

Oregon Administrative Rules

Chapter 734, Division 51

Highway Approach Permitting, Access Control, and Access Management Standards



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CHAPTER 734, DIVISION 51

HIGHWAY APPROACHES, ACCESS CONTROL, SPACING STANDARDS AND MEDIANS

General Provisions

734-051-1010

Authority for Rules

Division 51 rules are adopted under the director's authority contained in ORS 374.310(1).

Stat. Auth.: ORS 184.616, 184.619, 374.310–374.314, 374.345, 374.355

Stats. Implemented: ORS 374.300 to 374.360, §27, ch. 330, OL 2011

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12

734-051-1020

Purpose and Intent of Rules

(1) Purpose. Division 51 establishes procedures, standards, and approval criteria used by the department to govern highway approach permitting and access management consistent with Oregon Revised Statutes (ORS), Oregon Administrative Rules (OAR), statewide planning goals, acknowledged comprehensive plans, and the Oregon Highway Plan (OHP).

(2) Intent. The intent of division 51 is to provide a highway access management system based on objective standards that balances the economic development objectives of properties abutting state highways with the transportation safety and access management objectives of state highways in a manner consistent with local transportation system plans and the land uses permitted in applicable local comprehensive plan(s) acknowledged under ORS Chapter 197.

(3) Oregon Highway Plan. The Oregon Highway Plan serves as the policy basis for implementing division 51 and guides the administration of access management rules, including mitigation and public investment, when required, to ensure highway safety and operations pursuant to this division.

Stat. Auth.: ORS 184.616, 184.619, 374.310–374.314, 374.345, 374.355

Stats. Implemented: ORS 374.300–374.360, §27, ch. 330, OL 2011

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12

734-051-1030

Administration of Rules

(1) Approaches Subject to Division 51. Private approaches in existence and applications for private approaches filed after June 29, 2014 are governed by the rules of division 51. Public approaches do not require an Approach Permit but are subject to the provisions of OAR 734-051-1050.

(2) Grandfathered Approaches. Division 51 rules do not affect existing rights of owners of grandfathered approaches that meet the definition in OAR 734-051-1070(30), except where the rules specifically state their application to grandfathered approaches, such as the rule for changes of use of an approach under OAR 734-051-3020. An approach no longer qualifies as grandfathered once the department issues a Permit to Operate under division 51 rules or the department acquires access control as defined under OAR 734-051-1070.

(3) Compliance with Land Use Requirements. Approval of a property for a particular use is the responsibility of city, county, or other governmental agencies, and an applicant must obtain appropriate approval from city, county, or other governmental agencies having authority to regulate land use. Approval of an application for an approach to a state highway, or issuance of a construction permit or a Permit to Operate for the same, is not a finding of compliance with statewide planning goals or an acknowledged comprehensive plan.

(4) General Requirements for Notices of Appealable Decisions and Other Written Communication. The department will provide notice of appealable decisions by certified mail to the applicant. Notice of non-appealable decisions and other written communication will be by first class mail, unless written agreement is made with the applicant for such communication through electronic means such as email.

(5) Reasonable Access. Pursuant to ORS 374.310, the division 51 rules may not be exercised so as to deny any property that has a right of access reasonable access to the highway. ORS 374.312 authorizes adoption of rules establishing criteria for reasonable access consistent with ORS 374.310. The rules under OAR 734-051-4020 address reasonable access solely in the context of the issuance of approach permits and do not affect whether access may be reasonable for other purposes or under other reviews.

Stat. Auth.: ORS 184.616, 184.619, 374.310–374.314, 374.345 & 374.355

Stats. Implemented: ORS 374.300–374.360, §27, ch. 330, OL 2011

734-051-1040

Relationship to Local Jurisdiction Rules and Regulations

(1) Where ODOT and Local Jurisdiction Agree on Standards or Requirements. Where ODOT and a local jurisdiction have agreed to access spacing standards, sight distance standards or channelization requirements in an adopted facility plan that is different than the adopted standards in this rule, the agreed upon standard will be considered consistent with the standards

adopted by this rule and with OAR 660-012-0015 and shall be applied to the state highways within that jurisdiction.

(2) Where Local Jurisdiction Standards or Requirements Exceed OAR 734-051. Where a local jurisdiction has adopted access spacing standards, sight distance standards or channelization requirements that are more stringent than the standards adopted by these rules or allow less access to the state highway than the standards adopted in these rules, the local standards shall be considered to be consistent with the state standards and with OAR 660-012-0015 and shall be applied to state highways within that jurisdiction.

(3) Where OAR 734-051 Exceeds Local Jurisdiction Standards or Requirements. Where a local jurisdiction has adopted access spacing standards, sight distance standards or channelization requirements that are less stringent than the standards adopted by these rules or provide greater access to the state highway than those standards adopted by these rules, the local standards shall be deemed to be inconsistent with these rules and with OAR 660-012-0015 and shall not be applied to state highways within the local jurisdiction.

Stat. Auth.: ORS 184.616, 184.619, 374.310–374.314, 374.345 & 374.355
Stats. Implemented: ORS 374.300–374.360, §27, Ch. 330, OL 2011

734-051-1050

Procedure to Obtain a Permit to Construct or Modify a Public Approach

(1) Purpose. This rule describes the procedures to obtain a Permit to Construct a new public approach or modify an existing public approach on state highway right of way. This rule does not supersede any existing agreements between the department and a local jurisdiction for maintenance or other responsibilities related to a public approach.

(2) Applicability. This rule applies to construction and modification of a public approach as defined in OAR 734-051-1070.

(3) Permit Requirements.

(a) A right of access is required to obtain a Permit to Construct a public approach.

(b) A Permit to Construct is required to construct or modify a public approach on state highway right of way.

(c) A local jurisdiction is not required to obtain a permit to operate from the department for ongoing operation of a new or existing public approach. However, the department may issue a permit to operate upon agreement with the local jurisdiction that a permit to operate is a preferred means of documenting any terms and conditions related to the approach.

(4) Agreements for Public Approaches.

(a) The city or county with jurisdiction of the public approach shall contact the department District Office regarding the proposed work within the state highway right-of-way.

(b) The department shall notify the local jurisdiction of all documents and approvals required to obtain a Permit to Construct.

(c) The city or county with jurisdiction of the public approach may enter into an agreement with the department that addresses responsibilities, obligations and coordination that may include, but is not limited to the following:

(A) Financing for the project;

(B) Development of a traffic impact analysis, with a time horizon sufficient to ensure the approach has adequate operational life;

(C) Preliminary project matters, including but not limited to field surveys, environmental studies, traffic investigations, acquisition of all necessary right-of-way, and identification and acquisition of required permits;

(D) Determinations regarding the character or type of traffic control devices to be used, and who has the authority to place or erect them upon state highways, and maintain and operate them;

(E) Development and approval of final plans including but not limited to paving, pavement marking, signing, sidewalks, curbs, lighting, storm drain facilities, landscaping and any other construction details;

(F) Responsibility and manner of providing insurance and bonding;

(G) Responsibility for preparation of the contract and bidding documents, advertising for construction bid proposals, award of contracts, payment of contractor costs, furnishing of construction engineering, field testing of materials, technical inspection and project manager services for administration of the contract;

(H) Ownership, maintenance and responsibility for improvements and constructed elements associated with the public approach; and,

(I) Exchange and transmittal of final construction drawings.

(d) The department shall issue a Permit to Construct upon receipt and approval of all required submissions from the local jurisdiction.

(5) Appeals. A local jurisdiction may appeal a department decision to deny a Permit to Construct or the terms and conditions of a Permit to Construct through a contested case hearing as set forth in OAR 137-003-0501 through 137-003-0700.

Stat. Auth.: ORS 184.616, 184.619, 374.310–374.314, 374.345 & 374.355
Stats. Implemented: ORS 374.300–374.360, §27, ch. 330, OL 2011
Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12

734-051-1060

Delegation of Permit Authority to Local Jurisdiction

(1) Delegation of Permit Authority. The department and a local government may enter into an intergovernmental agreement setting provisions for and allowing the local government to issue approach permits for private approaches to regional and district highways, when it is determined by the department and a local jurisdiction that it is in the best interest of highway users.

(2) Application of State Requirements. Intergovernmental agreements developed pursuant to OAR 734-051-1060(1) must provide that permits issued by the local government will be consistent with the highway plan; these administrative rules; state statutes; and local transportation system plans acknowledged under ORS 197.

Stat. Auth.: ORS 184.616, 184.619, 374.310–374.314, 374.345 & 374.355
Stats. Implemented: ORS 374.300–374.360, §27, ch. 330, OL 2011
Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12

734-051-1065

Restriction of Turning Movements for Existing Private Approaches

(1) Applicability.

The department may restrict turning movements onto a state highway from an approach for which a permit was issued under OAR 734-051-3010 or that is deemed to have written permission under OAR 734-051-3015 when the restriction is not required by contract, condemnation judgment, recorded deed or a Permit to Operate.

(2) Procedures and Circumstances.

(a) The department may restrict turning movements under this rule for circumstances that include the following:

- (A) Safety and highway operations concerns set forth in OAR 734-051-4020(3); or
- (B) To prevent roadway departure crashes, particularly head-on type crashes and sideswipe meeting type crashes; or
- (C) Where drainage facilities are required in the median of the highway; or
- (D) To provide a two-stage or multi-stage pedestrian and/or bicycle crossing; or
- (E) Pursuant to local government projects and land use decisions.

(b) When the department is evaluating the need to restrict turning movements under this rule, the department shall engage the following:

(A) Owners of property abutting the highway that will be affected by the restriction;

(B) Property lessees and business operators abutting the highway that will be affected by the restriction;

(C) The local jurisdiction with land use authority in the area of the restriction;

(D) A representative of the freight industry; and

(E) Other stakeholders as appropriate.

(c) Prior to implementing a turning restriction, the department will provide written notification to the parties listed in (a) of its decision to implement the restriction.

(d) A non-traversable median may not be used as mitigation for an approach road permit unless the department first establishes that no other measures will be effective for the circumstances.

Stat. Auth.: ORS 184.616, 184.619, 374.310–374.314, 374.345 & 374.355

Stats. Implemented: ORS 374.345; 374.312

734-051-1070

Definitions

(1) “Access Control” means that the right of access between a property abutting the highway and the highway has been acquired by the department or eliminated by law.

(2) “Access Management Strategy” means a project delivery strategy developed by the Department of Transportation, in collaboration with cities, counties and owners of real property abutting a state highway in the affected area, that identifies the location and type of public and private approaches and other necessary improvements that are planned to occur primarily in the highway right of way and that are intended to improve current conditions on the section of highway by moving in the direction of the objective standards described in ORS 374.311, subject to safety and highway operations concerns.

(3) “Access Management Plan” means a facility plan adopted by the Oregon Transportation Commission in coordination with affected local governments for managing access on a designated section of highway or within the influence area of an interchange. An access management plan may establish a unique access plan and access management standards for the designated section of highway or influence area of an interchange, and may be more stringent than standards adopted under OAR 734-051-4020. It may be developed independent of or in conjunction with a highway or interchange project; however, an access management plan is not a highway or interchange project.

(4) “Alternate Access” means the right to access a property by means other than the proposed approach. It may include an existing public right of way, another location on the subject state highway, an easement across adjoining property, a different highway, a service road, a local road, or an alley, and may be in the form of a single or joint approach. The existence of alternate access is not a determination that the alternate access is “reasonable” as defined in ORS 374.310.

(5) “Annual average daily traffic” means highway traffic volumes as reported in the most recent edition of the transportation volume tables published annually by the department.

(6) “Appealable decision” means a final decision by the department where the applicant has a right to a dispute resolution procedure to review the department’s decision as set forth in OAR 734-051-3080 through 3110. The following are appealable decisions:

- (a) A decision to deny an application for an approach permit;
- (b) A decision to deny an application for a deviation from approach permitting standards;
- (c) A decision to impose mitigation measures as a condition of approval of an approach application or as a condition of approval of a deviation from the general approval criteria set forth in OAR 734-051-4020(2);
- (d) A decision to remove a connection for which the department has issued a Permit to Operate or written permission as grandfathered, or which the department deems to have written permission as set forth in OAR 734-051-3015.

(7) “Applicant” means a person, corporation, or other legal entity with a legal property interest, including a lease, option or reservation of access, to land abutting the highway that applies for an approach permit or a deviation from approach permitting standards, or their designated agent.

(8) “Application” means a completed application form for state highway approach including any required documentation and attachments necessary for the department to determine if the application can be deemed complete.

(9) “Approach” means a legally constructed public or private connection that provides vehicular access to or from a state highway that:

- (a) Has written permission under a Permit to Operate issued by the department under OAR 734-051-3010; or
- (b) The department has recognized as grandfathered under OAR 734-051-1070(29); or
- (c) The department does not rebut as having a presumption of written permission under OAR 734-051-3015.

(10) “Average Daily Trips” means the total of all one-direction vehicle movements with either the origin or destination inside the study site that includes existing, primary, pass by, and diverted linked trips and is calculated in accordance with the procedures contained in the Trip Generation Manual, 9th Edition published by the Institute of Transportation Engineers (ITE). Adjustments to the standard rates in the ITE Manual for mode split may be allowed if calculated in accordance with Transportation Planning Rule and the ITE procedures. Adjustments to the standard rates for multi-use internal site trips may be allowed if calculated in accordance with ITE procedures and if the internal trips do not add vehicle movements to the approaches to the highway.

(11) “Channelization” means the roadway lane configuration necessary to safely accommodate turning movements from the highway to an intersecting approach.

(12) “Classification of highways” means the department’s state highway classifications defined in the Oregon Highway Plan.

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

- (14) “Connection” means an existing approach as defined in (9) or an unpermitted means of vehicular access to or from a state highway and an abutting private property, city street or county road.
- (15) “Construction Permit” means a permit to construct or modify a state highway approach including all attachments, required signatures, and conditions and terms.
- (16) “Crash history” means at least the three most recent years of crash data recorded by the department’s crash analysis and reporting unit.
- (17) “Day” means calendar day, unless specifically stated otherwise.
- (18) “Deemed complete” means acknowledgement by the department that it has received all required information from the applicant for a complete application for an approach permit or for a request for a deviation from approach permit standards.
- (19) “Department” or “ODOT” means the Oregon Department of Transportation.
- (20) “Deviation” means an exception from the access management spacing, sight distance or channelization standards set forth in OAR 734-051-4020.
- (21) “Director” means the director of the Oregon Department of Transportation.
- (22) “District highway” means a state highway that has been classified by the commission as a district highway in the Oregon Highway Plan.
- (23) “Division 51” (“this division”) means Oregon Administrative Rules (OAR) 734-051-1010 through 734-051-7010.
- (24) “Expressway” means a state highway that has been designated by the commission as an expressway in the Oregon Highway Plan.
- (25) “Facility Plan” means a plan developed by the department for a state highway facility, including but not limited to corridor facility plans, and transportation refinement plans.
- (26) “Fair Market Value” means the amount in cash, or on terms reasonably equivalent to cash, for which in all probability the property would be sold by a knowledgeable owner willing but not obligated to sell to a knowledgeable purchaser who desired but is not obligated to buy.
- (27) “Freeway” means a route or segment of highway that is completely access controlled and access limited to grade separated interchanges.
- (28) “Freeway or Expressway ramp” means all types, arrangements, and sizes of turning roadways that connect to a freeway or expressway interchange.
- (29) “Functional Area of an Intersection” means the intersection and the area beyond the intersection that comprises decision and maneuver distance, plus any required vehicle storage length.
- (30) “Grandfathered approach” means an approach that the department has recognized in documentation dated prior to January 1, 2014 as having grandfathered status under the rules in effect on the date of the documentation. An approach that is recognized as having grandfathered status is treated in the same manner as a Permit to Operate under Division 51 rules unless otherwise noted.

(31) “Grant of Access” means the conveyance of a right of access from the department to an abutting property owner.

(32) “Highway mobility standards” mean the performance standards for maintaining mobility as adopted by the commission in the Oregon Highway Plan.

(33) “Highway peak hour” means the highest one-hour volume observed on an urban roadway during a typical or average week, or the thirtieth (30th) highest hourly traffic volume on a rural roadway typically observed during a year.

(34) “Highway designation” means a designation made by the Oregon Transportation Commission to a defined route or segment that is in addition to highway classification and that modifies the system management goals for the designated part of the highway. Highway designations include but are not limited to expressways, freight routes, special transportation areas, scenic routes and lifelines.

(35) “Indenture of Access” means a deeded conveyance to the abutting property owner to change the location, width, or use restrictions of a reservation of access. Removal of a farm crossing or farm use restriction from a reservation of access requires a grant of access.

(36) “Infill” (“Infill Development”) means development of vacant or remnant land passed over by previous development and that is consistent with zoning. Infill occurs in urban areas. It may also occur in rural areas on commercial or industrial zoned land where the land has been developed into an urban block pattern including a local street network, and the posted highway speed is at or below forty-five (45) miles per hour.

(37) “Influence area of an interchange” means the area 1,320 feet from an interchange ramp terminal measured on the crossroad away from the mainline.

(38) “Interchange” means a system of interconnecting roadways in conjunction with one or more grade separations that provides for the movement of traffic between two or more roadways or highways on different levels.

(39) “Intersection” means an at-grade connection of a public or private road to the highway.

(40) “Interstate highway” means a state highway that has been classified by the commission as an interstate highway in the Oregon Highway Plan.

(41) “Land Use Action” means an action by a local government or special district concerning the adoption, amendment or application of the statewide planning goals, a comprehensive plan provision or a land use regulation including zoning, development or subdivision codes.

(42) “Land Use Regulations” means local jurisdiction zoning and development codes, including regulation of land use, zoning, subdivisions, land partitions, access, site plans, and similar regulations adopted pursuant to ORS 197, for cities, and ORS 215, for counties.

(43) “Median” means the portion of the roadway separating opposing traffic streams.

(44) “Mitigation Measure” means an improvement, modification, or restriction set forth in OAR 734-051-3070 and required by the department or initiated by an applicant necessary to offset impacts of the development and provide for safe operation of the highway and proposed approach. Mitigation measures may be a condition of approval for a deviation from approach permitting standards or an application for an approach permit.

(45) “Move in the direction of” means a change in an existing private connection that would bring the connection closer to conformity with access spacing, sight distance, or channelization standards set forth in OAR 734-051-4020. The process and criteria for moving in the direction of access spacing, sight distance, or channelization standards are set forth in OAR 734-051-3020(7) through (11).

(46) “Oregon Highway Plan” means the Oregon Highway Plan adopted by the Oregon Transportation Commission, pursuant to ORS 184.618.

(47) “Peak hour”, for the purpose of approach applications made under OAR 734-051-3020 (Change of Use), means the hour during which the highest volume of traffic enters and exits the property during a typical week.

(48) “Permit to Construct” means a permit that is issued by the department that includes all attachments, required signatures, conditions and terms, and any bond and insurance documentation provided by the applicant as required by the department to construct or modify an approach and any related mitigation within the state highway right of way.

(49) “Permit to Operate” means written permission issued by the department to operate, maintain and use an approach to the state highway, including all required signatures and attachments, and conditions and terms. A Permit to Operate is not required for a public approach but the department may issue a Permit to Operate for a public approach upon agreement with the governing city or county.

(50) “Permittee” means a person, corporation, or other legal entity holding a valid Permit to Operate including the owner or lessee of the property abutting the highway or their designated agent.

(51) “Permitted approach” means a legally constructed approach connecting to a state highway for which the department has issued a valid Permit to Operate.

(52) “Planned” road or street means a highway, road, street or alley identified in an adopted corridor plan, comprehensive plan or transportation system plan in accordance with administrative procedures of OAR 660-012 and ORS Chapter 197 but has not been constructed.

(53) “Posted speed” means the statutory speed established by ORS 811.105 or 811.180, or the designated speed established by 810.180.

(54) “Prior use” of an approach means the number of peak hour or average daily trips:

(a) Authorized by the Permit to Operate issued by the department; or

(b) Authorized by the department for a grandfathered approach in the documentation recognizing the approach as grandfathered; or

(c) Based on the use of the property on January 1, 2014 for approaches that the department does not rebut as having a presumption of written permission under OAR 734-051-3015.

(55) “Private approach” means an approach that serves one or more properties and that is not a public approach.

(56) “Private road crossing” means a privately owned road designed for use by trucks that are prohibited by law from using state highways, county roads or other public highways.

(57) “Professional Engineer,” for the purpose of OAR 734-051, means a person who is registered and holds a valid license to practice engineering in the State of Oregon, as provided in ORS 672.002 through 672.325 and OAR 820-001 through 820-040.

(58) “Project Delivery” means the process of programming, designing and constructing modernization and highway improvement projects identified in the Statewide Transportation Improvement Program.

(59) “Public approach” means an existing or planned city street or county road connection that provides vehicular access to and from a highway. An existing city street or county road connection must be under the authority of the city or county to be considered a public approach. A planned city street or county road must be consistent with OAR 731-051-1070(52), included as part of a corridor plan, local transportation system plan or comprehensive plan, and must be or come under the authority of the city or county to be considered a public approach.

(60) “Receipt of an application” means the date the department date-stamps an application as received.

(61) “Redevelopment” (“Infill Redevelopment”) means the act or process of changing an existing development including replacement, remodeling, or reuse of existing structures to accommodate new development that is consistent with current zoning. Redevelopment occurs in urban areas. It may also occur in rural areas on commercial or industrial zoned land where the land has been developed into an urban block pattern including a local street network, and the posted highway speed is at or below forty-five (45) miles per hour.

(62) “Region Access Management Engineer” means a professional engineer employed by the department who by training and experience has comprehensive knowledge of the department’s access management rules, policies, and procedures, or a professional engineer as specified in an intergovernmental agreement delegating permitting authority as set forth in OAR 734-051-1060.

(63) “Region Manager” means the person in charge of one of the department’s Transportation Regions or designated representative.

(64) “Regional highway” means a state highway that has been classified by the commission as a regional highway in the Oregon Highway Plan.

(65) “Reservation of Access” means a right of access to a specific location in an area where the department has acquired access control subject to restrictions that are designated in a deed. A reservation of access may include a use restriction limiting the right of access to a specified use or restriction against a specified use. A reservation of access affords the right to apply for an approach but does not guarantee approval of an application for state highway approach or the location of an approach.

(66) “Right of access” means the property right of an abutting property owner to ingress and egress to the roadway. A right of access includes a common law right of access, or may be conveyed through operation of law or by deed as a reservation of access, or grant of access.

(67) “Right of way” means real property or an interest in real property owned by the department for the purpose of constructing, operating and maintaining public transportation facilities.

(68) “Rule, this” (“this rule”) means the part of OAR 734, division 51, as designated by the four-digit suffix, in which the reference to “this rule” appears. For example, this rule (“Definitions”) is OAR 734-051-1070.

(69) “Rural” means the area outside the urban growth boundary, the area outside a Special Transportation Area in an unincorporated community, or the area outside an Urban Unincorporated Community defined in OAR 660-022-0010.

(70) “Sight distance” means a length of highway that a driver can see with an acceptable level of clarity.

(71) “Signature” means the signature of each property owner or the authorized agent of the corporation.

(72) “Spacing standards” means the access management spacing standards set forth in OAR 734-051-4020.

(73) “Special Use Approach” means an approach that is intended to provide vehicular access for a specific use and for a limited volume of traffic. Such uses are determined by the department and may include emergency services, government, and utility uses. Mitigation required as a part of an approach permit approval or a condition on a construction permit does not by itself create a “special use approach.”

(74) “State highway” means a highway that is under the jurisdiction of the Oregon Department of Transportation.

(75) “Statewide highway” means a state highway that has been classified by the commission as a statewide highway in the Oregon Highway Plan.

(76) “Temporary approach” means an approach that is constructed, maintained, and operated for a specified period of time not exceeding two years, and removed at the end of that period of time.

(77) “Traffic Impact Analysis” means a report prepared by a professional engineer that analyzes existing and future roadway conditions.

(78) “Trip” means a one-way vehicular movement that consists of a motor vehicle entering or exiting a property.

(79) “Unincorporated community” means a settlement that is not incorporated as a city and that lies outside the urban growth boundary of any city.

(80) “Urban” means the area within the urban growth boundary, within a Special Transportation Area of an unincorporated community, or within an Urban Unincorporated Community defined in OAR 660-022-0010.

(81) “Vehicular Access” means the location where motorized vehicles move to and/or from a street, roadway, highway or alley and an abutting property.

(82) “Workday” means Monday through Friday and excludes holidays and days state offices are closed.

Stat. Auth.: ORS 184.616, 184.619, 374.310–374.314, 374.345 & 374.355

Stats. Implemented: ORS 374.300–374.360, §27, ch. 330, OL 2011

Rights of Access

734-051-2010

General Provisions

(1) Right of Access Required for Private Approach. In order for the department to approve an application requesting a private approach, the property for which application is made must have a right of access to the state highway as defined in OAR 734-051-1070. A right of access or a recorded easement establishing a right of access does not guarantee approval of an approach permit. Where no right of access exists, an application for a grant of access must be submitted before an application for state highway approach will be deemed complete. The department will not approve a grant of access where an application for approach permit cannot be approved.

(2) Right of Access Required for Public Approach. Where no right of access exists, a local jurisdiction must submit an application for a grant of access with its application to construct a public approach. The department will not approve a grant of access where an application to construct a public approach cannot be approved.

(3) Request to Verify Right of Access. Upon request, the department shall verify whether a property abutting the state highway has a right of access and identify any restrictions or limitations of the right.

(4) Removal of Farm Use Restrictions. Removing a farm crossing or farm use restriction from a reservation of access requires a grant of access from the department.

Stat. Auth.: ORS 184.616, 184.619, 374.310–374.314, 374.345 & 374.355
Stats. Implemented: ORS 374.300–374.360, §27, ch. 330, OL 2011

734-051-2020

Grants of Access

(1) Grant of Access. The department may approve an application for a grant of access only when the provisions in sections (2) through (6) below are fully complied with.

(2) Restricted Areas.

(a) The department shall not approve an application for a grant of access for a private approach:

- (A) On an interstate highway or freeway ramp;
- (B) On an expressway or expressway ramp;
- (C) Opposite a freeway or expressway ramp terminal; or
- (D) In the influence area of an interchange.

(b) The department shall not approve an application for a grant of access for a public approach on a freeway, freeway ramp, or an expressway ramp.

(c) The department shall not approve an application for a grant of access to serve a public approach aligned opposite a freeway or expressway ramp or within the influence area of an interchange unless the public approach is included in an interchange area management or facility plan approved by the ODOT chief engineer and adopted by the commission.

(3) Criteria for Grant of Access for a Private Approach. The department may approve an application for a grant of access where all of the following conditions are met:

(a) An applicant submits an application for state highway approach, as set forth in OAR 734-051-3010 through 734-051-3030, with its application for a grant of access, as set forth by this rule;

(b) The applicant meets the requirements for issuance for a construction permit, as set forth in OAR 734-051-5020;

(c) The applicant agrees in writing to meet any mitigation measures, terms, and conditions placed on the approval of the grant of access, construction permit and the Permit to Operate;

(d) One of the following in (A) or (B) occurs:

(A) The department determines that access control is no longer needed at the location specified in the application for a grant of access as set forth in section (5) of this rule; or

(B) The applicant establishes that the grant of access will benefit the state highway system as set forth in OAR 734-051-4030;

(e) Alternate access to the property is not and cannot be made reasonable pursuant to sections (6) and (7) of OAR 734-051-4020;

(f) The property owner must agree to deed restrictions that ensure that future development intensity and trip generation can be safely accommodated by the state transportation system; and

(g) The technical services manager approves an application for a grant of access.

(4) Criteria for Grant of Access for a Public Approach. The department may approve an application for a grant of access for a public approach to a state highway where all of the following conditions are met:

(a) A local jurisdiction submits an application for a grant of access, as set forth in sections (6) through (8) of this rule;

(b) The grant of access is consistent with the Oregon Highway Plan and a local transportation system plan; or, in the absence of a transportation system plan, a grant of access may be considered where the local jurisdiction has explored all practicable alternatives to the connection, including parallel streets and the purchase of additional right of way;

(c) One of the following occurs:

(A) The department determines that access control is no longer needed at the location specified in the application for a grant of access as set forth in section (5) of this rule; or

(B) The local jurisdiction provides sufficient evidence for the department to establish that the grant of access will benefit the state highway system as set forth in (i) or (ii) below:

(i) The proposed connection is a public facility with a functional classification of collector or higher and is identified in an adopted transportation system plan consistent with OAR 660-012-0000 through 660-012-0070; or

(ii) The technical services manager determines that the grant of access will provide a benefit to the state highway pursuant to OAR 734-051-4030.

(d) The department and the local jurisdiction requesting a grant of access for a public approach:

(A) Shall enter into an intergovernmental agreement, as set forth in OAR 734-051-1050, that details the responsibility for construction, maintenance, operation, mitigation measures and cost of the public approach; and

(B) May enter into an intergovernmental agreement that addresses transportation plan and land use amendments or modifications to ensure that trip generation and traffic operations from planned development can be safely supported on the state transportation system.

(5) Factors to Determine if Access Control is Still Needed. For the purposes of determining whether access control is still needed, per subsections (3)(d)(A) and (4)(c)(A) of this rule, at the proposed location for a grant of access, the department shall consider factors including but not limited to those in (a) through (g):

(a) Classification of the highways and highway designations;

(b) Spacing standards;

(c) Highway mobility standards;

(d) State and local transportation system plans;

(e) Comprehensive plan and land uses in the area;

(f) Safety and operational factors; and

(g) Sight distance standards.

(6) Applicant for Grant of Access. The applicant for a grant of access must be the owner of the property abutting the highway right of way or the owner's designated agent.

(7) Complete Application for Grant of Access. A complete application for grant of access to a state highway consists of a completed and signed standard state form, a complete application for a state highway approach, including all required documentation, deposit toward processing fee for a grant of access pursuant to this rule, and a current preliminary title report covering the property to be served by the approach, showing any access easements appurtenant to the property; the department shall not process an application for grant of access that is incomplete.

(8) Fees and Deposit Toward Processing Fee. The applicant shall pay all costs incurred by the department in processing the application for a grant of access. An initial deposit to cover the processing fee is required for an application for a grant of access. The total or final processing fee is based on the actual documented costs incurred by the department plus a ten (10) percent charge for general administration:

(a) The department shall determine the amount of the initial deposit based on the complexity of the request and the anticipated cost of obtaining an appraisal of the grant of access;

(b) The initial deposit is applied towards the total or final processing fee; and

(c) The total or final processing fee includes the cost to secure an appraisal of the fair market value of the grant of access.

(9) Review Process. Upon acceptance of an application for grant of access and any required documentation, the department shall evaluate the application pursuant to division 51, ORS chapter 374, and any other applicable state statutes, administrative rules, and department manuals for evaluating and acting upon the application for a grant of access, and shall:

(a) Forward the application for grant of access to the state traffic engineer for processing pursuant to section (10) of this rule; or

(b) Based on the applicable rules, statutes, or department manuals, deny the application for grant of access.

(10) Review by State Traffic Engineer. When the application for grant of access is forwarded to the state traffic engineer, the state traffic engineer, with the assistance of department staff, shall:

(a) Evaluate the application for grant of access;

(b) Notify the applicant of any additional information required; and

(c) Make a recommendation to approve or deny the application for a grant of access to the technical services manager and the technical services manager shall conditionally approve or deny the application for grant of access subject to identified conditions of approval, and payment of the appraised value. The technical services manager shall provide written notification of the conditional decision to the applicant.

(11) Appraisal. If the application for grant of access is conditionally approved, the department shall:

(a) Appraise the abutting property to determine the fair market value of the grant of access;

(b) Notify the applicant of the value of the grant of access; and

(c) Provide the applicant with instructions for payment.

(12) Payment for Grant of Access. Except as provided by section (13) of this rule, upon approval of an application for a grant of access and prior to issuance of the deed of the grant of access, payment must be made to the department in an amount equal to the appraised value of the grant of access; this payment is in addition to the processing fee.

(13) Waiver of Payment. The department may waive payment of the appraised value of the grant of access when an application for a grant of access is for a public approach and the department has determined that the public approach will cause a direct and immediate benefit the state highway system as set forth in OAR 734-051-4030.

(14) Execution and Recording. After payment of fair market value is received by the department:

(a) The grant of access will be executed and recorded; and

(b) A copy of the grant of access will be sent to the region manager so that a construction permit may be issued in accordance with OAR 734-051-5020 for a private approach and 734-051-1050 for a public approach.

Stat. Auth.: ORS 184.616, 184.619, 374.310–374.314, 374.345 & 374.355
Stats. Implemented: ORS 374.300–374.360, §27, ch. 330, OL 2011

734-051-2030

Indentures of Access

(1) General Provisions. Abutting property owners with a reservation of access must apply to the department to indenture or change the location, width or use restrictions of the reservation.

(2) Criteria for Approval of Indenture of Access. The department may approve an application for indenture of access to a property abutting a state or local facility where all of the following criteria are met:

(a) An applicant to indenture a reservation of access for a private approach must submit an application for state highway approach permit as set forth in OAR 734-051-3030 with its application for an indenture of access as set forth in this rule;

(b) The applicant meets the requirements for issuance of a construction permit, as set forth in OAR 734-051-5020;

(c) The applicant agrees in writing to meet any mitigation measures, conditions, and terms placed on the construction permit and the permit to operate;

(d) The property owner agrees to convey one or more existing reservations of access, including the reservation being indentured to the department and close any affected approaches; and

(e) The region manager approves the application for indenture of access.

(3) Mitigation. Approval of an indenture of a reservation of access for a public approach may require mitigation measures to ensure that the state transportation system can safely accommodate the traffic operations at the indentured location. Mitigation measures may include but are not limited to amendments to the comprehensive plan or transportation system plan, or modification to the public street system.

(4) Process. The application procedures for indenture of access are:

(a) A complete application for indenture of access to a state highway consists of a completed and signed standard state form, and the processing fee for indenture of access, except where the region manager, not a designee, waives the processing fee and documents in writing the reasons for the waiver;

(b) The department shall not process an application for indenture of access that is incomplete;

(c) Only the property owner or the owner's designated agent shall submit an application for indenture of access;

(d) Upon acceptance of an application for indenture of access, the department shall evaluate the application pursuant to division 51, ORS Chapter 374, and any other applicable state statutes, administrative rules, and department manuals for evaluating and acting upon the application for an indenture of access; and

(e) The region manager shall approve or deny the application for indenture of a reservation of access and shall notify the applicant.

Stat. Auth.: ORS 184.616, 184.619, 374.310–374.314, 374.345 & 374.355

Stats. Implemented: ORS 374.300–374.360, §27, ch. 330, OL 2011

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12

Administration of Private Approaches

734-051-3010

Permit for Private Approach

(1) Applicability. This rule applies to applications for state highway approach permits for private approaches.

(2) Restricted Areas. The department shall not issue an approach permit to a freeway, a freeway ramp, or an expressway ramp, or an approach that would be aligned opposite a freeway or expressway ramp terminal.

(3) Rules in Effect. An application for an approach permit shall be subject to the rules in effect on the date the application was filed. The department shall use OAR 734, division 51, and ORS 374, and may use other applicable statutes or administrative rules to evaluate and act on an application.

(4) Approach Permit Approval Criteria. The department shall approve an application for an approach based upon a determination that it meets all of the following criteria:

(a) The department determines that a complete application has been submitted pursuant to OAR 734-051-3030;

(b) The department determines that the application is consistent with any applicable facility plans adopted by the Oregon Transportation Commission, including special transportation area plans, facility plans, corridor plans;

(c) Except where paragraphs (A) through (D) of this subsection apply, the department determines that the proposed approach meets the spacing, channelization and sight distance standards of OAR 734-051-4020, or the department approves a deviation from these standards under OAR 734-051-3050 which may include mitigation measures pursuant to OAR 734-051-3070;

(A) OAR 734-051-3020 applies to applications for change of use of a private approach.

(B) OAR 734-051-4020(5) applies to applications for properties with no alternate access.

(C) OAR 734-051-4040 applies to applications for temporary approaches.

(D) OAR 734-051-4050 applies to applications for special use approaches.

(d) The department determines that the approach does not create or contribute to a safety or highway operations concern, as identified in OAR 734-051-4020(3), or such concerns are sufficiently mitigated pursuant to OAR 734-051-3070.

(5) Cooperative Improvement Agreement. A written agreement between the applicant and the department may be required. The agreement will address transfer of ownership of the improvements to ODOT, work standards that must be followed, any maintenance responsibilities of the applicant, and other requirements that apply to the work. ODOT may withhold issuance of a Permit to Construct under 734-051-5020 or a Permit to Operate, Maintain, and Use an Approach under 734-051-5080 until the agreement is fully executed by all parties. ODOT will work with the applicant to identify the need and develop the provisions for the agreement early in the permitting process in order to avoid delays in obtaining permits.

Stat. Auth.: ORS 184.616, 184.619, 374.310–374.314, 374.345 & 374.355

Stats. Implemented: ORS 374.300–374.360, §27, ch. 330, OL 2011

734-051-3015

Presumption of Written Permission for an Existing Private Connection

(1) Applicability. This rule applies to those existing private connections for which the department has not:

(a) Issued a Permit to Operate in accordance with OAR 734-051-3010 (Permit for Private Approach); or

(b) Issued a Permit to Operate under section (3) of this rule; or

(c) Issued documentation recognizing the connection as grandfathered under OAR 734-051-1070 (Definitions).

(2) Presumption of Written Permission.

(a) An owner of real property abutting a state highway with a connection to a state highway that existed on January 1, 2014 is presumed to have the Department of Transportation's written permission for the connection based upon documentation for a highway project completed by the department that shows that the connection was built or rebuilt as part of a highway project or that the department intended to issue an approach permit to the property owner for the connection.

(b) An owner of real property abutting a state highway with a connection that was in existence before April 1, 2000, is also presumed to have the department's written permission for the connection based upon documentation in any form that shows:

(A) That the connection was in existence before July 16, 1949; or

(B) That the connection was in existence before the department accepted jurisdiction of the highway from a city or county; or

(C) That the connection was built or rebuilt to the abutting property with the department's knowledge or permission.

(c) There is no presumption of written permission under this rule where there is not a right of access to the state highway as defined in OAR 734-051-1070 (Definitions).

(d) Connections presumed to have written permission under this section are subject to OAR 734-051-3020 (Change of Use of a Private Connection) as set forth in section 4 of this rule.

(e) An owner of real property with a connection presumed to have written permission under this section is responsible for the cost and performance of maintaining the connection in accordance with OAR 734-051-5090 (Maintenance of Approaches).

(f) The department may rebut that an existing connection has a presumption of written permission under section 7 of this rule.

(3) Issuance of a Permit to Operate. The department may issue a Permit to Operate for a connection that it does not rebut as having a presumption of written permission if a change of use has not occurred as set forth in OAR 734-051-3020.

(4) New Application Required for Change of Use. Connections deemed to have a presumption of written permission under section 2 of this rule are subject to the requirements and procedures for change of use as set forth in OAR 734-051-3020.

(a) If the department determines that the connection meets one of more of the criteria for a change of use as set forth in 3020(2), the property owner is required to submit a new application for all approaches to the property as set forth in OAR 734-051-3020(1) and OAR 734-051-3030 (Application Requirements for State Highway Approach).

(b) For the purposes of OAR 734-051-3020(2)(a) and (b), prior use is the use of the property on January 1, 2014. For the purposes of OAR 734-051-3020(2)(c), the increase in daily use of a connection by vehicles with a gross vehicle weight rating of twenty-six thousand (26,000) pounds or greater is based on the use of the connection on January 1, 2014.

(5) Removal of a Connection. If the department intends to remove a connection that it does not rebut as having a presumption of written permission, the department shall provide notification as set forth in OAR 734-051-5110(2) and the removal shall be subject to the post-decision review processes of OAR 734-051-3080 through 3110 and remedies as set forth in OAR 734-051-6010 through 6070.

(6) Connections Located on Open Frontage. Open frontage refers to a large open area along the highway right of way where the location for entry to or exit from an abutting property is not clearly defined. For the purposes of sections 2 and 3 of this rule, the department shall determine the location and dimensions of the connection within open frontage that it deems to have provided written permission in collaboration with the property owner(s) and, where possible, the property lessees and business operators. The department shall consider the land use served by the connection on January 1, 2014 and the current standards of the Oregon Highway Design Manual.

(7) Department Rebuttal of a Presumption of Written Permission.

(a) The department shall have the burden to establish that the factual basis for a presumption of written permission under sections 2(a) and (b) of this rule does not exist.

(b) The department may rebut the presumptions of written permission by establishing the following:

- (A) A search of department as-constructed plans for highway projects where the connection is located do not show a note to build or rebuild the connection as part of a project; and
- (B) Neither the department nor the property owner have written documentation indicating that ODOT approved issuance of a permit to construct or a Permit to Operate for the connection; and
- (C) For connections that existed prior to April 1, 2000:
 - (i) Photographic evidence or other historical documentation indicates that the connection was established after July 16, 1949; and
 - (ii) Photographic evidence or other historical documentation indicates that the connection did not exist before the date that the department accepted jurisdiction of the highway; and
 - (iii) Written documentation from the department to the property owner dated prior to January 1, 2014 indicates that construction of the connection was not authorized or that the connection is no longer authorized by the department for the reasons specified in the documentation.
- (c) If the department establishes that an existing connection does not have the presumption of written permission under this rule, then:
 - (A) The connection is subject to removal or reconstruction as provided in ORS 374.307 and the property owner is not entitled to file a claim for relief under OAR 734-051-6010; and
 - (B) The department shall not offer an administrative remedy under OAR 734-051-6020 through 6070.

Stat. Auth.: ORS 184.616, 184.619, 374.310–374.314, 374.345 & 374.355
 Stats. Implemented: ORS 374.300–374.360, §27, ch. 330, OL 2011

734-051-3020

Change of Use of a Private Connection

(1) Applicability.

- (a) This rule sets forth procedures and requirements for a change of use of an existing private connection to a state highway.
- (b) A new application is required for the purpose of permitting all connections to a property when there is a change of use as set forth in section (2) of this rule. All connections to the property are subject to this rule whether they exist under a Permit to Operate, are grandfathered under OAR 734-051-1070(29), or the department provides written permission under OAR 734-051-3015.

(2) Changes of Use Requiring an Application for State Highway Approach. Except as provided under section (5) of this rule, a new application is required for a change of use when any one of the following:

- (a) The number of peak hour trips increases by fifty (50) trips or more from that of the property's prior use and the increase represents a twenty (20) percent or greater increase in the number of peak hour trips from that of the property's prior use; or

(b) The average daily trips increases by five hundred (500) trips or more from that of the property's prior use and the increase represents a twenty (20) percent or greater increase in the average daily trips from that of the property's prior use; or

(c) The daily use of a connection increases by ten (10) or more vehicles with a gross vehicle weight rating of twenty-six thousand (26,000) pounds or greater; or

(d) ODOT demonstrates that safety or operational concerns related to the connection are occurring as identified in OAR 734-051-4020(3); or

(e) The connection does not meet the stopping sight distance standards, as measured in feet, of ten (10) times the speed limit established in ORS 811.111 or the designated speed posted under ORS 810.180 for the highway as measured in miles per hour, or ten (10) times the 85th percentile speed of the highway where the 85th percentile speed is higher or lower than the speed limit established in ORS 811.111 or the designated speed posted under ORS 810.180. The applicant may perform a study to determine if the 85th percentile speed is higher or lower than the speed limit established in ORS 811.111 or the designated speed posted under ORS 810.180. The sight distance measurement, as described in OAR 734-051-4020(2)(c)(A)–(B), and the study to determine the 85th percentile speed shall be performed according to published department procedures by or under the supervision of a professional engineer as defined in OAR 734-051-1070. The measurement shall be taken under existing and proposed site conditions.

(3) Mandatory Meeting. Unless waived by the department, a meeting between ODOT staff and the applicant is required for a change of use application prior to the department deeming the application complete. It is preferable that the meeting be held prior to submittal of the change of use application.

(4) Determinations of Change of Use. The department shall determine whether a change of use meets the thresholds in section (2) of this rule by using one or more of the following methods:

(a) Field counts;

(b) Site observation;

(c) Traffic impact analysis;

(d) Field measurement;

(e) Crash history;

(f) Trip Generation, 9th Edition, published by the Institute of Transportation Engineers (ITE); or

(g) Information and studies provided by the local jurisdiction or the applicant.

(5) Exempt from Application for Change of Use. Buildout of an approved site plan or multi-phased development does not require a new application for an approach road permit where the department determines that the buildout is consistent with the land use approval by the local government and the permit issued by the department for development.

(6) Approval Criteria. The department shall approve an application for a state highway approach that does not pose a safety or highway operations concern, as set forth in OAR 734-051-4020(3), or all such concerns are sufficiently mitigated pursuant to OAR 734-051-3070, and:

(a) The application meets the applicable approach road spacing, channelization and sight distance standards set forth in OAR 734-051-4020(2)(a) through (c); or

(b) The department and the applicant reach agreement that the application moves in the direction of conforming to approach road spacing, channelization, and sight distance standards under sections (7) through (9) of this rule; or

(c) The applicant and the department reach agreement under section (6)(b) that the existing condition without change is sufficient to support approval of an application.

(7) Moving in the Direction of Conformity Collaborative Process. The department and applicant, through a collaborative process, shall determine whether an application moves in the direction of conforming to the spacing, channelization or sight distance standards subject to safety and operations concerns. The collaborative process shall be made available to the applicant within thirty (30) days of the date an application for state highway approach is deemed complete.

(8) Criteria for Moving in the Direction of Conformity. In determining whether an application for a private approach to a state highway moves in the direction of conformity with the spacing, channelization and sight distance standards of OAR 734-051-4020, the department shall consider all connections on the subject site. An application moves in the direction of conformity with OAR 734-051-4020 when changes are made to a connection that include, but are not limited to, one or more of the following:

(a) Eliminating or combining existing connections to the highway resulting in a net reduction in the number of connections; or

(b) Improving the distance between connections; or

(c) Improving sight distance; or

(d) Widening an existing connection to accommodate truck turning radius requirements; or

(e) Widening an existing connection to accommodate additional exit lanes; or

(f) Narrowing an existing connection to provide the appropriate number of entry and exit lanes as required for the property; or

(g) Developing a throat on a connection to allow for more efficient movement of motorists from the highway.

(9) Agreement. Where the department and applicant agree that a change of use application moves in the direction of conforming to spacing, channelization, and sight distance standards, the department shall approve the application without requiring separate deviations from those standards. The department, upon completion of the terms of agreement, shall issue a Permit to Operate for all approaches that are to remain operational as identified in the agreement. An agreement to remove, modify, or mitigate a connection pursuant to the agreement between the department and the applicant is not an appealable decision.

(10) Where Agreement is Not Reached.

(a) If, after participating in a collaborative process pursuant to section (7) of this rule, the applicant and the department cannot agree that an application is moving in the direction of conformity pursuant to sections (8) and (9) of this rule, the region manager shall document the issues of agreement and non-agreement with the applicant through a written statement of non-agreement. The applicant may then request further collaboration on the issues of non-agreement

under OAR 734-051-3090, sections (1) through (3), and/or a review by the Dispute Review Board under 734-051-3100.

(b) Where agreement cannot be reached under the processes of subsection (a) of this section, the department may require additional information to complete the application and make a decision pursuant to the standards of OAR 734-051-4020 and issue a final decision to approve, deny, or approve with mitigation, consistent with the procedures in OAR 734-051-3030 and 3040. The department's decision to deny or approve with mitigation applications under the standards of OAR 734-051-4020 are subject to post-decision review under OAR 734-051-3080.

(11) Connections Not Subject to Moving in the Direction of Conformity Criteria.

Notwithstanding sections (6) through (8) above, the "moving in the direction of" criteria as set forth in section (8) of this rule shall not be applied to the connections in subsections (a) through (f), below. For these connections, the department shall apply the standards of OAR 734-051-4020 to approve, deny, or approve with mitigation the application, consistent with the procedures in OAR 734-051-3040.

(a) Connections where no right of access to the property exists at the location of the connection, and an application for a grant of access or indenture of access is not approved;

(b) Connections to undeveloped property without an approved site plan or land use approval allowing for development of the property;

(c) Connections for which the department rebuts a presumption of written permission under OAR 734-051-3015;

(d) Connections to property abutting a highway segment with a statewide classification and a posted speed of 50 miles per hour or greater;

(e) Connections to property abutting a highway segment designated as an expressway; and

(f) Connections to property within the boundaries of an adopted facility plan, or corridor plan, where the connection is inconsistent with the plan, and the planned component for the access to the property has been constructed or is funded to be constructed within four years at the time of the application.

Stat. Auth.: ORS 184.616, 184.619, 374.310–374.314, 374.345 & 374.355

Stats. Implemented: ORS 374.300–374.360, §27, ch. 330, OL 2011

734-051-3030

Application Requirements for State Highway Private Approach

(1) Purpose. This rule sets forth the requirements for an application for state highway approach.

(2) Pre-Application Meetings.

(a) The department or applicant may request a pre-application meeting for any approach permit application.

(b) The purpose of a pre-application meeting is to review general application requirements and processing timelines, technical application requirements, and any issues specific to the proposal, including understanding the economic needs and objectives that are pertinent to the subject property.

(c) Applicant requests for pre-application meetings shall be made on forms provided by the department and shall be accompanied by a preliminary site plan, description of existing and proposed land use(s), including estimated vehicle trips, and any additional information or questions the applicant chooses to provide.

(d) The department encourages applicants to provide complete and accurate information regarding potential changes in land use and development with requests for pre-application meetings in order to avoid unnecessary delays in processing any future application.

(3) Application. An application for a state highway approach permit must include the following information in subsections (a) through (j) below:

(a) Application form for a state highway approach;

(b) A site plan illustrating the existing and proposed location of all approaches, and any other buildings, facilities, and natural geographic features that impact vehicle circulation on the property, circulation to and from the highway, or sight distance;

(c) Property owner's signature or evidence of the property owner's consent to apply for a permit where the applicant is not the owner of the subject property;

(d) Information required by the department to evaluate sight distance concerns, including but not limited to measurements, diagrams, calculations, or other information that may require preparation by a professional engineer;

(e) Information identified by the department that is required to demonstrate compliance with the approval criteria of OAR 734-051-3010 or 734-051-3020, as applicable;

(f) Identification and request for approval of all deviations from spacing, channelization and sight distance standards, as applicable;

(g) Information required by the department to evaluate a deviation pursuant to OAR 734-051-3050;

(h) A Traffic Impact Analysis (TIA) where the department determines that a TIA is required to evaluate the approach permit application pursuant to OAR 734-051-3030(4);

(i) A Land Use Compatibility Statement provided by the department, completed and signed by the local jurisdiction that certifies that all necessary local land use planning approvals have been obtained or are under review and demonstrates that the proposed use is consistent with the acknowledged comprehensive plan, and transportation system plan and local development code.

In lieu of the Land Use Compatibility Statement, the department may accept the final land use decision;

(j) Tax lot map(s) with names and addresses of persons who own the properties adjacent to the subject property.

(4) When a Traffic Impact Analysis is Required.

(a) A traffic impact analysis is required for a request for a deviation from the spacing, channelization or sight distance standards as set forth in OAR 734-051-4020, unless waived by the department.

(b) Except where the criteria in subsections (A) and (B) of this section, below, are met for the highway segment where an approach permit is sought, the department may require a person applying for an approach permit to submit a traffic impact analysis in conjunction with the application for an approach permit.

(A) The average daily volume of trips at the property is determined to be four hundred (400) or fewer trips; or

(B) The average daily volume of trips at the property is determined to be more than four hundred (400) but fewer than one thousand one (1001) trips and:

(i) The highway is a two-lane highway with average annual daily trip volume of five thousand (5,000) or fewer motor vehicles;

(ii) The highway is a three-lane highway with average annual daily trip volume of fifteen thousand (15,000) or fewer motor vehicles;

(iii) The highway is a four-lane highway with average annual daily trip volume of ten thousand (10,000) or fewer motor vehicles; or

(iv) The highway is a five-lane highway with average annual daily trip volume of twenty-five thousand (25,000) or fewer motor vehicles.

(5) Traffic Impact Analysis Submittal Requirements. Traffic Impact Analyses (TIA), when required, shall be subject to the requirements of subsection (a) through (e). To the extent possible the department shall coordinate the analysis needs associated with the approach application with any local jurisdiction TIA requirements.

(a) A Professional Engineer (PE) employed by the department shall determine the scope of the TIA, and shall determine the sufficiency of the TIA for the purpose of evaluating the application.

(b) The TIA shall assess highway peak hour and average daily trips for the type of land use action proposed, for the year of the analysis, the year of each phase opening, and future years

beyond project completion or buildout, but not greater than the year of the planning horizon for transportation system plans, or fifteen (15) years, whichever is greater.

(c) A Professional Engineer (PE) must prepare the study in accordance with methods and input parameters approved by the department.

(d) The scope and detail of the study must be sufficient to allow the department to evaluate the impact of the proposal and the need for roadway capacity, operational, and safety improvements resulting from the proposed approach.

(e) The study must identify the data used and the application of data in the analysis.

(6) Waiver of Application Requirements. The department may waive requirements for information and documentation required under this rule depending on the nature of the application and the sufficiency of other information available to the department for its evaluation of an application.

Stat. Auth.: ORS 184.616, 184.619, 374.310–374.314, 374.345 & 374.355

Stats. Implemented: ORS 374.300–374.360, §27, ch. 330, OL 2011

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12

734-051-3040

Private Approach Permit Application Review, Approvals and Timelines

(1) Complete Application Required. The department shall not process an application for state highway approach that is incomplete or contains insufficient information for the department to find that it meets the submittal requirements of OAR 734-051-3030.

(2) Notice of Completeness Determination. Upon receiving an application for state highway approach, the department shall determine and provide written notification about whether the application is complete within thirty (30) days of its receipt of the application. Where the department determines that an application for state highway approach is not complete, (a) through (e) apply:

(a) The 120-day timeline under OAR 734-051-3040(4) does not begin until the application is deemed complete as defined in OAR 734-051-1070(18);

(b) The department shall notify the applicant in writing when an application is incomplete within the timeframes required by this rule;

(c) The department notice shall provide specific information on what is needed to make the application complete;

(d) The department notice shall indicate that the application must be made complete within sixty (60) days of the date of the department notice, at which time the application expires unless the department and applicant agree to an extension; and

(e) Where an application is deemed incomplete because no right of access exists at the proposed approach location, the department notice shall provide information on how to apply for a grant of access or an indenture of access, as applicable.

(3) On-Site Reviews. The department in reviewing an application for completeness may conduct an on-site review to determine the need for supplemental documentation in accordance with (a) through (c) as follows:

(a) The on-site review area includes both sides of the highway in the vicinity of the proposed approach, including the site frontage, existing connections, and public intersections;

(b) The department may notify the applicant of an on-site review to be conducted, and may invite the applicant to meet on-site to answer questions and discuss the review; and

(c) Any on-site meeting between department representatives and the applicant shall be limited to clarifying the applicant's proposal and identifying any supplemental documentation needed to meet application requirements.

(4) Decision Timeline and Final Decision Within 120-Days of Complete Application. Except as provided in section (7), the department shall make its final decision, including resolution of all internal appeals, to grant or deny an approach permit within one hundred twenty (120) days of the date the department deems an application for state highway approach complete. The 120-day timeline breaks down as follows:

(a) The department shall make its decision to approve, approve with mitigation, or deny an application within thirty (30) days of the date that the department determines the application to be complete, where the proposal meets the applicable spacing, channelization and sight distance standards of OAR 734-051-4020; or

(b) The department shall make its decision to approve, approve with mitigation, or deny an application within sixty (60) days of the date that the department determines the application to be complete for all other applications.

(c) The final sixty (60) days of the one hundred twenty (120) days are reserved for the contested case hearing procedures of OAR 734-051-3110, except where the timeline is extended pursuant to section (7) of this rule.

(5) General Directives Applicable to Approach Permit Decisions. The directives in (a) through (e), as follows, apply to the department's review of all applications for state highway approach:

(a) Except for highways classified as interstate highways and highways designated as expressways by the commission, and except as provided by subsection (b) of this section, the department may not use the presence of alternate access to a property abutting a highway as a basis for denying an application for state highway approach.

(b) In rural areas, the department shall consider the presence of alternative access in determining whether to approve or deny a second or subsequent application for state highway approach.

(c) Mobility standards, established by the department, are not applicable to turning movements from private approaches during the department's review of an approach permit application, except when the ratio of volume to capacity on the proposed private approach is (one-point-zero) 1.0 or greater.

(d) The department shall utilize a professional engineer with relevant experience to review and respond to evidence from a qualified expert that is submitted by the applicant.

(e) The city or county, and persons that own property adjacent to the proposed approach, shall be allowed to express concerns about the application prior to the issuance of the permit.

(f) Where the development includes multiple parcels, the development is evaluated in its entirety, regardless of the number of individual parcels or ownership contained within the development, and applications will not be processed for individual parcels or ownership.

(6) Notice of Pending Denial or Approval with Mitigation. When the department proposes to deny an approach or approve an approach with mitigation, it shall notify the applicant of its intent and offer the applicant a pre-decision collaborative process, pursuant to OAR 734-051-3060, to discuss the department's and the applicant's positions. Upon conclusion of this collaborative process or if the applicant declines the offer of this collaborative process, the department shall issue its decision in writing, including sufficient specificity regarding the access management standards and/or safety or operations concerns upon which the department's decision is based.

(7) Extension of Timelines. The timelines of division 51 may be extended pursuant to (a) through (c) below:

(a) Submittal of an application for a grant of access or application for an indenture of access suspends the 30 or 60-day timeline identified in subsection (4)(a) or (4)(b) of this rule.

(b) Submittal of a written request for the post-decision collaborative discussion under OAR 734-051-3090 or dispute review board review under OAR 734-051-3100 suspends the 120-day timeline in section (4) of this rule.

(c) The timelines in division 51 may be extended where the applicant and the department agree to an extension in writing before the applicable deadline, as specified in these rules. Any agreement to extend a timeline shall include a new deadline date and shall state the reason for the extension. Applications for which an extension of time has been issued will expire on the deadline date specified in the extension letter if no new extension has been agreed to and the activities for which the deadline was extended have not been completed.

(8) Pending Land Use Approvals. If a land use action is pending, including an appeal of a final land use decision or a limited land use decision, for a property for which an application has been submitted, the application may be processed and:

(a) Approval will be conditioned on the department receiving notice of approval of the land use action shown on the application; and

(b) The department may issue a construction permit while the local land use action is pending. A deposit may be required, to be determined in the manner used for a temporary approach in OAR 734-051-4040 to ensure that the approach will be removed if the land use is not approved; and

(c) The department shall not issue a Permit to Operate until the applicant provides the department with written proof of final land use decision.

(9) Notice of Decision and Findings. The department shall document with written findings the decision to approve, approve with mitigation or deny an approach, and shall provide written notice of its final decision to the applicant as follows:

(a) The notice shall describe the applicant's appeal rights, as set forth in OAR 734-051-3080 through 734-051-3110; and

(b) Written findings shall be provided to the applicant upon request.

(10) Form of the Record. The record shall include the following, as applicable:

(a) Completed application pursuant to OAR 734-051-3030(3);

(b) Documents or other information received or considered;

(c) Written stipulations;

(d) Meeting notes; and

(e) Findings and final decision.

(11) Appeals. An appeal of a department decision to approve with mitigation or deny an application for an approach permit can be made pursuant to OAR 734-051-3080 through 734-051-3110.

(12) Expired Applications. Except as provided by OAR 734-051-3040(7), an application for an approach shall expire after one hundred twenty (120) days of inactivity on the part of the applicant if the department sends a reminder letter to notify the applicant that ninety (90) days have passed with no activity, and advising that the application will expire in thirty (30) days if the application continues to be inactive. After an application for state highway approach has expired, a new application is required.

Stat. Auth.: ORS 184.616, 184.619, 374.310–374.314, 374.345 & 374.355

Stats. Implemented: ORS 374.300–374.360, §27, ch. 330, OL 2011

734-051-3050

Deviations from Approach Spacing, Sight Distance, and Channelization Standards for a Private Approach

(1) Purpose. The purpose of this rule is to establish criteria for the region access management engineer to approve; approve with mitigation; or deny requests for deviations from the standards set forth in OAR 734-051-4020.

(2) Requests for a Deviation. The applicant may request one or more deviations for an approach that does not meet spacing, sight distance, or channelization standards set forth in OAR 734-051-4020(2). Applications that request deviations:

(a) Must identify all deviations needed and any dependency or relationship that they have with one another; and

(b) Must include a traffic impact analysis prepared by a professional engineer as set forth in OAR 734-051-3030(4) and 734-051-3030(5), unless waived by the department.

(3) Mitigation. The department may require mitigation measures as set forth in OAR 734-051-3070 as a condition of approval of a deviation under this rule.

(4) Request for a Deviation Not Required. A request for a deviation from approach spacing, sight distance and channelization standards is not required if:

- (a) The application is for property with no means of vehicular access other than the proposed approach, and the department and the applicant agree on a location for the approach and mitigation, if any, of the approach that optimizes safety, highway operations, and site design; or
- (b) The permit action is triggered by a change of use and the department and the applicant agree that the proposed approach moves in the direction of conformance with the standards as set forth in OAR 734-051-3020.

(5) Approval of Requests for Deviations from Approach Spacing Standards. The region access management engineer may approve a request for a deviation from access spacing standards set forth in OAR 734-051-4020(8) and 734-051-4020(9) upon determining that the approach adequately addresses the safety and highway operations concerns set forth in section OAR 734-051-4020(3) and one or more of the conditions in (a) through (h) apply:

- (a) The applicant agrees to provide a joint approach that serves two or more properties and results in a net reduction of connections to the highway;
- (b) The applicant agrees to remove or combine connection(s) to the highway resulting in a net reduction of connections;
- (c) Adherence to approach spacing standards will cause the approach to conflict with a significant natural or historic feature including but not limited to trees and unique vegetation, a bridge, waterway, park, archaeological area, or cemetery;
- (d) The highway segment functions as a local interest road as defined in the Oregon Highway Plan;
- (e) On a couplet with directional traffic separated by a city block or more, the request is for an approach at mid-block with no other existing approaches in the block or the proposal consolidates existing vehicle accesses at mid-block;
- (f) Based on the region access management engineer's determination that one or more of the safety and operations factors in OAR 734-051-4020(3) is significantly improved as a result of the approach;
- (g) The region access management engineer and the applicant agree on an approach location and mitigation measures that optimize safety, highway operations and site design; and/or
- (h) The applicant demonstrates that existing development patterns or land holdings make joint use approaches impractical.

(6) Approval of Requests for Deviations from Approach Spacing Standards in Interchange Areas.

- (a) The region access management engineer shall use traffic volumes based on a 20-year planning horizon in evaluating applications for deviations from the approach spacing standards for approaches proposed within an interchange management area. The 20-year year planning horizon will be measured from the date of application.
- (b) The region access management engineer may approve a request for a deviation from spacing standards in an interchange area upon determining that the approach adequately addresses the

safety and highway operations factors set forth in section OAR 734-051-4020(3) and one or more of the conditions in (A) through (D) apply:

(A) A condition of approval, included in the Permit to Operate, is removal of the approach when alternate access becomes available;

(B) The approach is consistent with a facility plan in the area of an interchange that has been adopted by the commission as set forth in OAR 734-051-7010;

(C) The applicant provides a joint approach that serves two or more properties and results in a net reduction of approaches to the highway; or

(D) Connections are combined or eliminated resulting in a net reduction of connections to the state highway.

(7) Approval of Requests for Deviations from Channelization Standards. The department may approve a deviation from channelization standards, pursuant to subsections (a) through (c) below:

(a) The region access management engineer may approve a deviation to the channelization standards set forth in OAR 734-051-4020(2) upon determining that the deviation adequately addresses highway safety and operations concerns set forth in section OAR 734-051-4020(3) and the conditions in (A) or (B) apply:

(A) The region access management engineer determines that channelization is not necessary to approve the application;

(B) The applicant agrees to restrict turning movements that cause the need for channelization in a manner satisfactory to the region access management engineer.

(b) If existing development patterns, land holdings, highway configuration or other factors make it impractical to meet channelization standards, the region access management engineer may require turning movements to be restricted at the approach.

(c) The department may require submittal of channelization design drawings prepared and sealed by a professional engineer for approval of a deviation for channelization.

(8) Approval of Requests for Deviations from Sight Distance Standards. The department may approve a deviation from sight distance standards, pursuant to subsections (a) or (b) below:

(a) The region access management engineer may approve a request for a deviation from sight distance standards set forth in OAR 734-051-4020(2) based on consideration of relevant factors, including but not limited to:

(A) Highway design speed, posted speed, and eighty-fifth (85th) percentile speed;

(B) Probable line of sight for the proposed approach;

(C) Anticipated traffic volumes at the proposed approach;

(D) Guidelines for intersection sight distance and stopping sight distance in the 2011 AASHTO Policy on Geometric Design of Highways and Streets; and

(E) Potential mitigation that would improve sight distance.

(b) Where a speed study prepared by the applicant and accepted by the department determines that the eighty-fifth (85th) percentile speed is lower than the current posted speed, the department may approve a deviation from the sight distance standard based upon the lower speed determination.

(9) Denial of Requests for Deviations. The region access management engineer shall not approve a request for a deviation from approach spacing, channelization or sight distance standards when any of the conditions in (a) through (d) apply:

(a) The requirements for approval under sections (5) through (8) of this rule, as applicable, cannot be met; or

(b) The standards can be met even though adherence to the standards results in higher site development costs; or

(c) The deviation creates a significant safety or traffic operations problem that cannot be mitigated by the applicant; or

(d) The request for a deviation results from a self-created hardship including but not limited to:

(A) Conditions created by the proposed site plan, building footprint or location, on-site parking, or circulation; or

(B) Conditions created by lease agreements or other voluntary legal obligations.

(10) Region Manager Approval of Deviations. The region manager, not a designee, may approve a request for a deviation from approach spacing, channelization or sight distance standards when the region access management engineer is prohibited from doing so under section (9) and:

(a) A determination is made by a professional engineer as defined in OAR 734-051-1070 and assigned by the region manager to analyze the request for a deviation determines that the approach adequately addresses the safety and highway operations concerns, or those concerns can be adequately mitigated; and

(b) The region manager, after consulting with the highway division administrator, identifies and documents conditions or circumstances unique to the site or the area that support the development.

Stat. Auth.: ORS 184.616, 184.619, 374.310–374.314, 374.345 & 374.355

Stats. Implemented: ORS 374.300–374.360, §27, ch. 330, OL 2011

734-051-3060

Pre-Decision Collaborative Discussion for Highway Approach Permit Applications

(1) Offer of Pre-Decision Collaborative Discussion. When the department intends to deny an application or approve an application with mitigation, it shall notify the applicant of its intent and offer to meet with the applicant in a pre-decision collaborative process, as described in sections (2) through (6), below.

(2) Notice. The department notice in section (1) shall describe the basis of the preliminary decision, extend an offer to meet with the applicant to provide further explanation or clarification of the department's preliminary decision, and provide the applicant an opportunity to propose modifications.

(3) Goals of Pre-Decision Collaborative Discussion. The goals of the pre-decision collaborative process are to ensure that all relevant information has been fully considered, provide opportunity to resolve differences to the extent possible, and facilitate timely issuance of a final decision.

(4) Timeline. The department's notice of preliminary decision and offer of a collaborative process must occur within either the 30-day or 60-day application decision timeline under OAR 734-051-3040(4), whichever is applicable. The department and applicant may agree to extend the timelines for the department's final decision as part of the collaborative process.

(5) Written Decision. Agreements reached using a pre-decision collaborative discussion shall be incorporated into the department's permit decision.

(6) Applicant May Decline Offer. If the applicant declines the offer of a collaborative process, or a collaborative agreement cannot be reached, the department shall issue its final decision in writing, including findings as set forth in OAR 734-051-3040(9).

Stat. Auth.: ORS 184.616, 184.619, 374.310–374.314, 374.345 & 374.355

Stats. Implemented: ORS 374.300–374.360, §27, ch. 330, OL 2011

734-051-3070

Mitigation Measures

(1) Mitigation Authorized. The department may require mitigation measures to address adverse impacts associated with a proposed approach on the state highway or the subject property that is not prohibited by statute or division 51 rules.

(2) Cost of Mitigation. Unless otherwise set forth in division 51 rules, the cost of mitigation measures is the responsibility of the applicant, permittee, or property owner as set forth in OAR 734-051-5050.

(3) Non-Traversable Medians. The department may not impose non-traversable medians as a mitigation measure for approach permit applications unless the department first establishes that no other mitigation measures are effective or available under the circumstances.

(4) Mitigation Measures. Mitigation measures may include one or more of the following in (a) through (n) below:

(a) Modifications to an existing connection;

(b) Modifications of on-site parking or storage of queued vehicles;

(c) Installation of left turn or right turn channelization or deceleration lanes;

(d) Modifications to left turn or right turn channelization or deceleration lanes;

(e) Modifications to the roadway to maintain or improve intersection sight distance;

- (f) Modification or installation of traffic signals or other traffic control devices, subject to subsection OAR 734-051-3070(7);
- (g) Modification of the highway;
- (h) Modification or installation of curbing;
- (i) Consolidation of existing approaches or provisions for joint use approaches;
- (j) Restriction of turn movements for circumstances such as:
 - (A) The proximity of existing connections or offset of opposing connections;
 - (B) Approaches within an influence area of an interchange;
 - (C) Approaches along an expressway;
 - (D) The proximity of railroad grade crossings;
 - (E) Approaches with a crash history involving turning movements;
 - (F) Approaches within the functional area of an intersection.
- (k) Installations of sidewalks, bicycle lanes, or transit turnouts;
- (l) Development of, or improvements to, reasonable alternate access, subject to OAR 734-051-4020(6) and 734-051-4020(7);
- (m) Modifications of local streets or roads along the frontage of the site; and
- (n) Installation of non-traversable medians where no other mitigation measure is effective or available under the circumstances.

(5) Relationship of Mitigation to Impacts. Mitigation measures are directly related to the impacts of the particular approach on the highway and the scale of the mitigation measures will be directly proportional to those impacts, as follows:

- (a) Mitigation measures located entirely within the property controlled by the applicant and/or within existing state right of way shall be preferred over all other means of mitigation;
- (b) Where mitigation requires the use of property other than that which is controlled by the applicant and/or ODOT, the department will make an effort to participate in negotiations between the applicant and other affected property owners, or assist the applicant to take necessary actions. However, ODOT will not exercise its power of eminent domain to acquire property necessary for improvements to mitigate the adverse impacts associated with a private approach that is not also part of project delivery; and
- (c) When cumulative effects of existing and planned development create a situation where approval of an application would require improvements that are not directly proportional to the impacts of the proposed approach, the region manager may negotiate mitigation measures to mitigate impacts as of the day of opening and defer the remaining mitigation to a future ODOT project which may require that the applicant convey any necessary right of way to ODOT prior to development of the subject approach.

(6) Access Mitigation and Access Management Proposals. An applicant may propose mitigation for an approach to be implemented by the applicant or the local jurisdiction. The

department will work with the local jurisdiction and the applicant to establish mitigation measures and alternative solutions including:

- (a) Changes to on-site circulation;
- (b) On-site improvements; and
- (c) Modifications to the local street network.

(7) Traffic Controls as Mitigation. Where mitigation measures include traffic controls:

- (a) The applicant bears the cost of the controls and construction of required traffic controls within a timeframe identified by the department or must reimburse the department for the cost of designing, constructing, or installing traffic controls; and
- (b) An applicant that is a lessee must provide evidence of compliance with required traffic controls and must identify the party responsible for construction or installation of traffic controls during and after the effective period of the lease.

(8) Traffic Signal Prioritization. Traffic signals are approved in the order of priority, (a) through (c) below:

- (a) Traffic signals for public approaches.
- (b) Private approaches identified in a transportation system plan to become public.
- (c) Private approaches.

(9) Traffic Signal Requirements. Traffic signals are approved with the following requirements:

- (a) A signalized private approach must meet spacing standards for signalization relative to all planned future signalized public road intersections; and
- (b) Location of traffic signals on state highways must meet the criteria of OAR 734-020-0400 through 734-020-0500.

(10) Ownership of Improvements. All highway improvements within the right of way resulting from mitigation constructed by the permittee, subject to inspection and acceptance by the department, become the property of the department. An agreement between the department and permittee may be required with mitigation. Such agreement may include, but shall not be limited to, identifying work that is allowed to occur within the right of way, specifying the responsibilities of each party, including any maintenance responsibility, and documenting the transfer of ownership from the applicant to the department for roadway improvements.

(11) Appealable Decision. Approval of an application with mitigation measures is an appealable decision.

Stat. Auth.: ORS 184.616, 184.619, 374.310–374.314, 374.345 & 374.355
Stats. Implemented: ORS 374.300–374.360, §27, ch. 330, OL 2011

734-051-3080

Post-Decision Review Processes

(1) Types of Post-Decision Review Processes. Three types of post-decision review processes are available to an applicant under division 51:

- (a) Post-decision collaborative discussion (OAR 734-051-3090);
- (b) Dispute review board (OAR 734-051-3100); and
- (c) Contested case hearing (OAR 734-051-3110).

(2) Sequence of Reviews.

- (a) Except as noted in subsection (b) of this section, an applicant may request any or all of the types of reviews listed in section (1) of this rule, provided the reviews must be conducted in sequence (a) through (c).
- (b) An applicant seeking further review of a determination of whether an application is moving in the direction of conformity pursuant to OAR 734-051-3020(10)(a) may request a collaborative discussion or review by the dispute review board, but may not request a contested case hearing. The option of a collaborative discussion is eliminated if the applicant chooses a review by the dispute review board prior to a collaborative discussion.

(3) Notice of Opportunity for Post Decision Reviews. Except for review of a department determination pursuant to OAR 734-051-3020(10)(a), the department shall notify the applicant when processing of the application has reached an opportunity for any of the types of post-decision review and shall provide instructions about how to request a review.

(4) Request for Post-Decision Review. Except for review of a department determination pursuant to OAR 734-051-3020(10)(a), the applicant must submit a written request to the region manager within twenty-one (21) days of the mailing date of notice of an opportunity for post-decision review, identifying which type of post-decision review the applicant is choosing and the documentation to be presented to the department.

(5) Subject of Post-Decision Reviews. Except for review of a department determination pursuant to OAR 734-051-3020(10)(a), all post-decision review processes shall consider the final decision reached by the department in the processing of the application.

Stat. Auth.: ORS 184.616, 184.619, 374.310–374.314, 374.345 & 374.355

Stats. Implemented: ORS 374.300–374.360, §27, ch. 330, OL 2011

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12

734-051-3090

Post-Decision Collaborative Discussion

(1) Purpose. An applicant or permit holder may request a collaborative discussion pursuant to this rule. The post-decision collaborative discussion process is an optional dispute resolution process that falls outside the 120-day timeline in OAR 734-051-3040(4).

(2) Conduct of the Post-Decision Collaborative Discussion. The post-decision collaborative discussion with the department shall be conducted as follows:

(a) The collaborative discussion shall be conducted under the alternative dispute resolution model in ORS 183.502;

(b) The applicant must request the collaborative discussion in writing before the discussion may proceed;

(c) During the post-decision collaborative process, the applicant or permittee and the department may present new or additional information in writing or in person for the collaborative discussion; and

(d) The collaborative discussion shall be conducted not more than forty-five (45) days from the date of the agreement to collaborate, unless the department and applicant or permittee agree to an extension.

(3) Settlement Offer. When the collaborative discussion process has concluded, the director may accept, modify or reverse the department's original decision in making a settlement offer. The director shall notify the applicant or permit holder in writing of the department's settlement offer.

(4) When the Applicant Rejects Settlement Offer. Except for review of a department determination pursuant to OAR 734-051-3020(10)(a), when an applicant rejects the director's settlement offer, the department will notify the applicant of their right to request review of the final department decision by dispute review board under OAR 734-051-3100 or contested case hearing under OAR 734-051-3110.

Stat. Auth.: ORS 184.616, 184.619, 374.310–374.314, 374.345 & 374.355

Stats. Implemented: ORS 374.300–374.360, §27, ch. 330, OL 2011

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12

734-051-3100

Access Management Dispute Review Board

(1) Dispute Review Board. In addition to requesting a contested case hearing under OAR 734-051-3110 or a post-decision collaborative discussion with the department under OAR 734-051-3090, an applicant or permittee may request review of a department decision or department determination pursuant to 734-015-3020(10)(a) through an access management dispute review board process. The dispute review board process is an optional dispute resolution process that falls outside the 120-day timeline in OAR 734-051-3040(4).

(2) Dispute Review Board Members. The department shall appoint an access management dispute review board consisting of any or all of the following in subsections (a) through (d) below:

- (a) The director, or a designee of the director who is familiar with the location in which the disputed approach is located;
- (b) A representative of the local jurisdiction in which the disputed approach is located;
- (c) A traffic engineer who practices engineering in Oregon; and
- (d) A representative from the economic or business sector.

(3) Procedure. The dispute review board review shall be conducted as follows:

- (a) The access management dispute review board shall consider information presented by the parties;
- (b) The applicant or permittee and the department may present new information to the dispute review board, if the new information has been shared with the other party in advance of the scheduled meeting and the party receiving the new information has a reasonable amount of time to prepare a response; and
- (c) The dispute review board shall notify the applicant or permittee and the director of its findings regarding the department's original decision or its recommendations pursuant to OAR 734-051-3020(10)(a).
- (d) The dispute review board review shall be conducted not more than forty-five (45) days from the date of applicant's request, unless the department and applicant or permittee agree to an extension.

(4) Settlement Offer. The director shall review the access management dispute review board's findings and recommendation and may accept, modify or reverse the department's original decision or determinations pursuant to OAR 734-051-3020(10)(a) in making a settlement offer.

The director shall notify the applicant or permit holder in writing of the department's settlement offer.

(5) Rejection of Settlement Offer. Where an applicant rejects a settlement offer with respect to a determination pursuant to OAR 734-051-3020(10)(a), the department will issue a final decision pursuant to 734-51-3020(10)(b). In all other cases, if the applicant rejects the settlement offer, the applicant or permit holder is entitled to file a request for a contested case hearing of the original decision within 21 days of the issuance of the settlement offer.

Stat. Auth.: ORS 184.616, 184.619, 374.310–374.314, 374.345 & 374.35

Stats. Implemented: ORS 374.300–374.360, §27, ch. 330, OL 2011

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12

734-051-3110

Contested Case Hearing Process

(1) Right to a Contested Case Hearing. Pursuant to ORS 374.313, a person holding an interest in real property, which is or would be served by an approach, may appeal a decision of the department by filing a request for a contested case hearing. Department decisions that result from conditions contained in a contract, condemnation judgment, recorded deed or permit cannot be appealed through the contested case hearing process.

(2) Procedure. The contested case hearing procedure is subject to the following requirements in subsections (a) through (f) below:

(a) The request for a hearing and the hearing are governed by OAR 137-003-0501 through 137-003-0700;

(b) After receiving a request for a contested case hearing, the department shall notify the office of administrative hearings of the request for the hearing;

(c) The hearings process falls within the 120-day timeline in OAR 734-051-3040(4) unless the department and the applicant mutually agree to a time extension;

(d) The department and the applicant may present additional information in writing or in person at the contested case hearing; and

(e) An administrative law judge will review the department's decision, conduct a hearing, and may approve, reverse, or modify the decision. The administrative law judge:

(A) Shall issue a proposed order as set forth in OAR 137-003-0645;

(B) May require conditions or limitations to be incorporated into the construction permit or the permit to operate; and

(C) The filing of exceptions stays the 120-day timeline for ODOT's final decision.

(f) The director shall issue a final order or may adopt as final the proposed order issued by the administrative law judge.

Stat. Auth.: ORS 184.616, 184.619, 374.310–374.314, 374.345 & 374.355

Stats. Implemented: ORS 374.300–374.360, §27, ch. 330, OL 2011

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12

Access Management Standards

734-051-4010

Access Management Standards for Approaches — General Provisions

(1) Applicability. Access management standards for approaches to state highways:

(a) Are based on the classification of the highway and highway designation, type of area, and posted speed;

(b) Apply to properties abutting state highways and planning processes involving state highways, and other projects as determined by the region manager;

(c) Do not apply to legal approaches in existence prior to January 1, 2012, except for those private approaches subject to the change of use provisions, pursuant to OAR 734-051-3020;

(d) Are intended to facilitate infill development and redevelopment, as applicable, with the goal of meeting or improving compliance with the access management spacing standards; and

(e) Are further intended to facilitate highway and interchange construction or modernization projects, or other roadway or interchange projects as determined by the region manager, with the goal of meeting or improving compliance with the access management spacing standards.

(2) Standards for Private Approaches. The access management standards are based on approach spacing distance, sight distance, the presence of channelization, and safety and operations considerations. OAR 734-051-4020 contains the access management standards applicable to private approaches.

(3) Access Management Standards for Infill and Redevelopment. The region access management engineer may apply the 'urban' access management spacing standards of OAR 734-051-4020 to infill or redevelopment projects in a rural area on commercial or industrial zoned

land where the land has been developed into an urban block pattern including a local street network, and the posted highway speed is at or below 45 miles per hour.

(4) Special Transportation Area (STA) Designations. Where the Oregon Transportation Commission has designated a Special Transportation Area (STA) in the Oregon Highway Plan, the spacing standards for such highway designation will be applied to the application.

(5) Deviations. Deviations from the access management standards must meet the criteria in OAR 734-051-3050.

(6) Traffic Signals. Location of traffic signals on state highways must meet the criteria of OAR 734-020-0400 through 734-020-0500.

Stat. Auth.: ORS 184.616, 184.619, 374.310–374.314, 374.345 & 374.355

Stats. Implemented: ORS 374.300–374.360, §27, ch. 330, OL 2011

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12

734-051-4020

Standards and Criteria for Approval of Private Approaches

(1) Applicability. This rule describes standards and criteria that the department applies to the review of an Application for State Highway Approach that has been deemed complete as set forth in OAR 734-051-3030. Applications submitted for change of use of an approach may be reviewed under the standards and criteria set forth in OAR 734-051-3020 in lieu of this rule.

(2) General Approval Criteria. Except for applications where the department identifies safety or operations concerns set forth in section (3), and except for applications that are subject to alternate access considerations as set forth in sections (5) through (7), the Region Manager shall approve an Application for State Highway Approach that meets the general approval criteria (a)-(c) in this section. Additional criteria set forth in section (9) apply to interchange areas.

(a) Approach Spacing Standards. Section (8) of this rule sets forth the approach spacing standards, except that the spacing standards applicable to interchanges and interchange areas are set forth in section (9).

(b) Channelization Standards. An application meets the channelization standards of this rule if none of the conditions in (A) through (C), below, exist; where a condition in (A) through (C) exists, an application may meet the channelization standards if the existing or proposed lane configuration on the highway conforms to the design requirements of the ODOT Highway Design Manual in effect at the time the application is filed.

(A) Average daily trips for the existing or proposed development exceed four hundred (400) for an application on a two-lane highway with annual average daily traffic of five thousand (5,000) or more motor vehicles; or

(B) Average daily trips for the existing or proposed development exceed four hundred (400) for an application on a four-lane highway with annual average daily traffic of ten thousand (10,000) or more motor vehicles; or

(C) Average daily trips for the existing or proposed development multiplied by the annual average daily traffic on the highway is equal to or greater than the products listed in the Table 1.

Table 1 - Channelization Standards				
Product of Property Average daily trips Multiplied by the Abutting Highway Annual Average Daily Traffic (Millions)				
Number of Highway Lanes	Posted Speed 25 mph or lower	Posted Speed 30-35 mph	Posted Speed 40-45 mph	Posted Speed 50 mph or higher
2 lanes	5.1	3.9	1.8	1.3
4 lanes	10.2	7.8	3.6	2.6

(c) Sight Distance Standards. Table 2 sets forth the sight distance standards for approaches. An Application for State Highway Approach meets the sight distance standard of this rule if the intersection sight distance at the intersection of the proposed approach and highway is equal to or greater than shown in Table 2. Intersection sight distance shall never be less than stopping sight distance, as calculated in accordance with 2011 AASHTO Policy on Geometric Design of Highways and Streets. Sight distance must be unobstructed within the sight triangle based on the following positions of measurement:

(A) Driver's eye height equal to 3.5 feet above the road surface of the proposed approach at a location 15 feet from the edge of the travel lane; and

(B) Object height equal to 3.5 feet above the road surface at the near edge of the travel lane to the left and at the far edge of the travel lane to the right of the approach.

Table 2: Intersection Sight Distance Standards (ISD)¹

Posted Speed (mph)	Assumed Design Speed ² (mph)	Two-Way Highway -- Number of Lanes Crossed by Vehicle Making Left Turn from Approach ³			One-Way Highway ⁴
		1 Lane	2 Lanes	3 Lanes	
		ISD (ft)			
20	25	280	295	315	240
25	30	335	355	375	290
30	35	390	415	440	335
35	40	445	475	500	385
40	45	500	530	565	430
45	55	610	650	690	530
50	65	720	765	815	625
55	70	775	825	875	670
60	70	775	825	875	670
65	70	775	825	875	670

¹ Standards in Table 2 are based on the methodology for sight distance calculations for passenger vehicles in the 2011 AASHTO Policy on Geometric Design of Highways and Streets.

² Assumed design speed is shown for purpose of correlating generally accepted highway design speeds with posted speeds. If the department establishes a higher design speed for a highway segment, the higher design speed, rather than the assumed design speed, shall be used to determine Intersection Sight Distance (ISD) in accordance with the methodology for sight distance calculations in the 2011 AASHTO Policy on Geometric Design of Highways and Streets.

³ Left turn made from approach to nearest lane in direction of travel. Number of lanes includes right and left turn lanes and traversable medians. Calculation of ISD in this table is based on the methodology for sight distance calculations in the 2011 AASHTO Policy on Geometric Design of Highways and Streets for left turn from stop-controlled minor road. Four or more lanes require calculation of ISD in accordance with AASHTO procedure.

⁴ Left or right turn made to nearest lane in direction of travel. Calculation of ISD in this table is based on 2011 AASHTO Policy on Geometric Design of Highways and Streets methodology for the right turn from stop-controlled minor road. Standards

also apply to sections of highway where turning movements are restricted to right turns only by a non-traversable median and to approaches that prohibit left turns from the approach across opposing traffic.

(3) Safety and Operations Concerns. The department has the burden of proving safety and highway operations concerns that it relies upon in requiring mitigation or in denying an application based on those concerns. The department may deny an application where the applicant is unable to provide adequate improvements to mitigate documented safety or highway operations concerns; safety and highway operations concerns that the department may consider are limited to (a) through (f), below:

(a) Regular queuing on the highway that impedes turning movements associated with the proposed approach. Regular queuing will be evaluated based on the ninety-fifth (95th) percentile queue on the highway during the highway peak hour, as determined by field observation or traffic analysis in accordance with ODOT's Analysis Procedures Manual; or

(b) Overlapping left turn movements or competing use of a center turn lane from a connection located on the opposite side of the highway; or

(c) Location of the proposed approach within a highway segment with a crash rate that is twenty (20) percent or higher than the statewide average for similar highways; or

(d) Location of the proposed approach within a highway segment listed in the top five percent of locations identified by the Safety Priority Index System developed by the department; or

(e) The proposed approach is on a district or regional highway with a posted speed of 50 miles per hour or higher and the distance to the nearest public approach is less than the stopping sight distance on the highway, calculated in accordance with the 2011 AASHTO Policy on Geometric Design of Highways and Streets; or

(f) Insufficient distance for weave movements made by vehicles exiting the proposed approach across multiple lanes in the vicinity of:

(A) Signalized intersections; or

(B) Roads classified as collectors or arterials in an acknowledged transportation system plan or comprehensive plan, or classified as such by the Federal Highway Administration; or

(C) On-ramps or off-ramps.

(4) Applications that Do Not Meet Approval Standards and Criteria -- Deviations. The department may approve an application that does not meet the approval standards and criteria of this rule for approach spacing, sight distance, and/or channelization if a deviation from the standards is approved as set forth in OAR 734-051-3050.

(5) Applications for Properties with No Alternate Access. For an application for an approach to property with a right of access and no alternate access, the department may waive the standards and criteria of this rule for access spacing, sight distance and channelization if the department and the applicant agree on an approach location and mitigation measures that optimize safety, highway operations and site design. Approval of an application under this section does not require approval of a deviation. If agreement cannot be reached the department shall apply OAR 734-051-4020(2)-(4) to the application to approve, deny, or approve with mitigation the application, consistent with the procedures in 734-051-3040. In applying 734-051-

4020(2)–(4), the department may include any matters of agreement or other results from discussion with the applicant pursuant to this section. The department’s decision to deny or approve with mitigation applications under 734-051-4020(2)–(4) is subject to post-decision review under 734-051-3080.

(6) Applications Where the Department Shall Consider Alternate Access. The region manager shall consider alternate access to a property only for an application for an approach to a highway designated as an expressway as described in subsection (a) of this section, or for a second or subsequent approach to a property in a rural area as described in subsection (b) of this section.

(a) Expressways. The region manager may approve an application to an expressway for a property that has alternate access when the criteria in (A) through (C) below are met:

(A) The department determines that either:

(i) The alternate access to the property cannot be made reasonable based on findings under section (7) of this rule; or

(ii) The approach provides an immediate and long-term benefit to the state highway system as set forth in OAR 734-051-4030, in addition to mitigating any safety or operations concerns; and

(B) The application meets the applicable standards and criteria of this rule or a deviation is approved as set forth in OAR 734-051-3050; and

(C) The approach does not cause any of the safety or operations concerns set forth in section (3) of this rule, or those concerns can be adequately mitigated.

(b) A Second or Subsequent Approach in a Rural Area. The region manager may approve an application for a second or subsequent approach to a property in a rural area that has alternate access when the criteria in paragraphs (A) through (C) are met:

(A) The department determines that either:

(i) The alternate access to the property cannot be made reasonable based on findings under section (7) of this rule; or

(ii) The approach will serve rural infill or redevelopment and approval of the approach will result in a net reduction of connections to the highway or the net result improves safety for any remaining approaches; and

(B) The application meets the applicable standards and criteria of this rule or a deviation is approved as set forth in OAR 734-051-3050; and

(C) The approach does not cause any of the safety or operations concerns set forth in section (3) of this rule, or those concerns can be adequately mitigated.

(7) Reasonable Alternate Access Criteria. In determining whether alternate access is or can be made reasonable pursuant to section (6) of this rule, the department shall consider all of the following provisions in subsections (a) through (e) below:

(a) Authorized Uses. Alternate access to the property is adequate to allow the authorized uses for the property identified in the acknowledged local jurisdiction comprehensive plan and local land use regulations, taking into account the economic development needs of the property;

(b) Type, Number, Size and Location of Alternate Access. The type, number, size and location of alternate access are adequate to serve the volume and type of traffic reasonably anticipated to enter and exit the property, based on the planned uses for the property and taking into account the economic development needs of the property;

(c) Constraints to Alternate Access. The presence of constraints that limit the development of alternate access including:

(A) Legal restrictions;

(B) Geographic restrictions;

(C) Historical or cultural resources; and

(D) Physical considerations such as planned streets, roadway width, and weight and size restrictions;

(d) Availability of Mitigation Measures. The availability of mitigation measures set forth in OAR 734-051-3070 that the applicant could make on the property or along the roadway frontage of the property, including situations in which the applicant or the local jurisdiction commits proportional shares toward the cost of removal or mitigation of geographic, safety, or physical restrictions on the property or local street network. Neither the lack of commitment by a local government to share the cost of mitigation nor the cost of mitigation alone is conclusive in evaluating whether a vehicle access is or could be made reasonable; and

(e) Phasing. In circumstances where a significant difference exists between the existing and the planned local road network the department may consider a phased method to establishing reasonable alternative access as follows:

(A) Where a planned public street or road network cannot be provided at the time of development, an application for an approach may be approved with conditions requiring a connection to the planned local street or road network when it becomes available;

(B) The approach permit to the state highway may be revoked and the approach removed, or the approach permit may be modified and additional mitigation required when the planned street or road network becomes available; and

(C) ODOT and the local government enter into an agreement regarding the timing, cost and responsibility for the development of the planned street or road network.

(8) Access Management Spacing Standards. Tables 3 through 10 set forth the access management spacing standards. Tables 7, 8, 9, and 10, including Figures 1, 2, 3 and 4, are the spacing standards for interchanges and approaches in interchange areas. Tables 3 and 6 are the standards for unclassified highways such as service roads and frontage roads. An application meets the spacing standards set forth in Tables 3 through 10 if the spacing of a proposed approach is equal to or greater than the distance shown in the applicable table. The spacing standards in Tables 3 through 6 are subject to the method of measurement and exceptions in subsections (a) through (c) below:

(a) The spacing standards in Tables 3 through 6 apply to the distance measured along the highway from the center of an existing or proposed private approach to the center of the nearest existing private connection, proposed approach, or public approach on the same side of the highway in both directions;

(b) The following exceptions in paragraphs (A) through (E) apply to the spacing standards in Tables 3 through 6:

(A) On one-way highways or highways with a non-traversable median, where turning movements to and from the highway are limited to either right in/right out or left in/left out turns only, the applicable approach spacing standards equal one-half the spacing standards in Tables 4 through 6.

(B) Tables 4 through 6 apply to highways designated as expressways regardless of average daily traffic.

(C) The spacing standards included in special transportation area management plans, and facility plans that are adopted by the Commission, take precedence over the spacing standards described in Tables 3 through 6.

(D) For special transportation areas where no management plan has been adopted, the minimum access management spacing for public road approaches is the existing city block spacing or the city block spacing as identified in the local comprehensive plan. Public road connections are preferred over private approaches and in special transportation areas, private approaches are discouraged; however where private approaches are allowed and where land use patterns permit, the minimum access management spacing for private approaches is 175 feet or mid-block if the current city block spacing is less than 350 feet.

(E) For a signalized private approach, the signal spacing standards in OAR 734-020-0400 through 734-020-0500 supersede the access management spacing standards in Tables 3 through 6; and

(c) The spacing standards in Tables 3 through 6 do not apply to approaches in existence prior to January 1, 2012, except when:

(A) A new approach or change of use of an approach is required under ORS 374.312;

(B) Where infill development or infill redevelopment occurs and spacing or safety will be improved by moving in the direction of the spacing standards in Tables 3 through 6; or

(C) Where a highway or interchange project occurs and spacing or safety will be improved by moving in the direction of the applicable spacing standards in Tables 3 through 6.

TABLE 3				
Access Management Spacing Standards for Highway Segments with Annual Average Daily Traffic \leq 5,000				
	Regional, District & Unclassified Highways	Statewide Highways	Statewide Highways	Statewide Highways
	Rural and Urban Areas	Rural Areas	Urban Areas	Unincorporated Communities in Rural Areas
Speed (mph)	Spacing (ft)			
55 or higher	650	1,320	1,320	1,320
50	425	1,100	1,100	1,100
40 & 45	360	990	360	750
30 & 35	250	770	250	425
25 & lower	150	550	150	350

TABLE 4				
Access Management Spacing Standards for Statewide Highways with Annual Average Daily Traffic $>$ 5,000				
	Expressway	Expressway		
	Rural Areas	Urban Areas	Rural Areas	Urban Areas
Speed (mph)	Spacing (ft)			
55 or higher	5,280	2,640	1,320	1,320
50	5,280	2,640	1,100	1,100
40 & 45	5,280	2,640	990	800
30 & 35	-	-	770	500
25 & lower	-	-	550	350

TABLE 5				
Access Management Spacing Standards for Regional Highways with Annual Average Daily Traffic > 5,000				
	Expressway	Expressway		
	Rural Areas	Urban Areas	Rural Areas	Urban Areas
Speed (mph)	Spacing (ft)			
55 or higher	5,280	2,640	990	990
50	5,280	2,640	830	830
40 & 45	5,280	2,640	750	500
30 & 35	-	-	600	350
25 & lower	-	-	450	250

TABLE 6				
Access Management Spacing Standards for District and Unclassified Highways with Annual Average Daily Traffic > 5,000				
	Expressway	Expressway		
	Rural Areas	Urban Areas	Rural Areas	Urban Areas
Speed (mph)	Spacing (ft)			
55 or higher	5,280	2,640	700	700
50	5,280	2,640	550	550
40 & 45	5,280	2,640	500	500
30 & 35	-	-	400	350
25 & lower	-	-	400	250

(9) Spacing Criteria for Applications in an Interchange Area. In addition to the spacing standards in Tables 7 through 10, the following criteria in subsections (a) and (b) below apply to approval of an application for a proposed approach located in an interchange area:

(a) The approach must be consistent with adopted access management plans or interchange area management plans; and

(b) Location of proposed traffic signals within an interchange area as illustrated in Figures 1, 2, 3 and 4 must meet the criteria of OAR 734-020-0400 through 734-020-0500.

TABLE 7 Minimum Spacing Standards Applicable to Freeway Interchanges with Two-Lane Crossroads					
Category of Mainline	Type of Area	Spacing Dimension (ft)			
		A	X	Y	Z
FREEWAY	Fully Developed Urban*	5280 (1 mile)	750	1320	750
	Urban	5280 (1 mile)	1320	1320	990
	Rural	10,560 (2 miles)	1320	1320	1320

Notes for Table 7:

- 1) If the crossroad is a state highway, the Access Management Spacing Standards may supersede these distances, provided the distances are greater than the distances listed in the above table.
- 2) No four-legged intersections may be placed between ramp terminals and the first major intersection.
- 3) No application shall be accepted where an approach is in a restricted area as defined in OAR 734-051-3010(2).
- 4) Use four-lane crossroad standards for urban and suburban locations that are documented to be widened in a Transportation System Plan or corridor plan.

- A = Distance between the start and end of tapers of adjacent interchanges
- X = Distance to the first approach on the right; right in/right out only
- Y = Distance to first intersections where left turns are allowed
- Z = Distance between the last right in/right out approach and the start of the taper for the on-ramp

*Fully Developed Urban Interchange Management Area: Occurs when 85% or more of the parcels along the developable frontage area are developed at urban densities and many have driveways connecting to the crossroad. See definition in the Oregon Highway Plan.

Figure 1: Measurement of Spacing Standards for Table 7

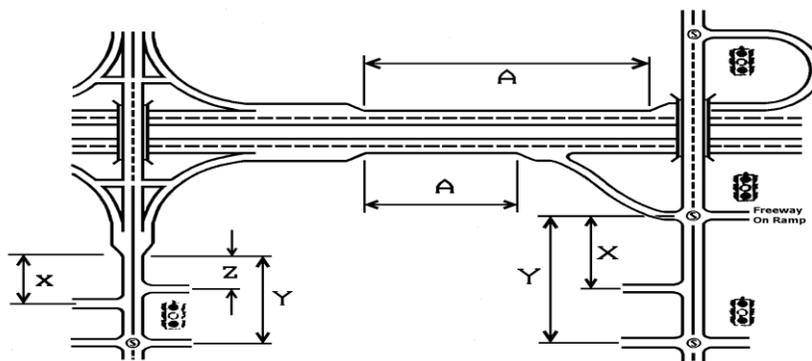


TABLE 8 Minimum Spacing Standards Applicable to Freeway Interchanges with Multi-Lane Crossroads					
Category of Mainline	Type of Area	Spacing Dimension (ft)			
		A	X	Y	Z
FREEWAY	Fully Developed Urban*	5280 (1 mile)	750	1320	990
	Urban	5280 (1 mile)	1320	1320	1320
	Rural	10,560 (2 miles)	1320	1320	1320

Notes for Table 8:

- 1) If the crossroad is a state highway, the Access Management Spacing Standards may supersede these distances, provided the distances are greater than the distances listed in the above table.
- 2) No four-legged intersections may be placed between ramp terminals and the first major intersection.
- 3) No application shall be accepted where an approach is in a restricted area as defined in OAR 734-051-3010(2).

- A = Distance between the start and end of tapers of adjacent interchanges
- X = Distance to the first approach on the right; right in/right out only
- Y = Distance to first intersections where left turns are allowed
- Z = Distance between the last right in/right out approach and the start of the taper for the on-ramp

*Fully Developed Urban Interchange Management Area: Occurs when 85% or more of the parcels along the developable frontage area are developed at urban densities and many have driveways connecting to the crossroad. See the definition in the Oregon Highway Plan.

Figure 2: Measurement of Spacing Standards for Table 8

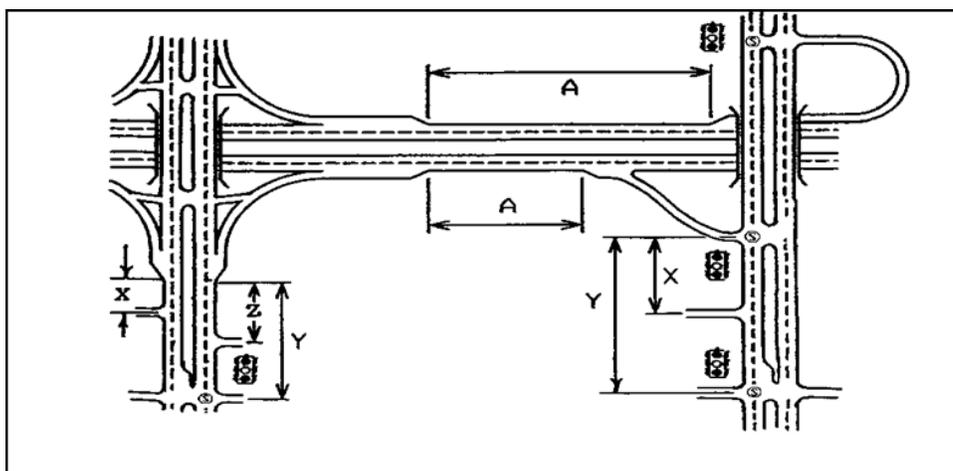


TABLE 9 Minimum Spacing Standards Applicable to Non-Freeway Interchanges with Two-Lane Crossroads							
Category of Mainline	Type of Area	Speed of Mainline (mph)	Spacing Dimension (ft)				
			B	C	X	Y	Z
Expressways, Statewide, Regional and District Highways	Fully Developed Urban*	45	2640	5280 (1 mile)	750	1320	750
	Urban	45	2640	5280 (1 mile)	1320	1320	990
	Rural	55	5280 (1 mile)	10,560 (2 miles)	1320	1320	1320

Notes for Table 9:

- 1) If the crossroad is a state highway, the Access Management Spacing Standards may supersede these distances, provided the distances are greater than the distances listed in the above table.
- 2) No four-legged intersections placed between ramp terminals and the first major intersection.
- 3) No application shall be accepted where an approach is in a restricted area as defined in OAR 734-051-3010(2).
- 4) Use four-lane crossroad standards for urban and suburban locations that are documented to be widened in a Transportation System Plan or corridor plan.
- 5) No at-grade intersections are allowed between interchanges less than 5 miles apart.

B = Distance between the start and end of tapers

C = Distance between nearest at-grade and ramp terminal intersections or the end/start of the taper section

X = Distance to the first approach on the right; right in/right out only

Y = Distance to first intersections where left turns are allowed

Z = Distance between the last right in/right out approach and the start of the taper for the on-ramp

*Fully Developed Urban Interchange Management Area: Occurs when 85% or more of the parcels along the influence area are developed at urban densities and many have driveways connecting to the crossroad. See the definition in the Oregon Highway Plan.

Figure 3: Measurement of Spacing Standards for Table 9

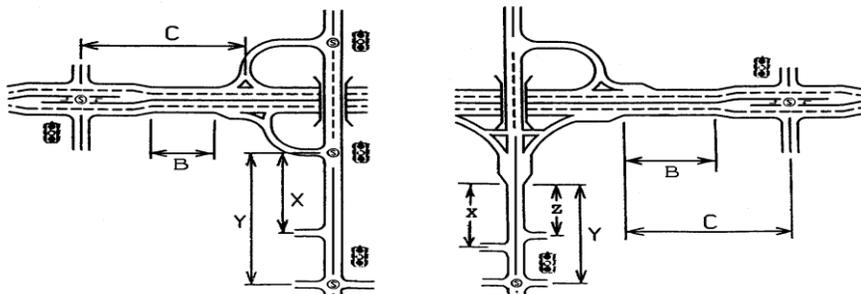


TABLE 10 Minimum Spacing Standards Applicable to Non-Freeway Interchanges with Multi-Lane Crossroads							
Category of Mainline	Type of Area	Speed of Mainline (mph)	Spacing Dimension (ft)				
			B	C	X	Y	Z
Expressways, Statewide, Regional and District Highways	Fully Developed Urban*	45	2640	5280 (1 mile)	750	1320	990
	Urban	45	2640	5280 (1 mile)	1320	1320	1320
	Rural	55	5280 (1 mile)	10,560 (2 miles)	1320	1320	1320

Notes for Table 10:

- 1) If the crossroad is a state highway, the Access Management Spacing Standards may supersede these distances, provided the distances are greater than the distances listed in the above table.
- 2) No four-legged intersections may be placed between ramp terminals and the first major intersection.
- 3) No application shall be accepted where an approach is in a restricted area as defined in OAR 734-051-3010(2).
- 4) No at-grade intersections are allowed between interchanges less than 5 miles apart.

B = Distance between the start and end of tapers

C = Distance between nearest at-grade and ramp terminal intersections or the end/start of the taper section

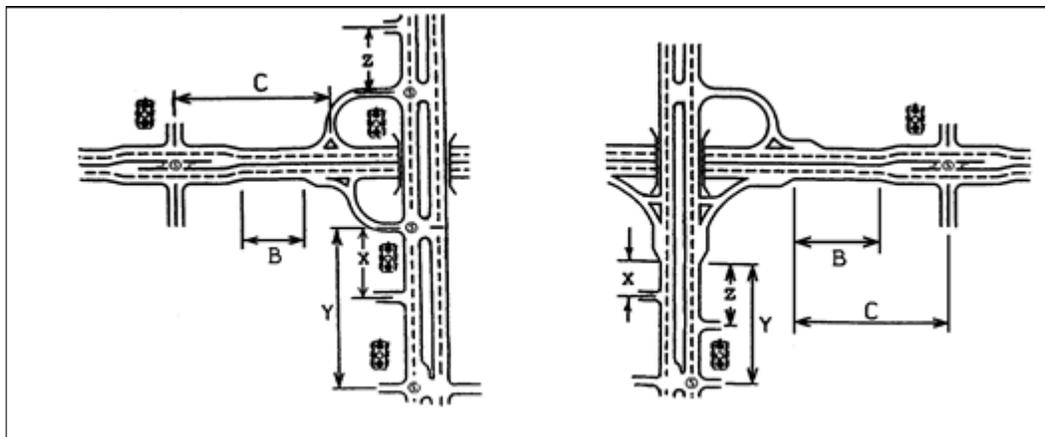
X = Distance to the first approach on the right; right in/right out only

Y = Distance to first intersections where left turns are allowed

Z = Distance between the last right in/right out approach and the start of the taper for the on-ramp

*Fully Developed Urban Interchange Management Area: Occurs when 85% or more of the parcels along the developable frontage area are developed at urban densities and many have driveways connecting to the crossroad. See the definition in the Oregon Highway Plan.

Figure 4: Measurement of Spacing Standards for Table 10



734-051-4030

Benefit to the State Highway System

(1) General Requirements. A benefit to the state highway system is a determination requiring the professional judgment of a professional engineer employed by the department and:

- (a) Will be found only where the department determines that an approach will provide an immediate and long-term benefit to the state highway system;
- (b) Is evaluated for a period of not less than twenty (20) years from the date of application; and
- (c) For an application for a grant of access, the benefit to the highway must be greater than the benefit associated with the mitigation needed to offset the traffic operations and safety impacts of the proposed approach.

(2) Criteria for Determination of Benefit to the State Highway System. The determination of the existence of a benefit to the state highway system must meet the following criteria in subsections (a) and (b) below:

(a) The department determines that the proposal results in improved access management of the highway by controlling, combining, or eliminating existing or planned approaches; and improving:

- (A) Approach spacing standards;
- (B) Public approach spacing; or
- (C) Intersection sight distance; and

(b) The department determines that one or more of the conditions identified in paragraphs (A) through (F) below will occur without degradation of any of the conditions in paragraphs (A) through (E), as follows:

- (A) Highway mobility standards improve;
- (B) Safety improves;
- (C) Specific safety concerns in the general vicinity are eliminated because of closure of an existing approach;
- (D) Operations in the general vicinity improve as a result of connectivity, traffic diversions, or other traffic engineering techniques;

(E) The applicant demonstrates that off-system connectivity improves and reduces demand to the state highway system without creating operational or safety concerns elsewhere, and:

(i) Off-system connectivity must occur immediately; or

(ii) Off-system connectivity must be committed for construction as evidenced by the local government's adopted capital improvement plan; and

(F) The department determines that other circumstances result in a benefit to the state highway system.

(3) Private Approach on an Urban Area Expressway. For an application for a private approach to an expressway in an urban area, the department may determine that a benefit to the state highway system exists if the requirements of subsection (a), (b) or (c) of this section are met:

(a) Where a change of use occurs, approaches to the expressway are combined or eliminated resulting in a net reduction in the number of approaches to the expressway, and the applicant demonstrates an improvement to:

(A) Private approach spacing;

(B) Public approach spacing; or

(C) Intersection sight distance standards.

(b) The department determines that an improvement in safety occurs on the section of the expressway where an approach is requested and the provisions of paragraphs (A) and (B) of this subsection are met:

(A) Only one approach to the expressway is requested, and:

(i) Where a new approach is requested, no approach to the site currently exists; or

(ii) Where a change of use occurs, only one private approach to the site currently exists; and

(B) An improvement in safety occurs on the expressway primarily and on other state highways secondarily and includes:

(i) A decrease in the total number of existing conflict points;

(ii) Elimination of existing left turns;

(iii) Elimination of an existing overlap of left turn movements;

(iv) The addition of a left turn lane where existing conditions meet the department's installation criteria; and/or

(v) Provision of adequate sight distance at the alternate approach or the subject approach where existing sight distance is deficient.

(c) The region access management engineer determines that the approach results in a benefit to the state highway system due to other circumstances.

(4) Procedure. The department determines whether a benefit to the highway system occurs, as follows:

(a) The region access management engineer will make a determination on those applications for an approach to an urban expressway; and

(b) The department's technical services manager will make a determination on those applications for a grant of access.

Stat. Auth.: ORS 184.616, 184.619, 374.310–374.314, 374.345 & 374.355

Stats. Implemented: ORS 374.300–374.360, §27, ch. 330, OL 2011

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12

734-051-4040

Temporary Approaches

(1) Procedure and Criteria. The region manager may approve an application for a temporary approach where:

(a) The department determines that a complete application has been submitted pursuant to OAR 734-051-3030 and that the approach can be operated safely. The department shall consider the spacing, channelization and sight distance standards set forth in OAR 734-051-4020 when determining whether an approach can be operated safely;

(b) Conditions such as signing or flagging are identified on the construction permit and the permit to operate and are enforced during construction and operation; and

(c) A closure date is specified on the permit to operate. A temporary permit cannot exceed two years.

(2) Deposit Required. A deposit of not less than \$1,000 per temporary approach is required prior to issuance of a construction permit and a permit to operate a temporary approach to guarantee its removal by the applicant, pursuant to subsections (a) through (c) below:

(a) The appropriate district office will determine the amount of the deposit;

(b) If the department incurs no expense in the removal of the temporary approach, the entire deposit is refunded to the applicant; and

(c) If the department incurs any expenses in the removal of the approach, the applicant will be billed for the amount in excess of the amount deposited or refunded the difference if the expense is less than the amount deposited.

(3) Time Extension for Temporary Approaches. The region manager may extend the closure date, for a temporary approach where extenuating circumstances beyond the control of the applicant or permittee exist.

(4) Right of Access for Temporary Approaches. The applicant must have a right of access to apply for a temporary approach permit. Existence of a recorded easement may not by itself establish a right of access and does not guarantee the approval of an application for a temporary approach or the location of a temporary approach.

(5) Deviations. Approval of a deviation is not required for approval of an application for a temporary approach.

(6) Appeal. The department's decision to deny or approve with mitigation applications under this section are subject to post-decision review under OAR 734-051-3080.

Stat. Auth.: ORS 184.616, 184.619, 374.310–374.314, 374.345 & 374.355

Stats. Implemented: ORS 374.300–374.360, §27, ch. 330, OL 2011

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12

734-051-4050

Special Use Approaches

(1) Procedure. The region manager shall approve an application for a special use approach where the department determines that a complete application has been submitted pursuant to OAR 734-051-3030 and that the approach can be operated safely. The department shall consider the spacing, channelization and sight distance standards outlined in OAR 734-051-4020 when determining whether an approach can be operated safely.

(2) Design. The design of special use approaches shall:

(a) Be limited from general use by physical means such as a gate or other design approved by the department; and

(b) May require special design considerations such as reinforced sidewalks, curb design options, and landscaping considerations.

(3) Mitigation. The region manager may require mitigation measures to be incorporated into a construction permit and a permit to operate a special use approach.

(4) Right of Access for Special Use Approaches. The applicant must have a right of access to apply for a special use approach permit. Existence of a recorded easement may not by itself establish a right of access and does not guarantee the approval of an application for a special use approach or the location of a special use approach.

(5) Deviations. Approval of a deviation is not required for approval of an application for a special use approach.

(6) Appeal. The department's decision to deny or approve with mitigation applications under this section are subject to post-decision review under OAR 734-051-3080.

Stat. Auth.: ORS 184.616, 184.619, 374.310–374.314, 374.345 & 374.355

Stats. Implemented: ORS 374.300–374.360, §27, ch. 330, OL 2011

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12

Approach Design and Construction

734-051-5010

Design of Approaches

(1) Design. Approach design must conform to design standards in the Oregon Highway Design Manual and provide for the safe movement of vehicles reasonably expected to utilize the approach to and/or from the highway without undue conflict with other traffic on the highway and the site.

(2) Mitigation. Design of an approach shall incorporate mitigation measures required as conditions of approval of an approach permit or an approval of a request for a deviation from the standards.

(3) Placement of Structures in Right of Way. No person may place curbs, posts, signs, or other structures on the highway right of way without approval pursuant to a permit issued by the department and compliance of all environmental regulations.

(4) Drainage. An applicant is responsible for the cost of accommodating drainage from the property.

(5) Private Road Crossings. Private road crossings shall be grade-separated and not connect to the state highway except where the technical services manager determines that grade separation is not economically feasible. Where the technical services manager determines that grade separation is not economically feasible the applicant shall install signing, signalization, other

traffic safety devices or other mitigation that the technical services manager determines necessary to safely operate the crossing.

(a) The department may construct the approach and additional facilities in accordance with the plans and specifications approved by the department; or

(b) The applicant may be required to install the approach and additional facilities, other than signalization, in accordance with plans and specifications approved by the region manager, where installation can be completed adequately and safely.

Stat. Auth.: ORS 184.616, 184.619, 374.310–374.314, 374.345 & 374.355

Stats. Implemented: ORS 374.300–374.360, §27, ch. 330, OL 2011

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12

734-051-5020

Issuance of Construction Permits

(1) General Requirements. The region manager shall issue a construction permit when construction plans, if required, and all other required documents are received and approved.

(2) Procedure. Prior to issuing a construction permit the department will issue to the applicant construction specifications including all provisions, mitigation measures, conditions, and agreements that will become part of the construction permit. To receive a construction permit, the applicant must complete the following, pursuant to subsections (a) through (d) below, within sixty (60) days of the date of the department's transmittal of the construction specifications:

(a) Review and sign the construction specifications to confirm that the applicant understands and agrees to the specifications including all provisions, mitigation measures, conditions, and agreements that will become part of the construction permit; and

(b) When the department determines that standard plans are not appropriate, an applicant must submit construction plans sealed by an engineer licensed in the state of Oregon within 60 days of notice of approval of an application to obtain a construction permit. The region manager determines the acceptability of submitted construction plans. If plans are not submitted within 60 days and no request for extension is received within that time, the approval of the application will be void; and

(c) Return the signed construction specifications to the department; and

(d) Submit proof of liability insurance and bond or deposit in lieu of bond as required by OAR 734-051-5060.

(3) Non-Compliance. If the applicant does not complete the actions required in section (2) of this rule within the 60-day timeframe, then the department will not issue a construction permit

and all approvals associated with approach application will be revoked. The 60-day time frame may be extended if the permittee and the department agree in writing before the deadline pursuant to OAR 734-051-5040.

(4) True and Complete Information. An applicant or permittee shall provide true and complete information, and if any required fact that is material to the assessment of the approach's impact upon traffic safety, convenience or the legal or property rights of any person (including the State of Oregon) is false, incorrect or omitted, the region manager may:

(a) Deny or revoke the construction permit; and

(b) At the applicant's or permittee's expense require the applicant or permittee to:

(A) Remove the approach and restore the area to a condition acceptable to the region manager;

(B) Provide additional safeguards to protect the safety, convenience, and rights of the traveling public and persons (including the State), if such safeguards are adequate to achieve these purposes, as a condition of the continued validity of the permit to operate; and

(C) Reconstruct or repair the approach.

(5) Signed Permit Required. No work on highway right of way may begin until an applicant obtains a valid construction permit, approved and signed by the region manager.

Stat. Auth.: ORS 184.616, 184.619, 374.310–374.314, 374.345 & 374.355

Stats. Implemented: ORS 374.300–374.360, §27, ch. 330, OL 2011

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12

734-051-5030

Construction of Approaches

(1) Notice of Intent to Begin Construction. A permittee must notify the region manager at least two workdays prior to beginning construction.

(2) Construction. Construction must conform to the terms of the construction permit including any special provisions, mitigation measures, conditions, or agreements, and the applicant must notify the region manager when construction is complete.

(3) Utilities, Erosion Control, Signs, Work Area Safety. The applicant or permittee is responsible for complying with the following requirements of subsections (a) through (d) below:

(a) The applicant shall relocate or adjust any utilities located on highway right of way when required for accommodation of the approach, and no construction may be performed until the

permittee furnishes evidence to the department that satisfactory arrangements have been made with the owner of the affected utility facility;

(b) The applicant shall provide erosion control during construction of the approach;

(c) The applicant shall comply with applicable sign requirements. Where warning signs are required by the construction permit, other regulations, or the region manager, the department furnishes, places, and maintains the signs at the permittee's expense; and unauthorized signs are not allowed on any portion of the right of way; and

(d) The applicant shall comply with work area safety requirements. The work area during any construction or maintenance performed under a construction permit or a permit to operate shall be protected in accordance with the 2003 Manual on Uniform Traffic Control Devices (MUTCD), the Oregon Supplement to MUTCD, and Oregon Temporary Traffic Control Handbook adopted under OAR 734-020-0005.

(4) Inspection. Upon inspection of the approach the department shall notify the permittee if construction deficiencies exist, and:

(a) The permittee must correct all deficiencies within sixty (60) days of notification that deficiencies exist and notify the region manager; and

(b) The region manager shall re-inspect the approach.

(5) Compliance. If a permittee fails to comply with the terms and conditions of the construction permit the department may, at the permittee's expense:

(a) Reconstruct or repair the approach; or

(b) Cancel the construction permit and remove the approach.

Stat. Auth.: ORS 184.616, 184.619, 374.310–374.314, 374.345 & 374.355

Stats. Implemented: ORS 374.300–374.360, §27, ch. 330, OL 2011

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12

734-051-5040

Effective Period of Construction Permits

(1) Effective Period. A construction permit is effective for the time period specified on the permit. The region manager shall extend the time period of a construction permit for good cause shown.

(2) Revocation of Permit. The region manager may revoke a construction permit where the permit holder fails to conform to the terms of the construction permit including any special provisions, mitigation measures, conditions, or agreements.

Stat. Auth.: ORS 184.616, 184.619, 374.310–374.314, 374.345 & 374.355

Stats. Implemented: ORS 374.300–374.360, §27, ch. 330, OL 2011

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12

734-051-5050

Responsibility for Costs of Construction of Approaches

(1) Costs the Permittee Bears. Except as otherwise provided in the division 51 rules, the permittee is responsible for the cost of mitigation measures and the cost of construction of an approach, including the cost of materials, labor, signing, signals, structures, equipment, traffic channelization, and other permit requirements.

(2) Costs the Department May Bear. The department may be responsible for:

(a) The cost of mitigation measures and the cost of construction of an approach where the costs are a part of the terms and conditions of a right of way acquisition obligation or other departmental contractual agreement; and/or

(b) The cost of removal or relocation of a legal approach upon highway right of way during project delivery.

Stat. Auth.: ORS 184.616, 184.619, 374.310–374.314, 374.345 & 374.355

Stats. Implemented: ORS 374.300–374.360, §27, ch. 330, OL 2011

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12

734-051-5060

Liability, Insurance and Bonding Requirements

(1) Liability. A permittee assumes responsibility for damage or injury to any person or property resulting from the construction, maintenance, repair, operation, or use of an approach for which a construction permit or a Permit to Operate is issued and where the permittee may be legally liable.

(2) Indemnification. An applicant or permittee indemnifies and holds harmless the State of Oregon, the commission, the department, and all officers, employees or agents of the department against damages, claims, demands, actions, causes of action, costs, and expenses of whatsoever nature which may be sustained by reasons of the acts, conduct, or operation of the applicant, his agents, or employees in connection with the construction, maintenance, repair, operation, or use

of an approach. Any such indemnification shall also provide that neither the contractor or subcontractor, nor any attorney engaged by the contractor or subcontractor, shall defend any claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State of Oregon may, at anytime at its election, assume its own defense and settlement in the event that it determines that the contractor is prohibited from defending the State of Oregon, or that the contractor is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue claims it may have against the contractor if the State of Oregon elects to assume its own defense.

(3) Amount of Insurance. Construction of an approach may not begin until the applicant provides the department with evidence of insurance in the following minimum amounts or the amounts required by the Department of Administrative Services, if greater:

(a) \$500,000 for property damage resulting from any single occurrence, or \$500,000 combined single limit and annual aggregate; and

(b) \$500,000 for the death or injury of any person, subject to a limit of \$500,000 for any single occurrence and annual aggregate.

(4) Additional Insured. Insurance policies must include as Additional Insured the State of Oregon, the commission, and the department, its officers, agents and employees, except as to claims against the permittee, for personal injury to any members of the commission or the department and its officers, agents, and employees or damage to any of its or their property.

(5) Insurance Required Prior to Construction. Construction of an approach may not begin until a copy of the insurance policy or a certificate showing evidence of insurance is filed with the department.

(6) Notice of Intent to Cancel or Not Renew Insurance. A permittee shall provide thirty (30) days written notice to the department of intent to cancel or intent not to renew insurance coverage. Failure to comply with notice provisions does not affect coverage provided to the State of Oregon, the commission, or the department, its officers, agents and employees.

(7) Damages. If the permittee or permittee's contractor damages the highway surface or highway facilities, the applicant must replace or restore the highway or highway facilities to a condition satisfactory to the department.

(8) Assurances. The permittee must furnish, in an amount specified by the region manager and for the time period necessary to install the approach, a cash deposit or a bond issued by a surety company licensed to do business in the State of Oregon to ensure the approach is installed in conformance with the requirements of this division and that any damage to the highway has been corrected to the department's satisfaction; and no construction is performed until a deposit or bond is filed with the department.

Stat. Auth.: ORS 184.616, 184.619, 374.310–374.314, 374.345 & 374.355

Stats. Implemented: ORS 374.300–374.360, §27, ch. 330, OL 2011

734-051-5070

Review Procedure for Modifying a Construction Permit

(1) Review. An applicant may request a review to modify a construction permit if:

- (a) Ambiguities or conflicts exist in the construction permit;
- (b) New and relevant information concerning the approach or the construction permit is available; or
- (c) Requirements of local governments or state agencies are relevant to the modification of the construction permit.

(2) Procedure.

- (a) The region manager shall determine if a request to review a construction permit meets the criteria in section (1) of this rule.
- (b) If the region manager determines that the criteria in section (1) are met, the region manager shall review and may modify the construction permit in cooperation with affected parties and consistent with engineering best practices.

Stat. Auth.: ORS 184.616, 184.619, 374.310–374.314, 374.345 & 374.355

Stats. Implemented: ORS 374.300–374.360, §27, ch. 330, OL 2011

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12

734-051-5080

Issuance of a Permit to Operate, Maintain and Use an Approach

(1) Permit to Operate. The department shall issue a permit to operate for a private approach upon approval of an application, where no construction permit is required, or upon notification by the applicant that construction is complete and the department determines that the approach conforms to the terms and conditions of the construction permit.

(2) Use of Approach. A permit to operate authorizes vehicles to enter and exit the highway at the location of the approach, except as otherwise limited through mitigation required under OAR 734-051-3070.

Stat. Auth.: ORS 184.616, 184.619, 374.310–374.314, 374.345 & 374.355

Stats. Implemented: ORS 374.300–374.360, §27, ch. 330, OL 2011

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12

734-051-5090

Maintenance of Approaches

(1) Approvals. To perform maintenance on a public or private approach, the permittee or owner must obtain the department's approval and any necessary permits prior to performing maintenance on an approach on highway right of way.

(2) Maintenance.

(a) For a private approach, the permittee or owner of a grandfathered approach is responsible for the cost of maintenance of an approach from the outside edge of the highway pavement, shoulder, or curb-line to the right of way line, and shall maintain all portions of the approach on the applicant's or permittee's property as a requirement of the permit.

(b) For maintenance of a public approach, the department may require an intergovernmental agreement with the city or county to define responsibilities and obligations.

(c) Traffic signal maintenance on the state highway shall be performed by the department or as assigned by a cooperative improvement agreement or intergovernmental agreement.

Stat. Auth.:ORS 184.616, 184.619, 374.310–374.314, 374.345 & 374.355

Stats. Implemented: ORS 374.300–374.360, §27, ch. 330, OL 2011

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12

734-051-5100

Effective Period of Permit to Operate, Maintain and Use an Approach

(1) General Provisions. A permit to operate, maintain and use (“permit to operate”) an approach runs with the land. Except as otherwise provided, a permit to operate is effective until:

(a) Revoked by mutual consent;

(b) Revoked for failure to abide by the terms and conditions;

(c) The approach is subject to a change of use as set forth in OAR 734-051-3020;

(d) The development of safety or operational concerns as set forth in OAR 734-051-4020(3);

(e) The approach is modified, mitigated, or removed in accordance with OAR 734-051-5120 Project Delivery; or

(f) By other operation of law.

(2) Successors and Assignees. The permit to operate is binding on successors and assignees including successors in interest to the property being served by the approach.

Stat. Auth.: ORS 184.616, 184.619, 374.310–374.314, 374.345 & 374.355

Stats. Implemented: ORS 374.300–374.360, §27, ch. 330, OL 2011

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12

734-051-5110

Revocation of Permits and Removal of Approaches

(1) Revocation of a Permit to Operate. The department may revoke a permit to operate and may remove an approach:

- (a) If there are current or potential safety or operational conditions identified that are verified by an engineering analysis;
- (b) If a permittee fails to comply with any terms or conditions of a permit to operate; or
- (c) During project delivery for a highway improvement project as set forth in OAR 734-051-5120.

(2) Notification of Intent to Remove an Approach. The department shall provide written notification of the intent to remove an approach under section (1) of this rule as required by ORS 374.305, 374.307, and 374.320.

(3) Mitigation. The region manager may determine that an approach identified for removal as described in section (1) of this rule may remain open if permittee agrees to comply with mitigation measures and to bear the cost of the mitigation measures.

(4) Cost of Removing an Approach. An applicant, permittee, or property owner is responsible for the expense of removing an approach except as set forth in OAR 734-051-5050 and 734-051-5120.

(5) Appeals. Removal of a permitted or grandfathered approach is an appealable decision.

Stat. Auth.: ORS 184.616, 184.619, 374.310–374.314, 374.345 & 374.355

Stats. Implemented: ORS 374.300–374.360, §27, ch. 330, OL 2011

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12

734-051-5120

Access Management in Project Delivery

(1) Applicability.

(a) This rule applies to access management in the project delivery process for modernization and highway improvement projects included in the Statewide Transportation Improvement Program.

(b) For purposes of this rule, a highway improvement project is a project in the Statewide Transportation Improvement Program that proposes to modify, relocate, or remove existing public or private connections to the state highway within project limits.

(2) **Department Exemptions.** This rule does not create an obligation that the department apply documentation requirements in OAR 734-051-3010 through 734-051-3050 (documentation requirements that pertain to approach permit applications).

(3) Access Management Strategy.

(a) The department shall develop an access management strategy during project delivery for modernization and highway improvement projects included in the Statewide Transportation Improvement Program. The access management strategy shall be developed in collaboration with cities, counties and owners of real property abutting a state highway and shall be consistent with the Oregon Transportation Plan, the Oregon Highway Plan, and other transportation modal plans adopted by Oregon Transportation Commission.

(b) An Access management strategy shall include an access management methodology that balances the economic development objectives of properties abutting the state highway with the transportation safety, access management objectives, and mobility of state highways, in a manner consistent with local transportation system plans and the land uses permitted in the local comprehensive plans acknowledged under ORS chapter 197.

(c) An Access management strategy shall identify the location and type of public and private approaches and other necessary improvements that are planned to occur primarily in the highway right of way and that are intended to improve current conditions on the highway by moving in the direction of the objective standards described in ORS 374.311.

(4) Content of an Access Management Strategy.

(a) The development of the access management methodology under section (3)(b) may include the following factors:

(A) The level of direct highway access generally needed for properties based upon the types of uses allowed by the zoning and comprehensive plan designations, such as residential, commercial retail, or other designation, recognizing that direct access may increase the economic development opportunities for some uses located on abutting properties;

(B) Effects of out of direction travel on the ability of customers to access various types of uses, recognizing differences between destination and pass-by uses;

- (C) Effects of changing existing connections and circulation patterns for existing developed properties;
 - (D) Effects of traffic congestion or speed which could negatively affect the ability of customers to access adjacent properties safely;
 - (E) Community support for the highway projects and economic development proposals in the planning area, as indicated by action of the governing body of the local government;
 - (F) The highway classification and long term vision for the function of the highway as to the level of importance for providing mobility and movement of freight;
 - (G) Existing and long term safety needs of all highway users;
 - (H) Reducing vehicle conflict points where possible, particularly around critical intersections and interchange locations, to improve highway safety and operations consistent with the highway classification;
 - (I) Safety and operations concerns under OAR 734-051-4020(3);
 - (J) Safety planning tools, data and resources such as the department's Safety Priority Index System, Analysis Procedures Manual, Roadway Departure Plan, Bicycle/Pedestrian Safety Plan, and Highway Safety Manual predictive models that identify areas of existing and future safety concerns. When considering safety factors as part of the methodology, the safety concerns and issues must be documented by a professional engineer as defined in OAR 734-051-1070.
- (b) The access management strategy shall include the locations of existing or planned intersecting county roads and city streets. The locations shall be consistent with the city and county transportation system plans or must be determined and agreed upon through collaboration among the department and the cities and counties affected by the project.
 - (c) The access management strategy shall identify locations where the department intends to acquire all rights of access to a segment of the state highway as part of the project.
 - (d) The access management strategy shall identify the locations and types of private approaches that are planned for the highway right of way. When determining the locations of private approaches, the department shall collaborate with affected real property owners, property lessees and businesses in the following manner:
 - (A) The department shall provide written notice to all affected real property owners and, when possible, property lessees and business operators. The department's notice will inform the parties that, based on application of the access management methodology, it may be necessary to relocate, modify, or remove one or more approaches to their property. The department notice shall invite the affected real property owners, lessees and business operators to meet with the department to review the application of the methodology to the approaches to their property.
 - (B) If an affected real property owner, property lessee or business operator accepts the invitation to meet with the department, then the department shall meet with the party(ies) to explore options for addressing the application of the methodology to their property.
 - (C) After meeting with the affected real property owner, property lessees or business operators the department shall provide written notice of the final decision regarding the location, modification or closure of the approaches to their property. The department's notice will explain the property owner's options for appeal of the department's decision, under OAR 734-051-3080

through OAR 734-051-3110. Only an affected real property owner may appeal the department's final decision to modify, mitigate, or close an approach to their property.

(5) Public Involvement Process. The department shall provide a public involvement process for cities, counties, highway users, real property owners, property lessees, and business operators affected by a modernization or highway improvement project to assist with:

- (a) Identifying deficiencies of highway segments impacted by the project;
- (b) Establishing the long-term vision for the highway segments that are part of the project to guide the scope and design of improvements for the project;
- (c) Establishing the access management methodology by which private connections will be considered for modification, relocation or closure; and
- (d) Establishing locations where the department proposes to acquire all rights of access to a segment of the state highway as part of the project.

(6) Request for Review of the Access Management Methodology.

(a) The department shall provide written notice to all affected real property owners at least twenty-one (21) calendar days prior to taking action to finalize the access management methodology for a highway project.

(b) Affected real property owners may make a written request for a review of the access management methodology prior to the department finalizing it, through either of the following:

(A) A collaborative discussion under section (7) of this rule; or

(B) An Access Management Dispute Review Board under section (8) of this rule.

(c) Affected real property owners may request a review of the Access Management Methodology not later than twenty-one (21) calendar days following the date of the department notice under (a) of this section. Only an affected real property owner may request a review of the Methodology. The request for review must be made in writing and state whether the request is for a review through a collaborative discussion under Section (7) or an Access Management Dispute Review Board under Section (8).

(d) An affected real property owner who requests a review of an access management methodology by collaborative discussion may also request a review by an Access Management Dispute Review Board after completion of the collaborative discussion. The request for review by an Access Management Dispute Review Board must be made not later than twenty-one (21) calendar days after the date of the final decision issued by the region manager following the completion of the collaborative discussion under section (7) of this rule.

(7) Collaborative Discussion Process.

(a) If an affected real property owner requests a collaborative discussion to review the access management methodology, the collaborative discussion shall be conducted within forty five (45) calendar days from the date of written request from the affected real property owner(s), unless the department and affected real property owner(s) agree to a time extension in writing.

(b) The region manager may include any department staff that he or she finds appropriate or necessary in the collaborative discussion process. In addition, the region manager shall invite local government representatives, and may include other facility users, economic development

representatives or other parties which the region manager believes will contribute to finding appropriate solutions. The collaborative discussion shall be conducted under the alternative dispute resolution model in ORS 183.502, unless a different process is agreed upon by the department and the affected real property owner(s).

(c) The region manager shall consider the information presented as part of the collaborative discussion and make the final decision. Within twenty-one (21) calendar days following the completion of the collaborative discussion, the region manager shall notify the property owner(s) in writing of the final decision to:

(A) Modify the access management methodology; or

(B) Finalize the access management methodology without modifications.

(8) Access Management Dispute Review Board Process.

(a) The actions and recommendations of the Access Management Dispute Review Board are not land use decisions, as defined in ORS 197.015, and may not be appealed to the Land Use Board of Appeals.

(b) Where more than one affected real property owner with the same or similar concerns requests review of the access management methodology by an Access Management Dispute Review Board, the department may consolidate the reviews.

(c) The Access Management Dispute Review Board shall include the following:

(A) The director, or a designee of the director, who is familiar with the location of the project;

(B) A representative of the local jurisdiction for which the state highway is located;

(C) An independent professional engineer with education or experience in traffic engineering as defined in OAR 820-040-0030; and

(D) A representative from the economic or business sector.

(d) The Access Management Dispute Review Board shall be conducted not later than forty-five (45) calendar days from the date of written request from the affected real property owner(s), unless the department and affected real property owner(s) agree to a time extension in writing. The Access Management Dispute Review Board shall make its recommendation to the director not later than fourteen (14) calendar days following the conclusion of its deliberations.

(9) Director Decisions Based on the Recommendations of the Access Management Dispute Review Board.

(a) The director shall consider the recommendations of the Access Management Dispute Review Board and make the final decision. The director shall notify in writing all parties participating in the review of the final decision to either:

(A) Modify the access management methodology; or

(B) Finalize the access management methodology without modifications.

(b) The director's decision under Section (1) of this rule shall be issued not later than twenty-one (21) calendar days after receiving the recommendation of the Access Management Dispute Review Board.

Stat. Auth.: ORS 374.310–374.314, 374.345, 374.355, 374.360

Stats. Implemented: ORS 374.300 to 374.360, §27, chapter 330, OL 2011, chapter 476, OL 2013

Remedies in Closure of Approaches

734-051-6010

Authority and Purpose of OAR 734-051-6010 through 734-051-6060

(1) Pursuant to ORS 374.313, a person holding an interest in real property which is or would be served by an approach may file a claim for relief when:

(a) The department closes an approach for which a permit was issued under ORS 374.310 or that was allowed by law prior to enactment of statutory permit requirements for approaches, or denies an application for an approach at the location of a grant or reservation of access; and

(b) Such closure or denial is not the result of conditions contained in a contract, condemnation judgment, recorded deed or permit.

(2) The department may offer administrative remedies upon such closure or denial to address issues related to real property, value, utility and use; and provide a simplified procedure for resolving the claim.

Stat. Auth.: ORS 184.616, 184.619, 374.310–374.314, 374.345 & 374.355

Stats. Implemented: ORS 374.300–374.360, §27, ch. 330, OL 2011

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12

734-051-6020

Definitions

For purposes of subsection 734-051-6020 the following definitions apply:

(1) “Claim for relief,” means a request for an administrative remedy for the denial of an approach application at the location of a grant or reservation of access, or the closure of an existing permitted or grandfathered approach.

(2) “Person holding an interest in real property,” means the owner of the title to real property or the contract purchaser of such real property, or record as shown on the last available complete tax assessment roll.

(3) “Administrative remedy,” “appropriate remedy” or “remedy” means the offer of monetary compensation or non-monetary benefits to a property owner that would address issues related to real property value, utility or uses, which include the equivalent value of:

- (a) Actual physical reconnection of an approach to the highway or some other public facility;
- (b) Construction of public roads or other public facilities, including frontage or utility roads, city streets, alleys or county roads;
- (c) Improvements or modifications to the real property served or intended to be served by the approach, including paving of parking, restriping of lanes or parking, relocation of other traffic barriers and other items that directly address the impact to the property of the closure or denial; and
- (d) Improvements or modifications to highways or other public facilities, including medians or other traffic channelization, signing or signal installation.

Stat. Auth.: ORS 184.616, 184.619, 374.310–374.314, 374.345 & 374.355

Stats. Implemented: ORS 374.300–374.360, §27, ch. 330, OL 2011

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12

734-051-6030

Offer of Remedies

- (1) The department shall make a determination of whether closure of the approach or denial of an application would create issues related to real property value, utility and use, and what remedies would address those issues.
- (2) The department will provide a written statement of such remedies, if any, within thirty (30) days of the denial of the application or notice of intent to close a permitted approach.
- (3) Remedies will include any benefits derived by the property by virtue of highway improvements and highway modifications, whether or not related to the specific closure.
- (4) Remedies will be limited to those necessary to serve existing uses or other uses reasonably allowed given the existing zoning of the property and other factors, including physical or geographic constraints.
- (5) Remedies do not include:
 - (a) Reimbursement for attorney fees;
 - (b) Relocation expenses;
 - (c) Lost profits;
 - (d) Lost opportunities; or

- (e) Costs not specifically related to value, utility or use of the property itself.
- (6) Offers of remedies are totally discretionary on the part of the department and are not subject to a contested case appeal.
- (7) If such remedies are acceptable to the property owner and there is written acceptance:
 - (a) The property owner shall not be entitled to any other remedies for such closure or denial; and
 - (b) Any appeal under OAR 734-051-3110 shall be dismissed and any request for an appeal pursuant to 734-051-3110 shall be withdrawn.

Stat. Auth.: ORS 184.616, 184.619, 374.310–374.314, 374.345 & 374.355

Stats. Implemented: ORS 374.300–374.360, §27, ch. 330, OL 2011

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12

734-051-6040

Procedure for Resolving Claims

- (1) Parties may agree to participate in mediation consistent with the applicable provisions of ORS 36.180 to 36.210 at any time during the process of determining the appropriate remedies, but prior to the final order in any contested case under OAR 734-051-3110, as follows:
 - (a) During mediation the parties may discuss any appropriate remedies in reaching agreement.
 - (b) Such mediation may also occur during the post-decision collaborative discussion process under OAR 734-051-3090 when the denial or closure meets the requirements for consideration of a remedy set forth in OAR 734-051-6010(1).
 - (c) The property owner and the department also may enter into an agreement to collaborate if the department determines that the difference between the remedies offered and remedies claimed by the property owner is less than \$30,000.
- (2) The agreement to collaborate may provide for a mutually chosen mediator as defined in ORS 36.185 to 36.210 to review the information made available to each party as of that time and other information mutually agreed to by the parties.
- (3) The value of the remedies offered and claimed will include a dollar value assigned by the department to any non-monetary remedies. Such review will result in a recommendation of remedies, subject to the condition that such remedies are neither less than the lower nor more than the greater of the offer and claim, in terms of assigned monetary value.

(4) The remedies recommended by the third party will be presented to the director or the director's designee. The director or designee shall take this recommendation into consideration in making subsequent offers of remedies.

Stat. Auth.: ORS 184.616, 184.619, 374.310–374.314, 374.345 & 374.355

Stats. Implemented: ORS 374.300–374.360, §27, ch. 330, OL 2011

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12

734-051-6050

Appraisals

(1) Either the department or the property owner, at their own cost, may at any time before or during the appeal of the closure or denial under OAR 734-051-3110 have an appraisal performed to assist in determining the remedies that would address the real property value, utility or use:

(a) Each party shall notify the other party of such appraisal in a timely manner; and

(b) There shall be full disclosure and sharing between the parties of any appraisal and appraisal information.

(2) A qualified review appraiser must review all appraisals to ensure conformance with federal and state eminent domain and access laws:

(a) The reviewer may be selected by the department or selected jointly by way of mutual agreement of both the department and the property owner; and

(b) The same review appraiser must review all appraisals for one affected property to ensure consistency.

(3) The department and property owner may agree to mutually select one appraiser, share the appraisal costs and submit agreed-to instructions to the appraiser:

(a) An appraisal from an appraiser selected under this section, after review as set forth in section (2) of this rule, will be presented to the director or the director's designee; and

(b) The director or designee shall take the information in the appraisal into consideration in making subsequent offers of remedies.

Stat. Auth.: ORS 184.616, 184.619, 374.310–374.314, 374.345 & 374.355

Stats. Implemented: ORS 374.300–374.360, §27, ch. 330, OL 2011

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12

734-051-6060

Conditions of Agreement

Reaching agreement on the appropriate remedies is contingent upon:

- (1) Receipt by the department of a recordable document relinquishing any grant or reservation of access at the location of the approach closure or approach application; and
- (2) Termination of the permit for any approach that is a subject of the settlement.

Stat. Auth.: ORS 184.616, 184.619, 374.310–374.314, 374.345 & 374.355

Stats. Implemented: ORS 374.300–374.360, §27, ch. 330, OL 2011

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12

734-051-6070

Delegation

(1) For OAR 734-051-6010 through 734-051-6070, the director delegates authority to the department's right of way manager or the manager's designee to:

- (a) Determine the department's offer of remedies, and
- (b) Agree to any settlement that includes providing administrative remedies.

(2) The actions in section (1) of this rule must occur prior to the final order in a contested case conducted under OAR 734-051-3110.

Stat. Auth.: ORS 184.616, 184.619, 374.310–374.314, 374.345 & 374.355

Stats. Implemented: ORS 374.300–374.360, §27, ch. 330, OL 2011

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12

Access Management in Highway Facility Plans

734-051-7010

Access Management in Highway Facility Plans

(1) General Provisions.

(a) Highway facility plans must be consistent with the Oregon Transportation Plan, the Oregon Highway Plan, and other transportation modal plans adopted by Oregon Transportation

Commission. Where a proposed highway facility plan is inconsistent with adopted plans, the proposed highway facility plan must be amended to be made consistent or the adopted plans must be amended to be consistent with the proposed highway facility plan.

(b) Highway facility plans must include the location of county roads and city streets within the area described in the facility plan. The location of future city or county road connections or changes to existing city or county connections must be determined through collaborative discussion and agreement between the department and the affected cities and counties.

(2) Public Participation in the Development of Highway Facility Plans.

(a) The department shall provide for a public involvement process when it develops highway facility plans. The department shall provide notice to affected real property owners and, where possible, include property lessees and business operators that abut the state highway(s), local governments, stakeholders representing the freight industry and economic development, and others who have expressed interest in participating in the planning process in writing or by email. The department's notification shall describe the general planning process, identify opportunities for stakeholder participation, and include the name and contact information of the department project leader and links to obtain updates.

(b) The public participation process shall include an opportunity for affected real property owners that abut the highway to review the key principles and related methodology developed under sections (3) and (4) of this rule.

(3) Development of Key Principles for Access to Properties Abutting the Highway.

(a) Highway facility plans that identify a need to modify, relocate, or close one or more existing private approaches must include key principles in the plan to address how properties abutting a state highway will be evaluated to retain or obtain access to the state highway during and after plan implementation. These key principles will support the overall facility plan goals and objectives but will be more specifically focused on the economic development importance of highway access to abutting properties, while also recognizing the need to ensure transportation infrastructure improvement benefits are maintained throughout the life of the facility plan.

(b) The key principles must balance the economic development objectives of real properties abutting the state highway with the transportation safety, access management objectives, and mobility of the state highway in a manner consistent with state transportation plans, local transportation system plans, and the land uses permitted in the local comprehensive plans acknowledged under ORS chapter 197.

(c) The highway facility plan shall articulate the key principles in sufficient detail and include an anticipated timeline for plan implementation. The key principles and timelines will inform affected real property owners who abut the highway(s) of the potential for modification, relocation or closure of existing private connections within the area described in the facility plan.

(4) Development of a Methodology for Facility Plans. The methodology developed by the department under this section for facility plans, including those prepared for specific highway improvement projects, will be an assessment that applies the key principles developed under section (3) to the planning process as it relates to access decisions. The facility plan and related methodology must be consistent with the agreed upon local road connections identified in the Transportation System Plan or with the local road connections agreed upon during development

of the plan and must consider potential implications to both the state and local roadway networks and transportation systems. The methodology may include the following factors in development and application of the assessment:

- (a) How properties abutting state highways within the facility plan area could develop or redevelop consistent with the existing zoning and comprehensive plan designations;
- (b) The level of direct highway access generally needed for properties based upon types of uses allowed by the zoning and comprehensive plan designations, such as residential, commercial retail, or other designation; recognizing that direct access may increase the economic development opportunities for some uses located on abutting properties;
- (c) Effects of out of direction travel on the ability of customers to access various types of uses, recognizing differences between destination and pass-by uses;
- (d) Effects of changing existing connections and circulation patterns for existing developed properties;
- (e) The safety and operational implications of traffic congestion or speed which could negatively affect the ability of customers to access adjacent properties safely;
- (f) Creation of permanent jobs in the planning area in relation to the economy and population, including jobs in employment and industrial areas;
- (g) Community support for the highway projects and economic development proposals in the planning area, as indicated by action of the governing body of the local government;
- (h) The agreed upon long term vision for the function of the highway as to its level of importance for providing mobility and movement of freight;
- (i) Existing and long term safety needs of all highway users;
- (j) Reducing vehicle conflict points where possible, particularly around critical intersections and interchange locations, to improve highway safety and operations consistent with the highway classification;
- (k) Safety and operations concerns under OAR 734-051-4020(3);
- (l) Safety planning tools, data and resources such as the department's Safety Priority Index System, Analysis Procedures Manual, Roadway Departure Plan, Bicycle/Pedestrian Safety Plan, and Highway Safety Manual predictive models that identify areas of existing and future safety concerns. When considering safety factors as part of the methodology, the safety concerns and issues must be documented by a professional engineer as defined in OAR 734-051-1070.

(5) Notice and Review of Key Principles for Affected Real Property Owners.

- (a) The department shall provide written notice to all affected real property owners, and where possible include property lessee's and business operators, at least twenty (20) days prior to the approval by the department and local agency(s) of the key principles for a highway facility plan.
- (b) Affected real property owners may make a written request for a review of the key principles and related methodology for the facility plan through either of the following:
 - (A) A Collaborative Discussion under Section (8) of this rule; or
 - (B) An Access Management Dispute Review Board under Section (9) of this rule.

(c) Affected real property owners may request a review any time following the date of the department notice in subsection (a), up to the time of plan adoption or finalization. The request for review must be made in writing and state whether the request is for review through a collaborative discussion or an Access Management Dispute Review Board.

(d) An affected real property owner who requests a review of the key principles and related methodology through collaborative discussion may also request a review by an Access Management Dispute Review Board after completion of the collaborative discussion. The request for review by an Access Management Dispute Review Board must be made not later than twenty-one (21) calendar days after the date of the final decision issued by the region manager under section (8) of this rule.

(6) Approval of Key Principles. The department shall approve the key principles by written signature and date of the director or region manager no sooner than 20 days after the date of the department notice in section (5)(a) of this rule with written concurrence by the local agency.

(7) Commission Adoption and Department Finalization of Highway Facility Plans.

(a) Highway facility plans that amend provisions of the Oregon Highway Plan shall be adopted by the Commission consistent with the provisions of OAR 731-015-0065. Prior to adoption by the Commission, the department shall work with local governments to amend local comprehensive plans, transportation system plans and local land use regulations to ensure consistency of the facility plan with local plans and regulations. A decision to adopt a highway facility plan is a land use decision that can be appealed to the Land Use Board of Appeals.

(b) Highway facility plans will be finalized by the department by a written signature and date of the director or region manager.

(8) Collaborative Discussion Process.

(a) If an affected real property owner requests review of the key principles or related methodology by a collaborative discussion, the collaborative discussion shall be within forty five (45) days from the date of written request from the affected real property owner, unless the department and affected real property owner agree to an extension of time.

(b) The region manager may include any department staff that he or she finds appropriate or necessary in the collaborative discussion process. In addition, the region manager shall invite appropriate local government representatives, and may include other facility users, economic development representatives or other parties which the region manager believes will contribute to finding appropriate solutions. The collaborative discussion shall be conducted under the alternative dispute resolution model in ORS 183.502, unless a different process is agreed upon by the department and the affected real property owner(s).

(c) The region manager shall consider the information presented as part of the collaborative discussion and make the final decision. Within twenty-one (21) calendar days following the completion of the collaborative discussion, the region manager shall notify the participants in the collaborative discussion in writing of the final decision to:

(A) Modify the key principles or related methodology; or

(B) Validate the key principles or related methodology without modifications. If the key principles were not previously approved as specified under section 6(a) of this rule, the

department and local agency(ies) will approve the key principles, unless a request for review from the Access Management Dispute Review Board is received by the agency.

(9) Access Management Dispute Review Board Process.

(a) The actions and recommendations of the Access Management Dispute Review Board are not land use decisions, as defined in ORS 197.015, and may not be appealed to the Land Use Board of Appeals.

(b) An affected real property owner who requests a review by the Access Management Dispute Review Board may not request a review by collaborative discussion under section (8) of this rule.

(c) Where an affected real property owner requests review of the key principles or related methodology by the Access Management Dispute Review Board, the department will provide notice to all affected property owners inviting them to participate in the Access Management Dispute Review Board process. Only one Access Management Dispute Review Board process is allowed to be used for each facility plan.

(d) The Access Management Dispute Review Board shall include the following:

(A) The director or a designee of the director who is familiar with the location for which the facility plan is being prepared;

(B) A representative of the local jurisdiction in which the state highway is located;

(C) An independent professional engineer with education or experience in traffic engineering as defined in OAR 820-040-0030; and

(D) A representative from the economic or business sector.

(e) The Access Management Dispute Review Board shall be conducted within forty-five (45) days from the date of written request from the affected real property owner(s), unless the department and affected real property owner(s) agree to an extension of time in writing.

(f) The Access Management Dispute Review Board shall make its recommendation to the director not later than fourteen (14) calendar days following the conclusion of its deliberations.

(g) The director shall consider the recommendations of the Access Management Dispute Review Board and make the final decision. The director shall notify in writing all parties participating in the review of the final decision to either:

(A) Modify the key principles or related methodology; or

(B) Validate the key principles or related methodology without modifications. If the key principles were not previously approved as specified under section 6(a) of this rule, the department and local agency(ies) will approve the key principles.

(h) The director's decision under subsection (g) shall be issued not later than twenty-one (21) calendar days after receiving the recommendation of the Access Management Dispute Review Board under subsection (f).

Stat. Auth.: ORS 184.616, 184.619, 374.310–374.314, 374.345 & 374.355

Stats. Implemented: ORS 374.300–374.360, §27, ch. 330, OL 2011