

Joint-Subcommittee of the
Oregon Land Conservation and Development Commission
and the
Oregon Transportation Commission



From LCDC:

Hanley Jenkins
Greg Macpherson
Marilyn Worrix



From OTC:
David Lohman
Mary Olson

Recommendations on Amendments to Transportation Planning Rule 0060 and Oregon Highway Plan

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I. Summary

The Land Conservation and Development Commission (LCDC) and the Oregon Transportation Commission (OTC) established this joint subcommittee in response to concerns from local governments and others, and a recognition that existing rules and plans are having unintended consequences. Specifically, the interaction of Section 0060 of the Transportation Planning Rule (TPR) with the mobility standards in the Oregon Highway Plan (OHP) can complicate the local process to balance multiple objectives. These objectives include economic development, compact urban development and the need for additional transportation infrastructure to keep highways functioning, which brings benefits to the state overall and especially to traded-sector business activity. The discussion about balancing, clarifying and streamlining TPR 0060 and OHP mobility standards was organized around three questions:

(1) *Whether to initiate formal rulemaking on OAR 660-012-0060 and/or whether to request that the OTC consider amending related provisions of the Oregon Highway Plan.*

The committee recommends that LCDC initiate rulemaking on TPR 0060 (OAR 66-12-0060). The committee recommends that OTC initiate amendments to the mobility standards in the OHP and associated guidance documents (e.g. OHP Mobility Standard Guidelines).

(2) *What are the highest priority issues that should be addressed?*

The committee recommends that the topics listed below be included in the scope for an initial phase (approximately 6 months) of amendments. Including a topic on the list does not indicate that the committee has reached a conclusion on the merits of any specific proposed amendment, but rather that the committee believes it is an important and potentially fruitful topic to pursue. The topics are divided into two categories based on whether it would be primarily addressed through the TPR or through the OHP; however, many topics will involve both TPR and OHP.

A. TPR Amendments

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- B3. Streamline alternate mobility standard development
- B4. Corridor or area mobility standards
- B5. Standardize a policy framework for considering measures other than volume to capacity ratios (v/c)

(3) *How should the process be structured to recognize the joint authority of LCDC and OTC concerning these issues?*

The committee recommends that these two lists be addressed in parallel coordinated processes with several check-in points, including further meetings of the committee. Draft amendments would go to the respective bodies for formal hearings with a target date of December 2011.

II. Background

Concerns about TPR 0060 and OHP mobility standards have been expressed in several ways:

- House Bill 3379 from the 2009 legislature
- Request to include TPR 0060 on the LCDC policy agenda in June 2010
- Testimony to LCDC in September 2010 regarding HB 3379 and broader issues
- Rulemaking petition from League of Oregon Cities in November 2010

To address these concerns a joint-subcommittee was appointed with three LCDC commissioners (Hanley Jenkins, Greg Macpherson and Marilyn Worrix) and two OTC Commissioners (David Lohman and Mary Olson).

The committee held three meetings to gather information and draft the recommendations contained in this report. The first meeting was held January 21, 2011 and included background presentations by staff and a panel discussion with three city planners, a city attorney, a regional planner and a traffic consultant. The second meeting was February 15 and included discussion of a draft framework of issues and options and approximately three hours of public testimony from fourteen people ranging from city planners to advocacy organizations. The third meeting was March 30 and was devoted to discussion on this recommendation.

The committee considered at least fifteen letters previously submitted to LCDC on these issues, and the committee received over twenty pieces of written testimony during their proceedings.

To gather input from developers, the committee chair (Greg Macpherson) and staff attended a joint meeting of the Retail Task Force, the International Council of Shopping Centers and the Commercial Real Estate Economic Coalition on March 17. Participants expressed concerns about both the process for TPR 0060 analysis and the level of mitigation ultimately required. There was a strong desire for a quicker process with more certainty in the outcome. There was a willingness

to provide a reasonable level of mitigation, but concern that the requested mitigation was at times unreasonable and not based on objective criteria.

To help assess the potential priorities, an online survey was conducted. The survey invitation was sent out to the email distribution list of people who had participated in the process or requested being on the list. It was also sent out to the Oregon Planners Network, a general email list. Eighty-four responses were received. The topics with the most support in the survey were incorporated into this recommendation.

Additional background information is available online:

http://www.oregon.gov/LCD/meetings.shtml#Joint_Subcommittee_TPR__OHP

III. Detailed Recommendations

(1) Whether to initiate formal rulemaking on OAR 660-012-0060 and/or whether to request that the OTC consider amending related provisions of the Oregon Highway Plan.

The committee received considerable testimony that the combination of TPR 0060 and OHP mobility standards is leading to unintended consequences, with two general themes frequently mentioned. The first theme is that economic development objectives should be better balanced with transportation performance, but testimony indicated that in practice the TPR and OHP are giving precedence to transportation. The second theme is that the transportation requirements can make it more difficult to increase development intensities, even though the statewide planning goals call for compact development. This is especially noticeable in urban centers that are targeted for the highest intensities of development, but also have the most traffic congestion. Based on these unintended consequences, the committee concluded that amendments and related work are needed.

(2) What are the highest priority issues that should be addressed?

A. TPR Amendments

A1. Exempt rezonings consistent with comprehensive plan map designations

This proposal was one of the most commonly suggested in testimony and the survey. The concern is that when an acknowledged comprehensive plan designates land for a particular purpose, the local government should be able to rely upon that designation and should not be required to make additional findings at the time of rezoning to be consistent with that designation. This issue is related to item A4 in this report "Address traffic at time of UGB expansion."

Testimony indicated that there is uncertainty and inconsistent interpretation about whether TPR 0060 must be applied for a rezoning when the new zone was assumed in the analysis for the transportation system plan (TSP) because the land was designated for that use in the comprehensive plan. In some cases, analysis at the time of zone change, and mitigation, has been required. The committee recommends that TPR 0060 be amended to exempt cases where the local government can make findings that transportation analysis has already been done (either in the TSP or at the time the comprehensive plan designation was set). It will be important in the

rulemaking process to define the type and level of prior planning and analysis that qualifies for this exemption, and it may be appropriate to define a time limit so that prior planning and analysis that is predominantly out of date does not qualify for the exemption.

Another option suggested in testimony was a broadly written exemption for any zone change consistent with the comprehensive plan map designation. This exemption would not require findings about whether transportation analysis was done previously. The committee does not support this blanket exemption.

A2. Practical mitigation for economic development projects

This proposal would allow consideration of the tradeoffs between economic development and transportation impacts to determine the appropriate level mitigation. In some cases it may be acceptable to allow transportation performance to fall below the standard so as to accomplish economic development goals. The concern is that the current rules and standards do not readily allow balancing these considerations. A related concern is that there is a lack of predictability in the outcome and process.

The definition of economic development in the rules implementing House Bill 3379 (OAR 731-017) would be a good starting point to determine which projects would qualify, but it would need to be reviewed to ensure it is appropriate for this purpose. The amendment would not completely eliminate the requirement to provide mitigation for traffic impacts, but could allow development to proceed with a lower level of mitigation. Traffic analysis would be required to determine the overall impact, and the net impact with the practical mitigation. Practical mitigation could also include phasing of construction, even in cases where TPR 0060(3) would require immediate mitigation. Further work is necessary to define the process that local and state governments would use to quickly reach agreement on the level of mitigation.

Another concern is that transportation projects to add capacity do not always come in small increments. Sometimes these improvement projects are larger than the impact of any one development. Practical mitigation may include a mechanism for payments towards a large transportation project in lieu of construction by an individual developer.

A3. Exempt upzonings in urban centers

This proposal is based on the principle that intense development within UGBs, and especially within central locations, is actually better for the overall transportation system and providing efficient services when compared to the same amount of development spread out along the urban fringe, because it reduces trip lengths and increases the options for walking, biking or transit. The concern is that commonly used analysis methods and adopted performance standards do not fully reflect these benefits. Therefore the amendment would eliminate the requirement to do traffic congestion and mobility analysis for these upzonings. Analysis for safety and network completeness for all modes would still be required.

It would be important to define the specific areas or types of areas to exempt. The definition will involve higher densities, mixed uses, and multi-modal accessibility. Part of the definition could be that the local jurisdiction has prepared a plan for the area as a center. Special Transportation Areas (STA) designations may be another factor to consider. It would also be important to define the types of upzonings that would be exempt to ensure that the upzoning supports the

transportation benefits. This amendment should be reviewed when methodologies and performance standards have improved so the benefits of development in centers are accounted for. In that case the exemption might no longer be needed because upzonings in centers would show a positive effect on transportation and would not need to mitigate a “significant effect” under TPR 0060.

In some cases it could be more appropriate to allow a trip reduction credit greater than the 10% allowed in TPR 0060(6), rather than a complete exemption. This could be appropriate in areas that do not meet all of the requirements for a defined center, but are near a center or meet some of the requirements.

A4. Address traffic at time of UGB expansion

This issue was one of the most commonly mentioned in the survey. The concern is that transportation performance is best considered at a more general level when expanding an urban growth boundary (UGB) rather than when rezoning to implement the plan. Currently the rules for UGB expansions require that transportation in general be considered as one of the location factors (OAR 660-024-0060(6)); however, there is an exemption (OAR 660-024-0020(1)(d)) stating that the specific requirements of TPR 0060 do not have to be applied if no additional development is allowed (e.g. prior county zoning retained). It is possible that addressing this issue would lead to amendments in the UGB rules (OAR 660-024); therefore, the rulemaking notice should open the portion of Division 24 that relates to TPR.

An important issue in the rule-making process will be the appropriate level of detail for transportation planning at the time of UGB expansion. The committee does not support requiring analysis at the level typical for TPR 0060 analysis. The committee supports considering transportation broadly (e.g. relative costs, safety, capacity, multi-modal networks) at the time of UGB expansion.

A5. Technical clarifications: TSP update and multiple planning periods

These two issues scored relatively high on the survey. They would not involve major shifts in policy, but would clarify issues that could otherwise cause problems in specific situations.

The issue with TSP updates is that it is not clear whether TPR 0060 applies. TPR 0060 does not apply when establishing a TSP. It does apply to a minor amendment (e.g. to remove a planned facility) since amending the TSP is a comprehensive plan amendment. In past practice it has not been applied for major TSP updates (i.e. updating the plan horizon year), but this is not explicit in the text.

The issue with multiple planning periods comes up for cities within a metropolitan planning area where the Regional Transportation System Plan has a different horizon than the city’s TSP. TPR 0060(1)(c) should be clarified to define what is meant by “the planning period identified in the adopted transportation system plan” when there are multiple TSPs.

B. OHP Amendments & Guidance Documents

Much of the discussion and testimony on OHP-related issues have focused on the need for additional flexibility in OHP mobility standards and concerns on limitations of peak hour v/c.

There are several different potential work areas to address mobility standard issues discussed below. These are designed to encourage the use of flexibility both in existing policy and through new or amended policies to better balance transportation, land use and economic development. It is also important to note that other ODOT work may lead to potential OHP amendments in the areas of access management, implementation of the Oregon Freight Plan and tolling policy development.

B1. Exempt proposals with small increase in traffic

There is concern that an increase of a single trip as a result of a proposed zone change or change in land use regulation is enough to qualify as a “significant” effect under TPR Section 0060, even though a single trip would not be “significant” in ordinary usage of the term. A provision could be considered that if additional trips resulting from the amendment are less than a defined threshold, then it would not be a significant effect for the purposes of TPR analysis on state highways. It may be possible to make this change through amendments to the OHP and/or ODOT guidance (in which case it would be a definition clarification, rather than a true exemption). It may, however, be necessary to amend the TPR to accomplish this, and a legal opinion will be needed to make the determination. Also worth considering would be amendments to the TPR to set a threshold for significance on local streets.

This definition of significant effect would provide relief for smaller projects and may better promote redevelopment activities with modest trip increases. It would allow ODOT to focus more resources on working with projects that would likely cause larger impacts. It would also free up resources for more advanced planning work encouraging a proactive approach to mobility and development issues. It would promote more efficient timing in development review. ODOT should include criteria based on the function of the state facility (e.g. interchange area functions) in these exemptions.

ODOT should consider OHP policy or procedural changes to exempt proposals with small increases in traffic from the definition of significant effect. This will need to include consideration of whether specific state highway functions should be excluded from this policy or procedural change (or if a different threshold should apply in different situations) and how safety issues should be addressed.

B2. Use average trip generation, not reasonable worst case

This issue was one of the most commonly mentioned in testimony and the survey. The concern is that when projecting the traffic that could result from a rezoning, the analysis must assume full build-out of the area with the types of development that would generate the most traffic, or at least assume the highest reasonable development. “Reasonable worst case” is not defined nor required by the TPR and OHP. The requirement comes from case law in Land Use Board of Appeals (LUBA) decisions. It may be more realistic to assume average trip generation because not all development leads to worst case traffic generation. This is especially the case for legislative amendments covering larger areas as opposed to quasi-judicial applications involving a single parcel and a specific proposed use.

ODOT should consider revising analysis procedures at both the system planning level (e.g. TSP development) and for TPR Section 0060 analyses to use average trip generation rates rather than reasonable worst-case scenarios, and to define the types of proposals where average trip

generation will be used. It is possible that fully implementing these revisions will require amendments to the OHP or TPR. If so, these amendments should be included in the initial phase of amendments.

B3. Streamline alternate mobility standard development

Alternate mobility standards provide one of the primary areas for flexibility in the OHP. The concern is that timelines and processes for alternate mobility standard development are too complex and time consuming for it to be a fully effective tool in a number of situations.

ODOT should review expectations for alternate mobility standards and streamline their development through enhanced guidance and staff procedures as well as modified policies if needed to make this a more effective, efficient and predictable tool.

B4. Corridor or area mobility standards

Current methodologies focus the evaluation of congestion at an intersection level (or even each movement within an intersection). There has been concern expressed that this technique does not accurately reflect the wider impacts of congestion, which may be better measured (and perhaps mitigated) beyond the development site over a wider corridor or area (including areas off the state highway system), rather than at a point-specific or intersection-specific location. The OHP currently provides flexibility for a corridor or area level mobility standard through the development of alternate mobility standards. However, there are a number of questions surrounding their development and implementation that should be addressed to expand and promote this flexibility. Questions on how to best and fairly mitigate over a corridor or area should also be considered.

ODOT should consider changes to Agency guidance and procedures on development and implementation of corridor or area-based mobility standards. Options for mitigation will be a key aspect of this work and may lead to policy modifications. Enhanced options for corridor and area-based standards and mitigation may be tied to developing measures outside of v/c ratios as discussed in more detail below.

B5. Standardize a policy framework for considering measures other than volume to capacity ratios (v/c)

Volume to capacity ratios measured during peak hours are not working well enough in highly congested conditions, making application difficult in many areas - especially in large urban areas. There are also concerns that v/c based measures focus only on site-specific locations and lack the multimodal considerations that other measures would provide. Work is needed to provide a policy framework outside of, and supplemental to, peak hour v/c ratios that provide additional flexibility, perform better in highly congested conditions, and provide an adequate measure of mobility and functionality for the state system and statewide objectives.

ODOT should analyze and implement options for expanded measures beyond and/or supplementing peak hour v/c. This process would build on initial results from the current ODOT Research Project SPR 716: "Development and Sensitivity Testing of Alternate Mobility Metrics" as well as additional Agency work. OHP policy changes should be considered to provide a policy framework that expands the flexibility for additional measures and provides for consistent applications through a number of situations across the state. Technical work, procedures and

methodologies would likely be a longer term effort to better implement policy changes. The Portland metro area may be one of several early focus areas for this work.

(3) *How should the process be structured to recognize the joint authority of LCDC and OTC concerning these issues?*

The committee recommends that the two lists of topics be addressed in parallel coordinated processes with several check-in points. Draft amendments would go to the respective bodies for formal hearings with a target date of December 2011.

A. Process for TPR Amendments

LCDC will need to appoint a rulemaking advisory committee (RAC) consisting of 12 – 15 members representing a wide range of interests including:

- City planners (a variety of sizes and regions)
- County planners
- Metropolitan planning organizations
- Developers
- Consultants
- Freight
- Advocacy organizations
- Citizen Involvement Advisory Committee (CIAC)
- Small business representative (especially important for the fiscal impact statement)
- State agencies: DLCD, ODOT, Business Oregon

The RAC would be chaired by an LCDC commissioner. The RAC would meet monthly to prepare draft amendments and to review the fiscal impact statement.

Once draft rules have been prepared by the RAC, they would be sent to the OTC advisory groups described below for review and comment to help coordinate the two processes. The target is to hold the LCDC hearing and possible adoption of TPR amendments in December 2011.

B. Process for OHP Amendments & Guidance Documents

OHP tasks will be based on input received to date, including through the committee process, and rely on existing advisory groups for input including Area Commissions on Transportation (ACTs), OTC-advisory committees (e.g. Freight Advisory Committee) and stakeholder groups. Policy changes will include opportunities for public review and input. More focused work on guidance and procedure documents will be managed through internal advisory committees and technical teams with expertise in these areas. When OHP amendments have been drafted, they will be sent to the RAC appointed by LCDC for review and comment to help coordinate the two processes. OTC consideration of policy amendments is targeted for December 2011. Potential tasks involving guidance and procedures would be completed concurrent with work on policy issues.

C. Role of the joint-subcommittee of LCDC and OTC

The committee will continue to be involved, but will not be the primary body for developing draft amendments. Meetings will be held approximately every three months to ensure that work is coordinated and progress is consistent with the committee's recommendations. The next meeting (targeted for July 2011) would review initial drafts for most of the recommended topics. The following meeting (targeted for September/October 2011) would look at drafts that have been refined and are ready for public involvement and outreach.