



Oregon

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TO: Land Conservation and Development Commission

FROM: Robert Cortright, Transportation Planning Coordinator

SUBJECT: **Agenda Item 6, September 28-30, 2005 Commission Meeting**

BRIEFING ON PROPOSED TRANSPORTATION PLANNING RULE AMENDMENTS

I. AGENDA ITEM SUMMARY

This item includes a briefing on proposed amendments to the Transportation Planning Rule (TPR) that the Commission will be considering at public hearings during the November 2005 and February 2006 Commission meetings. This memo and the staff briefing are intended to provide the Commission with an update on issues under consideration in the rule amendments. The proposed amendments are being developed by 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 and 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

No action by the Commission is requested or required at this time. Based on previous Commission action, the department intends to file notice for rule amendments in October and schedule public hearings for the Commission's November 2005 and February 2006 meetings.

III. BACKGROUND

Over the last year, the Commission's Transportation Subcommittee (Commissioners Henri, Jenkins and Worrix) have been working as part of a joint subcommittee with members of the Oregon Transportation Commission (OTC) to review proposed amendments to the Transportation Planning Rule (TPR). 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 have consulted with the Joint OTC-LCDC Subcommittee and a stakeholder Work Group to develop prepare additional

amendments to the Transportation Planning Rule. These amendments address issues identified in two evaluations of the TPR conducted during 2004.

At the September meeting, staff will provide a briefing reviewing the proposed schedule, describing proposed rule amendments and outlining issues. The department proposes to file formal rulemaking notice in October, with an initial public hearing at the Commission's November 30 - December 1-2 meeting. Rule adoption is tentatively scheduled for the Commission's February 1-2, 2006 meeting.

This memo includes summary information on the proposed rule amendments. 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. RULEMAKING PROCESS AND SCHEDULE

The amendments discussed in this memo represent the second phase of a two-phase process for amending the Transportation Planning Rule.

Status of March 2005 TPR Amendments

As noted above, in March 2005, the Commission adopted amendments to portions of the TPR related to review of plan amendments and zone changes. The amendments clarify circumstances where a proposed plan amendment or zone change results in a "significant effect" on the transportation system. Where a "significant effect" occurs, local governments must take steps to assure that planned land uses are supported by adequate planned transportation facilities.

At the March hearing on rule amendments, several commentors expressed concern that new provisions in the rule would unnecessarily complicate or delay plan amendments. In particular, concerns were expressed about two parts of the rule:

- provisions that required transportation providers, particularly ODOT, to issue written statements that planned but unfunded improvements are "reasonably likely" to be provided during the planning period.
- requirements limiting the list of "planned improvements" around interstate freeway interchanges to those with committed funding sources, and requiring further coordination with ODOT to address impacts to freeway interchanges.

In response to these comments and Commission direction, ODOT and the department committed to prepare written guidance to assist with rule implementation. Draft guidance has been prepared and is being distributed to interested persons for review and comment. ODOT and DLCD have also volunteered to work with local governments to assist in applying the rule to pending plan amendments or zone changes.

Work Group and Subcommittee Review

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

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

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

Proposed Schedule

Key dates and steps in the proposed rulemaking process are outlined below:

October

- File Secretary of State Notice of Administrative Rule amendment: October 14
- OTC Briefing on TPR Amendments (no public testimony): October 18

November

- Publish proposed Administrative Rule amendment language: November 1
- OTC Briefing on TPR Amendment (no public testimony): November 16
- First LCDC Hearing on TPR Amendments: November 30, December 1 or 2 (date to be determined)

December

- Joint OTC / LCDC Transportation Subcommittee meeting: December 13 (tentative)
- OTC Briefing on TPR Amendment (no public testimony): December 14

February

- Second LCDC Hearing on TPR Amendments: February 1, 2 or 3 (date to be determined)

V. SUMMARY OF PROPOSED RULE AMENDMENTS AND ISSUES

Based on the TPR Evaluations conducted in 20004 and comments from Work Group members and other interested parties the Work Group and the Joint Subcommittee have identified five areas where amendments to the TPR are warranted:

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

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

A. TPR Purpose Statement

The purpose statement (OAR 660-0012-0000) provides an overview of rule requirements and is an overall statement of intent to guide rule implementation. The purpose statement in the TPR includes a detailed explanation of the Commission's expectation that implementation of the rule should result in changes to land use and transportation plans that "reduce reliance" on the automobile. This implements the direction in Goal 12 that transportation plans "avoid principal reliance on any one mode of transportation."

TPR Evaluation Finding/Recommendation

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

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

Rule Amendment Proposal

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

- Broaden the scope of the purpose statement to address the range of transportation needs and outcomes

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

Work Group / Subcommittee Discussion

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

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

B. Transportation Project Development

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

TPR Evaluation Finding/Recommendation

ODOT and other transportation providers – principally local governments – have expressed concern that project development decisions have been unnecessarily delayed or complicated when project opponents raise questions about "need" "mode" or "general location" for a project that is listed as planned improvement in the applicable TSP. The 2004 evaluation concluded that more should be done in Section 0050 to make it clear that local governments could rely

upon decisions in a TSP about need, mode or general location during the project development – that is, that they need not reconsider these decisions during the project development process.

Rule Amendment Proposal

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

Work Group / Subcommittee Discussion

The Subcommittee and members of the Work Group supported the proposed amendments. Staff has made additional language changes to respond to comments and suggestions from Commissioner Jenkins.

C. Exceptions for Road Improvements on Rural Lands

TPR Evaluation Finding

During the 2004 evaluation stakeholders expressed concern about that goal exceptions for transportation facilities on rural lands were subject to the general requirements in the Exceptions Rule (Division 004) and the specific requirements in the TPR (Division 012). Because of differences between the language of the two rules, there is confusion about which rule applies and whether the rules are intended to establish different requirements. The evaluation recommended consolidating exception requirements for transportation facilities in the Transportation Planning Rule.

Rule Amendment Proposal

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

Work Group / Joint Subcommittee Discussion

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

D. Metropolitan Planning Recommendations

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

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

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

Metropolitan Status Report Findings

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

Rule Amendment Proposal

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

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

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

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

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

Work Group/ Joint Subcommittee Discussion

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

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

Metropolitan Status Report Findings

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

Rule Amendment Proposal

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

Work Group/ Joint Subcommittee Discussion

The Work Group and Joint Subcommittee generally support this recommendation.

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

Metropolitan Status Report Findings

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

Rule Amendment Proposal

This recommendation has generally been addressed through proposed revisions to the purpose statement – Section 0005. The phrase “reduced reliance” has generally been modified by adding the phrase “increasing transportation options”.

Work Group / Joint Subcommittee Discussion

The Work Group and Joint Subcommittee generally support this recommendation.

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

Metropolitan Status Report Findings

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

Rule Amendment Proposal

Proposed amendments would “mainstream” the current rule provisions for alternative standards by requiring each metropolitan area to adopt standards to measure achievement of reduced reliance. Adoption of standards would require Commission review and approval. In addition, the amendments would make the current 5% VMT reduction standard an "alternative compliance standard" - i.e. plans that include measures that would achieve a 5% reduction in VMT per capita would not be required to develop a separate standard and obtain Commission approval.

Work Group / Joint Subcommittee Discussion

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

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

Metropolitan Status Report Findings

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

Rule Amendment Proposal

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

Work Group / Joint Subcommittee Discussion

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

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

Metropolitan Status Report Findings

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

Rule Amendment Proposal

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

Work Group / Joint Subcommittee Discussion

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

E. Minor & Housekeeping Amendments

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

TPR Evaluation Finding/Recommendation

This issue was not addressed in the TPR Evaluation.

Rule Amendment Proposal

The department's recommendations for three minor and several housekeeping amendments are summarized in the table below. Housekeeping amendments are language changes to correct errors in the rule or to conform the rule to other goal or rule amendments. Staff is recommending three minor amendments:

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

Work Group / Subcommittee Discussion

While these minor and housekeeping issues are not formally part of the Work Group's charge, the department provided these proposals to the Work Group for review and comment. The Work Group suggested minor language changes which will be incorporated in the proposed amendments. In addition, Tom Kloster recommended that the proposed "housekeeping" change to be expanded to a "minor" change to allow smaller cities within metropolitan areas to apply for exemptions from the requirement to prepare a transportation system plan. Staff supports this proposal.

VI. ATTACHMENTS

Attachment A: Agenda Packet for the September 23, 2005 Joint OTC-LCDC Transportation Subcommittee Meeting