



# Oregon

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March 10, 2005

TO: Land Conservation and Development Commission

FROM: Robert Cortright, Transportation Planning Coordinator

SUBJECT: **Agenda Item 1, March 16-18, 2005 LCDC Meeting**

**PUBLIC HEARING ON PROPOSED ADMINISTRATIVE RULE AMENDMENTS  
– OAR 660-012 (Transportation Planning Rule) REGARDING REVIEW OF  
PLAN AND LAND USE REGULATION AMENDMENTS**

**ADDITIONAL PUBLIC TESTIMONY**

Attached are additional letters of comment on the proposed rule amendments. Comments from 1000 Friends of Oregon were received in February but inadvertently left out of the Commission packet. Comments from the City of Portland were received on March 7, 2005.



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**Date:** February 11, 2005

**From:** Rob Zako, Transportation Advocate

**To:** Land Conservation and Development Commission

**Re:** Five suggestions for improving Section 0060 of the Transportation Planning Rule

**1. The intent of Section 0060 should be clearly stated in a single subsection that combines the existing/proposed subsections (1) and (2).**

Section 0060 has always been a “2-part” rule: trigger and response. The section is triggered when there is (or would be) a significant effect. The response is for the local government to adopt one or more measures to mitigate the significant effect, i.e., to assure that there isn’t actually a significant effect. This 2-part nature of the rule continues to be a source of confusion.

The courts have concluded that the intent of Section 0060 (what LUBA in *Jaqua* termed the “prime directive”) is for local governments to “assure that allowed land uses are consistent with the identified function, capacity,” etc. of the transportation system—whether or not there is a “significant effect.”

Swapping subsections (1) and (2) helps make the intent of the rule clearer—but not enough. The addition of the word “would” in the definition of “significantly affects” signals that the aims of the rule aren’t clearly articulated. Is it a significant effect if it would occur or if it actually does occur? If mitigation measures assure there won’t be a significant effect, does the rule still apply? There’s been a lot of case law trying to sort out such confusions.

The intent of Section 0060 should be clearly stated in a single subsection that combines the existing/proposed subsections (1) and (2).

For example, in the *current* version of the TPR, subsections (1) and (2) could be combined to read as follows without changing the *current* meaning:

**OAR 660-012-0060(1)**

**When a local government amends a functional plan, an acknowledged comprehensive plan or a land use regulation, it shall assure that land uses allowed by land use plans and regulations are consistent with existing and planned transportation facilities and services in the transportation system plan:**

- (a) Allowed land uses are consistent with the functional classification of existing and planned transportation facilities and services.**
- (b) Allowed land uses will result in levels of travel or access that are consistent with the functional classification of existing and planned transportation facilities and services.**

**(c) Allowed land uses will result in levels of travel or access that are consistent with the performance standards (level of service, volume-to-capacity ratio, etc.) of existing and planned transportation facilities and services.**

Of course, in light of the *Jaqua* decision, we recognized there is a strong desire to modify the last part of this intent dealing with performance standards. The language above is intended to offer a better structure for the rule. A separate policy question is: What actually is the intent of Section 0060? LCDC should articulate the intent of Section 0060 clearly before adopting any amendments. The offered structure is intended to focus attention on that critical policy question, not to provide the answer to that question.

There are several good reasons to combine subsections (1) and (2):

- **Simplicity and Clarity:** Combining the two subsections makes the rule simpler and clearer.
- **Flexibility:** If the intent of the rule—what a local government shall achieve—is stated clearly, then it isn’t necessary to prescribe all the ways the local government can do so. It is possible to allow local governments more flexibility in achieving the aims of the rule. For example, it would be unnecessary to amend the rule to include the proposed new subsection (2)(e) (regarding transportation system management measures and minor transportation improvements), as a local government could adopt any measure that effectively achieves the aims of the rule.
- **Reduce Need for Court Interpretation:** Based on past experience, it is likely that land use decisions involving Section 0060 will be appealed to LUBA or a higher court. It is likely that the court will try to discern the intent of 0060. In the past, the court has viewed the “shall assure allowed land uses” phrase as the primary statement of the intent of the rule. By crafting this phrase carefully, LCDC can reduce the need for a court to interpret its intent.

## **2. The proposed subsection (3) should be dropped.**

The proposed subsection (3) would apply only in very special circumstances: when a transportation facility (or service) is already failing to meet the performance standards and is not planned in the transportation system plan to meet the performance standards during the planning period. Nevertheless, so the argument goes, if the effects of new land uses can be mitigated so that the performance of the transportation system is no worse and actually gets better, then such land uses should be allowed.

Here’s the policy question: Do land uses in the presence of a transportation facility or service that will fail to meet performance standards even by the end of the planning period satisfy the intent of Section 0060, as articulated in a combined version of subsections (1) and (2)?

If they do, then they are allowed under this rule, even without the addition of the proposed subsection (3), so subsection (3) isn’t needed. If not, then subsection (3) is actually inconsistent with the rest of the rule, so subsection (3) should be dropped to leave the rule internally consistent. Either way, the proposed subsection (3) should be dropped.

So the policy question is: What is the intent of Section 0060 when a transportation facility or service is expected to fail throughout the planning period? Subsection (1) should be better crafted to capture this intent.

### **3. The proposed subsection (4)(b) should be adopted as part of the Oregon Highway Plan, not part of the Transportation Planning Rule.**

Local governments (primarily cities and counties) control what types of land uses are allowed where. When allowed land uses result in levels of travel that are inconsistent with transportation facilities or services provided by some other entity, the local government has a responsibility to work with that other entity to assure that the other entity can continue to meet its own responsibilities.

In particular, if a local government allows land uses within 1/2-mile of an Interstate interchange, the local government reduces the ability of ODOT to meet its responsibilities for Interstate highways to provide through mobility. This is an important concern that must be addressed.

But having LCDC adopt an administrative rule to help uphold ODOT's responsibilities is the wrong way to do so. It makes much more sense for Section 0060 to provide a framework within which a local government and *any* transportation facility or service provider—not just ODOT—can balance their responsibilities.

Indeed, the current version of Section 0060 contemplates that a transportation facility or service provider is involved in the setting of the performance standards for its own facilities and services in the transportation system plan. Then the TPR requires that a local government allow land uses that are consistent with these performance standards. Thus the transportation system plan containing the performance standards becomes the place where responsibilities are balanced. This basic structure should be retained.

In brief, ODOT should articulate its concerns around Interstate interchanges through the functional classifications and performance standards in the OHP. ODOT should look to the TPR to provide a framework for assuring that those performance standards are adequately respected.

Moreover, other transportation facility and service providers should have the same ability to assure they can meet their responsibilities.

### **4. Transportation facility and service providers should define their absolute minimum acceptable performance levels.**

Section 0060 could be greatly clarified and simplified by eliminating it altogether! Then any land use amendment would be allowed.

1000 Friends of Oregon is not suggesting this approach. But if the effect of the proposed Section 0060 would be to allow any land use amendment, then why not just eliminate the section and save everyone the trouble of having to jump through hoops?

Thus an important policy question is: When would a land use amendment be unacceptable? When would a land use amendment reduce the performance of a transportation facility or service so much that it shouldn't be allowed?

In keeping with the philosophy that the TPR itself doesn't set performance standards, it should be up to transportation facility and service providers and local governments to decide what would be unacceptable. But there should be some standard: Gridlock should not be tolerated under any conditions.

Transportation facility and service providers should define their absolute minimum acceptable performance levels and apply these consistently. It may be that the stated performance standards in transportation system plans aren't actually absolute minimums but desired targets. If so, then perhaps transportation system plans could include the absolute minimums in addition to the desired targets.

Note: The fact that many transportation facilities are already performing below standards is proof that these standards aren't absolute minimum levels but rather desirable levels.

## **5. Land uses should drive transportation, not the other way around.**

We agree with Mr. Craig Stone of Medford, who testified to LCDC that land uses should drive transportation, not the other way around.

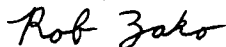
A local government should have the ability to allow types and levels of land uses where it wants to do so—just so long as such land uses would not result in an unacceptable level of traffic.

For example, the City of Medford should be able to allow more intense land uses in its central area, as doing so makes more sense than forcing development to less central areas, thereby creating more overall traffic.

The rub is that transportation engineers set mobility standards based on transportation considerations, not land use considerations. As a result, sometimes transportation effectively drives land use, dictating where development can and can't occur.

As we have discussed before in great detail,<sup>1</sup> local governments should adopt more refined mobility standards that better match where more development is desired. ODOT and other agencies should assist in developing such more refined mobility standards.

Sincerely,



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<sup>1</sup> "Policy issues arising out of the *Jaqua v. City of Springfield* case," October 29, 2004



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LAND CONSERVATION  
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**Office of Mayor Tom Potter**  
City of Portland

February 22, 2005

John VanLandingham, Chair  
Land Conservation and Development Commission  
635 Capitol St., NE  
Suite 150  
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Dear Chair VanLandingham:


Thank you for the opportunity to comment on the proposed amendments to the Transportation Planning Rule (TPR). We understand that the Commission's effort in this first round of amendments to the TPR is focusing on the issues raised by the Jaqua vs. City of Springfield case. We support Metro in saying that the intent of these amendments should be to "fine tune" the TPR, not undertake a major revision that would undermine its important goals.

The proposed amendments succeed in addressing the Jaqua vs. Springfield issues, but go beyond fine tuning and raises significant issues that should be addressed in a more comprehensive venue. The proposed language in 660-012-0060(4) could have unintended consequences that will impact Portland's ability to continue building a compact, pedestrian-friendly city. Rather than make these changes now, a larger discussion is in order. The metric for transportation success in urban areas needs to be reset. Sole reliance upon a level-of-service measure for motor vehicles will impede Portland from implementing Metro's 2040 plan, particularly building station communities that are well-served by transit and an interconnected street grid.

Metro has prepared a map that shows interstate highway interchanges and a half-mile radius around them. Areas that fall within this half-mile distance from interchanges include a large portion of the Central City, the Gateway regional center, and most light rail station areas. Some of the station areas have not yet been evaluated and redesignated for their full 2040 potential, and the provisions of 660-012-0060(4) could make this work difficult to complete.

We recommend that the Commission adopt the proposed changes to the TPR with the amendments proposed by Metro, including the deferral of the changes proposed in 660-012-0060(4) in their entirety. This deferral will allow for a full discussion and a review of the potential conflicts with other portions of the Transportation Planning Rule.

Sincerely,

  
Tom Potter  
Mayor of Portland