



& A s s o c i a t e s

M E M O R A N D U M

TO: Land Conservation and Development Commission
FROM: Frank Angelo
DATE: March 1, 2005
CC: Bruce Warner, ODOT Director
Lane Shetterly, DLCD Director
FILE #: 009-005
RE: March 16th Hearing on the Transportation Planning Rule - Revisions to OAR
660-012-0060

The attached version of Section 660-012-0060 includes suggested refinements prepared by staff in response to comments and/or questions received at the February 4th LCDC Hearing. As well, the Joint OTC/LCDC Transportation Subcommittee met on February 15th and provided additional direction to staff on refinements to this section of the Transportation Planning Rule. The attached version of Section 660-012-0060 provides the refinements and commentary specific to the suggested amendments to the text that have been developed subsequent to your February 4th Hearing.

<p align="center">Proposed Amendments: OAR 660-012-0060 <u>Plan and Land Use Regulation Amendments</u></p>	<p align="center"><u>Response to February 4th LCDC Hearing</u></p>
<p>Section 660-012-0060: Plan and Land Use Regulation Amendments</p>	
<p>The following text shows proposed changes to proposed rule language shows changes from the January 3, 2005 proposed rule amendments. reflects proposed amendments to section 660-012-0060 prepared by staff in response to issues and/or concerns raised at the February 4th LCDC Hearing and direction received from the February 15th Joint OTC/LCDC Transportation Subcommittee on this section. New language is in bold; deleted language is struck over.</p>	<p>The commentary provided below addresses only those changes to Section 660-012-0060 that have been prepared in response to comments and/or questions raised at the February 4th LCDC Hearing and direction received from the February 15th Joint OTC/LCDC Transportation Subcommittee.</p>
<p>SECTION 660-012-0060 (1)</p> <p>(1) Where an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation would significantly affect an existing or planned transportation facility, the local government shall put in place measures as provided in section (2) 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:</p> <p>(a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);</p> <p>(b) Change standards implementing a functional classification system; or</p> <p>(c) As measured at the end of the planning period identified in the adopted transportation system plan:</p> <p>(A) Allow land uses types or levels of development land uses 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;</p> <p>(B) Reduce the performance of an existing or planned transportation facility below the minimum acceptable performance standard identified in the TSP or comprehensive plan; or</p>	<p>1(a): Suggested language from Mike Montero to exclude correcting mapping errors as being considered to have a significant effect when it results in a functional classification change.</p> <p>1(c)(A): Clarifying language suggested by Metro in preliminary comments.</p>

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<p>(C) Worsen the performance of an existing or planned transportation facility that is otherwise projected to perform below the minimum acceptable performance standard identified in the TSP or comprehensive plan.</p>	
<p>SECTION 660-012-0060 (2)</p> <p>(2) Where a local government determines that there would be a significant effect, compliance with OAR 660-012-0060(1) shall be accomplished through one or a combination of the following:</p> <p>(a) Adopting measures that demonstrate allowed land uses are consistent with the planned function, capacity, and performance standards of the transportation facility.</p> <p>(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 OAR 660-012-0060(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.</p> <p>(c) Altering land use designations, densities, or design requirements to reduce demand for automobile travel and meet travel needs through other modes.</p> <p>(d) Amending the TSP to modify the planned function, capacity or performance standards of the transportation facility.</p> <p>(e) Providing other measures as a condition of development or through a development agreement or similar funding method, including transportation system management measures, demand management or minor transportation improvements. Locals governments shall as part of the amendment specify when measures or improvements provided pursuant to this subsection will be provided.</p>	<p>(2)(b): Added “improvements or services” to make this section consistent with other 0060 sections. Clarifying language is provided to indicate if a local jurisdiction amends its TSP or comprehensive plan by adding a transportation facility, improvement or service to address a significant effect, that is also needs to include a funding plan or mechanism to demonstrate how the facility, improvement or service will be provided by the end of the planning period.</p> <p>(2)(e): Added language to provide additional examples of how this subsection could be met. New language intended to clarify that the timing of required mitigation measures is determined by the local government and is not necessarily tied to the end of the planning period.</p>

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<p>SECTION 660-012-0060 (3)</p> <p>Notwithstanding subsections (1) and (2) of this rule, a local government may approve an amendment that would significantly affect an existing transportation facility without assuring that the allowed land uses are consistent with the function, capacity and performance standards of the facility where:</p> <p>(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;</p> <p>(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;</p> <p>(c) The proposed development 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. in a manner that avoids further degradation to the performance of the facility; and moves the facility in the direction of achieving compliance with its identified performance standard;</p> <p>(d) The amendment does not involve property located within one-half mile of an existing or planned interchange on an Interstate Highway, as measured from the center point of the interchange in an interchange area as defined in section 660-012-0060(4)(d)(C); and</p> <p>(e) For affected state highways, ODOT provides a written statement that the proposed funding and timing for the identified mitigation improvements or measures are, at a minimum, sufficient to avoid further degradation to the performance of the affected state highway. and move the facility in the direction of achieving compliance with its identified performance standard. 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</p>	<p>Section 3 has been been reorganized for readability. Changes reflect Subcommittee recommendations that were presented to the Commission at the February 4th Hearing.</p> <p>(3)(c): “At a minimum” has been added to this subsection {and subsection (3)(e)} to apply this subsection in a manner that is more consistent with the Dolan proportionality test. Comments received at the February 4th hearing indicated that the previous language (“moves the facility in the direction...”) was too vague and possibly violated the Dolan test. Therefore, the “moves the facility in the direction... language has been removed.</p> <p>(3)(e): Additional language is provided to clarify that under the specific circumstances of section 0060 (3) ODOT has the responsibility to provide a written statement and, that if ODOT has a reasonable opportunity to provide comments into the record and fails to exercise that responsibility, the local government may proceed with applying subsections (a) through (d).</p>

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<p>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 (d) of this section.</p>	
<p>SECTIONS 660-012-0060 (4)</p> <p>(4) Determinations under sections (1)-(3) of this rule shall be coordinated with affected transportation facility and service providers and other affected local governments.</p> <p>(a) In determining whether an amendment has a significant effect on an existing or planned transportation facility under section (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 (b) and (c) below.</p> <p>(b) Outside of interstate interchange areas, the following are considered planned facilities, improvements and services:</p> <p>(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.</p>	<p>Section 660-012-0060(4) has be reordered in its entirety and refined to more clearly present the distinctions between projects within interstate interchange areas and projects outside of interstate interchange areas. A definition of Interstate Interchange areas is provided in subsection (d)(C).</p> <p>(4)(b) provides the list of planned facilities, improvements and services that can be relied upon outside of interstate interchange areas.</p>

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<p>(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.</p> <p>(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.</p> <p>(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.</p> <p>(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.</p> <p>(c) Within interstate interchange areas, the improvements included in (b)(A)-(C) are considered planned facilities, improvements and services, except where:</p> <p>(A) ODOT provides a written statement that the proposed funding and timing of mitigation measures are sufficient to avoid a significant adverse impact on the Interstate Highway system, then local governments may also rely on the improvements identified</p>	<p>(4)(b)(D) and (E) specifically ties the determination of “reasonably likely to be provided” to “by the end of the planning period”. This replaces the previous “within the planning period”. The “by the end...” language is intentionally used to indicate that the improvements in (D) and (E) could occur at any time during the planning period and not just at the end of a planning period.</p> <p>(4)(c) provides the narrowed list of planned facilities, improvements and services that can be relied upon inside of interstate interchange areas [only those listed in (b)(A)-(C)] and also allows a written statement from ODOT or and improvements identified in an adopted Interchange Area Management Plan to meet this standard.</p>

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<p>in subsections (a)(D) and (E) of this section; or</p> <p>(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 subsections (a)(D) and (E) of this section.</p> <p>(d) As used in this section and section (3):</p> <p>(A) Planned interchange means new interchanges and relocation of existing interchanges that are authorized in an adopted transportation system plan or comprehensive plan;</p> <p>(B) Interstate highway means Interstates 5, 82, 84, 105, 205 and 405; and</p> <p>(C) Interstate interchange area means:</p> <p>(1) Property within one-half mile of an existing or planned interchange on an Interstate Highway as measured from the center point of the interchange; or</p> <p>(2) The interchange area as defined in the Interchange Area Management Plan adopted as an amendment to the Oregon Highway Plan.</p> <p>(e) For purposes of this section, a written statement provided pursuant to subsection (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 section 4(b) (A)-(C) to determine whether there is a significant effect that requires application of the remedies in OAR 660-012-0060(2).</p>	<p>(4)(d) presents definitions of terms used in subsection (4).</p> <p>(4)(e): Additional language added in response to testimony at the February 4th hearing to clarify that the written statement is deemed conclusive to make determination of a planned transportation facility, improvement or service. Absent a written statement, an applicant could only rely on planned transportation facilities, improvements or services in 4(b)(A)-(C). An applicant would still have the remedies available in 0060(2) to achieve compliance with this rule and, therefore, this subsection not intended to be a land use decision nor the final judgement/step in reviewing a plan amendment application.</p>

NOTE: Existing sections 660-012-0060 (4) – (7) will be renumbered as sections 660-012-0060 (5) – (8). No amendments to existing sections 660-012-0060 (4) – (7) are proposed.

