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## PERMANENT ADMINISTRATIVE ORDER

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CHAPTER 734

DEPARTMENT OF TRANSPORTATION

HIGHWAY DIVISION

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#### RULES:

734-051-1070, 734-051-3020

AMEND: 734-051-1070

NOTICE FILED DATE: 03/30/2022

RULE SUMMARY: In section (10), updated a reference to the Trip Generation Manual, published by the Institute of Transportation Engineers (ITE), from the 9th Edition to the 11th Edition.

#### CHANGES TO RULE:

734-051-1070

Definitions ¶¶

(1) "Access Control" means that the right of access between a property abutting the highway and the highway has been acquired by the department or eliminated by law.¶¶

(2) "Access Management Strategy" means a project delivery strategy developed by the Department of Transportation, in collaboration with cities, counties and owners of real property abutting a state highway in the affected area, that identifies the location and type of public and private approaches and other necessary improvements that are planned to occur primarily in the highway right of way and that are intended to improve current conditions on the section of highway by moving in the direction of the objective standards described in ORS 374.311, subject to safety and highway operations concerns.¶¶

(3) "Access Management Plan" means a facility plan adopted by the Oregon Transportation Commission in coordination with affected local governments for managing access on a designated section of highway or within the influence area of an interchange. An access management plan may establish a unique access plan and access management standards for the designated section of highway or influence area of an interchange, and may be more stringent than standards adopted under OAR 734-051-4020. It may be developed independent of or in conjunction with a highway or interchange project; however, an access management plan is not a highway or interchange project.¶¶

(4) "Alternate Access" means the right to access a property by means other than the proposed approach. It may include an existing public right of way, another location on the subject state highway, an easement across adjoining property, a different highway, a service road, a local road, or an alley, and may be in the form of a single or joint approach. The existence of alternate access is not a determination that the alternate access is "reasonable" as defined in ORS 374.310.¶¶

- (5) "Annual average daily traffic" means highway traffic volumes as reported in the most recent edition of the transportation volume tables published annually by the department.¶¶
- (6) "Appealable decision" means a final decision by the department where the applicant has a right to a dispute resolution procedure to review the department's decision as set forth in OAR 734-051-3080 through 3110. The following are appealable decisions:¶¶
- (a) A decision to deny an application for an approach permit;¶¶
- (b) A decision to deny an application for a deviation from approach permitting standards;¶¶
- (c) A decision to impose mitigation measures as a condition of approval of an approach application or as a condition of approval of a deviation from the general approval criteria set forth in OAR 734-051-4020(2);¶¶
- (d) A decision to remove a connection for which the department has issued a Permit to Operate or written permission as grandfathered, or which the department deems to have written permission as set forth in OAR 734-051-3015.¶¶
- (7) "Applicant" means a person, corporation, or other legal entity with a legal property interest, including a lease, option or reservation of access, to land abutting the highway that applies for an approach permit or a deviation from approach permitting standards, or their designated agent.¶¶
- (8) "Application" means a completed application form for state highway approach including any required documentation and attachments necessary for the department to determine if the application can be deemed complete.¶¶
- (9) "Approach" means a legally constructed public or private connection that provides vehicular access to or from a state highway that:¶¶
- (a) Has written permission under a Permit to Operate issued by the department under OAR 734-051-3010; or¶¶
- (b) The department has recognized as grandfathered under OAR 734-051-1070(30); or¶¶
- (c) The department does not rebut as having a presumption of written permission under OAR 734-051-3015.¶¶
- (10) "Average Daily Trips" means the total of all one-direction vehicle movements with either the origin or destination inside the study site that includes existing, primary, pass by, and diverted linked trips and is calculated in accordance with the procedures contained in Trip Generation Manual, 9<sup>th</sup> Edition published by the Institute of Transportation Engineers (ITE). Adjustments to the standard rates in the ITE Manual for mode split may be allowed if calculated in accordance with Transportation Planning Rule and the ITE procedures. Adjustments to the standard rates for multi-use internal site trips may be allowed if calculated in accordance with ITE procedures and if the internal trips do not add vehicle movements to the approaches to the highway.¶¶
- (11) "Channelization" means the roadway lane configuration necessary to safely accommodate turning movements from the highway to an intersecting approach.¶¶
- (12) "Classification of highways" means the department's state highway classifications defined in the Oregon Highway Plan.¶¶
- (13) "Commission" means the Oregon Transportation Commission.¶¶
- (14) "Connection" means an existing approach as defined in (9) or an unpermitted means of vehicular access to or from a state highway and an abutting private property, city street or county road.¶¶
- (15) "Construction Permit" means a permit to construct or modify a state highway approach including all attachments, required signatures, and conditions and terms.¶¶
- (16) "Crash history" means at least the three most recent years of crash data recorded by the department's crash analysis and reporting unit.¶¶
- (17) "Day" means calendar day, unless specifically stated otherwise.¶¶
- (18) "Deemed complete" means acknowledgement by the department that it has received all required information from the applicant for a complete application for an approach permit or for a request for a deviation from approach permit standards.¶¶
- (19) "Department" or "ODOT" means the Oregon Department of Transportation.¶¶
- (20) "Deviation" means an exception from the access management spacing, sight distance or channelization standards set forth in OAR 734-051-4020.¶¶
- (21) "Director" means the director of the Oregon Department of Transportation.¶¶
- (22) "District highway" means a state highway that has been classified by the commission as a district highway in the Oregon Highway Plan.¶¶
- (23) "Division 51" ("this division") means Oregon Administrative Rules (OAR) 734-051-1010 through 734-051-7010.¶¶
- (24) "Expressway" means a state highway that has been designated by the commission as an expressway in the Oregon Highway Plan.¶¶
- (25) "Facility Plan" means a plan developed by the department for a state highway facility, including but not limited to corridor facility plans, and transportation refinement plans.¶¶
- (26) "Fair Market Value" means the amount in cash, or on terms reasonably equivalent to cash, for which in all probability the property would be sold by a knowledgeable owner willing but not obligated to sell to a

knowledgeable purchaser who desired but is not obligated to buy.¶

(27) "Freeway" means a route or segment of highway that is completely access controlled and access limited to grade separated interchanges.¶

(28) "Freeway or Expressway ramp" means all types, arrangements, and sizes of turning roadways that connect to a freeway or expressway interchange.¶

(29) "Functional Area of an Intersection" means the intersection and the area beyond the intersection that comprises decision and maneuver distance, plus any required vehicle storage length.¶

(30) "Grandfathered approach" means an approach that the department has recognized in documentation dated prior to January 1, 2014 as having grandfathered status under the rules in effect on the date of the documentation. An approach that is recognized as having grandfathered status is treated in the same manner as a Permit to Operate under Division 51 rules unless otherwise noted.¶

(31) "Grant of Access" means the conveyance of a right of access from the department to an abutting property owner.¶

(32) "Highway mobility standards" mean the performance standards for maintaining mobility as adopted by the commission in the Oregon Highway Plan.¶

(33) "Highway peak hour" means the highest one-hour volume observed on an urban roadway during a typical or average week, or the thirtieth (30th) highest hourly traffic volume on a rural roadway typically observed during a year.¶

(34) "Highway designation" means a designation made by the Oregon Transportation Commission to a defined route or segment that is in addition to highway classification and that modifies the system management goals for the designated part of the highway. Highway designations include but are not limited to expressways, freight routes, special transportation areas, scenic routes and lifelines.¶

(35) "Indenture of Access" means a deeded conveyance to the abutting property owner to change the location, width, or use restrictions of a reservation of access. Removal of a farm crossing or farm use restriction from a reservation of access requires a grant of access.¶

(36) "Infill" ("Infill Development") means development of vacant or remnant land passed over by previous development and that is consistent with zoning. Infill occurs in urban areas. It may also occur in rural areas on commercial or industrial zoned land where the land has been developed into an urban block pattern including a local street network, and the posted highway speed is at or below forty-five (45) miles per hour.¶

(37) "Influence area of an interchange" means the area 1,320 feet from an interchange ramp terminal measured on the crossroad away from the mainline.¶

(38) "Interchange" means a system of interconnecting roadways in conjunction with one or more grade separations that provides for the movement of traffic between two or more roadways or highways on different levels.¶

(39) "Intersection" means an at-grade connection of a public or private road to the highway.¶

(40) "Interstate highway" means a state highway that has been classified by the commission as an interstate highway in the Oregon Highway Plan.¶

(41) "Land Use Action" means an action by a local government or special district concerning the adoption, amendment or application of the statewide planning goals, a comprehensive plan provision or a land use regulation including zoning, development or subdivision codes.¶

(42) "Land Use Regulations" means local jurisdiction zoning and development codes, including regulation of land use, zoning, subdivisions, land partitions, access, site plans, and similar regulations adopted pursuant to ORS 197, for cities, and ORS 215, for counties.¶

(43) "Median" means the portion of the roadway separating opposing traffic streams.¶

(44) "Mitigation Measure" means an improvement, modification, or restriction set forth in OAR 734-051-3070 and required by the department or initiated by an applicant necessary to offset impacts of the development and provide for safe operation of the highway and proposed approach. Mitigation measures may be a condition of approval for a deviation from approach permitting standards or an application for an approach permit.¶

(45) "Move in the direction of" means a change in an existing private connection that would bring the connection closer to conformity with access spacing, sight distance, or channelization standards set forth in OAR 734-051-4020. The process and criteria for moving in the direction of access spacing, sight distance, or channelization standards are set forth in OAR 734-051-3020(7) through (11).¶

(46) "Oregon Highway Plan" means the Oregon Highway Plan adopted by the Oregon Transportation Commission, pursuant to ORS 184.618.¶

(47) "Peak hour", for the purpose of approach applications made under OAR 734-051-3020 (Change of Use), means the hour during which the highest volume of traffic enters and exits the property during a typical week.¶

(48) "Permit to Construct" means a permit that is issued by the department that includes all attachments, required signatures, conditions and terms, and any bond and insurance documentation provided by the applicant as required by the department to construct or modify an approach and any related mitigation within the state

highway right of way.¶

(49) "Permit to Operate" means written permission issued by the department to operate, maintain and use an approach to the state highway, including all required signatures and attachments, and conditions and terms. A Permit to Operate is not required for a public approach but the department may issue a Permit to Operate for a public approach upon agreement with the governing city or county.¶

(50) "Permittee" means a person, corporation, or other legal entity holding a valid Permit to Operate including the owner or lessee of the property abutting the highway or their designated agent.¶

(51) "Permitted approach" means a legally constructed approach connecting to a state highway for which the department has issued a valid Permit to Operate.¶

(52) "Planned" road or street means a highway, road, street or alley identified in an adopted corridor plan, comprehensive plan or transportation system plan in accordance with administrative procedures of OAR 660-012 and ORS Chapter 197 but has not been constructed.¶

(53) "Posted speed" means the statutory speed established by ORS 811.105 or 811.180, or the designated speed established by 810.180.¶

(54) "Prior use" of an approach means the number of peak hour or average daily trips:¶

(a) Authorized by the Permit to Operate issued by the department; or¶

(b) Authorized by the department for a grandfathered approach in the documentation recognizing the approach as grandfathered; or¶

(c) Based on the use of the property on January 1, 2014 for approaches that the department does not rebut as having a presumption of written permission under OAR 734-051-3015.¶

(55) "Private approach" means an approach that serves one or more properties and that is not a public approach.¶

(56) "Private road crossing" means a privately owned road designed for use by trucks that are prohibited by law from using state highways, county roads or other public highways.¶

(57) "Professional Engineer," for the purpose of OAR 734-051, means a person who is registered and holds a valid license to practice engineering in the State of Oregon, as provided in ORS 672.002 through 672.325 and OAR 820-001 through 820-040.¶

(58) "Project Delivery" means the process of programming, designing and constructing modernization and highway improvement projects identified in the Statewide Transportation Improvement Program.¶

(59) "Public approach" means an existing or planned city street or county road connection that provides vehicular access to and from a highway. An existing city street or county road connection must be under the authority of the city or county to be considered a public approach. A planned city street or county road must be consistent with OAR 734-051-1070(52), included as part of a corridor plan, local transportation system plan or comprehensive plan, and must be or come under the authority of the city or county to be considered a public approach.¶

(60) "Receipt of an application" means the date the department date-stamps an application as received.¶

(61) "Redevelopment" ("Infill Redevelopment") means the act or process of changing an existing development including replacement, remodeling, or reuse of existing structures to accommodate new development that is consistent with current zoning. Redevelopment occurs in urban areas. It may also occur in rural areas on commercial or industrial zoned land where the land has been developed into an urban block pattern including a local street network, and the posted highway speed is at or below forty-five (45) miles per hour.¶

(62) "Region Access Management Engineer" means a professional engineer employed by the department who by training and experience has comprehensive knowledge of the department's access management rules, policies, and procedures, or a professional engineer as specified in an intergovernmental agreement delegating permitting authority as set forth in OAR 734-051-1060.¶

(63) "Region Manager" means the person in charge of one of the department's Transportation Regions or designated representative.¶

(64) "Regional highway" means a state highway that has been classified by the commission as a regional highway in the Oregon Highway Plan.¶

(65) "Reservation of Access" means a right of access to a specific location in an area where the department has acquired access control subject to restrictions that are designated in a deed. A reservation of access may include a use restriction limiting the right of access to a specified use or restriction against a specified use. A reservation of access affords the right to apply for an approach but does not guarantee approval of an application for state highway approach or the location of an approach.¶

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

(67) "Right of way" means real property or an interest in real property owned by the department for the purpose of constructing, operating and maintaining public transportation facilities.¶

(68) "Rule, this" ("this rule") means the part of OAR 734, division 51, as designated by the four-digit suffix, in which the reference to "this rule" appears. For example, this rule ("Definitions") is OAR 734-051-1070.¶

(69) "Rural" means the area outside the urban growth boundary, the area outside a Special Transportation Area in an unincorporated community, or the area outside an Urban Unincorporated Community defined in OAR 660-022-0010.¶¶

(70) "Sight distance" means a length of highway that a driver can see with an acceptable level of clarity.¶¶

(71) "Signature" means the signature of each property owner or the authorized agent of the corporation.¶¶

(72) "Spacing standards" means the access management spacing standards set forth in OAR 734-051-4020.¶¶

(73) "Special Use Approach" means an approach that is intended to provide vehicular access for a specific use and for a limited volume of traffic. Such uses are determined by the department and may include emergency services, government, and utility uses. Mitigation required as a part of an approach permit approval or a condition on a construction permit does not by itself create a "special use approach."¶¶

(74) "State highway" means a highway that is under the jurisdiction of the Oregon Department of Transportation.¶¶

(75) "Statewide highway" means a state highway that has been classified by the commission as a statewide highway in the Oregon Highway Plan.¶¶

(76) "Temporary approach" means an approach that is constructed, maintained, and operated for a specified period of time not exceeding two years, and removed at the end of that period of time.¶¶

(77) "Traffic Impact Analysis" means a report prepared by a professional engineer that analyzes existing and future roadway conditions.¶¶

(78) "Trip" means a one-way vehicular movement that consists of a motor vehicle entering or exiting a property.¶¶

(79) "Unincorporated community" means a settlement that is not incorporated as a city and that lies outside the urban growth boundary of any city.¶¶

(80) "Urban" means the area within the urban growth boundary, within a Special Transportation Area of an unincorporated community, or within an Urban Unincorporated Community defined in OAR 660-022-0010.¶¶

(81) "Vehicular Access" means the location where motorized vehicles move to and/or from a street, roadway, highway or alley and an abutting property.¶¶

(82) "Workday" means Monday through Friday and excludes holidays and days state offices are closed.

Statutory/Other Authority: ~~ORS 184.616~~, 184.619, 374.310-374.314, 374.345, 374.355

Statutes/Other Implemented: ORS 374.300-374.360, ~~227~~; ch. 330; OL 2011

AMEND: 734-051-3020

NOTICE FILED DATE: 03/30/2022

RULE SUMMARY: In section (4)(f), updated a reference to Trip Generation Manual published by the Institute of Transportation Engineers (ITE), from the 9th Edition to the 11th Edition.

CHANGES TO RULE:

734-051-3020

Change of Use of a Private Connection ¶¶

(1) Applicability.¶¶

(a) This rule sets forth procedures and requirements for a change of use of an existing private connection to a state highway.¶¶

(b) A new application is required for the purpose of permitting all connections to a property when there is a change of use as set forth in section (2) of this rule. All connections to the property are subject to this rule whether they exist under a Permit to Operate, are grandfathered under OAR 734-051-1070(30), or the department provides written permission under 734-051-3015.¶¶

(2) Changes of Use Requiring an Application for State Highway Approach. Except as provided under section (5) of this rule, a new application is required for a change of use when any one of the following:¶¶

(a) The number of peak hour trips increases by fifty (50) trips or more from that of the property's prior use and the increase represents a twenty (20) percent or greater increase in the number of peak hour trips from that of the property's prior use; or¶¶

(b) The average daily trips increases by five hundred (500) trips or more from that of the property's prior use and the increase represents a twenty (20) percent or greater increase in the average daily trips from that of the property's prior use; or¶¶

(c) The daily use of a connection increases by ten (10) or more vehicles with a gross vehicle weight rating of twenty-six thousand (26,000) pounds or greater; or¶¶

(d) ODOT demonstrates that safety or operational concerns related to the connection are occurring as identified in OAR 734-051-4020(3); or¶¶

(e) The connection does not meet the stopping sight distance standards, as measured in feet, of ten (10) times the speed limit established in ORS 811.111 or the designated speed posted under 810.180 for the highway as measured in miles per hour, or ten (10) times the 85th percentile speed of the highway where the 85th percentile speed is higher or lower than the speed limit established in 811.111 or the designated speed posted under 810.180. The applicant may perform a study to determine if the 85th percentile speed is higher or lower than the speed limit established in 811.111 or the designated speed posted under 810.180. The sight distance measurement, as described in OAR 734-051-4020(2)(c)(A)-(B), and the study to determine the 85th percentile speed shall be performed according to published department procedures by or under the supervision of a professional engineer as defined in 734-051-1070. The measurement shall be taken under existing and proposed site conditions.¶¶

(3) Mandatory Meeting. Unless waived by the department, a meeting between ODOT staff and the applicant is required for a change of use application prior to the department deeming the application complete. It is preferable that the meeting be held prior to submittal of the change of use application.¶¶

(4) Determinations of Change of Use. The department shall determine whether a change of use meets the thresholds in section (2) of this rule by using one or more of the following methods:¶¶

(a) Field counts;¶¶

(b) Site observation;¶¶

(c) Traffic impact analysis;¶¶

(d) Field measurement;¶¶

(e) Crash history;¶¶

(f) Trip Generation, 9<sup>th</sup> Edition published by the Institute of Transportation Engineers (ITE); or¶¶

(g) Information and studies provided by the local jurisdiction or the applicant.¶¶

(5) Exempt from Application for Change of Use. Buildout of an approved site plan or multi-phased development does not require a new application for an approach road permit where the department determines that the buildout is consistent with the land use approval by the local government and the permit issued by the department for development.¶¶

(6) Approval Criteria. The department shall approve an application for a state highway approach that does not pose a safety or highway operations concern, as set forth in OAR 734-051-4020(3), or all such concerns are sufficiently mitigated pursuant to OAR 734-051-3070, and:¶¶

- (a) The application meets the applicable approach road spacing, channelization and sight distance standards set forth in OAR 734-051-4020(2)(a) through (c); or¶
- (b) The department and the applicant reach agreement that the application moves in the direction of conforming to approach road spacing, channelization, and sight distance standards under sections (7) through (9) of this rule; or¶
- (c) The applicant and the department reach agreement under section (6)(b) that the existing condition without change is sufficient to support approval of an application.¶
- (7) Moving in the Direction of Conformity Collaborative Process. The department and applicant, through a collaborative process, shall determine whether an application moves in the direction of conforming to the spacing, channelization or sight distance standards subject to safety and operations concerns. The collaborative process shall be made available to the applicant within thirty (30) days of the date an application for state highway approach is deemed complete.¶
- (8) Criteria for Moving in the Direction of Conformity. In determining whether an application for a private approach to a state highway moves in the direction of conformity with the spacing, channelization and sight distance standards of OAR 734-051-4020, the department shall consider all connections on the subject site. An application moves in the direction of conformity with 734-051-4020 when changes are made to a connection that include, but are not limited to, one or more of the following:¶
- (a) Eliminating or combining existing connections to the highway resulting in a net reduction in the number of connections; or¶
- (b) Improving the distance between connections; or¶
- (c) Improving sight distance; or¶
- (d) Widening an existing connection to accommodate truck turning radius requirements; or¶
- (e) Widening an existing connection to accommodate additional exit lanes; or¶
- (f) Narrowing an existing connection to provide the appropriate number of entry and exit lanes as required for the property; or¶
- (g) Developing a throat on a connection to allow for more efficient movement of motorists from the highway.¶
- (9) Agreement. Where the department and applicant agree that a change of use application moves in the direction of conforming to spacing, channelization, and sight distance standards, the department shall approve the application without requiring separate deviations from those standards. The department, upon completion of the terms of agreement, shall issue a Permit to Operate for all approaches that are to remain operational as identified in the agreement. An agreement to remove, modify, or mitigate a connection pursuant to the agreement between the department and the applicant is not an appealable decision.¶
- (10) Where Agreement is Not Reached.¶
- (a) If, after participating in a collaborative process pursuant to section (7) of this rule, the applicant and the department cannot agree that an application is moving in the direction of conformity pursuant to sections (8) and (9) of this rule, the region manager shall document the issues of agreement and non-agreement with the applicant through a written statement of non-agreement. The applicant may then request further collaboration on the issues of non-agreement under OAR 734-051-3090, sections (1) through (3), and/or a review by the Dispute Review Board under 734-051-3100.¶
- (b) Where agreement cannot be reached under the processes of subsection (a) of this section, the department may require additional information to complete the application and make a decision pursuant to the standards of OAR 734-051-4020 and issue a final decision to approve, deny, or approve with mitigation, consistent with the procedures in OAR 734-051-3030 and 3040. The department's decision to deny or approve with mitigation applications under the standards of OAR 734-051-4020 are subject to post-decision review under OAR 734-051-3080.¶
- (11) Connections Not Subject to Moving in the Direction of Conformity Criteria. Notwithstanding sections (6) through (8) above, the "moving in the direction of" criteria as set forth in section (8) of this rule shall not be applied to the connections in subsections (a) through (f), below. For these connections, the department shall apply the standards of OAR 734-051-4020 to approve, deny, or approve with mitigation the application, consistent with the procedures in OAR 734-051-3040.¶
- (a) Connections where no right of access to the property exists at the location of the connection, and an application for a grant of access or indenture of access is not approved;¶
- (b) Connections to undeveloped property without an approved site plan or land use approval allowing for development of the property;¶
- (c) Connections for which the department rebuts a presumption of written permission under OAR 734-051-3015;¶
- (d) Connections to property abutting a highway segment with a statewide classification and a posted speed of 50 miles per hour or greater;¶
- (e) Connections to property abutting a highway segment designated as an expressway; and¶

(f) Connections to property within the boundaries of an adopted facility plan, or corridor plan, where the connection is inconsistent with the plan, and the planned component for the access to the property has been constructed or is funded to be constructed within four years at the time of the application.

Statutory/Other Authority: ORS ~~184.616~~, 184.619, 374.310-374.314, 374.345, 374.355

Statutes/Other Implemented: ORS 374.300-374.360, ~~27~~; ch. 330; OL 2011