

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON**

RESOLUTION NO. 2012-197

Authorizing the County Chair to Execute an Intergovernmental Agreement with Tri-Met and the City of Lake Oswego for the Sellwood Bridge Project.

The Multnomah County Board of Commissioners Finds:

- a) The Willamette Shore Consortium, comprised of the City of Portland, Metro, the City of Lake Oswego ("COLO"), Clackamas County, the Oregon Department of Transportation, and the Tri-County Metropolitan Transportation District of Oregon ("TriMet") (the "Consortium"), is the current owner of the rail right-of-way known as the Willamette Shore Trolley Line (the "Right-of-Way") in the vicinity of the Sellwood Bridge Project (the "Project"). The Consortium holds the Right-of-Way for the purpose of preserving it for public rail mass transit use.
- b) The Consortium has designated TriMet as its Right-of-Way Agent, with responsibility for negotiating and executing real property agreements relating to the Right-of-Way and working with local jurisdictions concerning public improvement projects that may impact the Right-of-Way. The Consortium has designated COLO as the party responsible for operation and maintenance of the Right-of-Way as called for in the work programs and budgets adopted by the Consortium.
- c) As part of the Project, the County has done or will do the following work within the Right-of-Way: removed the Staff Jennings Trestle and plans to replace it with trackage on fill, will utilize a portion of the Right-of-Way as a haul road, will construct a multi-purpose access (the "MPA"), is placing landslide stabilization shafts and anchors, is constructing a temporary detour bridge utilizing air space, replace the existing Sellwood Bridge structure connecting to the interchange with Highway 43, will replace the existing culverts at Stephens Creek with a concrete arch culvert, and has removed trees and vegetation and excavated to accommodate construction and improvements, then will replant the disturbed areas with all native trees and vegetation.
- d) Use of the Right-of-Way benefits the Project because it maximizes safe and efficient access for the supply of materials and equipment to the construction site over the haul road. The Project will provide benefits to the Consortium including improved management of drainage, placement of new ballast and sub-ballast, and replacement of ties.
- e) County will pay the Consortium \$434,271 for the net value of temporary construction easements (after offsetting value of Right-of-Way improvements built at County's expense) and will reimburse COLO for potential trolley revenue lost during the Project resulting from the Right-of-Way closure, additional maintenance costs incurred as result of the Project, and Tri-Met license fees.

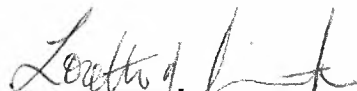
The Multnomah County Board of Commissioners Resolves:

1. The County Chair is authorized to enter into the IGA (with Exhibits A through D), modify the IGA and execute easements referenced in the IGA and such other ancillary agreements as necessary or desirable to further the intent of the IGA, so long as such modifications, easements and ancillary agreements do not result in a material increase in the obligations of Multnomah County or a material decrease in the benefits for Multnomah County under the IGA.

ADOPTED this 29th day of November, 2012.

BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON





Loretta Smith, Vice-Chair

REVIEWED:
JENNY M. MORF, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By 

Kenneth M. Elliott, Assistant County Attorney

SUBMITTED BY: Commissioner Deborah Kafoury, District 1.

**INTERGOVERNMENTAL AGREEMENT FOR THE
SELLWOOD BRIDGE PROJECT**

This Intergovernmental Agreement (this "Agreement") is made and entered into as of the effective date shown below, by and between the Tri-County Metropolitan Transportation District of Oregon ("TriMet") in its capacity as Right-of-Way Agent for the Willamette Shore Consortium, the City of Lake Oswego ("COLO") in its capacity as the Consortium member responsible for operation and maintenance of the Willamette Shore Trolley Line, and Multnomah County, Oregon ("County") (collectively, "the Parties").

RECITALS

A. The Willamette Shore Consortium, comprised of the City of Portland, Metro, COLO, Clackamas County, the Oregon Department of Transportation, and TriMet (the "Consortium"), is the current owner of the rail right-of-way known as the Jefferson Street Rail Line, also known as the Willamette Shore Trolley Line (the "Right-of-Way") in the vicinity of the Sellwood Bridge in Portland, Oregon. The Consortium holds the Right-of-Way for the purpose of preserving it for public rail mass transit use.

B. Pursuant to the November 1994 Intergovernmental Agreement for the Management of the Willamette Shore Line Right-of-Way, as supplemented by the 2003 Intergovernmental Agreement Regarding Maintenance and Funding for the Willamette Shore Line Right-of-Way (the "Maintenance and Funding Agreement"), the Consortium has designated COLO as the party responsible for operation and maintenance of the Right-of-Way as called for in the work programs and budgets adopted by the Consortium under the Maintenance and Funding Agreement.

C. Pursuant to the Maintenance and Funding Agreement, the Consortium has designated TriMet as its Right-of-Way Agent, with responsibility for negotiating and executing real property agreements relating to the Right-of-Way and working with local jurisdictions concerning public improvement projects that may impact the Right-of-Way.

D. The Sellwood Bridge project ("Bridge Project") is an ongoing effort by County to replace the 85-year old Sellwood Bridge with a new, seismically-sound structure that offers upgraded facilities for all users. The Bridge Project is currently in the final design phase, preliminary construction began in December 2011, and the Bridge Project is anticipated to be completed by July 1, 2016.

E. County's planned construction of the Bridge Project will affect the Right-of-Way in the following particulars:

- (i) County plans to remove the Staff Jennings Trestle and replace it with trackage on fill constructed within the Right-of-Way, unless the State

Historical Preservation Office ("SHPO") requires replacement of the trestle. The Consortium has notified County that the Consortium favors replacement of the trestle with trackage on fill because there is no longer any need for the driveway crossing beneath the trestle, trackage on fill is safer and requires less long-term maintenance efforts and costs, and trackage on fill uses fewer creosote-treated timbers than a replacement trestle;

- (ii) County plans to utilize a portion of the Right-of-Way as a haul road, requiring complete closure of track operations between the Sellwood Bridge and SW Miles Street for several years, including interruption of Willamette Shore Trolley operations;
- (iii) As part of the Bridge Project, County has agreed to locate a multi-purpose access (the "MPA") in portions of the Right of Way at the request of the Public Stakeholders' Committee for extension of the regional multi-use path, including a sidewalk crossing the Right-of-Way and connecting the path to Highway 43, and provision of multi-purpose access to the County bridge, City of Portland parks, the Consortium excursion Trolley and future rail mass transit, and River View Cemetery irrigation system maintenance and operations;
- (iv) County plans to perform slope stabilization work that will involve placement of landslide stabilization shafts and anchors within the Right-of-Way;
- (v) County plans to construct a temporary detour bridge that will utilize air space over the Right-of-Way;
- (vi) County plans to replace the existing Sellwood Bridge structure overcrossing the Right-of-Way and connecting to the interchange with Highway 43;
- (vii) County plans to reconstruct the Macadam Bay Driveway crossing the Right-of-Way between the Macadam Bay Moorage and SW Macadam Avenue;
- (viii) County plans to replace the existing culverts at Stephens Creek with a fish and wildlife friendly concrete arch culvert; and
- (ix) County plans to remove trees and vegetation, including many non-native, invasive species, within the Right-of-Way and excavate portions of the Right-of-Way to accommodate the construction activities and

improvements described in Subparagraphs (i) through (viii) of this Recital E, but will replant the disturbed areas with all native trees and vegetation.

F. Use of the Right-of-Way benefits the Bridge Project because it maximizes safe and efficient access for the supply of materials and equipment to the construction site, controlled by an existing traffic signal at Macadam Avenue.

G. The Bridge Project will provide benefits to the Consortium including improved management of drainage, placement of new ballast and sub-ballast, and replacement of ties.

H. The Parties understand that the Consortium is willing to accommodate County's Bridge Project so long as such accommodation does not prevent, significantly impair or otherwise interfere with the Consortium's ability to use the Right-of-Way for the purpose of public rail mass transit, or significantly increase the Consortium's cost to operate and maintain the Right-of-Way, after the Bridge Project's temporary use of the Right-of-Way is complete.

I. The Parties understand that the Consortium is also willing to accommodate County's Bridge Project, even though removal of the trestle and tracks for construction of the haul road will preclude operation of the excursion Trolley north of the Bridge Project during the term of the temporary construction easement defined in Section 1.b, provided that COLO is adequately compensated by the Bridge Project for such service interruption.

NOW THEREFORE, the premises being in general as stated in the foregoing recitals, it is agreed by and among the Parties hereto as follows:

AGREEMENT

1. GENERAL AGREEMENTS

- a. The Parties agree that the Bridge Project may not impact the Right-of-Way in such manner or degree so as to prevent, impair or otherwise interfere with the Consortium's ability to use the Right-of-Way for the purpose of public rail mass transit, or significantly increase the Consortium's cost to operate and maintain the Right-of-Way, after the Bridge Project's temporary use of the Right-of-Way is complete. In order to ensure this outcome, the Parties will work together to balance their respective interests. The Parties agree that the Bridge Project may temporarily preclude operation of the excursion Trolley, for which County will compensate COLO in accordance with Section 5 hereof.
- b. For valuable consideration and in accordance with the terms of this Agreement which are expressly made part of the TCE (defined below), TriMet hereby grants County a temporary construction easement (the "TCE") in the areas depicted on

Figures 1, 2 and 3 of Exhibit B, attached hereto and made a part hereof, for purposes of (i) permitting County to remove the Staff Jennings Trestle, in accordance with the conditions set forth in Section 2; (ii) permitting County to construct, operate and maintain a haul road in that portion of the Right-of-Way between the existing Sellwood Bridge and SW Miles Street, in accordance with the conditions set forth in Section 3; (iii) permitting County to construct landslide stabilization structures within the Right-of-Way in accordance with the conditions set forth in Section 6.b; (iv) permitting County to construct, operate and maintain a temporary detour bridge in accordance with the conditions set forth in Section 6.c hereof; and (v) permitting County to construct the Replacement Facilities (defined in Section 4); in accordance with the conditions set forth in Section 4 hereof. The term of the TCE granted herein shall be four (4) years commencing on the Effective Date set forth in Section 11.b below.

- c. The value of the TCE hereby granted by TriMet has been determined through an appraisal process and is stated in County's Proposal for Compensation attached hereto as Exhibit A and made a part hereof. The parties have relied upon the "Updated Appraisal report, Willamette Shore Railway Corridor, Portland to Lake Oswego, Date of Value: December 19, 2011," prepared by Gail R. Webb, a certified appraiser, on the basis of highest and best use for the property as permitted by the Uniform Relocation Assistance and Real Property Acquisition Policies Act, as amended. County will compensate COLO on behalf of the Consortium for interference with Willamette Shore Trolley operations caused by the Bridge Project in accordance with Section 5 below.
- d. To the extent any potential impacts of the Bridge Project not identified in this Agreement are discovered by any of the Parties, the Parties agree to negotiate in good faith and agree upon resolution of those impacts prior to County moving forward with any design or construction involving those impacts. The parties also agree to act in good faith to minimize schedule impacts to the Bridge Project.

2. REMOVAL & PRESERVATION OF STAFF JENNINGS TRESTLE

With respect to County's proposed removal of the Staff Jennings Trestle, conditions for granting of the TCE include the following:

- a. County has entered into a separate Permit of Entry with TriMet on behalf of the Consortium for purposes of coordinating the removal and replacement of the Staff Jennings Trestle.
- b. The Parties recognize that, by letter dated November 29, 2011, SHPO concurred with a finding of no adverse effect if, among other conditions, the trestle is

reconstructed. SHPO invited County to provide a letter accepting the stated conditions or propose an alternate process.

- c. The Consortium has determined that the Staff Jennings Trestle is not needed for future rail operations if a fill can be constructed within the available Right-of-Way. In view of the existing SHPO concurrence, County will propose to SHPO an alternate process pursuant to which the trestle would be replaced with trackage on fill constructed within the Right-of-Way and pursue such alternative process diligently and in good faith. County will provide the Consortium with copies of all correspondence between County and SHPO regarding such alternative process, including but not limited to a copy of the SHPO determination.
- d. When removing timbers and other materials from the existing trestle, County shall use reasonable care not to damage the materials. County will preserve and return to the Consortium all dated nail heads and historical markers. Timbers and all other materials that are not used by the County to reconstruct the trestle shall be made available to the Consortium. TriMet, on behalf of the Consortium, shall inspect and determine which materials are suitable for its reuse, and County shall haul these materials to a storage location previously approved by TriMet, at County's Yeon Shops, 1600 SE 190th Avenue in Portland. All remaining materials will be disposed of by County or its contractor at no cost to the Consortium.

3. HAUL ROAD

With respect to County's proposed construction, operation and maintenance of a haul road in that portion of the Right-of-Way between the existing Sellwood Bridge and SW Miles Street, conditions for granting of the TCE include the following:

- a. County has consulted with SHPO and the Oregon Department of Transportation ("ODOT") Geo-Environmental Section and obtained SHPO concurrence that removal of track and use of the Right-of-Way as a haul road is permitted by SHPO's existing approval and finding of No Adverse Effect dated November 29, 2011, as amended by letter dated January 18, 2012. A copy of the E-mail communications confirming SHPO's and ODOT's approval is attached hereto as Exhibit D and made a part hereof.
- b. County will cause its contractor to remove the existing track and track-related equipment and materials, including rail, tie plates, taper and transition rails, signal equipment, nine insulated joints, and angle bars; and to move these materials to the County's Yeon Shops, 1600 SE 190th Avenue in Portland, or other Consortium-approved locations. County will cause its contractor to dispose of all existing ties not suitable as relay at no cost to the Consortium.

- c. County will enter into an amendment to this Agreement with the Consortium for purposes of coordinating the replacement of track removed by County for the haul road.
- d. At a minimum and subject to the terms of the amendment to this Agreement referenced in Section 3.c above, and further subject to Section 4 below, upon the earlier of completion of the Bridge Project or when the haul road is no longer needed, County will cause its designer to design and its contractor to rebuild a 4'-8.5" gauge railway at a location selected by County's designer within the existing grade and alignment, as approved by TriMet on behalf of the Consortium. The rebuilt track will include 12" of new ballast tamped beneath the ties and trackside drainage system, and sub-ballast as required in the Consortium's reasonable discretion. The track will be reconstructed with new 6"x8"x8' creosoted ties. Rail will be the existing track removed by County for the haul road (subject to the Consortium's inspection and approval), except for damaged track, which shall be replaced by 115 RE continuously welded rail or an alternate, comparable rail approved by the Consortium, together with the appropriate tie plates, and angle bars with new track bolts and spikes. County will ensure that all forces performing the work are qualified rail construction contractors.
- e. The Parties recognize that County's use of the Right-of-Way as a haul road will impede access to the section of track between the Long Trestle and the Sellwood Bridge for maintenance by COLO (or by an operator of the excursion Trolley, who may be under contract to COLO) for the duration of the TCE. As a result, during the duration of the TCE, County will compensate COLO for the increased cost of maintenance. County will further allow COLO or its contractor to use the haul road to access the Right-of-Way north and south of the haul road for maintenance purposes, and County will construct, at County's expense, a platform at each end of the haul road to allow mounting of the track with hi-rail gear.

4. REPLACEMENT FACILITIES

- a. County will design and construct replacement facilities for the Staff Jennings Trestle and the portion of track removed to accommodate the haul road (the "Replacement Facilities"). The Replacement Facilities must be in like or better condition than existing.
- b. County will replace the Staff Jennings Trestle with trackage on fill constructed within the Right-of-Way, unless SHPO requires replacement of the trestle. The Consortium has notified County that the Consortium favors replacement of the trestle with trackage on fill. County will promptly apply to SHPO for approval of trackage on fill, and TriMet, on behalf of the Consortium, will cooperate with County as needed to facilitate SHPO review.

- c. At least 15 months prior to the start of construction of the Replacement Facilities, County will develop a Replacement Facility development and review schedule ("Schedule") that is acceptable to the Consortium and addresses the Consortium's concerns regarding ultimate width of the Right-of-Way. The Schedule must contain interim development milestones and adequate review periods to allow review.
- d. Before commencing construction of the Replacement Facilities, the County shall provide to the Consortium, for the Consortium's review and comment, the County's design plans for the Replacement Facilities at the design stages established by the Bridge Project (for example, the 30% and 60% stages of design). At least one (1) year prior to the start of construction of the Replacement Facilities, County's Bridge Project designers will propose to the Consortium a suitable design for the Replacement Facilities to be built by County within the existing Right-of-Way. County will furnish such design, including 90% plans and geotechnical information (the "Replacement Facilities Design"), for the Consortium's review and approval. The Consortium will have authority to review, comment upon and approve the Replacement Facilities Design. The Consortium's review shall be completed and written comments returned to County within ninety (90) days after the Consortium's receipt of the Replacement Facilities Design. County shall have ninety (90) days after receipt of the Consortium's comments to revise the Replacement Facilities Design and resubmit it for the Consortium's review and approval. If the parties are unable to agree upon a Replacement Facilities Design, they shall engage in the Dispute Resolution process set forth in Section 12.j before the County commences construction of the Replacement Facilities. County will compensate the Consortium for its review efforts and, in the event the Consortium determines it does not have sufficient staff resources available to perform reviews, County will furnish at its expense a third-party reviewer acceptable to the Consortium.
- e. County's Replacement Facilities Design shall include detailed draft specifications. In addition to the items set forth in Subsection 3.d above, specifications must address surface drainage, track embankment construction (including subsurface preparation, installing time of year/groundwater level requirements, embankment material, and installation and compaction in lifts), and be supported by a geotechnical engineer's report for track embankment design.
- f. Once the Replacement Facilities Design is approved by the Consortium, County will permit and construct the Replacement Facilities at its own cost and risk. County will provide funding or third-party services to provide inspection of Replacement Facilities. Construction of the Replacement Facilities shall be complete prior to expiration of the TCE.

5. INTERFERENCE WITH TROLLEY OPERATIONS

Removal of the Staff Jennings Trestle and use of the Right-of-Way as a haul road may substantially interfere with the maintenance and operation by COLO or its contractor of the excursion Trolley ("Trolley"), in that Trolley operations (if reinstated during the term of the TCE) will be restricted to the segment south of the Sellwood Bridge from the date Trolley operations are reinstated through the earlier of the date Trolley operations are again discontinued or termination of the TCE ("the Closure Period"). During the Closure Period, the Trolley will be unable to operate in the portion of the Right-of-Way north of the Sellwood Bridge and will be unable to access the northern terminus at SW Bancroft Street. The Trolley will be able to continue operations within the Right-of-Way in the area south of the Sellwood Bridge during the Closure Period. However, the Parties recognize that this may be a less desirable operating segment that will likely result in less passenger revenue. Following three full months of operations after Trolley operations restart south of the Sellwood Bridge during the Closure Period, COLO will provide County an analysis comparing (1) monthly gross revenues from Trolley operations during the first three (3) full months of such Trolley operation after restart of Trolley operations south of the Sellwood Bridge; and (2) gross revenues for the corresponding months during 2008, the last full year of Trolley operations before the Closure Period. In consideration of the interference with Trolley service pursuant to this Agreement, for each month or portion thereof of operations following the restart, County will compensate COLO on behalf of the Consortium in an amount equal to the difference in average monthly gross revenues between the first three (3) full months of operations after restart and average monthly gross revenues for those same three full months during the year 2008.

6. RIGHT-OF-WAY ENCROACHMENTS

a. Regional Multi-use Path & Multi-Purpose Access

For valuable consideration, including County's performance of its obligations described in this Subsection (a), TriMet will make the Right-of-Way available for purposes of permitting County to locate a regional multi-use path, including a sidewalk crossing the Right-of-Way and connecting the path to Highway 43, and provide multi-purpose access to the County bridge, City of Portland parks, Consortium excursion Trolley and future rail mass transit, and River View Cemetery irrigation system maintenance and operations ("MPA") thereon. Conditions for allowing County to site an MPA on the Right-of-Way include the following:

- i. The Parties recognize that the Consortium intends to build rail transit facilities within the Right-of-Way at the location of the proposed MPA, and agree that siting the MPA within the Right-of-Way must not preclude excursion Trolley operations or future rail mass transit use. The Consortium specifically reserves the right to use the Right-of-Way for excursion Trolley operations and future rail mass transit purposes, including but not limited to use of the MPA for access to existing excursion Trolley and future rail mass transit facilities. County's current

conceptual design for the portion of the MPA within the Right-of-Way is attached as Exhibit E.

- ii. County will coordinate with TriMet on behalf of the Consortium to confirm whether the Right-of-Way can accommodate both the proposed MPA and either excursion Trolley operations or future rail mass transit use.
- iii. It appears that future rail mass transit use will require a minimum of 26' for a double track alignment and that the MPA will require 14'-18', for a total, combined cross-section width of between 40' and 44'. The Parties recognize that this cross-section generally would accommodate both an MPA and a future double track alignment, but accept that this may preclude light rail.
- iv. Recognizing the Consortium's reservation of the right to use the Right-of-Way for future rail mass transit purposes, County agrees that it will design and construct the MPA as necessary (subject to receipt of necessary governmental approvals) to accommodate a future double track streetcar alignment within the Right-of-Way. Further, County recognizes that the Consortium may temporarily disrupt operation of the MPA in order to accommodate construction of a future double track alignment within the Right-of-Way.
- v. Before commencing construction of any portion of the MPA within the Right-of-Way, the County shall provide to the Consortium, for the Consortium's review and comment, the County's design plans for such portion of the MPA at the design stages established by the Bridge Project (for example, the 30% and 60% stages of design). At least one (1) year prior to the start of construction of such portion of the MPA, County's Bridge Project designers will propose to the Consortium a suitable design therefor. County will furnish such design, including 90% plans and geotechnical information (the "MPA Design"), for the Consortium's review and approval. The Consortium will have authority to review, comment upon and approve the MPA Design. The Consortium's review shall be completed and written comments returned to County within ninety (90) days after the Consortium's receipt of the MPA Design. County shall have ninety (90) days after receipt of the Consortium's comments to revise the MPA Design and resubmit it for the Consortium's review and approval. If the parties are unable to agree upon a MPA Design, they shall engage in the Dispute Resolution process set forth in Section 12.j before the County commences construction of any portion of the MPA within the Right-of-Way. County will compensate the Consortium for its review efforts and, in the event the Consortium determines it does not have sufficient staff resources available to perform reviews, County will furnish at its expense a third-party reviewer acceptable to the Consortium.

- vi. County's MPA Design shall include detailed draft specifications. Once the MPA Design is approved by the Consortium, County will permit and construct the MPA at its own cost and risk. Construction of the MPA within the Right-of-Way shall be complete prior to expiration of the TCE.
- vii. County will be responsible for the cost of all necessary retaining walls to contain the required cuts and fills for the MPA and the cost to acquire any additional right-of-way needed for cut and fill sections.
- viii. If the Trolley has operated seasonally in the year prior to termination of the TCE or rail mass transit is operating south of the Sellwood Bridge at termination of the TCE, the Parties agree to negotiate in good faith and resolve any issues regarding design, entitlements, cost and construction of a fence placed at the boundary line between the Right-of-Way and the MPA. Once such issues are resolved and the elements of such resolution are incorporated into an amendment to this Agreement, County will be responsible for the cost to furnish and install the fence. The parties also agree to act in good faith to minimize any schedule impacts to the Bridge Project.
- ix. At its own cost, County will perform survey work and property title research necessary for Metro and TriMet attorneys to confirm that title to the Right-of-Way is reasonably sufficient to allow use as an MPA. If title is not sufficient, then no MPA will be permitted by the Consortium.
- x. County will obtain any additional evaluations by the Federal Highway Administration required by Section 4(f) of the USDOT Act of 1966, to assess the Bridge Project's impacts on public park land, historic sites or wildlife resources, and, particularly, those associated with use of the Right-of-Way as an MPA, and County will make reasonable attempts to obtain any additional agreements associated with use of the Right-of-Way as an MPA. The parties acknowledge that, given the Consortium's mission of preserving the Right-of-Way for public rail mass transit use, issues raised by such a Section 4(f) evaluation may preclude or complicate TriMet's granting of an easement to County for the MPA, such that other real estate solutions such as granting of a revocable license or permit may be necessary.
- xi. The parties agree that, to the extent permitted by law, they will not raise the use of the Right-of-Way as a MPA in connection with any subsequent 4(f) evaluation that may be conducted for the development of the Right-of-Way for future rail mass transit purposes.
- xii. The Bridge Project and MPA may so affect the location of a future public rail mass transit alignment within the Right-of-Way that property swap(s) between

the Consortium and adjacent property owner(s) may be necessary to preserve the Right-of-Way for future public rail mass transit use. No MPA will be permitted by the Consortium unless County causes such swap(s) to occur, to the reasonable satisfaction of the Consortium.

- xiii. In consideration of the Parties' shared use of and benefits in the MPA and County's performance of its obligations described in this Subsection (a), TriMet, as right-of-way agent for the Consortium, will grant the MPA to County at no cost, as provided in the schedule of compensation under Section 9.

b. Slope Stabilization

TriMet will issue an irrevocable license ("License") to County for the purpose of permitting County to place landslide stabilization shafts, anchors, associated monitoring equipment, drilled shafts and grade beams within the Right-of-Way, and to perform associated tree removal and excavation work (collectively, "Landslide Stabilization Work"), pursuant to TriMet's standard license procedures, including but not limited to TriMet's standard license fee. Conditions for granting the License include the following:

- i. All shafts, anchors, and associated monitoring equipment where practicable, must be located at least 4' below either (i) the existing top of rail; or (ii) the top of rail as designed by County, whichever is higher. Shafts, anchors and monitoring equipment must not interfere with Trolley operations.
- ii. Shafts, anchors, and associated monitoring equipment must accommodate future construction and operation of a double-track rail alignment and the MPA; it is expressly understood that County must design its facilities to accommodate loading of future rail transit vehicles and that County shall have no access whatsoever to its facilities within the Right-of-Way once installed, except as required for monitoring (including corrective action) by County's contractor during the warranty period; provided, however, that County's monitoring activities (including corrective action) may not interfere with maintenance or operation of the Trolley or future rail mass transit. Long-term monitoring costs and responsibilities will be allocated and memorialized in the parties' Maintenance Agreement, currently being negotiated.
- iii. Prior hereto, the County has provided to the Consortium, for the Consortium's review and comment, the County's plans and specifications for the Landslide Stabilization Work (the "Landslide Stabilization Design"). County must provide to the Consortium, for the Consortium's review and comment, any proposed revisions to the Landslide Stabilization Design. The Consortium will have authority to review, comment upon and approve such proposed revisions. The Consortium's review shall be completed and written comments returned to

County within ninety (90) days after the Consortium's receipt of the proposed Landslide Stabilization Design revisions. County shall have ninety (90) days after receipt of the Consortium's comments to review the proposed revisions and prepare and resubmit the revised Landslide Stabilization Design for the Consortium's review and approval. If the parties are unable to agree upon revisions to the Landslide Stabilization Design, they shall engage in the Dispute Resolution process set forth in Section 12.j before the County commences construction pursuant to its proposed revisions. County will compensate the Consortium for its review efforts and, in the event the Consortium determines it does not have sufficient staff resources available to perform reviews, County will furnish at its expense a third-party reviewer acceptable to the Consortium.

- iv. County will permit and construct the Landslide Stabilization Work at its own cost and risk. Construction of the Landslide Stabilization Work within the Right-of-Way shall be complete prior to expiration of the TCE.
- v. The parties will comply with the terms of the License. In the event of a conflict between the terms of the License and the body of this Agreement, the parties acknowledge that the terms contained in the License prevail and will supersede the terms of this Agreement.

c. Temporary Detour Bridge

With respect to County's proposed construction, operation and maintenance of a temporary detour bridge that will utilize air space over the Right-of-Way, conditions for granting of the TCE include the following:

- i. The TCE area for the temporary detour bridge will be limited vertically to the area above a plane parallel with and seventeen feet above existing top of the rail.
- ii. County's use of the TCE for the temporary detour bridge must not interfere with the Consortium's use of the Right-of-Way.
- iii. If County's use of the TCE for the temporary detour bridge requires changes in the Macadam Bay driveway that necessitate relocation of the existing crossing, all such changes will be at County's sole cost and expense.

d. Permanent Crossing Structure Easement

For valuable consideration, TriMet on behalf of the Consortium will grant to County, its successors and assigns, a permanent crossing structure easement for purposes of permitting County to occupy, construct, operate, maintain, repair, renew and reconstruct the replacement

Sellwood Bridge that will utilize air space over the Right-of-Way overlapping but partially outside the boundaries of County's existing Sellwood Bridge right-of-way ("Permanent CSE"). Further details of this easement will be memorialized in the parties' Permanent Crossing Structure Easement, currently being negotiated, which shall be recorded prior to opening the easement for its beneficial use.

Conditions for granting of the Permanent CSE include the following:

- i. In consideration of County's construction of the replacement Sellwood Bridge and performance of its other obligations described in Sections 2, 3, 4 and 6 of this Agreement, TriMet, as right-of-way agent for the Consortium, will grant the Permanent CSE to County at no cost, as provided in the schedule of compensation under Section 9.
 - ii. The area of the Permanent CSE will be limited vertically to the area above a plane parallel with and seventeen (17) feet above existing top of the rail.
 - iii. The Permanent CSE must not interfere with the Consortium's use of the Right-of-Way.
- e. Macadam Bay Driveway Crossing Easement

For valuable consideration, TriMet on behalf of the Consortium will grant to County, its successors and assigns, a permanent crossing easement for purposes of permitting County to occupy and construct and for the residents of Macadam Bay Moorage to operate, maintain, repair, renew and reconstruct the Macadam Bay Driveway crossing the Right-of-Way between the moorage and SW Macadam ("Macadam Bay Easement"). Further details of this easement will be memorialized in the parties' Macadam Bay Driveway Crossing Easement, currently being negotiated, which shall be recorded prior to opening the easement for its beneficial use.

Conditions for granting of the Macadam Bay Easement include the following:

- i. County will rebuild the Macadam Bay Driveway, and install all associated crossing equipment as required in a subsequent Crossing Order to be issued by the Oregon Department of Transportation for the Bridge Project, in substantially the same location as the existing Macadam Bay Driveway crossing. In consideration of Macadam Bay's existing driveway easement and County's performance of its obligations described in this Subsection (e), TriMet, as right-of-way agent for the Consortium, will grant the Macadam Bay Easement to County at no cost, as provided in the schedule of compensation under Section 9.
- ii. The Macadam Bay Easement must not interfere with the Consortium's use of the Right-of-Way.

7. COMPLIANCE WITH ODOT CROSSING ORDER; MAINTENANCE AGREEMENT

In connection with County's Bridge Project, on August 20, 2012, the Oregon Department of Transportation issued Crossing Order No. 50963, a copy of which is attached hereto as Exhibit C. At no cost to the Consortium and to the Consortium's reasonable satisfaction, the County will perform all construction and maintenance activities required of the Consortium pursuant to Sections 7 and 8 of the Crossing Order. Further details of this obligation will be memorialized in the parties' Maintenance Agreement, currently being negotiated. The Maintenance Agreement will also address allocation of maintenance and monitoring costs and responsibilities for the Stephens Creek Culvert being installed by the County Bridge Project.

8. HAZARDOUS MATERIALS

- a. County will perform environmental investigations and will cause its contractor to manage and dispose appropriately of all hazardous materials, as that term is defined under Oregon law, that are required to be removed from the Right-of-Way as part of the County's Bridge Project activities. County will pay all removal and disposal costs for such hazardous materials.
- b. To the extent caused by or related to County's use of the Right of Way, County shall be responsible for any leak, spill, release or disposal of any hazardous materials, as that term is defined under Oregon law, in violation of federal, state or local laws, rules, regulations, or ordinances on, under, or adjacent to the Right-of-Way, or any threat of or reasonable suspicion of any of the same; and County shall immediately notify TriMet upon becoming aware of any such leak, spill, release or disposal of hazardous materials and provide notice to any applicable governmental agency relating to such hazardous materials.
- c. In the event of such a leak, spill, or release of a hazardous material on the Right of Way or the threat of or reasonable suspicion of the same, County shall immediately undertake all response necessary to contain, clean up, and remove the hazardous material and shall undertake within a reasonable time all investigatory, remedial and/or removal actions necessary or appropriate to ensure that any contamination by the hazardous material is eliminated. TriMet shall have the right to review and approve all investigatory, remedial, and removal procedures and the company(ies) and/or individuals conducting said procedures. Within thirty (30) days following completion of such investigatory, remedial and/or removal actions, County shall provide TriMet with a certificate acceptable to TriMet that all such contamination has been eliminated as required by federal, state, or local law or regulations.

9. COMPENSATION

FINAL Saved 11-30-12

- a. In consideration of the easements and other rights granted pursuant to this Agreement and as detailed in County's Proposal for Compensation attached hereto as Exhibit A and made a part hereof, County will compensate the Consortium through TriMet or COLO as follows:

Right Granted & Duration	Compensation Amount/Methodology	Paid to
TCE	See Exhibit A	TriMet
Interference with Trolley Operations	To be determined per Section 5	COLO
Interference with Maintenance Operations	Actual invoiced cost of labor, materials & equipment not to exceed \$100,000	COLO
MPA Rights	Donation by Consortium	
Slope Stabilization	TriMet standard license fee	TriMet
Permanent CSE	None (replaces existing Right-of-Way easement)	
Macadam Bay Driveway Crossing Easement	None (replaces existing Driveway easement)	

In the event the TCE or other rights are extended beyond their initial term for any reason, then in consideration for such extension, County will pay TriMet or COLO on behalf of the Consortium on a pro rata basis.

- b. In addition, County will reimburse the Consortium for all expenditures, including but not limited to staff and consultant time incurred between January 1, 2012, and completion of the Bridge Project, in supporting design development, conducting reviews as provided herein, and coordinating the Bridge Project with the Consortium's planning for future rail use of the Right-of-Way.
- c. County will be entitled to take a credit against the compensation paid to the Consortium for the actual costs of constructing the following improvements associated with the Bridge Project:
- i. New ballast and sub-ballast placed within the Right-of-Way;
 - ii. Replacement of all ties within the Right-of-Way;
 - iii. Placement of three (3) culverts and a ditch inlet within the Right-of- Way. Any new pipes crossing beneath the Right-of-Way shall be ASTM A252 Grade 2 (35kips yield strength).
- d. Payments by County
- i. County shall compensate the Consortium for the TCE rights granted herein on the Effective Date.

- ii. County shall compensate the Consortium for interference with Trolley operations and/or interference with maintenance operations, and shall reimburse the Consortium for expenditures described in subsection b above, within thirty (30) days of County's receipt of a proper invoice. Invoices shall be based on actual costs incurred by the Consortium during the applicable billing period.

10. PERMITS OF ENTRY

The Parties recognize that County may need access to the Right-of-Way before all of the easements and other rights contemplated by this Agreement can be finalized. In order to enable County to meet its schedule, TriMet on behalf of the Consortium will issue Permits of Entry to County based on the commitments made in this Agreement, in anticipation of the execution of the easements and other rights required by this Agreement, and conditioned upon agreement between the parties to the terms of such easements and other rights. Granting of such Permits of Entry will neither expressly nor impliedly transfer title to the Right-of-Way, nor forfeit the Consortium's right to use the Right-of-Way for rail purposes in the future.

11. DRAWINGS AND SPECIFICATIONS

County will provide TriMet with copies of the drawings and specifications for facilities affecting the Right-of-Way. Thereafter, in the event County substantially modifies its design for the permanent facilities to be located within the Right-of-Way (MPA, Permanent Crossing Structure, Macadam Bay Driveway, and/or landslide stabilization shafts and anchors), County will provide TriMet with opportunities for review, comment upon and approval of such modifications. County agrees to provide TriMet with copies of drawings and specifications in a timely manner.

At the conclusion of the Bridge Project, County will provide TriMet with copies of the Record Drawing Set for the permanent facilities to be located within the Right-of-Way.

12. GENERAL PROVISIONS

a. Integration

This Agreement, and the TCE, License and other rights granted pursuant to this Agreement, constitute the entire agreement between the Parties and supersede all prior or contemporaneous written or oral understandings, representations or communications of every kind relating to the Bridge Project. No course of dealing between the Parties and no usage of trade will be relevant to supplement any term used in this Agreement.

b. Term of Agreement

This Agreement is effective as of the date of last signature below (the "Effective Date"), and will remain in effect until the completion of all obligations created by this Agreement. The TCE is granted for a four (4)-year term, beginning May 17, 2012, the commencement date of the Permits of Entry issued by TriMet on behalf of the Consortium in accordance with Section 10, and extending through May 17, 2016.

c. Termination and Amendment

This Agreement may be terminated or amended by mutual written agreement of all Parties.

d. Waiver and Amendment

No waiver of any portion of this Agreement and no amendment, modification or alteration of this Agreement will be effective unless in writing and signed by the authorized representatives of all Parties. Acceptance or acquiescence in a course of performance rendered under this Agreement will not be relevant to determine the meaning of this Agreement, and no waiver by a party of any right under this Agreement will prejudice the waiving party's exercise of the right in the future.

e. Interpretation of Agreement

This Agreement will not be construed for or against any party by reason of the authorship or alleged authorship of any provision. The Section headings contained in this Agreement are for ease of reference only and will not be used in construing or interpreting this Agreement.

f. Severability/Survivability

If any of the provisions contained in this Agreement are held by a court of law or arbitrator to be illegal, invalid or unenforceable, the enforceability of the remaining provisions will not be impaired. All provisions concerning indemnity survive the termination of this Agreement for any cause.

g. Laws and Regulations

The Parties agree to abide by all applicable laws and regulations in carrying out this Agreement.

h. Indemnification

- i. Subject to the conditions and limitations of the Oregon Constitution and the Oregon Tort Claims Act, codified at ORS 30.260 through 30.300, as applicable to local public bodies under ORS 30.272 and public bodies under ORS 30.273 (the "OTCA"), County will indemnify, hold harmless, and defend TriMet, COLO, the Consortium, and the operator of the Consortium's excursion Trolley (currently the Oregon Electric Railway Historical Society ("OERHS")) and each of their officers, employees, agents, and representatives from and against all claims, demands, penalties, and causes of action of any kind or character (including the cost of defense thereof, including attorney fees) in favor of any person on account of personal injury, death, damage to property, or violation of law, which arises out of, or results from, the negligent or other legally culpable acts or omissions of County, its employees, agents, contractors or representatives relating to or arising from its actions under this Agreement.
- ii. County agrees to include, in any third-party contract for the Bridge Project, a provision to the effect that the contractor will fully indemnify and defend TriMet, COLO, the Consortium and OERHS and each of their officers, employees, agents, and representatives from and against all claims, demands, penalties, and causes of action of any kind or character (including the cost of defense thereof, including attorney fees) in favor of any person on account of personal injury, death, damage to property, or violation of law, which arises out of, or results from, the negligent or other legally culpable acts or omissions of such contractor, its employees, agents, subcontractors or representatives in connection with the Bridge Project.

i. Insurance

- i. While this Agreement is in effect, County agrees that it will require any contractors it uses to agree to comply with the insurance requirements provided below. Prior to commencement of work under this Agreement, County shall furnish to TriMet a certificate(s) of insurance executed by a duly authorized representative of each insurer showing compliance with the insurance requirements below. Failure of TriMet to demand such certificate or other evidence of full compliance with these insurance requirements, or failure of TriMet to identify a deficiency from evidence that is provided shall not be construed as a waiver of County's obligation to require such insurance from its contractor(s).
- ii. County's contractor(s) shall be responsible for payment of all premiums and deductibles. Insurance shall be maintained of the types and in the amounts described below:

- (1) Commercial General Liability (CGL) Insurance with a limit of not less than \$1,000,000 each occurrence (plus Pollution Legal Liability coverage with an aggregate limit of at least \$5,000,000 for bodily injury, property damages including loss of use, cleanup costs, and defense expenses; the CGL policy must delete any exclusion relating to work performed within 50' of a railroad.
- (2) Business Auto Liability Insurance with a limit of not less than \$5,000,000 each accident. Such insurance shall cover liability arising out of the use of any auto (including owned, hired, and non-owned autos).
- (3) Workers Compensation and Employer's Liability Insurance. The employer's liability limit shall not be less than \$1,000,000 each accident for bodily injury by an accident and \$1,000,000 each employee for bodily injury by disease. The workers compensation limit shall be equivalent to or better than the Oregon statutory limits.

- (4) The insurance required under this Paragraph must:

Include TriMet, COLO, the Consortium, and OERHS, and each of their respective directors, officers, agents, and employees as additional insureds with respect to work performed within the Right-of-Way.

- iii. County and/or its contractor shall give TriMet, COLO, the Consortium and OERHS no less than 30 days notice of cancellation or termination of the above-required insurance coverage.
- iv. All insurance policies must include a "waiver of subrogation" clause, provided that the coverage required hereunder is not adversely affected.
- v. The coverage required hereunder must be primary and non contributory.

j. Dispute Resolution

TriMet, COLO and County will negotiate in good faith to resolve any dispute arising out of this Agreement or the easements, license or other rights granted pursuant hereto. If the Parties are not able to resolve a dispute within 30 days after such dispute has arisen, they will submit the matter to mediation, and the Parties will each pay its own costs and share equally in mediation fees and costs. In the event the dispute is not resolved in mediation, the Parties will submit the matter to binding arbitration. The decision of the arbitrator will be final, binding

and conclusive upon the Parties and subject to appeal only as otherwise provided in Oregon law. The Parties will each pay their own costs, but will share equally in fees and costs of the arbitration and/or arbitrator service. The Parties will continue in the performance of their respective obligations notwithstanding the dispute. This dispute resolution procedure may be modified by mutual agreement of the Parties.

k. Notice

Routine correspondence and communication regarding the Bridge Project will be given as follows:

Consortium:

Sean Batty, Director Operating Projects & WSL Consortium Representative
TriMet
710 NE Holladay Street
Portland, OR 97232

Nicholas Stewart, Right-of-Way Agent
TriMet
710 Holladay Street
Portland, OR 97232

Jamie Snook, Principal Planner
Planning & Development
Metro
600 NE Grand Avenue
Portland, OR 97232

County:

Chuck Maggio, PE
Sellwood Bridge Project Office
2100 SW River Parkway
Portland, OR 97201

Notices regarding trolley operations will also be given to:

Brant Williams
Assistant City Manager
City of Lake Oswego
380 A Avenue
P.O. Box 369
Lake Oswego, OR 97034

Anyone entitled to notice may designate a different representative for notice purposes by giving written notification to the other parties as provided in this Section.

l. Choice of Law; Venue

This Agreement, and all rights, obligations and disputes arising out of this Agreement, will be governed by Oregon law. All litigation arising out of this Agreement will be decided by the state courts in Oregon. Venue for all mediation, arbitration, and litigation will be in Multnomah County, Oregon.

m. No Third-Party Beneficiary

Except as set forth herein, this Agreement is between and among the Parties and creates no third-party beneficiaries.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year hereinafter written.

TRI-COUNTY METROPOLITAN
TRANSPORTATION DISTRICT OF
OREGON

Approved as to Form:

By: _____
Name: Daniel W., Blocher, P.E. _____
Title: Executive Director
Date: _____

Tamara Lesh
Deputy General Counsel, TriMet

CITY OF LAKE OSWEGO, OREGON

Approved as to Form:

By: _____
Title: _____
Date: _____

City Attorney

MULTNOMAH COUNTY, OREGON

Approved as to Form:
JENNY M. MORE, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY

By: Loretta G. Smith
Title: Jeff Cogen, Chair Loretta G. Smith
Date: 11/30/2012 Vice Chair

By: Carmen M. Edlin
Asst. County Attorney

Exhibit A

County's Proposal for Compensation

To: Tamara Lesh, Jamie Snook

From: Ian Cannon *WBC*

Re: Proposal for Compensation for WSLC Right of Way

Summary

The Sellwood Bridge Replacement Project (Sellwood Project) will be building numerous improvements in the area West of the Willamette River from South of the Sellwood Bridge North to Miles Street. The Sellwood Project will need to utilize property that belongs to the Willamette Shoreline Consortium (WSLC). The major impacts to the WSLC Right of Way (ROW) are an approximately four year closure of the ROW to rail traffic for a temporary construction easement (TCE) and permanent use of some portion of the WSLC ROW for the proposed Multi-Purpose Access (MPA), including the sidewalk connecting Highway 43 to the MPA (the Sidewalk Easement), the Permanent Crossing Structure Easement (Permanent CSE), and the Macadam Bay Driveway Crossing Easement (MBDE). The Sellwood Project will include improvements that have near term benefits to the WSLC and future benefits to the possible streetcar project.

The Sellwood Project proposes that the value of the TCE be partially offset by the value of improvements that have near term benefit for the WSLC.

Estimated value of TCE	\$941,551
Minus estimated construction cost of near term benefits	<u>-\$507,280</u>
Net proposed payment to WSLC for TCE	\$434,271

Improvements that benefit a possible future streetcar have a proposed value of \$1,764,300.

The value of ROW associated with the MPA (including the Sidewalk Easement) is not finally determined at this time, because the final design and impact are yet to be determined. The current estimate of that value is \$1.16 million, based on approved concepts for the MPA alignment. The MPA is a goal of several local jurisdictions including Metro and the City of Portland (both members of WSLC). It is anticipated that the City of Portland, through its Parks Bureau, will maintain the MPA. The Sellwood Project will construct the MPA at an estimated cost of \$5.2 million.

The Permanent CSE is limited to an aerial crossing that does not interfere with existing trolley or future rail operations in the WSLC ROW but widens the existing County Right-of-Way to permit construction of a wider bridge. The MBDE will cross the WSLC ROW in the same location as the existing Macadam Bay driveway crossing. The Sellwood Project proposes no other monetary compensation to WSLC for the ROW required for the MPA (including the Sidewalk Easement), the Permanent CSE, and the MBDE.

In addition to the compensation for the temporary TCE above, the Sellwood Project proposes to compensate WSLC for lost revenue to the Historic Trolley and for WSLC staff effort to review

Sellwood Project plans. The Sellwood Project will provide and pay for qualified inspectors for the construction of rail facilities and other improvements within the WSCL ROW.

Temporary and Permanent Easement Values

Property values are calculated based on "DRAFT COPY, UPDATED APPRAISAL REPORT, WILLAMETTE SHORE RAILWAY CORRIDOR, PORTLAND TO LAKE OSWEGO, Date of Value: DECEMBER 19, 2011" prepared by Gail R. Webb. Square foot values are based on values for Segment 4 (page 55) and Segment 5 (page 56). Areas of impact are based on project Computer Aided Design (CAD) models.

The area of temporary impact includes the area of the haul road, the landslide stabilization construction, and the area of the Stephen's Creek culvert replacement. The total area of these impacts is approximately 137,517 square feet. This is further broken down into sub areas consistent with the appraisal. The Temporary Construction Easement Area table below shows the calculation of the Fair Market Value (FMV) of the property. Assuming a "rental" rate of 10% per year over four years leads to Temporary Construction Easement cost of \$941,551.

Temporary Construction Easement Area	Area (SF)	Unit Cost (\$/SF)	Value
Miles Street to South line Freeman Motors	18,261	\$60.94	\$1,112,825
South line Freeman Motors to South line Staff Jennings	57,679	\$20.72	\$1,195,109
South line Staff Jennings to South end of project	61,577	\$0.7461	\$45,942
	137,517	Total FMV	\$2,353,877
Four years at 10% of FMV per year yields -			\$941,551
* \$0.7461/SF equates to \$32,500/acre			

The MPA will have permanent impacts in the WSLC ROW. The final area of this impact is not yet defined. Final area required for the MPA will be determined as part of the final design process to be conducted through the fall and winter of 2012. The current estimate is based on conceptual CAD models of the approved MPA alignment (including the Sidewalk Easement). The MPA area yields a permanent easement value of \$470,688. (See MPA WSLC Footprint Area table below). However, the MPA will be constructed so that it has no impact on the Shoreline Trolley, and the MPA will be constructed so that space is preserved within the boundaries of the Sellwood Project for a future double track streetcar line from Portland to Lake Oswego. The Sidewalk Easement is represented by the first entry in the MPA WSLC Footprint Area table below, i.e., a 160 SF ROW crossing (approx. 8 ft. wide sidewalk x 20 ft. ROW width).

Permanent MPA Impact Area (est.)	Area (SF± est.)	Unit Cost (\$/SF)	Value
Miles Street to South line Freeman Motors	160	\$60.94	\$9,750
South line Freeman Motors to South line Staff Jennings	14,430	\$20.72	\$328,205
South line Staff Jennings to South end of project	6,406	\$20.72	\$132,732
Total FMV			\$470,688

Although Multnomah County will build the MPA as part of the Sellwood Project, the County will not be the ultimate owner or maintainer of the access. The MPA is a regional goal of several local jurisdictions including Metro and the City of Portland (both WSLC members). The MPA will not preclude the construction of rail mass transit along this corridor.

Improvements with Near Term Benefits

Several improvements to the WSLC rail alignment will be constructed as part of the Sellwood Project that will result in near and medium term benefits. These include drainage improvements, replacement of deteriorated timber ties, replacement of fouled ballast and sub-ballast, and an improved crossing at the Macadam Bay driveway. These improvements will result in improved drainage and more reliable and better riding track. These materials can be incorporated into a future streetcar project. The values of the improvements are calculated in the Near Term Benefit table below and total \$507,280.

Near Term Benefit	Quantity	Units	Unit Cost	Value
New ballast and sub-ballast	6,336	tons	\$40.00	\$253,440
Replace all ties	3,900	track ft	\$60.00	\$234,000
24 inch culvert under tracks	75	ft	\$120.00	\$9,000
18 inch culvert under tracks	41	ft	\$120.00	\$4,920
24 inch culvert under tracks	36	ft	\$120.00	\$4,320
Ditch inlet	1	ea	\$1,600.00	\$1,600
Total				\$507,280

Improvements with Benefits for Future Streetcar

The Sellwood Project will also construct improvements that will benefit the possible future streetcar including the Stephen's Creek culvert and the Slope Stabilization. The Stephen's Creek culvert replacement is a fish passage and wildlife improvement triggered by features to be constructed over the creek. Without the Sellwood project, the entire cost of this culvert replacement would be borne by the future streetcar project, as there is insufficient width on the existing berm and also insufficient width of ROW. The proposed culvert has an opening that is 32 feet wide and 17 feet tall, and is 90 feet long from West to East. The Engineer's Estimate of the construction cost of the culvert is \$1,814,700. The Sellwood Project proposes that the cost of 26 feet (enough for double track ROW) be attributed to the future streetcar. This cost is: $(26 / 90) \times \$1,814,700 = \$524,300$.

The Sellwood Project is also constructing slope stabilization in the area of the proposed new bridge. This will have both short and long term benefits. The long term benefits include decreased track maintenance due to slope movement and dramatically reduced risk of catastrophic slope failure in a seismic event in this area of known geological instability. The construction cost of the slope stabilization is \$12.4 million (based on negotiated construction cost). The Sellwood Project is a major beneficiary of this feature, but this improvement also benefits 5 other properties in the area: the future streetcar, Riverview Cemetery, Highway 43, the MPA, and Powers Marine Park. The project proposes that one fifth of half the cost be attributed to the future streetcar. This cost is \$1,240,000.

The Sellwood Project will also widen the existing flat area within WSLC ROW over a significant area of the project. Without the Sellwood Project, if the streetcar were to be constructed out to a 26 feet wide double track configuration, additional embankment would be required within the area of the Sellwood Project. Due to the configuration of the MPA this will be constructed as part of the Sellwood Project, reducing future construction costs for the streetcar. This total length and volume of this fill has not been quantified at this point in time, but would add to the projected total value calculated below.

The projected total value of costs (net of streetcar fill widening) that the Project proposes to attribute to the future streetcar is: $\$524,300 + \$1,240,000 = \$1,764,300$ (net of streetcar fill widening).

FINAL REVISED 11-26-12

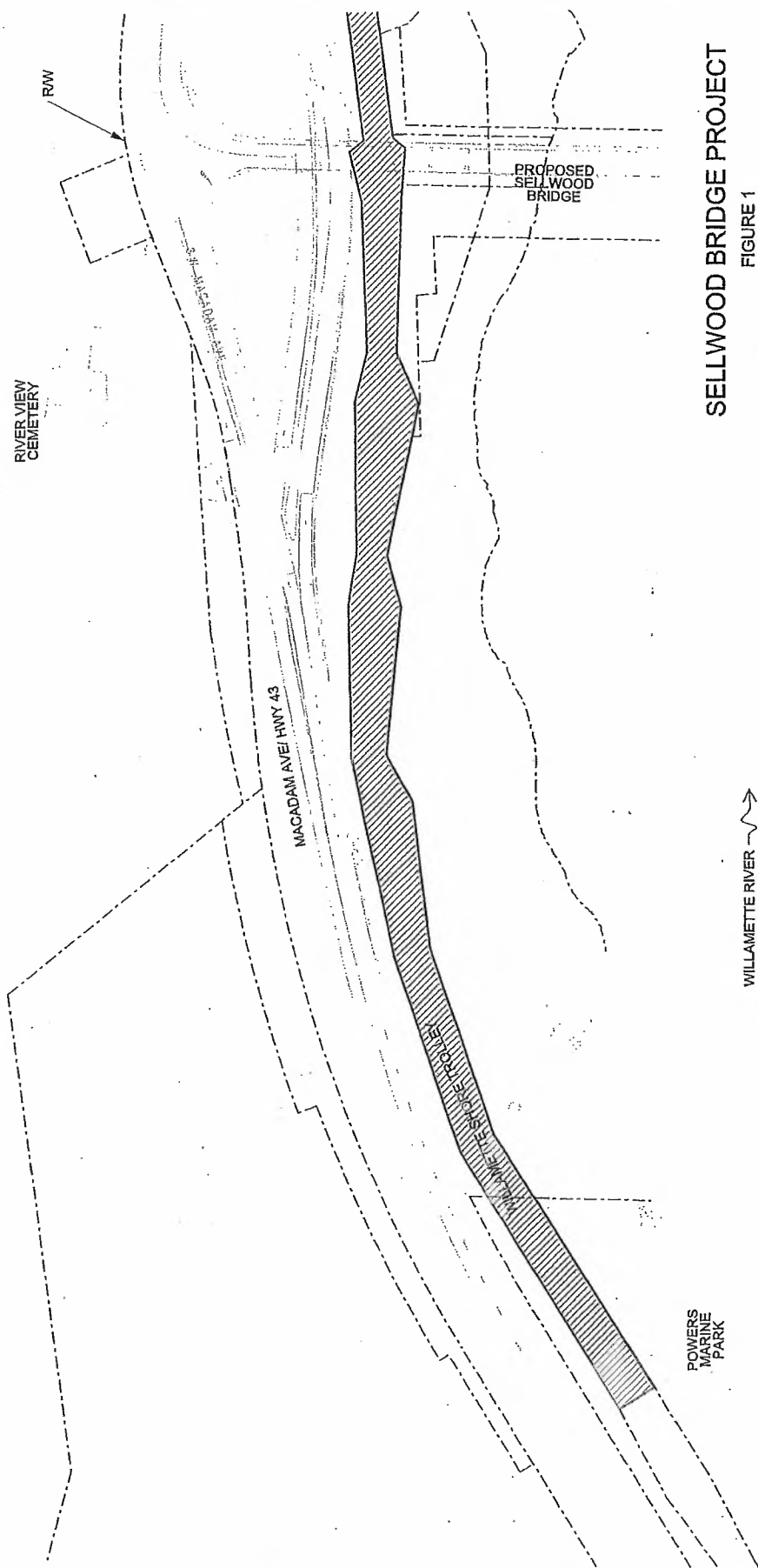
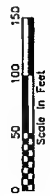
Exhibit B

Temporary Construction Easement Area – Figures 1, 2 & 3

LEGEND



TEMPORARY CONSTRUCTION
EASEMENT AREA



POWERS
MARINE
PARK

WILLAMETTE RIVER →

PROPOSED
SELLWOOD
BRIDGE

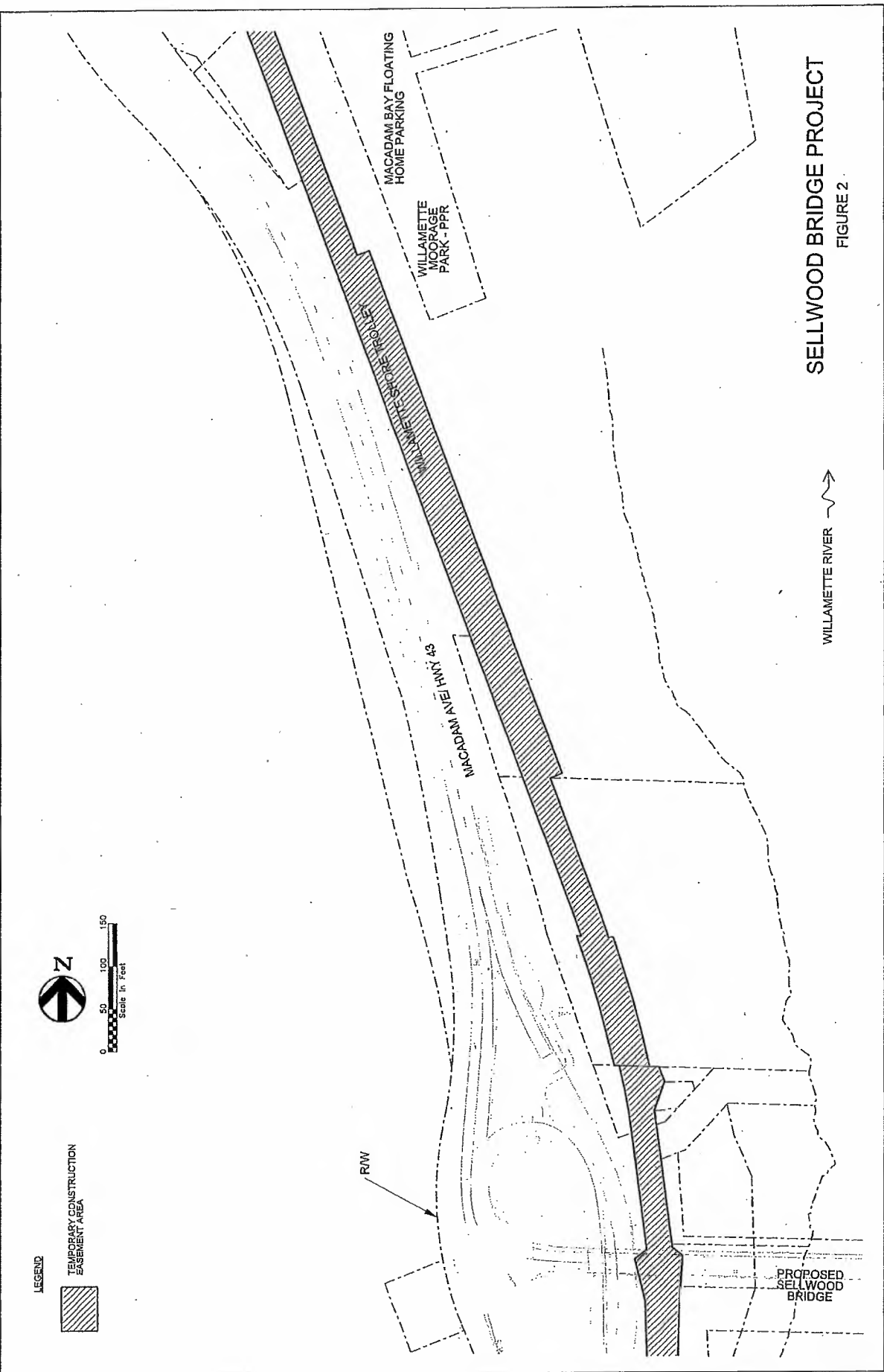
MACADAM AVE / HWY 43

RIVER VIEW
CEMETERY

RW

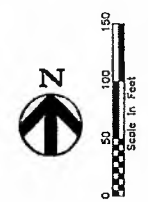
SELLWOOD BRIDGE PROJECT

FIGURE 1



SELLWOOD BRIDGE PROJECT
FIGURE 2

WILLAMETTE RIVER →



LEGEND
TEMPORARY CONSTRUCTION
EASEMENT AREA

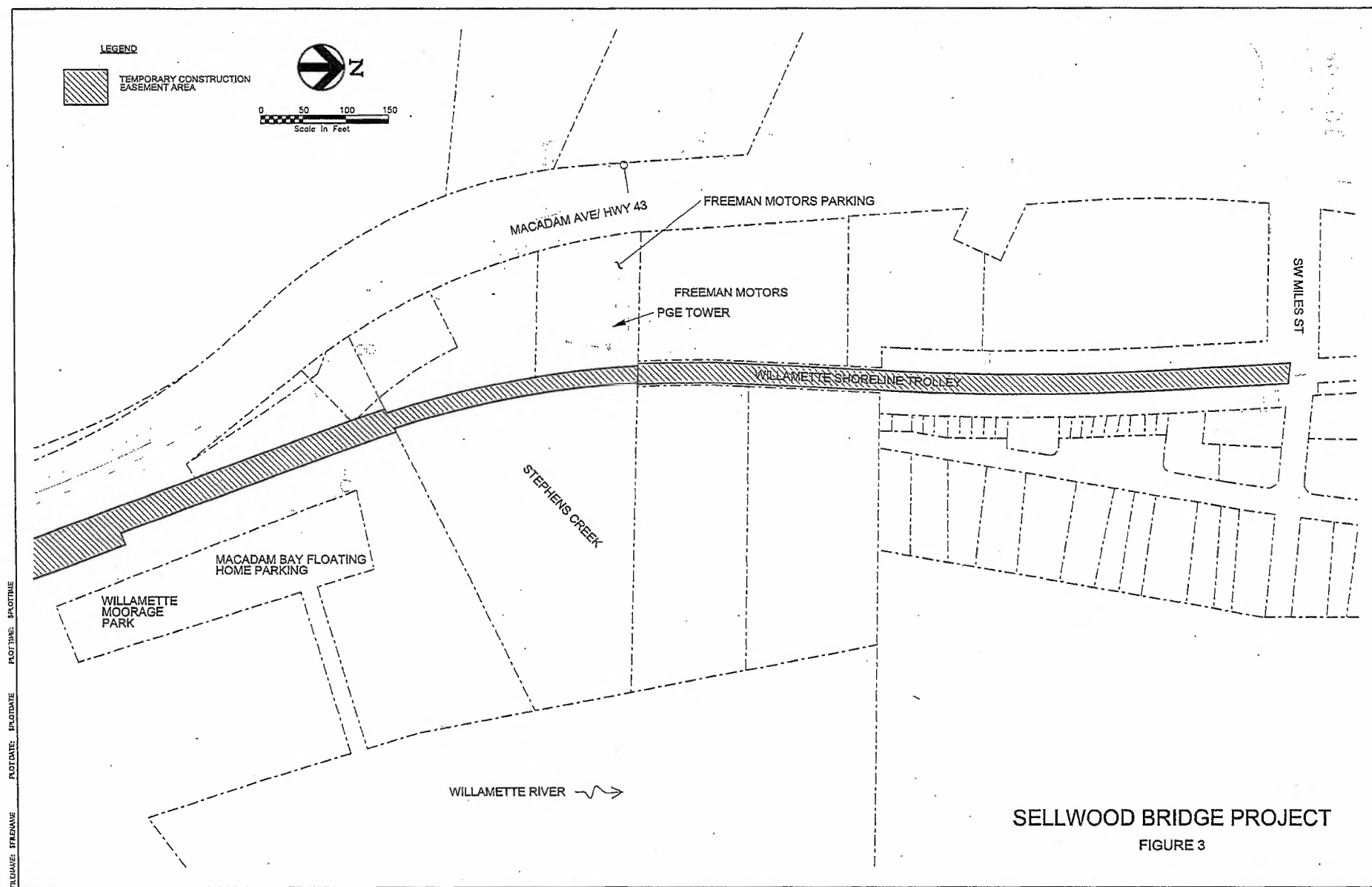


RW

MACADAM BAY FLOATING
HOME PARKING
WILLAMETTE
MOORAGE
PARK - PPR
JACKSONVILLE
SHORE LOT 12

MACADAM AVENUE HWY 43

PROPOSED
SELLWOOD
BRIDGE



FINAL REVISED 11-26-12

Exhibit C

Oregon Department of Transportation Crossing Order No. 50963



Oregon

John A. Kitzhaber, MD, Governor

Department of Transportation

Rail Division

555 13th St NE, Suite 3

Salem, OR 97301-4179

(503) 986-4321

Fax: (503) 986-3183

August 22, 2012

TO ALL PARTIES

RX 1644: In the Matter of the Alteration of the Railroad-Highway Overcrossing at Sellwood Bridge, Closure of the Railroad-Highway Undercrossing at Ferry Road, and Construction of a New Multi-use Path Grade Crossing of the WILLAMETTE SHORE TROLLEY LINE, in Portland, Multnomah County, Oregon.

Enclosed is your copy of Order No. 50963 in the above-cited matter. This Order is a compliance document, the terms of which are binding upon the Railroad Company and Road Authority and enforceable, if necessary, in a court of law.

Order No. 50963 requires the parties to provide written notice of project completion to the Rail Division. Upon receipt of this notice, Rail Division Staff will carefully inspect the crossing for compliance with the Order. Any deficiency or non-compliance item(s) found by staff will be directed to the affected party for correction/completion of that work.

Please call or e-mail me with any questions. Thank you.

Glen Kirkpatrick

Rail Crossing Safety Specialist

503.986.4097

503.986.3183 (fax)

Glen.e.kirkpatrick@odot.state.or.us

Enclosure: Copy of Order No. 50963

F:\TEMPLATES\service letter SL_.doc

ORDER NO. 50963

ENTERED: August 22, 2012

ODOT CROSSING NO. 47A-771.40-A
U.S. DOT NO. 754260B
(Sellwood Bridge)

ODOT CROSSING NO. 47A-771.42-B
U.S. DOT NO. 754261H
(Closed Ferry Road)

ODOT CROSSING NO. 47A-771.44-D
U.S. DOT NO.
(New multi-use path)

**BEFORE THE OREGON DEPARTMENT
OF TRANSPORTATION**

RX 1644

In the Matter of the Alteration of the Railroad-Highway)
Overcrossing at Sellwood Bridge, Closure of the)
Railroad-Highway Undercrossing at Ferry Road, and)
Construction of a New Multi-use Path Grade Crossing of)
the WILLAMETTE SHORE TROLLEY LINE (COPX), in)
Portland, Multnomah County, Oregon.)

ORDER

On September 29, 2011, Multnomah County made application under ORS 824.204 and 824.206 concerning the subject crossings. COPX is the affected railroad. Applicant and the City of Portland are the public authorities in interest. TriMet is also an affected party in this matter. ODOT Region 1 is an interested agency.

Rail Division staff has investigated the application. By e-mail dated June 20, 2012, staff served a Proposed Order and the application for all parties to review and acknowledge their agreement with its terms. All parties in this matter have agreed the proposed overcrossing replacement and the closure of the Ferry Road undercrossing are required by the public safety, necessity, convenience and general welfare. The parties further agree the public safety, public convenience and general welfare do not require the new multi-use path grade crossing to be grade separated. Therefore, under ORS 824.214, the Department may enter this Order without hearing.

Applicant proposes to replace the existing Sellwood bridge structure with a new bridge structure at the same location, as depicted in the Appendix to this Order. The existing Ferry Road undercrossing will be permanently closed and a new multi-use path grade crossing will be constructed. All of the proposed work is related to the Sellwood Bridge replacement project and construction of the interchange on the west end of the bridge.

The proposed multi-use path grade crossing will provide access from OR 43 and from the new Sellwood Bridge to the regional multi-use trail located in the Willamette Greenway. Applicant proposes to construct the new multi-use path grade crossing as depicted in the Appendix to this

Order. The proposed path will intersect the track at ≈ 90 degrees. The average daily traffic (ADT) volume is projected to be 486 bikes and 124 pedestrians. The trolley operation is seasonal. When in operation, there is a daily average of 4 to 8 trolleys between Lake Oswego and Portland. The maximum authorized speed on this track is 15 miles per hour.

The new interchange at the west end of the Sellwood Bridge will eliminate the Ferry Street undercrossing and the Staff Jennings private grade crossing.

From the foregoing, the Department finds the requested replacement of the existing Sellwood bridge structure and the permanent closure of the Ferry Road undercrossing are required by the public safety, necessity, convenience and general welfare. The Department further finds the proposed multi-use path grade crossing is required by the public safety, public necessity and general welfare. It is neither practical nor necessary to construct a grade separated crossing at this location. The application should be granted upon the following terms and conditions.

IT IS THEREFORE ORDERED that:

1. The authority to construct the **Multi-use path grade crossing No. 47A-771.44-D** is granted. Construction of the crossing shall be substantially in progress within **four years** from the entered date of this Order. Otherwise, the authority expires on that date. No authority to establish a Quiet Zone is granted by this Order.
2. The new Multi-use path grade crossing shall not be opened to public use until the ordered protective devices are installed.
3. The authority to alter the **Sellwood Bridge overcrossing No. 47A-771.40-A** is granted. The alterations shall be substantially in progress within 4 years of the entered date of this Order.
4. The authority to close the **Ferry Street undercrossing No. 47A-771.42-B** is granted. The crossing shall be removed from the Department's Catalog of Public Railroad Highway Crossings.
5. At the **Sellwood Bridge overcrossing No. 47A-771.40-A**, applicant (Multnomah County) shall:
 - a. Replace the existing overcrossing structure according to Multnomah County's final construction drawings for Bridge No. 21493, and bear all the costs. Final drawings shall be in substantial conformance with the Appendix to this Order. Upon completion, the Sellwood bridge overcrossing structure shall have a minimum vertical clearance of 18 feet and horizontal clearances of 7 feet from the nearest track, as depicted in the Appendix to this Order.
 - b. Maintain all highway appurtenances to the overcrossing structure, including damage caused by motor vehicles, and bear all the costs.
6. At the new **multi-use path Crossing No. 47A-771.44-D**, applicant (Multnomah County) shall:
 - a. Furnish and install that portion of the crossing lying outside lines drawn perpendicular to the end of ties to accommodate the multi-use path configuration

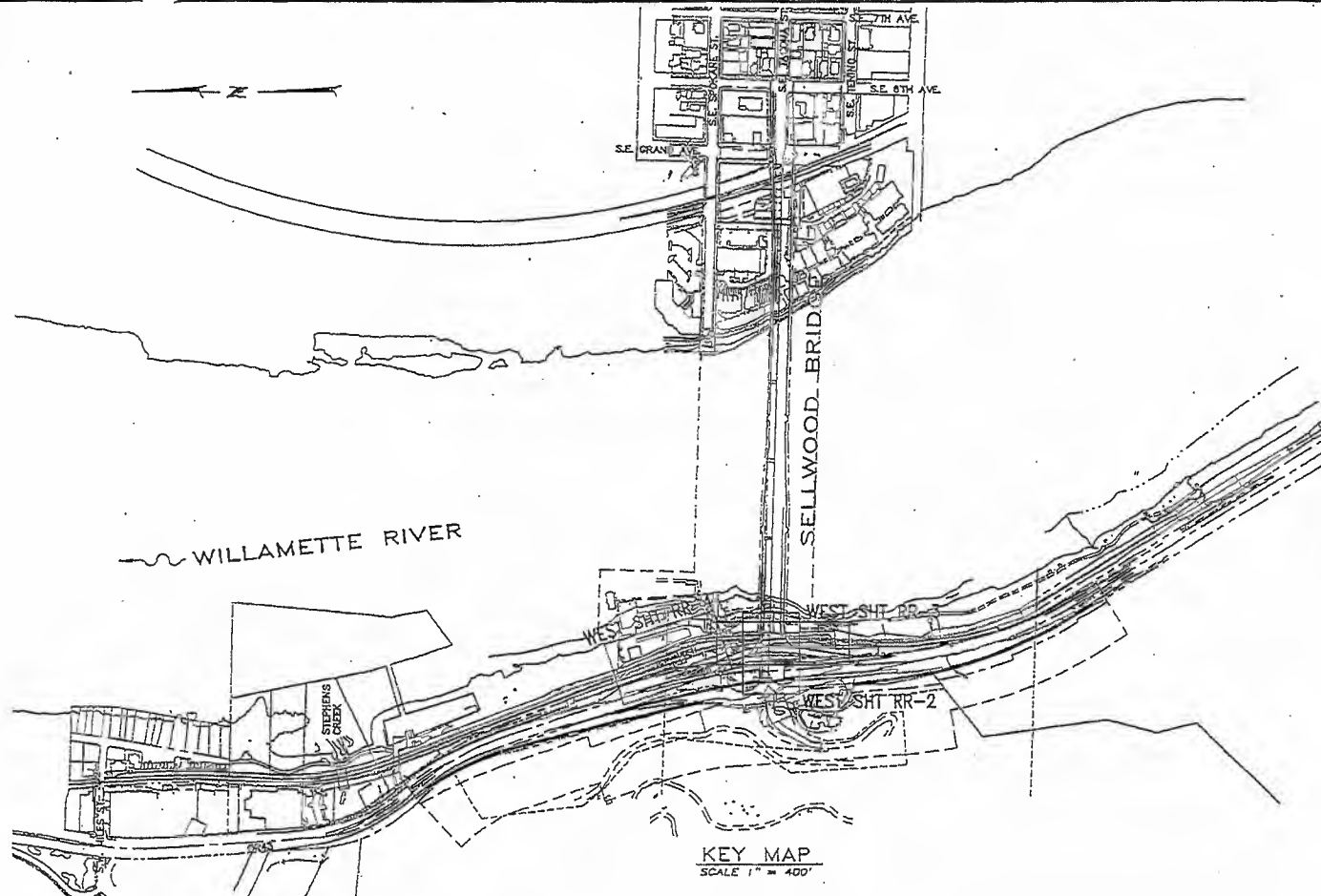
depicted in the Appendix to this Order, and bear all the costs. The crossing and multi-use path approaches shall comply with OAR 741-120-0020 (1), (2), and (4).

- b. Furnish and install tactile detectable warning strips on each approach to the crossing, and bear all the costs. The tactile strips shall be two feet wide and be placed a minimum of 12 feet from the nearest rail.
 - c. Furnish and install one advance warning (W10-1) sign, one Yield Ahead (W3-2) sign, and one advance warning pavement marking on the west approach to the crossing according to OAR 741-110-0030 (1), and bear all the costs. The devices shall be located as depicted in the Appendix to this Order.
 - d. Furnish and install two side road advance warning (W10-3) signs on the Willamette Greenway multi-use path approaches to the crossing according to OAR 741-110-0030 (1) and as depicted on the Appendix to this Order, and bear all the costs. Locate the devices in accordance with OAR 741-110-0040 (5).
 - d. Bear all the cost of the work listed in paragraphs 8.a., and 8.b., below.
7. At the **Sellwood Bridge overcrossing No. 47A-771.40-A**, COPX shall maintain the railroad track, railroad drainage and all railroad facilities, and bear all the costs.
8. At the **new multi-use Crossing No. 47A-771.44-D**, COPX shall:
- a. Subject to reimbursement by applicant, construct that portion of the crossing lying between lines drawn perpendicular to the end of ties to accommodate the multi-use path configuration depicted in the Appendix to this Order.
 - b. Subject to reimbursement by applicant, furnish and install two pedestrian Crossbuck/YIELD sign assemblies (R15-1, R1-2) at the crossing, located as depicted in the Appendix to this Order.
 - c. Maintain the ordered Crossbuck/YIELD sign assemblies, that portion of the crossing lying between lines drawn perpendicular to the end of ties, and bear all the costs.
9. At the **new multi-use path Crossing No. 47A-771.44-D**, City of Portland Parks and Recreation shall maintain the ordered advance warning (W10-1) sign, Yield Ahead (W3-2) sign, advance warning pavement marking, side road advance warning signs (W10-3), tactile warning strips, and bear all the costs.
10. Each party shall notify the Rail Division of the Department in writing upon completion of its portion of the project.

Made, entered, and effective

20 August 2012
H. A. (Hal) Gard
H. A. (Hal) Gard
Rail Division Administrator

Appendix to Order No. 50963
 RX 1644 Page 1 of 4
 ODOT Crossing 47A-771
 West End Sellwood Bridge



DO NOT SCALE THIS DRAWING
 FOLLOW DIMENSIONS, INDICATED
 SCALES CORRECT ONLY FOR
 FULL SIZE SHEET (22"x34")

DATE	REVISION	BY	DESIGNER	STRUCTURE NO.	DATE	DATE	DATE	DATE
			P. Perella					
			J. Shamrell					
			S. Kotka					
			S. Kotka					

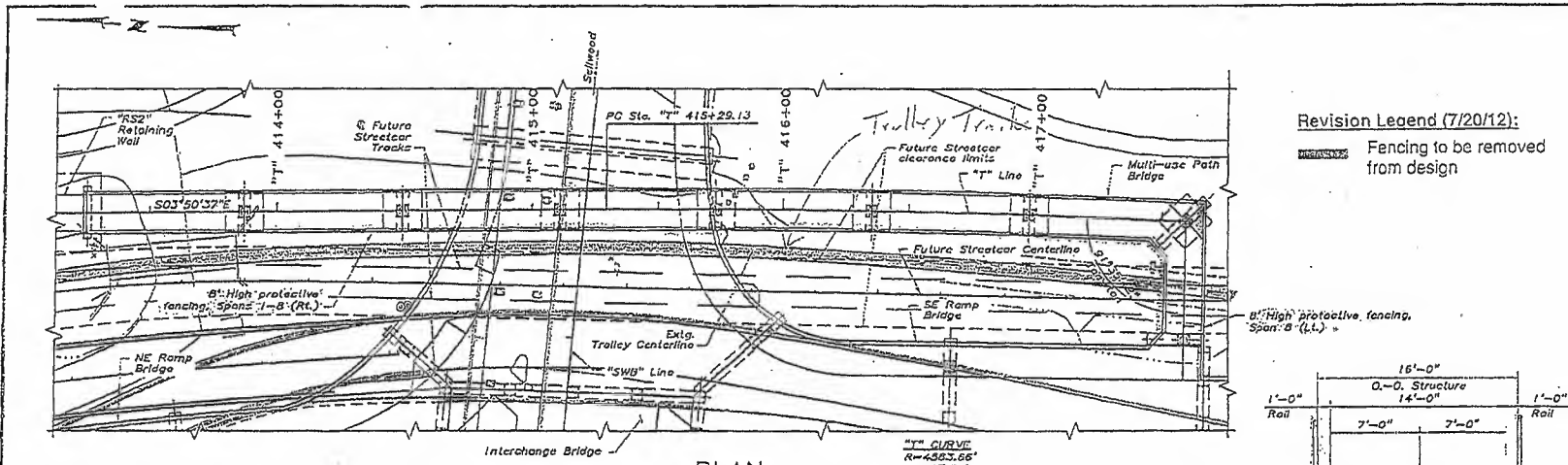


STRUCTURE NO.
 DATE
 Jan 2012
 CALC. BOOK

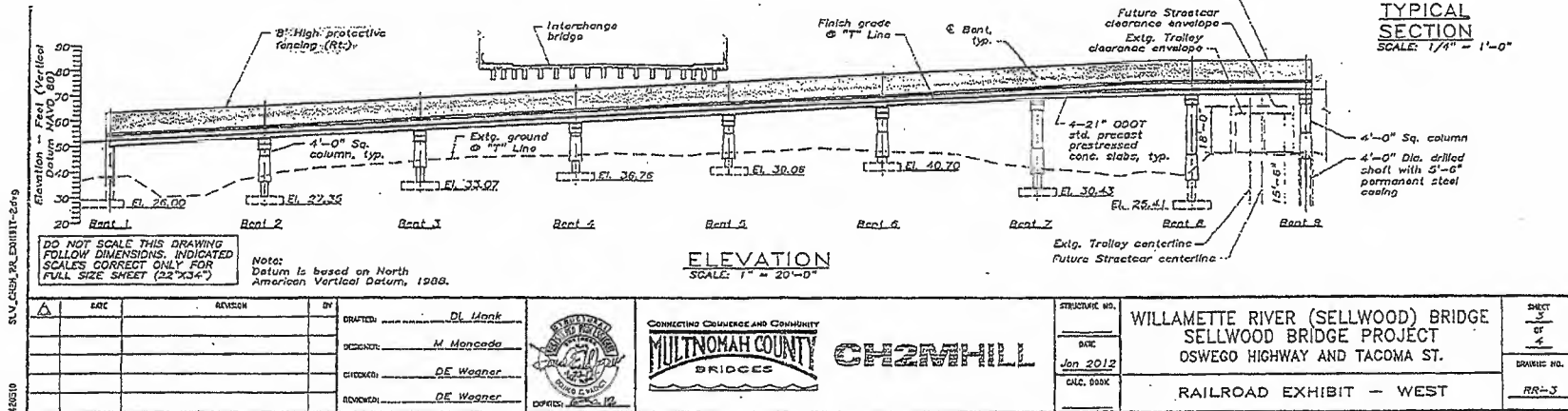
WILLAMETTE RIVER (SELLWOOD) BRIDGE
 SELLWOOD BRIDGE PROJECT
 OSWEGO HIGHWAY AND TACOMA ST.
 RAILROAD EXHIBIT - WEST

SHEET
 1
 OF
 4
 DRAWING NO.
 RR-1

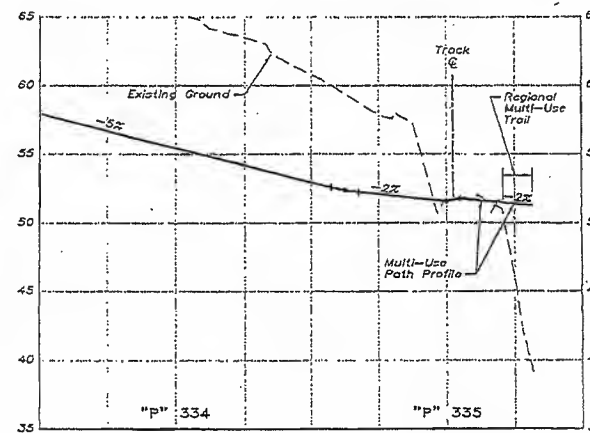
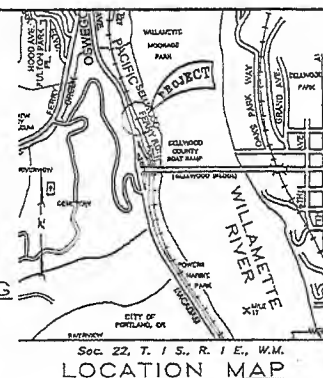
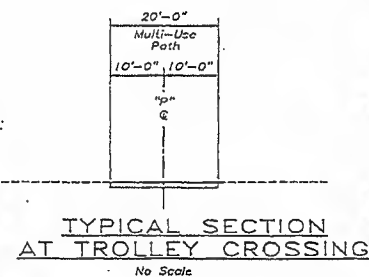
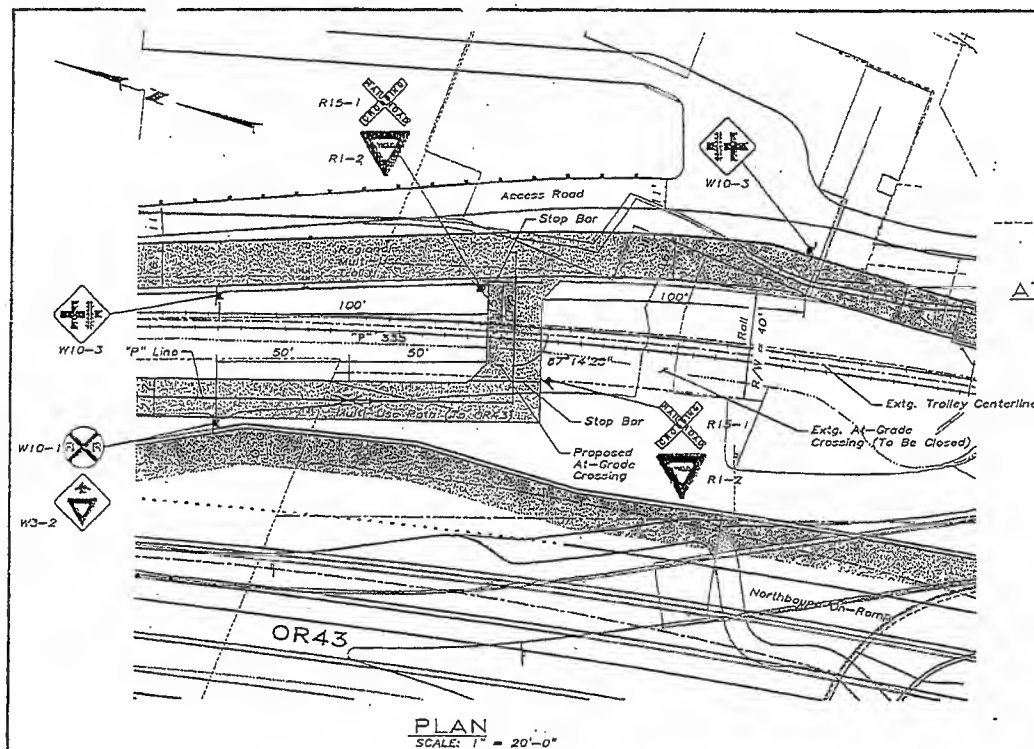




Appendix to Order No. 50963
RX 1644 Page 3 of 4
ODOT Crossing 47A-771
West End Sellwood Bridge



PLOT 2/10/12/23/2012 PLOT TIME 04:06 PM USER:pperralta



DO NOT SCALE THIS DRAWING
FOLLOW DIMENSIONS. INDICATED
SCALES CORRECT ONLY FOR
FULL SIZE SHEET (22"x34")

	DATE	REVISION	BY	DRAWN: <u>P. Peralta</u>		CONNECTING COMMERCIAL AND COMMUNITY 		STRUCTURE NO.	WILLAMETTE RIVER (SELLWOOD) BRIDGE SELLWOOD BRIDGE PROJECT OSWEGO HIGHWAY AND TACOMA ST.	SHEET 2
				DESIGNER: <u>J. Shamrell</u>				DATE Jan 2012		OF 4
				CHECKED: <u>S. Katko</u>				CALC. BOOK		DRAWING NO. RR-4
				REVIEWED: <u>S. Katko</u>	DESIGNED: <u>J. Shamrell</u>				RAILROAD EXHIBIT - WEST	

DEPARTMENT OF TRANSPORTATION

CERTIFICATE OF SERVICE

RX 1644

I, Juanita T. Sanchez, Administrative Assistant of the Rail Division for the Department of Transportation of the State of Oregon, hereby certify that on the 22nd day of August 2012, I served copies of Staff's Service Letter and Final Order No. 50963 upon the appropriate parties listed below via regular mail at Salem, Oregon, with postage prepaid and addressed as their addresses appear in the records of the Department of Transportation.

APPLICANT

Ian Cannon
Multnomah County
1403 SE Water Avenue
Portland, OR 97214

PARTIES

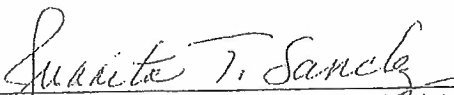
Jody Yates
PBOT, City of Portland
1120 SW 5th Ave., Ste 800
Portland, OR 97204

Joe Recker
TriMet
710 NE Holladay Street
Portland, OR 97232

William Weber
Willamette Shore Trolley
c/o City of Lake Oswego
PO Box 369
Lake Oswego, OR 97034

INTERESTED PARTY

Riad Alharithi
ODOT Region 1
123 NW Flanders Street
Portland, OR 97209



Juanita T. Sanchez, Administrative Assistant
Oregon Department of Transportation
Rail Division

FINAL REVISED 11-26-12

Exhibit D

SHPO's and ODOT's Approval of ROW Use as Haul Road

Lesh, Tamara

From: Lesh, Tamara
Sent: Monday, November 19, 2012 6:05 AM
To: Lesh, Tamara
Subject: FW: Sellwood Bridge Project - IGA - SHPO Finding of No Adverse Effect

From: HADLOW Robert W [<mailto:Robert.W.HADLOW@odot.state.or.us>]
Sent: Tuesday, November 13, 2012 3:55 PM
To: Joshan Rohani
Cc: BUCKLAND Jeffrey G
Subject: RE: Sellwood Bridge Project - Use of Rail ROW

Joe,

I conferred with Jeff Buckland, our Senior Environmental Project Manager, regarding your request to evaluate the access/haul road proposal noted in your email, below. Jeff has been our lead environmental person on the Sellwood Bridge Project.

We concluded that the proposal is within the spirit of the Section 106 Finding of No Adverse Effect to Historic Properties—Amendment to Existing Finding, Southern Pacific Railroad "Red Electric" Eastside Line. This amended finding was for the temporary use of the rail line right-of-way near the Sellwood Bridge during project construction. The project received Oregon SHPO concurrence on the FOE in November 2011.

For our project file, we ask that you send us a paper copy, or a link to an e-copy, of the fully signed and executed IGA for the access/haul road proposal.

Thanks,

Bob

From: Joshan Rohani [<mailto:Jwr@deainc.com>]
Sent: Monday, November 12, 2012 8:13 PM
To: HADLOW Robert W
Subject: RE: Sellwood Bridge Project - Use of Rail ROW

Bob,

I'm checking in to make sure you received the email below. If you could please call me at 503-499-0259, I would love to have a quick follow-up discussion with you to make sure we have a common understanding.

Thanks,
Joe

Joshan Rohani, PE, PTOE
David Evans and Associates, Inc.
Direct: (503) 499-0259

From: Joshan Rohani
Sent: Wednesday, November 07, 2012 7:13 PM
To: 'Bob Hadlow'
Cc: 'Charles MAGGIO'; Ken ELLIOTT
Subject: Sellwood Bridge Project - Use of Rail ROW

Bob,

I'm following up on our earlier conversation regarding the Sellwood Bridge Project's plan to use the Consortium ROW (former Southern Pacific Railroad) as a temporary access/haul road. As promised, this email provides a brief summary of the background and proposed plans with respect to the previous finding of No Adverse Effect. A letter dated November 29, 2011 indicates a finding of No Adverse Effect for the proposed removal/reassembly of the trestle and track within the Sellwood Bridge project area.

The County is now entering into an agreement with TriMet in its capacity as Right-of-Way Agent for the Willamette Shore Consortium, the City of Lake Oswego in its capacity as the Consortium member responsible for operation and maintenance of the Willamette Shore Trolley Line, and together plan on the following:

- County will construct, operate and maintain a haul road in that portion of the Right-of-Way between the area south of the existing Sellwood Bridge and SW Miles Street.
- County will remove the existing track and track-related equipment and materials, including rail, tie plates, taper and transition rails, signal equipment, nine insulated joints, and angle bars; and move these materials to the County's Yeon Shops, 1600 SE 190th Avenue in Portland.
- At the end of the project, or when the haul road is no longer needed, County will reassemble/rebuild the railway at within the existing grade and alignment, as approved by TriMet on behalf of the Consortium. The reassembly will include the existing track removed by County for the haul road (subject to the Consortium's inspection and approval).

Based on our understanding of the work being completed, and the process we are proposing to reinstall the existing track (as previously approved), it is our understanding that the use of this ROW as a temporary road would preserve the finding of no adverse effect.

Because the use of this facility is vital for the County/Contractor to continue making progress and meet upcoming schedule milestones, I would appreciate if we could aim for a one week schedule for consideration/approval. I value your thoughts on this being an achievable goal for schedule.

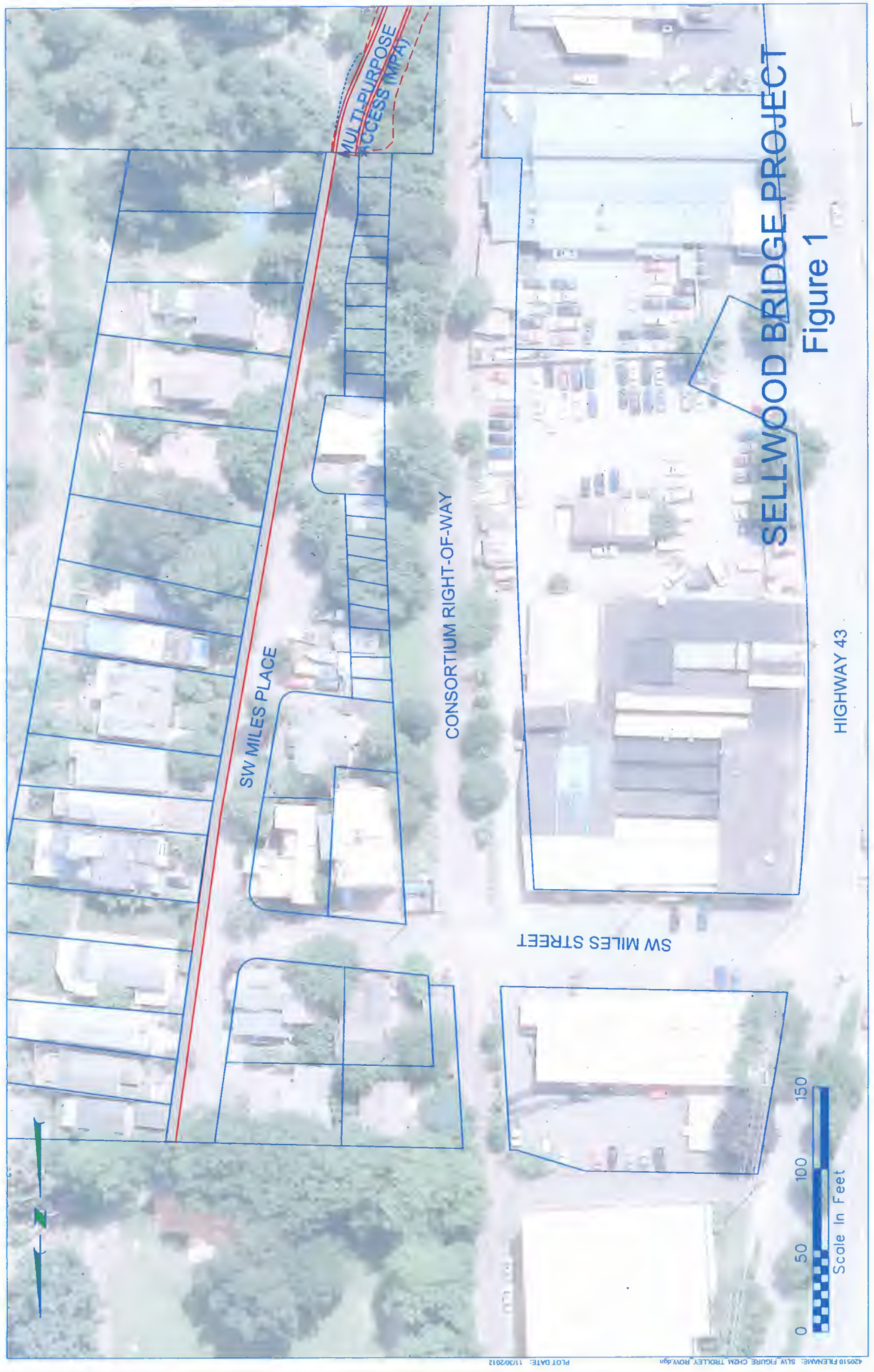
Please let me know if you are in agreement and can help identify the most appropriate method for documenting this concurrence. I'm available to help answer any other questions that come up.

Thanks again for your help,
Joe

Joshua Rohani, PE, PTOE
David Evans and Associates, Inc.
2100 SW River Parkway
Portland, OR 97201
Telephone: (503) 499-0259
Fax: (503) 223-2701
JVR@deainc.com
www.deainc.com

Exhibit E

Conceptual MPA Design

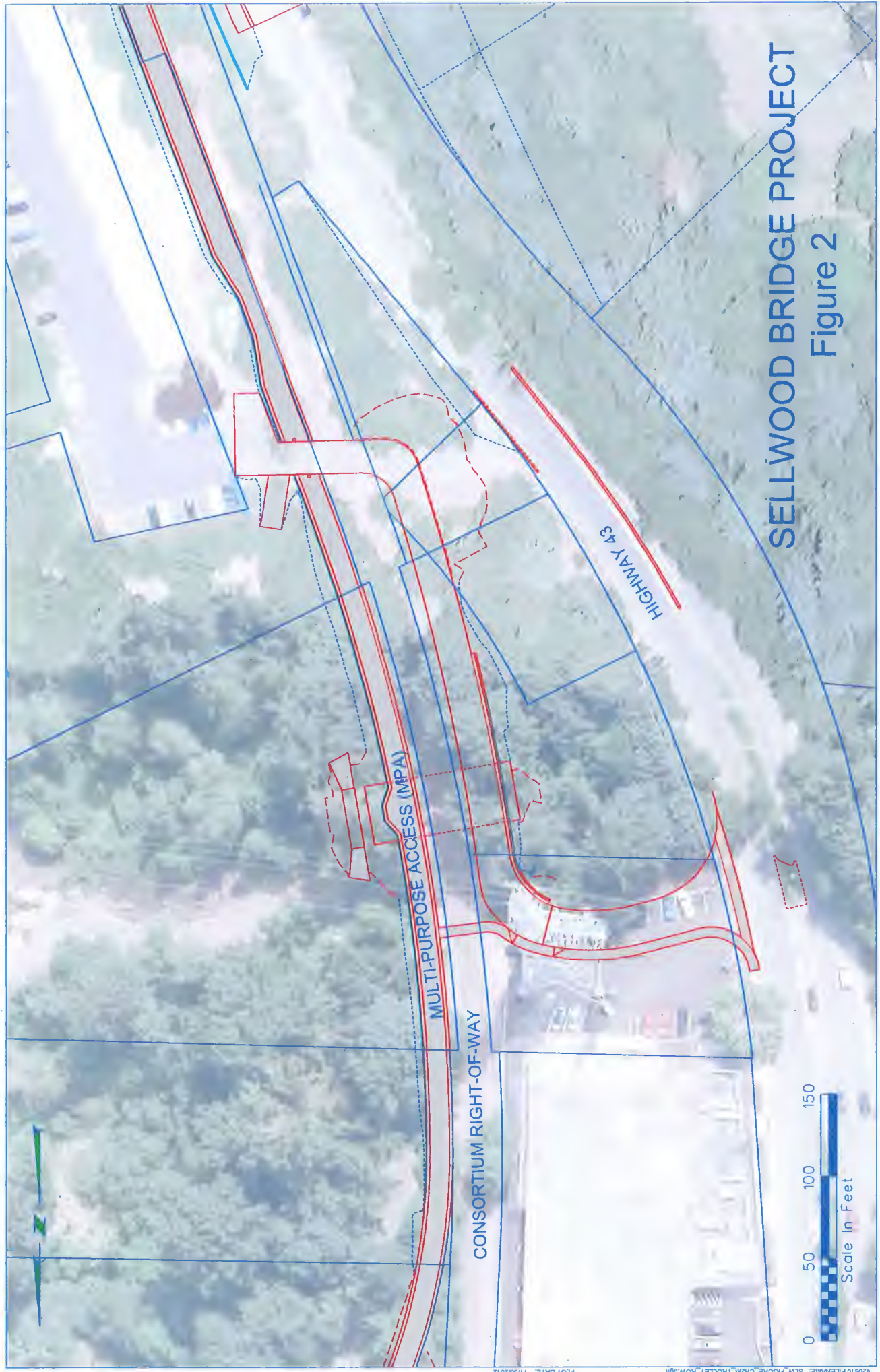


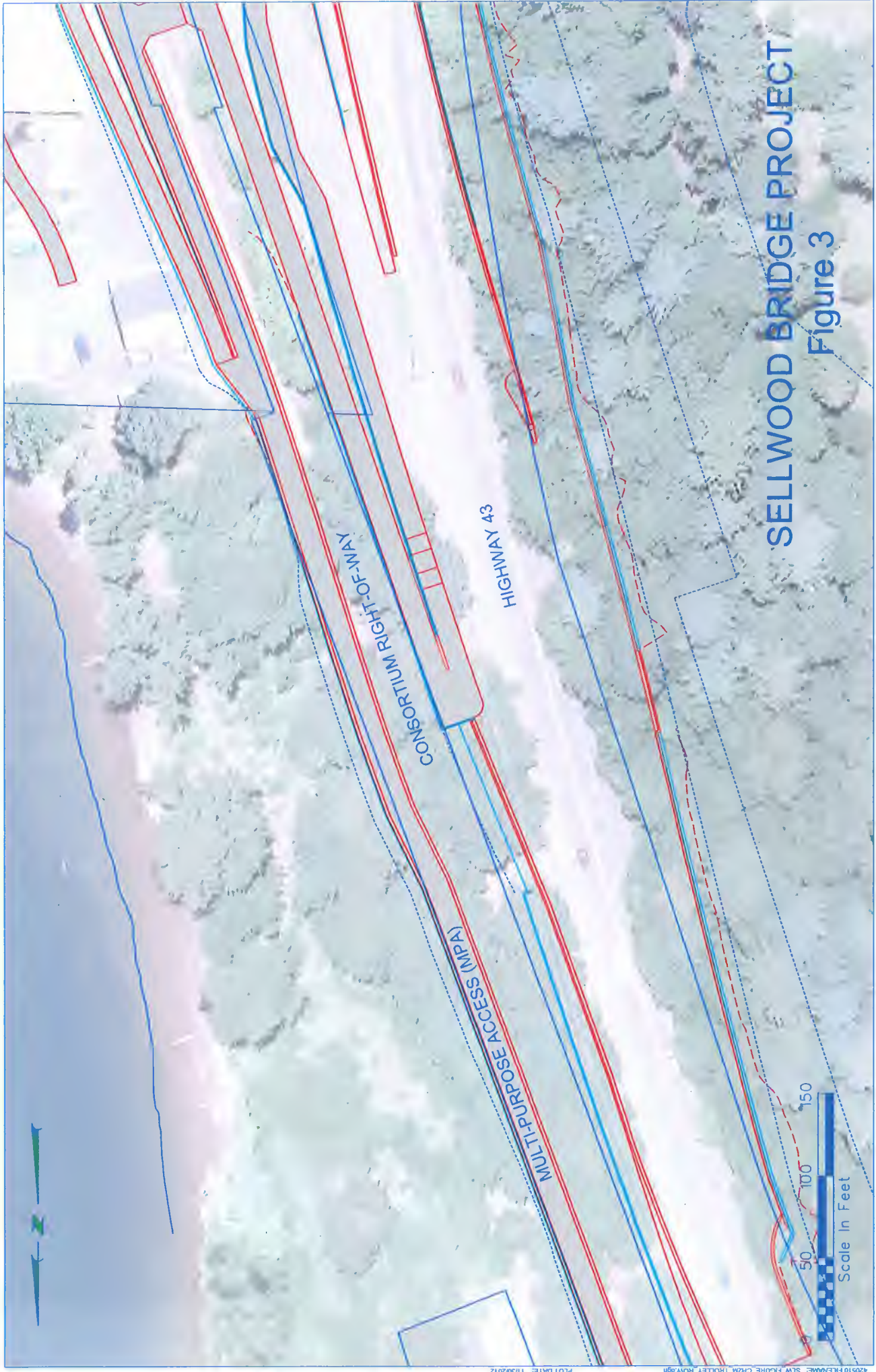
SELLWOOD BRIDGE PROJECT

Figure 1

SELLWOOD BRIDGE PROJECT

Figure 2





SELLWOOD BRIDGE PROJECT

Figure 3

SELLWOOD BRIDGE PROJECT

Figure 4

