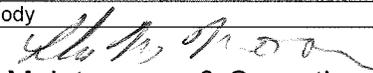




Highway Division Maintenance Leadership Team Operational Notice

Number	Supersedes	Effective Date	Cancellation Date
MG-133-03	New	3/18/2013	Until further notice
Subject		Issuing Body	
Accessing Private Property to Assess or to Remove a Hazard Tree		 Maintenance & Operations Engineer	

PURPOSE:

To establish guidelines for ODOT personnel going on private property to: 1. Assess a tree to determine whether it poses an immediate and substantial risk to the highway, or 2. To cut down or remove a tree that poses an immediate and substantial risk to the highway.

For the removal of potentially hazardous trees that *do not* pose an immediate and substantial risk to the highway use the hazard tree release and notification letters developed for property owners adjacent to the highway; these letters are available from the ODOT Foresters in the Maintenance and Operations Branch (<http://intranet.odot.state.or.us/erp/>).

GUIDELINES:

A tree that poses an “immediate and substantial risk” is a tree that in the opinion of the District Manager, or designee, interferes with the safe, unrestricted movement of traffic; is encroaching on the state highway; or is in a condition that it is likely to encroach on the state highway. The risk should be to the degree that traffic should be restricted or prohibited from using the highway until the unsafe condition is remedied. The District Manager may consult the ODOT Forester for assistance in determining if a tree poses an immediate and substantial risk to the highway.

Accessing Private Property to Assess a Potential Hazard Tree

In most cases, access to private property is not needed in order to assess a tree to determine if it may pose an immediate and substantial risk to the highway. ORS 366.365 authorizes ODOT personnel to access private property, if necessary and with prior notification to the property owner, to assess a tree to determine whether it poses an immediate and substantial risk to the highway. The District may request assistance, as needed at the District’s discretion, from a certified Arborist to conduct a technical assessment to determine whether the tree poses an immediate and substantial risk to the highway. If after inspecting the tree(s) ODOT personnel believes the tree poses an immediate and substantial risk to the highway, ODOT may immediately cut down the tree.

Notification to Access Private Property

Prior to accessing private property to inspect the tree, ODOT must notify the property owner or occupant. ODOT must first attempt to provide notice in-person to the property owner or occupant. If the property owner or occupant is not available written notice must be posted in a conspicuous place where the notice will likely be seen. Use the sample notification letter, available from an ODOT Forester or the Maintenance and Operations Branch website (<http://intranet.odot.state.or.us/erp/>) for this purpose.

Findings and Action

If ODOT personnel or a certified arborist determines, upon inspection, that the tree poses an immediate and substantial risk the department may immediately cut down the tree. Follow Tree Removal and Post-Removal Notification and Recovery procedures outlined below under *Removing a Tree on Private Property*.

Removing a Tree from Private Property

As described in ORS 366.365 and OAR 734-035-0150, ODOT personnel may go on private property to cut down or remove a tree from the private property when that tree poses an immediate and substantial risk to the highway. This action may be done without prior notification of the property owner.

Coordinating with the Property Owner

ODOT should make attempts to locate and notify the property owner of the identified hazard. If the property owner is readily available, the property owner should be given the opportunity to cut down or remove the tree, with appropriate District permits for traffic control, etc., provided the property owner can do so in a reasonable timeframe. Should the property owner elect not to cut down or remove the tree within a reasonable timeframe, ODOT may cut down or remove the tree without specific permission from the property owner.

In the event the property owner is not readily available the hazard tree may be cut down or removed by ODOT personnel without prior notification.

Tree Removal

The tree should be left on the private property if it is reasonable to do so and it can be accomplished in a safe manner. When the tree can not be left on the private property, it may be left on the roadside provided the tree does not create a traffic hazard. The tree may also be held at a nearby stockpile site or other ODOT property.

Post-Removal Notification and Recovery

Written notification to the property owner by certified mail must occur as soon as practical after the tree is removed. Notification will include a general description of the location of the private property and the date the tree was cut or removed. It will also include information regarding the location of the tree if left on site or, if the tree is removed from the private property, how such information may be obtained. A courtesy notice may be left when a business or residence is located on the private property, however, the courtesy notice does not take the place of the written notification sent by certified mail. Notification letters are available from the ODOT Foresters in the Maintenance and Operations Branch (<http://intranet.odot.state.or.us/erp/>).

If removed from private property, the property owner has thirty days from the date of the notification to claim and recover their tree, at the property owner's expense. The person claiming the tree must be able to show a right to possess the tree (e.g., a copy of the certified letter sent by ODOT). If the tree is not claimed within 30 days, the tree becomes the property of ODOT to be disposed of following ODOT standard practices.

Minimize Damage to Private Property

Upon entering private property to remove or assess a tree, measures should be taken to minimize impact to the property (including livestock or pets) and the value of the tree to the extent practical. If damage occurs, e.g., a fence must be cut to gain access, document the damage and what was done to remedy the impact or damage. At a minimum, a temporary fix should be done before leaving the private property. If tests or samples are needed to complete an assessment, prior permission must be obtained from the property owner or occupant.

Documentation

Photos and written notes should be kept on the number and condition of the tree(s) that pose the immediate risk or that are removed; the measures taken to locate and notify the private property owner (of the risk and of the tree removal activity if performed); and a description of how the owner was notified of the access to their property by ODOT (either in person or via posting).

If damage occurs to the property as a result of accessing property, tree cutting, tree removal, or a hazard tree assessment, document the damage and what was done to remedy the damage using photos and written notes. Follow up with the private property owner regarding damage. If the property owner wishes to file a damage claim, refer to *Crashes, Injuries and Damage to ODOT Property* section of the Maintenance Guide.

ROLES/RESPONSIBILITIES

Responsibility

Action

State Maintenance and Operations Engineer, Maintenance and Operations Leadership Team (MLT)

- Modify Operational Notice based on recommendations as appropriate

District Managers

- Establish clear expectations and accountability for work performance, professional behavior, and environmental stewardship.
- Ensure procedures are followed
- Recommend to MLT procedural changes based on field responses and concerns
- Maintain documentation at the District Office

Transportation
Maintenance Managers

- Evaluate trees for risk to the highway
- Request assistance from ODOT Forester or other certified arborist as appropriate
- Coordinate tree removal operations
- Locate and notify property owner(s)
- Follow documentation procedures
- Notify DM of any private property damage
- Attend appropriate hazard tree identification training
- Report issues or concerns with procedures to District Manager
- Ensure appropriate permits are issued to private property owners in a timely manner

ODOT Foresters

- Conduct tree inspections as requested by District
- Make appropriate recommendations to District based on professional judgment and expertise
- Coordinate as appropriate with Region Technical Center on environmental concerns



Oregon

John A. Kitzhaber, M.D., Governor

Department of Transportation
Maintenance & Operations Branch
800 Airport Rd. SE
Salem, OR 97301-4792
Phone: (503) 986-3000
Fax: (503) 986-3032

FILE CODE:

Date

CERTIFIED MAIL

Re: Notification of Hazard Tree(s) Removed

The Department of Transportation identified an immediate hazard to the public in the form of _____ tree(s) adjacent to the _____ highway, located approximately at mile point _____ on the _____ side of the highway in _____ County. Based on the County tax records you are the owner of the property that adjoins the state highway at this location.

As allowed in ORS 366.365, on _____ the Department cut down or removed the tree(s) in order to protect the highway and the traveling public. This action was taken since the tree(s) posed an immediate and substantial risk to the state highway and we were not able to contact you in a timely manner.

The tree(s) were either left on your property or were moved to a near by location as indicated below.

- the trees were left on-site
- the trees were removed from the property

Please contact _____ at _____ within 30-days to claim and recover your tree(s). You will be responsible for your costs to claim or recover the tree(s) and will need a permit from the Department for any work conducted on the highway right of way. When claiming your tree(s), please bring this letter with you to help us identify the appropriate tree(s). If the tree(s) are not claimed and recovered within 30 days from the date of this letter, the tree(s) will become the property of the Department to be disposed of at the Department's discretion.



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Notice of Property Access to Assess a Hazard Tree

NOTE: This may be used if a business or residence is on the property but the property owner was not readily available. Post notice on site in a conspicuous place where the notice will likely be seen.

The Department of Transportation needed to access this property to inspect a potential immediate hazard to the public in the form of _____ tree(s) on this property.

As allowed in ORS 366.365, on _____ the Department accessed this private property to assess a tree or trees to determine whether the tree(s) caused an immediate and substantial risk to the highway.

If there are questions on this action, you may contact _____ at _____.
Please be prepared with the highway, approximate mile post of the so that we may be better able to address your questions.

Oregon Department of Transportation



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Tree Removal Courtesy Notice

NOTE: This may be used if a business or residence is on the property but the property owner was not readily available. A certified letter to the property owner of record is still required.

The Department of Transportation identified an immediate hazard to the public in the form of _____ tree(s) on this property.

As allowed in ORS 366.365 and OAR 734-035-0150, on _____ the Department cut down or removed the tree(s) in order to protect the highway and the traveling public. This action was taken since the tree(s) posed an immediate and substantial risk to the state highway and we were not able to contact the property owner in a timely manner.

A certified letter will be sent to the property owner listed in the County tax records for this property. We will make every effort to leave the tree(s) on the property. However in the event we were not able to leave the tree(s) on site; that letter will give instructions for claiming the tree(s).

If there are questions on this action, you may contact _____ at _____. Please be prepared with the highway, approximate mile post of the property and the date the tree(s) were cut down or removed so that we may be better able to address your questions.

Oregon Department of Transportation