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Report to the Oregon Legislative Assembly from the Oregon Land Conservation and Development Commission

Transportation Planning Rule Amendments

as Required by Senate Bill 795 (2011)

February 1, 2012

**Report to the Oregon Legislative Assembly
Oregon Transportation Commission
Oregon Land Conservation and Development Commission**

**Regarding
Transportation Planning Rule and Oregon Highway Plan Amendments
Required by Senate Bill 795 (2011)**

Executive Summary

The Oregon Transportation Commission (OTC) and the Land Conservation and Development Commission (LCDC) are pleased to report to the Oregon Legislature that they have completed the reviews required by [Senate Bill \(SB\) 795 \(2011\)](#) and have amended the Oregon Highway Plan (OHP) and the Transportation Planning Rule (TPR). SB 795 called for changes that would “streamline, simplify and clarify the requirements” and “better balance economic development and the efficiency of urban development with consideration of development of the transportation infrastructure.” OHP and TPR amendments have streamlined the regulatory processes and changed the substance of the rules and policies.

Key changes to the OHP broaden the policy to better consider and balance multimodal and community development objectives along with highway mobility, provide less-stringent requirements for plan amendments that have a small increase in traffic, encourage and expand options for developing alternatives to existing mobility expectations, raise volume-to-capacity ratio thresholds for areas inside urban growth boundaries, and allow use of mobility measures besides volume-to-capacity ratios.

Amendments to the TPR to streamline the regulatory process include a new section (9) that will allow local governments to rezone land without analyzing traffic if the rezoning is consistent with the comprehensive plan map designation and the transportation system plan. Additionally, the rule was amended so that local decisions can be made without traffic analysis if the action includes conditions to prevent any increase in traffic generated at the site (see section 1(c) of the amended rule). To adjust the balance between multiple objectives, the TPR amendments add a new section (11) for economic development projects to reduce the burden of mitigating traffic impacts. Another amendment adds a new section (10) to allow local governments to designate areas where compact urban development is desirable and thus traffic congestion will not be a factor in zoning decisions.

Joint Subcommittee Process

In January 2011, LCDC and the OTC convened a Joint Subcommittee based on stakeholder concerns that the TPR and OHP were having unintended consequences for balancing transportation mobility with community and economic development objectives. The Joint Subcommittee held three meetings and heard considerable testimony with concerns related to TPR Section 0060 and OHP mobility standards. One theme often discussed was that economic development, transportation and land use objectives should

be better balanced. Testimony indicated that, in practice, transportation mobility took precedence over these other objectives. Another theme raised by stakeholders was that transportation requirements can make it difficult to increase development intensities, especially within urban centers, which is contrary to statewide planning goals and many community objectives. The Joint Subcommittee developed a [Recommendations Report](#) identifying priority work areas for both the TPR and OHP, which was supported by both Commissions and incorporated as part of SB 795.

TPR Amendment Process

To help draft TPR amendments, LCDC established a Rules Advisory Committee with 22 members representing a broad spectrum of interests, including local governments, economic development, transportation planning and public interest representatives. The committee held six meetings between June and September 2011, and reached consensus on the overall direction of the rule amendments and on the specific text for most sections. The proposed amendments were made available for public review and comment in October. Written testimony was received from over 30 interested parties. LCDC held a public hearing on December 8, taking testimony and deliberating on the remaining issues before adopting amendments on December 9. The [amended rules were filed with the Secretary of State](#) and took effect January 1, 2012.

OHP Amendment Process

ODOT considered input received during the Joint Subcommittee process and earlier stakeholder efforts to draft initial revisions to OHP Policy 1F (Highway Mobility Policy). Staff also provided draft materials to the TPR Rules Advisory Committee in an effort to coordinate the two work areas and collect broader input on the OHP policy revisions.

The OTC released draft OHP Policy 1F revisions for public review and comment on September 21. During the public review period, ODOT staff consulted with Area Commissions on Transportation, OTC-appointed advisory committees and other interested stakeholders across Oregon through meetings, presentations and notification of public review information. The OTC also held a public hearing on November 16. The public comment period closed November 21, allowing staff to incorporate the feedback received and prepare final draft policy revisions and supporting information for OTC review. The OTC adopted [OHP Policy 1F](#) revisions at their December 21, 2011 meeting.

Conclusion

DLCD and ODOT recognized that the TPR and OHP were having unintended consequences on planning and development objectives and took this opportunity to better balance transportation mobility with other important goals. The agencies worked together through a coordinated process to make revisions to the TPR and OHP consistent with the recommendations of the Joint Subcommittee and the requirements of SB 795. Additional information is provided in the accompanying components of this legislative report available at the following project websites:

OHP Project Site: <http://www.oregon.gov/ODOT/TD/TP/OHP2011.shtml>
TPR Project Site: http://www.oregon.gov/LCD/Rulemaking_TPR_2011.shtml

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Introduction

The Oregon Land Conservation and Development Commission (LCDC) is pleased to report that they have completed the review of the Transportation Planning Rules (TPR) required by Senate Bill 795 (2011) and that they have amended the TPR to streamline the regulatory process and adjust the balance of the substance of the regulations.

This report is organized in the following sections:

- Background on the TPR and what is it intended regulate
- Description of the recent concerns
- The process used to clarify concerns and draft rule amendments
- Summary of the rule amendments
- Conclusion
- Appendix: Complete text of the amendments

Background

The Transportation Planning Rules (TPR) were adopted by the Land Conservation and Development Commission in 1991, to implement Goal 12 of the statewide planning goals and to provide “transportation systems adequate to serve statewide, regional and local transportation needs” (OAR 660-012-0000(1)(a)). The rules require that local government prepare a Transportation System Plan (TSP), and most of the rules concern the content and process for transportation planning.

Ideally a local government will have land use plans (including zoning and development regulations) that are consistent with the TSP. In reality, most local governments have land use plans that would allow development beyond what the transportation system can accommodate without congestion and there is not enough funding for adding transportation capacity to prevent congestion.

In recognition of this imbalance, LCDC included a rule (OAR 660-012-0060, hereafter “0060”) to require consistency when land is rezoned. LCDC struck a balance with this rule and did not require local governments to reexamine existing zoning to rebalance land use and transportation. The LCDC also did not place any requirements on the development process for land that is already zoned appropriately for the proposed development. The rule only applies when a local government proposed to amend “a functional plan, an acknowledged comprehensive plan, or a land use regulation (including a zoning map)” (OAR 660-012-0060 (1)). The rule is most commonly applied during rezoning, and most of the discussion of the rule focuses on rezoning.

Recent Concerns

The TPR, and specifically 0060, have been updated several times since the initial adoption in 1991. In the last several years, concerns have been expressed that 0060, in conjunction with mobility standards established in the Oregon Highway Plan (OHP), have unintended consequences by making it difficult for local governments to rezone land.

The concerns were summarized in the Joint Subcommittee final recommendation:

“the interaction of Section 0060 of the Transportation Planning Rule (TPR) with the mobility standards in the Oregon Highway Plan (OHP) can complicate the local process to balance multiple objectives. These objectives include economic development, compact urban development and the need for additional transportation infrastructure to keep highways functioning, which brings benefits to the state overall and especially to traded-sector business activity.”

Process

Initially LCDC received general concerns through several avenues:

- House Bill 3379 from the 2009 legislature;
- Request to include TPR 0060 on the LCDC policy agenda in June 2010;
- Testimony to LCDC in September 2010 regarding HB 3379 and broader issues; and
- Rulemaking petition from League of Oregon Cities in November 2010.

Recognizing that the TPR is closely linked to the OHP, LCDC and the Oregon Transportation Commission (OTC) appointed a Joint Subcommittee to clarify the issues, focus on a list of priorities and lay out a process for addressing the concerns. Three LCDC commissioners (Hanley Jenkins, Greg Macpherson and Marilyn Worrix) and two OTC Commissioners (David Lohman and Mary Olson) first met in January 2011.

Over the course of three meetings, they participated in a panel discussion, took approximately three hours of public testimony from 14 people and received at least 35 pieces of written testimony. To gather input from developers, the committee chair (Greg Macpherson) and staff attended a joint meeting of the Retail Task Force, the International Council of Shopping Centers and the Commercial Real Estate Economic Coalition. To help assess priorities, an online survey was conducted with 84 responses received.

Based on this input, the Joint Subcommittee identified two lists of recommended items to address:

TPR Amendments

- A1. Exempt rezonings consistent with comprehensive plan map designations
- A2. Practical mitigation for economic development projects

OHP Amendments and Guidance

- B1. Exempt proposals with small increase in traffic
- B2. Use average trip generation, not reasonable worst case

TPR Amendments

- A3. Exempt upzonings in urban centers
- A4. Address traffic at time of urban growth boundary (UGB) expansion
- A5. Technical clarifications: transportation system plan (TSP) update and multiple planning periods

OHP Amendments and Guidance

- B3. Streamline alternate mobility standard development
- B4. Corridor or area mobility standards
- B5. Standardize a policy framework for considering measures other than volume to capacity ratios (v/c)

The full recommendation is available online:

<http://www.oregon.gov/LCD/docs/rulemaking/2009-11/TPR/Recommendation-Final.pdf>

The recommendation was approved by OTC at its meeting April 20, 2011 and by LCDC at its meeting April 21, 2011.

Senate Bill 795 recognized that the two commissions had already initiated the review and amendment process and set a deadline of January 1, 2012, for adoption of the amendments resulting from that review. The bill incorporated the list from the recommendation and then added one more item:

(i) The analysis required for transportation impacts of comprehensive plan amendments that require improvements to avoid further degradation of transportation facility performance by the time of development.

Senate Bill 795 also required this report to the legislature.

To help draft TPR amendments, LCDC established a rules advisory committee (RAC) consisting of 22 members representing a broad spectrum of interests, including local governments, economic development, transportation planning and public interest representatives. The committee held six meetings between June and September 2011, and reached consensus on the overall direction of the rule amendments and on the specific text for most sections. The proposed amendments were made available for public review and comment in October. Written testimony was received from over 30 interested parties. LCDC held a public hearing on December 8, taking testimony and deliberating on the remaining issues before adopting amendments on December 9. The amended rules were filed with the Secretary of State and took effect January 1, 2012.

Summary of the Amendments

The TPR items from the Joint Subcommittee recommendation, the item added by SB 795, and the two amendments added by the RAC (which address multiple concerns) combine to make significant, substantive changes to the TPR. The full list is:

- A1. Exempt rezonings consistent with comprehensive plan map designations
- A2. Practical mitigation for economic development projects
- A3. Exempt upzonings in urban centers
- A4. Address traffic at time of urban growth boundary (UGB) expansion

- A5. Technical clarifications: transportation system plan (TSP) update and multiple planning periods
- The analysis required for transportation impacts of comprehensive plan amendments that require improvements to avoid further degradation of transportation facility performance by the time of development.
- Additional Item #1 – Other Modes, Facilities, or Locations
- Additional Item #2 – Transportation Demand Management

The full text of the amended rule is available online:

www.oregon.gov/LCD/docs/rulemaking/2009-11/TPR/TPR_Amendments-Legislative_Style.pdf

A1. Exempt rezonings consistent with comprehensive plan map designations

The TPR amendments added a new section (9) to address this item. It states that if a proposed rezoning is consistent with the existing comprehensive plan map designation, and consistent with the acknowledged TSP, then it can be approved without considering the effect on the transportation system.

The key issue when drafting this section was how to describe the connection between the proposed rezoning and the local TSP. The intent is to avoid redundant analysis in situations where the transportation analysis has already been done. The RAC considered several versions of detailed descriptions of how to evaluate the prior planning without reaching a consensus. In the end, LCDC chose the following:

(b) The local government has an acknowledged TSP and the proposed zoning is consistent with the TSP

The rules regarding UGB expansion specifically exempt a proposed expansion from the TPR in certain circumstances. If this exemption was used at the time of UGB expansion, then the new section (9) exemption cannot be used, at least until the TSP has been updated to account for the UGB expansion.

A2. Practical mitigation for economic development projects

Section (11) was added to allow for greater flexibility when rezoning land to facilitate economic development. This section permits a local government to approve a rezoning for economic development with only partial mitigation of traffic impacts. Economic development is defined in some detail, but partial mitigation is not defined because it will need to be determined based on the details of each specific case. This section gives ODOT authority to determine an adequate level of partial mitigation when a state highway is affected.

Economic development is given one definition that applies to the entire state. A broader definition is provided for smaller cities.

The statewide definition states that a proposed rezoning is for economic development if it allows (and is limited to) uses that are “industrial or traded-sector.” These terms are further defined as follows:

- (i) *“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.*
- (ii) *“traded-sector” means industries in which member firms sell their goods or services into markets for which national or international competition exists.*

The broader definition is for cities with populations below 10,000, outside of metropolitan areas and outside the Willamette Valley. The broader definition adds “prime industrial land” and “other employment uses.” This would include the widest range of employment activities. Retail is an important example of a use that is allowed under the broader definition, but restricted in the statewide definition.

This section requires coordination with a broad range of state, regional and other local governments that would be affected by the decision. The coordination requirement does not, however, give other agencies authority to block a local rezoning decision. Approval authority belongs only to governments that have direct jurisdiction over the transportation network that would be affected (e.g., ODOT if a state highway is affected, the county if a county road is affected and the city of a city street is affected).

A3. Exempt upzonings in urban centers

Section (10) was added to ensure that the TPR does not interfere with compact urban development in appropriate locations. This section allows local governments to designate areas where traffic congestion does not have to be considered when evaluating a rezoning or amending development regulations to allow more density in an existing zone. These areas are called multimodal mixed-use areas (MMA).

To qualify as an MMA, the area must allow a range of uses such as residential (allowing at least 12 units per acre), offices, retail, services, restaurants, parks, plazas, civic, and cultural uses. Furthermore the development regulations for the area must be appropriate to an urban center. The zoning cannot allow (or must at least limit) low-intensity uses such as industrial, automobile sales, automobile services and drive-throughs.

If a local government proposes an MMA near a freeway interchange, then the local government must get approval from ODOT. If there is the potential for backups on the off-ramps, the local government and ODOT must reach an agreement about how they would be addressed. These additional requirements only apply during the designation process. Once the MMA is designated, it exempts the local government from having to consider congestion, even near the interchange.

A4. Address traffic at time of urban growth boundary (UGB) expansion

This issue was included in the list because early discussion with the Joint Subcommittee of LCDC and OTC flagged it as a potential concern. The RAC discussed this item and concluded that the current rules provide flexibility that allows local governments to address traffic at the appropriate time. No changes were made (aside from the brief mention in section (9)).

A5. Technical clarifications: transportation system plan (TSP) update and multiple planning periods

These items were placed at the end of the list by the joint subcommittee of LCDC and OTC because they are less important and do not involve significant policy questions. They were not addressed in this process due to lack of time after dealing with the more important policy issues. They may be addressed in a future “housekeeping” amendment.

(i) The analysis required for transportation impacts of comprehensive plan amendments that require improvements to avoid further degradation of transportation facility performance by the time of development.

This item refers to existing text in section (3) that allows for a relaxed standard in some cases. The result is a requirement for proportional mitigation, although that term is not used in the rule. Originally section (3) provided a way to approve rezonings in situations where the transportation system is already failing to meet performance standards, and there are no funded projects that would solve the problem. In this situation it would be unreasonable to expect that the rezoning would include enough transportation mitigation to bring the system back to meeting performance standards. Instead, the rule requires that the rezoning include mitigation that “avoids further degradation” to the performance. This is another way of saying that the mitigation must be proportional to the impact.

The concern was that this option was only available where the transportation system is *already* failing to meet performance standards. In a situation where the system is *projected* to fail, but has not yet failed, the local government would have had to require mitigation to bring the system all the way up to the performance standards. In some cases an applicant would be better off waiting for the system to begin to fail and then use the “avoid further degradation” provision of section (3).

The amendments deleted the first criterion (that the system has already failed), thus focusing on projected future conditions. This makes it easier to use the “avoid further degradation” criterion, and thus more projects will qualify for this type of proportional mitigation.

Additional Item #1 – Other Modes, Facilities, or Locations

Some amendments suggested by members of the RAC addressed more than one of the specific concerns. For example, broadening the range of mitigation options could help with an economic development project and could help permit greater density in downtowns. Accordingly, this

concept was not placed in the new sections (10) or (11) but was added to the general list of mitigation options in existing section (2).

A new subsection (2)(e) added three new options for addressing a significant effect, including improvements to:

- Other modes (example: the significant effect is motor vehicle traffic congestion, the mitigation could be adding sidewalks and bicycle lanes).
- Other facilities (example: the significant effect occurs along one street, the mitigation could be on another parallel street).
- Other locations (example: the significant effect occurs at one intersection, the mitigation could be at other intersections along the same highway).

This subsection requires concurrence by the governments that have direct jurisdiction over the transportation network that would be affected, similar to the requirement in the new section (11).

Additional Item #2 – Transportation Demand Management

Another amendment that could help address multiple concerns is a clarification to the definition of “significant effect” in (1)(c). The new definition states that when determining whether there is a significant effect, transportation demand management (TDM) – or any other enforceable, ongoing condition of approval that would reduce the amount of traffic generated – can be factored in to diminish or eliminate the significant effect.

Before this clarification TDM was generally treated as mitigation in response to a finding of significant effect. In many cases the end result is same either way it is calculated; however, in some cases it can be easier to approve a rezoning if TDM eliminates the finding of significant effect.

Conclusion

LCDC amended the TPR to address the significant policy issues and regulatory streamlining that were identified by the joint subcommittee of LCDC and OTC and that were listed in in SB 795.

Amendments to the Transportation Planning Rules Oregon Administrative Rules 660-012-0005 & 0060

Adopted by the Oregon Land Conservation and Development Commission December 9, 2011.
Filed with the Secretary of State December 30, 2011. Effective January 1, 2012.
Additions are **bold and underlined**. Deletions are [~~struck through in brackets~~].

660-012-0005

Definitions

....

(7) "Demand Management" means actions which are designed to change travel behavior in order to improve performance of transportation facilities and to reduce need for additional road capacity. Methods may include, but are not limited to, the use of alternative modes, ride-sharing and vanpool programs, [~~and~~]trip-reduction ordinances, **shifting to off-peak periods, and reduced or paid parking**.

...

660-012-0060

Plan and Land Use Regulation Amendments

(1) [~~Where~~]**If** an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation (**including a zoning map**) would significantly affect an existing or planned transportation facility, **then** the local government **must**[~~shall~~] put in place measures as provided in section (2) of this rule, **unless the amendment is allowed under section (3), (9) or (10) of this rule**[~~to assure that allowed land uses are consistent with the identified function, capacity, and performance standards (e.g. level of service, volume to capacity ratio, etc.) of the facility~~]. A plan or land use regulation amendment significantly affects a transportation facility if it would:

(a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);

(b) Change standards implementing a functional classification system; or

(c) **Result in any of the effects listed in paragraphs (A) through (C) of this subsection based on projected conditions** [~~As~~]measured at the end of the planning period identified in the adopted [~~transportation system plan~~]**TSP. 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.**[~~;~~]

(A) [~~Allow land uses or levels of development that would result in t~~]**Types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;**

(B) **Degrade**[~~Reduce~~] the performance of an existing or planned transportation facility **such that it would not meet the** [~~below the minimum acceptable~~]-performance standards identified in the TSP or comprehensive plan; or

(C) **Degrade**[~~Worsen~~] the performance of an existing or planned transportation facility that is otherwise projected to **not meet the** [~~perform below the minimum acceptable~~]performance standards identified in the TSP or comprehensive plan.

(2) [~~Where~~]**If** a local government determines that there would be a significant effect, [~~compliance with section (1) shall be accomplished~~]**then the local government must 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 identified in the adopted TSP through one or a combination of the [following:] remedies listed in (a) through (e) below, unless the amendment meets the balancing test in subsection (2)(e) of this section or qualifies for partial mitigation in section (11) of this rule. A local government using subsection (2)(e), section (3), section (10) or section (11) to approve an amendment recognizes that additional motor vehicle traffic congestion may result and that other facility providers would not be expected to provide additional capacity for motor vehicles in response to this congestion.

- (a) Adopting measures that demonstrate allowed land uses are consistent with the planned function, capacity, and performance standards of the transportation facility.
- (b) Amending the TSP or comprehensive plan to provide transportation facilities, improvements or services adequate to support the proposed land uses consistent with the requirements of this division; such amendments shall include a funding plan or mechanism consistent with section (4) or include an amendment to the transportation finance plan so that the facility, improvement, or service will be provided by the end of the planning period.
- ~~(c) Altering land use designations, densities, or design requirements to reduce demand for automobile travel and meet travel needs through other modes.]~~
- ~~(c)[d]~~) Amending the TSP to modify the planned function, capacity or performance standards of the transportation facility.
- ~~(d)[e]~~) Providing other measures as a condition of development or through a development agreement or similar funding method, including, **but not limited to**, transportation system management measures~~[- demand management]~~ or minor transportation improvements. Local governments shall, as part of the amendment, specify when

measures or improvements provided pursuant to this subsection will be provided.

(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.

(3) Notwithstanding sections (1) and (2) of this rule, a local government may approve an amendment that would significantly affect an existing transportation facility without assuring that the allowed land uses are consistent with the function, capacity and performance standards of the facility where:

- ~~[(a) The facility is already performing below the minimum acceptable performance standard identified in the TSP or comprehensive plan on the date the amendment application is submitted;]~~
- ~~(a)[b]~~) In the absence of the amendment, planned transportation facilities, improvements and services as set forth in section (4) of this rule 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;
- ~~(b)[e]~~) Development resulting from the amendment will, at a minimum, mitigate the impacts of the amendment in a manner that avoids further degradation to the performance of the facility by the time of the development through one or a combination of transportation improvements or measures;
- ~~(c)[d]~~) The amendment does not involve property located in an interchange area as defined in paragraph (4)(d)(C); and
- ~~(d)[e]~~) For affected state highways, ODOT provides a written statement that the proposed funding and timing for the identified mitigation improvements or measures are, at a

minimum, sufficient to avoid further degradation to the performance of the affected state highway. However, if a local government provides the appropriate ODOT regional office with written notice of a proposed amendment in a manner that provides ODOT reasonable opportunity to submit a written statement into the record of the local government proceeding, and ODOT does not provide a written statement, then the local government may proceed with applying subsections (a) through (c) of this section.

(4) Determinations under sections (1)-(3) of this rule shall be coordinated with affected transportation facility and service providers and other affected local governments.

(a) In determining whether an amendment has a significant effect on an existing or planned transportation facility under subsection (1)(c) of this rule, local governments shall rely on existing transportation facilities and services and on the planned transportation facilities, improvements and services set forth in subsections (b) and (c) below.

(b) Outside of interstate interchange areas, the following are considered planned facilities, improvements and services:

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

(B) 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.

(C) 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.

(D) 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.

(E) 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.

(c) Within interstate interchange areas, the improvements included in (b)(A)-(C) are considered planned facilities, improvements and services, except where:

(A) 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, then local governments may also rely on the improvements identified in paragraphs (b)(D) and (E) of this section; or

(B) There is an adopted interchange area management plan, then local governments may also rely on the improvements identified in that plan and which are also

identified in paragraphs (b)(D) and (E) of this section.

(d) As used in this section and section (3):

(A) Planned interchange means new interchanges and relocation of existing interchanges that are authorized in an adopted transportation system plan or comprehensive plan;

(B) Interstate highway means Interstates 5, 82, 84, 105, 205 and 405; and

(C) Interstate interchange area means:

(i) Property within **one-quarter**~~[one-half]~~ mile **of the ramp terminal intersection** of an existing or planned interchange on an Interstate Highway~~[as measured from the center point of the interchange]~~; or

(ii) The interchange area as defined in the Interchange Area Management Plan adopted as an amendment to the Oregon Highway Plan.

(e) For purposes of this section, a written statement provided pursuant to paragraphs (b)(D), (b)(E) or (c)(A) provided by ODOT, a local government or transportation facility provider, as appropriate, shall be conclusive in determining whether a transportation facility, improvement or service is a planned transportation facility, improvement or service. In the absence of a written statement, a local government can only rely upon planned transportation facilities, improvements and services identified in paragraphs (b)(A)-(C) to determine whether there is a significant effect that requires application of the remedies in section (2).

(5) The presence of a transportation facility or improvement shall not be a basis for an exception to allow residential, commercial, institutional or industrial development on rural lands under this division or OAR 660-004-0022 and 660-004-0028.

(6) In determining whether proposed land uses would affect or be consistent with planned transportation facilities as provided in **sections** ~~[0060]~~(1) and (2), local governments shall give

full credit for potential reduction in vehicle trips for uses located in mixed-use, pedestrian-friendly centers, and neighborhoods as provided in **subsections** (a)-(d) below;

(a) Absent adopted local standards or detailed information about the vehicle trip reduction benefits of mixed-use, pedestrian-friendly development, local governments shall assume that uses located within a mixed-use, pedestrian-friendly center, or neighborhood, will generate 10% fewer daily and peak hour trips than are specified in available published estimates, such as those provided by the Institute of Transportation Engineers (ITE) Trip Generation Manual that do not specifically account for the effects of mixed-use, pedestrian-friendly development. The 10% reduction allowed for by this section shall be available only if uses which rely solely on auto trips, such as gas stations, car washes, storage facilities, and motels are prohibited;

(b) Local governments shall use detailed or local information about the trip reduction benefits of mixed-use, pedestrian-friendly development where such information is available and presented to the local government. Local governments may, based on such information, allow reductions greater than the 10% reduction required in **subsection** (a) **above**;

(c) Where a local government assumes or estimates lower vehicle trip generation as provided in **subsection** (a) or (b) above, it shall assure through conditions of approval, site plans, or approval standards that subsequent development approvals support the development of a mixed-use, pedestrian-friendly center or neighborhood and provide for on-site bike and pedestrian connectivity and access to transit as provided for in **OAR 660-012-0045(3) and (4)**. The provision of on-site bike and pedestrian connectivity and access to transit may be accomplished through application of acknowledged ordinance provisions which comply with **OAR 660-012-0045(3) and (4)** or through conditions of approval or findings adopted with the plan

amendment that assure compliance with these rule requirements at the time of development approval; and

(d) The purpose of this section is to provide an incentive for the designation and implementation of pedestrian-friendly, mixed-use centers and neighborhoods by lowering the regulatory barriers to plan amendments which accomplish this type of development. The actual trip reduction benefits of mixed-use, pedestrian-friendly development will vary from case to case and may be somewhat higher or lower than presumed pursuant to **subsection** (a) above. The Commission concludes that this assumption is warranted given general information about the expected effects of mixed-use, pedestrian-friendly development and its intent to encourage changes to plans and development patterns. Nothing in this section is intended to affect the application of provisions in local plans or ordinances which provide for the calculation or assessment of systems development charges or in preparing conformity determinations required under the federal Clean Air Act.

(7) Amendments to acknowledged comprehensive plans and land use regulations which meet all of the criteria listed in **subsections** (a)-(c) below shall include an amendment to the comprehensive plan, transportation system plan the adoption of a local street plan, access management plan, future street plan or other binding local transportation plan to provide for on-site alignment of streets or accessways with existing and planned arterial, collector, and local streets surrounding the site as necessary to implement the requirements in [Section] **OAR 660-012-0020(2)(b)** and [Section] **660-012-0045(3)** [~~of this division~~]:

- (a) The plan or land use regulation amendment results in designation of two or more acres of land for commercial use;
- (b) The local government has not adopted a TSP or local street plan which complies with [Section] **OAR 660-012-0020(2)(b)** or, in the Portland Metropolitan Area, has not complied with Metro's requirement for street connectivity as contained in Title 6, Section 3

of the Urban Growth Management Functional Plan; and

(c) The proposed amendment would significantly affect a transportation facility as provided in **section** ~~0060~~(1).

(8) A "mixed-use, pedestrian-friendly center or neighborhood" for the purposes of this rule, means:

(a) Any one of the following:

- (A) An existing central business district or downtown;
- (B) An area designated as a central city, regional center, town center or main street in the Portland Metro 2040 Regional Growth Concept;
- (C) An area designated in an acknowledged comprehensive plan as a transit oriented development or a pedestrian district; or
- (D) An area designated as a special transportation area as provided for in the Oregon Highway Plan.

(b) An area other than those listed in **subsection** (a) **above** which includes or is planned to include the following characteristics:

- (A) A concentration of a variety of land uses in a well-defined area, including the following:
 - (i) Medium to high density residential development (12 or more units per acre);
 - (ii) Offices or office buildings;
 - (iii) Retail stores and services;
 - (iv) Restaurants; and
 - (v) Public open space or private open space which is available for public use, such as a park or plaza.
- (B) Generally include civic or cultural uses;
- (C) A core commercial area where multi-story buildings are permitted;
- (D) Buildings and building entrances oriented to streets;
- (E) Street connections and crossings that make the center safe and conveniently accessible from adjacent areas;

- (F) A network of streets and, where appropriate, accessways and major driveways that make it attractive and highly convenient for people to walk between uses within the center or neighborhood, including streets and major driveways within the center with wide sidewalks and other features, including pedestrian-oriented street crossings, street trees, pedestrian-scale lighting and on-street parking;
- (G) One or more transit stops (in urban areas with fixed route transit service); and
- (H) Limit or do not allow low-intensity or land extensive uses, such as most industrial uses, automobile sales and services, and drive-through services.

(9) Notwithstanding section (1) of this rule, a local government may find that an amendment to a zoning map does not significantly affect an existing or planned transportation facility if all of the following requirements are met.

- (a) The proposed zoning is consistent with the existing comprehensive plan map designation and the amendment does not change the comprehensive plan map;**
- (b) The local government has an acknowledged TSP and the proposed zoning is consistent with the TSP; and**
- (c) The area subject to the zoning map amendment was not exempted from this rule at the time of an urban growth boundary amendment as permitted in OAR 660-024-0020(1)(d), or the area was exempted from this rule but the local government has a subsequently acknowledged TSP amendment that accounted for urbanization of the area.**

(10) Notwithstanding sections (1) and (2) of this rule, a local government may amend a functional plan, a comprehensive plan or a land use regulation without applying performance standards related to motor vehicle traffic congestion (e.g. volume to capacity ratio or V/C), delay or travel time if the amendment meets the requirements of subsection (a) of this section. This section does not exempt a proposed amendment 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.

(a) A proposed amendment qualifies for this section if it:

- (A) is a map or text amendment affecting only land entirely within a multimodal mixed-use area (MMA); and**
- (B) is consistent with the definition of an MMA and consistent with the function of the MMA as described in the findings designating the MMA.**

(b) For the purpose of this rule, “multimodal mixed-use area” or “MMA” means an area:

- (A) with a boundary adopted by a local government as provided in subsection (d) or (e) of this section and that has been acknowledged;**
- (B) entirely within an urban growth boundary;**
- (C) with adopted plans and development regulations that allow the uses listed in paragraphs (8)(b)(A) through (C) of this rule and that require new development to be consistent with the characteristics listed in paragraphs (8)(b)(D) through (H) of this rule;**
- (D) with land use regulations that do not require the provision of off-street parking, or regulations that require lower levels of off-street parking than required in other areas and allow flexibility to meet the parking requirements (e.g. count on-street parking, allow long-term leases, allow shared parking); and**
- (E) located in one or more of the categories below:**
 - (i) at least one-quarter mile from any ramp terminal intersection of existing or planned interchanges;**
 - (ii) within the area of an adopted Interchange Area Management Plan**

(IAMP) and consistent with the IAMP; or

(iii) within one-quarter mile of a ramp terminal intersection of an existing or planned interchange if the mainline facility provider has provided written concurrence with the MMA designation as provided in subsection (c) of this section.

(c) When a mainline facility provider reviews an MMA designation as provided in subparagraph (b)(E)(iii) of this section, the provider must consider the factors listed in paragraph (A) of this subsection.

(A) The potential for operational or safety effects to the interchange area and the mainline highway, specifically considering:

(i) whether the interchange area has a crash rate that is higher than the statewide crash rate for similar facilities;

(ii) whether the interchange area is in the top ten percent of locations identified by the safety priority index system (SPIS) developed by ODOT; and

(iii) 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.

(B) If there are operational or safety effects as described in paragraph (A) of this subsection, the effects may be addressed by an agreement between the local government and the facility provider regarding traffic management plans favoring traffic movements away from the interchange, particularly those facilitating clearing traffic queues on the interchange exit ramps.

(d) A local government may designate an MMA by adopting an amendment to the comprehensive plan or land use regulations to delineate the boundary following an existing zone, multiple existing zones, an urban renewal area, other existing

boundary, or establishing a new boundary. The designation must be accompanied by findings showing how the area meets the definition of an MMA. Designation of an MMA is not subject to the requirements in sections (1) and (2) of this rule.

(e) A local government may designate an MMA on an area where comprehensive plan map designations or land use regulations do not meet the definition, if all of the other elements meet the definition, by concurrently adopting comprehensive plan or land use regulation amendments necessary to meet the definition. Such amendments are not subject to performance standards related to motor vehicle traffic congestion, delay or travel time.

(11) A local government may approve an amendment with partial mitigation as provided in section (2) of this rule if the amendment complies with subsection (a) of this section, the amendment meets the balancing test in subsection (b) of this section, and the local government coordinates as provided in subsection (c) of this section.

(a) The amendment must meet paragraphs (A) and (B) of this subsection or meet paragraph (D) of this subsection.

(A) Create direct benefits in terms of industrial or traded-sector jobs created or retained by limiting uses to industrial or traded-sector industries.

(B) Not allow retail uses, except limited retail incidental to industrial or traded sector development, not to exceed five percent of the net developable area.

(C) For the purpose of this section:

(i) "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.

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

(D) Notwithstanding paragraphs (A) and (B) of this subsection, an amendment complies with subsection (a) if all of the following conditions are met:

(i) The amendment is within a city with a population less than 10,000 and outside of a Metropolitan Planning Organization.

(ii) The amendment would provide land for “Other Employment Use” or “Prime Industrial Land” as those terms are defined in OAR 660-009-0005.

(iii) The amendment is located outside of the Willamette Valley as defined in ORS 215.010.

(E) The provisions of paragraph (D) of this subsection are repealed on January 1, 2017.

(b) A local government may accept partial mitigation only if the local government determines that the benefits outweigh the negative effects on local transportation facilities and the local government receives from the provider of any transportation facility that would be significantly affected written concurrence that the benefits outweigh the negative effects on their transportation facilities. If the amendment significantly affects a state highway, then ODOT must coordinate with the Oregon Business Development Department regarding the economic and job creation benefits of the proposed amendment as defined in subsection (a) of this section. The requirement to obtain concurrence from a provider is satisfied if the local government provides notice as required by subsection (c) of this section and the provider does not

respond in writing (either concurring or non-concurring) within forty-five days.

(c) A local government that proposes to use this section must coordinate with Oregon Business Development Department, Department of Land Conservation and Development, area commission on transportation, metropolitan planning organization, and transportation providers and local governments directly impacted by the proposal to allow opportunities for comments on whether the proposed amendment meets the definition of economic development, how it would affect transportation facilities and the adequacy of proposed mitigation. Informal consultation is encouraged throughout the process starting with pre-application meetings. Coordination has the meaning given in ORS 197.015 and Goal 2 and must include notice at least 45 days before the first evidentiary hearing. Notice must include the following:

(A) Proposed amendment.

(B) Proposed mitigating actions from section (2) of this rule.

(C) Analysis and projections of the extent to which the proposed amendment in combination with proposed mitigating actions would fall short of being consistent with the function, capacity, and performance standards of transportation facilities.

(D) Findings showing how the proposed amendment meets the requirements of subsection (a) of this section.

(E) Findings showing that the benefits of the proposed amendment outweigh the negative effects on transportation facilities.

Stat. Auth.: ORS 183 & 197.040

Stats. Implemented: ORS 195.025, 197.040, 197.230, 197.245, 197.610 - 197.625, 197.628 - 197.646, 197.712, 197.717 & 197.732