



& Associates

M E M O R A N D U M

TO: Joint OTC/LCDC Transportation Subcommittee
FROM: Frank Angelo, Principal
DATE: September 16, 2005
CC:
FILE #: 009-006
RE: Final Amendments to OAR 660-012-0050: Transportation Project Development

The following provides the final draft of amendments to OAR 660-012-0050 (Project Development). OAR 660-012-0050 focuses on project development, *i.e.* implementation of projects authorized for future construction in a transportation system plan. The Joint Subcommittee has reviewed and considered these proposed amendments at previous meetings. This memo reiterates previous documentation and background for historical context and incorporates direction from the Joint Subcommittee at its July 19th meeting on the proposed amendments. The changes to Section 0050 since the July 19th Joint Subcommittee meeting are highlighted in the attached table - Sections 0050 (3) and (3)(b). A "clean" copy of Section 0050 as revised is also attached to this memo.

OAR 660-012-0050 (Transportation Project Development)

Background

The Transportation Planning Rule distinguishes between "transportation system planning" and "transportation project development." As described in OAR 660-012-0010, transportation system planning establishes land use controls and a network of facilities and services adequate to serve state, regional and local transportation needs. Transportation project development implements the transportation system plan (TSP) by determining the alignment and preliminary design of improvements included in the TSP.

Transportation system planning is accomplished through the development of TSPs that are based on a determination of transportation needs relevant to the planning area. The planning process begins with an inventory and general assessment of existing and committed transportation facilities and services by function, type, capacity and condition, and it ends with the adoption of TSPs addressing a variety of transportation modes, including but not limited to roads (arterials and collectors), bicycle and pedestrian facilities, and facilities for travel by air, rail, and water. Under OAR 660-012-0025(1), for each required plan element, TSP adoption

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“constitutes the land use decision regarding the need for transportation facilities, services and major improvements and their function, mode and general location.”

Transportation project development implements the transportation system plan, much like individual land use permit applications implement a comprehensive plan. During this phase, projects authorized in the TSP go through preliminary engineering and design, leading to construction. Like local permit applications, additional land use decision-making might be involved, depending on the nature of the project. For example, a proposed road improvement might involve outstanding issues of compliance with land use standards regulating development in hazard areas or in or near protected natural resources (e.g., wetlands). During transportation project development, these standards are reviewed and appropriate mitigation measures are determined.

Proposed Amendments

During stakeholder interviews, several stakeholders raised concerns that second ‘bites at the apple’ were being taken during the project development phase. Stakeholders felt that once a project was justified through the transportation system planning process, in terms of its need, mode, function and general location, those elements of the project should be closed to further challenge when it came time to implement the earlier planning decision.

The proposed changes to OAR 660-012-0050 eliminate this problem. The changes clarify that project development concerns how projects “authorized in a TSP” are designed and constructed. They state that the focus of project development is project implementation, e.g. alignment, preliminary design and mitigation of impacts. They add that during project development, projects authorized in an acknowledged TSP are not subject to further justification in terms of their need, mode, function or general location.

As used in this section, “authorized in a TSP” means that the project has gone through the transportation planning process set out in OAR 660-012-0020 through 660-012-0035 and that the need, mode, function and general location of the project have been identified and approved through a decision-making process (i.e. that requirements of statewide planning goals and rules applicable to decisions about need, mode, function and general location have been addressed and complied with). In some situations, TSPs discuss future or potential projects for which the TSP does not make decisions about need, mode, function or general location. For example, Yamhill County’s 1997 TSP called for further planning for the proposed Newberg-Dundee Bypass, but it did not yet include the goal exceptions required to “authorize” that project. Under this provision, the mere mention of such projects in a TSP is not sufficient to render them “authorized in a TSP.”

The proposed changes to OAR 660-012-0050 are also intended to help clarify when additional land use decision-making is required. They do this by more clearly identifying those project development activities that do not require additional land use decision-making (e.g., compliance with uniform road improvement design standards) and those that do (e.g., compliance with regulations addressing hazard or natural resource areas or requiring compliance with OAR 660-012-0065(5)). This will help eliminate an area of confusion for local governments.

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| <p align="center">Proposed Amendments: 660-012-0050 Transportation Project Development</p> | <p align="center"><u>Commentary</u></p> |
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| <p>Section 660-012-0050: Transportation Project Development</p> | |
| <p>SECTION 660-012-0050 (1) & (2)</p> <p>(1) For projects identified by ODOT pursuant to OAR Chapter 731, Division 15, project development shall occur in the manner set forth in that Division.</p> <p>(2) Regional TSPs shall provide for coordinated project development among affected local governments. The process shall include:</p> <p>(a) Designation of a lead agency to prepare and coordinate project development;</p> <p>(b) A process for citizen involvement, including public notice and hearing, if project development involves land use decision-making. The process shall include notice to affected transportation facility and service providers, MPOs, and ODOT;</p> <p>(c) A process for developing and adopting findings of compliance with applicable statewide planning goals, if any. This shall include a process to allow amendments to acknowledged comprehensive plans where such amendments are necessary to accommodate the project;</p> <p>(d) A process for developing and adopting findings of compliance with applicable acknowledged comprehensive plan policies and land use regulations of individual local governments, if any. This shall include a process to allow amendments to acknowledged comprehensive plans or land use regulations where such amendments are necessary to accommodate the project.</p> | <p>No Changes Proposed to Sections 0050 (1) & (2).</p> |
| <p>SECTION 660-012-0050 (3)</p> <p>(3) Project development addresses how a transportation facility or improvement authorized in a TSP is designed and constructed. This may or may not require land use decision-making. The focus of project development is project implementation, e.g. alignment, preliminary design and mitigation of impacts. During project development, projects authorized in an acknowledged TSP shall not be subject to further justification with regard to their need, mode, function, or general location. For purposes of this section, a project is authorized in a TSP where the TSP makes decisions about transportation need, mode, function and general location for the facility or improvement as required by this division.</p> <p>(a) Project development does not involve land use decision-making to the extent that it involves transportation facilities, services or improvements identified in OAR 660-012-045(1)(a); the application of uniform road improvement design standards and other uniformly accepted engineering design standards and practices that are applied</p> | <p>Revised Section (3) clarifies and narrows existing TPR policy. It clarifies that the purpose of project development is to address project implementation and mitigation (i.e., how a TSP-authorized project goes in, rather than whether a project goes in). It narrows existing language by expressly providing that during project development, there is no “second bite of the apple” as to whether the project is needed once it has been authorized in an acknowledged TSP.</p> <p>Section (3)(a) expands existing Section (3) by more clearly identifying project developments activities that do not require additional land use decision-making. Regulations that need not be part of a local</p> |

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| <p align="center"><u>Proposed Amendments: 660-012-0050</u> <u>Transportation Project Development</u></p> | <p align="center"><u>Commentary</u></p> |
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| <p>during project implementation; procedures and standards for right-of-way acquisition as set forth in the Oregon Revised Statutes; or the application of local, state or federal rules and regulations that are not a part of the local government's land use regulations.</p> <p>(b) Project development involves land use decision-making to the extent that issues of compliance with applicable requirements requiring interpretation or the exercise of policy or legal discretion or judgment remain outstanding at the project development phase. These requirements may include, but are not limited to, regulations protecting or regulating development within floodways and other hazard areas, identified Goal 5 resource areas, estuarine and coastal shoreland areas, the Willamette River Greenway, and local regulations establishing land use standards or processes for selecting specific alignments. They also may include transportation improvements required to comply with ORS 215.296 or OAR 660-012-0065(5). When project development involves land use decision-making, all unresolved issues of compliance with applicable acknowledged comprehensive plan policies and land use regulations shall be addressed and findings of compliance adopted prior to project approval.</p> <p>(c) To the extent compliance with local requirements has already been determined during transportation system planning, including adoption of a refinement plan, affected local governments may rely on and reference the earlier findings of compliance with applicable standards.</p> | <p>government's land use regulations might include things like landscaping and street lighting.</p> <p>Section 3(b) reflects state law as to what constitutes a land use decision. It clarifies the types of circumstances where project development would involve land use decision-making. The last sentence is existing rule language.</p> <p>Section (3)(c) is existing rule language reordered.</p> |
| <p>SECTION 660-012-0050 (4), (5) & (6)</p> <p>(4) Except as provided in Subsection (1) of this section, where an Environmental Impact Statement (EIS) is prepared pursuant to the National Environmental Policy Act of 1969, project development shall be coordinated with the preparation of the EIS. All unresolved issues of compliance with applicable acknowledged comprehensive plan policies and land use regulations shall be addressed and findings of compliance adopted prior to issuance of the Final EIS.</p> <p>(5) If a local government decides not to build a project authorized by the TSP, it must evaluate whether the needs that the project would serve could otherwise be satisfied in a manner consistent with the TSP. If identified needs cannot be met consistent with the TSP, the local government shall initiate a plan amendment to change the TSP or the comprehensive plan to assure that there is an adequate transportation system to meet transportation needs.</p> <p>(6) Transportation project development may be done concurrently with preparation of the TSP or a refinement plan.</p> | <p>No Changes Proposed to Sections 0050 (4), (5) & (6).</p> |

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| <u>Proposed Amendments: 660-012-0050 Transportation Project Development</u> | <u>Commentary</u> |
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The following presents a “clean” version reflecting the proposed changes to OAR 660-012-0050.

Division 12

Transportation Planning

660-012-0050

Transportation Project Development

Amended Draft September 16, 2005

Section 660-012-0050: Transportation Project Development (Revised Version)

SECTION 660-012-0050 (1) & (2)

(1) For projects identified by ODOT pursuant to OAR Chapter 731, Division 15, project development shall occur in the manner set forth in that Division.

(2) Regional TSPs shall provide for coordinated project development among affected local governments. The process shall include:

- (a) Designation of a lead agency to prepare and coordinate project development;
- (b) A process for citizen involvement, including public notice and hearing, if project development involves land use decision-making. The process shall include notice to affected transportation facility and service providers, MPOs, and ODOT;
- (c) A process for developing and adopting findings of compliance with applicable statewide planning goals, if any. This shall include a process to allow amendments to acknowledged comprehensive plans where such amendments are necessary to accommodate the project;
- (d) A process for developing and adopting findings of compliance with applicable acknowledged comprehensive plan policies and land use regulations of individual local governments, if any. This shall include a process to allow amendments to acknowledged comprehensive plans or land use regulations where such amendments are necessary to accommodate the project.

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SECTION 660-012-0050 (3)

(3) Project development addresses how a transportation facility or improvement authorized in a TSP is designed and constructed. This may or may not require land use decision-making. The focus of project development is project implementation, e.g. alignment, preliminary design and mitigation of impacts. During project development, projects authorized in an acknowledged TSP shall not be subject to further justification with regard to their need, mode, function, or general location. For purposes of this section, a project is authorized in a TSP where the TSP makes decisions about transportation need, mode, function and general location for the facility or improvement as required by this division.

(a) Project development does not involve land use decision-making to the extent that it involves transportation facilities, services or improvements identified in OAR 660-012-045(1)(a); the application of uniform road improvement design standards and other uniformly accepted engineering design standards and practices that are applied during project implementation; procedures and standards for right-of-way acquisition as set forth in the Oregon Revised Statutes; or the application of local, state or federal rules and regulations that are not a part of the local government's land use regulations.

(b) Project development involves land use decision-making to the extent that issues of compliance with applicable requirements requiring interpretation or the exercise of policy or legal discretion or judgment remain outstanding at the project development phase. These requirements may include, but are not limited to, regulations protecting or regulating development within floodways and other hazard areas, identified Goal 5 resource areas, estuarine and coastal shoreland areas, the Willamette River Greenway, and local regulations establishing land use standards or processes for selecting specific alignments. They also may include transportation improvements required to comply with ORS 215.296 or OAR 660-012-0065(5). When project development involves land use decision-making, all unresolved issues of compliance with applicable acknowledged comprehensive plan policies and land use regulations shall be addressed and findings of compliance adopted prior to project approval.

(c) To the extent compliance with local requirements has already been determined during transportation system planning, including adoption of a refinement plan, affected local

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governments may rely on and reference the earlier findings of compliance with applicable standards.

SECTION 660-012-0050 (4), (5) & (6)

(4) Except as provided in Subsection (1) of this section, where an Environmental Impact Statement (EIS) is prepared pursuant to the National Environmental Policy Act of 1969, project development shall be coordinated with the preparation of the EIS. All unresolved issues of compliance with applicable acknowledged comprehensive plan policies and land use regulations shall be addressed and findings of compliance adopted prior to issuance of the Final EIS.

(5) If a local government decides not to build a project authorized by the TSP, it must evaluate whether the needs that the project would serve could otherwise be satisfied in a manner consistent with the TSP. If identified needs cannot be met consistent with the TSP, the local government shall initiate a plan amendment to change the TSP or the comprehensive plan to assure that there is an adequate transportation system to meet transportation needs.

(6) Transportation project development may be done concurrently with preparation of the TSP or a refinement plan.