

Appendix A: Definition of What Constitutes a Modification

The issue has arisen of what constitutes “modification” of an approach within a project. This is an important question when a project touches an approach but the project doesn’t want to get bogged down in extensive access management work. It is a particularly important question for paving projects, which may touch many approaches.

The language of OAR 734-051-5120(1) reads as follows:

Access Management in Project Delivery

(1) Applicability

(a) This rule applies to access management in the project delivery process for modernization and highway improvement projects included in the Statewide Transportation Improvement Program.

(b) For purposes of this rule, a highway improvement project is a project in the Statewide Transportation Improvement Program that proposes to modify, relocate, or remove existing public or private connections to the state highway within project limits.”

If a project is **not** proposing to modify, relocate or remove an existing public or private connection, the project does not have to comply with the access management strategy requirement. This eliminates the need for the process of developing the methodology and with it the possibility of property owner reviews in a Collaborative Discussion and/or Dispute Review Board.

Proposed definitions for when a methodology and strategy are not needed or needed in a project:

1. The following actions **do NOT constitute a modification** if all of the work is conducted within the ODOT right of way:

- Paving an apron that was previously not paved is not a modification
 - Widening or narrowing the paved area to bring the apron into conformance with the ODOT Highway Design Manual is also not a modification
 - If you are paving an area that is significantly narrower than the unpaved area, you should work with the property owner to establish the exact location
- Paving a radius that was previously not paved is not a modification
 - Enlarging or reducing the size of the radius to bring the apron into conformance with the Highway Design Manual is also not a modification
 - However, reductions in the size of the radius require communication with the property owner to ensure that the approach can adequately serve the types and numbers of vehicles that are anticipated to enter the property

2. The following action **may or may not constitute a modification** if all of the work is conducted within the ODOT right of way. If there is any question about whether the action is a modification, staff should err on the side of declaring the action to be a modification.

- Putting in curbs within the ODOT right of way may or may not be a modification

3. The following actions **do constitute a modification**:

- Any pavement of an approach within the owner's property, including a safety wedge or paving to keep gravel off the roadway. (Project staff must involve the Region right of way staff to get legal access to the property.)
- Installing curb and sidewalks on the property owner's property. (Project staff must involve the Region right of way staff to get legal access to the property.)

Open Frontage: Defining limits for an approach that was previously open frontage, either with paving or curbing, pursuant to OAR 734-051-3015(6) is not a modification and does not entitle the property owner to a post-decision review pursuant to OAR 734-051-3080.

Medians: Installation of a median is not a modification of an approach because it occurs entirely within the ODOT right of way.