

This draft was prepared by staff at DLCD and ODOT for the committee's consideration and potential adoption as their recommendation to their respective commissions. It will be reviewed by the committee at their meeting March 30, 2011. It is not a recommendation of the committee until it has been approved.

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



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Recommendations on Amendments to Transportation Planning Rule 0060 and Oregon Highway Plan

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I. Summary of Recommendations

(1) Whether to initiate formal rulemaking on OAR 660-012-0060 and/or whether to request that the OTC consider amending related provisions of the Oregon Highway Plan.

The committee recommends that the Land Conservation and Development Commission (LCDC) initiate rulemaking on Transportation Planning Rule (TPR) 0060 (OAR 66-12-0060). The committee recommends that the Oregon Transportation Commission (OTC) initiate amendments to the mobility standards in the Oregon Highway Plan (OHP) and associated guidance documents (e.g. OHP Mobility Standard Guidelines).

(2) What are the highest priority issues that should be addressed?

The committee recommends that the topics listed below be included in the scope for an initial phase (approximately 6 months) of amendments. Including a topic on the list does not indicate that the committee has reached a conclusion on the merits of any specific proposed amendment, but rather that the committee believes it is an important and potentially fruitful topic to pursue. The topics are divided into two categories based on whether it would be primarily addressed through the TPR or through the OHP; however, many topics will involve both TPR and OHP.

A. TPR Amendments

- A1. Exempt rezonings consistent with comprehensive plan map designations
- A2. Practical mitigation for economic development projects
- A3. Exempt upzonings in urban centers
- A4. Address traffic at time of urban growth boundary (UGB) expansion
- A5. Technical clarifications: transportation system plan (TSP) update and multiple planning periods

B. OHP Amendments & Guidance Documents

- B1. Exempt proposals with small increase in traffic
- B2. Use average trip generation, not reasonable worst case
- B3. Streamline alternate mobility standard development
- B4. Corridor or area mobility standards
- B5. Standardize a policy framework for considering measures other than volume to capacity ratios (v/c)

(3) How should the process be structured to recognize the joint authority of LCDC and OTC concerning these issues?

The committee recommends that these two lists be addressed in parallel coordinated processes with several check-in points, including further meetings of the committee. Draft amendments would go to the respective bodies for formal hearings with a target date of December 2011.

II. Background

The committee was established by LCDC and OTC in response to concerns about TPR 0060 and OHP mobility standards that were expressed in several ways:

- House Bill 3379 from the 2009 legislature
- Request to include TPR 0060 on the LCDC policy agenda in June 2010
- Testimony to LCDC in September 2010 regarding HB 3379 and broader issues
- Rulemaking petition from League of Oregon Cities in November 2010

Five commissioners were appointed to the committee:

LCDC Commissioners:

Hanley Jenkins

Greg Macpherson

Marilyn Worrix

OTC Commissioners:

David Lohman

Mary Olson

The committee's discussion was organized around three questions:

- (1) Whether to initiate formal rulemaking on OAR 660-012-0060 and/or whether to request that the OTC consider amending related provisions of the Oregon Highway Plan.
- (2) What are the highest priority issues that should be addressed?
- (3) How should the process be structured to recognize the joint authority of LCDC and OTC concerning these issues?

The committee held three meetings to gather information and draft the recommendations contained in this report. The first meeting was held January 21, 2011 and included background presentations by staff and a panel discussion with three city planners, a city attorney, a regional planner and a traffic consultant. The second meeting was February 15 and included discussion of a draft framework of issues and options and approximately three hours of public testimony from fourteen people ranging from city planners to advocacy organizations. The third meeting was March 30 and was devoted to discussion to reach consensus on this recommendation.

The committee considered at least fifteen letters previously submitted to LCDC on these issues. The committee received over twenty pieces of written testimony during their proceedings. All of the testimony is available online:

http://www.oregon.gov/LCD/meetings.shtml#Joint_Subcommittee_TPR__OHP

To gather input from developers, the committee chair (Greg Macpherson) and staff attended a joint meeting of the Retail Task Force, the International Council of Shopping Centers and the Commercial Real Estate Economic Coalition on March 17. Participants expressed concerns about both the process for TPR 0060 analysis and the level of mitigation ultimately required. There was a strong desire for a quicker process with more certainty in the outcome. There was a willingness to provide a reasonable level of mitigation, but concern that the requested mitigation was at times unreasonable and not based on objective criteria.

To help assess the potential priorities, an online survey was conducted using the framework of issues and options report provided to the committee (with the addition of topics mentioned at the second meeting). The survey invitation was sent out to the email distribution list of people who had participated in the process or requested being on the list. It was also sent out to the Oregon Planners Network, a general email list. Eighty-four responses were received. The topics with the most support in the survey are listed below:

- Address traffic at UGB expansion
- Exempt upzones in downtowns, centers and mixed use areas
- Exempt rezone consistent with comprehensive plan designation
- Use average trip generation, not reasonable worst case
- Change OHP mobility standards

Additional background information (including complete results of the survey) is available online:
http://www.oregon.gov/LCD/Rulemaking_TPR_2011.shtml

III. Detailed Recommendations

(1) *Whether to initiate formal rulemaking on OAR 660-012-0060 and/or whether to request that the OTC consider amending related provisions of the Oregon Highway Plan.*

The committee received considerable testimony that the combination of TPR 0060 and OHP mobility standards is leading to unintended consequences, with two general themes frequently mentioned. The first theme is that economic development objectives should be better balanced with transportation performance, but testimony indicated that in practice the TPR and OHP are giving precedence to transportation. The second theme is that the transportation requirements can make it more difficult to increase development intensities, even though the statewide planning goals call for compact development. This is especially noticeable in urban centers that are targeted for the highest intensities of development, but also have the most traffic congestion. Based on these unintended consequences, the committee concluded that amendments and related work are needed.

(2) *What are the highest priority issues that should be addressed?*

A. TPR Amendments

A1. Exempt rezonings consistent with comprehensive plan map designations

This proposal was one of the most commonly suggested in testimony and the survey. The concern is that when an acknowledged comprehensive plan designates land for a particular purpose, the local government should be able to rely upon that designation and should not be required to make additional findings at the time of rezoning to be consistent with that designation.

Testimony indicated that there is uncertainty and inconsistent interpretation about whether TPR 0060 must be applied for a rezoning when the new zone was assumed in the analysis for the transportation system plan (TSP) because the land was designated for that use in the comprehensive plan. In some cases, analysis at the time of zone change, and mitigation, has been required. TPR 0060 could be amended to exempt cases where the local government can make findings that transportation analysis has already been done (either in the TSP or at the time the comprehensive plan designation was set).

Another option would be a broadly written exemption for any zone change consistent with the comprehensive plan map designation. This exemption would not require findings about whether transportation analysis was done previously.

A2. Practical mitigation for economic development projects

This proposal would allow consideration of the tradeoffs between economic development and transportation impacts to determine the appropriate level mitigation. In some cases it may be acceptable to allow transportation performance to fall below the standard so as to accomplish

economic development goals. The concern is that the current rules and standards do not allow balancing these considerations.

The definition of economic development in the rules implementing House Bill 3379 (OAR 731-017) would be a good starting point to determine which projects would qualify, but it would need to be reviewed to ensure it is appropriate for this purpose. The amendment would not completely eliminate the requirement to provide mitigation for traffic impacts, but could allow development to proceed with a lower level of mitigation. Traffic analysis would be required to determine the overall impact, and the net impact with the practical mitigation. Practical mitigation could also include phasing of construction, even in cases where TPR 0060(3) would require immediate mitigation. Further work is necessary to define the process that local and state governments would use to agree on the level of mitigation.

A3. Exempt upzonings in urban centers

This proposal is based on the principle that intense development within UGBs, and especially within central locations, is actually better for the overall transportation system when compared to the same amount of development spread out along the urban fringe, because it reduces trips lengths and increases the options for walking, biking or transit. The concern is that commonly used analysis methods and adopted performance standards do not fully reflect these benefits. Therefore the amendment would eliminate the requirement to do traffic analysis for these upzonings. It would be important to define the specific areas or types of areas to exempt. It would also be important to define the types of upzonings that would be exempt to ensure that the upzoning supports the transportation benefits. This amendment should be reviewed when methodologies and performance standards have improved so the benefits of development in centers are accounted for. In that case the exemption might no longer be needed because upzonings in centers would show a positive effect on transportation and would not need to mitigate a “significant effect” under TPR 0060.

A4. Address traffic at time of UGB expansion

This issue was one of the most commonly mentioned in the survey. The concern is that transportation performance is best considered at a more general level when expanding an urban growth boundary (UGB) rather than when rezoning to implement the plan. Currently the rules for UGB expansions require that transportation in general be considered as one of the location factors (OAR 660-024-0060(6)); however, there is an exemption (OAR 660-024-0020(1)(d)) stating that the specific requirements of TPR 0060 do not have to be applied if no additional development is allowed (e.g. prior county zoning retained). It is possible that addressing this issue would lead to amendments in the UGB rules (OAR 660-024).

A5. Technical clarifications: TSP update and multiple planning periods

These two issues scored relatively high on the survey. They would not involve major shifts in policy, but would clarify issues that could otherwise cause problems in specific situations.

The issue with TSP updates is that it is not clear whether TPR 0060 applies. TPR 0060 does not apply when establishing a TSP. It does apply to a minor amendment (e.g. to remove a planned facility) since amending the TSP is a comprehensive plan amendment. In past practice it has not been applied for major TSP updates (i.e. updating the plan horizon year), but this is not explicit in the text.

The issue with multiple planning periods comes up for cities within a metropolitan planning area where the Regional Transportation System Plan has a different horizon than the city's TSP. TPR 0060(1)(c) should be clarified to define what is meant by "the planning period identified in the adopted transportation system plan" when there are multiple TSPs.

B. OHP Amendments & Guidance Documents

Much of the discussion and testimony on OHP-related issues have focused on the need for additional flexibility in OHP mobility standards and concerns on limitations of volume-to-capacity (v/c) ratios.

There are several different potential work areas to address mobility standard issues discussed below. These are designed to encourage the use of flexibility both in existing policy and through new policy considerations to better balance transportation, land use and economic development. It is also important to note that other ODOT work may lead to potential OHP amendments in the areas of access management, implementation of the Oregon Freight Plan and tolling policy development.

B1. Exempt proposals with small increase in traffic

There is concern that an increase of a single trip as a result of a proposed zone change or change in land use regulation is enough to trigger TPR Section 0060. A provision could be considered that if additional trips resulting from the amendment are less than a defined threshold, then it would not be considered a significant effect for the purposes of TPR analysis on state highways. This would provide relief for smaller projects and may better promote redevelopment activities with modest trip increases. It would allow ODOT to focus more resources on working with projects that would likely cause larger impacts. It would also free up resources for more advanced planning work encouraging a proactive approach to mobility and development issues. All of this would promote more efficient timing in development considerations. ODOT should include considerations based on the function of the state facility (e.g. interchange area functions) in these exemptions.

ODOT should consider OHP policy or procedural changes to exempt proposals with small increases in traffic from consideration of a significant effect. This will need to include consideration of whether specific state highway functions should be excluded from this policy or procedural change and how safety issues should be addressed.

B2. Use average trip generation, not reasonable worst case

This issue was one of the most commonly mentioned in testimony and the survey. "Reasonable worst case" is not defined nor required by the TPR and OHP. The requirement comes from case law in Land Use Board of Appeals (LUBA) decisions. It may be more realistic to assume average trip generation because not all development leads to worst case traffic generation.

ODOT should consider revising analysis procedures at both the system planning level (e.g. TSP development) and for TPR Section 0060 analyses to consider average trip generation rates rather than reasonable worst case scenarios. It is possible that fully implementing these revisions will require amendments to the OHP or TPR. If so, these amendments should be included in the initial phase of amendments.

B3. Streamline alternate mobility standard development

Alternate mobility standards provide one of the primary areas for flexibility in the OHP. The concern is that timelines and processes for alternate mobility standard development are too complex and time consuming for it to be a fully effective tool in a number of situations.

ODOT should review expectations for consideration of alternate mobility standards and streamline their development through enhanced guidance and staff procedures as well as modified policies if needed to make this a more effective, efficient and predictable tool.

B4. Corridor or area mobility standards

Current methodologies focus the evaluation of congestion at an intersection level (or even each movement within an intersection). There has been concern expressed that this technique does not accurately reflect the wider impacts of congestion, which may be better represented (and perhaps mitigated) over a wider corridor or area, rather than at a point-specific or intersection-specific location. The OHP currently provides flexibility for a corridor or area level mobility standard through the development of alternate mobility standards. However, there are a number of questions surrounding their development and implementation. Questions on how to best and fairly mitigate over a corridor or area should also be considered.

ODOT should consider changes to Agency guidance and procedures on development and implementation of corridor or area-based mobility standards. Options for mitigation and other considerations will be a key aspect of this work and may lead to policy modifications. Enhanced options for corridor and area-based standards and mitigation may be tied to developing measures outside of v/c ratios as discussed in more detail below.

B5. Standardize a policy framework for considering measures other than v/c

Volume to capacity ratios are not working well enough in highly congested conditions, making application difficult in many areas - especially in large urban areas. There are also concerns that measures based v/c focus only on site-specific locations and lack the multimodal considerations that other measures would provide. Work is needed to provide a policy framework outside of, and supplemental to, v/c ratios that provide additional flexibility, perform better in highly congested conditions, and provide an adequate measure of mobility and functionality for the state system and statewide objectives.

ODOT should analyze and implement options for expanded measures beyond and/or supplementing v/c. This process would build on initial results from the current ODOT Research Project SPR 716: Development and Sensitivity Testing of Alternate Mobility Metrics as well as additional Agency work. OHP policy changes should be considered to provide a policy framework that expands the flexibility for additional measures and provides for consistent applications through a number of situations across the state. Technical work, procedures and methodologies would likely be a longer term effort to better implement policy changes. Considerations and tasks in the Portland metro area may be one of several early focus areas for this work.

(3) How should the process be structured to recognize the joint authority of LCDC and OTC concerning these issues?

The committee recommends that the two lists of topics be addressed in parallel coordinated processes with several check-in points. Draft amendments would go to the respective bodies for formal hearings with a target date of December 2011.

A. Process for TPR Amendments

LCDC will need to appoint a rulemaking advisory committee (RAC) consisting of 12 – 15 members representing a wide range of interests including:

- City planners (a variety of sizes and regions)
- County planners
- Metropolitan planning organizations
- Developers
- Consultants
- Freight
- Advocacy organizations
- Citizen Involvement Advisory Committee (CIAC)
- Small business representative (especially important for the fiscal impact statement)
- State agencies: DLCD, ODOT, Business Oregon

The RAC would be chaired by an LCDC commissioner. The RAC would meet monthly to prepare draft amendments.

Once draft rules have been prepared by the RAC, they would be sent to the Area Commissions on Transportation (ACTs) for review and comment to help coordinate the two processes. The target is to hold the LCDC hearing and possible adoption of TPR amendments in December 2011.

B. Process for OHP Amendments & Guidance Documents

OHP tasks will be based on input received to date, including through the committee process, and rely on existing advisory groups for input including ACTs and stakeholder groups. Policy changes will include opportunities for public review and input. More focused work on guidance and procedure documents will be managed through internal advisory committees and technical teams with expertise in these areas. When OHP amendments have been drafted, they will be sent to the RAC appointed by LCDC for review and comment to help coordinate the two processes. OTC consideration of policy amendments is targeted for December 2011. Potential tasks involving guidance and procedures would be completed concurrent with work on policy issues.

C. Role of the joint-subcommittee of LCDC and OTC

The committee will continue to be involved, but will not be the primary body for developing draft amendments. Meetings will be held approximately every three months to ensure that work is coordinated and progress is consistent with the committee's recommendations. The next meeting (targeted for July 2011) would review initial drafts for most of the recommended topics. The following meeting (targeted for September/October 2011) would look at drafts that have been refined and are ready for public involvement and outreach.