

**Oregon Access Management Manual**

**Chapter 4**

**Approach Application and Permit Process**

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# General Information

## Using this Chapter

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### Purpose

- Chapter 4 is primarily concerned with all processes used to receive, accept, review, negotiate, and approve or deny *Applications* for approaches to the state highway, including appeal options, and follow-through for construction, inspection and permitting of the built approaches.
  - Chapter 4 interprets and applies Oregon Administrative Rules (OAR) 734-051 Rules 0020 through 0560
  - Chapter 4 is intended to provide a broad overview for employees new to Access Management and to be a useful reference tool for experienced employees.
  - This manual will be periodically updated so please contact us with your comments and suggestions.
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### Conventions

- There are a number of terms that Oregon Access Management staff use repeatedly and that have fairly specific meanings in application to this work. In this Chapter, these terms of art are typically shown in italics or capitalized.
- Information is divided into major categories that relate directly to the various steps in administering approach *Applications*.
- Categories are, to the extent practical, in the order that they will come up during the *Application* review process.
- Information is also divided into minor categories to help you find what you need quickly.
- The repetition of some minor categories is meant to establish a pattern of relationships between categories that should make it easy to get answers to your questions.
- The information was written, to the extent practical, to be easy to read and understand.

## Updating the Manual

- The Access Management Manual, and particularly Volume 1, “Approach Application and Permit Process,” which includes this Chapter, is meant to be a living document that responds to changes in interpretation resulting from practical experience, opinions of the Department of Justice, and court cases.
  - Changes to Chapter 4 will be reviewed by the Access Management Program Unit (AMPU) and the Region Access Management Engineers (RAMEs) and if general consensus is reached, AMPU staff will make changes as needed.
  - Changes to interpretations of the Rules and issues that cannot be resolved between AMPU and the RAMEs should also be reviewed by the Access Management Leadership Team and The Department of Justice in most cases, and by other departments as needed to ensure fairness and consistency with other programs and law.
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**Responsibility** Keeping the Manual up to date is the responsibility of the Access Management Program Unit.

## Changes in the 2004 Rules

### Purpose

The 2000 Division 51 Rules were Oregon’s first detailed access management rules after 50 years of relying on statute (ORS 374, et. al.) and, later the basic rules established in Division 50, for regulation of access onto state highways. After a couple of years of implementing the rules, several issues arose that created the impetus to amend the rules:

- The Division 51 rules were wordy, redundant and not organized logically.
  - The Rules were considered too prescriptive, with many activities and procedures required in situations where they were not warranted;
  - Engineering judgment was not fully utilized, particularly where the rules were overly prescriptive;
  - Issues that it should be possible to deal with internally, such as the *Application* form and the list of items required to be included with an *Application*, were specified in the rules, so any changes could not be made without going through formal rulemaking; and
  - There was limited consideration of the wide variability of circumstances that might exist on a site-by-site basis, making the rules seem inflexible, even unreasonable, in many situations.
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**Identifying the Changes in the Rules**

This Chapter points out changes from the 2000 Rules on an issue-by-issue basis. While it was the intent of AMPU to include them all here, there may be some omissions. Please let AMPU know if you notice that any significant rule changes have been left out of this Chapter.

## Getting to “Yes”

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**Introduction**

“Getting to Yes” is a catch phrase in alternative dispute resolution. In that context it means the process of working with all of the parties to a problem to find a solution that everyone can live with. It does not mean saying “Yes” when you should be saying “No.”

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**Background**

The 2004 Division 51 Rules have been developed and adopted within a time of significant economic problems in Oregon and the nation. In spite of the long-term economic, safety and mobility benefits of effective access management, the development community has a tendency to blame access management regulations, among other things, for hindering economic development.

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**ODOT’s Economic Development Function**

We all know ODOT is about more than highways. In fact it is about more than transportation. Moving people, materials and products are key components of the economy. ODOT and Oregon Transportation Commission (OTC) decide when and where to invest in improving the movement of people, materials and products. Our charge from the Governor and ODOT’s Director is to prioritize that economic development function in our work. ODOT’s Mission Statement is:

**To provide a safe, efficient transportation system that supports economic opportunity and livable communities for Oregonians.**

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### **Efficient Review and Decision Processes**

The approach permitting process and the access management planning process can be time consuming. To support the state's economy while maintaining support for the safety and economic benefits represented in Access Management, it is important to get decisions made as quickly and efficiently as possible.

- When an *Application* can be approved without any complex review and analysis, try to do it quickly;
- When an *Application* is complex, use the Pre-Application process to anticipate and minimize problems, and throughout the review process try to keep the applicant in the loop so they understand any delays;
- Try to create opportunities to fix problems informally. That is, instead of relying on the appeal or region review process to iron out disagreements, try to get modifications to proposals before a decision is issued;
- When denial is necessary consider whether there is a design option that will work whether it includes an approach onto the state highway or not; and
- Always make an effort to avoid unnecessary delays.

### **Working Within the Rules**

The idea of getting to yes does not mean stretching the rules to approve unsafe or otherwise unwise approaches:

- The 2004 Division 51 Rules include a number of provisions that allow flexibility in applying the rules under difficult or unusual circumstances, for example:
    - Infill and redevelopment projects can be treated with more flexibility than new developments [OAR 734-051-0040(66), -0080(3)(a)(B), -0115(1)(c)(B), -0125(1)(c)(B), -0135(4)].
    - Highway segments designations (STAs, UBAs) that allow different spacing standards have been designated in some areas, and the rules allow the application of STA/UBA spacing standards in some other, limited circumstances [OAR-051-0115(3)].
    - In Rural areas that have certain urban characteristics, we may sometimes use urban spacing standards [OAR 734-051-0040(66)].
    - In some situations, the Region Manager may approve an approach that could not otherwise be approved as long as it is safe [OAR-734-051-0135(10)].
    - The Region Manager can waive some requirements for complete *Applications* under certain circumstances [OAR 734-051-0070(1)(c), and -0135(4)(a)].
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# Record Keeping

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## Importance

Good record keeping is an extremely important part of your job. Although the issue of decision records often does not get a lot of attention unless a decision is appealed, good records need to be kept from the moment an approach is proposed until the decision is documented, and until all review and appeal opportunities have been exhausted. Records regarding permitting decisions need to be retained permanently and transferred to State Archives. ODOT record retention schedules are currently being updated. See <http://bluebook.state.or.us/schedules/odot/index> .

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## Purpose

- Reviewing and making a decision on an *Application* is a public decision that requires a factual record to support the decision.
  - The decision may be appealed. For an ODOT decision to be upheld on appeal (a “defensible” decision), the record of the decision needs to demonstrate that all steps in the decision process were done properly and that decisions were based upon facts in the record (findings of fact).
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## What to Record

At a minimum, the file and CHAMPS (Central Highway Approach/Maintenance Permit System) record combined should include information to document the following:

- Facts to support findings required for a decision;
  - Field notes from site visits;
  - Times and types of contact with the applicant, local jurisdictions and other participants including;
    - Who was present;
    - What issues were discussed; what questions were asked and answered; and
  - Any points of disagreement that may require further resolution.
  - Documentation of fee received;
  - Copies of any letters issued to applicants; and
  - Copies of application and signed permit, if issued.
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**Writing Findings**

A finding is a statement of the answer to a factual question. Approach permit decisions must be based upon such findings of fact. The findings must also track the criteria in the rules to be legally defensible. In developing findings, consider the following:

- All of the facts that affect the outcome need to be documented.
  - The finding statement needs to logically link the pertinent facts to the applicable criteria in the rules. The findings include both what the facts are and how they pertain to the decision at hand.
  - When you need to make a finding that does not pertain to the situation at hand, it is best to state: “This standard does not apply to this approach request because ...” and briefly explain why it does not apply. That way, particularly if it does go to a contested case hearing, it is clear that none of the relevant criteria were ignored in the review.
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**When Similar Situations get Different Results**

Sometimes *Applications* for approaches in what appear to be similar situations will end in different decisions. This makes defending staff decisions more complex. Consider the following:

- In a contested case, the question on this matter will be “what distinguishes this situation from the earlier similar situation?”
  - In the real world, you may not be aware of any earlier decision that may be compared to the one you are making in a contested case.
  - To cover all the bases, for any decision that is a close call whether to approve, deny, or mitigate, make thorough notes and/or findings in CHAMPS noting any unique facts of the matter and how and why you drew the conclusions you drew.
  - If you are aware of a similar situation that had different results, notes and findings should also include any facts or reasons why this outcome is unique.
  - It is not necessary to refer to the earlier decision, only to establish what is different in the current fact situation, and to include that information in the decision record.
-

**Dealing with  
Difficult People**

When a denial is a distinct possibility, or when an applicant is not willing to adjust plans to comply with the access management standards, record keeping may be even more important. The following accusations are common, and can turn a permit issue into a political issue:

- I didn't get notice; no one contacted me.
- This was never explained to me; how was I supposed to know this?
- The timelines were unclear; I didn't get adequate notice.

Good record keeping will minimize arguments about who said what and when, and can provide invaluable support to ODOT staff at all levels of the organization in controversial cases.

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**Good Customer  
Service**

ODOT is committed to good customer service. When one difficult permit case becomes a political issue it can have regional, if not statewide repercussions. Good records regarding customer contacts that show a timely response to customer concerns will be our best defense against distorted views of the fairness and timeliness of the approach permitting process.

**Records Show  
Level of Public  
Service**

Good record keeping has ramifications beyond supporting ODOT permit decisions:

- CHAMPS records showing timely completion of the steps in the decision process can help us demonstrate good customer service to the Director and the legislature.
- CHAMPS records showing difficulty meeting timelines helps identify staffing and training needs.
- Notes demonstrating an effort to answer customer concerns and cooperate with them over time can help offset unsubstantiated claims of poor public service.
- Good records leave an audit trail.

## **Clearing Inactive Files**

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**Purpose**

Part of good record keeping is clearing inactive files. Whatever step is available to put an end date on an *Application* or permit process should be taken so that any activity reports that are generated based on CHAMPS data will reflect reality.

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## When

Clearing inactive files is not automatic so that there is ample room for flexibility and fairness. The 2004 rules do recognize several situations under which a file can be closed. Applicants should always be advised when there is a risk of a file being closed, which will usually be part of the notice at each step of the process.

**Note:** All files, active and inactive, will be retained in the CHAMPS database.

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## Types of File Closures

Several terms are used in the Rules and/or in CHAMPS:

- Withdrawn –
  - The applicant stops the review process on their own initiative.
- Expired refers to *Applications*:
  - *Applications* can expire when the applicant fails to provide supplemental information in a timely manner;
  - *Application* approvals can expire when the applicant does not accept the conditions of approval for an *Application*, or when the applicant fails to provide proof of insurance.
- Void is used after an approval and prior to issuing a *Construction Permit*:
  - An approval may be voided if construction plans are not submitted in a timely manner;
  - An approval may be voided if the applicant does not accept the conditions of approval;
  - An approval may be voided if the applicant does not submit proof of insurance or the required bond/deposit/irrevocable letter of credit in a timely manner.
- Cancel is used after a Construction Permit has been issued;
  - A Construction Permit can be cancelled for non-compliance with the conditions and terms of the permit.
- Each of these file closure types has a corresponding CHAMPS letter.

**Note:** In every situation the documentation for the decision will be retained in the CHAMPS record. DO NOT delete the record from CHAMPS or destroy a hard copy file that is closed.

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**General 120-day Provision**

OAR 734-051-0070(17)

In addition to the above conditions that might cause a file to be closed, the 2004 rules allow a file to be closed for inactivity, with notice, as follows:

- On or around the 90<sup>th</sup> day of inactivity on the part of the applicant, notify the applicant in writing that the *Application* will expire at the end of 120 days if the *Application* continues to be inactive.
  - At the end of 120 days, the file can be closed with an “expired” status.
  - Submittal of any information after the date of expiration will be processed as a new *Application*, requiring submittal of a new *Application* and fee.
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# Dealing with Legal Issues

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## Purpose

It is important for the success of the access management program that the Division 51 Rules be applied consistently throughout the state. One major purpose of this Manual is to help ODOT staff in the field to understand what is intended by the language in the rules, but there may still be differences in interpretation and implementation. This section should help you sort out some of the more basic issues.

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## When in Doubt, Ask

- The Access Management Program Unit (AMPU) supports the efforts of the RAMEs, Permit Specialists, and others working on access management issues in the field. When in doubt about how the rules apply in a particular situation, feel free to call or email AMPU staff with your questions.
  - When a question of the application or interpretation of the rules is beyond the expertise of the AMPU, or when application of the rules as written appears to result in a bad decision, the AMPU may refer your question to our legal counsel at the Department of Justice.
  - The RAMEs may also forward questions to our Department of Justice legal counsel (DOJ) for advice that will be shared with AMPU and the other RAMEs to support consistent interpretation of the Rules around the state.
- 

## Entering Private Property

- Notify property owners and tenants ahead of time if possible that you will be visiting their property, especially if you think you will need to enter the property. Be sure you contact the owner of the property, not just the tenant, when ODOT is taking action related to an access to the property.
  - Document every contact with property owners and tenants.
  - Take thorough notes and keep timely records.
  - At the point an *Application* goes into the Appeal process, channel all communications with the applicant through the Appeals Coordinator who will in turn work through the assigned counsel at the Department of Justice.
-

**And/Or  
Decisions**

Understanding the use of “and” and “or” in lists of criteria and standards is important for knowing how a rule is applied:

- If a numbered or lettered list of criteria or standards has “and” after the second-to-last listed item, then every one of the items in the list must be applied to the review of the *Application*.
  - If “and” appears after each item in a list, it has the same meaning as “and” after the second to last item.
  - If a numbered or lettered list of criteria or standards has “or” after the second-to-last listed item, then only one item on the list need apply.
  - In a situation where a series of criteria or standards includes both an “and” and an “or” list, one list has to be a subsection within the other, and making the “or” determination first should get you where you need to go.
  - When in doubt, ask the AMPU staff.
- 

**Rational Nexus  
/ Direct  
Proportionality  
Issues**

Recent U.S. Supreme Court decisions on property rights, including the *Dolan v. City of Tigard* case in Oregon, have created a tougher standard of analysis to apply to any decision that imposes conditions on a property owner that will result in public use of private land or private investment in public infrastructure.

- It is extremely important to carefully back up any decision that includes a requirement for *Mitigation* measures and/or conditions that require the use of private land for public purposes or private investment within the public right-of-way.
  - Record all facts and analysis used to establish the scope and design of *Mitigation* measures and applicable conditions that demonstrate that the requirements are 1) directly related to and 2) proportional to the problems that would otherwise be created by the approach in question.
  - Meeting the standards of evidence in such circumstances is sometimes referred to as meeting “rational nexus” and “direct proportionality” tests.
  - Section 0145 (4) was added to the 2004 Rules to set a basic standard to deal with the issue of direct proportionality.
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**Alternate /  
Reasonable /  
Adequate**

- **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 approach on the highway, an easement across adjoining property, a different highway, a service road, or an alley, including a joint use approach, but is not a conclusive determination that the alternate access is “reasonable.”
- **Reasonable Access** is access sufficient to serve existing and proposed future uses, and is subject to the provisions in Division 51 section 0080 (8).
- As used in the 2004 Rules, “**Adequate**” has no technical definition but is used in the manner of its dictionary definition, meaning “sufficient.”

**Other State  
Laws, Rules,  
and Plans**

There are statutes, rules and plans relevant to access management of which you should be aware. The 2004 Division 51 has been developed to implement the other applicable regulations, so there should be no conflicts or inconsistencies in the short term. But as other regulations are updated it will be important to pay attention to changes that may affect implementation of Division 51. The AMPU has responsibility for tracking regulatory changes that effect the program, amending this Manual and other documentation, and informing ODOT staff when significant changes occur.

- **ORS 374** is the statutory authority for regulating approaches to the state highway system. The 2004 Division 51 specifically implements this statute, up to and including 2003 amendments.
- **1992 Oregon Transportation Plan** and subsequent amendments– The OTP is the core document for State transportation planning, including by reference plans for various transportation modes and issues, and not specifically guiding access management.
- **1999 Oregon Highway Plan** – The OHP is the highway modal plan that includes Goals and Policies for access management, spacing standards, and mobility standards. The 2004 Division 51 implements those goals and policies that relate to access.
- **PD-03** is the Operational Notice that guides the process for developing access management plans and strategies for highway projects. Division 51, section 0285 is the part of the rules that covers access management planning for ODOT projects. PD-03 does not otherwise pertain to the *Application* review process. PD-03 has not been adopted as an administrative rule and is an internal ODOT guideline, only.

Careful application of Division 51 will result in consistency with the above, with the understanding that Oregon Administrative rules have more legal weight than ODOT facility plans.

## Legal Issues with Local Government

### Local Government Transportation Plans

- The Transportation Planning Rule (OAR 660-012) (the TPR) requires comprehensive local government planning for transportation as it relates to land use, and implementation of the Rule results in adopted local Transportation System Plans and implementing ordinances. Our responsibilities under this rule are:
  - To participate in the local planning process to the extent possible to avoid conflicts between local plans and ODOT policy, plans and regulations.
  - To coordinate projects and processes to ensure we do not build or approve anything in conflict with adopted local plans.
- A TSP does not have to be “acknowledged” by the Land Conservation and Development Commission to be in effect.
  - Acknowledged plans have more legal weight than ones that are not acknowledged, particularly in terms of land use issues. But unacknowledged ones are in effect unless and until they are overturned on appeal.
  - The Land Conservation and Development Commission acknowledgment process is sometimes slow due to issues unrelated to the state highway system. Typically ODOT has participated in those parts of the plan pertaining to impacts on the state system, and those are rarely the issues that slow down acknowledgment.

### Coordination with Local Government

- ODOT must coordinate projects and many *Application* reviews with local governments. Inside an Urban Growth Boundary area but outside of the corporate boundaries of the city, “local jurisdiction” includes both the City and the County.
- The local government is the primary authority for determining whether a project is consistent with its plans and ordinances.
  - In Division 51 there are several thresholds for compliance with local plans:
    - “Consistent with” a comprehensive plan – A project is consistent with a plan when one or more general policies in the transportation plan support the type of project that is proposed.
    - “Included in” a comprehensive plan – is more specific than “consistent with” but for purposes of Division 51 should be interpreted to mean included in principle. For example, the plan includes a policy objective to increase connectivity in the general area of the proposed approach without identifying precisely where such connection(s) will be located.
    - “Identified in” a comprehensive plan – is specific. If a project is identified in a plan, then a particular project area and type of project is described in the local plan.

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**Denial of  
Alternate  
Access onto a  
Local Street**

Sometimes ODOT concludes that an applicant has reasonable alternate access onto a local street, but the local government denies a permit to the property.

- If the local government has express legal authority to deny the approach, we may have to treat it as a landlocked property.
- That means that they have to have an adopted ordinance or a specific provision in the comprehensive plan that covers the situation, and we need to see it.
- A preference for not allowing commercial traffic on a residential street, for instance, does not comprise legal authority. If that preference is memorialized in an adopted comprehensive plan, that may be sufficient authority, but only if it applies specifically to the subject street and location. If it is only a general policy it would have to be implemented by ordinance to have legal weight.

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**Inter-  
governmental  
Agreements**

Intergovernmental Agreements (IGAs) are used mostly in conjunction with highway and other facility projects, but may also be appropriate in conjunction with permitting if it involves another governmental entity particularly if there is a need to plan for future *Mitigations* on city or county roads.

- IGAs may be about specific, short-term actions to be taken by the parties to the agreement, or may be about broader and longer-term planning issues, or anything in between.
  - Some IGAs include the provision that the IGA will expire once the prescribed actions are completed, or when the policies in the IGA are adopted into the local TSP.
  - The Region Planners or Agreements Coordinators should have examples of IGAs on hand.
  - IGAs are usually submitted to other agencies in Salem for review, such as DOJ, AMPU, Right of Way, Contracts, etc, depending upon the content and legal implications of the agreement.
  - The District Manager needs to be in the loop early if it appears an IGA is part of the solution for a particular approach.
  - The IGA needs to be referenced in any appropriate CHAMPS file to support future tracking of the agreement.
-

**Transfer of Permitting Authority**

One type of transfer of jurisdiction that is available to local government is the transfer of approach permitting authority, which requires local permitting to comply with Division 51. As of this writing, no local government has requested such authority, but it is a relatively new provision (April 2000) and may be desirable where the local permitting authority wants to provide one-stop permitting for development proposals.

## Expenditure Accounts

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**Introduction**

All work for an *Application* is charged to an established expenditure account (EA). Pre-application activity should be charged to the same EA as activity for the *Application*.

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**Purpose**

- Expenditure Accounts are established to obtain information on labor costs for permitting activities, document the complexities of the permitting work, and develop a working database.
  - This database provides information necessary to support allocation of departmental funds for the *Application* process and to document the need for future fee increases.
  - The CHAMPS database records work activities for each *Application*.
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**EA Format**

The general EA format consists of an:

- Expenditure Account;
  - Sub Job (reflecting the potential complexity of the approach request); and
  - Activity Code.
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**Example**

A typical District EA would include the District EA, Complexity Code, and Activity Code.

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**Prior to March 1, 2004**

The following table shows the EA distribution for *Applications* under the 2000 Rules. These “complexity codes” will continue to be in effect for *Applications* filed before March 2, 2004, at least until January 1, 2005.

District Permit EA – Complexity Code – Activity Code
<ul style="list-style-type: none"> <li>• PRMT (Crew No.) - 001-L11 (<i>Applications</i> with 0-9 trips)</li> <li>• PRMT (Crew No.) - 002-L11 (50-99 trips)</li> <li>• PRMT (Crew No.) - 003-L11 (100-999 trips)</li> <li>• PRMT (Crew No.) - 004-L11 (1000-4999 trips)</li> <li>• PRMT (Crew No.) - 005-L11 (greater than 5000 trips)</li> <li>• PRMT (Crew No.) - 009-L11 (pre-application activities)</li> </ul>

As of 3-01-04

The following table shows the new EAs.

District Permit EA – Complexity Code – Activity Code
<ul style="list-style-type: none"> <li>• PRMT (Crew No.) – 101-L11 (<i>Applications</i> with 0-29 trips)</li> <li>• PRMT (Crew No.) – 102-L11 (30-99 trips)</li> <li>• PRMT (Crew No.) – 103-L11 (100-599 trips)</li> <li>• PRMT (Crew No.) - 104-L11 (600-2999 trips)</li> <li>• PRMT (Crew No.) - 105-L11 (3000-5999 trips)</li> <li>• PRMT (Crew No.) - 106-L11 (6000-9999 trips)</li> <li>• PRMT (Crew No.) - 107-L11 (10000 or more trips)</li> <li>• PRMT (Crew No.) - 109-L11 (pre-application activities)</li> </ul>

### Activity Codes

Code	Use	Examples
L11	<b>Approach Permits Access Management</b>	<ul style="list-style-type: none"> <li>• Evaluation of approach <i>Applications</i></li> <li>• Issuing and monitoring permits</li> <li>• Grants of Access and Indentures of Access for road approaches</li> <li>• Meetings with property owners, developers, and local government officials regarding specific permit inquiries and <i>Applications</i>.</li> <li>• Research on rights of access</li> <li>• Execution of Local Government Agreements</li> <li>• Implementation of appeals for denials</li> </ul>

P41	Development Review	<ul style="list-style-type: none"> <li>• Participation in review of local development applications</li> <li>• Participation in review of zone amendments</li> <li>• Participation in review of transportation impact analysis</li> </ul>
J13	Project Design	<ul style="list-style-type: none"> <li>• Development of Access Management strategy</li> </ul>
J22	STIP Projects	<ul style="list-style-type: none"> <li>• Preparing an access list</li> <li>• Researching rights of access</li> <li>• Preparing Grants of Access or Indentures of Access</li> </ul>

## Getting Started

### When is an Approach Permit Required?

**Who has to apply?**

A property owner, tenant or developer must go through the *Application* process under the following circumstances:

- For a new approach road;
- If the use of an existing approach road changes in a way that will cause impacts on the state highway to increase by a significant amount, as specified in OAR 734-051-0110 (additional details in “Change of Use” below);
- To modify or relocate an existing approach road;
- To construct a temporary approach for a limited time duration;
- To remove a restriction, such as farm use only, from an existing approach road.

The property owner must be a party to the *Application*, and authorize it in writing when the owner is not the applicant.

# Pre-Application Process

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**Purpose** The best time to apply the Access Management standards to an approach proposal is before a project or development is designed. The earlier ODOT can advise an applicant of the access issues that exist at a subject site, the better the results for all concerned.

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**Definition** *Pre-Application Review* is an opportunity to respond to preliminary inquiries and questions and to perform general information gathering before an applicant submits an *Application*.

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**Process**

- Inquiries may come in person or through phone calls or other correspondence from property owners, local government agency staff, or other interested individuals.
- ODOT staff responds to questions from City or County agencies or potential applicants.
- ODOT will usually visit the site to get a better understanding of the access issues.
- Depending upon the complexity of the site circumstances and proposed development, the Permit Specialist, RAME, and/or the District Manager may participate in, and help determine the extent of, the Pre-Application review.

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**Guidelines**

- Pre-Application review may include some level of research, site sketches, vehicle counts, tax lot map review, easements, and other non-complex studies.
- A rule of thumb for appropriate investment of time in the Pre-application process is no more than 4 hours.
- It is important that the applicant or jurisdiction understand that pre-application work is preliminary, and does not by itself satisfy the *Application* review requirements.
- The RAME provides guidance on complex issues.

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## Scope

- The complexity of the proposed development determines the level of pre-application efforts.
  - For small developments the pre-application process may be completed with an informal discussion between the Permit Specialist and the applicant
  - For large developments, or more complex proposals, the pre-application process may include meetings between ODOT, the applicant and consultant, and local government participants.
  - Complicated analyses such as hydraulic work, traffic signal work, roadway design reviews, *Deviation* reviews, and traffic impact studies are completed after an *Application* is filed.
- 

## Customer Service Opportunities

The pre-application process is our best opportunity to advise applicants of the BENEFITS of Access Management.

- Research shows that most commercial activities are not adversely affected by Access Control measures.
- In fact, research also shows that customers prefer doing business in areas where they don't have to contend with the congestion, delays and random cross movements of vehicles characteristic of areas with poor access management.
- Other positive points are:
  - Safety;
  - More efficient use of real estate that might otherwise be committed to driveways; and
  - The possibility of avoiding delays in the approach permit process by designing for compliance.

It is much easier to accept regulation when there is an understanding that it will support economic success.

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**Using the Pre-Application Process to Determine the Legal Status of an Approach**

Permit Specialists are often asked to verify the legal status of an existing driveway, usually as a requirement of the local government:

- Handle the request in “Pre-App” status in CHAMPS if you can.
  - The general guideline is that up to four hours are allowed for the pre-application process before a fee is required.
  - If a valid permit is found, copy it to the property owner.
  - Don’t put anything in writing unless you are absolutely sure!
  - At this time we don’t have a standard letter to send to the local government. If there is a need to develop such a letter, we will add it to our to-do list.
  - If the pre-application time period is not sufficient to get an answer, particularly if ROW research is needed, require submittal of an *Application*;
  - Usually this is going to be for a single-family or farm property, so the fee to open an *Application* is \$200;
  - If it is found that there is no right of access, or is otherwise not legal, we are already on course to make it legal, if possible.
- 

**Records**

- Create a CHAMPS file with “Pre-application” status.
  - Document contact with the applicant, and what issues were discussed with the applicant or other parties, in the *Notes* in CHAMPS.
- 

## **Pre-Application Meeting**

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**Purpose**

- A pre-application meeting is an optional step in the pre-application process.
  - Use the time to review and clarify the *Application* process and timelines.
  - Help the applicant understand what is required to complete the *Application for Approach Permit* and what documentation will be required.
  - Advise applicants of opportunities for Region Review and Administrative Appeal of adverse decisions.
- 

**Who Initiates the Meeting?**

ODOT, an applicant, or the local government may request a pre-application meeting to discuss the approach *Application* process.

**Whom to Include**

- ODOT staff;
- Applicant and any additional parties of applicant's choosing for example, the applicant's attorney, a consulting traffic engineer, the property owner;
- As Needed: Local Government Planner or Engineer, representative of Special District or Utility Co., etc.

**What to Cover in the Meeting**

- The pre-application meeting may include, but is not limited to, discussion of:
- Applicant's expectations regarding:
    - The number, type, and location of proposed approaches,
    - The types of turn movements proposed.
  - Right of Access.
  - Possible need for a *Deviation*.
  - Possible need for *Mitigation*.
  - Additional information and documentation that may be required before a decision can be made.
  - The applicant should be also informed that no decision can be made before a complete *Application* and the required fee are submitted.
  - The applicant should also be informed that the timeline does not start until an *Application* is received.

**Responsibilities**

	<b>Applicant</b>	<b>Permit Specialist</b>	<b>District Manager</b>	<b>RAME</b>
<b>May Request Meeting</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>
<b>Determines Staff Attendance</b>			<b>X</b>	<b>X</b>
<b>Schedules Meeting (sets date, time, location)</b>		<b>X</b>		
<b>Notifies Parties</b>		<b>X</b>		
<b>Takes notes and records notes in applicant file and CHAMPS</b>		<b>X</b>		

## RECORDS

- A written summary of the discussion and any decisions or actions taken needs to be filed in the applicant file and in the notes section of CHAMPS.
  - A Pre-Application Meeting contact list is created for the applicant file that includes:
    - Names of attendees
    - Addresses and phone numbers
    - E-mail addresses where available
- 

### Customer Service Opportunities

Visual cues about what good access looks like are a good idea in a face-to-face meeting. Consider bringing examples of effective site designs or sketches to consider for the subject site. At a minimum, have a dry erase board, extra paper, or other materials that will encourage sketching ideas during the meeting.

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## Change of Use of an Approach: OAR 734-051-0045

### Introduction

*A Change of Use* creates the need to submit a new *Application for Approach Permit* for a permitted or otherwise legally existing approach. Determination that a Change of Use has occurred happens before an *Application* is received, and may be initiated by ODOT.

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### Process Initiated

- Any of the following events may trigger a *Change of Use* review:
    - The property owner/tenant/developer, may submit a new *Application* due to site plan changes;
    - A local government agency notifies ODOT of a land use change that may result in a *Change of Use* of an approach, such as a Comprehensive Plan amendment and/or Zone Change, site plan review, or conditional use permit; or
    - ODOT observes activities at a site that may result in a *Change of Use*.
- 

### Definition

*A Change of Use* occurs when actions or events initiated by a property owner result in an impact to the volume or character of the traffic using an approach that may result in an adverse safety or traffic operation impact on the highway.

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**Applicability**

- Change of use applies to existing private approaches under a valid Permit to Operate, and to grandfathered approaches. Public approaches are not affected by a Change of Use.
- When a change of use has occurred on a grandfathered approach, and the approach is subject to closure for a project or for other reasons before the *Application* required by the change of use is approved, the grandfathered status still applies for the purpose of appeal rights.

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**What Change of Use is Not**

- A *Change of Use* is not a type of approach or *Application*.
- A *Change of Use* as used here is not the same as a change in the land use, but rather a change in the traffic impacts on the highway of an approach that are caused by a new, modified, or intensified land use.

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**Staff Responsibility**

- District permitting staff reviews the facts of a situation, including any conditions that apply to the existing permit and the type and intensity of existing and proposed development at the site, to determine whether a *Change of Use* has occurred.
- The Region Access Management Engineer may provide guidance to District staff.

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**Identifying Change of Use Events**

ODOT staff needs to cultivate good working relationships with City and County government staff to ensure timely review of access management issues in all situations where a *Change of Use* may occur:

- Local government is required to notify ODOT of certain proposed land use actions that may result in a *Change of Use*.
- Some Jurisdictions require their applicants to post signs on land that has a land use issue currently under review.
- Other land use activities may not require notice to ODOT, so it is important to develop good working relationships with local government staff so they will know when to notify ODOT and property owners of situations that may result in approach permit issues.
- An example of a local decision that does not require notice to ODOT is a Lot Line Adjustment. ODOT Planning staff may be able to help you understand which decisions local planning staff can make administratively without formal notice to ODOT.
- Observations by ODOT field staff may identify changes of use where no notice of a pending land use action has been received.

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**Types of  
Change of Use  
Events**

The following events may result in a Change of Use:

- Change in the zoning designation or a plan amendment.
- Construction of new buildings.
- Increase in floor space of existing buildings.
- Division or consolidation of property boundaries.
- Changes in the character of the traffic using the approach.
- Changes in internal circulation design or inter-parcel circulation.
- Reestablishment of a property's use, where the use has been discontinued for two years or more.

---

**Zone Change  
or Comp Plan  
Amendment**

A zone change or comprehensive plan amendment by itself will usually not have section 0045 (2)(b) impacts, but it could. For example:

- A zone change for a property that is already developed would allow more intensive uses in existing structures without any further local development review.

Notices of zone changes or comprehensive plan amendments on land with existing approaches to the highway should be reviewed with consideration of whether or not a change of use occurs at this time, or whether it will be deferred to when there is an actual development proposal.

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**Zoning or  
Comp Plan  
Change of Use**

When it is necessary to decide whether a zoning or comprehensive plan amendment has created a change of use, consider the following:

- Zoning, and the comprehensive plan designation if it is different.
  - A “reasonable worst case” scenario, in other words using the most intensive probable use allowed by the zoning, is the safest approach.
  - The more information that is available about actual development plans, the better the assumptions will be for the analysis.
  - Compare the projected total impact of the allowed future uses to that of the original approval, prior conditions, and/or existing land use and zoning, to determine whether a change of use has occurred.
-

**Determining  
Change of Use**

Once staff is aware of a change that may result in a *Change of Use* of an approach, there are numerous resources and methods that can be used to determine whether a *Change of Use* has actually occurred:

- Site observation
- Maintenance staff reports
- Traffic impact analysis or study
- Field measurement
- Crash history
- Institute of Transportation Engineer Trip Generation Manual
- Information and studies provided by the local agency
- Tracking changes in land use (cumulative impacts). This is an under-developed tool for analysis that can be improved over time if we keep good records in CHAMPS.

**0045 (2)(b)  
Change of Use  
Thresholds**

When an event that may result in a *Change of Use* will have any of the following impacts on the state highway, a Change of Use has occurred.

<b>Impact</b>	<b>Threshold</b>	<b>Example</b>
(A) Site Traffic Volume Generated by the Use	<ul style="list-style-type: none"> <li>• Increases by more than 250 net new Average Daily Traffic (ADT), or</li> <li>• 25 net new peak hour trips</li> </ul>	A new land use increases the number of trips to the site compared to the number generated under the previous use.
(B) Operational Problems Occur or are Anticipated	<ul style="list-style-type: none"> <li>• Creates safety problems</li> <li>• Increases back-up onto the highway</li> <li>• Inadequate approach throat area creates congestion within the site</li> </ul>	Internal Traffic Pattern Change: Parking lot layout and circulation are changed and the approach width and throat length are inadequate.
(C) Sight Distance	<ul style="list-style-type: none"> <li>• The approach does not meet sight distance requirements</li> </ul>	Location of new structures or realignment of internal circulation reduces sight distance of vehicles entering roadway.
(D) Safety Factors Not Met (see also 0080 (9))	<ul style="list-style-type: none"> <li>• Roadway character</li> <li>• Traffic character</li> <li>• Geometric character</li> <li>• Environmental character</li> <li>• Operational character</li> </ul>	Decision to use existing approach is not consistent with the safety factors inherent in the current conditions of the roadway.

(E) Number of Large Vehicles Using the Approach	<ul style="list-style-type: none"> <li>Increases by 10 (or more) vehicles per day by vehicles exceeding 20,000 pounds gross vehicle weight</li> </ul>	A general service station adds refueling facilities for trucks or recreational vehicles.
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**When is it NOT a Change of Use?**

- Modifications in advertising, landscaping, general maintenance or aesthetics that do not affect internal or external traffic flow or safety.
- Buildout (completion) or redevelopment of an approved site plan or multi-phased development within the parameters of a Transportation Impact Study that is less than five years old and was certified by an Oregon Registered Professional Engineer. In other words, a PE concurs that the TIS still reflects the conditions originally considered when the TIS was approved by ODOT.

**Records and Notice**

- Create a record in CHAMPS in “Pre-application” status to document the facts and the process used to determine whether there is a *Change of Use*.
- If the facts don’t add up to a *Change of Use*, it is sufficient to notify the property owner or applicant by phone or in person that no *Application* will be required.
- When ODOT determines that there is a *Change of Use* of a permitted or grandfathered approach, the property owner is notified in writing that an *Application* must be submitted. This is done with a brief custom letter and the Attachment found in CHAMPS for Change of Use.

**Consequences of Not Responding to a Change of Use**

- If a *Change of Use* occurs and an *Application* is not submitted the existing approach permit becomes invalid.
- Non-compliance can result in closure and removal of the approach.

**Customer  
Service  
Opportunities**

A Change of Use situation can become very contentious. Be prepared to let property owners and developers know why it is important to update approaches when there is a *Change of Use*.

- Safety – A situation that has worked just fine up to now may not be safe for increased volumes of traffic. And other local changes can exacerbate the impacts. We are trying to make the highway safe for their clients.
  - Mobility – As with safety, over time there have to be opportunities to upgrade facilities to maintain mobility standards. The *Change of Use* event is the logical opportunity to reassess local conditions.
  - Research shows drivers prefer to shop and live in areas where traffic moves smoothly and where they are not constantly challenged by vehicles entering, crossing or braking to turn in front of them.
- 

## **Modification of an Approach**

**Definition**

A modification of an approach is a change to an approach which does not constitute a change of use and does not affect internal or external traffic flow or safety.

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**Examples**

Changes to an existing, permitted or grandfathered approach which do not affect internal or external traffic flow or safety and which do not trigger a Change of Use Threshold.

The following chart is an example of the difference between general maintenance, a modification, or change of use.

Maintenance	Modification	Change of Use
General maintenance <ul style="list-style-type: none"> <li>• Filling potholes</li> <li>• Cleaning culverts</li> <li>• Adding gravel</li> <li>• Striping</li> </ul> Changes to: <ul style="list-style-type: none"> <li>• Signage</li> <li>• Landscaping</li> </ul>	Changes to <ul style="list-style-type: none"> <li>• Approach width</li> <li>• Surface type</li> <li>• Radius</li> <li>• Use of site</li> </ul>	Changes to <ul style="list-style-type: none"> <li>• zoning designation or a plan amendment</li> <li>• new buildings.</li> <li>• floor space of existing buildings.</li> <li>• property boundaries.</li> <li>• character of the traffic.</li> <li>• internal circulation design or inter-parcel circulation.</li> <li>• use that has been discontinued for two years or more.</li> </ul>

**NOTE:** Any modification to a permitted approach that changes conditions on the permit requires a new *Application for State Highway Approach*.

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**Change of Use**      If a modification results in a Change of Use, a new *Application for State Highway Approach* must be submitted.

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**Unpermitted Illegal**

- Illegal approaches cannot be modified.
- If an approach is illegal (not permitted or grandfathered) it must be removed or permitted.
- Modifications of an illegal approach will not change the need to remove or permit such an approach.

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**Unpermitted Grandfathered**

- If an approach is grandfathered, and the modification triggers a Change of Use, an *Application for State Highway Approach* is required.
- If an approach is grandfathered and the modifications do not trigger a change of use, no *Application for State Highway Approach* is required.

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**CHAMPS**

The following are examples of how to update approach information in CHAMPS:

Current Permit in CHAMPS	Upermits Pre-CHAMPS Permits	Grandfathered Approaches
<ul style="list-style-type: none"> <li>• Clone CHAMPS file (See CHAMPS User Guide)</li> <li>• A new CHAMPS number will be produced</li> <li>• Update CHAMPS information</li> <li>• Issue Construction Permit</li> <li>• Issue New Approach Permit</li> </ul>	<ul style="list-style-type: none"> <li>• Complete CHAMPS file</li> <li>• A new CHAMPS number will be produced</li> <li>• No <i>Application for State Highway Approach</i> is necessary</li> <li>• Issue Construction Permit</li> <li>• Issue New Approach Permit</li> </ul>	<ul style="list-style-type: none"> <li>• Complete CHAMPS file</li> <li>• Record Grandfathered Status in CHAMPS (See User Guide)</li> <li>• A new CHAMPS number will be produced</li> <li>• Issue <i>Grandfather</i> letter CHAMPS Letter #50</li> <li>• <b>DO NOT</b> issue Construction Permit</li> <li>• <b>DO NOT</b> issue Approach Permit</li> </ul>

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**Construction Permits**

- A *Construction Permit* is issued for modifications of currently permitted approaches.
- A *Construction Permit* is not issued for modifications of *Grandfathered* approaches.

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**Permit to Use**

- A modified *Permit to Operate, Maintain and Use and Approach* is issued upon completion of the modification of a currently permitted approach.
- A Permit to Operate, Maintain, and Use an Approach is not issued for a grandfathered approach.

**Note:** A New *Application for State Highway Approach* is not required for a modification to a currently permitted approach or a grandfathered approach.

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**Miscellaneous Permits**

- A miscellaneous permit may be issued for modifications of grandfathered approaches.
- A miscellaneous permit may be issued for general maintenance, signage, or landscaping.

## Processing Applications

### Timelines: OAR 734-051-0070, et. al.

**Purpose**

The Rules set out timelines for most activities related to reviewing *Applications* and issuing Permits. Some are the responsibility of ODOT staff and some are the responsibility of the applicant.

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**120-Day Rule**

Division 51 includes a “120-day rule” for processing *Applications* which ensures accountability for making timely decisions.

- Actually, the 120-day time limit only applies to two parts of the *Application* review process – 60 days to reach an administrative decision and 60 days to complete appeals.
  - The 120-day rule is a very important target for maintaining an acceptable level of public service.
  - Our performance is judged by management and the legislature in large part based upon our effectiveness in meeting this target.
  - However, there are no prescribed consequences for failure to meet the 120-day time limit built into the rules or ORS.
  - Related case law suggests we can be compelled to get to a decision, but would not be compelled to approve an *Application* simply because we exceeded the 120-day time limit.
- 

**Receiving the Application**

- An *Application* is “received” when it comes in the door of the District office. *Applications* should be date stamped to document the received date.
  - An *Application* that is not accepted when first submitted may have more than one “received” date until an acceptable *Application* is received.
-

**Accepting the Application**

An *Application* should be accepted as soon as possible after it is received. The earlier Division 51 rules set a ten-day time limit on accepting *Applications* and that length of time is a good target for maintaining good customer service.

An *Application* will not be accepted when:

- There is no right of access (see “Rights of Access,” below).
- The proposed approach is on a freeway, a freeway ramp, or an expressway ramp, or where an approach would be aligned opposite a freeway or expressway ramp terminal.

NOTE: The last condition, an approach that would be aligned opposite a ramp terminal, only applies to NEW approaches. We will still accept *Applications* for a Change of Use or other circumstance that would require revisiting an existing approach located opposite a ramp terminal. This is an interpretation supported by DOJ.

**Note:** Under no circumstances shall an ODOT employee accept and process their own application or an application of a co-worker. See *ODOT’s Conflict of Interest Policy, PER 01-02-02*.

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**Where a Grant of Access is Needed**

Time spent processing a *Grant* request does not effect our timelines. Depending upon the complexity of the situation, review of a *Grant* request and the transactions to complete an approved request may take up to 365 days.

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**Where an Indenture is Needed**

Time spent processing an *Indenture* request does not effect our timelines. Depending upon the complexity of the situation, review of an *Indenture* request may take up to 60 days to complete.

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**Deeming the Application Complete**

Once an *Application* is accepted, OUR CLOCK IS RUNNING. Staff has 30 days to determine that the *Application* can be deemed complete, or that supplemental information will be required.

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**Request for Supplemental Information**

- If, within the 30-day period to determine whether the *Application* is complete, it is found that supplemental information is required, CHAMPS Letter #07 or #77 is sent to let the applicant know what additional information is needed. Once the letter is mailed, OUR 30-DAY CLOCK STOPS.
- The applicant has either 60 days from the date of the letter or 90 days from the date the *Application* was accepted, whichever is longer, in which time supplemental items must be submitted, or an extension of time agreed to.

**NOTE:** Deeming an *Application* complete when there are outstanding items due from the applicant is ill advised. If an applicant cannot get materials finished on time, offer them an extension of time to complete their work off of our clock. Once the *Application* is deemed complete, we are under a time constraint to get to an administrative decision. Starting the clock prematurely could result in unwise approvals, unnecessary denials, or procedural problems that can result in successful appeals.

**Review and Decision**

OUR 60-DAY CLOCK TO REACH AN ADMINISTRATIVE DECISION STARTS ON THE DAY THE APPLICATION IS DEEMED COMPLETE.

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**Appeal Period**

OUR CLOCK STOPS ON THE DATE A DECISION LETTER IS ISSUED.

- At that point, the applicant has 21 days from the date the decision is mailed to request a Region Review or an Administrative Appeal.
  - If the request is not received within the 21 days, the right to a Region Review or Administrative Appeal is void.
  - A request for Region Review does not waive the right to a later Administrative Appeal.
- 

**Region Review**

During the time it takes to set up and conduct a Region Review, there is no set timeline, except:

- Once the review has been done, WE HAVE 21 DAYS TO ISSUE A DECISION FROM THE REGION, including the Region Manager's signature.
  - The applicant then has 21 days from the date the Region decision is mailed to request an Administrative Appeal.
-

<b>Administrative Appeal</b>	<p>On the date a request for Administrative Appeal is received by the Administrative Hearings Board, OUR 60-DAY CLOCK TO REACH A FINAL DECISION STARTS.</p> <ul style="list-style-type: none"> <li>• The timeline can be extended if the applicant agrees to a suspension of the 120-day rule.</li> </ul>
<b>Post Decision Review</b>	<p>Post Decision Review is an opportunity to negotiate details of plans or consider new information relating to an <u>approved Application</u>, and is not subject to any timelines in Division 51.</p>
<b>Request for Construction Drawings</b>	<p>The <u>applicant</u> has 60 days to submit construction drawings when the standard drawings are not being used.</p>
<b>Review Construction Drawings</b>	<p>The technical review of construction drawings submitted by an applicant is not subject to any timelines in Division 51.</p>
<b>Request for Insurance and Bond</b>	<p>The Preliminary Construction Specifications letter will include notice that the <u>applicant</u> has 60 days to submit proof of required insurance and any required deposit or bond.</p>
<b>Construction Permit</b>	<p>Getting to Issuance of a construction permit is not subject to any timelines in Division 51. The <u>applicant</u> is subject to the effective period specified on the <i>Construction Permit</i> and must request an extension of time if construction cannot be completed on time.</p>
<b>Issue Permit to Operate and Maintain</b>	<p>The <u>applicant</u> has a responsibility to advise ODOT when construction is complete. However, it is not unusual for applicants to neglect to do this. Inspection may be done whenever staff in the field observe that work is complete, or once the time period for the permit ends.</p> <ul style="list-style-type: none"> <li>• When the inspection finds deficiencies, the <u>applicant</u> has 60 days to correct them.</li> <li>• When the inspection finds that the approach has been constructed to specifications, the Permit to Operate and Maintain will be issued. No time period is specified.</li> </ul>

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**Customer  
Service  
Opportunities**

- While ODOT is not under time constraints at many points in the approach permitting process, the intent of the “120-day rule” is to maintain accountability for the length of time required to reach decisions.
  - At other times, when the timing is under our control, it is important to keep things moving along as quickly as possible to demonstrate a commitment to customer service and to support economic development.
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## **CHAMPS**

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**Introduction**

CHAMPS, the Central Highway Approach/Maintenance Permitting System, is an integral part of the *Application for State Highway Approach* process. Detailed information on CHAMPS is located in Volume 3 of the **Access Management Manual**.

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**Definition**

CHAMPS is ODOT’s permit tracking program with associated data bases. The purpose of CHAMPS is to manage the information related to approach road *Applications* and the access permits issued by ODOT.

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**Purpose**

- CHAMPS helps District, Region and statewide staff through the *Application* process by generating:
    - “Alerts” that advise the appropriate individual(s) about time-sensitive tasks required to complete the *Application* process;
    - Appropriate form letters for required correspondence that advise the applicant of the status of the review process.
    - A data source for Region Reviews and Contested Case Hearings.
    - A data source for generating reports from cumulative data.
-

**What  
CHAMPS Does**

- When an *Application* is processed to determine if a permit can be issued or not, CHAMPS aids in the processing of the *Application* and the determination whether or not an approach can be permitted.
  - If an approach can be permitted, the system is used to issue the permit.
  - Data and formulas needed to process approach *Applications* are built into CHAMPS.
  - The system has interfaces to other ODOT data bases for quick reference.
- 

**What  
CHAMPS  
Does Not Do**

This system does not deal with the other kinds of permits issued by other business areas of ODOT, such as commercial signs and over-height-over-weight transportation permits.

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**Records**

- Information recorded in CHAMPS during the *Application* process needs to be timely:
  - Every applicable file status should be recorded in sequence and in a timely manner. Skipping steps can result in unfavorable reports even when we are doing good work.
  - The alert features depend upon maintaining current records.
  - Keeping the *Application* information current throughout the *Application* process is the best way to get to defensible decisions and generate favorable reports.
- Thorough CHAMPS records result in the best available information to be shared within ODOT at all levels of the permitting process:
  - Permit Specialists
  - TEs with Approach Permitting Responsibilities
  - Region Access Management Engineers (RAMEs)
  - District and Region Managers
  - Access Management Appeals Coordinator
  - And others.
- CHAMPS records allow reports to be generated to support the program, such as:
  - Current and future staffing needs;
  - Future funding requirements.
- CHAMPS records and reports will only provide meaningful performance review of the Access Management Program for the Director and the Legislature if CHAMPS records reflect all of the work that goes into *Application* review and decisions.

# Preliminary Review

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**Introduction** The Permit Specialist is encouraged to perform a Preliminary Review whenever possible.

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**Purpose**

- To obtain necessary information for the right of way research, e.g., an engineering station or accurate mile point.
- To assess the potential complexity of the approach request.
- To provide guidance to other staff involved in the *Application* review.

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**Staff Requirements**

- The Permit Specialist will conduct the preliminary review in most cases.
- Include other staff qualified to evaluate potential safety, traffic control, operations, roadway design, site design, spacing requirements and drainage concerns as needed.

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**Preliminary research** Preliminary research typically includes taking note of potential problems with any of the following:

- Sight distance.
- Spacing standards. (Is a *Deviation* required?)
- Approach road (public street or driveway) volumes.
- Types of trips generated by the development (e.g. percentage of autos, large trucks).
- Projected distribution of types and volumes of trips over the course of the day.
- Volume and characteristics of highway traffic.
- Highway speeds.
- Whether the area is urban or rural.
- Need for a signal or other traffic control.
- Site circulation issues including:
  - Will internal site circulation require use of the public road or street? (Is the lot size adequate for the proposed development?)
  - Will the approach design provide adequate throat width, length and profile grade?
- Site drainage issues.

---

**Records**

A written summary of the Preliminary Site Review should be completed and filed in the applicant file with any key issues noted in the *Notes* section of CHAMPS:

- To provide all interested CHAMPS users with access to the site information.
  - To advise other staff involved in related research and decision making of the facts on the ground.
  - To support an outcome that is a defensible decision.
- 

**Customer  
Service  
Opportunities**

It may become apparent that the applicant's ideas are not compatible with ODOT requirements. Engage the applicant. You may be able to point out safety concerns and ask leading questions that will help the applicant come up with a better plan.

# Application for State Highway Approach

## Procedure Summary

- Introduction**      An *Application for State Highway Approach* is required:
- For a new approach to a state highway;
  - When a *Change of Use* occurs, as set forth in OAR 734-051-0045;
  - For a Temporary Approach to a state highway; or
  - For a Restricted Use Approach to a state highway.
- 

- The Application Form**      The *Application for State Highway Approach* must be completely filled out and submitted with the following items:
- A site plan;
    - A site plan for an urban commercial or other large development may include a full set of site and construction plans.
    - A site plan for a small residential or rural commercial development may be a simple site sketch, which is acceptable if it includes all of the relevant information identified on the back page of the *Application* form.
  - Written evidence of concurrence by the owner when the applicant is not the property owner;
  - An administrative fee (see “Administrative Fees,” below);
  - The information listed on the front of the *Application* Form or requested in support of the answers to certain questions on the form, and
  - Any other information about the site, the highway and the surrounding area necessary for the Department to determine whether the *Application* can be deemed complete.

## Accepting an Application

- Policy**      An *Application for State Highway Approach* should be *Accepted* or returned to the applicant within 10 days of submittal. However, this is no longer a specific requirement in the Rules.
- 

- Accepting an Application**      An *Application* can be *accepted* only when the *Application* contains sufficient information for the Department to determine whether the *Application* can be deemed complete. See OAR 734-051-0070(4)(c).

---

**When an  
*Application*  
CANNOT be  
accepted**

**0070 (4)(a)**

An *Application* cannot ever be accepted when the request is for an approach to:

- A freeway;
- A freeway ramp;
- An expressway ramp; or
- Where a new approach would be aligned opposite a freeway or expressway ramp terminal.

NOTE: When an *Application* cannot be accepted, issue CHAMPS Letter #69.

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**Incomplete  
*Applications***

**0070 (4)(c)**

- Any *Application* received with insufficient information for the Department to determine if the *Application* can be deemed complete is returned to the applicant, along with the application fee check.
- The CHAMPS status should be set to *PENDING* with a status reason identified and a more detailed reason placed in the notes.

NOTE: When the *Application* is incomplete, use CHAMPS Letter #03.

---

**Timelines**

ODOT must:

- Accept an *Application* or return the *Application* to the applicant within a reasonable time (within 10 days of the date of submittal is the target timeline); and
- Within 30 days of the date the *Application* is accepted, ODOT must determine whether an *Application* is *deemed complete* or what, if any, supplemental documentation is required. *See* OAR 734-051-0070(5).

**Records**

Create the CHAMPS file if it does not already exist and enter the appropriate status.

---

## Administrative Fees: OAR 734-051-0070(4)

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**Introduction** An administrative fee is required for each approach requested and must be received before the *Application* will be *Deemed Complete*.

---

**Basis for Fees** The charge to review an *Application* is an administrative fee based upon the following:

- The land use(s) proposed for the subject property:
  - The combined land uses for a new approach or a change in use where the former uses are no longer present; or
  - The new trips associated with redevelopment or a *Change of Use* where the uses allowed under the previous permit are still present.
- For public approaches, the fee will be based upon trip rates determined by a Traffic Impact Study. Note that public approach *Application* fees may be waived, as discussed further in the “Fee Waivers” subsection at the end of this Section.
- Established engineering assumptions about the volumes and characteristics of traffic generated by such uses; and
- The assumption that the greater the volume and complexity of traffic to and from the site, the more complex the analysis and review of the *Application* will be.

---

**Fees for Change of Use With No Increase in Trips**

- For an existing approach we will charge the minimum fee, \$200.00.
- For a new approach we will use the “Other” fee category and charge a fee based upon the ADT projected to use the new approach.

---

**Table 1** Adopted and made part of OAR 734-051-0070

Vehicle Trips per day	Amount of Fee
-----------------------	---------------

<b>First approach</b>	
29 or fewer	\$ 200.00
30 to 99	500.00
100 to 599	1000.00
600 to 2,999	2000.00
3,000 to 5,999	3000.00
6,000 to 9,999	4000.00
10,000 or more	5000.00
<b>For each additional approach</b>	
29 or fewer	\$ 80.00
30 to 99	200.00
100 to 599	400.00
600 to 2,999	800.00
3,000 to 5,999	1200.00
6,000 to 9,999	1600.00
10,000 or more	2000.00

**Calculating and Collecting Fees**

Fees should be collected as early as possible in the process of receiving/accepting/deeming the *Application* complete:

- The fee for one single-family dwelling or manufactured home, a Temporary Approach, a Restricted Use Approach or a Farm Field approach will be the minimum fee from Table 1 of Division 51, or \$200.00, and should be collected when the *Application* is submitted.
- All other fees will be determined by using the fee calculator in CHAMPS, which uses a method developed by ODOT that is based upon the Seventh Edition Institute of Transportation Engineers (ITE) Trip Generation Manual, and the land uses proposed for the subject property.
- Some land uses may not seem to fit into the list of uses included in the fee calculator. Use the “Land Use Categories for Fee Calculation” list below to see how other land uses fit into the fee categories.
- For land uses that do not fit into the fee categories, an ADT must be estimated for the use and entered as a basis for a fee. This must be confirmed by the RAME. Rarely should you need to use the ADT method to calculate a fee.
- The *Application* cannot be *Deemed Complete* until the full fee is paid.
- The CHAMPS Fee Calculation letter is #72.

## Land Use Categories For Fee Calculation:

- Background** This is not an exhaustive list, but includes most typical land uses as well as uses listed as “other” in CHAMPS over the last several years. If a use does not appear to fit into any category, consult with the RAME before initiating the process of either the applicant or staff determining ADT.
- Residential**
- Single-Family Detached Housing / Manufactured Home
  - Apartment Building / Condominium
  - Retirement Community / Elderly Housing
  - Congregate Care Facility / Group Home / Assisted Living Facility
  - Recreational Homes
  - Residential Planned Unit Development
  - Recreation Subdivision (to be treated just like a standard subdivision unless conditions of local planning approval clearly limit occupancy periods, and a TIS is submitted that establishes ADT)
  - Uses that are considered accessory to Residential Uses such as:
    - Home Occupation carried out inside residential buildings
    - Residential Day Care (as defined by the Oregon Employment Division)
- Office**
- General Office Building / Corporate Headquarters
  - Office Park / Business Park
  - Government Office Building
  - Post Office / City Hall / County Courthouse
  - Civic Center
  - Research Center
  - Office for Contract Services that do not include outside storage of materials or equipment, such as:
    - Landscaping / Pool Service
    - Stockbroker / Insurance Agent / Attorneys
    - Real Estate / Lending Agency
    - Rafting Guide Business
- Medical / Dental Office**
- Private Practice Medical Office
  - Private Practice Dental Office
  - Neighborhood Clinic
  - Urgent Care Clinic
  - Veterinary Clinic or Hospital
- Medical**
- Hospital
  - Nursing Home
  - Clinic / Group Practice

**Institutional**

- Public and Private Schools
- University / College / Community College
- Day Care Centers, except Residential Day Care
- Church / Synagogue / Mosque / Temple
- Court / Justice Facility / Jail / Prison
- Museum /Public Gallery
- Library
- Fire Station
- Community Hall / Lodge / Grange / Fraternal Organization
- Cemetery
- Military Facility

**Recreational**

- City, County, State or National Park, Monument or Wayside
- Golf Course / Miniature Golf Course / Driving Range
- Sports Fields / Batting Cages
- Fitness Center / Athletic Club / Tennis or Racquet Club
- Multi-Purpose Recreational Facility
- Skating Rink / Arena / Bowling Alley
- Movie Theater / Live Theater / Cabaret
- Auto Racetrack / Dog or Horse Track
- Marina / Boat Ramp / Waterslide Park / Beach Park
- Amusement Park / Zoo
- Theater including Drive-In Theater
- Stadium / Race Track
- Campground / Organizational Camp / Recreational Vehicle Park
- Tennis Courts / Racquet Club / Golf Course

- Retail**
  - General Merchandise / Shopping Center
  - Specialty Store / Apparel / Gifts / Furniture / Electronics / Books
  - Toys / Children's Store / Pet Store / Arts and Crafts Supplies
  - Building Materials / Hardware / Paint / Lumber / Home Improvement
  - Pharmacy or Drugstore, With or Without a Drive-up Window
  - Discount Store / Factory Outlet Store(s)
  - Casino not including Hotel
  - Plant Nursery / Garden Center
  - Restaurant other than Fast Food / Drinking Establishments
  - Auto Sales / Auto Parts Sales / Tire Store
  - Motorcycle Shop
  - Auto Glass Shop
  - Supermarket / Grocery Store / Discount Grocery Store
  - Wholesale Market / Discount Club
  - Video Arcade / Video & DVD Rental Store
  - Farm Stand / Other Sales to the Public of Farm Products
  - Pet Grooming / Travel Agent / Insurance Agent / Other Services
  - Cabinet Shop / Clock Repair / Appliance Repair
  - Mortuary
  - Offices for Contract Services that include outside storage of materials and equipment or on-site storage facilities
  
- Fast Food**                      With or Without Drive-Up or Drive-Through Window
- Restaurant**
- Gasoline**                      Gas Station With or Without Convenience Market or Fast Food
- Service Station**
- Convenience**                Stand Alone Market, not part of Gas Station
- Market**
- Espresso Stand**            Drive-up Window Coffee, Other Beverages, Snacks
  
- Services**
  - ATM Machine / Drive-in Bank
  - Walk-in Bank / Savings and Loan
  - Stockbroker
  - Lending Agency / Real Estate
  - Insurance Building
  - Restaurants (excluding Fast Food)
  - Quick Lube / Car Wash (automated or self-service)
  - Auto Care Center / Auto Parts and Service Center
  - Truck Stop
  
- Lodging**
  - Hotel / Motel / Resort Hotel

**Industrial /Agricultural by Floor Area**

- General Light or Heavy Industrial / Industrial Park
- Manufacturing / High Tech Industrial
- Warehousing / Indoor Storage / Mini Storage
- Winery
- Mink or Chinchilla Farm / Other Indoor Animal Husbandry
- Kennel, Animal Rescue Facility (ASPCA, Dog Pound)
- Home Occupation in Building Other Than Residential Dwelling or Garage

**Industrial / Agricultural by Acreage**

- Construction / Other Contracting Business including Heavy Equipment and Materials Storage
- Utility Facilities Including but not limited to:
  - Power Generation Facility
  - Refuse / Recycling / Transfer Station
  - Sewage Treatment Plant
- Aggregate Source / Quarry / Crusher Facility
- Outdoor Storage Including but not limited to:
  - RV Storage / Equipment Storage
  - Park and Ride / Overflow Parking
  - Motor Pool / School Bus Barn

**Public Approach**

To serve Multiple Properties and Connected to the Local Street Network, for example:

- New Subdivision

**Temporary Approach**

- Temporary Construction Approach
- Temporary Haul Road
- Temporary Auction Site
- Disaster Recovery Project
- Some Logging Roads (see below)

**Restricted Use Approach**

- Electrical Substation
- Cell Tower not sited on state right of way, and if approach is used only for tower facility maintenance. Otherwise, approach needs to be adequate to serve full buildout potential for entire property, and fee calculated accordingly.
- Pump Station / Wellhead / Monitoring Wells
- Municipal Utilities / Pipeline Access Road
- Fish Ladder / Irrigation Canal Access Road
- Some Logging Roads (see below)

**Farm Field  
(does not  
include product  
sales to the  
public onsite)**

- Field / Pasture Land / Crops
- Logging Road for ongoing Forest Management (see below)
- Tree Farm / Vineyard
- Production Plant Nursery
- Livestock including Feedlot / Dairy / Other Large Animal Husbandry
- Stables / Corrals / Riding Arena
- Barkdust / Compost / Soil Storage,

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**END OF LAND USE LIST**

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**Fees for  
Logging Roads**

Logging Roads appear in three use categories above. In general terms, the distinguishing characteristics for determining what type of permit to require include:

- Temporary – Typically a harvest road that can be removed after a limited duration of time.
- Restricted Use – For only occasional management.
- Farm Field – For ongoing forest management, e.g. a tree nursery or experimental forest.
- A Forest Service or Bureau of Land Management road will typically require a permanent approach. Even when gated, USFS/BLM gates are left open seasonally for weeks at a time and may be used for private access, recreation, watershed management, utility maintenance, and seasonal wild-crafting in addition to forest management.

---

**Fees for Mixed  
or Multiple  
Uses**

Some uses require more than one use to be entered into the fee calculator. The best information to have is the square footage (or acreage as applicable) for each distinct use. For example:

- A Casino will almost always include a restaurant. Many have hotels, gift shops, health clubs, overnight RV parking, and other services as well. The ITE puts them under “Recreational” but when the other ancillary uses are considered, they look more like retail or mixed uses. They are also big trip generators when successful, so be sure that the fee reflects a realistic ADT for a successful venture.
- A Truck Stop is a combination of several uses. The basic uses all fall under the ITE Seventh Edition “Service” category, e.g. service station, restaurant, and mechanic services. But they also often have retail, lodging and overnight camping components.
- A Planned Unit Development may be all commercial or all Residential, but it may also combine these and other uses.

**Fees for Multi-Phase Development**

When calculating a fee for a multi-phase development, consider the whole project, but consider also when subsequent phases will be built:

- Approaches should be sited and designed to serve the project at full build-out.
- If the uses of later phases of the project are not known, a TIS anticipating a reasonable worst case scenario will probably be necessary.
- A judgment call that may be needed is whether there is sufficient development pressure in the area to indicate that subsequent phases will actually be built within the current local or state facility planning horizon.
- When in doubt, consult the RAME.

---

**Submitting Fees to be Deposited**

When you receive the *Application* administrative fee, restrictively endorse stamp (For Deposit Only) on the back of the check, package together the check and a copy of the *Application* and/or a printout of the General Tab from CHAMPS (preferred), and send to:

Access Utility Permits  
Office of Highway Maintenance  
800 Airport Rd SE  
Salem OR 97301-4798

**Office Phone:** (503) 986-3031

**Fax:** (503)986-3032

Division/Section: **Unit/District:** Access & Utility Permits

**Crew:** 7836

Fees collected stay in ODOT's budget, in a Highway Division general revenue account. The proceeds are used to fund access management positions. Approximately 50% cost recovery is achieved.

---

**Returning Fees  
with Unaccepted  
Applications**

If an *Application* cannot be accepted, the applicant gets a full refund.

- If a fee was received with the *Application*, usually the original check can be returned with the returned *Application* materials.
- If the check has been deposited:
  - There is a refund field in CHAMPS that will alert Financial Services that a refund is owed.
- Contrary to access management folklore, Financial Services does not need a photocopy of the original check to ensure that the refund will be payable to the correct person. However, you are encouraged to keep a photocopy of the check in the *Application* file to cover all the bases if there is a problem somewhere else in the process.
- If no fee has been received, there will be no charge when an *Application* cannot be accepted.

NOTES: . AN APPLICATION WITH A CHECK ATTACHED MUST BE KEPT IN A LOCKED DRAWER WHEN NOT IN USE. A check should usually be kept with an *Application* until it is known whether the *Application* can be accepted for review. However, keeping a check more than 24 hours after it is received is inconsistent with Department policy for other receipts. Consequently, it is strongly recommended that an *Application* be reviewed for acceptability as soon as is reasonably possible, and no more than 10 days after it is received.

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## Refunds and Adjustments

- 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 0070 (6).
  - Before processing a refund, try to be sure that the applicant will not be applying for a *Grant* or *Indenture*. The time period to apply for a *Grant* or *Indenture* is the same as the time allowed for *Supplemental Information*, except where an extension of time is agreed to, and after which the *Application* expires and a refund may be processed.
  - Where the Department determines that the administrative fee was miscalculated at the time the *Application* was submitted, any additional administrative fee that is due must be paid prior to deeming the *Application* complete. Any excess administrative fee submitted will be refunded by the Department (not necessarily before the *Application* is deemed complete – refunds take a while to get paid out).
  - If a fee is accepted by mistake, a refund may be issued, as appropriate, if authorized by the Region Manager. Situations may include:
    - a use that is subsequently determined not to be a change in use,
    - previous conditions, and/or
    - too much money was received initially.
  - The reasons for any refund must be documented in writing and maintained in CHAMPS or the hard copy application file.
  - Once the *Application* is deemed complete, the fee is set and will not be adjusted. If, after the *Application* is deemed complete, the applicant makes significant changes to the proposal that would have resulted in a higher fee, ODOT may require a new, revised *Application* to be submitted with the additional fee amount. Consider the following:
    - If the increase in trips doesn't make a significant difference in how the review of the *Application* will be conducted, we will typically absorb the additional cost.
    - When the increase in trips is large enough to truly change the character of the approach or its impacts, the rules allow us to require the applicant to start over with a new application.
  - It is not the intent of the rules that we would refund any part of a fee for an *Application*, approval, or permit that is expired, voided, or cancelled, respectively. In the event such a refund seems appropriate, it would be the Region Manager's decision to allow it.
  - Fee calculations cannot be appealed.
-

## Fee Waivers

- The Deputy Director or the Region Manager may waive the administrative fee requirements if a local jurisdiction requests a new approach or modification of an existing approach during ODOT project development, including OTIA projects being built by local governments.
  - Where required *Mitigation* measures are for the benefit of a local jurisdiction, the Deputy Director or the Region Manager may waive the administrative fee requirements.
  - Responsibility for granting a waiver cannot be delegated.
  - The reasons for any fee waiver must be documented in writing and maintained in the CHAMPS or hardcopy application file.
  - Fee waiver decisions are not appealable.
- 

## No Fee Required

- An administrative fee is not required for construction or reconstruction of an approach by ODOT or its contractor as part of Road Improvement, Highway Or Interchange Construction, Or Reconstruction, Modernization, Or Other Roadway Or Interchange Project, including OTIA projects being constructed by local governments.
  - An administrative fee is not required for an *Application* for a shared use approach under certain circumstances, per section 0070 (4)(d)(F), as follows:
    - When an applicant applies for two approaches at the same time and one of them is for a shared use approach, there is no fee for the shared approach.
      - The idea is that developers who think they need more than one approach to their project will be motivated to consider whether they can use shared approaches to reduce the net impacts on the highway.
      - Depending on the location and configuration of the development property, they might in fact be able to create shared approaches in more than one place.
      - If the net increase of approaches on the highway is one, we only charge for one approach.
      - The rule does not extend this provision to a situation where the only approach is a shared approach. The thinking here is that at least one initial fee is needed to recover the costs of handling the *Application*.
-

- Other Charges**
- Deposits required for Temporary and Conditional Approved approaches built before local land use approval is complete require deposits to ensure removal, discussed in the related sections below. (Where these fees are involved, Access Management fees still apply).
  - Fees for *Grant* and *Indenture* applications are handled differently and will be discussed in their respective sections, below.
  - When a *Grant* is approved, the applicant will also pay for an Appraisal and for the appraised value of the *Grant* (discussed further below).

- Records**
- Calculate the appropriate fee in CHAMPS and enter the fee amount on the front of the *Application* form.
  - Enter fee in CHAMPS when received, and submit for deposit as described above.
  - PHOTOCOPY THE CHECK AND PUT THE COPY IN THE FILE.
  - Enter refund info in CHAMPS when necessary and generate email requesting the refund.

## Research

### Right of Way Research

**Purpose** The Right of Way section maintains records pertaining to the use of the public right of way. Right of Way research is an essential step in reaching good decisions for approach permitting. Research will turn up information on access rights and other conditions at the approach site.

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**Applicant's Responsibility** A tax lot map is required with an *Application*. The applicant is asked to mark the specific tax lot(s) to be served by the approach on the tax lot map.

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**Staff Responsibility**

- Submit the tax lot map that was received with the *Application* to Right of Way either electronically or by fax. Right of Way will not research the access rights until this tax lot map is received.
- If you have done a preliminary on-site review, the information from the review will be valuable for the right-of-way researcher.
- Include wherever possible the correct engineering station and accurate mile point.

---

**Research Results**

Right of Way Research will determine, to the extent records are available:

- Whether there is existing Access Control at the property;
- Whether there are existing *Reservations* of access;
- If the property has been partitioned or subdivided since the original acquisition of access rights
- Right of Way only has access to original acquisition files and tax lot maps other information such as easements may be obtained through a title report.

**NOTE:** It is helpful to have the above information on surrounding parcels, too. Information concerning adjoining property is useful in evaluating whether the property can be served through an existing approach, or whether it would be landlocked if the *Application* were denied.

**No Right of Access**

If no right of access exists at the location of the requested approach the applicant may submit an *Application* for a *Grant* of Access or an *Application* for an *Indenture* of Access except on a freeway. (See “*Grant*” and “*Indenture*” sections below.)

**Timelines**

ODOT must notify the applicant that an *Application* for a *Grant* of Access or *Application* for an *Indenture* of Access must be submitted within 60 days of the date of notice of the need for supplemental documentation ( within 90 days of the date received, whichever is longer), or an extension of time agreed to, or the *Application* expires.

- An *Application* for a *Grant* of Access or *Application* for an *Indenture* of Access must be submitted and processed concurrently with an *Application for State Highway Approach*.
- Submittal of an *Application* for a *Grant* of Access or *Application* for an *Indenture* of Access stays the 60-day timeline for review and staff decision of an *Application for State Highway Approach*.
- 

**Next Steps**

<b>Step</b>	<b>Action</b>
If a right of access exists	Proceed with the on-site review if needed, and review of the <i>Application</i> .

<p>If there is no right of access, and the site is on any of the following: a freeway, a freeway ramp, or an expressway ramp, or where an approach would be aligned opposite a freeway or expressway ramp terminal [ subsection 0070 (4)(a)].</p> <p>NOTE: The last condition is interpreted to mean that no <i>Application</i> for a NEW approach opposite a ramp terminal may be accepted. We will still accept <i>Applications</i> for change of use or otherwise for an existing approach.</p>	<p>The <i>Application</i> cannot be accepted. Return the <i>Application</i> and the check if one was received with the <i>Application</i>. (CHAMPS Letter #05)</p>
<p>If there is no right of access, but the rules do not otherwise preclude us from accepting the <i>Application</i>.</p>	<p>Notify applicant through CHAMPS Letter #05 of the applicable <i>Grant</i> or <i>Indenture of Access</i> process.</p>
<p>If applicant with no right of access wishes to proceed</p>	<p><i>Application</i> for a <i>Grant</i> of Access must be completed and submitted to the District office with the original <i>Application for State Highway Approach</i>.</p>
<p>If applicant wishes to move, realign or significantly modify an approach at a <i>Reservation</i> of access</p>	<p><i>Application</i> for an <i>Indenture of Access</i> must be completed and submitted to the district office with the original <i>Application for State Highway Approach</i>.</p>

**Tracking ROW  
Impacts of  
Permit  
Conditions**

Acquisition of Right of Way and other conditions of approval of approach permits may be noted on ROW maps in the District offices.

# Rights of Access

## Introduction

A right of access is the right to enter and leave the roadway, and includes a common law right of access, *Reservation* of access, or *Grant* of access. Common law rights of access include grandfathered approaches and abutters' rights. An approach permit may only be granted where there is a right of access by virtue of one of the sets of circumstances discussed in this Section.

## Types of Access Rights

- An existing Right of Access will have been established in one of the following ways:
  - A grandfathered approach is one that has been in existence and in continual use with no change of use since before ODOT started regulating approaches to state highways (1949 or earlier). Other approaches may be granted "grandfathered" status by the 2004 Rules under circumstances described below.
  - An abutter's right is a right of access that exists by virtue of a property abutting the highway in a location that is not otherwise access controlled. (Access Control may not show up on deeds where Access Control was established by law when there was a realignment of a highway onto new right of way after 1951.)
  - A Reservation of access is a location in an otherwise access-controlled area reserved to allow access across the Access Control line at that specific location.
  - An Indenture is an approved change to a *Reservation* or *Grant*.
  - A Grant of access is a right to cross an Access Control line at a specific location that has been applied for, found to be safe, and purchased at fair market value by the property owner.
- All of the above issues are discussed at further length under their respective subsection headings, below.
- There is no abutters right of access on a freeway, and there is generally no abutter's right on a new highway or entirely new alignment of a section of an existing highway.

---

## Applicability

This Section discusses Rights of Access and different statuses of existing approaches, and how each approach situation is treated under two different sets of circumstances:

- The first is the review of an *Application* for an approach permit.
  - The second is the property owners' options when we close an approach.
-

## Closure Options

- One question is whether an owner has appeal rights if ODOT makes a decision to close an approach.
  - The second is whether or not the situation is one that might qualify the property owner for “SB86 Remedies.”
    - *Remedies* are enabled under ORS 374.313.
    - SB86 Remedies allow ODOT the discretion to spend money to address issues related to real property approach rights under certain circumstances.
    - Remedies are voluntary on the part of ODOT and Right of Way initiates and administers a Remedy offer.
    - Basically, a Remedy is possible when we close a permitted approach or deny an *Application* at a *Reservation*.
- 

## Easements

### An Easement Does Not Establish a Right of Access

- Easements are typically private agreements between a property owner and another party granting the second party the right to enter or travel across the property, often for specific purposes and/or for specific persons.
  - Easements do not by themselves convey a right to 1) leave the property to enter the public right of way or 2) leave the right of way to enter the property.
- 

### Easement May Establish a Right to Apply for an Approach Permit

- Where there is no Access Control, an easement across an abutting property creates an abutter’s right to apply for an approach.
  - Where there is Access Control and no *Reservation*, the easement holder would have to get approval of a *Grant* of access.
  - Where there is a *Reservation* of access, if the *Reservation* does not specifically provide access to the easement holder’s tax lot, the easement holder would need to apply for a *Grant* of access.
  - If the *Reservation* includes a right of access for the easement holder’s tax lot, the easement holder may apply for an approach, but only at the location of the *Reservation*. If the *Reservation* is not at the location of the easement, the easement holder may apply for an *Indenture*, with the cooperation of the underlying property owner.
  - If an approach cannot be approved at the location of the easement, negotiating a new easement location with the underlying property owner is the responsibility of the easement holder.
-

**Easements  
Where There is  
Alternate  
Access**

If the property over which the easement exists (the burdened property) has an existing approach on the highway, that approach will be considered alternate access for purposes of reviewing an approach *Application* at the easement location.

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**Existing Shared  
Approaches at  
Easement  
Locations**

- For a shared approach, all properties and owners who have a right to use the approach need to have recorded easements monumenting that right.
  - Each user also needs to be included as a user in the conditions of the *Grant* or *Reservation*, or will need to apply for a new *Grant* to be added as a user.
  - Once a shared approach is established, changes to the approach conditions should be considered in light of the following:
    - For a request for a new approach that would leave the original one in service, an additional *Grant* will be required at the new (second) location.
    - If the request is to move the approach to a new location and close the original approach, an *Indenture* can be applied for, but only with the signature(s) of all affected *Grant* or *Reservation* holders.
- 

**New Shared  
Approaches at  
Easement  
Locations**

- A new approach developed across an easement usually should be reviewed as if to serve all of the lots with a recorded right to use the easement, unless there are other mediating circumstances:
  - In remote areas, where development pressures are very low, permitting could be based on only the currently proposed use.
  - There are also likely to be local land use issues regarding multiple lots that do not have direct road access, including the possibility that they are not developable, so you may want to contact the local jurisdiction planner.
- When in doubt, consult with the RAME.

## Grandfathered Right of Access

### Definition

“Grandfathering” is a common law concept that in this case means that an approach is legal by virtue of the fact that it was established legally, but not necessarily through the current permitting process. There are three statuses of approaches that we treat as grandfathered under the 2004 Division 51:

- A legally constructed approach existing prior to 1949. A property owner has the burden to prove an approach is grandfathered based upon its existence prior to 1949 and its continued use for the same purpose for the entire time. However, ODOT should obtain documentation of this status and retain with the hardcopy application file or in CHAMPS.
- For purposes of this Division, grandfathered approaches also include approaches presumed in compliance pursuant to OAR 734-051-0285(1)(this is new in the 2004 Rules). This recognizes the legality of approaches identified to remain open in Access Management Plans and Strategies or other plans; and
- Approaches intended to remain open that were improved in conjunction with a Department project prior to the original effective date of Division 51, which was April 1, 2000, as set forth in OAR 734-051-0285(9)(this is new in the 2004 Rules). This allows legal recognition of approaches that we have intentionally improved in conjunction with highway projects
- The latter two types of “grandfathering” require the Region Manager to document in writing the decision to recognize the approach and to state the basis for the decision to recognize. That written documentation serves as “written permission” which is equivalent to a permit for purposes of the availability of Remedies. For more information, see the Project Development Section, “Project Recognized Approaches” subsections near the end of this Chapter.

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### Approach Permitting for Grandfathered Approaches

Grandfathered approaches must be brought under permit if they are modified, moved, rebuilt or are used to serve a Change of Use. (CHAMPS Letter # 50).

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**Appeals and Remedies for Grandfathered Approaches**

- Grandfathered status gives the property owner appeal rights, including the right to Region Review, if the approach is identified for closure, modification or consolidation for safety reasons or in conjunction with an ODOT project. Such appeal rights are not available for other unpermitted approaches.
- Grandfathered status based upon existence of the approach in 1949 or earlier does not make the owner eligible for *Remedies* when the approach is identified for closure, modification or consolidation, for safety purposes or in conjunction with an ODOT project or when an *Application* is denied.
- The new “grandfathered” status, enabled in subsection 0285 (1) and (9) includes “written permission” of the Department, and so does create the possibility of Remedies. (For more information, see “Remedies” section, below)

## **Abutter’s Right of Access**

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**Definition**

By virtue of owning property adjacent to (abutting) a state highway that does not have Access Control, a property owner has a right to apply for an approach. An abutter’s right is a common law right.

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**Approach Permitting Where there is an Abutter’s Right**

An abutter’s right by itself does not guarantee approval or location of an approach. Appeal and review rights are only those provided in conjunction with review and decision of an *Application*.

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**Appeals and Remedies Where there is an Abutter’s Right**

An abutter’s right by itself does not give the owner appeal rights or make the owner eligible for *Remedies* when the property frontage is curbed or otherwise closed off for safety purposes or in conjunction with an ODOT project. (For more information, see “Remedies” section, below)

## Permitted Approach

**Definition** A legally constructed approach existing under a valid *Permit to Operate, Maintain and Use an Approach*.

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**Approach Permitting for Permitted Approaches**

Permitted approaches are subject to a new approach permit *Application* under the following circumstances:

- When the use of an existing approach road changes in a way that causes a *Change of Use*;
- To modify or relocate an existing approach road;
- To remove a restriction, such as farm use only, from an existing approach road.

Such changes may also require a *Grant* or an *Indenture* of access in an access-controlled area, depending upon the extent and type of changes proposed.

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**Appeals and Remedies for Permitted Approaches**

- Permitted status gives the property owner appeal rights, including the right to Region Review, if the approach is identified for closure, modification or consolidation, either for safety reasons or in conjunction with an ODOT project.
- Permitted status makes the owner eligible for the possibility of *Remedies* if the approach is identified for closure, modification or consolidation, either for safety reasons or in conjunction with an ODOT project. (For more information, see “Remedies” section, below)

## Reservation of Access

**Definition** In an Access Control Area, or where ODOT has otherwise acquired the right of access either by purchase or by law, a right of access may still exist by virtue of a *Reservation* of Access across the Access Control line. *Reservations* are established at the same time Access Control is established or acquired.

- A *Reservation* applies to a specific location, and may only be moved if an *Indenture* is approved.
  - If there is no *Reservation* it may be possible to get a *Grant* of access.
-

**Approach Permitting at a Reservation of Access**

- If the approach at a *Reservation* is unimproved or unpermitted, the existence of the *Reservation* does not guarantee that an approach permit will be approved.
  - If an approach at the *Reservation* is improved and permitted, an approach permit *Application* must be submitted when;
    - When the use of an existing approach road changes in a way that causes a Change of Use;
    - To modify or relocate an existing approach road;
    - To remove a restriction, such as farm use only, from an existing approach road.
- 

**Appeals and Remedies at a Reservation of Access**

- A *Reservation* of access gives the property owner appeal rights, including the right to region review, if the approach is identified for closure, modification or consolidation, either for safety reasons or in conjunction with an ODOT project.
- A *Reservation* makes the owner eligible for the possibility of *Remedies* if the approach is identified for closure, modification or consolidation, either for safety reasons or in conjunction with an ODOT project, OR if an *Application* is denied at the *Reservation*. (For more information, see “Remedies” section, below)

**Grant of Access: OAR 734-051-0295, -0305, -0335**

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**Purpose**

- Where Access Control exists, a new approach may only be permitted where there is an existing *Reservation* of access, or where a *Grant* is approved and conveyed to the property owner.
- A *Grant* may also be needed for a development on more than one adjoining lots or parcels where a *Reservation* or otherwise legal approach exists, but the existing *Reservation* or *Grant* does not specifically provide for access to all of the lots or parcels.

**Definition**

“Grant of Access” (*Grant*) 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.

- The “conveyance” is the combined acts of applying, approving, assessing a value, and ODOT selling the right of access to the property owner.
  - The “evidence of conveyance” is the paperwork showing that the above has been completed.
- 

**Application**

**Sections 0295 through 0335.**

- Applications for *Grants* must be submitted by the property owner or the owner’s designee, which designation must be verified in writing.
  - Applications for *Grants* must meet the criteria for an approach permit in addition to the criteria in OAR 734-051-0295.
  - Once the *Grant* application is reviewed for compliance with the Section 0295 criteria, the *Grant* will be denied at the Region level, or it will be referred to the State Traffic Engineer for further review.
  - A committee is typically convened from various ODOT programs, including AMPU, and sometimes FHWA, to consider the request and formulate the State Traffic Engineer’s recommendation.
  - The State Traffic Engineer will make a recommendation to the Technical Services Manager who may deny or approve the *Grant*.
  - If approved, the economic value of the *Grant* will be appraised and the applicant will be charged for the appraisal, the fair market value of the *Grant*, and any outstanding charges for processing the *Application*.
- 

**Fees and Other Charges**

The deposit amount to be collected with the *Grant* application will be set by the District. Other costs, including the appraised value of the *Grant*, will be calculated in the process of reviewing and conveying the *Grant* and do not require any action on the part of permitting staff.

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**Processing the Fee**

- Complete an “Order to Render Service/Materials” (ORS) form 734-3189. To get an outside billing EA to charge the work to, follow the online procedures at: <http://intranet.odot.state.or.us/fsb/forms/RenderSrvMatl.pdf>
- The application and supporting documentation then needs to be forwarded to the Statewide *Grants* Committee:

Statewide Grants Committee  
Traffic Management  
355 Capitol Street NE Fifth Floor  
Salem OR 97301-3871

Phone: (503) 986-3572  
Fax: (503) 986-4063

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**When a Grant Will Not be Approved**

*Grants* cannot be approved on a freeway, freeway mainline, freeway ramp, expressway, expressway ramp, opposite a freeway or expressway ramp terminal, or in an interchange management area.

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**Approval Criteria for all Grants**

- An *Application* for an approach permit has to be submitted concurrently with the *Grant* application and the *Application* for an approach permit must meet all applicable approval criteria.
- The applicant must agree in writing to meet any *Mitigation* requirements, conditions and any other terms of the approach permit approval.
- The *Grant* has to be found to be consistent with the 1999 Highway Plan.
- One of the following must also occur:
  - ODOT determines that Access Control is no longer needed at the location proposed for the *Grant*; or
  - The applicant establishes that the *Grant* would benefit the state highway system.

**Criteria and Conditions Unique to Grants for Private Approaches**

- Alternate access to the property is not or cannot be made reasonable.
  - The property owner must agree to deed restrictions to ensure that future development on the property can be accommodated by the state transportation system. In principle this is voluntary on the part of the property owner – if they voluntarily accept the deed restrictions, we voluntarily agree to convey the access right requested.
-

**Criteria and Conditions Unique to Grants for Public Approaches**

- *Grants* for public approaches also have to be consistent with local government corridor and other transportation plans, or the applicant has to demonstrate that all possible alternatives have been considered in the location decision for the approach.
  - The “benefits test” for public approaches requires the local jurisdiction to document the basis of the benefit and amend the Transportation System Plan to include it if the proposed approach road is not already provided for in the plan.
  - Intergovernmental Agreements (IGAs) are required for construction, operation, maintenance and costs of public approaches, and may also be entered into regarding land use and other planning issues related to the approach.
- 

**Approach Permitting**

- The existence of a *Grant* that was approved before April 1, 2000 does not guarantee that an approach will be approved at that location. A new approach at the *Grant* location must be approved through the review of an *Application* under current standards.
  - A *Grant* conveyed on or after April 1, 2000 is approved in conjunction with approval of an *Application*, so if the approach is constructed consistent with that approval and a *Permit to Operate and Maintain an Approach* is issued, it is only subject to a new *Application* if the approach is moved or modified or there is a *Change of Use*.
- 

**Appeals and Remedies w/ a Grant of Access**

- A *Grant* of access gives the property owner appeal rights, including the right to region review, if the approach is identified for closure, modification or consolidation for safety reasons or in conjunction with a highway project.
- A *Grant* makes the owner eligible for the possibility of *Remedies* under OAR 734-051-0500 through 0560. (For more information, see “Remedies” section, below)

## Indenture of Access: OAR 734-051-0315, -0325, & -0335

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- Definition**
- A deeded conveyance that changes the location, width, or use restrictions, other than farm use restrictions, of an existing *Reservation* or *Grant* of access in an access controlled area.
  - Other conditions that were placed on approval of the original *Grant* or *Reservation* should usually be carried into conditions of the *Indenture*.
- 

**When Needed** An *Indenture* application must accompany an approach *Application* when an approach at a *Reservation* is proposed to be enlarged, realigned or moved more than ten feet off the existing centerline, or when use restrictions on an existing permit need to be modified or removed to serve a *Change In Use*.

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- Fees**
- The processing fee for an *Indenture* is \$200.00
  - *Indenture* fees are sent to:

Right of Way  
355 Capitol Street NE Room 218  
Salem OR 97301-3871

Phone: (503) 986-3651  
Fax: (503) 986-6600

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- Application Requirements**
- All property owners with rights to use the existing approaches must be included as applicants for an *Indenture* request.
  - An *Application* for an approach permit has been submitted concurrently with the *Indenture* application and that *Application* meets approval criteria.
  - The applicant agrees in writing to meet the *Mitigation* requirements, conditions and any other terms of the approach permit approval.
  - The Region Manager or a designee makes the decision whether to approve an *Indenture*.
  - Approval will usually be conditioned upon closure of one or more existing *Reservations*.

---

**Conditions of Approval of an Indenture**

- Any conditions that were attached to the original *Grant* or *Reservation* will typically be continued into the conditions of the *Indenture*.
- The Rules enable the use of deed restrictions as conditions on an *Indenture*. In principle this is voluntary on the part of the property owner – if they voluntarily accept the deed restrictions, we voluntarily agree to convey the access right requested.

---

**Approach Permitting**

- An *Indenture* that was approved before April 1, 2000 does not guarantee that an approach will be approved at that location. A new approach at the *Indenture* location must be approved by review of an *Application* under the standards in effect at the time of the *Application*.
- An *Indenture* conveyed on or after April 1, 2000 is approved in conjunction with approval of an *Application*, so if the approach is constructed consistent with that approval and a *Permit to Operate, Use and Maintain an Approach* is issued, it is only subject to a new *Application* if the approach is modified or moved or there is a *Change of Use*.

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**Appeals and Remedies w/ an Indenture of Access**

- An *Indenture* is simply a change in a *Reservation* or *Grant*, so has the same appeal rights.
- An *Indenture* is simply a change in a *Reservation* or *Grant*, so has the same opportunity for Remedies.

## **Benefits to the State Highway System: OAR 735-051-0085**

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**Purpose**

- A *Grant* of access can be approved in part based on the creation of a benefit to the state highway system where Access Control is otherwise still needed in the area of the proposed *Grant*.
  - The 2004 Division 51 also allows consideration of a benefit to the state highway system to justify approval of an *Application* under certain conditions.
  - Benefits must be both immediate and expected to continue for 20 years or more.
-

**Grants**

The benefit test only kicks in for *Grants* if Access Control is still needed at the proposed *Grant* location! Consequently, the test is meant to be tough.

**Application for an Approach Permit**

For approach *Applications*, from section 0080 (6), the benefit test can only be applied to an approach with all of the following characteristics:

- In an urban area;
- On an expressway and
- With alternate access that is or can be made reasonable.

The threshold for demonstrating a benefit here is lower.

**Other Research**

**Purpose**

Many properties and frontages are the subject of one or more of a variety of past decisions or agreements made between ODOT and local governments, special districts and property owners that may affect the owners’ right of access and limit options for creating new approaches.

WHAT YOU ARE LOOKING FOR:	WHERE TO LOOK
Earlier approach permits	<ul style="list-style-type: none"> <li>• CHAMPS</li> <li>• U-Permits</li> <li>• Property Owner Records</li> <li>• District Files for correspondence acknowledging a permit</li> </ul>
Agreements with Local Govt. <ul style="list-style-type: none"> <li>• Maintenance Agreements</li> <li>• Transfer of Jurisdiction</li> <li>• Intergovernmental Agreements</li> </ul>	<ul style="list-style-type: none"> <li>• Discuss with Local Govt. Staff</li> <li>• ODOT Region Planning Staff</li> <li>• ROW</li> <li>• Archives</li> <li>• Agreements Database</li> </ul>
An approach in existence prior to a certain date	<ul style="list-style-type: none"> <li>• Dated Aerial Photos</li> <li>• Other Photos</li> <li>• Old Phonebooks</li> <li>• Old Newspapers</li> <li>• Building Permits</li> <li>• City or County Records</li> </ul>
An approach improved during a project, to establish it was intended to remain open	<ul style="list-style-type: none"> <li>• Dated Aerial Photos</li> <li>• Contractor agreements</li> <li>• As-Built or As-Constructed Drawings</li> </ul>

Agreements made in conjunction with right of way dedication	<ul style="list-style-type: none"> <li>• Right of Way</li> <li>• Agreement Writers</li> <li>• Archives</li> </ul>
Limitations on Access as Condition of Sale of Surplus Property	<ul style="list-style-type: none"> <li>• ODOT Surplus Properties</li> <li>• ROW Research</li> <li>• Title Report or Deed</li> </ul>
Survey Map Information	<ul style="list-style-type: none"> <li>• Tax Lot Maps <ul style="list-style-type: none"> <li>• <a href="http://www.ormap.org/maps/maps.htm">http://www.ormap.org/maps/maps.htm</a></li> </ul> </li> <li>• Use the map that includes a recorded file # and deed information.</li> <li>• If more than one map includes this information, use the one with the most recent recording date.</li> <li>• Geometronics</li> </ul>
Crash History	<ul style="list-style-type: none"> <li>• ITIS – the Integrated Transportation Info System</li> <li>• SIP – Safety Improvement Plan</li> <li>• Safety Priority Index System (SPIS) List</li> </ul>
Bridge Information	<ul style="list-style-type: none"> <li>• ITIS</li> <li>• OTMS– Oregon Transportation Management System</li> <li>• Bridge Log <ul style="list-style-type: none"> <li>• <a href="http://intranet.odot.state.or.us/tsbbridge/PDFs/BrLog.pdf">http://intranet.odot.state.or.us/tsbbridge/PDFs/BrLog.pdf</a></li> </ul> </li> </ul>
Curve Data, Lane Widths, etc.	<ul style="list-style-type: none"> <li>• ITIS</li> <li>• OTMS</li> </ul>
Engineering Station, Milepoint	<ul style="list-style-type: none"> <li>• ROW Maps, dated closest to date of old permit</li> <li>• As-Constructed Drawings</li> <li>• ITIS</li> <li>• Geographic Information Systems (GIS)</li> <li>• Linear Referencing System (LRS) which ties mileposts to GIS</li> <li>• Video Log</li> <li>• Bridge Log</li> </ul>

## Other Information Needed to Make a Decision

### Types of Approaches

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**Purpose** The review criteria that apply to an approach decision vary based upon the type of approach requested; highway classification; and the characteristics of the highway, surrounding area and subject property.

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### Private Approaches

**Definition** An approach serving one or more properties that is not a public approach as defined below.

- Typically, private approaches are driveways and private roads to serve one or more businesses or other developments;
- A street under public jurisdiction that does not tie into the local street network is private by definition for the purposes of approach permitting.

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**Shared Use Approaches** A shared use approach is a private approach serving more than one property or development. Division 51 encourages shared access to minimize the number of approaches on the highway, but authority to require them is limited.

- Applicants can be encouraged to share access at an existing approach by noting that a shared approach will (usually) be easier to approve than a new separate one.
- Applicants can be required to provide an easement at the edge of the property for a later shared approach when the adjoining property develops or redevelops.
- Locating approaches at property lines wherever appropriate is a way to enable later shared access.
- Shared use approaches must include deed records establishing the right to use the approach by all benefited properties/owners, such as reciprocal easements or other appropriate deed restrictions.

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**Incentive to Develop Shared Use Approaches**

- As an incentive to encourage shared approaches, Rule 0070 (4)(d)(F) provides that there is no fee for the second approach *Application* of two if one of them is for a shared approach serving both the subject property and a separate development or property.
    - The number of approaches on the highway can only increase by one.
    - The *Applications* must come in simultaneously.
    - Depending upon the location and surroundings of the subject property, it might be possible to allow more than one shared approach under this provision.
  - If all approaches applied for are “shared approaches” we still must collect the fee for the first approach to recover a reasonable share of our costs.
- 

## Public Approaches

**Definition**

- An approach serving multiple properties, with the roadway owned and operated by a public entity, and providing connectivity to the local road system.
  - For purposes of Division 51, an approach road owned and operated by a public entity may be a private road by definition if it does not connect to the local road system.
  - This distinction is important because roads that do connect to the local street system can help reduce the need to use the state highway for local trips, whereas roads that do not connect will impact the highway system like private driveways regardless of who owns them.
- 

**Working With Local Government**

- New public approaches must be consistent with local plans.
- ODOT has a responsibility to coordinate with local government to ensure that we do not approve projects that will conflict with local plans.
  - The city or county has primary authority to interpret their own local laws and policies.
  - The “Local Government Information” sheet in the *Application* packet is intended to provide the city or county an opportunity to advise both the applicant and ODOT of any plan policies or ordinances that apply to a particular *Application*.
  - For direction on understanding Rule language pertaining to local plans see “Dealing with Legal Issues,” above.

## Temporary Approaches: OAR 734-051-0095

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- Definition** 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.
- The Region Manager may extend the period of time for a valid temporary permit for extenuating circumstances beyond the applicant or permittee's control.
  - Removal of Temporary approaches is at the owner's expense.
- 

- Examples**
- Construction project access to be used until a permanent approach is completed.
  - Fixed period mining or logging access road.
- 

- Applicability**
- A temporary permit should only be issued for a temporary use.
    - If the use at the site will be permanently sited, a temporary approach permit is not appropriate.
    - If an applicant comes in with an *Application* for a second temporary approach, look carefully at the use being served. If it is not a temporary use, a standard approach review is required.
  - Temporary use permits can be extended beyond the basic two years, but it must be for extenuating circumstances related to the temporary use for which the original permit was issued.
-

**Temporary v.  
Permanent  
Approaches**

- Issuing more than one Temporary approach permit at the same location is not entirely out of the question, but should be discouraged. The important question is what is being served. If the use or aspects of the use are not temporary, then that is the wrong type of approach to be permitting.
- A Temporary permit might be issued in anticipation of a permanent one at the same location.
  - This might occur as a temporary approach for construction equipment where the permanent approach might not be developed until other parts of the project were built.
  - The location and design of the temporary approach might not be appropriate for the permanent approach, so if it is important to develop the temporary approach at the same location as the permanent one, both need to be requested and reviewed at the same time.
  - A temporary approach might also be used to mitigate wetlands, do site maintenance, or develop landscaping or drainage infrastructure, for instance, on a speculation development site, long before development plans are finalized. In that case it is necessary to make it clear to the temporary permit holder that the location of the temporary approach might not be approved as a permanent approach location, and must be removed at the end of the limited duration period.
- When in doubt, it should probably not be a Temporary Approach.

**Criteria**

- A permit can be approved if safety issues can be addressed:
- Long term impacts do not have to be assessed.
- Short term safety impacts may be mitigated operationally, that is by measures such as signage or by having flaggers direct traffic during operating hours.
- ODOT has a responsibility to monitor safe operations at Temporary approaches.

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**Conditions**

ODOT has broad discretion to place conditions on an approval of a Temporary Approach to ensure safety and to enforce the conditions. For example the use of the approach can be defined very specifically, including hours of operation or types of vehicles that can use it.

NOTE: Conditions of approval need to be shown to be directly related to the anticipated impacts of the temporary approach by documentation in the record.

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# Restricted Use Approaches: OAR 734-051-0105

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- Definition**
- 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.
  - *Mitigation* that is required as a condition of approval for an approach permit, or a condition on a construction permit does not by itself create a “restricted use approach.”
- 

**Use of the Term “Restricted”** A Restricted Use Approach is a new term of art in Division 51 referring specifically to the type of approaches set out in Section 0115. An unrelated use of the word “restricted” is its use to denote limitations on allowed turn movements at an approach. A condition restricting turn movements at an approach does not make it a Restricted Use Approach.

- Examples**
- Access for monthly maintenance on a cell tower (Only if the approach serves only the cell tower and the facility is located on private property. Under other conditions, another type of access will probably be required.)
  - Access to a water or sewer pump station for intermittent maintenance.
  - Shortcut to a fire road for emergency use only.
  - Irrigation ditch or pipeline access road.
- 

- Criteria** Safety is the only stated criterion for *Restricted Use* approaches.
- The number of trips associated with a restricted use approach will be, by definition, very small;
  - However, those trips may be high speed and/or very large equipment and/or under other adverse conditions;
  - Consequently, *Mitigation* measures may also be required, for instance a deceleration lane.
-

**Conditions** ODOT has broad discretion to condition the design and construction of *Restricted Use* approaches to prevent uses other than the specified one(s), and to protect public safety and other public investments that could be adversely impacted by the approach. Conditions may include, but are not limited to, requiring a gate or other features to prevent use by the general public, mountable curb, or requiring reinforced sidewalks under the approach.

## On-Site Review - OAR 734-051-0070(6)(a)

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**Purpose** On-site review was required in the 2000 Rules. Now it is technically optional, but will be necessary for most *Application* reviews to be sure you have all of the facts needed to get to the best decision.

- An On-Site Review will usually be needed where no on-site visit was made for preliminary review, or where additional information is required to determine whether and what kinds of supplemental documentation will be needed.
- For complex situations, an on-site review is usually necessary to anticipate issues that will need to be addressed with a Traffic Impact Study.

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**Entering Private Property** Notify the property owner when you expect to visit a site, particularly if you will need to enter the private property. Document your efforts to give notice whether or not you are able to make contact.

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**Requirements**

- The on-site review will turn up site-specific issues that need to be addressed, including the possible need for a Traffic Impact Study.
- The thoroughness of the review will vary with the complexity of the *Application* and the thoroughness of the preliminary review assessment if one was done.

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**Staff Requirements** The On-Site Review may require staff qualified to evaluate potential safety, traffic control and operations, roadway design, site design, spacing requirements and drainage concerns.

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- On-Site Review Area** The On-Site Review Area should be large enough to evaluate the potential impacts to the highway system, and includes at a minimum:
- Both sides of the highway in the immediate vicinity of the proposed land use or development;
  - The site frontage;
  - All existing and proposed approaches; and
  - The nearest public road intersection within a distance consistent with spacing standards.
  - Identification and mitigation of the impacts of the proposed development should be considered when determining the size of the review area. Developments that may require a larger study area include:
    - Development proposals that critically impact the roadway system.
    - Small development proposals in congested areas creating critical safety and operational issues.
  - Examples:
    - When a large development's impact on an interchange reaches beyond the spacing standard limit the review area should encompass the interchange impact area.
    - The recommended distance on the crossroad is a quarter mile from the ramp terminal of a freeway interchange.
- 

**Who determines the Review Area Size?**

The RAME may be involved in defining the Review Area.

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**Required**

The following considerations are always included in the decision process:

- Adequacy of sight distance
- Safety-related issues within the immediate area including:
  - Nearby problem intersections(s);
  - Area crash history;
  - Corner sight distance at approaches;
- Geometrics and operations of the proposed approach;
- Alternative access;
- The need for *Mitigation* measures such as median control;
- Whether a *Deviation* will be required.

**Additional Considerations**

Engineering judgement is used to determine any additional review issues that may require additional on-site evaluation, such as:

- Roadway System Issues:
  - Roadway function;
  - Is this a proper signal location;
  - Is the roadway being used for the site circulation;
  - Capacity analysis for site approach;
  - Additional traffic lane requirements
    - Left turn lane needed;
    - Deceleration lane(s) needed;
  - Types of traffic;
  - Posted highway speed;
  - Future construction, reconstruction, modernization, preservation or operational projects, if known.
- Site Issues:
  - Site geometry and layout;
  - Conflicts with utilities or easements.
- Traffic Signal Issues:
  - Whether a signal will be required in the near future;
- Impacts on other modes of transportation:
  - Accommodation of bicycle, pedestrian and transit modes;
  - Effects of the proposal on air or rail.
- Utility Issues:
  - Impact of drainage from the proposed development on the highway drainage system;
  - Existing or needed utility easements.

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**Traffic Devices**

When a traffic signal appears to be necessary, the State Traffic Engineer is contacted for concurrence with the need to install a signal at the proposed location, and for signal design assistance and approval.

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# On-site Review Checklist

**A Useful Tool** Below find an exhaustive Onsite Review Checklist, compiled from several examples in use around the state. This is intended to be a helpful tool to support the decision process with useful field notes. You will probably want to modify the list to meet your own needs.

---

## Application Info

Application Number \_\_\_\_\_ Applicant \_\_\_\_\_

Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_ Zip \_\_\_\_\_

Phone \_\_\_\_\_ (H) \_\_\_\_\_ (W)

Notes from Pre-App /Preliminary Review \_\_\_\_\_

---

Approach Type \_\_\_\_\_

Public  Private  Urban  Rural

Existing Land Use \_\_\_\_\_

Proposed Land Use \_\_\_\_\_

Highway Name \_\_\_\_\_ Route # \_\_\_\_\_ Highway # \_\_\_\_\_

T \_\_\_\_\_ R \_\_\_\_\_ S \_\_\_\_\_ TL \_\_\_\_\_

T \_\_\_\_\_ R \_\_\_\_\_ S \_\_\_\_\_ TL \_\_\_\_\_

MP \_\_\_\_\_ Station \_\_\_\_\_

R/W map # \_\_\_\_\_ R/W width \_\_\_\_\_

Highway Classification \_\_\_\_\_

UBA  UBC  STA  Urban Other

Reservations / Permits? \_\_\_\_\_

## Field Data

Closest Landmark \_\_\_\_\_

Other Access to Property: Type \_\_\_\_\_

Sight Distance Right \_\_\_\_\_ Left \_\_\_\_\_  
(15 feet behind fogline, 3.5 feet high to 2 foot height of object)

Requires Deviation:  Yes  No

Distance Back of Fog Line: \_\_\_\_\_

Posted Speed \_\_\_\_\_ Design Curve Speed \_\_\_\_\_

Side of Highway:  Right  Left

Approach Width \_\_\_\_\_ Radius 1 \_\_\_\_\_ Radius 2 \_\_\_\_\_

Distance from Centerline to:

Edge of Pavement \_\_\_\_\_ R/W \_\_\_\_\_

Ditch \_\_\_\_\_ Depth of Ditch \_\_\_\_\_

Culvert Required  Yes  No

Size \_\_\_\_\_ Length \_\_\_\_\_ Pipe End Type \_\_\_\_\_

Notes \_\_\_\_\_

Sidewalk  Yes  No Width \_\_\_\_\_ Notes \_\_\_\_\_

Person Conducting Review ; \_\_\_\_\_

Date of Site Visit: \_\_\_\_\_

Date Entered in CHAMPS \_\_\_\_\_ CHAMPS File # \_\_\_\_\_

Notes: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Identify Issues  
for Further  
Consideration**

- Sight Distance: \_\_\_\_\_
  - Safety Issues: \_\_\_\_\_
  - Nearby Problem Intersections: \_\_\_\_\_
  - Crash History: \_\_\_\_\_
  - Corner Sight Distance: \_\_\_\_\_
  - Geometrics Issues: \_\_\_\_\_
  - Operations Issues: \_\_\_\_\_
  - Make Alternate Access Adequate \_\_\_\_\_
  - Suggest *Mitigation* Measures: \_\_\_\_\_
  - May Need Median control: \_\_\_\_\_
-

---

**Other  
Considerations  
for a TIS**

- Capacity analysis: \_\_\_\_\_
- Left turn lanes: \_\_\_\_\_
- Deceleration lanes/right turns: \_\_\_\_\_
- Traffic signal: \_\_\_\_\_
- Bikes, pedestrians and transit: \_\_\_\_\_
  - Sidewalks: \_\_\_\_\_
  - Bike Lanes: \_\_\_\_\_
  - Transit Facilities: \_\_\_\_\_
- Effects on air or rail: \_\_\_\_\_
- Site geometry and layout: \_\_\_\_\_
- Appropriate posted speed: \_\_\_\_\_
- Additional traffic lanes: \_\_\_\_\_
- Traffic characteristics: \_\_\_\_\_

Highway Projects Anticipated:

- Reconstruction: \_\_\_\_\_
- Modernization: \_\_\_\_\_
- Preservation: \_\_\_\_\_
- Operations: \_\_\_\_\_

Other: \_\_\_\_\_

**Records**

- A written summary of the review findings and decisions or actions taken should be completed and filed in the applicant file and preferably in the *Notes* section of CHAMPS.
- A completed On-site Review Form like the example above can be put in the file to meet this requirement, but distinguishing characteristics of the site and the area should be noted in CHAMPS.

# Requesting Supplemental Information

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**Purpose** Supplemental information may be required before an *Application* can be deemed complete. Within 30 days of accepting an *Application* for review, staff must get sufficient understanding of the circumstances of a particular *Application* to know what will be needed to complete the *Application* and to get a letter to the applicant spelling out those requirements.

---

**Scope** Staff develops a work scope for the applicant, ODOT and any other participants, that identifies:

- Issues to be considered;
  - A work schedule;
  - Methods of Analysis;
  - Acceptable computer software for the analysis work;
- Proposed *Mitigation*;
- Types of work products (reports, plans, etc.);
- Other necessary information.

---

**Specificity** The degree of specificity of the supplemental information depends upon the scale of the proposed development (e.g. small family store v. major shopping center) and the surrounding conditions (e.g., urban or rural environment, undeveloped or mostly developed, highway classification, signalized intersections, etc.).

---

**Examples**

- Concerns were raised during the on-site review about landscaping that was not shown on the site sketch or plan. Was it not shown because the applicant intends to remove it? If so, it should be shown as a feature to be removed on the site plan.
- The On-Site Review reveals a complex situation requiring a Traffic Impact Study (TIS).

NOTE: A change in the 2004 Division 51 is that the specifications for developing a TIS have been deleted from the rules. The main reason for this is that the old language was prescriptive, and didn't provide for differences in circumstances among projects. The scope of a TIS is now at the discretion of engineering staff.

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**Working with  
Local  
Government**

Local government may require a TIS for reasons different from ODOT's reasons for requiring a TIS.

- Satisfying our requirements may not satisfy theirs and vice versa.
- Applicants may submit that an earlier TIS or a local Transportation System Plan will satisfy ODOT's requirement and that may be sufficient if it is relatively recent and conditions have not changed significantly, but
- ODOT still has the authority to require a site specific TIS, especially where other such documents do not answer all of ODOT's concerns, or where the other materials are out of date or overly general.

## Supplemental Information Meeting

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**Purpose**

When Supplemental information is necessary, it is recommended under some circumstances that ODOT staff meet with the applicant to discuss the supplemental information requested, for example:

- When it is anticipated that the applicant will have trouble understanding the request.
- When the supplemental information is technical and it is important to agree to the scope of the technical requirements.
- When it appears that the site design will have to be modified to meet approval criteria.

---

**Notification**

The following two letters are used to notify an applicant of supplemental information needs.

- To "Schedule Meeting to Discuss Application Process and Additional Documentation Required" use CHAMPS Letter #06 sent by first class mail.
  - For "Supplemental Documentation Required to Continue Processing of Application for State Highway Approach" use CHAMPS Letter #07 and Letter #77 to identify supplemental information that is required, to specify the deadline and to explain how to request an extension of time, sent by first class mail.
-

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**Participants**

- ODOT staff, as determined by District Manager or RAME;
  - Applicant and any additional parties of applicant's choosing;
  - Local Government representatives if their participation is desired or required to complete required studies.
  - Any of the participants may request additional meetings.
- 

**Staff  
Responsibilities**

	<b>Permit Specialist</b>	<b>District Manager</b>	<b>RAME</b>
<b>Request Meeting</b>	X	X	X
<b>Determine Staff Attendance</b>		X	X
<b>Schedule Meeting (set date, time, location)</b>	X		
<b>Notify Parties</b>	X		
<b>Take notes and record notes in applicant file</b>	X		

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**Records**

- Written summary of discussions and decisions or actions taken should be completed and filed in the applicant file with important details, issues and agreements documented in the notes section of CHAMPS.
- Pre-Application Meeting contact list should be created for applicant file including attendees names, addresses, telephone numbers, etc.

## Supplemental Information Timeline

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<b>Timeline</b>	<p>Following written notice, the applicant has until either:</p> <ul style="list-style-type: none"><li>• The sixtieth calendar day after the date of the letter requesting supplemental information; OR</li><li>• The ninetieth day after the date the <i>Application</i> was accepted, whichever is greater.</li></ul>
<b>Notification</b>	<p>The applicant is informed of the deadline for submission of supplemental documentation by the “Supplemental Documentation Required to Continue Processing of Application for State Highway Approach” letter, sent to the applicant by first class (CHAMPS Letter #06 to schedule a meeting or #07 to request supplemental information). The letter also advises that the applicant may request an extension of time prior to that date.</p>
<b>Time Extension</b>	<p>This time period may be extended if, prior to the end of the 90 calendar days, both the applicant and the Department agree to an extension of time. The extension of time agreement must be confirmed in writing and include a specific date for submittal of the supplemental information.</p>
<b>Permit Specialist Tracking</b>	<p>The CHAMPS program displays can be used to provide a reminder of the date 15 calendar days, or other adequate time period, before the end of the 60/90 calendar-day period that applies, to allow some time to negotiate an extension of time to submit the supplemental information if an extension is needed.</p>
<b>Deeming the Application Complete</b>	<ul style="list-style-type: none"><li>• Evaluate the re-submitted <i>Application</i> and supplemental information for completeness.</li><li>• Return the <i>Application</i> to the applicant if the required information is inadequate or incomplete.</li><li>• Deem the <i>Application</i> complete when the <i>Application</i> and supplemental information are satisfactory submitted, and date and stamp the <i>Application</i> as complete.</li></ul>

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## Complete Application

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### Policy

An *Application for State Highway Approach* is *complete* only when the all information required by Division 51, all supplemental information requested by the Department, and the full fee are received.

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### Timeline

Acceptance of a complete *Application for State Highway Approach* begins the sixty (60) day timeline for approval or denial of the *Application*.

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### Incomplete Applications

- An *Application for State Highway Approach* is denied if not made complete within 90 calendar days from the date of acceptance, or prior to the end or any agreed upon time extension.
  - A CHAMPS Letter #03 denial letter entitled Notice of Incomplete Application for State Highway Approach is sent to the applicant by certified mail and the *Application* is returned with the letter.
-

# Decision Process

## Technical Advisory Committees (TACs)

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**Purpose** The 2000 Rules included provisions to form Technical Advisory Committees to review *Deviation* requests. These provisions were determined to be matters of policy that do not need to be included in the rules. However, it is still our policy to use TACs on complex or controversial *Applications*, particularly *Deviations*, on an as-needed basis. A TAC can help in the following ways:

- Use the expertise of a variety of disciplines to reach the best outcome;
- Avoid missed opportunities to improve conditions;
- Have solid back-up for your decisions.

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**Participants** Typically, the RAME will participate, and help determine when a TAC is appropriate, and whom to include. Right of Way, Traffic, Technical Services, Operations and Highway representatives may be involved. Other interests may be represented including local government representatives. The Region Manager may have some suggestions whom to include.

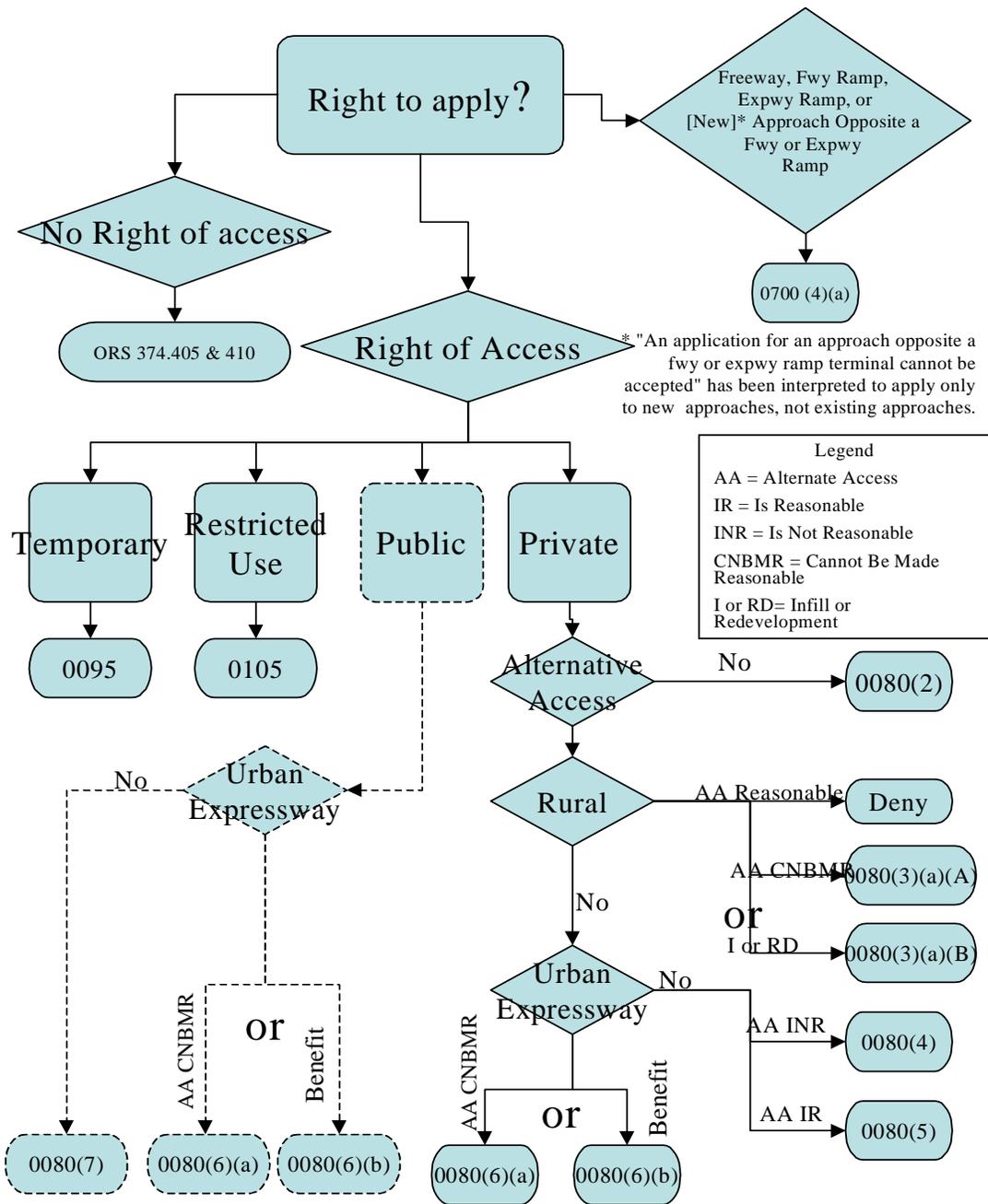
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**How to Use a TAC** A TAC can be convened to get support in understanding the highway system impacts of a proposal, to arrive at a fair and safe decision, and to develop appropriate *Mitigation* measures.

- This may be done in a meeting format, but might also be informal, with individuals reviewing the situation on their own and giving you direct input.
- In most cases, there would be a combination of the two. Face-to-face meetings are especially helpful if the project is very large or complex, or if different Department sections have conflicting priorities.

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# Approval Criteria



# Approval Criteria: OAR 734-051-0080

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## Applicability

Using this section:

- OAR 734-051-0080 (1) lists three considerations that apply equally to all *Applications*.
  - Section (2) through (8) are selection criteria that help you to determine the appropriate approval criteria for the specific *Application* decision.
  - Section (9) lists the safety factors to be considered in deciding whether to approve an *Application* under section (10) and (11).
  - The actual approval criteria are in sections (10) and (11).
  - The numbered and lettered selections below are actual rule language. The block letter paragraphs below each rule section are explanatory.
  - Applications that meet the criteria in 0080 must then be found to meet the Spacing Standards in OAR 734-051-0115 and 0125, or get approval of a Deviation pursuant to OAR 734-051-0135.
- 

## Roles and Responsibilities

An applicant has a responsibility to provide us with sufficient information to support their *Application*. While we are the experts on highways generally and on access management, they have a role as experts on their particular property and circumstances.

- In Rule 0080 sections (2) through (7), the Applicant is required to demonstrate certain things.
  - That means the burden of proof is on the applicant to provide justification for their proposal.
  - It also means they are responsible to take measures to make their proposal fit within the rules.
- In Rule 0080 sections (8) through (11), ODOT is required to determine certain things.
  - Based upon the information supplied by the applicant and other knowledge, does the *Application* satisfy the criteria?
  - Can any problems be solved through design conditions or *Mitigation* measures?
- Obviously there will be times when ODOT's information will be more thorough than the applicants' will. Where ODOT's professional judgment might result in an unfavorable decision, putting the "burden" to provide additional information on the applicant may create an opportunity for them to open the process up to other possibilities.
- Relying upon the applicant to make the case for an *Application* does not relieve us of responsibility to use other information that is available and known.

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**0080 (1) – All Applications**

- (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.

Easements are deeded rights to enter or to cross property, almost always granted or purchased for some stated purpose. Easements are agreements between property owners, and ODOT is rarely a party to an easement agreement. Consequently, there is no access right inherent in an easement. There may be exceptions to this rule, in which case it will probably be an issue for the Department of Justice. See “Dealing with Legal Issues,” above.

- (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.

Double frontage as used in (b) means the property has frontage on two state highways.

- (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.

Developers need to design internal site circulation to serve all of the businesses or dwelling units within a larger development. The fact that there are numerous users to be served does not justify a like number of approaches.

---

**0080 (2)  
Private &  
No Alternate  
Access**

- (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.

Where a property has a right of access, the Department cannot cause the property to be landlocked. If there is no safe way to provide access, at a minimum ODOT must purchase the access rights, and may have to purchase the entire lot or parcel.

**0080 (3)  
Private  
&  
Rural  
&  
W/ Alternate  
Access  
&  
Statewide, or  
Regional, or  
District, or  
Expressway  
or  
Interchange  
area**

**(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;

The purpose of section (8) is to allow what might be called a reasonableness test for the adequacy of alternate access. The existence of right-of-way, for instance, could create reasonable access in some cases but not in others.

- 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;

Sometimes we have an opportunity to create a safer situation by being able to approve an approach permit. Where older development has resulted in open shoulder approaches, for instance, or poorly located ones, the ability to approve an *Application* gives us room to negotiate a reduction in the overall width, alignment or number of approaches, for example, and make other improvements.

- and
  - (b) Section (10) of this rule is met.

Where either one of the (a) conditions exist, whether or not an approach will actually be permitted will be based upon the criteria in 0080 (10). (See below)

NOTE: Wherever a “net reduction” of approaches is considered in Division 51, it refers specifically to legal approaches on the highway.

---

**0080 (4)  
Private  
&  
Urban  
&  
W/ Alternate  
Access  
&  
Statewide or  
Regional or  
District or  
Interchange  
Area**

(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 determines that the alternate access is reasonable, if the applicant demonstrates that:

The alternate access may appear reasonable to the Department, but the applicant has an opportunity to persuade staff that it is not reasonable due to the specific circumstances of the site and proposed uses.

- (a) The alternate access is not reasonable as set forth in section (8) of this rule; and

The burden of proof is on the applicant to provide information that shows that the alternate access is not reasonable or cannot be made reasonable under 0080 (8).

- (b) Section (10) of this rule is met.

Where (a) is satisfied, whether or not an approach will actually be permitted will be based upon the criteria in 0080 (10). (See below)

---

**0080 (5)  
Private  
&  
Urban  
&  
W/ Alternate  
Access  
&  
Statewide or  
Regional or  
District or  
Interchange  
Area**

(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.

Where alternate access is reasonable, there is apparently less need for an approach directly to the highway. Consequently, the test to get an approach permit is tougher. Both section (10) and section (11) apply.

---

0080 (6)

**Public or  
Private  
&  
Urban  
&  
Expressway  
&  
W/ Alternate  
Access**

**(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;

The purpose of expressways is to provide “safe and efficient high speed and high volume traffic movements.” Few, if any, new approaches should be approved on expressways, to maintain a high level of mobility. But if alternate access cannot be made reasonable, an *Application* may be approved, subject to both section (10) and section (11).

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.

Rule 0085 expands the notion of a “benefit to the state highway” from its customary application to reviewing a request for a *Grant* of Access. In the 2004 rules, a determination that a proposal will result in a benefit to the highway can also be applied to approach *Applications*. 0085 will be discussed at further length below. In this case, if a benefit can be demonstrated, then just the criteria in section (10) must be met to approve the *Application*.

0080 (7)

**Public  
&  
Statewide or  
Regional or  
District or  
Expressway**

**(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)-(b) of this rule are met; and
- (c) The Permit to Operate is issued to the local jurisdiction.

0080 (8)

Determining when Alternate Access is Adequate is discussed in the next Manual section, below.

---

0080 (9)

**Safety Factors**

(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.

These five deceptively simple looking factors comprise engineering issues too numerous to mention here. Who will have responsibility for deciding which ones apply and how to apply them to a particular *Application* will vary among the Districts. This is an important follow-up subject to discuss with your RAME and your District team. Further guidance on Safety Factors is found below, and in Volume 2 of the Access Management Manual, “Analytical and Technical Information.”

---

0080 (10)

**Required  
Decision  
Criteria**

(10) As required by sections (2)-(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.

That is, based upon sound engineering practices, the approach as proposed can be designed and built to be safe, spacing standards are met and any traffic signals that are part of the project meet ODOT standards. If spacing standards are not met, the *Application* moves into the *Deviation* process in Rule 0135.

---

**0080 (11)**

**Optional  
Decision  
Criteria**

**(11)** As required by sections (5)-(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.

Section (11) applies in cases where the applicant doesn't have to have the proposed approach to have access to property, so we get to ask some tougher questions before we decide whether to approve an approach.

NOTE: The "may" in this section is as opposed to the "shall" in section (10) above. Sometimes we apply these standards and sometimes we don't. But where the applicable section (2) through (6) says that (11) applies, then we "may" require the applicant to demonstrate that the proposed approach meets any of the standards listed in (11) that are found to be applicable. However, in 0080 (7)(b), Sections (11) (a) and (b) are required to be met for public approaches. The "may" does not apply in this case.

NOTE: See also "Mobility Standards," immediately below.

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**Mobility  
Standards**

- The 2004 Rules include a significant change in how Mobility Standards are considered in the approach permitting process. Section 0080 (11) says that its subsection (a) concerning mobility standards "may" be required to be met, except for public approaches where compliance is required. Because the Rules are not specific about when mobility standards must be met (except for public approaches) the Oregon Highway Plan, Policy 1F on Highway Mobility Standards is the applicable policy regarding when to require consideration of mobility standards.

**Mobility Standards and the Highway Plann**

OHP Action 1F-1 and Tables 6 and 7 identify the mobility standards, expressed as volume to capacity ratios, prescribed for particular highway classifications or highway segments.

- The bulleted subsections of 1F-1 state when mobility standards shall be met (summarized here for quick reference – see the OHP for more detail):
  - On portions of highways where there are no intersections, v/c ratios shall not be exceeded for either direction of travel;
  - There are also specified minimum v/c standards for:
    - Unsignalized intersections and road approaches;
    - Approaches at which traffic must stop or yield;
    - Signalized intersections other than crossroads of freeway ramps;
    - Where two highways of different classification intersect;
    - Where a state highway intersects with a local road or street;
    - Freeway interchanges including queuing areas for ramps onto and off of the freeway and ramp terminal intersections.
- Any approach *Application* in any of the listed types of areas should be reviewed for compliance with the Mobility Standards.
- Action 1F-6 sets out the minimum mobility performance standard in any case – avoid further degradation.

**Reasonable Alternate Access: OAR 734-051-0080 (8)**

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**Purpose**

Where alternate access is reasonable, the burden to justify a new approach to the highway is greater. ORS 374 directs the Department to establish standards for “reasonable access,” and an amendment to ORS 374 by the 2003 legislature does establish standards to make that determination. This section of the rules implements those standards.

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**Why Ask the Question?**

**(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.

---

**Consider Uses Allowed on the Property**

- (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.

Land uses that are existing, proposed or allowed by the zoning designation may all need to be considered. If the proposed uses will utilize all of the land area, presumably the development is a long-term investment, and future changes don't need to be considered. But if the proposal does not require substantial investment in buildings, such as auto or manufactured home sales, or the proposal does not fully utilize the site, then the consideration of other potential uses becomes important. The question is, will the alternate access be sufficient to serve the access needs for the property over the long haul?

---

**Consider the Access Needs at Full Buildout**

- (b) The Department determines that the type, number, size and location of approaches are reasonable to serve the volume and type of traffic reasonably anticipated to enter and exit the property based on the planned uses for the property.

If the alternate access will provide capacity for all of the traffic that would be anticipated at full buildout of the property, it is more difficult to justify any additional approaches to the highway.

---

**Can Alternate Access be Made Reasonable with Mitigation?**

- (c) The Department may require mitigation measures as 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.

If improvements to an alternate approach, or to the local street network that serves that approach, will make it reasonable, then a "can be made reasonable" conclusion may be drawn. However, the "direct proportionality" question is important here. While cost by itself is not determinative, as stated in subsection (B), the cost of *Mitigation* measures needed to make alternate access reasonable must be directly proportional to the impacts of the proposed traffic on the highway system. For more information, see "Mitigation of Adverse Impacts" section, below.

---

**Consider Site  
Characteristics**

- (d) Consideration of factors including:
- (A) Legal restrictions;
  - (B) Geographic restrictions;
  - (C) Historical or cultural resources;
  - (D) Safety factors;

Does any other feature or condition of the site make it infeasible to mitigate the alternate access? There is a limit to how in depth ODOT will research some of these conditions. If the information available in the routine research shows that the access is or can be made reasonable, the applicant is responsible to provide verifiable information to support a claim that the alternate access is not or cannot be made reasonable.

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## OAR 734-051 Decision Logic

	Division 51 Subsection	Temporary	Restricted Use	Landlocked	Rural	Urban Not Reasonable	Urban Reasonable	Urban Expwy CNBMR	Urban Expwy Benefit Test	Public Other
		0095	0105	0080(2)	0080(3)	0080(4)	0080(5)	0080(6)(a)	0080(6)(b)	0080(7)
Does Approval Criteria Subsection Apply?										
Approval Criteria OAR 734-051-0080, 0085	0080 (8)	No	No	No	Yes	Yes	Yes	Yes	No	No
	0080 (9)	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
	0080 (10)	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes
	0080 (11)	No	No	No	No	No	Yes	Yes	No	(a) and (b) Only
	0085	No	No	No	No	No	No	No	Yes	No
Does Deviation Subsection Apply?										
Deviation Criteria OAR 734-051-0135	0135 (2)	No	No	Yes*	No	No	No	No	No	No
	0135 (3)	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes
	0135 (4)	No	No	If Infill or Redevel.	If Infill or Redevel.					
	0135 (5)	No	No	If I/C Mgt. Area	If I/C Mgt. Area					
	0135 (6)	No	No	No	No	No	No	If Public	If Public	Yes
	0135 (7)	No	No	No	No	No	No	If Public	If Public	Yes
	0135 (8)	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes
	0135 (9)	No	No	If I/C Mgt. Area	If I/C Mgt. Area					
	0135 (10)	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes
CNBMR = Cannot Be Made Reasonable										
I/C Mgt Area = Interchange Management Area										

**Working With  
Local  
Government**

- And
- (e) Physical considerations such as planned streets, roadway width, and weight and size restrictions. 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) An 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.

A local Transportation System Plan or Local Street Network Plan may already anticipate road improvements that would make alternate access reasonable, but due to scheduling or budgeting, the project won't be built for several years. It is possible to permit an approach to the highway on the condition it will be removed or modified once the local project is built. In this type of situation, an IGA should be negotiated with the local government to ensure that the local project will include *Mitigation* features that support the safe and efficient use of the alternate approach(es) when the local road project is built.

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**Customer  
Service  
Opportunities**

Whether or not alternate access is reasonable is one of the hottest political issues in access management. The prevailing paradigm among developers is that a business must have direct access onto the highest order road it abuts to be successful. Whenever possible, we need buy-in from property owners that alternate access will serve the property well. Accentuate safety, site circulation and mobility advantages for business early and often.

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## Records

- Note the sources of information used to determine whether alternate access is or can be made reasonable.
- If applicant provides additional information, be sure it is documented and supported by facts, and included in the file.
- If *Mitigation* is a part of the decision, document information sources used to establish the need for the *Mitigation* and its direct relationship to the impacts of the proposed use on the highway.
- If the applicant will need to close or modify the approach when alternate access becomes available, clearly document that condition in CHAMPS and on the *Permit to Operate*.
- If an Intergovernmental Agreement is a part of the decision, be sure that it is noted in the file and that the IGA references the *Application File Number*.

## Safety Factors

### Purpose

In the 2004 Rules, some engineering principles were deliberately not specified so that engineering judgment could be used to determine what issues to consider, on a case-by-case basis. Safety Factors is probably the most significant of those sets of issues. The following are examples of the characteristics to be considered under safety factors.

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### Roadway character

- Highway classification
  - Number of travel lanes
  - Road Capacity
  - Median Treatment
  - Traffic Controls
- 

### Traffic character

- Speed;
  - Crash history;
  - Existing and projected traffic volumes;
  - Vehicle types;
  - Presence of pedestrians, pedestrian facilities;
  - Presence of bikes, bike facilities.
-

- Geometric character**
- Topography, horizontal and vertical curves;
  - Stopping sight distance;
  - Intersection sight distance;
  - Clear vision areas (clear zone);
  - Right of way.
- 

- Environmental character**
- Whether the site is urban or rural;
  - Presence of wetlands, riparian areas, endangered species/habitat (Special Management Areas);
  - Drainage issues;
  - Snowplowing needs.
- 

- Operational character**
- Mobility standards;
  - Peak hour times and volumes;
  - Signal timing and coordination.

## Spacing Standards

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- Definition**
- Division 51 Spacing Standards are adopted as Tables 2 through 8.
- Spacing standards are based upon the 1999 Oregon Highway Plan.
  - Spacing standards are calculated to allow time for motorists to see what is ahead, assess their options and make necessary maneuvers to continue their trip safely. The standards also consider driver expectations for different driving situations.
  - Spacing standards vary with whether the area is urban or rural, highway classification, highway segment designations where applicable, highway speed and proximity to interchanges; and
  - Spacing Standards are intended to avoid overlapping conflicts between approaches and to maintain the safety and efficiency of the highway.
- 

- Which Spacing Standards Apply?**
- Any of the following conditions or designations may apply to the choice of spacing standards for a particular approach *Application*.

**Urban**

Denotes an area within an urban growth boundary, within a Special Transportation Area in a designated Unincorporated Community pursuant to OAR 660-022, or within a designated Urban Unincorporated Community pursuant to OAR 660-022.

- Urban Growth Boundaries are planning boundaries around incorporated cities that show “urbanizable” areas that are expected to be annexed to the city as they are needed.
- “Unincorporated Community” as used here is a planning category for an area with urban characteristics that is not incorporated as a city, but that is recognized in the County comprehensive plan for urban levels of development. There are several types of Unincorporated Communities based upon the types of development and levels of municipal services existing at the time of the plan designation.
- An “Urban Unincorporated Community” has many of the basic characteristics of a city including a water and/or sewer system.

The corporate limits of cities, urban growth boundaries and unincorporated community boundaries are available on County planning maps and in shape files in GIS that can be referenced with ArcView or ArcExplorer.

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**Rural**

The area outside an urban growth boundary, the area outside a Special Transportation Area in an unincorporated community, or the area outside an Urban Unincorporated Community as defined in OAR 660-022-0010(9). See “Urban,” above and “Highway Segment Designations,” below.

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**Urban  
Conditions in a  
Rural Area**

The 2004 Division 51 recognizes that may be urban conditions on the highway in an area that is otherwise rural by definition. The Region Access Management Engineer may apply the “urban” standards in OAR 734-051-0080 when all of the following apply:

- Infill or redevelopment projects in an otherwise 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.
-

## **Highway Classification**

Highway classifications are used to help prioritize investment and maintenance of the state system. Classifications are a factor in spacing standards because the balance between efficient through-movements and convenient access to local streets and business varies among the different highway classifications.

- Interstate Highway (part of the National Highway System) –The management objective is to provide for safe and efficient high-speed continuous-flow operation in urban and rural areas.
- Statewide Highway (part of the National Highway System except for Highway 82 in Union and Wallowa Counties) – The management objective is to provide safe and efficient, high-speed, continuous-flow operation.
- Regional Highway – The management objective is to provide safe and efficient, high-speed, continuous-flow operation in rural areas and moderate to high-speed operations in urban and urbanizing areas.
- District Highway – The management objective for District Highways is continuous flow operation in rural areas reflecting the surrounding environment, and moderate to low-speed operation in urban and urbanizing areas for traffic flow and pedestrian and bicycle movements.

Work is in progress to get Highway Classifications into the Linear Referencing System for easy look-ups in CHAMPS.

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## **Freeways and Expressways**

- A freeway or expressway classification is in addition to the OHP highway classification.
  - Expressway is defined in the 1999 Oregon Highway Plan as a “highway that provides for safe and efficient high speed and high volume traffic movements.” The Oregon Transportation Commission has designated over 500 miles of state highways as expressways. Expressways usually do not have pedestrian facilities, and bikeways may be separate from the roadway.
  - Freeways are completely access-controlled with no abutter’s rights of access and with access limited to grade-separated interchanges. In Oregon the freeway designation only applies to highways in the Interstate system.
-

## Freight Routes

- Freight Routes are designated statewide under Policy 1C of the OHP.
  - A Freight Route designation affects design standards to accommodate truck turn movements.
  - Freight routes are only referenced once in Division 51, indirectly. Under subsection 0115 (3), in the interim standards allowing application of either UBA or STA spacing standards under certain circumstances, the provision cannot be used on a freight route (requires a management plan).
  - The OHP, Action 1C.3 encourages treating freight routes as expressways during corridor planning.
  - OHP Table 6 identifies applicable mobility standards for freight routes.
- 

## Highway Segment Designations

- OHP Policy 1B.7 provides for Segment Designations, enabling ODOT to work with local government to recognize areas that have specific management objectives:
    - Special Transportation Areas (STAs) can be designated in an area that is a downtown, civic center or business district. Pedestrian and bicycle access, storefronts adjacent to sidewalks with parking behind, a minimum of private approaches and access spacing based upon the existing block distance are typical features of STAs.
    - Urban Business Areas (UBAs) are existing business strips along highways or planned business nodes where the business access needs of the area are considered equal in priority to the need for efficient through traffic.
    - Commercial Centers (CCs) are characterized by integration into the local street network, accommodation of bike and pedestrian traffic, preservation of mobility on the highway, and limited direct access to the highway. CCs do not change the applicable spacing standards.
    - Urban (Other) are urban highway segments that have not been otherwise designated and are subject to spacing standards based upon Highway Classification and speed. This is the default designation.
  - A first round of segment designations was adopted in January 2004. Work is in progress to get those designations entered into the ITIS database and to link that information to CHAMPS and/or the online Manual.
  - Segment designations adopted after the 2004 OHP amendments may not be adopted as OHP Plan amendments, but for purposes of approach permitting will be treated in the same manner as those segment designations adopted directly or by reference into the plan.
-

**Interim  
Provision for  
Spacing – STA  
and UBA  
Characteristics**

- Where a highway area clearly has the characteristics of an STA or a UBA, the spacing standards for STAs or UBAs may be applied where no designation has been adopted, BUT
  - Where a highway within a particular jurisdiction is or has been the subject of a segment designation process, whether or not a final decision has been made, this exception is not available. Final decision includes a decision to approve or deny a segment designation, in full or in part, or a decision to stop the review process and revert to current conditions; and
  - In locations where adoption of an STA or UBA would also require a management plan (that is, on freight routes) this exception is not available.
- 

**Working with  
Local  
Government**

Where local government expresses concern that the spacing standards are not appropriate for a particular highway segment, they may want to consider a change of highway classification or initiate a new segment designation.

- The local planning staff should start the process by getting in touch with their Area Commission on Transportation staff or MPO staff first to learn more about what changes may be available and about any local or regional planning issues that may arise from such a change.
- AMPU and TDD-Planning staff are also good resources if needed.
- Changes of either type will require a local TSP/comprehensive plan amendment and OTC adoption, and may also require regional or other local approvals.
- In initiating a classification change, local government should be made aware that lower classification highways have shorter spacing standards, but also have lower priority for state investment and maintenance.
- In initiating a segment designation change local government should be made aware that there are pros and cons to the designations, and a segment designation decision should be based upon established community goals for the segment in question.

## Deviations: OAR 734-0051-135.

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**Definition** A departure from Division 51 spacing standards that can only be approved when consistent with safety factors. Most *Deviations* are reviewed by a RAME.

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**Landlocked  
Parcels or Lots  
0135 (2)** For a property that has a right of access and that has no alternate access, ODOT must either permit an approach when it is requested, or purchase the right of access, which sometimes means purchasing the entire property. To get the safest possible approach for landlocked parcels, spacing criteria are to:

- Maximize the spacing between adjacent approaches; or
- Approve the approach at another safe location that accounts for other physical or environmental concerns on the property.

If neither of the above is safe, ODOT needs to consider purchase of the property. The District may delegate review of this type of *Deviation* to the Permit Specialist. However, consult with the RAME when there does not appear to be a safe alternative on a “landlocked” property.

NOTE: “Maximizing” the spacing between adjacent approaches does not mean locating the approach at the midpoint of the lot. Depending upon the locations of the nearest approaches on either side of the lot, and sometimes on both sides of the highway, maximizing the spacing may require engineering judgment. When in doubt, contact the RAME.

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**Deviation  
Approval  
Criteria**

**0135 (3)**

- (3) The RAME 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.

Most *Deviation* reviews will fall under this section:

- Only one of the seven listed criteria needs to be met to allow approval.
  - The meaning of "impossible" as used in subsection (c) should be applied as follows:
    - The burden is on the applicant to make the case "that existing development patterns or landholdings make joint use approaches impossible."
    - The neighboring property owner asserting that he does not want to participate in a joint use approach does not make joint use approaches "impossible." The rule doesn't say "impossible at this time" or "really inconvenient." It says "impossible."
    - An existing building or other structure that is early in its design life might well make the situation impossible. A small or derelict building might not.
    - An irrigation ditch between two parcels could make a joint use approach impossible. A cell tower or powerline might not.
-

**Infill and  
Redevelopment  
Allow  
Alternative  
Solutions**

**0135 (4)**

Infill and redevelopment are defined in the Rules. Basically, in areas that are mostly developed already, this section recognizes that it is likely that existing conditions do not comply with spacing standards. So the best case scenario is to improve conditions overall. Consequently, if application of section 0135 (2) or (3) does not get to yes, there is additional flexibility:

- The TIS requirement may be waived by the RAME, in part because infill and redevelopment projects are often a fairly small part of the cumulative effects on the highway system of all of the businesses in the area.
- Opportunities to improve safety and spacing overall are recognized as positives, and a denial could result in a lost opportunity for improvement.
- An alternative solution can be proposed by the RAME to increase safety and/or improve spacing, to be agreed to voluntarily by the applicant.
- Because the alternative solution is voluntary on both sides, it cannot be appealed.
- When an alternative solution is proposed and not agreed to by the applicant, the *Deviation* review process reverts to the standard requirements.

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**Interchange  
Areas  
0135 (5) and (9)**

- Where there is a right of access in an interchange area, a *Deviation* for an approach may be approved under section (5); but
- An approach shall not be approved where there is reasonable alternate access and there would be a net increase in the number of approaches to the highway per section (9).

NOTE: In Section (5), an *Application* that requires a *Deviation* in an interchange area has to be evaluated over a twenty year period. This is included in the rules because of the intense development pressures associated with most interchanges, and the needs to preserve both facility capacity and the value of ODOT's investment in the facility.

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**Public  
Approaches**

**0135 (6) and (7)**

- A *Deviation* for a public approach may be approved under section (6), but only if identified (see "Dealing with Legal Issues," above) in the comprehensive plan, and considering opportunities to combine or remove other public approaches, or reasons for a *Deviation* that are outside the control of the local jurisdiction; and
  - Approval may be conditioned upon amending transportation plans to provide for reduction of the number of approaches on the highway over time per section (7).
-

- Denial Criteria** (8) Under certain circumstances, a *Deviation* cannot be approved by the RAME:
- 0135 (8) and (9)**
- The only reason the *Deviation* is needed is to save the developer money.
  - The conditions that create the need for the *Deviation* are in the control of the applicant or property owner (See section immediately below on “self-created hardship”).
  - Approval would allow a significant safety or traffic operation problem.
- (9) The RAME also cannot 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.
- 

**Self-Created Hardship**

Self-created hardship means that an act of a property owner created a situation that makes a *Deviation* necessary, or that creates a landlocked condition. Multiple ownerships, partnerships and trusts, and transfers of ownership sometimes make it difficult to know when a situation is self-created.

- Presumably, if the situation was created by an action of any owner, any subsequent owner has some culpability for the situation because of their basic responsibility to know the conditions of the property when they obtain it.
  - If we receive notice of a pending land division that would create a landlocked parcel, it is very important to comment on the facts and to recommend conditions of approval for the local government decision to require shared or other appropriate access, to prevent the creation of new landlocked parcels. If we fail to respond to a timely notice in a timely manner, we will not have a good case for “self-created hardship.”
  - In most cases, a third party buyer’s issues are going to be with the seller, not with the Department.
  - All of that notwithstanding, it is conceivable that a situation will arise where the problem is clearly outside the control of a current owner.
  - This latter possibility will need to be dealt with on a case by case basis, probably with the support of our legal counsel.
-

**Region Manager Discretion** When a *Deviation* cannot be approved based upon any of the above criteria, the Region Manager can still approve it if it is safe and there is some other issue unique to the site that strongly supports approval.

0135 (10) EXAMPLE: A small city that has had long-term economic problems and a very low rate of growth has an opportunity for new development, but the developer is stubbornly attached to a particular site design, and there is little or no record of accidents in the vicinity.

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**Mitigation** Any *Deviation* approval may be subject to conditions including *Mitigation* measures to improve safety, operations and mobility.

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**Appeal Rights** Denial of a *Deviation* request can be taken through *Region Review* or to an *Administrative Appeal*. *Mitigation* measures can be considered for redesign or other technical modification, but not eliminated, under *Post-Decision Review*.

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**Staff Requirements**

- In most Districts, Permit Specialists will review only those *Deviations* that fall under 0135 (2);
- RAMEs will review all others; and
- The Region Manager may give additional consideration to a *Deviation* that does not create safety problems but that would otherwise be denied, when there are extenuating circumstances that can be documented that support an approval.

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**Records** Be sure that notes in CHAMPS cover in detail all of the issues on the lot and the highway that may apply to a *Deviation* decision.

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## Mitigation of Adverse Impacts

**Purpose** Approval of an *Application* may require *Mitigation* measures to ensure that the approach operates safely and supports mobility standards.

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**Definition**

- *Mitigation* Measures are conditions, improvements, modifications, and restrictions, required by the Department or initiated by an applicant for approval of an *Application*, often in conjunction with a *Change of Use* or *Deviation*.
- The intent is to mitigate, that is avoid and/or compensate for, any adverse impacts of traffic from the proposed approach on the highway system.
- Measures required for *Mitigation* may include but are not limited to:
  - limitations on turning movements,
  - deceleration lanes,
  - nontraversable medians,
  - elimination of other approaches, and
  - other design considerations
- Use CHAMPS Letter #16.

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**Easements as Mitigation Measures**

An easement at or near a property line intended to allow future shared access may be a desirable condition to place on a permit approval. Consider the following:

- An easement is a private agreement between private property owners, and consequently we cannot specifically require one owner to confer a property right to another.
- However, in reviewing an *Application*, a desirable *Mitigation* option may be to provide such an easement, as a voluntary action on the part of the applicant. The applicant would incorporate the easement into their development plan and our review would be based on that plan.
- We may require an owner to confer an easement to enable future joint access at a property line. That easement may include specific conditions regarding when, how and by whom it could be used.

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All Other Highway Locations	No Right of Access						OAR 734-051-0070 (4)(d)(B)													
	Temporary Approach						OAR 734-051-0095													
	Restricted Use Approach						OAR 734-051-0105													
	No Alternate Access (Land Locked)						OAR 734-051-0080 (2)													
	With Alternate Access						Rural		Alternate Access Cannot be Made Reasonable	OAR 734-051-0080 (3)(a)(A)										
							Urban		Expressway		Alternate Access Is Reasonable		OAR 734-051-0080 (6)(b)							
											Alternate Access Is Not Reasonable		Alternate Access Can be Made Reasonable	OAR 734-051-0080 (6)(b)						
							Non-Expressway		Alternate Access Is Reasonable				OAR 734-051-0080 (5)							
									Alternate Access Is Not Reasonable		OAR 734-051-0080 (4)									
							No Alternate Access						OAR 734-051-0080 (7)							
							With Alternate Access						Rural		OAR 734-051-0080 (7)					
													Urban		Expressway		Alternate Access Is Reasonable		OAR 734-051-0080 (6)(b)	
																	Alternate Access Is Not Reasonable		Alternate Access Can be Made Reasonable	OAR 734-051-0080 (6)(b)
																			Alternate Access Cannot be Made Reasonable	OAR 734-051-0080 (6)(a)
	Non-Expressway												OAR 734-051-0080 (7)							

- Division 51 only uses deed restrictions as negotiated conditions.
- Deed Restrictions as Mitigation Measures**
- An applicant may agree to future improvements or operating conditions recorded in a deed restriction to get to “yes” in the present.
  - Where an “Access Mitigation Proposal” is proposed by an applicant that will require a long term commitment of affected property owners to implement it, the rules require deed restrictions to ensure ongoing compliance by current and subsequent owners.
  - There should be good examples of deed restriction language available in the District or Region Office. If not, let the AMPU know.
- 

- Future Improvements as Mitigation Measures**
- It is possible to condition approval of an *Application* upon future improvements tied to a specified timeline or other threshold issues. Formal agreements to ensure future improvements include the following:
- The “Access Mitigation Proposal,” initiated by the developer and approved by ODOT, is a new and untested approach. When we have examples we will share them [0135 (4)].
  - Development agreements between the developer and ODOT are pretty common and it should be easy to find examples. The most effective time and place for development agreements is within the local land use review process, with conditions of approval setting out the development agreement conditions.
  - We have better models for local government agreements.
    - IGAs (intergovernmental agreements) can be used to get to agreement on a specific case. Ask the Agreements Coordinator for examples.
    - Transportation System Plans are the place to establish longer term agreements about how investments and design will be managed on the transportation system.
-

**Bases for  
Identifying  
Mitigation  
Measures**

- Any *Mitigation* that is required must be directly related to the impacts resulting from the proposed land use(s) and the conditions on the roadway.
  - To the extent practicable, *Mitigation* measures should only require changes to the applicant's own property and the highway. Mitigation measures that impact adjoining properties should be avoided, and where unavoidable, create the following concerns:
    - The negotiations and additional costs of the off-site measures may not meet the direct proportionality test.
    - ODOT should share the costs of *Mitigation* when possible.
    - Deferring the *Mitigation* to future street improvement projects may be prudent, with the condition to be included on the permit that the approach may require relocation or modification when that project is built.
    - Conditions on the permit need to include whether the approach will need to be removed or modified when a state or local project implements longer term *Mitigation*.
- 

**Day-of-  
Opening  
Impacts**

- Section 0145 (4)(c) allows that, in a situation where approval of an *Application* would require *Mitigation* measures that are not directly proportional to the impacts of the proposed approach, the applicant may only need to mitigate impacts as of the day of opening and defer *Mitigation* of future impacts to ODOT project development.
  - The applicant is required to convey any necessary right of way to ODOT prior to development of the subject approach.
- 

**Staff  
Responsibility**

The Permit Specialist will evaluate the impacts of the proposed approach, and should involve the Region Access Management Engineer for guidance on the scope of any required analysis to determine appropriate *Mitigation* measures.

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**Applicant  
Initiated  
“Mitigation  
Proposals”**

- New to the 2004 Rules is an option for the applicant to develop a site- or area-specific plan to mitigate access issues in conjunction with site planning and design.
  - An “Access Mitigation Proposal” will look like an access management plan, but with the inventory, analysis and strategies keyed to the subject development site and its immediate area.
  - The study area should at least include the distance in all directions to the nearest public intersections, and include consideration of the function of those intersections.
  - The intent is to encourage creativity and to help applicants meet their own needs by developing and committing to short and long-term strategies to maintain safety, operations and mobility on the highway system.
  - The RAME will review an Access Mitigation Proposal in conjunction with the review of an *Application*.
  - The applicant must record the agreement as a deed restriction to ensure that it can be enforced over time.
  - There are no examples as of this writing. When a proposal is reviewed and accepted, it should be submitted to AMPU for consideration as an example to be used in this Manual.
- 

**Records**

There must be enough information in the *Application* file, and preferably also in the *Notes* in CHAMPS, to demonstrate the relationship to, and proportionality among the actual conditions at the site and the *Mitigation Measures* required. That is, the link between the adverse effects of the proposed approach and the *Mitigation* measures required to eliminate or reduce those effects must be clearly established. Use CHAMPS Letter #16 Mitigation of Adverse Impacts.

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**Is Mitigation  
Needed?**

That depends on the following:

- Does the existing approach work well with the traffic change that will result from the proposed development?
- Is reconstruction or alteration needed to make the approach function safely?
- Are the surrounding roadway conditions already congested and sensitive to any level of adverse impacts?
- If the surrounding roadway system is at a volume to capacity ratio (v/c) equal to or greater than mobility standards established in the 1999 Oregon Highway Plan, any increase in the v/c ratio is considered significant, and *Mitigation* will be required to reduce the v/c value to pre-development levels.

---

**Working with  
Local  
Government**

Conditional Approval – When a proposed approach is intended to serve new development, approval of the *Application* should be conditioned upon final approval of a local land use decision. No permit will be issued until the applicant demonstrates that the use has been approved. The condition can include a reasonable time limit, but a time extension might be necessary if the local decision is appealed.

**Customer  
Service  
Opportunity**

*Mitigation* requirements often mean additional expense for developers, so they have a right to understand why:

- In addition to reminding them of the benefits to clients of good access design, when *Mitigation* is required a whole-system view may be helpful.
  - When applicants challenge *Mitigation* requirements (or earlier if you can), try to get them to look at an aerial photo or diagram of the vicinity of their project.
  - Together consider all of the turn movements and access needs that exist in the vicinity to understand how the required *Mitigation* will help to create a balance among many needs while supporting safety, operation and mobility.

## Denials

### Getting to Yes

Sometimes you can get to yes while you are saying no.

- We can't do that, but let me help you do this;
- Yes, but . . . ;
- The good news is that your customers will move mountains to get to your store.
- You can't always get what you want, but if you try sometimes, you get what you need.

It is really challenging to put a positive spin on "No," but when we pull it off it is a terrific accomplishment. Try to see alternatives, show examples, and remind applicants of the safety and other advantages of access management.

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### Reasons for Denial of an Application

- No right of access and a *Grant* cannot be approved.
  - Incomplete *Application* after the deadline for supplemental information has passed.
  - Denial of a *Deviation* that would have been necessary for approval.
- 

### Reasons for Denial of a Deviation

- Spacing standards can be met even though adherence to spacing standards results in higher site development costs.
  - The *Deviation* results from a self-created hardship including conditions created by the proposed site plan, building footprint or location, on-site parking, or circulation; or conditions created by lease agreements or other voluntary legal obligations.
  - The *Deviation* creates a significant safety or traffic operation problem.
  - In an interchange access management area where reasonable access is available and the approach would increase the number of approaches to the highway.
-

**Reasons for Denial of a Grant**

- Both of the following:
    - There is still a need for Access Control; and
    - The proposed approach would not create a benefit to the state highway system.
  - The *Application* does not meet the criteria for an Approach Permit in section 0175.
  - The *Grant* is for a public or private approach not consistent with the Oregon Highway Plan, or is for a public approach that is not consistent with a state corridor plan, a local TSP, or cannot be defended based upon an analysis of available alternatives.
  - Alternate access to the property is reasonable.
  - The property owner will not agree to deed restrictions the ensure future development trips will not have an adverse impact on the state highway system (as specified in the agreement).
  - The application is for a *Grant* on a freeway, freeway mainline, freeway ramp, expressway, expressway ramp, opposite a freeway or expressway ramp terminal, or in an Interchange Management Area.
- 

**Reasons for Denial of an Indenture**

- The *Application* does not meet the requirements to be issued a Construction Permit.
  - The property owner will not agree to close one or more existing approaches.
  - The Region Manager denies it based upon other circumstances that are documented in the record.
- 

**Reasons for Denial or Revocation of a Construction Permit**

- Where construction plans are required, they are not received within 60 days of notice that they are required, and no extension of time has been agreed to.
  - If the applicant does not accept the special provisions, *Mitigation* measures, conditions or agreements required.
  - If the applicant does not provide the insurance, bond and/or deposits required as a condition of approval.
  - If approval of the *Application* is found to have been based upon information in the control of the applicant that was false, incorrect or omitted and that would have changed the outcome of the *Application* review in any way.
-

**Options for the Applicant**

- Post-Decision Review – A review by the Region Manager of the conditions, including design issues, on a construction permit.
  - Region Review – An ODOT internal review of a denial, approval with *Mitigation*, or closure/modification of an approach in conjunction with an ODOT project.
  - Appeal – Administrative Appeal of a staff decision or of a Region Review Decision through the state Office of Administrative Appeals.
  - There is further discussion of each of these options in the next section, below.
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**Records**

Denials need to accurately and honestly explain why a proposal is being denied, and they need to leave options open when it is possible to do so.

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# Appeal and Review Procedures

## Post-Decision Review – OAR 734-051-0225

**Purpose** An opportunity to reconsider conditions placed on a Construction Permit.

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**Timeline** A request for Post-Decision Review (PDR) does not stay the time allowed for a request for Region Review or an Appeal. At times, a PDR may be under way during the time a Region Review or Appeal is pending because the applicant is keeping that option open while waiting for the outcome of the PDR.

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**Process** The Region Manager determines whether at least one of the criteria for revisiting the conditions of the permit is met:

- The permit requirements are inconsistent or ambiguous.
- New information exists that affects the permit; or
- Other local or state agencies have requirements that apply to construction standards for the approach.

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**Outcomes**

- The Region Manager may modify the permit to account for the new information or change in circumstances.
- The applicant can request a Region Review or Appeal of the Post-Decision Review.

# Region Review

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**Purpose**

Allows an internal ODOT review at the Region level of a District decision while preserving the right to an Appeal. The focus is on engineering issues, particularly safety, operations and mobility as related to the request or closure under consideration. Procedural issues may also be considered. Region Review is available for the following:

- Denial of an *Application*, including denial of *Applications* that require a *Deviation*;
  - Approval of an *Application* that requires *Mitigation* measures;
  - Denial or Approval with *Mitigations* of a *Post-Decision Review*.
  - Removal of a permitted or grandfathered approach due to a change in circumstances that causes safety or operational problems, or due to failure to comply with a *Permit to Operate*.
  - Closure or modification of a permitted or grandfathered approach in conjunction with an ODOT project.
  - Notice of Construction Deficiencies.
- 

**Options**

- A quasi-judicial review in front of a committee of ODOT staff with a variety of engineering specialties; or
- A mediated “collaborative discussion.”

**Responsibilities**

Position	Responsibility
Region Manager	<ul style="list-style-type: none"> <li>• Receives request for Region Review and forwards it to the Appeals Coordinator</li> <li>• Signs decision letter and sends it to applicant by Certified Mail.</li> </ul>
Appeals Coordinator	<ul style="list-style-type: none"> <li>• Acknowledges receipt of request for review.</li> <li>• Sets up review meeting; Identifies participants for committee and participants to testify on ODOT’s behalf, to include local government when applicable.</li> <li>• Issues a Notice to all participants of the date, time and location of the meeting and identifying the committee members.</li> <li>• Facilitates/referees review meeting and writes findings to reflect decision points and to back up the recommendation of committee to Region Manager.</li> <li>• Circulates findings for review by the committee, develops letter for Region Manager signature.</li> </ul>

RAME	<ul style="list-style-type: none"> <li>• Helps identify participants.</li> <li>• Compiles decision record for closures and other project-related reviews.</li> <li>• Participates on review committees in <u>other</u> Regions.</li> <li>• May testify to committee in own Region.</li> </ul>
Permit Specialist	<ul style="list-style-type: none"> <li>• Compiles decision record for reviews of <i>Applications</i>.</li> <li>• May testify to committee.</li> </ul>
District Manager	<ul style="list-style-type: none"> <li>• Identifies participants, particularly those who were involved in making the decision that is under review.</li> <li>• May testify.</li> </ul>
Statewide AM Engineer	Member of all Region Review committees
Dept. of Justice	May be asked to participate as facilitator, to write or review findings, in cases that are associated with litigation or other legally challenging situations.
Other ODOT representatives, FHWA	Representatives on review committee to reflect ODOT's various interests in the matter under review.
Local Government, Special Districts	May be invited to be on the review committee. May have an interest in testifying to the committee.

## Process

- When an *Application* decision is made that can be appealed, the applicant has 21 days from the date of mailing of the decision to request a Region Review.
  - The “clock” stops during the time required to develop the decision record and convene the review committee. Ideally, the committee will be convened within a month of receipt of the request, but it is not unusual for it to take longer.
  - At the review committee meeting, the Appeals Coordinator states the basis for the review, staff members directly involved in the case describe the reasons for the adverse decision, and the applicant makes his/her case including response to the staff report. The committee may choose to ask questions of anyone who has testified.
  - The committee continues the meeting without the applicant to deliberate, make findings based upon the criteria that pertain to the adverse decision, and conclude with a recommendation to the Region Manager.
  - The Appeals Coordinator has 21 days from the date of the meeting to complete a write-up the committee’s findings, run it by the committee members for comments and corrections, and have the findings and cover letter ready for the signature of the Region Manager, to be mailed to the applicant on the twenty-first day by Certified mail. (This is a change from a 10-day time limit in the 2000 rules)
  - The Region Review decision can be appealed.
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## Collaborative Discussion Option

- Once a Region Review has been requested, the applicant has the option to request a “collaborative discussion” on the issues to be reviewed.
- Collaborative discussion is based upon the Alternative Dispute Resolution model (ORS 183.502).
  - This decision model includes a neutral mediator, the Region Manger or designee(s), and other stakeholders whose interests will be affected by the outcome. Stakeholders might include, for example, a local government engineer, a utility representative, or representatives of other ODOT divisions.
  - The goal of mediation is to arrive at solutions that are win-win. That is, decisions that serve the best interests of all parties, and that will usually include some compromise on the part of all parties.
  - The Region Manager has the final decision authority.
  - The decision can be appealed.

# Appeals

## Purpose

Generally speaking, appeals are allowed on decisions that have been made based upon some level of discretion or professional judgment, and that have or appear to have adverse impacts on the applicant:

- Denial of an *Application*, including denial of *Applications* that require a *Deviation*;
- Approval of an *Application* that requires *Mitigation* measures;
- Denial or Approval with *Mitigations* of a *Post-Decision Review*.
- Denial or Approval with *Mitigations* of a *Region Review*;
- Removal of a permitted or grandfathered approach due to a change in circumstances that causes safety or operational problems, or due to failure to comply with a *Permit to Operate*.
- Closure or modification of a permitted or grandfathered approach in conjunction with an ODOT project.
- Notice of Construction Deficiencies.

## Responsibilities

Position	Responsibilities
<ul style="list-style-type: none"> <li>• Appeals Coordinator</li> </ul>	<ul style="list-style-type: none"> <li>• Is the primary contact between field staff and DOJ (all communications with the applicant should go through the Appeals Coordinator and DOJ).</li> <li>• Participates in pre-hearing conferences (usually by phone).</li> <li>• Prepares decision record and forwards it to the Administrative Law Judge (ALJ) assigned to the case and to DOJ as soon as possible after the appeal request.</li> <li>• Attends appeal Hearing as needed and may help DOJ counsel prepare for hearing on request.</li> <li>• Conveys DOJ Order to Executive Deputy Director's office for signature, then gets it mailed to applicant and/or applicant's attorney (Certified Mail) and to other participants (interoffice and regular mail).</li> </ul>
Key Contact @ Office of Administrative Hearings	<ul style="list-style-type: none"> <li>• Receives request for hearing and routes it to Administrative Law Judge (ALJ), Appeals Coordinator, Department of Justice.</li> <li>• Routes decision record and other submittals to ALJ.</li> </ul>

Permit Specialist	<ul style="list-style-type: none"> <li>• Copies decision likely to result in appeals to Appeals Coordinator as a courtesy advance warning.</li> <li>• Compiles a decision record when there is a request for appeal.</li> <li>• May be called upon to testify at the hearing.</li> </ul>
DOJ Assigned Attorney	<ul style="list-style-type: none"> <li>• In most cases, takes over all direct communication with the applicant. At this point we are in litigation and are represented by legal counsel. If there are further negotiations possible at the District level, they should be discussed with our assigned counsel and only acted upon if DOJ gives it their blessing.</li> <li>• Participates in pre-hearing conference call.</li> <li>• May participate in negotiated agreement before hearing is convened.</li> <li>• Identifies witnesses for ODOT.</li> <li>• Prepares case for and participates in administrative hearing.</li> <li>• Prepares order based upon ALJ's recommendation to be ODOT's final decision, to be signed by the Executive Deputy Director.</li> </ul>
Administrative Law Judge	<p>Convenes pre-hearing conference(s) which is a time to discuss a time line for "disclosure" of the pertinent facts and documents that apply.</p> <p>Presides over the administrative hearing if the case goes that far.</p> <p>Reviews the case to determine if proper procedures were followed and applicable criteria were applied appropriately.</p> <p>Makes a recommendation to ODOT's Deputy Executive Director.</p>
Other Staff	<p>May be called upon to help assemble the records needed for DOJ counsel and the Administrative Law Judge, and to testify at the contested case hearing.</p>

## Remedies – OAR 734-051-0500 through 0560

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### Purpose

A closure of permitted approaches or denial of an *Application* at a *Reservation*, may be necessary for safety or operations reasons, but may also cause, or appear to cause, economic harm to a property owner. Legislation in 1999 (Senate Bill 86) gave ODOT the discretion to offer a *Remedy* for assisting the owner in mitigating the impact of a closure or a denial of an *Application* at a *Reservation*. See OAR 734-051-0500 through 0560.

Further discussion of *Remedies* will be located in Chapter 2 "Policy and Legal Overview" of the Access Management Manual.

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### When Remedies May Be Offered

In the "Rights of Access" Section, above, at the end of each subsection on the various types of access rights, there is a discussion regarding whether or not remedies are available under each set of circumstances.

- The closed approach was legally permitted under Division 51 or the denied approach is at a *Reservation* of access; and
- The closure or denial was not due to circumstances within the control of the applicant.

**NOTE: Remedies are a tool that may be offered. However, Right of Way will treat closures of approaches at a reservation with no reasonable alternative access as a taking.**

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### Remedies are Not Takings

Remedies are different than and should not be confused with "takings," or condemnation. When ODOT decides to acquire property under eminent domain, the condemnation process is used, not remedies.

Remedies are simply an acknowledgement that, at times, regulation may be burdensome and ODOT can make a discretionary decision to try to help alleviate the situation.

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**Initiating the Remedy Process**

- When the property owner is notified of a closure or denial that may qualify for a *Remedy*, Right of Way may determine within 30 days that remedies are appropriate, and will provide a written statement of the availability of remedies.
- Right of Way initiates the remedies.
- ODOT has full discretion on whether to offer remedies.

**Responsibility**

Position/Division	Responsibility
Right of Way	Will take the lead in identifying remedies and negotiating agreements.
RAMEs, Permitting Staff	Identify situations that are likely candidates for remedies and alert Right of Way.

**No Appeal Right for Remedy Decision**

- Remedies are offered at the discretion of the Department, and a decision to not offer a remedy, or to offer one that may be unacceptable to the property owner, cannot be appealed.

## After the Approach is Approved

# Construction Permit Process

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### Purpose

When an *Application for State Highway Approach* has been approved, the applicant must then take the actions necessary to comply with the conditions of approval (includes *Mitigation* measures, conditions, terms and agreements required), including the submittal of *Construction Drawings and Plans* if the *Standard Drawings* are not being used.

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### Conditions of Approval

For convenience, in this section, the term “conditions of approval” is used to denote the complete list of *Mitigation* measures, conditions on permits, terms and agreements required in conjunction with approval of an *Application*.

These items have different meanings in the rules:

- “*Mitigation Measures*” are specifically related to alleviating the adverse impacts of traffic to and from the development site on the state highway system.
- “*Conditions*” are details of construction standards and operating limitations for the specific approach. This is different than the use of the term “conditional approval” which refers specifically to approval of an *Application* subject to final approval of a local land use decision.
- “*Terms*” are a subset of “*Conditions*”, and refer to actions other than construction specifications as a part of the Construction Permit, such as operating limitations (hours, weights, directional, turn movements, etc.)
- “*Agreements*” cover mutually agreed upon actions such as a requirement to move or modify the subject approach in the future, based on a specified threshold change in surrounding circumstances or an agreement to relocate the approach in conjunction with a future ODOT or local jurisdiction project.

NOTE: A “Conditional Approval” is something else. A conditional approval could also be called a “tentative approval,” subject to verification that all local land use approvals have been completed.

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**Before a  
Construction  
Permits Can Be  
Issued**

There are six basic steps between approval of an *Application* and being able to issue the Construction Permit:

- First, the *Application* approval is in the form of one of three CHAMPS approval letters. If it is not a “Conditional” approval, the approval letter will include preliminary construction specifications, and any conditions, restrictions and *Mitigation* measures required for the approach. For “conditional” approvals, the preliminary specifications will go out after the local land use approval is verified;
- The applicant is presumed to have accepted the Construction Specifications, including the conditions, restrictions and *Mitigations*, unless there is written notification to ODOT that the conditions, restrictions and *Mitigations* are not accepted, within 21 days of the date of mailing the Construction Specifications.
- The applicant prepares construction drawings unless standard drawings will be used. If construction drawings are required, they must be received within 60 days of the date the approval letter is mailed, or an extension agreed to within that time, or the approval will be void;
- Construction drawings are reviewed and approved (this may include a need for revisions before approval). There is no prescribed timeline for our review of the drawings. This is a change from the 2000 rules;
- Applicant must meet the insurance and bonding/deposit requirements, within 60 days of notification of the insurance and bond/deposit requirements. Failure to meet this deadline or negotiate an extension of time makes the approval void;
- When all of the conditions of approval, including insurance/bonding, that must be completed prior to construction are met, the Construction Permit can then be issued.

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**Standard  
Drawings**

For many *Applications* one of ODOT’s standard drawings and specifications, found in CHAMPS in the “Specification” Tab, will satisfy the preliminary construction drawing requirements.

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**To Whom is the Permit Issued?**

- Typically, the applicant would be the permittee. If the applicant is an agent of the property owner, that owner would be the permittee.
- However, where an approach is applied for by an easement holder, who the permittee will be may vary based upon a variety of issues, including the terms of the easement, the preferences of the parties, and the uses of the approach.
- A pertinent question is who will be responsible for maintenance of the approach.
- If only the easement holder will be using the approach, and is responsible for maintenance of the approach, we will issue the permit to the easement holder.
- The question of copying the permit to multiple property owners has been raised:
- A permit may be copied to users of the approach in addition to the permittee.
- Whether there can be multiple permittees on a single permit for separate properties is a question requiring further study.

**Changes from the 2000 Rules**

- Signatures – The step requiring applicant signature and return of the signed construction permit for ODOT authorization has been taken out of the rules. (more on “Signatures,” immediately below).
    - Submitting documentation of insurance and bonding is tacit acceptance of the specifications and conditions.
    - Beginning construction also equals acceptance of the conditions.
    - The use of the approach will be permitted only if the conditions of the construction permit have been met.
  - Time limit for our review of construction plans – The old rule included our time to review plans in the 120-day administrative timeline. That is out of the current rules, which makes sense since an appealed *Application* may not have an approval decision until very late in the 120 days.
  - Time allowed for the applicant to submit plans – Has been increased from 30 to 60 days for consistency with other requirements, and to increase fairness in light of the intent to void inactive files when deadlines are missed.
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**Applicant  
Signatures  
Prior to Issuing  
a Permit**

- Signatures on “Preliminary Construction Specifications:
    - The new rules do not require applicants to return their signed “preliminary construction specifications (previously “preliminary construction permits”). This is the logic behind this:
      - The districts had mixed results actually getting the signed forms back, and for the following reasons it is an extra, unnecessary step:
      - The applicant already agreed to work within our rules by signing the original *Application*, and acknowledges acceptance of the conditions when insurance and bond documentation are submitted.
      - No Use Permit will be issued until the specifications have been met.
    - However, it is recognized that it will sometimes be in the best interest of the department to have signed agreements, so we have left the option to add a signature box to the Preliminary Construction Specifications in CHAMPS. The District Manager should be in the loop in these cases.
      - The default situation in CHAMPS does not include the signature box.
  - To begin construction before the 21-day objection period ends, we do need written verification from the applicant that the conditions of the permit are accepted.
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**Local Govt.  
Signatures  
Prior to Issuing  
a Permit**

Local Government Signatures:

- The level of participation by local governments is likely to vary significantly around the state and in relation to the size of a jurisdiction and its staffing levels.
- When a *Mitigation* or other specification will require work in a local jurisdiction right of way, it is appropriate to have as a condition of approval that the applicant shall get the signature of the local public works director and obtain the applicable local permit, if any, before beginning construction.
- When a *Mitigation* or other condition requires a longer term commitment from a local jurisdiction, it is appropriate to ask the applicant to get written verification from the local government that existing transportation system and capital improvement plans already provide for the improvement, under the signature of the appropriate department.
- Not having a local government signature may cause us to miss an applicable local requirement. Getting local government sign-off is a good practice that demonstrates our commitment to work with them.

NOTE: When ODOT and the local government are cooperating to deliver an improvement project, whether or not it is instigated by a private development project, an IGA adopted by resolution or other appropriate action of the local decision making body is needed.

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## Design of Approaches: OAR 734-051-0165

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<b>Purpose</b>	Approaches must provide safe connections to the state roadway and efficiently serve the type of traffic using the approach, and allow movement to and from the highway of the number and type of vehicles reasonably expected to utilize the approach without undue conflict.
<b>Design Issues</b>	<ul style="list-style-type: none"><li>• Curbing, drainage, guardrail or other features shall be constructed as required by the Construction Permit.</li><li>• Developments with large buildings or paved areas require mitigation of storm water drainage</li><li>• Drainage plans must address environmental concerns if runoff contains pollutants.</li></ul>
<b>Specification Sources</b>	<ul style="list-style-type: none"><li>• Approach design needs to conform to the standards set forth in the 1996 Oregon Highway Design Manual.</li><li>• Signal location and installation shall be consistent with the standards in OAR 734-020-0400 through OAR 734-020-0500. The State Traffic Engineer must approve any signal request.</li></ul>
<b>Applicant Responsibility</b>	<ul style="list-style-type: none"><li>• Except for signals, the applicant will usually be authorized to install the approach and any additional required facilities, in accordance with plans and specifications approved by the Region Manager (or a designee).</li><li>• Authorization of the applicant to construct the approach will be based on the Region Manager's judgement that the applicant can install the approach and additional facilities adequately and safely.</li><li>• Construction and <i>Mitigation</i> required to serve large volumes of traffic will typically be at the applicant's expense.</li><li>• Applicant is responsible for mitigating off-site impacts of drainage from the property, including impacts on ODOT drainage facilities.</li></ul>

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**Conditions**

The Construction Permit may require special conditions, such as:

- Vegetation control
- Landscaping
- Set backs
- Limitation on the volume, type or schedule of vehicles using the approach
- Utility easements
- Donation of additional right of way
- *Mitigation* measures as allowed in OAR 734-051-0145

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**Additional Conditions**

- Based on engineering judgment, other conditions may be specified for the proposed development.
- Any conditions specified for the proposed approach must be directly related to maintaining safety, efficient operation and mobility on the state highway system and into and out of the subject property.

# Construction Drawings and Plans: OAR 734-051-0220 & -0260

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## **Construction Drawings and Plans**

Construction Drawings and Plans requirements will be listed in the CHAMPS letter requesting plans, and will typically include:

- Grade profile.
- Base and surface design.
- Design for type of approach including throat width and length.
- Erosion control plan for construction.
- Pollution control plan for construction.
- ODOT traffic control devices and/or signs.
- ODOT traffic control lines and/or striping.
- Types of vehicles using the approach.
- Structural details for proposed grade-separated structures, if applicable.

The RAME can provide assistance concerning additional information needed for the development proposal, such as a sign plan for a commercial development, parking stall plan, or return radii used in the parking plan.

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## **Applicant Responsibilities**

The applicant must comply with the requirements of Division 51, conditions of approval specified in the *Application* approval, and other requirements that have been included in the CHAMPS letter *Construction Drawings and Plans Requirements*.

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## **Projects**

For approaches designed and constructed as part of a project, the construction design and plan must comply with any requirements from an adopted corridor plan, refinement study or environmental study.

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## **Records**

All construction drawing and plan requirements are documented in writing to the applicant file and subsequently to the applicant by CHAMPS *Construction Drawings and Plans Requirements* letter.

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**Responsibilities** Representatives from all applicable work areas/units are involved in discussions and meetings concerning development or review of construction drawings or plans.

Specific elements of construction drawings and plans may include:

- Traffic Analysis and Forecasting
- Roadway Design
- Hydraulics
- Signal Design and Progression Analysis
- Signing
- Environmental
- Hazardous Material

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**Accepting  
Construction  
Drawings**

The Region Manager (or a designee) determines the acceptability of construction plans.

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**Timelines**

- Applicants have 60 days from the mailing date of the request for construction drawings to submit them for review.
- The 2004 Rules do not prescribe a time limit for ODOT review of construction drawings, but reviews should be completed as soon as is reasonably possible.

**Expiration of  
Approval**

The Construction Permit can expire in the following circumstances:

- The applicant does not accept the conditions of approval;
- The applicant does not meet the deadline for submitting proof of liability insurance, and bond, or deposit/irrevocable letter of credit in lieu of a bond and no extension of time has been requested.
- Deadlines include deadlines specified in extensions of time.
- After 120 days of inactivity on the part of the applicant, when we give notice on or around the 90<sup>th</sup> day that the permits will expire on the 120<sup>th</sup> day. (120<sup>th</sup> day or 30 days after notification, whichever is longer) See OAR 734-051-0070 (17).

**Expirations are not Automatic**

Expirations do not happen automatically, and that is intentional.

- Voiding a permit or approval should be a carefully considered decision, and flexibility is an important part of good customer service.
  - The capability to void permits, however, creates an opportunity to clear our records of files that appear active in CHAMPS, but that are inactive due to the failure of applicants to fulfill their responsibilities.
  - Maintaining inactive files in an apparently active status makes our service record look poor, even when our responsibilities have been carried out in a timely manner.
  - All records, inactive and active, shall be retained in CHAMPS.
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**Available Resources**

Region and central offices have resources available to assist in determining requirements for the construction drawings and plans and for review of submitted construction drawings and plans. For complex developments, contact the appropriate ODOT unit(s) for guidance on requirements for drawings and plans. Such units may include:

- Traffic Management Services
- Transportation Analysis Planning Unit
- Preliminary Design, and Hydrology.

Staff from each of these units should be included in development meetings.

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**Resource List**

A resource list is provided in the Appendix section of this Manual. This Appendix has not been updated at the time of the Chapter 4 rewrite. Notify the AMPU Planner of any issues, concerns or suggestion to improve the Appendix Resource List.

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## Issuing Preliminary Construction Specifications

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### Notification

- When the *Application for State Highway Approach* is approved, the applicant is sent one of three CHAMPS letters by first class mail. These letters provide the applicant with information on subsequent steps in the process.
  - The letters include the timeline to return required items and how to request an extension of time if the applicant is unable to provide the required items by the date specified in the letter.
    - Mailing of the *Preliminary Construction Specifications* starts the 60-day time limit for the applicant to submit proof of liability insurance, and bond or deposit/irrevocable letter of credit in lieu of a bond.
    - Mailing of the *Preliminary Construction Specifications* starts the 21-day time limit for the applicant to object to the provisions, *Mitigation* measures, conditions or agreements required as conditions of approval for the *Construction Permit*.
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**CHAMPS  
Letters**

<b>CHAMPS Letter</b>	<b>Description</b>	
<i>Approval of Application for State Highway Approach and Transmittal of Preliminary Construction Specifications. (CHAMPS Letter #15)</i>	<ul style="list-style-type: none"> <li>• Provides standard drawings from ODOT's Standard Drawings and Highway Design manuals.</li> <li>• Preliminary Construction Permit enclosed and applicant :               <ul style="list-style-type: none"> <li>• Advised of 21-day period to object to conditions in writing; and</li> <li>• Advised to submit proof of liability insurance and bond or deposit/irrevocable letter of credit in lieu of a bond, and return within sixty (60) days.</li> </ul> </li> </ul>	
<i>Approval of Application for State Highway Approach with Mitigation and Appeal Option. (CHAMPS Letter #16)</i>	<ul style="list-style-type: none"> <li>• Approval includes <i>Mitigation</i> measures as conditions of the Permit to Construct an Approach to a State Highway and the Permit to Operate, Maintain, and Use an Approach to a State Highway.</li> <li>• Information is provided regarding rights to Region Review and Administrative Hearing.</li> </ul>	
	Applicant <b>agrees</b> to <i>Mitigation</i> measures	Applicant <b>challenges</b> <i>Mitigation</i> measures
	Applicant asked to submit construction drawings and plans within sixty (60) days.	Will be in the form of a request for Region Review or Administrative Hearing.
<i>Approval of Application for State Highway Approach and Submittal Requirements for Construction Plans and Drawings. (CHAMPS Letter #17)</i>	<ul style="list-style-type: none"> <li>• <i>Application</i> approved and applicant instructed to submit construction drawings and plans.</li> <li>• Outlines requirements for drawings and plans, and additional information.</li> <li>• Specifies the date drawings and plans must be submitted.</li> </ul>	

**Applicant  
Signature:  
Individual**

- Where the Applicant is an individual:
  - The signature must be that of the specific individual.
  - Where applicant is other than property owner, Construction Permit must include written evidence of property owner's concurrence.

**Applicant Signature: Corporation or Partnership** Where the Applicant is a Corporation or a Partnership:

- Signature must be that of a duly authorized officer of the corporation or partnership.
- Corporation name must be included with the signature.
- Corporation or limited partnership must be licensed to do business in region, and must maintain a registered agent in Oregon.

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**Documentation** All construction drawing and plan requirements are documented in writing to the applicant file and subsequently to the applicant by CHAMPS *Construction Drawings and Plans Requirements* letter.

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## **Insurance and Bonding Requirements: OAR 734-051-0215**

**Purpose** The purpose of the insurance and bonding requirements is stated plainly in the Rules. Essentially, the owner, applicant and their contractors (through the owner) are responsible for any damage or injury caused by their activities. The insurance and bond/deposit/irrevocable letter of credit are assurances that financial obligations that may accrue from that responsibility are covered.

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**Requirements** Before a Construction Permit is issued and before work can begin on an approach, the applicant must submit:

- Written proof of insurance in the amounts specified in 0215 (3); and
- A performance bond, or deposit/irrevocable letter of credit in lieu of a bond, in an amount determined by the Region Manager, sufficient to ensure that any damage to the highway will be corrected at the applicant's expense.

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**Insurance**

- Except for claims against the applicant, the insurance policy or policies insure the State of Oregon, the Commission, the Department, its officers, agents and employees for personal injury and property damage.
- The applicant, contractor, or the insurer must provide the Department with 30 days notice before canceling or modifying the insurance coverage. Failure to comply with the reporting provisions shall not affect the coverage(s) provided to the State of Oregon, Department of Transportation and its divisions, officers, and employees.

- 
- Legal Liability**
- The applicant is liable for all damage or injury to any person or property resulting from the construction or maintenance, repair, operation or use of the approach for which the applicant has been issued a *Construction Permit* or a *Permit to Operate, Maintain and Use an Approach*.
  - The applicant must "indemnify and hold harmless the State of Oregon, the Commission, the Department, and all officers, employees or agents of the Department against any and all damages, claims, demands, actions, causes of action, costs and expenses of whatsoever nature which they or any of them may sustain 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 said approach."

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- Proof of Insurance**
- The applicant or the applicant's contractor must provide the Department written evidence of insurance in the following minimum amounts:
- \$50,000 For property damage resulting from any single occurrence, or
  - \$500,000 Combined single limit: and
  - \$200,000 For the death or injury of any person, subject to a limit of \$500,000 For any single occurrence.

- Performance Bond**
- The applicant or the applicant's contractors shall
- Furnish a performance bond (or cash deposit or irrevocable letter of credit) that is
    - Issued by a surety company licensed to do business in the State of Oregon,
    - In the amount specified,
    - Effective for the period of time necessary to install an approach,
    - And that will ensure that any damage to the highway is corrected to the satisfaction of the Region Manager.

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**Failure to Furnish Bond**

No construction work may take place until the deposit or bond has been filed with the Department.

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# Issuing the Construction Permit

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**Purpose** The Construction Permit allows construction to begin, and indicates that all conditions of approval required prior to construction have been met. The applicant must have an approved and signed Construction Permit before work begins on any state right of way.

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**Notification** Upon completing all the requirements, the *Transmittal of Final Permit to Construct a State Highway Approach* (CHAMPS Letter #21) is sent that:

- Informs the applicant that construction may begin;
- Specifies a completion date;
- Provides notification instructions for construction activities, including:
  - At least 48 hours notice to ODOT of beginning of construction;
  - Notice that construction is complete; and
- Provides a copy of the final Construction Permit.

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**Effective Period**

- The issue date of the Construction Permit is the date the Region Manager signs the Construction Permit.
- Construction permits are valid for a period of time that will be based upon the complexity of the proposed development;
- The expiration date is specified on the construction permit.
- An extension of time may be approved for good cause. Typically, “good cause” means circumstances not in the control of the permit holder.

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**Allocation of Costs** The applicant is responsible for the entire expense of constructing the approach and installing required *Mitigation* measures, including:

- Cost of all materials, labor, signing, structure, equipment, traffic channelization and
- All other requirements specified in the Construction Permit

EXCEPTION: Costs of any of these items may become the responsibility of the Department when they are a part of the terms and conditions of a right of way acquisition, obligation or other contractual agreement.

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<b>ODOT Costs (During Highway Projects)</b>	The Department is responsible for the cost to remove, alter or reconstruct an existing approach during construction, reconstruction, modernization, preservation, or operations projects on the highway.
<b>Property Owner Costs</b>	<p>The property owner is responsible for the following expenses:</p> <ul style="list-style-type: none"> <li>• If a property owner requests any widening or other improvement to their approach in conjunction with an ODOT highway project, the improvements will require a new Construction Permit and construction will be at the expense of the applicant.</li> <li>• The cost of maintenance of the approach from the outside edge of the highway pavement, shoulder or curb line to the right of way line, and any proportion of the approach on the applicant's property required to be maintained as part of the permit, is the responsibility of the applicant, regardless whether the improvement to the approach was initiated by ODOT or the property owner/applicant.</li> </ul>

<b>Expiration</b>	Failure of an applicant to complete installation of an approach within the specified period, deems the Construction Permit null and void, unless an extension of time is agreed to.
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<b>Non-compliance</b>	<p>Failure of the applicant to comply with any of the terms and conditions of the Construction Permit is sufficient cause for:</p> <ul style="list-style-type: none"> <li>• Reconstruction or repair of the approach by the Department at the applicant's expense in accordance with the rules and regulations and the conditions of the permit as provided in ORS 347.320; and/or</li> <li>• Cancellation of the Construction Permit, which may result in removal of the approach by the Department at the applicant's expense as provided in ORS 374.320.</li> </ul>
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## Construction of the Approach

<b>Purpose</b>	Upon receipt of a Construction Permit, the applicant may begin work on the approach.
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**Applicant Responsibilities** During construction, the applicant/permittee is responsible for all of the following:

- Erosion Control: Erosion control is regulated through cooperative agreements between local government and the Dept. of Environmental Quality, in addition to any applicable ODOT erosion control practices. In some cases a state (DEQ) or local permit may be required.
- Utilities: The property owner/permittee is responsible for any necessary work regarding utilities in the right of way or approach location, including satisfying ODOT that the appropriate utility companies have been contacted and all necessary arrangement have been made.
- As needed for safety during construction, ODOT may provide signage or other necessary traffic control during construction, at owner/permittee's expense.

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**Timeline** The time to construct the approach is estimated based on the applicant's proposed schedule, the time period is subject to agreement by the Department, and is specified on the permit. An extension of time may be granted by the Region Manager for good cause.

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**Inspection Typically, "good cause" means circumstances not in the control of the permit holder**

- In theory, the permit holder lets ODOT know when the construction is complete and ready for inspection. Unfortunately, this step is often skipped, and staff will often need to pay attention to progress on the approach by observation or by being in touch with the applicant.
- The approach is inspected to be sure it has been constructed in conformity with the terms and conditions of the construction permit.
- Any deficiencies must be corrected before a *Permit to Operate and Maintain an Approach* will be issued.
- An ODOT determination that there are construction deficiencies is not a decision that can be appealed.

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## Permit to Operate, Maintain and Use an Approach

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**Purpose** An approach cannot be used legally until a *Permit to Operate, Maintain and Use an Approach* is issued.

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**Inspection  
Notification**

Upon completion of construction of an approach the applicant should notify ODOT, though it has become clear that this responsibility is often not understood. Once construction is complete, a designee of the Region Manager (typically the Permit Specialist) will inspect the approach for compliance with all the terms and conditions of the Construction Permit.

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**Notification of  
Satisfactory  
Construction**

- If the permit specialist determines that the approach satisfies the terms of the Construction Permit CHAMPS letter, *Notification of Satisfactory Construction and Transmittal of Permit to Operate, Maintain, and Use a State Highway Approach*, is sent to notify the applicant that the approach has been satisfactorily constructed.
- A *Permit to Operate, Maintain, and Use a State Highway Approach* and information on the effective period of the permit is included.

**Notification of  
Construction  
Deficiencies**

If the permit specialist determines that there are construction deficiencies the applicant is notified by CHAMPS letter # 24 which will include:

- A list of deficiencies; and
- Notice of a sixty (60) day timeframe to correct the deficiencies and that the approach will be reinspected at the end of the 60 days.

A determination that there are construction deficiencies is not a decision that can be appealed.

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**Extension  
Agreement**

A time extension agreement may be made where additional time is necessary to correct the construction deficiencies. The applicant must agree to a new completion date, sign the agreement, and return the agreement by a specified date.

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**Correction of  
Construction  
Deficiencies**

When every one of any identified constructions deficiencies is corrected, Notification of Satisfactory Construction is sent to the permittee, as above.

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**Second Notification of Construction Deficiencies - Deficiencies not Corrected**

This letter is sent after re-inspection of the constructed approach when the deficiencies specified in the first written notice have not been satisfactorily corrected. A list of the remaining deficiencies is provided. Information is provided on how to correct remaining deficiencies, including the possibilities that:

- The Department may correct the deficiencies at the applicant's expense; or
- The Construction Permit may be revoked and the approach closed and removed.

**Timeline**

Except as otherwise provided in the Special Provisions, a *Permit to Operate, Maintain, and Use an Approach* is in effect for an indefinite period of time from the date of issue of the Permit to Operate, Maintain, and Use an Approach.

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**Exceptions**

- A *Permit to Operate, Maintain, and Use an Approach* may be revoked by mutual consent, or by the Department for failure of the applicant to abide by the terms and conditions of the Permit.
- A new *Application* and *Permit(s)* will be required for:
  - A Change in the Use of the approach, as described in OAR 734-051-0110;
  - A significant increase in the volume of traffic using the approach; or
  - A change in the highway facility that increases conflicts in the area of the approach so that it can no longer be operated safely or efficiently; or
- A *Permit to Operate, Maintain, and Use an Approach* may be revoked by some other operation of law.

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**Terms and Conditions**

The terms and conditions in *the Permit to Operate, Maintain, and Use an Approach* are binding upon successors and assigns of the applicant, including successors in interest to the property being served by the approach.

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**Operation,  
Maintenance  
and Use**

- The operation, maintenance and use of an approach are subject to the control of the legislature over the state highway system.
  - The *Permit to Operate, Maintain, and Use an Approach* are not deemed or construed to be beyond the power of authority of the legislature to control the state highway system.
  - The applicant, in accepting the *Permit to Operate, Maintain, and Use an Approach*, acknowledges that the rights and privileges may be changed or relinquished by legislative action.
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## Maintenance of Approaches

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**Maintenance** An applicant must obtain prior approval and any necessary permits from the Department prior to performing any maintenance work on the approach that may interfere with or interrupt traffic upon or along the highway.

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**Minor Maintenance** The applicant may perform minor maintenance work on the approach, in the area from the outside edge of the highway shoulder or curb line to the right of way line (see OAR 734-051-0270(4)), which does not interfere with traffic on the highway without obtaining approval from the Department.

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**Signal Maintenance** All signal maintenance is performed by the Department, or its agent, at no cost to the applicant, unless

- The *Permit to Operate, Maintain, and Use an Approach* contains a special provision requiring the applicant to bear the cost of signal maintenance, and
- The Department has entered into a Traffic Control Device Maintenance Agreement with the applicant.

**NOTE** Signal maintenance agreements are limited to agreements between the Department and local government agencies.

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**Signal Damage** Where an approach is a private road crossing, the applicant is responsible for the cost to repair or replace a damaged or destroyed signal.

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**Third Party Damage** When a third party is responsible for the damage to a signal the applicant will bear any costs over and above the amount the Department recovers from the third party.

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**Additional Information** The Traffic Design Unit, in Traffic Management Services, can provide additional information on current Department practice for signal maintenance agreements.

# Project Delivery: OAR 734-051-0285

## ODOT Projects

**Purpose** Project delivery is the complete set of steps involved in the allocation of resources to plan and construct new highways or modify and improve existing highways. It includes construction of new highways and interchanges, highway and interchange modernization projects, highway and interchange preservation projects, highway and interchange operations projects, or other highway and interchange projects.

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**Access Management Opportunities** Any time the state invests in the highway system, there is an opportunity to improve safety, operation and mobility conditions. Modernization projects incorporate significant access management measures in the era of OTIA project funding, but other types of project budgets may not include adequate funding for complete access management improvements. Still, it is important to be persistent about getting the best incremental improvements possible during project delivery.

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**Resources** Access management and other staff participation in project delivery is spelled out specifically in **PD-03**, an Operational Notice titled “Project Development Access Management Subteams. PD-03 includes guidance on the following issues, among others:

- When to use an Access Management Subteam;
- Membership, Roles and Responsibilities of Subteams;
- Applicability to various types of projects;
- Requirements for Access Management planning (more in “Plans and Studies,” below);
- Strategies and Solutions for access improvements;
- Access Management Plans;
- Intergovernmental agreements;
- Appeals and Remedies.

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**Remedies** Remedies may be available when legally permitted approaches are closed in conjunction with project delivery. Funds for remedies related to projects will typically come from the project budget. The dedicated fund for remedies is available primarily for other SB86 situations unrelated to projects. See “Remedies” section, above for further information.

**Planning  
Access  
Management  
Measure for  
Projects**

- Access Mitigation 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.
- 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. Strategies include but may not be limited to:
  - Acquisition of Access Control;
  - Closures of approaches;
  - Consolidation of approaches.
  - Relocation, redesign, reconstruction or realignment of approaches.
  - 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.

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**Dealing With  
Existing  
Approaches**

Division 51 provides for “modification, mitigation, or removal” of approaches within project limits in certain circumstances:

- The need for the change has to be documented in an Access Management Plan, an Access Management Plan for an Interchange adopted by the Department, or an approved Access Management Strategy;
- The change is necessary to meet the classification of highway or highway segment designation, mobility standards, spacing standards, or safety factors; and
- The affected property has multiple approaches and has alternate access in addition to the highway approach.

The net result of the project including closures, modifications and mitigations will be that access will be adequate for current and future uses of the affected property.

**Records**

- Spacing, Mitigation measures, closures and other modifications in project areas are subject to the standards and criteria in Division 51, but the Department does not have to develop all of the records, including findings and CHAMPS letters that would be generated in response to a regular *Application*.
- Instead, the Access Management Plan and/or Strategy will serve as the findings and decision document(s).

## Project Recognized Approaches

**Changes in the 2004 Rules**      What may be the most significant change in the 2004 Rules is the creation of potential “project recognized” status for some existing approaches [sections 0285 (1) and (9)]

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**Purpose**      To recognize that ODOT’s actions during project delivery create the perception that approaches left open or improved during highway construction have legal status, and to have a process in the Rules that allows that status to be officially recognized.

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**Applicable Rules**      Three Sections of the 2004 Rules pertain to project recognized approaches:

- 0040 (26) The definition of “grandfathered;”
- 0285 (1) Introduction of Project Development section, providing for approaches identified to remain open after April 1, 2000; and
- 0285 (9) Providing for approaches intended to remain open in conjunction with projects before April 1, 2000.

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**Project Recognized Prior to April 1 2000**      For approaches where there is no Access Control, that were intentionally improved during ODOT projects prior to the adoption date of Division 51:

**0285 (9)**

- The Region Manager is the decision maker and the written recognition that an approach is recognized must include the source of information relied upon to make the determination.
- As-built / as-constructed drawings alone are not enough to establish “intent” as used in the rule;
- Sources that can be used to establish intent may include but are not limited to contract documents and preliminary engineering documents, inspector’s notes, meeting notes, and aerial photos showing the land use existed prior to the highway project.
- The use of the word “project” will be interpreted broadly.

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**Project  
Recognized on  
or after April 1  
2000**

0285 (1)

Approaches identified to remain open in an area that is not Access Controlled in an Access Management Strategy (effective when accepted by the Region Manager), or an adopted Access Management Plan or Access Management Plan for an Interchange Area, after the adoption date of Division 51, April 1, 2000:

- Subject to any conditions of the applicable plan;
  - In the absence of a formal Access Management Plan or Strategy, another plan such as an EA or EIS that addresses access management directly and identifies which approaches will remain open will suffice.
  - Inclusion in a recognized plan or strategy is “written permission” as required in ORS 374, and subsequently SB86, as regards eligibility for Remedies;
  - “Project recognized” status does not convey a "grant of access.”
- 

**Applicability  
for Permitting  
Process**

- Project recognized approaches must be brought under permit for modification, relocation or Change of Use.
  - For an approach where there is Access Control, this may also require an application for a *Grant* or *Indenture*.
  - Documentation in writing for purposes of an *Application* may be in the form of an email. Be sure to import the email into the CHAMPS record.
- 

**Appeal Rights  
and Remedies  
for Closures**

- Project recognized status gives the property owner appeal rights, including the right to Region Review, if the approach is identified for closure, modification or consolidation for safety reasons or in conjunction with an ODOT project. Such appeal rights are not available for other unpermitted approaches.
- Project recognized status includes the “written permission” of the Department consistent with ORS 374 and subsequently Senate Bill 86, and so does create the possibility of Remedies. (For more information, see “Remedies” section, above.)

# Plans and Studies

## Traffic Impact Studies (TIS)

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**Purpose** A TIS is an engineering study that analyzes existing and future roadway conditions resulting from the applicant's development. Specific standards for Traffic Impact Studies were prescribed in the 2000 Rules. The 2004 changes leave out the specifics, deferring to engineering judgment. However, the 2000 rules provide good guidelines for developing a TIS, and are the source of the following information.

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**When is a TIS Required?**

- A Traffic Impact Study may be required for:
  - Proposed developments generating vehicle trips that equal or exceed 600 daily trips or 100 hourly trips;
  - Proposed zone changes or comprehensive plan changes;
  - 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 shall be required for proposed developments or land use actions where the on-site review indicates that operational or safety problems exist or are anticipated.

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**Waiver of TIS Requirement**

- The Region Access Management Engineer may waive the TIS requirements for a Traffic Impact Study for infill and redevelopment projects that would otherwise require a TIS. Such a waiver would be in connection with a proposed "alternative solution" pursuant to section 0135 (4)(a).

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**How is it Used?** A TIS is important at a variety of stages of the *Application* process for proposals that are not easily assessed through standard trip generation assumptions, for instance:

- To determine whether a *Change of Use* has taken place;
- To determine the appropriate fee for public approaches, large or complex uses, or others not included in the fee calculator use list.
- To determine the impacts of a proposal on the highway system;
- To help determine appropriate *Mitigation* measures.

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- Scope of Work**
- A Professional Engineer employed by the Department shall determine the scope of the study and shall review and comment on the study.
  - 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.
- 

- Contents**
- Documentation of current (baseline) conditions.
  - Future year analyses that apply to both public and private approaches and include year of each phase opening and a 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.
  - Documentation of data used and how data was used in the analysis.
  - Prepared by a Professional Engineer in accordance with methods and input parameters approved by the Department.
- 

- Resources**
- *Access Management Manual, Volume 2*
  - *The ODOT Development Review Guidelines, Chapter 5.*
  - ODOT Transportation Planning Analysis Unit (TPAU) website.
- 

- Working with Local Government**
- Local governments may also require a TIS to be developed in conjunction with review of a land use application. The scope may be different for a local government TIS.
    - If the opportunity arises, work with the local government to help scope a study that addresses ODOT issues as well as local issues.
    - We may be able to accept a study that was done to satisfy local concerns, but only if 1) it was done within five years of the approach *Application*, 2) the timeline and scope cover our basic requirements, and 3) local conditions have not changed significantly from the conditions at the time the study was done.
  - Directly requiring applicants to work with local government is awkward, particularly because we can't really require local government to work with them. Direct contact with the local government will often get the best results.
  - Scoping the TIS requirements to include consideration of local plan data, etc. is reasonable. That information is public domain, and usually has already been reviewed by ODOT.

# Transportation System Plans (TSP)

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- Definition**
- Transportation System Plans (TSPs) are local or regional jurisdiction plans that establish goals and policies, and set out a capital improvement plan for transportation improvements, prioritized for the short, middle and long term. (This requirement applies to UGB areas with populations over 2500).
  - TSPs are subject to the requirements found in OAR 660-012, which is administered by the Department of Land Conservation and Development.
  - TSPs are adopted as part of local comprehensive plans.
- 

- Contents**
- Inventory of current (baseline) conditions.
  - Goals/objectives for the local transportation system.
  - Policies and ordinances to implement the goals and objectives.
  - Consideration of alternatives to solve significant system problems.
  - Consideration of ODOT plans and policies, and the relationship of the local transportation system to the statewide system.
  - A schedule for building identified projects, prioritized.
  - A projected allocation of financial resources to develop and build identified system improvement projects (capital improvement plan).
- 

- Resources**
- The Transportation Planning Rule (OAR 660-012) requires development of TSPs and sets out the requirements for a complete plan.
  - ODOT, Local and Council of Government Planners.
- 

- Responsibilities**
- It is the responsibility of the local government to oversee the development of a TSP, either by staff or by consultants, to manage the public review process, and to adopt the TSP.
  - ODOT will typically participate in the review and development of the TSP, particularly as it relates to impacts on the state highway.

# Access Mitigation Proposals

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**Definition** 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.

NOTE: Wherever a “net reduction” of approaches is considered in Division 51, it refers specifically to legal approaches on the highway.

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**Contents** An *Access Mitigation Proposal* will look something like an access management strategy, except the study area will be smaller, centered on the subject property rather than on a corridor or ODOT project area. The proposal should, at a minimum:

- Identify existing approaches on both sides of the highway in the study area, and on side streets within a specified area.
- Identify safety and operations issues in the study area.
- Specify how the net number of approaches on the highway will be reduced and when.
- Specify other mitigations, improvements and modifications required to implement the proposal.
- Identify all affected property owners and include their written concurrence with the *Proposal*.

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**Resources** There are no examples of *Access Mitigation Proposals* yet. Until there are, refer to access management plans and strategies as examples.

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**Responsibilities**

- An *Access Mitigation Proposal* must be approved by the Department.
- An *Access Mitigation Proposal* must be agreed to by all affected property owners, and the terms of the proposal must be recorded in deed records at the County Clerk’s office so that the ongoing commitment to the *Proposal* goes with the land.

## Access Management Strategies

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**Purpose** To improve safety and operations through measures taken during project delivery including physical improvements to reduce conflicts such as medians and deceleration lanes, and treatments of existing approaches to mitigate, modify, relocate, consolidate or close them as needed, and as resources allow.

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**Definition**

- Implementation measures to be carried out during project delivery including identification of approaches intended to remain open, be modified or improved in conjunction with an ODOT project, and including identification of those approaches that will be closed.

---

**When Required** Access Management Strategies are required under the following circumstances:

- Modernization projects;
- Projects within the influence area of an interchange where the project included work along the crossroad; or
- Projects on an expressway.

---

**Strategy Approval** An Access Management Strategy needs to be approved by the District Manager. It is officially in effect when it is accepted by the Region Manager.

- Acceptance by the Region Manager is required before approaches may be “project recognized.”

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## Contents

- A Strategy should describe its own study limits, which may be the whole project area, or a limited area identified to address specific safety or operational issues within the project limits.
  - It should include an inventory of existing approaches and indicate their status (i.e. permitted, grandfathered, illegal) and whether they are currently in use.
  - It will identify approaches intended to be closed, based upon (but not limited to) the following considerations:
    - The subject property must have alternate access in addition to the highway access considered for closure [OAR 734-051-285 (5) (c)] and (d)].
    - Access that remains must be sufficient to serve traffic anticipated to enter and exit affected properties, based upon current conditions, proposed uses, and/or uses allowed by the zoning designation of the property [OAR 734-051-285 (5) (d)].
    - Approaches currently not in use are likely candidates to be closed to improve spacing.
    - Owners of grandfathered approaches have appeal rights when the approach is intended for closure.
    - Approaches that were not legally established are likely candidates to be closed, and do not have standing for an appeal or for SB86 Remedies.
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## Resources

- Examples of Access Management Strategies should be available from the Region offices.
  - The AMPU will be collecting examples and making them available at the Access Management website as they become available.
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## Access Management Plans

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**Purpose** Access Management plans are more comprehensive than Access Management Strategies. They put the access management issues more fully into the context of other local conditions, particularly the relationship to the local street network and existing and planned land uses.

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**Definition**

- A plan for a designated section of highway that includes an inventory of current conditions on the ODOT facility and local streets, as well as local land uses and zoning, and that sets out strategies for improving access management conditions.
- Both the Department and the appropriate local jurisdiction(s) must adopt the Access Management Plan, and the plan should be included in full or by reference in the local Transportation System Plan.

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**When a Plan is Required**

- Access Management Plans are required for modernization projects, except that the Region Manager may determine that an AMP is not appropriate for reasons that must be documented.
- AMPs are sometimes required as conditions of approval of funds for ODOT projects, as is currently the case for many OTIA projects.

---

**When a Plan Should be Developed**

In conjunction with TSP development or when an ODOT project is planned in an area with high traffic volumes or providing important statewide or regional connectivity where:

- Existing developments do not meet spacing standards;
- Existing development patterns, land ownership patterns, and land use plans are likely to result in a need for *Deviations*; or
- An access management plan would preserve or enhance the safe and efficient operation of a state highway.

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- Contents**
- Designation of a study area large enough to look at safety and operational issues on a “system” (or project) basis.
  - An inventory or summary of current conditions, including descriptions of the roadway network, right-of-way, Access Control, and land parcels in the analysis area.
  - Proposal(s) for improvement of access management conditions (within the context of the ODOT project if it is being developed in conjunction with project development) including:
    - Proposals for short, medium, and long-range actions to improve operations and safety and preserve the functional integrity of the highway system.
    - Consideration of whether improvements to local street networks are feasible.
    - Consideration of the comprehensive plan designations and zoning of the area.
    - Provision of comprehensive, area-wide solutions for local access and circulation that minimize the use of the state highway for local access and circulation.
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**Resources** Examples from you Region office or AMPU.

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**Responsibilities** Access Management Plans 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.

## Access Management Plans for Interchanges

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**Purpose** To protect the function of interchanges, primarily through applying access spacing standards.

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**Definition** An access management plan for the area within 1320 feet of an interchange ramp terminal measured on the crossroad away from the mainline.

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**When a Plan is Required**

- Access Management Plans are required for modernization projects in interchange management areas (the area inside 1320 feet of the interchange ramp terminals), except that the Region Manager may determine that an AMP is not appropriate. (Reasons for deciding that an AMP is not appropriate must be documented.)
  - For example, a Bridge project within an interchange area that will not result in any changes to the ramps probably will not require an AMP.
- AMPs are sometimes required as conditions of approval of funds for ODOT projects, as is currently the case for many OTIA projects.

**When a Plan Should be Developed**

Access with high volumes or providing important statewide or regional connectivity where:

- Existing developments do not meet spacing standards;
- Existing development patterns, land ownership patterns, and land use plans are likely to result in a need for *Deviations*; or
- An access management plan would preserve or enhance the safe and efficient operation of a state highway.

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**Contents**

- Access Management Plans for Interchanges include the following components:
- Description of the study area, which should be selected to be sufficient to look at highway operation and safety issues at the system level and in the context of local conditions including existing and potential land uses and the local street system.
- Descriptions of the local street network, right-of-way conditions, whether or not there is Access Control, and types, sizes and existing development of land parcels in the analysis area.
- Short, medium, and long-range actions to improve operations and safety and preserve the functional integrity of the highway system.
- Measures to preserve safe and efficient operations such as:
  - Physical improvements to the highway to reduce conflicts and promote the safe a smooth flow of traffic.
  - Improvements to the local street network where feasible.
  - Area-wide strategies for local access and circulation to minimizes the use of the state highway for local access and circulation.

**Resources**

RAMEs, Region Planning office, AMPU.

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- Responsibilities**
- Access Management Plans for Interchanges may be developed by ODOT, the local government or by consultants.
  - Plans are developed through coordination between ODOT and the local government, regardless of who is the author of the plan.
  - Plans are adopted by ODOT through intergovernmental agreements, and should also be adopted into the local TSP(s).

## Interchange Area Management Plans

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**Purpose** To plan for and manage grade-separated interchange areas to ensure safe and efficient operation between connecting roadways.

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**Definition** A coordinated land use and transportation plan with the purpose of identifying measures to maximize the capacity of the interchange 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.

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**When Plans are Required** During project development for new interchanges.

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**When Plans Should be Developed**

- When interchanges are being significantly redesigned.
- Where a zone change to permit more intense development is proposed near or around an interchange.
- For Priority should be placed on those facilities on the Interstate system with cross roads carrying high volumes or providing important statewide or regional connectivity.

**Contents****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;
  - Make recommendations for necessary improvements to approach roads and the local street network to support the long-term safety and efficiency of the interchange.
  - Identify opportunities to improve operations and safety in conjunction with roadway projects and property development or redevelopment;
  - Adopt strategies and development standards to capture those opportunities;
  - Should include short, medium, and long-range actions to improve operations and safety in the interchange area;
  - 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;
  - Should provide adequate assurance of the safe operation of the facility through the design traffic forecast period, typically 20 years;
  - Should consider existing and proposed uses of all property in the interchange area consistent with its comprehensive plan designations and zoning;
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**Resources**

TDD Planning and TPAU, AMPU staff and your RAME.

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**Consistency and Adoption**

- Interchange Area Management Plans must be 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.
  - Must be consistent with the 1999 Oregon Highway Plan; and
  - Are approved by the Department through intergovernmental agreements and adopted by the local government, and should be adopted into the local Transportation System Plan.
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