Permit No. _____

# Application and Permit to Construct Approach Road

Clatsop County Public Works
1100 Olney Avenue, Astoria, Oregon 97103
(503) 325-8631

Applicant Name: _____
(Please Print)

Applicant declares that he/she is the owner or lessee of the real property adjoining the highway at the location described herein and has the lawful authority to apply for this permit. When approved, the application is subject to the terms and provisions contained herein and attached hereto.

Road Name _____ Township ___ Range ___ Section ___ Tax Lot _____

Side of Road: North ☐ South ☐ East ☐ West ☐

Between/Near Landmarks _____

(Sketch below or attach map)

Applicant Signature _____ Date _____

Mailing Address _____

City _____ State _____ Zip _____ Phone _____

***Your signed permit will be mailed to you, please allow a minimum of 2 weeks for processing***

(Section Below to be Completed by Public Works Department)

Sight Distance Adequate: Yes ☐ No ☐ If no, explain: _____

Culvert Required: Yes ☐ No ☐ Size _____ Type _____ Length _____

Rock Required: Yes ☐ No ☐ Size _____ Amount _____

The County will install the above culvert: Yes ☐ No ☐ for a prepaid fee of $_____

Special Comments: _____

Permit Approved: _____ Date: _____

Construction Approved: _____ Date: _____

(When Construction is approved, copy to Clatsop County Planning & Development Department)

***Section 1. Authority.*** This chapter is adopted under the authority granted by ORS 374.310 and the County Home Rule Charter.

A. All authority contained in ORS 374.305-374.325 relating to County roads applies to any facility within a Public right-of-way.

B. The Director or the Director's designee is given the authority to issue all permits provided for in this chapter and to make all decisions necessarily related to those permits.

***Section 2. Definitions.*** As used in this chapter:

A. Approach permit means a permit allowing construction or alteration of a private driveway, approach road or other facility that provides ingress to or egress from a Public road.

B. County road means a public road under the jurisdiction of the County that has been designated as a County road.

C. Facility includes all roads, driveways, utilities, fences, ditches, culverts, structures, signs, landscapes and other items of a diverse nature that may be placed within or upon a Public right-of-way.

D. Local access road means a public road that is not a County road, state highway or federal road.

E. Public road means a road over which the public has a right-of-way that is a matter of public record..

F. Director means the Director of Public Works as being responsible for administration of County road activities and includes those individuals designated by the Director to carry out the purposes of this chapter.

G. Driveway includes all private roads that connect to a public road and provide ingress to or egress from property.

H. Right-of-way means land, property, or an interest therein, usually in a strip, acquired for or devoted to road purposes.

I. Road means the entire right-of-way of any public or private way that provides ingress to or egress from property by means of vehicles or other means or that provides travel between places by means of vehicles. Road includes, but is not limited to:

   A. Ways described as streets, highways, throughways or alleys;

   B. Road related structures that are in a right-of-way, such as tunnels, culverts or similar structures; and

   C. Structures that provide for continuity of the right-of-way, such as bridges.

J. Road encroachment permit means a permit allowing facilities to be placed within a Public road right-of-way. The permit shall state whether the permitted use is temporary or permanent.

K. Roadway means the portion of a road, including shoulders, for vehicular use.

L. Traveled Way means that portion of the right of way, exclusive of the shoulders, designed and intended for vehicular travel.

M. Tree Removal Permit means a permit allowing the alteration or removal of trees located within a county right of way.

***Sections 3. Interpretation.*** This chapter should be construed to ensure the safe use of public roads, to preserve the structural integrity of public roads and to allocate the cost of private development upon private developers and not upon County government. Nothing in this chapter should be interpreted as implying a right or privilege to place, build, enlarge or otherwise work on any facility in the right-of-way of a public road.

***Section 4. Work in Right-of-Ways; Permit Required; Conditions.*** Except as provided in this chapter, no person other than County agents or employees shall place, build, enlarge or otherwise work on any facility in the right-of-way of a public road without first obtaining a Road Encroachment Permit from the Director. This applies to all work, including, but not limited to, the following:

A. Constructing, grading, surfacing or providing drainage facilities for a private driveway or approach road;

B. Pipelines, irrigation lines, sewer lines, underground cables, overhead wires and utility poles;

C. Signs, billboards, symbols, notices, advertisements or directional guides;

D. Sidewalks, curbs, gutters, retaining walls, meters, inlet basins, fences and ornamental objects;

E. Planting of trees or other vegetation.

***Section 5. Exceptions to Certain Requirements; Interpretation.*** A permit is not required for utilizing lawfully installed facilities as intended when installed, providing the work does not involve excavation. This exception includes the following:

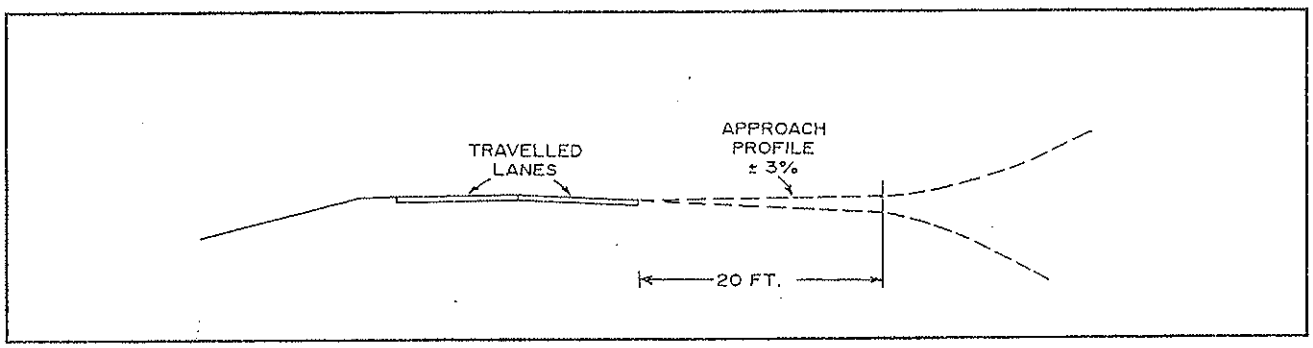
A. Inspection and cleaning of sewer and storm water facilities;

B. Inserting cables in existing conduits or making service connections within a terminal structure; and
C. Utilization that is expressly acknowledged by prior permit provisions.
D. Other activities approved in writing by the Director.

***Section 6. Signs, billboards, symbols, notices, advertisements or directional guides.*** Trees, vegetation, permanent signs, billboards, symbols, notices, advertisements or directional guides shall not be allowed in a county right of way unless allowed by law, designed to facilitate traffic safety and located without causing unreasonable risk to the traveling public. Temporary signs, notices, or directional guides may be allowed for a period not exceeding seven (7) consecutive days if in the opinion of the Director the sign, notice, or directional guide will facilitate the safe and en, notice, or directional guide will facilitate the safe and efficient use of the public road.

***Section 7. General Requirements for Approach Permits.*** Except as otherwise provided in this chapter, no person shall construct or alter a private driveway, approach road or other facility providing ingress to or egress from a public road without first obtaining an Approach Permit. The general requirements of this permit include but are not limited to the following:

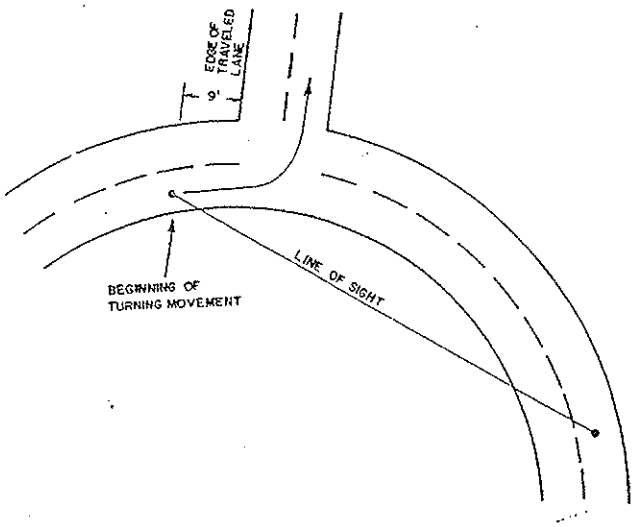
A. The applicant must be the owner or lessee of the real property abutting the road and have the authority to apply for this permit.
B. Construction or use of the proposed approach road may not be prohibited by law, agreement or by any permit or license issued by a governmental agency.
C. The holder of the permit must construct the approach so as not to interfere with normal road maintenance operations.
D. The profile of the approach centerline shall not exceed + or - 3% from the edge of the traveled surface for a distance of 20 feet, as follows:

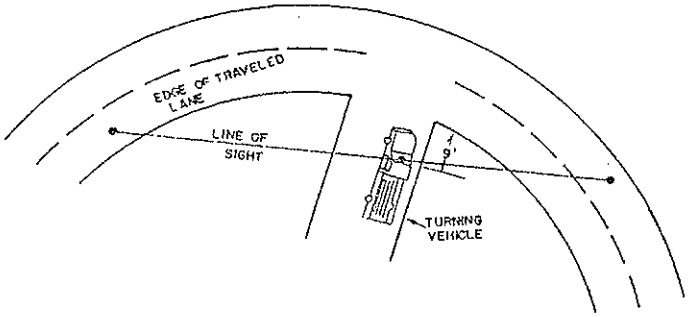



E. An approach permit may be denied when, in the opinion of the Director, lack of adequate sight distance or multiple intersecting approaches would create traffic safety hazard. The applicant may be required to remove brush, widen cut banks, relocate the proposed approach or otherwise satisfy sight distance requirements and ensure that those distances are maintained. The minimum recommended sight distances for the estimated speed of the traffic (not necessarily the posted speed) are given below. The sight distance should be measured from the height of the driver's eye or approximately forty-five inches.

| Speed (mph) | Minimum Sight Distance (ft.) |
|---|---|
| 25 | 180 |
| 30 | 200 |
| 35 | 250 |
| 40 | 325 |
| 45 | 400 |
| 50 | 475 |
| 55 | 550 |

Sight distance shall be measured from the center of the traveled lane from a point where the turning vehicle beings its turn (9 feet behind the edge of the traveled lane) to the center of the traveled lane of which the turning vehicle may enter or cross, measured at a height above each spot of 42 inches as follows:




F. The driveway or approach road shall as near as practicable intersect the public road at right angles.
G. Failure to construct any approach in conformance with these provisions, permit conditions or with plans submitted by the applicant may result in cancellation of the permit and removal of the partially constructed approach at the applicant's sole expense.
H. Proper barricades and warning signs must be maintained at all times during construction by the holder of this permit to ensure the safety of the motoring public.
I. The public road is to be restored to its original or to a better condition. All excess rock or dirt is to be removed from the traveled portion of the road by brooming or washing, as directed. Final clean up is to be completed within one week after the approach is constructed.
J. The entire cost of maintaining the road approach from the outside edge of the roadway to the right-of-way line shall be the responsibility of the applicant.
K. The maximum width for a driveway in residential and resource lands shall be twenty-four (24) feet. The maximum width for a driveway in industrial and commercial lands shall be thirty (30) feet except driveways for service stations and trucking businesses may be up to forty (40) feet in width. In no case shall the traveled way of any driveway be less than twelve (12) feet.
L. The minimum distance between driveways shall be twenty-five feet (25) measured from the nearest edges of the traveled ways.

***Section 8. Change in Use of Approach Road: Permit Required.*** A change in the manner of using an approach road that connects to or intersects a public road requires a new approach permit. A changed use includes, but is not limited to:

A. Any physical change requiring excavation, placing of an embankment, a culvert extension, construction of

head walls and repair or alteration of any existing lawfully installed facility pertinent to a driveway or approach road;

B. Any substantial change in the type or number of vehicles that were anticipated in the approval of the latest existing permit on file for a driveway or approach road; and

C. Any other change in the approach road or its use, which the Director finds, may adversely affect the public's safety or the public's interest in the County road in the absence of limitations or conditions.

***Section 9. Alteration and Removal of Vegetation in County Road Rights-of-Way.***

A. All trees within a County road right-of-way are subject to the County's control, and no tree may be altered or removed without a permit from the County. The permit requirement does not apply to public utilities or the County while exercising their rights within the right-of-way. In issuing a permit, the County shall have the authority to impose such conditions as it deems necessary to the public's safety and convenience.

B. The County has and claims the right to remove or alter any tree, or remove any other vegetation, situated entirely within the County road right-of-way if, in the judgment of the Director, such removal is necessary to the use or improvement of the road or related facilities or for the public's safety.

C. If the Director finds that a tree to be removed may have marketable or ornamental value to the owner of the land abutting the half of the right-of-way on which the tree is situated, the County shall first send notice to the abutting owner, giving the owner thirty (30) days within which to secure a permit to alter or remove the tree or other vegetation. If within that period of time the tree or other vegetation is not removed or altered to the extent necessary to the public safety and convenience as found by the Director, the County may remove or alter the tree or vegetation and, if it is a merchantable tree, retain it to defray the cost of removal. For purposes of giving notice under this subsection, the owner according to the Assessor's records of the property abutting the half of the right-of-way within which the tree is situated shall be deemed the tree owner. If the Director or his or her designate determines that an emergency exists which may affect the public safety, no notice shall be required prior to the removal of the tree or vegetation.

***Section 10. Review of Permit Applications.*** After a completed application with the required fee has been submitted, the Director shall review the application and shall issue a permit if the proposal complies with the provisions of this chapter and State law. The Director may impose additional written conditions on a permit after finding that such conditions are necessary to the public interest in the safe use of the road or the preservation of public improvements or adjoining property. The Director shall prepare appropriate forms to assist the applicant in providing the information necessary for the application review. If the applicant disagrees with the Director's interpretation of the regulations, with the Director's decision to deny the permit, or with the conditions imposed by the Director, or if the Director finds that the proposal raises problems of public safety or problems having to do with the public use or protection of the road, which problems are not addressed in the regulations, then either may refer the application to the Board of County Commissioners, which Board shall, within thirty (30) days, afford them an opportunity to be publicly heard and make its final decision in the matter. If the Board finds that the proposal creates a problem to public interests in the road that cannot be solved by the application of the regulations or of adequate conditions, the Board shall deny the application.

***Section 11. Permit Fees and Classifications.*** Permit fees shall be established by resolution of the Board of Commissioners and shall be paid at the time of application.

***Section 12. Allocation of Costs.***

A. The entire cost of installing, maintaining, repairing, operating, or using the facility and any expense incident to a facility or operation authorized by a permit shall be paid by the applicant.

B. The applicant shall reimburse the County for any reasonable and necessary expenses that the County may incur in connection with the facilities or operations authorized by the permit. The reimbursement of the County shall be made by the applicant within ten (10) days after receiving a statement from the Director.

***Section 13. Liability and Control.***

A. The applicant shall indemnify and hold harmless the County and its agents against all damages, claims and expenses resulting from any injury to or death of any person or from the loss of, or damages to property when such damage, claim or expense arises out of the construction, installation, maintenance, repair, removal, relocation, operation, or use of the facility covered by the permit, or out of any operation

authorized by the permit.

B. The County, its officers, or employees shall not be held responsible or liable for injury or damage that may occur to facilities covered by the permit or any connection thereto by reason of road maintenance and construction operations or resulting from motorist or road user operations or road contractor or permittee operations.

C. The applicant shall employ methods in performing the operations authorized by the permit that the Director may require in order to properly protect the public from injury and the road from damage.

D. During any operations, the applicant shall maintain such flag persons, signs, lights, flares, barricades, and other safety devices during work and non-work hours as required by the Director.

E. The applicant shall minimize interference with or interruption of traffic upon any Public road. Except in emergencies, there shall be no interference with or interruption of traffic upon and along the road until a plan for the satisfactory handling of traffic has been prepared by the permit holder and approved by the Director. The applicant shall notify the Director of any emergency as soon as possible.

F. All traffic control and safety devises used for the protection of the work areas shall conform to the current provisions of the Oregon Manual on Uniform Traffic Control Devises, Technical Bulletin No. 28".

G. To ensure compliance with the terms and conditions of the permit, the County reserves the right to inspect actions taken under a permit at any time and to require the applicant to correct all deviations from the permit.

H. Any supervision and control exercised by the Director shall in no way relieve the applicant of any duty or responsibility to the general public, nor shall such supervision and control relieve the applicant from any liability for loss, damage, or injury to persons or property.

I. Notice must be given to the Director at least two (2) working days prior to commencement of actual construction under a permit.

***Section 14. Insurance and Bond.***

A. Unless waived in writing by the Director, the applicant or his contractor shall obtain and carry, for the period of time required for the complete installation of the facilities authorized by the permit, including the repair and restoration of the road facilities, and also during such future period of time when operations are performed involving the repair, relocation, or removal of said facilities authorized by permit, a liability and property damage insurance policy providing coverage against any claim or suit for property damage, person injury, or death resulting from any activities of the applicant, agents, or contractors in connection with the construction, installation, repair, or removal of facilities authorized by the permit and the repair and restoration of the road facilities. The policy shall also include as named insured, the County, its officers, agents, and employees except as to claims against the applicant, for personal injury to any officers, agents, and employees of the County or damages to any County property. The policy shall provide coverage in the following amounts: $50,000 for property damage resulting from any single occurrence; and $100,000 for the death or injury of any person, subject to a limit of $500,000 for injuries or death resulting from any single occurrence. The policy shall be by an insurance company duly authorized and licensed to do business in the State of Oregon. A copy of the policy shall be submitted to the Director and approved by him before any work is commenced under this permit.

B. When requested in writing by the Director, the applicant or his contractor, shall furnish for the period of time required for the complete installation of the facilities authorized by this permit, including the repair and restoration of the road facilities, and also during such future periods of time when operations are performed involving the repair, relocation, or removal of said facilities authorized by the permit, a bond or cash deposit in the amount specified in the special provisions of the permit. If a bond is furnished, it must be written by a surety company duly qualified and licensed to do business in Oregon and in a form satisfactory to the Director. No work shall be commenced under the permit until security has been submitted to and approved by the Director.

***Section 15. Effective Period of Permit.***

A. Any construction, alteration or repair allowed by a permit must be completed within six (6) months of issuance or the permit will lapse. Upon completion of construction, a permit is effective indefinitely unless

a specific period is stated in the permit.

B. Failure of the applicant to comply with the terms of a permit after a ten (10) day written notice from the Director shall be sufficient cause for cancellation of a permit.

C. The permit, the privileges granted, and the obligations of the permit holder created thereby shall be binding upon the successors and assigns of the permit holder. Permit holders shall give the Director written notice of assignment or transfer.

***Section 16. Construction and Location Details.***

A. The applicant shall submit with any application the following:

(1) Drawings or sketches showing in detail and to scale the location of the proposed facility or operation with respect to existing and planned road improvements, the traveled way, the right-of-way lines, and where applicable, the access control lines and approved access points;

(2) The details of the attachment method if facilities are to be attached to a road structure;

(3) Pressure pipelines data, if applicable, as set forth below:

a. Design pressure of pipe;

b. Normal operating pressure; and

c. Maximum operating pressure.

B. The applicant's completed facility shall be in conformance with the information required by this ordinance and the applicants permit unless written permission is obtained from the Director to modify during installation. When a modification is approved, applicant shall furnish the Director four sets of as constructed drawings or sketches.

C. All work in connection with the facility authorized by the permit shall be done in a neat and workmanlike manner to the satisfaction of the Director, and construction shall conform to the rules of the Oregon Public Utility Commission, the Oregon Board of Health, or other governmental agencies having regulatory authority over the facility. If the above agencies do not prescribe standards that provide the degree of protection substantially equal to the following industry codes, then the appropriate industry codes shall apply:

1. United States of America Standards Institute, 10 East 40th Street, New York, NY 10016:

a. USAS B 31.1.0; Current Issue; Power Piping Systems;

b. USAS B 31.3; Current Issue; Petroleum Refinery Piping;

c. USAS B 31.4; Current Issue; Liquid Petroleum Transportation Piping Systems;

d. USAS B 31.8; Current Issue; Gas Transmission and Distribution Piping Systems.

2. American Petroleum Institute, 1271 Avenue of the Americas, New York, NY 10020: API RP 1102; Current Issue; Recommended Practice for Liquid Petroleum Pipelines Crossing Railroads and Highways.

3. American Water Works Association, 2 Park Avenue, New York, NY 10016: AWWA Standards and Specifications; Current Issue.

4. National Bureau of Standards, U.S. Department of Commerce, or sale by Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20401:

a. National Electric Safety Code; Current Issue;

b. Safety Rules for the Installation and Maintenance of Electric Supply and Communication Lines; Current Issue.

D. Corrugated metal pipe and concrete pipe used as a conduit or casing pipe or a gravity flow carrier pipe shall, as a minimum, conform to requirements of the current issue of State of Oregon, Standard Specifications for Highway Construction. Smooth iron or steel pipe used as a conduit or casing pipe shall be the standard type used for pressure pipe.

E. No trench shall be excavated with a top width in excess of twenty-four (24) inches more than the outside diameter of the pipe, conduit, or cable to be installed unless permission is obtained from the Director.

F. The backfilling of all trenches and tunnels must be accomplished immediately after the facility authorized by the permit has been placed therein and must be well tamped and fully compacted so as to allow the least possible amount of subsequent settlement.

G. All debris, refuse, and waste of all kinds which may have accumulated upon the road right-of-way by reason of the operations of the applicant shall be removed immediately upon completion of the said operations, and the road right-of-way restored to the condition it was prior to construction.

H. Unless permission is obtained from the Director to open cut for pipeline or conduit which crosses under the surfaced portion of the road and shoulders, road or street connections, road approaches, or driveways, the permit holder shall tunnel, jack, bore or drive under the surface in accordance with the following provisions:

1. Trenching shall be no nearer the toe of the fill slope in fill sections or the point where the outer edges of the surfacing meets the sub-grade and a minimum of 4 feet from the edge of the pavement.
2. Tunneling shall be by an approved method that supports the surrounding materials to prevent caving or settlement. Areas around the installed pipe or conduit shall be backfilled with moist sand, granular material, or cement grout filling all voids and packed in place with mechanical tampers or other approved devices. Lagging, bulk heading, and timbering shall be removed as the backfilling progresses.
3. Jacking, driving, or boring shall be by a method approved by the Director which will hold disturbances of surrounding material to a minimum. Sluicing and jetting is not permitted. Voids or displacement outside the outside perimeter of the pipe, conduit, or cable where greater than 0.1 foot, shall be filled with sand or cement grout packed in place.

I. When permission is granted to open cut the surfaced portion of the road, the following provisions shall be followed:

1. Trench edges in paved areas shall be sawn or cut to neat lines by methods satisfactory to the Director to a depth sufficient to permit removal of pavement without damage to pavement to be left in place. Pavement within the cutting limits, together with all other excavated material, shall be removed and disposed of outside road right-of-way.
2. No more than half of the traveled way shall be trenched at one time. The opened half shall be completely backfilled before opening the other half.
3. Closure of intersecting streets, road approaches, or other access points will not be permitted. Upon trenching across such facilities, steel running plates, planks, or other satisfactory methods shall be used to provide for traffic to enter or leave the road or adjacent property.
4. No more than 300 feet of trench longitudinally along the road shall be open at one time and no trench shall be left in open condition overnight.
5. Immediately after a facility authorized by a permit has been placed in a trench outside of a roadway, the trench shall be backfilled with compacted granular material which cannot be ribboned out between the finger and thumb, and which is free from humus, organic matter, vegetable matter, frozen material, clods, sticks and debris, and contains no stones having a dimension greater than three inches.
6. Immediately after a facility authorized by a permit has been placed in a trench within a roadway, the trench shall be backfilled with a flowable fill material or controlled density fill (CDF). This material shall be placed to an elevation that will allow placing the following foundation material and wearing surface:
   a. Where original surface was asphalt concrete or bituminous treatment or mix:
      (i)Wearing surface: Asphalt concrete placed to a compacted thickness of four inches or the thickness of the removed pavement, whichever is greater;
      (ii)Foundation material: Either 1-0 inch or 3/4-0 inch aggregate placed to a compacted thickness of eight (8) inches or the thickness of the removed stone base, whichever is greater.
   b Where original surface was crushed rock or gravel: either 1-0 inch or 3/4-0 inch aggregate placed to a total compacted thickness of four inches or the thickness of the removed stone base and wearing surface, whichever is greater.
   c. All materials in subparagraphs a. and b. of this paragraph, and their placement, shall conform to the requirements of the current Oregon State Highway Standard Specifications for Highway Construction.

7. For a period of one year following the patching of the paved surface, the applicant shall be responsible for the condition of pavement patches and, during that time, shall, upon request of the Director, repair to the Director's satisfaction any patches which become settled, cracked, broken, or otherwise faulty.

J. Unless permission is obtained from the Director, direct burial of cable placed by the ploughing method shall be limited to a minimum of four feet outside the surfaced portion of the road.

K. Standard warning signs for buried power or communications cable and for pipelines carrying gas or flammable liquids shall be placed at each crossing under the road and at intervals along longitudinal installations as required by current PUC order, or as specified by the Director:
   1. Signs shall be offset as near the right-of-way as practical; and
   2. Signs for installations located within the roadbed may be placed behind existing guardrail.

L. Pole line locations over the roadway shall have a minimum height of the lowest wire at 20 feet; locations parallel and not on the traveled portion, the minimum height of the lowest wire shall be 18 feet. Poles shall be located not less than 12 feet from the edge of pavement on paved-surfaced roads, or not less than 8 feet from the shoulder on gravel-surfaced roads. Wherever possible, poles shall be located along the tangent sections of roads and on the short curve radius side of curves. Poles to be located on the long radius side of curves will require additional approval by the Director and will be subject to special conditions.

M. Pedestals installed as part of a buried cable installation are to be located one foot from the right-of-way line unless permission is obtained from the Director to locate elsewhere. In no case shall the pedestals be located within the road maintenance operating area, including mowing operations, or nearer the pavement edge than any official highway sign in the same general location.

N. The buried cable or pipe depths shown on the permit form represents the distance from the top of the surface or ground line to the top of the cable or pipe.

***Section 17. Adoption of State Standards.*** To the extent that standards have not otherwise been adopted by the county, the county adopts, pursuant to ORS 368.205, as standard specifications for construction, improvement and repair to public roads, the standard specifications for highway construction adopted by the Oregon Department of Transportation.

***Section 18. Removal, Relocation and Repair.***

A. Permits issued under this chapter are subject to modification by the County including removal, relocation, or repair of any facility covered by the permit at the sole cost of the applicant.

B. Upon receiving written notice from the Director to remove, relocate, or repair a facility, the applicant shall, within thirty (30) days, make arrangements for the work to be done at the permit holder's cost, in accordance with the notice and instructions received from the Director. Before commencing this work, the permit holder shall furnish such insurance and post such bond as required by the Director.

C. Should the permit holder fail to remove, relocate, or repair the facility, the Director may remove, relocate, or repair it and submit a statement of costs for the work to the permit holder. Upon receiving the statement, the permit holder shall pay to the County the full amount of removal, relocation, or repair costs. The applicant, in obtaining a permit, also agrees to pay statutory court costs, disbursements, and attorney fees if an action must be commenced to obtain costs billed pursuant to this section.

***Section 19. Other Agencies.*** Nothing in a permit issued pursuant to this chapter is intended to grant rights or imply approval in areas not falling within the authority and jurisdiction of the Director. It is the responsibility of the applicant to determine the need for and to obtain such licenses, permits, or other form of approval that may be otherwise required by Clatsop County or by state agencies, federal agencies, cities, utility companies, and railroads.

***Section 20. Violations; Removal or Correction of Installations; Prosecution.***

A. If any person fails to obtain a permit or to comply with the appropriate regulations or permit conditions, the Director may remove or correct the installation and recover the cost from the person responsible.

B. In addition, any person who violates or fails to comply with any of the provisions of this chapter may be prosecuted as provided in Chapter 38, Clatsop County Code of Regulations. A separate offense may be deemed committed each day during or on which such unlawful condition is maintained or continued after citation or notice of violation has been given.

C. The decision to enforce any permit requirement or condition is not a ministerial act but rather a decision left to the discretion of the Director.