

Chapter 374

2017 EDITION

Control of Access to Public Highways

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THROUGHWAYS

374.005 Policy and purpose of ORS 374.005 to 374.095. (1) The kind, character and volume of traffic now moving over public highways, the speed at which such traffic moves, the prime and essential factors such as speed, safety and convenience to which transportation of persons and property over public highways is entitled, the relation which such transportation bears to the transportation systems of other states and of the nation as a whole, the ever-increasing toll of injury to and death of persons and the destruction of and damage to property caused by and resulting from accidents on public highways constitute and are conditions and elements which demand of highway officials a program of highway designing, highway regulations, highway use and operation, highway controls and highway safeguards which will make possible and insure a degree of safety and convenience and a type and class of service not possible under existing law.

(2) To the end that human lives may be saved, property damage minimized, transportation by motor vehicle promoted and highway travel in general safeguarded, the legislature finds, determines and declares that ORS 374.005 to 374.095 is necessary for the preservation of public safety, the improvement and development of transportation facilities in the state, the protection of highway traffic from the hazards of unrestricted and unregulated entry from adjacent property, the elimination of hazards due to highway grade intersections and in general the promotion of public welfare.

374.010 “Throughway” defined. As used in ORS 374.005 to 374.095, “throughway” means a highway or street especially designed for through traffic, over, from or to which owners or occupants of abutting land or other persons have no easement of access or only a limited easement of access, light, air or view, by reason of the fact that their property abuts upon the throughway or for any other reason.

374.015 Department of Transportation to establish and maintain throughways; highways to be designated throughways. (1) The Department of Transportation, in addition to and without restricting, limiting or repealing any powers and authority which it now has, may lay out, locate, relocate, adopt, establish, construct, designate, maintain and supervise the use and operation of new highways known as throughways.

(2) Any relocated section of an existing highway and such portions of existing highways, which at the time they are designated as throughways have less than 10 commer-

cial businesses abutting thereon catering to the motoring public in any one mile of such existing highway, may be designated and constructed as or converted into a throughway by the department. As used in this subsection, “relocated” means a highway or section thereof so located that for its construction an entirely new right of way is necessary.

(3) The authority and power of the department extends to and includes state highways within the corporate limits of cities, and with the approval of the municipal authorities may extend to and include city streets.

374.020 Interference with railroad facilities prohibited. No throughway shall be established upon or across the tracks, yards, station grounds or other operating properties of any common carrier railroad, or upon or across any industrial or business property served by railroad industrial trackage, or upon or across any property at such a location as to unduly interfere with the reasonable access of shippers, passengers or the public to railroad depots, team tracks or other facilities for receiving or delivering freight or passengers transported by railroad unless the Department of Transportation and the railroad agree on a proposed throughway project. [Amended by 1995 c.733 §94]

374.025 Change from throughway to highway. Any state highway or section thereof which has been located, established, designated and constructed as a throughway may, in whole or in part, be changed from a throughway to an ordinary highway by the Department of Transportation if in its judgment such action will best serve public needs.

374.030 Separation of throughways into separate roadways; ingress and egress. (1) The Department of Transportation may so design a throughway and so regulate, restrict or prohibit access thereto and use thereof as to best serve the traffic for which the throughway is intended. In this connection and for such purpose the department may divide and separate any throughway into separate roadways or lanes by the construction of raised curbs, central dividing sections or other physical separations, or by designating separate roadways or lanes by signs, markers or stripes and the proper lanes for traffic by appropriate signs, markers, stripes or other devices.

(2) After any highway has been so marked or designed no person has any right of ingress or egress to, from or across the highway to or from abutting lands, except at such points as may be designated by the department.

374.035 Acquisition of real property; effect of resolution. (1) The Department of Transportation may, in the name of the state, acquire by agreement, donation or exercise of the power of eminent domain, fee title to or any interest in any real property, including easements of air, view, light and access, which in the opinion or judgment of the department is deemed necessary for the construction of any throughway, the establishment of any section of an existing state road or highway as a throughway or the construction of a service road. The department may accomplish such acquisition in the same manner and by the same procedure as real property is acquired for state highway purposes, except that in case the acquisition is by proceedings in eminent domain the resolution required under such procedure shall specify, in addition to other provisions and requirements of law, that the real property is required and is being appropriated for the purpose of establishing, constructing and maintaining a throughway.

(2) A resolution adopted by the department stating and setting forth that a proposed highway is to be constructed as a throughway is conclusive evidence that the highway when constructed is a throughway with all the characteristics and incidents prescribed by and provided for in ORS 374.005 to 374.095.

374.040 Acquisition of land not immediately needed. Whenever it becomes necessary to acquire any real property for use in connection with the location, relocation, construction, reconstruction, improvement and maintenance of any throughway or section thereof or for a service road, the Department of Transportation may, in its discretion, acquire an entire lot, block or tract of land if by so doing the interests of the owner and the state will be best served, even though the entire tract is not immediately needed for the highway proper. This provision and authority shall apply to and be effective whether the real property is acquired by purchase, agreement or exercise of the power of eminent domain.

374.045 Payment for land acquired. The Department of Transportation may pay the cost incident to the acquisition of real property or any interest therein for the establishment, location and relocation of throughways and their construction, reconstruction and maintenance out of state highway funds in the same manner that such funds are disbursed for other highway purposes by the department.

374.050 Parties bringing eminent domain proceedings. In case an agreement provided for in ORS 374.080 has been entered into, proceedings in eminent domain for the

acquisition of real property or any interest therein deemed necessary therefor, may be brought in the name of the state by the Department of Transportation, alone or jointly with any city, county or city and county which are parties to the agreement.

374.055 Evidentiary purposes of improvement plan. In any proceeding in eminent domain evidence of the entire plan of improvement is admissible for the purpose of determining:

(1) Value of property taken.

(2) All damages by reason of deprivation of right of access to any highway to be constructed, established or maintained as a throughway.

(3) The damages which, if the property sought to be condemned constitutes a part of a larger parcel, will accrue to the portion not sought to be condemned by reason of its severance from the portion sought to be condemned and by reason of the construction of the improvement in the manner proposed.

374.060 Power of Department of Transportation as to intersecting streets and roads. The Department of Transportation, with the official approval of municipal authorities of cities with respect to city streets and with the official approval of the county court or board of county commissioners of any county with respect to county roads, may:

(1) Close any street, highway or road at or near the point of its intersection with a throughway; or

(2) Make provision for carrying the street or road over or under the throughway; or

(3) Provide a connection with a throughway by means of a utility or service road to a suitable point of connection; and

(4) Do any and all work on the street, highway or road as is necessary therefor.

374.065 Intersection of throughways and county roads. (1) The Department of Transportation shall provide for the intersection of throughways by county roads running into or across throughways.

(2) Any county road may be closed at the points where it runs into or intersects the throughway if the consent of the county court or board of county commissioners of the county in which the road is located is first obtained.

(3) After the establishment of a throughway, no county road shall be constructed running into or intersecting the throughway unless its plans and specifications have first been submitted to and approved in writing by the department. This approval shall be made a matter of record by

the department and by the county court or board of county commissioners.

374.070 Throughways in cities; intersecting streets. (1) Should any portion or section of a throughway be within the corporate limits of a city, provision shall be made for access thereto from existing streets at points designated by the municipal authorities of the city. In the event plans and specifications are submitted to the municipal authorities of the city by the Department of Transportation and the municipal authorities fail to designate such points within 60 days thereafter, the designation may be made by the department.

(2) After establishment of any throughway in or through a municipality, no street shall be constructed turning into or intersecting the throughway unless the plans and specifications therefor have first been submitted to and approved in writing by the department and made a matter of official record.

(3) Nothing in this section prohibits the closing of any street at the point where it runs into or intersects any throughway by the proper municipal authorities in the manner provided by law.

374.075 Cooperation of municipal and county authorities with Department of Transportation. The municipal authorities of cities and the county court or board of county commissioners of any county may do anything or all things necessary to cooperate with the Department of Transportation for laying out, acquiring and constructing any section or portion of any street or highway within their respective jurisdiction as a throughway and to convert any existing street or highway into a throughway.

374.080 Agreements with federal government, counties and cities. The Department of Transportation may enter into cooperative agreements with the federal government and with any county or city for the location, adoption, construction and maintenance of a throughway either within or without the corporate limits of any city, with respect to highways under the exclusive jurisdiction of the department, roads under the jurisdiction of the county court or board of county commissioners and streets under the exclusive jurisdiction of cities, and may, in such agreements, agree upon the allocation of costs of the project, the manner and method of maintenance and all other relevant matters.

374.085 Severance by throughway of agricultural land. Wherever by the location, relocation, establishment and construction or reconstruction of a throughway under ORS 374.005 to 374.095 real property,

title to which is held under one ownership, is severed and the land is being used for farm or other agricultural purposes, provision shall be made by the Department of Transportation for crossing the highway from one such tract to the other or compensation for the severance of the tract shall be paid. Should such tracts at any time cease to be held under one ownership, the department may terminate and discontinue the road crossings. No such connecting-road crossing shall be used for or in connection with the conduct of any roadside business or enterprise, but shall be available and used solely for passage from one of the severed tracts to the other.

374.090 Destruction by throughway of access to agricultural property. Whenever a throughway is located, relocated, constructed or reconstructed through or over farm or agricultural property and thereby all reasonable ingress and egress have been destroyed, the Department of Transportation shall provide access from the abutting properties to the throughway by a service road or by direct access, unless by agreement with the owners of the abutting properties access to the throughway has been waived by the property owner or has been acquired by the state by agreement or exercise of the power of eminent domain.

374.095 Utility roads where access to abutting property affected. If under ORS 374.005 to 374.095 any existing highway or section of existing highway is converted into a throughway, by reason thereof real properties then occupied and used are affected and such abutting real properties are dependent upon the existing highway or section of highway for ingress and egress, the Department of Transportation shall provide a utility or service road to serve the properties. This utility or service road shall be constructed and maintained by the state at state expense and shall follow a location or route immediately parallel to and adjoining the throughway. After the service or utility road has been constructed the abutting land owner's right of reasonable view shall not be impaired.

374.205 [Repealed by 1967 c.497 §7]

374.210 [Repealed by 1967 c.497 §7]

374.215 [Repealed by 1967 c.497 §7]

374.220 [Amended by 1957 c.459 §3; repealed by 1967 c.497 §7]

374.225 [Repealed by 1967 c.497 §7]

374.230 [Repealed by 1967 c.497 §7]

374.235 [Repealed by 1967 c.497 §7]

374.240 [Repealed by 1967 c.497 §7]

374.245 [Repealed by 1967 c.497 §7]

374.250 [Repealed by 1967 c.497 §7]

374.255 [Repealed by 1967 c.497 §7]

374.260 [Repealed by 1967 c.497 §7]

374.265 [Renumbered 374.335]

374.270 [Renumbered 374.340]

APPROACH ROADS, PRIVATE CROSSINGS AND OTHER FACILITIES UPON RIGHT OF WAY

374.300 Legislative intent. It is the intent of the Legislative Assembly that the Department of Transportation, local governments and regional governments work collaboratively to achieve accessibility and mobility goals for a balanced transportation system. [1999 c.972 §1]

374.302 Definitions for ORS 374.302 to 374.334. As used in ORS 374.302 to 374.334:

(1) "Approach road" includes a private road that crosses a state highway or a county road.

(2) "Channelization" means the roadway lane configuration necessary to safely accommodate turning movements from the highway to an intersecting approach.

(3) "District highway" means a state highway that has been classified by the Oregon Transportation Commission as a district highway.

(4) "Expressway" means a state highway that has been designated by the commission as an expressway.

(5) "Interstate highway" means a state highway that has been classified by the commission as an interstate highway.

(6) "Move in the direction of" means a change in an approach to a property abutting the highway that would bring a property closer to conformance with existing highway standards.

(7) "Peak hour" means the hour during which the highest volume of traffic enters and exits the property during a typical week.

(8) "Private approach" means an approach that serves one or more properties and that is not a public approach.

(9) "Private road crossing" means a privately owned road designed for use by trucks that are prohibited by law from using state highways, county roads or other public highways.

(10) "Public approach" means an existing or planned city street or county road connection that provides vehicular access to and from a highway.

(11) "Regional highway" means a state highway that has been classified by the commission as a regional highway.

(12) "Sight distance" means a length of highway that a driver can see with an acceptable level of clarity.

(13) "State highway" means a highway that is under the jurisdiction of the Department of Transportation.

(14) "Statewide highway" means a state highway that has been classified by the commission as a statewide highway.

(15) "Trip" means a one-way vehicular movement that consists of a motor vehicle entering or exiting a property.

(16) "Unincorporated community" means a settlement that is not incorporated as a city and that lies outside the urban growth boundary of any city. [2011 c.330 §2]

374.305 Necessity of permission to build on rights of way. (1) A person may not place, build or construct on the right of way of any state highway or county road, any approach road, structure, pipeline, ditch, cable or wire, or any other facility, thing or appurtenance, or substantially alter any such facility, thing or appurtenance or change the manner of using any such approach road without first obtaining written permission from the Department of Transportation with respect to state highways or the county court or board of county commissioners with respect to county roads.

(2) After written notice of not less than 10 days to the permittee and an opportunity for a hearing, the department with respect to crossings over a state highway and the county court or board of county commissioners with respect to crossings over a county road may abolish any crossing at grade by a private road or may alter or change any private road crossing when the public safety, public convenience and the general welfare require the alteration or change. [Amended by 1955 c.424 §1; 1957 c.323 §1; 1967 c.497 §1; 2011 c.330 §3]

374.307 Removal or repair of installation constructed without permission. (1) If any person, firm or corporation builds or constructs 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 the written permission required by ORS 374.305, the Department of Transportation or the county governing body shall, after the expiration of 30 days following the transmittal of a written notice to such person, firm or corporation, at the expense of such person, firm or corporation, remove all such installations from the right of way or reconstruct, repair or maintain any such installation in accordance with or as required by the rules and regulations. This expense may be recovered from such person, firm or corporation by the state or county in any court of competent jurisdiction.

(2) Notwithstanding subsection (1) of this section, if the Department of Transportation,

county governing body or designated agent of the department or governing body, whichever is applicable, determines that a traffic or pedestrian hazard is created by the construction which causes imminent danger of personal injury, it may:

(a) Order the construction removed, repaired or maintained to eliminate the hazard, within 24 hours after delivery of written notice to the person, firm or corporation which caused the construction, and to the owner of the property on which the construction occurred.

(b) If the hazard is not removed within the time set under paragraph (a) of this subsection, remove the hazard and recover the expenses of any removal, repair or maintenance from any such person, firm or corporation in any court of competent jurisdiction. [1955 c.424 §5; 1979 c.873 §1]

374.308 Presumption of written permission. (1)(a) An owner of real property abutting a state highway with an existing approach road is presumed to have the Department of Transportation's written permission for the approach road based upon documentation for a highway project completed by the department that shows that the approach road was built or rebuilt as part of the project or that the department intended to issue an approach permit to the property owner for the approach road.

(b) The department shall have the burden to establish that the factual basis for the presumption in paragraph (a) of this subsection does not exist.

(2)(a) An owner of real property abutting a state highway with an approach road that was in existence before April 1, 2000, is also presumed to have the department's written permission for the approach road based upon documentation in any form that shows:

(A) That the approach road was in existence before July 16, 1949;

(B) That the approach road was in existence before the department accepted jurisdiction of the highway from a city or county; or

(C) That the approach road was built or rebuilt with the department's knowledge or permission.

(b) The department shall have the burden to establish that the factual basis for the presumption in paragraph (a) of this subsection does not exist. The department may rebut the presumption in paragraph (a) of this subsection by a showing that there is insufficient documentation to determine whether the approach road was built or rebuilt with the department's knowledge or permission.

(3) Subsections (1) and (2) of this section apply only where there is a right of access to the state highway.

(4) For approach roads presumed to have written permission under this section, the determination of prior use for the purposes of ORS 374.312 (4) and (5) is the use of the property on January 1, 2014.

(5) Except as provided in this section, an approach road built without the department's written permission is subject to removal or reconstruction as provided in ORS 374.307.

(6) For purposes of ORS 374.302 to 374.334, 374.335 and 374.345, the presumption of written permission of the department for an approach road is deemed to be an approach permit issued by the department under ORS 374.310. [2013 c.476 §2]

Note: 374.308 and 374.317 were added to and made a part of 374.302 to 374.334 by legislative action but were not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

374.309 County permits; rules. (1) The county court or board of county commissioners shall adopt reasonable rules and regulations and may issue permits, not inconsistent with law, for the use of the rights of way of county roads for the purposes described in ORS 374.305.

(2) Rules and regulations adopted and permits issued under subsection (1) of this section shall include provisions, terms and conditions that in the judgment of the granting authority are in the best interest of the public for the protection of the road and the traveling public and may include, but need not be limited to:

(a) Provisions for construction of culverts under approaches, requirements as to depth of fills over culverts and requirements for drainage facilities, curbs, islands and other facilities for traffic channelization as may be deemed necessary.

(b) With respect to private road crossings, additional provisions for the angle of intersection, crossing at grade or other than grade, sight distances, safety measures including flaggers, crossing signs and signals, reinforcement for protection of the road, maintenance of the crossing and for payment by the applicant of any of the costs of complying with the provisions.

(c) With respect to private road crossings, the granting authority may also require the applicant to furnish:

(A) Public liability and property damage insurance in a sum fixed by the granting authority that indemnifies the members, officers, employees and agents of the granting authority from any claim that might arise on account of the granting of the permit and the

crossing of the road by vehicles operating under the permit; and

(B) Indemnity insurance, an indemnity bond or an irrevocable letter of credit issued by an insured institution as defined in ORS 706.008 in a sum fixed by the granting authority, indemnifying the granting authority for any damage to the roads that may be caused by the use of the crossing.

(3) The powers granted by this section and ORS 374.315 may not be exercised so as to deny any property abutting the road reasonable access. In determining what is reasonable access, the county court or board of county commissioners shall apply the following criteria:

(a) The access must be sufficient to allow the authorized uses for the property identified in the acknowledged local comprehensive plan.

(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. [2011 c.330 §8]

374.310 State permits; rules. (1) The Department of Transportation shall adopt rules consistent with this section and ORS 374.312 to govern the process of application for issuance of permits for approach roads to state highways by owners of property abutting highways. However, the department may not issue a permit for the construction of any approach road at a location where no rights of access exist between the highway and abutting real property.

(2) The rules and permits shall include provisions, terms and conditions that in the judgment of the department are in the best interest of the public for the protection of the highway and the traveling public and may include, but need not be limited to:

(a) Provisions for construction of culverts under approaches, requirements as to depth of fills over culverts and requirements for drainage facilities, curbs, islands and other facilities for traffic channelization as may be deemed necessary.

(b) With respect to private road crossings, additional provisions for the angle of intersection, crossing at grade or other than grade, sight distances, safety measures including flaggers, crossing signs and signals, reinforcement for protection of the highway, maintenance of the crossing and for payment by the applicant of any of the costs of complying with the provisions.

(c) With respect to private road crossings, the department may also require the applicant to furnish:

(A) Public liability and property damage insurance in a sum fixed by the department that indemnifies the officers, employees and agents of the department from any claim that might arise on account of the granting of the permit and the crossing of the highway by vehicles operating under the permit; and

(B) Indemnity insurance, an indemnity bond or an irrevocable letter of credit issued by an insured institution as defined in ORS 706.008 in a sum fixed by the department that indemnifies the department for any damage to the highways that may be caused by the use of the crossing.

(3) The powers granted by this section and ORS 374.315 may not be exercised so as to deny any property abutting the highway reasonable access. In determining what is reasonable, the department shall apply the following criteria:

(a) The access must be sufficient to allow the authorized uses for the property identified in the acknowledged local comprehensive plan.

(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.

(4) The department's determination that the access is sufficient to allow the authorized uses for the property identified in the acknowledged local comprehensive plan under subsection (3)(a) of this section, or that the type, number, size and location of approaches is 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, under subsection (3)(b) of this section, shall be based on the economic development needs of the property abutting the highway for its authorized and planned uses, subject only to consideration of safety and highway operations. The department shall have the burden of establishing safety and highway operations concerns.

(5) An approach permit is not required for a public approach.

(6) The department may not charge any fee for issuance of a permit under this section for construction of an approach road. [Amended by 1955 c.424 §2; 1957 c.323 §2; 1967 c.497 §2; 1991 c.331 §59; 1997 c.249 §119; 1997 c.631 §467; 1999 c.974 §3; 2003 c.371 §1; 2005 c.837 §15; 2010 c.31 §1; 2011 c.330 §§4,5]

374.311 Permit standards; rules. The objective standards for spacing, channelization and sight distance for decisions to approve, modify or deny an approach permit are as follows:

(1) When making a decision to approve or deny an application for an approach permit under ORS 374.312, the Department of Transportation shall apply, as one of the standards, the standards in Table 1 for spacing between approaches on highway segments where the annual average daily traffic is 5,000 or fewer motor vehicles:

TABLE 1

Speed (miles per hour)	Regional Highways District Highways Rural and Urban (distance in feet)	Statewide Highways Rural Areas (distance in feet)	Statewide Highways Urban Areas (distance in feet)	Statewide Highways Unincorporated Communities Rural Areas (distance in feet)
55 or higher	650	1,320	1,320	1,320
50	425	1,100	1,100	1,100
40 & 45	360	990	360	750
30 & 35	250	770	250	425
25 or lower	150	550	150	350

(a) For spacing between private approaches, the spacing standards described in Table 1 apply to the distance measured along the highway from the center of an existing or proposed private approach to the center of the nearest existing or proposed private approach on the same side of the highway in both directions. For spacing between a private and a public approach, the standard applies to the distance measured in both directions along the highway from the center of an existing or proposed private approach to the center of the nearest intersection of the highway with a public approach or another state highway.

(b) The spacing standards for approaches on one-way highways or highways with a raised or depressed nontraversable median where only a right-hand or left-hand turn into and from the approach is allowed are one-half the spacing standards for highways where the annual average daily traffic is more than 5,000 motor vehicles as described in Table 2.

(c) Special transportation areas, access management plans, corridor plans, interchange area management plans or interchange management areas, as designated by the Oregon Transportation Commission, may have spacing standards that take precedence over the spacing standards described in Table 1.

(d) For a signalized private approach, signal spacing standards established by the department by rule supersede the spacing standards described in Table 1.

(e) The spacing standards in Table 1 do not apply to approaches in existence prior to January 1, 2012, except when:

(A) A new or change of use of an approach permit is required under ORS 374.312.

(B) Infill development or infill redevelopment occurs and spacing or safety will be improved by moving in the direction of the spacing standards described in Table 1.

(C) A highway or interchange project occurs and spacing or safety will be improved by moving in the direction of the spacing standards described in Table 1.

(f) The spacing standards for a statewide highway, regional highway or district highway that is designated as an expressway by the commission where the annual average daily traffic is 5,000 or fewer motor vehicles are described in Tables 2 to 4.

(2) When making a decision to approve or deny an application for an approach permit, the department shall apply, as one of the standards, the standards in Table 2 for spacing between approaches on statewide highways where the annual average daily traffic is more than 5,000 motor vehicles:

TABLE 2

Speed (miles per hour)	Expressway Rural Areas (distance in feet)	Expressway Urban Areas (distance in feet)	Rural Areas (distance in feet)	Urban Areas (distance in feet)
55 or higher	5,280	2,640	1,320	1,320
50	5,280	2,640	1,100	1,100
40 & 45	5,280	2,640	990	800
30 & 35	-	-	770	500
25 & lower	-	-	550	350

(a) For spacing between private approaches, the spacing standards described in Table 2 apply to the distance measured along the highway from the center of an existing or proposed private approach to the center of the nearest existing or proposed private approach on the same side of the highway in both directions. For spacing between a private and a public approach, the standard applies to the distance measured in both directions along the highway from the center of an existing or proposed private approach to the center of the nearest intersection of the highway with a public approach or another state highway.

(b) The spacing standards for approaches on one-way highways or highways with a raised or depressed nontraversable median where only a right-hand or left-hand turn into and from the approach is allowed are one-half the spacing standards described in Table 2.

(c) Special transportation areas, access management plans, corridor plans, interchange area management plans or interchange management areas, as designated by the commission, may have spacing standards that take precedence over the spacing standards described in Table 2.

(d) For a signalized private approach, signal spacing standards established by the department by rule supersede the spacing standards described in Table 2.

(e) The spacing standards in Table 2 do not apply to approaches in existence prior to January 1, 2012, except when:

(A) A new or change of use of an approach permit is required under ORS 374.312.

(B) Infill development or infill redevelopment occurs and spacing and safety will be improved by moving in the direction of the spacing standards described in Table 2.

(C) A highway or interchange project occurs and spacing and safety will be improved by moving in the direction of the spacing standards described in Table 2.

(f) The spacing standards described in Table 2 for a statewide highway that is designated as an expressway by the commission also apply to an expressway where the annual average daily traffic is 5,000 or fewer motor vehicles.

(3) When making a decision to approve or deny an application for an approach permit, the department shall apply, as one of the standards, the standards in Table 3 for the spacing between approaches on regional highways where the annual average daily traffic is more than 5,000 motor vehicles:

TABLE 3

Speed (miles per hour)	Expressway Rural Areas (distance in feet)	Expressway Urban Areas (distance in feet)	Rural Areas (distance in feet)	Urban Areas (distance in feet)
55 or higher	5,280	2,640	990	990
50	5,280	2,640	830	830
40 & 45	5,280	2,640	750	500
30 & 35	-	-	600	350
25 & lower	-	-	450	250

(a) For spacing between private approaches, the spacing standards described in Table 3 apply to the distance measured along the highway from the center of an existing or proposed private approach to the center of the nearest existing or proposed private approach on the same side of the highway in both directions. For spacing between a private and a public approach, the standard applies to the distance measured in both directions along the highway from the center of an existing or proposed private approach to the center of the nearest intersection of the highway with a public approach or another state highway.

(b) The spacing standards for approaches on one-way highways or highways with a raised or depressed nontraversable median where only a right-hand or left-hand turn into and from the approach is allowed are one-half the spacing standards described in Table 3.

(c) Special transportation areas, access management plans, corridor plans, interchange area management plans or interchange management areas, as designated by the commission, may have spacing standards that take precedence over the spacing standards described in Table 3.

(d) For a signalized private approach, signal spacing standards established by the department by rule supersede the spacing standards described in Table 3.

(e) The spacing standards in Table 3 do not apply to approaches in existence prior to January 1, 2012, except when:

(A) A new or change of use of an approach permit is required under ORS 374.312.

(B) Infill development or infill redevelopment occurs and spacing and safety will be improved by moving in the direction of the spacing standards described in Table 3.

(C) A highway or interchange project occurs and spacing and safety will be improved by moving in the direction of the spacing standards described in Table 3.

(f) The spacing standards described in Table 3 for a regional highway that is designated as an expressway by the commission also applies to an expressway where the annual average daily traffic is 5,000 or fewer motor vehicles.

(4) When making a decision to approve or deny an application for an approach permit, the department shall apply, as one of the standards, the standards in Table 4 for the spacing between approaches on district highways where the annual average daily traffic is more than 5,000 motor vehicles:

TABLE 4

Speed (miles per hour)	Expressway Rural Areas (distance in feet)	Expressway Urban Areas (distance in feet)	Rural Areas (distance in feet)	Urban Areas (distance in feet)
55 or higher	5,280	2,640	700	700
50	5,280	2,640	550	550
40 & 45	5,280	2,640	500	500
30 & 35	-	-	400	350
25 & lower	-	-	400	250

(a) For spacing between private approaches, the spacing standards described in Table 4 apply to the distance measured along the highway from the center of an existing or proposed private approach to the center of the nearest existing or proposed private approach on the same side of the highway in both directions. For spacing between a private and a public approach, the standard applies to the distance measured in both directions along the highway from the center of an existing or proposed private approach to the center of the nearest intersection of the highway with a public approach or another state highway.

(b) The spacing standards for approaches on one-way highways or highways with a raised or depressed nontraversable median where only a right-hand or left-hand turn into and from the approach is allowed are one-half the spacing standards described in Table 4.

(c) Special transportation areas, access management plans, corridor plans, interchange area management plans or interchange management areas, as designated by the commission,

may have spacing standards that take precedence over the spacing standards described in Table 4.

(d) For a signalized private approach, signal spacing standards established by the department by rule supersede the spacing standards described in Table 4.

(e) The spacing standards in Table 4 do not apply to approaches in existence prior to January 1, 2012, except when:

(A) A new or change of use of an approach permit is required under ORS 374.312.

(B) Infill development or infill redevelopment occurs and spacing and safety will be improved by moving in the direction of the spacing standards described in Table 4.

(C) A highway or interchange project occurs and spacing and safety will be improved by moving in the direction of the spacing standards described in Table 4.

(f) The spacing standards described in Table 4 for a district highway that is designated as an expressway by the commission also apply to an expressway where the annual average daily traffic is 5,000 or fewer motor vehicles.

(5)(a) The department may require channelization on the highway as a condition for the approval of an approach permit if any of the following conditions exist:

(A) The number of average daily trips at the property exceeds 400 when the property is located on a two-lane highway with an annual average daily traffic of 5,000 or more motor vehicles.

(B) The number of average daily trips at the property exceeds 400 when the property is located on a four-lane highway with an annual average daily traffic of 10,000 or more motor vehicles.

(C) The product of the number of average daily trips at the property multiplied by the annual average daily traffic on the highway is equal to or greater than the products listed in the table below:

TABLE 5

Product of Property's Average Daily Trips Multiplied by the Abutting Highway's Annual Average Daily Traffic (Millions)

Number of highway lanes	Speed 25 mph or lower	Speed 30-35 mph	Speed 40-45 mph	Speed 50 mph or higher
2 lanes	5.1	3.9	1.8	1.3
4 lanes	10.2	7.8	3.6	2.6

(b) The number of average daily trips at a property may be determined by a traffic impact analysis or from national standards, as determined by the department. A vehicle that enters and exits a property has made two trips.

(c) The annual average daily traffic for a state highway may be determined from the most recent edition of the transportation volume tables published annually by the department. The department shall post the transportation volume tables on the department's website.

(6) The department may adopt by rule a standard for sight distance based on nationally accepted standards.

(7) As used in this section:

(a) "Infill development" means the development of vacant or remnant land that has been passed over by previous development and that is consistent with zoning. Infill occurs in urban areas. It may also occur in rural areas on commercially or industrially zoned land where the land has been developed into an urban block pattern including a local street network where the highway speed is 45 miles per hour or less.

(b) "Infill redevelopment" means changing an existing development including replacement, remodeling or reuse of existing structures to accommodate new development that is consistent with current zoning. Redevelopment occurs in urban areas. It may also occur in rural areas on commercially or industrially zoned land where the land has been developed into an urban block pattern including a local street network and where the highway speed is 45 miles per hour or less.

(c) “Rural” means the area outside an urban growth boundary, the area outside a special transportation area in an unincorporated community or the area outside an urban unincorporated community.

(d) “Speed” means the speed limit established in ORS 811.111 or the designated speed posted under ORS 810.180.

(e) “Urban” means the area within an urban growth boundary, the area within a special transportation area of an unincorporated community or the area within an urban unincorporated community. [2011 c.330 §17]

Note: 374.311 and 374.314 were added to and made a part of 374.302 to 374.334 by legislative action but were not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

374.312 Rules regarding permits for approach roads; intergovernmental agreements.

(1) It is the intent of the Legislative Assembly to develop a highway access management system based on objective standards that will balance the economic development objectives of properties abutting state highways with the transportation safety and access management objectives of state highways, in a manner consistent with local transportation system plans and the land uses permitted in the local comprehensive plans acknowledged under ORS chapter 197. The Department of Transportation shall comply with the legislative directives, objective standards and procedures established in this section for the governance of the process for application by and the issuance of approach permits to owners of property abutting the highway and shall adopt rules consistent with this section.

(2) The department shall make its final decision, including resolution of all internal appeals, to grant or deny an approach permit within 120 days of the date the department deems an application for an approach permit complete, unless the applicant and the department agree to an extension.

(3) The department shall make its decision to grant or deny an approach permit based on the provisions of this section, the spacing, channelization and sight distance standards described in ORS 374.311 or the standards and criteria in effect on the date that the application was filed.

(4) A new approach permit for a change of use of an approach is required for a private approach if:

(a)(A)(i) The number of peak hour trips increases by 50 trips or more from that of the property’s prior use; or

(ii) The number of trips on a typical day increases by 500 trips or more from that of the property’s prior use; and

(B) The increase described in subparagraph (A)(i) or (ii) of this paragraph represents a 20 percent or greater increase in the number of peak hour trips or the number of

trips on a typical day from that of the property’s prior use;

(b) The daily use of a private approach increases by 10 or more vehicles with a gross vehicle weight rating of 26,000 pounds or greater;

(c) The department demonstrates that safety or operational problems related to the approach are occurring on a highway as provided in subsection (10)(g) of this section. Any required mitigation measures shall be limited to addressing the identified safety or operational problems; or

(d) The approach does not meet the stopping sight distance standards of this section, as measured in feet, of 10 times the speed limit established in ORS 811.111 or the designated speed posted under ORS 810.180 for the highway as measured in miles per hour, or 10 times the 85th percentile speed of the highway where the 85th percentile speed is higher or lower than the speed limit established in ORS 811.111 or the designated speed posted under ORS 810.180. The permit holder may perform a study to determine if the 85th percentile speed is higher or lower than the speed limit established in ORS 811.111 or the designated speed posted under ORS 810.180. The sight distance measurement and the study to determine the 85th percentile speed shall be performed according to published department procedures by or under the supervision of an engineer registered in Oregon.

(5)(a) When a change of use of an approach permit is required under subsection (4) of this section, the department shall approve an application if the application proposes an approach that moves in the direction of conforming with the spacing, channelization and sight distance standards described in ORS 374.311, subject to consideration of safety and highway operations.

(b) Whether the application moves in the direction of conforming with the spacing, channelization and sight distance standards described in ORS 374.311, while not posing safety or highway operations concerns, shall be established by the department and the applicant using a collaborative process, as es-

established by department by rule, that is made available to the applicant within 30 days of the date the department determines an application to be complete.

(c) Applications that are deemed to be moving in the direction of conforming with the spacing, channelization and sight distance standards described in ORS 374.311 do not require separate deviations from those standards.

(d) For the purposes of this subsection, an approach moves in the direction of conforming with the spacing, channelization or sight distance standards described under ORS 374.311 if one or more changes are made to the approach that include, but are not limited to:

(A) Eliminating or combining existing approaches to the highway resulting in a net reduction in the number of approaches to the highway.

(B) Improving the distance between approaches.

(C) Improving the sight distance between approaches.

(D) Widening the existing driveways to accommodate truck turning radius requirements.

(E) Widening the existing driveways to accommodate additional exit lanes.

(F) Narrowing the existing driveways to provide the appropriate number of entry and exit lanes as required for the property.

(G) Developing a throat on the approach entrance to allow for more efficient movement of motorists from the highway.

(6) The department shall approve applications that meet the spacing, channelization or sight distance standards described in ORS 374.311 subject only to consideration of safety and highway operations concerns as provided in subsection (10)(g) of this section and the traffic impact analysis requirements described in ORS 374.314.

(7) Applications that do not meet the spacing, channelization or sight distance standards described in ORS 374.311 may be approved with deviations from those standards as follows:

(a) A request for one or more deviations from the spacing, channelization or sight distance standards described in ORS 374.311 may be included in an application for one or more private approaches that do not meet the standards.

(b) Unless waived by the department, a request for a deviation must include a traffic impact analysis provided by the applicant that addresses a request for deviations from the spacing, channelization or sight distance

standards described in ORS 374.311 for safety and highway operations.

(c) A request for a deviation may be approved based upon a determination by the engineer assigned by the department to analyze the request for a deviation that the approach adequately addresses the safety and highway operations concerns identified by the department as provided in subsection (10)(g) of this section.

(d) Where a speed study prepared by an applicant and agreed to by the department determines that the 85th percentile speed is lower than the current posted speed, the department may grant a deviation from sight distance standards based upon the lower speed determination.

(8) If a property has a right of access and there is no means of access to the property other than the state highway, an approach that does not meet the spacing, channelization or sight distance standards described in ORS 374.311 does not need a deviation from the standards if the department and the applicant agree on a location of the approach that optimizes safety, highway operations and site design.

(9) Except as otherwise provided in this section, the following procedures apply to all applications for an approach permit:

(a) The department shall determine whether an application for an approach permit is complete within 30 days of receipt of the application.

(b) The department shall approve an application, approve an application with conditions or deny an application:

(A) Within 30 days of the date that the department determines the application to be complete, for applications that meet spacing, channelization or sight distance standards described in ORS 374.311; or

(B) Within 60 days of the date that the department determines the application to be complete for all other types of applications.

(c) The department may impose reasonable conditions to mitigate safety or highway operations concerns identified by the department in its review of the application, as provided in subsection (10)(g) of this section.

(d) When the department proposes to deny an approach permit application or approve an application with conditions, the department shall notify the applicant of its intent and offer the applicant a collaborative process established by the department by rule.

(e) If the offer of a collaborative process is declined, the department shall issue its decision in writing with sufficient specificity regarding any safety or highway operations

concerns upon which the department's decision is based to allow the applicant to respond.

(f) The department's decision shall advise the applicant of the applicant's rights for dispute resolution processes to resolve issues relating to the department's decision as set forth in ORS 374.355.

(10) The following directives apply to all applications for an approach permit:

(a) All applications are required to meet sight distance standards described in ORS 374.311 (6) except as otherwise provided in this section or unless a deviation is otherwise approved by the department.

(b) Except for highways classified as interstate highways and highways designated as expressways by the Oregon Transportation Commission, the department may not use the presence of alternate access to a property abutting a highway as a basis for denying an approach permit application, except in rural areas where the presence of alternative access is a consideration in determining whether to approve or deny a second or subsequent approach permit application.

(c) The department may not impose nontraversable medians as a mitigation measure for approach permit applications unless the department first establishes that no other mitigation measures are effective or available under the circumstances.

(d) Mobility standards, established by the department by rule, are not applicable to turning movements from private approaches during the department's review of approach permit applications, except when the ratio of volume to capacity on the proposed private approach is 1.0 or greater.

(e) The department may not require an applicant to submit a traffic impact analysis except as provided in ORS 374.314.

(f) The department shall utilize an engineer with relevant experience to review and respond to evidence from a qualified expert that is submitted by the applicant.

(g) The department shall have the burden of proving any safety or highway operations concerns relied upon in the department's decision to approve an application with conditions or deny an application. Safety or highway operations concerns that may be applied to the department's permit decisions on applications submitted under this section are limited to one or more of the following unique safety and highway operations concerns:

(A) Regular queuing on the highway that impedes turning movements associated with the proposed approach.

(B) Offset approaches that may create the potential for overlapping left turn movements or competing use of a center turn lane.

(C) Insufficient distance for weave movements made by vehicles exiting an approach across multiple lanes in the vicinity of signalized intersections, roads classified by the Oregon Transportation Commission as collectors or arterials and on-ramps or off-ramps.

(D) Location of the proposed approach within a highway segment with a crash rate that is 20 percent higher than the statewide average for similar highways.

(E) Location of the proposed approach within a highway segment listed in the top five percent of locations identified by the safety priority index system developed by the department.

(F) Inadequate sight distance from an intersection to the nearest driveway on district highways and regional highways where the speed limit established in ORS 811.111 or the designated speed posted under ORS 810.180 is 50 miles per hour or higher.

(11) The department shall use the criteria for determining what constitutes reasonable access as specified in ORS 374.310.

(12) The department shall make its decision to grant or deny an approach permit on the record. When the department denies an application or approves an application with conditions, the department shall issue findings specifying the basis of the decision for the record. The department shall adopt rules specifying the form of the record.

(13) The department and a local government may enter into an intergovernmental agreement setting provisions for and allowing the local government to issue approach permits for regional and district state highways. The agreement must provide that permits issued by local governments will be consistent with the highway plan and administrative rules adopted by the department, with state statutes and with the local transportation system plan acknowledged under ORS chapter 197. The department shall adopt rules specifying the circumstances under which authority will be delegated to a local government.

(14) The department shall develop a program that allows a person that might be affected by the issuance of the permit, but that is not the owner of the property subject to the permit, to express concerns to the department prior to the issuance of the permit. For purposes of this subsection, persons that might be affected by the issuance of the permit are the city or county in which the road is located and any person that owns property adjacent to the proposed access. Nothing in

this subsection gives a city, county or other person that might be affected standing to appeal any decision of the department regarding granting of the permit. [1999 c.974 §2; 2003 c.371 §2; 2011 c.330 §13]

Note: 374.312 was added to and made a part of 374.302 to 374.334 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

374.313 Claim for relief after closure of approach road; mediation; rules; appraisal. (1) If the Department of Transportation closes an approach road for which a permit was issued under ORS 374.308 or 374.310 or that was allowed by law prior to enactment of statutory permit requirements for approach roads, or if the department denies an application for an approach road permit submitted pursuant to a grant or reservation of access contained in a contract, condemnation judgment or recorded deed, and the closure or denial is not the result of conditions contained in a contract, condemnation judgment, recorded deed or permit, a person holding an interest in the real property benefited by the access or proposed access may file a claim for relief as a contested case under ORS 183.415 to 183.500.

(2) Prior to issuing a final order in a contested case under subsection (1) of this section, the Director of Transportation may provide the opportunity for the parties to participate in mediation consistent with the applicable provisions of ORS 36.185 to 36.210. In any alternative dispute resolution proceeding, the director may authorize administrative remedies, including monetary damages or other relief, as determined by the department by rule, to address issues related to real property value, utility or use.

(3) In any proceeding under this section, any party may cause an appraisal of the subject property to be conducted. If the difference in value between a property owner's claim and an offer of monetary compensation by the department is less than \$30,000, the director shall provide a simplified procedure for resolving the claim. The cost of conducting an appraisal may be shared by the parties when a mutually acceptable appraiser can be identified. [1999 c.972 §3; 2005 c.149 §1; 2013 c.476 §6]

Note: 374.313 was added to and made a part of 374.302 to 374.334 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

374.314 Traffic impact analysis; rules. (1) Except as provided in subsection (2) of this section, the Department of Transportation may require a person applying for an approach permit under ORS 374.312 to submit a traffic impact analysis in conjunction with the application for an approach permit.

(2) The department may not require a person applying for an approach permit to submit a traffic impact analysis when:

(a) The average daily volume of trips at the property is 400 or fewer trips.

(b) The average daily volume of trips at the property is more than 400 but fewer than 1,001 trips if:

(A) The highway is a two-lane highway with fewer than 5,000 motor vehicles in annual average daily traffic;

(B) The highway is a three-lane highway with fewer than 15,000 motor vehicles in annual average daily traffic;

(C) The highway is a four-lane highway with fewer than 10,000 motor vehicles in annual average daily traffic; or

(D) The highway is a five-lane highway with fewer than 25,000 motor vehicles in annual average daily traffic.

(3) The average daily trips at a property may be determined using nationally recognized standards, as adopted by the department by rule.

(4) The number of motor vehicles in annual average daily traffic for a state highway may be determined from the most recent edition of the transportation volume tables published annually by the department. The department shall post the transportation volume tables on the department's website. [2011 c.330 §18]

Note: See note under 374.311.

374.315 Construction under permits; maintenance after construction. All construction under the permits issued under ORS 374.309 and 374.310 shall be under the supervision of the granting authority and at the expense of the applicant. After completion of the construction of the particular approach road, facility, thing or appurtenance, they shall be maintained at the expense of the applicant and in accordance with the rules and regulations adopted pursuant to ORS 374.309 and 374.310. [Amended by 2011 c.330 §9]

374.317 Approach road maintenance. An owner of real property abutting a state highway with an existing approach road that is presumed to have written permission under ORS 374.308 or that has an approach permit under ORS 374.310 is responsible for the cost and performance of maintaining the approach road, in accordance with the Department of Transportation's requirements, from the outermost edge of the highway pavement, shoulder or curb line to the right-of-way line, and shall maintain all portions of the approach road on the owner's property. [2013 c.476 §3]

Note: See note under 374.308.

374.320 Removal or repair of installation on right of way at expense of applicant.

(1) Upon failure of the applicant to construct or maintain the particular approach road, facility, thing or appurtenance in accordance with the rules and regulations and the conditions of the permit, the Department of Transportation or the county governing body shall, after the expiration of 30 days following the transmittal of a written notice to the applicant, at applicant's expense, remove all such installations from the right of way or reconstruct, repair or maintain any such installation in accordance with or as required by such rules and regulations and the conditions of such permit. This expense may be recovered from the applicant by the state or county in any court of competent jurisdiction.

(2) Notwithstanding subsection (1) of this section, if the Department of Transportation, county governing body or designated agent of the department or governing body, whichever is applicable, determines that a traffic or pedestrian hazard is created by the non-compliance which causes imminent danger of personal injury, it may:

(a) Order the construction removed, repaired or maintained to eliminate the hazard, within 24 hours after delivery of written notice to the applicant, and to the owner of the property on which the noncompliance occurred.

(b) If the hazard is not removed within the time set under paragraph (a) of this subsection, remove the hazard and recover the expenses of any removal, repair or maintenance from the applicant in any court of competent jurisdiction. [Amended by 1955 c.424 §3; 1979 c.873 §2]

374.325 Effect of ORS 374.305 to 374.325. Nothing in ORS 374.305 to 374.325 shall:

(1) Limit or affect any of the powers granted to, or duties imposed upon, the county courts or boards of county commissioners, the Department of Transportation or the Public Utility Commission by ORS 758.010 and 758.020, or any rights granted or authorized under those statutes.

(2) Grant any right for the construction or placing of an approach road, structure, pipeline, ditch, cable or wire, or other facility, thing or appurtenance on the right of way of any highway. [Amended by 1957 c.323 §3]

374.326 Collaboration with highway users. (1) The Department of Transportation shall work collaboratively with highway users on all proposals to install a raised or depressed barrier on two-lane segments of state highways.

(2) As used in this section "highway users" includes representatives of the freight industry and automobile users and may include representatives of local government and other transportation stakeholders, as appropriate. [2011 c.330 §19]

374.328 Highway classification. The Oregon Transportation Commission shall periodically review, not less often than every six years, the classification of state highways, including the designation of highway segments as expressways, as a part of its comprehensive, long-range transportation plan developed pursuant to ORS 184.617 to ensure that the classifications for the highways and designations of expressways are appropriate to their uses. [2011 c.330 §20; 2017 c.750 §30]

374.329 Agreements with cities. (1) When it is determined by the Department of Transportation and a city that it is in the best interest of highway users to abandon a segment of the state highway, the department and the city may enter into an agreement to transfer jurisdiction and ownership of the segment of state highway to the city.

(2) In addition to funds provided to the city under ORS 366.800, the department may agree to provide funds annually to the city for the continued construction, repair, maintenance and improvement of the abandoned state highway from the State Highway Fund.

(3) The agreement between the department and the city accepting jurisdiction must contain provisions to ensure that freight movement on the highway will not be restricted beyond the limits set in the agreement, unless the Oregon Transportation Commission, in consultation with the freight industry and the city, concludes that the restriction is necessary for the safety of the highway users. Nothing in this section prevents a city from taking emergency action to protect safety or place weight restrictions on a structure that is failing or otherwise damaged. [2011 c.330 §23]

374.330 Prior status preserved. (1) ORS 374.305, 374.310 and 374.325, as those sections were amended by chapter 323, Oregon Laws 1957, and ORS 374.309 do not affect any approach road, structure, pipeline, ditch, cable or wire, or other facility, thing or appurtenance lawfully placed or constructed upon the right of way of any highway prior to August 20, 1957.

(2)(a) ORS 374.305 and 374.310, as those sections were amended by chapter 497, Oregon Laws 1967, and ORS 374.309 do not affect any approach road, structure, pipeline, ditch, cable or wire, or other facility, thing or appurtenance lawfully placed or constructed upon the right of way of any state

highway or county road prior to September 13, 1967.

(b) Except as provided in paragraph (a) of this subsection, private road crossings authorized by the Public Utility Commission under ORS 374.205 to 374.260 (1965 Replacement Part) are subject to ORS 374.302 to 374.334 after September 13, 1967. [1957 c.323 §4; 1967 c.497 §3; 2011 c.330 §10]

374.331 Facility plans; rules. (1) As used in this section, “facility plan” includes, but is not limited to, interchange area management plans, corridor plans, transportation refinement plans and access management plans.

(2) Every facility plan and access management strategy developed for a highway improvement or modernization project under this section or ORS 374.334 must include a methodology that balances the economic development objectives of properties abutting state highways with the transportation safety and access management objectives of state highways, in a manner consistent with local transportation system plans and the land uses permitted in the local comprehensive plans acknowledged under ORS chapter 197.

(3) The following apply to all facility plans developed by the Department of Transportation:

(a) The location of county roads and city streets within the area described in the facility plan must be determined through collaborative discussion and agreement between the department and the affected cities and counties. Each facility plan must document the agreement regarding the location of county roads and city streets that intersect a state highway within the area described in the plan.

(b) The department shall develop key principles for each facility plan. The department shall use the key principles to evaluate how properties abutting a state highway may retain or obtain access to the state highway during and after plan implementation. In developing the key principles, the department shall also develop a methodology to weigh the benefits of a highway improvement or modernization project to public safety and mobility against:

(A) The local transportation system plans and the land uses permitted in the local comprehensive plans of cities and counties; and

(B) The economic development objectives of affected real property owners who require access to the state highway.

(c) If a facility plan identifies the need to modify, relocate or close existing private approaches, the plan must include key principles for managing access to the state

highway. The key principles must contain a level of detail sufficient to inform affected real property owners of the potential for the modification, relocation or closure of existing private approaches within the area described in the facility plan.

(d) Each facility plan affecting access to a state highway must include a timeline by which the plan may need to be implemented in order to meet the safety and operational needs of the state highway.

(e) Each facility plan must include the long term safety and operational needs for the state highway and for all intersecting highways, roads or streets based on an engineering analysis conducted by a traffic engineer.

(f)(A) Until a facility plan is adopted by the Oregon Transportation Commission or finalized by the department, an affected real property owner may request a review of the key principles and related methodology developed by the department through:

(i) A collaborative discussion as established by the department by rule; or

(ii) The Access Management Dispute Review Board established under ORS 374.360.

(B) The recommendation of the Access Management Dispute Review Board under subparagraph (A) of this paragraph is not a land use decision, as defined in ORS 197.015, that may be appealed to the Land Use Board of Appeals.

(4) Prior to adopting any key principle under subsection (5) of this section, the department shall provide notice and an opportunity to be heard to the affected cities and counties and to affected real property owners. The department shall provide notice by first class mail.

(5) Twenty days after the date the department sends written notice under subsection (4) of this section, the department, in agreement with the affected cities and counties, shall adopt the key principles for a facility plan. [2013 c.476 §4]

374.334 Access management strategy; rules. (1) As used in this section:

(a) “Access management strategy” means a project delivery strategy developed by the Department of Transportation, in collaboration with cities, counties and owners of real property abutting a state highway in the affected area, that identifies the location and type of public and private approaches and other necessary improvements that are planned to occur primarily in the highway right of way and that are intended to improve current conditions on the section of highway by moving in the direction of the objective standards described in ORS 374.311,

subject to safety and highway operations concerns.

(b) "Project" means a highway improvement project or highway modernization project included in the Statewide Transportation Improvement Program.

(2) The Department of Transportation shall develop an access management strategy for each project. In developing an access management strategy, the department shall engage affected real property owners when:

(a) Establishing the methodology by which private approaches will be considered for modification, relocation or closure; or

(b) The department proposes to acquire all rights of access to a segment of the state highway.

(3) Within 21 days after the department finalizes the methodology by which private approaches will be considered for modification, relocation or closure, an affected real property owner may request a review of the methodology through:

(a) A collaborative discussion as established by the department by rule; or

(b) The Access Management Dispute Review Board established under ORS 374.360.

(4) If a facility plan, as defined in ORS 374.331, is created for a project, the facility plan must include a sufficient level of detail to identify the location of the private approaches affected by the project.

(5) The department shall work with the cities, counties, highway users and real property owners affected by a project to:

(a) Identify deficiencies with each highway segment impacted by a project; and

(b) Establish the long-term vision for each highway segment impacted by a project that would guide the scope and design of improvements within the highway segment.

(6) The following apply to all projects that include modification, relocation or closure of existing private approaches to a state highway:

(a) The location of intersecting county roads and city streets shall be consistent with the city and county transportation system plans or shall be determined and agreed upon through collaborative discussion between the department and the cities and counties affected by the project.

(b) The department shall determine the location of private approaches in the access management strategy in collaboration with affected real property owners using a collaborative discussion as established by the department by rule. [2013 c.476 §5]

374.335 Driving certain motor vehicles across public highway not considered operation on highway. Where any private road crosses or is crossed by a public highway, the operation of a motor vehicle across the public highway or upon the public highway for a distance of not more than 1,200 feet in the use of the private road is not subject to ORS 811.450, 815.155, 815.160, 815.170, 818.020, 818.060, 818.090, 818.110, 818.160, 818.300, 818.320, 818.340, 818.350, 818.400 and ORS chapter 825, provided such vehicle or vehicle use is:

(1) Subject to a permit issued pursuant to ORS 374.308, 374.309 or 374.310, or such vehicle or vehicle use is authorized by the owner of the property subject to the permit; or

(2) A farm tractor or implement of husbandry. [Formerly 374.265; 1971 c.391 §1; 1983 c.338 §23; 1987 c.158 §66; 2011 c.330 §11; 2013 c.476 §7]

374.340 Cattle crossings under public road. Any person owning, using or occupying lands on both sides of any public road is entitled to the privilege of making a crossing under the road for the purpose of letting the person's cattle and other domestic animals cross the road. A crossing may be installed as provided under ORS 374.302 to 374.334. [Formerly 374.270; 1981 c.153 §74]

374.345 Rules regarding turning onto state highway from approach road. The Department of Transportation shall adopt rules regulating the procedures and circumstances under which the department may restrict turning movements onto a state highway from an approach road for which a permit was issued under ORS 374.308 or 374.310 when the restriction is not required by contract, condemnation judgment, recorded deed or permit. [1999 c.972 §4; 2013 c.476 §8]

374.350 Process for appeal of decisions regarding access to highways. The Department of Transportation shall establish a process through which persons affected by decisions of the department regarding access to highways may appeal the decisions. [1999 c.686 §3]

374.355 Dispute resolution procedures; rules. There is created a set of dispute resolution procedures governing an appeal of the Department of Transportation's decision regarding an approach permit or the removal or modification of an approach. The procedures described in this section include but are not necessarily limited to notice, guarantee of an impartial tribunal, burden of proof and admission and weight of evidence, as follows:

(1) Decisions by the department to deny an application, to deny a deviation or to approve an application with mitigation mea-

tures are appealable by the applicant or permit holder. An applicant or permit holder may request a hearing. A hearing conducted under this subsection shall be conducted as a contested case hearing in accordance with ORS chapter 183.

(2) In addition to requesting a hearing under subsection (1) of this section, an applicant or permit holder may request the following dispute resolution procedures to resolve issues relating to the department's decision:

(a) Collaborative discussion, as established by the department by rule;

(b) Review by an Access Management Dispute Review Board established under ORS 374.360; or

(c) Both.

(3) The time required for a collaborative discussion or review by an Access Management Dispute Review Board process is in addition to the 120 days required for the department's final decision under ORS 374.312.

(4)(a) The department shall conduct a collaborative discussion within 45 days of the date the department receives a request from an applicant or permit holder for collaborative discussion unless the applicant or permit holder and the department agree to a longer amount of time.

(b) The department shall conduct a review by an Access Management Dispute Review Board within 45 days of the date the department receives a request for a review by an Access Management Dispute Review Board from an applicant or permit holder unless the applicant or permit holder and the department agree to a longer amount of time.

(5) A request for a dispute resolution procedure shall stay the time in which the department must issue a final decision for a concurrent contested case hearing.

(6) If an agreement between the parties is reached using collaborative discussion, the Director of Transportation shall issue the written decision. The written decision is a binding agreement for the department and for the applicant or permit holder.

(7) The decision pursuant to the collaborative discussion or the Access Management Dispute Review Board to approve, modify or reverse the department's decision to approve an application for an approach permit with conditions, to modify or require mitigation measures of an existing approach permit, to deny an approach permit or to remove or modify an approach is a settlement offer and is not a decision that may be appealed.

(8) The department may adopt rules for the dispute resolution procedures described under this section. [2011 c.330 §14]

374.360 Access Management Dispute Review Board. (1) If the applicant or permit holder of an approach permit requests a review by an Access Management Dispute Review Board under ORS 374.355, the Department of Transportation shall appoint an Access Management Dispute Review Board by selecting members for a board consisting of any or all of following:

(a) The Director of Transportation or a designee of the director who is familiar with the location in which the disputed approach is located.

(b) A representative of the local jurisdiction in which the disputed approach is located.

(c) A traffic engineer who practices engineering in Oregon.

(d) A representative from the economic or business sector.

(2) The Access Management Dispute Review Board shall consider information presented by the parties and shall notify the applicant or permit holder and the director of its findings regarding the department's original decision.

(3) The director shall review the Access Management Dispute Review Board's findings and may approve, modify or reverse the department's original decision to approve an application for an approach permit with conditions, to modify or require mitigation measures for an existing approach permit, to deny the approach permit or to remove or modify an approach.

(4) The director shall notify the applicant or permit holder in writing of the department's determination following a review by an Access Management Dispute Review Board appointed under this section. [2011 c.330 §15]

RIGHTS APPURTENANT TO PROPERTY ABUTTING CERTAIN HIGHWAYS AND ROADS

374.405 Access rights of property abutting on state highways. No rights in or to any state highway, including what is known 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.

374.410 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, the 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.

374.415 Action to prevent entering or leaving state highways in manner not authorized. The Department of Transportation may commence and prosecute to final determination any suit, action or proceeding in the name of the state by and through the department, which in its judgment is necessary to enjoin and prevent any person, whether acting individually or by agent, from entering upon or departing from any state highway mentioned in ORS 374.405, at any location, for any use or in any manner not authorized by any grant of a right of access, as provided in ORS 374.410.

374.420 County throughways; rights of abutting property owners. (1) The county court or board of county commissioners may acquire by purchase, agreement, donation or exercise of the power of eminent domain, fee title or any interest in real property, including easements of air, view, light and access, which is necessary for the construction of a throughway or the establishment of a section of an existing county road as a throughway.

(2) When right of way is acquired for a throughway after August 13, 1965, no rights in or to the throughway, including what is known as right of access, accrue to real property merely because the property abuts upon that part of the right of way so acquired. This subsection also applies to right of way acquired, prior to August 13, 1965, pursuant to ORS 374.420 to 374.430 (1963 Replacement Parts).

(3) "Throughway," as used in this section, means a proposed or existing county road especially designed for through traffic, which has been designated by resolution of the county court or board of county commissioners as a throughway, over, from or to which owners or occupants of abutting land or other persons have no easement of access or only a limited easement of access, light, air or view, merely because of the fact that their property abuts upon the throughway or for any other reason. [Amended by 1965 c.364 §1]

374.425 County court to prescribe access rights of abutting property. In connection with the acquisition of real property for right of way for a throughway described in ORS 374.420, the county court or board of county commissioners may prescribe the location, width, nature and extent of any right of access that pertains to such real property. [Amended by 1965 c.364 §2]

374.430 Action to prevent entering or leaving county roads in unauthorized manner. The county court or board of county commissioners may commence and prosecute to final determination any suit, action or proceeding which in its judgment is necessary to enjoin and prevent any person, whether acting individually or by agent, from entering upon or departing from any throughway under its jurisdiction, mentioned in ORS 374.420, at any location, for any use or in any manner not authorized by any grant of a right of access, as provided in ORS 374.425. [Amended by 1965 c.364 §3]

PENALTIES

374.990 Penalty for violation of ORS 374.305 or rule adopted under ORS 374.309 or 374.310. In addition to the liability for expenses under ORS 374.307 and 374.320, violation of ORS 374.305 or of any rule or regulation adopted under ORS 374.309 or 374.310 is a misdemeanor. [1955 c.424 §6; 2011 c.330 §12]

