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August 19, 2010

John VanLandingham, Chair
Land Conservation and Development Commission
635 Capitol Street, NE, Suite 150
Salem, OR 97301

Re: Corvallis' Recent Experience with the Transportation Planning Rule

Dear Chair VanLandingham and Commissioners,

I am writing to request your attention to a matter that has had a very significant impact on our ability to implement our City's plans for growth and development. That issue is the implementation of the Transportation Planning Rule (TPR) and its effect upon our annexation and zoning district change decisions. We believe this issue also has larger implications for the success of the statewide planning program, as explained later in this letter. We ask that you consider a process to evaluate and amend the Transportation Planning Rule to address these issues. This letter may be considered a follow-up to the May 25, 2010, letter you received from our Planning Division Manager, Kevin Young. This issue is of great importance to us, and we are appreciative of this opportunity for comment specifically on issues surrounding the TPR. The City Council has recently reviewed this matter and endorsed this letter.

As explained in the May 25th letter from our Planning Division Manager (attached), the practical result of TPR implementation for Corvallis has been to make it extremely difficult for annexations and zone changes to occur, even when they are in conformance with our Comprehensive Plan Map designations. The fact that we have a number of State Highway intersections in Corvallis which are functioning below the accepted mobility standard, means that the potential for a "significant effect" per the TPR can be triggered by a handful of anticipated peak hour trips at one of these intersections. Aside from our difficulties in finding a mechanism that would require mitigation for unknown traffic impacts that would result from future development on an annexed parcel, there is also the question of the rough proportionality of requiring one party to make improvements to the traffic system that are truly the result of the cumulative growth in trips over time at a subject intersection. It appears that the TPR was not written with the Dolan v. City of Tigard decision in mind.

It is our belief that the fundamental goal of OAR 660-012-0060(1) is reasonable. The idea that a jurisdiction should ensure that traffic impacts will be addressed in conjunction with a rule change that would have the potential to create traffic impacts beyond those anticipated by the jurisdiction's Comprehensive Plan and Transportation System Plan is a sound planning concept. However, in this instance, and for many jurisdictions, we are hearing that our acknowledged Comprehensive Plans and adopted Transportation System Plans are not adequate tools to anticipate potential traffic impacts. Given the amount of community

involvement, coordination with State agencies, and staff work that went into those plans, we disagree with that conclusion.

The negative ramifications caused by the implementation of the TPR, as currently written and interpreted, extend beyond our community. Some of the more significant impacts are as follows:

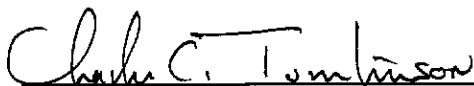
- Subverts Planned Urban Densities - By obstructing the ability to zone properties consistent with comprehensive plan designations, the TPR is obstructing jurisdictions from achieving their planned urban densities, and may be contributing to the sprawl of development into areas that are less subject to the TPR, but which are less able to accommodate increased density.
- Inconsistent with the Oregon Planning Program - Given the issues we have cited, the TPR seems to be in conflict with a number of Statewide Planning Goals, including 2 (Land Use Planning), 9 (Economic Development), 12 (Transportation), and 14 (Urbanization). The rule has severely constrained our ability to meaningfully plan for development in accordance with these goals.
- Discourages Economic Recovery - Potential development, re-development, and business expansion projects along ODOT-affected corridors are strongly discouraged by the prospect of cost-prohibitive, and potentially disproportionate, traffic mitigation measures.

Potential Solution:

Given the issues identified in this letter, and in the May 25th letter from our Planning Division Manager, one relatively simple correction to the TPR, which would fully address our concerns, would be to clarify within the rule that if "rule changes" such as zone changes are done consistent with a jurisdiction's adopted and acknowledged Comprehensive Plan, and if the jurisdiction's adopted Transportation Plan analyzed potential traffic impacts consistent with Comprehensive Plan Designations, either through an average or "worst-case" impact standpoint, then there could be no "significant effect" and analysis of compliance with the TPR would not be warranted. This is our preferred solution to the problem. This approach would also maintain the intent of the TPR to examine potential traffic impacts when contemplated "rule changes" are outside the parameters of adopted Comprehensive and Transportation Plans.

I thank you for your consideration and attention to this matter.

Respectfully,



Charles C. Tomlinson
Mayor, City of Corvallis

cc. Ken Gibb, Community Development Director, City of Corvallis
Richard Whitman, Director, Oregon Department of Land Conservation and Development

DEPT OF

AUG 2010

**LAND CONSERVATION
AND DEVELOPMENT**



**Community Development
Planning Division**
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May 25, 2010

John VanLandingham, Chair
Land Development and Conservation Commission
635 Capitol Street, NE, Suite 150
Salem, OR 97301

Local Implications of Transportation Planning Rule Implementation

Dear Chair VanLandingham and Commissioners,

We are writing to request your attention to a matter that has had a significant impact on the Corvallis planning program over the last few years. That issue is the implementation of the Transportation Planning Rule (TPR) and its effect upon our annexation and zoning district change decisions. This issue also has larger implications for the success of the statewide planning program, as explained in this letter. We ask that you consider a process to evaluate and amend the Transportation Planning Rule to address these issues.

As you are no doubt aware, OAR 660-012-0060(1) states that the requirements of the TPR must be addressed, "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...." This rule makes sense when one thinks about large-scale changes to land use regulations, functional plans, or comprehensive plans that could result in large, system-wide traffic impacts that would be outside the planned parameters of a jurisdiction's transportation system plan (TSP). To ensure orderly development and provision of appropriate transportation infrastructure to support such development, it is reasonable to require reassessment of traffic impacts and to ensure that appropriate mitigation for such impacts be provided in conjunction with large-scale "rule changes."

In the past, when considering zone change decisions that were consistent with Comprehensive Plan Designations, whether stand-alone within the City Limits, or done in conjunction with annexations, a finding that the proposed zoning was consistent with the Comprehensive Plan Designation was sufficient to demonstrate compliance with the TPR. This was because Corvallis' Transportation System Plan (TSP) was based on a model that took into account anticipated

development under Comprehensive Plan designations for the entire Urban Growth Boundary. Our TSP (like most prepared by local jurisdictions, to my knowledge) assumes that anticipated development within the UGB would create an average traffic impact, based on the assumption that there would be some uses that would create high amounts of traffic and others that would create less traffic.

At some point within the last few years our local ODOT representative made it clear that ODOT would no longer accept the argument that if a zone change is consistent with a Comprehensive Plan Designation, then it automatically complies with the TPR. The reason given was the potential for impacts beyond the average impacts assumed in our TSP. ODOT's position was clarified to state that, unless a jurisdiction has prepared a TSP that assumes "worst-case" development from a traffic impact standpoint, then a "significant effect" (per the language of the TPR) could occur. Consequently, the TPR would need to be addressed for these types of applications. Upon further request for clarification, ODOT staff provided a document, developed in April 2006, entitled, "Transportation Planning Rule (TPR) Reviews - Guidelines for Implementing Section 660-012-0060." (see attached excerpt of Section 3.2.14 - Analysis for Zone Changes in Conformance with Comprehensive Plan Amendments) The practical result of this for the City of Corvallis has been to make annexations and zone changes nearly impossible to approve.

The reason for our difficulty with this aspect of the TPR is because of the disconnect between the way the TPR is written and the way in which requirements for transportation system improvements are typically required at the local level. The TPR states that the issue of "significant effect" must be addressed at the time of a rule change - typically these are considered to be zoning district changes, land development code amendments, or comprehensive plan amendments. DLCDC requires that we send a notice when we are considering one of these types of rule changes, and DLCDC staff have been coordinating with ODOT to make sure the TPR is addressed. In order to sufficiently address the TPR we need to be able to demonstrate that if a proposed rule change could result in a "significant effect" that would worsen the performance standard of an ODOT transportation facility below acceptable levels (or that would send any additional trips to an intersection that is already "failing"), then mitigation for that impact is planned and funded, or will be required with development. However, it is not unusual for us to receive annexation applications that include only zone change and annexation requests, with no subdivision or other plan for development proposed in conjunction with the annexation. Actual development on a property that is annexed may not occur until several years after an annexation is approved.

Based on our understanding of "takings" law, in order to be Constitutionally permissible, required improvements and exactions by local governments must have a rational nexus and must be able to demonstrate rough proportionality to the anticipated impacts of a development. Therefore, it does not seem to be legally permissible to require transportation system improvements in association with an annexation/zone change approval if no impacts are associated with the approval. And, as you are no doubt aware, our City and most local

jurisdictions do not have adequate funding to allow these types of improvement projects to be included in our Capital Improvement Program. Therefore, we are largely dependant upon new development to make infrastructure improvements to mitigate for the impacts of the development. Additionally, it is not unusual for an improvement needed to bring a failing intersection back to an acceptable level of service to cost millions of dollars, which is typically well beyond the means available to the applicant for a small annexation. Although the TPR does not appear to address the need for rough proportionality, we certainly do!

Part of our particular problem in Corvallis is that ODOT's performance standards for a number of ODOT facilities and intersections within and around Corvallis are already below acceptable levels. The way the TPR is written, if any rule change might result in sending additional trips to a facility that is already failing, then minimally, mitigation for that impact must be established with the rule change. It is a "straw that broke the camel's back" type of scenario where a potential rule change that could potentially send a handful of trips to an intersection that is already failing would be obligated to provide mitigation to bring the failing intersection to an acceptable performance standard, or minimally, to mitigate for the potential "worst-case" traffic impacts of the rule change.

Some other jurisdictions utilize a process where it is possible to "condition" a zone change decision to require that the TPR be met with subsequent development. However, Corvallis Code does not currently allow us to "condition" a zone change and it is not clear to us how a zone change could be a contingent decision. Therefore, attaching a condition of approval to a zone change decision does not appear to be a viable option for addressing the TPR. Additionally, to condition a zone change such that development on a property could create no more additional trips than were allowed under the prior zoning (until such time as necessary traffic mitigation were in place) would effectively nullify the purpose for the zone change.

Another strategy that has been explored is attaching a condition of approval to address the TPR in conjunction with development on an annexed property through the Planned Development (PD) process. However, Corvallis, like Eugene and some other jurisdictions in Oregon, has been instructed by DLCD that we must remove obstacles to providing "needed housing" in our community through a clear and objective (non-discretionary, non-PD) process. Specifically, we have been required to put in place measures that require us to remove Planned Development Overlays from residential properties at the request of the owner (unless PD development is requested by an owner, or already established on the property through a Detailed Development Plan approval). The upshot for us is that, unlike in the past, the establishment of a Planned Development Overlay on a residential property no longer holds the binding force it once did. We cannot find that simply approving a Planned Development on a property in conjunction with an annexation/zone change application, or establishing a PD Overlay zone, will ensure that the TPR will be addressed through PD conditions. This is because PD approvals can expire and property owners can request to remove PD Overlays in the future and we would be obligated to approve

such a request under the "needed housing" rules. The recent Oregon Court of Appeals decision in Willamette Oaks, LLC v City of Eugene (232 OR App 29) has reinforced the problems with relying on a Planned Development Overlay to address the TPR in the future (that decision found that it was not permissible to delay the determination of whether potential development that would occur as the result of a "rule change" might result in a "significant effect" per the TPR).

Because of these issues, we have been in a bind regarding residential annexation applications for the past several years. One developer in particular has recently applied for the third time to annex particular properties into the City. Although we believe we may have found a way to adequately address the TPR through a planned development approval associated with the annexation and zone change requests, it remains to be seen whether this approach will be successful, and the convoluted process required is not a reasonable model to follow for all future annexations.

Aside from our particular issues with the TPR, we believe there are some larger issues with how implementation of the TPR seems to be inconsistent with some of the other goals of the Statewide planning program:

- Subverting Planned Urban Densities - By obstructing the ability to zone properties consistent with comprehensive plan designations, the TPR, as it is currently being implemented, is obstructing jurisdictions from achieving their planned densities, and may be contributing to the sprawl of development into other areas that are less subject to the dictates of the TPR, but which are less able to handle increased density. In other jurisdictions, we have heard reports that conditional zone changes mandate very low density development until such time that necessary transportation system improvements are completed. As noted previously, many of these necessary transportation system improvements are of such a scope that they cannot be realistically financed by private development or by local governments. Consequently, we seem to be "held hostage" to system improvements over which we have little control.
- Inconsistent with the Statewide Planning Program - Simply put, the Oregon program is predicated on establishing areas for urban growth and allowing for urban-level development in those areas. The current interpretation of the TPR is effectively denying jurisdictions' ability to implement urban-level development within urban growth boundaries.
- Discouraging Economic Recovery - Potential projects along ODOT-affected corridors have been discouraged by the prospect of addressing cost-prohibitive mitigation measures. This is especially true for small business owners.

- Inconsistent with the Original Goals of the TPR? - In its infancy, the Transportation Planning Rule was touted as a set of regulations designed to reduce vehicle miles traveled by promoting alternative modes of transportation, etc. It is unclear how this has evolved into a regulation that seems to be designed to facilitate the flow of vehicles and freight along state highways. This goal also seems to run counter to recent statewide initiatives to reduce greenhouse gas emissions, etc. Typically, building increased highway capacity results in more vehicles on the highways: "If you build it, they will come."

In conclusion, we ask that you consider initiating a process to evaluate and amend the Transportation Planning Rule to address the issues raised in this letter. Clearly, there is a need for a larger funding solution to provide for needed improvements to state highways; however, holding local jurisdictions "hostage" until this issue is resolved is not a sustainable solution (in either sense of the word). Please feel free to contact me if you have any questions regarding the issues we've identified.

Respectfully,



Kevin Young, AICP
Planning Division Manager
City of Corvallis, Planning Division
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kevin.young@ci.corvallis.or.us

cc. Ken Gibb, Community Development Director, City of Corvallis
Richard Whitman, Director, Oregon Department of Land Conservation and Development

Oregon City Planning Directors Association

August 30, 2010

Land Conservation and Development Commission
635 Capitol St. NE, Suite 150
Salem 97301-2540

Re: Request to amend the Transportation Planning Rule (TPR).

Dear Commissioners,

The Oregon City Planning Directors Association (OCPDA) requests the Land Conservation and Development Commission acknowledge the need to amend the TPR and direct both DLCDC and ODOT to make the needed amendments. As the TPR is currently interpreted and applied, it is creating a chilling effect upon cities' desire to, at minimum:

1. Revise and update comprehensive plans to address land supply issues;
2. Revitalize downtowns;
3. Implement zone changes that would be supported by State Planning Goals (i.e. high density zones, mixed use zoning districts, etc.)
4. Facilitate economic development; and
5. Utilize creative and collaborative solutions to address transportation infrastructure issues, including phasing of improvements.

The OCPDA supports the TPR and the very reasons it was established; however, recent changes in its interpretation has limited the methods cities can use to comply with the TPR while balancing local planning and development needs. For these very reasons the OCPDA formally requests the Land Conservation and Development Commission amend the TPR. If you should have any questions, please contact me via email at ayap@ci.damascus.or.us or by phone at 503-658-8545.

Respectfully,

Anita Yap, President
Oregon City Planning Directors Association



MEMORANDUM

City of Eugene
99 West 10th Avenue
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www.eugene-or.gov

Date: August 27, 2010

To: Land Conservation and Development Commission

From: Alissa Hansen, City of Eugene Planning Division

Subject: Transportation Planning Rule

Please consider the attached letter from the City of Eugene's Planning Director at your upcoming September 1, 2010 meeting, under agenda item #4, regarding the Transportation Planning Rule. This letter was submitted to Richard Whitman, Director of the Department of Land Conservation and Development earlier this year, in advance of a discussion on the Commission's policy agenda for the biennium.

The City appreciates the opportunity to provide comments on this important topic. I plan to attend your September 1, 2010 meeting to speak about some of our recent experiences with the Transportation Planning Rule.



**Planning & Development
Planning**

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May 28, 2010

Richard Whitman, Director
Department of Land Conservation and Development
635 Capitol St. NE, Suite 150
Salem, OR 97301-2540

Subject: Transportation Planning Rule (TPR) comments

On June 2-4, 2010, the Land Conservation and Development Commission (LCDC) will be holding their next regular meeting to take action on policy agenda items for the remainder of the biennium. We understand that one topic that will be discussed is the Transportation Planning Rule (TPR). In anticipation of this discussion, the Department of Land Conservation and Development (DLCD) and LCDC have encouraged local jurisdictions to share their concerns regarding the TPR. We appreciate this opportunity and would like to provide the following comments in hopes of improving the effectiveness of the TPR.

Background

As DLCD staff is aware, implementation of the TPR over the last few years has been an unpredictable process to navigate, in part due to the various court decisions that have been issued. As it stands today, the TPR poses some serious implications for local jurisdictions in their efforts to plan for, and accommodate, growth in their communities. These circumstances are exacerbated by the fact that local governments are struggling financially to provide a variety of services to their communities. This includes the provision of adequate transportation facilities. The TPR is predicated on the concept that state, county and city governments will have all necessary transportation facilities in place or programmed (with funding strategies) for their respective planning periods. We understand that the HB 3379 committee may be addressing the question of adequate funding. Needless to say, the ability to accomplish this is an increasing challenge.

In Eugene, there are several city, county and state transportation facilities that are currently (or nearly) falling below the facility's performance standard. While some of these facilities may benefit from planned improvements included in our local Transportation System Plan (TSP), others are yet to be addressed. While some local streets have been problematic in evaluating the TPR, by in large, Eugene's biggest challenge has been related to ODOT facilities, as well as some Lane County facilities. Where no future improvements are planned, new development or redevelopment has been severely restricted, if not completely halted.

While the City of Eugene fully supports the intent and purpose of Goal 12 and the TPR, recent court rulings have created unintended consequences that in some cases, seem to be in conflict with other statewide planning goals.

Current Challenges

The current application of the TPR poses challenges both to local governments as they plan for growth, as well as individual property owners who are attempting to further develop their land. Following is a brief discussion of those challenges:

Privately Initiated Amendments: When reading the TPR, it appears that the main focus of the rule was to assure that larger scale changes in a community's land use plans require careful consideration of corresponding transportation impacts. Under these circumstances, one would expect that a local government would be undertaking some form of comprehensive amendment process, possibly involving its TSP as well. For privately initiated amendments, this is not the case. Typically, such requests are site specific and limited in scope. Under these circumstances, the comprehensive nature of the TPR does not match the realities of small scale, quasi-judicial proposals. This is especially true for zone changes.

OAR 660-012-0060(1) states that the TPR applies to amendments of functional plans, an acknowledged comprehensive plan or land use regulation. While previous rulings have determined that a zone change is considered an amendment of a land use regulation, we believe that the TPR, as written, does not account for the realities associated with typical zone changes requests.

The amendments described above address fundamental changes to a local government's adopted plans (Amendments of comprehensive plans and local land use or zoning codes). A zone change, by definition, is simply a request to conform a property's zoning to an adopted and acknowledged comprehensive plan designation. Regardless of this viewpoint, application of the TPR at the time of zone changes has created circumstances we believe are contrary to the state's objectives.

With respect to privately initiated actions, an applicant is responsible for bringing an entire transportation facility into compliance with accepted standards, if that facility is not identified for improvement on the city's TSP. While the TPR allows the city to lower its level of service, the prospect of amending the TSP in response to a simple zone change request is infeasible. Expecting other agencies to do the same for their respective facilities is even more unrealistic. This approach essentially means that one single property owner must bear the responsibility of mitigating a failing facility [as prescribed under 0060(2) or (3)]. In the case of ODOT facilities, the typical mitigation necessary far exceeds the capacity of a single property owner. In Eugene, this has resulted in applications either being withdrawn or severely reduced in scale to avoid mitigation.

Growth Management Planning: Eugene is in the process of developing its strategy for accommodating its 20 year growth needs. The challenge of ensuring adequate city transportation facilities to serve this growth is substantial, especially when many facilities are currently at, or near capacity. While the TPR does provide some limited relief valves (660-012-0060(2)(d) and 660-012-0060(6)), Eugene's primary challenge has been with ODOT facilities, and to a lesser degree, county facilities. While the city works closely with these agencies on transportation issues, it has little control for ensuring long term solutions on their respective facilities. In the absence of any additional flexibility within the TPR, Eugene may be precluded from pursuing strongly supported efficiency measures for growth within its UGB if these strategies affect already impacted facilities.

Unintended Consequences

Based on these and other circumstances, application of the TPR in Eugene is resulting in the following unintended consequences:

Discourages economic recovery

Given the circumstances above, potential projects along certain ODOT affected corridors have essentially been stifled at the prospect of addressing cost prohibitive mitigation measures. This has been especially true for small property/business owners. Several projects (both residential and commercial) have been pursued in Eugene, but ultimately withdrawn, solely because of the prospect of TPR mitigation. Unfortunately, the very areas in Eugene that are more readily able to accommodate additional growth or redevelopment are located in the vicinity of these impacted facilities.

Promotes sprawl

In order to avoid cost prohibitive mitigation, applicants that do proceed are scaling back or limiting their development requests to avoid the requirement for mitigation, resulting in low intensity development. This is especially frustrating when both the city and the applicant are attempting to promote efficient use of the land within the UGB only to find a developer reluctantly reduce the level of development in order to avoid costly mitigation. A recent example of this is a comprehensive plan amendment and zone change approval for a residential parcel. In order to avoid mitigation requirements, the applicant proposed to condition the decision so that the resulting number of units would not exceed 1 unit per acre. Instead of pursuing a project that could yield up to 350+ units (as allowed under the city's adopted plans), future development will be limited to 28 units.

In another instance, a 23 acre parcel designated for high density residential development in the City's Metro Plan and neighborhood plan reduced proposed density by over 300 dwelling units (13 units per acre) after realizing the mitigation costs necessary to satisfy the TPR. The resulting density is slightly above the minimum required for the high density designation. The loss of these 300 units will eventually need to be made up elsewhere.

Continued development scenarios such as this will ultimately require Eugene to consider larger UGB expansions in the future.

Precludes communities from balancing transportation and land use objectives

As currently applied, the TPR allows very little, if any, opportunity for local governments to balance its land use objectives with the transportation requirements specified in the TPR. For example, comprehensive plans and neighborhood plans that were adopted and acknowledged by the state cannot necessarily be relied upon as a blueprint for future growth. In essence, the TPR prohibits consideration of previously adopted plans (even if these studies contained transportation considerations) when evaluating a zone change request. For zone change requests that are simply attempting to bring properties into conformity with the adopted comprehensive plan designations, the TPR, not the comprehensive plan, is the primary determinant of future growth potential. Under this approach, the TPR essentially trumps any adopted land use goal, objective or policy.

Limits growth management solutions

The current application of the TPR raises serious concerns for how cities can plan for future growth. Eugene is in the process of evaluating how to accommodate its future housing and employment needs. As Eugene looks at efficiency measures for how to grow more densely within our UGB, we are already seeing many areas of the city potentially eliminated from consideration simply because they involve failing or near failing ODOT or county facilities with no programmed improvements. These circumstances can be especially frustrating when considering growth scenarios that emphasize less dependence on vehicle use. The flexibility allowed in the TPR (660-012-0060(6)), while helpful, provides minimal assistance in satisfying the TPR.

Opportunities for Improvement

Based on the experiences in Eugene, we would like to offer the following suggestions on how the TPR might be improved:

1. **Exempt Zone Changes:** As noted above, Eugene believes that zone changes should not be considered an "amendment of a land use regulation". We have found that application of the TPR at the time of zone change is impacting the state's land use and growth management objectives disproportionate to the potential transportation benefits that may be achieved (see comments above). While it might seem advantageous to mitigate potential traffic impacts before any actual development is proposed, such mitigation rarely occurs, as applications are either abandoned or scaled back significantly to avoid any mitigation.
2. **Flexibility to provide mitigation over the planning period:** Greater flexibility in both the thresholds for determining impact and the mechanisms for implementing mitigation measures would help realize feasible improvements while accommodating growth. Areas to address could include:
 - Clarify/Modify the term "Significant Affect": The TPR provides minimal guidance as it relates to determining "significant affect". Eugene has based its determination on "reasonable worst case scenarios" which is not defined in the TPR. While some clarification of "significant affect" would be helpful, the larger concern is determining a reasonable level of impact in the absence of any actual project. Without the benefit of having development proposals to evaluate, these hypothetical scenarios can vary greatly. Any potential definition should account for projects that may be higher or lower in intensity over time (not simply worst case scenarios for every proposal).
 - Work with ODOT to modify their mobility standards (Volume to capacity ratio) to be less restrictive and/or balanced with other land use objectives.
 - Minor vs. major transportation Improvements: Consider eliminating this distinction or modifying it at a minimum, as it is referenced in 660-012-0060(2)(e). Eugene has had 2 recent examples where mitigation was proposed by an applicant, that if determined to be major improvements under 0060(2)(e), could have precluded the mitigation from being provided because it would require an amendment to the city's TSP (infeasible during a zone change process). If the affected agency supports the mitigation proposal, whether the mitigation is minor or major should be immaterial.
 - Phased Compliance: Consider amendments to allow greater flexibility in phasing mitigation. Consider allowing projects that are identified in adopted transportation system plans, whether funding is secured or not.

3. **Make the burden of mitigation proportional to the impact:** Under the current TPR, the rule has no accommodation for considering the proportional impact of a particular request. In essence, the rule functions under a "last straw" concept. If a transportation facility is near failing and the next request pushes the impact beyond acceptable levels, that project is responsible for bringing the transportation facility up to the identified performance standard. Particularly when ODOT facilities are involved, there are rarely modest (and proportional) mitigation measures available to a developer that would bring the facility up to the identified performance standard to restore capacity. Rather, it is more common to see the necessary mitigation be a substantial project. For most applicants, these choices are completely infeasible and disproportionate to their project.

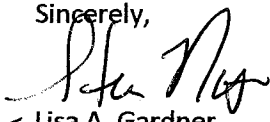
Given that these circumstances run contrary to other laws that limit a local government to imposing proportional mitigation (e.g. Dolan), we encourage the state to consider an amendment that bases the burden of mitigation in some proportional way. One option would be to consider a "fee in lieu" approach if no proportional mitigation is available.

4. **Balance the needs of ODOT facilities with other statewide planning goals:** Under its current application, the TPR provides minimal means to balance the needs of other statewide planning goals, in particular Goals 9 and 10. While we support the need for maintaining effective and functioning transportation systems, we do not believe that it is in the best interest of our community or the state to do so at the expense of sound growth management strategies. Given the limited resources to local governments, as well as the state, we are concerned that under the current approach, TPR compliance may lead cities to make decisions based predominately on a path of least resistance (e.g. avoids substantial transportation mitigation). We would encourage LCDC and staff to consider greater flexibility in the TPR to enable actions that balance the objectives of Goals 9 and 10 with those in Goal 12.

While we realize that our comments call for a more comprehensive assessment of the TPR, we do believe that left unchecked, the circumstances we've described will become more common place throughout the state. Eugene has had the unenviable position of being at the leading edge of these impacts, as a result of recent court decisions in our community. However, we are hearing from other communities who are beginning to experience similar impacts.

We appreciate your willingness to listen and look forward to the opportunity of working with your office on potential solutions.

Sincerely,


for Lisa A. Gardner
Planning Director
City of Eugene

cc: John VanLandingham, Chair, LCDC
Linda Ludwig, LOC



COUNCILOR ROD PARK, DISTRICT 1

John VanLandingham
Lane County Law & Advocacy Center
376 E. 11th Ave
Eugene, OR 97401

Dear Mr. VanLandingham:

As a new member of Local Officials Advisory Committee (LOAC), I was pleased to have the chance for introductions and discussion at the joint LOAC/ Land Conservation and Development Commission (LCDC) meeting on July 22nd. I was especially pleased that the Commission was interested in hearing the experiences that LOAC members have had in implementing the portions of the Transportation Planning Rule (TPR) concerning the effect of land-use changes on state roads.

I would like to take the opportunity to reiterate my testimony in writing and echo what other LOAC members said regarding the Transportation Planning Rule. While I respect the need to preserve the capacity of the state road system, particularly outside of urban areas, changes are needed to the TPR to support the desired outcomes for the Metro region, including vibrant, active communities and reduced greenhouse gas emissions. To meet the TPR, communities in the Metro region have turned to options such as downzones in centers and corridors on top of committing additional investments for vehicle traffic, rather than alternate modes. Possible solutions include revising the TPR language and trip calculations methods to better recognize mixed-use development advantages; in addition to recognizing the effects that compact urban form can have at the system level, not the specific intersection level. In the Portland metropolitan area, as elsewhere in the state, some congestion at peak times will be necessary, as it is a sign of a healthy economy and lively centers. In these difficult economic times, we do not want to inhibit our ability to support employment and residential development in urban areas due to a TPR requirement.

I look forward to future opportunities to discuss other issues of special concern to the metro area, including ways to streamline our respective roles with local jurisdictions and explore new approaches to greenhouse gas emissions through our joint work on House Bill 2001.

Again, thank you for the opportunity for communication between local officials and the Commission.

Sincerely,

A handwritten signature in cursive script that reads 'Rod Park'.

Rod Park
Metro Councilor District 1

cc: LOAC members
Richard Whitman

DEPT OF

AUG 20 2010

LAND CONSERVATION
AND DEVELOPMENT