



Sub Group 5 Meeting, Review of Temporary Administrative Rules

Access Management Committee

Transportation Building

355 Capitol Street NE, Room 227

Salem, OR 97301

3:00 – 6:00 PM, June 15, 2010

DRAFT

Working Facilitator: Del Huntington.

Attendees: (in person), Brent Ahrend, Jim Hanks, Doug Bish, Harold Lasley, Victor Dodier, Doug Norval, (ODOT Transportation Planning Analysis Unit).

(Via conference call), Mark Whitlow, Don Forrest, Bob Bryant.

Meeting Purpose

Reach consensus on proposed Oregon Administrative Rules (OAR's) to meet the intent of "Change of Use" in SB 1024. If consensus cannot be achieved, what changes are required? ODOT Director Garrett would like to advance the recommended OARs to the Oregon Transportation Commission (OTC) by June 29/2010. This schedule will allow for adoption of the temporary OARs for a Change of Use at the July OTC meeting.

Discussion

While the sub group was asked to review all of the proposed revisions in a 25 page handout from ODOT as sent to sub group members on June 11/2010, the discussion focused primarily on the proposed text in OAR 734-051-0045, Change of Use of an Approach.

OAR 734-051-0045(2)

There was a lot of discussion on how 734-051-0045(2) "peak hour" would be determined. It may be a fairly simple calculation when the peak hour of traffic to the site is the same for the prior and future uses of the site (this would be the case when a retail site increases the size of the store). However, the issue becomes more complex when the prior and future uses have different peak hour characteristics. I.e., a retail site with an am site peak hour of 9 am to 10 am is replaced with a manufacturing site with an am peak hour of 6 am to 7 am. The sub group understood that the intent of SB 1024 was to determine the

delta between the prior use peak hour of traffic with the future use peak hour of traffic, regardless if the peak hours occur at different times in the day.

Additional discussion centered on the topic of “a typical week” as used in SB 1024. Mark and Del provided insight on the earlier meetings with the Senate committee and ODOT management as SB 1024 was developed. It was understood that “a typical week” would not include the 30th highest hour of traffic on urban or rural state highways, but rather a typical week during the year. This would result in the use of the Average Annual Daily Traffic (AADT) for traffic volumes on the state highway for all analysis under a change of use.

It is recommended that 734-051-0045(2) be revised as follows;

OAR 734-051-0045(2) As used in this rule **0045** “peak hour” **of the site** means the hour during which the highest volume of traffic enters and **exists** exits the property during a typical week.

OAR 734-051-0045(3)(a)(G)

Jim recommended that due to existing economic conditions in Oregon, the two year timeframe identified in OAR 734-051-0045(3)(a)(G) should be increased from two years to three, four or five years. The issue was discussed very briefly though the subgroup did not reach a consensus.

Action item for sub group members; The subgroup needs to provide a recommendation if the “two years” is appropriate, or if the number of years should be increased to three, four or five years in the following OAR.

The current wording in the rules; OAR 734-051-0045(3)(a)(G) Reestablishment of a property’s use after discontinuance for two years or more.

OAR 734-051-0045(3)(b)(A)(i) & (ii), (B) and (E).

The subgroup discussed how sections (A) (B) and (E) would be applied within ODOT, and if it would be possible to reformat the rules for readability and to help clarify the legislative intent. ODOT staff reported that they have discussed this specific item with the Attorney General’s (AG) office. The AG has recommended that the OAR remain consistent with SB 1024. Some formatting changes may be necessary by the AG’s office before the proposed OAR is advanced to the OTC for adoption.

OAR 734-051-0045(3)(b)(C)(i), (ii), (iii), (iv), (v), (vi) and (vii)

There was considerable discussion on the proposed text advanced by ODOT staff. Mark provided insight on the earlier meetings with the Senate committee and ODOT management as SB 1024 was developed. The current proposed rule language advanced by ODOT on June 11/2010 exceeded previous agreements with ODOT. During meetings

in December 2009 and January 2020, Doug Tindall, ODOT Deputy Director agreed that safety and operational issues identified in this portion of the rules would be limited to existing safety and operational concerns. Doug agreed to removing the text referring to “or are anticipated” which allows ODOT staff to consider potential new safety and operational concerns in those cases where a developer is under the trip threshold for a “change of use”.

Examples of existing safety or operational concerns that could warrant mitigation for developers that stay below the trip threshold for a “change of use” include; a crash history at the approach(es), on-site traffic movements that result in operational issues on the state highway, including insufficient length of throat on the driveway, motorists making parking maneuvers too close to the highway, driveways that are excessively wide or narrow, and backing maneuvers onto the highway as the means of exiting the site.

Brent raised a concern that necessary mitigation measures must be limited to the concern and not seen as a means to close other driveways to the site. Discussion ensued as to if and when ODOT would have authority to modify or remove an approach to the highway or apply other access management techniques as part of an existing safety or operational concern. It was the consensus of the subgroup that ODOT would be required to show the safety and operational nexus to required mitigation measures as part of the change of use.

It is recommended that OAR 734-051-0045(3)(b)(C) reads as follows; (the strikethrough text identifies the language that the subgroup recommends be deleted)

OAR 734-051-0045(3)(b)(C) ODOT demonstrates ~~that one or more of the following~~ safety or operational problems related to the approach are occurring ~~or are projected to occur based on field observation, crash data or an engineering analysis that determines that mitigation is necessary to ensure safety.~~ The change of use process is limited to addressing the identified problem.

The subgroup discussed how ODOT may require mitigation measures for existing safety or operational concerns without requiring the developer to go through a completely new permit process under 0080. Attendees mentioned OAR 734-051-145(1) under mitigation section and/or 734-051-135(4) (a) and (b) as potential mechanisms to reach a solution rather than sending the property owner to 0080 and starting the process from the beginning.

Action Item; Mark volunteered to develop some proposed text for this portion of the rule for the subgroup to consider.

The following proposed text (i) through (vii) was advanced by ODOT to define safety and operational criteria to consider under a “change of use”. **The subgroup recommends that (i) through (vii) be eliminated from OAR 734-051-045 entirely.** Rather, the subgroup believed that the language may be appropriate under OAR 734-051-0080(9) to define safety factors as part of the “Criteria for Approving an Application for an Approach”.

- i) traffic movements at the approach are in conflict with 95th percentile queue at an intersection;
- ii) left or right turn lane siting criteria are met as described in Appendix F of the 2003 Oregon Highway Design Manual;
- iii) an analysis of traffic control devices included in the Manual on Uniform Traffic Control Devices as adopted under OAR 734-020-0005 determines that installation of a traffic control device is warranted;
- iv) grade of the approach exceeds 5% down slope from the highway;
- v) modifications to the approach or to the highway such as widening the approach, increasing throat length of the approach, increasing acceleration or deceleration distances on the highway, or improving turning radii of the approach are needed to safely accommodate use of the approach;
- vi) traffic movements at the approach contribute to crashes at a location listed on Safety Priority Index System as one of the top ten percent (10%) crash sites statewide;
- vii) trip volume –to-capacity ratio exceeds 1.0 at an approach during the peak hour.

OAR 734-051-0045(3)(b)(D)

There was considerable discussion on recommended sight distance requirements for existing approaches. National sight distance considerations and recommendations have changed over the years, with the most significant revision in the American Association of State Highway Officials (AASHTO) 2004 “Green Book”. Applying the sight distance from the AASHTO Green Book, 2004 results in longer distances as compared to the distance based on 10 times the posted speed.

As the temporary OAR’s will be applied for a limited time until the statute and/or OAR’s are re-written, it was acknowledged that the text as previously approved by Doug Tindall would be acceptable.

It is recommended that OAR 734-051-0045(3)(b)(D) reads as follows;

OAR 734-051-0045(3)(b)(D) The approach does not meet a sight distance requirement (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 as determined by a registered engineer in the state of Oregon. The

permittee may perform a study to determine if the 85th percentile speed is lower than the posted speed.

Note: in the event that ODOT believes that the 85th percentile speed is higher than the posted speed, ODOT would be responsible to conduct the speed study.

OAR 734-051-0045(3)(b)(E)

As stated previously in the meeting minutes, there was a question as to whether or not this criteria could be combined with OAR 734-051-0045(3)(b)(C). The subgroup did not have any further comments on this portion of the proposed OAR.

OAR 734-051-0045(3)(c)

The subgroup did not have any comments on this portion of the proposed OAR.

OAR 734-051-0045(4)

It is recommended that staff revise the numbering of the propose reference from -0045(3) to -0045(4). The subgroup did not have any further comments on this portion of the proposed OAR.

It is recommended that based on the discussions and consensus reached by the subgroup, OAR 734-051-0045 would read as follows;

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.

(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 years or more. *(Note; the subgroup briefly discussed the possibility of increasing “two”*

years to three, four or five, The subgroup does not have a recommendation at this time though any revision should be included in the proposed text advanced to the OTC on June 29th, 2010).

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

(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) ODOT demonstrates that safety or operational problems related to the approach are occurring. The change of use process is limited to addressing the identified problem.

(D) The approach does not meet a sight distance requirement (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 as determined by a registered engineer in the state of Oregon. The permittee may perform a study to determine if the 85th percentile speed is lower than the posted speed.

(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.

(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.

Discussion on other portions of the proposed OAR as developed by ODOT staff on 4/10/2010

Public Roads

SB 1024 identified that “an approach permit is not required for a public approach”. Mark and Del provided insight to the subgroup on how this issue became part of the text in SB 1024. During discussions last December and January on the “change of use”, examples were provided in which a developer sought entitlements with access limited to a local street. ODOT, the local agency and the potential developer had different opinions as to whether or not the street connection qualified as a public approach under the OAR definition. The text in the senate bill was intended to qualify that ODOT could not require the city to go through a change of use permit process for development that occurred on the city street system, even though it could result in additional traffic to the state highway. An unintended consequence of the specific text in SB 1024 was the apparent elimination of a process to deal with new public road connections to the state highway. It was determined that future city street and county road connections to the state highway would be considered and approved as part of the Transportation System Plan (TSP).

As a means to provide a process to facilitate discussions and memorialize precise public access locations, design and construction of the public facility and future maintenance, ODOT has proposed the use of an Intergovernmental Agreement (IGA). In the June 1st, 2010 AM Committee meeting, Jamie Jeffrey, representing the City of Portland, expressed concern with this strategy as she believed it would result in unacceptable costs and extended timelines. Jamie committed to reviewing the proposed IGA process. Del had a conversation with Jamie prior to the Subgroup # 5 meeting and provided an update.

Based on Jamie’s comments, it is understood that the City of Portland is required to develop a budgetary analysis for each IGA, and then advance the IGA to the City Council for approval. Jamie was concerned on the cost to process the IGA’s, the number of IGA’s that may have to be advanced to the council, the high number of IGA’s that might be required for local service roads not identified in the TSP, and the difficulty in managing IGA files for the local service roads. Jamie was interested in knowing what ODOT would put into an IGA. ODOT reported that they routinely enter into IGAs with local agencies and will provide some examples for Jamie to review.

Action Item; Harold will forward some typical IGA’s to Del as examples for Jamie to review.

After hearing the update of the conversation with Jamie, the subgroup members would like to know how well the old public approach permit process worked?, and, Does the deviation process for public approach make it more difficult to gain approval for a public approach?

Action Item; Del will follow up with Jamie on the specific questions and report back to the subgroup.

ODOT staff updated the subgroup that the statute doesn't prohibit ODOT from issuing a permit to the local government, and has learned that some local agencies have informed the state that they would prefer a permit as compared to an IGA.

Additional Miscellaneous Issues

A question was asked about a proposed revision in OAR 734-051-0135 in which ODOT proposed to eliminate "reasonable" from the existing text. Subsequent conversation revealed that this and other minor changes were part of a house-keeping exercise to remove apparent contradictions in the OAR 734. A member of the subgroup requested that ODOT not use this process as a house-keeping exercise as the public has not had sufficient time to review the revisions and respond to the agency. Harold agreed that he will remove the house-keeping text out of the proposed OARs that are advanced to the OTC on June 29th.

The subgroup # 5 meeting ended at 6 p.m.