the funding requirements of the transportation planning rule adopted by the Land Conservation and Development Commission.

SECTION 2. (1) The Department of Transportation shall undertake an evaluation to determine if funds deposited into the Oregon Streetcar Project Fund, established under section 23, chapter 746, Oregon Laws 2007, are sufficient to meet the objectives of purchasing newly constructed streetcars and supplying the streetcars to public transit systems in Oregon.

(2) If the department determines that additional funding is needed to make grants and provide for administrative costs, as described in section 23, chapter 746, Oregon Laws 2007, the department shall provide a recommendation to the Oregon Transportation Commission that describes any funds available to the department that may be deposited into the Oregon Streetcar Project Fund.

(3) No later than January 1, 2010, the department shall report to the legislative interim committees on transportation on the determinations made by the department and any recommendations the department has made to the commission.

SECTION 3. (1) If any part of chapter _____, Oregon Laws 2009 (Enrolled House Bill 2001), is referred to the people by petition under section 1 (3), Article IV of the Oregon Constitution, the remaining parts of chapter _____, Oregon Laws 2009 (Enrolled House Bill 2001), that are not referred to the people do not become operative unless the part that is referred to the people by petition is approved by the people at an election.

(2) If any part of chapter _____, Oregon Laws 2009 (Enrolled House Bill 2001), is referred to the people by petition under section 1 (3), Article IV of the Oregon Constitution, and the part that is referred to the people by petition is approved by the people at an election, the remaining parts of chapter _____, Oregon Laws 2009 (Enrolled House Bill 2001), that are not referred to the people become operative on the effective date of the part that is referred and approved.

SECTION 4. This 2009 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect on its passage.

**HOUSE BILL 3379 IMPLEMENTATION
Land Conservation and Development Commission Briefing Handout
September 1, 2010**

Background: What Prompted House Bill (HB) 3379?

- Perception from local governments that Transportation Planning Rule (TPR) Section 0060 (addressing the impacts of plan amendments) is an obstacle to economic development.²
- Local governments are concerned with implementation of TPR Section 0060 due to a lack of transportation funding and an inability to secure “reasonably likely” determinations for state highway projects that would mitigate transportation impacts.
- Concern that analysis methodologies are too restrictive (e.g. reliance on volume-to-capacity ratios (v/c), time period requirements for analysis and mitigation, etc....)

HB 3379 Requirements

- Directs the Oregon Transportation Commission (OTC) to adopt rules for an application process local governments can use when they are unable to meet the requirements of the TPR (ODOT has interpreted this to mean TPR Section 0060 requirements).
- Local governments would be able to consider time extensions, alternative funding methods, or transportation performance measure changes with HB 3379 applications.
- OTC may approve up to four applications in each ODOT Region during a calendar year.
- HB 3379 “Where As” clauses speak to the consideration of economic development projects as part of this work.

Implementation Process

- ODOT project staff and consultants are working with a Stakeholder Committee appointed by the ODOT Director to advise development of the Draft HB 3379 Administrative Rule.
- Stakeholder Committee members include city, county and MPO representatives, as well as representatives of state agencies, interest groups and the consulting community. Rob Hallyburton is participating on the Stakeholder Committee as the Department of Land Conservation and Development (DLCD) representative.
- Preliminary interviews were conducted with each committee member to identify issues and expectations for the work.
- Four Stakeholder Committee Meetings have been held to date, with two additional meetings likely over the next two months. Meeting objectives have included:
 - Committee background and charge,
 - Review and feedback on Preliminary Discussion Draft Administrative Rule,

² Because the TPR is a Land Conservation and Development Commission (LCDC) administrative rule, the OTC/ODOT has limited authority and ability to address some of the HB 3379 requirements and issues.

- A work session on major topic and decision areas for Rule revisions, and
- Committee review of a revised Draft Administrative Rule in August.

Key Elements of the Draft Administrative Rule

- Committee direction that the purpose of this Rule is to facilitate projects (plan amendments) that support economic development and job creation but cannot meet the funding or timing requirements of the TPR related to state highways. This direction includes the recommendation that HB 3379 applies to special circumstances that require a quick response. Aspirational plan amendments would continue to use existing TPR and Oregon Highway Plan (OHP) flexibility.
- Provides a definition of eligible economic development projects that qualify for the remedies included in this Rule. This definition was developed through coordination with the Business Oregon Commission. Additional criteria may be developed to help implement this definition.
- Confirms that the HB 3379 Administrative Rule does not provide authority to override provisions of the TPR.
- Recognizes the authority and discretion that the OTC has in applying and interpreting its own administrative rules and standards. HB 3379 work will result in an OTC administrative rule, allowing some additional flexibility for applications.
- Defines the term “traffic performance measures” as used in HB 3379 as meaning the minimum acceptable standards of performance for highway facilities identified in an adopted state, regional or local transportation system plan or comprehensive plan. For state highways, traffic performance is measured by v/c ratios as defined in the OHP. Adjustments to traffic performance measures for state highways, including alternative measures other than v/c, will require amendments to the OHP. The Rule offers methods to adjust traffic performance measures for applicable economic development projects through a quicker process.
- Provides for time extensions of up to twenty (20) years from the time of application.
- Identifies the information required for approval of an alternative funding plan.
- Requires coordination between local processes and the OTC application and approval process to ensure adequate local public review, adequate information for OTC decisions and an efficient/timely review process.
- Limits the number of HB 3379 applications that can be approved in a local jurisdiction to one application annually and limits the number of applications that can be approved in a defined area within a 3-year period.
- Does not include a deadline for when an application can be submitted during a calendar year.
- Allows for a pre-application meeting and coordination with the Oregon Business Development Department (OBDD/Business Oregon) and DLCD.
- Requires review of Rule implementation after a set time period following adoption.

Recommendations on Work Items Outside of Rule Development

- Some of the issues identified in the legislation (and other issues of interest to stakeholders) concern items that would need to be addressed outside of OTC rulemaking. Some of these issues are outside of OTC/ODOT authorities. Other issues lend themselves to improved guidance and improved internal practices and processes.

- Project staff is tracking these items as they arise in Stakeholder Committee discussions and will bring the issues back to the Committee following recommendation on the Draft Rule.
- A likely work product from the Stakeholder Committee may be recommendations for future work in the areas identified outside of Rule development.

Next Steps

- Request Stakeholder Committee recommendation on the Draft Rule in September or potential October meeting.
- Submit recommended Rule to ODOT Director for consideration and initiation of formal rulemaking process.
- Work with the Committee to develop a recommendations memo for issues outside of Rule development.
- Develop guidance for Administrative Rule implementation as needed.

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**OAR CHAPTER 660, DIVISION 12
TRANSPORTATION PLANNING**

660-012-0060

Plan and Land Use Regulation Amendments

- (1) Where an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation would significantly affect an existing or planned transportation facility, the local government shall put in place measures as provided in section (2) of this rule to assure that allowed land uses are consistent with the identified function, capacity, and performance standards (e.g. level of service, volume to capacity ratio, etc.) of the facility. A plan or land use regulation amendment significantly affects a transportation facility if it would:
 - (a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);
 - (b) Change standards implementing a functional classification system; or
 - (c) As measured at the end of the planning period identified in the adopted transportation system plan:
 - (A) Allow land uses or levels of development that would result in types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;
 - (B) Reduce the performance of an existing or planned transportation facility below the minimum acceptable performance standard identified in the TSP or comprehensive plan; or
 - (C) Worsen the performance of an existing or planned transportation facility that is otherwise projected to perform below the minimum acceptable performance standard identified in the TSP or comprehensive plan.
- (2) Where a local government determines that there would be a significant effect, compliance with section (1) shall be accomplished through one or a combination of the following:
 - (a) Adopting measures that demonstrate allowed land uses are consistent with the planned function, capacity, and performance standards of the transportation facility.
 - (b) Amending the TSP or comprehensive plan to provide transportation facilities, improvements or services adequate to support the proposed land uses consistent with the requirements of this division; such amendments shall include a funding plan or mechanism consistent with section (4) or include an amendment to the transportation finance plan so that the facility, improvement, or service will be provided by the end of the planning period.
 - (c) Altering land use designations, densities, or design requirements to reduce demand for automobile travel and meet travel needs through other modes.
 - (d) Amending the TSP to modify the planned function, capacity or performance standards of the transportation facility.
 - (e) Providing other measures as a condition of development or through a development agreement or similar funding method, including transportation system management measures, demand management or minor transportation improvements. Local governments shall as part of the amendment specify when measures or improvements provided pursuant to this subsection will be provided.
- (3) Notwithstanding sections (1) and (2) of this rule, a local government may approve an amendment that would significantly affect an existing transportation facility without assuring that the allowed land uses are

consistent with the function, capacity and performance standards of the facility where:

- (a) The facility is already performing below the minimum acceptable performance standard identified in the TSP or comprehensive plan on the date the amendment application is submitted;
 - (b) In the absence of the amendment, planned transportation facilities, improvements and services as set forth in section (4) of this rule would not be adequate to achieve consistency with the identified function, capacity or performance standard for that facility by the end of the planning period identified in the adopted TSP;
 - (c) Development resulting from the amendment will, at a minimum, mitigate the impacts of the amendment in a manner that avoids further degradation to the performance of the facility by the time of the development through one or a combination of transportation improvements or measures;
 - (d) The amendment does not involve property located in an interchange area as defined in paragraph (4)(d)(C); and
 - (e) For affected state highways, ODOT provides a written statement that the proposed funding and timing for the identified mitigation improvements or measures are, at a minimum, sufficient to avoid further degradation to the performance of the affected state highway. However, if a local government provides the appropriate ODOT regional office with written notice of a proposed amendment in a manner that provides ODOT reasonable opportunity to submit a written statement into the record of the local government proceeding, and ODOT does not provide a written statement, then the local government may proceed with applying subsections (a) through (d) of this section.
- (4) Determinations under sections (1)-(3) of this rule shall be coordinated with affected transportation facility and service providers and other affected local governments.

- (a) In determining whether an amendment has a significant effect on an existing or planned transportation facility under subsection (1)(c) of this rule, local governments shall rely on existing transportation facilities and services and on the planned transportation facilities, improvements and services set forth in subsections (b) and (c) below.
- (b) Outside of interstate interchange areas, the following are considered planned facilities, improvements and services:
 - (A) Transportation facilities, improvements or services that are funded for construction or implementation in the Statewide Transportation Improvement Program or a locally or regionally adopted transportation improvement program or capital improvement plan or program of a transportation service provider.
 - (B) Transportation facilities, improvements or services that are authorized in a local transportation system plan and for which a funding plan or mechanism is in place or approved. These include, but are not limited to, transportation facilities, improvements or services for which: transportation systems development charge revenues are being collected; a local improvement district or reimbursement district has been established or will be established prior to development; a development agreement has been adopted; or conditions of approval to fund the improvement have been adopted.
 - (C) Transportation facilities, improvements or services in a metropolitan planning organization (MPO) area that are part of the area's federally-approved, financially constrained regional transportation system plan.
 - (D) Improvements to state highways that are included as planned improvements in a regional or local transportation system plan or comprehensive plan when ODOT

- provides a written statement that the improvements are reasonably likely to be provided by the end of the planning period.
- (E) Improvements to regional and local roads, streets or other transportation facilities or services that are included as planned improvements in a regional or local transportation system plan or comprehensive plan when the local government(s) or transportation service provider(s) responsible for the facility, improvement or service provides a written statement that the facility, improvement or service is reasonably likely to be provided by the end of the planning period.
- (c) Within interstate interchange areas, the improvements included in (b)(A)-(C) are considered planned facilities, improvements and services, except where:
- (A) ODOT provides a written statement that the proposed funding and timing of mitigation measures are sufficient to avoid a significant adverse impact on the Interstate Highway system, then local governments may also rely on the improvements identified in paragraphs (b)(D) and (E) of this section; or
- (B) There is an adopted interchange area management plan, then local governments may also rely on the improvements identified in that plan and which are also identified in paragraphs (b)(D) and (E) of this section.
- (d) As used in this section and section (3):
- (A) Planned interchange means new interchanges and relocation of existing interchanges that are authorized in an adopted transportation system plan or comprehensive plan;
- (B) Interstate highway means Interstates 5, 82, 84, 105, 205 and 405; and
- (C) Interstate interchange area means:
- (i) Property within one-half mile of an existing or planned interchange on an Interstate Highway as measured from the center point of the interchange; or
- (ii) The interchange area as defined in the Interchange Area Management Plan adopted as an amendment to the Oregon Highway Plan.
- (e) For purposes of this section, a written statement provided pursuant to paragraphs (b)(D), (b)(E) or (c)(A) provided by ODOT, a local government or transportation facility provider, as appropriate, shall be conclusive in determining whether a transportation facility, improvement or service is a planned transportation facility, improvement or service. In the absence of a written statement, a local government can only rely upon planned transportation facilities, improvements and services identified in paragraphs (b)(A)-(C) to determine whether there is a significant effect that requires application of the remedies in section (2).
- (5) The presence of a transportation facility or improvement shall not be a basis for an exception to allow residential, commercial, institutional or industrial development on rural lands under this division or OAR 660-004-0022 and 660-004-0028.
- (6) In determining whether proposed land uses would affect or be consistent with planned transportation facilities as provided in 0060(1) and (2), local governments shall give full credit for potential reduction in vehicle trips for uses located in mixed-use, pedestrian-friendly centers, and neighborhoods as provided in (a)-(d) below;
- (a) Absent adopted local standards or detailed information about the vehicle trip reduction benefits of mixed-use, pedestrian-friendly development, local governments shall assume that uses located within a mixed-use, pedestrian-friendly center, or neighborhood, will generate 10% fewer daily and peak hour trips than are specified in available published estimates, such as those

provided by the Institute of Transportation Engineers (ITE) Trip Generation Manual that do not specifically account for the effects of mixed-use, pedestrian-friendly development. The 10% reduction allowed for by this section shall be available only if uses which rely solely on auto trips, such as gas stations, car washes, storage facilities, and motels are prohibited;

- (b) Local governments shall use detailed or local information about the trip reduction benefits of mixed-use, pedestrian-friendly development where such information is available and presented to the local government. Local governments may, based on such information, allow reductions greater than the 10% reduction required in (a);
- (c) Where a local government assumes or estimates lower vehicle trip generation as provided in (a) or (b) above, it shall assure through conditions of approval, site plans, or approval standards that subsequent development approvals support the development of a mixed-use, pedestrian-friendly center or neighborhood and provide for on-site bike and pedestrian connectivity and access to transit as provided for in 0045(3) and (4). The provision of on-site bike and pedestrian connectivity and access to transit may be accomplished through application of acknowledged ordinance provisions which comply with 0045(3) and (4) or through conditions of approval or findings adopted with the plan amendment that assure compliance with these rule requirements at the time of development approval; and
- (d) The purpose of this section is to provide an incentive for the designation and implementation of pedestrian-friendly, mixed-use centers and neighborhoods by lowering the regulatory barriers to plan amendments which accomplish this type of development. The actual trip reduction benefits of mixed-use, pedestrian-friendly development will vary from case to case and may be somewhat higher or lower than

presumed pursuant to (a) above. The Commission concludes that this assumption is warranted given general information about the expected effects of mixed-use, pedestrian-friendly development and its intent to encourage changes to plans and development patterns. Nothing in this section is intended to affect the application of provisions in local plans or ordinances which provide for the calculation or assessment of systems development charges or in preparing conformity determinations required under the federal Clean Air Act.

- (7) Amendments to acknowledged comprehensive plans and land use regulations which meet all of the criteria listed in (a)-(c) below shall include an amendment to the comprehensive plan, transportation system plan the adoption of a local street plan, access management plan, future street plan or other binding local transportation plan to provide for on-site alignment of streets or accessways with existing and planned arterial, collector, and local streets surrounding the site as necessary to implement the requirements in Section 0020(2)(b) and Section 0045(3) of this division:
 - (a) The plan or land use regulation amendment results in designation of two or more acres of land for commercial use;
 - (b) The local government has not adopted a TSP or local street plan which complies with Section 0020(2)(b) or, in the Portland Metropolitan Area, has not complied with Metro's requirement for street connectivity as contained in Title 6, Section 3 of the Urban Growth Management Functional Plan; and
 - (c) The proposed amendment would significantly affect a transportation facility as provided in 0060(1).
- (8) A "mixed-use, pedestrian-friendly center or neighborhood" for the purposes of this rule, means:
 - (a) Any one of the following:
 - (A) An existing central business district or downtown;

- (B) An area designated as a central city, regional center, town center or main street in the Portland Metro 2040 Regional Growth Concept;
 - (C) An area designated in an acknowledged comprehensive plan as a transit oriented development or a pedestrian district; or
 - (D) An area designated as a special transportation area as provided for in the Oregon Highway Plan.
- (b) An area other than those listed in (a) which includes or is planned to include the following characteristics:
- (A) A concentration of a variety of land uses in a well-defined area, including the following:
 - (i) Medium to high density residential development (12 or more units per acre);
 - (ii) Offices or office buildings;
 - (iii) Retail stores and services;
 - (iv) Restaurants; and
 - (v) Public open space or private open space which is available for public use, such as a park or plaza.
 - (B) Generally include civic or cultural uses;
 - (C) A core commercial area where multi-story buildings are permitted;
 - (D) Buildings and building entrances oriented to streets;
 - (E) Street connections and crossings that make the center safe and conveniently accessible from adjacent areas;
 - (F) A network of streets and, where appropriate, accessways and major driveways that make it attractive and highly convenient for people to walk between uses within the center or neighborhood, including streets and major driveways within the center with wide sidewalks and other features, including pedestrian-oriented street crossings, street trees, pedestrian-scale lighting and on-street parking;
 - (G) One or more transit stops (in urban areas with fixed route transit service); and
 - (H) Limit or do not allow low-intensity or land extensive uses, such as most industrial uses, automobile sales and services, and drive-through services.

Date: August 17, 2010

To: John VanLandingham, Chairman
Members of the Land Conservation and Development Commission

Richard Whitman, Director
Department of Land Conservation and Development

From: Linda Ludwig, Deputy Legislative Director
League of Oregon Cities

RE: Support for LCDC Review of the Transportation Planning Rule
-Sent early for the September, 2010 LCDC meeting

First, I would like to thank you for setting aside some time at the up-coming September, 2010 Commission meeting to hear comment about the Transportation Planning Rule (TPR) from interested parties. We appreciate the responsive action to concerns that have been forwarded to-date, especially when taking into consideration the substantial nature of the department's existing policy agenda.

I would additionally like to extend our thanks to ODOT for their work implementing HB 3379 (2009). The participants of the HB 3379 Stakeholder Group (appointed by ODOT to make recommendations regarding HB 3379) recognized that the enrolled bill was substantially different than the introduced version, and as a result of end of session amending, contained language that was less than artful or clear. As one of the few members of the "public" at the meetings, I can't help but have observed that there exists a notable reticence to change existing TPR processes and interpretations of the rule language by ODOT staff and by the consultants that had a hand in authorship of the last revisions to the rule (2005). While on its face, that is neither a positive or negative observation, it does become concerning when faced with continued observations of various stakeholder members from different persuasions of the "rub" points or situations where TPR implementation has been problematic.

My general observation within the context of the TPR discussions is that ODOT's primary objective is to protect the investments that have been made in the state highway transportation system, especially when it comes to state facilities, while DLCD's objectives would marry transportation planning with other aspects of the statewide planning program – particularly Goal 9 (Economic Development), Goal 10 (Housing) and Goal 14 (Urban Development). Cities are finding themselves caught between the objectives of the two agencies with regard to the TPR, and have been unable or less able to meet the objectives of Goal 10 and/or Goal 9, or to implement the designations in their acknowledged comprehensive plans. As a result, development opportunities (which benefit both state and local government) have walked away, or had their densities or

footprint substantially reduced, or chosen alternate locations that create additional “sprawl”. Further complicating matters is ODOT’s existing procedures for review and approval of local government alternatives to traffic performance standards, which requires a long-term legislative process by a city, and if approved eventually by the OTC, requires an amendment to the state highway plan.

The vast majority of the HB 3379 Stakeholder Group recognized that there are broader conflicts with the implementation of the TPR, and articulated interest in pursuing remedies to those concerns. As of this writing it is difficult to judge the outcome of the group, but if successful, may provide limited relief in only very limited circumstances.

We have heard from many cities in many different regions of the state about their growing frustrations and concerns with the TPR. Whether or not these problems were anticipated by agency representatives during the course of the last rulemaking effort (2005), other factors, including our devolving economic times, have made them worse; they need to be addressed with new vision, new solutions.

Although my comments set forward here are intentionally general, our letter of June 3, 2010 outlined some specific TPR concerns, along with several letters from individual cities sent at that time. I further anticipate receiving additional detailed comments from individual cities.

Lastly, the League has a biennial legislative policy process that involves many, many elected, administrative and technical officials represented on a statewide basis. Policy recommendations from eight policy committees are sent to 242 city councils to prioritize to inform our board of directors as they adopt priority issues for the coming year and legislative session. Having just completed this process, TWO of our eight policy committees (both Community Development and Transportation) identified conflicts with implementing the TPR as a priority city issue, with high ranking from our entire membership. Having two separate committees recommend the same priority is unheard of in my tenure, and speaks to the depth of concern about the issue.

Thank you in advance for your consideration.