



Oregon

John Kitzhaber, Governor

Department of Land Conservation and Development

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December 29, 2010



TO: Land Conservation and Development Commission

FROM: Richard Whitman, Director
Matt Crall, Land Use-Transportation Planning Specialist

SUBJECT: **Agenda Item 11, January 12–13, 2011 LCDC Meeting**

HOUSE BILL 3379

I. AGENDA ITEM SUMMARY

The Oregon Transportation Commission (OTC) recently adopted administrative rules as directed by House Bill (HB) 3379 (2009) to give local governments additional options for complying with Section 0060 of the Transportation Planning Rule (TPR; OAR 660, division 12) as part of economic development projects.

A. Type of Action and Commission Role

The report is informational to advise the commission about the work done by ODOT. No commission action is recommended on this agenda item. The commission will be discussing potential rulemaking related to OAR 660-012-0060 under agenda item 12.

B. Staff Contact Information

For additional information, please contact Matt Crall at 503-373-0050 x272, or by email at matthew.crall@state.or.us.

II. RECOMMENDATION

No formal action is required or recommended as part of this agenda item.

III. BACKGROUND

LCDC was briefed on the draft rules in September 2009. Although HB 3379 is targeted to address economic development opportunities, the commission heard from a variety of local governments about a broader range of concerns with TPR 0060 (see agenda item 12).

The OTC adopted the administrative rules (see Attachment A) implementing HB 3379 on December 15. ODOT provided training via webcast (see Attachment B for the slides) to staff from ODOT, DLCD and the Oregon Business Development Department.

The heart of the new rules is as follows:

(1) When a local government comprehensive plan amendment is needed to authorize an economic development project, and the proposal cannot meet the funding requirements of the Transportation Planning Rule as they relate to state highways, the local government may apply for:

(a) An extension of time to meet the requirements of OAR 660-012-0060(2)(b), OAR 660-012-0060(4)(b)(D) or OAR 660-012-0060(4)(c)(A);

(b) Approval of a plan proposing alternative methods of funding that meets the provisions in this division;

(c) An adjustment to existing traffic performance measures or allowance to use an alternative traffic performance measure other than a volume to capacity ratio with a proposed acceptable level of performance during an interim period prior to completion of construction of an economic development project for a period of no more than 20 years;
or

(d) An adjustment to existing traffic performance measures or allowance to use an alternative traffic performance measure other than a volume to capacity ratio with a proposed acceptable level of performance that address the specific traffic impacts of an economic development project.

(OAR 731-017-0015)

An important point is that these remedies are limited to **economic development** projects, defined in the rule as follows:

projects that demonstrate the direct benefits in terms of “primary” jobs created or retained by the development opportunity. Primary jobs are those in such areas as manufacturing, production, warehousing, distribution, or others that create new wealth for the Oregon economy.

(OAR 731-017-0010(4))

Additional information about HB 3379 and the new rules is available on ODOT’s website:

<http://www.oregon.gov/ODOT/TD/TP/HB3379.shtml>

ATTACHMENTS

A. OTC Memo and Administrative Rules adopted December 15, 2010

B. Webcast Slides from ODOT Training December 14, 2010



Oregon

Theodore R. Kulongoski, Governor

Department of Transportation

Office of the Director

Room 135

355 Capitol St NE

Salem, OR 97301

DATE: December 3, 2010

TO: Oregon Transportation Commission

FROM: Matthew L. Garrett
Director

SUBJECT: Agenda F – Oregon Administrative Rules Implementing House Bill 3379

Requested Action:

Approve adoption Oregon Administrative Rule (OAR) 731-017-0005 through 0055 relating to an application process for economic development projects that are unable to meet the Transportation Planning Rule (TPR) requirements related to state highways.

Background:

The rules carry out the state policy established in Oregon Revised Statute 367.850 (House Bill 3379). This statute requires the Oregon Transportation Commission to adopt rules to facilitate projects that support local economic development and job creation, but cannot meet the funding or timing requirements of the Land Conservation and Development Commission's Transportation Planning Rule related to state highways. This rule is not intended to supersede any requirements of the TPR; rather, it is intended to encourage innovation and flexibility in the application of traffic performance measures, timing and funding requirements adopted pursuant to the TPR and are associated with amendments to comprehensive plans and land use regulations, including zone changes.

The department worked with a stakeholder committee to develop the proposed rules and to identify other related issues that may warrant attention as next steps. Stakeholder committee members included city, county and Metropolitan Planning Organization representatives, as well as representatives of state agencies, interest groups and the consulting community.

Notice of this rulemaking was published in the November 2010 *Oregon Bulletin*. A public hearing was held November 17, 2010, and no one appeared or testified. The public comment period closed November 22, 2010. One comment came from the League of Oregon Cities, and staff incorporated its recommendation into the rule after consultation with the Department of Justice.

Additional information and stakeholder committee materials are available on the HB 3379 Website: <http://www.oregon.gov/ODOT/TD/TP/HB3379.shtml>

Copies (w/Attachments) to:

Jerri Bohard	Joan Plank	Patrick Cooney	Clyde Saiki
Robin Freeman	Barbara Fraser	Erik Havig	Robert Maestre
Dale Hormann	Michael Rock	Lauri Kunze	





NEW RULES

731-017-0005

Purpose

This division is intended to carry out the state policy outlined in ORS 367.850 to facilitate projects that support local economic development and job creation but cannot meet the funding or timing requirements of the Land Conservation and Development Commission's Transportation Planning Rule related to state highways. This division is not intended to supersede any requirements of the Transportation Planning Rule; rather, it is intended to encourage innovation and flexibility in the application of traffic performance measures, timing and funding requirements adopted pursuant to the Transportation Planning Rule associated with amendments to comprehensive plans and land use regulations, including zone changes. This innovation and flexibility extends beyond that already permitted under OAR 660-012-0060(2) and through existing applications of Oregon Highway Plan alternate mobility standard processes.

Statutory Auth: ORS 184.616, 184.619, 367.850
Stats. Implemented: ORS 367.850

731-017-0010

Definitions

For the purposes of this division, the following definitions shall apply:

- (1) "Amendment" means a proposed amendment to a comprehensive plan, transportation system plan or land use regulation.
- (2) "Commission" means the Oregon Transportation Commission.
- (3) "Director" means the Director of the Oregon Department of Transportation or the designee thereof.
- (4) "Economic development projects" means those projects that demonstrate the direct benefits in terms of "primary" jobs created or retained by the development opportunity. Primary jobs are those in such areas as manufacturing, production, warehousing, distribution, or others that create new wealth for the Oregon economy.
- (5) "Funding requirements" means the requirements set out in the Transportation Planning Rule that require a funding plan for transportation facilities or improvements needed to avoid a significant effect on existing or planned transportation facilities (OAR 660-012-0060(2)(b)); a written statement from ODOT that the proposed funding and timing for identified mitigation improvements or measures are, at a minimum, sufficient to avoid further degradation to the performance of an affected state highway (OAR 660-012-0060(3)(c)); a written statement from ODOT that improvements to state highways that are included as planned improvements in a regional or local transportation system plan or comprehensive plan are reasonably likely to be provided by the end of the planning period (OAR 660-012-0060(4)(b)); or a written statement from ODOT that the proposed funding and timing of mitigation measures are sufficient to avoid a significant adverse impact on the Interstate Highway system (OAR 660-012-0060(4)(c)).
- (6) "Interim period" means the period, not to exceed 20 years, between when construction of an economic development project begins and construction of the project ends.
- (7) "Local government" means any city, county or metropolitan service district formed under ORS chapter 268, or an association of local governments performing land use planning functions under ORS 195.025.

- (8) "Long-term economic benefits" means the net economic benefits anticipated to occur from an economic development project following completion of construction.
- (9) "ODOT" means the Oregon Department of Transportation.
- (10) "ODOT Region" refers to the five regions operated by ODOT. For the purposes of this division the ODOT Regions are defined as follows: Region One consists of Clackamas, Columbia, Hood River, Multnomah and Washington Counties. Region Two consists of Benton, Clatsop, Lane, Lincoln, Linn, Marion, Polk, Tillamook and Yamhill Counties. Region Three consists of Coos, Curry, Douglas, Jackson and Josephine Counties. Region Four consists of Crook, Deschutes, Gilliam, Jefferson, Klamath, Lake, Sherman, Wasco and Wheeler Counties. Region Five consists of Baker, Grant, Harney, Malheur, Morrow, Umatilla, Union and Wallowa Counties.
- (11) "Oregon Highway Plan (OHP)" means the 1999 Oregon Highway Plan, as adopted and amended by the Oregon Transportation Commission, which serves as ODOT's modal system plan for highways as set forth in OAR Chapter 731, Division 15, consistent with OAR 660-012-0015(1).
- (12) "Planning period" means the planning horizon identified in an adopted local or regional transportation system plan.
- (13) "Reasonably likely" means a determination by ODOT pursuant to OAR 660-012-0060 that funding to construct a planned improvement to a state highway included in a regional or local transportation system plan or comprehensive plan is likely to be available by the end of the planning period.
- (14) "Significantly affect" is as defined in OAR 660-012-0060(1).
- (15) "State Agency Coordination Agreement (or Program) (SAC)" means the agreement adopted by the Commission in September 1990 as part of the Unified Transportation Plan required by ORS 184.618 and certified by the Land Conservation and Development Commission in December 1990 as being in compliance with ORS 197.180 and OAR Chapter 660, Divisions 30 and 31. The SAC describes what ODOT will do to meet its obligation under ORS 197.180 to carry out its programs affecting land use in compliance with the statewide planning goals and in a manner compatible with acknowledged comprehensive plans.
- (16) "State highways" means highways under the jurisdiction and/or control and management of ODOT, including interstate highways within the State of Oregon.
- (17) "Traffic performance measures" means the minimum acceptable standards of performance for highway facilities identified in an adopted state, regional or local transportation system plan or comprehensive plan. For state highways, traffic performance is measured by volume to capacity ("v/c") ratios as defined in the Oregon Highway Plan. Modifications to traffic performance measures for state highways require amendments to the OHP.
- (18) "Transportation Planning Rule" means the Land Conservation and Development Commission's administrative rule governing transportation planning, set out at OAR Chapter 660, Division 12.
- (19) "Transportation System Plan" means a plan for one or more transportation facilities adopted in accordance with the Transportation Planning Rule that are planned, developed, operated and maintained in a coordinated manner to supply continuity of movement between modes, and within and between geographic and jurisdictional areas.
- (20) "Volume to capacity ratio" is a measure of roadway congestion, calculated by dividing the number of vehicles passing through a section of highway during the peak hour by the capacity of the section as described and defined in the Oregon Highway Plan.

Statutory Auth: ORS 184.616, 184.619, 367.850
Stats. Implemented: ORS 367.850

731-017-0015

Applications for Time Extensions, Alternative Funding Plans, or Adjustments or Alternatives to Traffic Performance Measures

- (1) When a local government amendment needed to authorize an economic development project cannot meet the funding requirements of the Transportation Planning Rule as they relate to state highways, the local government may apply for:
 - (a) An extension of time to meet the requirements of OAR 660-012-0060(2)(b), OAR 660-012-0060(4)(b)(D) or OAR 660-012-0060(4)(c)(A);
 - (b) Approval of a plan proposing alternative methods of funding that meets the provisions in this division;
 - (c) An adjustment to existing traffic performance measures or allowance to use an alternative traffic performance measure other than a volume to capacity ratio with a proposed acceptable level of performance during an interim period prior to completion of construction of an economic development project for a period of no more than 20 years; or
 - (d) An adjustment to existing traffic performance measures or allowance to use an alternative traffic performance measure other than a volume to capacity ratio with a proposed acceptable level of performance that address the specific traffic impacts of an economic development project.
- (2) Applications under subsection (1) of this Section shall be filed with ODOT for Commission review and approval. The Commission may approve up to four applications in each ODOT Region in a calendar year.
- (3) The provisions of this rule do not apply to Commission approval of alternate mobility standards authorized and processed pursuant to OHP Policy 1F Action 1F.3 in system or facility planning processes.

Statutory Auth: ORS 184.616, 184.619, 367.850
Stats. Implemented: ORS 367.850

731-017-0020

Application Submittal Requirements

- (1) An application submitted pursuant to section 0015 of this division shall be filed with the Region Manager or designee of the ODOT Region within which the economic development project would be located.
- (2) Prior to filing an application with ODOT pursuant to this division, the local government shall seek input from the public and affected local governments and agencies regarding the proposed application. Informal coordination with ODOT is encouraged at the earliest point possible to streamline the application process.
- (3) Prior to filing an application, a pre-application meeting shall be held between the local government, the applicant for the amendment and the ODOT Region Manager or designee to determine the nature of the application and identify the applicable submittal requirements and review criteria. ODOT shall notify and provide opportunity for representatives from Business Oregon and/or the Department of Land Conservation and Development to submit comments and attend the meeting.
- (4) All applications shall:

- (a) Be accompanied by any appropriate forms provided by ODOT;
- (b) Indicate the nature of the application request;
- (c) Provide a narrative that:
 - (A) Identifies the economic development project for which an amendment to a comprehensive plan or land use regulation is being proposed;
 - (B) Identifies the state highways that would be significantly affected by the proposed amendment, their functional classifications and traffic performance measures, and the extent of non-compliance with the traffic performance measures;
 - (C) Identifies the basis for the determination that improvements to state highways are not reasonably likely to be provided by the end of the planning period or that the funding or timing for mitigation measures are insufficient to avoid adverse impacts;
 - (D) Demonstrates the net long-term economic development benefits of the proposed economic development project, including:
 - (i) An estimate of the number of net new primary jobs the amendment is likely to create within the community and their associated average salary.
 - (ii) A statement of reasons why the proposal merits approval by the Commission under this division.
 - (E) Addresses how the application meets the specific criteria in sections 0025 through 0035 of this division, as appropriate, and the review criteria in section 0040 of this division.
 - (F) Explains why compliance with OAR 660-012-0060(1) cannot otherwise reasonably be accomplished through one or a combination of the measures in OAR 660-012-0060(2), including the phasing of development over time, access management measures, or the use of trip caps.
 - (G) Addresses how the project will impact traffic safety along the state highway corridor.
 - (H) Addresses how the project will impact the movement of freight along an affected state highway that is a freight route.
 - (I) Identifies the public involvement and local government coordination opportunities that have been provided with respect to the application.
- (d) Be accompanied by attachments that provide background information supporting the application and proposed amendment, such as a copy of the amendment application filed with the local government, a description of the proposed economic development project, a map showing the affected area and the location of affected state highways, any transportation analyses and studies submitted with the amendment application, a copy of any reasonably likely determination provided by ODOT, and other relevant information.
- (5) Applications affecting lands within one-half mile of an interstate interchange area as defined in OAR 660-012-0060(4)(d)(C) also shall address how the application is consistent with the following:
 - (a) An adopted Interchange Area Management Plan, if one exists.
 - (b) The function of the interchange.
 - (c) ODOT access management requirements for the interchange.
- (6) Within 14 days following receipt of an application, the Region Manager or designee shall notify a local government whether the application is complete. If notified that the application is incomplete, the local government may choose to provide the missing information or to present it as written. If presented as written, the extent of incompleteness shall be noted in the Director's report prepared pursuant to section 0040 of this division. Where incomplete information impedes the Director's review for compliance with criteria, the Director shall so note in the Director's report and may recommend denial of the application.

(7) A local government shall not have more than one application approved by the Commission pursuant to this division within a calendar year.

(8) Where a local government application filed pursuant to this division has been approved by the Commission within the previous three calendar years, the same local government shall not file any additional applications pursuant to this division for property located within the identified traffic impact area of the economic development project that was the subject of the previously approved application.

Statutory Auth: ORS 184.616, 184.619, 367.850
Stats. Implemented: ORS 367.850

731-017-0025

Additional Requirements for Time Extensions to Meet Funding Requirements

(1) In addition to the requirements of section 0020 of this division, an application requesting an extension of time to meet the requirements of OAR 660-012-0060(4)(b)(D) or OAR 660-012-0060(4)(c)(A) shall include the following additional information:

(a) The additional time period being requested from the OTC, up to a maximum of 20 years from the date of application.

(b) If applying for an extension of the time requirement in OAR 660-012-0060(4)(c)(A), the identified mitigation improvements or measures for which a time extension is needed to avoid a significant adverse impact on the Interstate Highway system.

(c) An explanation why OTC approval of a time extension is reasonable and necessary.

(d) An explanation of what will be accomplished during the additional time period that makes compliance with OAR 660-012-0060(1) likely by its conclusion.

(e) A discussion of whether and how an extension of time might adversely impact other existing uses in the community or along a corridor.

(2) Applications for time extensions beyond what is authorized in the OHP require OHP amendments and must be approved by the Commission. Pursuant to ODOT's State Agency Coordination Agreement, any such amendment must comply with the coordination procedures in OAR 731-015-0065.

Statutory Auth: ORS 184.616, 184.619, 367.850
Stats. Implemented: ORS 367.850

731-017-0030

Additional Requirements for Alternative Funding Plans

(1) In addition to the requirements of section 0020 of this division, an application requesting approval of an alternative funding plan shall include the following additional information:

(a) An estimate of the additional funds required to construct needed state highway facilities or improvements or provide identified mitigation improvements or measures.

(b) A description of the proposed alternative funding method and an explanation how it would be adequate to alleviate the funding shortfall.

(c) An explanation why implementation of the proposed alternative funding method is feasible and likely to occur.

(d) If the proposed alternative method requires participation by other public or private entities, such as contributions from employers or other parties directly benefitting from an economic

development project, a demonstration of commitment by such other entities to participate in the funding method.

(2) Applications for alternative funding plans must be approved by the Commission.

Statutory Auth: ORS 184.616, 184.619, 367.850

Stats. Implemented: ORS 367.850

731-017-0035

Additional Requirements for Adjustments or Alternatives to ODOT Traffic Performance Measures

(1) In addition to the requirements of section 0020 of this division, an application to adjust traffic performance measures or to allow use of alternative traffic performance measures including measures other than a volume to capacity ratio shall include the following additional information:

(a) Identification of the existing traffic performance measures and a description of the adjusted or alternative traffic performance measures being requested to accommodate the economic development project, including the geographic boundaries of the requested adjustment or alternative measures.

(b) An explanation how the proposed adjusted or alternative traffic performance measures protect the function of affected state highway facilities.

(c) Methodologies and procedures for applying the adjusted or alternative traffic performance measures, including the level of performance being sought under the new measure.

(d) If the proposal is to adjust existing traffic performance measures or allow use of alternative traffic performance measures during an interim period prior to completion of construction of the development:

(A) The proposed length of the interim period and what will be achieved during that interim period.

(B) An explanation of what will need to occur for the significantly affected transportation facility to be brought up to the current traffic performance measure by the end of the interim period.

(e) An explanation how Commission approval of the requested adjustment or use of alternative traffic performance measures would impact affected state highway corridors and the local government's ability to implement its adopted transportation system plan or comprehensive plan.

(2) Applications to adjust or allow alternative traffic performance measures for state highways require OHP amendments and must be approved by the Commission. Pursuant to ODOT's State Agency Coordination Agreement, any such modification must comply with the coordination procedures in OAR 731-015-0065.

Statutory Auth: ORS 184.616, 184.619, 367.850

Stats. Implemented: ORS 367.850

731-017-0040

ODOT Review and Report to Commission

(1) Within 30 days following receipt of a complete application or an incomplete application presented as written, the Director shall submit to the Commission a report and recommendation on the application.

(2) The Director's report shall:

(a) Identify the applicant and the nature of the application.

- (b) Identify the ODOT Region from which the application originated and the number of applications within that Region that have already been approved under this division during the current calendar year.
- (c) Address consistency with the applicable submittal criteria in section 0020 of this division and with the review criteria in this section.
- (d) Include ODOT's recommendation on the application and the reasons for that recommendation.
- (3) In evaluating applications submitted pursuant to this division, the Director shall consider the following:
- (a) Whether the economic development project for which amendments are needed can reasonably comply with the requirements in OAR 660-012-0060 without having to apply for a time extension or alternative funding plan or a proposal to adjust or allow use of alternative traffic performance measures under this division.
- (b) Based on consultation with Business Oregon, the net long-term primary job creation benefits of the proposed economic development project. Any written materials from Business Oregon will be attached to the ODOT Director's report.
- (c) The adverse impacts approval of the proposed project would have on state transportation facilities, measured in terms of the degree of divergence from existing state highway traffic performance measures, the length of time the divergence would remain in effect, the scale of short and long-term impacts on existing users of the facilities, the safety of users of the facilities, and impacts on neighboring communities.
- (d) Local government and private sector commitments to contribute financially to needed state highway and local road improvements that will mitigate state highway impacts.
- (e) Local government and private sector commitments to employ interim measures where appropriate, including but not limited to phasing of development or trip caps.
- (f) Local government and private sector commitments to employ techniques that reduce vehicle trips on the system as appropriate for the scale and location of the development, including but not limited to transportation demand management, carpooling, transit and land use management methods.
- (g) The level of public review and local government coordination associated with an application filed pursuant to this division.
- (4) In addition to the conditions of approval required under section 0045 of this division, the Director may recommend conditions of approval for the Commission to attach to a decision approving an application filed pursuant to this division.

Statutory Auth: ORS 184.616, 184.619, 367.850
Stats. Implemented: ORS 367.850

731-017-0045

Commission Review and Decision on Applications

(1) Within 45 days following receipt of the Director's report, the Commission shall review the Director's report and issue a written decision approving or denying the application. Commission approval or denial of an application shall be accompanied by findings of fact and a statement of reasons explaining how the decision relates to the applicable review standards. If a public hearing is required on the application, the Commission shall schedule the public hearing and allow for the required public review period. The Commission may approve up to four applications in each ODOT Region in a calendar year. The Commission may attach such

conditions to its approval as it deems necessary or appropriate to protect the function or ensure the safe operation of state highways or to protect the state's substantial financial investment in its state highway system.

(2) Once the Commission has approved four applications within an ODOT Region within a calendar year, it may continue its consideration of one or more applications within that ODOT Region to the following calendar year. Continuation of an application to the following calendar year shall not imply any preference or priority for that application.

(3) A Commission decision to approve an application shall be conditioned to limit the allowed uses on the property that is the subject of the proposed amendment to only those uses specifically identified in the proposed economic development project. A local government may achieve this result through application of a limited use overlay zone, the creation of a new zoning district, or other similar method.

(4) A Commission decision to approve an application to adjust traffic performance measures or allow use of alternative traffic performance measures other than a volume to capacity ratio shall be conditioned to apply only to the facility impact area that is the subject of the proposed local government amendment.

Statutory Auth: ORS 184.616, 184.619, 367.850
Stats. Implemented: ORS 367.850

731-017-0050

Land Use Decisions

(1) Commission determinations made pursuant to this division concerning the financing of transportation facilities and improvements are not considered land use decisions.

(2) Commission actions made pursuant to this division to extend the time beyond the maximum planning horizon established in the OHP and to adjust or allow alternative traffic performance measures are considered land use decisions and require OHP amendments.

Statutory Auth: ORS 184.616, 184.619, 367.850
Stats. Implemented: ORS 367.850

731-017-0055

Review and Update

Beginning two years following the adoption of this division, the Commission shall commence a review to evaluate implementation of and consider possible modifications to this division. This evaluation shall include considerations of the cumulative effects from applications that have been approved.

Statutory Auth: ORS 184.616, 184.619, 367.850
Stats. Implemented: ORS 367.850



Oregon Department of Transportation



House Bill 3379 Administrative Rule Interagency Webcast

Tuesday, December 14, 2010



Oregon Department of Transportation



HB 3379 Administrative Rule Webcast Agenda

1. Welcome and Webcast Overview
2. House Bill (HB) 3379 Background
 - What Prompted HB 3379?
 - Legislative Requirements
 - Rule Development Process
 - Next Steps
3. HB 3379 Administrative Rule
 - Key Elements and Objectives
 - Section Review
4. Summary and Contact Information
5. Questions



HB 3379 Administrative Rule Webcast Overview

- Provide information to ODOT staff and interagency partners on the HB 3379 Administrative Rule
- Provide opportunity to ask questions on Rule implementation
- Gather input you may have to help us develop an implementation guidance document



HB 3379 Administrative Rule Webcast Overview

- Presenters
 - Matt Garrett, ODOT Director
 - Erik Havig, Planning Section Manager (Moderator)
 - Robert Maestre, Long Range Planning Unit Manager
 - Michael Rock, ODOT Project Staff
 - Frank Angelo, Angelo Planning Group



Oregon Department of Transportation



HB 3379 Administrative Rule Webcast Overview

- **Welcome Message**
 - **Matt Garrett, ODOT Director**



Oregon Department of Transportation



House Bill 3379 Background



HB 3379 Administrative Rule Background: What Prompted HB 3379?

- HB 3379 was passed late in the 2009 Legislative Session and the language evolved significantly during the session
- The bill was a response to the perception from local governments that TPR Section 0060 is an obstacle to economic development
- TPR Section 0060 applies to determining and mitigating a significant effect on the transportation system from zone changes, comprehensive plan amendments and changes to land use regulations



HB 3379 Administrative Rule Background: What Prompted HB 3379?

- Local governments are concerned with the implementation of TPR Section 0060 due to:
 - Lack of state (and other) transportation funding
 - Inability to secure “reasonably likely” determinations for state highway projects that would mitigate transportation impacts
 - Concern that analysis methodologies are too restrictive (reliance on volume to capacity (v/c) ratios, time period requirements for analysis and mitigation, etc...)



HB 3379 Administrative Rule Background: Legislative Requirements

- Directs the OTC to adopt rules for an application process that local governments can use when they are unable to meet the requirements of TPR Section 0060
- Under HB 3379 applications local governments would be able to consider additional options to meet TPR Section 0060 requirements through:
 - Time extensions
 - Alternative funding plans
 - Changes to traffic performance measures (including consideration of measures other than volume to capacity ratios)



HB 3379 Administrative Rule Background: Legislative Requirements

- The "where as" clauses in the legislation speak to consideration of economic development projects and job creation for these applications
- Limitations are established that the OTC may approve up to four applications in each ODOT Region per calendar year



HB 3379 Administrative Rule Background: Rule Development Process

- ODOT Director appointed a Stakeholder Committee to advise development of the Proposed Administrative Rule
- Membership included representatives from:
 - Cities
 - Counties
 - MPOs
 - State Agencies (Business Oregon, DLCD, ODOT)
 - Interest Groups
 - Consultants



HB 3379 Administrative Rule Background: Rule Development Process

- Stakeholder Committee discussion led to development of the Proposed Rule language over a series of meetings
- The Proposed Rule was filed with the Secretary of State and published in the November 2010 Oregon Bulletin
- Public review and comment was open through November 22, 2010
- The Oregon Transportation Commission is considering the Proposed Rule at their December 15, 2010 Meeting



HB 3379 Administrative Rule Background: Rule Development Process

- While not the main focus of this webcast, another component of the Stakeholder Committee's work was to make recommendations on related tasks outside of Rule development
- This is important given some limitations with the authorities in the legislation and concern over broader issues
- Stakeholder Committee recommendations on related issues have been submitted to the ODOT Director



HB 3379 Administrative Rule Background: Next Steps

- Developing an implementation guidance document to inform application processes under the new Rule
- Your input and suggestions will be helpful for developing the guidance



House Bill 3379 Administrative Rule



HB 3379 Administrative Rule Key Elements and Objectives

- Development of the HB 3379 Administrative Rule was driven by the Stakeholder Committee given limited details in the legislation
- Several key elements of the Rule are important to ground its application
- Section Review portion of this webcast will provide detail on the specifics of the Rule language



HB 3379 Administrative Rule Key Elements and Objectives

- Committee direction that the purpose of this Rule is to facilitate projects (through plan amendments) that support economic development and job creation, but cannot meet the requirements of the TPR Section 0060 related to state highways
- Rule applies to special circumstances that require a quick response – Aspirational plan amendments would continue to use existing TPR and OHP flexibility



HB 3379 Administrative Rule Key Elements and Objectives

- HB 3379 and the Administrative Rule does not provide the authority to override provisions of the TPR, which is a Land Conservation and Development Commission Rule
- Provides a definition of economic development projects that qualify for the remedies in this Rule – the definition was developed in coordination with the Business Oregon Commission



HB 3379 Administrative Rule Key Elements and Objectives

- HB 3379 applications are based on (and triggered by) the local government plan amendment process
- Processes and analyses that lead up to the significant effect determination still apply as with "typical" plan amendment processes



HB 3379 Administrative Rule Key Elements and Objectives

- As specified in the legislation the Rule provides for:
 - Time extensions of up to 20 years from the time of application (although this is a limited benefit given existing OHP language requiring evaluation 15 years from the application)
 - Opportunities for approval of an alternative funding plan by the OTC
 - Methods to adjust traffic performance measures (OHP mobility standards) through a quicker process than typical alternate mobility standards developed through system planning work



HB 3379 Administrative Rule Key Elements and Objectives

- Rule requires coordination between local plan amendment processes and the OTC application/approval process to ensure adequate public participation, adequate OTC information and an efficient/timely process
- Provides for a pre-application meeting and coordination with Business Oregon and DLCD



HB 3379 Administrative Rule Key Elements and Objectives

- Limits the number of applications that can be approved in a local jurisdiction annually and within a defined area over a three year period
- Requires review of rule implementation two years following adoption



Section Review



HB 3379 Administrative Rule Sections

- 731-017-0005: Purpose
- 731-017-0010: Definitions
- 731-017-0015: Applications for Time Extensions, Alternative Funding Plans, or Adjustments or Alternatives to Traffic Performance Measures
- 731-017-0020: Application Submittal Requirements
- 731-017-0025: Additional Requirements for Time Extensions to Meet Funding Requirements
- 731-017-0030: Additional Requirements for Alternative Funding Plans
- 731-017-0035: Additional Requirements for Adjustments or Alternatives to ODOT Traffic Performance Measures
- 731-017-0040: ODOT Review and Report to Commission
- 731-017-0045: Commission Review and Decision on Applications
- 731-017-0050: Land Use Decisions
- 731-017-0055: Review and Update



HB 3379 Administrative Rule Section 731-017-0005

Purpose

- Intended to facilitate projects that support economic development and job creation that cannot meet TPR funding or timing requirements
- Applies only to those amendments to Comprehensive Plans and land use regulations (including Zone Changes) that significantly affect the state highway system
- Provides tools to encourage innovation and flexibility beyond what is already permitted through the OHP Alternate Mobility Standards
- Not intended to supersede TPR requirements



HB 3379 Administrative Rule Section 731-017-0010

Definitions

- Key definitions include:
 - Economic Development Project: demonstrate direct benefits in terms of "primary" jobs created by the development opportunity
 - Funding Requirements: funding plan to avoid a significant effect
 - Long-term Economic Benefits: net economic benefits anticipated to occur from the economic development project
 - Traffic Performance Measures: minimum acceptable standards of performance identified in adopted state, regional or local TSP (e.g. OHP mobility standards)



HB 3379 Administrative Rule Section 731-017-0015

Applications for Time Extensions, Alternative Funding Plans, or Adjustments or Alternatives to Traffic Performance Measures

- Enabling section for the following applications:
 - Time extensions to meet TPR requirements
 - Alternative funding plans
 - Adjustments to performance measures or alternative traffic performance measures other than v/c
- Limits OTC approval to four (4) applications in each ODOT Region per calendar year
- Notes that this Rule does not apply to OTC approval of alternate mobility standards developed through system planning authorized pursuant to OHP Policy 1F Action 1F.3



HB 3379 Administrative Rule Section 731-017-0020

Application Submittal Requirements:

- Application is filed with ODOT Region Manager or designee
- Local Government (applicant) shall seek input from and coordinate with the public, affected local governments and agencies and ODOT prior to filing
- Pre-application conference with local government, the applicant for the plan amendment and ODOT Region staff shall be held
- ODOT to notify DLCD and Business Oregon for coordination and/or participation in pre-application conference



HB 3379 Administrative Rule Section 731-017-0020 (continued)

Application Narrative:

- Identify economic development project and demonstrate the net long-term economic development benefits (estimate number of new primary jobs)
- Provide findings supporting applicable criteria
- Explain why existing TPR methods to avoid a significant affect [660-012-0060(2)] can't be accomplished
- Consider any impacts to traffic safety and freight mobility
- Describe public involvement and local review process



HB 3379 Administrative Rule Section 731-017-0020 (continued)

Special Conditions:

- Only one application may be approved by the OTC in a local jurisdiction within a calendar year
- Where a local government application has been approved by the OTC within the previous three calendar years, the same local government shall not file any additional applications for property located within the identified traffic impact area of the economic development project that was the subject of the previously approved application



HB 3379 Administrative Rule Section 731-017-0025

Additional Requirements for Time Extensions to Meet Funding Requirements

- Identify the additional time period requested to meet TPR funding requirements – up to 20 years
- Describe the proposed mitigation measures which support the time extension request
- Discuss why the time extension is necessary, what will be accomplished with the additional time and any impacts resulting from the extension
- Results in OHP amendment [Note: Analysis up to fifteen (15) years is currently required in OHP and would not need a HB 3379 application]



HB 3379 Administrative Rule Section 731-017-0030

Additional Requirements for Alternative Funding Plans

- Estimate the additional funds required to construct improvements or provide identified mitigation measures
- Describe the proposed alternative funding method and how it will be adequate to alleviate the funding shortfall
- Explain why implementation of the proposed alternative funding method is feasible and likely to occur
- If applicable, demonstrate commitment by other public or private entities to participate in the funding method



HB 3379 Administrative Rule Section 731-017-0035

Additional Requirements for Adjustments or Alternatives to ODOT Traffic Performance Measures

- Identify the adjusted or alternative traffic performance measure
- Identify the geographic boundaries where the measure will apply
- Describe how the adjusted or alternative traffic performance measure will affect the function of state highway corridors and facilities
- Describe the agreed upon methodologies and procedures for application of the new measure if it is not v/c or v/c-related
- Results in OHP amendment for the adjusted or alternative traffic performance measure



HB 3379 Administrative Rule Section 731-017-0040

ODOT Review and Report to Commission

- Director shall submit a report, with findings and recommendation to the OTC within 30 days of receipt of application
- Director may recommend conditions of approval
- Director's evaluation includes:
 - Determination that the application cannot reasonably comply with TPR without approval of the application
 - Consultation with Business Oregon on economic development benefits
 - Identification of any adverse impacts and their duration on the state highway system
 - Funding and system management commitments on the part of the local jurisdiction
 - Level of public review of the application request



HB 3379 Administrative Rule Section 731-017-0045

Commission Review and Decision on Applications

- Establishes a 45-day period for Commission review of applications following receipt of Director's report
- Limits OTC to up to four application approvals in a calendar year per ODOT region but allows OTC to continue other applications to the following year if necessary
- Requires that the OTC condition an application's approval to limit the allowed uses to those specifically identified in the proposed economic development project/application
- Allows OTC to attach additional conditions to approval of the application



HB 3379 Administrative Rule Section 731-017-0045 (continued)

Commission Review and Decision on Applications

- OTC approval of an application to adjust performance measures or allow use of alternative traffic performance measures other than a v/c ratio shall be conditioned to apply only to the facility impact area that is the subject of the proposed local government amendment



HB 3379 Administrative Rule Section 731-017-0050

Land Use Decisions

- OTC determinations on applications concerning the financing of transportation facilities and improvements are not considered land use decisions
- OTC determinations on applications for time extensions or adjustments to or allowing alternate traffic performance measures are considered land use decisions and require OHP amendments



HB 3379 Administrative Rule Section 731-017-0055

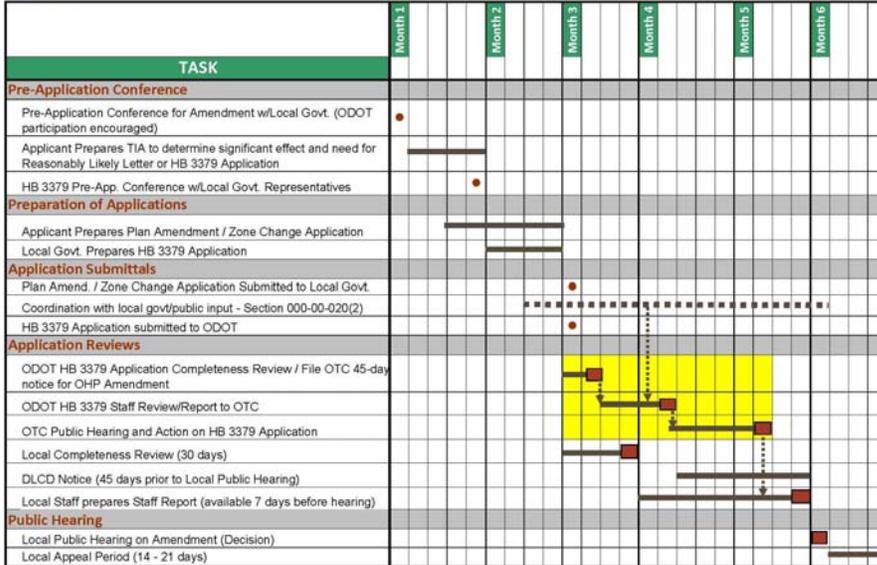
Review and Update

- Requires OTC review of this Rule to evaluate implementation and consider possible amendments beginning two years following adoption (anticipated December 2012)



HB 3379 Administrative Rule Application Process Schedule

HB 3379 Application Process - DRAFT
 3-Sep-10



Note: Areas highlighted in yellow represent ODOT/OTC Actions related to HB 3379 Applications



Summary and Contact Information



Oregon Department of Transportation



HB 3379 Administrative Rule Summary

- Reasons for legislation
- Based on existing TPR Section 0060 processes
- Special circumstances that require a quick response
- Coordination with local governments and interagency partners



Oregon Department of Transportation



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