

FILED

AT 10 O'CLOCK
DEC 14 1979

99 PAGE 1006

IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

Director of
General Services Lane County
[Signature]
DEPUTY

ORDER NO. 79-10-31-12) IN THE MATTER OF ESTABLISHING
) A WAY OF NECESSITY FOR
) GARY PARKS
)

THIS MATTER having come before the Board on the Petition of Gary Parks, and

WHEREAS, on May 23, 1979, by Order No. 79-5-23-5, we held an initial hearing on necessity, and having found necessity ordered the appointment of Road Viewers, and

WHEREAS, after reviewing the Road Viewers' Reports, we held a final hearing on the way of necessity in accordance with ORS Ch 376 and LM 15.605 to 15.665, and

WHEREAS, the Board is now satisfied that the best location of the way of necessity is different than that laid out by the Road Viewers and their route must be modified, now, therefore, it is

ORDERED that:

1. A way of necessity for Gary Parks be and hereby is established.
2. A portion of the way so established is hereby declared a "public road" as more particularly described on Exhibit "B".
3. A portion of the way so established is hereby declared a "perpetual right-of-way" and not as a public road, as more particularly described on Exhibit "B".
4. The Report of the Road Viewers is confirmed as modified herein and shall be recorded by the Clerk of the Board.
5. The costs for the Road Viewers assessed to Gary Parks are as follows:

Viewers-----	\$500
County administration research	
and mileage-----	169
TOTAL-----	\$669
6. The way laid out follows public property and no damages need be assessed. refund
7. The Director of the Department of Finance/the balance of \$331 of the petitioner's deposit of \$1,000 to Gary Parks.
8. In support of this action, we hereby adopt the Findings of Fact set forth in Exhibit "A"

Adopted this 12th day of December, 1979.

Vance L. Freeman
Chairman, Lane County Board of Commissioners

In the Matter of Establishing a Way of Necessity for Gary Parks

APPROVED AS TO FORM
DATE 12/11/79
[Signature]
OFFICE OF LEGAL COUNSEL

FINDINGS OF FACT

IN THE MATTER OF ESTABLISHING A WAY OF NECESSITY FOR GARY PARKS

CRITERIA.

This is a decision for establishing a way of necessity. The criteria applicable to this decision are in ORS Ch 376 and LM 15.605 to 15.655.

ISSUES.

1. Necessity. On May 23, 1979, after an initial hearing on necessity pursuant to LM 16.620, the Board found that the property was not reached conveniently by a public road, that it was necessary for Mr. Parks to have ingress and egress to his residence and, therefore, appointed a Board of County Road Viewers. See Order No. 79-5-23-5. The necessity was based upon the fact that petitioner claimed no access and that he had camped on the premises with the intent to make it his residence. The Road Viewers, by and through their Reports filed June 11, 1979 and July 5, 1979, determined, after extensive review, that County Road #386 still existed, that it passed through Mr. Parks' property and that it connected to "Friendly Acres Road", a public road. The Road Viewers, therefore, concluded that Mr. Parks had access and the way of necessity proceeding should be discontinued. We do not agree. For reasons to be set out below, the County Road and public road route proposed by the Road Viewers is neither convenient nor practicable.

CONCLUSIONS OF LAW - A way of necessity is necessary and must be established.

2. Location. The selection of a route to serve Mr. Parks' property consisted of essentially two choices. The first route involved simply accepting the Road Viewers' Reports and directing that Mr. Parks be allowed to open up County Road #386. That route would then consist of access from U. S. Highway #101 along Friendly Acres Road to the right-of-way of the still existing County Road #386, thence along County Road #386 to Mr. Parks' property. The second choice would be to find that route inconvenient and not practical and locate the way along a thin strip of property Lane County owns which intersects with County Road #386. This strip will hereafter be referred to as Taylor Road. This second way then would be from U. S. Highway #101 along Taylor Road to County Road #386, thence along County Road #386 to Mr. Parks' property.

The route selected by the Road Viewers is not currently opened up to regular vehicular traffic. Portions of it are under water several months of the year. In addition, Friendly Acres Road is at capacity and any enlarged use of it may result in additional expense to the adjoining residents. In addition, the abutting residents do not favor this route.

CONCLUSIONS OF LAW - The route selected by the County Road Viewers is neither convenient nor practicable and the Road Viewers' route must be modified.

3. Modification of Route. The route commonly referred to as "Taylor Road" is County land available for a portion of the access to the property. County Road #386 retains its status as a County road and can serve as the remainder of the route to Mr. Parks' property. Since its status as a County roadway exists, it need not be included in the actual way of necessity established.

After extensive public hearings, little or no opposition was offered on this route, in striking contrast to the almost unanimous opposition to the Road Viewers' route. This route would not require additional maintenance of Friendly Acres Road. It provides a less circuitous, shorter and more direct access to U. S. Highway #101. Attached Exhibit "B" is a legal description of the Taylor Road route for the way of necessity.

CONCLUSIONS OF LAW - Taylor Road is in the ownership of Lane County and is available for the location of a way of necessity. Because it does not impact Friendly Acres Road and is a more direct access, it is more convenient and practicable than the route selected by the Road Viewers. The Road Viewers' Report and route are hereby modified by these findings. The actual route as modified is as set forth on attached Exhibit "B".

4. Status of Road Created. ORS 376.115 allows the creation of either a "public road" or a "perpetual right-of-way". The Board was concerned that creation of a "public road" at this time could prematurely open the property up for development before the impact thereof could be fully evaluated. The Board, therefore, prefers the creation of a "perpetual right-of-way". However, Lane County holds title to a portion of Taylor Road "only so long as used for public road purposes". Accordingly, that portion of the way created should be as a "public road" so the County's land does not risk reversion. That portion of Taylor (hereafter referred to as State portion) is the portion relinquished to Lane County by the State of Oregon on October 16, 1970, recorded on Reel 502-R, RR #24588. The remainder of the way along Taylor Road was granted to the County by Cascade Title Co. (hereafter referred to as Cascade Title Co. portion) by warranty deed executed June 8, 1971, recorded on Reel 545-R, RR #59353. This portion of the way of necessity should be established as a "perpetual right-of-way" and not as a "public road". This portion lies between the State portion and the intersection with County Road #386.

CONCLUSIONS OF LAW - Of the route selected, the State portion is established as a public road, the Cascade Title Co. portion as a perpetual right-of-way and not as a public road.

5. Damages. The way selected does not cross any private property. It lies entirely on Lane County property.

CONCLUSIONS OF LAW. No damages for the way established are assessed.

b. Costs. The County Road Viewers and Surveyor's Division of the Lane County Department of Public Works incurred the following expenses:

Road Viewers-----	\$500
County administration research and mileage-----	169
TOTAL-----	\$669

CONCLUSIONS OF LAW - Total costs to be assessed against
Gary Parks - \$669.

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GARY PARKS WAY OF NECESSITY
PUBLIC ROAD PORTION

A parcel of land lying in the West one-half of the West one-half (W1/2W1/2) of Section 11, Township 18 South, Range 12 West, Willamette Meridian, Lane County, Oregon and being a portion of the right of way of the Oregon Coast Highway; the said parcel being that portion of said right of way lying between lines which are parallel with and 60 feet Easterly and 250 feet Easterly of the centerline of the existing Oregon Coast Highway and between lines at right angles to said centerline in Engineer's centerline Stations 218+00 and 218+60.

GARY PARKS WAY OF NECESSITY

PERPETUAL RIGHT-OF-WAY PORTION

A parcel of land lying in the South one-half of the Northwest one-quarter, and the Southwest one-quarter of the Northeast one-quarter of Section 11, Township 18 South, Range 12 West, of the Willamette Meridian, and being a portion of the tract of land conveyed to Lane County, a political subdivision of the State of Oregon, by those certain deeds recorded on Reel 66-55D, Recorder's Reception Number 65851; and Reel 545-R, Recorder's Reception Number 59353 Lane County Oregon Deed Records, said parcel being that portion of said property included in a strip of land 60 feet in width 30 feet on each side of the centerline of a permanent easement said centerline being described as follows:

Beginning at Engineers' Centerline Station L² 0+01.38, said station being South 0° 09' 40" West 1502.00 feet from a point on the North line of Section 11, Township 18 South, Range 12 West of the Willamette Meridian, which point is South 86° 18' 20" East 930.29 feet from the Northwest corner of said Section 11, said station also being Oregon Coast Highway centerline Station 218+15.00 P.O.T.; thence South 82° 50' 20" East 304.61 feet; thence on a 1145.92 foot radius curve right (the long chord of which curve bears South 70° 36' 35" East 485.46 feet) a distance of 489.17 feet; thence South 58° 22' 50" East 25.85 feet to Station L² 8+21.01 P.O.T. Bk = L 8+21.01 P.T. Ah; thence South 58° 22' 50" East 866.10 feet; thence on a 1432.39 foot radius curve left (the sub-chord of which curve bears South 63° 50' 26" East 272.58 feet) a distance of 273 feet, more or less, to County Road Number 386 and there ending in Lane County, Oregon.

The bearings used herein are based upon the Oregon Coordinate System, South Zone.

EXCEPT: that certain portion of the above described permanent easement which was conveyed to Lane County by the Oregon State Highway Commission as described on Reel 502 Recorder's Reception Number 24588 Lane County Oregon Deed Records being described as follows:

A parcel of land lying in the West one-half of the West one-half (W1/2W1/2) of Section 11, Township 18 South, Range 12 West, Willamette Meridian, Lane County, Oregon and being a portion of the right of way of the Oregon Coast Highway, the said parcel being that portion of said right of way lying between lines which are parallel with and 60 feet Easterly and 250 feet Easterly of the center line of the existing Oregon Coast Highway and between lines at right angles to said centerline at Engineer's centerline Stations 218+00 and 218+60.