

# *Access Rights and Highway Approach Permits*

***It is important to know about access rights if you own property bordering a highway.***

## **Why are access rights important?**

A property owner needs two things in order to have a legal right to drive a vehicle on to a highway from property bordering the highway:

1. A special property right known as a right of access (also called an access right); and
2. A highway approach permit or other written permission from ODOT.

State law prevents ODOT from issuing a highway approach permit if a property does not have an access right. For a property owner to obtain a highway approach permit the subject property must have a right of access. Having a right of access does not guarantee ODOT will be able to approve an approach permit. The requested highway approach has to meet the approach permit standards in OAR 734-051.

It is important to know if a property has an access right. If a property does not have an access right it may complicate or delay the approach permit application process. That is why ODOT begins the approach permit application process by researching highway right of way records to determine the access rights associated with the property.

## **There are two kinds of access rights**

### **1. A common law right of access**

A common law right of access (also called an abutter's right) is a specific kind of property right. It allows owners of property bordering a highway to drive a vehicle directly onto a highway from the property. Most property bordering a highway in Oregon has a common law right of access.

### **2. An access right at a Reservation of Access or a Grant of Access**

When a property borders a highway where the state owns access control it may not have a common law right of access. However, it may have a right of access through a *Reservation of Access* or a *Grant of Access*. These concepts are explained below.

#### **Access control.**

Access control occurs on highways where ODOT has acquired some or all of the highway access rights. Important state laws about access control include:

- ORS 374.405 made it so property bordering any part of a state highway constructed, reconstructed or relocated on a new highway right of way after May 12, 1951, does not have a common law right of access.
- ORS 374.407 allows ODOT to reserve access rights for property bordering a highway constructed on new right of way after May 12, 1951. It also requires ODOT to specify the location, width and other conditions for using the reserved access right.
- ORS 366.340 authorizes ODOT to acquire by purchase, agreement, donation or eminent domain some or all of the access rights to bordering property when it is necessary for construction and operation of public highways and for public safety.

***If you own property bordering a section of highway where access is controlled it is important to know about:***

- ***Reservations of Access***
- ***Grants of Access***
- ***Indentures of Access***

**1.**

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### Reservation of Access

When ODOT acquires access rights it is generally during construction, reconstruction or relocation of a highway. The department can often reserve a right of access for property bordering a highway to preserve economic development value of the property. A reserved access right is a specific property right called a *Reservation of Access*.

If ODOT approves a *Reservation of Access*, it is recorded in a property deed. The deed typically describes a specific location, width and other conditions for using the *Reservation of Access*.

### 2. Grant of Access

On a highway where the state owns all of the access rights, properties bordering the highway do not have highway access rights. Owners of property wanting to gain a right of access to the highway may be able to do so by applying to ODOT for a *Grant of Access*.

In order for ODOT to approve a *Grant of Access* the owner has to demonstrate the new access will benefit the highway. ODOT may also be able to approve a *Grant of Access* in a location where access control is no longer needed.

If ODOT approves a *Grant of Access*, the owner will need to buy the access rights from the state. State law requires ODOT to sell access rights at fair market value. ODOT will arrange for an appraisal to determine the market value of the property with an access right and without an access right.

The property owner must initially deposit from \$2,000 to \$5,000 with ODOT to pay for processing and appraisal costs. The cost varies depending on the land use. A property with highway access may be more valuable than a property without it. The owner will need to pay any additional amount equal to the increased value of the property when it has a right of access.

A *Grant of Access* is a property right that is recorded in a property deed. The deed describes a specific location, width and other conditions for using the *Grant of Access*. The property owner is responsible for recording the deed and for any associated costs.

#### **Application for a Grant of Access**

The application materials include instructions and additional information:

- *Grant of Access - [Application](#) (PDF)*

### 3. Indenture of Access

When a property has a right of access through a *Reservation of Access*, it does not give the property owner the right to move or change the access without permission from ODOT. The owner may be able to relocate the access to a more desirable location, widen it, change the use or make other improvements by applying to ODOT for an *Indenture of Access*.

If ODOT approves an *Indenture of Access*, it changes the terms for using the access right. Because a *Reservation of Access* is a property right, any changes need to be recorded in a property deed. The owner is responsible for recording the deed and for any associated costs.

#### **Application for an Indenture of Access.**

The application materials provide additional information and instructions.

- *Indenture of Access – [Application](#) (PDF)*
- *Application Check List - [Brochure](#)*

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**Access Right Information**

ODOT recommends that property owners and prospective buyers learn if the property has an access right if they intend to apply for a highway approach permit.

It is not easy to know if a property has an access right without asking ODOT to research highway right of way records. ODOT maintains all of the property deeds for the state highways at the Right of Way office in Salem. A property owner may contact the ODOT District office where the property is located at any time to request information about the access rights associated with a property. This research process generally takes less than two weeks.

**Contact Us**

If you have questions or want more information about the access rights for your property, please contact the ODOT District office where the property is located.

[Region and District Contacts & Maps](#)

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