

# STATE OF OREGON

# MEMORANDUM

**Department of Transportation  
Transportation Development Division**

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TO: Matthew Garrett, ODOT Director

FROM: Michael Rock, ODOT Long Range Planning  
On Behalf of the House Bill 3379 Stakeholder Committee

SUBJECT: Recommendations on Related Issues Outside of HB 3379  
Rulemaking

The House Bill (HB) 3379 Stakeholder Committee's primary role was to assist with the preparation of draft language for an Administrative Rule to implement HB 3379. The Proposed Rule language from the Committee was shared with you earlier this Fall for consideration and initiation of the permanent rulemaking process. The Proposed Rule was published in the November 1, 2010 Oregon Bulletin and was available for public review through November 22, 2010 with a public hearing held on November 17<sup>th</sup>. OTC consideration of the Proposed Rule is scheduled for their December 15, 2010 Meeting.

During Stakeholder Committee Meetings, members discussed a number of important items that were outside of the scope of writing the Administrative Rule, including considerations for the Transportation Planning Rule (TPR), Oregon Highway Plan (OHP) and broader transportation policy issues. ODOT staff worked with the group to provide an opportunity to discuss these issues following development of the Proposed HB 3379 Administrative Rule. These related items were the focus of the final Committee Meeting Agenda on October 27, 2010.

In addition to discussing these issues throughout Committee proceedings, the Stakeholder Committee received an update regarding the September 1, 2010 Land Conservation and Development Commission (LCDC) briefing on HB 3379 and the TPR where other issues were raised. Some committee members and/or their agencies provided testimony at the September 1<sup>st</sup> briefing.

This memo provides two sets of recommendations on issues the Agency may wish to consider for future work relating to balancing transportation and economic development. The first set of issues cover items recommended for consideration as part of HB 3379 Stakeholder Committee proceedings. The second set covers

additional issues collected at the September 1<sup>st</sup> LCDC briefing on HB 3379 and the TPR, or through other related forums.

### **HB 3379 Stakeholder Committee Issues and Recommendations for Agency Consideration**

The following issues were identified by the HB 3379 Stakeholder Committee and considered to be outside of the work directly associated with preparing the Draft Administrative Rule. Staff tracked these issues within an “Issues Bin” that was reviewed at each Stakeholder Committee Meeting. These items are presented in the order which they were raised during Committee discussions and do not represent any priority order.

#### **1. Consider planning, design and funding links.**

This issue is related to ODOT design practices. It covers how cost savings and efficiencies, as well as minimizing construction impacts, may be achieved through non-traditional planning and design practices, and through adjustments to design standards.

ODOT staff is currently implementing new design techniques through the application of Practical Design. Much of Practical Design’s focus is to effectively scope projects so that design teams can be confident that a particular solution is sufficient to improve the transportation system, without the investment being excessive given the transportation need (e.g. “right sizing” transportation solutions). Continued implementation of ODOT’s Practical Design initiative will improve applications and tools in this area.

Oregon’s Least Cost Planning initiative also provides a forum to better integrate planning, design and funding considerations. HB 2001, from the 2009 Legislative Session, directs ODOT to work with stakeholders to develop a Least Cost Planning model for transportation decision making. As used in the legislation, Least Cost Planning means a process for comparing direct and indirect costs of demand and supply options to meet transportation goals, policies or both, where the intent of the process is to identify the most cost-effective mix of options.

The HB 3379 Stakeholder Committee encourages continued implementation of these programs and techniques by Agency staff.

#### **2. Flexibility currently comes after collaboration to address conflicts between local planning and state standards. There needs to be more options for a range of approaches earlier in the planning/design process.**

Enhanced collaboration on transportation planning and policy concerns needs to occur early in planning and development processes. A primary forum where this can occur is through additional coordination at the transportation system and facility plan levels. By coming to agreement and developing feasible solutions for all parties, this early planning work provides the opportunity to be proactive in addressing conflicts.

ODOT staff is willing and encouraged to participate in pre-application conferences and other planning activities whenever possible. This allows issues and potential conflicts related to the state highway system to be identified and addressed early on.

The Draft HB 3379 Administrative Rule also includes provisions for early coordination and collaboration between a local jurisdiction, ODOT and other parties. Early coordination will be essential to ensure that the HB 3379 application process is efficient and within the local decision-making timeline.

In addition to continued implementation for the items discussed above, the Stakeholder Committee recommends that infrastructure considerations, including for transportation, be a more significant part of early planning work on Urban Growth Boundary and Urban Reserve Area decisions.

**3. Potential TPR text error “...financially constrained Regional Transportation System Plan....”**

The question was raised during an early HB 3379 Stakeholder Committee Meeting as to whether the TPR text stating “financially constrained Regional Transportation System Plan” refers to the federally required (and financially constrained) Regional Transportation Plan or the state required Regional Transportation System Plan (which is not financially constrained). Preliminary discussions with the Department of Land Conservation and Development (DLCD) indicate this language may be intentional and changes could have policy ramifications that should be considered.

The Stakeholder Committee recommends considering clarification of this term as part of any future TPR amendments.

**4. Consider implications from Greenhouse Gas emissions planning work on HB 3379 and vice versa.**

ODOT staff is participating in a number of technical planning activities related to Senate Bill (SB) 1059 addressing Greenhouse Gas emissions reduction planning. The Stakeholder Committee recommends that staff continue to monitor

this work to determine if there are impacts to implementation of the HB 3379 Administrative Rule and related Stakeholder Committee recommendations.

**5. Consider the value of corridor planning to help balance planning and development objectives.**

The HB 3379 Stakeholder Committee supports corridor planning as an effective tool for developing implementation strategies for transportation solutions and policy direction within a state highway corridor. These plans provide opportunities to coordinate with jurisdictions along a corridor and work toward a common objective. Corridor plans have multiple benefits that go beyond mobility applications and offer predictability for transportation system functions.

Corridor planning is an effective tool for developing alternate mobility standards that measure corridor mobility as currently allowed in the OHP. A corridor mobility standard would allow evaluation and implementation of a corridor travel time measure or corridor performance standard that considers traffic impacts and possible significant effects more broadly than point specific volume-to-capacity (v/c) ratios (e.g. individual intersections or movements at intersections). Corridor plans can assess and define the function of the facility and overall corridor for more detailed planning and implementation decisions, including considerations for plan amendments. Corridor plans and corridor mobility standards provide additional opportunities to broaden the scope of solutions that ODOT, local governments and affected property owners may consider. This could include more emphasis on a parallel street system, upstream or downstream improvements, or land use changes.

ODOT has outlined processes for preparing corridor plans and these steps have been followed for a number of corridors throughout the state. However, full corridor plans have not been done as often as originally envisioned often due to a lack of resources and challenges with development. Recently much of ODOT's planning focus has been at the facility plan level for interchange areas or segments of corridors. These plans can also provide opportunities to better balance planning and development objectives.

The HB 3379 Stakeholder Committee recommends that ODOT evaluate and provide more clarity regarding corridor mobility standards as well as recommend broader use of these tools, including through corridor planning work.

**6. Consider the benefits of phased mitigation as a tool to help balance planning and development objectives.**

Some Stakeholder Committee members noted that it is difficult to suggest a phased mitigation plan to address a significant effect identified under the TPR.

Comments were made that when a significant effect occurs it is “all or nothing” in terms of mitigating the identified significant effect. Committee members suggested that, due to funding constraints or design considerations, it may be appropriate and feasible to mitigate a significant effect by phasing-in an improvement project. It was noted by some however, that a phased approach should still be tied to the planning period to provide certainty that transportation needs will be addressed. It was also noted that a phased approach would mirror the OHP Major Improvements Policy (Policy 1G) that establishes the following priorities when considering improvements to the state highway system:

1. Protect the existing system.
2. Improve efficiency and capacity of existing highway facilities.
3. Add capacity to the existing system.
4. Add new facilities to the system.

Some opportunities for phased mitigation are currently available that limit development impacts to correspond with a feasible level of mitigation (e.g. trip caps, developing portions of properties, interim improvements, etc...), with additional project phases to come later. However, the perception of some Committee Members and others suggests that this flexibility may be difficult to use or is unknown in common practice.

A separate issue was discussed that involves evaluation and phasing of large projects as something the Agency should consider for additional work, but it is not directly tied to HB 3379 recommendations for balancing transportation and economic development. Three key items were noted on this concern:

1. There is no overall guidance on this issue.
2. There is no guidance on how to assess phases.
3. There is often a menu of choices, but there is never an additional discussion in the community based on the amount of money available, what aspects of the menu the community would choose; it is chosen for the community with little or no discussion.

The HB 3379 Stakeholder Committee recommends that DLCD/LCDC and/or ODOT evaluate the current flexibility for allowing phased mitigation to address a TPR significant effect and better document the approach. If appropriate, staff could provide an update to the existing TPR Guidance Document to identify acceptable methods and best practices to develop and evaluate phased mitigation plans. ODOT may be able to reassess aspects of phased mitigation under Agency authority to allow greater flexibility for phasing in state highway improvements and mitigation. If barriers to the desired direction for phased mitigation are found, the Agencies could consider new language or methods to make this a more useful and readily available tool.

7. **Provide guidance on implementation of the HB 3379 Administrative Rule. Aspects of this guidance may include implementation of OHP alternate mobility standards at the plan amendment level, providing sample (model) overlay zones, and expanding information to help with the preparation or evaluation of applications including criteria for economic development projects and consideration of service and office jobs.**

The Committee concurs with ODOT staff direction to prepare a Guidance Document to assist local jurisdictions and others prepare HB 3379 applications.

8. **Concerns regarding the timing requirement in the TPR for mitigation that avoids further degradation by the time of the development for areas already exceeding performance standards.**

Section 660-012-0060(3) of the TPR notes:

*“...a local government may approve an amendment that would significantly affect an existing transportation facility without assuring that the allowed land uses are consistent with the function, capacity and performance standards of the facility where:*

*(a) The facility is already performing below the minimum acceptable performance standard identified in the TSP or comprehensive plan on the date the amendment application is submitted;*

*(b) In the absence of the amendment, planned transportation facilities, improvements and services as set forth in section (4) of this rule would not be adequate to achieve consistency with the identified function, capacity or performance standard for that facility by the end of the planning period identified in the adopted TSP;*

*(c) Development resulting from the amendment will, at a minimum, mitigate the impacts of the amendment in a manner that avoids further degradation to the performance of the facility **by the time of the development** (emphasis added) through one or a combination of transportation improvements or measures;”*

Stakeholder Committee members expressed concern that mitigation “by the time of development” is too constraining and may preclude options that would successfully mitigate a significant effect over time. It was suggested that consideration could be given to changing “by the time of development” to “by the end of the planning period.” This would provide additional flexibility for phased mitigation as discussed earlier. However, impacts to the transportation system would need to be weighed before any changes are enacted. The HB 3379 Stakeholder Committee recommends this issue be further evaluated.

## **9. TPR Section 0060 may be an obstacle to achieving community objectives**

Application of TPR Section 0060 can represent an obstacle to community objectives that try to increase density to promote more efficient use of land and economic development. Examples from various communities were provided during the September 2010 LCDC briefing where a plan amendment/zone change was required to provide increased density in a town center or mixed-use area and would run into problems with the TPR and the significant effect element. In some cases, the development would simply move further out to the urban fringe as a result of this conflict. Presenters of these examples expressed frustration with ODOT's review of the transportation impacts on adjacent state highways and the Agency's comments regarding needed improvements or reductions to densities. Testimony also supported the idea of providing better balance between Statewide Planning Goal 9 (Economic Development), Goal 10 (Housing) and Goal 12 (Transportation). Stakeholder Committee members noted that new analysis methods hold promise for better assessing how density in one location can help reduce growth and traffic impacts elsewhere.

HB 3379 was one step to begin to address this issue. However, the Stakeholder Committee acknowledges that the HB 3379 Administrative Rule is narrow in its focus and is not able to address many of the larger issues raised at the LCDC briefing due to limited authorities.

## **10. ODOT's Mobility Standards need to be more flexible**

ODOT's mobility standards are a topic the HB 3379 Stakeholder Committee discussed thoroughly and is imbedded in a number of other recommendations provided in this memo. The need for flexibility was also a prominent theme in testimony at the September LCDC briefing. Testimony supported additional flexibility for local jurisdictions to use adjusted or different traffic performance measures (other than v/c) when they conduct their traffic impact assessments. Details on the use of v/c ratios are discussed as part of the next section of this memo.

OHP policy does allow for the development of alternate mobility standards when it is infeasible to meet the current standards for an area. To date, few jurisdictions have applied for alternate mobility standards at the system planning level, but several are currently under development. ODOT staff recognizes that the process to develop and adopt alternate mobility standards can be complex and time consuming. Staff is committed to find more efficient ways to use these tools and provide better information to local governments on how to most efficiently consider the use of alternate mobility standards.

As discussed with the Stakeholder Committee, ODOT has an existing Guidance Document that describes the process and preparation of alternate mobility standards (available online at <http://www.oregon.gov/ODOT/TD/TP/docs/orhwyplan/Mobility.pdf>). The HB 3379 Stakeholder Committee recommends that ODOT continue to improve the existing OHP Mobility Standard Guidelines and/or provide direction for additional flexibility in the use of OHP mobility standards. Enhanced outreach on the current and/or enhanced guidance will also be an important aspect for follow-up work.

### **11. Consideration of Performance Measures Beyond Volume-to-Capacity Ratios**

The use of v/c ratios is a specific aspect of OHP mobility standards where additional flexibility is desired by a number of parties. However, changes to the use of v/c measures will require evaluation based on several factors.

Earlier versions of the OHP defined state highway mobility by a letter grade around level of service (LOS). However, because each letter grade actually represented a range of traffic conditions, it became difficult to implement and was the subject of a court decision that caused ODOT to revise mobility standard methodologies. V/C ratios were selected for the mobility measure after an extensive analysis during 1999 OHP development. V/C based standards were chosen for reasons of application consistency, manageable data requirements, and accuracy in forecasting, among other considerations. Confidence in these factors are important since a prominent application of OHP mobility standards is for land use decisions that can potentially become involved in legal proceedings.

Staff recognizes that there are limitations to v/c ratios and the current standards are under pressure from growing levels of congestion and a lack of funding for improvements. As has been discussed, ODOT has the ability to adopt alternate mobility standards through system and/or facility planning processes. The proposed HB 3379 Administrative Rule adds another tool for the adoption of alternate standards at the plan amendment level to facilitate economic development projects.

ODOT has developed the OHP Mobility Standard Guidelines to assist the consideration and development of alternate mobility standards. However, these Guidelines assume that the alternate mobility standard will be v/c based in-line with current OHP policy. Additional flexibility and enhanced guidance can be explored to identify other acceptable transportation performance measures and/or processes that a local jurisdiction can consider and the circumstances where they might be appropriate. This will build off of current ODOT research on alternative mobility metrics.

## **12. Reasonably Likely**

Committee members raised concerns about Agency implementation of “Reasonably Likely” determinations established in the TPR. The Stakeholder Committee sees a need for clarity and guidance on what can be relied upon as likely mitigation and system improvements outside of the STIP project list, particularly for areas without a financially constrained project list in a Regional Transportation Plan. Some on the Committee feel that proportional mitigation should be considered as part of “Reasonably Likely” determinations.

## **13. Funding Concepts**

The original language in HB 3379 explored potential new financing mechanisms to fund improvements and mitigation for economic development projects and plan amendments. While this language was removed from the bill because of concerns with additional funding at this time, the Committee feels there is merit for continuing to explore new options to fund mitigation and other improvement projects.

## **14. Enhanced Guidance**

HB 3379 Stakeholder Committee discussions often pointed to flexibility and tools for working through transportation and economic development issues within the current policy framework. However, there is uncertainty on what is allowed and how to go about using the existing flexibility. In addition to the need for clarity, the Committee recommends the Agency seek to streamline use of the tools so that they are practical for all parties including for time commitment and costs. Additional outreach is needed and creative outreach techniques may be helpful. Committee members noted that the Agency could consider a best practices website for these topics.

## **15. Consider Thru Traffic Issues**

Committee members requested the Agency keep in mind as part of these conversations that the actions in one community, which increase development and traffic, can impact other communities on the same facility.

## **16. First Come, First Served vs. Reservation of Capacity**

A recurring issue discussed by the Committee is that the policy and rule framework seems to reward developments that occur early on (when there is adequate capacity) by no or limited mitigation requirements, while later developments end up mitigating impacts in full. The Committee recommends that concepts for reservation of capacity or proportional funding contributions be

explored, including considering ways to reserve capacity for future job creating development.

### **17. Legislative Outreach**

Committee members recommend the Agency consider providing feedback to the legislature describing the work of the Committee, outcomes and next steps. The group feels that good work was done through this process and should be considered as part of future decisions on these topics.

### **Comments from September 1, 2010 LCDC TPR Briefing and Other Related Issues**

LCDC held an informational briefing on HB 3379 at their September 1, 2010 Meeting. Following the HB 3379 presentation by ODOT staff, LCDC acknowledged the limited focus and authorities provided in the statute. As a part of this agenda item, LCDC took testimony from the public, interest groups and local governments on both HB 3379 and broader issues related to balancing transportation and economic development. Public testimony mainly focused on the TPR and OHP, and not on HB 3379. Much of the testimony outside of HB 3379 fell into the categories discussed below.

### **Suggestions for TPR Amendments or Other Actions**

Public, interest group and local government testimony at the LCDC briefing included suggestions on possible revisions to the TPR if LCDC were to consider amendments as part of their work plan. The testimony also included suggestions for other related actions. Items in both categories are described below.

- The TPR should not apply to zone changes that are consistent with existing comprehensive plan designations.
- The TPR currently applies to annexations/"small" zone changes. Should a threshold be established where the TPR wouldn't apply (e.g. recognize the differences between large scale legislative amendments and "small" plan amendments/zone changes)?
- Provide the ability to adopt ordinance provisions that effectively defer TPR analysis to the development review phase when no specific project is proposed at the time of rezoning. This would reverse the case law established in the Willamette Oaks Land Use Board of Appeals decision.
- Requiring a "worst case scenario" for TPR Section 060 analysis is unrealistic. Provide the ability for "average trip generation" analysis by land use district.
- Provide an increased "trip credit" to transit supportive/smart development/multi-modal proposals. A 30 percent credit was suggested.

Currently the TPR allows up to a 10 percent credit, with a greater credit allowed with more detailed local information.

- Provide flexibility or enhanced guidance as to when funding needs to be available for mitigation (as discussed in earlier sections of this memo on phased mitigation).
- Allow consideration of the impacts approved Destination Resorts have on nearby communities. Approved Destination Resorts consume transportation capacity that would otherwise be available for development in local communities. Many of the approved Destination Resorts aren't being developed because of the economy, yet the trips from these uses are still being assumed in the transportation analysis.
- Establish or enhance the hierarchy of facility importance for the application of the TPR (e.g. functional classification of the highway, etc...). Plans should recognize that "all roads are not equal" and are not of the same importance.
- Should there be a System Development Charge for state highways as a method to move away from the "first come, first served" approach?

### **Next Steps from the LCDC Briefing**

As a result of the September 2010 Meeting, LCDC requested that DLCD staff consider the testimony and return to the Commission to have a discussion on whether amendments to the TPR or other remedies are needed. Staff was asked to prepare a memo that reviews the issues and suggestions identified by stakeholders and assess options for addressing those issues including:

- Relationship of issues to HB 3379 rulemaking,
- Additional guidance to local governments about application of the TPR,
- Additional guidance from ODOT about application of the OHP,
- Amendments to the TPR, OHP or other documents, and
- Ramifications to freight and other mobility considerations from potential changes to rules or implementation.

### **HB 3379 Stakeholder Committee Recommendations on Issues Discussed at the LCDC Briefing**

The HB 3379 Stakeholder Committee agrees that the items raised at the LCDC briefing have merit and warrant further consideration having been raised through stakeholder testimony. However, these issues were not discussed in detail by the Committee in order to develop specific recommendations and are not considered an endorsement through the HB 3379 Stakeholder Committee process.

HB 3379 Stakeholder Committee recommendations in this memo will also be used to inform material prepared as follow-up to the September LCDC briefing.