

ROADS AND THE COUNTY
A MANUAL FOR OREGON COUNTY OFFICIALS

**References to Road Laws
and Descriptions of Practices and Procedures**

Originally Prepared in 1982

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in cooperation with
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Disclaimer: Although some parts of this report refer to state and federal practices and requirements, the report in no way reflects an official view or policy of the Oregon Department of Transportation and Federal Highway Administration. It does not constitute a standard, a specification or a regulation, and it is intended only as an advisory information source for Oregon county officials and other interested parties.

The organizations that developed this manual are not authorized, nor do we intend by this publication, to give legal advice. The reader should not act in reliance upon interpretations of law, upon the legal citation abstracts or upon the applicability, or inapplicability, to particular circumstances. Consult your legal counsel for that information.

Revisions: Revisions to this publication primarily adjust the information to reflect amendments to state laws. With the cooperation of the federal and Oregon transportation agencies, and others, some of the information on state and federal programs and activities is updated periodically. As with the original publication, the OACES has supported the revision program and its technical and legislative committees have served as a steering group. The 1984 and 1986 revisions were a product of the County Service Program, a joint program of the AOC and the Bureau of Governmental Research and Service, with the support of OACES. 1988 revisions were a product of the Oregon State University Transportation Research Institute (TRI) and the AOC. The revisions beginning in 1992 have been prepared by the AOC and OACES as a part of the County Road Program.

ABSTRACT

This manual describes the road laws and discusses issues and practices related to road activities. It is updated periodically to reflect legislative and other changes. It was prepared following 1979 and 1981 revisions to the Oregon laws that apply to road work by counties. Among other things, these revisions give greater recognition to the general authority of Oregon counties to manage their own affairs.

Four of the topics covered address right-of-way matters: obtaining road right-of-way (establishment); clarifying old road boundaries (legalization); discarding unneeded right-of-way (vacation); and accommodating a landlocked property (way of necessity).

Road control topics include jurisdictional classification of roads; regulating use of right-of-way; controlling hazards from adjacent properties; and traffic control management.

Procedures for conducting work on roads are addressed by discussion of contracting, force account work, and provisions for design and specifications.

More general topics include discussion of broad county authority, planning, road finance, and use of road districts. Intergovernmental relations and cooperative programs, including those with the state and federal departments of transportation, are also addressed.

FOREWARD

Imagery associated with Oregon county roads is often that of country roads—roads winding down mountains through tall Douglas firs or Ponderosa pines; stretching across sun-drenched plains with cattle grazing in the distance; or racing across a green valley floor, passing sheep, orchards and row crops. For modern county road officials, however, images of county roads range from 8-axle semi-trucks on 32-foot roads with paved curbs and gutters, to compact cars on 24-foot hard-surfaces, to pickup trucks bouncing down gravel roads.

These images reflect only a few of the diverse uses and ecological balances with which county road officials must deal. Roads under county jurisdiction are no longer restricted to distinctively rural areas. They include urbanized centers, commercial and industrial as well as agricultural and residential uses. It is the task of road officials to plan, design, construct, maintain, and improve roads to meet the changing needs of communities without having an adverse impact on the basic character of those communities.

This road manual has been prepared to help county road officials identify the various environmental, legal, technical, and procedural constraints within which road work must be accomplished. It is designed to be a working, changing document to facilitate use by busy people in a transitional society. The loose-leaf format will permit new sections to be added or modifications to be made as necessary. The road manual is also available on the AOC [County Road Program website](#).

The road manual has come into being through the cooperation of various county road principals in the state of Oregon, with coordination through the staff of the Association of Oregon Counties. It was originally compiled by the staff of the University of Oregon Bureau of Governmental Research and Service, and subject matter and much data came from the working files of the counties through activities of the Oregon Association of County Engineers and Surveyors. The Bureau also researched areas of need and drafted materials for review by people in the field. A similar procedure was followed by the Oregon State University Transportation Research Institute in the 1988 revision. Now, the revision work is being done by the Association of Oregon Counties staff as part of its program done by the Oregon Association of County Engineers and Surveyors. The manual is truly a county road officials' handbook, derived from "hand-on" experience and established with continual refinement through that same process.

Those using the manual are encouraged to add marginal notes as new or more complete information comes to their attention and to periodically transmit the notes to the Association of Oregon Counties for use in improving the manual. Very likely, something you found useful to add to your copy of the manual also will be useful for persons in other counties. In the end, returning to images, perhaps the image this manual suggests is one with which every county road official might identify—streamlining the paperwork to allow officials more time to be out on the road.

CHAPTER 1: INTRODUCTION

(This chapter was revised and updated in 2008, 2012, and 2014)

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[1.005](#) Using the Manual

CHAPTER 1: INTRODUCTION

1.000 GENERAL OVERVIEW. This overview highlights some of the topics addressed in this road manual but is not all inclusive. A more complete indication of the scope of the manual can be obtained by scanning each chapter's table of contents.

County government is responsible for a variety of public works functions. The oldest and financially the most important one is the system of roads, including bridges and road-related surface drainage facilities. Other common county-wide functions involving public works include solid waste disposal, county parks, surveying and fairgrounds. Although this is a *road* manual, a number of its parts can apply to other public works facilities. For example, capital improvement programming is a helpful tool in formulating project schedules and developing financing methods for all of a county's public facility needs. See chapter 2A.

State law grants all persons, including private and publicly owned utilities, the right to use public road right-of-way in unincorporated areas for water, gas, electrical and communication facilities. This law is the reason counties, unlike cities, do not generally license or franchise privately-owned public utilities. Counties do have the authority to regulate the manner in which public road right-of-way is used. See chapter 10. However, counties do have the authority to franchise cable television utilities. Additionally, [ORS 203.035](#) grants counties authority over matters of county concern to the fullest extent allowed by state and federal constitutions and laws.

County-Wide v. Local Facilities. The types of public works facilities and services provided by a county will vary depending on the different characteristics of the county. For example, county roads that carry heavy freight traffic must be built and maintained to higher standards than many rural roads that do not, and such facilities as sidewalks and highway lighting are not ordinarily required in non-urbanized parts of the county.

In some cases, equity to all county taxpayers requires that some county public works facilities be provided under special organizational and financial arrangements. Some counties, for example, are providing facilities to collect and treat domestic sewage in unincorporated urban areas, and some counties also provide street lighting, flood control structures, and other urban-type services. Counties undertaking provision of a special type or level of service to a local subcounty area may establish county service districts under [ORS Chapter 451](#). County service districts provide a way to localize the financing of services that benefit only specific areas, while retaining responsibility within county government. Chapter 3 discusses county service districts for serving localized areas, special assessments, system development charges, and direct subdivider responsibility, among a number of other financing options.

Roads and Related Facilities. The 26,670 miles of county roads constitute an important part of Oregon's road network and account for a significant portion of all county expenditures.

County government is responsible for maintaining only those roads that have been formally accepted as part of the county road system, and the governing body has broad discretion in the decision to accept roads into the system and to remove roads from the system. There are many miles of public roads, classified as local access roads, which are not

on the county road system. A county may regulate the use and development of these local access roads outside cities and may work with local property owners to help maintain them. However, county involvement with local access roads need not create a county obligation to maintain them. See chapters 2 and 8.

Most roads, except for those with specially acquired rights-of-way, exist because a property developer dedicated the right-of-way, usually at the time a subdivision was platted or acreage was divided. In return for the dedication, the owners of property expect a right of access and use of the right-of-way for public facilities such as power and communication lines. However, the right of access does not prevent a county from exercising some control over use of the road. See chapters 5 and 10.

In fulfilling its comprehensive plan by such means as application of subdivision regulations, a county may place some limits on the right of access when authorizing new development. A county also has authority to acquire right-of-way, including the ability to prevail in the case of an unwilling property owner by exercising its power of eminent domain. See chapter 5. The right of access could be part of the rights purchased from the land owner.

Planning for the location and development of a road system must take into account the multiple purposes served by the right-of-way. While there are a number of road types, roads can be divided into three levels of service: arterials, which are mainly for through traffic; collectors, which connect internal traffic movements to arterials; and local roads, which serve traffic to and from adjacent properties.

Development of a county road system is an integral part of the comprehensive planning process, and guidelines for transportation planning and implementation are described in [Goal 12 \(Transportation\)](#) of the state's Land Conservation and Development Commission and their administrative rules OAR 660-012-0000 to 660-012-0070. These are supplemented by Oregon Department of Transportation planning requirements established in part to meet the requirements of the 23 U.S.C. 134 and 135 on Metropolitan and Statewide Planning. See chapter 2A.

County road construction is often aided by funds from other governmental units. The most significant are state administered federal and state funds which are used along with county funds to finance some county road projects. In 31 of Oregon's 36 counties, National Forest shared revenues have been an important road revenue source. See chapters 3 and 11.

On some matters, such as traffic control devices, there may be a state-county sharing agreement when a state highway and county road intersect. The standards for traffic control devices are set by the state and are consistent with national standards. In most cases, traffic speeds are set by the state, but a county may seek adjustment of a posted speed through the state Traffic Management Section. A county may request authority to establish speed zones for low volume roads and unpaved roads pursuant to specific delegated authority from the Oregon Department of Transportation. See chapter 14.

If a street inside a city is on the county road system, it remains a county responsibility unless the city formally agrees to its removal from the county road system. Since rural roads often were not built to fit urban needs, the condition of the road sometimes influences the agreement under which a city accepts responsibility for what has been a county road. Also, a county may take over responsibility for what was a city street. See chapter 8.

[ORS Chapter 368](#) contains a special grant of authority consistent with the county ordinance authority granted counties under [ORS 203.035](#). ORS 368.011 and 368.016 establish that a county ordinance can replace or supplement most statutory provisions in ORS Chapter 368. See chapter 2.

1.005 USING THE MANUAL. During the 1979 and 1981 legislative sessions, the state laws that apply to many county procedures on road matters were overhauled. County officials since then have had more options from which to choose in determining how to exercise road responsibilities. This should be helpful in view of the fiscal and programming needs of the county road system and the need to give more attention to public roads that are not on the county road system (local access roads). Even private roads need some attention from county officials.

Various revisions in the laws have occurred since 1981 and revision pages were issued periodically to reflect these changes and otherwise update the materials. Revision pages were identifiable by a year notation at the bottom of the page. However, with the 2007-08 revision and update the revision-year notations have been dropped due to the complete review and revision of the publication. The revision-year notations are now noted at the beginning of each chapter. **To help highlight revisions in previous updates, new materials for the latest revision are shaded to assist the user in identifying the latest revisions to the manual. In the case of text that has had major rewriting; the entire rewrite is shaded even though some of the material is not new. In cases where it is considered particularly helpful in clarifying a change, prior wording that has been deleted is shown with a line through it. The shading and deleted material shown in the updated version will be removed before the next revision is produced.**

The Road Manual, as this publication is commonly called, describes the nature of the state law, the scope of county options, and some interpretations and examples of procedures. The manual is divided into sixteen chapters. Each chapter has a table of contents, which will be amended as necessary. The chapter table of contents supplements the content table found at the beginning of the manual, which only provides a general description of each chapter. With the 2007-08 revision, the publication has become a web-based document available for viewing at the Association of Oregon Counties, [County Road Program website](#). The [online version of the manual](#) will be updated continuously, however the print version will only be updated in annual iterations.

With the original publication of the Road Manual, section numbers were assigned, instead of page numbers, so that new and replacement material could be easily inserted as the manual is updated. With the word processing capabilities we have today, page numbering has been added to replace the section referencing at the top of each page. However, section numbers have been retained with hyperlinks in each chapter's Table of Contents to the referenced sections as well as hyperlinked references between sections.

A statutory index is found in Chapter 15. It lists, in numerical order, the statutes that are mentioned in the manual. To the right of each statute number are the manual section numbers that contain material regarding the statute. If the ORS section number is underlined, it has a hyperlink in the manual to the complete text of the ORS chapter in which the section is found. Previously, the Road Manual incorporated specific statute links which were saved from each ORS chapter. To ensure accuracy, all of those statute links have been modified to instead link to the relevant ORS chapter of the official Oregon Legislative Website's ORS

files. The underlined manual section number is the manual section containing the hyperlink.

In the explanatory sections of the Road Manual, many references are made to other materials such as the Oregon Revised Statutes (ORS), or the chapters and/or sections of the manual. Where only a reference to a chapter or section is made (e.g.: chapter 14 or section 10.120) that reference is made to the Road Manual. Other references include the source.

Every effort is made to keep the material in the manual up-to-date. It should be noted, however, that the Special References and the Legal Citation Abstracts may not be current or include the most recent information. All the same, an effort has been made with the 2014 revision to review all text and references to provide the most recent information available.

Chapter Organization. With exceptions, each chapter of the Road Manual is organized in the same pattern. The beginning sections of most chapters have the following structure.

____.000	Introductory material
____.015	Special references listed in a bibliography
____.100	State statutes summary
____.110	Hyperlinks to the ORS chapter containing the text of the statute
____.120	Legal citation abstracts

If additional statutes warrant separate grouping, another series of sections is used as follows:

____.200	Statutory summary
____.210	Statutes
____.220	Citations

The last half of the number system in each chapter is used for further development of specific topics. Various materials are included, depending on their significance. The general structure for the latter section numbering is as follows:

____.500	Analysis and explanation of topics
____.600	Reserved
____.700	Reference documents
____.800	Sample county ordinance provisions

No attempt has been made to comply strictly with this pattern. For example, reference documents or sample ordinance provisions may be more appropriately located with discussion of topic in the _____.500 number series, or discussion may be more appropriate within the _____.700 or _____.800 series.

Legal Citation Abstracts. These abstracts come from the law of the land as expressed in the federal or state Supreme Court case decisions and compiled in the National Reporter System. An example of a citation can be found in section 2.120: "Clary v. Polk Co., 231 Or 148, 372 P.2d 524 (1962)". The underlined portion of this citation contains the names of the parties involved in the court case. The following numbers indicate that the case can be found starting on page 148 in volume 231 of the Oregon Reporter or on page 524 in volume 372 of the Pacific Reporter, second series, and that it was decided in 1962. The decision of the court was that the county could only be held liable for a road related injury if

it could be proven that there existed a dangerous condition in the county road.

In the absence of a Supreme Court decision, reference may be made to Court of Appeals decisions (e.g.: 51 Or. App 605 (1981)). If no court case exists on a point at law, an opinion of the Attorney General on the point might be cited (e.g.: 34 Or. Att'y Gen. Op. 868 (1969)). The Supreme Court is a higher authority than the Court of Appeals. Attorney General opinions are not binding.

The legal citation abstracts provide generalized information on the referenced decisions or opinions. In dealing with specific legal matters the reader should consult with their county counsel who can research the original sources of authority.

Field Review Invited. Continued field review of the Road Manual is an important step in improving and maintaining the manual. Officials of each county should feel free to review the materials, offer suggestions, and raise questions. The OACES members and County Road Program staff have a continuing role in helping to identify topics that warrant analysis and discussion. If you have a suggestion, feel free to contact the County Road Program or raise the issue at an OACES monthly meeting so that the next generation of manual material will be superior to the material in this current version.

CHAPTER 2: COUNTY AUTHORITY

(This chapter was revised and updated in 2008, 2010, 2012 and 2014)

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CHAPTER 2: COUNTY AUTHORITY

2.000 COUNTY GENERAL POWERS. Legal authority to construct, operate and maintain county roads derives from a combination of state statutes and the general powers of county governments. State statutes of both mandatory and permissive effect are identified throughout this manual. This section presents a brief summary of the general powers of Oregon counties, and sections 2.100 and 2.130 explain the relations between general county powers and state statutory authority.

Legal Status of the County. The U.S. constitution makes no reference to local government of any type, so the powers reserved to the states under the 10th amendment include the power to create, abolish, define the powers and otherwise provide for any system of local government. All states have created local governments, and have granted them significant local discretionary powers to set local policies and manage their local affairs.

The term "home rule" refers generally to the extent to which a county or other local government may determine its own form of organization, functions, financial structure, and administrative systems. In Oregon, counties have home rule of two kinds--statutory and constitutional. Statutory home rule consists of powers delegated by the state legislature, which may be retracted or modified at any time by subsequent state legislation. Constitutional home rule consists of powers reserved directly to the people by the state constitution (Article VI, section 10) and vested in county government by adoption of a county charter. Constitutional or charter home rule powers may be retracted or modified only by charter or constitutional amendment. By the end of 1992, county charters had been adopted by the voters of nine Oregon counties—Lane (1962), Washington (1962), Hood River (1964), Multnomah (1966), Benton (1972), Jackson (1978), Josephine (1980), Clatsop (1988) and Umatilla (1992).

Statutory Home Rule. As mentioned above, many sections of Oregon statutes affect the way counties construct, operate and maintain county roads, and this manual makes an effort to identify those sections that are most relevant. The statute that conveys the broadest local discretion to counties is [ORS 203.035](#), which says that any county "may by ordinance exercise authority within the county over matters of county concern." Originally adopted in 1973, this statute was intended to delegate to all counties local legislative powers previously enjoyed only by charter counties. Enactment of this statute laid the foundation for the 1981 general revision of county road laws that recognized the greater flexibility and local control counties now have over their road systems.

Constitutional Home Rule. The scope of a charter county's home rule powers depends in part on the wording of its charter. All nine Oregon charter counties have adopted, in one form or another, the "general grant of power," which permits the county to take whatever actions it *could* be allowed to take under the federal and state constitutions and laws. The general grant of powers allows maximum discretion for counties to decide for themselves, without further recourse to the state legislature, matters relating to their organization, powers, functions and finances.

An important caveat: as a practical matter, the scope of a county's home rule powers (whether statutory or constitutional) also depends in part on the way the courts interpret them. Legal interpretation of a county's home rule powers usually occurs when there is a conflict

between a local enactment or action and some provision of state law. Under those circumstances, the Oregon Supreme Court ruled in 1978 that a general state law imposing "substantive social, economic, or other" regulations prevails over a conflicting local enactment, but if the state law deals only with the "structure and procedures of local agencies," the local enactment prevails over the state law. The court attached some important qualifications to this test, and attorneys have experienced great difficulty in trying to figure out exactly what it means (see Etter, *Municipal Home Rule in Oregon*, cited in section 2.015 below). Another complication as it relates to county roads is that the 1978 case interpreted the municipal home rule provisions of the state constitution (not the county home rule provisions), but legal authorities have generally regarded it as an authoritative guide to the interpretation of county home rule powers as well.

Difference between Statutory and Constitutional Home Rule Powers. The major difference between the powers of charter counties and those of general law (non-charter) counties is that charter home rule allows a county to change significant features of the county's organization structure (including converting certain county offices from elective to appointive status), while general law counties have very limited powers in that respect. For most purposes related to county road administration there is little or no difference between charter and general law counties. However, as noted above, the powers delegated by [ORS 203.035](#) may be retracted or modified by the state legislature at any time, whereas the home rule powers reserved to the people by Article VI section 10 of the state constitution and vested in counties by a county charter can be retracted or modified only by amending either the state constitution or the county charter, which of course requires a vote of the people.

2.015 SPECIAL REFERENCES. The following are sources of information outside this manual that are particularly relevant to sections of this chapter, as noted.

Section 2.000

U.S. Advisory Commission on Intergovernmental Relations, [*Measuring Local Discretionary Authority*](#) (Washington DC., November 1981)

Association of Oregon Counties, [*Oregon County Government, County Home Rule Papers*](#) (Salem, 2005)

Association of Oregon Counties, [*The Case for Local Self-Government and The Role of Oregon Counties*](#), (Salem, 1996)

Bureau of Governmental Research and Service, University of Oregon, *Model County Charter* (Eugene, 1977). The Bureau's *Model County Charter* is out of print but may be available in public libraries.

Duncombe, Herbert S., *Modern County Government* (Washington DC., National Association of Counties, 1977)

Etter, Orval, "County Home Rule in Oregon Reaches Majority," 61 *Oregon Law Review* 3, (1981)

Etter, Orval, *Municipal Home Rule in Oregon* (Eugene, University of Oregon School of Law,

1991)

Koehler, Cortus T., *A Practitioner's Guide to Information Sources and the Literature on County Government* (Sacramento, County Supervisors Association of California)

Martin, Lawrence L., *American County Government: An Historical Perspective*, in David R. Berman, [County Government in an Era of Change](#), (Westport, CT, Greenwood Press, 1993)

Tollenaar, Ken, [A Brief History of Oregon County Government](#), (Salem, Association of Oregon Counties, 2006)

Oregon Law Institute, *Oregon Local Government Law* (Portland, Oregon Law Institute, 1991), Chapter 3: "County Structure--Powers and Limitations."

Section 2.100

Association of Oregon Counties, "[Road Width Laws from the 1840's Onward](#)" (1979)

Section 2.200

National Association of County Engineers, [Action Guide Series](#), Volume II-1, "Comprehensive County Planning," Volume II-2, "Road Programming," Volume II-3, "Impact of Land Development on County and Local Transportation System Planning," and Volume II-4, "Rural Transportation Planning."

Section 2.520

National Association of County Engineers, [Action Guide Series](#), Volume I-7, "Tort Liability." (1992)

Oregon Law Institute, [Oregon Government Law](#), Ch. 9, "Oregon Tort Claims and Risk Management" (1991)

Oregon Law Institute, [Oregon Government Law 2004](#), *New Chapters in Public Law*, Ch. 1, "The Tort Liability of Government" (2004)

Takallou, Mojie, [Safety Handbook for Oregon's Local Roads and Streets](#), (Portland, University of Portland, 2010)

2.100 ROAD AUTHORITY GENERALLY. The broad scope of county authority is refined as it applies to roads by various statutes, primarily those contained in [ORS Chapter 368](#). ORS 368.011 and 368.016 establish that a county ordinance can replace or supplement most statutory procedures for road authority both on and off the county road system. The definitions in ORS 368.001, the distinctive status of local access roads under ORS 368.031, and the general description of the duties of county road officials in ORS 368.046 round out the picture of broad county authority in the road field. Although it does not deal with roads, ORS 368.021 regarding trails is a related statute which further describes the broad authority available to the county. County jurisdiction as it relates to various classes

of roads both inside and outside cities including jurisdictional transfers is discussed in more detail in chapter 8 (see sections 8.100 and 8.525) . The county’s control of access to the right-of-way and the use of public rights-of-way are similarly covered in detail in chapter 10 (see section 10.200 for utilities’ use; sections 10.000, 10.200, 10.510 and 10.520 for control of access; and section 10.525 for county ordinance authority on the use of rights-of-way.)

Furthermore, [ORS 373.110 to 373.130](#) provides that a county may provide a connecting road in a city as a county road when it is necessary to connect an existing county road with an existing state highway or, in a city of less than 2,500 population, to connect county roads. The procedure for establishment of a connecting road is as provided by law for establishment of county roads, including the power of eminent domain.

When a county constructs a bridge that is at least partially within a city, the county may also use any necessary city streets as an approach for the bridge. Approach portions of the streets are exclusively under county jurisdiction.

Although consent of the city is not required for the county to do these things, coordinated and mutual planning agreements foster smooth project implementation. See chapter 13 for a description of responsibility in cases involving a change in street grade due to a county road project.

Within counties home rule charter authority and under ORS 203.035 and 368.016, the road naming and addressing system can be established by a county’s ordinance. For more information see chapter 2A (section 130).

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- 368.016 County authority over roads; limitations**
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- 810.180 Designation of maximum speeds; rules**

2.120 CITATIONS ON ROAD AUTHORITY

35 Or. Att'y Gen. Op. 1230 (1972): [ORS Chapter 92](#) (ORS 92.090) draws no distinction between charter and non-charter counties. Therefore, a non-charter county may prescribe the same standards for a private road within its jurisdiction as are set for public roads bearing in mind the intended use and the degree to which the road will otherwise affect public safety and welfare.

34 Or. Att'y Gen. Op. 907 (1969): The county court is obligated to prevent obstruction of an open, dedicated public road, even though not expressly accepted as a county road, because of the county's authority over public highways within its jurisdiction. (Citing

to ORS 368.551 now repealed. However, county jurisdiction has been preserved in [ORS 368.016](#) and 368.031.)

34 Or. Att'y Gen. Op. 868 (1969): When public use and county maintenance of a road have continued for more than 10 years, the road can be considered part of the county road system. Such acts of the county as long, continued maintenance of and the exercise of authority over a road can constitute acceptance of the road without the formal adoption of a resolution. (Citing ORS 368.405, 368.546 and 368.551, now repealed. However, the opinion seems relevant in considering the application of ORS 368.016(3), particularly to factual conditions prior to 1981.)

31 Or. Att'y Gen. Op. 85 (1962): A county road official need not be a professional engineer unless called upon to do engineering work, in which case the county may engage an engineer from the state highway division to do engineering work.

2.130 COUNTY MODIFICATION OF STATUTORY PROCEDURES. In drafting the road laws a special effort was made to distinguish enabling legislation, which supplements county general powers, from preemptive legislation, which limits county powers. This is accomplished primarily by ORS 368.011, which expressly authorizes a county to enact ordinances to supersede any of the sections of ORS Chapter 368 except for the sections listed as not subject to being superseded. A county ordinance for this purpose could completely replace one or a group of statutes, or the ordinance could retain the statutes and serve as a supplement.

Illustrations are found elsewhere in this manual. See section 2.330 for an example of an ordinance to replace statutory notice provisions; see section 6.800 for an example of an ordinance to supplement statutory legalization provisions.

2.300 PRINCIPLES OF NOTICE. ORS 368.401 to 368.426 establish notice procedures which provide constitutional protections to those who may be subjected to a taking of property as a result of county road activities. The courts insist upon a good faith effort on the part of a public agency to notify property owners if there is a potential issue involving property rights. The parties are thus afforded an opportunity to file objections to any impending action involving a public hearing.

The following uniform notice procedures are for use in a county action related to roads that require notice. It need not be limited to actions that could cause a taking of property. The procedures could be applicable in numerous instances, including the following covered in this manual:

- Assessing the cost of road work, chapter 3.
- Acquiring property for public road purposes (establishing a road), chapter 5.
- Legalizing a road, chapter 6.
- Vacating a road, chapter 7.

- Withdrawing a road from the county road system, chapter 8.
- Creating statutory ways of necessity, chapter 9.
- Assessing the cost of abatement of road hazards, chapter 10.

2.310 STATUTES ON NOTICE.

[Chapter 368](#)

County Roads

368.401 General notice provisions

368.406 Notice by service

368.411 Notice by posting

368.416 Notice by publication

368.421 Record of notice

368.426 Contents of notice

[Chapter 308](#)

Assessment of Property for Taxation

308.212 Requirement for property owner to file address

2.320 CITATIONS ON NOTICE.

Shoji v. Gleason, 420 F. Supp. 464 (1976): “Notice must be reasonably calculated under all the circumstances to apprise interested parties of the pendency of an action. It also must reasonably convey the required information A notice which fails in either respect denies due process to interested parties We cannot conclude that the notice sent reasonably conveyed the required information. Instead, it obscured it. Its dry prose and legalistic phrases obscured both the imminence and the significance of the proceedings to follow. A reasonable recipient easily could conclude that it was a notice of an event of general public interest rather than an initial, crucial step in a proceeding which could impinge upon his property rights.”

Mullane v. Century Hanover Bank and Trust Co., 70 S. Ct. 652 (1950): “An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated under the circumstances to apprise interested parties of the pendency of the action and afford them an opportunity to present their

objection. . . . The notice must be of such a nature as reasonably to convey the required information. . . . and it must afford a reasonable time for those interested to make their appearance. . . . But when notice is due, process which is a mere gesture is not due process. The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it. The reasonableness and hence the constitutional validity of any chosen method may be defended on the ground that it is in itself reasonably certain to inform those affected.”

2.330 MODIFICATION OF NOTICE PROCEDURES. The provisions of ORS 368.401 to 368.426 on notice apply to a number of county hearing procedures, unless modified by a county ordinance. If a county considers some modification of the statutory procedure for providing notice desirable, it can (1) adopt an ordinance replacing or supplementing the notice statutes; or (2) include modifying provisions in an ordinance addressing a specific type such as vacation or legalization. See section 2.130. [Click here for a sample ordinance](#) that could replace ORS 368.401 to 368.426. A county should always, with county counsel, review and modify model ordinances appropriately to fit the particular circumstance of the county.

2.500 JURISDICTION OVER ROADS. Oregon was granted statehood by Congress in 1859. At that time Congress required the new state to use 5 percent of the net proceeds from land sales for road building and other improvements. Territorial roads previously in existence became county roads at the time of statehood and were maintained by these funds. Some of these county roads were later designated as state highways, either by the Oregon legislature or the state Highway Commission (now the state Transportation Commission).

Private individuals were authorized to build toll roads by the Oregon legislature in 1862. Most of these roads were eventually sold to the counties. Early in Oregon history, counties were required to establish and maintain these acquired roads and other roads already a part of a county road system. Reference to county roads in some of the old laws probably referred to all rural roads; however, over time, two groups of roads evolved.

Current statutes pertaining to county roads provide counties with greater discretion and alternatives as far as the management of roads is concerned. While counties are still required to maintain county roads, expenditures for road care may be made without placing a road on the county road system or creating a county obligation to maintain the road.

[ORS 368.016](#) declares roads a matter of county concern. This erases any question that the general powers of [ORS 203.035](#) and county charter powers are sources of general authority to address road-related matters. The primary significance of ORS 368.016 is the description of county authority when another governmental jurisdiction has an interest in a road. It establishes that a county has no authority over state highways. In the case of roads inside a city, county involvement is limited to that which receives city consent. However, a county needs no city consent to care for a county road inside a city.

Although a county has no road authority in the case of state highways, the county may participate in highway projects. The extensive ability to cooperate with the state Department of Transportation and other governmental entities is discussed in chapter 11.

County authority over roads is a broad authority applying to roads off the county road system as well as those on the system. County authority applies to private roads as well as public roads to the extent that private roads may be a matter of county concern. To help keep straight the various types of roads that may be of concern to a county, ORS 368.001 establishes definitions for various classes of roads. The word "road" used by itself applies to both public and private vehicle ways. This is consistent with the definition in [ORS 92.010](#) of the subdivision laws. A bridge or culvert is part of a road. A "public road" is a road that is documented by a public record as existing for public use. A "county road" is one on the county road system. "Local access roads" are all the public roads that are not part of the county road system and are not state or federal roads. For purposes of identifying a county's role, note that city streets that are not part of the county road system are "local access roads." The fact that the word "local" is included in this term does not exclude city arterial and collector routes from the meaning of "local access roads." The fact that a state or federal road is not a local access road does not prevent county involvement in state or federal road projects. By not being local access roads, the special agreements of ORS 368.031 would not apply to county involvement in state or federal road projects. Chapter 8 details county jurisdiction over various types of roads and discusses related procedures.

2.520 OBLIGATIONS AND LIABILITIES. In general, a tort is a wrongful act (usually a negligent act) that results in damage to a person or to someone's property. For example, reckless driving resulting in an accident causing personal injury or property damage is a tort.

For both state and local government there is a long tradition of considerable immunity from tort liability. However, the enactment in 1967 of the [Oregon Tort Claims Act \(OTCA\), ORS 30.260 to 30.300](#), generally makes the state and local governments liable for the torts of their officers, agents and employees if the torts are committed within the scope of their employment. In general, Oregon governments are liable like private individuals or entities for all types of torts--e.g., personal injury, property damage, wrongful entry, false arrest and detention, malicious prosecution, abuse of process, invasion of privacy, interference with contractual relations, and defamation. Liability for such torts exists when performing both governmental and proprietary functions.¹

The tort claim damage limits were increased by the 2009 Legislature. The per claim damage limits under the OTCA were increased from previous \$200,000 to \$1.5 million for the state of Oregon, and to \$500,000 for local governments. The per occurrence damage limits were increased from \$500,000 to \$3 million for the State of Oregon, and to \$1 million for local governments. For counties, the per claim limit will be raised by approximately \$33,300 each year until 2015 and the per occurrence limit will be increased by approximately \$66,600 each year until 2015. (See ORS 30.272 for the current limits for counties.) All property damage limits were increased from \$50,000 per claim to \$100,000 per claim, and to \$500,000 per occurrence. After 2015, the tort limits will rise yearly based on the Consumer Price Index, with a maximum cap of 3 percent a year.

The statutes, while making tort liability the rule, also outline several exceptions

¹ For additional information on managing liability claims see Chapter 3, "Tort Liability and Risk Management," of [Safety Handbook for Oregon's Local Roads and Streets](#) by Mojje Takallou, Ph.D., P.E., University of Portland, 2010.

which preserve important governmental immunities from liability. For example, there is generally no liability for injuries compensable by workers' compensation. Nor are public bodies liable for injuries resulting from the acts of public employees who by law are privileged when acting in their official capacities, such as judges and legislators.

An additional exception to some tort liability exists for faulty performance of or failure to perform a discretionary function, whether or not the discretion is abused. But this exception has been interpreted strictly by Oregon's appellate courts. According to the Oregon Supreme Court, the term "discretionary" involves "room for policy judgment" when a political balancing of policy objectives must be made. Clues as to whether governmental discretion is exercised include the level of administration at which the decision was made and the level of technical expertise required to make the decision. The court has cautioned, however, that a mechanical approach cannot be taken when determining whether an act is discretionary. While in some instances the nature of the decision alone may be sufficient to establish immunity, in others no determination is possible until it is known how the particular decision was made.

In Stevenson v. State of Oregon, 290 Or. 3, 619 P.2d 247 (1980), the state was alleged to be negligent in failing to shield a highway light so as to prevent a misleading effect on traffic approaching an intersection. The state argued in response that determining the need for such equipment is a discretionary function and, therefore, under the provisions of the Oregon Tort Claims Act, no liability should exist. However, the Oregon Supreme Court found nothing in the record to indicate that employees of the highway division made a policy decision when installing the highway lights at the intersection in question. Evidence did indicate that the employees' engineering judgment was negligently exercised in relation to standards adopted by the state Highway Division, which in this case were included in the Manual on Uniform Traffic Control Devices. The court held that when the design arrangement of roads or traffic control devices is not consistent with standards adopted by the public agency for such activities, liability for negligence may be enforced.

More recently, the Oregon Supreme Court has further refined their interpretation of discretionary immunity in a case involving a traffic accident created by vision obscured by overgrown roadside vegetation. In Hughes v. Wilson, 345 Or. 491, 199 P3d 305 (2008), Wasco County was alleged to be negligent in failing to remove a large bush that obstructed the plaintiff's view and resulted in a collision with a car driven by the defendant. The county moved for dismissal based on a policy that relied on private landowners to remove, or notify the county, of brush that obstructed visibility. The Court reversed lower court rulings and held the county was not entitled to discretionary immunity because there was not sufficient evidence to demonstrate it had put its policy into effect by communicating it to landowners.

In another recent case involving vegetation management and a lack of warning signs, the Oregon Court of Appeals ruled in favor of Washington County on discretionary immunity grounds in a case also involving overgrown vegetation that caused an accident, Timberlake v. Washington County, 228 Or App 607, 209 P3d 398, rev den 347 Or 44, 217 P3d 690 (2009). The plaintiff alleged the county was negligent in failing to remove foliage that had grown at the site of the collision and blocked visibility, however, the county stated its failure to maintain the site was the result of a policy allocating limited maintenance resources to specifically identified areas. The Court held in favor of Washington County, stating that although a local government cannot choose *not* to exercise a particular duty of care, it does have discretion to choose *how* to carry out that duty. Washington County had previously

passed a board resolution adopting a road maintenance policy that dictated how resources would be allocated. The county, on a yearly basis, schedules maintenance activities based on a priority matrix determined by the functional classification of roads. Two-thirds of the road maintenance funds are allocated on this basis, and the other one-third is allocated responding to complaints. With respect to the accident that was the subject of the court case, the road in question was not on the scheduled maintenance list and no complaints had been received. Included in this section is a link to both a past board order from Washington County adopting a [road maintenance work program](#) and the [road maintenance priority matrix](#).

Over the past several decades, Oregon courts have increasingly limited the ability of counties to rely on discretionary immunity. The two cases illustrated above demonstrate the necessity to have a board adopted policy clearly communicating the road maintenance priorities for the year. In light of the increase in tort claim limits for local governments, the reluctance of courts to grant summary judgment on discretionary immunity grounds, and ever shrinking county budgets, it is important that counties exercise sound risk management and communicate priorities to the public. See section 2.525 for other case citations.

A few statutes outside of the Oregon Tort Claims Act also expressly limit the same areas of potential liability. For example, a county is not liable for failure to maintain roads that are not on the county road system (local access roads). However, a county liability remains for negligent performance of work on a local access road if the county chooses to act. The Act did not do away with preexisting non-tort law under which local government has been subject to damage suits. For example, public agencies have long been liable for creating nuisances and for affirmative wrongdoing that amounts to trespass or to taking property without compensation.

Under Oregon's Tort Claims Act, in order to collect on most claims, persons who seek damages from local government units on account of torts must file a notice of their claims with the units within 180 days after they knew, or should have known, the alleged torts were committed. Legal action based on an alleged tort generally must be commenced not later than two years after the accident or occurrence.

ORS 368.031, which was described previously, establishes that a county generally is not obligated to care for a local access road. Several of the citations in section 2.120 are particularly relevant to this ORS section.

2.523 STATUTES ON OBLIGATIONS AND LIABILITIES

Chapter 30

Tort Actions Against Public Bodies

30.260 Definitions for ORS 30.260 to 30.300

30.261 Limitation on applicability of ORS 30.260 to 30.300 to certain private, nonprofit organizations

- 30.265** **Scope of liability of public body, officers, employees and agents; liability in nuclear incident**
- 30.269** **Limitations on awards under Oregon Tort Claims Act generally**
- 30.271** **Limitations on liability of state for personal injury and death**
- 30.272** **Limitations on liability of local public bodies for personal injury and death**
- 30.273** **Limitations on liability of public bodies for property damage or destruction**
- 30.274** **Direct appeal of constitutionality of limitations**
- 30.275** **Notice of claim; time of notice; time of action**
- 30.278** **Reporting notice of claim of professional negligence to licensing board**
- 30.282** **Local public body insurance; self-insurance program; action against program**
- 30.285** **Public body shall indemnify public officers; procedure for requesting counsel; extent of duty of state; obligation for judgment and attorney fees**
- 30.287** **Counsel for public officer; when public funds not to be paid in settlement; effect on liability limit; defense by insurer**
- 30.290** **Settlement of claims by local public body**
- 30.295** **Payment of judgment or settlement; remedies for nonpayment; tax levy for payment; installment payments**
- 30.300** **ORS 30.260 to 30.300 exclusive**

2.525 CITATIONS ON OBLIGATIONS AND LIABILITIES

Timberlake v. Washington County, 226 Or App 607 (2009): On June 3, 2005, Matthew Lyon was riding his motorcycle on SW Schools Ferry Road in Washington County when he was killed after being hit by a car that did not see his motorcycle approaching the intersection. Plaintiff, the personal representative of the decedent, alleged that the county was negligent in failing to remove foliage that had grown at the site of the collision and blocked visibility. The county moved for summary judgment on discretionary immunity grounds, stating that its failure to maintain the site was the result of a budget-driven policy decision about the allocation of its limited resources available for road maintenance. The trial court granted the motion. On appeal, the plaintiff contended that road maintenance is a ministerial duty imposed by law, and that a local government cannot

avoid liability for negligence merely because of limited resources. The Court of Appeals upheld the trial court, stating that although a local government cannot simply choose *not* to exercise a particular duty of care, it has discretion to choose *how* to carry out that duty. In this case, the Washington County Board of Commissioners had passed a resolution adopting a road maintenance policy dictating how limited resources would be allocated. The policy provided that two-thirds of the county's road maintenance funds would be allocated to scheduled maintenance based on a priority matrix determined by the functional classification of roads and the remaining third would be allocated responding to complaints. The road in question had not been scheduled for maintenance under the policy and the county had received no complaints of vision being impaired at the subject intersection.

Hughes v. Wilson, 345 Or. 491 (2008): Hughes brought a negligence claim against Wasco County, asserting the County was negligent in failing to remove a large bush that obstructed his view and resulted in his crashing his motorcycle into a car driven by Wilson. Hughes came around a corner at the same time that Wilson was pulling onto the road from a private driveway. The County moved for summary judgment on discretionary immunity grounds, relying on an adopted policy that relied on private landowners to remove, or notify the County, of brush that obstructed visibility between private driveways and county roads. The trial court agreed the County was entitled to discretionary immunity, and the Court of Appeals affirmed without opinion. The Oregon Supreme Court reversed the lower courts, holding that the County could not rely on discretionary immunity because it did not demonstrate it had put its policy into effect by communicating it to those landowners. Merely weighing the costs and benefits and making a decision, even if that decision might qualify as a permissible discretionary decision, is not sufficient to entitle a government to immunity. The government must also demonstrate that it took the action necessary to effectuate that decision.

Lisa Ann John v. City of Gresham, 214 Or. App. 305 (2007): The plaintiff's son was struck by a vehicle while crossing the street in a painted crosswalk. The City of Gresham and Multnomah County argued that the decision to paint the crosswalk, part of a traffic improvement project constructed by the city and county, was a discretionary decision subject to immunity under the Oregon Tort Claims Act. The Court of Appeals ruled against the city, stating that deference to the county's recommendation to paint the crosswalk did not result in protection by discretionary immunity, as the decision must be a result of an exercise of judgment for discretionary immunity to apply. The court also held regarding the county, the fact that the decision to paint the crosswalk was part of the approval of the overall final design also did not result in protection by discretionary immunity, since the decision merely determined compliance with existing policies and did not involve a judgment about matters of public policy. In addition, the court did not accept the city's argument that it was free from liability because it did not own the street where the accident occurred, stating that a city or county may be liable if the conduct caused a foreseeable harm to an interest protected against that kind of negligent invasion.

Weatherford v. County of Klamath, 201 Or. App. 601, 120 P.3d 530 (2005): The plaintiff alleged the county was negligent in failing to remove snow and ice from a parking lot, resulting in the plaintiff slipping and injuring herself. The county maintained that the ice melting product was not spread in the parking lot area where the plaintiff slipped because the county had a general policy against spreading the ice melting product in parking lot areas. Therefore, the county asserted it was entitled to immunity. The circuit

court agreed. The Court of Appeals reversed, and determined that it was possible that the county employees responsible for spreading the ice melting product were authorized to act according to their best judgment, and not pursuant to any policy. In that event, their decision would not entitle the county to immunity.

Vokoun v. City of Lake Oswego, 335 Or. 19, 56 P.3d 396 (2002): The plaintiffs bought property next to Tryon Creek State Park, which was part of the Red Hills subdivision. They brought an action for inverse condemnation and negligence against the city after their home was damaged in a landslide, which the plaintiffs alleged was caused by the city constructing a storm drain pipe in a manner that destabilized the soils on and adjacent to the plaintiffs' property. The circuit court held in favor of the plaintiffs; however, the Court of Appeals reversed and granted the city immunity based on the fact that the city council had adopted a Capital Improvements Plan that didn't include fixing the problem. The Supreme Court reversed the Court of Appeals, and held that the city was not entitled to discretionary immunity because evidence showed that city employees were making decisions in their routine, "day-to-day" activities about how to deal with the problem. Additionally, there was no evidence the city had considered the problem one way or another in its Capital Improvements Plan.

Garrison v. Deschutes County, 334 Or 264, 48 P3d 807 (2002): Plaintiff had backed his pickup to the edge of the dump, emptied its contents to a lower slab 14.5 feet below, then fell from his pickup to the lower slab. He claimed, using negligence language, faulty design of the dumping area by the County. The Supreme Court, relying on affidavits of the County Public Works and Solid Waste Directors, found that the Commissioners had delegated the responsibility for design to them, and that they had thoughtfully weighed alternatives and compared design risks when choosing this design of the dumping area, and therefore held that their decisions were the kind intended to be given discretionary immunity.

Ramirez v. Hawaii T & S Enterprises, Inc., 179 Or. App. 416, 39 P.3d 931 (2002): The plaintiff, who fell and fractured her ankle after stepping on a broken curb at a downtown intersection, sued the defendant owner of the adjacent property, as well as the City of Portland. The plaintiff based her claims against the city on the city's failure to inspect, maintain, and repair the curb, despite a city policy calling for inspections every two years. The city argued it was immune from liability under the Oregon Tort Claims Act (OTCA). The circuit court granted judgment in favor of both defendants. The Court of Appeals affirmed the judgment in favor of the city, but reversed as to the property owner. The city was immune because the decision to divert city employees from sidewalk inspection duties to flood-related duties involved the exercise of discretion by the city council, which had the authority to make and delegate decisions regarding the allocation of city resources.

McComb v. Tamlyn, 173 Or. App. 6, 20 P.3d 237 (2001): Plaintiff alleged that the State Department of Transportation was negligent in designing the signal phases for the intersection where she was hit by a vehicle turning right as she rode her bicycle in a crosswalk. The Court of Appeals held that the state's decision to adopt signal phases from the Manual on Uniform Traffic Control Devices (Manual) was not entitled to protection by discretionary immunity. Even if the state's decision to adopt the Manual was a policy decision, the relevant parts of the Manual were merely descriptive and did not require the use of a particular signal when designing a particular intersection. The Manual stated that

engineering judgment was required in the selection of traffic control devices, and the state had not met its burden of showing how the decision was made at this particular intersection.

Mann v. McCullough, 174 Or. App. 599, 26 P.3d 856 (2001): The personal representative of Mann, a passenger who died in a car accident, brought suit alleging that the City of Portland was negligent both in making its decisions regarding traffic management and control devices on Fremont Drive and in failing to warn the public of the dangers of speeding on the hill along Fremont Drive, specifically the possibility of a car becoming airborne if approaching the hill at an excessive speed. The Court of Appeals held that the city's adoption of recommendations of traffic pattern changes were discretionary acts because, although the city council's decisions were based on recommendations by the city's Bureau of Traffic Management, those recommendations involved the sort of delegated responsibility and strategic choices that are hallmarks of the exercise of discretionary immunity.

Sims v. Besaw's Cafe, 165 Or. App. 180, 997 P.2d 201 (2000): Portland's sexual orientation anti-discrimination ordinance provided that people harmed by violations of the ordinance "shall have a cause of action in any court of competent jurisdiction." The ordinance did not impermissibly expand state circuit court jurisdiction. Though the ordinance created a new cause of action, the circuit court, independently of the ordinance, had the power to adjudicate private disputes arising under Oregon municipal law. It is within the judicial power of the circuit court to adjudicate a private dispute that arises under Oregon municipal law. Statutes permitting Portland to use the circuit court to prosecute municipal violations were not the sole source of Portland's authority to enforce its ordinances in state court. Thus, the statutes did not preclude Portland from creating a private cause of action, which could be brought in the circuit court, for violations of its sexual orientation anti-discrimination ordinance.

Draper v. Astoria Sch. Dist. No. 1C, 995 F. Supp 1122 (D. Or. 1998): The statute of limitations for claims against public bodies within the scope of the Oregon Tort Claims Act is two years, notwithstanding any contrary law.

City of Tualatin v. City-County Insurance Services Trust, 321 Or. 164, 894 P.2d 1158 (1995): The city brought suit against its comprehensive general liability (CGL) insurer to recover the costs a municipal officer incurred in defending himself against an ethics complaint. The insurer maintained the insurance contract did not cover defense of the ethics complaint and that the municipality had no right to recover from the insurer the costs of defending the officer. The Court of Appeals held in favor of the insurer. The Supreme Court affirmed, holding that the insurer's contract promised the company would pay "on behalf of the insured all sums which the insured shall be legally obligated to pay as 'damages' because of liability arising under [ORS 30.260 to 30.300](#)," which comprise the Oregon Tort Claims Act (OTCA). The court stated that, read in the context of ORS 30.265 and ORS 30.285, the public body's duty to defend extends only to tort claims and demands, and since the insurer was bound only to defend against claims under the OTCA it was not bound to defend against an ethics violation complaint.

Hall v. Dotter, 129 Or. App. 486, 879 P.2d 236 (1994): Hall was standing in the median of the Tualatin Valley Highway and was struck by a car driven by Dotter. Hall alleged that the state and Washington County were negligent in designing and maintaining the intersection. The trial court's grant of summary judgment to the state and county based

on discretionary immunity was reversed by the Court of Appeals. The immunity defense was premised on the argument that state traffic inspectors simply followed the Manual on Uniform Traffic Control Devices and had no discretion to deviate from the Manual. However, evidence showed the state installed warning signs at a time contradictory to the specifications of the Manual, which suggested that the Manual was not the type of explicit order that entitled an employee to immunity. The court also held that a county can be liable for harm that occurs on a state road, if the county's conduct caused a foreseeable harm to an interest protected against that kind of negligent invasion. Additionally, it did not matter that the county had contracted away to the state its responsibility for providing signs or signals. If the county would otherwise be liable for negligence in maintaining its road, then the county remains liable for the negligence of its contractor, even if the contractor is the state

Bakr v. Elliott and City of Eugene, 125 Or. App. 1, 864 P.2d 1340 (1993): The estate of the decedent sued the city for alleged negligence in failing to inspect or perform any work on a tree that ended up falling and killing the decedent. The trial court held in favor of the city, stating that the city had no actual or constructive knowledge of the hazardous condition of the tree and that the decision not to inspect was an exercise of policy judgment for which it was immune from liability under ORS 30.265(3)(c) (renumbered ORS 30.265(6)(c) in 2011). The Court of Appeals affirmed, holding that the city was entitled to make a discretionary policy decision not to do anything about trees that it believed to be in fair condition.

Hawkins v. City of La Grande and Wallender v. City of La Grande, 315 Or. 57, 843 P.2d 400 (1992): Simply choosing between available alternatives does not demonstrate the type of discretion that is entitled to immunity.

Mosley v. Portland School District No. 1J, 315 Or. 85, 843 P.2d 415 (1992), affirming in part and reversing in part 108 Or. App. 7, 813 P.2d 71 (1991): This case is cited often in subsequent discretionary immunity cases as a good statement of the law on the subject. Plaintiff sued the school district for injuries suffered in a knife fight on school grounds during lunch period. Among other claims, plaintiff alleged that the school principal should have had better security and supervision. The Supreme Court, after a lengthy analysis, determined the principal's decisions were immune from liability because they were discretionary under the Court's precedents interpreting ORS 30.265(3)(c) (renumbered ORS 30.265(6)(c) in 2011).

Tozer v. City of Eugene, 115 Or. App. 464, 838 P.2d 1104 (1992): The plaintiff brought an action against the city, alleging that the driver who collided with her was unable to see a stop sign, and failed to stop, resulting in an injury. The circuit court held that the city was entitled to discretionary immunity under ORS 30.265(3)(c) (renumbered ORS 30.265(6)(c) in 2011) because the city's traffic sign inspection and maintenance program was developed through an exercise of policy judgment. The Court of Appeals reversed in favor of the plaintiff, stating that even if the city was immune from claims based on the development of the city's program, any negligence in the implementation of the program or in the performance of particular maintenance activities is not sheltered by discretionary immunity.

Lowrimore v. Dimmit, 310 Or. 291, 797 P.2d 1027 (1990): Innocent third party,

injured when a vehicle being pursued by the deputy sheriff struck her vehicle, sued both the driver of the pursued vehicle and the county. The circuit court entered a default judgment against the driver and ruled the county was not liable. The Court of Appeals affirmed. The Supreme Court reversed, holding that the officer's decision to pursue the vehicle did not qualify the officer to statutory immunity. Discretionary immunity will apply to decisions involving the making of policy, but not to routine decisions made by employees in the course of their day to day activities, even though the decision involves the choice among two or more courses of action.

Pritchard v. City of Portland, 310 Or 235, 796 P.2d 1184 (1990): The city passed an ordinance putting responsibility for making sure vegetation didn't obscure stop signs on adjoining landowners. Plaintiff, who failed to stop at the stop sign and collided with a pickup truck in the intersection because he claimed the sign was obscured by vegetation, alleged the city was negligent in not properly maintaining the stop sign. The Supreme Court said that since the city didn't specifically say in the ordinance that it was immune, and since the plaintiff was suing for negligent maintenance, not the act of adopting the ordinance (which may have been discretionary), the city could not claim it was immune either because of sovereign immunity or because of discretionary immunity under ORS 30.265(3)(c) (renumbered ORS 30.265(6)(c) in 2011).

Egner v. City of Portland, 103 Or. App. 623, 798 P.2d 721 (1990): The plaintiff, personal representative of a pedestrian struck and killed while in a crosswalk, brought a wrongful death action against the city. The plaintiff alleged the city was negligent in its decision to change the crosswalk from a marked to an unmarked one, in removing some but not all of the surface material and lighting that marked the crosswalk, and in failing to warn pedestrians that the marked crosswalk had been removed. The circuit court held in favor of the city, and the plaintiff appealed. The Court of Appeals reversed, stating that a decision whether to do maintenance work in a particular manner because of financial constraints might in some circumstances be protected by discretionary immunity. However, negligence in doing the work does not share similar discretionary immunity. The court held that questions of fact existed regarding whether the work had been done negligently.

Clarke Electric Inc. v. State By and Through State Highway Division, 93 Or. App. 693, 763 P.2d 1199 (1988): The unsuccessful bidder on a contract to install traffic signals was not allowed to challenge the rejection of its bid under the Oregon Tort Claims Act since the defendant state agency's alleged liability was premised on finding that the agency's order rejecting the bid was improper.

Little v. Wimmer, 303 Or. 580, 739 P.2d 564 (1987): Little was injured when the vehicle she was traveling in collided with another vehicle because of alleged hazardous and negligent design and construction, specifically because the county did not erecting a warning sign that would have warned traffic traveling on the highway of other traffic entering the highway. The Supreme Court held that because there was an absence of evidence that the county's decision not to install warning signs at the intersection was made as a policy judgment by a person or body with governmental discretion, the decision was not immune from liability.

Donaca v. Curry County, 303 Or. 30, 734 P.2d 1339 (1987): The Oregon Supreme Court reversed the Court of Appeal's blanket holding that a county does not have a common

law duty to maintain visibility at intersections of public and private roads. The Supreme Court ruled that whether a county is liable at common law for a motor vehicle accident allegedly caused by county's failure to control vegetation obstructing the view at an intersection should be determined according to general negligence law -- namely, whether county's act or omission caused a foreseeable kind of harm to an interest protected against that kind of negligent invasion, and whether the conduct creating the risk of that kind of harm was unreasonable under the circumstances.

Ramsey v. City of Salem, 76 Or. App. 29, 707 P.2d 1295 (1985): The city's failure to inspect the sidewalk on which the plaintiff fell was a discretionary act under [ORS 30.265\(3\)\(c\)](#) (renumbered ORS 30.265(6)(c) in 2011). The city was therefore immune from liability for the fall.

Sager v. City of Portland, 68 Or. App. 808, 684 P.2d 600 (1984), rev. den. 298 Or. 37: The failure of the city to inspect and repair sidewalks is a discretionary act and immune from liability.

Holdner v. Columbia County, 51 Or. App. 605, 627 P.2d 4 (1981): Maintenance of ditches is not a discretionary act, and the county may be held liable for negligence in maintaining them. Negligent maintenance may be a continuous tort, so notice may be given the governing body at any time during the continuation of the conduct or within 180 days after its conclusion.

Saracco v. Multnomah County, 50 Or. App. 145, 622 P.2d 1118 (1981): The plaintiff brought an action against the county to recover damages for personal injuries and property damages allegedly resulting from the plaintiff's car skidding and colliding with a portion of the county's bridge. The county contended it was immune from tort liability by virtue of the discretionary act exception provided in ORS 30.265(3)(c) (renumbered ORS 30.265(6)(c) in 2011). The circuit court held in favor of the county. The Court of Appeals reversed, stating the alleged negligence of the county's employees in failing to inspect, maintain and repair the steel grid surface of the bridge was not a discretionary act that was immune from tort liability, even though technical expertise may have been required.

Stevenson v. State ex rel Dept. of Transportation, 290 Or. 3, 619 P.2d 247 (1980): Stevenson was killed when the car she was in came on to the highway from a side road and was hit by a truck traveling through an apparent green light on the highway. Her estate claimed that the driver of her vehicle was misled by the green light for the highway because the State had not provided light "shields" to prevent this misleading effect. The State argued it was not liable because the decision on how to shield the lights was a policy decision entitled to discretionary immunity.

The Oregon Supreme Court rejected the simple rule it had previously developed that "state employees are generally immune from liability for alleged negligence in planning and designing highways." The Supreme Court adopted a new rule that the government could claim "discretionary immunity" only if the government function or duty was:

- 1) The result of a choice or exercise of judgment;
- 2) That choice must involve public policy, as opposed to the routine day-to-day activities of public officials; and
- 3) The public policy choice must be exercised by a body or person that has, either directly or by delegation, the responsibility to make it.

The Court held that there was nothing in the record to suggest the responsible employees made any policy decision.

2.530 ROAD-RELATED REGULATIONS. The authority to adopt ordinances on matters of county concern includes the authority to regulate those things affecting roads. Counties do not need to look for express statutory authority on a specific subject, but will need to be aware of various statutory restraints and preemptions to the county's broad authority. For example, a county: (a) has authority to regulate traffic, but not if in conflict with the state's traffic laws (see chapter 14); (b) can control placement of utilities in the road right-of-way, but not prohibit their installation (see chapter 10); and (c) may establish standards for roads in a subdivision if the subdivision standards are consistent with the county's adopted comprehensive plan. When there is a need, the county can consider adopting an ordinance to deal with the need. County regulations are discussed in various chapters as they apply to specific issues.

2.540 ORGANIZATION OPTIONS. Organization within the county government to conduct road work is a matter for local determination. In fact different Oregon counties have a number of different organizational arrangements for county road work. For example:

- Responsibilities assigned to the county road official² may be limited to roads or they may include such additional functions as solid waste disposal, parks or building regulation.
- Similarly, a road official may be responsible only for road work but be located within a department that also has separate organization units for other functions such as planning and community development.
- The titles of persons exercising overall direction and supervision with respect to road activities tend to reflect these differences: the title is public works director in 19 counties, roadmaster in 9 counties, road supervisor in 2 counties, road foreman in one county, road department director in one county, transportation and development director in one county, roads and parks director in one county, land use and transportation director in one county and environmental services director in one county. In some counties the person responsible for overall direction and supervision of the road activity is qualified by virtue of formal education (e.g., a civil engineer), while in others he or she is qualified by virtue of practical experience.

The way in which the road department relates to the rest of county government depends on the county's overall form of government. ORS 368.046 does state that "A county road official shall work under the direction of the county governing body," but that statute is not mandatory.³ Three basic forms of county government are represented in Oregon:

² ORS 368.001 defines "county road official" as "the roadmaster, engineer, road supervisor, public works director or other administrative officer designated by the county governing body as being responsible for administration of the road activities of the county."

³ ORS 368.011 provides that with certain exceptions, "a county may supersede any provision in this chapter by enacting an ordinance pursuant to the charter of the county or under powers granted the county in ORS 203.030 to 203.075" which includes the power to determine organization matters locally.

1. Commission Form: In this form, both legislative and administrative powers and functions are exercised by an elective board. Oregon counties that have this form of government usually have a three-member governing body (designated as either the board of county commissioners or the county court), and the road department or the department in which the road program is located reports directly to the governing body. County road officials in this system need to keep in mind that they are accountable to the entire governing body, and they must make sure that policies and directives regarding road department operations have at least majority support from the board or county court.

2. Commission-Administrator Form. In the commission-administrator form of county government there is a division of administrative responsibility between the elective governing body and an administrator appointed by the governing body. The nature and scope of the division varies widely from county to county. In some counties the administrator is responsible mainly for internal staff functions such as budget, personnel, and purchasing plus other activities that primarily assist the governing body in carrying out its duties. In others, the administrator has general supervision over some or all county departments, including the power to hire and fire department heads. The legal basis of the division of labor also varies from county to county: in some counties it is based merely on understandings between the governing body and the administrator that may or may not be summarized in a written job description; in others the division is spelled out in a county ordinance (which may be amended or repealed by the governing body); and in still others the division is established in general terms by provisions of a county charter that can be changed only by a vote of the people.

About half of Oregon's counties have established some kind of county administrator position. Road officials in those counties need to be aware of the scope of the administrator's authority with respect to road matters. If either the governing body or a county charter has delegated general supervision over the road department to a county administrator, the road official will obviously be accountable directly to the administrator rather than to the governing body.

3. Commission-Elected Executive Form. In Multnomah County, central administrative responsibilities are vested in an elected official (the chair of the board of county commissioners). In counties with the commission-elected executive form, there is a legal separation between the legislative (policy making) function and the executive (administrative) function. In most matters affecting the operation of the county road department, however, the arrangement is similar to that in commission--administrator counties in which the administrator appoints and supervises the road official or a department head who in turn appoints and supervises the road official.

CHAPTER 2A: COUNTY ROADS AND PLANNING

(This chapter was created out of Chapter 2 in 2007 and updated in 2013 and 2014)

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CHAPTER 2A: COUNTY ROADS AND PLANNING

2A.000 INTRODUCTION. Oregon's statewide planning goals grew out of Senate Bill 10 in 1969. That bill established a basic program for statewide planning. It required local governments to draw up comprehensive land use plans, and it set forth 10 goals to guide cities and counties in their planning.

In 1973, the legislature replaced that basic program with a much more extensive one. With Senate Bill 100, the legislature created the Land Conservation and Development Commission (LCDC) and directed it to establish new statewide planning goals and guidelines. After two years of development and numerous public hearings and workshops, LCDC adopted 19 statewide planning goals. The statewide goals address the following issues: Goal 1, Citizen Involvement; Goal 2, Land Use Planning; Goal 3, Agricultural Lands; Goal 4, Forest Lands; Goal 5, Open Spaces, Scenic and Historic Areas, and Natural Resources; Goal 6, Air, Water and Land Resources Quality; Goal 7, Areas Subject to Natural Disasters and Hazards; Goal 8, Recreational Needs; Goal 9, Economic Development; Goal 10, Housing; Goal 11, Public Facilities and Services; Goal 12, Transportation; Goal 13, Energy Conservation; Goal 14, Urbanization; Goal 15, Willamette River Greenway; Goal 16, Estuarine Resources; Goal 17, Coastal Shorelines; Goal 18, Beaches and Dunes; and Goal 19, Ocean Resources.¹

2A.015 SPECIAL REFERENCES. The following are sources of information outside this manual that are particularly relevant to sections of this chapter, as noted.

Section 2A.200

National Association of County Engineers, Action Guide Series, Volume II-1, "Comprehensive County Planning," Volume II-2, "Road Programming," Volume II-3, "Impact of Land Development on County and Local Transportation System Planning," and Volume II-4, "Rural Transportation Planning."

Oregon Department of Land Conservation and Development, [Statewide Planning Goals](#).

Oregon Department of Land Conservation and Development, [Transportation Planning Rule](#).

2A.100 COUNTY ROADS AND PLANNING. The most significant trend impacting roads and streets in the last 30 years is the increasing interrelationship between the provision of public transportation facilities and land use. Among the statewide planning goals directly impacting county roads are Statewide Planning Goal 11, Public Facilities and Services; Goal 12, Transportation; and Goal 13, Energy Conservation.

¹ Edited from the Department of Land Conservation and Development's paper on its website entitled "The Evolution of Oregon's Statewide Planning Goals (October 2000). Additional information is available at DLCD's website at http://www.oregon.gov/LCD/goals.shtml#Other_Information

The Land Conservation and Development Commission (LCDC) Transportation Planning Rule ([OAR 660-12-0000 to 660-12-0070](#)) implements Goal 12 and portions of Goal 11. The rule is intended to ensure that local jurisdictions (and the state) provide adequate transportation facilities and improvements to meet identified needs. This must be done in a manner that avoids “air pollution, traffic and livability problems.”

Transportation planning is divided into two phases. Jurisdictions must adopt a transportation system plan (TSP). This is characterized as “the land use decision regarding the need for transportation facilities, services and major improvements and their function, mode and general location” (OAR 660-12-0025). The required elements vary depending on the size of the jurisdiction. Generally, the TSP must establish plans for arterials and collector roads, public transportation, bicycle and pedestrian travel, parking and financing. Areas with populations in excess of 25,000 must have a plan for managing system demand. Specific numerical objectives for reducing vehicle miles traveled are set for Metropolitan Planning Organizations (MPOs).

OAR 660-12-0045 requires local governments to amend local land use regulations to implement the TSP. It states that certain road related activities, such as maintenance, repair, right-of-way dedication, and construction “need not be” subject to land use regulations and “under ordinary circumstances do not have a significant impact on land use.” Additionally, local land use or subdivision regulations must protect transportation facilities and corridors for their identified function by imposing access controls, development conditions, notice to other transportation agencies, and similar measures.

“Transportation project development” is the second phase in the provision of transportation facilities. This implements the TSP by determining the precise location, alignment and preliminary design of specific improvements (OAR 660-12-0010(1)). All unresolved issues of compliance with land use regulations must be addressed. Further, a decision not to build a project authorized by the TSP must evaluate alternative means for serving transportation needs.

Finally, OAR 660-12-0065 identifies the transportation facilities, services and improvements which may be permitted by counties on rural lands consistent with Goals 3, 4, 11, and 14 without requiring a goal exception. The rule is based on the assumption that uses listed in ORS 215.215 or 215.283 are not otherwise exempt from compliance with Goals 11 and 14. Uses not listed in the rule require an exception.²

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Chapter 197

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² Condensed from the “Streets and Roads” paper by Evan P. Boone and Dan R. Olsen for the Oregon Law Institute’s *Oregon Government Law 2005: The Latest Chapters in Public Law*, Chapter 3.

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Chapter 366

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2A.120 CITATIONS ON COUNTY ROADS AND PLANNING

Klamath County v. Oregon Department of Transportation and BNSF Railway Company, 201 Or. App. 10, 116 P.3d 924 (2005): The Oregon Department of Transportation (ODOT) ordered the closing of a railroad grade crossing in Klamath County pursuant to a statute allowing for closure without county consent unless responsibility for the road was being transferred to the county. Another statute established a public policy in favor of eliminating railroad grade crossings wherever possible, as long as it is required by the “public safety, necessity, convenience and general welfare.” The county argued that statutory authority did not support ODOT’s decision to close the crossing without county consent and

that the closure was not supported by substantial evidence that public health and safety required the closure. The Court of Appeals held that substantial evidence did exist that the public health and safety required closure, as there was evidence of frequent and increasing interference with vehicular traffic from trains and switching movements, accompanying dangers from frustrated drivers, and the existence of a convenient and safe alternative route which would reduce the risk of accidents. The court also held that statutory authority allowed ODOT to close the railroad crossing without the county's approval.

2A.130 ROAD NAMING.

It is in the public interest for counties to have a uniform system for road naming and addressing to facilitate emergency services and to provide a uniform system for the public's use. All public and private roads and streets should be named in accordance with the provisions of a road naming ordinance. As noted under the county's road authority in Chapter 2, counties clearly have the authority under ORS 203.035, 368.016 and county charter authority to address road-related matters including planning for and implementing a uniform road naming and addressing system. Accordingly, counties are encouraged to enact a particular ordinance for this purpose. Marion County has provided their ordinance, which you can view by [clicking here](#). Further, Marion County supplied an example of their process, also viewable by [clicking here](#).

A successful process needs to include provisions for notifying the property owners with addresses on the road, all emergency responders who serve that area, and the local U.S. post office. There are a variety of other entities it is recommended the county could forward the change information to, an example of which Marion County has also shared, [viewable here](#). Finally, it is useful to forward the information to the GPS data companies, [click here](#) for a list ODOT prepared.

2A.200 COUNTY ROADS AND TRANSPORTATION PLANNING.

County Roads in a Planning Perspective. Today, the county road system (as well as other county programs) must respond to a very broad range of complicated social, economic and environmental concerns while it goes about doing its primary job of moving people and things efficiently and safely among locations within the county. A few examples include:

- Land Use: The county road system must comply with and serve to implement the community's land use goals and policies embodied in the County Comprehensive Plan, such as prevention of urban sprawl and protection of resource lands.
- Air and Water Quality: Design and operation of the county road system must protect and enhance air and water quality by reducing traffic congestion, avoiding pollution from surface water runoff, safeguarding against improper disposal of hazardous wastes, etc.
- Energy Conservation: The county road system must also be designed and operated in a manner that helps the community conserve energy, a goal which itself is closely related to efficient land use. The county road system can do this

by providing facilities that promote use of transportation modes other than automobiles and trucks, including bike paths, sidewalks and facilities to aid public transit such as high occupancy vehicle (HOV) lanes and park-and-ride lots.

- Other Considerations: Finally, the county road system must respond to broad community concerns such as economic development, access for persons with disabilities, and other values and concerns of the communities it serves. Consideration must also be given to federal requirements such as the Endangered Species Act.

The key process by which the county road system deals with these complex social, economic and environmental concerns is comprehensive planning. County road officials today find themselves involved in at least three levels of planning:

1. Comprehensive Planning: Comprehensive plans are official statements of public policy regarding the development and use of land. The plan states how the citizens want the community to be in the future. Developed through citizen involvement and input, with adoption in a public process, a county comprehensive plan is the blue print for achieving the community's vision. The comprehensive plan guides a community's land use, natural resources, economic development and provisions for public services to achieve the community's vision. A key component of the plan is the Transportation System Plan which is coordinated with state and local jurisdictions, and designed to support and coordinate with the plan's land use element.

In terms that apply more specifically to Oregon counties, ORS 197.015(5) defines a "comprehensive plan" as:

“...a generalized, coordinated land use map and policy statement of the governing body of a local government that interrelates all functional and natural systems and activities relating to the use of lands, including but not limited to sewer and water systems, transportation systems, educational facilities, recreational facilities, and natural resources and air and water quality management programs. 'Comprehensive' means all-inclusive, both in terms of the geographic area covered and functional and natural activities and systems occurring in the area covered by the plan. 'General nature' means a summary of policies and proposals in broad categories and does not necessarily indicate specific locations of any area, activity or use. A plan is 'coordinated' when the needs of all levels of governments, semipublic and private agencies and the citizens of Oregon have been considered and accommodated as much as possible. 'Land' includes water, both surface and subsurface, and the air.”

This statutory definition requires that county roads, as part of a community's transportation system, be planned with regard to their relationship to all other "functional and natural systems and activities." The planning process for county roads therefore must involve state, county and city governments, as well as numerous federal, state and local agencies and other organizations outside county government.

2. Functional and Refinement Planning: Functional plans (including the Transportation System Plans described in section 2A.210) supplement the comprehensive plan and carry its general policies to a greater level of detail, including but not limited to the identification of specific projects and programs to implement the comprehensive plan. Functional plans generally deal with single functions or groups of related functions, such as transportation, parks and recreation, stormwater, solid waste, etc.

Refinement plans also supplement and extend the general policies of the comprehensive plan to a greater level of detail, but for specific geographic sub-areas of a city or county such as specific rural communities or the "transportation corridors" discussed in section 2A.215, rather than individual functions. Like the comprehensive plan, however, both functional and refinement plans require close coordination among governmental jurisdictions. This is particularly true of transportation planning, since cities, counties, some special districts (such as port districts), the state, and the federal government all have significant and interrelated transportation facilities and programs that must be tied together in an integrated system.

3. Project and Program Planning: Finally, planning must be undertaken for specific projects and individual programs. Project and program planning ranges from an agency's overall capital improvement program to detailed design of specific facilities.

Sections 2A.205 to 2A.240 briefly summarize transportation planning as it relates to each of these three levels of planning. These sections identify the various federal and state policies and mandates that affect transportation planning at the county level, as well as the relationship between transportation and comprehensive planning at the local government level.

2A.205 OREGON'S LAND USE PLANNING LAW. The Department of Land Conservation and Development (DLCD) administers the state land use planning law (ORS Chapter 197) under the direction of the Land Conservation and Development Commission (LCDC). This extensive land use planning program, established by the Oregon legislature in 1973, requires comprehensive plans for cities and counties, coordinated locally, regionally, and for the state as a whole. The legislation:

1. Established a Land Conservation and Development Commission (LCDC) of seven members appointed by the governor;
2. Created the Department of Land Conservation and Development to provide staff functions for LCDC;
3. Directed LCDC to establish statewide planning goals;
4. Required all cities and counties to prepare and adopt comprehensive plans consistent with statewide goals;

5. Required state agency plans and actions to conform to LCDC goals and to city and county comprehensive plans;
6. Required each city and county to enact zoning, subdivision and other land use regulations to implement their comprehensive plans;
7. Directed LCDC to review all local comprehensive plans and implementing ordinances for conformance with statewide goals;
8. Required widespread citizen involvement in the planning process at local and statewide levels;
9. Allowed for appeals from local decisions alleged to violate a state goal, a comprehensive plan or a land use regulation; and
10. Provided for the periodic review and update of city and county comprehensive plans.

Goals developed and adopted by LCDC cover nineteen specific subjects:

- Goal 1 - Citizen involvement;
- Goal 2 - Land use planning;
- Goal 3 - Agricultural lands;
- Goal 4 - Forest lands;
- Goal 5 - Open spaces, scenic and historical areas, and natural resources;
- Goal 6 - Air, water and land resources;
- Goal 7 - Areas subject to natural disaster and hazard;
- Goal 8 - Recreation;
- Goal 9 - Economic development;
- Goal 10 - Housing;
- Goal 11 - Public facilities and services;
- Goal 12 - Transportation;
- Goal 13 - Energy conservation;
- Goal 14 - Urbanization;
- Goal 15 - Willamette river greenway; and, for coastal areas,
- Goal 16 - Estuarine resources;
- Goal 17 - Coastal shorelands;
- Goal 18 - Beaches and dunes;
- Goal 19 - Ocean resources.

A publication available from DLCD, [*Oregon's Statewide Planning Goals*](#), contains the actual wording of the goals plus advisory guidelines for each goal and definitions of terms used in the goals and guidelines. For most of the goals, LCDC has adopted administrative rules that include additional explanations and requirements for applying the goals in the comprehensive planning process. The rules are published in a compilation, [*Oregon Administrative Rules \(OAR\)*](#), copies of which are available from the county counsel/district attorney or planning department in each county, or from DLCD.

All nineteen goals need to be considered together when adopting and amending comprehensive plans. In general, once LCDC has acknowledged a county's comprehensive

plan

and land use regulations (including amendments subsequent to acknowledgment), planning for specific functions such as county roads is tested for compliance with the acknowledged plan and land use regulations, and not with the goals themselves. Transportation System Plans described in section 2A.210 below constitute an apparent exception to this general principle, however, since the Goal 12 rule described in that section specifically requires findings against the goals as well as against the plan.

The LCDC goals of particular relevance to county roads are:

- Goal 5: Open Spaces, Scenic and Historic Areas, and Natural Resources. Provisions of this goal with special significance to county roads include requirements for protection of wetlands and wildlife habitats.
- Goal 11: Public Facilities and Services. This goal links development to provision of public facilities, including county roads, and requires that areas within an urban growth boundary (UGB) (see Goal 14 below) that contain a population of 2,500 or more be covered by a specific public facility functional plan.
- Goal 12: Transportation. This goal is discussed in detail in section 2A.210.
- Goal 14: Urbanization. This goal requires each county in cooperation with its cities to establish and maintain an urban growth boundary that includes the area within each city plus adjacent unincorporated areas that are expected to become urbanized in the future (usually within a 20 year period). Related administrative rules require that cities and counties enter into growth management agreements that determine, among other things, how public facilities will be provided within the urbanizable (unincorporated) portions of the areas.

Road Decisions as Land Use Decisions. Some decisions made by county governing bodies and road officials with respect to the county road program are "land use decisions" as defined by the land use law. If a decision is a land use decision, the law requires that certain special procedures be followed (notice, hearing, etc.) and it may be appealed to the Land Use Board of Appeals.

[ORS 197.015\(10\)](#) defines "land use decision" as:

- (A) A final decision or determination made by a local government or special district that concerns the adoption, amendment or *application* of (emphasis added):
 - (i) The goals;
 - (ii) A comprehensive plan provision;
 - (iii) A land use regulation; or
 - (iv) A new land use regulation; or

- (B) A final decision or determination of a state agency other than the commission (LCDC) with respect to which the agency is required to apply the goals.
- (C) A decision of a county planning commission made under [ORS 433.763](#).

In other words, a decision relating to county roads may be a land use decision if it is subject to some specific provision of the goals, the plan, or subdivision, zoning or other land use regulations. However, the statute goes on to state that "land use decision" does *not* include a decision of a local government:

- (A) That is made under land use standards which do not require interpretation or the exercise of policy or legal judgment;
- (B) That approves or denies a building permit issued under clear and objective land use standards;
- (C) That is a limited land use decision;
- (D) *That determines final engineering design, construction, operation, maintenance, repair or preservation of a transportation facility that is otherwise authorized by and consistent with the comprehensive plan and land use regulations* (emphasis added);
- (E) That is an expedited land division as described in ORS 197.360;
- (F) That approves, pursuant to [ORS 480.450\(7\)](#), the siting, installation, maintenance or removal of a liquefied petroleum gas container or receptacle regulated exclusively by the State Fire Marshal under ORS 480.410 to 480.460;
- (G) That approves or denies approval of a final subdivision or partition plat or that determines whether a final subdivision or partition plat substantially conforms to the tentative subdivision or partition plan; or
- (H) That a proposed state agency action subject to ORS 197.180 (1) is compatible with the acknowledged comprehensive plan and land use regulations implementing the plan, if:
 - (i) The local government has already made a land use decision authorizing a use or activity that encompasses the proposed state agency action;
 - (ii) The use or activity that would be authorized, funded or undertaken by the proposed state agency action is allowed without review under the acknowledged comprehensive plan and land use regulations implementing the plan; or
 - (iii) The use or activity that would be authorized, funded or undertaken by the proposed state agency action requires a future land use review under the acknowledged comprehensive plan and land use regulations implementing the plan;

The italicized provision, which was added to the statute in 1991, was intended to

exempt many types of county road decisions as they relate to this law. However, some types of county road planning decisions will still be "land use decisions". For example, the Goal 12 Transportation Planning Rule (TPR) discussed in the next section stipulates that "many determinations relating to the adoption and implementation of transportation plans will be land use decisions." The TPR specifically makes adoption of the county transportation systems plan (TSP) a land use decision, and it states that the development of road and other transportation projects may involve land use decisions "to the extent that issues of compliance with applicable requirements" of the goals, land use plans and land use regulations "remain outstanding at the project development phase." In developing plans and projects, county road officials should therefore consult with their legal advisors to determine when the special procedures for making "land use decisions" must be followed.³

2A.210 LCDC GOAL 12 AND THE 1991 TRANSPORTATION PLANNING RULE. LCDC Goal 12 (Transportation) reads as follows:

“GOAL: To provide and encourage a safe, convenient and economic transportation system.

A transportation plan shall (1) consider all modes of transportation including mass transit, air, water, pipeline, rail, highway, bicycle and pedestrian; (2) be based upon an inventory of local, regional and state transportation needs; (3) consider the differences in social consequences that would result from utilizing differing combinations of transportation modes; (4) avoid principal reliance upon any one mode of transportation; (5) minimize adverse social, economic and environmental impacts and costs; (6) conserve energy; (7) meet the needs of the transportation disadvantaged by improving transportation services; (8) facilitate the flow of goods and services so as to strengthen the local and regional economy; and (9) conform with local and regional comprehensive land use plans. Each plan shall include a provision for transportation as a key facility.

Transportation--refers to the movement of people and goods.

Transportation Facility--refers to any physical facility that moves or assists in the movement of people and goods excluding electricity, sewage and water.

Transportation System--refers to one or more transportation facilities that are planned, developed, operated and maintained in a coordinated manner to supply continuity of movement between modes, and within and between geographic and jurisdictional areas.

Mass Transit--refers to any form of passenger transportation which carries members of the public on a regular and continuing basis.

³ A Portland land use attorney has commented that ORS 197.015(10)(b)(D) (italicized above) may not exempt transportation planning decisions from the definition of "land use decision" to a very great extent. He notes that the statutory language "begs the question" whether the decisions described are actually "consistent with the comprehensive plan and land use regulations." He notes further that even at the project development stage "the issue . . . is not final design, but preliminary design." (See Mark J. Greenfield, "New LCDC Transportation Rule: Yet Another Assignment for Overworked Planners," n.d., p. 10)

Transportation Disadvantaged--refers to those individuals who have difficulty in obtaining transportation because of their age, income, physical or mental disability.”

Although Goal 12 was adopted in 1974, the administrative rule that provides requirements and guidance for its implementation was not adopted until May, 1991. This section and sections 2A.215 to 2A.225 discuss the rule (Oregon Administrative Rules (OAR) Chapter 660, Division 12) as it relates to county road planning and management. These sections provide only a brief overview of the rule: county road officials must refer to the rule itself for the guidance they need for transportation planning. Also, the discussion in these sections is oriented to the information needs of counties generally: counties that have territory served by Metropolitan Planning Organizations (MPOs--see below) or other areas within urban growth boundaries (UGBs) with populations greater than 25,000 will be affected by some rule provisions discussed here only briefly or not at all.

Purpose and Applicability of the Rule. The official purpose statement for the Goal 12 Transportation Planning Rule (TPR) is found in [OAR 660-012-0000](#). That section states that the rule's general purpose is to tell how transportation planning must be done in order to comply with LCDC goals, including but not limited to Goal 12. The section states specifically that one purpose is to "reduce reliance on the automobile" and that another is to "identify how transportation facilities are provided on rural lands consistent with the goals."

A more complete picture of the purpose of the TPR can be gained by a brief reference to its history. During the late 1980s there was growing concern with problems that had arisen between land use regulation and road and highway operations. Some road and highway projects and activities were becoming bogged down in legal challenges before the Land Use Board of Appeals and the appellate courts as they encountered county and city land use regulations, often after state and county road officials had expended considerable money and effort in environmental impact analyses and other preliminary planning activity.⁴ Problems included the failure of most comprehensive plans to identify future transportation corridors, cumbersome local land use review procedures for road and highway development projects and even some maintenance activities, and allowance of land uses that reduced the usefulness and efficiency of some road and highway facilities.

With leadership from the Oregon Department of Transportation (ODOT), planners and road officials at both state and county levels agreed to work together to resolve these problems. ODOT established an advisory committee consisting of state, county and city transportation and planning officials, and contracted with the Bureau of Governmental Research and Service at the University of Oregon to conduct a study of the issues. Many of the basic concepts and policies that resulted from that cooperative effort are included in the TPR. Of special importance to county road officials is the rule's emphasis on defining the status of roads and other transportation facilities in the land use system (i.e. in local comprehensive plans and implementing ordinance such as zoning ordinance or land division regulations) and ensuring that these facilities will be able to serve their intended purposes.

The rule as adopted in 1991 by LCDC goes beyond highway and road operations to incorporate the emphasis on alternative modes that is found in Goal 12 itself. The TPR is

⁴ See Sensible Transportation v. Metropolitan Service District 100 Or App 564 (1990) and Washington County Farm Bureau v. Washington County 17 Or LUBA 861 (1989).

now nationally recognized as a pioneering effort to coordinate transportation planning with land use planning. It does this while at the same time strengthening the coordination of planning among both governmental jurisdictions and transportation modes.

The TPR applies to actions of planning and transportation agencies at the state, regional, county and city levels of government. Regional Metropolitan Planning Organizations (MPOs) that have responsibilities under the rule are METRO in the Portland area, the Mid-Willamette Valley Council of Governments in the Salem-Keizer area, the Lane Council of Governments in the Eugene-Springfield area, the Cascades West Council of Governments in the Corvallis and Albany areas, the Rogue Valley Council of Governments in the Medford-Ashland and Grants Pass areas and the Bend Metropolitan Planning Organization for the Bend area. As will be explained further below, counties have a dual role as "regional" transportation planning agencies outside MPO areas and as local agencies as well.

Exemptions. OAR 660-012-0055 (6) authorizes the DLCD director to grant a whole or partial exemption from the TPR for counties with less than 25,000 population. Counties requesting such exemptions must demonstrate that their existing and "committed" transportation systems are adequate to meet their needs, that they do not anticipate substantial new development or population growth, and that they do not anticipate major new transportation facilities. The rule defines "committed" transportation facilities and improvements as those which are consistent with the applicable comprehensive plan "and have approved funding for construction in a public facilities plan . . . or Transportation Improvement Program."

While an exemption to the TPR is permissible, a county should fully explore the benefits of developing and adopting a transportation system plan (TSP) prior to requesting an exemption. A county TSP provides for the coordination of transportation planning and needed facilities between the Oregon Department of Transportation, the cities and the county. Further, transportation projects necessary to implement the TSP are identified and priority for future funding established through the State Transportation Improvement Program (STIP). Other benefits may include road classification system, road standards, and access management requirements just to name a few.

To help state and local planners further understand and meet the requirements of the TPR, ODOT has developed guidance in the form of best practices for producing transportation plans. [*The Transportation System Planning Guidelines 2008 \(TSP Guidelines\)*](#) is intended to assist local jurisdictions in preparation and updating of their TSPs.

2A.215 TRANSPORTATION SYSTEM PLANS. One of the basic mandates of the TPR is that ODOT, each MPO, each county and each city must prepare and adopt a Transportation System Plan (TSP). Since portions of counties are included in MPO boundaries, the counties participate in the Regional Transportation Plan (RTP) process to produce an MPO plan that meets federal requirements. They also participate in the development of a Regional Transportation System Plan (RTSP) that meets the requirements for a regional plan for the MPO area. Counties are responsible for producing local TSPs covering regional and local transportation facilities and services for the rural portions of their jurisdiction. While much of the basic data and analysis will be used for all of these plans,

counties must identify separately their "regional" and "local" systems for purposes of the plan. The rule gives no particular guidance by which to segregate "regional" and "local" systems, so that will be a local determination.

The regional TSPs to be prepared by Multnomah, Washington, Clackamas, Marion, Polk, Benton, Lane, Jackson, Deschutes, Linn and Josephine Counties will include only those areas that lie outside the planning areas of the MPOs identified above. However, since both physical and economic aspects of transportation systems are linked among cities, counties and the state, counties will be interested and involved in not only their own regional and local TSPs but also in MPO plans, city TSPs, particularly as they relate to areas within urban growth boundaries outside city limits (urbanizable areas), and the state TSP.

Plan Elements. Under OAR 660-012-0020, each county TSP must include an inventory of the county's transportation services and facilities, including roads, intercity and intracity public transportation systems, bicycle and pedestrian facilities, and facilities for air, rail, water and pipeline transportation. The inventory must describe the condition of each service or facility and estimate its capacity.

The elements of the TSP include determination of needs for each mode, a plan for the arterial and collector road system, a public transportation plan (including intercity bus and rail service and services for the transportation disadvantaged), a bicycle and pedestrian plan, and a plan for air, rail, water, and pipeline transportation. Plans for urban areas having more than 25,000 population⁵ also must evaluate the feasibility of developing a public transit system if none exists at the present time and they must include plans for transportation system management and demand management.⁶ TSPs for urban areas of 2,500 population or more are to include financing programs, as already required by Goal 11.

Corridor Planning. Although plan elements are to be prepared for each mode, the rule requires that both state and regional TSPs relate the modes to each other and to their environmental, economic and other contextual considerations within "transportation corridors" to be identified by the plan. The rule does not expressly define the term, "transportation corridors," but draft guidelines for state corridor planning prepared by ODOT early in 1993 define a "corridor plan" as a "strategy for providing transportation services on a given route." Corridor plans identify areas connecting two points within which alternative road or highway routings and alternative modes of transportation should and can be considered and evaluated to identify intermodal opportunities and efficiencies. The basic concept is to shift transportation planning from a focus on a given transportation facility (highway, road, rail line, bus route etc.) or project to looking at all the ways goods, people, and services can be moved between the points within the corridor.

⁵ The rule uses the term "urban area" to refer to land within an urban growth boundary. Of the 20 Urban areas over 25,000 population all are within the eight MPOs except the urban areas of Coos Bay/North Bend, Klamath Falls, McMinnville and Redmond.

⁶ The rule defines transportation system management as "techniques for increasing the efficiency, safety, capacity or level of service of a transportation facility without increasing its size" and includes as examples traffic signal improvements, medians, removal of parking, channelization, access management, ramp metering, and restriping for high occupancy vehicles. It defines transportation demand management as "actions which are designed to change travel behavior in order to improve performance of transportation facilities and to reduce need for additional road capacity" including use of alternative modes, ride-sharing and vanpool programs, and trip reduction ordinances.

The ODOT draft guidelines illustrate the concept of corridor planning by suggesting that planning might occur in three phases, moving from more general to more specific determinations:

- Development of corridor strategies: The first phase would establish goals and objectives for transportation within the corridor, including such considerations as average speeds, levels of service, safety problems, etc.
- Development of general plans: The second phase would identify actions needed to meet the goals and objectives, including assessment of alternative modes, identification of the general location of needed facilities and improvements, ways to manage existing and planned facilities including avoidance and resolution of land use conflicts, etc.
- Refinement planning: The third phase would address particular environmental, land use or access management issues that may exist in some portions of a corridor at a greater level of detail than would be required in the second phase.

Corridor plans tie transportation facilities and improvements to local comprehensive plans in several ways. Local plans will be amended to recognize the transportation facilities and improvements identified in the corridor plans; and local governments will establish subdivision, zoning and other land use regulations consistent with corridor plan functional classifications and access management categories and otherwise provide for consistency between transportation and land use planning.

Needs Determination. The rule provides no detailed guidance for determining "needs" for each mode, but does state that regional TSPs are to rely on needs identified in the state TSP, and local TSPs are to rely on needs identified in both the state and regional TSPs. It also states that needs are to assume achievement of the goal of reducing reliance on the automobile. Otherwise, needs are to be determined by considering land use plans, projections of population⁷ and employment, economic trends and projections, and other local plans and policies consistent with the rule that could affect future transportation facility and service needs for the county. The rule specifically requires consideration of the needs of the transportation disadvantaged, industrial and commercial development, and, within MPO areas, the goal of reducing vehicle miles of travel per capita by 20 percent within the next 30 years. The Oregon Transportation Plan and Oregon Highway Plan (OHP) (the policy elements of the state's TSP), and the Federal-Aid Highway Laws ([Title 23 U.S.C.](#))--both described below--provide additional guidance for determining a county's transportation needs.

Evaluation of Alternative Modes. OAR 660-012-0035 emphasizes that TSPs are not to be just road plans, but are to feature specific consideration and evaluation of alternatives to the use of motor vehicles for the movement of goods and people. In addition to considering new facilities and services and improvements to existing facilities and services for all modes, the rule requires consideration (though not adoption, except for urban areas of 25,000 or

⁷ Portland State University's Population Research Center is the entity officially responsible for issuing population forecasts for Oregon's cities and counties no less than once every four years. This change was a result of HB 2253 (2013) which also requires PSU to seek input from cities, counties and citizens for each jurisdictional projection.

more) of transportation system management and demand management measures. Consideration of various types of land use regulations to increase population and development densities, including transit-oriented development (TOD)⁸, is mandatory for the Portland metropolitan area and permissive elsewhere. In 1998, this section of the rule was amended to expand options for MPO areas to demonstrate reduced auto reliance. The rule establishes some general criteria against which alternative modes are to be considered for each identified need, including the comprehensive plan land use designations and policies, impact on air and water quality, ESEE (economic, social, environmental and energy) consequences, coordination among modes, avoiding principal reliance on any one mode, and reduction of principal reliance on the automobile.

TSPs may omit the analysis and evaluation of alternatives under OAR 660-012-0035 if existing and committed transportation and services have "adequate capacity" to support the land uses provided in the comprehensive plan. However, DLCDC will review the TSP when it is adopted (see below) and may at that time require that the alternative modes analysis be included.

Adoption and Amendment of TSPs. The TPR established a deadline of May 1997 for adoption of county regional and local TSPs, and requires updates during each periodic review of the county's comprehensive plan.

Adoption and amendment of the TSP is a land use decision as described above in section 2A.205, as the TSP is an element of the County Comprehensive Plan. Although these actions are considered legislative rather than quasi-judicial land use decisions, certain procedural requirements must be followed:

- The ordinary notice procedures of the county may be used, but because this is a land use decision, persons, groups or agencies that specifically request it are entitled to receive mailed notice, and both jurisdiction policies and state statutes should be checked for possible timing requirements. Under [ORS 197.610](#), specific notice of TSP adoption or amendment must be sent to the DLCDC director at least 45 days before the final hearing on adoption or amendment. Notice to DLCDC must include the text of the plan or amendment plus relevant supplementary information. Under [ORS 215.503](#), [227.186](#) and [268.393](#) an individual notice to land owners may be necessary if the TSP would limit the use of property as specified in the current land use plan and applied zoning to the property, or reduce the value of the property.
- At least one public hearing is required, and many jurisdictions will conduct hearings before both the planning commission and the governing body. Any member of the decision making body who has a conflict of interest as defined by statute must declare it and may have to abstain from participation in the deliberation and decision if the member or the member's family or business has a direct or substantial financial interest.
- The decision to adopt or amend the TSP must be supported by adequate written findings. The TPR requires that findings explain how the plan or amendment

⁸ The rule defines TOD as "a mix of residential, retail and office uses and a supporting network of roads, bicycle and pedestrian ways focused on a major transit stop designed to support a high level of transit use."

satisfies the requirements of *both* the comprehensive plan *and* LCDC goals. The facts needed to support the findings must be contained in the plan or plan amendment or in the written record of the proceedings, including the testimony, staff reports, and other material submitted in connection with the hearing.

2A.220 IMPLEMENTING THE TSP. The TPR establishes requirements not only for preparation and adoption of the TSP, but for its implementation as well. These requirements are of two basic types: required land use regulations and required procedures for transportation project development.

Land Use Regulations. Some of the land use regulations required by the rule are intended to protect roads and other transportation facilities, corridors and sites, such as airports, "for their identified functions," including regulations that control access and regulations that provide for attachment of conditions to development proposals to minimize adverse impacts. Among other things, the TSP requires that county and city land use regulations require notification of transportation agencies regarding any land use application that could affect their facilities. As another example, the rule requires that any amendments to either the comprehensive plan or land use regulations that "significantly affect a transportation facility" must assure consistency with the "identified function, capacity and performance standards" of the facility. This includes a prohibition against "types or levels of land uses which would result in levels of travel or access which are inconsistent with the functional classification of a transportation facility."

Under OAR 660-012-0045 (3) to 660-012-0045 (7), counties and cities must adopt land use regulations for both urban and rural communities that implement the TSP by:

- requiring sidewalks along arterials, collectors and most local streets in urban areas except along controlled access roadways and bikeways along arterials and major collectors;
- supporting existing or planned public transit services in urban areas with 25,000 or more population, including provision for bus stops and "optimum road geometrics;"
- in MPO areas, providing for transit-oriented developments (TODs) along transit routes, reducing the number of parking spaces per capita by ten percent over the planning period and imposing maximum parking requirements for new developments; and
- enacting other provisions to protect existing and planned transportation facilities and promote increased use of alternative modes of transportation.
- establishing standards for local streets and access ways that minimize pavement width and total right-of-way consistent with the operational needs of the facility.

Several types of road and highway decisions and activities are exempted from county and city land use regulations by statute (ORS 197.015(10), cited above), by the TPR, or both. In general, land use regulations do not apply to "operation, maintenance, and repair of

existing transportation facilities *identified in the TSP*" (emphasis added), or to the dedication of right-of-way, authorization of construction, or construction of facilities and improvements "where the improvements are consistent with clear and objective dimensional standards." Also, in addition to the ORS 197.015(10) exemption of decisions that determine the final engineering design and construction of facilities that are consistent with the comprehensive plan (including the TSP, which becomes part of the comprehensive plan), the rule exempts certain road and highway facilities permitted outright in exclusive farm use and forest zones, including climbing and passing lanes, reconstruction or modification of roads where there is no removal of buildings or partitioning of land, temporary detours, and widening and minor betterment of roads and related facilities within existing rights of way. County road officials will have to review both the statutes and the TPR carefully to determine precisely which of their actions are subject to county and city land use regulations and which are not.

Project Development. The other main way in which the TSP is to be implemented is through project development, which the rule defines as "determining the precise location, alignment, and preliminary design of improvements included in the TSP based on site-specific engineering and environmental studies." (As noted above, many types of road "projects" and their final design are exempted from land use regulations). In OAR 660-012-0050, the rule requires that project development under regional TSPs (including county/regional TSPs) be done in coordination with other affected local governments and with citizen involvement and that a lead agency be designated for each project. Decisions regarding project development may be land use decisions if the comprehensive plan or the TSP has not resolved issues regarding the project's consistency with the plan or applicable land use regulations. Whether land use decisions are involved or not, the rule requires findings for each project that explain how the project is consistent with both the applicable comprehensive plan and LCDC goals.

Additional information about project development and capital improvement planning generally is presented in section 2A.240 of this manual.

2A.225 TRANSPORTATION IMPROVEMENTS ON RURAL LANDS. OAR 660-012-0065 further clarifies the status of transportation facilities under the land use planning system by identifying in some detail the types of transportation improvements that may be planned, constructed, and maintained on rural lands without taking exceptions to Goals 3 (agricultural lands), 4 (forest lands), 11 (public facilities) and 14 (urbanization), so long as they are otherwise consistent with the comprehensive plan and land use regulations. In addition to the statutory exemptions noted above (including transportation facilities and improvements permitted by statute outright in EFU and forest zones), OAR 660-012-0065(3) allows without Goal 3, 4, 11 and 14 exceptions, subject to the requirements of the rule, accessory transportation improvements and transportation improvements allowed or conditionally allowed by law in EFU zones or by OAR 660, Division 6 (Forest Lands), channelization, realignment of roads, replacement of an intersection with an interchange and continuous median turn lanes. Goal exceptions are not required for new two lane access roads and collectors within a built or committed exception area if the road is to reduce local access to or local traffic on a state highway. Transportation facilities, services and improvements that serve local travel needs are allowed without exceptions as long as the travel capacity and performance standards are necessary to support rural land uses identified in the acknowledged comprehensive plan or to provide emergency access.

If transportation improvements on rural lands require goal exceptions (for example, if a proposed improvement has not been included in the TSP), the rule requires that the exception:

- describe the "need, mode, function and general location" and the "size, design and capacity " of the proposed facility or improvement;
- the procedure and standards that will be applied to determine its design and location, and any measures required to mitigate adverse impacts (e.g., in floodway or wetland areas);
- explain why the transportation need being addressed cannot be met by the use of alternative modes of transportation, system management measures, or improvements to existing facilities;
- explain why alternative locations that would not require an exception cannot be used;
- identify ESEE consequences and explain why they are not more adverse than they would be for alternative routings that would also require exceptions; and
- identify any adverse impacts the improvement or facility would have on surrounding lands, including creation of pressures for new nonresource development.

2A.230 OTHER STATE MANDATES AND GUIDANCE FOR TRANSPORTATION PLANNING. The Oregon Transportation Plan (OTP), the 1999 Oregon Highway Plan, the Oregon Public Transportation Plan, the Oregon Rail Plan, the Oregon Bicycle Pedestrian Plan, and the Oregon Freight Plan, all adopted by the Oregon Transportation Commission, along with the Oregon Aviation Plan provide the state policy guidance for transportation planning. ODOT has also developed numerous facility level plans that apply these policies through decisions about managing and improving specific areas, segments and elements of the state transportation system. These documents form the state TSP required by the TPR and form the basis for the structure and coordination process for transportation planning in Oregon.

Oregon Transportation Plan

The OTP is the state's long-range intermodal transportation plan. It consists of a vision, overarching policies and strategies to guide the decisions for achieving a vibrant, functional transportation system well into the future. The plan identifies seven specific goals which are:

- Goal 1 – Mobility and Accessibility
- Goal 2 – Management of the System
- Goal 3 – Economic Vitality
- Goal 4 – Sustainability
- Goal 5 – Safety and Security

Goal 6 – Funding the Transportation System

Goal 7 – Coordination, Communication and Cooperation

Under each of these goals are a set of strategies that further explain and provide guidance for achieving the desired direction. Various individual modal and topic plans, including the Oregon Highway Plan, extend and apply the OTP to a greater level of detail for specific facilities and services.

The OTP stresses that the plan is best implemented through integrated state, regional and local planning and with cooperation from the private sector as well. The policies and suggested actions included in the OTP are not directly mandatory as they relate to county and other local government transportation planning. However, both ODOT's state agency coordination program under [ORS 197.180](#) and described in [OAR 731-015](#), the inter-jurisdictional planning mandates of the TPR provide the vehicles by which metropolitan planning organization (MPO), county and city transportation planning will have to be consistent with OTP's policies and suggested actions.

OTP includes planning and performance expectations that identify specific policies and actions that MPOs and local governments are expected to implement in their own plans. Most of these overlap requirements of the TPR but some go beyond it. For examples:

- provide for connectivity among modes and ease of transfer between local and state transportation systems
- avoid dependence on the state highway system for direct access to commercial, residential, or industrial development adjacent to the state highway ;
- protect and enhance the aesthetic value of transportation corridors ;
- provide grade separations and alternative motor vehicle routings to enhance rail service.

Additional OTP goals and strategies are identified for implementation by MPOs and by jurisdictions with urban areas over 25,000 population outside MPO areas. Several of these have to do with accessibility, compact urban growth, and transit. OTP policy applicable to MPOs and jurisdictions within MPO areas, would require that transportation investment decisions maximize the full benefits of the system and allow users to face prices which reflect the full costs of their transportation choices.

1999 Oregon Highway Plan

The 2006 Oregon Transportation Plan establishes goals, policies and investment strategies for Oregon's multimodal transportation system. The statewide plan calls for a transportation system marked by modal balance, efficiency, accessibility, environmental responsibility, connectivity among places, connectivity among modes and carriers, safety, and financial stability.

The 1999 Oregon Highway Plan (OHP) further clarifies OTP directives through policies that apply more specifically to the state highway system. The plan emphasizes:

- Efficient management of the system to increase safety, preserve the system and extend its capacity;
- Increased partnerships, particularly with regional and local governments;
- Links between land use and transportation;
- Access management;
- Links with other transportation modes; and
- Environmental and scenic resources.

The Highway Plan operates in the context of the Federal-Aid Highway Laws, the statewide land use planning goals, the Transportation Planning Rule and the State Agency Coordination Program. Its policies and investments support the Oregon Benchmarks and the Governor's Quality Development Objectives. The Highway Plan carries out the Oregon Transportation Plan and its policies and will be reflected in transportation corridor plans. Under the Transportation Planning Rule, regional and local transportation system plans must be consistent with the state transportation system plan, including the Highway Plan.

The Policy Element of the Plan contains policies and actions under broad goals for System Definition, System Management, Access Management, Travel Alternatives and Environmental and Scenic Resources. The goals are:

- Goal 1. System Definition: To maintain and improve the safe and efficient movement of people and goods, and contribute to the health of Oregon's local, regional, and statewide economies and livability of its communities.

The System Definition policies define a classification system for the state highways to guide management and investment decisions. The state highway classification system divides state highways into five categories based upon function: Interstate, Statewide, Regional, District and Local Interest Roads. Land use and transportation policies address the relationship between the highway and patterns of development both on and off the highways.

- Goal 2. System Management: To work with local jurisdictions and federal agencies to create an increasingly seamless transportation system with respect to the development, operation, and maintenance of the highway and road system that:
 - Safeguards the state highway system by maintaining functionality and integrity;
 - Ensures that local mobility and accessibility needs are met; and
 - Enhances system efficiency and safety.

The focus of the System Management policies is on making the highway system operate more efficiently and safely through public and private partnerships, intelligent transportation systems, better traffic safety, and rail-highway compatibility. The policies recognize that state and local partnerships can save resources; that the most cost effective way to achieve improvements to the state highway may be by assisting with off-system improvements; and that state and local governments should make inter jurisdictional transfers to reflect the appropriate functional classification of a particular roadway.

- Goal 3. Access Management: To employ access management strategies to ensure safe and efficient highways consistent with their determined function, ensure the statewide movement of goods and services, enhance community livability and support planned development patterns, while recognizing the needs of motor vehicles, transit, pedestrians and bicyclists.

Access management balances access to developed and developing land with ensuring movement of traffic in a safe and efficient manner. Implementation of access management is essential if the safety, efficiency and investment of existing planned state and local jurisdictional roads are to be protected.

- Goal 4. Travel Alternatives: To optimize the overall efficiency and utility of the state highway system through the use of alternative modes and travel demand management strategies.

Maintaining and improving the performance of the highway system requires that the highway function as part of a well-coordinated and integrated multimodal system. Alternative passenger modes, transportation demand management, and other programs can help reduce the single occupant vehicle demand on the highway system. Alternative freight modes and related strategies that strive for more efficient commercial vehicle operation can help the overall reliability and performance of the movement of goods.

- Goal 5. Environmental and Scenic resources: To protect and enhance the natural and built environment throughout the process of constructing, operating, and maintaining the state highway system.

The Oregon Transportation Plan mandated a transportation system that is environmentally responsible and encourages conservation of natural resources. The Environmental and Scenic Resources Policies recognize the Oregon Department of Transportation's responsibilities for maintaining and enhancing environmental and scenic resources in highway planning, construction, operation and maintenance.

2A.235 FEDERAL MANDATES AND GUIDANCE FOR TRANSPORTATION PLANNING.

Federal-Aid Highway Laws ([Title 23 U.S.C.](#))

The Federal-Aid Highway Laws affect county transportation planning in two important ways. First, although the highway laws do not directly impose planning mandates as such on counties, they do establish some mandatory policies for state planning and for

regional planning by Metropolitan Planning Organizations (MPOs). Many of the federal planning guidelines and mandates for the state and MPOs pass through to counties because they are included in the Goal 12 Transportation Planning Rule (TPR), the Oregon Transportation Plan (OTP) or the 1999 Oregon Highway Plan (OHP) and are applied to county transportation planning in ways outlined in the previous section. In addition, some of the following highway planning goals and policies not specifically covered in Goal 12, the TPR, OTP, or OHP may provide guidance for county transportation planning and project development:

1. Need for access to ports, airports, intermodal transportation facilities, major freight distribution routes, national parks, recreational areas, monuments and historic sites, and military installations.
2. Need for connectivity of roads within the metro area with roads outside the metro area.
3. Preservation of rights-of-way for construction of future transportation projects.
4. The use of life-cycle costs in design and engineering of bridges, tunnels, or pavement.
5. Coordination with state and federal agencies involved in Federal Lands Highway Program projects.⁹

The second way in which Federal-Aid Highway Laws affect county transportation planning is by authorizing the allocation of Surface Transportation Program (STP) funds for planning. STP funds are authorized for transportation planning by ODOT through the Transportation and Growth Management Program (TGM). The TGM program is a joint venture of the Oregon Department of Transportation and the Department of Land Conservation and Development. TGM grants are available to assist counties and other local governments with transportation planning activities required by the Transportation Planning Rule, the 1999 Oregon Highway Plan, and the Oregon Transportation Plan. Counties interested in undertaking or updating their Transportation System Plan should contact the Oregon Department of Transportation.

Other Federal Mandates and Guidance for Transportation Planning

Clean Air Act. One key purpose of the federal and state mandates for transportation planning is to reduce air pollution by reducing the amount of motor vehicle travel. Motor vehicles are major contributors to air pollution, particularly as they emit carbon monoxide and oxides of nitrogen and hydrocarbons that interact with sunlight to produce ozone. Dust originating on both paved and unpaved roads also contributes to air pollution, and suspended particulates may also be generated by some road operations such as gravel and asphalt production. County transportation planners need to be aware of air pollution problems that can be addressed through appropriate policies and strategies of the plan and that might affect county road and other transportation project development.

The federal Clean Air Act is applied in Oregon through the Department of Environmental Quality's State Implementation Plan (SIP), which establishes ambient air

⁹ This list is adapted from a similar list included in a May 26, 1992 ODOT discussion paper, "Transportation Planning and Performance Requirements for State, Regional and Local Governments," p. 11

quality standards for the state and identifies regions within the state that are not meeting the standards ("non-attainment areas"). Currently, the non-attainment areas are Klamath Falls, Medford and Portland. The Eugene and Salem areas are in attainment, but are being carefully monitored and regulated for certain pollutants. For specific information about air quality mandates and guidance county transportation planners should contact one of the DEQ regional offices (or, in Lane County, the Lane Regional Air Pollution Authority.)

Clean Water Act. Section 404 of the Clean Water Act of 1972 requires the Environmental Protection Agency (EPA) to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters" by regulating the discharge of dredged or fill material into waters of the United States, including wetlands. The Army Corps of Engineers (Corps) has responsibility for administering the Act, including issuance of permits, subject to EPA oversight, including possible EPA veto of permits approved by the Corps. In Oregon, the Division of State Lands also has statutory responsibility for protection of wetlands, some of which overlaps the responsibilities of EPA and the Corps, and the federal and state agencies maintain a joint, coordinated permitting process.

The federal "no net loss" policy for wetlands is a unifying theme for federal and state wetlands regulation. Planning for both construction and maintenance of county roads must take account of the rules and requirements for wetlands protection to avoid disturbance of existing wetlands if possible and to provide for mitigation in the event that disturbance is required for county road operations.

Americans With Disabilities Act. The Americans With Disabilities Act of 1990 (ADA) includes some provisions that affect transportation planning. These provisions apply to county transportation facilities whether or not federal financing is involved. The ADA was originally enacted in public law format and later updated and rearranged and published in the United States Code in 2011.

As detailed in rules developed by the federal Architectural and Transportation Barriers Compliance Board and the U.S. Department of Transportation, ADA requires that transportation planning take into account design and construction standards for pedestrian ways (including width, slope, surface, separation from vehicle ways, protruding objects, curb ramps, street crossings, and connectivity between pedestrian ways and transit stops, etc.), access to and design of on-street parking spaces, roadside emergency communications facilities, and other transportation facilities. Design standards for these elements that address and comply with the ADA requirements have been included in the [ODOT Highway Design Manual](#).

Other Federal Guidance and Mandates. Numerous additional federal laws and programs may affect county transportation planning, including the environmental impact analysis requirements of the National Environmental Policy Act, which applies to any project or activity that is financed partly or wholly with federal funds. Federal initiatives are encouraging the linking of planning and environmental analysis prior to project development activities to achieve some efficiencies in the amount of time and resources needed to bring project to fruition. Other federal guidance and mandates to be considered in county transportation planning may be established under laws administered by the federal agencies identified in Chapter 11 of the Manual.

2A.240 PROJECT PLANNING AND DEVELOPMENT. Transportation projects, including road improvements, are identified in various ways. The comprehensive plan may identify some needed projects in general terms. The Transportation Systems Plan (TSP) prepared in response to the DLCDC Transportation Planning Rule will also list some improvement projects to meet identified needs. Various functional and refinement plans are likely to propose additional projects, and still others are sure to be proposed by neighborhood organizations, elected officials, community organizations, and individual citizens as well as county road officials and other departmental personnel.

Project proposals from these various sources require analysis to determine their feasibility and estimated costs. The analysis will be based in part on information about facility condition and capacity that will be included in the Transportation Systems Plan described in section 2A.215. If analysis indicates that the project is needed and is feasible, specific funding sources must be identified for each project, and revenues anticipated from each source must be projected. Project proposals can then be prioritized and allocated to a time schedule determined by projected revenue availability, required lead time, and other considerations.

These analyses and decisions may be made informally in very small jurisdictions, but most counties perform these tasks by preparing a capital improvement program (CIP). The CIP includes capital improvement projects for all county functions and departments, but road and other transportation facility improvements are likely to comprise the bulk of planned capital expenditure in most counties. To the extent that transportation projects are part of a county's regional plan, the DLCDC Transportation Planning Rule requires that project development be done in cooperation with other affected local governments, with citizen involvement, and with findings of compliance with the county comprehensive plan and the Statewide Planning Goals. See section 2A.220.

The CIP generally includes abbreviated information about the nature and purpose of each project, the source of the project proposal, a rough estimate of its cost, the funding source, and the fiscal year or years during which construction is scheduled. Most jurisdictions include projects scheduled for four, five or six fiscal years, and projects scheduled for the first year of the period become those proposed for funding in the jurisdiction's annual budget. The farther into the future projects are scheduled, the less certainty there will be about estimated costs and funding sources, and CIPs often include projects in the "out years" that still require substantial preliminary planning and analysis to identify needs, cost estimates and funding sources.

The draft CIP, usually revised annually, is customarily submitted to the county planning commission for review in the context of comprehensive plan policies and provisions of related functional and refinement plans including the Transportation Systems Plan. The planning commission in turn submits the draft CIP with its recommendations to the county governing body for final review and adoption.

The CIP serves as the basis for two related reports. First, [ORS 279C.305](#) requires that counties annually prepare and file with the state Bureau of Labor and Industries (BOLI) a list of the public improvements they intend to fund during each fiscal year, with an estimate of "the total onsite construction costs" for each improvement, and to indicate whether they

intend to do the work with their own forces or by contracting with a private firm. Second, in metropolitan areas, federal law requires the Metropolitan Planning Organization (MPO) to prepare an annual Transportation Improvement Program (TIP) that lists the projects proposed for funding with federal financial aid by each city, county and transportation district or agency in the area, plus projects to be undertaken in the area under ODOT's four-year Statewide Transportation Improvement Program. The STIP may include projects to be funded from local as well as federal sources, in which case it becomes a single compilation of all transportation projects scheduled for the particular area. Like CIPs, TIPs list projects scheduled for several fiscal years (the federal law requires at least three fiscal years). The TIP is usually also submitted for review and recommendation by city and county planning commissions, and when adopted by the MPO it establishes eligibility for the federal funding for the first year of the period included.

2A.300 PRINCIPLES OF NOTICE. [ORS 368.401 to 368.426](#) establish notice procedures which provide constitutional protections to those who may be subjected to a taking of property as a result of county road activities. The courts insist upon a good faith effort on the part of a public agency to notify property owners if there is a potential issue involving property rights. Additional information on Notice may be found in chapter 2. See sections 2.300 to 2.330.

CHAPTER 3: ROAD REVENUE

(This chapter was revised and updated in 2008 and updated in 2010, 2012, 2013 and 2014)

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CHAPTER 3: ROAD REVENUE

3.000 INTRODUCTION. Of the dollars that pay for construction, maintenance and operation of county roads most come from the state from the counties' shared state highway revenue and local revenue sources including property taxes. Historically, the largest portion of funding came from the federal government, mainly National Forest shared revenue. However, over the last two decades this once significant source of funds for county roads has nearly dried up due to the decline in timber harvest on National Forest lands.

In the twenty-first century more and more of the money for county roads comes from local sources, including property taxes, local assessments, local gasoline taxes (in Multnomah and Washington Counties only), systems development charges, permit fees, and other miscellaneous local sources.

3.015 SPECIAL REFERENCES. Following are sources of information outside this manual that are particularly relevant to sections of this chapter, as noted.

Section 3.090

Association of Oregon Counties, [Oregon County Road Needs Report](#) (November 2006)

Oregon Law Institute, Oregon Government Law 2005: *The Latest Chapters in Public Law*, Ch.3, "Streets and Roads," Sec. VIII, "Road Revenues" (2005)

Section 3.100

Oregon Law Institute, Oregon Local Government Law, Ch. 12, "Local Finance Law" (1991)

Oregon Law Institute, Oregon Government Law, Ch. 8, "Public Finance, Bonds, and Debt" (1991)

Section 3.400

Bureau of Governmental Research and Service, Financing Local Improvements by Special Assessment (BGRS No. 82-1, Vol. 1; and BGRS No. 82-3, Vol. 2)

Marion County, Petition for Street and Road Improvement by Assessment, and related documents 1979

Oregon Law Institute, Oregon Local Government Law, Ch. 13, "Special Assessments" (1991)

Oregon Law Institute, Oregon Government Law 2004: *New Chapters in Public Law*, "The ABCs of LIDs, SDCs, and Reimbursement Districts": Ch. 4, "Special Assessments," Ch. 5, "Reimbursement Districts and Related Mechanisms for Recovering Cost of Public Improvements," and Ch. 6, "System Development Charges in Oregon: Problems and Solutions" (2004)

Section 3.450

Oregon Law Institute, *Oregon Government Law 2004: New Chapters in Public Law*, Ch. 6,
“System Development Charges in Oregon: Problems and Solutions” (2004)

3.090 DEDICATED AND NONDEDICATED REVENUE SOURCES. Most of the money available for county roads comes from dedicated sources: it cannot be used for non-road purposes because it has been earmarked for road purposes only by some provision of federal, state or local government law, terms of a tax levy that has been approved by the voters, conditions of an intergovernmental grant in aid or contract, or other reason.

For example, Article IX, Section 3a of the [Oregon Constitution](#) restricts the use of revenue from taxes on the use of motor vehicles and on motor vehicle fuel (whether the taxes are imposed by the state and shared with local governments or imposed by the local governments themselves.) County revenue from any state or county levy within the following constitutional restrictions must be used for road work:

Section 3a. Use of revenue from taxes on motor use and fuel; legislative review of allocation of taxes between vehicle classes.

- (1) Except as provided in subsection (2) of this section, revenue from the following shall be used exclusively for the construction, reconstruction, improvement, repair, maintenance, operation and use of public highways, roads, streets, and roadside rest areas in this state:
 - (a) Any tax levied on, with respect to, or measured by the storage, withdrawal, use, sale, distribution, transportation or receipt of motor vehicle fuel or any other product used for the propulsion of motor vehicles; and
 - (b) Any tax or excise levied on the ownership, operation or use of motor vehicles.
- (2) Revenues described in subsection (1) of this section:
 - (a) May also be used for the cost of administration and any refunds or credits authorized by law.
 - (b) May also be used for the retirement of bonds for which such revenues have been pledged.
 - (c) If from levies under paragraph (b) of subsection (1) of this section on campers, motor homes, travel trailers, snowmobiles, or like vehicles, may also be used for the acquisition, development, maintenance or care of parks or recreation areas.
 - (d) If from levies under paragraph (b) of subsection (1) of this section on vehicles used or held out for use for commercial purposes, may also be used for enforcement of commercial vehicle weight, size, load, conformation and equipment regulation.
- (3) Revenues described in subsection (1) of this section that are generated by taxes or excises imposed by the state shall be generated in a manner that ensures that the share of revenues paid for the use of light vehicles, including

cars, and the share of revenues paid for the use of heavy vehicles, including trucks, is fair and proportionate to the costs incurred for the highway system because of each class of vehicle. The Legislative Assembly shall provide for a biennial review and, if necessary, adjustment, of revenue sources to ensure fairness and proportionality.

The voters of Oregon in November 1999 approved an amendment to Article IX, Section 3a as submitted the 1999 Legislative Assembly requiring that taxes imposed by the state on the use of vehicles be fair and proportional to the costs incurred for the highway system by cars and by trucks. This requirement is commonly referenced as “cost responsibility” or “cost allocation.” The amendment also directs the legislature to regularly review and adjust the proportionality ratio when appropriate.

Earmarking of National Forest revenues is required by federal law ([16 U.S. Code 500](#)), which states that 25 percent of "all moneys received" from National Forest timber sales and other sources be paid to the states in which the National Forests are located to be used as each state legislature prescribes for the benefit of county roads and schools. Oregon law ([ORS 294.060](#)) requires that the 25-percent payments be divided 75 percent to the county road fund and 25 percent to the county school fund (with certain exceptions noted in Subsections 3 through 6 of ORS 294.060). National Forest payments to counties declined dramatically during the 1990s when the federal government curtailed timber harvest in National forest to protect salmon, the northern spotted owl and other birds and fish. In 2000 Congress passed Public Law 106-393 entitled “Secure Rural Schools and Community Self Determination Act of 2000” to stabilize Federal Forest payments. See section 3.300 for additional details on PL 106.393 and its reauthorization.

Federal "five percent" payments from sales of timber and other materials from public domain lands are also earmarked for roads by state and federal law (30 U.S. Code 603 and [ORS 272.085](#)). Federal payments under the Flood Control Act are similarly earmarked but for “the benefit of the public schools and public roads of the counties” receiving the funds (ORS 294.065) while payments under the Mineral Leasing Act are designated for the support of public schools “or” for the construction and maintenance of public roads of the county (ORS 294.055).

Certain other federal revenues allocated to the road fund in some counties are not legally earmarked for county roads, and could be reallocated for other county purposes. These are Oregon and California (O&C) revenues, Coos Bay Wagon Road revenues, federal payments in lieu of taxes, and federal grazing revenues from lands located outside of grazing districts. However federal grazing funds in counties receiving funds from “grazing districts containing Indian lands ceded to the United States” for disposition under public land laws, the funds are earmarked for the benefit of public schools and public roads of the county. Federal grassland payments under the Bankhead-Jones Act may be used either for roads or schools, or both, at the discretion of the county governing body.

Some non-dedicated state and local revenues are also allocated to the road fund in some counties. The major state non-dedicated source sometimes used for county roads is revenue from timber sales on state forests (i.e., county forest trust lands). Local non-dedicated sources include sales of real and personal property, interest earnings from other than road fund investments, and other miscellaneous general fund revenues. However, property taxes not specifically levied for road purposes may not be used for roads, as further discussed in section 3.100.

3.100 PROPERTY TAX LEVIES FOR COUNTY ROADS. Oregon laws regulating the use of property taxes for county roads are complicated enough to deserve special mention here, even though property taxes comprise only a small portion of total county road revenue and they are used by relatively few counties. In fiscal year 2005-06, for example, six Oregon counties received a total of \$7.8 million in property taxes for county roads, which was less than 2 percent of total county road revenue. \$2.99 million of the \$7.8 million total was levied in Washington County.

Constitutional Property Tax Limitations. Two basic types of constitutional limits apply to all property taxes in Oregon, including property taxes levied for county roads. First, Article XI, Section 11 of the [Oregon Constitution](#) (effective June 19, 1997) established permanent rate limits for each taxing district based on reduced levies and new assessed values. The system is "rate-based" meaning a tax rate is set and the amount of property tax revenues generated depends on the assessed value to which the rate is applied. However, counties will receive new property tax revenue from any new construction and other exception properties placed on the tax role. Growth in assessed value for each property is limited to three percent per year. A county can gain voter approval of a local option tax in excess of the permanent rate if the vote is held in the general election in even-numbered years, or if the tax is approved in an election at which at least 50 percent of the registered voters cast a ballot. A local option tax may be imposed for no more than five years, except that a levy for a capital project may be imposed for no more than the lesser of the expected useful life of the capital project or 10 years.

The other constitutional limit is imposed by Article XI, Section 11b of the constitution (the so-called "Measure 5" limitation imposed by an initiative measure in 1990). Even though a taxing unit's levy may be equal to or less than its tax base, if the combined levy of all taxing units (including levies inside and outside the tax base by counties, cities and special districts other than school districts) would cause the tax rate paid by any property owner to exceed \$10 per \$1,000 valuation, the excess amount cannot be collected. In that event, the reduction required by the \$10 limit is prorated among the levying units in accordance with each unit's proportion of the total rate. Only levies for debt service on general obligation debt for "capital construction or improvements" are exempted from the \$10 limit, and then only if the bonds were issued before November 6, 1990 or have been subsequently approved by a vote of the people.

In 1997, voters passed Measure 50, the second and more complex property tax system change of the 1990s. The principal features of the measure were to "cut" and "cap." The "cut" rolled back a property's taxable value and reduced taxing district levies. In addition, most local government tax levies were replaced with permanent tax rates. Measure 50 introduced maximum assessed value (MAV), which acts as a "cap" on the growth of taxable (assessed) value for most property. The system changed from one primarily based on taxes levied to meet current government budget needs, to one based on a permanent tax rate calculated on historic service levels unrelated to current service demands. This is the same rate-based system in place today.

Special Provisions for County Road Property Taxes. A brief reference to history is necessary to understand certain provisions of the county road property tax laws. Some of the county road laws currently on the books date back to statehood, including some that relate to county road financing.

The earliest county road taxes were those that property owners were allowed to pay in lieu of doing physical labor on county roads. For example, at least as early as 1892, property owners could pay the district road supervisor \$1.50 in lieu of the day's work that otherwise would be required for each \$1,000 assessed value of property. However, counties over 10,000 population could levy a tax of two mills (20 cents per \$1,000) plus a \$2 poll tax for county road purposes. Counties had been required since 1860 to divide their counties into road districts, and the proceeds of those taxes were required to be apportioned among the road districts with "due regard to the amount of taxes collected in the several road districts, to the condition of the roads and necessity for repairs, and to the amount of travel thereon." The law also required that when a county levied such taxes, "no other tax nor other taxes for (road purposes) shall be levied or collected."¹

In 1901 the legislature authorized all counties to levy a 10 mill (\$1/\$1000) tax for county road purposes in lieu of the kinds of taxes previously authorized.² This statute continued the requirement for apportionment to road districts, although apparently no specific percentage of the proceeds was required to be apportioned to districts until 1903 (OL 1903 p. 262, section 34), when a 50 percent apportionment was required. It also continued the previous restriction against use of non-road tax money for road purposes. An annotation included for section 4829 of Bellinger and Cotton's Annotated Codes and Statutes of Oregon (1902) says that the restriction impliedly repealed a statute permitting use of up to three mills from the general fund for roads.

Two features of those early laws that have survived in various forms to the present day are somewhat puzzling in the light of modern transportation financing policy. First, most counties have long since abolished their road districts in the interest of gaining flexibility in responding to county road needs (see manual Chapter 12), but state law still mandates that each incorporated city constitutes a separate road district, and the statutes still require that 50 percent of any road property taxes levied within "districts" (i.e., cities) be "apportioned" to those districts according to each district's percentage of the county's taxable property. See [ORS 368.710\(1\)](#). Some cities have adopted charter amendments that exempt their property from county road levies, thereby giving up their entitlements to the 50 percent "apportionment." However, cities that do not have such charter provisions still have a legal right to 50 percent of any county road property taxes levied within their boundaries.

Second, the early prohibition against using county money for roads that has not been specifically levied for that purpose survives as ORS 368.705(3):

County funds derived from any ad valorem tax levy may not be used or expended by the county governing body upon any roads or bridges except:

- (a) Funds derived from a levy within the permanent rate limit of section 11 (3), Article XI of the Oregon Constitution, or the statutory rate as provided in ORS 310.236 (4) or 310.237, if a voter-approved county serial levy dedicated to road improvements was used in determining the rate limit; or
- (b) Local option taxes levied under [ORS 280.040 to 280.145](#).

An exception to this restriction is provided by [ORS 382.205](#), which permits a county to use any available county money for emergency bridge repairs if money is not available from the county road fund.

¹ Hill's Annotated Laws of Oregon, Volume 2 (1892), section 4085.

² OL 1901 P. 105, section 4852.

Given the circumstances of county financing today, there is no apparent public policy reason why county general fund property tax revenue should not be usable for county road purposes if in the judgment of the county governing body such uses are necessary or desirable. The original historical reason for this restriction is difficult to ascertain, since no records remain of the legislative deliberations that resulted in its enactment. Even though the restriction predates the requirement that county road taxes be apportioned to incorporated cities, apparently its only purpose today is to prevent resorting to county general fund levies as a means of evading the requirement that county road property tax levies be shared with incorporated cities.

It is clear from [ORS 368.710](#) that any local option taxes for road purposes must be shared with cities under the 50 percent provision. However, the 2007 Legislature provided greater flexibility for local option levies by allowing the county and the cities within the county to develop a sharing agreement instead of the mandated 50 percent apportionment. This provision took effect on January 1, 2008. It is not entirely clear whether county debt service levies would be subject to the city sharing requirement, although that is doubtful. It is also doubtful that road levies under the county service district law (ORS Chapter 451) would be subject to the city sharing provision, although only one county (Washington) has created a county service district for road purposes. Washington County's Urban Road Maintenance District (URMD) received voter approval for funding in 1994. It was funded as a five-year serial levy; however Measures 47 and 50 eliminated the sunset provision on the serial levy and converted the levy to a \$0.25 per \$1,000 permanent tax rate for the district. (NOTE: "Districting for Road Purposes" is covered in Chapter 12.)

3.105 COUNTY GAS TAXES AND VEHICLE REGISTRATION FEES. As outlined in section 2.000, Article VI, section 10 and [ORS 203.035](#) grant counties constitutional and statutory home rule authority respectively. The general grant of powers allows maximum discretion for counties in matter of county concern. The scope of a charter county's home rule powers to impose taxes depends on the provisions in its charter. ORS 203.035 allows all counties to "exercise authority within the county over matters of county concern, to the fullest extent allowed by Constitutions and laws of the United States and of this state, as fully as if each particular power comprised in that general authority were specifically listed" in the statutes.

Additionally, ORS 203.055 provides that any ordinance, adopted by a county governing body under ORS 203.035 and imposing taxation, or providing an exemption from taxation, must be submitted to and approved by the electors of the county before taking effect. Consequently, any county in Oregon may impose a county gas tax pursuant to its charter or by the statutory grant of authority in ORS 203.035 and 203.055. **Any county who passes a local gas tax will need to set a method for collection. ODOT currently provides this administrative function to counties for approximately \$24,000 and it takes them about 90 days before collection can begin.**

A county may also impose a county registration fee on certain vehicles under the authority of [ORS 803.445](#) and as provided in [ORS 801.041](#). ORS 801.041(1) provides that such fees must be approved by the voters. The amount of the fee must be a fixed amount not to exceed the registration fee established by the state under ORS 803.420(1). The law requires the county to share at least 40 percent of the money with the cities within the county unless a different distribution is agreed to between the county and the cities. The law further

provides that two or more counties may act jointly to impose a registration fee.

However, with the passage of the 2009 Transportation Funding Package³, the Legislature imposed a four-year moratorium on city and county gas tax ordinances and required voter approval of such taxes after January 1, 2014 (see [ORS 319.950](#)).

The measure also limited counties' authority under ORS 803.445 to impose a vehicle registration fee to counties with populations of 350,000 or more (i.e., Clackamas, Multnomah, and/or Washington counties). It authorizes the enactment of the ordinance without voter approval to help finance the replacement of the Sellwood Bridge (see ORS 801.041). It provides that two or more counties may act jointly to impose a registration fee.

Currently, counties with populations of 350,000 or more may adopt a county vehicle registration without prior voter approval. The new provision also reinstates the authority of counties with populations less than 350,000 to adopt a county registration fee with voter approval. It also reinstates the requirement that counties share at least 40 percent of the money with the cities within the county unless a different distribution is agreed to between the county and the cities.

Chapter 145, [Oregon Laws 2011](#) further amended ORS 801.041 to clarify that the county vehicle registration fees enacted for the Sellwood Bridge could be used for payment of debt service and costs related to bonds or other obligations issued for such purposes. The measure also allowed the bonding of the county registration fee revenue for all counties.

3.110 STATUTES ON COUNTYWIDE SOURCES

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[Chapter 370](#)

County Road Bonding Act

³ House Bill 2001 (Chapter 865, [Oregon Laws 2009](#)). See the [AOC 2009 Legislative Summary](#) for the measure summary (pp. 65—80). Chapter 865, [Oregon Laws 2009](#) was amended in the 2010 session by Senate Bill 1019 (Chapter 30, [Oregon Laws 2010](#)) to correct an oversight in House Bill 2001 regarding the allocation of the registration fee increase for heavy vehicles. The heavy vehicle registration fee revenue had not previously been included in the normal highway fund distribution of 50%-30%-20%.

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Chapter 319

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3.120 CITATIONS ON COUNTYWIDE SOURCES

State ex rel Weinstein v. Lane County, 71 Or. App. 238, 692 P.2d 135 (1984): The County appealed an order of the trial court requiring an accounting of all monies borrowed from the county general road fund and a cessation of borrowing from that fund. The trial court concluded that money in the road fund may only be borrowed to supplement depleted election accounts pursuant to [ORS 294.050](#). However, the Court of Appeals agreed with the County that ORS 294.460 (renumbered ORS 294.468 in 2011) authorized local governments to loan money from any fund, including special revenue funds raised for particular purposes such as the county road fund, to any other fund. (NOTE: See loan restrictions and pay back requirements on such loans in ORS 294.468.)

Jarvill v. City of Eugene, 289 Or 157, 613 P.2d 1 (1980): In an effort to revitalize its downtown area, the City of Eugene approved a charter amendment to create a downtown development district (District) under city council control. Pursuant to this amendment, the City enacted ordinances for the levying of certain taxes to promote economic development and finance a free parking program.

Petitioners argued that Article I, section 32 of the Oregon Constitution requires that a city tax be uniform throughout the boundaries of the city levying the tax, and that a city is prohibited from imposing a tax on an area within its boundaries smaller than the whole of its city limits. They argued that the constitutional provision prohibits a taxing authority from classifying the subjects of taxation according to a geographical location. The Supreme Court held that a classification based on or defined by geographical location is constitutionally permissible if it is also based upon qualitative differences that distinguish the geographical area from other areas within the territorial limits, whether these qualitative differences are natural or political. The businesses within the District were a distinct and valid class because they all shared the conditions unique to a downtown urban core area. Also, the City was taxing the District for the purpose of creating a unique area in the future, where the City will provide services and programs that patently and physically distinguish the District from any other area of the city.

Or. Atty. Gen. Inf. Op. No. OP-5477 (June 1983): A county may levy a tax on a serial basis on only real property outside incorporated cities, but all voters in the county may vote on the issue. Cities must be provided a share of the proceeds from the levy pursuant to [ORS 368.710](#).

38 Or. Atty. Gen. Op. 745 (1977): A county may establish a reserve fund for accumulation of monies received from the federal government, and spread out the use of these payments on any facet of the financial operations of the county under ORS 280.040 to 280.140.

28 Or. Atty. Gen. Op. 201 (1957): The county authorized an increase in the District Attorney's salary pursuant to ORS 8.830. However, the county did not have the authority to direct that the additional compensation be paid from the county road fund.

22 Or. Atty. Gen. Op. 414 (1946): When calling a road bond election, the county court is not required to specify particular roads to be improved or the amount to be used improving them.

11 Or. Atty. Gen. Op. 653 (1924): "Permanent roads" means roads that were intended to remain. The type of materials used is irrelevant.

10 Or. Atty. Gen. Op. 504 (1922): Bridges are included within the term "permanent roads."

3.150 COUNTY SERVICE DISTRICT. [ORS chapter 451](#) authorizes a county to establish areas within which it provides special services to be financed by user charges, assessments and taxes collected from within the areas. The 1985 legislature amended ORS 451.010 so that any county may establish county service districts for road purposes. Before or after formation of the district, the county may prepare plans related to providing the service.

When the proposal for formation of a county service district includes a permanent rate limit for the proposed district, the district may impose operating taxes not in excess of the permanent rate limit if the proposal is approved by a majority of the votes cast and the election is held in May or November of any year. The 2011 legislature removed the previous requirement that at least 50 percent of registered voters cast ballots in the formation election (Chapter 8, [Oregon Laws 2011](#)).

3.160 STATUTES ON COUNTY SERVICE DISTRICTS

[Chapter 451](#)

County Service Facilities

451.010 Facilities and services provided by service districts

451.410 Definitions for ORS 451.410 to 451.610

- 451.420 District may construct and operate service facilities**
- 451.490 Methods of financing service facilities**
- 451.545 Bond issue for financing service facilities**
- 451.547 Tax levies authorized**
- 451.550 Powers of district under ORS 451.410 to 451.610**
- 451.570 Regulations for sewage disposal, solid waste disposal, street cleaning and other authorized purposes**

3.170 INTERGOVERNMENTAL TRANSPORTATION AGREEMENTS.

The 2001 Legislature enacted new transportation authority for counties which authorized the creation of intergovernmental entities to operate, maintain, repair and modernize transportation facilities. It authorizes the electors in such entities to establish a permanent property tax rate and to issue bonds up to two percent of the real market value of the taxable property within the entity. ORS 190.083 sets out the broad taxing authority of the entities. It authorizes one or more counties to enter into intergovernmental transportation agreements, but requires the county or counties to consult with the cities within the county before entering into an agreement. The law also excludes these entities from the definition of district and exempts them from the requirements for county service districts. (Also see section 11.610.)

3.180 STATUTES ON INTERGOVERNMENTAL TRANSPORTATION AGREEMENTS.

[Chapter 190](#)

Intergovernmental Transportation Agreements

190.083 County agreements for transportation facilities

3.200 STATE SOURCES OF ROAD REVENUE. [ORS 366.739 to 366.774](#) provide a monthly apportionment of 24.38 percent of state-collected highway revenue to counties less the amounts specified in the Oregon Transportation Investment Acts of 2001, 2002 and 2003 (OTIA I, II & III) to service the bond debt of authorized by the Legislature. Counties receiving moneys shall report expenditures during the Legislative Assembly as provided by ORS 366.774.

Passage of the Transportation Funding Package⁴ was of significant importance for

⁴ House Bill 2001 (Chapter 865, [Oregon Laws 2009](#)). See the [AOC 2009 Legislative Summary](#) for the measure summary (pp. 65—80). Chapter 865, [Oregon Laws 2009](#) was amended in the 2010 session by Senate Bill 1019 (Chapter 30, [Oregon Laws 2010](#)) to correct an oversight in House Bill 2001 regarding the allocation of the registration fee increase for heavy vehicles. The heavy vehicle registration fee revenue had not previously been included in the normal highway fund distribution of 50%-30%-20%.

counties in the 2009 Session. When the increases in the gas tax, registration fee, title fee and weight-mile tax are fully implemented, the new revenue will provide an approximately 50 percent increase in the amount of money counties currently receive from state highway funds. The bill also contains a number of policy elements that will impact counties. Multnomah and Clackamas counties, for instance, have been given the opportunity to enact additional vehicle registration fees to provide for the replacement of the aging Sellwood Bridge. (See section 3.105 and ORS 366.752).

Under the constitutional provisions discussed in section 3.090 the expenditure of these funds must be on roads. Because of the constitutional dedication of these funds, care must be exercised in accounting for their expenditure. For example, a county that transfers highway user revenue to county departments other than a road department to offset services provided to the road program must limit the amount transferred to remain proportionate to the road-related services provided by the department. See 34 Or. Att'y Gen. Op. 191 (1968).

ORS 366.514 requires that a reasonable amount, but not less than 1 percent, of this revenue be spent on [bicycle trails and footpaths](#). To meet the constitutional limitation, bicycle and footpath facilities need to be within the road right-of-way even though the statute refers to footpaths and trails in parks and recreation areas. See section [3.090](#) for more information. There is an exception to this constitutional restriction. The constitution permits the use of revenue from motor vehicle registration fees received for certain special vehicles to be used for certain purposes other than roads. Under ORS 366.512, the registration fees for campers, motor homes, and travel trailers are paid into the State Parks and Recreation Fund.

ORS 366.768 allows the state to advance funds from the state highway revenue to a county when necessary to permit the county to pay road bonds when they come due.

[ORS 367.700 to 367.750](#) authorizes the issuance of bonds by the state to provide funds for local governments for road work. Those jurisdictions with the highest unemployment rates are to have priority. Repayment of these funds is to be made by deducting the necessary amount from the county's allocation of state-collected highway revenue.

The state also is often involved in the transfer of federal funds to counties or performing road work in the county involving federal and state funds. These matters are discussed in Chapter 11.

3.205 STATE AID PROGRAMS

Fund Exchange. By agreement with the cities and counties, ODOT makes funds available to individual cities and counties for the exchange of flexible Surface Transportation Block Grant Program (STBGP) federal funds. The amount of funds available for exchange is determined annually. Exchanging federal funds for state funds helps local agencies avoid complicated federal contracting regulations. Exchanged funds may be used for all phases of a specified capital improvement within the roadway right-of-way, but are not intended for maintenance. Cities and counties receive 94 cents for every \$1 of federal funds exchanged.

Oregon Transportation Infrastructure Bank (OTIB). The [Oregon Transportation Infrastructure Bank](#) (OTIB) is a statewide revolving loan fund designed to promote innovative financing solutions for transportation needs. Oregon's program was started in

1996 as part of a federal pilot program. (Because of the source of initial capital for the OTIB, most loans involve the use of federal funds.) Legislative action in 1997 established the program in state law and expanded the bank's authority. Staff support for the program is provided by the Financial Services office of the Oregon Department of Transportation (ODOT).

Immediate Opportunity Fund (IOF). The Immediate Opportunity Fund supports primary economic development in Oregon. It does this by building and improving streets and roads in strategic locations. The IOF only funds strategic projects that require a quick response and commitment of funds because other sources are unavailable or insufficient. It is not a substitute for other funding sources. The IOF is a discretionary program managed by the Oregon Transportation Commission. The maximum amount available for a single project is \$1,000,000. [Click here to see the IOF funding guidelines for more information.](#)

Jurisdictional Exchange. ODOT has identified over 1,000 miles of state highways that primarily serve local purposes. These include urban arterials serving mostly local travel, urban streets that are parallel to highway bypasses, and roads that function like county roads. Through negotiated agreements, ODOT will transfer jurisdiction of these highways to local governments. The 2011 legislature modified [ORS 366.290](#) to state that the agreements may provide for annual funding out of the "State Highway Fund to address the additional costs to the county for the construction, repair, maintenance or improvement of the road or highway over which the county accepts jurisdiction." The agreements must also contain provisions to ensure that freight movement on the highway will not be restricted unless the state, county and freight industry agreed that the restriction is necessary for the safety of the highway users.

Special County Program. The Oregon Legislature created the Special County Program in 1991. It has been modified several times since then, but the current terms of the program are specified in ORS 366.772. The program allocates \$750,000 annually, with \$500,000 coming from the counties' share of the State Highway Fund, and \$250,000 from ODOT's share. These funds are distributed to the counties having the largest "county road base funding deficit." This deficit is defined in the law as the amount of a county's "minimum county road base funding" minus the amount of that county's "dedicated county road funding." "Minimum county road base funding" means \$4,500 per mile of county arterial and collector roads as of July 1, 2008, and thereafter adjusted annually for inflation (\$5,080.90 for the 2014 allocation). "Dedicated county road funding" means the previous year's State Highway Fund allocation, USFS distribution and STBGP allocation.

Special City Allotment. ORS 366.805 provides for the allocation of \$1 million in state highway funds to be distributed annually among cities with populations of less than 5,000. ODOT sets the distribution and dollar amount by agreement with the League of Oregon Cities. Half of the funds come from the cities' share of gas tax revenues and the half comes from ODOT's share of the State Highway Fund. The small cities can receive \$50,000, one-half the maximum grant amount, up front, with final payment due upon completion of the project.

ConnectOregon. The 2011 Oregon Legislature approved \$40 million in lottery-backed bonds for the *ConnectOregon* IV program ([Chapter 624, Oregon Laws 2011](#)). *ConnectOregon* IV will continue to improve the connections between the highway system and air, marine, rail, transit and other multimodal projects statewide to create jobs, and help foster economic development by facilitating the movement of goods and people with a safe

and efficient transportation system. No less than 10 percent of *ConnectOregon* IV funds must be distributed to each of the five regions of the state, provided that there are qualified projects in the region.

3.210 STATUTES ON STATE SOURCES

Chapter 366

State Highways

- 366.505** **Composition and use of highway fund**
- 366.506** **Highway cost allocation study; purposes; design; report; use of report by Legislative Assembly**
- 366.507** **Modernization program; funding; conditions and criteria**
- 366.508** **Legislative findings**
- 366.510** **Turning over highway funds to State Treasurer**
- 366.512** **Collection of certain registration fees for State Parks and Recreation Department Fund**
- 366.514** **Use of highway fund for footpaths and bicycle trails**
- 366.739** **Allocation of moneys to counties and cities generally**
- 366.742** **Repayment of specified bonds; allocation of moneys not needed for repayment**
- 366.744** **Allocation of moneys from specified increases in title and registration fees and in truck taxes and fees; restrictions on expenditure by Multnomah County**
- 366.747** **Allocation of moneys from specified increases in fees**
- 366.749** **Allocation of moneys resulting from increase in numbers of vehicle registrations, titles and trip permits due to specified actions by vehicle dealers and persons engaged in towing**
- 366.752** **Allocation of moneys from specified increases in fees**
- 366.762** **Appropriation from highway fund for counties**
- 366.764** **Basis of allocation of appropriation to counties**
- 366.766** **Remitting appropriation to counties**
- 366.768** **Advances from highway fund to county**

- 366.772** Allocation of moneys to counties with road funding deficit
- 366.774** Authorized use of allocation to counties; report by counties to Legislative Assembly
- 366.800** Appropriation from highway fund for cities; amount and source
- 366.805** Allocation of appropriation to cities

[Chapter 367](#)

Indebted for State Highways, City and County Roads and Recreation Facilities

- 367.700** Authority to sell limited amount of bonds under ORS 367.700 to 367.750.
- 367.705** Use of funds; priority.
- 367.710** Repayment by city or county; interest.
- 367.715** Procedure for issuing bonds under ORS 367.700 to 367.750.
- 367.745** Setting aside sufficient moneys to pay maturing bonds.
- 367.750** Constitutional debt limits not to be exceeded.

3.220 CITATIONS ON STATE SOURCES

Honeyman v. Myers, 342 Or. 126, 149 P.3d 1147 (2006): The Supreme Court held a ballot title that stated the proposed initiative amended the constitution and diverted revenues to “road, highway safety” did not meet the requirements of ORS 250.035(2) (a). The title was missing reference to the patrol activities that were the object of the fund and part of the initiative’s subject matter.

Or. Atty. Gen. Inf. Letter Op. DOJ File NO. 731-001-GG0201-00 (January 2001): In a detailed analysis of the constitutional law on expenditure of road funds, with particular emphasis on the *Rogers* and *Auto Club* cases summarized below, the Attorney General explained how these opinions have narrowly construed the provision of Article IX, section 3a that refers to funds used for the “operation and use” of highways. The use of Highway Funds must either involve the construction, reconstruction, improvement, repair or maintenance of highways, specified weighmaster activities, or be restricted to projects or purposes that primarily and directly facilitate motorized vehicle travel. *Rogers* prompted this comprehensive review of ODOT programs, many of which predated the 1980 constitutional amendment, to determine whether they conformed to Article IX, section 3a.

Bicycle Transportation Alliance, Inc. v. City of Portland, 133 Or. App. 422, 891 P.2d 692 (1995): An advocate group for increased bicycle access appealed the dismissal for failure to state a claim of its allegation that the City failed to comply with ORS 366.514

by not constructing bicycle and pedestrian facilities around and through the City's arena construction project. The City contended that the statute merely required the City to expend one percent of state highway fund revenues on the activities described in ORS 366.514(1) annually. The Court of Appeals held that ORS 366.514 required a reasonable amount of state highway funds be spent, as necessary, on bicycle and pedestrian facilities and also established an annual spending floor of one percent of total funds received per fiscal year. The advocate group's amended complaint, alleging the City's failure to provide bicycle and pedestrian facilities in connection with the arena project, was sufficient to state a claim for relief under ORS 366.514.

Automobile Club v. State of Oregon, 314 Or 479, 840 P.2d 674 (1992): A fee from persons who received gasoline intended for resale and stored in an underground tank and used to assist rural gas stations to conform to federal environmental regulations relative to underground storage tanks was held to be an unconstitutional tax under Article IX, section 3a by the Oregon Supreme Court. The revenue from the fee did not provide for construction, improvement, repair, maintenance, or use of highways, nor did the fund primarily and directly facilitate motorized vehicle traffic. The primary beneficiaries of the revenue were not users of highways, but rather owners of gasoline stations.

Rogers v. Lane County, 307 Or 534, 771 P.2d 254 (1989): The County and the City of Eugene sought declaration that the use of proceeds of taxes on motor vehicles and motor vehicles fuels for expansion and improvement of the airport was valid. The trial court applied a use-benefit test, and held that the construction of such improvements with highway funds was authorized by Article IX, section 3a of the Oregon Constitution. The Court of Appeals reversed, holding that Article IX, section 3a of the Oregon Constitution prevented the proposed expenditure for a parking lot facility and covered walkways. The Supreme Court agreed with the Court of Appeals, concluding that the expenditure must be for the highway itself, and cannot be justified by a broad use-benefit test. The constitutional amendment section 3a and its accompanying materials (Voters' Pamphlet) demonstrated voter approval of a narrow construction of Article IX, section 3a, where taxes and fees on motor vehicles and vehicle fuels are only used for highway purposes.

44 Or. Atty. Gen. Op. 389 (1985): The Transportation Commission may undertake an improvement project on a county road at its own expense and accept reimbursement from the county for all or part of the cost. The Commission and county may contract to provide for reimbursement by withholding sums from future Highway Fund appropriations due to the county under ORS 366.525 (renumbered [366.762](#) in 2003) to ORS 366.540 (renumbered [366.768](#) in 2003) if the county has no obligation to repay out of other funds.

41 Or. Atty. Gen. Op. 545 (1981): Money set aside for construction and maintenance of footpaths and bicycle trails pursuant to ORS 366.514 cannot be used to construct a bicycle-pedestrian bridge over a river if the bridge itself is not within highway rights of way. Because park and recreation purposes were eliminated from the approved use of Highway Fund monies by constitutional amendment, the one percent footpath and bicycle trail fund must be spent only for highway purposes in order to comply with Article IX, section 3a. The monies cannot be used for the construction of a bicycle-pedestrian bridge which is totally separated from and not part of any highway right of way.

37 Or. Atty. Gen. Op. 1518 (1976): The language of ORS 366.535 (renumbered [366.766](#) in 2003) is mandatory. Allocations from the Highway Fund must be remitted, even if current information is not yet available. The allocation may then be based on the

most recent information available. If this later proves to be inaccurate, subsequent payments must be adjusted.

33 Or. Atty. Gen. Op. 571 (1968): Except where the legislature has expressly allowed the use of county funds for non-county road purposes, as in [ORS 368.715](#), the county cannot use the motor vehicle fuel tax moneys received under ORS 366.525 (renumbered 366.762 in 2003) for dedicated but not accepted public roads.

30 Or. Atty. Gen. Op. 338 (1961): Net revenue from fuel taxes credited to the Highway Fund under ORS 481.950 (replaced by 802.110 in 1985) is subject to apportionment under ORS 366.525 (renumbered 366.762 in 2003).

3.300 FEDERAL SOURCES OF ROAD REVENUE. Although the federal government is exempt from taxation by local governments, various in-lieu payments have been enacted in recognition of the loss of state and county revenue associated with federal land ownership. Some of these provide revenue expressly for roads. State laws often supplement federal revenue allocations by specifying how the revenue is to be used. (See Section 3.090 for additional information on federal revenues and 11.870 for additional information on county revenue from federal land receipts.)

[ORS 293.560](#) and [294.060](#) provide for distributing federal forest receipts from each forest reserve generating the receipts to each county in proportion to forest reserve area in the county. With some limited exceptions listed in ORS 294.060, 75 percent of the funds must go to the general road fund, while 25 percent goes to the county school fund.

Prior to 1990, federal forest receipts were the most significant source of federal funds coming directly to counties for road purposes⁵. In 1990, the U.S. Fish and Wildlife Service listed the Northern Spotted Owl as a threatened species under the Endangered Species Act throughout its range of northern California, Oregon and Washington causing a dramatic decline in timber harvests on federal lands. By 2000, federal forest receipts to county road fund budgets had dropped from over \$120 million annually to less than \$60 million.

In October 2000 Congress passed Public Law 106-393 entitled “Secure Rural Schools and Community Self Determination Act of 2000” to help stabilize these federal payments to counties. “PL 106-393” provided guaranteed stable payments to forest counties as a temporary “safety net” to supplement the sharply falling 25 percent share of timber harvest receipts from declining economic activity on National Forest land. These “25-percent fund” payments have been made to forest counties across the United States since 1908 when Congress agreed that since forest counties would forego the opportunity for private development in the newly created National Forests, they should receive a share of the revenues that were generated on a sustainable basis, in perpetuity.

The new law also reduced the political and forest management gridlock at the local

⁵ The Oregon Legislature authorized certain counties to use federal forest receipts for patrolling county roads. Chapter 894, [Oregon Laws 2007](#) was the initial measure passed authorizing Douglas and Lane Counties to use such funds for the sheriff’s department patrolling of county roads. Chapter 75, [Oregon Laws 2012](#) expanded the authority to include Coos, Curry, Josephine, Klamath and Linn Counties as well as Douglas and Lane Counties. All other counties can loan money from the road fund to another county fund for patrol purposes. ~~These measures are scheduled to sunset on January 2, 2016.~~

level by involving stakeholders in the active management of National Forest lands and generated local employment through the creation of forest health improvement projects. The Title I funds under PL 106-393 provided to counties allowed them to address the substantial maintenance and construction backlog created during the 1986 through 1999 period of plummeting 25-Percent Forest Reserve payments. The Title II funds provided resources to improve watersheds, enhancement of fish and wildlife habitat, reduce the risk of catastrophic wildfires and similar special projects on federal lands. The Title III funds provided counties revenue for (1) search and rescue and emergency services on public lands, (2) community service work camps, (3) access and conservation easements, (4) forest related educational opportunities, (5) fire prevention and county planning, and (6) community forestry. PL 106-393 expired on September 30, 2006 with the last payment being made to counties in January 2007. After PL 106-393 expired, Congress reauthorized the program for one additional year with the extension expiring on September 30, 2007 (with the last payment to counties in January 2008).

Through the continuing efforts of Oregon's congressional delegation and others, Congress passed on October 3, 2008 a four-year extension of the Secure Rural Schools and Community Self-Determination Act as a part of the Emergency Stabilization Act of 2008. The extension known as "the SRS Act" provided that federal forest payments would continue to flow to Oregon counties, but at a reduced rate. The legislation provided that Oregon counties would receive 90% of the federal fiscal year (FFY) 2006 payment of \$149 million in FFY 2008, followed by 81% of the 2006 payment in FFY 2009, and 73% of the FY 2006 payment in FFY 2010. For the fourth and final year of the extension, Oregon's payments were calculated using a new formula. The amounts varied for each county, but the statewide total was approximately 44% of the 2006 payments (with the last payment to counties in January 2012).

Once again, through the efforts of the Oregon congressional delegation and others, the new federal transportation act, Moving Ahead for Progress in the 21st Century (MAP-21)(P.L. 112-141), included a one-year extension of the Secure Rural Schools and Community Self Determination Act (SRS). There was another extension through 2014, but the future of the PL 106-393 "safety net" remains very uncertain.

[ORS 368.722](#) additionally provides that counties may expend federal funds from forest receipts pursuant to ORS 294.060 on city streets and bridges. [ORS 373.260](#) governs such expenditure. See section 11.320 on city-county relations.

BLM timber receipts have historically been another significant source of county revenue, as discussed in section 11.830. (BLM payments were also impacted by the listing of the Northern Spotted Owl as referenced above and modified by Public Law 106-393 and extended by SRS2008 and MAP-21, but the future of the federal "safety net" payments is bleak.)

Other federal funds tied to roads and coming directly to counties are as follows:

Lands Leased for Minerals: Under [ORS 294.055](#) all funds received by counties under the Mineral Leasing Act are to be spent on public schools or the construction and maintenance of public roads. [ORS 293.565](#) specifies that funds be distributed to the counties in which the land is located. Since the statutes provide that the funds may be used for roads or schools the final allocation of these funds is left to the discretion of the county governing body.

The Flood Control Act: Under ORS 294.065 all county receipts received pursuant to the Federal Flood Control Act are to be spent on public schools and public roads. ORS 293.570 specifies that funds be distributed to the counties in which the land is located. Since the statutes are silent on the percentage split between schools and roads, the decision is discretionary with each county governing body.

Grazing Land: Under ORS 294.070 all funds received by counties as their portion of federal grazing revenue under the Taylor Grazing Act are to be expended on range improvement. ORS 293.575 specifies that these funds be distributed to the counties in proportion to their amount of federally leased land. Indirect support for county roads may sometimes result from these expenditures; for example, construction of fences along right-of-way, etc. Under an exception for certain former Indian lands, some of the funds are to be used for only public school and road purposes.

Public Land Materials Sales: Under [ORS 272.085](#) all funds received by counties as their share of the five percent of net proceeds from the sales of federal public lands and materials on those lands are to be expended on public roads and bridges. These funds are distributed to counties on the basis of the average square mile area of each county.

The state will deduct a distribution charge of 60 cents per county, in addition to a transaction charge, from transactions under these programs. This charge was established in 1985 with the understanding that the state would modify past practices and distribute any interest earnings from investment of these funds while in state custody.

Sections 3.300 to 3.320 pertain to federal revenue related to roads that are directly allocated to counties under a federal act. Other federal sources of road revenue are described in Chapter 11 and come in the following forms.

1. Federal grants that a county can qualify to receive
2. Federal funds available to the State Department of Transportation for which a county project may be eligible
3. Federal agency direct expenditures for projects on selected county roads.

3.305 FEDERAL AID PROGRAMS. Federal-Aid highway funds are authorized by Congress to assist the States in providing for construction, reconstruction, and improvement of highways and bridges on eligible Federal-Aid highway routes and for other special purpose programs and projects.

The principal statutes establishing the Federal-Aid Highway Program are found in [Title 23, United States Code \(23 U.S.C.\)](#). Regulatory requirements are generally found in Title 23, Highways, of the Code of Federal Regulations (23 CFR).

[A Guide to Federal-Aid Programs and Projects](#) published by the Federal Highway Administration (FHWA) of the U.S. Department of Transportation provides basic information about the Federal-Aid programs, projects, and other program characteristics. The current publication updates information from the past document and includes information resulting from the latest multi-year Federal-Aid authorizing legislative act, [Fixing America's Surface Transportation \(FAST\) Act \(P.L.114-94\)](#). As new or updated information becomes available, the electronic version of this guide will be updated.

The FAST Act is the current federal transportation bill authorizing funding for the nation's surface transportation programs, and won't expire until 2020. Previously, Moving Ahead for Progress in the 21st Century (MAP-21) Act was the federal authorization from 2012 to 2014. It replaced the expired Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA LU) (NOTE: Typically, with the expiration of the transportation Act, Congress will take several months to pass a new transportation Act. During the time between the expiration of the old Act and the enactment of the new Act, Congress will pass continuing resolutions to extend the expiration date of the previous Act and its programs until the new Act is passed and signed into law.)

The FAST Act established funding levels and policies for the federal government's highway, highway safety, transit, motor carrier, and some rail programs administered by the U.S. Department of Transportation for federal fiscal years (FY) 2015 through 2020.

Previously, MAP-21 significantly consolidated the highway program structure (see the [Oregon Federal Highway Funding chart](#) for an overview of program consolidation). Most set-asides, small formula programs and discretionary programs—including High Risk Rural Roads, Safe Routes to School and Scenic Byways—were eliminated as separate programs; however, most types of projects funded under these programs are eligible under other programs.

The majority of highway funding is focused on preserving and improving the National Highway System (NHS) under the National Highway Performance Program (NHPP), which combines the Interstate Maintenance and National Highway System programs and a portion of Bridge funding. Virtually all federal funding flows to ODOT under five major formula programs as noted below:

- National Highway Performance Program (NHPP)
- Surface Transportation Block Grant Program (STBGP)
- Highway Safety Improvement Program
- Congestion Mitigation and Air Quality Improvement (CMAQ) Program
- Transportation Alternatives (previously Transportation Enhancements)

Because ODOT is responsible for administering all federal funds supporting highway construction in Oregon, all local government expenditures related to federal highway programs are managed by ODOT and included in ODOT's budget. There is a [“Federal-Aid Guidelines and Working Agreement”](#) (Federal-Aid Agreement) between ODOT, the Association of Oregon Counties, and the League of Oregon Cities. The agreement sets out the guidelines and working procedures for the various federal aid programs for cities and counties. The specific grant provisions for each project are specified in an intergovernmental agreement between ODOT and the city or county receiving the grant. **Detailed information on federal funding sources are available in sections 11.390 to 11.453 of the County Road Manual.**

~~Surface Transportation Program (STP): The Surface Transportation Program provides federal funding to states and local governments which can be used for highways, bridges, or transit projects. With the passage of MAP 21, eligibility under STP was expanded to include recreational trails, safe routes to schools, and truck parking facilities. Bridges not on the National Highway System (NHS)—both state and local bridges—will be funded under STP. The 15 percent set-aside for “off-system” bridges on low volume local roads is retained.~~

~~Under provisions of the program, urbanized areas 200,000 and above receive an annual allocation of STP funding based on their populations. Half of STP funding will be subject to suballocation to MPOs with a population over 200,000 and other areas of the state. Under the Federal Aid Agreement developed in cooperation with Oregon cities and counties as referenced above, ODOT shares a portion of its yearly STP funding with all 36 counties and with cities with populations above 5,000 and less than 200,000. (Also see section 11.400.)~~

~~STP funds are also eligible for Fund Exchange with ODOT as described in Section 11.405.~~

~~Highway Bridge Program: The federal Highway Bridge Program (HBP) was not continued under MAP 21, instead bridges will be funded with STP funds for state and local bridges not on the National Highway System (NHS) and bridges on the NHS will be funded with NHPP dollars. ODOT will continue to set aside funding under the Local Bridge Program. The 15 percent set aside for bridges of the federal aid highway system on low volume local roads is retained, as is the waiver that Oregon has used to ensure that local governments are not required to overinvest in these bridges on lower volume roads.~~

~~Under MAP 21 and the new Federal Aid Agreement with the cities and counties, ODOT allocates the federal funds to the Local Bridge Program for local government bridges determined to be eligible using the previous HBP criteria based on inspection of all bridges subject to National Bridge Inspection Standards (NBIS) and reported to FHWA through the National Bridge Inventory (NBI) process. Bridges will continue to be inspected every two years, to determine which bridges are deficient and eligible for the bridge list. ODOT submits its NBI list annually to FHWA and produces the list of deficient bridges in Oregon eligible for the Local Bridge Program. The Local Agency Bridge Selection Committee (LABSC) is responsible for administering the Local Bridge Program on behalf of ODOT and selecting the projects to be funded with the STP funds. The allocation of STP funds for bridge projects is focused on the replacement and rehabilitation of the bridges with the most critical needs.~~

~~The Local Bridge Program funding amount for 2013 is \$22,963,391 and serves as the baseline funding for the program. To calculate the Local Bridge Program allocation for future years, ODOT will use the percent increase (or decrease) in the federal aid formula obligation limitation from the prior federal fiscal year (FFY) compared to the FFY prior to that to determine the percentage increase or decrease in the Local Bridge Programs funds for the following FFY. (Also see section 11.410.)~~

~~Congestion Mitigation and Air Quality (CMAQ): The Congestion Mitigation and Air Quality program continues under MAP 21. While project eligibility remains basically the same, the legislation places considerable emphasis on diesel engine retrofits and other efforts that underscore the priority on reducing fine particle pollution (PM 2.5). CMAQ directs funds toward transportation projects and programs in Clean Air Act non-attainment or maintenance areas for ozone and carbon monoxide. These projects and programs must contribute to attaining a national ambient air quality standard. Federal funds are allocated only to areas not meeting Department of Environmental Quality air quality standards. (Also see section 11.420.)~~

~~Transportation Alternatives Program (TAP): The Transportation Enhancements (TE) program becomes the Transportation Alternatives Program (TAP) under MAP 21, and nationwide two percent of total highway funds are set aside for TAP. Local governments~~

and other public agencies can apply for these funds on a competitive basis. The funds may be used only for 12 specific activities that enhance the cultural, aesthetic, or environmental value of the transportation system. The majority of Oregon's Transportation Enhancement funds has been used for pedestrian and bicycle facilities. Other projects have involved acquisition of scenic easements, landscaping and scenic beautification, and mitigation to reduce water pollution due to highway runoff. Projects are selected based on applications from local governments and other public agencies.

———— TAP funding is suballocated to metropolitan planning organizations with populations larger than 200,000. Although the Recreational Trails and Safe Routes to School programs are eliminated as separate programs under MAP-21, TAP funding can be used for both types of projects. Funding for programs focused on bicycle and pedestrian projects will decline, however, as the TAP funding is less than the total formerly dedicated to the three major bicycle/pedestrian programs. However, states retain the flexibility to spend more on these projects than required, and ODOT has committed to continuing funding at SAFETEA-LU levels for all three bicycle/pedestrian programs through 2015. (Also see section 11.415.)

———— Highway Safety Improvement Program (HSIP): The High Risk Rural Road Program (HRRR) (also called HR3 in Oregon) was eliminated as a set aside under MAP-21 but all activities continue as eligible activities under the Highway Safety Improvement Program, which pays for infrastructure projects that improve highway safety. Funding for HSIP under MAP-21 was significantly increased, with Oregon's HSIP funding increasing by nearly 48 percent to about \$29 million in FY 2013. States that see increased crashes on rural roads face a requirement to obligate a set amount for projects on these roads (state, local and tribal).

———— With Oregon's funding under the HSIP increased significantly and with new requirements in MAP-21 to address safety challenges on all public roads, ODOT has increased the amount of funding available for safety projects on local roads. Through a process that is still under development, safety funding will be distributed to each ODOT region, based on the fatalities and serious injuries in each region. Each ODOT region will collaborate with local governments to select projects that can reduce fatalities and serious injuries, regardless of whether they lie on a local road or a state highway. (Also see section 11.450, and section 11.453 for Other Safety Programs.)

———— Federal Lands Access Program (FLAP): MAP-21 eliminated the Forest Highways Program and the Public Lands Highways Discretionary Program and created the Federal Lands Access Program, which provides funding over and above the state's federal aid highway program funding. FLAP provides federal funding for transportation projects on state and county roads that are located within, adjacent to, or provide access to any type of federal land—including U.S. Forest Service, Bureau of Land Management, national parks, Corps of Engineers, Bureau of Reclamation and national wildlife refuges. Since only roads providing access to national forests were eligible under the old Forest Highways Program, this significantly expands the network of roads eligible for funding.

———— The formula for distributing funds among states is modified significantly, and Oregon—which previously received the largest allocation of Forest Highway funding in the nation—will receive a smaller share of nationwide funding. Oregon will receive an estimated \$20 million in 2014. For the first time, federal lands projects will require non-federal match (10.27 percent of total project cost).

~~The Federal Highway Administration (Western Federal Lands Highway Division office in Vancouver, Washington) administers the program and generally is responsible for the development and construction of projects. Projects to be funded in Oregon are selected by a committee composed of representatives from FHWA, ODOT and the Association of Oregon Counties. (For additional information see sections 11.445 and 11.815 to 11.819).~~

Emergency Relief (ER) Program: Federal funding for repairing damage to Federal-Aid Highways is available from the Federal Highway Administration when the Governor declares a disaster. The ER program is continued under MAP-21. A subsequent finding by the Federal Highway Administration (FHWA) that a natural disaster or catastrophic failure occurred and that the damage is eligible for ER assistance is also required. "Federal-Aid Highways" include county roads other than county roads classified as local access roads, local roads or rural minor collectors⁶. The funding requirements for the ER projects are detailed in the FHWA-ODOT paper titled "[Oregon Division ER Program SOP Summary](#)."

The slide presentation, "[Emergency Relief Program](#)," that FHWA and ODOT made to OACES in November 2012 provides a good overview of the ER program.

The ER program was continued under MAP-21. The [FHWA Emergency Relief Manual](#) was updated in May 2013. It covers in detail procedures applicable to the FHWA's ER program and incorporates program changes made by MAP-21. (Questions and answers addressing the ER program changes under MAP-21 can be found at [FHWA's MAP-21 website](#).)

Damage to highway facilities that are not Federal-aid Highways (minor collectors and local roads) may be eligible for other federal funds administered by Federal Emergency Management Agency (FEMA) in cooperation with [Oregon Emergency Management \(OEM\)](#). Additional FEMA information can be found at [FEMA's web site](#).

Metropolitan Planning: A portion of federal funds is set aside for Metropolitan Planning activities. Federal planning funds are allocated based on urbanized population. Metropolitan Planning Organizations use the funds to develop long-range transportation plans and transportation improvement programs.

3.310 STATUTES ON FEDERAL SOURCES

[Chapter 272](#)

Federal Lands

272.085 Five Percent United States Land Sales Fund; use of moneys

[Chapter 293](#)

Receiving, Handling and Disbursing Public Funds

⁶ Federal Forest Highways are eligible for a 100% "Permanent Repair" rate for these programs, when meeting other eligibility requirements.

- 293.560** **Apportionment among counties of moneys received from federal government from forest reserves**
- 293.565** **Apportionment among counties of moneys received from federal government under Mineral Lands Leasing Act; Federal Mineral Leases Fund**
- 293.570** **Apportionment among counties of moneys received from federal government under Federal Flood Control Act; Federal Flood Control Leases Fund**
- 293.575** **Distribution of funds received under the Taylor Grazing Act; Taylor Grazing Fund**

[Chapter 294](#)

County and Municipal Financial Administration

- 294.055** **Use by counties of moneys received from federal government under the Mineral Leasing Act**
- 294.060** **Apportionment of moneys received by counties from federal forest reserves to road and school funds**
- 294.065** **Use by counties of moneys received from federal government under the federal Flood Control Act**
- 294.070** **Expenditure of Taylor Grazing Act funds; advisory board**

[Chapter 368](#)

County Roads

- 368.722** **Expenditure of general road fund on city streets and bridges**

3.320 CITATIONS ON FEDERAL SOURCES

Lane County v. Paulus, 57 Or. App. 297, 644 P.2d 616 (1982): The county brought a declaratory judgment action, believing it had the statutory authority to commingle federal forest revenues in the county road fund with other county monies for the purpose of investment and to credit all interest earned from the commingled investments to county's general fund. The Oregon Court of Appeals disagreed. The Court stated ORS 294.060 required that any unobligated road funds be invested for the benefit of county road fund and all interest earnings credited to the road fund. However, once the county road fund had been obligated for road fund purposes, or had been invested for benefit of the road fund, any remaining cash balances maintained on hand to meet current obligations could be commingled with county general fund for investment purposes. Any resulting earnings on any nonconstitutionally dedicated portion of such residual cash balances could also be credited to the county general fund.

Or. Atty Gen. Inf. Op. No. OP-5613 (January 1984): Federal forest receipts may be spent on a parking lot only if the lot becomes part of a county road. A parking lot adjacent to a county courthouse that is bounded by city streets may not be designated a county road as defines in ORS 368.001. The federal forest receipts received by a county under ORS 293.560 are placed in the road fund under ORS 294.060. The money may be expended only as general road funds may be expended under ORS 368.705⁷

41 Or. Atty Gen. Op. 430 (1981): Funds received from federal forest reserves, as well as interests earned by the investments of these funds, must be deposited in the county road fund. Federal forest reserve receipts are not “taxes” within the meaning of Article IX, Section 3a of the Oregon Constitution.

41 Or. Atty Gen. Op. 270 (1980): Federal statute, 16 USC sec 500, authorizes the Oregon Legislature to spend forest receipts for the benefit of public roads and schools of the counties where the national forest is located. Whether certain expenditures of forest receipts from the road fund are permissible must be judged in light of ORS 368.705(2), which prescribes how the county road fund will be used. Because forest receipts are non-tax funds, the spending limitation imposed by Article IX, Section 3a of the Oregon Constitution is not controlling.

A county may expend federal forest receipts for bicycle trails that are a part of the county road system, or inside the right of way. Federal forest receipts may also be spent on trails outside the right of way where those trails link to a county road or state system. These receipts may also be spent for parking lots that are appurtenant to the county road system and available for the general motoring public on the county road system. The county may not expend federal forest receipts directly for mass transit, as the mass transit system cannot be deemed part of the county road system.

35 Or. Atty Gen. OP. 1130 (1972): Subject to the restrictions of ORS 294.070, Taylor Grazing Act funds distributed to the county become county funds and are no longer subject to state supervision.

3.400 SPECIAL ASSESSMENTS. Under [ORS 371.605 to 371.660](#), consideration of improvement of a road in an unincorporated area to be financed by assessment of benefited property owners may be initiated by resolution of the county governing body or by petition signed by the owners of abutting land. The county engineer investigates the improvement proposed by the resolution or petition, determines the project's feasibility, makes a cost estimate, and recommends the method of assessment to be used to cover the costs of the improvement.

If the engineer's report is favorable, notice of the report and the proposed assessment is given to owners of abutting property. If more than 50 percent of the owners representing at least 50 percent of the assessment object within 20 days of the mailing of the notice, the improvement is abandoned. If it is not abandoned, the county governing body may proceed with the improvement. If it proceeds, notice is filed with the county clerk that the abutting property is subject to a lien for any of the cost of the improvement that is to be assessed. (NOTE: Counties with home rule charter may have different provisions regarding objections

⁷ The opinion does not refer to ORS 368.722, authorizing expenditure of forest receipts on city streets under ORS 373.260.

to the engineer's report.)

After the improvement is completed, the engineer computes the actual cost and may add the actual and estimated future costs for the engineering and administrative expenses. Each owner of abutting land is assessed an amount of the costs in proportion to the relative benefit conferred. A hearing on the proposed assessment must be held by the county governing body to hear objections, after which final assessments are decided and recorded under the previously filed lien on the property. The property owner may then apply for installment payment of the assessment or may defer payment under the Bancroft Bonding Act, [ORS 223.205 to 223.295](#). Otherwise, the assessment is due 30 days after certification by the county governing body.

In addition to road work, the special assessment statutes may be used for certain other public improvements. Local improvement projects also may be initiated using the general powers granted by a county charter or by [ORS 203.030 to 203.075](#). ORS 371.605 to 371.660 are believed to provide an alternative to, rather than a restraint on, general ordinance local improvement assessment procedures.

3.410 STATUTES ON SPECIAL ASSESSMENT

Chapter 371

Road Districts and Road Assessment Plans

IMPROVEMENT OF STREETS AND ROADS IN UNINCORPORATED AREAS

- 371.605** **Definitions for ORS 371.605 to 371.660**
- 371.610** **Application of ORS 371.605 to 371.660; authority of county to supersede statutes**
- 371.615** **Petition or resolution for improvement of roads in unincorporated areas**
- 371.620** **Signers of petition and objection in event of cotenancies**
- 371.625** **Investigation and estimation of cost of improvement by engineer**
- 371.630** **Notice to owner of engineer's report; filing objections**
- 371.635** **Court order for improvement; recording; vacation of order and removal of lien**
- 371.640** **Engineer to compile improvement cost; source of payment; reimbursement of source; additional work**
- 371.642** **Allocation of costs of sidewalk or curb construction and other improvements**
- 371.645** **Engineer to ascertain assessment; hearing on objections; court order**

- 371.650** **Certification of assessment; recording order; lien**
- 371.655** **When assessment due, payable and delinquent; application of other statutes**
- 371.660** **Delinquent list; execution and sale**

3.420 CITATIONS ON SPECIAL ASSESSMENT

Rink v. Kortge, 276 Or. 505, 555 P.2d 775 (1976): In 1965 and 1967 owners of certain lots in Wasco County petitioned the county court to make street improvements, which were made, but the owners failed to pay the costs assessed. After writs of execution were issued in 1972, the Wasco County Court levied and sold the lots. Petitioner Rink purchased ten of the lots. However, in 1973, the original owners tendered the amounts necessary to redeem the lots. The county court issued certificates of redemption to the original owners and sent Rink checks for the amount due him. Petitioner Rink filed a writ of mandamus to require the county court to issue him deeds to the ten lots he purchased. The Supreme Court affirmed the dismissal of Rink’s petition, and held that the right of redemption applies to both the vendee and the record owner under a land sale contract pursuant to ORS 371.660(3). The applicable redemption sections are ORS 23.410 and 23.600.

30 Or. Atty. Gen. Op. 241 (1961): Under ORS 371.630, both conditions (50 percent of the owners and 50 percent of the property) must be met concurrently before the county is forced to abandon an improvement. Under ORS 371.635, the county may voluntarily reject improvement, even in the face of a favorable engineer’s report and receipt of insufficient objections.

Multnomah County v. Rockwood Water District, 219 Or. 356, 347 P.2d 111 (1959): Multnomah County brought action on an implied contract to recover against the Water District for the sum expended in lowering the defendant District’s pipes on the grading of a dedicated street. The Supreme Court held that when a road improvement is made, the cost of relocating a public utility’s pipes, lines and wires must be assessed to the adjoining property owners if the county is operating pursuant to ORS 371.605 to 371.660.

27 Or. Atty. Gen. Op. 197 (1956): Land owners petitioning under ORS 371.615 may petition for road improvements, as defined in ORS 371.605(3). At any point the county may take over the road and continue improvements out of the county road fund.

The cost of making the improvements is assessed against the abutting land and becomes a lien upon such property. ORS 371.635 makes provision for the ordering of the improvements either by contract or by force account. “Force account” means work done under county supervision with county equipment and labor.

3.450 SYSTEM DEVELOPMENT CHARGES. [ORS 223.297 to 223.314](#) provide the framework for the imposition of system development charges. The charges may be imposed for present and/or future capital improvements to meet additional capacity requirements as a result of a new development. The fees are collected at the time of increased usage of a capital improvement, the issuance of a building or development permit, or at the

time of connection to the capital improvement. There are improvement fees for future capital improvements and reimbursement fees for improvements already constructed or under construction.

In establishing the amount of a reimbursement fee, consideration must be given to the cost of the facility, prior contributions of existing users, the value of unused capacity and other relevant factors. Improvement fees are based on the cost of the improvement needed to increase the capacity of the systems for which the fee is being collected.

A capital improvement plan or other comparable plan must be prepared by any governmental unit adopting a system development charge. The plan includes a listing of capital improvements to be funded with improvement fee revenues and the estimated cost and timing for each improvement.

The 2003 Legislature modified the methodology for calculating SDCs and the costs for which the SDCs may be expended. It modified the definition of reimbursement fee to include capital improvements under construction when the fee is established, for which the governmental unit determines capacity exists. The law change now requires the annual SDC accounting to include the total revenues collected and costs of compliance.

3.460 STATUTES ON SYSTEM DEVELOPMENT CHARGES

[Chapter 223](#)

System Development Charges

- 223.297 Policy**
- 223.299 Definitions for ORS 223.297 to 223.314**
- 223.301 Certain system development charges and methodologies prohibited**
- 223.302 System development charges; use of revenues; review procedures**
- 223.304 Determination of amount of system development charges; methodology; credit allowed against charge; limitation of action contesting methodology for imposing charge; notification request**
- 223.307 Authorized expenditure of system development charges**
- 223.309 Preparation of plan for capital improvements financed by system development charges; modification**
- 223.311 Deposit of system development charge revenues; annual accounting**
- 223.313 Application of ORS 223.297 to 223.314**
- 223.314 Establishment or modification of system development charge not a land use decision**

3.470 CITATIONS ON SYSTEM DEVELOPMENT CHARGES

Home Builders Assn. of Lane County v. City of Springfield, 211 Or. App. 658, 156 P.3d 167 (2007): Petitioners challenged the methodology for imposing system development charges (SDCs) adopted by the cities of Springfield and Eugene pursuant to ORS 223. The methodology at issue was intended to operate as the framework to fund improvements to wastewater treatment facilities. On appeal, petitioners erroneously framed their arguments concerning factors relied on by the cities that form the basis for the methodology (e.g. choice of population projection) as issues of statutory interpretation. However, the issues framed by petitioners pertained to the basic facts, and the inferences that could be drawn from those facts. These issues were therefore subject to application of the substantial evidence standard of review. Petitioner failed to prove the City's methodology was legally deficient under ORS 223.304.

Home Builders Assn. of Metropolitan Portland v. City of West Linn, 204 Or. App. 655, 131 P.3d 805 (2006), *cert. denied* 341 Or. 80, 136 P.3d 1123 (2006): Home Builders petitioned for a writ of review of a resolution the City adopted on the grounds that the resolution did not conform to legal requirements and the SDC it imposed was not supported by substantial evidence. The City imposed an SDC to support parks and recreation facilities facing increased population growth. The SDC was an improvement fee imposed on new users for increasing the capacity of the system. The trial court initially remanded the case and directed that the City make findings to determine if there was any "open space" the City intended to fund that did not qualify as parks or recreation space. After the City eliminated some unqualified "open space," the trial court affirmed a reduced SDC. In their assignment of error, petitioners asserted the trial court erred in remanding the case to the City, and that the City both lacked authority and employed unlawful methodology to modify its resolution on remand. The Court of Appeals affirmed, holding the City's methodology valid under ORS 223.304(2). Although the statute required a city to establish fees by use of a "methodology," nothing in the statute required it to use a particular formula.

Homebuilders Assn. of Metropolitan Portland v. Tualatin Hills Park and Recreation Dist., 185 Or. App. 729, 62 P.3d 404 (2003): Plaintiffs claimed that an SDC was a regulatory taking in violation of the Oregon Constitution, and also a violation of the Fifth Amendment of the United States Constitution. The Court of Appeals rejected both claims. In order to establish a regulatory taking under Article I, section 18 of the Oregon Constitution, a property owner must show that the government has deprived the owner of all substantial beneficial or economically viable use of the property. The Court held that conditioning the development of their real property on the payment of an SDC did not meet this burden. Additionally, no Oregon court has ever suggested that a legislatively imposed exaction of money applicable to a large group of people constituted a taking. The Court did not formally adopt a particular test for the District's resolution, but noted that the charge was not without rational basis, and also passed the test of being reasonably related to the District's stated goal of providing parks and recreational facilities.

Rogers Machinery, Inc. v. Washington County, 181 Or. App. 369, 45 P.3d 966 (2002): Rogers petitioned for a writ of review to challenge the imposition of a Traffic Impact Fee (TIF) categorized as "general light industrial" assessed against the development of a second building on the site of the corporation's headquarters under a Washington County ordinance. Rogers alleged a taking in violation of the Fifth Amendment, and a violation of state statutes governing SDCs. The Court of Appeals agreed with Rogers that

the TIF qualified as an SDC, specifically an improvement fee, and was required to comply with the statutory provisions governing such charges. However, the court concluded the statutory challenge was untimely and also rejected the corporation's constitutional challenge. The heightened scrutiny required for development conditions set forth in *Dolan* did not apply to the TIF. *Dolan v. City of Tigard*, 512 US 374, 114 S.Ct. 2309 (1994). Legislatively mandated fees are different under the Fifth Amendment than the taking of real or personal property. The imposition of fees (money exactions), like taxes and other general assessments is accorded substantial judicial deference, not heightened scrutiny.

3.500 FINANCING FOR A LOCALIZED NEED. A county has a number of options that can be used to finance road work to serve a localized need to equalize provision of service throughout the county. The county can serve its citizens in localized areas by expediting and coordinating the development of revenue from within the localized area. The county can also develop revenue sources expressly for local access roads that are distinctive from the funding for county roads. In addition to previously discussed county service districts (3.150), special assessments (3.400), and system development charges (3.450), other potentials are listed below:

- A differential tax
- Placing responsibility on a subdivider or other developer
- Establishing a county road district system
- Establishing special road districts

The following provides further general information.

Financing Public Facilities

Counties may choose from a variety of methods to finance public facilities. Roads and related drainage have been the predominate county-financed public facility. However, increasingly, counties are becoming involved in other facilities – sometimes even urban projects such as sewers. As a result, there has been a broader interest in alternative revenue sources. The major financing methods include:

- Property tax levies: either to finance current construction and maintenance or to retire bond issues that have been used to pay for public improvement construction. One special use of property taxes is tax increment financing. Under this system, revenue from taxes levied against the annual increase in assessed value that is attributable to urban renewal is used to retire bonds issued to pay for public facilities related to the urban renewal project. When the bonds are paid, the increase in value is added to the regular tax roll.
- User fees: such as a landfill dumping fee or a monthly sewer service charge, which, like property taxes, may be used to pay current costs or to retire bond issues.
- Connection charges: to cover a portion of the cost to extend water or sewer

mains to serve a particular property (generally a one-time payment).

- Systems development charges: on new development, over and above building and land use permit fees or charges for public facilities required to serve the particular property or immediate area. Systems charges are designed to elicit a contribution from new development to provide funds for the extra capacity area wide facilities need to accommodate new growth. The revenue can build a fund for future construction or to reimburse a jurisdiction for construction completed or underway. ORS 223.297 to 223.314 provide a uniform framework for imposing system development charges.
- Special assessments: apportioned on the basis of relative benefit. This is usually a charge for constructing facilities such as local access roads or sewers, which previously were not available to serve the particular properties.
- Subdivider or developer finance: to pay for facilities such as local access roads or sewers, which are needed to serve a newly developing area, by requiring their installation at the expense of the subdivider or developer.
- State shared revenues: especially shared highway revenues, which are used primarily for maintenance.
- Federal grants-in-aid: such as grants for park land acquisition or allocations for public facilities under programs such as the Community Development Block Grant program.

Financing public facilities through borrowing (issuance of bonds) is of course a method of paying for the facilities, but the bonds must be retired from revenue raised by one or more of the above (or other) sources, so bonding in and of itself cannot be considered to be a method of financing. In some cases a state or federal agency may loan the county money at a more favorable interest rate than would be available in the bond market.

Policy Choices. The choice of methods to finance construction and maintenance of public facilities involves several considerations.

First, the choices faced by most counties involve improvement or extension of an existing system (road, drainage way, solid waste disposal sites, etc.) rather than construction of an entirely new system. This means that past decisions have an important bearing on the available finance options. For example, a county that has financed a certain type of facility (e.g., roads) from a general road levy in the past could find it difficult to change to special assessment financing because of the inequity to property owners being assessed for the first time. The converse would be equally difficult, since previously assessed properties would object to paying property taxes for similar facilities to serve new areas. Counties can use various methods to adjust financing systems. Usually the move is away from general tax sources and toward property benefit sources to finance facilities to provide a localized service. Often, the methods used have been influenced by new subdivision activity.

Second, the choice of financing methods has important economic and social impacts which are hard to predict, since the relative emphasis placed on each local revenue source will affect the various population sectors in different ways. For example, the use of systems

development charges directly affects new construction and increases the cost of housing, while the cost of the same facilities financed by a bond issue and property tax levy would be spread throughout the county. County finance options are further complicated by the differences in county responsibilities inside and outside cities.

Some clues to appropriate choices of financing methods for construction are suggested by recognizing that public facilities are generally one of three types:

- (1) Direct extensions to individual properties, such as local access roads with storm water collection facilities;
- (2) Community service area facilities, such as localized drainage way enlargement and collector roads; or
- (3) County-wide facilities, such as major drainage ways, and arterial and limited access roads.

Facilities of the first type may be financed most appropriately by methods that assess charges to the particular property to be served, such as special assessments, connection charges, and subdivider or developer finance. Facilities of the third type usually call for financing through more general revenue sources, such as user charges, property taxes, and outside sources, such as federal grants. Facilities of the second type probably present the most difficult policy choices, since they involve a mix of area wide and local benefits. Systems development charges are one revenue source commonly identified with this second type.

Policies are, of course, influenced by local circumstances. For example, a county that is experiencing substantial new subdivision development might place certain costs of new facilities on developers because policy suggests county general revenues should not benefit individuals. Conversely, to help stimulate economic development a county might place more of the cost of new facilities on general revenue sources, even though a developer would be assisted by the public expenditure.

Many of the financing tools that are appropriate for facility construction are not appropriate for operation and maintenance costs. These annual needs generally are the largest part of the annual expenditures for and are best financed from general tax revenue or user charges. Revenue from the gasoline tax and other motor vehicle taxes, as a form of user charge, is an appropriate source to pay for the operation and maintenance of roads. Through the county service district or establishment of differential tax areas, a county can use general tax sources and still allocate charges to taxpayers in the parts of the county specifically receiving a service.

3.510 BONDING FOR COUNTY ROADS. Article XI, Section 10 of the state constitution and both [ORS 370.010 to 370.240](#) and [ORS 287A.001 to 287A.380](#) authorize counties to issue bonds to finance road projects. The statutory debt limit for counties is two percent of the county's real market value (ORS 287A.100). Although the authority under Chapter 287A is apparently broad enough to cover county needs for bonding authority, the ORS 370.010 to 370.240 authority has been left on the statute books. ORS Chapter 287A was rewritten by the 2007 Legislature while ORS 370.010 to 370.240 were extensively

revised in 1983. Both sets of statutes are referenced in section 3.110 of this manual.

The outstanding county road debt for counties totaled \$109.9 million as of the end of fiscal year 2008-09, including \$30.7 million in bonded indebtedness. The restrictions imposed by Measure 5 (Article XI, Section 11b) appear to have caused more counties to resort to debt financing since debt service levies for eligible bond issues are outside the \$10 levy limitation.

3.530 THE COUNTY ROAD FUND. The laws on county road levies specify that the money be placed in a county road fund and that revenue from this source be spent only on county or state roads or, in case of an emergency, on other public and private roads. ([ORS 368.705](#) and 368.715.) All counties have a county road fund, and revenue from local, state and federal sources are placed in the fund (ORS 368.705). In the case of county road funds, the constitutional limitation of Article IX, Section 3a is the most restrictive as discussed in section 3.090. Therefore, the uses of the county road funds must be limited to the constitutionally dedicated State Highway Fund uses unless there is a statutory exception as referenced below. Some counties have created special use road funds, e.g. Bicycle/Pedestrian Fund, Equipment Reserve Fund, Capital Projects Fund. (See [ORS 294.468\(4\)](#) regarding commingling cash balances of funds.)

The Oregon Legislature has authorized certain counties to use federal forest receipts in the county road fund for patrolling county roads. Chapter 894, [Oregon Laws 2007](#) was the initial measure passed authorizing Douglas and Lane Counties to use such funds for the sheriff's department patrolling of county roads. Chapter 75, [Oregon Laws 2012](#) (HB 4175) expanded the authority to include Coos, Curry, Josephine, Klamath and Linn Counties as well as Douglas and Lane Counties. The 2012 law also authorizes all other counties to make interfund loans of the federal forest revenues to any other county fund for the purpose of patrolling of county roads by county law enforcement officers. ~~These measures are scheduled to sunset on January 2, 2016.~~

Similarly, county policy may authorize revenue in the county road fund to be spent on local access roads as well as on county roads subject to the provisions of ORS 368.031.

ORS 294.468 authorizes a county to loan between funds, including borrowing from the county road fund, provided the other requirements of the section are met. The statute provides for loaned money to be returned to the fund from which borrowed no later than the end of the ensuing year (or ensuing budget period for a biennial budget) if the loan is an operating loan. If the loan is a capital loan repayment in full is required over a term not to exceed 10 years from the date the loan is made.

ORS 294.050 allows the county to borrow money from the county road fund to supplement depleted election accounts in the general fund but requires repayment in the following fiscal year from the first funds available in the general fund or emergency fund. (NOTE: If using the authority of this statute is contemplated, its relationship to the more recent ORS 294.468(1)(c) should be considered.) Also, the road fund must be reimbursed when a grant of access is made to private property when the access rights were originally acquired by use of such funds. See Or. Att'y Gen. Op. OP-5953 dated May 30, 1986.

When a revenue source has constitutional or statutory restrictions on its use, the accounting system needs to demonstrate that the restrictions have not been violated (ORS 368.051). See

section 4.502 for information on Accounting Guidelines. The Association of Oregon Counties has developed a guidance paper to provide clarity on these matters.

3.535 STATUTES AND CITATIONS ON GENERAL ROAD FUND

[Chapter 294](#)

County and municipal financial administration

- 294.050 County borrowing money from county general road fund**
- 294.052 Definitions; investment by municipality of proceeds of bonds**
- 294.055 Use by counties of moneys received from federal government under the Mineral Leasing Act**
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[Chapter 382](#)

County Bridges

382.205 Using county funds for bridges

State ex rel Weinstein v. Lane County, 71 Or. App. 238, 692 P.2d 135 (1984): The County appealed an order of the trial court requiring an accounting of all monies borrowed from the county general road fund and a cessation of borrowing from that fund. The trial court concluded that money in the road fund may only be borrowed to supplement depleted election accounts pursuant to ORS 294.050. However, the Court of Appeals agreed with the County that ORS 294.460 (renumbered ORS 294.468 in 2011) authorized local government to loan money from any fund, including special revenue funds raised for particular purposes such as the county road fund, to any other fund. (NOTE: See restrictions and pay back requirements on such loans in ORS 294.468. If using the authority of ORS 294.050 is contemplated, its relationship to the more recent ORS 294.468(1)(c) should be considered.)

Lane County v. Paulus, 57 Or. App. 297, 644 P.2d 616 (1982): Any unobligated road fund monies, including federal forest receipts, must be invested for the benefit of the county road fund. Interest earned on such monies must be credited to the road fund.

42 Or. Atty. Gen. Op. 271 (1982): Proceeds in a county road fund dedicated by statute or constitutional provision to a particular purpose may be used only for such purpose; an expenditure or use of such proceeds for a different purpose would require reimbursement to the fund involved.

41 Or. Atty. Gen. Op. 430 (1981): Federal forest receipts, as well as interest earned by the investments of these funds, must be deposited in the county road fund. Federal forest receipts are not "taxes" within the meaning of Article IX, section 3a of the Oregon Constitution.

3.540 PATHS FOR BICYCLES AND PEDESTRIANS. [ORS 366.514](#) mandates that the state, counties and cities expend one percent of their State Highway Fund receipts to provide [footpaths, trails and bicycle trails](#) along roads and highways. The statute also requires establishment of "footpaths and bicycle trails. . . wherever a . . . road . . . is being constructed, reconstructed or relocated."⁸ However, the county may elect to place these facilities along roads financed with other revenue and probably may use State Highway Fund revenues to finance a path even if the roadway was financed from other revenue. It is important to note that the county may exempt a road project from having paths for bicycles and pedestrians if it finds the cost is unreasonably high, the sparse population makes the facility unwarranted, or the facility would cause a safety hazard. Grant funds for pedestrian and/or bicycle improvement projects are distributed through ODOT's "[Enhance](#)" component of the STIP process.

Subsection 3 of the statute states that at least one percent of the revenue a county receives from the State Highway Fund must be spent on these footpaths and bicycle trails. However,

⁸ This requirement is probably an obligation only if the road work is being done with money the county has received from the State Highway Fund (gas tax and other highway-user revenue). However, this is a question that should be reviewed by your county counsel.

the subsection does not apply to a county in any year in which the one percent equals \$1,500 or less and to a city in which it is \$250 or less. A county in lieu of expending the funds each year may credit the funds to a financial reserve in accordance with [ORS 294.346](#), to be held for not more than 10 years. In calculating expenditures made in any one year, the county may count money as spent on the date on which a contract is signed or, if the work is done by county personnel, on the date construction begins. See section 3.220

The Transportation Planning Rule requires bikeways along arterials and major collectors in urban areas and rural communities. Sidewalks are required along arterials, collectors and most local streets in urban areas, except that sidewalks are not required along controlled access roadways, such as freeways.

A bicycle trail or footpath constructed within a road right-of-way should be distinguished from the trails provided for by ORS 368.021. Under ORS 368.021 a trail is an independent right-of-way that is limited to uses other than the usual vehicle use common to roads. The constitutional earmarking of revenue from motor vehicle use and ownership prevents expenditure of motor vehicle revenue on independent trails but does not necessarily prevent expenditure for work on bicycle trails or footpaths along a roadway.

3.543 STATUTES AND CITATIONS FOR PATHS FOR BICYCLES AND PEDESTRIANS

[294.346](#) **Reserve fund established without vote; review of need for reserve fund; unexpended balances; application to system development charges**

[366.514](#) **Use of highway fund for footpaths and bicycle trails**

Bicycle Transportation Alliance, Inc. v. City of Portland, 133 Or. App. 422, 891 P.2d 692 (1995): An advocate group for increased bicycle access appealed the dismissal for failure to state a claim of its allegation that the City failed to comply with ORS 366.514 by not constructing bicycle and pedestrian facilities around and through the City's arena construction project. The City contended that the statute merely required the City to expend one percent of state highway fund revenues on the activities described in ORS 366.514(1) annually. The Court of Appeals held that ORS 366.514 required a reasonable amount of state highway funds be spent, as necessary, on bicycle and pedestrian facilities and also established an annual spending floor of one percent of total funds received per fiscal year. The advocate group's amended complaint, alleging the City's failure to provide bicycle and pedestrian facilities in connection with the arena project, was sufficient to state a claim for relief under ORS 366.514.

41 Or. Atty. Gen. Op. 545 (1981): Money set-aside for construction and maintenance of footpaths and bicycle trails pursuant to ORS 366.514 cannot be used to construct a bicycle-pedestrian bridge over a river if the bridge itself is not within highway rights of way. Because park and recreation purposes were eliminated from the approved use of Highway Fund monies by constitutional amendment, the one percent footpath and bicycle and trail fund must be spent only for highway purposes in order to comply with Article IX, section 3a. The moneys cannot be used for the construction of a bicycle-

pedestrian bridge which is totally separated from and not party of any highway right of way.

3.600 FUEL TAX REFUNDS. Federal and state taxes are collected on motor vehicle fuel (gas) and on use fuel (diesel). Counties may request a refund for state gas tax paid to operate a vehicle on other than a state highway, county road or city street and for a refund of diesel tax paid to operate any county vehicle. (The 2001 Legislature deleted the requirement for counties that the vehicle must be used exclusively in the improvement, construction and maintenance of public highways to qualify for the refund of the diesel tax at the same time it granted the diesel fuel refunds to special district and state agencies.) Counties may claim a refund for federal gas taxes paid on fuel sold to the county for its exclusive use. Refunds cannot be claimed for Federal taxes paid on diesel fuel. Instead no federal tax should be paid at the time of purchase by purchasing nontaxable (dyed) diesel fuel.

3.610 STATUTES ON FUEL TAX REFUNDS

[Chapter 319](#)

Motor Vehicle Fuel and Aircraft Fuel Taxes

- 319.320 Refund of tax on fuel used in operation of vehicles over certain roads or private property**
- 319.831 Refund of tax on fuel used in operation of vehicle over certain roads or private property**

CHAPTER 4: PROCEDURES FOR CONDUCTING ROAD WORK

(This chapter was revised and updated in 2008, 2010, 2012 and 2014)

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CHAPTER 4: PROCEDURES FOR CONDUCTING ROAD WORK

4.000 INTRODUCTION. The methods for carrying out road work are basically no different than for other public construction. However, notwithstanding the statutory requirements for accurate records of all public construction work, state law expressly requires the county to provide complete and accurate cost accounts of all road work completed. Similarly, in addition to general state requirements for audits of public accounts, there is an express requirement for the audit of road work costs.

4.015 SPECIAL REFERENCES. The following are sources of information outside this manual that are particularly relevant to the sections of this chapter, as noted.

Section 4.100

Applied Economics, Inc., The Utilization of Private Contractors by Public Agencies: An Examination of the Issues, 1980

Oregon Department of Justice, Attorney General's Public Contracts Manual, 2010¹

Oregon Law Institute, Oregon Government Law 2004: New Chapters in Public Law, Ch. 2 "Transitioning to the New Public Contracting Code" 2004

Section 4.300

Program for Governmental Research and Education, Oregon State University, The Development of Public Improvement Contracting Law in Oregon, County Practices and Policies Regarding Allocation of Road Work to County Forces and Private Contractors, and Constructing Public Improvements at "Least Cost:" Legal Mandates and County Practices and Policies.

Oregon Department of Transportation, [2008 Oregon Standard Specifications for Construction](#)

Oregon Department of Transportation, [2002 Oregon Standard Specifications for Construction](#) (The 2002 edition of the Oregon Standard Specifications for Construction and the 2006 edition of the Supplemental Specifications-Part 00100 have been replaced by the 2008 edition of the Oregon Standard Specifications for Construction.)

Oregon Bureau of Labor and Industries, [Prevailing Wage Rates on Public Works](#)

Oregon Law Institute, Oregon Government Law, Ch. 6, "Public Contracts" (1991) (1993)

¹ The Attorney General's Model Public Contract Rules are shown online at the [Department of Justice OAR chapter 137](#) under divisions [046](#), [047](#), [048](#) and [049](#). These rules include the changes and commentary made in response to the few amendments made by the 2011 Legislative Assembly. The changes and commentary made in response to the few amendments made by the 2012 Assembly can be viewed at [Attorney General Model Public Contract and Legislative Sufficiency Rules for 2012](#). However, the 2010 edition is, and will remain, the latest hard-copy version of the manual until at least after the 2014 legislative session. Budget constraints prohibited the printing of a hard-copy 2011-2012 edition.

Supplement)

Section 4.500

Oregon Department of Transportation, [Routine Road Maintenance: Water Quality and Habitat Best Management Practices](#) (“ODOT Blue Book”), 2009.

Section 4.510

American Consulting Engineers Council, A Guide to the Procurement of Architectural and Engineering Services

American Society of Civil Engineers, Manual 45, Consulting Engineer: A Guide for the Engagement of Engineering Services

Oregon Department of Justice, Attorney General’s Public Contracts Manual, Sec. II (B) (3) “Table of Model Rules, Division 48--Consultant Selection: Architectural, Engineering and Land Surveying Services and Related Services Contracts,” and Sec. III (B) (2) “Rules and Policies, (4) OAR Chapter 125, Div. 248--Consultant Selection: Architectural, Engineering and Land Surveying Services and Related Services Contracts,” 2006

OACES/CECO Subcommittee, Consultant Manual, Supplement to the AOC County Road Manual

Oregon Department of Transportation, [Local Agency Program Consultant Procedures and Forms](#), 2010 (Information on the two-tiered process used when local agencies choose to use ODOT Contracts or Price Agreements to obtain Architectural, Engineering and related services for Local Agency projects.)

4.100 PUBLIC CONTRACTS. Public agencies enter into contracts for:

- (1) Performance of physical work, such as construction of facilities;
- (2) Personal services, such as facility design by a consultant; and
- (3) Purchase of materials or equipment

Road contracts of a county are distinctive from other public contracts in that ORS [297.525](#) and [368.051](#) may require additional cost records.

Public Contracts Generally

Authority. For many years the state has regulated certain aspects of local government purchasing and contracting for both personal services and construction. Requirements have covered competitive bidding, prevailing wage requirements, preference requirements for Oregon suppliers, etc. The 1975 legislature thoroughly revised the public contracting statutes, and various refinements to the 1975 legislation have followed. Among other changes, it enacted a general requirement for competitive bidding on all public contracts, with certain statutory exemptions, and provides that other exemptions may be authorized

under rules of the director, Department of Administrative Services or a local contract review board. The law allowed the county governing body to enact an ordinance designating itself or three or more persons as the contract review board for the county. The 2003 legislature did a complete rewrite of the public contract statutes granting public agencies broader authority and revised and expanded ORS Chapter 279 by adding Chapters 279A, 279B and 279C. The updated statutes provide that the county governing body is the local contract review board for the county unless it takes action otherwise. The new revisions further set out that the county governing body may create a county contract review board by appointing a body, board or commission other than the governing body to serve as the county's contract review board ([ORS 279A.060](#)). A county-designated board may also serve other local governments in the county, subject to payment of fees the county may impose for the service. However, any other local government may elect to establish its own board.

In addition to allowing justifiable exemptions from the competitive bid requirements or the approval of a special procurement, the contract review board has power to designate certain service contracts as personal services contracts, to allow purchasing by brand name under certain conditions, reduce bonding requirements of public improvement contracts, decide appeals from disqualified bidders, and establish other contracting procedures within the statutory guidelines. The 2003 legislature expanded the contract review board's authority in exempting a public improvement contract or a class of public improvement contracts and certain products or classes of products from the competitive bidding under certain circumstances and with certain findings.

The purchase, sale or lease of goods and equipment, however, must comply with the bidding procedure, except that products, services or supplies that cost less than \$10,000 may be excluded from competitive bidding requirements.

Public Contracting Code. The 2003 Legislature enacted a major revision of the state public contracting laws applicable to state and local public procurement and public improvements which became operative March 1, 2005. On that date provisions of ORS chapter 279 (with the exception of provisions on products of disabled individuals) were repealed and replaced with three new chapters that constitute the new Public Contracting Code (referenced here as the "Code"):

- [ORS chapter 279A](#), General Provisions, which applies to the entire Code.
- [ORS chapter 279B](#), Public Procurement, which applies to general good and services procurement, and state agency procurements of personal services other than those for architectural, engineering, land surveying, and related services.
- [ORS chapter 279C](#), Public Improvements and Related Contracts, which apply to construction contracts and contracts for architectural, engineering, land surveying, and related services.

The Code was further amended by the 2005 and 2007 Legislatures to address certain "technical amendments" overlooked in the 2003 revision. However, the 2007 session also made some substantive changes to the Code that will be identified later in this chapter.

Model Rules for Public Contracting. ORS 279A.065 requires the Attorney General to adopt model rules of procedure appropriate for use by state agencies and local governments ("agencies"). Under ORS 279A.065, "agencies" with contracting authority

who are subject to the Code are also subject to the model rules unless the “agencies” adopt their own rules of procedure and specifically state that the model rules do not apply. If an agency adopts its own rules, it must review its rules each time the Attorney General amends the model rules to determine whether the agency should amend its rules to comply with the statutory changes.

“Agencies” that have not adopted their own rules of procedure are subject to the model rules adopted by the Attorney General under ORS 279A.065 (4), including all modifications to the model rules that the AG may adopt. This does not apply to personal services contracts of local governments except for contracts for architectural, engineering, land surveying and related services.

The Attorney General amended the model rules effective January 1, 2010. The amended rules, including commentary, are included in the Attorney General’s Public Contracts Manual. (The 2010 edition is, and will remain, the latest hard-copy version of the manual until at least after the 2014 Legislative Assembly. Budget constrains prohibited the printing of a hard-copy 2011-2012 edition.)

The manual also serves as a reference on many other public contracting issues faced by public agencies. It includes:

Selected case law on public contracts

Public contracting code, including 2009 amendments

Statutes on products related to individuals with a disability

Model public contract rules and commentary, including amendments effective January 1, 2010²

Other Materials, including reprints of or references to other laws, rules and forms relating to public contracting of benefit to public agencies.

Caveat: Note that not all laws, rules and forms apply to both state and local governments. For example, the Attorney General’s review of public contracts rules ([OAR chapter 137, division 45](#)) and the Oregon Department of Administrative Services public contracting rules (OAR chapter 125, divisions 246-249) apply only to state agencies, not local governments.

In 2012, the Legislative Assembly enacted SB 1518A (Chapter 53, Oregon Laws 2012) prohibiting state agencies, under specified conditions, from accepting bids or proposals from persons who previously had advised or assisted an agency in public contracting matters.

The Attorney General does not advise local governments, and the materials in the AG’s manual do not constitute legal advice. State agencies and local governments should consult their legal counsel for advice on particular public contracting questions.

² The Attorney General’s Model Public Contract Rules are shown in the [Department of Justice OAR chapter 137](#) under divisions [046](#), [047](#), [048](#) and [049](#). These rules include the changes and commentary made in response to the few amendments made by the 2011 and 2012 Legislative Assemblies.

Cooperative Purchasing. [ORS 279A.200 through ORS 279A.225](#) provide contracting agencies with the specific authority to engage in “cooperative purchasing,” whereby contracting agencies may conduct certain public contracting activities on behalf of other contracting agencies, participate in contracting activities conducted by other contracting agencies, or rely on their membership in a cooperative procurement group³ as the basis for the selection of contractors to provide certain goods and services. A contracting agency may enter into a contract or price agreement arising out of a cooperative procurement as an alternative to engaging in screening and selection methods set forth in ORS Chapters 279B or 279C.

The Code describes three types of cooperative procurements, and establishes the conditions under which a contracting agency may participate in or administer each. The types of cooperative procurements and the general substantive and procedural requirements are described below.

- Joint Cooperative Procurements. Joint cooperative procurements are cooperative procurements in which the contracting agencies or the cooperative procurement group are identified in the applicable solicitation document. A joint cooperative procurement may not be a permissive cooperative procurement. The Model Rules provide that a contracting agency may use a joint cooperative procurement to establish contracts or price agreement for goods, services (including personal services) and contracts for public improvements. A contracting agency may enter into a contract or price agreement arising out of a joint cooperative procurement if the solicitation and award process is an open and impartial competitive process that uses source selection methods substantially equivalent to those set forth in [ORS 279B.055](#) (competitive sealed bids), [279B.060](#) (competitive sealed proposals), or [279B.085](#) (special procurements), or substantially equivalent to the competitive bidding process in [ORS Chapter 279C](#). The Code does not establish any separate notice requirements, but does require that the solicitation and the original contract or price agreement identify each participating contracting agency or cooperative procurement group.
- Permissive Cooperative Procurements. Permissive cooperative procurements are cooperative procurements in which the contracting agencies are not identified in the applicable solicitation document. The Model Rules provide that a contracting agency may use a permissive cooperative procurement to establish contracts for goods and services (including personal services). A contracting agency may enter into a contract or price agreement arising out of a permissive cooperative procurement if the solicitation and award process is an open and impartial competitive process that uses source selection methods substantially equivalent to those set forth in [ORS 279B.055](#) (competitive sealed bids) or [279B.060](#) (competitive sealed proposals). If a contracting agency estimates that it will spend in excess of \$250,000 on the goods or services acquired under a contract or price agreement arising out of a permissive cooperative procurement, then it

³ Examples include the Oregon Cooperative Purchasing Program (ORCPP) operated by the Oregon Department of Administrative Services and the U.S. Communities Government Purchasing Alliance (GPA) available through the National Association of Counties (NACo). GPA is a cooperative purchasing program offering local governments’ access to nationally solicited contracts that provide significant reductions in price and guaranteed delivery features.

must advertise its intent to do so, provide vendors the opportunity to submit comments, and respond to any comments it receives. ORS 279A.215 (2), (3).

- Interstate Cooperative Procurements. Interstate Cooperative Procurements are permissive cooperative procurements in which one or more of the participating agencies are located outside the state of Oregon. The Model Rules provide that a contracting agency may use an interstate cooperative procurement to establish contracts for goods and services (including personal services). A contracting agency may enter into a contract or price agreement arising out of an interstate cooperative procurement if the solicitation and award process is an open and impartial competitive process that uses source selection methods substantially equivalent to those set forth in ORS 279B.055 (competitive sealed bids) or 279B.060 (competitive sealed proposals). A contracting agency, or a cooperative procurement group of which it is a member, must advertise its intent to enter into a contract arising out of the interstate cooperative procurement, provide vendors the opportunity to submit comments, and respond to any comments it receives. ORS 279A.220 (2), (3).

Planned Public Improvements List. ORS 279C.305 provides close surveillance over expenditures for public improvements, whether by contract or force account construction. The law requires counties to prepare and file with the Commissioner of the Bureau of Labor and Industries a list of public improvements planned for construction each fiscal year, not less than 30 days before adoption of the county budget. The list must include the estimated total construction cost of each project and indicate the improvements that will be performed by a private contractor. Before constructing a public improvement that costs more than \$125,000 with its own equipment and personnel, the county must prepare adequate plans and specifications, as well as the estimated unit cost of each classification of work. If the county does improvement work with its own forces, it must also keep cost records. The county must contract out every public improvement project that costs more than \$5,000 if it fails to adopt a cost record system that substantially complies with model cost accounting guidelines developed by the Oregon Department of Administrative Services.

Personal Service Contracts. The Code preserves local contracting agencies' authority both to designate particular contracts or classes of contracts as contracts for personal services (ORS 279A.055(2)), and to establish separate procedures for screening and selecting persons to perform personal services (ORS 279A.070). Competitive bidding is not required for personal service contracts, but each county must create a selection procedure for entering into personal services contracts. In 1991 the Attorney General added model rules regarding selection of architects and engineers to the model rules for other contracts even though these contracts do not require competitive bidding. The 2003 legislature added land surveyors and other related services to this requirement and established a special section in ORS Chapter 279C for such contracts.

The 2011 legislature added photogrammetric mapping and transportation planning to the list of services subject to procedures for contracting with architects, engineers, and land surveyors and stipulated the usage of Qualification-Based Selection (QBS) in selecting consultants to provide architectural, engineering, photogrammetric mapping, transportation planning, or land surveying services. The new law clarifies that a contracting agency can adjust procedures to accommodate the scope, schedule or objectives for a particular project if the estimated cost for services does not exceed \$250,000 (ORS 279C.110(2)), and may directly appoint a consultant if the estimated cost for services on a project does not exceed

\$100,000 ([ORS 279C.110\(8\)](#)). It also allows a contracting agency to enter into a contract with the consultant directly in an emergency (ORS 279C.110(9)), or if the project has been previously described, planned, studied or rendered in a previous contract and the contract is a continuation of the project (ORS 279C.115).

Support for Emerging Small Business. [ORS 279A.105](#) allows a public contracting agency to require a bidder to subcontract with or obtain materials from a certified emerging small business. Under ORS 279A.100, contracts for procurement of goods and services or any other public contract of \$50,000 or less may contain limits on competitive bidding to achieve affirmative action goals. The 2009 Legislature extended these provisions to business enterprises that are owned, controlled by, or employs service-disabled veterans. The public contracting agency is required to ensure any contracts with provisions for these enterprises remain certified throughout the contract. Directories of certified disadvantaged minority and women's businesses and of certified emerging small businesses (DMWESB) are maintained by the Oregon Business Development Department. Directories are available [online](#).

Preferences in Public Contracting. Under ORS 279A.128, a contracting agency may provide a specified percentage preference of not more than ten percent for goods fabricated or processed entirely in Oregon or services or personal services performed entirely in Oregon. When the contracting agency provides for a preference under ORS 279A.128, and more than one offeror qualifies for the preference, the contracting agency may give a further preference to a qualifying offeror that resides in or is headquartered in Oregon. A contracting agency may establish a preference percentage higher than ten percent by written order that finds good cause to establish the higher percentage and which explains the contracting agency's reasons and evidence for finding good cause to establish a higher percentage. A contracting agency may not apply the preferences described in this statute in a procurement for emergency work, minor alterations, ordinary repairs or maintenance of public improvements, or construction work that is described in ORS 297C.320. (OAR 137.046.0300(5))

Use, Operation, Maintenance, or Disposition of Personal Property. ORS 279A.185 provides that a county or other local contracting agency may sell, transfer or dispose of personal property in accordance with rules adopted under ORS 279A.070. This section also confirms that a county or other local contracting agency may negotiate with private or public entities to establish contracts, agreements and other cooperative arrangements for the use, operation, maintenance or ultimate lawful disposition of personal property owned or under the control of the public body. The governing body must find that the arrangement will promote economic development in the geographic area.

County Surplus Property. ORS 279A.010 provides that the definition of "public contract" includes the "sale or other disposal ... by a contracting agency of personal property ...". However, the new Code does not specifically address the disposition of locally-owned surplus personal property such as surplus equipment and machinery except as noted in ORS 279A.185. ORS 279A.250 to 279A.290 sets forth the process that state agencies must follow for the disposal of state-owned surplus personal property. In the absence of specific requirements in the Code for local governments, it is probably prudent to adopt rules that follow a process similar to the requirements for state agencies found in ORS 279A.280. Counties may also use the services of the State Surplus Property Program as described below. However, it is important to remember that regardless how the property is disposed of, if the surplus property was originally purchased with county road funds, any moneys received from the sale of such surplus property needs to be deposited to the road fund.

[ORS 271.310](#) (Chapter 446, [Oregon Laws 2011](#)) added a new requirement that any political subdivision, when selling or exchanging real property to an individual, corporation or governmental organization within 100 feet of a railroad right-of-way, or 500 feet of a railroad crossing, must provide notice to the Oregon Department of Transportation (ODOT). Notification must be given at least 30 days prior to the listing or placing real property for sale. Private rail holders may receive notice, but do not receive priority in purchasing over the general public. The measure provides ODOT with rulemaking authority to implement the act.

State Surplus Property Program. The State Surplus Property Program administered by the Oregon Department of Administrative Services (DAS) provides a central distribution point for surplus, seized and/or recovered public property for state agencies and political subdivisions. The program provides property disposal services to state agencies and local governments, as well as acquisition services to state agencies, local governments and qualified non-profit organizations. DAS also administers the Federal Surplus Property Program which provides disposition services to federal executive agencies, as well as acquisition services to state agencies, local governments and qualified non-profit organizations. While emphasis is placed on reutilization of property within the public sector, the program is nationally recognized for its innovative use of the Internet in advertising its post-reutilization property to the general public as well. It is important to note that DAS does charge an administrative fee for these services.

4.110 STATUTES FOR PUBLIC CONTRACTS

[Chapter 279A](#)

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- 279A.010 Definitions for Public Contracting Code**
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279A.185 Local contracting agency arrangements for use or disposition of personal property authorized

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279A.200 Definitions for ORS 279A.200 to 279A.225

279A.205 Cooperative procurements authorized

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279A.220 Interstate cooperative procurements

279A.225 Protests and disputes

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279A.260 Powers and duties of department; acquisitions by qualified donees; rules

279A.265 Use of Oregon Department of Administrative Services Operating Fund; cash dividends

279A.270 Contracts with federal government for accepting gifts and acquiring surplus property; bids not required

279A.275 Leasing of state property

279A.280 Disposal of surplus property; costs of disposal

279A.285 Disposition of moneys received as payment for repair or replacement of damaged, destroyed, lost or stolen property

279A.290 Miscellaneous receipts accounts

PENALTIES

279A.990 Penalties

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Municipal Audit Law

297.525 Annual audit of county road work.

[Chapter 368](#)

368.051 Accounting for county road work.

4.120 CITATIONS ON PUBLIC CONTRACTS

W. Linn Corporate Park, LLC v. City of W. Linn, 428 F. App'x 700, 702 (9th Cir. 2011): As a condition to the grant of development permits, the City of West Linn required developer WLCP to construct several off-site public improvements with its personal property (money, piping, sand and gravel, etc.), but they did not require WLCP to dedicate any interest in its own real property. Also in dispute, WLCP refused to dedicate its interest in an intersection to this City. The City recorded an easement to allow public vehicular traffic to continue using the property without WLCP's permission and further refused to release WLCP's performance bond. As to the public improvement issue, because the City did not require a dedication, WLCP did not have a cognizable claim under the federal Fifth Amendment's Takings Clause. See Lingle v. Chevron USA, Inc., 544 U.S. 528, 547, 125 S.Ct. 2074, 161 L.Ed.2d 876 (2005). As to the intersection dedication, the municipality did effect a taking of property when it recorded an easement without permission of the property developer. While WLCP was awarded \$5,100 for this taking, the municipality's refusal to release performance bond posted by the property developer in retaliation for developer's refusal to dedicate its interest was not in retaliation for "inherently expressive" conduct, and thus such conduct was not protected by First Amendment, since such conduct did not convey any "particularized message." "Contrary to WLCP's arguments, refusing to convey the disputed intersection did not equate to petitioning the government for redress. Rather, WLCP was simply asserting what it believed were its property rights as part of its ongoing contractual dispute with the City."

Reedsport Sch. Dist. No. 105 v. Gulf Ins. Co., 210 Or. App. 679, 152 P.3d 988 (2007): A school district sued a surety on the performance of a bond following unsatisfactory construction work performed for the school district by a bonded contractor, alleging both breach of the bond and breach of the parties' alleged settlement agreement. The trial court awarded damages on both claims; the Court of Appeals reversed both claims. The Court reversed the breach of bond claim because it was barred by bond's contractual two-year limitation provision; although ORS 12.080 provides for a six-year statute of limitations for contracts, the parties had specified a different limitation period. The six-year statute of limitations is merely a contractual default, not a mandate, and the school district was free to negotiate different terms. The school district's settlement agreement claim was also barred, as the defendant requested "immediate" response to its offer, but the school district took 19 months to accept the offer.

Jal Construction, Inc. v Friedman, 191 Or. App. 492, 83 P.3d 332 (2004): A low bidder's timely delivery of bid on city public works contract to the mailbox of a city purchasing manager in city hall, rather than to city public works building, substantially complied with bidding requirements as set out in statutes and model rules. Thus, the award of the contract to the low bidder was lawful; the objective of the statutes and model rules was to direct bid to particular person, not to particular building or address.

State ex rel Oregon Waste Systems, Inc. v. United Pacific Insurance Co., 172 Or. App. 435, 18 P.3d 491 (2001): Plaintiff completed its work hauling away tires under a

subcontract, but the general contractor did not pay plaintiff the full amount agreed to in the subcontract. Plaintiff argued that the contract involved a project for “construction, reconstruction or major renovation on real property” pursuant to ORS 279.011(8) and was therefore qualified as a “public improvement contract” subject to the bonding requirement of ORS 279.029. The Court of Appeals concluded that hauling away tires simply uncovered the ground, and did not meet the common meaning of “renovate.” The contract was therefore not a contract for public improvement. The bonding requirement in ORS 279.029 depends upon the contract being one for public improvement, and therefore did not apply. (The relevant subject matter of ORS 279.029 is now found under [ORS 279C.375](#) and [279C.380](#), the relevant subject matter of ORS 279.011 is now found under ORS 279A.010.)

McLean v. Buck Medical Services, 157 Or. App. 563, 971 P.2d 462 (1998): Defendant ambulance company entered into a contract with two counties to provide ambulance services. Ambulance company employees sought payment of overtime wages as provided for in the public contract overtime wage requirements of ORS chapter 279. The Court of Appeals held that the services provided under the contract were personal services within the meaning of ORS 279.051, and the contracts were therefore exempt from statutory overtime requirements. (The relevant subject matter of ORS 279.051 is now found under ORS 279A.055.)

Double Eagle Golf, Inc. v. City of Portland, 322 Or. 604, 910 P.2d 1104 (1996): The City issued a request for proposals to operate concessions at a public golf course. The request notified prospective bidders that the goals of the contract were to maximize revenue and service to the public. The incumbent concessionaire submitted a bid, but the City awarded the contract to a party whose bid guaranteed less revenue to the City than the concessionaire's bid. The concessionaire then brought an action against the City and officials. ORS 279.051 gave local contract review boards the authority to designate particular service contracts as personal services contracts. The Supreme Court held that ORS 279.029(1), which required a public contracting agency to award a contract to the "lowest responsible bidder," applied to contracts for the purchase of goods or services, but it did not apply to concession contracts intended to raise revenue for a public agency. (The relevant subject matter of ORS 279.051 is now found under ORS 279A.055. The relevant subject matter of ORS 279.029 is now found under ORS 279C.375 and 279C.380.)

Wegroup PC v. State of Oregon, 131 Or. App. 346, 885 P.2d 709 (1994): An architectural firm sought payment from the state for redesign work required because the State changed its plans. The firm's recovery was barred because it failed to comply with the contractual, statutory, and regulatory requirements of modifying the contract price before performing the additional work. The burden was on the firm to refuse to proceed until an appropriate contract amendment had been negotiated and approved pursuant to ORS 279.712. (The relevant subject matter of ORS 279.712 is now found under ORS 279A.140.)

Or. Atty. Gen Inf. Op. No. OP-5841 (May 1985): A county public contract review board (PCRB) does not have general statutory authority to review and supervise (except for considering, granting or denying exemptions) the contracting procedures and contract terms of local public agencies that are subject to its jurisdiction. (The PCRB is now referenced as the local contract review board, see ORS 279A.060.)

4.200 REQUIREMENTS FOR PUBLIC PROCUREMENT CONTRACTS.

Application. In response to House Resolution 1 (2001), representatives of local governments, schools, state agencies, contractors, unions, and trade organizations worked through the 2002 interim on a comprehensive rewrite of Oregon's public contracting laws. Reflecting practices suggested by the American Bar Association's Model Procurement Code, the new Oregon Code, enacted as House Bill 2341 (Chapter 794, Oregon Laws 2003) applied to public contracts first advertised, or entered into, on or after March 1, 2005.

Methods of Source Selection. Greater procurement flexibility is allowed in Chapter 279B than under former law for the general procurement of "goods and services" (other than public improvements and related services addressed in ORS Chapter 279C). Special treatment is provided for personal service contracts as they are identified by local agencies ([ORS 279A.055 \(2\)](#)). Contracting agencies may select from two primary methods of procurement: competitive sealed bids or competitive sealed proposals. Chapter 279B sets forth the provisions and "checklist" requirements for source selection, including the two primary methods of procurement: competitive sealed bids or competitive sealed proposals. It also authorizes the following alternatives:

- *Small Procurements.* [ORS 279B.065](#) procedures are highly informal for procurement with a value of under \$10,000.
- *Intermediate Procurements.* Under ORS 279B.070 at least three competitive quotes are required for these informal procurements, up to \$150,000 in value.
- *Sole Source Procurements.* Under ORS 279B.075 written findings are required that the goods or services are available from only one source.
- *Emergency Procurements.* In ORS 279B.080 the head of a contracting agency, or designee, may authorize a defined "emergency" procurement after documentation. (See ORS 279A.010 for the definition of "emergency" and ORS 279A.075 for delegation of authority.)
- *Special Procurements.* Under ORS 279B.085 the contracting agency must detail the selection method to be used, the goods or services to be acquired and the circumstances that justify a selection method different from those described above.

ORS Chapter 279B also contains its own administrative provisions, including cancellation, offeror responsibility, prequalification and debarment, notice of intent to award, use of price agreements, matters pertaining to specifications and legal remedies.

Legal remedies provisions are set forth in ORS chapter 279B for procurement of goods and services, in which a protest procedure is established at the contracting agency level. However, these provisions do not apply to architectural, engineering, photogrammetric mapping, transportation planning, land surveying or related services contracting under ORS chapter 279C. These provisions also do not apply to public improvement contracting under ORS chapter 279C, in which the current legal remedies under ORS 279C.460 through 279C.470 remain in place.

4.210 STATUTES ON PUBLIC PROCUREMENT CONTRACTS

Chapter 279B

Public Procurement

PUBLIC FACILITIES, CONTRACTING & INSURANCE

GENERAL PROVISIONS

- 279B.005 Definitions**
- 279B.010 Policy**
- 279B.015 Applicability**
- 279B.020 Maximum hours of labor on public contracts; holidays; exceptions; liability to workers; rules**
- 279B.025 Procurement practices regarding recyclable and reusable goods**
- 279B.030 Demonstration that procurement will cost less than performing service or that performing service is not feasible; exemptions**
- 279B.033 Contents of cost analysis; conditions under which procurement may proceed; exceptions**
- 279B.036 Determination of feasibility of procurement**
- 279B.040 Prohibition on accepting bid or proposal from contractor that advised or assisted contracting agency to develop specifications or solicitation documents; exception**

SOURCE SELECTION

(Methods of Source Selection)

- 279B.050 Methods of source selection**
- 279B.055 Competitive sealed bidding**
- 279B.060 Competitive sealed proposals**
- 279B.065 Small procurements**
- 279B.070 Intermediate procurements**
- 279B.075 Sole-source procurements**

279B.080 Emergency procurements

279B.085 Special procurements

(Cancellation, Rejection and Delay of Invitations for Bids or Requests for Proposals)

279B.100 Cancellation, rejection, delay of invitations for bids or requests for proposals

(Qualifications)

279B.110 Responsibility of bidders and proposers

279B.112 Personnel deployment disclosure; contents; preference for bidder or proposer that will employ more workers in state; rules; exception

279B.115 Qualified products lists

279B.120 Prequalification of prospective bidders and proposers

279B.125 Application for prequalification

279B.130 Debarment of prospective bidders and proposers

(Notice of Intent to Award)

279B.135 Notice of intent to award

(Price Agreements)

279B.140 Price agreements

(Determinations)

279B.145 Finality of determinations

SPECIFICATIONS

(General Provisions)

279B.200 Definitions for ORS 279B.200 to 279B.240

279B.205 Specifications to encourage reasonable competition

279B.210 Policy; development of specifications

279B.215 Brand name or equal specification; brand name specification

279B.220 Conditions concerning payment, contributions, liens, withholding

279B.225 Condition concerning salvaging, recycling, composting or mulching

yard waste material

279B.230 Condition concerning payment for medical care and providing workers' compensation

279B.235 Condition concerning hours of labor

279B.240 Exclusion of recycled oils prohibited

LEGAL REMEDIES

279B.400 Protests and judicial review of approvals of special procurements

279B.405 Protests and judicial review of solicitations

279B.410 Protests of contract award

279B.415 Judicial review of protests of contract award

279B.420 Judicial review of other violations

279B.425 Review of prequalification and debarment decisions

4.220 CITATIONS ON PUBLIC PROCUREMENT CONTRACTS

Butler Block, LLC v. Tri-Cnty. Metro. Transp. Dist. of Oregon, 242 Or. App. 395, 255 P.3d 665 (2011): A developer brought action against a metropolitan transportation district, alleging claims for breach of contract and breach of the implied obligation of good faith and fair dealing and seeking several related declarations. The Circuit Court, Multnomah County, Richard Maizels, J. Pro Tem., granted district's motion for summary judgment. The developer appealed on the issue of anticipatory repudiation by the City when it declined to grant Developer an extension. Even assuming that developer was entitled, under development agreement, to an extension of time to perform due to changes in the real estate market and developer's inability to obtain construction financing, metropolitan transportation district did not objectively manifest, through its conduct, that it unequivocally and absolutely would not proceed in accordance with its obligations under the agreement, and thus district's failure to grant an extension was not an anticipatory repudiation of the agreement. The letter, in which metropolitan transportation district reiterated to developer its understanding that the section of development agreement concerning extensions due to causes beyond the control of the party seeking the extension did not encompass changed market conditions or terms of financing, could not be understood, in context, to express an absolute, unconditional and unequivocal intent not to perform where, even though developer did not provide district with the financial documentation required under the agreement, the district continued negotiating with developer over the terms of a meaningful extension.

Advanced Drainage Sys., Inc. v. City of Portland, 214 Or. App. 534, 166 P.3d 580 (2007): Manufacturer of corrugated high density polyethylene pipe brought action for declaratory judgment that city's refusal to authorize pipe's use for storm sewers violated right to equal treatment under the state and federal constitutions. City filed counterclaim seeking a declaration that it had complete discretion to choose what products to authorize for use on

its construction sites. The Circuit Court, Multnomah County, John A. Wittmayer, J., granted city's motion for summary judgment, and manufacturer appealed. On appeal, the Court held that the City's standard specifications were rational and thus did not violate manufacturer's constitutional right to equal privileges and immunities; there was evidence that the pipe was not as safe or durable as other types of sewer pipe, and city could have concluded that limiting the types of pipe used would allow for more efficient maintenance. However, the Court did note that the City does not have complete discretion to decide what products to select for use on its construction projects and what products, emphasizing that the standards had to be rational.

Buntyn v. Gov't Standards And Practices Comm'n, 186 Or. App. 351, 63 P.3d 37 (2003): Government Standards and Practices Commission investigated energy manager of school district, who was former day shift custodial supervisor, regarding purchase order requisitions initiated by manager on behalf of district for materials and equipment repairs from company which was owned by manager's son, and for which manager was also listed as co-owner. The Commission determined manager had violated statutes governing public officials' code of ethics. Manager appealed. The Court of Appeals, Wollheim, J., held that: (1) statute precluding public official's use or attempted use of office to obtain financial gain that would not otherwise have been available but for public official's office modified phrase "financial gain" and not phrase "use or attempt to use;" (2) plain meaning of statute precluding public official's use or attempted use of office to obtain financial gain that would not otherwise have been available but for public official's office prevented public officials from arguing that they could have obtained same benefit by means other than use of public office; (3) manager did not violate statute precluding public official's use or attempted use of office to obtain financial gain that would not otherwise have been available but for public official's office; and (4) manager violated statute requiring public official to notify authority in writing of conflict of interest.

Northwest Pump & Equipment Company v. Stach, 167 Or. App. 64, 1 P.3d 466 (2000): Northwest Pump submitted the lowest bid for a contract to provide materials for the construction of gasoline storage tanks and pumping equipment, but Linn County awarded the contract to the only other bidder. Northwest Pump then filed an action against the County and the successful bidder, alleging multiple violations of ORS 279.029(1), including the requirement that contracts for public improvement be awarded to the "lowest responsible bidder." Northwest Pump sought declaratory and injunctive relief, bid preparation costs, attorney fees and costs, and damages for lost profits that the company allegedly would have earned on the contract. The claims for lost profits and injunctive relief were dropped, and the trial court awarded partial summary judgment to plaintiff on liability, concluding that the County used brand names in violation of ORS 279.017, failed to comply with the advertising requirements of ORS 279.025 and violated Linn County Code. The remaining issues went to trial, and the trial court awarded Northwest Pump \$4,000 in damages for its bid preparation costs.

On appeal, Northwest Pump contested an award of \$25,000 of the \$79,000 that it sought to recover in attorney fees under ORS 279.067. The Court of Appeals determined it required more comprehensive findings, such as the amount Northwest Pump's award was reduced for pursuing its claim for lost profits that was eventually dropped, to determine if the trial court abused its discretion. The award of attorney fees was vacated and the case was remanded. (The relevant subject matter of ORS 279.029 is now found under [ORS 279C.375](#). The relevant subject matter of ORS 279.017 is now found under ORS 279B.215. The relevant subject matter of ORS 279.067 is now found under ORS 279C.460.)

Double Eagle Golf, Inc. v. City of Portland, 322 Or. 604, 910 P.2d 1104 (1996): The City issued a request for proposals to operate concessions at a public golf course. The request notified prospective bidders that the goals of the contract were to maximize revenue and service to the public. The incumbent concessionaire submitted a bid, but the City awarded the contract to a party whose bid guaranteed less revenue to the City than the concessionaire's bid. The concessionaire then brought an action against the City and officials. ORS 279.051 gave local contract review boards the authority to designate particular service contracts as personal services contracts. The Supreme Court held that ORS 279.029(1), which required a public contracting agency to award a contract to the "lowest responsible bidder," applied to contracts for the purchase of goods or services, but it did not apply to concession contracts intended to raise revenue for a public agency. (The relevant subject matter of ORS 279.051 is now found under [ORS 279A.055](#). The relevant subject matter of ORS 279.029 is now found under ORS 279C.375.)

Schlumberger Technologies, Inc. v. Tri-County Metro. Transp. Dist., 145 Or. App. 12, 929 P.2d 331 (1996): The Court of Appeals held that deciding whether a bid meets the technical terms of an invitation for bids requires an exercise of judgment that is within the scope of the duties of the entity issuing the invitation, and which may require its specific expertise; the reviewing court determines whether that entity properly abused its discretion, not whether the court agrees with the decision.

4.300 REQUIREMENTS FOR PUBLIC IMPROVEMENT CONTRACTS.

Public Improvement and Related Contracts

Of the three chapters within the Public Contracting Code, ORS Chapter 279C most closely resembles former ORS Chapter 279. In developing ORS Chapter 279C, the statutes in former ORS Chapter 279 were reorganized and updated by House Bill 2341 (2003 Oregon Laws, Chapter 794), but unlike ORS Chapters 279A and 279B, ORS Chapter 279C did not undergo a wholesale change from the law prior to 2003. For all construction services contracts, competitive bidding is the norm and the chapter details the required competitive bidding procedures. However, the chapter also includes exceptions and exemptions to the competitive bidding process. The Chapter 279C provisions pertaining to construction services also address general concepts, such as the following: hours of labor, prevailing wage rates, what qualifies as a "public work", what constitutes "funds of a public agency", payment and interest, retainage, actions against payment bonds, first-tier subcontractor disclosure, prequalification, disqualification, rejection of bids, contract award, allowing multiple awards, required contract clauses, and legal remedies. More specifically:

- *Architectural, Engineer, Photogrammetric Mapping, Transportation Planning, Land Surveying and Related Services.* Definitions and procedural requirements are in ORS 279C.100 to 279C.125. Related services are defined and procedural provisions are identified. The qualifications based selection process or "QBS" is required for all agencies for architectural, engineering, photogrammetric mapping, transportation planning and land surveying contracts, unless exempt under one of the provisions of ORS 279C.110.
- *Bidding Exceptions and Exemptions.* While competitive bidding is the standard for public improvement contracts under ORS 279C.335, it also sets forth some exceptions to the competitive bidding requirement, specifically for intermediate

level contracts (as detailed below) and authorized class exemptions.

- *Performance and Payment Bonds.* ORS 279C.375 and 279C.380 specifically require a 100% performance bond as well as a 100% payment bond, rather than one combined bond, and clarifies the purpose of each. The bonds must be from a surety company with a state certificate of authority, and these statutes clarify that the right of action on the payment bond also applies in the case of competitive proposals.
- *Competitive Proposals.* ORS 279C.400 to 279C.410 do not authorize the use of competitive proposals for public improvement contracts, but set out a procedural framework if they are authorized by an exemption. Bidding statutes applicable to competitive proposals are identified, as well as inapplicable statutes. Requirements for Requests for Proposals (RFPs) and the selection process are also set forth.
- *Competitive Quotes.* ORS 279C.335(1)(d) that if the estimated value of a public improvement will not exceed \$100,000, the contracting agency may follow the intermediate procurement procedures of ORS 279C.412 and 279C.414 with rules adopted under ORS 279A.065.
- *Construction Contracts that are not Public Improvements.* Under the provisions of ORS 279C.320 construction contracts that are not for public improvements are to be procured as ordinary goods and services under ORS 279B. (These contracts including minor alterations, ordinary repair or maintenance of a public improvement, and emergency work.) Additional procedural and substantive provisions related to the “public works” statutes are located in ORS 279C.800 to 279C.870 (including the Public Works Bond, additional retainage for failure to submit certified payroll statements, and a prevailing wage rates threshold of \$50,000).

Procurement of Construction Services

Competitive Bidding and Least-cost Policies. [ORS 279C.300](#) addresses the statutory “policy of competition” and states that “(I)t is the policy of the State of Oregon that public improvement contracts awarded under this chapter must be based on competitive bidding, except as otherwise specifically provided in ORS 279C.335 for exceptions and formal exemptions from competitive bidding requirements.” ORS 279C.305 requires public agencies to make every effort to construct improvements at the least cost. This goal may be attained either by use of an agency's own equipment and personnel or by contract with a private contractor. Regardless of the estimated cost of a project, the public agency must prepare during the annual budget period a list of every improvement project to be funded by the agency. The list must show the estimated cost, indicate which projects are expected to be done by private contract, and must be filed with the Commissioner of the Bureau of Labor and Industries.

Projects Over \$125,000. If the estimated cost of a public improvement project exceeds \$125,000 and the public agency is using its own equipment and personnel, the agency must show that this method is least costly and must prepare adequate plans, specifications, and estimated costs of the proposed improvement. The agency must then

keep an accurate account of the costs incurred, in compliance with model cost accounting guidelines developed by the Oregon Department of Administrative Services (formerly the Oregon Executive Department). ORS 279C.310 prohibits public improvements using county equipment or personnel if the project costs in excess of \$5,000 and cost accounting guidelines are not used.

Cost Account. [ORS 368.051](#) specifically requires county road officials to maintain a cost account for all road work performed by the county. [ORS 297.525](#) requires that the annual county audit include a cost audit of the cost account for county road work. (Also see section 4.502 for additional information on cost accounting.)

Contract Limitations. ORS 279C.335 requires competitive bidding on public improvement contracts but makes various exceptions. It is possible under this law to exempt a public improvement contract or a class of public improvement contracts from competitive bidding upon adoption of findings following a public hearing. Projects costing in excess of \$100,000 which have not been competitively bid must be evaluated and reported comparing the actual results with the details provided in the findings along with other analyses (ORS 279C.355). In addition under [ORS 279A.185](#) a county or other local contracting agency may negotiate certain arrangements without competitive bids for the use, operation, maintenance, or disposition property. Many of the exceptions depend upon action by a contract review board which adopts rules under which it can deal with special situations related to public contracts. The county governing body is the local contract review board for the county unless it takes action otherwise. The county governing body may create a local contract review board by appointing a body, board or commission other than the governing body to serve as the county's contract review board, as provided in ORS 279A.060.

Adopted in 1985, ORS 279C.315 voided any contract provision purporting to take away a contractor's right to compensation for delay if the delay was caused by the public contracting agency. ORS 279C.360 lists requirements for bid advertisements. ORS 279C.365 specifies information to be included in bid documents including statements to identify the right of the agency to reject bids and limit receipt of bids to bidders registered with the Construction Contractors Board or licensed by the State Landscape Contractors Board. ORS 279C.370 also specifies when a bidder must submit information about first-tier subcontractors to the public contracting agency. ORS 279C.830 specifies that the specifications for public works contracts contain a provision stating the existing state prevailing rate of wage and, if applicable, the federal prevailing rate of wage required under the Davis-Bacon Act ([40 U.S.C. 3141 et seq.](#)) to be paid to workers or referenced electronically if available electronically or accessible on the Internet.

Requirements for Public Improvement Contracts (See section 4.720 for Contract Checklist.)

Policy on Competitive Bidding. It is the policy of the State of Oregon that public improvement contracts awarded under ORS Chapter 279C must be competitively bidding (see [ORS 279C.300](#)) as required by ORS 279C.335 unless exempted under one of the provisions of subsection (1) of the section. ORS 279C.340 authorizes public agencies to negotiate with the lowest responsible bidder when all bids exceed the agency's cost estimate subject to the provision of ORS 279C.340 and rules adopted by the agency for such situations. ORS 279C.307 enacted in 2009 restricts a contracting agency from contracting for administration of a public contract with parties to the contract to be administered, but with some exceptions. See [section 4.720](#) for a [contract checklist](#) and forms in awarding

public improvement contracts.

Public Contract Labor Requirements. Modern public contract law deals in large part with the obligation of units of local government to meet certain requirements with regard to labor.

The requirements under ORS 279C.540, 279C.545 and 653.268 provide, among other things, for a work-day generally limited to 10 hours and a work-week to 40 hours, except in cases of public need. Additionally, the statutes allow certain types of overtime, while placing a time limit on overtime claims. [ORS 653.269](#) includes a number of exceptions and modifications to overtime laws. Public contractors must generally, under ORS 279C.800 to 279C.870, pay the prevailing wage for the type of work and locality of work and are subject to certain inspections and sanctions in order to ensure compliance. ORS 279C.810 exempts projects from prevailing wage when the contract price does not exceed \$50,000. If the contract is subject to state and federal prevailing wage, the public agency must include in the specifications information showing which prevailing rate of wage is higher for workers in each trade or occupation in each locality, as determined by the Commissioner of the Bureau of Labor and Industries. The specifications for every contract must also contain a provision stating that the contractor and every subcontractor must have a public works bond filed with the Construction Contractors Board before starting work, unless exempt under ORS 279C.836(7) or (8). If the contract does not contain a provision covering the prevailing wage obligation, the public agency and the contractor or subcontractor share the liability.

First-Tier Subcontractor Disclosure. ORS 279C.370 requires bidders on public improvement contracts to disclose the first-tier subcontractors that will be furnishing labor or labor and materials in connection with the contract and whose subcontracts equal or exceed certain dollar values. A bidder's failure to submit a completed disclosure form is considered to be a nonresponsive bid and may not be awarded the contract. The contracting agency is not required to determine the accuracy or the completeness of the subcontractor disclosure.

The disclosure must include the name of each subcontractor, the category of work that each will perform and the dollar value of each subcontract. The information must be disclosed in [the form](#) provided in ORS 279C.370.

Award of Contract. After bids are opened and a determination is made to award the contract, the contracting agency must award the contract to the "lowest responsible bidder." In determining the lowest responsible bidder, a contracting agency must do all of the following:

- (1) Check the Construction Contractors Board's contractor disqualification list.
- (2) Determine that the contractor has met the standards of responsibility as set forth in ORS 279C.375 (3) (b) (A through D),
- (3) Document the contracting agency's compliance with items (1) and (2) above in the form provided in ORS 279C.375. (To submit Responsible Bidder Determination Forms, visit the [Construction Contractors Board website](#)), and
- (4) Submit the Responsibility Determination Form with any attachments to the Construction Contractors Board within 30 days after awarding the contract.

A contracting agency may not exclude a commercial contractor from bidding on a public contract because the contractor's license issued by the Construction Contractors Board is endorsed as a level 1 or level 2 license (see ORS 279C.375 (6)).

Termination of Contracts. The public body and the contractor may terminate a contract by mutual agreement in certain situations involving either the public interest or impracticality, as set forth in [ORS 279C.330](#), with appropriate compensation being paid. The statutes also provide for temporary suspension of work, again with compensation.

Retainage of Payment Due. Retainage provisions have been upheld by the court and are presently codified in ORS 279C.550 to 279C.570 and ORS 701.410 to 701.440. Various retainage requirements are set forth in ORS 279C.560. With legislation passed in 2009, public agencies are now required to accept general obligation bonds, irrevocable letters of credit, or other forms of financial security from a contractor in lieu of moneys held as retainage, unless the agency makes a finding that the alternative security offered poses extraordinary risk for the agency. Under [ORS 701.440](#), some of the statutory retainage requirements do not apply to federally funded projects.

Prompt Payment. Prompt payments are required on public contracts for public improvements under ORS 279C.570. If a payment is not made within the earlier of 30 days of receipt of the invoice from the contractor or 15 days after the payment is approved by the agency, the agency must pay interest on the amount due. Similar requirements are in the law for contractors to promptly pay subcontractors. Contracts awarded by a public contracting agency must include a clause which requires the contractor to include prompt payment and interest clauses in subcontracts and for subcontractors to include such contracts in any lower-tier subcontracts. ORS 279C.515

Other Contract Provisions. Under ORS 279C.505, public contracts must obligate the contractor to make prompt payment to employees and agree to allow no liens or claims to be filed against the contracting agency on account of labor or materials furnished.

ORS 279C.525 requires bid documents to make specific reference to any federal, state or local ordinances or regulations dealing with the prevention of environmental pollution and the preservation of natural resources that affect the performance of the contract. If the contractor is delayed or must do additional work because of failure to cite ordinances or the enactment of new ordinances, the contracting agency may terminate the contract, get the work done or issue a change order to the contractor to do the cleanup work. Similar provisions are included in ORS 279C.525 for conditions necessary to comply with referenced regulations, where the conditions were not addressed by the bid documents and were discovered after award of the contract.

Contract bid specifications and contracts must include a provision that a fee equal to 0.1 percent of the contract price (not less than \$250 or more than \$7,500) is to be paid by the public agency to the Bureau of Labor and Industries for the Prevailing Wage Education and Enforcement Account to fund wage surveys, prevailing wage enforcement and public education efforts (ORS 279C.825).

Certified payroll statements received by a public agency are public records subject to the provisions of ORS 192.410 to 192.505. Each public improvement contract must also contain a condition that the contractor demonstrate that an employee drug testing program is

in place (ORS 279C.505 (2)).

ORS 279C.500 to 279C.535 addresses a number of additional contract requirements that affect the provisions of contract documents and contract administration. These are in addition to matters discussed in other portions of this chapter. The Attorney General has drafted model contract provisions that address various statutory requirements. The state highway specification publication also provides example of provisions for contracts covering these statutory requirements.

Recent Legislative Changes

Procedural and substantive changes made by the 2009 Legislature are as follows:

- *Chapter 149, Oregon Laws 2009 (HB 2731)* Permits contracting agency and person appealing a disqualification, denial, revocation, or revision of being prequalified for public contracting work, to agree on a time in which the Director of Oregon Department of Administrative Services or the local contract review board must conduct the hearing and decide an appeal.
- *Chapter 160, Oregon Laws 2009 (SB 50)* Extends the deadline for notice of claim from a laborer or supplier on public contracts from 120 to 180 days following the last day labor or furnished materials were provided, and extends the deadline for notice of claim for a required contribution to an employee benefit plan from 150 to 200 days.
- *Chapter 214, Oregon Laws 2009 (HB 2763)* Allows contracting agencies to pay up to ten percent more than lowest bidder, for agricultural products produced and transported entirely within Oregon. Allows higher percentage to be paid if agency finds and explains good cause in a written determination.
- *Chapter 235, Oregon Laws 2009 (SB 479)* Provides that Public Contracting Code may not be construed to prohibit contracting agency from giving preference in awarding public contract to business enterprise that is owned or controlled by disabled veteran as defined in ORS 408.225. Permits contracting agency by ordinance, resolution or rule to limit competition for certain contracts to business enterprise that is owned or controlled by disabled veteran. Permits contracting agency to require contractor to award subcontract to business enterprise that is owned or controlled by disabled veteran. Prohibits discrimination against subcontractor that is owned or controlled by or that employs disabled veteran.
- *Chapter 368, Oregon Laws 2009 (HB 2953)* Provides that contracting agency may reject bid for public improvement contract if bidder does not demonstrate that bidder is responsible. Provides that bidder must demonstrate responsibility by showing that bidder has licenses that businesses and service professionals operating in this state must have in order to undertake work specified in public improvement contract and that bidder is covered by liability and other insurance in amounts required in solicitation documents for public improvement contract..
- *Chapter 568, Oregon Laws 2009 (HB 2955)* Requires contracting agencies to accept general obligation bonds, irrevocable letters of credit, or other forms of

financial security from a contractor in lieu of moneys held as retainage in connection with public improvement contracts, unless the agency makes findings that the alternative security offered poses extraordinary risk. Permits a contractor to accept similar instruments from a subcontractor.

- *Chapter 880, Oregon Laws 2009 (HB 2867)* made several changes to the Public Contracting Code in ORS Chapters 279B and 279C:
 - Requires a contracting agency, before conducting a procurement for goods or services with an estimated contract price that exceeds \$250,000, to demonstrate with cost analysis or by other means that the cost of providing goods or performing service with a contracting agency's own personnel or resources is greater than cost of procuring goods or services from the contractor. Excludes cities or counties that have a population of not more than 15,000, and other specified contracting agencies.
 - Requires contracting agencies, before entering into a public contract, to establish measurable standards to assess the quality of a contractor's performance and clear consequences for failing to meet those standards. Directs the Department of Administrative Services to consult, evaluate effectiveness, and report to the Legislative Assembly on January 10, 2011.
 - Modifies ORS 279B.420 regarding judicial review.
 - Prohibits a contracting agency from contracting for administration with parties to the contract to be administered, with some exceptions.
 - Specifies additional criteria for contracting agency to use in determining the contractor's responsibility and for prequalifying the contractor.

Procedural and substantive changes made by the 2011, 2012 and 2013 Legislatures are as follows:

- *Chapter 4, Oregon Laws 2012 (HB 4034)* Changes the applicable interest rate for a contractor's failure to make a timely payment in accordance with a public improvement contract to nine percent per annum. Requires that a public improvement contract obligate a contractor to provide a first-tier subcontractor with a standard payment claim form and that the contractor use the same form and regular administrative procedures to process payments during the entire term of a public contract. Permits a contractor to change the form or administrative procedure if the subcontractor is notified of the new or changed form or procedure and includes in the notice the new or changed form or a description of the new or changed procedure. Establishes operative date 91 days after measure's effective date
- *Chapter 53, Oregon Laws 2012 (SB 1518A)* Prohibits state contracting agency, under specified conditions, from accepting bid or proposal from bidder or proposer that advised or assisted state contracting agency concerning solicitation documents or materials related to public contract.
- *Chapter 83, Oregon Laws 2012 (SB 1533B)* Revises requirement that contracting agencies include an amount in contracts for construction, reconstruction or major renovation of public buildings equivalent to 1.5 percent of the total contract price for the inclusion of solar technologies to allow for inclusion of geothermal

electricity generation or direct use of geothermal energy.

- *Chapter 237, Oregon Laws 2011 (HB 3000)* Allows contracting agencies to pay up to 10 percent more for goods fabricated or processed, or services performed entirely within the state, with the exception of specified public improvements and construction contracts. Allows contracting agencies to give further preference to bidder or proposer that resides or is headquartered in Oregon if more than one bidder or proposer qualifies for the 10 percent preference. Allows contracting agencies to set the preference higher than 10 percent if the agency finds good cause.
- *Chapter 458, Oregon Laws 2011 (HB 3316)* Adds photogrammetric mapping and transportation planning to the list of services subject to procedures for contracting with architects, engineers and land surveyors. Modifies the usage of qualification-based selection in selecting consultants to provide architectural, engineering, photogrammetric mapping, transportation planning or land surveying services. Clarifies that a contracting agency can adjust procedures to accommodate the scope, schedule or objectives for a particular project if the estimated cost for services does not exceed \$250,000, and may directly appoint a consultant if the estimated cost for services on a project does not exceed \$100,000. Allows the Department of Administrative Services, attorney general and contracting agencies subject to the state's model public contracting rules to take any action on or before the measure's operative date necessary to enable to exercise the measure's provisions.
- *Chapter 522, Oregon Laws 2013 (SB 254)* Makes statutory changes to the process for procurement of construction manager/general contractor (CM/GC) services by public agencies. The Attorney General will publish model rules on procurement of CM/GC services, which local agencies will then need to follow.

Prevailing wage changes made by the 2009 Legislature are as follows:

- *Chapter 7, Oregon Laws 2009 (SB 54)* Requires contractor and subcontractor certified statements of payroll records for workers on public works contracts to include weekly gross wages of each worker.
- *Chapter 107, Oregon Laws 2009 (SB 55)* Provides that contractor or subcontractor that intentionally falsifies information in certified statements of payroll records is ineligible for public works contract for three years.
- *Chapter 161, Oregon Laws 2009 (SB 53)* Requires contracting agency to pay fee for prevailing wage education and enforcement when notifying BOLI commissioner of award of public works contract within 30 days after award.
- *Chapter 322, Oregon Laws 2009 (HB 2907)* Prohibits contracting agency from entering into agreement with another state or political subdivision or agency of another state in which contracting agency agrees that contractor may pay less than prevailing wage.
- *Chapter 788, Oregon Laws 2009 (SB 51)* Increases minimum fee payable by

contracting agency of prevailing wage education and enforcement to \$250; maximum fee to \$7,500.

Prevailing wage changes made by the 2010 Legislature are as follows:

- *Chapter 45, Oregon Laws 2010 (HB 3651)* Amends ORS 279C.800 to provide that workers on solar energy installations on real property owned by a public body must be paid the prevailing rate of wage, regardless of how small the installation may be or how the installation is financed.

Prevailing wage changes made by the 2011 Legislature are as follows:

- *Chapter 265, Oregon Laws 2011 (SB 178)* Removes requirement for Bureau of Labor and Industries to compare state and federal wage rates and make results available. Directs public agencies to include provisions for payment of higher wage rate by contractors and subcontractors in public works contracts.

4.310 STATUTES ON PUBLIC IMPROVEMENT CONTRACTS

Chapter 279C

Public Contracting of Public Improvements

NOTE: ORS sections in this chapter were amended or repealed by the Legislative Assembly during its 2011, 2012 and 2013 regular sessions. See the measure summaries above for a summary of the measures passed by the Legislature.

GENERAL PROVISIONS

279C.005 Definitions

279C.010 Applicability

ARCHITECTURAL, ENGINEERING, LAND SURVEYING AND RELATED SERVICES

279C.100 Definitions for ORS 279C.100 to 279C.125

279C.105 Contracts for architectural, engineering, photogrammetric mapping, transportation planning or land surveying and related services; procedures

279C.107 Public disclosure of contents of proposals for architectural, engineering, photogrammetric mapping, transportation planning or land surveying services; treatment of trade secrets and confidential information

279C.110 Selection procedure for consultants to provide services; compensation; applicability

279C.115 Direct contracts for services of consultants

- 279C.120** Selection procedure for related services
- 279C.125** Architectural, engineering, photogrammetric mapping, transportation planning and land surveying services selection process for local public improvements procured through state agency; rules

PROCUREMENT OF CONSTRUCTION SERVICES

(General Policies)

- 279C.300** Policy on competition
- 279C.305** Least-cost policy for public improvements; costs estimates in budget process; use of agency forces; record of costs
- 279C.307** Limitations in procurement of personal services; exception
- 279C.310** Limitation on contracting agency constructing public improvement
- 279C.315** Waiver of damages for unreasonable delay by contracting agency against public policy
- 279C.320** Contracts for construction other than public improvements
- 279C.325** Limitation on contracting agency awarding contract to nonresident education service district

(Competitive Bidding; Contract Specifications; Exceptions; Exemptions)

- 279C.330** “Findings” defined
- 279C.335** Competitive bidding; exceptions; exemptions
- 279C.340** Contract negotiations
- 279C.345** Specifications for contracts; exemptions
- 279C.350** Exemption procedure; appeal
- 279C.355** Evaluation of public improvement projects not contracted by competitive bidding

(Solicitation; Contract Award; Rejection)

- 279C.360** Requirement for public improvement advertisements
- 279C.365** Requirements for solicitation documents and bids and proposals
- 279C.370** First-tier subcontractor disclosure

- 279C.375 Award and execution of contract; determination of responsibility of bidder; bonds; impermissible exclusions**
- 279C.380 Performance bond; payment bond; waiver of bonds**
- 279C.385 Return or retention of bid security**
- 279C.390 Exemption of contracts from bid security and bonds**
- 279C.395 Rejection of bids**

(Competitive Proposals)

- 279C.400 Competitive proposals; procedure**
- 279C.405 Requirements for requests for proposals**
- 279C.410 Receipt of proposals; evaluation and award**
- 279C.412 Competitive quotes for intermediate procurements**
- 279C.414 Requirements for competitive quotes**

(Prequalification and Disqualification)

- 279C.430 Prequalification of bidders**
- 279C.435 Effect of prequalification by Department of Transportation or Oregon Department of Administrative Services**
- 279C.440 Disqualification from consideration for award of contracts**
- 279C.445 Appeal of disqualification**
- 279C.450 Appeal procedure for prequalification and disqualification decisions; hearing; costs; judicial review**

(Remedies)

- 279C.460 Action by or on behalf of adversely affected bidder or proposer; exception for personal services contract**
- 279C.465 Action against successful bidder; amount of damages; when action to be commenced; defenses**
- 279C.470 Compensation for contractor on contract declared void by court; exceptions; applicability**

CONSTRUCTION CONTRACTS GENERALLY

(Required Contract Conditions)

- 279C.500** “Person” defined
- 279C.505** Conditions concerning payment, contributions, liens, withholding, drug testing
- 279C.510** Demolition contracts to require material salvage; lawn and landscape maintenance contracts to require composting or mulching
- 279C.515** Conditions concerning payment of claims by public officers, payment to persons furnishing labor or materials and complaints
- 279C.520** Condition concerning hours of labor
- 279C.525** Provisions concerning environmental and natural resources laws; remedies
- 279C.527** Inclusion of amount for solar energy technology in public improvement contract; written determination of appropriateness; exemptions and limitations
- 279C.528** State Department of Energy requirements and specifications; rules
- 279C.530** Condition concerning payment for medical care and providing workers’ compensation
- 279C.535** Condition concerning steel material; rules
- (Hours of Labor)
- 279C.540** Maximum hours of labor on public contracts; holidays; exceptions; liability to workers; rules
- 279C.545** Time limitation on claim for overtime; posting of circular by contractor
- (Retainage and Payments)
- 279C.550** “Retainage” defined
- 279C.555** Withholding of retainage
- 279C.560** Form of retainage
- 279C.565** Limitation on retainage requirements
- 279C.570** Prompt payment policy; progress payments; retainage; interest; exception; settlement of compensation disputes
- (Subcontractors)
- 279C.580** Contractor’s relations with subcontractors

- 279C.585 Authority to substitute undisclosed first-tier subcontractor; circumstances; rules**
- 279C.590 Complaint process for substitutions of subcontractors; civil penalties**

(Action on Payment Bonds and Public Works Bonds)

- 279C.600 Right of action on payment bond or public works bond of contractor or subcontractor; notice of claim**
- 279C.605 Notice of claim**
- 279C.610 Action on contractor’s public works bond or payment bond; time limitation**
- 279C.615 Preference for labor and material liens**
- 279C.620 Rights of person providing medical care to employees of contractor**
- 279C.625 Joint liability when payment bond not executed**

(Termination of Contract for Public Interest Reasons)

- 279C.650 “Labor dispute” defined**
- 279C.655 Extension and compensation when work suspended**
- 279C.660 Compensation when contract terminated due to public interest**
- 279C.665 Contractual provisions for compensation when contract terminated due to public interest**
- 279C.670 Application of ORS 279C.650 to 279C.670**

PREVAILING WAGE RATE

- 279C.800 Definitions for ORS 279C.800 to 279C.870**
- 279C.805 Policy**
- 279C.807 Workforce diversity for public works projects**
- 279C.808 Rules**
- 279C.810 Exemptions; rules**
- 279C.815 Determination of prevailing wage; sources of information; comparison of state and federal prevailing wage; other powers of commissioner**
- 279C.820 Advisory committee to assist commissioner**

- 279C.825 Fees; rules**
- 279C.829 Agreement with other state to pay less than prevailing rate of wage**
- 279C.830 Provisions concerning prevailing rate of wage in specifications, contracts and subcontracts; applicability of prevailing wage; bond**
- 279C.835 Notifying commissioner of public works contract**
- 279C.836 Public works bond; rules**
- 279C.838 Applicability of state and federal rates of wage**
- 279C.840 Payment of prevailing rate of wage; posting of rates and fringe benefit plan provisions**
- 279C.845 Certified statements regarding payment of prevailing rates of wage; retainage**
- 279C.850 Inspection to determine whether prevailing rate of wage being paid; civil action for failure to pay prevailing rate of wage or overtime**
- 279C.855 Liability for violations**
- 279C.860 Ineligibility for public works contracts for failure to pay or post notice of prevailing rates of wage; certified payroll reports to commissioner**
- 279C.865 Civil penalties**
- 279C.870 Civil action to enforce payment of prevailing rates of wage**

4.320 CITATIONS ON PUBLIC IMPROVEMENT CONTRACTS

Dental v. City of Salem, 196 Or. App. 574, 103 P.3d 1150 (2004): Dental submitted towing contract proposals to the City, but he failed to include the required Letter of Appointment certification from the state police. The City therefore rejected each of his proposals and awarded its towing contracts to other companies. Dental filed an action against the City, seeking a declaratory judgment, injunctive relief, and asserting a breach of contract claim. The trial court awarded judgment in favor of Dental. The Court of Appeals found that the trial court erred in awarding declaratory relief instead of addressing the owner's claim under ORS 279.067. Declaratory relief was inappropriate, as it would not serve a useful purpose, and because the Oregon Legislature created a statutory remedy. There was no dispute that Dental's bids did not comply with all prescribed public bidding procedures and requirements. Therefore, the City did not abuse its discretion in rejecting the bids. (The relevant subject matter of ORS 279.067 is now found under [ORS 279C.460](#).)

State ex rel Oregon Waste Systems, Inc. v. United Pacific Insurance Co., 172 Or. App. 435, 18 P.3d 491 (2001): Plaintiff completed its work hauling away tires under a subcontract, but the general contractor did not pay plaintiff the full amount agreed to in the

subcontract. Plaintiff argued that the contract involved a project for “construction, reconstruction or major renovation on real property” pursuant to ORS 279.011(8) and was therefore qualified as a “public improvement contract” subject to the bonding requirement of ORS 279.029. The Court of Appeals concluded that hauling away tires simply uncovered the ground, and did not meet the common meaning of “renovate.” The contract was therefore not a contract for public improvement. The bonding requirement in ORS 279.029 depends upon the contract being one for public improvement, and therefore did not apply. (The relevant subject matter of ORS 279.029 is now found under ORS 279C.375 and 279C.380, the relevant subject matter of ORS 279.011 is now found under [ORS 279A.010](#).)

Northwest Pump & Equipment Company v. Stach, 167 Or. App. 64, 1 P.3d 466 (2000): Northwest Pump submitted the lowest bid for a contract to provide materials for the construction of gasoline storage tanks and pumping equipment, but Linn County awarded the contract to the only other bidder. Northwest Pump then filed an action against the County and the successful bidder, alleging multiple violations of ORS 279.029(1), including the requirement that contracts for public improvement be awarded to the “lowest responsible bidder.” Northwest Pump sought declaratory and injunctive relief, bid preparation costs, attorney fees and costs, and damages for lost profits that the company allegedly would have earned on the contract. The claims for lost profits and injunctive relief were dropped, and the trial court awarded partial summary judgment to plaintiff on liability, concluding that the County used brand names in violation of ORS 279.017, failed to comply with the advertising requirements of ORS 279.025 and violated Linn County Code. The remaining issues went to trial, and the trial court awarded Northwest Pump \$4,000 in damages for its bid preparation costs.

On appeal, Northwest Pump contested an award of \$25,000 of the \$79,000 that it sought to recover in attorney fees under ORS 279.067. The Court of Appeals determined it required more comprehensive findings, such as the amount Northwest Pump’s award was reduced for pursuing its claim for lost profits that was eventually dropped, to determine if the trial court abused its discretion. The award of attorney fees was vacated and the case was remanded. (The relevant subject matter of ORS 279.029 is now found under ORS 279C.375. The relevant subject matter of ORS 279.017 is now found under [ORS 279B.215](#). The relevant subject matter of ORS 279.067 is now found under ORS 279C.460.)

Schlumberger Technologies, Inc. v. Tri-County Metro. Transp. Dist., 149 Or. App. 316, 942 P.2d 862 (1997): The successful bidder intervened in an action filed by the unsuccessful bidder against Tri-Met. The successful bidder was subject to the same rights and liabilities as an original party, and therefore potentially entitled to recover attorney fees. (The relevant subject matter of ORS 279.067 is now found under ORS 279C.460.)

Steelman-Duff, Inc. v. State, ex rel. ODOT/Oregon State Hwy Div., 323 Or. 220, 915 P.2d 958 (1996): A successful bidder was named as a defendant in an unsuccessful bidders’ action against ODOT. After the trial court found the unsuccessful bidder was not entitled to relief, the successful bidder sought to recover attorney fees. The Supreme Court held that ORS 279.067(4) permits an award of attorney fees to any party to a proceeding brought pursuant to this section, whether or not that party is one of the types specifically enumerated in this section. (The relevant subject matter of ORS 279.067 is now found under ORS 279C.460.)

Schlumberger Technologies, Inc. v. Tri-County Metro. Transp. Dist., 145 Or. App. 12, 929 P.2d 331 (1996): The Court of Appeals held that deciding whether a bid meets the

technical terms of an invitation for bids requires an exercise of judgment that is within the scope of the duties of the entity issuing the invitation, and which may require its specific expertise; the reviewing court determines whether that entity properly abused its discretion, not whether the court agrees with the decision.

Coates v. State ex rel ODOT, 144 Or. App. 449, 927 P.2d 108 (1996): Considering the legislative intent of ORS 279.435, as well as the text and context, the Court of Appeals concluded that this section allows attorney fees only on claims for interest. (The relevant subject matter of ORS 279.435 is now found under ORS 279C.570.)

Stockton v. Silco Construction Co., 319 Or. 365, 877 P.2d 71 (1994): Employees of a subcontractor on several public works projects alleged they were not paid the prevailing wage. The Supreme Court held that ORS 279.350 makes subcontractors, rather than the general contractor, directly liable for making the required payments to their own employees. The statute also imposes direct liability on the subcontractors, rather than the general contractor, for deficiencies. The Court further concluded that the legislature did not intend ORS 279.365(1) to provide a right of action against the contractor for unpaid prevailing wages. (The relevant subject matter of ORS 279.530 is now found under ORS 279C.840. The relevant subject matter of ORS 279.365 is now found under ORS 279C.870.)

Or. Atty. Gen. Inf. Op. No. OP-5868 (September 1985): A public agency could construct a public improvement estimated to cost more than \$50,000 using its own equipment personnel even though the agency did not list the project with the Commissioner of the Bureau of Labor and Industries before adopting its budget. However, the agency must make a pre-construction filing with the commissioner and comply with ORS 279.023(1) and 279.023(3). (The relevant subject matter of ORS 279.023 is now found under ORS 279C.305.) (Note: The \$50,000 level was increased to \$125,000 in 1997.)

Or. Atty. Gen. Inf. Op. No. OP-5664 (May 22, 1984): If the work involved is not construction, reconstruction, major renovation or painting, a contract does not need to include a requirement for paying the prevailing wage rate. A contract to paint or to repaint traffic lines would require payment of the prevailing wage if the contract amount exceeded \$10,000. However, contracts for many typical maintenance and repair activities such as snow removal, sanding, mowing and culvert cleaning need not include a requirement for payment of the prevailing rate. (Note: the \$10,000 threshold was increased by the 2005 Legislature to \$50,000, see [ORS 279C.810](#).)

41 Or. Atty. Gen. Op. 327 (1981): A public contracting agency which has submitted a public improvement to bid and then discovers it does not have the money available to build the improvement cannot enter into a contract with the low bidder to hold the bid open at the bid price plus an increment based upon a cost of living index for the period of time over 90 days which the contract would be delayed due to lack of funds. (Note: ORS 279C.340 provides for negotiation with the lowest bidder under certain conditions.)

4.400 ENGINEERING WHEN DEVELOPER FINANCES IMPROVEMENTS. County land division regulations commonly require a developer to install various public facilities, including road improvements. The usual expectation is that the developer will pay for the facilities when installed. When a developer's funds are used

to install public improvements, ORS 92.097 provides that the developer has a right to employ an engineer to design or supervise installation of the improvements. However, the work must be done to county standards, and the county may charge a fee to cover county costs, such as for inspection of the work. In some circumstances, deferred payment under special assessment procedures may be extended to a developer by a county. If special assessment procedures are extended, the work is not done by private funds, and the county is probably not obligated to permit the developer to hire outside engineering, even though it may elect to do so.

4.410 STATUTES ON DEVELOPER FINANCING

[Chapter 92](#)

Subdivisions and Partitions

92.097 Employment of private licensed engineer by private developer; government standards and fees

4.450 SIDEWALK AND CURB REPAIR. The repair of sidewalks and curbs is the responsibility of the owner of abutting property. If out of repair, the county notifies the owner; if the owner does not make the repairs, the county may do so and charge the cost which, if unpaid, becomes a lien on the property. For possible county liability for injuries occurring due to sidewalks in disrepair, see sec. 2.520.

4.460 STATUTES ON SIDEWALK AND CURB REPAIR.

[Chapter 368](#)

County Roads

368.910 Owner to repair sidewalks and curbs along road; county may repair if owner fails

368.915 Payment and reimbursement when county makes repairs

368.920 Expense of repairs as lien on abutting property

368.925 Delinquency in paying assessment for repairs; execution sale

4.500 REQUIREMENTS FOR CONDUCTING ROAD WORK. [ORS 279C.305](#) sets out the Oregon Legislature's "least-cost policy" for public works directing public agencies to make every effort to construct public improvements at the least cost to the agency. However, [ORS 279A.010 \(1\) \(cc\)](#) defines "public improvement" as a project for construction or reconstruction of a public facility, but does not include the repair or maintenance necessary to preserve the facility. Therefore, the maintenance and preservation of the county's road system may be accomplished by either use of the county's own equipment and personnel or by public contract. As noted in section 4.506 most county

maintenance work is performed with county employees and county-owned equipment.

The ability of cities and counties to maintain roads and streets with their own equipment and personnel was limited by the 1979 Legislature with the passage of legislation requiring cities and counties to implement cost accounting systems consistent with guidelines promulgated by the State Executive Department. (See the following sections for additional information on cost accounting.)

4.502 ACCOUNTING GUIDELINES. The statutes regarding contract work found in ORS 279A.005 to 279A.125 and 279C.005 to 279C.870 place an obligation on each public agency, including county road departments, to account for costs of public improvement projects. As part of this accountability, ORS 279C.305 requires each public agency to prepare a list of all public improvements showing the estimated cost and to file a copy of the list with the commissioner of the Bureau of Labor and Industries. The definition of "public improvement" and "public improvement contracts" in ORS 279A.010 helps distinguish improvement projects from other work such as maintenance and from projects where no funds of the agency are directly or indirectly used, except for participation that is incidental or related primarily to project design or inspection. The list of public improvements is prepared at least 30 days before adoption of the annual budget and represents the best judgment available at the time of its preparation. It does not bind the public agency to a public improvement program that is identical to the list.

Whether work is a public improvement or maintenance is sometimes subject to controversy. Asphalt overlays were the subject of circuit court decisions in Klamath and Clackamas counties. In AGC v. Klamath County (1982), an asphalt overlay "not less than 2 1/2" in depth, 24' in width, and extending approximately five continuous miles in length over an existing road surface, costing in excess of \$50,000" was judged a public improvement. In rendering the February 1982 opinion, the judge observed that the term public improvement applies to work "which is a substantial permanent addition or betterment of real property, as opposed to ordinary repair or maintenance which is necessary to maintain an existing improvement or facility." Among the considerations noted was testimony that a 2 1/2" overlay adds structural strength and that the Federal Highway Administration classifies resurfacing of 3/4" or more as beyond ordinary maintenance. In AGC v. Clackamas County (1986), the evidence did not establish that an asphalt overlay approximately 2" thick would be a public improvement under ORS 279.011(6). The March 1986 opinion observed that whether "an overlay constitutes improvement by adding structural strength is determined by comparing the condition and capacity of the road as originally constructed or subsequently improved with the condition the road is in or will be in following the overlay." Since the evidence did not establish that an improvement had been made, the judgment denied the action against the county. In 1997, an amendment to ORS 279.023 (now ORS 279C.305) declared that road resurfacing at a depth of two or more inches and at an estimated cost that exceeds \$125,000 is a public improvement.

The list submitted to the Bureau of Labor and Industries must indicate which public improvement projects are expected to be done by contract. Each project done by the public agency's own forces must have a cost record. Cost accounting guidelines have been prepared by the state Executive Department, but a public agency is not required to use the guideline accounting system. However, unless the guideline system or a comparable system is used, under [ORS 279C.310](#) the agency must contract out any public improvement work costing over \$5,000. [Click here](#) for the Executive Department's (now Department of Administrative

Services) commentary and guidelines.

4.504 EQUIPMENT MAINTENANCE AND EQUIPMENT RENTAL RATES. Maintenance of county vehicles and equipment is commonly part of a public works operation, but some maintenance is provided by private contractors. The amount of maintenance performed in the county's shop depends on the size and location of the county. Most county equipment is used in connection with road work and other public works activities, but a county equipment maintenance shop may also service vehicles used by county administrators, inspectors, sheriff, and others. A county with a motor pool or equipment pool has a separate agency, often in the public works department, to care for equipment used by the various departments. This isolates the equipment ownership costs and may help provide budget control and increase the awareness of costs. To comply with the statutory requirement to keep records of construction cost, a county must make a reasonable estimate of the cost of equipment used to construct public improvements. Estimates of equipment cost are commonly made by establishing equipment rental rates that can be charged to the project or another account.

Benton County conducted a study in 1980 to establish rental rates for county equipment. The system takes into account the numerous components that enter into total cost. [Click here for a summary](#) of the considerations involved. While a county may use a technique of this kind to set rates, other recognized rates, such as those used by the state Highway Division, may be utilized by the county for project cost accounting.

NOTE: The capital recovery concept described in the Benton County study goes beyond the cost accounting guideline requirement that internally established rental rates must account for depreciation as well as for the cost of maintenance, repair, insurance and fuel. The purpose for the county's concept is to have sufficient money on hand to purchase a replacement when the equipment has served its useful life. The rate will exceed a rate based on depreciation alone because of the effect of inflation. Either method complies with the provision of ORS 279.023 (now ORS 279C.305) which requires that cost of equipment used to include "investment cost."

4.506 CONSTRUCTION BY CONTRACT AND FORCE ACCOUNT. Counties almost universally handle public works maintenance with county employees and county-owned equipment. However, there is considerable variation in policies and practices governing construction of public improvements. Some counties enter into contracts with private firms for all or most of their construction projects, while others do at least some of their construction with their own forces (force account).

Among the factors to consider in making the choice between contract and force account construction are the availability of private contractors in a particular area; the amount of preliminary engineering required to prepare a project for bidding; the relative efficiency of county crews and contractors for a particular construction project or type of project; the optimal size of the county public works department considering both normal maintenance operations and unusual or emergency situations, and the efficient utilization of that optimal number of employees.

Some restrictions are placed on counties and other public agencies that construct their own improvements. As described in 4.502, to provide a method of monitoring these

restrictions, each public agency must prepare a list of the year's public improvement projects to be filed with the state Commissioner of Labor and Industries.

Oregon law requires that construction must be at "least cost" to the public agency. When the public agency rather than a private contractor constructs a project that costs more than \$125,000 the agency is required to demonstrate the "lowest cost" advantage. The public agency also must prepare adequate plans, specifications and unit cost estimates for the work to be done by the agency's forces. No public improvement in excess of \$5,000 may be constructed with an agency's forces unless the agency has a system for keeping records that substantially complies with cost accounting guidelines provided by the state Executive Department.

Public improvements are often paid for by developers, usually in compliance with subdivision regulations or other standards required of new developments. Counties may design the work, using the county engineering staff. State law provides that a developer can use a private engineer to design and supervise installation of public improvements financed with the developer's funds, but the public agency can establish standards for the improvements, inspect the plans and the work, and charge the cost of these services to the developer.

4.510 SELECTION OF CONSULTANTS. Contracting for consultant services is distinctive from construction contracts because of the selection process. Selecting firms to provide professional services is not by the low-bid price method because of the need to select on the basis of professional competency to provide the service required. There are several references that may be helpful to a county that is reviewing consultant selection procedures. The Local Government Section of the Oregon Department of Transportation has developed the Local Agency Guidelines (LAG Manual) to provide information and guidance to aid counties in meeting Federal Highway Administration (FHWA) funding and contracting requirements. The LAG Manual includes a chapter for selecting and hiring consultants for local government federal-aid projects. The two-tiered selection procedure and contract provisions (also known as a flex service contract) conform to federal requirements, including those that assure minority contractors receive a reasonable share of the work.

Additionally, [ORS 279A.065](#) required the Attorney General to prepare model contracting rules including procedures for the selection of architects, engineers and land surveyors to provide contract services. The Oregon Department of Justice publishes the Attorney General's Public Contracting Manual following each legislative session for use by state agencies and local governments. The manual includes a section on "Consultant Selection: Architectural, Engineering and Land Surveying Services and Related Services Contracts" which provides guidance to counties on the two-tiered procedures for contracting for such services.

[ORS 279C.110](#) requires state agencies and local government to select architectural, engineering, photogrammetric, transportation planning and land surveying consultants on the basis of qualifications for the type of service required. Contracting agencies may use pricing information only after the agency has selected a candidate through the qualification-based selection (QBS) process required by subsection 2 of ORS 279C.110. The qualifications based selection process is required unless exempt under one of the provisions of ORS 279C.110. (The discretionary option for local governments was repealed by Chapter 458, Oregon Laws 2011).

4.520 PREQUALIFICATION OF BIDDERS. Although a county is not required to prequalify those who bid on county work, ORS 279C.430 to 279C.450 apply if the county elects to require or permit prequalification. Under ORS 279C.435 a person who is prequalified with the state Department of Transportation is presumed to be prequalified for county work at the same level. ORS 279C.435 also refers to prequalification by the state Department of Administrative Services, but the department eliminated its prequalification list in 1982 and has established a post-qualification procedure. ORS 279C.365 prohibits receiving a contract bid unless the bidder is registered with the Construction Contractor's Board or licensed by the State Landscape Contractor's Board.

Under ORS 279C.430, if a county requires prequalification, a prospective bidder who applies for prequalification must be notified of qualification or disqualification within 30 days of the date the county receives the required application. If an applicant is disqualified, the notification must specify the provision of ORS 279C.440 that was the grounds for disqualification. If prequalification is not required by the county, a bidder may be disqualified by the county as part of the process of selecting the bidder to be awarded the contract. In either case, a bidder's qualification or disqualification must be based on one or more of the five reasons listed in ORS 279C.440. Apparently a contractor could be prequalified and yet not be permitted to bid because of failure to be registered or licensed by the state.

4.530 CONTRACT ADMINISTRATION. In addition to inspection of contract work, the county will want to monitor a contractor's fiscal and accountability responsibilities as they may relate to contract compliance. For example, before the contract work gets underway, the contractor should have appropriate certificates of insurance and workers' compensation.

See section 4.300 for statutory requirements for public improvement contracts and procedural and substantive changes made by recent legislatures.

See section 4.720 for a contract checklist and forms for awarding public improvement contracts.

4.700 [SAMPLE CAPITAL PROJECT ESTIMATE FORM](#)

4.710 FORMS FOR PUBLIC IMPROVEMENT LISTING UNDER ORS 279.023. [The Public Improvement Summary Form](#), No. WH-118 should be used to list all public improvements the county plans to fund in the fiscal year, noting the project information requested on the form. [The Project Comparison Form](#), No. WH-119 should be used when the county plans to use county personnel and equipment to construct a project estimated to cost more than \$125,000. [ORS 279C.305](#) requires the county to show that the decision conforms with the state's policy that public agencies should make every effort to construct improvements at the least cost to the public agency.

In developing cost comparisons, use unit costs that can be substantiated by the cost accounting system and contractor unit prices that reflect bidding data. All projects should be summarized on Form No. WH-118 indicating the work will be performed by contract or by county forces -- whichever method is estimated to result in the least cost to the county.

If the county is not budgeting for any public improvements for the year, simply indicate "none" on the summary form.

It is very important that this information be submitted to the Prevailing Wage Rate Unit, Wage and Hour Division, Bureau of Labor and Industries, 800 NE Oregon St. #32, Portland OR 97232, at least 30 days before final adoption of the budget. In addition, copies should be sent to the Association of Oregon Counties office.

4.720 CHECKLIST AND FORMS FOR AWARDING PUBLIC IMPROVEMENT CONTRACTS. After all bids are opened and a determination is made that a contract will be awarded, but prior to the award of contract, the county road official should use [this checklist](#), or something, similar to verify that the county is ready to award a contract.

Once the determination to award has been made, ORS 279C.375 provides that the county must award the contract to the lowest responsible bidder and submit the Responsibility Determination form, with any attachments, to the Construction Contractors Board within 30 days of awarding the contract. To submit or search Responsible Bidder Determination Forms, visit the [Construction Contractors Board website](#).

Additionally, ORS 279C.835 requires the county to notify the Bureau of Labor and Industries on the BOLI [Notice of Award of Public Works Contract form](#) (WH-81) whenever a contract subject to the prevailing wage law is awarded. The county has 30 days to submit the notice and the notice must also include a copy of the [disclosure of first-tier subcontractors](#) submitted under ORS 279C.370. Notice is not required if the contract is for less than \$50,000 or is exempt from the prevailing wage law for some other reason. (Some legal counsels advise their clients that both forms be filed for all contracts awarded.)

For contracts first advertised or solicited on or after January 1, 2008, ORS 279C.825 requires the contracting agency to pay the [contract fee](#) (WH-39) to BOLI.

CHAPTER 5: ROAD RIGHT-OF-WAY
(This chapter was revised and updated in 2010 and 2014)

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CHAPTER 5: ROAD RIGHT-OF-WAY¹

5.000 INTRODUCTION. Most roads exist because someone provided the right-of-way. A person provides right-of-way to obtain a benefit, usually in the form of improved access to property the person is developing. These dedicated or deeded rights-of-way normally consist of easements over the land, which leave certain residual property rights with owners of abutting property. As indicated in chapter 7, extinguishing the easement for road purposes by vacation of the road usually reestablishes the abutting owners' control over the land within the road right-of-way.

When providing a road right-of-way the dedicator usually expects more than a place for vehicles to travel. Access to all portions of property along the road and use of the right-of-way for location of utility facilities are the primary additional functions served by most road rights-of-way.

As some of the quiet rural roads became busy thoroughfares, the benefit of the road to abutting property owners changed, and an increased general public benefit emerged. The road system of the county evolved into two parts. One part is made up of traffic-carrying routes; the other part consists of property access routes. Most routes serve part of both functions, but traffic-carrying routes work best if property access is minimized, and property access routes serve best if through traffic is minimized. Traffic-carrying routes make up the backbone of the county road system. Depending on individual county policy, some local access routes also may be part of the county road system, but most are local access roads as defined in [ORS 368.001](#). See chapter 2.

In establishing new right-of-way for a traffic-carrying county road, access limitations increase the likelihood that the property owners involved will expect payment for the value of the property needed for the right-of-way. For this reason, counties must pay for much of the new county road right-of-way, and if it is not possible to negotiate the price, the county must be able to reach a fair compensation by other means. Local access roads continue to be established by dedication. In acquiring road right-of-way, relocation payments must be made to anyone displaced by the acquisition. The procedure for obtaining new road right-of-way includes the flexibility that the various acquisition options require.

5.015 SPECIAL REFERENCES. The following are sources of information outside this manual that are particularly relevant to sections of this chapter, as noted.

Section 5.000

¹ Right-of-way vs. right of way. Webster's Ninth New Collegiate Dictionary uses hyphens to separate these words. Black's Law Dictionary Fifth Edition does not use the hyphens and they do not appear in the Oregon Revised Statutes. The hyphens are used in the descriptive materials in this manual.

Association of Oregon Counties, "[Road Width Laws from the 1840's Onward](#)"

Section 5.100

Oregon Law Institute, Oregon Government Law 2005: *The Latest Chapters in Public Law*, Ch. 3 "Streets and Roads: Obtaining Road Right-of-Way" 2005

Oregon Law Institute, Oregon Government Law 2004: *New Chapters in Public Law*, Ch. 3 "Takings and Condemnation" 2004

Section 5.504

Bureau of Governmental Research and Service, The Development Standards Document, 1979; Model Development Standards Documents: Basic Abbreviated Form, 1983

Section 5.510

Oregon Department of Transportation, [Right-of-Way Manual](#)

Section 5.520

Oregon State Bar, Local Government (Oregon CLE, 1982), Ch. 11, "Eminent Domain"

Oregon Law Institute, Oregon Government Law 2004: *New Chapters in Public Law*, Ch. 3 "Takings and Condemnation" 2004

5.100 ACQUIRING PROPERTY FOR ROAD. ORS 368.073 to 368.111 provide a procedure by which title or a lesser interest in property, such as an easement, may be acquired for road purposes. This statutory procedure may be supplemented or modified by county ordinance. Under the statutes, one set of procedures is provided for all roads, whether or not the road is to be on the county road system. ORS 368.116 and 368.131 clarify county authority where railroad or federal property is involved.

Acquisition of property for roads may be initiated by a county governing body, by persons filing a petition, or by a written proposal to dedicate land for public road purposes. If initiated by petition, the petition must include a statement of the public necessity for the road, a description of the proposed road, a list of owners of the property to be acquired and of property abutting the proposed road, and the signatures of a majority of the owners of the abutting properties. The signature of an owner of property that is in multiple ownership is counted as a fraction of an owner signature for the property, in the same proportion as that owner's interest in the property bears to the interest of all other owners of the same property. Before completion of the road acquisition proceedings, any person signing the petition may withdraw their signature. After the petition has been filed, a hearing on the proposed road is conducted by the county governing body, with proper notice given before the hearing. Proceedings initiated without a petition follow requirements of other laws, such as the subdivision approval procedure or the procedure to purchase by county initiation.

When proceedings to acquire property for road purposes have been initiated, a county governing body may complete acquisition by several methods--dedication, purchase, condemnation, and the use of road viewers are all available to counties. Additionally, roads

may be established by accepting grants of right-of-way over public lands from the federal government or by a court determination that the road exists because of prescriptive use.

Once acquired, the road is surveyed and recorded. Costs incurred by the county may be absorbed by the county or charged to the persons who benefit. Persons who benefit may be the petitioners, if acquisition proceedings were initiated by petition, or the persons who donate land, if land is offered by dedication or donation.

When the newly established road follows the general alignment of an existing public road, under ORS 368.126, the final order establishing the road may vacate obsolete portions of the old road merely by describing the portions to be vacated. However, the vacated portions will not be closed until the new road is open to travel.

5.105 FEDERAL R.S. 2477 RIGHTS-OF-WAY. Revised Statute 2477 (R.S. 2477), former [43 U.S.C. 932](#), was enacted as a part of the Mining Law of 1866 during a time when the federal government's focus was on encouraging settlement and development of the West. Congress passed R.S. 2477 to ensure miners' routes to their claims and cattlemen's trail for their herds by granting rights of way over any federal land not otherwise set aside. Although Congress repealed the statute in 1976 with the Federal Land Policy and Management Act, it did not terminate rights-of-way in existence at that time. As part of the new law in 1976, Congress recognized all valid existing claims to these rights-of-way as of that date.

The Interior Department encouraged counties interested in an acknowledgement to submit proposed memorandums of agreement to the department for consideration. However, the process has been fraught with conflict and confusion and with less than satisfactory results for counties in the West. County officials assert that the federal government has set an unacceptably high standard for counties to meet to demonstrate the validity of an R.S. 2477 right-of-way. Counties that wish to maintain historical rights-of-way across federally managed lands face nearly impossible challenges under the current policy.

In 2000, Baker County passed a [resolution](#) establishing a county policy regarding R.S. 2477 rights-of-way and listing the R.S. 2477 rights of way in the county. The resolution declares that the county had previously accepted the grant offered under R.S. 2477 by the federal government, and that it therefore was the owner of, or had a perpetual easement in favor of the public, over rights-of-way accepted pursuant to the grant offered under R.S. 2477. The county's authority over a right-of-way was challenged in court in [Butchart v. Baker County](#), 214 Or. App. 61, 166 P.3d 537 (2007). Details on the case and the Court of Appeals decision are discussed in section 5.125.

5.110 STATUTES ON PROPERTY ACQUISITION

[*Chapter 368*](#)

County Roads

368.073 Initiation of proceedings to acquire property for road purposes

- 368.081 Requirements for petition to initiate road proceedings**
- 368.086 Road proceedings; hearing; notice**
- 368.091 Owners' rights to terminate road proceedings**
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- 368.121 Financial assistance to persons displaced by county road acquisition**
- 368.126 Order establishing new road along existing road to identify parts of existing road to be vacated**
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[Chapter 203](#)

County Governing Bodies

- 203.135 Exercise of eminent domain power by county governing body for road, park and other public purposes**

5.120 CITATIONS ON PROPERTY ACQUISITION

Petersen v. Crook Cnty., 172 Or. App. 44, 17 P.3d 563 (2001): Plaintiff property owners sued county to quiet title to portion of graveled road crossing their property. Neighboring owners intervened, and county and neighboring owners filed counterclaims for public and private rights to use road. The Circuit Court granted summary judgment to plaintiffs on quiet title claim and, following trial on counterclaims, entered judgment recognizing private prescriptive easements and public prescriptive easement in road. Plaintiffs appealed. The Court of Appeals held that: (1) deed that allegedly “excepted” a 50 foot “easement” did not show an intent to dedicate road to the public or create any prescriptive easement in favor of anyone; (2) evidence concerning statements by predecessors did not establish existence of public road or prescriptive public easement; and (3) county and neighboring owners failed to show requisite adverse use for 10-year period.

State ex rel. DOT v. Schrock Farms, 140 Or. App. 140, 914 P.2d 1116 (1996): The Oregon Department of Transportation (ODOT) attempted to condemn a portion of the defendant’s property in order to build a highway. At the time, zoning and land use regulations did not permit the building of a highway through the defendant’s property

because it was zoned for Exclusive Farm Use (EFU). The lower court held that ODOT lacked authority to take the land by condemnation. The Court of Appeals reversed, holding that ODOT had authority to condemn the property on which it intended to build the highway, even if, at the time ODOT acted, applicable zoning and other land use regulations did not permit building the highway. The condemnation of the defendant's property was justified because a precondition for seeking the regulatory changes that are necessary to make it available for highway use is ownership of the property.

Multnomah County v. Union Pacific Railroad, 297 Or. 341, 685 P.2d 988 (1984): County brought action for a declaration that it had a prescriptive easement for public pedestrian crossing over railroad right-of-way. The circuit court and the Court of Appeals held in favor of the county and Union Pacific sought review. The Oregon Supreme Court reversed, holding that a county cannot acquire a public easement across a railroad right-of-way by prescriptive use if the use interferes with railroad operations and imposes a danger to the public. ORS 763.013 states the Public Utility Commission, rather than a circuit court, has the responsibility to determine the appropriateness of grade pedestrian crossings at railroad tracks, and PUC had not done so in this case. [NOTE: ORS 763.013 has been renumbered ORS 824.202, and authority transferred from the PUC to the Oregon Department of Transportation]

Laudahl v. Polk County, 46 Or. App. 765 (1980): Plaintiff brought a claim seeking just compensation for the portion of their property they claimed had been incorporated into a county road, the center line of which allegedly formed a boundary of their property. The county maintained it had acquired all of the disputed area by prescription and claimed a right of way 60 feet wide or 30 feet from the center line. The Oregon Court of Appeals affirmed the trial court's decision that the county had acquired a prescriptive easement only over that portion of plaintiff's property that lay within an 8-foot wide strip, measured north from the road's center line in areas where no ditches adjoined the road. The court stated that a prescriptive easement for road purposes that is dependent solely upon adverse and continuous uses by the general public has a width no greater than the extent of the uses.

Poe v. Department of Transportation, 42 Or. App. 493, 600 P.2d 939 (1979): Plaintiff brought suit seeking a declaratory judgment that a piece of property in the City of Gladstone, which had once been part of the Cascade Highway before that highway was relocated due to the construction of I-205, was a public road over which the plaintiffs had the right to travel. The state cross-claimed to quiet title and enjoin the plaintiff from asserting any adverse claims to the property, alleging that the road in question was abandoned and the roadway reverted to the abutting owner under common law, which in this instance was the state. The lower court held in favor of the plaintiff. The Court of Appeals affirmed, holding the portion of highway in question had not been properly abandoned by ODOT because statutory law, as opposed to common law, applied. ORS 366.300(3) requires ODOT to determine after the realignment of a state highway whether the eliminated sections are "needed or valuable for any public use" before title can revert back to abutting owner, which would have been the state in this case. ODOT did not make the determination called for in the statute, and therefore was enjoined from advertising for sale and selling the property in question as surplus property.

Colombo v. Hewitt, 221 Or. 121, 350 P.2d 893 (1960): Plaintiff sought an injunction restraining defendant property owners from obstructing a county road in a way that denied them use of the roadway. Defendant argued that the road was vacated in 1927 when a new road was constructed along a similar path and therefore the right of way on each side of the

old road reverted to property owners on the respective sides of the road. The Oregon Supreme Court held in favor of plaintiff, stating that there was no valid order entered in 1927 establishing a new road following the general alignment of the old road, as required by ORS 368.540, and therefore the old road was never vacated. The court did not accept the defendant's argument that an order entered by the county court in 1948 that granted the vacation based on its view of the intent of the 1927 county court was valid. Instead, it held that the final order had to be carried to a conclusion at the time the alteration was made and cannot be made 21 years later. [NOTE: The relevant language of ORS 368.540 can now be found at ORS 368.126 and 368.331]

Hendrickson v. City of Astoria, 127 Or. 1, 270 P. 924 (1928): Plaintiff filed an action to recover damages from injuries sustained while falling off a raised board sidewalk on Flavel Street in the City of Astoria. The plaintiff alleged the injuries resulted from the negligence of the defendant in failing to repair the handrail on the east side of the sidewalk, where it had fallen down. The trial court held in favor of the plaintiff and awarded \$750 in damages. The city appealed, claiming that while Flavel Street was dedicated as a public street, the dedication was never accepted by the city authorities. The Supreme Court affirmed in favor of the plaintiff, holding that the city had accepted the dedication by undertaking important municipal acts such as sewer construction and maintaining the street lights. The court stated an offer of dedication may be expressly accepted by a municipality or impliedly accepted by an act showing the public body has assumed control and possession.

Bayard et al v. Standard Oil Co., 38 Or. 438, 63 P. 614 (1901): Adverse use of a road by the public for the period prescribed by statute will establish an easement in the public.

34 Or. Att'y Gen. Op. 868 (1969): If circumstances of public use and county maintenance of a road have continued for a period in excess of ten years, the road will be considered part of the county road system.

5.125 CITATIONS ON FEDERAL R.S. 2477 RIGHTS-OF-WAY

Cnty. of Shoshone, Idaho v. United States, 589 F. App'x 834 (9th Cir. 2014): A County, landowner, and mining company filed suit against United States Forest Service and various government officials, pursuant to Quiet Title Act, seeking declaration that mountainous passage route through federal land was public right-of-way. Although federal law governs the interpretation of R.S. 2477, "in determining what is required for acceptance of a right of way under the statute, federal law 'borrows' from long-established principles of state law, to the extent that state law provides convenient and appropriate principles for effectuating congressional intent." Under Idaho law, the mountainous passage route through federal land was not a "highway" before the surrounding land subsuming the road exited the public domain, and thus roadway was not a public right-of-way pursuant to R.S. 2477. Although the route was used as public road during initial gold stampede, the route was replaced within two years by alternate routes when mining efforts in the area failed, and circumstantial evidence did not compel finding of a regular public use prior to time surrounding land exited public domain.

Butchart v. Baker County, 214 Or. App. 61, 166 P.3d 537 (2007): Plaintiff owned several parcels of land in rural Baker County that were granted to his predecessors pursuant to a federal mining permit in 1883. The dispute centered over whether the Connor Creek Road, which crossed plaintiff's property, existed "over public lands" before the mining

patent was granted to plaintiff's predecessor in interest. If so, the road was to be considered an R.S. 2477 road, which was enacted as a part of the Mining Law of 1866 and granted rights-of-way over any federal land not otherwise reserved for public use. If the road was an R.S. 2477 road, it would not belong to the plaintiff. In 2000, Baker County passed a [resolution](#) establishing a county-wide policy regarding R.S. 2477 rights-of-way and declared Baker County had accepted the grant offered under R.S. 2477 by the federal government, and that it therefore was the owner of, or had a perpetual easement in favor of the public, over highway rights-of-way accepted pursuant to the grant offered under R.S. 2477.

The plaintiff argued that the current road was not in the same area as roads shown on the early maps, that it actually followed an old Indian trail, and that he therefore was entitled to exclude the public from using the road. He brought claims against the county for declaratory and injunctive relief, and inverse condemnation. The trial court denied plaintiff relief on all claims. The Court of Appeals held that plaintiff was jurisdictionally precluded from seeking declaratory and injunctive relief because of his failure to timely pursue a remedy via "writ of review" statutes. They also held that while plaintiff was not jurisdictionally precluded from pursuing his inverse condemnation claim, sufficient historical evidence supported the trial court's judgment dismissing the inverse condemnation claim.

Southern Utah Wilderness Alliance v. Bureau of Land Management, 425 F.3d 725 (2005): The Southern Utah Wilderness Alliance and other groups filed suit against the counties and the Bureau of Land Management (BLM), alleging that the counties engaged in unlawful road construction activities and that the BLM violated its duties by not taking action. The counties contended their actions were lawful because they took place within valid R.S. 2477 rights-of-way. The district court referred the issue of the validity and scope of the rights of way to the BLM, which determined that the counties lacked a valid right-of-way for 15 of the 16 claims and exceeded the scope of the right-of-way on the 16th claim. On the groups' motion for summary judgment, the district court affirmed the BLM's findings. On appeal, the court remanded the case to determine whether the work performed by the counties was routine maintenance or construction to determine whether the counties were required to consult with the BLM before undertaking the work. The court further held that the district court abused its discretion by deferring to the BLM's findings because the BLM lacked primary jurisdiction to determine the validity of R.S. 2477 claims. The court remanded the case to the district court for a de novo proceeding.

5.200 USE OF ROAD VIEWERS. Selecting a road alignment and determining benefits and damages through the use of road viewers is a road establishment procedure that began many years ago. While it is not always suitable, some counties continue to find it useful. ORS 368.161 to 368.171. Its primary use occurs in situations where some property owners have a specific interest in establishing a new right-of-way but the right-of-way does not take land uniformly from all those involved.

The board of road viewers is established by the county governing body and consists of a county road official and two other persons. Persons with a special understanding of property values, or at least local conditions, usually are more effective. They must, of course, be persons who are not suspected of having a bias or a special interest in the road. The board investigates the proposed road right-of-way and submits a written report to the county, which includes the board's recommendation, a description of the proposed road, and an assessment of damages created by the proposed road.

If the board's recommendation is positive and the county wants to continue proceedings, a hearing concerning the proposed road is conducted by the county governing body after proper notice of the hearing is given. If the county determines a public need exists for the road, the county may designate the persons liable for costs and the persons entitled to payment of damages. Additionally, a survey of the road is made and recorded.

The most common recent use of road viewers probably has been with reference to way of necessity cases. See chapter 9 for a description of the current law on way of necessity. The specific reference to the use of road viewers under the way of necessity provisions is found in [ORS 376.160\(1\) \(b\)](#), which provides that the county governing body may appoint persons to investigate a proposed way of necessity.

5.210 STATUTES ON ROAD VIEWERS

[Chapter 368](#)

County Roads

- 368.161 Use of road viewers to establish road**
- 368.166 Road viewer report; hearing; notice**
- 368.171 Order, costs and damages under proceeding with road viewers**

5.220 CITATIONS ON ROAD VIEWERS

Hewitt v. Lane County, 253 Or. 669, 456 P.2d 967 (1969): The plaintiffs challenged the damages offered by the county as compensation for property taken as a result of a new road being built. Originally, the county board of road viewers fixed damages at \$8,325. The plaintiffs appealed to the circuit court, which awarded them \$25,000 as well as \$4,000 for attorney fees. The county appealed, asserting that because the board of viewers proceeded under the condemnation statute, which makes no provision for attorney fees to a landowner who prevails after appealing from an award fixed by road viewers, rather than the inverse condemnation statute which does, no attorney fees could be allowed. The Court of Appeals affirmed the award, holding that the inverse condemnation statute applied to the landowners because the intent of statute was to provide substantial equality to landowners whether their land was taken by condemnation or inverse condemnation. A county does not avoid liability for attorney fees when it loses a contest over just compensation concerning land taken for highway purposes, even though it proceeded under ORS Chapter 368 (condemnation) instead of Chapter 281 (inverse condemnation). [NOTE: ORS Chapter 281 has since been consolidated with and moved to ORS Chapter 35, however, the inverse condemnation statute ORS 20.085 calling for prevailing party attorney fees remains]

Morton v. Hood River County, 88 Or. 144, 171 P. 584 (1918): The county court or county commission is the final judge of a proposed road's public utility.

Feagin v. Wallowa County, 62 Or. 186, 123 P. 902 (1912): The county court or county commission cannot make a final order on a road if a remonstrance has not been disposed of.

Jones v. Polk County, 36 Or. 539, 60 P. 204 (1900): County commissioners are not bound by a board of viewers' recommendations but may set them aside and reappoint the same or a new board to reexamine the proposed road site.

5.300 ASSISTANCE TO DISPLACED PERSONS. [ORS 35.500 to 35.530](#) require relocation assistance to persons displaced by public property acquisition. ORS 368.121, which "permits" a county to make certain relocation payments, appears to add nothing to these requirements.

A relocation must be preceded by a written notice from the county at least 90 days before the move. Relocation payments are to be provided under the guidelines of the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. The 1970 Act was amended extensively with the Uniform Relocation Act amendments of 1987. Excerpts of this law are included in Section 5.330. A new provision in the 1987 amendments allows the payment of certain relocation expenses for the relocation of a utility facility. The Federal Highway Administration has regulations ([49 CFR 24](#)) covering the requirements of the Act.

Under the Oregon statutes a county or other public entity is obligated to follow the relocation assistance requirements of the federal act even in those cases where federal funds are not utilized. ORS 35.510 (previously ORS 281.060) was adjusted by the 1989 legislature to recognize the changes in federal law related to this obligation. The section numbers from the Title 42 United States Code which correspond to the section numbers of the original federal act that are references in ORS 35.510 are as follows:

1970 Federal Act	42 U.S. Code
202	4622
203	4623
204	4624
205	4625
206	4626
211	4631
301	4651
302	4652
303	4653
304	4654

5.310 STATUTES ON DISPLACED PERSONS

[Chapter 35](#)

Condemnation for Public Use; Relocation Assistance.

35.500 Definitions for ORS 35.500 to 35.530

- 35.505 Relocation within neighborhood; notice prior to move; costs and allowances**
- 35.510 Duties of public entities acquiring real property**
- 35.515 Required disclosures for business and farm operations**
- 35.520 Decision on benefits; hearing; review**
- 35.525 Construction**
- 35.530 Federal law controls**

[Chapter 368](#)

County Roads

- 368.121 Financial assistance to persons displaced by county road acquisition**

5.320 CITATIONS ON DISPLACED PERSONS

State ex rel, DOT v. Hewett Professional Group, 321 Or. 118, 895 P.2d 755 (1995):
The Oregon Department of Transportation (ODOT) initiated a suit in the circuit court to condemn property owned by the defendant. The defendant alleged that ODOT previously had stated they would not actually need to take the property. The defendant proceeded to demolish the building on the property in order to construct a new office facility. ODOT then notified the defendant of its intent to take the property. Among other allegations, the defendant alleged that ODOT had an affirmative statutory duty to notify of its plans to take the property and that ODOT manipulated the timing of the taking to deprive the defendant of the value of the building. The Supreme Court disagreed, holding that ODOT was not required by ORS 281.060 to notify the defendant of its plans to take property as Oregon looks to federal law to determine how an agency should go about taking land in certain eminent domain proceedings and the referenced federal law expressly states that its timing policy provisions do not create rights or liabilities. [NOTE: The relevant information of ORS 281.060 can now be found at ORS 35.510]

5.330 FEDERAL ACT ON PROPERTY ACQUISITION AND DISPLACED PERSONS

Excerpts from "Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs" as amended and revised are linked below. See Section 5.300 above for the section numbers from the Title 42 United States Code which corresponds to the section numbers of the original federal Act that are references in ORS 35.510.

[TITLE 42. THE PUBLIC HEALTH AND WELFARE](#)
[CHAPTER 61. UNIFORM RELOCATION ASSISTANCE AND REAL](#)

**PROPERTY ACQUISITION POLICIES FOR FEDERAL AND FEDERALLY
ASSISTED PROGRAMS**

(42 U.S. Code 4601 to 4655)

5.400 ACQUIRING LAND ADJOINING ROAD. ORS 35.600 to 35.625 authorize the acquisition of property adjoining and within 100 feet of the proposed boundaries of a road to protect its full use and enjoyment by the public. A determination of necessity must be made by the county governing body before exercising this right. The county may subsequently sell the adjoining land it acquired with any restrictions considered necessary to protect the public "use and enjoyment" of the road.

5.410 STATUTES ON ACQUIRING ADJOINING LAND

Chapter 35

Condemnation of Property Adjoining Proposed Roadways

- 35.600 Application**
- 35.605 Authorization to acquire adjoining property for roadways**
- 35.610 Ordinance or resolution required**
- 35.615 Restrictions on future use of property acquired adjacent to roadway**
- 35.620 Acquisition of land adjoining road boundaries declared necessary**
- 35.625 Procedure to ascertain compensation and damages**

5.500 DEDICATED ESTABLISHMENT. As indicated in section 5.000, a road becomes established by dedication usually because a property owner sees a benefit from the road that exceeds the value of the land to be dedicated. Ordinarily, a dedication does not pass absolute title in the property to the public; a dedication is an appropriation of land to the public for a particular use and is accepted by the public for such use only.

Typically, a property owner, rather than the county, will initiate such proceedings. The owner of land must perform an act that clearly shows the intention to dedicate a part of his or her land to the public for use as a street. A declaratory intent may be expressed by the owner of land in various types of written instruments, such as a deed or a recorded plat upon which designated areas are marked as roads. No dedication becomes conclusive and binding on either the property owner or the county until it is accepted by the county. Acceptance in this context does not mean acceptance of responsibility for the construction or maintenance of a roadway. It does mean the county has approved the dedication subject to the fulfillment of the required procedures. For example, the dedication of land for road purposes in a subdivision plat is not complete until the plat is recorded, and it cannot be recorded until approval has been provided under county subdivision approval procedures.

5.502 DEDICATION BY DEED. When a deed is used to accomplish a dedication, the intent to dedicate either an easement in the land for use as a road or an absolute conveyance of title must appear clearly on the face of the instrument. The deed must dedicate the property interest to the county governing body specifically rather than to the public in general. A survey is usually necessary to obtain an accurate description of the land being deeded. Before the deed may be accepted for recording it must contain specific evidence of its approval by the county ([ORS 92.014\(2\)](#)).

5.504 DEDICATION BY PLAT. Most road dedication occurs as part of a subdivision or partitioning of land. A county may require dedication of land for road purposes to be a part of these procedures. Land division regulations may provide clarification in this regard. [Click here for an example](#).

As mentioned in 5.502, state law requires evidence of county approval before a dedication can be recorded. Additionally, ORS 92.014(1) provides that "A person may not create a street or road for the purpose of subdividing or partitioning an area or tract of land without the approval of the city or county having jurisdiction over the area or tract of land to be subdivided or partitioned."

Because approval of subdivision and partitioning proposals are a major source of new road right-of-way, county guidance in the establishment of these roads will assure access and minimize future problems as expansion of the road system occurs. The county road official has a key role in reviewing subdivision proposals to assure adequate width and suitable alignment of road right-of-way. The road official also will likely be involved in monitoring road improvement work for compliance with the road standards of the county. When a new subdivision connects to a county road or when a county road needs extension through a new subdivision, the county regulations may require the subdivider to be responsible for that construction. Streets are usually the subject of the most extensive standards found in a regulation to control land division. [This example](#) of general street standards is an excerpt from chapter 5 of the Bureau's 1983 publication entitled Model Development Standards Documents: Basic Abbreviated Form. The major purpose for linking to this example in the manual is to identify the kind of standards that may be appropriate, rather than to suggest that the specific standards be used.

As indicated, subdivision street improvement is an obligation commonly placed on a person dividing land. However, requiring a land divider to install road improvements may be impractical in some partitionings. On the other hand, failure to apply the obligation to install improvements uniformly to all land dividers can create inequities and also result in unimproved roads. It may also stimulate some land dividers to contrive to escape road improvement costs. Agreements running with the land have been used under which the land divider and subsequent owners have consented to a local improvement project. The work would be done under the special assessment authority discussed in chapter 3 at any future time the county determined it was feasible. This practice is becoming increasingly common in Oregon cities as a way to overcome charter remonstrance rights and is equally available to counties. Its use assumes that, since it is based on contractual consent, any remonstrance right would not apply.

5.506 RESPONDING TO PETITIONERS. The petitioning method of initiating consideration of a new road provides for some special procedures, including a hearing. Although petitioners are required to include a description of the proposed road in the petition, before preparing the notice of hearing, the description should be checked to be sure it is complete. The notice of hearing must provide sufficient information to reasonably convey the nature of the issue to the person having a right to notice. Highly technical legal descriptions of the proposed road location are less suitable than a simple description that provides an understanding of the location and width of the road. The notice should also explain how more detailed information can be obtained. This might be provided by having an overlay map on file showing the outer boundaries of the standard right-of-way with an explanation of the likely nature of additional encroachments that may be required to accommodate cuts and fills. Unless the county officials perceive a substantial general interest in the road, it may be inappropriate to invest in extensive survey and alignment design until after the county governing body has had its hearing and determined to proceed with the project. The right to petition and to receive a hearing only obligates the county governing body to consider the proposal. Its decision to proceed is a matter of discretion.

Each step in the procedure represents some expense. The county may place the cost on the petitioners and may require advance payment or posting of a bond by the petitioners. The statute does not set out these details; they are left for each county to develop within their own policies and circumstances.

5.507 CITATIONS ON DEDICATIONS.

John P. Sharkey Co. v. City of Portland, 58 Or. 353, 363, 114 P. 933, 936 (1911): The Sharkey Company filed suit to restrain the City of Portland from wrongfully removing earth from an excavation being made in the improvement of a street. The court ruled that the dedication of a street, alley, road, etc. is not the grant of a fee, but a right created in favor of the public, and is in the nature of an estoppel in pais. As a result, the Sharkey Company retained a fee in the soil.

5.510 PURCHASE. When the county wants to establish a road by purchase of right-of-way, it has a choice between purchasing absolute title to the land (which is the same as owning the land "in fee") or obtaining only easement rights as in a dedication. There is usually no reduced cost for purchasing only an easement. In either case, the rights and duties of the county, the rights of abutting landowners, and the rights of the general public may be substantially the same. However, the differences are the reason for considering purchase in fee. For example, if the county owns absolute title, it should have established the right to retain the land for other public purposes once it is vacated and, if found surplus to public needs, the right to sell the land. If the county owns only an easement, the title will typically vest in the abutting landowners when the road is vacated.

By purchasing property for a road in fee, the county may eliminate or restrict any of the rights of abutting property owners that are traditional to right-of-way easements. This may be particularly desirable in the case of alignments that will become major traffic ways. For lesser roads, the merits of ownership in fee would need to be compared to the merits of leaving certain rights with the abutting property owner, which may also leave certain responsibilities--for example, responsibility for sidewalk and street tree care is often placed on abutting property owners.

Normally, a county seeks to acquire land for road purposes by dedication. If that is not feasible, the county negotiates a purchase price. However, when no agreement can be reached with the landowner, condemnation is the usual procedure available for counties to obtain road right-of-way. The use of road viewers is also available, but is probably not appropriate in the case of roads intended to be part of the system of traffic-carrying county roads. A purchase agreement should expressly describe the nature of the interest in the land that is being acquired.

[ORS 35.510](#) requires observance of the federal land acquisition policies under the "Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs" as amended and revised current through P.L. 110-51, approved on July 31, 2007, by the state, a county or another instrumentality of the state whenever any program or project is undertaken by a public entity which will result in the acquisition of real property. This will apply to county right-of-way acquisition for all road projects whether or not federal grant moneys are used. See section 5.330. For further information, see the agreement forms on federal-aid programs and the booklet entitled [Right-of-Way Manual](#), published by the Oregon Department of Transportation.

5.520 CONDEMNATION. Condemnation is the name given the procedure by which the power of eminent domain is exercised. The exercise of this power for purposes of acquiring property for roads is authorized in [ORS 368.096\(1\) \(c\)](#) and [ORS 203.135](#). See section 5.110. For acquisition of property adjoining the road, see section 5.400 and 5.521.

A county normally does not use condemnation to establish roads if it is possible to acquire the land by dedication or negotiated purchase, since condemnation not only requires judicial proceedings but often results in a higher cost to the county. Even if the award is no greater than the amount the county offered the owner, the cost of the proceedings are added expense.

ORS Chapter 35 is the General Condemnation Procedure Act. ORS 35.220 provides a standard procedure for the entry upon and examination, surveying, testing and sampling of real property before the commencement of condemnation action. A condemner may not enter upon any land under the provisions of this section without first attempting to provide actual notice to the owner or occupant of the property. If the condemner has not provided actual notice, written notice must be posted in a conspicuous place where the notice is most likely to be seen. The provisions of the section establish that some entry to the property could occur before selection of the particular property to be appropriated. The process for a county to use to appropriate property for a public road is found in ORS 368.073. This statute provides that "A county governing body may initiate proceedings to acquire title or a lesser interest in real property for public road purposes." It then lists three situations that would cause initiation, including initiation by the governing body's own action. In any case, ORS 35.220 provides authority to enter upon and survey land if the property is to be appropriated to public use. (The 2003 Legislature combined ORS Chapters 35 and 281 in order to set forth a single location in the statutes where Oregon's eminent domain laws can be located.)

ORS 368.011 authorizes a county to supersede ORS 368.073 by enacting a general ordinance. An ordinance may be useful if a county finds it convenient to assign certain initial evaluation of road locations to the county road official or to otherwise expand upon the procedure to be followed in acquiring property for public uses, but ordinance provisions of

this type would probably supplement rather than supersede the statutes.

A general rule of law found in the legal encyclopedia Corpus Juris Secundum, Volume 87 under Trespass, Section 54 (87 C.J.S Trespass ' 54) is that going upon land while acting under valid authority of government is not a trespass if the method used to carry out the authority, the particular act done, and the way it was done were justified. However, a road official will want to receive legal counsel before entering private property without permission. The legal counsel will need to determine what constitutes "valid" authority in case of a property owner's objection.

Because the county must give just compensation for the public taking of private property, an appraisal of the value of the property must be made. Prior to making the appraisal, a 15-day written notice must be provided to the property owner by the condemning authority. At least 40 days before the filing of any action for condemnation of property, the condemning authority must make an initial written offer to the owner to pay just compensation. A copy of the written appraisal must accompany the offer for compensation. If it is determined that the amount of compensation is less than \$20,000, the condemning authority may provide a written explanation of the valuation methodology in lieu of a written appraisal. The owner has up to 40 days to accept or reject the offer. Accepting the offer closes a transaction. If the owner rejects the offer and obtains a separate appraisal, the owner must provide the condemning authority a copy not less the 60 days prior to trial or arbitration. A rejection of the offer opens up two avenues for seeking resolution. One method is the mediation process where diplomacy and reason will hopefully resolve differences. The other method is arbitration where a panel will decide the issue of compensation. Arbitration will be binding up to \$20,000 and non-binding up to \$50,000 limits. If neither mediation nor arbitration results in an agreement, a condemnation trial is held to determine compensation due for property being acquired. In most cases, it may benefit the county to begin negotiations with a property owner as though the matter may go to condemnation. This will reduce the likelihood that some procedures may need to be duplicated². Because a county often wants to utilize federal grant money for road construction, land acquisition involving condemnation needs to be consistent with the federal land acquisition procedures discussed in section 5.510.

Ballot Measure 39 (2006). *Kelo v. City of New London*, 545 U.S. 469 (2005), was a case decided by the Supreme Court of the United States involving the use of eminent domain to transfer land from one private owner to another to further economic development. The case arose from the condemnation by New London, Connecticut, of privately owned real property so that it could be used as part of a comprehensive redevelopment plan. The Court held in a 5-4 decision that the general benefits a community enjoyed from economic growth qualified such redevelopment plans as a permissible "public use" under the Takings Clause of the Fifth Amendment.

The decision was widely discussed by politicians and the general public alike many of whom viewed the outcome as a violation of property rights and as a misinterpretation of the Fifth Amendment.

² The 2009 Legislature in ORS 35.300 changed the method of awarding attorney fees in condemnation proceedings by requiring government to pay attorney fees and costs if the judgment exceeds the highest offer rather than the initial offer and ensures that a property owner will receive attorney fees and costs incurred on or before an offer of compromise if the owner accepts the offer of compromise, or the owner rejects offer and does not achieve a better result.

On November 7, 2006, the voters of Oregon in response to the *Kelo* case approved an initiative measure, Ballot Measure 39³, which prohibits a public body from condemning private real property if it intends to convey all or part of the property to a private party. It excludes property condemned as dangerous to health and safety, materials or fixtures that can be removed from the property, property to be used for transportation or utility services, or property acquired by a new owner after the public body has published notice of its intends to consider condemning the property. The Measure does allow governmental entities to lease condemned property for accessory retail uses. It requires a court to decide whether the public body unlawfully intended to convey the property to another private person. An owner's rights to attorney fees and costs are authorized if the court prohibits the condemnation or if compensation awarded is more than the condemning authority's initial offer.

5.521 STATUTES ON CONDEMNATION PROCEDURES

Chapter 35

Limitations on Condemnation Powers

35.015 Prohibition on condemnation of certain properties with intent to convey property to private party; exceptions

35.018 Severability

Eminent Domain Procedure

35.205 Short title

35.215 Definitions for chapter

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35.235 Agreement for compensation; status of resolution or ordinance of public condemner; status of action of private condemner; agreement effort not prerequisite

35.245 Commencement of action; jurisdiction; parties

35.255 Content of complaint

35.265 Advance deposit by public condemner requiring immediate possession; effect on interest otherwise allowable

35.275 Advance occupancy by private condemner; hearing; deposit or bond; effect of size of bond or deposit on amount of just compensation

³ Ballot Measure 39 was enacted as Chapter 1, Oregon Laws 2007 and codified as ORS 35.015 and ORS 35.018 with amendments to ORS 35.346.

- 35.285 Distribution of deposits; effect of withdrawal on appeal**
- 35.295 Defendant's answer**
- 35.300 Offer of compromise**
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- 35.315 View of property by order of court**
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- 35.365 Effect of withdrawal of award; disposition of award**
- 35.375 Chapter as exclusive condemnation proceeding; exception**
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- 35.390 Effect of failure of condemner to use property as required; price of repurchase; form of offer of repurchase**
- 35.395 Change in period of use; notice; effect of failure to agree on change; review by court**
- 35.400 Designation of person to exercise right of repurchase; effect of failure to designate; offer to repurchase; acceptance; notice; determination of price**
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[Chapter 203](#)

General County Condemnation Authority

- 203.135 Exercise of eminent domain power by county governing body for road, park and other public purposes**

[Chapter 368](#)

County Roads

- 368.096 Alternative methods to acquire property for roads**

5.522 CITATIONS ON CONDEMNATION PROCEDURES

Hall v. State ex rel Oregon Dep't of Transp., 355 Or. 503, 326 P.3d 1165 (2014):
When a government regulation, rather than a physical occupation or invasion, restricts a property owner's right of possession, enjoyment, and use, a taking, as would trigger constitutional requirement of just compensation, can occur if as a consequence the property retains no economically viable or substantial beneficial use. When a government zoning or planning actions involving the designation of private property for eventual public use result in a reduction in the property's value, the owner is constitutionally entitled to compensation if, and only if: (1) he or she is precluded from all economically feasible private uses pending eventual taking for public use, or (2) the designation results in such governmental intrusion as to inflict virtually irreversible damage. Under the facts of this case, representations made by Oregon Department of Transportation (ODOT) regarding ODOT's intention to landlock landowners' property and to initiate a condemnation action did not constitute a de facto taking, as could support inverse condemnation claim by landowners under state constitution, even if ODOT acted with malicious motive to deter development of property. ODOT's actions did not deprive the landowners of all economically viable use of property, since the landowners were able to sell billboard easements on property, and there was no physical occupation of property. Government regulations of the use of property or planning for the eventual taking of property for public use that reduces the property's value generally does not result in a de facto taking, as would trigger

constitutional requirement of just compensation. However, there are two exceptions to this rule: the first arises when a regulation or planning action deprives the owner of all economically viable use of the property, and the second is merely a restatement of the separate and freestanding principle that a taking results if a physical governmental occupation or invasion of property rights substantially has interfered with the owner's use and enjoyment of the property.

Opinion Request OP-2013-4 (Or. A.G. Nov. 6, 2013): ORS 215.080 provides authority to commission personnel to enter upon land survey land, but does not exempt them from professional licensing requirements under ORS 676.025(1). However, persons entering upon land pursuant to ORS 215.080 are not subject to the restrictions imposed under ORS 672.047.

Parker v. City of Albany, 239 Or. App. 317, 246 P.3d 16, 16 (2010): The Fifth Amendment's Takings Clause generally does not apply to the imposition of taxes, fees, and similar monetary assessments by the government to fund or cover the cost of its operations. U.S.C.A. Const. Amend. 5. As such, the Fifth Amendment's Takings Clause did not exempt condemnees, only part of whose property was taken by city for public project in local improvement district (LID) to improve the road adjoining the property, from being required to pay their share of the LID assessment that represented city's cost to acquire a portion of their land for the project.

State ex rel, DOT v. Stallcup, 341 Or. 93, 138 P.3d 9 (2005): The state filed a complaint in condemnation (after the parties were unable to agree on compensation) to acquire a portion of Stallcup's property adjacent to a road in connection with a road improvement project. Stallcup had received, but did not disclose, a draft appraisal that estimated the value of the property at \$355,082, which was the amount that he used in filing his answer to the condemnation action. ORS 35.346(5)(b) requires each party in a condemnation proceeding to provide to the other party a copy of every appraisal obtained. The issue was whether the draft appraisal was required to be disclosed. The trial court held in favor of Stallcup, stating the statute did not require disclosure of draft appraisals. The Court of Appeals reversed, stating that legislative history supported using a broad definition of appraisal that included "any written opinion by a qualified person regarding valuation" and that the undisclosed opinion fell within the scope. The Supreme Court reversed and affirmed the trial court, holding that the Court of Appeals failed to look at the context provided by other subsections of ORS 35.346. Subsection 35.346 (2) allows for a "written explanation" in lieu of an appraisal when the amount at stake is less than \$20,000. If the Court of Appeals interpretation had been followed, the written explanation itself would be considered an appraisal, which would negate the effect of the section of the statute.

Wiard Memorial Park District v. Wiard Community Pool, Inc., 183 Or. App. 448, 52 P.3d 1080 (2002): The park district sought condemnation of the defendant's property in order to provide additional park facilities. The circuit court granted the district's petition and the defendant appealed, arguing that the decision did not satisfy the requirement of ORS 35.235(2) that a proposed project be most compatible with the greatest public good and the least private injury. The Court of Appeals affirmed the circuit court, holding that a public condemner's determination that a proposed project satisfies 35.235 (2) is presumed valid in the absence of fraud, bad faith, or an abuse of discretion. Here, the defendant's intended use of the property was to build a pool, however, the property had sat empty for 15 years. An immediate public need for additional park facilities was shown; while the defendant did not provide evidence it would be able to raise the funds to construct a pool in the future.

Powder Valley Water Control District v. Hart Estate Inv. Co., 146 Or. App. 327, 932 P.2d 101 (1997): The Water Control District filed a complaint to condemn an easement across the landowner's property. The circuit court entered a judgment in favor of the district. The landowner appealed, claiming that the district's complaint failed to state facts sufficient to constitute a condemnation claim because the condemnation resolution contained no description of the property to be condemned. The Court of Appeals affirmed the circuit court, holding that while the complaint itself must describe the property sought to be condemned, there is no requirement in [ORS 35.255](#) that the complaint allege a resolution, much less a resolution that describes the property.

State ex rel. DOT v. Schrock Farms, 140 Or. App. 140, 914 P.2d 1116 (1996): The Oregon Department of Transportation (ODOT) attempted to condemn a portion of the defendant's property in order to build a highway. At the time, zoning and land use regulations did not permit the building of a highway through the defendant's property because it was zoned for Exclusive Farm Use (EFU). The lower court held that ODOT lacked authority to take the land by condemnation. The Court of Appeals reversed, holding that ODOT had authority to condemn the property on which it intended to build the highway, even if, at the time ODOT acted, applicable zoning and other land use regulations did not permit building the highway. The condemnation of the defendant's property was justified because a precondition for seeking the regulatory changes that are necessary to make it available for highway use is ownership of the property.

State ex rel. DOT v. Hewett Professional Group, 321 Or. 118, 895 P.2d 755 (1995): The Oregon Department of Transportation (ODOT) initiated a suit in the circuit court to condemn property owned by the defendant. The defendant alleged that ODOT previously had stated they would not actually need to take the property. The defendant proceeded to demolish the building on the property in order to construct a new office facility. ODOT then notified the defendant of its intent to take the property. Among other allegations, the defendant alleged that ODOT had an affirmative statutory duty to notify of its plans to take the property and that ODOT manipulated the timing of the taking to deprive the defendant of the value of the building. The Supreme Court disagreed, holding that ODOT was not required by ORS 281.060 to notify the defendant of its plans to take property as Oregon looks to federal law to determine how an agency should go about taking land in certain eminent domain proceedings and the referenced federal law expressly states that its timing policy provisions do not create rights or liabilities. [NOTE: The relevant information of ORS 281.060 can now be found at ORS 35.510]

Emerald People's Utility District v. Pacificorp, 100 Or. App. 79, 784 P.2d 1112 (1990): The plaintiff brought an action to condemn four hydroelectric generating plants owned by the defendant. The four plants were part of an integrated system of eight plants operated by the defendant. The circuit court dismissed the action because the condemnation was not "most compatible with the greatest public good and the least private injury," as required by ORS 35.235 (2). The Court of Appeals affirmed, stating the people's utility district already obtained hydroelectric power at favorable rates, while the defendant's hydroelectric plants were its cheapest source of power generation and therefore the defendant would suffer a substantial economic detriment. Acquisitions by eminent domain are the subject of ORS Chapter 35 and the plans and locations referred to in ORS 35.235 (2) are for the public acquisition and use of private property. In applying ORS 35.235 (2), courts are required to consider economic benefits and harms.

Laudahl v. Polk County, 46 Or. App. 765 (1980): Plaintiff brought a claim seeking just compensation for the portion of their property they claimed had been incorporated into a county road, the center line of which allegedly formed a boundary of their property. The county maintained it had acquired all of the disputed area by prescription and claimed a right of way 60 feet wide or 30 feet from the center line. The Oregon Court of Appeals affirmed the trial court's decision that the county had acquired a prescriptive easement only over that portion of plaintiff's property that lay within an 8-foot wide strip, measured north from the road's center line in areas where no ditches adjoined the road. The court stated that a prescriptive easement for road purposes that is dependent solely upon adverse and continuous uses by the general public has a width no greater than the extent of the uses.

City of Silverton v. Porter, 28 Or. App. 415, 559 P.2d 1297 (1977): The city commenced an action for condemnation of the defendant's land and, pursuant to ORS 35.265, obtained a court order granting it immediate possession of the land. The city deposited \$12,600 as estimated just compensation for the property, which the defendant withdrew and used for his own purposes. No judgment of condemnation was ever entered. Two years later, the city filed an election to abandon the condemnation action. The circuit court then entered an order allowing the abandonment and required the defendant to repay the city the \$12,600 and denied defendant compensation for the loss of use of their property while in the possession of the city. The Court of Appeals reversed, holding that while the abandonment was proper, the circuit court erred in not allowing compensation for the defendant's loss of use of the land. A condemner which takes prejudgment possession of property and subsequently elects to abandon its condemnation action is liable in damages to the condemnee for the loss of use of the land, as prejudgment possession is considered a property interest as defined in ORS 35.215 (5).

Hewitt v. Lane County, 253 Or. 669, 456 P.2d 967 (1969): The plaintiffs challenged the damages offered by the county as compensation for property taken as a result of a new road being built. Originally, the county board of road viewers fixed damages at \$8,325. The plaintiffs appealed to the circuit court, which awarded them \$25,000 as well as \$4,000 for attorney fees. The county appealed, asserting that because the board of viewers proceeded under the condemnation statute, which makes no provision for attorney fees to a landowner who prevails after appealing from an award fixed by road viewers, rather than the inverse condemnation statute which does, no attorney fees could be allowed. The Court of Appeals affirmed the award, holding that the inverse condemnation statute applied to the landowners because the intent of statute was to provide substantial equality to landowners whether their land was taken by condemnation or inverse condemnation. A county does not avoid liability for attorney fees when it loses a contest over just compensation concerning land taken for highway purposes, even though it proceeded under ORS Chapter 368 (condemnation) instead of Chapter 281 (inverse condemnation). [NOTE: ORS Chapter 281 has since been consolidated with and moved to ORS Chapter 35, however, the inverse condemnation statute ORS 20.085 calling for prevailing party attorney fees remains]

5.525 ESTABLISHMENT BY PRESCRIPTIVE USE. A strip of land may become a public road by prescription--a procedure that is independent of dedication or purchase. A prescriptive road exists if the land has been used for road purposes by the public for at least ten years, a circumstance sometimes referred to as adverse possession. The public use must have been generally known (open and notorious) and must have been outside the interests of the property owner. If a property owner specifically permits public use of his or her private land, as evidenced by licensing the users or other periodic action to grant

permission, the land will not become a public road regardless of the length of time public use was permitted. For example, a timber owner who permits hunters and recreationists to use a private logging road has not lost control of the road just because public use has been occurring for over ten years.

The interest in the land obtained by the public through prescriptive use is merely an easement. The width of the easement is that which the factual history determines has had public use. For example, a prescriptive right-of-way may be a trail rather than a road; however, a pedestrian crossing in regular use over railroad tracks may not become a public right-of-way. See section 5.120. When questions arise as to the width of the right-of-way established by prescription, [ORS 368.206](#) provides some guidance, but the courts look to the facts of each case.

As in the case of dedicated roads, if a public road established by prescriptive use is no longer needed and vacation proceedings are held, the former landowners or their successors may retain their right to absolute title.

Although there may be a general belief that a prescriptive road exists, formal proceedings are necessary before the public's rights can be certain. Under the definition of "public road" in ORS 368.001, the public's rights must be a matter of public record. In some cases the legalization procedure may serve to provide the public record. In other cases specific court action is required.

5.530 RELOCATION OF RIGHT-OF-WAY. When a public road is established generally along the alignment of a previous road, under ORS 368.126, vacation of the obsolete portions may be accomplished as part of the proceedings to establish the new alignment. However, when the existing road is to be relocated and will not follow the old alignment, establishment of the new right-of-way and vacation of the old road need to be accomplished separately. Some road projects need to be analyzed as to the suitability of these alternatives.

5.540 FIXING RIGHT-OF-WAY BOUNDARIES. Today's land values and principles for fixing property lines increase the need for accurate surveying of rights-of-way. An initial survey will ensure that the legal description is consistent with the actual location contemplated and will permit relocation of proposed boundaries when necessary to fit conditions found in the field. When acquiring new right-of-way, a description that results from a centerline survey and a uniform width declaration seldom meets today's need for accuracy to determine the need for extra space for cut and fill slopes, flair at intersections, and numerous other conditions that may warrant investing in some road design steps in conjunction with making the right-of-way decisions. Once the boundaries have been decided, they need to be clearly and accurately identified. ORS 368.106 requires that the document establishing an interest in property for road purposes be recorded and that the road right-of-way be surveyed and monumented in compliance with [ORS 209.250](#). This latter section requires a map and a written narrative of location to be filed with the county surveyor. The right-of-way boundaries are only part of the record of the road. A county may supplement the provisions of ORS 368.106 to designate an official to retain custody of the road records.

CHAPTER 6: LEGALIZATION OF ROADS
(This chapter was revised and updated in 2008, 2012 and 2014)

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6.800	Comments on Sample Ordinance

CHAPTER 6: LEGALIZATION

6.000 INTRODUCTION. The need to set the record straight on the location of roads in Oregon has been a concern since the middle of the nineteenth century. The Oregon Revised Statutes provide such a procedure, which was overhauled by the 1981 legislature. A county may refine or improve this statutory procedure to meet local needs, but should exercise caution to ensure that the final results have the status provided by [ORS 368.216\(3\) and \(4\)](#).

The legalization procedure is used to clarify the record of the right-of-way boundaries of a road if one or more of the following conditions exist:

- If doubt exists as to the legal establishment of a public road
- If the location of the road cannot be accurately determined
- If a road traveled for 10 years or more does not conform to the location in the county records.

As noted above, use of the procedure depends on the nature of the record to be clarified. If a road exists exclusively because of public use and there is no other record of acquisition or property owner intent to convey right-of-way, the legalization procedure may result in no more right of way than would result from action to establish prescriptive rights. In that case, the county may want to explore direct negotiation with the property owners involved. If that fails to result in agreement, court proceedings to determine the boundaries of prescriptive rights and condemnation of any additional land needed may be the appropriate procedure. However, when the road that is actually traveled and otherwise used seems to be only a part of the record on the road, use of the legalization procedure may permit recognition of a statutory width. While the legalization procedure may not resolve all issues that could arise, when the limitations of prescriptive rights are involved, it should help bring the entire array of facts into proper perspective. In many cases, the record of original intent to provide a specific right-of-way should erase the need to enter the less precise prescriptive-rights arena.

Once the county governing body has determined whether the legalization of the road is in the public interest it must adopt an order abandoning or completing the legalization procedures on the road. Upon the completion of the legalization procedures, any records showing the location of the road that conflict with the location as legalized are void (ORS 368.216 (4)(a)). The county governing body is further required to have the final order recorded, the road right of way surveyed and monumented in compliance with [ORS 209.250](#), and have the survey recorded with the county surveyor (ORS 368.106).

The statutory procedures described below apply only to legalization of right-of-way for the county road system. Clarification of the record of a road that is not in the county road system needs to be accomplished by adjudication in the courts or passage of a county ordinance broadening the statutory authorization.

6.015 SPECIAL REFERENCES: The following are sources of information outside this manual that are particularly relevant to sections of this chapter, as noted.

Section 6.505

Oregon Law Institute, Oregon Government Law 2005: *The Latest Chapters in Public Law*, Ch. 3, "Streets and Roads, Obtaining Road Right-of-way" (2005)

Section 6.505

Association of Oregon Counties, "[Road Width Laws from the 1840's Onward](#)".

6.100 STATUTORY SUMMARY. [ORS 368.201 to 368.221](#) contain procedures for legalization of county roads. Legalization of a road is an action the county governing body may take to clarify the record as to the location of the right-of-way for a road. It consists of:

- (a) Making a study of the road's history and a survey of its location;
- (b) Conducting a hearing with due notice to abutting property owners;
- (c) Issuing an order fixing the road-of-way;
- (d) Compensation for property affected by the legalization; and
- (e) Filing and recording the survey for the legalized road.

Special compensation is provided for a person who owns a building that is in the road right-of-way unless that person had a reasonable basis for knowing of the encroachment before constructing the building. Rules are provided for settling uncertainty concerning roadway width.

6.110 STATUTES ON LEGALIZATION OF ROADS

[Chapter 368](#)

County Roads

- 368.201 Basis for legalization of roads**
- 368.206 Proceedings for legalization of roads; report; notice**
- 368.211 Compensation for property affected by road legalization**
- 368.216 Order under road legalization proceeding**
- 368.221 Legalization; county determination of lesser width**

6.120 CITATIONS ON LEGALIZATION OF ROADS

Strome v. Lane Cnty. Bd. of Comm'rs, 230 Or. App. 190, 213 P.3d 1269 (2009): A property owner was not entitled to compensation for road legalization based on a claim that legalization was required for the removal of a bridge that encroached on a county road; evidence indicated that county owned the bridge in question, and there was no evidence that the property owner would be damaged by the costs of removal.

Shotgun Creek Ranch, LLC v. Crook Cnty., 219 Or. App. 375, 182 P.3d 312 (2008): The Crook County Court legalized a road known as Shotgun Road that crossed property owned by the plaintiff. The plaintiff sought a writ of review challenging the legalization in circuit court, which affirmed in favor of the county. The plaintiff appealed, alleging the county court had no authority to undertake the legalization because the process only applies to roads that are indisputably county roads, and Shotgun Road was never lawfully established as one. The plaintiff also alleged that, even if the court had legalization authority, the court misapplied it because there was not substantial evidence that the proper location of Shotgun Road was along the south side of the Crooked River, as opposed to the north side. The Court of Appeals held that county governing boards have the authority to legalize county roads whose status as such is doubted. Also, the purpose of legalization is not to resolve competing factual accounts of where a road was established, but to remove doubt about establishment when, due to omissions or defects in the establishment process, doubts as to legality exist.

Holdner v. Columbia County, 123 Or. App. 48, 858 P.2d 901 (1993): Property owner sued county for breach of contract and inverse condemnation that he alleged resulted from county attempting to enlarge a road plaintiff claimed was originally 40 feet to 60 feet following a landslide that caused a portion of Dutch Canyon Road to slide onto his property. The county initiated legalization proceedings pursuant to ORS 368.201 for a 60 foot right of way, and maintained that the road was 60 feet wide before the landslide, and that therefore, there was no taking of plaintiff's property. The Court of Appeals held in favor of the county, stating that legalization process, which began after landslide but before road repair, did not result in a taking of the plaintiff's property. In addition, the court held the county was not bound by a county commissioner's statement that county would reimburse plaintiff for any damage caused by the use of plaintiff's private road during construction. A single commissioner cannot bind the county, as a majority of the board is required to transact county business, and the plaintiff is charged with knowing the limitation on a single commissioner's authority.

Unger's Co. v. Lincoln County, 5 Or. App. 270, 483 P.2d 81 (1971): Plaintiffs brought a claim against the county for damages arising from the legalization of County Road No. 702, commonly known as Drift Creek Road, which passed through their property. The Plaintiffs filed objections to the legalization proceeding on the ground that no such county road existed. The county submitted results of an investigation which found that the road was indeed a valid county road, and went forward with legalizing the road as resurveyed. The Court of Appeals affirmed the lower court and held that evidence supported the findings that County Road No. 702 was established in 1891, the plaintiffs' grantors assented to the establishment of the road, and the road had remained open and traveled by the public since its establishment. Under these circumstances, the court was required to deny plaintiffs' claim for damages. The court noted that the purpose of the legalization statutes is to remedy situations where a discrepancy exists between the road in fact and the road as described in the original survey by resurveying the existing road and conforming the official records to reflect its course.

6.500 DISCUSSION OF LEGALIZATION PROCEDURE. When legalization of a county road right-of-way is initiated under the statutory procedure, the county surveys the road to identify its location. The county road official prepares a written report regarding the road, based on the survey and other records. Notice of legalization proceedings is given to owners of abutting land by serving notice on the owners and by posting along the stretch of road in question. See chapter 2 for service and posting procedures. A hearing is held to provide affected landowners an opportunity to provide information or discuss problems that the proposed legalization may create. The legalization process serves to settle cases of right-of-way uncertainty. Once the process is completed, the legalized right-of-way is documented by the same kind of records of survey provided for newly established roads in ORS 368.106. Affected property owners who want to contest the decision must appeal to the courts within 60 days of the legalization through use of writ of review. If a proceeding is abandoned or overturned, the county may still want to preserve the record of the proceedings and the location data.

6.505 WIDTH OF ROADS. The description of right-of-way width in [ORS 368.206](#) serves to consistently determine the right-of-way width and considers the historic statutory widths. When the record is unclear concerning the width of a county road, the width to be used is that width consistent with the law on county road width at the time the road was created. "[Road Establishment Laws](#)" is a compilation of road width laws from the 1840's onward prepared for the Association of Oregon Counties and very helpful for this purpose. If this width cannot be determined, the width to be used is the one consistent with width standards the county for roads of the same class at the time of the road creation. However, it is unlikely that the present county standard could be applied to claim a width in excess of that which would have been likely in the era when the road was originally established. A county may legalize a road at a width less than the standard width provided by ORS 368.221 if such action is in the public interest, or a portion may be narrowed if an encroachment cannot be removed. This authority in ORS 368.221 allows certain reductions in width as part of the legalization process without the need to follow vacation procedures.

Typically, questions concerning width arise when the apparent description of a road created by dedication is at variance with its actual location. In these instances the county will want to use legalization procedures to "clean up" the record. However, as indicated in section 6.000, if a road's only record of existence is through prolonged public use (prescriptive use), the legalization procedure may be of little value in fixing a uniform width.

6.510 ENCROACHMENTS. The fact that the location of a road right-of-way needs legalization suggests that the exact boundary line is not entirely clear in some places. Under that circumstance some unsuspecting property owners may have installed structures within the right-of-way. ORS 368.211 allows a person caught in that circumstance to request compensation for the expense of removing the encroaching structure. However, the request must be made during legalization procedures. This permits the county governing body to weigh the relative merits of adjusting the right-of-way or of paying compensation to remove the structure. Compensation is not available to a person who knew at the time he or she acquired the property that the structure was in the road right-of-way. Compensation is also not available when the person or the person's grantor received compensation for the right-of-way when it was originally established, had otherwise actively participated in establishing

the right-of-way, or otherwise had knowledge that the right-of-way was a public way.

6.515 ADJUSTING THE LOCATION. Under some circumstances it may be appropriate to modify the right-of-way from the one the legalization analysis would otherwise fix. If the modification consists of a narrowing of width as described in ORS 368.221, this may occur merely by making that decision part of the legalization order. If right-of-way is required in a location that the facts of the road history do not permit to be included by the legalization process alone, concurrent procedure for establishment of the new right-of-way and abandonment of the old right-of-way are conducted. See chapter 5.

6.600 LEGALIZATION CHECKLIST

[ORS 368.401](#) to 368.426 establish standard methods and timeframes for providing notice by service, posting and publication in proceedings such as legalization that affect real property (See sections 2.300 and 2.330).

ELEMENT	ORDER NUMBER	DATE RECORDED AND FILED
Order to Survey		
Survey		
Notice of Hearing		
Affidavit of Posting		
Affidavit of Service		
Final Order		

6.700 SAMPLE DOCUMENTS. The following sample documents on legalization proceedings were prepared by generalizing forms previously used by certain counties and may not cover all the procedures a county may need to follow. Modifications may be necessary to adapt them to individual county conditions or to unusual aspects of individual cases. County counsel review and modification of such documents is necessary to fit the particular circumstances and conditions of your county. The sample documents are as follows:

[6.701](#) Survey Order

[6.702](#) Hearing Notice

[6.703](#) Affidavit of Posting

[6.704](#) Affidavit of Service

[6.705](#) Legalization Order

[6.710](#) Legalization Resolution (Alternative to 6.701 and 6.702)

[6.711](#) Legalization Order (Alternative to 6.705)

6.800 COMMENTS ON SAMPLE ORDINANCE. [This sample ordinance](#) may be used for one of the following purposes. Obviously, a county should, with county counsel review, modify and update such an ordinance appropriately to fit the particular circumstances of that county.

- (1) To Structure the Notice and Hearing Procedure: Short of getting consent sign-offs or some similar acceptance from each potentially affected property owner, some form of hearing is a necessary part of the proceedings. While the statutes contemplate a hearing, they do not fix a hearing procedure. Each county contemplating use of the legalization procedure needs to consider an ordinance to fill out these details. The sample illustrates just one method of accomplishing this. The ordinance could consist of no more than sections 1 through 4. Refer to section 2.330 for a discussion of notice alternatives.
- (2) To Give Independent Attention to Potential Sources of Legal Challenge: Section 5 may be unnecessary; however, section 5 suggests going at least one step beyond the normal notice and hearing process when uncertainty exists. Very likely, the county would have used informal efforts to reach uncommunicative persons in order to discover and resolve possible conflicts. Section 5 formalizes one added step when communication has not been obtained by other means.
- (3) To Extend the Legalization Process to Local Access Roads: Under the 1981 road legislation the statutory legalization process applies to roads on the county road system only.¹ However, a county may elect to use its general ordinance powers to extend the statutory procedure to apply to local access roads. The sample ordinance does this if the optional addition to section 1 enacting a general ordinance on legalization is included. A county may be particularly interested in applying legalization to a local access road if there is a potential of eventually adding it to the county road system or if the county is to be involved in spending county funds on the local access road or carrying out a special assessment project.

¹ Prior to the 1981 revision, some historical statutory references to "county roads" might have had no purpose other than to distinguish them from streets in a "town plat," which would normally be expected to be under the jurisdiction of a town or city government. In drafting the 1981 revisions the term "county roads" refers exclusively to roads on a county road system. Limiting legalization statutes to only the county road system under the 1981 revisions leaves each county the choice of extending the procedure to local access roads by ordinance.

CHAPTER 7: VACATION OF PUBLIC PROPERTY
(This chapter was revised and updated in 2008 and 2014)

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CHAPTER 7: VACATION OF PUBLIC PROPERTY

7.000 INTRODUCTION. A public area or a public interest in an area under county jurisdiction may be vacated when a county governing body determines the public use is no longer required and that discontinuance of public usage would be in the public's interest. Unless the owner consents, vacation of public lands is not allowed if the vacation would deprive the owner of a recorded property right the access necessary for the exercise of the recorded property right. This principle applies to county roads, local access roads, and other properties.

The vacation procedures outlined in [ORS 368.326 to 368.366](#) may be followed by a county. The county may also refine or improve this procedure to meet local needs, but supplemental county procedures may not conflict with other state laws or constitutional protection.

The vacation procedures apply to all property in the county that is outside cities, including private interests such as subdivision plats. These vacation procedures, if used for vacation of a subdivision, supplement [ORS 92.205 to 92.245](#), which may be used for vacation of an undeveloped subdivision. The county or public interest usually pertains to a road, but could involve a public square, trail, or any other public property. Once vacated, county-owned land, including vacated right-of-way, in which the county has fee title may be disposed of by established sale procedures.

The vacation of most property within a city is up to the city, using procedures of [ORS 271.080 to 271.230](#) and city regulations. However, if property within the limits of a city is under county jurisdiction, the county may act to vacate the property providing the city concurs.

The statutes described in this chapter have replaced previous statutes addressing the vacation of public lands, towns and plats as well as previous statutes addressing the vacation of county roads and county line roads. Persons who were familiar with the road vacation statutes prior to 1981 may notice there no longer is a reference to road right-of-way not being extinguished by adverse possession. Since protecting public land from loss by adverse possession is not directly related to vacation of road right-of-way, the two subjects were separated with the repeal of ORS 368.620 by 1981 c. 153, sec. 79. Those having a reason to refer to the law exempting public land from loss by adverse possession should see [ORS 275.027](#).

7.015 SPECIAL REFERENCES: The following are sources of information outside this manual that are particularly relevant to sections of this chapter, as noted.

Section 7.100

Oregon Law Institute, Oregon Government Law 2005: *The Latest Chapters in Public Law*, Ch. 3, "Streets and Roads, Termination of Right-of-Way" (2005)

Oregon Law Institute, Oregon Government Law 2005: *The Latest Chapters in Public Law*, Ch. 3, "Streets and Roads, Rights of Abutting Owners" (2005)

7.100 STATUTORY SUMMARY. ORS 368.326 to 368.426 contain procedures for vacation of public roads and other property. Vacation may be initiated by resolution of the county governing body or by petition of individuals. If by petition, acknowledged signatures of owners of 60 percent of the abutting land or 60 percent of the owners of abutting land must be included. A report of the proposed vacation must then be made by the county road official, notice must be given to owners of abutting land, and a hearing must be held to consider the proposed vacation. Notice and hearing are not required if the petition for vacation includes the signatures of the owners of 100 percent of the private property internal to the area to be vacated and owners of 100 percent of the land abutting any public property involved and if the county road official files a written report that the vacation is in the public interest. As used here, a public agency owning property outright should be considered to be within the meaning of owners of private property.

The county governing body determines if the vacation is in the public interest and issues an order granting or denying the vacation. Costs are established and persons liable for payment are determined by the governing body. The order directs payments of established costs by those liable.

Vacation of public land affecting two counties or a county and a city requires coordinated action and individual orders by the governing bodies involved.

The governing body may determine ownership (vesting) of vacated property in the order or resolution vacating the property. Generally, vacated road right-of-way vests in the owner holding underlying title. When not otherwise provided, property usually vests by extending boundaries of abutting property to the center of the vacated property. Vacated public squares vest in the county, as do vacated rights-of-way in which the county has fee-title ownership.

7.110 STATUTES ON VACATION OF PUBLIC ROADS AND OTHER PROPERTY

Chapter 368

Vacation of County Property

- 368.326 Purpose of vacation proceedings; limitation**
- 368.331 Limitation on use of vacation proceedings to eliminate access**
- 368.336 Abutting owners in vacation proceedings**
- 368.341 Initiation of vacation proceedings; requirements for resolution or petition**
- 368.346 Report, notice and hearing for vacation proceedings**
- 368.351 Vacation without hearing**
- 368.356 Order and costs in vacation proceedings**

368.361 Intergovernmental vacation proceedings

368.366 Ownership of vacated property

7.120 CITATIONS ON VACATION OF PUBLIC ROADS AND OTHER PROPERTY

Howe v. Greenleaf, 260 Or. App. 692, 702-10, 320 P.3d 641, 647-51 (2014): There is a presumption that where a dedicated road runs between two tracts of land under different ownership and the road was wholly dedicated from only one of the owners' tracts, then the entire width of the road transfers with the abutting property from which it was wholly dedicated. ORS 93.310(4) and ORS 368.366(1)(d). The general presumption that title to the centerline of a road transfers with the abutting property does not apply in only two circumstances: (1) When, at the time of conveyance of the abutting property, the road is held under another title from that of the grantor or (2) when the grantor clearly does not intend to convey title to the centerline of the road as that intention appears from an express provision in the conveyance or the circumstances surrounding the transaction. The common-law exception to the general presumption was created to address the situation where properties on opposite sides of a road are under different ownership and the road is dedicated from land owned by only one of those owners. That exception to the general rule makes sense because it avoids the possibility of taking a valuable property right from one party (the underlying fee ownership of the road) and giving it to another party who otherwise has no claim to it.

C-Lazy-K Ranch, Inc. v. Alexanderson, 243 Or. App. 168, 259 P.3d 53 (2011): The plaintiffs, C-Lazy-K Ranch, brought an action seeking a declaration that their neighbors had no public or private right to access their property through landowners' properties. Plaintiff contended that, by separate orders issued in 1921 and 1941, the Jefferson County Board of Commissioners vacated two sections of a Jefferson County road that make up the disputed road. Following a bench trial, the circuit court ruled that disputed road had been vacated by county board of commissioners. On de novo review, the Court of Appeals concluded that although a portion of the disputed road remains public because it was not vacated by order in 1921, the public road does not extend to defendants' property line because of the 1941 order, and thus defendants may not access their property over the disputed road. In interpreting the ambiguous vacation orders, the Court examined both the wording of the orders (giving effect to all of the language in the orders) and supplemental extrinsic evidence.

Pacific Western Company and Lowell Patton v. Lincoln County, 166 Or. App. 484, 998 P.2d 798 (2000): Patton owned a large parcel of land west of Highway 101 and east of the Pacific Ocean beach in Lincoln County. In August 1993, Patton partitioned (without the county's approval) a one-acre parcel in the Northwest corner of the lot. He executed a sale to Pacific Western, of which he was the sole owner, and began developing the lot as a recreational vehicle park. In 1995, five nearby landowners of property filed a petition with the Lincoln County Board of Commissioners to initiate proceedings to vacate a portion of NW Sandy Drive, the only public roadway that provided access to the partitioned lot. The Board approved the vacation, and the trial court agreed, stating that under ORS 368.331, the county was not obligated to obtain Patton's consent. The Court of Appeals reversed, holding that the trial court had misconstrued the statute and that consent is required when vacation would deprive an owner of access necessary for the exercise of a recorded property right. The fact that Patton did not originally partition the lot properly does not defeat his appeal

because he did properly file the bargain and sale deed, making Pacific Western an owner of a recorded property right.

Oregon Shores Conservation Coalition v. Lincoln County, 164 Or. App. 426, 992 P.2d 936 (1999): Plaintiffs appealed a decision by the county to vacate a portion of County Road 804 located entirely in the city, a decision in which the city concurred. The road was a 60-foot wide unimproved right-of-way running south along the beach, had never been improved or used extensively for transportation, and was used to some extent as a footpath. An overplatted subdivision was developed encroaching within the right-of-way, and the county conducted proceedings to vacate the portion of the right-of-way within the subdivision. The city adopted a resolution concurring with the county's determination. The plaintiffs appealed the decision to the Land Use Board of Appeals (LUBA), which remanded on the grounds that the county violated Implementation Requirement (IR) of Goal 17 (Coastal Shorelands) of the state land use goals. The Court of Appeals reversed, holding that while the county's decision was a "land use decision" subject to the jurisdiction of LUBA, the IR and Goal 17 were inapplicable to the county's decision, since the city had enacted prior legislation implementing both the IR and goal with respect to the right-of-way in question. However, Policy 6 of the city comprehensive plan and the city zoning ordinance adopted virtually identical language to IR 6 of Goal 17, which requires that where the vacated access is along the "ocean shore," there must be alternate access points within the "affected site."

Harding v. Clackamas County, 89 Or. App. 385, 750 P.2d 167 (1988): Schurgin Development Corp. sought review of the Land Use Board of Appeal's (LUBA) order reversing Clackamas County's vacation of a portion of Southeast 90th Avenue, a county road, which abutted Schurgin's planned development project. Harding was the holder of an easement that provided access to the vacated street from the athletic club she operated. In vacating the road, the county followed the summary vacation procedures in ORS 368.351 rather than the procedures in ORS 368.346 that would have provided the holder notice and hearing rights. The Court of Appeals affirmed LUBA's decision, holding that the conditions of ORS 368.351 were not met because Schurgin, the sole signatory of the vacation petition, did not own the abutting property at the time of the petition, and because Harding had not petitioned for or consented to the vacation. In addition, the county road official's report did not state that the vacation was presently in the public interest, as required by ORS 368.351. The failure to follow vacation procedures, including giving notice when required, rendered the vacation invalid.

Martin v. Klamath County, 39 Or. App. 455, 592 P.2d 1037 (1979): Plaintiff owned a large tract of land that included a strip of land which had previously been used by the public as a roadway. The road was originally part of the Klamath Indian Reservation road system and was transferred to Klamath County following the termination of the reservation. The portion of the road in question included a bridge over the Sprague River. The bridge was washed out by a flood and not replaced, resulting in very little use of the road. The plaintiff erected a fence across the road to prevent persons from driving down the road and depositing trash on plaintiff's property. Plaintiff brought an action against the county to quiet title to the strip of land. The Court of Appeals held that the doctrine of common law abandonment does not apply when the legislature provides a method by which a county may abandon or vacate roads. Therefore, the road was not vacated and the county was entitled to have plaintiff enjoined from interfering with the public's use of the road until vacation proceedings were properly utilized.

Strawberry Hill 4-Wheelers v. Benton County Board of Commissioners, 287 Or. 591, 601 P.2d 769 (1979): Plaintiffs challenged the determination of the Board of Commissioners to vacate a portion of County Road No. 26460, known as Old Peak Road. After the board decided to vacate the stretch of road, the plaintiffs filed a petition for a writ of review attacking the legality of the board's order. The trial court granted the county's motion to disallow the writ on the ground that road vacation procedures are legislative and not judicial or "quasi-judicial" and therefore are not reviewable by writ of review. The Court of Appeals affirmed. The Oregon Supreme Court reversed, stating that the function of vacating a road qualified as a quasi-judicial function for purposes of the writ of review because the plaintiff's challenge was not limited to questioning the county's decision on the merits, but also included a challenge to the procedures used by the county board. While the allegation did not specify what procedural failures undermined the proceedings, the lack of specificity was not the stated ground of the trial court's dismissal of the writ. The writ of review would not extend, however, to those elements of the trial court's decision involving an exercise of discretionary policy judgment, such as a discussion of the utility of the road.

Fahey v. City of Bend, 252 Or. 267, 449 P.2d 438 (1969): When the property abutting a road has passed prior to the vacation of that road, it is assumed that the grantor intended that title in the street portion of the lot also passed at the time of the conveyance, unless stipulated otherwise.

7.500 DISCUSSION OF VACATION PROCEEDINGS. The following parts of this chapter may be helpful in carrying out property vacation procedures or in determining the merits of supplementing the statutes by county ordinance. Vacation proposals are often initiated by persons who expect to benefit either from the resulting reassignment of the vacated land or in some other manner. However, a county is under no obligation to vacate a road right-of-way or other property held for public use, even if all owners of abutting land seek the vacation. The long-term public interest, rather than the present state of public use, is the important consideration when making a vacation decision. When a property vacation will cause no identifiable loss to the long-term public interest and no damage to property owners in the vicinity, the vacation may facilitate better use of the land. Items that should be considered include:

- Present use and condition of the property, including maintenance cost and nuisance liability
- Potential future public uses
- Potential private uses, their social and economic impacts on the neighborhood, and their effect on property taxes
- Need for easement to utility companies or others if property is vacated.

7.505 CHARGES FOR VACATION PROCEEDINGS. Persons requesting vacation of public property and those who may benefit from a vacation may be required to pay the costs involved. A county may establish fees to recover county costs. In the case of a vacation proposal initiated by petition, payment may be an appropriate responsibility of the petitioners. A vacation that is completed may warrant payment by those who benefit. More

specifically, a fee schedule could have one of the following forms.

- A fee schedule for charging petitioners may be established. The amount of the charge would be one that has some reasonable relation to county costs for administration of vacation proposals. County officials may elect to charge a fee under one of the following conditions:
 - (1) As a condition to processing a petition, even though the vacation may not be allowed
 - (2) As an amount to be retained only if the vacation is allowed
 - (3) As a dual fee, with the second part charged only if the vacation is allowed.
- A fee schedule for charging those who benefit from a property vacation may be established. The fee could be a set amount having some reasonable relation to county administrative cost or it could be an amount based on the benefit property owner's gain as a result of the vacation. Some cities have used the appraised value of the land a property owner receives because of a vacation as the measure of benefit. Since the land vacated does not normally become the property of the county,¹ it is not available to sell. Thus, any charge needs to avoid the characteristics that constitute a sale. [Here is an example](#) of a charge system from Eugene code, sections 7.595 to 7.605.

The following should be considered when establishing a fee to recover the actual costs to the county. Several hours of staff time are required to assist the petitioners in preparing an adequate petition; to check signatures and property ownerships; to prepare the road official's report to the governing body; and when a vacation is granted, to change road records and assessor's records. When less than 100 percent of the affected property owners sign a petition, substantial additional costs result for posting and publication of notices, notification of individuals, and holding a public hearing. One practical approach to establishing a fee schedule is to charge a fee ranging between 8 to 12 hours of the payroll cost of the person expected to do a majority of the work on the petition for petitions signed by 100 percent of the affected persons. If the fee is double for petitions signed by less than 100 percent of the affect persons, this should approximate the processing costs.

7.510 VACATION AS PART OF RELOCATION. Vacation proceedings are required when a road is relocated and the old right-of-way is abandoned. However, [ORS 368.126](#) (see chapter 5) modified this rule and allows vacation to be effective on identification of those parts to be abandoned in the final resolution or order establishing the new road when the new road follows the same general alignment as the previous road.

Counties may want to establish criteria to be used to determine when the alteration of a road is not a relocation requiring separate vacation proceedings to dispose of abandoned portions. Factors to be considered might include the extent to which the new road would follow the general alignment of the old and whether accessibility to the road by any abutting land owners would be eliminated.

¹ See Fowler v. Gehrke, 166 Or. 239, 111 P.2d 831 (1941).

7.515 CONTINUATION OF TITLE. ORS 368.366 provides that, notwithstanding other general rules in the section, a county governing body may determine vesting of vacated property. This appears to favor vesting of vacated property in any manner that best serves the public interest as long as it does not result in an unconstitutional taking of property rights. For example, in the case of a public square or a road right-of-way established by county purchase, property could normally vest in the county. As another example, for roads established by prescriptive use, title to underlying properties would remain with the original and successor owners. There are instances where a vacated road may not be equally divided. A vacation proposal that contemplates some vesting of ownership other than that described in ORS 368.366 (1) (d) should describe the vesting in the petition. For example, if the entire right-of-way was dedicated off property holdings along one side of the road, the vacated portions might properly return to that side of the road, and the petitioners should know that is contemplated. The basic rule is that if title to the vacated property is held in fee, the property shall vest to the owner holding title. For example, if the county purchased road right-of-way in fee, in contrast to purchasing a road easement over someone's property, the vacated road would properly remain in county ownership until it was sold by the county. An exception to the rule on attachment occurs when vacated property is a public square. In this case, the property vests in the county.

7.520 EASEMENTS OVER VACATED PROPERTY. Because right-of-way serves as the location of various public facilities, utilities and drainage, the county's order of vacation may, and often does, reserve easements within the area being vacated. This may be done by a general preservation of easements or by a more specific description of easements to be preserved. As a condition of vacation, formal easements for any continuing uses must be recorded in the county property records. This is necessary to protect both the easements and future buyers of the property.

7.525 VACATION OF UNDEVELOPED SUBDIVISIONS. [ORS 92.205 to 92.245](#) contain procedures for vacation of undeveloped subdivisions. These procedures are to be used predominantly when an undeveloped subdivision that was approved before adoption of a comprehensive plan fails to conform to current comprehensive plan and zoning provisions. The agency or body reviewing the subdivision may, after a hearing, require a revision of the subdivision or vacate the subdivision by adopting an ordinance to that effect. Alternatively, an owner of property within a subdivision may request that the procedures in ORS 368.326 to 368.426 be used by the county to vacate a subdivision or some portions of a subdivision, or the county governing body may utilize its legislative authority to expand subdivision vacation procedures. Vacation of a subdivision normally vacates any local access roads within the subdivision.

7.530 VACATION WITH 100 PERCENT CONSENT. ORS 368.351 allows for procedural simplification when owners of all property to be directly affected by a vacation have signed a petition both seeking and approving the vacation. In this case, the section allows vacation to occur "without complying with [the notice and hearing requirements of] ORS 368.346," if the vacation is assessed by the county road official as "in the public interest." Note that ORS 368.356 requires the county governing body to make the final determination as to whether the vacation is in the public interest. Thus, consideration of a 100 percent vacation proposal is not terminated if the county road official determines that the vacation is not in the public interest. Instead, the road official must complete the report

required by ORS 368.346 and the notice and hearing procedures must be followed. The sample forms in this chapter contain an example of 100 percent vacation proceedings supplemented by notice and hearing. As a practical matter, if a county road official is unable to assess a vacation as being in the public interest, it may be well to advise the petitioners before proceeding that there may be added costs under the notice and hearing procedure.

7.535 EXTENT OF NOTICE. ORS 368.346 requires that notice of a vacation hearing be provided by posting and publication and by service on specified persons. When this requirement is carried out according to the notice statutes, it adequately covers the dual requirement in Shoji v. Gleason that notice must (a) apprise interested persons (those with a property interest) of the pending proceeding and (b) reasonably convey the necessary information.

Some of the past problems with notice resulted in 1977 statutory amendments to identify persons with easement over property as parties who should have notice. A road vacation could, for example, affect access to a utility easement over adjacent land. The 1977 legislation gave added emphasis to the need to search the records adequately to find those with a recorded interest and to provide other methods of notice if there is uncertainty. Notice is costly, and recognition of the 1977 legislation in the new vacation statutes, together with the Shoji case, has probably increased costs a county may charge petitioners who seek a vacation. Individual counties may find it possible to streamline the statutory procedures to some degree, as long as the basic reasons behind title searches and notice are not lost. See section 2.300 to 2.330 for Principles of Notice and related information.

7.700 SAMPLE FORMS. Forms and policy documents on vacation proceedings follow but do not cover all the procedures a county may need to follow. Modifications may be necessary to adapt them to individual county conditions or to unusual aspects of individual cases. To illustrate, some of the specific example forms used involved a 100 percent petition in Marion County, but because of certain unclear ownership facts a hearing was provided and procedure followed is as though the petition had been less than 100 percent. In a 100 percent petition situation the notice and hearing forms normally should be unnecessary. The sample forms are as follows:

- [7.702](#) **Resolution Setting Fee Schedule (see also sec. 7.505)**
- [7.704](#) **Information and Procedure for Road Vacation**
- [7.706](#) **Road Official's Administrative Guide**
- [7.708](#) **Resolution, Notice of Hearing, and Order**
- [7.710](#) **Affidavit of Posting**
- [7.712](#) **Affidavit of Service**
- [7.714](#) **Petition for Vacation**
- [7.716*](#) **Posted County Notice of Public Hearing**

7.718* **Published County Notice of Public Hearing**

7.720* **Mailed Notice to Parties of Interest**

7.722 **Sample Letter to Public Utility Company**

7.724 **Road Official's Report**

7.726 **Board Order Granting a Vacation**

7.728 **Board Order Denying a Vacation**

* Items required when vacation process is initiated by petition and less than 100 percent of affected property owners sign petition.

CHAPTER 8: JURISDICTIONAL CLASSIFICATION OF ROADS

(This chapter was revised and updated in 2008, 2010, 2012 and 2014)

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CHAPTER 8: JURISDICTIONAL CLASSIFICATIONS OF ROADS

8.000 INTRODUCTION. Road classifications are useful to separate the various types of roads that may be under county jurisdiction. A "road" includes the entire right-of-way of any public or private road used by vehicles. The road includes structures such as tunnels, culverts and bridges that are part of the continuity of the travel way. Because county authority over roads is broad, road classifications help define county jurisdiction and distinguish degrees of county interest. A trail is a lesser public right-of-way, which may provide for public access for hiking, bicycling or other purposes but not for the kind of vehicle access that is commonly provided by a road. Programs for trail development fall under the same procedures as apply to local access roads. The classifications discussed in this chapter are related to matters of overall jurisdiction. Classifications used for design purposes are also included. Some of the statutes included in this chapter duplicate those in chapter 2 on county powers.

8.100 ROAD CLASSIFICATIONS. Under [ORS 368.001 to 368.041](#), roads on which vehicular traffic moves may be public or private. Since private roads are located on land owned by a private individual or group, public access and use is generally restricted. Public roads, on the other hand, are roads that the public has a right to use as a matter of public record. As described in chapter 5, these roads are generally located on land owned outright by the governing body of the jurisdiction or on rights-of-way over which the public has obtained an easement.

All public roads within the county are under county jurisdiction except roads within the state highway system, federal roads, and most roads inside cities. Although ultimate jurisdiction over these excepted public roads rests in other bodies, the county may participate in their control and development by consent. Private roads outside a city may be subject to county regulation.

Public roads under county jurisdiction are either local access roads or county roads. County funds may be spent on a local access road only for work necessary to deal with an emergency or work recommended by the county road official, justified by public use, and authorized by the county governing body. However, as discussed in Chapter 3, revenue from a county road levy cannot be spent on local access roads. After a county service district is created for road purposes, voters within the district may authorize a tax levy for work on local access roads. County roads are required to be kept in appropriate repair consistent with the public's use of the road through the use of county funds. A local access road may be reclassified and become part of the county road system if it is expressly accepted as a county road by the county governing body. Under ORS 368.041, for a road to be made a county road the right-of-way must either be a minimum of 50 feet or any greater width that the county governing body establishes. A county road is reclassified as a local access road if it is withdrawn from the county road system.

In addition to the statutory classifications of county roads and local access roads, counties commonly develop functional road classifications for system design purposes, as discussed in section 8.540 and chapter 13.

County roads inside a city that have not been transferred to city jurisdiction remain under county control. County jurisdiction over such roads may be transferred by mutual

consent at the initiative of either the county or the city, using the procedure outlined in [ORS 373.270](#). Conversely, under ORS 368.062, a city street may be transferred to the county road system by mutual consent. See chapter 11 for other matters of county-city cooperation.

8.110 STATUTES ON ROAD CLASSIFICATIONS

[Chapter 368](#)

County Roads

- 368.001 Definitions**
- 368.011 County authority to supersede statutes; limitations**
- 368.016 County authority over roads; limitations**
- 368.021 County authority over trails**
- 368.026 Withdrawal of county road status; report; notice; hearing**
- 368.031 County jurisdiction over local access roads**
- 368.036 Standards for county roads and road work**
- 368.039 Road standards adopted by local government supersede standards in fire codes; consultation with fire agencies**
- 368.041 Widths of county roads; maintenance of designated roads as county roads**
- 368.062 Transferring road within city to county jurisdiction**

[Chapter 373](#)

Roads and Highways Through Cities

- 373.270 Transferring jurisdiction over county roads within cities**

8.120 CITATIONS ON ROAD CLASSIFICATIONS

W. Linn Corporate Park, L.L.C. v. City of W. Linn, 349 Or. 58, 240 P.3d 29 (2010): City's failure to obtain the consent of affected landowners did not render street vacation ordinance void and of no effect; consent of property owners prior to notice and hearing was necessary only if vacation is initiated by petition, and statute permitted city initiation of vacation proceedings without the prehearing consent of affected landowners.

44 Or. Att'y Gen. Op. 20 (1983): Cites Cole v. Seaside, below. Unless a county formally transfers jurisdiction over a county road to a city pursuant to ORS 373.270, city authority over county roads within its city limits is limited to that authority which is

expressly conferred upon it by the legislature.

Willett v. City of West Linn, 142 Or. 662 (1933): The City levied a special assessment against the real property of Willet to pay the cost of constructing a sidewalk along a county road. Willet claimed that all proceedings to levy a special assessment against his real property of such improvements were null and void because the City never acquired jurisdiction over this county road. No record existed of the county court surrendering jurisdiction and receiving acceptance by the City as required by statute, therefore the Supreme Court held that the City was not authorized to levy the special assessment.

Cole v. City of Seaside, 93 Or. 65 (1919): The Supreme Court held that a city may not assume control of a county road within its limits unless the county surrenders authority over the road following procedures prescribed the legislature. [NOTE: This holding was codified in ORS 373.270.)

[NOTE: Content previously in sections 8.200 and 8.210 is now in chapter 10, at sections 10.230 and 10.240.]

8.500 IDENTIFYING THE COUNTY ROAD SYSTEM. As provided by [ORS 368.016](#), a county governing body may "by resolution or order make any public road within its jurisdiction a county road," and any road classified as a county road on November 1, 1981 retains that classification until changed.

The 1981 overhaul of the road laws included deletion of several statutes that probably were responsible for placing certain roads on the county road system. For example, the following are among the statutes repealed:

1. ORS 368.420 stated that all territorial roads are county roads.
2. ORS 203.120(12) stated that roads to certain cemeteries are county roads.
3. ORS 382.275 stated that a county had the duty to maintain bridges constructed at its sole expense.

These and other previous statutes, as well as the long evolutionary history of county roads, may leave public roads on the county road system that do not fit the road classification policy of a particular county. See also the reference to 34 Or. Att'y Gen. Op. 868 in section 2.120. The procedures for withdrawing roads from the county road system and for adding roads to the system are available to adjust the present classifications. If for some reason the county does not have a clear record of its county road system, a descriptive list of all the roads that are on the county road system (including bridges) may be adopted.

If the county wants to continue prior road care activities on some of the roads that are not on the county road list, it can follow the procedures of ORS 368.031 to identify this local access road care program. To avoid future uncertainty, any local access road care program that is a continuing program could expressly establish a time period or circumstance that would terminate the program or otherwise provide a clear identification that the roads involved are local access roads. Preparation of descriptive criteria may be helpful in determining which roads should be "county roads" and which should be "local access roads".

8.504 ADDING TO THE COUNTY ROAD SYSTEM. A road is added to the county road system by an order or resolution of the county governing body. Most additions to the county road system fall within one of three groups:

1. Constructing a new major trafficway;
2. Upgrading an existing trafficway; or
3. Improving a subdivision street to standards for maintenance as a county road.

8.506 TRAFFICWAYS. Sometimes an off-setting withdrawal of some roadway may be warranted when a county road has been added to the system through new or upgraded construction of a trafficway. The opportunity for withdrawal may be greatest if adding the new county road and withdrawal of the road then relieved of traffic occur as part of a single program.

8.508 SUBDIVISION STREETS AND THE COUNTY ROAD SYSTEM. Some counties follow a practice of adding subdivision streets to the county road system if the streets are constructed to permanent subdivision street standards. The following are among the reasons for this practice.

- The subdivider is expected to finance the improvement of the street and county assurance of maintenance is an added incentive for the subdivider to make the improvements to county standards. This may have been particularly important during the period when counties were first implementing subdivision street standards. Today most county subdivision regulations require improved streets, and subdividers expect to have that obligation.
- The county promises maintenance to encourage property owners to finance the improvement of local streets under a program that applies equally to initial construction of streets in new sub-divisions and upgrading of streets in older subdivided areas.

With acknowledgment of a county's comprehensive plan, the State Real Estate Commissioner no longer has responsibilities under [ORS 92.305 to 92.495](#) related to roadways and other public improvements in subdivisions and series partitions. ORS 92.325 (3) (h). Any responsibility for developers to build roads and provide for their maintenance now depends upon requirements of the county. For developments that had tentative plans approved before acknowledgment, the Real Estate Commissioner continues to have certain facility monitoring responsibility, including assured maintenance of roads in improved developments. Demonstrating that a roadway will be maintained can be achieved by putting the road on the county road system, including appropriate provisions in a property owners' association agreement, or providing for an area road tax through a county service district or a road district.

8.520 WITHDRAWING ROADS FROM THE COUNTY ROAD SYSTEM.

Withdrawal is a procedure to be used when a section of road on the county road system has little or no general use. This may result from historic inclusion of a road that should not have county road status. See section 2.500. It also may be the result of a change in the function served by a section of road. This most commonly occurs when general traffic is removed from a road as a result of improvement of another county road or a state highway. A county may want to develop criteria to distinguish local access roads from county roads in order to have a consistent basis for withdrawal decisions. A road withdrawn from the county road system reverts to a "local access road" status.

Because of some degree of county maintenance responsibility for county roads, property owners along a road having county road status may perceive they will lose a benefit if the road is withdrawn. To assure that these points of view receive consideration, [ORS 368.026](#) requires notice and a hearing before the county governing body acts on a county road withdrawal proposal. The steps in considering a withdrawal action might be as follows:

1. The county road official prepares a description of the road proposed for withdrawal, an explanation of the reasons for the proposed withdrawal, and a description of the effects of withdrawal on the land abutting on the road.
2. Notice of a hearing is served on owners of the land along the road proposed for withdrawal. The notice is either served personally or by certified mail. See sections 2.300 to 2.320.
3. If withdrawal is to occur, the county governing body adopts an order or resolution which might provide as follows: "As authorized by ORS 368.026, the following [road is/roads are] withdrawn from the county road system to become local access roads as defined in ORS 368.001."

While the procedure is basically simple, its accomplishment may be difficult if property owners object. If there has been some county maintenance of the road which the property owners think may be threatened, the county could identify a local access road care program for the road under ORS 368.031 at the same time the withdrawal action is taken.

In 2010, Crook County created a process for withdrawing county roads from the county road system in an effort to optimize the use of available road revenues for the maintenance and improvement of its county road system. The county court adopted an order establishing a process and criteria for withdrawal of a county road from the county road system and designating it as a public road. See [Order 2010-43](#) "In The Matter Of Reclassifying County Maintained Roads."

The county court also approved an order establishing a process for the withdrawal of county roads within subdivisions from county road status with special incentives to encourage the property owners within the subdivision to become a special road district under ORS 371.305 to 371.360 and approve a permanent tax rate to maintain the roads. See Crook County [Order 2010-44](#) "In The Matter Of Reclassifying County Maintained Roads Located Within Subdivisions."

8.525 TRANSFERRING COUNTY ROADS TO A CITY. A county road inside

a city may be transferred to the city by mutual agreement. [ORS 373.270](#) provides that either the city or the county may initiate the transfer of jurisdiction. Once the transfer has been initiated, the county must provide public notice and an opportunity for a public hearing before the final order by the county governing body surrendering jurisdiction. The transfer is not complete until it is formally accepted by the city when it is initiated by the county or by the county when it is initiated by the city. On completion of the transfer, county jurisdiction ceases, and the city assumes the same responsibility over the former county road as it has for other city streets.

8.530 TRANSFERRING CITY STREETS TO A COUNTY. A city street may be transferred to a county by mutual agreement of the two jurisdictions. Either the city or county may initiate the transfer under provisions of ORS 368.062. Once the transfer has been initiated, the city must provide public notice and an opportunity for a public hearing before the final action by the city governing body surrendering jurisdiction. The transfer must be accepted by the county when it is initiated by the city or by the city when it is initiated by the county. On completion of the transfer, city jurisdiction ceases, and the county assumes the same responsibility over the former city road as it has for other county roads.

8.540 ROAD FUNCTIONAL CLASSIFICATION. After each decennial census, the Federal Highway Administration (FHWA) requires state DOTs to use census data to review and update all Federal Aid Urban Boundaries (FAUB) and the corresponding Federal Functional Classification (FC) of public roads ([Title 23, Section 103, USC](#)). Information on Oregon’s [2010 Statewide Functional Class Review](#) is available on ODOT’s website.

The FAUB is the dividing line between urban and rural Federal Functional Classification. This booklet presents the concepts and criteria for the FAUBs and FC of roads. Counties should use the ODOT publication, [Guidelines for Updating Federal Aid Urban Boundaries and Functional Classification](#), in conjunction with their local Transportation System Plan (TSP) to identify needed updates of their Federal Aid Urban Area boundary and Federal Functional Classification.

While there is a major emphasis on updating FC immediately after the census, adjustments to FC should be made any time there are major changes in the road system or the local TSP.

The functional classification of urban routes will change when roads cross the urban area boundary into a rural area. This change is due to the decreasing population density and an increasing importance of land accessibility.

Urban (Pop. Over 5,000)	Rural
Urban Principal Arterial	Rural Principal Arterial or Rural Minor Arterial
Urban Minor Arterial	Rural Major Collector
Urban Collector	Rural Minor Collector
Urban Local	Rural Local

Copies of the guidelines, FC maps, boundary files and links to Federal websites are available online at: [2010 Statewide Functional Class Review](#).

CHAPTER 9: WAY OF NECESSITY
(This chapter was revised and updated in 2008, 2010 and 2014)

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CHAPTER 9: WAY OF NECESSITY

9.000 INTRODUCTION. Until replaced by 1979 legislation, Oregon's statutory procedures for establishment of ways of necessity were often time consuming for county personnel and, more times than not, involved the county in disputes between private citizens over a matter in which the general public often had no real concern.

[ORS 376.150 to 376.200](#) now places the greater part of the burden on the landlocked property owner to provide the data and evidence necessary to justify a way of necessity. It is also important to note a county may remove itself from jurisdiction over the establishment of ways of necessity by passing an ordinance vesting jurisdiction with the county circuit court. A county may adopt supplemental procedures for implementing the statutes on way of necessity, but it cannot replace the statutory system. A landowner has a right to a way of necessity if the "necessity" is demonstrated. The county's responsibility applies inside cities as well as outside. A way of necessity is a public way owned and controlled by the county which can be vacated only with the consent of the county. Although not referenced in the statute, it seems probable that a way of necessity decision needs to comply with an acknowledged comprehensive plan. That is, creation of the way should not promote development that is inconsistent with the plan.

9.015 SPECIAL REFERENCES. The following are sources of information outside this manual that are particularly relevant to sections of this chapter, as noted.

Section 9.100

Oregon Law Institute, Oregon Government Law 2005: *The Latest Chapters in Public Law*, Ch. 3, "Streets and Roads, Obtaining Road Right-of-way" (2005)

9.100 STATUTORY SUMMARY. ORS 376.150 to 376.200 contain procedures for establishing ways of necessity. A way of necessity either (1) provides a property owner with egress and ingress rights over adjoining private or public land in order to reach property otherwise inaccessible by motor vehicle or (2) provides for utility service access. The procedure consists of the following:

- (a) A property owner files a petition detailing the need, location and practicality of the proposed way of necessity as well as the compensation proposed for listed landowners across whose property the way of necessity will pass. The petition is accompanied by a deposit to secure payment of county expenses incurred in the way of necessity procedures. The petition must contain evidence that the petitioner does not have an existing easement, right to easement, or enforceable access to a public road.
- (b) The county road official, county surveyor, or other persons appointed by the court investigates the petition's sufficiency and compiles the results in a written report.
- (c) The county governing body considers the matters presented by the petition, the

report, and any matters brought by way of answer to the petition and report.

- (d) The county governing body issues an order either denying the way or fixing the way of necessity and the compensation due the county and other property owners.

The way of necessity must comply with statutory standards and any conditions set by the order. The county has no maintenance responsibility for a way of necessity.

9.110 STATUTES ON WAY OF NECESSITY

Chapter 376

Ways of Necessity; Special Ways; Pedestrian Malls

- 376.150 Definitions for ORS 376.150 to 376.200**
- 376.155 Petition to establish way of necessity; contents; requirements**
- 376.157 Continuation of preexisting sewer service**
- 376.160 Notice to landowners; investigation of proposed way; report to county governing body**
- 376.165 Deposit to cover county expenses**
- 376.170 Filing of answer by landowner; reply to answer by petitioner**
- 376.175 Order granting or denying way of necessity; contents; liability for costs; appeal**
- 376.180 Conditions for way of necessity**
- 376.185 Way of necessity over public land**
- 376.195 Subsequent partition of land receiving way of necessity requires government approval**
- 376.197 Way of necessity to historic cemeteries**
- 376.200 Transfer of jurisdiction over establishment of ways of necessity to circuit court; local court rules; procedure after transfer**

9.120 CITATIONS ON WAY OF NECESSITY

Tyska v. Prest, 163 Or. App. 219, 988 P.2d 392 (1999): Respondent Prest sought a statutory way of necessity over the appellant Tyska's property. The circuit court granted the request. The Court of Appeals reversed the circuit court, and held that while it was true

that Prest did not have “existing enforceable access” to a public road, as required by ORS 376.180 (8), she failed to establish that she could not acquire an implied easement for access to a public road through a different landowner’s property, as required by ORS 376.180 (9). A statutory way of necessity under ORS 376.180 cannot be granted unless both of the prior conditions (in addition to others) are met. The court stated that the circuit court improperly placed the burden of proof on Tyska to show that an implied easement did exist, when the burden should be placed on Prest to show that the possibility of an implied easement did not exist.

Morgan v. Hart, 325 Or. 348, 937 P.2d 1024 (1997): Plaintiff sought access over adjoining land to a public road under the theories of express easement, prescriptive easement, and way of necessity. The trial court held in favor of the plaintiff based on an easement already existing through a different landowner’s property and denied an award of attorney fees to the landowner’s whose property was in the recommended route of the proposed way of necessity. The Court of Appeals reversed the trial’s court’s denial of attorney fees, and the Oregon Supreme Court affirmed the Court of Appeals. The Court stated that statutes governing litigation over a way of necessity require a plaintiff seeking a way of necessity to pay attorney fees incurred by a landowner whose property is the subject of the route recommended in the required surveyor’s report and who appears in the action. This principle applies even when the plaintiff did not propose that the way of necessity be located on that landowner’s property.

Nice v. Priday, 149 Or. App. 667, 945 P.2d 559 (1997): Plaintiff sought a prescriptive easement through the defendant’s land, which the trial court granted. The Court of Appeals reversed the trial court and the plaintiff subsequently petitioned for a way of necessity. The trial court then granted the defendant’s motion for dismissal on the ground that the plaintiff was not allowed to pursue a second action based on the same factual scenario at issue in the first action. The Court of Appeals reversed, holding that an action for a prescriptive easement and a petition for a way of necessity involve different parties, legal processes and legal consequences. A successful petition for a way of necessity creates public access to landlocked property through a route determined, owned, and controlled by the county, and is unlike a private action for a prescriptive easement that constitutes a private right of way over the estate of another.

Pike v. Wyllie, 103 Or. App. 30, 795 P.2d 1096 (1990): Following the denial of the way of necessity in the opinion directly below, the defendant sought attorney fees incurred in the appeal, pursuant to [ORS 376.175 \(2\)\(e\)](#), which direct the petitioner to pay costs and reasonable attorney fees incurred by each owner of land whose land was subject to the petitioner’s action for a way of necessity under ORS 376.150 to 376.200. The plaintiff argued that the statute only referred to a decision by the county governing body and not costs incurred on appeal. The Court of Appeals held in favor of the defendant, stating that the statute is the only authority for granting or denying a way of necessity, and a decision on appeal must comply with the statutory provisions. Therefore, following a determination that the plaintiff was not entitled to a way of necessity, the court could award attorney fees incurred on appeal by the defendant.

Pike v. Wyllie, 100 Or. App. 120, 785 P.2d 764 (1990): Plaintiff filed a petition for a way of necessity over a road that ran across the defendant’s property. The county court denied the petition, however, the Grant County Circuit Court granted the petition and

the defendant appealed. The Court of Appeals reversed the circuit court, stating that under sections ORS 376.150 to 376.200, if the petitioner has an existing enforceable easement for access to a public road, he is not entitled to a way of necessity, even if the existing access is not reasonable. Here, the plaintiff had an existing easement across a bridge that had been washed out and he had previously agreed to replace. That it would cost the plaintiff a large amount of money to replace the bridge did not detract from the fact that he had a legally enforceable easement that provided access to a public road.

Schoeneman v. Meyer et al, 78 Or App 89, 715 P.2d 100 (1986): The plaintiffs' sought a declaratory judgment and an injunction regarding the defendants' use of a gateway that was established in 1978 as a statutory way of necessity. The defendants' sought to expand use of the gateway to serve additional residences to be constructed on their subdivided property. The circuit court held in favor of the defendants' and the plaintiffs' appealed. The Court of Appeals affirmed, stating that the plaintiffs' are not entitled to have the use of the statutory way of necessity restricted so as to create a private easement. A statutory way of necessity must be open to the public for the use of all who desire to use it.

Witten et al v. Murphy, 71 Or. App. 511, 692 P.2d 715 (1984): Plaintiffs' brought a claim to establish a way of necessity through the defendant's adjoining land. The county court granted the way of necessity and the circuit court affirmed. The defendant argued that the plaintiffs' failed to satisfy the requirements of ORS 376.180 that there is "no existing enforceable access to a public road" and that they could not "acquire an easement for access to a public road through other legal action." The thrust of his argument was that the plaintiffs' had alternate access through another landowner's property. The Court of Appeals affirmed the lower courts, and held that the plaintiffs' had met the statutory requirements for a way of necessity. The evidence showed that the plaintiffs' did not own land abutting a public road and the alternate access was not available year-round due to the terrain and periodic flooding. In addition, the Court held that an action for an easement through the alternate access was not available, either through prescription or through express or implied agreement.

Chapman v. Perron, 69 Or. App. 445, 685 P.2d 492 (1984): Plaintiff filed a petition for a statutory way of necessity. The circuit court determined that the current statutory scheme for ways of necessity violated the Oregon Constitution because it does not require a "finding" that the public, as well as the petitioner, needs to have ingress and egress to the property. On appeal, the Court of Appeals reversed, holding that statutory ways of necessity were open to the public and thus, the statutory scheme creating such ways did not violate the constitution. The court stated that it is not a constitutional requirement that there be a finding of public need, only that the way of necessity be open to public use.

Chambers v. Disney, 65 Or. App. 684, 672 P.2d 711 (1983): Plaintiff sought a road easement by prescription allowing access through the defendant's property in order to connect to a public road. He also brought an alternative claim for a way of necessity. The trial court granted the plaintiff's prescriptive easement claim, stating that the plaintiff had established use adverse to the rights of the defendant, and therefore did not consider the way of necessity claim. ORS 376.180(9) does not allow for a way of necessity to be established if the petitioner could acquire an easement for access to a public road through other legal action. The Court of Appeals reversed, and held that the plaintiff had failed to establish the requisite adverse use because the road was already in existence when the plaintiff and defendant acquired their respective tracts and it was not clear who constructed

the road. The court remanded the case to the trial court to consider the plaintiff's claim for a way of necessity.

In re Johnson v. Paulson et al, 62 Or. App. 386, 660 P.2d 710 (1983): The plaintiffs' appealed an order of the circuit court, which had denied an appeal of an order from the county board that established and located a way of necessity across plaintiffs' land and fixed the amount of compensation and attorney fees to be paid to the plaintiffs'. The circuit court denied the appeal on the ground that the plaintiffs' should have instead petitioned the circuit court for a writ of review pursuant to ORS 34.010. The Court of Appeals reversed, stating that the legislature did not intend that proceedings of a board of county commissioners on ways of necessity be reviewed by writ of review under ORS Chap. 34; instead [ORS 376.175\(5\)](#) provides that any part of a board's report in such a proceeding may be appealed to a circuit court.

Ray v. Davis, 254 Or. 155, 458 P.2d 679 (1969): In considering various routes for establishing ingress and egress from petitioner's land to a public road, the petitioners are not limited in their remedy to a road suitable only to farm machinery, but are entitled to a road that may be utilized by the public for all-weather passenger car travel.

Hanns v. Friedly, 181 Or. 631, 184 P.2d 855 (1947): The plaintiff brought a suit for an injunction against the defendant for a trespass upon her property, who was granted a way of necessity along west line of plaintiff's property but instead cleared a roadway along the east line that intruded much further into plaintiff's property. The Oregon Supreme Court affirmed the lower court's decision granting the injunction and awarding the plaintiff \$250 in damages. The court stated that when a court order authorized the defendant to establish a right-of-way as near as practicable on the plaintiff's property line, the defendant could not construct a roadway on another location he arbitrarily selected.

9.500 DISCUSSION OF WAY OF NECESSITY PROCEDURE. The way of necessity procedure is activated by a petition from the landowner who needs the property access. The procedure is described in sections 9.510 through 9.550.

9.510 PETITION AND INVESTIGATION. When a landowner has filed a petition to establish a way of necessity with the county governing body or with circuit court (if the county has transferred jurisdiction per ORS 376.200), the county serves the petition on all landowners whose property will be crossed by the access road or utility access way. The county also directs its engineer, surveyor, or other persons to investigate the proposal and submit a written report. If someone other than the engineer or surveyor is selected, it may be either another county employee or someone not in the county employ. It could be a board of road viewers as described in [ORS 368.161](#), but the board would then follow the procedures of ORS 376.150 to 376.200 rather than those for establishing other public road right-of-way. See chapter 5.

The report on a way of necessity must: (1) consider possible alternate routes, (2) make a determination that the proposed route meets statutory requirements, (3). consider the reasonableness of the proposal, and (4) recommend a specific location and width for the way of necessity. The written report is submitted back to the county governing body, then served on the petitioner and all affected landowners.

9.520 ANSWER TO PETITION; PETITIONER'S REPLY. Within 30 days of receipt of the petition and report, a landowner whose property will be crossed by the way of necessity may file an answer disagreeing with any matter in the petition or report or presenting new material relevant to the proceedings. The petitioner must then reply within 10 days of receipt of the answer. The county is responsible for serving both answer and reply on the respective parties. No provision is made for a hearing or other direct personal confrontation. However, there is nothing to prevent such a practice if the county considers it to be beneficial.

9.530 ORDER AND CONDITIONS FOR WAY OF NECESSITY. After considering the matters presented, the county governing body shall determine whether a need for a way of necessity has been shown and shall enter an order so stating. An order for a way of necessity that is limited to providing utility service must conform to affected utility policy and standards. A way of necessity that is granted must comply with the conditions listed in ORS 376.180. The county's order shall declare that a way of necessity has been established, describe its exact location and width, any conditions, its permitted uses, and compensation to be made to landowners affected by the order and to the county for costs incurred in processing the petition (see section 9.540). A common condition is the requirement that the way be fenced or the entrance gated, or both. Any party to the action may appeal the order to the county circuit court within 30 days after the order's entry.

The landowner for whom the way of necessity was established must maintain the road or utility way only to serve the uses or persons specifically identified in the order establishing the way. The county is not required to improve, maintain or repair the way of necessity.

9.540 COMPENSATION. The petitioner is required to make compensation to property owners whose land is subject to the petitioner's action. Costs and reasonable attorney fees as well as an amount for the land damaged by the way are payable by the petitioner to the landowner. The petitioner must also reimburse the county for the cost of processing the petition. The county may require the petitioner to make a money deposit when the petition is filed to secure payment of these costs. The deposit may then be deducted from the expenses ordered to be paid. The county may want to advise a prospective petitioner of likely costs before the petition is received to avoid any belief that there will be cost savings compared to reaching purchase agreements by private negotiation with the property owners involved.

The petitioner must pay any costs within 60 days after entry of the order. If more than one petitioner seeks the way of necessity, they are jointly liable for any costs ordered to be paid.

9.550 WAY OF NECESSITY OVER PUBLIC LAND. A way of necessity across public land may not be established without the consent of the appropriate state agency or political subdivision. This consent, however, may not be "unreasonably" withheld. A copy of the petition, the county report, and the notice of hearing, if any, are forwarded by the

county by certified mail to the state agency or political subdivision.

9.800 TRANSFER OF JURISDICTION TO CIRCUIT COURT. In the event the county governing body decides not to retain jurisdiction over establishment of ways of necessity, it may pass an ordinance removing itself from jurisdiction. The responsibility for settling way of necessity cases is then handled in the county's circuit court. The court follows the same procedures. Thus, the county road official or county surveyor may have a duty to assemble and analyze information in any case. An appeal from a decision of the circuit court is made to the court of appeals. [Click here](#) for an illustration of an ordinance transferring jurisdiction.

CHAPTER 10: REGULATION RELATED TO RIGHT-OF-WAY
(This chapter was revised and updated in 2008, 2010, 2012, 2013 and 2014)

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CHAPTER 10: REGULATION RELATED TO RIGHT-OF-WAY

10.000 INTRODUCTION. Road right-of-way serves as the location for various facilities and activities other than the roadway and its use by motor vehicles. Common examples of other right-of-way use are its use as the location for utility lines and for cattle crossings. Conditions and activities on property adjacent to a road can create hazardous conditions or other conditions detrimental to the uses of the road. These might include blockage of drainage ways, hazardous trees, irrigation sprinkler water on the roadway, and improper driveway installation.

County authority to regulate what occurs within and adjacent to the rights-of-way of public roads is included in both the general and the express statutory powers granted to counties¹. This authorization is particularly important in preserving and extending the life of public roads and preventing injury to persons from road hazards or dangerous traffic situations.

The express statutory authorizations that deal with regulation of right-of-way were rewritten in part by the 1981 legislature. The county may refine or improve these statutory procedures to meet local needs (see [ORS 374.309](#)). Also, some of the statutes apply only to county roads. The county may, through local ordinances, elect to broaden the application of the subjects of these statutes to local access roads. However, the 2003 legislature amended the law to provide that ODOT and counties may not apply the law so as to deny any property adjoining a road or highway reasonable access. ORS 374.309(3) defines what is “reasonable.” (Also see section 2.100 on road authority generally and sections 10.200 and 10.510 on use of the right-of-way and section 11.235 on jurisdictional transfers)

10.015 SPECIAL REFERENCES. The following are sources of information outside this manual that are particularly relevant to sections of this chapter, as noted.

Section 10.530

¹ While there is no case that definitively answers the question of a county’s authority to take away access, and whether it must compensate an owner if it does, certain general principles adopted in other cases seem, by analogy, to apply to a county. Supreme Court cases have consistently held that while a property owner has a common-law right of access to his or her property from an abutting public road, that right is subject to the right of the public to use the road for highway purposes. *Sweet et al. v. Irrigation Canal Co.*, 198 Or. 166 (1953); *Oregon Investment Co. v. Schrunk*, 242 Or. 63 (1965). If the interference of the abutting property owner’s access from his or her property to the street serves a legitimate highway purpose, the court has held the owner does not have a taking claim. *Oregon Investment Co.*, 242 Or. at 69-70; *Brand v. Multnomah County*, 38 Or. 79 (1990). If the interference does not serve a legitimate highway purpose, the court has held the owner does have a taking claim. *Sweet*, 198 Or. at 191. However, a denial of access at one point, that leaves reasonable access at an alternative point, does not result in a compensable taking because economically viable use remains. *Deupree v. Dept. of Transportation*, 173 Or. App. 623 (2001).

A possible exception occurs when the property owner is denied access at a specific location that has been retained by easement. *State v. Hansen*, 162 Or. App. 38 (1999). However, before a court can entertain a suit, the property owner must apply for any permit that might be available and give the agency a chance to act on the application. Also, in determining what constitutes reasonable access, it is important that ORS 374.309 (3) (a) and (b) be considered. ORS 374.309 (3) (a) states that the remaining access must be sufficient to allow the use of the property specified by the local comprehensive plan. ORS 374.309 (3) (b) notes that the type, number, size, and location of any approaches must be adequate to serve the type of traffic reasonably anticipated to enter and exit the property.

American Public Works Association, [One Call Systems International Directory and Excavator's Damage Prevention Guide](#), 32 pp. (2002)

Oregon Utility Notification Center, [Oregon Laws and Administrative Rules](#)

Section 10.540

Polk County, [General Provisions for Installation of Utilities Within Road Rights-of-Way and General Provisions of Construction of Road Approach to County Roads](#)

10.100 PREVENTING ROAD HAZARDS. Those with land adjacent to a public road are responsible to use and care for the land in a manner that does not damage a public road or create a road hazard. [ORS 368.251 to 368.281](#) prohibit creation of road hazards and provide procedures the county may follow to abate hazards. These procedures include issuance of an abatement order and a public hearing on abatement with notice given in accordance with the uniform notice provisions in ORS 368.401 to 368.426 to persons responsible for the hazard. ORS 368.990 establishes statutory penalties for violating road hazard statutes.

When the person ordered to abate the hazard does not or is unable to do so and a substantial risk of damage or injury exists, the county may take any reasonable action, including entry onto private land, to abate the hazard. The costs of abatement may then be assessed and charged to the person responsible for the road hazard.

Under [ORS 105.810](#) and 105.815, a person who, without authority, injures or severs any produce, tree or vegetation (including that within a road) is subject to treble damages, except that in certain cases the judgment will be double damages.

The 2012 session of the Legislature enacted legislation which exempts ODOT from obtaining a city or county permit prior to removing trees that potentially pose an immediate and substantial risk of damage or injury in any manner on a state highway (ORS 366.366).

10.110 STATUTES ON PREVENTING ROAD HAZARDS

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County Roads

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Chapter 105

Property Rights

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10.120 CITATIONS ON PREVENTING ROAD HAZARDS.

Donaca v. Curry County, 303 Or. 30, 734 P.2d 1339 (1987): The Oregon Supreme Court reversed the Court of Appeal's blanket holding that a county does not have a common law duty to maintain visibility at intersections of public and private roads. The Supreme Court ruled that whether a county is liable at common law for a motor vehicle accident allegedly caused by county's failure to control vegetation obstructing the view at an intersection should be determined according to general negligence law -- namely, whether county's act or omission caused a foreseeable kind of harm to an interest protected against that kind of negligent invasion, and whether the conduct creating the risk of that kind of harm was unreasonable under the circumstances.

NOTE: See section 2.525 on "Citations on Obligations and Liabilities," section 13.510 on "Tort Liability for Road Design" and section 14.120 on "Citations on Traffic Control Devices."

10.150 RESTRICTING POSTING OF SIGNS. Except as otherwise provided, ORS 368.942 prohibits posting of notices, signs or pictures on structures within county road right-of-way. Violations of this statute or of ORS 368.251 to 368.256 are punishable by fine or imprisonment under ORS 368.990. ORS 368.945 authorizes a county road official to remove unlawfully posted materials. ORS 368.955 and 368.960 prohibit posting signs on private property in view of a county road without consent of the property owner.

10.160 STATUTES ON RESTRICTING POSTING OF SIGNS

[Chapter 368](#)

County Roads

- 368.942 Posting notices, signs or pictures on structures within county road right of way prohibited**
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- 368.955 Posting notices, signs or pictures within view of county road on property of another without consent prohibited**
- 368.960 Authority of property owner to remove unlawfully posted matter**
- 368.990 Penalties**

10.200 PERMITS TO USE RIGHT-OF-WAY. [ORS 374.300 to 374.360](#) and ORS 368.056 require persons to obtain permission from the county to place or construct any thing or structure within the right-of-way of a county road or, if a gate or stock guard, within the right-of-way of any public road.

A county may issue permits for the use of and construction within rights-of-way and may reasonably regulate such use and construction for the protection of the road and the traveling public. Costs are the responsibility of the permittee. A person has the right to free use of a public road outside a city as the location of water, gas, electric or communication facilities, subject to county regulation of the use and issuance of a permit ([ORS 758.010](#))². The 2009 legislature added ORS 758.025 relating to the relocation of utility facilities in the right-of-way by requiring public bodies to coordinate with utilities in the planning of road projects that would require the utilities to relocate their facilities in the right-of-way in order to minimize or eliminate costs to the public body and the utilities. [ORS 552.438](#) grants authority to water improvement districts to construct works across or along a road only with the permission of the county governing body.

The 2003 legislature added counties to the access management provisions of ORS 374.310(3) along with ODOT providing that ORS 374.310 and 374.312 may not be applied so as to deny any property adjoining a road or highway reasonable access. In 2011, the legislature reinstated separate provisions for ODOT and counties by enacting ORS 374.309

² [Pacific N.W. Bell v. Multnomah County](#), 68 Or. App. 375, 681 P.2d 797 (1984), rev. den. 297 Or. 547 ruled that a county ordinance providing for imposition of permit fees for construction by utilities within right-of-way alongside county roads was invalid because it conflicts with ORS 758.010(1) and the “free of charge” language in the statute.

exempting county roads from the ODOT requirements and amended ORS 374.310 and 374.312 to apply only to ODOT. However, the new law retained the access management principle that ODOT and counties may not apply the law so as to deny any property adjoining a road or highway reasonable access and the statutory criteria for determining what is “reasonable.” The new law also directed counties to adopt rules and regulations for the issuance of permits for use of the rights-of-way of county roads. (Also see sections 10.000, 10.510 and 11.235.)

Following passage of the 2011 legislation on access management, ODOT adopted new administrative rules governing the procedures counties must follow to obtain a “Permit to Construct” a new public approach or modify an existing public approach on state highway right of way. The new procedure is set out in [OAR 734-051-1050](#).

10.210 STATUTES ON PERMITS TO USE RIGHT-OF-WAY

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Control of Access to Public Highways

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County Roads

368.056 Permit for gate construction on public road

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*Utility Rights of Way and Territory Allocation;
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758.010 Authority to construct lines and facilities; requirements and conditions

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recovery of costs**

[Chapter 552](#)

Water Improvement Districts

552.438 Construction on public land or right of way, or along watercourse

10.220 CITATIONS ON PERMITS TO USE RIGHT-OF-WAY

Klamath County v. Oregon Department of Transportation and BNSF Railway Company, 201 Or. App. 10, 116 P.3d 924 (2005): The Oregon Department of Transportation (ODOT) ordered the closing of a railroad grade crossing in Klamath County pursuant to a statute allowing for closure without county consent unless responsibility for the road was being transferred to the county. Another statute established a public policy in favor of eliminating railroad grade crossings wherever possible, as long as it is required by the “public safety, necessity, convenience and general welfare.” The county argued that statutory authority did not support ODOT’s decision to close the crossing without county consent and that the closure was not supported by substantial evidence that public health and safety required the closure. The Court of Appeals held that substantial evidence did exist that the public health and safety required closure, as there was evidence of frequent and increasing interference with vehicular traffic from trains and switching movements, accompanying dangers from frustrated drivers, and the existence of a convenient and safe alternative route which would reduce the risk of accidents. The court also held that statutory authority allowed ODOT to close the railroad crossing without the county’s approval.

Deupree v. ODOT, 180 Or. App. 395, 43 P.3d 1122 (2002): During a project to

widen Highway 62 and construct a raised median, ODOT issued notices of intent to cancel two approach road permits through which the petitioners enjoyed direct access to the highway. ODOT had authority under [ORS 374.320](#) to cancel a permit upon the failure of an applicant to comply with the permit's terms and conditions, including the requirement for a permit to be obtained when there is a change in use of an approach road. One of the roads in question here had undergone such a change. The road was previously used to reach a grocery store, but the store had since ceased operation.

Concerning the second approach road, ODOT had the authority under the permit to remove the approach road during a widening or reconstruction. In authorizing a removal, the permit effectively authorized a cancellation of the permit in those circumstances.

Foster Auto Parts, Inc. v. City of Portland, 171 Or. App. 278, 15 P.3d 573 (2000): The Court of Appeals held that a failure to secure a permit for a driveway does not prevent the acquisition of prescriptive rights. Lack of a permit does not conclusively establish that a driveway constitutes a public nuisance.

Pacific Western Company and Lowell Patton v. Lincoln County, 166 Or. App. 484, 998 P.2d 798 (2000): Patton owned a large parcel of land west of Highway 101 and east of the Pacific Ocean beach in Lincoln County. In August 1993, Patton partitioned (without the county's approval) a one-acre parcel in the northwest corner of the lot. He executed a sale to Pacific Western, of which he was the sole owner, and began developing the lot as a recreational vehicle park. In 1995, five nearby landowners of property filed a petition with the Lincoln County Board of Commissioners to initiate proceedings to vacate a portion of NW Sandy Drive, the only public roadway that provided access to the partitioned lot. The board approved the vacation, and the trial court agreed, stating that under [ORS 368.331](#), the county was not obligated to obtain Patton's consent. The Court of Appeals reversed, holding that the trial court had misconstrued the statute and that consent is required when vacation would deprive an owner of access necessary for the exercise of a recorded property right. The fact that Patton did not originally partition the lot properly does not defeat his appeal because he did properly file the bargain and sale deed, making Pacific Western an owner of a recorded property right.

State of Oregon, By and Through its Department of Transportation v. Hanson, 162 Or. App. 38, 987 P.2d 538 (1999): The Hansons (Plaintiffs) owned property adjacent to Highway 20 in Bend. When they acquired the property in 1990, they acquired with it a deeded easement that allowed access to Highway 20 along a specifically reserved path. In 1992, the state brought action to condemn a portion of the plaintiffs' property adjacent to the highway as part of a highway widening project. The state also denied the plaintiffs' application for a permit for access at the location reserved. The plaintiffs' asserted counterclaims for breach of contract and inverse condemnation. The trial court held in favor of the plaintiffs'. The state argued that it is entitled to restrict access to a public highway without compensation in the interests of public safety. On appeal, the Oregon Court of Appeals affirmed the trial court, stating that while ordinarily a denial of access at one location is not compensable as long as there remains access at another location, the situation here was different. In this case, the Hansons reserved not a general common-law right of access, but an easement of access to a specific highway at a specific location. When the state denied them access at that location, there was a taking of precisely what had been reserved in the deed. Therefore, the trial court was correct in awarding judgment and compensation to the Hansons.

US West Communications, Inc. v. Jackson County, 130 OR. App. 316 881 P.2d

164 (1994): The Supreme Court upheld summary judgment against a consortium of utilities that challenged a Jackson County ordinance requiring utilities to provide or pay for photographs of preconstruction sites before they could obtain permits to work in county rights-of-way. Because no fee, price or other pecuniary liability was imposed, the requirement did not constitute a “charge” in violation of [ORS 758.010\(1\)](#).

Pacific N.W. Bell v. Multnomah County, 68 Or. App. 375, 681 P.2d 797 (1984) rev. den. 297 Or. 547: The County enacted an ordinance providing for imposition of permit fees for construction by utilities within right-of-way alongside county roads. The County contended the fee was imposed merely to defray associated administrative costs was therefore permissible. The Court of Appeals held that the ordinance was invalid because it violated the “free of any charge” provision of ORS 758.010(1).

Sweet v. Irrigation Canal Co., 198 Or. 166, 254 P.2d 700 (1973): Plaintiff brought suit as an abutting owner to obtain a decree enjoining maintenance by Irrigation Canal Co. of an irrigation ditch in a county road, believing it to be an open ditch which interfered with the plaintiffs’ right of ingress and egress to and from their land. The lower court’s found that the owner did not abut a county road and thus lacked standing to bring the action. On appeal, the owner argued that the road was established by court proceedings and extended to the owner’s fence line and that the owner’s deed called for the road as one of the boundaries. The company countered that the ditch was located between the road and the owner’s property line. The Oregon Supreme Court reversed the lower court, stating that the evidence showed that the ditch was in the county road, and that the plaintiffs’ land adjoined the county road. The plaintiffs’ were therefore entitled to an injunction enjoining Irrigation Canal Co. from maintaining the irrigation ditch in the county road if it would interfere with the plaintiffs’ right of ingress and egress from their land. An abutting landowner’s entitlement to full use of a public easement is a property right and may not be taken without just compensation.

36 Or. Atty. Gen. Op. 131 (1972): Home rule counties have the authority to levy an excise tax on the gross revenues of utilities derived from the operations within the county.

10.230 FOREST ROADS. [ORS 376.305 to 376.390](#) provide that any logging operator, after applying to the county having jurisdiction over a forest road, may become a forest road contractor and assume responsibility for the improvement or maintenance of the forest road described in the application. A forest road is any county road or local access road outside a city that leads to timber. Before beginning to work on a contract under ORS 376.305 to 376.390, the forest road contractor is required to be bonded and insured.

The contract between the county and the logging operator must describe the work to be done. The county road official is to supervise all work done under a forest road contract. Once the work is completed, other logging operators may use the forest road under an approved cost-sharing arrangement. The general public retains the right to use all contract forest roads. (For a sample forest road contract, bond and insurance, click here to view a [Lincoln County forest road contract](#).)

10.240 STATUTES ON FOREST ROADS

[Chapter 376](#)

Ways of Necessity; Special Ways; Pedestrian Malls

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10.250 LOGS ON ROAD. [ORS 98.650 to 98.654](#) relate to trees, logs, poles or pilings deposited or transported on county roads. No person is to leave trees, logs or poles on a county road right-of-way unless instructed to do so by a weighmaster. If these items are left on the right-of-way, they must be removed within 30 days or title to them passes to the county. These statutory provisions do not apply to trees, logs or poles allowed to remain upon the right-of-way by permit or by the provisions of [ORS 758.010 to 758.020](#) or to rights-of-way of county roads not maintained for public travel.

Dragging or permitting one's vehicle to be used to drag these items or anything else upon a "public road" is prohibited under [ORS 818.320](#) unless exempted under ORS 818.330 by issuance of an \$8 permit under ORS 818.240 and 818.270. Violators are subject to civil

liability under ORS 818.410 and have committed a Class C traffic infraction.

10.260 STATUTES ON LOGS ON ROADS

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- 818.320 Dragging objects on highway; civil liability; penalty**
- 818.330 Exemptions from prohibition on dragging objects on highway**

10.300 RESTRICTIONS ON THROUGHWAY ACCESS. [ORS 374.420 to 374.430](#) relate to access rights of abutting property owners to throughways. No right of access is allowed unless granted by the county. The county may also prosecute those who enter upon or depart from a throughway in an unauthorized manner.

10.310 STATUTES ON RESTRICTIONS ON THROUGHWAY ACCESS

[Chapter 374](#)

Control of Access to Public Highways

- 374.420 County throughways; rights of abutting property owners**
- 374.425 County court to prescribe access rights of abutting property**
- 374.430 Action to prevent entering or leaving county roads in unauthorized manner**

10.320 CITATIONS ON RESTRICTIONS ON THROUGHWAY ACCESS

State by & through ODOT v. Dupree, 154 Or. App. 181, P.2d 232 (1998): A portion of the defendant's property, including a restaurant operated by defendant, was condemned by the State so that Highway 30 could be widened from two to four lanes. After the widening, the defendant's access to the highway was reduced from two access points to one. The defendant asked for increased compensation, arguing that this limited access diminished the value of the property as a restaurant.

The only fact that suggested the defendant's remaining property could not be used as a restaurant was the change in access. Because the change in defendant's access to her property was accompanied by the condemnation of a portion of it, the change in access had no effect on the valuation of the property for compensation. A restriction on access to an abutting highway imposed for regulatory purposes to the use of the highway generally does not result in a compensable taking of access rights under Article I, section 18 of the Oregon Constitution. The Court of Appeals provided a footnote explaining that ORS 374.420 and the holding in *Douglas County* (cited below) only apply to county roads, not state highways.

Curran v. State by & through ODOT, 151 Or. App. 781, 951 P.2d 183 (1997): The Currans claimed that ODOT deprived them of all reasonable vehicular access from a state highway to a parcel of their real property that abutted the highway. In order to comply with federal highway regulations, ODOT placed a guardrail along a curve by the entrance to the approach road, blocking that road. Rather than apply to ODOT for a permit for a new place of access, the Currans brought an action for inverse condemnation. The Currans argued that a taking of their property had occurred by the actions of ODOT in regulating its own property for which ODOT was required to pay compensation. Because the Currans did not request a permit for access at some other location on the property, there was no way to determine if ODOT had deprived the plaintiff of all reasonable vehicular access. ODOT was therefore properly entitled to judgment as a matter of law because the plaintiff's claim was unripe.

Douglas County v. Briggs, 286 Or. 151, 593 P.2d 1115 (1979): The Supreme Court found that the county must compensate the defendant for loss of access from defendant's property to an established abutting county road which had been converted by the county into a "throughway" pursuant to ORS 374.420(1).

10.500 CONTROL OF ROAD-DAMAGING CONDITIONS ON PRIVATE PROPERTY. The county has a concern with matters that can cause damage to a road or create conditions in the road right-of-way that might be damaging to others. Property adjacent to a public road can be the source of hazards. Some of the common problems are as follows:

- A stream or other drainage way becomes blocked causing water to overflow onto the road.
- Water is diverted or sprayed from the private property onto the road.

- A tree or structure falls onto the road from adjacent property.

[ORS 368.251](#) and 368.256 prohibit a person who owns or is in charge of land from creating or permitting conditions on the land that is damaging or a hazard to the road. As a practical matter, to effectively implement this legislation, county officials need to watch for hazardous and damaging conditions and seek their correction. Informal contact may take care of many cases, but ORS 368.261 to 368.281 provide procedures to act and to recover county costs if the county must abate a hazardous condition.

10.510 CONTROL OF ACCESS TO THE RIGHT-OF-WAY³. The common law history of roads and state legislation grant owners of property abutting a road a right of access to the right-of-way. ORS Chapter 374 addresses the control of access to public roads. The legislature has modified this section of law numerous times over the past fifty years with the most recent changes occurring in 2003, 2010 and 2011. The 2011 legislature modified this section of law by enacting [ORS 374.309](#) and amended ORS 374.310 and 374.312 to provide that ODOT and counties may not apply the law so as to deny any property adjoining a road or highway reasonable access. These provisions also set out criteria for determining what is “reasonable.” The new law requires counties to adopt rules and regulations for the issuance of permits for use of the rights-of-way of county roads. However, as indicated in ORS 374.420 to 374.430, rights of access may be limited by a county when the county governing body adopts a resolution designating the county road involved as a throughway. When access to property is completely shut off, as in the case of a throughway, the county must provide just compensation to the property owner for the taking of a property right.

However, the county may, by ordinance, control the location of and the manner in which access is installed. Standards pertaining to driveway widths, curbing and grading may be included in county regulations.

10.520 CONTROL OF USE OF RIGHT-OF-WAY. ORS 374.305 expressly requires a person to obtain written permission from the county before installing anything in a county road right-of-way. This requirement has been in effect since 1949.

Once a county has adopted regulations regarding the manner in which a person may install a driveway approach, pipe line, farm equipment crossing, or other things in a county road, the county may remove or correct an installation made without a permit and recover the cost from the person responsible. The statutory right-of-way permit requirement applies to county roads. A county may also want to enact an ordinance to require permits for some or all use of local access right-of-way. Since the intended meaning of the phrase "county road" in the 1949 legislation that established the permit requirement has not been researched, the safest practice would be to enact an ordinance to establish the level of regulation desired for roads that are not on the recognized county road system.

Adopted regulations could also establish fees to be paid for permits. The authority to regulate normally includes the authority to charge reasonable fees that are consistent with the cost of enforcing the regulations. The costs a county may have in enforcing a right-of-

³ See the footnote to section 10.000 on page 10-2 for a discussion of a county’s authority to take away access, and whether it must compensate an owner if it does.

way use regulation include costs of inspections and staff studies as well as the cost of permit issuance. Some counties are charging permit fees, although in some cases the amount is considerably below county costs. While there is some justification for charging fees that recover costs from those who create a county expense, the main purpose of a permit system is to protect the right-of-way and coordinate its use. Practices that encourage persons to check before encroaching the right-of-way may be important to minimizing county costs.

10.525 COUNTY ORDINANCE ON USE OF RIGHT-OF-WAY. [Click here](#) for a sample comprehensive ordinance for control of the right-of-way that extends permit requirements to local access roads. Obviously, a county should, with county counsel review, modify and update such an ordinance appropriately to fit the particular circumstances of that county.

10.530 PUBLIC UTILITIES AND EXCAVATIONS. Public utilities are a major user of road right-of-way. They are subject to the controls described in section 10.520. [ORS 758.010](#) states in part that those responsible for water, gas, electric and communication source lines may use road right-of-way "free of charge." See [Pacific N.W. Bell v. Multnomah County](#) in section 10.220.

Utilities with underground facilities have a substantial interest in satisfactory control of excavation in road right-of-way. Any person excavating needs to know the location of other underground facilities so they can be avoided. A county's permit system can be a valuable aid in reducing possible damage from excavation.

The laws on regulations for excavation are covered in [ORS 757.542 through 757.562](#). These apply both to utilities working on their own facilities as well as anyone excavating in the area of underground utilities.

Additionally, there are administrative rules that require that utility companies be contacted before excavation begins in [OAR 952-001-0010 through 952-001-0090](#). These rules and the laws referenced above on regulating excavation include a requirement that all underground utility facility operators subscribe to the [Oregon Utility Notification Center](#) (OUNC) which provides a statewide "One-Call" system. The OUNC is the state agency that administers the statewide "One-Call" system. The Board of Directors is comprised of 20 Governor-appointed volunteers, one of which is a county representative, that administer the One-Call Center and carry out a variety of public relations, outreach, and educational efforts. The OUNC is often, mistakenly, called the "One-Call Center". The OUNC has contracted with a private company, One Call Concepts, Inc., to run the "One-Call Center" under Board's direction. Information on the program can be accessed at the [OUNC's website](#).

10.540 SAMPLE DOCUMENTS. The following documents are from those used by Jackson County to administer requests to engage in construction within the road right-of-way. Another county using the forms should, with county counsel review, modify and update such documents appropriately to fit the particular circumstances of that county. For example, "public works director" may be an inappropriate title in some counties. Included in the Sample Documents are the Utility Permit Regulations (see Section 10.545) which include details on proper backfilling and Photo Requirements for Utility Permits (see Section 10.546).

SAMPLE DOCUMENTS

- [10.541](#) **APPLICATION FOR FACILITY PERMIT**
- [10.542](#) **DRIVEWAY/ROAD APPROACH PERMIT APPLICATION**
- [10.543](#) **ENCROACHMENT PERMIT EXAMPLE**
- [10.544](#) **ROAD IMPROVEMENT PERMIT APPLICATION**
- [10.545](#) **UTILITY PERMIT REGULATIONS**
- [10.546](#) **PHOTO REQUIREMENT FOR UTILITY PERMITS**

10.550 GATES AND STOCK GUARDS. While the public is entitled to the full and free use of a public road right-of-way, the county governing body with jurisdiction over a public road may authorize the placing of gates or stock guards within the road right-of-way. The county may also place whatever restrictions it wishes upon the exercise of this authority, [ORS 368.056](#). When a stock guard is necessary to control livestock, the stock guard is constructed across the roadway with any necessary gates to the side of the roadway to allow movement of animal herds. Gateways are a type of public road and are normally related to the statutes dealing with ways of necessity, [ORS 376.150 through 376.200](#). See chapter 9.

CHAPTER 11: INTERGOVERNMENTAL RELATIONS

(This chapter was revised and updated in 2008 and updated in 2010, 2012, 2013 and 2014)

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CHAPTER 11: INTERGOVERNMENTAL RELATIONS

11.000 INTRODUCTION. Intergovernmental transfers are the source of over half of all county road funds in Oregon. Counties, therefore, have reason to increase interaction between governmental entities, if only for financial reasons. This chapter serves to assist counties in understanding the requirements and procedures of other government levels and agencies so they may qualify for permits, comply with applicable law, and develop working agreements, as well as gain financial aid.

Intergovernmental relations are always going to be more difficult than the more structured relations within a single unit of government. The parties to an intergovernmental relation will always be less clear about the working methods of other agencies than they are about their own. The natural tendency is to mistrust and blame shortcomings in the relation on the other party. Any intergovernmental relation requires the efforts of both parties in order to be productive. Much of the relation stems from personal contact among the affected officials. This chapter provides introductory information on the roles and requirements of agencies at all levels of government with which counties are likely to interact in conducting road work. Addresses, telephone numbers, and references for further information are also included.

Other chapters contain related materials, including the following:

- Intergovernmental roles in transportation planning -- chapter 2A.
- County authorization of another entity's facilities (utilities, sewers, etc.) within road right-of-way -- chapter 10.
- Coordination in case of excavation within the right-of-way -- chapter 10.
- Transfer of a road within a city to or from city jurisdiction -- chapter 8.

This manual does not include all of the statutory material on intergovernmental cooperation that is expressed in laws directed at the other party. However, various relations between a county and another unit of government are described throughout the manual.

11.015 SPECIAL REFERENCES. The following are sources outside this manual that are particularly relevant to the sections of this chapter, as noted.

Section 11.020

National Association of County Engineers, [Action Guide Series](#)

Section 11.105

Bureau of Governmental Research and Service, [Current and Emerging Roles for COGs in Oregon](#) (1988)

Oregon Transportation Commission, [Policy on Formation and Operation of Area Commissions on Transportation \(ACTs\)](#) (2003)

Section 11.200

Oregon Department of Transportation, [Highway Fiscal and Statistical Data](#) (1998)

Oregon Department of Transportation, [Oregon Mileage Report](#) (published annually)

Oregon Department of Transportation, [Oregon State Highway VMT by County](#)

Section 11.205

Oregon Department of Transportation, [Standard Specifications for Construction](#)

Section 11.320

Oregon Department of Transportation, [Statewide Transportation Improvement Program \(STIP\)](#)

Section 11.345

Oregon Department of Transportation, [Federal-Aid Highway Program Stewardship and Oversight Agreement](#), (April 2010)

Section 11.355

Oregon Department of Transportation, [Local Agency Guidelines \(LAG Manual\)](#)

Section 11.390

Oregon Department of Transportation, [Statewide Programs Unit, Transportation Funding Programs Available to Cities, Counties, and Other Agencies](#)

Oregon Department of Transportation, [ODOT Two-Tiered Selection and Work Assignment Procedure](#) and [Quick Reference Guide & Checklist](#)

Section 11.450

Oregon Department of Transportation, [2010 Highway Safety Program Guide](#)

Section 11.460

Oregon Department of Transportation, [Oregon Bicycle and Pedestrian Plan](#)

Section 11.535

Bureau of Governmental Research and Service, University of Oregon, [Model Land Development Ordinance](#)

Section 11.600

Association of Oregon Counties, [Oregon County Road Needs Report](#) (November 2006)

Section 11.620

Deschutes County, [Central Oregon Public Works Partnership \(COPWP\)](#) (2012)

Marion County, [Managing Oregon Resources Efficiently \(MORE\)](#) (2013)

Section 11.800

Office of Management and Budget, [Catalog of Federal Domestic Assistance](#) (Washington, D.C.; USGPO)

Section 11.830

Bureau of Governmental Research and Service, University of Oregon, [The O&C Lands](#) (1981)

Section 11.845

Rural Development (USDA), [Community Facility Loans](#)

Section 11.850

U.S. Army Corps of Engineers, [U.S. Army Corps of Engineers Permit Program: A Guide for Applicants](#)

Section 11.865

U.S. Coast Guard, [The Bridge Permit Application Guide](#)

Section 11.880

Federal Emergency Management Agency, [Disaster Assistance: A Guide to Recovery Programs](#)

11.020 DEALING WITH OTHER GOVERNMENTS. Local government officials deal constantly with other local governments, state agencies, and federal agencies on administrative matters of mutual concern. When special problems arise, including problems that indicate the need for policy or program revision by another government at the same or a different level, local government officials may need to establish independent contact with legislative committees or headquarters offices of state or federal agencies. They may utilize the services of several organizations which have special expertise in intergovernmental relations in making these independent contacts.

Local Government Associations

The [League of Oregon Cities](#) and the [Association of Oregon Counties](#) are readily available to city and county officials for information and assistance on intergovernmental matters. These organizations, along with the Oregon School Boards Association, maintain full-time staffs at a joint headquarters building known as the Local Government Center (1201 Court St

NE, Salem). The organizations are supported primarily by dues paid by member cities and counties.

Association of Oregon Counties. The AOC was organized in 1906 to provide exchange of information and development of consensus on matters affecting county government. It is governed by a thirty-seven-member board of directors. The board appoints and oversees the activities of the executive director who, in turn, appoints and supervises the staff. The AOC has an active legislative committee, plus several active functional committees. Every county judge or commissioner serves on at least one committee unless he or she chooses not to serve. Association policy is formulated through the committees and adopted by the entire membership at the annual convention in November.

Giving special attention to road matters, the Oregon Association of County Engineers and Surveyors is one of the organizations affiliated with the AOC. One of its functions is to advise the AOC committee involved with transportation.

National Organizations. Three national organizations serve city and county interests in federal government affairs. With headquarters in Washington, D.C., the National League of Cities (NLC), the U.S. Conference of Mayors (USCM) and the [National Association of Counties](#) (NACo) are funded through dues paid by individual cities and counties and, in some cases, by state organizations such as AOC and LOC. They also receive federal grants for a portion of their revenue. They hold annual conventions, mid-year legislative conferences, and other national and regional meetings of many kinds, and they keep cities and counties informed of federal affairs through weekly newspapers and other publications.

At the national level, the [National Association of County Engineers](#) (NACE), which is affiliated with the National Association of Counties, provides a vehicle for national cooperation among those responsible for county facilities such as roads. A notable resource available through NACE is its [Action Guide Series](#), which provides organizational and technical information based on nationwide practices.

11.100 STATUTORY AUTHORITY. In contrast to most other chapters, the statutes duplicated in this chapter are scattered through the chapter in conjunction with each specific topic. Although a state law may erase technical impediments to cooperation, successful results depend on attitudes and personal efforts of all parties involved.

11.105 INTERGOVERNMENTAL COOPERATION GENERALLY: ORS 190.003 to 190.150.

Interlocal Contracts and Agreements

Most interaction among local governments is carried out under formal contracts or agreements and informal cooperative arrangements in the provision of specific services or facilities by two or more units. Combinations may be between cities and counties, neighboring counties, counties and school districts or special districts, etc.

Extent of Local Intergovernmental Cooperation. Inter-local service contracts and agreements are very common. A 1972 national survey in which nearly 2,400 municipalities

participated showed that more than 60 percent of the responding cities received some services from other governments and more than 40 percent provided services to other governments. These findings seem consistent with practices in Oregon.

Statutory Basis. Contracts and arrangements are authorized under Oregon laws which permit a unit of local government to enter into an agreement with any other unit or units of local government for the performance of any or all functions and activities that each party to the agreement has authority to perform. See [ORS 190.003 to 190.150](#).

A unit of local government may also cooperate with a unit of state or federal government or with an American Indian tribe or agency. Cooperation with an agency of another state is also authorized after being submitted to the Attorney General for legal review.

Public Works Mutual Aid Agreement. Most Oregon local governments are parties with ODOT to the [Oregon Public Works Emergency Response Cooperative Assistance Agreement](#). Public works agencies in Oregon may sign the agreement or cancel their participation as they wish. ODOT maintains the [list](#) of all parties to the agreement and sends an updates list to all parties. The agreement:

- Enables public works agencies to support each other during an emergency.
- Provides the mechanism for immediate response to the requesting agency when the responding agency determines it can provide the needed resources and expertise.
- Sets up the documentation needed to seek maximum reimbursement possible from appropriate federal agencies.

As one of the State of Oregon’s designated emergency response agencies, ODOT has an important supporting role in emergency response and disaster recovery. The Emergency Response Program of ODOT’s Office of Maintenance and Operations maintains a website with helpful [information and publications](#) on road maintenance, operation and emergency preparedness including ODOT’s Routine Road Maintenance Guide (“[Blue Book](#)” to Best Maintenance Practices).

Intrastate Mutual Assistance Compact. The 2007 legislature enacted the Intrastate Mutual Assistance Compact ([ORS 402.200 to 402.240](#)) establishing a statewide mutual aid agreement that streamlines the procedure for a local government to request assistance from other jurisdictions by:

- Specifying that requests for assistance may be verbal or in writing;
- Establishing that employees of the responding agency are agents of the requesting agency;
- Requiring the requesting agency to indemnify the employees of the responding agencies to the same extent they indemnify their own employees; and
- Establishing a procedure for settling reimbursement disputes.

The new authority does not preempt existing mutual aid agreements, nor does it mandate that a local government respond to the request of another jurisdiction. The legislation is to expedite multi-agency assistance during a time of crisis.

Intergovernmental Agreements for Roads and Streets. A 1995 local government summit involving the Governor and City and County Officials resulted in agreement on

principles for governmental partnerships of all sorts. The basic tenant of those principles is that the citizens of Oregon are better served when governments work together. Highway and road maintenance cooperative agreements are one form of governments working together to be more effective and efficient in delivering a better transportation product to the public. Agreements range from informal agreements for sharing or trading specific tasks to formal long term agreements that merge responsibilities for road and highway maintenance. The agreements could be as simple as more effectively utilizing public equipment to as complex as crews from each entity working together to maintain the entire local highway and road system. Agreements may be for sharing buildings, land, equipment, personnel or materials. Most counties have joint and cooperative programs with some or all of their cities, other counties, or the state for a wide range of road-related activities.

Some examples of agreements include:

- County expenditures on county roads located inside cities
- County transfer of funds to cities for expenditure on city streets
- Joint projects, pooling resources of both city and county on a project basis
- Washington County's "Major Streets Transportation Improvement Program" (MSTIP) under which a portion of the county's property tax levy funds projects both inside and outside cities that are planned and programmed jointly by the county and the cities.
- A five-year agreement under which Marion County maintains the city of Keizer's streets. The city compensates the county at unit costs for labor, equipment and materials. Under another agreement, Marion County and Salem perform maintenance services for each other upon request, keeping records of direct costs incurred by each party with an annual "balancing" cash payment equal to the difference.
- A general agreement to share use of equipment owned by Polk County and the cities of Monmouth, Independence and Dallas.
- An agreement under which Jackson County maintains and services state Transportation Department equipment and vehicles at its county shops in White City, and a separate agreement under which the County provides motor pool services to state vehicles owned by the state Department of Administrative Services.
- Another Jackson County agreement under which the County provides mowing, weed control and other landscape maintenance services to the Phoenix-Talent School District.
- A number of cities and counties and ODOT have signed the Oregon Public Works Emergency Response Cooperative Assistance Agreement which provides for reciprocal emergency aid and resources to supplement agency personnel in the event of an emergency. The agency providing assistance is compensated for workers, equipment and materials that are used in the emergency.

Intergovernmental Councils

Early Development. Contracts and agreements of the type just described go back to the 1920s and 1930s in Oregon. Shortly after World War II several areawide councils were established. Members were the cities, counties, and sometimes special districts in the same general urban or other substate community. These councils were set up voluntarily for the purposes of planning and coordination of functions and pooling of resources to employ personnel or acquire property or equipment the individual units could not afford separately.

Federal and State Support. Federal agencies were quick to realize the potentials of intergovernmental councils for the purpose of areawide planning with regard to federal grants to fund specific projects such as highways, sewer and water systems, etc. Several federal agencies began to require review of federal grant applications by areawide planning agencies during the late 1950s and early 1960s, and the Intergovernmental Cooperation Act of 1968 provided a statutory basis for requiring areawide or regional planning council review of federal grant proposals. The state government has also encouraged the formation of "councils of governments" for the purpose of coordinating local government activities with state agency planning and field operations.

COGs, MPOs and Other Regional Planning Agencies Today. Councils of governments served 31 of Oregon's 36 counties in 1988, including three counties in the Portland Metropolitan Service District (Metro), which acts as a COG and performs other regional functions.

The councils of governments/intergovernmental councils in Oregon today differ widely in organizational features and functions. Except for Metro, membership in councils of governments is a matter of choice for each local government unit, and several of the COGs lack membership of one or more of the eligible units in their areas.

A significant portion of the state's transportation investment is in urban areas where transportation system improvements are planned and programmed by Metropolitan Planning Organizations (MPOs). An MPO is a federally-designated transportation planning body for an urbanized area with a resident population over 50,000. The MPO is responsible for developing long-range transportation plans for that area. Oregon currently has eight MPOs¹. MPOs have two important responsibilities. They develop long-range plans for the metropolitan area that are parallel in scope and scale to a transportation system plan, but must adhere to strict federal rules about fiscal limitations on planned improvements and, in some areas, address special air quality regulations. Second, the MPOs decide on system investment priorities by programming the projects to fund in the next four years, creating a local transportation improvement program.

Area Commissions on Transportation (ACTs) The Oregon Transportation Commission (OTC) provides opportunity for local citizen involvement in ODOT's decision-making through regionally based transportation advisory commissions known as Area Commissions on Transportation (ACT). Each ACT identifies the area to include, proposes how they will operate and receives a charter from the OTC. The ACTs advise the OTC on all aspects of

¹ Two Oregon cities, Milton-Freewater and Rainer, are part of bi-state MPOs with the Walla Walla Valley MPO and the Kelso-Longview-Rainer MPO of Washington State respectively.

transportation and consider regional and local transportation issues if they affect the state system. An ACT plays a key advisory role in the development of the Statewide Transportation Improvement Program.

11.110 STATUTES ON INTERGOVERNMENTAL COOPERATION

Chapter 190

Intergovernmental Cooperation Generally

- 190.003** **Definitions for ORS 190.003 to 190.130**
- 190.007** **Policy; construction**
- 190.010** **Authority of local governments to make intergovernmental agreement**
- 190.020** **Contents of agreement**
- 190.030** **Effect of agreement**
- 190.050** **Fees for geographic data; uses**
- 190.070** **Agreement changing service responsibilities requires changes in tax coordination resulting from change**
- 190.080** **Powers of intergovernmental entity created by intergovernmental agreement; limits; debts of entity are debts of parties to agreement; procedure for distribution of assets; rules**
- 190.083** **County agreements for transportation facilities**
- 190.085** **Ordinance ratifying intergovernmental agreement creating entity**
- 190.110** **Authority of units of local government and state agencies to cooperate; agreements with American Indian tribes; exclusion of conditions for public contracts**
- 190.112** **Agreements with United States to perform security functions**
- 190.115** **Summaries of agreements of state agencies; contents**
- 190.118** **Index of summaries**

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- 190.125** **Agreements to deliver water; joint board of control**

190.130 Effect of ORS 190.12

190.150 Agreements under federal Watershed Protection and Flood Prevention Act

Chapter 402

*Emergency Mutual Assistance
Generally*

INTRASTATE MUTUAL ASSISTANCE COMPACT

402.200 Legislative findings

402.205 Definitions for ORS 402.200 to 402.240

402.210 Local government mutual assistance compact

402.215 Request for assistance

402.220 Resource sharing; procedures and protocols

402.225 Credentials of employee providing assistance

402.230 Reimbursement for assistance; disputes

402.235 Applicable benefits for injuries to employee providing assistance

402.240 Indemnification of employee providing assistance

11.120 CITATIONS ON INTERGOVERNMENTAL COOPERATION

39 Or. Att'y Gen. Op. 549 (1979): ORS 190.110 generally authorizes the county to contract with the state to engineer, let bids and supervise improvements to be made on county roads. This general authority is augmented by more specific statutes such as ORS 366.775. (See 11.200 for further information on county-state cooperation.)(Note: ORS 366.775 was renumbered [ORS 366.576](#) in 2003)

38 Or. Att'y Gen. Op. 2045 (1978): Under ORS 190.010, a county and city may enter into an agreement for performance of a function or activity that only one of the parties is authorized to perform. However, such an agreement may not provide for payment by one unit of government for functions to be performed by the other unless the functions are a proper purpose of the paying governments.

27 Or. Att'y Gen. Op. 156 (1955): A county may cooperate with a city to construct or permit the construction of sidewalks on a county road right-of-way within the city. Such construction does not violate minimum road width requirements of ORS 368.415. (Note: ORS 368.415 was renumbered [ORS 368.041](#) in 1981)

11.130 GOVERNOR’S INTERGOVERNMENTAL/REGIONAL SOLUTIONS OFFICE. The office of Intergovernmental/Regional Solutions in the Governor's office is a valuable asset for county officials. The office of Intergovernmental Relations was originally created in the late 1960s to serve as liaison between the Governor and local government officials. The office has provided an important communications link between counties and the Governor. Over the past several decades the various directors of the office have been regular participants in AOC meetings and conferences.

At the onset of his administration, Governor Kulongoski determined that he wanted to create a more systemic partnership with counties and began a series of outreach efforts designed to enhance greater economic development partnerships/opportunities between counties and the state. In doing so, he brought the Economic Revitalization Team in under the auspice of Intergovernmental Relations and established a unique level of communication between the state and its local partners.

In 2008 the office in addition to its ongoing role as an advocate for local government in the Governor's office assumed the responsibilities of the Governor's Office of Rural Policy. The Office of Rural Policy was created by executive order (Executive Order No. 04-04) to focus on the developing policies that address the unique challenges faced by rural Oregon. Due to lack of funding from the state legislature, the office was closed in April 2008 and responsibilities transferred to the Office of Intergovernmental Relations.

When Governor Kitzhaber took office in 2011, he expanded the relationship with counties and initiated the Regional Solutions problem-solving concept, an innovative, collaborative approach to community and economic development in Oregon. The state, in partnership with public, private and civic interests, established five Regional Solutions Centers (RSCs) throughout Oregon. Each is located in an institution of higher education to serve and support the unique economic and community develop needs of the different regions of the state. Each Regional Solutions Center is led by a Regional Solutions Coordinator, supported by an Advisory Committee of local stakeholders, and staffed by a Regional Solutions Team comprised of staff from five state agencies. Stakeholder engagement is integrated into the organizational framework of Regional Solutions Centers through a Regional Advisory Committees. These are comprised of local business, nonprofit, elected, and higher education leaders. Regional priorities are set by the Advisory Committees and the priorities are revisited and revised at least annually.

The office address of the Director of Intergovernmental/Regional Solutions is State Capitol, Room 167, 900 Court Street, N.E., Salem, OR 97301-4047. The telephone number is (503) 378-5539.

11.140 PARTICIPATION OF THE DEPARTMENT OF ADMINISTRATIVE SERVICES: ORS 190.210 to 190.250

[ORS 190.210 to 190.220](#): Authorize the Oregon Department of Administrative Services (DAS) to participate with local governments in developing and funding local planning for services that are supported or utilized by state agencies.

ORS 190.240 to 190.250: Permit any state agency to furnish services requested by the

federal government or a city, county or other political subdivision in Oregon if the services are similar to ones provided to other state agencies; also permit the Oregon Department of Administrative Services to provide centralized accounting, data processing, data recording and storing, and other similar services to other agencies. The cost of the services shall be charged.

The fact that ORS 190.240 requires state agencies to charge for services does not nullify more specific provisions such as those in [ORS 366.155](#) obligating the state Department of Transportation to provide certain assistance without charge. See 11.215 and 11.220.

11.150 ADVANCE INTERGOVERNMENTAL REVENUE ESTIMATES. Certain intergovernmental transfer payments are highly consistent, follow predictable trends, and are easily estimated; federal-aid payments are an example. The county can usually estimate these based on past receipts and the ODOT-AOC-League of Oregon Cities agreement. See section 11.400. The estimates can be confirmed by the Oregon Department of Transportation when Congress passes the highway-aid appropriation bill.

Some categories of federal and state aid are completely dependent on economic activity in the state and can vary greatly. Transfer payments to Oregon counties include:

- (1) Distribution of motor vehicle and operator revenue payments to counties as provided in ORS 366.739 to 366.774. These are provided monthly by ODOT (available online from the ODOT [Financial Services Branch](#)). ODOT also maintains a [forecast of city and county payments](#). Additionally, the County Road Program staff (see sections 11.020 and 11.620) typically sends an email to county road officials whenever ODOT updates their forecast of State Highway Funds converted to each county's allocation.
- (2) The County Road Program also provides historical revenue information for counties to use in estimating National Forest revenues to be distributed to the counties under [ORS 293.560](#) and [294.060](#) (see section 11.870).

These estimates are essential to the planning of road improvements because they give notice during the county budget development process of the probable scale of revenue available to the county. Minor federal revenue transfer payments for mineral leases, grazing, etc., exist, but no procedure has been devised to systematically estimate them.

11.200 COUNTY-STATE COOPERATION AND RELATIONS. Sections 11.202 to 11.490 discuss numerous programs that ODOT manages or coordinates on behalf of counties. These include such programs as ODOT assistance to counties, ODOT-County work agreements, ODOT's management of federal-aid programs, overview of the various federal-aid programs available to counties, and overview of state-aid programs for counties.

Sections 11.500 to 11.555 discuss other state agency involvement that has some relation to county road work. Hyperlinks are provided to many of the other agencies' web sites.

Further useful information may be obtained by contacting the [Intergovernmental/Regional Solutions Director](#) in the Governor's Office at (503) 378-3072

(see section 11.130) or by contacting the [County Road Program](#) of the Association of Oregon Counties at (503) 585-8351. See section 11.620.

11.202 OREGON DEPARTMENT OF TRANSPORTATION (ODOT). Oregon’s Department of Transportation, counties, and cities cooperatively manage Oregon’s highway system so users safely and efficiently experience a “seamless transportation system.” Although Oregon’s counties and cities, as well as the Oregon Department of Transportation (ODOT), each own a portion of the 45,600-mile system of highways, roads and streets., they all share responsibility for the system. It is interesting to note that ODOT owns about 8,030 miles of highway, including the interstate highways; counties own about 26,700 miles of county road, with an additional 6,400 miles of local access road “dedicated to the public” (see [ORS 368.031](#)); and cities own about 10,900 miles of city street.

ODOT is the state agency with the greatest contact with counties on road matters. ODOT constructs and maintains the state highway system; administers [the Statewide Transportation Improvement Program \(STIP\)](#); manages federal-aid reimbursement programs and state grants-in-aid for city and county street and road systems; oversees county road approaches to state highways; administers federal and state grants-in-aid for transportation facilities and programs; administers other motor vehicle programs, including motor carriers and public transit; and provides technical assistance and advice regarding these and other transportation matters.

The department also maintains considerable statistical data on the entire system of highways, roads and streets and is directly involved in many projects on county roads. See the various resources available from ODOT in section 11.015.

ODOT manages and coordinates numerous programs on behalf of counties. These include such programs as ODOT’s assistance to counties, ODOT-County work agreements, [Fund Exchange](#), the [Oregon Transportation Infrastructure Bank](#), [ConnectOregon](#) and various federal-aid programs. In addition, [ODOT’s Bicycle and Pedestrian Program](#) helps counties and cities to comply with state law requiring a portion of state shared highway funds to be spent on [footpaths and bicycle trails](#). (See sections 3.540 to 3.545 for additional information on bicycle trails and footpaths.)

County road departments and ODOT work together in numerous areas and functions. This portion of the Manual will provide a general summary of the programs, assistance and services that are available through ODOT or are provided in conjunction with ODOT.

Chapter 366 deals with State Highways and the State Highway Fund and the powers and duties of the Oregon Transportation Commission and ODOT regarding highways, the Highway Fund and the designation of specific areas of assistance for counties. See section 11.205.

The following sections highlight ODOT assistance to counties; explanation of state throughways and counties; county’s involvement in interstate bridge projects; interstate ferries and counties; the availability of particular federal-aid and state grant programs for counties; overview of ODOT’s Fund Exchange program; information on various federal-aid programs for counties including highway, traffic and railroad crossing safety programs; overviews of the federal Public Lands Highway and Forest Highway programs; data on bicycle and pedestrian

programs; and county eligibility for the Immediate Opportunity Fund.

11.205 ODOT ASSISTANCE TO COUNTIES: ORS 366.155. Pursuant to [ORS 366.155](#), ODOT provides particular support and assistance to counties. For example, the state Department of Transportation (ODOT) is required to collect adequate data regarding mileage, character and condition of county and state roads and bridges to complete related statistics. ODOT is also required to act in an advisory capacity in matters of road design, construction and maintenance.

More specifically, ODOT provides free bridge and culvert plans under ORS 366.155 (h), to some counties. The state costs for these plans are not charged against the county's federal-aid revenue. Plans and specifications for bridges or culverts that are provided under this statute are provided without cost to the 10 counties with the lowest dedicated county road funding, as defined in ORS 366.772. Standard specifications for road projects are provided without cost to all counties under this statute.

ODOT in partnership with the Oregon Division of the American Public Works Association (APWA) developed [Oregon Standard Specifications for Construction](#). In addition, for the geometric design of highways and streets, ODOT has adopted The Policy of Geometric Design of Highway and Streets (“AASHTO’s green book”) as the standard for federally funded projects. Counties and cities have also agreed to use AASHTO’s green book on federally funded projects through the [Federal-Aid Project Guidelines and Working Agreement](#) (Federal-Aid Agreement) with ODOT.

11.210 STATUTES ON ODOT ASSISTANCE TO COUNTIES

Chapter 366

State Highways

366.155 Duties and powers of department regarding highways; assistance to counties and State Parks and Recreation Department

11.215 ODOT AND COUNTY ROAD CONSTRUCTION AND MAINTENANCE: ORS 366.572 to 366.576. As authorized by ORS 366.572 to 366.576, ODOT may enter a cooperative agreement with local government for road work on any state highway or any other road. Further, ODOT is authorized to use its eminent domain powers to acquire right of way. The relationship of this authority to [ORS 190.110](#) has not been adjudicated. It appears that ORS 366.572 to 366.576 supplement rather than limit potential agreements that might arise under ORS 190.110 and merely direct ODOT to participate in such agreements when public roads are concerned. See 39 Or. Att’y Gen. Op. 549 (1979) in part 11.120.

ODOT controls the approach access to state highways and the intersections of state highways and county roads as well as other public approaches. [OAR 734-051-1050](#) defines the procedure for establishing or modifying public approaches on state highway rights-of-way.

11.217 COOPERATIVE INTERSECTION, SIGNALIZATION AND LIGHTING PROJECTS. A uniform policy between the Oregon Transportation Commission, the Association of Oregon Counties and the League of Oregon Cities governs the proportion of total signalization and lighting costs to be borne by cities, counties and the state at intersections of state, city and county roads, including maintenance and power costs. The current policy is the [2002 Policy Statement for Cooperative Traffic Control Projects](#). The policy specifies that the state shall pay 100 percent of costs for traffic signal projects involving only state highways and illumination projects on state freeways. It recommends varying percentages of shared cost on projects involving city, county and state roads in three categories of population: under 10,000; between 10,000 and 50,000; and over 50,000--for traffic signals, flashing beacons, school crossings, preemption devices and illumination.

11.220 STATUTES ON ROAD WORK AGREEMENTS

[Chapter 366](#)

State Highways

- 366.572 State highway agreements with local governments**
- 366.574 Intergovernmental road maintenance agreement**
- 366.576 Road, highway or street agreements with local governments**

11.225 DEPOSIT OF MONEY FOR HIGHWAY WORK: ORS 366.425. A county may deposit money with the State to have ODOT direct the work on a public highway (including a county road). The advance deposit may be in the form of: 1) check or warrant, deposited in the State Treasury (an option of which may be a deposit in the [Local Government Investment Pool](#) accompanied with an Irrevocable Limited Power of Attorney), or 2) an Irrevocable Letter of Credit issued by a local bank in the name of the State.

11.230 STATUTES ON DEPOSITS WITH ODOT

[Chapter 366](#)

State Highways

- 366.425 Deposit of moneys for highway work**

11.235 ADDING, REMOVING OR RELOCATING STATE HIGHWAY SYSTEM ROADS: ORS 366.290 to 366.321. By mutual agreement with the counties, ODOT may select county roads or other routes to designate and adopt the roads as state

highways. Construction, maintenance and repair of state highways are at the expense of the State unless the costs are shared by mutual agreement between ODOT and the county where the road is located.

Likewise, ODOT may eliminate a portion of a highway from the system of state highways with the consent of the county where the highway is located. The eliminated road shall then be under the exclusive jurisdiction of the county, and any construction, repair, maintenance or improvement is the county's responsibility. However, the 2011 legislature modified ORS 366.290 to state that the agreements may provide for annual funding from ODOT to address the additional costs to the county for the maintenance and preservation of the highway for which the county has accepted jurisdiction. The agreements must also contain provisions to ensure that freight movement on the highway will not be restricted unless the state, county and freight industry agreed that the restriction is necessary for the safety of the highway users.

When ODOT relocates or realigns a portion of a state highway, ODOT shall maintain the eliminated section at state expense if the highway is needed to serve a community or persons living along the route. However, the eliminated section may be maintained by the county or by the State and the county by mutual agreement. If the eliminated section is no longer needed and is not owned by ODOT in fee, it reverts to abutting owners. See chapter 13 for a description of responsibility in cases involving a change in road grade due to a highway project.

When the State adopts a road outside a city as a state highway, the related rights of way are vested in the State.

When location, construction, relocation, reconstruction, maintenance or repair of a state highway requires relocation of any facilities placed or maintained in or on a public right of way by any municipal corporation or specified district or authority, ODOT must pay the municipal corporation, district or authority whose facilities are required to be relocated reasonable expenses of relocation, less any benefits and salvage of the relocation. Specific exceptions are also set forth in the statute.

11.240 STATUTES ON STATE HIGHWAY ADDITIONS AND REMOVALS

Chapter 366

State Highways

- 366.290 Adding to or removing roads from state highway system; responsibility for construction and maintenance**
- 366.295 Relocation of highways**
- 366.297 Environmental performance standards; rules**
- 366.300 Treatment of sections eliminated when highway relocated**

366.320 Acquisition of rights of way and right of access

366.321 Expense of relocating municipal facilities payable by department; exceptions

11.250 CITATIONS ON STATE HIGHWAY ADDITIONS AND REMOVALS

Klamath County v. Oregon Department of Transportation and BNSF Railway Company, 201 Or. App. 10, 116 P.3d 924 (2005): The Oregon Department of Transportation (ODOT) ordered the closing of a railroad grade crossing in Klamath County pursuant to a statute allowing for closure without county consent unless responsibility for the road was being transferred to the county. Another statute established a public policy in favor of eliminating railroad grade crossings wherever possible, as long as it is required by the “public safety, necessity, convenience and general welfare.” The county argued that statutory authority did not support ODOT’s decision to close the crossing without county consent and that the closure was not supported by substantial evidence that public health and safety required the closure. The Court of Appeals held that substantial evidence did exist that the public health and safety required closure, as there was evidence of frequent and increasing interference with vehicular traffic from trains and switching movements, accompanying dangers from frustrated drivers, and the existence of a convenient and safe alternative route which would reduce the risk of accidents. The court also held that statutory authority allowed ODOT to close the railroad crossing without the county’s approval.

Poe v. Department of Transportation, 42 Or. App. 493, 600 P.2d 939 (1979): Plaintiff brought suit seeking a declaratory judgment that a piece of property in the City of Gladstone, which had once been part of the Cascade Highway before that highway was relocated due to the construction of I-205, was a public road over which the plaintiffs had the right to travel. The state cross-claimed to quiet title and enjoin the plaintiff from asserting any adverse claims to the property, alleging that the road in question was abandoned and the roadway reverted to the abutting owner under common law, which in this instance was the state. The lower court held in favor of the plaintiff. The Court of Appeals affirmed, holding the portion of highway in question had not been properly abandoned by ODOT because statutory law, as opposed to common law, applied. [ORS 366.300 \(3\)](#) requires ODOT to determine after the realignment of a state highway whether the eliminated sections are “needed or valuable for any public use” before title can revert back to abutting owner, which would have been the state in this case. ODOT did not make the determination called for in the statute, and therefore was enjoined from advertising for sale and selling the property in question as surplus property.

11.260 STATE THROUGHWAY ARRANGEMENTS WITH COUNTY: ORS 374.060, 374.065, 374.075, and 374.080. When a county road or city street intersects with a throughway, ODOT may close the road or street at or near the intersection, carry it over or under the throughway, or provide a connection with the throughway by means of a utility or service road. However, before ODOT undertakes any of these actions, it must first obtain the approval of the governing body of the affected county or city.

ODOT is also directed to accommodate existing county roads that run into or across

throughways, but new county roads must have approval from ODOT prior to connecting to a throughway. Before closing a county road where it meets a throughway, ODOT must first obtain approval from the county governing body.

In order to construct a throughway or convert an existing street into a throughway, city and county officials are empowered to do whatever is necessary to cooperate with ODOT.

ODOT may enter into cooperative agreements with the federal government and with a county or city to create a throughway and may agree on allocation of the costs of the project, and manner and method of maintenance, and other relevant matters.

11.265 STATUTES ON THROUGHWAY ARRANGEMENTS

Chapter 374

Control of Access to Public Highways

- 374.060 Power of Department of Transportation as to intersecting streets and roads**
- 374.065 Intersection of throughways and county roads**
- 374.070 Throughways in cities; intersecting streets**
- 374.075 Cooperation of municipal and county authorities with Department of Transportation**
- 374.080 Agreements with Federal Government, counties and cities**

11.270 INTERSTATE BRIDGES: [ORS 381.205 to 381.520 and 381.805 to 381.820](#). Each county, city, or port bordering on an interstate stream may construct or otherwise establish and maintain an interstate bridge. For this purpose, each of the public bodies involved may act independently or in conjunction with each other and may enter into agreements with other governmental bodies, including the United States, the State of Oregon, and private persons. The bridge may be financed by the expenditure of county funds, revenue bonds, and gifts or grants from any source. The county is also authorized to borrow money for construction of a bridge by issuing general obligation bonds. The bridge may be either toll or free. Once constructed, the bridge and all connecting roads are part of the state highway system. The governor, as chairman of the board or body constructing an interstate bridge, shall conduct all negotiations and make all contracts and agreements, delineate the powers and duties of the board or body constructing an interstate bridge, define the limitation on use of bridge funds, and provide for the tax exemption of interstate bridges constructed by the bordering state rather than by Oregon.

11.280 INTERSTATE FERRIES: [ORS 384.305 to 384.365](#). The Oregon Department of Transportation (ODOT) and any county, city or port bordering on an interstate stream may construct and operate interstate ferries. For this purpose, each of the public bodies

may act independently or in conjunction with each other and may enter into agreements with other governmental bodies, including the United States, and with private persons. In addition, each of these agencies has the power of eminent domain. Interstate ferries may be financed by expenditure of agency funds, revenue certificates, and gifts or grants from any source. The ferries are part of the Oregon highway system, and may be either toll or free.

11.300 ODOT RAILROAD PROGRAM. The ODOT railroad program emphasizes railroad grade crossing safety². Their decision on protective devices for crossings can involve expenditures by a county as well as by the railroads. (See section 11.450) [ORS Chapter 824](#) covers ODOT's responsibilities for railroad crossings as well as requirements for protective devices and obtaining permission for grade crossings.

11.305 SPEED CONTROL AND OTHER TRAFFIC SAFETY. Traffic speed and signing uniformity are essential to safe travel. The intergovernmental coordination required to accomplish this is handled through the Oregon Department of Transportation and adoption of the [Manual on Uniform Traffic Control Devices](#). These topics are covered in chapter 14, "Traffic Control Management".

11.310 TRANSPORTATION SAFETY DIVISION. The [Transportation Safety Division](#) of ODOT is responsible under [ORS 802.300 to 802.340](#) for the development and conduct of a comprehensive statewide highway safety program and the new Safe Routes to School Program. The Division coordinates the activities and programs of the agencies engaged in the promotion of highway safety; provides highway safety information and publicity to all appropriate media; and serves as a clearinghouse for all highway safety materials and information used throughout the state. Based on research and analyses of problems in highway safety, the agency makes recommendations to the legislature concerning safety regulations and laws. The agency also recommends for the governor's approval activities related to the Federal Highway Safety Act of 1966 as it is applicable to and participated in by the State of Oregon. The agency publishes a yearly Highway Safety Plan.

11.320 COORDINATED PROJECT PLANNING – STATE AND LOCAL PLANS. While each jurisdiction is ultimately responsible for decisions relating to the construction, operation and maintenance of the portion of the system that it owns, federal and state money cannot be spent on project unless they are listed in the Statewide Transportation Improvement Plan (STIP), pursuant to [Title 23 of the United State Code](#) (USC). The STIP is a budget document that establishes priorities and a schedule for funding transportation improvements projects for transit and highways. The STIP publication lists all approved state and FHWA funded projects on the county, city and state highway systems, regardless of who is responsible for implementing the project.

In Oregon, the planning process that occurs before a transportation project makes it into the STIP depends on the type of project. Some projects are identified using the

² [ORS 271.310](#) (Chapter 446, [Oregon Laws 2011](#)) added a new requirement that any political subdivision, when selling or exchanging real property to an individual, corporation or governmental organization within 100 feet of a railroad right-of-way, or 500 feet of a railroad crossing, must provide notice to the Oregon Department of Transportation (ODOT). Notification must be given at least 30 days prior to the listing or placing real property for sale.

[Oregon Transportation Management System \(OTMS\)](#). The management system usually includes computerized databases and complex formulas that monitor and record conditions of transportation system assets, like pavement or bridges. Other projects are selected from long-range plans that use detailed studies and performance criteria to identify system improvements. There are also criteria for projects to ensure eligibility for funding and to help prioritize them. The [Oregon Transportation Commission \(OTC\)](#) adopts such [criteria](#) for development STIP projects, modernization, preservation, and the state bridge program. Many of the individual funding programs also have selection criteria to help choose projects. Additional information is available in the [STIP Users' Guide](#).

The OTC adopts the STIP in odd-numbered years, usually in August. It takes about thirty months to prepare Oregon's STIP. While the STIP is adopted by the OTC, the following groups are also involved:

- Area Commissions on Transportation (ACTs);
- Transportation Management Areas (TMAs);
- Metropolitan Planning Organizations (MPOs) See table below for Oregon MPO websites;
- Regional Transportation Planning Organizations;
- Federal Agencies;
- ODOT and ODOT Program Advisory Groups;
- Local Agencies;
- Indian Tribal Governments;
- Oregon Freight Advisory Committee (OFAC);
- Transit Districts;
- Port Districts; and
- The Governor's Office.

11.330 METROPOLITAN AREA PLANS.

A. Transportation Management Areas (TMAs)

MPOs with populations over 200,000 are designated as TMAs. TMAs receive federal funds through ODOT, using a national formula, and can determine how to spend the funds. TMAs have project selection authority for regional STBGP and [Congestion Mitigation and Air Quality \(CMAQ\)](#) funds in consultation with the State. Further details regarding CMAQ are available in the related fact sheet at the end of [Section A, Chapter 3 of the Local Agency Guidelines \(LAG Manual\)](#) or by contacting your [Regional Local Agency Liaison](#). ODOT works with all MPOs in a collaborative way to select projects that best serve the needs of each MPO.

B. Metropolitan Planning Organizations (MPOs)

By agreement with ODOT, MPOs in areas with populations between 50,000 and 200,000 receive federal STBGP funds. The Region and the MPO work together to identify and prioritize transportation improvement projects and to balance investment needs in the MPO area with other needs in the Region. Some MPOs consist of a single city while others include multiple cities and unincorporated areas.

C. TMA AND MPO Areas

As noted in the following table, all of Oregon's TMAs are also MPOs. Transportation plans in areas of the state that are not in attainment of federal air quality standards have

further requirements to conform to federal air quality rules.

MPO	Jurisdictions/Agencies	TMA	MPO
<u>Albany</u>	Linn, Benton and Marion Counties, cities of Albany, Jefferson, Millersburg, and Tangent, and Cascades West Council of Governments (CWCOG).	No	Yes
<u>Bend</u>	Deschutes County, City of Bend, and Bend Metropolitan Planning Organization	No	Yes
<u>Central Lane</u>	Lane County, Lane Transit, cities of Eugene, Springfield and Coburg, and Lane Council of Governments (LCOG).	Yes	Yes
<u>Corvallis Area</u>	Benton County, cities of Corvallis and Adair Village, Corvallis Transit District, and Cascades West Council of Governments (CWCOG).	No	Yes
<u>Kelso-Longview-Rainier</u>	In Oregon: Columbia County, City of Rainier, and Port of St. Helens.	No	Yes
<u>Metro</u>	Metro, Clackamas, Multnomah and Washington counties, all incorporated cities in Metro area, Tri-Met, and SMART.	Yes	Yes
<u>Middle Rogue</u>	Josephine and Jackson Counties, cities of Grants Pass, Rogue River and Gold Hill and Rogue Valley Council of Governments (RVCOG).	No	Yes
<u>Rogue Valley</u>	Jackson County, cities of Ashland, Central Point, Eagle Point, Medford, Phoenix, and Talent, Medford Transit District, and Rogue Valley Council of Governments (RVCOG).	No	Yes
<u>Salem-Keizer Area</u>	Marion and Polk counties, cities of Salem, Keizer and Turner, Salem Transit District, and Mid-Willamette Valley Council of Governments (MWVCOG).	Yes	Yes
<u>Walla Walla Valley</u>	In Oregon: Umatilla County and City of Milton-Freewater	No	Yes

Projects funded only with state or local sources may be included in the Metropolitan Transportation Improvement Program (MTIP). For consistency in planning and coordination of projects, agencies are encouraged to include all projects for which funding is secured.

The Regional Transportation Plan (RTP) is the MPO's long range transportation plan. The RTP lists projects on state highways and city and county arterial streets, as well as transit needs and improvements related to other alternative modes such as bike lanes and sidewalk improvement projects. Projects in the MTIP must be specifically identified or

consistent with the RTP.

An MTIP really is the MPO's local version of the STIP. In cooperation with the State and area transit operators, MPOs are responsible for developing a MTIP that is consistent with the RTP. All projects in an MPO using [Title 23](#) or [Federal Transit Administration](#) (FTA) funds must be included in the MTIP in order to proceed. ODOT works with the MPOs to make sure that state highway projects are included in the MTIP. After the MTIP is adopted by the MPO Board and approved by the Governor, the projects are added to the STIP, just as they appear in the MTIP.

For further details regarding planning requirements as well as a diagram illustrating how the TMAs and MPOs integrate their projects with the MTIP and RTP in the development of the [STIP](#), refer to [Section A, Chapter 3 of the LAG Manual](#) or contact your [Regional Local Agency Liaison](#).

11.340 PLANS OUTSIDE OF METROPOLITAN AREAS.

Outside of metropolitan areas, there are three important planning processes that are the source documents for projects listed in the STIP:

- Highway corridor plans;
- Refinement plans; and
- (Local) Transportation System Plans (TSPs).

Highway Corridor and Refinement Plans. Highway corridor and refinement plans are adopted as part of the related city or county TSP. This planning process is usually conducted separately from the TSP process, but local agencies generally amend their TSP by adopting these plans as new parts of the plan because the TSP typically has already been completed and more detail is necessary. Most modernization projects that are constructed outside of metropolitan areas are developed through an ODOT highway corridor or refinement planning process. As noted, these plans may be conducted outside of the TSP process but local governments normally need to amend their TSP to these plans and the resultant actions.

For modernization projects, the corridor or refinement plan itself may be listed as a project in the STIP. These projects, which are funded from the Region's modernization program, are usually listed in the Development STIP (D-STIP). This refinement planning effort occurs inside or outside an MPO, inside an MPO it is done jointly with the appropriate MPO. The D-STIP includes projects that typically will take more than four years to develop and for which construction funds have not obtained. (NOTE: some corridor plans are not programmed in the D-STIP, but are funded with planning money that is given to each Region). It is important to note that regardless of the funding, if there is a problem related to capacity on the state highway system, the solution needs to be developed through an ODOT approved corridor or refinement plan that is adopted as part of the local TSP.

Transportation System Plans. Local TSPs are the heart of the state's transportation planning process. TSPs are elements of local comprehensive land use plans and are developed to identify multi-modal transportation solutions to serve future population and employment levels. In most communities, getting a project listed in the TSP is the first step toward advancing a specific solution. TSPs include a list of capital improvement projects

and service investments that may include transit system development, bike and pedestrian system improvements, and street and highway improvements.

Most TSPs are implemented either through a local capital improvement process that determines the sequence, funding, and timing of transportation improvements, or through the local budget process. These expenditures are often integrated into local system development charge programs, development bond programs, and/or applications for state and federal grants.

Additional information including websites and lists of Oregon’s state level plans is available in [Section A, Chapter 3 of the LAG Manual](#) or by contacting your [Regional Local Agency Liaison](#).

11.345 LOCAL, STATE AND FEDERAL ROLES AND LEGAL REQUIREMENTS. There are federal, states, and local laws as well as numerous formal and informal agreements between jurisdictions designed to manage the “seamless transportation system” for the efficient and effective movement of people and products. (See “[Intergovernmental Agreements for Roads and Streets](#)” in section 11.105 for examples.) Often the source of funding for transportation projects includes particular legal requirements, and the applicable intergovernmental agreements also outline legal requirements and define the roles and responsibilities of the entities involved.

A. Association of Counties and League of Oregon Cities Agreement with ODOT. The [Association of Oregon Counties](#) (AOC), [League of Oregon Cities](#) (LOC) and ODOT entered an agreement entitled [Federal-Aid Project Guidelines and Working Agreement](#) (Federal-Aid Agreement). The Federal-Aid Agreement details particular roles and responsibilities for ODOT and local agencies regarding Oregon’s transportation system. In particular, the Federal-Aid Agreement provides guidelines and working procedures for Oregon counties, cities, and ODOT, as related to certain federal funding programs available to counties and cities (Surface Transportation Program and Local Bridge Program), as well as ODOT’s Certification Program which allows qualified counties and cities greater local control in the delivery of federal transportation projects, with ODOT oversight.

Local agencies must ensure that their staff members, consultants and contractors comply with applicable state and federal laws, regulations, and procedures in developing and constructing federally funded projects.

For further details regarding application and eligibility requirements and contract information for federal funding programs such as the Surface Transportation Program, Local Bridge Program, Transportation Alternatives Program, Congestion Mitigation and Air Quality, Emergency Relief Program, and numerous other programs, see the [LAG Manual, Section A, Chapter 3](#) or contact your [Regional Local Agency Liaison](#).

B. Federal Highway Administration and ODOT Stewardship Agreement. The Federal Highway Administration (FHWA) has the authority and responsibility for implementing and monitoring federal laws, regulations and executive orders affecting highway transportation projects undertaken with federal funding. When a project involves FHWA funding, FHWA is involved according to these responsibilities, delegations of authority

and FHWA's [Stewardship Agreement](#) with ODOT. As outlined further in ODOT's Local Agency Guidelines (LAG Manual), [Section A, Chapter 2](#), per the Code of Federal Regulation (CFR), ODOT is responsible to FHWA for administering the successful implementation of federal-aid programs and projects.

Where FHWA has not delegated final approvals to ODOT, ODOT monitors county and city activities, reviews or prepares documents and makes recommendations to FHWA. For example, ODOT will review all environmental documents for completeness and sufficiency before ODOT submits them to FHWA for approval. ODOT also provides assistance to counties and cities in interpreting the regulations, manuals and guidelines, as they apply to specific project conditions. [ODOT's Regional Local Agency Liaisons](#), [Certification Program Manager](#) and [Local Program Coordinator](#) are all available to aid local agencies with these activities.

County personnel concerned with federal-aid road programs interact directly with ODOT rather than with FHWA because ODOT is delegated certain authority under the United States Code 23 U.S.C. 302, as follows:

- (a) Any State desiring to avail itself of the provisions of this title shall have a state transportation department which shall have adequate powers and be suitably equipped and organized to discharge to the satisfaction of the Secretary the duties required by this title. In meeting the provisions of this subsection, a State may engage, to the extent necessary or desirable, the services of private engineering firms.

11.350 ODOT LOCAL PROGRAMS. ODOT educates counties and cities regarding state and federal funding programs. The [Regional Local Agency Liaison](#) stationed in each of five ODOT regions is the principal initial contact for local governments seeking assistance with various aspects of federal-aid project delivery and can provide aid to cities and counties as they apply for state and federal funding. [ODOT's Statewide Program Unit staff](#) can assist local governments in interpreting state and federal policies, becoming a Certified Agency, coordinating federal-aid training needs and can refer them to the appropriate ODOT personnel if a question is specialized.

11.355 OVERVIEW OF HOW A FEDERAL-AID PROJECT IS DONE. The Federal Highway Administration (FHWA) requires ODOT's involvement in county federal-aid projects. The development of a federal transportation project can be described in the following six phases.

- Phase I Program Development (Planning)
- Phase II Project Development (NEPA, Permitting & Project Design)
- Phase III Right of Way Acquisition
- Phase IV Utilities
- Phase V Advertising, Bid and Award
- Phase VI Construction

Common activities that occur during each of these phases are summarized in the following paragraphs. A much more detailed outline of procedures and legal requirements can be found in ODOT's [Local Agency Guidelines \(LAG Manual\)](#).

I. Program Development (Planning): During the Program Development phase, the initial concept for a project is created; public input is sought as needed. Additional details regarding these plans were addressed previously in sections 11.320 to 11.340. [ODOT's Project Delivery Guidebook](#) also provides further information regarding transportation program development.

A. Transportation Planning:

1. **Public Involvement:** During this phase, it is important to seek out and involve the public in deciding what projects should be developed. All projects recommended through this public process should be reviewed against certain considerations such as the following questions:

- Does this project meet all the eligibility criteria and related requirements of the proposed federal, state and local funding source(s)?
- Does this project support social values?
- Does this project achieve responsible stewardship of the natural environment?
- Does this project result in cost effective solutions to the problem it is attempting to fix?
- **Project Prioritization:** After considering a proposed project against the review questions, the next step is for the project to enter the appropriate project prioritization process such as the county or city selection process and the MPO process.

2. **Local Transportation Plan:** The project will then need to be included in any local transportation plan, such as the local Transportation System Plans (TSP's), the Oregon Transportation Plan (OTP), or any Modal plans such as Oregon Highway Plan (OHP). Then, in order for the project to be eligible for state or federal funding, the proposed project must be included or consistent with the proper plans such as the STIP, RTP, and MTIP. See sections 11.320 to 11.340. The [LAG Manual, Section A, Chapter 3](#), also provides "fact sheets" outlining specific details regarding each funding program and its requirements.

B. Identify Potential Projects: Transportation needs identified in the Planning and Systems Analyses components are moved to a ranked list of future projects for consideration in the STIP. There are many stakeholders that help make this determination, including citizens, elected officials, local and regional governments, cities, counties and other jurisdictions, federal agencies, as well as ODOT [liaisons](#) and staff.

II. Project Development Phase: This phase involves several activities, as described below, from the time the project is assigned a Local Agency Liaison until the project is let out to bid.

A. Project Prospectus: After a project has been prioritized and included in the draft STIP, then the project prospectus is developed during the project development phase. The Project Prospectus is one of the main items contained in the project application package. The project application package includes the prospectus in conjunction with

either the project intergovernmental agreement or a supplemental project agreement as appropriate. Please refer to the [LAG Manual, Section B, Chapter 3](#) for more information on agreements or contact your [Regional Local Agency Liaison](#).

B. Scope, Schedule, and Budget: Selected projects from the future projects lists are added to the Draft STIP. Please refer to [LAG Manual, Section B, Chapter 2](#) for more information regarding processes for successfully completing the project prospectus phase or contact your [Regional Local Agency Liaison](#). Scoping teams review proposed projects sites and develop scopes of work and project summaries.

1. Scoping Teams:

- Look at the proposed project site.
- Conduct initial reconnaissance.
- Develop the project scope and prospectus.
- Advance projects for possible inclusion in the STIP.

2. ODOT Regional Environmental Coordinators (RECs) determine:

- Appropriate environmental class (See Appendix A of [ODOT's Project Delivery Guidebook on Project Types](#)). It is during this activity that a project is given either a class 1, 2, or 3 assignment. This is important to note because each class requires different follow-up activities. However, most projects are a class 2, which allows them to move into the PROJECT DEVELOPMENT PHASE much quicker.
- Method of project delivery (Presentation on [Project Delivery Methods](#)).

3. Execute Agreements: It is during this phase that the necessary agreements between ODOT and the county or city must be executed in order for the county or city to have authorization for state or federal funding for the project. Please refer to [LAG Manual, Section B Chapter 3](#) for more information regarding the process for executing agreements or contact your [Regional Local Agency Liaison](#).

NOTE: Some projects are earmarked for a specific type of project delivery, such as the OTIA III bridge projects.

C. Project Selection – Final STIP

ODOT's STIP coordinator assigns funding to the project and OTC and FHWA then approve the project and it is listed in the final STIP.

1. Progress Billings (Reimbursement Costs): If the project has federal money, the county or city must also submit progress billings and obtain reimbursement for work completed. Billings will only be accepted after the local public agency agreement is executed, a prospectus has been completed, federal authorization is obtained and the notice-to-proceed letter has been issued by ODOT. For more information regarding progress billings, please refer to [LAG Manual, Section B, Chapter 4](#) or contact your [Regional Local Agency Liaison](#).

NOTE: *If a project is classified as Class 1 or 3, the project will be listed in the STIP as*

in an “Environmental Phase.” It is important to list the project as in the “Environmental Phase” because it allows the project to use federal funds to complete the necessary environmental documentation, such as NEPA. Please refer to [LAG Manual, Section B, Chapter 5](#) for more information regarding activities and processes for Class 1 and 3 projects. ODOT’s [Regional Local Agency Liaisons](#) can also provide assistance.

D. The Local Project Manager works with the appropriate ODOT [Regional Local Agency Liaison](#).

1. Start Project: The county or city works with ODOT to either retain a consultant or establish an in-house project team to develop the project. See section 4.510 for information on consultant selection.
2. Survey, Maps, Engineering and Environmental Reports. If a project is a Class 2, the reports must provide Class 2 justification. For more information regarding justification, please refer to [LAG Manual, Section B, Chapter 5](#), (Class 2 – Categorical Exclusion) or your ODOT [Regional Local Agency Liaison](#).
3. Permits. Identify all necessary permits for the project.
4. Approved Design: A project design is selected based on project location and conceptual designs.
5. Preliminary Plans: Plans that further bid documentation preparation, such as roadway, bridge, signal, and erosion control are drafted. Plans are about 70 percent completed. Please refer to [LAG Manual, Section B, Chapter 9](#) or your ODOT Regional Local Agency Liaison for more detailed information regarding general design requirements.
6. Advance plans and Special Provisions: Detailed plans, specifications and estimates of material quantities are developed. Plans are 90 percent completed. Please refer to [LAG Manual, Section B, Chapter 10](#) or your ODOT Regional Local Agency Liaison for more information regarding design approval.

The timeline for completion of this phase can range from two years to more than eight years if there are complex environmental issues.

III. Right Of Way, Acquisition and Procedures Phase: During this phase, potential right of way needs are identified; right of way issues are resolved through potential property and easement acquisition, owner relocation, or owner compensation; and required local and statewide permits are obtained.

- Right of Way and Permits: The right of way acquisition process is regulated by ODOT’s Right of Way Section to assure compliance with the federal and state laws, assure fair and equitable treatment of any persons whose proper rights are impacted by the project and encourage and expedite acquisition by negotiations. Counties and cities must advise ODOT’s [Regional Local Agency Liaison](#) as early as possible, of the local agency’s need for right of way assistance. Please refer to the [LAG Manual, Section B, Chapter 6](#), for further information.

IV. Utilities and Railroads Phase: Most transportation improvement projects involve utilities in some fashion. Depending on the project, utility involvement could be relatively minor, such as requiring utilities to mark their facility locations that are in the project area. Alternatively, utilities might be required to relocate their facilities due to conflicts with the project.

Regarding rail facilities, if a highway project or related project work and equipment are within 500 feet of a railroad, county or city staff must notify ODOT's [Regional Local Agency Liaison](#) who will coordinate communication with ODOT's Rail Division and the State Railroad Liaison.

Any potential utility or railroad needs must be identified and addressed as early as possible. For further details, reference the [LAG Manual, Section B, Chapter 13](#) or your [ODOT Regional Local Agency Liaison](#).

V. Advertising, Bid and Award Phase: Once final Plans, Specifications and Estimates (PS&E) are complete, then final bid documents can be prepared. Further detailed information regarding PS&E is available in the [LAG Manual, Section B, Chapter 11](#) or your ODOT [Regional Local Agency Liaison](#). The advertising bid and award phase begins with advertising a project bid and ends when the construction contract is awarded.

1. Advertise and bid opening for design/bid/build projects: A project is advertised, contractors bid, and the bid opening occurs. Please refer to [LAG Manual, Section B, Chapter 15](#) for more information regarding Advertising, Bid & Award procedures or your ODOT [Regional Local Agency Liaison](#).
2. Award contract: The construction contract is awarded to the successful bidder.

VI. Construction Contract Administration Phase: Construction Contract Administration, also known as Construction Engineering (CE) is the next phase of oversight for the actual construction work. A working relationship is established with the contractor and the project is constructed based on final plans and specifications. This phase has five components. Please refer to the [LAG Manual, Section B, Chapter 16](#) for a more detailed layout of the construction administration procedure.

1. Before on-site work begins: All requirements such as bonds, insurance, and subcontractor compliance, are met, and a Notice to Proceed is issued.
2. Pre-Construction meeting with the contractor prior to commencement of work.
3. On-site work begins: The contractor begins construction. The contractor is responsible to furnish materials and to do the required work according to the construction contract plans and specifications.
4. On-site work completed: the contractor finishes all or part of the construction work, clean up and removal of equipment and materials is completed, and the final project documentation is submitted.
5. Acceptance of projects: The project manager ensures all on-site construction and other work required under the contract is done, all equipment is removed, and all

required certifications, bills, forms and other documents are received from contractor.

6. Completed project: The project is complete when all project requirements have been met and final payment has been made to the contractor.

11.360 PROJECT DELIVERY METHODS. Counties and cities have several alternative methods for delivering transportation projects that involve state or federal funds. If a project does not use any state or federal funding, and does not impact the state or federal highway system, then the county or city may perform its own project delivery independent of these other methods. The following list reflects the methods that are commonly used with projects involving state or federal funds.

1. ODOT: ODOT provides project development, contract award, and construction engineering services for the local public agency. As a part of this process, ODOT may also retain a consultant on behalf of the local public agency to perform project delivery activities.
2. Become Certified: Qualified counties or cities can become certified to administer their own construction projects involving federal money. ODOT and the local public agency must work closely together to develop an approved project delivery system that meets all the federal requirements. Further details are available in the [LAG Manual, Section C, Chapter 2](#).

11.365 ODOT'S ROLE IN COUNTY-FEDERAL-AID AND STATE GRANTS: ORS 366.556 to 366.570. The state is authorized through the Oregon Department of Transportation (ODOT) to enter into a contract or agreement with the United States to provide federal funding for state or county road work. In fulfilling the agreement, ODOT is authorized to pledge funds derived from any source, including loans, to match federal funds or otherwise meet the costs incurred. Typically for a federal-aid project on a county road, the county deposits the money with the state under ORS 366.425 and the state uses that money for the matching funds. See section 11.225.

11.370 REQUIREMENTS OF STATE ADMINISTERED FEDERAL PROGRAMS. All federal-aid programs require compliance with federal civil rights including Title VI and labor laws, property acquisition laws, the Uniform Relocation Act Public Law (P.L. 91-646 as amended by P.L. 100-17, P.L. 104-66, and P.L.105-117), the Architectural Barriers Act (P.L. 90-480), the National Environmental Policy Act (NEPA) and other environmental laws and requirements, the Common Rule (49 CFR 18) with respect to procurement and the Brooks Act with respect to consultant selection. Compliance is also required for the Endangered Species Act, and the National Historic Preservation Act. The federal government has delegated responsibility to the state for compliance with these laws under U.S. Code, Title 23, Section 302. The [Statewide Programs Unit](#) of ODOT can provide counties with guidance and advice on these requirements. This manual also discusses many of these items elsewhere in this manual. For example, see chapter 5 for information on federal property acquisition requirements and chapter 13 for information on architectural barriers.

11.380 STATUTES ON STATE-FEDERAL AGREEMENT FOR COUNTY ROAD WORK

Chapter 366

Intergovernmental Highway Cooperation

- 366.556 Acceptance of provisions of Acts of Congress**
- 366.558 Contracting with and submitting programs to Federal Government**
- 366.560 Pledge of state to match federal funds**
- 366.562 Use of highway fund to match federal moneys**
- 366.563 Borrowing to match federal moneys**
- 366.566 Meeting requirements of federal aid statutes**
- 366.567 Using highway funds to comply with federal aid statutes**
- 366.570 Payments under cooperative agreement with Federal Government**

11.385 CITATIONS ON STATE-FEDERAL AGREEMENTS FOR COUNTY ROAD WORK

37 Or. Atty. Gen. Op. 599 (1975): The Attorney General interpreted ORS 366.735 to state that the Department of Transportation is not required to first undertake a project for which federal matching funds are available, if a project for which federal funds are not available is deemed to be more expedient and necessary. Construction of ORS 366.515 to create an absolute obligation to first match any available federal funds would result in a conflict of Oregon law prohibiting the adoption of future legislation or regulations of other entities. Availability of federal matching funds in the future depends upon future determinations by federal authorities of criteria for qualifying projects, and future federal laws and regulations. (Note: While ORS 366.515 was repealed in 1975, the relevant “necessary and expedient” language of ORS 366.735 remains, and that statute was renumbered ORS 366.568 in 2003)

11.390 STATE ADMINISTERED FEDERAL-AID PROGRAMS. In response to previous provisions of section 302 of Title 23 U.S.C., the Oregon Department of Transportation (ODOT) in cooperation with the Association of Oregon Counties (AOC) and the League of Oregon Cities (LOC) worked out a series of agreements to govern the different federal-aid programs available to counties and cities. These agreements were consolidated into a joint ODOT/AOC/LOC [Federal-Aid Project Guidelines and Working Agreement](#) (Federal-Aid Agreement) in 2012. This agreement is typically updated with each federal transportation reauthorization legislation and was last updated in November 2012.

It is the policy of the State of Oregon under the [Federal-Aid Agreement](#) to administer the various programs in compliance with all federal rules and regulations. The agreement includes fund distribution, system and project selection for the major FHWA federal-aid programs. In addition the agreement sets forth the guidelines and procedures under which all FHWA federal-aid projects will be administered. Under the agreement flexibility is built into the system. County governing bodies, with the advice of their public works department, are free to choose the type of project on which federal-aid will be used.

ODOT provides free bridge and culvert plans under ORS 366.155 (h), to some counties and the state costs for these plans are not charged against the county's federal-aid revenue. Counties may hire an [approved consultant](#) to do bridge engineering on federal-aid projects instead of relying on ODOT. Engineering costs are included in the projects costs. If a consultant is hired, it should be someone who is familiar with FHWA and ODOT project requirements.

The current edition of the [Federal-Aid Agreement](#) is summarized in the following 11.400 to 11.420 sections. Details of all the agreements and policies for the various programs are available from the [Statewide Programs Unit](#) of ODOT.

11.395 FEDERAL-AID ROUTE DESIGNATIONS. Many FHWA Federal-Aid programs are limited to routes on the Federal-Aid System, often referred to as “ON-System Routes”³. County road ON-System routes are those with Federal Functional Classifications of Urban Arterials, Urban Collectors, Rural Arterials and Rural Major Collectors. Lower Federal Functional Classification Routes, Minor Rural Collectors and Local Roads, (referred to as “OFF-System Routes”) are not eligible for most FHWA Federal-Aid funding. The most notable exception is the Surface Transportation Block Grant Program (STBGP) funds, which have a specific amount of funding set aside for OFF-System bridge replacements. Similarly, some bicycle and pedestrian funds and safety funds may also be used OFF-System.

11.400 SURFACE TRANSPORTATION PROGRAM (STBGP). The Surface Transportation Program (STP) was originally established by the ISTEA in 1991. The FAST Act renamed the STP the Surface Transportation Block Grant Program (STBGP) in 2015 to better align the title with how the program has been administered. Nearly all of the previous program’s provisions remain in place, and the changes are incorporated below. The STBGP program is the largest consistent federal funding source for county roads and is scheduled to increase by \$4 billion over the five year enactment of the FAST Act.

The STBGP funds may be used for ON-System roads and, with the passage of MAP-21 in 2012, on local bridges and state bridges not on the National Highway System (NHS). The 15 percent set-aside for OFF-System bridges (bridges on roads classified as local or rural minor collectors) is retained with the [FAST Act](#) but funded with STBGP funds, however, as in prior years FHWA can issue a waiver of this requirement on behalf of Oregon cities and counties. (See section 11.410 for more details). STBGP funds may also be used for a wide range of transportation related projects in addition to highway related projects. However, State Highway Funds may only be used as match money for projects eligible for State Highway

³ Prior the implementation of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), the Federal-Aid System was defined by specific routes designated as either Federal-Aid Secondary (FAS-C) or Federal-aid Urban (FAUS) routes.

Fund expenditures. Activities eligible for STBGP funds are:

- Construction, reconstruction, resurfacing, restoration, and rehabilitation
- Operational improvements
- Capital costs for transit projects including vehicles and facilities used to provide intercity passenger service by bus
- Highway and transit infrastructure safety improvements
- Surface transportation planning, highway and transit technology transfer activities, and research and development
- Capital and operating costs for traffic management and control
- Fringe and corridor parking facilities
- Carpool and vanpool projects
- Transportation enhancements including pedestrian and bicycle facilities, pedestrian and bicyclist safety and education, acquisition of scenic and historic sites, scenic and historic highway programs, landscaping, historic preservation, rehabilitation and operation of historic transportation facilities, preservation of abandoned transportation corridors, archeological planning and research, control and removal of outdoor advertising, mitigation of water pollution from roadway runoff, and establishment of transportation museums
- Participation in wetland mitigation and wetland banking
- Bicycle facilities and pedestrian walkways and modification of public sidewalks to comply with ADA requirements
- State office to help design, implement and oversee public-private partnerships (P3) which are already eligible to receive Federal highway or transit funding

Of the STBGP funds received by Oregon, the **FAST Act** requires an allocation to the three Transportation Management Areas (TMA's), Portland Metro, Salem-Kaiser, and Eugene-Springfield, based on their populations relative to the rest of the state. ODOT also allocates additional portion of the STBGP funds among counties and cities as specified in the [Federal-Aid Project Guidelines and Working Agreement](#) (Federal-Aid Agreement). The funds for counties are allocated to counties on the basis of 25 percent to each county equally, 60 percent in proportion to rural population, and 15 percent in proportion to mileage of rural roads in the county. (Previously, ten percent of the STBGP funds were earmarked for safety construction activities. The safety component now has its own separate appropriation in federal transportation program. See section 11.450 for more details).

11.405 STBGP EXCHANGE PROGRAM. Fund Exchange. By agreement with the cities and counties, ODOT makes flexible State Highway Funds available to individual cities and counties for the exchange of their federal STBGP fund allocation. This program is subject to ODOT having adequate State Highway Funds available. ODOT makes this determination annually. Exchanging federal funds for state funds helps cities and counties avoid complex federal regulations and contracting requirements. Fund exchanges provide funding for specific roadway projects including pavement preservation programs, purchase of equipment or aggregate, match for federal-aid projects, and repayment of bonds and loans on eligible projects. Cities and counties receive 94 cents in state funds for every \$1 of federal funds exchanged. Details of the program are in the [Federal-Aid Project Guidelines and Working Agreement](#).

11.410 HIGHWAY BRIDGE PROGRAM (STBGP). The Highway Bridge Program (HBR) was not continued under MAP-21; instead bridges will be funded with STP funds for state and local bridges not on the National Highway System (NHS) while bridges on the NHS will be funded with National Highway Performance Program (NHPP) dollars. (See section 11.400). STP funding for bridge replacement and rehabilitation will be distributed in accordance with the [Federal-Aid Project Guidelines and Working Agreement](#) (Federal-Aid Agreement).

Under MAP-21 and the new [Federal-Aid Agreement](#) with the cities and counties, ODOT allocates the federal funds to the Local Bridge Program for local government bridges determined to be eligible using the previous HBP criteria based on inspection of all bridges subject to National Bridge Inspection Standards (NBIS) and reported to FHWA through the National Bridge Inventory (NBI) process. Bridges are inspected every two years, to determine which bridges are deficient and eligible. ODOT submits its NBI list annually to FHWA and produces the list of deficient bridges in Oregon eligible for the Local Bridge Program. The Bridge Program Unit is responsible for administering the Local Bridge Program on behalf of the Local Agency Bridge Selection Committee (LABSC). The LABSC select the projects to be recommended to be included in the STIP for federal funding within the Local Bridge Program. Since there is a significant shortfall in the federal, state and local funding available to replace deficient bridges, the allocation of federal funds for bridge projects are focused on the replacement and rehabilitation of the bridges with the most critical needs using the Technical Ranking System (TRS) described in the [Federal-Aid Agreement](#).

The Local Bridge Program funding amount for 2013 is \$22,963,391 and serves as the baseline funding for the program. For future fiscal years, the Local Bridge Program allocation will be calculated by multiplying the percent increase (or decrease) in federal-aid formula obligation limitation from the prior Federal Fiscal Year (FFY) compared to the FFY prior to that and then multiplied by the previous year's Local Bridge Program allocation. Funding for local bridge inspections, load rating, project scoping and program support for National Bridge Inspection Standards (NBIS) bridges will be subtracted from the total federal-aid funding allocated to the Local Bridge Program.

Under MAP-21, the state will continue to administer the bridge pool for city and county (local) bridges. The local pool is sub-divided into “Large” bridges (over 30,000 square feet) and “Small” bridges based on relative costs. The “Small” bridge pool is further sub-divided into ON-System and OFF-System bridges. The STP funds are allocated to the pool (and sub-pool) based the ratio of the total replacement cost of the deficient bridges in the pool (and sub-pool) to the total replacement cost of the deficient bridges in the local pool.

Federal law requires a minimum of fifteen percent of the Oregon STP funds to be used to fund projects on OFF-System bridges. ODOT, with the concurrence of AOC and LOC, has obtained a waiver of that requirement each year since 2000.

Special emergency funding of bridges that have been destroyed or substantially damaged is also possible under this program. Further details of the program are in the [Federal-Aid Agreement](#).

11.415 TRANSPORTATION ALTERNATIVES PROGRAM (TAP). MAP-21 replaced the Transportation Enhancement Program (TE) with the new Transportation Alternatives Program (TAP), and nationwide two percent of total highway funds are set aside for TAP. The FAST Act eliminated the TAP program and rolled the funding into the STBGP as a set-aside. Although the program is eliminated, all of the previous funding restrictions and eligibility requirements apply to the set-aside in the STBGP. Funding will be suballocated to MPOs with populations larger than 200,000. Although the Recreational Trails and Safe Routes to School programs were eliminated as separate programs, this STBGP set-aside may be used for both types of projects.

Transportation enhancements have historically included [12 eligible TE activities](#) related to surface transportation, including pedestrian and bicycle facilities, pedestrian and bicyclist safety and education, acquisition of scenic and historic sites, scenic and historic highway programs, landscaping, historic preservation, rehabilitation and operation of historic transportation facilities, preservation of abandoned transportation corridors, archeological planning and research, control and removal of outdoor advertising, mitigation of water pollution from roadway runoff, and establishment of transportation museums. However, eligible activities under this set-aside may change as the rules for the program are developed.

The Transportation Enhancement Advisory Committee and the statewide selection of projects will be replaced by a region-based process utilizing the ACTs, with the Oregon Transportation Commission having the final say.

11.420 CONGESTION MITIGATION AND AIR QUALITY IMPROVEMENT (CMAQ). This Federal-Aid program is administered by the Environmental Engineering Unit of ODOT and the funds are designated for only seven areas identified as non-attainment or maintenance areas under the Clean Air Act Amendments of 1990 (Portland Metro area, Medford/ Ashland Metro area, Klamath Falls, La Grande, Lakeview, Oakridge and Grants Pass). The purpose is to fund transportation projects and programs that contribute to improving air quality. An ODOT CMAQ Advisory Committee develops project selection criteria and distribution targets. All projects must demonstrate savings in emissions (carbon monoxide, ozone and/or particulate matter). The CMAQ program will continue under the FAST Act with only relatively minor changes, including an explicit allowance for vehicle-to-infrastructure (V2I) communication equipment.

11.430 NATIONAL SCENIC BYWAYS. In eliminating virtually all discretionary highway programs, MAP-21 discontinued the discretionary grant program for scenic byways. However, most infrastructure projects on designated scenic byways will be eligible for ODOT “[Enhance](#)” funding in the 2015-2018 [STIP](#), and local governments will be able to use STBGP and State Highway Fund resources for these projects. ODOT has indicated that it plans to maintain a scenic byways program, though it will be reduced in size and scope. ODOT anticipates that few new scenic byways will be designated now that the prospect for receiving federal grants to fund projects has ended. ODOT will seek to develop partnerships with the travel and tourism community and scenic byways advocates to invest in marketing for existing byways.

11.440 FEDERAL PUBLIC LANDS HIGHWAYS. MAP-21 eliminated the Forest Highways Program and the Public Lands Highways Discretionary Program and replaced them with the Federal Lands Access Program (FLAP). (See section 11.445 for details).

11.445 FEDERAL LANDS ACCESS PROGRAM (replaces the FEDERAL FOREST HIGHWAY PROGRAM). MAP-21 eliminated the Forest Highways Program and the Public Lands Highways Discretionary Program and created the Federal Lands Access Program (FLAP), and **the FAST Act continues it with modestly higher funding levels.** FLAP is a Direct Federal rather than a Federal-Aid program, which provides funding over and above the state's federal-aid highway program funding. The FLAP funds are allocated to each state by an allocation formula. In Oregon, FLAP is administered by FHWA's Western Federal Lands Highway Division (WFLHD) in Vancouver, WA in cooperation with the Oregon Department of Transportation (ODOT) and the Association of Oregon Counties (AOC). This three-member group is called the Program Decisions Committee (PDC) and determines who receives FLAP funding in Oregon.

FLAP funding may be used for any state and local road, trail or transit facility that is located on, adjacent to, or provides access to *any* type of federal land—including U.S. Forest Service, Bureau of Land Management, Corps of Engineers, national parks, and national wildlife refuges. This significantly expands the type of projects eligible for funding, as only roads “on or providing access” to U.S. National Forests were eligible under the Forest Highways Program. The formula for distributing funds among states was modified significantly by MAP-21, and Oregon—which previously received the largest allocation of Forest Highways funding in the nation—will receive a smaller share of nationwide funding. Nonetheless, because overall FLAP funding is increased compared to Forest Highways, Oregon will receive a boost of nearly 7 percent, to an estimated \$24 million in 2013.

For the first time, federal lands projects will require a non-federal match (10.27 percent of total project cost). FLAP funds are available for all project cost that includes design, right-of-way, utility relocation, construction, maintenance and enhancement work. (For additional information see sections 11.815 to 11.819).

11.450 HIGHWAY SAFETY IMPROVEMENT PROGRAM (HSIP). The FAST Act continued the Highway Safety Improvement Program (HSIP) as a core Federal-aid program. The High Risk Rural Roads Program (HRRR, called HR3 in Oregon) was eliminated as a special set-aside after MAP-21 was enacted, and a new HRRR Special Rule was also enacted which requires States to obligate funds for high risk rural roads if the fatality rate is increasing on rural roads. The goal of the program is to achieve a significant reduction in traffic fatalities and serious injuries on *all* public roads and requires a data-driven, strategic approach to improving highway safety on public roads. States that see increased crashes on high risk rural roads face a requirement under MAP-21 to obligate a set amount for projects on these routes.

Funding for HSIP was significantly increased under MAP-21, with Oregon's share growing nearly 48 percent to almost \$29 million for FY 2013. With Oregon's funding under HSIP increased and with the specific directive in MAP-21 to address safety

challenges on all public roads, ODOT increased the amount of funding available for safety projects on local roads. In the past HSIP funds have been obligated primarily for projects on state highways

Through a process that is still under development, safety funding will be distributed to each ODOT region, based on the fatalities and serious injuries in each region. Each ODOT region will collaborate with local governments to select projects that can reduce fatalities and serious injuries, regardless of whether they lie on a local road or a state highway. In late 2012 ODOT, AOC and the League of Oregon Cities (LOC) mutually agreed upon the principles of a new jurisdictionally-blind safety program and designated it the [All Roads Transportation Safety](#) program or “ARTS”. The [Memorandum of Understanding](#) (MOU) documents the terms of the agreement.

By working collaboratively with the local road jurisdictions (cities, counties, MPO’s and tribes) ODOT expects to increase awareness of safety on all roads, promote best practices for infrastructure safety, compliment behavioral safety efforts and focus limited resources to reduce fatal and serious injury crashes in the state. The program will be data driven to achieve the greatest benefits in crash reduction and will be blind to jurisdiction. See the ODOT’s [PowerPoint presentation](#) of Oregon’s proposed plan. Details of the proposed plan, as it develops will be posted on ODOT’s [All Roads Transportation Safety \(ARTS\)](#) website.

11.453 OTHER SAFETY PROJECTS. In addition to HSIP funds Federal-Aid funding is available to local governments for other safety programs.

- [Section 130 Railway Highway Crossing](#). This provides for eliminating hazards at railroad highway grade crossings including the separation or protection of grades at crossings, the reconstruction of existing railroad grade crossing structures, and the relocation of highways to eliminate grade crossings. At least one-half of the available funds must be used to install protective devices at crossings. This money is available for projects on any public road. The state Grade Crossing Protection Account now pays 100 percent of the local match for the costs that are eligible for federal-aid. Projects are determined by the [ODOT Rail Program Office](#) based on an accident prediction formula.
- [Traffic Safety Management Study](#). When hazards in the county road system are identified, a county may apply to the [Transportation Safety Division](#) for funding to undertake a traffic safety management study. The application is evaluated according to the severity of the county's problem as identified in both the application and the Transportation Safety Division's studies. If a study is authorized, the county and the Transportation Safety Division negotiate a letter of intent specifying the type of program to be undertaken.

Information on additional safety programs can be found at the [Transportation Safety Programs](#) website including information on Roadway Safety, Safe Routes to School, Traffic Records Data and Work Zone Safety.

11.455 IMMEDIATE OPPORTUNITY FUND. [Immediate Opportunity Funds](#) are

available to support economic development in Oregon through the construction and improvement of public streets and roads in support of plant locations and other immediate opportunities. Projects either support specific economic development activities that affirm job retention and create job opportunities or focus on the revitalization of business or industrial centers to support economic development and quality development objectives. Funding requests are made through the Oregon Economic and Community Development Department's Region Development Officer and coordinated with ODOT Region offices. Recommendations for approval are made by the directors of the two departments to the Oregon Transportation Commission based on economic merit, transportation need and quality development objectives.

11.460 BICYCLE AND PEDESTRIAN PROJECTS. The [ODOT Bicycle and Pedestrian Program](#) ended as a separate program in 2012. Grant monies are now distributed through ODOT's "[Enhance](#)" component of the new ODOT STIP process. Counties may also propose small-scale urban pedestrian and bicycle projects on state highways through the Regional Local Agency Liaison. (See sections 3.540 to 3.545 for additional information on [bicycle trails and footpaths](#).) Contact ODOT Bicycle and Pedestrian [program staff](#) at Phone: 503-986-3555 or 555 13th ST NE, Suite 2, Salem, OR 97301-4178

11.470 PUBLIC TRANSIT DIVISION PROGRAMS. The Public Transit Division (PTD) coordinates funding programs through its various programs. There are many grant programs plus a technical assistance program. Most of the programs are described on ODOT's [Public Transit Division's website](#).

Moving Ahead for Progress in the 21st Century, or MAP-21, significantly modifies the transit program structure, merging a number of small formula programs and changing a major discretionary program into a formula program (see the [Oregon Federal Transit Funding chart](#) for an overview of program consolidation).

Federal-aid assistance to transit providers is provided under the following formula grant programs:

- Urbanized Areas
- Rural Areas
- Elderly and Disabled (which includes the former New Freedom Program)
- State of Good Repair (formerly Fixed Guideway Modernization)

It also authorizes transit systems in urban areas of over 200,000 that operate fewer than 100 buses in peak service to use a portion of their Urbanized Area funds for operating expenses.

A program discontinued during the past federal program was re-established by the FAST Act in 2015 as the [FTA's Bus Discretionary Program](#). This program allocates \$268 million in the first year to the replacement of aging fleets or facilities

The division administers two formula programs that provide local communities funding on an ongoing basis. The other funds are distributed through various discretionary grant processes. More information about the discretionary grant processes is posted on the PTD website.

The [Special Transportation Fund Formula Program](#) (STF) is a state financed program (cigarette tax and other funds) that provides STF Agencies with funds to finance transportation services for elderly persons and persons with disabilities. STF Agencies are transportation districts, county governments (where no transportation districts exist), and the nine federally recognized Indian tribes in Oregon. The majority of funds are allocated to the STF Agencies on the basis of a population formula. A portion of the funds are used for discretionary grants. The primary use of the formula funds in the rural areas is used to support local public transit services as match to the following programs. Of the 42 STF Agencies, 24 are counties.

The [Small City and Rural Area Program](#) provides operating and administrative funds by formula to eligible recipients (entities providing service to rural areas and urban areas of less than 50,000 population) for general public transit service. The fund source is federal. The local community provides the local match, which ranges from 43.92% for operating expenses to 10.27% for capital expenses. In Oregon, there are 36 rural and small city projects, and nine of the recipients are counties.

Currently, the discretionary transit programs include Mass Transit Capital (for replacement of the large urban buses), Innovation (for implementing new technologies and concepts in transit) and Oregon Street Car (for building Oregon-made street cars for Oregon transit agencies). The federally funded programs include: Intercity Bus (for support of regional and national bus transportation), Job Access and Reverse Commute (provide service for low-income workers), New Freedom (for support of services specific for people with disabilities), Elderly and Disabled program (for support of services benefiting seniors and people with disabilities), and Planning (for local-area transit-related planning.)

The ODOT Public Transit Division also has a [Rural Transit Assistance Program](#) designed to provide an enhanced level of training and technical assistance to Oregon transportation providers. The PTD staff may be contacted at 555 13th St. NE, Ste. 3, Salem, OR 97301-4179, (503) 986-3300.

11.480 FARM TO MARKET ROADS. In 1999, the Oregon Legislature enacted ORS 366.578 affirming the state’s interest in county farm-to-market roads and the commercial importance of county roads. The new law acknowledges “the importance of farm-to-market roads” and directs ODOT and local government officials to consider the importance of such roads when making highway funding decisions. For the purposes of this statute, the law defines a “farm-to-market road” as a road, street or highway that is “used to move agricultural or logging products to market.”

11.490 STATUTES ON FARM TO MARKET ROADS.

[Chapter 366](#)

State Highways

366.578 Farm-to-market roads

Chapter 369

Ways of Public Easement

369.020 Designation of county market roads as ways of public easement

369.025 County market road within city

11.500 OTHER STATE AGENCIES. Following is a list of some state agencies, in addition to the Department of Transportation, that may have information relevant to right-of-way selection or other road development matters.

State Organizations

- [Department of Agriculture: Soil and Water Conservation Commission](#)
- [Department of Environmental Quality](#)
- [Department of Administrative Services](#)
- [Extension Service \(Oregon State University\)](#)
- [Forestry Department](#)
- [Department of Fish and Wildlife](#)
- [Department of Geology and Mineral Industries](#)
- [Department of Justice](#)
- [Department of Land Conservation and Development](#)
- [Department of State Lands](#)
- [Parks and Recreation Department](#)
- [Oregon State Marine Board](#)
- [Public Utility Commission](#)
- [Department of Water Resources](#)

11.505 DEPARTMENT OF AGRICULTURE (ODA). The Oregon Department of Agriculture (ODA) administers the following two state laws that influence road maintenance operations: [Pest & Weed Control Act \(ORS 569\)](#) and the [Pesticide Use Reporting Act](#)⁴.

⁴ Section 5 of Chapter 572, Oregon Laws 2009 (HB 2999) suspended the pesticide reporting for pesticide

Specifically, [ORS 569.355](#) of the Pest & Weed Control Act requires the state and counties to control weeds designated as noxious by the Oregon State Weed Board. The 2011 legislature declared noxious weeds a threat to the Oregon economy and directed ODA to establish a program for issuing grants to counties for noxious weed control. The law requires counties to establish weed control districts and provide matching funds in order to be eligible for the grants (ORS 569.515 to 569.520). Under the Pesticide Use Reporting Act, ODA is required to “design, develop and implement the system in order to collect, evaluate, summarize, retain and report information on the use of pesticides in each major category of use in Oregon.” This system is referred to as the Pesticide Use Reporting System (PURS). The Association of Oregon Counties’ (AOC) [Road Program](#) has developed an electronic based reporting system for county road departments in AOC’s Integrated Road Information System ([IRIS](#)). With IRIS, county road department employees can record pesticide use information and send it to ODA electronically.

Additionally, ODA’s Native Plant Conservation Program administers the [Threatened & Endangered Plants Act \(ORS 564\)](#). This law protects native plants on all non-federal public land when they are listed as threatened and endangered. To avoid a “take” under [OAR 603-073](#), activities that disturb these listed plants require an Oregon listed plant permit. For more information about these two state statutory requirements, refer to section 11.900. ODA can be reached at 635 Capitol St. NE, Salem, Oregon, 97301-2532, 503-986-4550.

11.510 OFFICE OF EMERGENCY MANAGEMENT (OEM). The [Office of Emergency Management](#) is established by [ORS 401](#) and is a division of the Oregon Military Department. Its purpose is to assure overall coordination of emergency planning, preparedness and recovery efforts among state and local agencies. OEM also works closely with the Federal Emergency Management Agency (FEMA) during a presidentially declared disaster. (See section [11.880](#) for information on FEMA.)

Counties requesting a declaration from the Governor must submit their requests through OEM. The 2007 Oregon Legislature enacted Chapter 408, Oregon Laws 2007 amending ORS 401.055 (renumbered to ORS 401.165 in 2009) to require counties to establish a procedure for receiving, processing and transmitting to OEM all requests submitted by cities requesting the Governor to declare an emergency on behalf of the city.

An important part of OEM’s responsibility involves the coordination of the [Oregon Emergency Response System \(OERS\)](#) for receipt and dissemination of emergency information. This communication system is available to and is utilized by cooperating state agencies. It is also for use by counties to report accidents and disasters. Incidents must be reported locally before calling OERS.

Communications Systems

- 24-hour, toll free, incident-reporting number: (800) 452-0311
- 24-hour agency incident-reporting number: (503) 378-6377

users from July 1, 2009 through June 30, 2011. Due to continuing state budget constraints, the 2011 legislature continued the suspension of the reporting requirement indefinitely. Section 4 of the measure delays the repeal of the reporting requirements from December 31, 2009 to June 30, 2019.

- [National Warning System \(NAWAS\)](#): a statewide, private line, telephone communication system
- [Law Enforcement Data System \(LEDS\)](#): teletype
- Oregon Department of Transportation: teletype

Procedures

Normal Duty Hours: During normal duty hours of the regular work week, emergency incidents may be reported directly to OEM by any of the indicated communications systems. Preference should be placed on the agency commercial telephone systems.

After Hours: Emergency incidents should be reported to [OERS](#).

11.515 DEPARTMENT OF ENVIRONMENTAL QUALITY (DEQ). The purpose of the [Department of Environmental Quality](#) is to reduce pollution of air, water and land in the State of Oregon. Pursuant to this, DEQ has developed a variety of permit, planning, certification, and reporting requirements aimed at preventing pollution or minimizing the pollution once it occurs. Many of these requirements were developed to administer both state and federal environmental statutes concerning water quality, drinking water quality, solid/hazardous waste management, and air quality. Some of these requirements are applicable to highway construction and maintenance activities as well as maintenance yards. County road officials may have to comply with these requirements when engaging in such activities or operating their yards. The requirements that may apply to county road department operations are summarized below. To contact DEQ, use the following information: 811 SW 6th Avenue Portland 97204-1390, (503) 229-5696.

For the protection of surface water such as waterways, lakes, and wetland, Oregon DEQ requirements that may apply to road construction and maintenance activities as well as maintenance yards include:

- National Pollutant Discharge Elimination System (NPDES) 1200-CA (for government) or 1200-C (for private contractors working on public projects) permit for [erosion & sediment control](#) during road construction clearing/disturbing an acre or more of land.
- [NPDES 1200-Z](#) permits for stormwater arising from industrial activities such as transportation maintenance yards if the facility does qualify for a “no exposure” conditional exclusion to the 1200-Z permit.
- NPDES Municipal Separate Storm Sewer System (MS4) Permit for the [stormwater from road systems](#) in an urbanized area (50,000 population size or more) and the “urban fringe” (1,000 people per square mile) as well as other county operations such as road maintenance/construction, maintenance yards, and land use planning.
- Implementation plans for [Total Maximum Daily Loads \(TMDL\)](#) to address

specific water pollutant problems (high temperature, heavy metals carried in sediment, bacteria carried in sediment etc.) that impair the structure and function of water bodies. TMDL requirements can influence the operation of county road department facilities and operations on both urban and rural roads as well as other operations such as land use planning. Note: DEQ typically integrates TMDL requirements into NPDES MS4 permit if a county has one.

- [Section 401 Clean Water Act Water Quality Certifications](#) for the U.S. Army Corps of Engineers' Section 404 Permits for both construction stormwater discharge and post-construction run-off discharge.
- [Coastal zone non-point pollution control planning requirements](#) under the Coastal Zone Act Reauthorization Amendments (CZARA) are implemented using other DEQ programs such as TMDLs, NPDES MS4 permits, NPDES 1200-C and 1200-CA permits, NPDES MS4 Permits, and Section 401 Clean Water Act Water Quality Certifications. Following the Oregon Department of Transportation's "Erosion Control Manual" and "Routine Road Maintenance Manual for Water Quality & Habitat Protection" should address CZARA requirements for road maintenance and erosion and sediment control during road construction and maintenance.

For more information on permits, planning, and certifications for water quality protection refer to section 11.900.

For protection of the soil's capacity to assimilate pollutants, requirements for activities associated with transportation support facilities (e.g., maintenance yards) include:

- [Water Control Pollution Facility \(WPCF\) 1000 Permit](#) for operations that mine aggregate, operate an asphalt batch plant, or operate a concrete batch plant and dispose operational wastewater via evaporation, seepage into the ground, or irrigation. This permit is issued to address stormwater and washwater that has come in contact with overburden, raw materials, intermediate products, finished products, byproducts, waste products, or process equipment located on these sites. Although this is a DEQ permit, the Department of Geology, Aggregate, and Mineral Industries (DOGAMI) administers this permit.
- [WPCF 1700-B Permit](#) for washing activities that involve vehicles, construction equipment, roads/parking lots/other paved surfaces, and buildings and discharge the wastewater from washing activities via evaporation, seepage into the ground, or irrigation. Depending on the number of vehicles/equipment washed per week, a county road department may need this permit.

For more information on permits associated with the discharge of wastewater and industrial stormwater on land, refer to section 11.900.

For the protection of groundwater sources of drinking water, DEQ's [underground injection control \(UIC\) requirements](#) apply to the decommissioning of motor vehicle waste disposal wells or sumps if they are in operation in maintenance yards. The use of a motor vehicle waste disposal well is prohibited in Oregon. DEQ's UIC requirements also apply to the infiltration of road system stormwater into the ground using devices such as sumps or

French drains (i.e., Class V wells under federal and state rules). For more information on UIC requirements for groundwater quality protection, refer to section 11.900.

For the protection of land quality, DEQ administers several state and federal statutes. The management and disposal of solid and hazardous waste generated from county maintenance yards and construction/maintenance activities, has to comply with the following three state statutes administered by DEQ: [Solid Waste Management Act](#), [Hazardous Waste & Materials II Act](#), and the [Toxic Use & Hazardous Waste Reduction Act \(TUHWRA\)](#). The Solid Waste Management Act and Hazardous Waste Materials II Act authorize DEQ to administer federal requirements under the [Resource Conservation & Recovery Act](#) as well as state-specific requirements.

The regulatory definition of solid waste includes all useless or discarded putrescible/non-putrescible materials such as garbage, ashes, paper, cardboard, useless or discarded commercial, industrial, demolition or construction materials, discarded vehicles and their parts, discarded industrial appliances, plant cuttings, and dead animals. Plant cuttings/materials that will be used to protect/condition soil or promote plant growth/establishment are not considered solid waste. Solid waste should be disposed of at a DEQ permitted facility. The Solid Waste Management Act also requires a local government unit that is responsible for solid waste disposal to prepare a waste reduction program before DEQ may issue a permit for a waste disposal site. For rules governing solid waste management, refer to [OAR 340-093 \(General Provisions\)](#). For additional information, refer to section 11.900.

Hazardous waste is waste that possesses at least one of four characteristics (ignitability, corrosivity, reactivity, or toxicity), or appears on the federal designated list of hazardous wastes. The regulatory requirements for documenting and reporting on the disposal of hazardous depend upon the quantity of hazardous waste generated at a facility. Under state and federal rules, a facility that generates hazardous waste must calculate its “hazardous waste generator status” and comply with the reporting requirements applicable to the facility generator status. If a county maintenance yard generates more than 220 lbs but less than 2,200 lbs of hazardous waste in any calendar month, DEQ considers the facility a “small quantity generator (SQG)” and requires the reporting of hazardous waste management at this facility. If the yard is below this threshold, DEQ considers the facility a “conditionally exempt generator (CEG)” and does not require the reporting of hazardous waste management unless there is a change in the status of the facility. Although the documenting and reporting requirements are less for CEG, all hazardous waste must be managed following state and federal regulations. For rules governing hazardous waste management, refer to [OAR 340-100 \(General\)](#), [OAR 340-101 \(Identification & Listing of Hazardous Waste\)](#), [OAR 340-102 \(Standards Applicable to Generators of Hazardous Waste\)](#), and [OAR 340-111 \(Used Oil Management\)](#). For additional information, refer to section 11.900.

Certain hazardous waste may be managed under streamlined requirements under the [universal waste rule](#). Universal waste management requirements are less stringent than requirements for hazardous waste. If a hazardous waste is managed as a universal waste, the hazardous waste is not calculated in determining a facility’s hazardous waste generator status under the Hazardous Waste & Materials II Act and can reduce the cost of disposing this waste if it is identified as hazardous. For more information, refer to section 11.900.

Under the TUHWRA, if a maintenance yard generates 220 to 2,200 pounds of hazardous waste in a calendar month (i.e., the yard is classified as a small hazardous waste generator); a hazardous waste reduction plan or environmental management system (EMS) is needed for the yard. For more information on a hazardous waste reduction plan or EMS, refer to section 11.900.

Under Hazardous Waste & Materials II Act, DEQ also administers programs to regulate the use of tanks to store oil or other chemicals. This state statute also includes federal tank storage requirements under the Resource Conservation & Recovery Act. DEQ's storage tank program regulates underground tanks (USTs), leaking underground tanks (LUSTs), above ground tanks (ASTs), and heating oil tanks (HOTs). Storage tanks regulated under DEQ's UST Program are excluded from the U.S. EPA's [spill prevention, containment, and countermeasures \(SPCC\)](#) regulations discussed above (see section 11.897). DEQ regulates the registration and operation of USTs as well as the clean-up of contaminated soil and groundwater from LUSTs. DEQ has established procedures for reporting and responding to spills from ASTs, and DEQ oversees third party clean-up and decommissioning of HOTs used to heat buildings for human habitation. For more information on issues relating to storage tanks, refer to section 11.900.

For the protection of air quality, DEQ administers several permits under – authority of the [Air Quality Act \(ORS 468A.040\)](#) – that regulate the air emissions for rock crushing and asphalt plants, the construction of high volume roads, open burning, and the generation of noise. These permits are summarized as follows:

- If permitted at all within an "open burning control area", open burning requires [open burn letter permit](#) or must be in an area excepted from permit requirements. Areas within the control area include: the Willamette Valley, areas in the Coos Bay, Rogue and Umpqua basins; and areas within three miles of a city of 4,000 population that is outside the previously listed areas. DEQ regulates open burning under the Air Quality Act (ORS 468A.040). For the Oregon Administrative Rules on open burning, see [OAR 340-264-0010 to 340-264-0190](#).
- In 1991, DEQ terminated its [noise control program](#) as a cost cutting measure. However, the requirements in the [Oregon Noise Control Act \(ORS 467\)](#) for controlling noise are still in effect. Construction activities are exempted from DEQ's rules for administering this statute.
- Under the Air Quality Act (ORS 468A), DEQ regulates emissions from rock crushing operations or asphalt batch plants. Emissions from these two sources are considered minor sources of air contaminant emissions and are regulated under the [air contaminant discharge permit \(ACDP\)](#) program. There are several types of ACDPs depending on the level of air emissions. For the rules governing ACDPs, refer to [OAR 340-216](#).
- In the past, under the Air Quality Act, "indirect source construction permits" were needed for roads carrying 20,000 or more trips per day or if the road is projected to have 10,000 added trips per day within ten years. More recently, Oregon Administrative Rules ([OAR 340-254-0010 to 0080](#)) were amended to exclude highway sections since these sources were being regulated by the new

transportation conformity rules.

- Under the Air Quality Act, with some exceptions stated under [OAR 340-232-0120](#), the use of any “cutback asphalts” for paving roads and parking areas is prohibited during the months of April, May, June, July, August, September, and October in the vicinity of three air quality non-attainment areas which include Portland, Salem, and Medford. The rules define cutback asphalt to mean “a mixture of a base asphalt with a solvent such as gasoline, naphtha, or kerosene. Cutback asphalts are rapid, medium, or slow curing.”
- Under the Air Quality Act, DEQ can regulate road dust as a “nuisance” under [OAR 340-208](#). This rule defines nuisance as a “substantial and unreasonable interference with another's use and enjoyment of real property, or the substantial and unreasonable invasion of a right common to members of the general public.” OAR 340-208-0300 explicitly prohibits nuisance sources.

For more information on air quality protection requirements, refer to section 11.900. Before planning road work or developing a new transportation support facility, you may want to consider contacting DEQ at 811 SW 6th Avenue, Portland, Oregon 97204-1390, 800-452-4011.

11.520 DEPARTMENT OF FISH & WILDLIFE (ODFW). The Oregon Department of Fish & Wildlife (ODFW) administers the [Oregon Fish Passage Act \(ORS 509.580 to 509.910\)](#), the [Oregon Threatened & Endangered Species Act \(ORS 496.171 to 496.192\)](#), the Oregon Wildlife Policy (ORS 496.012), and the [Oregon Food Fish Management Policy \(ORS 506.109\)](#). The purpose of the state policies codified in the Oregon Revised Statutes is to ensure that the development and management of lands of this state enhances the “production and public enjoyment of wildlife and food fish.” ODFW is responsible for administering this law. To do this, ODFW has developed the [Fish & Wildlife Mitigation Policy rules \(OAR 635-415\)](#) to provide goals and standards for individual development actions. These rules indicate that ODFW can use any regulatory process provided by the implementation of federal, state, and local environmental laws and ordinance to administer these rules. ODFW can participate in these federal, state, and local processes through the duration. Typically, ODFW uses the public review stage of the Oregon Department of State Lands’ (DSL) removal-fill permit process (see section 11.545) and the U.S. Army Corps of Engineers (Corps) Section 404 and Section 10 permit processes (see section 11.850) to make recommendations to mitigate the impact of proposed development actions on wildlife and fish to these two regulatory agencies.

ODFW typically recommends specific times of the year during which projects should be conducted. They have developed the [Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wildlife Resources](#). This document presents dates during which in-water work will have the least impact on sensitive species.

To administer the Fish Passage Act, ODFW issued [fish passage regulations \(OAR 635-412\)](#) to describe actions that require measures to ensure the passage of native migratory fish – both freshwater and anadromous – and approval of any fish passage measures. For road departments, potential triggers include the following: bridge maintenance, installation, and replacements; culvert maintenance, installations and replacements; and, work above a

road bed that is segmenting a wetland, estuary, and floodplain. In addition, under the Oregon Threatened & Endangered Species Act (ORS 496.182), ODFW lists fish and wildlife species that are at risk of extinction and develops survival guidelines for these species that all state agencies must consider when taking action that may affect a listed species (see [OAR 635-100-0001 to 0180](#)). If a proposed action may violate survival guidelines, the state agency must consult with ODFW. Typically, the administration of these statutory requirements occurs during established regulatory procedures such as DSL's removal-fill permit process and the Corps' permit programs.

Current law requires ODFW to consult with federal agencies, other interested state agencies, other states with a common interest, and interested parties and organizations prior to making a determination that a species is threatened or endangered. In 2012, the legislature added affected cities, counties, private landowners and local service districts to the list of parties that must be consulted prior to a determination, and requires the department to work with the affected cities, counties, private landowners and local service districts to mitigate the adverse economic impact of such determinations ([ORS Chapter 496](#)).

Finally, under [ORS 497.298](#), a permit from the ODFW is required to capture and move fish in Oregon when isolating your project site regardless of the fish's status under the State Threatened & Endangered Species Act. This permit is referred to as "Scientific Take Permit." Under the federal Endangered Species Act (ESA), the National Marine Fisheries Service and the U.S. Fish & Wildlife Service (i.e., Services) have a similar requirement for moving or handling ESA-listed fish while doing in-water road construction or maintenance work (see sections 11.890 & 11.895). Depending on their availability, ODFW may be able to move federally ESA-listed fish from a work site under their cooperative agreements with the Services. For more information on ODFW requirements, refer to section 11.900. During the planning stages of your project, you may want to contact ODFW at 3406 Cherry Avenue N.E., Salem, OR 97303-4924 (503) 947-6000.

11.525 OREGON FOREST PRACTICES ACT. Roads in forest lands are also regulated under the [Forest Practices Act \(FPA\) \(ORS 527.610 et seq.\)](#). Specifically, ORS 527.710 states that the State Board of Forestry shall develop "rules to be administered by the State Forester establishing minimum standards for forest practices in each region or subregion." ORS 527.620 (5) (b) defines "Forest Practice" as including road construction and maintenance operations on forest lands. Under ORS 527.630 the State Board of Forestry is given "exclusive authority to develop and enforce statewide and regional rules pursuant to ORS 527.710." The rules for road construction and maintenance are covered under administrative rules on Forest Roads, Road Construction and Maintenance ([OAR 629-625](#)). Under the FPA, there is potential overlap with other state and federal environmental and natural resource statutes. The FPA specifically addresses the overlap with state and federal water and air pollution control requirements under ORS 527.724. For other areas of potential overlap, Section 710(4) of the FPA requires consultation before adopting rules when "forest operations" may affect other agency programs (e.g., federal safe drinking water, removal-fill, natural heritage conservation programs etc.). However, the State Board of Forestry cannot implement another agency's program unless the Board adopts rules to do so and the other state agency concurs by rule with the Board's rule (ORS 527.610 (6)). For more information on the Forest Practices Act, refer to section 11.900. To contact the Oregon Department of Forestry, write or call at 2600 State Street, Salem, Oregon 97310, 503-945-

11.530 DEPARTMENT OF GEOLOGY AND MINERAL INDUSTRIES (DOGAMI). The 2011 legislature enacted Chapter 406, Oregon Laws 2011 (HB 3601) directing the Department of State Lands (DSL) and DOGAMI to enter to in a memorandum of agreement when surface mining would otherwise be under the permitting jurisdiction of both departments because part of the surface mining is located within the beds or banks of any waters within Oregon, and part of the surface mining is located upland from the beds or banks of any waters of the state and assigned DOGAMI sole responsibility for permitting as described in ORS 517.797. The new law provides that DOGAMI, prior to any permitting under the memorandum of agreement, must consult with DSL regarding any conditions necessary to protect the waters of this state. The new law applies to permits first applied for under ORS 517.797, or renewed, on or after January 1, 2012.

Counties must obtain a surface mining permit from the Department of Geology and Mineral Industries (DOGAMI) when establishing a gravel pit or a similar surface mine if the mine triggers the acreage/volume threshold of greater than 1 acre or 5,000 cubic yards. If a local ordinance is passed pursuant to ORS 517.780(2), a county or city may take responsibility for its own land surface mining activities if the operation sells less than 5,000 cubic yards within 12 consecutive months. A model county ordinance for surface mining regulation, prepared by the Bureau of Governmental Research and Service, University of Oregon for the Association of Oregon Counties, contains a sample ordinance providing for self-regulation of a county's own operations. Counties that had an approved ordinance in effect on July 1, 1984 regulating all surface mining in the county may continue to replace the Department of Geology and Mineral Industries as the surface mining permit-issuing agency. However, no additional counties may assume that authority. For more information, refer to section 11.900. Contact DOGAMI at 800 NE Oregon Street, Suite 965, Portland, Oregon 97232, 971-673-1555.

11.535 DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT (DLCD). The Department of Land Conservation and Development administers the state's Land Use Planning Law, ORS 197.005 to 197.465. Under the law, counties and cities are required to develop, adopt and implement comprehensive plans (see chapter 2A).

Statewide Land Use Planning Goal 12 provides DLCD with the basis for the Department to review of county comprehensive plans. Goal 12 calls for the establishment of a transportation plan which encourages a safe, convenient and economic transportation system.

A transportation plan shall (1) consider all modes of transportation including mass transit, air, water, pipeline, rail, highway, bicycle and pedestrian; (2) be based upon an inventory of local, regional and state transportation needs; (3) consider the differences in social consequences that would result from utilizing differing combinations of transportation modes; (4) avoid principal reliance upon any one mode of transportation; (5) minimize adverse social, economic and environmental impacts and costs; (6) conserve energy; (7) meet the needs of the transportation disadvantaged by improving transportation services; (8) facilitate the flow of goods and services so as to strengthen the local and regional economy; and (9) conform with local and regional comprehensive land use plans.

DLCD's review of a county Transportation Plan is further guided by the requirements of Division 12, Transportation Planning Rule, [Oregon Administrative Rule 660-012-0000](#). Review the Administrative Rule for the requirements of the Rule.

DLCD also reviews U.S. Army Corps of Engineer's Section 404 Permits for compliance with the [Coastal Zone Management Act](#). This authority for review is referred to federal consistency review, and DLCD's Ocean-Coastal Management Program (OCMP) is responsible for conducting it. In a federal consistency determination, OCMP reviews how Goal 16 (estuarine resources), Goal 17 (coastal shore lands), Goal 18 (beaches & dunes), and Goal 19 (ocean resources) are addressed in a city/county comprehensive plan and then determines if the proposed action in a federally-funded project or federal permit application is consistent with the local government's comprehensive plan and ordinance to implement these goals. For more information on this permit process refer to section 11.900. If planning work in Oregon's coastal zone, you may want to contact DLCD at 635 Capitol St. NE, Suite 150, Salem, Oregon, 97301-2540, 503-373-0050.

11.540 PARKS & RECREATION DEPARTMENT (OPRD). The [Parks & Recreation Department \(OPRD\)](#) administers a state statute to protect Oregon's scenic waterways as well as a federal and several state statutes protecting historic, cultural, and archaeological resources. If these resources are present during the planning of road work, these statutes could influence the design, construction, and maintenance process for road work. The State Historic Preservation Office (SHPO) of OPRD administers the federal and state statutes to protect historic, cultural, and archaeological resources. SHPO administers [Section 106 of the federal National Historic Preservation Act \(NHPA\)](#). Under NHPA Section 106, SHPO reviews projects, activities, or programs funded in whole or part under the direct or indirect jurisdiction of a Federal agency. In these reviews, SHPO is required to "to take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register." These reviews are typically triggered by the U.S. Army Corps of Engineer's Section 404 and Section 10 Permits (see section 11.850).

SHPO also administers the state [Indian Graves & Protected Objects Act \(IGPOA\) \(ORS 97.740 to 97.760\)](#) and the [Archaeological Objects & Sites Act \(AOSA\) \(ORS 358.905 to 358.961\)](#). ASOA was enacted to protect "archaeological sites and their contents located on public land." Under AOSA, a permit is required from SHPO to excavate, alter, or remove objects from an archaeological site on private and public lands in Oregon. The [Archaeological Sites & Historic Materials Acts \(ORS 390.235 to 390.240\)](#) gives OPRD the authority to issue these permits. IGPOA was enacted to also protect specifically burials sites and related cultural objects of native Indians from disturbance. For more information, see the AOC web site on [Cultural, Historical, & Archaeological Resources](#).

OPRD also administers the Scenic Waterways Act (ORS 390.805 to 390.940). The ORPD must be notified of certain activities proposed within one quarter of a mile of the bank of Oregon's designated scenic waterways. Such activities include cutting of trees, mining, construction of roads, railroads, utilities, buildings, or other structures. The proposed uses or activities may not be started until the written notification is approved, or until one year after the notice is accepted. During the planning stage of your project, you may want to contact OPRD at 725 Summer Street NE, Suite C, Salem, Oregon 97301, 503-986-0674.

11.545 DEPARTMENT OF STATE LANDS (DSL). The [Department of State Lands](#) is responsible for administration of the Oregon Common School Trust Fund, which consists of 732,000 acres of state land, 800,000 acres of offshore land, and all land submerged or capable of being submerged in Oregon's navigable waterways. The Department has jurisdiction over gas and oil leases, geothermal exploration, and all mineral rights on state land.

The basic county contact with the Department of State Lands occurs when a county wants to build or maintain a road on state-owned submerged and/or submersible land⁵. Typically, state ownership begins and ends at the ordinary high water mark of a navigable waterway. The most common situations are:

- Easements for bridges
- Registrations of uses in rights-of-way created prior to November 1, 1981
- Leases of uses in rights-of-way created after November 1, 1981
- Removal-fill permits

Bridge building over navigable waters in the state may also require a federal permit (see sections 11.850 and 11.865 for permits required by agencies bridging navigable water.)

DSL Easements for Bridges. Counties are required to have an easement for every bridge over a water of the state. Provisions for obtaining these easements are specified in [OAR 141-122](#). The cost of the easement is currently \$100 per bridge (OAR 141-122-0060(7)(c)). The application fee for the easement is \$750 (OAR 141-122-0060(3)), however a county can submit one application for all bridges (OAR 141-122-0060(4)(b)).

DSL Registrations and Leases for Uses in Rights-of-Way. A registration or lease is required for all structures (except for bridges, which require easements) and uses occupying state-owned submerged and/or submersible lands. Provisions for registrations and leases are in [OAR 141-082](#). If the right-of-way was created prior to November 1, 1981, it must be registered (no fee). The registration must be renewed every five years. If the right-of-way was created after November 1, 1981, it must have a lease (with an annual fee).

DSL Removal-Fill Permits. For detailed information on Removal-Fill Permitting, please reference the [DSL Removal-Fill Guide](#). The Department has adopted a general authorization (GA) for certain minor road construction projects that do not require a removal-fill permit but the Department must provide written authorization for the work to proceed. A GA is for transportation projects that have a minimal impact on waters of this state and have predictable impacts that are on-going, routine, or reoccurring in nature (e.g., stream bank stabilization). A GA is comparable to the U.S. Army Corps of Engineers' (Corps) nationwide permit (see section 11.850). For projects that have more than a minimal impact yet the impacts are both predictable and reoccurring in nature, DSL issues a general permit (GP). In 2011, the legislature modified the general permit law to prescribe two procedures

⁵ The 2011 legislature enacted Chapter 406, [Oregon Laws 2011](#) (HB 3601) directing the Department of State Lands and the Department of Geology and Mineral Industries to establish a memorandum of agreement when surface mining would otherwise be under the permitting jurisdiction of both departments and assigned DOGAMI sole responsibility for permitting. See section 11.530.

by which DSL may establish general permit for removal or fill: (1) *by rule* for processing applications on statewide or geographic basis; or (2) *by order* for an application or group of applications covering recurring or ongoing activities substantially similar in nature and having predictable effects and outcomes. For larger projects where the impacts are more than minimal and are less predictable, DSL issues an individual permit (IP). Individual permits require more time to process. When requesting an IP or GP, the [Joint Permit Application](#) between the Corps and DSL must be completed. DSL may also issue, orally or in writing, an emergency authorization (EA) for the fill or removal of material in an emergency for the purpose of making repairs or for preventing irreparable harm, injury or damage to persons or property (see [OAR 141-085-0676](#)). Fill or removal for maintenance, including emergency reconstruction, of “recently damaged parts of currently serviceable roads or transportation structures” is exempt. This exemption applies in all waters of the state except State Scenic Waterways. Although there is not a complete overlap of wetlands and waterways regulated, the Corps administers a federal permit under Section 10 of the Clean Water Act that mirrors DSL’s removal-fill permit (see section 11.850). DSL and the Corps use the same application (i.e., the Oregon joint permit application) and attempt, where possible, to align the federal and state permit programs to reduce the complications arising from a dual state and federal permit program. The Oregon legislature enacted a law that was codified in [ORS 196.795](#) granting DSL the authority to investigate the assumption of the federal Section 404 permit program—currently administered by the Corps—from the U.S. Environmental Protection Agency (see section 11.897).

Under the [Scenic Waterways Act \(ORS 390.835\)](#), DSL also issues permits for all removal-fill actions regardless of volume on waterways designated as scenic using the same permit for complying with Oregon’s Removal-Fill Act. An application for a removal-fill permit on a state scenic waterway triggers a review by the Oregon Parks & Recreation Department. For actions such as the cutting of trees within the boundaries of a designated scenic waterway, the Oregon Parks & Recreation Department must be notified before action is taken (see section 11.540).

Projects that involve the placement and/or removal of fill in wetlands may require a wetland determination or delineation to calculate the area of wetland impacted. Once area is determined, mitigation for the impacts will be required. The Department of State Lands allows for different [mitigation options](#) for impacts to wetlands. The best option is generally dependent on project location and type of wetland impacted. Additionally, if a Corps permit is required for a project, it is important to ensure that the mitigation type selected is accepted by the Corps. In the event a county or individual would like to appeal a wetland delineation determination made by DSL, an appeal can be requested which will then go to an independent review committee (ORS 196.818).

For more information on state easements, removal-fill permits, and requirements for wetlands and scenic waterways, refer to section 11.900. Before placing fill in or removing fill from waters of the state or working within the boundaries of a state scenic waterway, you may want to contact [DSL](#) at 775 Summer Street NE Suite 100, Salem, Oregon 97301-1279, 503-986-5200.e

11.546 STATUTES ON WETLANDS AND FILL/REMOVAL

Chapter 196

*Wetlands
Wetlands Mitigation Bank*

- 196.600** Definitions for ORS 196.600 to 196.655
- 196.605** Purpose
- 196.610** Powers of Director of Department of State Lands; fees
- 196.615** Program for mitigation banks; program standards and criteria; rules
- 196.620** Resource values and credits for mitigation banks; use and withdrawal of credits; annual evaluation of system by director
- 196.623** Watershed enhancement project as mitigation bank; sale of mitigation credit
- 196.625** Fill and removal activities in mitigation banks; reports
- 196.630** Rules
- 196.635** Director to consult and cooperate with other agencies and interested parties
- 196.640** Oregon Removal-Fill Mitigation Fund; rules
- 196.643** Payments to comply with permit condition, authorization or resolution of violation
- 196.645** Sources of fund
- 196.650** Use of fund
- 196.655** Report on Oregon Removal-Fill Mitigation Fund; contents
- 196.660** Effect of ORS 196.600 to 196.655
- 196.665** Short title

Wetland Conservation Plans

- 196.668** Legislative findings
- 196.672** Policy
- 196.674** Statewide Wetlands Inventory; rules
- 196.676** Response to notices from local governments

- 196.678** Wetland conservation plans; contents; procedure for adopting
- 196.681** Duties of department; standards for approval of plan; conditions for approval; order
- 196.682** Permits required for removal or fill; conditions on issuance of permit
- 196.684** Amendment of plans; review of plans by department; review of orders by Land Use Board of Appeals
- 196.686** Acknowledged estuary management plans; review and approval; hearings; final order
- 196.687** Regulation of alteration or fill of artificially created wetlands
- 196.688** Public information program
- 196.692** Rules

Removal of Material; Filling

- Note** Provision relating to fills depending on E.P.A. approval--1989 c.45 §2; (See ORS 196.795 for details)
- 196.795** Streamlining process for administering state removal or fill permits; application for state program general permit; periodic reports to legislative committee
- 196.800** Definitions for ORS 196.600 to 196.905
- 196.805** Policy
- 196.810** Permit required to remove material from bed or banks of waters; status of permit; exceptions; rules
- 196.815** Application for permit; fees; disposition of fees
- 196.816** General permits allowing removal of certain amount of material for maintaining drainage; rules; waiver of fees
- 196.817** General permit; rules
- 196.818** Wetland delineation reports; review by Department of State Lands; fees
- 196.820** Prohibition against issuance of permits to fill Smith Lake or Bybee Lake; exception
- 196.825** Criteria for issuance of permit; conditions; consultation with public bodies; hearing; appeal

- 196.830** Estuarine resource replacement as condition for fill or removal from estuary; considerations; other permit conditions
- 196.835** Hearing regarding issuance of permit; procedure; appeals; suspension of permit pending appeal
- 196.845** Investigations and surveys
- 196.850** Waiving permit requirement in certain cases; rules; notice; review; fees; disposition of fees
- 196.855** Noncomplying removal of material or filling as public nuisance
- 196.860** Enforcement powers of director
- 196.865** Revocation, suspension or refusal to renew permit
- 196.870** Abatement proceedings; restraining order; injunction; public compensation
- 196.875** Double and treble damages for destruction of public right of navigation, fishery or recreation; costs and attorney fees
- 196.880** Fill under permit presumed not to affect public rights; public rights extinguished
- 196.885** Annual report of fill and removal activities; contents of report.
- 196.890** Civil penalties
- 196.895** Imposition of civil penalties
- 196.900** Schedule of civil penalties; rules; factors to be considered in imposing civil penalties
- 196.905** Applicability; rules
- 196.910** Monitoring fill and removal activities; public education and information materials; periodic reports to legislative committee

NOTE: Section 2 of Chapter 108, Oregon Laws 2012 creates a process by which a person may request an independent review of determinations made by the Dept. of State Lands that are related to wetlands delineation.

Penalties

196.990 Penalties

NOTE: Definitions in 197.015 apply to ORS chapter 196.

Chapter 517

*Reclamation Of Mining Lands
Generally*

- 517.750** Definitions for ORS 517.702 to 517.989
- 517.780** Effect on county zoning laws or ordinances; rules; certain operations exempt
- 517.797** Memorandum of agreement with Department of State Lands regarding permitting

11.547 CITATIONS ON WETLANDS AND FILL/REMOVAL

Bridgeview Vineyards, Inc. v. State Land Board, 211 Or. App. 251, 154 P.3d 734 (2007): Plaintiff sought emergency authorization from the Department of State Lands (DSL) to place riprap in Sucker Creek, a non-navigable stream located in Josephine County that is designated as a salmonid habitat. After DSL denied the authorization, the trial court granted the plaintiff relief, stating that its proposed activity fit within several exceptions to and exemptions from the fill and removal laws permitting requirements. The Court of Appeals reversed, stating that under ORS 196.810, the removal or fill of 50 cubic yards or more of material in connection with activities customarily associated with agriculture requires a permit if the removal or fill is in a salmonid stream. The Court found that the statute applies, even in connection with activities customarily associated with agriculture, because the plaintiff failed to establish that its proposed fill and removal activities involved less than 50 cubic yards of material.

Owen v. Division of State Lands, 189 Or. App. 466, 76 P.3d 158 (2003): The Department of State Lands (DSL) issued a cease and desist order to Owen directing him to stop fill activities on a road that spans wetlands located on his property until he obtained a permit for that work as provided in ORS 196.810(1)(a). The work included placing approximately 2,600 cubic yards of fill material on the existing road footprint, grading out the material on the road, and replacing a culvert. Owen asserted that the work was exempt from the permit requirement under ORS 196.905(4) (b), which allowed an exemption for maintenance of certain farm roads. DSL asserted that the work was reconstruction, which DSL argued was not exempt from the permit requirements. The Court of Appeals reversed the final order from DSL, and held the work was “maintenance” within the exemption, stating that restoring a road that lacks current serviceability does not preclude that work from constituting maintenance. The Court concluded that “maintenance” can include repairs to a farm road that does involve meaningful changes to its preexisting physical dimensions.

11.550 PUBLIC UTILITY COMMISSION (PUC). Under ORS 757.035, the Public Utility Commission is empowered to regulate operation of telegraph, telephone, signal and power lines within the state. The regulatory powers of the Commission are important to

counties because the county road right-of-way is available by right to utilities (see section 11.670 and chapter 10). Counties, unlike cities, may not control the use of road right-of-way by the grant of franchises. Counties may issue installation permits which may specify such things as location of facilities in the right-of-way and the manner in which cutting and resurfacing of the roadway is to be performed. Counties have some interest in monitoring the commission's rules and coordinating with that office in this regard. See Pacific N.W. Bell v. Multnomah County in section 10.220.

11.551 STATUTES ON PUC REGULATION OF UTILITY LINES

Chapter 757

Utility Regulation Generally

757.035 Adoption of safety regulations; enforcement

11.552 PUC ADMINISTRATIVE RULES ON UTILITY LINES. Oregon Administrative Rules, Chapter 860, Division 24 (OAR-860-024) deals with the Electric and Communication General Construction and Safety Standards.

Construction, Operation, and Maintenance of Electrical Supply and Signal Lines OAR 860-024-0010 Construction, operation, and maintenance of electrical supply and signal lines shall comply with the standards prescribed by the **2007 Edition of the American National Standard, National Electrical Safety Code** approved June 16, 2006 by the American National Standards Institute. (The publication(s) referred to or incorporated by reference in this rule are available from the agency.)

11.555 WATER RESOURCES DEPARTMENT. Under ORS 537.040, a public agency having jurisdiction over roads or highways may register a water use for road and highway maintenance, construction and reconstruction purposes. The first-year registration costs \$300 and the annual renewal fee is \$50. The registration can cover a number of locations throughout the county that could be used for water. The registration is subordinate to other water rights from the same source and an agency may have to stop using the water if the use is having a significant adverse effect.

11.600 COUNTY-COUNTY COOPERATION AND RELATIONS.

County-County Cooperation and Relations. County-to-county cooperation is encouraged in Oregon law, specifically ORS Chapters 190 (Intergovernmental Relations) and 203 (County Governing Bodies). ORS 203.035 states that the power granted by that law "is in addition to other grants of power to counties, shall not be construed to limit or qualify any such grant and shall be liberally construed, to the end that counties have all powers over matters of county concern that it is possible for them to have under the Constitutions and laws of the United States and of this state."

Additionally, [ORS 368.011](#) authorizes counties to supersede the county road statutes of ORS Chapter 368 by enacting an ordinance pursuant to the charter of the county or under powers granted the county in ORS 203.030 to 203.075. Subsection (2) of ORS 368.011 places minimal limitations on this authority by stating that a county may not enact an ordinance to supersede a provision of “this section” (ORS 368.011) or ORS 368.001 (definitions of the chapter), 368.016 (county authority over roads including limitations), 368.021 (county authority over trails), 368.026 (withdrawal of county road status), 368.031 (county jurisdiction over local access roads), 368.051 (accounting for county road work), 368.705 (county road fund and the use of fund), 368.710 (apportionment of local option taxes and compression), 368.720 (using road funds outside of county) or 368.722 (expenditure of general road fund on city streets and bridges). All the other sections of ORS Chapter 368 can be adapted to the county’s specific needs and conditions by the adoption of a county ordinance by the county governing body.

11.610 INTERGOVERNMENTAL COOPERATION AND PROGRAMS.

The Oregon Legislature enacted the intergovernmental cooperation statutes ([ORS 190.003 to 190.130](#)) “in the interest of furthering economy and efficiency in local government” and stated that the authority “shall be liberally construed.” The broad powers of an intergovernmental agreement contain the following components:

(1) Authority. A unit of local government may enter into a written agreement with any other unit or units of local government for the performance of any or all functions and activities that a party to the agreement, its officers or agencies, have authority to perform. The agreement may provide for the performance of a function or activity:

- (a) By a consolidated department;
- (b) By jointly providing for administrative officers;
- (c) By means of facilities or equipment jointly constructed, owned, leased or operated;
- (d) By one of the parties for any other party;
- (e) By an intergovernmental entity created by the agreement and governed by a board or commission appointed by, responsible to and acting on behalf of the units of local government that are parties to the agreement; or
- (f) By a combination of the methods described in this section.

(2) Contents of agreements. Intergovernmental agreements must specify the functions or activities to be performed and by what means they are to be performed. Where applicable, the agreement shall provide for the following:

- (a) The apportionment among the parties of the responsibility for providing funds to pay for expenses incurred.
- (b) The apportionment of fees or other revenue derived from the functions or activities and the manner in which the revenue is accounted for.
- (c) The transfer of personnel and the preservation of their employment benefits.
- (d) The transfer of possession of or title to real or personal property.
- (e) The term or duration of the agreement, which may be perpetual.
- (f) The rights of the parties to terminate the agreement.

In the event the parties to an agreement are unable, upon termination of the agreement, to agree on the transfer of personnel or the division of assets and liabilities

between the parties, the circuit court has jurisdiction to determine that transfer or division.

(3) Effect of agreement. Under such agreements, the unit of local government, consolidated department, intergovernmental entity or administrative officer designated to perform specified functions or activities is vested with *all powers, rights and duties* relating to those functions and activities that are *vested by law in each separate party* to the agreement, its officers and agencies.

Intrastate Mutual Assistance Compact. The 2007 Legislature passed the Intrastate Mutual Assistance Compact ([ORS 402.200 to 402.240](#)) for local governments with an effective date of January 1, 2008. The compact is modeled after the Emergency Management Assistance Compact that the State of Oregon has with other states. The intrastate compact establishes a statewide mutual aid agreement that streamlines the procedure for a local government to request assistance from another jurisdiction by:

- Specifying that request for assistance may be verbal or in writing;
- Establishing that employees of the responding agency are agents of the requesting agency;
- Requiring the requesting agency to indemnify the employees of the responding agencies to the same extent they indemnify their own employees; and
- Establishing a procedure for settling reimbursement disputes.

The new law does not preempt any existing mutual aid agreements, nor does it mandate that a local government respond to the request of another jurisdiction. The intended purpose of the measure is to establish a statewide agreement to expedite assistance during times of crisis. The measure was introduced at the request of Oregon Emergency Management, Oregon Association Chiefs of Police, Oregon State Sheriffs' Association and Oregon Fire Chiefs Association.

Intergovernmental Transportation Entity. ORS 190.083 authorizes the creation of intergovernmental entities by one or more counties to operate, maintain, repair and modernize transportation facilities including roads, streets and highways. An intergovernmental entity created for such purpose may issue general obligation bonds and assess, levy and collect taxes in support of the purposes of the entity. ORS 190.083 also allows the electors of transportation entities to establish a permanent property tax rate to fund the operations of the entity. The statutory grant of authority prescribes the powers of such entities, including the authority to issue general obligation bonds and to assess, levy and collect taxes to finance such bonds. This grant of authority to counties is quite broad, but does require counties, entering into such agreements, to consult with the governing bodies of the cities within the county on the establishment of transportation entities.

Managing Oregon Resources Efficiently (MORE). [MORE-IGA](#) is a multi-agency intergovernmental agreement initiated by the Marion County Public Works Department to update and replaced the Portland Metropolitan Area Transportation Co-operative Intergovernmental Agreement (PMAT-IGA). The MORE-IGA document was prepared and edited by Marion County's counsel and approved and signed by the Marion County Board of Commissioners on March 20, 2013.

MORE-IGA replaces the very successful PMAT-IGA, which was used for 18 years by

32 agencies in Northwest Oregon for everything from fixing roads and bridges, engineering traffic lights, building speed humps, snow and ice removal, to moving large trees for fish habitat. MORE has broadened its scope in several dimensions over PMAT, including being a statewide IGA, open to any public agency in Oregon for obtaining intergovernmental services of another public agency including equipment, materials, and services for public works, municipal, transportation, engineering, construction, operations, maintenance, emergency management, and related activities.

The IGA is just two pages in length, based on ORS Chapter 190, and is available to Oregon public agencies only. It addresses the emergency management requirements of FEMA that agencies have agreements in place to aid each other for cost reimbursements. It can be downloaded from the [MORE website](#), and simply needs to be signed by the agency and returned to Marion County. Being on the web allows the multi-agencies to exercise and maintain signed agreements at will, with virtually no administration cost. The website contains instructions on how to sign the IGA; PDF files of the signature pages of the MORE-IGA's agencies; and an electronic bulletin board to be used by agencies to post notices for everything from training announcements to equipment for sale. For additional information, contact MORE Contract Administrator, [Don Newell](#) of Marion County Public Works Department at (503) 365-3129.

Central Oregon Public Works Partnership (COPWP). The Central Oregon Public Works Partnership is a multi-agency intergovernmental agreement similar to MORE. The purpose of the [COPWP-IGA](#) is to provide a localized working group for central and eastern Oregon public agencies. COPWP-IGA was based on the partnership goals and objectives of several city councils and county boards of commissioners in central Oregon. Information on the IGA can be downloaded from its website at the following hyperlink: [COPWP-IGA](#). A copy of the IGA and instructions on participating in the IGA are available at the website. Counties are encouraged to join both MORE-IGA and COPWP-IGA.

Deschutes County oversees the administration of the COPWP-IGA. For additional information, contact COPWP Administrator [Chris Doty](#) of Deschutes County Road Department at (541)322-7105.

11.620 COUNTY ROAD PROGRAM (CRP). The [County Road Program \(CRP\)](#) within the Association of Oregon Counties (AOC) was established in 1990 as a cooperative program with the Oregon Association of County Engineers and Surveyors (OACES). Its purpose is to enhance county road management capabilities with programs of shared technical assistance. The Road Program is designed to:

- Encourage and facilitate the exchange of ideas among counties
- Strengthen county road management and public works responsibilities
- Enhance intergovernmental relations with all levels of government
- Advocate for legislative issues promoting good county government and increased funding for county roads
- Promote the utilization of new technology and management methods
- Support and enhance an integrated road information and management system

With the creation of the County Road Program, AOC also developed the [Integrated Road Information System \(IRIS\)](#), to provide Oregon counties a complete computerized

road inventory and management system in a Microsoft Windows environment, free of any additional cost. It provides counties a state-of-the-art road information system and currently includes nine unique modules:

Road Inventory System	Pavement Management System
Cost Accounting System	Maintenance Management System
Service Request System	Vegetation Management System
Accounts Payable System	Equipment Management System
Accounts Receivable System	

IRIS is currently used by 32 Oregon counties. One of the key features is providing IRIS as a Software as a Service (SaaS). This SaaS solution is known as IRIS On-Line, which is currently being used by 30 of Oregon's counties. With IRIS On-Line, users access the software via high-speed Internet. IRIS also comes with built-in data recovery through both AOC servers and a secondary back-up in Deschutes County. These technological enhancements continue to result in significant cost savings and improved customer service and support for Oregon counties.

11.630 OREGON ASSOCIATION OF COUNTY ENGINEERS AND SURVEYORS (OACES). The [Oregon Association of County Engineers and Surveyors](#) or OACES was established as an affiliate of the Association of Oregon Counties (AOC) circa 1928 to facilitate interaction between the county road officials of Oregon and with the county judges and commissioners of the 36 counties. Over time the elected county surveyors also became involved in the activities and meetings of the association.

The purpose of OACES is to promote public works activities, including the construction and maintenance of roads and appurtenances to recognized engineering standards in the counties; to promote the professional application of land surveying; to promote the ethical practices of the professions; and, by the exchange of ideas, to give all counties in Oregon the advantages of these professions in all phases of county services. Today, there are two divisions of OACES, the Public Works Division and the Surveyors Division. OACES members have two annual conferences, in the spring and fall. Also, OACES members attend the Association of Oregon Counties fall conference in November. In addition to its annual meetings, the two divisions of OACES meet on a monthly basis in various locations around the state.

11.640 NATIONAL ASSOCIATION OF COUNTY ENGINEERS (NACE). The [National Association of County Engineers](#) is the county road officials' affiliate of the National Association of Counties in Washington, D.C. NACE was founded in 1956, with membership open to county engineers or engineers serving in equivalent capacities in counties of the United States. Since that time the membership has been expanded to allow for non-engineers who are in responsible charge of a county operation to become a voting member. It has also been expanded to welcome members from any country who have similar goals.

NACE has four prime objectives:

- To advance county engineering and management by providing a forum for exchange of ideas and information aimed at improving service to the public.
- To foster and stimulate the growth of individual state organizations of county engineers and county road officials.

- To improve relations and the spirit of cooperation among county engineers and other agencies.
- To monitor national legislation affecting county transportation/public works departments and through NACo, provide NACE's legislative opinions.

NACE welcomes all who are interested in the profession to join the association. The NACE website maintains a “NACE Member's Only Section” where members can access NACE publications and resources including electronic versions of the NACE Action Guides.

11.650 COUNTY-DISTRICT COOPERATION AND RELATIONS. A county is likely to have road-related contacts with various districts. Some of the most likely are in the following sections. See chapter 12 for information on Road Districts

11.660 MASS TRANSIT AND TRANSPORTATION DISTRICTS. [ORS 267.010 to 267.430 and 267.510 to 267.990](#) deal with formation, establishment, duties and powers of mass transit and transportation districts. Within these sections there are various statutes providing for intergovernmental agreements concerning public transportation. For example, ORS 267.225 provides that a district may cooperate with or enter into agreements with a city, county, port, or state agency for joint use of a right-of-way open to public travel.

11.670 DISTRICTS WITH UTILITY FUNCTIONS. A district has the right, as does another organization or person, to locate water, gas, electric and communication facilities in certain road right-of-way, subject to approval of the location by the county. See chapter 10.

11.680 DIKE BUILDING DISTRICTS. The county may construct and maintain roads on dikes in cooperation with a district or a company authorized to build dikes. See chapter 8.

11.700 COUNTY-CITY COOPERATION AND RELATIONS. Because they are both road building entities, cities and counties have many common interests in this field. Most relations involve mutual agreement, but there are exceptions, as indicated by sections 11.720, 11.730 and 11.740. County responsibility to respond to a request for a way of necessity also applies, even if the property involved is inside a city, as discussed in chapter 9.

County-City Relations. The county-city "connection" is mostly defined by law, but some aspects are negotiated voluntarily by the officials of cities and counties.

General Legal Relation. Legal questions sometimes arise as to the jurisdiction of county governments inside city limits. Expanded exercise of police power by counties under home rule charters and powers delegated by the legislature in the 1970s have made this more of an issue than it once was.

Some questions of jurisdiction are covered by statute. For example, applicability of a county ordinance adopted under the county's general delegation of powers is limited to areas outside cities unless the cities consent by action of the city council or voters.

Some county charters also have provisions that limit counties with respect to exercise of powers inside cities. Even in the absence of such provisions, the attorney general has ruled that "ordinances of 'home rule' counties would not . . . be effective within a city which has relegated to itself under its charter the power to regulate the same subject."

Specific Statutory Relations. Many state laws, both mandatory and permissive, regulate city-county relations in specific matters. For example, cities in Oregon do not assess property or collect their own property taxes: state law mandates that function to counties on a county-wide basis. State law also requires counties to conduct city elections if the city election is held at the same time as a primary or general election, stipulates that an area newly annexed to a city retains the county zoning until the city changes it, and otherwise regulates city-county relations in particular matters.

Counties also administer a number of services on a countywide basis, which are extended to residents of cities as well as unincorporated areas. Such services include public health and mental health programs, recording of property documents, solid waste disposal, and others.

Voluntary Contracts and Agreements. Cities and counties often cooperate voluntarily under contractual arrangements, such as use of county jails to house city prisoners, sheriff's patrol services, building inspection, data processing and others.

Issues in City-County Relations. Friction sometimes arises in city-county relations. Often the issues are financial, such as the "double taxation" issue when cities complain that city property owners pay taxes to the county but that certain county services are provided only outside cities. County roads annexed to cities remain a county responsibility until the city voluntarily takes over, and there are city-county disagreements over the level of maintenance that should be conducted on such roads, as well as the timing and conditions of transfer to city jurisdiction. County policies relating to urban development in city fringe areas and county services and facilities in such areas have also caused problems between cities and counties. Urban growth management agreements between cities and counties that are required as a condition of comprehensive plan acknowledgement by LCDC have helped to resolve these problems in recent years.

11.710 COUNTY ROAD INVOLVEMENT INSIDE CITIES. With certain exceptions, county involvement in transportation facilities within a city is a matter of mutual agreement. As a practical matter, even when there is a county obligation or unilateral county authority, county-city communication and cooperation is usually beneficial. The authority of a county to become involved with road work inside a city is not limited as long as there is an agreement with the city. See chapter 2. [ORS 368.016](#) establishes the need for mutual consent for county involvement in projects on a city's streets (local access roads inside a city). This rule and city-county relations regarding county roads inside cities are discussed in chapter 8.

The county's obligation for county roads inside a city terminates only when the city officials concur in an action to remove the road from the county system. See chapter 8. Various statutes give counties express authority for road work inside a city under certain circumstances. See also sections 11.700 through 11.740.

- [ORS 373.110](#) Connections between a county road and a state highway.

- ORS 373.120 Connections between county roads in cities under 2,500 population.
- ORS 373.130 Approaches to county constructed bridges.

Some of this authority very clearly may be exercised without necessarily reaching agreement with city officials (for example, bridge approaches). While less clear in other cases, there is room to contend that no concurrence from city officials is required for a county to establish certain connecting roads inside a city. However, any uncertainty would be erased by completing a county-city agreement. It seems reasonable to conclude that establishment of a connecting road inside a city without a county-city agreement would mean the connecting road is added to the county road system; with an agreement, the status of the road would depend on the terms of the agreement. In addition to the general authority discussed in chapter 2 and some of the data in chapter 8, see ORS 373.240 to 373.260 and 368.722, for links to the statutory text in sections 11.760. There is additional discussion of how this issue applies to traffic control in section 14.100.

11.720 ESTABLISHMENT OF COUNTY ROADS WITHIN A CITY: ORS 373.110 to 373.130. The county may provide a connecting road in a city as a county road when it is necessary to connect an existing county road with an existing state highway or, in a city of less than 2,500 population, to connect county roads. The procedure for establishment of a connecting road is as provided by law for establishment of county roads, including the power of eminent domain.

When a county constructs a bridge that is at least partially within a city, the county may also use any necessary city streets as an approach for the bridge. Approach portions of the streets are exclusively under county jurisdiction.

Although consent of the city is not required for the county to do these things, coordinated and mutual planning agreements foster smooth project implementation. See chapter 13 for a description of responsibility in cases involving a change in street grade due to a county road project.

11.730 STATUTES ON COUNTY ROADS IN CITIES

[Chapter 373](#)

Roads and Highways Through Cities

- 373.110 Connecting county road to state highway by road through city**
- 373.120 Connecting county roads by roads through certain cities**
- 373.130 County use of city streets as bridge approach**

11.750 COUNTY AND CITY ROAD FUND USE FOR COOPERATIVE PROJECTS: ORS 373.240 to 373.260, and 368.720 to 368.722. Road fund revenue of a county or city may be used under an intergovernmental agreement for work on and the acquisition of right-of-way for (a) a county road or city street within the city or (b) a road outside the city but leading directly to it if the city has a population less than 100,000. In an agreement, the parties shall specify the apportionment of the costs and the method and kind of development. In carrying out such developments, city road funds may be used jointly with county road funds. County road funds used may include money going to the county road fund from federal forest receipts under [ORS 294.060](#).

A county may also expend road funds outside of the county under an intergovernmental agreement that specifies the terms for using the funds and who will be responsible for the work. This provision, ORS 368.720, allows the collection of a multi-county gas tax which could be distributed by a formula agreed upon by the participating counties.

11.760 STATUTES ON COUNTY-CITY ROAD FUND EXPENDITURES

[Chapter 368](#)

County Roads

368.720 Using road funds outside of county

368.722 Expenditure of general road fund on city streets and bridges

[Chapter 373](#)

Roads and Highways Through Cities

373.240 General road fund of city

373.250 Use of city road fund

373.260 Agreements between counties and cities as to acquisition of rights of way and road improvement

11.765 CITATIONS ON COUNTY-CITY ROAD FUND EXPENDITURES

Or. Atty. Gen Inf. Op. No. OP-2011-1 (Mar. 9, 2011): Under some circumstances, a county and city may agree to “swap” unrestricted county road funds for an equal amount of unrestricted city funds. By channeling county road funds through the city, the county converts county road funds into general county funds. ORS 368.011 provides that counties generally may supersede provisions of chapter 368 by enacting ordinances, but lists several chapter 368 provisions that may not be superseded by adoption of a county ordinance, which include all the provisions concerning the use of county road funds. ORS 368.705(2) provides that revenues in the county road fund generally must be used on “county roads and bridges on county roads”

rather than on city roads and bridges. There are exceptions to this general rule, depending on the revenue source. For example, county road funds derived from “forest reserves” and state gas tax revenues may be expended on city roads and bridges, as provided in ORS 368.722 and ORS 294.950(2), respectively. A city may provide city unrestricted funds to the county pursuant to its municipal charter if the city determines that the expenditure complies with section 48 of its charter and furthers a legitimate city purpose or as specified by the relevant statutes or ORS chapter 169. In addition, the city and county both must ensure that their proposed expenditures are made in compliance with the procedural requirements set out in the Local Budget Law, ORS 294.305 to 294.565.

11.770 TRANSFER OF ROAD JURISDICTION: ORS 373.270 and ORS 368.062. Jurisdiction over a county road within a city may be transferred if both county and city agree. Jurisdiction over a city street may be transferred to a county by mutual agreement. See chapter 8.

11.780 BRIDGES. The only statutes expressly on county-city cooperation on bridges are [ORS 382.305 to 382.425](#), which pertain only to Multnomah County. Besides delineating control between the county and Portland over Willamette River bridges, these sections also determine Multnomah County's method of financing bridge construction.

Further authority for cooperative bridge construction and maintenance would be based on the general authority found in [ORS 190.010 to 190.110](#) (see section 11.105) and the authority to cooperate on roads including that found in ORS 368.720 and ORS 373.250 and 373.260 (see section 11.760) and ORS 382.205. By definition in ORS 368.001, a bridge is part of a road.

11.800 COUNTY-FEDERAL COOPERATION AND RELATIONS. Although roads played a crucial role in the early history of our nation--uniting the early colonies and speeding the mail--they were largely ignored by the federal government after the widespread introduction of railroads in the mid-nineteenth century. The few famous long-distance roads like the Oregon Trail were little improved and were frequently toll roads in the better stretches. In the twentieth century, with the coming of the automobile, the federal government showed increasing concern for roads. The advent of the Federal-Aid Secondary System in 1944 and the Federal-Aid Highway Act in 1956 led to vastly increased federal road activity. The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) gave counties and the state greater flexibility to utilize federal transportation funds within a comprehensive transportation planning system. This flexibility was continued with the Transportation Equity Act for the 21st Century (TEA-21) in 1998 and the Safe, Accountable, Flexible, and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) in 2005 and The Moving Ahead for Progress in the 21st Century (MAP-21) in 2012 and the Fixing America's Surface Transportation (FAST) Act in 2015.

Counties have a special interest in road funds available through programs administered by the Federal Highway Administration because they are the basic and largest federal road programs. Various other federal agencies that are potential funding sources for roads are reviewed in this section. Counties also have an interest in the transportation planning of federal agencies, and federal agencies have an interest in county planning. See chapter 2A.

Because the major active federal role in roads has been delegated by the Federal Highway Administration to the state Department of Transportation, county involvement in transportation project programming and federal highway funding is discussed further in the county-state relations part of this manual, beginning with section 11.200. Similarly, the mechanism for county influence on federal agency road projects is delegated to the state and is discussed in section 11.815. This section therefore deals primarily with how county initiated projects may involve cooperation with various federal agencies.

The [Catalog of Federal Domestic Assistance](#) is a comprehensive guide to all federal-aid programs. It is published by the U.S. General Services Administration (GSA). One copy of this large volume would probably suffice for all county departments if it is in a location that is generally available. Copies are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. Possession of a copy of the catalog would decrease the probability of overlooking newly-available or obscure funding sources. This can also be reviewed online at the [GSA website](#).

Due to frequent changes, this section cannot cover all possible aid programs, but it does cover the major current programs, most of the lesser known ones, and, most importantly, the federal agencies with which an Oregon county public works department or road department needs to interact. Federal policy since the early 1980s has been to de-emphasize federal grants and loans and to group previously separate programs into "block grant" programs with more of the program management conducted by the states. ISTEA discussed later in this chapter implemented that policy and significantly restructured federal aid programs for transportation. SAFETEA-LU continued the policy and programs with its passage in 2005.

Following is a list of some federal agencies that may have information relevant to right-of-way selection or other road development matters.

Federal Organizations

- [Department of Agriculture](#): Forest Service; Natural Resources Conservation Service; Rural Development.
- [Department of the Army: Corps of Engineers](#)
- [Department of Housing and Urban Development](#)
- [Department of the Energy: Bonneville Power Administration](#)
- [Department of Commerce](#): National Marine Fisheries Service; Economic Development Administration
- [Department of the Interior](#): Bureau of Reclamation; Bureau of Land Management; Bureau of Indian Affairs; National Park Service; U.S. Geological Survey; Bureau of Mines; U.S. Fish and Wildlife Service
- [Department of Transportation](#): Federal Aviation Administration; U.S. Coast Guard; Federal Highway Administration; Federal Transit Administration

11.805 FEDERAL HIGHWAY ADMINISTRATION (FHWA). The Federal Highway Administration ([FHWA](#)), an agency of the United States Department of Transportation (DOT), administers the Federal-aid Highway Program⁶ and the Federal Lands Access Program (FLAP). The Federal-aid Highway Program is a federally assisted, State-administered program. It operates through the distribution of Federal funds to the States to construct and improve urban and rural highway systems.

FHWA is a three-tiered organization consisting of headquarters, five resource centers, 52 federal-aid division offices and three federal lands highway division offices. The headquarters office provides guidance to the division offices (one in each State and almost always located in the capital city) which are the primary contacts with the State and local transportation agencies. For certain programs, local officials share responsibilities with the State for effective administration of Federal funds. The division offices review and approve projects, monitor the States' programs, and provide technical assistance. The Resource Centers support the division offices and serve as the central locations for technical and program specialists.

The Federal Lands Highway (FLH) offices of FHWA works with numerous federal land management agencies (FLMAs) including the Bureau of Indian Affairs (BIA), U.S. Forest Service (USFS), National Park Service (NPS), Fish and Wildlife Service (FWS), Bureau of Land Management (BLM), U.S. Army Corps of Engineers (USACOE), and the Bureau of Reclamation (BOR). The FLH administers the Federal Land Access Program, in addition to the Federal Land Transportation Program and the Tribal Transportation Program. Federal Land Highway offices have staff to provide the full array of services needed for complete project delivery, from early planning and inception, through design and construction. The [Western Federal Lands Highway Division](#) (WFLHD) operates in Oregon, Washington, Idaho, Montana, Alaska, and Yellowstone and Grand Teton National Parks in Wyoming. WFLHD's offices are in Vancouver, Washington.

The federal-aid highway program is governed by [United States Code Title 23: Highways](#). This federal law is the authority from which state departments of transportation derive their supervisory role over federally-aided road projects. Although Title 23 is implemented by the state Department of Transportation, a working familiarity with Title 23 will help counties make informed judgments on proposed state regulations and suggest revisions in adopted state practice. Adopted or proposed state practice may not be the only means of implementing a particular federal law. See sections 11.370 and 11.390 to 11.450 for information on federal funds for county projects and section 8.540 for information on the federal-aid functional classifications.

11.806 ADVISING THE FHWA ON NEW RULES. The FHWA issues periodic announcements of proposed new rules and revisions to existing rules. It is possible for counties as well as individuals to request to be placed on the announcement-notification list of the FHWA. This list has been developed specifically to allow local input. Thus, the county has an opportunity to comment on and request modifications to proposed rules, in addition to receiving advance notification. It is necessary to specify the desired number of copies (up to

⁶ See FHWA's [A Guide to Federal-Aid Programs and Projects](#) for basic information about Federal-Aid programs and projects with descriptions of and historic information on active and inactive FHWA programs.

ten copies are free) and the subject matter of concern. Twelve subject categories have been specified, as follows, and all or any number may be requested.

Title 23 - Highways

Chapter I

Subchapter A: General Management and Administration

Subchapter B: Payment Procedures

Subchapter C: Civil Rights

Subchapter D: National Highway Institute

Subchapter E: Planning

Subchapter F: Transportation Infrastructure Management

Subchapter G: Engineering and Traffic Operations

Subchapter H: Right-of-Way and Environment

Subchapter I: Public Transportation

Subchapter J: Highway Safety

Chapter II

Subchapter B: Guidelines

Subchapter C: General Provisions

To be placed on the announcement list, specify the categories of interest and number of copies requested and mail to:

U.S. Department of Transportation
Federal Highway Administration
Office of Public Affairs (HPA-1)
Washington, D.C. 20590

The online search engine of the Office of the Federal Register can be used to review existing federal regulations or search for proposed rules. The web address for the Federal Register is <http://www.gpoaccess.gov/nara/index.html>.

Although FHWA is the primary federal agency dealing with roads, it is not the only one. Several other federal agencies play a significant role in road construction and maintenance. A search at the Federal Register website can identify rules and proposed rules for various agencies, subjects, Code references, etc.

11.810 FOREST SERVICE ROADS. Section 212 of Title 36 of the Code of Federal Regulations (36 CFR 212), defines the nature of the transportation network on Forest Service lands; authorizes cooperative work with other agencies, including states and counties; and defines the procedure a county or other agency uses to apply for a road easement on Forest Service land.

Section 205 of Title 23, United States Code ([23 U.S.C. 205](#)), describes funding for forest development roads and trails (F.R.& T.). These roads are normally under Forest Service administration, but the Forest Service is authorized to enter into a contract with a state or local subdivision as deemed advisable. Special cases of use of F.R.& T. funds on local roads have been made by Congress, but no administrative authority exists for such action.

Roads constructed as an integral part of a timber sale contract are funded through collections against the timber costs. Some extension of the funding authority for improvements on other roads related to a specific timber sale may be made by the Forest Service on a case by case basis. Local Forest Service personnel should be contacted if circumstances indicate such funding may be appropriate.

11.811 FOREST SERVICE ROAD PROJECT SELECTION. The local Forest Service Engineer and District Ranger offices are the ones most active in selection of Forest Service road projects, both F.R.& T. and purchaser constructed. The forest service engineer offices are as follows:

REGION 6 FOREST ENGINEERS IN OREGON

<u>Forest/Engineer</u>	<u>Address</u>	<u>Telephone Number</u>
Regional Engineer	333 SW 1st Avenue, P.O. Box 3623 Portland, OR 97208-3623	503-808-2500
Deschutes	63095 Deschutes Market Road, Bend, OR 97701	541-383-5300
Fremont-Winema	1301 South G St, Lakeview, OR 97630	541-947-2151
Malheur	431 Patterson Bridge Road, P.O. Box 909 John Day, OR 97845	541-575-3000
Mt. Hood	16400 Champion Way, Sandy, OR 97055-7248	503-668-1700
Ochoco	3160 NE 3rd St., P.O. Box 490 Prineville, OR 97754-0490	541-416-6500
Rogue River-Siskiyou	3040 Biddle Road, Medford, OR 97504	541-618-2200
Siuslaw	3200 SW Jefferson Way Corvallis, Oregon 97331	541-750-7000
Umatilla	72510 Coyote Road Pendleton, OR 97801	541-278-3716
Umpqua	2900 NW Stewart Parkway Roseburg, OR 97471	541- 957-3200
Wallowa-Whitman	1550 Dewey Ave., P.O. Box 907, Baker, OR 97814	541-523-6391

11.815 ELIGIBLE FLAP PROJECTS. Public Law 112-141, Moving Ahead for Progress in the 21st Century, or MAP-21, eliminated the Forest Highways Program and the Public Lands Highways Discretionary Program and created the Federal Lands Access Program (FLAP) under Section 1119 of MAP-21 for funding to improve access to federal lands.

The new program also eliminated the designation of “forest highways” and instead is directed towards public highways, roads, bridges, trails, and transit systems for which title or maintenance responsibility is vested in a State, tribal, or local government and provide access to federal lands. Activities in the FLAP include reconstruction of existing roads, rehabilitation of worn roadway surfaces, and enhancement projects to improve the traveling experience on federal lands. MAP-21 also states that priority shall be given to projects that access high use recreation sites or federal economic generators as determined by the Federal Land Management Agency.

Under the present level of funding, Oregon receives approximately twenty-four million dollars per year for FLAP, all of which is managed directly by the Western Federal Lands Highway Division of the Federal Highway Administration (FHWA) in Vancouver, Washington. And, for the first time, projects will require a non-federal match (10.27 percent of total project cost).

Funds may be used for: planning, research, engineering and construction; transportation planning for travel and tourism. The following activities are eligible for consideration on FLAP facilities:

1. Preventive maintenance, rehabilitation, restoration, construction and reconstruction
2. Adjacent vehicular parking area
3. Acquisition of necessary scenic easements and scenic or historic sites
4. Provisions for pedestrian and bicycles
5. Environmental mitigation in or adjacent to Federal land to improve public safety and reduce vehicle-wildlife mortality while maintaining habitat connectivity
6. Construction and reconstruction of roadside rest areas, including sanitary and water facilities.
7. Operation and maintenance of transit facilities

Proposed projects must be located on a public highway, road, bridge, trail or transit system that is located on, is adjacent to, or provides access to Federal lands for which title or maintenance responsibility is vested in a State, county, town, township, tribal, municipal, or local government.

Projects are selected by a Programming Decision Committee (PDC). The Oregon PDC is made up of representatives of:

- Western Federal Lands Highway Division,
- Oregon Department of Transportation, and

- Association of Oregon Counties

The PDC is required to cooperate with each applicable Federal Land Management Agency before final programming decisions are made.

11.819 THE NATIONAL GRASSLANDS: AN EXAMPLE OF FEDERAL-COUNTY COOPERATION. The Crooked River National Grasslands are a collection of over 700 former submarginal ranches and homesteads. Repeated crop failure reduced the number of families to 48. On petition of the county landowners, the area was purchased under the Bankstead Jones Farm Tenant Act of 1937 by the U.S. Resettlement Administration and has been gradually returned to grazing land. The grasslands have been administered by the Forest Service since January 1954.

Jefferson County and the Forest Service have had a road maintenance agreement covering the grasslands for many years. Under the agreement, some heavily traveled roads through the grasslands are maintained by the county, while some remote county roads are maintained by the Forest Service. Jefferson County has a similar agreement with the Forest Service regarding the Deschutes National Forest under which both agencies share maintenance expenses. The county patches roads and plows snow. When road overlays and seals are required, the Forest Service supplies materials. Jefferson County and the Warm Springs Indian Reservation also cooperate by sharing equipment, etc.

The National Grasslands-Jefferson County agreements are of long standing and require little contact. An annual letter from the county department of public works to the Forest Service leads to agreement renewal between the county governing body and the Forest Service. Both sides understand the agreement, and it runs smoothly. Although undoubtedly not unique, these county-federal agreements are examples of effective intergovernmental agreements in Oregon.

11.825 THE NATIONAL PARK SERVICE. The Western Federal Lands Highway Division handles construction of National Park Service roads and coordination of those roads with local counties. Counties interested in initiating road work in cooperation with the National Park Service or in coordinating county road planning with the National Park Service should contact [Western Federal Lands](#).

11.830 BUREAU OF LAND MANAGEMENT (BLM) ROADS AND O&C LANDS. Oregon is unique among the states in having federally-administered [O&C lands](#). These 2.5 million acres of forest land were originally granted to the Oregon and California Railroad Company. Following violation of the land grant terms, the land reverted to federal ownership in 1916. A smaller amount of land associated with the Coos Bay Wagon Road (CBWR) lands was also re-conveyed to the United States in 1919 in a similar manner. The O&C lands, together with the similar Coos Bay Wagon Road lands, now are managed by the Bureau of Land Management (BLM), Department of the Interior, and, to a lesser extent, by the U.S. Forest Service under the statutory authority of the O&C Act of 1937. The O&C Act is a dominant use law that requires the O&C and CBWR lands to be managed for permanent forest production and the timber thereon sold, cut and removed in conformity with the principle of sustained yield for the purpose of providing a permanent timber supply, protecting watersheds,

regulating stream flows and contributing to the economic stability of communities and industries. In addition, the law provided for recreation facilities. In 1976, Congress reaffirmed the mandates of the O&C Act by providing a savings provision in the Federal Land Policy and Management Act (FLPMA). Section 701(b) of the FLPMA states, "Notwithstanding any provision of this Act, in the event of conflict with or inconsistency between this Act and the O&C Act, insofar as they relate to timber resources and the disposition of revenues from lands and resources the O&C Act of 1937 will prevail."

The Bureau of Land Management maintains a five-year timber sale plan. In preparing this program, the condition of county roads is supposed to be considered by BLM road engineers. Counties are not notified when sales will simply continue existing traffic flow on county roads that have traditionally carried heavy logging traffic. When timber sales might impinge on a weight-limited county bridge or a low-capacity road, BLM engineers are instructed to contact the county well in advance to allow a road improvement program to be developed. The five-year timber sale plan can be obtained by the county from the Bureau of Land Management. County-BLM road cooperation has been good in the past, since the mutual interests of the two agencies are recognized. The BLM depends on county roads to move harvested timber to state highways, mills or railheads.

Relations between BLM and county public works departments are informal. Necessary contacts usually are initiated by telephone when issues of mutual concern arise. BLM is capable of granting free right-of-way for roads to public agencies. The BLM is also a resource for mineral materials such as sand, stone, gravel and cinders. [43 CFR 2800](#) defines procedures under which road and railroad right-of-way may be granted on O&C and Coos Bay Wagon Road lands and provides specific information on the type of application that needs to be submitted.

Although the federal government is exempt from taxation by local governments, a revenue sharing system has developed for the O&C lands in recognition of the large percentage of land in some counties that has been removed from county tax rolls. Under this system, 50 percent of the proceeds of timber sales and other receipts are paid to the counties; another 25 percent to which the counties are entitled under federal law is, with consent of the counties, used to reimburse the treasury for appropriations that finance investment in roads, reforestation, recreation facilities, and related programs that improve the lands involved. The 50 percent payments provide an additional incentive for counties to make expenditures of their own for the benefit of O&C land management, including construction and maintenance of county roads that provide access to the O&C lands and their resources.

O&C lands are a source of considerable public controversy. After the previous management plan (called WOPR) was not enacted by the federal administration, a new plan revision process is underway. Meanwhile, the O&C lands are the subject of federal legislation to change the governance structure to a trust, among other revisions.

The BLM also manages public domain lands, including considerable grazing land in eastern Oregon, which involves relations with counties on road development.

11.835 DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD). HUD has a variety of programs that might be potential funding sources for transportation planning or roads in association with larger projects. HUD projects do not fund highway

construction. Local road construction adjacent to housing is eligible for funding. Information on all HUD funding in Oregon is available from the HUD area office: Field Policy and Management, 400 S.W. Sixth Avenue, Suite 700, Portland, Oregon 97204-1632, telephone (971) 222-2600.

Projects described in the following sections have the most potential involvement in roads.

11.836 COMMUNITY DEVELOPMENT BLOCK GRANTS. HUD awards block grants to local governments to fund a wide range of community development activities in a single flexible-purpose program. Most Oregon grants have involved some local road construction.

Spending priorities are determined at the local level, but the law enumerates the general objectives that the block grants are designed to fulfill, including adequate housing, a suitable living environment, and expanded economic opportunities for low-income groups. Specifically, recipients are required to estimate their low-income housing needs and address them in the overall community development plan they submit to receive their grant.

Applicant Eligibility: Metropolitan cities over 50,000 population (Portland, Medford, Salem and Eugene, in Oregon) and qualified urban counties (Clackamas, Washington and Multnomah) are guaranteed an amount called an "entitlement". It is based on need, objectively calculated by a formula that takes into account population, poverty, overcrowded housing, age of housing, and growth lag. Smaller communities compete for the remaining (discretionary) funds. In 1982, federal policy sought to shift block grant administration to the states and to include more previously-separate programs within a single block grant grouping.

Legal Authority: Housing and Community Development Act of 1974 P.L. 93-383 as amended (42 U.S.C. 5301 et seq.)

11.840 ECONOMIC DEVELOPMENT ADMINISTRATION (EDA). EDA's Public Works and Economic Development Investments in the Public Works and Economic Development Act are intended to help the nation's most distressed communities revitalize, expand and upgrade their physical infrastructure to attract new industry, encourage business expansion, diversify local economies and generate or retain long-term private sector jobs and investments. Distress is evidenced by chronic high unemployment, underemployment, low per capita income, out migration, or a Special Need.

All EDA grants require a local match. Potential projects include but are not limited to design and engineering works, water lines/storage facilities, sewer systems, and roads. Eligible road projects include access roads to industrial parks, industrial streets, and certain roads not in the federal-aid highway programs that result in substantial economic expansion of the area. Information on EDA programs are available from the Portland Office located in One World Trade Center, 121 SW Salmon St, Room 244, Portland, OR 97204, (503) 326-3078.

11.845 RURAL DEVELOPMENT (USDA). The [USDA Rural Development, Rural Housing Service](#) makes a variety of loans to develop essential community facilities in rural

areas and towns up to 20,000 in population. Examples of uses of [Community Facilities Loans](#) include bridges, off street parking, sidewalks and street improvements. The loans can include costs to acquire land needed for a facility and necessary professional fees.

Loans and loan guarantees are available for public entities such as municipalities, counties, and special purpose districts as well as to nonprofit corporations and tribal governments.

In addition, borrowers must:

- (1) Be unable to obtain needed funds from other sources at reasonable rates and terms;
- (2) Have the legal authority to borrow and repay loans, to pledge security for loans, and to construct, operate and maintain the facilities or services;
- (3) Be financially sound and able to organize and manage the facility effectively;
- (4) Base the project on taxes, assessments, revenue, fees or other satisfactory sources of money sufficient to pay for operation, maintenance and reserve, as well as retire the debt; and
- (5) Be consistent with available comprehensive and other development plans for the community and comply with federal, state and local laws.

Grants are available to public entities and nonprofit corporations and tribal governments to assist in the development of essential community facilities. Applicants must:

- (1) Be unable to obtain needed funds from commercial sources at reasonable rates and terms;
- (2) Have the legal authority necessary for construction, operation and maintenance of the proposed facilities;
- (3) Proposed facilities that are necessary for orderly community development and consistent with the State's strategic plan;
- (4) Be located in a rural community having a population of 20,000 or less and serve primarily rural areas with populations of 20,000 or less; and
- (5) Serve area where the median household income of the population to be served by the proposed facility is below the higher of the poverty line or 90 percent of the State nonmetropolitan median household income. (Or have a "Not Employed" rate of at least 19.5% for Community Facility Economic Impact Initiative Grants.)

Applications and assistance may be obtained at the field offices for Rural Development.

Rural Development Offices

Address

Oregon State Office
1201 NE Lloyd Boulevard., Suite 801
Portland, OR 97232-1274
(503) 414-3327

Tangent Area Office
31978 North Lake Creek Drive

Address

Redmond Area Office
625 SE Salmon Avenue
Redmond, OR 97756
(541) 923-4358, Ext. 4

Pendleton Area Office
200 SE Hailey Avenue, Suite 105

Tangent, OR 97389
(541) 967-5925

Pendleton, OR 97801
541-278-8049, Ext. 4

Roseburg Area Office
2593 NW Kline Street
Roseburg, OR 97471
(541) 673-0136, Ext. 4

La Grande Satellite Office
1902 Adams Avenue, Suite 1
La Grande, OR 97850
(541) 963-4178, Ext. 4

Medford Satellite Office
573 Parsons Drive, Suite 103
Medford, OR 97501
(541) 776-4267

11.850 THE U.S. ARMY CORPS OF ENGINEERS (CORPS). The U.S. Army Corps of Engineers (Corps) became involved in county road work through the granting of right-of-way easements on federal land administered by the Corps of Engineers for county roads, relocation of roads displaced by Corps projects, processing of approach permits when individuals or government entities want to connect lesser roads to county roads already authorized on Corps property, and granting of permits involving wetlands and waterways that are considered waters of the U.S. or considered navigable waters or bays. Approach permits need approval by both the county and the Corps of Engineers.

Under [Section 404 of the Clean Water Act \(CWA\)](#) and [Section 10 the Rivers & Harbors Act \(RHA\)](#), the Corps issues permits for projects that impact waterways and wetlands. Although there is some overlap in the [waterways and wetlands](#) covered by the administration of these two laws, more waterways and wetlands are regulated under Section 404 of the CWA than Section 10 of the RHA since the [term navigable waters under the CWA and RHA](#) have somewhat different meanings. Under Section 404 of the CWA, the Corps regulates the placing of dredged material into [waters of the United States](#) - including wetlands - to protect the chemical, physical, and biological integrity of these waters. This regulatory definition of waters of the U.S. includes the navigable waterways regulated under the RHA and the navigable harbors & bays regulated under the RHA. However, under the CWA, the term navigable is more expansive including the navigable waters regulated under the RHA as well as other navigable water bodies. There are 7 categories of waterways that are jurisdictional:

- Category 1: All navigable waters (a waterway that is, has been, or could be used for commerce and can support transportation via boat)
- Category 2: Interstate waters including interstate wetlands,
- Category 3: Other intrastate waters that could affect interstate/foreign commerce,
- Category 4: Impoundments of waters of the U.S.,
- Category 5: Tributaries of waters in categories 1 - 4,
- Category 6: Territorial seas; and,
- Category 7: Wetlands adjacent to waters in categories 1 - 6.

The Corps uses one permit (i.e., the Oregon joint permit application) to streamline the administration of these two laws. Consultation with the Corps prior to submitting an application is recommended so that the jurisdictional determination process can be initiated.

In the [Section 404 permit program](#), the Corps offers [nationwide permits](#) for small transportation projects that have a minimal impact on waters of the U.S. and these impacts are predictable and reoccurring in nature or more routine (e.g., streambank stabilization). For projects that have more than a minimal impact but are predictable and reoccurring in nature, the Corps can permit the work using a general permit. For larger projects that have more than a minimal impact and are not reoccurring in nature, the Corps permits this work using an individual permit. Counties initiating road work involving waters of the U.S. should contact the Army Corps of Engineers well in advance by telephone and schedule a pre-application conference to discuss project and regulatory issues. For more information on Corps programs, refer to section 11.900. To contact the Corps, the phone number is (503)808-4373 and mailing address is U.S. Army Corps of Engineers, CENWP-0D-GP, 333 SW First Avenue, P.O. Box 2946 Portland, Oregon 97208-2946.

11.855 THE BUREAU OF RECLAMATION. The [Bureau of Reclamation](#) constructs reservoirs in response to local needs for irrigation, municipal or industrial water, recreation, fish habitat, or improved water quality. Projects are initiated at the instigation of local groups. When the Bureau of Reclamation undertakes a project feasibility study, notices of initiation of the study are sent to the county governing body and local newspapers. The Bureau of Reclamation must cooperate with the county public works department in the development of estimates of road restoration costs due to reservoir construction, considering such factors as road cross sections, maximum permissible grades, etc. Similar coordination is necessary during installation of a pipeline that parallels road right-of-way associated with a proposed project.

11.860 THE NATURAL RESOURCES CONSERVATION SERVICE (NRCS). The [Natural Resources Conservation Service](#) is a resource center for soil information in addition to its potential for road work funding and assistance after flood events. Under the Watershed Protection and Flood Prevention Act (P.L. 83-566), as amended (16 U.S.C. 1001 et seq), the NRCS may fund the relocation of existing roads and construction of new roads as part of flood control work or land and water resource protection and development. An example of a project that might be eligible is an access road to a new reservoir. Proposed projects have to be initiated by a state or one of its political subdivisions. In Oregon the majority of projects undertaken by the NRCS are either sponsored or co-sponsored by a county.

As a resource for soil information, the NRCS can provide information on the application of agronomic practices to improve water quality for runoffs. The NRCS also does wetland determinations for agricultural purposes and can provide information on these determinations having been made for particular pieces of property. Assistance can be obtained from the county office of the NRCS or by contacting the [State Conservationist's Office](#) at (503) 414-3200 or the [Natural Resources Division](#) of the Oregon Department of Agriculture at (503) 986-4700.

11.865 THE UNITED STATES COAST GUARD (USCG). When a county intends to build a bridge over a navigable waterway it must first secure a permit required under Section 10 the Rivers & Harbors Act (see section 11.850). This permit is administered by the U.S. Army Corps of Engineers (Corps). The county road department submits an Oregon joint permit application (JPA) to the Corps and the Corps evaluates the application

to determine if it has jurisdiction under the Clean Water Act or the Coast Guard has jurisdiction under the Rivers & Harbors Act. If the Coast Guard has jurisdiction, the JPA is referred to this agency for further consideration and work is authorized using a [Corps' nationwide permit No. 15](#).

For more information on this permit process refer to section 11.900. Counties initiating the planning of road work involving navigable waters or bays should contact the Corps well in advance by telephone and schedule a pre-application conference to discuss project and regulatory issues. For more information on this permit process as well as other refer to section 11.900. To contact the Corps, the phone number is (503)808-4373 and mailing address is U.S. Army Corps of Engineers, CENWP-0D-GP, 333 SW First Avenue, P.O. Box 2946, Portland, Oregon 97208-2946.

11.870 COUNTY REVENUE FROM FEDERAL LAND RECEIPTS. Although the federal government is exempt from taxation by local governments, various in-lieu payments have been enacted in recognition of the loss of state and county revenue associated with federal land ownership.

Under three of these payment programs, revenues are earmarked for county roads by federal or state law or both:

- National Forest Revenues. Under 16 U.S.C. 500, 25 percent of "all moneys received" from timber sales and other National Forest operations are paid to the states in which the Forests are located to be used as each state prescribes for the benefit of county roads and schools. [ORS 293.560](#) and [294.060](#) require that the National Forest revenues be paid to the counties in proportion to each county's National Forest acreage, and that the payments be divided 75 percent to the county road fund and 25 percent to the county school fund. Some counties have been authorized to allocate a larger proportion for schools. (National Forest payments to counties declined dramatically during the 1990s when the federal government curtailed timber harvest in National forest to protect salmon, the northern spotted owl and other birds and fish. See sections 3.090 and 3.300 for additional information on this payment program.)
- Public Land Materials Sales. 30 U.S.C. 603 requires that federal revenues from unreserved public domain lands be shared with the states on the same basis as each state's admission act provides for sales of public lands. Federal law provides for five percent of these revenues to be shared, but the Bureau of Land Management deducts 20 percent for administrative expenses, so the payment is reduced to four percent. Although most of the revenue under this program comes from western Oregon timber sales, [ORS 272.085](#) requires that the payments be distributed to all Oregon counties on the basis of each county's percent of the state's geographic area. The state law earmarks the payments for county roads and bridges.
- Flood Control Revenue. Under 33 U.S.C. 701c-3, 75 percent of the federal flood control leasing revenues are paid to the states "for defraying any of the expenses of county government." [ORS 294.065](#) restricts these payments for schools and roads, although the county governing body apparently has discretion as to the

amount to be allocated for each purpose. The revenues are paid to the counties in which the federal flood control lands are located.

Several other federal land shared revenues may be allocated either to county road funds or to other county programs at the discretion of the county governing body. State law gives the governing body that discretion in the case of mineral leasing revenues (30 U.S.C. 191 and ORS 294.055), revenues from federal grazing lands not included in grazing districts (43 U.S.C. 315i and ORS 294.070), and grazing revenues from ceded Indian lands (43 U.S.C. 315i and ORS 294.070). Other federal land payments come to the counties without federal earmarking and state law is silent as to the purposes for which the money may be spent. These programs include O & C revenues (43 U.S.C. 1181f), Coos Bay Wagon Road revenues (43 U.S.C. 869-4), federal Wildlife Refuge revenues (16 U.S.C. 715s), federal Payments in Lieu of Taxes (31 U.S.C. 6902), and Bankhead-Jones Act revenues (7 U.S.C. 1012). (Also see sections 3.090 and 3.300)

11.871 STATUTES ON APPORTIONMENT OF FEDERAL LAND RECEIPTS

Chapter 294

County and Municipal Financial Administration

- 294.055 Use by counties of moneys received from Federal Government under the Mineral Leasing Act**
- 294.060 Apportionment of moneys received by counties from federal forest reserves to road and school funds**
- 294.065 Use by counties of moneys received from Federal Government under the Federal Flood Control Act**
- 294.070 Expenditure of Taylor Grazing Act funds; advisory board**

11.872 CITATIONS ON APPORTIONMENT OF FEDERAL LAND RECEIPTS

Lane County v. Paulus, 57 Or. App. 297, 644 P.2d 616 (1982): The county brought a declaratory judgment action, believing it had the statutory authority to commingle federal forest revenues in the county road fund with other county monies for the purpose of investment and to credit all interest earned from the commingled investments to county's general fund. The Oregon Court of Appeals disagreed. The Court stated ORS 294.060 required that any unobligated road funds be invested for the benefit of county road fund and all interest earnings credited to the road fund. However, once the county road fund had been obligated for road fund purposes, or had been invested for benefit of the road fund, any remaining cash balances maintained on hand to meet current obligations could be commingled with county general fund for investment purposes.

11.875 FEDERAL HANDICAPPED ACCESS REQUIREMENTS. Federal and state policies call for reducing physical barriers to the free movement of handicapped persons. Under federal policy, restrooms and other buildings constructed with federal aid as part of highway projects need to be accessible to the handicapped. The Americans with Disabilities Act (ADA) of 1990 provides comprehensive civil rights protections to persons with disabilities in the areas of employment, public accommodations, transportation, State and local government services and telecommunications. Title II of the ADA addresses State and local government services and requires access in the constructions or alteration of buildings and facilities. Guidelines to implement Title II of the ADA are provided in 36 CFR 1191. For more information, please see section 13.540 of this manual.

11.880 THE FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA). Federal aid in response to disasters and emergencies is coordinated through the [Federal Emergency Management Agency](#). In the event of a major emergency the Governor requests a presidential declaration of a major disaster. The FEMA director makes a recommendation to the President following review of disaster preliminary damage assessments. The President declares an emergency, if warranted, making large-scale federal assistance available.

Counties should request assistance from the state when the incident overwhelms their resources. Although federal assistance may sometimes be available early in an emergency, it cannot be provided until the Governor request it and the President declares. Counties should anticipate being initial responders when an emergency occurs.

Federal emergency aid is also available in circumstances less catastrophic than a major disaster or emergency. Examples where this might occur includes U.S. Air Force or Coast Guard search and rescue assistance, Army Corps of Engineers flood assistance, federal fire suppression assistance for forest and grass fires, etc.

The [FEMA website](#) lists all available federal disaster-aid programs. FEMA's [Disaster Process and Disaster Aid Programs](#) lists federal disaster procedures and disaster aid programs including Individual Assistance, Public Assistance for state and local governments and Hazard Mitigation. All may be available from FEMA depending on the scope of the disaster.

Complete program descriptions are available in the [Disaster Assistance: A Guide to Recovery Programs](#) which supports the [National Response Framework](#)⁷ as a resource for federal, state, local and non-governmental officials. It contains brief descriptions and contact information for Federal programs that may be able to provide disaster recovery assistance to eligible applicants.

The federal disaster-aid program information is available from the regional office that serves Alaska, Idaho, Oregon and Washington: [Region X \(Bothell, WA\)](#), Federal Emergency Management Agency, Federal Regional Center, 130 228th Street, Southwest, Bothell, Washington 98021-8627, telephone (425) 487-4600.

⁷ The National Response Framework was replaced by the earlier National Response Plan effective March 22, 2008. The National Response Framework (NRF) presents the guiding principles that enable all response partners to prepare for and provide a unified national response to disasters and emergencies. It establishes a comprehensive, national, all-hazards approach to domestic incident response.

11.885 FEDERAL AGENCIES ADMINISTERING THE WILD AND SCENIC RIVERS ACT. The USDA Forest Service, U.S. Bureau of Land Management, U.S. Fish & Wildlife Service, and National Park Service are responsible for managing rivers designated as Wild & Scenic under the Wild & Scenic Rivers Act (WSR). The WSR Act was passed in 1968 to stem the loss of “free flowing” rivers in the U.S. As a result, several rivers with outstanding natural, recreational, historic, and cultural values were designated for special protection and management. In this Act, free-flowing is defined as follows:

...existing or flowing in natural condition without impoundment, diversion, straightening, rip-rapping, or other modification of the waterway...

Although the Wild and Scenic Rivers (WSR) Act does not prohibit development along a river corridor, it does specify guidelines for the determination of appropriate actions within the bed and banks of a Wild and Scenic River. Federal agencies that manage WSR base their decisions on a process referred to as a Section 7 determination process discussed below. The requirements of this Act are triggered when your project is either funded or permitted (e.g., Corps’ Section 404 permit) by the federal government. Projects must comply with the guidelines and direction provided in the document entitled Wild and Scenic Rivers Act Section 7 Guidelines.

For more information on requirements of the WSR Act, refer to section 11.900. Counties initiating the planning of road work in Wild & Scenic Rivers should contact the federal agency responsible for this river well in advance by telephone and schedule a meeting to discuss the project and Section 7 determination process. Contact Dan Haas, U.S. Fish and Wildlife Service, Hanford Reach National Monument, 3250 Port of Benton Boulevard, Richland, Washington 99354. Telephone: (509) 371-1801.

11.890 U.S. FISH & WILDLIFE SERVICE. County road departments typically work with the U.S. Fish & Wildlife Service (U.S. FWS) when they submit a Section 404 permit to the U.S. Army Corps of Engineers (Corps) (see section 11.850) and the proposed project area of impact involves fish, wildlife, invertebrate (insect), or plant species or their habitat that is protected under either the federal Endangered Species Act (ESA), the [Fish & Wildlife Coordination Act \(FWCA\)](#), the [Bald & Golden Eagle Protection Act \(BGEPA\)](#) and/or the [Migratory Bird Treaty Act \(MBTA\)](#). During the Corps’ permit process, road departments consult under Section 7 of the ESA concerning the effects of their proposed road work on plant, animal, and insect species listed as threatened or endangered under the ESA. The conclusion of this consultation leads to a biological opinion and an “incidental take statement.” This statement provides the county road department coverage from ESA Section 9 prohibitions against a “take” of an ESA-listed species (see below) when following the measures stated in the biological opinion. The National Marine Fisheries Service (NMFS) (see section 11.895) is also responsible for administering Section 7 of the ESA; however, their authority is limited to species that are dependent on the marine environment for a substantial part of their life cycle.

The requirements of the ESA can also influence road work outside of the Corps’ permit process. ESA Section 9 prohibitions against “take” of an ESA listed species always apply to road work. The statutory definition of “take” means to harass, harm, kill, trap, capture, or collect or attempt to engage in any such conduct.” To obtain coverage against the Section 9 prohibitions for a “take” of a ESA-listed species while doing road work, the U.S. FWS provides ESA Section 10 (a)(1)(A) Permit. Another option for coverage from a

“take” is to develop a Habitat Conservation Plan for an ESA-listed species under Section 10 of the ESA. Additionally, [safe harbor agreements](#) – administered by the U.S. FWS through the Section 10 (a) (1) (A) process – may also be developed to guide the voluntary management of ESA-listed species on non-federal land. In addition, ESA Section 4(d) can also be used to provide coverage against a “take” of threatened species for certain local government operations; however, unlike NMFS, the U.S. FWS does not use this section of the law at this time.

Additionally, to avoid a “take” under the ESA, county road departments need authorization to move or handle ESA-listed fish while isolating a work site while performing in-water road construction or maintenance. Section 10 (a) (1) (A) of the ESA allows the U.S. FWS to issue this authorization. Moreover, this authorization can be obtained through a biological opinion (either programmatic such as SLOPES or individual) when obtaining a U.S. Army Corps of Engineers Section 404 or Section 10 permit. An authorization will also be needed from the NMFS if marine species such as salmon and steelhead are present and these species are listed under the ESA. Typically, in a Section 7 consultation, both agencies issue this authorization.

Working with the U.S. FWS under the FWCA may occur when a county road department submits a Section 404 Permit to the Corps. When fish and wildlife resources are involved in a project proposed in a Section 404 permit (including bridge projects on navigable waters regulated by the U.S. Coast Guard), the Corps consults with the U.S. FWS.

Working with the U.S. FWS under the MBTA occurs when a county road department has a road project involving birds or their nests and these birds are on the U.S. FWS migratory bird species list. The MBTA makes it illegal to take, possess, or transport a migratory bird, or their parts, nests or eggs without a permit issued by the U.S. FWS.

Working with the U.S. FWS under the BGEPA occurs when a county road department has a proposed road project that could “disturb” a nest of a Bald or Golden Eagle. The U.S. FWS has guidelines for protecting the Bald Eagle and has defined “to disturb” in administrative rules. These agency actions will provide more clarity for complying with the BGEPA. Since the Bald Eagle has been “delisted” under the ESA, the BGEPA will be more influential in managing potential land use impacts to this bird and its habitat. Moreover, there is statutory overlap between the BGEPA and the MBTA in that both of these acts prohibit killing or harming eagles, their nests, or their eggs. However, the BGEPA goes further than the MBTA by protecting eagles from disturbance.

For more information on the ESA, FWCA, BGEPA, or MBTA requirements refer to section 11.900. Counties initiating the planning of road work involving fish, wildlife, invertebrate, and plant species should contact the U.S. FWS in advance by telephone and schedule a meeting to discuss regulatory requirements and conservation measures for these species. To contact the U.S. FWS, use the following information: Oregon Fish & Wildlife Office, 2600 S.E. 98th Avenue, Suite 100, Portland, OR 97266, (503) 231-6179.

11.895 NATIONAL MARINE FISHERIES SERVICE (NMFS). County road departments work with the National Marine Fisheries Service (NMFS) when road projects involve potential impacts to species that spend most of their life cycle in a marine environment (e.g., salmon, steelhead, seals, sea lions). The NMFS administers the

[Endangered Species Act \(ESA\)](#) and [Magnuson Steven Act \(MSA\)](#) and these two laws may affect how road work is done. During the Corps' permit process, road departments consult under Section 7 of the ESA concerning the effects of their proposed road work on marine species such as salmon and steelhead listed as threatened or endangered under the ESA. The conclusion of this consultation leads to a biological opinion and an "incidental take statement." This statement provides the county road department coverage from ESA Section 9 prohibitions against a "take" of an ESA-listed species (see below) when following the measures stated in the biological opinion. The U.S. Fish & Wildlife Service (U.S. FWS) (see section 11.890) is also responsible for administering Section 7 of the ESA; however, their authority is limited to non-marine species or species that are not dependent on the marine environment for a substantial part of their life cycle.

To expedite ESA Section 7 consultations with the NMFS on small projects, the Corps has worked with NMFS to develop a "programmatic" consultation for smaller projects currently referred to as Standard Local Operating Procedures for Endangered Species (SLOPES) during the revision of this manual. If a road project can be designed and constructed to conform to a programmatic consultation such as SLOPES, an individual consultation with NMFS during the review of a Section 404 application is unnecessary. Since NMFS also administers the MSA, programmatic consultations such as SLOPES also help permit applicants expedite the Essential Fish Habitat and consultation requirements under the MSA (see below). As a result, if a road project complies with the reasonable and prudent measures of a programmatic consultation, the project will meet the consultation requirements of both the ESA and MSA.

The requirements of the ESA can also influence road work outside of the Corps' permit process. ESA Section 9 prohibitions against "take" of an ESA listed species always apply to road work whether or not a Corps Section 404 permit is needed. The statutory definition of "take" includes to harass, harm, kill, trap, capture, or collect. To obtain coverage against the Section 9 prohibitions for a "take" of an ESA-listed species while doing road work, ESA Section 10 (a) (1) (A) provides authority to NMFS to issue a permit providing coverage for "take." To obtain this coverage, an applicant develops a [Habitat Conservation Plan](#) for an ESA-listed species under Section 10 of the ESA. Coverage from a "take" under the ESA can also be obtained from safe harbor agreements through the Section 10 (a) (1) (A) process. As of the revision of this document, NMFS does not use the safe harbor agreements.

Under Section 4(d) of the ESA, NMFS has issued "4(d) rules" for threatened salmon and steelhead that provide coverage for a "take" for certain local government actions such as routine road maintenance. AOC worked with county road departments and NMFS to develop a template for seeking coverage from "take prohibitions" under NMFS's 4(d) Limit 10 rule.

If no marine species such as salmon are listed under the ESA but are present near a project site, a Corps Section 404 permit for a road project may trigger Essential Fish Habitat consultation requirements with NMFS under the MSA. In an effort to streamline MSA requirements listed salmon and steelhead that are also protected under the ESA, NMFS has combined consultation requirements for both the ESA and MSA under one programmatic consultation for small projects. This streamlined programmatic consultation is currently referred to as the Standard Local Operating Procedures for Endangered Species (SLOPES) as of the revision of this manual. If projects are designed to meet the conditions this programmatic consultation, they will meet the consultation requirements for both the ESA

and MSA. Designing a project to meet the reasonable and prudent measures in a programmatic consultation will greatly expedite the consultation requirements under these two statutes.

Finally, to avoid a “take” under the ESA, county road departments need authorization to move or handle ESA-listed fish while isolating a work site while performing in-water road construction or maintenance. Section 10 (a) (1) (A) of the ESA allows NMFS to issue this authorization. Depending on their availability, biologist with the Oregon Department of Fish & Wildlife can move fish during in-water worksite isolation under their agreement with NMFS. Additionally, if a county has an NMFS-approved 4(d) Limit 10 routine road maintenance program, the incidental take statement that accompanies the NMFS approval should allow the county road department – with a trained and experienced individual – to move fish during worksite isolation. Moreover, this authorization can be obtained through Limit 3 of the 4(d) rules for salmon and steelhead and through an incidental take statement accompanying a biological opinion (either programmatic such as SLOPES or individual) when obtaining a U.S. Army Corps of Engineers Section 404 or Section 10 permit. An authorization will also be needed from the U.S. Fish and Wildlife Service if marine species such as salmon and steelhead are present and these species are listed under the ESA. Typically, in a Section 7 consultation, both agencies issue this authorization.

For more information on the ESA and MSA requirements, refer to section 11.900. Counties initiating the planning of road work involving marine species should contact the NMFS in advance by telephone and schedule a meeting to discuss regulatory requirements and conservation measures for these species. To contact the NMFS, use the following information: Oregon State Habitat Office, 1201 NE Lloyd Blvd, Suite 1100 Portland, OR 97232, (503) 230-5400.

11.897 U.S. ENVIRONMENTAL PROTECTION AGENCY (EPA). Depending on the quantity of stored oil in maintenance yards, county road departments may work with the U.S. Environmental Protection Agency (EPA) to comply with regulations for [spill prevention, containment, and countermeasures \(SPCC\)](#) for oil stored at county maintenance yards or job sites. Under the [Clean Water Act Section 311](#), if total oil storage at a facility exceeds 1,320 gallons of oil storage capacity for above ground tanks and 42,000 gallons of oil storage capacity for below ground tanks, EPA requires a spill prevention, containment, and countermeasure plan for facilities that could accidentally discharge to navigable waters or bays or their tributaries. Underground storage tanks (UST) regulated by the Oregon Department of Environmental Quality’s (DEQ) UST Program are not included in this calculation (see section 11.515). Containers of oil 55 gallons or greater are calculated into the inventory of oil storage capacity.

EPA also has statutory authority for administering other sections under the Clean Water Act (e.g., NPDES, TMDL, Section 401 Water Quality Certifications) as well as other federal statutes such as the Safe Drinking Water Act, Resource Conservation Recovery Act, and Clean Air Act that influence county road work and the operation of maintenance yards. However, EPA has delegated authority for administering these federal statutory programs to the Oregon Department of Environmental Quality (DEQ) (see section 11.515). As a result, except for the SPCC requirements, county road department’s work directly with DEQ on these state administered, federal programs. In this capacity, EPA provides oversight for these programs and may issue policy and regulations that influence DEQ’s administration of these

federal programs. EPA has oversight authority over the U.S. Army Corps of Engineer’s Section 404 Permit program for placing or removing fill from wetlands or waterways identified as waters of the U.S. EPA can issue regulations influencing the administration of the Section 404 Permit Program or any other federal program delegated to the State of Oregon under the Clean Water Act, Resource Conservation & Recovery Act, Safe Drinking Water Act, and Federal Insecticide Fungicide and Rodenticide Act.

For more information on the SPCC requirements, refer to section 11.900. Contact the EPA at 805 S.W. Broadway, Suite 500, Portland, Oregon 97205, (503) 326-3250.

11.899 NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) & FEDERAL AGENCIES. The National Environmental Policy Act (NEPA) ([42 U.S.C. 4321 et seq.](#)) established environmental policy and goals for the protection, maintenance, and enhancement of the environment, and it provides a process for implementing these goals during federal actions such as the funding or permitting projects. As practiced, NEPA is used as a framework for integrating all environmental requirements (e.g., Clean Water Act, Endangered Species Act, National Historic Preservation Act, Fish & Wildlife Coordination Act) into one Federal review of a proposed project involving federal funding and/or federal authorization. Specifically, Section 102 of NEPA requires all federal agencies to prepare detailed statements assessing the environmental impact of and alternatives to major federal actions significantly affecting the environment. These statements are commonly referred to as environmental impact statements (EISs). There are three levels of analysis depending on whether or not an undertaking could significantly affect the environment. These three levels include: categorical exclusion determination; preparation of an environmental assessment/finding of no significant impact (EA/FONSI); and preparation of an environmental impact statement (EIS). Typically, to streamline compliance with NEPA as well as other environmental statutes, the applicant for a federal permit such as a U.S. Army Corps of Engineers’ Section 404 Permit – for example – develops the analysis for this statement utilizing the information acquired for other environmental requirements required for this permit. This approach avoids producing duplicate analyses.

11.900 SUMMARY OF ENVIRONMENTAL REQUIREMENTS

Action/Activity	Resource Involved	Regulatory Program Possibly Involved	State/Federal Agency Involved	More Information
♦ Placing or removing fill in wetlands or waterways (lakes, rivers)	Wetlands and waterways (lakes, rivers, streams)	Section 404 Permit (federal) Section 10 Permit (federal)	1. U.S. Army Corps of Engineers 2. U.S. EPA (oversight role)	WETLANDS, WATERWAYS, FLOODPLAINS & OCEAN SHORES
♦ Placing or removing fill in wetlands or waterways (lakes, rivers)	Wetlands and waterways (lakes, rivers, streams)	Removal-fill Permit (state)	Oregon Department of State Lands	WETLANDS, WATERWAYS, FLOODPLAINS & OCEAN SHORES
♦ Constructing a bridge or culvert across the ordinary high water mark of a waterway	Submersed or submersible land	Submersed or Submersible Lands Easement	Oregon Department of State Lands	WETLANDS, WATERWAYS, FLOODPLAINS & OCEAN SHORES

◆ Maintenance and construction of bridges across navigable waters	Navigable waters	Section 404 Permit (federal)	U.S. Coast Guard	WETLANDS, WATERWAYS, FLOODPLAINS & OCEAN SHORES
◆ Maintenance and construction of stream crossings or within riparian corridors involving a federal permit or funds*	Rivers designated as Wild & Scenic	Wild & Scenic Rivers Act Section 7 Guidelines	1. USDA Forest Service 2. U.S. Bureau of Land Management 3. National Park Service 4. U.S. Fish & Wildlife Service	WETLANDS, WATERWAYS, FLOODPLAINS & OCEAN SHORES
◆ Maintenance and construction of stream crossings or within riparian corridors or tree cutting**	Rivers and other water bodies designated as Scenic Waterway	Notification of proposed activities in Scenic Waterways Removal-fill permit for any volume of fill	Oregon Parks & Recreation Department Department of State Lands	WETLANDS, WATERWAYS, FLOODPLAINS & OCEAN SHORES
◆ Road construction affecting beaches and dunes ocean, ocean shoreland*	Coastal resources	Ocean-Coastal Management Program (OCMP) Federal Consistency Review	Oregon Department of Land Conservation & Development	STORMWATER/WASTEWATER DISCHARGES & OIL SPILLS
◆ Road construction and maintenance*	Fish, wildlife, plants, and invertebrates (insects) listed as threatened or endangered or candidates for such a listing and their habitat when in a project's area of impact	1. Section 7 Consultation 2. Section 10 Permit & Safe harbor agreement	U.S. Fish & Wildlife Service	ENDANGERED/THREATENED SPECIES & FISH/WILDLIFE PROTECTION
◆ Road construction and maintenance*	Species that spend most of their life cycle in the marine environment (e.g., salmon & steelhead)	1. ESA Section 7 Consultation 2. ESA Section 10 Permit 3. ESA 4(d) rules Magnuson Stevens Act Essential Fish Habitat Consultation	National Marine Fisheries Service (NMFS)	ENDANGERED/THREATENED SPECIES & FISH/WILDLIFE PROTECTION
◆ Isolating a project site when working in a water body & moving aquatic species from the site	Native and non-native fish	Scientific take permit	Oregon Department of Fish & Wildlife	ENDANGERED/THREATENED SPECIES & FISH/WILDLIFE PROTECTION
◆ Isolating a project site when working in a water body & moving ESA listed species from the site	ESA listed marine species and their habitat	ESA Section 10(a)(1)(A) permit, ESA Section 7 Consultation, or ESA Section 4(d) Limit 10 or Limit 3 rules	National Marine Fisheries Service	ENDANGERED/THREATENED SPECIES & FISH/WILDLIFE PROTECTION
◆ Isolating a project site when working in a water body & moving ESA listed species from the site	ESA listed non-marine species and their habitat	ESA Section 10(a)(1)(A) permit and ESA Section 7 Consultation	U.S. Fish & Wildlife Services	ENDANGERED/THREATENED SPECIES & FISH/WILDLIFE PROTECTION
◆ Road construction and maintenance**	Fish & wildlife listed as threatened & endangered and their habitat	Species Survival Guidelines	Oregon Department of Fish & Wildlife	ENDANGERED/THREATENED SPECIES & FISH/WILDLIFE PROTECTION

♦ Disturbing native plants during road construction & maintenance	Native plants listed as threatened & endangered	Oregon Listed Plant Permit	Oregon Department of Agriculture	NOXIOUS WEEDS/NATIVE PLANTS/FOREST LANDS
♦ Road construction and maintenance	Fish & wildlife species and their habitat	Fish & Wildlife Coordination Act Review	U.S. Fish & Wildlife Service	ENDANGERED/THREATENED SPECIES & FISH/WILDLIFE PROTECTION
♦ Road construction and maintenance**	Fish & wildlife species and their habitat	Oregon Fish & Wildlife Mitigation Policy Rules	Oregon Department of Fish & Wildlife	ENDANGERED/THREATENED SPECIES & FISH/WILDLIFE PROTECTION
♦ Culvert and bridge replacements as well as culvert and bridge construction	Native migratory fish listed by ODFW	Oregon Fish Passage Rules	Oregon Department of Fish & Wildlife	ENDANGERED/THREATENED SPECIES & FISH/WILDLIFE PROTECTION
♦ Construction stormwater associated with clearing vegetation and disturbing soil on an acre or more land	Water bodies	NPDES 1200-C (private) & 1200-CA Permit	Oregon Department of Environmental Quality U.S. EPA (oversight)	STORMWATER/WASTEWATER DISCHARGES & OIL SPILLS
♦ Construction and maintenance stormwater discharges and post-construction stormwater discharges from a road system and municipal operations in an urban area (>50,000 pop.) and its urban fringe	Water bodies	NPDES MS4 Permit	Oregon Department of Environmental Quality U.S. EPA (oversight)	STORMWATER/WASTEWATER DISCHARGES & OIL SPILLS
♦ Construction and maintenance stormwater discharges and post-construction stormwater discharges from a road system and municipal operations in a basin or sub-basin in rural areas and urban areas with populations < 50,000	Water bodies	Total Maximum Daily Load (TMDL) Water Quality Analysis	Oregon Department of Environmental Quality U.S. EPA (oversight)	STORMWATER/WASTEWATER DISCHARGES & OIL SPILLS
♦ Construction and maintenance requiring an U.S. Army Corps of Engineers Section 404 or Section 10 Permit*	Water bodies	401 Water Quality Certification	Oregon Department of Environmental Quality U.S. EPA Oversight	WETLANDS, WATERWAYS, FLOODPLAINS & OCEAN SHORES
♦ Construction and maintenance projects in the coastal zone †	Water bodies in the coastal zone	Coastal zone non-point Pollution Control Program	Oregon Department of Environmental Quality U.S. EPA (oversight)	STORMWATER/WASTEWATER DISCHARGES & OIL SPILLS
♦ Stormwater discharge from maintenance yards	Water bodies	NPDES 1200-Z	Oregon Department of Environmental Quality U.S. EPA Oversight	STORMWATER/WASTEWATER DISCHARGES & OIL SPILLS

◆ Stormwater discharge from an aggregate mining operation and asphalt batch plant	Land, soil	WPCF 1000 Permit		STORMWATER/WASTEWATER DISCHARGES & OIL SPILLS
◆ Washwater from vehicle/equipment/road cleaning	Land, soil	WPCF 1700 Permit	Oregon Department of Environmental Quality	STORMWATER/WASTEWATER DISCHARGES & OIL SPILLS
◆ Injecting stormwater from roads or maintenance yards into the ground via sump, French drain etc.	Groundwater	Underground Injection Control Program/WPCF Permit	Oregon Department of Environmental Quality U.S. EPA (oversight)	INJECTING STORMWATER & WASTEWATER INTO THE GROUND
◆ Injecting wastewater from a vehicle maintenance shop into the ground vial sump etc.	Groundwater	Underground Injection Control Program/WPCF Permit	Oregon Department of Environmental Quality U.S. EPA (oversight)	INJECTING STORMWATER & WASTEWATER INTO THE GROUND
◆ Disposing of solid waste or storing of solid waste in a maintenance yard	Land, soil	Solid Waste Program	Oregon Department of Environmental Quality U.S. EPA (oversight)	SOLID WASTE, HAZARDOUS WASTE, AND STORAGE TANKS
◆ Disposing of hazardous waste	Land, soil, water bodies, groundwater	Hazardous Waste Program	Oregon Department of Environmental Quality U.S. EPA (oversight)	SOLID WASTE, HAZARDOUS WASTE, AND STORAGE TANKS
◆ Disposing of hazardous waste such as batteries, waste pesticide, fluorescent lights etc. as universal waste	Land, soil, water bodies, groundwater	Universal Waste Program	Oregon Department of Environmental Quality U.S. EPA (oversight)	SOLID WASTE, HAZARDOUS WASTE, AND STORAGE TANKS
◆ Reducing the generation of hazardous wastes via plans such as environmental management systems	Land, soil, water bodies, groundwater	Toxic Use & Hazardous Waste Reduction Program	Oregon Department of Environmental Quality	SOLID WASTE, HAZARDOUS WASTE, AND STORAGE TANKS
◆ Storing oil in tanks or responding to oil leaks in underground storage tanks	Land, soil, water bodies, groundwater	Above Ground, Underground, Leaking Underground, Heating Oil Storage Tank Program	Oregon Department of Environmental Quality U.S. EPA (oversight)	SOLID WASTE, HAZARDOUS WASTE, AND STORAGE TANKS
◆ Oil storage in maintenance yards & project sites	Navigable waters & their tributaries	Spill Prevention Containment & Countermeasures (SPCC)	U.S. EPA	STORMWATER/WASTEWATER DISCHARGES & OIL SPILLS
◆ Burning of any materials in an open area	Air	Open Burn Letter Permit	Oregon Department of Environmental Quality U.S. EPA (oversight)	AIR DISCHARGES/NOISE/OPEN BURNING
◆ Noise generated from road construction and maintenance	Air	Noise Control Regulations	Oregon Department of Environmental Quality	AIR DISCHARGES/NOISE/OPEN BURNING

♦ Use of cutback asphalt in road paving	Air	Cutback Asphalt Prohibition	Oregon Department of Environmental Quality U.S. EPA (oversight)	AIR DISCHARGES/NOISE/C PEN BURNING
♦ Nuisance discharges into the air such as dust from road construction & maintenance	Air	Nuisance Prohibition Regulation	Oregon Department of Environmental Quality	AIR DISCHARGES/NOISE/C PEN BURNING
♦ Extracting gravel/mineral resources for road construction outside of the ordinary high water mark of waterways and outside of wetland boundaries	Land	Surface Mining Permit	Department of Geology & Mineral Industries	WETLANDS, WATERWAYS, FLOODPLAINS & OCEAN SHORES
♦ Road construction and maintenance in forest lands ††	Forest lands	Oregon Forest Practices Act road construction & maintenance rules	Oregon Department of Forestry	NOXIOUS WEEDS/NATIVE PLANTS/FOREST LANDS
♦ Federally funded or permitted road construction and maintenance*	Water bodies; groundwater; fish/wildlife and their habitat; cultural, historic, & archeological resources; parks, trails, and other recreational facilities; communities	NEPA Environmental Assessment (EA) and Environmental Impact Statement (EIS)	All federal agencies funding a project and/or administering a permit	NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)
♦ Road construction and maintenance*	Historic, cultural, and archeological resources	Section 106 Review	Oregon State Historic Preservation Office	CULTURAL, HISTORICAL, & ARCHAEOLOGICAL RESOURCES
♦ Road construction and maintenance	Native American burial site and related objects	Protection from disturbance from the Indian Graves and Burial Objects Protection Act	Oregon State Historic Preservation Office	CULTURAL, HISTORICAL, & ARCHAEOLOGICAL RESOURCES
♦ Road construction and maintenance**	Archeological objects on public and private land	Permit for excavation, alter, or remove archeological objects	Oregon State Historic Preservation Office	CULTURAL, HISTORICAL, & ARCHAEOLOGICAL RESOURCES
♦ Vegetation management in right-of-ways	Noxious weeds	Oregon State Weed Board's designated noxious weeds	Oregon Department of Agricultural	NOXIOUS WEEDS/NATIVE PLANTS/FOREST LANDS
♦ Vegetation management in right-of-ways	Herbicide use on noxious weeds	Pesticide Use Reporting System	Oregon Department of Agriculture	NOXIOUS WEEDS/NATIVE PLANTS/FOREST LANDS

* This requirement is triggered by federal funding and/or a federal permit such as a U.S. Army Corps of Engineer's Section 404 or Section 10 Permit. If a federal permit is required, this requirement is managed within the federal permit process.

** This requirement is trigger by an application for an Oregon DSL removal-fill permit and/or an U.S. Army Corps of Engineers permit for placing fill or removing fill in wetlands and waterways.

- † This DEQ program is primarily covered by the TMDL Program in coastal zones, NPDES MS4 Program, NPDES 1200-C/CA Program, and/or the voluntary adoption of Oregon Department of Transportation's "Erosion Control Manual" and "Routine Road Maintenance Manual for Water Quality & Habitat Protection"
- †† This program should be consistent with the requirements of other programs required by the Oregon DEQ and National Marine Fisheries Service for example. Meeting the requirements of these other programs should ensure compliance with the Oregon Forest Practices Act.

11.910 MISCELLANEOUS STATE PERMIT REQUIREMENTS AND LICENSES. The following is a list of common road department permits issued by state agencies that road officials should consider in their operations.

- Oregon Department of Transportation - Road Approach Permits for public road intersecting with State Highway
- Driver and Motor Vehicle Services - Fuel Use License
- Motor Carrier Transportation Division - Over Legal Weight Hauling for moving large or heavy equipment
- Department of Environmental Quality - NPDES Storm Water Permits for yards, construction areas and quarries
- Department of Environmental Quality - Water Pollution Control Facilities permit for industrial septic tanks
- Department of Environmental Quality - Landfill Permit for demolition and land clearing debris
- Department of Environmental Quality - Hazardous Waste Generator Permit when generate more than 220 pounds per month
- Department of Environmental Quality - Air Contaminate Discharge Permit for crushers and hot plants
- Department of Environmental Quality - Underground Storage Tank Permit for fuel tanks
- Department of Environmental Quality - Indirect Source Construction Permits for constructing facilities that will generate large amounts of traffic
- Department of Environmental Quality - Open Burning of Construction Waste Permit for burning in an open burning control area
- Department of Environmental Quality - Noise Rule permit for certain nonconstruction activities

- Department of Environmental Quality - Oil Spill Clean-up Procedures
- Department of Environmental Quality - Waste Reduction Program for local government unit responsible for solid waste disposal
- Department of Environmental Quality - Volatile Organic Compounds Permit in Portland, Salem and Medford areas
- Department of Environmental Quality - Cutback Asphalt Prohibition from April to October in Portland, Salem and Medford areas
- Department of Environmental Quality - Road dust control
- Department of Forestry - Permit to Operate Power Equipment
- Department of Forestry - Notification of Operations
- Department of Forestry - Burn Permit
- Department of Land Conservation and Development - Oregon Shoreline Development Permit
- Department of Land Conservation and Development - Oregon Coastal Management Program Consistency
- Division of State Lands - Removal/Fill Permit for work in waterways and wetlands
- Department of Geology and Mineral Industries - Mined Land Reclamation Permit for rock and gravel quarries
- Department of Agriculture - Scale License for truck scales
- Department of Agriculture - Pump License for fuel pumps
- Building Codes Division - Boilers and Pressure Vessels Permit for heating and compressed air
- Building Codes Division - Elevator Permit for elevators, manlifts, and platforms
- Parks and Recreation Department - Ocean Shores Permit for Construction in Ocean Zone
- State Fire Marshall - LP Installation Permit for LP tanks and equipment
- State Fire Marshall - Class 1 Fuel Dispenser Permit for gasoline storage
- State Fire Marshall - Hazardous Substance Regulations for on-site hazardous

materials

- Water Resources Department - Well Permit for water and/or monitoring wells
- Driver and Motor Vehicle Services - Commercial Drivers License for certain equipment operators
- Department of Agriculture - Pesticide Applicators License for roadside weed spraying
- Building Codes Division - Electrician License for in-house electrical repairs
- Building Codes Division - Limited Maintenance Electrician License for traffic signal maintenance
- State Fire Marshall - Explosives License for in-house explosives person

11.920 MISCELLANEOUS LOCAL PERMIT REQUIREMENTS. The following is a list of common road department permits issued by local agencies that road officials should consider in their operations.

- Building Permits for in-house carpentry and similar work
- Electrical Permits for in-house electrical repairs
- Plumbing Permits for in-house plumbing repairs
- Alarm Permits for alarm systems
- Development Permits for excavations and fills in flood zones
- Burning Permit from local fire district for burning debris and other materials

CHAPTER 12: DISTRICTING FOR ROAD PURPOSES
(This chapter was revised and updated in 2008, 2010, 2012 and 2014)

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CHAPTER 12: DISTRICTING FOR ROAD PURPOSES

12.000 INTRODUCTION. Districting is a technique to localize a program activity to a portion of a county and to place financial responsibility within the localized area. The state laws have provided for three types of road districts for many years. They are the subject of this chapter. A county contemplating districting for road purposes will want to explore the county service district option ([ORS Chapter 451](#)), which became available to all counties in 1985, and the intergovernmental transportation entity enacted in 2001 ([ORS 190.083](#)). The county service district system, since it is primarily a fiscal technique, has been reported in Chapter 3.

Oregon statutes authorize and outline the formation of general districts, special road districts, and road assessment districts. The purpose of these various districts has been to facilitate the construction and improvement of roads. The county service district and transportation entity may also be tools for this purpose.

The district systems emerged during an earlier period. At one time many counties were using the general road district system, and the road levy statutes still contain language as though all counties were divided into road districts. See Chapter 3. Under the general road district system, which continues to function in a few counties, the county governing body and the county road official have the responsibility for the road program. Special road districts have independent operating boards but may utilize the county organization to provide its services. The road assessment district was designed specifically for Malheur County and is used only there. (Note: Washington County has established a county service district for urban road maintenance purposes and Union and Wallowa counties have established an intergovernmental transportation entity for the operation of their railroad line.)

12.015 SPECIAL REFERENCES. The following are sources of information outside this manual which are particularly relevant to the sections of this chapter, as noted.

Section 12.000

Oregon Law Institute, Oregon Local Government Law, Ch. 9, "Streets and Roads" (1991)

Oregon Law Institute, Oregon Local Government Law 2005, *The Latest Chapters in Public Law*, Ch. 3, "Streets and Roads" (2005)

Section 12.050

Oregon State Bar, Land Use, Ch. 12, "Moratoria and Growth Control Devices" (1982)

Oregon Law Institute, Oregon Local Government Law 2005, *The Latest Chapters in Public Law*, Ch. 1, "Annexations, Formations, and Dissolutions" (2005)

12.050 ROAD DISTRICT FORMATION AND DISSOLUTION. The formation or change of organization of any type of district for road purposes is accomplished under the District Boundary Procedure Act, [ORS 198.705 to ORS 198.955](#). The 2011 legislature modified the requirements for forming a district when the proposal includes a permanent tax

rate for the district by removing the previous requirement that at least 50 percent of registered voters cast ballots in the formation election held in May or November (Chapter 8, Oregon Laws 2011).

Further, under [ORS 197.175\(1\)](#) when a county acts to form, change the organization of, or annex territory to a district, the county is exercising its "planning and zoning" responsibilities. Once a district with road authority is functioning, any decision to open a road would become a land use decision. In counties within the jurisdiction of a local government boundary review commission, a formation or change in a road district must comply with that commission's authority.

ORS 198.920 to 198.955 defines the dissolution procedure for special districts and county service districts. The 2011 legislature augmented the process by passing ORS 198.927 which authorizes annexation of any or all territory of a dissolved district by a district formed under the same principal Act; allows for the allocation of the indebtedness; and subjects the territory annexed to the permanent tax rate limit and local option taxes of the annexed district (Chapter 369, Oregon Laws 2011).

12.100 COUNTY ROAD DISTRICTS. Road districts may be created under [ORS 371.055 to 371.110](#) for the purpose of improving county roads and, within a city or drainage district, public roads. These road districts are commonly referred to as county road districts or general road districts to distinguish them from the more specialized road districts provided by other statutes. A county road district could apparently be superimposed over a part of a county as a means of levying a property tax for roads in addition to any overall county road levy. However, the historical experience has been that a county road district system is applied county-wide and replaces any county road levy program. Incorporated cities and certain drainage districts and islands are automatically separate road districts. Road improvements within a district may be initiated by a petition signed by 12 or a majority of the resident freeholders of the road district. If approved by the county road official, an investigation is made of the improvements and a report is submitted to the county court or board of county commissioners, which may grant the petition. Road improvements within a drainage road district are limited to those roads specifically designated by the board of supervisors of the drainage district. Similarly, road improvements within a city that is a separate road district are limited to the roads designated by the city council.

A road district may assess, levy and collect each year an ad valorem tax on all district property. The board of supervisors of a drainage district may levy a tax, not to exceed \$1 per acre of land for road purposes. In May 1997 the voters approved the legislatively referred Measure 50 to amend the citizen initiative, Measure 47, passed in November 1996. Measure 50 combined each taxing body's operating levies into a single levy, reduced that levy, and converted the levy into a permanent tax rate for the jurisdiction.

In addition, Measure 50 created a new type of levy known as the local option levy. Local option levies are operating levies that can be passed by local governments to raise revenue beyond the permanent rate amounts. All moneys collected shall be credited to a special fund in the county treasury and they may be expended under the supervision of the county court. Incorporated city road districts can have their funds paid over to the city and expended under the supervision of the city.

The 2001 Legislature modified ORS 371.110 by requiring that boundary changes

must be filed in final approved form with the county assessor and the Department of Revenue as provided in [ORS 308.225](#) for ad valorem taxation purposes.

12.110 STATUTES ON COUNTY ROAD DISTRICTS

Chapter 371

Road Districts and Road Assessment Plans

- 371.055 Establishment of road districts**
- 371.060 Drainage districts and cities as separate road districts**
- 371.065 Construction, maintenance and repair in drainage road district; tax levy**
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- 371.097 Levy of taxes; application of Local Budget Law**
- 371.105 Tax as special fund; use of fund**
- 371.110 Effect of change of district boundaries on road tax levy; filing boundary change with county assessor and Department of Revenue**

12.120 CITATIONS ON COUNTY ROAD DISTRICTS

12 Or. Att'y Gen. Op. 502 (1926): The basis for the tax levy is the assessed valuation on the books on the date the tax was voted.

25 Or. Att'y Gen. Op. 332 (1951): Establishment of general road districts does not curtail final county jurisdiction over road decisions except in incorporated cities and drainage districts.

12.200 SPECIAL ROAD DISTRICTS. Special road districts created under ORS 371.305 to 371.385 are governed by a three-member board of commissioners which is appointed by the county governing body and have the powers of a municipal corporation for the purpose of improving roads within the district. In 1999, the Legislature expanded county authority by authorizing the county governing body, by ordinance, to change the method of selection of the district commissioners. The new law provides that the enabling ordinance shall specify whether the district commissioners shall be elected or appointed and prescribe the procedures for effecting the change.

The voters of the district authorize the collection of an ad valorem property tax to be used to improve public roads. As noted in section 12.100, Measure 50 converted each taxing body's property tax levy into a permanent tax rate for property tax purposes and limited the ability of taxing bodies to impose additional property taxes for operating purposes to voter-approved local option levies. Any tax levy authorized is to be collected and disbursed under the direction of the district board.

In 2001 the Legislature further expanded the authority of special road districts, but in a very limited way. It enacted a measure establishing tax zones for special road districts for the purpose of imposing property taxes at different tax rates and amounts on assessed value of property in each zone. However, the special road district must be located in a county with a population between 100,000 and 200,000 people and the total square miles of the county is between 3,000 and 3,500 square miles. (The only county that qualified at the time of enactment was Deschutes County and was enacted specifically for Deschutes County.)

In order to qualify, the district must be providing qualitative differences in services to the residents in each tax zone. The zone boundaries and tax rate for each zone must be approved by the voters of the district.

In 2010, Crook County enacted a process for the withdrawal of county roads within subdivisions from the county road system in order to better utilize its limited road revenues. The policy creates incentives to encourage the subdivision property owners to create a special road district and approve a permanent tax rate to maintain the subdivision roads. See Crook County [Order 2010-44](#) "In The Matter Of Reclassifying County Maintained Roads Located Within Subdivisions."

12.210 STATUTES ON SPECIAL ROAD DISTRICTS

[Chapter 371](#)

Special Road Districts

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- 371.359 Filing boundary change with county assessor and Department of Revenue**
- 371.360 Deposit of tax proceeds in bank**
- 371.385 Certain tax limitations not in effect after August 22, 1969**

12.220 CITATIONS ON SPECIAL ROAD DISTRICTS

30 Or. Att'y Gen. Op. 331 (1961): An uninhabited area may not comprise a special road district.

39 Or. Att'y Gen. Op. 549 (1979): A special road district may transfer funds obtained to improve roads from the road district to the county in order to pay for the improvements.

12.300 ROAD ASSESSMENT DISTRICTS. Road assessment districts may be formed under ORS 371.405 to 371.535 only in counties with a population between 19,000 and 25,000 at the time of formation. Subsequent growth to a population exceeding 25,000 has no effect on a properly formed district. The district must have at least 20,000 acres or \$1 million assessed valuation of taxable property. An elected three-member board of directors has authority over all roads within the district except for state primary and secondary highways. Unless the board of directors contracts with a city within the district, however, the board has no authority over streets within the city. Once authorized by voters in the district, the board may levy a road tax of up to one-fourth of one percent (0.0025) of the real market value of the property within the district. An additional one-fourth of one percent (0.0025) may be levied in any year by separate voter approval for that year's levy. The assessments are to be collected by the county, kept in a separate fund, and disbursed for road purposes on order of the board of directors. Any tax levied by the board does not prevent the county governing body from levying any other tax for road purposes provided by law.

Some practical limitations on road assessment districts necessitate cooperation between the district and the county governing body of the county in which the district is located. All county road right-of-way within a road assessment district is acquired and held by the county. Establishment of a roadway as a county road ultimately is determined by the county governing body. As a practical matter, however, recommendations of the district board play an important role in decisions concerning acceptance of a public road as a county

road. Such an acceptance has the same impact on a road assessment district as it would on a county without those districts.

12.310 STATUTES ON ROAD ASSESSMENT DISTRICTS

Chapter 371

Road Assessment Districts

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371.535 Disposition of funds of dissolved district

12.320 CITATIONS ON ROAD ASSESSMENT DISTRICTS

40 Or. Att'y. Gen. Op. 130 (1979): A road assessment district is not dissolved automatically because the population of the county ceases to be within the limits specified in ORS 371.410. A road assessment district must be dissolved according to the uniform procedures established in ORS Chapter 198.

12.500 USING DISTRICTS FOR ROAD WORK. The road district laws came about at a time when the various portions of a county were more isolated. Today, road programs are more often built around functional differences in the roads rather than by their location in the county. This is demonstrated by the emergence of the road classification system, which distinguishes county roads from local access roads. As indicated in Chapter 3 and section 12.000, road districts are not the only alternatives for financing localized road needs.

Road districts now serve fairly narrow purposes. The county road district system as used in Clatsop County serves primarily to separate in-city and out-of-city property tax financing for roads. The special road district system as used in Lincoln County serves to offer localized areas a method of financing the care of local access roads. Under the county policy, subdivision streets are not added to the county road system for maintenance purposes. The county works with persons in an area wanting local access road maintenance by performing work paid for by the road district levy. The specialized objectives causing the use of various road districts may be achievable by the use of differential taxes, special assessments, county service district systems, or intergovernmental transportation agreements.

12.510 HIGHWAY LIGHTING BY DISTRICTS. [ORS 372.010 to 372.480](#) authorize the establishment of highway lighting districts for the purpose of illuminating specific portions of a public road. A separate board of commissioners for the district is appointed unless the governing body of the county within which the district is located is petitioned to act as the board for the district.

In either event, the county engineer is required to investigate and report on any lighting project proposed by a petition of landowners in the district. A hearing on the petition is required after the filing of the report. The county service district system discussed in Chapter 3 is an alternative way to provide lighting to benefit an area of the county.

Water supply districts, [ORS 264.350](#), and rural fire protection districts, [ORS 478.290](#), are also authorized to install and operate lighting systems along public roads within their respective districts.

CHAPTER 13: DESIGN AND SPECIFICATIONS FOR ROADS

(This chapter was revised and updated in 2008 and updated in 2010, 2012 and 2014)

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CHAPTER 13: DESIGN AND SPECIFICATIONS FOR ROADS

13.000 INTRODUCTION. Road failure due to heavy truck loads received national recognition in the spring of 1918 when widespread road failures occurred. The cause was a substantial growth in trucking stimulated by World War I. The narrow, thin roads built before that time were only adequate for automobiles and farm vehicles. The substantial increases in the use of both automobiles and trucks beginning in the 1950s magnified problems of traffic congestion and highway safety. Research and experience have addressed problems of structural adequacy, safety and convenience, and substantial investments have been made to modernize the road system. Today's counties have the task of preserving the existing road system. Although some new road alignments will be created, most of the future road system is at hand. Some of the system suffers from structural problems not unlike those of 1918 or from capacity and safety deficiencies similar to those that expanded rapidly in the 1950s. Efforts to take care of road needs are deterred by an expanding cost as well as the effects of increased vehicle use and truck weight.

Even though counties generally spend more money on road maintenance than on improvements, road improvement remains an important part of the road program. Maintenance of roads that are below minimum standards of structural adequacy may be more costly than investing in improvement of the road and, thereby, reducing maintenance costs. The road program has shifted to what is called the four R's: resurfacing, restoration, rehabilitation, and replacement.

Counties are given broad authority under state law to formulate and establish specifications and standards to be used when conducting road work. This chapter is intended, in part, to help transfer technical knowledge into improved field practice. It serves as a location for information on road design matters. See Chapter 4 for related information on general provisions of contracts for road work.

13.015 SPECIAL REFERENCES. The following are sources of information outside this manual that are particularly relevant to the sections of this chapter, as noted.

Section 13.100

Oregon Law Institute, Oregon Government Law 2005: *The Latest Chapters in Public Law*, Ch. 3, "Streets and Roads," Sec. III, "Creation of Roads" (October 2005)

Section 13.500

Oregon Department of Transportation, [2008 Oregon Standard Specifications for Construction](#)

Oregon Department of Transportation, [Standard Drawings \(2008\)](#)

American Association of State Highway and Transportation Officials, A Policy on Geometric Design of Highways and Streets, 2004

American Association of State Highway and Transportation Officials, Guidelines for Geometric Design of Very Low-Volume Local Roads, 2001

13.100 COMPLIANCE WITH STANDARDS. Under [ORS 368.036](#), all county roads and work performed on county roads are to comply with specifications and standards established by the county. When these do not exist, the work is to comply with the specifications and standards of the Department of Transportation. Specifications for work performed on a local access road may differ from those applied to county roads. Counties commonly develop functional road classifications such as arterial, collector, and local service as part of their specifications and standards for road work. Since county-adopted specifications and standards apply to work on existing as well as new roads, the provisions need to accommodate existing conditions that often will be below the optimum standards a county is striving to achieve.

A public road that is designated as a county road under ORS 368.016 shall be 50 feet wide under ORS 368.041 or any greater width if standards adopted by the county governing body provide otherwise.

When curbs are replaced or are newly constructed along a public road, curb cuts and ramps must be provided at intersections to allow reasonable access to crosswalks for persons with physical disabilities, according to [ORS 447.310](#).

[ORS 810.150](#) sets standards for road drains to avoid hazards to bicycle traffic. [ORS 801.030](#) exempts drains installed before September 13, 1975.

[ORS 215.606](#) requires counties to adopt standards and specifications for clustered mailboxes within the boundaries of county roads and rights-of-way. See section 13.540.

ORS 368.039 requires cities and counties to consult with local fire officials and consider their needs when adopting road specifications and standards. Once adopted, however, those standards supersede the state uniform fire code and any local fire codes.

13.110 STATUTES ON COMPLIANCE WITH STANDARDS

[Chapter 368](#)

County Roads

- 368.036 Standards for county roads and road work**
- 368.039 Road standards adopted by local government supersede standards in fire codes; consultation with fire agencies**
- 368.041 Widths of county roads; maintenance of designated roads as county roads**

[Chapter 215](#)

County Construction Codes

215.606 Standards for clustered mailboxes in county roads and rights-of-way

[Chapter 447](#)

Plumbing Code; Accessibility to Handicapped

447.310 Standards for curbing

[Chapter 801](#)

General Provisions and Definitions for Oregon Vehicle Code

801.030 Exemptions from amendments to vehicle code

[Chapter 810](#)

*Road Authorities; Courts; Police;
Other Enforcement Officials*

810.150 Drain construction; compliance with bicycle safety requirements; guidelines

13.200 GRADE CHANGE RESPONSIBILITY. If the Oregon Department of Transportation changes the grade of a road and any damages result, the department is liable for the damage except in a case where the county has requested the grade change. The county has liability if it changes the grade of a city street even though the city consented to the change. Claims for damages must be commenced in circuit court within six months of completion of a grade change. ORS 105.755 and 105.760.

13.210 STATUTES ON GRADE CHANGE RESPONSIBILITY

[Chapter 105](#)

Property Rights

105.755 State liability for damages resulting from change of grade of roads other than city streets; proceedings on cause of action; limitation

105.760 State or county liability for damages resulting from change of grade of streets; proceedings on cause of action

13.220 CITATIONS ON GRADE CHANGE RESPONSIBILITY

Deupree v. Department of Transportation, 173 Or. App. 623, 22 P.3d 773 (2001): Owner of property adjacent to state highway sought damages for, among other claims, a change in grade that denied direct access to property, although indirect access remained via a public road that intersected the state highway. Because the change in grade did not result in a loss of all highway access to their property, the court held plaintiffs did not suffer damage or injury for which they were entitled to just compensation

Larson v. State Highway Commission, 253 Or. 287, 453 P.2d 941 (1969): The plaintiff suffered damage to his property as a result of a change of grade in highway abutting the property. The Supreme Court of Oregon held the State was liable to pay just and reasonable compensation for any damage resulting from a change in the grade of a public road, unless the county had requested the State Highway Commission to make such change. Evidence supported a finding that a change in grade had been proposed and requested by the county, and thus precluded state liability under ORS 105.755(2).

13.500 ADOPTION BY REFERENCE. Counties find it convenient to adopt road standards and specifications by reference. Under [ORS 368.036](#) the county standards must be adopted by the county governing body or the work must comply with Oregon Department of Transportation standards. Adoption by reference saves the county from preparing extensive documents and gains a degree of uniformity in the state. Prior to 2002, there were two common sources of specifications used by Oregon counties. One document was prepared by the Oregon Chapter, American Public Works Association entitled 1990 Standard Specifications for Public Works Construction. The other document was the Oregon Department of Transportation's Standard Specifications for Highway Construction. The two publications have now been combined into a single ODOT manual [Oregon Standard Specifications for Construction](#) which is updated periodically. Of course, a county may use portions of the document or the document in its entirety. The following are examples of ordinance sections adopting the ODOT set of standards. Be sure to specify the date of the edition being adopted and have the sections reviewed by your legal counsel.

Section 1. Adoption of Road Construction Specifications. The Standard Specifications for Construction, ____ edition, promulgated by the Oregon Department of Transportation is adopted as the standard specifications for road construction in this county and may be cited as "_____ County Standard Road Specifications." A copy is available on file in the office of the director of public works. Work done and materials used for road construction awarded or otherwise authorized shall conform to the standards in effect at the time of the award or authorization unless provided otherwise by the county in the specifications or special provisions for the particular work.

The last sentence of the sample section allows for additional job specifications or changes in the standard specifications which may be desirable for a particular job. The standards themselves also provide for the usual flexibility for technical adjustments for each project.

If the state standards are adopted, the definitions need to be adjusted to fit the county level of administration. The following section is provided for that purpose. Each county should choose the appropriate term for its form of government.

Section _____. Definitions. Wherever the following terms appear in the Standard Specifications for Highway Construction, adopted in section 1, they shall be modified as shown:

- (1) "Commission" -- county court [or county commission].
- (2) "Department" -- county road department [or county public works department].
- (3) "State" -- county, acting by and through its governing body and other authorized representatives.

It is also possible to modify the specifications at the time of adoption. If a county wants to make modifications that will apply to all work, these may be made by inserting the phrase "except as hereinafter modified" after the word "adopted" in the section 1 examples above and then adding a section or several sections making the modifications, similar to the following:

Section _____. Modifications. The standard specifications referred to in section 1 are modified as follows:

- (1) Section ____ is revised to read as follows:
- (2) Section ____ is deleted.
- (3) Section ____ is amended by adding a new subsection ____ to read as follows:

In the past, counties were advised that the adoption of a state established standard could provide for automatic adjustment as the state changed its standards. In a 1980 court case, the court ruled that this cannot be done as a local legislative enactment because prospective referential adoption is an unconstitutional delegation of lawmaking power. Brinkley v. Motor Vehicles Division, 47 Or. App. 25 (1980). (See also Advocates for Effective Regulation v. City of Eugene, 160 Or. App. 292 (1999))¹ Counties may need to adjust prior referential adoptions if they contain a prospective feature. Changes that have occurred in a document adopted by reference become changes in the county's document only following express adoption of the changes by the county.

Although adoption by reference helps contractors and others by reducing the number of different rules that may be in effect, it is important for the county to review the document adopted and determine any adjustments to reflect county practices or to fit a particular project. For example, if there are administrative provisions in a document the county adopts by reference that do not fit the county's administrative system, the provisions need to be omitted or replaced as part of the referential adoption.

13.510 TORT LIABILITY FOR ROAD DESIGN. Public agencies and

¹ Same principle as *Brinkley*. This case involved a challenge to an adopted city initiative regulating hazardous wastes traveling through the city. The regulation was very much like that state statutory scheme on the subject. One of the flaws the Court of Appeals found was that the definition of "hazardous wastes" included what the Federal Government would find to be "hazardous wastes" in the future. The court found that inclusion to be an unconstitutional delegation of authority, using the *Brindley* analysis.

employees are generally immune from liability for alleged negligence in the performance of their discretionary functions, such as planning and designing highways. However, liability may exist when a public employee negligently fails to follow and implement road standards adopted by the agency. Although the implementation of standards often requires technical expertise, the technician is obligated to stay within the applicable standards in order to preserve immunity from liability for injuries resulting from conditions due to the technician's decision.

In Stevenson v. State of Oregon, 290 Or. 3, 619 P.2d 247 (1980), the state was alleged to be negligent in failing to shield a highway light so as to prevent a misleading effect on traffic approaching an intersection. The state argued in response that determining the need for such equipment is a discretionary function and, therefore, under the provisions of the Tort Claims Act, ORS 30.260 to 30.300, no liability should exist. However, the Oregon Supreme Court found nothing in the record to indicate that employees of the highway division made a policy decision when installing the highway lights at the intersection in question. Evidence did indicate that the employees' engineering judgment was negligently exercised in relation to standards adopted by the state Highway Division, which in this case were included in the Uniform Traffic Control Device Manual. The court held that when the design arrangement of roads or traffic control devices is not consistent with standards adopted by the public agency for such activities, liability for negligence may be enforced. See section 2.520 for a general discussion of county tort liability and sections 2.120, 2.320 and 2.525 for case citations.

13.520 STATUTES ON TORT LIABILITY FOR ROAD DESIGN

[Chapter 30](#)

Tort Actions Against Public Bodies

30.265 Scope of liability of public body, officers, employees and agents; liability in nuclear incident

13.530 CITATIONS ON TORT LIABILITY FOR ROAD DESIGN

Lisa Ann John v. City of Gresham, 214 Or. App. 305 (2007): The plaintiff's son was struck by a vehicle while crossing the street in a painted crosswalk. The City of Gresham and Multnomah County argued that the decision to paint the crosswalk, part of a traffic improvement project constructed by the city and county, was a discretionary decision subject to immunity under the Oregon Tort Claims Act. The Court of Appeals ruled against the city, stating that deference to the county's recommendation to paint the crosswalk did not result in protection by discretionary immunity, as the decision must be a result of an exercise of judgment for discretionary immunity to apply. The court also held regarding the county, the fact that the decision to paint the crosswalk was part of the approval of the overall final design also did not result in protection by discretionary immunity, since the decision merely determined compliance with existing policies and did not involve a judgment about matters of public policy. In addition, the court did not accept the city's argument that it was free from liability because it did not own the street where the accident occurred, stating that a city or county may be liable if the conduct caused a

foreseeable harm to an interest protected against that kind of negligent invasion.

Garrison v. Deschutes County, 334 Or 264, 48 P3d 807 (2002): Plaintiff had backed his pickup to the edge of the dump, emptied its contents to a lower slab 14.5 feet below, then fell from his pickup to the lower slab. He claimed, using negligence language, faulty design of the dumping area by the County. The Supreme Court, relying on affidavits of the County Public Works and Solid Waste Directors, found that the Commissioners had delegated the responsibility for design to them, and that they had thoughtfully weighed alternatives and compared design risks when choosing this design of the dumping area, and therefore held that their decisions were the kind intended to be given discretionary immunity.

State of Oregon v. Winters, 170 Or. App. 118, 10 P.3d 961 (2000): Winters owned 163 acres of farmland adjacent to State Highway 125, which lies between the Sandy River and Winter's property. The State brought action to condemn 2.7 acres of Winter's steeply sloped property adjacent to state highway in order to mitigate and prevent future rock slides. Winters counterclaimed for trespass and inverse condemnation. The trial court held in favor of the state on the inverse condemnation counterclaim, but found for Winter's on the trespass claim and also awarded him just compensation for the 2.7 acre parcel. The Court of Appeals affirmed the trial court in all respects except for the dismissal of the inverse condemnation counterclaim. The court held that an inverse condemnation claim based on the removal of lateral support could still properly be considered in the future, as the right to lateral support for his retained property remains and may be a compensable taking should the state's activities on the condemned property cause a future loss of lateral support.

Saracco v. Multnomah County, 50 Or. App. 145, 622 P.2d 1118 (1981): Plaintiff was injured when his car left the roadway and hit the side of the Hawthorne Bridge. He alleged that the cause of the accident was the county's negligence in failing to inspect and maintain the bridge so as to alleviate slick and wet conditions, as well as a failure to keep the bridge in a state of good repair. Multnomah County argued that the design, construction, and maintenance of the Hawthorne Bridge, including the roadway, were discretionary acts that entitled the county to immunity from liability. The Court of Appeals disagreed, stating that the county was not immune from liability by virtue of discretionary immunity because, though the decision to use steel studs as a traction device was a policy decision, the actions in dispute involved non-policy inspection and maintenance decisions.

Stevenson v. State ex rel Dept. of Transportation, 290 Or. 3, 619 P.2d 247 (1980): Stevenson was killed when the car she was in came on to the highway from a side road and was hit by a truck traveling through an apparent green light on the highway. Her estate claimed that the driver of her vehicle was misled by the green light for the highway because the State had not provided light "shields" to prevent this misleading effect. The State argued it was not liable because the decision on how to shield the lights was a policy decision entitled to discretionary immunity. The Oregon Supreme Court rejected the simple rule it had previously developed that "state employees are generally immune from liability for alleged negligence in planning and designing highways." The Supreme Court adopted a new rule that the government could claim "discretionary immunity" only if the government function or duty was:

- 1) The result of a choice or exercise of judgment;
- 2) That choice must involve public policy, as opposed to the routine day-to-day activities of public officials; and
- 3) The public policy choice must be exercised by a body or person that has, either directly or by delegation, the responsibility to make it.

The Court held that there was nothing in the record to suggest the responsible employees made any policy decision.

Wright v. Lane County, 40 Or. App. 443, 595 P.2d 835 (1979): Plaintiff sought a judgment declaring that Lane County was required to widen the road on which he lived, in order to conform to the specifications set out in the Lane County Manual. The Court of Appeals affirmed the trial court's dismissal of plaintiff's claim, stating that the decision to modify existing facilities to conform to new standards is discretionary in that it involves public policy considerations such as the availability of funds, public acceptance, and order of priorities. In addition, the manual's specifications applied only to dedicated public roads, of which this road was not, and its language looked to prospective application, and while the road became a county road in 1916, the manual was not adopted until 1963.

Boese v. City of Salem, 40 Or. App. 381, 595 P.2d 822 (1979): Plaintiffs' owned rental units in Northeast Salem, with a driveway near the intersection with Broadway Street. The city installed a traffic light on Broadway and closed the driveway for safety reasons. The plaintiffs' brought an inverse condemnation action and the trial court agreed, awarding \$15,000 for the closure of the private driveway. The Court of Appeals reversed, holding that the plaintiffs' retained adequate access to their property from another street, although that access may have been less satisfactory. An inconvenience of this sort is not compensable.

Kropitzer v. City of Portland, 237 Or. 157, 390 P.2d 356 (1964): Kropitzer brought suit to recover damages for alleged appropriation of his private property by the City through inverse condemnation. This was alleged to have occurred as a result of the City cutting into the hillside adjacent to Kropitzer's property while constructing a new paved road. Kropitzer's land subsided and the Trial Court held that the City's conduct constituted a taking of a portion of his property without compensation. The Oregon Supreme Court reversed stating that, because Kropitzer's predecessor in interest had dedicated to the public the streets designated in the subdivision plat, the dedication should be construed as granting the city the privilege of removing naturally necessary lateral support, provided the work is not done negligently.

13.540 STANDARDS FOR HANDICAPPED ACCESS. Both federal and state policies call for reducing physical barriers to the free movement of handicapped persons. Under the Federal Architectural Barriers Act (PL 90-480), any restroom or other building constructed with federal aid as part of a road project needs to be accessible to handicapped persons. The requirements for reducing physical barriers were augmented under provisions of the Americans with Disabilities Act (42 U.S.C. section 12101 et seq.). A joint technical assistance memo from the U.S. Departments of Justice and Transportation clarifies when a road must include curb ramps. When altering the roadway, for example through a new layer of asphalt, road reconstruction or thin-lift overlays, the sidewalks must be brought up to ADA accessibility standards. When the road work is for maintenance, for example it is a chip seal, fog seal or pothole patch, the roadway does not need to be brought up to ADA standards. The examples given are not exhaustive, and for more information please [click here](#) to read the joint technical assistance memo in its entirety.

State requirements are contained in [ORS 447.210 to 447.310](#). To implement ORS 447.210 to 447.280, standards have been placed in chapter 31 of the Oregon Structural Specialty Code. The standards apply to government buildings and most private buildings used by the public and include standards for curb cuts and ramps to provide access to the

buildings.

ORS 447.310 requires new or replaced curbs and sidewalks to have ramps at intersections to allow access to the handicapped. See drawing [RD 755](#) in Standard Drawings, Oregon Department of Transportation.

ORS 215.606 requires counties to adopt standards and specifications for clustered mailboxes within the boundaries of county roads and rights-of-way that conform to the standards and specifications for such mailboxes contained in the State of Oregon Structural Specialty Code. The measure incorporates clustered mailboxes into the definition of “related facilities” for the purpose of ensuring access by persons with disabilities. Other “related facilities” means building site improvements that include, but are not limited to, parking lots, passageways and roads.

13.550 STATUTES ON HANDICAPPED ACCESS

Chapter 215

County Construction Codes

215.606 Standards for clustered mailboxes in county roads and rights-of-way

Chapter 447

Standards And Specifications For Access By Persons With Disabilities

447.210 Definitions for ORS 447.210 to 447.280

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CHAPTER 14: TRAFFIC CONTROL MANAGEMENT
(This chapter was revised and updated in 2008, 2010, 2012 and 2014)

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CHAPTER 14: TRAFFIC CONTROL MANAGEMENT

14.000 INTRODUCTION. The county has authority and, in some cases, an obligation to establish regulations and install devices to control traffic on county roads and other public road rights-of-way under county jurisdiction. Because of the need for motor vehicle rules that have statewide, national and even international consistency, special limitations apply to local traffic control authority. This chapter does not discuss all parts of the Oregon Vehicle Code. Some sections are addressed in other chapters. For example, requirements for drain construction to avoid hazards to bicycles are found in Chapter 13. The vehicle code often uses the word "highways" to mean the same broad range of facilities that county statutes call "public roads". Definitions that apply to the vehicle code are found in ORS 801.100 to 801.610 but have not been reproduced in this chapter. For other information refer to [Oregon Revised Statutes](#), Chapters 801 to 822.

The [Safety Handbook for Oregon's Local Roads and Streets](#) provides local roadway agencies with important information related to roadway safety features intended for use on roads and streets in rural and small urban areas. It will assist local road agency professionals in understanding the critical relationship between road users' behavior, traffic control devices, roadside safety features, traffic crashes, and roadway safety.

14.015 SPECIAL REFERENCES. The following sources of information are outside this manual but they are particularly relevant to sections 14.500 and 14.510 of this chapter

Section 14.000

Takallou, Mojie, [Safety Handbook for Oregon's Local Roads and Streets](#), (Portland, University of Portland, 2010)

Section 14.500

U.S. Department of Transportation, Federal Highway Administration:

- (1) [Manual on Uniform Traffic Control Devices \(2009\)](#).
- (2) [Standard Highway Signs \(2004 Edition with 2012 Supplement, Metric and English Versions\)](#).
- (3) [Work Zone Safety and Mobility \(2004\)](#).
- (4) [MUTCD Sign Retroreflectivity Requirements \(2007\)](#).

Oregon Department of Transportation:

- (1) [Manual on Uniform Traffic Control Devices: Oregon Supplements, \(2009\)](#).
- (2) [Construction Manual \(2001\) \(Revised 2014\)](#).
- (3) [Highway Design Manual \(English\) \(2012\)](#).
- (4) [Highway Design Manual \(Metric\) \(2012\)](#).
- (5) [Oregon Temporary Traffic Control Handbook \(2011\)](#).
- (6) [Traffic Line Manual \(2011\)](#).
- (7) [Traffic Signal Policy and Guidelines, \(2013\)](#).
- (8) [Guide to School Area Safety \(2009\)](#).

- (9) [Highway Safety Manual \(with Oregon Applications\) \(2010\).](#)

Oregon Department of Transportation, Association of Oregon Counties and League of Oregon Cities:

- (1) [2002 Policy Statement for Cooperative Traffic Control Projects](#)

Institute of Transportation Engineers:

- (1) [ITE Publications](#)

Transportation Research Board:

- (1) [The Highway Capacity Manual \(2010\)](#)

Bureau of Governmental Research and Service, University of Oregon:

- (1) [Model Traffic Ordinance 1987](#)

14.100 COUNTY TRAFFIC CONTROL JURISDICTION. The rule in Oregon is that traffic control is a statewide concern. However, the legislature has delegated a broad authority to further regulate vehicular and pedestrian traffic, providing the local regulations do not conflict with state law provisions. In addition to implementing state traffic laws and standards, counties may supplement state traffic laws by ordinance to meet local needs or concerns within limitations designed to maintain state and national uniformity. [ORS 810.010](#) describes which public entity has jurisdiction over which public roads for purposes of the vehicle code. ORS 810.010(2) identifies the county governing body as the regulatory authority for county roads outside cities. Some county governing bodies have designated the county road officials as the county's road authority for traffic control matters (see [Wasco County's Order](#) as an example). Traffic control authority on county roads inside a city is with the city, but the county retains responsibility for road maintenance. A city must have county consent to place certain controls into effect, such as making a county road one-way or designating size or weight restrictions.

Under ORS 810.010(4), the county governing body is also the vehicle code's road authority for local access roads outside cities. However, other governmental entities have certain ancillary authority. For example, a road district's authority seems broad enough to include financing traffic control device installations as a road improvement. The provisions of ORS 810.010 are supplemented and limited by various statutes, including ORS 801.020 and 801.040.

ORS 810.210 directs counties to place and maintain traffic control devices on roads under their jurisdiction wherever the county considers necessary, except for railroad crossings. The devices must be in conformance with state Transportation Commission standards. The Oregon Department of Transportation has exclusive jurisdiction over the installation of signs, signals, gates and protective devices at railroad-highway grade crossings.

[ORS 811.260](#) was amended by the 2011 legislature by adding the flashing yellow

arrow signal and the green, yellow and red bicycle signals to list of traffic control devices and specifying the movements allowed for each of the new signals.

14.110 STATUTES ON TRAFFIC JURISDICTION.

Chapter 801

General Provisions and Definitions for Oregon Vehicle Code

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- 801.026** **General exemptions; exceptions**
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- 801.041** **Terms and conditions for imposition of registration fee by county**

Chapter 810

Road Authorities; Courts; Police; Other Enforcement Officials

- 810.010** **Jurisdiction over highways; exception**
- 810.012** **Jurisdiction over access to facilities and services from certain roads; rules**
- 810.210** **Placement of traffic control devices**
- 810.212** **Requirements for certain speed limit signs**

Chapter 811

Rules of the Road for Drivers

GENERAL DRIVING RULES

(Traffic Control Devices)

- 811.260** **Appropriate driver responses to traffic control devices**

14.120 CITATIONS ON TRAFFIC CONTROL DEVICES

(See Citations on Traffic Control Devices in section 14.220)

14.200 TRAFFIC CONTROL FOR ROADS. ORS 810.020 to 810.160 authorizes regulation of road use and imposition of restrictions to protect a road from damage or to protect the interest or safety of the public. Under ORS 810.030, any restriction, other than a speed restriction, that is necessary to protect the road or the public may be imposed, including prohibiting all or certain classes of vehicles and imposing vehicle size and weight limits. This broad authorization in the vehicle code is supplemented by more specific provisions. In some instances, the specific provisions require special procedures or otherwise limit authority. It does not appear that listing specific provisions, as described below, limits the broad authority granted to counties under ORS 810.030.

Truck Controls. ORS 810.040 expressly authorizes prohibiting large or heavy vehicles on designated roads if a truck route has been designated to accommodate large or heavy vehicles and appropriate signs are installed to give notice of the prohibitions and designations. A city may not take an action of this type which affects a county road inside the city without county consent. Under ORS 810.050, 810.060 and [818.200](#), a county may authorize travel by vehicles with a weight exceeding the maximums in ORS 818.010 or a size exceeding the maximums in 818.080. However, the maximum height under ORS 818.080 may not be exceeded except by a variance permit. A variance permit may be issued under ORS 818.200 to 818.220 for oversize and overweight vehicle trips. Some specific exceptions to size and weight limitations are found in ORS 801.026, 818.030, 818.050, 818.070 and 818.100. This includes exempting vehicles and other equipment while constructing, maintaining or repairing roads but only when at the work site. In addition, motor vehicles and equipment, when doing road work or servicing a utility are exempt from certain rules of the road under ORS 801.026.

Federal law, [49 U.S.C. 31114](#), prevents the state from enacting or enforcing any laws denying reasonable access to commercial vehicles between what is commonly called "the National Network" and terminals and facilities for food, fuel, repairs, and rest. Additionally reasonable access cannot be denied between the National Network and points of loading and unloading to household goods carriers. This law applies to truck-tractor and semitrailer combinations for which the length of the semitrailer shall not exceed 53 feet and the truck-tractor with semitrailer and trailer or semitrailer combinations for which the length from the front of the first semitrailer to the rear of the second semitrailer or trailer is 68 feet. There is no minimum length. Reasonable access must be allowed up to and including one road-mile from the National Network using the most reasonable and practicable route available, except where specifically prohibited. Restrictions for reasonable access can only be for reasons of safety and engineering analysis of the route. Procedures for restricting reasonable access are provided in [OAR 734-073-0067](#). Federal regulations for reasonable truck access are in [23 CFR 658.19](#). A listing of [National Network highways](#) are shown in 23 CFR 658 Appendix A. (Click here to see the [National Highway System for Oregon](#).)

Other Controls. A county also may do any of the following by designating the affected location. In most instances, appropriate signs or other traffic-control markings must be installed before the controls become effective.

[ORS 810.020](#) On throughways, prohibit or restrict parades, non-motorized traffic, motorcycles or mopeds.

ORS 810.040 Designate truck routes and prohibit operation of heavy vehicles on

other highways.

- ORS 810.070 Adopt an ordinance permitting golf carts on roads adjacent to or near a golf course.
- ORS 810.080 Control pedestrian movement on roads.
- ORS 810.090 Permit bicycle racing on a road.
- ORS 810.110 Require vehicles to stop or yield at intersections.
- ORS 810.120 Establish no-passing zones.
- ORS 810.130 Establish a one-way road.
Consent to city designation of a county road as one-way.
Establish places on roads as safety zones.
Prohibit turns.
Provide a special travel course through an intersection.
Provide for mass transit vehicle movement that is prohibited for other vehicles.
- ORS 810.140 Provide exclusive-use lanes for busses or car poolers.
- ORS 810.160 Regulate or prohibit stopping, standing or parking of vehicles.

Speed Control. With minor exceptions, speeds are set by the Oregon Department of Transportation by rule as provided in ORS 810.180. A Speed Zone Review Panel conducts hearings on contested speed zone recommendations. Under subsection (5), the department upon receiving a request from a county may establish a designated speed for a county road by a process established by rule. Under subsection (5) (f) of ORS 810.180, the department may delegate its authority to counties in the case of low-volume and unpaved roads. Under subsection (8) of this section, a county may temporarily reduce speeds to protect a road from damage or to protect the public from hazardous road conditions. Subsection (8) also provides that a county may designate vehicle speeds on a section of road having temporarily dangerous conditions, including those due to construction or maintenance work. Under subsection(10), a county may designate speeds five miles per hour lower than the statutory speed on roads located in a residence district and designed to facilitate pedestrian and bicycle traffic provided the county posts signs giving notice of the speed designation and the presence of pedestrians or bicycles. Under subsection (7) a county may regulate vehicle speed in county parks. ORS 810.070 permits a county to establish speed limits when authorizing golf carts on a road.

Traffic Control Devices. The 2011 legislature added the *flashing yellow signal* to the statutory list of traffic control devices with a description of the movement allowed for the new signal. The legislature also added green, yellow, flashing yellow and red *bicycle signals* to list of traffic control devices with the specified movements allowed for each of the new bicycle signals. See [ORS 811.260](#).

Bicycle traffic signals specifically regulate bicycle traffic. They are sometimes referred to as “bike heads”. Cyclists must obey the traffic signals just as vehicle operators must obey traffic signals. The bicycle traffic signal uses the same green-yellow-red colors as

a regular traffic signal. The key difference between bicycle signals and conventional traffic signals is that the bicycle signals display a color-coded symbol of a bicyclist instead of the conventional round-lens traffic signal. They are used primarily to reduce conflicts between cyclists and motorists at existing signalized intersections.

The City of Portland began implementing bicycle-specific traffic lights in 2004. Currently, the City of Portland has six intersections with bicycle-specific traffic lights. The Oregon Department of Transportation asserted in the legislative hearings that not proscribing the appropriate response to this type of traffic control device in statutes would hinder their further implementation.

Abandoned Vehicles. [ORS 819.100 to 819.215](#) relate to abandoned vehicles, but all of these sections are not reproduced in this chapter. Under ORS 819.140, a county has authority to take custody of and move a vehicle abandoned on a road or on any other property in the county¹. Other sections establish a procedure for taking this action, but a county may supersede or supplement the statutory provisions under subsection (4) of ORS 801.040.

14.210 STATUTES ON TRAFFIC CONTROLS.

Chapter 801

General Provisions and Definitions for Oregon Vehicle Code

801.026 General exemptions; exceptions

Chapter 810

Road Authorities; Courts; Police; Other Enforcement Officials

(Roads)

810.020 Regulating use of throughway

810.030 Imposition of restrictions on highway use; grounds; procedure; penalties

810.040 Designation of truck routes; limitations

810.050 Increase in size or weight limits on highways if federal law allows

810.060 Increase in weight or size if highway found capable of supporting increase

810.070 Use of golf carts on highways

¹ Chapter 371, [Oregon Laws 2009](#) provides that a disabled or abandoned vehicle taken into custody by a public body will be sold or disposed of by the person engaged to tow the vehicle.

- 810.080 Pedestrian traffic**
- 810.090 Bicycle Racing**
- 810.110 Designation of through highways and stop intersections**
- 810.120 Designation of no passing zones**
- 810.130 One-way highways; safety zones; turns**
- 810.140 Designation of exclusive use lanes**

(Parking)

- 810.160 Controlling parking on highways; limitations**

(Speed Limits)

- 810.180 Designation of maximum speeds; rules**

Chapter 818

Vehicle Limits

WEIGHT

- 818.010 Maximum allowable weight**
- 818.012 Wheel load on certain vehicles; rules**
- 818.020 Violating maximum weight limits; civil liability; penalties**
- 818.030 Exemptions from weight limitations**
- 818.040 Violation of posted weight limits; civil liability; penalty**
- 818.050 Exemptions from posted weight limits**

WEIGHT AND SIZE

- 818.060 Violation of administratively imposed weight or size limits; civil liability; penalties**
- 818.070 Exemptions from administratively imposed weight or size limitations**

SIZE

- 818.080 Maximum size limits**
- 818.090 Violation of maximum size limits; civil liability; penalties**

- 818.100 Exemptions from size limitations**
- 818.105 Request for unrestricted access to specified highway for overlength combination; mandated responses to request**

Chapter 819

*Destroyed, Abandoned and Stolen Vehicles;
Vehicle Identification Numbers*

ABANDONED VEHICLES

(Offense)

- 819.100 Abandoning a vehicle; penalty**
 - (Custody and Removal)**
- 819.110 Custody, towing and sale or disposal of abandoned vehicle; general provisions**
- 819.120 Immediate custody and towing of vehicle constituting hazard or obstruction; rules**
- 819.140 Agencies having authority to take vehicle into custody; powers of agency taking custody**
- 819.150 Rights and liabilities of owner**
- 819.160 Lien for towing**
- 819.170 Notice prior to taking vehicle into custody and towing; methods; contents**
- 819.180 Notice after taking into custody and towing; method; contents**
- 819.185 Procedure for vehicles that have no identification markings**
- 819.190 Hearing to contest validity of custody and towing**
- 819.200 Exemption from notice and hearing requirements for vehicle held in criminal investigation**

(Sale or Disposal of Vehicle)

- 819.210 Sale of vehicle not reclaimed**
- 819.215 Disposal of vehicle appraised at \$500 or less**

(Vehicle Appraisers)

819.480 Vehicle appraiser certificate; rules

14.220 CITATIONS ON TRAFFIC CONTROL LAWS.

Timberlake v. Washington County, 226 Or App 607 (2009): On June 3, 2005, Matthew Lyon was riding his motorcycle on SW Scholls Ferry Road in Washington County when he was killed after being hit by a car that did not see his motorcycle approaching the intersection. Plaintiff, the personal representative of the decedent, alleged that the county was negligent in failing to remove foliage that had grown at the site of the collision and blocked visibility. The county moved for summary judgment on discretionary immunity grounds, stating that its failure to maintain the site was the result of a budget-driven policy decision about the allocation of its limited resources available for road maintenance. The trial court granted the motion. On appeal, the plaintiff contended that road maintenance is a ministerial duty imposed by law, and that a local government cannot avoid liability for negligence merely because of limited resources. The Court of Appeals upheld the trial court, stating that although a local government cannot simply choose *not* to exercise a particular duty of care; it has discretion to choose *how* to carry out that duty. In this case, the Washington County Board of Commissioners had passed a resolution adopting a road maintenance policy dictating how limited resources would be allocated. The policy provided that two-thirds of the county's road maintenance funds would be allocated to scheduled maintenance based on a priority matrix determined by the functional classification of roads and the remaining third would be allocated responding to complaints. The road in question had not been scheduled for maintenance under the policy and the county had received no complaints of vision being impaired at the subject intersection.

Hughes v. Wilson, 345 Or. 491 (2008): Hughes brought a negligence claim against Wasco County, asserting the County was negligent in failing to remove a large bush that obstructed his view and resulted in his crashing his motorcycle into a car driven by Wilson. Hughes came around a corner at the same time that Wilson was pulling onto the road from a private driveway. The County moved for summary judgment on discretionary immunity grounds, relying on an adopted policy that relied on private landowners to remove, or notify the County, of brush that obstructed visibility between private driveways and county roads. The trial court agreed the County was entitled to discretionary immunity, and the Court of Appeals affirmed without opinion. The Oregon Supreme Court reversed the lower courts, holding that the County could not rely on discretionary immunity because it did not demonstrate it had put its policy into effect by communicating it to those landowners. Merely weighing the costs and benefits and making a decision, even if that decision might qualify as a permissible discretionary decision, is not sufficient to entitle a government to immunity. The government must also demonstrate that it took the action necessary to effectuate that decision.

Lisa Ann John v. City of Gresham, 214 Or. App. 305 (2007): Plaintiff's son was struck by a vehicle while crossing the street in a painted crosswalk. The City of Gresham and Multnomah County argued that the decision to paint the crosswalk, part of a traffic improvement project constructed by the City and County, was a discretionary decision subject to immunity under the Oregon Tort Claims Act. The Court of Appeals ruled against

the City, stating that deference to the county's recommendation to paint the crosswalk did not result in protection by discretionary immunity, as the decision must be a result of an exercise of judgment for discretionary immunity to apply. The Court also held regarding the County, the fact that the decision to paint the crosswalk was part of the approval of the overall final design also did not result in protection by discretionary immunity, since the decision merely determined compliance with existing policies and did not involve a judgment about matters of public policy. In addition, the Court did not accept the City's argument that it was free from liability because it did not own the street where the accident occurred, stating that a city or county may be liable if the conduct caused a foreseeable harm to an interest protected against that kind of negligent invasion.

McComb v. Tamlyn, 173 Or. App. 6, 20 P.3d 237 (2001): Plaintiff alleged that the State Department of Transportation was negligent in designing the signal phases for the intersection where she was hit by a vehicle turning right as she rode her bicycle in a crosswalk. The Court of Appeals held that the state's decision to adopt signal phases from the Manual on Uniform Traffic Control Devices (Manual) was not entitled to protection by discretionary immunity. Even if the state's decision to adopt the Manual was a policy decision, the relevant parts of the Manual were merely descriptive and did not require the use of a particular signal when designing a particular intersection. The Manual stated that engineering judgment was required in the selection of traffic control devices, and the state had not met its burden of showing how the decision was made at this particular intersection.

Mann v. McCullough, 174 Or. App. 599, 26 P.3d 856 (2001): Personal representative of Mann, a passenger who died in a car accident, brought suit alleging that the City of Portland was negligent both in making its decisions regarding traffic management and control devices on Fremont Drive and in failing to warn the public of the dangers of speeding on the hill along Fremont Drive, specifically the possibility of a car going airborne if approaching the hill at an excessive speed. The Court of Appeals held that the City's adoption of recommendations of traffic pattern changes were discretionary acts because, although the city council's decisions were based on recommendations by the Portland Bureau of Traffic Management, those recommendations involved the sort of delegated responsibility and strategic choices that are hallmarks of the exercise of discretionary immunity.

Piper v. Scott, 164 Or. App. 1, 988 P.2d 919 (1999): Defendant State was not liable for failing to warn drivers about livestock wandering on to roads in open range areas because the policy of not posting signs was a discretionary decision. Piper's argument that the State cannot rest on a "non-decision" regarding its duty to maintain safe highways failed because testimony showed that the State's policy was to not post warning signs unless it received complaints or accident reports indicating possible dangers and that policy could not be characterized as mere inaction.

Ettinger v. Denny Chancler Equip. Co., 139 Or. App. 103, 910 P.2d 410 (1996): Ettinger, a construction worker, suffered head and neck injuries when a truck driven by an employee of defendant hit an overpass that Ettinger was working on. The overpass had a height clearance of 14-feet, while the defendant's truck was 16-feet high. The Court of Appeals held that ODOT's enabling statutes do not support a private right of action based on violations of maximum size restrictions; these rules pertain only to governmental rights of action. [ORS 818.200](#), ORS 818.340, and ORS 818.410 collectively render permittees and drivers liable to governmental entities for damages caused by the movement of oversize loads.

Hall v. Dotter, 129 Or. App. 486, 879 P.2d 236 (1994): While attempting to cross,

Hall was standing in the median of the Tualatin Valley Highway and was struck and injured by a car driven by Dotter. Hall alleged that the State and Washington County were negligent in designing and maintaining the intersection. The Trial Court's grant of summary judgment to the State and County based on discretionary immunity was reversed by the Court of Appeals. The immunity defense was premised upon the argument that state traffic inspectors simply followed the Manual on Uniform Traffic Control Devices and had no discretion to deviate from the Manual. However, evidence showed the state installed warning signs at a time contradictory to the specifications of the Manual, which suggested that the Manual was not the type of explicit order that entitled an employee to immunity. Also, a county can be liable for harm that occurs on a state road, if the county's conduct caused a foreseeable kind of harm to an interest protected against that kind of negligent invasion. Additionally, it did not matter that the county had contracted away to the state its responsibility for providing signs or signals. If the county would otherwise be liable for negligence in maintaining its road, then the county remains liable for the negligence of its contractor. The fact that the contractor is the state is irrelevant to this principle.

Pritchard v. City of Portland, 310 Or 235, 796 P.2d 1184 (1990): Pritchard rode his motorcycle past a stop sign that was obscured by foliage and collided with a pickup truck in the intersection. The Oregon Supreme Court held the City was not protected by the discretionary immunity exception to liability. Pritchard was not suing the City for its exercise of policy choice, such as the decision to place liability and responsibility of foliage removal on abutting landowners, but rather for negligence in failure to keep a stop sign free of foliage.

State v. Johnson, 87, Or. App. 654, 743 P.2d 1121 (1987): Johnson was found guilty by the Trial Court of operating an overweight combination of vehicles on a county road without a county variance permit in violation of ORS 818.020. Johnson argued that the county was statutorily required to establish maximum weight limits. The Court of Appeals affirmed the conviction, stating [ORS 810.050](#) grants road authorities the authority (but does not require them) to increase weight limits on their own highways if it is determined the highway was capable of carrying greater weight, but the increased limits may not exceed the maximum authorized by ODOT, unless the maximum is increased by the local road authority.

Little v. Wimmer, 303 Or. 580, 739 P.2d 564 (1987): Little was injured when the vehicle she was traveling in collided with another vehicle because of alleged hazardous and negligent design and construction, specifically the County not erecting a warning sign that would have warned traffic traveling on the highway of other traffic entering the highway. Because there was an absence of evidence that the County's decision not to install warning signs at the intersection was made as a policy judgment by a person or body with governmental discretion, the decision was not immune from liability.

Stevenson v. State ex rel ODOT, 290 Or. 3, 619 P.2d 247 (1980): Stevenson was killed when the car she was in came on to the highway from a side road and was hit by a truck traveling through an apparent green light on the highway. Her estate claimed that the driver of her vehicle was misled by the green light for the highway because the State had not provided light "shields" to prevent this misleading effect. The State argued it was not liable because the decision on how to shield the lights was a policy decision entitled to discretionary immunity.

The Oregon Supreme Court rejected the simple rule it had previously developed that "state employees are generally immune from liability for alleged negligence in planning and

designing highways.” The Supreme Court adopted a new rule that the government could claim “discretionary immunity” only if the government function or duty was:

- 1) The result of a choice or exercise of judgment;
- 2) That choice must involve public policy, as opposed to the routine day-to-day activities of public officials; and
- 3) The public policy choice must be exercised by a body or person that has, either directly or by delegation, the responsibility to make it.

The Court held that there was nothing in the record to suggest the responsible employees made any policy decision.

Winters v. Bisailon, 152 Or. 578, 54 P.2d 1169 (1936): Local authorities may not curtail, infringe upon, or annul state law regulating traffic. However, local authorities may enact ordinances for the regulation of traffic in certain areas by erecting signs, markings, and traffic control signals.

42 Or. Atty. Gen. Op. 98 (1981): ORS 483.502 subjects a county to citation for violation of any provision of the overweight and oversize vehicle laws. A county is generally subject to citation for violations, notwithstanding the fact that the county’s vehicle operates exclusively on the county’s own road system. However, county vehicles engaged in maintenance, construction, or repair of public highways are exempted under ORS 483.502(4), while they are within the “immediate location or site” of the repairs or maintenance. The exemption is limited to that area required by road equipment to properly perform the actual work of the project, including reasonable time to maneuver and for the storage of materials at the periphery of the site.

Provisions that have replaced ORS 483.502(4) are found in the vehicle code at ORS 818.030(3), 818.050(3), 818.070(3), 818.120(3), and 818.140(3). The wording in these sections mirror the “immediate location or site” language found in the former ORS 483.502(4), allowing for an exemption only if the vehicle(s) are being used for the construction or repair of public highways. Otherwise, government agencies remain subject to the weight and size provisions of the code.

41 Or. Atty. Gen. Op. 474 (1981): Towing and removal of abandoned and illegally parked vehicles pursuant to ORS 483.382 is subject to due process requirements. Vehicles constituting a hazard may be towed immediately without notice, but the owner must be given prompt notice, an immediate opportunity to regain possession by posting security, and an opportunity for a hearing. (The relevant subject matter of ORS 483.382 is now found under [ORS 819.110](#), 819.120 and 819.170).

See also, Draper v. Coombs, 792 P 2d 915, 922 (9th Cir. 1986)—while [ORS 87.152](#) allows a towing company to establish a lien on vehicles towed, due process requires that municipal ordinances provide an opportunity for a hearing on the towing or the charges imposed.

34 Or. Atty Gen. Op. 482 (1969): Since the county has the authority, pursuant to ORS 483.204(1) and ORS 483.012(3), to erect signs at the intersection of county roads and public access roads, the county could be found negligent for failing to place the necessary warning signs. However, if the public access roads are not legal county roads, the county has no duty of maintenance and care and is not required to place warning signs for defects in

the public road. (The relevant subject matter of ORS 483.204(1) and ORS 483.012(3) is now found under [ORS 810.110](#))

14.500 UNIFORM STANDARDS FOR TRAFFIC CONTROL DEVICES.

County placement of traffic control devices must conform to the [Manual on Uniform Traffic Control Devices](#) (MUTCD), published by the Federal Highway Administration, as adopted, amended and supplemented by the Oregon State Transportation Commission (ORS 810.200). The manual sets forth the basic principles that govern design and usage of traffic control devices. Uniform standards improve road safety by providing for the orderly and predictable movement of all traffic. Local authorities must follow the standards as adopted by the state, but have considerable responsibility to determine where signs and other traffic control devices are needed and the nature of the restrictions on the use of the roads. The standard traffic control devices serve to inform the driving public and generally must be in place before any restrictions will be in effect. Under ORS 810.180(4) and (5), a county may take more expeditious action to impose restrictions that are temporary, such as those that are appropriate during construction or maintenance work or to protect against temporary road deficiencies or emergency conditions.

The second revision of the 2003 MUTCD in 2007 introduces new language establishing minimum retroreflectivity levels that must be maintained for traffic signs. Agencies have until January 2012, to establish and implement a sign assessment or management method to maintain minimum levels of sign retroreflectivity. The compliance date for regulatory, warning, and ground-mounted guide signs is January 2015. For overhead guide signs and street name signs, the compliance date is January 2018. The new MUTCD language is shown on page 2 and 3 of [MUTCD Sign Retroreflectivity Requirements](#).

Counties may submit suggestions concerning uniform traffic control devices to the Oregon Traffic Control Devices Committee, and such suggestions may possibly influence the national committee. There are representatives from the National Association of County Engineers who serve on the national committee who could be a channel for getting information to the committee. Further, counties may communicate directly with the Federal Highway Administration regarding the MUTCD.

14.510 TRAFFIC ORDINANCES. The actions required of vehicle operators and pedestrians in response to traffic control devices should be specified by local ordinance if statutory coverage is not complete or adequate. As with traffic control devices, uniformity of traffic ordinances is important to help ensure effective traffic control and public safety. A sample traffic ordinance can be found in the Bureau of Governmental Research and Service, [Model Traffic Ordinance 1987](#). In developing local provisions to supplement state standards, the merits of uniformity between the county and cities in the county may warrant attention. Enforcement of local traffic ordinances and state laws on roads under county jurisdiction is to be conducted by local police authorities.

14.520 MOTOR VEHICLE DRIVERS LICENSES. [ORS 807.010 to 807.175](#) of the motor vehicle code require some county road personnel to obtain a commercial driver license. The law establishes four major classes of vehicle operators' licenses. The most common driver license of the past is comparable to a Class C license. Some county personnel may need a Class A, B, or C commercial driver license in order to operate larger equipment.

However, no license is required to operate road construction machinery that is not required to be registered.

A Class C license authorizes a person to operate any vehicle for which a commercial driver license is not required.

A Class C commercial driver license authorizes a person to operate a vehicle that can transport 16 or more persons, that transports persons for hire for a transit or transportation district, or transports hazardous materials if the gross vehicle weight is less than 26,001 pounds and the driver has the proper endorsement.

A Class B commercial driver license adds authority to operate any single vehicle and to tow a vehicle not in excess of 10,000 pounds gross vehicle weight.

A Class A commercial driver license authorizes a person to operate any vehicle or combination of vehicles.

Endorsements are required on any license to operate a motorcycle, transport hazardous materials, operate tank vehicles, transport 16 or more persons, or to operate double or triple trailers.

Oregon must maintain certain federal standards to comply with certification of the commercial driver license (CDL) program. Failure to comply would result in withholding of federal highway dollars and decertification of the Oregon commercial driver license program. ORS 807.100 requires all CDL holders to maintain proof of medical qualification on file with the DMV and authorizes the DMV to cancel the CDL based on the expiration of such proof. ORS 807.407 and [ORS 809.413](#) modify the suspension statutes to be from the date of the offense rather than the conviction date.

The 2012 legislature amended ORS 807.040(1)(j)(A) by providing that applicants for commercial driver license may use “relevant experience obtained in the military” for the CDL requirement of having at least one year’s driving experience.

Certifying Personnel. The county may establish its own program to certify the Class A, B, or C driving competency of its personnel if it has at least five qualifying vehicles and can comply with certain conditions. The requirements are found in Driver and Motor Vehicles Services Branch administrative rules [OAR 735, Division 60](#). The requirements include a training program, a person qualified to issue certifications, and a person qualified to conduct examinations. To establish a certification program, the first step is to send proper applications to the state Driver and Motor Vehicles Services Branch.

14.523 OPERATING VEHICLES WHILE USING MOBILE COMMUNICATION DEVICE. In 2007, the Oregon legislature enacted a statute requiring the use of a hands-free accessory (defined as a device that allows use of the cell phone while keeping both hands on the steering wheel) in order to lawfully use a mobile communication device while driving. In 2009, this violation was re-designated as a primary offense, meaning that a law officer could stop a driver solely for using a cell phone without also using a hands-free accessory. Exceptions are provided for several cases, including use by public safety officers or persons operating a vehicle in the scope of employment and select uses of devices that allow only for one-way voice communication (such as citizen-band

radios or certain push-to-talk phones).

The 2011 legislature amended the statute ([ORS 811.507](#)) by removing the exception for individuals operating the motor vehicle in the scope of the person's employment. All other exceptions remain, including the vocational exceptions for persons engaged in agricultural operations, operating emergency vehicles and law enforcement. House Bill The 2011 legislature added further exceptions for individuals operating a tow or roadside assistance vehicle or operating a vehicle owned or contracted by a utility for the purpose of maintaining that utility. The revision also allows an individual providing transit services to operate a one-way voice communication device.

14.525 MISCELLANEOUS VEHICLE OPERATING PERMITS. The county has authority to permit the operation of a vehicle with a sifting or leaking load under [ORS 818.230](#) and may permit the dragging of something over a road under ORS 818.240. These activities are otherwise unlawful, except that certain dragging operations are exempt, including those that might occur when a county is working on a road.

14.530 SPEED CONTROL. Restrictions on vehicle speeds are set forth in ORS 811.105. When a county wants to apply different speed restrictions to a particular road, the Oregon Department of Transportation may designate a safe and reasonable posted speed upon request.

If emergency conditions warrant, the county may impose special speed restrictions after mutual telephonic agreement with the State Traffic Engineer. Authority of the Department of Transportation may be delegated to the county with respect to roads under county jurisdiction that have low traffic volumes or do not have a hard surface. Information on the procedures follows.

14.531 SPEED ZONE PRACTICES IN OREGON. Speed limits are covered in [ORS 810.180](#) (Designation of Speed Limits) and under ORS 811.100 through 811.124. The establishment of speed zones under normal conditions is described in the "Speed Control" paragraph of section 14.200 and in [OAR 734-020-0015](#).

ORS 811.100 describes Oregon's basic speed rule and ORS 811.105 lists the statutory speed limits:

- 15 mph when driving in an alley as defined in [ORS 801.110](#) or a narrow residential roadway as defined in ORS 801.368
- 20 mph in a business district as defined in ORS 801.170
- 25 mph in any public park
- 25 mph on a highway in a residence district defined in ORS 801.430 if:
 - (a) The residence district is not located within a city; and
 - (b) The highway is neither an arterial as defined in ORS 801.127 nor a collector highway as defined in ORS 801.197
- 55 mph in locations not otherwise described in ORS 811.105

Establishing speed zones in Oregon requires an engineering investigation. These investigations are in accordance with nationally accepted traffic engineering standards and

procedures that have been established through years of research and experience.

A major factor in speed zoning is the 85th percentile, the speed at or below which 85 percent of the vehicles are traveling. This is an indication of what most drivers feel is reasonable and safe. This procedure provides Oregon with a consistent and uniform application of techniques to establish safe and proper speed zoning. Other factors taken into consideration are accident history, roadside culture, traffic volumes, and roadway alignment.

In Oregon, decisions regarding speed zones are made jointly by the Department of Transportation and the road authority, for example, a city or county. The Department of Transportation has the responsibility to investigate roads for establishing new speed zones or changing posted speeds of existing speed zones. These investigations are performed at the request of the road authority. For additional information from ODOT, [click here](#).

If the recommended speed is of mutual agreement between the Department and the local road authority, the speed zone is established. If mutual agreement cannot be reached, the speed zone decision is referred to the Speed Zone Review Panel. This panel reviews contested speed zone cases. The panel receives testimony from the local road authority and makes the final recommendation. The panel is comprised of representatives from the Transportation Safety Committee, the Oregon State Police, the Association of Oregon Counties, the League of Oregon Cities, and the Department of Transportation.

A city, county, or other agency such as the Bureau of Land Management may request delegated authority to establish speed zoning on low volume roads (less than 400 ADT) and/or non-hard surfaced roads from the Oregon Department of Transportation. The agency must make a written request for delegation according to ORS 810.180. After receiving authority, the agency must meet criteria similar to which the state meets when performing and reporting speed zone investigations. (The delegation of authority for low volume roads and unpaved roads is covered in OAR [734-020-0016](#) and [734-020-0017](#).)

Typical Process

The local agency receives a petition from local residents or upon its own decision decides to forward a request for an engineering investigation to the Department. A Speed Zone Request form (see section [14.531a](#)) is completed and sent to the State Traffic Engineer.

Upon receipt of the request, an engineering investigation and traffic studies will be initiated. This will be done by the Department or the road authority may request to make the investigation. A report is prepared detailing the engineering characteristics of the section as well as use detail and actual speeds.

When the report is available, it will be reviewed by the Department which decides whether to propose a change or retain the posted speed zone. The Department gives written notice to the road authority of its determination.

If the road authority concurs with the recommendations they advise the Department and a Speed Zone Order is issued (see section [14.531b](#)).

Typical Process without Initial Agreement on Concurrence with Local Agency

All steps will be the same up to and including the transmittal of the report and recommendation.

The local agency advises the Department that they do not concur with the recommendations. When differences of opinion occur, an effort will be made to reach a mutually agreeable compromise. If mutual agreement cannot be reached, the issue is referred to the Speed Zone Review Panel.

Transfer of Jurisdiction

When a local agency requests the Department's concurrence that a particular section of roadway has no arterial characteristics, low volume, gravel or no-hard surface and has no statewide significance or if after a normal request and investigation it is the Department's finding that these characteristics exist, the Department by delegated authority and at the local agency's request may prepare a letter transferring jurisdiction of speed zoning the road to the local agency. The agency is requested in the transfer letter to advise the Board of various speed zone items including the speed established by the agency. (See Sample Letters at section [14.531c](#) and section [14.531d](#))

Emergency Speed Zones

Upon notification of an emergency by the Region Engineer or his representatives, or by the Board of County Commissioners, City Councils or their authorized representatives, the State Traffic Engineer may establish emergency speed zones with mutual agreement via telephone.

After establishing an emergency speed zone, a field investigation will be initiated. The findings of the study are utilized to terminate the temporary emergency speed zone by the end of the 120-day limit or to make the temporary action permanent.

School Speed Zone Laws

The 2003 and 2005 Legislatures revised the statutes relating to the definition of "school zone" for purposes of the speed control laws. [ORS 801.462 \(1\) \(a\)](#) and [ORS 811.111 \(1\) \(e\) \(A\)](#) specify that the school zone speed limit is 20 mph in a school zone adjacent to the school grounds applies when the flashing lights indicate children may be arriving at or leaving school or, if the school zone does not have flashing lights, the 20 mph limit applies between 7 a.m. and 5 p.m. on days school is in session. Further, if the school has a parking lot located across the street from the school and the street has a posted speed limit greater than 45 miles per hour, a flashing light may also be used ([ORS 810.243](#)).

ORS 801.462 (1)(b) and ORS 811.111 (1)(e)(B) specify that the school zone speed limit is 20 mph at a crosswalk that is not adjacent to school grounds applies when the flashing lights indicate children may be arriving at or leaving school, or where signs marking the school zone when children are present as defined in ORS 811.124. ORS 811.124 defines "children are present" to be when children are in a crosswalk, waiting at a crosswalk, or when a crossing guard is present.

SAMPLE SPEED ZONE FORMS

[14.531a](#) Speed Zone Request

- [14.531b](#) Speed Zone Order by Delegated Authority
- [14.531c](#) Request for Delegation of Authority Sample Letter by County
- [14.531d](#) Delegation of Authority Sample Letter from ODOT to County

14.540 OVERWEIGHT/OVERSIZE PERMITS.

The weight and size of a vehicle that may travel on a particular road without special authority is limited to one of the following:

- The weight and size limits in Oregon law ([ORS 818.010](#) and 818.080).
- A weight or size below the limits in Oregon law, but imposed by the county under its authority to protect the road or the public ([ORS 810.030](#) or 810.040).
- A weight, length, or width exceeding the limits in Oregon law, but authorized by the county under its authority to increase limits on highways if federal mandate allows or requires it and if a highway is found capable of supporting the increase (ORS 810.050 or 810.060). The weight and size increases authorized cannot, however, exceed those the state Department of Transportation has authorized for state highways.

OREGON WEIGHT TABLE 1

[Weight Table 1](#) outlines the maximum vehicle and combination weights allowed without an over-dimension variance permit. The maximum weight allowed is 600 pounds per inch of tire width, 20,000 pounds single axle, 34,000 pounds tandem, 80,000 pounds gross weight. The common vehicle types that follow Weight Table 1 are solo truck, truck-tractor and semitrailer, truck and trailer, log truck and pole trailer.

OREGON GROUP MAP 1

Group Map 1 ([Front](#) & [Back](#)) shows Group 1, 2, and 3 highways and length limits, indicating which vehicles and combinations, including those hauling loads, can operate without an over-dimension permit.

OVER-DIMENSION VARIANCE PERMITS

Under Oregon law, a road authority may, if the public interests will be served, issue a variance permit to allow a “vehicle, combination of vehicles, load article, property, machine, or thing” to travel over any highway or street under its jurisdiction (ORS 818.200 and 818.220). Oregon law sets the fee for a variance permit at no more than \$8 (ORS 818.270). If the permit is issued by a private contractor, an additional fee not to exceed \$5 may be charged. Road authorities may choose not to charge any fee for permits. Some counties and the state issue certain permits by phone. Self-issuance permits are also available for certain qualified operations. Various permit forms used by Marion County are reproduced in the following section.

OREGON WEIGHT TABLES 2, 3, 4, 5

[Weight Table 2](#) outlines the maximum vehicle and combination weights allowed for what’s

called “Extended Weight” operations. Variance permits based on Table 2 allow between 80,000 pounds and 105,500 pounds maximum. The common vehicle types that follow Weight Table 2 are truck-tractor-semitrailer-trailer (aka doubles), triple-trailer combinations, and truck-tractor and tri-axle semitrailers.

[Weight Table 3](#) outlines the maximum vehicle and combination weights allowed for certain “Heavy Haul Weight” operations. Annual, continuous operation variance permits that are based on Table 3 allow up to 98,000 pounds for non-divisible loads. The maximum weight for single-trip permits is based on the number of axles and wheelbase. Other maximums include 600 pounds per inch of tire width, 21,500 pounds per single axle, 43,000 pounds per tandem axle, the weight shown on the over-dimension permit and the sum of the permissible axle, tandem axle, or group axle weight, whichever is less. The common vehicle types that follow Weight Table 3 are truck-tractor-lowbed semitrailer and truck-tractor-semitrailer and booster.

[Weight Table 4](#) outlines the maximum vehicle and combination weights allowed for other “Heavy Haul Weight” operations. The maximum weight for Table 4 variance permits is based on the number of axles and wheelbase. Table 4 allows for more weight using a shorter wheelbase than that authorized by Table 3. Other maximums include 600 pounds per inch of tire width, 21,500 pounds per single axle, 43,000 pounds per tandem axle, the weight shown on the over-dimension permit and the sum of the permissible axle, tandem axle, or group axle weight, whichever is less. The common vehicle types that follow Weight Table 4 are self-propelled crane, truck-tractor-lowbed semitrailer, truck-tractor with jeep and semitrailer, and truck-tractor with semitrailer and booster.

[Weight Table 5](#) outlines the maximum vehicle and combination weights for “Heavy Haul Weight” operations that involve certain specific vehicle configurations only. Table 5 provides for up to 48,000 pounds per tandem axle if the combination of vehicles has at least 9 axles, with a steer axle followed by four consecutive tandem axles which are 8' wide (standard). Ten percent more weight may be allowed when the combination has 10' wide axles with 4 tires per axle (allowing up to 52,800 pounds per tandem, instead of 48,000 pounds. Or additional weight (25% more) may be allowed when the combination has 10' wide axles with 8 tires per axle. This allows up to 60,000 pounds per tandem, instead of 48,000 pounds. The common vehicle type that follows Weight Table 5 is a truck-tractor with jeep and semitrailer and booster.

Use of Weight Table 5 and its formulas for increased weights is more complex than the other tables and requires special analysis by the Motor Carrier Division’s Over-Dimension Permit Unit. In special circumstances, ODOT's Bridge Unit may be engaged in order to authorize additional weight for moving a large, non-reducible load.

SINGLE-TRIP VARIANCE PERMITS

The Over-Dimension Permit Unit of the Oregon Department of Transportation’s Motor Carrier Transportation Division routinely works with counties to obtain their approval in order to issue single trip permits that authorize an oversize or overweight vehicles to travel on both state highways and county roads.

Washington County has developed a [Pre-Approved Single Trip Overdimensional Permit Routes](#) online atlas used by its Motor Carrier Division to determine if route request needs county approval or if it can be approved by ODOT. The county has published the information for the use of its staff and ODOT staff and is only intended to assist with

processing permits within the county.

ANNUAL, CONTINUOUS OPERATION VARIANCE PERMITS

Oregon law provides a way for trucking companies to go to one place to obtain continuous operation permits for each of the particular jurisdictions a truck combination will travel, whether that be state highways, county roads, or Portland streets ([ORS 818.205](#)). The Motor Carrier Division has enlisted four agents to issue these [Continuous Operation Variance Permits](#) (COVPs) -- Oregon Trucking Associations, A Work Safe Service, Marion County Public Works Department, and Clackamas County Motor Carrier Division. COVPs may be issued for certain combinations operating at extended weight, over-length, and/or over-width, certain heavy haul combinations, combinations hauling overseas containers, long logs, poles, pilings, and structural members, and trucks transporting manufactured homes and mobile/modular units. COVPs cost \$8 per jurisdiction for which the permit authorizes travel, except for six counties that have established lesser fees.

[COVP Road Authorities, with Phone Numbers, Table of Legal Allowances by Road Authority, and Listing of Permits Available by Road Authorities](#)

ADDITIONAL INFORMATION

Visit the [ODOT Motor Carrier Transportation Divisions Website](#) for additional information about over-dimension operations:

STATE CONTACT

Motor Carrier Transportation Division, Over-Dimension Permit Unit
550 Capitol Street NE, Salem OR
Phone 503-373-0000

CONTINUOUS OPERATION VARIANCE PERMIT AGENTS

Oregon Trucking Associations, 4005 SE Naef Rd., Portland OR 97267
Phone: 888-293-0005, Ext. 110

A Work Safe Service, 1696 Capitol St. NE, Salem OR 97301
Phone: 503-391-9363

Marion County Public Works, 5155 Silverton Rd. NE, Salem OR 97305
Phone: 503-588-7905 or 503-584-7704

Clackamas County Motor Carrier, 902 Abernethy Rd., Oregon City OR 97045
Truck Permits: 888-387-8259

14.541 MARION COUNTY TRANSPORTATION PERMITS

EXPLANATION OF MATERIALS FOR MARION COUNTY TRANSPORTATION PERMITS (See the following links for sample documents)

- a. [Resolution assigning issuance of permits to Marion County Public Works Department.](#)
- b. [Transportation Permit Requirements for Marion County Road System.](#)

- c. [Ordinance establishing rules for issuance of variance permits.](#)
 - Attachment A General Rules
 - Attachment B Pilot Cars, Warning Lights and Signs, and Other Special Requirements
 - Attachment C Movement of Over-Dimensional Mobile Homes and Modular Building Units
 - Attachment D Issuance of Permits Allowing Tow Cars to Tow Oversize Disabled Vehicles or Combinations of Vehicles
 - Attachment E Transportation of Food Processing Plant By-Products from Which There is Fluid Leakage
 - Attachment F Transportation of Over Length Logs, Poles, Pilings and Structural Members
 - Attachment H Movement of Buildings and Structures
 - Attachment R Tables of Weight and Height Restrictions
- d. [Route Maps for Permits, Special Permits and Restricted Routes or Structures.](#)
- e. [Application for Structure Moving Permit](#)
- f. [Sample Transportation Permit](#)
- g. [ODOT Issued/Marion County Approved Transportation Permit](#)

14.542 OVERWEIGHT/OVERSIZE DECLARATIONS.

Oregon law requires that each road authority adopt a rule, resolution, or ordinance to allow overweight, overlength, or overwidth vehicles on roads that it determines are capable of carrying greater weight, length, or width ([ORS 810.060](#)).

This statutory directive is limited in that a county cannot provide a blanket authorization exceeding that authorized for state highways. Therefore, in terms of vehicle weight counties need not consider blanket overweight authorizations because the state has not authorized any increased axle weights.

In terms of size, there are various ways a county can respond to this requirement.

- If there are no roads capable of carrying an increased size vehicle without individual study and issuance of a permit, no roads would need to be declared. The governing body may, however, want to have some record that the matter was considered and a judgment was reached that no routes had a capability warranting a declaration. This would be responsive to the directive in law ([ORS 810.060](#)).

- If there are very few roads capable of routinely carrying an increased size vehicle, those roads could be declared capable and placed on a list. The county is not required, but may wish to post the capable roads in order to inform drivers that oversize vehicles are allowed.
- If most roads are capable of routinely carrying an increased size vehicle, the county could declare that all roads are capable except those placed on a list of incapable roads. In that case, the county is not required, but may wish to post the incapable roads in order to inform drivers that oversize vehicles are not allowed. The declaration could relate to county roads only or could also include local access roads.

The following key points may be helpful when addressing this subject:

1. The question of capability of a road is a matter of judgment by the county governing body.
2. The county must list a road only if it is capable of handling the greater size.
3. Any increased size that is authorized cannot exceed the maximum limits set by the Oregon Department of Transportation, but they may be lower and they may vary by route. For example, ODOT has placed state highways in three groups with different allowable vehicle lengths. See [Group Map 1](#), which identifies Group 1, 2, and 3 highways:
4. Oregon law, ORS 810.060, probably applies to local access roads as well as to county roads, but the county governing body is free to determine that local access roads would not be suitable for inclusion in a blanket declaration covering county roads.
5. A declaration can be amended or rescinded at any time.
6. If a road is declared to be capable of carrying oversize vehicles, use of that road can be restricted as the county governing body determines necessary to protect the road from damage or to protect the interest and safety of the public.

The statute specifies that either a resolution or ordinance may be used to make a declaration regarding road and highway capabilities. Use of a resolution is the preferred method because it permits prompt action in the event some change must be made in existing county declarations.

The sample resolutions that follow illustrate two methods of making a declaration. Counties may prefer a vehicle length different from that used in the samples. Although not addressed in the resolution, each county will want to consider the value of posting any specially-restricted roads in order to inform drivers of limits that would not be commonly known. See also Marion County permit documents in Section 14.541.

OVERWEIGHT/OVERSIZE DECLARATIONS SAMPLE DOCUMENTS

[14.542a](#) Maximum Allowable Lengths Table

[14.542b](#) Resolution Adopting a Maximum Size for Combinations of Vehicles

[14.542c](#) Resolution Adopting a Maximum Size for Combinations of Vehicles on Certain County Roads

14.550 REMOVAL OF ABANDONED AND ILLEGALLY STOPPED VEHICLES [ORS 810.430](#) provides the police with a general grant of authority to move illegally parked vehicles. [ORS 819.100 to 819.215](#) and [ORS 811.550 to 811.570](#) authorize the removal of certain vehicles from public roads and other property. These provisions apply to counties as follows:

ORS 819.110 A vehicle may be removed by an authorized person if it has been on a public road for more than 24 hours, an authorized county official has reason to believe the vehicle is disabled or abandoned, and appropriate notice and an opportunity for hearing have occurred.

ORS 819.120 A vehicle may be removed immediately if it constitutes a hazard or an obstruction to motor vehicle traffic on a public road.

ORS 811.555 The sheriff may move a vehicle that is located where stopping, standing or parking is prohibited under ORS 811.550.

ORS 811.570 The sheriff may move a vehicle that is improperly parked in a location where parking is permitted.

Immediate Removal. Immediate removal is authorized under ORS 819.120 if the vehicle is "disabled, abandoned, parked or left standing unattended on a road or highway right of way" and is in a location constituting a "hazard or obstruction to motor vehicle traffic using the road or highway." The law provides examples of when the situation is considered to be a hazard or obstruction. (See section 14.210) If the road is a state highway, the state Transportation Commission establishes additional criteria beyond the details in the law for determining when vehicles may be taken into immediate custody. [OAR 734-020-0147](#) describes the conditions calling for immediate removal from a state highway. However, the conditions do not apply if "there is an indication that the vehicle's position is temporary in nature"-- if hazard flashers are operating, the hood is up, the engine is running, or emergency signals have been placed. The conditions calling for immediate removal from a state highway are as follows:

1. Any vehicle, any part of which is on or extends within the travel portion of any state highway as identified by painted edge lines, or when there are no edge lines, other clear delineation of the travel portion from the highway shoulder;
2. Any vehicle, any part of which is on or extends onto the inside or median paved shoulder (i.e., next to the high speed lane) of a freeway; or
3. Any vehicle, any part of which is on or extends within a paved shoulder of:
 - A. Any freeway or expressway within the city limits of any city in this state during the hours of 7:00 to 9:00 a.m. and 4:00 to 6:00 p.m. local time;

- B. Any freeway or expressway within 1,000 lineal feet of a freeway exit or entrance ramp gore area (the area where the ramp first enters or leaves the freeway);
 - C. Any freeway ramp;
 - D. Any state highway not illuminated by highway pole mounted luminaries and the vehicle remains during or into a period between sunset and sunrise; or
 - E. Any state highway where the sight distance is limited to 500 feet or freeway where the sight distance is limited to 1,000 feet because of roadway horizontal or vertical curvature; or
4. Any vehicle, any part of which is on or extends within a bicycle lane or bicycle path which is immediately adjacent to a state highway.

The limitations on immediate removal from state highways established by the administrative rule do not apply to other roads in the county. A county can rely on the broader language of the statute or the county governing body could enact an ordinance establishing criteria for immediate removal of vehicles from a road other than a state highway. In the case of immediate removal, an opportunity for hearing must be provided to protect the rights of the vehicle owner.

Disposition of Towed Vehicles. Towed vehicles are returned to their owners when costs due of removal have been paid. The person who tows an abandoned vehicle has a lien on the vehicle and its contents to the extent of towing and storage charges. The vehicle may be sold and the proceeds used to cover the expense of removal and custody, with any excess going to the general fund of the county. The owner may claim the remaining funds if the claim is made within two years of the sale. If the appraised value of the vehicle is \$500 or less, it may be considered junk, and disposal procedures are then somewhat simplified (ORS 819.215).

County Ordinance. The county governing body has authority to supplement or supersede many of the statutes related to abandoned vehicles. In addition to the general police power of counties under [ORS 203.035](#), county authority to supersede certain statutes related to abandoned vehicles by ordinance or charter is expressly authorized by [ORS 801.040](#). In exercising this authority, care should be taken to include at least as many procedural safeguards as are found in the statutes or to otherwise give special attention to constitutional due-process requirements. Although the statutes give a county authority to take custody of abandoned vehicles without enactment of a county ordinance, an ordinance may more clearly describe the conditions under which the county may have a vehicle towed and otherwise clarify procedures. For example, a county ordinance could limit the conditions under which immediate removal could occur in a manner similar to the Transportation Commission's administrative rule. A sample county ordinance addressing the overall subject of abandoned vehicles in some detail is [available by clicking here](#). It is based on an ordinance prepared for city use.

CHAPTER 15: STATUTORY INDEX

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15.100	Statutory Index

CHAPTER 15.000: STATUTORY INDEX

15.000 INTRODUCTION A cross index of Oregon Revised Statutes (ORS) Sections to the Road Manual Sections is provided. The ORS sections and topics are listed numerically in the left column and the corresponding County Road Manual sections and topics are shown in the right column. If the ORS number is underlined, the section has a hyperlink connection to the statute in the manual section that is underlined to the right. The hyperlink connections are available in the [online version](#) of the manual which can be found at the [County Road Program website](#).

15.100 STATUTORY INDEX The following pages are the statutory index.

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*If the ORS number is underlined, the section has a hyperlink to the ORS in the Manual Section that is underlined to the right.

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818.080	Maximum Size	14.200 , 14.210 , 14.220 14.540 , 14.542	Truck Controls Overweight/Oversize Permits
818.090	Violation of Maximum Size Limits	14.200 , 14.210 , 14.220	Truck Controls

*If the ORS number is underlined, the section has a hyperlink to the ORS in the Manual Section that is underlined to the right.

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818.105	Unrestricted Access to Specified Highway	14.210 , 14.220	Truck Controls
818.120	Vehicle Exemption	14.200 , 14.220	Traffic Laws
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*If the ORS number is underlined, the section has a hyperlink to the ORS in the Manual Section that is underlined to the right.

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*If the Constitution section number is underlined, the section is reproduced in the Manual Section that is underlined to the right. Hyperlinks under the Manual Section will take you to the corresponding chapter.