



Oregon

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TO: Land Conservation and Development Commission

FROM: Robert Cortright, Transportation Planning Coordinator

SUBJECT: **Agenda Item 6, February 1- 3, 2006 Commission Meeting**

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

I. AGENDA ITEM SUMMARY

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

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

II. SUMMARY OF RECOMMENDED ACTION

The department recommends that the Commission receive testimony from members of the public wishing to comment on the proposed rule amendments. (Attachment A.) After the close of the public hearing, the Commission should deliberate and consider adoption of the proposed rule amendments. The department recommends that the Commission adopt the proposed amendments to Division 012 (the Transportation Planning Rule) and Division 004 (the Exceptions Rule) as set forth in Attachment A. The department further recommends that the Commission continue the rulemaking hearing to its March meeting to consider whether to adopt additional amendments to Rule 0070 related to the goal exception thresholds issue.

III. BACKGROUND AND PUBLIC PARTICIPATION

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

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

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

At the Commission's September 2005 meeting, staff reviewed the proposed schedule, described proposed rule amendments and outlined issues. The department filed formal rulemaking notice in October. An initial public hearing was held at the Commission's December 1, 2005 meeting in Medford. This staff report includes a response to comments and additional recommendations for revisions to the proposed amendments.

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

IV. LCDC REVIEW CRITERIA AND PROCEDURES FOR RULEMAKING

The Commission's procedures for rulemaking derive from ORS Chapter 183 and are specified in procedural rules at OAR 660, Division 1. In general, the Commission must hold a public hearing and provide an opportunity for interested parties to testify on the proposed rules. The Commission must deliberate in public and, if the Commission makes a decision to adopt any or all of the proposals, a majority of the Commission must affirm the motion to adopt.

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

“197.040 Duties of Commission; rules.

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

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

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

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

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

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

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

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

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

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

V. RESPONSE TO ISSUES FROM THE DECEMBER 1 HEARING

At the conclusion of the December 1 hearing, the Commission directed the department to consider comments and possible amendments in three of the five “issue areas” for proposed amendments.¹ These include:

¹ Proposed rule amendments in the two other issue areas – transportation project development and minor and housekeeping amendments – are recommended for adoption and included in Attachment A. Proposed amendments addressing these issues are unchanged from the November 1 draft of the rule.

- TPR Purpose Statement
- Exceptions for Road Improvements on Rural Lands
- Metropolitan Planning

The staff report also addresses “Other Issues” raised at the December 1 hearing. The discussion below outlines the department’s additional analysis on each of these issues and includes, where appropriate, recommendations for changes to the proposed rule language. Attachment A includes the proposed rule amendments. (New language added since the December 1 public hearing is highlighted in bold and underlined.)

A. TPR Purpose Statement

The Commission directed the department to consider several comments and options for amendments to the TPR purpose statement (Rule 0000). The Commission asked that the department present issues and options in the form of a “decision tree” to facilitate deliberation on this part of the rule. The department is recommending a revision to the purpose statement to respond to the recommendation from the City of Portland and others that the purpose statement incorporate some reference to the Goal 12 language to “avoid principal reliance on any one mode of transportation.”

Decision Tree

A generalized decision tree is outlined below:

1. Decide whether a longer or shorter purpose statement is appropriate



Review reasons for the purpose statement

- for Commission rules in general
- for the specific issues addressed in the TPR

If Longer: Use Joint Subcommittee/ Staff Recommendation

If Shorter: Consider an alternative version of the purpose statement



2. Decide whether “avoid principal reliance on any one mode” language from Goal 12 provides desirable guidance or emphasis.



3. Decide whether clarification is needed about how “providing transportation options” relates to reducing reliance on the automobile.

1. Long or Short Purpose Statement

A number of commentators suggested that the Commission should adopt a shorter purpose statement. They expressed concern that the revised purpose statement was overly long and bureaucratic. In general, short purpose statements are preferred but in the case of the Transportation Planning Rule the Joint Subcommittee and staff concluded that a longer purpose statement is warranted.

Reasons for the TPR Purpose Statement

The general reason for a purpose statement is to summarize the subject matter of the administrative rule and its relationship to the Commission's authority and particular elements of the state planning program, particularly applicable statewide planning goals.

Purpose statements are also a logical place for the Commission to provide any broader statement of intent to guide interpretation or application of the rule, especially where the rule is complex or potentially controversial. Rules by their nature are regulatory documents, written to apply narrowly to specific actions or decisions. This can make it difficult for the public to understand the broader underlying reasons for the rules or what the Commission expects the rule is intended to accomplish. Through a purpose statement the Commission can articulate broader statements to help staff, local governments and the public better understand what the rule is expected to accomplish.

The department and Commission's typical practice is to adopt relatively short purpose statements. Most of the Commission's administrative rules provide guidance to local governments on application of a particular statewide planning goal. In these situations, the purpose statement is short and simply references the applicable goal and effectively defers to the goal to establish broad policy guidance.

The TPR is somewhat different than the Commission's other administrative rules in ways that affect the purpose statement:

- While the TPR primarily implements Goal 12 (Transportation), the TPR also provides guidance on application of other statewide planning goals that affect transportation planning. The TPR also provides guidance on coordination and integration of land use and transportation planning.
- A major reason for the rule in 1991 was to clarify how local governments should carry out the broad direction in Goal 12 that plans should "avoid principal reliance on any one mode of transportation."
- The TPR is long and comprehensive – longer than any of the Commission's other rules. The purpose statement helps summarize the rule and provide direction to local governments and the public. In evaluations of the TPR conducted in 2004, stakeholders in metropolitan areas and around the state asked that the Commission further clarify the purpose statement as it relates to "reducing reliance on the automobile" and to distinguish planning requirements for different sizes of communities around the state.

These factors led the Joint Subcommittee, the Work Group and staff to conclude that a longer, more detailed purpose statement was warranted for the TPR.

Suggestions for a shorter purpose statement were considered during the Subcommittee/Work Group process. Metro staff submitted an informal draft of a shorter statement at the Subcommittee's last meeting (on September 23, 2005). While several parties expressed desire for a shorter purpose statement, no specific proposal for a shorter statement – including Metro's - gained broad support. Also, in the course of this

discussion, those involved, such as DEQ, identified specific issues that they felt warranted additional or specific emphasis in the purpose statement. The longer purpose statement also addresses stakeholder support to clarify how the rule applies to different sizes of urban areas.

For these reasons, the Joint Subcommittee concluded that a longer statement was appropriate. The subcommittee also concluded that the longer statement, as drafted, reasonably expressed the rule's purpose and was generally supported by stakeholders. The department believes it would be difficult to draft a shorter purpose statement that provides additional clarity about overall policy direction and would receive broad support from stakeholders.

Recommendation

The department recommends the longer version of the purpose statement as proposed by the Joint Subcommittee and Work Group, with the modification described in Section 2, below.

2. Whether it is useful or harmful to include the Goal 12 phrase “avoid principal reliance on any one mode of transportation” in the purpose statement.

Several commentors have supported language proposed by the City of Portland that would incorporate the directive in Goal 12 to “avoid principal reliance on any one mode of transportation” into the purpose statement. The Commission asked the department to comment on the merits and disadvantages of this change.

As noted above, a major reason for amending the purpose statement is to clarify the rule's overall direction for “reducing reliance on the automobile.” This responds to concerns expressed by stakeholders throughout the state and in metropolitan areas in the two TPR evaluations conducted in 2004. The recommendation provided by the Joint Subcommittee and the Work Group substantially accomplishes this by adding references to other requirements of Goal 12 and by outlining the different expectations for metropolitan areas and other urban areas. Incorporating the specific language from Goal 12 – “to avoid principal reliance on any one mode of transportation” – is helpful to create a clear link to this part of the goal. It is helpful, and not harmful, provided it is incorporated in a manner that reflects the Commission's understanding of Goal 12 and the rule's requirements.

The department believes that an additional clarification is appropriate and recommends that the Commission adopt a slightly modified version of the language recommended by the City of Portland. Staff understands the essence of the Portland proposal is to incorporate the phrase “avoid principal reliance upon any one mode of transportation” from Goal 12 into the purpose statement. The staff alternative is intended to reflect two key points: (1) the notion that plans should achieve a balance among modes of transportation; and (2) that providing transportation choices or options is the primary means by which the avoiding principal reliance is to be achieved.

Portland Proposal to add “avoid principal reliance”

”(1)(b) Avoid principal reliance upon any one mode of transportation and encourage and support the availability of a variety of transportation choices for moving people, including vehicles, walking, bicycling and transit.”

Staff Recommendation to incorporate Portland proposal

”(1)(b) Encourage and support the availability of a variety of transportation choices for moving people that balance transportation modes, including vehicles, walking, bicycling, and transit in order to avoid principal reliance upon any one mode of transportation.” (November 1 amendments with new language underscored.)

Recommendation

The department recommends that the Commission adopt the staff recommendation including staff’s recommendation for incorporating the City of Portland’s proposal as modified and outlined above.

3. “Transportation Choices” v. “Reduced Reliance on the Automobile”

The Commission asked that the department respond to comments from Craig Anderson, of the Rogue Valley Transportation District, and his concerns that the shift in the rule to emphasize “providing transportation choices” is not the same as or not equal to “reducing reliance on the automobile”.

As noted elsewhere, a major concern expressed in the TPR evaluations was that the TPR’s direction to local governments to plan for reduced reliance on the automobile was unclear. Stakeholders generally agreed that the rule should do more to emphasize provision of transportation options or choices as the means that local governments would employ to achieve this policy. Stakeholders also asked that that Commission clarify how the direction to reduce reliance is to be met in metropolitan areas and outside metropolitan areas. The proposed amendments respond to these concerns by adding the phrase “provide transportation options” to modify or complement the direction to “reduced reliance on the automobile” throughout the rule.

Comment

Mr. Anderson expressed concern that amending the TPR to emphasize “providing transportation choices” would allow local governments in metropolitan areas to respond to the TPR in a way that makes only modest improvements in the availability and convenience of alternative modes (for example, additional sidewalks, bikeways and transit service.) Mr. Anderson observed that, in many areas, facilities for walking, cycling and transit need substantial expansion if these modes are to be safe, convenient and effective alternatives to automobile travel. He also expressed concern that local governments might continue other actions (road building and sprawling land use patterns) that would swamp any beneficial effects of improvements in alternative modes and allow high levels of reliance on the automobile to continue.

Response

The department agrees with Mr. Anderson's overall point that a policy to "provide transportation choices" is potentially different than a policy to "reduce reliance on the automobile". However, the department notes that the proposed rule amendments retain the policy direction to reduce reliance on the automobile and do not represent the shift in direction that Mr. Anderson implies. To clarify, the proposed amendments retain the objective of reducing reliance on the automobile.² New language regarding "providing transportation options" clarifies how that objective is to be accomplished. Expanding the availability and convenience of alternative modes is the primary means by which the Commission expects the objective of reduced reliance to be achieved. The changes also clarify what is expected in different sizes of urban areas. Importantly, the specific requirements that implement the purpose statement – especially those applicable to metropolitan areas – remain substantially in place.³

Recommendation

The department does not recommend any additional revisions to the proposed amendments. The department notes that Mr. Anderson's general concern is addressed through changes that incorporate the City of Portland's recommendation to add reference to "avoiding principal reliance on any one mode of transportation" from Goal 12 to the purpose statement.

² In general the phrase "increasing transportation choices" has been added to the TPR wherever the phrase "reduced reliance on the automobile" is used:

"0035(3)(e) The transportation system shall avoid principal reliance on any mode of transportation **by increasing transportation choices** to reduce principal reliance on the automobile. In MPO areas, this shall be accomplished by selecting transportation alternatives which meet requirements in section (4) of this rule."

0035(4) In MPO areas, regional and local TSP shall be designed to achieve adopted standards for **increasing transportation choices and** reducing reliance on the automobile."

0035(5) **MPO areas shall adopt standards** to demonstrate progress towards **increasing transportation choices and** reducing automobile reliance as provided for in this rule.

0035(5)(a)(E) The [alternative] standard is measurable and reasonably related to achieving the goal of **increasing transportation choices and** reducing reliance on the automobile as described in 660-012-0000.

³ For metropolitan areas, specific directions about how increased transportation options and reduced reliance are to be achieved is retained. The relevant requirements include the following:

- Transportation plans must include bicycle, pedestrian, transit, transportation demand management and parking management plans or elements. (660-012-0020(2)(b)-(d))
- Metropolitan areas must adopt standards and benchmarks to measure progress. Metropolitan areas must show that their standards will significantly increase the availability and convenience of alternative modes of transportation. (660-012-0035(4)-(7))
- Most metropolitan areas are required to prepare "integrated land use and transportation plans" such plans must include significant new transportation demand management (TDM) measures and a significant expansion of transit service. (660-012-055(1))

B. Exceptions for Road Improvements on Rural Lands

The Commission asked that the department conduct further analysis to clarify the applicability of Section 0070(10). In addition, the staff and the Department of Justice have assessed impacts of a recent Court of Appeals decision that relates to the proposed amendments... Each of these issues is reviewed below.

1. Modification of Approved Goal Exceptions (Section 0070(10))

Comment

John Boyd, Douglas County and Linda Ludwig, on behalf of the League of Oregon Cities, expressed concern that proposed amendments to Section 0070(10) would require goal exceptions for a range of roadway improvements, including new streets within urban growth boundaries, which do not currently require goal exceptions. In addition, Mr. Boyd expressed concern about the use of the term "limited access roadway" and suggested that it may be appropriate to add a definition of this term.

Response

Rule 0070 applies to local government decisions for transportation facilities that require goal exceptions. Section 10 addresses amendments to adopted exceptions and describes what changes would and would not require a new exception. The language in two of the three subsections – subsections (a) and (b) - clearly applies to "modifications to ... transportation facilities and improvements authorized in an exception." The concern expressed by Mr. Boyd and Ms. Ludwig appears to arise from the fact that subsection (c) does not include similar language. The department believes adding this phrase to subsection (c) will resolve the concerns raised by Douglas County and LOC.

Recommendation

The department recommends the following revision to Section 10(c) to make it clear that this section applies only when a local plan would modify an adopted goal exception:

- (c) Notwithstanding subsection (a) and (b) of this section, the following modifications to transportation facilities or improvements authorized in an exception shall require new goal exceptions:

2. Effect of Court of Appeals decision on Consolidation of Exception Requirements into the TPR

Comment

The major purpose of the proposed amendments to Section 0070 is to consolidate requirements for goal exceptions for transportation improvements on rural lands into the Transportation Planning Rule. Such exceptions are currently subject to provisions in the TPR and the Exceptions Rule (Division 004). On December 21, 2005, subsequent to the Commission's initial hearing on the proposed amendments, the Court of Appeals issued its decision in the case of 1000 Friends et al. v. Yamhill County (CA-A129506) that, in part, addresses this issue. Staff, with assistance from the Department of Justice, has

reviewed the case to assess its relevance to the proposed rule amendments. A memo from Ms. Bonnie Heitsch, Assistant Attorney General, is included as Attachment C.

Response

As noted above, the purpose of the proposed amendments is to consolidate relevant requirements for goal exceptions for transportation improvements on rural lands into the TPR. In preparing the proposed amendments, staff reviewed the statutory requirements and Division 004 to identify substantive and procedural requirements applicable to transportation facilities that should be incorporated into the TPR. The proposed amendments to Rule 0070 reflect staff's analysis and recommendations. The proposed amendments were reviewed by the TPR Work Group and the Joint Subcommittee and supported by both groups. Of note, the TPR Work Group included a representative from 1000 Friends (Mr. Rob Zako) who expressed support for the proposed amendments as a reasonable consolidation of the relevant requirements. (Mr. Zako has raised broader policy questions about the decision in this case that are addressed in the "Other Issues" section of this report.)

The Court of Appeals identified a number of differences between provisions of Rule 0070 and Division 004 that caused the Court to conclude that local governments must apply both rules to fully and properly justify a goal exception. The memo from Bonnie Heitsch, DOJ (Attachment C: Memo to Craig Greenleaf from Bonnie Heitsch, Department of Justice, January 9, 2006) outlines differences noted by the Court and suggests specific additional language changes to incorporate portions of Division 004 that the court found relevant into Rule 0070. In general, the changes proposed in Ms. Heitsch's memo add additional detail from Division 004 that although not essential, is helpful, and provides more complete consistency between Division 004 and Rule 0070.

The department notes that these additional amendments have not been reviewed by the Work Group or the Subcommittee.

Recommendation

The department recommends that the proposed rule amendments be revised to incorporate the additional language set forth in Ms. Heitsch's memo. The draft rule amendments in Attachment A incorporate Ms. Heitsch's recommendations.

C. Metropolitan Planning Recommendations

1. Changes from the November 1 Draft Rules

The department is recommending several changes to the November 1 draft of the proposed rule amendments. The changes include recommendations from the department's staff report for the December 1 hearing and additional changes in response to testimony provided at that hearing. The proposed amendments to the November 1 draft are summarized below. Attachment A includes the proposed amendments with these additional revisions.

Summary of Proposed Changes from the November 1 Draft Rule	
Proposed Change	Source of Change/ Explanation
0015(2) Substitute the phrase “local governments in metropolitan areas” for the term “MPOs” throughout this section.	<u>DLCD Staff Report 11/13</u> Clarifies that TPR applies to and is to be implemented by local governments (i.e. cities and counties) rather than metropolitan planning organizations.
0015(2)(c) – Revise as follows: “Regional TSPs prepared for metropolitan areas outside metropolitan service districts shall be adopted by the cities and counties within the metropolitan area. <u>Cities and counties may comply with this requirement by amending local TSPs to include policies and measures sufficient to comply with the requirements of this division for metropolitan areas that apply within the local planning area.</u> Metropolitan service districts shall adopt a regional TSP for areas within their jurisdiction.”	<u>DLCD Staff Report 11/13</u> Responds to comment from metropolitan area planners to allow compliance with the TPR to be addressed either by the adoption of a regional TSP or amendments to local TSPs. Currently the TPR requires adoption of a separate regional TSP by local governments in a metropolitan area.
0016(1) revise as follows: “Insofar as possible, regional transportation system plans for metropolitan areas shall be accomplished through a single -coordinated process that complies with the applicable requirements of federal law and this division.	<u>Responds to comment from metropolitan transportation planners.</u> Concern that the term “single” is too directive and may lead to legal challenges about regional processes that are otherwise well-coordinated and meet other TPR requirements.
0016(2)(a) revise as follows: “(a) Adopt <u>Make</u> a finding that the proposed regional transportation plan amendment or update is consistent with the <u>applicable provisions of</u> adopted regional and local transportation system plans and comprehensive plan and compliant with applicable provisions of this division	<u>Responds to comments from Central Lane MPO area transportation planners.</u> Concern is that requirement to “adopt” would necessitate action by elected officials. The amendment is intended to allow administrative decisions, for example by a planning director.
0016(2)(b) revise last sentence to read: “In the Portland Metropolitan area, compliance with this section may <u>shall</u> be accomplished by Metro through adoption of required findings or an amendment to the regional transportation system plan.”	<u>DLCD Staff Report 11/13</u> Responds to a comment from Washington County to incorporate language previously agreed to. Metro also supports this change.
0016(3) revise subsection: (b) Adds or deletes a project from the list of planned transportation facilities, services or improvements <u>or from the financially-constrained project list required by federal law.</u>	<u>Clarification in response to comment from Metro.</u> Clarifies that addition or deletion of a project from the “financially-constrained” project list required by federal law is subject to review and findings required by this section.

The Commission asked that the department consider and, as appropriate, respond to comments from several commentors, including: Washington County, Metro, City of Salem, City of Springfield and the Retail Task Force.

2. Further clarify requirements for Preparation of Regional and Local Transportation System Plans to avoid duplication (Springfield)

Mr. Greg Mott, Planning Director for the City of Springfield, expressed several concerns that the proposed amendments would further complicate local government obligations under the TPR. Department staff met with Mr. Mott and other Central Lane MPO planners to discuss these concerns. Mr. Mott's comments and the department's proposed responses are summarized below:

Comment: The rule should avoid creating a requirement for a separate regional plan for state purposes – i.e. in addition to the federal RTP.

Response: The proposed amendments have been revised to allow metropolitan area local governments to meet the rule either by adopting a regional TSP or adopting local TSPs that are adequate to meet the requirements of this division.

Comment: The proposed coordination procedures in Rule 0016 should allow findings that proposed RTP amendments are consistent with local and regional TSPs be made administratively, rather than directly by local elected officials.

Response: Section 0016 has been revised. The phrase “adopt a finding” has been replaced with the phrase “make a finding” to avoid creating the impression that such findings must be in the form of a plan amendment adoption or similar action by elected decision-makers.

Comment: The rule should support update of federally-required plans with the understanding the planning period extends beyond locally adopted plans and the MPO decision-makers are not acting as land use decision-makers. Mr. Mott is also concerned about the resource implications to local governments of addressing Goal 14 requirements in coordination with MPO plan updates.

Response: No change is recommended. A major purpose of the proposed amendments is to clarify and facilitate coordination between MPOs and local governments to address relevant TPR and Goal 14 requirements as RTPs are updated – especially when updates of the federal RTP would require planning to accommodate urban development outside of urban growth boundaries. The department agrees that addressing Goal 14 requirements is potentially complicated and expensive. The proposed rule should make it easier to address Goal 14 by assuring that MPO work is closely coordinated with local governments and properly considers Goal 14 and TPR requirements.

Recommendation

The department recommends that the Commission adopt the revisions listed above and shown in Attachment A.

3. Revise requirements related to “reduced reliance” on the automobile (Salem)

Julie Warncke, Transportation Planner for the City of Salem submitted comments on the draft rule in November. On January 10, 2006, the City of Salem submitted additional comments on the proposed rule amendments. (The city’s letter is included in Attachment A.) The city’s letter suggests several other specific wording changes to requirements applicable to metropolitan areas. The city’s comments and department’s responses are outlined below.

Comment: In November Ms. Warncke submitted comments suggesting that the operative phrase in Rule 0035 (4) (5) be modified as follows: “...increasing transportation choices ~~and reducing~~ to reduce reliance on the automobile...” to emphasize provision of choices as the means to accomplish the objective. Ms. Warncke feels the current wording creates confusion about the rule’s objective and that the revised wording would be more consistent with changes to the purpose statement.

Response: Sections 0035(4) and (5) set forth the requirements for standards by which metropolitan areas are to measure progress in meeting TPR requirements for providing transportation options and reducing reliance on the automobile. The combined emphasis on “providing transportation choices” and “reducing reliance on the automobile” is consistent with the more specific planning objectives and requirements for metropolitan areas. For example, outside metropolitan areas, TPR requirements are limited to measures that relate directly to increasing the availability and convenience of alternative modes. Within metropolitan areas, a range of measures are required – including land use changes, TDM and parking plans - that increase transportation choices and are expected to reduce reliance on the automobile.

Comment: The city’s January 10, 2006 letter recommends replacing the phrase “reducing reliance on the automobile” in Section 0035(4) and (5) with the phrase “to improve mobility, safety, and encourage the use of different modes of travel.”

Response: The purpose of Section 0035(4) and (5) is to provide guidance to metropolitan areas in developing standards that measure their efforts to achieve portions of the rule and Goal 12 to avoid principal reliance on any one mode of transportation. The city’s proposed language would add broader considerations that are not directly relevant to this part of the goal and rule. (These considerations are addressed in Section 0035(2).)

Comment: The city’s January 10, 2006 letter notes differences in timelines for conforming local plans to adopted amendments in Rule 0016 and Rule 0055 and recommends that the two be amended to be consistent.

Response: The department has reviewed the two rules and believes that the language is consistent. The two rules deal with different coordination obligations. In general, Rule 0016 deals with coordination between the federally-required regional transportation plan and local and regional plans. Rule 0055 addresses coordination between regional and local transportation system plans (TSPs) – both of which are state-required plans. In addition, the department believes that timelines in both rules are consistent. The general obligation in both rules is that necessary conforming amendments be adopted within one year. Each rule provides for exceptions: Rule 0016 allows the Commission to approve more time for conforming amendments and Rule 0055 allows regional TSPs to specify a longer time for conforming local amendments.

Comment: *The city recommends that amendments to language in Section 0016 that allows MPOs to extrapolate population projections beyond the planning period of the applicable acknowledged comprehensive plan. The city's proposal would allow metropolitan areas to apply methodologies that "produces no significant change" in the metropolitan area share of county population and employment growth.*

Response: The purpose of the proposed amendments is to allow MPOs to update federally required regional transportation plans when the federally mandated planning period extends beyond the planning period in the acknowledged local comprehensive plan. The department's proposed language allows for MPOs to extrapolate assuming a continuation of the metropolitan area's share of population and employment growth. This limits the scope of the MPO's analysis to assumptions in the existing adopted plan, which the department believes is appropriate given the essentially stop gap nature of the decision under consideration – i.e. bridging the gap between the acknowledged plan and the federally-required transportation system plan. The department believes that an MPO forecast that suggests a change in the share of metropolitan population warrants the more careful consideration that would otherwise occur when a county formally adopts a future population forecast. The department is also concerned that the city's proposed standard that – i.e. that a methodology "produces no significant change" in the metropolitan area share of population growth – is vague and would muddle rather than clarify the direction the rule is intended to provide.

Comment: *The city's January 10 letter recommends revising language that regarding implementation of benchmarks to allow local governments that do not meet adopted benchmarks the option of amending the benchmark. The rule currently requires that when a local government does not meet a benchmark, that it undertake amend actions included in the plan to meet the benchmark.*

Response: The department does not believe that this amendment is needed or appropriate. Local governments may amend adopted benchmarks. However, because benchmarks measure progress in meeting Commission-approved standards, a change to a benchmark may involve a change to an approved standard. Such a change would require review by the Commission. Section 0035(7) allows local governments that do not meet benchmarks to undertake additional actions to achieve the benchmark (and the underlying standard) without Commission review. The department is concerned that Salem's proposed language change would, in effect, allow local governments to change benchmarks in a way that would effectively change the underlying standards without Commission review.

Recommendation

No change is recommended.

4. *Modify standards for review of plan amendments for consistency with adopted metropolitan strategies to provide transportation options and reduce reliance on the automobile. (Retail Task Force)*

This portion of the proposed amendments (0035)(1)(d)) would require that local governments in metropolitan areas that have not completed planning required by the TPR review plan amendments and zone changes and make findings that the proposed amendments are consistent with and support implementation of the region's adopted plan or strategy to increase transportation options and reduce reliance on the automobile.

Comment

The Retail Task Force (RTF) is concerned that use of the term "designated centers" is too narrow and will discourage or prevent plan amendments outside of designated centers. RTF has proposed alternative language that would broaden the list of areas included as part of a regional strategy. (RTF suggestions are included in Attachment D.) RTF also proposes a more general standard for review of plan changes: allowing for changes that "move in the direction" of achieving the region's adopted strategy.

Response

The department believes that these changes would result in either ambiguity or a very low threshold for approval of proposed plan and zone changes. The proposed rule gives local government's a reasonable amount of discretion in two ways:

- The amendments would require that local governments assess whether plan amendments are consistent with or implement a locally-adopted strategy. Since such plans are locally developed, the department believes that LUBA and the Courts would generally defer to local discretion in interpreting such plans.
- The terms describing qualifying land use designations are broad and are consistent with the visions and strategies adopted by metropolitan local governments. Strategies to date have focused on mixed use centers and transit oriented development as a key

means to promote land use changes that reduce reliance on the automobile. The term “other land use designations” is broad and allows metropolitan areas to count some flexibility in crafting a regional strategy.

Recommendation

No change is recommended.

D. Other Issues and Comments

Testimony from 1000 Friends of Oregon, Washington County and the City of Jacksonville raised issues that are not directly related to the TPR amendments. Each of these issues is addressed below.

1. Goal Exception Thresholds

In response to comments from Rob Zako, 1000 Friends of Oregon, the Commission asked that the department assess the possible implications of the LUBA decision in *1000 Friends v. Yamhill County* on acceptable or appropriate thresholds for goal exceptions for new transportation facilities.

Relationship to Current Rulemaking

During stakeholder interviews, stakeholders commented that the broader standards in Division 004, which were developed for site-specific uses like rural residential or rural commercial development, often did not apply in a logical or relevant manner to transportation facilities or were redundant of standards in OAR 660-012-0070. They recommended that the TPR standards be rewritten to be self-contained and standalone. The proposed changes to OAR 660-012-0070 do that, incorporating from Division 004 those standards that are relevant to transportation facilities and can apply in a logical manner.

The proposed amendments to Rule 0070 have focused exclusively on consolidation of existing goal exception requirements into the TPR. Neither the Joint Subcommittee nor the Work Group discussed the policy issue raised by 1000 Friends about whether the “threshold” provisions of the exceptions process should be reconsidered. The issue was not addressed in part because the LUBA decision was issued in July, after the Subcommittee and the Work Group had completed work on this issue. As noted above, the Court of Appeals recently issued a decision in this case, upholding LUBA’s as it relates to the goal exceptions threshold issue.⁴

While not discussed in the context of goal exceptions, concerns about ODOT’s mobility standards were a major issue in the stakeholder interviews conducted by Frank Angelo in August 2004:

⁴ The Court of Appeals remanded the decision to LUBA to address compliance with Division 004 on issues not related to the “goal exceptions threshold” question.

“The relationship between the TPR and other state transportation policy documents, particularly the Oregon Highway Plan (OHP) and Oregon Transportation Plan (OTP) needs to be clarified. This is particularly true when it involves the application of the OHP’s Highway Performance Standards (volume to capacity standards). There is the perception that the performance standards are “unrealistically high” and may, in fact, produce unintended consequences that run counter to achieving land use objectives for more efficient land use patterns.”

“Of all the Stakeholder comments, concerns regarding the applicability of performance standards / level of service standards were the most consistent. Comments related to this topic were fairly universal. These include:

- The standards are “unrealistically high” and they can lead to an “overestimation” of transportation system needs.
- Because standards are perceived to be too high, they may have the unintended consequence of making higher density (or development that implements “smart development” principles) more difficult by promoting development “where transportation capacity exists”, which is most often located in lower density areas on the urban fringe.
- More local flexibility in terms of determining performance standards is viewed as a positive because the locals will be better able to consider the land use context in which a development is proposed and size transportation facilities accordingly.
- While alternative performance standards are possible to obtain on State facilities through the application of Special Transportation Areas (STA) in the OHP, obtaining agreement with ODOT on the application of a STA has been difficult and time-consuming.
- One possible outcome of a region or local jurisdiction accepting a lower performance standard is that the jurisdiction could potentially be penalized when it comes to receiving state highway funding (i.e.. the money goes to capacity solutions to address congestion). Therefore, there is a perceived financial incentive to “have congestion”.

(Memo from Frank Angelo to LCDC & OTC, September 14, 2004)

In August 2005, partly in response to the stakeholder concerns discussed in Frank Angelo’s September 28, 2004 memo, the Oregon Transportation Commission amended the OHP mobility standards for most urban highway segments with speeds of 35 mph or less. The amendments relax V/C standards for affected highways by .05 — increasing the allowable v/c ratio from .80 to .85. This change allows accommodation of roughly 200 additional vehicles hourly through a typical urban intersection. The change applies to highways in non-metropolitan areas and designated freight routes in metropolitan areas.

In addition, existing provisions in the OHP allow MPOs and local governments to propose alternate mobility standards for specific areas or for the entire MPO or city.

OTC has approved amendments setting alternate standards for the Portland Metro area and the South Medford interchange.

Background on Exceptions Requirements and Thresholds

Major new roads on rural lands require reasons exceptions to Goals 3, 4, 11 and 14. The standards for approval of a “reasons” exception require local governments to establish the transportation need for a planned facility and demonstrate that the need cannot reasonably be met by alternatives that would not require a goal exception. Rule 0070 requires that local governments justify and set “thresholds” to guide decisions about whether or not non-exception alternatives can reasonably meet the identified transportation need.

- (4) To address Goal 2, Part II(c)(1) the exception shall provide reasons justifying why the state policy in the applicable goals should not apply. Further, the exception shall demonstrate that there is a transportation need identified consistent with the requirements of OAR 660-012-0030 which 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.
- (5) To address Goal 2, Part II(c)(2) the exception shall demonstrate that non-exception locations cannot reasonably accommodate the proposed transportation improvement or facility.
- (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.”

LUBA and Court of Appeals Decisions in *1000 Friends v. Yamhill County*⁵

In July 2005, LUBA upheld Yamhill County’s approval of goal exceptions for the Newberg Dundee Bypass⁶. On December 21, 2005, the Court of Appeals upheld LUBA’s decision as it relates to the use of OHP standards as thresholds for goal exceptions. The relevant holding in the LUBA and the Court of Appeals decisions was that the county was justified in using the volume-to-capacity (v/c) standards in the

⁵ *1000 Friends v. Yamhill County*, LUBA 2004-169, et seq., July 21, 2005. On December 21, 2005, the Court of Appeals issued a decision upholding LUBA’s decision as it relates to the use of OHP standards as thresholds for goal exceptions.

⁶ Yamhill County adopted two goal exceptions, one for the bypass itself and a second to allow an intermediate interchange on rural lands between the Dundee and Newberg UGBs.

Oregon Highway Plan (OHP) as the threshold for deciding what the transportation need is and for judging whether non-exception alternatives are reasonable. (The applicable standard calls for achieving a .85 volume-to-capacity (v/c) ratio at the end of the 20-year planning period.)

Here is LUBA's conclusion:

“Friends argue that it was improper to use the thresholds in the OHP. However, they do not persuasively explain why. Presumably, some thresholds had to be used, and we do not see that the county was barred from using the standards in the OHP. Although petitioners do not agree with the consequences of using the OHP thresholds, we see no error in respondents utilizing those thresholds.” (opinion at page 10)

“Although petitioners offered many alternatives that do not require new exceptions, those alternatives do not meet the operational and mobility thresholds identified in the OHP necessary to satisfy the identified transportation need. We recognize that allowing the county and ODOT to utilize the OHP thresholds to identify the relevant transportation need may effectively predetermine the outcome. As long as the thresholds are appropriate, however, as they are here, nothing in the goals, statutes, or rules prevents the county and ODOT from taking that path.” (Opinion at page 10)

The Court of Appeals upheld LUBA's conclusion on the thresholds issue:

“LUBA upheld the county's choice of thresholds, and particularly the OHP standards.

Before LUBA, ODOT and the county argued that reliance on the OHP standards was appropriate because a provision of the LCDC transportation planning rules OAR 66-012-0030(3)(a)(B) requires the state to establish standards for transportation facility performance on state highways..... Because the OHP standards serve as the state's Transportation System Plan (TSP) LUBA concluded that those standards constitute an appropriate measure of “reasonableness” for testing alternative to a goal exception under OAR 660-012-0070(4) and (5)”

Petitioner does not otherwise explain why the way the county used the OHP standards as a threshold was inappropriate. Accordingly, we affirm LUBA's conclusion that the county did not misuse the OHP standards as a “reasonableness” threshold.” (Opinion at pages 5-6)

Implications

At the conclusion of the December 1 hearing, the Commission requested that the department provide an analysis of implications of the use of the v/c standards in the OHP as goal exceptions thresholds. The department's analysis is provided below.

Summary

The department has reviewed the LUBA and Court of Appeals decisions with ODOT staff and representatives from the Department of Justice. In general, the department believes that the effect of the LUBA and court decisions is to make it more likely that local governments will be able to justify goal exceptions for bypasses, new interchanges or other major highway improvements.

Whether the ruling actually results in more exceptions being pursued and approved is requires further analysis and is subject to debate. Some goal exceptions would be justified whether or not the OHP standards are used as threshold criteria. (i.e. in some situations congestion will be so bad, any reasonable measure of congestion would lead to approval of the exception.) In addition, ODOT staff contends that other OHP policies that guide planning for bypasses and other major highway improvements (and a lack of funding for major improvements) will cause other exceptions that rely on v/c standards as a threshold not to be approved.

Effect of the Court Case

The effect of the LUBA and Court of Appeals decisions is that local governments may use the volume to capacity (v/c) standards in the Oregon Highway Plan (OHP) as a screen for determining whether non-exception alternatives reasonably meet transportation needs. While local governments will have to justify their decision to use the v/c standards, the LUBA and Court of Appeals decisions rely upon provisions in the TPR and OHP that will be generally applicable to other communities considering goal exceptions for bypasses or new interchanges. In essence, the Courts decision makes use of ODOT's v/c standards something close to a safe harbor for evaluating whether non-exception alternatives reasonably meet transportation needs. The effect may be broader, but this case relates specifically to v/c standards included in the Oregon Highway Plan.

Implications for Future Goal Exceptions

The effect of using the OHP v/c standards will vary depending on circumstances and the specific proposal under consideration. In some cases, future travel demand will be so great that non-exception alternatives cannot meet the expected need under any reasonable performance standard. In other situations, future traffic may only slightly exceed the OHP v/c standards. In those situations, i.e., where the exceedance is small, the v/c standards would screen out an option that would otherwise reasonably meet expected transportation needs.

The goal exceptions taken by Yamhill County for the Newberg-Dundee Bypass illustrate the range of possible outcomes. The Newberg Dundee bypass involved two goal exceptions: one exception for the bypass itself and a second exception to allow an intermediate interchange on rural land between Newberg and Dundee - the East Dundee

Interchange. The non-exception alternatives to the bypass involved widening Highway 99W and other measures that would significantly exceed v/c standards.⁷

By contrast, the non-exception alternatives to the East Dundee interchange were much closer to meeting the OHP v/c standards. With the bypass, the existing 3-lane section on Highway 99W through Dundee would meet the OHP v/c standard for the next 10-15 years. If an alternative mobility standard had been used as the threshold, the existing 3-lane section may have been found reasonable to meet needs throughout the planning period.⁸

The department believes that it will be easier to approve an exception in situations where non-exception alternatives come close to but do not quite meet v/c standards. Where local governments choose to use the OHP v/c standards as threshold criteria, they will be able to categorically reject alternatives that do not meet the v/c standards. This will narrow the scope of alternatives that must be considered during the exceptions process. In particular, local governments would not have to consider the following options as alternatives for a goal exception⁹:

- Adoption of alternative mobility standards as provided in the Oregon Highway Plan (i.e. allowing for somewhat lower highway performance than standards listed in Table 6 and 7 in the OHP)¹⁰ or ,

⁷ The exception for the bypass considered a transportation management alternative (TMA) that would make a series of TDM, transit, access management and local street improvements to address transportation needs in Newberg and Dundee. The TMA alternative would result in a 2025 v/c of .90 in Newberg and 1.25 in Dundee. Meeting the .75 v/c standard in the OHP would have required providing 8 lanes on 99W through Newberg and 7 lanes through Dundee.

⁸ The County and ODOT considered a Special Transportation Area (STA) alternative for 99W through Dundee with the bypass. The STA permits a lower v/c threshold of 0.95. The exception concluded that an STA was "not reasonable" because 0.95 v/c standard on 99W would be exceeded by the end of the planning period – the year 2025. For this reason, the exception evaluated widening of 99W through Dundee from 2 to 4 travel lanes. Thresholds other than complying with v/c standards were used to eliminate alternatives to the East Dundee interchange.

⁹ As noted below, OHP policies allow for adoption of alternative mobility standards and require ODOT to consider a range of minor improvements or other measures before proposing major improvements or new bypasses.

¹⁰ An ODOT study of possible highway improvements north of Bend illustrates this point. At the request of the OTC, ODOT Region 4 staff are evaluating possible alternatives to a planned interchange at Cooley Road, located at the north end of the Bend Parkway. Two of the alternatives under consideration are new bypasses connecting Highway 20 and Highway 97 on the north side of Bend across rural lands. Both would require goal exceptions. Either alternative is estimated to cost between \$100 and 200 million. In the supporting report to the OTC, ODOT dismissed consideration of lower mobility standards as an option for addressing needs in this area:

“Alternatives Considered But Dismissed

The four concepts outlined above are being carried through the alternatives evaluation process. However, in addition to these concepts, there were additional alternatives considered by the PMT but dismissed after preliminary screening due to infeasibility from a cost, construction, and/or compatibility standpoint. The dismissed alternatives included:

- Adoption of non-exception improvements or measures that would address most but not all of the expected transportation demand - even where the alternative improvements would be more cost-effective than the proposed exception.

In addition, non-exception alternatives that are evaluated will generally have significant community impacts. The major effect of having to meet the v/c standards is that road capacity must be added in sufficient quantity so that projected peak hour congestion 20 to 25 years into the future is avoided. In many communities, meeting these standards without an exception will require some combination of additional lanes on major streets or new streets within the urban area. An example would be the widening of an existing five-lane highway to seven lanes (i.e. by adding a new travel lane in each direction.) The cost and community impact of these alternatives is often considerable, and local governments typically consider them to be unacceptable.¹¹

Over the last 10 years a number of communities around the state have considered or made proposals for highway bypasses, new interchanges or some other major highway improvement requiring a goal exception. The department believes that use of the v/c standards as a screening criterion could allow many of these communities to successfully justify a goal exception.

Effect of Oregon Highway Plan Policies

ODOT staff question whether use of v/c standards would necessarily result in additional interchanges or bypasses being included in local plans. They note that ODOT has not supported bypasses in several communities that have proposed them (Seaside and Lincoln City, and Bend¹² for example.)

ODOT staff also note that the TPR requires that local governments must coordinate planning for highway improvements with ODOT. The Oregon Highway Plan (OHP) includes policies that guide ODOT decisions about planning for bypasses and other major improvements.

..... Lower mobility standards - dismissed because of inability to address transportation mobility and safety needs and provide sufficient capacity over the planning horizon.”

(Memo to the Project Management Team from Sonia Hennem et al., Kittelson & Associates, November 21, 2005, page 9)

¹¹ As noted in the previous footnote, meeting the .75 v/c standard in the OHP would require widening 99W to 8 lanes in Newberg and 7 lanes in Dundee.

¹² At its December 13, 2005 meeting, OTC received a status report on long-term options to deal with traffic issues in Bend, at the northern end of the Bend Parkway. Staff advised that there was strong local interest in an eastside bypass as a solution to the area’s transportation needs and asked for Commission guidance. The OTC explicitly directed that an eastside bypass not be considered and that the area should instead plan to make do with improvements to the existing roadway system for at least the next 20 years.

When ODOT applies for a goal exception in order to construct a new road or interchange, it must show that the improvement is consistent with the Oregon Highway Plan (OHP). OHP policies applicable to major highway improvements include:

- Policy F- Highway Mobility Policy. ODOT must apply its highway mobility standards over a 20-year planning horizon when engaged in system planning.
- Policy G -Major Improvements. Directs ODOT to improve system efficiency before adding more capacity or new facilities.
- Policy H - Bypass Policy. This policy requires that new bypasses be constructed as limited access freeways or expressways with full access control. Bypasses must also be consistent with Policy G, the major improvement policy, and must include management plans for interchanges and local jurisdictions must adopt land use measures that protect the regional and statewide mobility function of the bypass and interchanges.

ODOT staff believes that application of these policies would, in many situations, prevent local governments from including bypasses or new interchanges in their plans, even where they might be able to justify a goal exception using the OHP v/c standard as a threshold.

Options

As noted above, LUBA and the Court of Appeal's decisions and the issue of appropriate thresholds for reasonable alternatives were not discussed by either the Joint Subcommittee or the Work Group. Since this issue is significant and of interest to a number of stakeholders, the department would recommend seeking additional public review and input if the Commission is interested in addressing this issue.

The proposed amendments to Rule 0070 do not change portions of the rule related to specifying thresholds and could therefore reasonably be adopted at this time.

The department has identified five options for Commission action on this issue:

Option 1: Take no action.

The effect of this option would be to leave the LUBA ruling in place as the principal guidance to local governments on appropriate thresholds for goal exceptions. The department has described the implications of this option above.

Option 2: Continue the existing rule hearing and process to consider this issue further.

This option would involve continuing the rule hearing to the Commission's March meeting to decide whether to address the thresholds issue further. If at the March meeting the Commission decides that additional amendments should be considered, the department would recommend reconvening the Work Group and that the Joint Subcommittee discuss the issue and suggest possible rule amendments. Reconvening the

Joint Subcommittee would require agreement from the OTC to undertake this additional work.

Option 3: Conclude current rulemaking and defer to a future meeting of the Joint OTC-LCDC Subcommittee

The Joint Subcommittee is scheduled to meet again in 9 to 12 months to review progress in implementing the Rule 0060 amendments. The Commission could direct that the Joint Subcommittee review the issue and provide a recommendation at that time.

Option 4: Conclude current rulemaking and request the department to provide a separate recommendation on this issue.

This option would direct the department to do further analysis of this issue outside of the current rulemaking process and present an additional analysis of the issue and possible options to the Commission for its consideration at a later date.

Option 5: Conclude current rulemaking and schedule a joint OTC/LCDC meeting to review and discuss the OHP mobility standards and their relationship to land use decisions.

This option would defer further discussion of this issue and possible rulemaking to a broader discussion between the Commission and the Transportation Commission about mobility standards and their use in land use and transportation planning decisions.

Recommendation

The department recommends the Commission proceed with Option 2.

The department believes that additional time is needed to present a complete analysis of the likely implications of the Court and LUBA decisions. Option 2 would allow the Commission to proceed with adoption of current amendments and give the Commission additional time to more fully understand implications of the LUBA and Court of Appeals decisions and decide on an appropriate course of action. The Commission could, based on additional analysis, either adopt further rule amendments or close the rulemaking process.

Continuing the existing rulemaking process would save time and resources that would otherwise be required to start a new rulemaking. The department notes that the Commission has limited resources to address important policy issues and is concerned that starting a new rulemaking process, under newly adopted rulemaking requirements would detract from the department and Commission's ability to deal with other issues.

2. Implementation of Section 0060 Amendments

Comment

Brent Curtis of Washington County expressed concern that the department had not responded to direction from the Commission at the March 2005 hearing regarding additional consideration of the proposed amendments. Mr. Curtis also noted that the recent draft Oregon Transportation Plan update documents that the funding gap between plans and expected revenues is more than \$1 billion per year. He encouraged the Commission to review the draft OTP and consider reassessing the 0060 amendments that tie plan amendments to decisions about whether funding for planned improvements is “reasonably likely”. The Commission asked that the department continue to report on progress in implementing the 0060 amendments.

Response

The department believes it has been responsive to the guidance provided by the Commission at its March 2005 hearing regarding Section 0060. At the March meeting, the Commission asked that the department work with ODOT to prepare guidance on implementing the rule, consider further the effect of the rule amendments (particularly as it relates to freeway interchanges and “reasonably likely determinations, and that the department advise the Commission about plan amendments where the 0060 amendments are at issue. The department’s efforts in each of these areas are discussed below.

- Following the March meeting, the department has worked with ODOT staff and the consultant team to prepare guidance on implementation of Section 0060. While the guidance is designed primarily to assist ODOT staff it is also available to and has been shared with local government staffs. The draft guidance was presented to the Joint Subcommittee in September 2005. It was also and was included as an attachment to the Commission’s briefing on the TPR amendments in September 2005.¹³ ODOT has presented the draft guidance at the Oregon Planning Institute and in a series of regional workshops conducted around the state over the last two months. ODOT has been developing revisions to respond to comments and intends to incorporate the 0060 guidance into its “Development Review Guidelines” – ODOT’s principal written guidelines to ODOT staff involved in plan amendments.
- In July and August 2005, department and ODOT staff met with Metro staff and officials to discuss their concerns about possible effects of 0060 requirements on plan amendments to implement 2040 designations in general and station areas around interchanges, in particular. ODOT and DLCD committed to work with Metro and local governments as specific plan amendments are considered. We also expect that Metro will address the issue more generally as it prepares the next update to its regional transportation plan.

¹³ Copies of ODOT’s Draft TPR Guidelines are available from the department and are available on line at: <http://www.oregon.gov/ODOT/TD/TP/docs/TPR2/23sep05/aeGuidelines.pdf>

- ODOT and DLCD staffs remain committed to keep the Commissions informed about specific issues arising out of application of the 0060 amendments. Over the nine months that the rule has been in effect, ODOT has issued only one letter of comment on a plan amendment involving a “reasonably likely” determination¹⁴.
- LCDC and OTC have committed to reconvene the Joint Subcommittee later this year to review progress in implementing the 0060 amendments. This provides a further opportunity to assess whether rule amendments are working as intended or whether further revisions are warranted.

On January 9, 2006, department staff and ODOT staff met with Washington County staff to discuss their concerns about the 0060 amendments. The county expressed particular concern about how 0060 requirements might affect planning and zoning for areas recently added to the Metro UGB. ODOT indicated that it will discuss possible alternative mobility standards for affected interchanges and work with county to address reasonable likelihood of improvements needed to support urbanization of this area.

ODOT staff will provide a briefing to the Commission on the proposed Oregon Transportation Plan amendments on February 1, in advance of the Commission’s hearing on the proposed rule amendments. This will provide the Commission an opportunity to more fully understand the funding situation and other issues noted by Mr. Curtis.

Recommendation

No further action is recommended at this time. The department intends to continue work with ODOT in preparing guidance to implement the 0060 amendments and will advise the Commission about plan amendments where application of Section 0060 is an issue.

3. *Parking Management Plan Requirements*

Comment

Mr. Paul Wyntergreen, Planning Director for the City of Jacksonville, expressed concern about the workability of parking management plan requirements that would apply to Jacksonville. Jacksonville has recently been added to the Rogue Valley metropolitan planning area. Mr. Wyntergreen suggested that the Commission consider amendments to this section that would provide more flexibility in addressing parking management. The Department indicated it would follow-up with Mr. Wyntergreen and MPO staff to assess this issue and options.

¹⁴ The plan amendment involved adding additional commercial land in Newport near the south end of the Yaquina Bay Bridge. ODOT advised that a portion of the needed widening of Highway 101 in this area to five lanes was not reasonably likely. ODOT is currently working with the city and the applicant to resolve the issue. DLCD is also participating.

Background on TPR Requirements

The TPR requires that MPO areas prepare parking plans. The plans must meet one of two tests:

- Reduce the number of per capita parking spaces in non-residential zones in the metropolitan area by 10% over the planning period.
- Adopt a series of parking management measures including:
 - o Reduced minimum parking requirements
 - o Maximum parking limits
 - o Allowing on-street, shared or leased parking to be provided to meet parking off-street parking requirements
 - o Provide for residential parking districts
 - o Require parking lots of 3-acres or more to be laid out as blocks to facilitate pedestrian access and future redevelopment.

The proposed amendments do not change existing rule requirements for parking plans. The parking plan requirements of the TPR were not raised as an issue during the MPO evaluation conducted by the department in 2004 and was not addressed by either the Joint Subcommittee or the TPR Work Group.

Response

Department staff consulted with Mr. Wyntergreen and RVMPO staff to discuss the city's situation and how the relevant TPR requirements might be addressed. The major points of discussion are outlined below: The city feels it currently has a parking problem and desires to provide additional parking, especially to accommodate major events, like the Britt Festival. Consequently, the parking management measures option appears to be the most appropriate, since it would place the least restriction on the city's ability to add additional parking.¹⁵

- The city has already adopted several of the required parking management measures and believes that several others are reasonable and feasible.
- The city remains concerned about the rule requirement to reduce minimum parking standards and would like the rule to provide flexibility to not meet this requirement.
- Over the next year, Jacksonville will be updating of its TSP with support from a Transportation and Growth Management (TGM) grant. This will provide the city an opportunity to address specific rule requirements in detail.

¹⁵ Additional parking can be allowed under either TPR option. The 10% reduction requirement in the rule is a reduction "per capita" and consequently allows for a net increase in the number of parking spaces provided. The parking management measures do not limit the number of parking spaces that may be provided, and instead manage how parking may be provided. For example, the parking management measures would allow the city to construct public parking lots without restriction on the number of spaces provided.

Recommendation

No change to the rule is recommended to address this issue. As noted above, this portion of the rule is not otherwise proposed for amendment and has not been raised as an issue by other stakeholders.

The department believes that the TPR provision requiring reduction in minimum parking requirements is appropriate and already incorporates flexibility in three ways:

- The rule requires a reduction from 1990 requirements, allowing the city to take credit for any reductions it has adopted over the last 15 years;
- The rule does not specify the amount of reduction that must be made; allowing the city to exercise judgment about an appropriate reduction in minimum parking requirements given its particular situation.
- Minimum parking requirements are minimums. Minimum parking requirements allow individual property owners or developments to provide additional parking when they feel it is warranted to meet expected parking demand.

In addition, the department has indicated that in reviewing TSPs and plan amendments for compliance with this part of the TPR we would consider whether or not the city's existing minimum parking requirements are low or high. If the city's requirements are currently low – for example, at or near the recommended minimums in the Department's model development code for small cities – and other requirements for parking management measures are in place, the department would likely not object to the plan amendment.

VI. PUBLIC COMMENTS

The deadline for public comments submitting public comments for distribution to the Commission prior to the Commission meeting is January 17th. Letters of comment received at the time this report was prepared are included in Attachment D. Additional comments received prior to the Commission meeting will be provided in either a separate mailing to the Commission or as handouts at the Commission meeting. The department will also post these comments on its website.

VII. OVERALL CONCLUSION AND RECOMMENDATION

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

The department recommends that the Commission receive testimony from members of the public at the February 2 hearing and following public testimony that the Commission specify any additional changes to the proposed amendments in Attachment A.

The department also recommends that the Commission continue the rulemaking hearing to the March meeting to consider whether to adopt additional amendments to Rule 0070

related to the goal exception thresholds issue. The department further recommends that the Commission limit additional public testimony at any subsequent hearings on these amendments to the goal exceptions threshold issue.

Suggested Motion to continue hearing: (Staff Recommendation)

I move that the Commission continue the rulemaking hearing to the March meeting to consider whether to adopt additional amendments to Division 012 Rule 0070 related to the goal exception thresholds issue and that additional public testimony on the proposed amendments be limited to the goal exceptions thresholds issue.

Suggested Motion to adopt: (Alternative)

I move that the proposed amendments Division 012 (the Transportation Planning Rule) and Division 004 (the Exceptions Rule) as set forth in Attachment A be adopted.

Suggested Motion to continue or deny: (Alternative)

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

VIII. ATTACHMENTS

- Attachment A: Proposed Amendments to the Transportation Planning Rule, January 17, 2006
- Attachment B: Staff Report from the December 1, 2005 Public Hearing
- Attachment C: Memorandum from Bonnie Heitsch, Department of Justice, January 6, 2006.
- Attachment D: Public Comments on Proposed Rule Amendments (Letters from the City of Salem, Metro, City of Portland, Rogue Valley Transportation District, Retail Task Force, 1000 Friends of Oregon, Jeff Condit, Miller Nash on behalf of Columbia Empire Farms.)