

OREGON HIGHWAYS

by Teresa Elliott. October 1988

Revised & Updated by

Douglas Luth, November 1997

This document is not intended to be a legal resource, but a general reference.

The Oregon Department of Transportation (ODOT) has a responsibility (whether real or implied) to know what its ownership rights and limits are with respect to its Highway rights of way. While information identifying these rights is available in various written forms at scattered locations, there appears to be a lack of knowledge of where to find it, and how to decide what is important. The disbanding of the Right of Way Research Unit several years ago necessitates a summary of the pertinent information to be documented and made available.

Covered in this report are topics that generate the basic questions of "documented rights" as well as some background information for further clarification and understanding of ODOT's rights. The following abbreviations will be used throughout the paper:

A&R - Abandonment and Retention Agreement
HD - Highway Division or Highway Department (old)
ODOT - Oregon Department of Transportation
OL - Oregon Law
ORS - Oregon Revised Statute
OTC - Oregon Transportation Commission
RIW - Right of way
SHC - State Highway Commission (old)
BPR - Bureau of Public Roads, now FHWA
FHWA - Federal Highway Administration
GLO - Government Land Office

Topics discussed include:

- 1) Designation and establishment of State highways.
- 2) Resoluted right of way.
- 3) Right of way widths.
- 4) Historical status of a road.
- 5) Changes to ODOT highways. (abandonment and retention, relinquishment).
- 6) Miscellaneous highway legislation.
- 7) Where to find information.

1. Designation and Establishment of State Highways

Highways in Oregon were adopted and brought into the State Highway system in three possible ways:

- a) By Legislative Act - Statutes.
- b) By resolution from Oregon County's to the State Highway Commission - the Commission was empowered by the Legislature to accept these transfers.
- c) By the Oregon Transportation Commission by Resolution and by the Legislature.

All three of these authorities, could and have on occasion, adopted, established changed and even removed highways from the State Highway System. In 1977 the Oregon Legislature repealed all statutory highways, and left sole authority for the State Highway System with the Oregon Transportation Commission (ORS 366.225 and ORS 184.616).

Note: You will find a copy of the designations formally in resolutions or as entries in the SHC or

Oregon Transportation Commission meeting minutes. Records of the State Highway Designations are kept in the Oregon Transportation Commission and SHC Records which are located at ODOT's "General Files & History Center", Room. #126, Transportation Bldg. In Salem, 986-3286.

2. Resoluted Right of Way

Resoluted right of way means ODOT received, via resolution formally enacted by a County Commission/Court, county acquired rights-of-way for a given route for use as a State Highway under the old establishment laws. These transferred rights of way were usually an easement or donated lands by deed from the adjacent property owners.

By taking over county roads considered to be main traveled routes, ODOT acquired whatever property rights the county possessed at time of transfer. Since many ODOT highways were established by some other agency, it is important to determine what property rights ODOT acquired as a result of the resolution.

Resoluted rights of way generally revert back to the County when ODOT no longer requires them for highway related purposes. An exception would be where in a subsequent purchase transaction, ODOT purchased the rights to the resoluted rights of way from the adjacent land owner. In this case, ODOT would remain the fee owner of the property.

3. Right of Way Widths

Current right of way width for ODOT highways is set by the Transportation Commission via adoption of a survey resolution.

Original right of way widths were designated via resolution by the county(s) through which the road traversed, by the SHC via resolution, or by description in a deed if acquired in fee.

The Oregon Legislature, by law, established a statutory width for county road rights of way. If a resolution or establishment document did not specify a width, then the right of way width is whatever the statutory width was at the time the highway or road was established. This width is valid until such time as the road is relocated, widened, straightened, or otherwise altered causing a "stated" change in the width. Refer to Dr. William Fry's Chart on Statutory Widths for County Roads (See "Exhibit A").

In the early years of the State Highway Commission, counties acquired rights of way for ODOT. The right of way acquired, was usually an easement, and an occasional fee simple interest (ORS 366.320).

For highways across federal public lands, a right of way easement was acquired from the Bureau of Public Roads, or whatever government agency was responsible for the land at the time of transfer.

Current ODOT practice is to acquire fee simple title for right of way whenever possible. ORS 366.360 gives ODOT the authority to acquire real property in fee simple title. (Some States only have the power to acquire easements for roads. Oregon is an exception due to written statutes.)

The task of acquiring right of way is the responsibility of the Right Of Way Section, part of ODOT's Technical Services.

Additional right of way may have been acquired in conjunction with construction or other improvement projects. You need to check the right of way maps in Roadway Final Design Section, second floor, Transportation Building in Salem, to see if there has been any change to a highway, affecting right of way width, or ODOT's rights and responsibilities.

4. Historical Status of a Road

At the time a given highway was placed on ODOT's highway system, it may have been in existence as:

- a) previous territorial, wagon, or military road
- b) toll road
- c) county market road
- d) trail
- e) right of way across federal land
- f) forest road
- g) right of way through cities
- h) right of through counties

It is important to identify what the nature of the road was prior to, and at the time it was placed on the ODOT system. Knowing this, and having the documentation to support it will help to determine who has the jurisdiction, control, maintenance responsibility and who owns which property rights. It also helps to identify regulations governing the road and its width.

a. Territorial, Wagon, or Military Roads were established by Legislative Acts. Some were by the US Congress and some by the Oregon State Legislature. Generally these were established for public use and fee title was not obtained. However, in some instances with the wagon roads (at least for the Willamette Valley and Cascade Mountain Wagon Road), fee title was given in the form of a grant from the US Government to the State and then transferred to the Wagon Company. There are some files with information on the Wagon and Territorial Roads in research files located in the R/W Engineering Unit, second floor, Transportation Building, Salem.

Territorial Roads were given to the Counties through which they traversed by ORS 368.420, (also see General Laws of Oregon 1903, page 272). Territorial roads, state roads, and county roads established by the Oregon Territorial Legislature or the County Commissioners were declared legal roads by the State of Oregon when Oregon entered the Union, (approved June 4, 1859).

In accordance with General Laws of Oregon 1892, p.99, wagon roads were to be surveyed and maps filed, then the roads were to become county roads in each of the counties through which they traversed.

Many of the Military roads also became county roads, though no specific regulation governing them is known.

b. Toll roads were generally privately owned roads which may have been given, or sold to the County or to ODOT for use as a highway. There should be a deed recorded in the county records for these roads, indicating current ownership.

c. County Market Roads were county roads built or improved with ODOT and federal funds by the county during 1917-1932 period. By 1932, the County Market Roads funds were exhausted. Many of the Market Roads became Secondary ODOT Highways, while others remained county roads. (See

OSHC Journal of Minutes pages 3126 through 3140 for Nov. 13, 1931 designation and adoption of many of the secondary ODOT highways.)

d. Trails consist of Indian, settler, or animal trails, some of which evolved into paths, wagon roads, then county roads. There is no specific legislation on trails. They are relevant in establishing a timeframe of when or how early a given route was in use.

e. Right of Way Across Federal Lands - There are two types of government lands: Reserved Lands and Unreserved or unappropriated lands.

Federal lands are each administered by different agencies with their own policies regarding granting right of way easements for roads across the Reserves. Old right of way files usually contain letters from these agencies specifying the conditions under which the right of way was granted. Generally, these right of ways are to be returned to the Federal Government when ODOT no longer requires them for a highway related use.

Reserved Lands were set aside by various Congressional Acts such as the Taylor Grazing Act, US Reclamation projects, power site reserves, Indian Reservations.

Unreserved or Unappropriated Lands are generally governed by the Bureau of Land Management or the US Forest Service. Both these agencies give easements for the right of way.

f. Forest Roads were roads that partially passed through a national forest and were built with Federal Forest Road funds. (These roads may belong to the County, ODOT or the federal government.) The roads were built with matching funds, but generally the Bureau of Public Roads (BPR) surveyed, designed and constructed the road. When one of these routes became an ODOT highway, the BPR was supposed to send a copy of the maps, plans and rights of way descriptions to ODOT. There are Forest Road files for each of these roads in "General Files & History Center", Room #126, Transportation Building in Salem, listed under the Forest Road Number.

In some cases, an application for a road may be found, along with cooperative agreements, correspondence and contract plans and specifications for roads through the forest. These, if available, are found in the Forest Road file.

A formal application for right of way through public land was not acquired for every highway. This was not consistently done, as each National Forest tended to be autonomous. To provide some standardization of the right of way through national forests a Memorandum of Understanding was established and agreed to between ODOT and the US Forest Service. A copy of this Memorandum is on file in "General Files & History Center", Room. #126, Transportation Building in Salem, 986-3286, under Misc. C & A # 7703.

g. Right of Way Through Cities may have been platted when the town was originally platted and incorporated, or an addition or subdivision was added to the city limits. These streets were usually dedicated. The plat established the road, but did not necessarily pass fee title. The plat usually has the information about the dedication, and a book and page reference to check to see if fee title was given to the city. Generally, the adjacent property owns the underlying fee title to platted city streets. In some subdivisions, it depends on how the subdivision is laid out and the specific wording in the deeds and the dedication.

For ODOT highways that are routed over existing city streets, ODOT only has curb-to-curb (or to the outside of the ditch line if there is no curb) surface jurisdiction and maintenance responsibility (ORS 373.020).

In the case of Unincorporated towns or cities, the County Courts had complete jurisdiction and control over any and all streets and alleys in the same manner as any other public road. These streets and alleys were declared by Legislative Act to be public highways known as county roads (see General Laws of Oregon 1903, page 279).

For roads and highways routed through cities which were placed on the State highway system prior to the city's incorporation or annexation, the OTC has right of way line to right of way line jurisdiction and maintenance responsibility. The laws applying in this case are the same as for ODOT highways that were county roads, (ORS 366.320).

Refer to the following page for a discussion on County Roads in existence prior to a city's incorporation that are still under the county jurisdiction.

ODOT highways located within the city limits, over a route where no prior city street existed, have been treated as ODOT highways. ODOT has right of way line to right of way line jurisdiction provided ODOT or the County acquired fee title for the right of way.

For the above reasons, it is important to determine if a route through town was in existence prior to the town being platted and incorporated, or if it came into being with the platting of the town.

There may be miscellaneous contracts and agreements (Misc. C & A's) between cities, counties and/or ODOT altering the terms and limits of jurisdiction. If ODOT was involved, these agreements will be in ODOT's "General Files & History Center", Room #126, Transportation Building in Salem, 986-3286.

It should be noted however, that cities and counties did not have the authority to enter into any agreement with each other to transfer or relinquish to the city any county road until after 1939. ORS 373.270 authorized the transfer of county roads jurisdiction (upon request from the city) within the corporate city limits. See the procedure given in the statutes.

h. Right of Way Through Counties. The county roads were to be established in accordance with the procedure set by the Oregon State Legislature (Gen. Laws of OR., 1903, pages 262-285) by the county court or by the County Commissioners. These roads were usually resolute, though the rights of way may have been acquired by an easement, by fee, by dedication or by condemnation with eminent domain rights.

The process a County Road was established is:

- 1) By petition signed by 12 land holders to establish a road;
- 2) Petitioners bond set aside to pay for the survey and Road Viewers expenses;
- 3) A County Resolution declaring its intent to locate and establish a road;
- 4) Posting of the notices in three key public locations
- 5) Appointment of Road Viewers, and the assignment of the County Surveyor to survey, locate lay out, view, and assess whose property will be affected and assess the damages;
- 6) Surveyor's report;
- 7) Road Viewer's report;
- 8) First reading of the Road Viewer's report;

- 9) Second Reading of the Road Viewer's report;
- 10) Third or Final Reading of the Road Viewers report.
- 11) Final Surveyor's report, along with notice of where the field notes and plat are recorded;
- 12) An assessment of damages or list of persons asking for compensation; any remonstrance's;
- 13) Final Order Establishing the Road, this is one of the most important documents;
- 14) Finally there should also be a separate listing where the property owners are actually awarded damages, in this case the rights of way is an easement across their property.

Occasionally some of the steps, i.e., the final reading the surveyor's report, the assessment of damages and the Final Order, will be combined in the same documents. All of the documents listed in these steps should be filed in the County Court journals or the County Commissioner's journals.

In some cases after the County road was established by the formal process, the county acquired fee title to all or parts of the rights of way along the route. This information is located in the Book of Deeds, the Record Book of Deeds, or possibly in the Miscellaneous Deeds books. Usually there is an index book for each of these books in the county. The Deed Book Index is listed by Grantor - Grantee. (Lake and Clatsop Counties did this).

You may need to go through the indexes looking for any possible land owners in the area to do a Chain of Title search to find any deeds or easements granted, or sold to the County, the City, the State of Oregon, SHC, or OSHD, or the US government. You may also want to check for deeds from the persons awarded damages.

These journals, or at least the indexes, are located in the County Clerk's Office. Some Counties have a Recorder/ Archives Office where they store the older journals. Some Counties also have these journals on microfilm, and if this is the case, the search for documents may take longer.

County Road records; surveys; field notes; plats of towns, subdivisions, property boundaries, etc; and GLO information are among some of the information available in most of the County Surveyor's office or the Road Officials' office. These documents do not establish the roads; but do provide essential descriptions and references that may be used to locate the formal establishment documents in the County Commissioner's journals. They also provide valuable information for re-establishing a survey.

For ODOT highways that were previously county roads, ODOT has whatever rights the county had. ORS 366.320, vested in ODOT all the right of way owned or held by the County over and along any roads adopted by ODOT as a highway. (If the county had an easement, then ODOT acquired an easement; if the county had fee ownership, then ODOT has fee ownership.) Also see ORS 366.290.

From 1914-1940, Counties also acquired on behalf of ODOT, rights of way for new highways being constructed. In these cases, the county often purchased fee title or an easement from the private property owners, though the County may have no record of it being a county road or even existing. In these cases, it is not a county road, it is an ODOT highway. Usually the highway was a completely new route traversing across a new frontier.

Santiam Highway through Jefferson County is an example where the county acquired the right of way for ODOT. Since the County acquired the right of way, the Road Records did not contain any record of the highway. This information had to be obtained by checking ODOT's right of way map for the adjacent property owners, then going through the County Record of Deeds for the deeds conveying title.

Remember, boundaries and names of the counties have changed and shifted over the years. This can present problems when determining the road origin and you may need to check with county records in the county in which it was previously located.

5. Changes to ODOT Highways

ODOT highway right of way can be changed when projects are relocated, widened, signalized, etc. For previous construction projects that changed or might have changed the right of way, the maps in ODOT's Roadway Final Design Unit, second floor, Transportation Building in Salem, provide useful information and clues to the widths, relevant right of way files or other SHC actions to check.

Additions to, and deletions from, the State highway system are under authority of the OTC.

The method for removing a section from the ODOT highway system, when the right of way is no longer needed, depends on the type of interest ODOT holds and whether the property will continue to be used for roadway purposes. The section remains part of the ODOT highway system until it is formally removed by the following possible actions:

a. Resoluted highways, those obtained by way of an easement, are subject to removal from ODOT's highway system by using the Abandonment and Retention process, whether being transferred to another government jurisdiction or the abutting owner. Right of Way Section does these.

b. Fee holdings may only be transferred to another government jurisdiction for highway use by relinquishment, and then only with the stipulation that they continue to be used as public roads. In these instances, a written relinquishment agreement between the state and either the county or city is executed. It should address jurisdictional and maintenance responsibilities and include the reversionary clause stating that the property automatically reverts to ODOT in the event it is no longer used as a public roadway.

If a fee holding is no longer needed as a roadway, a relinquishment to a city or county is not appropriate. The disposition of the property must be handled by ODOT Right of Way Section's Property Management Unit. The Property Management Unit, will market and sell the parcel per applicable statutes and regulations, returning the sale proceeds to the Highway Trust fund for future allowed uses.

ODOT's Right of Way Section processes proposals for any highway or portion thereof to be removed from the State highway system. Right of Way Section develops a draft Abandonment and Retention Agreement. This is distributed to Region, Property Management and Transportation Development for approval. Once approved, the agreement is forwarded to appropriate county officials for approval. The final step is submitting both the signed agreement and the resolution document to ODOT's Right of Way Manager for signature and subsequent recording in the appropriate county records and filing with ODOT's "General Files & History Center", Room. #126, Transportation Building in Salem.

At present, researches that have been done may be available in ODOT's R/W Engineering Unit, located on the second floor of the Transportation Building in Salem.

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6. Miscellaneous Highway Legislation

ORS 271.330	Relinquishment of ODOT property to other governmental bodies for public use, with reversionary clause.
ORS 366.225	Repealed all statutory highways, sole authority to the Oregon Transportation Commission.
ORS 366.285	Procedures for establishing or re-establishing highways when the location is in doubt.
ORS 366.290	Adding to, or removing roads from the ODOT highway system.
ORS 366.300	Treatment of portions of highways eliminated from the highway when relocated 1) if for public use, goes to county; 2) otherwise reverts to abutting owners; Covered in an Abandonment and Retention Resolution.
ORS 366.320	ODOT has whatever the rights were vested in the County at the time ODOT took over a county road as an ODOT highway.
ORS 366.360	ODOT may acquire fee simple title to real property acquired by ODOT by either donation, agreement, or exercise of the power of eminent domain.
ORS 368.420	All Territorial Roads in the State were declared to be county roads at the time the State entered the Union.
ORS 373.020	For ODOT highways routed over city streets ODOT has curb-to-curb jurisdiction.
ORS 373.260	Since 1939, a County may enter into an agreement with any city for construction, improvement, or repair of, and for the acquisition of right of way for any county road or city street within the city limits.
ORS 373.270	Allows for the transfer of jurisdiction of county roads within city limits to the city upon request, procedure given in the statute.
ORS 374.005 ORS 374.095	Oregon "Throughway Laws".

7. Where to Find Information

Abandonment Resolutions

ODOT's "General Files & History Center", Room #126, Transportation Bldg., Salem, 986-3286.
There is a card index on top of the file cabinets for the A&R's. This index is alphabetical by County, and then numerically by Highway Number.

Agreements

ODOT's "General Files & History Center", Room #126, Transportation Bldg., Salem, 986-3286.

Assessor's Mans

Maps for all counties can be obtained from the Department of Revenue, Salem.

Bridge Engineering Files

Bridge Engineering Section, 3rd floor, Transportation Bldg., Salem, (503) 986-4200

Forest Highway Construction Maps (FRV Maps)

Roadway Final Design, 2nd Floor, Transportation Bldg. Salem

GLO (Government Land Office Plats)

R/W Engineering, County Mapping

Highway Resolutions

ODOT's "General Files & History Center", Room #126, Transportation Bldg., Salem, 986-3286.

Highway Survey Field Notes

Newer books in Roadway Final Design. Older volumes in storage.

Mile Point Logs

Bound together in binders in Roadway Final Design.

R/W Maps

Roadway Final Design, 2nd Floor, Transportation Bldg., Salem

R/W Mosaics

Photogrammetry - Transportation Bldg., Salem

Subdivision Plats

R/W Engineering, 2nd Floor, Transportation Bldg., Salem

Throughway Maps

Order through ODOT's "General Files & History Center", Room. #126, Transportation Bldg., Salem, 986-3286.

ODOT's "General Files & History Center". Room. #126. Transportation Bldg. Salem, 986-3286.

Minutes of State Highway Commission.

Abandonment & Retention Resolutions (Index in card files)

Survey Resolutions (Index in card files)

Primary & Secondary Highway Resolutions

Agreements

Cattle Guard File

Construction Contracts (old ones on microfilm)

Book of contractors (alphabetical. to look up contract numbers)

Historical Highway Files

Forest Highway Files

Throughway maps are ordered through this office

Right of Way HQ. 4th Floor, Transportation Bldg., Salem

Right of way files

Roadway Final Design 2nd Floor, Transportation Bldg., Salem

Construction field notes (old ones in storage)

Construction maps (indexed by straight line maps and highway files. Old ones are on microfiche in Roadway Final Design)

Right of way maps (indexed by highway files and large right of way index map)

County maps

Forest highway construction maps (FRV maps)

Mile point notebooks

Bridge log

Bridge Engineering Section, 3rd floor, Transportation Bldg., Salem, (503) 986-4200

Highway and county files on bridge maintenance

Maintenance files by bridge number (old in archives)

Several photo albums of old bridges in Bridge library

File of information on buildings, bridge culverts, cattle passes

R/W Engineering - 2nd Floor, Transportation Bldg., Salem

City plats

GLO plats

Metzger maps

Mapping & Mileage Control - Mill Creek Office Bldg. Salem

GLO Plats

City Maps

Mile Point Logs

Photogrammetry - Transportation Bldg., Salem

Mosaics

Aerial photography

Mapping & Mileage Control - Mill Creek Office Bldg. Salem

Latest Quad Maps

General Highway Maps (County Maps)

Highway List (alphabetically and by highway number)

ODOT Library - Transportation Bldg., Salem

Complete Set of Biennial Reports

Complete set of Oregon Historical Society Journal with Index

Oregon Laws, Oregon Revised Statutes, some history books

EXHIBIT "A"

Statutory County Road Widths

