

Development Review Guidelines 2012
Chapter 1: ODOT Development Review Program

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1 ODOT Development Review Program

1.1. Introduction: Development Review Program Purpose

ODOT develops plans for the state highway system and for an integrated, multi-modal transportation system. Local cities and counties plan for land use and economic development within their boundaries. While jurisdiction over each decision process is separate, in reality, transportation planning decisions impact the viability of land uses, and land use decisions impact the functions of the transportation system. ODOT development review provides input about the relationship of local land use decisions to the safety and operations of local highway facilities and opportunities to improve transportation systems to support both local objectives and the function of affected state facilities.

Coordination between ODOT and local jurisdictions is required by the statewide land use planning program when either develops a plan or makes a land use decision affecting the other's planning program. Local jurisdictions are required to notify ODOT as an affected agency of any land use decisions that may affect state transportation facilities.

ODOT participates in the public review of a land use application and may make recommendations about how a land use approval may be conditioned to protect state transportation interests. Where a local decision is made that ODOT staff believes is inconsistent with the local comprehensive plan or development code in a way that adversely affects state transportation facilities, the agency may establish standing to appeal the local decision, though actual appeals by ODOT are rare.

ODOT has a responsibility to protect the function of state highway facilities to the extent possible, balancing transportation system needs with community objectives and economic development needs. ODOT staff are most effective in helping to achieve this balance when they develop positive working relationships with local planners and focus on identifying workable solutions where conflicts occur. The bottom line for ODOT is transportation safety; where safe solutions are available there is often room for flexibility.

1.2. Purpose of Development Review Guidelines

The Development Review Guidelines (Guidelines) document is a reference handbook intended for use by ODOT staff and others involved in land development projects with associated traffic that may impact the safety and operations of state transportation facilities. 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 document is posted on the Transportation Development Division publications web page at:
<http://cms.oregon.gov/ODOT/TD/TP/Pages/Plans.aspx>

1.2.1. The Guidelines Help Staff:

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

1.2.2. 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 summarizes the local land use process and gives general tips on working effectively with local partners.
- Chapter 3 details the technical and policy issues to be considered when ODOT makes a recommendation on a local land use proposal. Chapter 3 is divided into three sub-chapters due to the volume of information:
 - 3.1 – Land Use Review
 - 3.2 – Transportation Planning Rule Review
 - 3.3 – Traffic Impact Analysis
- Chapter 4 includes strategies and tips for establishing legal defensibility for ODOT recommendations when participating in the local land use process and for building a strong record in case it is needed 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 such as white papers, sample memos and letters and a case law summary.

1.2.3. Guideline Updates

The ODOT web version of the Guidelines will be updated periodically to keep the Guidelines current. The 2012 update was precipitated by some significant changes in policy related to development review, including new Access Management rules, a revised Policy 1F in the Oregon Highway Plan (OHP) and a major rewrite of the Transportation Planning Rules (TPR) under the authority of the Department of Land Conservation and Development.

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

1.3. ODOT Development Review Organization

The Development Review program is administered through ODOT's five regions 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 as well as where statewide interests require consistent practices.

1.3.1. Why ODOT Participates in Local Land Use Review

The goals of development review are to balance the economic development needs of the local area with the system management goals of the agency. ODOT's mission is to protect the safety of the travelling public and to manage/preserve the public investment in transportation facilities over their full design life. ODOT accomplishes these goals in part by participating in local land use review, and by working with local governments to identify and implement reasonable solutions to mitigate adverse impacts of development to the state transportation system.

The need to find collaborative ways to manage investment in the state transportation system has become more pressing in recent years due to population growth and overall growth in vehicle miles traveled. At the same time funding for transportation investments has not kept pace with the state's growth. This reduction in available transportation funding combined with increased demands on the transportation system requires all transportation

providers to manage resources to continue providing opportunities for economic growth. Finding this balance will require ODOT staff to continue to work in partnership with local governments and other state agencies to provide safe travel options for the citizens and businesses that rely on the state's transportation infrastructure.

1.3.2. ODOT Development Review Program Objectives

The objectives of ODOT's Development Review Program are to:

- Build positive relationships with our local partners, developers, and citizens.
- Balance state transportation facility needs with local economic development needs while maintaining safety for all users and ensuring acceptable operations.
- 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 that affect ODOT facilities.
- Provide timely and consistent recommendations to local governments based on local criteria and ODOT policies, standards, state statutes and administrative rules that apply to the development review process.
- Where there are adverse impacts to state facilities, work within the local land use process to identify and negotiate an appropriate level of mitigation that is directly related 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.
- Support local decisions that strengthen the connection between local land use and transportation that enhance community safety and livability, and enhance the conductivity between state transportation facilities and the local street network.

1.3.3. ODOT Development Review Authority

The decision authority in land use and development reviews is based on the local land development code and is enacted by the local elected council or commission. These local land development codes are a part of the local comprehensive plan and are required, by state laws to be consistent with the Oregon Transportation Plan and Oregon Highway Plan or other modal or topic plans.

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. 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.

It is not ODOT's role to interpret or ensure compliance with local development codes or comprehensive plans unless implementation would be contrary to ODOT laws, plans, policies, or standards.

1.3.4. 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 (in other words, accepted by the Land Conservation and Development Commission) 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/pages/rules/oars_700/oar_731/731_015.html.

1.3.5. 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 land use 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 locally adopted and state 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://www.oregon.gov/LCD/goals.shtml>.

1.3.6. 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, which was amended most recently in December 2011, 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 state transportation facilities. The full text of the TPR is located online at:
http://arcweb.sos.state.or.us/pages/rules/oars_600/oar_660/660_tofc.html.

1.3.7. Oregon Transportation Plan (OTP)

The Transportation Commission adopted the Oregon Transportation Plan (OTP) to guide and coordinate transportation activities and to ensure that 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/pages/otp.aspx>.

1.3.8. 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 Policy Element, which has been amended numerous times, guides how state highways are developed and managed.

The Highway Plan Land Use and Transportation Policy 1B 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 to balance highway management needs with existing or planned development.

The OHP Highway Mobility Policy 1F establishes state highway mobility targets that implement the objectives of the Oregon Transportation Plan (OTP) and other OHP policies. The policy does not rely on a single approach to determine transportation needs necessary to maintain acceptable and reliable levels of mobility on the state highway system. It offers the flexibility to consider and develop methodologies to measure mobility that are reflective of current and anticipated land use, transportation and economic conditions of the state and community livability goals.

Policies and standards in the Highway Plan provide an important context for ODOT review of local land use and development proposals. Online location: <http://www.oregon.gov/ODOT/TD/TP/pages/ohp.aspx>.

1.3.9. Control of Access (ORS Chapter 374) and Access Management Rule (OAR Chapter 734, Division 051)

The statute and the administrative rule (http://arcweb.sos.state.or.us/pages/rules/oars_700/oar_734/734_051.html) 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.

1.3.10. 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 necessary, and should be a part of development review. For general information on related subjects:

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

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

ODOT Rail Division implements 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

(<http://www.oregon.gov/ODOT/RAIL/docs/Publications/railplan01.pdf?ga=t>).

Relevant statutes and rules 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. Find more information about Rail Division programs online at: http://www.oregon.gov/ODOT/RAIL/Pages/About_Us.aspx.

1.4. Development Review System and Other Resources

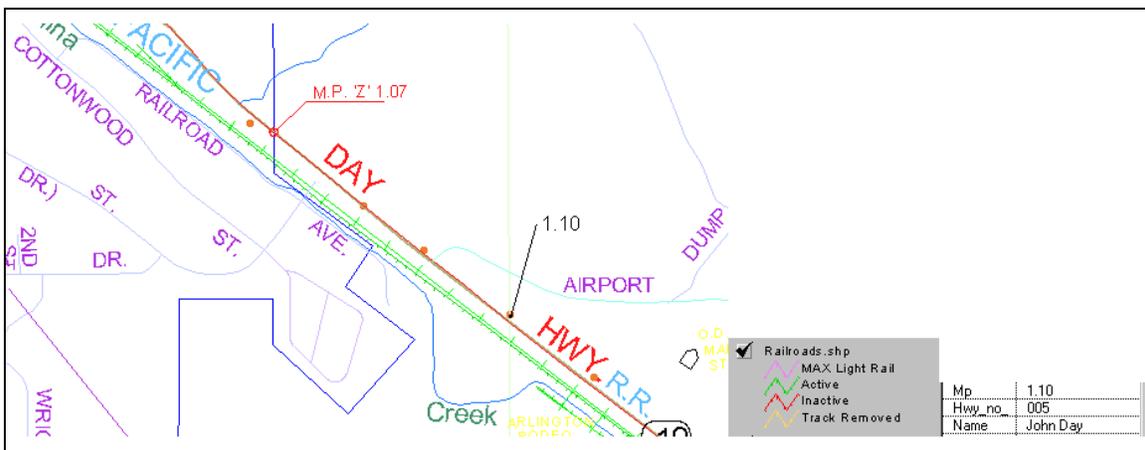
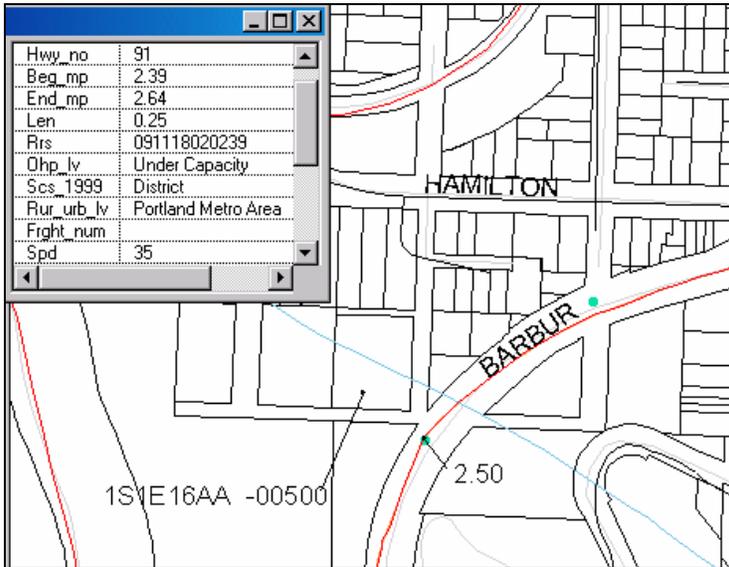
Over the years the region and district offices have used different methods to track development review case files, some of which are active for a year or more, and to support a historic record of previous cases and decisions. When this document was updated in 2005, several systems were in use, based variously on local web sites, desktop databases and developing ODOT intranet tools. Region 1 used a combination of local tax lot and street data to verify the location of a proposed land use; ODOT data is then overlaid to identify OHP classification and other designations, mile-points and other information.

In 2008 a statewide process began that included development review planners from each region, the state development review coordinator, access management staff and administrative staff involved in performance measurement, to create a statewide development review data base, based to some extent on the Region 1 system. The intent included maintaining information about development review cases in a single data base, producing correspondence to meet development review needs, enabling internal correspondence to be saved into the data record and producing reports on collected data to meet administrative needs. The first version of the data system had a lot of problems. After a year of identifying system bugs and creating “work-arounds” for many operational issues, work started on an “enhancement” project that was funded to make some significant changes, including connecting the “response” function directly to Microsoft Word to improve utility and revisiting the algorithms used for administrative reports.

The DRS data base is interactive with the statewide highway database (HTDR1), allowing highway information to be called up by entering highway number and mile point information. Other connections with data resources are desirable and are part of long-term aspirations for the system. For example, data fields for latitude and longitude are included which could be used to tie case files to map locations in ODOT’s Geographic Information System (GIS). The access management program has a case file data base, the Central Highway Approach Maintenance System (CHAMPS). Since access management is closely related to development review in terms of the timing and issues of ODOT involvement, it is desirable to be able to navigate between the two for both research and file review functions. More information on coordinating development review with DRS is in Chapter 2, Section 2.6.1. There is no visitor link to DRS; access is for system users only, but it can be viewed by ODOT employees on an as needed basis through the Region System Administrators.

1.4.1. Geographic Information Systems (GIS):

ODOT staff has access to GIS data and mapping resources that are continuously improving and can be used to generate maps from existing data layers and identify conditions relevant to ODOT's review. Available data layers and tools include milepoint, crash data, STIP projects, speed limits, nearby rail lines, local zones and distance in feet to interchanges.



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

1.4.2. 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_09.pdf.

1.4.3. Design Standards

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://www.oregon.gov/ODOT/HWY/ENGSERVICES/Pages/hwy_manuals.aspx.