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Chapter 1: Oregon Administrative Rule 731-017

Background

House Bill (HB) 3379 (see Appendix C), passed during the 2009 legislative session, directed the Oregon Transportation Commission (OTC) to adopt an administrative rule establishing an application process that local governments may use for economic development projects if they are not able to meet the funding or timing requirements of the Transportation Planning Rule (TPR) related to state highways. The resulting Oregon Administrative Rule (OAR 731-017) describes how a local jurisdiction may work with the OTC and the Oregon Department of Transportation (ODOT or Agency) to do one of the following:

- Apply for a time extension to meet TPR requirements.
- Submit a plan proposing alternative methods of funding for projects that will allow the proposed development to meet the highway mobility standards adopted by the OTC.
- Apply to adjust existing traffic performance measures or allow use of alternative performance measures other than volume to capacity ratios (v/c) during an interim period prior to completion of construction of the proposed development and completion of the required transportation improvement project by the end of the planning period.
- Apply to adjust existing traffic performance measures or to allow various types of traffic performance measures other than v/c that address the specific traffic impacts of an economic development project when the required transportation improvement will not be provided by the end of the planning period.

The legislation included limitations on the process to be described in the administrative rule, including OTC approval of no more than four applications in each ODOT Region per calendar year.

Based on review of the legislation and work with a Stakeholder Committee, ODOT prepared an administrative rule to implement the provisions of HB 3379. A public hearing on the rule was held on November 17, 2010. The OTC adopted Oregon Administrative Rule 731-017-0005 through 731-017-0055 on December 15, 2010. This document provides guidance on the steps necessary to implement the sections of this administrative rule.
**HB 3379 Stakeholder Committee**

The HB 3379 Stakeholder Committee was established to advise the ODOT Director on implementation of HB 3379. Stakeholder Committee members (see Appendix B) were appointed based on their wide range of viewpoints and geographically-diverse knowledge of development and transportation issues. The primary Stakeholder Committee tasks included:

- Providing input and recommendations on rulemaking to the ODOT Director and OTC as required by the legislation.
- Providing recommendations on related issues outside of rulemaking that the Agency may consider for further work to balance transportation and development objectives.

The Stakeholder Committee met six (6) times in 2010 and forwarded a recommended administrative rule to the ODOT Director following its September 2010 Meeting.

**Organization of Guidelines**

The OAR 731-017 Guidelines are intended as a living document, to be updated periodically as additional information is obtained from research or applications. This document is organized as follows:

- Chapter 1: Oregon Administrative Rule 731-017 Background
- Chapter 2: Implementation Guidance for Oregon Administrative Rule 731-017 / Section-by-Section Guidance
- Appendix A: Oregon Administrative Rule 731-017
- Appendix B: HB 3379 Stakeholder Committee Members and Affiliation
- Appendix C: House Bill 3379 Enrolled
- Appendix D: Oregon Administrative Rule 660-012-0060 (As Effective March 2011)
Chapter 2: Implementation Guidance for Oregon Administrative Rule 731-017 / Section-by-Section Guidance

Chapter 2 provides section-by-section guidance for ODOT staff and local jurisdictions to consider when preparing and reviewing applications filed under OAR 731-017. The adopted administrative rule text is provided in Appendix A and is available on the Secretary of State’s Oregon Administrative Rules website. As additional implementation questions arise, as experienced is gained, or as a result of policy changes, Chapter 2 may be refined and expanded to provide further clarification and guidance.

731-017-0005: Purpose

The Purpose Section notes that the administrative rule:

- Is intended to facilitate projects that support economic development and job creation that cannot meet TPR funding or timing requirements in Section 660-012-0060. (See “Economic development projects” definition in Section 731-017-0010).
- Applies only to those amendments to comprehensive plans and land use regulations (including zone changes) that significantly affect the state highway system.
- The initial significant effect determination needs to follow the accepted 660-012-0060 ODOT analysis procedures and methodologies and apply the existing mobility standards that are in place prior to any relief provided through 731-017.
- This is an ODOT / OTC administrative rule. Therefore, the provisions only apply to state highway facilities.
- Provides tools to encourage innovation and flexibility beyond what is already permitted through Oregon Highway Plan (OHP) alternate mobility standard processes in OHP Action 1F.3. One aspect of this rule is that it provides a more expeditious method for obtaining alternate mobility standards for eligible plan amendments / projects.
- Is not intended (or authorized) to supersede TPR requirements.

This rule is intended to provide additional flexibility beyond what can be obtained through ODOT’s alternate mobility standard process. The provisions of this rule apply only to state highway facilities and do not supersede TPR requirements.
• Is intended to offer more innovation and flexibility in meeting TPR requirements beyond that already allowed in OAR 660-012-0060(2) and (6) when certain conditions dictate its use (i.e. when a local government has an opportunity to locate a specific economic development project within its jurisdiction but the land use action cannot comply with Section 0060 of the TPR related to state highways).

• This rule does not apply to other technical reviews ODOT would undertake on specific development proposals (i.e. access management permits, site plan review, etc…).

731-017-0010: Definitions

This section provides the important definitions that the rule relies upon. The key definition and cornerstone of this rule is the definition of an economic development project in OAR 731-017-0010(4):

“Economic development projects” means those projects that demonstrate the direct benefits in terms of “primary” jobs created or retained by the development opportunity. Primary jobs are those in such areas as manufacturing, production, warehousing, distribution, or others that create new wealth for the Oregon economy.

An initial recommendation for this definition was coordinated through the Oregon Business Development Commission. The HB 3379 Stakeholder Committee discussed this definition in great detail and concluded that applications submitted to ODOT under this rule should be based on the presumption that approval of the application will result in actual job commitment / creation / retention as defined in 731-017-0010(4). The Stakeholder Committee used the term “fish on the hook” to state their intent that any application be based on a concrete development proposal as opposed to aspirational desires, and clearly demonstrate and document the job commitment / creation / retention that would result from approval of an application filed under this rule. It is the applicant’s responsibility to provide clear findings regarding job commitment / creation / retention.

If an application cannot firmly demonstrate primary job commitment / creation / retention resulting from a specific development proposal as defined by the definition of an economic development project in this rule, the flexibility provided by the rule is not available. Aspirational amendments that would change the comprehensive plan / zoning...
designation but cannot demonstrate actual job commitment / creation / retention as a part of the local approval are not eligible for the flexibility provided by this rule. These types of amendments should continue to use existing flexibility under the TPR and OHP.

Other key definitions include:

- Funding requirements: funding plan to avoid a significant effect (731-017-0010(5)).
- Long-term economic benefits: net economic benefits anticipated to occur from the economic development project following completion of construction (731-017-0010(8)).
- Traffic performance measures: minimum acceptable standards of performance identified in adopted state, regional or local TSPs (e.g. OHP mobility standards) (731-017-0010(17)).

The reader is encouraged to review the specific definitions provided in the rule for additional detail and information.

**731-017-0015: Applications for Time Extensions, Alternative Funding Plans, or Adjustments or Alternatives to Traffic Performance Measures**

This section of the rule is the enabling section that authorizes the various types of applications that can be filed and identifies the local government as the applicant under this rule. This section also notes certain limitations regarding the OTC’s review of applications.

Specifically, Section 731-017-0015 enables applications for:

- Time extensions to meet TPR requirements.
- Alternative funding plans.
- Adjustments to performance measures or alternative traffic performance measures other than v/c.

This section identifies the local government as the applicant in 731-017-0015(1):

*When a local government amendment needed to authorize an economic development project cannot meet the funding requirements of the Transportation Planning Rule as they relate to state highways, the local government may apply for:*

**HB 3379 designs the “Local Government” as the applicant for OAR 731-017 requests.**
In terms of guidance, this section is interpreted to mean that the local government would submit the application under this rule on behalf of the applicant for the local land use action (plan amendment / zone change). Because the local government submitting the OAR 731-017 application is the same local government that will be deciding the land use application, it is important that the “local government applicant” be the City Manager, County Administrator, Planning Director or designee, rather than the Planning Commission, City Council or Board of Commissioners, in order to avoid the potential appearance of a conflict.

The expectation is that, while the local government is the formal applicant for OAR 731-017, the applicant that initiated the local action (plan amendment / zone change) will provide the necessary materials and findings and participate in proceedings before ODOT.

This section also:

- Limits OTC approval to four (4) applications in each ODOT Region per calendar year. It does not limit the number of applications that can be submitted in a calendar year – only the number the OTC can approve. This language directly implements the provisions in HB 3379.
- Notes that this rule does not apply to OTC approval of alternate mobility standards developed through system planning authorized pursuant to OHP Policy 1F, Action 1F.3. Alternate mobility standards through system planning work requires a more thorough analysis and consideration of system performance and operations and they are not limited in number or geographic scope.

731-017-0020: Application Submittal Requirements

This section sets out the submittal requirements to be included in all applications submitted under this rule. It is anticipated that many of the requirements called for in this section will already exist as part of the local land use action (plan amendment / zone change) proceeding, and that applications filed under this rule will be able to summarize or attach existing local application materials to provide the necessary findings supporting an application. It is not the intent of either the HB 3379 Stakeholder Committee or ODOT staff to require extensive additional materials or make application submittal a cumbersome technical process. Still, to meet the intent of the rule and to inform OTC decisions, inclusion
of certain information is critical to these applications and will be expected to be provided or addressed in any submittal.

Section 731-017-0020 can be separated into four parts:

- Procedure
- Narrative
- ODOT Region Determination of Completeness
- Maximum Number of Local Government Applications

Each part is discussed below. Again, these requirements apply to all applications. The following rule sections include additional submittal requirements / information specific to the particular type of application being filed.

**Procedure**

The following steps initiate an application filed under this rule:

- Prior to filing, the Local Government (applicant) seeks input from and coordinates with the public, affected local governments and agencies, and ODOT on the plan amendment or zone change.
- Prior to filing, a pre-application conference is held between the local government, the applicant and ODOT Region staff (coordinated by the ODOT Region Planning Manager).
- ODOT provides opportunity for the Department of Land Conservation and Development (DLCD) and Oregon Business Development Department (Business Oregon) to provide input and participate in the pre-application conference.
- Application is filed by the local government with ODOT Region Manager with a copy to the ODOT Region Planning Manager.
- Once the application is filed, the ODOT Region Planning Manager becomes the primary contact and staff responsible for reviewing and coordinating the application and meeting mandated timelines.
- Application includes any appropriate forms provided by ODOT.

The rule mandates early coordination with the public, affected local governments and agencies, and ODOT Region staff prior to application submittal and requires that the level of coordination be documented in the

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submitted application. The level of early coordination is up to the applicant but should include:

- Reviewing the nature of the plan amendment with the ODOT Region Planning Manager and any affected agencies and what approval of the application would accomplish.
- Discussing anticipated transportation impacts, technical methodologies the applicant is considering and early thoughts on potential mitigation measures.
- Identifying discussions with ODOT or other agencies that have previously occurred.

A formal Pre-Application Conference will be scheduled by the ODOT Region Planning Manager to discuss the nature of the potential application prior to submittal. The ODOT Region Planning Manager will notify DLCD and Business Oregon and invite their comments and/or participation in the conference. Comments from these agencies will assist ODOT and the OTC in evaluating the long term economic benefits of the economic development project and prioritizing projects within an ODOT Region. These comments will also help the applicant develop a complete application.

**Narrative**

Application narratives must provide the following information. The level of detail provided to address each item is at the discretion of the applicant, but should be commensurate with the extent of anticipated traffic impacts and the extent of non-compliance with the existing mobility standards. Again, the expectation is that much of the information called for in this section will already exist within the local action (plan amendment / zone change and traffic impact analysis) and that to a large extent, applications filed under this rule will be able to summarize or attach existing local application material to provide the necessary findings supporting an application.

**Narrative “Checklist”:**

- Identify the economic development project for which an amendment to a comprehensive plan or land use regulation is being proposed.
- Identify the state highway(s) that would be significantly affected by the proposed amendment within the planning horizon, their functional classifications and traffic performance measures (mobility standards), and the extent of non-compliance with the
mobility standards (or the extent above the existing / projected conditions for a facility already operating over standard).

- The initial significant effect determination needs to be technically based on accepted ODOT analysis procedures and methodologies.
- Identify the basis for the determination that improvements to state highways are not reasonably likely to be provided by the end of the planning period or that the funding or timing for mitigation measures are insufficient to avoid adverse impacts on state highway performance.
- Demonstrate the benefits of the proposed economic development project, including an estimate of the number of new primary jobs the development is likely to create or retain within the community and their associated average salary. The estimates of new or retained primary jobs and economic development benefits could be developed through collaboration with local economic development agencies, local planning agencies, the job creation estimates from the proposed user or other sources. This information will be shared with Business Oregon to solicit their input on the job creation potential of a proposal and eligibility under the economic development project definition (OAR 731-017-0010(4)).
- Address how the application meets the specific criteria in OAR 731-017-0025 through 0035, as appropriate, and the review criteria in OAR 731-017-0040.
- Explain why compliance with OAR 660-012-0060(1) cannot otherwise reasonably be accomplished through one or a combination of the measures in OAR 660-012-0060(2), including the phasing of development over time, access management measures, transportation system management measures, transportation demand measures, or the use of trip caps.
- Address how the project will impact traffic safety along the state highway corridor.
- Address how the project will impact the movement of freight along an affected state highway that is a designated OHP freight route.
- Identify the public involvement and local government coordination opportunities that have been provided with respect to the application.
- Include attachments that provide background information supporting the application and proposed amendment, such as a copy of the amendment application filed with the local government, a description of the proposed economic development
project, a map showing the affected area and the location of affected state highways, transportation analyses and studies submitted with the amendment application, a copy of any reasonably likely determination provided by ODOT, and other relevant information.

- For applications affecting lands within one-half mile of an interstate interchange area as defined in OAR 660-012-0060(4)(d)(C) address how the application is consistent with the following:
  i. An adopted Interchange Area Management Plan, if one exists.
  ii. The function of the interchange.
  iii. ODOT access management requirements for the interchange.

**ODOT Region Determination of Completeness**

- The ODOT Region Planning Manager shall notify a local government whether the application is complete within 14 days of submittal.
- If notified that the application is incomplete, the local government may choose to provide the missing information or to present it as written.
- If presented as written, the extent of incompleteness shall be noted in the ODOT Director’s report. Where incomplete information impedes the Director’s review for compliance with criteria, the Director shall so note in the Director’s report and may recommend denial of the application.

**Maximum Number of Local Government Applications**

- A local government shall not have more than one application approved by the Commission pursuant to this division within a calendar year.
- Where a local government application has been approved by the OTC within the previous three calendar years, the same local government shall not file any additional applications for property located within the identified traffic impact area of the economic development project that was the subject of the previously approved application.

The staff and Stakeholder Committee included these last two conditions to recognize that the legislation was limiting in the actual number of applications that could be approved within an ODOT Region on an annual basis. The intent of the rule is to provide a level of equity in terms of how many applications could be approved in a single jurisdiction in a calendar
year. The three-year limitation on approval of an application within a specified traffic impact area is intended to avoid the cumulative impacts of incrementally altering standards or performance measures in a targeted area and promoting a system / facility level evaluation.

**731-017-0025: Additional Requirements for Time Extensions to Meet Funding Requirements**

This section includes additional submittal requirements specific to an application requesting a time extension to meet funding requirements. Existing rules and policies require use of the planning horizon in the adopted local and/or regional transportation system plan when evaluating the impacts of plan amendments. A minimum analysis period of fifteen (15) years beyond the application date is currently required in the OHP for plan amendments that impact state highways. An application requesting a time extension beyond the authorized 15 year period (up to 20 years) may require an application if not already covered by the planning horizon in the local plan and, if approved, will result in an OHP amendment. An extension beyond 20 years would exceed the TPR and is not allowed under this rule. The additional information / narrative “checklist” requirements for time extensions beyond 15 years include:

- Identify the additional time period requested to meet TPR funding requirements – up to 20 years from the date of application.
- Describe the proposed mitigation measures that support the time extension request.
- Discuss why the time extension is reasonable and necessary, what will be accomplished during the additional time period to make compliance with OAR 660-012-0060(1) more likely by its conclusion, and how the extension might adversely impact other existing uses in the community or along affected corridors.

**731-017-0030: Additional Requirements for Alternative Funding Plans**

This section includes additional submittal requirements specific to an application requesting approval of an alternative funding plan to meet TPR requirements. Applications filed under this section are encouraged to look for creative / innovative methods to finance transportation improvements that will support the proposed economic development project. The additional information / narrative “checklist” requirements include:
• Estimate the additional funds required to construct improvements or provide identified mitigation measures.
• Describe the proposed alternative funding method and how it will be adequate to alleviate the funding shortfall.
• Explain why implementation of the proposed alternative funding method is feasible and likely to occur.
• If applicable, demonstrate commitment by other public or private entities to participate in the funding method.

**731-017-0035: Additional Requirements for Adjustments or Alternatives to ODOT Traffic Performance Measures**

This section includes additional submittal requirements specific to an application requesting approval of adjustments or alternatives to ODOT traffic performance measures. The adjustments or alternative traffic performance measures resulting from approval of an application would be enacted to allow the identified economic development project to proceed.

ODOT relies upon v/c-based analysis methods because this approach was found to be more precise, reliable and measurable when determining impacts to the state highway system after an extensive evaluation of different measures during OHP development. However, this rule allows an applicant to propose an alternative measure and to obtain ODOT’s agreement on the proposed methodology as it relates to the specific application request. From ODOT’s perspective the preferred measure is to remain v/c (or v/c based) but an applicant has the option to submit other measures and demonstrate how the proposed measure will comply with the objectives of and criteria in this administrative rule.

Under OAR 731-017-0015, adjustments to existing traffic performance measures or alternatives to traffic performance measures with a proposed acceptable level of performance may be requested for two different circumstances:

• During an interim period prior to completion of construction of the proposed economic development project for a period of no more than 20 years – when a required transportation project is expected to occur by the end of the planning period; or
• To address the specific traffic impacts of an economic development project by adjusting the existing traffic performance measure or allowing various types of traffic performance measures other than v/c that address the specific traffic impacts of the development project when the required transportation improvement will not be provided by the end of the planning period.

In order to have adjusted or alternative traffic performance measures considered, the applicant must submit the following additional information / narrative “checklist” requirements:

• Identify the existing and the proposed adjusted or alternative traffic performance measures or standards.
• Identify the geographic boundaries where the measures will apply.
• Describe how the adjusted or alternative traffic performance measures will affect the function of state highway corridors and facilities.
• Describe the agreed upon methodologies and procedures for application of the new measure if it is not v/c or v/c-related. The non v/c or v/c-related methodology should be discussed at the Pre-Application Conference and its use agreed upon prior to the submittal of an application to the ODOT Region.
• If the proposal is to adjust existing traffic performance measures or allow use of alternative traffic performance measures during an interim period prior to completion of construction of the development and required project, the application shall describe:
  o The proposed length of the interim period and what will be achieved during that interim period.
  o What will need to occur for the significantly affected transportation facility to be brought up to the current traffic performance measure by the end of the interim period.
• Explain how OTC approval of the requested adjustment or use of alternative traffic performance measures would impact affected state highway corridors and the local government’s ability to implement its adopted transportation system plan or comprehensive plan.

Approval of an adjusted or alternative traffic performance measure will result in an amendment to the OHP.

731-017-0040: ODOT Review and Report to Commission

This section establishes the timeline for ODOT staff review of applications and identifies elements and findings to be included in the
ODOT staff report. The suggested timeline is compressed and reflective of the desire of both staff and the Stakeholder Committee to make sure that the ODOT review runs in conjunction with the local review process and provides input to that process in a timely manner to allow the local jurisdiction and applicant to take advantage of the economic development project opportunity. This section provides that:

- The ODOT Director shall submit a report with findings and a recommendation to the OTC within 30 days of determination of a complete application.
- The Director may recommend conditions of approval (see below under section 731-017-0045 for the types of conditions that may be attached).
- The Director’s evaluation shall address:
  - Whether the application can reasonably comply with the TPR without approval of the application.
  - The net long-term primary job creation benefits, based on consultation with Business Oregon (see below).
  - Any adverse impacts and their duration on the state highway system.
  - Funding and system management commitments on the part of the local jurisdiction.
  - The level of public review and local government coordination given to the application.

Consultation with Business Oregon will include a letter of recommendation to the ODOT Region Planning Manager from Business Oregon that addresses the applicant’s estimates of the “net long-term primary job creation benefits” and eligibility of the economic development project under OAR 731-017. The letter from Business Oregon will become part of the Director’s report to the OTC.

**731-017-0045: Commission Review and Decision on Applications**

Following submission of the ODOT staff report, the OTC must review the staff recommendation and make a decision within 45 days. Staff has indicated its desire to place staff reports prepared under this rule on the next available OTC meeting – as long as notification requirements (including for potential OHP amendments) can be met. This section also enables the OTC to apply conditions of approval to the application as noted below. Finally, this section limits OTC
approval to four (4) applications per calendar year in each ODOT Region. There are no limits as to how many applications can be filed in an ODOT Region.

OAR 731-017 applications that require OHP amendments must follow the State Agency Coordination (SAC) procedures for statewide modal plans (OAR 731-015) and the OTC’s Public Involvement Policy (https://www.oregon.gov/ODOT/Get-Involved/OTC/OTCpolicy11_pip.pdf). Notification of a potential OHP amendment should be provided to DLCD, MPOs, all affected cities and/or counties, interested state and federal agencies, special districts, and all other known interested parties as early as possible after determination of a complete application to allow for the 45-day comment period prior to the OTC decision. Notice should also be published in the local newspaper of record at the same time notice is provided to known interested parties. Material and findings may be draft until the formal Director’s report is submitted for OTC consideration, but the notification should contain information necessary to allow informed public comment on the application. The Region Planning Manager should request that the application be placed on the regular OTC agenda to allow for public comment and meet the public meeting requirements for the OHP amendment. The OTC must adopt both the OHP amendment and findings as part of their action for an approved application.

This section also:

- Allows the OTC to continue consideration of applications to the following year if necessary (once four have been approved in an ODOT Region).
- Requires that the OTC condition an application’s approval to limit the allowed uses to those specifically identified in the proposed economic development project / application.
- Allows the OTC to attach additional conditions of approval for the application to protect the function and ensure the safe operation of state highways, as well as protect the state’s financial investment in these facilities.
- Establishes that OTC approval of an application to adjust performance measures or allow use of alternative traffic performance measures other than a v/c shall be conditioned to apply only to the facility impact area (traffic impact area) that is the subject of the proposed local government amendment.
Staff and the Stakeholder Committee included this language to intentionally narrow the impacts of an application’s approval to the specific use proposed and the specific area of impact. The Committee did not believe that other properties within the subject impact area or uses other than those proposed by the economic development project should be allowed to use the remedies included in this rule.

As presented in this section of the rule, the OTC has the ability to require the use of an overlay zone or new zoning district specific to the application and the use(s) proposed. This can have the effect of establishing a “time certain” period in which the proposed economic development project would need to be constructed. If the development project did not materialize, then approval for that specific use would expire and the “approval” could not be used by someone else after the expiration of the time period. Under this circumstance the actual zone change would not revert, but it would have a requirement that conditioned future site plan approval upon being consistent with any existing overlay zone. The intent is that with the overlay zone, it is used during that very brief time period or it is lost. The OTC approval, then, would be conditioned upon the local jurisdiction adopting such time limited overlay zone at the same time as the zone change. This approach will require dual findings for both the underlying zone and the overlay zone.

**731-017-0050: Land Use Decisions**

This section notes that decisions related to transportation financing are not land use decisions.

The TPR clearly states that financing programs are not considered land use decisions:

**660-012-0040: Transportation Financing Program**

*(4) Anticipated timing and financing provisions in the transportation financing program are not considered land use decisions as specified in ORS 197.712(2)(e) and, therefore, cannot be the basis of appeal under ORS 197.610(1) and (2) or 197.835(4).*

OAR 731-017-0050 also notes that decisions related to time extensions and decisions adjusting or allowing alternative traffic performance measures are land use decisions. These actions are considered land use decisions because they require amending the OHP, which is a land use action.
731-017-0055: Review and Update

This section reflects the HB 3379 Stakeholder Committee’s desire to include a timely review of the implementation of this administrative rule to determine its benefits and impacts, and whether amendments need to be made to the text. Specifically, this section:

- Requires OTC review of this rule to evaluate implementation and consider possible amendments beginning two years following adoption (December 2012).

The purpose of this review is to consider the cumulative effects of approved applications during the two-year time period and to identify any common features in the submitted applications. Each ODOT Region should monitor the number and types of applications it receives, the type of information, and the level of detail that each application includes to determine if more guidance or modifications to information requirements are necessary. Finally, the two-year evaluation should report on the application submittal and review timeframe and how well ODOT’s review coincided with the local land use review process.
Oregon Administrative Rule 731-017 Application Process -
Typical Schedule

The following chart illustrates how applications filed under this administrative rule will fit into the local land use review process for the proposed plan amendment / zone change. The HB 3379 Stakeholder Committee and ODOT staff were clear in their desire to have the application review process run concurrently with the local review process and not add significant time. The application review / staff report / OTC action timeline included in the administrative rule was designed to compliment the local review process as much as possible.

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Note: Areas highlighted in yellow represent ODOT/OTC Actions related to HB 3379 Applications
Appendix A

Oregon Administrative Rule 731-017

Readers should consult the Secretary of State’s Oregon Administrative Rules website (http://sos.oregon.gov/archives/Pages/oregon_administrative_rules.aspx) for the “official” version.

ECONOMIC DEVELOPMENT PROJECTS UNABLE TO MEET TPR REQUIREMENTS FOR STATE HIGHWAYS

731-017-0005

Purpose

This division is intended to carry out the state policy outlined in ORS 367.850 to facilitate projects that support local economic development and job creation but cannot meet the funding or timing requirements of the Land Conservation and Development Commission’s Transportation Planning Rule related to state highways. This division is not intended to supersede any requirements of the Transportation Planning Rule; rather, it is intended to encourage innovation and flexibility in the application of traffic performance measures, timing and funding requirements adopted pursuant to the Transportation Planning Rule associated with amendments to comprehensive plans and land use regulations, including zone changes. This innovation and flexibility extends beyond that already permitted under OAR 660-012-0060(2) and through existing applications of Oregon Highway Plan alternate mobility standard processes.

731-017-0010

Definitions

For the purposes of this division, the following definitions shall apply:

(1) “Amendment” means a proposed amendment to a comprehensive plan, transportation system plan or land use regulation.

(2) “Commission” means the Oregon Transportation Commission.

(3) “Director” means the Director of the Oregon Department of Transportation or the designee thereof.
(4) “Economic development projects” means those projects that
demonstrate the direct benefits in terms of “primary” jobs created or
retained by the development opportunity. Primary jobs are those in such
areas as manufacturing, production, warehousing, distribution, or others
that create new wealth for the Oregon economy.

(5) “Funding requirements” means the requirements set out in the
Transportation Planning Rule that require a funding plan for transportation
facilities or improvements needed to avoid a significant effect on existing
or planned transportation facilities (OAR 660-012-0060(2)(b)); a written
statement from ODOT that the proposed funding and timing for identified
mitigation improvements or measures are, at a minimum, sufficient to
avoid further degradation to the performance of an affected state highway
(660-012-0060(3)(c)); a written statement from ODOT that improvements
to state highways that are included as planned improvements in a regional
or local transportation system plan or comprehensive plan are reasonably
likely to be provided by the end of the planning period (660-012-
0060(4)(b)); or a written statement from ODOT that the proposed funding
and timing of mitigation measures are sufficient to avoid a significant
adverse impact on the Interstate Highway system (660-012-0060(4)(c)).

(6) “Interim period” means the period, not to exceed 20 years, between
when construction of an economic development project begins and
construction of the project ends.

(7) “Local government” means any city, county or metropolitan service
district formed under ORS Chapter 268, or an association of local
governments performing land use planning functions under ORS 195.025.

(8) “Long-term economic benefits” means the net economic benefits
anticipated to occur from an economic development project following
completion of construction.

(9) “ODOT” means the Oregon Department of Transportation.

(10) “ODOT Region” refers to the five regions operated by ODOT. For
the purposes of this division the ODOT Regions are defined as follows:
Region One consists of Clackamas, Columbia, Hood River, Multnomah
and Washington Counties. Region Two consists of Benton, Clatsop, Lane,
Lincoln, Linn, Marion, Polk, Tillamook and Yamhill Counties. Region
Three consists of Coos, Curry, Douglas, Jackson and Josephine Counties.
Region Four consists of Crook, Deschutes, Gilliam, Jefferson, Klamath,
Lake, Sherman, Wasco and Wheeler Counties. Region Five consists of
Baker, Grant, Harney, Malheur, Morrow, Umatilla, Union and Wallowa
Counties.
(11) “Oregon Highway Plan (OHP)” means the 1999 Oregon Highway Plan, as adopted and amended by the Oregon Transportation Commission, which serves as ODOT’s modal system plan for highways as set forth in OAR chapter 731, division 15, consistent with OAR 660-012-0015(1).

(12) “Planning period” means the planning horizon identified in an adopted local or regional transportation system plan.

(13) “Reasonably likely” means a determination by ODOT pursuant to OAR 660-012-0060 that funding to construct a planned improvement to a state highway included in a regional or local transportation system plan or comprehensive plan is likely to be available by the end of the planning period.

(14) “Significantly affect” is as defined in OAR 660-012-0060(1).

(15) “State Agency Coordination Agreement (or Program) (SAC)” means the agreement adopted by the Commission in September 1990 as part of the Unified Transportation Plan required by ORS 184.618 and certified by the Land Conservation and Development Commission in December 1990 as being in compliance with ORS 197.180 and OAR chapter 660, divisions 30 and 31. The SAC describes what ODOT will do to meet its obligation under ORS 197.180 to carry out its programs affecting land use in compliance with the statewide planning goals and in a manner compatible with acknowledged comprehensive plans.

(16) “State highways” means highways under the jurisdiction and/or control and management of ODOT, including interstate highways within the State of Oregon.

(17) “Traffic performance measures” means the minimum acceptable standards of performance for highway facilities identified in an adopted state, regional or local transportation system plan or comprehensive plan. For state highways, traffic performance is measured by volume to capacity ("v/c") ratios as defined in the Oregon Highway Plan. Modifications to traffic performance measures for state highways require amendments to the OHP.

(18) “Transportation Planning Rule” means the Land Conservation and Development Commission’s administrative rule governing transportation planning, set out at OAR chapter 660, division 12.

(19) “Transportation System Plan” means a plan for one or more transportation facilities adopted in accordance with the Transportation Planning Rule that are planned, developed, operated and maintained in a
coordinated manner to supply continuity of movement between modes, and within and between geographic and jurisdictional areas.

(20) “Volume to capacity ratio” is a measure of roadway congestion, calculated by dividing the number of vehicles passing through a section of highway during the peak hour by the capacity of the section as described and defined in the Oregon Highway Plan.

731-017-0015

Applications for Time Extensions, Alternative Funding Plans, or Adjustments or Alternatives to Traffic Performance Measures

(1) When a local government amendment needed to authorize an economic development project cannot meet the funding requirements of the Transportation Planning Rule as they relate to state highways, the local government may apply for:

(a) An extension of time to meet the requirements of OAR 660-012-0060(2)(b), 660-012-0060(4)(b)(D) or 660-012-0060(4)(c)(A);

(b) Approval of a plan proposing alternative methods of funding that meets the provisions in this division;

(c) An adjustment to existing traffic performance measures or allowance to use an alternative traffic performance measure other than a volume to capacity ratio with a proposed acceptable level of performance during an interim period prior to completion of construction of an economic development project for a period of no more than 20 years; or

(d) An adjustment to existing traffic performance measures or allowance to use an alternative traffic performance measure other than a volume to capacity ratio with a proposed acceptable level of performance that address the specific traffic impacts of an economic development project.

(2) Applications under subsection (1) of this Section shall be filed with ODOT for Commission review and approval. The Commission may approve up to four applications in each ODOT Region in a calendar year.

(3) The provisions of this rule do not apply to Commission approval of alternate mobility standards authorized and processed pursuant to OHP Policy 1F Action 1F.3 in system or facility planning processes.
731-017-0020

Application Submittal Requirements

(1) An application submitted pursuant to section 0015 of this division shall be filed with the Region Manager or designee of the ODOT Region within which the economic development project would be located.

(2) Prior to filing an application with ODOT pursuant to this division, the local government shall seek input from the public and affected local governments and agencies regarding the proposed application. Informal coordination with ODOT is encouraged at the earliest point possible to streamline the application process.

(3) Prior to filing an application, a pre-application meeting shall be held between the local government, the applicant for the amendment and the ODOT Region Manager or designee to determine the nature of the application and identify the applicable submittal requirements and review criteria. ODOT shall notify and provide opportunity for representatives from Business Oregon and/or the Department of Land Conservation and Development to submit comments and attend the meeting.

(4) All applications shall:

(a) Be accompanied by any appropriate forms provided by ODOT;

(b) Indicate the nature of the application request;

(c) Provide a narrative that:

(A) Identifies the economic development project for which an amendment to a comprehensive plan or land use regulation is being proposed;

(B) Identifies the state highways that would be significantly affected by the proposed amendment, their functional classifications and traffic performance measures, and the extent of non-compliance with the traffic performance measures;

(C) Identifies the basis for the determination that improvements to state highways are not reasonably likely to be provided by the end of the planning period or that the funding or timing for mitigation measures are insufficient to avoid adverse impacts;

(D) Demonstrates the net long-term economic development benefits of the proposed economic development project, including:
(i) An estimate of the number of net new primary jobs the amendment is likely to create within the community and their associated average salary.

(ii) A statement of reasons why the proposal merits approval by the Commission under this division.

(E) Addresses how the application meets the specific criteria in sections 0025 through 0035 of this division, as appropriate, and the review criteria in section 0040 of this division.

(F) Explains why compliance with OAR 660-012-0060(1) cannot otherwise reasonably be accomplished through one or a combination of the measures in 660-012-0060(2), including the phasing of development over time, access management measures, or the use of trip caps.

(G) Addresses how the project will impact traffic safety along the state highway corridor.

(H) Addresses how the project will impact the movement of freight along an affected state highway that is a freight route.

(I) Identifies the public involvement and local government coordination opportunities that have been provided with respect to the application.

(d) Be accompanied by attachments that provide background information supporting the application and proposed amendment, such as a copy of the amendment application filed with the local government, a description of the proposed economic development project, a map showing the affected area and the location of affected state highways, any transportation analyses and studies submitted with the amendment application, a copy of any reasonably likely determination provided by ODOT, and other relevant information.

(5) Applications affecting lands within one-half mile of an interstate interchange area as defined in OAR 660-012-0060(4)(d)(C) also shall address how the application is consistent with the following:

(a) An adopted Interchange Area Management Plan, if one exists.

(b) The function of the interchange.

(c) ODOT access management requirements for the interchange.

(6) Within 14 days following receipt of an application, the Region Manager or designee shall notify a local government whether the
application is complete. If notified that the application is incomplete, the local government may choose to provide the missing information or to present it as written. If presented as written, the extent of incompleteness shall be noted in the Director’s report prepared pursuant to section 0040 of this division. Where incomplete information impedes the Director’s review for compliance with criteria, the Director shall so note in the Director’s report and may recommend denial of the application.

(7) A local government shall not have more than one application approved by the Commission pursuant to this division within a calendar year.

(8) Where a local government application filed pursuant to this division has been approved by the Commission within the previous three calendar years, the same local government shall not file any additional applications pursuant to this division for property located within the identified traffic impact area of the economic development project that was the subject of the previously approved application.

731-017-0025

Additional Requirements for Time Extensions to Meet Funding Requirements

(1) In addition to the requirements of section 0020 of this division, an application requesting an extension of time to meet the requirements of OAR 660-012-0060(4)(b)(D) or 660-012-0060(4)(c)(A) shall include the following additional information:

(a) The additional time period being requested from the OTC, up to a maximum of 20 years from the date of application.

(b) If applying for an extension of the time requirement in OAR 660-012-0060(4)(c)(A), the identified mitigation improvements or measures for which a time extension is needed to avoid a significant adverse impact on the Interstate Highway system.

(c) An explanation why OTC approval of a time extension is reasonable and necessary.

(d) An explanation of what will be accomplished during the additional time period that makes compliance with OAR 660-012-0060(1) likely by its conclusion.

(e) A discussion of whether and how an extension of time might adversely impact other existing uses in the community or along a corridor.
(2) Applications for time extensions beyond what is authorized in the OHP require OHP amendments and must be approved by the Commission. Pursuant to ODOT’s State Agency Coordination Agreement, any such amendment must comply with the coordination procedures in OAR 731-015-0065.

731-017-0030

**Additional Requirements for Alternative Funding Plans**

(1) In addition to the requirements of section 0020 of this division, an application requesting approval of an alternative funding plan shall include the following additional information:

(a) An estimate of the additional funds required to construct needed state highway facilities or improvements or provide identified mitigation improvements or measures.

(b) A description of the proposed alternative funding method and an explanation how it would be adequate to alleviate the funding shortfall.

(c) An explanation why implementation of the proposed alternative funding method is feasible and likely to occur.

(d) If the proposed alternative method requires participation by other public or private entities, such as contributions from employers or other parties directly benefitting from an economic development project, a demonstration of commitment by such other entities to participate in the funding method.

(2) Applications for alternative funding plans must be approved by the Commission.

731-017-0035

**Additional Requirements for Adjustments or Alternatives to ODOT Traffic Performance Measures**

(1) In addition to the requirements of section 0020 of this division, an application to adjust traffic performance measures or to allow use of alternative traffic performance measures including measures other than a volume to capacity ratio shall include the following additional information:
(a) Identification of the existing traffic performance measures and a description of the adjusted or alternative traffic performance measures being requested to accommodate the economic development project, including the geographic boundaries of the requested adjustment or alternative measures.

(b) An explanation how the proposed adjusted or alternative traffic performance measures protect the function of affected state highway facilities.

(c) Methodologies and procedures for applying the adjusted or alternative traffic performance measures, including the level of performance being sought under the new measure.

(d) If the proposal is to adjust existing traffic performance measures or allow use of alternative traffic performance measures during an interim period prior to completion of construction of the development:

(A) The proposed length of the interim period and what will be achieved during that interim period.

(B) An explanation of what will need to occur for the significantly affected transportation facility to be brought up to the current traffic performance measure by the end of the interim period.

(e) An explanation how Commission approval of the requested adjustment or use of alternative traffic performance measures would impact affected state highway corridors and the local government’s ability to implement its adopted transportation system plan or comprehensive plan.

(2) Applications to adjust or allow alternative traffic performance measures for state highways require OHP amendments and must be approved by the Commission. Pursuant to ODOT’s State Agency Coordination Agreement, any such modification must comply with the coordination procedures in OAR 731-015-0065.

731-017-0040

ODOT Review and Report to Commission

(1) Within 30 days following receipt of a complete application or an incomplete application presented as written, the Director shall submit to the Commission a report and recommendation on the application.

(2) The Director’s report shall:
(a) Identify the applicant and the nature of the application.

(b) Identify the ODOT Region from which the application originated and the number of applications within that Region that have already been approved under this division during the current calendar year.

(c) Address consistency with the applicable submittal criteria in section 0020 of this division and with the review criteria in this section.

(d) Include ODOT’s recommendation on the application and the reasons for that recommendation.

(3) In evaluating applications submitted pursuant to this division, the Director shall consider the following:

(a) Whether the economic development project for which amendments are needed can reasonably comply with the requirements in OAR 660-012-0060 without having to apply for a time extension or alternative funding plan or a proposal to adjust or allow use of alternative traffic performance measures under this division.

(b) Based on consultation with Business Oregon, the net long-term primary job creation benefits of the proposed economic development project. Any written materials from Business Oregon will be attached to the ODOT Director’s report.

(c) The adverse impacts approval of the proposed project would have on state transportation facilities, measured in terms of the degree of divergence from existing state highway traffic performance measures, the length of time the divergence would remain in effect, the scale of short and long-term impacts on existing users of the facilities, the safety of users of the facilities, and impacts on neighboring communities.

(d) Local government and private sector commitments to contribute financially to needed state highway and local road improvements that will mitigate state highway impacts.

(e) Local government and private sector commitments to employ interim measures where appropriate, including but not limited to phasing of development or trip caps.

(f) Local government and private sector commitments to employ techniques that reduce vehicle trips on the system as appropriate for the scale and location of the development, including but not limited to
transportation demand management, carpooling, transit and land use management methods.

(g) The level of public review and local government coordination associated with an application filed pursuant to this division.

(4) In addition to the conditions of approval required under section 0045 of this division, the Director may recommend conditions of approval for the Commission to attach to a decision approving an application filed pursuant to this division.

731-017-0045

Commission Review and Decision on Applications

(1) Within 45 days following receipt of the Director’s report, the Commission shall review the Director’s report and issue a written decision approving or denying the application. Commission approval or denial of an application shall be accompanied by findings of fact and a statement of reasons explaining how the decision relates to the applicable review standards. If a public hearing is required on the application, the Commission shall schedule the public hearing and allow for the required public review period. The Commission may approve up to four applications in each ODOT Region in a calendar year. The Commission may attach such conditions to its approval as it deems necessary or appropriate to protect the function or ensure the safe operation of state highways or to protect the state’s substantial financial investment in its state highway system.

(2) Once the Commission has approved four applications within an ODOT Region within a calendar year, it may continue its consideration of one or more applications within that ODOT Region to the following calendar year. Continuation of an application to the following calendar year shall not imply any preference or priority for that application.

(3) A Commission decision to approve an application shall be conditioned to limit the allowed uses on the property that is the subject of the proposed amendment to only those uses specifically identified in the proposed economic development project. A local government may achieve this result through application of a limited use overlay zone, the creation of a new zoning district, or other similar method.

(4) A Commission decision to approve an application to adjust traffic performance measures or allow use of alternative traffic performance measures other than a volume to capacity ratio shall be conditioned to
apply only to the facility impact area that is the subject of the proposed local government amendment.

731-017-0050

Land Use Decisions

(1) Commission determinations made pursuant to this division concerning the financing of transportation facilities and improvements are not considered land use decisions.

(2) Commission actions made pursuant to this division to extend the time beyond the maximum planning horizon established in the OHP and to adjust or allow alternative traffic performance measures are considered land use decisions and require OHP amendments.

731-017-0055

Review and Update

Beginning two years following the adoption of this division, the Commission shall commence a review to evaluate implementation of and consider possible modifications to this division. This evaluation shall include considerations of the cumulative effects from applications that have been approved.
Appendix B:

HB 3379 Stakeholder Committee Members and Affiliation

- Chair: Edward Gallagher, MPG Northwest, LLC.
- Bob Bryant, Oregon Department of Transportation
- Jon Chandler, Oregon Home Builders Association
- Al Densmore, City of Medford (Rogue Valley MPO Policy Committee)
- Paul Dewey, Central Oregon LandWatch
- Marie Dodds, AAA Oregon/Idaho
- Chris Doty, City of Redmond
- Rob Hallyburton, Department of Land Conservation and Development
- Darrin Lane, Linn County
- Chris Maciejewski, DKS Associates
- Sarah Miller, Oregon Business Development Department
- Lynn Peterson, Clackamas County
- Bob Russell, Oregon Trucking Associations
- Mark Whitlow, Perkins Coie (Retail Task Force)
Appendix C

House Bill 3379 Enrolled

75th OREGON LEGISLATIVE ASSEMBLY--2009 Regular Session

Enrolled

House Bill 3379
(Applicable Sections)

Sponsored by Representatives D EDWARDS, HUFFMAN, WHISNANT, Senator TELFER; Representatives BEYER, HOLVEY, SCHAUFLER, STIEGLER, Senators FERRIOLI, STARR

AN ACT

Relating to transportation; and declaring an emergency.

Whereas in March 2005, the Land Conservation and Development Commission, responding in part to a decision of the Oregon Court of Appeals, amended OAR 660-012-0060, the transportation planning rule, to require assurance of planned transportation system projects and reasonably likely funding mechanisms to ensure that the transportation system’s mobility standards are satisfied if a proposed comprehensive plan or land use regulation amendment would result in an existing or planned transportation facility failing to meet adopted performance standards at any time during the local jurisdiction’s 15- to 20-year planning period; and

Whereas lack of state funding for transportation system projects has precluded state participation in funding mechanisms and funding responsibility for necessary improvements to the state highway system identified in the transportation system plans of local jurisdictions seeking to expand urban growth boundaries or rezone parcels necessary to increase land supply to accommodate economic development projects; and

Whereas local government entities are limited in their ability to provide the transportation infrastructure necessary to support economic development associated with amendments to their comprehensive plans, including zone changes and urban growth boundary expansions, because of the limited availability of federal, state and local funding for planned
transportation projects as called for in the transportation planning rule, and these limitations have led to a loss in jobs and a failure to attract needed economic development projects in many communities throughout Oregon; now, therefore,

Be It Enacted by the People of the State of Oregon:

SECTION 1. (1) Subject to the limitations in subsection (2) of this section, if a local government is unable to meet the funding requirements of the transportation planning rule adopted by the Land Conservation and Development Commission, the local government may:
   (a) Apply for an extension of time to meet the requirements;
   (b) Submit a plan to the Oregon Transportation Commission and the Department of Transportation proposing alternative methods of funding that will meet the standards adopted by the Oregon Transportation Commission; or
   (c) Apply to the Department of Transportation:
      (A) To adjust various traffic performance measures during an interim period prior to completion of construction of the development in question for a period of no more than 20 years; or
      (B) To allow various types of traffic performance measures other than a volume to capacity ratio.

(2) The Oregon Transportation Commission may not approve more than four applications for extension or alternative plans in each Department of Transportation region in a calendar year. For purposes of this subsection, the regions are as follows:
   (a) Region one consists of Clackamas, Columbia, Hood River, Multnomah and Washington Counties.
   (b) Region two consists of Benton, Clatsop, Lane, Lincoln, Linn, Marion, Polk, Tillamook and Yamhill Counties.
   (c) Region three consists of Coos, Curry, Douglas, Jackson and Josephine Counties.
   (d) Region four consists of Crook, Deschutes, Gilliam, Jefferson, Klamath, Lake, Sherman, Wasco and Wheeler Counties.
   (e) Region five consists of Baker, Grant, Harney, Malheur, Morrow, Umatilla, Union and Wallowa Counties.

(3) The Oregon Transportation Commission shall adopt rules for the administration of this section. In adopting rules, the commission may not define under what circumstances a local government is considered to be able to meet the funding requirements of the transportation planning rule adopted by the Land Conservation and Development Commission.
Appendix D:

Oregon Administrative Rule 660-012-0060 (As Effective March 2011)

Readers should consult the Secretary of State’s Oregon Administrative Rules website (http://sos.oregon.gov/archives/Pages/oregon_administrative_rules.aspx) or the Department of Land Conservation and Development for the current version.

Plan and Land Use Regulation Amendments

(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:

(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) As measured at the end of the planning period identified in the adopted transportation system plan:

   (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;

   (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

   (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.
(2) Where a local government determines that there would be a significant effect, compliance with section (1) shall be accomplished through one or a combination of the following:

(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.

(d) Amending the TSP to modify the planned function, capacity or performance standards of the transportation facility.

(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. Local governments shall as part of the amendment specify when measures or improvements provided pursuant to this subsection will be provided.

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

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

(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;
(c) 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;

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

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

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

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

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

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

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

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

(D) Improvements to state highways that are included as planned improvements in a regional or local transportation system plan or comprehensive plan when ODOT provides a written statement that the improvements are reasonably likely to be provided by the end of the planning period.

(E) Improvements to regional and local roads, streets or other transportation facilities or services that are included as planned improvements in a regional or local transportation system plan or comprehensive plan when the local government(s) or transportation service provider(s) responsible for the facility, improvement or service provides a written statement that the facility, improvement or service is reasonably likely to be provided by the end of the planning period.

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

(A) ODOT provides a written statement that the proposed funding and timing of mitigation measures are sufficient to avoid a significant adverse impact on the Interstate Highway system, then local governments may also rely on the improvements identified in paragraphs (b)(D) and (E) of this section; or

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

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

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

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

(C) Interstate interchange area means:
(i) Property within one-half mile of an existing or planned interchange on an Interstate Highway as measured from the center point of the interchange; or

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

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

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

(6) In determining whether proposed land uses would affect or be consistent with planned transportation facilities as provided in 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 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) Amendments to acknowledged comprehensive plans and land use regulations which meet all of the criteria listed in (a)-(c) below shall include an amendment to the comprehensive plan, transportation system plan the adoption of a local street plan, access management plan, future street plan or other binding local transportation plan to provide for on-site alignment of streets or accessways with existing and planned arterial, collector, and local streets surrounding the site as necessary to implement the requirements in Section 0020(2)(b) and Section 0045(3) of this division:

(a) The plan or land use regulation amendment results in designation of two or more acres of land for commercial use;

(b) The local government has not adopted a TSP or local street plan which complies with Section 0020(2)(b) or, in the Portland Metropolitan Area, has not complied with Metro's requirement for street connectivity as
contained in Title 6, Section 3 of the Urban Growth Management Functional Plan; and

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

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

(a) Any one of the following:

(A) An existing central business district or downtown;

(B) An area designated as a central city, regional center, town center or main street in the Portland Metro 2040 Regional Growth Concept;

(C) An area designated in an acknowledged comprehensive plan as a transit oriented development or a pedestrian district; or

(D) An area designated as a special transportation area as provided for in the Oregon Highway Plan.

(b) An area other than those listed in (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.