DATE:	March 12, 2025	**FROM:**	Janet Jones
TO:	Tamra Mabbott	**SUBJECT:**	Zone Change – Completeness Review Response

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TO: Tamra Mabbott
Morrow County
215 NE Main Avenue
Irrigon, OR 97844

FROM: Janet Jones, PE

SUBJECT: Zone Change – Completeness Review Response

PROJECT: Morrow County Zone Change
EFU/SAI to M-G with Limited Use Overlay

CC: Megan Lin, Steve Pfeiffer – Perkins Coie
Lee Leighton, Ian Sisson, Brian Varricchione – Mackenzie

This memorandum was prepared to supplement the Transportation Planning Rule Analysis prepared for Threemile Canyon Farms, LLC by David Evans and Associates, Inc., dated March 12, 2025 ("TPR study") to respond to completeness review items raised by Morrow County in a letter dated February 26, 2025 and review items raised by Lancaster Mobley in a memorandum dated February 27, 2025.

Consistent with state and local requirements, the TPR Report analyzes the projected transportation impacts of Threemile Canyon Farm's proposed comprehensive plan and land use regulation amendment with the intent of identifying and addressing any inconsistencies with Morrow County's adopted 2012 Transportation System Plan (TSP). Among other things, a TSP determines the functional classification of identified transportation facilities, adopts standards for implementing that functional classification system, and adopts performance standards for transportation facilities.

Per ODOT's TPR Section 0060 FAQs document, local governments determine whether a plan amendment or zone results in a "significant effect" if: 1) it generates more traffic than allowed under an existing plan and zoning; AND 2) planned transportation improvements do not provide adequate capacity to support allowed land uses. Because the proposed zone change is projected to generate fewer trips than allowable under the existing zoning for the subject site, the proposed zone change does not constitute a "significant effect" on the local transportation system.

The functional classification and performance standards in the TSP establish the baseline against which subsequent plan and land use regulation amendments must be measured to determine if they "significantly effect" a transportation facility within the meaning of OAR 660-012-0060(1). Specifically, per Oregon Administrative Rule (OAR) 660-012-0060(1), the following criteria are identified in considering when a proposed zone change has a "significant effect" on the transportation system:

(1) A plan or land use regulation amendment significantly affects a transportation facility if it:
   (a) Changes the functional classification of an existing or planned transportation facility.
   (b) Changes standards implementing a functional classification.
   (c) Results in any of the effects listed in paragraphs (A) through (C) of this subsection.

(A) Types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility.

(B) 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.

(C) Degrade the performance of an existing or planned transportation facility this is otherwise projected to not meet the performance standards identified in the TSP or comprehensive plan.

Based on the criteria listed above, the proposed zone change does not have a significant effect on Morrow County's TSP as described below. Specifically, the proposed zone change does not "significantly affect" Boardman Airport Lane within the meaning of this rule.

(a) Changes the functional classification of an existing or planned transportation facility.

This criterion does not apply because Boardman Airport Lane is not identified in the County's TSP.

Boardman Airport Lane is not identified nor addressed in the County's currently adopted 2012 Transportation System Plan. The County's TSP lists Collectors and Arterials Figure 3-1 of the TSP and Boardman Airport Lane is not on the list. Boardman Airport Lane is owned and maintained by the Port of Morrow County, as identified in a February 20, 2025 letter prepared by the Port of Morrow for the subject zone change application. Therefore, it is not a Morrow County facility bound by the roadway standards set for by Morrow County.

(b) Changes standards implementing a functional classification.

This criterion does not apply because Boardman Airport Lane is not identified in the County's TSP. While Boardman Airport Lane is not identified in the Morrow County TSP, the physical geometry is consistent with the roadway design requirements for the County's Rural Arterial II roadway classification. Therefore, if the facility was expressly owned and maintained by Morrow County, no changes would be required to the standards for a Rural Arterial II classification in regard to its application to Boardman Airport Lane. Assuming the Morrow County roadway standards apply to Port of Morrow facilities by extension, no changes are required to the standards for a Rural Arterial II classification in regard to its application to Boardman Airport Lane.

(c)(A) Types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility.

The projected traffic levels on Boardman Airport Lane are consistent with the functional classification for a Rural Arterial II, as presented in the currently adopted 2012 Morrow County TSP.

While Boardman Airport Lane is not identified as a Collector or Arterial on the Morrow County TSP (and is not owned and maintained by Morrow County), it was recently constructed to standards that most closely align with the County's Rural Arterial II classification, per Table 6-1 of the currently adopted TSP. The County's Rural Arterial II[1] functional classification requires a 60-foot right of way (ROW) width, 32-40 feet of paved width, and two (2) 12-foot travel lanes, as presented in Figure 1 below. Boardman Airport Lane exceeds these design requirements with a 100-foot ROW and a 32-foot paved width, as presented in Figure 2 and Figure 3 below.

[1] All of the County's roadway classifications are labeled "Rural" and County's TSP does not have a separate "Urban" Arterial designation.

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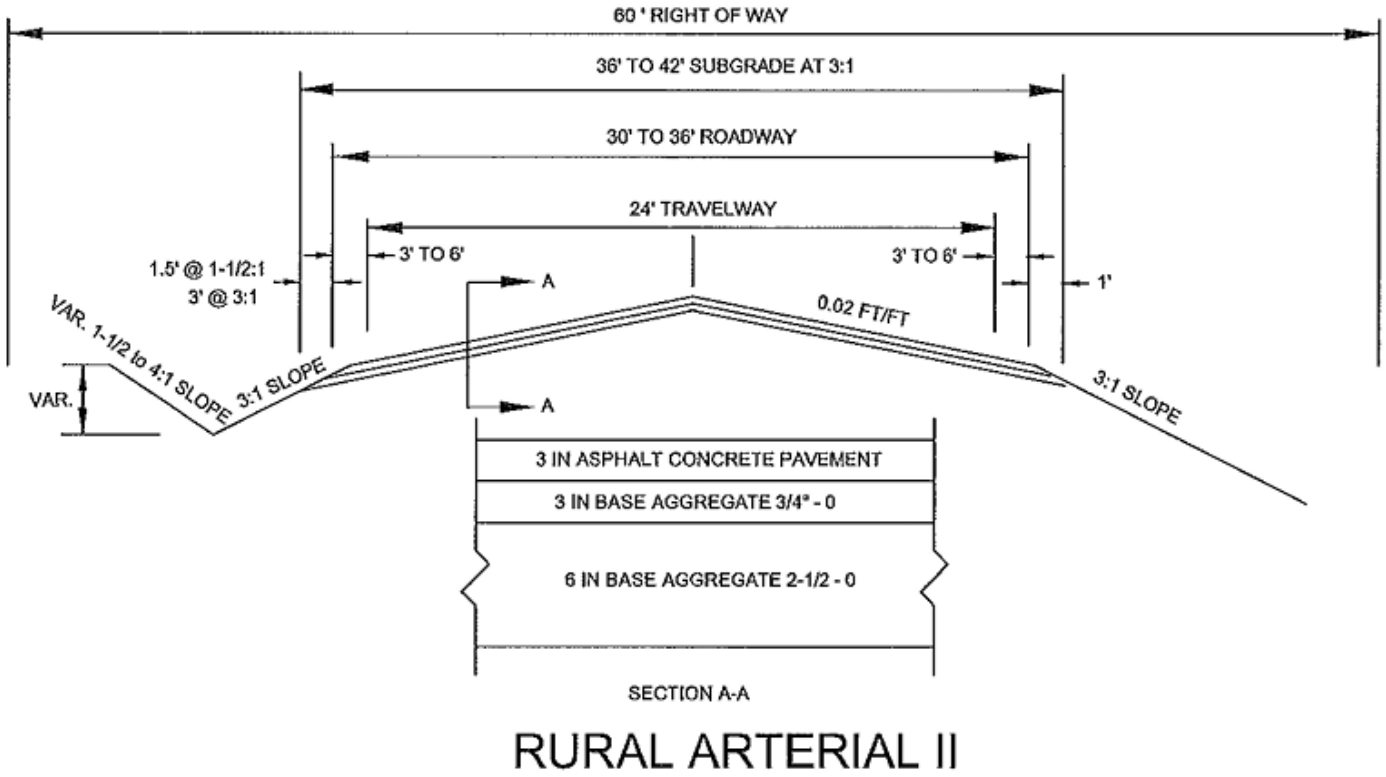

Figure 1 - Morrow County Rural Arterial II Standard Cross Section; Source: Morrow County 2012 TSP

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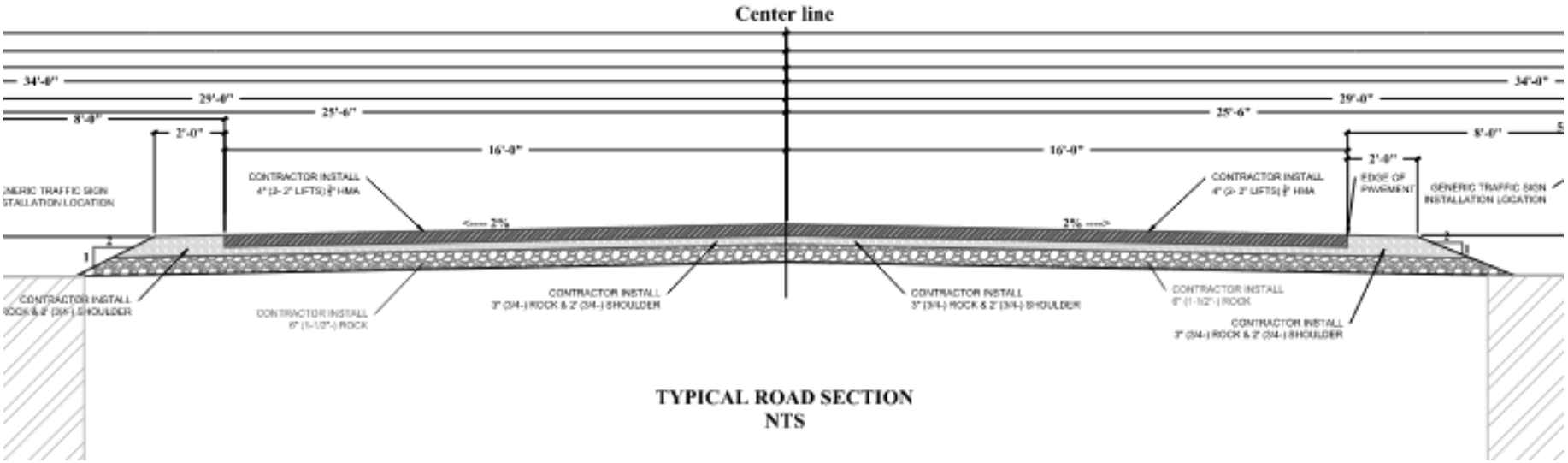

Figure 2 - Typical Road Section for Boardman Airport Lane (Paved Width); Source: Port of Morrow Airport Road Infrastructure Plans

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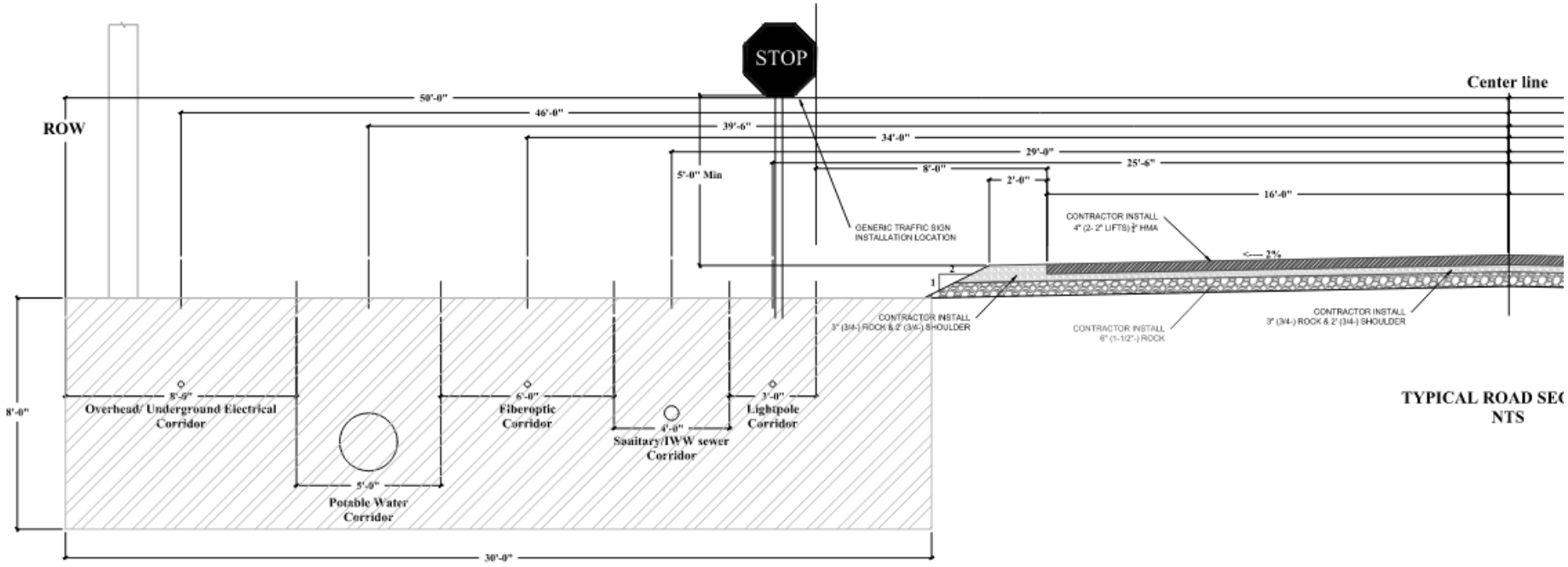

Figure 3 - Typical Road Section for Boardman Airport Lane (Half Street ROW); Source: Port of Morrow Airport Road Infrastructure Plans

(c)(B) 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.

While Boardman Airport Lane is not identified in the County's TSP, the roadway is designed to the standards most closely matching that of the County's Rural Arterial II designation. The projected traffic volumes associated with the proposed rezoning on Boardman Airport Lane are consistent with the traffic volume thresholds identified in the County's TSP for a Rural Arterial II.

Boardman Airport Lane also appears to fall within the range of traffic volume thresholds identified for Arterial II roadways. It should be noted the "Average Daily Traffic (ADT)" column in Table 6-1 of the TSP appear to be incorrectly labeled, as the volume thresholds identified in this column ranges more appropriately reflect peak hour traffic volumes. This is confirmed by comparing the traffic volume thresholds in Table 6-1 with the traffic volume thresholds in Table 3-10, which shows both average daily traffic (ADT) and peak hour traffic volumes, identified as "30th DHV", or 30th Design Hourly Volumes. The maximum ADT value in Table 3-10 is approximately 14,000, whereas the maximum peak hour volume, or 30th DHV is approximately 2,200.

Based on this analysis, while Boardman Airport Lane is not identified as a transportation facility in the County's adopted TSP, both the physical design of and the projected traffic volumes on Boardman Airport Lane associated with the proposed rezoning are consistent with Morrow County's Rural Arterial II functional classification. The existing paved width of Boardman Airport Lane is approximately 32 feet, with two (2) 12-foot travel lanes and a 4-foot paved shoulder within a 100-foot right-of-way, as presented in Figure 2 below. The future ADT with the proposed zone change is projected to be 600 and 700 vehicles during the AM and PM peak hours, respectively. Therefore, the proposed zone change does not cause an inconsistency with the adopted TSP (which does not address Boardman Airport Lane) and, in fact, is consistent with the actual design of Boardman Airport Lane, and related performance standards, which meet roadway standards and projected traffic volumes for Arterial II roads under the County's TSP.

(c)(C) 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.

This criterion does not apply as Boardman Airport Lane is not identified in the County's TSP as not meeting performance standards. As explained in the March 12, 2025 TPR study, the proposed zoning designation is projected to result in fewer potential trips generated compared to potential development under the existing Space Age Industrial and Exclusive Farm Use zones on the site. The study notes that under the existing zoning designation, three intersections fail to meet performance standards during the planning period (Tower Road/I-84 WB Ramp; Tower Road/Kunze Lane; and Tower Road/Boardman Airport Lane). By comparison, under the proposed rezone, only two intersections fail to meet performance standards during the planning period (Tower Road/Kunze Lane and Tower Road/Boardman Airport Lane). Because the analysis found a net decrease in trip generation potential associated with the proposed rezoning and reduced impacts when compared with the existing zoning designation, there is no "significant effect" within the meaning of OAR 660-012-0060. Enclosed with this response are two supporting documents with respect to OAR 660-012-0060: 1) "Frequently Asked Questions about Section 0060 of the Transportation Planning Rule", and 2) "Development Review Guidelines, Chapter 3 Section 3.2 – Transportation Planning Rule (TPR) Reviews".

Secondary Access

Regarding emergency or secondary access, the County's TSP states that streets need to be required under certain conditions, such as where physical conditions make streets impractical, or "where conditions of development approval require off-site improvements." TSP at 4-6, 4-7. As noted in the TPR Report, because the proposed rezoning is projected to result in fewer impacts than the existing zoning designation, no mitigation is required for approval of the rezoning. And instead, any need for potential future off-site improvements required to mitigate traffic impacts from data center development will be evaluated as part of development approval—in particular, Morrow County's Site Plan Review process. Likewise, any required improvements for emergency access to the site will be identified and provided prior to any development of the site for data center use and be subject to County review and approval via required Site Plan Review. *See* MZCO 5.020.E.9. This ensures that safety/access issues are thoroughly evaluated, and effective life/safety access will be made available at the stage of development when more information is known about actual site design and site access/circulation requirements.

This rezone proposal does not impact the Future Connectivity section of Morrow County's TSP (Page 4-7), nor will it exacerbate existing connectivity issues between north and south Morrow County, because the traffic generated by future data center development will not necessitate or result in north-south traffic movements beyond the Tower Road/Airport Lane travel route identified in the TPR Report. Specifically, the TPR Report confirms that the primary route to and from the site is via I-84 and Tower Road/Airport Lane, with minimal to no trips travelling south on Tower Road. Consequently, the proposed rezone will not increase or otherwise affect the identified pre-existing need for a second north-south connection, historically referred to as the Ione-Boardman Road.

Per MZCO 4.010(C), "It is the responsibility of the landowner to provide appropriate access for emergency vehicles at the time of development." As this application is for a zone change and not for land development, identification of emergency access is not required at this time.

Conclusion

In summary, the proposed zone change for the subject property west of the Boardman Airport is not expected to significantly affect a transportation facility based on the following:

- The geometric design of Boardman Airport Lane is consistent with a Rural Arterial II as presented in the currently adopted 2012 Morrow County TSP, and actually exceeds the paved width requirements for such roadway.

- The projected traffic volumes on Boardman Airport Lane are consistent with a Rural Arterial II as presented in the currently adopted 2012 Morrow County TSP. Therefore, no change to the design of Boardman Airport Lane is needed.

- The planned roadway network within Morrow County will not be impacted by the proposed zone change. Secondary/emergency access to and from the site will be identified as a requirement of site plan review.

The TPR analysis completeness review prepared by Lancaster Mobley and dated February 27, 2025 notes that "with the zone change in place, an amendment to the TSP would be necessary in order to establish an

appropriate functional classification to ensure that adequate infrastructure is planned and constructed." While an amendment to the County's TSP could be prepared to formally designate Boardman Airport Lane as a "Rural Arterial", the intent of the roadway classification remains the same: the roadway is expected to operate adequately as constructed. The roadway is constructed to County arterial standards and has the capacity to support the future projected traffic volumes consistent with the proposed zone change.

In short, the proposed zone change is expected to be adequately served by existing roadway improvements, namely improvements recently made to Boardman Airport Lane, making the proposed zone change compliant with the state's Transportation Planning Rule.

Please contact me at 503.499.0276 or janet.jones@deainc.com if you have any questions or need additional information.

DATE: March 12, 2025 **FROM:** Janet Jones

TO: Tamra Mabbott **SUBJECT:** Zone Change – Completeness Review Response

Sincerely,

DAVID EVANS AND ASSOCIATES, INC.

Janet Jones, PE
Senior Transportation Engineer | Associate

Attachments/Enclosures: Frequently Asked Questions about Section 0060 of the Transportation Planning Rule; Development Review Guidelines, Chapter 3 Section 3.2 – Transportation Planning Rule (TPR) Reviews

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FREQUENTLY ASKED QUESTIONS ABOUT SECTION 0060 OF THE TRANSPORTATION PLANNING RULE

What is Section 0060 of the Transportation Planning Rule?

Section 0060 of the Transportation Planning Rule (TPR) is a statewide planning requirement that directs cities and counties to assess whether proposed plan amendments and zone changes will have a significant effect on the transportation system. In essence, this means that before approving plan or zone changes, cities and counties must determine whether existing transportation facilities and planned improvements will provide adequate capacity to support the new development that would be allowed by the proposed land use changes.

If there is not adequate planned capacity, a "significant effect" occurs. When a city or county finds there is a significant effect, it must take steps to put land use and transportation in balance. Ways to do this include: adding planned transportation facilities or improvements, limiting land use or modifying performance standards to tolerate additional congestion. Section 0060 outlines the process and standards for deciding whether a plan amendment or zone change has a significant effect, and appropriate remedies.

What is the purpose of Section 0060?

Section 0060 is intended to assure that when new land uses are allowed by plan or zone changes that there is adequate planned transportation capacity, usually roadway capacity, to serve the planned land uses. The potential for traffic and congestion from new development is a major concern in communities around the state. Section 0060 is a tool to help communities understand the traffic impacts of plan and zone changes and assure that growth is adequately planned for and does not result in excessive traffic congestion. Amendments to Section 0060 adopted in 2005 also help communities address whether funding plans and strategies for needed improvements are in place before plans or zoning are changed to allow more development.

What is the legal basis for Section 0060?

State law (ORS 197.646) requires that local governments comply with statewide planning goals and rules adopted to implement them when they consider plan amendments. The TPR implements Statewide Planning Goal 12 (Transportation) which requires local governments to plan for a safe, convenient, and adequate transportation system.

What decisions does TPR Section 0060 apply to?

This portion of the TPR applies to local plan and land use regulation amendments. These include plan and zoning map changes as well as changes to the list of allowed land uses in a zone or other provisions of a zoning district.

Does Section 0060 apply to building permits, subdivisions or conditional use permits or similar authorizations?

No. As described above, Section 0060 only applies where a plan amendment or zone change of some sort is involved. Approvals that are made under the terms of existing city and county plans and zoning ordinances are not subject to Section 0060. However, in some situations local governments may have adopted local standards that are equivalent to the TPR Section 0060 that do apply during site plan review.

Does Section 0060 affect <u>all</u> plan amendments and zone changes?

In practice, the TPR affects relatively few plan amendments and zone changes. Most plan amendments don't affect expected traffic one way or another; and those that do are often adequately served by existing or planned roadway improvements.

Do changes to land use regulation amendments other than zone changes need to be reviewed for compliance with Section 0060?

Yes. While most changes to zoning or development codes do not affect the transportation system, some relatively minor changes may allow new or expanded uses that would have a significant effect. For example, adding "sales of building materials" as an allowed use in an industrial zoning district could have the effect of allowing a large format retail use into an industrial zoning district that would generate much more traffic than allowed industrial development. Local governments need to evaluate each land use regulation amendment and assess whether or not it would allow uses that would generate more traffic than that generated by uses currently allowed in the zone.

Section 0060 is *part* of the Transportation Planning Rule. What are the other parts of the TPR?

The Transportation Planning Rule or TPR is an administrative rule adopted by the Land Conservation and Development Commission. The rule implements Statewide Planning Goal 12 (Transportation) and other statewide planning goals that provide guidance to local governments about how they conduct transportation planning. The major requirement in the TPR is that cities and counties adopt transportation system plans (TSPs) that include plan for future streets and roadway improvements and other transportation facilities and services needed to support future land use plans. The TPR was adopted in 1991. Since that time most of the cities and counties in the state have adopted TSPs to carry out the rule. Further information about the TPR including the full text of the rule is available on the DLCD website. Information about TSPs is available from the respective city and county planning departments.

My city and county have adopted transportation plans (TSPs). Is additional review of plan amendments and zone changes for compliance with 0060 still required?

Yes. Generally, TSPs include planned facilities that are adequate to serve uses anticipated based on existing planning and zoning. Changes to comprehensive plans and zoning can create the need for additional street or roadway improvements. Section 0060 requires cities and counties to assess whether a plan amendment or zone change would create more traffic than the plan anticipates or that facilities called for in the plan are designed to handle. In many cases, local governments find that improvements called for in TSPs will be

adequate to support the planned land use change. Where this is the case, the requirements of 0060 are met. However, where expected new traffic would exceed the capacity of planned facilities, additional planning must be done to figure out how the traffic will be handled, usually by amending the TSP to account for the additional traffic.

How is Section 0060 applied?

Local governments considering plan or land use regulation amendments evaluate whether the proposed plan amendment or zoning change would "significantly effect" the planned transportation system. Most local governments ask applicants to address this in their application. The evaluation involves reviewing applicable city, county or state transportation plans and assessing whether the proposed plan or zone change will have a significant effect on the transportation system.

What is the standard for deciding whether a plan amendment or zone change has a "significant effect"?

The standards for determining whether or not a plan or land use regulation amendment has a significant effect are set out in OAR 660-012-0060(1). [1] In most situations, an 0060 "significant effect" occurs because the plan amendment or zone change would allow uses that would result in a level traffic that exceeds the adopted performance standards for a local street or state highway. (This is the standard in 0060(1) (B): where a plan amendment or zone change reduces "….the performance of an existing or planned transportation facility below the minimum acceptable performance standard identified in the TSP or comprehensive plan.")

Local governments determine whether there is a significant effect by:

- Assessing how much new traffic would be generated by the proposed plan or zone change
- Adding the potential new traffic to traffic that is otherwise expected to occur
- Assessing whether this additional traffic will cause roadways in the vicinity of the plan amendment to exceed adopted performance standards

How do local governments determine whether or not a plan amendment or zone results in a "significant effect"?

Typically some sort of traffic analysis or traffic impact study is prepared. In either case, the analysis compares traffic allowed under the existing and proposed plan or zoning designations. A proposed plan amendment or zone change has a "significant effect" if:
(1) it generates more traffic than allowed by existing plan and zoning AND

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[1] There are three other circumstances where a plan amendment could trigger a "significant effect":
- Changes to the functional classification of an existing or planned transportation facility – an example would be where a local plan designation for a planned street is changed from a "minor arterial" to a "major collector".

- Changes to standards implementing a functional classification system. Examples of this type of change would include amendments to driveway or street spacing requirements.

- Allowing types or levels of uses which would result in levels of travel or access that are inconsistent with the functional classification of a transportation facility; or

(2) planned transportation improvements do not provide adequate capacity to support the allowed land uses.

Are there some simple guidelines for assessing whether a plan amendment is likely to trigger a significant effect?

Yes. In most cases the key question is whether the proposed plan designation or zoning will result in more traffic than is allowed by current zoning.

If the proposed plan amendment or zone change would generate the same or less traffic than is allowed by the current plan and zone designations, it generally is considered *not* to have a "significant effect" on the transportation system. In essence, the rule requires further review of transportation impacts only where a plan amendment or zone change would yield more traffic than is allowed by current zoning.

If a plan amendment would result in more traffic being allowed is it automatically considered to have a "significant effect" under the TPR?

No. The local government would first need to evaluate whether planned transportation facilities will be adequate to handle the additional traffic. If they are adequate, then there would not be a significant effect.

Is the evaluation of significant effect based on the applicants proposed use or other uses allowed by the proposed plan or zone change?

Generally speaking the evaluation of whether there is a significant effect must consider the range of uses allowed by the proposed plan and zoning changes, not just the particular use proposed by the applicant. This is because the resulting plan amendment or zone change, once approved, would allow any of the uses listed in the zoning district without further review for compliance with the TPR. Typically, plan amendments and zone changes do not prevent an applicant (or subsequent property owners) from pursuing more intense development than is contemplated in the original application.

As explained below, an applicant or local government can modify or limit the proposed plan or zone change to reduce its traffic generating impacts and possibly avoid triggering a significant effect. Where the application or approval is limited to specific uses or a particular level of traffic generation, it is possible to limit the scope of the analysis. In many situations this is adequate to avoid triggering a significant effect.

What happens when a local government concludes there is a "significant effect"? Can the plan amendment or zone change still be approved?

A finding of "significant effect" does not prevent approval of a plan amendment or zone change. It does trigger the requirement for local governments to take steps to put land use and transportation "in balance"; by assuring that planned land uses are consistent with the planned transportation system. Local governments have four options for putting land use and transportation “in balance” including one or a combination of the following:

- Adding planned transportation facilities or improvements
- Limiting allowed land uses to fit available facilities

- Changing the transportation performance standards to accept lower performance
- Adopting measures that reduce auto travel

Can local governments avoid triggering a significant effect by limiting the uses allowed by a proposed plan amendment or zone change?

Yes. In practice, applicants or local governments have done this by calculating either the capacity of the planned transportation system or the intensity of use allowed by existing plans and zoning, and then including zoning restrictions that cap allowed development to avoid a "significant effect". This can be done by adopting trip caps or limits on the allowed uses. Currently, thoughtful applicants, with assistance from their traffic consultants, will carefully calculate the capacity of the planned transportation system and adjust their plan amendment proposal to fit within the available the capacity. This may include proposing roadway improvements or other measures to make the proposal fit the available capacity.

How do local governments assess whether there is adequate planned transportation capacity to support proposed uses?

Evaluation is based on applicable adopted transportation plans. These include adopted city and county transportation system plans (TSPs), and the 1999 Oregon Highway Plan adopted by the Oregon Department of Transportation (ODOT).[2] Basically, local governments compare expected traffic under existing plans with additional traffic that would be allowed under the proposed plan amendment. They then assess whether improvements included in adopted plans will adequately serve the additional traffic. If the increased volume of traffic would cause a performance standard not to be bet, there is a significant effect on the transportation system. This assessment is usually based on a traffic impact analysis prepared by a traffic engineer for the applicant.

Does the TPR require traffic impact studies?

While the TPR does not specifically require a traffic impact study, one may be needed to determine whether or not a plan amendment or zone change results in a significant effect. The need for a traffic impact study is usually decided by local government as it reviews a proposed plan amendment. Where a proposed amendment affects a state highway, the local government needs to consult with ODOT to determine whether a traffic impact study or some other analysis is needed.

Does the TPR require a "worst case" analysis - for example, where someone is proposing a zone change to allow a specific use, such as an auto dealership, but the proposed zoning allows other more intense uses, such as fast food restaurants?

No. However, the analysis must be based on the uses that would be allowed by the proposed zoning. An applicant or local government can limit the scope of analysis by limiting the request or approval to specific uses or to a particular level of traffic generation. One approach that is often used is to calculate the amount of traffic expected to be generated by the proposed use and to adopt land use regulations that limit uses in the zone to not exceed this amount.

[2] The Oregon Highway Plan also includes any specific implementing plans adopted by the Oregon Transportation Commission, such as Highway Corridor Plans or Interchange Area Management Plans. These specific “facility plans” often set different or additional standards for highway performance than are in the OHP document.

Is it possible to defer compliance with the TPR to a subsequent approval, such as a site plan or conditional use approval?

Technically no. However, local governments can achieve this result by limiting development and adopting a local ordinance that essentially mirrors the requirements of Section 0060. Several LUBA rulings[3] have upheld local government decisions that, in effect, defer application of the TPR where the following conditions are met:

(1) The plan amendment and zone change themselves do not allow additional development
(2) the plan or zoning amendment include the substance of 0060 as a standard for approving any development - typically through a site plan approval process; and
(3) the local implementation process provides for public review and a hearing including notice to ODOT and other affected transportation providers.

In addition, the Department of Justice has provided ODOT with informal guidance about requirements for local governments to accomplish deferral.

Does DLCD recommend "deferring" transportation analysis required by the TPR?

No. The department recommends against using this approach for several reasons:

- **It undermines the predictability that zoning is intended to provide.** Zoning or rezoning land is implies that the land is suitable and appropriate for uses allowed in the zone. If lands are zoned "commercial", for example, property owners rightfully assume that the public has determined that the land is suitable for many commercial uses and can be developed for commercial uses without difficult or complicated reviews. Deferring evaluation of transportation impacts and mitigation to site review works against this objective, especially where expensive improvements are needed to mitigate traffic impacts.

- **It undermines public participation in zoning decisions.** Rezoning is a key opportunity for the public, including neighboring property owners, citizens and agencies, to comment on a proposed zone change. Traffic impacts are often a major concern which the public should understand *before* a zone change is approved. Deferring transportation analysis reduces the opportunity for meaningful public participation.

- **It creates tracking and enforcement problems for local governments**. Where transportation analysis is deferred, future land use decisions and approvals have to be adjusted to include the required transportation analysis. It several years pass between the time the original zone change is approved there is likely to be uncertainty or confusion about what is required – especially if local staff turnover or if property is sold.

[3] The LUBA decisions on this issue are:
- Citizens for the Protection of Neighborhoods, LLC v. City of Salem and Sustainable Fairview Associates LLC, 47 OrLUBA 111 (2004): http://www.oregon.gov/LUBA/docs/Opinions/2004/06-04/03201.pdf
- *Concerned citizens of Malheur County v. Malheur County and Treasure Valley Renewable Resources, LLP, 47 OrLUBA 208 (2004)*.... http://www.oregon.gov/LUBA/docs/Orders/2004/04-04/04008.pdf

Overall, local governments, property owners and the public are better served by conducting the traffic analysis as the zone change is considered and making a clear decision about whether the planned transportation system is adequate to serve the allowed uses as part of approving the zone change.

What qualifies as a "planned transportation facility" that local governments may rely upon in determining whether there are adequate facilities to support the planned land use?

Section 0060(4) lists the types of facilities, improvements and services that can be counted as "planned" for purposes of 0060 compliance. Typically, a facility or improvement must be included in the relevant TSP and have some level of funding commitment in place to be considered to be "planned" under section 0060. The rule also allows transportation providers to issue letters to confirm that certain improvements are "reasonably likely" to be provided by the end of the planning period. Where such letters are issued, the improvements may be considered as planned. The rule also allows for improvements that are provided by the applicant, typically as a condition of approval, to be counted as planned improvements.

A detailed list of list of facilities, improvements and services that are considered planned is outlined in Section 0060(4) and includes:

- Transportation facilities, improvements or services that are funded for construction or implementation in:
  - the Statewide Transportation Improvement Program
  - a locally or regionally adopted transportation improvement program or capital improvement plan, or,
  - program of a transportation service provider.

  (See OAR 660-012-0060(4)(b)(A).)

- Transportation facilities, improvements or services that are authorized in a local transportation system plan and for which a funding plan or mechanism is in place or approved. These include, but are not limited to, transportation facilities, improvements or services for which:
  - transportation systems development charge revenues are being collected;
  - a local improvement district or reimbursement district has been established or will be established prior to development;
  - a development agreement has been adopted; or
  - conditions of approval to fund the improvement have been adopted. (See OAR 660-012-0060(4)(b)(B)).

- Transportation facilities, improvements or services in a metropolitan planning organization (MPO) area that are part of the area's federally-approved, financially constrained regional transportation system plan. OAR 660-012-0060(4)(b)(C).

Who decides whether a planned facility or improvement is "reasonably likely" to be provided by the end of the planning period?

The decision is made by the relevant transportation facility provider. For example, for state highways, the decision about whether an improvement is reasonably likely is made by

ODOT. For county roads, the decision is made by the county. For city streets, the determination is made by the city. In each case, the entity making the determination may establish its own procedures to determine who is authorized to make reasonably likely determinations and how such determinations will be issued. ODOTs guidelines address this issue for state highways.

Are "reasonably likely" determinations "land use decisions"?

The Commission's intent is that reasonably likely determinations not be land use decisions. The determination is essentially evidence or a finding submitted by a third-party. The rule does not ask or direct that local governments decide as part of the land use proceeding whether an improvement is "reasonably likely" to be funded; that determination is made separately and only the result, not the substance of determination, is at issue in the land use proceeding.

Why does the rule require "reasonably likely" determinations for projects that are included in TSPs? Why aren't all of the projects included in TSPs considered "planned projects" for purposes of 0060?

The amendments to Section 0060 were adopted following a broad evaluation of the TPR and of transportation planning done by Oregon communities over the last 10-15 years conducted jointly by the Oregon Transportation Commission and LCDC. A major finding of the evaluation was that there is a substantial gap between likely funding and the improvements that are called for in TSPs. In short, the transportation improvements included in plans greatly exceeds revenue likely to be generated over the next 20 years, even if there are new or expanded sources of revenue.

The consequence of this funding gap is that many of the projects that TSPs call for in the next 20 years will not be built, and for many communities traffic congestion will worsen. To a large extent, this is a result of past land use decisions – that put in place development patterns that create a need for additional roadway improvements. While LCDC recognizes that more needs to be done to address this gap, the conclusion was that it was not prudent to ignore or worsen the imbalance between land use and transportation by allowing additional land use changes that depend upon improvements that are not likely to be built in the next 20 years.

The TPR says that transportation performance is measured at the "end of the planning period". How is the applicable "planning period" determined?

The TPR defines planning period as "… the 20-year period beginning with the date of adoption of a TSP to meet the requirements … of the rule." (OAR 660-012-0005(18). This date based on the date of adoption of the applicable city or county TSP. For state highways, the Oregon Highway Plan indicates that the planning period is the one specified in the relevant local TSP applies but not less than 15 years from the date of application.

Are there additional requirements for review of plan and zone changes around freeway interchanges?

Yes. Section 0060 includes additional requirements for review of plan amendments within ½ mile of interchanges on interstate freeways. This includes interchanges on I-5 and I-84, as well as interchanges on I-205, I-405 (in the Portland Metropolitan area) and I-105 in the

Eugene-Springfield area. Additional review was required because of the special significance of the interstate system to the state transportation system.

Within freeway interchange areas the list of "planned improvements" is limited to improvements that have some form of funding commitment and does not include projects that are "reasonably likely" to be funded. However, other improvements can be counted as planned if ODOT agrees that the proposed plan amendment will not adversely affect the interstate highway system. (This part of the rule and ODOTs process for assessing whether amendments will affect the interstate system are outlined in ODOTs Guidelines for implementing Section 0060. See below.)

Who sets the performance standards for deciding whether there is "adequate" transportation capacity and what are they?

Standards for capacity and transportation system performance are set by local governments and ODOT through their adopted transportation system plans (TSPs). For state highways, mobility standards are expressed as acceptable "volume-to-capacity" ratios for traffic. Most local governments use a comparable system that uses letter grades to define acceptable "level of service" or LOS. The system rates service from "A", light traffic and free flow conditions to "F" heavily congested, with significant delays at traffic lights or to make turn movements. Most set "D" or "E" as the acceptable performance standard.

Does 0060 effectively set a "concurrency requirement", i.e. that adequate facilities have to be built or funded before development can be allowed?

No. The rule does not create the kind of "concurrency" requirement that has been adopted in other states, where transportation facilities must be built before new development is approved. . The TPR requires local governments to assess whether planned facilities – that are expected to be constructed over the planning period – will – at the end of the planning period – be adequate to meet needs. This allows for development to occur in advance of needed transportation improvements being constructed.

Will Section 0060 delay the development of "shovel-ready" industrial sites?

No. Industrial sites are not certified as "shovel-ready" until and unless they have the necessary plan and zoning designations for the appropriate industrial uses and are served by adequate public facilities, including transportation facilities. Section 0060 does not apply to sites already designated as "shovel-ready" and, therefore, will not cause a delay in their development.

Can local governments adopt concurrency requirements or other standards that are stricter than those in 0060 standards?

Yes. The TPR is basically a minimum state standard for review of plan amendments and zone changes. Individual cities can adopt ordinances regulating new development to meet particular local needs or circumstances that are stricter than the TPR. Several local governments have adopted concurrency type standards, requiring that needed improvements be constructed or funded or in place at the same time new development occurs.

Can a local government change performance standards to accept greater levels of congestion?

Yes. Where a planned development will result in an exceedance of the applicable performance standard, the TPR authorizes local governments to amend their TSPs to modify the performance standards to accept greater motor vehicle congestion OAR 660-012-0060(2)(d). Where state highways are affected, local governments need to get ODOT to agree to change its performance standards as well. Metro in the Portland metropolitan area, in coordination with the Oregon Transportation Commission and ODOT, has adopted performance standards that accomplish this objective and support the implementation of the region's Metro 2040 plan.

Where can I get more information about Section 0060?

The full text of the Transportation Planning Rule, including Section 0060, is available on DLCD's website at www.lcd.state.or.us

ODOT has produced guidelines for use by its staff in applying Section 0060. The guidelines are available on the ODOT website at:
http://www.oregon.gov/ODOT/TD/TP/docs/TPR/tprGuidelines.pdf
While the guidelines are intended principally for use by ODOT staff, they can also provide useful guidance to help local governments and applicants understand and apply Section 0060. Key to the amended rule are decisions by ODOT (and local governments) about whether or not needed improvements are funded or "reasonably likely" to be funded during the planning period. The ODOT guidance provides direction about how ODOT staff are to make reasonably likely determinations.

Numerous LUBA decisions provide useful guidance in understanding details of applying the Section 0060. The text of LUBA opinions and headnotes summarizing LUBA decisions related to Goal 12 and the Transportation Planning Rule are available on LUBA's website at www.orluba.state.or.us

DEVELOPMENT REVIEW GUIDELINES AND APPENDICES

3.2 Transportation Planning Rule (TPR) Reviews

3.2.1 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. 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 and TPR Section -0325 which is concerned with transportation issues to be addressed in review of proposed amendments to comprehensive plans and zoning maps in climate friendly areas (CFA) or Metro Region 2040 centers. 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.

This Chapter of the Development Review Guidelines has been updated to reflect the most current implementation steps associated with the TPR based on the 2022 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 and -0325 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 .

3.2.2 Determine If and How TPR Section -0060 Applies to an Application

1. TPR section -0060 applies to applications that include a comprehensive plan map or text amendment, a functional plan, a zoning map or zoning code text amendment and are not located in a defined CFA or Metro Region 2040 center. If the application is located within a defined CFA or Metro Region 2040 center, see Section 3.2.11.
    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 the 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:
        i. Property within one-quarter mile of the ramp terminal intersection of an existing or planned interchange on an Interstate Highway; or
        ii. The interchange area as defined in the Interchange Area Management Plan adopted by the Oregon Transportation Commission.
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 and can be looked up in OHP Appendix D as a quick reference. A plan, map, or land use regulation 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). 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 map (TPR -0060(9)), then:

a. Determine a) whether the proposed zoning is consistent with the local Transportation System Plan (TSP) or the land use model used in the development of the local 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 Section -0060 and the rule has not been addressed in a subsequent decision, the rule must be addressed as part of the current decision process.
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 case 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, and the project is outside an interchange area, 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:
      i. If the subject property is within an “interchange area” as defined in (4)(d)(C), the “no further degradation” provision does not apply.
      ii. Will the ODOT facility meet the OHP mobility standards within the planning period, and
      iii. Are there planned improvements to the subject facility that would bring the 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:

i. The “no further degradation” standard does not apply, so the proposal must reviewed for a significant affect related to the OHP mobility standards.
ii. 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.

i. Section 0060 (11) allows “partial mitigation” when the economic benefits, coupled with partial mitigation of the traffic impacts, outweigh the negative transportation impacts.
    1. 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.

ii. The types of mitigation available under Section (2) of the rule include:
    1. Adopting the subject amendment including measures that "demonstrate" that development under the amendment will be consistent with the performance standards for affected facilities.
    2. 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
    3. 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:
    i. Local findings neglect to account information ODOT submitted that could reasonably have led to different findings;
    ii. Safety and operations problems are expected to occur that have not been addressed in the applicant proposal or conditions of approval;
    iii. 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:
    i. Subsequent Site Plan Review provides an opportunity to recommend conditions of approval for specific development projects.
    ii. 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.
    iii. A negotiated mitigation agreement may be developed with the local government and/or the applicant to address concerns in addition to those addressed in TPR 0060.

3.2.3 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 transportation 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, 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.

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 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 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.

3.2.4 When Significant Effect Analysis is NOT Required

All zone changes need to be reviewed for compliance with Section 0060. However, the rules 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 and consistent with the acknowledged local TSP 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 DLCD Regional Representative for clarification if they want to try to apply Section 0060 for an amendment of the zoning designation where a "single map" land use regime is in place.

In most cases, determining whether 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 TSPs. 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 travel demand 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, CFEC rules in 660-012, 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 for a 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 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 facility. 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. A 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.[10] 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 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.

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[10] 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.

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.

Reviewing Plan Amendments and/or Zone Changes within a Designated MMA

When reviewing a Plan Amendment or Zone Change within an MMA for compliance with TPR 0060, do not use the mobility standards in the OHP. You can use safety or other measures to determine significant effect. If the MMA is within an interchange area there must be an ODOT letter of concurrence which should guide how you review the amendment for TPR 0060 compliance.

3.2.5 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)),[11] 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.[12]

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

[11] 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.

[12] Services includes transit services and measures such as transportation demand management.

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.[13] However, state 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.[14] 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*

[13] 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 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.
[14] 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.

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.

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),[15] 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

[15] 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

amendments are more stringent for land areas located inside interstate interchange areas.[16] 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 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

[16] "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.

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 result;[17] 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.

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

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

worst case analysis, but DLCD 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 no 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.

OHP Policy 1F supports 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).[18]

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 reasonably likely, then the local government may not rely on that improvement when determining if the proposed amendment will have a significant effect.[19]

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

[18]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.
[19] For a summary of ODOT participation roles see TPR Subsection (4)(e)(A) and Guidelines under 3.2.6, ODOT Participation in -0060 Reviews.

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.

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.

3.2.6 Significant Effect Remedies – Mitigation

Pursuant to Section -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 (Section -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 per 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).

3.2.7 Remedies – Reduce or Avoid the Significant Effect

Measures that Reduce Traffic Generation

Revised language in Section -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 the 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 requires 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.

3.2.8 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 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.

3.2.9 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

development,[20] 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

[20] 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.

likely to be found sufficient to mitigate a safety problem that exists or is created by the proposed development.

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 DLCD 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 nor 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 to 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.

3.2.10 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, and 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.

Table 3.1: ODOT Input into TPR 0060 Decision Making

Action and TPR Subsection	**Type of Communication**	**Do the Rules Set a Timeline?**
Determine "System-wide balancing test:" whether improvements not on affected facility are sufficient to balance a significant effect. Section (2)(e)	Written Concurrence Local govts. cannot approve an amendment based upon the system-wide balancing test without written agreement from the facility or service provider.	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.
Determine whether a proposal includes sufficient actions to "avoid further degradation" Section (3)(d)	Written Statement that "*that the proposed funding and timing for the identified mitigation improvements or measures are, at a minimum, sufficient to avoid further degradation*. . ." The local govt. may proceed with adoption, applying (3)(a)-(c) if ODOT gets notice and does not provide the written statement	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.
Provide a Reasonably Likely Determination Section (4)(b)(D)	Written Statement whether a facility that will mitigate impacts is reasonably likely to be delivered within the plan period. The local govt. cannot rely on state	No - There is no deadline for providing this letter. A reasonably likely finding for a needed facility, or a finding that an improvement

Action and TPR Subsection	Type of Communication	Do the Rules Set a Timeline?
	facilities to mitigate significant effect without the reasonably likely letter.	is not reasonably likely will focus the local review; this information is needed as early in the process as possible.
Mixed-Use Multimodal Area (MMA) designation w/in ¼ mile of interchange, not consistent with adopted IAMP Section (10)(b)	Written Concurrence – if there are no operations or safety effects (660-012-060 (10)(c)(A)); and/or 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))	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.
Mixed-Use Multimodal Area (MMA) designation w/in an Interchange Area Management Plan (IAMP) area Section (10)(b)	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. Note that mobility targets for affected state facilities may be considered, but meeting these targets is not required for MMA designation.	During the public notice period, as part of the local govt.'s legislative amendment process.
Mixed-Use Multimodal Area (MMA) designation outside Interchange Area Management Plan (IAMP) area and ¼ from interchange ramp terminal Section (10)(b)	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. Note that mobility targets for affected state facilities may be considered, but meeting these targets is not required for MMA designation.	During the public notice period, as part of the local govt.'s legislative amendment process.
Plan Amendment within an Existing MMA	ODOT may have an advisory role in the local decision related to issues other than mobility/congestion	During the public notice period, as part of the local govt.'s legislative amendment process.
Determine whether a proposal includes appropriate actions to support Partial Mitigation steps Section (11)(b)	Written Concurrence The local govt. can assume that they have obtained concurrence if ODOT does not respond in writing w/in 45 days. Section (11)(c)	Forty-five (45) days from receiving notice of the proposed local action.

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.

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 develop 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, it 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. 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:

- 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.

The 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/zone.[21] 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.

3.2.11 Determine If and How TPR Section -0325 Applies to an Application

OAR 660-012-0325 outlines the specific actions local governments must take when considering the adoption of a new Climate Friendly Area (CFA) or Metro Region 2040 center or when reviewing comprehensive plan or land use regulation amendments within existing CFA/Metro Region 2040 centers. Depending upon what is being considered, the review process will necessitate the preparation of a multimodal transportation gap summary and/or a highway impacts summary as outlined in Table 3.2.

Table 3.2: TPR -0325 Decision Making

Adoption/Amendment Scenario	Analysis Requirements Multimodal Transportation Gap Summary	Analysis Requirements Highway Impacts Summary
Adoption of a New CFA or Metro Region 2040 Center	Required	Potentially Required[1]
Expansion of an Existing CFA/Metro Region 2040 Center Boundary	Required	Potentially Required[1]
Amendment to Comprehensive Plan or Land Use Regulations Within an Existing CFA or Metro Region 2040 Center	Not Required	Potentially Required[2]

[1]If the area being considered for adoption contains a ramp terminal intersection, state highway, interstate highway, or adopted ODOT facility plan.

[2]If the comprehensive plan/land use amendment study site/area is within a quarter- mile of a ramp terminal intersection, adopted Interchange Area Management Plan area, or adopted ODOT Facility Plan area…Or…If the comprehensive plan/land use amendment study site/area is expected to be reasonably likely to result in increasing traffic on the state facility that exceeds the small increase in traffic defined in the Oregon Highway Plan.

Additional details and guidance under these two scenarios are provided in the following sections.

3.2.12 When a New CFA/Metro Region 2040 Center is Being Considered for Adoption or An Existing CFA/Metro Region 2040 Center is Being Expanded

While the CFA/Metro Region 2040 center adoption decision is made at the city or county level, ODOT has a vested interest to ensure the decision process considers the Transportation Review provisions outlined in OAR 660-012-0325, particularly when state highways and state interests are located within or near the proposed boundary area. When ODOT is notified about a potential adoption of a new CFA/Metro Region 2040 center, ODOT review staff must ensure that a multimodal gap summary has been prepared and will prepare a highway impacts summary, if applicable. The multimodal gap summary definition outlined in OAR 660-012-0325 is intended to produce an initial high-level summary which identifies areas for further analysis in a TSP. The multimodal gap summary does not need to comply with multimodal inventory requirements outlined in OAR 660-012-0505, 660-012-0605, and 660-012-0705; however, this data may be used if available and needed to illustrate a particular issue. During a CFA/Metro Region 2040 Center designation process, Region staff should anticipate a multimodal gap summary that is prepared at a high level and uses available information from existing data sources/plans to help establish a baseline.

The following guidance outlines ODOT's general expectations when reviewing multimodal gap summary submittal information.

Multimodal Gap Summary

Requirement – A summary of the existing multimodal transportation network within the study area or CFA.

What is Expected?

- Vehicular (local street connectivity), pedestrian (sidewalks and multiuse pathways), bicycle (lanes, routes, multiuse pathways), freight (designated route, type) and public transit (routes, stations, transit stops, supporting infrastructure facilities) inventory information on all classified (local street and higher) facilities. This data may be extracted/derived from existing planning documents such as TSPs, facility plans, sub-area plans, and transit plans, with field verification as needed.
- For state highways, multimodal inventory could be derived/extracted from ODOT's TransGIS web tool.
- A list of references used to complete the summary.

What is Not Needed?

- Multimodal performance summary such as a Level of Traffic Stress (LTS) or Multimodal Level of Service (MMLOS) assessment, as the requirement is for an inventory summary.

Upon review of the multimodal transportation network summary, what questions should ODOT region staff be asking/considering?

- Does the summary cover all applicable travel modes, including freight?
- Are the modes summarized according to jurisdictional responsibility including ODOT?
- Is the summary sufficient enough to provide an understanding of the study area's basic multimodal transportation network and how that network supports the desired characteristics of a CFA/Metro 2040 Center?

Requirement – A summary of the gaps in the pedestrian and bicycle network, including gaps that need to be filled for people with disabilities.

What is Expected?

- Summary of gaps in the pedestrian network on all classified (local and higher) facilities and state highways, as applicable.
- Summary of gaps in the bicycle network on all collector and higher roadways and state highways, as applicable.
- Summary of the general condition of sidewalks, major impediments on the sidewalk network that limit the mobility for people with disabilities (e.g., utility pinch points, sidewalks without curb ramps at major intersections, accessible pedestrian push buttons etc.).

What is Not Needed?

- Inventory summary that identifies pedestrian segments that do not meet current local or state standards for sidewalk width on all classified (local and higher) streets. This detail should be provided in subsequent TSP updates.
- Detailed Americans with Disabilities Act (ADA) curb ramp, transit stop or sidewalk assessments.

Upon review of the pedestrian/bicycle gap summary, what questions should ODOT region staff be asking/considering?

- Is the gap summary consistent with the multimodal transportation network summary?
- At the planning level, what are the major challenges to address the identified pedestrian and ADA gaps?
- At the planning level, what are the major challenges to address the identified bicycle gaps?

Requirement – A list of planned projects to fill multimodal network gaps identified above.

What is Expected?

- A pedestrian and bicycle project list extracted/derived from existing planning documents such as TSPs, facility plans, sub-area plans, or transit plans.
- In the absence (or in addition to) of planned project lists, a preliminary list of pedestrian and bicycle projects to fill identified gaps on the infrastructure network.

What is Not Needed?

- Details about specific planned or potential projects. This detail should be provided in subsequent TSP updates.

Upon review of the planned project list, what questions should ODOT region staff be asking/considering?

- Is the list of projects coordinated across jurisdictions and agencies?
- At the planning level, what is needed to develop the CFA to build a well-connected and ADA-compliant pedestrian network?
- At the planning level, what is needed to develop the CFA to build a low-stress bicycle network throughout the CFA?
- Has sufficient planning taken already place such that projects have been identified to address key multimodal gaps and deficiencies?

Highway Impacts Summary

A highway impacts summary is only required at this level if the proposed CFA/Metro Regional 2040 center boundary contains an interchange ramp terminal intersection, state highway, interstate highway, or adopted ODOT facility plan.

Requirement – A summary of the existing and proposed development capacity of the CFA/Metro Region 2040 center based on the proposed changes to the Comprehensive Plan and land use regulations

What is Expected?

- A comparative assessment of the study area's existing and potential future development characteristics under the proposed plan designation/development code change.

Requirement – A summary of the additional motor vehicle traffic generation that may be expected within the planning period.

What is Expected?

- A quantification of the study site/area's existing and potential motor vehicle trip profile (daily, and AM/PM peak hours as applicable) on relevant state highway segments. The summary should be based on available tools such as the ITE Trip Generation Manual or local/regional travel demand model output.

- The trip generation estimates should account for internalization between complementary mixed-use development, reductions for multimodal (e.g., walking, bicycling, transit, travel demand management, telework) opportunities, and other study area specific land characteristics that would minimize motor vehicle trip making.
- The quantification of trip making does not require a review of the highway segment/intersection operations with the additional trips.

Upon review of the motor vehicle trip making assessment, what questions should ODOT region staff be asking/considering?

- Do the trip generation estimates take into consideration the urban context and properly account for multimodal opportunities?
- Is there a finding that identifies if the changes will generate additional motor vehicle traffic that will substantially impact interstate or state highway facilities or their ramp terminals?
- Do the impacts (if any), disproportionally impact the state highway system?

Requirement – A summary of traffic-related deaths and serious injuries within the climate friendly study area in the most recent past five years that data is available.

What is Expected?

- A narrative map that describes the location of all intersection/roadway segment fatalities and serious (Injury A) crashes within the proposed CFA/Metro Region 2040 center.
- For those fatality and serious (Injury A) crashes, a tabular summary of the crash types (e.g., left-turning, pedestrian) and other relevant conditions, such as whether alcohol or drugs were involved, lighting conditions, and roadway surface conditions.

Upon review of the safety assessment, what questions should ODOT staff be asking/considering?

- Are there existing intersections or segments within the study area with existing or known safety deficiencies and what would be the impact of future trips generated by the CFA/Metro 2040 Center on those intersections/segments?

3.2.13 When a Comprehensive Plan or Land Use Regulation Amendment is Being Considered within an Adopted CFA/Metro Region 2040 Center

After the adoption of a CFA/Metro Region 2040 center, local jurisdictions may sponsor or be presented with third-party requests for amendments to Comprehensive Plans or land use regulations. OAR 660-012-0325 outlines specific requirements and analyses that are needed to support a land use amendment within an existing adopted CFA/Metro Region 2040 center.

When ODOT is notified about a proposed land use amendment, Region staff should first review the application to determine if the following questions have been answered as part of the application narrative:

1. Is the comprehensive plan/land use amendment study site/area within a quarter-mile of a ramp terminal intersection, adopted Interchange Area Management Plan area, or adopted ODOT Facility Plan area? or

2. Is the comprehensive plan/land use amendment study site/area expected to be reasonably likely to result in increasing traffic on a classified state highway that exceeds the small increase in traffic defined in the Oregon Highway Plan[1] and adopted by the Oregon Transportation Commission?

If the above questions have been addressed and the answer to either is ”yes,” then ODOT must ensure the application includes a highway impact summary that is prepared according to the following expectations.

While OAR 660-012-0325 does not specifically outline how to perform a highway impact summary when reviewing an application for a land use amendment within an adopted CFA, the following guidance outlines ODOT’s general expectations.

Highway Impact Summary

Requirement – A summary of the existing and potential amended development capacity of the CFA/Metro Region 2040 center based on the proposed changes to the Comprehensive Plan and land use regulations.

[1] Per Action 1F.5 in the Oregon Highway Plan:
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.

What is Expected?

- When involving a small study area or individual parcel, the application must include a summary of the existing site/study area's development potential and how that could change under a reasonable maximum development potential of the amended land use. If the study area in question is undeveloped or underdeveloped, the comparison should be based on each scenario's reasonable maximum development potential.
- When involving a larger study area or the entire CFA/Metro Region 2040 center, a comparative assessment of the study area's existing and potential future development potential under the proposed plan designation/development code change.

Requirement – A summary of the additional motor vehicle traffic generation that may be expected within the planning period on the applicable state highway.

What is Expected?

- A quantification of the study site/area's existing and potential amended motor vehicle trip profile (daily and AM/PM peak hours as applicable) on relevant state highway segments. The summary should be based on available tools such as the ITE Trip Generation Manual or local/regional travel demand model output.
- The trip generation estimates should account for internalization between complimentary mixed-use development, reductions for multimodal opportunities, and other study area specific land characteristics that would minimize motor vehicle trip making.
- The quantification of trip making does not require a review of the highway segment/intersection operations with the additional trips.

Upon review of the motor vehicle trip making assessment, what questions should ODOT region staff be asking/considering?

- Do the trip generation estimates take into consideration the urban context and properly account for multimodal opportunities?
- Is there a finding that identifies if the changes will generate additional motor vehicle traffic that will substantially impact interstate or state highway facilities or their ramp terminals.
- Do the impacts (if any), disproportionally impact the state highway system?

Requirement – A summary of traffic-related deaths and serious injuries within the climate friendly study area in the past five years.

What is Expected?

- A narrative map that describes the location of all intersection/roadway segment fatalities and serious (Injury A) crashes within the proposed CFA/Metro Region 2040 center.
- For those fatality and serious (Injury A) crashes, a tabular summary of the crash types (e.g., left-turning, pedestrian) and other relevant conditions such as whether alcohol or drugs were involved, lighting conditions, and roadway surface conditions.

Upon review of the safety assessment, what questions should ODOT staff be asking/considering?

- Are there existing intersections or segments on the applicable state highway network with existing or known safety deficiencies and will the trips generated by a proposed land use amendment impact those intersections/segments?