

**DRAFT**  
**OTC/LCDC Joint TPR Subcommittee Meeting**  
**September 23, 2005 9:00-12:00**  
**ODOT HR Training Center, Suite C**

**Attendees:** Stuart Foster, ODOT; Ron Henri, LCDC; Hanley Jenkins, LCDC; Marilyn Worrix, LCDC; Lane Shetterley, DLCD

**Audience and Staff:** Rob Zako, 1000 Friends of Oregon; Randy Tucker, Metro; Mark Whitlow, Retail Task Force; Andy Back, Washington County; Philip Selinger, TriMet; Danielle Cowan, Wilsonville; Dale Hormann, DOJ; Bob Cortright, DLCD; Jerri Bohard, ODOT; Anna Russo, ODOT; Bob Sherman, ODOT; Frank Angelo, Consultant; Mark Greenfield, Consultant; Jeanne Lawson, Consultant; Sharon Kautz, ODOT

**Welcome and Introductions/Agenda Review** – Jeanne Lawson

The purpose of today's meeting is to send forward a final packet to LCDC, and as part of that look at final refinements of 0050 and 0070, to finalize the Purpose Statement with refinements from the Work Group, developing MPO amendments, and also some minor and housekeeping amendments. We will also take a look at the TPR Guidelines that have been developed.

**Overview of Agenda Topics** – Frank Angelo

See Angelo/Eaton memo dated September 16, Overview of Agenda Topics

We have had two work group meetings (August 2 and September 9) since the subcommittee last met in July. The intent is to put together a package of proposed administrative amendments for LCDC. We will need to file notice by October 14 of the intent for administrative rule amendments, and publish the draft rule amendments by November 1. That would target a November 30 or December 1 meeting of LCDC with a second LCDC hearing in February for final adoption.

The big piece of the agenda is the TPR Guidelines. At this point they are for information only, we are not asking the Subcommittee for any action today. We do want the guidelines to reflect your understanding of the amendments we previously made to 0060 in terms of how they would be implemented.

**TPR Purpose Statement** – Frank Angelo

See Angelo/Eaton memo dated September 16 – TPR Purpose Statement, Revised Version

This revision is the result of the two work group meetings and comments sent to us by the stakeholders. Your direction to us was to work with the Work Group to make any revisions to the suggested revisions to the purpose statement that we presented to you in

July, and also to maintain consistency with the existing TPR policies while presenting the purpose statement in a more clear and understandable manner, and that there should be no real change in policy or direction expressed in the purpose statement, but to clearly reflect the policy in the existing Transportation Planning Rule.

In our conversations prior to the August meeting we asked the work group to provide us comments specific to any specific recommendations, language changes, or any areas they saw as possible policy changes or shifts. We received a dozen or so comments from the various stakeholders, which you should have received earlier.

As a result of those communications and the conversations, we went back with a revised purpose statement that we feel improved on the original draft, and addressed many of the comments we received. We presented the revised version to the work group at the September 9 meeting, and had continuing discussions. As a result of those discussions, a few more refinements were made, and left the September 9 meeting with the belief that the work group in general endorsed the revisions to the purpose statement. Some members did continue to express concern that there were perceived shifts in policy away from the current emphasis on reduced reliance to the automobile. There was also discussion that the new purpose statement went away from the tone of a more visionary statement to more of a bureaucratic statement.

The staff believes we have incorporated many of the comments and have improved on the draft purpose statement, and are comfortable there has been no policy shift and that we have presented the purpose statement in a clear and understandable manner. Page 6 and 7 of the memo show the changes we have made since the September 9 meeting:

- In subsection (1) we have modified the last sentence to emphasize the purpose of the division is to direct transportation planning in coordination with land use planning. There was conversation the original language indicated to direct transportation and to direct land use planning. The work group asked that we separate those thoughts, but still retain the coordination with land use planning concept.
- Subsection (1)(d) – We had discussion regarding the meaning of “economic”. Ways were suggested to better express the emphasis and importance of the movement of freight and other goods and services. We have modified (1)(d) to reflect those suggestions.
- Subsection (3) – Tom Kloster suggested we include the term “regions”.

In summary, we believe we have accurately responded to many of the comments we have received. The purpose statement is clear and understandable, and does present what follows in the balance of the TPR. The work group was generally supportive.

**Jeanne Lawson** – We did check in with all the members of the Work Group at the end of the discussion, and with the modifications that Frank has mentioned, they said they did feel this was appropriate, with the exceptions of Metro, 1000 Friends, and BTA, which felt that the reduced reliance reference was weakened in this version, and that it felt more bureaucratic and less visionary.

**Ron Henri** – Comparing the proposed Purpose Statement, page 6 paragraph one, to the proposed wording in page 1 of the letter from the City of Portland. I am assuming this version of the Purpose Statement was done before we received the letter from the city, is this correct?

**Frank Angelo** – That is correct. What is on page 6 is the result of comments received at the work group meeting.

**Ron Henri** – What does the staff think of the distinction between the wording proposed by Portland, and that which is in the proposed statement, page 6?

**Mark Greenfield** – The language the City of Portland uses is language that Mark Whitlow proposed at the Work Group. We looked at that language, and at the language you see in subsection (1) and we thought the language in subsection (1) was more clearly stated.

**Jeanne Lawson** – Do you want to take action on this item understanding that we will take public comment and come back to confirm anything? Stuart, Marilyn, Ron, Hanley, are you comfortable with this? All responded yes.

**Final 0070, Division 4 Amendments** – Frank Angelo

Angelo/Eaton memo dated September 16 – Final Amendments to OAR 660-012-0070, OAR 660, Division 4 and OAR 660-012-0005 (11)

You have seen these on a number of occasions. Since your last meeting we have done some minor refinements to both 0070 Division 4 conforming amendments and definitions that implement the changes to 0070.

The changes we are showing on page 5 under 0070 (10)(b), we have changed “existing” to “constructed”. On page 6 we have added more clarity to (2) in terms of what would require new goal exceptions to include new approach roads located within the influence area of an interchange. We have defined that by adding a definition on page 9. The other changes in 0070 you have seen before, and have indicated to us that you are satisfied with those changes.

You also have in your packet a comment from Rob Zako, 1000 Friends of Oregon, regarding the modifications to 0070 as well as a memorandum from Dale Hormann and Bonnie Heitsch with the Dept. of Justice, responding to Rob’s comments on 0070.

With that, and the refinements, we recommend this is ready to be forwarded to LCDC for rulemaking.

**Jeanne Lawson** - Do these look acceptable?

**Hanley Jenkins** – I would be interested in staff comments from DLCD or ODOT on the concept of what Rob Zako has presented, and an explanation as to why we ended up with an AG’s response so those of us on the Commission’s can have some context as to where this is coming from and how it is being addressed.

**Bob Cortright** – I will start and let Dale fill in the details. Our review of the 1000 Friends letter is that it raises a number of questions that are basically legal questions. The exceptions process is guided both by statute and by the Statewide Planning Goal 2. There are requirements in both of those that effect what you can do in writing an administrative rule. What we wanted to do was to give you some certainty that we think we are working within the framework that is established by the statute and the goal in the way we have put this forward.

To be fair, Rob’s letter also raises some policy questions about what the rule should say within in the broad discretion the statute gives you. We wanted to make it clear that the basic legal foundation we are pursuing is consistent with the goal and the statute.

**Dale Hormann** – From my viewpoint, I go along with Bob. The response from DOJ was to address the legal question, not the policy question and to respond in such a way to say in our analysis (myself, Bonnie Heitsch and Steve Shipsey) we did not see any substantive changes in what has been moved into 0070 from Division 4. We want to make it clear that from a legal standpoint it is consistent with existing law, it is consistent with existing rule language, and is consistent with current LUBA decisions.

**Stuart Foster** – Regarding (10)(c)(4) “Modifications that reduce the effectiveness of facility design ...” I would prefer that to say “Modifications that materially reduce the effectiveness of facility design ...”

**Dale Hormann** – We had “eliminate” there, and it was changed to “reduce”. Materially shifts where the trigger point is, and may blur what the trigger point is.

**Stuart Foster** – If it reduces it in a non-material way why are we concerned about it? I am trying to get away from the technical issues where we can get results from LUBA decisions that make everybody sick to their stomachs sometimes.

**Bob Cortright** – My feeling is adding that word is consistent with what we were getting at, not that there was simply a change in what the protection is when a measure is adopted, but that the change reduces its effectiveness. Saying it is reduce in a material way is consistent with the overall objective of making the highway compatible and reducing the impacts on rural areas.

**Marilyn Worrrix** – I would be comfortable with that because I am always looking for a way to avoid a situation where what we create results in a situation where somebody says they didn’t really mean that, did they. The addition of that word is a step in that direction.

**Hanley Jenkins** – I think it makes it less clear what “materially” is, but I do like the flexibility that it provides, because the way it reads now, any reduction would trigger the consideration. There needs to be an opportunity to make a value judgment as to whether it significantly reduces or there is a recognized reduction that is causing some kind of impact.

**Ron Henri** – Nothing to add. Well said.

**Jeanne Lawson** – Consensus is “materially” will be added to this subsection.

**Final 0050 Amendments** – Frank Angelo

Angelo/Eaton memo dated September 16 – Final Amendments to OAR 660-012-0050: Transportation Project Development

Have made a couple of minor amendments have been made since the meeting in July.

- On page 3, section 0050 (3) now reads “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.”
- On page 4, (b) beginning towards the middle of the paragraph, has been changed to “...Willamette River Greenway, “and local regulations establishing land use standards or processes for selecting specific alignments.”

Those were the only two changes that were made. The balance of the amendments you have seen before, and we feel this is ready to be finalized and sent to LCDC for rulemaking.

**Ron Henri** – Early on in our work we were looking at the Jaqua decision and were focused on that, and at time Commissioner Foster indicated this was an area that was dear to his heart and I am looking forward to hearing your comments Stuart, as to whether this meets your needs. In reviewing it over the months, I believe we have arrived at the place we want to be.

**Stuart Foster** – Thanks Ron, it does accomplish what we feel needs to be accomplished here.

**MPO Amendments** – Bob Cortright

Bob Cortright memo – Draft TPR Amendments for Metropolitan Areas

Background – Before we convened the Joint TPR Subcommittee, LCDC had directed staff to separately do an evaluation of the portions of the TPR that apply to metropolitan areas. The LCDC subcommittee had met twice during 2004 and several times with the MPOs preparing the evaluation report. In September 2004 that resulted in our subcommittee reviewing six specific recommendations that identified areas of the TPR

that needed changed, or where changes should be considered. LCDC reviewed that in November, and forwarded the recommendations onto this process, the Joint TPR Subcommittee, for consideration.

In June 2005 we distributed to the TPR Work Group specific recommendations for rule language that addressed four of the six recommendations that came out of the LCDC report. In August we went into detail on the remaining two recommendations.

Today I would like to highlight for you the issues that are new here.

Page 5, 660-012-0016 (New Section). This is dealing with the overall effort to coordinate planning that is done by MPOs which is required by federal law, with the land use planning decisions that are made by local governments, specifically cities and counties, under state law. MPOs are not local governments and the decisions they make are not land use decisions and they are not directly subject to the requirements in this rule. Our effort is to figure out how those two processes coordinate, because in reality the MPO is doing the lion's share of the planning work for transportation systems and facilities in urban areas. Local governments rely heavily on the work that is done that is done mirrored and implemented in the local transportation plans. We want to be very clear about where that handoff occurs, where a land use decision ends up being made.

We expect that MPOs and local governments will continue to do what they have been doing, which is work very closely so the land use decisions get made in a timely way. What we are trying to do in this rule is describe how we want that coordination to occur. If the MPO is considering a plan amendment that does relate to land use, that would trigger some kind of land use decision we want to identify those situations. Section (3) of the rule lists the sorts of changes to MPO plans that would relate to land use and trigger some review by the local government.

The choice for local government, in section (2) is to conduct a review and say no, there is no impact, this is consistent with our adopted local TSP, or that they would initiate some sort of amendment to the plan in combination with the MPOs consideration. A major concern of local governments is coordinating the timing of these two processes. We want to make sure this rule does not create barriers to MPOs making necessary amendments. The direction of the rule is that a local government initiates an amendment with DLCD no later than 30 days after adoption of an MPO amendment, and that amendment be acted upon within one year of the MPOs adoption. That gives local government sufficient time to make the corresponding land use changes when an MPO amendment does trigger an effect on the land use rule.

Section (4) of the rule lists the sorts of amendments to MPO plans that do not affect land use.

Section (5) is dealing with a bigger issue and one that will become increasingly significant for metropolitan areas in the future. Under federal law MPOs are required to maintain a 20 year planning horizon for future population, employment and

transportation needs. Sometimes the local governments acknowledged comprehensive plan and urban growth boundary do not go 20 years into the future. The issue is, what does the MPO do in forecasting future growth to act consistently with the comprehensive plan. We have tried to outline in section (5) the process and considerations that if the MPO applies, the local governments can say this is consistent with Goal 14 and the TPR to allow the MPO to forecast growth that is beyond what is in the acknowledged comprehensive plan.

Again, we expect the MPOs are going to work closely with local governments in forecasting where future growth goes. This is intended to make it clear what the linkage is between how MPOs do what they are required to do under federal statute with the corresponding land use decisions.

This overall provision about MPOs really applies outside the Portland Metropolitan Area. With Metro being a local government, we have a regional local government that is responsible for both the regional land use and regional transportation decisions. Outside the Portland area, they are separate entities, and are not local governments.

This is the bulk of the new language that we recommended adding that goes beyond what you have seen before. There are two other areas I would like to highlight.

The two recommendations that we added guidance on in the most recent amendments, deal with situations for MPOs that have not yet fully completed their obligations under the TPR. The big one that is outstanding in the down-state metropolitan areas is to complete an integrated land use and transportation plan that involves basically making changes to planning facilities to integrate a land use and transportation strategy. That is still outstanding for the downstate MPO areas.

**Stuart Foster** – Define “downstate MPO areas”.

**Bob Cortright** – That is a term I use to include Salem-Keizer, Eugene-Springfield, Medford, and eventually Bend and Corvallis. Bend and Corvallis do not yet have regional TSPs.

The rule was amended in 1998 to require the plans to be completed and in place by 2004. In doing the evaluation, the conclusion we reached is that it is going to take considerably longer for the MPOs to make those changes to comprehensive plans, and then to make the corresponding changes to zoning. We have recommended that each of the MPOs generate a schedule that identifies the remaining work needed to complete the Land Use and Transportation Plans, and to have a schedule as to when that work will be completed. It does not set a specific deadline. It gives the MPOs some flexibility to lay out their strategy for completing the necessary work. That is what is outlined at the bottom of page 11.

The other section I want to point out to you is at the top of page 12. The other recommendation is for those who have not yet completed integrated land use and

transportation plans, that they would review interim plan amendments to see that they are facilitating or implementing the overall land use strategy. The TPR was adopted in 1991 with the expectation that we would be done by now; that we would have plans in place that would accomplish the objective of the rule. The companion recommendation coming out of the status report was that we should look more carefully at interim decisions. Subsection (d) requires that MPOs look at plan amendments and make findings that they are consistent with implementing that broad strategy they have adopted.

We have received some comments from the MPOs that this is not a clear and objective test. It is one that we think each MPO is going to have to look at based on the broad outlines of the strategy to determine whether or not it is in compliance. That contrasts with the current process which has a broad strategy for changing land use, but does not have to reconcile that with individual plan amendments.

**Marilyn Worrix** – On (d), I am not surprised to hear the jurisdictions comment that this is not a very clear and objective standard, because basically it says “adopt findings”. I have always read this as you have to seriously discuss it, and I am curious if you think it is much more than that.

**Bob Cortright** – That is most of it. Right now when a plan amendment comes in, it only needs to meet the Transportation Planning Rule, and the TPR does not provide any guidance on having to reduce reliance on the automobile. There is no accountability. The expectation was they would come up with an overall plan that would have accomplished that objective by now.

**Marilyn Worrix** – The concern of the local government is not that they would prefer to have a lot more they need to do, but is their concern that the department would somehow use this to make life more difficult for them? What is their fear?

**Bob Cortright** – I think their concern is that there is just one more standard you have to meet, and that it complicates the situation.

**Hanley Jenkins** – Subsection (5) – regarding the development and coordination of the population and employment forecasts. My problem is my experience. I do not work in an MPO, and I have a problem separating out what the Portland MPO does, and what Bob is calling the “downstate MPOs” do. My assumption is that it is the local governments in the “downstate MPOs” that are developing the population and employment forecasts, is that correct?

**Bob Cortright** – The overall forecast is going to be done at the county level, starting with the Office of Economic Analysis forecast. The allocation within counties is going to be done by the county, and MPOs are coordinating with the counties in that process.

**Hanley Jenkins** – So when the MPO is charged by the federal government with doing a population and employment forecast for the 20 year period, what this is saying is that

should coordinate with what the county has prepared, and not substantially deviate until you get beyond the county's forecast?

**Bob Cortright** – Right. An overall observation is there is a high level of consistency between the state and federal requirements. The federal law and regulations direct MPOs to act consistently with local plans, and with state policies and goals. The key step in the transportation planning process is to take that future population and employment projection and allocate where in the MPO it is going to locate.

**Hanley Jenkins** – What happens when you get beyond the local forecast? I assume the MPO is doing that forecasting at the charge of their federal requirements.

**Bob Cortright** – That is the difficult situation they are in. The acknowledged comprehensive plan may not go to that future horizon. Generally county population projections are going to go out at least 20 years. What this is talking about, and what we are suggesting in (a) is that to the extent that the population projection does not go out 20 years, that you would extrapolate the current projections and current allocations to allow the MPO to go forward.

**Hanley Jenkins** – Does that mean the county has to go back and adopt beyond their 20 year forecast in order to make it effective for the MPO?

**Bob Cortright** – Ultimately they would have to do that, but if you do it as an extrapolation that goes beyond, the county could make a finding that it is consistent with Goal 14 in the TPR. It would not prevent them at any point from adopting an updated forecast that the MPO would then have to be consistent with.

**Hanley Jenkins** – So to avoid the conflict between the MPO driving the economic and employment forecast beyond the counties adopted projections, the county could simply step and re-evaluate their forecasts, and do a 20 year forecast from that point forward.

**Bob Cortright** – That is right. The more typical concern we had expressed to us is cities and counties are saying they may not get to updating their forecasts, but we do not want that to stop the MPO from moving forward with an update to the MPO plan. That is really what we are intending to allow here.

**Hanley Jenkins** – My second comment is on page 11, (1). Is it the local government or the MPO that is requesting the extension?

**Bob Cortright** – It would be the local government, in (c), I think is what you are referring to.

**Hanley Jenkins** – Yes, that would be the first part. Should we say at the beginning that the local government in MPOs may request, and that the Commission may, by order, grant an extension? Is that who comes first here? Is it the local government that makes that request?

**Bob Cortright** – That is correct. It would not be the MPO. I think we have used the term “metropolitan area” as meaning the local governments in a metropolitan area, so I think that is a good clarification.

**Hanley Jenkins** – On page 12, at the top, I was trying to follow your explanation preceding this, and what I was hearing you say is that it was the MPO that shall review plan and land use regulation amendments and adopt findings. But I believe this is saying the local government shall review and adopt findings. Is that correct?

**Bob Cortright** – That is correct. Technically the MPO is not making land use decisions.

### **Minor and Housekeeping Amendments** – Bob Cortright

Referring to September 15 memo: Minor and Housekeeping Amendments

Minor amendments are ones we think do make a substantive change in the rule, but are relatively uncontroversial. Housekeeping amendments are strictly changes to errors we technically have to make in order to accomplish the rule. We reviewed these at the last TPR Work Group meeting.

Bob reviewed table at bottom of page 1: Proposed Minor and Housekeeping Amendments.

There is one additional minor amendment to be moved from the housekeeping changes to minor amendment status. That is 0055(6), authorizes the director of DLCD to grant exemptions to the requirement to prepare a Transportation System Plan. The general expectation is that it would be smaller local governments (under 10,000 in population) that would be granted exemptions. Currently there are approximately 20 statewide. The minor change we are recommending is to allow smaller cities (under 10,000) in MPOs to be eligible for exemptions. We have several small cities that are essentially landlocked and probably do not need to do a TSP.

**Marilyn Worrrix** – One question on the exemptions. Is there some shared vision between the department and the local jurisdictions as to who is likely to ask, and what the answer is likely to be?

**Bob Cortright** – There are criteria. Does the community face significant growth pressures, and are there significant transportation issues. If the answer to those questions are no, then it is pretty straight forward.

**Marilyn Worrrix** – Overall, you think this change will facilitate smoother work in some of those local communities, not a new battleground.

**Bob Cortright** – No, I do not think it will. Most communities want to do a TSP so they can figure out what their transportation needs are and also qualify for funding.

## **PUBLIC COMMENT**

### **Andy Back** – Washington County

My comments have to do with the MPO changes, specifically section (2). Bob has stated, and I think the rules reflect that it was not written for the Portland Metropolitan Area. The language as it stands does not clarify that issue very well, or deal with the fact that as a local government, it is unclear what we would do given that Metro also has an RTP and a federal RTP. We are okay with doing the things outlined in (a) and (b) after Metro amends the RTP, but the way it is worded now, it starts the timeline as soon as Metro amends the federal RTP, which puts us in the catch 22 of having to be consistent with both when Metro is not yet consistent with both. Would like to see this addressed.

**Bob Cortright** – I agree, and tried to cover this in my explanation. We think in the metropolitan area Metro's adoption of amendments to the RTP are probably sufficient. Those are land use decisions that would make the two plans consistent, which is really the underlying objective here. I would be glad to work with Andy on language that addresses that.

### **Randy Tucker** – Metro

I am here representing Metro for Tom Kloster, who has been your representative for Metro throughout this process.

Regarding the Purpose Statement – We have come to the conclusion that is in agreement with one of the comments in the City of Portland letter, which is that we should import the language directly from Goal 12 that says “avoid principle reliance on any one mode of transportation” which does not single out the automobile, and maintains consistency with the goal of the rule. I would like to say that we have a version of this that is a lot shorter and simpler, but I think it would not be appropriate at this point to introduce it into record. You might want to take a look at it during the break.

### **Rob Zako** – 1000 Friends of Oregon

1000 Friends can live with most of the amendments before you. That said, we are disappointed with the process and where we are right now. The Purpose Statement has been organized and does clarify some things, but has become much longer, more bureaucratic, we feel it weakens the reduced reliance language, and there is a loss of vision and focus in the length. We think the Metro version is a better way to go.

The amendments related to the MPOs are a step in the right direction. They clarify some issues that need to be clarified, but we are skeptical as to whether they will make any difference. We think the rules that we have now that apply to MPOs are fairly clear, and there are MPOs that are ignoring those, specifically the Salem-Keizer MPO.

The 0050 and the Minor and Housekeeping Amendments are all fine. Our major concerns right now are with 0070, and we will be moving forward with this to LCDC. We just received the DOJ opinion a few days ago. Basically, we do not disagree with the DOJ view that LCDC has the legal authority to adopt these proposed amendments. We also generally agree that the post amendments do not drastically shift the policy; they do tweak it a bit. Our major concerns are whether or not the policy that the current or the revised language expresses is the right policy.

We have seen some policy shift. I would like to call your attention to Division 4, subsection 0020(2)(b)(B). If you go to the post amendments to 0070 on page 4, subsection (6)(a), this subsection is supposed to be drawing the language from Division 4. The subsection is basically saying that before adopting a goal exception, you need to make sure there are not non-exception areas. Division 4 goes into much more detail, and there are several questions that need to be answered. We feel this is a policy shift when you compare the language in Division 4 with the new language in subsection (6)(a).

Regarding subsection (6)(b) & (c) – We see the new language as a policy shift. A private citizen would not have the expertise to prove to the government that there might be a reasonable alternative, so unless they had the money to hire a transportation engineer, they would need to trust the jurisdiction. This may legally be consistent with the statute in Goal 2, but we feel it is not the right policy for Oregon. We feel the jurisdictions adopting goal exceptions have an obligation to look at what the alternatives might be and do an analysis themselves to demonstrate there are not any alternatives.

**Mark Whitlow** – Retail Task Force

The issue I would like to focus on is the MPO standards, where the MPOs have not yet adopted integrated land use plans. Referring to page 12, 0055 (1)(d) (A thru C) – I do not understand how this is going to be read and am concerned about the unintended consequences. Is this a set of findings they have to make to satisfy, which then seems to convert into state criteria, or a new state standard they have to address. If this is a state standard, it is not subject to local interpretation. If they have not adopted an integrated plan, maybe they do not have designated standards.

What we talk about with Metro a lot is that the centers by themselves is not going to get us there, because they are a form of exclusionary zoning, and there is a good argument that if they put everything in centers it actually exacerbates vehicle miles traveled. It increases trips. It is the smaller nodes on the transit corridors that make the system work and reduce VMTs.

I have not kept up with the Purpose Statement, but the last time I did, it seemed we were using the term “principle reliance” as the identifier. I am now seeing “reduced reliance”.

Would like to suggest we revisit the reasonably likely written statement process in 12 to 18 months to make sure it is a working solution.

**Phil Selinger** – Tri-Met

Tri-Met has not been a part of the working group process, so I will be brief. Tri-Met has submitted a letter for the record and our comments largely track with 1000 Friends, Metro and the BTA. We appreciate how the process has listened to everyone's concerns, including those in the Metro area who favor the up front placement of reduced reliance as a fundamental tenant of the TPR 12. We believe any weakening of the reduced reliance language makes our job, and the 2040 framework plan that much harder to achieve. We recognize the needs of the Metro area are not always aligned with smaller communities, but many of the principles for planning and guidance still apply.

As common guidance for all involved in infrastructure and land development the TPR is more potent than anything Tri-Met, Metro and even ODOT might put out on their own. Tri-Met understands the charge that has been handed down and we believe the exercise has been handled openly and fairly. We all recognize that our unique quality of life in the Portland area and the state has been our greatest asset in attracting business and talent. This is very much a shared interest for Tri-Met, and we appreciate the opportunity to track and comment on the process.

**BREAK**

**Future Role of Subcommittee** – Jerri Bohard

We feel it is important to leave this committee as perhaps ad hoc in case there is a need for the committee to come back together, for monitoring purposes or other needs that may be identified. We are holding a tentative date of December 15 for a subcommittee meeting if needed after the LCDC hearing. You will be notified if we feel there is a need for that meeting, but please mark it as tentative on your calendars.

**TPR Amendments** – Jeanne Lawson

We need to come to closure on the TPR amendments. We have had comments on the MPO amendments regarding consistency, potential for confusion, language about nodes and principle reliance. We have had comments on the purpose statement and 0070, and have had a request for date certain on the monitoring. Do you want to address any of these comments before revising or confirming your positions from earlier in the meeting.

**Stuart Foster** – I would like to respond to Rob Zako's comments in regard to 0070. As I look at the language, it looks to me like Rob said the new language eliminates the need to look do the reasonable alternative analysis. I do not see that. It looks to me that it requires that. But it does require there to be some substantive support for it. Is that right?

**Frank Angelo** – That is right. It does not relieve the project from looking at reasonable alternatives, but it does say if you want to recommend additional alternatives, there has to be some foundation tied back to the purpose and need for the project.

**Jeanne Lawson** – Are there any other comments regarding 0070? Are we to closure on 0070? Yes.

**Stuart Foster** – Regarding Mark Whitlow’s comments on the MPO amendments, I would like to hear Bob’s response to those. Mark uses the words “designated centers” which I know in the 2040 plan have a real significant defined meaning. I am not sure it has any meaning in non-Metro MPOs.

**Bob Cortright** – Our intent is not to limit it to centers, but to use centers as a generic term. We did look at what the other MPOs had done in terms of the kinds land use designations, and centers of some form. We tend to use that term broadly.

**Stuart Foster** – Maybe it would be helpful if the commentary spelled that out because there is some ambiguity in the way the term is used.

**Bob Cortright** – We do not mean that to be exclusive of nodes. We have defined the term “mixed use pedestrian friendly areas” and I think there is a reference to the fact that it includes the Eugene nodal areas and the Portland centers.

**Jeanne Lawson** – Is the subcommittee comfortable with the staff working on the language here to consider making clarification that it is to be interpreted broadly? Consensus.

**Bob Cortright** – Addressing the other part of Mark Whitlow’s concern that we were establishing a state standard that would somehow interfere with local governments or make it more difficult for them to do plan amendments. If you look carefully at the language in (A)(B) and (C), we are setting a state standard, but the substance of that standard that we are asking local governments to measure is the terms of whatever they have adopted in the way of a strategy to achieve the goal. There is nothing in the rule we are pointing to as the standard, it asks what is your regional strategy for accomplishing this objective. Is this plan amendment consistent with what you have adopted locally?

It is a standard because you do have to apply this, but the terms of whether or not the standard is met is judged by looking at what that broad local vision or strategy or policy is to the extent local governments put forth.

**Jeanne Lawson** – Is the subcommittee comfortable with that? Yes.

**Lane Shetterley** – Regarding the date certain for a follow-up on the reasonably likely written statements. I like the idea of LCDC following up, maybe by the end of the next Legislative session. If there are circumstances that elevate this to a more urgent need, we might review sooner.

**Jeanne Lawson** – I am seeing heads nod in agreement around the table. Any other issue you want to discuss?

**Marilyn Worrrix** – I would like staff to make one more response to Rob Zako’s concerns about a check list for Division 4. We were really trying to avoid something like a check list there.

**Bob Cortright** – The criteria in Division 4 are written broadly, in talking about more site specific kinds of goal exceptions. First, are there feasible locations on non-resource land? Second, are there feasible locations in committed areas, basically areas that have development and are not available for farm use inside urban growth boundaries. We had a hard time understanding how those kinds of considerations apply directly. What Rob was saying, is maybe there are appropriate versions of those questions to ask or answer. I do not think we saw the ones that matched up with what this part of the exceptions process was asking us to look at. There are other considerations in the exceptions process that deal with the basic test of evaluating the consequences of different alternatives.

**Mark Greenfield** – This issue did get addressed in LUBA’s decision on the Newberg/Dundee appeal. That argument was raised much like Rob has raised it and LUBA rejected it, focusing on the fact that transportation facilities are very different than site specific uses, and other the TPR you look at the adverse effects of economic, social, environmental and energy, and compare them all together, there is no evaluation of agricultural lands for transportation projects.

**Jeanne Lawson** – There has not been much discussion on comments about the purpose statement, did you want to revisit any part of it?

**Jerri Bohard** – The point Hanley was making was is the changes we need to make to the MPO language. One is the commitment to look at section (2) dealing with the MPO language. The other was on page 11, to put language in front of (c) and to work on language on page 12 relative to what we mean by designated centers.

**Jeanne Lawson** – Bob will work with Andy on that language, and the subcommittee is comfortable with that going forward.

**Ron Henri** – Regarding the proposed alternative Purpose Statement. Acknowledging all the work that has gone into developing the purpose statement proposed here today, I would hope to see this alternative surface during the commission discussion of the Purpose Statement.

**Stuart Foster** – There has been a ton of work on the Purpose Statement. This new alternative has the whole language “avoid principle reliance upon any one mode of transportation”. That does not fly in Ontario, Burns, etc. I think the Purpose Statement we have come up with is well balanced and clearly indicates that livability from a quality standpoint, we should pursue alternate modes in rural areas. I would have a huge problem with making a general statement like what is in this new draft. It does raise a lot of issues in non-metropolitan areas.

**Ron Henri** – I do hope it comes up for further discussion because it does raise the stark choice.

**Jeanne Lawson** – I am not hearing any desire to revisit the Purpose Statement at this point, so with the modifications you have agreed on or directed staff to work on refinement of language, are you prepared to forward this on to LCDC?

**Ron Henri** – Yes

**Hanley Jenkins** – Yes

**Stuart Foster** – Yes

**Marilyn Foster** – Yes

**TPR Guidelines** – Frank Angelo

Referring to the September 15 memo: September 23<sup>rd</sup> Joint Subcommittee Meeting – TPR Guidance (Draft)

Let me start by making two points. One is the guidelines are really intended as directions for ODOT staff. They are not intended to guide local governments. Two, they are a draft that will evolve over time.

We have provided a set of guidelines that deal with the amendments that were adopted in March on 0060 which include types of projects that a local jurisdiction or applicant may rely on during the review of 0060 in determining if a proposed amendment would have a significant effect on an existing transportation facility.

Frank reviewed the draft guidelines.

## **PUBLIC COMMENT ON THE TPR GUIDELINES**

### **Andy Back**

A county has over \$1 billion of needs on the state facilities in the county, and historically we have had good relationships and partnerships with ODOT, and we continue to keep that in mind as we go forward. Washington County probably contributes more local money to the state system than any other county in the state.

One of our major concerns with 0060 from the beginning is that there has not been adequate analysis of what the words actually mean. Now that the words are actually adopted I think the consequences are not going to meet up with the expectations. Our comments on the guidelines emphasize that point.

I do want to emphasize one point where I think the interpretation is correct, and that is on page 15 of the guidelines. I believe it is correct that every time a plan amendment is done, a written statement needs to be asked for. I think ODOT has the option of doing it differently, in that they could create and maintain a current list and say that is the written

statement. One of our major complaints is the ad hoc nature of the decision making that goes into providing a written statement. We do not think it is in the best interest of the county or the development community because it is unknown until the actual letter shows up.

Referring to the handout from Washington County. This relates to section (3) that is sort of a tool to let plan amendments go forward as long as they are not wanting to mitigate impacts that may occur today. When I read it now, it seems like it is to a very limited circumstance that you would apply this, and I am thinking of the person who does not want the plan amendment.

(a) Refers to the facility performing below the minimum acceptable performance standard identified in the TSP or comprehensive plan on the DATE the amendment application is SUBMITTED. (Andy took that to literally mean you had to have a traffic count done and to the local government on the date of submission, instead of referring to the TSP or comprehensive plan that is IN PLACE on the date of submission.)

(c) What does “time of development” mean? Jurisdictions can interpret that however they want, but there is a lot of wiggle room there.

In Section (A) which is the language that has the STIP in it. The way the guidelines are written, it implies it is ODOT’s job to include that in the written statement, in fact the written statement draft letter has language about whether or not it is in the STIP. There is no language in here that says this is part of the written statement, and in fact it is the local government’s responsibility to interpret these words. Part of the interpretation allows us to interpret the word “implementation in the STIP”, which if push came to shove, we could consider a study as being implementation.

I think there is a lot of broad language here that does not put a cap on reasonably likely language, and if that is what the intent was, that is fine, but I think there are a lot of straight faced arguments that can say this language means different than how it is represented in the guidelines.

### **Randy Tucker**

I would like to call your attention to something that was flagged by our staff attorney. On the bottom of page 14, the last bullet under “Factors to Consider...”. This looks to us like exactly the thing the Jaqua amendments were trying to avoid. It looks like a concurrency kind of criteria here. We cannot find the source of authority for this in the rule that was adopted, and it seems to be contrary to where we are trying to go.

### **Rob Zako**

This is quite a beast you have here. 0060 is approximately a thousand words, and I was amazed to see 21 pages of guidelines to explain what it means and how to implement it. We are pretty much going to stay out of it, and frankly, good luck.

Getting back to Jaqua itself, the Peace Health development in Springfield is being constructed now as we speak and I do not think anything you are talking about has any relevance to that. Steve Pfeiffer approached me a while back ago and informed me that Peace Health plans to apply for a plan amendment to do the development under the current rules. Currently the development satisfies the Jaqua ruling before your rule amendments that said that I-5/Beltline would be built first, the hospital would open in 2008, Springfield would do some road amendments and they would open some medical offices in 2010. Now they are saying they want to open earlier and maybe the road improvements will not be done.

Imagine having a major regional hospital open while I-5/Beltline is under construction and there are only two ways to get there. It is going to be a transportation mess. Under the current rule, all you need to do is make sure that 15 to 20 years in the future the problem is solved, all the improvement are in the RTP, so this reasonably likely language does not matter. We have a situation where we have a lot of rules and guidance but we are going to have a transportation mess in the Eugene/Springfield area soon and we will see how the people feel about that.

### **Mark Whitlow**

Regarding Section (3) – If the role of the TPR is to judge the impact of an amendment on the system it seems that if you mitigate your own impacts then you do not have a significant effect. It seems we are limiting our ability to allow development to pay its own way. Section (3) is an example of that. My suggestion is as we go forward into the future let's allow ourselves to let development pay for its impacts. It would be a lot less trouble and a lot less onerous on the evaluating side to simply say we have a proposal here with a mitigation package.

**Stuart Foster** – Regarding Randy Tucker's referral to the bullet under "Factors to Consider", I do not see it as restraining anything, so I do not see the harm of having it in there. The list is not an inclusive or exclusive list, and it is not identified as criteria.

I am really impressed with the guidelines, realizing it is still in draft form, but someone had done a splendid job. After refinement, from ODOT's standpoint, it will be a really helpful and effective document. I do not believe we have had anything like this in the past have we?

**Jerri Bohard** – We had something similar for the Development Review Guidelines, but nothing to this level of specificity. From a next steps standpoint, our intent is to work with our ODOT Planners to make sure have addressed the issues, and to work with the local government planners. This is still draft, but is a living document to a certain extent. The other part we wanted to do with this, our intent is to go out to the regions and meet with planning staff to talk about the TPR, STIP, etc.

**Hanley Jenkins** – Is this something that is going to be adopted by ODOT? What is the final form?

**Jerri Bohard** – It is not something that is intended to be adopted. We do a number of guidelines that we keep. We have a notebook we call the Development Review Guidelines, and this most likely will become a chapter in that, and also an appendix to the TSP Guidelines. We have a Planning Business Line Team that meets each month, which is the Planning Managers from each of the regions, Craig Greenleaf and myself, and we will make sure the Planning Managers are comfortable with this before we institute it. We will also to our Highway Staff meeting, which is the Region Managers.

**Marilyn Worrrix** – The section that relies on the opinion of the Region Managers, do you have other processes within the department where similar responsibilities are placed there?

**Jerri Bohard/Dale Hormann** – In the Access Management Rule a lot of the decisions are made at the Region Manager level.

**Marilyn Worrrix** – How often to those positions change?

**Stuart Foster** – Not very often. There are five Region Managers, and they are all highly skilled, long term employees.

**Jeanne Lawson** – Region Managers play an important rule in terms of maintaining relationships with the jurisdictions.

**Hanley Jenkins** – Do you expect this to come back to the subcommittee if we should meet sometime in the future? I am a little concerned about it going out to local governments, but we have had four citizens from different organizations comment on it today.

**Jerri Bohard** – As we bring drafts forward, we will be glad to send them out to the Work Group and the Subcommittee, so you will be kept informed of the drafts and the status of the work. If the Subcommittee should meet in the future you will be updated.

**Stuart Foster** – I would like to say from ODOT and the Transportation Commission that we really appreciate this process and the time that LCDC and the DLCD staff have committed to it. We think what we have given the nod on today is an outstanding product that absolves the issues we had last spring when we started this process.

**Lane Shetterley** – It has been a good exercise to have the Commissions working together on this. Also, thank you for the participation of the faithful few who have been following this, and I expect to see you all in Medford.

