

TPR 0060 & OHP Policy 1F

Framework of Issues and Options

This document attempts to record the issues and concerns that have been raised and to list options for potential solutions. It is intended to help organize discussion and should not be taken as validation or endorsement of specific ideas. As additional issues are raised and solutions suggested they will be added to the list.

Summary	1 st Phase	2 nd Phase	TPR	OHP	Other
<u>Exemptions</u>					
Exempt upzones in downtowns, centers and mixed use areas			X		
Exempt zone changes consistent with comprehensive plan designation			X		X
Exempt economic development projects			X		
Exempt very small cities			X		
Exempt low traffic highways			X	X	X
Exempt very small tract zone changes			X		
Exempt proposals with small increase in traffic			X	X	X
<u>Determination of Significant Effect</u>					
Use average trip generation, not reasonable worst case			?	?	X
Change treatment of background traffic					X
Assume increased density substitutes for development elsewhere			?		X
Increase trip credit for mixed use development			X		X
Assume all projects in TSP regardless of funding			X		
Allow deferral of TPR			X		X
<u>Performance Standards</u>					
Amend local standards					X
Transfer jurisdiction and set local standards					X
Change OHP mobility standards				X	
Corridor or area mobility standards				X	X
Change OHP mobility standards by category				X	
Alternate mobility standards				X	X
<u>Mitigation</u>					
Options for approval with a finding of significant effect					X
Trip caps					X
Mitigation options				X	X
Make mitigation roughly proportional			X		
Allow phasing of construction					X
Allow phasing of construction on failing facilities			X		
Definition of "minor improvement"			X		?
Unfair to burden only the last to develop			?		X
New tools for funding or financing					X
<u>Other</u>					
Address traffic at UGB expansion			X		X
TSP Update			X		
Multiple planning periods			X		X
Freight			X	X	
RTSP vs. RTP					

Descriptions and Considerations

Exemptions

Exempt upzones in downtowns, centers and mixed use areas

Intense development in centers and mixed use areas can improve the overall transportation system by reducing trips lengths and increasing the range of choices for walking, biking or transit. The concern is that the TPR and mobility standards can make it difficult to increase the intensity of development. Exemption may be appropriate if current provisions do not provide sufficient flexibility. It could be appropriate to condition the exemption to ensure that the development will support the center. Examples could include findings that the street system is built out (i.e. no major expansions of capacity are appropriate or feasible) and that auto-oriented uses (e.g. drive-throughs) will be prohibited or limited.

Exempt zone changes consistent with comprehensive plan designation

In most cases a zone change is not subject to 0060 if it is clear that the TSP assumed trip generation consistent with the comprehensive plan and therefore consistent with the proposed zoning. A concern is that in some cases this has not been done, so clarification and improved guidance may be needed. A further step would be to amend the TPR to exempt any zone change consistent with the comprehensive plan, even when the designation was not used for the TSP. This may be more appropriate for residential zones because comprehensive plan designations correspond well with zoning by matching densities.

Exempt economic development projects

HB 3379 provides some additional options, but does not exempt economic development projects from TPR requirements. A broader exemption could allow greater flexibility for job creating proposals. Defining economic development projects would be important. The administrative rule implementing HB 3379 includes this definition:

(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.

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Exempt very small cities

The concern is that TPR analysis can be administrative burden on small cities with limited staff, which might justify an exemption. One potential concern with this option would be areas near freeway interchanges, which can be very important to the statewide transportation system regardless of size of the city at the interchange.

Exempt low traffic highways

The concern is that it may be a waste of effort to project and analyze traffic on highways that currently have very low volumes and thus are unlikely to exceed performance standards in the future. In these cases an exemption is not likely to change the outcome, but could save time and money on analysis. One option would be to establish a numeric definition of low traffic (e.g. under 5,000 ADT). A proposed rezoning would include current traffic data to document that the highway met the definition. Another option would be that the OHP could be amended to exempt specific highways or segments.

Exempt very small tract zone changes

In most cases rezoning a small area would only have a small impact and an exemption would not change the outcome, but could save time and money on analysis. However, sometimes a small piece of land at a critical location (e.g. near an interchange) with an intense use (e.g. fast food restaurant with drive-through) could have a large impact. There is also the possibility of multiple small changes with significant cumulative effects. An exemption could be limited to already developed parcels, thus the added traffic is likely to be even smaller.

Exempt proposals with small increase in traffic

The concern is that just a single additional trip is enough to trigger TPR 0060. A provision could be added that if additional trips are less than some threshold (e.g. 5 trips during the peak hour), then it would not be considered a significant effect. This would not be a true exemption, since some analysis would be required to calculate that the impact was below the threshold. It could be added to the TPR, but since the threshold would be related to a performance standard, it might fit better in the OHP or analysis procedures.

Determination of Significant Effect

Use average trip generation, not reasonable worst case

Nothing in the TPR or OHP requires or defines “reasonable worst case”. The requirement comes from case law in LUBA decisions. Under the current TPR and case law it would be possible to use average trip generation if the proposal includes provisions to enforce the assumption (see trip caps below). The TPR could be amended to specify that analysis use an average case. The TPR does not currently contain specific methodologies, so this would represent a significantly different approach.

Change treatment of background traffic

The concern is that expected growth in background traffic (e.g. through traffic on a state highway, through freight, traffic from planned uses outside the jurisdiction) could use up capacity thus precluding opportunity for plan amendments in the immediate vicinity. The effect can be especially pronounced in an area adjacent to a downtown or center. Traffic from outlying areas to the center passes through the close-in neighborhood and leads to failing performance standards. Another example could be destination resorts outside a UGB generating traffic inside a UGB.

Assume increased density substitutes for development elsewhere

The concern is that commonly used analysis procedures implicitly assume that development on the rezoned area would be in addition to all other development. A solution would be to maintain a control total on development so that upzoning one area is balanced with an assumption of decreased development elsewhere. The TPR and the OHP neither prohibit nor require this approach. The change would likely be in ODOT *Analysis Procedures Manual* or similar guidance document. ODOT has some experience with this approach, but has not yet adopted it as a standard procedure.

Increase trip credit for mixed use development

TPR 0060(6)(a) currently allows an automatic 10% reduction in projected trip generation for mixed use development. Section (8) defines the type of “mixed-use pedestrian-friendly center neighborhood” where this can be used.

Subsection (6)(b) allows a larger reduction with specific documentation. Metro has established a 30% reduction for areas meeting certain requirements. Other than this, the provision to go beyond 10% has not been used.

Several local governments noted 30% would be helpful but not sufficient where locals anticipate large increases in density and capacity is constrained.

One option would be to provide better guidance on where larger reductions would be accepted and on what data would need to be provided. Another option would be to amend the TPR to increase the automatic reduction.

Assume all projects in TSP regardless of funding

The concern is that projects within a plan (i.e. a TSP) are not being counted as planned. One option would be to allow local government to assume that all projects listed in local TSPs would be constructed by the planning horizon. This would reinstate the “polite fiction” described in the Jaqua LUBA opinion. All, or nearly all, TSPs include many times more projects than are reasonably likely to be built within the next 20-30 years. These facilities are included in the plan so that the opportunity to build them is preserved, not on the basis of any evidence that they will be built. Local governments do have discretion to determine what is reasonably likely on the local system, and projects on a state system with identified funding are counted. A key issue is, could a local government include a project on a state facility without identifying a local funding source when ODOT does not consider state funding reasonably likely.

Allow deferral of TPR

The concern is that at the time of a zone change the details of the eventual development or use may not be known. This means that analysis must assume the reasonable worst case, which may be quite a bit higher than actual development. Furthermore, for a zone change without a specific development proposal, the property owner will have difficulty financing the required analysis, much less committing to mitigation.

Allowing deferral would be an important policy decision. DLCDC has always advised against deferral. Zoning is supposed to indicate suitability of land for proposed use. Requiring a subsequent discretionary review reduces the certainty that land use planning is supposed to provide.

Prior to the Willamette Oaks court decision, LUBA allowed deferral if provisions similar to TPR 0060 were included as local code provisions or conditions of approval. In Willamette Oaks the Court of Appeals found that the plain text of the TPR does not allow deferral.

Deferral of mitigation construction is generally allowed, and is discussed as “phasing construction” below.

Performance Standards

Amend local standards

In some cases it is the standards for local streets that trigger a significant effect. Cities and counties have the authority to change standards to avoid significant effect, but may not be aware of this.

Transfer jurisdiction and set local standards

Some state facilities serve more of a local function rather than a statewide mobility function. In those cases the facility could be transferred to the local government who could then set the performance standard as they deemed appropriate. Clearly this is not appropriate for all state highways, especially those that serve an important through movement or are a freight connection.

Change OHP mobility standards

One concern is that the mobility standards in the OHP Policy 1F are too high to be achieved with reasonably likely funding. Another concern is that the volume to capacity ratio (v/c) only measures congestion for motor vehicles, and does not measure other modes, safety or overall accessibility. Another concern is that v/c may not

be the best way to measure the impact of congestion because it is measured at a single point, and does not accurately depict conditions in highly congested corridors (where v/c approaches or exceeds 1.0). There are many options for addressing these concerns, and some examples are listed here and some are described in other sections.

- Use v/c, but change the threshold values as appropriate.
- Use v/c, but change how and when it is measured. For example, the OHP includes separate mobility standards for the Portland metropolitan area that generally set a maximum v/c of 1.1 for the highest hour and 0.99 for the second hour.
- Use other measures of congestion such delay in seconds or travel time index. See also corridor standards below.
- Measure performance of other modes including walking, bicycling and transit. These measures would be based on the quality of facilities, and not congestion.
- Measure safety. ODOT prepares a Safety Priority Index System (SPIS) to measure past safety performance. A recently published *Highway Safety Manual* provides a predictive methodology to evaluate potential safety improvements.

Using any of these different performance standards would allow different options for how impacts are mitigated.

Corridor or area mobility standards

Currently congestion delay is evaluated at each intersection (and sometimes for each movement within an intersection). The concern is that this does not accurately reflect the impacts of congestion. Measuring performance over an entire corridor or system subarea also enables a wider scope for mitigation.

Change OHP mobility standards by category

The concern is that not all state highways are the same. Within the OHP, there are over 50 different categories for which a v/c ratio is set (e.g. a regional highway inside an UGB, outside an MPO, outside of STA where speed > 35 mph). It may be that some of these categories could be adjusted to better reflect state priorities (e.g. reducing sprawl and using resources most efficiently) and funding realities.

Alternate mobility standards

OHP Action 1F.3 allows the OTC to approve alternate mobility standards “where it would be infeasible to meet the standards”. ODOT has approved a few alternate mobility standards and several more are currently underway. The concern is that alternative standards are difficult (i.e. expensive and time-consuming) to obtain. OHP Action 1F.3 currently specifies that alternative mobility standards must be “related to v/c” which limits the flexibility.

Mitigation

Options for approval with a finding of significant effect

There is sometimes an assumption that a significant effect always leads to denial, and thus applicants will do anything possible to avoid a finding of significant effect. In fact TPR 0060(2) presents at least five options for how to comply in cases where there is a significant effect. Improved guidance could help clarify options.

Trip caps

Trip caps are an optional way to avoid a significant effect sometimes volunteered by applicants as a way to avoid costly construction. One concern is that trip caps can be difficult to administer. In some cases, however, the local government already counts trips to calculate a system development charge (SDC), so monitoring a trip cap would not be difficult.

A trip caps does not actually cap trips and prevent people from entering a site once the cap is reached. Instead it limits development, but not by using the typical measures of a zoning code (e.g. setbacks, height limits, maximum square-feet, or a cap on floor-area-ratios (FAR)). Under a trip cap, each development is required to predict the number of trips that will be generated (typically using formulas found in the *ITE Trip Generation Manual*). When the total number of predicted trips reaches the cap, no more development is allowed on that site, regardless of whether the site has reached it maximum height, footprint or FAR.

Mitigation options

Depending on how performance standards are defined, the range of options for mitigation could be wider. Examples would include:

- With corridor or area performance standards, then mitigation could occur anywhere along the corridor or within the area including facilities off the state system.
- With multi-modal performance standards, the mitigation could be sidewalks, bicycle facilities, transit stops or other improvements.
- With a safety performance standard the mitigation could be to improve elements of an intersection that are unsafe, but not add capacity.

Make mitigation roughly proportional

The concern is that meeting TPR 0060 and mobility standards would place a burden on the applicant that exceeds what is constitutionally permitted under Dolan. The TPR does not, on its face, require an applicant to provide mitigation. It allows providers (local governments and ODOT) to agree to public funding commitments (including reasonably likely decisions). Dolan applies to exactions where adopted zoning already entitles the owner to a proposed use, and is not directly applicable to discretionary or legislative rezonings that are governed by TPR 0060.

Allow phasing of construction

TPR requires analyzing at the end of planning period, thus phasing of construction is allowed (if funding is identified or reasonably likely). Testimony suggests this is unclear with some people believing that all improvements must be constructed up front. Additional guidance could help.

Allow phasing of construction on failing facilities

There is an exception to the general requirement to analyze performance standards at the end of the planning period. If a facility already fails to meet the performance standard and planned improvements would not change this, then TPR 0060(3)(c) requires mitigation to “avoid further degradation... by the time of development.” The option would be to amend the TPR to measure “avoid further degradation” at the planning horizon. This would allow a failing facility to get worse in the short run.

Definition of “minor improvement”

TPR 0060(2)(e) provides that one way to deal with a significant effect is to provide a “minor transportation improvement” which is defined in TPR 0005:

(15) "Minor transportation improvements" include, but are not limited to, signalization, addition of turn lanes or merge/deceleration lanes on arterial or collector streets, provision of local streets, transportation system management measures, modification of existing interchange facilities within public right of way and design modifications located within an approved corridor. Minor transportation improvements may or may not be listed as planned projects in a TSP where the improvement is otherwise consistent with the TSP. Minor transportation improvements do not include new interchanges; new approach roads within the influence area of an interchange; new intersections on limited access roadways, highways or expressways; new collector or arterial streets, road realignments or addition of travel lanes.

The concern is that if the necessary mitigation does not fit the definition of "minor", then a TSP amendment would be required, which can be infeasible within the zone change process and timeline.

Unfair to burden only the last to develop

TPR 0060 does not directly assign responsibility to an applicant to provide funding. Local governments have the option to collect funds from all developers (i.e. system development charge or SDC) or to fund projects from local sources. Local governments also have broad discretion to find that projects on the local system are "reasonably likely" without identifying specific funding. Where state highway improvements are involved ODOT is willing to negotiate funding arrangements to avoid unfair burdens. Juniper Ridge in Bend is an example of a negotiated agreement.

TSPs are a good vehicle for locals to allocate funding responsibility equitably. Additional guidance and assistance preparing SDCs might help. Another option would be SDC authority for ODOT either on a statewide basis or in the vicinity of specific state highways. Another option is fee in lieu of mitigation that is sufficient to allow a reasonably likely finding, but still fair to the current developer because it does not put the entire burden on their proposal.

New tools for funding or financing

Tax-increment financing is mentioned in the draft Oregon Business Plan. Urban renewal already allows property tax increment funding for transportation projects. The initial version of HB 3379 (2009) would have created income tax-increment financing.

Other

Address traffic at UGB expansion

The concern is that a major decision such as a UGB expansion can be made without TPR findings (See OAR 66-024-0020(1)(d)), but a rezone consistent with comprehensive plan needs TPR findings.

TSP Update

TPR 0060 does not apply when establishing a TSP. It does apply to a minor amendment (i.e. to remove a planned facility) since amending the TSP is a comprehensive plan amendment. In past practice it has NOT been applied for major TSP updates (that update the planning horizon year), but the text is not explicit about application for major TSP updates, and may need to be clarified.

Multiple planning periods

TPR 0060(1)(c) requires measuring "at the end of the planning period identified in the adopted transportation system plan." This is clear for state highways (OHP) and for most local streets (city TSP). This can be unclear when both a regional plan (MPO RTSP) and a city plan cover the same facility.

Freight

TPR 0060 does not explicitly mention freight. OHP mobility standards are stricter on freight routes (i.e. the maximum v/c is 0.05 lower). Is this an adequate protection? Are there other ways to measure freight performance?

RTSP vs. RTP

TPR 0060(4)(b)(C) states that improvements in the “area's federally-approved, financially constrained regional transportation system plan” may be relied upon. The HB 3379 advisory committee suggested that this might be an error and should refer to the “regional transportation plan” instead. Ideally the state (RTSP) and federal (RTP) requirement are met through a single document, but in some cases a region adopts two separate plans. Citing the RTSP was an intentional choice at the time to use the plan acknowledged under state procedures.