

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

**Testimony received
at the meeting
February 15, 2011**



From LCDC:
Hanley Jenkins
Greg Macpherson
Marilyn Worrix



From OTC:
David Lohman
Mary Olson

Don Forrest
Site Acquisition Manager, Fred Meyer Stores
(Submitted by Mark Whitlow without oral testimony on behalf of Fred Meyer)

Anita Yap
President, Oregon City Planning Directors Association

Andy Back
Principal Transportation Planner, Washington County
(Flow chart)

Tom Kloster
Transportation Planning Manager, Metro

Greg Byrne
Community Development Director, City of Albany
(Submitted by Linda Ludwig on behalf of the city)

Committee Staff

For further information or to submit written testimony, contact Matt Crall:
matthew.crall@state.or.us
503-373-0050 ext. 272
635 Capitol St NE, Suite 150
Salem OR 97301-2564

What's on your list today? You'll find it at

FredMeyer

Fred Meyer Stores • P.O. Box 42121 • Portland, OR 97242-0121 • 3800 SE 22nd Ave. • Portland, OR 97202-2999 • 503 232-8844 • www.fredmeyer.com

February 14, 2011

Michael D. Rock
Oregon Department of Transportation
Transportation Development Division
555 13th Street NE
Salem, OR 97301

**RE: Potential Amendments to Transportation Planning Rule – Request for
Streamline to Facilitate Development**

Dear Joint Committee Members:

This letter is written on behalf of Fred Meyer Stores Inc. Fred Meyer is the second largest private employer in the state of Oregon. Fred Meyer owns and operates 52 stores in Oregon and employs over 13,000 people in the state.

When a plan amendment or zone change is needed to develop a new Fred Meyer store, or to enlarge an existing facility, in order to allow the expansion or new development, the TPR requires that concurrent transportation facility capacity be available by the end of the long-range planning period. A long-range transportation impact study is required with a goal of identifying the potential impacts to the transportation system anticipated by the new or expanded store, with proposed transportation improvements to mitigate those impacts.

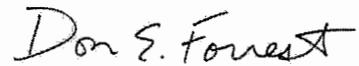
Additionally, the traffic impact study will identify existing and projected system functionality over the longterm, with the typical study finding that the system is already operating at unacceptable levels, or will be when projected to the end of the planning period. Fred Meyer is then required to mitigate its own impacts and, in addition, to provide additional off-site transportation improvements to fix the existing or anticipated system deficiency(s), beyond Fred Meyer's proportionate share.

It is our hope that the Joint Committee will consider an amendment to the TPR which would allow retailers and developers to proceed with their projects by covering their own impacts, but without being required to repair existing or anticipated system failures. We understand that provisions of the existing rule allow this consideration but only under limited circumstances. We encourage the State to make that simple result available at the outset, and to streamline other provisions to reduce the traffic impact study requirements for a simplified and cost effective approach.

Michael D. Rock
Oregon Department of Transportation
Page 2

Thank you for the opportunity to submit this request and participate in this important discussion.

Sincerely,

A handwritten signature in cursive script that reads "Don S. Forrest".

Don Forrest
Site Acquisition Manager
Real Estate & Store Development

OREGON CITY PLANNING DIRECTORS ASSOCIATION
PO BOX 928
SALEM OR 97308
1201 COURT STREET NE, SUITE 200
SALEM OR 97301
503-588-6550



February 14, 2011

To: Joint subcommittee of the Oregon Land Conservation and Development Commission and the Oregon Transportation Commission

Subject: OCPDA Recommendations on amendments to the Transportation Planning Rule

Thank you for the opportunity to comment on rulemaking for refinements to the Transportation Planning Rule. OCPDA recognizes the importance of the TPR and have developed recommendations that will strengthen the implementation and application of the rule. We appreciate that you have formed this subcommittee to review the TPR and are seeking input from those that work with the TPR regularly.

At the January 2011 OCPDA Board meeting, the board unanimously approved a list of Recommended Amendments to the Transportation Planning Rule, which are described in more detail in the attached document. The four concepts are summarized below.

1. **Zone Changes.** Add a provision which exempts zone changes from TPR analysis provided the requested zone change is consistent with the land use designation adopted in the local comprehensive plan and acknowledged by DLCD.
2. **Analysis of Potential Impact.** Amend 660-012-0060(1)(c)(A) to clarify the current language regarding the level of anticipated development that is required to be evaluated. If a concurrent development application is proposed, it shall serve as the basis for the analysis. In the absence of a concurrent development application, the rule would evaluate land uses or levels of development that would be anticipated to occur, under an "average or reasonably likely scenario."
3. **Implementation of Mitigation Measures.** Increase flexibility regarding how and when mitigation measures are implemented. Such changes would help reflect limited financial resources, and would better align with associated development processes.
4. **Proportional Mitigation.** Provide language in the rule to reflect the legal responsibility of local governments regarding exactions. Local jurisdictions must show that particular exactions not only have a nexus to the requested action, but that the exaction must be reasonably proportional to the impact resulting from a given request.

Thank you again for the opportunity to participate in these discussions. We are available for further input on issues if you have questions.

Best regards,

Anita Yap, AICP
President of the Board
Oregon City Planning Directors Association

Oregon City Planning Directors Association Recommended Amendments to the Transportation Planning Rule

1. **Zone Changes**

Recommended Action: Add a provision which exempts zone changes from TPR analysis provided the requested zone change is consistent with the land use designation adopted in the local comprehensive plan and was acknowledged by DLCD.

Discussion: As noted in testimony from numerous cities, zone change requests involve actions which are intended to implement adopted and acknowledged comprehensive plans. This situation is in stark contrast to all other provisions of the TPR which focus on amendments, not implementation, of comprehensive plans and codes.

The resulting effect for zone change requests is that there is no fixed goal post upon which one can rely (e.g. the adopted and acknowledged comprehensive plan). The TPR essentially trumps any locally adopted and acknowledged plans in determining whether a particular zone change can be supported. In many cases cited in the testimony, future development is prevented all together, or at intensities far below that planned for by local jurisdictions. OCPDA believes that this situation runs contrary to the fundamental principles of the state to grow efficiently within our respective UGB's. Left unchecked, this situation poses a significant threat to our ability to achieve these goals.

2. **Analysis of Potential Impact**

Recommended Action: Amend 660-012-0060(1)(c)(A) to clarify the current language regarding the level of anticipated development that is required to be evaluated. OCPDA recommends that if a concurrent development application is proposed, it shall serve as the basis for analysis. In the absence of a concurrent development application, the rule would evaluate land uses or levels of development that would be anticipated to occur, under an "average or reasonably likely scenario".

Discussion: Currently, there is no language in the rule that defines the level of development activity that must be evaluated under this subsection. Given that some proposals include concurrent development applications, it would seem logical to allow that project to serve as the basis for analysis. Where no development proposal is included, the standard would assume a typical, or average level of anticipated development. While individual future projects may fall above or below these levels, this approach would provide a fair account of anticipated development intensities over the long term.

3. **Implementation of Mitigation Measures**

Recommended Action: Increase flexibility regarding how and when mitigation measures are implemented. Such changes would help reflect limited financial resources, and would better align with associated development processes. Recommended changes could include:

- Allow mitigation measures to be implemented at the time of development
- Phased mitigation: Consider flexibility to allow identified projects (not yet funded) to be used for future year compliance.

- Elimination of the distinction of “minor transportation improvements” as used in 660-012-0060(2)(e). Changes to this provision could help facilitate streamlined transportation solutions.
- Provide streamline process for cities to adopt alternative mobility standards. Alternatively, provide language that balances v/c targets with other land use objectives (e.g. projects achieving higher density are held to lower v/c standard). HB3379 provided a good first step, but offers very little tangible benefit.

Discussion: As the TPR is currently interpreted, mitigation measures not only need to be identified at the time of a proposed amendment, but funding for these measures need to be in place as well. For most amendment requests (especially smaller privately initiated amendments), the reality is that unless the local jurisdiction has previously incorporated such measures within their TSP, an applicant will either withdraw or scale back their request to avoid this cost and time prohibitive requirement, or face denial. LCDC has received testimony from numerous cities confirming this to be a common theme throughout the state.

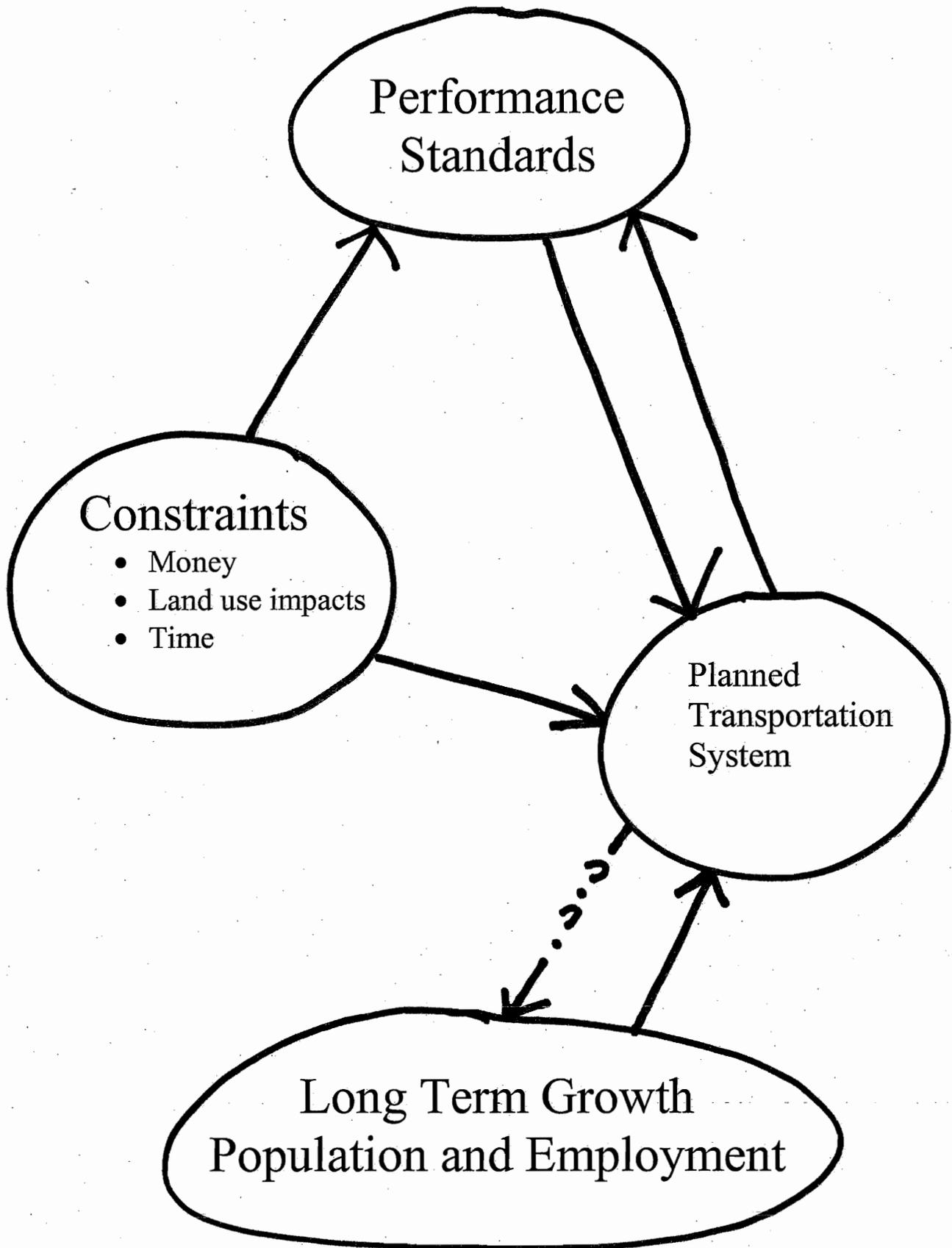
The recommended actions above represent some potential options to align mitigation requirements with the timing and financial realities being faced in most local communities. Without such changes, many cities have testified that they expect to see reduced levels of development or development inconsistent with the state’s goals of compact growth.

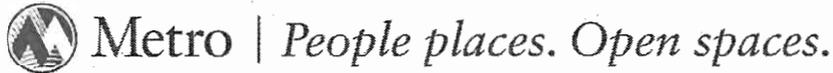
4. **Proportional Mitigation**

Recommended Action: Provide language in the rule to reflect the legal responsibility of local governments regarding exactions. Local jurisdictions must show that particular exactions not only have a nexus to the requested action, but that the exaction must be reasonably proportional to the impact resulting from a given request. For privately initiated requests, consider an option to require payment of fees in-lieu of an applicant’s proportional impact.

Discussion: As LCDC has heard in the testimony previously provided, the TPR does not account for any proportional considerations (e.g. Dolan findings). For example, if a privately initiated zone change would potentially contribute a handful of additional trips to an already failing intersection, this single request would bear the responsibility of improving the intersection back to acceptable levels. Such mitigation is typically cost prohibitive for a single party. Furthermore, local jurisdictions would also be prohibited from imposing a disproportional exaction. Given the financial challenges facing most local jurisdictions, the solution doesn’t reside with the cities to implement such mitigation.

Left unchecked, the current pattern of avoidance (of impact) will likely continue. While this may satisfy ODOT’s concerns, it actually results in scenarios completely contrary to the long term goals for development within UGB’s.





February 15, 2011

Metro Testimony on Proposed Rulemaking: Transportation Planning Rule (TPR) Amendments

History

The Metro region opposed the 2005 amendments to the TPR citing concerns over unintended sprawl effects, but agreed to test the new requirements as part of developing the 2035 Regional Transportation Plan (RTP). The lessons of the 2035 RTP underscore the following:

- Adopting the RTP required a State of Oregon legal interpretation stating that the Section 0060 provisions do not apply to RTP updates;
- Metro was unable to meet Oregon Highway Plan (OHP) mobility standards, and used a policy loophole to maintain compliance with the OHP;
- The RTP update failed to bring forward meaningful alternative mobility standards, due to lack of resources and time.

Rethinking Congestion Policy

Most of Oregon's current transportation policy is governed by congestion standards that are often at odds with the growth strategies envisioned in local plans:

- There is a national consensus that that we can't "build our way out" of congestion, and yet a substantial share of our scarce transportation dollars are still invested with this expectation.
- There is an emerging national consensus that sprawl creates more congestion, yet the OHP mobility policy promotes sprawl by default by pushing development to less congested areas at the urban edge.
- The "trip credits" approach used by the RTP for "good" development in congested areas is only a band-aid that will continue to promote sprawl since the "credits" offer a marginal benefit in most cases and still pivot on a congestion policy that pushes growth toward the urban edge.

The RTP promotes two new strategies for managing congestion in a congested urban environment:

1. *Managing for reliability*: this means defining success with the relative reliability of a corridor to move people and goods, as opposed to the degree of congestion. This policy is based on research that shows commuters and businesses successfully adapting to congestion, provided they can reasonably estimate and manage their travel time.
2. *Managing by travel corridor*: the RTP identifies 24 mobility corridors in the metro region that are defined by land use anchors, and the network of roadways and transit that serves these land use anchors. This integrated strategy could provide a new template for the OHP, and could be a way for the TPR to frame mobility.

Congestion & the Economy

While the Metro region clearly has transportation liabilities that affect our economic competitiveness, congestion is not chief among them. This is proved by the fact that our congestion levels continue to rank below those of Vancouver BC, Seattle, San Francisco, Los Angeles and San Diego -- all of whom we trail in economic activity and rate of job growth. These are areas where the TPR could sharpen our focus:

- The TPR must find a way to measure economic viability that helps us wisely invest transportation dollars, and moves us toward a more competitive position with other West Coast metropolitan areas. The state's least-cost planning efforts are an important starting point for this work.
- The TPR must also find a way to say "yes" to growth inside urban growth boundaries that represents a better alternative to sprawl, and place more trust in private markets when evaluating amendments to plans and zoning.

The TPR & Climate Change

The looming crisis represented by global climate change should be the major new frame for the TPR, with any updates to the rule reflecting a new focus on climate as the major policy driver. The following are two key areas where the TPR should address climate change:

1. *Local and regional plans* should be re-framed to focus on strategies for achieving GHG/capita reduction as the principal outcome. While this new focus is consistent with Oregon's statewide planning program of promoting compact development and limiting sprawl, the climate outcome should be explicit in the TPR.
2. *Infrastructure investment strategies* in local plans should be designed to cope with the effects of climate change over the long term. This includes GHG/capita reduction strategies, but also contingency plans for managing the effects that climate change is predicted to have on infrastructure.

February 11, 2011

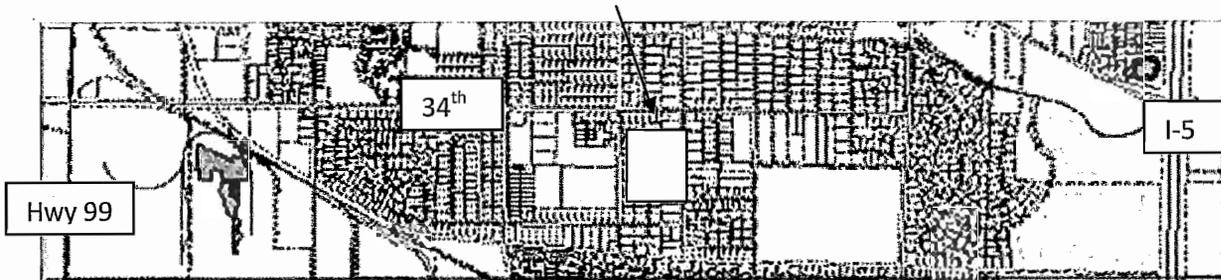
Linda C. Ludwig

Deputy Legislative Director
League of Oregon Cities
PO Box 928
Salem, OR 97308

Linda,

You have asked for cities' experiences in dealing with the TPR and the highway plan, as you prepare to address the Legislature on potential amendments.

Here's one that we dealt with recently.



The highlighted parcels in the map excerpt above lie almost midway between I-5 on the east and Hwy 99 on the west – truly an infill site, first subdivided in the 50's. It's difficult to develop because the V/C ratios at the intersection of 34th Ave (the city street) and Hwy 99 would be exceeded with any sort of development of this +/- 7-acre site. The zoning has been changed between light commercial and multi-family in the past in an attempt to find a marketable solution. Someone recently wanted to go back to a mixed use, with convenience commercial and residential units.

We had to include lane widening on Hwy 99 in the TSP to meet the V/C requirements, even though the predictions for LOS "C" extend to the life of the plan. It's the highway speed that makes the big difference, apparently.

So, developers continue to pass on the site. No one developing seven acres of mixed use can reasonably widen highway lanes almost a mile away.

In our downtown, Hwy 20 falls on a one-way couplet, and connects Corvallis and North Albany to the Interstate. Unfortunately, the downtown commercial cross streets (1st and 2nd Ave) are also one-way. Any change back to two way streets – a really good thing for a downtown setting – are hampered by the need to keep the signal timing correct for highway mobility. Going to two-way would require a few

Ludwig Letter
Page 2
February 11, 2011

seconds of left turn movements, and that would reduce through movement. In the contest between highway mobility and downtown revitalization, the mobility wins.

These are among the current issues we are having trying to integrate the transportation regulations into our planning and land use future.

Thanks for seeking our participation.

Cordially,

Greg Byrne
Community Development Director

GB Albany