

# Draft Amendments to TPR 0060

**- Public Review Draft – October 25, 2011 –**

Within existing sections (1) through (8) additions are underlined and deletions are ~~struck through~~.

Sections 9, 10 and 11 are completely new and thus changes are not shown.

Additional information at [www.oregon.gov/LCD/Rulemaking\\_TPR\\_2011.shtml](http://www.oregon.gov/LCD/Rulemaking_TPR_2011.shtml)

## *Proposed Rule Text*

### **660-012-0005 – Definitions**

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

### **660-012-0060 – Plan and Land Use Regulation Amendments**

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

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

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

(c) Result in any of the effects listed in paragraphs (A) through (C) of this subsection based on projected conditions ~~As measured at the end of the planning period identified in the adopted transportation system plan (TSP). As part of evaluating projected conditions, the amount of traffic that is projected to be generated within the area of the amendment may be reduced if the amendment includes an enforceable ongoing requirement that would demonstrably limit traffic generation, including, but not limited to, transportation demand management. This reduction may diminish or completely eliminate the significant effect of the amendment.:~~

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

## *Explanations*

This definition is used in (1)(c).

Clarified that a zoning map is part of land use regulations. Identified exceptions that are described more fully later in the rule.

Moved the description of how to address a significant effect to section (2), which lists corrective actions.

The definition of “significant effect” is clarified so that anything which reduces traffic generation (as opposed to mitigation that adds capacity) may be considered when determining if there is a significant effect. A common approach to reduce or limit traffic generation is known as a “trip cap.” This method typically limits development, rather than directly limiting trips. At the time of rezoning, trips are allocated for each

- (B) ~~Degrade~~Reduce the performance of an existing or planned transportation facility such that it would not meet the below the minimum acceptable performance standards identified in the TSP or comprehensive plan; or
- (C) ~~Degrade~~Worsen the performance of an existing or planned transportation facility that is otherwise projected to not meet the perform below the minimum acceptable performance standards identified in the TSP or comprehensive plan.

**(2)** ~~Where~~If a local government determines that there would be a significant effect, ~~compliance with section (1) shall be accomplished then the local government must ensure that allowed land uses are consistent with the identified function, capacity, and performance standards of the facility at the end of the planning period identified in the adopted TSP through one or a combination of the following, unless the amendment meets the balancing test in subsection (2)(e) of this section or qualifies for partial mitigation in section (11) of this rule:~~

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

parcel. At the time of development, size and intensity are limited based on the allocation and projected traffic generation per square-foot.

Some performance standards are met by staying below the threshold, so the language was changed to be neutral about the direction.

The consistency list was moved from section (1) since it deals with how to correct a significant effect, not the definition of a significant effect.

Clarification added to say that corrective action is measured at the end of the planning period (same as significant effect) to allow for phased mitigation.

New text added to enable section (11).

Altering designation densities or design requirements and demand management were removed from (2) because they are included in (1)(c) when determining whether there is a significant effect. They can also be used as part of the corrective action for an amendment that has a significant effect, in which case they would reduce the magnitude of the effect and thus reduce the extent of mitigation required in (2).

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(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.

Added to allow more flexibility in corrective actions, but only with the approval of the provider (e.g. ODOT if a state highway is affected). For example, an amendment that would cause motor vehicle congestion could be balanced by constructing a sidewalk, adding a bicycle lane to the street, building a parallel connection or improving another intersection on the street.

**(3)**

The RAC reached a consensus that section (3) should be amended to make it easier to qualify for the reduced mitigation described in (3)(c) of the existing rule (which would be (3)(b) in the amended rule). The RAC did not reach a consensus on how to best accomplish this goal.

*Option #1*

Notwithstanding sections (1) and (2) of this rule, a local government may ~~find that approve~~ an amendment ~~that would not~~ significantly affect an existing transportation facility ~~without assuring that the allowed land uses are consistent with the function, capacity and performance standards of the facility~~ where:

- (a) The facility is already performing below the minimum acceptable performance standard identified in the TSP or comprehensive plan on the date the amendment application is submitted, or;
- ~~(b) In~~ the absence of the amendment, planned transportation facilities, improvements and services as set forth in section (4) of this rule would not be adequate to achieve consistency with the identified function, capacity or performance standard for that facility by the end of the planning period identified in the adopted TSP;

A few members of the RAC preferred Option #1, which would make two changes. The current rule allows approval of a local plan or regulation amendments if it qualifies under (a) through (d), even though it would have a significant effect as defined in (1). Option #2 would redefine significant effect so that a qualifying amendment would not be labeled as a significant effect. The second change would be to replace the implied “and” between (a) and (b) with an explicit “or” so that (3) could be used if either condition were met.

*Option #2*

Notwithstanding sections (1) and (2) of this rule, a local government may approve an amendment that would significantly affect an existing transportation facility without assuring that the allowed land

A broad majority of the RAC preferred Option #2 for two reasons. First, the redefinition of the “significant effect” seemed to be contrary to the

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uses are consistent with the function, capacity and performance standards of the facility where:

~~(a) The facility is already performing below the minimum acceptable performance standard identified in the TSP or comprehensive plan on the date the amendment application is submitted;~~

(a) In the absence of the amendment, planned transportation facilities, improvements and services as set forth in section (4) of this rule would not be adequate to achieve consistency with the identified function, capacity or performance standard for that facility by the end of the planning period identified in the adopted TSP;

ordinary usage of the word effect. If an amendment adds trips and adds capacity, it would seem to have an effect, even if the effect is balanced on net and thus eligible to be approved under this section. Second Option #1 would permit (3) to be used on a facility that is failing now, but will be fixed with funded projects. The rezoning could interfere with those plans to correct the current failing. Option #2 broadens the scope of amendments that would qualify for the provisions of (3) by focusing the qualifications on the projected future conditions (rather than current conditions), which is consistent with planning focus of the TPR. The requirement for mitigation by the time of development would not change.

(b) Development resulting from the amendment will, at a minimum, mitigate the impacts of the amendment in a manner that avoids further degradation to the performance of the facility by the time of the development through one or a combination of transportation improvements or measures;

~~(c)~~ The amendment does not involve property located in an interchange area as defined in paragraph (4)(d)(C); and

(d) For affected state highways, ODOT provides a written statement that the proposed funding and timing for the identified mitigation improvements or measures are, at a minimum, sufficient to avoid further degradation to the performance of the affected state highway. However, if a local government provides the appropriate ODOT regional office with written notice of a proposed amendment in a manner that provides ODOT reasonable opportunity to submit a written statement into the record of the local government proceeding, and ODOT does not provide a written statement, then the local government may proceed with applying subsections (a) through ~~(c)~~ of this section.

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

Only minor changes proposed in (4) for consistency.

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- (a) In determining whether an amendment has a significant effect on an existing or planned transportation facility under subsection (1)(c) of this rule, local governments shall rely on existing transportation facilities and services and on the planned transportation facilities, improvements and services set forth in subsections (b) and (c) below.
- (b) Outside of **interstate** interchange areas, the following are considered planned facilities, improvements and services:
- (A) Transportation facilities, improvements or services that are funded for construction or implementation in the Statewide Transportation Improvement Program or a locally or regionally adopted transportation improvement program or capital improvement plan or program of a transportation service provider.
  - (B) Transportation facilities, improvements or services that are authorized in a local transportation system plan and for which a funding plan or mechanism is in place or approved. These include, but are not limited to, transportation facilities, improvements or services for which: transportation systems development charge revenues are being collected; a local improvement district or reimbursement district has been established or will be established prior to development; a development agreement has been adopted; or conditions of approval to fund the improvement have been adopted.
  - (C) Transportation facilities, improvements or services in a metropolitan planning organization (MPO) area that are part of the area's federally-approved, financially constrained regional transportation system plan.
  - (D) Improvements to state highways that are included as planned improvements in a regional or local transportation system plan or comprehensive plan when ODOT provides a written statement that the improvements are reasonably likely to be provided by the end of the planning period.
  - (E) Improvements to regional and local roads, streets or other transportation facilities or services that are included as planned improvements in a regional or local transportation system plan or comprehensive plan when the local government(s) or transportation service provider(s) responsible for the facility, improvement or service provides a written statement that the facility, improvement or service is reasonably likely to be provided by the end of the planning period.
- (c) Within **interstate** interchange areas, the improvements included in (b)(A)-(C) are considered planned facilities, improvements and services, except where:
- (A) ODOT provides a written statement that the proposed funding and timing of mitigation measures are sufficient to avoid a significant adverse impact on the Interstate Highway system,

*Option #1*

This existing section applies a higher level of scrutiny to **interstate** interchanges; whereas, the new section (10) includes all interchanges for special treatment in that section. Some member of the RAC proposed amending this existing text to be consistent with the new (11). This option would remove the highlighted words throughout (4).

*Option #2*

A majority of the RAC did not support amending (4) to include all interchanges because this would increase the level of state regulation, which would be counter to the overall intent.

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then local governments may also rely on the improvements identified in paragraphs (b)(D) and (E) of this section; or  
(B) There is an adopted interchange area management plan, then local governments may also rely on the improvements identified in that plan and which are also identified in paragraphs (b)(D) and (E) of this section.

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

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

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

(C) Interstate interchange area means:

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

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

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

(5) [Transportation facility not a basis for an exception on rural lands]

**(6)** In determining whether proposed land uses would affect or be consistent with planned transportation facilities as provided in 0060(1) and (2), local governments shall give full credit for potential reduction in vehicle trips for uses located in mixed-use, pedestrian-friendly centers, and neighborhoods as provided in (a)-(d) below;

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

Changed to be consistent with new text in (10)(b)(E).

No changes proposed in (5).

No changes proposed in (6).  
Included here for context.

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uses which rely solely on auto trips, such as gas stations, car washes, storage facilities, and motels are prohibited;

- (b) Local governments shall use detailed or local information about the trip reduction benefits of mixed-use, pedestrian-friendly development where such information is available and presented to the local government. Local governments may, based on such information, allow reductions greater than the 10% reduction required in (a);
- (c) Where a local government assumes or estimates lower vehicle trip generation as provided in (a) or (b) above, it shall assure through conditions of approval, site plans, or approval standards that subsequent development approvals support the development of a mixed-use, pedestrian-friendly center or neighborhood and provide for on-site bike and pedestrian connectivity and access to transit as provided for in 0045(3) and (4). The provision of on-site bike and pedestrian connectivity and access to transit may be accomplished through application of acknowledged ordinance provisions which comply with 0045(3) and (4) or through conditions of approval or findings adopted with the plan amendment that assure compliance with these rule requirements at the time of development approval; and
- (d) The purpose of this section is to provide an incentive for the designation and implementation of pedestrian-friendly, mixed-use centers and neighborhoods by lowering the regulatory barriers to plan amendments which accomplish this type of development. The actual trip reduction benefits of mixed-use, pedestrian-friendly development will vary from case to case and may be somewhat higher or lower than presumed pursuant to (a) above. The Commission concludes that this assumption is warranted given general information about the expected effects of mixed-use, pedestrian-friendly development and its intent to encourage changes to plans and development patterns. Nothing in this section is intended to affect the application of provisions in local plans or ordinances which provide for the calculation or assessment of systems development charges or in preparing conformity determinations required under the federal Clean Air Act.

(7) [Special provisions for cities without a TSP amending to affect 2 acres of commercial land]

No changes proposed in (7).

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

No changes proposed in (8). Included here for context.

- (a) Any one of the following:
  - (A) An existing central business district or downtown;
  - (B) An area designated as a central city, regional center, town center or main street in the Portland Metro 2040 Regional Growth Concept;
  - (C) An area designated in an acknowledged comprehensive plan

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- as a transit oriented development or a pedestrian district; or
- (D) An area designated as a special transportation area as provided for in the Oregon Highway Plan.
- (b) An area other than those listed in (a) which includes or is planned to include the following characteristics:
  - (A) A concentration of a variety of land uses in a well-defined area, including the following:
    - (i) Medium to high density residential development (12 or more units per acre);
    - (ii) Offices or office buildings;
    - (iii) Retail stores and services;
    - (iv) Restaurants; and
    - (v) Public open space or private open space which is available for public use, such as a park or plaza.
  - (B) Generally include civic or cultural uses;
  - (C) A core commercial area where multi-story buildings are permitted;
  - (D) Buildings and building entrances oriented to streets;
  - (E) Street connections and crossings that make the center safe and conveniently accessible from adjacent areas;
  - (F) A network of streets and, where appropriate, accessways and major driveways that make it attractive and highly convenient for people to walk between uses within the center or neighborhood, including streets and major driveways within the center with wide sidewalks and other features, including pedestrian-oriented street crossings, street trees, pedestrian-scale lighting and on-street parking;
  - (G) One or more transit stops (in urban areas with fixed route transit service); and
  - (H) Limit or do not allow low-intensity or land extensive uses, such as most industrial uses, automobile sales and services, and drive-through services.

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

New section added to exempt zone map amendments consistent with comprehensive plan map designation.

<p><i>Option #1:</i></p> <ul style="list-style-type: none"> <li>(a) The proposed zoning is consistent with the existing comprehensive plan map designation and the amendment does not change the comprehensive plan map.</li> <li>(b) The local government has an acknowledged TSP.</li> </ul>	<p>A broad majority of the RAC supported Option 1 as a “bright line” test that does not evaluate the specifics of an acknowledged TSP.</p>
<p><i>Option #1A:</i></p> <ul style="list-style-type: none"> <li>(a) The proposed zoning is consistent with the existing comprehensive plan map designation and the amendment does not change the comprehensive plan map.</li> <li>(b) The local government has an acknowledged TSP.</li> <li>(c) The area subject to the amendment was not exempted from this rule at the time of an urban growth boundary amendment as permitted in OAR 660-024-0020(1)(d).</li> </ul>	<p>This variation on option 1 was drafted following the final RAC meeting based on suggestions during the discussion. It would carve out a narrow situation where this exemption cannot be used. The UGB rules in Division 24 allow an area to be brought into the UGB without</p>

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	<p>detailed transportation analysis because the analysis would be required by TPR 0060 at the time of rezoning. In this situation, subsection (c) would not allow this exemption to be used to completely avoid transportation analysis.</p> <p>OAR 660-024-0020(1)(d): “The transportation planning rule requirements under OAR 660-012-0060 need not be applied to a UGB amendment if the land added to the UGB is zoned as urbanizable land, either by retaining the zoning that was assigned prior to inclusion in the boundary or by assigning interim zoning that does not allow development that would generate more vehicle trips than development allowed by the zoning assigned prior to inclusion in the boundary;”</p>
<p><i>Option #2:</i> (c) The proposed zoning is consistent with the TSP assumptions about development of the area of the proposed amendment. The proposed zoning is not consistent with the TSP if the TSP is based upon an assumption that the current zone would continue or an assumption that the area would remain undeveloped throughout the planning horizon, or if the area was brought into the urban growth boundary without applying this rule as permitted in OAR 660-024-0020(1)(d). A TSP need not include a detailed traffic impact analysis for the specific area of the amendment to be consistent with the proposed zoning.</p>	<p>A few members of the RAC supported including additional provisions to determine whether the proposed amendment is consistent with prior planning in the TSP. Subsections (a) and (b) would be the same as Option #1.</p>
<p><i>Option #2A:</i> (c) The proposed zoning is consistent with the TSP assumptions about development of the area of the proposed amendment. Consistency means: (A) forecast annual daily traffic (ADT) in the acknowledged TSP is within twenty percent of current ADT in the impact area; and (B) the most recent acknowledged population forecast is within twenty percent of actual population of the jurisdiction. (d) The proposed zoning is not consistent with the TSP if: (A) the TSP assumed continuation of the current zone; (B) the TSP assumed the area would remain undeveloped throughout the planning horizon; or (C) the urban growth boundary was expanded without applying this rule as permitted in OAR 660-024-0020(1)(d).</p>	<p>This option was proposed by members of the RAC that supported option 2 following the RAC meeting.</p>

**(10)** Notwithstanding sections (1) and (2) of this rule, a local government may amend a functional plan, a comprehensive plan or a land use regulation without applying performance standards related to motor vehicle traffic congestion (e.g. volume to capacity ratio or V/C), delay or travel time if the amendment meets the requirements of subsection (a) of this section. This section does not exempt a proposed amendment from other transportation performance standards or policies that may apply including, but not limited to, safety for all modes, network connectivity for all modes (e.g. sidewalks, bicycle lanes) and accessibility for freight vehicles of a size and frequency required by the development.

New section to designate multimodal, mixed-use areas that are exempt from congestion performance standards. Using this exemption would be a two-step process, although the two steps could be combined into a single process and approved at the same meeting.

The first step is to designate an area where this exemption will apply. The requirements for what kind of area qualifies are in (b) and (c). The process to designate the area is in (d), or (e) if zoning changes are needed to qualify.

The second step is to evaluate a proposed upzoning without regard to congestion standards. If the rezoning meets other approval criteria and meets the requirements in (a), then it is approved.

- (a) A proposed amendment qualifies for this section if it:
  - (A) is a map or text amendment affecting only land entirely within a multimodal mixed-use area (MMA); and
  - (B) is consistent with the definition of an MMA and consistent with the function of the MMA as described in the findings designating the MMA.
- (b) For the purpose of this rule, “multimodal mixed-use area” or “MMA” means an area:
  - (A) with a boundary adopted by a local government as provided in subsection (d) or (e) of this section and that has been acknowledged;
  - (B) entirely within an urban growth boundary;
  - (C) with adopted plans and development regulations that allow the uses listed in paragraphs (8)(b)(A) through (C) of this rule and that require new development to be consistent with the characteristics listed in paragraphs (8)(b)(D) through (H) of this rule;

Typically an upzoning would be consistent with the definition and function of an MMA. A rezone to reduce the intensity of uses would not be consistent.

(A) through (C) in (8)(b) list the types uses expected in MMA, but obviously each development, and each rezoning will not include all of these uses. (D) through (H) list development standards that would apply to each development within an MMA.

(D) with land use regulations that do not require the provision of off-street parking, or regulations that require lower levels of off-street parking than required in other areas and allow

Within an MMA people would not be completely reliant on automobiles; therefore

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- flexibility to meet the parking requirements (e.g. count on-street parking, allow long-term leases, allow shared parking); and
- (E) located in one or more of the categories below:
- (i) at least one-quarter mile from any interchange exit ramp terminal intersection;
  - (ii) within the area of an adopted Interchange Area Management Plan (IAMP) and consistent with the IAMP; or
  - (iii) within one-quarter mile from any interchange ramp terminal intersection if the mainline facility provider has provided written concurrence with the MMA designation as provided in subsection (c) of this section.
- (c) When a mainline facility provider reviews an MMA designation near an interchange, the provider must consider the factors listed in paragraph (A) of this subsection.
- (A) The potential for operational or safety effects to the interchange area and the mainline highway, specifically considering:
- (i) whether the interchange area has a crash rate that is higher than the statewide crash rate for similar facilities;
  - (ii) whether the interchange area is in the top ten percent of locations identified by the safety priority index system (SPIS) developed by ODOT; and
  - (iii) whether existing or potential future traffic queues on the interchange exit ramps extend onto the mainline highway or the portion of the ramp needed to bring a vehicle to a full stop from posted mainline speeds.
- (B) If there are operational or safety effects as described in paragraph (A) of this subsection, the effects may be addressed by an agreement between the local government and the facility provider regarding traffic management plans favoring traffic movements away from the interchange, particularly those facilitating clearing traffic queues on the interchange exit ramps.
- (d) A local government may designate an MMA by adopting an amendment to the comprehensive plan or land use regulations to delineate the boundary following an existing zone, multiple existing zones, an urban renewal area, other existing boundary, or establishing a new boundary. The designation must be accompanied by findings showing how the area meets the definition of an MMA. Designation of an MMA is not subject to the requirements in sections (1) and (2) of this rule.
- (e) A local government may designate an MMA on an area where comprehensive plan map designations or land use regulations do not meet the definition, if all of the other elements meet the definition, by concurrently adopting comprehensive plan or land use regulation amendments necessary to meet the definition. Such amendments are not subject to performance standards related to

development regulations that mandate parking can be relaxed.

This section addresses interchanges, along with (c) below. Interchanges are the most expensive part of the network, thus the balance of competing objectives shifts somewhat near interchanges. The goal is to ensure safe operation of the interchange throughout the planning horizon because it is unlikely that an interchanges will be rebuilt to accommodate additional traffic.

One-quarter mile from the intersection is consistent with ODOT access management regulations near interchanges (Division 51). Freeway to freeway interchanges do not have terminal intersections and thus would not be included in this requirement, which is appropriate since nearby development would not have any way to affect the freeway. An agreement could include, trigger points for actions such as adjusting signal timing, access management, extending off ramps, variable speed control, and other traffic system management and operation actions.

This section is intended to prevent a “catch-22” where an area cannot be designated because it does not have mixed-use zoning, and cannot be rezoned because that would

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motor vehicle traffic congestion, delay or travel time.

have a significant effect under existing congestion standards.

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

New section added to allow balancing economic development benefits with transportation effects. While a majority of the RAC supported this, some RAC members did not want to allow *partial* mitigation. They preferred the *proportional* mitigation in the proposed amendments to (3) and the mitigation options in the proposed new subsection (2)(e).

- (a) The amendment must meet paragraphs (A) and (B) of this subsection [or meet paragraph (C) of this subsection].
  - (A) Create direct benefits in terms of industrial or traded-sector jobs created or retained by limiting uses to industrial or traded-sector industries.
    - (i) For the purposes of this rule, “industrial use” means employment activities generating income from the production, handling or distribution of goods including, but not limited to, manufacturing, assembly, fabrication, processing, storage, logistics, warehousing, importation, distribution and transshipment and research and development.
    - (ii) For the purposes of this rule, “traded-sector” has the meaning given in ORS 285A.010.
  - (B) Not allow retail uses, except limited retail incidental to industrial or traded sector development, not to exceed five percent of the net developable area.

The phrase “industrial or traded sector” and the definition of “industrial” come from SB 766.

ORS 285A.010 defines “Traded sector” as industries in which member firms sell their goods or services into markets for which national or international competition exists.

*Option #1*

- (C) Notwithstanding paragraphs (A) and (B) of this subsection, an amendment complies with subsection (a) if all of the following conditions are met:
  - (i) The amendment is within a city with a population less than 10,000 and outside of a Metropolitan Planning Organization.
  - (ii) The amendment would provide land for “Other Employment Use” or “Prime Industrial Land” as those terms are defined in OAR 660-009-0005
  - (iii) The amendment is located within a county where the annual average unemployment rate is greater than the annual average unemployment rate of the State of Oregon.

A majority of the TAC supported a broader definition of economic development for smaller communities. One reason for a broader definition is that smaller communities may be unable to attract traded-sector jobs. Another reason is that an employment use (e.g. retail) could in some cases benefit the transportation system by reducing trips to nearby larger cities. OAR 660-009-0005: (6) "Other Employment Use" means all non-industrial

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	<p>employment activities including the widest range of retail, wholesale, service, non-profit, business headquarters, administrative and governmental employment activities that are accommodated in retail, office and flexible building types. Other employment uses also include employment activities of an entity or organization that serves the medical, educational, social service, recreation and security needs of the community typically in large buildings or multi-building campuses.</p> <p>...</p> <p>(8) "Prime Industrial Land" means land suited for traded-sector industries as well as other industrial uses providing support to traded-sector industries. Prime industrial lands possess site characteristics that are difficult or impossible to replicate in the planning area or region. Prime industrial lands have necessary access to transportation and freight infrastructure, including, but not limited to, rail, marine ports and airports, multimodal freight or transshipment facilities, and major transportation routes. Traded-sector has the meaning provided in ORS 285B.280</p>
<p><i>Option #2 – Consistent definition for all communities, thus no additional subsection for smaller communities.</i></p>	<p>Other members did not support a different definition for smaller communities because partial mitigation imposes costs to the rest of the state (either in congestion or state funds needed to make up the difference) and thus should only be available when there was a net benefit to the state. They felt</p>

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*Explanations*

	<p>that some development (e.g. retail) moves jobs from one area to another and thus should not qualify for what amounts to a subsidy from the state.</p>
<p>(b) A local government may accept partial mitigation only if the local government determines that the benefits outweigh the negative effects on local transportation facilities and the local government receives from the provider of any transportation facility that would be significantly affected written concurrence that the benefits outweigh the negative effects on their transportation facilities. If the amendment significantly affects a state highway, then ODOT must coordinate with the Oregon Business Development Department regarding the economic and job creation benefits of the proposed amendment as defined in subsection (a) of this section. The requirement to obtain concurrence from a provider is satisfied if the local government provides notice as required by subsection (c) of this section and the provider does not respond in writing (either concurring or non-concurring) within forty-five days.</p> <p>(c) A local government that proposes to use this section must coordinate with Oregon Business Development Department , Department of Land Conservation and Development, area commission on transportation, metropolitan planning organization, and all affected transportation providers to allow opportunities for comments on whether the proposed amendment meets the definition of economic development, how it would affect transportation facilities and the adequacy of proposed mitigation. Informal coordination is encouraged throughout the process starting with pre-application meetings. Formal coordination must include notice at least forty-five days before the first evidentiary hearing. Notice must include the following:</p> <ol style="list-style-type: none"><li>i. Proposed amendment.</li><li>ii. Proposed mitigating actions from section (2) of this rule.</li><li>iii. 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.</li><li>iv. Findings showing how the proposed amendment meets the requirements of subsection (a) of this section.</li><li>v. Findings showing that the benefits of the proposed amendment outweigh the negative effects on transportation facilities.</li></ol>	<p>This subsection describes what is different for amendments that meet the definition in (a). The RAC decided it was important to require concurrence from ODOT and the county if their facilities would be affected. Because ODOT is not the state agency responsible for evaluating economic development benefits, there is a requirement to coordinate with Business Oregon.</p>