

GUIDE TO TRAILS IN EFU AND FOREST ZONES

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Counties and others have inquired about the appropriate land use review process for trails in EFU and forest zones. The question is whether trails are an allowed use or a use that is subject to discretionary review. We believe this depends on the circumstances:

- When a trail is proposed to be included within a public park, it should be reviewed as a public park use subject to ORS 215.296 or OAR 660-006-0025(5). This could be a quasi-judicial conditional use review or a legislative review as part of the adoption of a Park Master Plan.
- When a trail is proposed to be linear and pass through multiple properties, it should be reviewed as a transportation facility subject to ORS 215.296 review. This could be a quasi-judicial conditional use review, or, more likely, a legislative review as part of the adoption of a Transportation System Plan.
- When a trail is proposed to be included within a private park, it should be reviewed as a private park use subject to ORS 215.296 or OAR 660-006-0025(5) through a quasi-judicial conditional use review process.
- When a trail is proposed on a land trust or other private property to which public access is granted, an ORS 215.296 or OAR 660-006-0025(5) review may or may not be necessary. If the subject property is undeveloped and its purpose is primarily the conservation of natural or cultural resources, we think it is reasonable to view it as private property and not a park, so that review would not be necessary. However, if the subject property has special features that are likely to make it a desirable destination for a significant number of visitors, if there will be regular planned events, if there is a fee, or if there is more than nominal development of supporting facilities such as a small parking lot, porta potty and kiosks, then an ORS 215.296 or OAR 660-006-0025(5) review would be appropriate.
- When a proposed public linear trail would include a land trust or other private conservation-oriented property, that property must be included as part of the local review.

Trails as Park Uses

Public parks are authorized at ORS 215.213(2)(e) and 215.283(2)(d) in EFU zones, where consistent with the provisions of ORS 195.120. ORS 195.120 calls for rules for “allowable uses in state and local parks that have adopted [park] master plans.” Those rules, adopted under division 34, list as an authorized use: ***“Recreational trails: walking, hiking, biking, horse, or motorized off-road vehicle trails; trail staging areas.”*** Public parks are authorized in forest zones at OAR 660-006-0025(4)(f), as provided in division 34. The ORS 215.296 or OAR 660-006-0025(5) review process should occur as part of a legislative review through the adoption of or amendment to a park master plan, although specific trail link changes or refinements could go through a quasi-judicial conditional use review.

Trails as Transportation Facilities

While trails as transportation facilities aren't specifically identified as an allowed use in EFU or forest zones in statute, ORS 215.213(10) and 215.283(3) state that "other transportation facilities" not allowed under subsections (1) and (2) "***may be established, subject to the approval of the governing body or its designee***" subject to either 1) the adoption of an exception or 2) "***ORS 215.296 for those uses identified by rule***" of LCDC.

The wording "***may be established, subject to the approval of the governing body or its designee***" indicates a discretionary review and is identical to the lead-in wording for the lists of uses in subsection (2) of ORS 215.213 and 215.283 – sometimes referred to as the lists of conditional uses. The reference to "***ORS 215.296 for those uses identified by rule***" of LCDC specifically indicates that the uses listed in rule require review against ORS 215.296.

OAR 660-012-0065 *Transportation Improvements on Rural Lands* addresses transportation improvements and facilities that are allowed in rural areas, including not just EFU zones, but also forest, rural residential and other rural and nonresource zones. Section (3) states that a specific list of improvements and facilities, including use (h) "***Bikeways, footpaths and recreation trails not otherwise allowed as a modification or part of an existing road***" "are consistent with Goals 3 and 4. Section (5) states that in EFU and forest zones, certain of the listed uses, not including (h), "***shall, in addition to demonstrating compliance with the requirements of ORS 215.296***" comply with what we refer to as a "super" 215.296 process. This statement indicates that, in EFU and forest zones, all other listed uses not subject to the "super" 215.296 process, including use (h), are subject to the ordinary 215.296 process. The only reason why there is no specific reference in section (3) to an ORS 215.296 review is because the list applies to uses in all resource, rural and nonresource zones, while only EFU and forest zones require review for compliance with this standard.

The ORS 215.296 review process could occur as part of a quasi-judicial or a legislative review. A legislative review involving a Transportation System Plan would be a preferred approach, although individual landowners along a proposed route should in this case be notified, within the standard notification distance. Subsequent refinements to a proposed trail route could involve an amendment to a Transportation System Plan or a quasi-judicial conditional use review.

Additional questions have arisen regarding rights-of-way and road modification and how they affect trail reviews. While established ROWs may minimize some aspects of review, they still raise issues regarding potential farm conflicts. This includes railroad ROWs. A new trail or trail link in a new or existing ROW requires an ORS 215.296 review. However, a new bike lane or pedestrian path that is part of a road modification in an existing ROW can be reviewed as an allowed use through ORS 215.213(1)(k), 215.283(1)(i) or OAR 660-006-0025(3)(h).