

# Draft Development Review Guidelines Updates – August 2024

**Revisions to the ODOT Development Review Guidelines have been drafted to reflect updated processes for land use and development review. These are draft updates and have not been approved. Once approved, the Development Review Guidelines on ODOT’s external website will be updated.**

## Background

In 2022, DLCD updated Oregon Administration Rules Chapter 660, Division 12, also known as the Transportation Planning Rule (TPR) through the Climate-Friendly and Equitable Communities (CFEC) rulemaking process. The updated TPR requires Climate Friendly Areas (CFAs) to be established in cities and counties over 5,000 in population within metropolitan areas and that new development review processes be established to support the intended mixed-use and multimodal development pattern. (Metro 2040 Centers fulfill the CFA requirement within the Portland metropolitan area.)

## TPR Changes Impacting Development Review

Two key changes resulted from the TPR updates.

**First, cities, counties and the State must adopt two performance standards for use in comprehensive plan or land use regulation amendments consistent with Rule 0060.** One performance standard must support transportation options and reducing reliance on automobiles.

**Second, Rule 0325 outlines new processes for development review within CFAs and Metro 2040 Centers, replacing Rule 0060 requirements.** A multimodal transportation gap summary and/or a highway impacts summary must be completed as described below.

- A multimodal gap summary is a high-level review of the existing multimodal transportation network, including gaps in the pedestrian and bicycle network, a list of planned projects to fill the identified gaps, and flags for further review in a transportation system plan.
- A highway impacts summary is required when an ODOT facility is within the area of review and should describe potential changes in development capacity, additional motor vehicle traffic generation, and crash data. The summary should be at a planning level, is intended to rely upon existing data/analysis, and does not require an analysis of transportation performance standards.

## Rule 0325 Analysis Requirements

Adoption/Amendment Scenario	Multimodal Gap Summary	Highway Impacts Summary
Adoption of a New CFA / Metro 2040 Center	Required	Potentially Required <sup>1</sup>
Expansion of Existing CFA / Metro 2040 Center	Required	Potentially Required <sup>1</sup>
Amendment to Comprehensive Plan or Land Use Regulations within Existing CFA / Metro 2040 Center	Not Required	Potentially Required <sup>2</sup>

<sup>1</sup> If the proposed CFA / Metro 2040 Center contains a ramp terminal intersection, state highway, interstate highway, or adopted ODOT facility plan

<sup>2</sup> If the comprehensive plan/land use amendment study 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 proposed amendment 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.

## Proposed Updates to the Development Review Guidelines

The following changes are proposed for the Development Review Guidelines. These proposed changes began with an audit of the updated TPR compared with the current Guidelines and reflect input from three internal advisory committee meetings and a meeting of statewide development review staff.

- **New guidance for plan amendments within CFAs.** Added new content to Chapter 3.2 to identify requirements for multimodal gap summaries and highway impact summaries.
- **Update existing guidance for plan amendments in areas outside of CFAs.** Modified Chapter 3.2 to reflect new performance standard requirements. The proposed changes will be revisited to reflect any updated standards for the state system established through the ongoing Oregon Highway Plan (OHP) update.

# Development Review Guidelines

---

## Contents

- 1 ODOT Development Review Program ..... 7
  - 1.1 Introduction: Development Review Program Purpose ..... 7
  - 1.2 Purpose of Development Review Guidelines ..... 7
    - 1.2.1 The Guidelines Help Staff ..... 8
    - 1.2.2 How to Use the Guidelines ..... 8
    - 1.2.3 Guideline Updates ..... 9
  - 1.3 ODOT Development Review Organization ..... 9
    - 1.3.1 Why ODOT Participates in Local Land Use Review ..... 9
    - 1.3.2 ODOT Development Review Program Objectives ..... 10
    - 1.3.3 ODOT Development Review Authority ..... 11
    - 1.3.4 State Agency Coordination Agreement ..... 11
    - 1.3.5 Statewide Planning Goals and Guidelines ..... 11
    - 1.3.6 Transportation Planning Rule (TPR) – OAR Chapter 660, Division 012 .... 12
    - 1.3.7 Oregon Transportation Plan (OTP) ..... 12
    - 1.3.8 Oregon Highway Plan ..... 12
    - 1.3.9 Control of Access (ORS Chapter 374) and Access Management Rule (OAR Chapter 734, Division 051) ..... 13
    - 1.3.10 ODOT NPDES Permit ..... 13
    - 1.3.11 Railroad-Highway Crossing Safety: Rules and Regulations of the Rail Division 13
    - 1.3.12 ADA Program ..... 14
  - 1.4 Development Review System and Other Resources ..... 14
    - 1.4.1 Geographic Information Systems (GIS) ..... 15
    - 1.4.2 ODOT Traffic Manual ..... 16
    - 1.4.3 Design Standards ..... 16
- 2 Land Use Decision Coordination ..... 17
  - 2.1 Introduction ..... 17

2.2	State Agency Coordination.....	17
2.3	System Planning .....	19
2.3.1	Transportation System Plans Are Intended To: .....	19
2.3.2	Transportation System Plans are required for the following: .....	19
2.3.3	The Oregon Transportation Plan .....	20
2.3.4	ODOT Facility Planning .....	20
2.3.5	ODOT Guidance on Long Range Planning.....	21
2.3.6	ODOT Policies and Procedures.....	22
2.3.7	Project Delivery Operational Notices .....	22
2.3.8	Planning Business Leadership Team Operational Notices .....	22
2.3.9	Periodic Review of Local Long Range Plans .....	22
2.4	Local Decision Making Authority .....	24
2.4.1	Types of Local Land Use Applications/Actions .....	24
2.4.2	Notice of Proposal .....	26
2.4.3	Timelines for Land Use Review and Response .....	26
2.5	ODOT’s Role in Local Development Review.....	28
2.5.1	Determine Whether ODOT Has an Interest in the Proposal .....	28
2.5.2	Evaluating a Local Land Use/Development Proposal .....	29
2.5.3	All Development Applications that Raise ODOT Concerns.....	30
2.5.4	Development Application with Access to a State Highway .....	31
2.6	Review and Response to Land Use Proposals .....	33
2.6.1	Development Review System.....	33
2.6.2	Content of ODOT Responses.....	35
2.6.3	Response Letters .....	35
2.6.4	Mitigation Proposed as Condition of Approval .....	36
2.7	Findings.....	37
2.7.1	Applicability of Findings .....	38
2.7.2	Preparing Findings .....	39
2.8	Working Effectively with Local Partners .....	40
2.8.1	Local Agency Planning and Public Works Departments .....	40

2.8.2	Participate Effectively in Public Hearings.....	42
2.9	Legal “Burdens” in the Planning Decision Process.....	44
2.9.1	“Burden of Proof” .....	44
2.9.2	“Substantial Evidence” .....	44
2.10	ODOT Internal Coordination .....	45
2.10.1	Coordination with ODOT Access Management .....	45
2.10.2	Coordination with Managers .....	47
2.10.3	Coordination with Other ODOT Units .....	48
2.10.4	Coordination with Other State Agencies .....	50
2.10.5	Coordination with Other Groups .....	50
3	Chapter 3 .....	52
3.1	Basic Land Use Application Review .....	52
3.1.1	Introduction.....	52
3.1.2	Core Issues Summary .....	53
3.1.3	Apply Local Review Criteria .....	55
3.1.4	Consideration Related to Improvements in State Right of Way .....	61
3.1.5	Considerations Related to Site Access to a State Highway .....	67
3.1.6	Plan Designations to Balance State and Local Objectives.....	74
3.1.7	Coordinating Land Use Review with Access Permitting and Rail Methods Vary by Local Jurisdiction.....	76
3.2	Transportation Planning Rule (TPR) Reviews .....	80
3.2.1	Introduction.....	80
3.2.2	Determine How TPR Section 0060 Applies to an Application .....	81
3.2.3	TPR Section 0060 Relationship to Transportation System Planning .....	85
3.2.4	When Significant Effect Analysis is NOT Required.....	88
3.2.5	Determining Significant Effect.....	96
3.2.6	Significant Effect Remedies – Mitigation.....	107
3.2.7	Remedies – Reduce or Avoid the Significant Effect.....	108
3.2.8	Facilities Operating Below Performance Standards.....	111
3.2.9	Economic Development Balancing Test .....	115

3.2.10	Development Review Participation in 0060 Reviews.....	119
3.3	Traffic Impact Analysis .....	129
3.3.1	Overview.....	129
3.3.2	When a TIA May Be Required .....	131
3.3.3	Adequacy of State Transportation Facilities .....	136
3.3.4	TIA Scope of Work .....	137
3.3.5	TIA Deliverables .....	141
3.3.6	Site Trip Generation, Distribution and Assignment.....	156
3.3.7	Trip Distribution .....	161
3.3.8	Mitigation Alternatives.....	166
3.3.9	TIA Appendices .....	167
3.3.10	Capacity Analysis Documentation Requirements.....	173
4	Land Use Appeals.....	181
4.1	Purpose of Appeals Chapter .....	181
4.1.1	ODOT Factors for Deciding to Appeal .....	182
4.1.2	Appeals Avoidance and Preparation Best Practices.....	182
4.1.3	Internal ODOT Coordination Process .....	185
4.1.4	Consultation with OTC.....	186
4.1.5	After the Decision has been Made to Appeal.....	187
4.1.6	Outline of LUBA Appeals Process .....	190
5	Negotiated Mitigation Agreements .....	192
5.1	Purpose.....	192
5.1.1	Problem Statement.....	192
5.2	Policy Issues That May Apply .....	193
5.2.1	1999 Oregon Highway Plan (OHP).....	193
5.2.2	Access Management Rule (OAR 734-51 or Division 51).....	195
5.2.3	Transportation Planning Rule (TPR) (OAR-660-012) .....	196
5.2.4	Local Collection of Funds for Transportation Facilities .....	197
5.3	Types of Agreements .....	199
5.4	Legal Considerations that Influence the Choice of Type of Agreement.....	199

5.5	Reviewing the Developer’s Impacts and Contribution to Solutions.....	201
5.5.1	Nexus and Proportionality.....	202
5.5.2	NEEDS TITLE***** .....	203
5.5.3	NEEDS TITLE***** .....	205
5.5.4	NEEDS TITLE***** .....	<b>Error! Bookmark not defined.</b>
5.5.5	Documenting the Method of Calculating the Developer’s Share.....	211
5.6	Content of Agreements by Type.....	211
5.6.1	Letter of Agreement.....	211
5.6.2	Memorandum of Understanding .....	212
5.6.3	Intergovernmental Agreements .....	215
5.6.4	Cooperative Improvement Agreements .....	216
5.7	Legal Sufficiency .....	218
5.7.1	Public Contracting Requirements .....	218
5.7.2	Construction Standards .....	218
5.7.3	Contract Language .....	218
5.7.4	Who Can Sign a Binding Contract for ODOT.....	218

# Table of Figures

Figure 3.1: Land Use Decision Process ..... 58  
Figure 3.2: General Land Use Criteria..... 59

# Table of Tables

Table 3.1: ODOT Input into TPR 0060 Decision Making ..... 120  
Table 3.2: TIA Thresholds and Analysis Areas..... 132  
Table 3.3: Future Year Analysis: Suggested Time Lines..... 140  
Table 3.4: EXAMPLE Existing Transportation Facilities in the Immediate Study Area 143  
Table 3.5: EXAMPLE (Study Year) Existing Conditions and Operations Study..... 144  
Table 3.6: EXAMPLE: 2001 Existing Intersection Capacity Analysis..... 146  
Table 3.7: EXAMPLE Intersection Crash History (Start Date to End Date) ..... 148  
Table 3.8: EXAMPLE Historical Traffic Counts..... 149  
Table 3.9: EXAMPLE 2014 Background Daily Traffic Profile..... 151  
Table 3.10: EXAMPLE Existing Daily Traffic Volumes on Select Roadway Segments 152  
Table 3.11: EXAMPLE Estimated Developer Preferred Site Plan Trip Generation..... 153  
Table 3.12: EXAMPLE 2014 Total Daily Traffic Profile (Preferred Development)..... 153  
Table 3.13: EXAMPLE (Planned Year of Opening) Background Traffic Conditions .... 155  
Table 3.14: EXAMPLE 2003 Background Intersection Capacity Analysis ..... 156  
Table 3.15: EXAMPLE Site Trip Generation..... 159  
Table 3.16: EXAMPLE Total Traffic Study Intersection Capacity Analysis ..... 163  
Table 3.17: EXAMPLE Background Traffic; Intersection Capacity Analysis ..... 164  
Table 3.18: EXAMPLE 2014 Total Traffic Operations (Preferred Development Plan). 165  
Table 3.19: EXAMPLE Key Intersection Mitigation (Year of Opening) Total Traffic  
Conditions ..... 166  
Table 3.20: EXAMPLE: Total Traffic Study Intersection Capacity Analysis ..... 168  
Table 3.21: EXAMPLE Estimated 95th Percentile Queuing Analysis ..... 175  
Table 5.1: Quantifiable Factors Related to Proportional Share..... 206



## **1 ODOT Development Review Program**

### **1.1 Introduction: Development Review Program Purpose**

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

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

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

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

### **1.2 Purpose of Development Review Guidelines**

The Development Review Guidelines (Guidelines) document is a reference handbook intended for use by ODOT staff and others involved in land development projects with associated traffic that may impact the safety and operations of state transportation

facilities. The guidelines are intended to establish best practices and to support consistency among the Regions in ODOT's relationships with local governments and with consultants.

The Guidelines are a compilation of information to help staff respond to local land use and development proposals that affect state transportation facilities. The Development Review Guidelines document is posted on the [Planning Guidance and Resources](#) web page.

### **1.2.1 The Guidelines Help Staff:**

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

### **1.2.2 How to Use the Guidelines**

The Guidelines are organized into five chapters.

- Chapter 1 provides an overview of ODOT's Development Review Program.
- Chapter 2 summarizes the local land use process and gives general tips on working effectively with local partners.
- Chapter 3 details the technical and policy issues to be considered when ODOT makes a recommendation on a local land use proposal. Chapter 3 is divided into three sub-chapters due to the volume of information and based upon increasing complexity of development issues:
  - 3.1 – Land Use Review
  - 3.2 – Transportation Planning Rule Review
  - 3.3 – Traffic Impact Analysis
- Chapter 4 includes strategies and tips for establishing legal defensibility for ODOT recommendations when participating in the local land use process and for building a strong decision record in case it is needed for a potential appeal.
- Chapter 5 identifies basic protocols for staff to use during the negotiation of fair, legally defensible and enforceable mitigation agreements with local

governments and/or private developers during the development review process.

- The Appendices include technical references such as white papers, sample memos and letters and a case law summary.

### **1.2.3 Guideline Updates**

The ODOT web version of the Guidelines will be updated periodically to keep the Guidelines current. The 2012 update was precipitated by some significant changes in policy related to development review, including new Access Management rules, a revised Policy 1F in the Oregon Highway Plan (OHP) and a major rewrite of the Transportation Planning Rules (TPR) under the authority of the Department of Land Conservation and Development. A less extensive update in 2017 adds some lessons learned since the 2012 update and new information on meeting Americans with Disabilities Act requirements.

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

## **1.3 ODOT Development Review Organization**

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

### **1.3.1 Why ODOT Participates in Local Land Use Review**

The goals of development review are to balance the economic development needs of the local area with the system management goals of the agency.

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

The need to find collaborative ways to manage investment in the state transportation system has become more pressing in recent years due to population growth and overall growth in vehicle miles traveled. At the same time, funding for transportation investments has not kept pace with the state's growth. This reduction in available transportation funding combined with increased demands on the transportation system requires all transportation providers to manage resources to continue providing opportunities for economic growth. Finding and maintaining this balance will require ODOT staff to continue to work in partnership with local governments and other state agencies to provide safe travel options for the citizens and businesses that rely on the state's transportation infrastructure.

### **1.3.2 ODOT Development Review Program Objectives**

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

- Build positive relationships with our local partners, developers, and citizens.
- Balance state transportation facility needs with local economic development needs while maintaining safety for all users and ensuring acceptable operations.
- Provide expertise on the applicable development-related ODOT standards and procedures to local government, property owners and developers.
- Provide professional review of potential transportation impacts of proposed local land use changes and development projects that affect ODOT facilities.
- Provide timely and consistent recommendations to local governments based on local criteria and ODOT policies, standards, state statutes and administrative rules that apply to the development review process.
- Where there are adverse impacts to state facilities, work within the local land use process to identify and negotiate an appropriate level of mitigation that is directly related and proportional to the development's impacts.
- Work with developers and local government(s) to prevent or mitigate new stormwater discharges into state facilities to maintain compliance with ODOT's NPDES (National Pollutant Discharge Elimination System) permit.
- Work with developers and local government(s) to provide Americans with Disabilities Act compliant facilities where required or otherwise needed.
- Support local decisions that strengthen the connection between local land use and transportation that enhance community safety and livability, and enhance connectivity between state transportation facilities and the local street network.

### **1.3.3 ODOT Development Review Authority**

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

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

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

### **1.3.4 State Agency Coordination Agreement**

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

### **1.3.5 Statewide Planning Goals and Guidelines**

The Oregon Statewide Planning Goals and Guidelines consist of 19 state land use goals and constitute the framework for Oregon's land use planning program. Oregon's statewide goals are achieved through local comprehensive planning. State law requires each city and county to adopt a comprehensive plan that complies with the statewide goals. Under Oregon's statewide planning process, transportation issues are addressed primarily under [Goal 12, Transportation](#).

To implement the [Statewide Planning Goals](#) and local comprehensive plans, local governments must have locally adopted and state acknowledged land development ordinances. They have to make findings of compliance with those ordinances to support the approval of most land use decisions. Local ordinances assume, and Oregon case law has affirmed, that applicants for land use approval have the burden of proof to establish compliance with local regulations, which means that it is their responsibility to provide sufficient information to demonstrate that criteria are met.

### **1.3.6 Transportation Planning Rule (TPR) – OAR Chapter 660, Division 012**

The Land Conservation and Development Commission adopted the [Transportation Planning Rule \(TPR\)](#) in 1991 to implement the Statewide Goal on Transportation. The TPR, which was subject to significant amendments most recently in December 2011, provides the regulatory framework to integrate land use and transportation planning. The TPR requires a hierarchy of transportation system plans (TSPs) to meet state, regional and local needs. The TPR also requires that local governments provide notice and coordinate with ODOT on potential land use changes that have a “significant effect” on state transportation facilities.

### **1.3.7 Oregon Transportation Plan (OTP)**

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

### **1.3.8 Oregon Highway Plan**

In 1999 the Transportation Commission adopted the Oregon Highway Plan (OHP) as a critical element of the Oregon Transportation Plan. The Highway Plan Policy Element, which has been amended numerous times, guides how state highways are developed and managed.

The Highway Plan Land Use and Transportation Policy 1B addresses the relationship between the highway and patterns of development both on and off the highway. Policy 1B provides for the designation of urban highway segments that meet certain standards as Special Transportation Areas (STAs), Urban Business Areas (UBAs) or Commercial Centers to support planning and management strategies to balance highway management needs with existing or planned development.

The OHP Highway Mobility Policy 1F establishes state highway mobility targets that implement the objectives of the Oregon Transportation Plan (OTP) and other OHP

policies. The policy does not rely on a single approach to determine transportation needs necessary to maintain acceptable and reliable levels of mobility on the state highway system. It offers the flexibility to consider and develop methodologies to measure mobility that are reflective of current and anticipated land use, transportation and economic conditions of the state and community livability goals.

Policies and standards in the Highway Plan provide an important context for ODOT review of local land use and development proposals.

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

The statute and the administrative rule ([OAR 734-051](#)) define ODOT standards and procedures to manage access to state highway facilities to the degree necessary to maintain functional use, highway safety, and the preservation of public investment consistent with the 1999 Oregon Highway Plan and adopted local comprehensive plans.

### **1.3.10 ODOT NPDES Permit**

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

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

### **1.3.11 Railroad-Highway Crossing Safety: Rules and Regulations of the Rail Division**

The [ODOT Rail Division](#) implements standards and procedures to manage the safety of rail facilities and rail crossings to the degree necessary to maintain functional use, crossing safety, ADA accessibility and the preservation of public investment consistent with the 2001 [Oregon Rail Plan](#).

Relevant statutes and rules are ORS 823/824 and OAR 741 Divisions 100, 105, 110, 115, 120, 125 and 200. This authority requires a public road authority or railroad to file an application for a Crossing Order with the ODOT Rail Division for permission to construct a new separated or at-grade crossing, make alterations to an existing public crossing, or to close an existing public crossing. The ODOT Rail Division is in agreement with the Federal Railroad Administration in its efforts to close crossings wherever possible. The Division is required by statute to eliminate crossings at grade wherever possible.

### **1.3.12 ADA Program**

The Americans with Disabilities Act (ADA) provides that “no qualified individual with a disability shall, by reason of such a disability, be excluded from participation in or denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” All public entities, regardless of whether they receive federal funding, are subject to Title II of the ADA. The primary purpose is to ensure accessibility of programs and transportation, that people with disabilities have an equal opportunity.

Relevant Federal laws and rules are:

- Americans with Disabilities Act (signed into law July 26, 1990) and Section 504 of the Rehabilitation Act of 1973
- Americans with Disabilities Act Title II Regulations Part 35 Nondiscrimination on the Basis of Disability in State and Local Government Services
- 28 CFR Part 36 Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities

See the [ADA in the Public Right of Way](#) web page for the Transition Plan and Curb Ramp Inventory.

## **1.4 Development Review System and Other Resources**

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

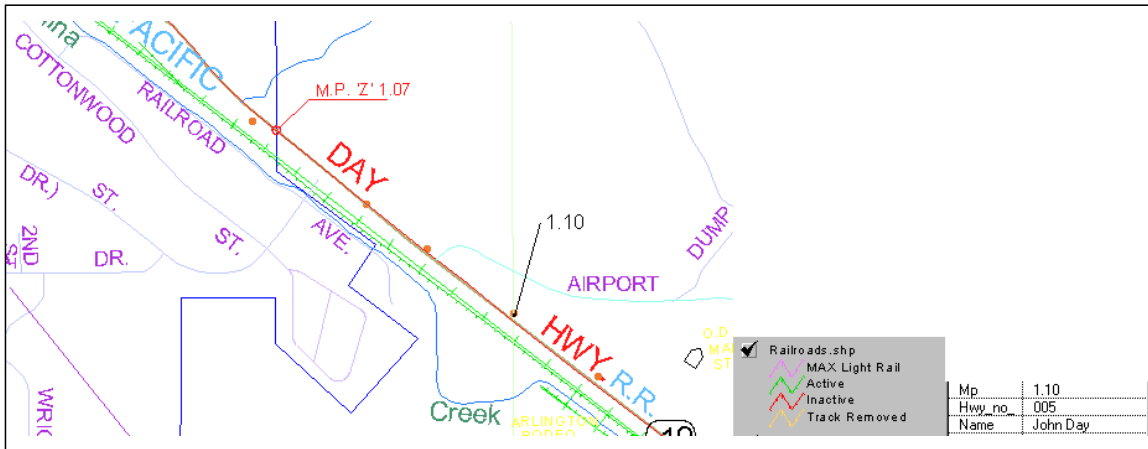
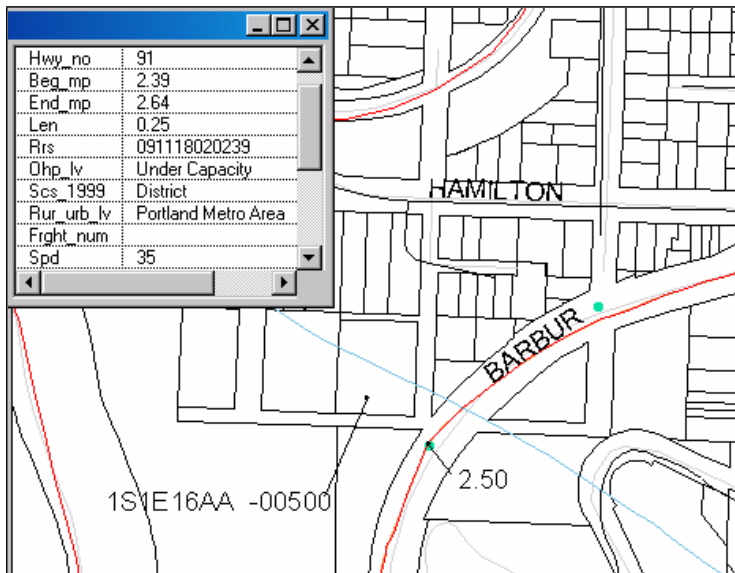


In 2008 a statewide process began that included development review planners from each region, the state development review coordinator, access management staff and administrative staff involved in performance measurement, to create a statewide development review data base, based to some extent on the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

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

#### **1.4.1 Geographic Information Systems (GIS)**

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



Visit ODOT’s [Data and Maps](#) page and select GIS Mapping Applications.

### 1.4.2 ODOT Traffic Manual

For a general overview of ODOT Traffic Engineering practices see the ODOT [Traffic Manual](#). This document is bookmarked alphabetically and cites to the legal authorities for various practices. It is intended for use as a reference document by new ODOT employees and others unfamiliar with ODOT and the relationships among statutes, rules, policies and engineering practices.

### 1.4.3 Design Standards

The Department’s technical guidance for project development is found in the AASHTO Policy on Geometric Design and the ODOT [Highway Design Manual](#) (HDM).

## **2 Land Use Decision Coordination**

### **2.1 Introduction**

Land use regulation, including the Transportation Planning Rule, is under the authority of Land Conservation and Development Commission, not ODOT, and is implemented by local government. This Chapter discusses the full range of planning activities that make up the **context** for ODOT participation in development review. Depending upon the planning organizational structure of the individual Regions, development review staff may have responsibilities in a variety of planning activities outside of the tasks typically considered to be part of development review.

The Oregon State Land Use Goals apply to all government activities within the state that affect land use. The state level authority for the Goals and related land use statute and administrative rules is the responsibility of the LCDDC and their administrative agency, the Department of Land Conservation and Development. This includes the Transportation Planning Rule or TPR ([OAR 660-0012](#)).

State agencies whose business practices have an effect on land use are required to make related plans consistent with the statewide land use planning goals. ODOT decisions about where state facility investments will be made affect local land use because of direct impacts on real property and because creating new capacity and improving road conditions can support local economic development. Local government decisions about land use affect ODOT facilities by increasing demand and by raising safety and operations issues.

Cities and counties are required to plan ahead for land use needs consistent with the state goals and regulations, including the transportation goal and TPR, and to continually respond to changing growth projections and infrastructure needs. In addition, the State Agency Coordination rules require that state and local plans be consistent with one another. To achieve these ends, state and local coordination in both long- term planning and review of site development applications is necessary.

### **2.2 State Agency Coordination**

The Land Conservation and Development Commission state agency coordination rules apply to all state agencies with decision authority that affects land use. There are two general areas of agency authority that are addressed:

- **Land Use Decisions Generally:** [OAR 660 Division 30](#) regulates coordination among affected jurisdictions when agencies make decisions related to land use other than permitting decisions. The rule requires agencies whose programs and activities affect land use to adopt their own rules and develop a program to spell out how state agency coordination will be administered. The rule also requires LCDC certification of agency programs to “assure that state agency rules and programs which affect land use comply with the statewide goals and are compatible with acknowledged city and county comprehensive plans.”
- **Permitting:** [OAR 660 Division 31](#) regulates coordination among affected jurisdictions when agencies make decisions related to issuing permits.

*“The rule establishes procedures and standards which require consideration of Goals and Acknowledged Plans prior to approval of state permits. The rule establishes a process for state agencies to rely on a local determination of compliance with the State Planning Goals and the Acknowledged Comprehensive Plan when issuing certain permits.”*

Highway approach permits are the permits of concern in development review and are identified as Type B permits that, under this rule, do not require public notice and hearings for department decisions. The Land Use Compatibility Statement is the tool used to accomplish coordination as set up in this rule.

ODOT’s programs that affect land use include, generally, the adoption and amendment of administrative rules, system plans and facility plans; the development of highway facility construction projects; the management of land owned by the agency; and permitting work in state right of way that is usually related to private land development on adjoining lands. ODOT has a certified SAC program and rules:

- [OAR 731 Division 15](#) sets out coordination and public outreach requirements for the types of agency decisions that fall under the LCDC definition of decisions affecting land use.
- The ODOT State Agency Coordination Program is documented in a 1990 handbook that is not published electronically. Many of the organizational bases for the program have changed over time due to reorganization and lessons learned, but in the meantime the procedures described in the handbook have become standard practice in the affected ODOT Divisions and have been adapted to changing needs consistent with the rule.

In the more than twenty five years that the LCDC SAC rules have been in effect, interagency coordination has become a standard business practice for ODOT. Local governments are required to adopt transportation system plans that are consistent with the Oregon Highway Plan and other state system plans. They are required to notify ODOT of their proposed actions that affect ODOT programs or facilities. ODOT is required to ensure that facility plans and project development decisions are consistent with local TSPs.

## **2.3 System Planning**

### **2.3.1 Transportation System Plans Are Intended To:**

- Provide long-range direction for the development of local transportation facilities and services for all modes.
- Integrate transportation and land use.
- Provide a rationale for transportation investments and land use decisions.
- Provide preliminary planning for local and regional projects that may become part of the [Statewide Transportation Improvement Program \(STIP\)](#) which is ODOT's capital improvement plan for highway. The STIP development process identifies projects for development and construction and sets funding levels and timelines.

### **2.3.2 Transportation System Plans are required for the following:**

- Oregon Department of Transportation;
- Metropolitan planning organizations;
- Counties with populations greater than 25,000 (Counties smaller than 25,000 population may qualify for a whole or partial exemption from the TSP requirement);
- Cities with populations greater than 10,000 (Cities smaller than 10,000 population may qualify for a whole or partial exemption from the TSP requirement).

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

Local planners have learned and ODOT increasingly recognizes that system planning is an effective way to identify and help prioritize transportation projects for funding. For example, project criteria developed for the 2001 Oregon Transportation Investment Act (OTIA) established a linkage between plans, projects and funding. The Transportation Commission may be heading in the same direction in its review of the STIP process,

and, in the future, STIP projects may be required to come from adopted and acknowledged transportation system plans.

The inclusion of needed projects in fully developed TSPs is the best tool a local jurisdiction has to make their case to get projects elevated into the STIP. And participating in the local TSP process is the best opportunity ODOT has to ensure that local priorities are consistent with the needs of state facilities. For a more detailed discussion on how long-range provisions are implemented, see Chapter 3.1.

### **2.3.3 The Oregon Transportation Plan**

The [Oregon Transportation Plan](#) (OTP) is the State TSP. It provides overall policy direction for the development of transportation facilities and services in Oregon. The OTP was adopted by the Oregon Transportation Commission in 1992 and a significant update was adopted in 2006.

The whole OTP also comprises the various mode and topic plans identified below. Of these, the 1999 Oregon Highway Plan typically has the most relevance in the development review process. All Plans, unless otherwise hyperlinked, can be found on ODOT's [Statewide Policy Plans](#) page.

- [Department of Aviation; Oregon System Plan](#) (2007)
- Oregon Highway Plan (1999, including amendments through May, 2015)
  - Subsequent amendments to the OHP are located in the Registry of OHP Amendments.
- Public Transit Division; State Management for Public Transportation Programs (2009), Oregon Public Transportation Plan
- Oregon Bicycle/Pedestrian Plan (1995), Bicycle and Pedestrian Design Guide (2011)
- Oregon Rail Freight Plan (2011)
- Transportation Safety Action Plan (2016)
- [ADA Transition Plan](#) (2017)
- [Willamette Valley Transportation Strategy](#) (1995)
- Facility Plans (Corridor Plans, Interchange Area Management Plans, Access Management Plans, etc.) are posted on the [Registry of Amendments for the Highway Plan](#).

### **2.3.4 ODOT Facility Planning**

ODOT does facility planning at a local or sub-regional level. In conjunction with local governments and other stakeholders, ODOT develops Interchange Area Management Plans (IAMPs), Access Management Plans and Corridor Plans. ODOT also can

coordinate with local government to develop Highway Segment Management Plans for special transportation areas (STAs), urban business areas (UBAs) and Commercial Centers, particularly where Oregon Highway Plan (OHP) freight routes are affected, though few segment management plans have been completed.

Facility plans set forth strategies and long-term management priorities for the subject facility or corridor. To research adopted ODOT facility plans in effect see the OHP Registry of Amendments (linked in previous section).

### **2.3.5 ODOT Guidance on Long Range Planning**

#### **Internal Guidance**

ODOT has developed guidelines for facility and area planning to meet changing needs, beginning with the Corridor Planning Guidelines prepared in 1995 (not published on line). [Interchange Area Management Plan Guidelines](#) were last updated in 2013.

Agency Procedures and various less formal technical memos have provided methods or best practices for addressing planning needs for freight capacity issues, special transportation areas, local interest roads and jurisdictional transfers, among others. To find the available guidance for a particular type of state facility planning effort, make contact through the related web site and request the most current available reference.

As a precursor to corridor or other facility planning, ODOT prepares Transportation Conditions Reports for Oregon Highways. These reports are not plans. However, they provide a wealth of background and forecast information, including “no build” information for each subject corridor. This information includes operational, geometric, and safety analysis, access locations, environmental data, management system data, land use data, topographical and geologic data, and a full set of air photos in static and customizable map sets. These reports can be very valuable tools to aid plan preparation, project prospectus development, or development review activities.

#### **Guidance for Local Planners**

ODOT publishes the [Transportation System Planning Guidelines](#), last updated in 2008 and currently under review in response to revisions of the TPR effective January 1, 2012. The latest rule amendments affected only Section 0060, so do not affect many of the activities governed by the rules.

ODOT also provides guidance and support for local transportation planning through Refinement Planning, Highway Classification, Highway Segment Designations and Existing Conditions Reports. Much of the Department’s technical guidance for project

development can be found in the AASHTO Policy on Geometric Design and the ODOT [Highway Design Manual](#) (HDM).

### **2.3.6 ODOT Policies and Procedures**

A Policy or Procedure is developed by a Division when there is a need for an agency-wide understanding of a business practice or set of business practices that is not otherwise established. Before adoption, policies and procedures are vetted with all affected business line teams and leadership teams. Final approval of policies and procedures is by the agency Executive Committee. Policies and Procedures of particular interest for ODOT Planners include:

- Facility Plan Adoption
- Classifying and Reclassifying Highways
- Jurisdictional Transfer

### **2.3.7 Project Delivery Operational Notices**

As noted on the related Project Delivery web page, “operational notices are ODOT’s Project Delivery policy guidelines intended to ensure consistency in project delivery practices throughout ODOT. The audience for these notices is all staff, internal to ODOT and contractors doing business on behalf of ODOT using ODOT’s practices and policies.”

Project development Operational Notice topics that may be of interest in development review include access management (environmental guidance, water quality management, highway mobility and planning and project development integration).

### **2.3.8 Planning Business Leadership Team Operational Notices**

PBLT recognizes the need to clarify and document processes used in ODOT planning processes and so develops and maintains Operational Notices. These notices reflect PBLT's operational position and direction, guide planning decision-making, and inform the planning work of ODOT employees and members of the consultant community doing business with ODOT. Operational Notices are developed and implemented using a participative process with stakeholders and address a particular subject identified by PBLT.

### **2.3.9 Periodic Review of Local Long Range Plans**

Periodic Review is a term used in Oregon land use law to describe the periodic evaluation and revision of a local comprehensive plan. In 2007, the Oregon Legislature enacted a bill that revised the scope of Periodic Review to include only those cities with



a population greater than 10,000. While Statewide Planning Goal 2, Land Use Planning, requires that all local governments' comprehensive plans be maintained and updated, counties and smaller cities are no longer legally obligated to complete the formal statutory requirements for Periodic Review. As part of the 2007 legislative amendments, the scope of Periodic Review was also scaled back to include only the fundamental building blocks of local planning: housing, economic development, transportation, public facilities and services, and urban land supply.

Although the legal requirements have changed, the fundamental purpose of Periodic Review is to ensure that local comprehensive plans are:

- Updated to respond to changes in local, regional and state conditions,
- Coordinated with other comprehensive plans and investments; and
- In compliance with the statewide planning goals, statutes and rules.

ODOT's interest in local comprehensive plans is primarily the transportation system plan (TSP), but other elements of the plan are important to transportation planning. In particular, the population projections in comp plans are very important for anticipating facility needs over time. In the best case, population projections are updated as the basis for the facility needs analysis in a TSP update. Economic development and housing elements can also be valuable for anticipating facility needs.

ODOT participation in local periodic review is an opportunity to work with local governments to collaborate on issues important to all affected jurisdictions while the comprehensive plan, including the transportation system plan, is being updated. ODOT planners can advise the local governments of consistency issues related to the OHP and other ODOT policy or regulations that may need to be addressed. Periodic review is an opportune time to address ways the local development code can be updated to better protect the short and long term function of the local transportation system, particularly as it functions in relationship to state facilities.

Most cities and counties in Oregon have adopted and may be currently working on an update to a **Transportation System Plan (TSP)**. Many TSPs are funded through the ODOT/DLCD Transportation Growth Management Program (TGM). In addition, the Regions sometimes pay for new TSPs and updates with SPR planning funds.

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

Cities and Counties inside Metropolitan Planning Organizations (MPOs) are also subject to **Regional Transportation Plans** (RTPs) which are subject to federal standards. Projects recognized in the plans have to be “fiscally constrained” which means it is reasonable to expect that such projects will be funded for construction within the plan period. RTPs may also contain land use and transportation elements and alternative mobility standards. When an MPO’s RTP includes alternative mobility standards that are approved by the Oregon Transportation Commission (OTC) they supersede the mobility targets / standards in Table 6 of the OHP.

## **2.4 Local Decision Making Authority**

Under Oregon’s land use program, the local city or county makes land use decisions within their political boundaries. City and county boundaries overlap in many urban growth boundary areas. The local decision-making authority is delegated to a series of decision makers, based primarily upon the amount of discretion allowed for each type of decision. Authorities can include local or regional planning staff members, a hearings officer, planning commission, city council or board of commissioners or an administrative body such as a Variance Committee or Design Commission.

Each type of land use action has prescribed procedures whose execution varies among local jurisdictions. Different kinds of procedures are subject to different requirements regarding public notice, participation, approval criteria, process time frames, hearings, accepting new information and comments and appeal processes.

ODOT is one of many stakeholders that are notified of pending land use decisions. In addition to service providers, local development codes require notification of nearby property owners whose land falls within specified distances of the subject property. Ministerial decisions may not require notice and legislative decisions may be noticed in newspaper ads rather than directly to property owners, but input from affected property owners and owners’ associations is a significant factor in the land use decision process. ODOT may be contacted by affected neighbors and development review planners need to anticipate that those interactions can result in additional questions about ODOT’s point of view, including anticipated safety and operational issues in a development area.

### **2.4.1 Types of Local Land Use Applications/Actions**

In order to effectively carry out the ODOT development review program it is necessary to have a basic understanding of the different types of local land use reviews and procedures. The land use procedures used by local government are similar, but because no two local codes are quite the same, it is important for a development review planner to become familiar with local zoning codes in their area of responsibility.

Many local zoning codes may be accessed via the Internet. Local government information can be found at [Oregon Blue Book](#) including links to local jurisdiction web sites that typically post development plans and ordinances.

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

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

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

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

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

### **2.4.2 Notice of Proposal**

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

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

1. Land use applications that require public hearings;
2. Subdivision and partition applications;
3. Other applications which affect private access to roads; and
4. Other applications within airport noise corridors and imaginary surfaces which affect airport operations.”

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

Oregon Revised Statute (ORS) [215.402 \(County\)](#) and [227.160 \(City\)](#) contain statutory requirements for public notice of land use reviews. Many jurisdictions require pre-application conferences for certain types of land use and development applications; pre-application conferences are not required by law, but are often required locally for large projects and those anticipated to have significant offsite impacts. If they are held ODOT should be at the table. ODOT staff should coordinate with local jurisdictions to ensure that ODOT is notified of pre-application conferences, particularly for larger land use and development applications. A pre-application conference provides the opportunity for ODOT to help determine whether a traffic study is needed, what the scope of the traffic study should be, the appropriate methodology and standards to use in the analysis and other issues related to the impact of the proposal on state facilities. It may also make it easier to identify win-win mitigations by identifying options early in the development site planning process.

### **2.4.3 Timelines for Land Use Review and Response**

There are two statutory timelines that need to be recognized in the development review process. Both the local application review process and ODOT approach permitting are subject to a “120 day rule” that requires that all steps of the decision process including local / internal appeals must be completed within 120 days unless parties agree to an extension (both) or other specific issues arise (approach permitting). When an approach permit is processed at the same time as the local land use decision, it can be a challenge to keep both applications on time.

### **Land Use Review**

The ways in which local jurisdictions break down their 120-day time periods varies by jurisdiction and by type of application. There is a period of time for preliminary review to identify whether there is enough information to support a decision. LUBA and Oregon case law has established that applicants bear the burden of proof for providing adequate information in support of their proposals (more on this later in this chapter). There are set periods of time for public notice as required, submittal of written comments prior to hearings, public hearings, final decisions, acceptance of appeal filings and scheduling appeal hearings.

Extensions of time require the written agreement of both the applicant and the local jurisdiction. The situation that typically precipitates an agreement to grant an extension of time is a need for additional information that will require consultation with a professional planner or engineer, for example, when not supplying that information would likely result in a denial or conditions of approval unfavorable to the developer. The clock restarts when the needed information is accepted by the local planner. As long as the applicant and jurisdiction agree, an extension may be granted without cause.

### **Approach Permitting**

ODOT's timeline for approach permitting is set out in 734-051-3040(4). ODOT has 30 days to determine whether the application is complete and the application must be accepted as complete before the 120-day period begins. An application cannot be found to be complete until it is confirmed that a right of access exists at the proposed location. A letter is sent to the applicant confirming that the application is complete and noting that a decision will be made within 60 days of the date of the notice. If the application "meets the applicable spacing, channelization and sight distance standards" the decision shall be made within 30 days; more complex decisions get the full 60 days. An appeal to a decision to deny or approve an application with mitigation requirements must be resolved within the 120-day limit.

Situations that might result in suspension of the 120 days for an approach permit application include the need for additional information before accepting the application as complete that will require consultation with a professional engineer, for example, when not supplying that information would likely result in a denial or conditions of approval unfavorable to the developer. Submittal of an application for a grant of access or application for an indenture of access stays the 120-day timeline. Submittal of a written request for a post-decision collaborative discussion under OAR 734-051-3090 or dispute review board review under OAR 734-051-3100 also stays the 120-day timeline until the process is completed. Timelines in Division 51 may be extended where the

applicant and the department agree to an extension in writing before the applicable deadline.

The timelines can overlap in several places:

- The need for Traffic Impact Analysis is a circumstance that can stall both the land use and approach permit applications before the applications are deemed complete. Getting to this concern at the same time may be the biggest benefit of reviewing state permit and local land use applications at the same time.
- ODOT may issue an approach permit approval (subject to the 120 day rule) and a construction permit (not part of the 120 day rule) while the local land use decision is still pending. However, a permit to operate will not be issued until approval of the land use is confirmed, and if the land use application is denied, the applicant is responsible for any necessary deconstruction of the approach.
- A local land use condition of approval may require verification of a successful approach permit application before construction permits are issued. Meeting conditions of approval is outside of the 120 day decision period and sometimes takes months or even years.

## ***2.5 ODOT's Role in Local Development Review***

ODOT is a service provider in the local development review process like local water, sewer, and fire protection providers. As the service provider of the state transportation system, ODOT adopts policies, performance targets and standards that define facility function and performance. These standards are considered in the context of the applicant's proposal and local approval criteria to form ODOT's recommendation to the local government.

The responsibility for a local land use decision is with the local governing body. Like other interested parties who participate in the local decision process, ODOT has the opportunity to appeal the local land use decision. (See Chapter 4 for additional information on preventing the need for, and at the same time being prepared for, possible appeals).

### **2.5.1 Determine Whether ODOT Has an Interest in the Proposal**

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

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

1. Plan amendments and zone changes (includes map and text amendments affecting transportation).
2. Sites adjacent to a state highway.
3. Any proposal that includes proposed access to a state highway.
4. A development site off the highway that will send significant trips to the highway.
5. Land division or lot line adjustment for property with highway frontage or proposed access.
6. Sites located in the footprint of a future highway alignment.
7. Proposed noise sensitive land uses adjacent to state highways.
8. Land use/development proposals that could affect state airport expansions such as cell towers, or noise sensitive land uses in the vicinity of public use airports.
9. Airport expansions.
10. Sites located adjacent to a rail right of way or that could affect a rail crossing.
11. Any proposal that is within 500 ft of a rail line or rail crossing.
12. Aggregate resource sites.
13. ODOT surplus property sales.
14. Off-premise signs (billboards).
15. Public Buildings

### **2.5.2 Evaluating a Local Land Use/Development Proposal**

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

1. Is a comprehensive plan amendment or zone change proposed that could have a “significant effect” on a transportation facility as defined by the TPR, OAR 660-12-060? See Chapter 3.2 of these guidelines and [OAR 660-012-0060](#).
2. Could a proposal that does not trigger the TPR significantly impact a state highway in some other way? For example, will it trigger signal or left turn warrants, increase AM, PM or average daily traffic (ADT) on the highway, or add traffic to an already dangerous intersection or one where mobility targets are not met?
3. Does the proposal include any new or additional approaches to the highway?

4. Will the proposal as designed change the use of an existing state highway approach in a way that will adversely impact the state highway operations or safety?
5. Does the site drainage plan discharge into a state highway drainage facility or into a local facility that discharges into the state facility?
6. Is the proposed land use action/development proposal within 500 feet of a railroad track?
7. Does the proposed development abut or touch, or construct, modify or remove any ADA features of pedestrian facilities—including curb ramps, pedestrian signals, or path of travel—on or along the state highway system?

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

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

### **2.5.3 All Development Applications that Raise ODOT Concerns**

Once it is determined that ODOT has an interest in the application, questions to consider include:

1. **Traffic Impact Analysis:** A Highway Approach Permit application may require a TIA when the local government does not, and vice versa. Has a traffic impact study been prepared and is it available? If a TIA has not yet been prepared, is there an opportunity to work with the developer on the TIA? For more detailed guidance on working with applicants on TIA documents, see Chapter 3.3.
2. **Mobility Targets:** Are there segments of the highway that already exceed the highway mobility targets (volume/capacity ratios), or that will exceed those targets as a result of the development?
3. **Local Street Network:**
  - a. Will the development overwhelm the local street network, causing traffic to reroute to the state highway?



- b. Does the development anticipate future local streets connecting to the state highway?
- c. Will the development provide local streets, particularly those that would offer a parallel route that creates an alternative to using the state highway for local trips?
- 4. Safety: Are there sections of the state highway with safety issues and/or will the development trigger turn lane or signal warrants and require highway improvements?
- 5. ADA and Pedestrian Facilities:
  - a. Does the proposed development abut or touch, or construct, modify or remove any ADA features to pedestrian facilities—including curb ramps, pedestrian signals, or path of travel—on or along the state highway system?
  - b. Are there gaps in pedestrian facilities or obstacles that impede pedestrians, including disabled persons, from full use of affected facilities?
  - c. Do pedestrian signals meet accessibility standards?
- 6. Rail:
  - a. Will the proposed land use action alter or construct sidewalks, bike lanes, bike paths, curb ramps, signals or roadway within 500 ft of a public rail road crossing?
  - b. Will the proposed land use action involve the relocation, construction or closure of any railroad grade crossings?
  - c. Will the proposed land use action increase or decrease vehicle traffic at a grade crossing?
  - d. Will the proposed land use action encroach on the railroad's right of way? The typical r/w for a railroad is 50 ft on each side of the centerline of the tracks.
  - e. Will the proposed land use action involve installation of new vehicle traffic signals or changes to existing traffic signals within 500 ft of a grade crossing?

YES answers to any of these questions suggest the need to include other ODOT staff specialists in the review. For example, if the answer is YES to ANY of questions under 5, the ODOT review should be coordinated with the ODOT Crossing Safety Section.

#### **2.5.4 Development Application with Access to a State Highway**

Direct access to a state highway has to be reviewed by ODOT in a prescribed process that is completely separate from the local land use decision, even though the issues addressed may be very similar. For development sites that have or intend to add direct access to a state highway, the state access management rules ([OAR-734-051](#)) apply.

A legal right of access must exist or be applied for and approved and under certain conditions an Application for State Highway Approach must be submitted and approved. Though the approach application process is separate from the development review process, there are issues that arise that affect both processes. Part of the development review planners' job is to be sure local planners are aware of access issues that may arise related to a site design and be sure access management staff are included in the local planning review when appropriate.

Local development codes may include requirements that affect state approach permits. For example, the code may require that highway access issues be resolved before approval of a site plan or that an approved state highway permit to construct the approach be issued as a condition of approval before building permits will be issued for the development. The local code may also include site design requirements that result in stricter standards than the state access spacing standards; such standards are implemented by the local jurisdiction, not by ODOT.

The access management rules underwent extensive revisions in 2011-12. Further details related to those changes will be discussed in Chapter 3.2, including decision timelines.

For applications that include direct access to a state facility, in addition to the questions in the previous section, consider:

1. Right of Access: If there are any existing approaches to the property, are they being operated under valid permits? Grandfathered or otherwise presumed to be permitted? If not, has a legal right of access been established for the property?
2. Does the proposal result in a Change of Use as described in section 734-051-3020: Change of Use of an Approach? If the development does not constitute a change of use, no new approach permit is required. There is an ongoing policy discussion on what standards should apply where there is no technical "change of use" and an existing approach is neither permitted nor grandfathered (as defined in the rules). At this time<sup>1</sup> interpretation of the rule does not require such approaches to be brought under permit.
3. Alternate Access: Are there other ways to provide access to the property besides the highway, such as using local streets? In most circumstances, the

---

<sup>1</sup> August 2012

- availability of alternate access will not prevent an applicant from getting access to the highway.<sup>2</sup>
4. Spacing between Approaches: How does spacing of any existing or proposed approach road on the subject and adjacent properties conform to the standards applicable to highways of the same classification set out in OHP Appendix C and regulated by Division 51?
  5. Location of Approaches: Can the development function without a highway approach? Can a single approach road shared by adjoining users provide adequate, safe access to the development?
  6. Based on the existing and proposed approaches to the highway and to local streets, are there site design options that will reduce safety and operations impacts on the highway? ODOT's direct authority in these situations is limited to the situations described in OAR 734-051-4020 (3), but situations may arise where the local government may agree that a recommended site design change is justified.
  7. If a new approach to the highway is necessary, what is the preferred location for highway safety and operations? Note that recommending redesign / relocation of an approach off of the state facility is not something we would require under the new alternate access provisions, but could still be a defensible recommendation, particularly if the local decision makers agree that there are safety concerns.
  8. ADA: Will the highway approach meet all ADA accessibility requirements such as Running Slope, Cross Slope, Clear Width, etc. per the appropriate Standard Drawing? If not, has an ADA Design Exception been approved by the State Roadway Engineer in Technical Services?

## ***2.6 Review and Response to Land Use Proposals***

### **2.6.1 Development Review System**

Development review application tracking, data storage and quarterly reporting are supported by the Development Review System or DRS.

When a land use notice is first reviewed a decision is made whether ODOT intends to participate in the local decision process. The Regions use the DRS "Tally" function to count the notices that will not be processed further. If further work will be done to review

---

<sup>2</sup> Note that the 2012 access management rule amendments significantly changed how the availability of alternate access can be considered in approach permitting. See OAR 734-051-3040(5)(a) and 4020(5)-(7)

the proposal, a “Case” is created for the proposal where basic information is entered and related documents can be stored.

ODOT Users have varying status for access to DRS. “Users” can make changes and additions to case files. “Guests” can look at case files but not modify them. “System Administrators” have additional permissions including adding or deleting users.

The DRS platform has email capability for correspondence related to each file, with the outgoing emails saved within the data base. Contact information is entered into each case file identifying who will be collaborating on the internal review and the external contacts who can receive email through DRS. In addition, other electronic files including incoming emails can be copied into a case file as “Documents.”

An important function of DRS is assembling and transmitting “Responses.” The system is set up to cache “Clauses” and “Templates” to meet a variety of response needs.

- Clauses include discrete parts of Responses, such as a Region’s letterhead or the text and typical recommendation for a particular area of applicable law or policy. Clauses also may include bookmarks for auto fill of data from fields in the related case file.
- The system has a simple method of assembling clauses into templates. Staff can customize templates for a variety of standard circumstances, and if a proposal falls outside the bounds of standard responses, clauses can be added or deleted on a case by case basis.
- When a template is opened through the case file “Response” function, all the bookmark fields are populated from the case file entries. The response can be edited in Word and when saved the edited version will remain in the case file without having modified the template. When the Response is finished it can be emailed directly from DRS. A “finalized” response becomes a permanent record of what was sent to the local government.

A “Comments” function supports internal correspondence and maintains a record of that correspondence in the case file. Similar functions that build the case file record are “Decisions” and “Meetings.”

Quarterly reports are set up for two purposes: reports to the Planning Business Line Team (PBLT) and to support reporting requirements for the federal State Planning and Research (SPR) funding that supports ODOT planning programs. These reports are intended to show the level of effort put into development review and to show successes getting favorable conditions in local decisions or other means of mitigation of the development impacts on state highway facilities.

## 2.6.2 Content of ODOT Responses

ODOT comments to local governments on land use/development applications are made in the form of recommendations. It is the local government decision-making body that makes the decision. In written and oral comments to the local jurisdiction, make clear whether the ODOT recommendation is simply a good practice being recommended or whether compliance is necessary to be consistent with local code, state and federal law. It is sometimes useful to distinguish comments and proposed conditions of approval based upon the weight of law backing them up.

- Mandatory/required by law (OAR 734 Division 51 approach permits, permits to connect to ODOT stormwater system, miscellaneous permits to work in the state right of way, TPR 0060, Rail Crossing Order ORS 823/824, ADA accessibility standards and compliance, etc.).
- Recommended/Supported by law (TPR, TSP, Comprehensive Plan Policies, and case law).
- Informational only (potential future issue, permit coordination/contacts).

General Types of ODOT Recommendations:

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

## 2.6.3 Response Letters

In order for ODOT's input to local governments to become part of the official decision record and to establish standing in any subsequent appeals,<sup>3</sup> ODOT submits response letters. The response letters should be formal and written in terms of the applicable local approval criteria. The letters should be written in a way that will help the local decision-

---

<sup>3</sup> See Chapter 4 for more information on avoiding, and when necessary participating in, land use appeals

makers understand how ODOT standards and practices relate to the local approval criteria. The DRS templates are set up to serve this purpose.

For quick reference, the regulatory bases for ODOT's participation in development review can be found at these sites:

- Transportation Planning Rule;
- Statewide Land Use Goals;
- Access Management Rule, OAR 734 Division 51, and
- OHP Land Use and Transportation Policy 1B and Action 1B.4;
- Americans with Disabilities Act Transition Plan

ODOT's comments are based on the materials submitted by the applicant, relevant state and local plans and state policies, practices and administrative rules. ODOT comments may include draft recommended findings of fact and conclusions related to ODOT interests and recommended conditions of approval. Because the local government has the authority to interpret its own ordinance, ODOT staff may want to state "It is ODOT's understanding that this requirement means that..." to help support ODOT's position. Chapter 3, Sections 1, 2 and 3 of these Guidelines go into more detail about the analysis that is necessary to form ODOT's position on a proposal.

ODOT's most common response to the local land use proposal is to recommend approval subject to certain conditions. The conditions allow the applicant the opportunity to modify their plans to meet local, state and federal standards. The most common condition of approval proposed by ODOT is a requirement that the applicant obtains a *State Highway Approach Permit* or otherwise affirms the legality of an existing approach prior to final development approval or issuance of building permits. This helps ensure that ODOT-related conditions of approval pertaining to access are satisfied before the building permit is issued. In this manner, the local and state regulations are coordinated.

#### **2.6.4 Mitigation Proposed as Condition of Approval**

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

- In the land use decision process, conditions requiring mitigation measures must be enabled in the local development code.
- Mitigation measures related to highway approach permits are enabled by the Division 51 access management rules and implemented as conditions of approach permit approval.

The local government can decide to apply conditions that protect state facilities and are supported in doing so by state agency coordination requirements, but the discretion to do so is theirs unless their development code includes the same or arguably similar requirements. Remember that land use regulation, including the TPR is under the authority of DLCD, not ODOT.

When a land use application includes a TIA, that study will typically include recommended mitigation of development impacts. If not, or if other mitigation measures are preferred, ODOT staff may recommend mitigation. Unless the mitigation is a requirement of an approach permit approval, ODOT relies on the local government to require the recommended mitigation measures.

It is important that conditions of approval ensure the applicant is responsible for completion of the identified mitigation measures. This may be accomplished, for example, by withholding construction permits until certain measures are taken, phasing development so that mitigation for one phase is completed before a next phase is permitted, monetary deposit with the local jurisdiction, and/or formal agreements between two or more of the parties.

Conditions of approval are stated in the record of decision. If the mitigation is substantial or exceeds the proportionate share of the applicant's impact and the applicant is not willing to make the improvements, other TPR-identified remedies (for plan and code amendments) or denial may be appropriate. Chapters 3.1 – 3.3 of these Guidelines discuss mitigation in more detail.

## **2.7 Findings**

Technically, ODOT does not write findings for local government decisions. However, ODOT's recommendations are part of decisions that must be based on findings of fact in order to be legally defensible. If ODOT conditions are going to be included and supported in a local decision, they need to be backed up by sound findings.

A response letter may include recommended findings for the local decision document and/or statements consistent with the definition of findings may used in the letter to support recommended conditions. In the rare situation that it becomes necessary to appeal a local decision, well considered findings that support ODOT's position become even more important.

"Findings" can be defined as statements of fact related to criteria for decision making as to compliance with a regulation, and are often referred to as findings of fact. A finding of

fact is distinguished from a conclusion of law which can only be made by the deciding authority, in this case the local jurisdiction.

This is one point in the decision process where the notion of “interpretation” is of interest. Findings identify the facts and relate them to the criteria in a way that indicates whether the criteria are met, but do not rise to the level of interpreting the regulations to reach conclusions of law.

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

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

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

In review of local land use proposals, ODOT’s recommended findings and findings supporting recommendations should identify 1) the applicable local ordinance provision(s) and any other applicable regulations, 2) the facts of the case related to each regulation and 3) discussion whether or not the facts support a conclusion that the proposal complies with the subject regulation. Where ODOT recommended findings are included in written or oral testimony submitted in a local decision process, testimony should be accompanied by a written request that the findings be adopted into the local decision document.

### **2.7.1 Applicability of Findings**

Findings are applicable in two aspects of development review:

Any time a decision is made by ODOT staff in the area of permitting, the file should contain a set of findings to substantiate the basis for the decision. The Access Management CHAMPS database includes prompts for findings related to approach permitting.



Similarly, when ODOT makes a case for a recommended mitigation measure or other condition of land use approval the recommendations should be backed up by findings of fact.

Findings are required to be prepared by the local government staff to support the local decision. Local planners may sometimes use or paraphrase findings from ODOT responses in their staff reports or decision documents. Note that the tone of recommendations and findings to support them needs to be considerate of local sensibilities to the extent practicable, and that may be the determining factor whether they are actually included in the staff report and decision.

### **2.7.2 Preparing Findings**

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

The ODOT findings must speak to how the facts of a case relate to the local approval criteria. For plan amendments and zone changes, the local approval criteria will have to address the TPR, reference the appropriate portions of the local government's development ordinances and tie their approval criteria to the OHP and OAR Division 51 as appropriate. In the case of TPR reviews, findings should provide details explaining whether or not, and, if not, how the proposed land use is inconsistent with the jurisdiction's adopted comprehensive plan, development code and/or transportation system plan. As a matter of practice, the bar is set higher for plan amendments/zone changes and conditional uses than for uses subject to site review but otherwise permitted outright. For uses permitted outright it is adequate to refer to the pertinent local zoning code criteria without making reference to local comprehensive plan policies.

- Findings should typically be concise;
- Keep as neutral (or, where appropriate, supportive) a tone as possible in the submitted correspondence, focusing on the function of the roadway;
- Where an appeal appears likely, the Department of Justice can be a resource to help you include citations to any applicable LUBA cases that would buttress ODOT's position;

- Explain how the applicant has not met the burden of proof where applicable. The burden of proof has not been met if a reasonable person would not conclude that the applicable criteria are met based upon the facts of the case and the information provided by the applicant; and
- Include in the letter references to specific examples from the application materials that demonstrate failure to meet the burden of proof, describing what is missing or inaccurate.

For example, most local codes have sections that require that “adequate” public infrastructure be available to serve proposed new development. Adequacy of the state highway facility includes mobility, operations, safety, etc. Note the mobility targets / standards<sup>4</sup> in Policy 1F of the Oregon Highway Plan as amended in 2011 and consider whether the traffic impacts of the proposed development will cause those standards to be exceeded. Offer suggested conditions of approval to either meet the standards or to keep the volume to capacity (v/c) ratio at its current level after the development occurs. Identify the mitigation measures necessary to achieve the standards.

Policy 1F includes provisions for “alternate mobility standards” for a facility or area of a transportation system that may lower the bar for compliance with the policy. However, alternate standards cannot be applied in the approval process for an administrative or quasi-judicial land use decision. Alternate mobility standards must first be adopted by the local government and the OTC, based on a long-range planning process and local legislative decision.

## ***2.8 Working Effectively with Local Partners***

### **2.8.1 Local Agency Planning and Public Works Departments**

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

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

1. Work with local governments to get them to notify ODOT Regions/Districts of major development proposals on a pre-application basis.

---

<sup>4</sup> The OHP Policy 1F volume to capacity ratio (v/c) performance measures are applied as “targets” except for decisions that trigger TPR section 0060 in which case they are applied as “standards.”

2. Attend pre-application conferences.
  - Identify information that needs to be included in the land use application in order for the applicant to address the local approval criteria and impacts on transportation facilities and services.
  - Provide written comments either at the pre-application meeting or as soon as possible following the meeting.
  - Provide the best information available.
  - Try to resolve conflicts.
  - Advise applicant when a new approach permit or change of use of an existing approach may be needed.
  - Discuss the need for traffic impact analysis if needed.
  - Provide ODOT contact information.
3. Know the local approval criteria. This is essential because it forms the primary basis for the decision. The local approval criteria are the regulations in place at the time of the application submittal (not at the time the application is deemed complete).
4. The approval criteria may include previous conditions of approval that apply to the site. For example, the site may be part of a planned unit development (PUD) that has specific approval criteria that apply at the time of development.
5. Note that comments do not have to be limited to the criteria identified by the local planning department. State policy, plans and standards are applicable to ODOT facilities and should be included as part of the ODOT analysis and discussion.
6. Know the review process including the timelines, decision-making body and appeal process.
7. Provide timely responses. Respond to the local government in time to get the ODOT comments included in the staff report and decision documents.
8. Provide the local staff with any recommended condition of approval language written clearly and completely. This provides clarity and helps the local staff. The condition language should address when the condition is to be performed. Stating that the condition is to be performed prior to the issuance of the primary building permit works well when it is feasible. It may be helpful to discuss the language of the condition with the local staff to see if there are ways the condition can be written to best fit with their development and/or building permit review process. The local staff can make their own recommendations and offer modified language following the receipt of the ODOT comments. Having a uniform position with the local staff helps

eliminate confusion and enhances our chances of gaining agreement from the decision-making body.

9. When a proposal goes to a public hearing, attend the hearing and testify if needed to be sure ODOT interests have been heard. Request the hearing record be kept open if necessary to allow time to address unanswered questions. This request must be made before the conclusion of the first evidentiary hearing. If requested, the record for a hearing must be kept open for a minimum of seven additional days (ORS 197-763(6)).

### **2.8.2 Participate Effectively in Public Hearings**

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

1. To prepare for a hearing, become familiar with the following:
  - All materials filed by the applicant.
  - Relevant ordinances (Development Code) which are typically documented in a staff report.
  - Traffic Analysis, if any.
  - Staff report(s).
  - Previous proposals and/or existing uses on the property; do a site visit if possible.
  - Local comprehensive plan text and map.
  - Other studies, plans and minutes relating to the proposal.
  - The Transportation Planning Rule (TPR) when applicable.
  - Statewide Land Use Goals
2. Before the hearing, discuss the proposal with the local staff. Try to get a feel for their position on the proposal and whether it promotes local priorities. Use the opportunity to increase local understanding of highway facility issues and be persuasive about mitigation needs.
3. Be familiar with the procedural rules such as the order of presentation, local jurisdiction's appeal requirements and review procedure. For example, would an appeal be heard de novo (new hearing, additional information may be added to the record) or on the record (hearing is based on the record, with no new introduction of evidence)? If appeals are heard on the record it is even more important to submit thorough and accurate comments at the first level of review.
4. Know all deadlines for submission of evidence / comments and appeal requests.

5. Know your audience. It is helpful to have some background for the individuals on the local body hearing the case.
6. The ODOT staff presentation can be either in writing or oral. You will have a better opportunity to persuade the local hearings body if you are present and can respond to questions. If an oral presentation is given, it should also be submitted in writing.
7. Carefully listen and take notes on the other testimony in order to be prepared to rebut any evidence submitted by the others that detracts from ODOT's testimony, whether ODOT is the proponent or opponent. Note that opponents do not usually get the opportunity to rebut during the public hearing. If rebuttal is needed it will be necessary to request that either 1) the record be kept open for a specific period of time, or 2) the hearing be continued to a certain future date, typically the next scheduled meeting of the hearings body. The hearings body is required to keep the record open when requested by a party with legal standing, but will often only keep it open for a week or two, and continue deliberations at a future meeting. Typically, the hearings body may continue the hearing at its discretion. (See also discussion on burden of proof below.)
8. If ODOT is a proponent of a local land use action, listen carefully for any additional criteria raised by the opposition. If additional criteria are raised, staff may need to explain why those criteria are not applicable and/or submit evidence to show why the proposed change complies with the criteria. Proponents do get a chance to rebut, but in some communities only the applicant may do so. If that is the case, and ODOT is not the applicant, ODOT may be allowed to rebut at the request of the applicant. In the case where new evidence or new criteria are raised, a request to keep the record open and/or continue the hearing may be the best course.
9. If ODOT is an opponent to the local land use decision, do not rely on the local government to identify all applicable criteria. If you believe certain decision criteria apply but have not been identified by the local jurisdiction, discuss the matter with the local government staff, and be prepared to identify those criteria and defend their applicability to the subject application in testimony. Also be prepared to address the facts of the case and whether it can be demonstrated that the claimed additional criteria are not met.
10. Identify whether the proposal amends a functional plan, acknowledged comprehensive plan or land use regulation. If yes to any of these, the local government has a responsibility to identify whether the proposal will have a significant impact on transportation facilities per OAR 660-12-060 of the TPR.
11. If it will be helpful, use charts, maps and other graphics to illustrate your position. If oversize graphics are used, be sure to supply a legible, smaller format version with identical content that can be placed in the application file.

Everything relied upon as a basis for the decision needs to be part of the record, particularly if there are resulting appeals, and large maps on foam core, for instance, do not stay with the file.

12. Identify, by reference to number and name, all applicable statutes, administrative rules, plan provisions and ordinances that are applicable to the subject local land use decision.

## **2.9 Legal “Burdens” in the Planning Decision Process**

Two legal definitions, whose applicability to land use decisions is well established in case law, are useful in understanding the legal responsibilities of applicants and other parties in land use decisions. When ODOT has concerns about a proposal that appears to have adverse impacts on state facilities, looking at whether these burdens have been met is part of the process of addressing the benefits and/or shortcomings of a proposal or making a case for mitigation or an appeal.

### **2.9.1 “Burden of Proof”**

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

### **2.9.2 “Substantial Evidence”**

Substantial evidence that the proposal complies with the applicable criteria must be contained in the record of decision. “Substantial evidence” is evidence a reasonable person would accept as adequate to support a conclusion. The proponent must provide evidence to show that the applicable criteria have been met. The burden of proof then shifts to the opposition to show why this evidence is not substantial, i.e., that it does not address the criteria, it does not answer the question raised by the criteria, it is not technically correct, or the person producing the evidence is not qualified, etc. If opponents provide evidence that contradicts the proponents’ evidence, the burden shifts back to the proponent to bolster their evidence. The bottom line is, if you are the opponent, you cannot simply mention applicable criteria and rest. You need to see whether the proponent then provides evidence to show why those criteria are not applicable or have already been met. Opponents do not usually get an opportunity to rebut unless a request to keep the record open is accepted by the decision body.

## **2.10 ODOT Internal Coordination**

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

### **2.10.1 Coordination with ODOT Access Management**

Both local and state approvals may be required to develop a parcel of land with access to a state highway. The state approval is in the form of an ODOT State Highway Approach Permit regulated by OAR 734-051 (Division 51) and administered through the ODOT District offices. Additional information related to the applicability of Division 51 is included throughout Chapter 3.

Access management decision making is also subject to State Agency Coordination. ODOT's rule regarding state agency coordination for permit decisions is [OAR-731-015](#).

A complete application for a State Highway Approach Permit includes a Land Use Compatibility Statement (LUCS) filled out and signed by the applicable local government land use authority (OAR 734-051-3030 (3) (i)). The LUCS ensures that ODOT knows the status of the proposal relative to local land use regulations, whether it is permitted outright or has a current approval or that it requires a new land use approval, and whether or not an application is currently under review. If an application is required and an application has been submitted, ODOT can accept and review an approach application,

It is usually preferable for an applicant to apply for a state highway approach permit prior to the final decision on a land use application. The reason is that ODOT decisions about highway access may affect the site layout and the way vehicles enter, exit, and circulate on the property. ODOT may also require mitigation that affects access to the property.<sup>5</sup> However, Division 51 provides for flexibility in the timing of the application. See [OAR 734-051-3040](#) for additional detail on the time frames for approach permit decision making.

---

<sup>5</sup> OAR 734-051-3070 establishes allowable mitigation measures and limitations on them. Conditions of approval of approach permits are appealable.

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

Local land use approval may be obtained prior to state highway approach approval. The applicant runs the risk of having the state deny the approach, requiring the applicant to either revise the site plan through the local review amendment process or to appeal ODOT's decision to deny the approach road.

The applicant decides whether to obtain the state approval prior to the local land use approval. A property owner may apply for an ODOT State Highway Approach Permit before, after or during the local land use review. This flexibility allows applicants to decide for themselves the best course of action. To allow them some flexibility in terms of the timing of their applications, section 3040 (8) allows approval of an approach permit pending verification of local land use approval. In addition, 3040 (8) (b) allows a construction permit for a highway approach (driveway) to be issued while a land use action is pending, with a bonding requirement to cover the cost of removal if the land use is ultimately denied.

The final Permit to Operate, Maintain and Use an Approach will only be issued upon the applicant receiving local land use approval and the completion of construction of the approach to state standards. In this manner, the state and local governments coordinate their reviews and have assurances that the same set of site plans are being approved by both agencies.

ODOT recommends that applicants obtain state approach approval prior to local land use approval. In the best case for coordinating an approach permit application with the local land use decision, the same site plan is submitted for both reviews. However, either decision process may require changes to the site plan to meet approval criteria.

In cases where the local land use action includes site plan approval, obtaining ODOT approach permit approval prior to the local approval is typically the best course of action. Agency staff can identify approaches the agency can support or would oppose. ODOT recommends that applicants know both the local and state rules pertaining to access prior to designing their project and submitting either the state or local application.

When the state approves an approach location and the local government objects, the applicant must take steps to address the local government's issues. ODOT will only allow an approach where the provisions of OAR 734-051 are satisfied.



If the local government approves an approach location that ODOT can't approve outright, ODOT staff needs to decide the most effective means to get the approach in the best feasible location. ODOT:

1. May object through the local appeal process; and
2. Will withhold issuing the approach permit until the provisions of OAR 734-051 are satisfied.

The applicant may have to submit an amended site plan or other application to the local government to modify the approach location. OAR 734-051 includes an appeal process which is separate and distinct from the local land use appeal process.

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

### **2.10.2 Coordination with Managers**

**Planning Managers** are responsible for the development review and long range planning programs in the Regions and supervise the current and long-range planners, and in some regions supervise development review engineers and the regional access management engineer. The Planning Manager or designee (e.g. Development Review Team Lead) is responsible for keeping other managers in the region informed about development review issues. In some regions the Planning Managers oversee access management related to long range planning and development review. The [Statewide Transportation Improvement Program](#) (STIP) can reside in the Planning unit. It is the responsibility of the development review planners and engineers to be aware of upcoming ODOT projects in the vicinity of a proposed development. The statewide STIP coordinator is another source of information about when projects will be delivered.

**District Managers** have the legal authority to issue approach road permits. The District Manager may refer planners to an approach Permit Specialist or the Region Access Management Engineer on access management issues. The District Manager supervises staff that is involved in the daily maintenance and operation of the state's highway system and all features on the right of way (signs, signal poles, fences, etc.). This includes non-ODOT signs on state right of way.

**Traffic Managers** have legal authority for the placement of official ODOT signs (regulatory, warning, guide) and certain informational signs on the highway. Other responsibilities include the location, timing and other operations of traffic signals,

striping the highway and conducting speed zone studies. For more information, see [Traffic Roadway Sign Policy Information](#).

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

**Region Right of Way Managers** oversee the acquisition, management and disposal of state-owned property. Salem Right of Way has the capability to research properties to determine whether ODOT has purchased access control, identify the location of reservations of access and research other property deed information related to the highways.

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

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

The **Office of Civil Rights Manager** is responsible for the implementation of the goals and priorities in the ADA Transition Plan. The Office of Civil Rights staff are responsible for tracking and reporting any ADA or discrimination related complaint, question or request that occur on or along state highway, or are associated with ODOT funding, contracts, or other agreements.

### 2.10.3 Coordination with Other ODOT Units

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

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

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

**ADA Program:** This program exists to ensure compliance with the federal Americans with Disabilities Act requirements. The program is collaborative: staff members across all of ODOT have responsibility for its implementation but the primary responsibilities are in the Office of Civil Rights and the Technical Services Traffic/Roadway Section. Assistance offered includes training on development of transition plans, ADA-related design, inspection and inventory. The ADA Program also provides design support to insure construction is in compliance with the applicable ADA Standards.

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

**Long Range Planning:** The Regions have long-range planners who are expected to be familiar with the local governments' TSPs and Comprehensive Plans. Salem's Transportation Development Division (TDD) also has specialized long-range planners for various travel modes. Where a local government's plans for an area on the highway are at odds with the classification of the highway, there may be long-range planning measures that will allow the community's desired outcome.

- A Highway Segment Designation per OHP Policy 1B may be a viable approach to propose as a long-range solution.
- Alternate Mobility Standards, as enabled in OHP Policy 1F, can be established to allow the local jurisdiction to accept more congestion on the highway as a trade-off for allowing a traffic intensive use, or any new use on a facility that is operating near capacity.

These approaches can't be used in the course of development review. They must be developed as part of an OHP amendment that requires both local and state adoption.

**TDD Freight Unit and Motor Carrier Division:** [ORS 366.215](#) requires that OTC cannot permanently reduce the vehicle-carrying capacity of an identified freight route when altering, relocating, changing or realigning a state highway unless specific conditions are met.

**Rail and Public Transit Division:** The Rail Section has exclusive legal authority over public grade crossings and provides coordination with the railroads for affected private rail crossings. ODOT's Public Transit Section supports mobility options for Oregonians through advocacy, grants and collaborative partnerships with transit agencies. The

Division also has oversight on ADA issues related to rail crossings and public transit stops.

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

#### **2.10.4 Coordination with Other State Agencies**

**Business Oregon:** From their home page: “Business Oregon works to create, retain, expand and attract businesses that provide sustainable, living-wage jobs for Oregonians.” Business Oregon may be a participant in a land use action as a proponent or sponsor of an economic development project. In addition the new TPR Section 11, which allows “partial mitigation” of traffic impacts under circumstances that provide certain types of economic benefits, requires the decision process to be coordinated with OBDD.

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

**Oregon Department of Aviation:** The department reviews local land use applications for their effects upon airport operations. These can include noise-sensitive uses locating near airports, cell towers, waterfowl attractions in flight paths and development in runway protection zones. Structure height and some kinds of lighting can be significant issues in the vicinity of airports.

#### **2.10.5 Coordination with Other Groups**

ODOT has established practices for outreach to local governments and the general public on all of its activities that relate to land use. This can result in the agency’s development review responses extending beyond submitting letters to the local government. Larger projects and those that raise sensitive issues can require ODOT staff coordination and interaction with the following groups:

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

**Metropolitan Planning Organizations (MPOs):** Federally authorized MPOs are required to create and maintain regional transportation plans (RTPs) for urban and urbanizing areas as participants in federal transportation funding. There are several in Oregon located in the areas of Portland (Metro), Salem/Keizer Area Transportation Study (SKATS), Corvallis Area MPO, Eugene/Springfield (Central Lane MPO), Medford (Rogue Valley MPO), and Bend Area MPO. As many as three additional MPOs will be formed as a result of population increases documented in the 2010 U.S. Census, centered in Albany, Grants Pass and Milton-Freewater (in an interstate MPO with Walla Walla, Washington).

**Regional Solutions Teams (RST):** ODOT is one of eight state agencies participating in RST. Coordinated through the Governor's office, the effort now includes the following agencies:

- Oregon Economic and Community Development Department (OECDD)
- Oregon Department of Transportation (ODOT)
- Department of Land Conservation and Development (DLCD)
- Department of Environmental Quality (DEQ)
- Department of State Lands (DSL)
- Oregon Department of Agriculture (ODA)
- Oregon Housing and Community Services (OHCS)
- Department of Consumer and Business Services (DCBS)

The RST assists local communities with economic and community development issues that involve multiple state agencies through [Regional Solutions Teams](#).

### **3 Chapter 3**

#### **3.1 Basic Land Use Application Review**

##### **3.1.1 Introduction**

This section deals primarily with the Oregon state land use planning system as it is implemented by cities, counties and Metro. Oregon cities and counties have comprehensive plans that address the Statewide Planning Goals and implement those plans with land development ordinances or codes. The local jurisdictions have the authority and responsibility for compliance with their plans and codes. The state rules governing land use decision making are administered by the Department of Land Conservation and Development.

ODOT is notified of pending land use decisions as an “affected agency” and participates in local land use decision-making when there is a potential impact to a state highway. ODOT has some functions that affect land use and one such function that is directly related to local land use decisions is issuing State Highway Approach Permits.

This chapter addresses ODOT concerns in local land use decision making and the relationship between land use development decisions and highway approach permitting. An ODOT approach permit is required for direct vehicle access to a state highway.

The approach permit process is separate from but parallel to the local land use review. As discussed in Chapter 2, ODOT staff should review the site access during the land use review as a way to identify potential conflicts and make sure their review of the land use application is coordinated with the ODOT access permit application process. ODOT staff should determine whether any proposed approach to a state facility needs to be assessed for consistency with ODOT Division 51, ([OAR 734-051](#)) which comprises the access management standards and procedures, and with any applicable OHP policies. ODOT staff has the responsibility to inform developers of possible conflicts with Division 51 requirements. Consult with a District Permit Specialist or the Region Access Management Engineer (RAME) for more information.

The discussion in this chapter is narrowed to the ODOT analysis used in relatively uncomplicated land use proposals that do not include comprehensive plan, zoning, development code or other plan amendments. Applications including plan amendments are subject to both the types of issues raised in this chapter and to Transportation Planning Rule (TPR) Section 0060. See Chapter 3.2 for background and procedures for land use applications requiring TPR review. In addition, many ODOT responses to land

use proposals are based upon traffic impact analysis (TIA); there is a more detailed discussion of traffic impact analysis in Chapter 3.3.

This chapter discusses several types of land use decisions at a general level. Figure 1 illustrates typical ministerial and quasi-judicial local land use review processes. Legislative proposals that do not trigger the need for TPR review should also be reviewed consistent with the practices described in this chapter. For these categories of land use reviews, development review planners work with the local planning staff and sometimes the developer/applicant to implement (rather than amend) local land use and transportation plans and ordinances in a manner that eliminates, minimizes or mitigates development impacts on state transportation facilities.

The planning horizon (end of the planning period) for traffic impacts on state facilities for this group of land use decisions is typically based on the year of development project completion rather than the local transportation system plan (TSP) planning horizon. For additional guidance on planning horizons see Figure 3.3.1 - Future Year Analysis: Suggested Time Lines.

### **3.1.2 Core Issues Summary**

See Chapter 1 for a fuller overview of ODOT review authority as a coordinating agency in the state land use program. The following areas of concern are applicable to all land use reviews:

#### **“Raise It or Waive It”**

If ODOT has any serious concerns with the impacts of a land use application it is important to “raise” the issues with a written statement to the local land use file describing those issues. To the extent possible the state transportation system issues should be linked to applicable local development code criteria in that early statement, but they can be raised as a place holder before the connection to the local code is identified if time is short. If issues are not raised in the first level of review (and are not ultimately linked to applicable criteria), they are “waived” as a basis for an appeal to the next level of review. ODOT does not initiate many appeals, but keeping the appeal option open is fundamental in any case that may have an adverse impact on affected state facilities.

#### **Rail Crossings**

ODOT authority to regulate the safety of rail facilities and rail crossings applies to all land use decisions/development proposals that might impact a rail crossing, particularly activities within 500 feet of a rail crossing, whether or not a state highway facility is within the vicinity of the proposal.

### **Americans with Disabilities Act Compliance**

Pedestrian and transit facilities are required to be designed and constructed or reconstructed consistent with ADA standards.

### **On-System Development Proposals**

If the development has direct access to a state highway, the access management rule, OAR Chapter 734 Division 051, applies to any decision regarding location, design and construction of a connection to the highway. Refer to the rule for specific provisions and consult with ODOT Permit Specialists and/or a Region Access Management Engineer (RAME) for additional information. This is discussed in more detail below. Note that these guidelines are not intended to detail the state highway approach permitting process, but rather to identify how that process relates to the development review process and to make the most of opportunities to get to better decisions for both processes.

### **Off-System Development Proposals**

The local development code applies to traffic issues related to projects that do not require access directly to a state highway, but ODOT will still have an interest in mitigating impacts of increased traffic at highway intersections whenever possible. The local code will typically include approval criteria that public facilities be adequate to serve the new land use, so if, for example, an intersection necessary to connect the proposed development to the state highway system is not adequate, development review staff can recommend a finding that the criteria are not met and/or recommend mitigation measures. The local code may provide that a TIA is required based on development size or traffic generation rates. Preparation of a traffic impact analysis is typically in the applicant's best interest as a way to demonstrate compliance with the local approval criteria. For additional information on traffic impact analysis, see Chapter 3.3.

### **Relationship of Access Management Rule to Local Site Design Standards**

The 2011-12 major amendment of OAR 734-051, the Access Management rules, includes the following section 1040 that explains which standard will prevail between local and state standards that apply to access locations, etc., on a state facility. This is the complete section of Division 051-1040:

*(1) Where ODOT and Local Jurisdiction Agree on Standards or Requirements. Where ODOT and a local jurisdiction have agreed to access spacing standards, sight distance standards or channelization requirements in an adopted access management plan or facility plan that are different than the adopted standards in this rule, the agreed upon standard will be considered consistent with the*



*standards adopted by this rule and with OAR 660-012-0015 and shall be applied to the state highways within that jurisdiction.*

*(2) Where Local Jurisdiction Standards or Requirements Exceed OAR 734-051. Where a local jurisdiction has adopted access spacing standards, sight distance standards or channelization requirements that require greater distances than the distances adopted by these rules or allow less access to the state highway than the standards adopted in these rules, the local standards shall be considered to be consistent with the state standards and with OAR 660-012-0015 and shall be applied to state highways within that jurisdiction.*

*(3) Where OAR 734-051 Exceeds Local Jurisdiction Standards or Requirements. Where a local jurisdiction has adopted access spacing standards, sight distance standards or channelization requirements that result in distances that are less than the distances adopted by these rules or provide greater access to the state highway than those standards adopted by these rules, the local standards shall be deemed to be inconsistent with these rules and with OAR 660-012-0015 and shall not be applied to state highways within the local jurisdiction.*

OAR 051-1040 affirms a basic precept of administrative law that where two jurisdictions, both operating within their legal authority, enact different regulations regarding the same specific issue (e.g. driveway spacing standards), the stricter standard applies. So, if the local government has adopted spacing, sight distance or channelization standards stricter than the Division 51 standards, the local standard applies (subsection 2). If Division 51 is stricter than local standards or the local government has not adopted standards, Division 51 applies (subsection 3). A third possible situation results from a facility or refinement planning process that involved ODOT and one or more local governments and results in a different standard to which the affected jurisdictions have agreed, in which case that agreed-to standard applies (subsection 1).

### **3.1.3 Apply Local Review Criteria**

The local code sets the approval criteria for land use reviews. Acknowledged plans and ordinances are presumed to be consistent with state standards.<sup>6</sup> State decisions and actions are required to be consistent with local land use plans. For approach permit applications, consistency with local standards is documented in a Land Use Compatibility Statement (LUCS) that is filled out and signed by the local jurisdiction and filed with the approach permit application materials.

---

<sup>6</sup> Local plans and TSPs are required to be consistent with applicable state plans; acknowledgement is acceptance by the state (LCDC) that a plan meets applicable state standards.

When the local jurisdiction reviews a land use application for transportation effects, the standards for determining adequacy of or acceptable impacts to State Highways are the mobility targets/standards (v/c ratios) of the OHP, the access management spacing, sight distance and channelization standards and the safety and operations factors in OAR 734-051-4020(3). Performance measures other than v/c ratio may also come into play in determining “adequate facilities” or appropriate mitigation measures, such as crash history, queuing, signal warrants and turn lane criteria.

ODOT must rely on the local code to include some type of “adequate facilities” criteria because state transportation performance standards do not apply directly to local land use decisions except plan amendments, as detailed in Chapter 3.2.

### **Applicable Criteria**

The local approval criteria vary depending upon the requested type of land use action. Despite the legal requirement that quasi-judicial approval criteria must be clear and objective, local approval criteria often include criteria that require judgment, such as that ‘public facilities must be adequate to serve new development’ and/or that the ‘transportation system must be maintained to be safe and efficient.’ This general language gives ODOT staff an opportunity to recommend findings on the impacts of the land use action on the safety, function, capacity, and performance of affected state highways.

Both the local land use and the state approach permit processes will benefit if the applicant submits the same site plan with both applications, particularly if they are being processed at the same time. But note that either review may result in conditions that change the site plan design and those changes will have to be conveyed to the other reviewing authority to ensure that final approvals are consistent.

Figure 3.1.1 shows a generalized work flow for ODOT Development Review responses.

Figure 3.1.2 lists typical decision point approval criteria for different types of land use decisions. There are other criteria in all local land use codes related to permitted land uses, setbacks, ground coverage, floor area ratios, site design etc. that are less likely to raise ODOT transportation issues. ODOT will work with local jurisdictions to identify opportunities for developers to mitigate their impacts to the state highway system. This can include implementing mitigation identified in a traffic impact analysis or construction of TSP-planned improvements. Mitigation measures or other remedies for impacts are typically stipulated as conditions of approval.

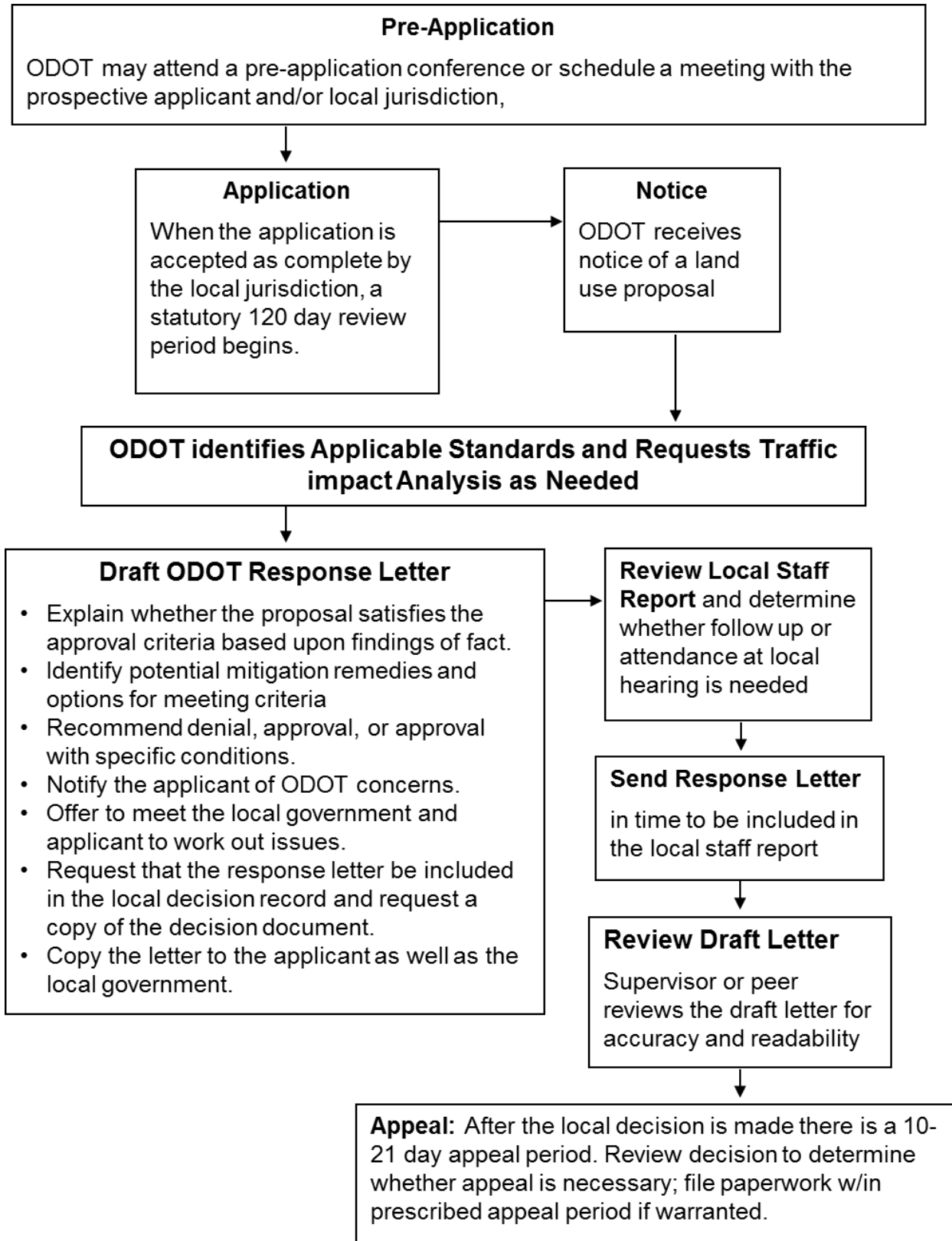
Note that mitigation as used in this chapter generally refers to measures required by the local government as conditions of their land use approval, unless the context is a

discussion of approach permits. Technical discussion of mitigations as conditions of approach permits is beyond the scope of this chapter. Refer to Chapter 3.3: Traffic Impact Analysis for more information.

There are two general areas of concern for ODOT in the review of local land use proposals. One is local site design standards that include landscaping and other modifications within highway right of way. The types of issues likely to arise and the types of recommendations made to address them are detailed in Section 3.1.5.

As discussed above, the other area of concern is proposed development design details that relate to direct access to the state highway. Where possible, the same site plan drawings should be used for both the local land use and state approach permit applications. The types of issues likely to arise and the types of recommendations made to address them are detailed in Sections 3.1.4 and 3.1.5.

**Figure 3.1: Land Use Decision Process**



**Figure 3.2: General Land Use Criteria**

<b>Land Use Request</b>	<b>Common Local Approval Criteria</b>	<b>ODOT Interest Includes Safety and Operations of State Facilities, and:</b>
Conditional Use	All requirements for permitted uses plus consideration whether public interest and welfare are met	Adequate transportation system to serve proposal
Subdivision	Available infrastructure including water and sewer, lot and street frontage requirements plus no adverse impact on the transportation system	Local street connectivity, internal circulation to reduce demands upon the highway, safe access from subdivision to State Highway
Partition	Creates two or three parcels; parcel size and street frontage requirements	Side street access, or single approach to serve 2-3 parcels through recorded access agreements
Expedited Land Division	Creates 3 or fewer residential parcels where the subject property is already zoned for residences, developed at 80% or greater of zoned density, all physical / infrastructure site requirements met, no conflicts with protected resources.	Requires notice to service providers; 63-day local limit for decision; no public hearing; May include conditions of approval; small scale, so low risks for ODOT system unless the development requires state highway access. Short, unforgiving comment period.

<b>Land Use Request</b>	<b>Common Local Approval Criteria</b>	<b>ODOT Interest Includes Safety and Operations of State Facilities, and:</b>
Variance	Potential to vary site design standards based on hardship circumstances related (typically) to the lot configuration or other site characteristics; variance cannot use to remedy a “self-created difficulty.”	Transportation system safety problem could result, where result would be lot configuration w/ inadequate driveway spacing or onsite queuing capacity
Limited Land Use Review ORS 197-195	Local option to simplify some decisions based on the codification of all applicable code provisions and clear and objective criteria for decision making	Does not require notice to facility providers.
Site Design Review	Review for consistency with adopted design and siting standards for uses otherwise permitted in the applicable zone. May occur concurrent with other land use reviews.	Building placement to help facilitate pedestrian and transit use; vehicular and pedestrian access and movement; adequate queuing area for vehicles exiting the property.
Historic Review	Design standards and objectives to protect historic district, building and/or site characteristics.	Likely none; ODOT may have an interest where a scenic highway or non-roadway ODOT facility could be affected.

### **3.1.4 Consideration Related to Improvements in State Right of Way**

Local development codes often require street-side improvements such as sidewalks, street trees, bicycle facilities, etc. When the right of way improvements would be developed along a state highway, ODOT has some concerns that need to be raised in the review and decision processes. A related site design issue is a developer decision to site a noise sensitive use near a busy highway or rail line. The following subsections address ODOT's main concerns with implementing local development standards and protecting state interests for improvements and uses affecting state right of way.

#### **Site Design Elements in State Right of Way. Generally**

1. ODOT cannot require frontage improvements not directly related to the approach design, even if the applicant is required to obtain an ODOT Approach Road (or other ODOT) permit. In review of proposals for development within Urban Growth Boundaries ODOT typically recommends that the local jurisdiction require curb, sidewalk and bikeway frontage improvements consistent with the local transportation system plan along the site's highway frontage.
2. ODOT cannot require right of way dedication outright, though dedication of right of way may be part of mitigating the impacts of an approach.
  - ODOT may recommend that the local jurisdiction require right of way dedication consistent with the local transportation system plan, the planned cross section for the highway and/or in anticipation of future highway capacity or other improvements.
  - If the local jurisdiction requires the applicant to dedicate right of way to ODOT, the District Access Management Coordinator is responsible for assisting in coordinating the dedication and providing verification to the local jurisdiction that the dedication requirement has been fulfilled.
  - For dedicating right of way to ODOT, the property owner must be the signatory for the dedication and is responsible for a certified environmental assessment of the site prior to transfer of the property to ODOT to ensure that there is no hazardous material on the property.
3. ODOT Permits, issued from the District Maintenance office, are required for all work in the State Right of Way. State design standards for improvements in state right of way must be met and the built improvements inspected, including curb ramps. Permitted work may include ADA accessibility measures such as the construction/re-construction of ADA curb ramps, modifying traffic signals for ADA compliance with height/reach/level landing requirements, or installing audible pedestrian signals. All ADA work must be inspected and approved by trained and certified personnel.

4. In Eastern and Central Oregon and at high altitudes, snow plowing and snow storage are significant issues. Any land area beyond the edge of the roadway or shoulder may be designated for snow storage.

### **Bike and Pedestrian Facilities**

1. Only recommend that sidewalks be required by the local jurisdiction for sites inside urban growth boundaries.
2. Sidewalks are not consistent with ODOT policy on interstate and expressway highway facilities.
3. Identify potential for conflicts between pedestrians and vehicles, especially when the proposed main entrance is located on or near the highway. Recommend site plan modifications as needed to reduce the potential for pedestrian and vehicle conflicts.
4. For proposed developments within interchange areas or other locations where it can be challenging to accommodate bicycle and pedestrian access, coordinate with a State and/or Region Bicycle and Pedestrian Coordinator.
5. Approach permit standard drawings/plans for urban driveways that are constructed across sidewalks and landscape strips often involve building or replacing sections of sidewalk and landscaping on both sides of the driveway.
6. Safety concerns for bikes and pedestrians increase as approaches are widened or add additional lanes and where a sloping driveway apron crosses a sidewalk.

### **Americans with Disabilities Act (ADA) Accommodation**

New construction or the alteration of existing features within the State Right of Way must be compliant with the appropriate ADA Standards. Features requiring ADA compliance include:

1. ADA Curb Ramps – The construction or re-construction of ADA Curb Ramps require that they be compliant with the standards for Running Slope, Cross Slope, Clear Width, Detectable Warning (Truncated Domes), Lip Height, Counter Slope, Slope Differential, Turning Space, Turning Space Widths, and Turning Space Slopes. If any of these cannot be achieved, an ADA Design Exception must be obtained from the Traffic-Roadway Section of Technical Services.
2. Traffic Signals – The construction of new Traffic Signals or the modification of existing traffic signals must insure that the pedestrian push button has the appropriate Height, Reach and Level Landing for ADA accessibility.



3. Audible Pedestrian Signals – Audible Pedestrian Signals must be installed if requested or if the local jurisdiction has a written policy to install them according to the guidance in the ODOT Traffic Manual.
4. Sidewalks – New or re-constructed Sidewalks must be ADA Accessible with appropriate Clear Width, Running Slope and Cross Slope. If these cannot be obtained an ADA Design Exception must be obtained from the Traffic-Roadway Section of Technical Services.
5. Crosswalks – New or modified Crosswalks must meet ADA Accessibility requirements
6. Transit Stops – New or modified Transit Stops must meet ADA Accessibility requirements.
7. Rail Crossings – New or altered Rail Crossings must be ADA Accessible, Rail Crossing features include: Sidewalks, Curb Ramps, Truncated Domes, Lights & Bells and Pedestrian Crossing Arms.

See ODOT [Engineering for Accessibility](#) for more information.

### **Transit Facilities and Networks**

Local governments' TSPs identify existing and planned transit systems or networks. Development review can identify opportunities to obtain on- and off-site improvements that support alternative modes and reduce reliance on the automobile. Where public transit is available, improvements to bus stops or a new stop internal to the development site may be appropriate. Local Development Codes may require attention to improving transit facilities and connections to other modes. In review of a development application, the ODOT planner may also identify opportunities to improve circulation and connectivity for transit.

### **Street Trees and Landscaping**

1. Many urban jurisdiction development codes require the installation of trees within the State highway right of way. A miscellaneous permit may be issued to install trees within the State right of way only if:
  - A design exception is approved through Tech Services; and
  - The local code requires the property owner to maintain the trees and/or there is an Intergovernmental Agreement between the local jurisdiction and ODOT in which the local jurisdiction is responsible for maintaining the trees.
2. Any land area between the sidewalk and the edge of the roadway or shoulder may be designated for landscaping.

3. The development review planner needs to keep informed about District and Region practices regarding landscaping and whether there are consistency issues with local landscape design standards.

### **Site Drainage**

1. ODOT is responsible for the quantity and quality of stormwater discharged from its facilities. See the [Stormwater Management Program](#) for more information.
2. Oregon drainage law only allows properties that naturally drain to the State highway system to connect legally to the State highway drainage system by permit.
3. An ODOT Drainage Permit is required for connection to state highway drainage facilities. Stormwater discharge permits are issued through the District offices and. Applicants should contact the District offices directly.
4. A standard recommended condition of approval that advises the applicant of the need to contact the District office regarding permit requirements for the discharge of stormwater into the highway drainage facility is recommended.
5. The applicant must provide the ODOT District with a preliminary drainage plan showing impacts to the highway right of way. A drainage study prepared by an Oregon Registered Professional Engineer is usually required by ODOT if:
  - Total peak runoff entering the highway right of way is greater than 1.77 cubic feet per second; or
  - The improvements create an increase of the impervious surface area greater than 10,758 square feet.
6. Designing and constructing an approach often involves installing or constructing a culvert or other storm drain feature as part of a driveway.

### **Signs and Other Displays**

1. The ODOT Outdoor Advertising Sign Program regulates signs. Off premise signs require a permit (ORS 377.752). For help with off-premise signs, including determining whether a sign fits the definition of on- or off-premise, contact ODOT's [Outdoor Advertising Sign Program](#) for more information.
2. Signs are not permitted in the State highway right of way.
3. Flashing lights on signs that are visible to the state highways are not legal.
4. Car dealerships often use the State highway for the off-loading and loading of vehicles. When reviewing proposals for car dealerships, the applicant should be advised that the stopping and parking of vehicles upon State highway right of way for the maintenance of adjoining property or in furtherance of any

business transaction or commercial establishment is strictly prohibited. The applicant must provide adequate on site circulation for the parking and maneuvering of all vehicles anticipated to make deliveries or be displayed or parked on the lot.

### **Impacts on Rail Facilities**

1. The ODOT Rail and Public Transit Division regulates the safety of public rail crossings including heavy rail, gated light rail crossings, passenger rail and transit rail (commuter rail) as set forth in Railroad-Highway Crossing Safety Laws (ORS 823/824), and the rules and regulations of the Rail Division including OAR 741 Divisions 100, 105, 110, 115, 120, 125 and 200.
2. All proposed land use actions within 500 ft. of a rail line, passenger trains or transit vehicles, whether or not the proposal impacts a state highway, should be routed to the ODOT [Rail Crossing Safety Section](#) for review.
3. A “Crossing Order” is required for permission to construct a new separated or at-grade crossing, make alterations to an existing public crossing, or to close an existing public crossing.
  - a. To “alter” means any change to the roadway or tracks at a crossing that materially affects use of the crossing by railroad equipment, vehicles, or pedestrians.
  - b. Alterations include, but are not limited to: adding or removing tracks, changing the width of the roadway; installing or removing protective devices; creating an additional travel lane; changing the direction of traffic flow; installing curbs, sidewalks, or bicycle facilities.
4. ADA Compliance is required at railroad crossings for:
  - a. Sidewalks
  - b. Curb Ramps
  - c. Truncated Domes
  - d. Lights & Bells
  - e. Pedestrian Crossing Arms

The Rail Division has the necessary drawings and sketches to insure ADA compliance.

### **Impacts on Freight Corridors**

In 2003 the legislature passed a bill that protects freight vehicle capacity “of identified freight route(s)” that applies in planning and project development. Here is the section of statute in full:

***ORS 366.215 Creation of state highways; reduction in vehicle-carrying capacity.***

*(1) The Oregon Transportation Commission may select, establish, adopt, lay out, locate, alter, relocate, change and realign primary and secondary state highways.*

*(2) Except as provided in subsection (3) of this section, the commission may not permanently reduce the vehicle-carrying capacity of an identified freight route when altering, relocating, changing or realigning a state highway unless safety or access considerations require the reduction.*

*(3) A local government, as defined in ORS 174.116, may apply to the commission for an exemption from the prohibition in subsection (2) of this section. The commission shall grant the exemption if it finds that the exemption is in the best interest of the state and that freight movement is not unreasonably impeded by the exemption.*

Review of development applications affecting the identified freight routes includes consideration of maintaining the “hole in the air” available for passage of large vehicles that exists before development so that freight capacity will not be reduced by development activity. This typically comes up where a highway is the Main Street of a city and pedestrian facilities and other amenities are proposed to support local retail, for example. If any proposed improvements or conditions of approval, such as pedestrian bulb-outs or on-street parking, might reduce the geometric capacity for freight, consultation with the freight community is part of the process for applying to the Oregon Transportation Commission for an exemption from all or part of the statute.

See the [Guidance for Implementation of ORS 366.215](#) for more information.

### **Roundabouts**

One method that may be proposed for mitigating public and private access for large development projects is constructing a roundabout. ODOT was, in the early 2000s, under a sort of moratorium on roundabouts for several years based upon concerns of the freight industry that roundabouts were being designed that would be dangerous or impede freight movement. ODOT Highway Division released a directive on how freight interests will be included in design and location decisions for roundabouts in 2012, in part:

*When considering a roundabout on the state highway system, follow ODOT procedures that consider the needs and concerns of all stakeholders, including assuring that the roundabout can accommodate the freight movement on the highway. Determining if the roundabout can accommodate freight movement requires conversations with the trucking industry, through the ODOT Motor Carrier Division. Regardless of when roundabouts are being considered; during*

*planning, during project development, or during development review, conversation with the trucking industry is required.<sup>7</sup>*

Pursuant to that directive “roundabouts proposed to be located on the state highway system shall be designed so as not to impede the freight on the highway, including an evaluation of how over-dimension vehicles will be accommodated.” Any proposed roundabout needs to be vetted in a process consistent with [DES 02](#).

Roundabout design and constructions must include ADA accommodation including the specifications for Running Slope, Cross Slope, Clear Width, etc. per the appropriate Standard Drawing. If not, an ADA Design Exception must be approved by the State Roadway Engineer in Technical Services.

### **Noise**

- It is generally not the State’s responsibility to provide mitigation for noise sensitive land uses or other receptors that are built after the noise source is in place.
- Residential developments proposed to be built adjacent to rail lines may be exposed to noise from heavy rail freight trains, passenger trains or transit vehicles. Applicants should be advised to take appropriate measures to mitigate the noise impact as well as construct fencing between the lot and the railroad right of way to prevent illegal trespass between private property and tracks.
- Residential developments adjacent to freeways may be exposed to traffic noise levels that exceed federal noise guidelines. Applicants should be advised to take appropriate measures to mitigate this impact.

### **3.1.5 Considerations Related to Site Access to a State Highway**

Applicants can apply for a land use approval before applying for a state highway approach permit or vice versa. Development review and access management staff roles both include opportunities to do triage for the other staff function.

The following considerations help determine when access issues need to be addressed and when access management staff need to be engaged in the development review process. Note that obtaining an approach permit or verifying that none is needed should be a standard recommended condition of approval for any local land use approval.

---

<sup>7</sup> Highway Division DIRECTIVE: Roundabouts on State Highway System Number: DES 02

### **Legal Right of Access**

Coordinate with the ODOT District Office to see whether any existing approach road is under permit, either through an approach permit specifying the physical location and approach use, or where the approach is grandfathered (predates 1949 or otherwise as defined in 734-051-1070).<sup>8</sup> Where a connection between the site and the state highway is not permitted or grandfathered, or when a new approach is proposed, an application for an approach permit can only be approved if there is a legal right of access:

*(66) “Right of access” means the property right of an abutting property owner to ingress and egress to the roadway. A right of access includes a common law right of access, or may be conveyed through operation of law or by deed as a reservation of access, or grant of access.” Where ODOT has purchased, or obtained by law, the access rights on the property highway frontage, the applicant must already have a Reservation of Access at the location of any proposed approach or be able to get approval to purchase a Grant of Access to use that approach location.*

Just because there is an existing curb cut does not mean the approach location was legally established. Where an ODOT contractor put in a curb cut during an improvement project, the approach may have attained legal status, but do not assume so without consultation with the District and/or the Region Access Management Engineer (RAME).

It is not uncommon for a property legal description and/or County Assessor’s map to include an easement that abuts the highway right of way. Such easements do not by themselves confer a right of access. Such easements allow access across the underlying property to those properties or parties described in the related deeds, but do not establish a legal connection to the highway.

When suggesting condition of approval language, it is good to include enough information in the condition to help the applicant know how to meet the condition, e.g. whom to contact, aspects of the proposal that may bear on a permit decision, etc.

### **Change of Use**

Whether or not any existing “connection” is currently permitted or grandfathered, a new State Highway Approach Permit will be required for any existing connection when the new use is a “change of use.”

---

<sup>8</sup> Note that legislative efforts are ongoing to establish a way to bring unpermitted connections to highways under permit or otherwise establish legality. This section will need to be revised once rulemaking is done under any new legislative definition of what comprises a legal connection.

How change of use is applied has changed due to recent changes to the access management administrative rules, specifically OAR 734-051-3020: Change of Use of a Private Connection. The change was effective July 1, 2012. The term “connection” is now used as a general term for all private driveways and access points to the state highway system, permitted, grandfathered or otherwise. Public streets, roads or alleyways are exempt from this definition.

In the past ODOT evaluated only approaches that had been permitted or could meet grandfathered status to determine whether the change of use section could be applied to determine whether a new or amended permit would be necessary. Other connections would be reviewed as new approaches. The rule now applies to all private connections, with or without an existing permit or acknowledged grandfathered status.

Now that all private connections to the state highway system are subject to review under the change of use section of the administrative rule it is incumbent upon ODOT staff to understand the implications of this part of Rule. The “change” in change of use is a change in the use of the connection, based on traffic thresholds identified in OAR 734-051-3020(2) or other circumstances that will have an adverse impact on the safety and operations of the affected state highway.

Upon review of the land use notification it may become apparent that ODOT has issued an earlier road approach permit to the property associated with the current proposal. If so, an evaluation of the prior use and the conditions of that permit will be the basis for determining whether a change of use has occurred.

When staff is notified of a proposal that has any private “connection” to a state highway, it should be evaluated for operational and safety issues consistent with OAR 734-051-4020(3). The evaluation should also consider whether there is a change in traffic volume and the nature of any significant safety issues of record.<sup>9</sup> Region Technical Services staff can help with evaluating operational and safety issues. The Region Access Management Engineer (RAME) should be consulted prior to submittal of any land use comment indicating the applicant will be required to make application for a road approach permit.

---

<sup>9</sup>ODOT has the burden of proof to determine whether a significant safety issue exists. Safety issues are generally those that can be demonstrated by a high crash rate or by sub-standard sight distance associated with the connection to the highway. For additional discussion of “burden of proof,” see Chapter

### **Proposal for New Approach to a State Highway**

The criteria for approval of a new approach permit were expanded somewhat under the 2012 access management rules, and are found in OAR 734-051-4020: Standards and Criteria for Approval of Private Approaches. The general requirements pertain to:

- Approach road spacing standards based on average daily trips on the highway, highway classification and speed,
- Channelization needed to accommodate common lane changes as related to average daily trips and the number of traffic lanes, and
- Sight distance standards based on the 2004 AASHTO Policy on Geometric Design of Highways and Streets.

The development review response for an application that includes a new approach or approaches may include recommended conditions of approval, developed in coordination with access management staff, such as limits on the size and design of improvements, including ADA accommodation, to an existing connection and/or number, location, size and design recommendations for any new approaches.

### **Safety**

The 2012 access management rules specify six safety concerns that can trigger required mitigation or denial of an approach permit application, OAR 734-051-4020:

*(3) Safety and Operations Concerns. The department has the burden of proving safety and highway operations concerns that it relies upon in requiring mitigation or in denying an application based on those concerns. The department may deny an application where the applicant is unable to provide adequate improvements to mitigate documented safety or highway operations concerns; safety and highway operations concerns that the department may consider are limited to (a) through (f), below:*

*(a) Regular queuing on the highway that impedes turning movements associated with the proposed approach. Regular queuing will be evaluated based on the ninety-fifth (95th) percentile queue on the highway during the highway peak hour, as determined by field observation or traffic analysis in accordance with ODOT's Analysis Procedures Manual; or*

*(b) Overlapping left turn movements or competing use of a center turn lane from a connection located on the opposite side of the highway; or*



*(c) Location of the proposed approach within a highway segment with a crash rate that is twenty (20) percent or higher than the statewide average for similar highways; or*

*(d) Location of the proposed approach within a highway segment listed in the top five percent of locations identified by the Safety Priority Index System developed by the department; or*

*(e) The proposed approach is on a district or regional highway with a posted speed of 50 miles per hour or higher and the distance to the nearest public approach is less than the stopping sight distance on the highway, calculated in accordance with the 2004 AASHTO Policy on Geometric Design of Highways and Streets; or*

*(f) Insufficient distance for weave movements made by vehicles exiting the proposed approach across multiple lanes in the vicinity of:*

*(A) Signalized intersections; or*

*(B) Roads classified as collectors or arterials in an acknowledged transportation system plan or comprehensive plan, or classified as such by the Federal Highway Administration; or*

*(C) On-ramps or off-ramps.*

- Inability to meet siting standards and/or problems related to the safety and operations standards can be addressed in a variety of ways set up in the access management rules, including two levels of collaborative process to negotiate solutions and administrative appeals. See a full list of these processes in subsection 3.1.7: Create Opportunities for Problem Solving at Each Stage of Review. The development review planner is unlikely to have responsibility for the administrative processes related to the access rules. It is mentioned here only to recognize that the rules are not generally hard and fast and there are usually avenues for compromise if an approach can be made safe.
- Approaches that cross bike lanes and sidewalks create safety concerns for cyclists, pedestrians and people with disabilities.

### **The Number of Approaches Proposed**

- When a piece of property is developed or redeveloped, there may be an opportunity to remove unneeded or unsafe connections. One way this occurs is in applying the “moving in the direction of” compliance with access spacing standards to meet the requirements in the change of use permitting process

(734-051-3020 (8)(a)). If the existing connections do not meet spacing standards but are proposed to be retained, the applicant can sometimes resolve this by applying for a deviation to the spacing standards.

- While ODOT cannot legally require a joint approach road, it is often in the interest of the state facility to recommend joint approach roads along property lines whenever possible through conditions of approval. These can be particularly important in areas dominated by strip commercial development. All parties using the approach road must be identified and sign the approach road permit. For a joint approach to work over the long run, it is important for the local conditions of approval to require easements over the approach for all property owners with rights to use the joint approach and/or other cross connections. Recognize that a joint approach may have an impact on the nature of the traffic using the highway approach road. For instance, it may not be desirable to channel customer vehicles and large delivery vehicles onto the same approach.
- All approaches have the potential to cause safety issues where they cross bike and pedestrian facilities.

### **Additional Lane(s) to Support Turn Movements**

An applicant may propose the addition of auxiliary lanes to serve a development, or additional lanes may be called for as mitigation in an applicant TIA. Such proposals need to be approached with caution, and ODOT technical staff need to be included in reviewing them to avoid configurations that increase conflicts with highway operations and potential impacts on other nearby land uses.

- Acceleration Lanes allow a driver exiting the property to the right a chance to build up speed before merging left onto the highway. While an acceleration lane for a single property may appear reasonable, it becomes a problem when multiple properties have acceleration lanes. To a driver on the highway, an uninterrupted string of acceleration lanes appears to be a travel lane. ODOT discourages the use of an acceleration lane as a mitigation measure. Drivers may begin to use the acceleration lanes as through lanes, adding to sideswipes, rear-end collisions, and weaving problems.
- Deceleration / Right Turn Lanes allow a driver entering a property to the right a chance to reduce speed before turning into a driveway, and may improve the safety and efficiency of the turn movement. There are similar risks to acceleration lanes where adjacent properties also have deceleration lanes, but with adequate signage and ending lanes at intersections, right turn lanes can be appropriate accommodations at busy approaches.
- Left Turn Lanes are important safety features when they are warranted. The speed of through traffic and the number and nature of turn movement conflicts

will affect whether a left turn lane will be safe and safety and operations conditions will vary from site to site.

- Adding lanes adds to safety concerns where approaches cross bike or pedestrian facilities.

All of the safety factors in OAR 734-051-4020(3) should be considered when reviewing a proposal that includes additional lanes in the state right of way. Access Management staff and/or a Traffic Engineer should be included on the review team.

### **Sufficient Throat Distance for Vehicle Storage on the Site**

The amount of stacking or queuing distance as vehicles enter the site is a safety and operations concern that can be considered in approach permitting decisions (OAR-051-4020 (3)(a)). If the entering traffic must stop too soon once on a site, queues can back up from the site onto the highway. As a rule of thumb, 75 feet of onsite queuing space is a minimum distance. That means 75 feet until the first parking stall, the ordering window at a drive through, first turning opportunity to use a travel aisle, etc. For a larger parcel, the roadway entering the site should be free-flow and any aisles intersecting the entrance roadway should be stop controlled. This is particularly important for grocery stores, shopping malls, etc. Traffic studies should include queuing analysis for on-site operations in the influence area of the approach road.

### **Unique Aspects of Traffic Entering or Exiting the Site**

Certain land uses generate the use of vehicles that affect highway approach design. An example would be any site with heavy truck traffic (warehouses, mills, car dealerships, lumberyards, aggregate sites, etc.). It is important to make sure curb radii are sufficient for trucks to make the turn easily. A deceleration lane lets trucks get out of the travel lane, and results in minimal disruptions to highway through traffic.

### **Site Access for People with Disabilities**

Pedestrian site access from the sidewalk, on-street parking or roadway must have the appropriate running slopes, cross slopes and clear width to accommodate people with disabilities.

### **How the Approach Road Will Relate to Others in the Vicinity**

Safety and operations concerns increase with the number and location of other approaches and intersections in the vicinity. A new or a change of use of an existing, approach should not introduce or increase conflicts with driveways upstream, downstream or on the other side of the highway. Overlapping turn movements are a safety and operations concern that can be considered in approach permitting decisions (OAR-051-4020 (3)(b)). As a general practice, a driveway should be aligned directly

across from a driveway on the other side of the highway; otherwise overlapping lefts may be introduced. In some special cases it is desirable to offset driveways on opposite sides of the highway to separate left turns. For example, on an east-west road the northern approach should be to the west of the southern approach to ensure that left turns will not overlap. However, site conditions may not make it possible to do so. Offset approaches on opposite sides of the highway may be appropriate provided the driveways would not create conflicts with other turning movements and queues. These are technical judgments outside of the planner's responsibilities.

### **Access to/from Subdivisions and Land Partitions**

Local codes have standards for access to new lots (subdivided) or parcels (partitioned) that typically require 1) a public or private road that provides access to all the new lots/parcels, 2) internal circulation and 3) where feasible, particularly for subdivisions, appropriate integration into the local street network. If a partition or subdivision will have direct access to a state highway it should be designed for a single point of access on the highway unless there are safety issues or geographic conditions that can only be addressed with additional access.

Some local subdivision and partition ordinances allow or require conditions of approval that provide for future transportation connections to the local street network consistent with their respective TSPs. Measures to implement the planned local street network can include "stubbing out" a street to a property line where a cross connection is planned or setting an access control line where the connection is not desirable. Where lots or parcels are created in a way that could lead to future applications for individual approaches on a state highway, make a recommendation that an access control line along the highway be required as part of the plat.

#### **3.1.6 Plan Designations to Balance State and Local Objectives**

As is clear from the discussion above, it can be challenging to balance private, local and state interests in land use and transportation. Both ODOT and DLCD have developed special land use and transportation designations that can help to establish ongoing agreement between local government and the state about how balance among multiple objectives will be accomplished.

None of these options can be applied to resolve concerns with an individual land use application; they need to be adopted legislatively as part of long range planning. In the case of the OHP options, a segment designation is also an amendment to the OHP. These policy options are included here to advise development review planners that there are long term options that can be recommended to local jurisdictions to address issues that are not easily resolved in the local land use decision process.

### **Mixed-Use Multi-Modal Areas**

Enabled in the 2012 update to TPR Section 0060, an MMA can be considered a boundary or an overlay zone that is adopted by a local government. It has to be located entirely within an urban growth boundary and identifies an area planned for transit and pedestrian oriented, downtown Main Street characteristics including a mix of housing, commercial and public uses. See [OAR 660-012-0060 sections \(8\) and \(10\)](#). Chapter 3.2 discusses MMAs in more detail.

### **State Highway Designations**

The Oregon Highway Plan provides four types of segment designations that help define the relationships between state objectives for the function of a state highway and local objectives for livable communities and economic development.

Any of the three designations set out in OHP Policy 1B, Land Use and Transportation, is implemented as a result of collaboration between the local jurisdiction and ODOT and is adopted as an amendment to the OHP. New expressways are identified through corridor planning or other action of the OTC. That process also includes consultation with local government. Expressways are adopted as amendments to the OHP. Local TSPs and development codes may also need to be amended to implement any of these designations.

### **Policy 1B: Land Use and Transportation Policy – Segment Designations**

The various benefits of negotiating a highway segment designation can include:

- Local input into design and operations decisions to reduce the need for design exceptions;
- Identification of opportunities to improve pedestrian, bike, and transit facilities or movements;
- Identification of potential impacts to the safety and operations of all travel modes;
- Identification of opportunities to use the local street network to improve the efficiency of the highway and increase options for local access;
- Long-term commitment to local priorities in balance with freight needs;
- Increased understanding of ODOT concerns in urban settings and recognition of community economic interests such as parking and pedestrian crossings; and
- Reduced uncertainty for public and private development interests.

Special Transportation Areas (STAs) are existing traditional downtown areas adjacent to highways where pedestrian comfort and safety are a high priority, on-street and/or centralized parking replace large private parking areas, transit is available, and speeds are low, typically 25 miles per hour. STAs can also be designated where local plans call

for pedestrian oriented compact development at downtown densities. An STA on a Statewide Highway that is also an OHP Freight Route requires a management plan.

Urban Business Areas (UBAs) are auto-oriented commercial areas, often on transit routes, with moderate highway speeds. Where the posted speed on a highway is 35 miles per hour or lower in a commercially zoned area, the UBA provisions automatically apply without a formal designation.

Commercial Centers (CC) are concentrated commercial areas with limited access to the highway, internal traffic circulation and connections to the local street network. Commercial Centers with access to Expressways require management plans.

### **Policy 1A: State Highway Classification System - Expressways**

Expressway designations are initiated as a result of “a corridor planning process, ODOT special study or action of the Oregon Transportation Commission.” Because of the importance of maintaining system mobility, the Commission classifies new Expressways as a subset of National Highway System (Interstate and Statewide) highways in consultation with local governments. The Commission classifies new Expressways as a subset of Regional and District Highways with the agreement of directly affected local governments.

For more information on the OHP designations see the OHP Policy Element, Policies 1A and 1B.

### **3.1.7 Coordinating Land Use Review with Access Permitting and Rail Methods Vary by Local Jurisdiction**

Methods Vary by Local Jurisdiction

1. Some local governments require access issues to be resolved and reflected in the proposed site plan submitted for their review.
2. Some local governments defer access issues on development review projects through conditions of approval that require the applicant to provide proof of an ODOT Road Approach Permit prior to issuance of building permits or a final plat.
3. Some local governments do not consider access issues when processing development review projects. Building permits are sometimes issued for projects on a state highway without any coordination with ODOT. This is not in the best interest of the developer because approved plans may have to be redrawn, and in some cases the local approval may have to be amended to address changes required to get an approach permit. This situation creates an opportunity to approach the local government to try to persuade them that

coordination with ODOT is a pro-development approach because it will save time and expenses for developers in the long run. Where the local government chooses not to address state access issues it may be necessary to contact the applicant directly to be sure access requirements are understood.

### **Benefits of Coordination**

1. If the applicant chooses to complete the state approach permit process before the local land use review, ODOT can issue a conditional approval of the Application for State Highway Approach from ODOT. Conditional approval means that the approach permit does not go into effect until the applicant demonstrates that the local government has issued a final decision approving the development proposal. This method gives the developer the advantage of the state conducting research as to the legal disposition of property access rights before design documents are finalized. (734-051-3040(8)(b)).
2. ODOT approach permits typically include a letter from an ODOT Permit Specialist explaining the use, limitations, and conditions of the permit. Applicants are often required, as a condition of the approach permit, to convert their Conditional Road Approach Permit into final Road Approach Permit prior to issuance of building permits or within a specified time.
3. Knowing the conditions of the approach permit prior to final site design may inform better design. The intensity of uses for which the project is designed has a direct relationship to the design of an approach, and, conversely, the permit for the approach will establish a limit on the intensity of uses allowed.
4. Division 51 includes a provision for beginning construction of an approach with conditional approval while the local review process is under way. A Construction Permit may be issued while the local land use action is pending. A deposit may be required, to be determined in the manner used for a Temporary Approach, to ensure that the approach will be removed if the land use is not approved.
5. The decision to allow construction to begin early is made within the approach permit review process. No permit to operate and maintain the approach will be issued until all permit conditions are met, including verification of the local land use approval.
6. Both the local land use decision process and the approach permitting process include an appeal process. The approach permitting appeal process only grants standing to request an appeal to the property owner/applicant, while land use appeals can be initiated by any party participating in the early decision process; both processes can be lengthy. Coordinating the state and local application review processes can shorten the time it takes to get to final

decisions by providing sufficient information early in the process to make it possible to submit a single plan / design to meet the conditions of both permitting programs.

7. Where a proposed development affects or is in the vicinity of a railroad crossing it is important to coordinate the local land use review process with the ODOT Crossing Safety Section. A “Crossing Order” is a separate administrative process that an applicant/local jurisdiction may need to go through and that process can also be lengthy.

### **Economic Development Focus of Access Management Rule Amendments**

The major rewrite of Division 51 adopted in 2012 was motivated primarily by economic development interests in reducing uncertainty in the approach permitting process. Changes to that effect include:

#### **Reduce Uncertainty and Make it Easier to Get Direct Access to a Highway**

- Create “clear and objective” permit approval criteria: 1) access spacing, 2) intersection sight distance and 3) channelization (lane configuration that accommodates necessary vehicle weaving movements)
  - Relate Standards to Highway Conditions
  - Allow closer access spacing on all highways with less than 5000 AADT
  - Allow closer access spacing on urban Region and District highways where posted speed is 45 mph or less
- No longer consider whether a property abutting a highway could take access from an adjoining city street or county road, except for interstates, expressways or the second or subsequent access to property in a rural area.
- Limits the safety and operations concerns that ODOT can consider when evaluating a state highway approach permit.

#### **Reduce Costs for Applicants by Shifting Technical Burdens**

- Shifts the Burden of Proof to ODOT for analysis to demonstrate traffic impact of a proposed development on a state highway except for developments expected to generate 1000 AADT or more.
- Shifts the Burden of Proof to ODOT to determine when a traffic safety or operations issue exists in the vicinity of a proposed approach.

#### **Create Opportunities for Problem Solving at Each Stage of Review**

- Pre-application meetings
- Pre-decision collaborative process
- Collaborative process for change of use of an existing approach



- Collaborative process for property with no alternative access
- Collaborative process to consider use of non-traversable medians
- Post-decision collaborative process
- A new Dispute Review Board

The changes mentioned above are also intended to reduce the need for applicants to apply for deviations to the approach permit standards and to support expedited approval. For detailed discussion of ODOT's approach road permitting process relative to the 2012 Rules, see the [Access Management Technical Guidance](#).

## **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 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 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 be reviewed for a significant effect 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 or 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 (9) 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

concurrency, 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.<sup>10</sup> 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.

---

<sup>10</sup> 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)),<sup>11</sup> 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.<sup>12</sup>

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

---

<sup>11</sup>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.

<sup>12</sup>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.<sup>13</sup> 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.<sup>14</sup> 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*

---

<sup>13</sup> 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.

<sup>14</sup> 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-S TIP 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),<sup>15</sup> 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

---

<sup>15</sup> 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.<sup>16</sup> 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

---

<sup>16</sup> “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;<sup>17</sup> 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

---

<sup>17</sup> 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 on doubt be entirely different from what is reasonable in Hines.

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

*“A common approach in estimating traffic generated by a particular use is to rely on published data, such as the Institute of Transportation Engineers Trip Generation Handbook. Such data are usually based on average or typical intensities for particular categories of uses. Another common approach is to examine similar developed uses in the vicinity, and to base trip generation estimates on the traffic levels generated by such similar uses. We have never held that either approach requires an estimation of the highest theoretical intensity of a particular use category, and it is difficult to see how the theoretical intensity could be calculated with any accuracy.”*

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

- Historic growth trends; population as well as industry-specific growth trends and projections. In many areas, particularly smaller markets’ and rural communities’ assessment of what is reasonable, may be based on local knowledge of economic conditions, population projections and past trends.



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

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

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).<sup>18</sup>

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.<sup>19</sup>

### **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

---

<sup>18</sup>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.

<sup>19</sup>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 development of other modes.

### **System-wide Balancing Test**

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

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

### **Local Actions to Implement System Balancing Approach**

Where a proposed amendment is expected to significantly affect a transportation facility, a local government may propose a remedy that consists of improvements to state,

regional or local transportation facilities or services on the affected facility or at other locations or improvements that benefit other modes of transportation, rather than improvements only to the affected facility.

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

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

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

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

This is a new regulatory concept, so there are no examples of implementing it at this writing. Consequently, there are no formal guidelines on how to determine if proposed mitigation provides sufficient net benefits to the system as a whole to balance an identified significant effect. Each situation will be unique. ODOT reviewers will need to rely on the local findings that support the proposed amendment and use their best professional judgment to make a determination that the system-wide benefits are sufficient to balance the significant effect. Quantitative “proof” of the equivalence of the benefits may be lacking. The local government will need to provide sufficient transportation analysis to support findings that the proposed mitigation sufficiently



addresses and balances the significant effect. Case study examples of early determinations will be helpful for providing additional guidance and best practices in the future.

### **Example: Assessing System Level Balance**

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

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

### **3.2.8 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 at the option of the local government.
- Second, as in Section 0060 (4) (reasonably likely), Section 0060 (3) includes a provision authorizing ODOT to submit a written statement concurring with the adequacy of any needed mitigation measures. However, unlike Section (4), should ODOT fail to provide a written statement, the local government may make their own determination about the adequacy of the proposed mitigation. Consequently, ODOT should pay close attention to procedures for applying this section of the rule described below in *Approving an Amendment on a Failing Facility*.
- Section 0060 (3) focuses on whether proposed funding and timing for identified mitigation measures “are, at a minimum, sufficient to avoid further degradation to the performance of the affected state highway.”

### **Approving an Amendment on a Failing Facility**

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

- In the absence of the amendment (i.e. under existing plan and zoning designations), planned transportation facilities, improvements and services would not be adequate to achieve consistency with the identified function, capacity or performance standard for that facility by the end of the planning period identified in the adopted TSP.

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

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

measures are, at a minimum, sufficient to avoid further degradation to the performance of an affected state highway.

### **Applicability of OHP Policy 1F: Highway Mobility Standards**

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

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

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

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

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

- *The annual average daily traffic is less than 10,000 for a four-lane highway*
- *The annual average daily traffic is less than 25,000 for a five-lane highway*
- *If the increase in traffic between the existing plan and the proposed amendment is more than 1000 average daily trips, then it is not considered a small increase in traffic and the amendment causes further degradation of the facility and would be subject to existing processes for resolution.”*

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

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

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

### **OHP Action 1F.5 Flexibility for Mitigation**

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

*“In applying OHP mobility targets to analyze mitigation, ODOT recognizes that there are many variables and levels of uncertainty in calculating volume-to-capacity ratios, particularly over a specified planning horizon. **After negotiating reasonable levels of mitigation for actions required under OAR 660-012-0060,***

*ODOT considers calculated values for v/c ratios that are within 0.03 of the adopted target in the OHP to be considered in compliance with the target. The adopted mobility target still applies for determining significant effect under OAR 660-012-0060.”*

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

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

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

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

### **3.2.9 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,<sup>20</sup> 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

---

<sup>20</sup> 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 or ODOT is required to provide the improvement(s) needed to fully mitigate the significant effect. In other words, acceptance of partial mitigation, consistent with the conditions of section



0060 (11), does not obligate either the local government or ODOT provide the necessary funding to fully address the impacts expected from the proposed amendment.

### **Options for Using OAR 731-017**

In 2010 the OTC adopted [OAR 731-017](#) that provides relief for amendments that create economic development opportunities through an application process that local governments may use if they are not able to meet the funding or timing requirements of the TPR related to state highways. Refer to Oregon Administrative Rule 731-017 Guidelines for detailed information how a local government may work with the OTC and ODOT to apply for time extensions and to adjust existing traffic performance measures or allow the use of alternative performance measures, as allowed by the OAR.

### **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, 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 <i>“that the proposed funding and timing for the identified mitigation improvements or measures are, at a minimum, sufficient to avoid further degradation.”</i>  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

Development Review Guidelines  
Chapter 3 Section 3.2 – Transportation Planning Rule (TPR) Reviews  
May 4, 2017

<b>Action and TPR Subsection</b>	<b>Type of Communication</b>	<b>Do the Rules Set a Timeline?</b>
	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 developer intends to propose, presents the best opportunity to identify the types of written responses, including concurrence statements, that are likely to be needed to complete the review process.

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

### **Reasonably Likely Written Statement**

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

ODOT should respond to a request for a reasonably likely determination only after receiving a written request from an applicant or local government. If the request comes from the applicant, it may be a simple matter to confirm that planned improvements are already included in the STIP. But for projects that do not yet have identified funding, a request from an applicant should be followed up with the local government to determine whether the proposal has traction. ODOT's role here is to participate in the local land use decision process; resources should be focused on queries that are already going into or through that process.

If no one contacts ODOT on the matter, ODOT should take no action. Note that while there is no notice requirement under OAR 660-012-0060 (4)(b)(D) and (4)(c)(A), failure to provide notice to ODOT could work against the applicant's best interests. ODOT does not need to respond to an amendment or zone change proposal without first receiving

notice, but should monitor the application to make sure that no action is taken contrary to the requirements of the rule.

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

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

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.<sup>21</sup> 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 below.

**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 <sup>1</sup>
Expansion of an Existing CFA/Metro Region 2040 Center Boundary	Required	Potentially Required <sup>1</sup>
Amendment to Comprehensive Plan or Land Use Regulations Within an Existing CFA or Metro Region 2040 Center	Not Required	Potentially Required <sup>2</sup>

<sup>1</sup>If the area being considered for adoption contains a ramp terminal intersection, state highway, interstate highway, or adopted ODOT facility plan.

<sup>2</sup>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 is 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: <https://gis.odot.state.or.us/transgis/>
- 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), disproportionately 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<sup>1</sup> 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.

#### *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.
- 

---

<sup>1</sup> 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.

**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), disproportionately 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?

### 3.4 **Traffic Impact Analysis**<sup>22</sup>

#### 3.4.1 Overview

The primary audience of these guidelines is internal to ODOT: Development Review Planners, Region Access Management Engineers, Traffic Analysts and other ODOT staff who review local government development proposals and/or state highway approach applications. Traffic Impact Analysis reports (TIAs) are used to identify the impacts of development proposals or new or changed approaches on state transportation facilities and to propose mitigation measures when needed as conditions of development approval.

This Section may also provide guidance to those involved in the preparation of TIA reports or Traffic Impact Studies (TIS) for development projects that affect state highways, either directly or indirectly. Assignment of ODOT reviewing responsibilities will vary by Region, except that a TIA submitted as part of an Approach Permit application will be reviewed by the RAME or other licensed Oregon Professional Engineer (PE).

Guidelines do not set policy, but rather attempt to explain how agency business practices can be carried out effectively and in a manner consistent with formal ODOT policies and procedures, state laws and administrative rules.

The following discussion provides general information and ODOT accepted best practices applicable to typical TIA reports, but does not include substantive technical content. The Analysis Procedures Manual<sup>23</sup> is the technical resource that should be relied upon in the development of TIAs.

Although this guidelines document is developed by and for the ODOT Development Review Committee and staff, this section may have broader application because TIAs are used in a variety of situations. Staff members who review TIAs have requested that this section go beyond the subset of TIA issues that apply directly to development review to include access management and other issues. In so doing, it is believed that the development of TIAs can be more efficient, with fewer surprises later in the development process.

This approach will also help to ensure that the various issues likely to arise in the development process will, to the extent practicable, be assessed based upon the same

---

<sup>22</sup>734-051-1070 (77): - "Traffic Impact Analysis" means a report prepared by a professional engineer that analyzes existing and future roadway conditions.

<sup>23</sup> <https://www.oregon.gov/ODOT/Planning/Pages/APM.aspx>

data sets and time frames and upon consistent assumptions. However, it is understood that in some cases the site plan review will not occur for years after the zone change review so new data and timeframes will sometimes be required.

### **Technical Considerations**

When a TIA is developed for a proposal that includes new traffic control or modification to existing traffic signals, consult the Region Traffic Engineer early in the TIA scoping process. Proposed changes to or the addition of traffic control devices must be reviewed and approved by the Region Traffic Engineer or State Traffic Engineer prior to establishing ODOT concurrence with a traffic study's recommendations.

It is inadvisable to create a condition of approval specifically calling for a future signal where there is a range of possible solutions that could be effective at that later date. Include the Region Traffic Engineer on the application review team where signalization is proposed. The [Traffic Manual](#) is an additional resource.

The [Analysis Procedures Manual](#) (APM) provides detailed technical support for many of the analysis procedures used in the development of TIAs. APM procedures must be followed unless otherwise agreed to by the department.

Every development proposal presents a unique set of issues to address, so professional judgment must be used along with the information in this chapter. Where ODOT is requiring, or takes the lead in developing the traffic analysis, variations from the APM must be approved by the department.

### **What the TIA Provides:**

In the traffic analysis scoping process participants establish the purpose of the study, define a study area, agree to a methodology, appropriate peak hour (30th highest peak hour is a standard; variations relate to local conditions), and identify critical issues to be addressed. The basic outputs will include:

- Existing Site Conditions including the operational and geometric characteristics of roadways within the study area and how the highway area is performing relative to OHP Mobility Performance Targets or alternate mobility targets already in effect at the location;
- Existing or potential safety hazards or operation concerns, including patterns and trends and potential changes related to recent or planned improvements;
- Impacts of the Proposed Development on traffic facilities and services, and which facilities are inadequate to meet transportation needs;
- A comparison of the operational and safety characteristics of the transportation system for each time period to the standards and thresholds

- set in the applicable approval criteria. For example, identification of v/c ratios for all state intersections during each time period and analysis year and including the v/c ratios with and without the proposed development;
- Traffic flow diagrams to illustrate existing and projected traffic volumes and the appropriate design hour turning movements at each study intersection and site approach location;
  - The completed TIA will provide the basis and rationale for any mitigation recommendations for the development application and/or approach permit. Mitigation alternatives can include geometric improvements, alternative approach configurations, installation of traffic control devices, Transportation Demand Management strategies, and other measures;
  - For land use proposals subject to the TPR, a TIA will usually be necessary to determine whether a development proposal that includes a plan amendment will have a “significant effect” on a transportation facility as spelled out in TPR, section 0060 (OAR 660-012) and as discussed in detail in Chapter 3.2 of these guidelines;
  - Other information required by local government code, the access management rules or other regulating agency or which the applicant agreed to provide during the scoping process.

### **3.4.2 When a TIA May Be Required**

ODOT development review planners may recommend that a TIA be developed for a development application, but the ability to require a TIA is limited:

- ODOT only has authority to require a developer or other private applicant to develop traffic analysis for highway approach change of use and other permit applications only under certain circumstances.
- Local government may also require a TIA for certain types or scales of development proposals if it is enabled in their development codes.
- Applications for plan and zoning amendments<sup>24</sup> that create a “significant effect” under TPR section 0060 must provide information that is best discovered in traffic impact analysis, but it is up to the local government to request or require it.

Consequently, requiring a TIA is not an option in many cases.

---

<sup>24</sup> As used here, “plan and zoning amendments” comprise “an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation (including a zoning map),” pursuant to OAR 6600-012-0060 (1).

Circumstances under which ODOT is more likely to ask that the local government request or require a TIA include:

- When the proposed development is within a quarter mile of the terminal of an interchange ramp;
- When the local development code requires that there are “adequate facilities” to serve the proposed development (often applies to “change of use” applications);
- When ODOT preliminary review identifies operational or safety issues related to increased traffic or highway access at the development site; and/or
- When an approach to the state highway will be the development’s only, or primary, access to the roadway network.

**Table 3.2: TIA Thresholds and Analysis Areas**

	Transportation Planning Rules	Local Land Use (Will vary by jurisdiction)	ODOT approach permit
Traffic Impact Analysis Required (Unless Waived)	When greater than existing provides. OHP (Policy 1F.5) >1000 ADT >400 ADT - <1000 ADT (Hwy Sec/ADT)	Example: 20 peak hour trips and/or 200 ADT at subject site or intersection	<u>Public Approach</u> if agreed to in coordination with local jurisdiction  <u>Request for Deviation</u> from the spacing, sight distance and channelization standards per OAR 734-051-4020  Whenever site trips relative to highway ADT exceed thresholds in (OAR 734-051 3030(4)(b)) <sup>25</sup>  May be used to affirm whether a Change of Use of a Highway Approach (COU) has occurred.
Analysis Area	The analysis area is the area significantly affected (i.e. affected intersections), within reason. For example, in rural areas without	Examples: Within 1 Mile radius of the subject property; or  Area including all	(Not regulatory – based on past practice) Area including all intersections where traffic is increased by 50 peak hour trips;

<sup>25</sup> Rule section included in Highway Approach Permitting section below.

	Transportation Planning Rules	Local Land Use (Will vary by jurisdiction)	ODOT approach permit
	street networks, a measurable effect can be felt far beyond the local area.	arterials and collectors experiencing peak hour increase of XX trips.	300 ADT; and/or 10% TEV <sup>26</sup> increase (most likely to occur on low volume and/or rural roads)

In some cases, ODOT staff may work to persuade an applicant that it is in their best interest to have traffic analysis information in their applications even if there is not a specific requirement to do so. Remember that land use applicants have a responsibility (supported strongly by case law in Oregon) to provide adequate information to demonstrate that they satisfy all local land use criteria, and that maintaining adequate transportation facilities is a general requirement of all local plans and most codes.

The information that comes from good analysis will be valuable in all three elements of land development applications considered here: plan and zoning amendments, site development review and approach permitting. Development review planners work closely with ODOT access management staff and local planners to recognize when analysis is needed and coordinate the scoping of a TIA to ensure that it answers questions for all three review processes as needed.

**Local Land Use Review**

In basic development review, ODOT’s role is as a party to a local land use decision that will be based upon the local development code. The local jurisdiction may require a TIA as part of a land use application. If it does not, the development review planner may recommend that a TIA be required, but unless the local code enables a TIA requirement or requires applicants to demonstrate that transportation facilities are adequate<sup>27</sup> to serve the type of proposal under review, a decision to require traffic analysis will be at the will of the local jurisdiction.

Where local development codes do require traffic impact analysis, the traffic volume or other type of thresholds that trigger a TIA requirement will often be different from the thresholds used in the access management rules. Where an application hits one threshold and not the other, the jurisdiction with authority related to that threshold will be the one requiring the TIA.

---

<sup>26</sup> Total Entering Vehicles

<sup>27</sup> Discussed further in section 3.3.03, below

If the TIA shows that the transportation system is inadequate to accommodate a proposed land use action, then the TIA also identifies and recommends improvements to mitigate conditions so that adequacy can be achieved and that the local jurisdiction may then require as condition(s) of approval for the application.

### **Plan and Code Amendments**<sup>28</sup>

When a land use proposal includes a request for a plan amendment or zoning map amendment,<sup>29</sup> the issue of “significant effects” on transportation facilities arises pursuant to the Transportation Planning Rule (OAR 660-012-0060) and a TIA may be useful to identify whether a significant effect is indicated and the extent of it. If the local jurisdiction chooses to use the provisions in OAR 660-012-0060(11) (partial mitigation) to meet the TPR 0060 requirements, the proposal is required to include “*(a)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*” which would likely require some level of formal traffic study. The TPR does not specifically require that a TIA be developed to meet the requirements of the rule, so the decision to require traffic analysis is still a local one. However, where ODOT believes it is likely that there is a significant effect, it is in everyone’s interest to develop a TIA to analyze the likely impacts through an agreed upon scope and methodology.

### **Highway Approach Permitting**

In highway approach permitting TIAs are useful in a variety of types of decisions, but only required under certain circumstances:

- TIAs may be developed in cooperation with local governments for public approaches (in a process that is outside of the permitting process that applies to private approaches).
- Whether or not a private approach is subject to “change of use” review<sup>30</sup> may be determined in several ways that may include a TIA, but the rule does not specify that the applicant has to develop the TIA. In fact, the decision whether there is a change of use of the approach is determined before an application is required. It is unlikely that ODOT would ask for a TIA before deciding that an application will be required.

---

<sup>28</sup> See also Chapter 3.2, Transportation Planning Rule (TPR) Reviews

<sup>29</sup> As listed in OAR 660-012-0060(1) “...an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation (including a zoning map)...”

<sup>30</sup> 734-051-3020-Change of Use of a Private Connection

“Change of use” means a change to the use of an existing highway access, as opposed to the same term as used in land use planning that refers to a change to the type of land use. If a development activity creates a change of use of an approach, the affected approaches to the state facility are reviewed under “moving in the direction of” standards. That is, any conditions of the existing accesses that are not consistent with current spacing, sight distance and channelization standards can be remedied by ODOT / Applicant agreement to measures to reduce the inconsistencies in a meaningful way. If agreement cannot be reached, the applicant has the option to apply for a permit under the standard review process that applies to new approaches, wherein a TIA may be required.

ODOT’s direct authority to require a TIA is related to trip volumes from the site and highway configuration and traffic levels, and is enabled and limited by OAR 734-051-3030(4):

- TIAs are required for deviations from standards unless waived by the department.
- TIAs may be required for other applications under certain circumstances related to site trip volumes and highway ADT:

***OAR 734-051-3030(4) (b) Except where the criteria in subsections (A) and (B) of this section, below, are met for the highway segment where an approach permit is sought, the department may require a person applying for an approach permit to submit a traffic impact analysis<sup>31</sup> in conjunction with the application for an approach permit.***

*(A) The average daily volume of trips at the property is determined to be four hundred (400) or fewer trips; or*

*(B) The average daily volume of trips at the property is determined to be more than four hundred (400) but fewer than one thousand one (1001) trips and:*

*(i) The highway is a two-lane highway with average annual daily trip volume of five thousand (5,000) or fewer motor vehicles;*

*(ii) The highway is a three-lane highway with average annual daily trip volume of fifteen thousand (15,000) or fewer motor vehicles;*

---

<sup>31</sup> Emphases added



*(iii) The highway is a four-lane highway with average annual daily trip volume of ten thousand (10,000) or fewer motor vehicles; or*

*(iv) The highway is a five-lane highway with average annual daily trip volume of twenty-five thousand (25,000) or fewer motor vehicles.*

Circumstances in highway approach permitting under which a TIA requirement may be waived by ODOT:

- When a request for a spacing deviation does not present any safety or operations concerns as set out in OAR 734-051-4020(3); and/or
- The applicant proposes and the department approves channelization to address the channelization standard set forth in OAR 734-051-4020(2)(b); and/or
- The department determines that a request for a sight distance deviation can be approved without a TIA.
- Region Access Management Engineer is familiar enough with the traffic conditions in the area to make a determination that the proposed development will not result in any significant safety or operations concerns.
- The local jurisdiction is requiring a TIA that is adequate in scope to address ODOT's concerns.

Staff needs to review explanations and background in the Highway Division technical bulletins on safety and operations concerns, channelization, and sight distance when deciding whether a TIA is needed and for what purpose.<sup>32</sup>

### **3.4.3 Adequacy of State Transportation Facilities**

State transportation facilities are “adequate” if they meet the minimum requirements set forth in the Oregon Highway Plan. The overriding highway plan policy is “To maintain and improve the safe and efficient movement of people and goods and contribute to the health of Oregon’s local, regional, and statewide economies and livability of its communities.” The individual OHP policies do not directly address safety or efficiency; the individual policies generally address system management issues.

The OHP policy that most directly addresses “efficiency” is Policy 1F, the Highway Mobility Policy, which addresses highway capacity as a performance measure. For long-range studies, such as those required for zone changes and plan amendments, the adequacy of transportation facilities is often determined relative to the amount of remaining capacity there will be on the transportation system at the end of the

---

<sup>32</sup> <http://www.oregon.gov/ODOT/HWY/TECHSERV/Pages/technicalguidance.aspx#Bulletins>

applicable planning period (e.g. the horizon year for the applicable local transportation system plan).

Amendments to Policy 1F in 2011 changed the way volume to capacity ratios are applied in planning. The v/c Tables 6 and 7 in the Policy are now generally considered “targets” rather than standards. The highway mobility targets are used in three distinct ways:

- Transportation System Planning: Mobility targets identify state highway mobility performance expectations and provide a measure by which the existing and future performance of the highway system can be evaluated. Plan development may necessitate adopting methodologies and targets that deviate from adopted mobility targets in order to balance regional and local performance expectations. For purposes of compliance with OAR 660-012, the Transportation Planning Rule, mobility targets are considered standards.
- Local Plan Amendments and Development Review: Mobility targets are used to review amendments to comprehensive plans and land use regulations pursuant to the Transportation Planning Rule (TPR) to assess whether the proposed changes are consistent with the planned function, capacity and performance standards of state highway facilities. Unless the Oregon Transportation Commission has adopted an alternative mobility target that applies to the impacted facility, the mobility targets in Tables 6 and 7 are considered standards for purposes of determining compliance with OAR 660-012-0060.
- Operations: Mobility targets are used to assist in making traffic operations decisions such as managing access and traffic control systems to maintain acceptable highway performance.

#### **3.4.4 TIA Scope of Work**

The scope of work for a traffic impact analysis sets out the work that needs to be accomplished to deliver the analysis and report. The scope identifies the types of information needed to meet the requirements for the type(s) of criteria being addressed and includes assumptions and methods of analysis to be applied. A TIA scope of work may address criteria for TPR section 0060 compliance, local site development review, and/or highway approach permitting.

If possible, a TIA scope required for any one of these decision processes should also call for adequate analysis to inform good decisions in the other areas, but without requiring unnecessary time or expense for applicants.

Depending upon which entity requires or requests that a TIA be developed, ODOT staff may or may not participate in scoping. For an approach permit the RAME's have a key role; for a land use application that does not include a new approach to a state highway, ODOT may ask or be asked to have an active role. ODOT staff may sometimes be encouraged to participate to help a local agency work through the technical details of scoping and reviewing a TIA. The agency definitely has an interest in any traffic study that considers conditions on state facilities.

The elements of a scope of work include but may not be limited to:

- A description of the proposed development including at a minimum: current and proposed land uses, property acreage and building sizes, intended location(s) of access to public right of way, site plan illustration, on-site circulation plan and vicinity map and development schedule including anticipated dates for completion of all phases.
- Analysis Study Area description including locations of affected intersections and public and private connections to public right of way and facilities supporting other modes, with illustration(s) of the study area,
- Set Assumptions:<sup>33</sup>
  - Plan Horizon
  - Planned Transportation Improvements
    - Highway
    - Local
    - Other modes
  - Analyzed Peak Hour and Mobility Target(s) That Apply
- Describe Required Traffic Data:
  - Traffic Count Standards and Locations
  - Site Trip Generation, Distribution and Assignment
- Describe of Analysis Procedures
  - Capacity Analysis
  - Queue Length Analysis
- Describe Analysis Requirements
  - Intersection Sight Distance
  - Right and Left Turn Criteria
  - Traffic Signal Installation and Modifications
  - Access Management

---

<sup>33</sup> See also the Analysis Procedures Manual (linked earlier in the chapter), and Best Practices for Traffic Impact Analysis:

<https://www.oregon.gov/ODOT/Programs/ResearchDocuments/BestPracticesforTraffic.pdf>

- Describe Analysis Outputs
  - Existing Conditions
  - Traffic Volumes and Operations – Future Year
    - With proposed development
    - Without proposed development
  - Analysis Variable Inputs
- Conclusions and Recommendations
- Caveats (for example, “Signal timing adjustments will not be considered as mitigation”).

### **Identifying an Analysis Study Area**

The size of the area to be studied may vary based on the particular purpose of the study and the extent of the development and resulting traffic impacts. For example, when a TIA is being performed to identify effects and solutions related to plan or zoning amendments (OAR 660-012-0060) there may be a large area considered for a “significant effect determination” or to consider mitigating effects with off-site improvements or improvements for other modes, but for a state highway approach permit, the focus is narrower, looking at primarily local approach issues related to a state highway facility.

As a rule of thumb, the study and analysis area should typically include:

- Both sides of the highway along the entire frontage of the property(ies) involved;
- All state highways and major city and county streets which directly serve the proposed development or land use change, as well as any interchange ramps in the area;
- Nearest existing improvements for transit, bicycles and pedestrians.
- All proposed approaches on the state highway system;
- Any private approach intersection where the proposed development can be expected to add vehicle trips in a single day of more than the threshold volumes identified in OAR 734-051-3030(4) (b) or the threshold(s) set in the local development code, and
- Any road segment or intersection where the additional traffic created by the proposed development is greater than 10 percent of the current traffic volume for road segments or the current entering volume for the intersection.

Engineering judgment and awareness of local planning criteria come into play when defining a workable analysis area. For example, large development projects in rural areas can cause measurable traffic for hundreds of miles. A relatively small

development can generate a significant percent increase in volume on a lightly traveled highway without an adverse effect on the highway. No specific formula will result in a sensible study area for all cases. Base the TIA study area upon the extent of the direct impacts of the proposed development on transportation facilities and on areas around the facilities most at risk of failure or unsafe conditions due to the projected traffic impacts.

**Identify Future Year(s) for Analysis:**

**Table 3.3: Future Year Analysis: Suggested Time Lines**

<b>Proposed Development Daily Trip Generation</b>	<b>Single-Phase Development Horizon Years</b>	<b>Multi-Phased Development Horizon Years</b>
Up to 999 ADT	Year of Opening	Year of Each Phase Opening
1,000 - 2,999 ADT	Year of Opening and at 5 Years	Year of Each Phase Opening and 5 Years Beyond Buildout
3,000 – 4,999	Year of Opening and 10 Years	Year of Each Phase Opening and 10 Years Beyond Buildout
5,000 or More	Year of Opening and Year of Planning Horizon for the Transportation System Plan or 15 Years, Whichever is Greater	Year of Each Phase Opening and Year of Planning Horizon for the Transportation System Plan or 15 Years, Whichever is Greater
Plan Amendments and Zone Changes <sup>34</sup>	Year of Planning Horizon for Transportation System Plan or 15 Years, Whichever is Greater	Year of Planning Horizon for Transportation System Plan or 15 Years, Whichever is Greater

---

<sup>34</sup> This is policy – **OHP Action 1F.2**. . . 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. To determine the effect an amendment to a transportation system plan, acknowledged comprehensive plan or land use regulation has on a state facility, the capacity analysis shall include the forecasted growth of traffic on the state highway due to regional and intercity travel and to full development according to the applicable acknowledged comprehensive plan over the planning period.

### 3.4.5 TIA Deliverables

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

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

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

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

### **Executive Summary**

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

### **Introduction**

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

### **Existing Area Conditions**

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

**Table 3.4: EXAMPLE Existing Transportation Facilities in the Immediate Study Area<sup>35</sup>**

Roadway	Roadway classification by Jurisdiction	Number of Lanes	Posted Speed (mph)	Sidewalks	Bicycle Lanes	On-Street Parking	Transit Facilities
I-5	Interstate Highway (ODOT)	7-8	55	No	No	No	No
SW Nyberg Road	Arterial east of T-S Road Washington County	6	30	Yes	Yes	No	No
	Minor Collector west of T-s Road (Tualatin)	2	30	Yes	No	No	No
Tualatin-Sherwood Road	Arterial (Washington County)	5	35	Yes	No	No	No
SW Martinazzi Ave	Minor Arterial north of T-S Rd. (Tualatin)	3	NP	Yes	No	No	Yes
	Major Arterial south of T-S rd. (Tualatin)	5	35	Yes	No	No	Yes

Note: ODOT has jurisdictional control over SW Nyberg Road within the vicinity of the northbound and southbound 1-5 ramp terminals

Note: This example does not include a column for mobility standard (LOS or v/c); it is recommended that the applicable mobility standard be included.

Information provided in a study of existing conditions includes:

**Existing Area Conditions:<sup>36</sup>**

- Study area description:
  - Area of potentially significant traffic impact;
  - Existing street network;
  - Existing traffic volumes and conditions;

---

<sup>35</sup> As used in this chapter, a Figure is an illustration, i.e. an illustrative table from a sample document, as opposed to the Tables which are tables of information developed specifically for this chapter. This distinction was established for this chapter in the process of the 2006 complete guidelines update.

<sup>36</sup> Identify existing or potential safety hazards in the analysis area: The APM in Chapter 4 provides guidance for analyzing historic crash data for screening purposes (Critical Crash Rate and Excess Proportion of Specific Crash Types) or using the more detailed Highway Safety Manual Predictive Method (Excess Expected Crash Frequency). No fewer than three years of the most current data should be used for this analysis, five years is recommended if no significant roadway changes have occurred. Recent or upcoming improvement projects that change transportation infrastructure should be accounted for in evaluating hazardous locations (see next web link, below).



- Availability of public transit , bike and pedestrian facilities and other alternatives;
- Existing transportation system management programs;
- Local policy and regulations;
- Crash history including crash locations, severity, and collision types;
- Crash analysis results, as pertinent (Critical Crash Rate, Excess Proportion of Specific Crash Types, Excess Expected Crash Frequency); and
- Known operational problems (e.g., long queues, high percentage of truck traffic, sight distance issues); and
- Any unique geometric characteristics.
- Study area land use(s):
- Existing land uses;
- Existing zoning and comprehensive plan designations;
- Anticipated/ planned future development; and
- Proposed zoning or plan amendments.

**Table 3.5: EXAMPLE (Study Year) Existing Conditions and Operations Study**

Site Number	Intersection	Minimum Operating Standard	Weekday PM Peak Hour		Saturday Midday Peak Hour	
			LOS	v/c	LOS	v/c
1	SW Boones Ferry Road / SW Tualatin Road	0.99	B	0.61	Not Analyzed	Not Analyzed
2	SW Boones Ferry Road / SW Martinazzi Ave	0.99	C	0.91	B	0.62
3	SW Nyberg Road / SW Martinazzi Ave	0.99	B	0.44	B	0.35

Note: LOS and v/c reported for the highest delay of critical movement

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

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

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

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

In general, ODOT requires the use of the 30th highest hourly volume (30 HV) of the year as the design hour volume. Alternatives to the 30th highest annual hour may be considered and established through the adoption of alternative mobility target(s), as provided in OHP Policy 1F and using the process set out in ODOT Operational Notice PB-02.<sup>37</sup>

Note that alternative mobility targets may only be adopted through a long range planning process, such as a TSP update or other policy or facility plan; this is not an option for conditioning land use or site development approval.

In large urban areas, the design hour volume may be closely approximated by using the weekday peak hour volume from the peak month of the year. The weekday peak hour typically occurs during the work-related commute period, usually between 7-9 a.m. or 4-6 p.m. Seasonal factors can be applied to the counts obtained to model conditions during the peak month of the year.

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

In rural or recreational areas, the time of the design hour volume may be less predictable. An example is a coastal community where summer weekend peaks are far higher than weekday or off-season weekend traffic levels, so a decision has to be made to identify the appropriate peak hour traffic volumes for the study.

---

<sup>37</sup> Operational Notices are policies related to ODOT internal practices. Consult with an ODOT planner if you have questions about the operational notice PB-02.

Complete procedures for determining the design hour volume in both urban and rural areas can be found in the APM. Also, see the APM for guidance on count location, type and duration.

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

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

For plan and zoning amendments, the TPR (OAR 660-012-0060(2)(e)) allows consideration of mitigation impacts at a broader or system-wide level under certain circumstances by:

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

A TIA for an application that proposes using 0060(2)(e) measures to provide adequate facilities needs to include analysis at a scale that will identify appropriate measures and validate their application in the particular case.

**Table 3.6: EXAMPLE: 2001 Existing Intersection Capacity Analysis**

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

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

It is also important to identify **existing or potential safety hazards** in the analysis area. Traffic crash data from ODOT's Crash Analysis and Reporting Unit is used to identify patterns and trends and to compare existing conditions to similar locations in the jurisdiction and in the state. Five years of the most current crash data should be used for a TIA. Recent or upcoming improvement projects that change transportation infrastructure should be accounted for in evaluating hazardous locations. See the APM for crash and safety analysis procedures

Note that the safety (and operational) issues that can be considered in a decision to deny or require mitigation measures for a State Highway Approach Permit are limited in the access management rules to the list of issues in section 4020(3), as follows:

*(3) Safety and Operations Concerns. The department has the burden of proving safety and highway operations concerns that it relies upon in requiring mitigation or in denying an application based on those concerns. The department may deny an application where the applicant is unable to provide adequate improvements to mitigate documented safety or highway operations concerns; safety and highway operations concerns that the department may consider are limited to (a) through (f), below:*

*(a) Regular queuing on the highway that impedes turning movements associated with the proposed approach. Regular queuing will be evaluated based on the ninety-fifth (95th) percentile queue on the highway during the highway peak hour, as determined by field observation or traffic analysis in accordance with ODOT's Analysis Procedures Manual; or*

*(b) Overlapping left turn movements or competing use of a center turn lane from a connection located on the opposite side of the highway; or*

*(c) Location of the proposed approach within a highway segment with a crash rate that is twenty (20) percent or higher than the statewide average for similar highways; or*

*(d) Location of the proposed approach within a highway segment listed in the top five percent of locations identified by the Safety Priority Index System developed by the department; or*

*(e) The proposed approach is on a district or regional highway with a posted speed of 50 miles per hour or higher and the distance to the nearest public approach is less than the stopping sight distance on the highway, calculated*

*in accordance with the 2004 AASHTO Policy on Geometric Design of Highways and Streets; or*

*(f) Insufficient distance for weave movements made by vehicles exiting the proposed approach across multiple lanes in the vicinity of:*

*(A) Signalized intersections; or*

*(B) Roads classified as collectors or arterials in an acknowledged transportation system plan or comprehensive plan, or classified as such by the Federal Highway Administration; or*

*(C) On-ramps or off-ramps.*

**Table 3.7: EXAMPLE Intersection Crash History (Start Date to End Date)**

Intersection	Collision Type						Total Crashes	Estimated Annual Average Daily Traffic	Crash Rate (crashes per million entering vehicles)
	Angle	Turning	Rear End	Fixed Object	Bike / Ped	Other			
SW Boones Ferry Rd / SW Tualatin Road	-	-	4	-	2	-	6	24,800	0.08
SW Nyberg Rd / SW Martinazzi Ave	-	4	4	-	-	-	8	16,950	0.43
1-5 SB Ramp Terminal / SW Nyberg Rd	1	20	24	-	2	1	48	50,900	0.86

Identification of **existing or potential traffic operational problems** is based on thorough field observations of the subject intersection(s). Items of concern include, but are not limited to, excessive queuing and/or delay, location and spacing of adjacent intersections and driveways, sight distance and deficiencies related to geometry, meeting criteria for signals or turn lanes, etc. See the excerpt from Division 51 above for the types of operational issues that can be considered in reviewing a State Highway Approach Permit. Finally, for land use proposals subject to the TPR, **committed and planned transportation improvements** in the area, (both ODOT and local government) that affect or are affected by the development proposal need to be identified. This will include projects identified on the “financially constrained” list in

adopted local and regional transportation system plans as well as corridor plans or projects from ODOT’s Statewide Transportation Improvement Program (STIP) or the local jurisdiction’s Capital Improvement Program (CIP).

Authorized users can find local transportation plans, refinement plans and ODOT facility plans in the area on the [Transportation Planning Online Database](#).

**Traffic Volumes – Year of Opening without the Development**

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

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

**Transportation Models**

The output from urban travel demand models may be used to estimate future traffic growth. Transportation models use current and projected land use and transportation network data to estimate current and future travel demand. The data is obtained from many different sources, including census data, state employment data, O-D<sup>38</sup> surveys, household travel surveys, traffic counts and field surveys.

**Table 3.8: EXAMPLE Historical Traffic Counts**

Count Location	2008	2009	2010	2011	2012
SW Nyberg Road (west of SW 65 <sup>th</sup> Ave)	21,837	20,764	21,733	21,506	21,351
SW Tualatin-Sherwood Road (east of SW Boones Ferry Road)	40,469	38,813	39,671	41,137	40,591

Models that may be used in transportation impact analysis include MPO models, County models, and Small Urban Area models. A map showing locations of Oregon models the form used to request ODOT model runs is available on the [Technical Tools](#) web page.

---

<sup>38</sup> O-D stands for origin-destination survey, conducted to identify where drivers at a survey station are destined. It’s used frequently in model development and other studies. For example it can be used to determine the percentage of through versus local trips. A couple of the more common methods include roadside interviews/post card handouts or license plate surveys. Bluetooth is a more recent technique.

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

**Table 3.9: EXAMPLE 2014 Background Daily Traffic Profile**

Roadway	Segment	Estimated Daily Volume	
		2012 Existing	2014 Background
SW Lower Boones Ferry Rd	East of SW Upper Boones Ferry Rd	13,200	13,600
SW Tualatin Sherwood Rd	West of SW Boones Ferry Rd	30,800	31,800
SW Nyberg Rd	East of SW Tualatin-Sherwood Rd & west of 1-5 Southbound Ramp Terminal	51,900	52,900

Models are most suitable for use in urban areas over long time frames. The traffic analyst referencing model data needs to understand the origin of the inputs and the design parameters and limitations of the model. The transportation analysis zone (TAZ) containing a proposed development should be investigated closely to ensure the appropriate land use was assumed in the model.<sup>39</sup> If a plan or zone amendment is proposed that will change allowed land uses to something that will perform differently from the land uses assumed in the model, the model may be relied upon for future year baseline projections, but projections are also needed that include the impacts of the proposed land use changes.

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

Note: Nearly all computerized system level traffic assignments require that further post-processing take place prior to their being used for transportation project planning and design. Model numbers represent employment and households, and only indirectly represent trips, so modeled volumes have to be compared on a relative basis. The recommended methodology for refining trip assignments obtained from computerized transportation models is provided in Chapter 17 of the [Analysis Procedures Manual](#).

---

<sup>39</sup> Note that if the model is to be used to forecast future background volumes, the “appropriate land use” in the TAZ should not include the proposed project.



Guidelines for the use of models to evaluate land use changes are provided in the [Modeling Procedures Manual for Land Use Changes](#),

**Table 3.10: EXAMPLE Existing Daily Traffic Volumes on Select Roadway Segments**

Roadway	Segment	Estimated Daily Volume
SW Lower Boones Ferry Road	East of SW Upper Boones Ferry Road	13,200
SW Martinazzi Ave	South of SW Boones Ferry Rd. and north of SW Nyberg Rd.	13,700
SW Nyberg Road	West of SW Tualatin-Sherwood Rd. and east of SW Martinazzi Ave.	9,000
SW Tualatin-Sherwood Road	East of SW Martinazzi Ave and west of SW Nyberg Road	44,600

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

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

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

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

**Table 3.11: EXAMPLE Estimated Developer Preferred Site Plan Trip Generation**

	ITE Code	Size (sq. ft.)	Weekday PM Peak Hour			Saturday Midday Peak Hour		
			Total	In	Out	Total	In	Out
<b>Existing Site</b>								
Existing Site Driveways <sup>1</sup>			945	435	510	970	490	480
<i>Less Existing Library</i>	590	22,123	(160)	(75)	(85)	(150)	(80)	(70)
<i>Less Existing Civic Uses</i>	715	+/- 10,000	(50)	(10)	(40)	-	-	-
<b>Total Existing Retail</b>			735	350	385	820	410	410
<b>Future Site</b>								
Shopping Center	820	299,000	1,325	650	675	1,750	910	840
<i>Less Existing retail Driveway Counts</i>	-	-	(735)	(350)	(385)	(820)	(410)	(410)
<i>Subtotal</i>	-	-	590	300	290	930	500	430
<i>Pass-by Trips (weekday 34%, Sat. 26%)</i>	-	-	(200)	(100)	(100)	(190)	(95)	(95)
Office	710	39,000	60	10	50	15	10	5
<b>New Net Trips</b>			450	210	240	725	400	325

**Table 3.12: EXAMPLE 2014 Total Daily Traffic Profile (Preferred Development)**

Roadway	Segment	Estimated Daily Volume		
		2012 Existing	2014 Background	2014 Total
SW Lower Boones Ferry Rd	East of SW Upper Boones Ferry Rd.	13,200	13,600	13,900
SW Boones Ferry Rd.	East of SW Martinazzi Ave	28,100	28,800	29,600
SW Martinazzi Ave	South of SW Boones Ferry Rd & north of SW Nyberg Rd.	13,700	14,100	14,400

**Traffic Operations – Year of Opening without the Development**

When background traffic volumes for the year of opening have been established, an operational analysis of study area intersections is conducted. This analysis should incorporate any transportation system improvements anticipated to be completed by the represented year. Results should be clearly presented in tables or figures and the

performance of each intersection analyzed should be reported using the operational criteria preferred by the jurisdiction having authority over that intersection.

**Table 3.13: EXAMPLE (Planned Year of Opening) Background Traffic Conditions**

(Site) Number	Intersection	Minimum Operating Standard	Weekday PM Peak Hour		Saturday Midday Peak Hour	
			LOS	v/c	LOS	v/c
Signalized Intersections						
2	SW Boones Ferry Rd / SW Tualatin Rd.	0.99	B	0.75	Not Analyzed	Not Analyzed
3	SW Boones Ferry Rd / SW Martinazzi Ave	0.99	D	0.96	B	0.63
12	I-5 NB Ramp Terminal / SW Nyberg Rd.	0.85	B	0.60	B	0.54
Unsignalized Intersections <sup>40</sup>						
4	SW Martinazzi Ave / North Site Driveway	E	C	0.12	B	0.11
11	SW Nyberg / Right-In-Right-Out Site Driveway	0.99	A	0.01	A	0.02
All-Way Stop Controlled Intersections						
20	SW Sagert Street / SW Martinazzi Ave	D	F	N/A	Not Analyzed	Not Analyzed

---

<sup>40</sup> LOS and v/c reported for the highest delay or critical movement

**Table 3.14: EXAMPLE 2003 Background Intersection Capacity Analysis**

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

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

### 3.4.6 Site Trip Generation, Distribution and Assignment

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

#### Trip Generation

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

**Institute of Transportation Engineers (ITE) Trip Generation Manual:** This published document contains information provided by engineering and planning professionals in the United States and Canada about the trip generation characteristics of a variety of land uses. The Manual is updated periodically, so the most recent edition should be used. The data for a specific land use in this manual can often be applied to a proposed development if the uses are reasonably similar. If the appropriate land use is not listed in Trip Generation, the size of the proposed development is not within the range of data points presented, or if the trip rates are not considered to be similar to location conditions, local trip rates may need to be developed. Development of local trip rates

should follow the methodology contained in the most recent edition of ITE Trip Generation Handbook.

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

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

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

#### **Site Trip Generation, Distribution and Assignment**

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

**Analysis When Proposal Does Not Include Specific Land Uses:** Applications for comprehensive plan map and zoning amendments are often submitted without identifying a specific land use development proposal. The parties must agree on a scenario for potential uses of the land that considers the most intense allowed uses tempered by site conditions specific to the development site.

- The "worst case" is the most intense use allowable under the current zoning (future year condition without the project) and/or the proposed zoning (future year condition with the project).
- The worst case is tempered by a determination of what is "reasonable," based upon mitigating factors such as access and the physical and size constraints of the subject property.

- Rely on the local comprehensive plan Economic Development or analogous element to determine what is reasonable. Factors used in the adopted plan to establish trends can include the size and level of growth activity in the market area, population, and sometimes job, growth, and recent and planned economic development projects.
- ODOT will typically accept local government assumptions related to development trends that are based on local research and/or policy and that are adopted into plans and ordinances,

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

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

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

For example, if a 20-acre site were proposed to be re-zoned from industrial use to commercial use, but no specific type of size of commercial development had been identified in the application, assume that the property will develop to the highest trip generating potential under the new zoning. Assign high trip generating uses such as retail, a fueling station, and fast food with drive-through window to the property in

quantities appropriate for the size of the site. Consider whether the high trip-generating uses are appropriate to the site, given its location and surrounding land uses when assigning the potential land use mix to the site. “Allowed” uses are presumably those uses that are permitted outright by the zoning designation. Conditional uses are not permitted outright and are typically subject to additional analysis and conditions at the time of conditional use review and approval.

Also, develop trip generation assumptions for property that will remain undeveloped when a zone change is being requested and a specific development is identified in the application that does not result in full buildout of the property. This provides realistic projections of the long term transportation impacts of the comprehensive plan/zoning change.

A table should be included in the TIA report that shows the daily trips generated, as well as the hourly trips generated for all time periods analyzed.<sup>41</sup> Both entering and exiting volumes need to be displayed for the hourly periods. Include weekend trip generation for some land uses, particularly for those uses that will generate a significant number of trips on the weekend. Show trip generation for each proposed use included in the development.

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

**Table 3.15: EXAMPLE Site Trip Generation**

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

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

---

<sup>41</sup> Traffic Impact Analysis reports typically evaluate the time of day when the peak site traffic, combined with adjacent street traffic, is greatest such as during the AM and PM commute and/or weekend peak. This is commonly defined as the peak hour of adjacent street traffic. However, if a TIA is required as part of an ODOT approach permit, trip generation should also be reported for the peak AM/PM and weekend peak of the generator so that a change of use determination can be performed by ODOT per OAR 734-051-3020.



1. **Pass-by Trips:** Pass-by trips are made as intermediate stops on the way from an origin to a primary destination without a route diversion. They are attracted from traffic passing the site on an adjacent roadway that offers direct access. Reductions in trip generation on the adjacent system accounting for pass-by trips may be allowed based on the factors below.
  - a. Type of development
  - b. Existing traffic composition
  - c. Existing population distribution
  - d. Location(s) of competing developments

Pass-by trip proportions within the total street volume need to be realistic. The number of pass-by trips should not exceed 15 percent (15%) of the adjacent street traffic volume (street volume prior to site development) during the peak hour per ITE Transportation Impact Analyses for Site Development.

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

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

The most recent Trip Generation Handbook, ITE, should be consulted for a complete explanation of when and how to use these and other trip generation refining factors.

**The Region Access Management Engineer or his/her designee should review and approve all proposed trip generation adjustments before proceeding with the TIA.**

The non-automobile portion of the project's traffic should be deducted from the trip generation estimates. Data must be presented to support any significant use of alternative modes. Note that the [TPR section 660-012-0060\(6\)](#) allows, and in some cases requires, local governments to give a specific amount of credit for potential reduction in vehicle trips for uses located in mixed-use, pedestrian-friendly centers and neighborhoods.

### **3.4.7 Trip Distribution**

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

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

In cases where ODOT is the lead review agency, ODOT must approve of the trip distribution methodology used in the study. A common method of determining trip distribution is to analyze existing area travel patterns. However, when using this method care must be taken to consider the types of trips associated with the proposed land use and how site generated trips are likely to interact with surrounding land uses.

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

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

**Travel Demand Model:** A travel demand model can be effective in estimating traffic distribution patterns. Because travel demand models are typically developed in conjunction with a transportation system plan and comprehensive plan, they can provide a reliable forecast for growing urban areas. The transportation analysis zone (TAZ) containing the proposed development should be investigated closely to ensure land uses, development densities, and trip making characteristics are modeled consistent with existing conditions. TAZ's may need to be split along with other necessary network adjustments. Post processing of the model trip assignment for use in projecting trip distribution is necessary, and should follow the guidance in the APM. This method is preferable for large developments.

As a variation of this alternative, the travel demand model can be used to perform a “select zone” run to determine the distribution of the proposed development’s traffic. The results then can be used to manually assign the project’s trips to study intersections and roadways based on the select zone results.

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

### **Trip Assignment**

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

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

**Traffic Operations and Safety<sup>42</sup> – Year of Opening with the Development**

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

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

**Table 3.16: EXAMPLE Total Traffic Study Intersection Capacity Analysis**

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

**Traffic Volumes – Future Year without the Development**

Local code, statewide planning regulations, or the rules in Division 51 may require analyses of future years beyond the year of opening of the proposed development. The future years to be analyzed are established in the scope of work and may depend upon the level of trip generation, phasing of the development, or whether or not a zone change/plan amendment is proposed. Table 3.3.2 above shows recommended

---

<sup>42</sup> Safety analysis can be performed for the year of opening using the Highway Safety Manual (HSM) Predictive Method, following guidance provided in Chapter 4 of the APM. This analysis provides forecast crash performance considering the effects of traffic volumes and changes in the roadway. The results can be used to evaluate the relative safety impact of development traffic and mitigations.

thresholds for determining years of analysis based on current practice in access management.

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

**Traffic Operations and Safety – Future Year without the Development**

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

**Table 3.17: EXAMPLE Background Traffic; Intersection Capacity Analysis**

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

**Traffic Volumes – Future Year with the Development**

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

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

**Traffic Operations and Safety – Future Year with the Development**

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

**Table 3.18: EXAMPLE 2014 Total Traffic Operations (Preferred Development Plan)**

Number	Interconnection	Minimum Operating Standard	Weekday PM Peak Hour		Saturday Midday Peak Hour	
			LOS	v/c	LOS	v/c
Signalized Intersections						
2	SW Boones Ferry Rd / SW Tualatin Rd.	0.99	B	0.63	Not Analyzed	Not Analyzed
3	SW Boones Ferry Rd / SW Martinazzi Ave	0.99	D	0.97	B	0.68
12	I-5 NB Ramp Terminal / SW Nyberg Rd.	0.85	C	0.71	E	0.88
Unsignalized Intersections						
4	SW Martinazzi Ave / North Site Driveway	E	C	0.24	C	0.19
All-Way Stop Controlled Intersections						
20	SW Sagert Street / SW Martinazzi Ave	D	F	N/A	Not Analyzed	Not Analyzed

Note: LOS and v/c reported for the highest delay of critical movement

**3.4.8 Mitigation Alternatives**

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

If the analysis finds the transportation system is inadequate to support the development, the applicant must identify mitigation so the development can meet local approval criteria. Mitigations may also be proposed in response to identified safety concerns. Mitigation alternatives can include geometric improvements, alternative approach configurations, installation of traffic control devices, Transportation Demand Management strategies, and other measures. In addition, the TPR has been amended to allow system improvements outside of the immediate impact area of a development site, including improvements serving modes other than highway, under some circumstances.

Any mitigation considered for the proposed project must be included in a revised traffic operational and safety analysis. The safety impacts of proposed mitigations can be determined using the HSM Predictive Method or appropriate Crash Modification Factors. The APM provides guidance for evaluating safety mitigations in Chapter 4. This analysis must show whether the mitigation is sufficient to meet the local approval criteria for any time period in which it had failed to meet the criteria in the earlier analysis. In addition, the feasibility of implementing any recommended mitigation must be examined and addressed in the TIA. This will typically include considerations such as availability of necessary right-of-way, design standards, Oregon Highway Plan policies, Oregon Administrative Rules and statutes, and consistency with local transportation system plans.

Where access to a state highway is proposed, OAR 734-051-3070 provides a description of types of mitigation measure applicable under ODOT’s authority.

**Table 3.19: EXAMPLE Key Intersection Mitigation (Year of Opening)  
 Total Traffic Conditions**

Mitigation	Weekday PM Peak Hour			Saturday Midday Peak Hour		
	Delay	LOS	v/c	Delay	LOS	v/c
Traffic Signal	10.3	B	0.55	7.2	A	0.42
Permissive left-turn phasing assumed for all approaches						

### **Report Conclusions and Recommendations**

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

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

#### **3.4.9 TIA Appendices**

The traffic count data sheets and the capacity analysis worksheets are a necessary part of a complete TIA and are typically included with other relevant information as an Appendix. Additional information that is typically appended includes:

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

### **Technical Analysis**

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



**Capacity Analysis**

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

The v/c ratios from the TIA must be compared to OHP Policy 1F, Highway Mobility Standards, and the v/c ratios provided in OHP Tables 6 (general) and 7 (Metro), as amended. In situations where an interchange and interstate freeway needs to be modified, it is necessary to coordinate with FHWA and the developer to work out any issues relative to OHP versus HDM standards. The v/c ratios from the OHP tables establish the mobility targets for the various classifications of state highways and the target ratios should not be exceeded. OHP Policy 1F provides a process by which alternative mobility standards may be adopted, as has occurred in the Metro area and is proposed in other areas. Where an alternative mobility standard has been adopted by a local jurisdiction and by the OTC, that standard supersedes Table 6.

**Table 3.20: EXAMPLE: Total Traffic Study Intersection Capacity Analysis**

Intersection	Signalized Intersection*		Unsignalized Intersection			Level of Service
	v/c	Average Delay (sec)	Critical Movement	Movement v/c	Movement Delay (sec)	
Hwy 213 @ Hwy 211	0.56	27.5				C
Hwy 213 @ Barnards Rd			EBLT	0.28	35.0	E
Site Access @ Barnards Rd			SB	0.04	9.3	A
Hwy 213 @ Macksburg Rd			EB	1.021.83	118477.0.5	F
Hwy 213 @ Union Mills Rd			WB	0.851.65	401.076.1	F

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

Local jurisdictions can adopt operational standards for state highways that are more conservative than those from the 1999 Oregon Highway Plan, and some have. While

ODOT does not consider local standards when evaluating system adequacy, the local jurisdiction can use them to require mitigation on state facilities. Of course, as the owner of the facilities, ODOT must approve any proposed mitigation.

In situations where the mobility targets are already exceeded prior to the addition of the proposed development's traffic, where transportation improvements are not planned that would bring performance levels back to the mobility standard, the standard is to avoid further degradation of the facility, pursuant to OHP Action 1F.6.

For further explanation of ODOT's policies on implementing mobility standards during the review of development and approach permit applications, see the white papers titled, "Highway Performance and the 1999 Mobility Standards," (2001) and "Application of Oregon Highway Plan Mobility Standards" (2004) that are attached in Appendix 8. An Operational Notice, PB-02, sets up best practices for alternative mobility standards.<sup>43</sup>

**Capacity analysis** of signalized intersections, unsignalized intersections, rural two-lane highways, arterials, multilane highways, freeways, and weaving sections in the study area should follow the established methodology of the APM. Capacity analysis is based on actual measured values, standard default values listed in the HCM, or other department-approved input values. Default values selected for use in the analysis should remain constant through each analysis year and each alternative as applicable.<sup>44</sup> The calculations may be done by hand or with the use of computer software.

Application of computer software should closely follow an ODOT approved analysis methodology. The appropriate use of computer software such as HCS or the current version of Synchro for capacity analysis is discussed in the APM.

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

---

<sup>43</sup> Operational Notices are policies related to ODOT internal practices. Consult with an ODOT planner if you have questions about the operational notice PB-02.

<sup>44</sup> The APM recommends using peak hour factors based on traffic counts for the existing conditions analysis and then using default values for future conditions. All other defaults should remain constant.

other capacity analysis inputs should be attached to the report and also conveyed electronically to reviewers.

### **Peak Hour Factors**

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

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

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

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

### **Signalized Intersections**

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

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

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

Computer software used should closely follow an ODOT-approved analysis methodology. The appropriate use of computer software such as HCS or Synchro for capacity analysis can be further explored using resources available on the web page of

ODOT's Transportation Planning Analysis Unit (see link above). Summary output sheets for the capacity analysis must be attached to the traffic study.

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

### **Unsignalized Intersections**

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

### **Roundabouts**

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

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

The State Transportation Engineer has been delegated the authority to approve the installation of roundabouts. Requests for roundabout approval are made through the Region Traffic Engineer in collaboration with the Technical Services Roadway Manager. Requests must be supported by an Intersection Traffic Control Study as explained in the ODOT Traffic Manual. The investigation addresses the Considerations described below. (See also Section 6-26 of the [Highway Design Manual](#)).

The Department has developed a list of considerations that should be addressed in the Engineering Investigation that is submitted for proposed roundabout locations.<sup>45</sup> These considerations should not be interpreted as roundabout warrants nor should they be considered pass/fail criteria for installation of a roundabout. Rather, they have been

---

<sup>45</sup> This paragraph and the bulleted list that follows it were copied from the June 2014 DRAFT Highway Design Manual Chapter 8.6 Modern Roundabouts, Section 8.6.3. Consult the HDM as adopted to be sure of the considerations in place at the time of development review.

identified as important considerations to take into account when proposing roundabout intersections on state highways.

- Freight Mobility needs should be sufficiently defined and addressed prior to Conceptual Approval.
- Motorized user mobility needs must be balanced with the mobility needs of non-motorized road users. The ability for bicyclists and pedestrians to safely move through the roundabout intersection is equally important as the mobility needs of motorized vehicles. Bicyclists should be given the option to use either the circulating roadway with other vehicles or the pedestrian crossings outside the circulatory roadway. Special design considerations should be given for the pedestrian crossings at the entrances and exits on all legs of the roundabout where vehicles are either decelerating to enter the roundabout or accelerating to exit the roundabout. Multi-lane roundabouts, like other multi-lane intersections, have potential for “multiple threat” conflicts between vehicles and pedestrians, particularly vision impaired pedestrians. The Public Rights-Of-Way Accessibility Guide (PROWAG) has identified the need for pedestrian-activated crossing capability at multi-lane roundabouts. Although not explicitly required at this time, rulemaking is proposed and it is prudent to design a multi-lane roundabout for easy installation of the necessary equipment in the future. Crosswalk placement, striping, installing conduit as well as identifying and reserving necessary equipment locations even though final installation of all the equipment is not necessary at this time, is good design practice and can save money in the future. Additional information can be obtained by reviewing the PROWAG document available from the FHWA Civil Rights website under Programs/ADA/Section 504.
- Roundabout design should consider the needs and desires of the local community including speed management and aesthetics.
- Intersection safety performance should be a primary consideration when pursuing a roundabout for intersection control. Predicted reductions in fatal and serious injury crashes should be compared with other types of intersection control such as traffic signals or other alternatives supported by crash modification factors (CMF) from the AASHTO Highway Safety Manual.
- Roundabout entrance geometry, circulating geometry and exit geometry should be designed to allow the design vehicle to traverse the roundabout in a reasonable and expected manner commensurate with best design practices as shown in NCHRP Report 672 and the ODOT Highway Design Manual. This design should utilize a representative template of the design vehicle and the vehicle path should be demonstrated through the use of computer generated path simulation software,

- Roundabouts should meet acceptable v/c ratios for the appropriate Design Life. (See the Design Life subsection for possible exceptions to this consideration.)
- Roundabouts proposed for the state highways with posted speeds higher than 35 mph will require special design considerations (e.g. longer splitter islands, landscaping, reversing curves approaching the roundabout) to transition the roadside environment from higher to lower speeds approaching the roundabout intersection.
- For Roundabouts with more than 4 approach legs, special design considerations should be made for the layout of the approach legs.
- Roundabout proposals should address how roundabout operations would impact the corridor immediately upstream and downstream from the roundabout intersection. (If the proposed roundabout is in a location where exiting vehicles would be interrupted by queues from signals, railroads, draw bridges, ramp meters, or by operational problems created by left turns or accesses, these problems should be addressed by the Engineering Investigation.

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

Analysis of roundabout operations is outlined in the APM.

#### **3.4.10 Capacity Analysis Documentation Requirements**

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

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

The HCM allows and encourages field measurements of traffic flow parameters such as ideal saturation flow rate and lost time. ODOT will accept substitution of field measured

values only when accompanied by appropriate worksheets showing data collected and calculations made. See the two Mobility Standards White Papers attached in Appendix 8 for more details.

### **Queue Length Analysis**

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

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

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

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

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

Any methodology used to determine queue lengths must be approved by the Region Access Management Engineer or his/her designee. Note that queue lengths subject to over-capacity conditions can only be adequately assessed through the use of simulation

software. Simulation software should be used to calculate 95th percentile queues when operational conditions are greater than 0.70 v/c and must be used if the v/c exceeds standards. All simulations must be calibrated in accordance with the APM. The APM provides further detail on determining appropriate queue lengths.

**Table 3.21: EXAMPLE Estimated 95th Percentile Queuing Analysis**

Intersection	Movement	Estimated 95 <sup>th</sup> Percentile Queue (ft.)	Storage Length
		Weekday PM Peak Hour	
		Total Traffic	
I-5 SB Ramp Terminal / SW Nyberg Road	SB LT	575	700'
	SB TH/RT	425	700'
I-5 NB Ramp Terminal / SW Nyberg Rd.	NB TH/LT	750	1,270
	NB RT	300	1,270
SW Nyberg Rd / Signalized Site Driveway	WB LT	225	225
	WB TH	525	525
	WB RT	150	325
	SB LT	250	250
	SB TH/RT	200	250
	EB LT	150	225
	EB TH/RT	275	700
	NB RT	275	275
NB TH/LT	150	225	

**Intersection Sight Distance**

Adequate intersection sight distance should be verified for all study intersections and highway approaches. Stop controlled intersection sight distance should meet the standards of OAR 734-051 and the most recent AASHTO A Policy on Geometric Design of Highways and Streets. See also the Highway Design Manual Chapter 5. Intersection sight distance will vary depending which of the following types of at-grade intersections is under consideration:

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

Another measure of sight distance is stopping sight distance. Intersection sight distance is the standard for location of approaches to the highway; stopping sight



distance is a lower standard that may be used in some cases, but not without approval of the RAME.

Sight distance standards are discussed in [OAR 734-051-4020](#). See [additional technical information](#).

### **Right/Left Turn Lane Warrants**

Proposed right or left turn lanes at unsignalized intersections and private approach roads must meet the installation criteria in the Highway Design Manual (HDM).

Locations that meet the HDM criteria for a right or left turn lane should be noted in the traffic study and installation of a turn lane may be recommended as mitigation for project traffic impacts. Meeting the criteria does not mean a turn lane has to be installed. Engineering judgment must be used to determine if an installation would be unsafe or impractical, particularly considering bicycle and pedestrian safety. The ODOT [Traffic Manual](#) provides further guidance on the use of right and left turn lanes. The APM also provides guidance on turn lanes.

At signalized intersections, the need for a right turn lane or left turn lane is based on a consideration of the intersection's v/c ratio, delay for the turn movement, desired phasing, and through vehicle speeds. Further guidance can be found in the ODOT Traffic Manual.

### **Intersection Traffic Control Study**

Analysis and recommendations related to traffic signals must follow ODOT's Traffic Signal Policy and Guidelines. Modification or installation of a traffic signal must be based on documentation that satisfies the requirements of [OAR 734-020](#). If the proposed signal installation/modifications are within 500 ft of a rail crossing, contact the Rail Division Crossing Safety Section to determine additional analysis requirements.

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

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

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

Complete time-space diagrams are required for each of the analysis scenarios, including the existing coordination system. The diagrams indicate the offsets, phasing, and split times for each of the signals in the system.

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

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

The hourly bandwidth capacity should be calculated for both directions of progression and then compared with the corresponding hourly demand at the most critical intersection. See the APM for further details on this calculation. The Signal Progression Calculator may be used to help estimate bandwidth and can be found on the [Technical Tools](#) webpage.

### **Transportation Demand Management**

Goal 4 of the 1999 Oregon Highway Plan is “To optimize the overall efficiency and utility of the state highway system through the use of alternative modes and travel demand management strategies”. In addition, the TPR allows a significant effect on a highway segment to be mitigated in part by improvements to other modes in the plan amendment area.

Techniques to reduce a development’s vehicle trip generation should be evaluated and recommended as part of the traffic study where appropriate. These techniques are referred to as “Transportation Demand Management” (TDM). Some TDM techniques to reduce vehicle trips during peak hours are listed below.

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

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

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

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

### **Transportation System Management**

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

infrastructure, service and committed improvements, existing bicycle and pedestrian infrastructure and service, and improvements to minimize conflicts with other modes.

### **Turning Conflict Analysis**

When a proposed development adds ingress and/or egress trips onto or from the highway from an unsignalized, existing or proposed, public/private approach, a turning conflict analysis should be conducted to ensure that there are no turning conflicts with other approaches on the highway. The analysis should also establish v/c and LOS for the intersection. Turning diagrams should be drawn that include the proper intersection geometry, the distances of any queues, and the proper turning radius for the design vehicle. For additional information see the [Evaluating Left Turn Conflicts for Access Permitting bulletin](#).

### **Access Management**

When developed in conjunction with an application for a Highway Approach Permit, the TIA should document the manner in which a proposed site approach meets the minimum spacing criteria of OAR 734-051 or fits into an access management plan already adopted by ODOT. The approach permit application will be subject to the approval criteria of OAR 734-051-3020 or 4020, et.al. If a deviation to the spacing standards will be requested, the TIA must establish the basis for granting the deviation.

Of particular interest to ODOT are the possible need for median control and any driveway conflicts with nearby intersections. If the driveway is in an Interchange Management Area, special considerations apply as defined in the 1999 OHP and Division 51. For additional information on access management requirements see the [Technical Guidance](#) webpage and the [TIA Requirements for Access Management bulletin](#).

### **Mitigation Approval**

Mitigation approval typically involves all of the members of the Development Review Team (Traffic Analysts, Planners, and Permit Specialists) as well as consultation with additional ODOT staff as necessary. Depending on the type and location of the mitigation proposed, approval may be required from sources such as the Region Traffic Engineer, State Traffic Engineer, Region Access Management Engineer, Roadway Engineering, or Right-of-Way, and other local stakeholders. For example, in cases where the installation of a traffic control device is proposed, the ODOT Traffic Manual provides a complete discussion of the State Traffic Engineer's authority and requirements for installation. Care should be taken to ensure that all needed approvals have been or can be obtained prior to making recommended mitigation plans into conditions of approval.

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

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

### **Planning Conclusions and Recommendations**

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

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

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

## **4 Land Use Appeals**

### **4.1 Purpose of Appeals Chapter**

Oregon is unique in the U.S. in allowing state agency appeal of local land use decisions. ODOT's intent is to avoid or minimize appeals of local land use decisions and strive to solve problems within the local land use process without resorting to an appeal. The authority to appeal has resulted in many productive discussions that lead to solutions and agreement. The judicious use of appeals is a very important tool for ODOT in protecting transportation objectives and public investments throughout the state.

As a state agency that is involved in land use actions in carrying out its mission, ODOT may consider appealing a local government land use decision that adversely affects state transportation facilities. Appeals start at the local level and then, if necessary, go to the Land Use Board of Appeals (LUBA). This chapter is intended to model a consistent approach to both avoiding and preparing for land use appeals. It sets out the factors considered to make the decision to appeal and outlines the internal coordination process to verify the appropriateness of an appeal.

This chapter is designed to assist ODOT management, planners and permit specialists to better understand the ties between local land use and development review and when and how ODOT may act to appeal a local land use decision. It includes steps to take when working with local government to resolve issues short of an ODOT appeal, and communication with the Department of Land Conservation and Development (DLCD) when an appeal is anticipated. The chapter also covers preparing an adequate record of ODOT's participation in the local land use process to support a successful appeal.

The chapter covers only the land use appeals process and does not discuss appeals under OAR 734, Division 51 State Highway Approach Permit appeals. For questions about appeals of approach permit decisions, contact the Access Management Program Unit Appeals Coordinator.

Much of the work for a successful appeal has to be completed before the appeal is even contemplated, which is why it is important to establish standing to appeal by appearing before the local government either in person or in writing, establish best practices that include developing and keeping an adequate record<sup>46</sup>, support recommendations with

---

<sup>46</sup> Keep a file of all materials submitted to the local government and any related background materials that may help our DOJ representative work a case if an appeal is initiated.

reasons backed up by thorough statements of fact, and keeping track of any other ODOT permit issues that relate to the land use decision.

#### **4.1.1 ODOT Factors for Deciding to Appeal**

The following questions are intended to provide a framework for deciding when an appeal is appropriate. Because land use proposals and local contexts vary so much, not all of them will apply in every situation and additional questions may arise.

1. Would the decision result in development that would negatively affect safety or operations on the state transportation system?
2. Is the land use application proposing improvements or activities that are inconsistent with the Transportation Planning Rule, adopted state transportation plans or local transportation system plans?
3. Has staff worked diligently with property owners, developers and local government(s) to reach acceptable solutions that minimize any differences with state transportation plans and adopted standards?
4. Is there another way to resolve the conflict, such as dispute resolution or technical assistance? Are the applicants willing to delay the land use decision to work on solutions?
5. Does the problem include a local government decision that should actually be made under the authority of ODOT or the OTC?
6. Would a ruling in the case provide needed interpretation of an ambiguous statute or rule?
7. Could the decision whether or not to appeal create a risk of setting a legal precedent that goes against state interests? For instance, could the question that would be addressed to LUBA result in a decision that would have statewide implications for the transportation system? Could not proceeding with an appeal result in a local decision that sets a bad example for future negotiations?

If needed, DOJ is a good resource for addressing these questions.

#### **4.1.2 Appeals Avoidance and Preparation Best Practices**

ODOT prepares for an effective appeal by participating in the local land use decision process, using every opportunity to resolve disagreements, engaging the parties and ODOT staff in a timely and constructive manner, and keeping good records. These are the same steps set out in Chapters 3.1 and 3.2 that are used to effectively resolve issues before the local decision is made, minimizing the need for appeals.

**Standing to Appeal:** To bring an appeal to a local government or to LUBA, ODOT must establish “standing” in the local case to qualify to appeal the land use decision.

Standing is a legal construct that identifies who has a right to appeal and is an element of all types of legal cases; in land use it is based upon providing input and raising issues in a timely manner in the local review process.

ODOT has standing to appeal a land use decision if it “appeared before the local government, special district or state agency orally or in writing”<sup>47</sup>. Standing to appeal may be achieved either through speaking at the first or a continued public hearing, or by submitting written testimony within locally prescribed time limits, as included in the initial notice of a pending decision. Written testimony must be submitted to the local government during the course of the proceedings before the record is closed. It is a good safeguard to include a request in any written submittals that the submitted document be added to the decision record. The record is typically closed at the end of a hearing and before the hearings body deliberates on its decision, but a hearings body may agree to keep the record open or re-open it at the request of one or more parties. If the record is still open after a public hearing, ODOT may submit additional information that addresses questions arising in the hearing unless the hearings body has limited what new information will be accepted, for example limiting it to information addressing or rebutting issues raised in the initial hearing.

**Local Decision Time Limits:** State law sets timeframes for local decision making included the timing of notices, review and response periods, appeal periods, and the “120-day rule” that applies to most land use decisions outside of plan amendments and zoning and code amendments. Notices provide the dates for the deadlines for any next steps such as the deadline for comments and a hearing date. To see the whole time line for a particular type of land use decision, consult the local code.

**Exhaustion of Administrative Remedies:** LUBA and other state courts will not hear land use decisions before the local “administrative remedies” have been “exhausted.” Before an appeal can be filed with LUBA, the petitioner must “exhaust all administrative remedies”. This means that ODOT has followed all local government administrative requirements and has appealed the decision to the highest decision-maker at the local level. It is important to know the local government’s decision-making structure and follow it to the letter.

### **Building ODOT’s Case Through the Decision Record**

Keeping good records and making sure those records (e.g., maps, letters, correspondence, comments, traffic impact studies) get into the formal local government

---

<sup>47</sup> ORS 197.830(2)



record should start at the very beginning of ODOT's review process so that if and when an appeal does arise, ODOT is prepared.

The "record" is the formal file of the jurisdiction exercising its decision making authority. ODOT submits comments and recommendations in writing into the local record and those materials should provide adequate information, such as traffic studies, graphics, crash data, meeting notes from discussions with the local government and/or applicant, sometimes state rule or policy excerpts, etc., to demonstrate the basis for the recommendations. The local record should include, at a minimum, all of the information that was submitted and relied upon to make the decision, documentation of all public notice(s) of the subject decision process, testimony at hearings in the form of meeting minutes, (recordings, and sometimes transcriptions if part of a LUBA record) and written findings and decision details, documented and signed where required by state or local law.

When the local decision is appealed to LUBA pursuant to OAR 197-835(2) (a)-(b), this local record is the written information upon which the LUBA decision will be based. Development review staff can check the local file to be sure that it includes the correct and complete information that was submitted by ODOT. By definition, the LUBA record includes:

*"All written testimony and all exhibits, maps, documents or other written materials specifically incorporated into the record or placed before, and not rejected by, the final decision maker, during the course of the proceedings before the final decision maker"*

Use the Development Review System data base to save all electronic documentation and emails related to the local land use case file, particularly letters and exhibits submitted to the local government to be added to the record. Use the DRS email function to the extent practicable to record correspondence with the other parties to the decision and maintain any other email correspondence in accessible files. (Access to DRS is set up by the Region DRS Administrator.)

When a decision record is packaged for LUBA there are a couple of additional steps to remember. When the LUBA record is submitted there is an opportunity for review by parties to be sure that the record document is a correct representation of what local decision makers saw when they made their decision(s). At this stage it is important to review the record and be sure ODOT's materials are included and complete. Any oversized materials submitted to the record may not be copied into the case file even though they are part of the record. The local government should make sure those exhibits are carried into oral arguments at LUBA; in some cases, ODOT staff or DOJ may want to

carry copies of oversize exhibits into the hearing themselves to be sure the board sees everything.

#### 4.1.3 Internal ODOT Coordination Process

1. Participate in the local land use action to identify ODOT's interests and concerns and establish standing in the case to protect the right to appeal.
2. Advise Planning Managers of any issues indicating an appeal may be necessary and work with multi-disciplinary teams to find solutions where possible.
3. When the Region determines that an appeal is likely to be necessary, prepare a brief analysis of the case that includes a description of the development proposal, anticipated effects on state facilities, how the agency has coordinated with the local government to solve problems, and any other reasons to consider whether to proceed to an appeal.
4. The region staff contacts the Department of Justice as soon as possible. No appeal is filed unless DOJ concurs there is a legal basis for the action. The case file shall include a copy of the notice of land use action with the envelope attached to monument the postmark date which is the basis for the 21-day filing period. DOJ has the responsibility to file a notice of intent to appeal" for ODOT. The LUBA version of the notice is a boilerplate document that can usually be prepared quickly.
5. Develop a staff report in coordination with DOJ that includes a process timeline that considers the steps to get OTC approval if the commission meets during the appeal process or the timing for gaining OTC review after the appeals period according to the procedures described in ORS 184.633 (5) and (6)<sup>48</sup>.
6. Initiate contact with the Department of Land Conservation and Development Regional Representative or Salem transportation section to coordinate as needed when an appeal appears necessary and when the decision to appeal has been made.
7. ODOT can appeal to LUBA either as a proponent of a local land use action (usually in conjunction with project development) or as a reviewer of a local action (development review function). The Region Manager, in consultation with the Transportation Development Division Manager, and considering the staff analysis and DOJ advice, submits a recommendation to appeal to the Director.

---

<sup>48</sup> [https://www.oregonlegislature.gov/bills\\_laws/ors/ors184.html](https://www.oregonlegislature.gov/bills_laws/ors/ors184.html)

8. The Region Planning Manager will also review the case with the Planning Business Line Team as an informational item and seek their advice on land use policy implications. PBLT review is not a prerequisite to filing an appeal and may occur after the appeal is filed. The goal of the PBLT review is to achieve long-term consistency across the state.
9. Where there is disagreement between the Region Manager and TDD Division Administrator on whether to appeal, the differing perspectives should be documented and presented to the director.
10. The Director must approve the filling of the appeal and get formal approval to proceed from the OTC following the procedures specified in ORS 184.633 (5) and (6).
11. If an appeal is to be filed and consequently a review is scheduled for the OTC, the Region notifies the local government and applicant of their opportunity to address the Commission regarding the appeal.

#### **4.1.4 Consultation with OTC**

1. The Director's authorities and the process of engaging OTC in the decision to appeal are set out in ORS 184.633 (5) and (6). A "Notice of Intent to Appeal" does not have to be approved by the OTC before it is filed. The OTC can confirm the Director's decision to file the notice of intent after the notice has been filed with LUBA. However, the OTC members will be informed about any appeal before the notice is filed. See Item 10 below.
2. Discuss the proposed land use action and these impacts with the Region Manager, TDD Division Administrator or designee and the assigned DOJ attorney before the final land use hearing.
3. Call the Director's office to schedule a briefing with the Director for one or two days after the local decision is to be announced. It is recommended that this be done through TDD and in any case the TDD Division Administrator needs to be included in the briefing. The Director's calendar is tightly scheduled – expect more than a week before you get a meeting time.
4. If you set up the briefing and the local government does not approve the land use action, or adopts acceptable conditions of approval, the meeting with the Director can be cancelled and no one will mind. Waiting to schedule the briefing until the local decision is made, or until the written decision is in hand will make it very difficult to find sufficient time and the support necessary to accomplish the other steps.
5. Work with the Development Review staff person at TDD as needed to prepare the memorandum from the Director authorizing DOJ to file the notice of intent to appeal. The Region office will send an electronic version of the

- memo to the TDD Division Administrator and the Director's office. Do this as early as possible to allow time for follow-up.
6. In the scheduled meeting with the Director, expect to describe and discuss the following:
    - a. Illustrations and description of the development proposal;
    - b. The unacceptable safety, operational or other impacts on state facilities;
    - c. Steps that have been taken to remediate the situation;
    - d. What was done to try and settle the issue outside of the local appeals and/or LUBA process;
    - e. If there is any room to negotiate after the notice of intent is filed; and
    - f. Any anticipated political ramifications such as a party calling state representatives or members of congress to assist, etc.
  7. The Region provides individual briefings to OTC members before the Director authorizes the "Notice of Intent to Appeal". This will have to be accomplished in a non-quorum manner (no more than two OTC members per briefing) and can be done by phone or video conference. This could easily require more than a week to accomplish. Sending briefing information electronically to each commissioner prior to the briefing will expedite the process.
  8. For a LUBA appeal, the Notice of Intent to Appeal must be filed by DOJ within 21 days of the final local decision.
  9. When all of these steps are taken together, this is a quick turnaround time for what can be a challenging process and there is little margin for error on the timing. The local government or applicant may file a notice to dismiss and demonstrate that the appeal period expired before the notice of intent was filed.
  10. Develop the report to the OTC as soon as possible. Be aware of Commission Services' submission deadlines for agenda items. Provide an ODOT-generated location map with the report. For a variety of reasons, the local government's public notice map may be inadequate.
  11. The Region will mail a copy of the report to OTC and to the local government and applicant as soon as it is completed. The law requires that the applicant and local government be afforded an opportunity to address the OTC before the commission deliberates on the authorization to proceed with the appeal.

#### **4.1.5 After the Decision has been Made to Appeal**

##### **Local Appeals**

There are several levels of land use decision processes and one or more opportunities for local appeal of a decision. The local development code or general code will set out the procedures and timelines that apply. A simple way to find the local ordinances for

most local governments is to reference the [Oregon Blue Book](#) which includes links to city and county web pages.

Administrative (or ministerial) decisions are made by local planning or other administrative staff based on objective standards, and can be appealed. The hearings body may be the appointed planning commission, a hearings officer and/or the city council or county commission (or county court in some Eastern Oregon counties).

Planning commissions may hear appeals of administrative decisions, make some types of administrative decisions, make quasi-judicial<sup>49</sup> decisions and typically also hold hearings and make recommendations regarding legislative land use actions such as plan and code amendments.

A hearings officer works for a local jurisdiction to hear and decide appeals of staff and planning commission decisions. In some communities, a hearings officers' decision is the final decision of the jurisdiction without any referral to the elected body (city council or county commission/court).

City councils and county commissions have final local land use decision authority unless they have delegated that role to a hearings officer or other hearings body.

The local development code or other code will set out the local appeals process. There may be a form to submit or appeal may be by letter. The basic standard for an appeal is to describe the reasons for the appeal and relate them to applicable sections of the local code that are the basis for the appeal. Relate the reasons for the appeal to one or more of:

- The facts in the record and how they support ODOT's point of view or contradict the decision findings;
- ODOT's materials submitted to the record that support a different outcome;
- Other parties' submittals to the record and testimony in hearings; and
- Whether the findings and conditions in the staff report and/or final decision are consistent with local criteria and the facts of the case.

A typical appeals process starts by meeting the deadline for providing notice of intent to appeal that includes all the locally required documentation. The local government will provide notice of the subsequent hearing to the petitioner and to other interested parties as defined in the local code.

---

<sup>49</sup> Decisions related to a particular land area that require discretion or judgment on subjective standards in addition to any related objective standards

Also in the code may be specifications on whether or not the subject appeal process will allow introduction of new information or be limited to information already in the record. If new information is not allowed, arguments in the appeal must be based on the materials already in the record, identifying points in the decision findings that are not supported by the facts in the record.

New issues that can be raised will usually relate to either incomplete or contradictory information in the record, or the failure to address criteria that the petitioner believes should have been applied in the decision. In the latter case, it is important to explain why the neglected criteria apply.

Hearings are held in public meetings and other parties than the petitioner and applicant are allowed to testify. Hearings bodies have some discretion about what new information they will consider in making their decision. The record may be left open for new information in response to issues raised in a hearing, with a specific deadline for submittal of those materials. Hearings and/or deliberations may be continued to the next regular meeting of the body or to a different “date certain” meaning the hearings body will set the date at the time they decide to continue the proceedings.

There is often more than one local appeal process that must be worked through in a set order. The last appeals process decision (or any decision that is not appealed) is the final local decision. The final decision of a city or county can be appealed to the Land Use Board of Appeals. The LUBA Process is described in some detail in section 4.1.06, below. A LUBA decision can be appealed to the Oregon Court of Appeals.

Only issues raised in the local appeal can be raised in a LUBA appeal unless the LUBA appeal is based on an alleged procedural error.

### **LUBA and Beyond**

An appeal of a final local land use decision is made to LUBA. The [Land Use Board of Appeals](#) (LUBA) was created by legislation in 1979 (ORS Chapter 197-805 through 860<sup>50</sup>) and has exclusive jurisdiction to review all governmental land use decisions, whether legislative, quasi-judicial or ministerial.

Prior to LUBA's creation, land use appeals were heard by the Land Conservation and Development Commission (LCDC) and the circuit courts. LUBA was created to simplify the appeal process, speed resolution of land use disputes and provide consistent interpretation of state and local land use laws. The LUBA tribunal is the first of its kind in the United States. The governor appoints the three-member board to serve four-year

---

<sup>50</sup> [https://www.oregonlegislature.gov/bills\\_laws/ors/ors197.html](https://www.oregonlegislature.gov/bills_laws/ors/ors197.html)

terms. The appointments are confirmed by the Oregon Senate. The board members must be members of the Oregon State Bar. See [OAR 661-010-0000](#) for more information.

#### 4.1.6 Outline of LUBA Appeals Process

LUBA hears and rules on appeals of land use decisions made by local governments and special districts. LUBA is the first state level forum that can hear appeals of final local land use decisions. Subsequent appeals would go to the Oregon Court of Appeals and then the Oregon Supreme Court, if that latter body chooses to hear the case. Good basic information on the LUBA appeals process is available online at the [Land Use Board of Appeals Frequently Asked Questions](#). The steps in an ODOT appeal to LUBA are completed in close coordination with DOJ.

As discussed above, an appeal of a land use decision to LUBA requires authorization by the OTC. After discussion with the Region, the TDD Division Administrator advises the Director of the intention to appeal and asks that the question be added to the next regular OTC agenda. If the deadline to file falls before the OTC meeting, the filing of a **Notice of Intent to Appeal** is done with the Director's tentative approval. When the commission considers the question they may affirm the decision to file or have the LUBA filing withdrawn.

The following description of the LUBA appeals process is extrapolated from the applicable administrative rules. It is intended to make the material more concise and simplify the language while maintaining consistency with the rules. However, there may be subtle differences that could make a difference in a legal proceeding. The actual rules will always be the best source for digging deeper into their meaning or for quoting from or citing to the rules.

1. A LUBA appeal is initiated by filing a timely **Notice of Intent to Appeal** at the LUBA offices in Salem.
  - a. The notice must be received at LUBA, within 21 days after the challenged local land use decision becomes final.
  - b. The date of filing of the notice is either when it is received in the LUBA office, or the date it is mailed either registered or certified mail, which must be documented with a Post Office date- stamped receipt for the mailing.
  - c. The notice is submitted with a specified filing fee, part of which is a deposit for appeal process costs. The deposit for costs typically goes to the prevailing party once the LUBA decision is issued.
  - d. The notice of intent must be copied to the local government and to all parties to the local decision, using the list of participants in the local decision record that is maintained by the local agency.

2. If the decision appealed is for physical development of a project, a **Motion for Stay** of the land use decision (and site development activities) must also be filed to stop development while the appeal is pending.
3. To become a party to a case after it is started, within 21 days after the Notice of Intent to Appeal, an entity that meets the requirements for legal standing in the case may file a **Motion to Intervene** that specifies whether the intervention is on the side of the Petitioner or Respondent.
4. The local government, special district or state agency whose decision has been appealed (Respondent) must submit a formal **Record of Decision** to LUBA within 21 days after the notice of intent to appeal is served on the local government, special district or state agency. The Respondent also supplies a copy of the record to the Petitioner.
5. The **Petition for Review** must be filed by the appealing party (Petitioner) within 21 days after the date the record is received by LUBA. The Petition for Review:
  - a. Identifies the basis for the Petitioner's standing, e.g. participation in the local decision process with written or oral testimony.
  - b. Relies on the existing record to support its claims;
  - c. Identifies the basis for the appeal including decision criteria and why the record does not meet the burden of proof to demonstrate compliance with the criteria;
  - d. Demonstrates that the decision at hand is a land use decision or limited land use decision to establish LUBA's jurisdiction over the matter; and
  - e. Raises all matters of law that can be considered in the LUBA review. If an issue is not raised, it will not be available as a basis for a decision.
6. The Respondent must file **Respondent's Briefs** that addresses the Petitioner's claims within 42 days after LUBA receives the record.
7. **Oral Arguments** are scheduled once the respondent's briefs are received. Only the petitioner, respondent and any interveners, or their legal counsel, may testify.
8. LUBA must issue a **Final Opinion and Order** within 77 days after the record was transmitted to the board.
9. Other procedures may prolong the decision process, including various motions, an opportunity for mediation, and negotiated delays for other reasons. See the LUBA information site link, above.



## **5 Negotiated Mitigation Agreements**

### **5.1 Purpose**

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

#### **5.1.1 Problem Statement**

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

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

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

Not every development impact on state transportation facilities will be amenable to a negotiated mitigation agreement. Where the impacts on the system can be mitigated by operational measures that can be accomplished incrementally, it is relatively easy to identify fixes that are clearly related to the impacts of the development project and that can be constructed in a timely manner. And where ODOT already has a project planned and funded that deals with related issues, determining a proportional share

cash contribution will be relatively simple. But for all of the different situations that will arise between these two ends of the spectrum, arriving at a reasonable solution will be more complicated. In any case, there needs to be assurance that mitigation measures will be constructed in a timely manner. Where that assurance cannot be established, a negotiated mitigation agreement will not get the desired results.

## **5.2 Policy Issues That May Apply**

### **5.2.1 1999 Oregon Highway Plan (OHP)**

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

#### ***Policy 1B – Land Use and Transportation***

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

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

#### ***Action 1B.6***

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

- *A process for coordinated review of future land use decisions affecting transportation facilities, corridors or sites;*
- *A process to apply conditions to development proposals in order to minimize impacts and protect transportation facilities, corridors or sites;*
- *Regulations assuring that amendments to land use designations, densities and design standards are consistent with the functions, capacities and highway mobility standards of facilities identified in transportation system plans including the Oregon Highway Plan and adopted highway corridor plans;*

- *Refinement of zoning and permitted and conditional uses to reflect the effects of various uses on traffic generation;*
- *Standards to protect future operation of state highways and other roads; and*
- *Access control measures, for example, driveway and public road spacing, median control and signal spacing standards which are consistent with the functional classification of roads and consistent with limiting development on rural lands to rural uses and densities.*

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

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

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

***Policy 2A: Partnerships***

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

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

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

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

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

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

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

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

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

will be required and mitigation of adverse impacts will be part of that permit. If the impacts are major, a negotiated agreement may result from the permit process.

OAR 734-051-0145: Mitigation Measures may be required on the state highway or the subject property to comply or improve compliance with the division 51 rules for continued operation of an existing approach or construction of a new approach. The cost of mitigation measures is the responsibility of the applicant, permittee, or property owner. That is, where an approach permit is required, developers are responsible for the cost of the impacts of the particular approach on state facilities, as well as mitigation measures, which must be directly proportional to those impacts.

This section of Division 51 includes a list of the types of measures appropriate for mitigation of traffic impacts that may be also appropriate for negotiated agreements. Other measures related to access management and operations may also be raised in negotiations, such as restrictions on the use of an approach (e.g. a trip cap based on a reasonable projection of trips for the current proposal, limiting future increases); or donation of right of way and/or access control to the state.

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

### **5.2.3 Transportation Planning Rule (TPR) (OAR-660-012)**

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

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

- Access control measures;
- Standards to protect future operation of roads and other transportation facilities and services;

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

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

#### **5.2.4 Local Collection of Funds for Transportation Facilities**

Local governments interested in being proactive partners in protecting and improving state highways have some options they can choose to exercise to generate funds for infrastructure. Cities are enabled to collect fees from property owners or developers to pay for capital improvements to public facilities. Two common types of programs fall under the categories of Local Improvement Districts (LIDs) (cities) and System Development Charges (SDCs) (cities and counties).

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

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

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

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

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

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

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

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

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

### **5.3 Types of Agreements**

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

- **Permit:** For example Road Approach, Utility, or Miscellaneous (e.g., landscape) permits for uses of right of way or for improvements within the public right-of-way, resulting in improvements that will remain in private ownership. (This Chapter does not address permitting issues except for purposes of comparison with the other types of agreements.)
- **Letter of Agreement:** An informal agreement memorializing an understanding between parties of the nature of a problem and the need to work together for a solution.
- **Memorandum of Understanding (MOU):** A more formal recognition of a development impact on the state system and preliminary, (usually) nonbinding agreement as to who will be responsible for identifying, funding, constructing or otherwise providing a solution.
- **Intergovernmental Agreement (IGA):** A binding agreement between ODOT, local jurisdiction(s), and sometimes other state or federal agencies, assigning roles and responsibilities to address a known or anticipated problem with respect to implementing a proposed solution. May establish a special fund and assign responsibility for collecting and administering funds.
- **Cooperative Improvement Agreement (CIA):** A binding agreement between ODOT and local government entities and/or a private developer, one of whom is going to construct improvements to a state facility. A CIA assigns roles and responsibilities for the development of a highway construction project, including but not limited to, preliminary planning and engineering, funding, contract administration, construction, inspection, and maintenance.

### **5.4 Legal Considerations that Influence the Choice of Type of Agreement**

Letters of Agreement, Letters of Understanding and Memoranda of Understanding (MOU) are all normally non-binding statements of intent or commitment to use best efforts. They are not necessarily legal contracts. But, it is what is in them that



determines their force and effect and whether they are legally binding. All parties should sign, even if they aren't binding because the signatures establish a record of the intent of the parties to follow a certain course of action.

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

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

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

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

- **Permit:** Typically used for something to be built or placed in the right-of-way, such as a utility line, that remains in the private party's ownership and that will not be transferred to public ownership (e.g. not a public improvement) or for establishing a short or long term use of the right of way. However, a permit can be used in instances where there is a public improvement to be constructed by a developer that will be transferred to ODOT. This decision to use permitting can be used if the value of the improvement is less than \$100,000, the permit includes provisions concerning compliance with ORS 276.071 (including paying prevailing wage rate, and compliance with applicable provisions of the public contracting code), and there is a mechanism for ODOT acceptance for the completed improvement and transfer of ownership.
- **Formal Agreement:** Under any of the following circumstances, a permit is not sufficient:

- When ODOT applies state or federal monies toward some facility to be constructed;
  - When ODOT is doing the construction under its own procurement process, with developer contributions toward improvements (i.e., the developer is contributing all or partial funding);
  - When the improvement cost is \$100,000 or greater and the facility being built is, or will become, a public improvement; or
  - When continued maintenance is an issue, an agreement is needed to establish long term commitments and obligations for maintenance and sometimes responsibility to pay for electricity.
- Review for Legal Sufficiency by the Department of Justice: Under OAR 137-045-0010(23), a "public contract" means "any contract, including any amendments, entered into by an Agency for the acquisition, disposition, purchase, lease, sale or transfer of rights of real or personal property, public improvements, or services, including any contract for repair or maintenance. An Intergovernmental Agreement entered into for any of the foregoing actions is a Public Contract. . ." So, negotiated mitigation agreements for improvements that will be part of the highway system are considered "public contracts" and also subject to ORS 291.047 which requires a review for legal sufficiency by DOJ when the value of the public contract exceeds \$100,000. If the commitment of the developer to construct such public improvement exceeds \$100,000 or the value of the improvement itself exceeds \$100,000, the Cooperative Improvement Agreement would require legal sufficiency review as discussed further in Section 5.7, below.

### ***5.5 Reviewing the Developer's Impacts and Contribution to Solutions***

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

Each of the three central parties to the mitigation agreement has an important role in establishing the developer's proportional share contribution. The developers' responsibility is to provide factual and thorough information upon which an informed decision with appropriate conditions can be based. The local government's role is to

apply their local code and exercise appropriate discretion to apply conditions to any development approval so that the outcome protects public investment in infrastructure. ODOT has the responsibility to protect state transportation facilities by thorough review of the facts presented, the analysis process used, and the conclusions reached in the local planning process. It is also ODOT's responsibility to provide timely response and clear direction on how best to protect the state system.

### **5.5.1 Nexus and Proportionality**

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

**Nexus:** Mitigation measures need to be directly related to (have a nexus with) the impacts of the development (*Nollan v. California Coastal Commission*, 483 U.S. 825 (1987)). Traffic Impact Analysis (TIA) identifies the potential impacts of development projects. Where an approach road permit is required, the Permit Specialist and/or Region Access Management Engineer will be looking at proposed approaches to the highway with respect to their impacts on the state facility, whether or not the project is at a scale that will require a TIA. A good traffic study is the best tool for determining the relationship between development project impacts and state transportation facility needs, but in some cases, the nexus question will need to be answered without the benefit of a thorough TIA.

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

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

### **5.5.2 Developer Contributions**

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

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

#### **Capacity and the Distribution of Trips on the System**

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

- **Through Trips:** The classification of a highway denotes expectations for how it will be used and the preponderance of through trips on the particular facility. Population trends and other trends such as job growth or growth in annual vehicle miles traveled per person help to establish reasonable assumptions about future needs for the facility. Where there is a transportation model available, the preliminary work for estimating future conditions has already been done.
- **Local Trips:** Background local trips and projected local trips based upon population forecasts, annual VMT/capita, transportation modeling, etc.
- **Excess Capacity / Needed Capacity:** Given local and through trips, now and on the planning horizon, is there available capacity to serve new local users? What share of this capacity would reasonably be assigned to the proposed development? Is there already a shortage, or projected shortage of capacity to serve uses already existing or planned? Note that deficiencies already in existence at the time of development do not meet the nexus test because they are clearly not caused by subsequent development. Consequently, correcting pre-existing problems are not the responsibility of the current developer, as established in the courts, and so cannot be required to be mitigated. This does not preclude such mitigation from being included in a voluntary negotiated agreement.

- Land Use and Zoning Influences: Consider available development sites, lot sizes, zoning, and expectations about how fast development or redevelopment may occur. What will transportation facility needs be when planned development is fully built out? As development occurs presumably all new development will use a share of existing and planned transportation facility capacity.
- Projected trips (total entering vehicles or TEV) produced by the proposed private development project (minus any allocated share of available capacity, if applicable).
- Transportation facility construction projects that are planned, funded, scheduled. What capacity will planned improvements provide?

### **Example Methodologies Based on Capacity**

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

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

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

### **Operations and Safety**

While it is difficult to quantify safety problems other than by crash data, safety and operations impacts are often relatively easy to mitigate with minor improvements to state facilities. Safety and operations impacts will often occur in conjunction with developments requiring approach permit applications, and the practices associated with approach road permitting will support identification of appropriate mitigation measures.

Where the proposed development will create a new safety problem, the entire cost of the mitigation will usually be justified as a proportional share.

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

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

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

### 5.5.3 Legal Precedent

In addition to the US Supreme Court *Nollan* and *Dolan* cases, Oregon has a subsequent Court of Appeals case that affirms a City of Springfield methodology basing a proportional share determination upon **measurable or otherwise quantifiable** factors that can be compared as before and after conditions. This case provides a nice example of a method based on the site conditions and what constitutes adequate documentation of the logic used to calculate the developer's proportional share.

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

- Compared the number of conflict points (driveways) on the roadway before and after a development proposal to demonstrate safety impacts and required that the developer restore the area to the prior condition (i.e. the prior number of conflict points) to mitigate the safety issue.

- Compared the ADT of the through street with a conservatively estimated level of trip generation for the proposed new uses to demonstrate capacity impacts and calculated a percentage of ADT attributable to the proposed development.
- Calculated the number of square feet of travel area necessary to accommodate the total trips on the road and the number of square feet attributable to the development’s trips using the percentage calculated above, and then required that number of square feet of right of way to be dedicated for public ways.

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

#### 5.5.4 Proportional Share

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

**Table 5.1: Quantifiable Factors Related to Proportional Share**

Factor	Capacity	Critical Movement
<b><i>Impacts that can be Measured and Compared to Background Conditions</i></b>		
<b>Daily Trips</b>	<ul style="list-style-type: none"> <li>• How many trips will the proposal generate daily?</li> </ul>	<ul style="list-style-type: none"> <li>• How many critical movements will the proposed development add per day? During peak periods?</li> <li>• What will be the measurable effect on delay times?</li> </ul>
<b>Peak Hour Trips</b>	<ul style="list-style-type: none"> <li>• How many trips will the proposal generate at the</li> </ul>	<ul style="list-style-type: none"> <li>• How many critical movements will the</li> </ul>

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



<b>Factor</b>	<b>Capacity</b>	<b>Critical Movement</b>
<ul style="list-style-type: none"> <li>• <b>Peak Hour Trips</b></li> <li>• <b>ADT</b></li> </ul>	Numbers from counts in the immediate area of the proposed development	Numbers from counts in the immediate area of the proposed development
<ul style="list-style-type: none"> <li>• <b>Daily Through Trips</b></li> <li>• <b>Daily Local Trips</b></li> </ul>	Numbers related to expectations for the facility (classification), models, counts	Numbers related to expectations for the facility (classification), models, counts
<b>Delay at Intersection(s)</b>	Time from traffic analysis, LOS, capacity implications	Time from traffic analysis, LOS, capacity implications
<b><i>Future Conditions</i></b>		
<ul style="list-style-type: none"> <li>• <b>Peak Hour Trips</b></li> <li>• <b>ADT</b></li> </ul>	Based on TIS/TIA, models, population projections for future year identified in TIS scope, year of opening (15 years for any plan amendment)	Based on TIS/TIA, models, population projections for future year identified in TIS scope, year of opening (15 years for any plan amendment)
<ul style="list-style-type: none"> <li>• <b>Daily Through Trips</b></li> <li>• <b>Daily Local Trips</b></li> </ul>	Based on models, future year identified in TIS/TIA scope, year of opening (15 years for any plan amendment)	Based on models, future year identified in TIS/TIA scope, year of opening (15 years for any plan amendment)
<b>Delay</b>	System Delay based on models	Critical Movement Delay based on models
<b><i>Documenting Proportional Share Determination</i></b>		
<b>Mitigation Project Description</b>	<ul style="list-style-type: none"> <li>• Features and locations of improvements that will mitigate development impacts</li> <li>• Quantified increase in capacity</li> </ul>	<ul style="list-style-type: none"> <li>• Features and locations of improvements that will mitigate development impacts</li> <li>• How changes will affect critical movement(s)</li> </ul>
<b>Scale of Project</b>	<ul style="list-style-type: none"> <li>• Major: Developer will participate in STIP project</li> <li>• Minor: Developer will</li> </ul>	<ul style="list-style-type: none"> <li>• Major: Developer will participate in STIP project</li> <li>• Minor: Developer will</li> </ul>

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

Factor	Capacity	Critical Movement
<b>Roadways</b>	project? <ul style="list-style-type: none"> <li>• Is roadway authority willing to negotiate availability of its ROW, if needed?</li> </ul>	mitigation approach?
<b>Do Improvements Require ODOT Study and Approval? Are Proposed Improvements justified by an engineering study?</b>	Is the proposed improvement consistent with ODOT policy? Design standards? State and local priorities regarding the STIP?	Many operations measures require an engineering study and approval by the Region Traffic Engineer or State Traffic Engineer prior to construction, including crosswalks, some stop signs, traffic signals, dual turn lanes, turn restrictions, and others. All proposed operations measures must be processed through the Region Traffic Engineer. See the ODOT Traffic manual for guidance on documentation requirements for specific measures.
<b>Is Private ROW Needed?</b>	If third party private ROW is required to build mitigation project, is there assurance that owner is a willing seller?	If private ROW is required to build mitigation project, is there assurance that owner is a willing seller?
<b>Readiness: Is Project in the STIP? (Funded) Is Project in the Local TSP? Has Preliminary Engineering been done?</b>	Yes/No	Yes/No

### **5.5.5 Documenting the Method of Calculating the Developer’s Share**

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

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

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

## **5.6 Content of Agreements by Type**

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

### **5.6.1 Letter of Agreement**

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

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

### **5.6.2 Memorandum of Understanding**

A memorandum of understanding (MOU) is similar to a letter of agreement in terms of legal weight, but is more formal and typically sets out issues and solutions in more detail. The following elements of an MOU should be included, as applicable to the circumstances of the agreement:

- Identifies all parties and proxies participating in the agreement;
- May identify a STIP project scheduled for the facility that is affected by the private development project, and that will be modified by solutions identified in the agreement, and/or be paid for, all or in part, by the developer;
- May identify project management responsibilities for contract administration, project development, environmental and construction phases;
- Recitals:
  - May include a purpose statement;
  - Descriptions of Project Area:
    - Highway Classification and other distinguishing characteristics;
    - Description of the private development project and relationship to the state facility;
    - May include other information about the project area such as topography, resource issues, other lands in public ownership, a need for right of way or easements;
  - Status of the local land use proposal:
    - Land use approval and permit status;
    - Local conditions of approval related to the highway facility.
  - Citations to Applicable Enabling Law and Regulations:
    - Statute and Administrative Rules enabling the agreement;
    - Statute and Administrative Rules pertinent to specific issues in the agreement (e.g. regulations regarding signalization)
    - Applicable Local Regulations;

- Applicable State Goals and land use regulations;
- Applicable OHP standards.
- Statements of current and future conditions:
  - General agreement regarding the impact of the private development on state facilities;
  - General agreement describing the specific problem(s) to be addressed;
  - General agreement regarding solutions.
- Private Developer willingness to contribute money or other consideration:
  - Method used to determine private developer's share of improvement costs or other contributions;
  - Willingness to construct capacity or operations improvements.
- Willingness of state, city and or developer to negotiate with third-party property owners, agencies for easements, etc.
  - Description of the relationship of any needed right of way or easement to the development project, including property location and why it is needed;
  - Description of any needed agreements to be entered into with those third parties;
- Statement that the MOU agreement is not binding;
- Statement of agreement as to next steps.
- ODOT Commitments may include but are not limited to:
  - Agreement to provide support or assistance in local land use and/or access permitting processes;
  - Agreement to provide funding for parts of project not directly related to subject development impacts, which could be considered the state's "proportional share";
  - Review of plans for agency approval when construction plans are developed and provided by the private party;
  - Administrative responsibilities where right of way will be obtained.
- Private Developer Commitments may include but are not limited to:
  - Provision of Funds and Other Contributions:
    - Description of reasons for the contribution which will include a description of the method for determining developer share;
    - Timing of and/or events triggering payment(s);
    - Advance Deposit and/or Letter of Credit (including time limits on letter of credit) required;

- Provision of right-of-way and terms and conditions of right-of-way transfer;
- Funds for right-of-way purchase;
- Funds for construction;
- Construction of Improvements:
  - Description of improvements including type and location;
  - Timing of and/or events triggering construction;
  - If public improvements in state right of way will be constructed by the developer or their contractor, it is important to make it clear that Fair Labor Standards<sup>51</sup> apply just as they would for an ODOT project;
  - Responsibilities reserved by ODOT or the local government:
    - Insurance Required;
    - Provision for Indemnity;
    - Provision for ODOT entry onto private property for inspections, etc. related to the subject agreement;
    - Open books and accounting practices;
    - Terms for the use of a third-party contractor;
- Local Government Commitments may include collection of funds, contribution of matching funds.
- Terms upon which there is mutual agreement:
  - Timing and triggering events for fund contributions;
  - Timing and triggering events for construction of improvements;
  - Anticipated future improvements beyond those currently agreed to;
  - Acceptable and unacceptable mitigation measures for issues not resolved in the subject MOU;
  - Mutual review and coordination of project plans;
  - Consideration of Relocation Assistance related to the acquisition of right-of-way;
  - Compliance with local, state and federal requirements;
  - Compliance with state and federal labor laws.
- Contingencies
  - Final local land use approval;
  - Final ODOT permits, where applicable;
  - Completion of any additional agreements needed:

---

<sup>51</sup> Work done in the state right of way and/or using federal funds may be subject to Bureau of Labor and Industries (BOLI), Davis-Bacon, and/or other applicable Fair Labor Standards including prevailing wage rates. For more information on prevailing wage rates for public works see: ORS 276.071 and: <https://secure.sos.state.or.us/oard/displayDivisionRules.action?selectedDivision=3850>

- Easements,
- Agreements with third-parties,
- Cooperative Improvement Agreement,
- Any additional agreements with ODOT that must be completed prior to occupancy permit, final plat approval or other contingency;
- Acquisition of all needed easements.
- Responsibility for cost overruns.
- Terms and Conditions
  - Effective upon signing by all parties (typical);
  - Term of agreement such as “until construction is complete,” or “until subsequent agreement is in effect;”
  - Termination of agreement:
    - Subject to mutual consent and/or written notice within stated time period;
    - Due to change in state or federal law;
    - By default or failure to perform as agreed;
    - Does not prejudice the rights of the parties.
  - Amendment is subject to mutual agreement;
  - Conditions under which parties’ contributions may change and responsibility for cost overruns;
  - Disputes will be handled through collaboration/mediation;
- Legal Considerations
  - Delegation statement regarding ODOT signatories
  - Hold Harmless statement;
  - Equal authority of the parties to the agreements;
  - Fair Labor statement including citations to applicable state and federal regulations;
  - Indemnification requirements;
  - Statement that this is a complete and final agreement.

### 5.6.3 Intergovernmental Agreements

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

- A local government may assume administrative responsibility for the construction of mitigation measures, including collecting private funds and administering contracts.



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

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

#### **5.6.4 Cooperative Improvement Agreements**

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

##### **Contents:**

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

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

## **5.7 Legal Sufficiency**

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

### **5.7.1 Public Contracting Requirements**

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

### **5.7.2 Construction Standards**

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

### **5.7.3 Contract Language**

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

### **5.7.4 Who Can Sign a Binding Contract for ODOT**

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

For most purposes, including IGAs and CIAs, the delegated authority to the Director, Deputy Director and Region Managers is limited to \$75,000, unless the project is included in the STIP or included in a line item in the biennial budget approved by the OTC. If not in the STIP and not in the approved budget, and over \$75,000 (and that includes money going out from ODOT and money or value of asset coming in - not necessarily the "cost") then the OTC has to approve the contract.

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

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

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