

PLEASE NOTE: This attachment only includes the substantive revisions to the proposed temporary Oregon Administrative Rules (OAR). It does include the entire OAR for 734-051-045, “Change of Use”. However, it does not include all 24 pages that were forwarded to the Oregon Transportation Commission for adoption in July 2010. The majority of the items in the additional pages that were omitted in this attachment reflect revisions in numbering of existing rules to accommodate change of use criteria and the use of Intergovernmental Agreements for public approaches.

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

Access Management Temporary Rules
Amendments

734-051-0040
Definitions

The following definitions apply to division 51 rules:

(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. **A Permit to Operate is not required for a public approach however the Department may issue a Permit to Operate for a public approach upon agreement with the governing city or county.**

(44) “Permitted approach” means a legally constructed **private or public** 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.

[(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.

(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.

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 -0045 "peak hour" of the site means the hour during which the highest volume of traffic enters and exits the property during a typical week.

[(2)]**(3)** 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] **four** 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).]

(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

(iii) 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.

(B) **ODOT demonstrates that safety or [O]operational problems related to the approach are occurring[or are anticipated]. Mitigation shall be limited to addressing the identified safety or operational problems.**

(C) The approach does not meet **a sight distance requirement[s] (measured in feet) of 10 times the posted speed of the roadway or 10 times the 85th percentile speed of the roadway where the 85th percentile speed is higher or lower than the posted speed. The permittee may**

perform a study to determine if the 85th percentile speed is lower than the posted speed. The sight distance measurement and the study to determine the 85th percentile speed shall be performed by or under the supervision of an engineer registered in the state of Oregon.

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

*[(E)] **(D) The daily [U]se of [the]an approach increases by 10 or more vehicles [exceeding 20,000 pound]with a gross vehicle weight rating of 26,000 pounds or greater [increases by 10 vehicles or more per day].***

(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)]**(4)** 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

(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.**

734-051-0080

Criteria for Approving an Application for an Approach

[(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.]

734-051-0135

Deviations from Access Management Spacing Standards

[(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.]

(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.

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

(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

734-051-0315
Indentures of Access

(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.

734-051-0345
Region Review Process and Collaborative Discussion Option

(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**.

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