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Chapter 3.1 Basic Land Use Application Review

3.1.1 Introduction

This section deals primarily with the Oregon state land use planning system as it is implemented by cities, counties and Metro. Oregon cities and counties have comprehensive plans that address the Statewide Planning Goals and implement those plans with land development ordinances or codes. The local jurisdictions have the authority and responsibility for compliance with those codes. The state rules governing land use decision making are administered by the Department of Land Conservation and Development.

ODOT is notified of pending land use decisions as an “affected agency” and participates in local land use decisionmaking when there is a potential impact to a state highway. ODOT has some functions that affect land use and one such function that is directly related to local land use decisions is issuing State Highway Approach Permits.

This chapter addresses ODOT concerns in local land use decision making and the relationship between land use development decisions and highway approach permitting. An ODOT approach permit is required for direct vehicle access to a state highway.

The approach permit process is separate from but parallel to the local land use review. As discussed in Chapter 2, ODOT staff should review the site access during the land use review as a way to identify potential conflicts and make sure their review of the land use application is coordinated with the ODOT access permit application process. ODOT staff should determine whether any proposed approach to a state facility needs to be assessed for consistency with ODOT Division 51, (OAR 734-051) which comprises the access management standards and procedures, and with any applicable OHP policies. ODOT staff has the responsibility to inform developers of possible conflicts with Division 51 requirements. Consult with a District Permit Specialist or the Region Access Management Engineer (RAME) for more information. The full text of the Division 51 rule is available at:

http://arcweb.sos.state.or.us/rules/OARS_700/OAR_734/734_051.html.

The discussion in this chapter is narrowed to the ODOT analysis used in relatively uncomplicated land use proposals that do not include comprehensive plan, zoning, development code or other plan amendments. Applications including plan amendments are subject to both the types of issues raised in this chapter and to Transportation Planning Rule (TPR) Section 0060. See Chapter 3.2 for background and procedures for TPR review. In addition, many ODOT responses to land use proposals are based upon traffic impact analysis (TIA); there is a detailed discussion of traffic impact analysis in Chapter 3.3.

This chapter discusses several types of land use decisions at a general level. Figure 1 illustrates typical ministerial and quasi-judicial local land use review processes. Legislative proposals that do not trigger the need for TPR review should also be reviewed consistent with the practices described in this chapter. For these categories of land use reviews, development review planners work with the local planning staff and

sometimes the developer/applicant to implement (rather than amend) local land use and transportation plans and ordinances in a manner that eliminates, minimizes or mitigates development impacts on state transportation facilities.

The planning horizon (end of the planning period) for traffic impacts on state facilities for this group of land use decisions is typically based on the year of development project completion rather than the local transportation system plan (TSP) planning horizon. For additional guidance on planning horizons see Figure 3.3.1 - Future Year Analysis: Suggested Time Lines.

3.1.2 Core Issues Summary

See Chapter 1 for a fuller overview of ODOT review authority as a coordinating agency in the state land use program. The following areas of concern are applicable to all land use reviews:

“Raise It or Waive It”

If ODOT has any serious concerns with the impacts of a land use application it is important to “raise” the issues with a written statement to the local land use file describing those issues. To the extent possible the state transportation system issues should be linked to applicable local development code criteria in that early statement, but they can be raised as a place holder before the connection to the local code is identified if time is short. If issues are not raised in the first level of review (and are not ultimately linked to applicable criteria), they are “waived” as a basis for an appeal to the next level of review. ODOT does not initiate many appeals, but keeping the appeal option open is fundamental in any case that may have an adverse impact on affected state facilities.

Rail Crossings

ODOT authority to regulate the safety of rail facilities and rail crossings applies to all land use decisions/development proposals that might impact a rail crossing, particularly activities within 500 feet of a rail crossing, whether or not a state highway facility is within the vicinity of the proposal.

On-System Development Proposals

If the development has direct access to a state highway, the access management rule, OAR Chapter 734 Division 051, applies to any decision regarding location, design and construction of a connection to the highway. Refer to the rule for specific provisions and consult with ODOT Permit Specialists and/or an Region Access Management Engineer (RAME) for additional information. This is discussed in more detail below. Note that these guidelines are not intended to detail the state highway approach permitting process, but rather to identify how that process relates to the development review process and to make the most of opportunities to get to better decisions for both processes.

Off-System Development Proposals

The local development code applies to traffic issues related to projects that do not require access directly to a state highway, but ODOT will still have an interest in

mitigating impacts of increased traffic at highway intersections whenever possible. The local code will typically include approval criteria that public facilities be adequate to serve the new land use, so if, for example, an intersection necessary to connect the proposed development to the state highway system is not adequate, development review staff can recommend a finding that the criteria are not met and/or recommend mitigation measures. The local code may provide that a TIA is required based on development size or traffic generation rates. Preparation of a traffic impact analysis is typically in the applicant's best interest as a way to demonstrate compliance with the local approval criteria. For additional information on traffic impact analysis, see Chapter 3.3.

Relationship Of Access Management Rule to Local Site Design Standards

The 2011-12 major amendment of OAR 734-051, the Access Management rules, includes the following section 1040 that explains which standard will prevail between local and state standards that apply to access locations, etc., on a state facility. This is the complete section of Division 051-1040:

- (1) Where ODOT and Local Jurisdiction Agree on Standards or Requirements. Where ODOT and a local jurisdiction have agreed to access spacing standards, sight distance standards or channelization requirements in an adopted access management plan or facility plan that are different than the adopted standards in this rule, the agreed upon standard will be considered consistent with the standards adopted by this rule and with OAR 660-012-0015 and shall be applied to the state highways within that jurisdiction.*
- (2) Where Local Jurisdiction Standards or Requirements Exceed OAR 734-051. Where a local jurisdiction has adopted access spacing standards, sight distance standards or channelization requirements that require greater distances than the distances adopted by these rules or allow less access to the state highway than the standards adopted in these rules, the local standards shall be considered to be consistent with the state standards and with OAR 660-012-0015 and shall be applied to state highways within that jurisdiction.*
- (3) Where OAR 734-051 Exceeds Local Jurisdiction Standards or Requirements. Where a local jurisdiction has adopted access spacing standards, sight distance standards or channelization requirements that result in distances that are less than the distances adopted by these rules or provide greater access to the state highway than those standards adopted by these rules, the local standards shall be deemed to be inconsistent with these rules and with OAR 660-012-0015 and shall not be applied to state highways within the local jurisdiction.*

OAR 051-1040 affirms a basic precept of administrative law that where two jurisdictions, both operating within their legal authority, enact different regulations regarding the same specific issue (e.g. driveway spacing standards), the stricter standard applies. So, if the local government has adopted spacing, sight distance or channelization standards stricter than the Division 51 standards, the local standard applies (subsection 2). If Division 51 is stricter than local standards or the local government has not adopted

standards, Division 51 applies (subsection 3). A third possible situation results from a facility or refinement planning process that involved ODOT and one or more local governments and results in a different standard to which the affected jurisdictions have agreed, in which case that agreed-to standard applies (subsection 1).

3.1.3 Apply Local Review Criteria

The local code sets the approval criteria for land use reviews. Acknowledged plans and ordinances are presumed to be consistent with state standards¹. State decisions and actions are required to be consistent with local land use plans. For approach permit applications, consistency with local standards is documented in a Land Use Compatibility Statement (LUCS) that is filled out and signed by the local jurisdiction and filed with the approach permit application materials. Additional guidance on the LUCS: http://www.oregon.gov/ODOT/HWY/TECHSERV/docs/tech_bulletins/AM12-01b.pdf .

When the local jurisdiction reviews a land use application for transportation effects, the standards for determining adequacy of or acceptable impacts to State Highways are the mobility targets/standards (v/c ratios) of the OHP, the access management spacing, sight distance and channelization standards (http://arcweb.sos.state.or.us/pages/rules/oars_700/oar_734/table/734-051-4020.pdf) and the safety and operations factors in OAR 734-051-4020(3). Performance measures other than v/c ratio may also come into play in determining “adequate facilities” or appropriate mitigation measures, such as crash history, queuing, signal warrants and turn lane criteria.

ODOT must rely on the local code to include some type of “adequate facilities” criteria because state transportation performance standards do not apply directly to local land use decisions except plan amendments, as detailed in Chapter 3.2.

Applicable Criteria

The local approval criteria vary depending upon the requested land use action. Despite the legal requirement that quasi-judicial approval criteria must be clear and objective, local approval criteria often include criteria that require judgment, such as that ‘public facilities must be adequate to serve new development’ and/or that the ‘transportation system must be maintained to be safe and efficient.’ This general language gives ODOT staff an opportunity to recommend findings on the impacts of the land use action on the safety, function, capacity, and performance of affected state highways.

Both the local land use and the state approach permit processes will benefit if the applicant submits the same site plan with both applications, particularly if they are being processed at the same time. But note that either review may result in conditions that change the site plan design and those changes will have to be conveyed to the other reviewing authority to ensure that final approvals are consistent.

¹ Local plans and TSPs are required to be consistent with applicable state plans; acknowledgement is acceptance by the state (LCDC) that a plan meets applicable state standards.

Figure 3.1.1 lists typical decision point approval criteria for different types of land use decisions. There are other criteria in all local land use codes related to permitted land uses, setbacks, ground coverage, floor area ratios, site design etc. that are less likely to raise ODOT transportation issues. ODOT will work with local jurisdictions to identify opportunities for developers to mitigate their impacts to the state highway system. This can include implementing mitigation identified in a traffic impact analysis or construction of TSP-planned improvements. Mitigation measures or other remedies for impacts are typically stipulated as conditions of approval.

Note that mitigation discussed in this chapter generally refers to measures required by the local government as conditions of their land use approval, unless the context is a discussion of approach permits. Technical discussion of mitigations as conditions of approach permits is beyond the scope of this chapter. Refer to Chapter 3.3: Traffic Impact Analysis for more information.

There are two general areas of concern for ODOT in the review of local land use proposals. One is local site design standards that include landscaping and other modifications within highway right of way. The types of issues likely to arise and the types of recommendations made to address them are detailed in Section 3.1.5.

As discussed above, the other area of concern is proposed development design details that relate to direct access to the state highway. Where possible, the same site plan drawings should be used for both the local land use and state approach permit applications. The types of issues likely to arise and the types of recommendations made to address them are detailed in Sections 3.1.4 and 3.1.5.

Figure 3.1.1: Land Use Decision Process

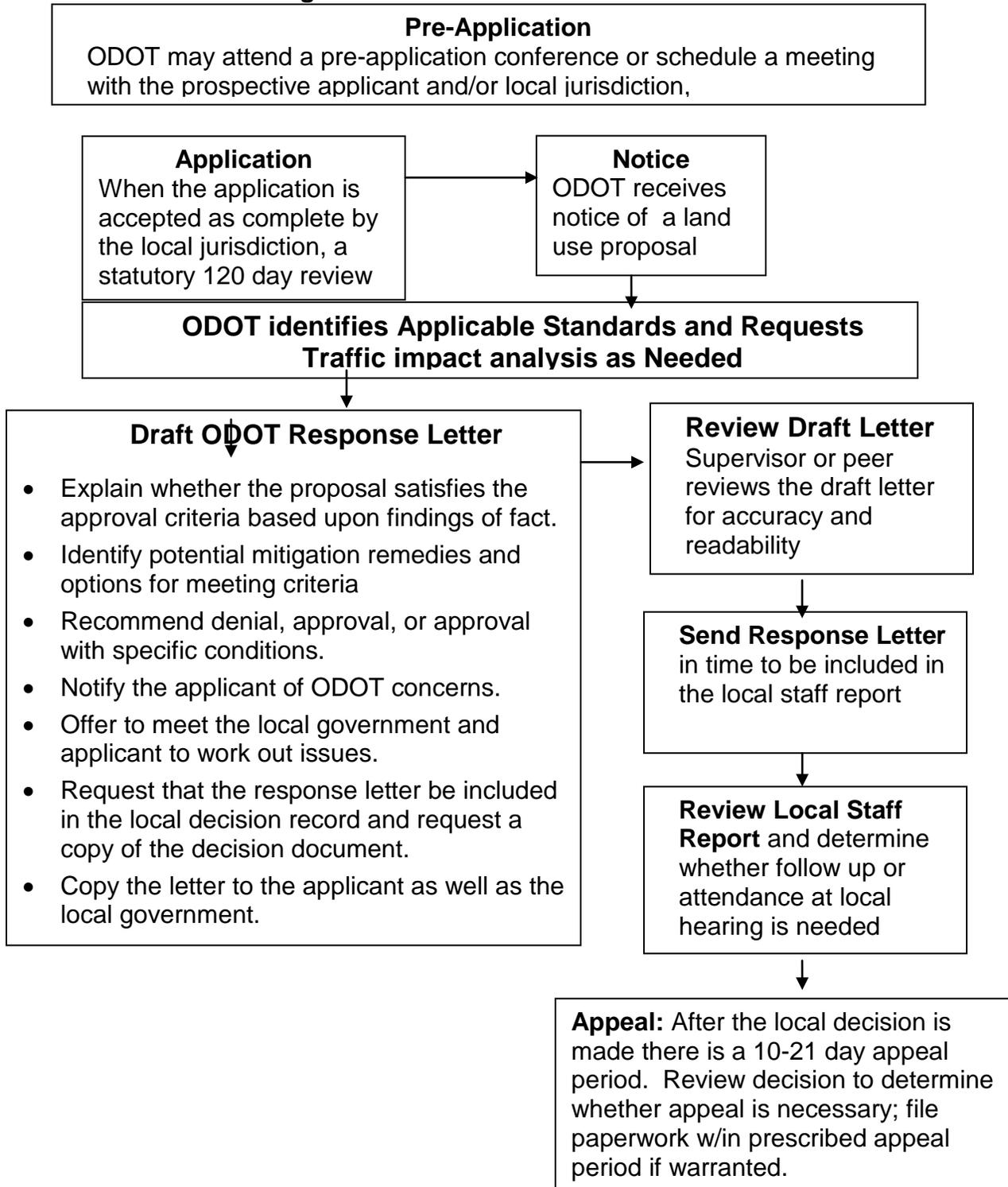


Figure 3.1.2: General Land Use Criteria

Land Use Request	Common Local Approval Criteria	ODOT Interest Includes Safety and Operations of State Facilities, and:
Conditional Use	All requirements for permitted uses plus consideration whether public interest and welfare are met	Adequate transportation system to serve proposal
Subdivision	Available infrastructure including water and sewer, lot and street frontage requirements plus no adverse impact on the transportation system	Local street connectivity, internal circulation to reduce demands upon the highway, safe access from subdivision to State Highway
Partition	Creates two or three parcels; parcel size and street frontage requirements	Side street access, or single approach to serve 2-3 parcels through recorded access agreements
Expedited Land Division	Creates 3 or fewer residential parcels where the subject property is already zoned for residences, developed at 80% or greater of zoned density, all physical / infrastructure site requirements met, no conflicts with protected resources.	Requires notice to service providers; 63-day local limit for decision; no public hearing; May include conditions of approval; small scale, so low risks for ODOT system unless the development requires state highway access. Short, unforgiving comment period.
Variance	Potential to vary site design standards based on hardship circumstances related (typically) to the lot configuration or other site characteristics; variance cannot use to remedy a “self-created difficulty.”	Transportation system safety problem could result, where result would be lot configuration w/ inadequate driveway spacing or onsite queuing capacity

Limited Land Use Review ORS 197-195	Local option to simplify some decisions based on the codification of all applicable code provisions and clear and objective criteria for decision making	Does not require notice to facility providers.
Site Design Review	Review for consistency with adopted design and siting standards for uses otherwise permitted in the applicable zone. May occur concurrent with other land use reviews.	Building placement to help facilitate pedestrian and transit use; vehicular and pedestrian access and movement; adequate queuing area for vehicles exiting the property.
Historic Review	Design standards and objectives to protect historic district, building and/or site characteristics.	Likely none; ODOT may have an interest where a scenic highway or non-roadway ODOT facility could be affected.

3.1.4 Considerations Related to Improvements in State Right of Way

Local development codes often require street side improvements such as sidewalks, street trees, bicycle facilities, etc. When the improvements would be developed along a state highway ODOT has some concerns that need to be raised in the review and decision process. A related site design issue is a developer decision to site a noise sensitive use near a busy highway or rail line. The following subsections address ODOT’s main concerns with implementing local development standards and protecting state interests for improvements and uses affecting state right of way.

Site Design Elements in State Right of Way, Generally

1. ODOT cannot require frontage improvements not directly related to the approach design, even if the applicant is required to obtain an ODOT Approach Road (or other ODOT) permit. In review of proposals for development within Urban Growth Boundaries ODOT typically recommends that the local jurisdiction require curb, sidewalk and bikeway frontage improvements consistent with the local transportation system plan along the site’s highway frontage.
2. ODOT cannot require right of way dedication outright, though dedication of right of way may be part of mitigating the impacts of an approach.
 - ODOT may recommend that the local jurisdiction require right of way dedication consistent with the local transportation system plan, the planned cross section for

the highway and/or in anticipation of future highway capacity or other improvements.

- If the local jurisdiction requires the applicant to dedicate right of way to ODOT, the District Access Management Coordinator is responsible for assisting in coordinating the dedication and providing verification to the local jurisdiction that the dedication requirement has been fulfilled.
 - For dedicating right of way to ODOT, the property owner must be the signatory for the dedication and is responsible for a certified environmental assessment of the site prior to transfer of the property to ODOT to ensure that there is no hazardous material on the property.
3. ODOT Permits, issued from the District Maintenance office, are required for all work in the State Right of Way.
 4. In Eastern and Central Oregon and at high altitudes, snow plowing and snow storage are significant issues. Any land area beyond the edge of the roadway or shoulder may be designated for snow storage.

Bike and Pedestrian Facilities

1. Only recommend sidewalks be required by the local jurisdiction for sites inside urban growth boundaries.
2. Sidewalks are not consistent with ODOT policy on interstate and expressway highway facilities.
3. Identify potential for conflicts between pedestrians and vehicles, especially when the proposed main entrance is located on or near the highway. Recommend site plan modifications as needed to reduce the potential for pedestrian and vehicle conflicts.
4. For proposed developments within interchange areas or other locations where it can be challenging to accommodate bicycle and pedestrian access, coordinate with a State and/or Region Bicycle and Pedestrian Coordinator.
5. Approach permit standard drawings/plans for urban driveways that are constructed across sidewalks and landscape strips often involve building or replacing sections of sidewalk and landscaping on both sides of the driveway.
6. Safety concerns for bikes and pedestrians increase as approaches are widened or add additional lanes and where a sloping driveway apron crosses a sidewalk.

Transit Facilities and Networks

Local government TSPs identify existing and planned transit systems or networks. Development provides opportunities to obtain on- and off-site improvements that support alternative modes and reduce reliance on the automobile. Where public transit is available, improvements to bus stops or a new stop internal to the development site may be appropriate. Local Development Codes may require attention to improving transit facilities and connections to other modes. In review of a development

application, the ODOT planner may identify opportunities to improve circulation and connectivity for transit.

Street Trees and Landscaping

1. Many urban jurisdiction development codes require the installation of trees within the State highway right of way. A miscellaneous permit may be issued to install trees within the State right of way only if:
 - A design exception is approved through Salem Roadway; and
 - The local code requires the property owner to maintain the trees and/or there is an Intergovernmental Agreement between the local jurisdiction and ODOT in which the local jurisdiction is responsible for maintaining the trees.
2. Any land area between the sidewalk and the edge of the roadway or shoulder may be designated for landscaping.
3. The development review planner needs to keep informed about District and Region practices regarding landscaping and whether there are consistency issues with local landscape design standards.

Site Drainage

1. ODOT is responsible for the quantity and quality of stormwater discharged from its facilities: <http://www.oregon.gov/ODOT/HWY/OOM/CW.shtml> .
2. Oregon drainage law only allows properties that naturally drain to the State highway system to connect legally to the State highway drainage system by permit.
3. An ODOT Drainage Permit is required for connection to state highway drainage facilities. Stormwater discharge permits are issued through the District offices and. Applicants should contact the District offices directly.
4. A standard recommended condition of approval that advises the applicant of the need to contact the District office regarding permit requirements for the discharge of stormwater into the highway drainage facility is recommended.
5. The applicant must provide the ODOT District with a preliminary drainage plan showing impacts to the highway right of way. A drainage study prepared by an Oregon Registered Professional Engineer is usually required by ODOT if:
 - Total peak runoff entering the highway right of way is greater than 1.77 cubic feet per second; or
 - The improvements create an increase of the impervious surface area greater than 10,758 square feet.
6. Designing and constructing an approach often involves installing or constructing a culvert or other storm drain feature as part of a driveway.

Signs and Other Displays

1. The ODOT Outdoor Advertising Sign Program regulates signs. Off premise signs require a permit (ORS 377.752). For help with off-premise signs, including

determining whether a sign fits the definition of on- or off-premise, contact ODOT's Outdoor Advertising Sign Program for more information at:

http://www.oregon.gov/ODOT/HWY/SIGNPROGRAM/Pages/contact_us.aspx.

2. Signs are not permitted in the State highway right of way.
3. Flashing lights on signs that are visible to the state highways are not legal.
4. Car dealerships often use the State highway for the off loading and loading of vehicles. When reviewing proposals for car dealerships, the applicant should be advised that the stopping and parking of vehicles upon State highway right of way for the maintenance of adjoining property or in furtherance of any business transaction or commercial establishment is strictly prohibited. The applicant must provide adequate on site circulation for the parking and maneuvering of all vehicles anticipated to make deliveries or be displayed or parked on the lot.

Impacts on Rail Facilities

1. The ODOT Rail Division regulates the safety of public rail crossings including heavy rail, gated light rail crossings, passenger rail and transit rail (commuter rail) as set forth in Railroad-Highway Crossing Safety Laws (ORS 823/824), and the rules and regulations of the Rail Division including OAR 741 Divisions 100, 105, 110, 115, 120, 125 and 200.
2. All proposed land use actions within 500 ft of a rail line, passenger trains or transit vehicles, whether or not the proposal impacts a state highway, should be routed to the ODOT Rail Crossing Safety Section for review. Contact information: http://www.oregon.gov/ODOT/RAIL/Pages/staffcontacts.aspx#Crossing_Safety_Section
3. A "Crossing Order" is required for permission to construct a new separated or at-grade crossing, make alterations to an existing public crossing, or to close an existing public crossing.
 - To "alter" means any change to the roadway or tracks at a crossing that materially affects use of the crossing by railroad equipment, vehicles, or pedestrians.
 - Alterations include, but are not limited to: adding or removing tracks, changing the width of the roadway; installing or removing protective devices; creating an additional travel lane; changing the direction of traffic flow; installing curbs, sidewalks, or bicycle facilities.

Impacts on Freight Corridors

In 2003 the legislature passed a bill that protects freight vehicle capacity "of identified freight route(s)" that applies in planning and project development. Here is the section of statute in full:

ORS 366.215 Creation of state highways; reduction in vehicle-carrying capacity.

(1) *The Oregon Transportation Commission may select, establish, adopt, lay out, locate, alter, relocate, change and realign primary and secondary state highways.*

(2) *Except as provided in subsection (3) of this section, the commission may not permanently reduce the vehicle-carrying capacity of an identified freight route when altering, relocating, changing or realigning a state highway unless safety or access considerations require the reduction.*

(3) *A local government, as defined in ORS 174.116, may apply to the commission for an exemption from the prohibition in subsection (2) of this section. The commission shall grant the exemption if it finds that the exemption is in the best interest of the state and that freight movement is not unreasonably impeded by the exemption.*

Review of development applications affecting the identified freight routes includes consideration of maintaining the “hole in the air” available for passage of large vehicles that exists before development so that freight capacity will not be reduced by development activity. This typically comes up where a highway is the Main Street of a city and pedestrian facilities and other amenities are proposed to support local retail, for example. If any proposed improvements or conditions of approval, such as pedestrian bulb-outs or on-street parking, might reduce the geometric capacity for freight, consultation with the freight community is part of the process for applying to the Oregon Transportation Commission for an exemption from all or part of the statute.

There is guidance on line for implementing the statute, including a link to a map that shows the “identified freight routes.”

http://transnet.odot.state.or.us/hwy/TSpdlt/PDLT%20Meetings/2011/02_February/03_ORIS%20366%20215%202011%20Guidelines3.doc

Roundabouts

One method that may be proposed for mitigating public and private access for large development projects is constructing a roundabout. ODOT has been under a sort of moratorium on roundabouts for several years based upon concerns of the freight industry that roundabouts were being considered that would be dangerous or impede freight movement. ODOT Highway Division released a directive on how freight interests will be included in design and location decisions for roundabouts in 2012, in part:

When considering a roundabout on the state highway system, follow ODOT procedures that consider the needs and concerns of all stakeholders, including assuring that the roundabout can accommodate the freight movement on the highway. Determining if the roundabout can accommodate freight movement requires conversations with the trucking industry, through the ODOT Motor Carrier Division. Regardless of when roundabouts are being considered; during planning, during project development, or during development review, conversation with the trucking industry is required.²

² Highway Division DIRECTIVE: Roundabouts on State Highway System Number: DES 02

Pursuant to that directive “*roundabouts proposed to be located on the state highway system shall be designed so as not to impede the freight on the highway, including an evaluation of how over-dimension vehicles will be accommodated.*” Any proposed roundabout needs to be vetted in a process consistent with DES 02:

<http://www.oregon.gov/ODOT/HWY/techserv/pages/bpds/operational-notices.aspx#directives>.

Noise

- It is generally not the State’s responsibility to provide mitigation for noise sensitive land uses or other receptors that are built after the noise source is in place.
- Residential developments proposed to be built adjacent to rail lines may be exposed to noise from heavy rail freight trains, passenger trains or transit vehicles. Applicants should be advised to take appropriate measures to mitigate the noise impact as well as construct fencing between the lot and the railroad right of way to prevent illegal trespass between private property and tracks.
- Residential developments adjacent to freeways may be exposed to traffic noise levels that exceed federal noise guidelines. Applicants should be advised to take appropriate measures to mitigate this impact.

3.1.5 Considerations Related to Site Access to a State Highway

Applicants can apply for a land use approval before applying for a state highway approach permit or vice versa. Development review and access management staff roles both include opportunities to do triage for the other staff function.

The following considerations help determine when access issues need to be addressed and when access management staff need to be engaged in the development review process. Note that obtaining an approach permit or verifying that none is needed should be a standard recommended condition of approval for any local land use approval.

Legal Right Of Access

Coordinate with the ODOT District Office to see whether any existing approach road is under permit, either through an approach permit specifying the physical location and approach use, or where the approach is grandfathered (predates 1949 or otherwise as defined in 734-051-1070).³ Where a connection between the site and the state highway is not permitted or grandfathered or a new approach is proposed, an application for an approach permit can only be approved if there is a legal right of access:

(66) “Right of access” means the property right of an abutting property owner to ingress and egress to the roadway. A right of access includes a common law right of

³ Note that legislative efforts are ongoing to establish a way to bring unpermitted connections to highways under permit or otherwise establish legality. This section will need to be revised once rulemaking is done under any new legislative definition of what comprises a legal connection.

access, or may be conveyed through operation of law or by deed as a reservation of access, or grant of access.”

Where ODOT has purchased, or obtained by law, the access rights on the property highway frontage, the applicant must already have a Reservation of Access at the location of any proposed approach or be able to get approval to purchase a Grant of Access to use that approach location.

Just because there is an existing curb cut does not mean the approach location was legally established. Where an ODOT contractor put in a curb cut during an improvement project, the approach may have attained legal status, but do not assume so without consultation with the District and/or the Region Access Management Engineer (RAME).

It is not uncommon for a property legal description and/or County Assessor’s map to include an easement that abuts the highway right of way. Such easements do not by themselves confer a right of access. Such easements allow access across the underlying property to those properties or parties described in the related deeds, but do not establish a legal connection to the highway.

When suggesting condition of approval language, it is good to include enough information in the condition to help the applicant know how to meet the condition, e.g. whom to contact, aspects of the proposal that may bear on a permit decision, etc.

Change of Use

Whether or not any existing “connection” is currently permitted or grandfathered, a new State Highway Approach Permit will be required for any existing connection when the new use is a “change of use.”

How change of use is applied has changed due to recent changes to the access management administrative rules, specifically OAR 734-051-3020: Change of Use of a Private Connection. The change was effective July 1, 2012. The term “connection” is now used as a general term for all private driveways and access points to the state highway system, permitted, grandfathered or otherwise. Public streets, roads or alleyways are exempt from this definition.

In the past ODOT evaluated only approaches that had been permitted or could meet grandfathered status to determine whether the change of use section could be applied in determining whether a new or amended permit would be necessary. Other connections would be reviewed as new approaches. The rule now applies to all private connections, with or without an existing permit or acknowledged grandfathered status.

Now that all private connections to the state highway system are subject to review under the change of use section of the administrative rule it is incumbent upon ODOT staff to understand the implications of this part of Rule. The “change” in change of use is a change in the use of the connection, based on traffic thresholds identified in OAR 734-051-3020(2) or other circumstances that will have an adverse impact on the safety and operations of the affected state highway.

Upon review of the land use notification it may become apparent that ODOT has issued an earlier road approach permit to the property associated with the current proposal. If so, an evaluation of the prior use and the conditions of that permit will be the basis for determining whether a change of use has occurred.

When staff is notified of a proposal that has any private “connection” to a state highway, it should be evaluated for operational and safety issues consistent with OAR 734-051-4020(3). The evaluation should also consider whether there is a change in traffic volume and the nature of any significant safety issues of record.⁴ Region Technical Services staff can help with evaluating operational and safety issues. The Region Access Management Engineer (RAME) should be consulted prior to submittal of any land use comment indicating the applicant will be required to make application for a road approach permit.

Proposal for New Approach to a State Highway

The criteria for approval of a new approach permit were expanded somewhat under the 2012 access management rules, and are found in OAR 734-051-4020: Standards and Criteria for Approval of Private Approaches. The general requirements pertain to:

- Approach road spacing standards based on average daily trips on the highway, highway classification and speed,
- Channelization needed to accommodate common lane changes as related to average daily trips and the number of traffic lanes, and
- Sight distance standards based on the 2004 AASHTO Policy on Geometric Design of Highways and Streets.

The development review response for an application that includes a new approach or approaches may include recommended conditions of approval, developed in coordination with access management staff, such as limits on the size and design of improvements to an existing connection and/or number, location, size and design recommendations for any new approaches.

Safety

The 2012 access management rules specify six safety concerns that can trigger required mitigation or denial of an approach permit application, OAR 734-051-4020:

(3) Safety and Operations Concerns. The department has the burden of proving safety and highway operations concerns that it relies upon in requiring mitigation or in denying an application based on those concerns. The department may deny an application where the applicant is unable to provide adequate improvements to mitigate documented safety or highway operations concerns; safety and highway

⁴ ODOT has the burden of proof to determine whether a significant safety issue exists. Safety issues are generally those that can be demonstrated by a high crash rate or by sub-standard sight distance associated with the connection to the highway. For additional discussion of “burden of proof,” see Chapter 4.

operations concerns that the department may consider are limited to (a) through (f), below:

(a) Regular queuing on the highway that impedes turning movements associated with the proposed approach. Regular queuing will be evaluated based on the ninety-fifth (95th) percentile queue on the highway during the highway peak hour, as determined by field observation or traffic analysis in accordance with ODOT's Analysis Procedures Manual; or

(b) Overlapping left turn movements or competing use of a center turn lane from a connection located on the opposite side of the highway; or

(c) Location of the proposed approach within a highway segment with a crash rate that is twenty (20) percent or higher than the statewide average for similar highways; or

(d) Location of the proposed approach within a highway segment listed in the top five percent of locations identified by the Safety Priority Index System developed by the department; or

(e) The proposed approach is on a district or regional highway with a posted speed of 50 miles per hour or higher and the distance to the nearest public approach is less than the stopping sight distance on the highway, calculated in accordance with the 2004 AASHTO Policy on Geometric Design of Highways and Streets; or

(f) Insufficient distance for weave movements made by vehicles exiting the proposed approach across multiple lanes in the vicinity of:

(A) Signalized intersections; or

(B) Roads classified as collectors or arterials in an acknowledged transportation system plan or comprehensive plan, or classified as such by the Federal Highway Administration; or

(C) On-ramps or off-ramps.

- Inability to meet siting standards and/or problems related to the safety and operations standards can be addressed in a variety of ways set up in the access management rules, including two levels of collaborative process to negotiate solutions and administrative appeals. See a full list of these processes in subsection 3.1.7: Create Opportunities for Problem Solving at Each Stage of Review. The development review planner is unlikely to have responsibility for the administrative processes related to the access rules. It is mentioned here only to recognize that the rules are not generally hard and fast and there are usually avenues for compromise if an approach can be made safe.
- Approaches that cross bike lanes and sidewalks create safety concerns for cyclists and pedestrians.

The Number of Approaches Proposed

- When a piece of property is developed or redeveloped, there may be an opportunity to remove unneeded or unsafe connections. One way this occurs is in applying the “moving in the direction of” compliance with access spacing standards to meet the requirements in the change of use permitting process (734-051-3020 (8)(a)). If the existing connections do not meet spacing standards but are proposed to be retained, the applicant can sometimes resolve this by applying for a deviation to the spacing standards.
- While ODOT cannot legally require a joint approach road, it is often in the interest of the state facility to recommend joint approach roads along property lines whenever possible through conditions of approval. These can be particularly important in areas dominated by strip commercial development. All parties using the approach road must be identified and sign the approach road permit. For a joint approach to work over the long run, it is important for the local conditions of approval to require easements over the approach for all property owners with rights to use the joint approach and/or other cross connections. Recognize that a joint approach may have an impact on the nature of the traffic using the highway approach road. For instance, it may not be desirable to channel customer vehicles and large delivery vehicles onto the same approach.
- All approaches have the potential to cause safety issues where they cross bike and pedestrian facilities.

Additional Lane(s) to Support Turn Movements

An applicant may propose the addition of auxiliary lanes to serve a development, or additional lanes may be called for as mitigation in an applicant TIA. Such proposals need to be approached with caution, and ODOT technical staff need to be included in reviewing them to avoid configurations that increase conflicts with highway operations and potential impacts on other nearby land uses.

- Acceleration Lanes allow a driver exiting the property to the right a chance to build up speed before merging left onto the highway. While an acceleration lane for a single property may appear reasonable, it becomes a problem when multiple properties have acceleration lanes. To a driver on the highway, an uninterrupted string of acceleration lanes appears to be a travel lane. ODOT discourages the use of an acceleration lane as a mitigation measure. Drivers may begin to use the acceleration lanes as through lanes, adding to sideswipes, rear-end collisions, and weaving problems.
- Deceleration / Right Turn Lanes allow a driver entering a property to the right a chance to reduce speed before turning into a driveway, and may improve the safety and efficiency of the turn movement. There are similar risks to acceleration lanes where adjacent properties also have deceleration lanes, but with adequate signage and ending lanes at intersections, right turn lanes can be appropriate accommodations at busy approaches.

- Left Turn Lanes are important safety features when they are warranted. The speed of through traffic and the number and nature of turn movement conflicts will affect whether a left turn lane will be safe and safety and operations conditions will vary from site to site.
- Adding lanes adds to safety concerns where approaches cross bike or pedestrian facilities.

All of the safety factors in OAR 734-051-4020(3) should be considered when reviewing a proposal that includes additional lanes in the state right of way. Access Management staff and/or a Traffic Engineer need to be included on the review team.

Sufficient Throat Distance for Vehicle Storage on the Site

The amount of stacking or queuing distance as vehicles enter the site is a safety and operations concern that can be considered in approach permitting decisions (OAR-051-4020 (3)(a)). If the entering traffic must stop too soon once on a site, queues can back up from the site onto the highway. As a rule of thumb, 75 feet of onsite queuing space is a minimum distance. That means 75 feet until the first parking stall, the ordering window at a drive through, first turning opportunity to use a travel aisle, etc. For a larger parcel, the roadway entering the site should be free-flow and any aisles intersecting the entrance roadway should be stop controlled. This is particularly important for grocery stores, shopping malls, etc. Traffic studies should include queuing analysis for on-site operations in the influence area of the approach road.

Unique Aspects of Traffic Entering or Exiting the Site

Certain land uses generate the use of vehicles that affect highway approach design. An example would be any site with heavy truck traffic (warehouses, mills, car dealerships, lumberyards, aggregate sites, etc.). It is important to make sure curb radii are sufficient for trucks to make the turn easily. A deceleration lane lets trucks get out of the travel lane, and results in minimal disruptions to highway through traffic.

How the Approach Road will Relate to Others in the Vicinity

Safety and operations concerns increase with the number and location of other approaches and intersections in the vicinity. A new, or the change of use of an existing, approach should not introduce or increase conflicts with driveways upstream, downstream or on the other side of the highway. Overlapping turn movements are a safety and operations concern that can be considered in approach permitting decisions (OAR-051-4020 (3)(b)). As a general practice, a driveway should be aligned directly across from a driveway on the other side of the highway; otherwise overlapping lefts may be introduced. In some special cases it is desirable to offset driveways on opposite sides of the highway to separate left turns. For example, on an east-west road the northern approach should be to the west of the southern approach to ensure that left turns will not overlap. However, site conditions may not make it possible to do so. Offset approaches on opposite sides of the highway may be appropriate provided the driveways would not create conflicts with other turning movements and queues. These are technical judgments outside of the planner's responsibilities.

Access to/from Subdivisions and Land Partitions

Local codes have standards for access to new lots (subdivided) or parcels (partitioned) that typically require 1) a public or private road that provides access to all the new lots/parcels, 2) internal circulation and 3) where feasible, particularly for subdivisions, appropriate integration into the local street network. If a partition or subdivision will have direct access to a state highway it should be designed for a single point of access on the highway unless there are safety issues or geographic conditions that can only be addressed with additional access.

Some local subdivision and partition ordinances allow or require conditions of approval that provide for future transportation connections to the local street network consistent with their respective TSPs. Measures to implement the planned local street network can include “stubbing out” a street to a property line where a cross connection is planned or setting an access control line where the connection is not desirable. Where lots or parcels are created in a way that could lead to future applications for individual approaches on a state highway, make a recommendation that an access control line along the highway be required as part of the plat.

3.1.6 Plan Designations to Balance State and Local Objectives

As is clear from the discussion above, it can be challenging to balance private, local and state interests in land use and transportation. Both ODOT and DLCD have developed special land use and transportation designations that can help to establish ongoing agreement between local government and the state about how balance among multiple objectives will be accomplished.

None of these options can be applied to resolve concerns with an individual land use application; they need to be adopted legislatively as part of long range planning. In the case of the OHP options, a segment designation is also an amendment to the OHP. These policy options are included here to advise development review planners that there are long term options that can be recommended to local jurisdictions to address issues that are not easily resolved in the local land use decision process.

Mixed-Use Multi-Modal Areas

Enabled in the 2012 update to TPR Section 0060, an MMA can be considered a boundary or an overlay zone that is adopted by a local government. It has to be located entirely within an urban growth boundary and identifies an area planned for transit and pedestrian oriented, downtown, Main Street characteristics including a mix of housing, commercial and public uses. See OAR 660-012-0060 sections (8) and (10):

http://arcweb.sos.state.or.us/pages/rules/oars_600/oar_660/660_012.html. Chapter 3.2 discusses MMAs in more detail.

State Highway Designations

The Oregon Highway Plan provides four types of segment designations that help define the relationships between state objectives for the function of a state highway and local objectives for livable communities and economic development.

Any of the three designations set out in OHP Policy 1B, Land Use and Transportation, is implemented as a result of collaboration between the local jurisdiction and ODOT and is adopted as an amendment to the OHP. New expressways are identified through corridor planning or other action of the OTC. That process also includes consultation with local government. and expressways are adopted as amendments to the OHP. Local TSPs and development codes may also be amended to implement any of these designations.

Policy 1B; Land Use and Transportation Policy – Segment Designations

The various benefits of negotiating a highway segment designation can include:

- Local input into design and operations decisions to reduce the need for design exceptions;
- Identification of opportunities to improve pedestrian, bike, and transit facilities or movements;
- Identification of potential impacts to the safety and operations of all travel modes;
- Identification of opportunities to use the local street network to improve the efficiency of the highway and increase options for local access;
- Long-term commitment to local priorities in balance with freight needs;
- Increased understanding of ODOT concerns in urban settings and recognition of community economic interests such as parking and pedestrian crossings; and
- Reduced uncertainty for public and private development interests.

Special Transportation Areas (STAs) are existing traditional downtown areas adjacent to highways where pedestrian comfort and safety are a high priority, on-street and/or centralized parking replace large private parking areas, transit is available, and speeds are low, typically 25 miles per hour. STAs can also be designated where local plans call for pedestrian oriented compact development at downtown densities. An STA on a Statewide Highway that is also an OHP Freight Route requires a management plan.

Urban Business Areas (UBAs) are auto-oriented commercial areas, often on transit routes, with moderate highway speeds. Where the posted speed on a highway is 35 miles per hour or lower in a commercially zoned area, the UBA provisions automatically apply without a formal designation.

Commercial Centers (CC) are concentrated commercial areas with limited access to the highway, internal traffic circulation and connections to the local street network. Commercial Centers on Expressways require management plans.

Policy 1A: State Highway Classification System - Expressways

Expressway designations are initiated as a result of “*a corridor planning process, ODOT special study or action of the Oregon Transportation Commission.*” Because of the importance of maintaining system mobility, the Transportation Commission classifies new Expressways as a subset of National Highway System (Interstate and Statewide)

highways in consultation with local governments. The Transportation Commission classifies new Expressways as a subset of Regional and District Highways with the agreement of directly affected local governments.

For more information on the OHP designations see the OHP Policy Element:
<http://www.oregon.gov/ODOT/TD/TP/docs/ohp/policyelement.pdf>.

3.1.7 Coordinating Land Use Review with Access Permitting and Rail

Methods Vary by Local Jurisdiction

1. Some local governments require access issues to be resolved and reflected in the proposed site plan submitted for their review.
2. Some local governments defer access issues on development review projects through conditions of approval that require the applicant to provide proof of an ODOT Road Approach Permit prior to issuance of building permits or a final plat.
3. Some local governments do not consider access issues when processing development review projects. Building permits are sometimes issued for projects on a state highway without any coordination with ODOT. This is not in the best interest of the developer because approved plans may have to be redrawn, and in some cases the local approval may have to be amended to address changes required to get an approach permit. This situation creates an opportunity to approach the local government to try to persuade them that coordination with ODOT is a pro-development approach because it will save time and expenses for developers in the long run. Where the local government chooses not to address state access issues it may be necessary to contact the applicant directly to be sure access requirements are understood.

Benefits of Coordination

1. If the applicant chooses to complete the state approach permit process before the local land use review, ODOT can issue a conditional approval of the Application for State Highway Approach from ODOT. Conditional approval means that the approach permit does not go into effect until the applicant demonstrates that the local government has issued a final decision approving the development proposal. This method gives the developer the advantage of the state conducting research as to the legal disposition of property access rights before design documents are finalized. (734-051-3040(8)(b)).
2. ODOT approach permits typically include a letter from an ODOT Permit Specialist explaining the use, limitations, and conditions of the permit. Applicants are often required, as a condition of the approach permit, to convert their Conditional Road Approach Permit into final Road Approach Permit prior to issuance of building permits or within a specified time.
3. Knowing the conditions of the approach permit prior to final site design may inform better design. The intensity of uses for which the project is designed has a direct

relationship to the design of an approach, and, conversely, the permit for the approach will establish a limit on the intensity of uses allowed.

4. Division 51 includes a provision for beginning construction of an approach with conditional approval while the local review process is under way. A Construction Permit may be issued while the local land use action is pending. A deposit may be required, to be determined in the manner used for a Temporary Approach, to ensure that the approach will be removed if the land use is not approved.
5. The decision to allow construction to begin early is made within the approach permit review process. No permit to operate and maintain the approach will be issued until all permit conditions are met, including verification of the local land use approval.
6. Both the local land use decision process and the approach permitting process include an appeal process. The approach permitting appeal process only grants standing to request an appeal to the property owner/applicant, while land use appeals can be initiated by any party participating in the early decision process; both processes can be lengthy. Coordinating the state and local application review processes can shorten the time it takes to get to final decisions by providing sufficient information early in the process to make it possible to submit a single plan / design to meet the conditions of both permitting programs.
7. Where a proposed development affects or is in the vicinity of a railroad crossing it is important to coordinate the local land use review process with the ODOT Crossing Safety Section. A "Crossing Order" is a separate administrative process that an applicant/local jurisdiction may need to go through and that process can also be lengthy. (http://www.oregon.gov/ODOT/RAIL/contact_us_directory.shtml).

Economic Development Focus of Access Management Rule Amendments

The major rewrite of Division 51 adopted in 2012 was motivated primarily by economic development interests in reducing uncertainty in the approach permitting process. Changes to that effect include:

Reduce Uncertainty and Make it Easier to Get Direct Access to a Highway

- Create "clear and objective" permit approval criteria: 1) access spacing, 2) intersection sight distance and 3) channelization (lane configuration that accommodates necessary vehicle weaving movements)
 - Relate Standards to Highway Conditions
 - Allow closer access spacing on all highways with less than 5000 AADT
 - Allow closer access spacing on urban Region and District highways where posted speed is 45 mph or less
- No longer consider whether a property abutting a highway could take access from an adjoining city street or county road, except for interstates, expressways or the second or subsequent access to property in a rural area.

- Limits the safety and operations concerns that ODOT can consider when evaluating a state highway approach permit.

Reduce Costs for Applicants by Shifting Technical Burdens

- Shifts the Burden of Proof to ODOT for analysis to demonstrate traffic impact of a proposed development on a state highway except for developments expected to generate 1000 AADT or more.
- Shifts the Burden of Proof to ODOT to determine when a traffic safety or operations issue exists in the vicinity of a proposed approach.

Create Opportunities for Problem Solving at Each Stage of Review

- Pre-application meetings
- Pre-decision collaborative process
- Collaborative process for change of use of an existing approach
- Collaborative process for property with no alternative access
- Collaborative process to consider use of non-traversable medians
- Post-decision collaborative process
- A new Dispute Review Board

The changes mentioned above are also intended to reduce the need for applicants to apply for deviations to the approach permit standards and to support expedited approval. Detailed discussion of ODOT's approach road permitting process relative to the 2012 Rules is under development. See the Access Management Unit Resource Page for the latest guidance:

<http://transnet.odot.state.or.us/hwy/accessmgt/Web%20Pages/Resources.aspx>