

March 1, 2005

TO: Land Conservation and Development Commission

FROM: Lane Shetterly, Director

SUBJECT: **Agenda Item 1, March 16-18, 2005 LCDC Meeting**

**PUBLIC HEARING ON PROPOSED ADMINISTRATIVE RULE AMENDMENTS –
OAR 660-012 (TRANSPORTATION PLANNING RULE) REGARDING REVIEW OF
PLAN AND LAND USE REGULATION AMENDMENTS**

I. AGENDA ITEM SUMMARY

This item includes a public hearing to receive testimony on proposed amendments to portions of the Transportation Planning Rule (TPR) (OAR 660-012-0060) that relate to plan amendments. The Commission initiated this rulemaking in response to a request from the Oregon Department of Transportation (ODOT) in July 2004. The proposed rule amendments were developed by the Joint Oregon Transportation Commission (OTC) / Land Conservation and Development Commission (LCDC) Transportation Subcommittee (Subcommittee).

The Commission received testimony on the proposed amendments at its February 4, 2005 meeting. Based on advice from the subcommittee, the department has prepared a revised draft of proposed amendments for the Commission's consideration. This report outlines key issues in the proposed rule amendments and recommends adoption of the proposed amendments. The report also includes other options for the Commission's consideration.

For more information about this agenda item, contact Bob Cortright, at 503.373.0050 x241 or by e-mail at bob.cortright@state.or.us.

II. SUMMARY OF RECOMMENDED ACTION

The department recommends that the Commission receive testimony from members of the public wishing to comment on the proposed rule amendments. Given work by the Joint Subcommittee and the extended opportunity for public comment at the February 4th meeting public testimony will be limited to 3 minutes per person. After the close of the public hearing the Commission should discuss the testimony and any specific issues or concerns. The department recommends that the Commission adopt the proposed rule amendments.

III. BACKGROUND AND PUBLIC PARTICIPATION

A major purpose of the Transportation Planning Rule (TPR) is to promote more careful coordination of land use and transportation planning – to assure that planned land uses are supported by and consistent with planned transportation facilities and improvements. This is primarily accomplished by local governments and ODOT as they prepare transportation system plans (TSPs). TSPs set forth a system of planned transportation facilities and services to support implementation of adopted comprehensive plans.

Section 0060 of the TPR requires that local governments consider whether plan amendments and zone changes would have a “significant effect” on the planned transportation system. When plan amendments have a significant effect, the rule requires that local governments take steps to assure that planned land uses and planned transportation facilities are in balance and consistent with one another.

In June 2004, the Oregon Court of Appeals upheld a LUBA decision in the case of *Jaqua v. City of Springfield*. A major holding in the case was that a “significant effect” under Section 0060 occurs if a planned transportation facility would fail to meet adopted performance standards at any point during the planning period – typically extending 15-20 years into the future. If a “significant effect” was identified, the local jurisdiction can then, according to the court decision, only rely upon transportation projects that have a funding commitment at the point the significant effect occurs as being in place to address the significant affect created by the proposed plan amendment. The effect of the Court’s ruling was, in essence, that local governments considering plan amendments must estimate the timing of construction of new facilities and future land uses, and evaluate whether or not there would be a failure to meet adopted transportation performance standards.¹ Where a failure is expected to occur, the local government would conclude there is a “significant effect” and would then be obligated, under requirements of the TPR, to take steps to keep land use and transportation in balance. The corrective remedies set forth in the current rule include adding planned transportation facilities or services, limiting land uses, and adjusting performance standards.

A number of stakeholders – including local governments, the development community, ODOT, and a several legislators – expressed concern that the *Jaqua* holding resulted in a new, unintended and excessive standard for review of plan amendments. Generally, concerned parties felt that the ruling called for a much more detailed matching of planned facilities and improvements with planned land uses than LCDC anticipated when it adopted the TPR in 1991. Several expressed concern that the ruling resulted in a type of “concurrency” requirement – i.e., requiring that needed transportation facilities be in place before new development resulting from a plan amendment could be authorized. Other groups, notably 1000 Friends of Oregon, argued

¹ Performance standards measure how well transportation facilities are operating. Local governments typically use roadway “level of service” (LOS) standards that grade roadway operation on a scale of A-F. Most adopt LOS D or E as a minimum performance standard for roadway operation. The Oregon Highway Plan adopts “volume to capacity” (v/c) standards for state highways. V/C performance standards set ratios or percentages of traffic volume to capacity as a minimum operating standard. V/C standards vary depending on the importance of the highway and other factors and typically range from .75 to .90.

that the ruling represented a continuation of previous court decisions, was reasonable and required a careful matching of planned facilities with planned land use.

In July 2004, the Commission accepted a request from ODOT to evaluate the Transportation Planning Rule and recommend a response to the *Jaqua* case and to identify other areas where amendments to the TPR or other measures might be warranted. The consulting firm of Angelo/Eaton was hired and conducted a series of stakeholder interviews that led to preparation of an evaluation report in September. In September, the Commission agreed to convene a joint subcommittee of LCDC and the Oregon Transportation Commission (OTC) to follow up on the issues identified in the evaluation. LCDC members are Commissioners Ron Henri, Hanley Jenkins and Marilyn Worrix. OTC members are Chair Stuart Foster and Commissioner Mike Nelson.

Between October and January, the joint subcommittee conducted a series of meetings focusing on review of the *Jaqua* case and preparation of proposed amendments to Section 0060 of the TPR. In December, the department filed notice with Secretary of State to initiate rulemaking. Proposed amendments relate to Section 0060 and related definitions in Section 0005 of the Transportation Planning Rule.

On February 15, the joint subcommittee met and discussed testimony received by LCDC and recommended further changes to the proposed rule amendments that are included in Attachment A.

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 (These were included as Attachment C in the department’s staff report for the February 2005 LCDC meeting.). LCDC legal counsel, Steve Shipsey, will be present at the Commission meeting for further advice on this statute, and on rulemaking procedures and criteria.

As outlined above, the department recommends that the Commission consider public testimony, consider possible revisions to the proposed rule language and proceed with proposed amendments at its March 16-18 meeting.

V. PROPOSED RULE CHANGES FROM THE FEBRUARY 4 HEARING

The proposed rule amendments are included as Attachments A and B to this staff report. The proposed amendments are presented in two different formats: Attachment A presents the text of the proposed amendments showing additions and deletions from the existing rule text. Attachment B includes the proposed rule text and explanatory comments in a two-column format and shows recommended changes from the January 3, 2005 proposed rule amendments.

The March 1 draft of the proposed rule amendments incorporates changes based on public comments at the February 4 LCDC meeting and additional review by staff and the Joint OTC-LCDC Transportation Subcommittee. (The subcommittee met and reviewed proposed changes on February 15th. The draft incorporates changes recommended by the Joint Subcommittee.)

Section 0060(1)

- Section 1(a) has been revised to incorporate a suggestion from Mike Montero to exclude correction of map errors from review under Section 0060.
- Section (1)(c)(A) has been revised to incorporate a minor wording clarification from Metro staff.

Section 0060(2)

- Section (2)(b) is one of the five “remedies” that local governments may implement to put land use and transportation in balance. Section (2)(b) allows for amendments to TSPs to add planned facilities, improvements and services. This section has been revised to make it clear that addition of a planned facility, improvement or service must include a funding

plan or mechanism consistent with the provisions of Section 0060(4) so that the facility, improvement or service will be provided by the end of the planning period.

Section (2)(e) allows an applicant to provide mitigation measures to remedy a significant effect. Three revisions are proposed to this subsection

- Allow development agreements or similar funding mechanisms as a means to implement this mitigation.
- Add “demand management” as an acceptable means of mitigation
- Require that local governments specify when mitigation measures required under this section will be provided.

Section 0060(3)

- This section has been reorganized based on a suggestion from the Joint OTC-LCDC Transportation Subcommittee to improve readability of the proposed rule
- Section (3)(c) describes the mitigation that an applicant must provide to qualify for approval under this section of the rule. Based on comments and direction from the subcommittee language, requiring mitigation to “move in the direction of achieving compliance” has been deleted. Several commenters expressed concern that this language was confusing and potentially exceeded the Dolan test for rough proportionality between impacts and required mitigation.
- Section (3)(e) requires a written statement from ODOT when an application affects a state highway. This section has been revised to allow local governments to take action on a plan amendment when ODOT does not respond to a timely local notice.

Section 0060(4)

- This section has been reorganized to more clearly present the proposed rule.
- Section (d) has been added to include definitions for the terms “interstate interchange area”, “planned interchange” and “interstate highway.”
- Section (c) and (d) describe how the proposed rule applies to interstate interchange areas. Both sections have been amended to make it clear that where there is an adopted interchange area management plan (IAMP), that plan is used to define the limits of the interchange area for purposes of this rule.

VI. ISSUES

At its February 4 meeting, the Commission received testimony on the proposed rule amendments from interested parties. Testimony included support and opposition for various provisions of the rule and specific suggestions for changes to the proposed rule amendments. The department’s analysis of the major issues and recommendations are summarized below. The department’s analysis incorporates and reflects recommendations from the joint OTC-LCDC Transportation Subcommittee.

1. Defining Significant Effect

Overview

The purpose of the proposed amendments is to respond to the LUBA and Court of Appeals decisions in the *Jaqua v. City of Springfield* case. Together, these decisions interpret portions of Section 0060 that define when a “significant effect” occurs. The purpose and result of a “significant effect” determination is to trigger additional planning and coordination to put land use and transportation “in balance.” Section 0060(2) gives local governments – in coordination with ODOT and other transportation facility providers – broad discretion to decide what constitutes an appropriate balance.

A basic policy question for the Commission in this rulemaking is to define when a significant effect occurs, i.e., deciding what circumstances should trigger additional transportation planning and coordination by local governments to put land use and transportation in balance. The general intent of Section 0060 is that additional planning should only be required when a plan amendment would have a significant effect on the planned transportation system that is greater than that anticipated in the relevant transportation system plan.

The *Jaqua* case raises two related questions in deciding whether there is a significant effect caused by a proposed plan amendment:

- When to measure if land use and transportation are in balance.
- What facilities and improvements may be relied on as being in place when deciding whether land use and transportation are in balance.

When to Measure

The holding in the *Jaqua* cases was that a significant effect occurs if relevant performance standards are exceeded at any point during the relevant planning period – between the date of the plan amendment and the end of the planning period. The proposed amendments would establish the “end of the planning period identified in the adopted transportation system plan” as the point at which a “significant effect” would need to be determined.

What to Count

The result of the *Jaqua* decisions is that decisions about significant effect must be based on only those planned facilities for which funding is in place at the time the significant effect occurs. The proposed amendments would expand the list of planned facilities and allow local governments to count as “planned” those facilities, improvements and services for which there is a funding plan or mechanism in place to fund the improvement. Additionally, outside interchange areas, the proposed rule allows local governments to count improvements that the relevant transportation provider agrees are reasonably likely to be provided by the end of the planning period.

Commenters, particularly local governments, have recommended that the Commission amend the rule to allow local governments to rely upon all of the planned facilities, improvements and services included in adopted transportation system plans, whether or not funding is in place. These different options for defining significant effect are arrayed in the table below:

Figure 1: Options for Defining Significant Effect

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	Flexibility Least ←-----→ Most			
	Jaqua	1000 Friends Testimony	Joint OTC/LCDC Subcommittee	Washington County/ Others Testimony
When is significant effect measured?	Continuously (throughout the planning period)	Two points: <ul style="list-style-type: none"> • 5 years from approval • End of planning period 	End of the transportation system plan planning period; typically 20 years	End of the Planning Period
What counts as planned facilities improvements?	Facilities, improvements and services where there is a firm funding assurance at the time the significant effect occurs. Usually programmed funding or a condition of approval requiring facility improvement be in place	<ul style="list-style-type: none"> • At 5 years needed facilities, improvements must be programmed or have firm funding assurance (like Jaqua) • At 20 years, facilities must have some sort of funding commitment (like Proposed Amendments) 	Facilities, services and improvements in the TSP where there is a funding commitment of some type: <ul style="list-style-type: none"> • In the STIP or a local CIP • Other local funding mechanism (e.g. SDC) • MPO “financially constrained plan” • Facility provider statement that improvement is “reasonably likely” 	All facilities, services and improvements identified as needed in the adopted TSP.
Effect	Needed facilities or improvements must be in place at the time development occurs. Plan approval must include provisions that limit land use to match available capacity throughout the planning period	<ul style="list-style-type: none"> • Improvements needed in short term must have firm funding commitment • Improvements needed in long-term must have some funding mechanism 	Needed facilities, improvements and services must have some type of funding commitment by the end of the planning period or “reasonably likely” statement.	Local governments can rely on all facilities and improvements (including state facilities) in adopted TSPs without regard to likelihood of funding

Rationale for Proposed Amendment

The proposed amendments allow local governments to count as “planned”, those improvements that have some level of funding commitment from transportation facility providers. Qualifying funding commitments must be in the form of an adopted funding plan or commitment, or a written statement from the provider that a needed improvement is reasonably likely to be provided. The department and the joint subcommittee considered other options for defining what to count, but continue to believe that the proposed amendments provide the appropriate measure of whether or not a plan amendment has a significant effect that warrants additional planning and coordination required under Section 0060(2).

There are several reasons why the department and subcommittee reached this conclusion:

- It is widely understood that adopted transportation system plans include planned projects that will exceed likely transportation funding over the next 20 years.² This mismatch between plans and expected revenues has significant implications for the performance of the transportation system that warrant additional consideration by local governments when they consider plan and zone changes that would rely on improvements that are not likely to be funded.
- When there is no funding commitment for needed improvements, a finding of “significant effect” is appropriate because it triggers work by the applicant, the local government and the transportation provider to address the problem. In situations where a plan amendment or zone change will have a significant effect, applicants, local governments and transportation providers should work to identify and implement improvements or measures that will either avoid the significant effect or remedy it. The result is usually a combination of improvements to the transportation system or limits on land use that result in the transportation system operating to meet identified standards. In the plan amendment at issue in the *Jaqua* case – approval of the Peace Health Hospital in Springfield – steps taken by the applicant to avoid a finding of significant effect resulted in substantial financial commitments by the applicant, working with ODOT, the City of Springfield and the Central Lane MPO, to improve both local streets and affected state highways.³
- A finding of “significant effect” is most likely to occur in situations where additional planning and coordination is appropriate: where a proposed plan amendment relies upon a major transportation facility or improvement that the responsible provider does not have

² TSPs are based on identified needs from planned land uses, not expected revenues. Although metropolitan areas are required to prepare financially-constrained plans, they have also adopted “unconstrained plans” that call for many more projects. In Portland Metro area, the region estimates that it has \$13 billion in transportation improvement needs but is likely to have only \$5 billion in revenue over the planning period. In addition, the financially constrained plan assumes a significant increase in available revenue over the planning period – roughly the equivalent of a 25c per gallon increase in the gas tax over the next 20 years.

³ In subcommittee discussions, ODOT was asked whether proposed amendments would increase or reduce ODOTs leverage to obtain financial commitments of the type obtained in the PeaceHealth plan amendment. ODOT advised that the amendments would reduce its leverage because they expand the list of improvements that local governments may count as planned.

a plan to fund or cannot provide a statement that the facility or improvement is reasonably likely to occur in the next 20 years.

- The threshold for triggering a significant effect is much reduced from the *Jaqua* standard. Under *Jaqua*, a significant effect occurs if performance standards would be exceeded at any point during the planning period, considering projects that are scheduled for funding. As noted above, the proposed amendments measure at the end of the 20 year planning period and allow local governments to count various types of funding plans and commitments. Compared to *Jaqua*, the proposed amendments will reduce the likelihood that a plan amendment triggers a significant effect and the additional planning obligations under the rule.

Comments and Response

a. When to Measure

Comment

Most commenters agree with the Joint Subcommittee’s recommendation that significant effect should be measured at the end of the planning period rather than continuously over the planning period. 1000 Friends recommended that the Commission consider measuring at two points during the planning process (at year five and at the end of the planning period). The short term measurement would correspond with firmer financial commitments in STIP and local CIPs for short-term improvements, while the long-term would correspond with the proposed rule amendments.

Response

With the exception of 1000 Friends, there is general support for the recommendation to measure whether there is a significant effect at the end of the relevant planning period.

b. Allow local governments to count all facilities and improvements in TSPs as “planned”

Comment

Several commenters (including Washington County and Metro) recommended that Section 4 of the rule be amended to allow local governments to count as “planned” all of the facilities, improvements and services that are included in adopted TSPs. This change would essentially remove the consideration of funding commitments or likelihood of funding from decisions about whether there is a significant effect. Commenters recommend this change because they believe that the proposed “reasonably likely” statement is unworkable or because they disagree that funding availability should be a consideration in approving plan amendments, or that inclusion in a TSP is sufficient evidence of a commitment to construct the facility or improvement.

Response

The department and the joint subcommittee disagree with this recommended change and have not included it in the proposed amendments. Because of the funding gap, the department has serious concerns about this option. Allowing plan amendments that depend upon unfunded

improvements will aggravate the imbalance between land use and transportation plans and make the imbalance more difficult to resolve in the future. Plan amendments that rely on unfunded improvements create an additional demand for those improvements without addressing how or whether the improvements are likely to be provided. This is especially important for major improvements and new facilities. Many planned major improvements will not be built during the planning period. The nature of major improvements is that they can create more capacity than is needed. This extra “planned” capacity is then available for plan amendments. Plan amendments approved on the assumption that planned capacity will be built aggravate congestion problems.⁴

c. Effect of a Determination of Significant Effect

Comment

A number of commenters expressed concern that the result of the proposed rule would be that more plan amendments and zone changes would trigger a “significant effect”. This would happen in situations where funding commitments for needed transportation improvements – as provided in Section 4 – are not present. Many commenters implied that the result of a significant effect determination (based on the lack of a “planned facility or a “reasonably likely” determination) would be that a plan amendment or zone change could not proceed.

Response

The inference that a finding of significant effect would preclude a plan amendment or require concurrency is incorrect. A finding of a “significant effect” does not prevent a local government from moving forward with a plan amendment or zone change. Rather, the conclusion that there is a “significant effect” triggers the requirement in Section 0060(2) for additional planning and coordination to put land use and transportation in balance. Section 0060(2) includes five possible remedies that local governments may choose from. These include amending the TSP to accept lower performance or adding funding commitments for needed transportation facilities or services, such as occurred with PeaceHealth.

Where a significant effect is triggered, the rule gives local governments, in coordination with affected transportation providers, broad discretion to select an appropriate solution. Section 0060 does not set any specific performance standards or minimum requirements for transportation facilities. These decisions are up to local governments and ODOT. Under Section 0060(2) a local government may choose to allow a land use change that that relies on a major unfunded

⁴ For example, consider a situation where a TSP calls for widening of an arterial street or highway from three to four or five lanes. The need for an additional travel lane may be triggered by an increase in projected traffic from 1800 vehicles per hour - vph - in the peak hour today to 2400 vph over the next 20 years. The TSP would include a planned improvement for additional lanes that would increase planned capacity to 3200 vph. This planned improvement would have extra capacity for development of 800 vph that could then be relied upon to support plan amendments and zone changes. Now, assume that the improvement is not likely to be constructed in the next 20 years, and plan amendments are approved that allow additional development based on the planned capacity of 3200 vph. The result is substantially more congestion and an increased need for an unfunded improvement. With the proposed amendments, the local government could choose to accept this level of congestion or take other steps that either address funding the proposed amendment, allowing some but not all of the planned land uses , or implementing a series of smaller modest improvements and measures that increase the capacity of the transportation facility.

improvement and will result in high levels of congestion. The obligations in the rule are largely procedural – local governments must amend their TSP to accomplish this result, and where a state highway is affected, the local government must coordinate that decision with ODOT.⁵

In addition, the proposed amendments add remedies that local governments may choose to address a significant effect. Subsection (2)(e) includes a new remedy that allows for minor improvements that are adopted as conditions of approval with the plan amendment to be used to remedy a significant effect. This provision gives applicants and local governments flexibility to add modest improvements, without an amendment of the TSP or comprehensive plan, to add planned improvements or facilities. This provision recognizes that plan amendments for specific developments often include a combination of minor improvements such as traffic signals, turn lanes or ramp improvements that address traffic needs but that do not require TSP amendments. Section 3 allows local governments to approve plan amendments where facilities are currently and planned improvements are not funded or likely to be provided during the planning period.

d. Reduced performance standards as a remedy for a significant effect

Comment

One of the remedies that local governments may adopt when a plan amendment has a significant effect is to amend the TSP to lower performance standards - basically to tolerate higher levels of traffic congestion. The Commission received conflicting comments about whether this option was desirable or workable. Some commenters - including Craig Stone and Mike Montero - supported the rule changes as an important step in recognizing the need to change performance standards. Both Mr. Stone and Mr. Montero noted the current rule has the unintended effect of discouraging more intense development in urban centers and encouraging development in outlying areas, because roadways in urban centers are at or approaching capacity while outlying areas generally have additional unused capacity. Both noted that the long run effects of the current rule were to promote sprawl and long-distance travel and discourage compact development in urban centers. One commenter, James Hanks, expressed concern that this adoption of lower performance standards would not be a practical alternative. Mr. Hanks argued that the most likely option, adopting level of service (LOS) "F" was unworkable because it represented system failure and would effectively put no constraint on plan amendments. Mr. Hanks questioned the value of preparing transportation system plans (TSPs) or the TPR if LOS F were considered an acceptable standard

Response

One of the major issues raised by stakeholders in the TPR evaluation interviews is that current transportation performance standards are unrealistically high, given financial constraints and land use objectives to promote more compact growth in urban centers. There was strong support from most stakeholders that ODOT and DLCD should direct changes to performance standards so that they are more financially realistic and consistent with land use objectives. Mr. Stone's and Mr. Montero's comments are representative of the broader stakeholder input on this issue.

⁵ Adopting a lower performance standard for a state highway would require an amendment of the Oregon Highway Plan. The OTC has indicated its willingness to consider such amendments and has agreed to explore changes to its performance standards for state highways to encourage higher density and urban centered development.

Staff disagrees with Mr. Hanks' conclusion that reduced performance standards (including lower levels of service) are not a workable choice for balancing land use and transportation. ODOT, Metro and a number of local governments have adopted reduced performance standards to address the balancing obligation under Section 0060.

Conventional performance standards represent desirable operating conditions for roadways.⁶ While higher levels of service are obviously desirable, in most urban areas they are unattainable because of the physical and financial constraints to making the improvements that would be required to achieve these levels of service. Also, there is growing recognition that somewhat higher levels of congestion in a downtown or center during peak hours are reasonable and unavoidable and, consequently, that limiting intensification of land uses in urban centers because of increased congestion would be counter-productive.

There is increasing recognition of the need to adjust transportation performance standards to recognize fiscal realities and land use objectives. The Oregon Highway Plan (OHP) provides different performance standards for different classes of highways and land use patterns. The OHP also includes provisions for adoption or approval of alternative mobility standards to achieve growth management objectives where physical or environmental constraints would make improvement infeasible.⁷ In addition, OTC members have indicated they intend to review and make further adjustments to the OHP mobility standards to address this issue. The department recommends that the Commission support OTC efforts on this issue.

Several local governments have recognized the need to adjust performance standards. Metro considered this issue in detail in developing its regional transportation plan and has adopted a level of service standard that for selected areas allows 1 hour of level of service F and 1 hour of LOS E during the day. Metro adopted the standard to tolerate additional congestion in regional and town centers; and to recognize that the costs of improvements to achieve higher levels of service were impracticable and would be counterproductive to the region's efforts to promote development in centers. The City of Salem has adopted a policy that limits arterials to 5-lanes, recognizing that additional arterial widening would be unreasonably expensive and counterproductive. Other states with comprehensive growth management programs are taking similar steps. Florida, a state with strong transportation planning requirements, has adopted different standards that tolerate higher levels of congestion in downtowns and other areas planned for higher density, mixed use development⁸.

⁶ Performance standards are measured in the peak hour and generally call for tolerating relatively modest levels of congestion. For example, LOS D at a signalized intersection would be a delay of up to 25 to 40 seconds; while LOS F would be a delay of 60 seconds or more. The following are the 1994 Highway Capacity Manual criteria for LOS based on traffic signal stopped delay:

LOS A, B,C < 25.0 seconds of stopped delay
LOS D > 25.0 sec < 40.0 sec (Marginal Congestion)
LOS E > 40.0 sec < 60.0 sec (Moderate Congestion)
LOS F > 60.0 sec (Serious Congestion)]

⁷ OHP Policy 1F.3 allows for approval of alternative mobility standards for state highways in metropolitan areas to promote compact development and in other areas where severe environmental or land use constraints would make necessary improvements infeasible. ODOT has approved alternative standards in the Portland Metropolitan area and the South Medford interchange and is currently working with the Central Lane MPO on this issue.

⁸ Florida allows adoption of very low roadway performance standards for downtowns and other designated growth centers. Provisions for "multi-modal transportation districts", for example, allow volume to capacity standards for

2. “Written statements” by transportation providers that certain planned improvements are “reasonably likely to be provided”

Overview

The basic thrust of the proposed amendments is to allow local governments to count as “planned” those improvements for which there is some form of funding commitment to implement the improvement during the planning period. Section 4 provides for two types of funding considerations: (1) commitments that are part of adopted plans or other agreements; and (2) statements from transportation providers that a facility improvement or service is reasonably likely to be provided. This second provision, allowing local governments to count facilities and improvements based on “written statements,” has drawn a number of comments.

This portion of the rule is written to reflect how transportation funding commitments are made. Transportation funding is generally addressed at two levels: short-term programming and longer term planning. Short-term programming typically covers the next 4-6 years and allocates expected revenues to specific projects and improvements. Long-term planning typically covers a 20-year planning period, focuses on setting broad priorities, and usually reflects only general consideration of available revenues. Short-term plans are generally highly reliable: improvements called for in plans are typically built as scheduled. Funding of projects called for in long-term plans is much less certain because needs and priorities tend to change over time.

The proposed amendments are written to allow local governments to count as “planned” projects for which there is a funding plan commitment or mechanism. This includes the short-term commitments described above and some longer-term commitments where there is a funding mechanism in place for the improvement...⁹ In addition, Section (4)(b) (D) and (E) allow local governments to count as “planned” other transportation facilities, improvements and services where the transportation provider issues a written statement that the facility, improvement or service is reasonably likely to be provided by the end of the planning period. This section effectively allows local governments, in consultation with transportation providers, to consider whether some of the long-term projects that lack a funding plan or mechanism are reasonably likely to be provided during the planning period. For example, ODOT’s commitments for improvements on state highways are generally limited to projects that are funded for construction in the State Transportation Improvement Program (STIP).¹⁰ Section (4)(b)(D) would allow ODOT to issue a written statement that an improvement that is not on the STIP or included in a region’s financially constrained project list is reasonably likely to be funded over the relevant planning period. Based on such a statement, local government would decide whether or not a proposed amendment has a significant effect as provided for in the rule.

roadway performance of up to 1.25. Essentially, they allow development where forecast traffic volumes would be expected to exceed roadway capacity by 25%. By comparison, a .90 to 1.0 volume to capacity ratio generally corresponds to a LOS F rating.

⁹ Sections 4(b)(A)-(C) list a range of specific funding commitments that local governments may rely upon. These include projects in the Statewide Transportation Improvement Program (STIP), projects in a local capital improvement program (CIP), and projects for which local governments are collecting systems development charges (SDCs) and in metropolitan areas, projects that are included in a financially constrained regional transportation plan.

¹⁰ The STIP sets forth ODOT funding commitments for a four-year period. Subsection (4)(b)(C) would include improvements on state highways in metropolitan areas over a normal planning period – typically 20 years.

Comments and Response

a. Appropriateness of the “reasonably likely to be provided” test

Comment

Several commenters expressed concern that the term “reasonably likely to be provided” is vague and will be difficult or unworkable. Washington County expressed concern that efforts to decide what improvements are reasonably likely to be funded would be contentious and would lead to delay in approving plan amendments.

Response

Staff and the joint committee considered these comments and continue to recommend use of the “reasonably likely” test. The department believes that concerns about the reasonably likely test are overstated:

- Decisions about whether or not a plan or land use regulation amendment should be approved should consider whether needed improvements are, in the opinion of the facility or service provider, reasonably likely to be provided during the planning period. The effect of this section is to require additional coordination between local governments considering plan and land use regulation amendments and transportation facility providers.
- Determinations of “reasonably likely” apply to a limited set of improvements. A written determination that an improvement is reasonably likely to be provided is required only where there is not some other form of funding plan or commitment in place. Section (4)(b) allows local governments to count as “planned” those improvements that have some form of funding plan or commitment in place. These include projects in the Statewide Transportation Improvement Program (STIP), project in a local capital improvement plan (CIP), and projects for which local governments are collecting systems development charges (SDCs) and in metropolitan areas, projects that are included in a financially constrained regional transportation plan. (See Sections (4)(b) (A)-(C)).
- The requirement applies to the right set of improvements. The improvements likely to be subject to “reasonably likely” determinations will be major unfunded improvements. Given the gap between expected revenues and needs identified in TSPs, plan amendments that rely on major unfunded improvements should logically involve additional coordination with transportation providers.
- The “reasonably likely to be provided” test properly defers determinations about transportation facility funding and timing to transportation facility providers.
- Local governments can address this issue by amending their TSPs to adopt a list of facilities, improvements and services that would be considered “reasonably likely to be

funded over the planning period”.¹¹ Adoption of such a list would avoid the need for incremental decisions on individual plan amendments.

b. Written statements about reasonably likely will be difficult to implement because such determinations will be considered land use decisions.

Comment

Several commenters expressed concern that local government or facility provider decisions made pursuant to section 0060(4) (b)(D) and (E) would be considered land use decisions and appealable to LUBA. Most commenters are concerned that this would result in a vague and unworkable standard that would needlessly complicate or delay approval of plan amendments.

Response

The department and the joint subcommittee carefully considered this issue as the proposed amendments were developed. The rule is intended and drafted so that local governments considering plan amendments are not required to make decisions about what is reasonably likely and so that the issuance of written statements by transportation providers are not land use decisions.

Section (4)(b)(D) and (E) allow and direct local governments considering plan and land use regulation amendments to rely upon written statements provided by ODOT or other transportation facility or service providers about whether facilities, improvements or services are reasonably likely to be provided by the end of the planning period. The intent of this section is that local government land use decision-makers be able to rely, without question, upon the written statement provided by the relevant transportation provider.

For local governments considering plan amendments, compliance with this section requires only that they determine that:

- A statement has been provided by the appropriate transportation provider; and
- The substance of that statement establishes that the relevant facility or service provider has advised that the facility, improvement or service is reasonably likely to be provided during the relevant planning period.

In addition, written statements issued by transportation providers are not land use decisions. The rule directs local governments to obtain statements from transportation facility and service providers acting in their capacity as the responsible agency for funding and providing transportation facilities, improvements or services. The written statements they are asked to provide relate to future funding and timing for providing transportation facilities, improvements or services that are otherwise authorized in adopted transportation system plans. Under ORS 197.712(2)(e) and Section 0040(3) of the TPR such project funding and timing decisions are not considered land use decisions.¹²

¹¹ Adoption of such a list would need to be coordinated with affected transportation facility and service providers. The department anticipates addressing this issue further in the second phase of TPR amendments.

¹² 197.712(2)(e): " A city or county shall develop and adopt a public facility plan for areas within an urban growth boundary containing a population greater than 2,500 persons. The public facility plan shall include rough cost estimates for public projects needed to provide sewer, water and transportation for the land uses contemplated in the

In adopting this requirement the department understands that local governments - particularly cities and counties - can be both the land use decision-maker and a transportation facility or service provider for the needed facility, improvement or service. Where a local government has both roles, the department expects that the local government would undertake two separate actions: one in its capacity as a transportation facility or service provider (to assess whether a planned facility is reasonably likely to be provided) and a second in its capacity as a land use decision-maker - to apply this rule and other relevant land use requirements to the proposed plan or land use regulation amendment.¹³

The department expects that ODOT and other transportation facility and service providers will likely develop procedures or criteria for issuance of written statements to local governments. As described above it is not intended that such procedures or the resulting written statements be considered land use decisions.

c. Whether to define or provide guidance on “reasonably likely”

Comment

Several commenters recommended that the term “reasonably likely” be defined or that the rule include guidance on how such determinations should be made. Other commenters suggested that the “reasonably likely” test be removed from the rule because the term is not or could not be satisfactorily defined.

Response

The department and the joint subcommittee considered these comments and continue to recommend that the rule leave the term reasonably likely undefined. This term is intentionally undefined to defer such decisions to the relevant transportation provider. The department expects that transportation providers will use their own judgment and expertise to reach appropriate decisions about what is reasonably likely to be provided in a particular circumstance. The department is also concerned that additional guidance in the rule might otherwise imply that such decisions are land use decisions.

For terms that are not defined in rulemaking, interpretation is based on standard dictionary definitions:

comprehensive plan and land use regulations. Project timing and financing provisions of public facility plans shall not be considered land use decisions."

OAR 660-012-0040(4): Anticipated timing and financing provisions in the transportation financing program are not considered land use decisions as specified in ORS 197.712(2)(e) and, therefore cannot be the basis of an appeal under ORS 197.610(1) and (2) or ORS 197.835(4).

¹³ Where city streets and county roads are affected, cities and counties are likely to be both land use decisions-makers and transportation providers. This is a common situation for review of development applications. Most cities and counties deal with this by delegating authority to a particular city or county office or officer. For example, the public works department will comment to the planning department on adequacy of streets and roads to meet county standards.

Reasonable: "...2. Governed by or in accordance with reason or sound thinking. 3. Within the bounds of common sense <allowed a *reasonable* time for the trip>. 4. Not extreme or excessive: FAIR <*reasonable* fuel rates>..."¹⁴

Likely: 1. Possessing or displaying the characteristics or qualities that make something probable <they are *likely* to arrive this morning.> 2. Within the realm of credibility: PLAUSIBLE <a *likely* result.>

Synonyms: Likely/probably adjective core meaning: "...showing a probability of happening or of being true <likely to rain at any moment.> Both *likely* and *probably* describe what seems to be true, but is not certain <a likely excuse> <a probable explanation>..."¹⁵

d. Clarification of whether written statements are intended as binding commitments

Comment

Chair VanLandingham asked that the department clarify whether a statement that a facility is reasonably likely to be provided is a binding funding commitment on the transportation provider. Vice-Chair Kirkpatrick asked that the department explain what the consequences would be if an improvement that a transportation provider indicated was reasonably likely is not constructed.

Response

Written statements issued by transportation providers are not funding commitments, they are an assessment by the provider of future funding likelihood. They are statements of expectations for future action, but are not in and of themselves funding commitments. Staff has consulted with the Department of Justice on this issue and the department concurs that this part of the rule neither requires nor results in binding funding commitments by transportation providers.

The rule does not provide any consequence in a situation where a facility or improvement that is forecast as "reasonably likely to be provided" is not provided. A practical effect of issuance of such a statement is to reinforce the priority of the project with the transportation provider and put in place development that will create an additional need for the project.

e. Accuracy of future revenue and funding estimates

Comment

Some commenters expressed concern that it will be difficult for ODOT and transportation providers to accurately estimate future revenues or forecast what facilities or improvements are reasonably likely to be made. Vice-Chair Kirkpatrick asked that the department provide information on the accuracy of previous funding forecasts.

Response

Methods for calculating future transportation revenues are available. ODOT currently prepares a long-term state revenue forecast as a basis for metropolitan areas to prepare federally required "financially-constrained" plans. Federal rules include guidance on how states and metropolitan

¹⁴ Webster's II New College Dictionary, 1995, page 923.

¹⁵ Webster's II New College Dictionary, 1995, page 635.

areas governments can estimate what funding is likely to be available. Local transportation system plans already address timing of planned transportation facilities – typically listing facilities needed in the short term (0-5 years), medium term (5-10 years) and long-term (10-20 years.)¹⁶

To implement federal planning requirements for metropolitan areas, ODOT coordinates the preparation of long-term funding forecasts. ODOT has prepared two forecasts, one in 1994, the other in 1998. Both forecasts assumed regular increases in state transportation funding equivalent to a gas tax increase of 1 cent per year plus an addition 1 cent every fourth year. The state did not realize the increase in transportation funding until 2002. Recent increases in funding as part of the OTIA packages are consistent with the 1998 estimate. However, since much of the funding is from bonding paid back by future revenues, the net increase in revenue is likely less than forecast.

f. Scope of analysis to determine whether improvements are reasonably likely

Comment

Washington County expressed concern that the requirement to define what is reasonably likely would require the county to make an area-wide or countywide assessment about which unfunded projects are likely to be funded.

Response

As noted above, the rule does not specify a method for transportation providers to determine whether or not a planned facility is reasonably likely to be provided. The rule intentionally leaves these decisions to transportation providers. While a provider may want to consider area-wide or jurisdiction-wide priorities in making individual decisions, the department does not believe that level of analysis is required to provide a reliable statement as set forth in the rule. As noted above, TSPs already include general estimates for the timing of planned transportation improvements. In addition, the occasion of a plan amendment is an appropriate opportunity for the jurisdiction and transportation providers to assess whether priorities for transportation improvements should be changed. Often the development opportunity presented by a plan amendment is the impetus for changing public investment priorities.

3. Additional Consideration for Interchange Areas

Overview

Within interchange areas, the proposed rule would allow local governments to count as “planned” only those facilities, improvements and services where there is a funding plan or commitment (as set forth in (4)(b)(A)-(C)). Generally, this means that local governments would

¹⁶ TPR Section 0040 requires urban areas with a population of 2500 or more to include a transportation financing program as part of their adopted TSP. The transportation financing program includes:
“(a) A list of planned transportation facilities and major improvements;
(b) A general estimate of the timing for planned transportation facilities and major improvements;
(c) A determination of rough cost estimates for the transportation facilities and major improvements identified in the TSP.” OAR 660-012-0040(1)

not be able to consider other improvements that transportation providers agree are reasonably likely to be funded – which is allowed outside of interchange areas.

Comments and Response

a. Appropriateness of a higher threshold around interchanges

Comment

Several commenters expressed concern about the higher threshold in the rule for defining what constitutes a significant effect in an interchange area. Commenters question whether this additional level of coordination is necessary and express concern that this gives ODOT undue control or a “veto” over plan amendments in interchange areas. Metro and Washington County representatives expressed concern that the proposed amendments would limit their ability to plan for more intense development in designated regional and town centers – areas where the region wants to promote higher density, mixed use development.

Response

The joint subcommittee discussed this issue at length and concluded that more careful consideration of plan amendments in the vicinity of interstate freeway interchanges is warranted for several reasons. Interstate freeway interchanges are a key part of the state highway system. Bottlenecks and operational problems at interchanges can create significant safety problems and affect accessibility to large areas. Maximizing operational life of interchanges is critical to the state’s economy, to support movement of goods, and to attract and serve new industrial development. Also, interstate freeway interchanges are the most expensive portions of the state highway system and represent a significant state investment. Upgrading, reconstructing or replacing interchanges is very expensive. Consequently, careful coordination of land use and transportation planning around interchanges is especially important. The effect of the proposed amendments is consistent with this objective: the rule does not prevent plan amendments or zone changes around interchanges, but does trigger additional coordination between ODOT and local governments to assure adequate planned facilities are in place prior to approving a plan amendment that would otherwise have a significant affect on the interstate interchange.

b. Criteria for ODOT decisions that plan amendments in interchange areas will not have a significant adverse impact on freeway operations

Comment

Several commenters expressed concern about provisions in Section (4)(c) which allow local governments to count as “reasonably likely” improvements in interchange areas where ODOT issues a written statement that the amendment will not have a “significant adverse impact on the interstate highway system..” Commenters were concerned that the term is not defined and would result in delays or uneven implementation by ODOT.

Response

The joint subcommittee discussed the wording of this provision and modified it to address concerns raised by commenters – the revised standard focuses on impacts on freeway operation rather than impacts within the entire interchange area. This section is written broadly to allow

ODOT some discretion in determining whether or not a plan amendment has a significant adverse impact. The department anticipates that ODOT will develop more specific guidance for its staff to use in applying this standard when it coordinates with local governments on plan amendments. As written, this section is intended to allow ODOT to reach a conclusion that a plan amendment has no significant adverse effect in a variety of circumstances. This could be because the plan amendment generates little additional traffic on the interchange; the property generating traffic is in the interchange area but distant from the interchange; or where the development proposal includes measures that mitigate its impact on freeway operations. In addition, Transportation Commissioners indicated this standard would allow for ODOT to consider whether more intense development at a town center or close-in area had less impact on freeway operation than more remote locations where the use might otherwise be sited.

c. Extent of interchange areas subject to the rule

Comment

Several commenters expressed concern about the extent of areas adjoining interchanges that would be affected by the rule. Commissioner Worrix asked that the department provide additional information about the amount of land that would be affected by the rule.

Response

The proposed amendments would define interchange areas to include properties within ½ mile of the center point of freeway interchanges on interstate highways. The joint subcommittee discussed whether to reduce the size of interchange areas or reduce the extent the number of interchanges that would be covered. The joint subcommittee did recommend changes to the rule to allow the interchange area to include the area covered by an adopted interchange area management plan (IAMP). ODOT has compiled some additional information on the extent of interstate freeway interchanges:

- There are 274 interchanges along I-5, I-82, I-84, I-105, I-205 and I-405.
- 97 of these interchanges are in a UGB.
- 124 are outside a UGB.
- 53 overlap a UGB.
- Interchange areas cover less than two-tenths of 1% of the total area of the state
- Interchange areas include approximately 100,000 acres of land, exclusive of right of way.

4. Consistency with other planning goals and efforts

Overview

Several commenters asked that the Department and Commission consider how the proposed amendments relate to or might affect other ongoing or planned policy work. The proposed amendments are part of a broader effort to consider amendments to the Transportation Planning Rule. In addition, the department recognizes that amendments to Section 0060 have important implications for implementation of Goal 14 and efforts to update comprehensive plans to support economic development. Phase 2 of the proposed TPR evaluation is expected to address how transportation planning should be coordinated with consideration and implementation of urban growth boundary amendments.

Comments and Response

a. Consistency with Economic Development Efforts and Goal 9 rule

Comment

Several commenters expressed concern that the proposed amendment may inadvertently make it more difficult to make plan amendments that achieve state efforts to promote economic revitalization, especially for new industrial development. Vice-Chair Kirkpatrick asked that the department assess how the rule related to efforts to support and promote economic development.

Response

The department has considered how the proposed amendments relate to economic development efforts, including pending amendments to the Goal 9 rule. The major focus of the current Goal 9 rule amendments is to direct additional planning to improve the availability of appropriate industrial sites in the short term – within 6 months to two years of an application. Overall, because the proposed TPR amendments deal with adequacy of transportation facilities in the long-term (i.e. at the end of the planning period) they will have little effect on short-term economic development efforts.

- The proposed amendments would not apply to certified sites - and other immediate opportunity sites – because such sites are currently zoned to allow industrial uses. As noted above, the proposed rule applies only where a plan amendment or zone change is required.
- In situations where a plan amendment is needed, the proposed rule amendments will reduce barriers associated with the *Jaqua* decision by allowing plan amendments to be approved that fail to meet performance standards before the end of the planning period.
- The proposed rule includes provisions that allow local governments to approve plan amendments for industrial development in situations where there are unresolved transportation problems. Sections 0060(2) and (3) of the proposed amendments allow local governments, in coordination with transportation providers, to approve plan amendments in situations where the result would be long-term transportation problems. Under Section 2(d), local governments may, in essence, choose to approve a plan amendment to allow desired industrial development where it would result in otherwise unacceptable levels of congestion.

- There are some situations where proposed amendments to 0060 may inadvertently work against efforts to assure that key industrial sites are served by adequate transportation facilities. This would happen because the proposed rule amendments would make it easier for local governments to approve plan amendments for non-industrial uses that effectively use up the existing or planned roadway capacity that is otherwise needed or intended to support industrial development. This would be most likely to occur when plan amendments for non-industrial uses occur on lands that are near key industrial sites.¹⁷

b. Relationship to UGB Amendments; Plan Changes to Implement UGB Amendments

Comment

Several commenters expressed concern that the proposed amendments will complicate approval of UGB amendments or impede local governments' efforts to rezone land added to UGBs to allow urban levels of development. Washington County expressed concern that the rule amendments would complicate planning and zoning of lands that have recently been added to the Metro UGB. The county would resolve this issue by allowing local governments to count as "planned", all of the facilities and improvements included in their adopted transportation system plans (i.e. without regard to likelihood of funding.)

Background

Response to these comments requires some background on relevant requirements in Goal 14 (Urbanization) and TPR Section 0060. Goal 14 establishes criteria for approval of UGB amendments. This includes assessing the feasibility of providing urban levels of facilities and services, including transportation facilities, to the lands proposed to be added to the urban growth boundary. Section 0060 of the TPR applies to plan amendments and zone changes that authorize more intense use of land that would affect the transportation system. UGB amendments trigger application of the TPR where local governments, as part of the UGB amendment, also propose plan amendments or zone changes to allow more intense land uses.

Local governments may choose to address Goal 14 and the TPR in a single action, or in two separate steps. Local governments considering major UGB amendments – like Metro's recent amendments – generally do UGB amendment in two separate steps (UGB amendment and subsequent plan and zone changes following preparation of a concept plan that provides more detail on anticipated land uses and densities). Where site specific amendments are proposed,

¹⁷ The situation around the Santiam Highway interchange on Interstate 5 in Albany provides an illustration of this situation. The interchange is currently at or near capacity and major improvements will be needed. The interchange is also the principal access point to the 66-acre Kempf property, an industrial site that is currently being considered for designation as a state certified industrial site. The city's planning director, Helen Burns-Sharp testified to the Commission about several plan amendments in this area, including a proposed plan amendment for "large format" commercial development. The proposed rule amendments would allow the city to approve plan amendments for commercial development that would worsen congestion at the interchange in the short run provided there is a funding commitment to make needed improvements by the end of the planning period. The additional traffic congestion that would be allowed would make the Kempf industrial site less desirable for development.

local governments typically address Goal 14 and the TPR in a single plan amendment that both amends the UGB and applies urban plan designations and zoning.¹⁸

Response

Much of the land recently added to the Metro UGB relies upon major transportation facilities and improvements that lack funding commitments.¹⁹ In adopting these UGB amendments, Metro and local governments committed to prepare “concept plans” for each of these areas. Concept plans will include detailed transportation planning for the affected areas.

The proposed rule amendments will require local governments to assess whether needed improvements are reasonably likely to be funded. Where needed improvements lack funding commitments, a “significant effect” would occur that would trigger consideration of the remedies set forth in Section 2 of the proposed amendments.²⁰ These remedies allow for local governments to approve plan and ordinance amendments that allow intense urban development. The department expects that the rule will trigger additional coordination between local governments and ODOT to address funding needs or adjust performance standards for affected transportation facilities.

The department believes that the coordination and remedies included in the proposed rule are appropriate and workable. Planning and zoning of lands should consider impacts on the transportation system and whether funding priorities or transportation performance standards should be revised. In some cases, the department expects that the result will be to allow high-intensity urban land uses even though they result in high levels of traffic congestion. The department notes that Washington County’s adopted transportation system plan (as noted by Washington County staff at the February 4 hearing) has apparently already reached this conclusion for the Tualatin Town Center area.

Where state highways are affected, local governments will need to coordinate these decisions with ODOT. This coordination is appropriate to engage ODOT in discussions about transportation funding needs and priorities and adjustments to performance standards for state highways. OTC members have indicated support for considering changes to mobility standards and approval of alternative mobility standards that result in some increase in congestion to support and encourage higher density, urban centered growth.

The department is concerned that the alternative proposed by Washington County and others – allowing plan amendments to rely upon all the improvements identified in an adopted TSP regardless of funding availability – would effectively ignore this issue and allow plan amendments to proceed without careful consideration of transportation consequences and planning options for dealing with these consequences.

¹⁸ The Commission (supported by LUBA and the Courts) has held that an UGB amendment, by itself, does not trigger TPR Section 0060 requirements. As noted above, UGB amendments do need to address Goal 14 requirements, which include consideration of comparative feasibility of providing needed services to areas being considered for UGB expansion.

¹⁹ The Damascus area expansion depends on the proposed Sunrise Corridor highway improvements, while expansions in the Tualatin and Sherwood areas depend in part on the proposed I-5 to 99W connector. Neither is in the region’s financially constrained list of planned improvements.

²⁰ The existing rule provisions would require basically the same steps and allow most of the same remedies.

CONCLUSION AND RECOMMENDATION

The department recommends that the Commission receive testimony from members of the public wishing to comment on the proposals. After the close of the public hearing the Commission should discuss the testimony and any related matters and provide additional direction to the department, including recommendations as to changes to the proposed rule amendments that will be published prior to the final hearing and adoption scheduled for the March 16-18, 2005 Commission meeting.

Recommendation and Proposed Motion

The department recommends that the Commission accept the staff report and adopt the proposed rule amendments as set forth in Attachment A.

Proposed Motion

“I move that the Commission accept the Department’s March 1, 2005 staff report and adopt the proposed amendments to the Transportation Planning Rule as set forth in Attachment A to the staff report.”

Options

The proposed rule amendments reflect consideration of the issues discussed above. In addition, the Joint Subcommittee discussed these issues and supports adoption of the proposed rule amendments. The Joint Subcommittee considered options that would narrow the scope of the proposed rule by deleting provisions of the rule that have generated the most controversy.

Option 1: Delete provisions related to written statements about reasonably likely improvements in Section 0060(4)

The Joint Subcommittee considered but rejected this option. Most of the reasons for retaining this portion of the rule are discussed above. Basically, the Joint Subcommittee and staff believe that rule provisions for written statements appropriately allow local governments to count additional facilities as “planned” in appropriate situations. Deleting this provision would result in either an overly narrow or overly broad definition of “planned” improvements that would make the rule either too strict or too loose

Option 2: Delete or defer provisions related in Section (3) related to facilities that are currently failing and Section (4) related to interchanges.

The Joint Subcommittee evaluated these two changes as a package. Each of these sections provides additional guidance to address specific situations (interchanges and currently failing facilities.) The two are related because the interchange requirements are somewhat stricter; while the treatment of failing facilities is more flexible than other provisions in the rule. Adopting either one without the other would make the resulting rule either overly strict for failed facilities or too permissive for plan amendments around interchanges. In the end, the Joint

Subcommittee concluded that it was important for the rule to address both situations, and that the rule provisions are reasonable and workable.

Attachments

- A. Proposed Transportation Planning Rule Amendments, March 1, 2005
- B. Memo from Frank Angelo, including Proposed TPR Amendments with Commentary, March 1, 2005
- C. Public Comments on Proposed Rule Amendments