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**DIVISION 51**  
**HIGHWAY APPROACHES, ACCESS CONTROL, SPACING**  
**STANDARDS AND MEDIANS**

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**734-051-0010**

**Authority for Rules**

Division 51 rules are adopted under the Director's authority contained in ORS 374.310(1).

Stat. Auth.: ORS 184.616, 184.619, 374.310, 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

Hist: TO 4-2000, f. 2-14-00, cert. ef. 4-1-00; HWY 2-2004, f. 2-18-04, cert. ef. 3-1-04

**734-051-0020**

**Purpose and Applicability of Rules**

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)**.

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

Hist: TO 4-2000, f. 2-14-00, cert. ef. 4-1-00; HWY 2-2004, f. 2-18-04, cert. ef. 3-1-04, 734-051-0030 Renumbered into 734-051-0020

**734-051-0030**

**Applicability of Rules**

[TO 4-2000, f. 2-14-00, cert. ef. 4-1-00; Renumbered to 734-051-0020 by HWY 2-2004, f. 2-18-04, cert. ef. 3-1-04]

**734-051-0035**

**Administration of Rules**

**(1)** Approaches in existence and applications filed after March 1, 2004 are governed by these rules.

(2) Division 51 rules do not affect existing rights of owners of grandfathered approaches.

(3) Consistent with ORS 374.312 the Department and local governments may enter into intergovernmental agreements allowing local governments to process applications and issue Construction Permits and Permits to Operate for private approaches to regional and district highways, including highways routed over city streets where the local government owns the right of way.

(4) Approval of a property for a particular use is the responsibility of city, county, or other governmental agencies, and an applicant must obtain appropriate approval from city, county, or other governmental agencies having authority to regulate land use. Approval of an application or issuance of a Construction Permit or a Permit to Operate is not a finding of compliance with statewide planning goals or an acknowledged comprehensive plan.

(5) Any notice or other communication by the Department is sufficient if mailed by first class mail to the person at the address on the application or where property tax statements for the property are sent. Any notice of an appealable decision is sufficient if sent by certified mail to the person at the address on the application or where property tax statements for the property are sent. The notice date is the date of mailing.

(6) Pursuant to ORS 374.310(3), the Division 51 rules may not be exercised so as to deny any property adjoining the highway reasonable access and ORS 374.312(1)(c) requires adoption of rules establishing criteria for reasonable access consistent with ORS 374.310(3) criteria. These rules address "reasonable access" solely in the context of the issuance of approach permits. "Reasonable access" under these rules does not affect whether access may be reasonable for other purposes or under other reviews.

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 through 347.345 and 374.990; Ch. 974, Oregon Laws 1999; Chapter 371, Oregon Laws 2003

Hist: HWY 2-2004, f. 2-18-04, cert. ef. 3-1-04, Renumbered from 734-051-0050 and 734-051-0060

## **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 Commission as of the adoption of this rule.

(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 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.

(4) "Access Management Plan" means a plan for a designated section of highway that identifies the location and type of approaches and necessary improvements to the state highway or local roads and that is intended to improve current conditions of the section of highway by moving in the direction of the access management spacing

standards. An Access Management Plan for an Interchange means an access management plan developed to manage the influence area of an interchange. Both the Department and the appropriate local jurisdiction must adopt the Access Management Plan, and the plan should be included in a Transportation System Plan. A plan document may be developed independent of or in conjunction with a specific roadway project. A plan document is not a roadway project in and of itself.

(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.

(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, 7 and 8** 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(1), and approaches intended to remain open that were improved in conjunction with a Department project prior to the effective date of this Division, 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 similar to an Access Management Plan or an Access Management Plan for an Interchange developed to plan for and manage grade-separated interchange areas to ensure safe and efficient operation between connecting roadways and to protect the functional integrity, operations, and safety of the influence area of an interchange. Interchange Area Management Plans typically include analysis of the relationships between existing local land uses, zoning and long range plans and the state and local roadway network within a designated study area around an existing or planned interchange, and identify necessary improvements to approach roads and the local street network to support the long-term safety and efficiency of the interchange. An Interchange Area Management Plan is a document that may be developed independent of or in conjunction with a specific roadway interchange project. A plan document is not a roadway project in and of itself.

**(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 ordinance.

**(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)** "Permitee" 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 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.

(46) "Private approach" means an approach serving 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.

(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(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 2, 3, and 4**, 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 5, 6, 7, and 8** 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. 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 Institute of Traffic Engineers' Trip Generation Report. Adjustments to the standard Institute of Traffic Engineers' rates for mode split may be allowed if calculated in accordance with Transportation Planning Rule and the Institute of Traffic Engineers' Trip Generation Report procedures. Adjustments to the standard Institute of Traffic Engineer's rates for multi-use internal site trips may be allowed if calculated in accordance with the Institute of Traffic Engineers' 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 & 374.345; ORS 374.313

Stats. Implemented: ORS 374.305 - 374.345 & 374.990

Hist: TO 4-2000, f. 2-14-00, cert. ef. 4-1-00, Renumbered from 734-050-0010; HWY 2-2004, f. 2-18-04, cert. ef. 3-1-04; HWY \_\_\_-2005, f. & cert. ef. 9-16-05

## **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) 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).

(B) Operational problems occur or are anticipated.

(C) The approach does not meet sight distance requirements.

(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.

(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

Hist: HWY 2-2004, f. 2-18-04, cert. ef. 3-1-04, Renumbered from 734-051-0110



## **734-051-0050**

### **General Policy**

[Hist: TO 4-2000, f. 2-14-00, cert. ef. 4-1-00; Renumbered to 734-051-0035 by HWY 2-2004, f. 2-18-04, cert. ef. 3-1-04]

## **734-051-0060**

### **General Administration**

[TO 4-2000, f. 2-14-00, cert. ef. 4-1-00; Renumbered to 734-051-0035 by HWY 2-2004, f. 2-18-04, cert. ef. 3-1-04]

## **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, and the administrative fee as set forth in **Table 1**, 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 the correct administrative fee, to determine if supplemental documentation is required or otherwise determine that the application may be deemed complete.

(d) All of the following apply to administrative fees and fee adjustments for incorrect charges, refunds, and waivers:

(A) The application, site plan and check for the administrative fee will be returned if the application is not accepted.

(B) The Department may refund 75% of the administrative fee where the Department determines that no right of access exists and the application cannot be deemed complete as set forth in section (5) of this rule.

(C) The administrative fee will be calculated based upon the land uses proposed for the site as early in the application process as is reasonably possible, and the application will not be considered complete until the full amount is received.

(D) The Executive Deputy Director or the Region Manager, not a designee, may waive the administrative fee requirements if a local jurisdiction requests a new approach or modification of an existing approach during project delivery. The reasons for the fee waiver must be documented in writing.

(E) Where the department determines that mitigation measures are required as set forth in OAR 734-051-0145 and those mitigation measures are for the benefit of a local jurisdiction, or where a local government proposes relocation or modification of a public approach to improve safety or spacing, the Executive Deputy Director or the Region Manager, not a designee, may waive the administrative fee requirements. The reasons for the fee waiver must be documented in writing.

(F) Where a development proposes two or more approaches, no administrative fee for an “additional approach” as specified in **Table 1**, will be added for any shared approach located to serve two or more separate developments when the total number of approaches to the highway does not increase by more than one approach.

(G) An administrative fee is not required for a permit for construction or reconstruction of an approach by the Department or its contractor as part of road improvement, highway or interchange construction, or reconstruction, modernization, or other roadway or interchange project.

(H) An administrative fee is not required for a name change on a Permit to Operate, Maintain and Use an Approach, including issuing an operation permit for a public approach when the applicant is a private entity, when both the original permittee and the proposed new permittee document their concurrence with the change.

(I) Administrative fees are calculated based upon a methodology developed by the Department based upon proposed land uses, and consistent with **Table 1**.

(J) The Department’s decision concerning administrative fees and fee adjustments for incorrect charges, refunds, and waivers is not an appealable decision.

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

(a) Within 30 days of accepting an application when the full administrative fee has been received and section (6) of this rule does not require supplemental documentation; or

(b) When the full administrative fee and supplemental documentation are 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 Division 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.

(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 be processed as a new application, requiring submittal of a new application and fee.

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

Hist: TO 4-2000, f. 2-14-00, cert. ef. 4-1-00; HWY 2-2004, f. 2-18-04, cert. ef. 3-1-04, 734-051-0090 and 734-051-0100 renumbered into 734-051-0070

### **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 (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 (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 (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 (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 (8) of this rule; and

(b) Section (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 (8) of this rule; and

(b) Section (10) and section (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 (8) of this rule, and section (10) and section (11) 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 (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.

**(8)** Which approval criteria will be applied to an application (sections (2) through (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.

**(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.

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

(a) The approach is consistent with safety factors in section (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.

(11) As required by sections (5) through (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

Hist: TO 4-2000, f. 2-14-00, cert. ef. 4-1-00; HWY 2-2004, f. 2-18-04, cert. ef. 3-1-04

### **734-051-0085**

#### **Benefit to the State Highway System**

(1) For the purposes of this rule a benefit to the state highway system:

(a) Will be found only where an applicant demonstrates that an approach will provide an immediate and long-term benefit to the state highway system;

(b) Is evaluated for no less than 20 years;

(c) For an Application for a Grant of Access, must exceed any mitigation of impacts related to the development regarding safety and operations; and

(d) Is a determination requiring the professional judgment of a professional engineer employed by the Department.

(2) For an Application for State Highway Approach or for an Application for a Grant of Access the Department may determine a benefit to the state highway system exists if the requirements of subsections (a) and (b) of this section are met:

(a) The applicant demonstrates better management of access as a result of either controlling or combining approach locations, or eliminating existing or planned approaches by improving:

(A) Access management spacing standards;

(B) Public approach spacing; or

(C) Intersection sight distance.

(b) The applicant demonstrates with no degradation of the criteria in paragraphs (A) through (E) of this subsection, that any of the following occur:

(A) Highway mobility standards improve.

(B) Safety improves on the section of highway where the approach is located.

(C) Safety problems in the general vicinity are eliminated because of closure of an existing approach.



(D) Operations in the general vicinity improve as a result of connectivity, traffic diversions, or other traffic engineering techniques.

(E) The applicant demonstrates that off-system connectivity improves and reduces demand to the state highway system without creating operational or safety problems elsewhere:

(i) Off-system connectivity must occur immediately; or

(ii) Off-system connectivity must be committed for construction as evidenced by the local government's adopted Capital Improvement Plan.

(F) The Department determines that other circumstances result in a benefit to the state highway system.

**(3)** For an Application for State Highway Approach, for a private or public approach in an urban area and to an expressway, the Department may presume that a benefit to the state highway system exists if the requirements of subsection (a) of this section are met, or the requirements of subsections (b) and (c) of this section are met:

(a) Where a change of use occurs, approaches to the expressway are combined or eliminated resulting in a net reduction in the number of approaches to the expressway, and the applicant demonstrates an improvement of:

(A) Access management spacing standards;

(B) Public road intersection spacing; or

(C) Intersection sight distance.

(b) The Department determines that an improvement in safety occurs on the section of expressway where an approach is requested and both paragraphs (A) and (B) of this subsection are met:

(A) Only one approach to the expressway is requested and:

(i) Where a new approach is requested, no approach to the site currently exists; or

(ii) Where a change of use occurs, only one private approach to the site currently exists; and

(B) An improvement in safety occurs on the expressway primarily and on other state highways secondarily and includes:

(i) A decrease in the number of existing conflict points;

(ii) Elimination of existing left turns;

(iii) Elimination of an existing overlap of left turn movements;

(iv) The addition of a left turn lane where existing conditions meet the Department's installation criteria; or

(v) Provision of adequate sight distance at the alternate approach or the subject approach where existing sight distance is deficient.

(c) The Region Access Management Engineer determines that the approach results in a benefit to the state highway system due to other circumstances.

**(4)** A benefit to the state highway system is determined by:

(a) The Region Access Management Engineer when an Application for State Highway Approach is submitted for a private approach in an urban area and on an expressway; or

(b) The Department's Technical Services Manager when an Application for a Grant of Access is submitted.

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 347.345 and 374.990; Ch. 974, Oregon Laws 1999; Chapter 371, Oregon Laws 2003  
Hist.: HWY 2-2004, f. 2-18-04, cert. ef. 3-1-04

### **734-051-0090**

#### **Application Submittal Requirements**

[Hist: TO 4-2000, f. 2-14-00, cert. ef. 4-1-00, Renumbered from 734-050-0015; Renumbered to 734-051-0070 by HWY 2-2004, f. 2-18-04, cert. ef. 3-1-04]

### **734-051-0100**

#### **Application Procedure**

[Hist: TO 4-2000, f. 2-14-00, cert. ef. 4-1-00; Renumbered to 734-051-0070 by HWY 2-2004, f. 2-18-04, cert. ef. 3-1-04]

### **734-051-0095**

#### **Temporary Approaches**

(1) The Region Manager may approve an application for a temporary approach where:

- (a) The approach is consistent with safety factors;
- (b) Conditions such as signing or flagging are identified on the Construction Permit and the Permit to Operate and are enforced during construction and operation; and
- (c) A closure date is specified on the Permit to Operate.

(2) A deposit of not less than \$1000 per temporary approach is required prior to issuance of a Construction Permit and a Permit to Operate a Temporary Approach to guarantee its removal by the applicant:

- (a) The appropriate District office will determine the amount of the deposit;
- (b) If the Department incurs no expense in the removal of the temporary approach, the entire deposit is refunded to the applicant; and
- (c) If the Department incurs any expenses in the removal of the approach, the applicant will be billed for the amount in excess of the amount deposited or refunded the difference if the expense is less than the amount deposited.

(3) The Region Manager may extend the time period for a temporary approach where extenuating circumstances beyond the control of the applicant or permittee exist.

(4) Existence of a recorded easement does not by itself establish a right of access and does not guarantee the approval of an application for a temporary approach or the location of a temporary 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

Hist.: HWY 2-2004, f. 2-18-04, cert. ef. 3-1-04, Renumbered from 734-051-0120

### **734-051-0105**

#### **Restricted Use Approaches**

(1) The Region Manager may approve an application for a restricted use approach where the approach is consistent with safety factors.

(2) The Department shall require restricted use approaches:

(a) To be restricted from general use by physical means such as a gate or other design approved by the Department; and

(b) May require special design considerations such as reinforced sidewalks, curb design options, and landscaping considerations.

(3) The Region Manager may require mitigation measures to be incorporated into a Construction Permit and a Permit to Operate a Restricted Use Approach.

(4) Existence of a recorded easement does not by itself establish a right of access and does not guarantee the approval of an application for a restricted use approach or the location of a restricted use approach.

Stat. Auth.: ORS 184.616, 814.619, 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

Hist.: HWY 2-2004, f. 2-18-04, cert. ef. 3-1-04

### **734-051-0110**

#### **Change in Use of an Approach**

[Hist: TO 4-2000, f. 2-14-00, cert. ef. 4-1-00, Renumbered from 734-050-0065; Renumbered to 734-051-0045 by HWY 2-2004, f. 2-18-04, cert. ef. 3-1-04]

### **734-051-0115**

#### **Access Management Spacing Standards for Approaches**

(1) Access management spacing standards for approaches to state highways:

(a) Are based on the classification of the highway and highway segment designation, type of area, and posted speed;

(b) Apply to properties abutting state highways, highway or interchange construction and modernization projects, and planning processes involving state highways or other projects determined by the Region Manager; and

(c) Do not apply to approaches in existence prior to April 1, 2000 except where any of the following occur:

(A) These standards will apply to private approaches at the time of a change of use.

(B) If infill development or redevelopment occurs, spacing and safety factors will improve by moving in the direction of the access management spacing standards, with the goal of meeting or improving compliance with the access management spacing standards.

(C) For a highway or interchange construction or modernization project or other roadway or interchange project determined by the Region Manager, the project will improve spacing and safety factors by moving in the direction of the access management spacing standards, with the goal of meeting or improving compliance with the access management spacing standards.

(2) Spacing standards in **Tables 2, 3, and 4**, adopted and made a part of this rule, identify the spacing standards. The Region Access Management Engineer may apply the ‘urban’ standards to infill or redevelopment projects in a rural area 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.

(3) An applicant may provide evidence to support a determination that an approach is located in a commercially zoned area that has the characteristics established in the Oregon Highway Plan for a Special Transportation Area (STA) or for an Urban Business Area (UBA), in which case the spacing standards for such segment designation may be applied to the application. A decision by local government or by the Oregon Transportation Commission to either designate or not designate an STA and/or UBA makes this provision unavailable. This provision may not be applied where a management plan would be required for an STA or a UBA under the provisions of the Oregon Highway Plan

(4) Deviations must meet the criteria in OAR 734-051-0135.

(5) Location of traffic signals on state highways must meet the criteria of OAR 734-020-0400 through 734-020-0500.

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

Stats. Implemented: ORS 374.305 - 374.345 & 374.990

Hist.: HWY 2-2004, f. 2-18-04, cert. ef. 3-1-04, Renumbered from 734-051-0190; HWY \_\_\_-2005, f. & cert. ef. 9-16-05

## **734-051-0120**

### **Temporary Approaches**

[TO 4-2000, f. 2-14-00, cert. ef. 4-1-00, Renumbered from 734-050-0060; Renumbered to 734-051-0095 by HWY 2-2004, f. 2-18-04, cert. ef. 3-1-04]

## **734-051-0125**

### **Access Management Spacing Standards for Approaches in an Interchange Area**

(1) Access management spacing standards for approaches in an interchange area:

(a) Are based on classification of highway and highway segment designation, type of area, and posted speed;

(b) Apply to properties abutting state highways, highway or interchange construction and modernization projects, planning processes involving state highways, or other projects determined by the Region Manager; and

(c) Do not apply to approaches in existence prior to April 1, 2000 except where any of the following occur:

(A) These standards will apply to private approaches at the time of a change of use.

(B) If infill development or redevelopment occurs, spacing and safety factors will improve by moving in the direction of the access management spacing standards, with the goal of meeting or improving compliance with the access management spacing standards.

(C) For a highway or interchange construction or modernization project or other roadway or interchange project determined by the Region Manager, the project will improve spacing and safety factors by moving in the direction of the access management

spacing standards, with the goal of meeting or improving compliance with the access management spacing standards.

(2) Spacing standards in **Tables 5, 6, 7, and 8** and **Figures 1, 2, 3, and 4**, adopted and made a part of this rule, identify the spacing standards for approaches in an interchange area.

(3) When the Department approves an application:

(a) Access management spacing standards for approaches in an interchange area must be met or approaches must be combined or eliminated resulting in a net reduction of approaches to the state highway and an improvement of existing interchange management areas spacing standards; and

(b) The approach must be consistent with any applicable access management plan for an interchange.

(4) Deviations must meet the criteria in OAR 734-051-0135 .

(5) Location of traffic signals within an interchange management area must meet the criteria of OAR 734-020-0400 through 734-020-0500.

(6) The Department should acquire access control on crossroads around interchanges for a distance of 1320 feet. In some cases it may be appropriate to acquire access control beyond 1320 feet.

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

Hist.: HWY 2-2004, f. 2-18-04, cert. ef. 3-1-04, Renumbered from 734-051-0200

### **734-051-0130**

#### **Application for an Approach**

[TO 4-2000, f. 2-14-00, cert. ef. 4-1-00; Repealed by HWY 2-2004, f. 2-18-04, cert. ef. 3-1-04]

### **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(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.

(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.

(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.

(10) Where section (2), (3), (4), (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.

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

(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

Hist.: HWY 2-2004, f. 2-18-04, cert. ef. 3-1-04, Renumbered from 734-051-0320

### **734-051-0140**

#### **Supplemental Documentation for Application**

[TO 4-2000, f. 2-14-00, cert. ef. 4-1-00; Repealed by HWY 2-2004, f. 2-18-04, cert. ef. 3-1-04]

### **734-051-0145**

#### **Mitigation Measures**

(1) The Department may require mitigation measures on the state highway or the subject property to comply or improve compliance with the Division 51 rules for continued operation of an existing approach or construction of a new approach.

(2) Unless otherwise set forth in Division 51 rules, the cost of mitigation measures is the responsibility of the applicant, permittee, or property owner as set forth in OAR 734-051-0205.

(3) Mitigation measures may include:

(a) Modifications to an approach;

(b) Modifications of on-site storage of queued vehicles;

- (c) Installation of left turn or right turn channelization or deceleration lanes;
  - (d) Modifications to left turn or right turn channelization or deceleration lanes;
  - (e) Modifications required to maintain intersection sight distance;
  - (f) Modification or installation of traffic signals or other traffic control devices;
  - (g) Modification of the highway;
  - (h) Modification or installation of curbing;
  - (i) Consolidation of existing approaches or provisions for joint use accesses;
  - (j) Installation of raised medians;
  - (k) Restriction of turn movements for circumstances including:
    - (A) The proximity of existing approaches or offset of opposing approaches;
    - (B) Approaches within an Interchange Management Area;
    - (C) Approaches along an Expressway;
    - (D) Areas of insufficient decision sight distance for speed;
    - (E) The proximity of railroad grade crossings;
    - (F) Approaches with a crash history involving turning movements;
    - (G) The functional area of an intersection; and
    - (H) Areas where safety or traffic operation problems exist.
  - (l) Installations of sidewalks, bicycle lanes, or transit turnouts;
  - (m) Development of reasonable alternate access; and
  - (n) Modifications of local streets or roads along the frontage of the site.
- (4)** Mitigation measures are directly related to the impacts of the particular approach on the highway and the scale of the mitigation measures will be directly proportional to those impacts, as follows:
- (a) Where safety standards can be met by mitigation measures located entirely within the property controlled by the applicant or within existing state right of way, that will be the preferred means of mitigation.
  - (b) Where safety standards cannot be met with measures located entirely within the property controlled by the applicant or within existing state right of way, ODOT will make an effort to participate in negotiations between the applicant and other affected property owners or assist the applicant to take necessary actions.
  - (c) When cumulative effects of existing and planned development create a situation where approval of an application would require mitigation measures that are not directly proportional to the impacts of the proposed approach, the Region Manager may allow mitigation measures to mitigate impacts as of the day of opening and defer mitigation of future impacts to ODOT project development provided the applicant conveys any necessary right of way to ODOT prior to development of the subject approach.
- (5)** Mitigation to an alternate access may be more significant where the property fronts a higher classification of highway than where the property fronts a lower classification of highway.
- (6)** An applicant may propose an Access Mitigation Proposal or an Access Management Plan to be implemented by the applicant or the local jurisdiction.
- (7)** The Department will work with the local jurisdiction and the applicant to establish mitigation measures and alternative solutions including:
- (a) Changes to on-site circulation;
  - (b) On-site improvements; and
  - (c) Modifications to the local street network.



(8) Where mitigation measures include traffic controls:

(a) The applicant bears the cost of the controls and constructs required traffic controls within a timeframe identified by the Department or reimburses the Department for the cost of designing, constructing, or installing traffic controls; and

(b) An applicant that is a lessee must provide evidence of compliance with required traffic controls and must identify the party responsible for construction or installation of traffic controls during and after the effective period of the lease.

(9) Traffic signals are approved in the following priority:

(a) Traffic signals for public approaches.

(b) Private approaches identified in a Transportation System Plan to become public.

(c) Private approaches.

(10) Traffic signals are approved with the following requirements:

(a) A signalized private approach must meet spacing standards for signalization relative to all planned future signalized public road intersections; and

(b) The effect of the private approach must meet 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.

(11) All highway improvements within the right of way resulting from mitigation constructed by the permittee, and inspected and accepted by the Department, become the property of the Department.

(12) Approval of an application with mitigation measures 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

Hist.: HWY 2-2004, f. 2-18-04, cert. ef. 3-1-04, Renumbered from 734-051-0210

### **734-051-0150**

#### **Vicinity Map**

[TO 4-2000, f. 2-14-00, cert. ef. 4-1-00; Repealed by HWY 2-2004, f. 2-18-04, cert. ef. 3-1-04]

### **734-051-0155**

#### **Access Management Plans, Access Management Plans for Interchanges, and Interchange Area Management Plans**

(1) The Department encourages the development of Access Management Plans, Access Management Plans for Interchanges, and Interchange Area Management Plans to maintain highway performance and improve safety by improving system efficiency and management before adding capacity consistent with the **1999 Oregon Highway Plan**.

(2) Access Management Plans and Access Management Plans for Interchanges are developed for a designated section of highway with priority placed on facilities with high volumes or providing important statewide or regional connectivity where:

(a) Existing developments do not meet spacing standards;

(b) Existing development patterns, land ownership patterns, and land use plans are likely to result in a need for deviations; or

(c) An access management plan would preserve or enhance the safe and efficient operation of a state highway.

(3) Access Management Plans and Access Management Plans for Interchanges may be developed:

- (a) By the Department;
- (b) By local jurisdictions; or
- (c) By consultants.

(4) Access Management Plans and Access Management Plans for Interchanges comply with all of the following:

(a) Are prepared for a logical segment of the state highway and include sufficient area to address highway operation and safety issues and development of adjoining properties including local access and circulation.

(b) Describe the roadway network, right-of-way, access control, and land parcels in the analysis area.

(c) Are developed in coordination with local governments and property owners in the affected area.

(d) Are consistent with any applicable adopted Transportation System Plan, Local Comprehensive Plan, Corridor Plan, or Special Transportation Area or Urban Business Area designation, or amendments to the Transportation System Plan unless the jurisdiction is exempt from transportation system planning requirements under OAR 660-012-0055.

(e) Are consistent with the **1999 Oregon Highway Plan**.

(f) Contain short, medium, and long-range actions to improve operations and safety and preserve the functional integrity of the highway system.

(g) Consider whether improvements to local street networks are feasible.

(h) Promote safe and efficient operation of the state highway consistent with the highway classification and the highway segment designation.

(i) Consider the use of the adjoining property consistent with the comprehensive plan designation and zoning of the area.

(j) Provide a comprehensive, area-wide solution for local access and circulation that minimizes use of the state highway for local access and circulation.

(k) Are approved by the Department through an intergovernmental agreement and adopted by the local government, and adopted into a Transportation System Plan unless the jurisdiction is exempt from transportation system planning requirements under OAR 660-012-0055.

(l) Are used for evaluation of development proposals.

(m) May be used in conjunction with mitigation measures.

(5) The Department encourages the development of Interchange Area Management Plans to plan for and manage grade-separated interchange areas to ensure safe and efficient operation between connecting roadways:

(a) Interchange Area Management Plans are developed by the Department and local governmental agencies to protect the function of interchanges by maximizing the capacity of the interchanges for safe movement from the mainline facility, to provide safe and efficient operations between connecting roadways, and to minimize the need for major improvements of existing interchanges;

(b) The Department will work with local governments to prioritize the development of Interchange Area Management Plans to maximize the operational life and preserve and improve safety of existing interchanges not scheduled for significant improvements; and

(c) Priority should be placed on those facilities on the Interstate system with cross roads carrying high volumes or providing important statewide or regional connectivity.

(6) Interchange Area Management Plans are required for new interchanges and should be developed for significant modifications to existing interchanges consistent with the following:

(a) Should be developed no later than the time an interchange is designed or is being redesigned;

(b) Should identify opportunities to improve operations and safety in conjunction with roadway projects and property development or redevelopment and adopt strategies and development standards to capture those opportunities;

(c) Should include short, medium, and long-range actions to improve operations and safety in the interchange area;

(d) Should consider current and future traffic volumes and flows, roadway geometry, traffic control devices, current and planned land uses and zoning, and the location of all current and planned approaches;

(e) Should provide adequate assurance of the safe operation of the facility through the design traffic forecast period, typically 20 years;

(f) Should consider existing and proposed uses of the all property in the interchange area consistent with its comprehensive plan designations and zoning;

(g) Are consistent with any adopted Transportation System Plan, Corridor Plan, Local Comprehensive Plan, or Special Transportation Area or Urban Business Area designation, or amendments to the Transportation System Plan unless the jurisdiction is exempt from transportation system planning requirements under OAR 660-012-0055;

(h) Are consistent with the **1999 Oregon Highway Plan**; and

(i) Are approved by the Department through an intergovernmental agreement and adopted by the local government, and adopted into a Transportation System Plan unless the jurisdiction is exempt from transportation system planning requirements under OAR 660-012-0055.

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

Hist.: HWY 2-2004, f. 2-18-04, cert. ef. 3-1-04, Renumbered from 734-051-0360

### **734-051-0160**

#### **Drainage Plan**

[TO 4-2000, f. 2-14-00, cert. ef. 4-1-00; Repealed by HWY 2-2004, f. 2-18-04, cert. ef. 3-1-04]

### **734-051-0165**

#### **Design of Approaches**

(1) Approach design must conform to standards in the 2002 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

Hist.: HWY 2-2004, f. 2-18-04, cert. ef. 3-1-04, Renumbered from 734-051-0260

### **734-051-0170**

#### **Site Plan**

[TO 4-2000, f. 2-14-00, cert. ef. 4-1-00; Repealed by HWY 2-2004, f. 2-18-04, cert. ef. 3-1-04]

### **734-051-0175**

#### **Issuance of Construction Permits**

(1) The Region Manager shall issue a Construction Permit when construction plans, if required, and all other required documents are received and approved.

(2) Receipt of the Construction Permit by the applicant constitutes acceptance of the special provisions, mitigation measures, conditions, or agreements, consistent with and identified and approved through the application process, unless the applicant provides written notification to the Department that the special provisions, mitigation measures, conditions, or agreements are not accepted within 21 days of the date of mailing Construction Permit.

(3) If the applicant does not accept the special provisions, mitigation measures, conditions, or agreements the Construction Permit will be void.

(4) The applicant must provide the Department with proof of liability insurance and bond or deposit in lieu of bond as required by OAR 734-051-0215 within 60 days from

the date of transmittal or the Construction Permit and approval of the application are void.

(5) No work on highway right of way may begin until an applicant obtains a valid Construction Permit, approved and signed by the Region Manager.

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

Hist.: HWY 2-2004, f. 2-18-04, cert. ef. 3-1-04, Renumbered from 734-051-0230

### **734-051-0180**

#### **Transportation Impact Study**

[TO 4-2000, f. 2-14-00, cert. ef. 4-1-00; Repealed by HWY 2-2004, f. 2-18-04, cert. ef. 3-1-04]

### **734-051-0185**

#### **Construction of Approaches**

(1) An applicant must notify the Region Manager at least two work days prior to beginning construction.

(2) Construction must conform to the terms of the Construction Permit including any special provisions, mitigation measures, conditions, or agreements, and the applicant must notify the Region Manager when construction is complete.

(3) Upon inspection of the approach the Department shall notify the applicant if construction deficiencies exist:

(a) The applicant must correct all deficiencies within 60 days of notification that deficiencies exist and notify the Region Manager; and

(b) The Region Manager shall re-inspect 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

Hist.: HWY 2-2004, f. 2-18-04, cert. ef. 3-1-04, Renumbered from 734-051-0250

### **734-051-0190**

#### **Access Management Spacing Standards for Approaches**

[TO 4-2000, f. 2-14-00, cert. ef. 4-1-00; Renumbered to 734-051-0115 by HWY 2-2004, f. 2-18-04, cert. ef. 3-1-04]

### **734-051-0195**

#### **Effective Period of Construction Permits**

(1) A Construction Permit is effective for the time period specified on the permit. The Region Manager shall extend the time period of a Construction Permit for good cause shown.

(2) If an applicant fails to comply with the terms and conditions of the Construction Permit the Department may, at the applicant's expense:

- (a) Reconstruct or repair the approach; or
- (b) Cancel the Construction Permit and remove 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

Hist.: HWY 2-2004, f. 2-18-04, cert. ef. 3-1-04, Renumbered from 734-051-0240

### **734-051-0200**

#### **Interchange Access Management Area Spacing Standards for Approaches**

[TO 4-2000, f. 2-14-00, cert. ef. 4-1-00; Renumbered to 734-051-0125 by HWY 2-2004, f. 2-18-04; cert. ef. 3-1-04]

### **734-051-0205**

#### **Allocation of Costs for Construction and Maintenance of Approaches**

(1) Except as otherwise provided in the Division 51 rules, the applicant or permittee is responsible for the cost of mitigation measures and the cost of construction of an approach including the cost of materials, labor, signing, signals, structures, equipment, traffic channelization, and other permit requirements.

(2) The Department may be responsible for the cost of mitigation measures and the cost of construction of an approach where the costs are a part of the terms and conditions of a right of way acquisition obligation or other contractual agreement.

(3) The Department is responsible for the cost of removal or relocation of a permitted or grandfathered approach during project delivery unless the removal or relocation is at the request of a permittee or owner of a grandfathered approach.

(4) The applicant, permittee, or owner of a grandfathered approach is responsible for the cost of maintenance of an approach from the outside edge of the highway pavement, shoulder, or curb-line to the right of way line, and any portion of the approach on the applicant's property required to be maintained as part of the permit.

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

Hist.: HWY 2-2004, f. 2-18-04, cert. ef. 3-1-04, Renumbered from 734-051-0270

### **734-051-0210**

#### **Mitigation Measures**

[TO 4-2000, f. 2-14-00, cert. ef. 4-1-00; Renumbered to 734-051-0145 by HWY 2-2004, f. 2-18-04, cert. ef. 3-1-40]

**734-051-0215**

**Liability and Control for Construction and Maintenance, Repair, Operation and Use of Approaches**

(1) An applicant or permittee assumes responsibility for damage or injury to any person or property resulting from the construction, maintenance, repair, operation, or use of an approach for which a Construction Permit or a Permit to Operate is issued and where the applicant may be legally liable.

(2) An applicant or permittee indemnifies and holds harmless the State of Oregon, the Commission, the Department, and all officers, employees or agents of the Department against damages, claims, demands, actions, causes of action, costs, and expenses of whatsoever nature which may be sustained by reasons of the acts, conduct, or operation of the applicant, his agents, or employees in connection with the construction, maintenance, repair, operation, or use of an approach.

(3) Construction of an approach may not begin until the applicant provides the Department with evidence of insurance in the following minimum amounts:

(a) \$50,000 for property damage resulting from any single occurrence, or \$500,000 combined single limit; and

(b) \$200,000 for the death or injury of any person, subject to a limit of \$500,000 for any single occurrence.

(4) Insurance policies must include as named as insured the State of Oregon, the Commission, and the Department, its officers, agents and employees, except as to claims against the applicant, for personal injury to any members of the Commission or the Department and its officers, agents, and employees or damage to any of its or their property.

(5) Construction of an approach may not begin until a copy of the insurance policy or a certificate showing evidence of insurance is filed with the Department.

(6) An applicant or permittee shall provide 30 days written notice to the Department of intent to cancel or intent not to renew insurance coverage. Failure to comply with notice provisions does not affect coverage provided to the State of Oregon, the Commission, or the Department, its officers, agents and employees.

(7) If the highway surface or highway facilities are damaged by the applicant or the applicant's contractor, the applicant must replace or restore the highway or highway facilities to a condition satisfactory to the Department.

(8) The applicant or permittee must furnish, in an amount specified by the Region Manager and for the time period necessary to install the approach, a cash deposit or a bond issued by a surety company licensed to do business in the State of Oregon to ensure that any damage to the highway has been corrected to the Department's satisfaction; and no construction is performed until a deposit or bond is filed with the Department.

(9) The applicant or permittee is responsible for relocating or adjusting any utilities located on highway right of way when required for accommodation of the approach, and no construction may be performed until the applicant furnishes evidence to the Department that satisfactory arrangements have been made with the owner of the affected utility facility.

(10) The applicant or permittee is responsible for erosion control during construction of the approach.

(11) Where warning signs are required by the Construction Permit, other regulations, or the Region Manager, the Department furnishes, places, and maintains the signs at the applicant's or permittee's expense, and unauthorized signs are not allowed on any portion of the right of way.

(12) The work area during any construction or maintenance performed under a Construction Permit or a Permit to Operate is protected in accordance with the Manual on Uniform Traffic Control Devices adopted under OAR 734-020-0005.

(13) An applicant or permittee shall provide true and complete information, and if any required fact that is material to the assessment of the approach's impact upon traffic safety, convenience or the legal or property rights of any person (including the State of Oregon) is false, incorrect or omitted, the Region Manager may:

(a) Deny or revoke the Construction Permit; and

(b) At the applicant's or permittee's expense:

(A) Require the applicant or permittee to remove the approach and restore the area to a condition acceptable to the Region Manager;

(B) Require the applicant or permittee to provide additional safeguards to protect the safety, convenience, and rights of the traveling public and persons (including the State), if such safeguards are adequate to achieve these purposes, as a condition of the continued validity of the Permit to Operate;

(C) Reconstruct or repair the approach; or

(D) Remove 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

Hist.: HWY 2-2004, f. 2-18-04, cert. ef. 3-1-04, Renumbered from 734-051-0280

### **734-051-0220**

#### **Submittal of Construction Drawings and Plans**

[TO 4-2000, f. 2-14-00, cert. ef. 4-1-00; Repealed by HWY 2-2004, f. 2-18-04, cert. ef. 3-1-04]

### **734-051-0225**

#### **Post-Decision Review Procedure**

(1) An applicant may request a post-decision review to modify a Construction Permit if:

(a) Ambiguities or conflicts exist in the Construction Permit;

(b) New and relevant information concerning the approach or the Construction Permit is available; or

(c) Requirements of local governments or state agencies are relevant to the modification of the Construction Permit.

(2) The Region Manager shall determine if a request for a post-decision review meets the criteria in section (1) of this rule.

(3) The Region Manager may conduct a post-decision review and may modify the Construction Permit.



(4) A post-decision review does not stay the time period to request a Region Review or Contested Case Hearing.

(5) A post-decision review decision 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

Hist.: HWY 2-2004, f. 2-18-04, cert. ef. 3-1-04, Renumbered from 734-051-0235

### **734-051-0230**

#### **Issuance of Construction Permits**

[TO 4-2000, f. 2-14-00, cert. ef. 4-1-00; Renumbered to 734-051-0175 by HWY 2-2004, f. 2-18-04, cert. ef. 3-1-04]

### **734-051-0235**

#### **Post-Decision Review Procedure**

[TO 4-2000, f. 2-14-00, cert. ef. 4-1-00; Renumbered to 734-051-0225 by HWY 2-2004, f. 2-18-04, cert. ef. 3-1-04]

### **734-051-0240**

#### **Effective Period of Construction Permits**

[TO 4-2000, f. 2-14-00, cert. ef. 4-1-00; Renumbered to 734-051-0195 by HWY 2-2004, f. 2-18-04, cert. ef. 3-1-04]

### **734-051-0245**

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

(1) The Department shall issue a Permit to Operate 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 an 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

Hist.: HWY 2-2004, f. 2-18-04, cert. ef. 3-1-04, Renumbered from 734-051-0290

### **734-051-0250**

#### **Construction of Approaches**

[TO 4-2000, f. 2-14-00, cert. ef. 4-1-00, Renumbered from 734-050-0040; Renumbered to 734-051-0185 by HWY 2-2004, f. 2-18-04, cert. ef. 3-1-04]

### **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.

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

Hist.: HWY 2-2004, f. 2-18-04, cert. ef. 3-1-04, Renumbered from 734-051-0310

### **734-051-0260**

#### **Design of Approaches**

[TO 4-2000, f. 2-14-00, cert. ef. 4-1-00, Renumbered from 734-050-0035; Renumbered to 734-051-0165 by HWY 2-2004, f. 2-18-04, cert. ef. 3-1-04]

### **734-051- 0265**

#### **Effective Period of Permit to Operate, Maintain and Use an Approach**

(1) Except as otherwise provided a Permit to Operate is effective unless:

(a) Revoked by mutual consent;

(b) Revoked for failure to abide by the terms and conditions;

(c) A change of use occurs as set forth in OAR 734-051-0045;

(d) Safety or operational problems exist as set forth in OAR 734-051-0275;

(e) The highway facility is significantly improved to meet classification of the highway, highway mobility standards, spacing standards, and safety criteria that are inconsistent with the approach; or

(f) By other operation of law.

(2) The Permit to Operate is binding on successors and assignors including successors in interest to the property being served by the approach.

(3) The operation, maintenance, and use of an approach are subject to the control of the legislature over the state highway system.

(4) A Permit to Operate should not be construed to be beyond the power or authority of the legislature to control the state highway system.

(5) Acceptance of a Permit to Operate is acceptance of all special provisions, mitigation measures, conditions, or agreements, identified and approved through the application process and acknowledgment that all rights and privileges may be changed or relinquished by legislative action.

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

Hist.: HWY 2-2004, f. 2-18-04, cert. ef. 3-1-04, Renumbered from 734-051-0300

### **734-051-0270**

#### **Allocation of Costs for Construction and Maintenance of Approaches**

[TO 4-2000, f. 2-14-00, cert. ef. 4-1-00, Renumbered from 734-050-0020; Renumbered to 734-051-0205 by HWY 2-2004, f. 2-18-04, cert. ef. 3-1-04]

### **734-051-0275**

#### **Removal of Approaches**

(1) The Department may revoke a Permit to Operate and may remove an approach:

(a) If current or potential safety or operational problems exist that are verified by an engineering analysis;

(b) If an applicant or permittee fails to comply with any terms or conditions of a Permit to Operate; or

(c) During project delivery as set forth in OAR 734-051-0285.

(2) The Department shall provide written notification of the intent to remove an approach under section (1) of this rule as required by ORS 374.305, 374.307, and 374.320.

(3) The Region Manager may determine that an approach identified for removal as described in section (1) of this rule may remain open if mitigation measures are required as set forth in OAR 734-051-0145:

(a) The Department shall provide written notification of the intent to remove the approach unless mitigation measures are taken; and

(b) The applicant must agree to comply with mitigation measure and to bear the cost of the mitigation measures.

(4) An applicant, permittee, or property owner is responsible for the expense of removing an approach except as set forth in OAR 734-051-0205 and 734-051-0285.

(5) Removal of a permitted or grandfathered approach 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

Hist.: HWY 2-2004, f. 2-18-04, cert. ef. 3-1-04, Renumbered from 734-051-0380

### **734-051-0280**

#### **Liability and Control for Construction and Maintenance, Repair, Operation and Use of Approaches**

[TO 4-2000, f. 2-14-00, cert. ef. 4-1-00, Renumbered from 734-050-0025; Renumbered to 734-051-0215 by HWY 2-2004, f. 2-18-04, cert. ef. 3-1-04]

### **734-051-0285**

#### **Project Delivery**

(1) This rule applies to construction of new highways and interchanges, highway or interchange modernization projects, highway and interchange preservation projects, highway and interchange operations projects, or other highway and interchange projects. Access Management Strategies, Access Management Plans, and Access Management

Plans for Interchanges are developed during project delivery to maintain highway performance and improve safety by improving system efficiency and management before adding capacity, as provided by this rule and consistent with the **1999 Oregon Highway Plan**. All approaches identified to remain open in an area that is not access controlled in an Access Management Strategy, Access Management Plan, or Access Management Plan for an Interchange Area are presumptively found to be in compliance with Division 51 rules once any measures prescribed for such compliance by the plan are completed, and subsequent changes will be measured from that status. However, that status does not convey a grant of access.

(2) This rule does not create an obligation that the Department apply documentation requirements in OAR 734-051-0070(1) or the standards and criteria in OAR 734-051-0080, 734-051-0115, 734-051-0125, 734-051-0275 or 734-051-0295 through 734-051-0335.

(3) The Region Manager shall develop Access Management Strategies for modernization projects, projects within an influence area of an interchange where the project includes work along the crossroad, or projects on an expressway and may develop Access Management Strategies for other highway projects.

(4) Except where the Region Manager documents the reasons why an Access Management Plan is not appropriate, the Region Manager shall develop an Access Management Plan for modernization projects and an Access Management Plan for an Interchange for modernization projects where the project includes work along the crossroad.

(5) The Region Manager may require modification, mitigation, or removal of approaches within project limits:

(a) Pursuant to either:

(A) An Access Management Plan or an Access Management Plan for an Interchange adopted by the Department; or

(B) An approved Access Management Strategy; and

(b) If necessary to meet the classification of highway or highway segment designation, mobility standards, spacing standards, or safety factors; and

(c) If a property with an approach to the highway has multiple approaches and if a property with an approach to the highway has alternate access in addition to the highway approach.

(d) The determination made under subsections (a) through (c) of this section must conclude that the net result of the project including closures, modification and mitigations will be that access will remain 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.

(6) Access Management Strategies comply with all of the following:

(a) Are developed for the project limits, a specific section of the highway within the project limits, or to address specific safety or operational issues within the project limits.

(b) Must improve access management conditions to the extent reasonable within the limitation, scope, and strategy of the project and consistent with design parameters and available funds.

(c) Promote safe and efficient operation of the state highway consistent with the highway classification and the highway segment designation.

(d) Provide for reasonable use of the adjoining property consistent with the comprehensive plan designation and zoning of the area.

(e) Are consistent with any applicable adopted Access Management Plan, Transportation System Plan or Corridor Plan unless the jurisdiction is exempt from transportation system planning requirements under OAR 660-012-0055.

(7) Access Management Plans comply with all of the following:

(a) Must include sufficient area to address highway operation and safety issues and the development of adjoining properties including local access and circulation.

(b) Must improve access management conditions to the extent reasonable within the limitation and scope of the project and be consistent with design parameters and available funds.

(c) Describe the roadway network, right-of-way, access control, and land parcels in the analysis area.

(d) Are developed in coordination with local governments.

(e) Are consistent with any applicable adopted Transportation System Plan, corridor plan, or Special Transportation Area or Urban Business Area designation, or amendments to the Transportation System Plan unless the jurisdiction is exempt from transportation system planning requirements under OAR 660-012-0055.

(f) Are consistent with the **1999 Oregon Highway Plan**.

(g) Contain short, medium, and long-range actions to improve operations and safety and preserve the functional integrity of the highway system.

(h) Consider whether improvements to local street networks are feasible.

(i) Promote safe and efficient operation of the state highway consistent with the highway classification and the highway segment designation.

(j) Consider the use of the adjoining property consistent with the comprehensive plan designation and zoning of the area.

(k) Provide a comprehensive, area-wide solution for local access and circulation that minimizes use of the state highway for local access and circulation.

(l) Are approved by the Department through an intergovernmental agreement and adopted by the local government, and adopted into a Transportation System Plan unless the jurisdiction is exempt from transportation system planning requirements under OAR 660-012-0055.

(8) In the event of a conflict between the access management spacing standards and the access management spacing standards for approaches in an interchange area the more restrictive provision will prevail. These spacing standards are used to develop Access Management Plans for Interchanges and where appropriate:

(a) Support improvements such as road networks, channelization, medians, and access control, with an identified committed funding source, and consistent with the **1999 Oregon Highway Plan**;

(b) Ensure that approaches to cross streets are consistent with spacing standards on either side of the ramp connections; and

(c) Support interchange designs that consider the need for transit and park-and-ride facilities and the effect of the interchange on pedestrian and bicycle traffic.

(9) Notwithstanding other provisions of this Division, the Region Manager, not a designee, may recognize an approach to be in compliance where there is no Access Control, and where construction details for a Department project show the intention to

preserve the approach as a part of that project, as documented by plans dated before the original effective date of Division 51, April 1, 2000.

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

Hist.: HWY 2-2004, f. 2-18-04, cert. ef. 3-1-04, Renumbered from 734-051-0370

### **734-051-0290**

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

[TO 4-2000, f. 2-14-00, cert. ef. 4-1-00; Renumbered to 734-051-0245 by HWY 2-2004, f. 2-18-04, cert. ef. 3-1-04]

### **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(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**, the adopted State Highway 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 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

Hist.: HWY 2-2004, f. 2-18-04, cert. ef. 3-1-04, Renumbered from 734-051-0430

### **734-051-0300**

#### **Effective Period of Permit to Operate, Maintain and Use an Approach**

[TO 4-2000, f. 2-14-00, cert. ef. 4-1-00, Renumbered from 734-050-0050; Renumbered to 734-051-0265 by HWY 2-2004, f. 2-18-04, cert. ef. 3-1-04]

### **734-051-0305**

#### **Application Procedure for Grants of Access**

(1) An Application for a Grant of Access to a state highway must be made on the standard state form, and the processing fee must accompany the Application for a Grant of Access as set forth in OAR 734-051-0335.

(2) The Department may refuse to accept an Application for a Grant of Access if the application is:

- (a) Incomplete;
- (b) Not accompanied by an Application for State Highway Approach and all required documentation;
- (c) Not accompanied by a current preliminary title report covering the property to be served by the approach, showing any access easements appurtenant to the property; or
- (d) From anyone other than the owner of the abutting property or a designated agent.

(3) Upon acceptance of an Application for a Grant of Access and any required attachments, the Department shall use Division 51, ORS Chapter 374, and any other applicable state statutes, administrative rules, and Department manuals for evaluating and acting upon the application for a grant of access.



(4) The Region Manager shall review the Application for a Grant of Access, determine if the Application for a Grant of Access meets the requirements of Division 51 and Department policy, and shall:

- (a) Forward the Application for a Grant of Access to the State Traffic Engineer; or
- (b) Deny the Application for a Grant of Access.

(5) When the Application for a Grant of Access is forwarded to the State Traffic Engineer, the State Traffic Engineer, with the assistance of Department staff, shall:

- (a) Evaluate the Application for a Grant of Access;
- (b) Notify the applicant of any additional information required; and
- (c) Make a recommendation to the Technical Services Manager.

(6) The Technical Services Manager shall approve or deny the Application for a Grant of Access and notify the applicant.

(7) If the Application for Grant of Access is approved, the Department shall:

(a) Appraise the abutting property to determine the fair market value of the grant of access;

- (b) Notify the applicant of the value of the grant of access; and
- (c) Provide the applicant with instructions for payment.

(8) After payment of fair market value is received by the Department:

- (a) The grant of access will be executed and recorded; and
- (b) A copy of the grant of access will be sent to the Region Manager so that a Construction Permit may be issued in accordance with OAR 734-051-0175.

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

Hist.: HWY 2-2004, f. 2-18-04, cert. ef. 3-1-04, Renumbered from 734-051-0440

### **734-051-0310**

#### **Maintenance of Approaches**

[TO 4-2000, f. 2-14-00, cert. ef. 4-1-00, Renumbered from 734-050-0045; Renumbered to 734-051-0255 by HWY 2-2004, f. 2-18-04, cert. ef. 3-1-04]

### **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.

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

Hist.: HWY 2-2004, f. 2-18-04, cert. ef. 3-1-04, Renumbered from 734-051-0450

### **734-051-0320**

#### **Requests for Deviations to Access Management Standards**

[TO 4-2000, f. 2-14-00, cert. ef. 4-1-00; Renumbered to 734-051-0135 by HWY 2-2004, f. 2-18-04, cert. ef. 3-1-04]

### **734-051-0325**

#### **Application Procedure for Indentures of Access**

(1) An Application for Indenture of Access to a state highway must be made on the standard state form and the appropriate processing fee must accompany the Application for Indenture of Access as set forth in OAR 734-051-0335 except where the Region Manager, not a designee, waives the processing fee and documents in writing the reasons for the waiver.

(2) The Department may refuse to accept an Application for Indenture of Access if the application is:

(a) Incomplete;

(b) Not accompanied by an Application for State Highway Approach and all required documentation;

(c) Not accompanied by a current preliminary title report covering the property to be served by the approach showing any access easements appurtenant to the property; or

(d) From anyone other than the owner of the abutting property or a designated agent.

(3) The Department shall use Division 51, ORS Chapter 374, and any other applicable state statutes, administrative rules, and Department manuals for evaluating and acting upon the Application for Indenture of Access.

(4) The Region Manager shall approve or deny the Application for Indenture of Access and shall notify the applicant.

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; Chapter 974, Oregon Laws 1999, Chapter 371, Oregon Laws 2003

Hist.: HWY 2-2004, f. 2-18-04, cert. ef. 3-1-04, Renumbered from 734-051-0460

### **734-051-0330**

#### **Processing Requests for Deviations**

[Hist: TO 4-2000, f. 2-14-00, cert. ef. 4-1-00; Repealed by HWY 2-2004, f. 2-18-04, cert. ef. 3-1-04]

### **734-051-0335**

#### **Administration of Grants and Indentures of Access**

(1) A processing fee must be submitted with the Application for Indenture of Access.

(2) A processing fee must be submitted with the Application for a Grant of Access.

The processing fee is based on the actual documented costs incurred by the Department plus a 10 percent charge for general administration:

(a) The processing fee includes the cost to secure an appraisal of the fair market value of the grant of access;

(b) An initial deposit, applied towards the processing fee, must accompany the Application for a Grant of Access; and

(c) The Department shall determine the amount of the initial deposit based on the complexity of the request and the anticipated cost of obtaining an appraisal of the grant of access.

(3) The applicant shall pay all costs incurred by the Department in processing the Application for a Grant of Access.

(4) Upon approval of an Application for a Grant of Access and prior to issuance of the Construction Permit, payment must be made to the Department in an amount equal to the appraised value of the grant of access. This payment is in addition to the processing fee.

(5) The Department may waive payment of the appraised value of the grant of access when:

(a) An application for a grant of access is for a public approach and the applicant has demonstrated that the public approach will benefit the State highway system as set forth in OAR 734-051-0085(1) and (2); and

(b) The benefit to the State highway system is a direct and immediate result of the public 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

Hist.: HWY 2-2004, f. 2-18-04, cert. ef. 3-1-04, Renumbered from 734-051-0470

### **734-051-0340**

#### **Deviation Limits for Spacing of Approaches within an Interchange Access Management Area**

[TO 4-2000, f. 2-14-00, cert. ef. 4-1-00; Repealed by HWY 2-2004, f. 2-18-04, cert. ef. 3-1-04]

## 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.

(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  
Hist.: HWY 2-2004, f. 2-18-04, cert. ef. 3-1-04, Renumbered from 734-051-0390

### **734-051-0350**

#### **Minor Deviation Limits for Approach Spacing**

[TO 4-2000, f. 2-14-00, cert. ef. 4-1-00; Repealed by HWY 2-2004, f. 2-18-04, cert. ef. 3-1-04]

### **734-051-0355**

#### **Contested Case Hearings**

(1) An applicant may request a contested case hearing as provided by the Administrative Procedures Act (ORS Chapter 183):

(a) The request for a hearing and the hearing are governed by OAR 137-003-0501 through 137-003-0700;

(b) The request for a hearing must evidence an intent to request a hearing and must be submitted to and received by the Office of Administrative Hearings within 21 days of the mailing date of the notice of an appealable decision by the Department;

(c) The hearings process falls within the 120-day timeline in OAR 734-051-0070(8) unless the Department and the applicant agree to a time extension:

(A) Time extensions fall outside the 120-day timeline; and

(B) Filing of exceptions falls outside the 120-day timeline.

(2) The Department is authorized to use agency representatives in access management contested case hearings as set forth in OAR 137-003-0545.

(3) The Department and the applicant may present additional information in writing or in person at the contested case hearing.

(4) An Administrative Law Judge will review the Region Manager's decision, conduct a hearing, and may approve, reverse, or modify the decision. The Administrative Law Judge:

(a) Shall issue a proposed order as set forth in OAR 137-003-0645; and

(b) May require conditions or limitations to be incorporated into the Construction Permit or the Permit to Operate.

(5) The Executive Deputy Director shall issue a final order or may adopt as final the proposed order issued by the Administrative Law Judge.

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

Hist.: HWY 2-2004, f. 2-18-04, cert. ef. 3-1-04, Renumbered from 734-051-0400

### **734-051-0360**

#### **Access Management Plans**

[TO 4-2000, f. 2-14-00, cert. ef. 4-1-00; Renumbered to 734-051-0155 by HWY 2-2004, f. 2-18-04, cert. ef. 3-1-04]

**734-051-0370**

**Project Development**

[TO 4-2000, f. 2-14-00, cert. ef. 4-1-00; Renumbered to 734-051-0285 by HWY 2-2004, f. 2-18-04, cert. ef. 3-1-04]

**734-051-0380**

**Closure of Existing Legal Approaches**

[TO 4-2000, f. 2-14-00, cert. ef. 4-1-00; Renumbered to 734-051-0275 by HWY 2-2004, f. 2-18-04, cert. ef. 3-1-04]

**734-051-0390**

**Region Review Process and Collaborative Discussion Option**

[TO 4-2000, f. 2-14-00, cert. ef. 4-1-00; Renumbered to 734-051-0345 by HWY 2-2004, f. 2-18-04, cert. ef. 3-1-04]

**734-051-0400**

**Hearing Procedures**

[TO 4-2000, f. 2-14-00, cert. ef. 4-1-00; Renumbered to 734-051-0355 by HWY 2-2004, f. 2-18-04, cert. ef. 3-1-04]

**734-051-0410**

**Scope for Modification of Access Rights**

[TO 4-2000, f. 2-14-00, cert. ef. 4-1-00; Repealed by HWY 2-2004, f. 2-18-04, cert. ef. 3-1-04]

**734-051-0420**

**General Policy for Modification of Access Rights**

[TO 4-2000, f. 2-14-00, cert. ef. 4-1-00, Renumbered from 734-050-0075; Repealed by HWY 2-2004, f. 2-18-04, cert. ef. 3-1-04]

**734-051-0430**

**Grants of Access**

[TO 4-2000, f. 2-14-00, cert. ef. 4-1-00; Renumbered to 734-051-0295 by HWY 2-2004, f. 2-18-04, cert. ef. 3-1-04]

**734-051-0440**

**Application Procedure for Grants of Access**

[TO 4-2000, f. 2-14-00, cert. ef. 4-1-00; Renumbered to 734-051-0305 by HWY 2-2004, f. 2-18-04, cert. ef. 3-1-04]

**734-051-0450**

**Indentures of Access**

[TO 4-2000, f. 2-14-00, cert. ef. 4-1-00; Renumbered to 734-051-0315 by HWY 2-2004, f. 2-18-04, cert. ef. 3-1-04]

### **734-051-0460**

#### **Application Procedure for Indentures of Access**

[TO 4-2000, f. 2-14-00, cert. ef. 4-1-00; Renumbered to 734-051-0325 by HWY 2-2004, f. 2-18-04, cert. ef. 3-1-04]

### **734-051-0470**

#### **Administration of Grants and Indentures of Access**

[TO 4-2000, f. 2-14-00, cert. ef. 4-1-00, Renumbered from 734-050-0085; Renumbered to 734-051-0335 by HWY 2-2004, f. 2-18-04, cert. ef. 3-1-04]

### **734-051-0480**

#### **Collaborative Discussions**

[TO 4-2000, f. 2-14-00, cert. ef. 4-1-00; Repealed by HWY 2-2004, f. 2-18-04, cert. ef. 3-1-04]

## **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 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

Hist.: TO 7-2000, f. & cert. ef. 7-14-00; HWY \_\_\_-2005, f. & cert. ef. 9-16-05

### **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 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; HWY \_\_\_-2005, f. & cert. ef. 9-16-05

## **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 OAR 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; HWY \_\_\_-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 734-051-0390).

(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

Hist.: TO 7-2000, f. & cert. ef. 7-14-00; HWY \_\_\_-2005, f. & cert. ef. 9-16-05

### **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; HWY \_\_\_-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 and Chapter 972, Oregon Laws 1999

Stat. Implemented: ORS 374.310 and Chapter 972, Oregon Laws 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; HWY \_\_\_-2005, f. & cert. ef. 9-16-05