

**Highway Access Management
Key Laws, Rules, and Safety Factors
Thursday, January 14, 2010
Central Oregon ACT**

Access Management: What is it?

“Access Management is *balancing* access to developed land while ensuring movement of traffic in a safe and efficient manner.” --Oregon Highway Plan, Goal 3 - Access Management

“Access Management is the *systematic control* of the location, spacing, design, and operation of driveways, median openings, interchanges, and street connections to a roadway.” -- Transportation Research Board Access Management Manual

Key State Laws

Mid 1900's – Oregon one of first states to adopt comprehensive legislation codifying the state's police power to control access to public highways.

- ORS 374.305
 - ⇒ Prohibits any person from building or constructing on the right of way of any state highway or county road "any approach road or any other facility, thing or appurtenance" *without first obtaining a permit* from ODOT.
 - ⇒ Requires a new permit for change in use of an existing approach.
- ORS 374.310
 - ⇒ Authorizes ODOT to adopt rules for issuing permits for highway access.
 - ⇒ Authorizes permits to include terms and conditions that in its best judgment “.....may be in the best interest of the public for the protection of the highway or road and the traveling public....”
 - ⇒ Prohibits ODOT from issuing permits for access where *no rights of access exist* “...between the highway and the abutting property”.
 - ⇒ Requires that property adjoining the highway have *reasonable access* to the highway. Reasonable means (a) access must be sufficient to allow the authorized uses for the property identified in the acknowledged local comprehensive plan; and (b) the type, number, size and location of approaches must be adequate to serve the volume and type of traffic reasonably anticipated to enter and exit the property, based on the planned uses for the property.
 - *Reasonable access does not mean direct access*
 - Case law: Oregon courts have generally ruled that the state may restrict access to land, without compensation, so long as the landowner retains reasonable and adequate access to serve the land. However, if state regulation deprives the owner of all economically beneficial or productive use of the land, the regulation amounts to a government “taking”, and must be compensated by the government.
 - ⇒ Prohibits ODOT from “land-locking” property without compensating property owner.
- ORS 374.405
 - ⇒ Eliminates *right of access* for property owners abutting highways constructed or relocated after May 12, 1951 on totally new right of way acquired after May 12, 1951.

Key Aspects of Administrative Rules – Chapter 734, Division 51 Highway Approaches, Access Control, Spacing Standards & Medians

OAR 734-051 are ODOT's administrative rules governing highway approaches, access control, spacing standards and medians,

- Property must have *right of access* before ODOT will accept a permit application.
 - ⇒ "Right of access" means the right of ingress and egress to the roadway and includes a common law right of access, reservation of access, or grant of access. 0040(57)
 - ⇒ Property abutting highways constructed prior to 1951 usually have common law right of access, unless access rights are/have been acquired by ODOT.
 - ⇒ No abutter's right of access exists to highways constructed after May 12, 1951 on totally new right of way acquired after May 12, 1951.
- A right of access gives the property owner a right to apply for an approach, *but does not obligate ODOT to approve the application*.
 - ⇒ If ODOT denies an application for property that has a right of access, the Department must determine if a remedy is appropriate. See 0520.
 - ⇒ If ODOT denies an application where the property has a deeded reservation of access, the denial is considered a "taking" and ODOT must acquire access rights through eminent domain process. (Appellate Court decision in Hanson case)
- The property owner's burden to justify increasing highway approaches is greater if ODOT determines that reasonable alternate access exists. See 0080(5)(a)-(b) and (11)(a)-(d).
 - ⇒ "Alternate Access" means the physical existence of *other means to access a property than the proposed approach*, such as an existing public right of way, another location on the subject state highway, an easement across adjoining property, a different highway, a service road, or an alley, including singularly or as a joint approach, but without a conclusive determination that the alternate access is "reasonable". 0040(6)
- All approaches are subject to ODOT's general supervision and control, commonly referred to as "police power". See 0275.
 - ⇒ ODOT can require changes to or closures of existing approaches in the interest of the safety or operation of the highways. If closure leaves no reasonable alternate access where right of access existed, then state must compensate property owner.
- Highway classification is a key determinant for access spacing standards. Tables 1-7.
- Many areas of flexibility to facilitate problemsolving.
 - ⇒ Deviations
 - ⇒ "Move in direction of" principle
 - ⇒ Requirement for and content of traffic impact studies
 - ⇒ Phased improvements
- Special considerations for "rural" areas
 - ⇒ "Rural" means the area outside the urban growth boundary, the area outside a Special Transportation Area in an unincorporated community, or the area outside an Urban Unincorporated Community defined in OAR 660-022-0010(9)." See 0040(59).
 - ⇒ Urban spacing standards are allowed in rural areas for "...infill or redevelopment projects on commercial or industrial zoned land" under certain conditions. See 0115(2).
 - ⇒ Private approaches to property in rural areas are allowed, *even where there is alternative access*, if certain criteria are met. See 0080(3)(a)(B).

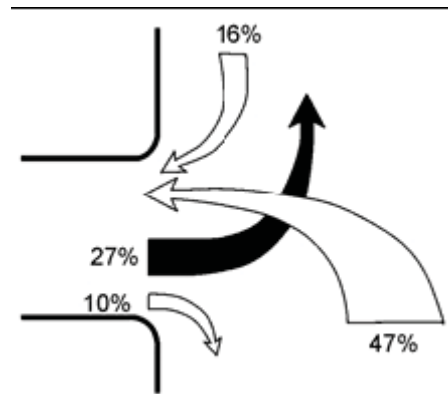
Safety Factors of Access Management

2003 – 2007 State Highway Crash Data

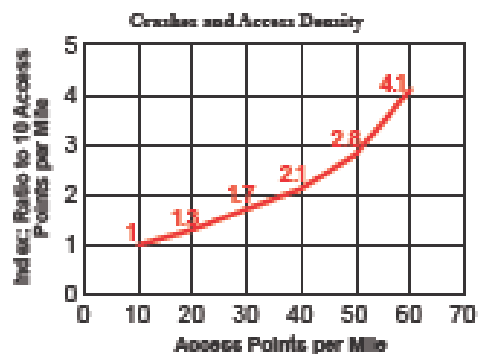
- Fatalities, injuries and property damage from *crashes at intersections and driveways* (all highways)
 - 218 people killed – 16% of all deaths
 - 28,848 people injured -- 44% of all injuries
 - Property damage only – 39% of all crashes
- All **percentages above increase** when interstates, freeways, and expressways are excluded
- Rural Highways – 35% of all crashes
 - 880 people killed -- 77% of all fatalities occurred in crashes on rural highways
 - 2048 major injuries -- 57% of all major injuries occurred in crashes on rural highways

Percentage of Driveway Crashes by Movement (75% related to left turns)

Source: Transportation Research Board, Access Management Manual 2003

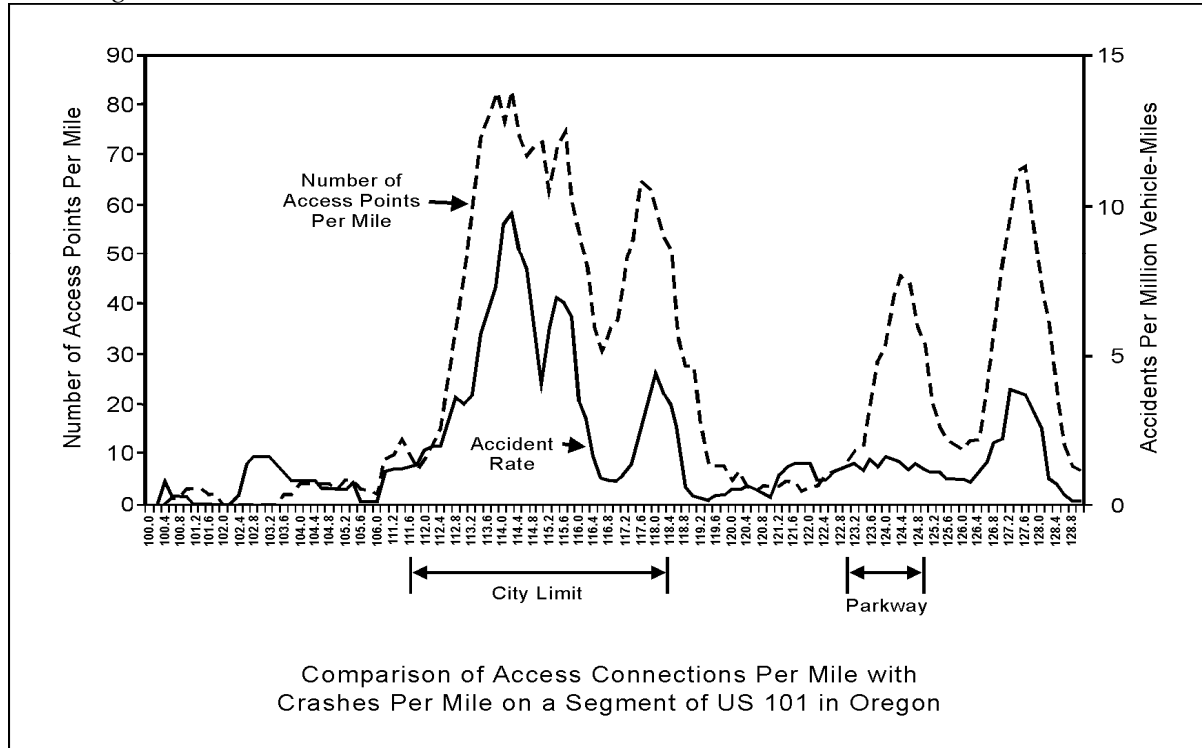


- *Access density*: Relationship between the number of approaches/mile and the number of crashes/mile.

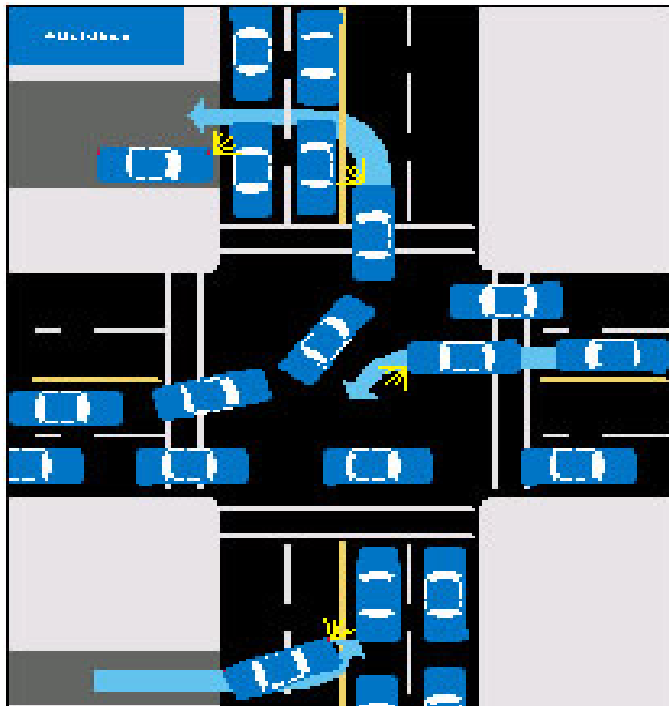


Transportation Research Board, Access Management Manual 2003

- ODOT Parkway Study on access density vs. accident rates. *Significant reduction in accident rate by adding median, reducing number of approaches and limiting turn movements to right in/right out.*



What contributes to unsafe access?



- Based on ODOT and national studies, major factors include:
- Poorly designed driveways.
 - Queues at driveways that block entering and exiting vehicles or limit sight distance.
 - Driveways too close to intersections that create congestion, queuing, and short maneuvering distances at approaches.
 - Land use inconsistent with road function increases traffic, bicycle, and pedestrian conflicts.
 - Turning movements, especially across multiples lanes of traffic on high volume and/or high speed routes.

Some of the Ways Access Management Makes Highways Safer

- Better driveway and intersection design (e.g., bike/ped safety)
- Better spacing and location of driveways and intersections (e.g., reduce conflicts, improve visibility)
- Reduce access density (e.g. consolidate driveways where it makes sense)
- Better coordination of local land use with highway access. Access Management Plans and Interchange Area Management Plans encourage collaboration on local street and subdivision layouts, “main street” developments, commercial and industrial land use, rezoning, and other highway access issues.
- Use of medians to focus turning movements to key locations, especially on high volume/high speed roads.
- Use of turn lanes to separate turning vehicles from “through” vehicles.
- Provide access to local roads where speed and traffic volume are lower.

Balancing Safety with Other Highway Interests

- Working to balance safety with the interests of property owners, motorists, local governments, and developers can turn into a contentious process.
- Several national studies have shown most retail businesses see no loss in business due to access management improvements.
 - Kansas – Concluded that except in extreme cases, no impact to businesses was noted
 - Texas
 - ⇒ Business owners reported no change in pass-by traffic
 - ⇒ Most negative impacts were during construction
 - ⇒ Perceptions before installation were most pessimistic than after
 - ⇒ 93% of business owners saw no loss of customers
 - ⇒ Property values stayed the same or increased short term
 - ⇒
- *ODOT approves approach road applications on average 97% of the time* since 2004 rules were adopted.


Other Benefits of Access Management

- Improves efficiency of freight movement -- A truck delayed 5 minutes in traffic adds \$30 to cost of trip. If this delay occurs *just once a month* for all trucks on Oregon highway, total added cost = \$1.5 million/mo to cost of freight movement.
- Reduces fuel consumption and pollution -- Every time you stop in a mile, fuel consumption increases by 20%.
- Access management is one of the most cost-effective methods that ODOT uses to improve safety and efficiency of highway system. The *consequences of not managing accesses* can lead to very expensive by-pass solutions.

APPENDICES

Appendix A: Evolution of ODOT Regulations

Appendix B: Development Review Issues



Evolution of ODOT Regulations: How We Got to Where We Are

- 1960's – mid 70's
 - Existing highway system had large amount of unused capacity.
 - ODOT focus was on building and expanding highway system.
 - Access management was not a priority of ODOT policy and practice in managing the highway system.
 - No overarching policy or rules regulating access; decisions left in large part to discretion of district and region offices
 - As local government rezoned and developed land around highways, existing access points with low levels of traffic (i.e. farm field or residential) were allowed to turn into direct connections for commercial uses.
- 1974: OTC adopted Division 50, first set of access management administrative rules.
- 1980's & 1990's
 - Large-scale developments, expanding population growth and limited funds for new highways.
 - Excess highway capacity diminishing in many urban areas.
 - Growth in traffic and more intense land uses lead to greater traffic conflicts and safety problems. ODOT became more focused on managing access as a means to improve safety and preserve mobility.
 - Increasing focus at national level on research and implementation of access management techniques, policies and programs.
- Late 1990's: Development community believed that ODOT lacked consistency and predictability in access management decisions. Smaller communities were concerned that ODOT policies were aimed at urban areas and did not take rural needs into account.
- 1999: Senate Bill 773 directed ODOT to adopt access management administrative rules to provide greater consistency, improve customer service and coordination with local governments
 - OTC appointed Access Management Advisory Committee (AMAC) to help develop comprehensive administrative rules for access management in the issuance of permits, planning, and project delivery.
 - ⇒ 17 members representing business, developers, cities, counties, agricultural and environmental interests.
 - ⇒ Extensive public involvement process.

2000 – 2009

- April 1, 2000: Oregon Transportation Commission adopted new Division 51 rules developed through the AMAC process
- New rules adopted in coordination with update of Oregon Highway Plan (OHP)
 - Goal 3: Access Management
 - ⇒ *To employ access management strategies to ensure safe and efficient highways consistent with their determined function, ensure the statewide movement of goods and services, enhance community livability and support planned development patterns, while recognizing the needs of motor vehicles, transit, pedestrians and bicyclists.*

- OHP established highway classification system and classified all highways based on primary function within state system. Highway classification determines priority of access to land vs mobility of through traffic.
- 2002: AMAC revisited rules due to several problems reported by staff and external stakeholders following the first years of implementation. Major problems identified:
 - Structure of rules made them difficult to understand.
 - Rules were *too prescriptive*; more flexibility needed to develop solutions specific to site conditions.
 - Rules *did not adequately distinguish between rural and urban communities* in standards and approval criteria.
- 2004: First major revisions to Division 51 adopted based on AMAC II process. Revisions included:
 - Provisions were added to distinguish between urban and rural.
 - ⇒ Definitions added for infill and redevelopment in rural areas.
 - ⇒ Allowed use of urban spacing standards for infill and redevelopment in rural areas if certain criteria are met.
 - Increased flexibility for engineering staff to develop solutions
 - Clarification of criteria used to determine whether alternate access is “reasonable”
 - Allowed approval of approaches on expressways if no alternate access exists.
- 2004: ODOT contract with OSU to survey *applicants and local governments* about customer service.
 - 95.6% of applicants said ODOT staff was courteous
 - 87.5% of applicants said application forms were understandable
 - 85.3% of applicants said ODOT staff did good to excellent job answering questions
 - 78.3% of applicants said ODOT decision was “fair”
 - 76.7% of applicants said time to reach final decision was acceptable
 - 71.3% of applicants were extremely to somewhat satisfied with ODOT performance.
 - Similar responses from *local governments* -- 88.7% rated ODOT as “very” or “somewhat” cooperative in addressing conflicts.
- 2005: Division 51 revised at request of Retail Task Force. Lowered access spacing standards on all highways with posted speed ≤ 35 MPH inside Urban Growth Boundary or in Urban Unincorporated Community.
- 2007: Division 51 revised to eliminate application fees that ranged from \$200 - \$5000 in response to change in ORS 374.310.

Appendix B

Development Review Issues

Division 51 Issues When No Comprehensive Plan Amendment or Rezoning is Required

- Is there a right of access?
 - Access control, reservations of access, grant of access
- Is the development plan consistent with local codes and ordinances?
- Is alternate access available and reasonable; can it be made reasonable?
- Is the approach public or private?
- Does the development include more than one parcel?
 - Phased or complete build-out
 - Parcel ownership and access rights
- Is the approach in urban or rural area?
 - Infill or redevelopment
- What is Highway Classification? Is there a highway segment designation?
 - Prior on mobility and access varies
- Is the approach part of an Access Management Plan or Interchange Area Management Plan? Plans result in closer coordination of land use and transportation and result in better predictability for property owners and developers.
- What is the type and volume of traffic generated by the approach?
 - Traffic Impact Analysis
 - Safety Concerns
 - Feasible mitigation of impacts
 - ⇒ Focused on safety impacts at or near approach
 - ⇒ Signals, intersection improvements, turn lanes, medians, etc
 - ⇒ Proportionate share limitation
- Can the approach meet spacing standards or is a deviation from the rules needed?
 - Deviation approval criteria
- Other safety concerns (ex: drainage, lighting, etc)
- Meeting timelines specified for ODOT and applicant in administrative rules.

Transportation Planning Rule Issues When Local Government Seeks Comprehensive Plan Amendment, Rezoning or Urban Growth Boundary Expansion

Typically, Division 51 rules are not the primary focus when development triggers a land use action subject to the Transportation Planning administrative rules.

- Are there adequate transportation facilities to support proposed land uses and traffic projections?
- What improvements are needed to maintain highway mobility performance measures over 20-year timeframe?
- Are changes needed in local government transportation plans, street standards, or other ordinances to ensure adequate facility performance?
 - Access Management Plan and/or Interchange Area Management Plan may be appropriate.