



CENTRAL OREGON CITIES ORGANIZATION

BEND, CULVER, LA PINE, MADRAS, MAUPIN
METOLIUS, PRINEVILLE, REDMOND, SISTERS

May 20, 2010

John VanLandingham, Chairman and Commission Members
Land Conservation and Development Commission

Richard Whitman, Director
Department of Land Conservation and Development
635 Capitol Street NE, Suite 150
Salem, OR 97301-2540

RE: Request for TPR amendments

Chair VanLandingham, Director Whitman, and Commission Members,

It has come to our attention that the Land Conservation and Development Commission is considering policy agenda items for the remainder of the biennium. The Central Oregon Cities Organization respectfully requests that the Commission investigate and explore amendments to the DLCDC's Transportation Planning Rule.

It has been five years since the LCDC implemented rule changes to the Transportation Planning Rule (TPR) resulting from the Jaqua v. City of Springfield decision issued by the Oregon Court of Appeals. In this five year period, many cities within the Central Oregon Cities Organization have encountered difficulty in satisfying TPR requirements in contemplation of reasonable development proposals.

The TPR changes implemented in 2005 have raised the bar to an unachievable level and have resulted in a variety of unintended consequences, most significantly missed economic development opportunities. The 2005 changes, primarily those relating to "reasonably likely" funding of planned projects and concurrency (timing) of projects to coincide with perceived system need, seemed appropriate in the greater context of traditional public facilities planning.

However, when coupled with the reality of ...

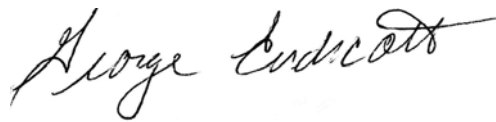
- Lack of state transportation funding to improve state highway facilities, which in many cases are functionally obsolete.
- Lack of legislatively approved funding mechanisms to generate additional funds to construct needed "big-ticket" infrastructure improvements.

- Additional state land use rules which mandate urban related transportation solutions within urban areas, yet require urbanization of non-resource lands irrespective of transportation system capacities or deficiencies.
- Unattainable state mobility standards based on archaic traffic engineering principles which lack system or corridor perspective.
- State access management and design standards which produce unwieldy and unreasonable solutions within urban areas.
- Highway and Rail proximity issues adding significant cost to projects and limiting local grid connectivity.

... the TPR has become an obstacle to economic development rather than a planning tool as intended.

The Central Oregon Cities Organization is a proponent of good transportation planning and we recognize the nexus of land use and transportation system impact. While we do not suggest eliminating the TPR, we do strongly feel that the rule needs to be amended in reflection of the many other rules and realities that local governments encounter when balancing the needs of land use (economic development), congestion and financial resources.

Respectfully,



George Endicott, Chair
Central Oregon Cities Organization



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May 19, 2010

John VanLandingham, Chairman and Commission
Members
Land Conservation and Development Commission

KATHIE ECKMAN
Mayor

Richard Whitman, Director
Department of Land Conservation and Development
635 Capitol Street NE, Suite 150
Salem, OR 97301-2540

MARK CAPELL
Mayor Pro Tem

JODIE BARRAM
City Councilor

RE: Request for TPR amendments

JIM CLINTON
City Councilor

Chair VanLandingham, Director Whitman, and Commission Members,

JEFF EAGER
City Councilor

The City of Bend is providing input regarding the Transportation Planning Rule (TPR) in anticipation of your rule making discussion at your June 2010 meeting in John Day.

TOM GREENE
City Councilor

ORAN TEATER
City Councilor

The City of Bend understands and supports the intent of the TPR, however finds that its implementation is an obstacle to providing local economic development opportunities for existing and new businesses in Oregon. The challenge can be traced to the amendment to the TPR (OAR 660-12) in 2005 mandating that all projects necessitated by zone change applications be fully funded by the end of the 20-year planning period. As a result, any economic development project which causes an 'impact' on a state highway system must demonstrate how it will 'reasonably' pay or mitigate for large and expensive improvements which, typically on a state highway, are beyond the financial capabilities of most communities.

ERIC KING
City Manager

It is important that municipalities mitigate their impacts to the state highway system, but we need flexibility in when and how we fund those mitigations, and it is critical that the State partner with local entities in funding as well as finding alternative solutions. Bend has been working through the Central Oregon Cities Organization (COCO) to develop alternative concepts for addressing long term multi-modal transportation needs. We believe ODOT should seek alternative mobility standards that focus on a number of performance measures that are flexible, cost efficient, and still create safe highways. In addition we have discussed alternative mobility standards, a corridor approach to transportation planning, as well as creating additional sources of revenue through income tax sequestration.

The challenges that the City of Bend faces with the TPR as a barrier to economic development are particularly difficult for us because of our isolation from west coast markets and larger metropolitan areas. Consequently, we need to be very responsive to economic opportunities. Finding a solution is going to require a new approach to transportation planning and funding, and we are motivated to participate in innovative solution-oriented discussions with the State. The City's focus is on ensuring that adequate multi-modal transportation infrastructure can be developed to support economic development.

It is important in these difficult times that government remain flexible and make every effort to encourage industrial and commercial growth to help improve State and local prospects for job creation and long term economic stability, while also balancing the long term needs of our infrastructure.

Sincerely,

A handwritten signature in cursive script that reads "Kathie Eckman".

Kathie Eckman
Mayor
City of Bend



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May 21, 2010

John VanLandingham, Chairman
Members of the Land Conservation and Development Commission

Richard Whitman, Director
Dept. of Land Conservation and Development
635 Capitol Street NE, Suite 150
Salem, OR 97301

RE: DLCD/LCDC Policy Agenda – TPR

The League has heard from cities during the course of the last year about their problems with transportation planning rule (TPR) implementation. Those problems seem to be growing – coupled with existing restricted revenue streams and the growing need for communities to provide economic/job based incentives.

During the last Local Officials Advisory Committee (to LCDC) meeting, this issue again rose during the course of the discussions about LCDC's policy agenda, and the concerns echoed broadly enough to warrant a request to the Commission to add this item to this biennium's policy agenda, for review and possible rulemaking.

ODOT has initiated work required by the passage of HB 3379; but it seems reasonably likely that the work will be narrowly focused to implement the requirements of the bill (performance measures, alternative mobility standards, adjustment in the planning period for a limited number of jurisdictions) , and not undertake a broader review of specific conflicts that local governments are experiencing with the implementation of the TPR with other statewide planning goals, including Goal 10 (Housing) and Goal 9 (Economic Development) – which lie within the purview of DLCD/LCDC. Having said this, I would also like to note that the majority of the HB 3379 work group members that attended the first (and to-date only) meeting also articulated the need and desire for a broader TPR look.

By illustration, I will mention below just a couple of concerns that we are hearing about. This is not an all-inclusive list, nor is it prioritized or necessarily the most significant; it is the tip of the iceberg. And whether these or other concerns with implementation were or were not intended outcomes of the TPR, the point today is that local governments, particularly cities, are struggling with how to integrate planning and TPR requirements – the outcomes of which have long term impacts on their ability to manage where and how growth occurs; their ability to serve that growth efficiently; and their ability to capitalize on near term economic opportunities that benefit both their citizens (jobs) and the state (income).

-Because of the timing of zone changes/comp plan amendments to traffic analysis and mitigation requirements, in order to avoid cost prohibitive mitigation, we have heard of cases where applicants are limiting back their requests, resulting in low or lower density development – contrary to density guidelines/requirements, potentially eventually

"Getting it done for Oregon's cities!"

resulting in a greater UGB land need, and leading to development scenarios that are primarily based on less-impacted transportation systems, whether they make good planning sense or not. Some cases include opportunities for high density mixed-use development.

-Extensive mitigation requirements have also been necessary for requests that include zone changes for vacant residential annexations, when actual development on the property to be annexed may not occur for several years after annexation is approved.

-Most city TSP's (approved by DLCD) are based on average traffic impacts within the UGB, not on the most intensive use scenarios. ODOT's guidance has required a worst case development assumption (from a traffic impact standpoint) to avoid a "significant effect", even when a city's comprehensive plan designations have been adopted and subsequently acknowledged by DLCD in the comprehensive plan, and a PAPA is consistent with the city's comprehensive plan is adopted. This situation has forced many cities to question what they can depend on (comp. plan) when reviewing a development application; or is the reality that all cities now face an expensive and time consuming process to amend their TSP's to assume worst case development from a traffic impact standpoint before they can move forward with new development opportunities?

Several strategies have been employed by cities to find a way to make the current requirements work, but this has resulted in additional spent resources, with some cities still being left stymied. Strategies such as:

-Utilizing a process to "condition" a zone change decision to require that the TPR be met with subsequent development, however, some city codes do not allow a zone change to be conditioned; or

-Attaching a condition of approval to address the TPR through the PUD process, however, many cities have been instructed by DLCD to remove obstacles to needed housing that include removing planned development overlays at the request of the owner- which may undermine the city's ability to ensure that the TPR would be subsequently addressed; or

-Creating "holding" zones for annexed parcels, which effectively slows down the urbanization process and "value enhancement" of annexed properties.

Seemingly, these strategies are a stop-gap solution, which require extensive staff work and coordination as part of a process that is already extremely complex and time sensitive.

Thank you in advance for your consideration of this matter. I understand that representatives from the city of Lincoln City brought up their concerns with the transportation planning rule when LCDC was meeting there last month, and that several other cities or city organizations have shared their concerns and made a similar review request of the Commission.

Most Sincerely,



Linda Ludwig, Deputy Legislative Director

May 19, 2010

John VanLandingham, Chair
Land Conservation and Development Commission
635 Capitol St. NE, Suite 150
Salem 97301-2540

SUBJECT: Transportation Planning Rule

Dear Chair VanLandingham and Members of the Commission:

The City of Ashland requests that LCDC consider including a broad look at the Transportation Planning Rule (TPR) as part of its 2009-2011 Policy Agenda. We would encourage LCDC to view this as a cooperative effort with the Oregon Transportation Commission (OTC)

We know that the Legislature passed HB 3379 in 2009 and that the Oregon Department of Transportation (ODOT) has begun work on the rulemaking required by this bill. While we appreciate efforts to look at delaying projects and other ways to measure vehicle congestion, neither HB 3379 nor the rulemaking will address some of the fundamental conflicts that exist between the Transportation Planning Rule and both other Statewide Planning Goals and HB 1059 that requires local governments to reduce the greenhouse gasses produced by passenger vehicles.

The City of Ashland has a longstanding commitment to Oregon's land use planning system and to equity in planning for all transportation modes. The City's comprehensive plan, land use regulations, and transportation plans focus on a transportation network that allows people to travel by transit, bicycle, or foot as easily as by car. This policy was originally adopted because the City Council felt that meaningful alternatives to the automobile are essential to the community's livability. Over time, we have come to believe that modal equity is also more financially and environmentally responsible than designing our community for the motor vehicle.

The City of Ashland recognizes that the TPR was originally drafted to ensure coordination between transportation and land use planning. In application, however, it actively works against good land use by focusing too much on motor vehicle travel. Jurisdictions end up planning to expand roads to accommodate an assumed ever-increasing number of motor vehicle trips rather than planning for land use that reduces dependence on the automobile. The existing TPR does not allow local jurisdictions to consciously decide to accept congestion, to assume reductions in trips made by cars and trucks, or to shift trips to transit, rail, walking, or bicycling. As such, the TPR discourages redevelopment and efforts to increase density because the infrastructure required is so auto-oriented that it works against walkable neighborhoods, employment areas, and commercial districts. Additionally, the required road projects are often expensive, which becomes itself an impediment to desired redevelopment and infill.

Ashland has run into the problems with the TPR recently. As the Commission knows from your recent visit to Ashland, we have been working on a Master Plan for redevelopment of the old Croman Mill site. This former mill site is over 60 acres in size and is critical to ensuring that we



have sufficient employment lands both for our economic health and to comply with Goal 9. To comply with the TPR, we conducted a transportation impact analysis and identified the impacts on City streets and highways owned and managed by the Oregon Department of Transportation. We found that several facilities will require capital improvements to increase the capacity to move passenger vehicles and trucks. Under the current TPR, not only do we need to identify these projects before we rezone the Croman Mill Site, but we also have to have a project financing plan in place prior to adopting the Master Plan. In addition to being prohibitively expensive, some of the projects that would be required conflict directly with some of the City's other land-use goals, including creating a pedestrian-friendly and transit oriented hub at one intersection and increasing the viability of another employment area at another. These projects all assume that we have to accommodate additional vehicle trips, rather than to use rail, transit, and other modes to move workers, residents, and goods. We believe that the expansion of the roads and streets – not increasing density of employment – will actually create the trips. Not only does the car focused approach limit our efforts to comply with Goal 14 and with Goal 9 but it also ultimately creates sprawl and decreases the livability of our community, which limits our success in complying with Goals 3, 4, and 5. Last but not least, planning for more capacity seems directly contrary to direction from the Oregon Legislature that we reduce VMT of passenger vehicles as a way to reduce greenhouse gas emissions.

The City of Ashland believes that DLCD has a large stake in reconciling the conflicts that the TPR creates with other land use planning goals, and we hope that you include a much broader look at the TPR as part of your policy agenda.

Sincerely,



Martha J. Bennett
City Administrator

- c. Mayor and City Council
Bill Molnar, Community Development Department
Linda Ludwig, League of Oregon Cities



Campbell M. Gilmour
Director

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

DEVELOPMENT SERVICES BUILDING
150 BEAVERCREEK ROAD | OREGON CITY, OR 97045

April 6, 2010

Richard Whitman, Director
Department of Land Conservation & Development
635 Capitol St. NE, Suite 150
Salem, Oregon 97301-2540

DEPT OF

APR 07 2010

**LAND CONSERVATION
AND DEVELOPMENT**

Re: Forest Template – ORS 215.750(1) & OAR 660-006-0027(1)(f)

For some time now we have noted a 'loophole' within the OAR and ORS that allows an owner of multiple adjacent properties in the forest zones to develop dwellings on each parcel by simply switching names on the deed titles, rendering the contiguously owned property no longer a 'tract' by definition. For example, a person owning four contiguous properties can place the first property under a husband's name, the second under the wife, the third under both names and the last under the husband or wife's name. By performing this simple task through quit claim deeds the owners have now opened up each property for the template test provisions, potentially establishing a dwelling on each lot. Additionally, much of the time these separations basically void OAR 660-006-0027(1)(h)(i) because there is no longer a tract that includes an existing dwelling although much of the time there is a dwelling on the original tract.

The juggling of ownership, in order not to be considered a tract is not consistent with other such applications as provided within OAR 660-006. The comparable language within the lot of record language, OAR 660-006-0027(1)(a)(C) *"The lot or parcel on which the dwelling will be sited was part of a tract on November 4, 1993, no dwelling exists on another lot or parcel that was part of that tract."* The template test does not have this language. Because of this a property owner is not limited to the tract having a dwelling on November 4, 1993 and can take the tract out of common ownership, simply by changing the names on the current deeds. This allows contiguously owned property not to be defined as a tract as found in ORS 215.010(2), *"Tract" means one or more contiguous lots or parcels under the same ownership.* because there is no date in time such as found in OAR 660-006-0027(1)(a)(C).

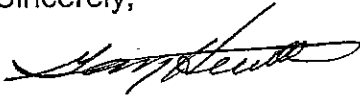
We find that since other portions of the OAR specifically limit development to a tract without a dwelling on November 4, 1993, the template test should have the same language as well. By including the tract language the property owner will be limited in developing multiple contiguous properties, holding the tract to one dwelling and consolidating those contiguous properties as part of the process, the same as OAR 660-006-0027(d)(B) *"When the lot or parcel on which the dwelling will be sited is part of a tract, the remaining portions of the tract shall be consolidated into a single lot or parcel when the*

dwelling is allowed." This would be stronger if the language also required a deed restriction stating the consolidation cannot be repealed if the consolidation is 160 acres for instance. This change will limit residential development within our forest zones the same as for the lot of record.

We have had numerous applications where three, four and five parcels have been taken out of a tract and each parcel later receiving approval for a template dwelling as provided for in OAR 660-006-0027(1)(f) and ORS 215.750(1). The potential build out of our forest zones appears to be in conflict with the intent of limiting development as the lot of record language does. Additionally, the increased time limits for such development as provided in ORS 215.417 to not require immediate build out appear to limit the immediacy of such development. Ultimately, if the OAR and ORS continue to allow more dwellings on land within the forest zones through the template provisions it also allows more dwellings on less land within closer proximity which in turn increases fire issues and overcrowding of our forest lands.

We request these proposed changes within the OAR be applied consistently to fairly allow development within each provision, not providing an advantage to one process over the other.

Sincerely,



Gary Hewitt - Sr. Planner
Farm & Forest Specialist
Clackamas County Planning Division
Department of Transportation & Development