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1. Introduction

1.1. Purpose of Development Review Guidelines

The Development Review Guidelines (Guidelines) document is a reference handbook intended for use by ODOT staff and others developing proposals subject to ODOT review. The guidelines are intended to establish best practices and to support consistency among the Regions in ODOT's relationships with local governments and with consultants.

The Guidelines are a compilation of information to help staff respond to local land use and development proposals that affect state transportation facilities. The Development Review Guidelines are posted on the Transportation Development Division intranet web page at:

http://www.oregon.gov/ODOT/TD/TP/DRG.shtml#DRG_Guidelines and are also included as Chapter 5 of the Access Management Manual, Volume 1. Chapter 4, Volume 1 of the Access Management Manual focuses on access management issues specifically related to approach permitting under OAR 734-051. That Manual is located at:

<http://www.oregon.gov/ODOT/HWY/ACCESSMGT/accessmanagementmanual.shtml>.

The Guidelines Help Staff:

- Understand the regulatory framework for ODOT's participation in local land use and development review.
- Participate effectively in the local land use process.
- Coordinate internally to formulate a recommendation to a local government.
- Apply the applicable ODOT practices consistently to local land use and development reviews.
- Assess operational, safety and other impacts of a local land use proposal on state transportation facilities.
- Understand the options and the legal bases for ODOT recommendations to local governments.

1.1.1. How to Use the Guidelines

The Guidelines are organized into five chapters.

- Chapter 1 provides an overview of ODOT's Development Review Program.
- Chapter 2 explains the local land use process and gives general tips on working effectively with local partners.
- Chapter 3 explains the technical and policy analysis necessary for ODOT to make a recommendation on a local land use proposal and is divided into three sub-chapters due to the volume of information.
- Chapter 4 includes strategies and tips for participating in the local land use decision and building a strong record for a potential appeal.
- Chapter 5 identifies basic protocols for staff to use during the negotiation of fair, legally defensible and enforceable mitigation agreements with local governments and/or private developers during the development review process.
- The Appendices include technical references and sample response letters to local governments.

1.1.2. Guideline Updates

The ODOT web version of the Guidelines will be updated periodically to keep the Guidelines current. (Use link above)

It will be important for users of the Guidelines to assist with keeping information current. Please send your comments and updates to your Region development review planner or to the Transportation Development Division Planning Manager.

1.1.3. ODOT Development Review Organization

The Development Review program is administered through ODOT's five region offices throughout the state. ODOT staff responsibility for coordinating internal review of local land use and development proposals varies among regions. In some regions, the District Maintenance staff takes the lead whereas in other regions the Planning staff takes the lead in Development Review coordination with local governments. It is important to become familiar with ODOT's organizational structure for your particular region and to recognize where regional differences are appropriate and where statewide interests require consistent practices.

1.1.4. Why ODOT Participates in Local Land Use Review

The goals of development review are to protect the travelling public's safety and to enable the infrastructure to achieve its full design life. ODOT participates in local land use review to help protect the public investment in the state transportation system by working with local governments to mitigate the impacts of development.

By participating in the local land use and development review process, ODOT works to achieve a balance between the traffic generated by a proposed development and what the transportation system can accommodate.

The need to protect the state transportation system has become more pressing in recent years due to the rate of population growth, especially in the western part of the state, and growth in vehicle miles traveled. The funding for transportation investments has not kept pace with the state's travel demand. The growth in travel demand combined with the revenue shortfall has increased the need to protect the existing state transportation system and to ensure that development mitigates for its proportional impact.

1.1.5. ODOT Development Review Program Objectives

The objectives of ODOT's Development Review Program are highlighted below:

- Build positive relationships with our local partners, developers, and citizens.
- Provide expertise on the applicable development-related ODOT standards and procedures to local government, property owners and developers.
- Provide professional review of potential transportation impacts of proposed local land use changes and development projects.
- Provide timely and consistent recommendations to local governments based on local criteria and ODOT policies, standards, state statutes and administrative rules.
- Work within the local land use process to obtain mitigation that is linked and proportional to the development's impacts.
- Work with developers and local government(s) to prevent or mitigate new stormwater discharges into state facilities to maintain compliance with ODOT's NPDES permit.
- Help make decisions that strengthen the connection between local land use and transportation, and that enhance community livability.

1.1.6. ODOT Development Review Authority

Coordination with ODOT is required when the state transportation system is affected by a proposed local land use change or development. This includes land uses with and without direct access to a state transportation facility. Key elements of ODOT authority are listed below and Figure 1 illustrates applicable land use and transportation authority. Development review often focuses on impacts to state highways; however, all modes of the state transportation system and attendant facilities are included within the legal framework of ODOT review. This includes consideration of impacts to rail, bike/pedestrian, transit and aviation facilities, and the stormwater systems associated with those facilities.

Statewide Planning Goals and Guidelines

The Oregon Statewide Planning Goals and Guidelines consist of 19 state land use goals and constitute the framework for Oregon's planning program. Oregon's statewide goals are achieved through local comprehensive planning. State law requires each city and county to adopt a comprehensive plan that complies with the statewide goals. Under Oregon's statewide planning process, transportation issues are addressed primarily under Goal 12, Transportation. Goal 12 can be found at: <http://www.oregon.gov/LCD/docs/goals/goal12.pdf>

To implement the Statewide Planning Goals and local comprehensive plans, local governments must have adopted and acknowledged land development ordinances. They have to make findings of compliance with those ordinances to support the approval of most land use decisions. Local ordinances assume, and Oregon case law has affirmed, that applicants for land use approval have the burden of proof to establish compliance with local regulations, which means that it is their responsibility to provide sufficient information to demonstrate that criteria are met. The Goals can be found at: <http://oregon.gov/LCD/goals.shtml> .

Transportation Planning Rule (TPR) - OAR Chapter 660, Division 012

The Land Conservation and Development Commission adopted the Transportation Planning Rule (TPR) in 1991 to implement the Statewide Goal on Transportation. The TPR provides the regulatory framework to integrate land use and transportation planning. The TPR requires a hierarchy of transportation system plans (TSPs) to meet state, regional and local needs. The TPR also requires that local governments provide notice and coordinate with ODOT on potential land use changes that have a significant effect on transportation facilities. Subsection 0060(3) states: Determinations under subsections (1) and (2) of this section [660-012-0060] shall be coordinated with affected transportation facility and service providers and other affected local governments." The full text of the TPR is located online at: http://arcweb.sos.state.or.us/rules/OARS_600/OAR_660/660_012.html

State Agency Coordination Agreement

Oregon's planning laws not only require that cities and counties comply with statewide planning goals, but also specify that special districts and state agencies conform to the statewide goals. The laws further require that special districts and state agencies carry out their programs in accordance with acknowledged local plans. ODOT's State Agency Coordination Program outlines the legal and procedural interactions between land use and transportation programs to achieve coordination. For further reference see OAR 731-015-0005 which states: "land use programs are carried out in compliance with the statewide planning goals and in a manner compatible with acknowledged comprehensive plans, as required by ORS 197.180 and OAR 660, Divisions 30 and 31".

The ODOT State Agency Coordination Rule (SAC) is located at:

http://arcweb.sos.state.or.us/rules/OARS_700/OAR_731/731_015.html

Oregon Transportation Plan (OTP)

The Transportation Commission adopted the Oregon Transportation Plan (OTP) to guide and coordinate transportation activities and to ensure transportation planning utilizes the potential of all modes of transportation. The OTP constitutes the statewide transportation system plan under Goal 12 and the TPR. The OTP includes a policy element and a system element. Online address:

<http://www.oregon.gov/ODOT/TD/TP/OTP.shtml>

Oregon Highway Plan

In 1999 the Transportation Commission adopted the Oregon Highway Plan (OHP) as a critical element of the Oregon Transportation Plan. The Highway Plan will guide how state highways are developed and managed over the next 20 years.

- The Highway Plan Land Use and Transportation Policy addresses the relationship between the highway and patterns of development both on and off the highway. Policy 1B provides for the designation of urban highway segments that meet certain standards as Special Transportation Areas (STAs), Urban Business Areas (UBAs) or Commercial Centers to support planning and management strategies that balance local highway management needs with highway operation standards.
- The Highway Mobility Standards set standards for mobility based on volume-to-capacity ratios (v/c) that vary according to highway classification and urban and rural land use types. The v/c standards replace level of service (LOS) standards.

Policies and standards in the Highway Plan provide an important context for ODOT review of local land use and development proposals. The major OHP policies pertaining to development review are shown on Table 1. Online location:

<http://www.oregon.gov/ODOT/TD/TP/orhwyplan.shtml>

Department of Transportation, Control of Access – (ORS Chapter 374) and Access Management Rule (OAR Chapter 734, Division 051)

The statute and administrative rule define ODOT standards and procedures to manage access to state highway facilities to the degree necessary to maintain functional use, highway safety, and the preservation of public investment consistent with the 1999 Oregon Highway Plan and adopted local comprehensive plans. Access management issues and procedures are specifically addressed in Chapter 4, Volume 1 of the Access Management Manual. Find it online at:

<http://www.oregon.gov/ODOT/HWY/ACCESSMGT/accessmanagementmanual.shtml>

ODOT NPDES Permit

The NPDES (National Pollutant Discharge Elimination System) permit program is a requirement of the United States Clean Water Act to regulate the discharge of pollutant contaminated water to U.S. waters. As a transportation agency, ODOT is required to obtain MS4 permit coverage for the discharge of polluted stormwater runoff generated from roadways, sidewalks, parking lots, etc. The statewide permit includes all river basins in Oregon. The stormwater management program is designed to reduce or manage the discharge of ODOT stormwater pollutants to the greatest extent practicable to meet NPDES requirements.

ODOT is responsible for the quantity and quality of stormwater discharged from its facilities. This is relevant to Development Review because local development may contribute to both volumes and pollution loads in the ODOT stormwater facility. ODOT's permit does not cover stormwater from outside of the state right of way, so preventing or mitigating flows from other sources is needed, and should be a part of development review. For general information on related subjects, where ODOT intranet is available:

<http://www.oregon.gov/ODOT/HWY/GEOENVIRONMENTAL/hydraulics1.shtml>.

Railroad-Highway Crossing Safety Rules and Regulations of the Rail Division

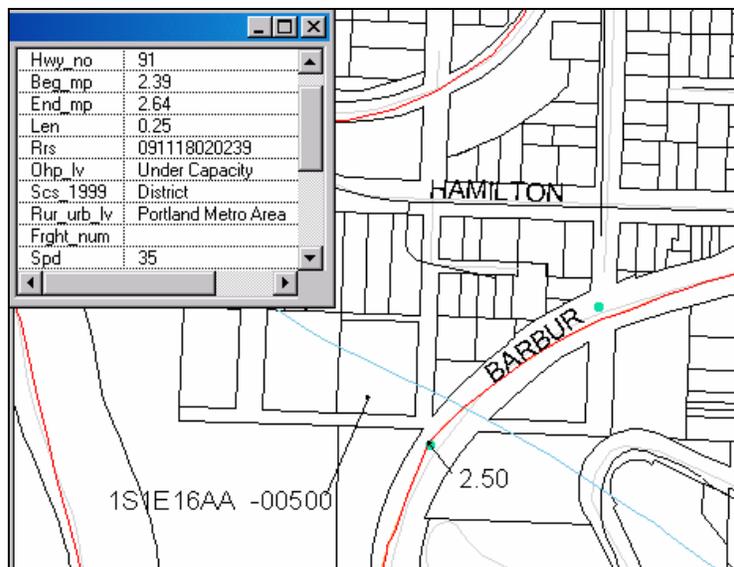
The relevant statutes and administrative rule define ODOT Rail Division standards and procedures to manage the safety of rail facilities and rail crossings to the degree necessary to maintain functional use, crossing safety, and the preservation of public investment consistent with the 2001 Oregon Rail Plan. Relevant statutes and rule are ORS 823/824 and OAR 741 Divisions 100, 105, 110, 115, 120, 125 and 200. This authority requires a public road authority or railroad to file an application for a Crossing Order with the ODOT Rail Division for permission to construct a new separated or at-grade crossing, make alterations to an existing public crossing, or to close an existing public crossing. The ODOT Rail Division is in agreement with the Federal Railroad Administration in its efforts to close crossings wherever possible. The Division is required by statute to eliminate crossings at grade wherever possible. The Crossing Safety Section is the Rail section that

interacts most directly with the development review program. Find it online at:
<http://www.oregon.gov/ODOT/RAIL/>

1.1.7. Geographic Information Systems (GIS):

Creating efficiencies in Development Review

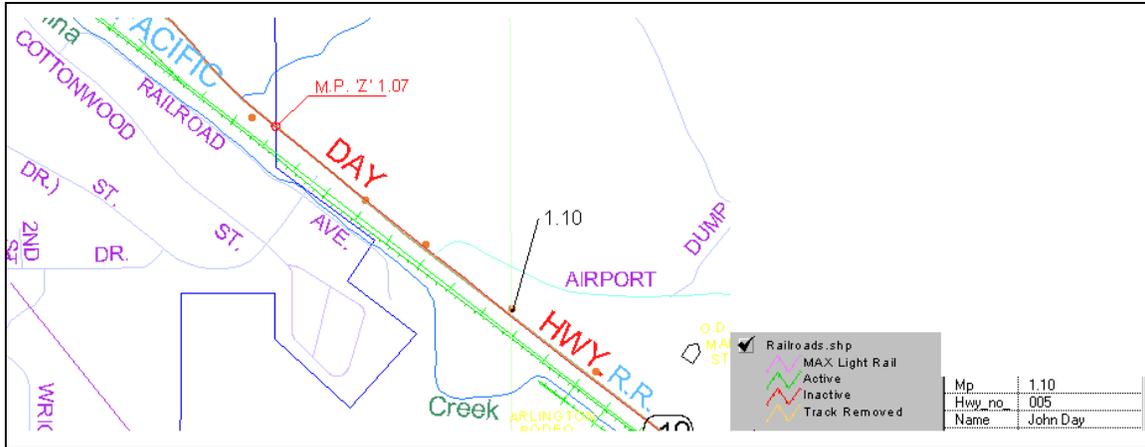
ODOT staff has access to GIS data and mapping resources that are continuously improving and can be used to respond to a development notice and prepare a comment letter faster, with greater accuracy of findings. GIS software creates maps by putting layers of images together at one tax lot, then producing a table of data that show OHP access and level of service standards at a given point. It also reports milepoint, crash data, STIP projects, speed limits, nearby rail lines, local zones and reports distance in feet to interchanges.



Several systems are in use in 2005, some based on local web sites, desktop databases, and the developing ODOT intranet tools. Region 1 staff use a combination of local tax lot and street data to verify the location of a proposed land use. ODOT data is then overlain for OHP and milepoints.

GIS technology has proven to be a time-saver in Region 1. Frequent updates of the data by local governments and ODOT staff have increased confidence in the data's accuracy.

The technology is evolving, so you should check with ODOT GIS staff before setting up a system for your local office. Region 1 staff, expect to continue to refine and upgrade their systems, and will help other Regions identify needs and methods to set up their own systems.



Where ODOT intranet is available, see the ODOT GIS Home Page at <http://intranet.odot.state.or.us/gis/>.

1.1.8. ODOT Traffic Manual

For a general overview of ODOT Traffic Engineering practices see the ODOT Traffic Manual. This document is bookmarked alphabetically and cites to the legal authorities for various practices. It is intended for use as a reference document by new ODOT employees and others unfamiliar with ODOT and the relationships among statutes, rules, policies and engineering practices. See: http://www.oregon.gov/ODOT/HWY/TRAFFIC-ROADWAY/docs/pdf/Traffic_Manual_08.pdf

2. Coordinating Review & Response

2.1. Local Land Use Process

In order to effectively carry out the ODOT development review program it is critical to understand the different types of local land use reviews and procedures. The land use procedures used by local government are similar, but because no two local codes are the same, it is important to become familiar with local zoning codes in your region. Many local zoning codes may be accessed via the Internet. Local government information can be found at: <http://bluebook.state.or.us/local/index.htm>, including links to local web sites where available.

2.1.1. Role of Long Range Planning in the Development Review Process

This section identifies the long-range plans upon which development review decisions should be based. While development review occurs at the end of the planning process, it is influenced by decisions made much earlier. Under the TPR, transportation system plans:

- Provide long-range direction for the development of local transportation facilities and services for all modes.
- Integrate transportation and land use.
- Provide a rationale for transportation investments and land use decisions.
- Provide a link to the State Transportation Improvement Program (STIP) which is ODOT's process to identify projects for development and construction and set funding levels and timelines. Additional Information regarding the STIP process is available online at: http://intranet.odot.state.or.us/highwaybudget/stip_development.htm

Transportation system plans are required for the following:

- Oregon Department of Transportation;
- Metropolitan planning organizations;
- Counties with populations greater than 25,000 (Counties smaller than 25,000 population may qualify for a whole or partial exemption from the TSP requirement);

- Cities with populations greater than 10,000 (Cities smaller than 10,000 population may qualify for a whole or partial exemption from the TSP requirement).

Many jurisdictions below these population thresholds already have, or are working on, transportation system plans for their areas.

The Oregon Transportation Plan (OTP) is the State TSP. It provides overall policy direction for the development of transportation facilities and services in Oregon. The OTP was adopted by the Oregon Transportation Commission in 1992 and is in the process of being updated, with adoption of the update anticipated in 2006. Find the OTP and news of the update process online at <http://www.oregon.gov/ODOT/TD/TP/ortransplanupdate.shtml>

The OTP also includes the various mode and topic plans identified below. Of these, the 1999 Oregon Highway Plan may have the most impact on the development review process.

Elements of the Oregon Transportation Plan include:

- Aviation System Plan (2000):
<http://www.aviation.state.or.us/Aviation/docs/resources/OregonAviationPlan.pdf>
- Oregon Highway Plan (1999):
<http://www.oregon.gov/ODOT/TD/TP/orhwyplan.shtml>
- Oregon Public Transportation Plan (1997):
<http://www.oregon.gov/ODOT/TD/TP/OPTP.shtml>
- Oregon Bicycle/Pedestrian Plan (1995):
http://www.oregon.gov/ODOT/HWY/BIKEPED/bp_plan_update.shtml
- Oregon Rail Freight Plan (1994):
<http://www.oregon.gov/ODOT/RAIL/docs/Publications/railplan01.pdf>
- Transportation Safety Action Plan (1995):
<http://www.oregon.gov/ODOT/TS/tsap.shtml>
- Willamette Valley Transportation Strategy (1995)
- Corridor Plans (differing dates for each corridor).

2.1.2. Periodic Review

Periodic review is an important but often underutilized tool to work with local governments in bringing their comprehensive plans up to date. It is important for ODOT planners to work with local governments to ensure that local plans are consistent with state transportation and land use plans, policies and regulations. Periodic review is the method used to bring local comprehensive plans up to date with current land use statutes and rules. ORS 197.628 states that periodic review is required:

“. . . to ensure that the plans and regulations remain in compliance with the statewide planning goals adopted pursuant to ORS 197.230, and to ensure that the plans and regulations make adequate provision for needed housing, employment, transportation and public facilities and services”.

Periodic review is an opportune time to address local code deficiencies.

If the local code has not been updated consistent with the Transportation Planning Rule (Goal 12), the TPR can be implemented in two ways:

1. Recommend to both the local government and DLCD that the deficiencies be addressed as part of their next Periodic Review work program; and/or
2. Apply the state TPR directly to local land use and development proposals.

2.1.3. Planning Resources for Specific Highway Sections

There may already be established guidance for the approach to take to develop conditions and mitigations on particular highway sections. In and near urban areas there is often more than one plan or research data source that can be relied upon.

Most cities and counties in Oregon have adopted or are currently working on a **Transportation System Plan (TSP)**. The current list of TSPs under development for all Oregon jurisdictions is included in Appendix 1. Many of these TSPs are funded through the ODOT/DLCD Transportation Growth Management Program (TGM). In addition, the Regions can sometimes pay for TSPs and updates with SPR planning funds.

Local governments also frequently have transportation related **Mode and Area Plans**. Downtown Redevelopment Plans, Local Street Network Plans, Parking Plans and Bike, Pedestrian and Transit Plans are a few examples of plans that may articulate street design preferences and enable certain conditions of approval relevant to development Review.

Cities and Counties inside Metropolitan Planning Organizations (MPOs) are also subject to **Regional Transportation Plans (RTPs)**. RTPs are subject to federal standards that require projects recognized in the plans to be “fiscally constrained”

which means it is reasonable to expect that such projects will be funded for construction. RTPs may also contain land use and transportation elements and alternative mobility standards. When an MPO's alternative mobility standards are approved by the Oregon Transportation Commission (OTC) they supercede the mobility standards in Table 6 of the OHP.

In addition, ODOT does facility planning at a local or sub-regional level. In conjunction with local governments and other stakeholders, ODOT develops Interchange Area Management Plans (IAMPs), and has in the past developed several Corridor Plans. ODOT also coordinates with local government to develop Highway Segment Management Plans for special transportation areas (STAs), urban business areas (UBAs) and Commercial Centers. These documents set forth strategies and long-term management priorities for the subject corridors. Confer with ODOT Region planners to ascertain whether a facility plan is available for any particular area under review.

2.1.4. ODOT Guidance on Long Range Plans

To provide a framework for ODOT system and corridor planning, The Corridor Planning Guidelines were prepared in 1995 and Transportation System Planning Guidelines were updated in 2001. Revisions of the TPR are under way at this writing, and new TSP Guidelines are anticipated in 2006. New TSPs and TSP updates should rely upon the most recent guidelines available. Transportation System Planning Guidelines 2001 is available in hard copy through the Transportation Development Division in Salem, or electronically at: <http://www.oregon.gov/ODOT/TD/TP/TSP.shtml> .

ODOT also provides guidance and support for local transportation planning through Refinement Planning, Interchange Area Management Planning (new IAMP guidelines to be completed in late 2005), Highway Classification (new classification/reclassification procedure to be completed late 2005), Highway Segment Designations and Existing Conditions Reports. Much of the Department's technical guidance for project development is found in the AASHTO Policy on Geometric Design and the ODOT Highway Design Manual (HDM) located online at: http://egov.oregon.gov/ODOT/HWY/ENGSERVICES/hwy_manuals.shtml .

As a precursor to corridor or other facility planning, ODOT has begun to prepare Transportation Conditions Reports for Oregon Highways. Currently, these reports have been prepared for I-5, US 101, and Oregon 58. These reports are not plans. However, they provide a wealth of background and forecast information, including "no build" information for their subject corridor. This information includes operational, geometric, and safety analysis, access locations, environmental data, management system data, land use data, topographical and geologic data, and a full set of air photos in static and customizable map sets (map customization is only available for US 101 and Oregon 58 which are produced as a geographic information systems product--these will be available on the ODOT intranet by Fall of

2005). While not providing planning solutions, these reports can be very valuable tools to aid plan preparation, project prospectus development, or development review activities.

2.1.5. Linking Plans, Projects and Funding

ODOT is increasingly looking to system plans as a source to identify fundable transportation projects. For example, project criteria developed for the 2001 Oregon Transportation Investment Act (OTIA) establish a linkage between plans, projects and funding. The Transportation Commission may be heading in the same direction in its review of the STIP process, and, in the future, STIP projects may need to come from adopted and acknowledged transportation system plans. Including needed projects in fully developed TSPs is the best tool a local jurisdiction can have to make their case to get projects elevated into the STIP. And participating in the local TSP process is the best opportunity ODOT has to ensure that local priorities are consistent with the needs of state facilities. For a more detailed discussion on how long-range provisions are implemented, see Chapter 3, sections 3.1.08 through 3.1.10.

2.1.6. Local Decision-Making Authority

Under Oregon's land use program, the local government makes local land use decisions. The local decision-making authority is delegated to a series of decision makers, based primarily upon the amount of discretion allowed for each type of decision. Authorities can include local or regional planning staff members, a hearings officer, planning commission, city council or board of commissioners or an administrative body such as a Variance Committee or Design Commission. Each type of land use action has prescribed procedures. Different kinds of procedures are subject to different requirements regarding public notice, participation, approval criteria, hearings and appeal deadlines.

2.1.7. Types of Local Land Use Applications/Actions

Oregon's land use statutes create four types of decisions: a land use decision [ORS 197.015(10)]; a limited land use decision [ORS 197.015(12)]; a ministerial decision [ORS 197.015(10)(b)(A)]; and an expedited land division [ORS 197.360-197.380]. Many jurisdictions in Oregon classify land use applications into four categories or procedure types. Each type of decision has different procedural requirements, including notice, hearing and decision-making.

Type I: (Ministerial decisions) This procedure is applied where the approval criteria are clear and objective and the decision does not require the exercise of policy or legal judgement. Often, no public notice is provided and there is no opportunity for an appeal. Lot line adjustments and minor setback adjustments are often classified as Type I reviews.

Type II: (Ministerial decisions or quasi-judicial, depending upon the local code.) This procedure is applied where the approval criteria require minimal discretion by the decision-maker and the development impacts are minor. Type II decisions are generally made without a public hearing, but public notice is provided with an opportunity to appeal. Applications for partitions and site/development plan review are often classified as Type II procedures.

Type III: (Quasi-judicial decisions) This procedure is applied where the approval criteria involve substantial discretion by the decision-maker. Type III procedures involve notice, a public hearing, and an opportunity for appeal. Zone changes that are consistent with the underlying comprehensive plan designation, subdivisions and conditional use permits are typically classified as Type III procedures.

Type IV: (Legislative decisions) This procedure is used for “legislative” decisions that generally affect large areas. The notice requirements are usually broader than a quasi-judicial review and allow more time for comment, often including public hearings before more than one decision body. Comprehensive plan map amendments and related zone changes, plan and zoning code text amendments, urban growth boundary amendments and some annexations are processed through Type IV procedures.

2.1.8. ODOT’s Role in Local Development Review

ODOT is considered a service provider in the local development review process similar to the local water, sewer, or fire protection providers. As the service provider of the state transportation system, ODOT adopts policies and standards that define facility function and performance. These standards and policies are applied to the applicant’s proposal and local approval criteria to form ODOT’s recommendation to the local government. The responsibility for a local land use decision is with the local governing body. Like other interested parties who participate in the local decision process, ODOT has the opportunity to appeal the local land use decision. (See Chapter 4 for additional information on appeals).

2.1.9. Notice of Proposal

Several provisions of State law and Oregon Administrative Rule require local government to provide public notice of land use proposals to ODOT. It is through these notices that ODOT becomes advised of the proposed action and involved in the development review comment process. Under the TPR (OAR 660-12-0045(2)(f)), local governments are required to have:

“Regulations to provide notice to public agencies providing transportation facilities and services, MPOs, and ODOT of:

(A) *Land use applications that require public hearings;*

- (B) *Subdivision and partition applications;*
- (C) *Other applications which affect private access to roads; and*
- (D) *Other applications within airport noise corridors and imaginary surfaces which affect airport operations.”*

Local governments are also required to notify DLCD of proposed plan and land use ordinance amendments. DLCD provides copies of these notices to ODOT.

Oregon Revised Statute (ORS) 215.402 (County) and 227.160 (City) contain statutory requirements for public notice of land use reviews. An index to statutes can be found at <http://www.leg.state.or.us/ors/vol5.html> .

Pre-application conferences are not required by statute. However, many jurisdictions require pre-application conferences for certain types of land use and development applications. ODOT staff should coordinate with local jurisdictions to ensure that ODOT is notified of pre-application conferences, particularly for larger land use and development applications. The pre-application conferences provide the opportunity for ODOT to help determine whether a traffic study is needed, the scope of the traffic study, the appropriate methodology and standards to use in the analysis and other issues related to the impact of the proposal on state facilities.

2.1.10. Determine Whether ODOT Has an Interest in the Proposal

When an application or notice is first received by ODOT it is reviewed to determine whether the proposal will impact ODOT's facilities. Region staff need to utilize their local knowledge about problematic sections of highway that may have high crash rates, substandard geometrics or other operational issues.

The following types of local land use proposals are generally of interest to ODOT:

1. Plan amendments and zone changes (includes map and text amendments affecting transportation).
2. Sites adjacent to a state highway.
3. Any proposal that includes proposed access to a state highway.
4. Development site off the highway that sends significant trips to the highway.
5. Land division or lot line adjustment for property with highway frontage or proposed access.
6. Sites located in the footprint of a future highway alignment.
7. Proposed noise sensitive land uses adjacent to state highways.

8. Sites located adjacent to a rail right of way or that could affect a rail crossing.
9. Airport expansions.
10. Land use/development proposals that could affect state airport expansions such as cell towers, or noise sensitive land uses in the vicinity of public use airports.
11. Aggregate resource sites.
12. ODOT surplus property sales.
13. Off premise signs (billboards).
14. Any proposal that is within 500 ft of a rail line or rail crossing.

2.1.11. Evaluating a Local Land Use/Development Proposal

To assist in evaluating whether ODOT has any interest in the proposal, answer the following five questions. Keep in mind; this is a first cut review. Chapter 3 contains a detailed discussion of how to evaluate a proposal.

1. Is a comprehensive plan amendment or zone change proposed that could have a “significant effect” on a transportation facility as defined by the TPR, OAR 660-12-060? See Chapter 3.2 and OAR 660-060 at: http://arcweb.sos.state.or.us/rules/OARS_600/OAR_660/660_012.html
2. Could a proposal that does not trigger the TPR, as above, significantly impact a state highway in some other way? For example, will it trigger signal or left turn warrants, increase AM, PM or average daily traffic (ADT) on the highway, or add traffic to an already dangerous intersection or one where mobility standards are not met?
3. Does the proposal site plan include any new or additional approaches to the highway?
4. Will the proposal as designed change the use of an existing state highway approach in a way that will adversely impact the state highway?
5. Does the site drainage plan discharge into a state highway drainage facility or into a local facility that discharges into the state facility?
6. Is the proposed land use action/development proposal within 500 ft of a railroad track?

If the answer is NO to ALL of the above questions, then there is probably no impact to a state facility and no further ODOT analysis or response is required. The agency may wish to submit a letter to the local jurisdiction stating: “ODOT has no objection to the proposal as submitted”. This confirms to the local government that ODOT received notification and conducted a review. In the case that the proposal changes significantly before it is adopted, and the changes create impacts that could not have been anticipated in the above assessment, the letter also establishes standing for ODOT to participate in review of any proposed changes and to appeal the decision if necessary.

If the answer is YES to ANY of the above questions then further review is warranted as discussed below.

Development Application without Access to a State Highway

Questions to consider include:

1. Has a traffic impact study been prepared and is it available? If a TIS has not yet been prepared, is there an opportunity to work with the developer on the TIS? For more detailed guidance on working with applicants on TIS documents, see Chapter 3.3.
2. Are there segments of the highway that already exceed the highway mobility standards (volume/capacity ratios), or that will exceed those standards as a result of the development?
3. Will the development overwhelm the local street network, causing traffic to reroute to the state highway? Does the development anticipate future local streets connecting to the state highway? Will the development provide for local streets, particularly those that would offer a parallel route that creates an alternative to using the state highway for local trips?
4. Are there sections of the state highway with safety issues or will the development trigger turn lane or signal warrants and require highway improvements?
5. Are there legal or policy issues such as consistency with the Land Use and Transportation Policy 1B of the Oregon Highway Plan?
6. Is the proposed land use action within 500 ft of a railroad track?
7. Will the proposed land use action alter or construct sidewalks, bike lanes, bike paths or roadway within 500 ft of a public rail road crossing?

8. Will the proposed land use action involve the relocation, construction or closure of any railroad grade crossings?
9. Will the proposed land use action increase or decrease vehicle traffic at a grade crossing?
10. Will the proposed land use action encroach on the railroad's right of way? The typical r/w for a railroad is 50 ft on each side of the centerline of the tracks.
11. Will the proposed land use action involve installation of new vehicle traffic signals or changes to existing traffic signals within 500 ft of a grade crossing?

If the answer is YES to ANY of questions 6 through 11, the ODOT review should be coordinated with the ODOT Crossing Safety Section.

Development Application with Access to a State Highway

In addition to the questions above, also consider:

1. Access Management compliance: How does spacing of the approach roads on the subject and adjacent properties conform to the standard applicable to the highway classification set by the OHP and Division 51?
2. The number of proposed approaches to the highway and to local streets, and their locations: Can the development function without a highway approach? If not, can a single approach road be shared by adjoining uses? If a new approach is necessary, can it be located along a property line, etc?
3. State Highway Approach Permit: If there are any existing approaches to the property, are they being operated under valid permits? Grandfathered? If not, is there a legal right of access to the property?
4. Alternative approaches: Are there other ways to provide access to the property besides the highway, such as using local streets?

Also, refer to Chapter 4 of Volume 1 of the Access Management Manual for detailed instructions about applying Division 51. Chapter 4 is located online at: <http://www.oregon.gov/ODOT/HWY/ACCESSMGT/links.shtml> .

2.1.12. Types of ODOT Responses

ODOT comments to local governments on land use/development applications are made in the form of recommendations. It is the local government decision-making

body that makes the decision. In written and oral comments to the local jurisdiction, make clear whether the ODOT recommendation is simply a good practice being recommended or whether compliance is necessary to be consistent with local code/or state law. It is sometimes useful to distinguish comments and proposed conditions of approval based upon the weight of law backing them up.

- Mandatory/required by law (local development code, OAR 734 Division 51, permits to connect to ODOT drainage system, miscellaneous permits to work in the state right of way, TPR 060, Rail Crossing Order ORS 823/824).
- Recommended/Supported by law (TPR, TSP, Comprehensive Plan Policies, and case law).
- Informational only (potential future issue, permit coordination/contacts).

Potential ODOT Recommendations:

- No objection to the development as proposed.
- Support the proposal as submitted.
- Support the proposal if certain conditions of approval are applied.
- Object to the proposal as submitted unless certain conditions are met. If possible, recommend the course of action that would make the proposal acceptable to ODOT. For example, the applicant may be responsible for installing a traffic signal or working with the local government to amend their TSP to identify needed intersection improvement(s). Funding mechanisms and a timeline for improvement(s) would be components of the amendment.
- Object to the proposal with sufficient findings of fact addressing the local decision criteria to justify a recommendation to deny.

2.1.13. ODOT Response Letters

In order for ODOT's input to local governments to become part of the official decision record, ODOT submits response letters. The response letters should be formal and be written in terms of the applicable approval criteria. The letters should be written in a way that will help the local decision-makers understand how the ODOT standards and practices relate to the local approval criteria. If ODOT's authority is in doubt, ODOT staff should include direct references to:

- The Transportation Planning Rule:
http://arcweb.sos.state.or.us/rules/OARS_600/OAR_660/660_012.html;

- Access Management Rule, OAR 734 Division 51, http://arcweb.sos.state.or.us/rules/OARS_700/OAR_734/734_051.html ;
- Highway Procedures and Operations (generally), OAR 741, http://arcweb.sos.state.or.us/rules/OARS_700/OAR_734/734_tofc.html ; and
- OHP Land Use and Transportation Policy 1B and Action 1B.4, <http://www.oregon.gov/ODOT/TD/TP/docs/orhwyplan/hwyplan/goal1.pdf>; in the response letters. (See also ODOT Review Authority section in Chapter One)

ODOT's comments are based on the materials submitted by the applicant and relevant state and local plans, policies, practices and administrative rules. ODOT comments include findings of fact, conclusions and a recommendation. Because the local government has the authority to interpret its own ordinance, ODOT staff may want to state "It is ODOT's understanding that this requirement means that..." to help support ODOT's position. Examples of ODOT letters to local governments in Appendix 4 show how different types of recommendations may be supported and conveyed.

Chapter 3 of these Guidelines outlines the analysis that is necessary to form ODOT's position on a proposal. This includes a determination of whether the proposal will result in a significant effect to a state facility. All modes are considered in determining a significant effect.

ODOT's most common response to the local land use proposal is to recommend approval subject to certain conditions. The conditions allow the applicant the opportunity to modify their plans to meet local and state standards. The most common condition of approval proposed by ODOT is a requirement that the applicant obtain a State Highway Approach Permit prior to final development approval (e.g. issuance of the building permit). This helps ensure that ODOT-related conditions of approval pertaining to access are satisfied before the building permit is issued. In this manner, the local and state regulations are coordinated. In some situations ODOT may condition a State Highway Approach Permit approval on later demonstration that the local land use application has been approved. Prior approval of an approach location can ensure a site plan will be designed consistent with the State Highway Approach Permit application and conditions of approval (OAR 734-51-0070(10)).

Include the following information in ODOT letters to local governments to help communicate and to establish a legally defensible position:

1. **Local file number, project address or general location, project name if any, and applicant's name.**

2. **Include a brief description of the proposal** from the official land use notice. Be clear that the review is for the proposal for which the public notice was sent versus a re-submittal by the applicant. If brevity is appropriate, it may suffice to state the general nature of the development and add, “. . . as described in the public notice dated mo/day/yr.”
3. **Identify the applicable local approval criteria.** This information is supposed to be a part of the land use notice, or a local planner can help provide this information if it is not apparent or included in the public notice. If TPR section 060 applies, say so and why. Quote the regulations as appropriate. The code or policy citation number is likely adequate for a hearings officer who will have familiarity with the local regulations. It may be beneficial to quote the code or policy language for a lay commission.
4. **Provide findings of fact** that pertain to the approval criteria. Example: The applicable mobility standard for Highway X is .90 volume to capacity (note the applicable Oregon Highway Plan Table with effective date of plan). The existing operation functions at .95 mobility standard. The proposed number of new trips during the a.m. peak hour is 500. Build-out of the development is expected to occur in the year 2004. Note that these are all facts with no conclusion.
5. **Provide conclusions** that are clearly distinguished from the findings. You may wish to have a section in the letter titled “Conclusions”, or you may wish to state the conclusion in the opening paragraph followed by the findings that support the conclusion. In this way the decision-makers can more quickly understand the content of the letter. Example: Based on our analysis the applicable mobility standards of Highway X can support the additional traffic that will be generated by the proposed zone change. ODOT has no objection to the proposal.
6. **Attach the traffic analyst’s comments**, particularly if it is a contentious case. When this is done, the cover letter can focus the reader on the impacts of the traffic analysis and the recommended course of action. The attached facts can support the conclusion and recommendation. Attaching the traffic analyst’s comments also demonstrates that professional analysis and considered judgment were involved
7. **Recommend a course of action.** Offer options when appropriate. Example: “ODOT recommends the City Council do one of the following: . . . “
8. **Provide the ODOT contacts.** Example: I can be reached at (phone number) if you have any questions. Preferably there is one spokesperson to whom questions can be directed, as appropriate. Or you may wish to include a list of ODOT contacts as a standard part of comment letters.

9. **If you intend to be present at the hearing, say so in the letter.** This is done primarily as a courtesy to local staff. Example: I intend to give oral testimony at the October 3rd hearing before the Planning Commission and look forward to helping answer any transportation related questions.
10. **Request that the ODOT letter be included in the record.** This is important. Most jurisdictions routinely add comments directly related to a notice of a land use/development application to their decision record, but to avoid any ambiguity regarding the intent of the letter, it is good to include a written request that it be included to ensure legal standing to appeal when necessary.
11. **Request a copy of the written decision.** Once again, eliminate any ambiguity about the reason for your letter to ensure timely notice of the decision in case there is a reason to consider an appeal.
12. **Copy the letter to the applicant and others as appropriate.** Typically, it is an important courtesy to inform the applicant in advance of release of the ODOT staff response. List staff members who receive the letter to identify whom the applicant should contact to resolve concerns. If this practice is not followed, the applicant may contact another ODOT person who may be unaware of the staff work that has already been done.

2.1.14. Findings: What Are They and Why are They Important?

Oregon law requires that a local government decision be supported by substantial evidence in the whole record (ORS 197-835(9)(a)(C)). Substantial evidence is evidence upon which a reasonable, prudent person could rely in reaching a decision, City of Portland v. Bureau of Labor and Industries, 298 Or 104, 119, 690 P2d 475 (1984). One way to provide the required substantial evidence is through development of “findings.”

Findings are required by Oregon law to accompany administrative decisions to explain why a decision is made. “Findings ensure that applicable legal standards have been addressed and show that the decision complies with the applicable law. This protects participants in the land use process from arbitrary government action.” (Land Use CLE S10.78.)

“Approval or denial of a permit...shall be based upon and accompanied by a brief statement that explains the criteria and standards considered relevant to the decision, states the facts relied upon in rendering the decision and explains the justification for the decision based on the criteria, standards and facts set forth.” (ORS 227.173(3) (cities)) and (215.416(9) (counties)).

ODOT’s findings should identify 1) the applicable local ordinance provision(s) and any other applicable regulations, 2) the facts of the case related to each regulation

and 3) discussion whether or not the facts support a conclusion that the proposal complies with the subject regulation. Where our findings are included in testimony submitted in a local decision process, the submittal should usually include a written request that the findings be adopted into the local decision document.

Findings are applicable in two stages of local decision making:

- Any time a decision is made by ODOT staff in the area of permitting, including a decision to make recommendations on a local land use proposal, the file should contain a set of findings to substantiate the basis for the decision.
- Findings are required to be prepared by the local government staff to support the local decision. ODOT staff can sometimes improve the departments' legal position in a local land use action by preparing findings for the local planner to use in developing their staff report and the final decision document. This is especially helpful for small jurisdictions with limited staff. Assuring that the findings you submit are always properly drafted and legally supportable will help establish and maintain a relationship of trust and credibility. Note that the tone of recommendations and findings to support them needs to be considerate of local sensibilities to the extent practicable, and may be the determining factor whether they are actually included in the staff report and decision.

2.1.15. Preparing Findings

The local jurisdiction, as the decision-making body, has responsibility to prepare the findings supporting a local decision. Typically, findings are drafted in a staff report that is submitted to the planning commission (or other decision authority) to explain the relationship of the facts to the decision criteria. Based upon the deliberations and decision of the decision body, the findings may be revised in the final decision document, establishing the rationale for the decision. ODOT, as a service provider, prepares findings relative to the state transportation system. Ideally, the ODOT comments are incorporated into the staff report and final decision document findings.

The ODOT findings must speak to the local approval criteria. For plan amendments and zone changes, the local approval criteria will have to address the TPR, reference the appropriate portions of the local government's development ordinances and tie their approval criteria to the OHP and OAR Division 51 as appropriate. In the case of TPR reviews, provide details explaining whether and, if so, how the proposed land use is inconsistent with the jurisdiction's adopted comprehensive plan and/or transportation system plan. As a matter of practice, the bar is set higher for plan amendments/zone changes and conditional uses than for uses permitted outright. For uses permitted outright it is adequate to refer to the

pertinent local zoning code criteria without making reference to the local comprehensive plan policy.

- The findings need to be concise;
- Keep as neutral (or, where appropriate, supportive) a tone as possible in the submitted correspondence, focusing on the function of the roadway;
- The Department of Justice can be a resource to help you include citations to any applicable LUBA cases that would buttress ODOT's position;
- Explain how the applicant has not met the burden of proof where applicable. The burden of proof has not been met if a reasonable person would not conclude that the applicable criteria are met based upon the facts of the case and the information provided by the applicant; and
- Include in the letter references to specific examples from the application materials that demonstrate failure to meet the burden of proof, describing what is missing or inaccurate.

For example, most local codes have sections that require that adequate public infrastructure be available to serve proposed new development. Adequacy of the state highway facility includes mobility, safety, etc. Stress the mobility standards of the OHP and how the development will cause those standards to be exceeded where applicable. Offer suggested conditions of approval to either meet those standards or to keep the volume to capacity (v/c) ratio at its current level after the development occurs. Identify the mitigation necessary to achieve the standards.

2.1.16. Mitigation in the Form of Conditions of Approval

Local governments are required to adopt regulations that include: "A process to apply conditions to development proposals in order to minimize impacts and protect transportation facilities, corridors or sites;..." as a part of implementation of the Transportation Planning Rule, under OAR 660-012-0045(2)(e).

Typically, the applicant's Traffic Impact Study (TIS) includes recommended mitigation or ODOT staff recommends mitigation. As a courtesy to the local government, the state should gain the local government's concurrence on the proposed mitigation.

It is important to identify a mechanism to ensure the applicant is responsible for the identified mitigation. This is usually done through conditions of approval, either initiated by local planners or proposed as part of the applicant's submittal. Conditions of approval are stated in the record of decision. If the mitigation is substantial or exceeds the proportionate share of the applicant's impact and the applicant is not willing to make the improvements, other TPR-identified remedies or

denial may be appropriate. Subsequent sections of these Guidelines discuss mitigation in more detail.

2.1.17. Ways to Work Effectively with Local Partners

The following strategies can help ODOT work with local partners on land use/development reviews:

1. Work with local governments to get them to notify ODOT Regions/Districts of major development proposals on a pre-application basis.
2. Attend pre-application conferences.
 - Identify information that needs to be included in the land use application in order for the applicant to address the approval criteria.
 - Provide written comments either at the pre-application meeting or as soon as possible following the meeting.
 - Provide the best information available.
 - Try to resolve conflicts.
 - Provide ODOT contact information.
3. Know the local approval criteria. This is essential because it forms the primary basis for the decision. The local approval criteria are the regulations in place at the time of the application submittal (not at the time the application is deemed complete). Note that comments do not have to be limited to the criteria identified by the local planning department. State policy, plans and standards are applicable to ODOT facilities and should be included as part of the ODOT analysis. The approval criteria may include previous conditions of approval that apply to the site. For example, the site may be part of a planned unit development (PUD) that has specific approval criteria that apply at the time of development.
4. Know the review process: timelines, decision-making body and appeal process.
5. Provide timely responses. Respond to the local government in time to get the ODOT comments included in the staff report and recommendation. You may wish to provide the local staff with an electronic version of your letter so they can easily incorporate the ODOT findings into the staff report.
6. Provide the local staff with the recommended condition of approval language written clearly and completely. This provides clarity and helps the local staff.

The condition language should address when the condition is to be performed. Stating that the condition is to be performed prior to the issuance of the primary building permit works well when it is feasible. It may be helpful to discuss the language of the condition with the local staff to see if there are ways the condition can be written to best fit with their development and/or building permit review process. The local staff is able to make their own recommendations and offer modified language following the receipt of the ODOT comments. Having a uniform position with the local staff helps eliminate confusion and enhances our chances of gaining agreement from the decision-making body.

7. When a proposal goes to a public hearing, request the hearing record be kept open if necessary to allow time to address unanswered questions. This request must be made before the conclusion of the first evidentiary hearing. If requested, the record for a hearing must be kept open for seven additional days (ORS 197-763(6)).

2.1.18. Ways to Participate Effectively in the Hearings Process

The following tips are intended to help ODOT participate in the local land use hearings process:

1. To prepare for a hearing, become familiar with the following:
 - All materials filed by the applicant.
 - Relevant ordinances (Development Code).
 - Traffic Analysis, if any.
 - Staff report(s).
 - Previous proposals on the property.
 - Local comprehensive plan text and map.
 - Other studies, plans and minutes relating to the proposal.
 - The Transportation Planning Rule (TPR).
 - Statewide Land Use Goals: <http://www.oregon.gov/LCD/goals.shtml> .
2. Discuss the proposal with the local staff. Try to get a feel for their position on the proposal and whether it promotes local priorities. Use the

opportunity to increase local understanding of highway facility issues and be persuasive about mitigation needs.

3. View the property.
4. Be familiar with the procedural rules such as the order of presentation, local jurisdiction's appeal requirements and review procedure. For example, would an appeal be heard de novo (new hearing) or on the record (hearing is based on the record, with no new introduction of evidence)? If appeals are heard on the record it is even more important to submit thorough and accurate comments at the first level of review.
5. Know all deadlines for submission of evidence and appeal requests.
6. Know your audience. Try to find out the interests and inclinations of the local body hearing the case.
7. The ODOT staff presentation can be either in writing or oral. You will have a better opportunity to persuade the local hearings body if you are present and can respond to questions. If an oral presentation is given, it should also be submitted in writing.
8. Carefully listen and take notes on the other testimony in order to be prepared to rebut any evidence submitted by the others that detracts from ODOT's testimony, whether ODOT is the proponent or opponent. Note that opponents do not usually get the opportunity to rebut during the public hearing. If rebuttal is needed it will be necessary to request that either 1) the record be kept open for a specific period of time, or 2) the hearing be continued to a certain future date, typically the next scheduled meeting of the hearings body. The hearings body is required to keep the record open when requested by a party with legal standing, but will often only keep it open for a week or two, and continue deliberations at a future meeting. Typically, the hearings body may continue the hearing at its discretion. (See also discussion on burden of proof below.)
9. If ODOT is the proponent of a local land use action, listen carefully for any additional criteria raised by the opposition. If additional criteria are raised, staff may need to explain why those criteria are not applicable and/or submit evidence to show why the proposed change complies with the criteria. Proponents do get a chance to rebut, but in some communities only the applicant may do so. If that is the case, and ODOT is not the applicant, ODOT may be allowed to rebut at the request of the applicant. In the case where new evidence or new criteria are raised, a request to keep the record open and/or continue the hearing may be the best course.

10. If ODOT is an opponent to the local land use decision, do not rely on the local government to identify all applicable criteria. If you believe certain decision criteria apply but have not been identified by the local jurisdiction, discuss the matter with the local government staff, and be prepared to identify those criteria and defend their applicability to the subject application in testimony. Also be prepared to address the facts of the case and whether it can be demonstrated that the claimed additional criteria are not met.
11. Identify whether the proposal amends a functional plan, acknowledged comprehensive plan or land use regulation, then identify whether the proposal will have a significant impact on transportation facilities per OAR 660-12-060 or the TPR.
12. Use charts, maps and other graphics to illustrate your position. If oversized graphics are used, be sure to supply a legible, smaller format version with identical content that can be placed in the application file. Everything relied upon as a basis for the decision needs to be part of the record, particularly if there are resulting appeals, and large maps on foam core, for instance, do not stay with the file.
13. Identify, by reference to number and name, all applicable statutes, administrative rules, plan provisions and ordinances that are applicable to the subject local land use decision.

2.1.19. Burden of Proof

The proponent(s) of the local land use/development application has the burden of proof to demonstrate that the application meets all applicable review criteria. This applies to the applicant initially and then to the local government whenever a decision approving the proposal is made in full or in part. The burden of proof is met if a reasonable person would conclude that the decision criteria are met, based upon the facts of the matter and the materials submitted by the applicant. Professionally prepared traffic impact studies are often submitted as part of the local land use application to address the burden of proof.

2.1.20. Substantial Evidence

Substantial evidence that the proposal complies with the applicable criteria must be contained in the record of decision. "Substantial evidence" is evidence a reasonable person would accept as adequate to support a conclusion. The proponent must provide evidence to show that the applicable criteria have been met. The burden then shifts to the opposition to show why this evidence is not substantial, i.e., it does not address the criteria, it does not answer the question raised by the criteria, it is not technically correct, or the person presenting the evidence is not qualified, etc. If the opposition provides evidence that detracts from the proponent's evidence, the burden shifts back to the proponent to bolster their evidence. The bottom line is, if

you are the opponent, you cannot simply mention applicable criteria and rest. You need to see whether the proponent then provides evidence to show why those criteria are not applicable or have been met. If they do so, you should try to rebut their testimony. Opponents do not usually get an opportunity to rebut.

The usual sequence for giving testimony at a land use hearing is:

- Applicant
- Other Proponents
- Opponent
- Applicant's Rebuttal

Parties with legal standing in the subject hearing, both proponents and opponents, have a right to ask that the record remain open for a specific period of time to allow a response to any new evidence or criteria that have been raised in the hearing. The local body conducting the hearing will typically specify a date after which the record will be closed, and deliberations will resume at a later date based upon the timely evidence in the closed record.

Parties may also request a continuance of the hearing, which means that the hearings body would agree to allow further testimony at a future "date certain." Whether or not to continue the public hearing is a decision made at the discretion of the local hearings body.

2.1.21. Internal Coordination

For the agency to successfully participate in the local land use process, the responding ODOT planner must ensure that the agency speaks with one voice. This means contacting other units of ODOT as well as managers prior to submitting a comment letter. The specifics of the local land use proposal will dictate which of the parties listed below should be brought into the review. At a minimum, the ODOT planner needs to inform the Planning Manager and must contact District staff for their input before submitting the agency's response. The managers and units discussed below are the primary resources to use when analyzing a local land use proposal.

2.1.22. Coordination with ODOT Managers

Planning Manager: Responsible for the development review program in the Region and supervises the current and long-range planners. The Statewide Transportation Improvement Program (STIP) usually resides in the Planning unit and thus the manager would know of any upcoming or distant ODOT projects in the vicinity of the development. The STIP coordinator is another source of information about when projects will be delivered. The Planning Manager is responsible for keeping other managers in the region informed about development review issues.

District Manager: Legal authority for issuing approach road permits lies with the District Manager. The District Manager may refer you to the Region Access Management Engineer on access management issues. The District Manager supervises staff that is involved in the daily maintenance and operation of the state's highway system and all features on the right of way (signs, signal poles, fences, etc.). This includes non-ODOT signs on state right of way.

Traffic Manager: Has legal authority for the placement of official ODOT signs (regulatory, warning, guide) and certain informational signs on the highway. Other responsibilities include the location, timing and other operations of traffic signals, striping the highway and conducting speed zone studies.

http://www.oregon.gov/ODOT/HWY/TRAFFIC-ROADWAY/publications_traffic.shtml

Area Manager: Oversees the project development process when ODOT constructs a project. Examples would be building passing lanes, new alignments, general widening, etc. The Area Manager also serves as ODOT's liaison to the Area Commission on Transportation, a consortium of local jurisdictions. There can be a degree of overlap between the Planning Manager and the Area Manager on the long-term goals for ODOT's facilities.

Region Right of Way Manager: Oversees the acquisition, management and disposal of state-owned property. Salem Right of Way researches properties to determine whether ODOT has purchased access control, identify the location of reservations of access and research other property deed information related to the highway.

Region Manager: Oversees all managers within the region with the exception of Right of Way. The Region Manager normally does not get directly involved in development review except in unusual circumstances. It is prudent to brief the Region Manager about applications that may become politically sensitive, particularly when it may be pertinent to appeal a local decision. That briefing is coordinated through the Planning Manager.

Crossing Safety Section Manager: Responsible for the railroad crossing safety program. The Crossing Safety Section is responsible for managing the application process for constructing, altering or closing public rail crossings; mediating agreements between public authorities in interest (road authorities) and railroads; preparing final Crossing Orders authorizing improvements; and participating in the review of land use actions as needed.

2.1.23. Coordination with Other ODOT Units

ODOT is one of the most complex state agencies in terms of roles, responsibilities and regulations. Below are examples of units that may need to be contacted for input or just to discuss problems and possible solutions to the application at hand.

It is preferable to begin with staff at the Region or District level.

Bicycle and Pedestrian Program: This program provides technical assistance and grants to local officials regarding bicycle and pedestrian issues.

Geo/Environmental Section: The Geo/Environmental Section has staff in both the Regions and in Salem. The section can assist in assessing drainage issues. ODOT Drainage Permits, however, are handled through the Districts. Environmental issues can range from threatened and endangered species and wetlands to historic buildings.

Long Range Planning: The Regions have long-range planners who are expected to be familiar with the local governments' TSPs and Comprehensive Plans. Salem's Transportation Development Division (TDD) also has specialized long-range planners for various travel modes. Where a local government's plans for an area on the highway are at odds with the classification of the highway, a Highway Segment Designation per OHP Policy 1B may be a viable approach to propose as a long-range solution. Read OHP Policy 1B and contact TDD to develop this idea further.

Rail Division: The division, which is based in Salem, has exclusive legal authority over public grade crossings and provides coordination with the railroads for affected private rail crossings.

Signs: Authority to regulate signs depends on the type of sign and its location. Signs on state right of way are the province of the District Maintenance office. Signs on private property, but visible from the state highway, are handled by the Outdoor Advertising Sign Program in Salem. The Travel Information Council deals with logo signs for gas, food and lodging as well as tourist-oriented directional signs.

2.1.24. Coordination with Other State Agencies

Department of Land Conservation and Development: DLCD, through its Commission, adopts statewide planning goals and reviews local jurisdictions' comprehensive plans for compliance with those goals. DLCD acknowledges local governments' comprehensive plans and TSPs. The department also reviews proposed amendments to those plans for compliance with state planning goals and associated administrative rules. Interpretations and implementation of the Transportation Planning Rule and other rules and statutes in their purview should be coordinated with DLCD.

Oregon Department of Aviation: The department reviews local land use applications for their effects upon airport operations. These can include noise-sensitive uses locating near airports, cell towers, waterfowl attractions in flight paths and development in runway protection zones.

2.1.25. Coordination with Other Groups

ODOT has increased its outreach to local governments and the general public. This can result in the agency's development review responses extending beyond submitting letters to the local government. Larger projects with sensitive issues can require ODOT staff coordination and interaction with the following groups:

Area Commissions on Transportation (ACT): The ACTs are advisory bodies chartered by the OTC. Representatives from cities, counties and Indian nations comprise the ACTs, which are organized geographically and typically include a decision making body of local government officials and a technical advisory body of planning, transportation and public works staff.

Economic Revitalization Team (ERT): ODOT is one of eight state agencies participating in ERT. Coordinated through the Governor's office, the effort now includes the following agencies:

- Oregon Economic and Community Development Department (OECDD)
- Oregon Department of Transportation (ODOT)
- Department of Land Conservation and Development (DLCD)
- Department of Environmental Quality (DEQ)
- Department of State Lands (DSL)
- Oregon Department of Agriculture (ODA)
- Oregon Housing and Community Services (OHCS)
- Department of Consumer and Business Services (DCBS)
- Formerly the Community Solutions Team (CST), the ERT assists local communities with economic and community development issues that involve multiple state agencies through regional ERT teams.

Local Planning and/or Public Works Departments: Local departments offer a wealth of information regarding local plans, policies, land use ordinances, street standards, drainage issues and existing stormwater facilities. ODOT and local staff can work cooperatively to craft conditions of land use approval that meet the requirements of the state and local governments.

2.1.26. Coordinating State Highway Approach Permit Approval With Local Development Approval

Both local and state approvals are required to develop a parcel of land with access to a state highway. The state approval is in the form of an ODOT state highway

approach road permit regulated by OAR 734-051 and administered through the ODOT District office. The local approval is the result of the city or county's land use and development review process.

It is usually preferable for an applicant to apply for a state highway approach permit prior to the final decision on a land use application. The reason is that ODOT decisions about highway access may affect the site layout and the way vehicles enter, exit, and circulate on the property. ODOT may also require mitigation that affects access to the property. However, the administrative rules provide for flexibility in the timing of the application.

The questions and answers below help explain how the two processes can be coordinated to provide flexibility in the sequence of events leading to application approval.

1. Can the local land use approval be obtained prior to state highway approach approval?

Yes, however the applicant runs the risk of having the state deny the approach, requiring the applicant to either revise the site plan through the local review amendment process or to appeal ODOT's decision to deny the approach road. Some flexibility is established in OAR 734-051-0070(10).

2. Does the applicant get to choose whether he or she obtains the state approval prior to the local land use approval?

Yes. Based on OAR 734-051-0070(10) a property owner may apply for an ODOT State Highway Approach Permit before, after or during the local land use review. This flexibility allows the applicants to decide for themselves the best course of action to allow applicant's some flexibility in terms of the timing of their applications, section 0070(10)(a) allows approval of an approach permit pending verification of local land use approval. In addition, in the 2004 amendments to Division 51, section 0070(10)(b) was added to allow a construction permit for a highway approach (driveway) to be issued while a land use action is pending, with a bonding requirement to cover the cost of removal if the land use is ultimately denied. The final Permit to Operate Maintain and Use an Approach will only be issued upon the applicant receiving local land use approval and the completion of construction of the approach to state standards. In this manner, the state and local governments coordinate their reviews and have assurances that the same set of site plans are being approved by both agencies.

3. Does ODOT recommend applicants obtain state approach approval prior to local approval?

In cases where the local land use action includes site plan approval, obtaining ODOT approach permit approval prior to the local approval is typically the best

course of action. Agency staff can identify approaches the agency can support or would oppose. ODOT staff may advise the applicant to get a state approach permit prior to the local approval but cannot require it (OAR 734-051-0070(10)). ODOT recommends the applicant know both the local and state rules pertaining to access prior to designing their project and submitting either the state or local application.

4. What happens if the state approves an approach location and the local government objects?

The applicant must take steps to address the local government's issues. ODOT will only allow an approach when the provisions of OAR 734-051 are satisfied.

5. What happens if the local government approves an approach location and ODOT objects?

ODOT staff needs to decide the most effective means to get the approach in the best feasible location. ODOT: 1) May object through the local appeal process; and 2) Will withhold issuing the approach permit until the provisions of OAR 734-051 are satisfied. The applicant may have to submit an amended site plan or other application to the local government to modify the approach location. OAR 734-051 includes an appeal process; however, it is separate and distinct from the local land use appeal process.

6. What happens if more time is needed to work through the local or state issues?

If more time is needed to work through issues, the time lines for review of an approach permit may be extended by mutual consent of ODOT and the applicant. The applicant may also submit a letter to the local jurisdiction to suspend the "120-day rule" to allow more time for the local land use process.

3. CHAPTER 3 – PART 1: Land Use Reviews

3.1. Overview

This section discusses the ODOT analysis involved with most local land use proposals. Where the Transportation Planning Rule (TPR) also applies, there is an additional review and response process to follow. See Chapter 3.2 for background and procedures for TPR review.

This chapter discusses all types of land use actions other than plan amendments and zone changes. Table 3.1.1 lists typical ministerial and quasi-judicial local land use reviews. Legislative proposals that do not trigger the need for TPR review should also be reviewed consistent with the practices listed in this chapter. For these categories of land use reviews, ODOT works with the local planning staff and developer to implement (vs. amend) the local land use and transportation plans and ordinances. The planning horizon is typically based on the year of project completion rather than the local transportation system plan (TSP) planning horizon. A generalized review process for applications that are not subject to TPR review is illustrated in Figure 3.1.1.

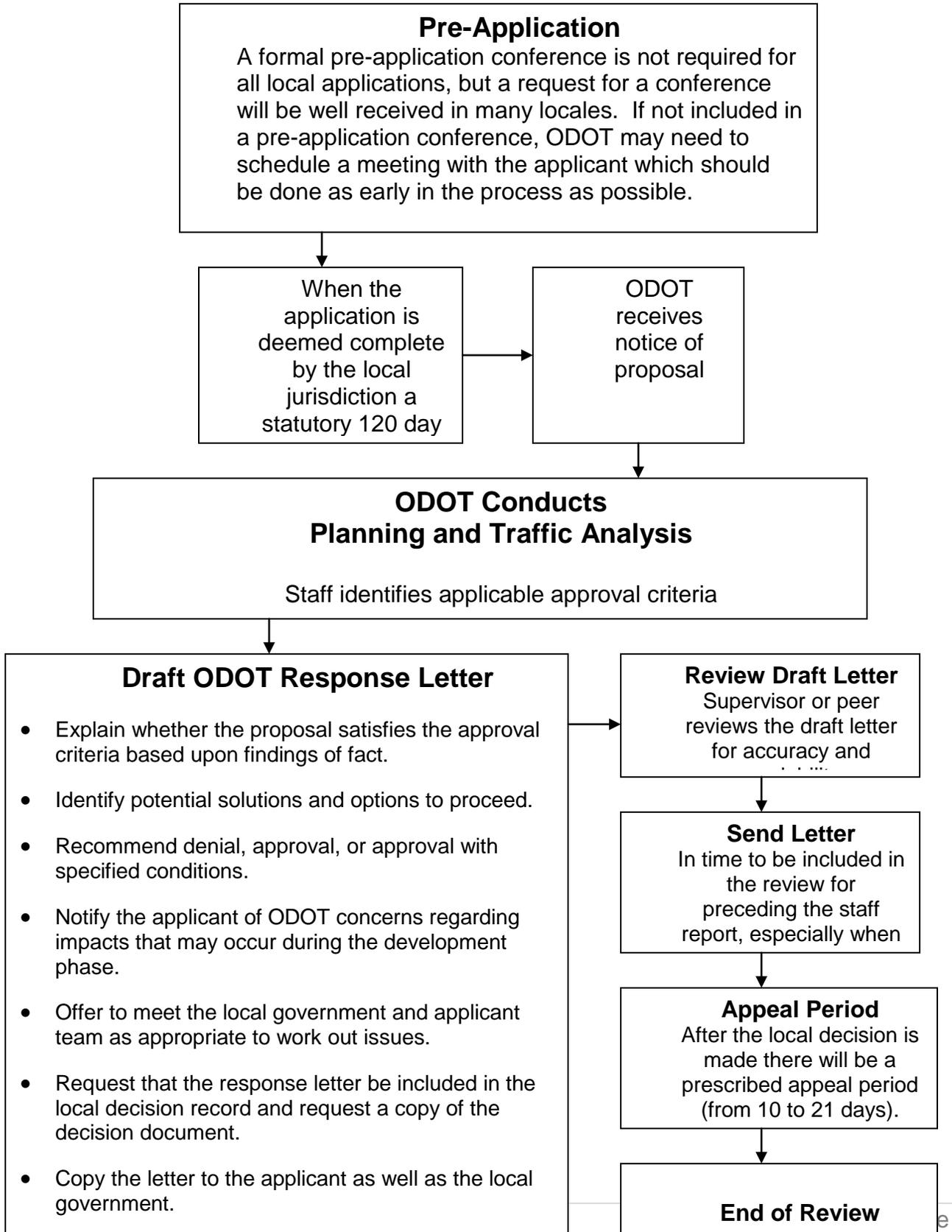
An ODOT approach permit must be obtained to gain access to a state highway. The approach permit process is separate from the local land use review. However, as discussed in Chapter 2, ODOT staff should review the site access during the land use review as a way to identify potential conflicts. ODOT staff should determine whether the proposed approach is consistent with ODOT Division 51, (OAR 734-051) access management standards and any applicable OHP policies. ODOT staff has the responsibility to inform developers of possible conflicts with Division 51 requirements. Consult with the District Permit Specialist or the Region Access Management Engineer (RAME) for more information. The full text of the Division 51 rule is available at:

http://arcweb.sos.state.or.us/rules/OARS_700/OAR_734/734_051.html. Detailed instructions for application of Division 51 can be found in the Access Management Manual, particularly Volume 1, Chapter 4, located at: <http://www.oregon.gov/ODOT/HWY/ACCESSMGT/accessmanagementmanual.shtml>.

3.1.1. ODOT Review Authority

See Chapter 1 for a general overview of ODOT review authority. ODOT authority to regulate the safety of rail facilities and rail crossings applies to all land use actions/development proposals whether or not a state highway facility is within the vicinity of the proposal. The following additional provisions are applicable for land use reviews:

Figure 3-1



On-System Projects

If the development has direct access to a state highway the access management rule, OAR Chapter 734, Division 051 applies. Refer to the rule for specific provisions. Many local codes also have provisions requiring a traffic analysis.

Off-System Projects

The local development code applies. It normally includes an approval criterion that the proposed land use will not constitute an undue burden on existing streets, or that public facilities are adequate to serve the new land use. The local code may provide that a TIS is required based on development size or traffic generation rates. Preparation of a traffic analysis is typically in the applicant's best interest as a way to demonstrate compliance with the local approval criteria.

3.1.2. Apply Local Review Criteria

The local code sets the approval criteria for land use reviews. Acknowledged plans and ordinances are presumed to be consistent with state standards. When the local jurisdiction reviews an application for transportation effects, ODOT refers to the mobility standards of the OHP, the spacing standards of the OHP and Division 51 to analyze whether the proposed land use is consistent with the acknowledged local development code language. ODOT must rely on the local code because there are no state transportation approval criteria that apply directly to land use actions. There are, however, state policies and standards that should be used in drafting findings regarding the local approval criteria.

3.1.3. Applicable Criteria

The local approval criteria vary depending upon the requested land use action. Despite the prescriptive and limited nature of the land use review, the local approval criteria often require that public facilities must be adequate to serve new development and/or that the transportation system must be maintained to be safe and efficient. This language gives ODOT staff an opportunity to recommend findings on the impacts of the land use action on the function, capacity, and performance standards of affected transportation facilities, particularly state highways.

Table 2 lists typical approval criteria for different types of land use actions. Also, ODOT will work with local jurisdictions to ensure that the developer mitigates proportional impacts to the state highway system. This can include implementing the mitigation identified in the traffic impact statement or TSP-planned improvements. Mitigations are typically stipulated as conditions of approval.

Table 3-1 Common Land Use Application Types

Land Use Request	Common Local Approval Criteria	ODOT Interest
Conditional Use	Public interest and welfare are met.	Adequate transportation system to serve proposal.
Subdivision	Infrastructure, lot and street frontage requirements plus a finding of no adverse impact on the transportation system.	Local street connectivity, internal circulation to reduce demands upon the highway.
Minor Partition	Lot and street frontage requirements.	Side street access, or single approach to serve 2-3 parcels through recorded access agreements.
Variance	Hardship circumstances; not “self-created difficulty”.	Likely none unless a transportation system safety problem will result, e.g. corner lot with insufficient driveway spacing.
Site Design Review	Design standards and objectives.	Building placement to help facilitate pedestrian and transit use; vehicular and pedestrian access and movement.
Historic Review	Design standards and objectives to protect historic building and site character.	Likely none unless a state transportation facility or Scenic Byway is involved.

3.1.4. General Review Factors for Land use Applications

1. Does the property have a legal right of access?

Detailed discussion of ODOT’s approach road permitting process is available in Volume 1, Chapter 4 of the Access Management Manual, located at: http://www.oregon.gov/ODOT/HWY/ACCESSMGT/docs/Vol_Ch04.pdf

Coordinate with the ODOT District Office to see if any existing approach road is under permit, either through an actual approach permit specifying the physical

location and approach use, or where the approach is grandfathered (predates 1949 or otherwise as defined in Division 51). Where ODOT has purchased, or obtained by law, the access rights on the property highway frontage, the applicant must already have a Reservation of Access at the location of any proposed approach or be able to purchase a Grant of Access to use that approach location. Just because there is an existing curb cut does not mean the approach location is a legal. Where an ODOT contractor put in a curb cut during an improvement project, the approach may have attained legal status, but do not assume so without consultation with the District and/or the Region Access Management Engineer (RAME).

Whether or not there is an approach that is currently permitted or grandfathered, a new State Highway Approach Permit will be required for a new approach or an existing approach that's use will change due to the new development. Obtaining an approach permit or verifying that none is needed should be a standard condition of approval on any local land use approval. When suggesting condition of approval language, it is helpful to include enough information in the condition to help the applicant know how to meet the condition, e.g. whom to contact, aspects of the proposal that will bear on a permit decision, etc.

2. How many approach roads does the plan indicate and do they meet spacing standards?

When a piece of property is developed or redeveloped, ODOT has the opportunity to close approach roads through the 'change of use' criteria (734-051-0045). If the approach roads do not meet spacing standards, in many cases the applicant can apply for a deviation to the spacing standards.

While ODOT cannot legally require a joint approach road, it is helpful to seek joint approach roads along property lines whenever possible through conditions of approval. These can be particularly important in areas dominated by strip commercial development. All parties using the approach road must be identified and sign the approach road permit. In support of any joint approach, it is necessary require easements over the approach for all property owners with rights to use the joint approach or other cross connection. Recognize that a joint approach may have an impact on the nature of the traffic using the highway approach road. For instance, it may not be desirable to channel customer vehicles and large delivery vehicles onto the same approach.

3. Resist requests for acceleration lanes.

Acceleration lanes allow a driver exiting the property to the right a chance to build up speed before merging left onto the highway. While an acceleration lane for a single property may appear reasonable, it becomes a problem when multiple properties all have acceleration lanes. To a driver on the highway, an uninterrupted string of acceleration lanes appears to be a travel lane. Drivers may begin to use

the acceleration lanes as through lanes, leading to sideswipes, rear-end collisions, and weaving problems.

4. Are there any upcoming ODOT projects along the site frontage that will need to have right of way dedicated?

Identifying whether right of way may be needed for a future project (highway widening, addition of left-turn refuge, right-turn lane, frontage roads, half-streets, etc.) is crucial. Property owners need to be informed of future ODOT projects that will affect development as early as possible in the review process, preferably no later than the pre-application phase. This will allow time for modifications to the project design or, in the extreme case, time to withdraw an application to avoid investment losses.

5. State right of way cannot be used to display items for sale.

6. Sidewalks and landscaping need to be negotiated within the state right of way.

Sidewalks should be property tight, not curb tight. If the sidewalk hugs the property line, the sidewalk becomes a safer and more pleasant place to stroll. The land between the sidewalk and the edge of the shoulder is available for landscaping and in colder climates, snow storage. Local jurisdictions often have overlapping requirements for widths, planting strips, landscaping, etc. ODOT, particularly in Region 1, is currently working through the sometimes conflicting issues of local landscaping requirements, sight distance and clear vision areas, and roadway maintenance practices, in an effort to establish better guidelines for working with local governments on streetscape design. In Eastern and Central Oregon and at high altitudes, snow plowing and snow storage are also significant issues. Landscaping outside of the state right of way is subject to local standards. Within the state right of way the development review planner needs to keep informed about District and Region practices regarding landscaping. Local landscape design standards will often work well within the right of way, but not always. When further guidance has been formalized it will be added to this document.

7. Is there an opportunity to support alternative modes of transportation?

Transportation System Plans identify opportunities to improve access to alternative modes of transportation. Familiarity with the local TSP may provide support for recommending site improvements that support alternatives and reduce reliance on the automobile. Where public transit is available, improvements to bus stops or a new stop internal to the development site may be appropriate. Facilities to provide safe pedestrian circulation through the site and between nearby developments are usually called for in TSPs. Connections to bikeways and bicycle parking support bike access consistent with the typical local TSP.

8. Has the proposal addressed OHP Land Use and Transportation Policy 1.B issues?

Would the proposal benefit from planning for compact development with limited access to the state highway? Is there a planned or potential Special Transportation Area, Urban Business Area or Commercial Center? If so, are there additional design options available in character with the applicable type of segment designation? If so, recommend and facilitate a new designation where needed, and/or recommend conditions of approval consistent with the designation.

9. Is there sufficient throat distance for vehicle storage on the site?

The amount of stacking distance as vehicles enter the site plays a crucial role in smooth highway operations. If the entering traffic must stop too soon once on a site, queues can back up from the site onto the highway. As a rule of thumb, 75 feet of throat is the minimum distance. That means 75 feet until the first parking stall, the ordering window at a drive through, first turning opportunity to use a travel aisle, etc. For a larger parcel, the roadway entering the site should be free-flow and any aisles intersecting the entrance roadway should be stop controlled. This is particularly important for grocery stores, shopping malls, etc. Traffic studies should include queuing analysis for on-site operations in the influence area of the approach road.

10. Are there any unique aspects about traffic entering or exiting the site?

Certain land uses have vehicles that can adversely affect highway traffic. Examples would include any site with heavy truck traffic (warehouses, mills, car dealerships, lumberyards, aggregate sites, etc.). It is important to make sure curb radii are of sufficient width that trucks can make the turn easily. A deceleration lane lets trucks get out of the travel lane, and results in minimal disruptions to highway through traffic.

11. How does the approach road for this site relate to others in the vicinity?

It is important to make sure the driveway on one site will not be introducing conflicts to driveways either upstream or downstream or on the other side of the highway. As a general practice, a driveway on the side of the highway should be aligned directly across from the driveway on the other side of the highway; otherwise overlapping lefts may be introduced. In some special cases it is desirable to offset driveways on opposite sides of the highway to separate left turns. For example, on an east-west road the northern approach should be to the west of the southern approach. This means left turners will not overlap, but it is rare to have driveways isolated enough for this to work.

Offset approaches on opposite sides of the highway may be appropriate when engineering judgment is used to ensure that the driveways would not create conflicts with other turning movements and queues.

12. Drainage that flows into state right of way requires an ODOT permit.

ODOT is responsible for the quantity and quality of stormwater discharged from its facilities: <http://www.oregon.gov/ODOT/HWY/OOM/CW.shtml> . This is relevant to Development Review because local development may contribute to both volumes and pollution loads in a ODOT stormwater facility. ODOT's permit does not cover stormwater from outside of the state right of way, so preventing or mitigating flows from other sources is needed, and identifying opportunities to do so should be a part of development review. ODOT is only required to accept drainage from properties where the drainage naturally flows from the property toward the highway. It is in the developer's interest to mitigate storm water (detention/retention) to avoid substantial changes in the rate of offsite flows.

Stormwater discharge permits are issued through the District offices and sometimes require a hydrologic study. Applicants should contact the district offices directly. A standard condition of approval advising the applicant of the need to contact the District office regarding requirements and permitting for the discharge of stormwater into the highway drainage facility is recommended.

13. Is the site within 500 ft of a railroad or does it add vehicle trips to a rail crossing?

The **Crossing Safety Section** is the Rail section that should be contacted to review land use actions/development proposals within 500 ft of a railroad or rail crossing. The **Crossing Safety Section** is particularly concerned with bringing existing public rail crossings up to current state safety standards.

ODOT is responsible for regulating the safety of rail facilities and rail crossings. This authority requires a public road authority or railroad to file an application for a Crossing Order with the ODOT Rail Division for permission to construct a new separated or at-grade crossing, make alterations to an existing public crossing, or to close an existing public crossing. To "alter" means any change to the roadway or tracks at a crossing that materially affects use of the crossing by railroad equipment, vehicles, or pedestrians. Alterations include, but are not limited to: adding or removing tracks, changing the width of the roadway; installing or removing protective devices; creating an additional travel lane; changing the direction of traffic flow; installing curbs, sidewalks, or bicycle facilities. If an alteration to a crossing is proposed, a standard condition of approval advising the applicant and local jurisdiction of the requirement to apply for a Crossing Order through the Crossing Safety Section should be included in the ODOT written response.

3.1.5. Basics of Site Plan Review

Site plan review requires that the ODOT planner review the applicant's drawings and envision how the traffic operations within and to the site will affect the highway. ODOT staff should not only look at the approach road itself, but also evaluate how the layout of the site will influence internal circulation, driver behavior and access for vehicles, pedestrians and bicyclists. The issues discussed below apply whether an access to the highway lies in a section where ODOT has purchased access control or just administers access via permitting authority. The sections below focus on site plans, and not the larger issues of appropriate mitigation, land use issues or mobility standards.

3.1.6. Subdivisions and Land Partitions

Ensure that future access to land partitions and subdivisions along a highway is consistent with ODOT access management standards. Reference the 1999 OHP Access Management Policies and OAR 734-051 Tables 2-8, the access management spacing standards, when commenting on highway access. Coordinate with the Permit Specialist on permitting issues and with the Right-of-Way Section staff on reservations of access issues. During the land partitioning and subdivision process, require that the property owner develop an internal road network or have cross-easements. In this way the various lots can be served by one highway approach in the future, instead of each lot having its own approach road.

Note that ODOT is not legally required to provide highway access to mitigate self-created hardships. So, for example, a developer creating new lots with shared access (or a lot purchaser with legal access to the shared drive) cannot legitimately argue later an abutter's right to new access for the individual property.

Example: Developer proposes to create three new lots with 500 feet of street frontage on a statewide highway. The driveway spacing standard is 1,300 feet for a statewide highway. ODOT's recommendation would be:

- The property owner shall create a public or private street (consistent with local government standards) providing access from a single approach to the highway, OR
- The property owner shall provide a reciprocal access easement to provide a shared driveway serving all three parcels prior to recording the final partition.
- The property owner shall provide proof of a valid ODOT Road Approach Permit prior to recording the final partition.

3.1.7. Coordination Options for Sites with Access on State Highways

Ideally, the developer is aware of both the state access standards and local land use criteria, but may proceed with one review in advance of the other. It is an ODOT staff responsibility to inform developers of their options (see also Chapter 2 subsection 26).

Coordination Methods Vary

1. Some local governments require access issues to be resolved and reflected in the proposed site plan submitted for their review. This is the ideal situation.
2. Some local governments defer access issues on development review projects through conditions of approval that require the applicant to provide proof of an ODOT Road Approach Permit prior to issuance of building permits.
3. Some local governments do not consider access issues when processing development review projects. Many building permits are issued for projects on a state highway without any coordination with ODOT. This is not in the best interest of the developer because approved plans may have to be redrawn, and in some cases the local approval may have to be amended to address changes required to get an approach permit. This situation creates an opportunity to approach the local government to try to persuade them that coordination with ODOT is a pro-development approach because it will save time and expenses for developers in the long run. Where the local government chooses not to address state access issues it may be necessary to contact the applicant directly to be sure access requirements are understood.

3.1.8. Benefits of Coordination

1. If the applicant chooses to complete the state approach permit process before the local land use review, ODOT can issue a conditional approval of the Application for State Highway Approach from ODOT. Conditional approval means that the approach permit does not go into effect until the applicant demonstrates that the local government has issued a final decision in favor of the development proposal. This method gives the developer the advantage of the state conducting research as to the legal disposition of the property access rights.
2. ODOT approach permits typically include a letter from an ODOT Permit Specialist explaining the use, limitations, and conditions of the permit. Applicants are often required, as a condition of the approach permit, to convert their Conditional Road Approach Permit into final Road Approach Permit prior to issuance of building permits or within a specified time.

Knowing the conditions of the approach permit prior to final site design may inform better design. The intensity of uses for which the project is designed has a direct relationship to the design of an approach, and, conversely, the permit for the approach will establish a limit on the intensity of uses allowed.

3. The 2004 amendments to Division 51 added a provision for beginning construction of an approach with conditional approval while the local review process is under way. A Construction Permit may be issued while the local land use action is pending. A deposit may be required, to be determined in the manner used for a Temporary Approach, to ensure that the approach will be removed if the land use is not approved. (OAR 734-051-0070 (10)(b)). The decision to allow construction to begin early is made within the approach permit review process. No permit to operate and maintain the approach will be issued until all permit conditions are met, including verification of the local land use approval.
4. Both the local land use decision process and the approach permitting process include an appeal process. The approach permitting appeal process only grants standing to request an appeal to the property owner/applicant, but both processes can be lengthy. Coordinating the state and local processes can shorten the time it takes to get to a final decision by providing sufficient information early in the process to make it possible to submit a single plan to meet the conditions of both permitting programs.
5. Where a proposed development affects or is in the vicinity of a railroad crossing is important to coordinate the local land use review process with the ODOT Crossing Safety Section (http://www.oregon.gov/ODOT/RAIL/contact_us_directory.shtml). A “Crossing Order” is a separate legal process that an applicant/local jurisdiction may need to go through and that process can be lengthy.

CHAPTER 3 – Section 2: Transportation Planning Rule (TPR) Reviews

3.2. Overview

The Oregon Transportation Planning Rule (TPR) (OAR 660-012) implements State Goal 12, Transportation Planning, and provides the framework for coordination among state and local land use and transportation plans and regulations. While most of the content of this chapter discusses implementation of TPR Section 0060, the Oregon Highway Plan is also applicable to comprehensive plan amendments subject to the TPR.

In June, 2004, the Oregon Court of Appeals upheld a Land Use Board of Appeals (LUBA) decision in the case of Jaqua v. City of Springfield.¹ A major holding in that case was that a “significant effect” under OAR 660-012-0060 occurs if a proposed comprehensive plan or land use regulation amendment would result in an existing or planned transportation facility failing to meet adopted performance standards at any point during the planning period – typically extending 15-20 years into the future. If a significant effect occurred, the local jurisdiction could then, according to the court decision, rely only upon planned transportation facilities that have a funding commitment at the point the significant effect occurs.

In March 2005, in response to concerns over implications of the Jaqua decision, the Land Conservation and Development Commission (LCDC) amended OAR 660-012-0060 (http://arcweb.sos.state.or.us/rules/OARS_600/OAR_660/660_012.html). The amendments established the end of the practice of using a local Transportation System Plan planning period as the time used to measure whether a proposed comprehensive plan amendment would result in a significant effect on a transportation facility. What constitutes a significant effect on a state highway facility is established in OHP Policy 1F and in Action 1F.6. (<http://www.oregon.gov/ODOT/TD/TP/docs/orhwyplan/hwyplan/PolicyElement.pdf>)

With the 2005 amendments LCDC also identified the planned transportation facilities, improvements and services that a local government could consider in determining whether a proposed amendment would significantly affect a transportation facility. Typically, these are projects authorized in the Transportation System Plan (TSP) for which a funding mechanism is in place or approved or for which funding is “reasonably likely” to be provided by the end of the planning period.

The following provides guidelines for implementing these 2005 amendments to OAR 660-012-0060. The guidelines specifically provide direction for the following:

- The types of planned transportation improvements that a local jurisdiction or applicant may rely upon during the Section 0060 analysis in determining

¹ Jaqua v. City of Springfield, 193 Or App 573 (2004). <http://www.oregon.gov/LUBA/docs/Opinions/2004/08-04/03072.pdf>

whether a proposed amendment would significantly affect an existing or planned transportation facility;

- The process that is followed in making “reasonably likely” determinations for transportation improvements being available within the planning period;
- Determination of the applicable planning period for a transportation analysis; and
- The analysis associated with transportation facilities that are currently operating below adopted performance standards.

The guidelines also address other issues that may arise in applying Section 0060, such as the analysis associated with zone changes that are in conformance with comprehensive plan designations and compliance with the Oregon Highway Plan (OHP) mobility standards.

These guidelines are intended to provide direction to ODOT on how to apply the provisions of Section 0060 of the Transportation Planning Rule (TPR), and for state highway facilities consistent with mobility requirements in the OHP, in response to applications before local governments to amend a comprehensive plan or land use regulation (e.g., zoning ordinance). While these guidelines were not specifically written to guide local governments through the Section 0060 plan amendment process, local governments may find them instructive, especially as they relate to state highway facilities.

OAR 660-012-0060(1) is directed at maintaining balance between the land uses allowed under a comprehensive plan and zoning and the transportation system that supports those land uses. The rule provides that where a proposed comprehensive plan or land use regulation amendment would “**significantly affect**” an existing or planned transportation facility, then the local government must put in place measures to assure that the land uses allowed by the amendment are consistent with the identified function, capacity and performance standards of the affected facility. The rule states that an amendment significantly affects a transportation facility if it would:

- Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);
- Change standards implementing a functional classification system; or
- As measured by the end of the planning period identified in the adopted transportation system plan [TSP]:
- Allow land uses or levels of development that would result in types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;

- Reduce the performance of an existing or planned transportation facility below the minimum acceptable performance standard identified in the TSP or comprehensive plan; or
- Worsen the performance of an existing or planned transportation facility that is otherwise projected to perform below the minimum acceptable performance standard identified in the TSP or comprehensive plan.

The burden of determining whether an amendment would “significantly affect” a transportation facility lies with local governments, not with ODOT.

In applying this rule to a proposed amendment, the first step for a local government is to determine whether or not the amendment would “significantly affect” one or more transportation facilities “as measured by the end of the planning period”. This requires the local government first to determine what existing and planned state and local transportation facilities it can count on as being available by the end of the planning period, and second to determine what the impact of the amendment would be on those facilities.

Where an amendment could impact a state highway facility, the local government should notify ODOT in a similar manner that it notifies service providers (e.g., sewer, water, local streets) of land use development applications. ODOT then needs to inform the local government as to what state transportation facilities and improvements the local government can rely on as being available for use by the end of the planning period, so that the local government can determine significant effect. As described in this document, in addition to existing state facilities, the planned state facilities and improvements local governments can rely on include:

- Transportation facilities, improvements or services that are “funded for construction or implementation” in the Statewide Transportation Improvement Program (STIP), and
- Improvements to state highways that are “included as planned improvements in a regional or local TSP or comprehensive plan” when ODOT provides a “written statement” that the improvements are “reasonably likely” to be provided by the end of the planning period. (See Reasonably Likely Determination, Section 3.2.05, p. 12)

The rule contains provisions distinguishing proposed amendments located inside “interstate interchange areas” from those located outside such areas. Generally, these affect properties located either within one-half mile of an existing or planned interchange along Interstates 5, 82, 84, 105, 205 or 405 or within an interchange area as defined in an Interchange Area Management Plan (IAMP) adopted as an amendment to the Oregon Highway Plan. These provisions are described in more detail below, as are other relevant provisions in the rule.

The guidelines should be considered together with the specific review standards in OAR 660-012-0060. To facilitate that effort, two flow charts are provided. The first flow chart describes how a “significant effect determination” is made for proposed amendments located inside interstate interchange areas. The second flow chart describes this process for amendments located outside such areas.

The following Guidelines are provided:

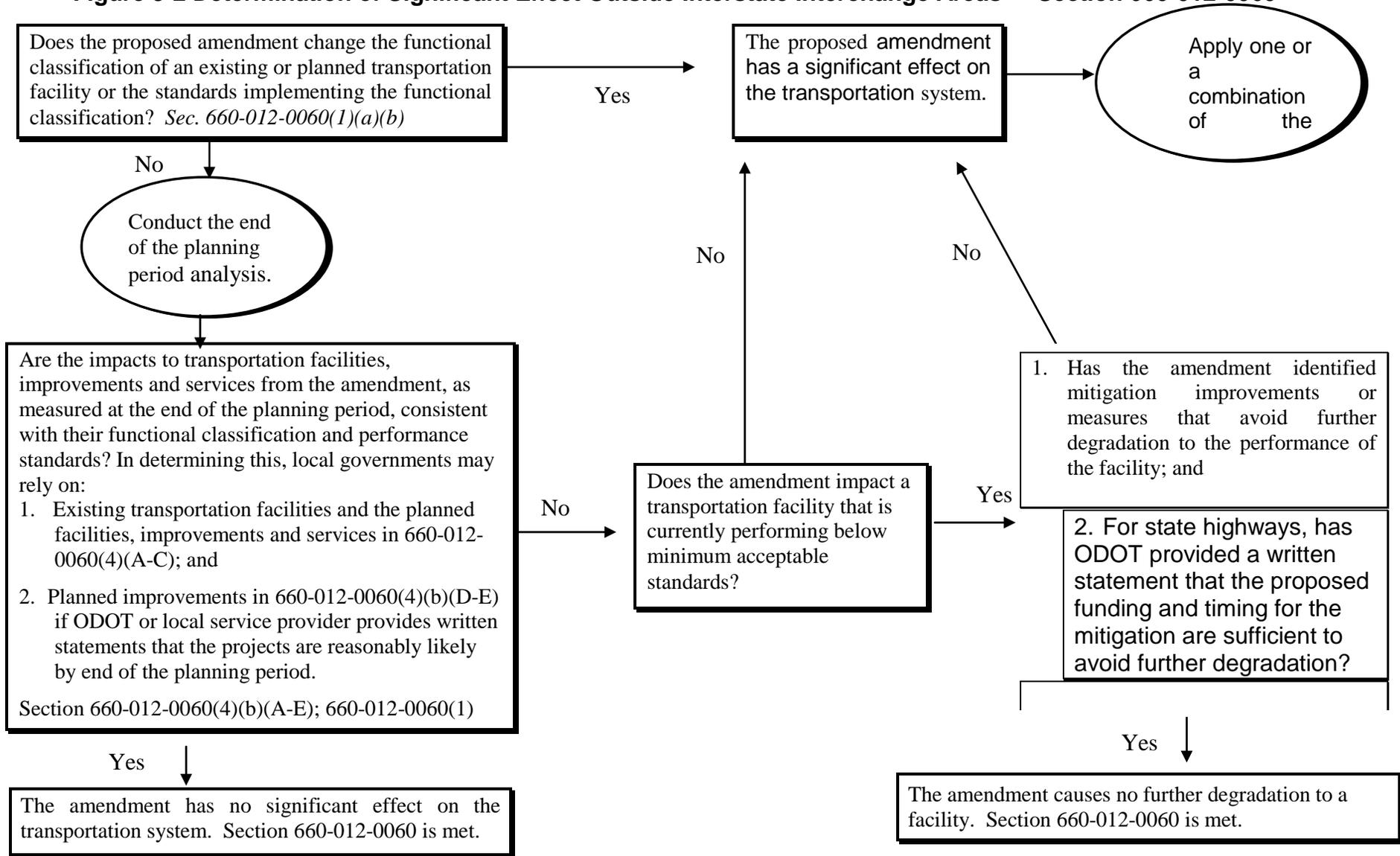
- 3.2.1 Determining Significant Affect
- 3.2.2 Planned Improvements All Amendments Can Rely Upon Regardless of Location Inside or Outside of an Interstate Interchange Area
- 3.2.3 Additional Planned Improvements Amendments Located Outside of an Interstate Interchange Area Can Rely Upon
- 3.2.4 Additional Planned Improvements Amendments Located Inside of an Interstate Interchange Area Can Rely Upon
- 3.2.5 Assessing Whether Mitigation Measures are Sufficient to Avoid an Adverse Impact on the Interstate System
- 3.2.6 Reasonably Likely Determination
- 3.2.7 Factors to Consider in Reasonably Likely Determination
- 3.2.8 Reasonably Likely Determination – ODOT Written Statement
- 3.2.9 Precedential Effect of a Written Statement
- 3.2.10 Determination of the Applicable Planning Period
- 3.2.11 Transportation Facilities Currently Operating Below Performance Standards
- 3.2.12 Determination of Failure to Meet a Performance Standard
- 3.2.13 ODOT Written Statement on Adequacy of Mitigation Measures
- 3.2.14 Analysis for Zone Changes in Conformance with Comprehensive Plan Amendments
- 3.2.15 Need for a Traffic Study
- 3.2.16 Delegation of Signature for Reasonably Likely Determination
- 3.2.17 Mitigation to Avoid a Significant Effect
- 3.2.18 When Should ODOT Provide a Reasonably Likely Determination and who is Responsible for Requesting it?
- 3.2.19 Can ODOT Revoke a Reasonably Likely Determination?
- 3.2.20 Implementation of the Town Centers, Regional Centers and Station Areas in the Portland Metropolitan Area
- 3.2.21 State Facilities Included in System Development Charge
- 3.2.22 Sample Letter for Reasonably Likely Determination

The following figures are provided below:

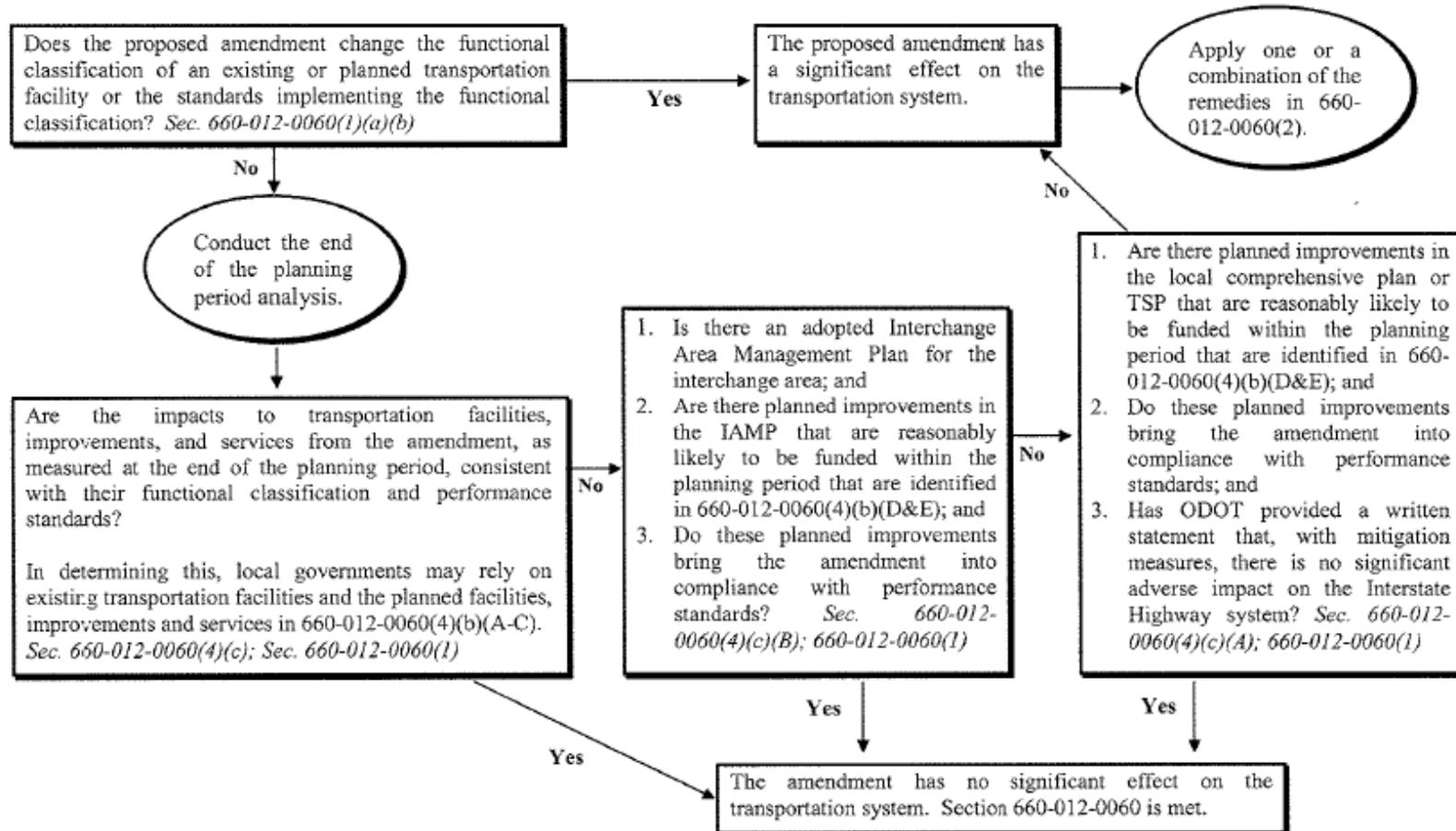
Figure 3.2.1: Determination of Significant Effect Outside Interstate Interchange Areas

Figure 3.2.2: Determination of Significant Effect Inside Interstate Interchange Areas

Figure 3-2 Determination of Significant Effect Outside Interstate Interchange Areas¹ – Section 660-012-0060



**Determination of Significant Effect
Inside Interstate Interchange Areas ¹
Section 660-012-0060**



¹Inside Interstate Interchange Area Defined in 660-012-0060(4)(d)(B) &(C)

3.2.1. Determining Significant Affect

As noted in the introduction to these guidelines, the first step for a local government in addressing a proposed comprehensive plan or land use regulation amendment under OAR 660-012-0060 is to determine whether or not the amendment would “**significantly affect**” an existing or planned transportation facility. A significant effect will result when an amendment

- Allows land uses or levels of development that would result in types or levels of travel or access that are inconsistent with the functional classification of a transportation facility;
- Reduces the performance of a transportation facility below the minimum acceptable performance standard identified in a TSP or comprehensive plan; or
- Worsens the performance of a transportation facility that is otherwise projected to perform below the minimum acceptable performance standard identified in a TSP or comprehensive plan.

In addition, for state highway facilities, a significant effect occurs when a proposed use will create conditions that do not meet standards for maintaining roadway function as established in the OHP, particularly the highway mobility standards in OHP Policy 1F.

Action 1F.6

For purposes of evaluating amendments to transportation system plans, acknowledged comprehensive plans and land use regulations subject to OAR 660-12-060, in situations where the volume to capacity ratio for a highway segment, intersection or interchange is above the standards in Table 6 or Table 7, or those otherwise approved by the Commission, and transportation improvements are not planned within the planning horizon to bring performance to standard, the performance standard is to avoid further degradation. If an amendment to a transportation system plan, acknowledged comprehensive plan or land use regulation increases the volume to capacity ratio further, it will significantly affect the facility.

Conversely, a proposed comprehensive plan of land use regulation that does not result in a greater impact on the transportation system (i.e. more trips than are allowed by the current plan and zoning designations) would not trigger a significant affect and, therefore, the provisions of Section 0060 would not apply to the amendment.

Because the analysis is measured “at the end of the planning period identified in the adopted transportation system plan” (see OAR 660-012-0060(1)(c)),² the local government first must determine which of the planned transportation improvements identified in its TSP or comprehensive plan will be provided (i.e., in place and available) as of that time. These, of course, would be considered in addition to existing transportation facilities and services.³

Section 660-012-0060(4) of the TPR specifies the planned facilities, improvements and services that a local government can rely on in determining whether a proposed amendment would significantly affect an existing or planned transportation facility. These improvements, which include both state and local transportation facilities, are described below and differ depending on whether the proposed amendment is located inside or outside an interstate interchange area.

3.2.2. Planned Improvements Local Decision Makers Can Rely On Regardless of Location Inside or Outside of an Interstate Interchange Area

The 2005 amendments to OAR 660-012-0060(4) established various levels of “certainty” for determining which planned transportation facilities, improvements and services a jurisdiction may rely on when conducting a “significant effect” analysis. The first level includes planned transportation facilities, improvements and services that can be assumed as being “in-place” or committed and available to provide transportation capacity. These include:

1. Transportation facilities, improvements or services that are funded for construction or implementation in:
 - The Statewide Transportation Improvement Program (STIP), or
 - A locally or regionally adopted transportation improvement program or capital improvement plan, or program of a transportation service provider. (See OAR 660-012-0060(4)(b)(A).)

² Section 0060 also regulates amendments that change the functional classification of an existing or planned transportation facility (e.g., amend the classification from a collector to an arterial) or change the standards implementing a functional classification system (e.g., change the lane width standards or the right-of-way requirements applied to a functional classification). When either circumstance occurs, the amendment is deemed to “significantly affect” a transportation system, and the local government must apply one or a combination of the remedies in OAR 660-012-0060(2). These guidelines do not address this situation.

³ Services includes transit services and measures such as transportation demand management.

2. Transportation facilities, improvements or services that are authorized in a local transportation system plan and for which a funding plan or mechanism is in place or approved. These include, but are not limited to, transportation facilities, improvements or services for which:
 - Transportation systems development charge revenues are being collected;
 - A local improvement district or reimbursement district has been established or will be established prior to development;
 - A development agreement has been adopted; or
 - Conditions of approval to fund the improvement have been adopted. (See OAR 660-012-0060(4)(b)(B)).
3. Transportation facilities, improvements or services in a metropolitan planning organization (MPO) area that are part of the area's federally-approved, financially constrained regional transportation system plan. OAR 660-012-0060(4)(b)(C).

Because the above planned project types have some level of funding commitment associated with them, the rule provides that they can be considered as “in-place and available” by the end of the applicable planning period. This means the transportation capacity provided by these projects may be considered as available to accommodate a proposed amendment.

Under this provision, jurisdictions may rely upon the project lists that they used to establish a systems development charge (SDC) rate, even if it is likely that the SDC will not fully fund all improvements on the list.⁴

When responding to local government requests for review and comment on proposed plan amendments, ODOT will need to identify which state transportation facilities, improvements or services identified in the local TSP or comprehensive plan are “funded for construction or implementation.” For ODOT projects, the following guidelines should be used:

C-STIP Projects - Construction STIP; identifies project scheduling and funding for the state's transportation preservation and capital improvement program for a four-year construction period. This program meets the requirements of the Transportation Equity Act for the 21st Century (TEA-21).

⁴ Note that the rule distinguishes funding in the STIP from funding through local plans or mechanisms. As discussed in Section 3.2.19 below, inclusion of a state facility in a local funding plan or program does not eliminate avoid the need for a “reasonably likely” determination by ODOT for state facilities. The focus of OAR 660-004-0060(4)(b)(B) is regional and local transportation improvements, not state transportation improvements.

The C-STIP projects that a local government may rely on in making a significant effect determination will be those that are “*funded for construction or implementation*”. These would include projects for which the construction costs are fully funded. They also include projects that may be under-funded, because the construction funding stream represents a commitment to build the project. However, they would not include projects where the funding is committed for something other than construction, e.g. planning, right of way purchase or environmental work.⁵ The broader term “implementation” was included in the rule to cover transportation services and other measures, such as transportation demand management programs, that are provided in a manner that does not involve physical construction.

As an example, assume that a state highway project is proposed to be built in three phases. Assume also that phase 1 is fully funded for construction, but that phases 2 and 3 have had funding approved only for right of way purchase. Under this scenario, only phase 1 may be considered “funded for construction or implementation.” Note that this would be so as well even if phase 1 was funded for construction at a level somewhat below its full anticipated cost. Because phases 2 and 3 have been funded only for right of way purchase, ODOT would need to determine whether construction of either or both phases is reasonably likely within the planning period.

D-STIP Projects - Development STIP; includes projects that require more than 4 years to develop or for which construction funding needs to be obtained. Projects in the D-STIP are not yet “funded for construction or implementation.” Accordingly, they will require a “reasonably likely” determination as described below.

Projects not included in either the C-STIP or D-STIP – these projects are not “funded for construction or implementation” and will require a “reasonably likely” determination as described below.

3.2.3. Other Planned Improvements Outside an Interstate Interchange Area Local Decision Makers Can Rely On For Amendments

When the location of the proposed amendment is outside of an interstate interchange area as defined in OAR 660-012-0060(4)(d)(B&C) (i.e., beyond one-half mile of an existing or planned interchange along Interstates 5, 82, 84, 105, 205 or 405 or outside an interchange area as defined in an adopted Interchange Area Management Plan on one of these facilities, then in addition to the transportation facilities and improvements identified in Guideline 3.2.02 above, a local government also may rely upon:

Improvements to state highways that are included as planned improvements in a regional or local transportation system plan or comprehensive plan when ODOT

⁵ While funding for environmental work might later lead to funding for construction, that is not always a certainty. Until there is funding for construction, reliance on the C-STIP project is not permitted.

provides a written statement that the improvements are “reasonably likely” to be provided by the end of the planning period. OAR 660-012-0060(4)(b)(D).

Improvements to regional and local roads, streets or other transportation facilities or services that are included as planned improvements in a regional or local transportation system plan or comprehensive plan when the local government(s) or transportation service provider(s) responsible for the facility, improvement or service provides a written statement that the facility, improvement or service is “reasonably likely” to be provided by the end of the planning period. OAR 660-012-0060(4)(b)(E).

In response to a local government request for review and comment on a proposed amendment, ODOT will need to identify those planned state highway improvements that it deems “reasonably likely” to be provided by the end of the planning period. How ODOT determines which improvements are “reasonably likely” is discussed below.

3.2.4. Other Planned Improvements In an Interstate Interchange Area That Local Decision Makers Can Rely Upon for Amendments

Because interstate highways and their associated interchanges play a major role in moving people and goods between regions of the state and between Oregon and other states, and because these facilities represent a tremendous state investment in highway infrastructure that the state wishes to protect, the standards applicable to proposed amendments located inside interstate interchange areas are more stringent.⁶ Generally, if the proposed amendment would be located inside of an interstate interchange area, a local government may consider only the planned facilities, improvements and services identified in Guideline 3.2.02 above in determining if the amendment would have a significant effect on an existing or planned transportation facility.

However, under certain circumstances, local governments may consider improvements to state highways and to regional and local roads, streets and other transportation facilities and services that are included as planned improvements in regional or local TSPs or comprehensive plans (OAR 660-012-0060(4)(b)(D&E)). This can occur only where:

- Either (1) ODOT provides a written statement that the proposed funding and timing of mitigation measures are sufficient to avoid a significant adverse impact on the Interstate Highway system caused by the proposed amendment; or (2) there is an adopted Interchange Area Management Plan (IAMP); *and*

⁶ “Interstate interchange area” means (1) property within one-half mile of an existing or planned interchange on an Interstate Highway (i.e., Interstates 5, 82, 84, 105, 205 and 405) as measured from the center point of the interchange, or (2) the interchange area as it is defined in an Interchange Area Management Plan adopted as an amendment to the Oregon Highway Plan.

- ODOT (for state transportation facilities) or the transportation service provider (for other transportation facilities) provides a written statement that the improvements are reasonably likely to be provided by the end of the planning period. OAR 660-012-0060(4)(c).

Guideline 3.2.05 addresses how ODOT determines whether a proposed state highway improvement is “reasonably likely”.

As an example, assume that an applicant is proposing plan and zoning amendments from low density residential to commercial for a 10-acre parcel located within one-half mile of an interchange along I-5. Assume as well that the Oregon Transportation Commission and all local governments with jurisdiction within the interstate interchange area have adopted an Interchange Area Management Plan for the interchange area. Further, assume that improvements to state highways or regional or local roads and streets that are not identified in Guideline 3.2.02 are included as planned improvements in the local government’s TSP or comprehensive plan.

In this circumstance, if the proposed amendment is consistent with the IAMP, then the local government reviewing the application may be able to consider the additional planned state and local transportation improvements in determining whether the amendment would significantly affect a transportation facility. Specifically, the local government reviewing the amendments may also consider the planned state and local improvements identified in OAR 660-012-0060(4)(b)(D) and (E), but only if ODOT or the local government or transportation service provider, as relevant, provides a written statement that the state improvement or the regional/local improvement or service is reasonably likely to be provided by the end of the planning period.

As a second example, assume the same facts but without an adopted IAMP. In this instance, the local government may consider the planned improvements identified in OAR 660-012-0060(4)(b)(D) and (E) as part of its significant effect determination only where (1) the applicant proposes mitigation measures to avoid a significant adverse impact on the Interstate Highway system; (2) ODOT provides the local government with a written statement that the proposed measures are sufficient to achieve that result⁷; and (3) ODOT (for improvements to state highways) and the relevant local government or transportation service provider (for improvements regional and local roads, streets and other transportation facilities or services) also indicate that the planned improvements are reasonably likely by the end of the planning period.

In the second example, steps will need to be taken to ensure that the proposed improvements will be made by the time of development. For instance, the local

⁷ To determine this, the applicant may need to submit a traffic impact statement or traffic impact analysis to ODOT. See Section 3.2.13.

government could adopt an additional plan policy when approving the plan amendment requiring that these measures be completed by the time of development, or ODOT and the parties could enter into a binding agreement that ensures that these measures would be implemented by the time of development. These measures would then be included as conditions of approval of the development at the time of development review.

3.2.5. Assessing Sufficiency of Mitigation to Avoid Adverse Impact On the Interstate System

As noted above, 3.2.04 allows plan amendments and zone changes in interstate interchange areas where ODOT provides a written statement that the proposed funding and timing of mitigation measures are sufficient to avoid a significant adverse impact on the Interstate Highway system caused by the proposed amendment. This is a new and different standard for review for ODOT facilities.

This standard is somewhat broader and different from existing ODOT standards – such as v/c standards – because it involves an assessment of adverse impact to the “interstate highway system”. This incorporation of a broader reference to the “system” was intentional to allow ODOT to consider the location of the proposed use and its impact on the interstate “system” in a broader fashion. In particular, the standard is intended to allow ODOT to consider whether development at the proposed location has less impact on the interstate system than if it were to be located in some other area where it is otherwise allowed and likely to occur. Consequently, in addition to considering specific mitigation and funding measures to reduce impacts from a proposed plan amendment, ODOT should assess whether locating the proposed development at the proposed site would have less impact on the interstate highway system than if the development were located at another site that is zoned to allow the proposed use and where the use would be likely to locate.

3.2.6. Reasonably Likely Determination

The TPR amendments that call for an assessment of whether planned improvements are “reasonably likely” to be provided by the end of the planning period is a significant new element in the TPR. This provision was added to reflect the fact that adopted transportation system plans include many more transportation projects and improvements than will be funded or constructed over a 20 years planning horizon. The basic intent of the 2005 TPR amendments to Section 0060 was that, in deciding whether or not a proposed plan amendment has a significant effect, local governments may count as “planned” only those improvements that are funded or reasonably likely to be funded during the planning period. Where funding is uncertain, a project or improvement that is included in the TSP may not be counted as a “planned improvement” for purposes of Section 0060 (i.e. for deciding whether or not planned transportation facilities and improvements are adequate to support planned land uses).

As noted in Guidelines 3.2.03 and 3.2.04, ODOT may need to comment at times on whether improvements to state highways that are included as planned improvements in a regional or local TSP or comprehensive plan are “reasonably likely to be provided by the end of the planning period.” OAR 660-012-0060(4)(b)(D).⁸

A “reasonably likely” determination represents that ODOT has determined the following:

- A state highway improvement is included as a planned improvement in a regional or local transportation system plan or comprehensive plan;
- The improvement is not included in the list of “Planned Projects All Amendments Can Rely Upon (Guideline 3.2.02); and
- In ODOT’s opinion, it is reasonably likely that the state highway improvement will be provided “by the end of the planning period” (see Guideline 3.2.09).

OAR 660-012-0060(4)(b)(D) requires that ODOT provide its “reasonably likely” determination in the form of a **written statement**. When ODOT provides a written statement indicating that a planned state improvement is reasonably likely to be provided by the end of the planning period, that written statement is deemed conclusive (i.e., cannot be rebutted) to that effect. Upon receiving such a written statement from ODOT, a local government then may consider the additional transportation capacity provided by the planned state improvement, as measured by the applicable performance standard, to determine whether a proposed amendment will significantly affect existing or planned transportation facilities.

If ODOT does not provide a written statement stating that a state highway improvement is reasonably likely to be provided by the end of the planning period, or if ODOT submits a written statement that such improvement is not reasonably likely, then the local government may not rely on that improvement when determining if the proposed amendment will have a significant effect. OAR 660-012-0060(4)(e)(A).

See Appendix A for a sample letter addressing a reasonably likely determination.

3.2.7. Factors to Consider in Reasonably Likely Determination

The reasonably likely written statement is intended to be analogous to a service provider letter provided during review of development applications in many local jurisdictions. That is, it is intended to answer the question: “Is it reasonably likely to expect that the transportation capacity provided by the planned improvement will be available (i.e., in place and available) by the end of the planning period and,

⁸ OAR 660-012-0060(4)(b)(E) also directs local governments or transportation service providers to make “reasonably likely” determinations for planned improvements to regional and local roads.

therefore, can be relied upon when conducting the traffic analysis that accompanies a proposed amendment?" In developing the written statement, ODOT (or a local jurisdiction for local improvements) could consider the following factors (not an exclusive list):

- The cost of the planned improvement and its relative priority for ODOT funding considering other needs in the region and expected funding levels.
- Has there been a history of securing construction funding for the type of planned improvement?
- Is the planned improvement located in an area that anticipates high growth and, therefore, may be a high priority area for targeting future transportation revenues?
- Is the planned improvement located in an area targeted for special land use consideration, such as a town center, a main street or an industrial area and, therefore, likely to receive a higher priority for future transportation funding?
- Is there demonstrated community and/or political support for the planned improvement or similar improvements that would likely result in securing funding by the end of the planning period?
- Is the planned improvement located on a priority type of facility, such as an arterial, a statewide highway, or a key freight connection, that would be reasonably likely to receive future funding before a lesser classified facility?
- Would the planned improvement provide a critical transportation connection or complete a key transportation link to the extent that it would have system-wide benefits and, therefore, likely be a priority for funding by the end of the planning period.
- Are there unique funding sources potentially available to support the planned improvement, such as tax increment financing, special assessments, or private contributions?
- For local facilities, has the local jurisdiction identified a reasonably likely project list as a subset of its overall TSP project list to be used during the review of proposed amendments, and if so, is the planned improvement included on this list?
- Does the local government have land use or subdivision regulations that would require the development to make the planned transportation improvement prior to or at the time of development?

For state highway improvements ODOT may find that reasonably likely determination are more problematic for large-scale projects (e.g. projects of statewide significance that have multi-million-dollar price tags). While many of the above factors could go into the determination for these types of projects, perhaps the most important factor would relate to the level of community/political support for a project of this type. In this circumstance ODOT may wish to consider these additional factors:

- Is there broad, multi-jurisdictional support (community, business, and political) for the planned improvement?
- Have any project development steps been taken towards providing the planned improvement (e.g. preliminary design work or purchase of right-of-way)?
- Are there any apparent “fatal flaws” that could obstruct moving forward with the planned improvement?
- What is the cost of the planned improvement and how important is it in relation to other projects within the Region?

3.2.8. Reasonably Likely Determination – ODOT Written Statement

When a reasonably likely written statement is required from ODOT, the written statement will be provided by the Region Manager in which the affected facility is located. The Region Manager shall consult with region staff to consider the factors noted above (or other relevant factors identified by the region) and provide a written statement to the local jurisdiction that is considering the proposed amendment.⁹ It is recognized that the application of the factors noted above and other relevant factors will require the Region Manager to exercise judgment when making a reasonably likely determination.

The written statement to the local jurisdiction shall consist of the following determinations/statements:

- The state highway improvement is included as a planned improvement in a regional or local transportation system plan or comprehensive plan;
- The state highway improvement is not included in state projects covered in **Projects All Amendments Can Rely Upon** (Guideline 3.2.02); and
- In the opinion of the ODOT Region Manager, it is reasonably likely that the state highway improvement will be provided by the end of the planning period.

⁹ As discussed in Section 3.2.14, the Region Manager should not delegate signing the written statement to a region planner or other ODOT employee.

The factors used by the Region Manager in making a reasonably likely determination shall be stated in the written statement. *Copies of the written statement shall be sent to ODOT's Director and its Transportation Development Division Administrator, and to the Director of DLCD.*

3.2.9. Precedential Effect of a Written Statement

A reasonably likely written statement provided by ODOT applies only to the specific proposed amendment for which the written statement is requested and submitted. That written statement is not applicable to any future amendment that might rely on the same planned state highway improvement for purposes of determining significant effect. In short, ODOT must issue a reasonably likely determination for each proposed plan amendment where an applicant or local government intends to rely upon an improvement to the state highway as “reasonably likely.”

The purpose of individualized statements is to allow ODOT staff to reassess whether or not the circumstances that led to a reasonably likely determination have changed since a previous statement was issued. For example, a reasonably likely determination may be issued for a proposed plan amendment where the applicant or local government commits to support funding of needed improvements. If the planned development or supporting funding does not occur as expected, then it may change ODOT's assessment of whether the project continues to be reasonably likely in the future.

ODOT should note that the reasonably likely determination merely indicates to the local government whether a planned state highway improvement is reasonably likely to be provided by the end of the planning period, in order to enable the local government to determine whether the proposed amendment will significantly affect transportation facilities.

3.2.10. Determination of the Applicable Planning Period

The 2005 amendments to the Transportation Planning Rule established “the end of the planning period in the adopted transportation system plan” as the period for the transportation analysis to determine whether a proposed amendment would significantly affect an existing or proposed transportation facility. In some instances, a regional or local TSP may have a planning period of 20 years or longer. In other instances the planning period may be less than the traditional 20 years. If the planning period in the adopted TSP is less than 15 to 20 years, what time period should ODOT use to determine whether a transportation improvement is “reasonably likely” to be provided?

When considering impacts to regional and local (non-state) roadways, the time period to be used to determine significant effects is the time period identified in the

local TSP. However, when considering impacts to state highways, this is not necessarily so.

Although state highway improvements may be included in local TSPs, the relevant TSP for state highway facilities is the Oregon Highway Plan. Oregon Highway Plan Action 1F.2 provides:

“...When evaluating highway mobility impacts for amendments to transportation system plans, acknowledged comprehensive plans and land use regulations, use the planning horizons in adopted local and regional transportation system plans or a planning horizon of 15 years from the proposed date of amendment adoption, whichever is greater”.

Hence, if a local TSP has a planning horizon that is 18 years out, ODOT would use that 18-year planning horizon as the timeframe for determining whether a planned state highway improvement is reasonably likely to be provided. However, if the local TSP has a planning horizon that is just 8 years out, ODOT would use a 15 year planning horizon as the timeframe for its “reasonably likely” determination, while local transportation service providers would use an 8 year planning horizon for the facilities they provide. This is because the relevant TSP for non-state facilities is the local TSP, not the Oregon Highway Plan.

The determination of the applicable planning period is a decision made by the local government in its review of the proposed plan amendment. If there is uncertainty about what the applicable planning period of the local TSP is (i.e. if it is not clear from the text of the adopted plan) local governments are generally given discretion to interpret how the plan applies. However, as noted above, the OHP is an applicable state TSP element, with a minimum planning horizon of 15 years from the date of the amendment for state highways.

3.2.11. Facilities Currently Operating Below Performance Standards

Section 660-012-0060(3) is an entirely new provision in the TPR. It is intended to allow for plan amendments and zone changes in areas where transportation performance standards are currently being exceeded and the proposed development would include mitigating measures that, basically, prevent things from getting worse. The underlying concept is that plan amendments and zone changes that do not measurably worsen an existing congestion problem should be allowed to move forward.

Specifically, Section 660-012-0060(3) added a new analysis standard and methodology for circumstances where:

- An existing transportation facility is already performing below the minimum acceptable performance standard identified in the TSP or comprehensive plan at the time the amendment application is submitted, and

- Absent the amendment, planned transportation facilities, improvements and services would not be sufficient to enable the facility to achieve consistency with its minimum acceptable performance standard by the end of the TSP planning period.

There are several significant qualifications that should be considered in applying 0060(3):

- First, it applies only in the specific circumstances noted in the bullets above. Hence, it would not apply if the existing facility currently is performing at or above its identified performance standard, even if the facility is expected to perform below its performance standard by the end of the planning period.
- Second, the provisions of Section 660-012-0060(3) are discretionary, not mandatory. Section 660-012-0060(3) indicates “Notwithstanding section (1) and (2) of this rule, a local government may approve an amendment...” (underline added). This means the application of this section is at the option of the local government. There may be times when this provision will benefit ODOT by limiting the impact of a proposed development on state highway facilities. However, there may be times when this provision would provide little overall benefit to ODOT. In such circumstances, ODOT may want to recommend against its use by local government.
- Third, like Section 0060(4), Section 0060(3) includes a provision authorizing ODOT to submit a written statement concurring with the adequacy of any needed mitigation measures. However, should ODOT fail to provide a written statement, the consequences under Section 0060(3) are very different than they are under Section 0060(4): if ODOT does not submit a written statement, local governments may make their own determination about the adequacy of mitigation. Consequently, ODOT should pay close attention to procedures for applying this section of the rule that are described below in 3.2.11.
- Fourth, unlike Section 0060(4) where the written statement focuses on whether planned state highway improvements are reasonably likely to be provided by the end of the planning period, Section 0060(3) focuses on whether proposed funding and timing for identified mitigation measures “are, at a minimum, sufficient to avoid further degradation to the performance of the affected state highway.”

3.2.12. Determination of Failure to Meet a Performance Standard

As an example, assume that a state highway is currently performing at a volume to capacity (v/c) ratio of 0.95. Assume also that the minimum acceptable performance standard for this facility is v/c 0.90 and that, by the end of the planning period with the planned improvements identified in the TSP, the highway would perform at a v/c

of 1.05. In this circumstance, the facility currently and in the future (i.e., end of TSP planning period) does not meet the minimum acceptable performance standard of 0.90. Section 660-012-0060(3) may be applied in this circumstance.

In this circumstance a local government might be able to approve an amendment that would significantly affect an existing transportation facility without assuring that the allowed land uses are consistent with the function, capacity and performance standards of the facility if it determines the following:

- The facility is already performing below the minimum acceptable performance standard identified in the TSP or comprehensive plan on the date the amendment application is submitted; and
- In the absence of the amendment (i.e. under existing plan and zoning designations), planned transportation facilities, improvements and services would not be adequate to achieve consistency with the identified function, capacity or performance standard for that facility by the end of the planning period identified in the adopted TSP.

If these two factors are present, then the local government may approve the amendment when the following conditions are met:

- The development resulting from the amendment will, at a minimum, mitigate the impacts of the amendment in a manner that avoids further degradation to the performance of the facility by the time of the development through one or a combination of transportation improvements or measures;
- The amendment does not involve property located in an interchange area as defined in OAR 660-012-0060 (4)(d)(C); and
- For affected state highways, ODOT provides a written statement that the proposed funding and timing for the identified mitigation improvements or measures are, at a minimum, sufficient to avoid further degradation to the performance of the affected state highway.

3.2.13. ODOT Written Statement on Adequacy of Mitigation Measures

Note particularly the requirement that ODOT provide a written statement. In OAR 660-012-0060(3)(e), if a local government provides the appropriate ODOT regional office with written notice of a proposed amendment in a manner that provides ODOT reasonable opportunity to submit a written statement into the record of the local government proceeding, and ODOT does not provide a written statement, then the local government may proceed with applying subsections (a) through (d) of this section. In this regard, Section 0060(3)(e) differs significantly from Section 0060(4)(b)(D). Under Section 0060(4)(b)(D), if ODOT fails to provide a written statement, then the local government **may not** consider planned improvements

under OAR 660-012-0060(4)(b)(D and E) in determining whether a proposed amendment will significantly affect an existing or planned transportation facility.

In terms of implementation, a question arises as to the performance standard beyond which an applicant must assure that there is no further degradation to the facility. The TPR amendments provide that in this circumstance, “development resulting from the amendment will, at a minimum, mitigate the impacts of the amendment in a manner that avoids further degradation to the performance of the facility by the time of the development.” (underline added) See OAR 660-012-0060(3)(c).

In the above example, if the existing highway performance is v/c 0.95 at the time of the amendment application and the projected “end of the planning period” performance is v/c 1.05 – does an applicant need to mitigate to 0.95 or 1.05 or at some other level? Since mitigation is tied to “the time of the development”, as opposed to “the time of the amendment application”, whether or not v/c 0.95 or some higher v/c level applies will depend on whether the development application is submitted concurrently with the amendment application or at some future date. If a development application is filed at the same time as the amendment application, or if it is filed shortly after the amendment and relied upon the traffic analysis submitted with the amendment application, then the applicant would provide mitigation to avoid further degradation to the transportation system based on the 0.95. However, if development is not expected to occur until a year or two later, when the traffic analysis projects that v/c will be 0.97, then the applicant would need to provide mitigation to avoid further degradation to the transportation system based on a v/c of 0.97.

Please note that this language is unclear in its application to a phased development. In that instance, “the time of the development” should be considered as the time of the first phase of the development when determining the level of required mitigation.

3.2.14. Zone Changes that Conform to Current Comprehensive Plans

Under OAR 660-012-0060(1), local governments must review changes to land use regulations, including zone changes as well as comprehensive plan amendments to determine if they would significantly affect existing or planned transportation facilities. A question that has been raised with some frequency is whether this provision applies in all instances. For example, some local governments have argued that zone changes that are consistent with or implement the underlying plan designation do not require review under Section 0060. They tend to assert that the comprehensive plan has already established a particular use is allowed, and that the zone change does not require further review. This is partially correct.

All zone changes need to be reviewed for compliance with Section 0060. Individual zone changes – and other land use regulation amendments - may or may not trigger a “significant effect” on the transportation system. In most cases a zone change or land use regulation amendment results in a “significant effect” if the result

of the change is to allow more traffic generation than is allowed under current zoning.¹⁰ For instance, if the Comprehensive Plan designation is Medium Density Residential and the current zoning is R-12 (12 units/acre), does the provision apply to a zone change to R-20 (20 units/acre) where the R-20 zoning district also implements the Medium Density Residential plan designation?

The requirement to assess whether a zone change significantly affects a transportation facility applies to all zone changes, whether or not they are consistent with the comprehensive plan. In all instances, findings must be made determining whether there is a significant effect. Because zone changes in conformance with comprehensive plan designations have the potential to increase trip generation over existing zoning, there is no blanket exemption for this kind of zone change.

Still, in certain instances, the required findings for zone changes may be less detailed and extensive. The Land Use Board of Appeals has held that zone changes do not trigger a significant effect under Section 660-012-0060 if they either:

- Do not have the effect of allowing more trip generation than the existing planning and zoning; or
- Are supported by adequately planned transportation facilities.¹¹ Where these circumstances exist, a detailed significant effects analysis is not required.

In either case, local governments must make findings that the proposed zone change falls within one of these categories and supported by substantial evidence.

Hence, if a zone change is proposed to reduce the maximum permitted residential density in an area from an existing 20 units/acre to 12 units/acre, and if both zones implemented a medium density residential comprehensive plan designation, the local government could find that the zone change reduced trip generation and thus would not significantly effect transportation facilities.

Likewise, if the zone change was to increase the maximum permitted residential density from an existing 12 units/acre to 20 units/acre, but it can be demonstrated that the TSP (1) assumed that the property could be rezoned to any of the zoning districts implementing the medium density residential plan designation, and (2) was developed to accommodate the most intensive level of development permitted under any of the zoning districts implementing that plan designation (including the 20 unit/acre zoning district), the local government could find that the zone change would not affect the assumptions that underlie the TSP and thus not result in a significant effect.

¹⁰ Conversely, a zone change or land use regulation amendment that does not have the effect of allowing more traffic than is allowed by the existing zoning or land use regulations is generally considered not to result in a significant affect.

¹¹ See, e.g., *Mason v. City of Corvallis*, 49 Or LUBA 199 (LUBA No. 2004-152) and *Just v. City of Lebanon*, 49 Or LUBA 180 (LUBA No. 2003-106).

However, if the TSP, when developed, did not assume and plan to accommodate the most intensive uses permitted by any zoning category implementing a specific comprehensive plan designation, then the potential for a significant effect exists and a detailed significant effect analysis must be made. Under OAR 660-012-0060, the analysis must focus on allowed land uses rather than proposed land uses. Because many TSPs were not developed in this way, local governments often will still need to apply the more detailed analysis to zone changes that conform to the comprehensive plan.

3.2.15. Need for a Traffic Study

Issue: Can ODOT require a traffic study when the applicant has failed to prepare one?

Response: ODOT probably cannot require a traffic study, but it can ask for one and tailor its response on whether it receives a study and the sufficiency of the information included in the study. If the information provided in the amendment application is insufficient to allow ODOT to make a reasonably likely determination, it can request that additional information be provided. If no or inadequate information is provided, ODOT should submit a written statement stating that the application does not contain sufficient information to allow ODOT to determine that improvements would be reasonably likely during the planning period. If the application involves OAR 660-012-0060(3), ODOT should submit a written statement saying that the application does not contain sufficient information to allow ODOT to determine that the identified mitigation improvements or measures are sufficient to avoid further degradation to the performance of affected state highways.

Because the preparation of traffic studies takes time, ODOT should request additional time, as needed, to allow for full review and comment of a study.¹²

3.2.16. Delegation of Signature for Reasonably Likely Determination

Issue: Can the ODOT Region Manager delegate signing an ODOT reasonably likely determination to an ODOT region planner or other ODOT employee?

Response: No. While a region planner will likely have input as to whether a planned state highway improvement is “reasonably likely to be provided by the end

¹² The 120-day rule, requiring local governments to decide land use applications within or outside urban growth boundaries within 120 or 150 days respectively of the application being deemed complete, *does not* apply to applications for comprehensive plan and land use regulation amendments, but it *does* apply to zone change applications (ORS 227.178(1), and ORS 215.427(1)). In zone change matters, if ODOT cannot receive needed traffic information in a manner that still allows for timely decision-making, and if the applicant does not agree to extend the 120-day or 150-day rule to provide ODOT with adequate time for review, then ODOT should submit a written statement indicating that because inadequate information has been provided, ODOT cannot conclude that the transportation improvement is reasonably likely during the planning period.

of the planning period”, the letter providing ODOT’s “reasonably likely” determination should be signed by the Region Manager. Because of the nature of the reasonably likely letter and the potential factors that could go into making the determination, the Region Manager may have policy or political knowledge that may influence the content of the letter. As well, having the Region Manager sign each reasonably likely letter will provide a level of continuity and consistency as to how the determination is made and what factors are considered in making a determination, and it will assure greater accountability in the process.

3.2.17. Mitigation to Avoid a Significant Effect

Issue: Where transportation improvements are not reasonably likely to occur by the end of the planning period, may an applicant rely on mitigation to avoid a finding of significant effect?

Response: No. As the rule is written, mitigation is used to remedy a significant effect, not to avoid a finding of significant effect. This is clearly indicated by OAR 660-012-0060(1). Under 660-012-0060(1)(c), a local government considers the transportation impacts of the proposed amendment without any added mitigation. If it finds that there is a significant effect, then it considers mitigation under 660-012-0060(2), which requires the local government to “put in place measures as provided in section (2) of this rule to assure that allowed land uses are consistent with the identified function, capacity and performance standards of the facility.”

It is likely that mitigation will exist to remedy a significant effect in many if not most instances. This may lead one to conclude, for that very reason, that the amendment would not have a significant effect. However, that interpretation places the cart before the horse. Under the rule, the correct approach is to first determine that a significant effect exists, and then determine the appropriate mitigation.

3.2.18. Reasonably Likely Determinations: When Should ODOT Provide One? Who is Responsible for Requesting it?

Issue: Who is responsible for obtaining a reasonably likely determination – the applicant, the local government or ODOT? When is it appropriate for ODOT to prepare and submit a reasonably likely determination?

Response: In many but not all plan or land use regulation amendment or zone change proceedings, an applicant would attend a pre-application conference with the local planning staff to identify the relevant review standards and the information needed to support the application. In matters involving OAR 660-012-0060, this should typically lead the applicant to contact ODOT with a request for a reasonably likely determination. However, in some jurisdictions the local government itself might be the entity contacting ODOT, or it could happen that no one contacts ODOT.

ODOT should respond to a request for a reasonably likely determination only after receiving such a request from an applicant or local government. If the request comes from the applicant, the response should be sent to both the applicant and the local government. If the request comes from the local government, the response should be sent to the local government. If no one contacts ODOT on the matter, ODOT should take no action.¹³

Upon receiving a request for a reasonably likely determination, ODOT should determine whether or not the application would fall under OAR 660-012-0060(3). If it does not, there is no potential harm to ODOT if it fails to respond to the request. However, if it does, ODOT is advised to respond in a timely manner, since a failure to do so could result in adverse consequences to the agency. See Guideline 3.2.10.

3.2.19. Can ODOT Rescind a Reasonably Likely Determination?

Issue: Suppose ODOT issues a letter stating that a planned highway improvement is reasonably likely to be provided by the end of the planning period. Can ODOT subsequently rescind that letter?

Response: While it may be highly improbable that circumstances would change in the time that an application is before a local government, it is not impossible. For instance, conditions may occur such that needed federal funding that seemed probable when the letter was written no longer seems probable a month later. For this reason, every letter submitted to local governments should include boilerplate language stating that if circumstances change, ODOT reserves the right to withdraw its reasonably likely determination.

Timing of ODOT's decision to rescind is important. ODOT's reasonably likely letter would typically be part of the written record before the local government as it considers a plan or land use regulation amendment. Once the record is closed, ODOT may not be able to rescind its letter.

3.2.20. Implementation in the Portland Metropolitan Area: Town Centers, Regional Centers and Station Areas

Issue: Local governments in the Portland metropolitan area are undertaking plan amendments and zone changes that implement Metro's 2040 plan to upzone lands in designated town centers, region centers and station areas. Are there additional considerations that apply in these areas?

¹³ Under OAR 660-012-00604 (4)(b)(D) and (4)(c)(A), while there is no notice requirement, failure to provide notice to ODOT would work against the applicant's best interests. While ODOT need not respond to an amendment or zone change proposal without first receiving notice, it should monitor the application to make sure that no action is taken contrary to the requirements of the rule.

Response: Metro area staff and local officials expressed concern that new provisions in Section 0060 would be used to block or delay upzoning and plan amendments to implement the 2040 plan as it applies to town centers, region centers and station areas. While the TPR does not include any specific provisions addressing this concern, ODOT staff and OTC Chair Foster committed to support and facilitate plan amendments and zone changes that implement 2040 in these areas. In particular, ODOT and the Commission committed to monitor implementing plan amendments and zone changes to resolve problems and facilitate implementation of 2040. ODOT region staff should be knowledgeable about this commitment and communicate with ODOT TDD staff about any issues that arise so that they can be promptly resolved.

3.2.21. State Facilities Included in Systems Development Charge

Issue: Does ODOT need to make a reasonably likely determination where a local government has a funding plan or mechanism in place or approved that applies not only to regional and local roads and other transportation facilities, but also to state highways authorized in a local transportation system plan or comprehensive plan?

Response: For state highways, the determination of whether improvements are reasonably likely to be provided by the end of the planning period is for ODOT rather than a local government to make. A local government cannot avoid this by providing, for example, that some portion of its systems development charge go towards paying the cost of a state highway improvement. Certainly, ODOT can consider the local contribution in determining whether an improvement is reasonably likely to be provided during the planning period. However, the mere fact that the local government will provide some level of funding to a state facility is not controlling on ODOT.

3.2.22. Sample Letter for Reasonably Likely Determination

DATE _____, 2005

Name
Community Development Director
City of Y, Oregon

RE: Plan Amendment from Residential to Commercial

The City of Y is considering proposed amendments that would redesignate and rezone 10 acres of land from residential to commercial. The proposed amendment is located at the intersection of Oak Street, a state highway, and Main Avenue, a local arterial. Pursuant to OAR 660-012-0060(4)(b), the City has written the Oregon Department of Transportation (ODOT) requesting a determination as to whether

planned state highway improvements to Oak Street that are included in the City's TSP are:

- Funded for construction or implementation in the Statewide Transportation Improvement Program (STIP);
- Part of the region's federally approved, financially constrained regional transportation system plan [if City Y is located within an MPO area]; or
- If neither of the above, are reasonably likely to be provided by the end of the TSP planning period.

ODOT offers the following comments in response:

1. Oak St. is a state highway facility and is classified in the Oregon Highway Plan as a Regional Highway and as a Freight Route.
2. The following improvements to Oak St. are included as planned improvements in the City of Y's TSP, which the City adopted using a 2018 planning period:
 - Widening Oak Street from 2 to 4 travel lanes.
 - Channelization improvements (turn lanes) at Oak Street and Main Avenue.
 - Provision of a traffic signal at the intersection of Oak St. and Main Ave.
3. The identified improvements to Oak St. are not included for construction funding in ODOT's Statewide Transportation Improvement Program (C-STIP).
4. The identified improvements to Oak St. are not included in the region's federally-approved, financially constrained regional transportation system plan [identify the region].
5. The identified improvements to Oak St. do not have a funding plan or mechanism in place or approved.

Because of this, ODOT offers the following written statement as to whether the identified Oak Street improvements are reasonably likely to be provided (i.e. in place and available) by the end of the planning period. Because the Oregon Highway Plan uses a minimum 15 year planning horizon for state transportation facilities and improvements, and the City's planning horizon local transportation improvements is less than 15 years, ODOT is using a 15-year(2020) planning period in making this determination.

The reasonably likely written statement is intended to be analogous to a service provider letter provided during the review of development actions in many local jurisdictions. That is, it is intended to answer the question: "Is it reasonably likely to expect that the transportation capacity provided by the planned improvement will be in place and available by the end of the planning period and, therefore, can be relied upon when conducting the traffic analysis that accompanies a proposed amendment application?"

Based on ODOT's review of the circumstances associated with future improvements to Oak St. it is our opinion that the necessary improvements (identified above) are reasonably likely to occur by the end of the planning period – in this case, by 2020. Region # has evaluated the circumstances and reached this conclusion based on the following factors:

1. The planned improvements are located on a priority type of facility (in this case a key freight connection) that the Region believes would be reasonably likely to receive future funding because of the access it provides to existing and future employment.
2. The planned improvements are located in an area that anticipates high growth and, therefore, may be a high priority area for targeting future transportation revenues.
3. The City of Y has land use regulations that allow the City to impose conditions on future development if such conditions are needed to avoid or remedy a significant effect. ODOT will provide further comments should this amendment result in a specific development request.
4. [Other]

Please note that under OAR 660-012-0060(4)(e), this reasonably likely determination is conclusive (i.e. cannot be rebutted). As such, the City may consider the planned improvements to Oak St. in determining whether the amendment would significantly affect existing or planned transportation facilities.

This reasonably likely determination does not constitute a commitment on the part of ODOT to fund the planned improvements on Oak St. Further, this written statement applies only to the subject property and only to this specific proposed amendment. It does not apply to any future amendments that may rely upon the same project to avoid a significant effect. Instead, future proposed amendments will require a new written statement from ODOT. This is necessary because circumstances may have shifted from the factors that ODOT considered for this application in making this reasonably likely determination for the planned improvements to Oak Street.

ODOT appreciates the opportunity to provide you with this written statement. ODOT also looks forward to an opportunity to review and comment on the significant effect determination that the City will be making and on the applicant's final traffic impact report once it is prepared and submitted to the City. Please keep us informed on these matters and provide us with the traffic report and staff report when they become available.

While it is unlikely that ODOT would need to do so, ODOT recognizes that conditions could change, and for that reason, ODOT reserves the right to withdraw this reasonably likely determination during the time that the record of this proceeding remains open.

If you have any questions regarding this determination, please call the Region Planner at xxx-xxx-xxxx.

s/Region # Manager

cc. ODOT Director
TDD Administrator
DLCD Director

Traffic Impact Studies

3.3. Overview

The primary audience of these guidelines is ODOT planners and other development review staff who review local government development proposals to identify their impacts on state transportation facilities and propose mitigation measures as conditions of development approval. This Section also provides guidance to those involved in the preparation of Traffic Impact Study (TIS) or Transportation Impact Analysis (TIA) reports, for development projects that affect state highways, either directly or indirectly. Assignment of ODOT reviewing responsibilities will vary by Region, except that a TIS submitted as part of an Approach Permit application will be reviewed by the Region Access Management Engineer (RAME). For purposes of the Chapter the term “TIS” includes TIA.

The following discussion provides general information and ODOT accepted best practices applicable to typical TIS reports, but is not intended to be exhaustive. Although this guidelines document is developed by and for the ODOT Development Review Committee and staff, this section may have broader application because TISs are used in a variety of situations. Staff who review TISs have requested that this section go beyond the subset of TIS issues that apply directly to development review to include access and other issues. In so doing, it is believed that the development of TISs can be more efficient, with fewer surprises later in the development process. This approach will also help to ensure that the various issues likely to arise in the development process will be assessed based upon the same data sets and time frames and upon consistent assumptions.

Consult Sections 3.3.28 (Roundabouts) and 3.3.33 (Traffic Signal Installation and Modification) early in the TIS scoping process when a TIS is developed for a proposal that includes new traffic control or modification to existing traffic signals. Proposed changes or addition of traffic control devices must be reviewed and approved by the Region Traffic Engineer or State Traffic Engineer prior to establishing ODOT concurrence with a traffic study’s recommendations. In addition, it is inadvisable to create a condition of approval specifically calling for a future signal where there is a range of possible solutions that could be effective at that later date. Consult the Traffic Manual for further detail analysis requirements where signalization is proposed: http://www.oregon.gov/ODOT/HWY/TRAFFIC-ROADWAY/docs/pdf/Traffic_Manual_09.pdf .

The Analysis Procedures Manual (APM) provides detailed technical support for many analysis procedures used in the development of TISs. See the APM at, http://www.oregon.gov/ODOT/TD/TPAU/A_APM.shtml .

Every development proposal presents a unique set of issues to address, so professional judgment must be used along with the information in this chapter. The

completed TIS will provide the basis for the mitigation recommendations for the development application.

3.3.01 Purpose of Traffic Impact Studies

Traffic Impact Studies develop and document technical studies that assess the effects of land use and infrastructure changes on the transportation system.

- A TIS will usually be necessary to determine whether a development proposal will have a “significant effect” on a transportation facility as spelled out in TPR section 0060 (OAR 660-012) and as discussed in Chapter 3.2 of these guidelines.
- A TIS can be required to be developed as part of an application for a permit for an approach to a state highway as provided in OAR 754-051.

Conclusions reached in a TIS are based on transportation engineering assumptions and calculations that must be performed by or under the direct supervision of an Oregon Registered Professional Engineer with an expertise in traffic, and documentation must bear his or her seal and signature

A TIS can be required of developers by local jurisdictions in conjunction with review of a proposed development, zone change, plan amendment, or changes to the transportation system itself. Including a TIS requirement for certain types or intensities of land development proposals and plan amendments in local land development codes is a valuable tool for managing a safe, efficient transportation system. The TIS provides information used to assess compliance with approval criteria in the local jurisdiction’s development code. If the TIS shows that the transportation system is inadequate to accommodate a proposed land use action, then the TIS also identifies and recommends improvements to mitigate conditions so that adequacy can be achieved. State transportation facilities are “adequate” if they meet the minimum requirements set forth in the Oregon Highway Plan for both efficiency and safety of travel.

For long-range studies, such as those required for zone changes and plan amendments, the adequacy of transportation facilities is often determined relative to the amount of remaining capacity on the transportation system. Remaining capacity should also be considered for some short-range studies.

The results and recommendations of the TIS are used by ODOT and local jurisdictions to support decisions regarding the denial, approval or approval with conditions of local land use proposals and highway approach permit applications. A TIS may also be developed to determine signal warrants, to generate data for modeling and other analysis, and to establish facility needs for the highway system itself. A TIS anticipates all of the traffic and facility issues related to the proposed activity and uses methodologies and assumptions that allow consistency among the study conclusions.

3.3.02 Authority to Require a Traffic Impact Study

The legal authority for ODOT's involvement in Local Land Use Review is summarized in Chapter 1. The authority to require a TIS as part of a local land use review comes from the local government's development code and is derived from the statewide land use program (ORS 197). For example the local public facilities or development code may include a requirement that a TIS be included as part of certain types of local land use applications submitted to the local government. The requirement may be stated directly or be implied. As discussed in Chapter 1, section 1.1.06, the applicant has the burden of proof to provide sufficient reliable information to satisfy the local approval criteria. A TIS is intended to satisfy the burden of proof to demonstrate that public transportation facilities are adequate or can be made adequate to serve transportation needs of the proposed land use.

The state Transportation Planning Rule requires an understanding of transportation impacts consistent with what we learn from traffic impact analysis for certain land use actions. The Transportation Planning Rule OAR 660-012-0060, as amended in 2005, states that:

Where an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation would significantly affect an existing or planned transportation facility, the local government shall put in place measures as provided in section (2) of this rule to assure that allowed land uses are consistent with the identified function, capacity, and performance standards (e.g. level of service, volume to capacity ratio, etc.) of the facility.

For cases where direct highway access has been proposed and an Application for a State Highway Approach (for a new approach or a change of use of an existing approach) has been received, the legal authority to require a TIS comes from OAR 734-051 (Division 51). While the state and local processes are separate, the same TIS may sometimes be used for both if all the requirements of each have been met in the study.

Specifically, section OAR 734-051-0070 authorizes a TIS requirement in the following circumstances when an applicant applies for approval of a State Highway Approach Permit:

OAR 734-051-0070 (6)

(e) (The Region Manager) may require a Traffic Impact Study for:

(A) Proposed developments generating vehicle trips that equal or exceed 600 daily trips or 100 hourly trips; or

(B) Proposed zone changes or comprehensive plan changes; and

(f) Shall require a Traffic Impact Study for proposed developments or land use actions where the on-site review indicates that operational or safety problems exist or are anticipated.

A TIS may also be required when an applicant requests a deviation to ODOT's access management spacing standards.

3.3.03 Traffic Impact Study Review and Oversight

Ideally, ODOT, the local jurisdiction, and the applicant will discuss and agree on the TIS's scope, analysis methods, and assumptions prior to the study's preparation. The TIS is submitted by the applicant to ODOT as part of an ODOT approach application or to the local government as part of a land use application. If the TIS is part of a local land use application, copies of the TIS should be forwarded to ODOT by the local government or provided directly by the applicant. It is preferable to have the applicant's consultant send copies directly to the appropriate ODOT office at the same time the TIS is submitted to the local jurisdiction to provide adequate review time.

The assigned ODOT Development Review staff person is responsible for seeing that TIS reports are distributed to the appropriate ODOT staff for review and comment as soon as possible, advising other reviewers when comments must be received to be included in the ODOT response letter. The ODOT traffic engineer/staff person conducting the TIS review may need to coordinate and confer with the District office, State Traffic Engineer, the Transportation Planning Analysis Unit, Rail Division Crossing Safety Section and/or the Region Traffic Operations Supervisor. Review should also be coordinated with local government staff; it can be helpful for ODOT and local staff to share draft technical reviews. Coordination helps inform and gain the support of local government staff for proposed mitigation measures.

If ODOT staff determines the TIS is incomplete or inadequate, ODOT's ability to have the applicant revise it depends on the nature of the application and the time available for review. When the TIS is reviewed as part of a local land use application, the ability to require revisions also depends on the local jurisdiction's review process. The best opportunity to identify critical issues is during the scoping stage. The best time to get the TIS revised is typically during the pre-application stage or prior to local jurisdiction staff accepting the application as complete.

When only the local jurisdiction has decision authority (for example, TPR review does not apply, there is no highway approach permit under review, and/or the applicant does not request a traffic signal in conjunction with development), the support of the local staff is needed before revisions to the TIS can be required. ODOT can assist local staff in making that decision by making it very clear why the TIS does not fulfill local approval criteria intended to ensure that reasonable transportation facilities exist to serve the proposed development. If the TIS contents clearly fail to comply with the criteria for approval of a project, the applicant may agree to suspend the "120-day rule" in order to have time to further refine the TIS to establish compliance.

When the TIS is reviewed as part of an ODOT approach application, the ability to require revisions depends on the stage of the application and the requirements of Division 51. If the applicant and ODOT agree to suspend the regulatory time limits for approach permitting, revisions to a TIS may be done to get sufficient information to allow an approval where the application would otherwise have been denied.

3.3.04 Scope of Work

The scope of work is either provided or approved by the local Regional ODOT Development Review engineering staff. The scope of work identifies the purposes for the TIS including identifying the proposed development's impacts to the transportation system; identifying potential improvements that would mitigate capacity, operational and safety impacts of the development; and establishing the developer's proportional share of the mitigation costs.

Under the discretion of the reviewing engineer, a scope of work should be developed in a way that avoids unnecessary data collection and analysis, subsequently reducing costs and time commitments for the applicant, ODOT and the local government. The scope should also be broad enough to anticipate other issues that are likely to arise later in the development process. Applicants should be encouraged to direct their engineers to contact the appropriate ODOT staff to discuss the scope of work prior to initiating work on the TIS to avoid the need for supplementary work later. The effectiveness of the final TIS in evaluating impacts and associated mitigation options is directly related to the quality of the initial scoping.

The scope of work should:

- define the study area boundaries,
- establish the analysis requirements and methodologies, and
- convey specific concerns to be addressed.

Identifying a Study Area:

The area to be studied will depend on whether the TIS is being performed to fulfill OAR 660 Division 12 Transportation Planning Rule (TPR) or OAR 735 Division 51 (Div 51) Access Management criteria. TPR criteria focus on 'significant effect' on an entire area and Div 51 focuses on local approach issues to the highway facility. Additional guidelines on establishing the study area can be found in Chapter 2 of the APM.

An earlier section of the access management rule, omitted when OAR 734-051 was amended in 2004, addressed "transportation impact studies" and defined a "maximum analysis area." While the decision at the time was that this language was not needed as part of the rule, it is recognized as good guidance. The analysis area should include:

- Both sides of the highway along the entire frontage of the property(ies) involved;
- All state highways and major city and county streets which directly serve the proposed development or land use change, as well as any interchange ramps in the area, as defined in OAR 734-051-01;
- All proposed approaches;
- Any public or private approach intersection where the proposed development can be expected to add 300 vehicle trips in a single day or more than 50 additional vehicle trips in any single hour, or an approach to the intersection; and
- Any road segment or intersection where the additional traffic created by the proposed development is greater than 10 percent of the current traffic volume for road segments or the current entering volume for the intersection.

Engineering judgment and awareness of local planning criteria come into play to define a workable analysis area. For example, large development projects in rural areas can cause measurable traffic for hundreds of miles. A relatively small development can generate a significant increase in volume on a lightly traveled highway without an adverse effect on the highway. No specific formula will result in a sensible study area for all cases. Base the TIS study area upon the extent of the direct impacts of the proposed development on transportation facilities and areas around the facilities most at risk of failure or unsafe conditions due to the projected traffic impacts.

To avoid the need for supplementary work later, developers/applicants should be encouraged to direct their engineers to contact the appropriate ODOT staff to discuss the scope of work prior to initiating work on a TIS. A sample scope of work letter is located in Appendix 7 of these guidelines.

Establishing Analysis Requirements and Methodologies: The scope should clearly identify the areas of analysis and methodologies needed for the TIS including those areas outlined under the “Components of Traffic Impact Studies” section. Table 3.3.1 shown below suggests workable thresholds for determining the year of future year analysis, based upon Access Management program practice.

Conveying Specific Concerns: Most projects have areas of unique traffic safety, operations or mitigation concerns. The scope should list those areas and, if necessary, outline the analysis needed and method of analysis to address the special concern.

Additional Considerations:

- Where an approach permit onto the highway is requested for a property that has alternate access, the TIS should include analyses both with and without site driveway/s onto the highway.
- The TIS could also include analysis of an approach with a restriction (e.g. right-in / right-out only) on the highway, but should still include analysis of the proposal with no site driveway(s) onto the highway.

- If the applicant applies for more than one approach onto the highway, separate analyses should be conducted as in the following example: An applicant applies for two driveways onto an Oregon District Highway. The property has alternate access. Analysis needs to be done in the TIS with two driveways onto the highway, with one driveway onto the highway, and no driveway onto the highway. All analyses with and without site driveway(s) onto the highway should show how these scenarios impact the highway, local streets, and other transportation modes (e.g. a nearby rail crossing).

In addition to Development Review staff, it is important to work closely with the Region Traffic Operations and Signal representative, along with Maintenance and Planning staff to develop a scope ensuring the correct parameters are used involving signalized intersections, unique traffic patterns and local planning requirements that avoids unnecessary revisions. If the proposal site is located within 500 ft of a rail crossing, also contact the Rail Division Crossing Safety Section for direction on what is needed in the TIS scope to adequately review the rail crossing issues.

Any variance from parameters found in the Scope of Work, APM and ODOT Policies and Procedures must be agreed to in writing prior to completion of analysis.

Additional general guidance on scoping analysis work is found in the APM at the TPAU website, as mentioned and linked in 3.3.00, above.

**Figure 3.3.1
Future Year Analysis: Suggested Time Lines**

Proposed Development Daily Trip Generation	Single-Phase Development Horizon Years	Multi-Phased Development Horizon Years
Up to 999 ADT	Year of Opening	Year of Each Phase Opening
1,000 - 2,999 ADT	Year of Opening and at 5 Years	Year of Each Phase Opening and 5 Years Beyond Buildout
3,000 – 4,999	Year of Opening and 10 Years	Year of Each Phase Opening and 10 Years Beyond Buildout
5,000 or More	Year of Opening and Year of Planning Horizon for the Transportation System Plan or 15 Years,	Year of Each Phase Opening and Year of Planning Horizon for the Transportation System Plan or 15 Years,

Plan Amendments and Zone Changes	Whichever is Greater Year of Planning Horizon for Transportation System Plan or 15 Years, Whichever is Greater ¹	Whichever is Greater Year of Planning Horizon for Transportation System Plan or 15 Years, Whichever is Greater ¹
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¹This is policy: see OHP Action 1F.2

3.3.05 Components of Traffic Impact Studies

The APM should be consulted for guidance on technical procedures that are common to planning and project analysis as well as analysis for a TIS. The general outline of a TIS document will include most or all of the following elements:

1. Executive Summary
2. Introduction
3. Existing Area Conditions
 - a. Traffic Volumes – Year of Opening without the Development
 - b. Traffic Operations – Year of Opening without the Development
 - c. Roadway characteristics
4. Site Trip Generation, Distribution and Assignment
 - a. Traffic Volumes – Year of Opening with the Development
 - b. Traffic Operations – Year of Opening with the Development
 - c. Traffic Volumes – Future Year without the Development
 - d. Traffic Operations – Future Year without the Development
 - e. Traffic Volumes – Future Year with the Development
 - f. Traffic Operations – Future Year with the Development
5. Technical Analysis
 - a. Capacity Analysis
 - b. Peak Hour Factors and Design Hour Factor
 - c. Signalized Intersections
 - d. Unsignalized Intersections
 - e. Roundabouts
 - f. Capacity Analysis Documentation Requirements
 - g. Queue Length Analysis
 - h. Intersection Sight Distance
 - i. Right/Left Turn Lane Warrants
 - j. Transportation Demand Management
 - k. Turning Conflict Analysis
 - l. Access Management
6. Mitigation Alternatives
7. Conclusions and Recommendations
8. Appendices including all data sheets

9. A Mitigation Schedule (See Appendix 12) is recommended as a way to summarize mitigation measures that will be used to reduce development impacts on the transportation system.

Each of these elements is discussed further in the subsections that follow.

3.3.06 Executive Summary

Executive summaries are particularly useful on larger, more complex applications to provide a general overview of the report. An executive summary concisely describes the purpose of the report and the study objectives, and provides a description of the site location, the study area, the proposed development and/or land use action, and the principal findings, recommendations and conclusions of the report. Executive summaries should be written to be understood by local government decision makers and other interested parties who are not planners or engineers.

3.3.07 Introduction

The Introduction to a TIS includes a brief description of the proposal including the site location, existing and proposed land uses and development intensities (e.g. number of units, square feet, whether the site is raw land or already has development, etc.), and the anticipated timing of development phases where applicable. In addition, the written description should be accompanied by a vicinity map, plat map with tax map identification (township, range, section and tax lot numbers), and a site plan. Site plans should be drawn to scale and show the proposed site approaches, approaches to adjacent properties and to properties across the highway from the subject site, building locations, parking lot layout, and internal circulation routes.

3.3.08 Existing Area Conditions

An **existing conditions analysis** identifies site conditions and the operational and geometric characteristics of roadways within the study area for the current year. In addition to detecting existing transportation system deficiencies, the existing conditions analysis provides a baseline for comparison to the proposed development's traffic impacts found later in the TIS.

Information provided in a study of existing conditions includes:

Existing Area Conditions:

- Study area description:
 - Area of potentially significant traffic impact;
 - Existing street network;
 - Existing traffic volumes and conditions;
 - Availability of public transit , bike and pedestrian facilities and other alternatives;

- Existing transportation system management programs;
- Local policy and regulations;
- Documented crash locations and crash type(s), as pertinent; and
- Known operational problems (e.g., long queues, high percentage of truck traffic, sight distance issues)
- Any unique geometric characteristics; and
- Study area land use(s):
 - Existing land uses;
 - Existing zoning and comprehensive plan designations;
 - Anticipated/ Planned future development; and
 - Proposed zoning or plan amendments.

Some information, such as a description of the subject property, location, and surrounding land uses that were discussed in the Introduction are covered in more detail in this section.

A physical description of each roadway in the study area helps assess currently available transportation infrastructure. At a minimum, this includes: roadway names; roadway classifications; jurisdiction with road authority; posted speeds; roadway cross-section dimensions; number of lanes; transit services; presence of bike lanes, sidewalks, and on-street parking.

Existing lane configurations and traffic control devices are shown on a diagram of the study area (for example: the number of through lanes and turn lanes and types of traffic control, etc.), for each intersection approach to be analyzed. The amount of available vehicle storage in the left and right turn lanes can also be provided in this diagram.

Traffic flow diagrams are included in the report to illustrate existing traffic volumes and the appropriate design hour turning movements at each study intersection and site approach location.

In general, ODOT requires the use of the 30th highest hourly volume (30 HV) of the year as the design hour volume. In large urban areas, the design hour volume can often be closely approximated by using the weekday peak hour volume from the peak month of the year. The weekday peak hour typically occurs during the work-related commute period, usually between 7-9 a.m. or 4-6 p.m. Seasonal factors can be applied to the counts obtained to model conditions during the peak month of the year.

The choice of peak hour volumes can vary based upon existing conditions or specifics of the development proposal. One example is a proposal for a church where Sunday morning traffic levels will be of more interest than weekday morning peak hours. In any case, **a description of the assumptions used** is a necessary part of the traffic study report.

In rural or recreational areas, the time of the design hour volume may be less predictable. An example is a coastal community where summer weekend peaks are far higher than weekday or off-season weekend traffic levels, so a decision has to be made to identify the appropriate peak hour traffic volumes for the study. Historical data from Automatic Traffic Recorded (ATR) stations can be very useful in determining the design hour volume in these situations.

Complete procedures for determining the design hour volume in both urban and rural areas can be found in the APM.

The dates of the **traffic counts** need to be stated and the actual count data included in or attached to the report. Traffic counts that are not more than a year old from the date the report is prepared are preferable. Counts between one and three years old must be projected to the current year. In areas where significant amounts of development or regional traffic growth have recently occurred, it is necessary to collect current count data to accurately capture these changes. Counts should not be taken within a week of state or federal holidays, unless directed by ODOT. Counts on weekdays should be conducted on a Tuesday, Wednesday, or Thursday, unless directed by ODOT. The presence of schools in the area should be considered when determining the date of counts. It is often preferable to count when schools are in session.

An **analysis of existing study area intersection operations** during the time periods specified in the scope of work must be provided based on the information described above. The results need to be clearly presented in tables or figures (see Figure 3.3.2).

Many jurisdictions measure **intersection operational performance** by Level of Service (LOS) or delay. ODOT measures the performance of the highway using volume to capacity ratios (v/c). The TIS will report the performance of each intersection analyzed using the measuring criteria preferred by the jurisdiction with authority over the intersection. Having both LOS and v/c data helps to get a more accurate picture of how well an intersection functions. For example, for a minor approach to a major roadway that is not signalized, the v/c may be well within standards while the LOS (delay) is unacceptable.

Figure 3.3.2
EXAMPLE: 2001 Existing Intersection Capacity Analysis

Intersection	Signalized Intersection*		Unsignalized Intersection			Level of Service
	v/c	Average Delay (sec)	Critical Movement	Movement v/c	Movement Delay (sec)	
Hwy 213 @ Hwy 211	0.45	26.3				C
Hwy 213 @ Barnards Rd			EBLT	0.02	17.7	C
Site Access @ Barnards Rd						
Hwy 213 @ Macksburg Rd			EB	0.87	77.5	F

*In region 3 the critical movement direction and critical movement v/c are also included for signalized intersections

It is also important to identify **existing or potential safety hazards** in the analysis area. Traffic crash data is included from the appropriate jurisdictions and analyzed to locate trends and compare existing conditions to similar roadway segments in the state. No fewer than three years of the most current data should be used for this analysis. Recent or upcoming improvement projects that change transportation infrastructure should be accounted for in evaluating hazardous locations (see next web link, below).

Identification of **existing or potential traffic operational problems** is based on thorough field observations of the subject intersection(s). Items of concern include, but are not limited to, excessive queuing and/or delay, location and spacing of adjacent intersections and driveways, sight distance and deficiencies related to geometry, etc.

Finally, for land use proposals subject to the TPR, **committed and planned transportation improvements** in the area, (both ODOT and local government) that affect or are affected by the development proposal need to be identified. This will include projects identified in adopted local and regional transportation system plans as well as corridor plans or projects from ODOT's Statewide Transportation Improvement Program (STIP) or the local jurisdiction's Capital Improvement Program (CIP).

Authorized users can find local transportation plans, refinement plans and ODOT facility plans in the area on the Transportation Planning Data Base (TPOD): <https://keiko36.odot.state.or.us/whalecome5690917adb26326abdb252e22d8/whalecom0/SecureKeiko36PortalHomePage/> . To research planned and proposed state highway facility construction projects in the TIS study area, go to: <http://www.oregon.gov/ODOT/HWY/STIP/index.shtml> .

3.3.09 Traffic Volumes – Year of Opening without the Development

These traffic volumes are typically referred to as the **background traffic** and represent the non-site traffic during the anticipated year of opening for the development. The background traffic consists of the existing traffic plus the traffic generated by nearby “in-process” developments (currently approved but not yet operational) and projected regional growth affecting the analysis area.

There are several methods for projecting the background traffic. The three most common methods are described briefly below. The method used to develop the background traffic volumes should be approved by the Region Manager or his/her designee.

Transportation Models

The output from urban travel demand models may be used to estimate future traffic growth. Transportation models use current and projected land use and transportation network data to estimate current and future travel demand. The data is obtained from many different sources, including census data, state employment data, O-D¹⁴ surveys, household travel surveys, traffic counts and field surveys.

Models that may be used in Traffic Impact Studies include MPO models, County models, and Small Urban Area models. A map showing locations of Oregon models is available at http://www.oregon.gov/ODOT/TD/TPAU/M_TravelDemand.shtml. A form used to request ODOT model runs is also available at this link.

Traffic Models are not detailed at the site level and are not intended for direct application to individual development project analysis without post-processing. However, model data do have value in development review by providing best available information on background trips under the current conditions (assuming input data is current) and for future years projected from those same “current” conditions.

Models are most suitable for use in urban areas over long time frames. The traffic analyst referencing model data needs to understand the origin of the inputs and the design parameters and limitations of the model. The transportation analysis zone (TAZ) containing a proposed development should be investigated closely to ensure the appropriate land use was assumed in the model. If a plan or zone amendment is proposed that will change allowed land uses to something that will perform differently from the land uses assumed in the model, the model may be relied upon

¹⁴ O-D stands for origin-destination survey. It is done to identify where drivers at a survey station are destined. It's used frequently in model development and other studies. For example it can be used to determine the percentage of through versus local trips. A couple of the more common methods include roadside interviews/post card handouts or license plate surveys. Bluetooth is a more recent technique.

for future year baseline projections, but projections are also needed that include the impacts of the proposed land use changes.

Transportation models of the current time period may be compared with a future year to arrive at an annual growth rate. The growth rate is then applied to the counted traffic volumes over the number of years into the future appropriate for that proposal. Because the models are typically developed in conjunction with a transportation system plan and comprehensive plan, this method can provide a reliable forecast for growing urban areas. Significant changes to the transportation network, such as the addition of a new arterial or the deletion of a link, are also captured well by a model.

Note: Nearly all computerized system level traffic assignments require that further post-processing take place prior to their being used for transportation project planning and design. Model numbers represent employment and households, and only indirectly represent trips, so modeled volumes have to be compared on a relative basis. The recommended methodology for refining trip assignments obtained from computerized transportation models is provided in the APM (http://www.oregon.gov/ODOT/TD/TPAU/A_APM.shtml). Guidelines for the use of models to evaluate land use changes are provided in the Modeling Procedures Manual for Land Use Changes, available at <http://egov.oregon.gov/ODOT/TD/TPAU/>.

TIS Level Cumulative Analysis. This methodology is most suitable for smaller urban areas or for a portion of a large urban area and for short time frames where there is good local information about future projects. This method projects future traffic volumes by adding estimated traffic generated by all approved but not yet opened developments in a study area to existing traffic volumes. Long-term forecasts should also include the effects of future developments on undeveloped lands. An additional amount may be added to account for increases in through trips. This methodology is outlined in the APM.

If a cumulative analysis is conducted, a table listing the anticipated developments and corresponding trip generation rates must be provided.

Historical Trends: This method is most suitable for rural areas with stable growth rates. This methodology is based on the Future Volume Table, available on the TPAU website and described in the APM, which is based on regression analysis of traffic counts covering, typically, the past 20 years. When projecting future traffic demands based on this methodology it is usually assumed that site traffic is included in these projections. Professional judgment is needed to verify whether site traffic would be over- or under-estimated using this method. (For example, a particularly large use such as a destination resort may not fit the past 20-year trend.)

When background traffic volumes for the year of opening have been determined, updated traffic flow diagrams reflecting this condition must be provided.

3.3.10 Traffic Operations – Year of Opening without the Development

When background traffic volumes for the year of opening have been established, an operational analysis of study area intersections is conducted. This analysis should incorporate any transportation system improvements anticipated to be completed by the represented year. Results should be clearly presented in tables or figures and the performance of each intersection analyzed should be reported using the operational criteria preferred by the jurisdiction having authority over that intersection (see Figure 3.3.3).

Figure 3.3.3
EXAMPLE: 2003 Background Traffic Study Intersection Capacity Analysis

Intersection	Signalized Intersection*		Unsignalized Intersection			Level of Service
	v/c	Average Delay (sec)	Critical Movement	Movement v/c	Movement Delay (sec)	
Hwy 213 @ Hwy 211	0.48	26.7				C
Hwy 213 @ Barnards Rd			EBLT	0.02	18.6	C
Site Access @ Barnards Rd						
Hwy 213 @ Macksburg Rd			EB	1.02	118.5	F
Hwy 213 @ Union Mills Rd			WB	0.85	76.1	F

*In region 3 the critical movement direction and critical movement v/c are also included for signalized intersections

3.3.11 Site Trip Generation, Distribution and Assignment

Site trip generation, distribution and assignment provides information about how many new trips can be expected to be created by the proposed development and where they will occur on the surrounding transportation system. **Generation, distribution and assignment should be agreed upon with ODOT staff before proceeding with the TIS.**

3.3.12 Trip Generation

An estimate of the amount of trips originating from and destined to a proposed development, and a description of the method used to make the estimate are essential in evaluating that development's impacts to the transportation system. A few of the more common methods used to make these estimates are described below.

Institute of Transportation Engineers (ITE) Trip Generation Manual: This published document contains information provided by engineering and planning professionals in the United States and Canada about the trip generation characteristics of a variety of land uses. The Manual is updated periodically, so the most recent edition should be used. The data for a specific land use in this manual can often be applied to a proposed development if the uses are reasonably similar.

Local Data: Sometimes ODOT or a local jurisdiction will have information about the trip generation characteristics for certain land uses. This information may be more appropriate for use than that from the ITE manual, which typically does not account for local conditions. Remember that the details of a specific development often change from the proposal submitted with the zone change application to something else at the time of site plan review. For example, the zone change may specify "Shopping Center" then change to a "Free-Standing Discount Store" at the site development stage, with both allowed under the new commercial zoning designation.

Data from Similar Sites: Data collected from existing sites found to be reasonably similar to that proposed are occasionally approved when no other information source is available or believed to be appropriate for the subject land use.

Estimates for Site Specific Characteristics: Trip generation can be estimated by closely examining the operating characteristics of the proposed development when there is no documented information available, and no similar sites can be found. To do this, information such as the number of employees, visitors, and deliveries must be known, as well as the time of day they are expected to be entering and leaving the site.

Reasonable Worst Case Analysis: Applications for comprehensive plan map and zoning amendments are often submitted without identifying a specific land use development proposal. The parties must agree to a "reasonable worst case" scenario for potential uses of the land where the proposed land use for a property is unknown.

- The "worst case" is the most intense use allowable under the current zoning (future year condition without the project) and/or the proposed zoning (future year condition with the project).
- The worst case is tempered by a determination of what is "reasonable," based upon mitigating factors such as the physical and size constraints of the subject property.
- Rely on the local comprehensive plan Economic Development or analogous element to determine what is reasonable. Factors used in the adopted plan to establish trends include the size and level of activity of the market area, population growth, and economic development.

- ODOT will typically accept local government assumptions related to the reasonable worst case that are based on local research and/or policy and that are adopted into plans and ordinances,

A 2005 Land Use Board of Appeals decision offers some direction on a definition for reasonable worst case. The basis for analysis of the difference in traffic impact between an existing zoning district and a proposed new zone, as required by OAR 660-012-060 is considered in *Mason v. City of Corvallis and Pahlisch Homes, 49 OR LUBA 199 (2005)*. The city rezoned a recently annexed parcel and amended the comprehensive plan. Petitioner objected because the city did not assume in its analysis of the traffic that the entire parcel could be developed into the most intense land uses allowed under the proposed new zoning. That decision says in part (emphasis added):

“Petitioner is correct that the focus of OAR 660-012-0060(1) is on **allowed** land uses rather than **proposed** land uses. Petitioner is also correct that the local government must generally assume the most traffic-intensive uses allowed under the amended and unamended plan and zoning, in conducting a comparison of traffic impacts under 660-012-0060(2)(d). . . (it is) not necessarily error to assume something other than the most traffic-intensive uses, as long as the assumptions are consistent and the uses compared provide a meaningful comparison of the traffic impacts between the existing and proposed plan and zoning. . . (F)or example . . . a local government "would clearly err if it assumed without adequate justification that the most traffic-intensive uses would develop under existing zoning but the least traffic-intensive uses would develop under the proposed zoning."

In *Griffiths v. City of Corvallis and Group Mackenzie, 50 Or LUBA 588 (2005)* LUBA was more specific about saying that the comparison between potential uses in the old zone vs. new zone should be based on the most intensive uses allowed in the zone, not the current uses, or the "likely" uses.

For example, if a 20-acre site were proposed to be re-zoned from industrial use to commercial use, but no specific type of size of commercial development had been identified in the application, assume that the property will develop to the highest trip generating potential under the new zoning. Assign high trip generating uses such as retail, a fueling station, and fast food with drive-through window to the property in quantities appropriate for the size of the site. Consider whether the high trip-generating uses are appropriate to the site, given its location and surrounding land uses when assigning the potential land use mix to the site “Allowed” uses are presumably those uses that are permitted outright by the zoning designation. Conditional uses are not permitted outright and are typically subject to additional analysis and conditions at the time of conditional use review and approval.

Also develop trip generation assumptions based on a reasonable worst case land use scenario when a zone change is being requested when a specific development

is identified in the application unless the proposed use results in full buildout of the property. This provides realistic projections of the long term transportation impacts of the comprehensive plan/zoning change.

A table should be included in the TIS report that shows the daily trips generated, as well as the hourly trips generated for all time periods analyzed. Both entering and exiting volumes need to be displayed for the hourly periods. Include weekend trip generation for some land uses, particularly for those uses that will generate a significant number of trips on the weekend. . Show trip generation for each proposed use included in the development. Figure 3.3.4 provides a typical display of trip generation data for an example development including 124 single-family detached homes.

Figure 3.3.4
EXAMPLE: Site Trip Generation

Land Use	ITE Code	Size	Daily Trips	Peak Hour Trips		
				Total	Inbound	Outbound
Single-Family Detached	210	124 Dwelling Units	1265	130	85	45

Explain any variations or adjustments that are required to account for local conditions. All assumptions for adjustments must be documented and discussed in the report. Further discussion on trip generation adjustments can be found below.

Trip Generation Adjustments: The forecast trip generation from the ITE Trip Generation Manual for the proposed development may be adjusted under certain circumstances. A few types of adjustments are described below.

1. **Pass-by Trips:** Pass-by trips are made as intermediate stops on the way from an origin to a primary destination without a route diversion. They are attracted from traffic passing the site on an adjacent roadway that offers direct access. Reductions in trip generation on the adjacent system accounting for pass-by trips may be allowed based on the following factors:

- Type of development
- Existing traffic composition
- Existing population distribution
- Location(s) of competing developments

Caution! – While this assumption may reduce the trips distributed to the transportation system, the full site traffic generation is still based on the site approach(es) and land use assumptions. Recognizing the existence of pass-by trips does not reduce the driveway entering and exiting turning volumes.

2. **Diverted Link Trips:** Diverted linked trips are trips that are attracted from the traffic on roadways within the vicinity of the site but that require a diversion from that roadway to gain access. Diverted linked trips will add traffic to the streets adjacent to a site, but might not add traffic to the area's major travel routes.
3. **Internal Trips:** Where multi-use developments are proposed that offer the potential for interaction among the individual uses (such as a mix of office, retail, and multi-family housing), a reduction in the vehicle trip generation between the overall development and the external street system can be applied to account for internal, or captured, trips. These captured trips are made entirely within the site by either walking or driving between buildings using the internal street system or pathways.
4. **Mode Split.** Mode split is the process of estimating the number of travelers from the development that are anticipated to use modes other than automobiles in the site impact analysis. If this percentage is low, the step can be skipped. As transit and other non-motorized alternatives become available, mode split analysis may be required. If transit or ridesharing is anticipated to be a factor, data from similar developments within the area should be used to refine the mode split estimates.

The most recent Trip Generation Handbook, ITE, should be consulted for a complete explanation of when and how to use these and other trip generation refining factors. **The Region Manager or his/her designee should review and approve all proposed trip generation adjustments before proceeding with the TIS.**

The non-automobile portion of the project's traffic should be deducted from the trip generation estimates. Data must be presented to support any significant use of alternative modes. Note that the Transportation Planning Rule section 660-012-0060(6) allows, and in some cases requires, local governments to give full credit for potential reduction in vehicle trips for uses located in mixed-use, pedestrian-friendly centers and neighborhoods. The complete TPR can be found in Division 12 of the following, on the web at:

http://arcweb.sos.state.or.us/rules/OARS_600/OAR_660/660_tofc.html

3.3.13 Trip Distribution

The purpose of trip distribution is to analyze the trip-making characteristics of the proposed development and off-site areas. The level of effort involved in this step is a function of the intensity and type of development, adjacent land uses, and the time of day being evaluated.

A complete TIS report includes a trip distribution diagram to illustrate the percentage of trips in and out of the site through all study area intersections. Project-generated trips and pass-by trips should have separate trip distributions.

In cases where ODOT is the lead review agency, ODOT must approve of the trip distribution methodology used in the study. A common method of determining trip

distribution is to analyze existing area travel patterns. However, when using this method care must be taken to consider the types of trips associated with the proposed land use and how site generated trips are likely to interact with surrounding land uses.

The *Analogy*, *Transportation Model* and *Surrogate Data* methods described below are methods of establishing trip distribution acceptable to ODOT and recognized by the Institute of Transportation Engineers.

Analogy Method. The analogy method uses traffic information from a similar, existing development to predict trip distribution for the proposed development. This can be accomplished by various methods including driver surveys, license plate origin-destination studies, and driveway turning movement counts. The gathered information can then be applied to the location of the proposed development. Judgment needs to be exercised with this method to account for other influencing factors such as population distribution, location and competing attractions.

Travel Demand Model. A travel demand model can be effective in estimating traffic distribution patterns. Because travel demand models are typically developed in conjunction with a transportation system plan and comprehensive plan, they can provide a reliable forecast for growing urban areas. The transportation analysis zone (TAZ) containing the proposed development should be investigated closely to ensure land uses, development densities, and trip making characteristics are modeled consistent with existing conditions. Significant changes to the transportation network, such as the addition of a new arterial or the deletion of a link, are captured well by most models. Post processing of the model trip assignment for use in projecting trip distribution is necessary, and should follow the guidance in the APM.

Surrogate Data. Surrogate data involves using one piece of information and applying it to another. An example is using employment as a surrogate for residential trips. Generally, residential use will serve as a good surrogate for office, retail, and entertainment trips. This method can accurately estimate trip distribution when used cautiously and for appropriate land uses. This method requires an extensive database of usable socioeconomic and demographic information for various regions of the city.

3.3.14 Trip Assignment

Trip Assignment is the process that estimates the volume of traffic that will use certain routes on the existing roadway system. Trip assignments can be developed with the aid of a computer model or by manual calculations. The most common method is to manually calculate the actual volumes of trips on each study area intersection movement using trip generation estimates and a previously established trip distribution diagram.

Prior to using the model trip assignment for planning or project analysis, post processing will be necessary. The recommended methodology is found in the APM. A complete TIS includes traffic flow diagrams illustrating the site traffic volumes on study intersection movements during each time period analyzed.

3.3.15 Traffic Volumes – Year of Opening with the Development

With background traffic volumes estimated and site generated trips assigned to the transportation system, “total” traffic volumes during the anticipated opening year of the development can be calculated by adding the two together. Again, an updated traffic flow diagram must be provided for each time period analyzed showing these new volumes on each study intersection movement. .

3.3.16 Traffic Operations – Year of Opening with the Development

This analysis should incorporate any transportation system improvements anticipated to be completed by the represented year. For purposes of comprehensive plan and zone changes, the categories of planned improvements that can be taken into consideration to mitigate future impacts are set out in the TPR, OAR 660-012-0060. Trip generation equations should be used if available. Improvements anticipated to be constructed as mitigation for the proposed development are not considered in this part of the analysis.

Results should be clearly presented in tables or figures and the performance of each intersection analyzed should be reported using the measuring criteria preferred by the jurisdiction having authority over that intersection (see Figure 3.3.5).

Figure 3.3.5
EXAMPLE: 2003 Total Traffic Study Intersection Capacity Analysis

Intersection	Signalized Intersection*		Unsignalized Intersection			Level of Service
	v/c	Average Delay (sec)	Critical Movement	Movement v/c	Movement Delay (sec)	
Hwy 213 @ Hwy 211	0.49	26.8				C
Hwy 213 @ Barnards Rd			EBLT	0.15	23.1	C
Site Access @ Barnards Rd			SB	0.04	9.2	A
Hwy 213 @ Macksburg Rd			EB	1.16	171.5	F
Hwy 213 @ Union Mills Rd			WB	0.95	105.7	F

*In region 3 the critical movement direction and critical movement v/c are also included for signalized intersections

3.3.17 Traffic Volumes – Future Year without the Development

Local code, statewide planning regulations, or the rules in Division 51 may require analyses of future years beyond the year of opening of the proposed development. The future years to be analyzed are established in the scope of work and may depend upon the level of trip generation, phasing of the development, or whether or not a zone change/plan amendment is proposed. Figure 3.3.1 above shows recommended thresholds for determining years of analysis based on current practice in access management.

Background traffic volumes for future year analysis should be developed using one of the methods described in the previous section, *Traffic Volumes – Year of Opening without the Development*. In the future year forecasts, transportation improvements that appear in a fiscally constrained transportation system plan can be assumed to be in place, as applicable. The estimated background traffic volumes for the future years must be displayed on traffic flow diagrams.

3.3.18 Traffic Operations – Future Year without the Development

This analysis incorporates any transportation system improvements anticipated to be completed by the represented year. For purposes of comprehensive plan and zone changes, the categories of planned improvements that can be taken into consideration to mitigate future impacts are set out in the TPR, OAR 660-012-0060. This does not include improvements anticipated to be constructed as mitigation for the proposed development. Results should be clearly presented in tables or figures and the performance of each intersection analyzed should be reported using the measuring criteria (LOS or v/c) preferred by the jurisdiction having authority over that intersection and/or the decision process (see Figure 3.3.6). It is helpful to have both measurements whenever possible.

Figure 3.3.6
 EXAMPLE: Background Traffic Study Intersection Capacity Analysis

Intersection	Signalized Intersection*		Unsignalized Intersection			Level of Service (LOS)
	v/c	Average Delay (sec)	Critical Movement	Movement v/c	Movement Delay (sec)	
Hwy 213 @ Hwy 211	0.55	27.5				C
Hwy 213 @ Barnards Rd			EBLT	0.11	26.3	D
Site Access @ Barnards Rd						
Hwy 213 @ Macksburg Rd			EB	1.59	368.2	F
Hwy 213 @ Union Mills Rd			WB	1.43	300.2	F

*In region 3 the critical movement direction and critical movement v/c are also included for signalized intersections

3.3.19 Traffic Volumes – Future Year with the Development

Future year traffic volumes from the site should be based on the described methods of trip generation, distribution, and assignment. For most land uses, trip generation will not change substantially from year of opening to the future year, so the proposed project generated volumes obtained for the year of opening may be used for the future year. If area land uses, transit usage, transportation infrastructure, or other factors are expected to change, then the estimates of future traffic generation may need to be adjusted as well.

The future year total traffic hourly and ADT volumes must be shown in traffic flow diagrams.

3.3.20 Traffic Operations – Future Year with the Development

This analysis incorporates any transportation system improvements anticipated to be completed by the represented year. This does not include improvements anticipated to be constructed as mitigation for the proposed development. Again, results should be clearly presented in tables or figures and the performance of each intersection analyzed should be reported using the measuring criteria preferred by the jurisdiction having authority over that intersection (see Figure 3.3.7).

Figure 3.3.7
 EXAMPLE: 2020 Total Traffic Study Intersection Capacity Analysis

Intersection	Signalized Intersection*		Unsignalized Intersection			Level of Service
	v/c	Average Delay (sec)	Critical Movement	Movement v/c	Movement Delay (sec)	
Hwy 213 @ Hwy 211	0.56	27.5				C
Hwy 213 @ Barnards Rd			EBLT	0.28	35.0	E
Site Access @ Barnards Rd			SB	0.04	9.3	A
Hwy 213 @ Macksburg Rd			EB	1.02 1.83	118477.0.5	F
Hwy 213 @ Union Mills Rd			WB	0.85 1.65	401.076.1	F

*In region 3 the critical movement direction and critical movement v/c are also included for signalized intersections

3.3.21 Mitigation Alternatives

The operational and safety characteristics of the transportation system for each time period are compared to the standards and thresholds set in the applicable approval criteria. Failure to comply with any applicable criteria can now be identified.

If the analysis finds the transportation system is inadequate to support the development, the applicant must identify mitigation so the development can meet local approval criteria. Mitigation alternatives can include geometric improvements, alternative approach configurations, installation of traffic control devices, Transportation Demand Management strategies, and other measures.

Any mitigation considered for the proposed project must be included in a revised traffic operational and safety analysis. This analysis must show whether the mitigation is sufficient to meet the local approval criteria for any time period in which it had failed to meet the criteria in the earlier analysis. In addition, the feasibility of implementing any recommended mitigation must be examined and addressed in the TIS. This will typically include considerations such as availability of necessary right-of-way, design standards, Oregon Highway Plan policies, Oregon Administrative Rules and statutes, and consistency with local transportation system plans.

Where access to a state highway is proposed, OAR 734-051-0145 provides a complete description of ODOT’s authority to require mitigation.

3.3.22 Conclusions and Recommendations

A report’s conclusions summarize existing and future conditions, discuss the development’s impacts, identify any operational or safety deficiencies, recommend mitigation if needed, and describe the effectiveness of the mitigation proposed.

The TIS should clearly state whether the proposed development with any necessary mitigation measures would comply with all operational and safety standards in the applicable approval criteria. A “Mitigation Schedule” (See Appendix 12), is a tool for summarizing the recommended and/or agreed upon mitigation measures that was developed by development review and access management staff. It is recommended as a way to convey general information about needed mitigation measures to local decision makers and to ODOT staff who are not trained as traffic analysts.

3.3.23 TIS Appendices

A report that includes, at a minimum, the traffic count data sheets used and the capacity analysis worksheets is a necessary part of a complete TIS and is typically included as an Appendix. Other information that is typically appended includes:

- Trip Generation Calculations;
- Queuing Analysis Worksheets;
- Crash Data;
- Analysis output sheets;
- Traffic Signal Warrant Worksheets;
- Turn Lane Warrant Worksheets;
- ODOT’s staff letter setting out or accepting the scope of work;
- Software input sheets for verification of defaults and input parameters (electronic files of inputs are desirable).

3.3.24 Technical Analysis

This section provides additional information for those responsible for reviewing TIS reports for ODOT, as well as for those responsible for conducting the technical analysis for a TIS report scoped by ODOT. Below are sections on several types of analysis to be considered in a typical TIS, as well as descriptions of methodologies generally acceptable to ODOT. The analysis needs for each development proposal must be determined individually. Furthermore, analysis methodologies and parameters other than those identified below may only be used with approval from the Region Manager or his/her designee.

3.3.25 Capacity Analysis

Volume to capacity (v/c) ratios are used as the measure of mobility on state facilities. A complete traffic impact studies lists the v/c ratios for all intersections during each time period and analysis year and clearly shows the v/c ratios with and without the proposed development.

The v/c ratios from the TIS must be compared to OHP Policy 1F, *Highway Mobility Standards*, and the v/c ratios provided in OHP Tables 6 (general) and 7 (Metro), as

amended. In situations where an interchange and interstate freeway needs to be modified, it is necessary to coordinate with FHWA and the developer to work out any issues relative to OHP versus HDM standards. The v/c ratios from the OHP tables establish the standards of mobility for the various classifications of state highways and the standard ratios should not be exceeded. OHP Policy 1F provides a process by which alternative mobility standards may be adopted, as has occurred in the Metro area and is proposed in other areas. Where an alternative mobility standard has been adopted by a local jurisdiction and by the OTC, that standard supersedes Table 6.

The performance of each ODOT intersection analyzed should be reported using the measuring criteria listed in the two Mobility Standard White Papers in Appendix 8 of these guidelines. If a development proposal's impacts will degrade the performance of a state highway to a degree that the v/c standards would be exceeded, mitigation must be implemented to bring v/c ratios back to or below the standard for the facility.

Local jurisdictions can adopt operational standards for state highways that are more conservative than those from the *1999 Oregon Highway Plan*, and some have. While ODOT does not consider local standards when evaluating system adequacy, the local jurisdiction can use them to require mitigation on state facilities. Of course, as the owner of the facilities, ODOT must approve any proposed mitigation.

In situations where the mobility standards are already exceeded prior to the addition of the proposed development's traffic, where transportation improvements are not planned that would bring performance levels back to the mobility standard, the standard is to avoid further degradation of the facility, pursuant to OHP Action 1F.6. If the development's impacts increase the v/c ratios further, mitigation must be implemented to return the v/c ratios back to the levels they were before the development traffic was added.

For further explanation of ODOT's policies on implementing mobility standards during the review of development and approach permit applications, see the white papers titled, "Highway Performance and the 1999 Mobility Standards," (2001) and "Application of Oregon Highway Plan Mobility Standards" (2004) that are attached in Appendix 8.

Capacity analysis of signalized intersections, unsignalized intersections, rural two-lane highways, arterials, multilane highways, and weaving sections in the study area should follow the established methodology of the APM. Capacity analysis is based on actual measured values, standard default values listed in the HCM, or other department-approved input values. Default values selected for use in the analysis should remain constant through each analysis year and each alternative as applicable. The calculations may be done by hand or with the use of computer software.

Application of computer software should closely follow an ODOT approved analysis methodology. The appropriate use of computer software such as HCS or the current version of Synchro for capacity analysis is discussed in the APM. For additional information on accepted analysis methods, use the resources located at <http://www.oregon.gov/ODOT/TD/TPAU/>.

A complete listing of input and output parameters must be included in the report, typically in a technical appendix and on a CD. A printout from a computerized analysis program should list all parameters necessary for the reviewer to make a determination that the analysis is accurate and complete. Printouts should indicate the number of lanes, lane configurations, saturation flow rate and adjustments, volumes and adjustments, intersection traffic control and timing data as applicable, approach v/c ratios. Copies of the field saturation flow study sheets, lost time measurements, or other capacity analysis inputs should be attached to the report and also conveyed electronically to reviewers.

3.3.26 Peak Hour Factors

The transportation system must be designed to accommodate the 15-minute peaking in the peak hour. In areas near capacity, the 15-minute flow can cause up to several hours of congested flow. The congestion that results from the 15-minute flow must be accounted for in the analysis of the transportation system.

The 1999 OHP v/c ratio Tables 6 and 7 originally intended peak hour factors to be used. The analysis that determined the v/c ratio standards used PHFs as an input. To remain consistent with the OHP, any analysis that uses the OHP v/c ratios need to use a PHF.

Peak 15 minute deficiencies do not necessarily result in the need for additional lanes at significant cost and right of way impacts. Minor mitigation resulting in lesser impacts may be sufficient, such as transportation demand management (TDM) strategies and acceptable operational improvements.

Peak hour factors should be obtained and applied according to the guidelines in the APM.

3.3.27 Signalized Intersections

Signalized intersections are evaluated with the methodology of the current Highway Capacity Manual (HCM), and as determined within the scope agreed to by ODOT staff. Results from an Interchange Capacity Utilization (ICU) analysis can be considered “ballpark” numbers, and can indicate whether further analysis is needed. Analysis of signalized intersections follows an approved method with the standard default input values or with locally measured values. ODOT default values for use with signalized intersection analysis are contained in the APM.

Methods and default values selected for use in the analysis should be consistent through each analysis year and each alternative. Other solutions short of signalization must be analyzed as required for Traffic signal justification analysis.

For future signals, left turns should be assumed to be phased as recommended in the current ODOT Traffic Signal Policy and Guidelines.

Computer software used should closely follow an ODOT-approved analysis methodology. The appropriate use of computer software such as HCS or Synchro for capacity analysis can be further explored using resources available on the web page of ODOT's Transportation Planning Analysis Unit (see link above). Summary output sheets for the capacity analysis must be attached to the traffic study.

These software applications are included here only as examples, not as recommended applications. Any software shown to be consistent with HCM methodology may be used.

3.3.28 Unsignalized Intersections

Two-way and four-way stop-controlled intersections may be evaluated with the methodology of the current HCM or other department-approved methods. The highest v/c of all movements (known as the critical movement) should be reported. As with other default input values of the HCM analysis method, revisions to the acceptable gap times and follow-up times should only be done after conducting a thorough field investigation study. In addition, v/c and LOS should be analyzed for access from a minor roadway to a major roadway.

3.3.29 Roundabouts

Where a roundabout is proposed as mitigation in Development Review there are several important planning issues:

- A roundabout cannot be used to rationalize adding a new approach to a state highway facility, particularly opposite a freeway ramp terminal, where the approach would not otherwise be approved.
- Where a roundabout is considered to mitigate development impacts, the analysis supporting the roundabout should also consider other possible solutions.

The State Transportation Engineer has been delegated the authority to approve the installation of roundabouts. Requests for roundabout approval are made through the Region Traffic Engineer in collaboration with the Technical Services Roadway Manager. Requests must be supported by an Intersection Traffic Control Study as explained in the ODOT Traffic Manual. The investigation addresses the Considerations described below. (See *a/so* Section 6-26 of the Highway Design Manual: http://www.oregon.gov/ODOT/HWY/TRAFFIC-ROADWAY/docs/pdf/Traffic_Manual_08.pdf).

ODOT has developed a list of Considerations to be addressed in roundabout requests:

- Roundabouts should meet acceptable v/c ratios for the appropriate design life. For development review a minimum of 10 years will be used.
- Roundabouts with posted speeds >35 mph are subject to special design considerations.
- Roundabouts not at an intersection of highways with roughly the same functional classification should address how unbalanced volumes will be handled. Note that the standard roundabout will treat all traffic sources equally which will affect operations for higher volume legs.
- Roundabouts with more than four legs require special design considerations.
- Roundabouts must provide for large trucks.
- Consideration must also be given to impacts of the roundabout both upstream and downstream.

The State Traffic Engineer makes the decision to approve a particular intersection for roundabout control (Concept approval). The State Roadway Engineer will make the final decision on the approval of the geometric design.

Analysis of roundabout operations is outlined in the APM.

3.3.30 Capacity Analysis Documentation Requirements

The input data and output results of capacity analysis work are a necessary part of a complete TIS and are typically included in an appendix, with all documentation available electronically. In a summary description of each intersection, document the following:

- lane configurations,
- stop-controlled approaches (for unsignalized intersections),
- cycle length (for signalized intersections),
- assumed ideal saturation flow rates and all adjustment factors,
- traffic volumes,
- peak hour factor,
- lost time, and
- v/c ratios for each approach and the entire intersection.

The HCM allows and encourages field measurements of traffic flow parameters such as ideal saturation flow rate and lost time. ODOT will accept substitution of field measured values only when accompanied by appropriate worksheets showing data collected and calculations made. See the two Mobility Standards White Papers attached in Appendix 8 for more details.

3.3.31 Queue Length Analysis

Intersection operations analysis needs to include the effects of queuing and blocking. Estimates of queue lengths should be based on the anticipated arrival patterns, duration of interruptions, and the ability of the intersection to recover from momentary heavy arrival rates. The average queue length and the 95th percentile queue lengths should be shown in the report. The 95th percentile queue length is used for design purposes. Average vehicle storage length to be used in the analysis is 25 feet unless a local study indicates otherwise

A queue analysis should be conducted in the TIS that contrasts the background queues versus the total traffic queues after development for all movements. In this analysis, the TIS should provide the length of storage lanes and distance from other intersections or rail crossing. The queue analysis should consider three different types of queues:

- **Overflow** - The storage lane for a turn movement exceeds capacity creating an overflowing queue onto the mainline.
- **Spillback** - Queue from a downstream intersection uses up all the capacity in a roadway segment between two signalized intersections where the queue spills back onto the upstream intersection.
- **Storage Blocking** – through traffic queues extend upstream past the opening of a storage lane preventing vehicles from accessing the lane.

If traffic from the proposed development adds to or creates an overflowing storage lane and/or spills back into another intersection or rail crossing, the TIS should explore whether there are potential mitigation measures to fix overflow or spillback problems. The same goes for storage blocking queues.

In cases where a TIS includes a queue analysis for an Interstate or Expressway off-ramp, vehicles should have enough stopping sight distance (determined from the recent AASHTO *A Policy on Geometric Design of Highways and Streets*) to decelerate from the beginning of the off-ramp to stop at the end of the 95th-percentile queue. If the total traffic does not allow reasonable stopping sight distance, the TIS should state what if any mitigation measure(s) would reduce the queue on the off-ramp.

Any methodology used to determine queue lengths must be approved by the Region Manager or his/her designee. Note that queue lengths subject to over-capacity conditions can only be adequately assessed through the use of simulation software. Simulation software should be used to calculate 95th percentile queues when operational conditions are greater than 0.70 v/c and must be used if the v/c exceeds standards. The APM provides further detail on determining appropriate queue lengths.

3.3.32 Intersection Sight Distance

Adequate intersection sight distance should be verified for all study intersections and highway approaches. Intersection sight distance should meet the standards of the most recent AASHTO *A Policy on Geometric Design of Highways and Streets*. See also the Highway Design Manual Chapter 5 by going to http://egov.oregon.gov/ODOT/HWY/ENGSERVICES/hwy_manuals.shtml . Intersection sight distance will vary depending which of the following types of at-grade intersections is under consideration:

- No control, but allowing vehicles to adjust speed;
- Yield control;
- Minor street stop control; and,
- Signal control where all legs of the intersection are either required to stop by a stop sign or the intersection is controlled by a signal.

Another measure of sight distance is stopping sight distance. Intersection sight distance is the standard for location of approaches to the highway; stopping sight distance is a lower standard that may be used in some cases, but not without approval of the RAME.

To determine if a proposed approach or an existing approach meets Division 51, see *Intersection Sight Distance Measurements Standards for On-Site Review of Approaches* found at: <http://www.oregon.gov/ODOT/HWY/ACCESSMGT/docs/IntSgtDist.pdf> Additional Technical information is available in the Access Management Manual Volume 2:

http://www.oregon.gov/ODOT/HWY/ACCESSMGT/accessmanagementmanual.shtml#Volume_2_Technical_Info .

3.3.33 Right/Left Turn Lane Warrants

Proposed right or left turn lanes at unsignalized intersections and private approach roads must meet the installation criteria in the 2001 Highway Design Manual (HDM): http://www.oregon.gov/ODOT/HWY/ENGSERVICES/hwy_manuals.shtml

Locations that meet the HDM criteria for a right or left turn lane should be noted in the traffic study and installation of a turn lane may be recommended as mitigation for project traffic impacts. Meeting the criteria does not mean a turn lane has to be installed. Engineering judgment must be used to determine if an installation would be unsafe or impractical. The ODOT Traffic Manual provides further guidance on the use of right and left turn lanes (see http://www.oregon.gov/ODOT/HWY/TRAFFIC-ROADWAY/docs/pdf/Traffic_Manual_08.pdf). The APM also provides guidance on turn lanes.

At signalized intersections, the need for a right turn lane or left turn lane is based on a consideration of the intersection's v/c ratio, delay for the turn movement, desired

phasing, and through vehicle speeds. Further guidance can be found in the ODOT Traffic Manual.

3.3.34 Interchange Traffic Control Study

Analysis and recommendations related to traffic signals must follow ODOT's Traffic Signal Policy and Guidelines. Modification or installation of a traffic signal must be based on documentation that satisfies the requirements of OAR 734-020 at http://arcweb.sos.state.or.us/rules/OARS_700/OAR_734/734_tofc.html . If the proposed signal installation/modifications are within 500 ft of a rail crossing, contact the Rail Division Crossing Safety Section to determine additional analysis requirements.

If a new signal is being proposed, the traffic impact study shall provide a traffic signal investigation that:

- Clearly indicates the need for a traffic signal;
- Assesses the ability of existing, planned, and proposed public roads to accommodate the traffic away from the state facility;
- Describes in detail how a specific development will affect study area intersections; and,
- Provides documentation of traffic volumes and document whether appropriate signal warrants are met.
- Applies right turn discounting where applicable, consistent with APM methodology.

A traffic signal cannot be installed unless one or more of the eight warrants identified in the current edition of the Manual on Uniform Traffic Control Devices (MUTCD), Chapter 4C, Sections 1 through 9 are met (or as amended), or will be met consistent with the requirements of OAR 734-020-0490. Only MUTCD warrant 1 Case A and B may be used to project a future need for a traffic signal. Note that meeting one or more signal warrants is not a mandate to install a signal.

For future year analysis, ODOT's Transportation Planning Analysis Unit has created preliminary signal warrants, which are discussed in the APM. The preliminary signal warrant form is available on the TPAU web site at: <http://egov.oregon.gov/ODOT/TD/TPAU/>.

When evaluating signal warrants (preliminary or MUTCD), it is important to include only the appropriate lane configurations and traffic volumes. Incorrect modeling of intersections is a very common mistake and can make a significant difference to the outcome of the analysis. Guidance on proper modeling of intersections when analyzing signal warrants has been included in the preliminary signal warrants section of the APM.

Installation, relocation, or modification of a traffic signal is subject to the requirements of OAR 734-020-480 (link in first paragraph of this section) regarding progression analysis. This OAR states that a traffic signal progression analysis

shall be completed for all new or revised traffic signals on state highways that are located within 2640 feet (1/2 mile) of an existing or possible future traffic signal (15 to 20 years in the future).

To implement the requirements of OAR 734-020, analysts may use a coordinated system software program (such as Synchro). Hand calculations and time-space diagrams are also acceptable. Progression bandwidth is determined under the following guidelines:

- Green and yellow time for the through phases may be used in the progression band;
- System cycle length must be adequate to accommodate pedestrian crossing times;
- The progressed band speed can be no more than 5 mph below the existing posted speed in off-peak hours or more than 10 mph below the existing posted speed in the peak hours, unless lower speeds are approved by the State Traffic Engineer. Progression speeds should never be set higher than posted speed.

Complete time-space diagrams are required for each of the analysis scenarios, including the existing coordinates system. The diagrams indicate the offsets, phasing, and split times for each of the signals in the system. If using Synchro, bandwidth is reported for the maximum green times or the 90th percentile arrival rates.

It must be shown that the proposed signal system is capable of maintaining a progression bandwidth as large as that required, or as presently exists, for through traffic on the state highway at the most critical intersection within the roadway segment. The carrying capacity of the progression bandwidth should be estimated with the equation below:

$$\text{Bandwidth Capacity (veh/hr).} = \frac{(\text{Bandwidth(sec)} - 4) \times (\text{Adj. Sat. Flow Rate})}{C}$$

The hourly bandwidth capacity should be calculated for both directions of progression and then compared with the corresponding hourly demand at the most critical intersection.

3.3.35 Transportation Demand Management

Goal 4 of the 1999 Oregon Highway Plan is “To optimize the overall efficiency and utility of the state highway system through the use of alternative modes and travel demand management strategies”. Techniques to reduce a development’s vehicle trip generation should be evaluated and recommended as part of the traffic study where appropriate. These techniques are referred to as “Transportation Demand Management” (TDM). Some TDM techniques to reduce vehicle trips during peak hours are listed below.

- Quality transit service to place of trip origins. Reliance on transit to mitigate a significant effect is only appropriate where transit service is currently available (see Chapter 3.2);
- Accommodations for bicycles such as bike lanes, bike boulevard treatments, bike parking;
- Ride-sharing and vanpool programs;
- Carpool incentives, such as preferred parking;
- Modified work schedules;
- Mixed uses connected by a quality pedestrian environment;
- Internal shuttle transportation in a major development;
- Reduction in parking availability or substantial increase in parking prices;
- Direct pedestrian connections to other nearby pedestrian facilities; and
- Trip-reduction ordinances.

These TDM techniques can be effective, alone or in combination, under a variety of conditions. For example, an increase in parking prices is most effective in reducing peak hour vehicle trips when accompanied by quality carpool, transit, or other alternative modes that provide good service to commuters and travelers.

Enforcement of TDM agreements is an issue where the measure requires long term commitment to maintaining a service or participation by private parties. Conditions of approval requiring TDM measure need to be very clear about expectations and about consequences if commitments are not followed through. For instance, a different mitigation measure might be required as a default where an agreed-upon rideshare program is not in place within a certain period of time. Any reliance on TDM for mitigation should be approved by either the participating ODOT planner or the Region TDM specialist.

In the case of transit, ODOT defers to the local transit authority to determine if the land use proposal has a significant effect per the Transportation Planning Rule, and whether adopted transit service standards are met.

3.3.36 Transportation System Management

Transportation System Management (TSM) measures provide low cost mitigation for operational issues related to land use changes. Transportation system management measures maximize system efficiency by managing traffic through the use of traffic control devices such as ramp meters, median barriers and access management controls, closure or consolidation of accesses to properties along congested corridors and re-routing traffic to other facilities. TSM is also used to protect and improve transit infrastructure and service, through scheduling and routing efficiency, existing TDM infrastructure, service and committed improvements, existing bicycle and pedestrian infrastructure and service, and improvements to minimize conflicts with other modes.

3.3.37 Turning Conflict Analysis

When a proposed development adds ingress and/or egress trips onto or from the highway from an unsignalized, existing or proposed, public/private approach, a turning conflict analysis should be conducted to ensure that there are no turning conflicts with other approaches on the highway. The analysis should also establish v/c and LOS for the intersection. Turning diagrams should be drawn that include the proper intersection geometry, the distances of any queues, and the proper turning radius for the design vehicle.

3.3.38 Access Management

When developed in conjunction with an application for a Highway Approach Permit, the TIS should document the manner in which a proposed site approach meets the minimum spacing criteria of OAR 734-051 or fits into an access management plan already adopted by ODOT. The approach permit application will be subject to the approval criteria of OAR 734-051-0080, et.al. If a deviation to the spacing standards will be requested, the TIS must establish the basis for granting the deviation.

Of particular interest to ODOT are the possible need for median control and any driveway conflicts with nearby intersections. If the driveway is in an Interchange Management Area, special considerations apply as defined in the 1999 OHP and Division 51.

3.3.39 Mitigation Approval

Mitigation approval typically involves all of the members of the Development Review Team (Traffic Analysts, Planners, and Permit Specialists) as well as consultation with additional ODOT staff as necessary. Depending on the type and location of the mitigation proposed, approval may be required from sources such as the Region Traffic Engineer, State Traffic Engineer, Region Access Management Engineer, Roadway Engineering, or Right-of-Way, and other local stakeholders. For example,

in cases where the installation of a traffic control device is proposed, the ODOT Traffic Manual provides a complete discussion of the State Traffic Engineer's authority and requirements for installation. Care should be taken to ensure that all needed approvals have been or can be obtained prior to making recommended mitigation plans into conditions of approval.

In situations where the mitigation proposed would be on a state highway routed over city right-of-way, coordination with the local jurisdiction will be required as well.

The legal considerations to keep in mind when determining how much and what types of mitigation are appropriate are discussed in Chapter 2.

3.3.40 Planning Conclusions and Recommendations

Traffic Impact Study Review Findings: A typical memorandum of findings begins with a brief description of the proposal and all affected state facilities. This is followed by an evaluation of the proposed development's impacts on the transportation system, a detailed description of any inadequate conditions, and an assessment of the ability to comply with the approval criteria. Based on these findings, recommendations should be made regarding necessary mitigation, if any, and whether to recommend that the local jurisdiction approve or deny the proposed action.

If there is a disagreement about any aspect of the TIS, such as an assumption, calculation, assessment of conditions, or recommended mitigation, a thorough explanation of the discrepancy should be provided along with a detailed justification for ODOT's position on the matter.

ODOT staff conclusions resulting from the review of a TIS should be written in a memorandum addressed to the ODOT staff person(s) responsible for corresponding with the local jurisdiction and/or applicant. The memorandum should be written in a clear and professional manner so it can be enclosed with the letter to the local jurisdiction to be submitted as part of the local decision record, if desired.

4. Land Use Appeals

4.1. Purpose of Appeals Chapter

This chapter is designed to assist ODOT management, planners and permit specialists to better understand the ties between local land use and development review, the approach road permit process, and the appeal of local land use decisions. This includes steps on how to work with local governments to resolve issues short of an appeal and communicating with the Department of Land Conservation and Development (DLCD) when a possible appeal is anticipated. The chapter also covers how to prepare the record to ensure the agency has a good chance of a successful appeal.

The chapter covers only the land use appeals process and does not discuss appeals under OAR 734, Division 51 State Highway Approach Permit appeals. For questions about appeals of approach permit decisions, contact the Access Management Program Unit Appeals Coordinator. The rules relating to requests for Region Review of approach permitting decisions are in OAR 734-051-0345 and requests for contested case hearings (appeals) in OAR 734-051-0355. Additional information on these review processes are in Chapter 4 of Volume 1 of the Access Management Manual, available online at:

http://www.oregon.gov/ODOT/HWY/ACCESSMGT/accessmanagementmanual.shtml#Volume_2_Technical_Info.

4.1.1. Reaching a Successful Decision

The goal of transportation planning, both long-range and short-range, is to ensure the traveling public has a safe and efficient transportation system. To achieve that, growth and development along and adjacent to state highways must be consistent with the planned function, capacity, performance standards and access management standards of those highways. This goal needs to be balanced with local governments' goals as identified in their comprehensive plans, zoning codes and development regulations. There is often a built-in conflict between what the local government or developer wants for its community and what ODOT needs for the state highway system.

Balancing the needs of the state highway system with the local land use regulatory framework calls for working closely with local governments and developers. All parties need to openly discuss their positions, paying particular attention to the distinction between what is required versus what is desired. DLCD Regional Representatives should be included in discussions early in the review process when it is anticipated that an appeal may be necessary (<http://egov.oregon.gov/LCD/repstlist.shtml>). Often, a middle ground can be reached that satisfies all. From the ODOT perspective, coordination entails educating local planners and developers on the legal and policy framework within which ODOT

works. In some areas ODOT has flexibility. It is a delicate matter to look at each case individually and still provide an overall consistent message from one local land use application to another.

In some situations it will not be possible to reach a mutually successful conclusion. For example, the desired comprehensive plan designation is incompatible with the highway designation, or the proposed development will add too much traffic and the developer is unwilling or unable to mitigate the impacts of the increased traffic. For those instances where a land use appeal must be pursued, this chapter provides the tools to ensure a successful appeal.

4.1.2. ODOT'S Guidelines on Land Use Appeals

As a state agency that is involved in land use actions in carrying out its mission, ODOT has an obligation to appeal local government land use decisions that adversely affect state transportation facilities. Appeals start at the local level and then, if necessary, go to the Land Use Board of Appeals (LUBA). These guidelines are intended to ensure a consistent approach to land use appeals. They set out the major factors used to make the decision to appeal and outline the basic internal coordination process to verify the appropriateness of an appeal.

ODOT's intent is to avoid or minimize appeals of local land use decisions and strive to solve these issues within the local land use process, short of an appeal. The combination of working with all interested parties and the state's ability to appeal when ODOT issues are not adequately considered has kept appeals to a minimum. The authority to appeal has resulted in many productive discussions that have led to agreements and solutions. The judicious use of appeals is a very important tool for ODOT in protecting transportation interests and investments throughout the state.

4.1.3. ODOT Factors for Deciding to Appeal

Before appealing a local land use decision, region planning staff go through a series of questions. These questions relate to previous steps taken to resolve the conflict, whether the local land use decision is inconsistent with or violates existing plans, rules or statutes, and the risk of precedence. Specific questions are as follows:

1. Are the proposed actions of the case inconsistent with the Transportation Planning Rule, adopted state transportation plans or local transportation system plans?
2. Will a ruling in the case provide needed interpretation of ambiguous statute or rule?
3. Has staff worked diligently with property owners, developers and local governments to reach acceptable solutions that minimize the conflicts with state transportation plans and adopted standards?

4. Is there another way to resolve the conflict, such as dispute resolution or technical assistance? Are the applicants willing to delay the land use decision?
5. Is the issue contrary to the responsibilities and authority of ODOT or the OTC? In particular, would the decision result in development that would negatively affect the safety or operation of the state transportation system?

4.1.4. Participating in the Local Land Use Process

Conveying ODOT's position early in the process gives the applicant and interested parties time to work out solutions. As solutions are sought, the ODOT development review planner should also be establishing the framework for a successful appeal. Before an appeal is ever considered, it is the development review specialist who has established the relationships, built the record, established standing to appeal by appearing before the local government either in person or in writing, and basically set the stage for the final outcome of an appeal. Much of the work for a successful appeal is completed before the appeal is even contemplated, which is why it is important to establish a set of best practices, including developing and keeping a record, writing good findings and keeping track of the various other permit issues that may be related to the land use appeal.

There are several important aspects of "keeping on top" of a potential appeal.

- Recognizing when a local land use decision is potentially contrary to ODOT's interests.
- Establishing "standing" in a local land use case in order to preserve the right to appeal.
- Establishing communication on the issues with DLCD, starting with the Regional Representative for the area early in the review process.
- Knowing related procedures that could impact the outcome of a land use decision, including approach permitting and other access management issues under Division 51.
- Knowing the hearing date scheduled for the planning commission and/or city council or county commission.
- Compiling accurate data, maps, traffic impact studies, correspondence, findings and other information for the local government record as such data becomes available.
- Knowing the local jurisdiction's procedural requirements for appearing at hearings and getting information into the local government record.

- Contacting the Development Review planner at the Salem office as soon as the need to appeal appears likely, to prepare for a possible request of the OTC for authorization to proceed with the appeal
- Recognizing a “final decision” to know when appeal proceedings must take place to be timely.
- Contacting your attorney general (AG) representative to help determine whether an appeal is appropriate in some cases, and to preserve ODOT’s right to appeal by acting in a timely manner.

Once the notice of intent to appeal is filed, the Department of Justice will step in to prepare the legal documents for the appeal, assist in any mediation or negotiation processes, and appear before LUBA or in court. However, it is the responsibility of the development review specialist to prepare the documentation for the appeal.

4.1.5. Strategies: Avoid Appeals and Prepare For Successful Ones

Managing the state’s transportation system is becoming more expensive and more difficult to fund with continued growth and development pressures adding to a system that, in many cases, is already beyond capacity. Add to this the recognition that the legal and regulatory arena in which ODOT operates is becoming increasingly complex. This section outlines some of the lessons learned to avoid adversarial actions where possible, and to prepare for and survive legal challenge.

1. **Understand the action.** Recognize that there may be separate issues being considered together, such as a permit application and a zone change application. Be able to separate these distinct concurrent processes. For example, access management negotiations and local land use actions may be taking place at the same time, with the same people. The hearing may only be about the land use actions, not the access management issues. Or a zone change and a site development plan may be reviewed together, with different review criteria for each. It is important to be able to separate the issues in order to know which information is important to which issue. Make sure the information pertinent to the specific action under review is made part of the record.
2. **Know the timelines.** Do not miss filing deadlines.
3. **The record.**
 - Know the contents of the record. It is important to be familiar with the entire contents of the local government record, including maps, previous plan amendments, local government decisions, ODOT actions and any other relevant material. Knowledge of the contents of the record is

particularly important when the opponent tries to enter information that is new or different from the record. If ODOT is unaware of the contents of the record, the agency may miss the opportunity to respond to, or base an appeal upon evidence that the local government has relied upon that is incorrect, misleading or irrelevant.

- Build the record. Do not assume that the local government will build the record in a way that will address ODOT issues. The local government's interest may not necessarily be the same as ODOT's. ODOT staff should go to the city or county to review the record, and submit additional material as needed with the specific, written request that it be added to the record.
 - Make sure the TIS is in the record when one is prepared. Ask the consultant to provide two copies, one for the office and one for the decision record.
 - Be familiar with the entire record. In some instances, there may be several phases to a project, including a series of applications and possible LUBA or other legal decisions. It is sometimes important to ask that records and documentation from earlier phases are included in the current decision record. These earlier phases may contain records and information that will provide important background, or conditions of earlier approvals critical to the present issue.
4. **Local Approval Criteria.** When challenging a land use or other development proposal, written or oral responses must state how the proposal fails to meet the local approval criteria. ODOT must specifically identify the provisions it believes that the proposal does not satisfy, explain how the Department reached that conclusion, and submit any additional technical data and analysis needed to support its position.
 5. **Develop a narrative or outline of ODOT's interests.** Take the time to establish, in clear language, ODOT's interests in the matter. Do not assume that the hearings officer, judge, opposing parties or anyone else involved in the case understands ODOT's position. For example, if there are an ongoing approach permit issue and a local land use issue, describe each, clarify which issue is before the decision body, describe the data or information pertinent to the hearing and, most important, describe the results that ODOT wants and why. Describe the state's interests in mobility, safety or whatever the issue may be. Do not describe the detail without explaining where the detail fits into the overall picture.
 6. **Use good visual aids.** Make sure to have good visual aids as appropriate, including accurate maps, as part of the record and for presentations to the hearings body. If you produce a large format visual aid, for example a large map, be sure it can be folded into a file folder or take a legible, smaller format

copy for the record. Note that appeals to LUBA require that the entire record be reproduced. Items that cannot be reproduced on a copy machine are just cited to in the record, and so may not be available to the LUBA referees for use in their deliberations.

7. **Cite Section 0060 of the TPR** whenever a land use change significantly affects the state highway. Include discussion of how the significant effect was determined.
8. **Become familiar with the local jurisdiction's procedural codes and ordinances.** There may be procedural or substantive requirements in the code, in addition to the decision criteria specific to the case at hand, that could be the leverage needed to get to a decision consistent with ODOT policy and could also be the basis for a successful appeal. Know the levels of review available locally so you know when administrative remedies have been exhausted, and when the local government has arrived at a final decision.

The Oregon Administrative Rule on when a decision becomes final was amended in 2001 to reflect the role of local rules or ordinances. The rule now states: "A decision becomes final when it is reduced to writing and bears the necessary signatures of the decision maker(s), unless a local rule or ordinance specifies that the decision becomes final at a later date, in which case the decision is considered final as provided in the local rule or ordinance." A decision cannot be appealed to LUBA until the highest applicable reviewing authority of the local government has issued a final decision.

9. **Coordinate internally throughout the process.** Develop a method or process for internal ODOT coordination. For example, if ROW is also involved in an aspect of the process, make sure that there is some form of frequent communication so that you know when and if another ODOT section is taking action that could impact the outcome of the appeal.
10. **Develop tools to protect ODOT's interests during phased development.** If development will occur over several phases, negotiate clear conditions of approval and/or written agreements with the local government to ensure that certain conditions of approval will be satisfied or applicable public improvements constructed before permits for subsequent phases can be issued.
11. **Balance ODOT and developer expectations.** Look at the big picture. For example, is there a Division 51 interchange area management plan under way that needs to be complete before the permit is granted? Is there a way in which the developer can proceed prior to ODOT's completion of the management plan? ODOT needs to be flexible and be able to rely on the

OHP and HDM while working with developers in interchange management areas where plans are not yet in place.

12. **Document, document, document.** Keep notes of conversations, meetings, decisions and phone calls. Document dates and times, what is said and by whom. Of particular value are documentation of discussions regarding any disagreement or negotiated agreement, and offers from all parties of actions they are willing to take to remediate problems.
13. **Continue to try to resolve the issue with the applicant.** Learn, understand and use all available means for alternative dispute resolution. Remember that resolving a dispute short of appeal and judicial resolution does not mean “giving in” on important issues. ODOT may have some room to maneuver or the developer may agree to modify the site plan or land use.
14. **Learn how to use citations.** It is important to correctly cite various statutes, rules, codes and other documentation. For example:
 - Transportation Planning Rule (TPR) section regarding proposals that will “significantly effect” the state facility: cite OAR 660-012-0060;
 - Access management rule: OAR 734-051-section (subsection); or
 - Zoning codes: City of ____, Land Development Ordinance, (year) (chapter) (section) (subsection).
15. **Knowledge is power.** Become familiar with and know the facts and history of the action. Sometimes a case can turn on what one might perceive to be a tiny technical detail. Being familiar with the case and the record will allow representatives of the agency to know when the opposing party’s argument is specious, or just incorrect. If you know the details of the case, you will be able to keep the record straight with more confidence and credibility.
16. **Use peer review early and often** to ensure the broadest possible understanding of ODOT’s issues and the best quality testimony.

4.1.6. Land Use Appeals Process

For purposes of this chapter, land use appeals generally occur when a local government makes a final decision that is contrary to ODOT’s interests after the department has made an effort to negotiate a better solution. Review the decision against the following questions or benchmarks:

- Is it inconsistent with the Transportation Planning Rule, adopted state transportation plans or local transportation system plans?

- Is it contrary to the responsibilities and authority of ODOT or the Oregon Transportation Commission?
- Would it result in development that would negatively affect the safety or operation of the state transportation system?

There are always at least three parties involved in a land use appeal beyond the local appeal process: the petitioner, the respondent and the Land Use Board of Appeals. The petitioner is the complaining party who files the action with LUBA. The respondent is the party being sued, who responds to the complaint. ODOT is generally the petitioner in land use appeals, appealing an action of a local government.

The above summary only pertains to land use appeals to LUBA. ODOT can be involved in legal action outside of LUBA and those actions are handled differently. Examples of other legal actions would be approach road applications and the Division 51 appeals process or property management cases and Right of Way.

4.1.7. Outline of LUBA Appeals Process

LUBA hears and rules on appeals of land use decisions made by local governments and special districts. LUBA is the first forum that can hear appeals of local land use decisions. Subsequent appeals would go to the Oregon Court of Appeals and the Oregon Supreme Court, if that latter body chooses to hear the case. Good basic information on the LUBA appeals process is available online at: <http://www.oregon.gov/LUBA/FAQ.shtml>. Additional details can be found on the LUBA Home Page which can be reached from the above site.

1. An appeal of a land use decision to LUBA requires authorization by the OTC. After discussion with the Region, the TDD Manager advises the Director of the intention to appeal and asks that the question be added to the next regular OTC agenda. If the deadline to file falls before the OTC meeting, the filing of a Notice of Intent to Appeal is done with the Director's tentative approval. When the commission considers the question they may affirm the decision to file or have the LUBA filing withdrawn.
2. A LUBA appeal is initiated by filing a timely Notice of Intent to Appeal at the LUBA offices in Salem.
 - The notice must be received at LUBA, within 21 days after the challenged local land use decision becomes final.
 - The date of filing of the notice is either when it is received in the LUBA office, or the date it is mailed either registered or certified mail, which must be documented with the Post Office date- stamped receipt for the mailing.

- The notice is submitted with a specified filing fee, part of which is a deposit for appeal process costs. The deposit for costs typically goes to the prevailing party once the LUBA decision is issued.
 - The notice of intent must be copied to the local government and to all parties to the local decision, using the list of participants in the local decision which is maintained by the local agency.
3. If the decision appealed is for physical development of a project, a Motion for Stay of the land use decision must also be filed to stop development while the appeal is pending.
 4. To become a party to a case after it is started, within 21 days after the Notice of Intent to Appeal, an entity that meets the requirements for legal standing in the case may file a Motion to Intervene, specifying whether the intervention is on the side of the Petitioner or Respondent.
 5. The local government, special district or state agency whose decision has been appealed (Respondent) must submit a formal Record of Decision to LUBA within 21 days after the notice of intent to appeal is served on the local government, special district or state agency. The Respondent also supplies a copy of the record to the Petitioner.
 6. The Petition for Review must be filed by the appealing party (Petitioner) within 21 days after the date the record is received by LUBA. The Petition for Review:
 - Identifies the basis for the Petitioner's standing, e.g. participation in the local decision process with written or oral testimony.
 - Relies on the existing record to support its claims;
 - Identifies the basis for the appeal including decision criteria and why the record does not meet the burden of proof to demonstrate compliance with the criteria;
 - Demonstrates that the decision at hand is a land use decision or limited land use decision to establish LUBA's jurisdiction over the matter; and
 - Raises all matters of law that can be considered in the LUBA review. If an issue is not raised, it will not be available as a basis for a decision.
 7. The Respondent must file Respondent's Briefs responding to the Petitioner's claims within 42 days after LUBA receives the record.

8. Oral Arguments are scheduled once the respondent's briefs are received. Only the petitioner, respondent and any interveners, or their legal counsel, may testify.
9. LUBA must issue a Final Opinion and Order within 77 days after the record is transmitted to it.
10. Other procedures may prolong the decision process, including various motions, an opportunity for mediation, and negotiated delays for other reasons. See the LUBA information site link, above.

4.1.8. ODOT's Role in Land Use Appeals

As stated earlier, ODOT generally participates in a land use appeal as the petitioner. ODOT may also participate in a LUBA appeal as an intervenor (intervene in the case as a party), with permission of LUBA. There are a number of procedural rules to follow should ODOT wish to intervene in a case and ODOT staff is advised to consult the Department of Justice immediately should an appeal be filed with LUBA in which ODOT has an interest in participating.

4.1.9. Standing to Appeal

To bring an appeal to LUBA, ODOT must establish "standing" to appeal the local decision. ODOT has standing to appeal a local land use decision if it "appeared before the local government, special district or state agency orally or in writing" (ORS 197.830(2)). Standing to appeal may be achieved either through oral testimony (speaking at the hearing – it is not enough to merely show up) or in written form, through a memorandum, letter, petition or other document. The written document must be submitted to the local government during the course of the proceedings before the record is closed. The record is typically closed during the hearing before the hearings body deliberates on its decision.

4.1.10. Exhaustion of Administrative Remedies

Before an appeal can be filed with LUBA, the petitioner must "exhaust all administrative remedies". This means that ODOT has followed all local government administrative requirements and has appealed the decision to the highest decision-maker at the local level. It is important to know the local government's decision-making structure and follow it to the letter.

4.1.11. "The Record" – What is the record and why is it important?

The "record" is the formal file of the jurisdiction exercising its decision making authority. It should include, at a minimum, all of the information that was submitted and relied upon to make the decision, documentation of all public notice(s) of the

subject decision process, and written findings and decision details, documented and signed where required by state or local law. When the local decision is appealed to LUBA pursuant to OAR 197-835(2) (a)-(b), this local record is the written information upon which the LUBA decision will be based. The development review planner should review the record while it is still open for submittals and be sure that it includes the correct and complete information from ODOT's perspective. By definition, the record includes:

“All written testimony and all exhibits, maps, documents or other written materials specifically incorporated into the record or placed before, and not rejected by, the final decision maker, during the course of the proceedings before the final decision maker” (OAR 661-010-0025(1)(d)).

Keeping good records and making sure those records (e.g., maps, letters, correspondence, comments, traffic impact studies) get into the formal local government record should start at the very beginning of ODOT's review process. The following section provides some best practices to use to obtain, retain and transmit appropriate information to the local government so that if an appeal does arise, ODOT is prepared.

4.1.12. Building a Good Record

There are two aspects to the recordkeeping that ODOT needs to do in responding to local land use decisions. One is supporting the decision(s) ODOT makes regarding its decision to get involved, its position on the case, and any decision to appeal. The other is making sure that the local government gets sufficient evidence in its record to clearly support ODOT's position and help local decision makers arrive at an informed and favorable decision.

All correspondence, maps, traffic impact studies, meeting notes and records of conversations are part of ODOT's decision-making history. As such, this information should be kept in some logical order so that it can later be made part of the formal local government record.

An example of an easy logical system is typical of local government practice. Local planning files are often maintained in reverse chronological order, reading from the present to the past. This is relatively easy using either a notebook or a file folder with a two-hole brad spindle. Just file from the back forward so that the latest items are the easiest to locate, and the relationship between items can be understood based upon what information was available at the time an action occurred and the item was filed.

Information submitted to the local government to include in their record should be organized like a planning report with a summary or cover memo on top, detailed narrative if the issues are complex, and technical materials, maps, charts, etc.

attached below. A stand alone report such as a TIS would typically be submitted as a separate exhibit.

Letters and Documents for the Record. ODOT staff submittals may take the form of letters, memoranda, and/or staff reports, and will include recommendations and findings. Be sure to include a request that the written information be made part of the local record. This written documentation must be submitted prior to the close of the record. The submittals need to reference how the materials relate to the logical approval criteria for the local land use application at hand. Written testimony can be received at more than one point in the process, but it is important to meet deadlines and provide information at the point in time it will be most useful:

- The notice of a pending land use decision will include a deadline by which information must be submitted for it to be considered in conjunction with the development of the staff report (or ministerial decision). This is the best time to submit information so the staff planner will be able to consider ODOT issues from the beginning of the review process, and will be able to ask questions of ODOT staff before presenting the application to the planning commission or other reviewer.
- If there is a public hearing, written and oral testimony are both accepted while the hearing is open.
- If any participant in the local hearing requests that the decision record be kept open, a deadline for submitting new information will be set. Do not rely on this process; this should only be used if new issues are raised in the course to the hearing that require additional technical work or other evidence to support ODOT's position.
- An appeal at the local level may or may not be a de novo hearing which would allow the submittal of new information. Often appeals to either a Hearings Officer or the City Council/County Board are hearings on the record, which means that only the record compiled for the earlier decision may be relied upon for the appeal decision. It is important to know whether the local appeal hearing is conducted on the record or de novo ahead of time to anticipate when the opportunity to submit new information will end.

Public Hearing Testimony. ODOT staff may also testify in person at hearings and bring additional written material related to the applicable decision criteria to the hearing and request that it be entered into the record. Public hearing minutes must be made available to the public within time limits set out in the General Code of the governing unit. Request a copy of the minutes for the ODOT record file. Note that the proceedings may also have been recorded and the tapes are available for public review, often before the written minutes have been released.

Electronic Record Keeping. ODOT must keep records of agency correspondence, both internal and external, notices from local jurisdictions, and the local staff reports, findings and decisions. These are a valuable source of information when preparing an appeal. The paper files for local land uses can be organized by either the Region's Planning Unit or by the District Office. Another method ODOT has developed in Region 1 to track local land uses is an electronic Development Review Log. This software has a feature to track the status of all files and keep records of correspondence, comments and meetings. The electronic log also has several features to track land uses by highway and mile point.

Keeping a journal. Keeping a written record of conversations, internal communications and meeting outcomes can be a valuable tool. The written record of conversations does not have to be word for word, but should note important features such as the subject matter, date and persons talked to. Remember to note disagreements, negotiated agreements and any mitigations offered by any part to discussions of the application. Care should always be taken to keep journals professional in nature, so that if the material is submitted as part of the local government record, it will not contain entries embarrassing to the writer or to ODOT.

4.1.13. Important Tips for Building a Record

The following is a list of tips for building a record.

- Establish good record-keeping practices in all cases.
- If the data or information is important to ODOT, get it in the record. If it is not in the record, the local appeals body and LUBA will not use it in its decision-making.
- The local government is the “keeper of the record”. It is up to you to see that the information gets placed into their record.
- As a failsafe, request, either orally at a hearing or as part of any written correspondence, that the information be made part of the record. If information is submitted to the planning commission and then appealed to the city council, make sure that the planning commission record, including your information, is placed before the city council.
- Make sure the TIS and any updates are placed in the record. It is often a good idea to request two copies in order to make sure one is available for the record.

4.1.14. Internal ODOT Coordination Process (PBLT, TDD, OTC)

1. The department must participate in the local land use action to identify ODOT's interests and concerns and establish standing in the case to protect its right to appeal to LUBA.
2. ODOT staff prepares a brief analysis of the case with reasons to consider whether to proceed to an appeal. The region staff contacts the Department of Justice as soon as possible in cases that might be appealed to LUBA. No appeal is filed unless the Department of Justice concurs there is a legal basis for such action. The case file shall include a copy of the notice of land use action with the envelope attached to monument the postmark date which is the basis for the 21-day filing period.
3. The staff report will include a process timeline that considers the critical steps to get OTC approval if the commission meets during the appeal process or the timing for gaining OTC review after the appeals period according to the procedures described in ORS 184.633(6).
4. The consideration of an appeal of a land use action is coordinated with the Department of Land Conservation and Development in the manner specified in the most recent draft of the intergovernmental agreement between ODOT and DLCD.
5. ODOT can appeal to LUBA either as a proponent of a local land use action (usually in conjunction with project development) or as a reviewer of a local action (development review function). The Region Manager, in consultation with the Transportation Development Division Manager, and considering the staff analysis and the Attorney General's advice, makes a recommendation to appeal to the Director.
6. The Region Planning Manager will also review the case with the Planning Business Line Team as an informational item to both inform the members and seek their advice on land use policy implications. PBLT review is not a prerequisite to filing an appeal and may occur after the appeal is filed. The goal of the PBLT review is to achieve long-term consistency across the state.
7. Where there is disagreement between the Region Manager and TDD Manager on whether to appeal, the differing perspectives should be documented and presented to the director.
8. The Director must approve the filling of the appeal and get formal approval to proceed from the OTC following the procedures specified in ORS 184.633(6).

9. If an appeal is to be filed and consequently a review is scheduled for the OTC, the region staff notifies the local government and applicant, if any, of their opportunity to address the Commission regarding the appeal.

4.1.15. Detailed Steps and Considerations for Filing an Appeal

1. The Director's authorities and the process of engaging OTC in the decision to appeal are set out in ORS 184.633(6), on line at: <http://www.leg.state.or.us/ors/184.html> . The "Notice of Intent to Appeal" does not have to be approved by the OTC before it is filed. The OTC can confirm the Director's decision to file the notice of intent after the notice has been filed with LUBA. However, the OTC members will be informed about any appeal before the notice is filed. See Item 10 below.
2. Inform and involve the Department of Justice, in time to participate in the final land use hearing at the latest. DOJ will want the details of the case and will want to know what the circumstances are that form the basis for appeal, and will help ODOT in the final local government hearing as needed.
3. DOJ has the responsibility to file the "Notice of Intent to Appeal" for ODOT. This is a boilerplate document that can be prepared very quickly.
4. Understand the work schedule of the DOJ attorney assigned to the case. Currently, there are three attorneys dealing with land use issues for ODOT. All work part time, three days per week.
5. The local land use decision's impacts should be known before the local government has its final land use hearing. Discuss the proposed land use action and these impacts with the Region Manager, TDD Manager or designee, and the DOJ attorney before the final land use hearing.
6. Call the Director's office to schedule a briefing with the Director for one or two days after the local decision is to be announced. It is recommended that this be done through TDD and in any case the TDD Manager needs to be included in the briefing. The Director's calendar is tightly scheduled – expect more than a week before you get a meeting time.
7. If you set up the briefing and the local government does not approve the land use action, or adopts acceptable conditions of approval, the meeting can be cancelled and no one will mind. Waiting to schedule the briefing until the local decision is made, or until the written decision is in hand will make it very difficult to find sufficient time and support necessary to accomplish the other steps.
8. Work with the Development Review staff person at TDD to prepare the memorandum from the Director authorizing DOJ to file the notice of intent to

appeal. Either the Region office or the TDD staff person will send an electronic version to the TDD Manager and the Director's office. Do this as early as possible to allow time for follow-up. The DOJ attorney must file the notice of intent for you, but will only do so when they are at work. Remember that they all work part time.

9. In the scheduled meeting with the Director, expect to describe and discuss the following:
 - What the development proposal is;
 - What the unacceptable impacts are;
 - What steps have been taken to remediate the situation;
 - How this matter got to this point;
 - What was done to try and settle the issue outside of the LUBA process;
 - If there is any room to negotiate after the notice of intent is filed; and
 - What the political ramifications are/will be (is the local government calling state representatives or members of congress to assist, etc.).
10. The Region will need to provide individual briefings to OTC members before the Director authorizes the "Notice of Intent to Appeal". This will have to be accomplished in a non-quorum manner (no more than two OTC members per briefing). This could require more than a week to accomplish. Sending briefing information by FAX to each commissioner prior to the briefing will expedite the process.
11. The Notice of Intent to Appeal must be filed within 21 days. If all the worst things happen, the notice of intent may not be filed until the 21st day. This leaves no margin for error. The local government or applicant may file a notice to dismiss and demonstrate that the appeal period expired before the notice of intent was filed.
12. Attend to the report to the OTC as soon as possible. Commission Services has submission deadlines for agenda items, be aware of them. Expect to provide an ODOT-generated location map with the report. For a variety of reasons, the local government's public notice map may be inadequate (poor graphics, area depicted is too small and lacks recognizable geography, etc.).
13. The Region will mail a copy of the report to OTC and to the local government and the applicant as soon as it is completed. The law requires that the applicant and local government be afforded an opportunity to address the

OTC before the commission deliberates on the authorization to proceed with the appeal.

5. Negotiated Mitigation Agreements

5.1. Purpose

This Chapter identifies basic protocols for staff to use during the negotiation of fair, legally defensible and enforceable mitigation agreements with local governments and/or private developers during the development review process. The purpose of this chapter is to support staff understanding of the opportunities and limitations that apply when negotiating such agreements, and to understand the legal framework within which the Agency may negotiate agreements for mitigation by developers and in cooperation with local governments.

5.1.1. Problem Statement

Development projects and land divisions approved by local governments often have adverse impacts or significant effects on state transportation facilities, even when the proposal is technically consistent with existing local plans and ordinances. In addition, comprehensive plan and zoning map amendments may be considered for which future transportation impacts may exceed the capacity of the future planned transportation system.

ODOT's ability to ensure that state transportation facilities either meet the agency's performance standards, or operate at the same performance level post-development as pre-development, is compromised by both the immediate and the cumulative traffic impacts of approved land use development, land subdivisions and partitions, and changes to land use designations. The goal of this Chapter is to provide guidance on consistent practices statewide to negotiate fair, fundable solutions with local governments and private developers to better ensure that investments in state transportation facilities are protected.

Developer contributions to mitigation measures may be made in several ways. The two broadest categories are: 1) a proportional share contribution to an ODOT STIP improvement project, and 2) developer construction of or payment for an improvement that compensates for the impacts of the private development on the highway facility.

Not every development impact on state transportation facilities will be amenable to a negotiated mitigation agreement. Where the impacts on the system can be mitigated by operational measures that can be accomplished incrementally, it is relatively easy to identify fixes that are clearly related to the impacts of the development project and that can be constructed in a timely manner. And where ODOT already has a project planned and funded that deals with related issues, determining a proportional share cash contribution will be relatively simple. But for all of the different situations that will arise between these two ends of the spectrum, arriving at a reasonable solution will be more complicated. In any case, there needs to be assurance that mitigation measures will be constructed in a timely manner.

Where that assurance cannot be established, a negotiated mitigation agreement will not get the desired results.

5.2. Policy Issues That May Apply

5.2.1. 1999 Oregon Highway Plan (OHP)

Goal 1: System Definition: The 1999 Oregon Highway Plan (OHP) provides emphatic support for coordination between ODOT and local government to ensure that state facilities will function consistent with their classification. Several OHP Policies assert that local governments have a responsibility to do land use planning in a manner that protects the public investment in the statewide transportation system.

Policy 1B – Land Use and Transportation

This policy recognizes the role of both State and local governments related to the state highway system:

- State and local government must work together to provide safe and efficient roads for livability and economic viability for all citizens.
- State and local government must share responsibility for the road system.
- State and local government must work collaboratively in planning and decision-making relating to transportation system management.

Action 1B.6

Help protect the state highway function by working with local jurisdictions in developing land use and subdivision ordinances, specifically:

- A process for coordinated review of future land use decisions affecting transportation facilities, corridors or sites;
- A process to apply conditions to development proposals in order to minimize impacts and protect transportation facilities, corridors or sites;
- Regulations assuring that amendments to land use designations, densities and design standards are consistent with the functions, capacities and highway mobility standards of facilities identified in transportation system plans including the Oregon Highway Plan and adopted highway corridor plans;
- Refinement of zoning and permitted and conditional uses to reflect the effects of various uses on traffic generation;
- Standards to protect future operation of state highways and other roads; and
- Access control measures, for example, driveway and public road spacing, median control and signal spacing standards which are consistent with the functional classification of roads and consistent with limiting development on rural lands to rural uses and densities.

Policy 1F (Highway Mobility Standards) describes the applicability of the mobility standards to protect performance. For the purposes of planning, the mobility standards establish the performance expectations for planning and plan implementation; guide the review of amendments to comprehensive plans and land use regulations; and help maintain consistency between desired highway performance and land use development.

Policy 1G (Major Improvements) states that “it is the policy of the State of Oregon to maintain highway performance and improve safety by improving system efficiency and management before adding capacity. ODOT will work in partnership with regional and local governments to address highway performance and safety needs. The highest priority is to preserve the functionality of the existing highway system.

Goal 2: System Management: Emphasizes the importance of interjurisdictional cooperation to provide a seamless transportation system that meets local, regional, statewide and interstate travel needs.

Policy 2A: Partnerships

It is the policy of the State of Oregon to establish cooperative partnerships to make more efficient and effective use of limited resources to develop, operate, and maintain the highway and road system. These partnerships are relationships among ODOT and state and federal agencies, regional governments, cities, counties, tribal governments, and the private sector.

Action 2A.4 Encourages consultation with local and regional governments in development of major modernization projects. Local governments are expected to contribute to projects consistent with their means, and may contribute cash; in-kind services and materials; and land use decisions and off-system improvements that help maintain the function and efficiency of the entire transportation system.

Action 2A.5 Encourages “partnerships with the private sector where doing so will provide cost efficiencies to the state and advance state goals.”

Action 2.A.7 Supports negotiation “with the private sector to leverage funds, right-of-way contributions, or off-system improvements when major highway improvements benefit specific properties planned for development. . .” Negotiations are appropriate in the course of long range planning, plan and zone amendments, and “where development has occurred or will occur that necessitate(s) major highway improvements.”

Goal 3: Access Management: Recognizes access management measures as effective means to balance local and through traffic needs, a central tenet of any partnership between the ODOT and local government. Access management strategies are major components of the toolbox available to mitigate the impacts of development projects on transportation facilities, both state and local. Access management helps ensure safe and efficient highways consistent with their determined function and enhances local circulation and livability.

Goal 4: Travel Alternatives: Planning for alternative modes of travel is another way local jurisdictions can help preserve the statewide transportation system over time. To support the goal of a seamless transportation system, it is important to require developers to connect with alternate modes, provide clear connections between transit and land uses and appropriately apply principles of transportation demand management where feasible.

In conclusion, any local or regional Transportation System Plan is required by the Transportation Planning Rule to be consistent with the OHP, and should include both plan and ordinance provisions that recognize the responsibility of local government to protect state investment in transportation infrastructure. It is implicit in any acknowledged plan that protection of state facilities is a shared responsibility with local and regional governments. The OHP recognizes that property owners and developers who benefit from the public investment in state transportation facilities also have responsibility for the long term viability of an integrated transportation system.

5.2.2. Access Management Rule (OAR 734-51) or (Division 51)

The access management rule applies in development review when a proposed development requires a new approach to the state highway and/or when the use of an existing approach will be changed in a way that increases traffic volume or operation in a manner described in 734-051-0045 sections (2) and (3). A land use may change without creating a “change of use” of an approach. However, any time an existing land use will be added to or intensified; it is an important time to consult with a District Permit Specialist or Region Access Management Engineer. They will be able to establish whether a change of use of the approach will occur if the proposal is approved. If it is determined that there will be a change of use of the approach, a new approach permit will be required and mitigation of adverse impacts will be part of that permit. If the impacts are major, a negotiated agreement may result from the permit process.

OAR 734-051-0145: Mitigation Measures may be required on the state highway or the subject property to comply or improve compliance with the division 51 rules for continued operation of an existing approach or construction of a new approach. The cost of mitigation measures is the responsibility of the applicant, permittee, or property owner. That is, where an approach permit is required, developers are responsible for the cost of the impacts of the particular approach on state facilities, as well as mitigation measures, which must be directly proportional to those impacts. This section of Division 51 includes a list of the types of measures appropriate for mitigation of traffic impacts that may be also appropriate for negotiated agreements. Other measures related to access management and operations may also be raised in negotiations, such as restrictions on the use of an approach (e.g. a trip cap based on a reasonable projection of trips for the current proposal, limiting future increases); or donation of right of way and/or access control to the state.

OAR 734-051-0155 provides for the development of Access Management Plans and Interchange Area Management Plans and lists the types of standards expected to be included in such plans. For development proposals that impact a facility for which a plan is in effect, there are agreed upon standards for the long term management of that facility and surrounding land uses for which the local government has taken responsibility as a party to the adopted facility plan.

Transportation Planning Rule (TPR) (OAR-660-012)

The purpose of the TPR, in large part, is to direct transportation planning in coordination with land use planning to protect existing and planned transportation facilities for their identified functions; provide for transportation facilities, improvements and services necessary to support acknowledged comprehensive plans; ensure coordination among affected local governments and transportation service providers; achieve consistency among state, regional and local transportation plans; and ensure that changes to comprehensive plans are supported by adequate planned transportation facilities.

660-012-0045 (Implementation of the Transportation System Plan) requires that local governments adopt land use regulations to protect transportation facilities for their identified functions. Such regulations shall include:

- Access control measures;
- Standards to protect future operation of roads and other transportation facilities and services;
- Process for coordinated review of future land use decisions affecting transportation facilities
- Process to apply conditions to development proposals to minimize impacts and protect transportation facilities; and
- Regulations assuring that amendments to land use designations, densities, and design standards are consistent with the functions, capacities and performance standards of facilities identified in the TSP.

Acknowledged Transportation System Plans, by virtue of being found consistent with the TPR, either implicitly or explicitly establish that the protection of state facilities is a shared responsibility with local and regional governments.

5.2.3. Local Collection of Funds for Transportation Facilities:

Local governments interested in being proactive partners in protecting and improving state highways have some options they can choose to exercise to generate funds for infrastructure. Cities are enabled to collect fees from property owners or developers to pay for capital improvements to public facilities. Two

common types of programs fall under the categories of Local Improvement Districts (LIDs) (cities) and System Development Charges (SDCs) (cities and counties).

ORS 223.389 (Local Improvement Districts) establishes a process for making local assessments for local improvements. A district boundary is established defining an area of benefited properties. When the decision is made to construct the improvement, the cost is estimated based upon a contract award or direct cost to the jurisdiction. The costs for the benefited properties are calculated and billing is sent out. A Local Improvement District may include property in other jurisdictions with the cooperation of that other jurisdiction. The law provides for financing methods, both for paying for the improvement and for collecting the individual assessments. This type of funding may not be a potential resource for funding state jurisdiction facilities, but could supplement ODOT investments with, for example, the addition or improvement of pedestrian facilities or improvements to local jurisdiction cross streets.

ORS 223.297 to 223.314 (System Development Charges or SDCs) states that SDCs are assessed based upon a Capital Improvement Plan and are collected at the time of increased usage of a capital improvement or issuance of a development permit, building permit or connection to the capital improvement.

System development charges do not include any fees assessed as part of a local improvement district, or the cost of complying with requirements or conditions imposed upon a land use decision, expedited land division or limited land use decision.

The following discussion of SDCs is included here at the request of ODOT planners to further illustrate what it takes for local jurisdictions to collect developer contributions for mitigation of development impacts on public facilities. Establishing an LID or SDC program requires planning and analysis to identify solutions to be funded, to document the improvements to be financed and the terms of the funding program, and to establish the property owner or developer share of the cost of those solutions.

Establishing Systems Development Charges: Prior to the establishment of a system development charge, which is done by ordinance or resolution, the local government must prepare a capital improvement plan or other public facilities plan that includes a list of capital improvements. These improvements are the ones that the local government intends to fund, in whole or in part, with revenues from the SDCs and the estimated cost, timing and percentage of costs eligible to be funded with revenues from the SDCs for each improvement. It appears that state facilities could be included in local capital improvement plans with the caveat that ODOT has to be on board with any such project in order for it to proceed to construction. Such improvements would also need to be recognized in the local TSP.

As an example of an established process that assesses affected property owner contributions to a public project, the amount of a system development charge has to be based upon:

- A methodology using ratemaking principles as employed to finance publicly owned capital improvements;
- Prior contributions by existing users;
- Gifts or grants from federal or state government or private persons;
- The value of unused capacity available to future system users or the cost of the existing facilities; and

Other relevant factors identified by the local government imposing the fee. Justification for the fee must include the projected cost of the capital improvements identified in the plan and project list, and documentation of the need for increased capacity in the system to which the fee is related. The local adopting ordinance may provide for accepting other considerations in lieu of the SDC such as donation of right of way or construction of improvements (not including onsite improvements necessary to develop the private project).

SDC receipts may only be spent on capital improvements associated with the systems for which the fees are assessed. Any capital improvement being funded, wholly or in part, with system development charge revenues must be included in the associated plan and on the project list adopted by the local government pursuant to ORS 223.309.

5.3. Types of Agreements

ODOT enters into a variety of agreement types related to land development that affects the state highway system. These agreements range from permits for relatively minor improvements in the right of way, through agreements and letters that identify and agree to needed mitigation measures, to cooperative improvement agreements (CIAs) that memorialize cost sharing and other shared responsibilities related to major facility projects and improvements in a legally binding agreement. The following are brief descriptions of the types of agreements that may be used in relation to the development review process:

- Permit: For example Road Approach, Utility, or Miscellaneous (e.g., landscape) permits for uses of right of way or for improvements within the public right-of-way, resulting in improvements that will remain in private ownership. (This Chapter does not address permitting issues except for purposes of comparison with the other types of agreements.)

- Letter of Agreement: An informal agreement memorializing an understanding between parties of the nature of a problem and the need to work together for a solution.
- Memorandum of Understanding (MOU): A more formal recognition of a development impact on the state system and preliminary, (usually) nonbinding agreement as to who will be responsible for identifying, funding, constructing or otherwise providing a solution.
- Intergovernmental Agreement (IGA): A binding agreement between ODOT, local jurisdiction(s), and sometimes other state or federal agencies, assigning roles and responsibilities to address a known or anticipated problem with respect to implementing a proposed solution. May establish a special fund and assign responsibility for collecting and administering funds.
- Cooperative Improvement Agreement (CIA): A binding agreement between ODOT and local government entities and/or a private developer, one of whom is going to construct improvements to a state facility. A CIA assigns roles and responsibilities for the development of a highway construction project, including but not limited to, preliminary planning and engineering, funding, contract administration, construction, inspection, and maintenance.

5.4. Legal Considerations That Influence The Choice Of Type Of Agreement

Letters of Agreement, Letters of Understanding and Memoranda of Understanding (MOU) are all normally non-binding statements of intent or commitment to use best efforts. They are not necessarily legal contracts. But, it is what is in them that determines their force and effect and whether they are legally binding. All parties should sign, even if they aren't binding because the signatures establish a record of the intent of the parties to follow a certain course of action.

Note: When federal agencies use a Memorandum of Agreement, they do consider it a binding agreement. If the federal government is a party to an agreement it is important to choose the correct type of agreement for the task at hand.

The most important agreement for getting mitigation improvements constructed is the Cooperative Improvement Agreement. This will obligate the developer and/or the City or County to provide funds and/or improvements to mitigate the impacts of proposed private development on state highway facilities in a legally binding contract.

One factor limiting the utility of standardized agreements will be the requirements of local jurisdictions. Local government involvement and cooperation, and requirements for the contents of an agreement will vary greatly from jurisdiction to jurisdiction.

The different types of agreements apply to different situations and/or to different stages in the process of mitigating impacts. Typically there are two stages of agreements. The first is an agreement in principle identifying a problem, proposing a solution, and agreeing to roles and responsibilities in delivering the solution (e.g., an MOU, Letter of Agreement or Letter of Understanding). The second is a binding contract establishing specific roles and contributions (e.g., an IGA or CIA), and also establishing the legal status of the parties and legal remedies related to the agreement. General rules of thumb for choosing the appropriate agreement type include the following:

1. Permit: Typically used for something to be built or placed in the right-of-way, such as a utility line, that remains in the private party's ownership and that will not be transferred to public ownership (e.g. not a public improvement) or for establishing a short or long term use of the right of way. However, a permit can be used in instances where there is a public improvement to be constructed by a developer that will be transferred to ODOT. This decision to use permitting can be used if the value of the improvement is less than \$100,000,, the permit includes provisions concerning compliance with ORS 276.071 (including paying prevailing wage rate, and compliance with applicable provisions of the public contracting code), and there is a mechanism for ODOT acceptance for the completed improvement and transfer of ownership.
2. Formal Agreement: Under any of the following circumstances, a permit is not sufficient:
 - When ODOT applies state or federal monies toward some facility to be constructed;
 - When ODOT is doing the construction under its own procurement process, with developer contributions toward improvements (i.e., the developer is contributing all or partial funding);
 - When the improvement cost is \$100,000 or greater and the facility being built is, or will become, a public improvement; or
 - When continued maintenance is an issue, an agreement is needed to establish long term commitments and obligations for maintenance and sometimes responsibility to pay for electricity.
3. Review for Legal Sufficiency by the Department of Justice: Under OAR 137-045-0010(23), a "public contract" means "any contract, including any amendments, entered into by an Agency for the acquisition, disposition, purchase, lease, sale or transfer of rights of real or personal property, public improvements, or services, including any contract for repair or maintenance. An Intergovernmental Agreement entered into for any of the foregoing

actions is a Public Contract. . ." So, negotiated mitigation agreements for improvements that will be part of the highway system are considered "public contracts" and also subject to ORS 291.047 which requires a review for legal sufficiency by DOJ when the value of the public contract exceeds \$100,000. If the commitment of the developer to construct such public improvement exceeds \$100,000 or the value of the improvement itself exceeds \$100,000, the Cooperative Improvement Agreement would require legal sufficiency review as discussed further in Section 5.7, below.

5.5. Reviewing the Developer's Impacts and Contribution to Solutions

The purpose of this section is to help the development review planner understand the range of issues that relate to determining the cost of mitigation of development effects. It is not intended to imply that development review planners will be calculating developers' contributions, but the information should help anyone who responds to land use notices and/or reviews Transportation Impact Studies (TISs) to understand the ways estimated contributions can be calculated. It is intended that this understanding will be used to make good recommendations for conditions of local approvals and to aid in the development of enforceable negotiated agreements.

Each of the three central parties to the mitigation agreement has an important role in establishing the developer's proportional share contribution. The developers' responsibility is to provide factual and thorough information upon which an informed decision with appropriate conditions can be based. The local government's role is to apply their local code and exercise appropriate discretion to apply conditions to any development approval so that the outcome protects public investment in infrastructure. ODOT has the responsibility to protect state transportation facilities by thorough review of the facts presented, the analysis process used, and the conclusions reached in the local planning process. It is also ODOT's responsibility to provide timely response and clear direction on how best to protect the state system.

5.5.1. Nexus and Proportionality:

While negotiated mitigation agreements are, generally speaking, voluntary agreements, they should be documented in a way that demonstrates alignment with the same constitutional benchmarks that apply to local application conditions of approval: nexus and proportionality.

Nexus: Mitigation measures need to be directly related to (have a nexus with) the impacts of the development (*Nollan v. California Coastal Commission*, 483 U.S. 825 (1987)). Traffic Impact Analysis (TIA) identifies the potential impacts of development projects. Where an approach road permit is required, the Permit Specialist and/or Region Access Management Engineer will be looking at proposed approaches to the highway with respect to their impacts on the state facility, whether or not the project is at a scale that will require a TIA. A good traffic study is the best tool for

determining the relationship between development project impacts and state transportation facility needs, but in some cases, the nexus question will need to be answered without the benefit of a thorough TIA.

Rough Proportionality: To require a mitigation measure it also needs to be roughly proportional to the impacts of the development (*Dolan v. City of Tigard*, 512 US 374, 114 S CT 2309, 129 L Ed 2nd 304 (1994)). The rest of this section considers ways “rough proportionality” can be assessed.

In the best case, the developer’s share is determined by the local government based upon a TIA provided by the developer. But any mitigation within state right of way or affecting public or private access to a state facility has to meet ODOT standards, so the actual terms of any agreement to mitigate impacts on a state facility have to be negotiated with ODOT. ODOT’s interests in the proportionate share question are 1) arriving at a reasonable total improvement cost for the mitigation or improvement project, and 2) effectively presenting the cost and funding needs issues within the development review process in a timely manner so that ODOT’s input supports the local decision making process to the extent possible.

5.5.2. Developer’s Contribution:

A developer’s contribution to the mitigation of adverse traffic impacts on a state facility must be roughly proportional to the adverse impacts of the development on affected state facilities. In most situations, the conditions to be addressed occur in the area local to the development project, but through trip impacts may exist on the state highway system far from the development location. For example, a large development in an area with a predominantly rural highway system could have measurable traffic impacts a hundred miles away. Determining the extent of an impact area is an important step in establishing impacts. Establishing an impact area for a traffic study is discussed in more detail in Chapter 3.3 of these Guidelines.

To establish proportionality, in most cases the largest impact will be the focus of the analysis, typically the critical movement through an intersection or total entering vehicle (TEV) impacts on capacity and mobility. The following factors should be considered:

Capacity and the Distribution of Trips on the System: To determine the impacts of an individual development project on a state transportation facility it is necessary to establish both how the facility is being used and how much capacity is needed to provide adequate capacity for all users over time.

- **Through Trips**: The classification of a highway denotes expectations for how it will be used and the preponderance of through trips on the particular facility. Population trends and other trends such as job growth or growth in annual vehicle miles traveled per person help to establish reasonable assumptions about future needs for the facility. Where there is a

transportation model available, the preliminary work for estimating future conditions has already been done.

- Local Trips: Background local trips and projected local trips based upon population forecasts, annual VMT/capita, transportation modeling, etc.
- Excess Capacity / Needed Capacity: Given local and through trips, now and on the planning horizon, is there available capacity to serve new local users? What share of this capacity would reasonably be assigned to the proposed development? Is there already a shortage, or projected shortage of capacity to serve uses already existing or planned? Note that deficiencies already in existence at the time of development do not meet the nexus test because they are clearly not caused by subsequent development. Consequently, correcting pre-existing problems are not the responsibility of the current developer, as established in the courts, and so cannot be required to be mitigated. This does not preclude such mitigation from being included in a voluntary negotiated agreement.
- Land Use and Zoning Influences: Consider available development sites, lot sizes, zoning, and expectations about how fast development or redevelopment may occur. What will transportation facility needs be when planned development is fully built out? As development occurs presumably all new development will use a share of existing and planned transportation facility capacity.
- Projected trips (total entering vehicles or TEV) produced by the proposed private development project (minus any allocated share of available capacity, if applicable).
- Transportation facility construction projects that are planned, funded, scheduled. What capacity will planned improvements provide?

Example Methodologies Based on Capacity:

In Florida, the state has established that a proportional share for a single development project with a local or regionally significant impact must, at a minimum, provide funds sufficient to complete construction or improvement of at least one required improvement. The amount is calculated based upon the cumulative number of trips from the proposed development expected to reach roadways during the peak hour after complete buildout of the stage or phase being approved. That projected number of trips is divided by the increase in the peak hour maximum service volume of roadways resulting from construction of an improvement necessary to maintain the adopted level of service, then multiplied by the construction cost, at the time of developer payment, of the improvement necessary to maintain the adopted level of service. As used here, construction cost includes all associated costs of the improvement:

$$\frac{\text{Net Peak Trips Generated by Development}}{\text{Increased Capacity from Improvements}} \times \text{Cost of Improvement} = \text{Developer Share}$$

In Montana, the calculation weighs the state's share for through trips and a local government share seen as sufficient to protect the local interest in serving citizens and existing developments. Then the economic development value for a benefited developer is assessed, with consideration of future development potential in the area.

Operations and Safety: While it is difficult to quantify safety problems other than by crash data, safety and operations impacts are often relatively easy to mitigate with minor improvements to state facilities. Safety and operations impacts will often occur in conjunction with developments requiring approach permit applications, and the practices associated with approach road permitting will support identification of appropriate mitigation measures. Where the proposed development will create a new safety problem, the entire cost of the mitigation will usually be justified as a proportional share.

In an area that is not yet fully developed, future users of the facility may have a measurable stake in the improvements made by an earlier developer, and the local government could require reimbursement to the developer as additional land is developed or redeveloped. This approach requires a local decision to establish a funding mechanism to assess and collect the share of the value of the improvement from subsequent benefited developers.

A developer's proportional share to address operational issues will typically be based upon consideration of one or more critical traffic movements. So the necessary mitigation may include the addition of turn lanes, an upgrade of traffic controls at an affected intersection, nontraversable medians, etc.

In a negotiated agreement, literal application of "proportional share" is not required because negotiations are entered into voluntarily. Beyond conditions of approval required by local codes or the Access Management Rule, agreements are presumed voluntary and developers often enter into larger commitments. Where impacts from proposed development are on a facility that, for example, already meets signal warrants or warrants for a left turn lane, getting that improvement constructed by the day of opening of the proposed development may be a critical need. In this situation the developer and local government should share ODOT's interest in a safe and efficient facility, and ODOT may have a basis for an appeal of the local decision if voluntary agreement cannot be reached.

5.5.3. Example of a Simple Calculation Upheld in Oregon Court:

In addition to the US Supreme Court Nollan and Dolan cases, Oregon has a subsequent Court of Appeals case that affirms the City of Springfield's methodology

basing a proportional share determination upon measurable or otherwise quantifiable factors that can be compared as before and after conditions. This case provides a nice example of a method based on the site conditions and adequate documentation of the logic used to calculate the developer's proportional share.

In McClure v. City of Springfield, 175 Or App 425, 435 n 6, 28 P3d 1222 (2001), the city:

- Compared the number of conflict points (driveways) on the roadway before and after a development proposal to demonstrate safety impacts and required that the developer restore the area to the prior condition (i.e. the prior number of conflict points) to mitigate the safety issue.
- Compared the ADT of the through street with a conservatively estimated level of trip generation for the proposed new uses to demonstrate capacity impacts and calculated a percentage of ADT attributable to the proposed development.
- Calculated the number of square feet of travel area necessary to accommodate the total trips on the road and the number of square feet attributable to the development's trips using the percentage calculated above, and then required that number of square feet of right of way to be dedicated for public ways.

The Oregon Court of Appeals affirmed the LUBA decision finding that these calculations were sufficient to establish that the conditions were "roughly proportional" to the impacts of the development. While the Dolan case found that "no precise mathematical calculation" is required, the more objective and quantifiable the basis for the determination, the more defensible the condition will be.

5.5.4. Quantifiable Factors:

The following chart lists quantifiable factors that may be used as bases of comparison to determine proportional share. Note that for any development proposal there may be a number of recommended or required mitigation measures, so there may be different proportional share factors used for each of them. For example, the need for a right turn lane could be based on through traffic volumes (v/c) and an analysis of critical movements, while the need for a redesigned intersection could be based upon safety issues (the number of conflict points).

Quantifiable Factors Related to Proportional Share

Factor	Capacity	Critical Movement
Impacts that can be Measured and Compared to Background Conditions		
Daily Trips	<ul style="list-style-type: none"> • How many trips will the proposal generate daily? 	<ul style="list-style-type: none"> • How many critical movements will the proposed development add per day? During peak periods? • What will be the measurable effect on delay times?
Peak Hour Trips	<ul style="list-style-type: none"> • How many trips will the proposal generate at the 30th highest hour? • After determining the development's share of available capacity, how many net trips need to be mitigated? 	<ul style="list-style-type: none"> • How many critical movements will the proposed development add in the peak hour? • What will be the effect on delay times at existing intersections? • How will new intersections affect system delay times?
Types of Vehicles	<ul style="list-style-type: none"> • Proportion/Number of proposal-generated truck trips • Impact on facility design, e.g. queuing needs 	<ul style="list-style-type: none"> • Will the geometry of existing intersections be adequate for the type of traffic to be generated?
Approach(es) on Highway	<ul style="list-style-type: none"> • Number requested, locations, relationships to existing permitted approaches • Opportunities to reduce net number of approaches in the project area • Opportunities to move in the direction of the approach spacing standards 	<ul style="list-style-type: none"> • Effect of existing approach spacing on the intersection • Effect of proposed new approaches on the intersection
Area Conflict Points	<ul style="list-style-type: none"> • Number of conflict points before and after proposal is constructed 	<ul style="list-style-type: none"> • Existing and proposed conflict points that will affect the function of the intersection

Sight Distance(s)	<ul style="list-style-type: none"> Measured sight distances before and after development and any mitigation project related to existing and new approach roads 	<ul style="list-style-type: none"> Measured sight distances before and after development and any mitigation project for critical movements
Current Conditions		
Peak Hour Trips ADT	<ul style="list-style-type: none"> Numbers from counts in the immediate area of the proposed development 	<ul style="list-style-type: none"> Numbers from counts in the immediate area of the proposed development
Daily Through Trips Daily Local Trips	<ul style="list-style-type: none"> Numbers related to expectations for the facility (classification), models, counts 	<ul style="list-style-type: none"> Numbers related to expectations for the facility (classification), models, counts
Delay at Intersection(s)	<ul style="list-style-type: none"> Time from traffic analysis, LOS, capacity implications 	<ul style="list-style-type: none"> Time from traffic analysis, LOS, capacity implications
Future Conditions		
Peak Hour Trips ADT	<ul style="list-style-type: none"> Based on TIS/TIA, models, population projections for future year identified in TIS scope, year of opening (15 years for any plan amendment) 	<ul style="list-style-type: none"> Based on TIS/TIA, models, population projections for future year identified in TIS scope, year of opening (15 years for any plan amendment)
Daily Through Trips Daily Local Trips	<ul style="list-style-type: none"> Based on models, future year identified in TISTIA scope, year of opening (15 years for any plan amendment) 	<ul style="list-style-type: none"> Based on models, future year identified in TIS/TIA scope, year of opening (15 years for any plan amendment)
Delay	<ul style="list-style-type: none"> System Delay based on models 	<ul style="list-style-type: none"> Critical Movement Delay based on models
Documenting Proportional Share Determination		
Mitigation Project Description	<ul style="list-style-type: none"> Features and locations of improvements that will mitigate development impacts Quantified increase in capacity 	<ul style="list-style-type: none"> Features and locations of improvements that will mitigate development impacts How changes will affect critical movement(s)

<p>Scale of Project</p>	<ul style="list-style-type: none"> • Major: Developer will participate in STIP project • Minor: Developer will construct or pay for incremental improvements 	<ul style="list-style-type: none"> • Major: Developer will participate in STIP project • Minor: Developer will construct or pay for incremental improvements
<p>Cost to Construct</p>	<ul style="list-style-type: none"> • Major: Total Project Cost • Minor: Individual project costs for improvements that can be done incrementally 	<ul style="list-style-type: none"> • Major: Total Project Cost • Minor: Individual project costs for improvements that can be done incrementally
<p>Percent of Available Existing or Constrained Capacity that Developer can Use</p>	<ul style="list-style-type: none"> • If the development is consistent with the comprehensive plan for the site, some of any existing capacity is presumed to be allocated to site 	<ul style="list-style-type: none"> • If the development is consistent with the comprehensive plan for the site, a share of available intersection /interchange capacity is presumed to be allocated to the site
<p>Percent of New Capacity that will Benefit Developer</p>	<ul style="list-style-type: none"> • If a STIP Modernization project is scheduled, some of the planned new capacity will be available to the site 	<ul style="list-style-type: none"> • If a STIP project is scheduled, some of the planned new capacity will be available to the site.
<p>Percent of Cost to Offset Adverse Impacts</p>	<ul style="list-style-type: none"> • Example: Trips generated by development, adjusted for capacity available, divided by new capacity added by highway project = percentage share of project costs • Example: Right turn lane will provide adequate capacity to offset development impact = 100% responsibility for project cost. 	<ul style="list-style-type: none"> • Example: Peak hour development trips added to Critical Movement divided by project increase in intersection peak hour capacity = percentage share of project costs. • Example: Development impacts create the need for intersection upgrade = 100% responsibility for project cost.

Feasibility		
Jurisdiction of Affected Roadways	<ul style="list-style-type: none"> • Does roadway authority agree to mitigation project? • Is roadway authority willing to negotiate availability of its ROW, if needed? 	<ul style="list-style-type: none"> • Does intersection jurisdiction agree to mitigation approach?
Is Private ROW Needed?	<ul style="list-style-type: none"> • If third party private ROW is required to build mitigation project, is there assurance that owner is a willing seller? 	<ul style="list-style-type: none"> • If private ROW is required to build mitigation project, is there assurance that owner is a willing seller?
Readiness: <ul style="list-style-type: none"> • Is Project in the STIP? (Funded) • Is Project in the Local TSP? • Has Preliminary Engineering been done? 	Yes/No	Yes/No

5.5.5. Documenting the Method of Calculating the Developer’s Share

Descriptions of developer contributions need to include enough information to demonstrate that the amount of financial contribution or the scale of facility improvement is at a level that mitigates the development’s impacts without being excessive. Whether or not a formula is developed for assessing the developer’s share, the method used to arrive at the amount should be documented in the public record. The method used could be memorialized in the IGA/CIA/contract, the local conditions of approval or, preferably, both.

Note that developers of large projects may make contributions in excess of what is strictly a “proportional share” in order to remove obstacles to approval of their projects. Because they have entered into negotiations voluntarily, the “nexus” and “proportional share” constitutional tests are not legally applicable. However, documenting how the agreement was arrived at and the logic that went into the agreement are still important for a durable and defensible agreement that will hold up even if the development project were to change hands or there are other changes in circumstance.

In a case that agreement cannot be reached on the basis of a voluntary agreement, a legal settlement agreement may become necessary. This is beyond the scope of this discussion.

5.6. Content of Agreements By Type

A review and comparison of agreements developed by ODOT to address the impacts of private development on the highway system was conducted in support of this chapter. That review showed that agreements vary widely as to the details included. However, there were clear patterns regarding the essential elements of agreements by type. While there is broad latitude in deciding what an agreement should include to cover the specific circumstances being addressed, the following summaries suggest a general framework for each type of agreement. The individual elements related to legal sufficiency that are applicable to all ODOT contracts are discussed in further detail in Section 5.6.0, below. Region Contract Specialists should be included in negotiating mitigation agreements early in the process and will be of great help determining what should be included in a particular agreement.

5.6.1. Letter of Agreement

While similar in function to an MOU, a letter of agreement is typically used where there is a single or simple set of clearly defined issue(s) to be addressed. The letter memorializes the understanding between the parties. The review of sample documents showed only the following elements in letters of agreement:

- Identification of the Parties to the Agreement;
- Description of the location, private development proposal and/or highway project that is the subject of the agreement;
- Reference to any prior agreements between the parties or related to the subject location/property/project;
- Statement that the private parties are willing to contribute funds proportionate to their impacts on the state facility;
- Statement how those funds will be used; and
- Citation to the Delegation Authority for the ODOT signatory to the agreement.

5.6.2. Memorandum of Understanding

A memorandum of understanding (MOU) is similar to a letter of agreement in terms of legal weight, but is more formal and typically sets out issues and solutions in

more detail. The following elements of an MOU should be included, as applicable to the circumstances of the agreement:

- Identifies all parties and proxies participating in the agreement;
- May identify a STIP project scheduled for the facility that is affected by the private development project, and that will be modified by solutions identified in the agreement, and/or be paid for, all or in part, by the developer;
- May identify project management responsibilities for contract administration, project development, environmental and construction phases;
- Recitals:
 - May include a purpose statement;
 - Descriptions of Project Area:
 - Highway Classification and other distinguishing characteristics;
 - Description of the private development project and relationship to the state facility;
 - May include other information about the project area such as topography, resource issues, other lands in public ownership, a need for right of way or easements;
 - Status of the local land use proposal:
 - Land use approval and permit status;
 - Local conditions of approval related to the highway facility.
 - Citations to Applicable Enabling Law and Regulations:
 - Statute and Administrative Rules enabling the agreement;
 - Statute and Administrative Rules pertinent to specific issues in the agreement (e.g. regulations regarding signalization)
 - Applicable Local Regulations;
 - Applicable State Goals and land use regulations;
 - Applicable OHP standards.
 - Statements of current and future conditions:
 - General agreement regarding the impact of the private development on state facilities;
 - General agreement describing the specific problem(s) to be addressed;
 - General agreement regarding solutions.
 - Private Developer willingness to contribute money or other consideration:
 - Method used to determine private developer's share of improvement costs or other contributions;
 - Willingness to construct capacity or operations improvements.
 - Willingness of state, city and or developer to negotiate with third-party property owners, agencies for easements, etc.
 - Description of the relationship of any needed right of way or easement to the development project, including property location and why it is needed;

- Description of any needed agreements to be entered into with those third parties;
 - Statement that the MOU agreement is not binding;
 - Statement of agreement as to next steps.
- ODOT Commitments may include but are not limited to:
 - Agreement to provide support or assistance in local land use and/or access permitting processes;
 - Agreement to provide funding for parts of project not directly related to subject development impacts, which could be considered the state's "proportional share";
 - Review of plans for agency approval when construction plans are developed and provided by the private party;
 - Administrative responsibilities where right of way will be obtained.
- Private Developer Commitments may include but are not limited to:
 - Provision of Funds and Other Contributions:
 - Description of reasons for the contribution which will include a description of the method for determining developer share;
 - Timing of and/or events triggering payment(s);
 - Advance Deposit and/or Letter of Credit (including time limits on letter of credit) required;
 - Provision of right-of-way and terms and conditions of right-of-way transfer;
 - Funds for right-of-way purchase;
 - Funds for construction;
 - Construction of Improvements:
 - Description of improvements including type and location;
 - Timing of and/or events triggering construction;
 - If public improvements in state right of way will be constructed by the developer or their contractor, it is important to make it clear that Fair Labor Standards¹⁵ apply just as they would for an ODOT project;
 - Responsibilities reserved by ODOT or the local government:
 - Insurance Required;
 - Provision for Indemnity;
 - Provision for ODOT entry onto private property for inspections, etc. related to the subject agreement;
 - Open books and accounting practices;
 - Terms for the use of a third-party contractor;
- Local Government Commitments may include collection of funds, contribution of matching funds.
- Terms upon which there is mutual agreement:
 - Timing and triggering events for fund contributions;

¹⁵ Work done in the state right of way and/or using federal funds may be subject to Bureau of Labor and Industries (BOLI), Davis-Bacon, and/or other applicable Fair Labor Standards including prevailing wage rates. For more information on prevailing wage rates for public works see: ORS 276.071 and: http://arcweb.sos.state.or.us/rules/OARS_800/OAR_839/839_025.html

- Timing and triggering events for construction of improvements;
- Anticipated future improvements beyond those currently agreed to;
- Acceptable and unacceptable mitigation measures for issues not resolved in the subject MOU;
- Mutual review and coordination of project plans;
- Consideration of Relocation Assistance related to the acquisition of right-of-way;
- Compliance with local, state and federal requirements;
- Compliance with state and federal labor laws.
- Contingencies
 - Final local land use approval;
 - Final ODOT permits, where applicable;
 - Completion of any additional agreements needed:
 - Easements,
 - Agreements with third-parties,
 - Cooperative Improvement Agreement,
 - Any additional agreements with ODOT that must be completed prior to occupancy permit, final plat approval or other contingency;
 - Acquisition of all needed easements.
 - Responsibility for cost overruns.
- Terms and Conditions
 - Effective upon signing by all parties (typical);
 - Term of agreement such as “until construction is complete,” or “until subsequent agreement is in effect;”
 - Termination of agreement:
 - Subject to mutual consent and/or written notice within stated time period;
 - Due to change in state or federal law;
 - By default or failure to perform as agreed;
 - Does not prejudice the rights of the parties.
 - Amendment is subject to mutual agreement;
 - Conditions under which parties’ contributions may change and responsibility for cost overruns;
 - Disputes will be handled through collaboration/mediation;
- Legal Considerations
 - Delegation statement regarding ODOT signatories
 - Hold Harmless statement;
 - Equal authority of the parties to the agreements;
 - Fair Labor statement including citations to applicable state and federal regulations;
 - Indemnification requirements;
 - Statement that this is a complete and final agreement.

5.6.3. Intergovernmental Agreements

Intergovernmental agreements (IGA) are not the most likely type of agreement to be used where the subject of the agreement is mitigation of private development impacts on state highway facilities. However, in some circumstances an IGA will be appropriate, for example:

- A local government may assume administrative responsibility for the construction of mitigation measures, including collecting private funds and administering contracts.
- A local government may participate in a Major Improvement being considered for inclusion in the State Transportation Improvement Program (STIP) in conjunction with trying to allow a land use that would otherwise cause adverse impacts on the state facility. Participation may include but is not limited to contributions to funding, in-kind services and materials, improvements to local street circulation that support the state highway, benefits to non-auto modes, land use actions, and other enhancements. Also referred to as OHP Action 2A.4 agreements, an IGA may be used to memorialize the commitment of the local government and the state to assigned roles to get the project constructed.

In these cases, an IGA may be appropriate, resulting in an agreement that is binding on ODOT and the other parties to the agreement. A subsequent CIA may also be required before any construction within the state right of way can be started.

5.6.4. Cooperative Improvement Agreements

All of the elements of an MOU may also be included in a Cooperative Improvement Agreement (CIA), but the CIA gets beyond identification of the problem and focuses on solutions. Agreements are primarily about funding, timing, project development and construction. Outcomes are being formally agreed to, roles may be more clearly defined and agreement parts are binding unless qualified otherwise.

Contents:

- All of the elements of the MOU that are applicable, useful as background or necessary legal considerations;
- Identification of the STIP project number, if any;
- Citation to any earlier MOU or IGA that is still in effect;
- Statement that this is a Binding Agreement.
- ODOT Commitments beyond those listed above
 - Commitment to pursue additional funding;
 - Specific provisions for handling funds:
 - Set up a separate fund for the private contributions,
 - Specify accounting practices;
 - Provision of ODOT right-of-way for deceleration or turn lanes, etc.

- Technical Responsibilities
 - Preliminary Design responsibilities;
 - Review of Plans
 - Cost Estimates;
 - Environmental studies
 - Transfer of right of way
 - Transfer of Improvements
 - Inspections and Certifications
 - Materials Testing and Quality Documents
 - Changes of Grade
 - Signal warrants
- Maintenance Responsibilities:
 - Pavement and other road improvements;
 - Interchange structures;
 - Signals;
 - Remedies if there is a failure to maintain facilities;
 - Electricity costs for signals, street lighting, cameras, vehicle detector loops, etc.
- Developer Commitments Same as Above.
- Local Government Commitments Beyond those Specified Above:
 - Contribution of Matching Funds;
 - Specified level of project management responsibilities.
- Terms upon which there is Mutual Agreement:
 - Consideration of the disposition of Surplus property.
 - Contingencies Same as Above.
- Terms and Conditions:
 - Disposition of funds in excess of expenditures;
 - Responsibility for any funding shortfall;
 - Liability Release Statements;
 - Lawsuits: Rights of prevailing parties.
- Consideration of additional regulations and responsibilities if a traffic signal is part of the project.
- Considerations required when federal funds are used, or funds are used as part of a “federal action”.
- Budget Statement.
- Definitions of Terms.
- Indication whether the agreement is a one time performance or payment agreement or if will obligate future parties. Some agreements may “run with the land” and not simply be the obligation of the developer. For example, a current owner may be responsible for getting approvals and agreements in place while the conditions of the agreement will be the obligation of future purchaser/developer of the subject property.

5.7. Legal Sufficiency

ORS 291.047 requires review and approval for legal sufficiency by the Attorney General's office of all personal service contracts (including engineering and architectural services) that provide for payment or project value in excess of \$100,000. OAR Chapter 137, Division 45, outlines the requirements for legal sufficiency review, including that the contract is written, contains all essential elements of a legally binding contract, on its face complies with all federal and state statutes and rules regulating the contract, contains provisions and terms which are sufficiently clear and definite as to be enforceable, and provides for the ability to terminate the contract. OAR 137-045-0015(4).

5.7.1. Public Contracting Requirements

Developers often think they can make improvements to state facilities more cheaply than the state can, but they don't realize that ORS 276.071 requires them to do the work the same way ODOT would have to do it, including paying prevailing wage rates. It is important to get the ORS 276.071 requirements into all permits and agreements.

5.7.2. Construction Standards

Anyone performing work on ODOT right of way that will result in a public improvement, that will eventually be owned and operated by ODOT, will be required to be pre-qualified to perform that type of construction under OAR Ch. 734, Division 10, and will be required to be registered with the Construction Contractors Board. In other words, the same requirements will be in place for construction work by the developer as would be required if ODOT were contracting for the public improvement.

5.7.3. Contract Language

At a minimum, a contract needs to establish the benefits each party expects from the agreement, as well as the burdens each agrees to bear. The consideration each party is to receive should be clearly stated to make the agreement enforceable. It is especially important to state the expected benefits to the government parties in a manner consistent with the requirements of the police power (i.e. Nollan, Dolan, etc.). Agreement language should stress the relationship of the public benefits that will come out of the agreement to the requirement that ODOT maintain a safe and efficient highway system.

5.7.4. Who Can Sign a Binding Contract for ODOT.

OTC is the entity that has statutory authority to enter into contracts and agreements for ODOT. Authority has been delegated to various managers through delegation orders, and sub-delegation orders, which may further delegate that authority.

For most purposes, including IGAs and CIAs, the delegated authority to the Director, Deputy Director and Region Managers is limited to \$75,000, unless the

project is included in the STIP or included in a line item in the biennial budget approved by the OTC. If not in the STIP and not in the approved budget, and over \$75,000 (and that includes money going out from ODOT and money or value of asset coming in - not necessarily the "cost") then the OTC has to approve the contract. For example, see Delegation Orders #2 and #416.

In Negotiated Agreements, where the local government or a developer is going to construct or pay for something that is not in the STIP to mitigate the impact of a development, the binding contract will need to go to the OTC. The OTC can also directly delegate authority when it takes action on something. For example, when the OTC approved the *ConnectOregon* grants and the OTIA III local bridge projects, they authorized the Director or Deputy Director to enter into the agreements, so those don't have to go back to the OTC.

When the ODOT Procurement Office (OPO) reviews IGAs and CIAs one of their considerations is who can sign and bind ODOT, based on the appropriate delegation order. Determining who can sign is specifically excluded from the legal sufficiency review, pursuant to DOJ rules. If a particular CIA does not fall into a category for which there is a delegated authority, Oregon Transportation Commission approval is necessary.

A Region Manager has authority to sign some agreements, pursuant to the applicable delegation and sub-delegation orders. However, if the value of the assets is in excess of \$75,000 and the subject project is not either in the STIP or included in a line item in the OTC approved biennial budget, the agreement will have to be approved by the OTC.

¹⁶ <http://intranet.odot.state.or.us/ssb/bss/del/index.htm>