



SUBJECT Neighbor Notification Program	FINAL NUMBER AM15-01(B)	EFFECTIVE DATE 01/01/2015	VALIDATION DATE	SUPERSEDES or RESCINDS NEW
	WEB LINK(S) http://www.oregon.gov/ODOT/HWY/TECHSERV/Pages/technicalguidance.aspx			
TOPIC/PROGRAM <u>Approach Road Permitting/</u> <u>Access Management</u>	APPROVED SIGNATURE Original signed by: Larry McKinley Access Management Program Manager			

PURPOSE

The purpose of this Bulletin is to provide guidance for implementing Oregon Revised Statue (ORS) 374.312(14) that requires the department to develop a program that allows certain property owners who might be affected by a Department decision to issue a permit for a state highway approach to be notified of the opportunity to have input prior to the final permitting decision. The program will be known as the Neighbor Notification Program.

GUIDANCE

This Bulletin provides guidance about:

- Which property owners must receive notice of a proposed approach by virtue of ORS 374.312;
- Which property owners the department may want to notify of a proposed approach, in addition to those required by ORS 374.312;
- The processes for providing notice to potentially affected property owners;
- The timing of notification; and
- How to respond to any comments received.

DEFINITIONS

“Adjacent properties” means properties that abut the permit applicant’s property to the left and to the right, and any other properties that access the highway from properties that abut the applicant’s property to the left and to the right.

“A person that might be affected” means the owner of an adjacent property, and the city or county government that has jurisdiction over the land in which the proposed approach is located.

“Permit” means, for purposes of the Neighbor Notification program only, a permit to operate that is being issued for a new approach or for a change of use. Existing approaches or approaches that are receiving a permit to operate because the department determines that they meet the presumption of written permission under OAR 734-051 do not require neighbor notification.

“Licensed engineer” means an engineer licensed in the State of Oregon to practice engineering.

“Other potentially affected property owners” means property owners, other than those defined as ‘a person that might be affected’, whose highway connections are identified by an engineer as likely to be affected by the proposed approach. These “other potentially affect property owners” may be offered the opportunity to comment at ODOT’s discretion.

“Property owner” means the owner or owners of record for tax assessment purposes.

BACKGROUND/REFERENCE

ORS 374.312(14) reads in its entirety:

“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 have input 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.”

EXPLANATION

A. What Action(s) Require Notification

Notify persons that might be affected whenever a new highway approach is proposed or a previously existing approach is proposed for a change of use.

Notice is not required for issuance of permits to approaches that are “presumed to be permitted” under SB 408. If such an approach is receiving a written permit for the first time, there is no need to notify nearby property owners.

B. Who Must Be Notified:

1. Required by ORS 374.312

People who might be affected by the issuance of an approach permit [see “definitions”] must receive notice that the approach application was filed and must be given an opportunity to comment. Attachment A explores further how to determine if a property owner might be affected in different geographical situations.

2. Other Potentially Affected Property Owners

ODOT recognizes that on infrequent occasions, there are property owners who may potentially be affected by the issuance of a permit who are not required to be notified under ORS 374.312. For example, issuance of a permit that requires construction of mitigation measures may affect access to property at more distant locations upstream or downstream or across the highway. Other potentially affected property owners shall be determined by the Region Access Management Engineer (RAME). Attachment B explains the analysis to follow in identifying which property owners may be affected. In the interest of public service and preventing unnecessary conflict, ODOT staff may notify any such affected property owners at its discretion.

C. Notification Processes.

1. Persons Required to be Notified by ORS 374.312

Local Jurisdiction

The Land Use Compatibility Statement (LUCS) process is the means by which the local jurisdiction is notified about the application and given an opportunity to comment. The applicant is responsible for obtaining the required signature of the local government on the LUCS and submitting it as part of the complete application package.

The LUCS asks the local jurisdiction to certify that all local land development approvals have been obtained or are in process. In addition, the LUCS form provides notice to the local jurisdiction that ODOT is in the process of issuing a permit and requests comments about any other concerns the local jurisdiction may have beyond the land use compatibility issue.

Adjacent Property Owners

ODOT staff is responsible for instructing the applicant which of the abutting property owners to notify of the application. This is done after Right of Way has confirmed that the property owner has a right of access, and ODOT has reviewed the tax lot map submitted by the applicant to determine which adjacent property owners must be notified. (The *Application for State Highway Approach* requires

the applicant to submit a tax lot map that displays the applicant's property in relation to all of the other abutting properties, including the names and addresses of the abutting property owners.)

The applicant is responsible for notifying each of the adjacent property owners in separate letters of the opportunity to comment on the application. ODOT will provide the applicant with the Notice to Neighbors form letter(s) for this purpose and a Neighbor Notice Certification form to be returned to the Department verifying that the required notification occurred. The application cannot be deemed complete until the Neighbor Notice Certification is received by ODOT. (Note: ODOT staff may send out the Notice to Neighbors form letters on behalf of the applicant and complete the Neighbor Notice Certification form if they choose.)

Persons who might be affected shall have fourteen (14) calendar days from the date of the Notification letter to make comments in writing. The fourteen (14) day period may end after the application is deemed complete, but ODOT's decision on the application shall not be issued during this 14-day period. Although this time period coincides with the pre-decision collaborative discussion process, there is no need to include persons that might be affected in the collaborative discussion. Any comments received from other property owners must be considered in making the final decision.

The Notice to Neighbors template letter asks the adjacent property owners receiving the letter to notify ODOT if there are any easements or other encumbrances on their property that entitle other property owners to access the highway via their property. If ODOT receives return information about any other property owners who may be impacted by the proposed approach, ODOT may instruct the applicant to send additional letters.

Quick Notification Process: If ODOT is processing an application and the applicant would prefer to notify the neighbors by telephone instead of letter, a telephone call is an acceptable form of notice. During the phone call, the applicant must explain that he or she is applying for an approach application and then read the contents of the notification letter over the phone. The applicant certifies to ODOT that the phone call was made by checking the "telephone" box on the Neighbor Notice Certification letter to ODOT. The purpose of this Quick Notification Process is to avoid a burdensome administrative process on simple applications where a phone call will suffice.

2. Other Potentially Affected Property Owners

If the RAME determines that other property owner(s) are likely to be affected by the proposed approach or mitigation, ODOT should notify them in writing of the Department's concerns. The notification will typically occur after the application is

deemed complete and the application review process has reached the stage that ODOT has an understanding of the probable design of the approach, including any mitigation, and the RAME determines that the use of an approach owned by another property owner is likely to be affected by the development of the proposed approach.

The Notification letter shall describe the proposed approach and any mitigation and provide fourteen (14) calendar days from the date of the letter to submit comments in writing. Although this time period coincides with the pre-decision collaborative discussion process, there is no need to include other potentially affected property owners in the collaborative discussion. ODOT's decision on the application shall not be issued during this 14-day period. Any comments received from other property owners must be considered in making the final decision.

ODOT staff are responsible for this process in its entirety based on the RAME's determination of the potential affects to non-adjacent properties. The applicant is not required to send any letters in this process.

E. Considering and Responding to Comments Received

In making the decision on the application, ODOT shall consider any comments that are received and, at its discretion, may act on any information received.

Acknowledgement of comments received in the Neighbor Notification Process by ODOT staff is strongly encouraged. The contact may be made by phone, in person, or in writing. A form letter is available in CHAMPS for this purpose (letter #106). The letter acknowledges that comments were received and that they are being considered in the final permitting decision. If there are concerns about the sensitivities of a particular situation, staff should seek management guidance.

None of the property owners notified in these processes are entitled to any type of appeal or review if ODOT chooses not to act on the comments.

RESPONSIBILITIES

The District Manager has overall responsibility for the management and conduct of the Neighbor Notification Program and shall be responsible for making work assignments that ensure the process is followed. The District Manager shall work with appropriate ODOT staff to ensure that duties and responsibilities are coordinated in a timely manner in accordance with this Bulletin.

ACTION REQUIRED

The following actions are required in implementing this technical guidance for all approach applications:

1. Confirm that the LUCS form was completed by the local jurisdiction and submitted to ODOT.
2. Tell the applicant which adjacent neighbors must be notified.
3. Provide the applicant with the explanatory cover letter, the Notice to Neighbor template letters and the Neighbor Notice Certification form.
4. Confirm that the applicant returned the Neighbor Notice Certification form indicating the adjacent property owners were notified.
5. If written comments are received, consider the comments in making the final decision.
6. File copies of all correspondence received and sent.

If ODOT is concerned that other potentially affected property owners exist, the following additional actions are required:

7. Identify any property owners who are likely to be affected.
8. Notify potentially affected property owners of the design, including any mitigation, of the proposed approach.

SPECIAL INSTRUCTIONS

If an applicant files an appeal that results in a change to the original decision (either an approval or approval with mitigation) that will affect another property, before construction may begin on the new approach, any person that might be affected by the issuance of the permit (as described above) must be notified about the new approach design and any required mitigation and given 14 calendar days to comment.

In these special cases, Region and District staff shall work with the ODOT appeals coordinator to ensure that appropriate notifications are made.

CONTACT INFORMATION

Title: ODOT Appeals Coordinator
Branch/Section: Access Management Unit, Traffic Roadway Section, Technical Services
Phone: (503) 986-4379
E-mail: Ann.Zeltmann@odot.state.or.us

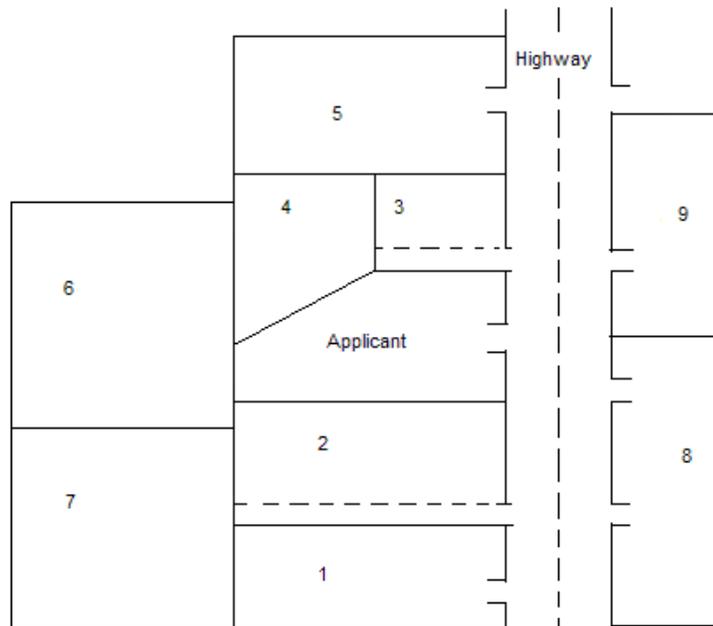
Attachment A

Who Must Receive Notice Under The Statutory Notification Process?

The existing land use patterns in the proximity of a property that has applied for a highway approach will determine which nearby land owners must receive notice under the statute. Attachment A contains two (2) diagrams that illustrate which nearby properties must be notified of the pending application. In Diagram A, the applicant's property is abutted by the highway and by other properties on three sides. In Diagram B, the applicant's property is abutted by the highway, a city street, and by other properties on two sides.

Based on the guidance provided in the Technical Bulletin, which of the property owners in Diagrams A and B should receive notice of the pending application?

Diagram A



Property owners 2 & 7, and 3 & 4 must receive Statutory Notification, along with the local jurisdiction via the LUCS form.

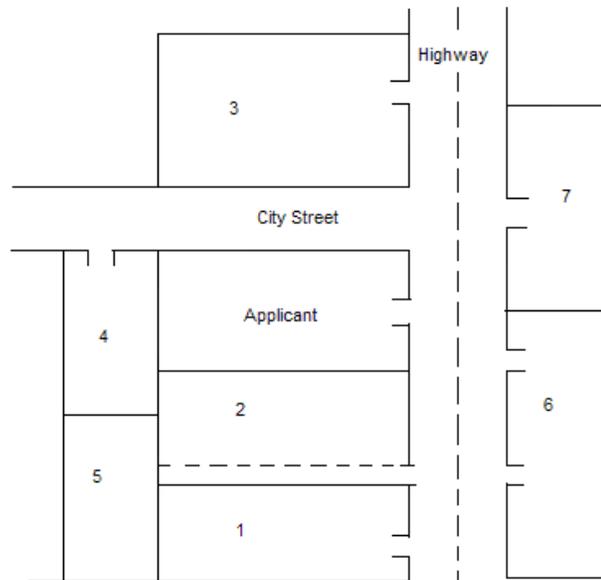
Property owners 1, 5, 6, 8 and 9 are not required to receive notice. However, if ODOT has particular concerns that these property owners may be potentially affected owners, they should be given the opportunity to comment on the permit application through the ODOT Notification process.

Statutory Notification Explanation:

- Property 1 – Do not notify. The property is not adjacent.
- Property 2 – Notify. The property is an adjacent property because it abuts the applicant's property to the right.
- Property 3 – Notify. The property is an adjacent property because it abuts the applicant's property to the left.
- Property 4 – Notify. The property takes its access to the highway over property that is adjacent to the applicant's property, it is defined it as an adjacent property because it has an access easement over the adjacent property. The adjacent property is requested to notify ODOT of access easements encumbered to their property.
- Property 5 – Do not notify. The property is not adjacent.
- Property 6 – Do not notify. Although the property abuts the applicant's property, it is located behind the applicant's property and as such is not defined as adjacent.
- Property 7 – Notify. The property takes its access to the highway over property that is adjacent to the applicant's property; it is defined as an adjacent property because it has an access easement over the adjacent property. The adjacent property is requested to notify ODOT of access easements encumbered to their property.
- Property 8 – Do not notify. Properties located across the highway are not defined as adjacent properties.
- Property 9 – Do not notify. Properties located across the highway are not defined as adjacent properties.

(Continued on next page.)

Diagram B



Property owners 2 & 5 must receive Statutory Notification along with the local jurisdiction via the LUCS form.

Property owners 1, 3, 4, 6 and 7 are not required to receive notice. However, if ODOT has particular concerns that these property owners may be potentially affected owners, they should be given the opportunity to comment on the permit application through the ODOT Notification process.

Statutory Notification Explanation:

Property 1 – Do not notify. The property is not adjacent.

Property 2 – Notify. The property is an adjacent property because it abuts the applicant's property to the right.

City Street -- The City must receive notification because it is the local jurisdiction. Even if the applicant's property did not abut the city street, the city must receive notification as a local jurisdiction.

Property 3 – Do not notify. Although the property is located to the left of the applicant's property, it is not defined as adjacent because it does not abut the applicant's property.

Property 4 – Do not notify. Although the property abuts the applicant's property, it is located behind the applicant's property and as such is not defined as adjacent.

Property 5 – Notify. The property takes its access to the highway over property that is adjacent to the applicant's property, it is defined it as an adjacent property because it has an access easement over the adjacent property. The adjacent property is requested to notify ODOT of access easements encumbered to their property.

Property 6 – Do not notify. Properties located across the highway are not defined as adjacent properties.

Property 7– Do not notify. Properties located across the highway are not defined as adjacent properties.

Attachment B

Who Must Receive Notice Under The ODOT Notification Process?

The purpose of the ODOT notification process is to collect information that enables ODOT to learn about any serious design flaws presented by the proposed approach or its mitigation so that changes may be made prior to permitting.

The question of who must receive notice under the ODOT notification process is a matter of engineering judgment, to be determined by a licensed engineer. If evidence reveals that the functioning of a connection owned by another property owner(s) is likely to be impacted by the design or location of the proposed highway approach or its mitigation, the property owner(s) must be notified.

The types of issues that could present issues for neighboring connections include, but are not limited to, those associated with the Safety and Operations concerns identified in OAR 734-051-4020(3). Examples include the following:

- Left turn channelization
- Right turn channelization
- Raised median barriers built to limit left turns
- Pavement striping intended to limit left turns
- Standing queues that back up from the new approach
- Conflicting offset connections

Only properties that are likely to experience a change in the operation of their own connection must be notified. These may include highway connections across the highway or at more distant locations. For example, a property owner must be notified if a median will require a U-Turn to enter that property's existing connection.

Notification should be limited to properties that are likely to be impacted by the new approach or its mitigation. For example, a new approach may produce standing queues, but if the queue does not affect the functioning of other connections, the neighbor(s) need not be notified.

If ODOT receives responses to the letters that are sent to potentially affected property owners, the responses must be evaluated and considered in making the final permit decision.