

Agenda Item 6 - Attachment D
February 2, 2006 LCDC Meeting

| Comments | Exhibit # |
|---|------------------|
| Paige West, Rogue Valley Transportation District (Rec'd on 11/18/05) | 1 |
| Mark Whitlow, Retail Task Force (Rec'd on 11/18/05) | 2 |
| Janet Taylor, Mayor, City of Salem (Rec'd on 1/13/06) | 3 |
| Jeffrey Condit, Miller Nash, Columbia Empire Farms (Rec'd on 1/18/06) | 4 |
| Rob Zako, 1000 Friends of Oregon (Rec'd on 1/18/06) | 5 |
| Paul Wyntergreen, City of Jacksonville (Rec'd on 1/18/06) | 6 |
| Andrew Ginsburg, Dept. of Environmental Quality (Rec'd on 12/02/50) | 7 |



Rogue Valley Transportation District

Support Services Department – Planning • Marketing • TDM

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On the web at: www.rvtd.org

DATE: November 18, 2005

TO: Chair, Land Conservation and Development Commission

Subject: Transportation Planning Rule Amendment

I appreciate the opportunity to voice concern over the revision and potential weakening of the Transportation Planning Rule. The TPR has a purpose for 'Reducing Reliance on the Automobile' in order to improve the quality of life for Oregonians. Relaxing the language of the TPR will lead the continuation of our post WWII transportation planning. Ask yourselves, "Do I want to breathe cleaner air, maintain green spaces, foster public places, improve the mental and physical health of all citizens and reduce the cost of city-wide infrastructure?" Your responsibilities, and mine, being in government are to not only provide a clear vision representing citizens' best interests *but to also* guide the efforts to achieve the vision. The TPR needs to be strengthened to offer objectives and guidelines.

The importance of maintaining the current language of the TPR

Reducing reliance on the automobile is a clearly defined, attainable vision with a purpose. This statement contains two messages. The first is that we are currently reliant, or dependent, on the automobile as transportation. The second is that being reliant on the automobile is not beneficial.

Relaxing the language in the TPR to simply "provide transportation options" is vague and represents a flawed vision. Citizens *currently* have the ability to choose between transportation modes. The choice often leans toward a private automobile because we live in an auto-centric society. Even with the current language of the TPR, and the 1998 compromise allowing 'alternative measures', Oregon's transportation infrastructure and land has been developed without thoughtful consideration of modes other than the automobile. Modifying the language will only exacerbate the problem.

Strengthening the Transportation Planning Rule

DLCD's time and energy would have been better spent strengthening the TPR to provide better guidelines and direction. It is unfortunate that with over a dozen Transportation Demand Management professionals in the state of Oregon, hundreds of similarly experienced policy writers around the world and literally millions of pages within scientific journals and research papers written on the

subject of reducing automobile use that we do not have a more concise TPR to work with.

The LCDC and OTC should dedicate the next year to strengthening the TPR. Create policies and guidelines that are attainable in five-year horizons. Provide performance standards and the tools to achieve them. Form a stakeholder group of TDM professionals to construct regional policies that are flexible yet can deflect apathy. Essentially, *complete* the TPR. Don't deflate the hot air balloon before it has a chance to leave the ground.

Sincerely,

Paige West
RVTD TDM Planner
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November 18, 2005

Chair John Van Landingham
Land Conservation and Development Commission
c/o Shelia Preston
635 Capitol Street SE, Suite 150
Salem, OR 97301-2540

Re: Amendments to the Transportation Planning Rules (TPR)

Dear Chair Van Landingham and Commission Members:

This letter is written on behalf of the Retail Task Force (RTF), with respect to the proposed amendments to the Transportation Planning Rule. As the RTF submitted to the Joint OTC/LCDC Transportation Subcommittee in its written comments of September 22, 2005 and oral testimony of September 23, 2005, the RTF remains concerned with the new provisions for MPOs set forth at Section 0055. Specifically, we are concerned that the required findings in Section 0055(1)(d)(A-C) for plan amendments and zone changes will make it impossible to obtain plan amendments or zone changes outside of "designated centers." During my testimony, I suggested that the use of the term "designated centers" was specific to the Portland area MPO (under Metro's 2040 Growth Concept), which terminology would not be meaningful, and perhaps confusing, to other MPOs in the state. In spite of that testimony, the language remains essentially the same.

Based upon the above, we submit proposed revisions to the text in marked fashion by way of attachment. We believe that the revised language achieves the staff's intent, without creating the impression that the state is attempting to apply the Portland area MPO standards statewide.

[32367-0008/PA053200.107]


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Perkins Coie LLP and Affiliates

Chair of the Land Conservation and Development Commission
November 18, 2005
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Thank you for the opportunity to provide comments on this important matter.

Very truly yours,



Mark D. Whitlow

MDW:djf

Enclosures

Cc: Bob Cortright
Retail Task Force Participants

TRANSPORTATION PLANNING RULE

660-012-0055

...

(1)(c)(B) Identification of centers, commercial nodes, mixed-use districts or ~~and~~ other land use planning designations (PDs) intended to implement or move in the direction of the vision;

(C) Adoption of housing and employment allocations to PD ~~centers and land use~~ designations; and

(D) Adoption of implementing plans and zoning for designated PD ~~centers and~~ other land use designations.

(d) Local governments within metropolitan areas that are not in compliance with the requirements of this division to adopt or implement a standard to increase transportation choices or have not completed an integrated land use and transportation plan as required by this division shall review plan and land use regulation amendments and adopt findings that demonstrate that the proposed amendment supports implementation or moves in the direction of the region's adopted vision, strategy, policies or plans to increase transportation choices and reduce primary reliance on the automobile.

~~A plan or land use regulation amendment supports implementation of an adopted regional strategy, policy or plan for purposes of this section if it achieves the following as applicable:~~

~~(A) Implements the strategy or plan through adoption of specific plans or zoning that authorizes uses or densities that achieve desired land use patterns;~~

~~(B) Allows uses in designated centers or neighborhoods that accomplish the adopted regional vision, strategy, plan or policies;~~

~~(C) Allows uses outside designated centers or neighborhood that either support or do not detract from implementation of desired development within nearby centers.~~

September 22, 2005

TO: Joint OTC/LCDC Transportation Subcommittee
FROM: Mark Whitlow/Retail Task Force (RTF)
RE: **RTF Comments**

Dear Commissioners/Subcommittee Members:

This memorandum is written on behalf of the Retail Task Force (RTF) to reiterate and build upon the comments made by the RTF at the Work Group meeting on September 9, 2005.

We are concerned with the new provisions for MPOs set forth at Section 0055. Specifically, we are concerned that the required findings in Section 0055(1)(d)(A)-(C) for plan amendments and zone changes will make it impossible to obtain plan amendments/zone changes outside of designated Centers. The introduction of these new criteria appears to add to the regulatory burden, instead of streamlining it, which we understood to have been one of the primary purposes for the proposed TPR amendments.

The RTF further requests that the Joint Subcommittee calendar a future date certain for automatic review (within 12 to 18 months) of the workability of the new "reasonably likely" standards via written statements to be issued by local governments and/or ODOT. To the extent that the written statements prove ineffective to solve the *Jaqua* problem, then the rules should be further amended to provide an adequate solution.

Thank you for the opportunity to participate on the Work Group.

Very truly yours,



Mark D. Whitlow

MDW:djf

cc: Frank Angelo
Craig Greenleaf, ODOT
Lane Shetterly, DLCD
Bob Cortright, DLCD
RTF Participants



MAYOR'S OFFICE

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LAND CONSERVATION
AND DEVELOPMENT

January 10, 2006

Chair John Van Landingham
Land Conservation and Development Commission
c/o Sheila Preston
635 Capitol Street NE, Suite 150
Salem OR 97301-2540

SUBJECT: **AMENDMENTS TO THE TRANSPORTATION PLANNING RULE**

Dear Chair Van Landingham and Commission Members:

This letter is submitted to convey the City of Salem's comments concerning proposed amendments to the Transportation Planning Rule. We appreciate the opportunity to provide input on this proposed rule-making and respectfully request that you address these issues in any action you decide to take. These comments supplement and modify those submitted by City staff at your public hearing on December 1, 2005; new or modified comments are shown in *italics*.

Local Street Standards

- The proposed amendment to section 660-012-0045(7) inserts a 28-foot street cross-section for local streets and purports to be a "minor" or "housekeeping" amendment. Salem asserts that this amendment is not minor or housekeeping and that it is not appropriate for the State to dictate local street design standards. The existing language already conveys the state's policy direction regarding pavement width in relation to operational needs of a facility. This policy direction is appropriate; dictating a street design cross-section is not. This proposed new sentence should be removed.

Increasing Transportation Options

- The City of Salem supports amendments to the purpose statement that shift the emphasis from "reduced reliance on the automobile" to "encourage and support the availability of a variety of transportation choices..." This emphasis better reflects Salem's philosophy of providing options for people to choose their mode of transportation, rather than the implication that the City is trying to force people out of their cars.
- Subsequent sections of the TPR are proposed to be amended to state in part, "...increasing transportation choices and reducing reliance on the automobile." (see, for example, OAR 660-012-0035(4), 660-012-0035(5)(E), and others). The City requests that this be modified to state, "... increasing transportation choices and reducing reliance on the automobile to improve mobility, safety, and encourage the use of different modes of travel."

Adopted Standards for Increasing Transportation Choices

- Salem supports the move away from the previously required per capita reduction in vehicle miles traveled (VMT) as no regional jurisdiction was able to effectively demonstrate this standard.
- As mentioned above, Salem proposes that the adopted standards be aimed at increasing transportation choices to improve mobility, safety, and encourage the use of different modes of travel, rather than increasing transportation choices and reducing reliance on the automobile.
- Salem requests that the Commission consider amending 660-012-0035(7) as it relates to how a local government or MPO must respond when a benchmark is not met. The current language mandates that “the relevant TSP shall be amended to include new or additional efforts adequate to meet the requirements of this section.” This language is contrary to the message that Salem has received from DLCD staff. Adopted standards are relatively new and setting benchmarks is more art than science. Many factors outside the control of an individual jurisdiction will influence whether benchmarks are met, not the least of which is the economy. Salem requests that this language be amended to state, “Where ~~interim~~ benchmarks are not met, the MPO and local jurisdictions shall identify factors influencing this failure, and, as appropriate, modify the benchmarks or amend the relevant TSP ~~shall be amended~~ to include new or additional efforts adequate to meet the requirements of this section.”

Coordination of Local and Regional Plans

- Salem currently works closely with the MPO to coordinate the local and regional transportation plans. This coordination is already a requirement of the federally-required regional plan. Proposed section 660-012-0016(2)(b) would adopt new deadlines for local jurisdictions to initiate (30 days) and achieve consistency (one year) with the regional plan. These new deadlines could force Salem and other local jurisdictions to embark on a special process immediately following an MPO action, rather than incorporating amendments into the next regularly scheduled update of the comprehensive plan. We request that this timing requirement be eliminated from the TPR.
- While Salem does not support the need for new deadlines for achieving consistency with the regional plan, if such deadlines are included, the rule needs to be internally consistent regarding these deadlines. Proposed section 660-012-016(2)(b) appears to be somewhat inconsistent with proposed section 660-012-0055(5). The former would require the local plan be amended within one year or according to a work plan approved by the Commission. The latter would require the local plan be amended within one year or by a date specified in the

adopted regional TSP. If deadlines are included, Salem prefers the language in 660-012-0055(5) since this provides more control at the local and regional level rather than the state level.

- Salem recommends a change to the section discussing population and employment forecasting. As proposed, section 660-012-0016(5)(a) seems too restrictive and could force a local jurisdiction or regional plan to rely on a forecasting methodology that may not be the most appropriate. Salem recommends that the last portion of this section be amended as follows: "... and (2) a continuation of methodology that produces no significant change in the metropolitan area share of county population and employment growth;..."

Mobility

- *The proposed amendments do not do enough to increase the efficiency of mobility for vehicular traffic, including buses.*
- *Oregon should do more to address all forms of mobility issues. The City recommends that the Land Conservation and Development Commission review the Transportation Planning Rule with consideration of how this rule can be amended to better support efficient mobility of all forms of transportation.*
- *The City recommends that the Transportation Planning Rule place a stronger emphasis on "Intelligent Transportation Systems." Intelligent Transportation Systems (ITS) involve the application of advanced technologies and management techniques to relieve congestion, enhance safety, provide services to travelers, and assist transportation system operators in implementing suitable traffic management strategies. We believe that it is crucial to place a greater emphasis on the use of technology to increase mobility into the future.*

Sincerely,



Janet Taylor
Mayor

cc: Salem City Council
Bob Wells, City Manager

DEPT OF

JAN 18 2006

**LAND CONSERVATION
AND DEVELOPMENT**

COPY

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January 17, 2005

VIA FEDERAL EXPRESS

Land Conservation and Development Commission
Department of Land Conservation and Development
635 Capitol Street N.E., Suite 150
Salem, Oregon 97301-2540

Subject: Rulemaking Action to Adopt OAR 660-012-0016 and Amendments to
Transportation Planning Rules and Interpretation of Goal 2 Exceptions
Process

Dear Commissioners:

We represent Columbia Empire Farms, Inc., and Dr. Robert B. Pamplin Jr.¹ (collectively "CEF"). This letter provides the Commission with CEF's comments regarding the above-referenced rulemaking. CEF is concerned with proposed changes to OAR 660-012-0070, which supplements the process for taking one or more Statewide Planning Goal (the "Goals") exceptions for transportation improvements on rural land. According to the October 14, 2005, Notice of Proposed Rulemaking (the "Notice"), the purpose of these proposed amendments is to "consolidate rule requirements for goal exceptions for transportation facilities and improvements on rural lands in the TPR." (Attachment 1, page 1.) This stated purpose is consistent with the Statement of Need and Fiscal Impact, attached to Notice, which states that the proposed changes are needed to "clarify" OAR Chapter 660, Division 012. (Attachment 1, page 2.) It is also consistent with a September 19, 2005, memorandum from Dale Hormann, Assistant Attorney General, who states that "the proposed amendments to OAR 660-012-0070 are not intended to change current law but to consolidate all the exception standards for transportation facilities on rural lands in a single location." (Attachment 2, page 1.) CEF is not opposed to the Commission consolidating the requirements for Goal exceptions for transportation facilities and improvements on rural lands; however, we believe that the effect of the proposed amendments goes beyond the stated purpose and instead constitutes a change in existing law.

In a recent Oregon court of appeals decision regarding the proposed Newberg-Dundee Bypass, which involves a reasons exception for a highway on land zoned for exclusive farm use, the court reiterated that the requirements of both OAR 660-004 and OAR 660-012 are

¹ Dr. Pamplin is the sole shareholder of Columbia Empire Farms, Inc.

Land Conservation and
Development Commission

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January 17, 2005

applicable to reasons exceptions for transportation facilities on rural land. 1000 Friends of Oregon v. Yamhill County, ___ Or App ___ (Slip Op at 6.) 2005. (Attachment 3.) Mr. Horman cites LUBA's opinion in this case in support of the proposed amendments. The Court of Appeals, however, reversed LUBA's decision on two key points. The court highlights the fact that the standards between the two administrative rule divisions are different, although not incompatible, and that "[t]he inquiry required to justify an exception under OAR 660-004-0020 is much more detailed than that set out in Goal 2, Part II, ORS 197.732, and OAR 660-012-0070." Id. We do not believe that the proposed amendments to OAR 660-012-0070 faithfully incorporate the differences or details between OAR 660-004 and OAR 660-012, as they apply to Goal exceptions for transportation facilities on rural land. Instead, we agree with the position of 1000 Friends of Oregon in its August 29, 2005, letter to the Joint LCDC/Oregon Transportation Commission Transportation Subcommittee that the proposed changes to OAR 660-012-0070 appear designed to change the existing law to make it easier to take exceptions for transportation facilities on rural lands. (Attachment 4, page 4.)

The specific proposed revisions that CEF objects to are discussed below.

1. OAR 660-012-0070(6): This administrative provision currently requires the following:

"To determine the reasonableness of alternatives to an exception under sections (4) and (5) of this rule, cost, operational feasibility, economic dislocation and other relevant factors shall be addressed. The thresholds chosen to judge whether an alternative method or location cannot reasonably accommodate the proposed transportation need or facility must be justified in the exception."

The proposed revisions add three subsections to OAR 660-012-0070(6) that are intended to incorporate requirements currently imposed by OAR 660-004-0020(2)(b)(B) and (C). (See Attachment 5, Page 4.) We have two primary concerns with these revisions. First, they only incorporate pieces of the current requirements from OAR 660-004-0020(2)(b)(B) and (C) and leave the context of those requirements behind. For example, the proposed OAR 660-012-0070(6)(a) requires that the exception identify and address alternative methods and locations that are potentially reasonable to accommodate the identified transportation need, as generally required by OAR 660-004-0020(2)(b)(B), but leaves out all of the guidance and context for that inquiry, as provided by OAR 660-004-0020(2)(b)(B)(i)-(iv). That guidance and inquiry sets out a list of questions that reinforces and expands on the ORS 197.732(1)(c) reasons exception standards. We see no reason why that guidance is inapplicable to an exception for a transportation facility across rural land.

Our second concern with the revisions to OAR 660-012-0070(6) is that we believe they reinforce a position that CEF believes is at odds with the larger policy directives of the Goals and the heavy burden necessary to obtain an exception to those Goals. Under the

proposed revisions, the thresholds chosen by an applicant to judge whether or not an alternative method or location can accommodate the proposed transportation need or facility become dispositive of which alternatives are reasonable and which are not. Such a result obviously runs the risk of an applicant subverting the Goal exception process to avoid the required rigorous examination of non-Goal exception alternatives merely by fashioning thresholds in such a way as to preclude any other solutions but the desired solution. The requirements for a reasons exception under ORS 197.732(1)(c), OAR 660-004-0020, and OAR 660-012-0070 must be administered in such a way as to be consistent with the larger context of the applicable Goals and the weight of state policy protecting resource land from urban uses.² In that context, CEF believes that the alternatives analysis should be broad enough to capture all of the possible reasonable alternatives under, in this case, the OAR 660-012-0070(4) measures. Instead, the proposed emphasis on thresholds as the sole determinant of reasonableness artificially restricts that alternatives analysis.

As an example of this, CEF points the Commissioners to the Newberg-Dundee Bypass process. In September 2004, the Yamhill County Board of Commissioners granted Goal 3, 11, and 14 exceptions authorizing the Newberg-Dundee Bypass corridor across prime farmland, specifically, CEF's 300-acre Dundee Farm, a commercial farming operation. Although CEF believes there were reasonable alternatives to siting the corridor through farmland, many of those alternatives were precluded from any serious consideration or analysis based on the threshold criteria that the Oregon Department of Transportation ("ODOT") had established upfront. None of the chosen thresholds had anything to do with preserving farmland – even though a Goal 3 exception would need to be taken. Instead, ODOT's chosen thresholds for the reasonableness of a non-goal exception alternative included such factors as the effect an alternative would have on economic displacement and community livability in the already urbanized areas. In other words, if ODOT deemed a non-Goal exception alternative, such as widening Hwy. 99W through Dundee, to have unacceptable adverse impacts on businesses in the area, then that non-Goal exception alternative would not be considered reasonable and would fail at the outset. Of course, what is "unacceptable" was not defined or included as part of an objective calculus; instead, it was approached more as a "we'll know it when we see it" sort of evaluation. The same can be said for ODOT's approach to the "community livability" threshold factor, i.e., if a non-Goal exception alternative seems too detrimental to community livability, it will not make it past the threshold level of analysis.

CEF does not believe that the administrative rule should support such a stunted approach to a Goal exception alternatives analysis. As the court of appeals has stated, "an exception should be just that – exceptional." 1000 Friends v. LCDC, 69 Or App 717, 731, 688 P2d 103 (1984). Instead, the proposed administrative rules make siting a transportation facility on rural land downright mundane.

² See, e.g., Goals 3, 4, 11, and 14, ORS 215.243, and the cases interpreting those regulations.

2. OAR 660-012-0070(7): This administrative provision, along with OAR 660-004-0020(2)(c), implements the environmental, economic, social, and energy ("ESEE") analysis requirement from ORS 197.732(1)(c)(C). The proposed revisions add language to the end of existing OAR 660-012-0070(7)(c) to incorporate requirements currently imposed by OAR 660-004-0020(2)(c). (Attachment 5, Page 4.) Our concern with this amendment is similar to our first concern regarding the amendments to OAR 660-012-0070(6): the new language includes only a small piece of the allegedly corresponding OAR 660-004 language, leaving behind language that provides guidance and context for the applicable ESEE analysis. This language is as follows:

"The exception shall include the reasons why the consequences of the use at the chosen site are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site. Such reasons shall include but are not limited to, the facts used to determine which resource land is least productive; the ability to sustain resource uses near the proposed use; and the long-term economic impact o the general area caused by irreversible removal of the land from the resource base." OAR 660-004-0020(2)(c).

That language makes it clear that the ESEE analysis embodied in OAR 660-004-0020(2)(c) should place a special emphasis on the resource land impacts of the chosen site relative to the anticipated resource land impacts of siting elsewhere. Without this language, the ESEE analysis can be interpreted as simply a balancing test where all ESEE factors are equal, including protection of resource land – even though the whole purpose of a Goal exception is to ensure that resource land is preserved to the greatest extent possible. And, indeed, this is how both Yamhill County and ODOT interpreted the Goal 12 exceptions provisions in the Bypass decision. As a result, the Bypass travels right though the middle of CEF's Dundee farm, the only significant commercial farming operation on the best farm soils between Newberg and Dundee. All of the other routes, even ODOT's truncated selection of routes, would have had less impact on the farm. We believe that adding the language from OAR 660-004-0020(2)(c) to OAR 660-012-0070(6) without including its context is contrary to that purpose and opens the door to local governments granting Goal exceptions without the proper emphasis on resource land protection.

Conclusion

Taking an exception to the Goals is meant to be a rigorous task, because Oregon's statewide land use planning program is centered around preserving resource land and ensuring that urban uses are sited on urban land – or land that is slated to become urban. We do not believe that the proposed changes to OAR 660-012-0070 are consistent with that policy. If the aim of the proposed changes is truly just to consolidate the exceptions standards for transportation facilities on rural lands in a single location, then that consolidation should be done such that it is faithful to the standards being consolidated. We also believe that any amendment to Division 12 to give transportation facilities a "pass" from compliance with any required

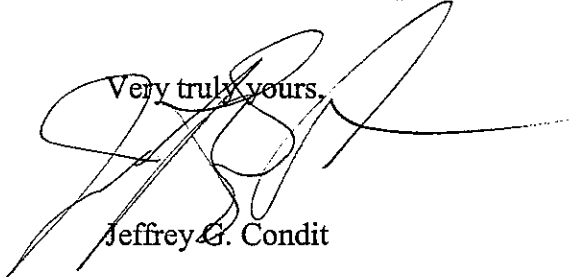
Land Conservation and
Development Commission

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January 17, 2005

provisions in Division 4 designed to protect farm land and applicable to all other exceptions exceeds the Commission's rulemaking authority under ORS 197.732, and therefore violates ORS 183.400. We think this is why the Commission incorporated compliance with Division 4 into Division 12 in the first place.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Jeffrey G. Condit', written over the typed name below.

Jeffrey G. Condit

cc: Floyd Aylor
Robert Cortright



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Date: January 18, 2006

From: Rob Zako, Transportation Advocate

To: Land Conservation and Development Commission

Re: Policy questions concerning goal exceptions for transportation improvements on rural lands—proposed amendments to OAR 660-012-0070 and OAR 660, Division 4

Executive Summary

The Legislature authorizes LCDC to adopt statewide planning goals and to adopt rules governing the goal exceptions process. Broadly speaking, the policy question before LCDC now is how to balance Goal 12 with Goals 3, 4, 11 and 14 if it isn't possible to meet all of them. Specifically, a critical question is: What reasons justify transportation improvements on rural lands? 1000 Friends of Oregon is opposed to LCDC adopting the proposed amendments to "clarify" or "streamline" the goal exceptions process for transportation improvements on rural lands. 1000 Friends of Oregon hopes the Big Look Task Force will review issues at the edge between urban and rural areas, specifically, concerning transportation improvements such as bypasses. 1000 Friends of Oregon suggests LCDC might distinguish transportation improvements that are "rural" in function from those that are, at least in part, "urban" and consider adopting stronger standards for "urban" improvements.

Dear commissioners:

Previously, we argued that "the proposed amendments to Section 0070 of the TPR and OAR Chapter 660, Division 4 (as well as some provisions of the existing rules) do not encourage goal compliance, as required by statute and goal, but rather appear to be designed to *facilitate exceptions* for transportation improvements on rural lands, and thus should be rejected."¹

More recently, we argued that "LCDC should review its policies concerning goal exceptions for transportation improvements on rural lands."²

Below we summarize the policy framework for statewide planning goals, especially Goals 3, 4, 11 and 14 as they relate to transportation improvements on rural lands, and for taking exceptions to goals. We highlight the policy questions we believe LCDC should answer. Finally, we offer modest advice for how LCDC might proceed.

¹ Memo from 1000 Friends of Oregon to Joint LCDC/OTC Transportation Subcommittee and TPR Work Group re "Proposed amendments to TPR and Division 4 concerning goal exceptions for transportation improvements on rural lands," August 29, 2005

² Memo from 1000 Friends of Oregon to LCDC re "Proposed Amendments to Transportation Planning Rule," November 18, 2005

Goals

The Legislature authorizes LCDC to adopt statewide planning goals and guidelines.³

It is the clear desire of the Legislature that *all* state and local land use plans, regulations and programs comply with *all* statewide planning goals.⁴

In particular, the following goals are relevant to goal exceptions for transportation improvements on rural lands:

- **Goal 3—Agricultural Lands:** To preserve and maintain agricultural lands. Agricultural lands shall be preserved and maintained for farm use, consistent with existing and future needs for agricultural products, forest and open space and with the state's agricultural land use policy expressed in ORS 215.243 and 215.700. ...
- **Goal 4—Forest Lands:** To conserve forest lands by maintaining the forest land base and to protect the state's forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use on forest land consistent with sound management of soil, air, water, and fish and wildlife resources and to provide for recreational opportunities and agriculture. ...
- **Goal 11—Public Facilities And Services:** To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development. Urban and rural development shall be guided and supported by types and levels of urban and rural public facilities and services appropriate for, but limited to, the needs and requirements of the urban, urbanizable, and rural areas to be served. A provision for key facilities shall be included in each plan. Cities or counties shall develop and adopt a public facility plan for areas within an urban growth boundary containing a population greater than 2,500 persons. ...
- **Goal 14—Urbanization:** To provide for an orderly and efficient transition from rural to urban land use. Urban growth boundaries shall be established to identify and separate urbanizable land from rural land. ...

When considering transportation improvements on rural lands, there is a tension between these four goals and:

- **Goal 12—Transportation:** To provide and encourage a safe, convenient and economic transportation system. ...

³ ORS 197.225 (“Preparation; adoption”) provides:

“The Department of Land Conservation and Development shall prepare and the Land Conservation and Development Commission shall adopt goals and guidelines for use by state agencies, local governments and special districts in preparing, adopting, amending and implementing existing and future comprehensive plans.”

⁴ ORS 197.250 (“Compliance with goals required”) provides:

“Except as otherwise provided in ORS 197.245, all comprehensive plans and land use regulations adopted by a local government to carry out those comprehensive plans and all plans, programs, rules or regulations affecting land use adopted by a state agency or special district shall be in compliance with the goals within one year after the date those goals are approved by the Land Conservation and Development Commission.”

Goal Exceptions

Broadly speaking, the policy question before LCDC now is how to balance Goal 12 with Goals 3, 4, 11 and 14 if it isn't possible to meet all of them.

ORS 197.732(1)(c) provides for "reasons" exceptions.⁵ Goal 2, Part II(c) echoes these provisions.

ORS 197.732(3) authorizes LCDC to adopt rules governing the goal exceptions process.⁶

In particular, ORS 197.732(1)(c)(A)–(B), which is echoed by Goal 2, Part II(c)(1)–(2), establishes a threshold for taking a "reasons" exception. The local government must meet the following standards:

- (A) Reasons justify why the state policy embodied in the applicable goals should not apply;
- (B) Areas which do not require a new exception cannot reasonably accommodate the use;

⁵ ORS 197.732 ("Goal exceptions; criteria; rules; review"), subsection (1) provides, in part:

"A local government may adopt an exception to a goal if: ...

(c) The following standards are met:

- (A) Reasons justify why the state policy embodied in the applicable goals should not apply;
- (B) Areas which do not require a new exception cannot reasonably accommodate the use;
- (C) The long term environmental, economic, social and energy consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site; and
- (D) The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts. ..."

⁶ ORS 197.732 ("Goal exceptions; criteria; rules; review"), subsection (3) provides:

"The commission shall adopt rules establishing:

- (a) Under what circumstances particular reasons may or may not be used to justify an exception under subsection (1)(c)(A) of this section; and
- (b) Which uses allowed by the applicable goal must be found impracticable under subsection (1) of this section."

Current and Proposed Rules for Goal Exceptions

The current rules give wide discretion to the local government, which effectively serves as both the applicant and the arbiter, to adopt goal exceptions for transportation improvements on rural lands.⁷

⁷ OAR 660-004-0020(2) provides, in part:

The four factors in Goal 2, Part II(c) required to be addressed when taking an exception to a Goal are:

- (a) “Reasons justify why the state policy embodied in the applicable goals should not apply”: The exception shall set forth the facts and assumptions used as the basis for determining that a state policy embodied in a goal should not apply to specific properties or situations including the amount of land for the use being planned and why the use requires a location on resource land;
- (b) “Areas which do not require a new exception cannot reasonably accommodate the use”:
 - (A) The exception shall indicate on a map or otherwise describe the location of possible alternative areas considered for the use, which do not require a new exception. The area for which the exception is taken shall be identified;
 - (B) To show why the particular site is justified, it is necessary to discuss why other areas which do not require a new exception cannot reasonably accommodate the proposed use. Economic factors can be considered along with other relevant factors in determining that the use cannot reasonably be accommodated in other areas. Under the alternative factor the following questions shall be addressed:
 - (i) Can the proposed use be reasonably accommodated on nonresource land that would not require an exception, including increasing the density of uses on nonresource land? If not, why not?
 - (ii) Can the proposed use be reasonably accommodated on resource land that is already irrevocably committed to nonresource uses, not allowed by the applicable Goal, including resource land in existing rural centers, or by increasing the density of uses on committed lands? If not, why not?
 - (iii) Can the proposed use be reasonably accommodated inside an urban growth boundary? If not, why not?
 - (iv) Can the proposed use be reasonably accommodated without the provision of a proposed public facility or service? If not, why not? ...”

OAR 660-004-0022 provides, in part:

“An exception Under Goal 2, Part II(c) can be taken for any use not allowed by the applicable goal(s). The types of reasons that may or may not be used to justify certain types of uses not allowed on resource lands are set forth in the following sections of this rule: ...

(12) Goal 12—Transportation Improvements on Rural Lands. Transportation improvements not allowed on rural lands as provided for in OAR 660-012-0065 require an exception pursuant to OAR 660-012-0070 and this division.”

OAR 660-012-0070(4)–(6) provides:

“(4) To address Goal 2, Part II(c)(1) the exception shall provide reasons justifying why the state policy in the applicable goals should not apply. Further, the exception shall demonstrate that there is a transportation need identified consistent with the requirements of OAR 660-012-0030 which cannot reasonably be accommodated through one or a combination of the following measures not requiring an exception:

- (a) Alternative modes of transportation;
- (b) Traffic management measures; and
- (c) Improvements to existing transportation facilities.

Indeed, LUBA opined that:

“We recognize that allowing the county and ODOT to utilize the OHP thresholds to identify the relevant transportation need may effectively predetermine the outcome. As long as the thresholds are appropriate, however, as they are here, nothing in the goals, statutes, or rules prevents the county and ODOT from taking that path.”

1000 Friends of Oregon v. Yamhill County, LUBA Nos. 2004-169, et seq.

In particular, OAR 660-012-0070(6) provides that non-exception alternatives are considered “reasonable” only if they meet thresholds related to “cost, operational feasibility, economic dislocation and other relevant factors.” In effect, the current rules give local governments broad discretion in setting thresholds that often determine which statewide planning goals are met and which are sacrificed. Typically, when costs and economic dislocation factors are considered, farm and forestlands lose out to urban lands.

As we argued previously, the proposed rule amendments would make it even easier for a local government to adopt goal exceptions for transportation improvements on rural lands.

Policy Considerations

But the critical question isn’t what the rules *currently* say but what they *should* say.

Of course, LCDC is bound by the statutory requirements of ORS 197.732 and by the 19 statewide planning goals (unless it opts to amend them).

But within the constraints of this regulatory framework, LCDC is authorized to provide an answer to the following critical question:

What reasons justify transportation improvements on rural lands?

To begin, we note that the relevant goal exceptions are of two types.

1. **Rural:** Broadly speaking, Goals 3 and 4 require that resource lands in rural areas be preserved. Insofar as transportation improvements on rural lands occur on resource lands, such improvements are in conflict with Goals 3 and 4.
2. **Urban:** Broadly speaking, Goals 11 and 14 require that urban uses occur in urban areas. Insofar as transportation improvements are urban uses, such improvements are in conflict with Goals 11 and 14.

To elucidate the distinction, we offer three examples.

Rural Example: Imagine that the Oregon Department of Transportation decided there was a need for a new state highway, say, connecting the coast to the Willamette Valley. Inevitably, such a highway would need to pass through farm and/or forestlands. In this case, the critical question is whether there really is a need for a *new* highway, or if improvements to *existing*

(5) To address Goal 2, Part II(c)(2) the exception shall demonstrate that non-exception locations cannot reasonably accommodate the proposed transportation improvement or facility.

(6) To determine the reasonableness of alternatives to an exception under sections (4) and (5) of this rule, cost, operational feasibility, economic dislocation and other relevant factors shall be addressed. The thresholds chosen to judge whether an alternative method or location cannot reasonably accommodate the proposed transportation need or facility must be justified in the exception.”

highways would be adequate. Here the challenge is to weigh Goal 12 against Goals 3 and 4. But as the new highway would function generally as a *rural* highway intended to connect distant urban areas, Goals 11 and 14 would not be as much at issue.

Urban Example: Imagine that the City of Bend decides that it needs to build a bypass around a congested interchange near a major shopping center that will require going outside of the urban growth boundary. For all practical purposes, the bypass would serve primarily the residents of Bend and surrounding areas and the bypass would be an *urban* facility, even if were located outside the UGB. As such, there would be intense economic pressures to eventually bring the land around the bypass into the UGB and for urban uses to develop around the bypass. It is questionable whether measures called for by the Bypass Policy of the Oregon Highway Plan or efforts such as interchange area management plans would result in the bypass remaining un-urbanized in the long run. In any case, the bypass would effectively be serving urban uses and therefore should arguably occur within the UGB, possibly as the result of a UGB expansion. Here the challenge is primarily to weigh Goal 12 against Goals 11 and 14. Indeed, we argue that the desired policy is clear: Urban uses—including transportation improvements that primarily serve urban areas—should occur within the UGB.

Mixed Rural-Urban Example: Suppose ODOT decides it needs to improve travel between the Portland metropolitan area and the coast, in particular, in the vicinity of the cities of Newberg and Dundee. In a sense, this example is like the first rural example: There is a lot of traffic wanting to get between Portland and Lincoln City. To that extent, the proposed Newberg-Dundee Bypass is a *rural* facility. In a sense, this example is also like the second urban example: The proposed “bypass” is intended to serve the *urban* uses of the cities of Newberg and Dundee. In particular, the proposed East Dundee Interchange is clearly aimed at serving the city of Dundee and is, as such, arguably an urban facility. In our view, the challenge in such hybrid cases is to assess to what extent that proposed facility is a rural facility and to what extent it is an urban facility. To the extent that it is a rural facility, it will necessarily need to pass through rural lands. Then the emphasis should be on avoiding or minimizing impacts on resources lands. To the extent that it is an urban facility, the facility should occur in an urban area. Indeed, as we argued above, there will be intense economic pressures to eventually bring the area around the facility into the UGB and for urban uses to develop around the facility.

Recommendations

We appreciate that the original reason for amending the rules for goal exceptions for transportation improvements on rural lands was to clarify and consolidate the existing rules without changing the policy intent.

Unfortunately, we believe the proposed amendments actually do change the policy intent of the rules by making it easier for a local government to adopt a goal exception.

Indeed, the Oregon Court of Appeals opined that:

“The most cursory review of the requirements of OAR 660-004-0020, however, disabuses a reader of the notion that a comprehensive shortcut for the exception process is available in OAR 660-012-0070. The inquiry required to justify an exception under OAR 660-004-0020 is much more detailed than that set out in Goal 2, Part II, ORS 197.732, and OAR 660-012-0070. Although local governments are faced with no mean task when addressing the standards in OAR

chapter 660, division 4, and OAR chapter 660, division 12, the two sets of standards are not necessarily incompatible.”

1000 Friends of Oregon v. Yamhill County, A129506.

Moreover, lacking a real policy discussion, we don't believe LCDC can in good conscience adopt such rule amendments. Eventually, the rules will come before LUBA or the Court of Appeals, who will try to ascertain LCDC's intent. Frankly, we pity the courts charged with determining that intent. Therefore:

- 1) **1000 Friends of Oregon is opposed to LCDC adopting the proposed amendments to “clarify” or “streamline” the goal exceptions process for transportation improvements on rural lands.**

On the other hand, we don't think it makes sense at this time for LCDC to devote significant resources to wrestling with how to best balance Goal 12 against Goals 3, 4, 11 and 14. At least while Measure 37 is a prominent issue, other important questions must wait.

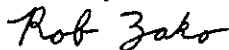
More to the point, we see some goal exceptions for transportation improvements on rural lands as, effectively, “backdoor UGB expansions.” A full discussion of the issues is probably better left to the “Big Look Task Force.” Senate Bill 82 charges the task force with looking at “land use issues specific to areas inside and outside urban growth boundaries and the interface between areas inside and outside urban growth boundaries.”

- 2) **1000 Friends of Oregon hopes the Big Look Task Force will review issues at the edge between urban and rural areas, specifically, concerning transportation improvements such as bypasses.**

Lastly, we suggest that LCDC might adopt modest rule amendments clarifying which transportation improvements are effectively “rural” in character and which are effectively “urban.” As hinted above, we see the presence of a highway interchange (or signaled intersection) in the vicinity of an urban area as a strong indication that the facility is, in significant part, an urban facility. In such cases, the interchange or intersection might be more appropriate inside the UGB, if necessary, after a UGB expansion has been adopted. The point is that a UGB expansion, if it is to occur, should be done explicitly, not implicitly as the result of a goal exception. On the other hand, it is appropriate to have interchanges, say, on Interstate-5 within a few miles of small communities without requiring these to occur inside a UGB.

- 3) **1000 Friends of Oregon suggests LCDC might distinguish transportation improvements that are “rural” in function from those that are, at least in part, “urban” and consider adopting stronger standards for “urban” improvements.**

Sincerely,



Rob Zako
Transportation Advocate
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Phone: (541) 343-5201
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rob@friends.org

Bob CORTRIGHT - RE: FW: Parking reduction requirements

From: Bob CORTRIGHT
To: City Paul Wyntergreen
Date: 18 January 2006 (Wednesday) 17:51
Subject: RE: FW: Parking reduction requirements
CC: dmoore@rvcog.org

Paul

I understand your continuing concerns and I will include your email in the Commission packet for their consideration at the February 2 hearing.

I do feel that the conversations we engaged in with Dan and Vicki earlier this month concluded that Jacksonville can meet most of the relevant TPR requirements and that the remaining issue of reducing the minimum parking requirements is a manageable one for the city and for our department.

The staff report should be available online next Monday or Tuesday.

Bob

Robert Cortright
Transportation Planning Coordinator
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fax 503.378.5518
e-mail bob.cortright@state.or.us
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>>> "Paul Wyntergreen, City Administrator" <jvillepaul@charter.net> 01/18 3:59 PM >>>

Bob,

Neither the COG nor I have heard back from you on whether the City of Jacksonville's existing minimum parking standards would be required to be reduced further under the TPR language as it stands and you had stated to me that my deadline for filing written comments for the next LCDC hearing on the TPR was today, the 18th, so I feel compelled to enter this testimony into the record.

I must reaffirm my position, stated both in writing and orally at the last hearing, that the parking provisions of the TPR need a relief from standards section that allows some flexibility for extraordinary circumstances (in our case, an event-based economy with high parking demands combined with a historically-protected downtown with no additional parking availability). Such relief mechanisms (ie. a mini-variance process) are easy to construct and insert into your larger amendments.

I know that you feel that it is late in the game to address this topic, but that is the very reason that hearing processes exist, so that you can work out bugs that may not have been considered earlier.

Thank you for submitting this into the record.

Paul Wyntergreen
City Administrator
Jacksonville

From: Bob CORTRIGHT [mailto:Bob.Cortright@state.or.us]
Sent: Tuesday, December 20, 2005 11:32 AM
To: jvillepaul@charter.net
Cc: dmoore@rvcog.org
Subject: Re: FW: Parking reduction requirements

Paul (and Dan)

Sorry for the delay in getting back to you.

I am glad that we are making progress in chipping away at what you would consider to be workable in Jacksonville. I would be happy to continue our conversations about (A) reducing minimum parking requirements for non-residential levels and (B) allowing on-street long-term lease and shared parking to meet off-street parking requirements.

I am available this Thursday and Tuesday or Wednesday of next week for a conference call.

Bob

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>>> "Paul Wyntergreen, City Administrator" <jvillepaul@charter.net> 12/15 5:05 PM >>>
Hi Bob,

As we discussed at the Commission, I was to provide you with my review of the application of the alternative TPR parking measures under Jacksonville's circumstances, so I have forwarded my earlier comments on the matter to RVCOG. You did clarify F for me at the meeting so I would probably now change that one to Already done. We could probably exempt structured parking (D) and do the 3 acre (E) thing since they are both moot points in Jacksonville, but (A) & (B) remain a problem.

We need to get a three-way discussion with Dan Moore going so that I can clarify what the impacts on my TSP update will be and respond to the Commission if further flexibility is needed.

Paul W.

From: Paul Wyntergreen, City Administrator [mailto:jvillepaul@charter.net]
Sent: Monday, November 14, 2005 3:01 PM
To: 'Vicki Guarino'
Subject: RE: Parking reduction requirements

Vicki,

Thank you for the reference. Parking measures that are already in place in Jacksonville are as follows:

- (A) Reduce minimum off-street parking requirements for all non-residential uses from 1990 levels (Not done, probably wouldn't do);
- (B) Allow provision of on-street parking (this is already allowed for in the downtown core), long-term lease parking (Not done, probably wouldn't do), and shared parking to meet minimum off-street parking requirements (Already allowed);
- (C) Establish off-street parking maximums in appropriate locations, such as downtowns, designated regional or community centers, and transit-oriented developments (Already done in all locations);
- (D) Exempt structured parking (Not done) and on-street parking (Already done) from parking maximums;
- (E) Require that parking lots over 3 acres in size provide street-like features along major driveways (including curbs, sidewalks, and street trees or planting strips) (Not done); and
- (F) Provide for designation of residential parking districts (Not done, probably wouldn't do).

Now the question is, does a selective compliance satisfy this requirement or do you need to do all six items? Let me know as soon as possible in case I need to testify to LCDC. I think the deadline for written comments is tomorrow.

Paul

From: Vicki Guarino [mailto:vguarino@rvcog.org]
Sent: Wednesday, November 09, 2005 1:49 PM
To: jvillepaul@charter.net
Subject: Parking reduction requirements

Paul,

This is the section of the TPR (existing) that addresses alternatives to 10 percent reduction of parking spaces per capita. This is the route Medford is taking in it's TSP to meet TPR requirements.

To orient you in the document, the parking plan requirement is (c) in section 5 of 660-012-0045 Implementation of the Transportation System Plan. The alternative parking requirement is in (d), just a few lines below (c). Here's the text:

d) As an alternative to (c) above, local governments in an MPO may instead revise ordinance requirements for parking as follows:

- (A) Reduce minimum off-street parking requirements for all non-residential uses from 1990 levels;
- (B) Allow provision of on-street parking, long-term lease parking, and shared parking to meet minimum off-street parking requirements;
- (C) Establish off-street parking maximums in appropriate locations, such as downtowns, designated regional or community centers, and transit-oriented developments;
- (D) Exempt structured parking and on-street parking from parking maximums;
- (E) Require that parking lots over 3 acres in size provide street-like features along major driveways (including curbs, sidewalks, and street trees or planting strips); and
- (F) Provide for designation of residential parking districts.

Vicki

Vicki Guarino, project coordinator
Rogue Valley Council of Governments
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Oregon

Theodore R. Kulongoski, Governor

Department of Environmental Quality

811 SW Sixth Avenue
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December 1, 2005

John VanLandingham, Chair
Members of the Land Conservation and Development Commission
Department of Land Conservation and Development
635 Capitol Street NE, Suite 150
Salem, OR 97301-2540

DEPT OF
DEC 02 2005
LAND CONSERVATION
AND DEVELOPMENT

Dear Chair VanLandingham and Commission Members:

DEQ thanks ODOT and DLCD for the opportunity to participate on the Transportation Planning Rule (TPR) Workgroup in developing the proposed revisions.

The purpose statement of the TPR establishes crucial links between land use, transportation, and environmental protection goals that are extremely important for Oregon's future. The proposed rule improves the TPR in many ways. Unfortunately it also diminishes one of the original intents of Goal 12 to avoid principle reliance upon any one mode of transportation. As you know, encouraging transportation options is a very important strategy for reducing air pollution in Oregon.

Many stakeholders, such as the City of Portland, Metro, the Bicycle Transportation Alliance, and the Rogue Valley Transit District, have provided comments encouraging you to include the phrase "avoid principal reliance upon any one mode of transportation" in the purpose statement as a way to retain the Goal 12 language as it applies to the entire state. DEQ would support this language as a good approach to correcting perceived problems with the existing rule language while still maintaining a clear link to the intent of Goal 12.

DEQ believes that Oregon's environment has been enhanced through integrated land use and transportation planning. As our state population grows, increases in vehicle miles traveled can negatively affect the quality of our air, land and water. With a tightening of federal air quality standards on the horizon, DEQ would encourage rapidly growing urban areas to begin integrating land use, transportation and air quality planning as early as possible, well before they become an MPO.

We appreciate the efforts of DLCD and ODOT staff to improve the readability of the rule and explain its multiple objectives. We encourage you to retain Goal 12 language and intent as much as possible in any proposed rule revisions you adopt and that you encourage growing urban areas to begin planning as early as possible to avoid the air pollution, traffic, and livability problems faced by other large urban areas of the country. Thank you for the opportunity to provide comments on the proposed rule. We look forward to working with you to achieve our mutual goals.

Sincerely,

Andrew Ginsburg
Air Quality Division Administrator

Cc: Bob Cortright, DLCD
Craig Greenleaf, ODOT