



MINUTES
June 23, 2011, 5:00 PM
SPECIAL MEETING
CITY COUNCIL CHAMBERS, CITY HALL
29592 ELLENSBURG AVE
GOLD BEACH OR 97444

Call to order: Time: 5:00PM

- 1. The pledge of allegiance**
- 2. Roll Call:**

	Present	Absent
Mayor James Wernicke	X	
Council Position #1 Jeff Crook	X	
Council Position #2 Larry Brennan		X
Council Position #3 Brice Gregory	X	
Council Position #4 Doug Brand	X	
Council Position #5 Tamie Kaufman	X	
City Administrator Ellen Barnes	X	
Student Liaison VACANT		

- 3. Special Orders of Business:**
No special orders of business

There were no special orders of business.

- 4. Consent Calendar**
No consent calendar

There were no consent calendar items.

- 5. Citizens Comments**
Citizen comments from the audience as presented to the Mayor

There were no citizen's comments.

- 6. Public Hearing**
No public hearings

There were no public hearings.

- 7. Citizen/Agency Requested Agenda Items**
No citizen/agency requested agenda items

There were no citizen/agency requested agenda items.

8. Public Contracts and Purchasing

None scheduled

There were no public contracts or purchasing items.

9. Ordinances & Resolutions

- a. **Resolution R1011-45-Approving Gold Beach Wedderburn Rural Fire Protection District contract**
- b. **Resolution R1011-46-IGA with ODOT for signal improvement upgrades**

a. Resolution R1011-45-Approving Gold Beach Wedderburn Rural Fire Protection District contract

City Administrator Ellen Barnes said a copy of the GBWRFPD contract had been attached for review. Barnes explained the difference in contract due to fees and modification of contract in regards to the date of purchase of new equipment.

MOTION:

Councilor Doug Brand made a motion to approve Resolution R1011-45. Councilor Jeff Crook seconded the motion.

Mayor Wernicke called for discussion or debate, hearing none, he called the vote.

Record of Vote	<i>Ayes</i>	<i>Nays</i>	<i>Abstain</i>
Council Position #1 Jeff Crook	X		
Council Position #2 Larry Brennan	absent		
Council Position #3 Brice Gregory	X		
Council Position #4 Doug Brand	X		
Council Position #5 Tamie Kaufman	X		
MOTION CARRIED UNANIMOUSLY			

b. Resolution R1011-46-IGA with ODOT for signal improvement upgrades

Councilor Brice Gregory asked if it should be noted that Councilor Larry Brennan was not presented. Admin Services Director, Jodi Fritts, said she had noted it at the beginning.

CA Barnes said the IGA was the cooperative agreement between the City, County and ODOT for the project for improving the intersections at 6th and Moore Streets. She said it was pretty standard language for an ODOT agreement.

Councilor Jeff Crook asked if we had received any feedback from our legal counsel. Barnes said two different attorneys at our law firm had reviewed the IGA. She said Lauren had reviewed it a while back and had made some recommendations for changes. Barnes said that when dealing with IGA's of this type with ODOT we are actually dealing with the Oregon Transportation Commission. She explained that the Transportation Commission attorney is the Oregon Attorney General. Our ability to modify the documents is pretty limited. She said ODOT did make some changes but the agreement was a standard one.

Barnes said she and the Mayor had discussed the agreement earlier that day. The Mayor had concerns about an inverse condemnation claim against the City. Councilor Gregory asked for clarification on inverse condemnation. Barnes explained that inverse condemnation is: by the City's action or inactions that we render a property unusable to a property owner—and in effect condemns it. She said they are not very common and that was just a general description of it. She asked Mr. Mayor if he would like to clarify. Mr. Mayor agreed with the basic definition and further explained that it depends on whether they recognize damages or an actual taking and he thought the issue was before the Oregon Supreme Court right now.

Barnes continued that Mr. Mayor's concern was potential risk to the City. Barnes said she had another attorney review the agreement today and his opinion was the hurdle was very high for the claimant to provide evidence of damage. Barnes explained ODOT has the right to do with their right-of-way what they want to do. She said the attorney had also spoken with Fritts and that she may be able to explain more. Fritts said the attorney has said there was recent legislation in the last year or so in a similar situation. The Supreme Court decided that ODOT has the right to put their access where ever they want as long as they provide the property some access—not necessarily where the property owner wants it. Fritts said the attorney said he felt it was unlikely that if a suit were brought against ODOT that the complainant would prevail but that anything could potentially happen. Based on case law he felt it was unlikely.

Councilor Gregory asked how the intersection improvements would affect the Gray Whale (Moore Street improvements). Mr. Mayor said they were not changing the access on the southwest side of the street. They are changing it at the northwest side by the Pocket Park. Barnes said ODOT did not want to address that side of the street because of the sub-standard stairway along Moore. She said they did not want to touch it because of ADA requirements—if it stays as is they don't have to make improvements.

Councilor Doug Brand said the biggest impact would be to the parking at the Pocket Park. Fritts said it was not so much the parking spaces as the planter area of the park.

Councilor Jeff Crook asked if the County had anything to do with the IGA since it was near the courthouse. Barnes said yes, they are a party to the IGA as well. Crook clarified that the IGA was between the County, ODOT, and the City. Barnes said "yes and no". It is an ODOT project completely funded by the State of Oregon. The only contributions for the County are giving up a little property (at the Pocket Park—they own the land we lease the park), the City is providing nothing other than Public Works time for utility relocation. Crook asked if that was our only part of the agreement. Barnes said we also agree to certain terms and conditions.

Gregory said: "So basically we are being told by ODOT this is what we are going to do..." Barnes said it is their right-of-way, Hwy 101 is not owned by the City. Councilor Tamie Kaufman asked if ODOT was paying for the utility relocation work? Discussion on the proposed relocation. Barnes said the cost of the relocation would be rolled into the ODOT project.

Gregory asked about Coos-Curry and undergrounding the electric lines. Barnes said at the intersection that would be happening. Barnes said at this time ODOT is negotiating with all the utility providers to underground everything all the way to the 6th Street substation. On the Hwy 101 side they will be underground to Subway. The main pole on the Chase corner has to come down to accommodate the new signal mast arm and that is what is driving the underground at that location.

Barnes said that intersection is the "Golden Nexus" for various utilities. It's a main line for the power up and down the coast; it is a critical junction for internet, and cable distribution. On the north side it will be underground in front of DQ until Riley Creek. Gregory said that sounded good since this intersection is one of the "worst looking" spots for vision with all the wires and poles everywhere.

Brand clarified that the new signals would be on poles. Barnes said yes they would be mast arms that would go out across Hwy 101. She believed the base would be located on the west side by Ray's at 6th and on the west side by Gray Whales at Moore. Gregory asked if there would only be one pole at each location. Barnes said yes.

Councilor Kaufman came back to the possibility of the "unlikely lawsuit" since the DQ property is owned by an attorney. Kaufman asked if that happened would our insurance cover us? Barnes said it would be a claim against the City and we have insurance. Barnes said there isn't a lot the City can do because "the project is happening." Barnes said the City is not taking anyone's property.

Kaufman said on another note: if 6th Street will already be under construction it would be a good time to finish the sidewalks on both sides of the streets. Barnes said that was already part of the plan. Brief discussion on sidewalk improvements. Barnes said the only bad part of it is that due to utility trenching 6th Street may have to be completely shut down at some point to facilitate the work and she said "that scares me the most." She is concerned about the impact to property owners during the actual construction. She said there is a narrow construction window to reduce impacts to the school as well. She says the scheduling is "dicey". She said a request for night construction would come back to the council at a later date to help shorten the construction window and reduce impacts to the neighborhood and businesses. Discussion about access to and from 6th during a closure.

Councilor Crook asked how long they expected the construction to last. Barnes said they did not know at this time. The big unknown at this time is what will happen when the utilities actually begin their change-over process. There is no way of knowing if things will go well, or go bad.

MOTION:

**Councilor Jeff Crook made a motion to adopt Resolution R1011-46.
Councilor Doug Brand seconded the motion.**

Mayor Wernicke called for discussion or debate, hearing none, he called the vote.

Record of Vote	<i>Ayes</i>	<i>Nays</i>	<i>Abstain</i>
Council Position #1 Jeff Crook	X		
Council Position #2 Larry Brennan	absent		
Council Position #3 Brice Gregory	X		
Council Position #4 Doug Brand	X		
Council Position #5 Tamie Kaufman	X		
MOTION CARRIED UNANIMOUSLY			

10. Miscellaneous Items (including policy discussions and determinations)
None Scheduled

There were no miscellaneous items scheduled.

11. City Administrator's Report

Since this was a special meeting a formal CA Report was not presented. Barnes said the City had open labor negotiations with Teamsters and it was likely that the Salary Schedule that had recently been adopted would change.

Mr. Mayor asked where we were on replacing Officer Wood. Barnes said the Chief was closely looking at a few specific candidates and a decision would be made soon.

12. Mayor and Council Member Comments

- a. Mayor James Wernicke: no comments tonight
- b. Councilors
 - 1) Jeff Crook: no comments
 - 2) Larry Brennan: absent
 - 3) Brice Gregory: thanks for the meeting
 - 4) Doug Brand: will hold comments until regular meeting
 - 5) Tamie Kaufman: no comments
- c. Student Liaison, VACANT

13. Citizens Comments

Written requests as presented to the Mayor at the beginning of the meeting

There were no citizens comments presented to the Mayor.

14. Executive Session

No executive session.

The next regularly scheduled meeting of the Gold Beach City Council is Monday, July 11, 2011, at 6:30PM in the Council Chambers of City Hall, 29592 Ellensburg Avenue, Gold Beach, Oregon

MOTION:

Councilor Doug Brand made a motion to adjourn. Councilor Brice Gregory seconded the motion.

Mayor Wernicke called for discussion or debate, hearing none, he called the vote.

Record of Vote	<i>Ayes</i>	<i>Nays</i>	<i>Abstain</i>
Council Position #1 Jeff Crook	X		
Council Position #2 Larry Brennan	absent		
Council Position #3 Brice Gregory	X		
Council Position #4 Doug Brand	X		
Council Position #5 Tamie Kaufman	X		
MOTION CARRIED UNANIMOUSLY			

15. **Adjourn Time: 5:20PM**



AGENDA
June 23, 2011, 5:00 PM
SPECIAL MEETING
CITY COUNCIL CHAMBERS, CITY HALL
29592 ELLENSBURG AVE
GOLD BEACH OR 97444

Call to order: Time: _____

1. **The pledge of allegiance**

2. **Roll Call:**

	Present	Absent
Mayor James Wernicke		
Council Position #1 Jeff Crook		
Council Position #2 Larry Brennan		
Council Position #3 Brice Gregory		
Council Position #4 Doug Brand		
Council Position #5 Tamie Kaufman		
City Administrator Ellen Barnes		
Student Liaison Alayna Brand		

***NOTE: If you would like to address this governing body, please present a completed "Business from the Audience" request to the Mayor at this time. Your request will be added under the CITIZEN COMMENTS section of our agenda. Comments and participation from the audience will be limited to 5 minutes without redundancy.*

3. **Special Orders of Business:**

No special orders of business

4. **Consent Calendar**

No consent calendar

5. **Citizens Comments**

Citizen comments from the audience as presented to the Mayor

6. **Public Hearing**

No public hearings

7. **Citizen/Agency Requested Agenda Items**

No citizen/agency requested agenda items

8. **Public Contracts and Purchasing**

None scheduled

9. **Ordinances & Resolutions**

- a. **Resolution R1011-45-Approving Gold Beach Wedderburn Rural Fire Protection District contract**

- b. Resolution R1011-46-IGA with ODOT for signal improvement upgrades
- 10. Miscellaneous Items (including policy discussions and determinations)
None Scheduled
- 11. City Administrator's Report
- 12. Mayor and Council Member Comments
 - a. Mayor James Wernicke
 - b. Councilors
 - 1) Jeff Crook
 - 2) Larry Brennan
 - 3) Brice Gregory
 - 4) Doug Brand
 - 5) Tamie Kaufman
 - c. Student Liaison, Alayna Brand
- 13. Citizens Comments
Written requests as presented to the Mayor at the beginning of the meeting
- 14. Executive Session

The next regularly scheduled meeting of the Gold Beach City Council is Monday, July 11, 2011, at 6:30PM in the Council Chambers of City Hall, 29592 Ellensburg Avenue, Gold Beach, Oregon

15. Adjourn Time: _____

The location of the hearing/meeting is accessible to the disabled. Advance notice is requested if special accommodations are needed. Call 541-247-7029 so that appropriate assistance can be provided. The City of Gold Beach is an affirmative action EEOE and complies with section 504 of the rehab act of 1973. Complaints of discrimination should be sent to: USDA, Attention Director, Office of Civil Rights, Washington, D.C. 20250-9419

POST: City Hall
Post Office

EMAILED: Media

www.goldbeachoregon.gov

RESOLUTION R1011-45

**RESOLUTION APPROVING A FIRE CONTRACT WITH THE GOLD BEACH
WEDDERBURN FIRE PROTECTION DISTRICT**

WHEREAS: The City operates a volunteer fire department that is capable of providing fire protection services to an extended area beyond the city limit boundaries; and

WHEREAS: The Gold Beach Wedderburn Fire Protection District requires fire protection services from the City; and

WHEREAS: The City has provided fire protection services to the Gold Beach Wedderburn Fire Protection District for many years; and

WHEREAS: The Gold Beach Wedderburn Fire Protection District desires to continue to have the City provide fire protection services to properties accepted, approved and agreed to by both parties that are located within the Gold Beach Wedderburn Fire Protection District; and

WHEREAS: The City desires and is capable of continuing to provide fire protection services to properties accepted, approved and agreed to by both parties that are located within the Gold Beach Wedderburn Fire Protection District; and

WHEREAS: The City has the authority pursuant to ORS chapter 190 to enter into intergovernmental agreements to provide services and facilities through the joint and cooperative exercises of powers, privileges and authority.

NOW, THEREFORE, BE IT RESOLVED: the City Council of the City of Gold Beach, Oregon, approves the fire contract with attached as Exhibit A to this resolution.

Passed by the City Council of the City of Gold Beach, County of Curry, State of Oregon, this 23rd day of June 2011.

James H. Wernicke, Mayor

ATTEST:

Jodi Fritts, City Recorder

**FIRE SERVICES AGREEMENT
GOLD BEACH-WEDDERBURN FIRE PROTECTION DISTRICT
CITY OF GOLD BEACH**

THIS AGREEMENT, made this ____ day of _____, 2011 by and between the City of Gold Beach, Oregon, a municipal corporation, hereinafter referred to as "City" and the Gold Beach-Wedderburn Fire Protection District, hereinafter referred to as "District".

WHEREAS, City operates a volunteer fire department, which has the capability to provide fire protection services to an extended area beyond the boundaries of City, and

WHEREAS, District requests fire protection services from City for premises described within the District's boundaries, and

WHEREAS, the parties desire to enter into a mutual agreement whereby City will provide fire protection to properties accepted, approved and agreed to by both parties that are located within the District.

NOW, THEREFORE, in consideration of the covenants, conditions and monies paid as outlined below, it is hereby agreed by and between the parties as follows:

1. Fire Protection Services

City agrees to furnish to District fire protection service within the premises of the accepted and approved recognized District, which may be amended from time to time, by annexation, with the written consent of both the District and City. Said fire protection service shall be subject to the following conditions:

- 1.1 City fire equipment will be on call at all times to respond to fire calls from District; though, it is understood that City equipment and personnel also are on call to other areas for fire service.
- 1.2 City shall answer all such fire calls as promptly as possible, but it is understood that City equipment and personnel also are on call to other areas for fire service.
- 1.3 Any and all fire suppression activities, including the direction of equipment and personnel, shall be under the sole and absolute direction of the City Fire Chief or his or her designees while fire department staff is engaged in any suppression activity on the premises of the District. District agrees not to interfere in any manner with the operation of the City fire department in providing fire protection services to the premises described above.
- 1.4 It is understood that City and its incorporated limits are entitled to fire protection first and, in the event, that any or all of City fire equipment shall be engaged in fighting a fire

within the City limits at the time a fire shall occur on the property of District, the time for dispatching of personnel and the amount of equipment under such circumstances shall be under the sole control and direction of the City Fire Chief and his or her designees. It is further understood that in the event a fire shall occur in the City or any other area at the same time as City fire equipment and personnel may be fighting a fire on the property of District, such equipment and personnel may be withdrawn from the property of District and recalled to the City or any other area at any time at the sole discretion of the City Fire Chief or his or her designees.

2. Consideration for Fire Protection Services

District agrees to pay timely to the City, such fees as are outlined in Exhibit "A" attached hereto and by reference incorporated in this agreement. District agrees that Exhibit "A" contains the full agreement on consideration between the parties in regards to this agreement.

3. Term

The term of this contract shall commence on July 1, 2011 and shall continue until June 30, 2018.

4. Annexation of Additional Premises

District agrees to notify City in writing of the District's intent to annex any new territory to be served with fire protection under this agreement and further provide to City a map and legal description of the proposed annexation and territory. Said map shall include information regarding all public and private roads and public or private water systems within said proposed annexation area. City shall be the sole determining body as to whether the area can be reasonably and effectively serviced with fire protection under this agreement. The District will not agree to annexation of any properties without written approval of the City to extend fire protection services. City shall have ninety (90) days from the date of receipt of all information requested by City to render a decision in regards to said annexation and fire service. City's decision shall be in writing to District within the ninety (90) day period. Failure of City to act on any decision shall be interpreted as a City denial of extension of fire protection services. Annexations approved by both the City and the District and completed prior to the effective date of this Agreement are covered by this Agreement.

5. Absolute Release and Indemnification of City

District, on behalf of itself, its officers, agents, employees, shareholders, members, residents, successors, assigns, Personal Representatives, and all other parties holding any rights under District, do hereby absolutely release, discharge and indemnify City, its officers, agents and employees, or fire department members from any responsibility or any liability in any manner for all claims, charges, expenses, personal injuries, property injuries or any other type of injury to themselves, their property or any third person from any act, decision or duty of City in performing this fire services contract. Said release and indemnification is contractual and not merely a recital and is an integral part of this agreement.

6. Amendments

It is expressly agreed between the parties that any changes in fees, extension of term or additional requirements or additions under this Agreement can be mutually negotiated by the parties at any time and any amendments to this Agreement shall be in writing only. This Agreement consists of the full and complete Agreement between the parties and all prior Agreements are hereby terminated as of the date of this Agreement first written above.

7. Attorneys Fees

In the event suit or litigation is instituted to enforce this Agreement or to enforce any of its terms or provisions or to collect any monies due hereunder, the prevailing party in such suit or action shall be entitled to such attorney's fees, including fees in appellate court, as the appropriate court may deem reasonable.

8. Fire Planning Committee

Representatives of the District shall have the opportunity to prepare and offer budget and management recommendations during each year's budget process; work with GBWFPD Board and the City Fire Chief to prioritize new hydrant needs and subsequent installation with the District.

IN WITNESS WHEREOF, the parties hereto have set their hands this ___ day of _____, 2011.



**Gold Beach-Wedderburn
Fire Protection District**

By: _____
James H. Wernicke, Mayor

By: _____, Chair

By: _____
Ellen R. Barnes, City Administrator

By: _____, Chair

Exhibit A

Beginning in fiscal year 2011-2012, District agrees to pay annually to City the sum of \$66,000 for general operations and \$18,700 for fire related expenses. The District agrees that it shall pay 50% of said sum on or before January 1 and the balance on or before June 1 each contract year. In addition, the District shall place in an Equipment Reserve Fund, held by the Curry County Treasurer, the amount of \$14,300 each year of this agreement. Two distributions from this fund will be made to the City. The first distribution in the amount of \$71,500 will be made on or before June 1, 2016 to use toward purchase of a new fire apparatus in FY2015-2016. The second distribution to the City in the amount of \$28,600 will be made on or before June 1 of the last year of this Agreement for benefit of the City of Gold Beach Fire Truck Reserve Fund. The lump sum is to be paid to City for the benefit of their Fire Truck Reserve Fund on June 1 of the last year of this Agreement. Any interest accrued prior to the payment of these distributions ~~lump sum~~ will remain with the District.

District agrees to pay City such additional sums as the parties agree are necessary due to unanticipated expenses as a result of the following:

1. Changes in the ORS or OAR subsequent to the signing of this Agreement
2. Voter approval of initiative petitions

Should City and District not agree to any changes in consideration, either party shall have the right to terminate this agreement upon six (6) months written notice.

Additionally, as consideration District shall supply the materials for the installation of additional fire hydrants as requested by District. City shall supply the labor to install those hydrants at points recommended by the City Fire Chief.

Payments and Due Dates are as Follows:

1. General Operations: \$66,000
 - \$33,000 due on or before January 1 each year
 - \$33,000 due on or before June 1 each year
2. Fire Department Expenditures: \$18,700
 - \$9,350 due on or before January 1 each year
 - \$9,350 due on or before June 1 each year
3. Fire Truck Reserve Fund: \$100,100

Each year of this agreement, \$14,300 will be deposited into the Equipment Reserve Fund held by the Curry County Treasurer. By June 1, 2016, a lump sum payment of \$71,500 from the Equipment Reserve Fund will be made to the City to use to purchase a new fire apparatus in FY 2015-2016. By June 1, 2018, another lump sum payment of \$28,600 will be made from this account to the City to the City of Gold Beach Fire Truck Reserve Fund. A lump sum payment of \$100,100 will be made from this account to the City on or before June 1, 2017.

RESOLUTION R1011-46

**RESOLUTION APPROVING A COOPERATIVE IMPROVEMENT AGREEMENT FOR
SIGNAL AND INTERSECTION UPGRADES AT HWY 101 AND MOORE STREET
AND HWY 101 AND 6TH STREET**

WHEREAS: HWY 101 that runs through Gold Beach is a part of the state highway system under jurisdiction and control of the Oregon Transportation Commission; and

WHEREAS: Moore Street and 6th Street are parts of the city street system under the jurisdiction and control of the City of Gold Beach; and

WHEREAS: The Oregon Transportation Commission desires to upgrade the signals at the locations of HWY 101 and Moore Street and HWY 101 and 6th Street; and

WHEREAS: The City desires to improve turning radiuses and sight distances at the intersections located at HWY 101 and Moore Street and HWY 101 and 6th Street; and

WHEREAS: The proposed signal and intersection improvements will be funded through federal Surface Transportation Program (STP) funds allocated to the state of Oregon and with other state funding to cover any matching requirements, nonparticipating costs, and all costs in excess of the available federal funds; and

WHEREAS: The proposed signal and intersection upgrades will improve public safety, transportation movement, street aesthetics at the project locations; and

WHEREAS: The City has the authority pursuant to ORS chapter 190 to enter into intergovernmental agreements to provide services and facilities through the joint and cooperative exercises of powers, privileges and authority.

NOW, THEREFORE, BE IT RESOLVED: the City Council of the City of Gold Beach, Oregon, approves the cooperative improvement agreement attached as Exhibit A to this resolution.

Passed by the City Council of the City of Gold Beach, County of Curry, State of Oregon, this 23rd day of June 2011.

James H. Wernicke, Mayor

ATTEST:

Jodi Fritts, City Recorder

**COOPERATIVE IMPROVEMENT AGREEMENT
US 101: Gold Beach Signal Upgrades**

THIS AGREEMENT is made and entered into by and between the **STATE OF OREGON**, acting by and through its Department of Transportation, hereinafter referred to as "State," **CURRY COUNTY**, acting by and through its elected officials, hereinafter referred to as "County," and the **CITY OF GOLD BEACH**, acting by and through its elected officials, hereinafter referred to as "City," herein referred to individually or collectively as "Party" or "Parties".

RECITALS

1. Oregon Coast Highway (US 101), is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC). Moore Street and 6th Street are parts of the city street system under the jurisdiction and control of City.
2. By the authority granted in Oregon Revised Statutes (ORS) 190.110, 366.572 and 366.576, State may enter into cooperative agreements with counties, cities and units of local governments for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties.
3. By the authority granted in ORS 810.080 State has the authority to establish marked pedestrian crosswalks on its highway facilities.
4. By the authority granted in ORS 810.210, State is authorized to determine the character or type of traffic control devices to be used, and to place or erect them upon state highways at places where State deems necessary for the safe and expeditious control of traffic. No traffic control devices shall be erected, maintained, or operated upon any state highway by any authority other than State, except with its written approval. Traffic signal work on this Project will conform to the current State standards and specifications.
5. Moore Street is part of the city street system; property outside the street right of way belongs to the County. County and City entered into Ground Lease Agreement 93 02851 on May 24, 1993 and amendment No. 1 on April 4, 1999. Said agreement allows the City to lease the parcel for parking facility from the County. Said agreement terminates on May 16, 2013.
6. The placement of signal poles and signal cabinets at the Moore Street location will encroach on property owned by County. State requests the permanent use of said property for construction and ongoing maintenance of the US 101 Gold Beach Signal Upgrade project.

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

TERMS OF AGREEMENT

1. Under such authority, State, City and County agree that State will perform signal upgrades at Moore Street and 6th Street, hereinafter referred to as "Project." The Project includes signal installation, sidewalks, signing, striping, and removal of parking facilities at northwest corner of Moore Street. The location of the Project is approximately as shown on the sketch map attached hereto, marked Exhibit A, and by this reference made a part hereof.
2. The Project will be conducted as a part of the Federal-Aid Surface Transportation Program (STP) under Title 23, United States Code. The total Project cost is estimated at \$1,767,000, which is subject to change. STP funds for this Project will be limited to \$895,972. The Project will be financed with STP funds at the maximum allowable federal participating amount, with State providing the match and any nonparticipating costs, including all costs in excess of the available federal funds.
3. The term of this Agreement shall begin on the date all required signatures are obtained and shall terminate upon completion of the Project and final payment or ten (10) calendar years following the date all required signatures are obtained, whichever is sooner.

COUNTY OBLIGATIONS

1. Placement of the signal poles and signal cabinet will occur outside State and City operating right of way on County owned property. County agrees to the location and placement of the signal improvements. County shall donate all necessary property rights for the Project located at Moore Street needed to complete the Project to State in accordance with State's Region 3 and statewide right of way policies and procedures. Further, County understands and acknowledges that in order to develop the Project for construction, a portion of the State's improvements will fall on property currently owned by County. County acknowledges that it has been informed of its right to compensation for the property needed for the project. County wishes instead to donate the property, subject to the policies and procedures for State and Federal approval. County may be eligible to receive relocation benefits for any personal property located within the donated real property that must be relocated due to the Project in accordance with State's Region 3 and statewide right of way policies and procedures.
2. County hereby grants State, and/or its contractor, the right to enter onto and occupy County property owned in fee simple within the Project limits for the performance of field work, Project construction and signal installation, as well as future maintenance of traffic signal, traffic loop detectors, connections, and equipment.
3. County certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of County, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind County.
4. County's Project Manager for this Project is Dan Crumley, PO Box 746, Gold Beach, OR 97444, 541-247-7097, crumleydan@co.curry.or.us, or assigned designee upon

individual's absence. County shall notify the other Parties in writing of any contact information changes during the term of this Agreement.

CITY OBLIGATIONS

1. City has requested that the Project improve the turning radius and sight distance of the northwest corner of Moore Street and US 101. City understands and agrees that said improvements will require the removal of on-street parking on the north side of Moore Street.
2. City shall maintain the asphaltic concrete pavement surrounding the vehicle detector loops installed in Moore Street and 6th Street in such a manner as to provide adequate protection for said detector loops.
3. State and City have developed an Access Management Strategy for this Project, identifying the closure and/or modification of highway approaches in the vicinity of US 101 and 6th Street. City agrees with the actions described in the Access Management Strategy, attached as Exhibit B and by this reference made part of this Agreement.
4. City shall donate to State all necessary property rights for the Project, located at 6th Street, needed to complete the Project to State in accordance with State's Region 3 and statewide right of way policies and procedures. Further, City understands and acknowledges that in order to develop the Project for construction, a portion of the State's improvements will fall on property currently owned by City. City acknowledges that it has been informed of its right to compensation for the property needed for the project. City wishes instead to donate the property, subject to the policies and procedures for State and Federal approval. City may be eligible to receive relocation benefits for any personal property located within the donated right of way that must be relocated due to the Project in accordance with State's Region 3 and statewide right of way policies and procedures.
5. City hereby grants State, and/or its contractor, the right to enter onto and occupy City right of way within the Project limits for the performance of field work, Project construction and signal installation, as well as future maintenance of traffic signal, traffic loop detectors, connections, and equipment.
6. City by execution of Agreement, gives its consent as required by ORS 373.030(2) and ORS 105.760 to any and all changes of grade within the City limits, and gives its consent as required by ORS 373.050(1) to any and all closure of streets intersecting the highway, if any there be in connection with or arising out of the Project covered by the Agreement. State shall be considered to be a person operating under contract with the City pursuant to Gold Beach Local Improvement Code section 2.210(13) for purposes of activities associated with the Project.
7. City certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of City, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind City.

8. City's contact for this Project is Will Newdall, Public Works, 29592 Ellensburg Ave., Gold Beach, OR 97444, (541) 247-7459, gbpw94100@frontier.com, or assigned designee upon individual's absence. City shall notify the other Parties in writing of any contact information changes during the term of this Agreement.

STATE OBLIGATIONS

1. State certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within State's current appropriation or limitation of the current biennial budget.
2. State shall be responsible for and pay to the power company 100 percent of the power costs for the traffic signal. State shall require the power company to send invoices directly to State.
3. State shall, upon signal turn on and proper operation, perform all necessary maintenance of said traffic signals, control the timing established for operation of the traffic signals and pay for maintenance and power costs for the traffic signals.
4. State agrees, as requested by City, to improve the turning radius and sight distance of the northwest corner of Moore Street, which will result in a removal of on-street parking on the north side of Moore Street. State further agrees to make improvements to the turning radius at 6th Street, which will require the modification or closure of private approaches.
5. State, or its consultant, shall conduct the necessary field surveys, environmental studies, traffic investigations, preliminary engineering and design work required to produce and provide final plans, specifications and cost estimates for the highway Project; identify and obtain all required permits; perform all construction engineering, including all required materials testing and quality documentation; prepare all bid and contract documents; advertise for construction bid proposals; award all contracts; pay all contractor costs, provide technical inspection, project management services and other necessary functions for sole administration of the construction contract entered into for this Project.
6. State shall be responsible for all costs associated with construction and installation of the Project.
7. State shall be responsible for illumination, signing, inspection, turn-on and signal timing.
8. State shall cause to be relocated or reconstructed, all privately or publicly owned utility conduits, lines, poles, mains, pipes, and all other such facilities of every kind and nature where such relocation or reconstruction is made necessary by the plans of the Project in order to conform the utilities and other facilities with the plans and the ultimate requirements for the portions of the Project which are on Moore Street and 6th Street.
9. All employers, including State, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Employers Liability insurance with coverage limits of not less than

\$500,000 must be included. State shall ensure that each of its contractors complies with these requirements.

10. State shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS 279C.505, 279C.515, 279C.520, 279C.530 and 279B.270 incorporated herein by reference and made a part hereof. Without limiting the generality of the foregoing, State expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
11. State's Project Manager for this Project is Elizabeth Stacey, 3500 NW Stewart Parkway, Roseburg, OR 97470-1687, (541) 957-3542, anne.e.stacey@odot.state.or.us, or assigned designee upon individual's absence. State shall notify the other Party in writing of any contact information changes during the term of this Agreement.

GENERAL PROVISIONS

1. This Agreement may be terminated by mutual written consent of all Parties.
2. State may terminate this Agreement effective upon delivery of written notice to County and City, or at such later date as may be established by State, under any of the following conditions:
 - a. If County or City fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
 - b. If County or City fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from State fails to correct such failures within ten (10) days or such longer period as State may authorize.
 - c. If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.
 - d. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or State is prohibited from paying for such work from the planned funding source.
3. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
4. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against State, County or

City with respect to which the other Party may have liability, the notified Party must promptly notify the other Parties in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.

5. With respect to a Third Party Claim for which State is jointly liable with County or City or would be if joined in the Third Party Claim, State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by County or City in such proportion as is appropriate to reflect the relative fault of State on the one hand and of County or City on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of State on the one hand and of County or City on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if State had sole liability in the proceeding.
6. With respect to a Third Party Claim for which County or City is jointly liable with State (or would be if joined in the Third Party Claim), County or City shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by State in such proportion as is appropriate to reflect the relative fault of County or City on the one hand and of State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of County or City on the one hand and of State on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. County's or City's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.
7. The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
8. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.

9. This Agreement and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.

THE PARTIES, by execution of this Agreement, hereby acknowledge that its signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

This Project is in the 2010-2013 Statewide Transportation Improvement Program, Key #14987 that was approved by the Oregon Transportation Commission on December 16, 2010 (or subsequently approved by amendment to the STIP).

SIGNATURE PAGE TO FOLLOW

CURRY COUNTY, by and through its elected officials

By _____

Date _____

By _____

Date _____

By _____

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By _____
County Counsel

Date _____

CITY OF GOLD BEACH, by and through its elected officials

By _____

Date _____

By _____

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By _____
City Counsel

Date _____

County Contact:

Dan Crumley
PO Box 746
Gold Beach, OR 97444
541-247-7097
crumleydan@co.curry.or.us

City Contact:

Will Newdall, Public Works Director
29592 Ellensburg Ave.
Gold Beach, OR 97444
541-247-7459
gbpw94100@frontier.com

STATE OF OREGON, by and through its Department of Transportation

By _____
Highway Division Administrator

Date _____

APPROVAL RECOMMENDED

By _____
Technical Services Manager/Chief Engineer

Date _____

By _____
State Traffic Engineer

Date _____

By _____
State Right of Way Manager

Date _____

By _____
Region 3 Manager

Date _____

By _____
Region 3 Right of Way Manager

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By _____
Assistant Attorney General

Date _____

State Contact:

Elizabeth Stacey, Project Leader
3500 NW Stewart Parkway
Roseburg, OR 97470-1687
541-957-3542
Annie.E.Stacey@odot.state.or.us

ORPIN Contact:

Jeanette Denn, Agreement Coordinator, ODOT
Region 3

EXHIBIT A – Project Location Map

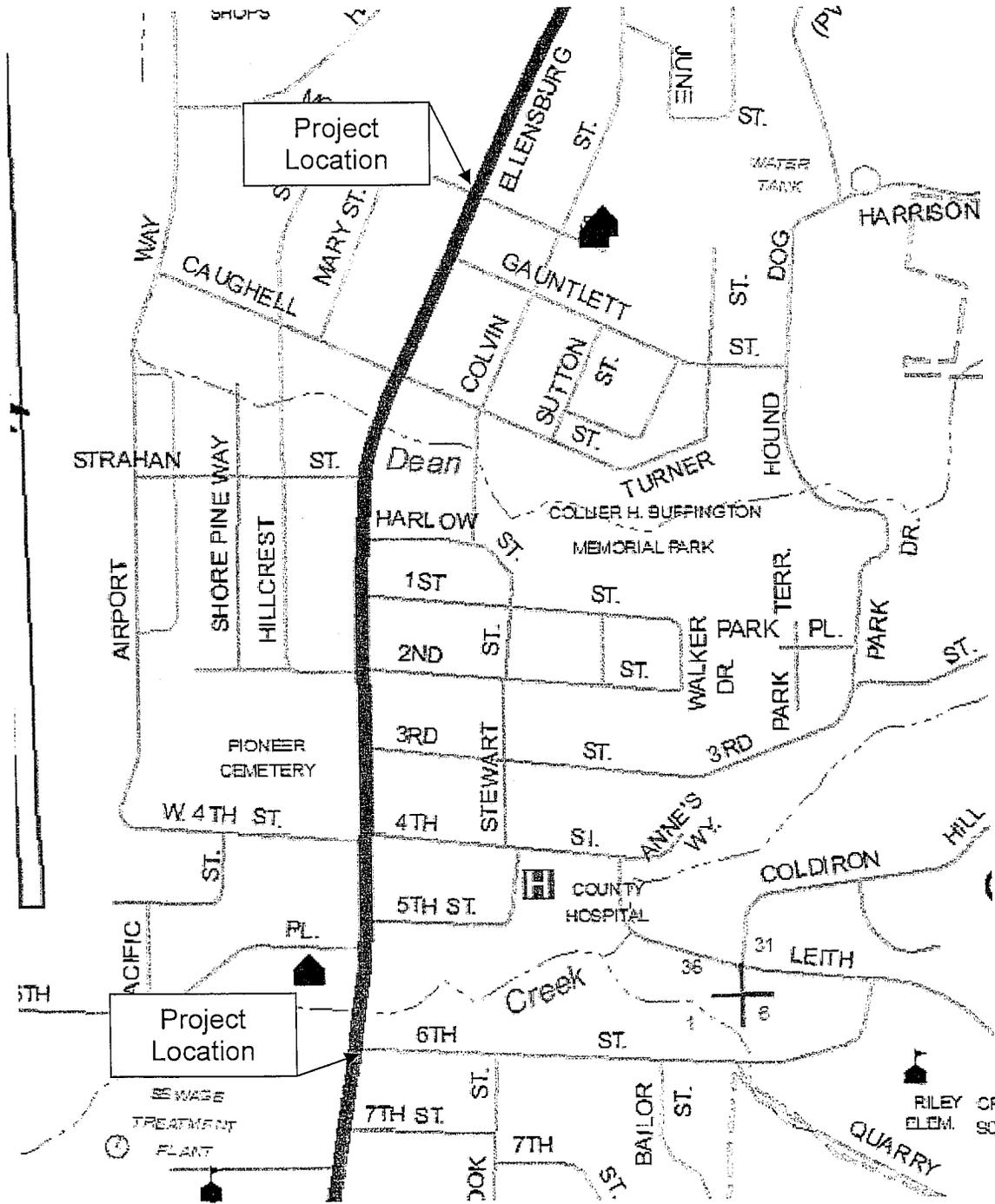


EXHIBIT B



Oregon

Theodore R. Kilguski, Governor

Department of Transportation
Region 3 Traffic AM Section
3500 NW Stewart Parkway
Roseburg, OR 97470
Phone 541-957-3539
Fax 541-957-3547

INTEROFFICE MEMORANDUM

TO: Elizabeth Stacey, Project Leader
FROM: John Oltman, P.E., Development Review Traffic Engineer
DATE: January 10, 2011
SUBJECT: Revised Official Project Access Memo for:
US 101: Gold Beach Signal Upgrades formally known as:
US 101: Moore Street Signal Upgrade KN 14987

Context and Background:

The Oregon Coast Highway, US 101, (Hwy # 009) is the main north/south coastal highway connecting Oregon with Washington and California. In the area of this project, it directly serves the community of Gold Beach. US 101 is part of the National Highway System and is designated in the Oregon Highway Plan (OHP) as a State Wide Highway and a Scenic Byway route. Urban traffic speeds in the project area are set at 30 mph and access spacing standards are 720 feet.

The primary focus of this project is to upgrade existing signals at US 101- Moore Street and at US 101- 6th Street in Gold Beach, Oregon located between Mile Points 328.46 and 329.1.

At Moore Street there are two public approaches within the area limits with no significant changes other than curb radius modifications and sidewalk ramp replacements on the public approaches.

At the 6th Street site there are potentially 6 approaches that could be impacted either by modification or removal.

Access Management Sub-Team:

The Access Management Sub-Team for this project included ODOT Region 3 staff Elizabeth Stacey as Project Leader, Ron Hughes as Region Access Management Engineer, Jeff Waddington as District 7 Permit Specialist, Rich Coffel as Designer, Roxanne Manneman as Right of Way Agent with John Oltman as Access Management Staff.

Access Management Purposes and Goals:

Access management is an important tool for promoting safe and efficient travel of both local and long distance users along the roadway. Typically, this is accomplished by restricting traffic movements and consolidating, relocating, or closing approaches to achieve or "move in the direction of" adopted access management standards. Too many access points along busy roads and highways lead to increased number of potential conflict points between vehicles entering and exiting driveways and through vehicles on the highway. This leads to deterioration of safety, increased vehicular delay, and deterioration in the level of service. The goals of access management decision-makers include minimizing such effects, balanced with ensuring safe and reasonable effective access to existing properties and businesses.

The goal for access management on this project is to:

- Improve access spacing throughout the project limits to the extent reasonable within the limitation and scope of the project, 1999 Oregon Highway Plan and Amendments and OAR 734-051-0115 and Tables, ODOT design parameters and available funds.
- Improve safety and efficiency of pedestrian and vehicle operations at the Moore Street and 6th Street intersections of US 101 by modifying, mitigating, or removing approaches within the influence area of the intersections

Criteria to Achieve the Access Management Purpose and Goal:

The following criteria will be used to make decisions and determine actions to first review, then possibly modify, mitigate, or remove approaches to the extent reasonable and consistent with the scope, schedule, and budget of the project.

Only those approaches that fall within the areas of proposed signal or drainage facility improvements of this project will be reviewed for possible modification and or closure.

And in addition to the above criteria, if the approach meets any of the following:

- A. An approach that violates the standard spacing standards based on the 1999 Oregon Highway Plan and Amendments and OAR 734-051-0115 and Tables will be reviewed for possible modification and or closure where such actions would be feasible within the budgetary constraints and goals of the project and will not leave the parcel without access.
- B. An approach that does not meet current geometric design standards in the area where the improvements are proposed will be reviewed for possible modifications to improve conformance to standards.

- C. Multiple approaches serving the same property will be reviewed for possible modification or closure of approaches that are unnecessary to serve the approved use of the property
- D. An approach that serves property with reasonable alternate access will be reviewed for possible modification or closure
- E. Modification, mitigation, or removal of approaches that would require the outright purchase of an entire property or are outside the budgetary constraints of the project will be avoided.

For those permitted approaches, any modification or intended closure will be per OAR 734-051-0285 and remedies as negotiated by the ODOT Right of Way, per OAR 734-051-0500-0550. For those approaches which have not been permitted through ODOT, or do not meet "Grandfathered" criteria or are not project recognized as outlined OAR 734-051-0285(8), the intended closure or modification will be per Oregon Revised Statute (ORS) 374.305.

Objectives to Achieve the Access Management Purpose and Goal:

- Compile a complete physical inventory of all private approaches within the project limits that will be listed later in this document.
- Identification of such approaches shall occur through on-site inspection.
- Verification of an approach's contribution to the current property use and role in the site.
- Unpermitted approaches within the project limits shall be closed or permitted in accordance with the approval criteria in OAR 734-051 or identified on the project Deficiency List for later evaluation.

Specific Actions to Achieve the Access Management Purpose and Goal:

Using the guidelines as outlined above, the project will:

Remove 3 private approaches
Modify or Repair 2 private approaches
Modify 3 public approaches

Additional inventory documentation for affected existing private approaches.

Mile Point 328.97 Left, station 25+70, 25 foot wide, No Permit found
Reservation station 25+70 25 feet wide. RAW file # 25498
Serving Tax Lot 10800, Section 36DD Twn. 38 Rng. 15 W.
Owner: Erika I. Grimes of 7918 Lanai Place, Gold Beach, OR
Approach Decision: Approach adjusted to fix drainage. No change in width or location

Mile Point 329.00 Left, station 27+35 approximately 30 feet wide, Permit #10840
Reservation station 27+29.5, 25 feet wide. R/W file # 25499
Serving Tax Lot 1300, Section 1AA Twn. 37 Rng. 15 W.
Owner: James W. Gardner, P.O. Box 1286, Gold Beach, OR
Approach Decision: Close the Approach to allow for Signal & Curb Radii Modifications

6th Street north side, approx. 25 feet east of US 101, construction station 10+60,
approx. 20 feet wide
Serving Tax Lot 1300, Section 1AA Twn. 37 Rng. 15 W.
Owner: James W. Gardner, P.O. Box 1286, Gold Beach, OR
Approach Decision: Close the Approach to allow for Signal & Curb Radii Modifications

Mile Point 329.02 Left, station 28+40 approximately 35 feet wide Permit # 20058
Reservation station 28+50, 40 feet wide. R/W file # 25518
Serving Tax Lot 1401, Section 1AA Twn. 37 Rng. 15 W.
Owner: JP Morgan Chase Bank NA, 1111Polaris Parkway Gold Beach, OR
Approach Decision: Modify Approach width from 40 feet to 30 feet.

Mile Point 329.01 Right, approx station 27+76 approximately 30 feet wide
Permit # 35093
Reservation station 27+90, 25 feet wide. R/W file # 25501
Serving Tax Lot, 104, Section 1AB Twn. 37 Rng. 15 W.
Owner: C & K Market Inc. at 615 Fifth Street, Gold Beach, OR
Approach Decision: Modify Curb Radii for Signal Enhancements.

Mile Point 329.03 Right, approx station 29+00 approximately 20 feet wide
Reservation station 28+90, 25 feet wide. R/W file # 25501
Serving Tax Lot, 104, Section 1AB Twn. 37 Rng. 15 W.
Owner: C & K Market Inc. at 615 Fifth Street, Gold Beach, OR
Approach Decision: Close Curb Cut in front of building wall. Maintain reservation

** Additional approaches within the area that will not be affected

Mile Point 328.98 Left approx station 26+50 approximate 25 feet wide, Permit #10840
Reservation station 26+50, 25 feet wide. R/W file # 25499
Serving Tax Lot 1300, Section 1AA Twn. 37 Rng. 15 W.
Owner: James W. Gardner, P.O. Box 1286, Gold Beach, Gold Beach, OR
Approach Decision: Do Nothing

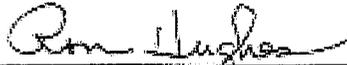
6th Street north side, approx. 25 feet east of US 101, construction station 11+60,
approx. 20 feet wide
Serving Tax Lot 1300, Section 1AA Twn. 37 Rng. 15 W.
Owner: James W. Gardner, P.O. Box 1286, Gold Beach, Gold Beach, OR
Approach Decision: Do Nothing

North of the Moore Street Signal at paving limits: No anticipated changes in approach
Mile Point 328.45 left, station 1686+10 approximately 30 feet wide No Permit found
RW file # 9419 and RW Deed 8907
Serving Tax Lot, 1200, Section 38DA Twn. 36 Rng. 15 W..
Owner: Curry County, P.O. Box 746, Gold Beach, OR
Approach Decision: Do Nothing

Additional Documentation

All affected approaches within the project limits including parcel information, ownership, location, permit status, and proposed actions for each location is indicated in Appendix A attached to this AMS. This is the Official Project Access Worksheet from which the Official Project Access List and Deficiency List will be developed.

Signature



Ron Hughes, Region 3 Access Management Engineer



Darrin Neavoll, District 7 Manager



Mark Thompson, Region 3 Technical Center Manager

-CC: Rich Coffel, Designer
Roxanne Hanneman, Right of Way Agent
Jeff Waddington, District 7 Permits
Brian Watjen, Area Maintenance Manager