

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF ADOPTING AN) RESOLUTION NO. 94-1868
INTERGOVERNMENTAL AGREEMENT FOR)
MANAGEMENT OF THE WILLAMETTE) Introduced by
SHORE LINE RIGHT-OF-WAY) Councilor Monroe

WHEREAS, In 1988, a Consortium of local jurisdictions (consisting of Metro, ODOT, Tri-Met, Multnomah County, Clackamas County, the City of Portland and the City of Lake Oswego) purchased the Jefferson Street branch rail line from the Southern Pacific Railroad in order to preserve it for possible use in the future as a high capacity transit corridor; and

WHEREAS, The legal name for the right-of-way is the "City of Portland Shore Line Right-of Way" and it is commonly referred to as the Willamette Shore Line Right-of-Way; and

WHEREAS, The right-of-way is approximately seven miles long and varies in width from 17 feet to 80 feet, and is owned primarily in fee title, but contains areas conveyed through easements; and

WHEREAS, The Consortium wishes to preserve the rail line right-of-way until such time as the region may decide to use it for High-Capacity Transit Purposes; and

WHEREAS, Encroachments into the right-of-way are occurring as a result of new development and expansion of existing development adjacent to the right-of-way; and

WHEREAS, The seven-mile right-of-way has numerous public and private at-grade roadway and pedestrian crossings which present significant problems for the safe operation of the trolley; and

WHEREAS, Requests for additional at-grade crossings are being made and new at-grade crossings are being created without permits or Consortium approval; and

WHEREAS, Access to some private property in the vicinity of the right-of-way requires crossing the right-of-way and, in some cases, requires direct private access to Highway 43; and

WHEREAS, A policy needs to be established to guide permitting jurisdictions in advising the public and reviewing new crossing requests; and

WHEREAS, Members of the Consortium have consulted in the development of a policy for management of the right-of-way; and

WHEREAS, A public meeting was held on September 14, 1993 to review the draft policy and receive public comments on the draft policy; and

WHEREAS, Notice of the public meeting was sent to approximately 600 property owners in the vicinity of the corridor; and

WHEREAS, Approximately 100 persons attended the public meeting and provided comments and suggestions; and

WHEREAS, The draft policy has been revised in response to many of the public comments received at the public meeting; and

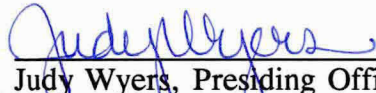
WHEREAS, The revised policy provides for safer operation of the trolley line, limits encroachments into the right-of-way and provides for revocable permits for crossing of the right-of-way; now, therefore

BE IT RESOLVED,

1. That Metro Council authorizes the Executive Officer to execute an Intergovernmental Agreement for the management of the Willamette Shore Line Right-of-Way, (see Exhibit A).

2. That staff be directed to continue working with Consortium members to implement the provisions of the Intergovernmental Agreement and the Willamette Shore Line Right-of-Way Management Policy (see Exhibit B).

ADOPTED by the Metro Council this 13th day of January, 1994.



Judy Wyers, Presiding Officer

Exhibit A - Intergovernmental Agreement
Exhibit B - Willamette Shore Line Right-of-Way Management Policy

INTERGOVERNMENTAL AGREEMENT FOR THE MANAGEMENT
OF THE
WILLAMETTE SHORE LINE RIGHT-OF-WAY

THIS AGREEMENT is entered into by and between the CITY OF PORTLAND, OREGON (Portland), METRO (Metro), the CITY OF LAKE OSWEGO, OREGON (Oswego), MULTNOMAH COUNTY, OREGON (Multnomah), CLACKAMAS COUNTY, OREGON (Clackamas), TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON (Tri-Met), and the STATE OF OREGON DEPARTMENT OF TRANSPORTATION (ODOT). The parties shall collectively be referred to as the "Consortium."

RECITALS:

- A. Portland and Oswego are municipal corporations of the State of Oregon organized and existing under the laws of the state of Oregon. Multnomah is a home rule political subdivision, and Clackamas is a general law county of the State of Oregon organized and existing under the laws and constitution of the State of Oregon. Metro is a municipal corporation of the State of Oregon with its own home rule charter. Tri-Met is a mass transit district of the State of Oregon established under Chapter 267 of Oregon Revised Statutes. ODOT is an administrative agency of the State of Oregon.
- B. This Agreement is entered into pursuant to Chapter 190 of Oregon revised Statutes.
- C. In December 1986, the Consortium entered into an Intergovernmental Agreement to Option and lease the Jefferson Street Rail Line (the "Line"). That intergovernmental agreement was amended to include Tri-Met.
- D. In August 1987, the Consortium entered into an Intergovernmental Operations Agreement.
- E. In June 1988, the Consortium entered into an Intergovernmental Agreement for the Purchase of the Jefferson Street Rail Line. That agreement stated that it was the Consortium's desire to preserve the line for possible future mass transit use.
- F. Since the purchase of the line, the Consortium has recognized the need to address a variety of issues which affect its ability to so preserve the line. Those include: encroachments into the right of way; unpermitted crossings of the right of way; requests from developers and property owners to cross the right of way; and the development of abutting property. In addition, the Consortium has become aware of federal funding opportunities, which require the development of a long term plan for the use of the line.
- G. The Consortium members desire to enter into an intergovernmental agreement which provides a structure for the long term governance of the line during this period of its preservation for possible future uses.

TERMS:

1. **Consortium Established.** The participating jurisdictions formally constitute themselves as the Willamette Shore Line Consortium for the overall management of the Line. Each jurisdiction will appoint as its representative to the Consortium either its director of planning or its director of transportation or someone of similar position who is authorized to speak on a policy level for the jurisdiction.

2. Consortium Chair and Staff. Metro's representative will be the initial Chairperson of the Consortium. Tri-Met and Metro will provide technical and administrative staff for the Consortium.
3. Regular Meetings. The Consortium will meet at least annually. The Consortium will be convened at the request of any of its members. A majority of the Consortium members shall constitute a quorum for the transaction of business at any meeting. The act of the majority of the members present at any meeting at which a quorum exists shall be the act of the Consortium.
4. Right-of-Way Protection. The local general purpose government with geographic jurisdiction over a rail segment will be responsible for receiving applications and issuing right-of-way "incursion" permits relevant to that segment. As part of the permit application, an applicant will be required to obtain a Tri-Met technical review based on the "Shore Line Right-of-Way Management Policy" attached to the Agreement, as amended by the Consortium from time to time. Tri-Met will be responsible for making engineering judgments, where called for by the Policy. The permitting jurisdictions will be obligated to abide by Tri-Met's engineering recommendations, including the denial of permits where the Policy as applied indicates denial and the attachment of conditions where the Policy as applied so indicates; except that, should a permitting jurisdiction disagree with the engineering recommendations made by Tri-Met, it may appeal such decision to the Consortium. The decision of the Consortium shall be followed by the permitting jurisdiction. Copies of any such right-of-way permits shall be forwarded to the right-of-way title holder.
5. Right of Way Ownership. The City of Portland will continue to be the title holder for the right-of-way, for the benefit of the Consortium. As title holder, the City will receive notice of all "incursion" permits issued.
6. Current Operations and Maintenance. Current operation and maintenance of the right-of-way will continue as provided in the current Lake Oswego/Portland agreement, until that agreement is changed.
7. Defense of Claims. All Consortium members agree to consult as soon as possible upon any member receiving a notice of a claim arising out of any activity related to the preservation of the Line. Should the Consortium decide to defend against the claim, all members will participate as parties in a coordinated defense. Should the Consortium decide not to defend against the claim, those jurisdictions against which the claim has been filed may decide on their own how to respond to the claim. Should a claim result in either an award of damages or a settlement, the Consortium members will determine by agreement the appropriate allocation of those costs. Each member will bear the costs of its own legal counsel.
8. Changes in Use. Changes in use of the right-of-way will be subject to Consortium approval.
9. Interim Planning and Coordination. The Consortium will consider adoption of an Interim Plan for improvements to and use of the right-of-way. Any Consortium member may propose expenditures for capital improvements to the right-of-way or related to its use. To assure coordination of capital expenditures, any such expenditures will be subject to Consortium approval.
10. Land Use in Areas Abutting Right-of-Way. Metro will coordinate the development of a model land use regulation to assure that the development of land

immediately abutting the right-of-way is consistent with potential transit uses of the right-of-way. This model regulation will be proposed to Portland, Lake Oswego, and Clackamas and Multnomah Counties for their adoption.

11. Term of Agreement. The term of this Agreement shall be for ten years and may be renewed for a like term upon the approval of the individual members.

CITY OF PORTLAND, OREGON

APPROVED AS TO FORM

By: _____

By: _____

By: _____

CITY OF LAKE OSWEGO, OREGON

APPROVED AS TO FORM

By: _____

By: _____

By: _____

MULTNOMAH COUNTY, OREGON
BOARD OF COUNTY COMMISSIONERS

APPROVED AS TO FORM

By: _____

By: _____

CLACKAMAS COUNTY, OREGON
BOARD OF COUNTY COMMISSIONERS

APPROVED AS TO FORM

By: _____

By: _____

METRO

APPROVED AS TO FORM

By: _____

By: _____

OREGON DEPARTMENT OF
TRANSPORTATION

APPROVED AS TO FORM

By: _____

By: _____

TRI-COUNTY METROPOLITAN TRANS-
PORTATION DISTRICT OF OREGON

APPROVED AS TO FORM

By: _____

By: _____

Willamette Shore Line Right-of-Way Management Policy

I. Need for a Policy

1. A Consortium of Local Governments (Metro, ODOT, Tri-Met, Multnomah County, Clackamas County, the City of Portland and the City of Lake Oswego) purchased the Willamette Shore Line Right-of-Way in 1988 from the Southern Pacific Railroad to preserve it for possible use as a future high capacity transit corridor.
2. The right-of-way extends for approximately 7 miles from the base of the Marquam Bridge, south along the old Southern Pacific rail line into the City of Lake Oswego. The right-of-way varies in width from 17 feet to 80 feet, and is generally held in fee title by the City of Portland for the Consortium. In some limited segments, ownership was conveyed by easement.
3. The Consortium had not established a policy for management of the right-of-way in the interim period. The interim period is the period before a regional decision is made to utilize the right-of-way for High Capacity Transit purposes.
4. The integrity of the right-of-way for use as a high capacity transit corridor has been incrementally diminished over the past few years due to new and existing development encroaching into the right-of-way. This includes new public and private vehicular and pedestrian at-grade crossings that are being built which threaten the safe and continued operation of the trolley.
5. The Consortium believes that continued use of the corridor for trolley purposes is an appropriate interim use.
6. Interim management of the right-of-way requires the establishment of a policy that defines when uses and crossings of the right-of-way are appropriate without diminishing the longer term goal of development of the right-of-way for High Capacity Transit purposes.
7. Additional regulation of new development on lands adjacent to the right-of-way may be necessary to adequately preserve the corridor for future development of high capacity transit and to minimize the impacts and costs of eventual development of the right-of-way on adjacent uses and neighborhoods.
8. Definition of interim development standards is necessary to facilitate development that will occur in areas adjacent to the right-of-way, before a regional decision is made as to the type of high capacity transit that will be developed within the Shore Line Right-

of-Way. Light Rail Transit (LRT) design standards have been developed by Tri-Met, because LRT has thus far been the high capacity transit mode of choice in the region.

9. There are two types of at-grade vehicular railroad crossings:
 - a. Public Crossings. These operate as public streets in that they are unrestricted with respect to who may use them. Depending on the location and type of crossing control, public rail line crossings in Oregon are regulated either by the state Public Utility Commission (PUC) or by the local traffic jurisdiction. In general, traffic signals are used for rail line crossings where trains operate within a street right-of-way and are controlled by the local traffic jurisdiction. The PUC generally requires railroad gates to be used at crossings where rail lines operate in exclusive right-of-way and are crossed at-grade by public streets, a condition that applies to many crossings of the Willamette Shore Line Right-of-Way.
 - b. Private Crossings. Private crossings are associated with private uses such as driveways, not public streets. They are established by agreement between the rail line owner and the private party desiring to cross the right-of-way, and generally would not be regulated by the PUC.
10. Conditions found at typical private at-grade crossings along the Willamette Shore Line Right-of-Way are significantly different from those at public street crossings. In general neither traffic signals, nor gates can offer a satisfactory level of safe crossing control. For instance:
 - a. Neither gates or traffic signals can provide adequate protection for children or pets in a driveway situation.
 - b. Private crossings allow access into the rail right of way which could otherwise be fenced from public access for safety purposes.
 - c. An at-grade crossing creates a break in any noise wall that might be provided, significantly reducing the noise wall's effectiveness. Also, crossing bells, mandated by the PUC, could create a significant noise impact.
 - d. The permittee (depending on the crossing permit provisions) is generally responsible for construction of the crossing, safety devices, insurance and maintenance costs. The financial and legal liabilities associated with a private crossing are a burden on the property's use and may be reflected in the property's value.

For these reasons, private at-grade crossings of rail lines are seldom justified.

11. Upgrading the Willamette Shore Line Corridor to high capacity transit standards would require major safety improvements at all private at-grade crossings. This could involve the replacement of most private at-grade crossings with pedestrian or vehicular grade separations, or by providing alternative access in order to close some private crossings.
12. There are some privately owned lands between the Willamette Shore Line Right-of-Way and the Willamette River that would not have access to a public road without crossing the right-of-way. However, in many cases access could be combined for more than one property, or achieved through crossing other private property such as through creation of access roads.

II. Right-of-way Management Goals

- 1. To manage the right-of-way in a manner that preserves it for possible future development of high capacity transit.**
- 2. To provide factual information to the public regarding possible future use of the right-of-way for high capacity transit.**
- 3. To provide a safe operating environment for continued operation of the Trolley and to enhance the safety of the right-of-way for eventual future use for high capacity transit purposes.**
- 4. To prohibit temporary or permanent uses within the right-of-way which will increase the cost of developing the right-of-way for transit or other purposes in the future.**
- 5. To prohibit new private at-grade crossings of the right-of-way, and work to phase out existing private at-grade crossings of the right-of-way.**
- 6. To coordinate crossings of the right-of-way with ODOT's access management goals, plans and policies for the Highway 43 Corridor.**
- 7. To develop and maintain access to the right-of-way for Operations and Maintenance, Emergency Repairs, and Capital Improvements.**
- 8. To ensure that private property owners are not prohibited from accessing their property, while ensuring conformance with these Management Goals and Policies.**

III. Right-of-way Management Policy

This policy is intended to apply only to the land within the right-of-way owned by the Consortium either by fee title or by easement. The policy does not apply to abutting privately owned property. All development within the right-of-way shall be in accordance with a revokable permit (and the conditions therein) issued by the appropriate local jurisdiction, in conformance with this "Willamette Shore Line Right-of-Way Management Policy".

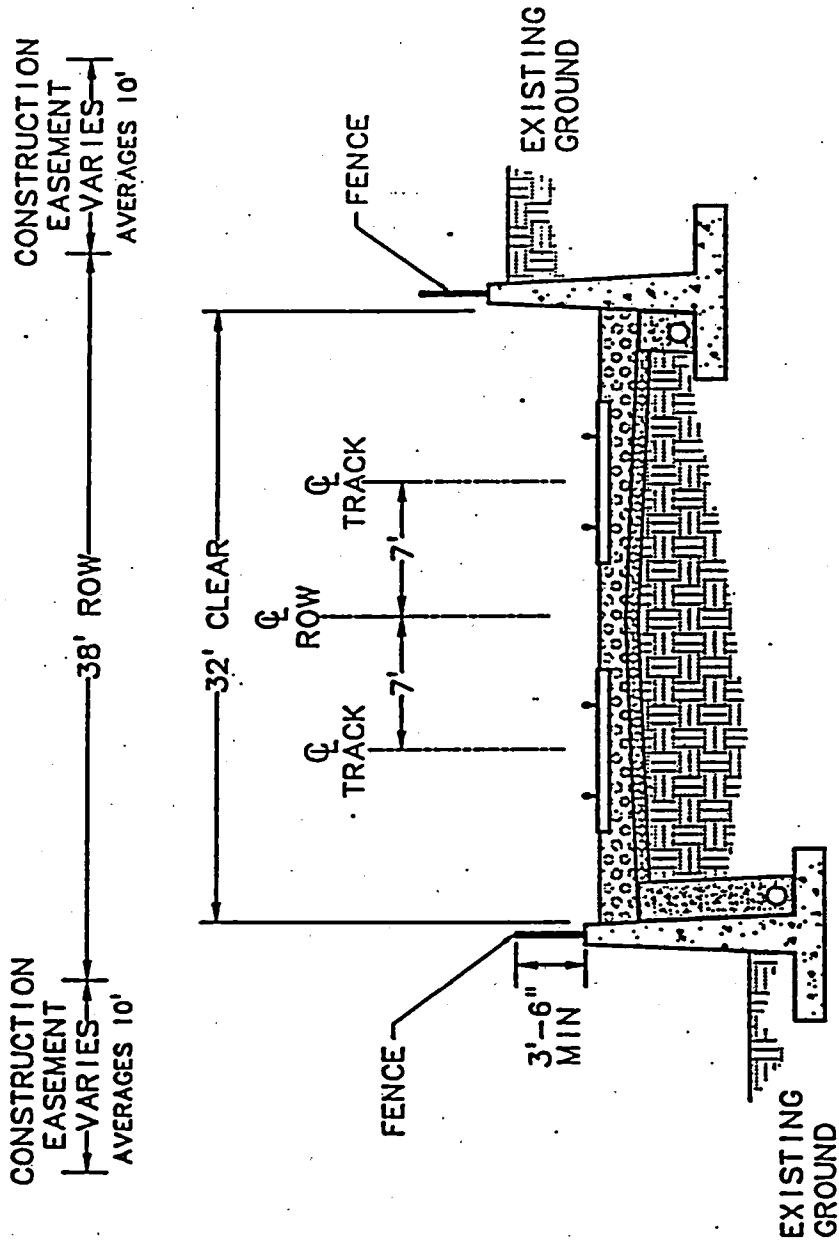
Light Rail Transit (LRT) design standards have been developed by Tri-Met, because LRT has thus far been the high capacity transit mode of choice in the region. Therefore, Tri-Met's existing LRT design standards will be used as interim standards, until such time as the region makes a decision regarding development of the Willamette Shore Line Right-of-Way. These standards are briefly illustrated in figures 1 and 2. These illustrations are not intended to represent the full standards, but to illustrate the more common issues related to the management of the Willamette Shore Line Right-of-Way. For additional details related to the standards, contact Tri-Met.

In addition to the LRT design standards, the following policies and standards shall apply to all development within the right-of-way.

Uses Permitted Within the Right-of-Way

1. Only uses that are consistent with eventual use of the right-of-way for a future high capacity transit corridor will be permitted within the right-of-way.
2. No grading shall be permitted within the right-of-way except where required for an approved crossing, or to improve drainage of the right-of-way. All grading or drainage changes within the right-of-way must be in accordance with a permit approved by the Rail Representative.
3. No vehicle backup or other maneuvers will be allowed within the right-of-way, and all vehicular turn arounds shall occur on abutting private property.
4. No fixed improvements (including, but not limited to; landscaping, fountains, benches, rockeries, fences, irrigation facilities, parking pads, sidewalks or paths, gates, driveways or steps) shall be permitted within the right-of-way that would mean a loss of significant investment, upon removal. Notwithstanding the above, facilities for the safe function of existing crossings may be allowed through a permit.

WHERE EXISTING ROW IS LESS THAN 60' ELEMENTS OF THE MINIMUM SECTION DESIGN MAY BE REQUIRED



NOTES:

- 1 SOUND WALLS, IF REQUIRED, NOT SHOWN
- 2 STANDARD VERTICAL CLEARANCE 18' ABOVE TOP OF RAILS
- 3 CL = CENTERLINE
- 4 REFERENCE WESTSIDE CORRIDOR PROJECT DESIGN CRITERIA, JULY 1993

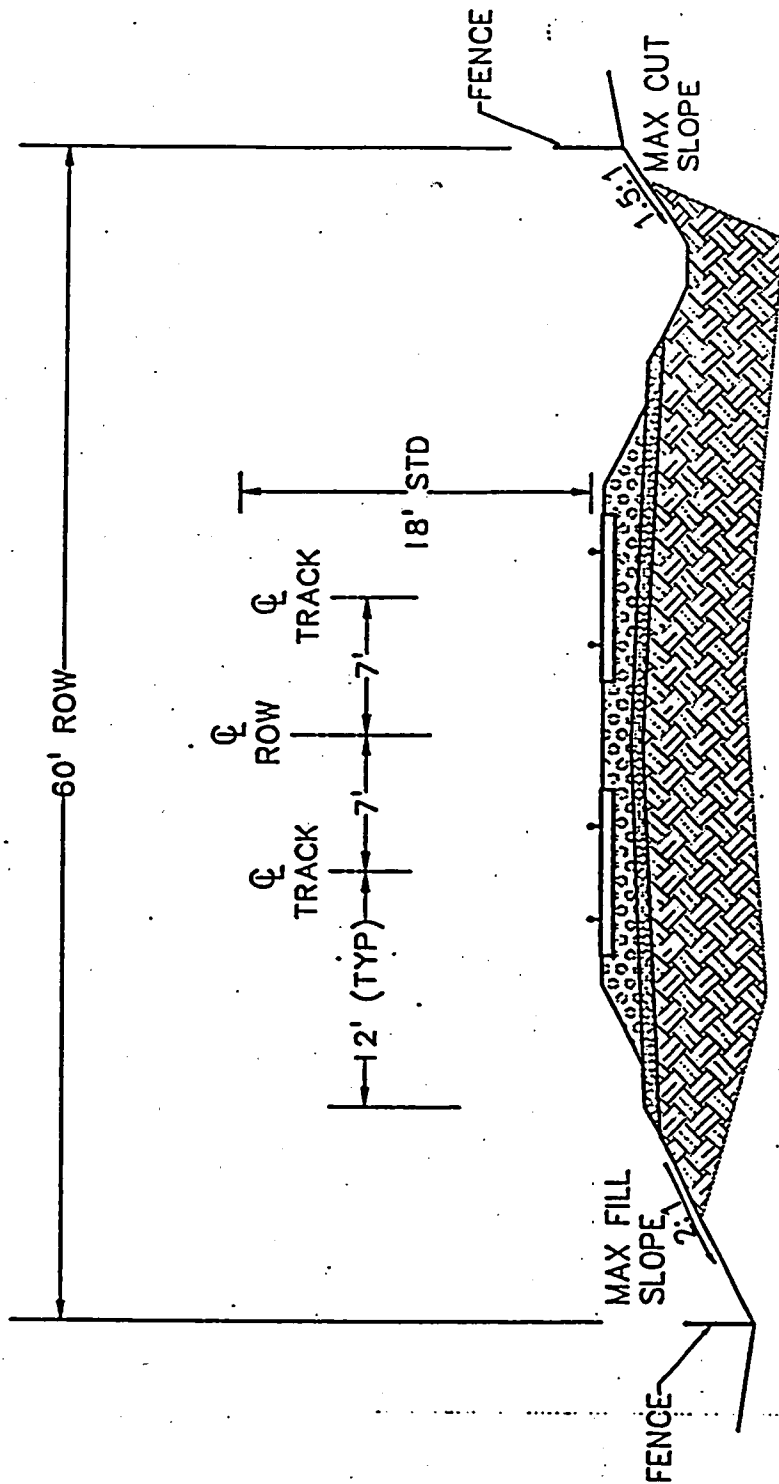


LRT DESIGN STANDARDS

MINIMUM LRT CROSS SECTION

Figure 1

OCT 93



NOTES:

- 1 SOUND WALLS, IF REQUIRED, NOT SHOWN
- 2 STANDARD VERTICAL CLEARANCE 18' ABOVE TOP OF RAILS
- 3 CL = CENTERLINE
- 4 REFERENCE WESTSIDE CORRIDOR PROJECT DESIGN CRITERIA, JULY 1993



LRT DESIGN STANDARDS

STANDARD LRT CROSS SECTION

Figure 2

OCT 93

5. Private landscaping is not allowed in the right-of-way, except as provided for in a revokable permit. A revokable permit may be issued for temporary landscaping for areas not currently required for rail operation or maintenance purposes when in conformance with the landscaping standards below.

Landscaping standards for use within the right-of-way:

1. The private landscaping shall not interfere with the current or future operations, maintenance or safety (including sight lines) as determined by the rail representative responsible for operation and/or maintenance.
2. Landscaping that could increase the cost of development of the right-of-way for high capacity transit purposes will not be permitted.
3. Landscaping within the right-of-way will not be designed or developed as an integral part of a total landscaping design for the abutting private property.
4. The landscaping shall not include any improvements of uses (fixed or not) that would, on removal, mean a loss of significant investment to either the public owners or the abutting private property owners. This includes but is not limited to plantings, shrubs, trees, buffers or irrigation systems.
5. Maintenance of the landscaping shall not require irrigation or watering of the right-of-way or the installation of irrigation systems within the right-of-way. This provision does not apply to public agencies or utilities.
6. All landscaping shall be maintained by the permittee. The public owners retain the right to bill the permittee for costs incurred for maintenance or removal of any of the landscaping improvements made by an adjacent property owner, or other uses within the right-of-way that create an operational hazard.
7. Permits will be revoked for non-compliance with any conditions of the permit, and may be revoked at any time the permitting jurisdiction or the consortium determines that it is in the interest of the owners of the right-of-way.

Permitted Crossings of the Right-of-Way

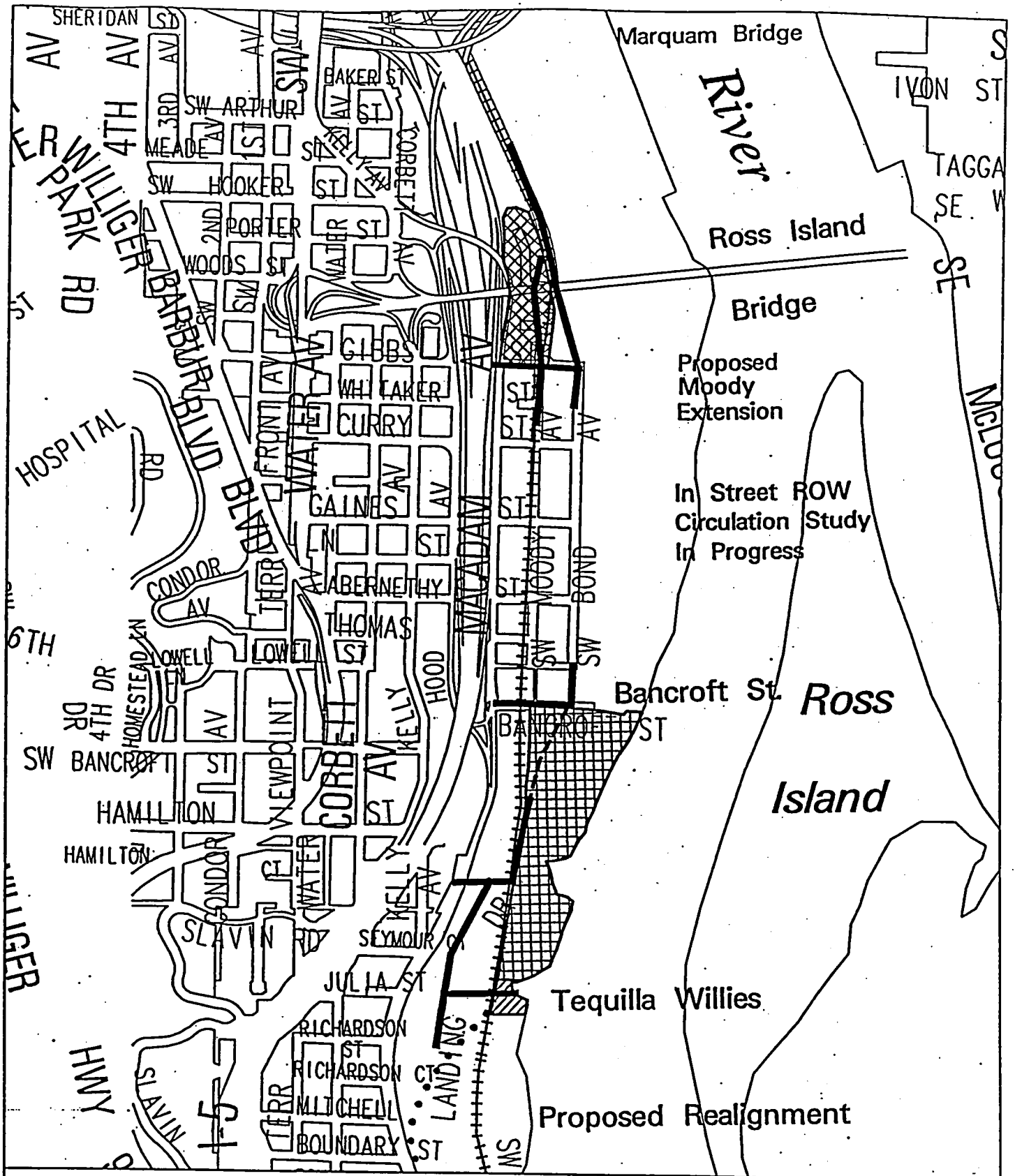
1. No new private at-grade crossings of the right-of-way shall be permitted. No new crossings of the right-of-way shall be permitted if an alternative access to the subject property is available. New crossings of the right-of-way may be permitted for access to properties between the right-of-way and the Willamette River only when no

alternative access exists, and then only when in conformance with the LRT design standards.

2. The "Conceptual Crossing Plan" (Figures 3, 4, 5, and 6) are intended to illustrate the possible public access routes for areas between the right-of-way and the Willamette River.
3. Requests for new right-of-way crossings shall be coordinated with ODOT for conformance with ODOT's access management goals, plans and policies applicable to the Highway 43 Corridor.
4. All crossings shall provide for Consortium access to the right-of-way for operations and maintenance, emergency repairs, and capital improvements of the right-of-way.
5. The Consortium will work with adjacent private property owners to phase out existing at-grade private crossings as properties are altered or redeveloped, and as applications are made for land use or building permits. Methods for phasing out private at-grade crossings include; consolidating crossings, replacing crossings with alternative access, and creating grade separated crossings by replacing an at-grade crossing with a bridge over the right-of-way or an underpass.
6. Utility crossings, including drainage crossings shall require a permit and shall be constructed in conformance with Tri-Met's LRT Standards.
7. Construction and maintenance of all private crossings shall be the responsibility of the permittee. The Consortium or local jurisdiction may bill the permittee for any costs incurred by the Consortium or local jurisdiction for maintenance or repairs associated with a private uses or crossings of the right-of-way.
8. All crossings shall be consistent with the need to ensure the long-term public safety and avoidance of nuisance throughout the corridor. This includes improving the operational characteristics of the interim Trolley use and for a future high capacity transit use, through minimizing and improving the crossings of the right-of-way.

IV. Process regarding issuance of right-of-way crossing or use permits

Permits for crossing or modifying the right-of-way will be issued by the appropriate local jurisdiction as specified in the Inter-Governmental Agreement.

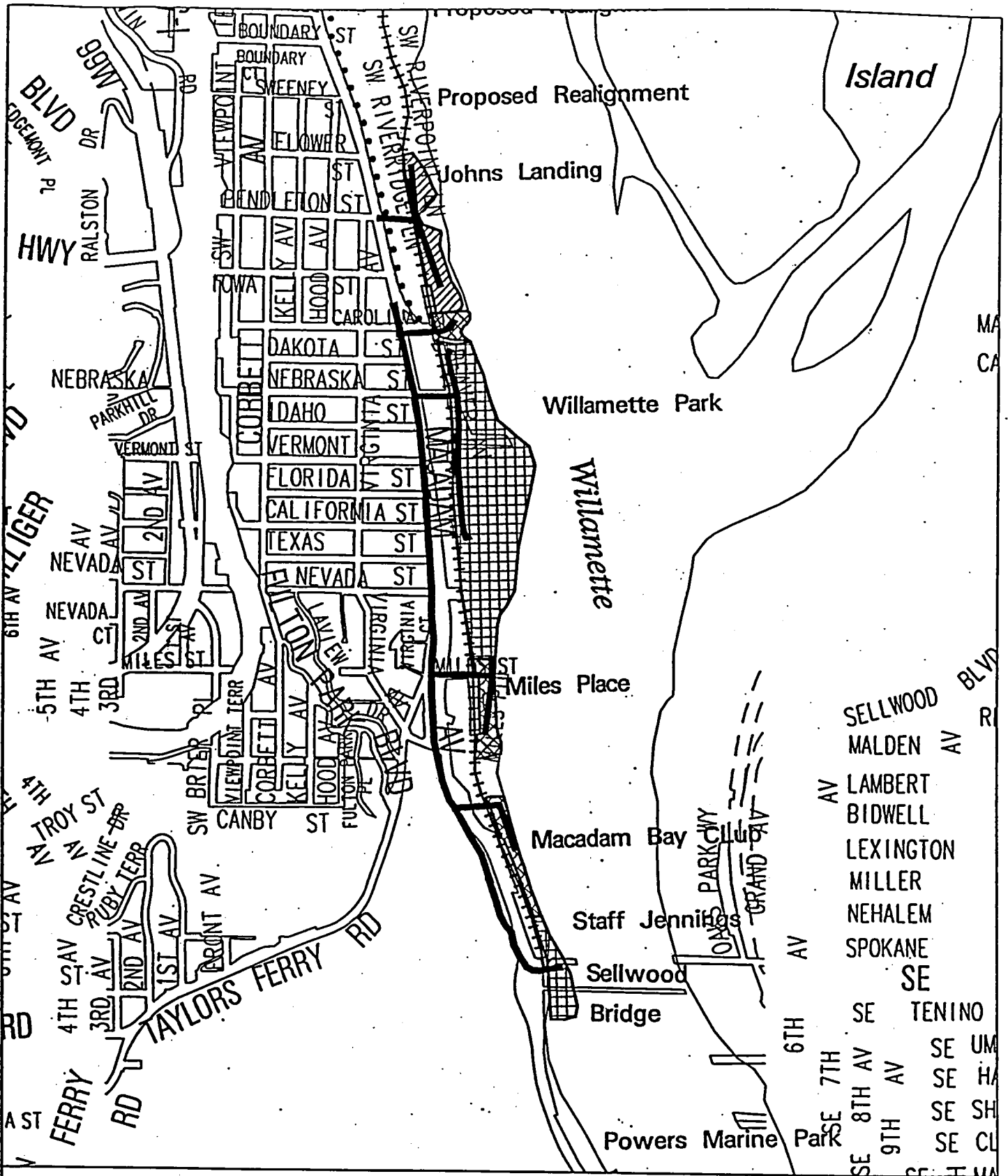


**Willamette Shore Line
Conceptual Crossing Plan**

Figure 3

- +++++ Shore Line Rail ROW
- Street Crossing Shore Line ROW
- ▨ Access from street within hatched area

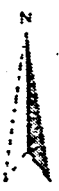


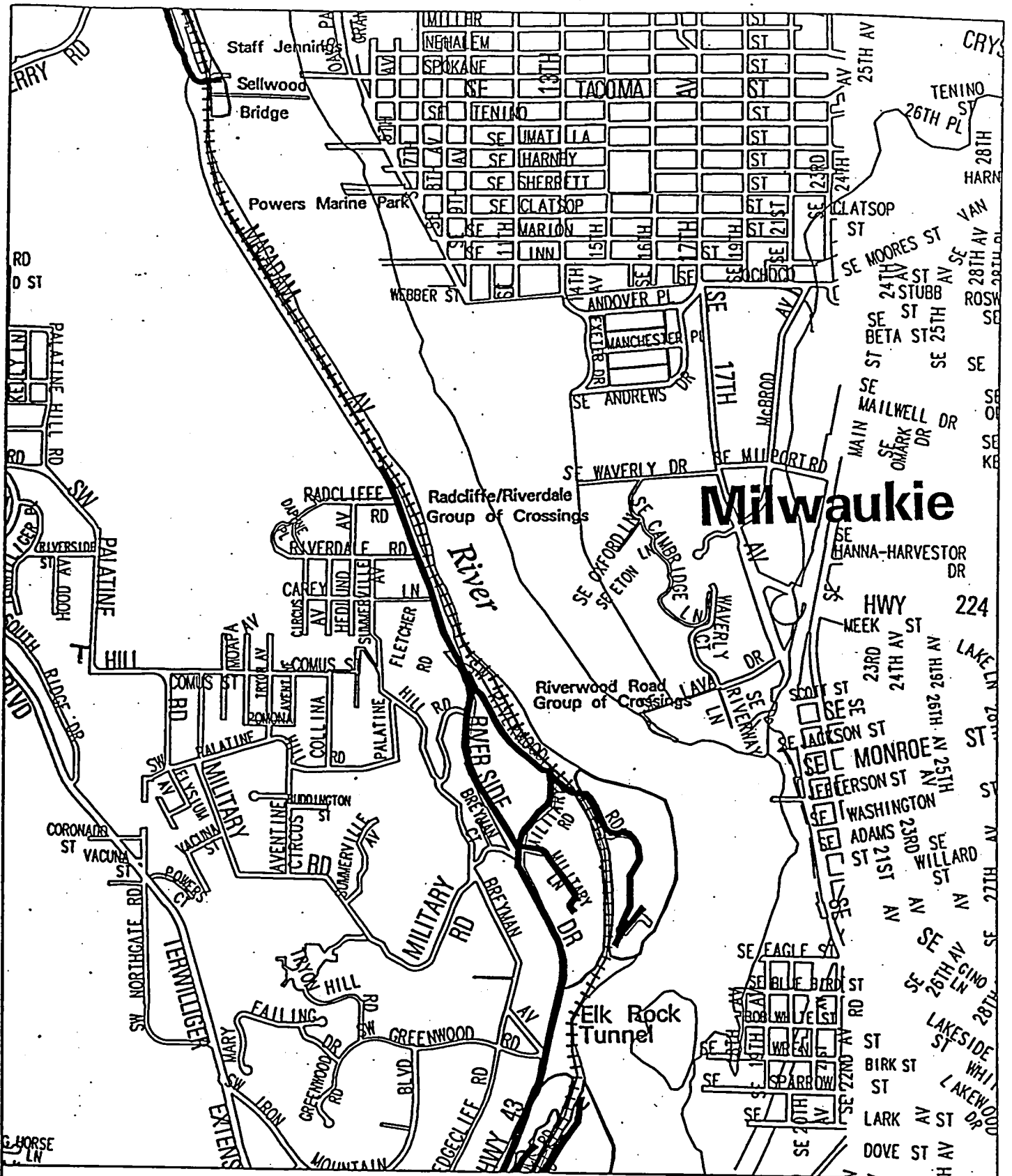


**Willamette Shore Line
Conceptual Crossing Plan**

Figure 4

- +++++ Shore Line Rail ROW
- Street Crossing Shore Line ROW
- ▣ Access from street within hatched area





Willamette Shore Line
Conceptual Crossing Plan

Figure 5

- +++++ Shore Line Rail ROW
- Street Crossing Shore Line ROW
- Access from street within hatched area



STAFF REPORT

CONSIDERATION OF RESOLUTION NO. 94-1868 FOR THE PURPOSE OF ADOPTING AN INTERGOVERNMENTAL AGREEMENT FOR MANAGEMENT OF THE WILLAMETTE SHORE LINE RIGHT-OF-WAY

Date: October 21, 1993

Presented by: Andrew Cotugno

PROPOSED ACTION

This resolution would adopt an Intergovernmental Agreement between Metro and the other jurisdictional members of the Consortium (ODOT, Tri-Met, Multnomah County, Clackamas County, the City of Portland and the City of Lake Oswego) that would:

1. Formalize the structure of the Consortium of local governments that purchased the right-of-way;
2. Designate Metro's representative to the Consortium as the initial chairperson of the Consortium;
3. Establish, at a minimum, an annual meeting of the Consortium;
4. Establish a system for issuing revocable permits for use of, or crossings of, the right-of-way, and a process for resolution of right-of-way issues;
5. Establish a system where the members of the Consortium work together to resolve legal issues should they arise;
6. Provide for the development of an interim plan for improvements to the right-of-way, as necessary; and
7. Provide for Metro to coordinate the development of a model land use regulation that would ensure appropriate development adjacent to the right-of-way.

A copy of the draft Intergovernmental Agreement is attached to the resolution as Exhibit A.

TPAC and JPACT have reviewed this Intergovernmental Agreement and recommend approval of Resolution No. 94-1868.

FACTUAL BACKGROUND AND ANALYSIS

The Willamette Shore Line right-of-way (previously known as the Jefferson Street branch line) is an historic rail corridor that runs from the base of the Marquam Bridge along the western bank of the Willamette River to the City of Lake Oswego. Rail operation through this corridor began in 1887 with passenger service operating until the late 1920's. At its

peak, the Southern Pacific Railroad was running 64 passenger trains a day to and from Portland. Freight operations continued in the Macadam Corridor until 1983.

In 1988, a consortium of local jurisdictions purchased the Jefferson Street branch rail line from the Southern Pacific Railroad in order to preserve it for possible use in the future as a high-capacity transit corridor.

The line is now called the "Willamette Shore Line Right-of-Way." The title to the right-of-way is held by the City of Portland for the Consortium. The City of Lake Oswego manages the maintenance of the right-of-way for the Consortium through a contract with the City of Portland. The City of Lake Oswego contracts with a private operator for the operation of the trolley.

The Shore Line Right-of-Way corridor is identified in the Regional Transportation Plan as a future high-capacity transit corridor. The segment of the right-of-way between the Marquam Bridge and the Sellwood Bridge is one of several alternatives being considered for development in the South/North Alternatives Analysis High-Capacity Transit Study.

Recent development adjacent to the right-of-way, and within the right-of-way, has caused concern on the part of the Consortium. Expansion of existing uses and development of new uses, primarily large single-family houses, is occurring in many areas in the corridor. In some areas, this development is compromising the safe operation of the existing trolley and encroaching into the right-of-way. The development is incrementally degrading the integrity of the right-of-way for its intended use as a future high-capacity transit corridor.

In response to the concern about development in the corridor, in the spring of 1993, Consortium members agreed to adopt a moratorium, halting approval of new crossings of the right-of-way and uses in the right-of-way, to allow for development of a policy for interim management of the corridor.

Representatives of the Consortium have been meeting regularly since the beginning of the moratorium, and have developed a draft policy for management of the right-of-way. This policy is attached as Exhibit B to the draft resolution.

The policy addresses two major issues: use of the right-of-way and crossings of the right-of-way. The purpose of the "uses permitted within the right-of-way" section is: 1) to provide for safe operation of the line, both now and in the future; and 2) to assist property owners in avoiding costly encroachments into the right-of-way, which would later have to be removed. The policy prohibits abutting property owners from installing either fixed improvements or significant landscaping in the right-of-way. Revocable permits for limited temporary landscaping can be granted under certain conditions. For safety purposes, the policy proposes that there be no vehicular movements or parking in the right-of-way.

The section on "permitted crossings of the right-of-way" establishes criteria for crossing of the right-of-way. It identifies two different types of crossings: public and private. The policy limits new at-grade crossings. It proposes that existing private at-grade crossings be phased out over time through a variety of methods, including consolidation of crossings, replacement of at-grade crossings with grade-separated crossings, and development of alternative access.

In order to provide for public review of the draft policy, a public meeting was held on September 14, 1993. Notice of the meeting was sent to approximately 600 property owners in the vicinity of the right-of-way. Approximately 100 people attended the meeting. A copy of the meeting summary is attached to this staff report as Attachment A.

There is strong support within the region for preserving the right-of-way for future high-capacity transit use. However, many property owners in the vicinity of the right-of-way are opposed to the Consortium's ownership of the right-of-way and to plans for managing the right-of-way in such a way as to preserve it for future high-capacity transit use. Some of these property owners attempted to stop the purchase of the right-of-way by the Consortium through legal means, but were unsuccessful.

TPAC reviewed the draft Intergovernmental Agreement and proposed policy at its November 24 meeting. ODOT has indicated that the agency is reconsidering its continued participation in the Shore Line Consortium. TPAC members encouraged ODOT's continued involvement.

EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends approval of Resolution No. 94-1868.

MEETING SUMMARY

DATE OF MEETING: September 14, 1993, 7:00 p.m.

GROUP/SUBJECT: Willamette Shore Line Right-of-Way Public Meeting

ATTENDEES: See Attached List

Welcome and Introduction

Gina Whitehill-Baziuk, representing Metro, welcomed the public to the meeting and explained the agenda and format for the evening. She explained that there was a sign up sheet near the door, and that anyone who signed up would receive a copy of the meeting summary that would be prepared following the meeting.

The Consortium is made up of a group of local jurisdictions and public agencies that purchased the Jefferson Street Branch Rail Line from Southern Pacific. Those agencies include: Metro, ODOT, Tri-Met, City of Portland, City of Lake Oswego, Multnomah County and Clackamas County.

Staff representing the Consortium member agencies were present at the meeting and introduced. Meeting participants were provided a list of names and phone numbers of jurisdictional representatives to contact with future questions regarding the right-of-way.

Background and Purpose of Meeting

Sharon Kelly Meyer, also representing Metro, explained that the intent of the meeting was to review the *Draft Right-of-Way Uses and Crossings Policy* for the "City of Portland Shore Line Right-of-Way." She described an overview of the history of the corridor and the purpose for the meeting.

In 1988, a Consortium of local jurisdictions purchased the Jefferson Street line from the Southern Pacific Railroad in order to preserve it for possible use in the future as a high capacity transit corridor. The line is now called the "City of Portland Shore Line." The title to the right-of-way is held by the city of Portland for the Consortium. The City of Lake Oswego manages the maintenance of the right-of-way for the Consortium and contracts with a private operator for the operation of the trolley.

The portion of the right-of-way north of the Sellwood Bridge is one of several alternatives under consideration as a possible route for a north/south transit corridor in the region. The study known as the "South/North Transit Corridor Study" is evaluating a number of alternatives, including Light Rail Transit for possible development in this corridor. The portion of the right-of-way

south of the Sellwood Bridge is not currently being studied for development as a high capacity transit corridor. However, the entire right-of-way from the Marqum Bridge to the Lake Oswego central business district is identified in the Regional Transportation Plan as a future high capacity transit corridor.

The purpose of the meeting is to review the draft policy developed by Consortium staff to protect the right-of-way, and to aid abutting property owners in the development of their property. Comments from the public will be evaluated, and where reasonable, changes could be incorporated into a revised draft of the policy. The revised draft policy would be adopted and implemented by each of the local jurisdictions in the Consortium. Permits to be issued under the policy would be reviewed, in addition to by the appropriate local jurisdiction, by Tri-Met for compliance with engineering standards.

Overview of Proposed Policy

Jennifer Ryan, representing Tri-Met, provided an overview of the draft policy.

The draft policy consists of two sections. The first addresses uses permitted within the right-of-way. The purpose of this section is to provide for safe operation on the line, both now and in the future, and to assist property owners in avoiding costly encroachments into the right-of-way, which would later have to be removed. The draft policy proposes that abutting property owners not install either fixed improvements or landscaping in the right-of-way. Revocable permits for temporary landscaping might be granted under certain conditions. For safety purposes, the policy proposes that there be no vehicle backups into the right-of-way.

The second section addresses how to access property across the right-of-way. It identifies two different types of crossings, public and private. The draft policy proposes that there be no new at-grade crossings and that existing at-grade crossings be phased out through a variety of methods, including consolidation of crossings, replacement of at-grade crossings with grade-separated crossings, and development of alternative access.

Citizen Comments and Questions

Question: *When will the draft policy be considered and voted on?*

Answer: Staff will consider comments and suggestions made at this public meeting and will revise the draft policy over the next several weeks. It will then be forwarded to the elected or appointed officials of the various jurisdictions within the next couple of months. You may want to contact the representative from your jurisdiction listed on the handout in order to keep informed.

Question: *Once the Policy has been approved, would safety changes then be implemented on the trolley line?*

Answer: Once the policy has been adopted, development proposals received would first go through a safety review. At this point, there is no plan for the broad implementation of safety improvements, such as grade-separating private crossings. The goal would be to make improvements incremental over time as funds are available.

Question: *If safety problems are so severe, why not shut the trolley down? There are several stop signs for the trolley - it seems that those would meet safety requirements.*

Answer: The reason the right-of-way was purchased by the consortium was to preserve it as a rail corridor. The trolley operation is intended as an interim use, until such time as the region decides to develop the corridor for some other use. The existing stop signs along the right-of-way are very unusual for a rail line. Under normal operation of a rail line, the stop signs would be directed toward the traffic crossing the rail line.

Question: *Are there plans to electrify the line within the next five years?*

Answer: There are no plans at this time to electrify the corridor. However, if, as a result of the South/North Study, a decision were made to select Light Rail Transit, and if the Westbank alternative were selected, electrification would occur, but probably not within 5 years. As part of project analysis and development, utility issues would be addressed.

Question: *The east side of the river has been destroyed with rail - the west side is the most valuable property - why are we destroying it? Why not move the rail line back?*

Answer: The rail right-of-way was purchased to preserve it as a possible future transit corridor. In conjunction with the South/North Study, the area north of the Sellwood Bridge is currently being considered as a possible transit corridor. A corridor along Macadam Avenue is also being studied. The area within the right-of-way south of the Sellwood Bridge is not currently being evaluated for development, but will remain in the regional transportation plan as a possible future corridor.

Question: *Why are LRT standards being imposed south of the Sellwood Bridge if that area is not included in the South/North Study?*

Answer: The entire corridor is included in the regional transportation plan which identifies future transit corridors. The LRT standards are being used because they are a well

developed existing set of standards which are readily available for use in preserving this corridor, without requiring the costly development of a new set of standards.

Question: *If you want to develop your property that is adjacent to the Right-of-Way, what procedure do you follow?*

Answer: First, you should contact your local jurisdiction. Local jurisdictions will be responsible for implementing the policy. The jurisdiction will talk with you about how the policy relates to your specific property, and the local jurisdiction will review all applications with Tri-Met who will work with the jurisdiction and the property owners to develop a solution, consistent with the policy and the needs of the property owner.

Question: *How does the Policy treat the land adjacent to the Right-of-Way when the Right-of-Way is not wide enough?*

Answer: The draft policy does not address management of lands outside of the land owned by the Consortium. Lands in private ownership, adjacent to the right-of-way, will not be directly impacted by the draft policy.

Question: *Some segments of the Right-of-Way have been conveyed by easement instead of by deed. Regarding easement rights, is there documentation? Also, How does the draft policy relate to these lands?*

Answer: There are two sets of documents which relate to the status of the right-of-way. One is the set of documents housed within the County Assessors records at the applicable county courthouse, the other is the set of conveyance documents held by the Consortium and conveyed from the railroad at the time of purchase. These documents can be used to identify the legal status of the consortiums' interest in the right-of-way. The policy is intended to apply to all land for which the consortium has an ownership interest, whether by deed or easement.

Question: *Assuming light rail will be chosen, what other studies have been done to run the line in a location other than along the current rails?*

Answer: There is not a current assumption that light rail will go down this specific right-of-way. Until a decision is made in the South/North Study on the mode of transit and the location of the corridor, no decisions to build along the current rails will be made. The only portion of the corridor that is currently being studied is the

north portion of the right-of-way. The focus of this meeting is how we plan to manage the right-of-way in the interim period, until such time as a decision is made to utilize it differently.

Question: *If you are uncertain as to whether or not you have a public or private crossing, what do you do?*

Answer: Generally, if your property is the only property utilizing an access at a particular point, you would likely have a private crossing. However there are exceptions. The best way to determine the status of your crossing is to contact either your local jurisdiction representative or Jennifer Ryan at Tri-Met.

Question: *I am concerned about the scenic value to the trees in some segments of the corridor. Would safety be used as a reason to cutdown the trees?*

Answer: If any particular tree became diseased or obviously hazardous to the safe operation of the trolley or adjacent property owners, a tree may need to be removed. There is not a plan at this time to remove any trees within the corridor. Also, in the future, if or when the region evaluates this corridor for development as a transit corridor, one of the many areas that would be evaluated in an Environmental Impact Statement is visual impacts.

Question: *Could a provision be added to the Policy to preserve the scenic elements of the ROW?*

Answer: Staff agreed that it could be considered in the revision of the draft policy.

Question: *Has the decision already been made to go through Johns Landing Condominiums?*

Answer: There is an alternative that goes through the Johns Landing area that is being considered in the South/North Study. It is one of several options associated with the "Westbank Alternative." The Westbank Alternative would provide for a transit improvement on the Westbank of the Willamette River. There are also several alternatives that would provide for a transit alternative on the Eastbank of the Willamette River. Decisions on the South/North Study will not be made for at least a year, and probably longer.

Question: *Referring to the previous question, who makes the decision?*

Answer: The decision is a regional decision that is developed through building a consensus with the local jurisdictions. It is an extensive process. There are 14 jurisdictions involved in the decision-making process. Recommendations will be made by all the local jurisdictions included in the study area to the Joint Policy Advisory Committee on Transportation (JPACT) and then to the Metro Council for a final decision. Metro staff can provide a more in-depth description of the decision-making process.

Question: *Is the Trolley a private or public enterprise?*

Answer: The City of Portland is the holder of the deed to the right-of-way. The city of Lake Oswego is responsible for maintenance and operation of the service in the right-of-way. Lake Oswego, through a contract with a private operator, manages the operation of the trolley (the equipment on the line is privately owned).

Question: *If the Trolley weren't running, would public money still be used for the line?*

Answer: Yes, some public money would still be used to preserve/maintain the right-of-way.

Question: *Could a provision be added to the Policy that states that there will be no improvements south of the Sellwood Bridge?*

Answer: No, because the entire right-of-way is designated in the regional transportation plan as a future transit corridor. It is possible, however, that clarification could be added as to which portion of the right-of-way is being studied in the South/North Transit Corridor Study.

Question: *Why not develop the transit facilities on public roads rather than imposing on private properties?*

Answer: Within the South/North Study, there are several alternatives identified for possible development. This right-of-way is only one of the alternatives being considered. However, it is important to remember that the Jefferson Street Rail Line has been operating as a rail line since before the turn of the century. There is a long historical precedent of this corridor being operated as a rail line, and as a passenger rail for a good portion of the historic period. The rail line existed long before any of the residences along the line were built.

Question: *On Page 8, #4 , it states that the Consortium will phase out existing private crossings when properties are altered or redeveloped, or when applications are made for land use or building permits. This should be reworded - it appears that all private crossing will be phased out.*

Answer: It is the goal of the policy to eventually phase out private crossings. However, the draft policy should be reviewed to more clearly state that it is the goal, and there is no current plan to implement the goal on a corridor wide basis.

Question: *If property owners were required to have an alternative route into their homes, who would pick up the cost for that?*

Answer: It would be the responsibility of the property owner. If the past or current owner of the right-of-way has given permission for individual property owners to temporarily cross the right-of-way (unless there is a specific agreement between the property owners to the contrary), permission to cross the right-of-way may be revoked, and there is no obligation on the part of the right-of-way owner to provide an alternative access.

Comment: *The Mayor of Lake Oswego addressed the issue of traffic/transportation problems in the Portland metropolitan area. She submitted a letter for the record.*

A copy of the letter is attached.

Question: *When will there be more time to address questions on the policy?*

Answer: Due to the late hour, the meeting was formally adjourned, however, the Metro and jurisdictional staff remained to answer additional questions. Those who still had questions on the policy were encouraged to stay and staff remained available to answer more questions.

Question: *Has anyone addressed the impact of this proposed policy on adjacent property owners? How can a property owner market property? Should you disclose that you have a rail right-of-way adjacent to your property?*

Answer: There are a variety of perceived impacts of the draft policy on adjacent property owners. The right-of-way has been in existence since long before any of the homes adjacent to the right-of-way. Most if not all current property owners were aware of the right-of-way when they purchased their property, and we feel that it is important to accurately inform the public about the status of the right-of-way. If you have questions about disclosure during a land sales transaction, you should

contact your real estate agent, your attorney or the local board of realtors for advice.

Question: *Has it been considered whether or not double tracks should go through the tunnel?*

Answer: No, that has not been considered at this time. That question would be considered in the future, if and when the southern segment of the corridor were to be formally evaluated for a transit improvement.

The group was informed that additional questions regarding the policy could be answered by contacting their local jurisdiction, Metro or Tri-Met.

Closing

The meeting was adjourned at approximately 9:00 pm. Those interested in having specific site-related questions answered, remained (staff was available).

bc/sm

Attachment: Letter submitted by Mayor of City of Lake Oswego



September 14, 1993

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ALICE L. SCHLENKER,
MAYOR

CHARLES C. (MIKE) ANDERSON,
COUNCILOR

HEATHER CHRISMAN,
COUNCILOR

WILLIAM HOLSTEIN,
COUNCILOR

BOB JUNE,
COUNCILOR

BILL KLAMMER,
COUNCILOR

MARY PUSKAS,
COUNCILOR

Lake Oswego Corridor TAG
C/O Sharon Kelly-Meyer
Metro
600 NE Grand Avenue
Portland 97206-2936

Dear Members of the Lake Oswego Corridor TAG:

The City of Lake Oswego, a strong supporter and partner in the consortium which purchased the Jefferson Street line in 1987, is pleased to have the opportunity to support a policy regarding crossings of the rail right-of-way along the line.

The formalization of a policy regarding crossings will provide all parties -- property owners, consortium members, members of the public, neighbors -- with an understanding of specified ground rules for this right-of-way, as well as protecting the public's investment.

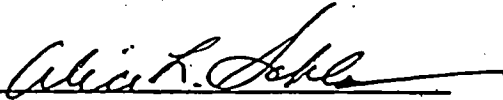
In addition to the original capital acquisition of \$2,000,000, the City of Lake Oswego completed, in 1992, a track extension into the downtown. We look forward to the extension from the current northern terminus to the Riverplace neighborhood in the future.

The saving of the rail line and the rights-of-way was a visionary effort by the members of the consortium, supported by scores of citizen constituents, in anticipation of the need for alternative transportation systems as the metropolitan population increases in the decades ahead.

The proposed policy will provide an understanding and a process for both those interested in the preservation for future use of the corridor and the right-of-way, as well as those interested in developing along the route to be aware of what can be permitted and what will not be allowed on this unique Oregon transportation corridor.

Thank you for your interest in, and consideration of, preserving this rail corridor and right-of-way now and for future generations.

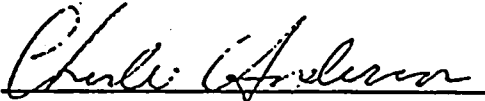
Sincerely,



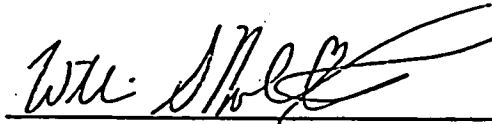
Alice L. Schlenker, Mayor



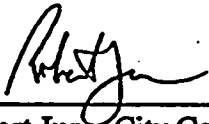
Heather Chrisman, Council President



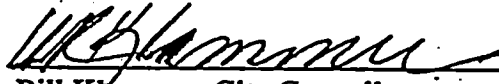
Charles C. Anderson, City Councilor



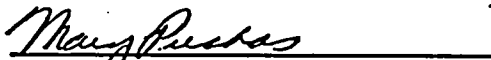
William Holstein, City Councilor



Robert June, City Councilor



Bill Klammer, City Councilor



Mary Buskas, City Councilor

PLANNING COMMITTEE REPORT

CONSIDERATION OF RESOLUTION NO. 94-1868 FOR THE PURPOSE OF ADOPTING AN INTERGOVERNMENTAL AGREEMENT FOR MANAGEMENT OF THE WILLAMETTE SHORE LINE RIGHT-OR-WAY

Date: January 10, 1994

Presented By: Councilor Devlin

Committee Recommendation: At the January 6 meeting, the Planning Committee voted unanimously to recommend Council adoption of Resolution No. 94-1868. Voting in favor: Councilors Kvistad, Gardner, Devlin, Gates, McLain, Monroe, Moore, and Washington.

Committee Issues/Discussion: Sharon Kelly Meyer, Transportation Planning Supervisor, presented the staff report. The resolution adopts an intergovernmental agreement that sets up a process and a consortium for managing the right-of-way of the Willamette Shore Line Corridor. The policy addresses what uses are allowed within the right-of-way owned by the Consortium and under what circumstances crossings would be allowed. The Consortium is made up of those jurisdictions having property within their boundaries or other legal interest. These jurisdictions include the cities of Portland and Lake Oswego, Clackamas County, Multnomah County, Tri-Met, Metro and the Oregon Department of Transportation (ODOT).

About five years ago, the freight rail line was abandoned through an ICC proceeding. In order to avoid having the property revert to the adjacent land owners, the Consortium purchased the property. The title is held by the City of Portland but there is an intergovernmental agreement outlining the interest of all other parties. This resolution is the next step in the process that will protect this right-of-way for future use.

Last September there was a meeting advertised to over 600 property owners in the area adjacent to the Willamette Shore Line Corridor. Approximately 100 attended the meeting and made suggestions for improving the policy. Since revision of the policy an active adoption process has been undertaken resulting in the following groups adopting the policy: Lake Oswego City Council; Clackamas County Board of Commissioners; Multnomah County Board of Commissioners; and the Tri-Met Board. The policy has also been reviewed by the Portland Planning Commission who has made a recommendation to the Portland City Council (expected to take final action within two weeks).

The only body other than the Metro Council that hasn't taken final action is ODOT, which is reconsidering their role and may or may not decide to participate in this

intergovernmental agreement. It is the department's opinion that ODOT's participation, while helpful, is not mandatory.

Councilor Wyers asked what planned future use is envisioned for the right-of-way. Ms. Meyer explained that the portion of the corridor north of the Sellwood Bridge is one of the alternatives that is being considered in the South/North (S/N) Light Rail Transit Study. The portion south of the bridge doesn't have a specific planned use at this time. The entire corridor is within the Regional Transportation Plan to be preserved or potentially developed as a high capacity transit corridor to Lake Oswego.

Councilor Moore asked for further clarification as to public involvement. Ms. Meyer said that in addition to the September meeting mentioned earlier, the staff has met "one-on-one" with adjacent property owners or groups of property owners along the corridor. The City of Lake Oswego, Tri-Met, Multnomah and Clackamas County and Portland Planning Commission all held a public hearings before taking their individual actions. There was also a public process for the original intergovernmental agreement and the ICC process of abandonment. Also there has been a court case about some of the past encroachments and various public hearings on the operation of the trolley.

Councilor Wyers asked who Metro's representative (the Chair of the group) would be. Mr Cotugno indicated he would act in that capacity. All other members are staff rather than elected officials. She then asked how much staff time is anticipated to take care of the needs of the Consortium. Mr. Cotugno indicated that most of the financial burden will fall to Tri-Met and those jurisdictions having to deal with actual development applications. Metro's role is as a coordinator and conflict negotiator.

Councilor Wyers expressed her concern about the resolution from the viewpoint that it is part of a series of steps that may impact the S/N alignment decision to give undue weight to the westside over the eastside.

Councilor Gardner asked the staff to elaborate on the purpose of purchase during the original deliberations. He also asked if the S/N decision chooses an eastside alignment, would there still be a reason to keep this section of right-of-way. Mr. Cotugno explained that the corridor was acquired specifically to preserve the "opportunity" for "future" light rail. The timing of the "future" was undefined. If the property is not acquired, a westside opportunity is foreclosed. If the eastside is selected for the S/N, there is nothing to preclude an additional connection on the westside. All of these decision are fully dependent on the cost effectiveness concerns being examined now in the study.

Public Hearing: Mike Cook, the Chair of the Willamette Shore Line Association, told the committee that it was reasonable for Metro to preserve right-of-way opportunities for

future light rail. But he explained that there are sections of the right-of-way that have been committed to be relocated at Macadam in the future under the City's comprehensive plan and the district's plans for this area. Irrespective of those agreements, this agreement continues to protect the right-of-way along the riverside of the residential units. This residential area was originally planned to be an excellent example of a transit oriented development that is being talked about a lot today. What is happening, as a result of this agreement, is that instead of one light rail line, three are being considered. These include: a line along Macadam, a street car running beside it, and another along the riverside. This, he believes does not leave enough room for a viable neighborhood and will be working to oppose using the riverside area.

Councilor Gardner asked Mr. Cook about the current status of the City of Portland's comprehensive plan in regards to the Macadam line; whether the line was an alternative to the existing right-of-way or a clear decision to move the right-of-way to Macadam. Mr. Cook said he was working to clarify that point. The Macadam Corridor Guidelines, adopted by the City of Portland, shows no rail line along the river, only on Macadam. His purchase documents, however, say that there will be rail line of approximately 26 feet in width in the existing or some relocated area. Councilor Gardner referenced the Johns Landing Master Plan document, that precedes the Portland comprehensive plan, that might help to clarify the issue. His recollection is that only one of the two lines were planned for selection, rather than two lines. Councilor Gardner felt that approving this resolution doesn't pre-judge the S/N alignment decision - it is one small step allowing for one possibility. Other decisions have had higher impact, he said, referring to the reinforcement of the Hawthorne Bridge. Metro has taken a number of former steps that benefit various alignments - this is just one of them.