

W. S. E. I.

AGENDA COVER MEMO

DATE: January 3, 2006

TO: Lane County Board of Commissioners

DEPARTMENT: Public Works

PRESENTED BY: Frank Simas, Right of Way Manager

TITLE: In The Matter of Giving Direction to Public Works Staff With Regard to Responding to Citizen Complaints and Inquiries Involving Hazards or Potential Hazards on Local Access Roads.

I. MOTION

THAT THE ORDER BE ADOPTED DIRECTING PUBLIC WORKS STAFF AS TO PROCEDURES TO BE FOLLOWED CONCERNING CITIZEN COMPLAINTS, HAZARDS AND POTENTIAL HAZARDS ON LOCAL ACCESS ROADS.

II. ISSUE

The investigation of citizen complaints regarding hazards, potential hazards and other conditions relating to Local Access Roads, and the taking of actions needed to temporarily remediate said hazards for the protection of public safety involves the expenditure of County funds from the Road Fund which are not authorized without the Board having adopted an Order or Resolution authorizing the work and designating the work to be either a single project or a continuing program.

III. DISCUSSION

A. Background

At the November 9, 2005, meeting of the Board, a Work Session was held regarding the obligations of Lane County with regard to Local Access Roads (LARs) so that the Board could be informed as to what procedure is currently followed by Public Works staff in responding to citizen complaints and inquiries, and so that the Board could give direction to staff regarding whether any changes are necessary or desirable in order to serve the public interest and/or limit the liability of the County.

At the conclusion of the Work Session the direction given to staff was as follows:

- 1.) Prepare an Order for Board consideration authorizing staff to expend Road funds to investigate hazards and complaints involving Local Access Roads

and take remedial action, if necessary to protect public safety, and that the Order should generally reflect the current practices of the Department of Public Works with regard to these roads.

2.) Notify the owners of non-permitted private gates on Local Access Roads, as well as on County roads, to remove said gates at their expense or apply for Facility Permits for the gates to remain.

3.) Public Works Staff should work with the County's Intergovernmental Relations Manager regarding amendments to the Oregon Revised Statutes that would eliminate the need for specific individual authorizations to perform routine administrative activities associated with Local Access Roads.

B. Analysis

1.) Expenditure of County Road Funds for Administrative Investigation of LAR Hazards and Complaints

A Local Access Road is defined pursuant to ORS 368.001(3), as "A Public Road that is not a County road, state highway or federal road". Subsection (5) of the same section defines Public road as a "road over which the public has a right of use that is a matter of public record". Lane Code 15.010(35) further defines "public road" by adding "For the purposes of this chapter, a public road is a road that has been dedicated for use by the public for road purposes either by good and sufficient deed presented to and accepted by the Board, or by a partition map and plat or a subdivision plat presented to and accepted by the Board".

Based on a review of state statutes, the Lane Code and existing case law, Legal Counsel concluded that while the County has the ability to exercise jurisdiction over Local Access Roads per ORS 369.031, it has no duty to improve LARs or to keep them in repair. It was further concluded that the County may have a duty to at least consider a known danger over which it may exercise its jurisdiction and that if the County knows of a danger and takes no action, there may be some risk of liability.

The Department of Public Works frequently receives complaints and inquiries from citizens regarding hazards or lack of maintenance on Local Access Roads.

Existing protocol for responding to these issues is as follows:

a.) If the complaint or inquiry relates to maintenance concerns or to a situation which clearly is not a threat to public safety, the issue is addressed by referring to the Maintenance Road Book and informing the citizen of the status of the road and that maintenance on the road, if any, is done by other than Lane County forces. No further action is taken.

b.) If the citizen reports an issue that may involve a safety hazard, staff will attempt to determine through contact with the complainant whether the hazard might rise to the level of an imminent threat to public safety or whether it is more in the realm of a nuisance.

c.) If it appears that the condition may be an "imminent" threat, Public Works staff will schedule a "drive-by" to assess the situation. If, in the judgment of Public Works staff and the County Engineer, the condition warrants, barricades and/or warning signs will be erected. Follow-up will consist of advising the Board in order to receive direction as to how to proceed.

d.) If, in the judgment of Public Works staff and the County Engineer, the threat is less than imminent, but still a potential threat, the issue will be addressed pursuant to ORS 368.261 through 368.281 (Road Hazard Abatement) or by the Failure to Comply process as provided in LC 15.210(11), involving removal by the "owner" upon notice, or removal by County forces, with the cost billed to the owner.

If corrective action is taken to mitigate a hazard, either in advance of, or after Board authorization, it is with the expectation reimbursement will be made by affected residents and property owners to offset the County's expenditures.

Any actions undertaken in accordance with the above procedures are taken based on receipt of actual notice, usually via a citizen complaint. County forces do not patrol Local Access Roads looking for hazards and would therefore have no knowledge of a hazard unless it had been reported to Public Works staff.

2.) Removal of Non-Permitted Gates on Local Access Roads and County Roads.

At the work session, a list of gates on County Roads and Local Access Roads was included with the Agenda Packet. Since that time, staff has determined that there are actually only a small number of unpermitted gates remaining in the County.

A revised list was distributed to the Board on December 8, 2005, and it included 8 unpermitted gates on County Maintained mileage and 5 on Local Access Road mileage. Notification has been sent to all of the apparent owners of the private gates on County Maintained mileage requiring their removal at their expense, or application for a Facility Permit allowing the gates to remain. For the two gates on Templeton Road, the Board has directed the County Surveyor to initiate a process to withdraw County Road status from the portion of road where the gates are located and staff will suspend further action regarding these gates until the Public Hearing in the matter has been completed.

All but one of the gates on Local Access Roads were on unconstructed sections of road. Consistent with existing practice as outlined above, no action will be taken with regard to these gates unless a complaint is received or unless the Board directs otherwise. The apparent owner of the gate on the constructed section of LAR has been notified to remove it at his expense, or apply for a Facility Permit that allows the gate to remain.

3.) Efforts to Amend the ORS to Allow Administrative Activities Related to Hazards on Local Access Roads Without Specific Board Action.

Public Works Right of Way staff has scheduled a meeting with the County Intergovernmental Relations Manager to discuss the possibility of changes to the ORS during the 2007 Legislative Session to allow expenditures on routine administrative activities for Local Access Roads without specific authorization. The Board will be kept informed of any progress in this regard once the legislature re-convenes.

C. Summary

Based on an analysis of statutes and case law in Oregon, Legal Counsel has concluded that while having jurisdiction over local access roads does not require the County to do anything, there will always be some risk of liability if an injured party makes a negligence claim. The decision to exercise jurisdiction or to not exercise jurisdiction over local access roads should be based on specific analysis, considerations and direction by the Board, because, as pointed out in Legal Counsel's analysis, some case law suggests that "If there is a legal duty to protect the public by warning of a danger or by taking a preventive measure, or both, the choice of a means may be discretionary, but the decision whether or not to do so at all is, by definition, not discretionary"

Current protocol for handling inquiries and/or complaints is based on past practices and general guidance from Legal Counsel and an interpretation of state statutes. The past experience where the County has been named as a defendant in a lawsuit arising from occurrences on LARs has been scant, however, specific direction from the Board as to its preference for the handling of these and as to whether it is in the public interest to continue to expend funds in this manner will assist staff and possibly mitigate some future risk of liability.

D. Recommendation

1. Approve the attached Order authorizing the expenditure of County Road Funds in accordance with the protocol described in items (a) through (d) above, and designating the authorization as a continuing program in accordance with ORS 368.031(2).

IV. IMPLEMENTATION/FOLLOW-UP

Upon Approval of the Order, Public Works staff will continue to follow the procedures as outlined in the Order. Staff will also monitor compliance with regard to removal or permitting of gates on County maintained roads and will report back as to any progress with amendment of the ORS.

ATTACHMENTS

None.

IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY
STATE OF OREGON

ORDER NO:

(IN THE MATTER OF GIVING
(DIRECTION TO PUBLIC WORKS
(STAFF WITH REGARD TO
(RESPONDING TO CITIZEN
(COMPLAINTS AND INQUIRIES
(INVOLVING HAZARDS OR POTENTIAL
(HAZARDS ON LOCAL ACCESS ROADS

WHEREAS, a Work Session with the Board of County Commissioners was held on November 9, 2005, regarding the obligation of Lane County in regard to Local Access Roads (LARs) so that the Board could be informed as to what procedure is currently followed by Public Works staff with regard to responding to citizen complaints and inquiries involving LARs and so that the Board could give direction to staff as to any changes needed to better serve the public interest and/or limit the liability of the County; and

WHEREAS, pursuant to ORS 368.031, the County has the ability to exercise jurisdiction over LARs, but it has no duty to improve LARs or the keep them in repair; and

WHEREAS, the Board has determined that it will serve the public interest to authorize the County Public Works staff to take action to investigate hazards or potential hazards on LARs and to take remedial action for the protection of public safety when necessary; and

WHEREAS, said action will necessitate the expenditure of County funds from the Road Fund, and said expenditures are not authorized unless the Board adopts an Order or Resolution authorizing the work and designating the work to be either a single project or a continuing program;

IT IS HEREBY ORDERED that, pursuant to ORS 368.031(2), the Department of Public Works is authorized to investigate complaints and inquiries related to conditions on LARs and to take appropriate action as necessary to protect public safety, including research to determine the status of roads, placement of appropriate signage and/or barricades if warranted, advising the Board when necessary for direction as to how to proceed, and seeking removal of road hazards at the owner's expense pursuant to ORS 368.261 through 368.281 or Lane Code 15.210(11);

IT IS FURTHER ORDERED that the above actions shall be designated as a continuing program.

DATED this _____ day of _____, 2006.

Chair,
Lane County Board of Commissioners

APPROVED AS TO FORM

Date 1-9-06 Lane County

Marc Kroll
OFFICE OF LOCAL GOVERNMENT