

August 3, 2004

TO: Advisory Committee on Regulatory Permitting ("ACRP")

FROM: Mark Whitlow – Work Group Lead  
Transportation Infrastructure Work Group

RE: **EXECUTIVE SUMMARY: Report & Recommendations**

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## TOPIC

Does transportation infrastructure pose a problem for industrial and other types of development in Oregon?

## PROBLEM/OPPORTUNITY STATEMENT

There is a shortage of transportation infrastructure and no money to provide for it. The general shortfall in transportation infrastructure exists on state highways and local roads for all types of development, including the buildout of permitted uses under acknowledged comprehensive plan, redevelopment projects, and new development.

The problem presents opportunities to form further public/private partnerships to jointly plan and fund the transportation infrastructure shortfall, in a variety of different contexts. Many of these partnerships will be project related, but others will be focused on searching for and developing better ways to coordinate and communicate in advance of projects.

## SITUATIONAL ANALYSIS

The Work Group consisted of a diverse membership of participants, both public and private sector, including industrial brokers and developers. Three two-hour meetings were conducted during the month of July pursuant to a predetermined work plan. Roundtable discussions were used for soliciting ideas, generating and reviewing case studies and for assigning specific tasks to five separate subcommittees to study and report back to the Work Group regarding a spectrum of potential solutions identified by the Work Group. The recommendations forwarded to the ACRP are the solutions selected by the Work Group following subcommittee

presentations, where the Work Group identified consensus support for the given recommendations.

## **WORK GROUP RECOMMENDATIONS**

The Work Group deliberated on the potential solutions, as reported by the subcommittees at its final meeting on July 29, 2004. Of the potential solutions discussed based on the reports of the subcommittees, the Work Group recommends that the ACRP take action with respect to the following issues:

### **A. Creative Infrastructure Financing**

The following actions were adopted by the Work Group as recommended by the Creative Financing Subcommittee:

#### **1. Grant Statewide Authority to Create Reimbursement Districts and SDC Credit Transfers**

Some cities and counties may not have authority to create reimbursement districts or to allow transfers of SDC credits among and between property-owners and developers. Legislation could explicitly grant all cities and counties such authority. Reimbursement districts and the ability to transfer SDC Credits among property owners and developers have been identified as practical ways to facilitate infrastructure development by the private sector, where infrastructure improvements built beyond those needed to mitigate the impacts of the specific development can be repaid to the developer through the reimbursement district or SDC Credit transfer mechanisms.

#### **2. "Single Property/No-Urban-Renewal-Agency Plan" Tax Increment Financing**

Right now, in order for a city or county to use tax increment financing, an urban renewal agency must be functioning for the area, and an urban renewal plan must be developed and approved (a process that can easily take more than a year, and then be subject to referendum). However, the Legislature could authorize a city to create a "tax increment district" which could be used to finance transportation infrastructure in newly urbanized areas (conversion of urbanizable to urban land within existing UGBs or new urban land created by UGB expansions). The city could borrow funds (either from ODOT or another source, by issuing a bond) to construct the infrastructure improvements (which could include not only necessary transportation infrastructure, but also wastewater, stormwater and other needed infrastructure.) Property taxes on the assessed value of the property before the

property was brought into the UGB could continue to be paid to the overlapping taxing districts (schools, county, city, etc.). Property taxes levied against the increase in value—whether the increase is due to the land now being inside the UGB or the value of the infrastructure improvements thereby constructed—could be paid to the city to be used to repay the costs of the infrastructure that had been needed to serve the site. Once the borrowed funds were repaid, the property taxes on the entire parcel would be paid in the normal course.

### 3. Increase OECDD/ODOT Involvement at the Local Agency Level

The Legislature should provide additional staff and/or dollars to increase OECDD and ODOT's involvement at the local agency level. One way to increase involvement would be to require OECDD and/or ODOT staff to be available to attend pre-application conferences at the local agency level. Another option would be to request local agencies to hand out a flyer or brochure prepared by OECDD and/or ODOT at all pre-application conferences that include the website for state agency contacts (i.e., DEQ, DSL, OECDD, Water Resources, etc.), the infrastructure funding opportunities by OECDD, and the infrastructure funding options, including ODOT's OIPP (Oregon Innovative Partnership Program). This would be a great way for OECDD and ODOT to provide targeted promotion of their programs.

## **B. Realistic Transportation System Plans (TSPs)**

The Subcommittee recommended that the TSP requirements contained in the Transportation Planning Rule (TPR) be further studied with respect to the standards and criteria for TSPs. The Subcommittee recommended that this job be folded into the joint DLCDC (LCDC)/ODOT (OTC) study project that is currently underway to amend the Transportation Planning Rule. Issues that should be included in the work would include the following:

- Interrelate/coordinate corridor plans, interchange access management plans and highway segment designations (activities under the Oregon Highway Plan) with local transportation system planning, thereby improving state and local coordination for transportation planning.
- A more detailed examination of any state highway corridors within the urban areas should be conducted.
- TSPs need to be more realistic identifying infrastructure projects which can be placed in the STIP, providing purpose statement for each project, identify order of priority, increasing the related level of traffic analysis, and advancing environmental impact analysis for significant facilities.

- Reduce the current weaknesses in transportation system planning that exist at jurisdictional boundaries. The TPR stipulates that plans must be consistent with respect to shared transportation facilities, but the coordination to obtain this consistency could be vastly improved.
- Need to provide incentives to develop better TSPs.
- The safety component of TSPs should become a more meaningful element, particularly near schools and in downtowns.
- Examine ways to allow amendments to TSPs to be done in increments, either legislatively or through quasi-judicial amendments (or clarify that they may be amended by private, quasi-judicial land use applications), in conjunction with proposed development projects.
- TSPs should also include a separate portion devoted to potential growth and economic development, with related transportation infrastructure identified as an inducement to such growth and economic development.
- Need to clarify what it means to have a facility listed on a TSP. In other words, make clear that some transportation facilities can be constructed even if they are not listed on a local TSP.

### **C. Concurrency/TPR Amendments**

After the Subcommittee report by Frank Angelo, the Work Group concluded that it would be appropriate to recommend to the ACRP that Section 0060 and perhaps other provisions of the TPR be amended within the joint LCDC/OTC amendment project. However, given the immediate uncertainty created by the *Jaqua* decision for local communities throughout the state, the Work Group recommended that LCDC engage in emergency rulemaking to clarify Section 0060 of the TPR, so as to return to the status quo existing before the *Jaqua* decision. Specifically, the emergency rulemaking - which is valid only for 180 days - would provide express clarifying language to Section 0060 allowing proposed development to proceed in conjunction with an amendment to a transportation system plan, an acknowledged comprehensive plan or land use regulation, so long as transportation infrastructure improvements sufficient to mitigate the impacts on the transportation system are included within an acknowledged TSP or STIP for construction by the end of the planning period. The express amendment language for the emergency rule will be developed through the emergency rulemaking process. Once again, this clarification

by interim rulemaking would allow cities and counties to rely upon adopted TSPs for the duration of the transportation planning period.

**D. Improved ODOT/Local Government Coordination**

The Subcommittee delivered a series of suggested recommendations to improve state/local coordination on highway access decision making, thereby improving and expediting land use decisions. The Work Group concurred with the recommendations of the Subcommittee and forwarded them onto the ACRP (per the attached chart).

**Improved and Expedited Land Use Decisions  
by  
Local Governments and ODOT**

<p style="text-align: center;"><b>Relatively Simple Improvements (Good Management/ Coordination)</b></p>	<p style="text-align: center;"><b>More Difficult (Minor/Process Improvement)</b></p>	<p style="text-align: center;"><b>Harder (ORS/Admin. Rule/IGA Changes)</b></p>
<ul style="list-style-type: none"> <li>• ODOT, AOC, and LOC should encourage pre-application conferences on any large development that desires direct access to a state highway or is a major traffic generator.</li> </ul> <p>(All should work to define the types, size, and thresholds that would generally trigger pre-application conferences.)</p>	<ul style="list-style-type: none"> <li>• AOC/LOC/ODOT should review land use actions by local government and define those types of actions that require no review/permits by ODOT.</li> </ul> <p>(The work would decrease work load and focus efforts on those applications with state interests.)</p>	<ul style="list-style-type: none"> <li>• ODOT/LOC/AOC should develop and pilot an Intergovernmental Agreement that allows a few cities/counties to manage access on district and region state highways.</li> </ul> <p>(This would be a pilot program that, if successful, would lead to other local government desire to manage access and provide one-stop land use approval.)</p>

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<ul style="list-style-type: none"> <li>• ODOT should encourage developers/property owners to apply for an access permit concurrent with a local government development review process.</li> </ul> <p>(This should be offered at the developer’s request and be processed concurrently with the local development review and approval process.)</p>	<ul style="list-style-type: none"> <li>• AOC/LOC/ODOT should pursue model intergovernmental agreements that allow easy jurisdictional transfer of specific highways to the city or county for purposes of development review/mitigation and/or access management.</li> </ul> <p>(This work would allow one-stop permits for development along a specific highway.)</p>	<ul style="list-style-type: none"> <li>• ODOT/AOC/LOC should develop a long-range strategy to identify those state highways that should be under the jurisdiction of a city and/or county, develop a model IGA to accomplish the transfer, and a plan to address the increased financial liability to the specific city or county.</li> </ul> <p>(This would give the appropriate city and/or county responsibility for certain highways within their jurisdiction and provide full development and access management responsibilities.)</p>
<ul style="list-style-type: none"> <li>• AOC, LOC, and ODOT should develop clear and objective standards about when a Traffic Impact Study (TIS) must be prepared by the developer/applicant.</li> </ul> <p>(This work should also define the minimum acceptable requirements of a TIS and assure statewide consistency.)</p>	<ul style="list-style-type: none"> <li>• AOC/LOC/ODOT/DLCD should develop a process and standards to allow traffic engineers to be certified to provide data and analysis that can be used by the applicant/developer, local government and ODOT during development review and conditioning process.</li> </ul> <p>(This would speed up processing of proposed development by eliminating the need for multiple traffic analysis and increased costs.)</p>	<ul style="list-style-type: none"> <li>• ODOT should continue work to identify and map those Special Transportation Areas (STAs), Urban Business Areas (UBAs) and Commercial Centers (CC) where ODOT will allow more congestion and great access on its state highways.</li> </ul> <p>(Cities and counties should review and endorse these designations for planning and development purposes by resolution or letter of agreement.)</p>

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<ul style="list-style-type: none"> <li>• ODOT region staff should review any adverse comments to a proposed development with the Region Manager prior to submission to the record.</li> </ul> <p>(ODOT staff must convince Region Manager that there are state interests that indicate opposition to a proposed development is warranted.)</p>	<ul style="list-style-type: none"> <li>• ODOT should establish an internal review process that requires the Region Manager and Transportation Development Division Administrator to concur that there are state interests that require ODOT to appeal a local land use action to a planning commission or city council.</li> </ul> <p>(This would require ODOT to clearly articulate the state interest in any appeal <u>before</u> the formal appeal is filed.)</p>	<ul style="list-style-type: none"> <li>• ODOT/OTC should seek amendments to relevant state statutes and administrative rules to effect the consolidation of permitting procedures for highway access, traffic signals, and rail crossings. (Coordinating these permitting functions would facilitate development projects which involve two or more of such permitting activities. Cities have specifically identified the need to coordinate and expedite rail crossing permits with related land use permit applications.)</li> </ul>
<ul style="list-style-type: none"> <li>• AOC/LOC/ODOT/DLCD should develop training programs/seminars for their fall conferences that focus on local government authority and opportunities in development review and financing of infrastructure.</li> </ul> <p>(The training should be for both “large” and “small” cities/counties, allow ODOT and OECDD to outline state infrastructure fund opportunities and educate elected and/or appointed officials on existing public infrastructure funding tools.)</p>		

## **E. NEPA/Land Use Review Consolidation/Integration**

The subcommittee forwarded a series of ideas and suggestions to better integrate the environmental and land use processes needed to site and develop transportation facilities throughout the state.

The problem we identified with NEPA is the number of jurisdictions that have rules and regulations regarding the environmental issues involved in road building. While many issues considered by under NEPA have counterparts in Oregon law or rule, there are some that are unique to a specific state process. We also have information that many applicants prefer the federal process with it specific timelines and final adjudication. As a result we recommend the following:

- All state processes run concurrently with the federal process and state rules be amended to conform as much as possible with the federal timelines and data requirements.
- Where possible, state agencies defer to the NEPA process and accept the NEPA decision. Agencies could also consider amending their laws and rules to delegate their decision making to the NEPA process.
- The state could pursue an intergovernmental agreement with the federal authority that would sort a out and combine state and federal needs into one joint process.
- We could also limit the application of the above to projects of statewide significance.
- We need to find money inside current agency budgets to implement the joint activities.

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