

Chapter 271 — Use and Disposition of Public Lands Generally; Easements

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USE OF PUBLIC LANDS; EASEMENTS

PUBLIC LANDS

CONSERVATION AND HIGHWAY SCENIC PRESERVATION EASEMENTS

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CONSERVATION AND HIGHWAY SCENIC PRESERVATION EASEMENTS

271.715 Definitions for ORS 271.715 to 271.795. As used in ORS 271.715 to 271.795, unless the context otherwise requires:

(1) “Conservation easement” means a nonpossessory interest of a holder in real property imposing limitations or affirmative obligations the purposes of which include retaining or protecting natural, scenic, or open space values of real property, ensuring its availability for agricultural, forest, recreational, or open space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological, or cultural aspects of real property.

(2) “Highway scenic preservation easement” means a nonpossessory interest of a holder in real property imposing limitations or affirmative obligations the purposes of which include retaining or protecting natural, scenic or open space values of property.

(3) “Holder” means:

(a) The state, any county, metropolitan service district, soil and water conservation district, city or park and recreation district or a county service district established under ORS 451.410 to 451.610 to construct, maintain and operate service facilities in Washington or Clackamas Counties for the purposes specified in ORS 451.010 (1)(a) and (b) and in Washington County for the purpose specified in ORS 451.010 (5) acting alone or in cooperation with any federal or state agency, public corporation or political subdivision;

(b) A charitable corporation, charitable association, charitable trust, the purposes or powers of which include retaining or protecting the natural, scenic, or open space values of real property, assuring the availability of real property for agricultural, forest, recreational, or open space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological, or cultural aspects of real property; or

(c) An Indian tribe as defined in ORS 97.740.

(4) “Third-party right of enforcement” means a right provided in a conservation easement or highway scenic preservation easement to enforce any of its terms granted to a governmental body, charitable corporation, charitable association or charitable trust, which, although eligible to be a holder, is not a holder. [1983 c.642 §1; 1985 c.160 §1; 1997 c.249 §78; 1999 c.208 §1; 2001 c.708 §12; 2001 c.907 §2; 2003 c.467 §1; 2005 c.368 §1]

271.720 [1967 c.318 §2; 1975 c.511 §1; 1981 c.787 §40; repealed by 1983 c.642 §11]

271.725 Acquisition and creation of conservation or highway scenic preservation easement.

(1) The state, any county, metropolitan service district, soil and water conservation district, city or park and recreation district or a county service district established under ORS 451.410 to 451.610 to construct, maintain and operate service facilities in Washington or Clackamas Counties for the purposes specified in ORS 451.010 (1)(a) and (b) and in Washington County for the purpose specified in ORS 451.010 (5) may acquire by purchase, agreement or donation, but not by exercise of the power of eminent domain, unless specifically authorized by law, conservation easements in any area within their respective jurisdictions wherever and to the extent that a state agency or the governing body of the county, metropolitan service district, soil and water conservation district, city, park and recreation district or county service district established under ORS 451.410 to 451.610 to construct, maintain and operate service facilities in Washington

or Clackamas Counties for the purposes specified in ORS 451.010 (1)(a) and (b) and in Washington County for the purpose specified in ORS 451.010 (5) determines that the acquisition will be in the public interest.

(2) Except as otherwise provided in ORS 271.715 to 271.795, a conservation easement or highway scenic preservation easement may be created, conveyed, recorded, assigned, released, modified, terminated, or otherwise altered or affected in the same manner as other easements.

(3) The state, any county, metropolitan service district, soil and water conservation district, city or park and recreation district or a county service district established under ORS 451.410 to 451.610 to construct, maintain and operate service facilities in Washington or Clackamas Counties for the purposes specified in ORS 451.010 (1)(a) and (b) and in Washington County for the purpose specified in ORS 451.010 (5) may acquire by purchase, agreement or donation, but not by exercise of the power of eminent domain unless specifically authorized by law, highway scenic preservation easements in land within 100 yards of state, county or city highway rights of way. These easements may be acquired only in lands that possess significant scenic value in themselves and contribute to the overall scenic beauty of the highway.

(4) No right or duty in favor of or against a holder and no right in favor of a person having a third-party right of enforcement arises under a conservation easement or highway scenic preservation easement before its acceptance by the holder and recordation of the acceptance.

(5) Except as provided in ORS 271.755 (2) a conservation easement or highway scenic preservation easement is unlimited in duration unless the instrument creating it otherwise provides.

(6) An interest in real property in existence at the time a conservation easement or highway scenic preservation easement is created is not impaired by it unless the owner of the interest is a party to or consents to the conservation easement or highway scenic preservation easement. [1983 c.642 §2; 1985 c.160 §2; 1997 c.249 §79; 1999 c.208 §2; 2003 c.467 §2; 2005 c.368 §2]

271.729 Report on effect of conservation or highway scenic preservation easement on

property value; fee. (1) An owner of real property considering whether to convey a conservation easement or a highway scenic preservation easement to a holder may apply to the county assessor for a report on the effect of the conveyance of the easement on the assessed value of the property upon which the easement is to be granted.

(2) The request for the report shall be made in writing to the assessor and shall be accompanied by:

(a) An appraisal of the property prepared by an appraiser certified or licensed under ORS chapter 674. The appraisal shall have been prepared within three months preceding the date that application is made to the assessor and shall state the appraiser's opinion of the real market value of the property both before and after the easement is conveyed;

(b) A copy of the instrument creating the easement; and

(c) A fee in an amount determined by the assessor, as reimbursement for the costs of preparing the report.

(3) Upon receipt of a completed application, the assessor shall determine what the assessed value for the property would have been had the easement been accepted and recorded by the proposed holder for the last tax year in which a property tax statement described in ORS 311.250 was sent to the property owner. The assessor shall prepare a written report stating the assessor's findings and shall send the report to the property owner. [2001 c.925 §11]

271.730 [1967 c.318 §3; 1981 c.787 §41; repealed by 1983 c.642 §11]

271.735 Hearing; notice. (1) Before the acquisition of a conservation easement or highway scenic preservation easement, the state agency, county, metropolitan service district, soil and water conservation district, city, park and recreation district or county service district established under ORS 451.410 to 451.610 to construct, maintain and operate service facilities in Washington or Clackamas Counties for the purposes specified in ORS 451.010 (1)(a) and (b) and in Washington County for the purpose specified in ORS 451.010 (5) considering acquisition of such an easement shall hold one or more public hearings on the proposal and the reasons therefor. The hearings shall be held in the community where the easement would be located and all interested persons, including representatives of other governmental agencies, shall have the right to appear and a reasonable opportunity to be heard.

(2) Notice of the hearing shall be published at least twice, once not less than 12 days and once not less than five days, prior to the hearing in a newspaper of general circulation in the community. The notice may also be published by broadcasting or telecasting generally in the community.

(3) At least 30 days prior to the hearing, the state agency shall mail notice of the hearing to the governing body of each county, city and other governmental agency having jurisdiction in the area of the proposed easements.

(4) This section does not apply to conservation easements or highway scenic preservation easements acquired pursuant to ORS 390.121, 390.310 to 390.338 and 390.805 to 390.925 or acquired pursuant to a metropolitan service district bond measure authorizing the acquisition of open spaces within specific areas. [1983 c.642 §9; 1985 c.160 §3; 1989 c.904 §29; 1999 c.208 §3; 2003 c.467 §3; 2005 c.368 §3]

271.740 [1967 c.318 §4; 1981 c.787 §42; repealed by 1983 c.642 §11]

271.745 Validity of conservation or highway scenic preservation easement. A conservation easement or highway scenic preservation easement is valid even though:

(1) It is not appurtenant to an interest in real property;

(2) It can be or has been assigned to another holder;

(3) It is not of a character that has been recognized traditionally at common law;

(4) It imposes a negative burden;

(5) It imposes affirmative obligations upon the owner of an interest in the burdened property or upon the holder;

(6) The benefit does not touch or concern real property; or

(7) There is no privity of estate or of contract. [1983 c.642 §4; 1985 c.160 §4]

271.750 [1967 c.318 §5; 1975 c.511 §2; 1981 c.787 §43; repealed by 1983 c.642 §11]

271.755 Action affecting conservation or highway scenic preservation easement; standing to bring action. (1) An action affecting a conservation easement or highway scenic preservation easement may be brought by:

(a) An owner of an interest in real property burdened by the easement;

(b) A holder of the easement;

(c) A person having a third-party right of enforcement; or

(d) A person authorized by other law.

(2) ORS 271.715 to 271.795 do not affect the power of a court to modify or terminate a conservation easement or highway scenic preservation easement in accordance with the principles of law and equity. [1983 c.642 §3; 1985 c.160 §5; 1997 c.249 §80]

271.765 Applicability. (1) ORS 271.715 to 271.795 apply to any interest created after October 15, 1983, that complies with ORS 271.715 to 271.795, whether designated as a conservation easement or highway scenic preservation easement, or as a covenant, equitable servitude, restriction, easement, or otherwise.

(2) ORS 271.715 to 271.795 apply to any interest created before October 15, 1983, if it would have been enforceable had it been created after October 15, 1983, unless retroactive application contravenes the Constitution or laws of this state or the United States.

(3) ORS 271.715 to 271.795 do not invalidate any interest, whether designated as a conservation or preservation easement or as a covenant, equitable servitude, restriction, easement, or otherwise, that is enforceable under other law of this state. [1983 c.642 §5; 1985 c.160 §7; 1997 c.249 §81]

271.775 Rules governing conservation and highway scenic preservation easements. The board or officer administering a state agency or the governing body of any county, metropolitan service district, soil and water conservation district, city or park and recreation district or of a county service district established under ORS 451.410 to 451.610 to construct, maintain and operate service facilities in Washington or Clackamas Counties for the purposes specified in ORS 451.010 (1)(a) and (b) and in Washington County for the purpose specified in ORS 451.010 (5) may make and enforce reasonable rules, regulations, orders or ordinances governing the care, use and management of its conservation easements and highway scenic preservation easements. [1983 c.642 §7; 1985 c.160 §8; 1999 c.208 §4; 2003 c.467 §4; 2005 c.368 §4]

271.785 Taxation of property subject to highway scenic preservation easement. For the purpose of taxation, real property that is subject to a highway scenic preservation easement shall be assessed on the basis of the real market value of the property less any reduction in value caused by the highway scenic preservation easement. Such an easement shall be exempt from assessment and taxation the same as any other property owned by the holder. [1983 c.642 §8; 1985 c.160 §6; 1991 c.459 §371; 2007 c.809 §18]

271.795 Construction of Act. ORS 271.715 to 271.795 shall be applied and construed to effectuate the general purpose to make uniform the laws with respect to the subject of ORS 271.715 to 271.795 among states enacting it. [1983 c.642 §6; 1997 c.249 §82]