CENTRAL OREGON CITIES ORGANIZATION

BEND, CULVER, LA PINE, MADRAS, MAUPIN
METOLIUS, PRINEVILLE, REDMOND, SISTERS

May 20, 2010

John VanLandingham, Chairman and Commission Members
Land Conservation and Development Commission

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

RE: Request for TPR amendments

Chair VanLandingham, Director Whitman, and Commission Members,

It has come to our attention that the Land Conservation and Development Commission is considering policy agenda items for the remainder of the biennium. The Central Oregon Cities Organization respectfully requests that the Commission investigate and explore amendments to the DLCD's Transportation Planning Rule.

It has been five years since the LCDC implemented rule changes to the Transportation Planning Rule (TPR) resulting from the Jaqua v. City of Springfield decision issued by the Oregon Court of Appeals. In this five year period, many cities within the Central Oregon Cities Organization have encountered difficulty in satisfying TPR requirements in contemplation of reasonable development proposals.

The TPR changes implemented in 2005 have raised the bar to an unachievable level and have resulted in a variety of unintended consequences, most significantly missed economic development opportunities. The 2005 changes, primarily those relating to "reasonably likely" funding of planned projects and concurrency (timing) of projects to coincide with perceived system need, seemed appropriate in the greater context of traditional public facilities planning.

However, when coupled with the reality of …

- Lack of state transportation funding to improve state highway facilities, which in many cases are functionally obsolete.
- Lack of legislatively approved funding mechanisms to generate additional funds to construct needed "big-ticket" infrastructure improvements.

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- Additional state land use rules which mandate urban related transportation solutions within urban areas, yet require urbanization of non-resource lands irrespective of transportation system capacities or deficiencies.
- Unattainable state mobility standards based on archaic traffic engineering principles which lack system or corridor perspective.
- State access management and design standards which produce unwieldy and unreasonable solutions within urban areas.
- Highway and Rail proximity issues adding significant cost to projects and limiting local grid connectivity.

… the TPR has become an obstacle to economic development rather than a planning tool as intended.

The Central Oregon Cities Organization is a proponent of good transportation planning and we recognize the nexus of land use and transportation system impact. While we do not suggest eliminating the TPR, we do strongly feel that the rule needs to be amended in reflection of the many other rules and realities that local governments encounter when balancing the needs of land use (economic development), congestion and financial resources.

Respectfully,

George Endicott, Chair
Central Oregon Cities Organization

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TOM GREENE
City Councilor

ORAN TEATER
City Councilor

ERIC KING
City Manager

May 19, 2010

John VanLandingham, Chairman and Commission Members
Land Conservation and Development Commission

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

RE: Request for TPR amendments

Chair VanLandingham, Director Whitman, and Commission Members,

The City of Bend is providing input regarding the Transportation Planning Rule (TPR) in anticipation of your rule making discussion at your June 2010 meeting in John Day.

The City of Bend understands and supports the intent of the TPR, however finds that its implementation is an obstacle to providing local economic development opportunities for existing and new businesses in Oregon. The challenge can be traced to the amendment to the TPR (OAR 660-12) in 2005 mandating that all projects necessitated by zone change applications be fully funded by the end of the 20-year planning period. As a result, any economic development project which causes an 'impact' on a state highway system must demonstrate how it will 'reasonably' pay or mitigate for large and expensive improvements which, typically on a state highway, are beyond the financial capabilities of most communities.

It is important that municipalities mitigate their impacts to the state highway system, but we need flexibility in when and how we fund those mitigations, and it is critical that the State partner with local entities in funding as well as finding alternative solutions. Bend has been working through the Central Oregon Cities Organization (COCO) to develop alternative concepts for addressing long term multi-modal transportation needs. We believe ODOT should seek alternative mobility standards that focus on a number of performance measures that are flexible, cost efficient, and still create safe highways. In addition we have discussed alternative mobility standards, a corridor approach to transportation planning, as well as creating additional sources of revenue through income tax sequestration.

The challenges that the City of Bend faces with the TPR as a barrier to economic development are particularly difficult for us because of our isolation from west coast markets and larger metropolitan areas. Consequently, we need to be very responsive to economic opportunities. Finding a solution is going to require a new approach to transportation planning and funding, and we are motivated to participate in innovative solution-oriented discussions with the State. The City's focus is on ensuring that adequate multi-modal transportation infrastructure can be developed to support economic development.

It is important in these difficult times that government remain flexible and make every effort to encourage industrial and commercial growth to help improve State and local prospects for job creation and long term economic stability, while also balancing the long term needs of our infrastructure.

Sincerely,

Kathie Eckman

Kathie Eckman
Mayor
City of Bend

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May 21, 2010

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

Richard Whitman, Director
Dept. of Land Conservation and Development
635 Capitol Street NE, Suite 150
Salem, OR 97301

RE: DLCD/LCDC Policy Agenda – TPR

The League has heard from cities during the course of the last year about their problems with transportation planning rule (TPR) implementation. Those problems seem to be growing – coupled with existing restricted revenue streams and the growing need for communities to provide economic/job based incentives.

During the last Local Officials Advisory Committee (to LCDC) meeting, this issue again rose during the course of the discussions about LCDC's policy agenda, and the concerns echoed broadly enough to warrant a request to the Commission to add this item to this biennium's policy agenda, for review and possible rulemaking.

ODOT has initiated work required by the passage of HB 3379; but it seems reasonably likely that the work will be narrowly focused to implement the requirements of the bill (performance measures, alternative mobility standards, adjustment in the planning period for a limited number of jurisdictions) , and not undertake a broader review of specific conflicts that local governments are experiencing with the implementation of the TPR with other statewide planning goals, including Goal 10 (Housing) and Goal 9 (Economic Development) – which lie within the purview of DLCD/LCDC. Having said this, I would also like to note that the majority of the HB 3379 work group members that attended the first (and to-date only) meeting also articulated the need and desire for a broader TPR look.

By illustration, I will mention below just a couple of concerns that we are hearing about. This is not an all-inclusive list, nor is it prioritized or necessarily the most significant; it is the tip of the iceberg. And whether these or other concerns with implementation were or were not intended outcomes of the TPR, the point today is that local governments, particularly cities, are struggling with how to integrate planning and TPR requirements – the outcomes of which have long term impacts on their ability to manage where and how growth occurs; their ability to serve that growth efficiently; and their ability to capitalize on near term economic opportunities that benefit both their citizens (jobs) and the state (income).

-Because of the timing of zone changes/comp plan amendments to traffic analysis and mitigation requirements, in order to avoid cost prohibitive mitigation, we have heard of cases where applicants are limiting back their requests, resulting in low or lower density development – contrary to density guidelines/requirements, potentially eventually

resulting in a greater UGB land need, and leading to development scenarios that are primarily based on less-impacted transportation systems, whether they make good planning sense or not. Some cases include opportunities for high density mixed-use development.

-Extensive mitigation requirements have also been necessary for requests that include zone changes for vacant residential annexations, when actual development on the property to be annexed may not occur for several years after annexation is approved.

-Most city TSP's (approved by DLCD) are based on average traffic impacts within the UGB, not on the most intensive use scenarios. ODOT's guidance has required a worst case development assumption (from a traffic impact standpoint) to avoid a "significant effect", even when a city's comprehensive plan designations have been adopted and subsequently acknowledged by DLCD in the comprehensive plan, and a PAPA is consistent with the city's comprehensive plan is adopted. This situation has forced many cities to question what they can depend on (comp. plan) when reviewing a development application; or is the reality that all cities now face an expensive and time consuming process to amend their TSP's to assume worst case development from a traffic impact standpoint before they can move forward with new development opportunities?

Several strategies have been employed by cities to find a way to make the current requirements work, but this has resulted in additional spent resources, with some cities still being left stymied. Strategies such as:

-Utilizing a process to "condition" a zone change decision to require that the TPR be met with subsequent development, however, some city codes to not allow a zone change to be conditioned; or

-Attaching a condition of approval to address the TPR through the PUD process, however, many cities have been instructed by DLCD to remove obstacles to needed housing that include removing planned development overlays at the request of the owner- which may undermine the city's ability to ensure that the TPR would be subsequently addressed; or

-Creating "holding" zones for annexed parcels, which effectively slows down the urbanization process and "value enhancement" of annexed properties.

Seemingly, these strategies are a stop-gap solution, which require extensive staff work and coordination as part of a process that is already extremely complex and time sensitive.

Thank you in advance for your consideration of this matter. I understand that representatives from the city of Lincoln City brought up their concerns with the transportation planning rule when LCDC was meeting there last month, and that several other cities or city organizations have shared their concerns and made a similar review request of the Commission.

Most Sincerely,

Linda Ludwig

Linda Ludwig, Deputy Legislative Director

CITY OF
ASHLAND

May 19, 2010

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

SUBJECT: Transportation Planning Rule

Dear Chair VanLandingham and Members of the Commission:

The City of Ashland requests that LCDC consider including a broad look at the Transportation Planning Rule (TPR) as part of its 2009-2011 Policy Agenda. We would encourage LCDC to view this as a cooperative effort with the Oregon Transportation Commission (OTC)

We know that the Legislature passed HB 3379 in 2009 and that the Oregon Department of Transportation (ODOT) has begun work on the rulemaking required by this bill. While we appreciate efforts to look at delaying projects and other ways to measure vehicle congestion, neither HB 3379 nor the rulemaking will address some of the fundamental conflicts that exist between the Transportation Planning Rule and both other Statewide Planning Goals and HB 1059 that requires local governments to reduce the greenhouse gasses produced by passenger vehicles.

The City of Ashland has a longstanding commitment to Oregon's land use planning system and to equity in planning for all transportation modes. The City's comprehensive plan, land use regulations, and transportation plans focus on a transportation network that allows people to travel by transit, bicycle, or foot as easily as by car. This policy was originally adopted because the City Council felt that meaningful alternatives to the automobile are essential to the community's livability. Over time, we have come to believe that modal equity is also more financially and environmentally responsible than designing our community for the motor vehicle.

The City of Ashland recognizes that the TPR was originally drafted to ensure coordination between transportation and land use planning. In application, however, it actively works against good land use by focusing too much on motor vehicle travel. Jurisdictions end up planning to expand roads to accommodate an assumed ever-increasing number of motor vehicle trips rather than planning for land use that reduces dependence on the automobile. The existing TPR does not allow local jurisdictions to consciously decide to accept congestion, to assume reductions in trips made by cars and trucks, or to shift trips to transit, rail, walking, or bicycling. As such, the TPR discourages redevelopment and efforts to increase density because the infrastructure required is so auto-oriented that it works against walkable neighborhoods, employment areas, and commercial districts. Additionally, the required road projects are often expensive, which becomes itself an impediment to desired redevelopment and infill.

Ashland has run into the problems with the TPR recently. As the Commission knows from your recent visit to Ashland, we have been working on a Master Plan for redevelopment of the old Croman Mill site. This former mill site is over 60 acres in size and is critical to ensuring that we

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have sufficient employment lands both for our economic health and to comply with Goal 9. To comply with the TPR, we conducted a transportation impact analysis and identified the impacts on City streets and highways owned and managed by the Oregon Department of Transportation. We found that several facilities will require capital improvements to increase the capacity to move passenger vehicles and trucks. Under the current TPR, not only do we need to identify these projects before we rezone the Croman Mill Site, but we also have to have a project financing plan in place prior to adopting the Master Plan. In addition to being prohibitively expensive, some of the projects that would be required conflict directly with some of the City's other land-use goals, including creating a pedestrian-friendly and transit oriented hub at one intersection and increasing the viability of another employment area at another. These projects all assume that we have to accommodate additional vehicle trips, rather than to use rail, transit, and other modes to move workers, residents, and goods. We believe that the expansion of the roads and streets – not increasing density of employment – will actually create the trips. Not only does the car focused approach limit our efforts to comply with Goal 14 and with Goal 9 but it also ultimately creates sprawl and decreases the livability of our community, which limits our success in complying with Goals 3, 4, and 5. Last but not least, planning for more capacity seems directly contrary to direction from the Oregon Legislature that we reduce VMT of passenger vehicles as a way to reduce greenhouse gas emissions.

The City of Ashland believes that DLCD has a large stake in reconciling the conflicts that the TPR creates with other land use planning goals, and we hope that you include a much broader look at the TPR as part of your policy agenda.

Sincerely,

Martha J. Bennett
City Administrator

c. Mayor and City Council
Bill Molnar, Community Development Department
Linda Ludwig, League of Oregon Cities

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COPY

CLACKAMAS COUNTY

Campbell M. Gilmour
Director

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

DEVELOPMENT SERVICES BUILDING
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April 6, 2010

DEPT OF
APR 07 2010
LAND CONSERVATION AND DEVELOPMENT

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

Re: Forest Template – ORS 215.750(1) & OAR 660-006-0027(1)(f)

For some time now we have noted a 'loophole' within the OAR and ORS that allows an owner of multiple adjacent properties in the forest zones to develop dwellings on each parcel by simply switching names on the deed titles, rendering the contiguously owned property no longer a 'tract' by definition. For example, a person owning four contiguous properties can place the first property under a husband's name, the second under the wife, the third under both names and the last under the husband or wife's name. By performing this simple task through quit claim deeds the owners have now opened up each property for the template test provisions, potentially establishing a dwelling on each lot. Additionally, much of the time these separations basically void OAR 660-006-0027(1)(h)(i) because there is no longer a tract that includes an existing dwelling although much of the time there is a dwelling on the original tract.

The juggling of ownership, in order not to be considered a tract is not consistent with other such applications as provided within OAR 660-006. The comparable language within the lot of record language, OAR 660-006-0027(1)(a)(C) *"The lot or parcel on which the dwelling will be sited was part of a tract on November 4, 1993, no dwelling exists on another lot or parcel that was part of that tract."* The template test does not have this language. Because of this a property owner is not limited to the tract having a dwelling on November 4, 1993 and can take the tract out of common ownership, simply by changing the names on the current deeds. This allows contiguously owned property not to be defined as a tract as found in ORS 215.010(2), *"Tract" means one or more contiguous lots or parcels under the same ownership."* because there is no date in time such as found in OAR 660-006-0027(1)(a)(C).

We find that since other portions of the OAR specifically limit development to a tract without a dwelling on November 4, 1993, the template test should have the same language as well. By including the tract language the property owner will be limited in developing multiple contiguous properties, holding the tract to one dwelling and consolidating those contiguous properties as part of the process, the same as OAR 660-006-0027(d)(B) *"When the lot or parcel on which the dwelling will be sited is part of a tract, the remaining portions of the tract shall be consolidated into a single lot or parcel when the*

dwelling is allowed." This would be stronger if the language also required a deed restriction stating the consolidation cannot be repealed if the consolidation is 160 acres for instance. This change will limit residential development within our forest zones the same as for the lot of record.

We have had numerous applications where three, four and five parcels have been taken out of a tract and each parcel later receiving approval for a template dwelling as provided for in OAR 660-006-0027(1)(f) and ORS 215.750(1). The potential build out of our forest zones appears to be in conflict with the intent of limiting development as the lot of record language does. Additionally, the increased time limits for such development as provided in ORS 215.417 to not require immediate build out appear to limit the immediacy of such development. Ultimately, if the OAR and ORS continue to allow more dwellings on land within the forest zones through the template provisions it also allows more dwellings on less land within closer proximately which in turn increases fire issues and overcrowding of our forest lands.

We request these proposed changes within the OAR be applied consistently to fairly allow development within each provision, not providing an advantage to one process over the other.

Sincerely,

Gary Hewitt - Sr. Planner
Farm & Forest Specialist
Clackamas County Planning Division
Department of Transportation & Development

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.

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To: Members of the Land Conservation and Development Commission
Richard Whitman, Director, Dept. of Land Conservation and Development

From: Al Johnson

Date: August 31, 2010

Re: Agenda Item 4, Sept. 1 LCDC Meeting
Transportation Planning Rule Issues

Dear Commissioners and Director Whitman:

I will be retiring at the end of this month, so I thought I would take this opportunity to offer a few parting observations based upon 20 years of experience with the Transportation Planning Rule as a land use attorney for clients in both the public and the private sectors. These are personal observations and do not necessarily represent the views of any, much less all, of the many clients who have navigated the TPR maze in my company over the years. I hope they provide helpful background as you move ahead.

My principal concerns are with elements of the Transportation Planning Rule that fail what might be called the MacPherson Test. As you know, former Senator Hector Macpherson has been called the Father of Senate Bill 100 and Oregon's statewide land use program.

In 1977, just four years after the adoption of SB 100, Senator Macpherson testified in support of removing an unduly-onerous provision of the original Senate Bill 100, which, in his words allowed "the state takeover of local planning and enforcement powers in the event all else fails." His written testimony articulates a principle which might be called the "Macpherson test:"

> "I consider the current provision unduly oppressive on local governments, unworkable at the state level and therefore a paper tiger which fails in its purpose while at the same time infuriating local officials and bringing ridicule to the program."

Testimony of Hector Macpherson on SB 570 (1977 Or Laws Ch. 644), Exhibit G, Feb. 22, 1977 Senate Env. & Energy Committee.

Fortunately for the health of the program in its early years, Senator Macpherson was quick to move past pride of authorship when considering the concerns of local governments. Those concerns are just as relevant today.

In my view, the TPR provisions discussed below fail the Macpherson test and deserve the same fate as the provisions addressed by Senator Macpherson in 1977: They should be repealed by the body that adopted them.

The vmt/alternative measures/woodshedding program:

As experienced by your regional and local partners, the TPR's per-capita vehicle-miles-travelled program can be summarized as follows:

LCDC to local governments: Prove your transportation plans will meet arbitrary targets even though the Commission and DLCD have no basis for expecting you to be able to provide such proof. When that fails, invent and adopt alternative measures. Then prove that those measures will meet other equally-arbitrary targets that the Commission and DLCD have no basis for thinking you can meet. When that fails, appear as summoned for periodic public floggings. Bring stacks of charts and spreadsheets to show that you have done lots of data-gathering and haven't fudged the numbers documenting your failures. Promise to do better.

This situation is a product of the very different burdens of proof borne by local and state planning authorities.

Local governments have to prove, based upon substantial evidence, that their plans and implementing ordinances will meet state standards set forth in state land use goals and rules. As they hear so often at your meetings, they have to "connect the dots."

In contrast, when the Commission established the TPR's per-capita vehicle-miles-travelled reduction requirements, it did so in a state rulemaking process that did not require it to make findings based upon any evidence, much less substantial evidence, that transportation systems planning could achieve those targets. It did not have to connect the dots. Not surprisingly, the dots have never been connected.

Nor could they have been. Shortly before the TPR was adopted, a leading article in the Journal of the American Planning Association pointed out that times were changing: Increases in per-capita-vmt over the previous 20 years had been largely the result of

increases in female labor force participation, increases in single-parent households, increases in auto-ownership rates, and continuing cheap fuel.

These trends were maturing in 1998 and were already viewed by professionals outside of Oregon as unlikely to continue at the same rate. Those professionals were right. As more recent studies have found, those trends have largely played themselves out, and new long-term trends pushing per-capita-vmt down have set in, including an aging population, telecommuting, a commuting workforce that is steadily shrinking as a share of the driving population, the end of cheap fuel, and a stagnating economy. See *Oregon Statewide Congestion Overview*, ODOT 1998, *The Road Less Travelled*, Brookings, 2009, and *Signs of Change*, East-West Gateway COG, 2008.

Not surprisingly, local governments have been never been able to connect the dots with the kinds of facts and modelling that are required of them but not of the Commission or the Department. Local land use authorities have no way of proving that their transportation systems plans will achieve the required results at all, much less on the schedule and at the arbitrary percentages required by the rule. The same is true of the alternative measures and their attendant benchmarks, which have to be "chosen" by local governments in the same sense that errant pupils get to "choose" from bundles of birch rods at Jane Eyre's boarding school.

It should be no surprise that changes in the trends that actually drove the run-up in per-capita-vmt have done what transportation planning could not: As the state's own benchmark reports show, Oregon has done better than projected for more than a decade now:

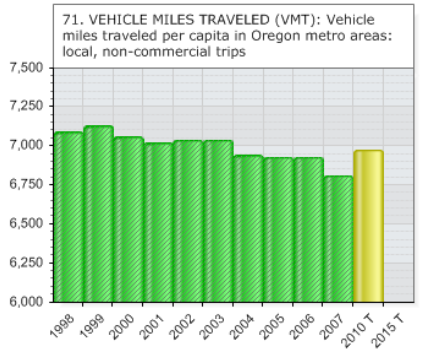
Updated 12/13/2008

Module 1: OREGON'S PROGRESS
71. VEHICLE MILES TRAVELED (VMT)

Making Progress?
Yes

Why this answer The 2007 data suggests a continued decline in vehicle miles traveled per capita in metro areas. However, VMT is correlated to economic activity and the 2007 data may reflect the economic slowdown. Decoupling the connection between VMT and economic growth will be a challenge for Oregon's 21st century economy.

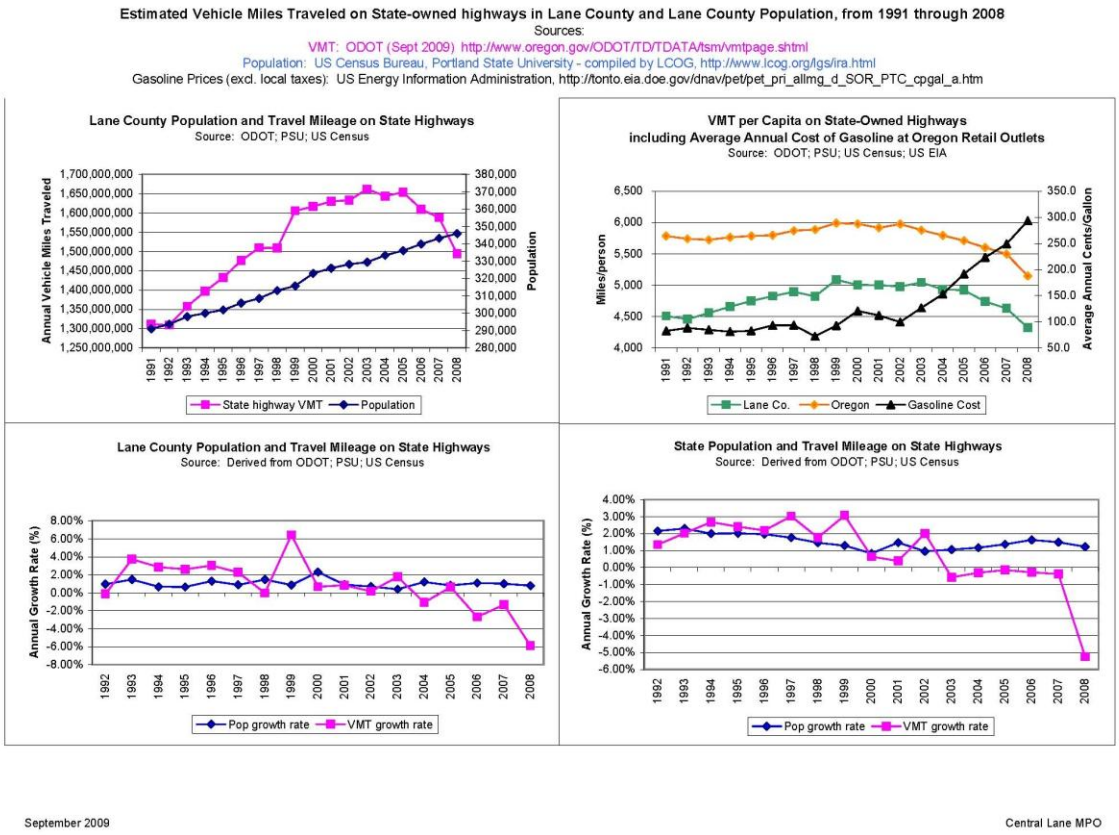
1998	7090
1999	7130
2000	7060
2001	7020
2002	7040
2003[1]	7040
2004	6940
2005	6930
2006	6930
2007	6810
2010 TARGET	6977
2015 TARGET[2]	



Worse
Better

Oregon Department of Transportation

Oregon's MPO regions may have done even better, based on these charts:



Unfortunately, the way the current version of the TPR works, outperforming the per-capita-vmt projections that triggered the alternative measures requirements is not a relevant benchmark. You can beat the projections and still get flogged.

I hope that the state's response to this bright spot in Oregon's otherwise generally dismal statewide benchmarks will not be to deny local governments credit for any vmt-reductions that have causes other than transportation planning. That would only make sense if other factors had been given due credit as primary causes of the big increases in per-capita vmt that led to the adoption of the TPR's vmt-reduction requirements. Denying them credit after wrongfully assigning them blame would surely fail the Macpherson test.

The Regional Transportation Plan amendment trigger:

Section 16 turns the Oregon land use planning process on its head. It should be repealed and replaced with something consistent with statewide citizen participation and coordination requirements, post-acknowledgment statutes, and the Macpherson test.

The Commission added a new Section 16 in 2005 as a way of maintaining consistency between federally-mandated regional transportation plans and state-mandated regional and local transportation plans. This new section has proven to be an end-run around state land use goals as and has reversed the roles of appointed and elected local planning officials.

Section 16 provides that, when a local Metropolitan Planning Organization (MPO) amends the MPO's regional transportation plan, a document addressing federal funding requirements, local elected officials must immediately or soon thereafter amend acknowledged regional transportation plans to bring them into compliance with whatever the MPO has done.

For its part, the MPO, an appointed body, apparently has no obligation to demonstrate that its changes comply with acknowledged transportation plans that have been adopted by elected local land use authorities. This provision reverses the roles of local elected and unelected planning bodies. It also undermines the statutory concept of acknowledgment for local comprehensive plans.

In Eugene-Springfield, for example, a decade-long process of citizen participation, intergovernmental coordination, and intense political activity by local elected officials went into each update of TransPlan, the region's acknowledged transportation system plan. Then, pursuant to Section 16, the unelected MPO board was able to upend all of that work in a single stroke by dropping the planned West Side bypass from the regional plans list of projects proposed for funding. It did so without having to demonstrate continuing compliance with any statewide land use goal or rule, including the citizen participation goal, the planning goal, the economic development goal, and the transportation goal. The effect of that decision, according to DLCD, was to implicitly deacknowledge all of the plan designations and related Goal 9 and 10 inventories that depended upon the existence of the bypass as a planned facility.

All this almost before the ink had dried on the Commission's 2007 final order closing out the region's 13-year periodic review.

As far as I can tell from reviewing the literature on federal statues and MPOs in other states, this kind of planning coup d'etat is not required by federal law. It is made possible

only by the flawed language of Section 16 of the TPR.. No other state, to my knowledge, has anything like Section 16, and other states get their federal funding.

There may be more fundamental problems with Section 16. Insofar as Section 16 enables MPOs to require elected land use authorities to conform their plans to plan changes made by appointed officials of MPOs, which are not among the local land use authorities recognized by Oregon's land use statues, Section 16 may be *ultra vires*: that is, it may exceed the authority of the Commission to change allocations of land use and legislative authority made by state statutes, local charters, and the Oregon constitution.

All-at-once-and-nothing-first:

One of the most troublesome recent changes in the TPR comes from the Court of Appeals, which recently reversed a long-standing consensus that local governments can defer full application of the TPR's Section 60, provided that they assure complete application of the rule before new uses allowed by the amendments can occur.
In *Willamette Oaks, LLC v City of Eugene*, 232 Or App 29 (Nov. 18, 2009), the court ruled that a local government may not defer application of Section 60 of the TPRwhen amending a comprehensive plan or implementing regulation.

As noted in the DLCD Director's Report for the January 20-21 meeting of the LCDC, this decision is potentially a major goalpost change:

> "This [decision] is significant because it would appear to reverse a string of LUBA decisions dating back to 2004 that have effectively allowed local governments to comply with 0060 by adopting limitations or conditions that restrict development as part of the plan or zone change and put in place a TPR-like standard and process for review of subsequent development." January, 2010 Director's Report.

The Department did not take part in the recent case, and it has never indicated any unhappiness with the leading LUBA decision endorsing the previous reading of the TPR. Unfortunately, the Department seems to have decided it likes the new and more stringent reading of the rule. Moreover, the Department apparently wants to apply the new rule not only to quasi-judicial changes such as were involved in the Court's decision, but also to major legislative comprehensive plan updates, including UGB amendments, county-wide destination resort mapping, and general zoning code updates.

The result threatens planning gridlock. No local government can do a meaningful job of assessing the transportation impacts of every legislative amendment to its plans and zoning ordinances. The job is too big, the potential effects are too uncertain, and the danger of preempting meaningful impact analysis when the impacts are more certain are too great.

The result is also unnecessary, and it is one that the Commission could easily change by issuing its own interpretation or clarification of the rule. In so doing, it would simply be reinstating a working reading of the rule that state, local, and private participants in the land use process have been relying on for years.

Here is some tedious but important history:

Until last month, DLCD has, in a variety of ways, treated the LUBA decisions as fully consistent with Section 60 of the TPR. This is especially significant since it has taken the public and the Commission through two extensive rounds of TPR rulemaking since the leading LUBA decision was announced.

The leading LUBA decision is *Citizens for Protection of Neighborhoods v. City of Salem and Sustainable Fairview*, 47 Or LUBA 111 (2004).

Although it was entitled to comment, object, appeal, and file a brief on this issue in both the 2004 case and the 2009 case, DLCD did nothing. As far as we can tell, neither ODOT nor DLCD has objected to deferrals or even raised the issue in any periodic review, LUBA appeal, or appellate court proceeding.

The absence of rulemaking or other corrective response to *Sustainable Fairview* is especially significant because of the dramatic contrast with another case involving the same provisions of the TPR--Section 60, decided the same month.

LUBA issued its decision in *Sustainable Fairview* in June, 2004, the same month that the Court of Appeals issued its decision in *Jaqua v. City of Springfield*, 193 Or App 573, 91 P3d 817 (2004).

In marked contrast to the *Sustainable Fairview* decision, the *Jaqua* decision resulted in the immediate initiation of proposed amendments to Section 60 of the TPR. That response to *Jaqua* resulted in significant "corrections" to the Court of Appeals decision. It also evolved into an intensive two-round comprehensive review and update of the TPR running from 2004 to 2006. See TPR amendments LCDD 3-2005, f. & cert. ef. 4-11-05; LCDD 6-2006, f. 7-13-06, cert. ef. 7-14-06. See also work group materials, staff reports, drafts, minutes, etc. from October, 2004, through August, 2006, on DLCD's website at www.oregon.gov/LCD/transplan.shtml and www.oregon.gov/ODOT/TD/TP/TPR2.shtml.

One way to realign agency practice with the rule is for the agency to back up its practice by continuing that practice and defending it if appealed. If it does that, the Court of Appeals will, it is hoped, appropriately defer as it has done in similar situations in the past. See, e.g., *Newcomer v. Clackamas County*, 92 Or App 174, 758 P2d 369 (1988).

We believe that the Court of Appeals would readily defer to the Commission if it chooses to reinforce the previous workable and generally-accepted interpetation of its rule. An

agency interpretation that is consistent with agency practice and not clearly contrary to the language of the rule would be entitled to considerable deference. See *Don't Waste Oregon Com. v. Energy Facility Siting*, 323 Or 132, 142, 881 P2d 119 (1994).

From a practical standpint, given the longstanding consensus among LUBA, DLCD, ODOT, and LCDC, local governments and applicants for plan and zone changes have felt comfortable relying on LUBA's interpretation of Section 60. This reliance has affected their approach to complying with Section 60 not only as they respond to applications for quasi-judicial plan and zone changes, but also as they legislatively update their comprehensive plans and zoning regulations to comply with the mandates of numerous state land use statutes, goals, and rules.

Good Luck

Local governments have lost most of the flexibility they used to have to adapt and respond to change within urban growth boundaries during the program's first 20 years. As the surpluses built into the first round of acknowledged comprehensive plans disappear and allowed uses of the remaining land supplies are ever-more-strictly constrained by ever-more-demanding state land use planning requirements, planning gridlock threatens to set in, profoundly affecting their ability to address unforeseen changes, whether they be crises or opportunities.

I am grateful to have had a role, however minor, in the development of Oregon's pioneering state land use program. I am concerned, as a land use litigator and an early advocate for formal rulemaking, that the Commission's ever-thickening rulebook and a body of caselaw taller than either of our candidates for governor will hamper its ability to cope with challenges facing it. A good place to start is with a red pencil and the Macpherson test.

Best wishes,

Al Johnson
541-687-1004
alj25@qwestoffice.net

cc: Bob Cortright
Bob Rindy

City of Tualatin

www.ci.tualatin.or.us

September 1, 2010

Chad Jacobs
League of Oregon Cities

Via Email

RE: LCDC hearing on conflicts between the Transportation Planning Rule and other Planning Rules

Dear Chad:

You have asked whether cities have encountered issues in trying to comply with the Statewide Planning Goals and the language in the Transportation Planning Rule. The answer from Tualatin is "yes."

There is a significant conflict. The Land Use Planning rules (including those mandated by Metro) are focused on utilizing areas already within the Urban Growth Boundary to protect valuable farm and forest resource land. This generally means that cities must densify within the UGB. However, the Transportation Planning Rule states that a local government cannot change zoning to allow densification if there will be impacts to the state transportation system or if that system is already failing. This includes the freeway system, which already needs to have improvements in certain areas to handle existing traffic. Because Tualatin sits at the junction of I-5 and I-205, with 99W located on its western edge, we are constantly trying to accommodate mandated growth within our city while minimizing traffic impacts. Cities are not allowed to impose long-term moratoriums to stop growth until the transportation systems catch up and they can't demand that a developer who is adding only a few trips to the system pay millions of dollars to fix the state highway system.

A recent example exists in Tigard, our neighbor to the north. Tigard wants to upzone both its downtown and the Tigard Triangle area. This is consistent with the discussions being held about High Capacity Transit down 99W. There is no question that there has to be a sufficient population for such transit projects to be successful However, Tigard cannot meet the requirements in the Transportation Planning Rule in order to allow the upzoning.

Sincerely,

Brenda L. Braden
Tualatin City Attorney

18880 SW Martinazzi Avenue | Tualatin, Oregon 97062-7092 | 503.692.2000

CITY OF SPRINGFIELD, OREGON
DEVELOPMENT SERVICES DEPARTMENT
PUBLIC WORKS DEPARTMENT

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Date: September 1, 2010

Members of the Land Conservation and Development Commission
Richard Whitman, Director
Department of Land Conservation and Development
635 Capitol Street, NE; Suite 200
Salem, Oregon 97301-2540

Subject: Agenda Item 4, Sept. 1 LCDC Meeting; Transportation Planning Rule Issues

Dear Commissioners and Director Whitman,

We appreciate the Commission's awareness of the difficulties many Oregon communities are experiencing as we endeavor to achieve compliance with the diverse and challenging mandates of the Transportation Planning Rule. There are a number of specific requirements in the TPR that present the City of Springfield with what is today an expensive and sometimes unwinnable standard. We will identify and briefly explain these provisions in this letter, however, it is our belief that the most constructive dialogue for improvement will occur during the work undertaken to implement SB 1059, including the role of the state and local government in a planning program that will be expanding its reach to include measures to address climate change, GHG emissions and an economy that must adapt to a world of declining fossil fuels. We look forward to the next 12-16 months with enthusiasm and high expectations for bold, creative and adaptive solutions.

As we partner with our MPO communities, DLCD and ODOT to undertake this new state-wide effort we will focus our strongest interests on the discussions involving federal-state-local transportation planning coordination, standards for creating and measuring successful land use-transportation plans, and each of the attendant requirements that will address the myriad critical issues of jobs, housing and quality of life. To that end, we make note of the following elements of the TPR that would benefit from the SB 1059 makeover.

It's been our experience that we are often caught between the fluidity of the market and the various state mandates embodied in our comprehensive plan. When these conflicts arise, we accept our responsibility to implement our plan, but we also realize that state-mandated plans have well-known limits. Often we find that creative development proposals will better achieve our broad quality community development objectives than concepts reflected in our comprehensive plans; this is what happens when a moving force (the market) meets a stationary object (an Oregon-style comprehensive plan). It is essential to the viability of such a model that such plans can be amended in a timely and efficient way.

Until 2009 there was some flexibility regarding the evidence necessary to sustain such comprehensive plan amendments when addressing the TPR; however, as a result of the Oregon Court of Appeals decision on the case *Willamette Oaks, LLC v City of Eugene*, the court ruled that Section 60 of the TPR could not be set aside until a development application was submitted when amending a comprehensive plan or implementation ordinance. The Court's ruling was based on the text of the rule and what that text meant; not that performing the analysis would result in a better decision therefore it (the determination) could not be delayed. We believe the Commission can address this matter by inclusion of specific language in the Rule that supports what was common practice until *Willamette Oaks*. This will assist local government as they address and consider

applications for quasi-judicial plan and zone changes, and also as they undertake legislative updates to their comprehensive plans, zoning codes and other development standards and processes necessary to comply with the mandates of the statutes, goals, and rules.

Another area of concern is the consequences, we hope unintended, from the addition of Section 16 to the TPR. We acknowledge and endorse the benefits of coordination between all required transportation and land use documents; that endorsement should be self-evident given the chaos that would result if such planning documents were prepared and adopted without regard for geographical similarities and related objectives. However, the federal transportation law does not require federal plans to comply with state land use law and neither should state land use law require local plans to comply with federal transportation law. We believe that most of Section 16 (addition or deletion of regional projects the notable exception) preempts the established mandate for compliance of local plans with state land use goals.

Section 16 also confers de facto land use authority to a Metropolitan Planning Organization (MPO) by requiring local governments to amend local land use plans in compliance with amendments made to the MPO's federal regional transportation plan. Other than METRO, MPOs are not constituted with the authority to amend, or direct the amendment of local government comprehensive plans, including transportation system plans. This provision is a dislocation of the relationship between citizens of a community and their duly elected representatives and a direct challenge to our understanding of the meaning and purpose of acknowledgement.

A related TPR issue is the requirement for MPOs to prepare Regional Transportation System Plans (RTSPs) and the attendant requirement that all MPO member governments adopt the RTSP as part of their comprehensive plans. We're unclear what purpose an RTSP serves for MPO governments that is not already achieved by the required federal Regional Transportation Plan (RTP) and local TSPs and comprehensive plans, assuming that the local TSPs have been adopted in compliance with all state land use goals in combination with the requirement that TSPs must be coordinated with the RTP whenever the RTP is changed. It should be possible for an MPO to have a federal RTP and local TSPs, with a requirement that they be harmonized, not that one is required to conform to the other, either as a result of an RTP update or at periodic review.

The construction, operation and maintenance of the entirety of our transportation infrastructure is the most significant and expensive public investment supporting the planned growth of our communities. Without a balanced approach to access, safety, freight movement and alternative modes that go beyond merely facilitating planned land uses and into direct improvement of the health and well being of the people of Oregon, we will find ourselves overmatched by the entirely new challenges that will face us as we encounter our destiny in the 21st century. Thanks again for this opportunity to comment. We look forward to continuing our outstanding relationship with the Department and the Commission.

Cordially,

Gregory Mott
Planning Manager

Tom Boyatt
Transportation Manager

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Metro | *Memo*

Date: Wednesday, September 1, 2010
To: Land Conservation and Development Commission (LCDC)
From: Councilor Carlotta Collette
Subject: Comments on Transportation Planning Rule

The TPR has many good elements and has helped us better link land use and transportation planning. Examples include building orientation and parking requirements that have been adopted across the Metro region.

I understand from our local partners that the 2005 TPR changes relating to plan amendments have made it more difficult in some areas to implement the 2040 Growth Concept in our region. You will likely hear from cities and counties about their experiences with 0060 today, and you may hear that ODOT perceives those experiences differently. We support the intended purpose of the amendments to protect the state highway system for non-local trips. However, we believe there is a more refined way to apply it that would support sustainable compact development as well as preserve capacity on major facilities.

The 2005 TPR amendments have, in many instances:

- added time and cost when seeking ODOT approval on amendments that are clearly consistent with the 2040 Growth Concept
- discouraged plan amendments that would advance 2040 Growth Concept principles in order to avoid a TPR 0060 issue

When the 2005 TPR amendments were adopted, LCDC asked the Metro region to give it a try, and report back with our recommendations. At this time, we propose the following:

- Revisit the rule as part of the HB 2001 Green House Gas scenarios that Metro will develop and test over the next two years. This will provide an excellent opportunity to fine-tune the rule, and ensure that it reinforces our climate change strategy
- In the interim, recognize that compact development patterns reduce VMT/capita and greenhouse gas emissions with updated trip credits based on Metro's Regional Transportation Plan research.

Thanks for the opportunity to weigh in, and we look forward to working with you to continue improving this important part of our planning framework.

EXHIBIT: 6 AGENDA ITEM: 4
LAND CONSERVATION & DEVELOPMENT COMMISSION
DATE: 9-1-10
PAGES: _____
SUBMITTED BY: Carlotta Collette

City *of* Tigard
Memorandum

To: Land Conservation and Development Commission

From: Mayor Craig Dirksen

Re: Impacts of Transportation Planning Rule on Land Use

Date: September 1, 2010

cc: Councilor Buehner, Councilor Henderson, Councilor Webb, Councilor Wilson, City Manager Craig Prosser

Tigard supports the intent of the Transportation Planning Rule (TPR) – to preserve the function and performance of state transportation facilities. However, the effect of the TPR implementation has been to limit the region's, and by extension the City's, ability to effectively plan for future growth in ways that will achieve Metro's 2040 objectives and the City's aspirations for its Corridor, Town Center and Regional Center: creating places that can be efficiently served by transit, bicycling, and walking.

The City of Tigard aspires to significantly increase residential density in downtown Tigard, a designated town center. This aspiration is hampered by capacity constraints on Pacific Highway 99W. Similarly, large sections of the Tigard Triangle (the area bounded by I-5, Highway 217, and Pacific Highway 99W) are limited to the 0.40 floor area ratio under current zoning due to congestion on these state highways.

Without the ability to accommodate growth in these close-in locations, new single family residential developments are being planned on the west side of the City. Ironically, much of the new traffic generated by these developments will travel along these same congested highways and will be less conducive to multimodal transportation options. As such, one unintended outcome of the TPR, as it is currently implemented, is to create an environment which encourages suburban sprawl type development.

Issues with Current Implementation for Zone Changes

Proposed land use changes must be evaluated for compliance with the TPR according to standards identified in the Oregon Highway Plan (OHP). The standards are expressed in terms of the volume-to-capacity (v/c) ratio, as defined in the Highway Capacity Manual (HCM) to measure performance.

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LAND CONSERVATION & DEVELOPMENT COMMISSION
DATE: 9-1-10
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SUBMITTED BY: Craig Dirksen

We appreciate the many valid reasons to use v/c ratios as a measure of performance; however, exclusive use of v/c ratio has significant limitations. Reliance on v/c ratio as the overriding measure in TPR evaluations results in decisions based entirely on motor vehicle capacity to the exclusion of other mobility measures:

- The OHP does not recognize performance measures for travel by bicycle, pedestrian, or transit travel. In fact, mitigations required to meet v/c ratio standards may negatively affect pedestrian and bicycle conditions. For example, adding a right-turn lane may improve motor vehicle capacity, but it also increases conflict points for bicycles and increases the crossing distance for pedestrians. The OHP does not provide a means of evaluating the off-setting impacts to these modes. This is especially problematic on at-grade highways such as Pacific Highway 99W.

- The OHP performance measures, in the form of v/c ratios, do not recognize and properly credit mitigation of safety deficiencies. In circumstances where potential safety mitigations would improve overall mobility, limiting performance measures to v/c ratios does not provide an opportunity to recognize and encourage safety mitigations.

- The OHP does not adequately consider the reduced impact of mixed-use development. Future development in centers and corridors will utilize mixed use zoning to create complete communities. Such complete neighborhoods where people live, work, shop, and recreate have less impact on surrounding transportation facilities because a large percentage of their activity is internal.

Where v/c ratio must be used to evaluate motor vehicle mobility, it does not provide a realistic assessment of conditions for roadways that are already over capacity.

- A fundamental value used to calculate v/c ratio is the volume of vehicles using an intersection during the peak hour. When an intersection is over-capacity, by definition the demand for travel through an intersection is not satisfied. As such, the v/c analysis will indicate that it is operating below capacity simply because vehicles are tied up in traffic and unable to get through the intersection. Typically, it is known from field experience that an area is over capacity; however, it is inappropriate and limiting for the OHP to require reliance on a measure that is deemed inaccurate in over-capacity conditions.

Alternative Measures & Approaches

ODOT has made efforts to address some of the shortcomings of the current TPR implementation. These include special area designations where higher degrees of congestion may be allowed; additionally, the OHP allows for the identification of alternative mobility standards, including standards in the Portland Metropolitan area. However, performance measures continue to be focused on v/c ratios.

Some alternatives to v/c ratios that could provide a measure of overall mobility include:

- Arterial Level of Service (LOS). Like the v/c ratio, arterial LOS is documented in the Highway Capacity Manual (HCM). This measure is based on travel time along a corridor, appropriately shifting the focus of traffic performance away from a single point (intersection) and toward point-to-point corridor conditions.

- Multi-Modal Level of Service (MMLOS). The MMLOS provides a means of evaluating a transportation facility and providing a performance measure for motor vehicles, pedestrians, bicycles, and transit. It can measure the mutual impacts of changes among different modes on a given roadway segment. For example, a roadway widening may improve conditions for motor vehicles, but could negatively impact pedestrian conditions if it reduces the width of the landscape buffer or sidewalks. This impact would be captured in the MMLOS analysis.

  The MMLOS transportation performance measure is included in the most recent update of the HCM (2010 edition). As such, it is thoroughly vetted by the Transportation Research Board of the National Research Council. However, as a relatively new addition the practical experience is limited. Future consideration of alternative mobility standards by ODOT should include examination of MMLOS.

Other performance measures that should be considered include non-capacity based operational improvements. These might include access management strategies that may not improve the measured performance using v/c analysis, but would improve the flow of traffic and reduce conflict points. Similarly, evaluation of mobility in terms of safety and safety mitigations should be elevated as a factor of highway mobility.

Partnership for a Solution

Preserving the function and performance of our transportation infrastructure will require a partnership of state, regional, and local agencies and governing bodies. We all have a stake in maintaining safe and efficient mobility on our state highways. Tigard is committed to working with our partners to achieve these mobility needs while meeting the Region's 2040 vision and the City's aspirations for the future.

EXHIBIT: 9 AGENDA ITEM: 4
LAND CONSERVATION & DEVELOPMENT COMMISSION
DATE: 9-1-10
PAGES: _____
SUBMITTED BY: Denny Egner

CITY OF LAKE OSWEGO

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August 31, 2010

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

Dear Chair VanLandingham and Commissioners,

The City of Lake Oswego strongly supports the overall objective of linking transportation planning and land use planning as outlined in the Transportation Planning Rule (TPR). This letter and the accompanying testimony describe an area of concern where the rule, in practice, may fail to achieve what is best for local communities, the Metro region, and the state.

Downtown Lake Oswego, located along State Highway 43 between Portland and West Linn, is designated as a Metro 2040 Town Center. As such, the downtown is planned to be a vibrant, mixed-use center that is highly walkable and well served by transit. Through urban renewal efforts, the City has been successful in encouraging private investment and mixed-use development that has resulted in an increase in property values of over $200 million since 1986.

The City is currently examining the opportunities to further enhance its town center, by redeveloping an existing industrial area (the Foothills area) located adjacent to Highway 43, between the downtown and the Willamette River. In addition, Metro and the City are currently in the process of developing plans to extend the Portland Streetcar to Lake Oswego with streetcar stops located in the Foothills area. The redevelopment opportunities are tremendous.

In 2005, the City completed a study that explored the opportunities and constraints related to redevelopment in Foothills. The study, funded by a Transportation and Growth Management (TGM) grant, examined land use and transportation impacts of three different development scenarios for Foothills.

The most intense scenarios added 1,200 housing units to the area and 70,000 sq. ft. of commercial space. To implement the scenarios, a comprehensive plan and zone change would be required, which would trigger the need to address the Transportation Planning Rule. The study actually found that this level of redevelopment did not result in the need for major improvements to Highway 43. Simple traffic signal timing adjustments could satisfy any problems.

Jack Hoffman, Mayor ■ Roger Hennagin, Councilor ■ Donna Jordan, Councilor
Sally Moncrieff, Councilor ■ Mary Olson, Councilor ■ Bill Tierney, Councilor ■ Dan Vizzini, Councilor

Earlier this year, the City hired a team to create a detailed development plan for the Foothills area. The plan will address transportation, infrastructure, and environmental issues and is intended to make the site development ready. A key question that remains unanswered is the density and intensity that is needed to make the redevelopment feasible. It is highly possible that the final desired densities for Foothills will be as much as two or three times the number of units that were analyzed in the 2005 study. However, based on the results of the 2005 study, this increase in intensity will likely require additional lanes along Highway 43 through the downtown, which would greatly impact existing buildings and the intimate scale and character of the street.

The 2005 study was based on a Metro 2025 traffic model and made the following key findings:

- Traffic on Highway 43 was expected to increase by 35-50% over the 20-year period.
- 10-15% of the increase in traffic on Highway 43 would be generated by the Foothills development.
- 85-90% of the increase in traffic would be generated by background traffic and new development elsewhere including 7,000 units in the Stafford basin.
- The traffic model generated the background traffic in the Stafford basin despite the fact that no acknowledged city or county plan designated the area for development.

To conclude, linking transportation and land use planning is complex. In the case of Lake Oswego's Foothills area, the amount of development that is allowed under the rule is dependent on the amount of background traffic generated by the Metro traffic model. For Foothills, it is entirely possible that increased development intensity in the right place – a walkable Metro 2040 Town Center – will be supplanted by sprawling development at the edge of the urban area. Rather than accommodate dispersed growth, the TPR should be crafted to encourage development in the right places - in centers, corridors and in downtowns. In your work to address problems with the TPR, please assure that methods are developed that give priority to plan amendments that add densities in centers and corridors consistent with local and regional aspirations.

Thank you for the opportunity to comment.

Sincerely,

Dennis Egner
Assistant Planning Director
City of Lake Oswego

Attachment: Foothills Area Map and Concept Plan

Foothills

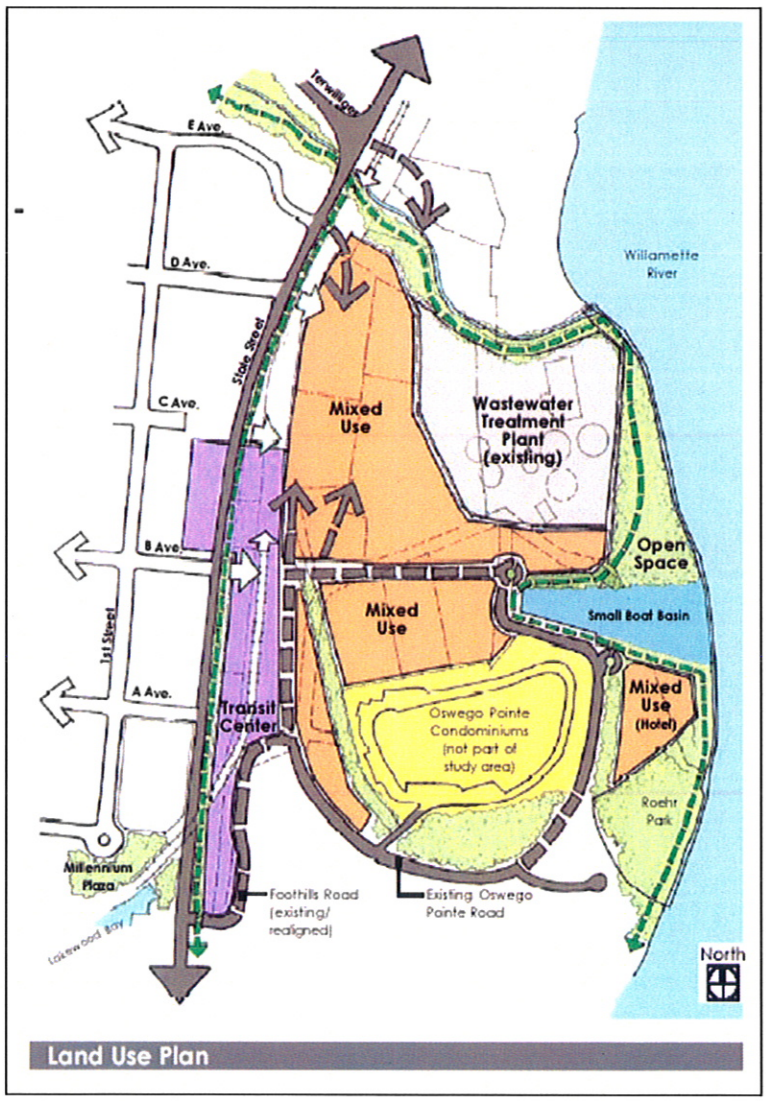
Terwilliger
E Ave.
D Ave.
C Ave.
B Ave.
A Ave.
State Street
1st Street
Willamette River
Mixed Use
Wastewater Treatment Plant (existing)
Open Space
Small Boat Basin
Mixed Use
Mixed Use (Hotel)
Transit Center
Oswego Pointe Condominiums (not part of study area)
Roehr Park
Millennium Plaza
Lakewood Bay
Foothills Road (existing/ realigned)
Existing Oswego Pointe Road
North
Land Use Plan

EXHIBIT: 10 AGENDA ITEM: 4
LAND CONSERVATION & DEVELOPMENT COMMISSION
DATE: 9-1-10
PAGES: _____
SUBMITTED BY: Tom Armstrong

September 1, 2010

Mr. John Van Landingham, Chair, LCDC
c/o Oregon Department of Land Conservation and Development
635 Capitol Street NE, Suite 150
Salem, OR 97301-2540

RE: City of Portland Comments on the Transportation Planning Rule

Dear Chair Van Landingham,

As Mayor of the City of Portland, I wish to enter the following comments regarding the Transportation Planning Rule (TPR).

In general, the TPR has been a useful tool to help coordinate land use and transportation planning and investment decisions. However, when considering comprehensive plan amendments and zone changes, there has not been a balancing act among goals and objectives as is usually the case with the state goals and planning rules and compliance with the TPR has taken on a primacy that has created conflicts and controversies. The most difficult cases have involved ODOT's strict interpretation of the Oregon Highway Plan (OHP) mobility standards without consideration of larger VMT reduction goals embodied in Regional Transportation Plan (RTP) or long range urban form as described in the 2040 Growth Concept. This narrow focus on preserving the capacity of state facilities has a dampening effect that is inducing sprawl by discouraging high density development in urban centers and corridors that are located on or near a state highway. This in turn causes development capacity to be shifted to the edge of the region where is there is theoretical capacity on state facilities, but will ultimately add to the congestion in the region and undermine our climate change/carbon reduction goals.

Specifically, I would like to highlight the difficulties that we have had with the TPR in implementing our vision for Portland's Central City. With 144,000 employees and 41,000 residents, Portland's Central City is the densest employment and residential area in the city, region and state. As the heart of the Portland metropolitan area, it is the nucleus of a complex multimodal transportation system. The result is that the Central City enjoys the highest non-auto mode split in the region. Surveys indicate that auto trips make up a decreasing percent of Central City trips. For the first time, according to scientific surveys by the Portland Business Alliance, in 2007 and 2008 auto commute trips composed a minority of trips into the downtown and more employees arrived by transit trips alone than by single-occupancy vehicles. The same survey indicated that bicycling continues to gain importance as a means of commuting.

These trends have a direct connection to the TPR. Parking spaces and VMT per capita are decreasing. Modeling estimates done by the City of Portland indicate that the typical Central City resident and worker travels almost 4 miles less than the typical region resident: 13 miles per capita versus 17 miles per capita. Further analysis indicates that the Central City contributes significantly less greenhouse gas (GHG) emissions per capita than the rest of the region. I think we can all agree that these results are what we want to see in Portland and across the metropolitan region.

Yet despite these positive trends that meet the goals of TPR, the City finds the TPR has been a barrier to increasing density and meeting our mode split goals. It is difficult to get ODOT approval for Central City land use changes based on a narrow application of the OHP mobility standards and the potential impact on the through capacity of the highway system that rings the Central City.

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Instead of focusing on a broader policy analysis of TPR compliance, ODOT asks the City for detailed, complex and costly traffic analysis focused solely on whether changes negatively affect ODOT facilities 30 years out on a "worst case scenario." This overly broad "don't make it worse" policy has the effect of misallocating resources as broader TPR objectives are overshadowed by a narrow analysis focused on the number of potential additional trips (using a very strict definition of "significant") added to state highway facilities.

As part of the Central City 2035 planning process, we're aiming to recommend increasing our land use and non auto mode split targets to further reinforce the role of the Central City in the region; enhance it as a place to live, visit and do business; and meet the City's and State's climate action goals. We trust that TPR policy, if reconsidered in its design and application, can be an asset rather than a liability in meeting these objectives.

This is just one example. We have many more cases across our city where we have been discouraged or prohibited from encouraging higher density development in town centers, main streets and station communities all in the name of preserving capacity on state highways.

In closing, I second Metro's call for revisiting the TPR and updating the OHP mobility standards. I am concerned that the rulemaking process to implement HB 3379 will be too narrow in focus. This is an opportunity for the Land Conservation and Development Commission and the Oregon Transportation Commission to clarify the hierarchy of goals embodied the Statewide Planning Goals, and specifically in the TPR and how they relate to the OHP. We need a more balanced approach to ensure that state, regional, and local land use and transportation decisions are focused on creating a compact urban development pattern that enables us to reduce VMT and greenhouse gas emissions.

Sincerely,

Mayor Sam Adams

CC: Susan Anderson, Director, Bureau of Planning and Sustainability
Sue Keil, Director, Bureau of Transportation

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Community Development Department
71 S.E. D Street, Madras, OR, 97741
541-475-3388

September 1, 2010

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

Subject: Request for additional amendments to Transportation Planning Rule beyond those required by HB 3379.

Dear Commissioners,

The City of Madras (City) supports the proposed draft changes to the Transportation Planning Rule (TPR) required by HB 3379, although they do not address the larger issues with the TPR.

It is important for the LCDC to know that the City is a supporter of the TPR and the very concept it was adopted – to ensure transportation impacts are addressed in various planning processes. Considering the original Rule that was adopted, the changes to the Rule and the case law that has followed, we have incrementally moved away from this core concept by adding additional requirements to the Rule that are cumbersome and over burden cities to their detriment where long-term housing and economic development objectives will be compromised.

As you know, cities are currently in a difficult fiscal position. 84% of all Oregon cities have populations less that 15,000. Moreover, only 9% of those cities are located in a MPO. These two statistics illustrate the fact that most Oregon cities are small and are located in rural areas of the State, have a State highway adjacent or bisecting their city, and do not have the same financial capacity as larger cities to fund large transportation projects that are triggered in small rural cities when administering the TPR.

To address these issues, the City recommends additional amendments to the TPR that are consistent with the current fiscal conditions of the State and local governments. To this extent, the City requests the LCDC acknowledge that the TPR needs to be amended beyond that required by HB 3379. Furthermore, the City specifically requests that TPR be amended to include the following 3 concepts:

EXHIBIT: 11 AGENDA ITEM: 4
LAND CONSERVATION & DEVELOPMENT COMMISSION
DATE: 9-1-10
PAGES: _____
SUBMITTED BY: Nick Snead

1. Amend the TPR to allow transportation improvements to be deferred to the development review stage (i.e. ex post facto of a zone change). With the recent LUBA decision[1], mitigations to transportation impacts cannot be deferred to the development review stage and requires the all of the funding to be in place and or the improvement to be constructed when the property is zoned and the actual vehicle trips are not yet generated and impacting the transportation system. By deferring the mitigations in this manner is respectful of the realities of development while ensuring the precise transportation impacts of a development are mitigated prior to development occurring.

2. Amend the TPR in a manner that provides equity to all stewards of transportation facilities. The TPR should be amended to include *Dolan* test. To illustrate this point, how is it proportional that property owner proposing to change the zoning of their 16 acre parcel from a resource designation to a City residential zoning is required to fund the entire design and construction of 1.5 miles of a 5-lane state highway expansion improvement to mitigate their impacts because a funding source cannot be identified the City or ODOT? By incorporating the *Dolan* test in the TPR it would allow the precise transportation impacts of development to be mitigated and require only the pro-rata share of a larger transportation improvement.

3. Amend the TPR to allow flexibility in timing and funding. The City recommends the TPR be amended to allow a corridor approach to transportation planning which would identify and prioritize projects to be constructed within the planning period amongst several cities that may or may not be in a MPO and use the current funding sources available to cities to construct the prioritized projects within the planning period. This would allow the intent of the TPR to be satisfied and facilitate economic development and housing objectives of each city while using the very limited funding sources in a strategic manner within a region.

In summary, the City is very concerned about the limitations and burdens the TPR and its ability to facilitate economic development and create affordable housing and therefore urges the LCDC to further amend the TPR as discussed above. If you should have any questions, please contact me directly at 541-323-2916.

Respectfully,

Nicholas S. Snead
Community Development Director
City of Madras

[1] Willamette Oaks, LLC v. City of Eugene, 59 Or LUBA 60 (2009)

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September 2, 2010

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

Re: Transportation Planning Rule – Need for Amendments

Dear Chair VanLandingham and Commission Members:

This letter is written on behalf of the International Council of Shopping Centers (ICSC) and the Retail Task Force (RTF) regarding the Commission agenda item relating to Oregon's Transportation Planning Rule (TPR). Please make this letter a part of your record of proceedings.

I am a member of the HB 3379 Stakeholders Committee. In addition, I have participated in numerous legislative activities regarding the TPR, including the last amendments in 2005 based on the *Jaqua* case. As some members of the Commission may recall, ICSC and the RTF presented testimony during that last round of amendments and were skeptical of the workability of the "reasonably likely" standard for establishing the certainty of funding for necessary transportation facilities improvements to provide future system capacity. Several years later, those concerns appear to have been well justified. HB 3379 does not present a viable solution to the TPR's "reasonably likely" problems.

It is time to take a fresh look at the TPR. Some of its provisions are detrimental to critical economic growth and development, especially regarding the need to increase densities inside urban grown boundaries, one of the state's primary land use policies. If the capacity of the transportation system cannot be increased correspondingly with the increase in density, then the TPR's concurrency policy will prevent the planned increase in the density of development inside UGBs, at least where the density increase is hinged on plan amendments. Accordingly, the concurrency requirements of the TPR in that context are in a direct policy conflict with the state's primary land use policy.

In addition to the policy conflict above described, the TPR also contains a number of other provisions that could be amended to enhance economic growth and development by avoiding unnecessary cost and delay now created by the following circumstances:

- As interpreted, the TPR now applies to zone changes in conformance with comprehensive plans. In the last round of discussions, I believe that many cities and/or counties testified that such an interpretation was overly burdensome and served no particular use or purpose. In other words, that interpretation of the rule creates process without corresponding benefit. Other interests may disagree but, on balance, the issue needs to be reexamined. It would be very easy to amend the rule to avoid that interpretation.

- As now interpreted, Section 0060 would only allow certain transportation measures to be utilized for mitigation purposes following a TPR analysis and resultant finding of significant affect, rather than allowing those transportation measures to be used to avoid a finding of significant affect. The difference is more than "half full/half empty." Rather, the difference is the addition of considerable cost and delay to a project by requiring a long-range traffic impact study and the time to negotiate, analyze and apply that study, where many studies ultimately propose a "trip cap" for mitigation, where the trips to be generated by the new plan map and zoning map designations will be no greater than the trips originated by the prior plan map and zoning map designations. So, the simple question is why can't a trip cap be used to avoid a finding of significant affect and truncate the system? Some jurisdictions may not favor trip caps, but many others, including the City of Portland, have identified them as useful tools. As above, the relevant provisions of the TPR could easily be amended to provide that streamlining opportunity.

We offer the above comments as illustrations of the need to further address the TPR. Both ICSC and the RTF look forward to the opportunity to participate in amendment proceedings. Thank you for the opportunity to present comments on this important matter.

Very truly yours,

Mark D. Whitlow

MDW:sv
cc: Mr. Bob Cortright
Ms. Linda Ludwig, League of Oregon Cities
Mr. Art Schlack, Association of Oregon Counties
ICSC, Government Relations Committee for Oregon
RTF Participants

LEAGUE of Oregon CITIES

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November 24, 2010

John VanLandingham, Chairman, LCDC
Members of the Oregon Land Conservation and Development Commission

Richard Whitman, Director
Oregon Department of Land Conservation and Development

RE: Petition for Rule Amendment – OAR 660-012-0060 (TPR)

Dear Chair VanLandingham and Members of the Commission:

Enclosed please find a petition from the League of Oregon Cities for revisions to the Transportation Planning Rule (TPR), OAR 660-012-0060.

As you are aware, the League works with its 242 member cities to help serve the citizens of Oregon and provide sustainable communities that offer family wage jobs, affordable homes, quality schools/infrastructure, adequate public safety and recreational opportunities. Cities have a unique role in providing, enhancing, and protecting economic opportunities within the state – over 80% of Oregon's jobs are located within cities and over 80% of the state's income tax revenues are generated within cities. In order for our citizens, communities, and the state to garner the benefits of economic opportunities, there needs to be working hydraulics between policies that support and guide the complex linkage between transportation infrastructure and land use planning. We believe one of those policies, the Transportation Planning Rule (TPR), creates unnecessary impediments to state and local objectives that guide economic development opportunities and other planning requirements. Accordingly, we are filing the enclosed petition and request LCDC to commence review and revisions to the TPR during the calendar year 2011.

We appreciate your due consideration of this important matter. If you have any questions, please do not hesitate to contact me at lludwig@orcities.org, or 503.540.6574.

Respectfully submitted,

Linda Ludwig, Deputy Legislative Director

Petition for Rule Revision
Oregon Land Conservation and Development Commission

In the Matter of Adopting Revisions to the Transportation Planning Rule	))	Petition for Rule Amendment OAR 660-012-0060 (TPR)

Petitioner is the League of Oregon Cities; mailing address: PO Box 928, Salem Oregon 97308.

Petitioner is an intergovernmental organization formed under ORS 190.010 – 190.111 that represents all of Oregon's 242 incorporated cities. The League was founded in 1925 and is governed by a 15-member Board of Directors.

Petitioner works in partnership with its member cities to help local government better serve the citizens of Oregon. The League and the state's elected and appointed officials share constituencies in our collective efforts to provide sustainable communities that offer family wage jobs, affordable homes, quality schools, quality infrastructure, adequate public safety and recreational opportunities.

Petitioner plays an important role in representing the economic interests of Oregon's cities – over 80% of Oregon's jobs are located within cities, and more than 80% of the state's income tax revenues are generated by city residents. Cities are where the bulk of the state's growing infrastructure needs are located – 72% of Oregon's population are city residents. Cities are responsible for promulgating local rules and implementing state and local policies that support the complex linkage between transportation and land use planning.

Petitioner proposes that the Oregon Land Conservation and Development Commission tender revisions to the Transportation Planning Rule (TPR) that would eliminate the conflicts that occur between various Statewide Planning Goals and the Transportation Planning Rule when interpretations of what constitutes a significant effect result in a triggering of the rule. Petitioner also observes that there are a number of other provisions that could be amended to enhance economic growth and development by avoiding unnecessary cost and delay created by the current language of the rule, and proposes an evaluation and additional streamlining revisions accordingly.

Those interested in Transportation Planning rule revisions include the cities of Corvallis, Ashland, Portland, Eugene, Tigard, Bend, Redmond, Springfield, Lake Oswego, Tualatin, and Madras. The balance of many of Oregon's 242 cities are additionally interested (including those non-MPO cities, and those and those that have a State highway adjacent to or bisecting their city), and the Oregon City Planning Directors Association. Other non-city interests include: LCDC's Local Officials Advisory Committee (LOAC), some or many of Oregon's counties, Metro, state agencies including but not limited to the Oregon Department of Transportation, developers and development interests, the Oregon Home Builders Association, the International Council of Shopping Centers, and unnamed others.

Reasons for the adoption of rule revisions:
Many cities have reported that their long term housing and economic development objectives have been comprised as a result of conflicts when trying to comply with the language of the Transportation Planning Rule and other Statewide Planning Goals – particularly with regard to critical economic development (Goal 9) and increasing densities within the urban growth boundaries (Goals 10 & 14). Specifically, when a zone change or plan amendment would result in a significant effect to a state facility, and the capacity of the transportation system cannot be increased through presently allowable measures, the TPR prevents the planned increase in the density of the development (at times even if these densities are already designated and/or adopted in a city's comprehensive plan). This causes development capacity to be shifted to the edge of the city or the region where there is theoretical capacity on state facilities, but over time adds to

congestion and the likely undermining of carbon reduction goals – failing to achieve what is best for local communities, regions and the state.
Therefore, Petitioner requests the Oregon Land Conservation and Development Commission to commence review and revisions to the Transportation Planning Rule no later than the calendar year 2011.

Dated this 24nd day of November, 2010.

League of Oregon Cities

By _____
Michael J. McCauley, Executive Director

bendbulletin.com

The Bulletin

Lawmakers take aim at road rule

Law requires sufficient infrastructure to suit development

By Nick Budnick / *The Bulletin*

Last modified: December 29. 2010 5:11AM PST

SALEM — Local lawmakers are gearing up for another run at a state rule that officials say has blocked job-producing development, particularly in Central Oregon.

When the 2011 Legislature convenes in two weeks, Sen. Chris Telfer, R-Bend, and Rep. John Huffman, R-The Dalles, plan to introduce bills to relax or suspend a rule that requires localities and developers to pony up funds for road improvements before approving development that would increase traffic jams on state highways.

Huffman and Telfer say their efforts are fueled by complaints from local officials who have found their efforts blocked due to what's known as the transportation planning rule. It was first adopted in the early 1990s to cut down on car travel and minimize traffic congestion.

But many communities and developers increasingly complain that they are unable to pay for road improvements before the land nearby has been developed.

“A lot of our communities had said that economic development has been hindered because of the pay-forward portion of the (rule), and unless you're a large corporation it's very difficult to pay for all of the required infrastructure,” Huffman said.

The rule has hit the state's fastest-growing areas, such as Central Oregon, hardest.

In Bend, the rule blocked the city's efforts to develop the 1,500-acre Juniper Ridge property until recently. Needed improvements to the intersection at U.S. Highway 97 and Cooley Road are estimated to cost $30 million. According to an agreement between the city of Bend and ODOT, the state will pay for $18,615,000 while the city fund the remaining $11,385,000.

That's money the city does not have. But the Oregon Transportation Commission approved a partial rezoning without immediate road improvements.

Pete Erickson / The Bulletin

The intersection of Highway 97 and Cooley Road in Bend on Tuesday. A state law requiring improvements to the intersection delayed development at Juniper Ridge until recently. Some legislators want to change the law.

Pete Erickson / The Bulletin

The intersection of Highway 97 and Cooley Road in Bend on Tuesday. A state law requiring improvements to the intersection delayed development at Juniper Ridge until recently. Some legislators want to change the law.

Last year, Bend City Manager Eric King testified before a legislative committee that the rule had foiled the city's attempts to lure a photovoltaic manufacturer that was interested in bringing 1,000 new jobs to the city.

Huffman says his bill would exempt smaller cities like Madras, Burns, Baker City and Prineville — but not Bend — from complying with the rule.

However, Telfer's bill would suspend the rule entirely for five years, for all cities, to “help some economic growth get going.”

The Oregon Department of Transportation and the Department of Land Conservation and Development are already looking at revamping the rule, spurred by complaints from local officials. Matt Crall, who is working on the rule, called the plans for new bills on the topic a “wild card” that could affect what the departments do.

Debate over the rule has sparked mixed feelings at ODOT, which enforces it. Department officials find themselves in the uncomfortable position of enforcing what amounts to a growth moratorium on some cities. However, the department also wants to ensure that truckers and other motorists move freely on state highways.

ODOT Director Matt Garrett testified before the Oregon Transportation Committee in October, when the Juniper Ridge compromise was discussed. He said that relaxing the rule means greater potential for traffic jams.

“I'll be very blunt,” Garrett said. “What we have is a corridor that has significant freight. As the congestion continues to grow, I see dollar signs there. I see commerce and goods and services stalled.”

In an interview, Bob Bryant, the longtime Bend-based ODOT regional manager, said that increased congestion may be inevitable. That's because the more affordable road improvements to offset increased congestion, such as traffic lights, have already been done in most cities. So further growth will cost far more money.

“We're not talking about simple little fixes anymore,” he said.

Nick Budnick can be reached at 503-566-2839 or at nbudnick@bendbulletin.com.

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The Bulletin

Find the room for compromise

Published: January 02. 2011 4:00AM PST

It's clear that Oregon's so-called transportation planning rule has serious flaws. The question is, can the state and its communities find a workable middle ground on the rule or will lawmakers have to get into the act? We hope not.

The transportation planning rule has an element of logic to it. The Oregon Department of Transportation and the Department of Land Conservation and Development agreed that before the state would sign off on development, the parties involved would have to correct any traffic problems the development might create. In that respect the rule is akin to a state systems development charge: Improvements must be paid for before development can proceed.

Also like SDCs, the rule has its problems, and Bend's troubles with the intersection of U.S. Highway 97 and Cooley Road illustrate them well. In the city's case the development held at bay is Juniper Ridge. The state told the city several years ago it would have to make dramatic multimillion-dollar improvements at that intersection if it hoped to develop what still may become a tax-generating jewel in the city's crown. The city could not come up with the $50 million necessary to make the changes, and there things sat until recently.

The state is not completely off base, however, in its rule. A more heavily used intersection at Cooley Road and 97 surely will worsen traffic problems in all directions, for one thing, and the state bears the responsibility of keeping things flowing on its major highway in the region. If it can require pre-emptive road improvements, some of those problems can be avoided.

In reality, it wouldn't be just those who work at Juniper Ridge or those who drive on U.S. 97 who would benefit from a better intersection, but a host of other businesses and neighborhoods nearby and not so nearby. They're already part of the reason the intersection needs work, yet in theory they might not have to cough up a cent to have that work done.

Meanwhile, if the U.S. 97-Cooley Road intersection offers an example of just what's wrong with the transportation planning rule, it also offers a vision of what can be done, if only all sides will agree to work on the problem.

Bend and ODOT earlier this year worked out an agreement that will allow development to begin before the intersection is improved. Improvement itself will come in stages, each one triggered by an increase in traffic in the area. Bend can begin selling property in Juniper Ridge sooner rather than later, even as it continues to plan for necessary road improvements in the future.

That solution, one in which the various parties come together to create something all can live with, is far better than either of the alternatives. Doing nothing would continue the state's stranglehold on development, something both communities and the state itself need. Leaving changes up to lawmakers puts political clout, not need, in the forefront and any solution thus created might well be worse than the current problem.

Two east-side lawmakers, state Sen. Chris Telfer, R-Bend, and Rep. John Huffman, R-The Dalles, plan to offer changes to the transportation planning rule when the Legislature meets next year. We hope they'll hold off, at least for a time. State officials already are working to make changes to the rule, and they should be given time to do so before lawmakers step in.

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Email/Letter

January 3, 2011

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635 Capitol Street NE, Suite 150
Salem, Oregon 97301-2540
503-373-0050
Email: c/o Whitman Richard DLCD - richard.whitman@state.or.us
Web: http://www.oregon.gov/LCD/lcdc.shtml

References

Reference 1 January 12-13, 2011 LCDC Meeting On Agenda Item 12. Transportation Planning Rule (TPR) 0060

Reference 2 December 29, 2010 Transportation Planning Rule 0060 - Joint Subcommittee Memorandum from Richard Whitman, Director/Matt Crall, Land Use - Transportation Planning Specialist, Department Land Conservation and Development (DLCD) to the LCDC; Subject: Agenda Item 12, January 12-13, 2011 LCDC Meeting

Reference 3 December 29, 2010 House Bill 3379 Memorandum from Richard Whitman, Director/Matt Crall, Land Use - Transportation Planning Specialist, DLCD to the LCDC; Subject: Agenda Item 12, January 12-13, 2011 LCDC Meeting

Dear LCDC:

Thank you for this opportunity to provide comments on "Agenda Item 12 Transportation Planning Rule (*TPR*) 0060" for your scheduled January 12-13 meeting. We are part of the broad support for the basic principle in *TPR* section 0060:

> *"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."*

Our members live in the Merlin travel shed in northern Josephine County, and we are impacted by the level of service provided by the public transportation services at the failing I-5 Louse Creek Interchange 61. We are concerned per the May 2010 TRIP report, *Oregon's Transportation Chokepoints: The Top 50 Chokepoints and Remedies for Relief*, and that per the TRIP report the $5,000,000.00 or more in funding needed is not secured for the Louse Creek Interchange, and has no completion date identified. According to the TRIP report the Louse Creek Interchange is the 45th worst choke point in Oregon. The TRIP report identifies the 50 worst surface transportation choke points statewide and the status of projects needed to relieve these choke points. Addressing these choke points will be critical in maintaining the high quality of life in the state by

improving mobility, reducing delays, enhancing environmental quality, and supporting economic growth (Appendix A).

Our comments will center around the League of Oregon Cities' (LOC's) identified needs supporting a request for rule making on *TPR* 0060 (see Appendix B). However, our interest is the application of the *TPR* in rural areas. First of all, we empathize with the concerns of the LOC *"to help serve the citizens of Oregon and provide sustainable communities that offer family wage jobs, affordable homes, quality schools/infrastructure, adequate public safety and recreational opportunities."*

We would like our statewide transportation infrastructure problem fixed. We would be happy to have an adequate transportation infrastructure versus a quality infrastructure. Not adequately addressing the problem will continue to impede routine travel and/or commerce, or limit economic development opportunities because of a lack of interchange capacity. This constraint on reliable transportation at interchanges harms business productivity and reduces access to housing, employment, recreation, entertainment and other social functions.

Historically, the cumulative impacts of approving incremental development projects were the consumption of the transportation facilities' capacities contributing to the incremental cost of improvements, and placing greater pressures on the political system for the funding of the development projects unfunded share of improvements. These incremental development approvals have created a major problem at state transportation facilities now way behind in their needed capacities to serve the people of the state. We finally formally recognized the problem in 1991 when the LCDC, with support from the Oregon Department of Transportation (ODOT), adopted the *TPR*. The rule created a partnership program between DLCD and ODOT to enable the integration of land use and transportation planning.

We are in disagreement with the LOC's belief that *"the Transportation Planning Rule (TPR) creates unnecessary impediments to state and local objectives that guide economic development opportunities and other planning requirements."* We believe everyone agrees that the real issue is secure funding (*Oregon's TPR Goes into the Shop for Repairs, Including the Funding Fiction* at http://web.utk.edu/~tnmug08/TRB/oregon.pdf). We appreciate the honesty, but the frank and open discussion of the "polite fiction" of planned but unfunded projects throughout Oregon scares us. Local governments have always had several options to put land use and transportation in balance (i.e., address the secure funding issue and solve the problem) where planned improvements are not adequate to support the planned land use:

1. They can limit the allowed land uses to match available transportation capacity, or
2. They can amend their transportation system plan (TSP) to expand transportation capacity through secured funding, or
3. They can amend their TSP to change performance standards to accept increased congestion.

We agree with LOC's Concern 6 (Appendix B), in the sense that the real problem has always been paying for the necessary transportation facilities needed for growth and development, and that we should assess the likely future transportation funding for needed facilities. Per the above number 3, changing transportation performance standards to accept increased congestion is a legal option, but in the long-run that old strategy of deferring the provision of adequate transportation services will continue to make Oregon less competitive in fostering economic growth, not more competitive. There is nothing new here, we continue to spin the old arguments: less taxes and less services and more job opportunities.

We are frightened with LOC's Concern 3 and Concern 4. Deferring detailed transportation analysis and identification of mitigation measures to a future time uncertain, and counting aspirational improvements as "planned" when the improvements were included in the of a local TSP, regardless of whether the projects were funded, is how we got to 1991 and tried to solve our problem with the *TPR*. Jobs and economic growth come from, in part, an adequate transportation system, not by providing less efficient transportation services to businesses and industry. We agree with LOC's Concern 7 (Appendix B) that TSP requirements place an unfair burden on plan amendment applicants that are the "last ones in" to address transportation deficiencies that are also the result of traffic from other development. This concern is legitimate <u>and</u> also how we arrived at the problem, by catering to it.

We are concerned that the <u>continued erosion of the *TPR's* effectiveness</u> will result in Oregon's quality of life and its economic productivity being reduced by increasing the number and severity of the choke points in the state's surface transportation system. These choke points include major roads, highways and public transit routes that impede routine travel, commuting or commerce, or that place limits on economic development opportunities because of deficient design or a lack of adequate capacity. For example, the 2005 amendment to the *TPR* at OAR 660-012-006(3) already allows state transportation facility choke points to continue failing while allowing continuing development. Just as critical, or perhaps more critical, is that the *TPR* 006(3) rule allows the intensity of the failing system to increase because it does not address the cumulative effects of development that are not amendments to a local comprehensive plan, nor those developments that do not have a significant effect. Therefore, under *TPR* 006(3) the failing facility continues to increasingly degrade in its ability to provide an adequate service. The fiction that the facility's cumulative performance is not worsened over time does not stand. Our new House Bill 3379 already compromises the *TPR* with its waivers to the infrastructure needs of economic development projects as defined by OAR 731-017-0010(4)). Surely this legislation supersedes the *TPR* requirements with its waivers.

In summary, Oregon's system of roads, highways and public transit plays a critical role in supporting the high quality of life in the state by providing sustainable communities through reliable mobility to the state's residents, visitors and businesses. Even while the state has enjoyed significant population and economic growth over the past two decades, its transportation system has not been able to keep up with the growing demand for access. Increasingly, Oregonians are finding their mobility constrained by congested and crowded roads, buses and rail cars, increasing personal delays and diminishing their access to recreation, social activities, employment and

housing. Businesses in Oregon are also seeing their productivity and goal of providing sustainable communities threatened by increasing traffic congestion and constrained freight routes, which increases the cost and reduces the reliability of transport, harming their competitiveness.

Maintaining the high quality of life in Oregon and insuring future business competitiveness will require that Oregon make further improvements to its surface transportation system. Numerous surface transportation choke points in the state impede routine travel, commuting or commerce. Addressing these choke points will be critical in maintaining the high quality of life and providing sustainable communities in Oregon by improving mobility, reducing delays, enhancing environmental quality and supporting economic growth. The short term gains of providing poorly planned opportunities for economic growth will not counteract the long-term loss of jobs statewide if we continue to defer paying for the cumulative costs of an adequate transportation infrastructure.

Thank you for any consideration you can give to our comments.

Mike :)

/s/ *Mike Walker*
Mike Walker, Education Chair
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Email: hugo@jeffnet.org
Web Page: http://www.hugoneighborhood.org/

Appendix A. MAJOR FINDINGS OF TRIP REPORT

TRIP. May 2010. Oregon's Transportation Chokepoints: The Top 50 Chokepoints and Remedies for Relief. Washington, DC (http://www.tripnet.org/Oregon_Chokepoints_Report_051310.pdf).

The major findings of the TRIP report are:

Oregon's quality of life and economic productivity are being reduced by chokepoints in the state's surface transportation system. These chokepoints include major roads, highways and public transit routes that impede routine travel, commuting or commerce, or that place limits on economic development opportunities because of deficient design or a lack of adequate capacity.

• Two recent reports found that the state's businesses, particularly in the Portland area, were responding to increasing traffic congestion by increasing inventories, decentralizing operations to serve the same market, increasing the number of deliveries and drivers because of longer travel times and starting production shifts earlier in the day to avoid peak congestion periods.

• Oregon's top 50 surface transportation chokepoints include urban interchanges and highway segments, public transit routes and sections of rural highways that are unable to meet a region's need for adequate mobility. This constraint on reliable transportation harms business productivity and reduces access to housing, employment, recreation, entertainment and other social functions.

• The top five surface transportation chokepoints in Oregon are located in Portland and include the I-5 Columbia River Crossing, the I-5/I-84/I-405 Interchange, the OR 212/224 Corridor, the I-205/I-5 Interchange and the OR 217/I-5 Interchange. The following chart provides more details on these five chokepoints. Intermodal (roadway and transit) chokepoints are shaded in green, roadway chokepoints are shaded in yellow and transit chokepoints are shaded in purple.

Appendix B. LEAGUE OF OREGON CITIES' CONCERNS

(Reference 2, Pages 3-4)

Stakeholder Interests and Concerns The provisions of OAR 660-012-0060 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 previous joint subcommittee of LCDC and OTC. **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 the tension between this objective and other important land use and transportation planning objectives. (emphasis added)

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

Concern 1 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. (emphasis added)

Concern 2 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.) (emphasis added)

Concern 3	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. (emphasis added)
Concern 4	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.** (emphasis added)
Concern 5	Whether zone changes that are consistent with and carry out terms of an adopted comprehensive plan should be subject to section 0060 requirements.
Concern 6	Whether standards for transportation performance, especially for state highways in urban areas, are **financially realistic or attainable given likely future transportation funding**. (emphasis added)
Concern 7	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.** (emphasis added)

Email copies:

- Hugo/Quartz Roads Group
- Hugo Neighborhood Association & Historical Society
- Rogue Advocates
- Goal One Coalition
- 1000 Friends of Oregon
- William Wilkins, Executive Director, TRIP
- Matthew Garrett, Director
  Oregon Department of Transportation
- Matthew Crall, TGM Program Coordinator
  Oregon Department of Land Conservation and Development

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Legislating More Traffic Congestion

Wednesday, 05 January 2011 11:19 The Source Staff

Imagine yourself trying to negotiate the traffic at the north end of the Bend Parkway, in the area of the Cascade Village Mall shopping center. (We know it's painful, but please try.)

Now imagine thousands more cars and trucks stirred into the mix every day. And imagine that no improvements have been made to allow the road grid to handle that extra load.

About 17 years ago, the state of Oregon wisely adopted a regulation designed to prevent that sort of thing. It's called the transportation planning rule, and basically it says that if new development is going to substantially increase traffic congestion, cities and/or developers must come up with the cash for highway improvements to mitigate the impact.

The transportation planning rule, among other things, blocked the planned creation of a Wal-Mart "superstore" at the north end of town. The Oregon Department of Transportation insisted that money be found first to pay for road upgrades, including $30 million worth at the worst bottleneck, the Cooley Road – Highway 97 interchange. The city's share would be more than $11 million, and the city doesn't have it.

Now two Republican state legislators, Sen. Chris Telfer of Bend and Rep. John Huffman of The Dalles, want to change the rule. Huffman's proposal is slightly more modest: He wants to eliminate the rule for small cities such as Prineville and Madras. Telfer's idea is to suspend it statewide for five years.

Predictably, Telfer and Huffman say it's all about creating jobs. But most of the jobs created would be either temporary (in construction) or low-wage (such as at Wal-Mart). The damage, in terms of livability, pollution and time wasted sitting in traffic, would be permanent.

But why not give Telfer's five-year-suspension idea a try, at least, and see if it helps pull Bend and the rest of Oregon out of the recession? Simply because there's no way in hell the rule will be brought back once it's gone. It's not hard to predict the rationalizations: The economy still isn't that strong, reinstating the rule would inflict hardship on cities and developers, yada-yada-yada.

Anyway, Bend's economy isn't on the skids because state regulations make development too tough; it's in that lamentable situation because it – and, to a great extent, the entire state's economy – depended too much on the volatile construction industry, and when the real estate bubble went pop there was nothing else to fall back on.

Telfer's and Huffman's idea, in a way, reflects the same sort of reckless buy-now, pay-later mentality that caused the bubble and subsequent disastrous bust. Instead of paying the bill for development as we go, they want to let development proceed full speed ahead now and worry about the tab later, when more development (presumably) will generate more revenue to cover it.

It's a sort of Ponzi scheme, and like all Ponzi schemes it comes to grief sooner or later – as everybody in Bend should have learned by now. The transportation planning rule is simple common sense, and for wanting to scrap it Telfer and Huffman deserve THE BOOT.

Written by :
TSWeekly

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what's going on

LIVE MUSIC EVENTS DINING NEWS POPULAR

Wed | 05:30PM Joanna Lee
Wed | 06:00PM Pool Tournament
Wed | 06:30PM Open Mic Night
Wed | 07:00PM Anastacia Beth Scott
Wed | 07:00PM The Summit Open Mic
Wed | 10:00PM Ladies Night
Thu David Samual Project
Thu Ladies Night with DJ Harlo
Thu | 06:00PM Acoustic Jam
Thu | 06:00PM Songwriters Open Mic
Thu | 07:00PM Open Mic Jam Session
Thu | 07:00PM JazzBros!

E-Mail/Letter

January 10, 2011

Oregon Department of land Conservation and Development (LCDC)
635 Capitol Street NE, Suite 150
Salem, Oregon, 97301-2540
503-373-0050
E-Mail: c/o Whitman Richard DLCD- richard.whitman@state.or.us
Web: http://www.oregon.gov.LCD/lcdc-shtml

References -1 January 12-13, 2011 LCDC Meeting – Agenda Item 12. Transportation Planning rule (TPR) 0060
2 December 29, 2010 Transportation Planning Rule 0060-Joint Subcommittee Memorandum-
3 December 29, 2010 House Bill 3379 Memorandum from Richard Whitman, Director/Matt Crall, Land Use- Transportation Planning Specialist, DLCD to LCDC: Subject Agenda Item 12, January 12-13, 2011 LCDC Meeting

Dear LCDC:

Thanks you for considering these comments on "Agenda Item 12 Transportation Planning Rule (TPR) 0060" for your scheduled January 12-13 meeting. As a Board member of the Lower Applegate Citizens Advisory Committee and Rogue Advocates we are part of the large citizen support for the basic principle in TPR section 0060:

"Local governments should consider and address the transportation impacts of plan and zone changes at the time they are making decision about what types of land uses to allow in an area."

Members of the Lower Applegate Citizens Advisory Committee live in the southwest area of Josephine County and Grants Pass areas. The majority of members use the Redwood Highway, Route 199, transportation corridor and connecting roadways. The Redwood Highway corridor has received extensive ODOT consultation and meetings to help resolve the significant traffic congestion and safety problems. Improvements have been made, but to date have not been able to keep pace with the extensive development of the area. In addition this highway, Route 199, is used as the main arterial for travel through Grants Pass to the Oregon coast. This Redwood transportation corridor is currently not able to adequately handle the carrying capacity, & so concern is expressed about any changes which would further delay and erode our transportation system.

Deferring of detailed transportation analysis and identification of mitigation measures to a later time will result in more degradation of this and other transportation systems and will not solve the transportation or economic problems. Delay and counting improvements as "planned" when included in a local TSP, but not funded, has contributed to this current inefficient transportation system. Developments approved in advance of infrastructure through multiple types of "conditions" create more impact problems and do not fix them. Delays can also lead to increased costs rather than "economic benefit".

The argument is in question as to whether approving transportation systems without meeting all the performance standards or deferring funding will result in "economic growth" for our community and for Oregon. The results often are quite the opposite as the quality of life is impacted with traffic congestion, accidents and often increased traffic deaths. Well planned transportation services and infrastructure are needed before approval of business and private developments.
The proposed changes, Concern 6 & others, by the League of Oregon Cities are not sufficiently backed by supportive data. Making changes by not considering all impacts of plan and zone changes may help the real estate business, but prove harmful and decrease the economic development in other business sectors.
Concern 2- Local governments need to consider the larger community and in Josephine and Jackson counties it is essential to consider the agriculture, recreation and tourism industries. Metro and other communities are working hard to develop needed alternative transportation. Concern is whether ODOT's standards for highway performance are consistent with state and local land use objectives to promote mixed-use development in urban areas. The broader directives in the TPR are also important to promote land use patterns that reduce reliance on the automobile as we look to "smart growth" and sustainable communities.

Changes are not needed in TPR section 0060
Concern 1—
* the economic problems of cities will not be remedied by deferring and not addressing all transportation deficiencies.
Concern 2 –
*need is 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.
Concern 3 –
*governments should not be able to defer detailed transportation analysis and identification of mitigation measures to the time of review of specific development proposals.
Concern 4-
* governments should not be able to count improvements as "planned" when the improvement is included in its TSP, regardless of whether the project is funded.
Concern 5-
*Zone changes and comprehensive plan changes **should be subject** to section 0060 requirements
Concern -6
*standards for transportation performance, especially for state highways in urban areas, should be financially realistic and attainable given likely future transportation funding
Concern 7
*TPR requirements do not 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.

Addressing our current transportation deficiencies in our communities, addressing critical choke points and improving the surface transportation system is essential to maintaining a high quality of life and economic competitiveness in Oregon. Reducing delays, addressing funding upfront, and all impacts of the TSP will support and maintain our communities and quality of life. The short term gains of poor planning and delay of transportation infrastructure will result in increased cumulative costs and an inadequate transportation system.

Thank you for consideration of these comments.

Sincerely,

Jean Mount
Board member Lower Applegate Citizen Advisory Committee
Board member Rogue Advocates
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