

**Joint-Subcommittee of the
Oregon Land Conservation and Development Commission
and the
Oregon Transportation Commission**

**Testimony received prior to the
March 30, 2011
meeting**



From LCDC:
Hanley Jenkins
Greg Macpherson
Marilyn Worrix



From OTC:
David Lohman
Mary Olson

From	Date Received
Matt Grady Senior Project Manager, Gramor Development	February 15
Ron Irish Transportation System Analyst, City Albany	February 16
Joseph Schaefer Land Use Planner, Schwabe, Williamson & Wyatt	February 23
Steve Nystrom Land Use Planning Manager, City of Eugene	February 25
Heidi Guenin Transportation Policy Coordinator, Upstream Public Health	March 21
Mary Kyle McCurdy Staff Attorney, 1,000 Friends of Oregon	
Rob Sadowsky Executive Director, Bicycle Transportation Alliance	
Mara Gross Policy Director, Coalition for a Livable Future	
Steph Routh Executive Director, Willamette Pedestrian Coalition	
Jane McFarland Principal Planner, Land Use and Transportation Planning, Multnomah County	March 22
Alejandro Queml Program Supervisor, Health Communities By Design, Multnomah County	

Committee Staff

For further information or to submit written testimony, contact Matt Crall:

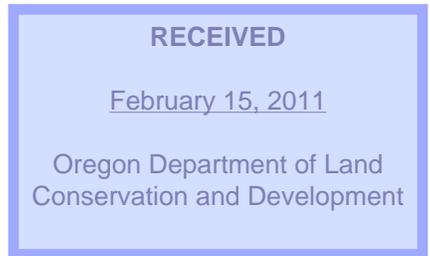
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635 Capitol St NE, Suite 150
Salem OR 97301-2564



February 15, 2011

Michael D. Rock
Oregon Department of Transportation
Transportation Development Division
555 13th Street NE
Salem, OR 97301



RE: Proposed Transportation Planning Rule (TPR) Amendments

Dear Joint Committee Members:

Gramor Development is an established northwest developer of high-quality, well-designed commercial shopping centers and mixed use developments. Examples of Gramor's projects include Lake View Village in downtown Lake Oswego, Progress Ridge TownSquare and Murray Scholls Town Center in Beaverton and the Happy Valley Town Center in Happy Valley.

Gramor is interested in maintaining an adequate inventory of buildable lands inside growth boundaries. Many infill, refill or new development sites inside growth boundaries are constrained. Often the constraint is inadequately sized parcels already zoned for commercial or mixed use development. In those cases, Gramor must rely on comprehensive plan map and zoning map amendments and/or related text changes to obtain a development site of adequate size. Those cases trigger the need to comply with the Transportation Planning Rule, which often proves to be problematic.

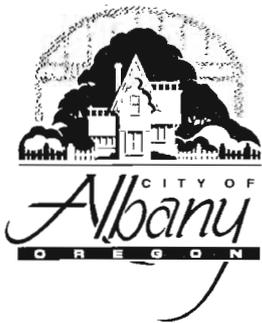
The Transportation Planning Rule needs to be simplified and streamlined. I believe that zone changes in conformance with comprehensive plans should not trigger the need to comply with the TPR. In addition, the TPR needs to be further modified to allow private developments to mitigate their project impacts without being required to fix existing or project transportation system deficiencies. That part of the rule terminates projects and is bad for the economy.

Thank you for the opportunity to comment. We would like the opportunity to participate in a broader discussion with other industry members to fashion practical solutions based upon factors in the market place.

Sincerely,
Gramor Development, Inc.

Matt Grady, AICP
Senior Project Manager

MG:kw



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February 16, 2011

Oregon Department of
Land Conservation and
Development

February 16, 2011

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Matthew Crall
Oregon Department of Land Conversation and Development
635 Capital Street NE
Salem, OR 97301

Dear Mr. Crall:

TPR 0060 REVIEW

I attended the joint subcommittee meeting held on February 15, 2011, and listened with interest to the comments provided and the questions asked by the subcommittee members. The subcommittee expressed a desire to hear about specific examples of problems encountered by application of the TPR as well as suggestions for changes.

Albany recently updated its TSP and extended the plan's horizon year from 2015 to 2030. One of the primary reasons for undertaking that four-year effort was problems we had encountered with the TPR. The TSP had been developed with a 20-year horizon, and we were just over half way past that point. The TPR analysis needed to approve developments requiring zone changes were being developed with a horizon year that exceeded that of our TSP. As a result, we were finding the improvements envisioned by the TSP did not have enough capacity to accommodate proposed developments. Those issues invariably occurred along the highway system (I-5 ramp terminals, Highway 99E, and US 20) and not on corridors under local jurisdiction. We thought updating the TSP and developing a new project list would provide enough reserve capacity on the system to allow for approval of future projects that triggered the TPR.

Now that we have finished the TSP update, it looks like the reserve capacity we thought we could achieve on the highway system will not be there. Despite including virtually all of the capacity improvements we could come up with (duel left-turn lanes, dedicated right-turn pockets, etc.) most signalized intersections along the highway system are projected to operate at or over the OHP standard at our new TSP's horizon year. Meeting the OHP standards proved impossible. As a result we will be in front of the OTC shortly requesting approval of alternate mobility standards along large sections of the Highway 99E and US 20 corridors through town. That will lead to future TPR issues. Virtually any project involving a TPR review that includes one of those locations will be in a situation where "one new trip" will cause a significant effect, with no mitigation possible except adding through lanes to the entire highway system along established commercial corridors. In short, under the current rules the answer to those future development proposals will be "no."

I believe the problems with the TPR, as it is used in conjunction with OHP standards, are structural and run deep. A minor tweak might provide some short-term relief, but will not address the larger long-term issues that need resolution. The underlying problem

February 16, 2011

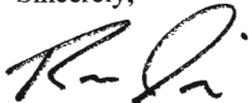
seems to be that our land use planning goal of compact urban development served by an efficient multi-modal system is not the outcome driven by application of the current OHP standards during TPR reviews. None the less, I recognize that time and political constraints by necessity limit the scope of the current TPR review. With that fact in mind, I offer the following suggestions:

Allow use of average trip generation: Zone changes that implement assumptions included in an adopted TSP are not subject to another TPR analysis. Trip generation assumptions used during TSP development to model and analyze vacant and underutilized sites are based on average trip generation rates and not worst case. That approach recognizes that some sites will develop with more intense uses, and some with less. That approach is used because it has been judged better than making a worst case assumption for every site, which would unavoidably result in over-estimating congestion and mitigation needs. The process used during TSP development is in stark contrast to the “worst case” assumptions required for a stand-alone TRP analysis. That is true even though the risk and impact of over and under estimating trip generation is the same in both cases. Specifically, allowing use of average trip generation with the TPR would make trip generation assumptions consistent across both types of analysis. Projects involving only a zone change could use average trip generation. Projects with a bundled zone change/development proposal would assume the higher of the average for the zone or the specific development proposal being considered.

Develop corridor or area mobility standards: The OHP standards deal with intersections on a point by point basis. That makes it difficult if not impossible to consider mobility improvements along a corridor unless the v/c deficiency at each problem intersection is fully resolved.

Allow multi-modal mitigation for cases of significant effect: Allowing TPR mitigation to include multi-modal improvements like sidewalk, bike lane, and transit facilities would go a long way towards achieving the goal of compact development served by an efficient multi-modal system. Developments in urban areas that resulted in a significant effect could still take place without being “pushed” to the urban fringe, and at the same time headway would be made towards development of a fully multi-modal transportation system.

Sincerely,



Ron Irish
Transportation Systems Analyst

RGI:prj

c: Greg Byrne, Community Development Director (via e-mail)

From: Schaefer, Joseph [JSchaefer@SCHWABE.com]
Sent: Wednesday, February 23, 2011 11:45 AM
To: matthew.crall@state.or.us
Cc: Morasch, Steve
Subject: TPR Framework Memo



Matt:

I just read the very excellent memo (version 4), which is by far the best summary of TPR issues, so congratulations.

There is one sentence that I and one of the litigators here think is not accurate, on page 6 under the heading "Make mitigation roughly proportional."

The last sentence reads "Dolan applies to exactions where adopted zoning already entitles the owner to a proposed use, and is not directly applicable to discretionary or legislative rezonings that are governed by TPR 0060."

Dolan does apply to all discretionary (read quasi-judicial) applications, including rezoning, because everyone is entitled to a quasi-judicial rezoning if they meet the criteria, in the same manner that they are entitled to site plan approval and building permits for a permitted use if they meet all the standards and criteria. If someone applies for a zone change, and the gov't conditionally approves it pending a dedication, the dedication must meet the roughly proportional standard.

So we suggest the sentence be revised to read: "Dolan applies to exactions that are required as a condition for a quasi-judicial land use approval, and is not applicable to legislative rezonings that are governed by TPR 0060." We appreciate your sensitivity to the Dolan issue, as reflected in this paragraph and also in the discussion on page 7 regarding the unfair burden on the last property to develop, and want to ensure the memo is correct about the distinction between legislative and quasi-judicial procedures.

Thanks

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February 25, 2011

Oregon Department of
Land Conservation and
Development

From: NYSTROM Steven A [Steven.A.Nystrom@ci.eugene.or.us]
Sent: Friday, February 25, 2011 3:04 PM
To: 'matthew.crall@state.or.us'
Subject: Follow up to TPR hearing

Matt, I testified last week at the Joint Subcommittee meeting regarding the TPR/OHP. Commissioner Lohman asked me to follow up with examples of areas where I felt the description of issues on the Framework Options underplayed their significance. I'd appreciate it if you could forward the following comments to the subcommittee.

Exempt zone changes consistent with comprehensive plan designation

The first sentence "In most cases a zone change is not subject to 0060 if it is clear that the TSP assumed trip generation is consistent with the comprehensive plan....". While I wish this were true, this in fact is not at all the case. Based on current court cases, ALL zone changes are subject to the TPR. It's also important to note that while some zone changes may involve less analysis than others (e.g. able to determine no significant effect), the fact is that once the TPR analysis is triggered, there are a lot of unknowns for perspective applicants (cost, potential for mitigation and of course time delays). While on paper it may seem that this situation is nothing more than a nagging issue; the uncertainty, time delays and costs (most times a traffic professional is necessary) are enough, in many cases, to scare away projects altogether.

Other possible exemptions for zone changes

The discussion of the additional exemptions implies that such actions would have a notable impact on the current problem. While I appreciate the intent behind the other suggested exemptions, they would barely scratch the surface of the underlying issue. Frankly, to write such narrow exemptions may require more time than it's worth, and may only end up making it more complicated to navigate the TPR.

Amend local Standards

The discussion portrays the issue as simply a lack of understanding at the local level that the TPR does have the authority to amend their local standards. While I can't speak for all cities, most cities are well aware that this option exists. The real problem lies with the cumbersome nature of the amendment process, especially when involving privately initiated requests (zone changes or comp plan amendments). There is no realistic way to accommodate changes in local standards in the face of pending applications. While cities can consider more holistic changes to their standards, such efforts require tremendous resources and most likely would occur during their TSP updates. This situation begs for a much more nimble process to respond to changing circumstances.

Options for approval with a finding of significant effect

The description of this issue implies that with some simple guidance or education regarding the options provided for in 0060(2), future projects will find it much easier to work through the process of determining, and ultimately implementing necessary mitigation. With all due respect, this statement completely misses the mark on what is occurring at the local level. For many privately initiated projects, particularly those of a modest level, the mere prospect of having to do any TPR analysis for a simple zone change is enough to scare away many applicants. Keep in mind many of these applicants are not developers. They are property owners simply trying to bring their property into conformance with adopted comp plans in order to better position the property for sale to developers (another reason zone changes don't make sense for TPR review).

If the statements in this description also assume that many "simple" zone changes merely need to do some quick and dirty analysis to determine significance, I can assure you this is not reality. At minimum, most applicants are forced to hire professional traffic consultants to support their findings. Recent court decisions certainly don't support back of the napkin approaches. Further, we are seeing frequent challenges of TPR findings in our recent zone changes and comp plan amendments. It frankly serves as the easiest tactic to challenge a project. This in turn requires even more resources and complexity.

Trip Caps

This description fails to mention the more important element of trip caps. That is that trip caps do not provide a long term solution to the state's growth strategies. It's value is as a tool to avoid mitigation. It does nothing to promote the overall strategies of growing more efficiently. Eugene has implemented trip caps in 2 or 3 instances. While they helped move a single project along in each case, they resulted in significantly reduced development levels for that project and did nothing to address the future development strategies for other property owners in the area. At best, trip caps are a stop gap measure.

Unfair to burden only the last to develop

The description of this issue, in particular ODOT's role doesn't truly reflect the challenges that are faced at the local level. While ODOT may be more than willing to negotiate mitigation solutions, the significance of the mitigation is typically so great that in many cases that the project is dead on arrival. So while it's true that 0060 doesn't directly assign responsibility to one applicant, in fact, that is how it plays out. If ODOT is not prepared to fund the solutions, there are no options other than the applicant. Local SDC's and other similar tools don't come close to answering the question either.

Final Thoughts

As I mentioned in my testimony, I think it's important to understand that while many pieces of the TPR provide well-intentioned provisions, those of us at the local level are here to tell you that some of these elements are not working well, and in some cases, are producing significant unintended consequences which should be of concern to LCDC and OTC. I believe there are at least a few key areas of the TPR/OHP that could be addressed without significant resource commitments. These alone, could greatly improve the effectiveness of the TPR while addressing key statewide objectives. They include the following:

- * Exempt zone changes from the TPR if consistent with adopted comprehensive plan. As I noted, even if you believe it's a good idea to mitigate impacts at the time of zone change through the TPR, this in fact is not occurring in most cases.

Note: I also stated that most cities require development projects to submit a Traffic Impact Analysis (following a zone change approval). So in essence, there already is a requirement in place that ensures that the actual project (not a hypothetical one under the TPR) will adequately mitigate its impact. Exempting zone changes from the TPR would NOT eliminate an applicant's responsibility of mitigating their impacts. Rather, it would place the burden more appropriately with a developer (with an actual project). Given these provisions, I see little risk in exempting zone changes.

- * Use Average Trip generation, not reasonable worst case

- * Consider changes to mobility standards holistically. Don't simply focus on easier ways to change the standards case by case. ODOT should consider different benchmarks for their mobility standards, at least for urban areas.

- * Consider more flexible mitigation techniques. This could include a combination of timing, funding and triggers.

I hope this additional information has been helpful. I would be happy to provide further detail or assist in any way to move these amendments forward. Thank you again for your consideration of my input.

Steve Nystrom * Land Use Planning Manager
Planning Division * City of Eugene
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541.682.8385 * steven.a.nystrom@ci.eugene.or.us

We are writing in support of adjusting the Oregon Highway Plan (OHP) mobility standards. We believe adjustments to the standards are necessary to facilitate investments in complete streets, where pedestrian, bicycle, and transit facilities are safe, accessible, and desirable. Complete streets are fundamental to Oregonians being able to stay healthy and lead physically active lifestyles.

When we have healthier communities we have healthier Oregonians, which ultimately will save Oregon money. Research shows that people who live in built environments where they can walk, bike, and take transit live longer, healthier lives, with lower rates of diabetes, cancer, stroke, and heart disease.ⁱ At a time when almost two-thirds of Oregon adults are overweight or obese, we need to build a transportation system that makes it easy to be active, and we need policies that permit planners to design systems that facilitate and encourage more people to walk, bike, and take transit.ⁱⁱ

Many jurisdictions are already building their transportation systems to make walking, biking, and taking transit easier. Others would like to do more but are hindered by policies, including the OHP mobility standards, which force them into making auto movement dominant. All jurisdictions, especially those in urbanized areas, need to be able to get credit for making investments in their pedestrian, bicycle, and transit infrastructure, not just for expanding auto vehicle capacity on roadways. When urban roads are designed solely with the movement of auto traffic in mind, the safety of pedestrians, bicyclists, and transit-users are at risk. Pedestrians, bicyclists, and transit users are our most vulnerable road users, but there is safety in numbers – walking, biking, and taking transit are safer in areas where more people choose these modes.ⁱⁱⁱ If we choose to invest in streets that facilitate walking, biking, and taking transit, then there will be more people walking, biking, and taking transit, and it will become safer to travel by these modes.

We have many plans in Oregon that reflect the desire to have safe, accessible, multimodal transportation systems. Now we need to figure out how to set our policies so we allow those goals to become reality. The Oregon Transportation Plan, the Oregon Highway Plan, and the Oregon Statewide Planning Goals all include goals related to a safe, accessible, and multimodal transportation system that help make Oregon a vibrant place to live. We believe the mobility standards in Policy 1F of the Oregon Highway Plan do not allow us to live up to these goals; currently the standards only measure motor vehicle volume/capacity ratios. These standards do not allow enough flexibility for jurisdictions to capture the benefits of planning for bicycle, pedestrian, and transit facilities, safety improvements, demand management, strategies that deal with non-recurring congestion, and land use that supports walking, biking, and taking transit. Adjusting the mobility standards to provide this flexibility will allow jurisdictions to meet the safety, accessibility, and multimodal goals outlined in our state, regional, and local plans and to meet Oregon's greenhouse gas emissions reductions goals.

Oregonians rely on the transportation system every day to get where they need to go. The transportation system as a whole and the policies, like the Oregon Highway Plan, that guide how the system is built have significant impacts on the health of our community members. We hope the Oregon Transportation Commission will take this opportunity to make it easy for all Oregonians to walk, bike, take transit, and lead more physically active, healthier lives.

Heidi Guenin, Transportation Policy Coordinator
Upstream Public Health

Mary Kyle McCurdy, Staff Attorney
1,000 Friends of Oregon

Rob Sadowsky, Executive Director
Bicycle Transportation Alliance

Mara Gross, Policy Director
Coalition for a Livable Future

Steph Routh, Executive Director
Willamette Pedestrian Coalition

-
- ⁱ Frank, L. D., and Engelke, P. (2009). How land use and transportation systems impact public health: A literature review of the relationship between physical activity and built form. Active Community Environments Initiative Working Paper #1. Retrieved from: <http://cdc.gov/nccdphp/dnpa/pdf/aces-workingpaper1.pdf>
- ⁱⁱ Oregon Health Authority. (2007). Oregon Overweight, Obesity, Physical Activity, and Nutrition Facts. Retrieved from: http://public.health.oregon.gov/PreventionWellness/PhysicalActivity/Documents/Oregon_PANfacts_06.pdf
- ⁱⁱⁱ Jacobsen, P. L. (2003). Safety in numbers: More walkers and bicyclists, safer walking and bicycling. *Injury Prevention*, 9, 205-209.



MULTNOMAH COUNTY OREGON

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Prevent. Promote. Protect.

March 21, 2011

Joint Sub-Committee of the LCDC and OTC
Oregon Department of Land Conservation and Development
635 Capitol Street, NE Suite 150
Salem, Oregon 97310-2564**RECEIVED**

March 22, 2011

Oregon Department of
Land Conservation and
DevelopmentSubject: Rulemaking regarding the Transportation Planning Rule and Oregon Highway Plan

Dear Honorable Commissioners:

Multnomah County strongly encourages the State of Oregon to revisit its Transportation Planning Rule (TPR) and Oregon Highway Plan (OHP) policies to address unintended consequences that limit or encumber the development of healthy communities. We support flexible transportation policies and standards that balance mobility with opportunities for active transportation and other health-promoting behaviors, especially in areas with adopted regional land use and transportation system plans.

We believe flexibility in existing policies and standards is necessary to support investments in compact urban form with complete transportation systems that provide access to community destinations, including employment and essential services. Complete transportation systems -- where pedestrian, bicycle, and transit facilities are safe, accessible and desirable -- are fundamental to providing Oregonians with more opportunities to lead physically active and healthier lifestyles. In short, complete transportation systems are as critical to Oregon's public health as they are to the strength of our economy.

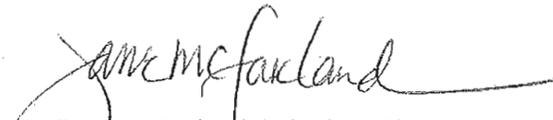
Healthier communities mean healthier Oregonians, which ultimately can save Oregon money. Oregon, like the rest of the country, faces a serious health crisis, led by increased rates of overweight and obesity that impact public health and the economy. This toll on human health translates into nearly \$1 billion per year in medical costs and lost productivity. Fortunately, research shows that people who live in communities where they can walk, bike, and take transit, forms of active transportation, exhibit lower rates of mortality and chronic diseases, including diabetes, cancer, stroke, and heart disease.

Oregon land development and transportation policies need to support urban forms that promote active transportation as well as mobility. The functionality of the State transportation system, freeways and highways, needs to be context-sensitive in balancing freight and auto mobility with investments for safe active transportation. Measures such as volume/capacity standards do not allow enough flexibility for metropolitan areas and local jurisdictions to capture the benefits of land use that supports active transportation, demand management and strategies that deal with non-recurring congestion. Adjusting mobility standards for urban segments of freeways and highways will allow jurisdictions to meet the safety, accessibility, and multimodal goals outlined in our state, regional, and local plans and to meet Oregon's greenhouse gas emissions reductions goals.

Joint Sub-Committee of the LCDC and OTC
March 21, 2011
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Oregonians rely on the transportation system every day to get where they need to go and to move their goods and services. The transportation system as a whole and the policies, like those in the TPR and OHP that guide how the system is built, have significant impacts on our quality of life. We respectfully request the LCDC and OTC Joint Subcommittee craft policies changes leading to sound public and private investments that both benefit our economic health and make it easy for Oregonians to walk, bike, take transit, and lead more physically active, healthier lives.

Sincerely,



Jane McFarland, Principal Planner
Land Use and Transportation Planning



Alejandro Qeral, Program Supervisor
Health Communities By Design