

Development Review Guidelines 2013
Chapter 3.2: Transportation Planning Rule (TPR) Reviews

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3.2 Introduction

The Oregon Transportation Planning Rule, OAR 660-012 (TPR) implements Statewide Planning Goal 12, Transportation, and provides the framework for coordination among state and local land use and transportation plans and regulations. Most of the content of this chapter discusses implementation of TPR Section 0060 which is concerned with transportation issues to be addressed in review of proposed amendments to comprehensive plans and zoning maps. The Oregon Highway Plan (OHP) Access Management and Highway Mobility Policies, et. al., are also applicable to comprehensive plan amendments subject to the TPR and so are also discussed herein.

Since its original adoption in 1991, the TPR has been amended several times to respond to court decisions affecting application of the rule and implementation procedures, to respond to legislation and stakeholder concerns, and to provide more clarity to the application of the TPR under certain situations. The most recent, amendments occurred in 2011. This Chapter of the Development Review Guidelines has been updated to reflect the most current implementation steps associated with the TPR based on the 2011 amendments and related amendments to the OHP.

These guidelines are intended to provide direction to ODOT development review staff on how to apply the provisions of Section 0060 of the TPR to applications under review by a local government that will amend a comprehensive plan or land use regulation (e.g., zoning ordinance).

While these guidelines are written specifically for ODOT development review staff, local government planners, consultants and others involved in local plan and code amendments may find them instructive, particularly as they relate to state highway facilities. Other TPR summary information is available from the Department of Land Conservation and Development's (DLCD) TPR website at: http://www.oregon.gov/LCD/Rulemaking_TPR_2011.shtml.

Many of the October 2012 changes to this chapter are based upon staff's best understanding of the multiple changes to DLCD's Transportation Planning Rules, ODOT's Access Management Rules and Oregon Highway Plan Policy 1F. While these guidelines are intended to capture "best practices," the practice is just starting for these many changes and ODOT will be part of a learning curve that will fall most heavily on our local partners.

3.2.1. Determine How TPR Section 0060 Applies to an Application

1. TPR section 0060 applies only to applications that include a comprehensive plan map or text amendment, a functional plan, a zoning map or zoning code text amendment.

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- a. Information needed to proceed with the review includes the current and proposed map designations and/or text, affected parcel size or number of acres, location and the state highways that may be affected. For purposes of this chapter “plan amendment” comprises all of the types of amendments to which the TPR applies.
- b. Note that there is a distinction in several areas of the rule based upon whether the subject property is inside or outside of an interchange area. “Interchange area” is defined in subsection (4)(D)(c) as:

Property within one-quarter mile of the ramp terminal intersection of an existing or planned interchange on an Interstate Highway; or

2. The functional classification of the roadway indicates the performance expectations for the facility. State facility functional classifications are set out in OHP Policy 1A. A plan amendment that changes the functional classification, changes standards implementing the functional classification system or generates levels of travel or access that are inconsistent with the functional class, of either an existing or planned transportation facility, creates a “significant effect” on the facility that has to be addressed consistent with Section 0060.
3. The rule has limited applicability if the subject property of the plan amendment is located within a designated Multi-Modal Mixed Use Area (MMA). The local government designation of an MMA is enabled in the 2011 TPR amendments to section 0060, including criteria and coordination requirements. Subsequent amendments within MMAs are not subject to the highway mobility standards. If the subject property is not within an established MMA, go to step 4. If it is, review the proposed plan amendment against ODOT standards and MMA objectives other than mobility standards such as safety, complete local street networks and alternative travel modes. If an agreement exists per -0060 (10) (c) (B), review proposals in the terms of that agreement.
4. If the proposal is a zoning map amendment that is consistent with the acknowledged Comprehensive Plan map¹ (TPR -0060(9)), then:
 - A) Determine a) whether the proposed zoning is consistent with the local Transportation System Plan (TSP), and b) that the area subject to the zone change was not exempted from TPR review at the time of an urban growth boundary or other previous plan amendment. If the previous decision was made under an exemption from TPR 0060 and the rule has not been addressed in a subsequent decision, the rule must be addressed as part of the current decision process.

¹ “Consistency with the comp plan” is not defined and there is ongoing discussion with DLCD regarding the circumstances under which this applies.

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- B) If yes to A, make finding of no significant effect.
5. If the proposal is a zone change that is not consistent with the Comprehensive Plan, determine whether the amendment intensifies trips:
- A) Identify before and after reasonable worst case² land use assumptions.
 - B) Compare trip generation numbers for before and after reasonable worst case land uses.
 - C) Reduce number of trips based on enforceable ongoing TDM requirements that demonstrably limit traffic generation per TPR - 0060(1) (c).
 - D) If the amendment does not increase the number of trips, make a finding of no significant effect.
6. If the proposal affects a facility that does not meet mobility targets or one that is projected to fail to meet mobility targets within the plan period, it is subject to the “No Further Degradation” standard and the following considerations apply:
- A) If the increase in trips constitutes a “small increase” as defined in OHP Action 1F5, make a finding of no significant effect.
 - B) If the amendment does increase the number of trips above the 1F.5 threshold, make Significant Effect Determination.
 - C) If the facility will not meet standards at the end of the plan period and there is no improvement planned that will bring it up to standards, OHP 1F.5 applies and the performance standard for the application impacts is “no further degradation”.
7. When it has been determined that there is a significant effect on a state highway facility, consider:
- A) Whether the “no further degradation” standard will apply:
 - a) If the subject property is within an “interchange area” as defined in (4)(D)(c), the “no further degradation” provision does not apply.
 - b) Will the ODOT facility meet the OHP mobility standards within the planning period, and
 - c) Are there planned improvements to the subject facility that would bring performance of the facility up to the standards?
 - B) If the facility will meet the OHP standards at the end of the plan period or there is a planned improvement that will bring it up to standards:
 - a) The “no further degradation” standard does not apply, so the proposal must reviewed for a significant affect related to the OHP mobility standards.

² Reasonable worst case is discussed in more detail in subsection 3.2.3, below.

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- b) Planned improvements that may be considered are different within or outside of an interchange area as defined in subsection (4)(D)(c).
- C) If the proposed changes without mitigation will cause a significant effect, consider local government options to remedy the significant effect. The local jurisdiction has the option to apply remedies enabled in section 0060(2) or to balance economic and job creation benefits with partial mitigation pursuant to 0060 (11).

Section 0060 (2) requires the local government to “*ensure that allowed land uses are consistent with the identified function, capacity, and performance standards of the facility measured at the end of the planning period*” and lists four acceptable approaches to do so, by legislating consistency, mitigating problems directly or improving alternate modes or facility sites per subsection (e):

(e) Providing improvements that would benefit modes other than the significantly affected mode, improvements to facilities other than the significantly affected facility, or improvements at other locations, if the provider of the significantly affected facility provides a written statement that the system-wide benefits are sufficient to balance the significant effect, even though the improvements would not result in consistency for all performance standards.

- a. Section 0060 (11) allows “*partial mitigation*” when the economic benefits, coupled with partial mitigation of the traffic impacts, outweigh the negative transportation impacts.
 - i. The types of development qualified for application of partial mitigation are limited by business type, except in cities with less than 10,00 population where additional business type definitions may apply.
 - ii. Partial mitigation is acceptable only when the benefits outweigh the negative effects on transportation facilities and providers of any transportation facility that would be significantly affected give written concurrence that benefits outweigh negative effects on their facilities.
- b. The types of mitigation available under Section (2) of the rule include:
 - i. Adopting the subject amendment including measures that “demonstrate” that development under the amendment will be consistent with the performance standards for affected facilities.

- ii. Local legislative approaches that modify local intentions for system performance such as amending the TSP to commit to planned facilities to remedy the development impacts or reclassifying or changing the intended characteristics of the roadway to be consistent with expected conditions of the development
- iii. Conditions of approval or applicant initiated measures that mitigate the impacts directly of improve other modes in a way that facility and service providers can agree that the impacts are balanced on a system-wide basis.

D) Coordination with ODOT is required at several steps in the process laid out herein. However, if ODOT participates fully in the review process set up in the rule there still may be circumstances where the agency may be in a position to recommend denial and potentially appeal a plan amendment that does not resolve ODOT issues if, for instance:

- c. Local findings neglect to account information ODOT submitted that could reasonably have lead to different findings;
- d. Safety and operations problems are expected to occur that have not been addressed in the applicant proposal or conditions of approval;
- e. Findings related to a traffic impact analysis are incomplete or are arguably prejudicial to the interests of the agency;

E) Remedies that may be available when ODOT still has outstanding concerns about impacts on state facilities after the local decision is final could include:

- f. Subsequent Site Plan Review provides an opportunity to recommend conditions of approval for specific development projects.
- g. Where direct access to state facilities is proposed, the State Highway Approach Permitting process allows for mitigation of impacts related to the specific land use proposed.
- h. A negotiated mitigation agreement may be developed with the local government and/or the applicant to address concerns in additions to those addressed in TPR 0060.

3.2.2. TPR Section 0060 Relationship to Transportation System Planning:

The TPR requires local governments and the state to prepare Transportation System Plans based on their existing comprehensive plans & zoning designations. Transportation system needs are projected based upon allowed uses under existing plans and population and job growth projections. All cities and counties have TSPs but many have not been updated for years and do not

address current conditions. Every comp plan / zone change adopted after TSP adoption will change the basis for the assumptions used in the analysis and the rationale for proposed system improvements listed in the TSP.

Transportation planning as set up in the TPR requires local governments and the state to plan for future traffic demand. Traffic demand on any particular facility will tend to grow at different rates than population and employment. Some communities' daytime population is much higher than the resident population, increasing traffic demand on the transportation system to, from and within, job-dense areas. Local population & employment forecasts may anticipate 1.5% growth per year, while a developing commercial or industrial district can increase traffic demand in its vicinity at a much higher rate.

Section 0060 of the TPR sets out the processes and alternate approaches that local jurisdictions can use to ensure that, if changes are made to the local comprehensive plan, including amending zoning maps, that the TSP is still adequate to serve existing and planned land uses, or to identify what modifications to the TSP may be needed. So comprehensive plan and zone changes are reviewed for consistency with the TSP, and steps must be taken to remedy significant inconsistencies. This is directed at maintaining balance between planned land uses and the transportation system that supports those land uses.

As an overall principle, 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 measures in place to ensure that the land uses allowed by the amendment are consistent with the identified function, capacity and performance standards of the affected facility.

As summarized in the introductory section of this chapter, 2011 TPR amendments allow that:

- Under certain circumstances a significant effect determination is not required and
- Where an amendment would significantly affect a transportation facility, there are certain conditions under which the impact does not have to be fully addressed or mitigated.

These conditions are discussed in more detail later in this chapter. The 2011 amendments further provide clarification of:

- How a significant effect can be avoided altogether,
- Circumstances where governments do not have to make a determination of significant effect, and
- New ways to come into compliance with the TPR once a significant effect determination is made.

The desired outcome of these changes is that future growth and development-related decisions will achieve a better balance of economic development, transportation and land use objectives. For practitioners – those who will need to apply or comply with the TPR – there are new methods described on how to meet the state’s mobility targets, as well as new ways to show that a proposal is consistent with adopted land use and transportation plans.

The rule clearly states that an amendment significantly affects a transportation facility if its traffic impacts are found to:

- 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
- Result in any of the following, as measured at the end of the planning period identified in the adopted TSP:
 - Generate types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;
 - Degrade the performance of an existing or planned transportation facility such that it would not meet the performance standards identified in the TSP or comprehensive plan; or
 - Degrade the performance of an existing or planned transportation facility that is otherwise projected to not meet the performance standards 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.

So, if a significant effect finding is required, the next step for a local government is to determine whether or not the traffic impacts of the amendment would “significantly affect” one or more transportation facilities “as measured at the end of the planning period.” This requires the local government 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
- Determine what the impact of the amendment would be on those facilities.

The updated TPR also allows, as part of the evaluation of projected conditions associated with a proposed amendment, that the amount of traffic projected to be generated may be reduced if the amendment includes an “*enforceable, ongoing requirement that would demonstrably limit traffic generation.*” Requirements that might qualify as “enforceable” and “ongoing” are discussed in Section 3.2.5.

ODOT is notified of local land use activities as an affected agency and that notice triggers the first level of development review. In addition to notice of the pending land use action, the local government should also notify ODOT of a determination that an amendment could impact a state highway facility and request that ODOT identify what state transportation facilities and improvements the local government can rely on to be available for use by the end of the planning period to help determine whether there is a significant effect.

As described in this document, the planned state facilities and improvements local governments can rely on include:

- Existing state facilities,
- Transportation facilities, improvements or services that are “funded for construction or implementation” in the Statewide Transportation Improvement Program (STIP),
- Projects in a financially constrained Regional Transportation Plan (RTP) adopted by a Metropolitan Planning Organization (MPO), 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 guidelines in Section 3.2.2)

The rule contains provisions that distinguish proposed amendments located inside “interstate interchange areas” from those located outside such areas. Being within the interchange area means the application applies to properties located either within one-quarter mile of a ramp terminal of an existing or planned interchange along Interstates 5, 82, 84, 105, 205 or 405 or within an interchange area as defined in an adopted Interchange Area Management Plan (IAMP). This is described in further detail later in this chapter.

3.2.3. When Significant Effect Analysis is Not Required

All zone changes need to be reviewed for compliance with Section 0060. However, the 2011 revisions provide for two circumstances under which a finding of no significant effect can be made without traffic impact analysis. Under Section (9) a zone change that is found to be consistent with the comprehensive plan designation does not require further analysis to make a finding of no significant effect. And a plan amendment or regulatory amendment inside an established Multimodal Mixed-Use Area is not subject to analysis regarding transportation facility capacity (congestion, delay, travel time).

Zone Changes Consistent with - 0060(9)

Pursuant to Section 0060 (9), a finding of no significant effect can be made if it is determined that the proposed zoning is consistent with the existing comprehensive plan map designation *and* the acknowledged local TSP.

For areas that were added to an urban growth boundary (UGB) after the “significant effect” threshold was added (effective April 11, 2005), determining that Section 0060 (9) is applicable will require finding that TPR 0060 was applied at the time that the area was added to the UGB or that the local government has a subsequently acknowledged TSP update or amendment that accounted for urbanization of the subject area.

Determining Consistency with the Existing Comprehensive Plan Map Designation

Many local governments have a two-map land use system and use both an adopted comprehensive plan map with general land use designations and a corresponding zoning map that implements the comprehensive plan map with more specific designations. Other jurisdictions may have a single map showing both the underlying comp plan designations and the subsections that identify more specific regulatory characteristics. In either of these cases, Section 0060 (9) can be readily applied.

However, if the comprehensive plan map and zoning map are identical then it is more difficult to justify the application of Section (9). Local planners should consult with their DLCDC Regional Representative for clarification if they want to try to apply Section 0060 (9) for an amendment of the zoning designation where a “single map” land use regime is in place.

In most cases, determining whether or not the proposed zone change is consistent with the existing comprehensive plan map should be fairly straight forward. As an example, a commercial comprehensive plan land use designation may be implemented by a variety of commercial zones, such as office commercial, general commercial, mixed-use commercial, neighborhood commercial, etc. If an applicant wanted to change zoning from office commercial to general commercial, and both zones implement the commercial land use designation on the comprehensive plan, then the consistency requirement of TPR subsection 0060 (9)(a) could be met for the comprehensive plan.

Determining Consistency with the Acknowledged Transportation System Plan

In addition to establishing that a proposed zone change is consistent with the comprehensive plan land use designation, the applicant must provide adequate information so the local government can determine whether the proposed zoning is consistent with the locally adopted and state acknowledged TSP. While

detailed information is preferred, it may not be easy to meet this test, so several approaches to meeting subsection 0060 (9)(b) are suggested below.

Subsection 0060 (9)(b) is clearly met when it can be shown that the transportation modeling for the TSP accounted for the type and intensity of development that is allowed by the proposed zoning. How easily this determination can be made will depend in part on whether the assumptions and analysis used in the TSP are readily available, accessible and discernable. Ideally, an applicant will be able to review (or the local government will be able to document) the traffic-related assumptions specific to the area that is the subject of the zone change. If this review determines that the TSP assumed the type of development, or levels of trip generation comparable to the levels that would be generated by the proposed zoning, a finding can be made that the zone change is consistent with the acknowledged TSP and section 0060 (9) can be met. If there is insufficient documentation of plan assumptions or modeling data, other factors in the adopted TSP, such as trip distribution, trip assignment, and background traffic, may be reviewed and considered for their adequacy in forecasting the comparable impacts to the proposed rezoning.

Complicating factors include TSP modeling that based future trip generation on population growth projections, making it impossible to make a trip generation finding specific to the subject parcel. However, the applicant or local government may be able to demonstrate that the trip generation resulting from the zone change is substantially similar to that assumed in the TSP and, therefore, the action can be found to be consistent with the acknowledged TSP.

In cases where the TSP was not based on a traffic model (which is typical in smaller cities) or it is not clear what was assumed in the TSP, it may be possible for the applicant or local government to show that the proposed rezoning is “not inconsistent” with the acknowledged TSP.

Where modeling data is not available or where the traffic assumptions for the subject area are not documented, more emphasis will need to be placed on consistency of the proposed action with adopted land use policy, the TSP goals and objectives as they relate to the particular area and growth, economic development policies, or planned transportation improvements. Whether or not one can make a credible argument that a proposed zone is “not inconsistent” with the TSP will depend on local circumstances and available information.

Example 1.a: A zone change is proposed to reduce the maximum permitted residential density in an area from R-20, an existing 20 units per acre residential zone, to R-12, 12 units per acre. Both zones (R-20 and R-12) implement a Medium Density Residential comprehensive plan designation (MDR). In this case, the local government could find that the zone change reduced trip generation and thus would not significantly affect transportation facilities. No further “significant effect” analysis would be required.

Example 1.b: A proposed zone change would increase the maximum permitted residential density from an existing R-12 units/acre to R-20

units/acre. While the proposed zone is consistent with the comprehensive plan designation, more information is needed to determine whether the amendment is consistent with TSP.

If 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), then:

The local government can find that the zone change would not affect the assumptions that underlie the TSP and thus the application is not subject to “significant effect” review.

Example 1.c: A proposed zone change would increase the maximum permitted residential density from an existing R-12 units/acre to R-20 units/acre. The proposed zone is consistent with the comprehensive plan designation, but traffic assumptions for the subject area are not available due to lack of clear modeling data. However, the proposal is supported by findings that show that the proposed density is consistent with locally adopted policy statements regarding future development in the subject area and an associated trip generation analysis shows that the proposed zoning will not exceed the locally adopted mobility standard on affected transportation facilities. In this case it is reasonable to conclude that the zone change is not inconsistent with the TSP and that the application does not require “significant effect” review.

Example 1.d: A zone change is proposed to increase the maximum permitted residential density in an area from an existing R-12 units/acre to R-25 units/acre. The R-12 zone implements the Medium Density Residential comprehensive plan designation (MDR). The R-25 implements the High Density Residential comprehensive plan designation (HDR). In this case, the proposed zone change is not consistent with the comprehensive plan so the application is subject to “significant effect” analysis.

ODOT’s Role in Determining Consistency with Plans

ODOT’s participation in a zone change decision reviewed under section 0060 (9) will typically occur in response to the original notification of a proposed zone change on property in the proximity of, or having potential impacts to a state facility. In straightforward cases, where there is little ambiguity about the

applicability of section 0060 (9), ODOT's role in the local zone change process will be minimal. However, in cases where it is difficult to support findings concluding that the requirements of section 0060 (9) have been met, the Agency has a role in reviewing the proposed changes in more detail.

ODOT's may make the case that Section 0060 (9) does not apply where the Agency does not agree that the proposed action is consistent with the local comprehensive plan or transportation system plan and the action is anticipated to have a significant effect on a state transportation system. In any case, note that ODOT must participate in the local proceedings prior to the local decision to ensure standing to appeal a potentially adverse decision.

Multimodal Mixed-use Areas - 0060 (8) & (10)

Multimodal Mixed-use Areas, or MMAs can be adopted, and subsequent amendments within their boundaries adopted, without consideration of local or state mobility performance measures (roadway capacity, congestion, delay, travel time, etc.) The act of designating an MMA is not subject to the significant effect evaluation requirements or remedies and no significant effect determination is required. For proposed MMA designations near state highway interchanges, ODOT may need to provide written concurrence, as further discussed under *Planning for MMAs near Interchanges* later in this section.

Any local government can take the land use planning and implementation steps in 0060 (10) necessary to establish an MMA. Because MMAs must include relatively high residential densities, and must limit or exclude low-intensity and auto-dependent land uses, MMAs are most likely to be designated in larger metropolitan areas and within or near existing central business districts, downtowns, and transit lines. There are similarities between the requirements of an MMA designation and the mixed-use Metro 2040 Growth Concept design types, which may make the Metro-area local governments among those likely to consider MMAs. There are also similarities to the ODOT designated Special Transportation Areas (STA); existing STAs may be candidates for MMA adoption.

Jurisdictions must adopt boundaries and make findings of consistency with TPR Section 0060 (10) to adopt an MMA designation. Because this action is a legislative plan amendment, the MMA designation must be acknowledged by the Land Conservation and Development Commission (or not appealed) in order to go into effect.

Establishing a Multimodal Mixed-Use Area

The steps to legislatively adopt an MMA include:

- Amend the adopted comprehensive plan to define the MMA boundary;
- Adopt implementation measures through ordinance amendments (e.g., development code, land use regulations, transportation standards);

- Follow the land use notice and inter-agency coordination requirements for legislative amendments; and
- Support the MMA-related amendments with findings of consistency with the Statewide Planning Goals, particularly for Goal 12 – Transportation, and compliance with TPR Sections 0060(8) and (10) specifically.
- A local government’s findings supporting the MMA designation should specifically reference provisions in the locally adopted TSP and development code that satisfy the requirements of TPR Section 0060(8)(b), such as street connectivity and pedestrian-friendly street design, and/or the amendment creating the MMA must include revisions to policy and regulatory documents that require the Section 0060 (8) characteristics of an MMA to be design standards and/or conditions of approval as redevelopment and new development occur.
- While capacity or mobility issues will not be the basis for decision making on MMA designations, an assessment of the operational and safety impacts of the MMA on the state system is needed and this may require a TIA or study. It is the local government’s responsibility to provide findings and information in order to support the local action. A TIA is not explicitly required through the TPR; however, one is strongly recommended for potential MMAs near interchange facilities. An assessment of the impacts of the MMA on the state system will be particularly important to provide to ODOT for MMAs proposed within ¼ mile of an interchange, where written concurrence from the Agency is required. See *Planning for MMAs near Interchanges* later in this section and TPR Section 0060(10).

ODOT’s Role in MMA Designations

The act of adopting an MMA designation is exempt from meeting mobility performance targets in OHP Tables 6 and 7. Regardless of the location of a proposed MMA, when state highways are affected ODOT has an advisory role in the local decision related to technical modeling and analysis and should review and comment on recommended (and/or previously adopted) standards that support the proposed designation.

While not explicit in the TPR, where an MMA designation includes a state facility the expectation is that ODOT will participate early in the local planning process, well before public legislative hearings and adoption. One way ODOT staff can assist the local government is with scoping for any necessary analysis to ensure that resulting information is sufficient to identify operational impacts on the state facility. ODOT has a responsibility to ensure that other transportation performance requirements are met. The TPR provides that MMA designation is “*not exempt . . . from other transportation performance standards or policies that may apply including, but not limited to, safety for all modes, network connectivity for all modes (e.g. sidewalks, bicycle lanes) and accessibility for freight vehicles of a size and frequency required by the development.*”

Through the local planning process (as an early participant and/or as part of the local adoption process), ODOT will have an opportunity to verify whether an MMA requires ODOT written concurrence. ODOT concurrence is required if the boundaries of the MMA are within one-quarter mile of any ramp terminal intersection of an existing or planned interchange.

Planning for MMAs Near Interchanges

The TPR specifies that ODOT has a responsibility to assess the operational and safety performance of interchanges and mainline facilities when MMAs are proposed within one-quarter mile of an interchange's ramp terminal intersection. In these cases, ODOT written concurrence with the MMA designation is required as a part of MMA adoption.³ ODOT must consider safety, including crash rates and top 10 percent Safety Priority Index System (SPIS) locations, and the potential for exit ramp backups onto the mainline prior to issuing written concurrence. These circumstances don't necessarily stop ODOT from "concurring" with the MMA designation; rather they become considerations in the designation process to help to ensure the system is managed as effectively as possible.

If ODOT finds that there are interchange-related operational or safety issues resulting from the designation of an MMA, these conditions may need to be addressed in a traffic management agreement between ODOT and the local government. The TPR does not require that the impacts to the interchange or mainline facility be fully mitigated at the time of MMA designation. However, in order for ODOT to concur with the MMA decision, the local government and ODOT will need to consider how potential impacts can be avoided or mitigated. This may occur through developing agreements or management plans that address identified interchange-related operational and safety issues and/or include measures to move traffic away from the interchange. The agreement may also address issues that are forecast to occur or may arise unexpectedly in future years.

ODOT also has a role in reviewing proposed MMA designations within the management area of an adopted IAMP. The TPR does not specifically require that a local government obtain a written concurrence statement from ODOT when the proposed MMA is within an adopted IAMP management area. However, the TPR requires that, if the proposal is within an IAMP area, the MMA must be consistent with the provisions of the IAMP. The local government can address this requirement through findings of fact supporting MMA adoption. Where there is an adopted IAMP, ODOT will review how the proposed MMA boundaries relate to the management area and how well any amendments to proposed land uses and development requirements match the land use and transportation assumptions and recommendations in the IAMP. If the MMA is

³ Note that designation of an MMA within the area of an adopted Interchange Area Management Plan (IAMP), where the MMA designation is consistent with the IAMP, is considered an action where performance standards related to mobility do not apply (Section (10)(b)(E)(ii)). ODOT's role in MMA designations within IAMP boundaries is explored later in this section.

found to be consistent with the adopted IAMP, ODOT can concur with the designation. If there are inconsistencies with the IAMP, ODOT and the local government will need to take steps to either address inconsistencies through mitigation or suggest changes to the MMA and/or amendments to the IAMP to achieve consistency. ODOT may appeal local adoption of the MMA if concerns are not adequately addressed.

To minimize delays and misunderstandings, ODOT recommends that the local government or applicant provide ODOT with a TIA that provides sufficient information to determine whether there are current or projected future traffic queues on an interchange exit ramp. TIAs used for this purpose need to include analysis of existing and potential safety and operational issues for modes at and near the interchange and any proposed traffic management measures to mitigate potential safety concerns for ODOT's consideration in review of the proposed MMA designation.

The TIA may identify needed capacity improvements, in addition to operational and safety issues. Volume-to-capacity ratio analysis may be used to determine the extent of congestion using the adopted OHP v/c targets (or adopted alternatives). An operational analysis should also be part of the assessment to determine the presence and extent of any traffic operational and safety impacts. A specific TIA may inform the agreement with local governments described in the TPR for potential MMA areas near interchanges. What is beneficial for a specific traffic impact analysis may differ based on the location and other characteristics of the proposed MMA.

If sufficient transportation analysis is not provided by the local government to support ODOT written concurrence, the Agency may conduct the analysis on its own to make the determination and identify potential mitigation measures to include in agreements with local governments as described in the TPR. Agency staff should communicate with the local government that this may complicate and/or lengthen the time necessary to make a determination on a proposed MMA designation within interchange areas as required in the TPR.

Outside of designated IAMP areas, and where an MMA designation is proposed beyond one-quarter of a mile from an interchange, ODOT concurrence is not required under the TPR. The Agency will still review these plan amendments as a party to the local government's legislative amendment process and, where necessary, will have an opportunity to comment and potentially appeal a local MMA adoption based on factors other than mobility targets for the affected facility(ies). For example, ODOT may consider and comment on safety, adequacy of multimodal facilities, transit capabilities and other characteristics.

3.2.4. Determining Significant Effect

As noted in the introduction to these guidelines, after it is determined how Section 0060 applies, "step 2" for the local government 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:

- Results in “*types or levels of travel or access*” that are inconsistent with the functional classification of an existing or planned transportation facility. The terms in quotes are not defined, but presumably:
 - “Types of travel” can include local versus through trips, proportions of vehicle types, such as a notable increase in large truck or transit vehicle trips, shifting focus from vehicle to transit trips, etc.
 - “Levels of travel” could relate to facility capacity, critical turn movements, travel speeds, etc.
 - “Types and levels of access” relates to the need for direct access to a facility, an increased density / reduced minimum lot size that will increase access demands, design standards reducing the allowable number of approaches where there is demand for increased numbers of approaches, etc.
- Degrades the performance of a transportation facility such that it would not meet the performance standards identified in a TSP or comprehensive plan; or
- Further degrades the performance of an existing or planned transportation facility that is otherwise projected to not meet the performance standards identified in a TSP or comprehensive plan.

Determining consistency with undefined standards is tricky. Access consistency might be interpreted to mean existing and allowed approaches under the amendments will meet spacing and other approach permitting standards. Types of travel are presumed consistent if they are consistent with the expectations for the roadway based on functional classification; for example a statewide highway carries a high proportion of through traffic rather than local. Or, a land use that will generate a high level of trips in and out of the local area would be changing the type of travel in a way that is inconsistent with the functional classification of an affected District Highway.

For state highway facilities, a significant effect most often occurs when a proposed use will create conditions that do not meet objectives for maintaining roadway function as established in the OHP (primarily highway classification definitions in OHP Policy 1A and highway mobility targets in OHP Policy 1F). Note that, when developing system and facility plans (where the state and local governments jointly take a broad look at what is viable for an identified impact area around a particular facility), the State’s mobility objectives are considered “target” levels. However, for purposes of local plan amendment review, the targets are treated as *standards* in order to ensure compliance with applicable administrative rules, including determining compliance with the TPR.

A proposed comprehensive plan or land use regulation amendment that does not result in a defined impact on the transportation system (i.e. does not exceed performance standards or allow more trips than do the current plan and zoning designations for a facility that is already projected to exceed standards) would not trigger a significant effect and, therefore, the provisions of Section 0060 would not apply to the amendment.

To identify impacts “at the end of the planning period identified in the adopted TSP” (see OAR 660-012-0060(1)(c)),⁴ the local government first must determine which of any planned transportation improvements identified in its TSP or comprehensive plan will be provided (i.e., in place and available) at the end of the planning period. These are considered in addition to existing transportation facilities and services.⁵

Section 0060(4) of the TPR specifies which planned facilities, improvements and services a local government can rely on to determine whether a proposed amendment would significantly affect an existing or planned transportation facility. These improvements may include both state and local transportation facilities.

Planned Improvements Local Decision Makers Can Rely on for Significant Effect Analysis

OAR 660-012-0060(4) establishes various levels of planned, non-state transportation facilities, improvements and services a local government may rely on when conducting a “significant effect” analysis. The first thing to consider is planned transportation facilities, improvements and services that can be assumed as being “in-place” or committed and available to provide transportation capacity. Subsection 0060 4(b) details the list of planned project types, all of which have some level of funding commitment associated with them, that can be considered as “in-place and available” by the end of the applicable planning period. In other words, the transportation capacity provided by these projects may be considered as available to accommodate traffic increases associated with a proposed amendment.

Under this provision, local governments 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.⁶ However, state

⁴ 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.

⁵ Services includes transit services and measures such as transportation demand management.

⁶ Note that the rule distinguishes funding in the STIP from funding through local plans or mechanisms; inclusion of a state facility in a local funding plan or program does not eliminate the

facilities that fall into this category still require a reasonably likely determination to be relied upon.

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 - ODOT’s Construction STIP; identifies project scheduling and funding for the state’s transportation preservation and capital improvement program for a four-year construction period.

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*”. This includes projects for which the construction costs are fully funded. It also includes projects that may be under-funded because the construction funding stream represents a commitment to build the project. However, it would not include projects where the funding is committed for something other than construction, e.g. planning, right of way purchase or environmental work.⁷ 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.

Example 2: A state highway project is proposed to be built in three phases. Phase 1 is fully funded for construction, but 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 true 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” so will require a “reasonably likely” determination before they can be “relied upon.”

MPO Financially Constrained Regional Transportation Plan (RTP) – Transportation facilities, improvements or services in a metropolitan planning organization (MPO) area that are part of the area’s federally-approved, financially constrained RTP are considered to be funded.

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.

⁷ While funding for environmental work might later lead to funding for construction, that is not always a certainty. Until there is funding for construction, sole reliance on the C-STIP project is not permitted.

Amendments Outside an Interstate Interchange Area

When the location where the proposed amendment will be applied is outside of an interstate interchange area, as defined in OAR 660-012-0060(4)(d)(B) and (C),⁸ then, in addition to the transportation facilities and improvements identified 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 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).

Amendments Inside an Interstate Interchange Area

Interstate highways and associated interchanges play a major role in moving people and goods between regions of the state and between Oregon and other states. These facilities represent a tremendous public investment in highway infrastructure that the state wishes to protect. Consequently, the standards applicable to proposed amendments are more stringent for land areas located inside interstate interchange areas.⁹ If the proposed amendment applies to land located inside of an interstate interchange area, the local government may consider only the planned facilities, improvements and services identified in Section 0060 (4)(c) in determining whether the amendment would have a significant effect on an existing or planned transportation facility.

Section 0060(4)(c) sets out slightly different parameters for reliance on planned improvements. Generally, the improvements described in subsection 4(b)(A)-(C) can be relied upon; subsections 4(b)(D) and (E) can only be relied upon 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 standard is somewhat broader than and different from existing ODOT standards because it involves an assessment of adverse impact to the “interstate

⁸ Beyond one-quarter mile from the ramp terminal intersection of an existing or planned interchange along Interstates 5, 82, 84, 105, 205 or 405 or outside an interchange management area as defined in an adopted Interchange Area Management Plan on any of these facilities

⁹ “Interstate interchange area” means (1) property within one-quarter mile of a ramp terminal intersection of an existing or planned interchange on an Interstate Highway (i.e., Interstates 5, 82, 84, 105, 205 and 405), or (2) the interchange area as it is defined in an Interchange Area Management Plan adopted as an amendment to the Oregon Highway Plan.

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.

Examples of Improvements that can be Relied Upon to Meet Future Needs within an Interchange Management Area

Example 3.a: An applicant is proposing plan and zoning amendments from low density residential to commercial for a 10-acre parcel located within one-quarter mile of an interchange along I-5. The Oregon Transportation Commission has adopted an Interchange Area Management Plan and all local governments with jurisdiction within the interstate interchange management area have adopted necessary amendments and/or resolutions to bring their codes into compliance with the IAMP. Improvements to state highways or regional or local roads and streets that are not identified in the STIP are included as planned improvements in the local government’s TSP or comprehensive plan.

In this situation, 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 to determine 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 applicable, 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.

Example 3.b: In this second example, the same facts are present except there is no adopted IAMP. In this case, 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 result¹⁰; and (3) ODOT (for improvements to state highways) and the relevant local government or transportation service provider (for improvements to regional and local roads, streets and other transportation facilities or services) also indicate in writing that the planned improvements are reasonably likely by the end of the planning period.

¹⁰ To determine this, the applicant may need to submit a traffic impact statement or traffic impact analysis to ODOT. See Section 3.2.13.

In this 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 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 may enter into a binding agreement that ensures that these measures will 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.

Identify Traffic Generation Assumptions for Significant Effect Analysis

For traffic analysis, ODOT should be a party to the development of the assumptions that will be used to project traffic generation related to a land use amendment proposal. However, the local government is the lead agency in this process unless ODOT initiates the analysis independently.

Typically, the evaluation of traffic impacts is based on a “reasonable worst case” scenario for potential land use and traffic assumptions, rather than the particular land use and effects of what is proposed. The TPR does not specify the use of a reasonable worst case analysis, but DLCDC suggests that this approach will get the most reliable results and that opinion is supported by related case law. This is actually a two-step process that first assesses the reasonable worst case assumptions for land uses that may be developed within the plan period and subsequently assesses the reasonable worst case of the traffic characteristics of those land uses.

It is also important to take into account what is “reasonable” for the particular location that is being assessed. The concept of “worst case” is premised on an assumption that whatever else can be developed on a site will be developed so the transportation system needs to be sufficient to serve that set of possible uses. The “reasonable” part is about the market forces and local objectives that will affect what will actually be built. What is reasonable in Hillsboro will on doubt be entirely different from what is reasonable in Hines.

Oregon case law provides some insight into assumptions about defining a locally based “reasonable worst case” scenario for land uses when projected traffic effects are needed. The Land Use Board of Appeals provided some clarification in *Rickreall Community Water Association v. Polk County*, 53 Or LUBA 76 (2006). This decision says that the highest potential allowed use of the property must be considered for the purposes of projecting future trips, but that this approach does not require an estimation of the absolute maximum traffic that a use category might generate.

“A common approach in estimating traffic generated by a particular use is to rely on published data, such as the Institute of Transportation Engineers Trip Generation Handbook. Such data are usually based on average or typical intensities for particular categories of uses. Another common

approach is to examine similar developed uses in the vicinity, and to base trip generation estimates on the traffic levels generated by such similar uses. We have never held that either approach requires an estimation of the highest theoretical intensity of a particular use category, and it is difficult to see how the theoretical intensity could be calculated with any accuracy.”

In estimating traffic generated for plan and zoning amendments, ODOT will generally rely on the judgment of local decision makers, provided there is some documentation of the methodology used, the assumptions made and the basis for those assumptions. Some types of information that would support land use assumptions include:

- Historic growth trends; population as well as industry-specific growth trends and projections. In many areas, particularly smaller markets’ and rural communities’ assessment of what is reasonable, may be based on local knowledge of economic conditions, population projections and past trends.
- As used in “available lands” assessments, only properties below a certain improvement to land value ratio may be assumed to be likely to redevelop.
- Likely infill of vacant properties in otherwise developed areas and/or added development “pads” on developed large lots may be assumed, where the reasoning behind the assumption can be documented.
- In zones allowing a broad range of uses, the basis for assumptions regarding what is “reasonable” should be documented where it is not simply the “worst case” for traffic related to allowed land uses.
- Site constraints in the area, either man-made, such as lot or street configurations, or natural such as floodplains or steep slopes, etc.
- An economist’s report might be the basis for an assumption that the area will not fully build out to allowed densities within the planning horizon due to a location-specific market factor.

The methodology and assumptions used to evaluate legislative plan amendments, such as TSP updates and amendments to comprehensive plans, may be different from assumptions used to evaluate quasi-judicial plan amendments, where the subject property has to be shown to comply with specific standards and be consistent with existing plans. Similarly, assumptions for a single parcel or small area may be different than for an entire city or large sub-area. In all instances, communication and coordination between local and ODOT staff about methodology and assumptions is crucial early in the traffic analysis process.

The 2011 OHP Policy 1F revisions support this approach. Consistent with Policy 1F (Action 1F.2), when evaluating how amendments to transportation system

plans impact highway mobility, “*planned development*” assumptions must be considered that are consistent with the community’s comprehensive plan:

Planned development means the amount of population or employment growth and associated travel anticipated by the community’s acknowledged comprehensive plan over the planning period.”

So, growth “anticipated” in local plans (but not full build-out of allowable land uses, which would amount to using the worst case without tempering that by what is reasonable), plus the “*forecasted growth of traffic on the state highway due to regional and intercity travel*” are the basis for projections of travel demand on the state facility at the end of the planning period.

Identify the Applicable Planning Period

The TPR establishes “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. The planning period will vary with the age of the plan; TSPs typically are based on a 20 year planning horizon.

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. The Oregon Highway Plan (The highway modal plan of the Oregon Transportation Plan which is ODOT’s adopted TSP) Action 1F.2 provides:

“...When evaluating highway mobility 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”.

So, 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, the state would use a 15 year planning horizon for state facilities as the timeframe for its “reasonably likely” and “significant effect” determinations, while local transportation service providers would use an 8 year planning horizon for the facilities they provide. The relevant TSP for non-state facilities is the local TSP, not the Oregon Transportation Plan.

The determination of the applicable planning period for local facilities and services is 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 to apply the plan.

Reasonably Likely Determination

The TPR section that calls for an assessment of whether planned improvements are “reasonably likely” to be provided by the end of the planning period is an important element of TPR Section 0060. This provision recognizes that adopted transportation system plans often include more transportation projects and improvements than will be funded or constructed over the original 20-year planning period. Where funding is uncertain or unlikely, a project or improvement that is included in the TSP may not be counted as a “planned improvement” for purposes of Section 0060 to decide whether or not planned transportation facilities and improvements are adequate to support planned land uses.

ODOT may be asked to provide a written statement 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).¹¹

To make a “reasonably likely” determination, ODOT must determine 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 a transportation facility, improvement or service that is “funded for construction or implementation” in the Statewide Transportation Improvement Program (STIP) (which is already accounted for); and
- In ODOT’s opinion, it is reasonably likely that the state highway improvement will be provided “by the end of the planning period”

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) for the purposes of the subject amendment. Upon receiving such a written statement from ODOT, a local government then may consider the additional transportation capacity provided by the reasonably likely 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

¹¹ 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.

reasonably likely, then the local government may not rely on that improvement when determining if the proposed amendment will have a significant effect.¹²

ODOT Considerations for Reasonably Likely Determinations

The reasonably likely written statement 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 it be relied upon when conducting the traffic analysis that accompanies the proposed amendment?” ODOT considerations for determining whether a future facility improvement is “reasonably likely” include but are not limited to:

- The cost of the planned improvement and its relative priority for ODOT funding, considering other needs in the region and expected funding levels;
- Whether there has been recent history of securing construction funding for the type of planned improvement;
- Location of the planned improvement in an area that anticipates high growth that may be a high priority area for targeting future transportation revenues;
- Location of the planned improvement in an area targeted for special land use consideration, such as a town center, a main street or an industrial area that benefits economic development in the region and/or the state and is therefore likely to receive a higher priority for future transportation funding;
- 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;
- Location of the planned improvement on an arterial or statewide highway, or a designated freight route, that would be reasonably likely to receive future funding ahead of a lower classified facility;
- Whether the planned improvement would provide a critical transportation connection or complete a key transportation link that would have system-wide benefits;
- Potential availability of unique funding sources for the planned improvement, such as tax increment financing, special assessments, private contributions or other local initiatives; and
- Whether the proposed improvements reflect ODOT’s Practical Design initiative or agreements associated with adopted alternative mobility targets.

¹² For a summary of ODOT participation roles see TPR Subsection (4)(e)(A) and Guidelines under 3.2.6, ODOT Participation in -0060 Reviews.

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

- Broad, multi-jurisdictional support (community, business, and political) for the planned improvement;
- Whether any project development steps have been completed towards providing the planned improvement (e.g. inclusion in the Developmental or D-STIP, preliminary design work or purchase of right-of-way);
- Any apparent “fatal flaws” that could obstruct moving the planned improvement forward; and
- The cost of the planned improvement and how important it is in relation to other planned projects within the Region.

Important Notes on Reasonably Likely Determinations

1. For state highways, the determination of whether improvements are reasonably likely to be provided by the end of the planning period is ODOT’s decision. This is true even where a local government has authorized local funds or has a revenue stream in place to fund the project. ODOT will consider any local commitment to contribute to project costs when determining whether an improvement is reasonably likely to be provided during the planning period.
2. An ODOT statement that a facility is reasonably likely to be available within the planning period applies only the proposed plan amendment for which it is written. If a subsequent plan amendment is proposed that affects the same facility, the process has to be repeated and there may be changes of circumstance that would result in the second instance being denied reasonably likely findings.
3. Where a state facility is affected so that an ODOT reasonably likely letter is needed, the local jurisdiction cannot proceed to rely on the subject facility if no such ODOT letter is received.

3.2.5. Significant Effect Remedies - Mitigation

Pursuant to 0060(2), if a local government determines that a proposed amendment will have a significant effect, approval of the proposal requires measures that will ensure that the allowed land uses are consistent with “the identified function, capacity, and performance standards of the facility,” as measured at the end of the planning period in the adopted TSP. The local government must:

- Adopt measures that ensure that the allowed land uses are consistent with the planned function, capacity, and performance standards of the affected facility;
- Amend the TSP or comprehensive plan to provide transportation system improvements sufficient to support the proposed land uses; and/or
- Amend the TSP to modify the planned function, capacity or performance standards of the affected facility (0060(2)(a) through (c)). The local government can accomplish this in a number of ways, including:
 - Amend the TSP to include facilities, improvements or services adequate to support the proposal and include a funding plan and/or mechanism as required by section 0060 (4).
 - Amend the TSP to modify the function, capacity, or performance standards of a non-state facility. An example would be changing the functional classification of a roadway and/or its level of service standard.
 - Require transportation system management measures or transportation improvements, including a timeframe for implementation, as a condition of development approval. This can be a problematic approach since the applicant for the plan amendment may be different from the future developer. Some jurisdictions resist putting development related conditions on plan amendments based on the logic that development creates the actual impacts on transportation. However, some jurisdictions will condition plan amendment approval, providing an opportunity to let applicants know what will be expected of them when development occurs. One approach to accomplish this would be to apply an overlay zone or area plan that creates special conditions for subject development area, a distinct planning process enabled in some development codes that would typically run concurrent with the plan amendment.

The local government is required to remedy a significant effect through one or a combination of the approaches listed above *unless*:

- The amendment is supported by a commitment to improvements that will benefit modes other than the significantly affected mode and that are sufficient to balance out the identified significant effect of the proposed amendment (section 0060(1)(c));

- The local government approves the amendment inside an adopted MMA; or
- The local government approves partial mitigation, pursuant to Section 0060 (11).

3.2.6. Remedies – Reduce or Avoid the Significant Effect

Measures that Reduce Traffic Generation

Revised language in subsection 0060 (1)(c) clarifies that when evaluating projected traffic conditions, any such requirement(s) proposed as part of the amendment may be considered and the assumed trip generation numbers may be reduced accordingly when determining significant effect.

“As part of evaluating projected conditions, the amount of traffic projected to be generated within the area of the amendment may be reduced if the amendment includes an enforceable, ongoing requirement that would demonstrably limit traffic generation, including, but not limited to, transportation demand management. This reduction may diminish or completely eliminate the significant effect of the amendment.”

Examples of enforceable requirements include but are not limited to trip caps and transportation demand management actions, such as parking maximums, hours of operation or staggered shifts for labor intensive uses. Trip caps, or trip budgets, are adopted locally by ordinance as part of a comprehensive plan or zone amendment, or as a condition of approval of a development proposal. Transportation demand management requirements can be incorporated into a local development code or zoning ordinance through a legislative amendment, or can be more narrowly applied to a specific geographic or project area, as part of an amendment proposal and pursuant to conditions of approval adopted through the development approval process.

Local governments can also alter land use designations, densities, or design requirements through a legislative amendment to the local development code or zoning ordinance to reduce demand for automobile travel. Local plans may also address future travel needs through development of other modes.

System-wide Balancing Test

Section 0060 (2) includes a list of acceptable remedies to mitigate a demonstrated significant effect on a transportation facility. New to this list is a “balancing test” that allows system-wide improvements to be part of a local government’s determination of whether or not the proposed land uses and the planned transportation system are consistent. Improvements that can be considered when determining transportation/land use consistency include those that benefit other modes, improvements to the affected facility at other locations, or providing improvements to facilities other than the one significantly affected.

For state facilities, ODOT must agree and provide a written statement that the system-wide benefits are sufficient to balance the significant effect to a state facility. Under this TPR provision, it is not necessary to demonstrate that the proposed improvements will bring the affected facility up to all applicable performance standards in order to make a determination of no significant effect.

Local Actions to Implement System Balancing Approach

Where a proposed amendment is expected to significantly affect a transportation facility, a local government may propose a remedy that consists of improvements to state, regional or local transportation facilities or services on the affected facility or at other locations, or improvements that benefit other modes of transportation, rather than improvements only to the affected facility.

When a state highway is affected and addressed under this option, the local government will need to request a written statement from ODOT agreeing with the assessment that the system-wide benefits are sufficient to balance the significant effect, even though the improvements may not result in fully meeting the mobility targets or other applicable performance measures.

Traffic impact analysis will be needed to establish baselines of facility performance. against which a determination can be made of whether the system level mitigation proposed is sufficient to balance against the significant effect. For an affected state facility, the traffic impact analysis should identify recommended capacity improvements, as well as operational and safety measures. Typically, a volume-to-capacity (v/c) ratio analysis will be needed to determine the extent of congestion on the state facility and the adopted OHP v/c targets will be the baseline against which the extent of these impacts is evaluated. The prior adoption of alternative mobility targets and/or methods may change the requirements/thresholds for this initial analysis, but the approach is still the same. Specific requirements of analysis of the system benefits will vary, depending on the location of the proposed amendment area and the type(s) and location(s) of mitigating improvements being proposed.

ODOT's Role and Considerations: System-wide Balancing Test

The TPR requires a written statement from ODOT regarding the sufficiency of the proposal to meet the balancing test, so the Agency will have to ascertain the extent to which proposed system improvements will improve the whole transportation system and how the subject state and local facilities are expected to perform as part of that system. Proportionality of the mitigation to the scale of the proposed plan amendment and consistency with applicable plans will be important elements for performing this “balancing test.”

This is a new regulatory concept, so there are no examples of implementing it at this writing. Consequently, there are no formal guidelines on how to determine if proposed mitigation provides sufficient net benefits to the system as a whole to balance an identified significant effect. Each situation will be unique. ODOT reviewers will need to rely on the local findings that support the proposed

amendment and use their best professional judgment to make a determination that the system-wide benefits are sufficient to balance the significant effect. Quantitative “proof” of the equivalence of the benefits may be lacking. The local government will need to provide sufficient transportation analysis to support findings that the proposed mitigation sufficiently addresses and balances the significant effect. Case study examples of early determinations will be helpful for providing additional guidance and best practices in the future.

Example: Assessing System Level Balance

Example 4: A proposed amendment will allow development that will cause an intersection on a state highway to exceed the OHP mobility target for the facility (i.e. create a significant effect). The affected facility is located in a developed, urban area and has been recently re-constructed to improve mobility, a project that widened the roadway and included enhanced traffic signal timing. Capacity improvements to accommodate the additional traffic demand from the proposed amendment, such as additional lanes, would be counter to the local government’s alternate mode transportation goals and could not be accommodated without acquiring right-of-way and costly impacts to existing development.

Given the limitations related to increasing capacity on the significantly affected intersection, the proposal instead require improvements to a parallel local collector that would improve vehicular circulation in the vicinity of the subject site and affected intersection. Improvements on the collector include left turn pockets, right turn lanes, and pedestrian improvements, all of which are designed to enhance the collector as a viable alternate route to the state highway. The traffic analysis shows that these local improvements will improve the mobility through the state intersection, but will not entirely mitigate the traffic impacts on the facility resulting from the proposed amendment. In this circumstance, where the state facility is severely constrained from additional capacity improvements and the local street system is enhanced to measurably offset the impacts on the significantly affected intersection, the Agency could provide the local government with a written statement agreeing with the assessment that the system-wide benefits are sufficient to balance the significant effect on the state facility.

3.2.7. Facilities Operating Below Performance Standards

Section 660-012-0060(3) is intended to provide a workable approach for plan amendments and zone changes planned transportation facilities, improvements and services in the adopted TSP are already expected to be insufficient to meet minimum acceptable performance standards by the end of the plan period. The proposed amendment must require mitigating measures that can be shown to

prevent things from getting worse (e.g. no further degradation) than would occur under anticipated conditions without the plan amendment.

There are several qualifications to consider in applying Section 0060 (3):

- First, the provisions of Section 0060 (3) are discretionary, not mandatory. Section 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.
- Second, as in Section 0060 (4) (reasonably likely), Section 0060 (3) includes a provision authorizing ODOT to submit a written statement concurring with the adequacy of any needed mitigation measures. However, unlike Section (4), should ODOT fail to provide a written statement, the local government may make their own determination about the adequacy of the proposed mitigation. Consequently, ODOT should pay close attention to procedures for applying this section of the rule described below in *Approving an Amendment on a Failing Facility*.
- 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.”

Approving an Amendment on a Failing Facility

Pursuant to section 0060 (3), a local government may be able to approve an amendment that would significantly affect an existing transportation facility without ensuring that the allowed land uses are consistent with the function, capacity and performance standards of the facility if it determines the following:

- 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 this is the situation, then the local government may approve the amendment when the following conditions are met:

- At a minimum the development resulting from the amendment will mitigate the impacts of the change to avoid further degradation of the performance of an affected 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 an affected state highway.

Applicability of OHP Policy 1F: Highway Mobility Standards

Action 1F.5 addresses how ODOT evaluates proposed amendments to transportation system plans, acknowledged comprehensive plans and land use regulations that are subject to OAR 660-12-0060, where the proposal impacts a failing state transportation facility or one that is predicted to fail.

Action 1F.5 clarifies that where the volume to capacity ratio or alternative mobility target for a highway segment, an intersection or interchange is currently above the mobility targets in OHP Table 6 or Table 7 or those otherwise approved by the Oregon Transportation Commission, or is projected to be above the mobility targets at the planning horizon, and transportation improvements are not planned within the planning horizon to bring performance to the established mobility target, the mobility target to apply is “no further degradation.” So, as in TPR section 0060 (3), the goal of avoiding further degradation is only applicable when there are no planned transportation improvements to bring performance up to the established mobility target.

Action 1F.5 further establishes that, where the facility is already operating above capacity, or is projected to be operating under failing conditions at the planning horizon, a small increase in traffic does not cause “further degradation” of the facility. Policy 1F defines a “small increase in traffic” in terms of certain thresholds that are based on average daily trips. If an amendment subject to TPR Section 0060 increases the volume to capacity ratio further, or degrades the performance of a facility so that it does not meet an adopted mobility target at the planning horizon, it will significantly affect the facility unless the change in trips falls below the thresholds listed:

“The threshold for a small increase in traffic between the existing plan and the proposed amendment is defined in terms of the increase in total average daily trip volumes as follows:

- *Any proposed amendment that does not increase the average daily trips by more than 400.*
- *Any proposed amendment that increases the average daily trips by more than 400 but less than 1001 for state facilities where:*
 - *The annual average daily traffic is less than 5,000 for a two-lane highway*
 - *The annual average daily traffic is less than 15,000 for a three-lane highway*
 - *The annual average daily traffic is less than 10,000 for a four-lane highway*

- *The annual average daily traffic is less than 25,000 for a five-lane highway*
- *If the increase in traffic between the existing plan and the proposed amendment is more than 1000 average daily trips, then it is not considered a small increase in traffic and the amendment causes further degradation of the facility and would be subject to existing processes for resolution.”*

The measured increase in average daily traffic is **total site trips** and is not broken down into trips that impact the state highway only or have any other specific traffic characteristics. The OHP Action 1F.5 threshold text regarding “state facilities” is in reference to the traffic and roadway characteristics of the affected state facility, not the additional trips from the site.

Example 5: A state highway is currently performing at a v/c ratio of 0.95. The minimum acceptable performance target for this facility is v/c 0.90. By the end of the planning period, assuming all of the planned improvements identified in the adopted TSP, the highway will perform at a v/c of 1.0. That is, the TSP does not identify projects that will enable the facility to meet the minimum acceptable performance target at the end of the planning period.

The traffic study for the proposed amendment indicates that the amendment will cause the facility to perform at a v/c of 1.05. In this circumstance, because the TSP has not identified improvements needed to meet the v/c 0.90 target for the facility at the end of TSP planning period Section 660-012-0060(3) may be applied to this circumstance. Application of 0060(3) would result in the requirement that the proposed amendment not result in further degradation to the facility from the future year v/c in the TSP. That is, the amendment will need to identify an improvement or action that will return the projected v/c of 1.05 to a v/c of 1.0 (the v/c projected for the facility without the amendment).

OHP Action 1F.5 Flexibility for Mitigation

In addition to setting thresholds for determining what is a small increase in traffic, 2011 revisions in OHP Action 1F.5 provide some flexibility for determining mitigation for an affected state facility. Action 1F.5 states:

*“In applying OHP mobility targets to analyze mitigation, ODOT recognizes that there are many variables and levels of uncertainty in calculating volume-to-capacity ratios, particularly over a specified planning horizon. **After negotiating** reasonable levels of mitigation for actions required under OAR 660-012-0060, ODOT considers calculated values for v/c ratios that are within 0.03 of the adopted target in the OHP to be considered in compliance with the target. The adopted mobility target still applies for determining significant effect under OAR 660-012-0060.”*

This policy language applies after a significant effect has been determined through TPR Section 0060 processes and a reasonable level of mitigation has been negotiated with the applicant and/or local government. The intent of this language is to address situations where reasonable and proportional mitigation for the proposal will get close to the adopted target (within 0.03 v/c), but mitigation to fully meet the target is a significant investment that is unreasonable and not proportional to the likely development impact on state facilities.

OHP Action 1F.5 also encourages mitigation measures other than increasing capacity that include but are not limited to:

- System connectivity improvements for vehicles, bicycles and pedestrians.
- TDM methods to reduce the need for additional capacity.
- Multimodal (bicycle, pedestrian, transit) opportunities to reduce vehicle demand.
- Operational improvements to maximize use of the existing system.
- Land use techniques such as trip caps or trip budgets to manage trip generation.

These actions may not be applicable in many situations. However, the actions correspond well with many of the 2011 amendments to the TPR, particularly subsection 0060 2(e) that enables implementation of system level mitigation measures to balance potential impacts.

3.2.8. Economic Development Balancing Test

Section 0060 (11) is a new element of the TPR that allows for transportation impacts generated by a proposed amendment to be weighed against the proposed land uses' potential to create industrial or traded-sector jobs.

“Industrial” means employment activities generating income from the production, handling or distribution of goods including, but not limited to, manufacturing, assembly, fabrication, processing, storage, logistics, warehousing, importation, distribution and transshipment and research and development.

“Traded-sector” means industries in which member firms sell their goods or services into markets for which national or international competition exists.

Where a proposed amendment creates the type of jobs that meet the definitions above, a local government may accept partial mitigation where it can be shown that the economic benefits outweigh the negative effects on transportation facilities. ODOT has an opportunity to provide written concurrence that the benefits outweigh the negative effects on state facilities

Where a proposed amendment significantly affects a state transportation facility, the local government must obtain “concurrence” from ODOT that the economic benefits of the proposal outweigh the negative impacts to the state transportation system. The same is true for other transportation facility providers (e.g. city or county systems). The TPR requires that ODOT coordinate with the Oregon Business Development Department (Business Oregon) when determining the job-creation benefits of a proposed amendment.

Application of this section is more flexible in terms of the types of jobs considered eligible for communities with fewer than 10,000 in population and located outside of Metropolitan Planning Organization (MPO) areas as well as outside of the Willamette Valley.

Local Actions to Implement Economic Development Balancing Approach

Local governments may approve an amendment with partial mitigation if the amendment will create or retain industrial or traded-sector jobs, as defined in the TPR. For jurisdictions with populations of 10,000 or more, in an MPO, or in the Willamette Valley, such actions also must restrict retail uses to those considered incidental to the primary employment use and limit such uses to five percent or less of the net developable area.

Where a proposed amendment is expected to significantly affect a state facility and the local government proposes to approve it with partial mitigation of the impacts on the state system, the local government will need to provide notice requesting a written statement from ODOT agreeing with the assessment that the employment benefits outweigh the “negative effects” on the affected facility. However, as in the process for allowing “no further degradation,” above, if ODOT does not respond in writing in a timely manner, the local government can proceed to a decision based on their own findings supporting partial mitigation. A city proposal impacting a county facility would trigger a similar agreement process and vice versa.

The local government must coordinate with Business Oregon, DLCD, and where applicable, the local area commission on transportation (ACT), the MPO, and other transportation providers and local governments directly affected by the proposal to in the process of determining whether or not the proposal meets the

definition of economic development¹³, how it would impact the transportation system, and the adequacy of the proposed mitigation. The local government must also provide notice of any determination related to these factors at least 45 days before the first evidentiary hearing. (Note that this time period is different from the recent amendments to Oregon Administrative Rule 660, Division 18, where the notification period regarding notice of local government changes to comprehensive plans and land use regulations has been changed to 35 days in advance of the first evidentiary hearing.)

ODOT's Role and Considerations: Economic Balancing Test and Partial Mitigation

When a proposed amendment qualifies as economic development pursuant to the TPR, then it may be approved without mitigating the full effect of the amendment on traffic mobility. A local government determines whether economic benefits outweigh the negative effects on the local transportation system; ODOT makes the determination for the state transportation system. ODOT staff must evaluate the adequacy of the proposed mitigation, which may or may not include improvements to the significantly affected facility. The proportionality of proposed mitigation to the likely traffic impacts may be one consideration of partial mitigation. The proposed mitigation should be considered as a way to balance local economic development policy and objectives with any proposed improvement, especially where a significant facility improvement is needed to fully reach mobility target performance levels.

The TPR requires that ODOT coordinate with Business Oregon when determining the job-creation benefits of a proposed amendment. It may also be helpful for Business Oregon to assist in any determination of other economic impacts (positive or negative) from the proposal on existing or potential businesses in the area. This coordination allows ODOT staff to focus on transportation impacts rather than have the role of assessing job creation eligibility and potential as well as determining the economic benefits of the proposal.

It is still ODOT's decision whether or not the transportation impacts are acceptable after weighing the economic benefits against any proposed mitigation, but only if ODOT's position is submitted in writing in a timely manner. In the past, significant effect determinations have been focused on mobility considerations. TPR 0060(11) allows ODOT to consider trade-offs between mobility performance and employment benefits. Proposals for partial mitigation may offset capacity problems but still have a negative impact on the safety of the facility. Cases that raise safety concerns will require a higher level of review and coordination with the local government. Partial mitigation is not as likely to be found sufficient to mitigate a safety problem that exists or is created by the proposed development.

¹³ The TPR does not define "economic development" per se, but the types of uses that comprise economic development are "industrial" and "traded sector" as defined at the beginning of this section.

Assessing Whether Partial Mitigation is Acceptable

ODOT will compare the economic benefits and transportation impacts from a state perspective, and evaluate whether the economic benefits of the proposal outweigh the negative impacts, on a case by case basis and with input from Business Oregon. As with any proposed amendment that potentially impacts a state facility, ODOT will review the projected transportation impacts, including those on mobility and safety. When a local government is proposing to accept partial mitigation for a proposal that accommodates eligible development, and the level or type of mitigation does not remedy the impacts to a state facility, ODOT may work with Business Oregon to formulate a recommendation for a proper balance of job creation in consideration of the transportation impacts.

Because the economic development “balancing test” will be unique in each circumstance where it is applied, it is not possible to provide specific guidance to determine whether the proposed “partial mitigation” adequately addresses impacts to the state transportation system. There are no benchmarks or thresholds available at this time; ODOT reviewers, in coordination with Business Oregon, will need to weigh what is gained by the proposal (jobs) versus what is being given up (highway mobility). It may also be beneficial to coordinate with DLCDD and local governments to consider the potential impacts on nearby or future businesses in the area.

Unresolved safety issues will be a key consideration for what may be considered acceptable as partial mitigation. Consistent with both the TPR and OHP Policy 1F changes, issues related to mobility can now be counterbalanced with effecting economic development policy objectives, particularly where Business Oregon staff has verified that the job creation benefits of the proposed change are significant. In these cases, partial mitigation may be one method to balance local economic development policy and objectives, especially where a significant facility improvement is needed to fully reach mobility target performance levels. As referenced here, a “significant” improvement could be one that is prohibitively expensive, or one where the necessary improvement is disproportionately expensive related to the impacts of the proposal. Safety considerations may need to be considered at a higher level than mobility considerations. Future actions related to partial mitigation will provide case studies on which to base subsequent decisions.

Note that, where section 0060 (11) is applied, neither the local government or ODOT is required to provide the improvement(s) needed to fully mitigate the significant effect. In other words, acceptance of partial mitigation, consistent with the conditions of section 0060 (11), does not obligate either the local government or ODOT provide the necessary funding to fully address the impacts expected from the proposed amendment.

Options for Using OAR 731-017

In 2010 the OTC adopted OAR 731-017 that provides relief for amendments that create economic development opportunities through an application process that local governments may use if they are not able to meet the funding or timing

requirements of the TPR related to state highways. Refer to *Oregon Administrative Rule 731-017 Guidelines* for detailed information how a local government may work with the OTC and ODOT to apply for time extensions and to adjust existing traffic performance measures or allow the use of alternative performance measures, as allowed by the OAR. See <http://www.oregon.gov/ODOT/TD/TP/docs/oar731/guidelines.pdf>.

3.2.9. Development Review Participation in -0060 Reviews

As discussed throughout this chapter, the TPR either requires or prompts ODOT's participation in local plan amendment actions in a variety of circumstances and through a variety of ways – some of which are prescribed by the Rule and some of which are not. This section is a summary of the ways ODOT participates in local actions related to 660-012-0060 and the associated timeframes for ODOT response.

An important thing to keep in mind is that, regardless of regulatory requirements and prescribed timelines, development review staff always have a role as an advisor to local governments when a state facility is affected by a land use proposal. Local governments throughout the state have codified procedures for noticing ODOT of actions that are located near state transportation facilities and many more notify ODOT as a matter of course so that the Agency can participate in the local development approval process as needed.

It is not uncommon for local governments to include ODOT at the pre-application phase of the process prior to the formal submittal of a development proposal, particularly when a proposed amendment or development proposal will result in a need for direct access to the state highway or is otherwise likely to impact state transportation facilities. Where invited to participate at the pre-application stage, development review staff should consider the proposal carefully, involve others in the Agency with relevant expertise. Participation in person, followed up with a written summary of pertinent issues that have bearing on the subject proposal or on subsequent decisions related to the proposal, are recommended. Through these communications, it should always be clear that development review staff is available as a technical advisor on issues concerning the state transportation system, with the objective of supporting informed decision making.

The TPR timelines related to coordination among jurisdictions are sometimes in addition to the basic land use decision notice and comment periods discussed in Chapter 3.1. For example, at the time of an initial notice of a land use review, the local notice document may refer to the whole TPR rule as applicable criteria without identifying the need to consider a partial mitigation scenario, or it may include enough specificity to trigger ODOT review at that level. Partial mitigation, economic development and system balancing procedures may come up in the course of local review, for example as accommodation for a problem with approval based on the application as originally submitted. The local government has a responsibility to be sure ODOT is aware that one of these types of reviews is necessary and identifying the deadline for a response. Extensions of time

between the local government and the applicant may be necessary when this type of situation arises.

The following matrix lists actions inferred or required by the TPR and timing consideration. ODOT should always review land use notices with an eye to recognizing the need for additional review on the new TPR provisions, and strive to be responsive, aiming for quick turnaround times when commenting.

Development Review Guidelines 2013
Chapter 3.2: Transportation Planning Rule (TPR) Reviews

Table 1: ODOT Input into TPR 0060 Decision Making

Action and TPR Subsection	Type of Communication	Do the Rules Set a Timeline?
<p>Determine “System-wide balancing test:” whether improvements not on affected facility are sufficient to balance a significant effect.</p> <p>Section (2)(e)</p>	<p>Written Concurrence</p> <p>Local govts. cannot approve an amendment based upon the system-wide balancing test without written agreement from the facility or service provider.</p>	<p>No: The rule includes no set deadline for providing this statement, but the local govt. may. The statement should be timely w/in the context of the local decision process.</p>
<p>Determine whether a proposal includes sufficient actions to “avoid further degradation”</p> <p>Section (3)(d)</p>	<p>Written Statement that “<i>that the proposed funding and timing for the identified mitigation improvements or measures are, at a minimum, sufficient to avoid further degradation.</i> . . .”</p> <p>The local govt. may proceed with adoption, applying (3)(a)-(c) if ODOT gets notice and does not provide the written statement,</p>	<p>No: The rule includes no set deadline for providing this statement, but the local govt. may. The response should be timely w/in the context of the local staff report / hearings process.</p>
<p>Provide a Reasonably Likely Determination</p> <p>Section (4)(b)(D)</p>	<p>Written Statement whether a facility that will mitigate impacts is reasonably likely to be delivered within the plan period.</p> <p>The local govt. cannot rely on state facilities to mitigate significant effect without the reasonably likely letter.</p>	<p>No - There is no deadline for providing this letter.</p> <p>A reasonably likely finding for a needed facility, or a finding that an improvement is not reasonably likely will focus the local review; this information is needed as early in the process as possible.</p>
<p>Mixed-Use Multimodal Area (MMA) designation w/in ¼ mile of interchange, not consistent with adopted IAMP</p> <p>Section (10)(b)</p>	<p>Written Concurrence – if there are no operations or safety effects (660-012-060 (10)(c)(A)); and/or</p> <p>Written Agreement – between local govt. and Agency regarding traffic management plans to move traffic away from interchange (if applicable) (660-012-060 (10)(c)(B))</p>	<p>No - There is no deadline for providing this letter or for developing a traffic management plan. Responses should be timely w/in local legislative processes.</p>

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Table 1, cont.

Action and TPR Subsection	Type of Communication	Do the Rules Set a Timeline?
<p>Mixed-Use Multimodal Area (MMA) designation w/in an Interchange Area Management Plan (IAMP) area</p> <p>Section (10)(b)</p>	<p>ODOT will need to review the MMA for consistency with the IAMP. Written testimony should be submitted for the public adoption record where ODOT has concerns based on this review and/or other factors.</p> <p>Note that mobility targets for affected state facilities may be considered, but meeting these targets is not required for MMA designation.</p>	<p>During the public notice period, as part of the local gov't.'s legislative amendment process.</p>
<p>Mixed-Use Multimodal Area (MMA) designation outside Interchange Area Management Plan (IAMP) area and ¼ from interchange ramp terminal</p> <p>Section (10)(b)</p>	<p>ODOT may have an advisory role in the local decision related to technical modeling and analysis and communication could be oral or written. Written testimony should be submitted for the public adoption record where ODOT has concerns based on operations and safety factors.</p> <p>Note that mobility targets for affected state facilities may be considered, but meeting these targets is not required for MMA designation.</p>	<p>During the public notice period, as part of the local gov't.'s legislative amendment process.</p>
<p>Plan Amendment within an Existing MMA</p>	<p>ODOT may have an advisory role in the local decision related to issues other than mobility/congestion</p>	<p>During the public notice period, as part of the local gov't.'s legislative amendment process.</p>
<p>Determine whether a proposal includes appropriate actions to support Partial Mitigation steps</p> <p>Section (11)(b)</p>	<p>Written Concurrence</p> <p>The local gov't. can assume that they have obtained concurrence if ODOT does not respond in writing w/in 45 days. Section (11)(c)</p>	<p>Forty-five (45) days from receiving notice of the proposed local action.</p>

ODOT Written Statements

This section highlights some additional details to be considered when drafting a formal written statement from ODOT as required in the various configurations of TPR Section 0060 reviews. ODOT Region Managers will be ultimately responsible for such written statements under the TPR (See Director's

Delegation Memo:

http://transact.odot.state.or.us/tdd/OHPMob/Shared%20Documents/ODOT_TPR_Authority_Memo_Internal.pdf)

A local pre-application process, including review of preliminary concept or development plans that show site configuration and access ideas that the property owner or developer intends to propose, presents the best opportunity to identify the types of written responses, including concurrence statements, that are likely to be needed to complete the review process.

ODOT's written statement addressing TPR 0060 issues made in response to private applicant requests should be developed only after conferring with the local government and 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.

Reasonably Likely Written Statement

A request that ODOT make findings that a facility is "reasonably likely" to be in place at the end of the plan period should arise early in the application process, preferably in a pre-application process in which ODOT is included. By identifying the need before a formal application is submitted, all parties may be able to save time and resources by narrowing the review based on whether or not new state facilities may be relied upon. However, if the need for reasonably likely findings is not anticipated at that early stage, once it arises the local government should make a specific request of ODOT for the findings.

ODOT should respond to a request for a reasonably likely determination only after receiving a written request from an applicant or local government. If the request comes from the applicant, it may be a simple matter to confirm that planned improvements are already included in the STIP. But for projects that do not yet have identified funding, a request from an applicant should be followed up with the local government to determine whether the proposal has traction.

ODOT's role here is to participate in the local land use decision process; resources should be focused on queries that are already going into or through that process.

If no one contacts ODOT on the matter, ODOT should take no action. Note that while there is no notice requirement under OAR 660-012-0060 (4)(b)(D) and (4)(c)(A), failure to provide notice to ODOT could work against the applicant's best interests. ODOT does not need to respond to an amendment or zone

change proposal without first receiving notice, but should monitor the application to make sure that no action is taken contrary to the requirements of the rule.

There is no potential harm to ODOT from not responding to a request for a reasonably likely determination.. The local government cannot rely upon a future state facility without the reasonably likely letter. However, if a response is provided, ODOT is advised to respond as early as possible and within the locally noticed response period

Final responsibility for a reasonably likely determination is delegated to the Region Manager. ODOT Planning staff will advise the Region Manager of the need for the determination and written statement and brief the Region Manager on what is known about the proposal. The Region Manager may further consult with staff to understand the facts of the situation, apply the criteria in TPR 0060 and provide a written statement to the affected local government.¹⁴ It is understood that making a reasonably likely determination will require the Region Manager to exercise professional judgment..

While a region planner may do the background research and provide input as to whether a planned state highway improvement is “reasonably likely to be provided by the end of the planning period,” the Region Manager may not delegate signing an ODOT reasonably likely determination to an ODOT region planner or other ODOT employee. Having the Region Manager sign each reasonably likely letter will provide a level of continuity and consistency for how reasonably likely determinations are made and what factors are considered in making a determination, and will assure greater accountability in the process.

For all practical purposes, a planned transportation improvement project for a state facility is not reasonably likely to be provided within the plan period unless the improvement project is:

- Identified in a constrained (MPO) plan;
- Already funded through the construction section of the adopted STIP (and MTIP, if applicable);
- Identified in an adopted TSP through which we have worked with the local jurisdiction to make specific project likelihood determinations (clearly calling out what is not likely during the planning horizon or what is feasible to assume will be constructed within the planning horizon using some combination of federal, state, local, and private funds); or
- Required to be provided as mitigation by a local jurisdiction through a formal condition approval of a land use action.

The written statement to the local government shall consist at a minimum, of the following:

¹⁴ The Region Manager should not delegate signing the written statement to a region planner or other ODOT employee.

- Noting that the state highway improvement is included as a planned improvement in a regional or local transportation system plan or comprehensive plan;
- 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.
- The caveat that finding that a project is reasonably likely to be provided within the plan period does not mean that ODOT will necessarily be the source of funds to ensure completion of the project.
- The caveat that, if circumstances change, ODOT reserves the right to withdraw its reasonably likely determination.
- Other documentation as needed of the information and criteria upon which the determination was made.

Copies of the written statement shall be sent to ODOT's Director and its Transportation Development Division Administrator, and to the Director of DLCD.

Reasonably Likely Determination has Limited Applicability: 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. ODOT must issue a new 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 reason for this is that ODOT may need to reassess whether the circumstances that led to a reasonably likely determination have changed since the earlier 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.

The reasonably likely determination enables the local government to determine whether the proposed amendment will significantly affect transportation facilities. It does not represent a commitment by the Agency to provide the improvement.

Reasonably Likely Determination May Be Withdrawn: While highly improbable, it is possible that circumstances change between the time a reasonably likely determination letter is issued and the time that an application is before a local government for adoption. For instance, conditions may occur such that needed federal funding that seemed probable when the letter was written is no longer probable a month later. If the assumptions upon which the reasonably likely determination was made are no longer valid, the Agency may wish to

rescind the determination. To ensure that there is no question that ODOT has this option, every letter submitted to local governments should include 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, the local decision can proceed based upon the information in that record.

Avoid Further Degradation Written Statement

TPR Section 0060(1)(c) and (d) define "significant effects" where an amendment will further degrade conditions on a facility that is currently not meeting mobility standards or is projected not to meet mobility standards within the plan period, respectively. There is no need to address a significant effect on a particular facility if the facility provider submits a written statement that the proposed amendment includes a commitment to sufficient funding and timing to implement the needed improvements or measures to, at a minimum, avoid further degradation to the performance of the affected state facility.

Note that, if the 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 (c) of this section as if ODOT had submitted a statement of "no further degradation."

Written Concurrence – System-wide Improvements

Where a plan amendment will create a significant effect on a transportation facility, mitigation may be done on a system level in lieu of mitigation of the specific affected facility. Subsection 0060 (2)(e) of the TPR 0060 allows a commitment to funding or construction of improvements to other facilities or services, including other transportation modes, to be considered as mitigation on a system wide level.

For system-wide improvements to be approved in lieu of facility improvements, the facility or service provider must submit a written statement of concurrence with the proposed approach. For state facilities, ODOT must agree in a written statement that the system-wide benefits are sufficient to balance the significant effect to the state facility. The rule does not include a formal timeline for providing this statement, but this approach cannot be relied upon as a basis for amendment approval without it. . The statement should, if requested in a timely manner, be submitted before the first public hearing on the amendment, and must be submitted before the record is closed for the local decision process.

Written Concurrence – Mixed-Use Multimodal Areas

If a Mixed-use Multimodal Area is proposed for a land area all or part of which is inside a quarter mile of a state interchange ramp terminal intersection and the MMA designation is not otherwise found to be consistent with an adopted IAMP, a written statement of ODOT concurrence with the MMA designation is required. ODOT concurrence may be contingent upon development of a traffic management plan and/or other agreements. Pursuant to TPR 0060 (10)(c), before concurring, ODOT “*must*” consider:

- *The potential for operational or safety effects to the interchange area and the mainline highway, specifically considering:*
 - *Whether the interchange area has a crash rate that is higher than the statewide crash rate for similar facilities;*
 - *Whether the interchange area is in the top ten percent of locations identified by the safety priority index system (SPIS) developed by ODOT; and*
 - *Whether existing or potential future traffic queues on the interchange exit ramps extend onto the mainline highway or the portion of the ramp needed to safely accommodate deceleration.*

Where ODOT cannot concur with the MMA designation as submitted, negotiating remedies may include a Written Agreement between the local government and the agency regarding traffic management plans to move traffic away from the subject interchange, if applicable (660-012-060 (10)(c)(B)).

Written Concurrence - Economic Development Balancing Test

The economic development balancing test is the process that determines whether partial mitigation of an impact on a facility will be acceptable because of a countervailing gain in economic opportunities related to the amendment.

ODOT has 45-days from the time the local government provides notice that indicates that an application is being reviewed pursuant to TPR 0060 (11) (45 days before the first evidentiary hearing) in which to provide a concurring or non-concurring statement in writing under section 0060 (11). ODOT staff must work efficiently and, to the extent possible, coordinate with the local government and other affected state agencies (DLCD, OBDD) well in advance of the first public hearing. The requirement to obtain written concurrence is satisfied without ODOT’s input if the appropriate notice is provided and ODOT does not provide a written response within the 45-day period.

It is possible that the local plan amendment initial notification, as required by the TPR, will not explicitly state that a local government is proposing to approve partial mitigation, as allowed by section 0060 (11). However, DLCD “Notice of

Proposed Amendment” form (the “green form”) requires that local governments indicate the applicable Statewide Planning Goals and affected state agencies and provide a general description of the proposed action, including the proposed land use designation/zone¹⁵. There may be situations when ODOT staff will have one or more other indicators that the proposal entails employment uses and may include proposed partial mitigation on a state facility. If this occurs, initiating contact with the local government to determine whether section (11) will be applied is recommended to maintain ODOT’s interests in the decision process.

When Local Documentation is Insufficient for an ODOT Determination

If the information provided in the amendment application is insufficient to allow ODOT to make a reasonably likely determination or to make a decision regarding concurrence, the Agency can request additional information. ODOT cannot *require* a traffic study in most cases, except under certain circumstances related to approach permitting, but it can ask for one and tailor Agency response to the sufficiency of the information included in the application and study. 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 make a determination.

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.¹⁶

Helping Local Planners with the Transition to the New Rule Provisions:

There are likely to be a lot of missed cues in early stages of implementation of the new processes enabled by the 2011 rule. Each new approach to problem solving, e.g. MMAs, traded sector job creation, etc., has a slightly different process for notice of the application of its section, the timing of notice and response and the way in which the ODOT written response, or absence thereof, applies.

This adds some new challenges to watching land use notices for impacts on state transportation facilities; if a proposal looks as if it will trigger, or be easier to resolve using a system balancing, economic balancing or mixed-use multi-modal approach, it is probably a good idea to raise the issue with the local planners

¹⁵ If a Region development review team is not receiving the DLCD green forms, be sure that DLCD records of the parties who should receive the notice are up to date

¹⁶ 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.

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right away. This will help with the learning curve for the planning community and further protect ODOT's interests by minimizing the occurrence of last minute scrambles to respond to requests for ODOT written responses.

This is not intended to suggest that ODOT has a role directing how local planners apply OAR 660-012-0060. However, ODOT planners may have practical experience working with the rule before many of their local cohorts and may be able to answer questions that arise or see opportunities for problem solving that may not be self evident to someone trying to apply the rule for the first time.