



Sub Group 1 Meeting, Reasonable Access

Access Management Committee

Transportation Building

355 Capitol Street NE, Room 119

Salem, OR 97301

3:00 – 5:00 AM, September 9, 2010

FINAL

Working Facilitator: Del Huntington.

Participants: Brent Ahrend, Harold Lasley, Bob Bryant, Mark Whitlow, Jinde Zhu, Jamie Jeffrey, and Richard Dunlap.

Meeting Purpose

Identify legislative concepts for potential additions and/or revisions to the Oregon Revised Statutes (ORS), potential revisions to the Oregon Administrative Rules (OAR), and the Oregon Highway Plan (OHP) of objective standards for “reasonable access”, to advance to the Access Management (AM) Committee.

Presentation

Del presented a PowerPoint presentation of various sites along state highways within the Willamette Valley. The purpose of the presentation was to pictorially show the distinction in various access solutions including a grade separated facility at the Grande Ronde Gaming Casino, (it was acknowledged that this grade separated access does not meet ODOT interchange standards, though everyone agreed that it is a good solution for the use), a signalized intersection that provides access to a Home Depot in Sherwood, and various gas stations, each with very different access solutions. The presentation identified that it can be difficult to identify in rule, a definition of reasonable access as each site can vary so dramatically in size, shape, type of traffic to the site, hours of peak traffic, land use and zoning, trip generation, trip distribution, traffic volumes on the highway, and classification of the highway.

Richard did not agree with the use of the text “landlocked” in the presentation as it may result in unintended consequences related to the power of eminent domain. Reasonable access is based on specific issues on the site and the proposed development. Mark added that it is not his intent to make this a takings issue. Richard added that SB 86 was made law and provides an opportunity to provide remedies for property owners when

approaches are closed. Richard will provide Del with a copy of SB 86 to be distributed to the sub group participants (See Attachment I).

Brent – consider the turning movements to and from the site, and the traffic generation rather than the specific use. However, it was mentioned that this solution would not include low-volume Industrial uses that may need additional approaches to separate truck traffic from other motorists.

Jamie believes that the PowerPoint presentation is a good place to start with the proposed guidelines for staff, and add trip generation as an additional component.

Harold stated that the presentation shows a wide range of similar uses that each work, even though each site had a very different number of driveways. Harold believes that this type of guideline would be helpful.

Brent asked “What type of access are we trying to make work? Developers spend a lot of money on site plans and would like to have more certainty on ODOT approval.

Jamie – Changes to access can result in significant costs for the developer, especially for existing sites. On-site operations may have very important site circulation requirements, including gas stations and industrial sites. A requirement to relocate an approach can result in significant on-site concerns.

Bob asked if spacing standards can be one of the guidelines.

Jinde stated that in the event a developer cannot meet the spacing standards to a Washington County roadway, county staff reviews developments on a case-by-case basis. The developer is required to submit a study to justify a driveway.

Jamie referred to a document “Engineering Study Guide” that may be a good example of a model that the guidelines might follow, or at a minimum, provide a framework for the guidelines.

Mark cautioned that there is a need to be careful with pictorials as the site may not work as well as the developer would like. He recommended that a conversation with the developer was necessary to ensure that the access worked for the site. Mark also cautioned that while guidelines may function as a translator between the ORS and the OAR, we should not expect that they will provide sufficient information for all staff ODOT to understand and appreciate what is required for reasonable access to make a commercial enterprise successful.

Guidance is necessary on OAR 734-051-0080 related to reasonable access. Mark suggested that the guidelines recite the ORS 374.310 and tie it into the rules. Establish presumptions, i.e., trips to the site, site frontage – where the developer is ensured at least one or two driveways to the highway. There may be exceptions, in which under certain

circumstances will apply. Start broadly, then consider the mid-range and then specify the details.

Mark insisted that we get this going quickly – road test- see if it works – amend the rules and possibly the ORS. Brent agreed that we need to start writing down the specifics.

Mark wants “approaches to the highway” and he believes that this in the intent of ORS 374.310. He recommended that we start to develop guidelines for infill and re-development within the urban areas and include the concept of “moving in the direction of”, language that was made part of the AM administrative rules.

In urban areas, Brent wants to ensure that a property owner is ensured a full-movement access or accesses, when they are able to meet the access spacing criteria and a right-in, right-out access at half of the spacing criteria. Brent added that one exception for the full-movement access is when the approach would be located within the standing queue as a result of a downstream traffic signal. In these situations, the approach may be limited to right-in/right-out only.

Mark recommended that guidelines be developed, and then apply a typical approach application and follow it through the process to determine if the revised process addresses the concerns while supporting economic development. Do not follow OAR 734-051-0080, follow the guidelines instead. Come up with something for a trial basis.

Jamie expressed concern that staff may be resistant to follow guidelines if they appear to differ from the administrative rules, as they may tend to rely on the rules. Bob assured the sub group that this is a management issue that they will address.

Action Items

Bob stated that he would work with Del and Harold to start writing down specific guidelines for the sub group to review. It was determined that Del will begin working on guidelines for infill and redevelopment within urban areas.

Meeting adjourned at 5:00 PM.

ATTACHMENT I
SB 86/ORS 374.313 & Oregon Administrative Rules

SENATE BILL 86 (1999) is codified into statute as ORS 374.313

374.313 Claim for relief after closure of approach road; mediation; rules; appraisal. (1) If the Department of Transportation closes an approach road 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 if the department denies an application for an approach road permit submitted pursuant to a grant or reservation of access contained in a contract, condemnation judgment or recorded deed, and the closure or denial is not the result of conditions contained in a contract, condemnation judgment, recorded deed or permit, a person holding an interest in the real property benefited by the access or proposed access may file a claim for relief as a contested case under ORS 183.415 to 183.500.

(2) Prior to issuing a final order in a contested case under subsection (1) of this section, the Director of Transportation may provide the opportunity for the parties to participate in mediation consistent with the applicable provisions of ORS 36.185 to 36.210. In any alternative dispute resolution proceeding, the director may authorize administrative remedies, including monetary damages or other relief, as determined by the department by rule, to address issues related to real property value, utility or use.

(3) In any proceeding under this section, any party may cause an appraisal of the subject property to be conducted. If the difference in value between a property owner's claim and an offer of monetary compensation by the department is less than \$30,000, the director shall provide a simplified procedure for resolving the claim. The cost of conducting an appraisal may be shared by the parties when a mutually acceptable appraiser can be identified. [1999 c.972 §3; 2005 c.149 §1]

Note: 374.313 was added to and made a part of 374.305 to 374.330 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

OREGON ADMINSTRATIVE RULES

Remedies in Closure of Approaches

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; 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

Hist.: TO 7-2000, f. & cert. ef. 7-14-00; HWD 8-2005, f. & cert. ef. 9-16-05; HWD 2-2007, f. & cert. ef. 1-26-07; HWD 8-2010(Temp), f. & cert. ef. 7-30-10 thru 1-21-11

734-051-0510

Definitions

The following definitions apply to OAR 734-051-0500 through 734-051-0560:

(1) "Claim for relief," means an appeal of the denial of an approach application or the closure of an existing permitted or grandfathered approach under OAR 734-051-0355.

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

(3) "Administrative remedy," "appropriate remedy" or "remedy" mean the monetary or non-monetary benefits to a property that would address issues related to real property value, utility or uses, which include the equivalent value of:

(a) Actual physical reconnection of an approach to the highway or some other public facility;

(b) Construction of public roads or other public facilities, including frontage or utility roads, city streets, alleys or county roads;

(c) Improvements or modifications to the real property served or intended to be served by the approach, including paving of parking, restriping of lanes or parking, relocation of other traffic barriers and other items that directly address the impact to the property of the closure or denial; and

(d) Improvements or modifications to highways or other public facilities, including medians or other traffic channelization, signing or signal installation.

(4) Remedies will include any benefits derived by the property by virtue of highway improvements and highway modifications, whether or not related to the specific closure.

(5) Remedies will be limited to those necessary to serve existing uses or other uses reasonably allowed given the existing zoning of the property and other factors, including physical or geographic constraints.

(6) Remedies do not include:

(a) Reimbursement for attorney fees;

(b) Relocation expenses;

(c) Lost profits;

(d) Lost opportunities; or

(e) Costs not specifically related to value, utility or use of the property itself.

(7) Offers of remedies are totally discretionary on the part of the Department and are not subject to a contested case appeal.

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

Stats. Implemented: ORS 374.310, 374.313 & 374.345

Hist.: TO 7-2000, f. & cert. ef. 7-14-00; HWD 8-2005, f. & cert. ef. 9-16-05; HWD 2-2007, f. & cert. ef. 1-26-07

734-051-0520

Offer of Remedies

(1) The Department shall make a determination of whether closure of the approach or denial of an application would create issues related to real property value, utility and use, and what remedies would address those issues.

(2) The Department will provide a written statement of such remedies, if any, within 30 days of the denial of the application or notice of intent to close a permitted approach.

(3) If such remedies are acceptable to the property owner, and there is written acceptance:

(a) The property owner shall not be entitled to any other remedies for such closure or denial; and

(b) Any appeal under OAR 734-051-0355 shall be dismissed and any request for a Region Review or Collaborative Discussion pursuant to 734-051-0345 shall be withdrawn.

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

Stats. Implemented: ORS 374.310, 374.313 & 374.345

Hist.: TO 7-2000, f. & cert. ef. 7-14-00; HWD 8-2005, f. & cert. ef. 9-16-05

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).

(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
Hist.: TO 7-2000, f. & cert. ef. 7-14-00; HWD 8-2005, f. & cert. ef. 9-16-05; HWD 8-2010(Temp), f. & cert. ef. 7-30-10 thru 1-21-11

734-051-0540

Appraisals

(1) Either the Department or the property owner, at their own cost, may at any time before or during the appeal of the closure or denial under OAR 734-051-0355 have an appraisal performed to assist in determining the remedies that would address the real property value, utility or use:

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

(b) There shall be full disclosure and sharing between the parties of any appraisal and appraisal information without the necessity of formal requests or discovery.

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

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

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

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

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

(b) The Director or designee shall take the information in the appraisal into consideration in making subsequent offers of remedies.

Stat. Auth.: ORS 184.616, 184.619, 374.313 & 374.345
Stats. Implemented: ORS 374.310, ORS 374.313 & 374.345
Hist.: TO 7-2000, f. & cert. ef. 7-14-00; HWD 8-2005, f. & cert. ef. 9-16-05

734-051-0550

Conditions of Agreement

Reaching agreement on the appropriate remedies is contingent upon:

(1) Receipt by the Department of a recordable document relinquishing any grant or reservation of access at the location of the approach closure or approach application; and

(2) Termination of the permit for any approach which is a subject of the settlement.

Stat. Auth.: ORS 184.616, 184.619 & Ch. 972, OL 1999

Stats. Implemented: ORS 374.310 & Ch. 972, OL 1999

Hist.: TO 7-2000, f. & cert. ef. 7-14-00

734-051-0560

Delegation

(1) For OAR 734-051-0500 through 734-051-0560, the Director delegates authority to the Right of Way Manager or the Manager's designee to:

(a) Determine the Department's offer of remedies, and

(b) Agree to any settlement which includes providing administrative remedies.

(2) The actions in section (1) of this rule must occur prior to the final order in a contested case conducted under OAR 734-051-0355.

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

Stats. Implemented: ORS 374.310, 374.313 & 374.345

Hist.: TO 7-2000, f. & cert. ef. 7-14-00; HWD 8-2005, f. & cert. ef. 9-16-05