

## STATUTORY WAYS OF NECESSITY

**376.150 Definitions for ORS 376.150 to 376.200.** As used in ORS 376.150 to 376.200:

(1) "Public road" means the entire right of way of any road over which the public has the right of use or any right of way held by the state or a political subdivision of the state for road purposes that is not open for public use.

(2) "Way of necessity" means:

(a) A road established under ORS 376.150 to 376.200 to provide motor vehicle access from a public road to land that would otherwise have no motor vehicle access; or

(b) A route established under ORS 376.150 to 376.200 to provide utility service access from an existing service location to a service point that would otherwise have no utility service access. [1979 c.862 §1; 1989 c.674 §1]

**376.155 Petition to establish way of necessity; contents; requirements.**

(1) To establish a way of necessity under ORS 376.150 to 376.200, a landowner shall file a petition with the governing body of the county in which the land is located.

(2) A petition filed under this section shall contain a drawing and a narrative statement that contain all of the following information:

(a) The location and legal description of the property to be served by the proposed way of necessity.

(b) The location of all public roads located in the vicinity of the property to be served by the proposed way of necessity that are capable of being used to provide access to the property. The petition shall include the location of public roads that are not open for public use.

(c) A specific proposed location for the proposed way of necessity.

(d) Evidence showing the necessity for the establishment of a way of necessity.

(e) Evidence that either:

(A) The proposed way of necessity does not connect to a public road that has access rights acquired and limited by the state or county; or

(B) If the public road proposed for access by way of necessity has the limited access rights, the state or county is willing to grant permission to connect the proposed way of necessity to the public road.

(f) Evidence that the proposed way of necessity may be connected to the public road safely.

(g) Evidence that the specific location proposed for the way of necessity is the nearest practicable point for connection to a way of necessity to a public road.

(h) The names and addresses of the persons owning the land across which the way of necessity could be located.

(i) The petitioner's proposal for the amount of compensation to persons owning land across which the way of necessity is proposed to be located.

(j) Evidence that the petitioner does not have an existing easement or right to an easement to provide access to a public road.

(k) Evidence that the petitioner does not have any enforceable access to a public road. [1979 c.862 §2; 1991 c.936 §2]

**376.160 Notice to landowners; investigation of proposed way; report to county governing body.** (1) Upon receipt of a petition for a way of necessity filed under ORS 376.155, a county governing body shall:

(a) Provide for service of the petition on all persons owning land across which the way of necessity could be located; and

(b) Direct the county engineer, county surveyor or other persons appointed by the governing body to investigate the proposed way of necessity and to submit a written report to the county governing body.

(2) The report under subsection (1) of this section shall include:

(a) Possible alternate routes for ways of necessity to the property;

(b) A determination of whether the proposed way of necessity meets the requirements under ORS 376.150 to 376.200;

(c) The reasonableness of the way of necessity proposed in the petition; and

(d) A recommendation for a specific location and width for a way of necessity.

(3) Upon receipt of the report under subsection (2) of this section, the county governing body shall:

(a) Provide a copy of the report to the petitioner; and

(b) Serve a copy of the petition and report on all persons owning land across which the way of necessity is proposed to be located under the report or the petition.

(4) Service of the petition and report under this section shall be accomplished in the manner provided for service of summons in an action at law. If the report includes a recommendation for a route different than the route proposed in the petition, service on the affected parties shall include a copy of the petition. [1979 c.862 §3]

**376.165 Deposit to cover county expenses.** Upon receipt of a petition for a way of necessity filed under ORS 376.155, a county governing body may require the petitioner to deposit with the county an amount of money or other security to use for payment of county expenses incurred in the procedure for establishing the way of necessity or to assure that the expenses will be paid. If a deposit of money is required by the governing body, the deposit may be used to pay expenses and shall be deducted from the expenses ordered to be paid under ORS 376.175. [1979 c.862 §3a]

**376.170 Filing of answer by landowner; reply to answer by petitioner.** (1) Any person owning land across which a way of necessity is proposed to be established under ORS 376.150 to 376.200 may file an answer controverting any matter in the petition or report and alleging any new matter relevant to the proceedings. An answer filed under this subsection must be filed within 30 days after receipt of service of the petition and report. An answer shall be filed with the county governing body. The county governing body shall provide for service of the answer upon the petitioner in the manner provided for service of summons in

an action at law.

(2) If an answer is filed under this section, the petitioner may file a reply controverting any matter presented in the answer. A reply filed under this section must be filed within 10 days after receipt of service of the answer by the petitioner. A reply shall be filed with the county governing body. The county governing body shall provide for service of the reply upon the person filing the answer in the manner provided for service of summons in an action at law. [1979 c.862 §4]

**376.175 Order granting or denying way of necessity; contents; liability for costs; appeal.** (1) Upon consideration of the matters and issues presented under ORS 376.150 to 376.200, the county governing body shall determine whether or not a need has been demonstrated for the granting of a way of necessity under ORS 376.150 to 376.200 and shall enter an order granting or denying the way of necessity.

(2) Any order entered under this section shall:

(a) State whether the way of necessity is granted or denied;

(b) Declare as established any way of necessity that is granted;

(c) Describe the exact location and width of any way of necessity established;

(d) Describe those uses that are permitted on any way of necessity established;

(e) Direct the petitioner to pay costs and reasonable attorney fees incurred by each owner of land whose land was subject to the petitioner's action for a way of necessity under ORS 376.150 to 376.200;

(f) Establish the amount of compensation due to any owner of land across which any way of necessity has been established and direct the petitioner to pay the compensation; and

(g) Establish the costs incurred by the county in the procedures for the way of necessity under ORS 376.150 to 376.200 and direct the petitioner to reimburse the county for those costs not already paid by petitioner.

(3) An order entered under subsections (1) and (2) of this section to provide for utility service, as set forth in ORS 376.150 (2)(b), shall conform to affected utility policy and standards.

(4) A petitioner shall pay any costs the petitioner is directed to pay under an order issued under this section within 60 days after entry of the order. The petitioner is liable for any costs not paid within the time established in this subsection. If more than one landowner joins in a petition for a way of necessity under ORS 376.155, every petitioner granted use of the way of necessity shall be jointly and severally liable for any costs ordered to be paid.

(5) Any party to the action for a way of necessity may contest any part of the order of the county governing body in an appeal filed with the circuit court within 30 days after entry of the order of the county governing body. [1979 c.862 §5; 1989 c.674 §2; 1991 c.936 §3]

**376.180 Conditions for way of necessity.** A way of necessity established under ORS 376.150 to 376.200 shall:

- (1) Be located to cause the least possible damage to land across which it is located;
- (2) Be fenced or gated if required by the county governing body;
- (3) Not be connected to a public road in a location or manner that creates a traffic hazard or decreases the safety on the public road;
- (4) Be established only for uses in connection with the property for which the way of necessity is sought;
- (5) Not be subject to any use that is not described in the order establishing the way of necessity;
- (6) Not exceed 30 feet in width unless authorized by the county governing body for engineering purposes;
- (7) Not be connected to a public road where the rights of access to the road have been acquired by the state or a county unless the state or governing body of the county grants permission for the connection;
- (8) Not be established if the property for which the way of necessity is sought has an existing enforceable access to a public road;
- (9) Not be established if the petitioner for the way of necessity could acquire an easement for access to a public road through other legal action;
- (10) Not be established for land that has been subdivided or partitioned in violation of ORS chapter 92;
- (11) Not be established over land owned by the state or a political subdivision of the state unless permission is granted for the way of necessity under ORS 376.185; and
- (12) Not be established for any land if the owner of the land had knowingly eliminated access to all public roads from the land by the sale of other land owned by the landowner. [1979 c.862 §6; 1991 c.936 §5; 1993 c.18 §91]

**376.185 Way of necessity over public land.** (1) A way of necessity may not be established under ORS 376.150 to 376.200 across land owned by the state or a political subdivision of the state without the consent of the governing body of the political subdivision or of the appropriate agency of the state. The governing body of a political subdivision of this state and any agency of the state shall not unreasonably withhold consent required under this subsection.

(2) Whenever a way of necessity is sought over land owned by the state or a political subdivision of the state, a copy of the petition for the way of necessity, of the county report and of the notice of hearing shall be forwarded by certified mail to:

(a) If the political subdivision owns the land, the governing body of the political subdivision.

(b) If the state owns the land, to the Department of State Lands and to each agency of the state that has use or control of the land. [1979 c.862 §7; 1993 c.98 §17]

**376.190 Responsibility for maintenance of way of necessity; alteration limited.** (1) A way of necessity that is established under ORS 376.150 to 376.200 shall be maintained and kept passable by the person owning the land for

which the way of necessity is established. This subsection does not require the person to provide for maintenance of the way of necessity for uses or persons not specifically provided in the order establishing the way of necessity.

(2) A way of necessity established under ORS 376.150 to 376.200 shall not be altered or vacated except by the governing body of the county in which it is located and in a manner provided by law for the alteration or vacation of a public road.

(3) No county shall be required to work, improve, maintain or repair a way of necessity. [1979 c.862 §8; 1991 c.936 §5]

**376.195 Subsequent partition of land receiving way of necessity requires government approval.** Land for which a way of necessity is established under ORS 376.150 to 376.200 shall not be subsequently partitioned without the approval of the city or county governing body which has partitioning authority. [1979 c.862 §9]

**376.197 Way of necessity to historic cemeteries.** (1) Notwithstanding any other provision of ORS 376.150 to 376.200, a way of necessity for nonmotorized conveyance is established to any parcel that meets the criteria described in ORS 308A.125.

(2)(a) Notwithstanding any other provision of ORS 376.150 to 376.200, a way of necessity is established to a historic cemetery listed in accordance with the provisions of ORS 97.782.

(b) The way of necessity established under paragraph (a) of this subsection shall:

(A) Be designated by the owner of the land over which the way of necessity passes; and

(B) Be accessible, at reasonable times to be designated by the property owner for visitation, maintenance or research purposes, to the owner of the historic cemetery, to descendants of those persons buried in the historic cemetery and to persons interested in historical research. The reasonableness of the times designated by the property owner shall be based on the need of the property owner to make use of the property and the need of the historic cemetery visitors for family visitation, maintenance or research access to the historic cemetery. [1999 c.314 §46; 2001 c.364 §1; 2003 c.173 §9]

**376.200 Transfer of jurisdiction over establishment of ways of necessity to circuit court; local court rules; procedure after transfer.** (1) Notwithstanding any provision of ORS 376.150 to 376.200, a county governing body may adopt an ordinance removing the county governing body from jurisdiction over the establishment of ways of necessity under ORS 376.150 to 376.200.

(2) If the county governing body adopts an ordinance described in subsection (1) of this section, the circuit court of that county shall have jurisdiction of the establishment of ways of necessity for that county. Except as otherwise provided in this section, a court with jurisdiction of the establishment of ways of necessity

under this section shall follow the procedures for establishment of a way of necessity provided under ORS 376.150 to 376.200. The court may adopt local court rules to supplement the procedures provided under ORS 376.150 to 376.200.

Wasco County has done this

(3) Notwithstanding ORS 376.175, if jurisdiction for establishment of ways of necessity is in the circuit court as provided under this section, an appeal from the decision of the court shall be to the Court of Appeals.

(4) Notwithstanding ORS 376.160 (1), if jurisdiction for establishment of ways of necessity is in the circuit court as provided under this section, upon filing a petition the petitioner shall:

(a) Provide for service of the petition on all persons owning land across which the way of necessity could be located; and

(b) Post a bond or security deposit with the court clerk in an amount required by the court to pay for the cost of the investigation and report under subsection (5) of this section.

(5) If jurisdiction for establishment of ways of necessity is in the circuit court as provided under this section, upon receipt of a petition the court shall appoint a person to investigate the proposed way of necessity and submit a written report to the court and the petitioner. The cost of the investigation and report shall be charged against the bond or security deposit posted under subsection (4) of this section. If the bond or security deposit is more than the actual cost of the investigation and report, the difference shall be refunded to the petitioner. If the bond or security deposit is less than the actual cost of the investigation and report, the petitioner shall pay to the county governing body the amount of the deficiency. A judgment of the court shall not become final until the full cost of the investigation and report has been paid.

(6) Notwithstanding ORS 376.160 (3), if jurisdiction for establishment of ways of necessity is in the circuit court as provided under this section, upon receipt of the report under subsection (5) of this section, the petitioner shall serve a copy of the petition and report on all persons owning land across which the way of necessity is proposed to be located under the petition or report. [1979 c.862 §10; 1995 c.265 §1]

**376.205** [Repealed by 1981 c.153 §79]

**376.210** [Repealed by 1981 c.153 §79]

**376.215** [Repealed by 1981 c.153 §79]

**376.220** [Repealed by 1981 c.153 §79]