



# Oregon

Theodore R. Kulongoski, Governor

Department of Transportation  
Transportation Development Division  
Mill Creek Office Building  
555 13th Street NE, Suite 2  
Salem, OR 97301-4178

FILE CODE:

**DATE:** August 8, 2006  
**TO:** OTC/LCDC Joint Subcommittee on Transportation  
**FROM:** Craig Greenleaf, TDD Administrator  
**RE:** TPR Exceptions

## A. Summary.

ODOT believes that the TPR exceptions standards have worked well to date and will continue to work as intended. Until it is clearly demonstrated that local governments and ODOT are misusing the TPR thresholds standards, there is no good reason to amend those standards.

In the over 15 years these standards have been in place, only a handful of exceptions have been approved. Conversely, in a number of instances, these standards have prevented approval of inappropriate exceptions. Indeed, by DLCD's own analysis, the exceptions process has prevented local governments from pursuing exceptions where they are not justified:

"Most plans do not clearly explain why local governments chose not to pursue exceptions. From the available information, [DLCD] believes reasons for not pursuing exceptions included the following:

- the exceptions process was viewed as difficult or that the project could not meet requirements for approval
- detailed studies and analysis could not be done in the time available
- other improvements were found to adequately address needs for the foreseeable future
- the project requiring the exception was extremely expensive
- the project was controversial"

DLCD argues the *Yamhill County* decisions will effectively establish the Oregon Highway Plan (OHP) v/c standards as a "safe harbor", which could cause "potentially reasonable" alternatives to be rejected. This argument assumes that the volume to capacity (v/c) standards are inappropriate. However, those standards were adopted in a public process and are acknowledged as being in compliance with Goal 12 and relevant TPR planning requirements, including the requirement to ensure a system of transportation facilities "adequate to meet identified state transportation needs." This



argument also ignores the fact that any project sponsored by ODOT must comply with the policies in the OHP, including the major improvement policy (1G) and bypass policy (1H), which make it increasingly difficult to reach a “bypass” build alternative. Further, such projects must satisfy Action 1F.3 of the OHP Highway Mobility Standards policy, which requires local governments to consider adopting alternate highway mobility standards where it is infeasible to meet the OHP highway performance standards. With these safeguards, ODOT believes that the fears DLCD expresses are unlikely to be realized.

DLCD identifies seven factors that lead it to conclude that there is significant potential for additional goal exceptions. But virtually all of these factors are directed at the TSP planning process, *i.e.* how a project gets placed in the TSP in the first place. Given this, ODOT believes the real issue isn’t how thresholds are established to justify goal exceptions, but how local governments adopt or amend TSPs to add projects pursuant to OAR 660-012-0020 through 660-012-0040.

DLCD claims that the *Yamhill County* decisions change the legal landscape to give local governments broad discretion to set thresholds. ODOT believes that is incorrect. Local governments already had broad discretion to set thresholds under OAR 660-012-0070. Hence, the relevant question is, have they misused or abused that discretion in the 15 years the TPR has been in place? Based on the exceptions that have been adopted to date, and the far more common local government planning practice of selecting non-exception alternatives over exception alternatives, ODOT believes that the answer is “no”, and that except on a speculative and theoretical basis, DLCD fails to make the case that the future holds otherwise.

Indeed, the Newberg-Dundee Bypass project is illustrative and lends strong support to ODOT’s assertions that (1) ODOT considers all relevant OHP policies before it adds major new facilities to its system, and (2) the TPR exceptions process is not being misused or abused. As part of that project, ODOT examined in considerable detail whether the identified transportation need (discussed below) could be reasonably accommodated through a combination of substantially increased transit service (up to 10% of peak hour trips), transportation system management measures (such as new turn lanes, raised medians, driveway consolidation, carpooling and transportation demand management measures), and improvements to Oregon 99W or other roadways in Newberg and Dundee. In addressing improvements to existing facilities, ODOT identified improvements it had already made to Oregon 99W over the past 30 years in efforts to address and improve traffic congestion and safety in the corridor. These projects included, but were not limited to:

- Rebuilding the Oregon 99W Chehalem Creek Bridge (widened to four-lane standards) (1974-1976)
- Establishing the Oregon 99W couplet in Newberg (1974-1976)
- Installing traffic signals at 5<sup>th</sup> Street in Dundee (1983)
- Converting 1<sup>st</sup> Street in Newberg to one way eastbound between Oregon 99W and Church Street and restricting turn lanes to right in only eastbound (1991)

- Widening Springbrook Street on the east side of Newberg and at Oregon 99W (1993)
- Improving Wyooski Street at Oregon 219 for safety and truck improvements (1993)
- Restriping Oregon 99W in Dundee to provide a center-turn lane and eliminate on-street parking (1994)
- Restriping travel lanes, restricting turning movements and installing concrete median islands at the Oregon 99W/Oregon 18 intersection (1995)
- Constructing a left-turn lane on Oregon 99W at Riverwood Road (1996)
- Authorizing U-turns at Newberg signalized intersections on Oregon 99W in conjunction with the Oregon 99W Brutscher Street to Main Street project (1996)
- Reducing speed on Oregon 99W between Newberg and Dundee from 55 to 45 miles per hour (1998)
- Adding a southbound right-turn lane on Oregon 99W at 1<sup>st</sup> Street in Dundee (1998)
- Restriping travel lanes at Oregon 99W and Fox Farm Road (1998)
- Extending the center-turn lane from 1<sup>st</sup> Street in Dundee nearly to Fox Farm Road east of Dundee (1998)
- Installing flashing warning signals on Oregon 99W south of Dundee to notify motorists of congested conditions (1998)
- Widening Oregon 240 Chehalem Creek Bridge west of Newberg (1999)
- Restricting intersection movements at River Road in Newberg (2001)
- Reconstructing the Oregon 99W/Villa Road and Oregon 99W/Springbrook Road intersections (2001)
- Widening Oregon 99W to six lanes between River Road and Villa Road and realigning the connection to Hancock Street (2001)
- Widening Oregon 99W, adding striped bicycle lanes, and interconnecting traffic signals along Oregon 99W (2001)
- Adding a westbound Oregon 99W travel lane on Hancock Street (2002)
- Constructing a section of Newberg's north side arterial between Oregon 219 and Mountainview Road (2002)
- Eliminating or restricting movements at 57 percent of the 152 driveways along Oregon 99W in the project area (2001)
- Increasing LINK commuter service between McMinnville and Sherwood (2000-2001)

ODOT then noted that even with several additional improvements to Oregon 99W, it still could not come close to achieving compliance with ODOT's highway performance standards for statewide highways and freight routes. Indeed, even with all these past and proposed improvements, Oregon 99W in Dundee would operate at a v/c of 1.25 during peak hours, far in excess of roadway capacity.

In ODOT's opinion, Newberg-Dundee is not an isolated circumstance, but rather is typical of how ODOT deals with congestion problems. The agency takes many steps

over many years to solve the problem through system management and improvements to existing facilities before it looks to build major new facilities. But while non-exception alternatives are the solutions ODOT has chosen most often to resolve traffic congestion or safety problems, these don't always work. In such circumstances, where highways can no longer serve their identified functions to facilitate the movement of people and goods safely and efficiently, new roadway improvements may be necessary, and placing them on rural lands is sometimes the only reasonable option.

## **B. Background.**

### **1. What are Thresholds?**

A goal exception is essentially a variance for specific properties or situations that allows state land use goal requirements to be waived where the criteria of the exceptions process are met.<sup>1</sup> ORS 197.732(1)(c) and Statewide Planning Goal 2 authorize local governments to adopt "exceptions" where "reasons justify why the state policy embodied in the applicable goals should not apply."

For transportation improvements on rural lands, the exceptions process in OAR 660-012-0070 requires local governments to identify a transportation need and demonstrate that the need cannot reasonably be accommodated through alternative methods or locations that do not require goal exceptions. Towards that end, OAR 660-012-0070(6) directs local governments to establish and justify "thresholds" for judging whether an alternative method or location cannot reasonably accommodate the identified transportation need.

"Thresholds" are the yardsticks established and applied by local governments to measure whether or not alternative "non-exception" methods or locations can "reasonably accommodate" the identified transportation need. Under OAR 660-012-0070(6), to determine the reasonableness of non-exception alternatives, local governments must:

- Address cost, operational feasibility, economic dislocations and other relevant factors; and
- Justify the thresholds chosen to judge whether or not non-exception alternatives can reasonably accommodate the identified transportation need.<sup>2 3</sup>

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<sup>1</sup> *1000 Friends of Oregon v. LCDC (Curry County)*, 301 Or 447 (1986); *1000 Friends of Oregon v. Wasco County Court*, 299 Or 344 (1985).

<sup>2</sup> OAR 660-012-0070(6) provides in pertinent part:

"(6) To determine the reasonableness of alternatives to an exception under sections (4) and (5) of this rule, cost, operational feasibility, economic dislocation and other relevant factors shall be addressed. The thresholds chosen to judge whether an alternative method or location cannot reasonably accommodate the proposed transportation need or facility must be justified in the exception."

<sup>3</sup> OAR 660-012-0070(4) requires, in relevant part, that exceptions for transportation improvements on rural lands demonstrate there is a transportation need that "cannot reasonably be accommodated through one or a combination of the following measures not requiring an exception: (a) Alternative modes of transportation; (b) Traffic management measures; and (c) Improvements to existing transportation facilities." OAR 660-012-0070(5), as amended by LCDC on June 29, 2006, requires that exceptions demonstrate "that non-exception locations cannot reasonably accommodate the proposed transportation facility or improvement."

## Relevant Threshold Factors

As noted, OAR 660-012-0070(6) requires local governments to address cost, operational feasibility, economic dislocations and other relevant factors when determining the reasonableness of non-exception alternatives. These factors have typically been applied as follows.

*Cost*, as typically addressed in exceptions, includes costs associated with planning, designing and constructing the needed transportation improvement. Cost factors include costs for right of way acquisition and relocation rights, sub-grade preparations, drainage features, surfacing, structures, and roadside amenities. While the extent to which raw land costs outside a UGB are generally cheaper than raw land costs inside a UGB is not considered a reasonable basis for determining reasonableness (*see* OAR 660-012-0065(5)(a)), comparative rural and urban land acquisition costs may be a legitimate basis for determining reasonableness when existing development patterns, required dislocations, loss of access and other factors are of such a magnitude as to substantially increase urban land acquisition costs above their raw land values.

*Operational feasibility* includes such factors as roadway design and geometry, operational safety, and engineering within the context of the identified transportation need. Relevant considerations include whether roadway design and engineering alternatives can reasonably and safely accommodate the identified transportation need consistent with adopted design/engineering and safety standards. Operational feasibility also typically considers a transportation alternative's ability to operate in a manner that meets the identified transportation need and function. In *Yamhill County*, this was measured by determining whether non-exception alternatives complied with the maximum highway performance standards set out in ODOT's acknowledged 1999 Oregon Highway Plan.

*Economic dislocation* includes direct and indirect impacts to existing and planned economic uses. It considers impacts to commercial and industrial businesses that are directly displaced or otherwise adversely impacted through loss of parking or access, reduced lot size, loss of expansion opportunities or by other means. It also considers adverse impacts to agricultural or forestry operations, including loss of acreage for farming or timber harvesting, loss of direct access to fields or timber tracts, impacts to irrigation and drainage systems, impacts to spraying and other accepted farming or forestry practices, cost impacts, and the like.

*Other relevant factors* commonly involve environmental considerations, such as avoidance of significant wetlands, parks, wildlife refuges, recreational areas or threatened or endangered species. These factors typically reflect circumstances that are unique to a specific area. In one instance noted below, an identified relevant factor considered the impacts of various alternatives on the region's ability to comply with the TPR's "vehicle

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The exception shall set forth the facts and assumptions used as the basis for determining why the use requires a location on resource land subject to Goals 3 or 4."

miles of travel” standards. Overall, the thresholds standard provides local government with broad discretion to identify other relevant factors.

### Justification of Thresholds

OAR 660-012-0070(6) also requires local governments to justify the selected thresholds in the exception. While this requirement applies when the local land use proceeding results in an exception, it does not apply when the local government instead chooses a non-exception alternative. Because the requirement to justify thresholds does not apply when exceptions are not adopted, there may be many instances where this has occurred. Some instances where local governments found that non-exception alternatives could reasonably accommodate the identified transportation need are discussed below.

## **2. How have Thresholds been Established and Applied?**

In the 15 years since LCDC adopted the TPR in 1991, local governments have approved only about a dozen goal exceptions pursuant to the TPR exceptions standards. Examples include:

- Beef Bend Road (renamed Roy Rogers Road), a new 1.3 mile link within an existing 5.6 mile roadway segment in Washington County connecting the Sherwood/Tualatin area with Beaverton, Aloha and Hillsboro
- The West Eugene Parkway, a 5.8 mile arterial/expressway located predominantly inside the Eugene-Springfield urban growth boundary across West Eugene (exception taken solely to modify the alignment of a previously approved exception for this facility)
- Pacific Way Dooley Bridge Highway 101 Realignment (Clatsop County portion), for which less than one acre of the alignment was located outside the Seaside UGB
- The I-5 to 99W Connector, connecting I-5 near Tualatin with Oregon 99W near Sherwood (approved only to demonstrate need for a new facility; whether the need can be met inside or outside the Metro UGB has not yet been examined)
- The Newberg-Dundee Bypass, an approximately 12 mile new expressway in Yamhill County extending from east of Newberg to Dayton
- The East Dundee Interchange, an intermediate interchange connecting to the Newberg-Dundee Bypass east of the Dundee UGB
- The Stanton Boulevard Extension, connecting Oregon Highway 201 to Stanton Boulevard in Malheur County north of Ontario to accommodate increased employee commuter traffic associated with the new Snake River Correctional Institution
- Tank Farm Road Interchange, a new interchange along I-5 in Millersburg that replaced two existing I-5 interchanges.

Consistent with OAR 660-012-0070(2) and 660-012-0065(1), these exceptions were taken to Statewide Planning Goals 3, 4, 11 or 14. In other instances, exceptions for bridges or new roadway segments have been taken to Goal 15 (the Willamette River

Greenway) or Goals 16 or 17 (Estuarine Resources, Coastal Shorelands).<sup>4</sup> In those other instances, the TPR exception standards did not apply, because the TPR standards apply only to Goals 3, 4, 11 and 14. Instead, the local governments applied the exception standards in OAR 660, Division 4, which contain no thresholds standard and are not before the Joint Subcommittee for consideration.

For exceptions taken under the TPR, the thresholds established and applied have varied widely, reflecting differing transportation needs and particular local circumstances. However, a common thread can be found in their approach to operational feasibility. To aid the Joint Subcommittee's understanding of thresholds, this memorandum examines three of these exceptions. Later on, in the introduction to the discussion of the *Yamhill County* decision, the exceptions approving for the Newberg-Dundee Bypass and East Dundee Interchange are examined.

**Beef Bend Road** is a county road located outside Metro's regional UGB that provides the fastest and most direct access between Sherwood, King City and Tualatin to the south and the regional centers of Hillsboro and Beaverton to the north. The roadway adjoins the Tualatin National Wildlife Refuge and is part of the regional transportation system contained in Metro's Regional Transportation Plan (RTP).<sup>5</sup>

With the Tualatin/Sherwood area experiencing rapid growth, traffic volumes were forecast to more than double on a curvy, substandard 5.6 mile rural roadway segment connecting Oregon 99W in Sherwood with Scholls Ferry Road west of Beaverton. Examining this situation in the mid-1990s, Washington County determined a need for a north/south minor arterial facility providing for safe and efficient movement of people and goods between these subareas. Options included a new road, realigning existing Elsner Road, and improving other roads in the subregion. Some interested citizens also suggested applying techniques like road bumps and 25 mile per hour speed limits. In establishing thresholds, the County determined that cost was not a significant factor. However, operational feasibility was important because a facility that could not operate as and serve the function of a minor arterial would not adequately meet the identified transportation need. Accordingly, the County determined that the roadway "should and must operate in a manner consistent with its function of moving traffic efficiently between and through communities and to regional destinations. This necessitates the use and application of consistent, uniform [County] design standards." Noting that ORS 368.036 requires that roadways be built to adopted county standards, the exception stated that any alternative that could not meet such standards would not be deemed reasonable. The County also identified "reduction in vehicles miles traveled (VMT) as a threshold

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<sup>4</sup> These include the Haynes Slough Bridge Replacement in Coos County (a Goal 16 exception); the Pacific Way-Dooley Bridge exception through Seaside (Goal 16 and 17 exceptions); and an exception by the City of Springfield authorizing a temporary I-5 replacement bridge over the Willamette River (Goal 15 exception).

<sup>5</sup> The Beef Bend exception actually connects Beef Bend Road with Elsner Road and Scholls-Sherwood Road. Following its construction, Beef Bend Road was renamed Roy Rogers Road.

because a route that would significantly increase VMT would make it more difficult for the region to comply with Goal 12.<sup>6</sup>

The **West Eugene Parkway (WEP)** exception was quite different.<sup>7</sup> The original WEP exception (to Goals 3, 4 and 5) was approved and acknowledged in 1986, prior to adoption of the TPR. But in the 1990s, ODOT determined that the selected alignment might have significantly greater adverse impacts on threatened and endangered species than other potential alignments. Accordingly, Lane County reconsidered the proposed facility location. Because the need for the facility had previously been acknowledged, the selected thresholds emphasized “protecting natural resources and biologically sensitive areas consistent with federal and state environmental objectives.” As the exception stated, “Were it not for the significant adverse impacts of the Approved Design on high value wetlands and threatened and endangered species, the City of Eugene and Lane County would not now be considering comprehensive plan amendments to relocate the WEP. Instead, they could rely on the 1986 exception and their plans to construct the Approved Design.” The exception also considered cost, operational feasibility and economic displacements as thresholds. Regarding operational feasibility, it stated “A facility that cannot operate as a major arterial in a manner consistent with applicable state or local highway design and safety standards is not deemed reasonable to accommodate the WEP. Consistent with the identified need for the WEP, the facility must be capable of operating in a manner consistent with its function of moving inter- and intra-urban traffic efficiently through the Eugene-Springfield metropolitan area, and its design must be safe.”<sup>8</sup>

Following approval and construction of the Snake River Correctional Institution north of the City of Ontario in the 1990s, Malheur County approved the **Stanton Boulevard Extension**, extending Stanton Boulevard (a rural major collector) approximately one mile eastward to Highway 201 to provide a more direct route for a high percentage of prison employee commuter traffic traveling between the prison and Payette and Washington County, Idaho. Previously, Jacobsen Gulch Road and Oak Road connected Stanton Boulevard to Highway 201 over an approximately 2.5 mile distance. Jacobsen Gulch Road and Oak Road are substandard “local” roads with narrow travel lanes, few shoulders, and seven horizontal and two vertical curves that limit sight access. Also, Jacobsen Gulch Road is located along a river at the base of a north-facing slope. In winter, the pavement often ices over, making it hazardous, and the road has experienced a high accident rate. Prior to construction of the prison, Jacobsen Gulch Road and Oak Road served primarily the local rural/farming community. However, with the opening of the prison and the appearance of commuter traffic, these roads began functioning as

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<sup>6</sup> The Beef Bend exception considered impacts to agricultural lands through a detailed ESEE analysis. Because the new road alternative had the fewest adverse impacts on agricultural operations in the affected area, local farming community members on the citizens advisory committee unanimously favored it.

<sup>7</sup> The WEP is no longer listed as a project in the Eugene/Springfield Regional Transportation Plan. The project is discussed here solely for the purpose of providing an example of how thresholds have been applied.

<sup>8</sup> Opponents challenged this action before LUBA and the Court of Appeals, but their appeals were rejected by both bodies. *Friends of Eugene v. City of Eugene*, 44 Or LUBA 239, *aff'd without opinion* 189 Or App 335 (2003).

collectors. In establishing thresholds, Malheur County did not identify cost as a significant factor. However, safety was very important, especially since farm equipment and school bus drivers used Jacobsen Gulch Road. Like other local governments taking exceptions, Malheur County determined that “an alternative that cannot efficiently serve the function and provide the mobility demanded of a rural major collector will not adequately meet the identified need to improve connectivity between the [prison facility] and the communities where its employees reside. Hence, the question of whether existing roadways like Jacobsen Gulch Road or Chester/Ontario Heights/Community Roads can serve that purpose is relevant.”

### **3. Instances Where Local Governments Selected Non-Exception Alternatives.**

The following are examples of circumstances where exceptions were considered but not adopted because non-exception alternatives could reasonably accommodate the identified need.

The **Pacific Way-Dooley Bridge Project** in Seaside addressed a need to relieve significant congestion on the principal statewide highway serving the Oregon coast, US 101. In the local proceedings, there was substantial support for a bypass extending northward to Gearhart. That bypass would have been located almost entirely on resource lands subject to Goal 4 and possibly Goals 16 and 17. However, ODOT rejected a bypass alternative, recommending instead an alternative that generally followed an abandoned railroad right-of-way located a short distance east of existing Highway 101. Except for less than one acre in unincorporated Clatsop County, this alternative was located entirely within urban growth boundaries. In ODOT’s exception to coastal goals 16 and 17, ODOT acknowledged that the Seaside Comprehensive Plan contained language supporting the concept of a bypass located far enough to the east to avoid conflict with anticipated city development. ODOT further noted that such a bypass would require exceptions to goals 4, 11 and 14, and possibly goals 16 and 17, depending on its location. The exception then concluded that relocating US 101 via a bypass “would have been extremely difficult, if not impossible, to accomplish” under TPR standards. To do this, Clatsop County would need to show that none of the DEIS alternatives can reasonably accommodate the identified need, and “it is very unlikely that the County could make such a showing.”

In the **Spencer Creek Bridge Replacement Project** in Lincoln County, which involves reconstructing the deteriorating US 101 bridge over Spencer Creek located several miles north of Newport, ODOT considered a range of build alternatives, including realigning the highway through Beverly Beach State Park, through beach and dune areas protected by Goal 18, through the rural community of Beverly Beach, and through heavily forested lands east of the park. Applying the TPR, ODOT selected a reasonable alternative, albeit not necessarily the “optimum” alternative, that avoided nearby forest lands altogether and thus the need for an exception. This is an important point. Under the TPR exceptions standards, the issue is not whether a non-exception method or location can “best” meet the identified transportation need, but whether it can “reasonably accommodate” that need. If a non-exception alternative can reasonably accommodate the need, then exception alternatives cannot be justified.

The third example is ODOT's **Western Bypass Study**, which examined whether a new bypass should be constructed through Washington County connecting I-5 near Tualatin with US 26 near Hillsboro. When the study began, Washington County local governments were united in their support for a bypass. However, the TPR required ODOT to consider the viability of non-exception alternatives to meet identified transportation needs. As part of its environmental analysis, ODOT identified a range of alternatives, including a Bypass alternative, an alternative emphasizing transit and transportation system management, and an alternative emphasizing arterial upgrade and expansion. The study concluded that a mixture of arterial, transit and system management improvements, combined with some changes in land use designations and densities, could reasonably accommodate regional needs consistent with Level of Service "D" performance standards without a new bypass. The study resulted in recommendations to Metro that were adopted and provide the foundation for Metro's Regional Transportation Plan. As adopted, the only new limited access highway proposed in Washington County was the I-5 to 99W connector.<sup>9</sup>

These are but a few examples of circumstances where exceptions were not pursued. According to information provided by ODOT Regional Planners, most of the "potential goal exceptions" DLCD has identified in its memorandum to the Joint Subcommittee would not qualify for construction under OHP Policies 1G1 or 1H or for funding within 20 years. That some local government officials or stakeholders may desire them does not change this fact or make them more likely to occur. Instead, as DLCD itself acknowledges, the difficulties inherent in the exceptions process, combined with the availability of reasonable non-exception alternatives and high project cost, generally lead local governments not to pursue exceptions. See Appendix A, which provides supplemental information relevant to many of the existing or potential exceptions projects identified in DLCD's memorandum. ODOT believes these facts help to demonstrate that the TPR, in its current form, is working as intended.

#### **4. Application of Thresholds to the Newberg-Dundee Bypass.**

The principal stimulus for this Joint Subcommittee meeting is the *Yamhill County* decision and, in particular, the thresholds that Yamhill County established to judge the reasonableness of non-exception alternatives to the Newberg-Dundee Bypass and East Dundee Interchange (an intermediate interchange along the Bypass, located just east of Dundee's UGB).<sup>10</sup> To assist the Subcommittee, this section provides context for Yamhill County's actions.

For many years, Oregon 99W has served as both the "main street" for Newberg and Dundee and as a primary route connecting the Portland metropolitan region to the central Oregon coast, the Spirit Mountain casino, and the vineyards of Yamhill County. Over

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<sup>9</sup> The RTP amendment that Metro adopted identified a need for an I-5 to 99W connector, providing additional arterial capacity in the area of Tualatin and Sherwood, which could not be met through improvements to existing facilities. The amendment did not identify where the new connector would be located. However, if it required a location outside Metro's urban growth boundary, then necessary goal exceptions would be taken.

<sup>10</sup> Under the TPR, intermediate interchanges are considered independent projects that require independent justification.

the past decade, traffic on this stretch of highway increased by approximately 40 percent. By 2005, both on weekdays and weekends, lines of vehicles would often stretch for hours one mile or farther in both directions from the intersection of 5<sup>th</sup> Street in Dundee, where Oregon 99W has only one travel lane in each direction. This congestion blocked turning movements and access across Oregon 99W and created an unhealthy and unfriendly environment for residents, shoppers, tourists and persons simply passing through these towns.

Year 2025 traffic projections identified a continued increase in traffic volumes along Oregon 99W, ranging from 40% in downtown Newberg to nearly 50% in Dundee and 60% west of Dundee. According to “no-build” projections, by 2025, downtown Newberg and Dundee would experience, respectively, 15 and 14 hours of congestion each day, and travel through Newberg and Dundee would require more than 40 minutes under a No-Build Alternative, compared to 12-15 minutes with a Bypass. Even with improved express bus service, the addition of park-and-ride facilities, implementation of transportation system management measures, and improvements to existing transportation facilities above and beyond the many improvements ODOT has constructed over the past 30 years (see opening summary for a listing of these projects), the projected 2025 volume to capacity ratio in Dundee would be 1.25, far in excess of ODOT’s standard of 0.75 v/c for statewide highways and freight routes.

Based on these and similar findings, Yamhill County determined that a transportation need existed to provide significant congestion relief and improve the movement of people and goods for all users of the Oregon 99W corridor, including state, regional and local trips. In approving the Bypass, Yamhill County found that the Bypass would remove approximately 25,000 anticipated year 2025 daily statewide and regional trips from existing Oregon 99W in Newberg and approximately 38,000 daily statewide and regional trips from the highway in Dundee, freeing up Oregon 99W to serve local and remaining regional trips.<sup>11</sup> With these reductions in traffic volumes, Oregon 99W could again operate at acceptable performance standards.

To determine whether the identified need could be met by non-exception alternatives, Yamhill County established several thresholds, including a safety threshold, a community livability threshold (measured in accordance with principles set out in DLCD’s Smart Development Code Handbook), and an “operational feasibility and minimum transportation threshold.” The principal safety consideration was eliminating or reducing conflicts between different travel modes, particularly highway and freight as provided in OHP Policy 2G.<sup>12</sup> The livability threshold considered economic and community development objectives as set out in acknowledged plan documents and an adopted vision statement.

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<sup>11</sup> Statewide trips refer to movements of people and goods between regions of the state and between Oregon and other states. Regional trips refer to movements of people and goods between and through communities and accessibility to regional destinations within a metropolitan area, a county or a group of counties. Local trips refer to movement of people and goods within communities. See OAR 660-012-0005(28)-(30).

<sup>12</sup>OHP Action 2G.1 directs ODOT to “eliminate crossings at grade wherever possible.” Action 2G.2 provides: “Designate highway projects to avoid or reduce rail crossings at grade.” A railroad track parallels Oregon 99W through Dundee, approximately 170-200 feet south of the Oregon 99W right-of-way.

The operational feasibility threshold established the maximum volume to capacity standards set out in Table 6 of the 1999 OHP as minimum transportation performance thresholds for the Newberg-Dundee project. As applied, any alternative resulting in v/c ratios that exceeded those standards was deemed unreasonable. The Table 6 standards include standards for Statewide Highways and freight routes both inside and outside of UGBs. They also include standards for areas designated Special Transportation Areas (STAs), established by highway classification (Statewide highway, Regional highway, etc.) and location (inside or outside a UGB). This is important, because with approval of a bypass, existing Oregon 99W would no longer function as a Statewide highway/freight route serving primarily statewide and regional traffic (that function would be transferred to the Bypass). Instead, it would function as a lower category highway serving primarily local and regional traffic. Hence, the operational feasibility threshold would apply differently to the Bypass and the East Dundee Interchange.<sup>13</sup>

In applying the operational feasibility threshold to the **Bypass corridor**, Yamhill County examined whether combinations of non-exception alternatives could reasonably meet ODOT highway mobility standards for statewide highways and freight routes as set out in the 1999 Oregon Highway Plan:

“Further, because the OHP designates Oregon 99W as a Statewide highway and freight route, and because the identified transportation need is to serve statewide and regional traffic and freight movement and to separate this traffic from local traffic, the Board believes and finds that non-exception alternatives, in order to be reasonable, must be consistent with the functions and management objectives of Statewide highways and freight routes as identified in the 1999 OHP \* \* \*. The Board concludes that alternatives that are inconsistent with [OHP highway mobility] policies or are incapable of achieving these functions and management objectives will be deemed incapable of reasonably accommodating the identified transportation need.”<sup>14</sup>

In justifying this threshold, the Board of Commissioners found that these were the performance standards established by ODOT and acknowledged by LCDC pursuant to OAR 660-012-0020(3)(a)(B) (which requires, for state and regional facilities, that the

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<sup>13</sup> At the time it adopted the OHP, the Oregon Transportation Commission examined the approaches of several other states about how to set levels of service (LOS). The mobility standards (v/c) ultimately included in the OHP were one of the more extensively discussed aspects of the OHP. Adoption of the standards followed several OTC work sessions on the matter. There were also workshops conducted with local governments and MPO representatives. The OHP adoption of mobility standards also provided the opportunity for local governments to request different mobility standards applied locally. The OTC has approved these on two occasions, for the Metro MPO area and for the South Medford area.

<sup>14</sup> Yamhill County findings, page 10. The OHP mobility policies include a policy (Action 1F.3) that directs consideration of alternative highway mobility standards for (1) metropolitan areas or portions thereof to support an integrated land use and transportation plan for promoting compact development, reducing the use of automobiles, increasing the use of other transportation modes, and promoting efficient use of transportation infrastructure; (2) Special Transportation Areas; and (3) areas where extreme environmental or land use constraints make infeasible the transportation improvements necessary to accommodate reasonable use of properties in accordance with acknowledged plans or to accommodate comprehensive plan changes that carry out OHP Policy 1B (Land Use and Transportation).

transportation capacity analysis “be consistent with standards of facility performance considered acceptable by the affected state or regional transportation agency”).

In applying the operational feasibility threshold to the **East Dundee Interchange**, for which approval of a bypass corridor was a necessary precondition, Yamhill County found:

“Alternatives to the East Dundee Interchange addressed in the Exceptions Document include (1) establishing a ‘Special Transportation Area’ in Dundee to permit higher levels of congestion to occur; (2) retaining Oregon 99W as a three-lane highway and improving other roads in the area; (3) widening Oregon 99W through and south of Dundee to five lanes; and (4) creating a couplet in Dundee and expanding Oregon 99W to five lanes south of Dundee. \* \* \*.

“A “Special Transportation Area (“STA”) is an OHP-authorized designation that may be applied to a state highway segment to foster compact development patterns when a downtown, business district or community center straddles a state highway inside a UGB. \* \* \*. The primary objective of an STA is to provide access to and circulation amongst community activities, businesses and residences and to accommodate pedestrian, bicycle and transit movement along and across the highway. Under the OHP, traffic speeds are slow, generally 25 miles per hour or less. The maximum permissible volume to capacity ratio in an STA is 0.95.”<sup>15</sup>

The County Commissioners examined the reasonableness of designating Oregon 99W in Dundee as an STA pursuant to the operational feasibility threshold, but based on detailed findings, they concluded that neither an STA designation nor any other non-exception alternative could “reasonably accommodate” the identified transportation need. With a Bypass but without the East Dundee Interchange, by the end of the 20 year planning period, Oregon 99W as a three-lane highway through Dundee would continue to operate at a volume to capacity ratio over 1.0 (i.e., volume exceeds capacity), in violation of both state and local highway performance standards.<sup>16</sup> But because widening 99W to four lanes could achieve compliance with mobility standards, and because four-lane roadways are not inherently “unreasonable”, Yamhill County did not rely on mobility standards to justify the East Dundee Interchange exception. Rather, it focused on its livability threshold, determining that a five lane facility through Dundee would prevent the city from achieving the “smart growth” type of urban form envisioned in its plans and create

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<sup>15</sup> Yamhill County findings, page 25-26.

<sup>16</sup> An argument was raised that with the Bypass but without the East Dundee Interchange, the v/c ratio in downtown Dundee would not exceed 1.0 until well into the 20 year planning period. However, the TPR requires that the determination of local and regional transportation needs be based on population and employment forecasts that are at least 20 years in duration. See OAR 660-012-0070(4) and 660-012-0030(3)(a).

too many significant economic displacements.<sup>17</sup> On appeal to LUBA and the Court of Appeals, opponents did not articulate grounds challenging this basis for justifying the East Dundee Interchange exception.

### **5. The LUBA and Court of Appeals *Yamhill County* Decisions.**

1000 Friends and Columbia Empire Farms appealed the Newberg-Dundee Bypass exceptions to LUBA, challenging the operational feasibility threshold as unjustified. LUBA rejected this challenge, holding that OAR 660-012-0020(3)(a)(B) directs ODOT to establish standards for facility performance that it deems acceptable on state facilities, and here the use of mobility standards as thresholds was consistent with the state performance standards acknowledged in the OHP, which is part of ODOT's TSP. LUBA concluded that 1000 Friends had not persuasively explained why ODOT and the County erred in using this as a threshold. *1000 Friends of Oregon v. Yamhill County*, 49 Or LUBA 640, 648-650 (2005).

The Court of Appeals affirmed this aspect of LUBA's opinion on appeal. Like LUBA, the Court noted that under OAR 660-012-0020(3)(a)(B), for state facilities, "the transportation capacity analysis shall be consistent with standards of facility performance considered acceptable by the affected \* \* \* agency," and it found here that the operational feasibility threshold was consistent with OHP standards. The Court found nothing unreasonable or inappropriate with this, even if it did narrow the available alternatives and make selection of a bypass more likely. The Court also rejected the argument that the threshold should fail because a bypass consumes farmland, farmland is "different", and the "heavy weight of state policy under Goal 3 is on the preservation of farmland over converting it to urban uses." The Court found that this argument was not grounded in the wording of ORS 197.732(1)(c)(A) [the statutory provision authorizing "reasons" exceptions] or in OAR 660-012-0070(4), and it refused to insert (into these standards) what the legislature and LCDC had omitted. The Court concluded that petitioner had failed to explain why the way the County used the standard was inappropriate, and it held that the threshold was not unjustified. *Yamhill County*, 203 Or App at 330-332.

### **C. DLCD Concerns Regarding Implications of *Yamhill County* Decision.**

DLCD's concerns are spelled out in a separate memorandum that DLCD has prepared for this meeting. Boiled down to its essentials, DLCD believes that

- The *Yamhill County* decision in essence "makes use of ODOT's v/c standards something close to a safe harbor for evaluating whether non-exception alternatives reasonably meet transportation needs;

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<sup>17</sup> Goal Exception, pages 75-89. A five lane roadway through Dundee would have reduced the lot depth between Oregon 99W and the railroad right-of-way to about 150 to 170 feet. Provision of land for automobile circulation would have further reduced lot depths to about 130 feet. The widening would have displaced over 80 percent of the businesses located along the south side of the highway, including Argyle Winery, Dundee's anchor business. Argyle Winery testified that if displaced, it would not relocate in Dundee.

- As such, the *Yamhill County* decision will make it easier for local governments to approve exceptions in situations where potentially reasonable non-exception alternatives come close to but do not quite meet v/c standards; and
- The OHP v/c standards are not a good measure of whether non-exception alternatives are unreasonable because as a matter of policy and practice DLCD currently allows and will increasingly in the future have to accept as “reasonable” transportation solutions that do not fully meet the OHP v/c standards.

DLCD identifies seven factors which lead it to believe there is potential for a significant increase in consideration of roadway projects involving goal exceptions over the next several years. Those factors are:

- In the past local governments have expressed interest in a large number of projects requiring goal exceptions
- The *Yamhill County* decision changes the “legal landscape” for approval of goal exceptions by allowing local governments to establish v/c standards as thresholds
- In the next five years, many communities will be updating their transportation system plans. As TSPs are updated, more roadway and highway segments will be projected to fail to meet v/c standards 20 years into the future
- Local communities or important stakeholders want and advocate for big road projects as effective means to increase economic development opportunities or remedy growing traffic congestion or safety problems.
- Local communities have a financial incentive to pursue big projects because big projects are generally funded by the state or through Congressional earmarks.
- Non-exception solutions are locally difficult or controversial based on their potential impacts on the community and economic interests.
- Many local governments ignore the availability of funding when adopting TSPs.

#### **D. ODOT Response to DLCD Concerns.**

ODOT believes that DLCD’s concern that an OHP v/c threshold will result in numerous goal exceptions justifying new bypasses, interchanges and highway segments on rural lands is speculative and unrealistic, primarily because (1) proposals for major new facilities must comply with OHP policies, (2) OHP policies do not favor new facilities, (3) OHP policies allow local governments to accept higher levels of congestion, (4) many of the potential goal exceptions DLCD identifies would not qualify for construction under the OHP, and (5) ODOT lacks adequate funding to build many new facilities over a 20 year planning period in any event.

The OHP includes provisions (Action 1F.3) for local governments to ask the OTC to approve alternative mobility standards to those set out in the OHP. Already, the OTC has approved alternative standards for the Portland metro area and in Medford. Alternative standards are also being discussed as an option in the Eugene/Springfield area, although no formal request has been made to the OTC.

Even where local governments might justify an exception using OHP mobility standards and funding is potentially available, other OHP policies may prevent local governments

from amending their TSPs to authorize new bypasses, interchanges or highway segments.<sup>18</sup> OHP Policy 1G (Major Improvements) directs ODOT to maintain highway performance and improve safety by improving system efficiency and management before adding capacity. Action 1G.1 directs ODOT to use a priority system for developing corridor plans, TSPs, the Statewide Transportation Improvement Program and project plans to respond to highway needs. Under this system, adding new facilities is the lowest priority, below protecting the existing system, improving the efficiency and capacity of existing highway facilities, and adding capacity to the existing highway system. As described in the summary, the Newberg/Dundee situation provides a good example of how ODOT has followed this approach until further efficiency and capacity improvements to the existing system are no longer adequate to accommodate the transportation need. Also, OHP Policy 1H (Bypasses) requires ODOT to identify the need for new bypasses “in a manner consistent with Oregon Highway Plan Policy 1G.”

Where new bypasses or interchanges are proposed, ODOT must establish joint agreements, in the form of interchange management plans, access management plans, master plans or interchange overlay plans to protect the function of the transportation facility and ensure compatible land uses nearby. See OHP Action 1H.1 and Policy 3C. Hence, even where exceptions are justified, ODOT must take steps to protect lands in the vicinity of interchanges from growth patterns that consume resource lands or foster urban sprawl.

In several communities, ODOT has not supported new bypasses. These include Sandy, Bend, Redmond, Sisters, LaPine, Philomath, Seaside and Terrebonne. Moreover, for the vast majority of cities around the state that have expressed a desire for a bypass project, bypasses are not likely to get built within the 20 year planning period, even if they could be justified, because adequate funding for expensive facilities like bypasses simply is not available.

Both ODOT and DLCD participate in the development and adoption of, and in the case of LCDC, acknowledgment of local and regional TSPs. During the TSP development process, ODOT must work and negotiate with local jurisdictions to develop a reasonable and feasible transportation system. Those discussions include a fair amount of compromise and difficult trade-offs between ODOT and the local jurisdictions in order to reach consensus. Where compromise cannot be reached, both agencies have the opportunity to object to or appeal facility decisions that do not comply with state planning goals at the system planning stage.

With regard to using highway mobility standards as thresholds, DLCD’s concerns focus on state rather than county or city facilities. This means ODOT will be involved in the proceedings. And while DLCD may not always agree with ODOT in its determinations whether or not to build major new transportation facilities on rural lands, the existing TPR standards ensure that DLCD or other parties can propose not only their own non-

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<sup>18</sup> Some TSPs mention a desire for a bypass or an interchange, but do not expressly authorize one. Failure to include such an improvement on the approved project list would constitute a lack of authorization to construct such a facility absent a TSP amendment, which might require goal exceptions.

exception alternatives for local government consideration, including alternatives involving STAs, but also their own thresholds. Given this, together with the safeguards provided by OHP policies and the overall lack of funding to build new bypasses or other major facilities throughout the state, ODOT believes that an operational mobility standard applied in the way that ODOT and Yamhill County applied it to the Newberg/Dundee Bypass project poses no serious threat to the integrity of the land use program.

ODOT believes that Yamhill County acted appropriately in establishing and applying the operational mobility threshold, and that LUBA and the Court of Appeals correctly affirmed Yamhill County on this issue. In reviewing this threshold, these appellate bodies properly considered it within the broader context of the Transportation Planning Rule.<sup>19</sup> In relevant part, the TPR directs ODOT to (1) identify a system of transportation facilities and services adequate to meet identified state transportation needs (OAR 660-012-0015(1)), and (2) prepare a transportation capacity analysis “consistent with standards of facility performance considered acceptable by [ODOT]” (OAR 660-012-0020(3)(a)(B)). Furthermore, OAR 660-012-0060(1) provides that land use plans be consistent with the identified function, capacity and performance standards of transportation facilities.

The Oregon Transportation Commission adopted the OHP, which is its modal plan for highways, pursuant to these TPR requirements. The OHP established a hierarchy of state highways, identified these highways in terms of their functions, and established performance standards to ensure that those highways will continue to serve their intended functions. The OHP was then acknowledged as being consistent with the TPR. As noted in footnote 14 above, the OHP mobility standards (which the OTC relaxed in 2005 for most urban highway segments with speeds of 35 miles per hour or less in response to concerns raised in these TPR proceedings) were not established in an *ad hoc* or arbitrary manner or without due regard to the interrelationship of land use and transportation. Neither were they established without significant public and MPO/local government input. They were established to ensure a state highway system that functions properly to provide for the efficient movement of people and freight, which is a necessary component for livability and economic prosperity in Oregon. Where higher levels of congestion can be tolerated, the OHP provides for the creation of STAs or the adoption of alternative performance standards. But STAs or alternative performance standards are often not the answer, particularly along important freight routes or where local conditions do not facilitate STAs.

Given these TPR planning requirements, ODOT finds contradictions in DLCD’s analysis. On the one hand, the TPR directs ODOT and local governments first to identify transportation functions and establish appropriate capacity and performance standards for transportation facilities in order to establish systems of transportation facilities and services “adequate to meet” identified state, regional and local transportation needs (OAR 660-012-0015, 0020(3)), and then to maintain consistency with those standards (OAR 660-012-0060). ODOT did so through a public process, and the result of its effort (the OHP) is acknowledged. But DLCD now is suggesting that ODOT and local governments

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<sup>19</sup> These decisions are set out in relevant part in the memorandum from Angelo Planning Group dated August 8, 2006.

ignore and violate these approved standards, in order to avoid adversely impacting resource lands.

If DLCD's position is that the OHP and its standards too easily facilitate locating new state transportation improvements on resource lands – a contention to which ODOT takes exception – then by encouraging changes to the TPR exception standards, DLCD attacks a mere symptom of the problem it perceives, not the cure. If there is a problem with OHP or local government roadway performance standards, the more appropriate and direct way to address the problem is through changes to the planning elements of the TPR in OAR 660-012-0020 through 660-012-0040. Stated more precisely, DLCD should not recommend changing the TPR thresholds provisions to prevent reliance on standards that the TPR elsewhere requires ODOT and local governments to meet. If changes to the rule need to be made, then ODOT suggests strengthening Section 0020, which addresses how and what major improvements can be included in a TSP.

Finally, ODOT is concerned that in its efforts to protect resource land from development, DLCD is discounting the importance of a properly functioning state transportation network. DLCD's arguments imply that new transportation facilities outside UGBs are inherently "bad" and of secondary importance to resource land protection. The arguments ignore the fact that roads connect urban areas and thus sometimes require a rural location. They also ignore the fact that, like resource land protection, a properly functioning state highway system is critical to the health, livability, and economic and social well-being of Oregon residents. And they fail to acknowledge that growth over time has placed significant pressures on the state highway network, especially where state highways also serve as a community's "main street." While non-exception alternatives are the solutions ODOT has most often selected to resolve traffic congestion or safety problems, these do not always work. Where highways can no longer serve their identified functions to facilitate the safe and efficient movement of people and goods, new roadways are sometimes the only reasonable solution necessary, and placing them on resource lands is sometimes the only reasonable option.

In ODOT's opinion, the TPR threshold standards have worked and continue to work as intended. In the over 15 years they have been in place, a mere handful of exceptions have been approved. Conversely, in many instances, the exceptions standards, including the requirement that thresholds be established and justified, have prevented approval of inappropriate exceptions. These facts hardly warrant changing the existing exceptions standards.

Until it is clearly demonstrated that local governments and ODOT are misusing the TPR thresholds standards, ODOT believes there is no good reason to amend those standards. The problems DLCD perceives do not lie with use of a v/c threshold standard, because that standard is merely a reflection of other TPR requirements and must be considered within the broader context of the OHP. If DLCD is concerned with how cities and counties will apply existing TPR planning provisions to meet increased growth demands, DLCD could ask LCDC to modify or expand those planning provisions to require local governments to accommodate greater congestion levels on local roads. This would

reduce pressures to expand state highways or build new state facilities. As DLCD recognizes, the OTC amended the OHP highway performance standards in 2005 to allow greater levels of congestion on state facilities. However, there are limits to how much congestion the state highway system can tolerate without severely impacting the state's economic well-being and livability.

**E. Attachments.**

Attached to this memorandum is a document providing supplemental information regarding the adopted exceptions identified in Table 1 and potential goal exception projects identified in Table 2 attached to the DLCD memorandum. Regarding exceptions already adopted, the document shows that many of these exceptions were taken:

- Prior to TPR adoption in 1991
- To goals to which the TPR standards do not apply (e.g., coastal goals)
- For projects for which goal exceptions are no longer required under the TPR

The document also provides additional factual information to provide the Joint Subcommittee with a better understanding as to why the exception was taken.

Regarding projects potentially requiring exceptions, the document again separates out those projects requiring exceptions to goals to which the TPR standards do not apply and projects permitted on rural lands without goal exceptions. It also offers additional relevant information regarding projects to which the TPR does apply.