



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street NE, Suite 150

Salem, OR 97301-2540

(503) 373-0050

FAX (503) 378-5518

Web Address: <http://www.oregon.gov/LCD/index.shtml>

November 9, 2005

TO: Land Conservation and Development Commission

FROM: Robert Cortright, Transportation Planning Coordinator

SUBJECT: **Agenda Item 2, November 30- December 1- 2, 2005 Commission Meeting**

**PUBLIC HEARING ON PROPOSED AMENDMENTS
TO OREGON ADMINISTRATIVE RULE 660-012
(TRANSPORTATION PLANNING RULE)**

I. AGENDA ITEM SUMMARY

This item includes a public hearing to receive testimony on proposed amendments to the Transportation Planning Rule (TPR) (OAR 660-012). The proposed amendments were prepared by the Department of Land Conservation and Development (DLCD) and Oregon Department of Transportation (ODOT) staff under the direction of a Joint Subcommittee of the Commission and the Oregon Transportation Commission, in consultation with a Work Group composed of interested stakeholders.

The department has scheduled a second hearing and possible adoption of the proposed amendments for February 2, 2006.

For more information about this agenda item, contact Robert Cortright, at 503.373.0050, ext. 241, or by email at bob.cortright@state.or.us.

II. SUMMARY OF RECOMMENDED ACTION

The department recommends that the Commission receive testimony from members of the public wishing to comment on the proposed rule amendments. After the close of the public hearing the Commission should discuss the testimony and any related matters and provide additional direction to the department. A final draft incorporating the Commission's suggestions, including recommended changes to the draft rule amendments, will be published prior to the final hearing and adoption scheduled for the February 2, 2006 Commission meeting.

III. BACKGROUND AND PUBLIC PARTICIPATION

Over the last year, the Commission's Transportation Subcommittee (Commissioners Henri, Jenkins and Worrix) have been working as part of a joint subcommittee with members of the Oregon Transportation Commission (OTC) to review proposed amendments to the Transportation Planning Rule (TPR).

Amendments to the TPR have been considered in two phases. In March 2005, the Commission adopted amendments to respond to the *Jaqua v. City of Springfield*, 193 Or App 573, 91 P3d 817 (2004) decision related to review of plan amendments. Since the March 2005 meeting, staff and the Joint OTC-LCDC Subcommittee have worked to develop additional amendments addressing a series of other issues identified in two evaluations of the TPR conducted during 2004.

In March, the Commission appointed a TPR Work Group to assist the Joint Subcommittee in preparing and reviewing draft rule amendments. The Work Group was made up of stakeholders representing a range of interests. During Phase 2, the Work Group met five times and the Joint Subcommittee four times to review proposed rule amendments. In addition, staff met twice with metropolitan planning organization (MPO) representatives to discuss rule amendments related to metropolitan areas.

All Work Group and Joint Subcommittee meetings were open to the public. The Joint Subcommittee formally provided for public comment at meetings. The Work Group also provided informal opportunities for public comment (i.e., public comment was not on the work group agenda, but members of the public in attendance were allowed to make comments identifying specific issues or concerns.)

Supporting materials for the Joint Subcommittee and the Work Group were distributed one week in advance of the respective meetings via email. Interested persons who requested to be placed on the email list also received this mailing. In addition, all materials related to the proposed amendments were posted on a webpage devoted to the TPR amendments. The webpage is accessible from both the ODOT and DLCD websites.

At the Commission's September 2005 meeting, staff reviewed the proposed schedule, described proposed rule amendments and outlined issues. The department filed formal rulemaking notice in October. An additional public hearing and possible rule adoption are scheduled for the Commission's February 2, 2006.

This memo includes summary information on the proposed rule amendments. The text of the proposed amendments is included in Attachment A. Detailed information on the proposed rule amendments, including supporting information for the TPR Work Group and Joint Subcommittee meetings is available on the web at the following link:

<http://www.oregon.gov/ODOT/TD/TP/TPR.shtml>

IV. LCDC REVIEW CRITERIA AND PROCEDURES FOR RULEMAKING

The Commission's procedures for rulemaking derive from ORS Chapter 183 and are specified in procedural rules at OAR 660, Division 1. In general, the Commission must hold a public hearing and provide an opportunity for interested parties to testify on the proposed rules. The Commission must deliberate in public and, if the Commission makes a decision to adopt any or all of the proposals, a majority of the Commission must affirm the motion to adopt. No adoption is proposed for the February meeting, but a public hearing is scheduled.

ORS 197.040 also guides the Commission more generally with regard to rulemaking, as follows:

"197.040 Duties of Commission; rules.

"(1) The Land Conservation and Development Commission shall: . . .

(b) In accordance with the provisions of ORS 183.310 to 183.550, adopt rules that it considers necessary to carry out ORS chapters 195, 196 and 197. Except as provided in subsection (3) of this section, in designing its administrative requirements, the commission shall:

(A) Allow for the diverse administrative and planning capabilities of local governments;

(B) Assess what economic and property interests will be, or are likely to be, affected by the proposed rule;

(C) Assess the likely degree of economic impact on identified property and economic interests; and

(D) Assess whether alternative actions are available that would achieve the underlying lawful governmental objective and would have a lesser economic impact.

(c)(A) Adopt by rule in accordance with ORS 183.310 to 183.550 or by goal under ORS chapters 195, 196 and 197 any statewide land use policies that it considers necessary to carry out ORS chapters 195, 196 and 197.

(B) Adopt by rule in accordance with ORS 183.310 to 183.550 any procedures necessary to carry out ORS 215.402 (4)(b) and 227.160 (2)(b). . . .

(3) The requirements of subsection (1)(b) of this section shall not be interpreted as requiring an assessment for each lot or parcel that could be affected by the proposed rule."

The department has provided written documents, as part of the rule notice, to address requirements listed above (see Attachment C). LCDC legal counsel, Steve Shipsey, will be present at the Commission meeting for further advice on this statute, and on rulemaking procedures and criteria. The Commission is not required or expected to take any formal action during the December 1 meeting. Based on testimony and discussion, the Commission may instruct the department to amend the draft rule, or to create new or different provisions for the draft that would be reviewed (and possibly adopted) at the February 2006 LCDC meeting.

V. SUMMARY OF PROPOSED RULE AMENDMENTS AND ISSUES

Based on the TPR Evaluations conducted in 2004 and comments from Work Group members and other interested parties, the Work Group and the Joint Subcommittee identified five areas where amendments to the TPR are warranted:

- TPR Purpose Statement
- Project Development
- Exceptions for Road Improvements on Rural Lands
- Metropolitan Planning
- Minor & Housekeeping Amendments

The discussion below summarizes evaluation findings, the proposed rule amendments and discussion by the Work Group and the Joint Subcommittee. Attachment A includes the proposed rule amendments. Attachment C is the packet for the September 23 Joint LCDC OTC Subcommittee meeting. It includes additional background information on each of the issues outlined above.

A. TPR Purpose Statement

The purpose statement (OAR 660-012-0000) provides an overview of rule requirements and is an overall statement of intent to guide rule implementation. The purpose statement in the TPR includes a detailed explanation of the Commission's expectation that implementation of the rule should result in changes to land use and transportation plans that "reduce reliance" on the automobile. This implements the direction in Goal 12 that transportation plans "avoid principal reliance on any one mode of transportation."

TPR Evaluation Finding/Recommendation

During the 2004 evaluations the department and ODOT's consultant received considerable input from stakeholders, particularly local governments, that expressed concern about portions of the TPR that direct local plans to "reduce reliance on the automobile." Several concerns were expressed about this phrase:

- It implies local governments must put in place regulatory measures to restrict or reduce automobile use,
- It appears to create unrealistic expectations for non-auto modes, particularly in rural areas,
- The policy would be better received if it emphasized provision of transportation options, and
- The concern was more about the phrase "reduce reliance" than any specific requirement in the rule that implements that direction.

Rule Amendment Proposal

In response to the evaluation recommendation, the DLCD and ODOT staff work group drafted proposed changes to the purpose statement. Proposed changes are intended to:

- Broaden the scope of the purpose statement to address a range of transportation needs and outcomes
- Retain but refine the direction to reduce reliance on the automobile by:
 - placing additional emphasis on providing transportation options as the means to accomplish reduced reliance,
 - clarifying that efforts to reduce reliance should be particularly directed towards peak periods and to reducing use of single occupant vehicles,
 - clarifying expectations for different sizes of urban areas, and
 - making the direction to reduce reliance less prominent in the purpose statement.

Work Group / Subcommittee Discussion

This issue was the subject of extensive discussion by the Work Group. While there was general support for the revisions by the Work Group, several members and other interested parties expressed concern that proposed changes to the purpose statement represent a fundamental and undesirable shift in the policy direction in the rule. They recommended that changes be limited to minor refinements that more clearly retain the emphasis on reducing reliance on the automobile. Alternatively, some have suggested that more extensive changes to the purpose statement should only be made in the context of a much more extensive review and consideration by the Commission, possibly as part of the “Big Look” – the overall review of the state’s land use program.

In July, the Joint Subcommittee reviewed the proposed purpose statement and indicated they were comfortable with the proposed revisions. The Joint Subcommittee understood that some interest groups had continuing concerns and requested that staff discuss the revised Purpose Statement with the Work Group. The Joint Subcommittee requested that concerned Work Group members indicate where a policy shift has occurred in the proposed language; or identify where important elements are missing in the draft Purpose Statement and suggest specific language to address any concerns.

B. Transportation Project Development

Section 0050 of the TPR outlines procedures and requirements for “transportation project development”. Project development is, in essence, implementation of projects that are allowed for in the transportation system plan (TSP). TSPs reflect decisions about need, mode, function and general location of planned transportation facilities, services and improvements. Project development involves making detailed decisions about how improvements will be constructed, consistent with the general decisions in the TSP. A major objective of TSPs is to speed and simplify project development by resolving basic decisions about the overall transportation system in advance of detailed planning for specific improvements.

TPR Evaluation Finding/Recommendation

ODOT and other transportation providers – principally local governments – have expressed concern that project development decisions have been unnecessarily delayed or complicated when project opponents raise questions about “need,” “mode,” or “general location” for a project that is listed as a planned improvement in the applicable TSP. The 2004 evaluation

concluded that more should be done in Section 0050 to make it clear that local governments could rely upon decisions in a TSP about need, mode or general location during the project development. That is, that they need not reconsider these decisions during the project development process.

Rule Amendment Proposal

Proposed amendments clarify that TSPs generally reflect decisions about need, mode, function and general location for improvements that are listed in the TSP. For projects that are authorized by the TSP, revised rule language makes it clear that plan decisions about need, mode, function and general location need not be reconsidered during project development.

Work Group / Subcommittee Discussion

The Subcommittee and members of the Work Group supported the proposed amendments.

C. Exceptions for Road Improvements on Rural Lands

TPR Evaluation Finding

During the 2004 evaluation stakeholders expressed concern that goal exceptions for transportation facilities on rural lands were subject to the general requirements in the Exceptions Rule (Division 4) and the specific requirements in the TPR (Division 12). Because of differences between the language of the two rules, there is confusion about which rule applies and whether the rules are intended to establish different requirements. The evaluation recommended consolidating exception requirements for transportation facilities in the Transportation Planning Rule.

Rule Amendment Proposal

Staff has proposed amendments to the TPR that add relevant provisions from the Exceptions Rule to the TPR. In addition, staff is recommending amendments to the Exceptions Rule that essentially consolidates all the rule requirements for goal exceptions for transportation improvements into the TPR.

Work Group / Joint Subcommittee Discussion

Work Group members and the Joint Subcommittee reviewed the staff recommendation in May and June and generally supported the staff proposal. At the July and September Work Group meetings, Rob Zako, representing 1000 Friends of Oregon, indicated he had additional concerns about Section 0070 that he would share in testimony to the Commission.

D. Metropolitan Planning Recommendations

The Transportation Planning Rule establishes additional planning requirements for metropolitan areas¹. These include adoption of specific standards to accomplish the rule's direction to increase transportation options and reduce reliance on the automobile. The rule also directs local governments in metropolitan areas to prepare "integrated land use and transportation plans" that result in changes to land use patterns to make walking, bicycling and transit and reduced auto travel more convenient. In adopting the TPR in 1991, the Commission committed itself to periodically review efforts to implement these requirements and adjust the rule as necessary.

In 2004, the department prepared a detailed report ("Metropolitan Planning Status") evaluating the status of metropolitan area efforts to implement relevant portions of the TPR. The report was prepared in consultation with metropolitan planning organizations (MPOs) and metropolitan local governments. The Commission's Transportation Subcommittee participated in the review. The status report and recommendations were reviewed by the Commission at its November 2004 meeting. The Commission directed that the recommendations for rule amendments be considered as part of the TPR evaluation process then underway.

1. Revise requirements for reporting on TPR benchmarks and TSP updates to correspond with federally-required updates of MPO plans.

Metropolitan Status Report Findings

The TPR currently requires that MPOs set and measure benchmarks for achieving reduced reliance at 5-year intervals. The rule also anticipates that regional transportation plans would be updated on a five-year cycle. Federal law and regulations typically require updates on a three year cycle. It is desirable to consolidate state and federal required updates so that they can be addressed in a single plan update. The TPR does not set a specific schedule for updates to regional transportation plans, but requires that plans be updated at periodic review.

Rule Amendment Proposal

Proposed amendments would require that TPR benchmarks for regional transportation system plans be set and measured at intervals that correspond with federally-required plan updates. This would typically result in benchmarks being set and measured at 4-year intervals. The rule would also require that compliance of the regional transportation system plan with the TPR be assessed when federal plans are updated.

A new section is proposed to address coordination between MPOs preparing regional transportation plans (RTPs) to comply with federal law, and local governments preparing TSPs to meet state law. While the relevant plans and processes are closely coordinated, under Oregon law, MPOs (other than Metro) are not local governments and RTPs adopted by MPOs are not either "plans or land use regulations" under Oregon law.

¹ Oregon has metropolitan planning organizations (MPOs) covering six metropolitan areas: the Portland Metropolitan area, Salem-Keizer, Eugene-Springfield, Medford, Bend, and Corvallis. Corvallis and Bend were designated as MPOs in 2002 after meeting the 50,000 population threshold for designation in 2000.

The proposed amendments include new provisions to address coordination between local governments and metropolitan planning organizations (MPOs) to assure consistency between state and federally required plans. The proposed amendments call for a single coordinated process between MPO and local governments; but not a single plan. The new coordination provisions, proposed as a new section 0016 in the TPR include the following:

- Requires local governments to review proposed RTP amendments and assess whether they relate to TPR requirements.
- Lists RTP changes that do and do not relate to TPR requirements.
- Requires local governments to initiate necessary TSP amendments within 30 days of an RTP amendment that relates to TPR compliance and to adopt necessary amendments within one year.
- Define when population and employment forecasts and allocations that go beyond adopted local plans are consistent with Goal 14 and the TPR.

Work Group/ Joint Subcommittee Discussion

Work Group members generally agreed about the need to clarify the relationship between state and federal planning requirements within metropolitan areas. Most found that the proposed amendments were helpful in clarifying the relationship. Several felt that staff's initial proposal for adoption of necessary local plan amendments within six months of an RTP amendment was too short. Staff modified the proposal to allow for adoption within one year of the RTP amendment, but added provisions requiring initiation of necessary amendments within 30 days of an RTP amendment.

Discussion with MPOs and Local Governments

ODOT and DLCD staffs have met several times with metropolitan area planners during the development of the proposed amendments. These meetings have continued since the Joint Subcommittee completed its review in September. Metropolitan area planners are generally supportive of the proposed amendments but have suggested several changes to further clarify or specify the coordination responsibilities between MPOs and local governments in meeting state and federal requirements. The department anticipates that MPOs will provide specific recommendations to the Commission at the December hearing. The department anticipates that it will support most of these proposed changes as desirable clarifications.

2. *Revise TPR requirements for benchmarks to measure reduced automobile reliance.*

Metropolitan Status Report Findings

This involves deleting or modifying existing requirements to monitor and report average auto occupancy. (Section 0035(6)) (LCDC endorsed making these changes in its review of the Metro Regional Transportation Plan (RTP) in 2001).

Rule Amendment Proposal

The proposed amendments would delete the requirements for benchmarks related to auto-occupancy and average trip length. Requirements to measure progress on mode split and VMT per capita are retained.

Work Group/ Joint Subcommittee Discussion

The Work Group and Joint Subcommittee generally support this recommendation.

- 3. *Revise overall policy objective from "reduced reliance" to "increase availability and convenience of alternative modes."***

Metropolitan Status Report Findings

Revise overall policy objective from "reduced reliance" to "increase availability and convenience of alternative modes". Retain emphasis on the importance of land use changes to land use as a key method of achieving increased availability and convenience of alternative modes. Retain emphasis on the importance of land use changes to land use as a key method of achieving increased availability and convenience of alternative modes.

Rule Amendment Proposal

This recommendation has generally been addressed through proposed revisions to the purpose statement – Section 0005. The term “reduced reliance on the automobile” has generally been modified to read: “increasing transportation options to reduce reliance on the automobile”.

Work Group / Joint Subcommittee Discussion

The Work Group and Joint Subcommittee generally support this recommendation.

- 4. *De-emphasize VMT reduction as the principal measure of achieving state policy.***

Metropolitan Status Report Findings

In 1998, the Commission amended the TPR to allow metropolitan areas to adopt “alternative standards” to use in place of vehicle miles traveled (VMT) per capita to measure achieving the goal of reduced reliance on the automobile. Since the 1998 amendments, metropolitan areas have opted to use alternative measures. Since metropolitan areas have all opted for some other measure for achieving reduced reliance, it makes sense to modify the rule to recognize that metropolitan areas will use different standards.

Rule Amendment Proposal

Proposed amendments would “mainstream” the current rule provisions for alternative standards by requiring each metropolitan area to adopt standards to measure achievement of reduced reliance on automobiles. Adoption of standards would require Commission review and approval. In addition, the amendments would make the current 5% VMT reduction standard an

"alternative compliance standard" - i.e. plans that include measures that would achieve a 5% reduction in VMT per capita would not be required to develop a separate standard and obtain Commission approval.

Work Group / Joint Subcommittee Discussion

Work Group members and the Joint Subcommittee generally supported this amendment.

5. Amend the TPR to change the deadline for metropolitan areas to complete integrated land use and transportation plans.

Metropolitan Status Report Findings

1998 amendments to the TPR added requirements for metropolitan areas to prepare integrated land use and transportation plans. The rule called for completion of such plans within 3 years of approval of alternative standards. The status report prepared by DLCDC concluded that the “downstate” metropolitan areas have made some progress but that the schedule in the rule is overly ambitious and that some extension of time to complete such plans is warranted. General options for rulemaking include extending the deadline in the rule or requiring each metropolitan area to adopt a target date and schedule. Key steps for metropolitan areas would include: completion of vision, identification of centers or other land use categories; population and employment assignment; and adoption of planning and zoning to implement the land use strategy.

Rule Amendment Proposal

Proposed amendments would allow metropolitan areas to request time extensions from the existing deadline to complete an integrated transportation plan or specific elements of the plan. The extension would include a schedule for completion of outstanding work.

Work Group / Joint Subcommittee Discussion

Work Group members and the Joint Subcommittee generally supported this amendment.

6. Amend the TPR to require additional review of key interim actions for metropolitan areas that have not completed integrated land use and transportation plans.

Metropolitan Status Report Findings

Downstate metropolitan areas are several years away from completing integrated land use and transportation plans required by the TPR. Interim decisions in the form of plan amendments, major transportation investments and major development decisions have the potential to undermine efforts to increase transportation options and reduce reliance on the automobile. The status report called for amendments to the TPR to require review of major plan amendments to assure that decisions implement or are consistent with the region’s long-term strategy to increase transportation options.

Rule Amendment Proposal

The proposed amendments would require that local governments in metropolitan areas that have outstanding work to complete an integrated land use and transportation plan, review plan amendments and zone changes for consistency with regional and local plans or strategies adopted to achieve relevant portions of the TPR. This would require that local governments make findings that proposed plan or land use regulation amendments are consistent with adopted regional plans.

Work Group / Joint Subcommittee Discussion

The Work Group and Subcommittee reviewed this recommendation and did not offer any suggestions for revision.

E. Minor & Housekeeping Amendments

Rulemaking provides the opportunity to make minor revisions, clarifications and corrections to the administrative rule. The department has identified a number of such changes that it proposes to include in forthcoming rule amendments.

TPR Evaluation Finding/Recommendation

This issue was not addressed in the TPR Evaluation.

Rule Amendment Proposal

The recommended amendments include four minor amendments and several housekeeping amendments. Housekeeping amendments are language changes to correct errors in the rule or to conform the rule to other goal or rule amendments. Four minor amendments are recommended:

- Revises the 3-year deadline for completion of refinement plans in 0025(3). The Commission directed this from Metro Regional Transportation Plan acknowledgement review in 2001.
- Amend the “skinny streets” requirement to add "safe harbor" for 28' local streets with parking on both sides. This would implement recommendation of Neighborhood Streets Work Group from 2000.
- Delete provisions that apply to new roads in "urban fringe areas" that apply before TSP adoption. This provision is no longer needed because county TSPs now in place for 28 of 36 counties.
- Make small cities in metropolitan areas eligible for exemptions from the requirement to prepare a transportation system plan.

Work Group / Subcommittee Discussion

While these minor and housekeeping issues are not formally part of the Work Group’s charge, the department provided these proposals to the Work Group for review and comment. The

Work Group suggested minor language changes which will be incorporated in the proposed amendments. The fourth minor amendment incorporates a change recommended by the work group to allow smaller cities within metropolitan areas to apply for exemptions from the requirement to prepare a transportation system plan. This change is intended to recognize that there are several very small cities in metropolitan areas that are essentially built out and do not face transportation-related growth issues that require a full TSP.

VI. PUBLIC COMMENTS

The deadline for public comments submitting public comments for distribution to the Commission prior to the Commission meeting is November 18th. One letter of comment, from Metro, was received at the time this report was prepared and is included in Attachment D. Additional comments received by the Department by November 18th will be distributed in a separate mailing to the Commission on November 21st. The Department will also post these comments on its website.

Public comments received by the Joint Subcommittee during the development of its recommendations are included in Attachment B and on the Department's website.

VII. RECOMMENDATION

The department recommends that the Commission receive testimony from members of the public wishing to comment on the proposals. After the close of the public hearing the Commission should discuss the testimony and any related matters and provide additional direction to the department, including recommendations as to changes to the proposed rule amendments that will be published prior to the final hearing and adoption scheduled for the February 2, 2006 Commission meeting. The Commission may also wish to ask for additional input on specific issues from the Joint OTC-LCDC Transportation Subcommittee. The subcommittee has tentatively scheduled an additional meeting for December 14th for the purpose of addressing any issues that the Commission might want to refer to it.

VIII. ATTACHMENTS

- Attachment A: Proposed Amendments to the Transportation Planning Rule, November 1, 2005
- Attachment B: Agenda Packet for the September 23, 2005 Joint OTC-LCDC Transportation Subcommittee Meeting
- Attachment C: Department Rulemaking Notices
- Attachment D: Public Comments on Proposed Rule Amendments
(Additional comments to be provided separately in advance of the November 30, December 1 meeting)