

Josephine County STAFF REPORT

COMPREHENSIVE PLAN / RLDC TEXT AMENDMENT **(Article 81 – Road Standards; Article 11 - Definitions)**

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To: Josephine County Planning Commission

Date: September 10, 2012

Proposal: Recommendations of the Private Road Standards Sub-Committee concerning a proposed amendment to Sections 81 and 11 of the RLDC, adding a definition and provision for Private Roads.

Planning Commission Review: Sec. 46.020.B.1.a. of the Rural Land Development Code (RLDC) states the Planning Commission shall make final decisions to amend a comprehensive plan element unless the amendment involves an exception to statewide planning goals or involves farm or forest land. The proposed amendments do not involve an exception to statewide planning goals and only peripherally involve farm or forest lands. A Planning Commission decision to approve any code amendment is then forwarded to the Board with a recommended ordinance.

Board Review Authority: Sec. 46.020.B.2.c of the RLDC states the Board of Commissioners must implement amendments of the County's Comprehensive Plan by ordinance. The action to adopt the ordinance (or not) may not be appealed at the local level.

PURPOSE

The proposed text amendment would change the Rural Land Development Code by deleting and adding language in Article 81 to introduce standards regarding Private Roads; and, introduce a definition of Private Road in Article 11.

Proposed changes to the development code must be consistent with the Oregon Revised Statutes, Oregon Administrative Rules and the County Comprehensive Plan.

OVERVIEW OF APPLICABLE STATEWIDE GOALS AND RULES

The Planning Commission must make a finding whether the proposed amendments are consistent with applicable state-wide land use planning goals, contained in Oregon Administrative Rule 660, Division 15; the adopted Josephine County Transportation System Plan; Oregon Revised Statute 368 (for changes to Article 81) and the policies of the Josephine County Comprehensive Plan.

The Josephine County Comprehensive Plan and Rural Land Development Code (RLDC) contain procedures for amendment; furthermore, procedures for adoption of local implementing regulations must be consistent with the provisions of Oregon Revised Statute (ORS) 197 and applicable Oregon Administrative Rule (OAR) 660-012, the Transportation Planning Rule, when considering changes to the transportation system.

Statewide Planning Goals

Goal 1: Citizen Involvement

Meetings of the Land Development Advisory Committee (LDAC) were held from March 15, 2010 to February 13, 2012, including a meeting on March 14, 2011 where the original recommended amendments dated July 12, 2010 were approved by LDAC, then forwarded by the LDAC Chair to the Board of Commissioners on June 14, 2011. The Board in turn directed the Planning Commission to consider the proposed amendments to the Comprehensive Plan and Rural Land Development Code on September 22, 2011. Workshops of the Planning Commission were held on October 24, 2011, November 15, 2011 and January 23, 2012 to discuss the recommendations with Planning and Public Works staff, and representatives of Fire Protection providers; workshops were advertised on the County's website and notice mailed to local news media one week prior to the meetings. The Planning Commission held publicly advertised hearings on April 16 and 30, 2012, and May 14, 2012 to invite testimony regarding the recommendations from LDAC. At the May 14th hearing, the Planning Commission decided to appoint a sub-committee regarding private roads, to do further analysis and refine the recommendations of LDAC before considering them again in public hearing. The sub-committee held two meetings, on June 11 and July 23, 2012, conducted in accordance with Oregon public meeting law. Audio recordings of these meetings were posted on the County Planning Department's web-page.

Goal 2: Land Use Planning

The proposed ordinance revisions are implementation measures considered by the County for adoption into the Rural Land Development Code. Local plans and implementing ordinances are required under Goal 2 to coordinate with, and in practice be consistent with, state statutes and rules as stipulated in ORS 197.015.

Supporting documents related to the proposed plan and code amendments are filed in the Planning Department; affected agencies (including fire protection providers, consistent with OAR 368) have been notified of the proposal, and participated in workshops to examine more closely issues raised by the proposed code changes. No goal exceptions are contemplated by the proposed amendments. Because the proposed amendments may have a significant impact throughout the County, not a specific area, and could affect many land ownerships, the provisions considered herein are considered Major Revisions under Goal 2.

Goal 12: Transportation

The proposed ordinance amendments primarily concern transportation access to residential areas, but could affect commercial, industrial and institutional uses as well. Implementation measures of a local Comprehensive Plan must be consistent with the Transportation Goal. Specifically, plans providing for a transportation system should consider as a major determinant the carrying capacity of the air, land and water resources of the planning area. Development actions should not exceed the carrying capacity of such resources.

The County implements Goal 12 via: a Transportation System Plan (TSP) adopted in 2004; Article 81 of the RLDC, containing development standards addressing general access; and, the Josephine Public Works Design and Construction Standards and Specifications.

Oregon Administrative Rule 660-012 (Transportation Planning Rule)

Any amendments to local Road Standards must be consistent with the Transportation Planning Rule (TPR). The primary question raised in considering compliance with the TPR is whether the functional classification of existing or planned transportation facilities will be changed as a result of the amendment to regulations, per OAR 660-012-0060:

- 1) If an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation (including a zoning map) would significantly affect an existing or planned transportation facility, then the local government must put in place measures as provided in section (2) of this rule, unless the amendment is allowed under section (3), (9) or (10) of this rule. A plan or land use regulation amendment significantly affects a transportation facility if it would:
 - (a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);
 - (b) Change standards implementing a functional classification system.

(c) Result in any of the effects listed in paragraphs (A) through (C) of this subsection based on projected conditions measured at the end of the planning period identified in the adopted TSP. As part of evaluating projected conditions, the amount of traffic projected to be generated within the area of the amendment may be reduced if the amendment includes an enforceable, ongoing requirement that would demonstrably limit traffic generation, including, but not limited to, transportation demand management. This reduction may diminish or completely eliminate the significant effect of the amendment if it would:

- (A) Allow land uses or levels of development that would result in types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;
- (B) Degrade the performance of an existing or planned transportation facility such that it would not meet the performance standards identified in the TSP or comprehensive plan;
- (C) Degrade the performance of an existing or planned transportation facility that is otherwise projected to not meet the performance standards identified in the TSP or comprehensive plan.

Finding: The proposal to introduce private road standards that do not currently exist in the RLDC, nor in the Transportation System Plan of Josephine County, is a change to standards implementing a functional classification system. The RLDC (implementing regulations) must be consistent with the adopted Comprehensive Plan (ORS 197.175). The Transportation System Plan of Josephine County (TSP), last amended in 2004, is an element of the Comprehensive Plan. Therefore, amendments to the RLDC must be consistent with the TSP, or amendment to the TSP may be necessary to establish changes not previously addressed in its goals, policies or functional classifications.

2) If a local government determines that there would be a significant effect, then the local government must ensure that allowed land uses are consistent with the identified function, capacity, and performance standards of the facility measured at the end of the planning period identified in the adopted TSP through one or a combination of the remedies listed in (a) through (e) below, unless the amendment meets the balancing test in subsection (2)(e) of this section or qualifies for partial mitigation in section (11) of this rule. A local government using subsection (2)(e), section (3), section (10) or section (11) to approve an amendment recognizes that additional motor vehicle traffic congestion may result and that other facility providers would not be expected to provide additional capacity for motor vehicles in response to this congestion.

- (a) Adopting measures that demonstrate allowed land uses are consistent with the planned function, capacity, and performance standards of the transportation facility.
- (b) Amending the TSP or comprehensive plan to provide transportation facilities, improvements or services adequate to support the proposed land uses consistent with the requirements of this division; such amendments shall include a funding plan or mechanism consistent with section (4) or include an amendment to the transportation

finance plan so that the facility, improvement, or service will be provided by the end of the planning period.

- (c) Amending the TSP to modify the planned function, capacity or performance standards of the transportation facility.
- (d) Providing other measures as a condition of development or through a development agreement or similar funding method, including, but not limited to, transportation system management measures or minor transportation improvements. Local governments shall, as part of the amendment, specify when measures or improvements provided pursuant to this subsection will be provided.
- (e) Providing improvements that would benefit modes other than the significantly affected mode, improvements to facilities other than the significantly affected facility, or improvements at other locations, if the provider of the significantly affected facility provides a written statement that the system-wide benefits are sufficient to balance the significant effect, even though the improvements would not result in consistency for all performance standards.

Finding: The proposed change of road standards to allow private road systems *does* present a change to the functional classification of planned roads, because the current functional classification (found in Table 3-1 of the TSP) does not address the dimensional or design standards as originally recommended by LDAC. In order to adopt such standards, the County must adopt a new functional standard in the TSP, and/or change the design (width, maximum grade, load design, number of lots) of proposed private roads to that of an existing functional classification, such as Residential, Limited Residential or Restricted Residential.

The Action Plan of the 2004 TSP cited several recommendations for future development of the transportation system; none of the existing recommendations incorporated private roads. This is not to say the proposed private road standards cannot be written into an implementing ordinance, only that they cannot be approved without a concurrent change to the TSP.

Oregon Revised Statute 368

ORS 368 specifically names the County as having jurisdiction over local access roads, and authorizes the County to adopt standards and specifications for these roads. The statute requires the County to consult with municipal or other local firefighting agency concerning the proposed specifications and standards.

Finding: The Planning Commission received input during public workshops from: Illinois Valley Fire District; Grants Pass Fire Department; and, Rural/Metro Fire Department, a private, commercial entity operating in Josephine County under contract with individual homeowners. Consultation with local firefighting agencies is required by ORS 368.039 when amending specifications or standards for roads and streets. Written comments from fire protection agencies were received from Grants Pass and Rural Metro.

The Illinois Valley Fire District provided a short film during one of the workshops, depicting emergency-response vehicles negotiating a one-lane rural road. The fire protection agencies requested: 80,000 lbs. load-bearing capacity on roads and bridges; a minimum 48' turning radius; turn-outs at intervals no less than 400'. The agencies cited the following impacts may be a result of private road standards as proposed: lengthened response times for emergency services; likely traffic conflicts during fires or other emergencies (despite signage on one-lane, one-way roads); and, neglected maintenance on roads or bridges that put emergency-response personnel at risk.

APPLICABLE GOALS AND POLICIES OF THE COMPREHENSIVE PLAN

Goal 4 – Plan and develop facilities and services that are needed, and can be afforded, by the residents of the County (Policies 1 and 4)

Goal 6 – Prevent loss of life and property due to natural and man-made hazards

Goal 11 – The Comprehensive Plan shall be maintained, amended, and updated as necessary (Policy 1)

Finding: The proposed road standard amendments for private roads would reduce the up-front cost to land developers and (presumably) lower the initial cost of rural land parcels. Policy 1 of Goal 4 states the County will coordinate the development of services which will assist other government bodies, and Policy 4 states the County will facilitate the development of a transportation master plan for bridges and roads, coordinated with City, State and Federal agencies. Given the concerns of fire protection agencies regarding private road systems, the proposed standards as originally proposed may be inconsistent with the policy statement: “constructing roads suitable for use by emergency equipment, and design of loop systems that allow for emergency evacuation of an area in rural development.” If standards for private roads are consistent with state fire marshal standards for roads and bridges, then one could conclude this policy is satisfied.

Goal 6 contains Policy 3, in part concerning roads and the provision of emergency services:

3. The Josephine County Board of Commissioners shall encourage reduction of fuel concentrations and the construction of fire breaks, i.e. utilize fire resistant vegetation, construction of water sources, *construction of roads suitable for use by emergency equipment, and design of loop systems that allow for emergency evacuation of an area in rural developments.*

In considering the recommended amendments to the RLDC, the Planning Commission must consider the adopted Goals of the County Comprehensive Plan, and/or amend these Goals if appropriate. At this time, no specific language has been proposed to amend the Goals of the Comprehensive Plan. If the proposed standards are desired by the Planning Commission, staff recommends they consider adoption of a new Goal of the Comprehensive Plan to accompany the

amended language of the RLDC, so the policy direction is clear to guide any changes made to the Code, consistent with ORS 197.175 and *Baker v. Milwaukie* 533 P.2d 772 (1975).

Josephine County Transportation Plan

The amendments as proposed introduce a new transportation system policy, as the existing TSP does not contemplate private roads, as road standards were being developed concurrently with the TSP, and adopted into the County Construction Design Manual after a series of public hearings. The TSP does contain policies regarding: functional classification; capacity; traffic controls; access management; accessibility; levels of service at intersections; safety and bridges.

Recommendations that implement policies for Street Standards include:

#6-A (1): Roadway improvements for County facilities crossing jurisdictional boundaries shall be designed to ensure smooth transitions between urban and rural standards, or between State and County standards.

#6-A (2): The County's road standards shall address limits to the acceptable length of cul-de-sac or dead end roads and shall restrict the development of dead end roads beyond a specified length that do not have an existing or committed secondary access.

#6-A (3): The County shall require dedication of right-of-way as a condition of approval for proposed land development, where the adopted road standards demonstrate the need for a wider right-of-way and a rational nexus exists between the proposed land development and the amount of right-of-way required.

Finding: If the Planning Commission finds the use of private roads is consistent with these policies, the amendments could be approved without amendment of the TSP. Planning and Public Works staff is recommending reference to the State Fire Code and AASHTO, ODOT standards for bridges/culverts, and the Manual on Uniform Traffic Control Devices (MUTCD) for private roads, we find the inter-jurisdictional issues might be resolved by a uniform standard. Staff finds the length of cul-de-sacs and dead-end roads was not addressed in the original amendments as proposed by LDAC, and the Fire Code standard requires 'special approval'; such approval is ambiguous, as for areas not within a fire district, the source of approval is not identified. The County Engineer will not review and approve plans for private roads, but a private engineer could justify the length of the road; it is not clear for areas of the County not within a Fire District whether the State Fire Marshal will take over review of certain standards. The State Fire Code also does not dictate an interval requirement for committed secondary access at any specified length, again, leaving this determination to the local fire code official; in areas of the County not within a Fire District, the same issue arises again.

The proposed changes as contemplated by the Private Roads sub-committee are not restricted to residential use. Width, weight support, and grade are addressed; private roads would be limited to no more than 10 lots; roads serving more than 5 lots, or more than 15% in grade would require asphaltic concrete paving.

The proposed road standards represent a shift in emphasis from public streets to private roads for most land divisions in the County, which involve 10 lots or less; the private road standard would likely be chosen for most new developments, resulting in roads subject to private road maintenance agreements. This circumstance is not contemplated by the Transportation System Plan; therefore, the proposed amendments are not consistent with the TSP without adoption of a new policy to recognize private roads. If the Planning Commission wishes to approve the implementation of private road standards, amendment of the TSP policies is necessary so that policy and code are complimentary.

REVISED ORDINANCE AMENDMENTS

The Planning Commission Private Roads sub-committee proposes amendments to the Rural Land Development Code that reflect the general policy direction of the Land Development Advisory Committee, with revised language, as detailed in Exhibits A and B.

I. Expanded Use of Private Roads

The proposed amendments introduce a private road standard, which would allow privately maintained roads (other than those currently allowed in a Planned Unit Development) to provide primary access to rural residences. The proposed code refers to standards already established in the Oregon Fire Code and AASHTO as a minimum standard used in the design of roads for horizontal and vertical curves as well as load carrying capacity. Post-construction confirmation of the work by the design engineer is required by the proposed amendment.

Finding:

Substantial Increase in Lots Served by Private Roads During the last 10 years the County has approved 74 subdivisions. The average number of lots per subdivision is 7.8. Of the 74 approved subdivisions, 63 were for 10 or fewer lots (85%). Even with the (proposed) limitation of 10 lots to be served by private roads, it is likely most all future land divisions will utilize privately maintained roads.

Fire Safety Consequences Important fire safety provisions within Article 76 and OAR 660-006-0040 require adequate access for emergency services to serve forested lands. Section 76.040.B requires new public roads longer than 800' to address looped road and emergency access standards. If private easements are used this provision should also apply.* To address safety of residents and emergency personnel, staff recommends private road standard rely mainly upon the adopted State Fire Code standards for access. While turnouts were originally proposed at intervals of 800', this design standard does not guarantee congestion-free access during fires or other emergencies. This is especially true when large emergency trucks and equipment meet passenger cars and one has to back up to the nearest turnout.

Given the serious hazards inherent with wildfire, and to comply with ORS 368.039, the Planning Commission received the input of emergency service providers regarding potential impacts the proposed private road standards will have on emergency access. In discussions with the County Engineering staff, they recommend any private roads be designed to (at minimum), the State Fire Code, or in case of standards not identified in the Fire Code, the AASHTO standard for the appropriate road category, to be selected by the developer's private engineer.

(*If the Planning Commission finds the standards of Article 76 should apply to private and public roads, the language of Article 76 should be amended to reflect the inclusion of private roads.)

Private Road Networks The original proposal by LDAC did not limit the number of lots that may be served by private roads; the sub-committee agreed that a limit of 10 lots should be applied to private roads. To effectively prevent private road networks from extending beyond 10 lots, a provision is needed in the code to assess the development potential of other properties when a subject property is proposed to be divided. In some cases, where an additional lot or two might mean the difference between connecting to another access or settling for a long cul-de-sac, adding lots along a private road may be a prudent action.

Staff added language to the proposed text to address this circumstance.

Private Road Standards There is no provision for review or approval of private road plans by the County Engineer in the sub-committee's proposed amendments, but there are specific dimensional standards called out in proposed Sections 81.300D - G. These design standards set 'not to exceed' standards the staff find necessary, given the input of the County Engineer and Fire Protection services during previous public hearings.

Staff proposes to include a provision for surfacing private roads when they enter paved roads, public or private. This addresses a well-documented history of dangerous driving conditions created when gravel, dirt or mud from unpaved roads are deposited on surfaced roads. The proposed language of Article 81 includes a requirement for an engineer's statement of compliance with the standards to be submitted for Planning's file before preliminary plat approval, and an 'as-built' confirmation after construction, and prior to final plat.

The original recommendations eliminated County review and approval authority for road construction standards for private roads, and yet, referred to design standards usually reserved for the Public Works Design and Construction standards. Under the proposed provisions, the applicant's private engineer will bear the responsibility to design roads to meet the adopted State Fire Code and AASHTO standards, and prepare erosion control or drainage plans per Sections 83.040 and 83.050 of the RLDC. Erosion control and drainage issues do affect road design, and vice versa; the change to private roads as proposed would restrict the County Engineer's ability to address drainage concerns on new roads, or those raised by neighboring properties.

One of the issues created by the private road standards as originally proposed, is that design standards for engineering would be included the RLDC, not in the engineering design standards adopted by Public Works. Furthermore, Public Works and the County Engineer object to adopting design standards for which they have no long-term stake in reviewing or maintaining.

If the road isn't designed for public access, then public resources should not be used to review or maintain it.

Currently, the County maintains engineering standards within a Design and Construction Standards and Specifications manual, one that can be easily updated as road design standards are updated over time (with approval of the Board), and do not require a land use hearing as they are not considered part of the Planning Code. Since private road standards are guidelines for private engineers to follow, and Public Works is not setting a standard for roads they do not inspect or maintain, any reference in the RLDC should be to an established set of standards, not establishing engineering standards themselves.

Finally, the amendments originally proposed by LDAC mention County approvals or oversight in several places. Staff reiterates that if Private Road Standards are adopted, that no requirements for oversight by Public Works staff or the County Engineer should be included. The applicant's engineer will be responsible for ensuring a proposed private road meets the dimensional standards of the referenced code, and signing off on construction of the road once completed, and before approval of the final plat. Because the County does not build or maintain private roads, and the means of access must be established prior to land division, construction must be completed prior to final plat; the applicant cannot 'bond' for the construction of a private road. Bridge inspections, future assessment of structural-load standards and intervals of road maintenance will not be reviewed or enforced by the County. It is a good idea to require some type of agreement to lay out private responsibilities for private roads, but the public agency is not a party to the agreement. The provision and restrictions of the private road access (i.e. agreement for maintenance) must be noted on the final plat of land divisions per ORS 92.090.

Advantages of Private Roads There are some advantages to private roads, and in certain circumstances, they are the preferred alternative to public roads: in areas of limited-access that serve few lots or specialized uses, and, where streets have little potential for being part of a public road network.

The cost to the general taxpayer of maintenance and repair is foregone with private roads, such as those that provide access within industrial zones, business parks and commercial centers, manufactured home subdivisions (converted trailer parks, per 51.095 RLDC), and planned unit developments. Private roads are appropriate for 'gated communities'; and, may serve 55+ restricted-living areas better by offering stricter control of traffic in neighborhoods where walking or cycling on the road network is commonplace.

Based on feedback provided by Public Works and Fire Protection providers, we find it risky to approve private roads to serve more than 5 lots with a single lane of travel. The Private Roads sub-committee found that roads which serve more than 5 lots but less than 10 should require two-way surfaces for that *portion* serving more than 5 lots, and privately maintained roads should be generally limited to serve no more than 10 lots unless a safety issue can be addressed by the extension of a road beyond this threshold.

Summary Finding: As stated in the body of this report, there are fundamental policy changes inherent in establishing Private Road Standards. Privately-engineered and maintained roads would be constructed in place of publicly maintained roads for new land divisions, relying upon private landowner agreements instead of County road crews for the maintenance of roads and bridges. While the County has previously approved private roads for land access, it has done so within careful limits intended to avoid problems associated with extensive networks of privately maintained roads.

The recommended provisions by staff are a reflection of the discussions of the Private Roads sub-committee and the input of Public Works, the County Engineer and emergency service providers during previous public hearings.

The proposed amendments do not involve an exception to statewide planning goals and do not primarily involve farm or forest lands. Per Article 46, the Planning Commission decision to approve any code amendment is to be forwarded to the Board with a recommended ordinance.

RECOMMENDATION

Staff recommends the Planning Commission consider the applicable goals and policies of the Statewide Planning Goals, the Josephine County Comprehensive Plan, and other components of the Rural Land Development Code in assessing the role of private roads in the County transportation network. The attached Exhibit A contains proposed text amendments for the Commission to consider, revised from that of the original standards proposed by the Land Development Advisory Committee. Staff notes the amendments now proposed are based upon the participation of the Private Road Standards Sub-Committee, Public Works staff, and emergency service providers, as provided in workshops and public hearings.

Staff further advise the Commission to adopt as an amendment to the Transportation System Plan the following to existing language of Chapter 3 regarding private roads:

Privately Maintained Roads

Private roads in Josephine County are generally unimproved cul-de-sacs serving low-density rural residential development or facilities in mobile home parks. Private roads are not included in the street system inventory on Appendix A of TSP Technical Memorandum#2 that focuses on County-maintained facilities.

New private roads established to serve commercial, industrial or residential uses in the County will not be maintained by the County, and must be designed and constructed to the standards of the State Fire Code and/or the applicable AASHTO design standard as deemed appropriate at the time of land division or land use approval.

EXHIBITS

- A - Proposed Amendments to Article 81
- B - Proposed Amendment to Article 11
- C - ORS 368.039
- D - Chapter 5, 2010 Oregon Fire Code
- E – ORS 105.170-185 Easement Owner Obligations

81.300 - PRIVATE ROADS

- A. Private roads may be established for access to lots created by subdivision or partition for a maximum of 10 lots, unless the applicant demonstrates a road serving more than 10 lots should be approved to allow connection to another road, for purposes of providing an additional access point. The applicant must demonstrate legal access to any connecting road prior to tentative plat approval.
- B. Design plans for private roads shall be made by a civil engineer registered in the State of Oregon. Prior to tentative plat approval, the engineer shall certify the road design incorporates the most recent adopted version of the Oregon Fire Code, except as follows:
1. When the Fire Code allows modification or discretion in the determination of standards by the fire code official of an established Fire District.
 2. If the property is not within a Fire District, or the Fire Code allows modification or discretion in the determination of standards, the engineer may utilize road standards published by the American Association of State Highway and Transportation Officials (AASHTO) as minimum standards, except as otherwise directed by Article 81.
 3. For bridge and other structures within the private road easement, the engineer shall use the Oregon Standard Specifications for Construction manual as adopted by the Oregon Department of Transportation (ODOT).
- C. After construction of a private road, and prior to final plat approval, the registered design engineer shall provide inspection of the work and provide a written statement that the road has been constructed in accordance with the design plans. The engineer shall also perform a load rating analysis of any bridge or structure included in the private road easement. A copy of the design plans, inspection statement and load rating analysis shall be filed with the County Planning Department for inclusion in the project file.
- D. When the road grade is less than 15%, the road may be constructed of a sub-base and leveling top course of rock that will support the loading standard as determined by the State Fire Code, or AASHTO standard where applicable. All portions of

private roads that exceed 15% in grade shall be paved with asphaltic concrete.

- E. For that portion of a private road that serves more than 5 lots or parcels, the road width shall have a minimum driving surface of 20 feet.
- F. Where a private road generally approved for less than 20 feet in width intersects a public road, the private road width shall be no less than 20 feet for a distance of 50 feet from the intersection to accommodate two lanes of travel at the intersection. The travel lanes shall then taper down to the approved standard width with a minimum 25-foot taper.
- G. Where a private road intersects a public road, the private road shall be surfaced so to match that of the public road for a distance of 25 feet from the edge of driving surface of the public road.
- H. Signage and striping on private roads shall be in compliance with the Manual on Uniform Traffic Control Devices (MUTCD).
- I. The final plat for the subdivision or partition that creates a private road shall contain covenants for a road maintenance agreement that binds the property owners of the lots or parcels that receive access from the road, subject to the provisions of ORS 105.170 to 105.185, and the following:
 - 1. If the road includes a structure (such as a culvert or bridge), the agreement shall require that the structure(s) shall be kept free of debris and sediment, and maintained at the specified loading standard of the approved design.
 - 2. The road maintenance agreement shall contain a 'waiver of remonstrance', advising the legal owners of the property in the subdivision or partition plat are waiving any and all right to remonstrate against the County for future maintenance and/or reconstruction of the private roads within or serving lots of the plat.

81.020 - ACCESS STANDARDS

- A. Every lot or parcel created by a new land division shall abut a maintained county road or street ~~for at least 25 feet,~~ an approved private street that is subject to a

maintenance agreement, or a special access road under the permit control of the Secretaries of Agriculture or the Interior* or shall abut a state highway where the Oregon Department of Transportation has issued an access permit to each lot or parcel. Lots or parcels must abut such roads for at least 25 feet. Lots or parcels that do not abut such a road or highway may be approved by the review body when the following conditions exist:

1. When a parcel of land is an isolated ownership, where not more than two lots can be developed from the original parcel or from adjoining lands, and where access is by easement which has been created prior to June 29, 1973, the existence of an easement to the property line shall be deemed to continue to the proposed parcel;
2. When a parcel of land receives access by a public usage road declared by a court of competent jurisdiction or by a non-maintained county road, ~~and where the review body finds that acceptance of such road for partitioning purposes is in the public interest,~~ any partitioning using those roads shall be conditioned upon the dedication of additional right-of-way and improvement as required by the review body to meet access standards as required in Article 76 of this code. A waiver of remonstrance and an agreement to participate in future improvement of the road to county standards shall be required for any division off public usage or non-maintained county roads.
3. Divisions utilizing BLM or Forest Service roads shall require that approval for access be obtained from the Secretary of the Interior or Secretary of Agriculture or their representative.*

- B. No partitioning or subdivision of land shall be authorized using any special purpose roads, including ways of necessity, ~~special access roads under the permit control of the Secretaries of Agriculture or the Interior,~~ private timber access roads, or other roads in which the rights of the public for access may be restricted.

* - Access to BLM and Forest Service access roads was previously heard by the Planning Commission, and recommendation forwarded to the Board of Commissioner, who have not decided upon this aspect of text amendment. It is included here to be consistent with the prior recommendation.

11.030 - TERMS DEFINED

ROAD, PRIVATE - A road owned and maintained by a private individual(s), organization, or company.

368.039 Road standards adopted by local government supersede standards in fire codes; consultation with fire agencies.

(1) When the governing body of a county or city adopts specifications and standards, including standards for width, for roads and streets under the jurisdiction of the governing body, such specifications and standards shall supersede and prevail over any specifications and standards for roads and streets that are set forth in a uniform fire code adopted by the State Fire Marshal, a municipal fire department or a county firefighting agency.

(2) This section applies to specifications and standards for roads and streets adopted by the governing body of a county or city in a charter, acknowledged comprehensive plan or ordinance adopted pursuant to ORS chapter 92, 203, 221 or 368.

(3) Before adopting or amending any comprehensive plan, land use regulation or ordinance that establishes specifications and standards for roads and streets, a governing body of a county or city shall consult with the municipal fire department or other local firefighting agency concerning the proposed specifications and standards. The county or city governing body shall consider the needs of the fire department or firefighting agency when adopting the final specifications and standards. [1997 c.409 §1]

CHAPTER 5

FIRE SERVICE FEATURES

SECTION 501 GENERAL

501.1 Scope. Fire service features for buildings, structures and premises shall comply with this chapter. See also ORS 92.044, 203, 221, 195.065, 368.039, 478.920 and OAR 918-480-0100.

ORS Chapters 92.044, 203, 221, 368.039, 195.065 and 478.920 and OAR Chapter 918 are not a part of this code but are reproduced or paraphrased here for the reader's convenience.

ORS 92.044 is the adoption of standards and procedures governing approval of plats and plans; delegation to planning commission; fees.

ORS 203 is the county bodies; county home rule.

ORS 221 is the organization and government of cities.

ORS 368.039 allows road standards adopted by local government to supercede standards in fire codes and requires consultation with local fire agency.

ORS 195.065 requires local governments and special districts that provide urban service to enter into urban service agreements. For the purpose of this statute, "urban service" means: sanitary sewers, water, fire protection, parks, open space, recreation and streets, roads and mass transit.

ORS 478.920 describes elements that may be included in the scope of a fire prevention code adopted by a rural fire protection district, including but not limited to: mobile fire apparatus means of approach to buildings and structures, and providing fire-fighting water supplies and fire detection and suppression apparatus adequate for the protection of buildings and structures.

OAR 918-480-0100 describes the procedure for approving the installation of automatic fire sprinklers where fire apparatus access or fire-fighting water supply do not meet local standards.

ORS 479.200 regulates water supply requirements for certain public buildings erected after July 1, 1967, as defined in ORS 479.010(1)(1).

501.2 Permits. A permit shall be required as set forth in Sections 105.6 and 105.7.

501.3 Construction documents. *Construction documents* for proposed fire apparatus access, location of *fire lanes*, security gates across fire apparatus access and *construction documents* and hydraulic calculations for fire hydrant systems shall be submitted to the fire department for review and approval prior to construction.

501.4 Timing of installation. When fire apparatus access roads or a water supply for fire protection is required to be installed, such protection shall be installed and made serviceable prior to and during the time of construction except when

approved alternative methods of protection are provided. Temporary street signs shall be installed at each street intersection when construction of new roadways allows passage by vehicles in accordance with Section 505.2.

SECTION 502 DEFINITIONS

502.1 Definitions. The following words and terms shall, for the purposes of this chapter and as used elsewhere in this code, have the meanings shown herein.

FIRE APPARATUS ACCESS ROAD. A road that provides fire apparatus access from a fire station to a facility, building or portion thereof. This is a general term inclusive of all other terms such as *fire lane*, public street, private street, parking lot lane and access roadway.

Note: Specifications and standards for public streets are regulated by county or city governing bodies in accordance with ORS 368.039 wherein input from the fire service is required during planning for community development projects.

FIRE COMMAND CENTER. The principal attended or unattended location where the status of the detection, alarm communications and control systems is displayed, and from which the system(s) can be manually controlled.

FIRE DEPARTMENT MASTER KEY. A limited issue key of special or controlled design to be carried by fire department officials in command which will open key boxes on specified properties.

FIRE LANE. A road or other passageway developed to allow the passage of fire apparatus. A fire lane is not necessarily intended for vehicular traffic other than fire apparatus.

KEY BOX. A secure device with a lock operable only by a fire department master key, and containing building entry keys and other keys that may be required for access in an emergency.

SECTION 503 FIRE APPARATUS ACCESS ROADS

503.1 Where required. Fire apparatus access roads shall be provided and maintained in accordance with Sections 503.1.1 through 503.1.3. See Appendix D.

503.1.1 Buildings and facilities. *Approved* fire apparatus access roads shall be provided for every facility, building or portion of a building hereafter constructed or moved into or within the jurisdiction. The fire apparatus access road shall comply with the requirements of this section and shall extend to within 150 feet (45 720 mm) of all portions of the facility and all portions of the exterior walls of the first story

of the building as measured by an *approved* route around the exterior of the building or facility.

Exception: The *fire code official* is authorized to modify Sections 503.1 and 503.2 where any of the following applies:

1. The building is equipped throughout with an *approved automatic sprinkler system* installed in accordance with Section 903.3.1.1, 903.3.1.2 or 903.3.1.3.
2. Fire apparatus access roads cannot be installed because of location on property, topography, waterways, nonnegotiable grades or other similar conditions, and an *approved* alternative means of fire protection is provided.
3. There are not more than two Group R-3 or Group U occupancies.

503.1.2 Additional access. The *fire code official* is authorized to require more than one fire apparatus access road based on the potential for impairment of a single road by vehicle congestion, condition of terrain, climatic conditions or other factors that could limit access.

503.1.3 High-piled storage. Fire department vehicle access to buildings used for *high-piled combustible storage* shall comply with the applicable provisions of Chapter 23.

503.2 Specifications. Fire apparatus access roads shall be installed and arranged in accordance with Sections 503.2.1 through 503.2.8.

503.2.1 Dimensions. Fire apparatus access roads shall have an unobstructed width of not less than 20 feet (6096 mm), exclusive of shoulders, except for *approved* security gates in accordance with Section 503.6, and an unobstructed vertical clearance of not less than 13 feet 6 inches (4115 mm).

503.2.2 Authority. The *fire code official* shall have the authority to modify the dimension specified in Section 503.2.1.

503.2.3 Surface. Fire apparatus access roads shall be designed and maintained to support the imposed loads of fire apparatus and shall be surfaced so as to provide all-weather driving capabilities.

503.2.4 Turning radius. The required turning radius of a fire apparatus access road shall be determined by the *fire code official*.

503.2.5 Dead ends. Dead-end fire apparatus access roads in excess of 150 feet (45 720 mm) in length shall be provided with an *approved* area for turning around fire apparatus.

503.2.6 Bridges and elevated surfaces. Where a bridge or an elevated surface is part of a fire apparatus access road, the bridge shall be constructed and maintained in accordance with AASHTO HB-17. Bridges and elevated surfaces shall be designed for a live load sufficient to carry the imposed loads of fire apparatus. Vehicle load limits shall be posted at both entrances to bridges when required by the *fire code official*. Where elevated surfaces designed for emergency vehicle use are adjacent to surfaces which are not designed for such use, *approved* barriers, *approved* signs or both shall be

installed and maintained when required by the *fire code official*.

503.2.7 Grade. The grade of the fire apparatus access road shall be within the limits established by the *fire code official* based on the fire department's apparatus.

503.2.8 Angles of approach and departure. The angles of approach and departure for fire apparatus access roads shall be within the limits established by the *fire code official* based on the fire department's apparatus.

503.3 Marking. Where required by the *fire code official*, *approved* signs or other *approved* notices or markings that include the words NO PARKING—FIRE LANE shall be provided for fire apparatus access roads to identify such roads or prohibit the obstruction thereof. The means by which *fire lanes* are designated shall be maintained in a clean and legible condition at all times and be replaced or repaired when necessary to provide adequate visibility.

503.4 Obstruction of fire apparatus access roads. Fire apparatus access roads shall not be obstructed in any manner, including the parking of vehicles. The minimum widths and clearances established in Section 503.2.1 shall be maintained at all times.

503.5 Required gates or barricades. The *fire code official* is authorized to require the installation and maintenance of gates or other *approved* barricades across fire apparatus access roads, trails or other accessways, not including public streets, alleys or highways. Electric gate operators, where provided, shall be *listed* in accordance with UL 325. Gates intended for automatic operation shall be designed, constructed and installed to comply with the requirements of ASTM F 2200.

503.5.1 Secured gates and barricades. When required, gates and barricades shall be secured in an *approved* manner. Roads, trails and other accessways that have been closed and obstructed in the manner prescribed by Section 503.5 shall not be trespassed on or used unless authorized by the *owner* and the *fire code official*.

Exception: The restriction on use shall not apply to public officers acting within the scope of duty.

503.6 Security gates. The installation of security gates across a fire apparatus access road shall be *approved* by the fire chief. Where security gates are installed, they shall have an *approved* means of emergency operation. The security gates and the emergency operation shall be maintained operational at all times. Electric gate operators, where provided, shall be *listed* in accordance with UL 325. Gates intended for automatic operation shall be designed, constructed and installed to comply with the requirements of ASTM F 2200.

SECTION 504 ACCESS TO BUILDING OPENINGS AND ROOFS

504.1 Required access. Exterior doors and openings required by this code or the *International Building Code* shall be maintained readily accessible for emergency access by the fire department. An *approved* access walkway leading from fire apparatus access roads to exterior openings shall be provided when required by the *fire code official*.

APPENDIX D

FIRE APPARATUS ACCESS ROADS

The provisions contained in this appendix are adopted by the State of Oregon.

SECTION D101 GENERAL

D101.1 Scope. Fire apparatus access roads shall be in accordance with this appendix and all other applicable requirements of the *International Fire Code*. The fire code official may be guided by the Oregon Department of Land Conservation and Development's Neighborhood Street Design Guidelines, June 2001.

SECTION D102 REQUIRED ACCESS

D102.1 Access and loading. Facilities, buildings or portions of buildings hereafter constructed shall be accessible to fire department apparatus by way of an *approved* fire apparatus access road with an asphalt, concrete or other *approved* driving surface capable of supporting the imposed load of fire apparatus weighing at least 60,000 pounds (27 240 kg).

Exception: The minimum weight specified in Section D102.1 may be increased by the fire code official based upon the actual weight of fire apparatus vehicles serving the jurisdiction that provides structural fire protection services to the location including fire apparatus vehicles that respond under automatic and mutual aid agreements.

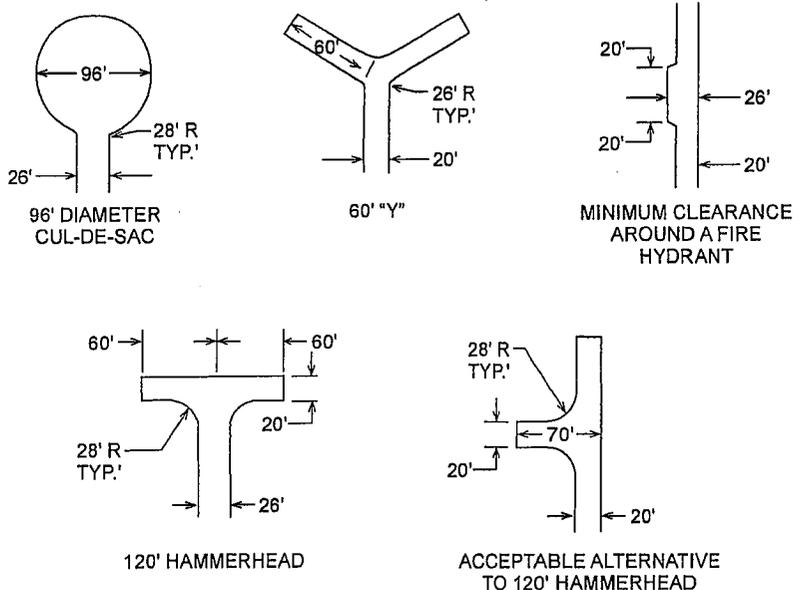
D102.1.1 Access in wildland-urban interface areas. For egress and access concerns in wildland-urban interface locations, the fire code official may be guided by the *International Wildland-Urban Interface Code*.

SECTION D103 MINIMUM SPECIFICATIONS

D103.1 Access road width with a hydrant. Where a fire hydrant is located on a fire apparatus access road, the minimum road width shall be 26 feet (7925 mm), exclusive of shoulders (see Figure D103.1).

Exceptions: The fire code official is authorized to modify the provisions of Section D103.1 when:

1. In accordance with OAR 918-480-0100, all buildings are completely protected with an approved automatic fire sprinkler system;
2. Provisions are made for the emergency use of sidewalks by such means as rolled or mountable curbs capable of supporting the fire department's apparatus;
3. Streets or roadways are identified for one-way circulating flow of traffic or pullouts are provided every 150 feet (45 720 mm) on streets or roadways identified for two-way traffic; or
4. A grid system for traffic flow is provided and streets or roadways in the grid do not exceed 300 feet (91 400 mm) in length but are accessible at each end from approved access roadways or streets.



For SI: 1 foot = 304.8 mm.

**FIGURE D103.1
DEAD-END FIRE APPARATUS ACCESS ROAD TURNAROUND**

D103.2 Grade. Fire apparatus access roads shall not exceed 10 percent in grade.

Exception: Grades steeper than 10 percent as *approved* by the fire chief.

D103.3 Turning radius. The minimum turning radius shall be determined by the *fire code official*.

D103.3.2 Drainage. When subject to run-off damage, the fire code official is authorized to require approved drainage.

D103.4 Dead ends. Dead-end fire apparatus access roads in excess of 150 feet (45 720 mm) shall be provided with width and turnaround provisions in accordance with Table D103.4.

TABLE D103.4
REQUIREMENTS FOR DEAD-END FIRE APPARATUS ACCESS ROADS

LENGTH (feet)	WIDTH (feet)	TURNAROUNDS REQUIRED
0-150	20	None required
151-500	20	120-foot Hammerhead, 60-foot "Y" or 96-foot-diameter cul-de-sac in accordance with Figure D103.1
501-750	26	120-foot Hammerhead, 60-foot "Y" or 96-foot-diameter cul-de-sac in accordance with Figure D103.1
Over 750		Special approval required

For SI: 1 foot = 304.8 mm.

D103.5 Fire apparatus access road gates. Gates securing the fire apparatus access roads shall comply with all of the following criteria:

1. The minimum gate width shall be 20 feet (6096 mm).
2. Gates shall be of the swinging or sliding type.
3. Construction of gates shall be of materials that allow manual operation by one *person*.
4. Gate components shall be maintained in an operative condition at all times and replaced or repaired when defective.
5. Electric gates shall be equipped with a means of opening the gate by fire department personnel for emergency access. Emergency opening devices shall be *approved* by the *fire code official*.
6. Manual opening gates shall not be locked with a padlock or chain and padlock unless they are capable of being opened by means of forcible entry tools or when a key box containing the key(s) to the lock is installed at the gate location.
7. Locking device specifications shall be submitted for approval by the *fire code official*.
8. Electric gate operators, where provided, shall be *listed* in accordance with UL 325.
9. Gates intended for automatic operation shall be designed, constructed and installed to comply with the requirements of ASTM F 2200.

D103.6 Signs. Where required by the *fire code official*, fire apparatus access roads shall be marked with permanent NO PARKING—FIRE LANE signs complying with Figure D103.6. Signs shall have a minimum dimension of 12 inches (305 mm) wide by 18 inches (457 mm) high and have red letters on a white reflective background. Signs shall be posted on one or both sides of the fire apparatus road as required by Section D103.6.1 or D103.6.2.

D103.6.1 Roads 20 to 26 feet in width. Fire apparatus access roads 20 to 26 feet wide (6096 to 7925 mm) shall be posted on both sides as a *fire lane*.

D103.6.2 Roads more than 26 feet in width. Fire apparatus access roads more than 26 feet wide (7925 mm) to 32 feet wide (9754 mm) shall be posted on one side of the road as a *fire lane*.

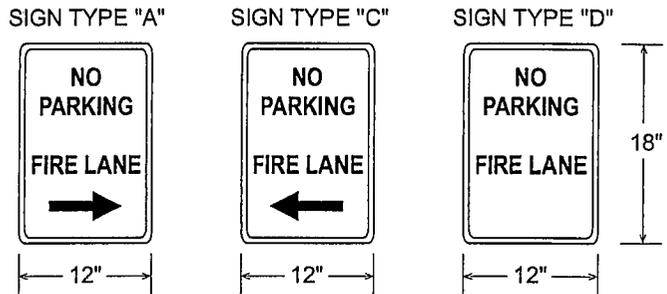


FIGURE D103.6
FIRE LANE SIGNS

SECTION D104
COMMERCIAL AND INDUSTRIAL DEVELOPMENTS

D104.1 Buildings exceeding three stories or 30 feet in height. Buildings or facilities exceeding 30 feet (9144 mm) or three stories in height shall have at least two means of fire apparatus access for each structure.

D104.2 Buildings exceeding 62,000 square feet in area. Buildings or facilities having a gross *building area* of more than 62,000 square feet (5760 m²) shall be provided with two separate and *approved* fire apparatus access roads.

Exception: Projects having a gross *building area* of up to 124,000 square feet (11 520 m²) that have a single *approved* fire apparatus access road when all buildings are equipped throughout with *approved automatic sprinkler systems*.

D104.3 Remoteness. Where two access roads are required, they shall be placed a distance apart equal to not less than one half of the length of the maximum overall diagonal dimension of the property or area to be served, measured in a straight line between accesses.

SECTION D105
AERIAL FIRE APPARATUS ACCESS ROADS

D105.1 Where required. Buildings or portions of buildings or facilities exceeding 30 feet (9144 mm) in height above the low-

est level of fire department vehicle access shall be provided with *approved* fire apparatus access roads capable of accommodating fire department aerial apparatus. Overhead utility and power lines shall not be located within the aerial fire apparatus access roadway.

D105.2 Width. Aerial fire apparatus access roads shall have a minimum unobstructed width of 26 feet (7925 mm), exclusive of shoulders, in the immediate vicinity of any building or portion of building more than 30 feet (9144 mm) in height.

D105.3 Proximity to building. At least one of the required access routes meeting this condition shall be located within a minimum of 15 feet (4572 mm) and a maximum of 30 feet (9144 mm) from the building, and shall be positioned parallel to one entire side of the building.

SECTION D106

MULTIPLE-FAMILY RESIDENTIAL DEVELOPMENTS

D106.1 Projects having more than 100 dwelling units. Multiple-family residential projects having more than 100 *dwelling units* shall be equipped throughout with two separate and *approved* fire apparatus access roads.

Exception: Projects having up to 200 *dwelling units* may have a single *approved* fire apparatus access road when all buildings, including nonresidential occupancies, are equipped throughout with *approved automatic sprinkler systems* installed in accordance with Section 903.3.1.1 or 903.3.1.2.

D106.2 Projects having more than 200 dwelling units. Multiple-family residential projects having more than 200 *dwelling units* shall be provided with two separate and *approved* fire apparatus access roads regardless of whether they are equipped with an *approved automatic sprinkler system*.

SECTION D107

ONE- OR TWO-FAMILY RESIDENTIAL DEVELOPMENTS

D107.1 One- or two-family dwelling residential developments. Developments of one- or two-family *dwelling units* where the number of *dwelling units* exceeds 30 shall be provided with separate and *approved* fire apparatus access roads and shall meet the requirements of Section D104.3.

Exceptions:

1. Where there are more than 30 *dwelling units* on a single public or private fire apparatus access road and all *dwelling units* are equipped throughout with an *approved automatic sprinkler system* in accordance with Section 903.3.1.1, 903.3.1.2 or 903.3.1.3 of the *International Fire Code*, access from two directions shall not be required.
2. The number of *dwelling units* on a single fire apparatus access road shall not be increased unless fire apparatus access roads will connect with future development, as determined by the *fire code official*.

D108 REFERENCED STANDARDS

ASTM F 2200-05	Standard Specification for Automated Vehicular Gate Construction	D103.5
ICC	IFC-09 International Fire Code	D101.5, D107.1
UL	325-02 Door, Drapery, Gate, Louver, and Window Operators and Systems, with revisions through February 2006	D103.5

EASEMENT OWNER OBLIGATIONS

105.170 Definitions for ORS 105.170 to 105.185. For purposes of ORS 105.170 to 105.185:

(1) "Easement" means a nonpossessory interest in the land of another which entitles the holders of an interest in the easement to a private right of way, embodying the right to pass across another's land.

(2) "Holders of an interest in an easement" means those with a legal right to use the easement, including the owner of the land across which the easement passes if the owner of the land has the legal right to use the easement. [1989 c.660 §1; 1991 c.49 §1]

105.175 Easement to be kept in repair; sharing costs; agreements. (1) The holders of an interest in any easement shall maintain the easement in repair.

(2) The cost of maintaining the easement in repair shall be shared by each holder of an interest in the easement, pursuant to the terms of any agreement entered into by the parties for that purpose or any recorded instrument creating the easement. Any such agreement, or a memorandum thereof, shall be recorded in the real property records of the county in which the easement is located. Failure to record the agreement shall not affect the enforceability of the agreement among the parties to the agreement and any other person with actual notice of the agreement.

(3) The cost of maintaining the easement in repair in the absence of an agreement and in the absence of maintenance provisions in a recorded instrument creating the easement shall be shared by each holder of an interest in the easement in proportion to the use made of the easement by each holder of an interest in the easement.

(4) Unless inconsistent with an agreement between the holders of an interest in an easement or a recorded instrument creating the easement, in determining proportionate use and settling conflicts the following guidelines apply:

(a) The frequency of use and the size and weight of vehicles used by the respective parties are relevant factors.

(b) Unless inappropriate, based on the factors contained in paragraph (a) of this subsection or other relevant factors, costs for normal and usual maintenance of the easement and costs of repair of the easement damaged by natural disasters or other events for which all holders of an interest in the easement are blameless may be shared on the basis of percentages resulting from dividing the distance of total normal usage of all holders of an interest in the easement into the normal usage distance of each holder of an interest in the easement.

(c) Those holders of an interest in the easement that are responsible for damage to the easement because of negligence or abnormal use shall repair the damage at their sole expense. [1989 c.660 §§2,3,4; 1991 c.49 §2]

105.180 Action for failure to comply with duty of holder; recovery of costs; arbitration. (1)

If any holder of an interest in an easement fails to maintain the easement contrary to an agreement or contrary to the maintenance provisions of a recorded instrument creating the easement or, in the absence of an agreement or recorded instrument imposing maintenance obligations, fails after demand in writing to pay the holder's proportion of the cost as indicated in ORS 105.175 (3) and (4), a civil action for money damages or specific performance or contribution may be brought against that person in a court of competent jurisdiction by one or more of the other holders of an interest in the easement, either jointly or severally. In any such civil action, the court may order such equitable relief as may be just in the circumstances. Nothing in ORS 105.170 to 105.185 shall impose a maintenance obligation on the holder of an interest in an easement based on the maintenance provisions in an instrument creating the easement if such holder is not a party to such instrument, whether the instrument is recorded or not, after such holder ceases to use the easement.

(2) The prevailing party shall recover all court costs, arbitration fees and attorney fees.

(3) Any holder of an interest in the easement may apply to the court of competent jurisdiction where the easement is located and that has jurisdiction over the amount in controversy for the appointment of an impartial arbitrator to apportion the cost, and the matter may be arbitrated in accordance with ORS 36.600 to 36.740. The application may be made before, during or after performance of the maintenance work. [1989 c.660 §5; 1991 c.49 §3; 2003 c.598 §34]

105.185 Application of ORS 105.170 to 105.185. The provisions of ORS 105.170 to 105.185:

(1) Apply to all easements existing on or created after January 1, 1992; and

(2) Do not apply to rights of way held or used by providers of public services including, but not limited to, railroad common carriers, pipeline companies, public utilities, electric cooperatives, people's utility districts, water utility districts, municipally owned utilities and telecommunications utilities, when used for the sole purpose of provision of service or maintaining or repairing facilities for the provision or distribution of service. [1989 c.660 §6; 1991 c.49 §4]