ORDINANCE NO. 499.14

AN ORDINANCE OF THE COUNTY OF RIVERSIDE
AMENDING ORDINANCE NO. 499 RELATING TO
ENCROACHMENTS IN COUNTY HIGHWAYS

The Board of Supervisors of the County of Riverside, State of California, ordains as follows:

Section 1. This ordinance amends and replaces Ordinance No. 499.11 and any prior version of Ordinance No. 499 in their entirety with the following:

"Section 1. AUTHORITY. Subject to the control of the Board of Supervisors, there is hereby delegated to the County Director of Transportation and Land Management Agency (TLMA) the administration of the use of County Highways, including County Roads and Public Right of Ways, for: excavations and encroachments; construction, operation, and maintenance of utility facilities; planting, maintenance, and removal of trees; and the issuance, modification, and revocation of Permits for such uses. This Ordinance is adopted pursuant to the Streets and Highways Code of the State of California. In the event of conflict between the provisions of this Ordinance and State or Federal law, and except for discretion provided to the County of Riverside (County) as the issuing authority of Encroachment Permits (Permits) within its jurisdiction, the provisions of State or Federal Law shall supersede this Ordinance, including, but not limited to, statutory franchise rights or prior rights of a Utility Owner which were established by law or title prior to any ownership or rights of the County.

Section 2. DEFINITIONS. The following definitions apply to this Ordinance:

a. Contractor. Any person, firm, company, corporation, developer, association, public agency, public utility, or organization performing construction of an Encroachment pursuant to a Permit.
All obligations, responsibilities, and other requirements of the Permit, shall be binding on the Contractor as the agent of the original Permittee unless otherwise specified in the Permit.

b. County Highway. All or any part of the entire width of the right of way of all County roads or Public Right of Ways accepted for public use and accepted into the County Maintained Road System.

c. Days. Calendar days.

d. Director of Transportation. The appointed manager of the County of Riverside Transportation Department, County Director of Transportation and Land Management Agency (TLMA) or authorized designee. The Director of Transportation is responsible for duties of the Road Commissioner under the Streets and Highways Code.

e. Encroachment. Any tower, pole, pole line, pipe, pipeline, driveway, private road, fence, sign, billboard, stand, building, or any other structure or object of any kind or character, which is placed in, under or over any portion of the right of way areas under the authority of this Ordinance.

f. Encroachment Permit Engineer. The manager designated by the Director of Transportation to issue and enforce Encroachment Permits.

g. Excavation. The movement or removal of earth, rock, pavement or other material in, on or under the ground. The term includes but is not limited to auguring, backfilling, digging, ditching, drilling, grading, plowing-in, ripping, scraping, trenching and tunneling.

h. Permittee. Any person, firm, company, corporation, association, public agency, public utility, or organization and the Permittee's successors-in-interest which has been issued a Permit by the
County for an Encroachment. All obligations, responsibilities, and other requirements imposed upon the Permittee pursuant to this Ordinance, shall be binding on successors in interest of the original Permittee and subsequent owners of the property benefitted by the Encroachment Permit.

i. **Public Right of Way or Right of Way.** All or any part of the entire width of the right of way of all roads accepted for public use, whether or not such entire area has been accepted into the County Maintained Road System.

j. **Utility.** Any and all water, sewer, irrigation, gas, petroleum, cable TV, electric, communications, and similar facilities that are owned by a Utility Owner.

k. **Utility Owner.** The Permittee or the successor in interest, which is the owner, operator or custodian of Utility facilities governed by this Ordinance. This shall include but not be limited to public utility companies, private utility companies, private persons, public agencies, districts, mutual utility companies, political subdivisions and other forms of companies, organizations or agencies.

**Section 3. ENCROACHMENTS AND EXCAVATIONS.** No person, firm, corporation, public utility company, public agency or district, or political subdivision, shall make any excavation or backfill in, or construct, install, operate or maintain any improvement, structure, or encroachment in, on, over, or under, any County Highway or its right of way without: first obtaining from the Director of Transportation a Permit; and maintaining continuous compliance with the terms and conditions of the Permit. A Permit shall be issued by the Director of Transportation only upon written application and payment of the required fees. A Permit shall be issued only if the applicant is: a public utility company holding a current franchise from the County or a public agency or district, or political subdivision having lawful authority to use the
County Highway right of way for purposes specified; the owner of an easement for such purpose within the County Highway right of way; or if the Director of Transportation is satisfied that the use proposed is in the public interest and there will be no substantial injury to the highway or impairment of its use, and that the use is reasonably necessary for the performance of the functions of the applicant.

Section 4. PERMIT REQUIREMENTS AND CONDITIONS. Every Permit shall be revocable and the terms, uses and installations thereunder shall be subordinate to the prior right of the County to use the right of way. Every Permit shall be strictly conditional upon the right of the County to require the Permittee to promptly relocate or remove the improvement, structure or encroachment, at the Permittee's expense, to avoid a crossing conflict, or underground interference for any proper public purpose, where in the opinion of the Director of Transportation such action is reasonably necessary for the benefit of any public utility company, public agency or district, political subdivision, or any other person or agency having a right to use the County Highway for the purpose proposed. The acceptance of a Permit shall not be deemed a waiver by the Permittee of any contractual or statutory right against any non-County party for reimbursement of the expense of such removal or relocation. Every Permit shall be subject to such conditions as the Director of Transportation determines are necessary to assure the safety of the traveling public and the restoration of the road, including but not limited to pavement surfaces, ground surfaces, and subsurfaces within County Highway rights of way.

The Director of Transportation may require such surety bond or deposit of money as in his/her judgment may be necessary to secure performance of the conditions of the Permit and the replacement or restoration of the road, including but not limited to pavement surfaces, ground surfaces, and subsurfaces within County Highway rights of way, and any survey monuments or other improvements that may have been disturbed. The Director of Transportation may, where convenient to road work he/she has programmed, or for other reasons of County convenience, arrange to do the work of
replacement of pavement or other restoration of the roadway and appurtenances at the
expense of the Permittee. Permittee shall perform all work to current County standards in
accordance with County Ordinance 461 or as specified in the Permit. Permittee shall
backfill excavations in accordance with County Ordinance 461 or as specified in the
Permit. If required by the Director of Transportation, Permittee shall restore the County
Highway or public right of way to its condition prior to any work or excavation. If a
Permittee fails to backfill any excavation or to restore the County Highway or public
right of way to a safe condition or to its condition prior to the permitted work, the
Director of Transportation shall have the right to perform the work required of the
Permittee, and then assess and collect the cost of the work from the Permittee. The
Director of Transportation may immediately remove and dispose of, or by notice may
require the removal of, any un-permitted advertisement sign or other un-permitted
appurtenance from a County Highway in accordance with the Streets and Highways
Code.

Section 5. MORATORIUM DECLARATION. The Director
of Transportation is authorized to declare and enforce a moratorium on the issuance of
Permits on County Highways to public and private Utility Owners within the limits of
construction of major reconstruction, resurfacing and road construction projects under the
following circumstances:

a. A County public works project is significant in scope, as
determined by the Director of Transportation; and

b. The Utility Owner was given written notice by the Director of
Transportation that a moratorium on the issuance of Permits will
commence upon the completion of construction of the County's
public works project.

A moratorium on issuance of Permits for utility purposes may be
established for a period of up to three years after issuance of the completion notice of the
County's public works project, but may be waived under the following scenarios:
a. Emergency repairs of existing utility facilities shall be considered exempt from the moratorium, but shall be subject to additional and enhanced road repair requirements as determined by the Director of Transportation. Such repairs shall provide for aesthetic and structural qualities at least equal to the pre-existing condition, and the Utility Owner may be required to include additional pavement improvements as directed by the Director of Transportation.

b. The Director of Transportation may allow the installation of new utility facilities, services, emergency work, and other work, upon receipt and evaluation of a request with justification from the Utility Owner. The Director of Transportation may issue a Permit for those new facilities if the Utility Owner mitigates the damage to the County Highway by properly and completely repaving the roadway, or otherwise repairs the County Highway to the same condition as before the utility work was performed, both aesthetically and structurally. Such paving shall be in accordance with the trench backfill and pavement resurfacing requirements approved by the Director of Transportation specifically for that roadway.

The Director of Transportation shall require such roadway repair methods on a County Highway subject to a moratorium as are deemed necessary to fully restore the County Highway to the aesthetic and structural condition prior to the utility’s construction.

Section 6. UTILITY CONSTRUCTION AND MAINTENANCE RESPONSIBILITY. Each Utility Owner shall maintain its improvements, structures, substructures, and other facilities within County Highway rights of way to then-current Utility standards and to then-current applicable standards, whether or not the Permit for the construction or installation was issued to the current owner of the encroachment.
When it is determined to be in the best interest of the public and the County, the Director of Transportation may allow a Contractor to obtain a Permit for the construction or installation of facilities for subsequent ownership by a Utility Owner, public agency, district, or political subdivision. In such a case, the Utility Owner shall obtain a Permit for the operation and maintenance of said utility facilities prior to the issuance of the construction or installation Permit. Upon satisfactory construction or installation of the utility facilities including trench backfill and overlying road surfaces, the Utility Owner, not the Contractor, shall operate and maintain said facilities in compliance with all applicable requirements of the Permit. Permits for main or trunk Utility facilities, shall also apply to all lateral and service utility facilities installed within County Highways, and all requirements of this Ordinance shall apply to such lateral and service utility facilities, including utility meters within public rights of way.

New underground installations shall be installed in a manner that will provide detection of the installation for the purposes of locating the facility. Tracer wires shall be installed as part of non-metallic conduits and pipes, with the exception of gravity sanitary sewer mains and laterals. Other means may be employed by the Utility Owner to facilitate future detection and location by the Utility Owner or the County. In the event of a conflict between this requirement and the rules of the California Public Utility Commission (CPUC), the rules of the CPUC shall govern.

Section 7. REQUIRED RECORDS AND LOCATION INFORMATION. The Utility Owner is responsible for keeping record drawings and/or “as-built” drawings (Drawings) on the installation of the Utility that includes the horizontal and vertical location of the permitted encroachments. For the purpose of the design and/or construction of public works projects within a County Highway, the Utility Owner shall, upon written request by the County, promptly identify and provide the vertical and horizontal location of its existing Utility facilities, based on the Drawings, and promptly provide the County with a set of the Drawings which provides this information. The Drawings shall be submitted to the County within 30 days of the date
of the request. Alternatively, within 30 days of the date of the request, the Utility Owner may provide the County with written notice which provides the County with a timeframe in which the Utility Owner will provide the information, not exceeding 90 days from the original request.

If precise location information cannot be provided from Utility Owner or other reasonably available records, and if it is determined by the County that there may be conflicts with existing Utility facilities, the Utility Owner shall provide precise location information (vertical and horizontal location) by excavating and exposing its existing Utility facilities. County will provide survey support. The Utility Owner shall be responsible for coordination of the field collection of the information with County, and shall provide at least five business days advance notice to the County Surveyor with written confirmation from the County’s survey representative. This work, commonly known as “potholing” and “positive location identification” (identify the vertical and horizontal location), shall be performed and the location information provided to the County within 60 days of issuance of an order by the County’s representative. In the event of failure to pothole as ordered by the County, the County may immediately proceed to perform the work itself and shall be reimbursed by the Utility Owner for all costs incurred within 60 days of the work.

The Utility Owner shall promptly respond to all requests for right-of-way, survey, or design information, and all other relocation related services and assistance, within a timeframe that will not impact the County’s project schedule. County will provide documents and assistance to the Utility Owner as available, and the County reserves the right to require the Utility Owner to pay for County services, documents and information that are the responsibility of the Utility Owner. The Utility Owner shall reimburse the County for delay or other costs incurred as a result of delays in encroachment relocation caused by Utility Owner’s failure to timely request services, documents or other information from the County, or fulfill its obligations under this Ordinance. The Utility Owner will not be required to pothole its facility a second time if
County was responsible for failure to accurately survey the facility installation, provided that County was provided with adequate notification and the required information from the Utility Owner. The County shall utilize information about existing Utility facilities to attempt to avoid or limit design and construction conflicts, in an effort to keep both construction and relocation costs to a minimum.

Section 8. MANDATORY RELOCATION. The Utility Owner shall, upon receipt of a written request from the County, remove or relocate its facilities that are in conflict with a public works project on County Highways, and cause the facilities to be removed or relocated in a prompt and diligent manner so as to avoid any unnecessary delays or costs to the public works project. A Utility Owner which owns poles and conduit systems that provide the use of those facilities to other persons or utility owners shall provide notices to such other utility owners within two days of receipt of the County’s notice; and a subsequent notice within two days of completion of relocation work by the Utility Owner. Utility Owner shall be responsible to facilitate complete removal and relocation of conflicting facilities, including attachments by other persons or utility owners, so the project will not be delayed. In the event a Utility Owner chooses, regardless of the reason, to implement a Utility removal or relocation in multiple stages, including relocation to a temporary location and/or alignment and then later to another final location and or alignment, the full cost for all aspects of the multiple stage relocation shall be the sole responsibility of the Utility Owner. For the purpose of this Ordinance, a multiple stage relocation shall be treated the same as any other removal or relocation.

The Utility Owner shall reimburse the County, upon receipt of billing, for any delays or costs attributable to the failure of the Utility Owner to remove or relocate conflicting Utility facilities in a timely manner. Upon written request from County and no later than 30 days from the date of the request, the County and Utility Owner decision-making representatives shall meet at a convenient site to “meet and confer” to discuss and address planned, pending or active projects governed by this Ordinance.
Section 9. PUBLIC SAFETY RELOCATIONS AND GENERAL RESPONSIBILITY. Permittee shall immediately remove or relocate, at its sole expense, any and all encroachments which are ordered by the Director of Transportation for the purpose of public, pedestrian or traffic safety. The Permittee shall promptly reimburse the County, upon receipt of billing, for any delays or costs attributable to the failure of the Permittee to remove or relocate such encroachments in a timely manner.

The Permittee for any encroachment situated within a County Highway shall be responsible for all costs and liability resulting from any damage to public and private property or personal injury caused by the construction, installation, operation, maintenance or failure of its encroachments. The Permittee shall promptly reimburse the County, upon receipt of billing, for all delays or costs incurred by the County in the protection of life or property where required due to failure of its encroachment, or due to any unsafe construction, installation, operation, or maintenance of the encroachment.

In the event the County incurs any costs as a result of the presence of the Permittee’s encroachment, and which cost would not normally be incurred by the County in the absence of the encroachment, the Permittee shall be fully responsible to promptly reimburse the County for all such costs upon receipt of billing. Reimbursable costs may include, but are not limited to, additional County staff time, legal fees and fines assessed by other governmental agencies. This paragraph shall apply to all matters governed by this Ordinance.

Section 10. EXCEPTIONS. The following are exceptions to the Permit requirements of this Ordinance:

a. Emergency: An excavation or encroachment may be made without first obtaining a Permit for repair or replacement of a facility previously installed only when necessary for the immediate protection or preservation of life or property; provided that a Permit shall be obtained on the first business day thereafter and the excavation or encroachment shall be made in such manner as to
give full protection to the County and the users of the County Highway.

b. **Agricultural Produce:** No Permit shall be required for the loading or unloading of agricultural produce or produce containers. All such operations shall, where possible, be conducted off of the paved or traveled part of the County Highway. If any part of the loading or unloading occurs on the paved or traveled part of the County Highway, appropriate visible warnings shall be posted for the protection of traffic approaching from each direction; and if such operation leaves less than one traffic lane available for travel in either direction, a flagman shall be used at the sole risk of the operator. Use of warnings and flagmen shall be in accordance with California Manual on Uniform Traffic Control Devices (MUTCD) or the Work Area Traffic Control Handbook (WATCH). Overnight storage of containers, agricultural products or unlicensed vehicles on the shoulder of any County Highway or within eight feet of the traveled portion of such highway is prohibited. Bulk manure not in containers may be temporarily stored or stockpiled within the right of way of a County Highway only when to be used on the abutting agricultural lands as follows:

1. On any portion of the right of way obviously not graded, improved or used for vehicle travel, sidewalk or drainage purposes; or

2. On any unpaved graded shoulder of a paved County Highway, not closer than four feet from the pavement and in such location as will not impede or impair highway drainage; or
3. On the graded shoulder of a County Highway less than four feet from the pavement only if there is no other location available and warning lights and signs are placed and maintained to protect the traveling public during any overnight storage.

Section 11. TREE REMOVAL. No person, firm, corporation, public utility company, public agency or district, or political subdivision, shall remove or severely trim any tree planted in the right of way of any County Highway without first obtaining a Permit from the Director of Transportation. The Permit may be issued without fee if the Director of Transportation is satisfied that such removal or trimming is in the public interest, or is necessary for the improvement of the right of way or the construction of improvements on adjacent land. The Director of Transportation may impose such conditions as he/she deems reasonable or necessary, including requirements for the work to be done by a qualified tree surgeon or tree trimmer, and provision for bond, insurance or other security to protect person and property from injury or damage. This shall not apply to any public utility maintaining overhead power or communication lines pursuant to franchise, where necessary to prevent interference of a tree with such installation. A Permit for removal of a tree may be conditioned upon its relocation or replacement by one or more trees of a kind or type to be specified in the Permit.

Section 12. APPLICATION. Each application for a Permit under this Ordinance shall be in writing in the name of the person, agency or entity owning the encroachment and controlling the construction of the work; and shall be signed by such person or its agent as authorized in writing. The application shall be submitted on a form supplied by the Director of Transportation and shall contain or be accompanied by such information as he/she may require. Each approved Permit shall be in writing and signed by the Director of Transportation or his/her representative.
Section 13. FEES.

Permit Fees: The fees required by this Ordinance may be paid at or after the time application is filed, but in any event before the Permit is issued. Fees are as stated in Appendix A to this Ordinance. Fees are non-refundable after paid.

Deposit-Based, Actual-Cost Fees: Project types that require the use of a Deposit-Based fee structure are identified in Appendix A. When it is mutually agreed to by the applicant and the Director of Transportation, any fee required by this Ordinance may be treated and accounted for as a Deposit-Based, Actual-Cost fee in the same manner as is detailed in Ordinance No. 671.

Fees collected in excess of the actual cost of providing the specific service shall be refunded. An additional deposit shall be required when the review or inspection costs exceeds the initial estimate. The County may suspend the Permittee’s work when the deposit is depleted and will not permit work to resume until an additional deposit has been received.

The County will make draws against deposited funds on biweekly intervals based on payroll accounting cycles and at the fully burdened hourly rates for each job classification required to provide a specified service. Hourly rates for services shall be established through the yearly budget process as adopted by the Board of Supervisors.

Deposits for applications will be collected upon submittal of the application. Deposits will be monitored and, when 80% depleted, an analysis of the project will be done to determine if the remaining portion of the deposit will cover expected project completion costs. If costs are expected to exceed the remaining deposit, additional deposits will be required to recover the estimated full cost for completion. Additional deposits will be determined based on the estimated cost to complete the specific application work.

A full accounting of a Deposit-Based account will be provided at the request of the applicant at any time. A final accounting of the Deposit-Based account
will be made within 45 days of the finalization of the Permit and provided to the applicant along with any refund of unused deposits. Remaining deposits will be refunded to the Permittee in accordance with Ordinance 671.

When it is mutually agreed to by the applicant and the County, any fee not designated a "Deposit-Based Fee" may be treated and accounted for as a Deposit-Based Fee in the manner described in this Ordinance.

Section 14. FEE EXEMPTIONS.

Permit Fees: The following shall be exempt from payment of the Permit fee for an excavation or encroachment:

a. Every public district, public agency or political subdivision having lawful authority to use the County Highway or right of way for the purpose specified in the Permit.

b. Street improvements under special assessment or improvement district proceedings conducted by the Board of Supervisors.

c. Public utility and public service facilities installed under contract with and controlled by the County or a County Service Area.

Note: If constructed by a private contractor, all Permit and fee requirements as established by this Ordinance are applicable.

d. Positive Location Identification (potholing) of underground encroachments, if ordered by the County.

Inspection Fees: The following shall be exempted from the payment of the inspection fee for an excavation or encroachment:

a. Street improvements under special assessment or improvement district proceedings conducted by the Board of Supervisors.

b. Public utility and public service facilities installed under contract with and controlled by the County or a County Service Area.

Note: If constructed by a private contractor, all Permit and fee requirements as established by this ordinance are applicable.
c. Positive Location Identification (potholing) of underground encroachments, if ordered by the County.

d. Subdivision Improvements to be constructed pursuant to Ordinance 461.

Section 15. BLANKET PERMITS.

The Director of Transportation may issue to an applicant a blanket Permit for a series of excavations or encroachments of the same type or types. This provision shall be broadly applied to reduce administrative costs of both County and Permittee. If the terms or conditions of the blanket Permit are violated, it may be revoked by the Director of Transportation and the Permittee may be required to obtain a separate Permit and pay fees for each excavation or encroachment.

Section 16. PENALTIES.

Any person who performs any act for which a Permit is required by this Ordinance without first obtaining such Permit, or who, having obtained such a Permit, violates any term or condition thereof and thereby jeopardizes or injures person or property, is guilty of a misdemeanor and shall be punishable by a fine of not more than $1,000.00, or by imprisonment in the County jail for not more than six months, or by both such fine and imprisonment. Nothing herein shall be deemed to deprive any person of any civil right or remedy he/she may have against a violator of this Ordinance, or to deprive the County of any cause of action which it may have against such violator, regardless of any prosecution or conviction under this section.

Section 17. SEVERABILITY.

If any provision, clause, sentence, or paragraph of this Ordinance, or the application thereof to any person, entity, or circumstances, shall be held invalid, such invalidity shall not affect the other remaining provisions of this Ordinance which can be given effect without the invalid provision or application; and to this end, the provisions of this Ordinance are hereby declared to be severable.”
Section 2. EFFECTIVE DATE. This Ordinance shall take effect thirty (30) days after the date of adoption.

BOARD OF SUPERVISORS OF THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

By: ______________________
    Chairman

ATTEST:
CLERK OF THE BOARD:

By: ______________________
    Deputy

(SEAL)

APPROVED AS TO FORM:
June 8, 2017

By: ________________
SYNTHIA M. GUNZEL
Supervising Deputy County Counsel
## APPENDIX A

### ENCROACHMENT

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<thead>
<tr>
<th></th>
<th>Permit Fee</th>
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<th>Unit Inspection Fee</th>
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<td>Tree planting, trimming or removal / Private Drain</td>
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<td>$ 0.00</td>
<td></td>
<td>no fee</td>
</tr>
</tbody>
</table>
## APPENDIX A

### ENCROACHMENT

<table>
<thead>
<tr>
<th>Extensive</th>
<th>Permit Fee</th>
<th>Inspection Fee</th>
<th>Unit Inspection Fee</th>
<th>Total Permit Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dry / Wet Utility trenches (less than 1000 feet)</td>
<td>$179.00</td>
<td>$210.00</td>
<td>plus</td>
<td>$0.23/lf</td>
</tr>
<tr>
<td>Road Closures</td>
<td>$179.00</td>
<td>$105.00</td>
<td>per day</td>
<td></td>
</tr>
<tr>
<td>Street Water, Sewer, Storm drain (IP’s Only)</td>
<td>$179.00</td>
<td>$0.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Storm Drains</td>
<td>$179.00</td>
<td>$210.00</td>
<td>plus</td>
<td>$0.23/lf</td>
</tr>
</tbody>
</table>

### Deposit Based

| Traffic Signal | Deposit | 3% cost | | | varies |
| Bridges and Drainage Structures | Deposit | 3% cost | | | varies |
| Permanent Poles / Aerial Cable | $179.00 | $210.00 | plus | $0.23/lf | varies |
| Dry / Wet Utility trenches (1000 feet +) | $465.00 | $210.00 | plus | $0.23/lf | varies |
| Application for a franchise for a project involving a solar power plant or other use not constituting a public utility use | $20,000.00 | | | | $20,000.00 |

### Penalties

| Work done without benefit of permit (minor) | $500.00 | | plus | 3X fee | varies |
| Work done without benefit of permit (involved) | $750.00 | | plus | 3X fee | varies |
| Work done without benefit of permit (extensive) | $1,000.00 | | plus | 2X fee | varies |
| Illegal cutting pavement (in addition to permit costs) | $1,000.00 | | plus | 0.50 sf | varies |
| Failure to notify County of work done under blanket permit | $1,000.00 | | Revoked | | $1,000.00 |

### Miscellaneous

| Miscellaneous Plan Review / Field Review | Current DBF hourly labor / equip. usage rates | varies |