

Exhibit B

Oregon Statutes

and

Oregon Administrative

Rules

ORS 366.205

Power and authority of commission over highways; rules

(1) The Oregon Transportation Commission has general supervision and control over all matters pertaining to the selection, establishment, location, construction, improvement, maintenance, operation and administration of state highways, the letting of contracts therefor, the selection of materials to be used therein and all other matters and things considered necessary or proper by the commission for the accomplishment of the purposes of this Act.

(2) The commission has full power to carry out the provisions of and may make such rules as it considers necessary for the accomplishment of the purposes of this Act, as defined in ORS 366.005.

(3) The Director of Transportation, as authorized by the commission, shall appoint such officials and do any other act or thing necessary to fully meet the requirements of ORS 366.510. [Amended by 1963 c.601 §1; 1965 c.368 §6; 1973 c.249 §37; 1975 c.436 §8; 1985 c.565 §64; 1989 c.904 §35; 1993 c.741 §38]

ORS 366.320

Acquisition of rights of way and right of access.

(1) The Department of Transportation may acquire rights of way deemed necessary for all primary and secondary state highways, both within and without the corporate limits of cities and towns, except that such rights of way within the corporate limits of cities and towns may be acquired at the sole expense of the state, at the expense of the city or town or at the expense of the city or town and the state, as may be mutually agreed upon.

(2) The department may acquire by purchase, agreement, donation or by the exercise of the power of eminent domain, real property or any right or interest therein deemed necessary for rights of way, either for original location or for widening, straightening or otherwise changing any highway, road or street. The department may, when acquiring real property for right of way, acquire all right of access from abutting property to the highway to be constructed, relocated or widened.

(3) All rights of way owned or held by the several counties over and along any roads adopted as state highways are vested in the state, by and through the department. This subsection does not apply to any rights of way owned by any city for city streets. [Amended by 1953 c.252 §2]

ORS 381.005. Construction, acquisition, improvement and maintenance of Columbia River bridges; acquisition of real property for Interstate 5 bridge replacement project

(1) The Department of Transportation in the name of the state may construct, reconstruct, purchase, rent, lease or otherwise acquire, improve, operate and maintain bridges over the Columbia River.

(2) Notwithstanding the designation of state highways within this state under ORS 366.005 and 366.220, the department may acquire real property necessary for the Interstate 5 bridge replacement project, together with approaches and connecting roads, on both sides of the Columbia River. For the purposes of the Interstate 5 bridge replacement project, the Oregon Transportation Commission by resolution may designate additional approaches, connecting roads and related facilities within the Interstate 5 corridor on both sides of the Columbia River as a part of the Oregon state highway system.

Text subject to final change by the Oregon Office of the Legislative Counsel.

ORS 381.010

Agreements for carrying out powers.

For the purpose of carrying out or putting into effect the right, power and authority granted by ORS 381.005 to 381.080 or any other law, the Department of Transportation in the name of the state may make and enter into agreements with:

- (1) The Government of the United States or any of its agencies.
- (2) The State of Washington.
- (3) Any county, municipality, port or other political subdivisions or agencies of the State of Washington.
- (4) Any county, municipality, port or any other political subdivisions of this state.
- (5) Any persons, associations, corporations, domestic or foreign.

DIVISION 122

RULES FOR GRANTING EASEMENTS ON TRUST AND NON-TRUST LAND

141-122-0010

Purpose and Applicability

(1) These rules:

(a) Govern the granting and renewal of easements on state-owned Trust and Non-Trust land as specified herein.

(b) Do not apply to the:

(A) Granting of easements for fiber optic and other cables on state-owned submerged and submersible land within the Territorial Sea, an activity governed by OAR 141-083 (Rules For Granting Easements For Fiber Optic And Other Cables On State-Owned Submerged and Submersible Land Within The Territorial Sea);

(B) Granting of authorizations for hydroelectric projects on state-owned Trust and Non-Trust Land, an activity governed by OAR 141-087;

(C) Dedication of roads or rights-of-way required of the Department or its agents by local government resulting from a local land use approval involving state-owned land; or

(D) Existing valid easements granted prior to the adoption of these rules.

(c) Require prior authorization for all uses described under OAR 141-122-0010(2) and (3) unless otherwise exempt from easement under the provisions of OAR 141-122-0010(4) of these rules.

(d) Contain specific provisions relating to the granting of easements by:

(A) The Department and the Oregon State Forester on Common School Forest Land;
and

(B) The Department to persons who have or will place a structure or facility on state-owned Non-Trust Land necessary for the use of water to take water for which they have a right to use the water.

(2) Unless otherwise exempt under the provisions of OAR 141-122-0010(4) of these rules, developments and uses of state-owned land subject to easement include, but are not limited to the following:

(a) Water, gas, electric and communication service lines (including fiber optic cables) and associated equipment such as pumping stations, transformers and meters;

(b) Innerducts and conduits for cables (regardless of whether they contain a cable or are in use);

(c) Water supply pipelines, ditches, canals, and flumes;

(d) Drainage and irrigation works;

(e) Sewer, storm, and cooling water lines, including outfalls;

(f) Bridges, skylines, and logging lines;

(g) Railroad and light rail track, bridges, stations, depots, and other related facilities;

(h) Roads and trails of all types;

(i) Overhead transportation lines (for example, skylines, tramways, logging lines, etc.);

(j) Storage of materials (for example, sand, gravel, dredge spoils, etc.);

(k) Encroachments; and

(l) Erosion control structures, dikes, levees, and tidegates.

(3) The Director may determine that other uses and developments similar to those specified in OAR 141-122-0010(2) are also subject to authorization by, or exempted from an easement and these rules.

(4) An easement is not required:

(a) For uses or developments on either Trust or Non-Trust Land that would require an easement under these rules if the person undertaking the use or owning the development has obtained a valid authorization from the Department pursuant to the provisions of OAR 141-082 (Leasing and Registration of Structures on, and Uses of State-Owned Submerged and Submersible Lands); OAR 141-110 (Management and Leasing of Rangeland Forage); or OAR 141-125 (Authorizing Special Uses on State-Owned Land), provided the proposed use or development is located on the land which is subject of the authorization, is incidental to the specific use that is the subject of the authorization, and does not result in an additional burden on the land; or

(b) For any structure or facility necessary for the use of water crossing or situated on state-owned submersible land if:

(A) The withdrawal is authorized by a valid right to use the water; and

(B) The water is used exclusively for irrigation or domestic use; or

(c) For water, gas, electric and communication lines physically attached to and supported by county or state-owned bridges that cross state-owned waterways which are located outside of city limits. If the water, gas, electric and communication lines are located within a city, or cross a state-owned waterway within a city, they are subject to easement unless otherwise exempt by these rules.

(5) A person who is exempt from obtaining an easement under the provisions of OAR 141-122-0010(4) may apply to obtain an easement, and the Department may authorize an easement even though none is required under these rules. The application shall be processed in accordance with OAR 141-122-0050.

Stat. Auth.: ORS 273.045

Stats. Implemented: ORS 273.761, 274.040, 274.720, 376.620, 530.050, 530.490 & 758.010

Hist.: DSL 6-2000, f. 8-11-00, cert. ef. 9-1-00; DSL 7-2002, f. 12-23-02, cert. ef. 1-1-03; DSL 4-2008, f. & cert. ef. 10-15-08

141-122-0020

Policies

(1) Pursuant to Article VIII, Section 5(2) of the Oregon Constitution, the State Land Board, through the Department, has a constitutional responsibility to manage all land (Trust and Non-Trust) under its jurisdiction "with the object of obtaining the greatest benefit for the people of this state, consistent with the conservation of this resource under sound techniques of land management."

(2) In addition to the constitutional mandate stipulated in OAR 141-122-0020(1), the Department is required to manage its Trust Land to ensure that full market value is obtained from any use of this asset.

(3) The Department will follow the guiding principles and resource-specific management prescriptions contained in the Asset Management Plan, and consider the comments received from federal, state, and local governments and interested persons when determining whether to authorize or condition an easement on state-owned land.

(4) The Department will manage state-owned submerged and submersible land to ensure the collective rights of the public to fully use and enjoy this resource for commerce, navigation, fishing, recreation, and other related public purposes consistent with applicable federal and state laws.

(5) The Department will not grant an easement if:

(a) As a result of its circulation for public comment of the application for easement as described in OAR 141-122-0050(3) it determines that the proposed use or development would unreasonably impact uses or developments proposed or already in place within the requested area; or

(b) The easement is in an area the Department has closed to the granting of easements or other authorizations offered by the agency. Such areas may be identified by contacting the Department.

(6) The Department will:

(a) Recognize all valid easements of record on land acquired by the Department as disclosed at the time of acquisition; and

(b) Honor any renewal provisions contained in existing valid easements granted by the Department if the holder of the easement has complied with all terms and conditions of the easement and applies to the Department for a new easement as prescribed in these rules.

(7) Except as provided in OAR 141-122-010(4), 141-122-0100, and 141-122-0105(2), any person wanting to use or place a development on state-owned land subject to an easement must obtain a written authorization in the form of an easement from the Department prior to beginning the use or placing the development. Additionally, an easement is required for any use or development that encroaches on state-owned land regardless of their height above or below, or manner of crossing the state-owned land.

(8) Unless otherwise exempt by these rules, each individual use of, or development placed on state-owned land constitutes a separate discrete activity subject to:

(a) An easement specifically authorizing only that individual use or development; and

(b) Payment of compensation as required in these rules.

(9) The Department may, at its discretion, deny an easement if the applicant's financial status or past business practices, or both, indicate that the applicant may not:

(a) Be able to fully meet the terms and conditions of an easement offered by the Department; or

(b) Use the land applied for in a way that meets the provisions of OAR 141-122-0020.

(10) An easement cannot be established on Department-managed land by adverse possession regardless of the length of time the use or development has been in existence.

(11) The Department may:

(a) Conduct field inspections to determine if the uses and developments in place on state-owned land are authorized by, or conform with the terms and conditions of an easement and, if not;

(b) Pursue whatever remedies are available under law and OAR 141-122-0130 to ensure that unauthorized uses subject to an easement on state-owned land are either brought into compliance with the requirements of these rules or removed.

(12) Pursuant to the provisions of ORS 530.490(2) and (3), the Oregon State Forester may issue easements on Common School Forest Land in accordance with these rules (OAR 141-122-0100) and those adopted by the Oregon State Board of Forestry.

(13) The Department will not grant an easement if the proposed use or development is inconsistent with any endangered species management plan adopted by the Department under the Oregon Endangered Species Act (ORS 496.171 to 496.192).

Stat. Auth.: ORS 273.045

Stats. Implemented: ORS 273.761, 274.040, 274.720, 376.620, 530.050, 530.490 & 758.010

Hist.: DSL 6-2000, f. 8-11-00, cert. ef. 9-1-00; DSL 7-2002, f. 12-23-02, cert. ef. 1-1-03; DSL 4-2008, f. & cert. ef. 10-15-08