

FREQUENTLY ASKED QUESTIONS ABOUT SECTION 0060 OF THE TRANSPORTATION PLANNING RULE

What is Section 0060 of the Transportation Planning Rule?

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

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

What is the purpose of Section 0060?

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

What is the legal basis for Section 0060?

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

What decisions does TPR Section 0060 apply to?

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

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

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

Does Section 0060 affect all plan amendments and zone changes?

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

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

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

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

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

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

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

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

How is Section 0060 applied?

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

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

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

Local governments determine whether there is a significant effect by:

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

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

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

¹ There are three other circumstances where a plan amendment could trigger a "significant effect":

- Changes to the functional classification of an existing or planned transportation facility – an example would be where a local plan designation for a planned street is changed from a "minor arterial" to a "major collector".
- Changes to standards implementing a functional classification system. Examples of this type of change would include amendments to driveway or street spacing requirements.
- Allowing types or levels of uses which would result in levels of travel or access that are inconsistent with the functional classification of a transportation facility; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Does the TPR require traffic impact studies?

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

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

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

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

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

Technically no. However, local governments can achieve this result by limiting development and adopting a local ordinance that essentially mirrors the requirements of Section 0060. Several LUBA rulings³ have upheld local government decisions that, in effect, defer application of the TPR where the following conditions are met:

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

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

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

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

- **It undermines the predictability that zoning is intended to provide.** Zoning or rezoning land implies that the land is suitable and appropriate for uses allowed in the zone. If lands are zoned "commercial", for example, property owners rightfully assume that the public has determined that the land is suitable for many commercial uses and can be developed for commercial uses without difficult or complicated reviews. Deferring evaluation of transportation impacts and mitigation to site review works against this objective, especially where expensive improvements are needed to mitigate traffic impacts.
- **It undermines public participation in zoning decisions.** Rezoning is a key opportunity for the public, including neighboring property owners, citizens and agencies, to comment on a proposed zone change. Traffic impacts are often a major concern which the public should understand *before* a zone change is approved. Deferring transportation analysis reduces the opportunity for meaningful public participation.
- **It creates tracking and enforcement problems for local governments.** Where transportation analysis is deferred, future land use decisions and approvals have to be adjusted to include the required transportation analysis. It several years pass between the time the original zone change is approved there is likely to be uncertainty or confusion about what is required – especially if local staff turnover or if property is sold.

³ The LUBA decisions on this issue are:

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

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

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

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

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

- ❑ Transportation facilities, improvements or services that are funded for construction or implementation in:
 - ❑ the Statewide Transportation Improvement Program
 - ❑ a locally or regionally adopted transportation improvement program or capital improvement plan, or,
 - ❑ program of a transportation service provider. (See OAR 660-012-0060(4)(b)(A).)

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

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

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

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

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

Are “reasonably likely” determinations “land use decisions”?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Where can I get more information about Section 0060?

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

ODOT has produced guidelines for use by its staff in applying Section 0060. The guidelines are available on the ODOT website at:

<http://www.oregon.gov/ODOT/TD/TP/docs/TPR/tprGuidelines.pdf>

While the guidelines are intended principally for use by ODOT staff, they can also provide useful guidance to help local governments and applicants understand and apply Section 0060. Key to the amended rule are decisions by ODOT (and local governments) about whether or not needed improvements are funded or "reasonably likely" to be funded during the planning period. The ODOT guidance provides direction about how ODOT staff are to make reasonably likely determinations.

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