

W. 17.a.

Memorandum Date: August 16, 2007

Agenda Date: September 12, 2007

TO: Board of County Commissioners

DEPARTMENT: Land Management Division
Department of Public Works

PRESENTED BY:  Craig Starr, Interim Manager

AGENDA ITEM TITLE: ORDER / IN THE MATTER OF AMENDING CHAPTER 5
OF THE LANE MANUAL TO REVISE THE MONETARY
PENALTY CALCUALTION AND APPEAL FEE AND ADD
COMPLIANCE CERTIFICATION POLICIES (LM 5.010,
5.020, 5.025, 5.030)

I. MOTION

Move approval of the Order.

II. AGENDA ITEM SUMMARY

This item would modify Lane Manual Chapter 5 regarding the compliance process as directed by the Board of County Commissioners at their August 14, 2007 work session.

III. BACKGROUND / IMPLICATIONS OF ACTION

A. Background

At their August 14, 2007 work session, the Board provided direction to staff to eliminate the requirement for an appellant to pay a deposit in the amount of accrued civil penalties in order to file an appeal of a compliance action. In place of such deposit, the Board directed staff to draft provisions for a \$1,500 appeal fee of which \$100 would be deposited in order to file an appeal with the remainder being due and payable if the appellant's appeal is denied.

At the same meeting, the Board directed staff to draft provisions that would establish a compliance certification process so that an individual involved in a compliance action could submit a certification with documentary evidence indicating that the violation has been corrected or abated. If LMD staff determine that the violation has, in fact, been corrected or abated, submittal of the compliance certification would establish the cutoff date for accrual of civil

penalties. If LMD staff determine that the violation continues, the accrual of civil penalties would continue uninterrupted from the date of the notice of failure to comply until the violation is actually corrected or abated.

Finally, at the same meeting, the Board directed staff to draft provisions that would increase the daily civil penalty for cases involving commercial gain, including increasing the maximum daily penalty for such cases from \$1,000 to \$2,500.

B. Analysis

Implementation of the Board's direction from their August 14, 2007 meeting involves changes to the Lane Code that are addressed in an Ordinance that is a companion to this agenda item. This item is to make the necessary changes to Lane Manual Chapter 5 in order to carry out the Board's direction. The proposed changes to Lane Manual 5 are attached to the Order as Exhibit A: Legislative Format of Amendments to Lane Manual Chapter 5.

In addition to the Lane Code and Lane Manual changes, implementation of the Board's direction will require modification of the notice of failure to comply and the administrative civil penalty worksheet, and creation of a new form for compliance certification. Copies of these working documents, as revised or created, are attached for the Board's information as Attachments B, C and D.

C. Alternatives / Options

1. Approve the Order with Exhibit A.
2. Do not approve the Order and direct staff to revise the proposed amendments.

IV. RECOMMENDATION

I recommend approval of the Order.

V. TIMING / IMPLEMENTATION

The amendments to Lane Code Chapter 5 addressed in a companion item will only become effective 30 days following the date of adoption. Since the changes to Lane Manual Chapter 5 and the working documents are intended to implement the Lane Code changes, they will become effective at the same time as the Code changes.

VI. FOLLOW-UP

LMD will initiate the compliance process changes directed by the Board as soon as the changes to Lane Code Chapter 5 become effective.

VII. ATTACHMENTS

Proposed Order

Exhibit A: Legislative Format of Amendments to Lane Manual Chapter 5

Attachment B: Revised Notice of Failure to Comply

Attachment C: Revised Administrative Civil Penalty Worksheet

Attachment D: Compliance Certification Form

IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO.

IN THE MATTER OF AMENDING CHAPTER 5 OF
THE LANE MANUAL TO REVISE THE MONETARY
PENALTY CALCULATION AND APPEAL FEE AND
ADD COMPLIANCE CERTIFICATION POLICIES (LM
5.010, 5.020, 5.025, 5.030)

The Board of County Commissioners of Lane County orders as follows:

Lane Manual Chapter 5 is hereby amended by deleting, substituting, and adding the following section:

DELETE THIS SECTION

5.010, 5.020, 5.025
as located on pages 5-1 through 5-3
(a total of 3 pages)

None

INSERT THIS SECTION

5.010, 5.020, 5.025
as located on pages 5-1 through 5-3
(a total of 3 pages)

5.030
as located on page 5-4
(a total of 1 page)

Said section is attached hereto and incorporated herein by reference. The purpose of this substitution and addition is to revise the monetary penalty calculation, revise the appeal fee and add compliance certification policies (LM 5.010, 5.020, 5.025, 5.030).

Adopted this _____ day of _____ 2007.

Chair, Lane County Board of Commissioners

APPROVED AS TO FORM

Date 8/17/07 Lane County

Leresa J. Wilson
OFFICE OF LEGAL COUNSEL

Chapter 5

Chapter 5 - ADMINISTRATIVE ENFORCEMENT

5.010 Definitions.

For purposes of these regulations, the following words and phrases mean:

Case Involving Commercial Gain. As defined by LC 5.005.

Enforcement officer. The person authorized by the Director or designee to enforce particular provisions of the Lane Code under which administrative enforcement is authorized.

Regulations. These regulations, and rules or regulations promulgated pursuant to sections of the Lane Code which authorize imposition of an administrative civil penalty.

Repeat or repetitive failure to comply. A failure to comply which is similar to another failure to comply by the responsible person within the preceding two years.

Responsible person. As defined by LC 5.005. *(Revised by Order No. 00-4-25-14, Effective 4.25.00)*

5.015 Administrative Civil Penalty.

(1) Any notice of failure to comply authorized by LC Chapter 5 shall:

- (a) Be in writing, signed by the Director;
- (b) Include those matters set forth in LC 5.017(6);
- (c) Specify the amount of the monetary penalty imposed;
- (d) State the starting date of the penalty. If applicable, state that each

day the violation continues to exist is a separate failure to comply for which the monetary penalty will be assessed. The penalty assessments will continue daily until the corrections are made;

(e) State that the responsible person receiving the notice of failure to comply has the right to appeal to a hearings officer within thirteen days after the notice of failure to comply is served on the responsible person.

(2) The amount of the monetary penalty assessed shall be determined in accordance with LM 5.020 below.

(3) The notice of failure to comply shall be deemed served for purposes of any time computations hereunder on: the date the notice is served personally on the responsible person; three days after the date the notice is mailed to the responsible person at an address within the state of Oregon; or seven days after the date the notice is mailed to a responsible person outside of this state.

(4) The monetary penalty shall become final upon expiration of the time for filing an appeal and entry of a hearings officer's order of civil penalty, unless a responsible person properly appeals pursuant to LM 5.025 below or other duly adopted regulations. If appealed, the penalty shall become final, if at all, upon the hearing officer's decision affirming the imposition of the civil penalty. *(Revised by Order No. 00-4-25-14, Effective 4.25.00)*

5.020 Determination of Monetary Penalty.

The amount of the monetary penalty to be assessed under LM 5.015 above shall be determined in accordance with the following formula, as described herein.

(1) The dollar amount of the assessment is calculated by multiplying the amount of the BASE (subsection (a)) by the MULTIPLIER (subsection (b)) and multiplying that by \$15. Notwithstanding this formula, the maximum assessment for a violation for a single day shall be \$1,000 except as provided for cases involving commercial gain in paragraph (2) below.

(a) The BASE is the sum of "H" plus "P" plus "R" plus "C" plus "E"

where:

(i) "H" is the history of the responsible person taking all feasible steps of procedures necessary or appropriate to correct the failure to comply. The value of "H" shall be:

aa. 0, if the responsible person has taken a major, active role in attempting to resolve the failure to comply. There must have been a physical effort that resulted in significant improvement. Verbal communication is not sufficient by itself, but it may be considered a part of the necessary effort.

bb. 1, if the person has made minor attempts to correct the failure to comply, but not significant improvement resulted. Verbal communication is not sufficient by itself, but it may be considered as a part of the necessary effort.

cc. 4, if the person took little or no action whatsoever. This includes verbal contact or assurances that the problem will be resolved, but with no noticeable physical effort to correct the failure to comply.

(ii) "P" is the number of prior failures to comply or violations of the code provision upon which the current failure to comply is based. This number is based on prior similar complaints verified as valid, whether or not further enforcement action occurred. The value of "P" shall be:

aa. 1, if the present failure to comply is the first failure to comply within the past two years.

bb. 2, if the present failure to comply is the second similar occurrence within the past two years.

cc. 4, if the present failure to comply is the third or subsequent similar occurrence within the past two years.

(iii) "R" is the nature of the occurrence, considering whether it was repeated or continuous as opposed to a single occurrence. The value for "R" shall be:

aa. 1, if the failure to comply was a one time occurrence.

bb. 2, if the failure to comply was repeated or continuous in nature.

(iv) "C" is whether the cause of the failure to comply was an inadvertent, negligent, or a reckless or intentional act. The value of "C" shall be:

aa. 1, if the failure to comply was unavoidable accident or caused by others. This category is used when the monetary penalty is assessed either (a) against a person who is responsible for the property, such as an owner, but who was not physically in charge of the property when the failure to comply occurred; or (b) against someone who did cause the failure to comply but could not have reasonably foreseen that the failure to comply would occur.

bb. 2, if the failure to comply was caused by a responsible person's negligence. Negligence is the failure to exercise the care that a prudent person would exercise under the circumstances. This category is used where someone either caused the failure to comply by carelessness or was negligent in taking the necessary corrective steps within the allowed time period.

cc. 4, if the failure to comply was due to reckless or intentional acts. A reckless act is marked by a lack of proper caution, or carelessness or consequences. An intentional act is an act done by intention or design.

(v) "E" is the responsible person's cooperativeness and efforts directed toward correcting the failure to comply. The value of "E" shall be:

aa. 0, if the person was cooperative resulting in the need for minimal enforcement effort on the part of the enforcement officer.

bb. 2, if the person was not cooperative.

(b) The MULTIPLIER is the product of "A" multiplied by "G" where:

(i) "A" is the number of prior enforcement actions taken against this responsible person by Lane County, whether at this property or another, and whether for this type of failure to comply or another. The value of "A" shall be:

aa. 1, if this failure to comply is the first enforcement action against this responsible person.

bb. 2, if there has been one prior enforcement action taken against this person within the past three years.

cc. 3, if this failure to comply is at least the third enforcement action taken against this responsible person within the past three years.

(ii) "G" is the immediacy and magnitude of the failure to comply. This factor is evaluated at the time the enforcement officer initiates compliance efforts. The value of this factor does not decrease if, after enforcement action is initiated, County efforts reduce the gravity of the occurrence or the responsible person makes corrections only at the insistence of the enforcement officer. The value of "G" shall be:

aa. 1, for a failure to comply which is not an immediate threat to health, safety or the general welfare and has only minor potential consequences. These situations pose nonimmediate threats to lives or property such that the failure to comply can be tolerated while corrective action is taken.

bb. 2, for a failure to comply which is significant, but does not pose an immediate threat to health, safety or the general welfare. These occurrences pose significant potential consequences, though the threat is not immediate. These situations can be tolerated for a limited period of time with interim measures taken to minimize the threat. For purposes of this factor, a failure to comply shall be considered significant if it occurs on property subject to the provisions of LC Chapter 10 and 16.210 through 16.400.

cc. 3, for a failure to comply which is substantial and poses an immediate threat to health, safety or the general welfare. These situations pose immediate threats to lives such that the threat cannot be tolerated. Action must be taken immediately to prevent occupancy of the premises or to remove the hazard.

(2) In cases involving commercial gain, the dollar amount of the assessment calculated using the formula in paragraph (1) above shall be multiplied by a factor of three (3) provided that the maximum assessment for a failure to comply of a single day for a case involving commercial gain shall be \$2,500. *(Revised by Order No. 00-4-25-14, Effective 4.25.00)*

5.025 Appeal Procedure.

(1) Appeals and hearings shall be governed by LC 5.030, and as set forth herein or in other regulations authorized and adopted pursuant to provisions of the Lane Code.

(2) Any appeal of an administrative civil penalty pursuant to LC 5.017(7) shall require an appeal fee of \$1,500. In lieu of paying the entire appeal fee initially, an appellant may deposit \$100 of the required appeal fee with the request for an appeal. The remainder of the appeal fee shall be due and payable if the appeal is denied, and shall be added to the accrued penalty..

(3) The hearings officer shall affirm the administrative civil penalty if the County has authority to impose the administrative civil penalty, the County substantially complied with applicable procedures, and the amount of the monetary penalty was properly determined in accordance with LM 5.020 above. The hearings officer may modify the amount of the monetary penalty based on the record and testimony received at the appeals hearing and the hearings officer's application of the evidence to the criteria contained in LM 5.020 above. The hearings officer shall set aside the administrative civil penalty only if the County did not have authority to impose an administrative civil penalty or if the County substantially failed to comply with applicable procedures. *(Revised by Order No. 00-4-25-14, Effective 4.25.00)*

5.030 Compliance Certification.

(1) At any time following issuance of a notice of failure to comply, the person receiving such notice may submit a compliance certification and documentary evidence indicating that the failure to comply has been corrected or abated.

(2) By submitting a compliance certification, a person authorizes access to his/her property by the Land Management Division to determine whether the failure to comply has been corrected or abated. If such access is subsequently denied, the failure to comply shall be deemed to have continued until such time that the Land Management Division is allowed access to make such a determination.

(3) After receiving a compliance certification and upon confirmation by the Land Management Division that the failure to comply has been corrected or abated, the accrual of civil penalties shall be deemed to have ceased on the day on which the compliance certification was received by the Land Management Division.

(4) If, after receiving a compliance certification, the Land Management Division determines that the failure to comply continues, the accrual of civil penalties shall continue uninterrupted from the date of the notice of failure to comply until it is corrected or abated.

Chapter 5 - ADMINISTRATIVE ENFORCEMENT

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- (a) Be in writing, signed by the Director;
- (b) Include those matters set forth in LC 5.017(6);
- (c) Specify the amount of the monetary penalty imposed;
- (d) State the starting date of the penalty. If applicable, state that each

day the violation continues to exist is a separate failure to comply for which the monetary penalty will be assessed. The penalty assessments will continue daily until the corrections are made;

(e) State that the responsible person receiving the notice of failure to comply has the right to appeal to a hearings officer within thirteen days after the notice of failure to comply is served on the responsible person.

(2) The amount of the monetary penalty assessed shall be determined in accordance with LM 5.020 below.

(3) The notice of failure to comply shall be deemed served for purposes of any time computations hereunder on: the date the notice is served personally on the responsible person; three days after the date the notice is mailed to the responsible person at an address within the state of Oregon; or seven days after the date the notice is mailed to a responsible person outside of this state.

(4) The monetary penalty shall become final upon expiration of the time for filing an appeal and entry of a hearings officer's order of civil penalty, unless a responsible person properly appeals pursuant to LM 5.025 below or other duly adopted regulations. If appealed, the penalty shall become final, if at all, upon the hearing officer's decision affirming the imposition of the civil penalty. *(Revised by Order No. 00-4-25-14, Effective 4.25.00)*

5.020 Determination of Monetary Penalty.

The amount of the monetary penalty to be assessed under LM 5.015 above shall be determined in accordance with the following formula, as described herein.

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**LEGISLATIVE
FORMAT**

5.020

Lane Manual

5.020

(a) The BASE is the sum of "H" plus "P" plus "R" plus "C" plus "E"

where:

(i) "H" is the history of the responsible person taking all feasible steps of procedures necessary or appropriate to correct the failure to comply. The value of "H" shall be:

aa. 0, if the responsible person has taken a major, active role in attempting to resolve the failure to comply. There must have been a physical effort that resulted in significant improvement. Verbal communication is not sufficient by itself, but it may be considered a part of the necessary effort.

bb. 1, if the person has made minor attempts to correct the failure to comply, but not significant improvement resulted. Verbal communication is not sufficient by itself, but it may be considered as a part of the necessary effort.

cc. 4, if the person took little or no action whatsoever. This includes verbal contact or assurances that the problem will be resolved, but with no noticeable physical effort to correct the failure to comply.

(ii) "P" is the number of prior failures to comply or violations of the code provision upon which the current failure to comply is based. This number is based on prior similar complaints verified as valid, whether or not further enforcement action occurred. The value of "P" shall be:

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bb. 2, if the present failure to comply is the second similar occurrence within the past two years.

cc. 4, if the present failure to comply is the third or subsequent similar occurrence within the past two years.

(iii) "R" is the nature of the occurrence, considering whether it was repeated or continuous as opposed to a single occurrence. The value for "R" shall be:

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(iv) "C" is whether the cause of the failure to comply was an inadvertent, negligent, or a reckless or intentional act. The value of "C" shall be:

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bb. 2, if the failure to comply was caused by a responsible person's negligence. Negligence is the failure to exercise the care that a prudent person would exercise under the circumstances. This category is used where someone either caused the failure to comply by carelessness or was negligent in taking the necessary corrective steps within the allowed time period.

cc. 4, if the failure to comply was due to reckless or intentional acts. A reckless act is marked by a lack of proper caution, or carelessness or consequences. An intentional act is an act done by intention or design.

(v) "E" is the responsible person's cooperativeness and efforts directed toward correcting the failure to comply. The value of "E" shall be:

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5.025

**LEGISLATIVE
FORMAT**

Lane Manual

5.025

(b) The MULTIPLIER is the product of "A" multiplied by "G" where:
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bb. 2, if there has been one prior enforcement action taken against this person within the past three years.

cc. 3, if this failure to comply is at least the third enforcement action taken against this responsible person within the past three years.

(ii) "G" is the immediacy and magnitude of the failure to comply. This factor is evaluated at the time the enforcement officer initiates compliance efforts. The value of this factor does not decrease if, after enforcement action is initiated, County efforts reduce the gravity of the occurrence or the responsible person makes corrections only at the insistence of the enforcement officer. The value of "G" shall be:

aa. 1, for a failure to comply which is not an immediate threat to health, safety or the general welfare and has only minor potential consequences. These situations pose nonimmediate threats to lives or property such that the failure to comply can be tolerated while corrective action is taken.

bb. 2, for a failure to comply which is significant, but does not pose an immediate threat to health, safety or the general welfare. These occurrences pose significant potential consequences, though the threat is not immediate. These situations can be tolerated for a limited period of time with interim measures taken to minimize the threat. For purposes of this factor, a failure to comply shall be considered significant if it occurs on property subject to the provisions of LC Chapter 10 and 16.210 through 16.400.

cc. 3, for a failure to comply which is substantial and poses an immediate threat to health, safety or the general welfare. These situations pose immediate threats to lives such that the threat cannot be tolerated. Action must be taken immediately to prevent occupancy of the premises or to remove the hazard.

(2) In cases involving commercial gain, the dollar amount of the assessment calculated using the formula in paragraph (1) above shall be multiplied by a factor of three (3) provided that the maximum assessment for a failure to comply of a single day for a case involving commercial gain shall be \$2,500. (Revised by Order No. 00-4-25-14, Effective 4.25.00)

5.025 Appeal Procedure.

(1) Appeals and hearings shall be governed by LC 5.030, and as set forth herein or in other regulations authorized and adopted pursuant to provisions of the Lane Code.

(2) Any appeal of an administrative civil penalty pursuant to LC 5.017(7); ~~shall be accompanied by an appeal fee of \$100~~ **require an appeal fee of \$1,500. In lieu of paying the entire appeal fee initially, an appellant may deposit \$100 of the required appeal fee with the request for an appeal. The remainder of the appeal fee shall be due and payable if the appeal is denied, and shall be added to the accrued penalty.**

(3) The hearings officer shall affirm the administrative civil penalty if the County has authority to impose the administrative civil penalty, the County substantially complied with applicable procedures, and the amount of the monetary penalty was properly determined in accordance with LM 5.020 above. The hearings officer may modify the amount of the monetary penalty based on the record and testimony received at

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**LEGISLATIVE
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5.030 Lane Manual 5.030

the appeals hearing and the hearings officer's application of the evidence to the criteria contained in LM 5.020 above. The hearings officer shall set aside the administrative civil penalty only if the County did not have authority to impose an administrative civil penalty or if the County substantially failed to comply with applicable procedures.

(Revised by Order No. 00-4-25-14, Effective 4.25.00)

5.030 Compliance Certification.

(1) At any time following issuance of a notice of failure to comply, the person receiving such notice may submit a compliance certification and documentary evidence indicating that the failure to comply has been corrected or abated.

(2) By submitting a compliance certification, a person authorizes access to his/her property by the Land Management Division to determine whether the failure to comply has been corrected or abated. If such access is subsequently denied, the failure to comply shall be deemed to have continued until such time that the Land Management Division is allowed access to make such a determination.

(3) After receiving a compliance certification and upon confirmation by the Land Management Division that the violation has been corrected or abated, the accrual of civil penalties shall be deemed to have ceased on the day on which the compliance certification was received by the Land Management Division.

(4) If, after receiving a compliance certification, the Land Management Division determines that the failure to comply continues, the accrual of civil penalties shall continue uninterrupted from the date of the notice of failure to comply until it is corrected or abated.

BEFORE THE LANE COUNTY HEARINGS OFFICIAL

LANE COUNTY

V.

NAOME VIOLATOR

NOTICE OF FAILURE TO COMPLY
CA95-0001

YOU HAVE BEEN ASSESSED A PENALTY OF \$120 PER DAY, BEGINNING APRIL 17, 1995, AND CONTINUING UNTIL THE VIOLATION OF FAILURE TO COMPLY WITH LANE CODE 5.725 OCCURRING AT 5017 JUNK VALLEY ROAD, RURAL CITY, OREGON IS CORRECTED.

On April 6, 1995, you were ordered to comply with Lane Code 5.725(1)(a) by removing the tires stored on the property located at 5017 Junk Valley Road, Rural City, Oregon. Lane Code 5.525(1)(a) prohibits the storage of four or more tires on property unless the tires are stored inside an enclosed structure in a way that does not present a health or fire hazard. The April 6, 1995 order directed you to comply with Lane Code 5.725(1)(a) before April 16, 1995.

On April 16, 1995, the property at 5017 Junk Valley Road was inspected. The inspection showed that a violation of the failure to comply with Lane Code 5.725(1)(a) remained on the property continues.

Your failure to obey the order to comply has resulted in a civil penalty being assessed against you. Until further notice, the amount of the penalty is \$120 for each day that the violation-failure to comply with Lane Code 5.725(1)(a) continues. This penalty has been calculated according to the formula set forth in Lane Manual 5.020.

A compliance certification form is enclosed with this notice of failure to comply. When you have **removed the tires stored on the property located at 5017 Junk Valley Road**, you can complete the compliance certification form and submit it, along with documentary evidence **that the tires have been removed**, to the Lane County Land Management Division at 125 E. 8th Avenue, Eugene, Oregon. By submitting the form, you will be authorizing the Land Management Division to access your property in order to determine whether the failure to comply has been corrected or abated. If it is confirmed to have been corrected or abated, the accrual of civil penalties will be deemed to have ceased on the day on which the completed compliance certification form and evidence was received by the Land Management Division. If the Land Management Division is not allowed access to the property to determine whether it has been corrected or abated, or it is determined that it continues, the accrual of civil

penalties shall continue uninterrupted from the date of this notice of the failure to comply until it is corrected or abated.

You may appeal this penalty. ~~To appeal you must obtain an appeal form from the Lane County Land Management Division, complete the form and return it along with the required monetary deposit. The required deposit is the amount of the penalty specified in this notice, multiplied by the number of days that have passed since the date of this notice, plus an appeal fee of \$100.~~ To appeal, you must submit a written request for appeal stating in detail your reasons for the appeal. This must be submitted to the Lane County Land Management Division, 125 E. 8th Avenue, Eugene OR 97401. The fee for an appeal is \$1,500, but you are only required to deposit \$100 of the required appeal fee with the request for an appeal. The remainder of the appeal fee will become due and payable if an appeal is denied, and shall be added to the accrued civil penalty if not paid within ten (10) days following the appeal decision. **YOU MUST FILE YOUR COMPLETED APPEAL FORM AND THE DEPOSIT WITHIN TEN (10) THIRTEEN (13) DAYS OF THE DATE OF THIS NOTICE (13 DAYS IF THIS NOTICE WAS MAILED TO YOU).** THE PENALTY WILL BECOME FINAL AT THE END OF THIS PERIOD IF NO APPEAL IS FILED.

Date: _____

_____, Manager
Land Management Division

ADMINISTRATIVE CIVIL PENALTY WORKSHEET

NAME:

FILE NUMBER:

“Base” X “Multiplier”

“Base” = Sum of H + P + R + C + E

1. H = “History”

“O” if responsible person has taken a major, active role in attempting to resolve. There must have been a physical effort that resulted in significant improvement. Verbal communication is not sufficient by itself, but may be considered a part of the necessary effort.

“1” if the person has made minor attempts to correct the violation, but not significant improvement resulted. Verbal communication is not sufficient by itself, but may be considered a part of the necessary effort.

“4” if the person took little or no action whatsoever. This includes verbal contact or assurances that the problem will be resolved, but with no noticeable physical effort to correct the violation.

“H” Value =

2. P = the number of prior violations of the code provision upon which the current violation is based. This number is based on prior, similar complaints verified as valid, whether or not further enforcement action occurred.

“1” if the present violation is the first within the past 2 years

“2” if the present violation is the second similar violation within the past 2 years

“4” if present violation is the third or subsequent similar violation within the past 2 years

“P” Value =

3. R = the nature of the occurrence, considering whether the violation was repeated or continuous as opposed to a single occurrence. The value for “R” shall be:

“1” if a one time occurrence

“2” if the violation was repeated or continuous in nature.

“R” Value =

4. C = Cause Was it inadvertent, negligent, or a reckless or intentional act. The value for "C" shall be:

"1" if the violation was an unavoidable accident or caused by others. This category is used when the civil penalty is assessed either:

- (a) against a person who is responsible for the property, such as an owner, but who was not physically in charge of the property when the violation occurred; or
- (b) against someone who did cause the violation but could not have reasonably foreseen that a violation would occur.

"2" if the violation was caused by a responsible person's negligence. Negligence is the failure to exercise the care that a prudent person would exercise under the circumstances. This category is used where someone either caused a violation by carelessness or was negligent in taking the necessary corrective steps within the allowed time period.

"4" if the violation was due to reckless or intentional acts. A reckless act is marked by a lack of proper caution, carelessness, or consequences. An intentional act is done by intention or design.

"C" Value = _____

5. E = the responsible person's cooperativeness and efforts directed toward correcting the violation. The value for "E" shall be:

"0" if the person was cooperative resulting in the need for minimal enforcement effort on the part of the Compliance Officer.

"2" if the person was not cooperative.

"E" Value = _____

"MULTIPLIER" is the product of "A" Multiplied by "G"

"A" is the number of prior enforcement actions taken against this responsible person by Lane County, whether at this property or another, and whether for this type of violation or another. The value for "A" shall be:

"1" if this violation is the first enforcement action against this responsible person.

"2" if there has been one prior enforcement action against this person in the past three years.

"3" if there have been two or more prior enforcement actions in the past three years.

"A" Value = _____

"G" is the immediacy and magnitude of the violation. This factor is evaluated at the time the Compliance Officer initiates compliance efforts. This value does not decrease if, after enforcement action is initiated, County efforts reduce the gravity of the violation or the responsible person makes corrections only at the insistence of the Compliance Officer. The value of "G" shall be:

"1" for a violation which is not an immediate threat to health, safety or the general welfare and has only minor potential consequences. These situations pose non-immediate threats to lives or property such that the violation can be tolerated while corrective action is taken.

"2" for a violation which is significant, but does not pose an immediate threat to health, safety or the general welfare. These violations pose significant potential consequences, though the threat is not immediate. These situations can be tolerated for a limited period of time with interim measures taken to minimize the threat. For purposes of this factor, a violation shall be considered significant if it occurs on property subject to the provisions of Lane Code Chapter 10 and 16.210 through 16.400.

"3" for a violation which is substantial and poses an immediate threat to health, safety, or general welfare. These situations pose immediate threats to lives such that the threat cannot be tolerated. Action must be taken immediately to prevent occupancy of the premises or to remove the hazard.

CALCULATION

"H" + "P" + "R" + "C" + "E" X ("A" x "G")

____ X (____ x ____) = ____ x15 = \$ ____ / day
(max. \$1,000 / day)

COMMERCIAL GAIN

Apply formula below if compliance case involves a property or structure being used for commercial or industrial purposes, or where the violation involves an activity that generates revenue or income.

Previous Penalty Calculation x 3 = \$ ____ / day x 3 = \$ ____ / day
(max. \$2,500 / day)

DATE:

COMPLIANCE CERTIFICATION

I, **Naome Violator**, hereby certify that I have removed the tires stored on the property located at **5017 Junk Valley Road, Rural City, Oregon** as required by the notice of failure to comply in **CA95-0001** and am now in compliance with Lane Code **5.725(1)(a)**. In support of my certification, I am providing the following documentary evidence of the correction or abatement:

Description of documentary evidence:

By signing this certification, I hereby authorize staff of the Lane County Land Management Division to access my property at reasonable times in order to determine whether the violation been corrected or abated. I understand and agree that, if such access is subsequently denied, the violation will be deemed to have continued and civil penalties will continue to accrue until such time that the Land Management Division staff is allowed access to make such a determination.

Date: _____

By: _____

Address: _____

For LMD use only.

Date Received by LMD: _____

By: _____

