

By law all access rights to a state highway are under Oregon Department of Transportation's regulatory authority. Access to the highway has no inherent value outside the scope of Oregon Department of Transportation's regulatory authority if reasonable access exists. For eminent domain appraisal purposes "reasonable access" is defined as any access that allows some remaining economic use of the property. This does not necessarily mean that the "*remaining economic use*" equals the existing use or the existing Highest and Best Use. (Right of Way Manual 4.480, Access Considerations) When access rights are acquired by Oregon Department of Transportation under eminent domain for the purpose of access control, any loss of value that might occur due to the loss of access is non-compensable as long as reasonable access, as defined, continues to exist.

Closure of accesses through Oregon Department of Transportation's administrative permitting authority does not constitute the taking of access rights and is not handled under eminent domain. Any related loss of value is non-compensable and is not a part of the eminent domain appraisal process. In these situations the department may consider an administrative remedy process as identified in OAR 734-051-0500 - 0530.

If the loss of access leaves the property with less than "reasonable access" (i.e. land-locking the property), the loss of value which results is treated as compensable.

There are two additional instances where access loss by eminent domain acquisition is treated as compensable. These are discussed below.

APPRAISING COMPENSABLE ACCESS RIGHTS

Loss or restriction of access through the acquisition of access rights under eminent domain is compensable under three scenarios: (1) when the right of access is completely removed and the property has no reasonable remaining access (land-locked); (2) when existing access reservations are acquired by the department; (3) when existing grants of access formerly issued for a property by the department are now acquired. In these instances, the loss in value to the larger parcel is the measurement that is used for valuing compensable access restriction damages. (Right of Way Manual 4.480)

This involves a Before and After analysis and should be reported on the Before and After Appraisal form (RPT. 4). In limited cases, and only with prior concurrence from the Right of Way Project Administration Unit Manager or the Appraisal Reviewer, a Taking and Damages Appraisal format (RPT. 3) may be used.

Value Finding Appraisals (RTP. 2) and Administrative Determinations of Value (RPT. 1) may be applicable in certain circumstances where it is obvious that no damages result from the loss of the reservation or grant of access. Appraisal Review concurrence is

required prior to using the Value Finding or Administrative Determination format. Since the before and after thought process is the basis for determining and measuring loss in value, the use of either of these formats in determining compensable access loss impacts would be rare and would require presenting a strong case to the Appraisal Review unit when the request is made.

Appraisers must recognize when doing a Before and After appraisal that identifying and measuring a loss in value due to access restriction by this method may also pick up non-compensable damage items as well. Examples of non-compensable damages are loss of business, circuity of travel or changes in traffic patterns. (See Right of Way Manual 4.450 Non-Compensable Damages.) Likewise when doing a Before and after appraisal for other types of compensable damages, such as proximity issues, non-compensable damages due to access restrictions (when reasonable access remains, etc.) may also be picked up. A careful analysis of the comparable sales used to establish the Before value and those establishing the After value is needed. Any non-compensable damage components picked up in the Before and After comparison should be identified and quantified in the appraisal narrative, but they are to be segregated out and not included in the final value conclusion. The final value is the basis for just compensation and by law can only include compensable damages.

When appraisers value the impacts of acquiring access rights at access reservations or grants of access, they should support their analyses by data developed from the market. Sales of comparable properties in the Before condition and in the After condition should be found and used. Adjustments to the comparable sales should follow the same criteria as for any narrative appraisal. The appraiser should lay out the analysis and the value conclusion in a logical manner that would lead the reader to the same conclusion.

The analysis should also include whether there are any special benefits from the project that may offset compensable damages, including access restrictions. That is standard procedure in all appraisals when dealing with compensable damages. (See 4.465 and 4.480)

As stated above since there is no inherent value for access, the loss in value to the larger parcel is the measurement that is used for valuing compensable access restriction damages. When the value of the access restriction is found to be zero (no damages or change in value), the appraiser must enter \$0 for land acquired and \$0 for Damages on the Allocation Page of the report. Stating a "nominal damage" is not allowable if the market evidence indicates no loss in value. Based on advice from Department of Justice and Right of Way policy, a minimum compensation of \$350 will be added at the time of the Appraisal Review, (See Right of Way Manual Chapter 4.145, Just Compensation and Minimum Payment). An appraiser could not realistically measure a loss in value, or damage, in an amount that small. The market is not that sensitive. So for a loss in value less than \$350, the appraiser should put zero or state that a loss - if any - is too small to measure. When an Administrative Determination of Value format is used and concludes zero or a loss in value too small to measure, the Right of Way staff person "*approving*" the

Administrative Determination in the Region office will set the minimum Just Compensation at \$350.

It should be noted that \$350 is the minimum compensation in all Regions of the State of Oregon. It is never the appraiser that enters the minimum amount. Administration policy is that the Reviewer of the appraisal or the person approving the Administrative Determination enters the minimum compensation amount.

In addition to acquiring access rights, Oregon Department of Transportation can issue anew access right to a highway where access is currently restricted. This is called a grant of access. Grants of access are also valued using a Before and After methodology and report format. The department's selling price for a grant of access is based upon the increase in the value of the parcel as a result of the additional access rights. All discussions pertaining to Before and After appraisals in this guide as well as in the Right of Way Manual apply also to the valuation of these grants of access.

ACCESS CONTROL DEFINITIONS AND CITATIONS

"Access Control Line"

Generally seen on Right of Way maps as a series of lines with short dashes. Older Right of Way maps placed the letters "RA" within a circle on each affected property. This Symbol stood for "*Restricted Access*". More modern Right of Way maps do not have this symbol. If access points are to be allowed along the Access Control Line, a perpendicular line with a circled "A" will be shown. This symbol designates a point of access. Restricted access rights will also be shown in the Exhibit A for new projects. The restricted access rights will also be shown on the deed to the property as a Deed Reservation, when the acquisition is completed.

"Access Controlled"

Ingress to or egress from the highway is either completely prohibited or allowed at one or more specific access locations known as, "*access reservations*." Any allowed access reservations will be identified in the conveyance document to Oregon Department of Transportation.

"Access Controlled to Highway"

Language will be included in the new conveyance document to control access from ALL of the grantor's remaining property TO THE HIGHWAY. Even if the parcel being acquired does not extend along the entire frontage of the grantor's property, the new document WILL AFFECT the entire frontage. One or more access reservations will be identified (stations and widths) in the conveyance document to provide access from the grantor's remaining property TO THE HIGHWAY.

"Access Controlled to Parcel"

Language will be included in the new conveyance document to control access from ALL of the grantor's remaining property TO THE PARCEL that is being acquired. If the parcel being acquired does not extend along the entire frontage, the new document will NOT AFFECT the remaining frontage. One or more access reservations will be identified (stations and widths) in the conveyance document to provide access from the grantor's remaining property TO THE PARCEL that is being acquired.

"Access Reservation"

Also known as "Deeded Reservations" is a deeded property right from the highway at a specific Engineer's Station. Most access reservations can serve only a specified property, usually the grantor's remaining property.

"Access Restricted"

Access from the highway is completely restricted. This is usually because Oregon Department of Transportation acquired the access rights during a previous highway project. It can also occur as a result of ORS 374.405 which says that on new or realigned segments of highway built after May 12, 1951, adjacent property owners have no abutter's rights of access.

"Access Restricted to Highway"

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"Access Restricted to Parcel"

Language will be included in the new conveyance document to prohibit access from ALL of the grantor's remaining property TO THE PARCEL that is being acquired. If the parcel being acquired does not extend along the entire frontage, the new document WILL NOT AFFECT the remaining frontage. No access reservations will be identified in the conveyance document.

"Grant of Access"

A deeded conveyance from Oregon Department of Transportation to a property owner for the right of access at a specific Engineer's Station where such rights do not presently exist. Normally the Grant shows a specific approach width and will specify the property to which the right extends.

A Grant of Access is also used to lift a "*farm crossing*" use restriction in an existing access reservation. In each Region, the RAME, (Region Access Management Engineer), in coordination with the District Maintenance Office, will be directly involved in this process. The property owner must pay Oregon Department of Transportation for the new grant of access rights.

"Indenture of Access Rights"

A deeded conveyance to move, to widen, or to lift most use restrictions (other than farm crossings) for an existing access reservation. This can also be the method for converting a private driveway into a public street connection. It is not intended to be used by a City or County acting as an agent for a private developer, who would otherwise need to obtain a Grant of Access Rights. The property owner initiates the Indenture process by submitting an Application for Indenture of Access to the District Office along with a \$200 fee. It is always at Oregon Department of Transportation's discretion whether to approve it or not. The authority to approve indentures has been delegated to the State Right of Way Manager.

In that this is simply moving the location of an existing access right or changing the intended use, it would not be proper to charge an amount equal to any resulting increase in value in addition to the \$200 fee. Therefore, an appraisal would not take place on an Indenture of Access Rights

"Joint Use Approach"

An access reservation that serves more than one property or more than one development.

"ORS 374.405-Access Rights of Property Abutting on State Highways."

"No rights in or to any state highway, including what is know as right of access, shall accrue to any real property abutting upon any portion of any State Highway constructed, relocated or reconstructed after May 12, 1951, upon right of way, no part of the width of which was acquired prior to May 12, 1951, for public use as a highway, by reason of the real property abutting upon the State Highway."

"ORS 374.4 10-Department of Transportation to prescribe access rights of abutting property."

"In connection with any acquisition of real property for Right of Way of any State Highway, Oregon Department of Transportation shall prescribe and define the location, width, nature and extent of any right of access that may be permitted by the Department to pertain to real property described in ORS 374.405." Oregon Department of Transportation can, at its discretion, establish access reservations to serve property that abuts a new alignment. This may be necessary to avoid land-locking any property. If no access reservations are declared in the conveyance document for a new alignment, access is automatically prohibited.

"Throughway"

Authorized by the Oregon Legislature in 1947; established by the Oregon Highway Commission in 1948. It is a highway specially designed or formally designated for through traffic. No right of access shall accrue to any real property abutting a throughway. Access to throughways shall be controlled: either by access reservations or complete restriction. Specific sections of certain highways have been officially declared as throughways. ORS 374.005-374.095 prescribe that Oregon Department of Transportation establish access control when acquiring any Right of Way for a throughway.