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Oregon’s Transportation Planning Rule Goes into the Shop for Repairs
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Abstract

Over ten years ago Oregon approved a new and sweeping process for considering transportation planning for local agencies and land use development. Coined the “Transportation Planning Rule” (TPR) and adopted into administrative rules of the state, local agencies were provided with a process for considering short range land use actions, long range transportation plans and changes to zoning that have been implemented by local agencies throughout the state. Recently the TPR has come under challenges in its process addressing the relationship between the adequacy of transportation facilities and rezoning of land uses. The Jaqua case, taken to the State Court of Appeals, raised key issues as to the level of evaluation and planning process necessary in determining the adequacy of transportation facilities.

The state has convened a blue ribbon panel to assess the issues associated with the implementation of the TPR and how transportation policy issues may need to be refined to best address both the long term planning goals and development implementation interests.

At stake is the level of transportation analysis necessary to address changes in land use from approved plans. For example:

- Does a twenty year analysis include travel demand forecasts and determination incremental year or phase facility adequacy in each year for 20 years or are adequate transportation facilities in the 20 year planning horizon the basis for decision making.
- How can decisions made for land use changes in plans be made in a way that protects the functional integrity of transportation investments (existing and future) outlined in long range transportation plans without further encumbering the public with greater unfunded transportation facility costs.

This paper and presentation will outline the issues associated with updating Oregon’s transportation planning rule including the stakeholder process, blue ribbon panel, study findings and explore the issues of implementation of one of the country’s most unique statewide transportation policies. The paper will explore the land use/transportation issues from multiple perspectives such as land development, local agency, public needs and transportation analyst.
Oregon’s Transportation Planning Rule Goes into the Shop for Repairs

Over ten years ago Oregon approved a new and sweeping process for considering transportation planning for local agencies and land use development. Coined the “Transportation Planning Rule” (TPR) and adopted into administrative rules of the state, local agencies were provided with a process for considering short range land use actions, long range transportation plans and changes to zoning that have been implemented by local agencies throughout the state. Recently the TPR has come under challenges in its process addressing the relationship between the adequacy of transportation facilities and rezoning of land uses. The Jaqua case, taken to the State Court of Appeals, raised key issues as to the level of evaluation and planning process necessary in determining the adequacy of transportation facilities.

The state convened a blue ribbon panel to assess the issues associated with the implementation of the TPR and how transportation policy issues may need to be refined to best address both the long term planning goals and development implementation interests. This effort has produced an amendment to the TPR in March 2005 related to the necessary transportation findings to support a rezoning of comprehensive plan/zoning for a jurisdiction. The process is on-going this year looking at other element of the TPR and “repairs” and refinements that would clarify and enhance the policy.

The following sections highlight the following topics in transportation planning techniques and analysis:

♦ Jaqua – the defense of Oregon’s comprehensive planning from arbitrary citizen and developer perspectives and Oregon’s open policy process that does not fear involvement, but rather embraces it
♦ Funding Fiction – how do you operate policy in a world where planning of transportation improvement outstrips any reasonable funding and address Dolan
♦ Analysis enhanced – how will Oregon’s planning approach address performance

Opening the Repair Shop

With all good planning policy, there are times when it is tested. The Transportation Planning Rule (TPR) has provided Oregon a framework since the early-1990’s to guide transportation planning consistent with statewide goals. The TPR has three key elements that guide planning:

1. Transportation System Plans (TSPs) to support comprehensive plans – these are multi-modal assessments of needs, options and priorities developed at a community level
2. Criteria for Comprehensive Plan/zone changes that would alter a TSP
3. Guidelines for Rural areas that differentiate them from urban areas for transportation planning

After nearly 15 years of pragmatic implementation, changes are visible throughout Oregon. For those attending the TRB Conference in Portland, you can experience many
of the results touring the area. Suburban areas with extensive bicycle lane networks, connectivity and LRT station area development patterns that promote alternative modes of travel – unlike any created in the 15 years prior to the TPR. While not perfect or complete, the groundwork for a substantially greater balanced transportation system with options is emerging. However, just like an onion (to steal a phase from *Shriek*) there are many layers to the analysis that supports the TPR. One of those came into focus in 2004 in the Jaqua v City of Springfield land use appeal.

A hospital in the Eugene area (PeaceHealth) wanted to site a new facility in Springfield on 99 acres of land that were planned for medium density residential. Following requirements to process the rezoning, the approval decision was challenged by local residents Robin and John Jaqua (and joined by Lane County and 1000 Friends of Oregon). The Land Use Board of Appeals (LUBA) and Court of Appeals remanded the City’s decision in part due to a detail in the transportation planning review. They found that the application did not address deficiencies in the system for intervening years within the 20 year planning horizon – it only assessed the out year of the 20 year planning period.

Challenges to planning process based upon process/procedures is not uncommon in other states (for example California CEQA and Washington SEPA), but are must less frequent in Oregon. Typically in the prescriptive planning laws of California and Washington, numerous challenged have resulted extensive transportation analysis costs for site planning compared with Oregon’s goal based system, where more time is invested in system planning. Based upon the Jaqua case, a blue ribbon panel was created to address the second of the TPRs elements noted above – the rezone criteria. The objective was to clarify the criteria and goals. At stake was the process that determines how decisions for land use changes are made. This process needed to protect the functional integrity of transportation investments (existing and future) outlined in long range transportation plans without further encumbering the public with greater unfunded transportation facility costs.

Where many areas fear public involvement in policy development and traditionally transportation departments operate from a DAD strategy – develop, announce and defend – Oregon embraces open public debate and (borrowing from classic engineering jargon) looks to reach out, reflect, refine, implement (R³I). Extensive stakeholder outreach, debate, public discussion and dialogue occurred in the free and clear of the web. Bob Cortright and Frank Angelo crafted a process that, given the short time, engaged a wide range of participants.

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1 Refer to the following web sites for the test of the LUBA decision and the file order:
http://luba.state.or.us/pdf/2004/aug04/03072.htm
http://luba.state.or.us/pdf/2004/jan04/03072.htm
The outcome was developed through extensive coordination on a difficult but detailed transportation planning analysis topic. The core elements focus on:

- Definition of significant effect
- Definition of analysis planning period (20 year)
- How to address conditions where facilities are deficient already – prior to the project
- Determination of what can be relied upon as programmed improvements – those that are presumed funded vs those that are only planned
- Importance of interchanges on the Interstate highway system to the state

All of these issues relate to transportation planning and analysis. In the “repair shop” following the Jaqua decision, the TPR has come out with the following updates:

**Significant Effect:** Defined as a change in a) functional classification; b) performance standards; or c) reduces performance below a standard in a TSP or comprehensive plan. For planners this means that if you define functional class by motor vehicle volume, when that volume is exceeded you will have triggered a significant effect. If you have a level of service or volume-to-capacity ratio threshold, if you exceed that standard you have a significant effect. Finally, if you need an exception to a functional classification standard, a significant effect is present.

**Planning Period:** The historic 20 year planning horizon developed from FHWA project planning guidelines has commonly been utilized in planning throughout the county. For Oregon TSPs, this is commonly utilized and the end year of the TSP analysis defines the planning horizon for jurisdictions as long as the TSP is periodically updated (required every 5 to 10 years by Oregon law). In Jaqua, the challenge was that only studying the end year of the planning horizon was not adequate and that intermediate years needed to be assessed at each point where a deficiency may exist between the present and the horizon year. This was viewed as a “concurrency” threat to the TPR by many in the state and the “repairs” made were to establish the horizon year as the basis for the rezone determinations, given refined understanding of “reasonably likely” transportation improvements. Most transportation forecasting in Oregon is done with travel demand models that are developed by the state or regionally. This level of consistency avoids the common feudalism of other areas where competing travel demand models are utilized to challenge one another. In Oregon, the state has invested in and coordinated this resource which as eliminated much of the friction found in other regions.

**Pre-existing Failure:** The condition of when something is broken before you plan, are you in a state of land use development moratoria, are you able to say that conditions are “level of service F now and will be level of service F after our project” so proceed, are you allowed to proceed if you don’t make the failure worse and/or are you able to

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2 Commentary on the amendments prepared for the Department of Land Conservation and Development can be found at [http://www.oregon.gov/LCD/transplan.shtml#Joint_OTC_LCDC_Subcommittee_Background](http://www.oregon.gov/LCD/transplan.shtml#Joint_OTC_LCDC_Subcommittee_Background)
proceed if you conditional accept mitigation that would bring conditions back to the pre-existing state or to the accepted standard. The repair shop answered this question by choosing the later of these. If conditions are deficient by standard, the project will need to bring them back to the pre-development conditions – either by demand management, minor mitigation or basically re-entry into the transportation system plan level process.

**The “Funding Fiction”**: Many of the TSPs in Oregon have improvement plans that far exceed the “available” or “assured” funding sources. This polite funding fiction is well known and been present since before the TPR. This is done to provide agencies with a road map to plan future funding needs well in advance of the forthcoming system deficiencies. However, for a rezoning consideration, determining what specific improvements are likely to be in place at the end of the planning horizon dictates whether a “hall pass” is issued or a significant effect is found. In the repair shop it was determined that the TPR needed to more clearly defined what improvements are “reasonably likely”. This included state transportation improvement program (STIP) or local/regional capital improvement program (CIP) funded projects, system development charge (SDC, similar to traffic impact fee (TIF) in other states) projects, local improvement district (LID) projects, federally-approved financially constrained regional transportation system plan (RTP) or projects that the state/local agency can provide a written document acknowledging a projects status as reasonably likely in the planning period. In the next five years, this last provision will likely change TSPs to include a list of reasonably likely projects.

**Interstate Interchanges**: The state devotes substantial resources to the interstate highway system and the importance of these facilities is unique compared to others in the state. To avoid common roadside development degradation to interstate capacity, high-level coordination between allowed land use and planned land use is needed. In the repair shop a one-half mile radius (from center of interchange) was established where rezone actions would be required to assess the interstate interchange in the consideration of the rezone action (within or beyond the local land use jurisdictions requirements). The objective was aimed at having the evaluation process consider the preservation of the functional integrity of these most valuable state facilities.

**The Funding Fiction**

Probably the most enlighten revelation of the Jaqua coordination process was the frank and open discussion of the “polite fiction”\(^3\) of planned but unfunded projects throughout the state. Commonly, many analysts reviewing rezone applications were freely utilizing the aspirational elements of the TSPs in determining the acceptability of changes to comprehensive plan or zoning changes. The difference between the improvements that could be counted upon through current or reasonable funding sources and those that the jurisdiction found in their TSP planning process as compatible with the future function and livability of their community created ripe ground for changes in comprehensive plan zoning to consume capacity that had not yet been programmed and further, compound and cause to fail those improvements that were reasonably likely. The funding fiction is

\(^3\) A term coined by Eric Jacobsen, DLCD in his paper summarizing the Jaqua decision in fall 2004.
a difference exists between the listing of projects a community could determine as acceptable/needed in a TSP and the timing, assessment and approval of funding sources (which are politically sensitive). Many decision makers involved in TSPs and rezone land use actions politely avoided the understanding of this difference (for whatever reason) in allowing some rezone projects to be approved where they were dependant upon planned but unfunded improvements. The net result of this misunderstanding is obvious. Rezoned land uses, outside the comprehensive plan process or TSP, being able to consume capacity without contributing to the incremental cost of improvements, placing greater pressures on the political system for funding of their unfunded share of improvements – without paying for there proportionate share of the impact that they contributed. If most of the improvements in the funding fiction were minor improvements, that would not substantially impact the planning process. Unfortunately, most of the unfunded projects are large, significant improvements (many times arterial or interchange area improvements). The Jaqua “retooling” has clarified this issue in the definition of what improvements are funded or reasonably likely (a call for action to have TSPs help define this to improve planning efficiency).

Negative planning outcomes likely from this action were discussed in the repair shop. Many rezone actions represent substantial up-zoning of the trip generation of a property. If these large-trip-increase land uses cannot find adequate facilities with the urban growth boundary will they spill over into rural areas or smaller satellite communities where opportunities for industrial/jobs-based land development plans can quickly transform into retail roadside development. Woodburn along I-5 could be used as an example of this type of impact (where strip retail, an outlet mall and Wal-Mart consume much of the land adjacent to I-5). The Jaqua and Dolan rulings provide a basis for new transportation analysis approaches to address this within the TPR:

- ODOT has standards for their highways (which are the bulwark of nearly every non-urban area’s transportation network) which are different in rural areas than urban areas. For example volume-to-capacity ratios ranging from 0.7 to 0.8 as compared to 0.99 in the Portland region. This differentiation assures that capacity needs in rural areas stay rural until the community determines it is to become urban. At such a time, greater coordination with residents, businesses, agencies and stakeholders would occur in a comprehensive planning effort rather than an isolated project rezone undertaking that is limited to a few people rather than the community.

- Inclusion of the ½ mile requirement at interstate interchanges assures that roadside development changes will be outside the access management influence areas of interchanges or will be evaluated on the basis that they preserve the functional integrity of the interstate system to service freight and through traffic needs of the state.

- The evolution of the proportionality test in land use action in Oregon is beginning to finally emerge which balances the contribution that a land development action makes to the transportation system with its impacts. This begins the resolution of

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4 City of Tigard vs Dolan was a Supreme Court land use decision reflection on the proportionality of mitigation that could be conditioned to new land use development or redevelopment.
the funding fiction by providing a basis to assure that land development has paid for its fair share of system impacts. The City of Beaverton and City of Milwaukie have recently utilized process that involves a matrix summary of the significantly impacted facilities and the proportionate impact – outlining those projects that are reasonably funded and those that are not both in the short term and the planning horizon (20 years).

Performance Measurements – Can We Enhance our Analysis and Land Use Together?

While the Jaqua update to the Transportation Planning Rule (TPR) did not delve into performance measures, the next phase of the TPR update may engage these discussions. The TPR allows local jurisdictions to establish standards of adequacy. In the first fifteen years of the TPR these have most commonly been established for the motor vehicle system being capacity driven measures such as level of service and volume-to-capacity ratio. In the Portland region, Metro (the MPO), has provided guidelines for agencies that address sub-geographic region, corridors and interstate facilities with one-hour and two-hour levels of service. Questions in the City of Portland are being asked about how performance measures can be developed that address adequacy, reflect on differences they have between system level planning and land use development actions, provide geographic differentiation, and can address in-fill development appropriately. More important is assuring that similar facilities do not end up with multiple determinations of adequacy by various jurisdictions.

The land use/transportation connection has been a hallmark of Oregon planning for over 20 years. The outcomes have been enhancements to communities and livability that are unique and diverse. Lessons are continually being learned and refinements made to the process of furthering the enhancement of communities. Observing outside efforts that try to legislate adequacy have not necessarily produced the outcomes achieved in Oregon. Level of service standards and concurrency in California, Florida, Arizona, Washington and Colorado have produced bigger roads, development that is spread over larger geographic space than in Oregon and no lack of congestion levels in the “meeting” their adequacy requirements.

In the transportation planning world simulation analysis tools have emerged that provide visualization of motor vehicle and other mode operation together. While powerful in application, these tools to-date have elevated the cost of transportation analysis and in some cases not elevated the fundamental understanding of capacity. In other corners of the transportation, the concept of multi-modal performance measures have been developed, but have generally resulted in similar fates in terms of complexity and ability to address core transportation needs. Neither as of yet have produce low cost, effective performance measures that could span from the system/corridor planning sphere to the land use or project level planning application efficiently.

The next wave of Transportation System Plans developed under the TPR will be the first where extensive congestion is prevalent in the base year conditions before future
forecasts. This will test the traditional travel demand forecast and operational tools for capacity analysis to new levels. Whether new more sophisticated tools will be necessary or cost effective as compared to greater understanding of the current tools in new applications is yet to be determined. The current subarea plans and TSPs in development in Oregon are utilizing a wide spectrum of performance measures to address all modes of transportation. These include a blend of old school with new tools:

♦ Level of service and volume-to-capacity ratio for motor vehicles
♦ Ridership and relationship of service access to land use density for transit
♦ Spatial coverages of non-SOV percentages utilizing ArcView and travel demand forecast results by analysis zone
♦ Motor vehicle queuing utilizing system tools for operational analysis
♦ 24 hour profiling of volume-to-capacity to determine motor vehicle peak hour spreading
♦ Access spacing conformity utilizing coverages in ArcView
♦ Neighborhood traffic environmental and pedestrian crossing volume-to-capacity ratios
♦ Integrated collision data analysis related to motor vehicle volume
♦ Pedestrian crossing capacity analysis of key arterial and collector barriers
♦ Bicycle network coverage assessments relative to compatible activity centers

Each of these provides quantifiable measures of performance that can be utilized to enhance communities and optimize operation. But will they guide us toward eliminating congestion? The TPR never promised a goal of no congestion – its purpose was to promote the development of safe, convenient and economic transportation systems designed to provide choices rather than the sole reliance on the automobile for travel, with an end result to reduce air pollution and avoid traffic and livability problems faced by other urban areas of the country. The TPR’s recent trip to the repair shop is another step in the voyage to accomplish this goal.