

PLANNING COMMISSION STUDY SESSION AGENDA JUNE 8, 2020



MEDFORD
OREGON

Commission Members

David Culbertson

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Planning Commission study sessions are held on the second and fourth Mondays of every month

Study Sessions begin at noon

City of Medford

To comply with Governor Brown's stay at home order, study sessions will be conducted via the internet. To join Webinar: <https://us02web.zoom.us/j/82491184633>, Meeting ID: 824 9118 4633 . For telephone: US: +1 669 900 6833 or +1 346 248 7799 or +1 301 715 8592 or +1 312 626 6799 or +1 929 205 6099 or +1 253 215 8782.

PLANNING COMMISSION STUDY SESSION AGENDA



MEDFORD
OREGON

June 8, 2020

Noon

Zoom Virtual Meeting

Virtual Meeting information

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10. Introductions

20. Discussion Item

20.1 GF-20-052 Transportation Planning Rule (TPR), Subsection (11)

30. Adjournment



MEMORANDUM

To: Planning Commission

From: Kyle Kearns, AICP, Planner II | Long Range Planning

Date: June 1, 2020 *for 06/08/2020 study session*

Subject: GF-20-052 – Transportation Planning Rule (TPR), Subsection (11)

BACKGROUND

Important Terms Used

Concurrency. The requirement that development mitigate transportation impacts at the time of zone change.

Traded-sector jobs. Industries that sell goods or services into markets with national or international competition

Industrial jobs. Industries generating income from production, handling or distribution of goods (e.g. fabrication, processing, storage, logistics, R & D)

In October of 2019, Council adopted ordinance 2019-108 which amended the city's transportation impact analysis criteria, zone change and concurrency requirements. The aforementioned amendments were drafted to create consistency with other cities as well as the Transportation Planning Rule (TPR). Through the public process, the Transportation Commission had reviewed the proposal twice, ultimately recommending approval to the Council on August 28.

Staff had received public testimony from both CSA Planning, Ltd. and the Medford/Jackson County Chamber of Commerce in regards to the proposal. Generally, the testimony received provided recommendations to improve, support, or revise the proposal. In reference to revisions they were either included in the adopted language or left out in order to allow for more research into the specific revision. The most notable revision left for a later date was for the inclusion of a process for a

specific subsection of the TPR (i.e. Subsection 11). In short, this subsection allows for partial mitigation of transportation facilities if certain criteria are met; the criteria pertain to economic development and the creation of traded-sector and industrial-sector jobs.

Inclusion of this subsection in the aforementioned ordinance was ultimately conceded in favor of proceeding forward with the other proposed amendments. However, at the Planning Commission hearing, the Commission moved that staff further review "...the use and application of TPR subsection (11) into the Medford Municipal Code following up with

study sessions with the Transportation Commission, Planning Commission and City Council (as needed),” per the September 12, 2019 Planning Commission Hearing Minutes. It is the intent of this memorandum to provide the follow up as directed by the Planning Commission.

Furthermore, staff is seeking the direction of the applicable Commissions as to whether or not further development of municipal code language is needed in order to proceed forward with the project as outlined in this memorandum.

TPR & SUBSECTION (11) SUMMARIZED

Transportation Planning Rule (TPR)

As previously stated, Ordinance 2019-108 amended the Medford Land Development Code (MLDC) to incorporate the Transportation Planning Rule in reference to the City’s transportation concurrency and zone change requirements. The City’s zone change approval criteria have provisions requiring certain public facilities be provided for, or can be provided for, prior to approval. One such public facility is adequate streets and street capacity “...in accordance with Oregon Administrative Rule 660-012-0060 [TPR]...” (MLDC § 10.204(B)(3)(b)). Generally, transportation facility adequacy is measured by level of service (i.e. seconds of delay) at an intersection of higher order (i.e. collector and arterial) streets. With the use of TPR as the determinant of “...adequate streets and street capacity...”¹ and through amending the land development code, the City has enabled provisions that previously were unavailable for transportation mitigations.

Previously, in order to ensure adequate street capacity, all projected transportation impacts had to be mitigated in order to allow for development of a rezoned property. In other words, if a parcel rezoned from a lower intensity zone to a higher intensity zone and caused excessive congestion at an intersection (i.e. failing level of service) the subject development was required to provide the improvements needed to alleviate congestion, or had to limit development, to maintain adequate Level of Service (LOS). By incorporating TPR as the determining factor for transportation mitigation, proposals seeking a rezone of a parcel now have additional options for transportation mitigation besides full mitigation of transportation impacts, thus no longer limiting the future development of the parcel.

These aforementioned options include, but are not limited to:

- Allowing development applications to assume funded projects, per adopted plans (e.g. Transportation System Plan), built in zone change analyzes;

¹ Street and street capacity are measured using Average Daily Trips (ADT) and intersection level of service (LOS), respectively.

- Amending the Comprehensive Plan or Transportation System Plan to change the adopted standards or funding sources for a specific project;
- Allowing for the use of “transportation system management” or minor transportation improvements in lieu of full mitigation
 - An example of transportation system management includes changing of signal timing or changes to road geometry;
- Improving other modes of transportation, besides auto-oriented modes, to reduce overall automobile demand on the transportation network; or
- Failing Facilities may be approved per MLDC §10.204(D), Approval of Failing Transportation Facilities (modeled after TPR).

Now, rather than pointing to MLDC language for what constitutes “...adequate streets and street capacity...,” the MLDC now points directly to the Transportation Planning Rule. The TPR also includes the provisions of Subsection (11), the topic that is the source of this memo.

Note: for the full text of TPR, visit the link below:

<https://secure.sos.state.or.us/oard/displayDivisionRules.action?selectedDivision=3062>

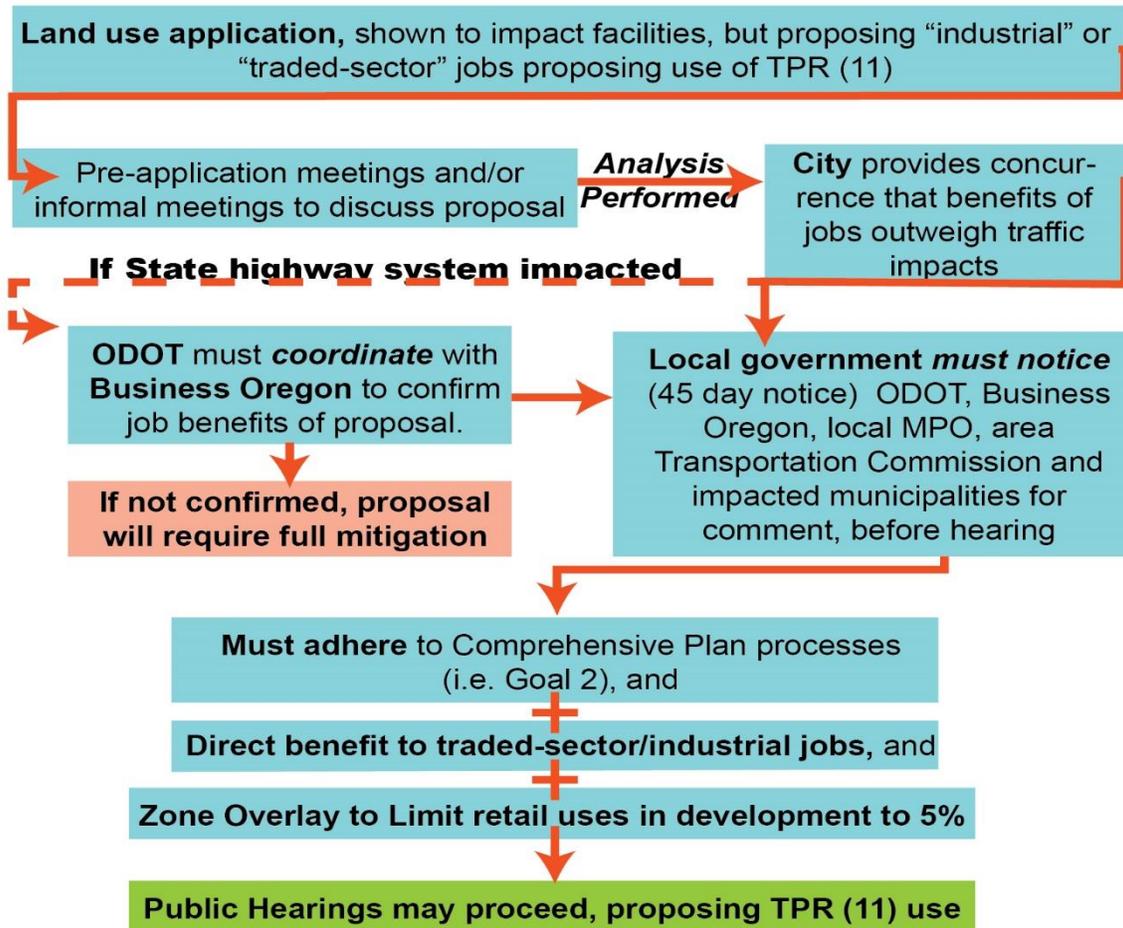
Transportation Planning Rule (TPR) – Subsection (11)

Subsection (11) is one of several mitigation options within the TPR. Among the available options, this one is the most complex in terms of implementation. On the next page is a graphic summarizing Subsection (11), for the full subsection text see Exhibit A.

As it stands currently, staff has concluded that this process is available for use in the City, without creating a new process. To further investigate the application of this Subsection, staff reached out to the Oregon Department of Transportation (ODOT), the Department of Land Conservation and Development, Business Oregon and an email group called the Oregon Planner’s Network (OPN). Substantive responses were received from: the Region 3 Planning and Program Manager of ODOT, Mike Baker (Exhibit B); the Land Use and Transportation Planning Coordinator of DLCD, Bill Holmstrom (Exhibit C); and the cities of Pendleton, Cornelius, and La Grande.

Both ODOT and DLCD reviewed their records and concluded that subsection (11) is used infrequently, on a “one-off basis,” or has not been applied in the State. Holmstrom of DLCD stated, “Creating a section of municipal code to administer this provision seems excessive to us. At the time of a particular zone change or other action that would trigger 0060 actions, the city could simply make findings under 0060(11) that support the partial mitigation action.” Ultimately, DLCD agreed with the conclusion that the process as defined in TPR is already available for use if requested at the time of zone change.

Transportation Planning Rule (TPR) “Subsection 11” - OAR 660-012-0060 (11)



A visual representation of how TPR Subsection would be applied to a land use application.

ODOT, in their response (see Exhibit B), outlined the process through their interpretation of the subsection. As stated in Subsection 660-012-0060 (11)(c) “A local government that proposes to use this section must coordinate with the Oregon Business Development Department, Department of Land Conservation and Development, area commission on transportation, metropolitan planning organization, and transportation providers and local governments directly impacted by the proposal to allow opportunities for comments...” Baker of ODOT states, “That process could be timely and require 6 to 8 weeks advance notice.” Furthermore, Baker speculates why there hasn’t been use of this subsection stating

“One of the important things to note is that if a city uses this provision of the TPR, recognizing that additional congestion may result, the facility provider (presumably ODOT, but could include County or other road authority) could no longer be expected to provide additional capacity for motor vehicles at that location to meet increased congestion (OAR 660.012.0060(2)). It would become

a fix the City should be prepared to fund. This is probably the main reason this subsection has not been used.” Exhibit B

CONCLUSION

Upon outreach to the aforementioned agencies and review of the Subsection (11), staff has concluded two key points. First, the use and process for Subsection (11) is already established within TPR. Creating a separate or distinct process for Medford would add ambiguity and barriers to the zone change process. Second, application of Subsection (11) could present liability in funding and mitigating transportation projects. As Baker of ODOT indicated, the likely reason for lack of use of Subsection (11) is that a jurisdiction would increase its financial responsibilities and mitigation requirements, absolving other roadway authorities from having to mitigate impacts. Thus, staff is concluding that no local process for TPR Subsection (11) is needed as the process already exist.

NEXT STEPS/DIRECTION SOUGHT

Staff is asking the Commission whether they support staff’s conclusion to take no further action on this topic and to make a motion providing direction to staff.

Once staff hears from both the Transportation Commission and Planning Commission, the item will either be closed or staff will begin to draft a development code amendment to create a process for Subsection (11) into the Medford Land Development Code, and future study sessions will be scheduled for discussion and consideration.

EXHIBITS

- A TPR Subsection (11) - 660-012-0060 (11)
- B Email, ODOT Region 3 Planning and Program Manager Mike Baker
- C Email, DLCD Land Use and Transportation Planning Coordinator Bill Holmstrom

Exhibit A: TPR Subsection 11 - 660-012-0060 (11)

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

(a) The amendment must meet paragraphs (A) and (B) of this subsection or meet paragraph (D) of this subsection.

(A) Create direct benefits in terms of industrial or traded-sector jobs created or retained by limiting uses to industrial or traded-sector industries.

(B) Not allow retail uses, except limited retail incidental to industrial or traded sector development, not to exceed five percent of the net developable area.

(C) For the purpose of this section:

(i) ‘Industrial’ means employment activities generating income from the production, handling or distribution of goods including, but not limited to, manufacturing, assembly, fabrication, processing, storage, logistics, warehousing, importation, distribution and transshipment and research and development.

(ii) ‘Traded-sector’ means industries in which member firms sell their goods or services into markets for which national or international competition exists.

(D) Notwithstanding paragraphs (A) and (B) of this subsection, an amendment complies with subsection (a) if all of the following conditions are met:

(i) The amendment is within a city with a population less than 10,000 and outside of a Metropolitan Planning Organization.

(ii) The amendment would provide land for “Other Employment Use” or “Prime Industrial Land” as those terms are defined in OAR 660-009-0005.

(iii) The amendment is located outside of the Willamette Valley as defined in ORS 215.010. (E) The provisions of paragraph (D) of this subsection are repealed on January 1, 2017.

(b) A local government may accept partial mitigation only if the local government determines that the benefits outweigh the negative effects on local transportation facilities and the local government receives from the provider of any transportation facility that would be significantly affected written concurrence that the benefits outweigh the negative effects on their transportation facilities. If the amendment significantly affects a state highway, then ODOT must coordinate with the Oregon

Business Development Department regarding the economic and job creation benefits of the proposed amendment as defined in subsection (a) of this section. The requirement to obtain concurrence from a provider is satisfied if the local government provides notice as required by subsection (c) of this section and the provider does not respond in writing (either concurring or non-concurring) within forty-five days.

(c) A local government that proposes to use this section must coordinate with Oregon Business Development Department, Department of Land Conservation and Development, area commission on transportation, metropolitan planning organization, and transportation providers and local governments directly impacted by the proposal to allow opportunities for comments on whether the proposed amendment meets the definition of economic development, how it would affect transportation facilities and the adequacy of proposed mitigation. Informal consultation is encouraged throughout the process starting with pre-application meetings. Coordination has the meaning given in ORS 197.015 and Goal 2 and must include notice at least 45 days before the first evidentiary hearing. Notice must include the following:

(A) Proposed amendment.

(B) Proposed mitigating actions from section (2) of this rule.

(C) Analysis and projections of the extent to which the proposed amendment in combination with proposed mitigating actions would fall short of being consistent with the function, capacity, and performance standards of transportation facilities.

(D) Findings showing how the proposed amendment meets the requirements of subsection (a) of this section.

(E) Findings showing that the benefits of the proposed amendment outweigh the negative effects on transportation facilities.

Exhibit B :Email, ODOT Region 3 Planning and Program Manager Mike Baker

From: [BAKER Michael](#)
To: [Kyle W. Kearns](#)
Cc: [Ask ODOT](#); [LEAMING Gary W](#); [WARNER Gary A](#); [Matt H. Brinkley](#); [HOROWITZ Micah](#)
Subject: RE: Question on TPR (11), Partial Mitigation ~ Kyle Kearns, City of Medford
Date: Wednesday, February 19, 2020 3:24:56 PM

<EXTERNAL EMAIL **Be cautious with links and attachments**>

Kyle,

I received an inquiry regarding a report you are putting together for your City Council regarding the Transportation Planning Rule (TPR) found in OAR 660.012.0060 (11). This subsection allows for only partial mitigation when a land use amendment is found to have a “significant affect,” but only in very limited circumstances. I have inquired of the other Region Planning Managers throughout the State, and we are unaware of any agency/application using this subsection.

Nevertheless, we believe it would work something like this:

1. A land use application is submitted to change the current land use/designation to that of an industrial use/designation that is expected to generate more trips than the current one. As part of the application, the applicant states that they intend to develop the property with “industrial” or “traded-sector” jobs as defined in OAR 660.012.0060(11)(C)(i-ii).
2. A pre-application conference is held. At that meeting, a desire for this type of development is expressed, and it is also recognized that difficult transportation challenges may be difficult to overcome without significant cost.
3. A traffic impact analysis is performed by the applicant. It is determined that under OAR 660.0060(1) a “significant affect” will occur in the planning horizon and that one of the mitigation measures outlined in OAR 660.012.0060(2) will be necessary. For this example, it is assumed that this mitigation will be in the form of an actual improvement(s) to the transportation system. It is also assumed, that the mitigation is well beyond what the applicant/city are willing to fund. A suggestion is made to utilize subsection 11 of the TPR.
4. Traffic mitigation of some sort must be identified that addresses at least part of the problem.
5. The City must perform an analysis that weighs the benefits of the development and partial mitigation against the negative effects on the transportation system.
6. The City Public Works Department as the road authority for the local street system must provide written concurrence that the benefits outweigh the negative effects.
7. If affecting a state highway, the City must notify ODOT, who has 45-days to respond (45-day notice is really only required prior to the first evidentiary hearing, but it is recommended that ODOT be contacted to participate in the pre-application meeting as well).
8. ODOT, after consultation with Business Oregon to review the City’s benefit-negative affects analysis, must (also) provide written concurrence that the benefits outweigh the negative effects. If ODOT and Business Oregon do not agree to the analysis, and ODOT responds as to such in writing, the City cannot proceed to utilize this provision of the TPR.

9. The City must also coordinate with RVMPO, RVACT, DLCD, Business Oregon, and other transportation providers (RVTD) and local jurisdictions that may be impacted by the proposal to allow opportunities for comment on the proposal, proposed mitigation, and findings. Note, with the exception of other transportation providers (road authorities) these entities do not need to approve the proposal or mitigation, only comment. Affected road authorities must provide written concurrence for the application of this subsection of the TPR to proceed. A 45-day notice to each of these is required before the first evidentiary hearing.
10. The City must require an overlay or other mechanism that restricts the uses in the new zone/plan designation to “industrial” or “traded-sector” uses as defined in OAR 660.012.0060 (11)(C)(i-ii). That overlay or other mechanism can allow up to 5% retail uses, but only those that are limited to incidental use for the “industrial” or “traded-sector” uses that are allowed.
11. The City holds public hearings as required by the local code and makes the appropriate findings in support of their decision.

The use of this subsection does require some public process. For example, RVACT must be consulted. Since RVACT does not have staff and only meets publicly, it could only be addressed in that manner. RVMPO has professional staff. While potentially the rule provides their staff the leeway to comment, they may also require a public process through their Technical and Policy Committees. That process could be timely and require 6 to 8 weeks advance notice. You may want to contact RVMPO staff on how they would process such a request. For other transportation providers and jurisdictions, the process they choose to use to address the issue may differ for each one.

One of the important things to note is that if a city uses this provision of the TPR, recognizing that additional congestion may result, the facility provider (presumably ODOT, but could include County or other road authority) could no longer be expected to provide additional capacity for motor vehicles at that location to meet increased congestion (OAR 660.012.0060(2)). It would become a fix the City should be prepared to fund. This is probably the main reason this subsection has not been used.

In the future, feel free to contact our Region Staff in Roseburg or White City directly. We welcome your comments and questions.

Mike Baker

ODOT Planning and Program Manager, Region 3

3500 NW Stewart Parkway
Roseburg, OR 97470
Phone: 541-957-3658
Fax: 541-672-6148

Exhibit C : Email, DLCD Land Use and Transportation Planning Coordinator Bill Holmstrom

From: [Holmstrom, Bill](#)
To: [Kyle W. Kearns](#)
Cc: [LeBombar, Josh](#)
Subject: RE: Question on TPR (11), Partial Mitigation
Date: Wednesday, February 19, 2020 4:05:10 PM

1 <EXTERNAL EMAIL **Be cautious with links and attachments**>

Hi Kyle,

I discussed your questions with my manager this afternoon. To answer your questions briefly, we can't recall an example of this provision of the TPR being used. Certainly a jurisdiction could have used it, and without a heads-up, or some detailed reading of the proposed amendment, we wouldn't really know about it. I have had a few questions about it over the years from other jurisdictions.

In any case, we would expect that this provision would be used infrequently, on a one-off basis. Creating a section of municipal code to administer this provision seems excessive to us. At the time of a particular zone change or other action that would trigger 0060 actions, the city could simply make findings under 0060(11) that support the partial mitigation action.

If this were to become something that were in use frequently enough to require a provision of municipal code, it seems to me that it makes more sense to avoid it through updates to the transportation system plan, other changes to the city's comprehensive plan, and/or changes to the facility performance standards that area causing the issues.

Thanks,
-Bill



2 **Bill Holmstrom, AICP**
Land Use and Transportation Planning Coordinator
Oregon Department of Land Conservation and Development
635 Capitol Street NE, Suite 150 | Salem, OR 97301-2540
Direct: 503-934-0040 | Main: 503-373-0050
bill.holmstrom@state.or.us | www.oregon.gov/LCD

From: Kyle W. Kearns [mailto:Kyle.Kearns@cityofmedford.org]
Sent: Wednesday, February 19, 2020 8:23 AM
To: Buhl, Laura <lbuhl@dlcd.state.or.us>; Holmstrom, Bill <wholmstrom@dlcd.state.or.us>
Subject: Question on TPR (11), Partial Mitigation

Hello,

Hope that all is well. I'm kind of working my way through various contacts in the DLCD contact page and I thought that, based on title, both of you may be of some assistance. A long email, but hopefully it is clear enough.

Our City Council has directed us to look into the validity of creating a public process for a part of the Transportation Planning Rule (TPR), Subsection (11). The short of this TPR provision is that a local government may approve partial improvements of transportation infrastructure if it meets criteria outlined in TPR (particularly the creation of traded-sector jobs). TPR ([link here](#))

OAR 660-012-0060, Subsection (11) states:

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

The TPR goes on to outline a process, in which Business Oregon, ODOT, DLCD, and local organizations are to partner in the decision making process, it states:

"(c) A local government that proposes to use this section must coordinate with Oregon Business Development Department, Department of Land Conservation and Development, area commission on transportation, metropolitan planning organization, and transportation providers and local governments directly impacted by the proposal to allow opportunities for comments on whether the proposed amendment meets the definition of economic development, how it would affect transportation facilities and the adequacy of proposed mitigation. Informal consultation is encouraged throughout the process starting with pre-application meetings."

My questions are:

Are there examples in the State where these provisions have been used?
Is a public process needed, or permitted, to be created?
Are there details you think I should be aware of?

Best,

Kyle Kearns, AICP | *Planner II*
City of Medford, Oregon | Planning Department
200 S. Ivy Street, Medford, OR 97501

Planning Commission
GF-20-052 – Transportation Planning Rule (TPR), Subsection (11)
June 1, 2020

Ph: 541-774-2380