

Application for Indenture of Access

Instructions and Explanation

Applicants are advised to meet with ODOT staff when pursuing an Indenture of Access. We welcome the opportunity to answer your questions about the process and the associated fees.

Please read the following explanation of ODOT's Indenture of Access process before submitting the application. Prior to processing your request, we must have your completed application form along with the required attachments. Please submit these items to the Oregon Department of Transportation District office.

An **"Indenture of Access"** allows a reservation, previously reserved in a deed, to be moved or modified, providing the applicant meets all required criteria.

Before a **Permit to Construct** and a **Permit to Operate, Maintain and Use a State Highway Approach** can be issued, the landowner must possess the right to access the state highway.

ODOT's authority to control access is established in Oregon Revised Statute 374.

Indenture of Access may be allowed if the applicant meets all the following criteria:

- ◆ The abutting property owner applies for the indenture as set forth in OAR 734-051-0460, applies for an approach, meets all the requirements for issuing the Construction Permit, and agrees in writing to meet all the conditions, if any, placed on the Construction Permit and the Permit to Operate, Maintain and Use an Approach, as set forth in OAR 734-051-0010 through 734-051-0350, including closure of the existing approach, if applicable;

- ◆ The Region Manager approves the indenture application; and
- ◆ If the indenture application is to increase the width of an existing reservation that is specified in the deed record or to make other changes, the Department as a condition of approval may require combining the property's existing reservations of access.

A request for removal of specified use restrictions imposed on an existing reservation of access may be considered, provided the owner complies with the provisions listed above. Any request to remove farm crossing or farm access restrictions requires a grant of access and must be requested as set forth in OAR 734-051-0430 and 734-051-0440.

Application Procedure for Indenture of Access

- (a) An application for an indenture of access to a state highway shall be made on the standard state form, available at all Department District offices, to the appropriate Region Manager through the appropriate District office.
- (b) The appropriate administrative fee must accompany the application, as set forth in OAR 734-051-0470.
- (c) The Department or the applicant may request a meeting to discuss the application process for an indenture of access and/or any additional information required.
- (d) The Department may refuse to accept an application when necessary information is missing; and
- (e) Since an indenture of access relates to a property right, the Department may refuse to accept an application for an indenture of access from anyone other than the owner(s) of the abutting property or

their agent.

An application for an indenture of access may not be accepted unless an application for an approach and all required documentation has been submitted to the Region Manager.

Required documentation:

Applicants for an indenture of access must submit all the materials described in OAR 734-051-0130, and a current preliminary title report or a chain of title from when the state acquired the access rights from the current owner, including copies of the vesting deeds.

The Region Manager shall make the final decision on an application for an indenture of access and shall notify the applicant.

Denial of an indenture of access may be appealed through the appeal process as set forth in OAR 734-051-0390 and 734-051-0400.

The Benefit of Controlling Access

ODOT has acquired the right of access to maintain or improve the safety and operation of state highways. The Oregon Highway plan (OHP) states that the implementation of access management strategies, which may include access control along some highways, is essential to protect the safety, efficiency, and investment of the existing and planned state highways. The plan recognizes that access management can bring about “a more steady traffic flow, which helps to reduce congestion, fuel consumption, and air pollution”. The OHP and OAR Chapter 734 Division 51 indicates where access control may be an appropriate strategy to maintain the function of the highway.

Legislative Background of Access Control

In 1949, legislation was passed to enable ODOT to modify rights of access. Oregon Revised Statutes specify among other property rights; the right of access can be purchased or condemned as deemed necessary for the safety of the traveling public. Since the passage of this legislation, access rights have been commonly purchased from abutting properties when acquiring right of way for road improvement projects. This acquisition of access rights can usually be found in the property’s chain of title.

Historically, owners of property abutting public roadways have enjoyed a common law abutter’s right of access to the roadway. Legislation passed in 1951 restricts the common law abutter’s right of access by providing that no rights of access accrue to real property abutting completely new highway alignments constructed since May, 1951. (ORS 374.405)

