



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street NE, Suite 150

Salem, OR 97301-2540

(503) 373-0050

FAX (503) 378-5518

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

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TO: Land Conservation and Development Commission

FROM: Robert Cortright, Transportation Planning Coordinator

SUBJECT: **Agenda Item 6, June 28-30, 2006 Commission Meeting**

**WORK SESSION AND POSSIBLE ADOPTION
OF PROPOSED AMENDMENTS
TO OREGON ADMINISTRATIVE RULE 660-012
(TRANSPORTATION PLANNING RULE)**

I. AGENDA ITEM SUMMARY

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

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

II. SUMMARY OF RECOMMENDED ACTION

The department recommends that the Commission conduct a work session to deliberate upon and consider adoption of the proposed rule amendments in Attachment A. The department is recommending that the Commission adopt the proposed amendments to Division 012 (the Transportation Planning Rule) and Division 004 (the Exceptions Rule) as set forth in Attachment A. The proposed amendments include one change from the January 18 proposed amendments: deleting proposed amendments to OAR 660-012-0045(7) related to skinny streets.

The department further recommends that the Commission continue the rulemaking process pending further review of the goal exception thresholds issue by the Joint OTC-LCDC Subcommittee. (A subcommittee meeting is scheduled for August 15 in Salem.)

III. BACKGROUND AND PUBLIC PARTICIPATION

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

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

In March 2005, the Commission appointed a TPR Work Group to assist the Joint Subcommittee in preparing and reviewing draft rule amendments. The Work Group was made up of stakeholders representing a range of interests. During Phase 2, the Work Group met five times and the Joint Subcommittee four times to review proposed rule amendments. In addition, staff met twice with metropolitan planning organization (MPO) representatives to discuss rule amendments related to metropolitan areas.

At the Commission's September 2005 meeting, staff reviewed the proposed schedule, described proposed rule amendments and outlined issues. The department filed formal rulemaking notice in October 2005. An initial public hearing was held at the Commission's December 1, 2005 meeting in Medford. The Commission conducted a second hearing at its February 2, 2006 meeting in Salem.

The text of the proposed rule amendments is included in Attachment A. Detailed information on the proposed rule amendments, including supporting information for the TPR Work Group and Joint Subcommittee meetings is available on the web at the following link: <http://www.oregon.gov/ODOT/TD/TP/TPR.shtml>

IV. LCDC REVIEW CRITERIA AND PROCEDURES FOR RULEMAKING

The Commission's procedures for rulemaking derive from ORS Chapter 183 and are specified in procedural rules at OAR 660, Division 001. In general, the Commission must hold a public hearing and provide an opportunity for interested parties to testify on the proposed rules. The Commission must deliberate in public and, if the Commission makes a decision to adopt any or all of the proposals, a majority of the Commission must affirm the motion to adopt.

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

“197.040 Duties of Commission; rules.

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

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

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

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

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

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

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

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

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

The department has provided written documents, as part of the rule notice, to address requirements listed above (Attachment C to the Department’s staff report for the December 1, 2005 Commission meeting.) The Commission’s legal counsel, Steve Shipsey, will be present at the Commission meeting for further advice on this statute, and on rulemaking procedures and criteria.

V. RESPONSE TO DIRECTION FROM THE FEBRUARY 2, 2006 HEARING

As noted above, the Commission conducted a public hearing and received public testimony on the proposed amendments at its February 2-3 meeting. Since Mr. Cortright was injured and unable to attend the hearing, the Commission deferred the staff presentation to a subsequent meeting. The February staff report, which provides the basis for the June staff presentation is included as Attachment B.

At the conclusion of the February 2 hearing, the Commission (1) asked that the Joint OTC-LCDC Subcommittee meet to review the goal exceptions threshold issue and (2) requested DLCD staff to give further consideration to three issues:

- The purpose statement as it relates to guidance to integrate land use and transportation planning;
- Amendments to allow 28' residential streets as a “safe harbor” to meet existing TPR requirements to allow for “skinny streets”.
- Proposed amendments to further define the term “centers” in proposed amendments that direct metropolitan areas to, in some situations, review plan amendments and make findings that they are consistent with adopted strategies for integrated land use and transportation plans.

The department’s additional analysis and recommendations on each of these issues is provided below.

A. Possible Amendments to Section 0070 regarding Thresholds for Goal Exceptions

Background

At the December 2005 meeting, the Commission asked that the department assess the possible implications of the LUBA decision in *1000 Friends v. Yamhill County* on acceptable or appropriate thresholds for goal exceptions for new transportation facilities. The department’s assessment was included in the staff report for the February Commission meeting (Attachment C - pages 16-25).

As noted above, at the conclusion of the February meeting, the Commission asked that the Joint OTC-LCDC Subcommittee meet to discuss further the implications of the Yamhill County case and provide a recommendation on whether the Commission should continue the rulemaking process to address this issue.

Response

A meeting of the Joint OTC-LCDC Subcommittee to discuss the thresholds issue is scheduled for August 15, 2006.

Recommendation

The department recommends that the Commission continue the rulemaking process and following further consideration by the Joint OTC-LCDC Subcommittee, decide whether additional amendments to address the exceptions threshold issue are appropriate.

B. Purpose Statement

Comment

Commissioner Kirkpatrick asked that staff give further consideration to comments from Scott Bricker of the Bicycle Transportation Alliance (BTA) that expressed concern that the revised purpose statement weakened direction in the existing purpose statement that directs and encourages changes to land use patterns and integration of land use planning and transportation planning to support increased use of alternative modes and shorter vehicle trips.

Response

The department considered Mr. Bricker's comments and reviewed the proposed changes to the purpose statement. The department notes that changes to this portion of the rule have been carefully considered by the Work Group and the Joint Subcommittee over the last year. The concerns expressed by Mr. Bricker were considered and addressed through that process.

While the department understands the concern that the purpose statement is somehow weaker, the department believes that the intent and effect of the revised purpose statement is to more accurately reflect the overall purpose of the rule and its application to different communities and situations around the state.

The changes to the purpose statement were crafted in large part to respond to concerns from local governments and others that the purpose statement elevated and emphasized reducing reliance and changing land use patterns over other important and applicable considerations and requirements in Goal 12. To the extent that these other provisions in Goal 12 have been given additional emphasis, the concern that the purpose statement as it relates to land use changes and alternative modes has been weakened is understandable. Again, the department believes that the revised statement is an accurate statement of the rule's overall purpose and continues to incorporate the direction to plan for changes to land use and transportation to achieve.

Recommendation

The department recommends that the Commission adopt the purpose statement as shown in Attachment A. (The proposed rule amendments are on pages 2 through 5.)¹

C. Adoption of 28' Street as a Safe Harbor for meeting the Skinny Street Requirement

Comment

At the February 2 hearing, a number of local government representatives submitted comments opposing the proposed amendments. Most expressed concern that the proposed amendment would have the effect of making the 28' street standard a state requirement that local governments would be forced to adhere to. They also expressed concern that it would have the effect of making it more difficult for local governments to adopt standards wider than 28'. Several commentors expressed concern that a 28' wide street with parking on both sides was inappropriate in particular circumstances.

The Commission asked that staff consider the comments and consider clarifying the intent of the “safe harbor” provision and also clarify criteria that would guide local governments wanting to justify wider streets.

Since the Commission’s February meeting, the department has received approximately 40 letters and emails from city officials opposing the proposed rule amendments. Those commenting include local planners, public works officials and fire and emergency response providers. In general, these local officials felt that the proposed rule amendment is unnecessary and that the proposed safe harbor of 28’ with parking on both sides is inappropriately narrow. In addition to opposition to the 28’ standard, many opposed the rule as setting a single state standard for local street width. A compilation of the emails and letters received on this issue since the February hearing is included in Attachment D.

Response

Based on public comment the department has reconsidered its recommendation on this issue.

The department submitted the proposed amendment as a “minor” amendment to the TPR. The department considered this a minor amendment because its intended effect was to formalize the Commission's endorsement of the Neighborhood Streets Design Guidelines – prepared and reviewed by the Commission in 2000.² The principal objective was to

¹ A detailed discussion of the purpose statement is included on pages 4-9 of the staff report for the February meeting – Attachment B.

² The guidelines – developed by a group of stakeholders including local planners, public works officials and fire and emergency service providers – recommended a series of standards that met the overall objective for reducing street widths, including the 28' local street with parking on both sides. The

make it clear that the 28' streets was a "safe harbor" – i.e., that local plans adopting this standard would be considered to comply with this requirement without further justification. It was not the department's intent to create a single state standard and we do not believe that the proposed amendment would have that effect.

Recommendation

The department recommends that the Commission not adopt the proposed amendments. This would leave existing provisions of 0045(7) regarding skinny streets intact.

As noted above, the department proposed these amendments with the expectation that they were minor and relatively non-controversial in nature. Based on the extensive public comment at and since the February 2 hearing, it is apparent that the amendments are not viewed as either minor or non-controversial by a significant number of city and fire officials. Given this response, the department concludes that it is inappropriate to move forward with the proposed amendments.

The department does believe that additional outreach is appropriate to address local concerns about "skinny streets" and related provisions of the rule. The department plans to reprint the Neighborhood Streets Design Guidelines publication. The department also plans to compile and share information on a range of successful street designs and other measures that address concerns of local fire and emergency service providers about skinny streets.

D. Refinement of Definitions and Provisions for Centers in Metropolitan Areas

Background

In 2004, the department conducted an evaluation of progress by metropolitan areas in meeting the TPR requirements. A key finding in the evaluation was that adoption of changes to land use plans called for by the rule is an on-going and long-term effort. In response to this finding, the evaluation recommended amending the TPR to direct metropolitan area cities and counties that have not met applicable rule requirements to make findings showing the proposed plan and zone changes are consistent with regional plans and strategies to increase transportation options and reduce reliance on the automobile.³

The proposed rule amendment would require affected cities and counties to assess whether proposed plan amendments and zone changes "support implementation of the

Neighborhood Street Design Guidelines and a Powerpoint presentation on this subject are available on the department's website: www.oregon.gov/LCD/docs/publications/neighstreet.pdf

³ This issue is addressed on pages 15-16 of the staff report for the February 2 Commission meeting – Attachment C to this report. The proposed rule amendments are on pages 17-18 of Attachment A.

region's adopted vision, strategy, policies or plans to increase transportation choice and reduce primary reliance on the automobile.”

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

- (A) Implements the strategy or plan through adoption of specific plans or zoning that authorizes uses or densities that achieve desired land use patterns;
- (B) Allows uses in designated centers or neighborhoods that accomplish the adopted regional vision, strategy, plan or policies;
- (C) Allows uses outside designated centers or neighborhood that either support or do not detract from implementation of desired development within nearby centers.

Comment

Mark Whitlow, on behalf of the Retail Task Force, has submitted comments expressing concern about the proposed amendments and suggesting that portions of the proposed amendments be deleted or revised. Mr. Whitlow is particularly concerned that the terms used in the rule are overly narrow and would limit a local government's ability to allow plan amendments for land use changes that are otherwise consistent with and advance a regional strategy and TPR objectives. Mr. Whitlow's changes would delete the guidance in (A) – (C) that guide decisions about whether amendments “supports implementation” of an adopted plan or strategy. In addition, Mr. Whitlow would add a more general test allowing amendments that “move in the direction” of achieving a strategy.

Mr. Whitlow also suggested that the rule be revised to types of land uses that might be part of a local government strategy, by adding the term “commercial nodes” and “mixed use districts” to the list of land use designations that may be part of an integrated land use and transportation plan.

Response

The department believes that the scope of the evaluation required by the proposed amendments is appropriate. Fundamentally, plan amendments and zone changes should advance, and not conflict, with a region's adopted strategy. The provisions in subsections (A)-(C) outline factors that are relevant to local determinations covered by this rule. By contrast, the department is concerned that Mr. Whitlow's recommendation would create a more ambiguous test that would be more time-consuming for local governments to administer and less effective in encouraging plan amendments and zone changes that support implementation of adopted strategies to implement this portion of the TPR.

The department also believes that adding the terms “commercial nodes” and “mixed use districts” to the list of implementing land use designations is unnecessary and potentially confusing.

Adding these terms to the rule is unnecessary because the rule, as drafted, already allows local governments to identify a range of land use designations that would implement an adopted regional strategy or vision. The broader term “other land use designations” allows for local governments to include a range of different designations as part of a regional strategy or vision.

The department is concerned that the two new terms suggested by Mr. Whitlow – “commercial nodes” and “mixed use district” – would complicate rather than simplify local implementation of the rule because both terms are new and neither term is defined. This would likely lead to uncertainty and debate about what distinguishes a “commercial node” from other forms of commercial development and whether or not a district that allows for multiple different uses, as most zoning districts do, constitutes a “mixed use” district.

The potential for confusion is high because the TPR includes three related but slightly different terms that are defined – “mixed use, pedestrian friendly center or neighborhood”, “pedestrian district” and “transit-oriented development”. These land use designations would also logically be part of a regional strategy or vision, but are not included in the rule. The department chose not to include a comprehensive list because, as noted above, the rule allows local governments to specify a range of “other land use designations” including any or all of the terms listed above as well as other designations that are specified by local governments in its regional strategy.

Recommendation

The department recommends that the Commission adopt the proposed amendments as shown in Attachment A.

VI. PUBLIC COMMENTS

Public comments from the February Commission meeting are included in Attachment C. Letters of comment on the “skinny streets’ issues are compiled in Attachment D.

VII. OVERALL CONCLUSION AND RECOMMENDATION

The department believes that there is sufficient information for the Commission to reach conclusions about the proposed rule amendments – as set forth in Attachment A – but that the Commission should consider further whether additional amendments to OAR 660-012- 0070 are warranted to address the goal exceptions threshold issue.

The department recommends that the Commission adopt the proposed amendments in Attachment A. The amendments are as recommended at the February meeting except

that the department is recommending that the Commission not adopt amendments to 0045(7) related to “skinny streets”.

The department also recommends that the Commission continue the rulemaking process to consider whether to adopt additional amendments to OAR 660-012- 0070 related to the goal exception thresholds issue.

Suggested Motion to adopt portions and continue rulemaking: (Staff Recommendation)
I move that the proposed amendments Division 012 (the Transportation Planning Rule) and Division 004 (the Exceptions Rule) as set forth in Attachment A be adopted and that the rulemaking process be continued to consider whether to adopt additional amendments to OAR 660-012- 0070 related to the goal exception thresholds issue following further review by the Joint OTC-LCDC Subcommittee.

Suggested Motion to continue the work session: (Alternative)
I move that the Commission continue the work session to the August 9-11 Commission meeting.

Suggested Motion to continue or deny: (Alternative)
I move that the proposed amendments to Division 012 (the Transportation Planning Rule) and Division 004 (the Exceptions Rule) as set forth in Attachment A not be adopted at this time. Staff is instructed to revise the proposed amendments so as to (indicate), and to schedule the revised proposal to the commission for public hearing and adoption on (date).

VIII. ATTACHMENTS

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| Attachment A: | Proposed Amendments to the Transportation Planning Rule, January 17, 2006, with amendments |
| Attachment B: | Staff Report from the February 2, 2006 Public Hearing |
| Attachment C: | Public Comments on Proposed Rule Amendments |
| Attachment D: | Public Comments on “Skinny Streets” Amendments |