

W. S.A.

AGENDA COVER MEMO

DATE: July 21, 2005

TO: Lane County Board of Commissioners

DEPARTMENT: Public Works

PRESENTED BY: Frank Simas, Right-of-Way Manager

AGENDA ITEM TITLE: To Establish Fees to be Charged by the Department of Public Works for the Issuance of Certain Facility Permits. Discussion only.

I. MOTION

None, discussion only.

II. ISSUE OR PROBLEM

With the exception of Permits for Donated Amenities as defined by Lane Code 15.205(7)(b), all Facility Permits are currently issued by the Engineering Division of the Public Works Department at no charge to the applicants and recipients. The largest component of the costs of administering these Facility Permits is for those allowing utility installation and relocations, which account for approximately \$275,000 out of a total yearly expenditure of about \$423,000.

The balance of the costs, amounting to about \$148,000, is associated with issuance of permits to allow road and driveway connections, special events, logging, road construction and "other." (vegetation removal, drainage etc.) Consequently, Road Funds that could otherwise be used for operations, maintenance and preservation (OMP), as well as for capital improvements, are spent for the administration and issuance of permits which typically are for the benefit of a particular property or owner. This proposal would allow Public Works to begin charging fees for these facility permits and to recover costs of administration.

III. DISCUSSION

A. Background

A Facility Permit is a permit administered through the Lane County Public Works Engineering Division, for any clearing, grading, excavation, construction, special events, or other activity or construction within a County Road right-of-way.

Lane Code Chapter 15.205 through 15.210 govern the issuance of Facility Permits. Per LC 15.200, the overriding purpose of the program is "to ensure the safety and convenience of the traveling public, and to effectively and efficiently manage and maintain the public investment in the road system . . ." (see Attachment A). Section 15.210(3) permits the collection of fees in connection with the issuance of Facility Permits "as allowed by law or as established by the Board."

Charging of fees for Facility Permits issued by county government for utility installations is prohibited by ORS 758.010. However, this Section was amended in 2001 to allow the State Department of Transportation (ODOT) to charge fees in accordance with ORS 374.325. The fees that are to be charged are set forth in OAR 734-055-0017, and they range from \$150 to \$15,000 depending on the size, scope and complexity of the project. This provision was intended to sunset in 2006, but was extended to 2008 by Senate Bill 859, which was approved in June, 2005.

All Facility Permits are issued and administered through the use of Road Funds. In 2001, the Oregon Attorney General's Office issued an opinion regarding what activities constituted eligible uses of State Highway funds. Because 35–40% of the County's Road fund revenues come from the State Highway Fund transfer, Legal Council's opinion was that it would apply to the Lane County Road fund. Lane County Legal Counsel reviewed an analysis prepared by ODOT based on the AG's opinion as to what Lane County activities (including Facility Permit issuance) may or may not be eligible uses for gasoline tax revenue from the State Highway fund transfer. The criteria used by the Attorney General was whether the activity directly facilitates motor vehicle travel over County roads.

Legal Counsel's opinion is that administration and issuance of permits for driveway and road connections, as well as the facilitation of utility relocations for both County-initiated and utility-initiated projects are the only permit activities that are eligible uses of County Road funds. The remaining categories of permits, then, are not eligible uses, including logging and vegetation removal, drainage to benefit private property, special events (including those sponsored by non-profit and charitable organizations) and roadside amenities. Permits for driveway and road connections, which is deemed an eligible use due to the fact that they do contribute to vehicular travel by improving connectivity to the road system, usually involve a direct benefit to a specific property or owner.

Table 1: Expenditures for Administering and Issuing Facility Permits						
	Actual Costs 10/01/04–5/31/05			Estimated Costs 10/01/04–09/30/05		
Type of Permits	Number	Cost	Average Cost	Number	Cost	Average Cost
Utility Placements and Relocation	318	\$181,600	\$571	425	\$275,264	\$648
Road Construction	11	\$7,710	\$701	15	\$11,857	\$790
Other	25	\$15,442	\$618	51	\$23,292	\$456
Driveway	216	\$61,142	\$283	306	\$92,743	\$303
Special Events	25	\$11,551	\$462	50	\$17,363	\$347
Logging	17	\$2,027	\$119	24	\$2,964	\$123
Total Costs		\$279,442			\$423,483	

Table 1 above depicts the actual costs incurred by the Engineering Division in connection with the issuance of Facility Permits for the period from October 1, 2004 to May 31, 2005 and the total estimated costs for the 12-month period that will end September 30, 2005. The actual costs reflect the reorganization of the permit function within the Engineering Division in September 2004, when most driveway and logging permits were transferred to the Road Maintenance Planning Section. This consolidated the inspection, issuance and compliance activities so that the personnel making recommendations for the permit requirements and those ensuring compliance with permit conditions are both under the supervision of the Road Maintenance Manager. This involved the reassignment of two employees from the Right of Way Management Section. The remaining Permit staff of the Right of Way Management Section now focuses their efforts on utility permitting, commercial driveway and road connections, special events, and "other" permits. Because there is currently only 8 months of experience under the reorganization, the actual costs for this period was used, and the data was used with historical data to estimate the costs for a twelve-month period. It was important to estimate for the four months from June 1 to September 30, in order to get a more accurate estimate, because this four-month period is typically the busiest time for permit issuance.

The actual figures for Utility Permits reflect greater emphasis in the area of inspection during installations to better ensure compliance with permit conditions and more intensive follow-up on existing utility conflicts from prior projects and permits. The high average cost is skewed by several large and complex CIP projects, notably, MLK, Jr. Parkway, North Game Farm Road, and South 42nd Street. These projects require many hours of plan review, coordination and inspection and they substantially impact the average. The actual cost for "Other" permits reflects time billed to another major project, which was the Fernridge Dam Repair road closure approval. "Other" Permits by their nature are unique and may involve special conditions and analysis, but typical costs would be more in line with the "Estimated" rather than for the period ending May 31, 2005.

The cost for road construction permits is high; reflecting extensive interaction with owners and engineers, plan review and several inspections during the effective period of the permit. Road construction sometimes involves new road connections in relation to new major subdivisions, but more typically involves improvement of existing Local Access Roads where they connect with the County Road system. Road Construction and Driveway permits are two areas in which less than full cost recovery may be consistent with the AG's opinion.

Issuance of permits free of charge to the applicant/permittee is not consistent with the adopted Lane County Strategic Plan, which includes identifying and recovering user fees and charges as a core strategy consistent with the premise that "those who benefit should pay and those who pay should benefit." The need for implementation of fees to recover costs associated with Facility Permits was identified some time ago, but several related issues needed to be resolved first. These issues are discussed below in terms of the actions taken to resolve them.

- On July 19, 2001, Public Works staff met with the Policy and Procedures Standing Committee to discuss road-related topics, including local access roads and Facility Permit fees. At that meeting, direction was given to Public Works to address several issues before implementing a fee program:

1. Change Lane Code to be consistent with ORS regarding the definition of a public road;
2. Cease issuing Facility Permits on LARs (Local Access Roads that are public roads which have not been formally dedicated and/or accepted as County roads and are not maintained by the County) and;
3. Provision of emergency service access in the absence of Facility Permit issuance for new development accessing from LARs through the building permit process.

The discussion also indicated general interest in ensuring full cost recovery from the Facility Permit program.

- In September 2001, Public Works staff met with the Roads Advisory Committee, which expressed consensus that a fee system and full cost recovery for Facility Permits is warranted.
- In subsequent meetings with the Finance and Audit Committee on October 30, 2001, and January 2002, a fee program achieving full cost recovery was affirmed, and direction was given to incorporate a mechanism in the fee schedule to subsidize the fees charged for certain community events.
- As part of the Lane County Transportation System Plan (TSP) update, Lane Code Chapter 15 was revised to address the three issues raised at the Policy and Procedures Committee July 2001 meeting. The TSP adoption materials became effective June 4, 2004. Specifically,
 1. The definition of a "public road" in Lane Code Chapter 15.010(35)(vii) was changed to be consistent with state statute. A definition for LARs was also added, including language stating that under ORS 368, the County is not liable for maintenance of LARs.
 2. LARs are now exempt from Facility Permit requirements. This is consistent with a provision in ORS 368.031 that the County may not spend monies on LARs unless there is an emergency or unless specifically authorized to do so by the Board of Commissioners, and then, only under certain circumstances. Although exempting LARs from Facility Permits, the Code retained prohibitions on placement of obstructions in all public roads and the authority of the County to enforce such prohibitions.
 3. In addition, although exempt from Facility Permit requirements, new development on vacant land taking access from an LAR must provide written certification from the local emergency service provider that the road is adequate. Public Works staff worked with the local fire departments to develop this provision. Furthermore, new LARs, i.e. if created as part of a land division, must meet minimum standards as set forth in Lane Code 15.706. Engineering certification of adequacy of access is required.

B. Analysis

To develop a fee proposal, staff evaluated the types of Facility Permits issued, the required processing steps, actual cost of administration, and other fee models. The objectives desired in implementing the fee program are: (a) cost recovery; (b) build to standard; and (c) compliance.

It became clear in reviewing these objectives that a fee will allow (a) above to be achieved, while other changes to the Facility Permit program are necessary to achieve (b) and (c). Therefore, the fee structure in Table 2 (under III. D., Recommendations) is proposed to achieve cost recovery. To improve performance in Facility Permit activities and compliance, staff intends to implement mechanisms already provided for in Lane Manual Chapter 15.855 (Attachment B). That is, applicants may be required to execute a performance agreement at the discretion of Public Works as provided for in LM 15.855. Because most applicants currently complete required work properly under the current, no fee policy, it is hoped that this approach will reduce costs of compliance over time, thereby allowing a reduction in fees for all permits or the forestalling of fee increases in the future. Public Works intends to initially implement the performance agreement in cases when an applicant has previously not completed the permitted work in accordance with permit conditions. Staff will evaluate whether this approach is effective, and make any necessary adjustments after a reasonable trial period.

Permit Type

To fulfill the purpose in LC 15.200, the following types of facility permits are issued:

- Commercial Driveway
- Residential Driveway
- Drainage
- Vegetation Alteration
- Events
- Road Construction
- Logging
- Donated Amenities
- Other

The above activities are regulated under LC 15.205–210 only when constructed or conducted within County road rights-of-way. For example, a driveway or road may be constructed on private property with no permit (unless regulated under another Code provision, such as the Forest zone), but the portion that intersects with and lies within the County road right of way requires a Facility Permit.

Facility Permit Process

Each permit follows the same general procedure, with slight differences depending on the activity being regulated. Driveway and road construction, logging operations, special events, and other activities involve irregular use of the right-of-way. The major objective for these permits is to ensure the operation is carried out in a safe manner with regard to traffic on the road and that the road is returned to its original condition. The motoring

public may need to be guided through the operation with signage, traffic cones, safety barriers, and traffic flaggers.

Processing involves the following general steps:

1. Applicant submits a completed application form, which they may download or obtain from a Public Works office. A site plan showing the location of proposed work should be attached.
2. Facility Permit Office staff review paperwork for completeness. If possible, this would occur at the time of intake; follow-up telephone calls or letters may be necessary.
3. The application is assigned a tracking number and logged into the computer database.
4. Staff performs historical research regarding previous permits and existing construction or activity within the County road right-of-way adjacent to the property.
5. Once paperwork is complete, on-site inspection is required to formulate the recommended design specifications, which are based upon factors such as spacing from other driveways and intersections, offsets with intersections across the road, drainage, proximity to curves, vegetation and other visibility issues, road functional class, and road speed limit.
6. For commercial applications, the Facility Permit Office Supervisor reviews paperwork and specifications and formalizes the permit in writing.

In the case of residential driveways, vegetation alteration, and culvert or other drainage work, the Maintenance Office Supervisor completes this task. The permit is then "issued."

7. The "issued" permit with its attached conditions is mailed to the applicant. A time line for completion is included in the conditions.
8. Once the applicant completes the work, he or she contacts the Facility Permit Office to request an inspection, an inspection is scheduled with the Road Maintenance Supervisor, and if work passes inspection, the permit is "Completed." In some cases staff visits the site during the activity to ensure safety measures are used.
9. The permit database is updated, and materials are filed and tracked for future retrieval at each step.
10. Under LC 15.709, an applicant may request a "Deviation" from the requirements. A Deviation may be sought from the minimum road design standards and other standards enforced under Lane Code Chapter 15, including Facility Permit requirements. If the Deviation is not granted, an Appeal to the Director, and then to the Board, is allowed under LC 15.709(2)(e) (Attachment B).

Compliance Procedures

Compliance tasks consist of extra tracking, letter contact, telephone contact, and extra inspections. Time devoted to these tasks varies depending on the applicant's willingness or ability to comply; the applicant's availability and responsiveness; and severity of the violation.

Cost of Administration

Costs of administration were most recently evaluated over a six month period, from October, 2004, when additional enhancements to the cost accounting system were implemented, thus allowing more detailed tracking of costs, through March 2005.

Other Fee Models

Staff looked at the existing fee programs in Public Works Land Management Division. While only partially comparable in that there are significant differences in type of action regulated, they provided insight into issues such as equity and timing of fee payment relative to work performed.

A comparison was also made with the Oregon Department of Transportation fee program. Although Counties are prohibited by statute from charging utilities a fee for activities affecting County Roads, ODOT charges fees for utility work in the right-of-way, and for road or driveway approach permits. Fees for approach permits range from \$80 to \$5,000, and are calculated based upon a complex formula factoring the number of approaches requested, categories of uses, square footage of structures, and anticipated traffic generation. ODOT does not charge a fee for other activities within the right-of-way, but restricts these other activities to a greater degree than does Lane County (for example parades are generally prohibited on state roads).

In comparison to the ODOT model, the proposal contained in Section D below is simpler, and also based upon what is believed to be an accurate assessment of costs.

Recommendations below represent what is considered the most equitable approach (see Table 2, below).

- Charge a permit fee as in Column (A) at the time of application. Fees listed in Column (A) are based upon a cost analysis completed for the six-month period from October 1, 2004 through March 31, 2005.
- Deviation requests and Appeals allowed under LC Chapter 15.210(12), and LC 15.709(2) would be charged the fees shown in Columns B, C, and D. The provisions for Deviations were recently adopted (effective June, 2004), and Appeals are historically rare, so these proposed fees are based upon estimated processing time, rather than historical data. These fees must be evaluated over the next several months to ascertain whether they are equitable and achieve full cost recovery.
- Community-sponsored, free events would be charged a facility permit fee. Although the Finance and Audit Committee gave direction to staff otherwise, this is not an eligible expenditure of Road funds, and consistent with the Attorney General's opinion, the County administrative cost of \$350/event, \$3,500 to \$7,000 funding would have to

Table 2: Proposed Facility Permit Fees				
	(A) Permit Fee*	(B) Deviation Requests	(C) Director Appeal	(D) Appeal to Board
		<i>[See LC Chapter 15.210(12) & 15.709]</i>		
Commercial Driveway	\$300	\$300	\$ 500	\$1,300
Residential Driveway	\$ 250	\$300	\$ 500	\$1,300
Special Events	\$350	\$300	\$500	\$1,300
Road Construction	\$350	\$300	\$ 500	\$1,300
Drainage, Vegetation, or Other activities	\$300	\$300	\$ 500	\$1,300
<p>* Includes normal permit administration, two inspections and an additional form inspection in the case of a concrete driveway apron. Refunds of \$100 would be allowed for Facility Permits that are cancelled before issuance. This would usually cover costs associated with initial intake and preliminary research.</p>				

come from sources other than the Road Fund, if these permits are to be issued at no cost.

- Donated amenities placed in the right-of-way are currently charged \$100 for facility permit processing. To achieve full cost recovery, it is recommended this fee be increased to the same as all "Other" activities as shown below in the last row (Drainage, Vegetation, and Other activities).
- The cost for issuing Road Construction Permits seems high, and the experience during the cited time period may not be typical over the long run. Less than full cost recovery is an eligible use of Road funds. The lower fee shown is more in line with other types of permits. The higher figure may be an undue burden for smaller projects. The lower fee shown is recommended and will be evaluated at the end of one year to see if costs are in line with the fees under the new system.

Because permits for utility installation and relocation are the largest category of permits both in terms of number of permits and total expenditure, Lane County may wish to pursue efforts through the County's Intergovernmental Relations Manager and through organizations such as OACES to amend the ORS to allow counties to charge fees for issuance of permits for utility placements and relocations within County rights of way outside of cities using the ODOT schedule of fees as a model.

C. Alternatives/Options

1. Direct staff to prepare proposed amendments to Lane Manual consistent with Table #2.
2. Direct staff as to an alternate schedule of fees.
3. Direct staff otherwise.

D. Recommendations

Alternative 1, including revisions to Chapter 60 of Lane Manual incorporating the fees.

E. Timing

The fee system can be in place within a reasonable time frame after the date of approval of the Lane Manual amendments.

IV. IMPLEMENTATION/FOLLOW-UP

If the Board directs, Public Works staff will forward the proposed schedule of fees to Legal Counsel for preparation of the necessary Lane Manual amendments, which will be submitted for approval as a Consent item. Staff will evaluate the program upon implementation for at least one year, and may request changes to the fees or fee structure after that time to achieve equity, cost recovery and compliance.

V. ATTACHMENTS

- A. Lane Code Chapter 15.200–215, and 15.709
- B. Lane Manual Chapter 15.850–865

ROAD AND RIGHT-OF-WAY REGULATIONS**15.200 Use of Public Roads and County Roads.**

In furtherance of the purpose of this chapter, to ensure the safety and convenience of the traveling public and to effectively and efficiently manage and maintain the public investment in the road system, the Director is delegated authority granted the Board by state statute to regulate the use of Public Roads and County Roads as defined in LC 15.010(35) and to require permits for certain activities. *(Revised by Ordinance No. 20-82, Effective 9.3.82; 10-04, 6.4.04)*

15.205 Facility Permits.

(1) Activities Requiring a Facility Permit. Placement of facilities and development within the right-of-way of a County Road as defined in LC 15.010(35), and alteration of such facilities and development shall be authorized only through facility permits issued by the Director in accordance with ORS 374.305 through 374.340. Facilities and development includes, but is not limited to, road improvements, sidewalks, new or reconstructed driveway or road approach intersections, utility placements, excavation, clearing, grading, culvert placement or replacement, stormwater facilities, or any other facility, thing or appurtenance.

(2) Prohibited Activities. Landscaping and trees, landscape timbers, rocks, irrigation facilities, walls, gates, fencing, non-standard mailbox supports, stairways, and any other fixed object or barrier that has the potential of hindering the normal operation, maintenance, or use of a Public Road or County Road shall generally be prohibited and subject to the Failure to Comply and Enforcement Provisions of LC 15.210(11) and LC 15.950 through LC 15.955.

(3) New Development Requiring a Facility Permit. A facility permit is required for access serving new development specified in LC 15.205(3)(a) through (c) below, when requiring intersection with a County Road as defined in LC 15.010(35), to ensure road and driveway approaches, culverts, and other facilities and development as specified in LC 15.205(1) above within the right-of-way of a County Road are constructed in a manner consistent with the purpose of this chapter:

- (a) a new structure on a vacant parcel;
- (b) a dwelling, including a manufactured dwelling;
- (c) if specified as a condition of approval in a land division or other land use decision.

(4) Development Exempt From Facility Permit Requirements. Notwithstanding LC 15.205(3), the following new development and uses are specifically exempt from facility permit requirements provided the new development or use does not involve construction of a new driveway or road approach on a County Road, alteration to the existing driveway or road approach on a County Road, or otherwise involve placement of facilities or development within a County Road right-of-way:

- (a) Temporary medical hardship homes;
- (b) Replacement dwellings.

(5) Special Transportation Permits. Movement of loads upon Public Roads or County Roads in excess of legal limits established by State law and in excess of road and bridge tolerances as posted by the Department shall be only as authorized on permit of

ATTACHMENT 'A'-LANE CODE EXCERPTS

Page 2 of 8

the Director in accordance with ORS 818.200 through 818.270 and any other applicable laws, rules and regulations.

(6) Nonmotorized Vehicles. Bicycling on Delta Highway shall be only as authorized on permit of the Director in accordance with LC 5.400.

(7) Other Permits. The Director is authorized to issue facility permits for such other activities or installations within public rights-of-way as may be granted the Board by applicable laws, rules and regulations. This includes, but is not limited to the following:

(a) Loading logs along County Roads, installation of stock guards or fencing along or within public rights-of-way and such special activities as bike races, parades, event banners and decorations, or similar activities that require special conditions for use of the Public Roads or rights-of-way.

(b) Donations of amenities for use within a County Road. Whenever a person wishes to donate to the County a public amenity for use within a County Road right-of-way, in addition to the criteria set forth in LC 15.210(2), the amenity shall:

(i) serve a public purpose or provide a public benefit;

(ii) be located so as not to be an obstruction to a vehicle running off the road;

(iii) not be designed or colored so as to distract vehicle operators;

(iv) if the object is to convey information, that the area used therefore shall be no larger than six inches by twelve inches, and shall otherwise comply with all applicable provisions of the sign code;

(v) include the agreement of the donor to maintain the amenity for a period of no fewer than 5 years.

(8) Access Management. Activities requiring a facility permit shall be subject to applicable Access requirements and spacing standards of LC 15.135 through 15.139 as part of the facility permit approval process. *(Revised by Ordinance No. 20-82, Effective 9.3.82; 10-04, 6.4.04)*

15.210 Permit Procedure.

The following rules and regulations are adopted with regard to permits specified in LC 15.205 above:

(1) Application. Application for permits shall be made on forms provided by the Department. The applicant shall certify that all information supplied on the application is correct and shall agree to abide by all applicable Federal, State and County laws, rules and regulations with regard to performance under the permit.

(2) Approval Criteria. Facility permit applications shall be reviewed to ensure the use or activity will maintain the road in a safe condition and to ensure protection of the public investment in the County Road system. Applications for road and driveway approach facility permits shall also be reviewed for consistency with LC 15.135 through 15.139. The Director, in approving any application, may attach special terms and conditions to promote these objectives. Applications for activities or uses that are deemed to jeopardize public safety or cause unnecessary damage to the road system shall be denied.

(3) Fees. Fees as allowed by law or as established by the Board may be collected by the Director, in connection with the issuance of permits.

(4) Performance and Indemnity Requirements.

ATTACHMENT 'A'-LANE CODE EXCERPTS

Page 3 of 8

(a) The holders of permits shall be liable for damage or injury to persons or property, including roads and structures, resulting from work done or privileges granted under any permit.

(b) Before a permit shall be issued, applicants for special transportation or other permits may be required to provide proof of adequate public liability or property damage insurance and proof of insurance or bond indemnifying Lane County, its agents and employees, against liability in the event of any injury or damage occurring by reason of the permittee's operations on a road. Applicants for facility permits may be required to show proof of such insurance.

(c) Applicants for permits to load logs along County Roads may be required to post a performance bond in an amount determined by the Director, and may be required to provide proof of adequate public liability and property damage insurance.

(d) Applicants for private access easement crossings may be required to furnish a bond or insurance indemnifying Lane County from any damage to County Roads or structures that may be caused by use of the crossing.

(e) When a facility permit is required as specified in LC 15.205(3), land use and zoning authorization for the development on a construction permit shall not be provided until a facility permit for access associated with the development has been issued. For purposes of this subsection, in addition to a copy of the issued facility permit, documentation of facility permit issuance shall consist of a site plan meeting the requirements of the Department and approved as to the access location and width by the Engineering Division, Right-of-Way Management Permits Section.

(f) In all cases, performance bonds and insurance shall be at least in the minimum amount designated by the Director.

(g) The holders of all permits shall conduct any work or privilege granted by permit at their own sole risk and shall indemnify, save harmless and defend Lane County, its agents and employees, from all claims, suits, actions and damages arising out of or resulting from the work or privileges granted by permit and such indemnity shall not be limited by reason of the enumeration of any insurance coverage that may be required.

(5) Safety Requirements. Holders of permits shall exercise diligence and care to ensure safety to the public and protection of the road system. Safety precautions shall include such stipulations reasonably related to safety requirements, as may be made by the Director, in issuing the permit, and such other safety measures as may be required by law. Should it be necessary to interrupt or redirect traffic, procedures designated by the *Manual on Uniform Traffic Control Devices* publication cited in LM 15.450 shall apply. During construction performed in connection with facility permits, roads shall be kept free of debris. Flaggers, barricades and other safety devices shall be employed as necessary to warn traffic of possible hazards. Lighted warning lights shall be maintained where necessary between the hours of sunset and sunrise.

(6) Construction.

(a) Facilities shall be constructed in conformance with:

(i) applicable Road Design Standards and requirements of LC 15.700 through LC 15.710;

(ii) applicable Access Management requirements of LC 15.130 through 15.139; and

ATTACHMENT 'A'-LANE CODE EXCERPTS

Page 4 of 8

(iii) applicable traffic impact analysis requirements pursuant to LC 15.697.

(b) The permittee shall notify the Director prior to the removal of any survey monuments, and shall be responsible for the cost of replacing any survey monuments moved or destroyed while working in public rights-of-way.

(c) The entire cost of construction, including special conditions and safety requirements, shall be borne by the permittee.

(d) Upon completion of the work, the road and right-of-way shall be restored to its original condition at the expense of the permittee.

(7) Inspection. Performance under any permit issued by the Director is subject to inspection and approval by the Director. Required security will not be released until approval has been granted. The Director is granted authority by the Board to act as its agent pursuant to ORS 374.305 through 374.340 with regard to correction of deficient or unauthorized installations.

(8) Maintenance. Holders of facility permits shall be responsible for maintenance of facilities at their own expense. The expense of relocation or alteration of road approaches in connection with a road improvement project shall be borne by the Department, except when such alteration is made in connection with assessable improvements in urban areas. Facilities shall be kept in a good state of repair at all times. The Director is delegated statutory authority of the Board with regard to maintenance requirements, alteration or removal of facilities within the rights-of-way.

(9) Permit Duration, Extensions, and Termination. Unless otherwise specified, construction and improvements required by a facility permit shall be completed within one year from the date the facility permit was issued.

(a) Permits may be extended to complete required construction and improvements for up to one year intervals for a maximum of three years from the date the facility permit was issued, provided:

(i) the request for an extension is submitted in writing with the applicable fee prior to the permit expiration date, and

(ii) a performance agreement is executed for the facility permit work. The performance agreement shall be on a form prepared or approved by Lane County and meet the requirements of LM 15.850 through 15.865.

(b) Permits may be terminated and a new Facility Permit may be required when:

(i) the development or use associated with construction and improvements required by the facility permit is substantially changed or expanded. For purposes of this subsection, "substantially changed or expanded" shall mean any of the following:

(aa) a change of development or use from residential to non-residential use;

(bb) a change of development or use from commercial to industrial use;

(cc) an additional permanent dwelling unit;

(dd) an increase in a commercial or industrial development or use that exceeds 25 percent of the area of the existing use, including all indoor and outdoor areas devoted to the use.

(ii) the permittee is found to have obtained a permit through misrepresentation of the facts or when, in the judgment of the Director, terms of the permit are being violated or public safety is threatened.

(10) Permittees shall be responsible for the cost of design, installation or construction of additional roadway improvements and traffic control devices, such as turn lanes, warning devices or traffic signals, at any time in the future when the traffic volumes generated by the use for which the access permit is authorized necessitate such installation in the interest of public safety. The need for and type of traffic control devices required shall be determined by the Director based upon the *Manual For Uniform Traffic Control Devices* publication cited in LM 15.450. Responsibility of the permittee shall be limited to cost of design and installation or construction only.

(11) Failure to Comply. The Director is authorized to remove unauthorized facilities and vegetation from public rights-of-way. When not representing an immediate hazard, the Director may first attempt to contact the owner for removal of unauthorized facilities or installations. Upon failure of the owner to comply with removal by a specified date, the Director may cause the unauthorized facility to be removed with the cost billed to the owner.

(12) Deviations from Facility Permit Requirements. Deviations from the requirements in LC 15.205 through 15.210 may be sought pursuant to the provisions in LC 15.709, Deviations from Design Standards and Facility Permit Requirements. *(Revised by Ordinance No. 20-82, Effective 9.3.82; 10-04, 6.4.04)*

15.215 Road and Bridge Restrictions.

The Director is delegated authority by the Board to impose temporary weight restrictions on roads or bridges pursuant to ORS 810.030, under emergency conditions. In the event of threat to public safety or extensive damage to Public Roads or bridges, the Director may post those facilities with such restrictions as authorized under ORS 810.030. Such action shall be abated unless confirmed at the next public meeting of the Board with a duly executed Board Order. *(Revised by Ordinance No. 20-82, Effective 9.3.82; 10-04, 6.4.04)*

15.709 Deviations From Design Standards and Facility Permit Requirements.

(1) Applicability. Deviations may be sought from the minimum Road Design Standard requirements specified in LC 15.700 through LC 15.708, and from the Facility Permit requirements in LC 15.205 through LC 15.210 pursuant to this section.

(a) Deviations may be sought based upon the following considerations:

(i) Design requirements would result in the need for a Variance to a requirement of other sections of Lane Code if the deviation is not granted;

(ii) Design requirements would result in an inconsistency with other requirements of Lane Code if the deviation is not granted;

(iii) Topography or slope constraints;

(iv) Proximity of existing homes/structures;

(v) Presence of existing significant trees or other vegetation;

(vi) The presence of a significant natural resource constraint including the presence of:

(aa) wetlands designated in the National Wetlands Inventory;

ATTACHMENT 'A'-LANE CODE EXCERPTS

Page 6 of 8

(bb) wildlife habitat for sensitive, threatened, or endangered species listed in a federal, state, or local inventory;

(cc) riparian vegetation within a riparian setback area specified in LC 16.253(2);

(dd) areas within the floodway as designated on federal floodplain maps;

(ee) other significant natural resource areas if designated on an adopted local natural resource inventory.

(vii) Historic resources listed in an adopted state or local inventory or officially designated as a state or federal historic landmark;

(viii) Insufficient right-of-way, and inability to obtain additional right-of-way;

(ix) Adopted Board decisions, including those found in project specific Design Concept and Findings documents;

(x) Other site specific circumstances.

(b) Deviations shall not compromise safety and sound engineering practices.

(c) A request for a deviation shall not be permitted if the standards in question are required as a condition of approval of a land use decision. In that case, the process outlined in LC Chapter 14 for requesting a reconsideration or appeal of the land use decision will be necessary.

(2) Procedure for Reviewing a Deviation Request. The following process shall be followed when a deviation to the facility permit or design standards is sought.

(a) Preliminary Assessment. The purpose of the preliminary assessment is to determine the validity of the deviation request based upon applicability requirements and considerations specified in LC 15.709(1). A preliminary assessment meeting with Public Works staff may be required to ensure that the applicant understands the design standard deviation request process, and to ensure that County staff understand the nature of the requested design standard deviation.

(b) Application.

(i) After any required preliminary assessment has been completed, an application for a design standard deviation may be submitted for review with the applicable fee. Supporting materials must demonstrate consistency with requirements in LC 15.709(2)(c) below.

(ii) Public Works Engineering Division staff will review the application for completeness. If additional information is needed from the applicant, the County shall request the information in writing within 14 days of application and fee submittal.

(iii) Additional materials may be requested of the applicant, including written information to address issues of concern that may be related to the request.

(iv) Supplemental documentation may be required depending on site-specific circumstances as determined by the County Engineer or designee, as follows:

(aa) Traffic and Crash Experience Analysis – The level of information and analysis must be sufficient to document that the proposed design deviation will not significantly affect safety.

ATTACHMENT 'A'-LANE CODE EXCERPTS

Page 7 of 8

(bb) Impacts on regulated natural resources – Documentation must be of sufficient detail to determine potential impacts on regulated water and wildlife resources such as wetlands, aquifers, fish bearing water bodies, and species listed as threatened or endangered on federal or state inventories, if the deviation is approved. Any required permits from federal, state and local agencies shall be obtained prior to initiation of construction if the deviation is granted.

(cc) Costs - The analysis must be of sufficient detail to compare project costs with and without the proposed design standard deviation(s).

(dd) Proposed Mitigation – Propose potential mitigation measures, how they would be implemented, and the time line for implementation, to offset potential safety reductions of the proposed design deviation.

(v) If additional information is requested from the applicant, it shall be submitted within 30 days from the date the request for additional information was mailed.

(c) Requirements for Granting a Deviation.

(i) The safety and function of the road system shall not be compromised by the proposed deviation, based upon accepted engineering practices;

(ii) The deviation will not result in an inconsistency with other standards found in Lane Code; and

(iii) The deviation will not result in the need for a Variance to any other applicable Lane Code requirement; or

(iv) The deviation is for a project initiated by the County and the Board recommends the deviation.

(d) Review and Decision.

(i) As necessary, a deviation review committee shall convene to review the design standard deviation request. As appropriate the committee will consist of representatives from agencies within and outside the County with jurisdiction in the area of the request. The committee will make a recommendation to the County Engineer or designee whether to accept, deny, or modify the request. The recommendation shall be based upon requirements of LC 15.709(2)(c) above.

(ii) The County Engineer or designee will review the deviation request and make a decision in writing and mail the decision to the applicant within 30 days from the date the application is deemed complete. If there is a committee review of the deviation request, the County Engineer or designee will make a decision in consideration of the committee's recommendation.

(iii) The County may assign conditions and require mitigation to ensure the continued safe and efficient operation of the road system if the request for a deviation is granted.

(e) Reconsiderations and Appeals.

(i) The applicant may appeal the initial County Engineer decision to the Director. Appeals shall be in writing and submitted with the applicable fee. Appeals shall be submitted within 30 days of the date the decision was mailed to the applicant.

(ii) Appeals shall be submitted with written arguments and supporting materials explaining how the County erred in its conclusions that the requirements of LC 15.709(2)(c) have not been met, or erred in assigning conditions to ensure safe and efficient operation of the road.

ATTACHMENT 'A'-LANE CODE EXCERPTS

Page 8 of 8

(iii) Upon receipt of the appeal, the County Engineer or designee may decide to reconsider the decision. Reconsideration shall be reviewed and acted upon within 14 days of receipt of the request. If the County Engineer or designee decides not to reconsider the decision, the appeal shall be reviewed and acted upon by the Director within 30 days of receipt of the request.

(iv) Further appeals shall be directed to the Board. Appeals to the Board shall be heard at a regularly scheduled Board meeting no later than 60 days after the appeal is filed. The appeal shall be filed with the applicable fee and presented to the Board by Department staff in a written report of relevant facts according to the County Administrative Procedures Manual, Process For Submitting Agenda Items For Consideration At Board Of County Commissioners' Meetings, and the appellant shall have an opportunity to present information at the Board meeting. Appeals shall be accompanied by the applicable fee.

(3) Applications shall be properly submitted and approved by the County prior to incorporation of design features into final project plans and/or related documents. Any required conditions of approval and mitigation shall be incorporated into final project plans and related documents. *(Revised by Ordinance 10-04, Effective 6.4.04)*

PERFORMANCE AGREEMENT STANDARDS

15.850 Purpose.

The following procedures and requirements are established to define acceptable Performance Agreement mechanisms as utilized in the implementation of Lane Code provisions for development under LC Chapters 10, 13, 16 and 15. *(Revised by Order No. 86-1-29-22, Effective 1.29.86)*

15.855 Application and Review.

LC 16.090 and 13.010, under definition of Performance Agreements, authorizes using security agreements to assure performance of developments in the Land Development process. LC 15.210(4)(e) authorizes using security agreements to assure performance of work required by facility permits. The County Administrator is delegated authority to accept and execute the following instruments:

- (1) Performance bonds.
- (2) Irrevocable letter of credit.
- (3) Assignments of savings accounts.
- (4) Trust agreements when the development meets the following criteria:
 - (a) Large scale industrial, commercial or residential developments in excess of 100 lots.
 - (b) Development scheduling is in excess of three years.
 - (c) Public improvements must be phased so, if not completed, that portion completed would result in logical public facility development.
 - (d) Construction of streets, structures, drainage and other development improvements shall be provided in phases. Each phase shall conform to the approved construction plans approved for the development. The phases shall be of adequate size to be functional and be approved by the Director.
- (5) For purposes of assuring performance of improvements associated with a land division approval or a facility permit, the County Administrator delegates authority for executing the instruments listed above in LM 15.855(1) through (4) above to the Director. *(Revised by Order No. 86-1-29-22, Effective 1.29.86; 04-5-5-8, 6.4.04)*

15.860 Alternate Performance Agreements.

Any Performance Agreements not specified in LM 15.855 above must contain specified security rights for the benefit of Lane County, equal to or better than that specified in LM 15.855 above. Such agreements shall be submitted to the Lane County Board of Commissioners by the Director via the regular agenda process. *(Revised by Order No. 86-1-29-22, Effective 1.29.86; 04-5-5-8, 6.4.04)*

15.865 Renewal of Performance Agreements.

(1) Approving Authority. If the monetary value remains unchanged, the renewal process is an administrative action approvable by the Director. Increases in monetary requirements are required to be approved by the County Administrator.

(2) Criteria for Approval of Renewals.

- (a) The applicant shall have made application for the renewal within the original time set for completion.
- (b) The applicant shall have the burden of proof to demonstrate that he or she has made a good faith and reasonable effort and progress to meet the time period specified, and that the reason for delay in meeting the condition could not have been reasonably avoided.
- (c) The applicant shall have the burden of proof to demonstrate either:
 - (i) That the uncompleted conditions can be met within a period of time not to exceed one year beyond the original time set forth.

ATTACHMENT 'B'- LANE MANUAL EXCERPTS

Page 2 of 2

(ii) That for reasons over which the applicant does not have control, certain items cannot be met within one year beyond the original expiration date set forth, but can be met within a reasonable time. The reasonable time shall be specified in any renewal granted by the Director or County Administrator. "Reasons over which the applicant does not have control" shall mean circumstances which would reasonably prevent any applicant, as opposed to a particular applicant, from meeting the uncompleted items within two years from the date of approval.

(3) Application Requirements.

(a) An application for renewal shall be completed on the form provided by the Director and shall contain any necessary supporting materials or documents.

(b) The application for an extension shall be accompanied by the required filing fee to help defray the costs of processing the application.

(c) The application shall be accompanied with an updated cost estimate compiled by a registered engineer with at least 10% added for administration cost.

(4) Notification of Decision on Application. The Director, after review of the application for a renewal, shall give written notice of his or her decision and the reasons supporting the decision to the applicant. In denying an extension the Director shall automatically exercise the established Performance Agreement. *(Revised by Order No. 93-3-31-7, Effective 3.31.93; 04-5-5-8, 6.4.04)*