

Enrolled
Senate Bill 1024

Sponsored by Senator JOHNSON (Pre-session filed.)

CHAPTER

AN ACT

Relating to highway access; creating new provisions; amending ORS 374.310; and declaring an emergency.

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

SECTION 1. ORS 374.310 is amended to read:

374.310. (1) The Department of Transportation with respect to state highways and the county court or board of county commissioners with respect to county roads shall adopt reasonable rules and regulations and may issue permits, not inconsistent with law, for the use of the rights of way of such highways and roads for the purposes described in ORS 374.305. However, the department may not issue a permit for the construction of any approach road at a location where no rights of access exist between the highway and abutting real property.

(2) Such rules and regulations and such permits shall include such provisions, terms and conditions as in the judgment of the granting authority may be in the best interest of the public for the protection of the highway or road and the traveling public and may include, but need not be limited to:

(a) Provisions for construction of culverts under approaches, requirements as to depth of fills over culverts and requirements for drainage facilities, curbs, islands and other facilities for traffic channelization as may be deemed necessary.

(b) With respect to private road crossings, additional provisions for the angle of intersection, crossing at grade or other than grade, sight distances, safety measures including flaggers, crossing signs and signals, reinforcement for protection of the highway, maintenance of the crossing and for payment by the applicant of the costs of any of the foregoing.

(c) With respect to private road crossings, the granting authority may also require the applicant to furnish public liability and property damage insurance in a sum fixed by the granting authority, which insurance shall also indemnify the members, officers, employees and agents of such authority from any claim that might arise on account of the granting of the permit and the crossing of the highway or road by vehicles operating under the permit; and the granting authority may also require the applicant to furnish indemnity insurance, an indemnity bond or an irrevocable letter of credit issued by an insured institution as defined in ORS 706.008 in a sum fixed by the granting authority, indemnifying such authority for any damage to the highways or roads that may be caused by the use of the crossing.

(3) The powers granted by this section and ORS 374.315 may not be exercised so as to deny any property adjoining the road or highway reasonable access. In determining what is reasonable, the department or county court or board of county commissioners shall apply the following criteria:

(a) The access must be sufficient to allow the authorized uses for the property identified in the acknowledged local comprehensive plan.

(b) The type, number, size and location of approaches must be 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.

(4)(a) As used in this subsection:

(A) "Peak hour" means the hour during which the highest volume of traffic enters and exits the property during a typical week.

(B) "Private approach" means an approach that serves one or more properties and that is not a public approach as defined in this subsection.

(C) "Public approach" means an existing or planned city street or county road connection that provides vehicular access to and from a highway.

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

(b) An approach permit is not required for a public approach.

(c) A new approach permit for a change of use of an approach is required for a private approach if:

(A)(i) The number of peak hour trips increases by 50 trips or more from that of the property's prior use; or

(ii) The number of trips on a typical day increases by 500 trips or more from that of the property's prior use; and

(B) The increase in subparagraph (A)(i) or (ii) of this paragraph represents a 20 percent or greater increase in the number of trips on a typical day and the number of peak hour trips from that of the property's prior use.

(d) A new approach permit for a change of use of an approach is required for a private approach if the daily use of a private approach increases by 10 or more vehicles with a gross vehicle weight rating of 26,000 pounds or greater.

(5) The department shall establish access management rules, mitigation measures and spacing and mobility standards that are less stringent for highway segments where the annual average amount of daily traffic is 5,000 motor vehicles or fewer, than for highway segments where the annual average amount of daily traffic is greater than 5,000 motor vehicles.

[(4)] (6) The department may not charge any fee for issuance of a permit under this section for construction of an approach road.

SECTION 2. (1) The Department of Transportation, in cooperation with stakeholders, shall develop proposed legislation to codify, clarify and bring consistency to issuance of access permits based on objective standards.

(2) The department shall provide a report to the Legislative Assembly prior to January 2011. The report must include a description of the proposed legislation developed under subsection (1) of this section.

SECTION 3. The amendments to ORS 374.310 by section 1 of this 2010 Act apply to existing approaches and to approaches permitted on or after the effective date of this 2010 Act.

SECTION 4. This 2010 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2010 Act takes effect on its passage.

Passed by Senate February 15, 2010

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Secretary of Senate

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President of Senate

Passed by House February 22, 2010

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Speaker of House

Received by Governor:

.....M,....., 2010

Approved:

.....M,....., 2010

.....
Governor

Filed in Office of Secretary of State:

.....M,....., 2010

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Secretary of State

From: LASLEY Harold [mailto:Harold.LASLEY@odot.state.or.us]
Sent: Wednesday, March 31, 2010 2:34 PM
To: Whitlow, Mark (Perkins Coie); lludwig@orcities.org; aschlack@aocweb.org;
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Cc: TINDALL Douglas J
Subject: Temporary Rules -- OAR 734-051

This email is to inform you of temporary administrative rules ODOT is proposing in response to Senate Bill 1024 that was signed into law by Governor Kulongowski on March 4, 2010. SB 1024 made changes to the ORS 374.310 that affect ODOT's authority to manage highway access. SB 1024 includes an emergency clause for the preservation of the public peace, health and safety and became effective immediately upon being signed into law.

Several of the current administrative rules for highway access, OAR 734-051, are in conflict with the statute as amended. ODOT is adopting temporary rules to provide guidance and direction for our staff, the public, and local government. These temporary rules must be replaced with permanent rules no later than 180 days from OTC approval (late October). The permanent rules will go through ODOT's normal administrative rules procedures for adoption, amendment and repeal of administrative rules.

The proposed temporary rules are attached below. Also attached is a Statement of Need and Justification for temporary rulemaking. Only the rules being changed are included in the attached. Additions to the current rules are shown in **bold** and deletions are [*bracketed and italicized*]. Below is a list of the rules being changed with a brief description of the changes. The temporary rules are scheduled to be on the April 21, 2010 Oregon Transportation Commission agenda for approval.

Please reply if you have comments on these temporary rules that you would like considered when ODOT develops permanent rules. We may contact you to discuss your comments further. We will also be working with a stakeholder committee in the near future to develop more changes required by SB 1024.

Temporary Rule Revisions – Brief Summary

OAR 734-051-0020 - No text changes are proposed to this rule. Readopting updates the reference to the 1999 Oregon Highway Plan and incorporates all amendments to the 1999 Oregon Highway Plan adopted by the Oregon Transportation Commission since this rule was last updated.

OAR 734-051-0040 - Changes definition (10) "Approach", definition (45) "Planned", definition (50) "Public approach" and definition (65) "Trip" to implement ORS 374.310 amendments.

OAR 734-051-0045 - Adds definition of "peak hour" from ORS 374.310 and changes criteria for change of use of an approach to be consistent with ORS 374.310.

OAR 734-051-0070 - Adds text to clarify that a Permit to Operate is not required for a public approach.

4/9/2010

OAR 734-051-0080 - Deletes section 0080(7), criteria for approving an approach application for a public approach, and renumbers subsequent sections.

OAR 734-051-0135 - Changes 734-051-0135(2), which references 734-051-0080(2), to make it consistent with 734-051-0080(2). Deletes section 0135(6) and 0135(7) related to approving a deviation for a public approach and renumbers subsequent sections. Adds a new section to authorize the Region Manager to require an intergovernmental agreement, access management plan or interchange area management plan before approving a deviation for a public approach.

OAR 734-051-0165 - Corrects the reference to the 2003 Highway Design Manual.

OAR 734-051-0245 - Adds text to clarify the issuance of a Permit to Operate only applies to a private approach.

OAR 734-051-0255 - Adds section 0255(3) to authorize the Department to require an intergovernmental agreement with a city or county to define responsibilities for maintenance of a public approach.

OAR 734-051-0295 - Changes reference to 0080 due to renumbering of 0080 sections. Deletes Permit to Operate in reference to public approach.

OAR 734-051-0315 - Adds section 0315(4) to authorizes the Department to require a city or county to enter into an intergovernmental agreement for approach in conjunction with approving an Indenture of Access.

OAR 734-051-0345 - Adds text to include an intergovernmental agreement as a means for the Region Manager to require mitigation measures, conditions, and terms applicable to a Region Review decision for a public approach.

OAR 734-051-0500 - Deletes text to make this rule consistent with Court of Appeals decision in State v. Hansen, 162 Or. App. 38 (1999).

OAR 734-051-0530 - Corrects a reference to OAR 734-051-0390 that should be 734-051-0345.

<<04-10 ruletext (4).doc>> <<734-051-0020Tsnj (2).doc>>

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Text to be added in **bold**
Text to be deleted in [*italics*]

Access Management Temporary Rules Amendments

734-051-0020

Purpose and Applicability of Rules

(1) The purpose of division 51 rules is to provide a safe and efficient transportation system through the preservation of public safety, the improvement and development of transportation facilities, the protection of highway traffic from the hazards of unrestricted and unregulated entry from adjacent property, and the elimination of hazards due to highway grade intersections. These rules establish procedures and criteria used by the Department to govern highway approaches, access control, spacing standards, medians and restriction of turning movements in compliance with statewide planning goals and in a manner compatible with acknowledged comprehensive plans and consistent with Oregon Revised Statutes (ORS), Oregon Administrative Rules (OAR), and the 1999 Oregon Highway Plan (OHP).

(2) The 1999 Oregon Highway Plan dated March 18, 1999 and all amendments approved by the Oregon Transportation Commission as of the adoption of this rule are hereby adopted by reference as the policy framework and investment priorities for implementing access management.

Stat. Auth.: ORS 184.616, 184.619, 374.310, 374.312 & 374.345
Stats. Implemented: ORS 374.305 - 374.350 & 374.990

734-051-0040

Definitions

The following definitions apply to division 51 rules:

(1) “1999 Oregon Highway Plan” means the 1999 Oregon Highway Plan and all amendments approved by the Oregon Transportation Commission as adopted by OAR 734-051-0020.

(2) “Access Control” means no right of access exists between a property abutting the highway and the highway. The right of access may have been acquired by the Department or eliminated by law.

(3) “Access Management Strategy” means a project delivery strategy that identifies the location and type of approaches and other necessary improvements that will occur primarily within the highway right of way and that is intended to improve current conditions of the section of highway by moving in the direction of the access management spacing standards.

(4) “Access Management Plan” means a plan for managing a designated section of highway or the influence area of an interchange to maintain and improve highway performance and safety. It is intended to improve current and future conditions on a section of highway or interchange by moving in the direction of the access management spacing standards and may address local street connectivity, local street improvements and local plans and land use regulations. An Access Management Plan 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.

(5) “Access Mitigation Proposal” means a proposal offered by an applicant that identifies the location and type of approaches and necessary improvements to the highway and that is intended to improve current conditions of the section of highway by moving in the direction of the access management spacing standards by combining or removing approaches resulting in a net reduction of approaches to that section of highway. An Access Mitigation Proposal must be approved by the Department, agreed to by all affected property owners, and real property interests must be recorded.

(6) “Alternate Access” means the physical existence of other means to access a property than the proposed approach, such as an existing public right of way, another location on the subject state highway, an easement across adjoining property, a different highway, a service road, or an alley, including singularly or as a joint approach, but without a conclusive determination that the alternate access is “reasonable” as defined in section (51) of this rule.

(7) “Appealable decision” means a decision by the Department that may be appealed through a Region Review as set forth in OAR 734-051-0345 or a Contested Case Hearing as set forth in OAR 734-051-0355. An appealable decision includes a decision to deny an application or to deny a deviation or approval of an application with mitigation measures.

(8) “Applicant” means a person, firm or corporation, or other legal entity that applies for an approach or deviation including an owner or lessee, or an option holder of a property abutting the highway, or their designated agent.

(9) “Application” means a completed form Application for State Highway Approach including any required documentation and attachments necessary for the Department to determine if the application can be deemed complete.

(10) “Approach” means a legally constructed, approach road or private road crossing, recognized by the Department as grandfathered or existing under a valid Permit to Operate. **A Permit to Operate is not required for a public approach.**

(11) “Approach road” means a legally constructed, public or private connection, providing vehicular access to and/or from a highway and an adjoining property.

(12) “Classification of highways” means the Department’s state highway classifications defined in the 1999 Oregon Highway Plan.

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

(14) “Construction Permit” means a Permit to Construct a State Highway Approach including all attachments, required signatures, and conditions and terms.

(15) “Crash history” means at least the three most recent years of crash data recorded by the Department’s Crash Analysis and Reporting Unit.

(16) “Day” means calendar day, unless specifically stated otherwise.

(17) “Deemed complete” means an application and all required supplemental documentation necessary for the Department to review and assess the application and determine if a Construction Permit or a Permit to Operate may be issued.

- (18) “Department” or “ODOT” means the Oregon Department of Transportation.
- (19) “Deviation” means a departure from the access management spacing standards.
- (20) “Division 51” means Oregon Administrative Rules (OAR) 734-051-0010 through 734-051-0560 and Tables 1, 2, 3, 4, 5, 6 and 7 adopted and made a part of division 51 rules and Figures 1, 2, 3 and 4 adopted and made a part of division 51 rules.
- (21) “Double-Frontage Property” means a property with a right of access to more than one state highway.
- (22) “Executive Deputy Director” means the Executive Deputy Director for Highway Division of the Oregon Department of Transportation.
- (23) “Expressway” means a segment of highway defined in the 1999 Oregon Highway Plan and classified by the Oregon Transportation Commission.
- (24) “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.
- (25) “Freeway or Expressway ramp” means all types, arrangements, and sizes of turning roadways for right or left turning vehicles that connect two or more legs at an interchange and the components of a ramp area terminal at each leg and a connection road, usually with some curvature and on a grade.
- (26) “Grandfathered approach” means a legally constructed approach existing prior to 1949. A property owner has the burden to prove an approach is grandfathered based upon existence prior to 1949. For purposes of this Division, grandfathered approaches also include approaches presumed in compliance as set forth in OAR 734-051-0285(7) and approaches intended to remain open that were improved in conjunction with a Department project prior to April 1, 2000, as set forth in OAR 734-051-0285(9).
- (27) “Grant of Access” means the conveyance or evidence of the conveyance from the Department of a specific right of access at a location where an abutting property currently does not have that specific right of access.
- (28) “Highway mobility standards” mean the established standards for maintaining mobility as defined in the 1999 Oregon Highway Plan.
- (29) “Highway segment designations” mean the four categories of designations, Special Transportation Area, Commercial Centers, Urban Business Areas, and Urban, defined in the 1999 Oregon Highway Plan.
- (30) “Indenture of Access” means a deeded conveyance that changes the location, width, or use restrictions of an existing reservation of access.
- (31) “Infill” 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 45 miles per hour.

(32) “Influence area of an interchange” means the area 1320 feet from an interchange ramp terminal measured on the crossroad away from the mainline.

(33) “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.

(34) “Interchange Area Management Plan” means a plan for managing a grade-separated interchange area to ensure safe and efficient operation between connecting roadways and to protect the functional integrity, operations, and safety of the interchange. An Interchange Area Management Plan may be developed independent of or in conjunction with an interchange project and may address local street connectivity, local street improvements and local plans and land use regulations. An Interchange Area Management Plan is not an interchange project.

(35) “Intersection” means an area where two or more highways or an approach and a highway join or cross at grade.

(36) “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 or subdivision codes.

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

(38) “Mitigation Measures” mean conditions, improvements, modifications, and restrictions set forth in OAR 734-051-0145 and required by the Department or initiated by an applicant for approval of a deviation or an application.

(39) “Move in the direction of” means that changes in the approach(es) to a property abutting the highway would bring a site closer to conformance with existing highway standards including where existing approaches to the highway or expressway are combined or eliminated resulting in a net reduction in the number of approaches to the highway or expressway, improvements in spacing of private approaches or public approaches, or improvements to intersection sight distance.

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

(41) “Permit to Construct” means a Permit to Construct a State Highway Approach including all attachments, required signatures, conditions and terms, and performance bonds or insurance.

(42) “Permit to Operate” means a Permit to Operate, Maintain and Use a State Highway Approach including all required signatures and attachments, and conditions and terms.

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

(44) “Permitted approach” means a legally constructed **private** approach existing under a valid Permit to Operate.

[(45) “Planned” means not currently existing but anticipated for the future when referring to items such as a roadway or utility connection shown in a corridor plan, or comprehensive plan, or transportation system plan.]

(45) “Planned” means not constructed but adopted into a comprehensive plan or transportation system plan in accordance with administrative procedures of OAR 660-012 and ORS Chapter 197.

(46) “Private approach” means an approach **that serves**^[ing] one or more properties and is not a public approach as defined in section (50) of this rule.

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

(48) “Professional Engineer” means a person registered and holding a valid certificate to practice engineering in the State of Oregon, as provided in ORS 672.002 through 672.325, with expertise in traffic engineering, as provided in OAR 820-040-0030.

(49) “Project Delivery” means the allocation of resources to plan and construct new highways or modify and improve existing highways.

[(50) “Public approach” means an approach serving multiple properties, owned and operated by a public entity, and providing connectivity to the local road system.]

(50) “Public approach” means an existing or planned city street or county road connection that provides vehicular access to the general public 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 734-051-0040(45) and must be or come under the authority of the city or county to be considered a public approach.

(51) “Reasonable Access” means the ability to access a property in a manner that meets the criteria under ORS 374.310(3).

(52) “Redevelopment” means the act or process of changing 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 45 miles per hour.

(53) “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 as specified in an Intergovernmental Agreement delegating permitting authority as set forth in OAR 734-051-0035(3).

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

(55) “Reservation of Access” means a limitation of a common law right of access to a specific location 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 use restriction included in a reservation of access does not restrict turning movements nor does the absence of a use restriction allow unrestricted turning movements. 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.

(56) “Restricted 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. A mitigation required as a part of approach permit approval or a condition on a construction permit does not by itself create a “restricted use approach.”

(57) “Right of access” means the right of ingress and egress to the roadway and includes a common law right of access, reservation of access, or grant of access.

(58) “Right of way” means real property or an interest in real property owned by the Department as defined in the 1999 Oregon Highway Plan.

(59) “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(9).

(60) “Safety factors” include the factors identified in OAR 734-051-0080(8[9]).

(61) “Signature” means the signature of the specific individual or an authorized officer of the corporation or partnership and must include the name of the corporation or partnership licensed as set forth in ORS 60.111, and which maintains a registered agent and registered office in this state.

(62) “Spacing Standards” mean Access Management Spacing Standards as set forth in OAR 734-051-0115 and specified in Tables 1, 2 and 3 adopted and made a part of division 51 rules and Access Management Spacing Standards for Approaches in an Interchange Area as set forth in OAR 734-051-0125 and specified in Tables 4, 5, 6 and 7 and Figures 1, 2, 3 and 4, adopted and made a part of division 51 rules.

(63) “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.

(64) “Traffic Impact Study” means a report prepared by a professional engineer that analyzes existing and future roadway conditions resulting from the applicant’s development.

(65) “Trip” means a one-way vehicular movement **that consists of a motor vehicle entering or exiting a property**. A vehicle entering a property and later exiting that property has made two trips.

(66) “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(9).

(67) “Vehicle trips per day” 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 current edition of the Institute of Transportation Engineers (ITE) publications Trip Generation and Trip Generation Handbook. Adjustments to the standard rates in the ITE publications 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 TFE procedures and if the internal trips do not add vehicle movements to the approaches to the highway.

(68) "Vehicular Access" means access by motorized vehicles to a property from a street, roadway, highway, easement, service road, or alley including singular or joint access.

(69) "Work Day" means Monday through Friday and excludes holidays.

Stat. Auth.: ORS 184.616, 184.619, 374.310, 374.312, 374.313 & 374.345

Stats. Implemented: ORS 374.305 - 374.350 & 374.990

734-051-0045

Change of Use of an Approach

(1) This rule applies to private approaches existing under a valid Permit to Operate and private grandfathered approaches.

(2) As used in this rule "peak hour" means the hour during which the highest volume of traffic enters and exists the property during a typical week.

(3[2]) A change of use of an approach occurs, and an application must be submitted, when an action or event identified in subsection (a) of this section, results in an effect identified in subsection (b) of this section.

(a) The Department may review an approach at the time of an action such as:

(A) Zoning or plan amendment designation changes;

(B) Construction of new buildings;

(C) Floor space of existing buildings increase;

(D) Division or consolidation of property boundaries;

(E) Changes in the character of traffic using the approach;

(F) Internal site circulation design or inter-parcel circulation changes; or

(G) Reestablishment of a property's use after discontinuance for two years or more.

(b) An application must be submitted when an action in subsection (a) of this section may result in any of the following:

[(A) Site traffic volume generation increases by more than 250 average daily trips or 25 peak hour trips (external trip generation for multi-use developments).]

(A)(i) The number of peak hour trips increases by 50 trips or more from that of the property's prior use; or

(ii) The number of trips on a typical day increases by 500 trips or more from that of the property's prior use; and

(B) The increase in subparagraph (A)(i) or (A)(ii) represents a 20 percent or greater increase in the number of trips on a typical day and the number of peak hour trips from that of the property's prior use.

(C[B]) ODOT demonstrates that safety or [O]operational problems are occurring or are anticipated to occur based on field observation, crash data or an engineering analysis that determines mitigation is needed to ensure safety.

(D[C]) The approach does not meet sight distance[s] [requirements] standards based on AASHTO 2004 Policy on Geometric Design of Highways and Streets.

[(D) The approach is not consistent with the safety factors set forth in OAR 734-051-0080(9).]

[(E) Use of the approach by vehicles exceeding 20,000 pound gross vehicle weight increases by 10 vehicles or more per day.]

(E) The daily use of an approach increases by 10 or more vehicles with a gross vehicle weight rating of 26,000 pounds or greater.

(c) An effect in subsection (b) of this section may be determined by:

- (A) Field counts;
- (B) Site observation;
- (C) Traffic Impact Study;
- (D) Field measurement;
- (E) Crash history;
- (F) Institute of Transportation Engineer Trip Generation Manual; or
- (G) Information and studies provided by the local jurisdiction.

(3) The following actions do not constitute a change of use:

(a) Modifications in advertising, landscaping, general maintenance, or aesthetics not affecting internal or external traffic flow or safety; or

(b) Buildout or redevelopment of an approved site plan or multi-phased development within the parameters of a Traffic Impact Study that is less than five years old or where within parameters of the future year analysis of the Traffic Impact Study, whichever is greater, and that is certified by a Professional Engineer.

Stat. Auth.: ORS 184.616, 184.619, 374.310, 374.312 and 374.345; Ch. 972 and Ch. 974, Oregon Laws 1999

Stat. Implemented: ORS 374.305 to 374.345 and 374.990; Ch. 974, Oregon Laws 1999, Chapter 371, Oregon Laws 2003

734-051-0070

Application Procedure and Timelines

(1) The Department shall document decisions made under Division 51 rules with written findings and shall provide written notice to applicants:

- (a) Written findings shall be provided to the applicant upon request;
- (b) Materials submitted by the applicant become the property of the Department;

(c) The Region Manager may waive requirements for information and documentation required from an applicant depending on the nature of the application and on the sufficiency of other information available to the Department for its evaluation of an application;

(d) Where necessary to comply with the permitting criteria under Division 51 rules, approval of an application may be conditioned upon significant changes to a proposed site plan including relocation of buildings, parking, circulation, reduction of intensity of use, or variances from local jurisdictions; and

(e) Approval of an application may require mitigation measures set forth in OAR 734-051-0145.

(2) The Department, applicant, or local government may request a pre-application meeting to discuss the approach application process.

(3) An application is required:

(a) For a new approach to a state highway;

(b) When a change of use occurs as set forth in OAR 734-051-0045;

(c) For a temporary approach to a state highway; or

(d) For a restricted use approach to a state highway.

(4) An application accompanied by a site plan must be submitted for each approach requested. All of the following apply to an application:

(a) The Department shall not accept an application for an approach to a freeway, a freeway ramp, or an expressway ramp, or where an approach would be aligned opposite a freeway or expressway ramp terminal.

(b) The Department shall require written evidence of concurrence by the owner where an applicant is not the property owner.

(c) The Department may refuse to accept an application that is incomplete or contains insufficient information to allow the Department to determine if supplemental documentation is required or otherwise determine that the application may be deemed complete.

(5) The Department shall determine if an application is deemed complete:

(a) Within 30 days of accepting an application when section (6) of this rule does not require supplemental documentation; or

(b) When the supplemental documentation is received and the Department determines that the supplemental documentation is sufficient to evaluate the application, if section (6) of this rule requires supplemental documentation.

(6) The Department may require supplemental documentation before an application is deemed complete, and the Region Manager:

(a) May conduct an on-site review to determine the need for supplemental documentation before an application is deemed complete. The on-site review area includes both sides of the highway in the vicinity of the proposed approach including:

(A) The site frontage;

(B) All approaches; and

(C) The nearest public intersections within a distance less than the applicable spacing standard distance.

(b) May meet with the applicant to discuss the supplemental documentation including definition and degree of specification;

(c) Shall notify an applicant, within 30 days of accepting an application, of the supplemental documentation necessary for an application to be deemed complete;

(d) Shall notify an applicant, within 30 days of accepting an application, that an application may not be deemed complete where no right of access exists; and

(A) An applicant may apply for an Application for a Grant of Access or Application for an Indenture of Access;

(B) An application for a Grant of Access or Application for an Indenture of Access must be submitted concurrently with an Application for State Highway Approach;

(C) OAR 734-051-0295 through 734-051-0335 govern modification of access rights:

(i) To state highways and other public roads from property where the Department has access control; and

(ii) To state highways from property owned or controlled by cities or counties where the Department has access control where a public road connection is requested.

(D) Submittal of an Application for a Grant of Access or Application for an Indenture of Access stays the 120-day timeline in section (8) of this rule;

(E) The timeline for processing an Application for a Grant of Access and completing the appraisals and property transactions may be up to 365 days depending on the complexity of the request; and

(F) The timeline for processing an Application for an Indenture of Access may be up to 60 days depending on the complexity of the request.

(e) May require a Traffic Impact Study for:

(A) Proposed developments generating vehicle trips that equal or exceed 600 daily trips or 100 hourly trips; or

(B) Proposed zone changes or comprehensive plan changes;

(f) Shall require a Traffic Impact Study for proposed developments or land use actions where the on-site review indicates that operational or safety problems exist or are anticipated; and

(g) Shall notify the applicant that required supplemental documentation, including an application for a grant of access or indenture of access, must be submitted within 60 days of the date of notice of supplemental documentation or the application expires.

(7) All of the following apply when a Traffic Impact Study is required:

(a) A Professional Engineer employed by the Department shall determine the scope of the study and shall review and comment on the study.

(b) Future year analyses apply to both public and private approaches and include year of each phase opening and future year beyond build out, based on vehicle trips per day and type of land

