

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

use action, but not greater than the year of planning horizon for transportation system plans or 15 years, whichever is greater.

(c) A Professional Engineer 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 approach.

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

(f) The study may be sufficient to satisfy the requirements of this rule without being adequate to satisfy local government requirements or the Transportation Planning Rule.

(8) When necessary to comply with the permitting criteria of division 51 Rules the Department shall evaluate an application that is deemed complete and shall approve or deny that application within 120 days including a final order as set forth in OAR 734-051-0355:

(a) The final 60 days of the 120 days are reserved for the Contested Case Hearing process set forth in OAR 734-051-0355;

(b) The Department shall use D[*d*]ivision 51 and ORS Chapter 374 and may use other applicable statutes, administrative rules, or manuals to evaluate and act on an application;

(c) If an application is approved, the Department shall issue a Construction Permit or a Permit to Operate as set forth in sections (10) through (13) of this rule; and

(d) Denial of an application is an appealable decision.

(9) If approval of an approach requires a deviation from access management spacing standards or access management spacing standards for approaches in an interchange area, a Traffic Impact Study may be required and the Department may approve or deny the deviation as set forth in OAR 734-051-0135:

(a) Approval of a deviation may be conditioned upon changes to a proposed site plan including relocation of buildings, changes to parking or circulation, reduction of the intensity of use, or variances from local jurisdiction regulations; and

(b) Denial of a deviation from spacing standards is an appealable decision.

(10) 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 accepted and processed:

(a) Approval will be conditioned on the Department receiving notice of approval of the land use action shown on the application.

(b) A Construction Permit may be issued 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 734-051-0095(2), to ensure that the approach will be removed if the land use is not approved.

(c) A Permit to Operate shall not be issued until the applicant provides the Department with written proof of final land use decision.

(11) To obtain a Construction Permit an applicant must submit construction drawings and plans within 60 days of notice of approval of an application when use of the Department's standard drawings is not appropriate. The Region Manager determines the acceptability of submitted construction plans. If plans are not submitted within the 60 days and no request for extension is received within that time, the approval will be void.

(12) The Department shall issue a Construction Permit as set forth in OAR 734-051-0175 upon approval of an application and approval of construction drawings and plans where required; and

(a) An approach approved by a Construction Permit must be constructed as required by OAR 734-051-0175 through 734-051-0245; and

(b) An applicant must have insurance, bonds, and deposits in place before construction begins and must provide 30 days written notice of cancellation or intent not to renew insurance coverage as set forth in OAR 734-051-0215.

(13) The Department shall issue a Permit to Operate as set forth in OAR 734-051-0245, **except that a Permit to Operate is not required for a public approach under ORS 374.310.**

(14) An applicant may request a Region Review of an appealable decision within 21 days of notice of that decision as set forth in OAR 734-051-0345:

(a) An applicant may request a collaborative discussion within the Region Review process; and

(b) The Region Review process stays the 120-day timeline for approval or denial of an application.

(c) An applicant may request a Contested Case Hearing following a Region Review and the hearing will be on the original decision.

(15) An applicant may request a Contested Case Hearing of an appealable decision within 21 days of notice of that decision, or within 21 days of notice of a Region Review decision, as set forth in OAR 734-051-0355.

(16) Division 51 timelines may be extended if the applicant and the Department agree 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.

(17) An application will expire after 120 days of inactivity on the part of the applicant if the Department sends a reminder letter to notify the applicant that 90 days have passed with no activity, and advising that the application will expire in 30 days if the application continues to be inactive. Submittal of any information after the date of expiration will require a new application.

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

734-051-0080

Criteria for Approving an Application for an Approach

(1) The following apply to all applications:

- (a) Existence of a recorded easement does not by itself establish a right of access and does not guarantee the approval of an application or the location of an approach.
- (b) If an application is for a double-frontage property the approach must be located on the lower classification highway except where the Region Access Management Engineer determines that an approach to the higher classification highway would better meet the approval criteria in sections (2) through (10[11]) of this rule.
- (c) Where a 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 accepted for individual parcels or ownership.
- (2) For a private approach with no alternate access to the property the Region Manager shall approve an application if the applicant demonstrates that section (9[10]) of this rule is met.
- (3) For a private approach in a rural area and on a statewide, regional, or district highway or an expressway or within the influence area of an expressway interchange or freeway interchange, with alternate access to the property, the Region Manager shall approve an application if the applicant demonstrates that:
- (a) Either:
- (A) The alternate access cannot be made reasonable as set forth in section (7[8]) of this rule; or
- (B) The proposal is for infill or redevelopment and approval of the proposal will result in a net reduction of approaches on the highway or the net result improves safety for any remaining approaches; and
- (b) Section (9[10]) of this rule is met.
- (4) For a private approach in an urban area and on a statewide, regional, or district highway or within the influence area of an expressway interchange or freeway interchange, with alternate access to the property, the Region Manager shall approve an application, even where the Department has evidence that the alternate access is reasonable, if the applicant provides substantial evidence that demonstrates that:
- (a) The alternate access is not reasonable as set forth in section (7[8]) of this rule; and
- (b) Section (9[10]) of this rule is met.
- (5) For a private approach in an urban area and on a statewide, regional, or district highway or within the influence area of an expressway interchange or freeway interchange, with alternate access to the property, the Region Manager shall approve an application if the applicant demonstrates that:
- (a) The alternate access is reasonable as set forth in section (7[8]) of this rule; and
- (b) Section (9[10]) and section (10[11]) of this rule are met.
- (6) For a [*public or*] private approach in an urban area and on an expressway, with alternate access to the property, the Region Manager shall approve an application if the applicant demonstrates that:
- (a) The alternate access cannot be made reasonable as set forth in section (7[8]) of this rule, and section (9[10]) and section (10[11]) of this rule of this rule are met; or

(b) ~~The~~ approach provides an immediate and long-term benefit to the state highway system, as set forth in OAR 734-051-0085, regardless of any required safety or operations mitigation measures, and section (9[10]) of this rule is met.

[(7) For a public approach on a statewide, regional, or district highway or an expressway the Region Manager shall approve an application if:

(a) The applicant demonstrates that the approach enhances connectivity consistent with, and is included in, the jurisdiction's adopted comprehensive plan, corridor plan, or transportation system plan unless the jurisdiction is exempt from transportation system planning requirements under OAR 660-012-0055;

(b) The applicant demonstrates that section (10) and subsections (11)(a) and (b) of this rule are met; and

(c) The Permit to Operate is issued to the local jurisdiction.]

(7[8]) Which approval criteria will be applied to an application (sections (2) through (6[7]) of this rule) depends in part upon whether alternate access to the site is or can be made reasonable, which is determined based upon the following:

(a) The Department determines that alternate access to the property is sufficient to allow the authorized uses for the property identified in the acknowledged local comprehensive plan.

(b) The Department determines that the type, number, size and location of approaches 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.

(c) The Department may require mitigation measures are set forth in OAR 734-051-0145:

(A) Including where the applicant or the local jurisdiction commits proportional shares for the cost of removal or mitigation of geographic, safety, or physical restrictions on the property or local street network; and

(B) Neither a lack of commitment by a local government to share the cost of mitigation nor the cost of mitigation alone is determinative in evaluating whether the access is or could be made reasonable.

(d) Consideration of factors including:

(A) Legal restrictions;

(B) Geographic restrictions;

(C) Historical or cultural resources;

(D) Safety factors; and

(E) Physical considerations such as planned streets, roadway width, and weight and size restrictions.

(e) Where a significant difference exists between an existing and planned local road network, a phased method addressing access may be considered:

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

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

(C) An agreement with the local government regarding the planned street or road network may be an intergovernmental agreement.

(8[9]) For purposes of Division 51, safety factors include:

- (a) Roadway character;
- (b) Traffic character;
- (c) Geometric character;
- (d) Environmental character; and
- (e) Operational character.

(9[10]) As required by sections (2) through (6[7]) of this rule an applicant must demonstrate, consistent with Division 51 rules, that:

- (a) The approach is consistent with safety factors in section (8[9]) of this rule;
- (b) Spacing standards are met or a deviation is approved as set forth in OAR 734-051-0135; and
- (c) The effect of the approach meets traffic operations standards, signals, or signal systems standards in OAR 734-020-0400 through 734-020-0500 and OAR 734-051-0115 and 734-051-0125.

(10[11]) As required by sections (5) through (6[7]) of this rule the Department may require an applicant to demonstrate that:

- (a) Highway mobility standards are met on state highways;
- (b) The approach is consistent with an Access Mitigation Proposal, Access Management Strategy, or Access Management Plan for the segment of highway abutting the property, if applicable;
- (c) The site plan shows that the site circulation does not require vehicles, once on site, to reenter the highway to access parking or other portions of the development; and
- (d) More than one approach to the highway is necessary to accommodate traffic reasonably anticipated to the site if multiple approaches are requested.

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

734-051-0135

Deviations from Access Management Spacing Standards

(1) A deviation will be considered when an approach does not meet spacing standards and the approach is consistent with safety factors in OAR 734-051-0080(8[9]). The information necessary to support a deviation must be submitted with an application or with the supplemental documentation as set forth in OAR 734-051-0070(5) and (6).

(2) For a private approach with no [reasonable] alternate access to the property, as identified in OAR 734-051-0080(2), spacing standards are met if property frontage allows or a deviation is approved as set forth in this section. The Region Manager shall approve a deviation for a property with no [reasonable] alternate access if the approach is located:

(a) To maximize the spacing between adjacent approaches; or

(b) At a different location if the maximized approach location:

(A) Causes safety or operational problems; or

(B) Would be in conflict with a significant natural or historic feature including trees and unique vegetation, a bridge, waterway, park, archaeological area, or cemetery.

(3) The Region Access Management Engineer shall approve a deviation if:

(a) Adherence to spacing standards creates safety or traffic operation problems;

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

(c) The applicant demonstrates that existing development patterns or land holdings make joint use approaches impossible;

(d) Adherence to spacing standards will cause the approach to conflict with a significant natural or historic feature including trees and unique vegetation, a bridge, waterway, park, archaeological area, or cemetery;

(e) The highway segment functions as a service road;

(f) 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 approaches at mid-block; or

(g) Based on the Region Access Management Engineer's determination that:

(A) Safety factors and spacing significantly improve as a result of the approach; and

(B) Approval does not compromise the intent of these rules as set forth in OAR 734-051-0020.

(4) When a deviation is considered, as set forth in section (1) of this rule, and the application results from infill or redevelopment:

(a) The Region Access Management Engineer may waive the requirements for a Traffic Impact Study and may propose an alternative solution where:

(A) The requirements of either section (2) or section (3) of this rule are met; or

(B) Safety factors and spacing improve and approaches are removed or combined resulting in a net reduction of approaches to the highway; and

(b) Applicant may accept the proposed alternative solution or may choose to proceed through the standard application review process.

(5) The Region Access Management Engineer shall require any deviation for an approach located in an interchange access management area, as defined in the Oregon Highway Plan, to be evaluated over a 20-year horizon from the date of application and may approve a deviation for an approach located in an interchange access management area if:

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

(b) The approach is consistent with an access management plan for an interchange that includes plans to combine or remove approaches resulting in a net reduction of approaches to the highway;

(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) The applicant demonstrates that existing development patterns or land holdings make utilization of a joint approach impracticable.

[(6) The Region Access Management Engineer may approve a deviation for a public approach that is identified in a local comprehensive plan and provides access to a public roadway if:

(a) Existing public approaches are combined or removed; or

(b) Adherence to the spacing standards will cause the approach to conflict with a significant natural or historic feature including trees and unique vegetation, a bridge, waterway, park, archaeological area, or cemetery.

(7) The Region Access Management Engineer may require that an access management plan, corridor plan, transportation system plan, or comprehensive plan identifies measures to reduce the number of approaches to the highway to approve a deviation for a public approach.]

[6](8) The Region Access Management Engineer shall not approve a deviation for an approach if any of the following apply:

(a) Spacing standards can be met even though adherence to spacing standards results in higher site development costs.

(b) The deviation results from a self-created hardship including:

(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.

(c) The deviation creates a significant safety or traffic operation problem.

[7](9) The Region Access Management Engineer shall not approve a deviation for an approach in an interchange access management area where reasonable alternate access is available and the approach would increase the number of approaches to the highway.

[8](10) Where section (2), (3), (4)[,] **or** (5)[or (6)] of this rule cannot be met, the Region Manager, not a designee, may approve a deviation where:

(a) The approach is consistent with safety factors; and

(b) The Region Manager identifies and documents conditions or circumstances unique to the site or the area that support the development.

(9) The Region Manager may require an intergovernmental agreement or completion of an access management plan or an interchange area management plan prior to approval of a deviation to construct a public approach.

(10[11]) Approval of a deviation may be conditioned upon mitigation measures set forth in OAR 734-051-0145.

(11[12]) Denial of a deviation is an appealable decision.

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

734-051-0165

Design of Approaches

(1) Approach design must conform to standards in the 2003[2] Oregon Highway Design Manual and allow movement to and from the highway of vehicles reasonably expected to utilize the approach without undue conflict with other traffic.

(2) Design of an approach may require mitigation measures as set forth in OAR 734-051-0145.

(3) No person may place curbs, posts, signs, or other structures on the highway right of way without written approval of the Region Manager.

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

(5) Approaches that are private road crossings must be constructed by grade separation except where the Technical Services Manager determines that grade separation is not economically feasible. Where no grade separation is required, the applicant shall install signing, signalization, or other traffic safety devices the Technical Services Manager determines necessary:

(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, 374.305, 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 Law 1999, Chapter 371, Oregon Laws 2003

734-051-0245

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

(1) 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 when the approach conforms to the terms and conditions of the Construction Permit.

(2) Use of a **private** approach is legal only after a Permit to Operate is issued.

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

734-051-0255

Maintenance of Approaches

- (1) An applicant, permittee, or owner of a grandfathered approach must obtain approval and necessary permits prior to performing maintenance on an approach that interferes with or interrupts traffic on or along a highway.
- (2) Where traffic signals are required, signal maintenance is performed by the Department or as assigned by a Cooperative Cost Agreement.

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

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

734-051-0295

Grants of Access

- (1) A grant of access establishes a right of access; and
 - (a) For a grant of access approved prior to April 1, 2000, the grant of access does not guarantee approval of an Application for State Highway Approach or issuance of a Construction Permit or Permit to Operate; and
 - (b) Subsequent to April 1, 2000, the Department may approve an Application for a Grant of Access only where an Application for State Highway Approach or a Construction Permit or Permit to Operate may be approved.
- (2) 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.
- (3) The Department shall not approve an Application for a Grant of Access for a private approach:
 - (a) On a freeway, freeway mainlines, or freeway ramp;
 - (b) On an expressway or expressway ramp;
 - (c) Opposite a freeway or expressway ramp terminal; or
 - (d) In an Interchange Management Area.
- (4) The Department may approve an Application for a Grant of Access to private property abutting a state and local facility where all of the following conditions are met:
 - (a) An applicant submits an Application for State Highway Approach as set forth in OAR 734-051-0070 and concurrently submits an Application for a Grant of Access, as set forth in OAR 734-051-0305.
 - (b) An applicant meets the requirements for issuance of a Construction Permit, as set forth in OAR 734-051-0175.

(c) The applicant agrees in writing to meet any mitigation measures, terms, and conditions placed on the Construction Permit and the Permit to Operate.

(d) The grant of access is consistent with the 1999 Oregon Highway Plan.

(e) 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 (7) of this rule; or

(B) The applicant establishes that the grant of access will benefit the state highway system as set forth in OAR 734-051-0085(1) and (2).

(f) Alternate access to the property is not and cannot be made reasonable as set forth in OAR 734-051-0080(7[8]).

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

(h) The application is approved by the Region Manager and reviewed by the State Traffic Engineer, and approved by the Technical Services Manager.

(5) The Department shall not approve an Application for a Grant of Access for a public approach:

(a) On a freeway, freeway mainlines, or freeway ramp;

(b) On an expressway ramp;

(c) Opposite a freeway or expressway ramp terminal; or

(d) In an Interchange Management Area.

(6) 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) An applicant submits an Application for State Highway Approach, as set forth in OAR 734-051-0070 and concurrently submits an Application for a Grant of Access, as set forth in OAR 734-051-0305.

(b) The applicant meets the requirements for issuance of a Construction Permit, as set forth in OAR 734-051-0175.

(c) The applicant agrees in writing to meet any mitigation measures, terms, and conditions placed on the Construction Permit [*and the Permit to Operate*].

(d) The grant of access is consistent with the 1999 Oregon Highway Plan, an adopted corridor plan, and local transportation system plan, or in the absence of an adopted corridor plan or transportation system plan, a grant of access may be considered where the applicant has explored all possible alternatives to the connection, including parallel streets, and the purchase of additional right of way.

(e) 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 (7) of this rule; or

(B) The applicant establishes that the grant of access will benefit the state highway system as set forth in OAR 734-051-0085; and

(i) The Department may determine that a benefit to the state highway system exists where 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; and

(ii) The Department shall require supporting documentation of sufficient detail to determine that a benefit to the state highway system exists, as set forth in OAR 734-051-0085(1) and (2), to be included in the transportation system plan; and

(iii) The Department shall determine if the supporting documentation is sufficient to meet the requirements in subparagraph (ii) of this paragraph.

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

(A) Shall enter into an intergovernmental agreement that details the responsibility for construction, maintenance, operation 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 planned development intensities and trip generation can be safely supported on the state transportation system.

(g) The application is approved by the Region Manager and reviewed by the State Traffic Engineer, and approved by the Technical Services Manager.

(7) For the purposes of sections (4) and (6) of this rule, the Department shall consider the following factors in determining whether access control is still needed at the location specified in an application for a grant of access:

(a) Classification of the highways and highway segment designations;

(b) Spacing Standards;

(c) Highway mobility standards;

(d) State and local transportation system plans;

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

(f) Safety factors.

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

Stats. Implemented: ORS 374.305 - 374.350 & 374.990

734-051-0315

Indentures of Access

(1) The Department may approve an Application for Indenture of Access to a property abutting a state or local facility where all of the following conditions are met:

(a) An applicant submits an Application for State Highway Approach as set forth in OAR 734-051-0070 and concurrently submits an Application for Indenture of Access as set forth in OAR 734-051-0325;

(b) The applicant meets the requirements for issuance of a Construction Permit, as set forth in OAR 734-051-0175;

(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 Region Manager approves the Application for Indenture of Access; and

(e) The property owner agrees to the closure of one or more existing reservations of access.

(2) All of the property owners that have a right of access at and are currently being served by the existing reservation of access must be applicants for any Application for Indenture of Access.

(3) A request for removal of farm crossing or farm access restrictions requires a grant of access as set forth in OAR 734-051-0295 and 734-051-0305.

(4) Approval of an Indenture of Access for a public approach may require mitigation measures to ensure that the state transportation system can safely accommodate the traffic 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.

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

734-051-0345

Region Review Process and Collaborative Discussion Option

(1) The Region Review process is an optional process that falls outside the 120-day timeline in OAR 734-051-0070(8) and applies to appealable decisions.

(2) To request a Region Review, an applicant must submit a written request to the Region Manager within 21 days of the mailing date of notice of an appealable decision and identify documentation to be presented at the Region Review.

(3) A Region Review Committee includes members with expertise in:

(a) Access Management policies;

(b) Roadway design standards;

(c) Right-of-way;

(d) Traffic engineering; and

(e) At least one Professional Engineer with experience in the issues being reviewed.

(4) The Department may invite a representative from the affected local jurisdiction with land use or transportation knowledge to provide input to the Region Review Committee.

(5) The applicant or permittee may present additional information in writing or in person to the Region Review Committee.

(6) The Region Review Committee shall meet, consider information presented, and provide written findings to the Region Manager.

(7) The Region Manager shall review the Committee's findings and approve, modify, or reverse the original decision; and

(a) Shall notify the applicant in writing within 21 days of the committee meeting;

(b) Shall include information on the applicant's right to request a contested case hearing on the original decision; and

(c) May include mitigation measures, conditions and terms to be incorporated into the Construction Permit or Permit to Operate **or intergovernmental agreement for a public approach.**

(8) An applicant may request a collaborative discussion within the Region Review process:

(a) Both the applicant and the Department must agree to the collaborative discussion.

(b) The collaborative discussion:

(A) Will be conducted under the Alternative Dispute Resolution model in ORS 183.502; and

(B) Will include a time limit of 45 days, or longer if the Department and the applicant agree, in the Agreement to Collaborate.

(c) The Region Manager is the final agreement authority and may make a binding decision for the Department.

(d) Any agreement made by the Region Manager:

(A) Shall be documented in writing;

(B) May require conditions or limitations to be incorporated into the Construction Permit or Permit to Operate; and

(C) Shall include information on the applicant's right to request a contested case hearing on the original decision.

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

734-051-0500

Authority and Purpose of OAR 734-051-0500 through 734-051-0560

(1) Pursuant to ORS 374.313, a person holding an interest in real property, which is or would be served by an approach may appeal the closure or denial of the approach under OAR 734-051-0355 by filing 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 approach roads[, 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 remedies upon such closure or denial.

(3) OARS 734-051-0500 through 734-051-0560:

(a) Establish administrative remedies to address issues related to real property, value, utility and use; and

(b) Provide a simplified procedure for resolving the claim.

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

Stats. Implemented: ORS 374.310, 374.313 & 374.345

734-051-0530

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 734-051-0355.

(2) During mediation the parties may discuss any appropriate remedies in reaching agreement. Such mediation may also occur during the collaborative discussion phase of the review procedure for the denial or closure. (See OAR 734-051-~~0345~~[0390]).

(3) 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.

(a) 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.

(b) 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.

(c) 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, 374.313 & 374.345

Stats. Implemented: ORS 374.310, 374.313 & 374.345

Secretary of State
STATEMENT OF NEED AND JUSTIFICATION
A Certificate and Order for Filing Temporary Administrative Rules accompanies this form.

Oregon Department of Transportation, Highway Division
Agency and Division

734
Administrative Rules Chapter Number

In the Matter of the Amendment of OAR 734-051-0020, 734-051-0040, 734-051-0045, 734-051-0070, 734-051-0080, 734-051-0135, 734-051-0165, 734-051-0245, 734-051-0255, 734-051-0295, 734-051-0315, 734-051-0345, 734-051-0500 and 734-051-0530 to bring existing Access Management rules into conformance with amendments to ORS 374.310.

Rule Caption: Amends Existing Access Management Rules to Comply with Amendments to ORS 374.310 made by Senate Bill 1024.

Statutory Authority: ORS 184.616, 184.619, 374.310

Other Authority: None

Statutes Implemented: ORS 374.305 through 374.350 and 374.990

Need for the Temporary Rule(s): Temporary rules are necessary to implement statutory changes to ORS 374.310 that the legislature enacted during the 2010 special session. At that time, the legislature declared an emergency asserting that this change is needed for the immediate preservation of the public peace, health and safety and the legislative became effective upon passage. The current access management rules are in conflict with the statute and the amendments are needed to clarify implementation of these statutory changes.

Additional proposed temporary rules bring existing access management rules into conformance with a Oregon Court of Appeals decision in State v. Hansen, 162 Or. App. 38 (1999); and correct and update citations and references contained in the existing access management rules.

Documents Relied Upon, and where they are available: SB 1024. The enrolled bill signed by the Oregon House and the Oregon Senate can be found at: <http://www.leg.state.or.us/10ss1/measpdf/sb1000.dir/sb1024.en.pdf>. The Governor's legislative action web page notes that the bill was signed into law on March 4, 2010 and can be found at: <http://governor.oregon.gov/Gov/Action2010.shtml>

Justification of Temporary Rules(s): These amendments to the access management rules are needed to implement the legislative changes to ORS 374.310 that became effective March 4, 2010. The statutory changes were enacted under a declared emergency. The current access management rules are in conflict with the statute and must be amended to clarify implementation of the new statutory provisions.

The temporary rules are needed to implement the changes to ORS 374.310 quickly and in a consistent manner in order to protect the interests of adjacent land owners and the safety of the motoring public on the state highway system. The legislative changes require changes to the current rules in order to be consistent with the statute. The temporary rules are intended to remove these "conflicts" and incorporate new definitions adopted in the statute into the rule. Failure to adopt temporary rules will lead to confusion and inconsistencies that could increase the cost for private and public interests doing business with the Department, increase the likelihood of litigation and compromise the safety of the motoring public. This statute affects a statewide program that is administered in five District offices across the state and the temporary rules are needed to ensure statewide consistency.

Doug Tindall

Printed name

Date

Authorized Signer