

PUBLIC RIGHTS OF WAY: WHO OWNS WHAT?

Public rights of way directly affect nearly all land owners in the County yet few have an understanding of what a public right of way is, or what rights they may or may not have in the right of way. The following is an overview of ownership and rights in and to public right of ways.

County's Rights in Right of Way

Most of the county's right of way is in the form of road right of way easements. An easement is a limited right to go onto and make use of another's land for a specific purpose. The granting of a public road easement gives the county the right to go onto property to do whatever may be necessary to construct and maintain public roads.

By statute, the county has jurisdiction over two types of public rights of way. One is the type known as a "county road." County roads may be both in the incorporated and unincorporated areas of the county. The county exercises the full range of jurisdiction for county roads, including their maintenance and improvement. The other type is known as a "local access road." Local access roads are only in the unincorporated areas of the county. The county exercises some jurisdiction for local access roads, but does not maintain or improve them.

The county does not own the right of way or have the right to take away anything from it unless it interferes with the use of the easement. As an example, the county can trim a tree that causes a vision hazard or remove a tree or other material to allow for a road widening. However, the county cannot remove the material for any purpose not related to the road without the property owners permission.

Property Owner Rights in Right of Way

A fee title owner of property owns not only the land, but everything below, on, or in the reasonable airspace above the land, including trees or other natural growth. By granting a public right of way, the owner is giving an easement across their land for specific uses, but retains ownership of the land. Because of the extent of the easement this is often referred to as the underlying fee ownership.

Under Oregon law, a property owner does not have the right to allow trees or other vegetation to intrude onto an abutting property or to interfere with an easement. The abutting owner or easement holder has the right to remove the offending vegetation, but is required to place the offending material on the original property owner's land, if the original owner wants them. This is a common situation for Public Works trimming in the right of way. The department usually removes the trimmings as a courtesy, but the property owner can keep the trimmings if they want.

Other's Rights in Right of Way

The purpose of a public right of way is to provide the public with a means to travel between places and to provide ingress to or egress from their property. Oregon law also grants authority to any person or corporation a right and privilege to construct, maintain and operate water, gas, electric and communication lines, fixtures and other facilities along public roads. While the public's rights are essentially restricted to travel, utilities enjoy the same rights as the county, subject to county oversight and control. This means they have the right to trim or remove vegetation in the right of way if it threatens or interferes with their facilities.