

LUBA HEADNOTES re TPR Section 0060

LUBA produces headnotes that summarize key holdings in its decisions. Below is a compilation of LUBA Headnotes that relate to TPR Section 0060 through June 1, 2010. LUBAs complete and up-to-date headnotes on Goal 12 and the TPR are available at <http://luba.state.or.us/hnall/16.htm>. Reviewers should note that provisions of Section 0060 were amended in March 2005. While many of the provisions of the amended rule remain the same, some have been changed, and most have been renumbered.

Land Use decisions subject to 0060

Section 0060 applies to comprehensive plan and land use regulation amendments. It does not apply to other land use decisions – such as annexations or development approvals.

Zoning map amendment. An amendment of a city’s zoning map to change the zoning designation of property is an amendment of a land use regulation and, therefore, is subject to OAR 660-012-0060(1). *Just v. City of Lebanon*, 49 Or LUBA 180 (2005).

Zoning map amendment. Where a zoning map is part of the city’s zoning ordinance, an amendment of the zoning map constitutes a land use regulation amendment, within the meaning of OAR 660-012-0060, and must meet the requirements of OAR 660-012-0060(1) if the zoning map amendment will significantly affect a transportation facility. *Adams v. City of Medford*, 39 Or LUBA 464 (2001).

Zoning ordinance text amendment. A zoning ordinance text amendment that, as conditioned, would not permit development that would add more traffic to the transportation system than could be added under the zoning ordinance before the text amendment does not “significantly affect a transportation system,” within the meaning of OAR 660-012-0060(2) (1998). *Marine Street LLC v. City of Astoria*, 37 Or LUBA 587 (2000).

Application of an overlay zone. A city’s interpretation that its community service overlay (CSO) zoning designation functions as a conditional use rather than a traditional overlay zone is sustainable under *Church v. Grant County*, 187 Or App 518, 69 P3d 759 (2003) and ORS 197.829(1). Therefore, because the CSO zone overlay can only be applied to approve a specific use, and unlike other city overlay zones, the CSO zone does not require a zoning map amendment, the CSO designation does not trigger the obligation to address the transportation planning rule. *Oregon Transfer Company v. City of Milwaukie*, 53 Or LUBA 119 (2006).

Application of an overlay zone. Even if the city’s use of a community service overlay (CSO) zoning designation may constitute an “end run” around the transportation planning rule, because the city’s code is acknowledged, any challenge to the CSO zoning designation is an impermissible attack on the city’s acknowledged code. *Oregon Transfer Company v. City of Milwaukie*, 53 Or LUBA 119 (2006).

Quasi-judicial plan and zone changes. In adopting a quasi-judicial comprehensive plan and land use regulation amendment, a local government is obligated either to demonstrate compliance with the Transportation Planning Rule (TPR) or, alternatively, establish that the TPR does not apply. *ONRC v. City of Seaside*, 29 Or LUBA 39 (1995).

Annexation. Arguments that application of a city zoning district to an annexed area will conflict with Goal 12 are misdirected, where the challenged decision merely annexes the area but does not rezone it. *Cutsforth v. City of Albany*, 49 Or LUBA 559 (2005).

UGB Amendment. The transportation planning rule does not apply to the amendment of the Metro UGB where the amendment only converts rural land to urbanizable land, and does not alter the types or intensity of allowed land uses, reduce the performance standards of transportation facilities, or otherwise “significantly affect” a transportation facility within the meaning of OAR 660-012-0060. *Citizens Against Irresponsible Growth v. Metro*, 39 Or LUBA 539 (2001).

Master Plan approval. The requirements of OAR 660-012-0060 only apply to amendments “to functional plans, acknowledged comprehensive plans and land use regulations.” Where a city took separate actions to approve a master plan of development and to amend its comprehensive plan to conform to the master plan of development and petitioners only appealed the master plan of development approval decision to LUBA, the requirements of OAR 660-012-0060 did not apply to the only decision that was before LUBA in that appeal. *Oregon Shores Cons. Coalition v. City of Brookings*, 49 Or LUBA 273 (2005).

Development Plan approval. Where a city approves a development plan for a university district as part of a quasi-judicial proceeding, but does not incorporate it into the city’s comprehensive plan or land use regulations, the development plan is not a comprehensive plan or land use regulation, and thus amendments to that plan are not subject to review for compliance with statewide planning goals or the Transportation Planning Rule. *Brome v. City of Corvallis*, 36 Or LUBA 225 (1999).

Population projection. A county population projection that does not itself “significantly affect” a transportation facility in any of the four ways described in OAR 660-012-0060 need not comply with that rule or local equivalents, notwithstanding that the population projection may set the stage for later decisions that will significantly affect transportation facilities. *Tipperman v. Union County*, 44 Or LUBA 98 (2003).

Road Vacation. OAR 660-012-0060 has no applicability to a decision vacating a county road, where the decision does not amend a functional plan, comprehensive plan or land use regulation. *Mekkers v. Yamhill County*, 39 Or LUBA 367 (2001).

Destination Resort/Goal Exception. Remand is necessary where the local government adopts exceptions to Statewide Planning Goals 11 and 14 to approve a destination resort, but fails to address comprehensive plan transportation policies that appear to implement

Statewide Planning Goal 12 (Transportation), for which the local government did not adopt an exception, and the decision fails to explain why those policies are either satisfied or not applicable. *Friends of Marion County v. Marion County*, 59 Or LUBA 323 (2009).

Intensification of Use

The TPR applies only where a plan amendment or zone change would have a significant effect on planned land use or the planned transportation system. In general, a “significant effect” occurs where the amended plan or zoning would allow a use that would generate MORE traffic than the existing plan and zone designations for the property. Consequently, local governments need to assess and compare the amount of traffic allowed under existing plans and the proposed plans.

Intensification test. A local government can show an amendment to its acknowledged comprehensive plan and zoning maps complies with Goal 12 (Transportation) by establishing either (1) there is a safe and adequate transportation system to serve development under the proposed map designations, or (2) development of the property under the proposed designations will not create greater or different transportation demands and impacts than development under the existing, acknowledged designations. *ODOT v. Clackamas County*, 27 Or LUBA 141 (1994).

Intensification test. A threshold question under OAR 660-012-0060(2)(d) is whether development under proposed zoning will cause greater traffic impacts than development under existing zoning. If not, the inquiry under OAR 660-012-0060(2)(d) ends there. If so, the local government must go on to evaluate whether the increased traffic will cause affected transportation facilities to fall below applicable performance standards. *Friends of Marion County v. City of Keizer*, 45 Or LUBA 236 (2003).

Intensification test. Implicit in OAR 660-012-0060(2)(d) is a causative element that triggers application of the rule only when the amendments (1) allow uses that generate more traffic than uses allowed under the unamended plan and zoning and (2) the additional traffic would reduce a facility’s performance standards below the minimum acceptable level. Where the amended plan and zoning would generate less traffic than the unamended plan and zoning, then the amendment cannot significantly affect a transportation facility within the meaning of OAR 660-012-0060(2)(d). *Mason v. City of Corvallis*, 49 Or LUBA 199 (2005).

Role of TSP Assumptions. If the adopted transportation system plan assumes that property will be rezoned in the future to allow more intense development, the city may assume at the time of the assumed rezoning that the zone change has no significant impact on transportation facilities. However, a city may not assume that its rezoning decision will have no significant impact on transportation facilities where (1) it has not adopted the transportation system plan required by the transportation planning rule and (2) the transportation plan the city has adopted does not assume the property will be

developed under the more intense zoning. *Just v. City of Lebanon*, 49 Or LUBA 180 (2005).

Role of TSP assumptions. Where the city’s acknowledged transportation system plan (TSP) assumed that the subject property would develop at urban densities allowed under a city comprehensive plan designation, and did not assume that the property would develop under the pre-existing low-density county zoning, in conducting the comparison of traffic impacts allowed under the amended and unamended plan and zoning under OAR 660-012-0060 it is appropriate to use the city plan designation assumed in the TSP rather than the county zone. *Mason v. City of Corvallis*, 49 Or LUBA 199 (2005).

Consistent assumptions required. In evaluating whether development under proposed zoning will cause greater traffic impacts than development under existing zoning for purposes of OAR 660-012-0060(2)(d), the local government must use consistent assumptions. *Friends of Marion County v. City of Keizer*, 45 Or LUBA 236 (2003).

Allowed v. applicants proposed use. The focus of OAR 660-012-0060(1) is on the land uses that are *allowed* under the amended plan and zoning regulations, not on the particular uses that the applicant may contemplate. Absent adequate justification for a different approach, the local government must assume that the property will develop at the most traffic-intensive use allowed under the amended plan and zoning, in determining whether the amendments “significantly affect” a transportation facility. *Mason v. City of Corvallis*, 49 Or LUBA 199 (2005).

Need not consider maximum theoretical intensity of proposed use. While OAR 660-012-0060 requires that local governments evaluate traffic impacts of uses allowed under a comprehensive plan designation or zoning district amendment, with focus on the most traffic-intensive uses among the uses allowed under the amendment, the rule does not require local governments to assume the most-traffic intensive use will occur at the maximum theoretically possible intensity. *Rickreall Community Water Assoc. v. Polk County*, 53 Or LUBA 76 (2006).

Consideration of development limitations. A local government may assume that property will not develop under the most traffic-intensive uses allowed in the amended plan and zoning regulations for purposes of OAR 660-012-0060, where the presence of steep slopes, wetlands, significant natural features or other limitations on development potential make it highly improbable that the site can be developed with the most traffic-intensive uses allowed under the amended plan and zoning regulations. *Mason v. City of Corvallis*, 49 Or LUBA 199 (2005).

Consideration of development limitations. In determining whether swapping plan designations between two similar areas of a parcel would result in a net increase in traffic impacts for purposes of the OAR 660-012-0060 requirement that plan amendments not “significantly affect” a transportation facility, a local government must consider the development potential of each area as zoned and planned, but need not consider extrinsic limitations on development, such as security concerns arising from

threats of terrorism, that cast doubt on whether one of the areas could be developed to its full potential, under its existing designation. *Excelsior Investment Co. v. City of Medford*, 44 Or LUBA 553 (2003).

Traffic Impact Analysis

While the TPR does not require applicants to traffic impact studies or analyses - called TIA's or TIS's – such studies are often needed to provide an sufficient factual basis to comply with the TPR.

Not required but may be needed for compliance. OAR 660-012-0060 does not require preparation or analysis of a traffic impact statement, although depending on the nature of the proposed plan amendment and the local government's approach to finding or ensuring compliance with the rule, some kind of traffic generation or traffic impact analysis may be necessary. *Citizens for Protection of Neighborhoods v. City of Salem*, 47 Or LUBA 111 (2004).

LUBA will look to clear evidence. Where evidence identified in the city's brief clearly supports a finding that a proposed development will not significantly affect a transportation facility, LUBA will affirm that part of the city's decision under ORS 197.835(9), notwithstanding the city's failure to make the required finding. *Marcott Holdings, Inc. v. City of Tigard*, 30 Or LUBA 101 (1995).

TPR findings must be understandable. An attempt to incorporate documents in the record as findings of compliance with the Transportation Planning Rule fails, where the decision purports to incorporate hundreds of pages of minutes and written testimony without adequately identifying those documents, and the incorporation is qualified in a manner that makes it difficult or impossible to understand the facts relied upon and the justification for the decision. *Staus v. City of Corvallis*, 48 Or LUBA 254 (2004).

May not ignore relevant studies. A local government may not explicitly rely on a traffic study to demonstrate compliance with Goal 12 and then ignore a portion of the traffic study that describes anticipated deterioration in level of service. *DLCD v. Klamath County*, 38 Or LUBA 769 (2000).

TIS limits basis for challenge. Where a city's finding that a zoning map amendment will not significantly affect transportation facilities is based on a lengthy transportation impact study, and petitioner attacks that finding based on other evidence of questionable relevance without developing any arguments challenging the transportation impact study, petitioner provides no basis for reversal or remand. *Adams v. City of Medford*, 39 Or LUBA 464 (2001).

Local decisions must address relevant TIS. Where two traffic studies indicate that post-acknowledgment plan amendments may cause a transportation facility to fall below the minimum acceptable performance standard, and the respondent cites no evidence to the contrary that a reasonable person would rely upon, remand is necessary for the city to address whether the plan amendment will “significantly affect” that transportation facility within the meaning of OAR 660-012-0060(2)(d). *NWDA v. City of Portland*, 47 Or LUBA 533 (2004).

Flawed TIS is basis for remand. An applicant does not carry his burden to demonstrate compliance with transportation-related criteria, where the findings supporting denial identify a flaw in the applicant’s evidence resulting from conducting a traffic study in the summer when school trips would not be reflected in the study. *Lee v. City of Oregon City*, 34 Or LUBA 691 (1998).

Flawed TIS is basis for remand. Remand is necessary where a county approves a truck stop with restaurant and truck wash based on a traffic study that, without explanation, uses a trip generation category of “Gasoline/Service Station” rather than the apparently more appropriate category of “Gasoline/Service Station with Car Wash,” and fails to take into account trips generated by the restaurant. *Western Land & Cattle, Inc. v. Umatilla County*, 58 Or LUBA 295 (2009).

Flawed TIS is basis for remand. A finding that a proposed truck stop will not create a traffic hazard is not supported by substantial evidence, where the traffic impact analysis finds that the nearest intersection presents only a “marginal safety concern” but fails to take into account the 1,000 daily truck and vehicle trips the proposed truck stop will send through the intersection, and there is no evidence that the additional traffic will not significantly decrease the intersection’s safety or significantly increase the crash rate. *Western Land & Cattle, Inc. v. Umatilla County*, 58 Or LUBA 295 (2009).

V/C calculations need not be overly precise. In determining whether a plan or land use regulation amendment will “significantly affect a transportation facility” under the OAR 661-012-0060(1)(c)(C) non-degradation test, a city does not err in allowing the before and after volume to capacity (v/c) ratio to be computed to two decimal places rather than three decimal places. *Rice v. City of Monmouth*, 53 Or LUBA 55 (2006).

Incomplete or conflicting testimony may require TIS. Where ODOT does not explain why it changed its mind and concluded that a zoning map amendment does not implicate the transportation planning rule, a city may not approve a change in zoning that will allow more intense development without requiring a transportation impact analysis to determine whether the potential additional traffic may “significantly affect a transportation facility.” *Just v. City of Lebanon*, 49 Or LUBA 180 (2005).

Applicable TSP

In general, Section 0060 only applies when there is an applicable transportation system plan. Applicable plans include adopted city and county transportation system plans, and adopted state plans, such as the Oregon Highway Plan.

TPR only applies where there is an adopted TSP. Where a city has not adopted a transportation system plan, as required by the transportation planning rule, a zoning map change cannot significantly affect a city transportation facility under OAR 660-012-0060(2)(d) by causing the performance of a city transportation facility to fall “below the minimum acceptable level identified in the [transportation system plan].” If the city has no transportation system plan for the city transportation facility, there is no minimum acceptable performance level to violate. *Just v. City of Lebanon*, 49 Or LUBA 180 (2005).

Oregon Highway Plan is an applicable TSP. Even if a city has not adopted a transportation system plan to establish performance standards for city transportation facilities, the Oregon Highway Plan establishes performance standards for state transportation facilities. Therefore, when amending its zoning map under OAR 660-012-0060 a city must consider whether the new zoning would allow development that will exceed those performance standards and thereby “significantly affect” those state transportation facilities within the meaning of OAR 660-012-0060(2). *Just v. City of Lebanon*, 49 Or LUBA 180 (2005).

Applicable performance standards. A code provision that encourages the city to expand local maritime activities is not a “minimum acceptable performance standard” for purposes of the OAR 660-012-0060(1)(c)(B) requirement that plan amendments not reduce a transportation facility’s performance below the minimum acceptable performance standard identified in the transportation system plan or comprehensive plan. *People for Responsible Prosperity v. City of Warrenton*, 52 Or LUBA 181 (2006).

Deferral of Transportation Analysis

TPR Section 0060 requires that local governments assess transportation impacts of proposed plan and land use regulation amendments at the time they adopt the amendment. In 2004, in its decision in the Sustainable Fairview case, LUBA held that a local government could comply with the TPR if the adopted plan or zone change did not allow more intense development, and adopt a local standard and process equivalent to provisions in 0060 which would be applied to any subsequent land use decisions. In November 2009, the Court of Appeals issued a decision in Willamette Oaks, effectively reversing LUBA’s position and holding that local governments may not defer 0060 type analysis to a subsequent local process.

Deferral of TPR Analysis not allowed. As we observed in *Jaqua v. City of Springfield*, 193 Or App 573, 593, 91 P3d 817 (2004), “OAR 660-012-0060 serves to prevent local governments from engaging in land use decision-making without considering whether transportation systems can accommodate the proposed use.”(Emphasis in original.)

Thus, based on the plain text of the rule, the local government was required to make a determination regarding whether the zone change would significantly affect transportation facilities before approving the amendment.

**** although other rules may provide for deferral of certain land use decisions by local governments, OAR 660-012-0060(1) makes no provision for a deferral of the decision required by its provisions.

In light of the foregoing, we conclude that LUBA erred in holding that the city could permissibly grant the zone change in this case without first evaluating, pursuant to OAR 660-012-0060(1), whether the change would significantly affect transportation facilities.

Mitigation Measures/Conditions of Approval

Local governments may comply with various provisions of Section 0060 by adopting actions as part of the plan amendment or zone change that either limit the allowed land uses or commit funding or construction of transportation improvements to either avoid or mitigate expected transportation impacts.

State Highway Improvements. Under OAR 660-012-0060(4), a local government errs in relying on conceptual highway improvements for which there is no funding mechanism in place or a written statement from the Oregon Department of Transportation that such improvements are reasonably likely to be provided by the end of the planning period, to conclude that plan amendments will not “significantly affect” the highway. *Rickreall Community Water Assoc. v. Polk County*, 53 Or LUBA 76 (2006).

Conditions must be enforceable. A condition of approval requiring that an applicant’s employees avoid a failing intersection and instead use a much longer circuitous route to the site is inadequate to ensure that the proposed amendment will not “significantly affect” that intersection, where the condition does not take into account non-employee traffic generated by the proposed use, and there is no mechanism to monitor compliance by employees. *Rickreall Community Water Assoc. v. Polk County*, 53 Or LUBA 76

Conditions must be clearly adopted. The absence of explicit conditions of approval mandating that a rezoning applicant construct necessary transportation improvements is not necessarily reversible error, where the local government expressly incorporates the traffic analysis that requires the improvements, and thus the decision itself requires the improvements. However, remand is necessary to adopt conditions of approval where the decision does not purport to incorporate the traffic analysis or require the necessary improvements to be constructed. *Nygaard v. City of Warrenton*, 55 Or LUBA 648 (2008).

Conditions must be clearly adopted. Remand is necessary where the rezoning decision relies on conditions of approval to comply with OAR 660-012-0060(4)(b)(B), which requires that the city ensure that necessary transportation improvements are actually funded, but fails to impose any such conditions. *Nygaard v. City of Warrenton*, 55 Or LUBA 648 (2008).

Authority to impose conditions. A code provision stating that permitted types of traffic impact mitigation “may include such improvements” as paving, curbing, contributions to traffic signals, etc. is not an exclusive list, and does not preclude a county from requiring an applicant to contribute money toward a future improvement project instead of requiring the applicant to actually construct the improvement. *Western Land & Cattle, Inc. v. Umatilla County*, 58 Or LUBA 295 (2009).

Conditions must be consistent with the TSP. Under OAR 660-012-0060(2)(e), if imposition of conditions of approval would require transportation improvements that are inconsistent with the acknowledged TSP, a local government may be required to amend its adopted transportation system plan, either pursuant to OAR 660-012-0060(2)(d) or simply to ensure that the amendment complies with the Goal 2 (Land Use Planning) consistency requirement. *Lufkin v. City of Salem*, 56 Or LUBA 719 (2008).