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January 6, 2010

**Attorneys and
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200 FORUM BUILDING

777 High Street
Eugene, Oregon
97401-2782

PHONE

541 686-9160

FAX

541 343-8693

www.eugene-law.com

James K. Coons

Frank C. Gibson

Stephen A. Hutchinson

E. Bradley Litchfield

Thomas M. Orr

William H. Sherlock

Patrick L. Stevens

Of Counsel

John G. Cox

Douglas M. DuPriest

Paul R. Allen

Janice L. Mackey

Zack P. Mittge

Sent Via Facsimile (541) 682-4616 and First Class Mail

Lane County Commissioner Faye Stewart II
Lane County Public Service Building
125 E. 8th Street
Eugene, OR 97401

RE: *Federal Funding for Replacement of Dearborn Island Bridge*
Our Client: Dearborn Water Control District
Our File No.: 11139

Dear Commissioner Stewart:

Thank you for agreeing to meet with my client and me tomorrow concerning the situation with the Dearborn Island Bridge. I write to provide you with some additional information on a critical issue in advance of that meeting.

Our firm represents the Dearborn Water Control District, a levee district comprised of real property owners residing on Dearborn Island in Blue River, Oregon. In July of 2009, the State Bridge Engineer advised the district that the sole road bridge to the island should be replaced and recommended closure if not repaired or replaced by January 1, 2010. See attached letter.

We have been advised by the Oregon Department of Transportation that federal funding may be available to meet up to ninety percent (90%) of the costs of the replacement given the bridge's current dilapidated state. However, ODOT indicates that the subject property has been designated in the ODOT system as not being a public road bridge eligible for these funds. Instead, the bridge is designated as being owned by the Dearborn Water Control District, which effectively eliminates its eligibility for federal funding.

This designation appears to be the result of a misunderstanding between ODOT and County transportation staff concerning the status of the subject road bridge. The Dearborn Water Control District dedicated a portion of Dearborn Island Road, including the Dearborn Island Bridge facility, to Lane County in 1981. Lane County Board Order 81-7-29-10 specifies that the road is dedicated to the County as a "public road." See attached Order. The designation of the road as a "public road" - as distinct from a "county road" -

Commissioner Faye Stewart

1/6/10

Page 2 of 2

appears to be where the confusion has arisen as between County staff and ODOT.

ODOT does not make a distinction between "county roads" maintained by the County, and "public roads" for the purposes of federal funding. However, since the County does not maintain Dearborn Island Road as a "county road", County staff has apparently advised ODOT that the road and bridge is not owned by the County and is instead owned by the Dearborn Water Control District. This confusion between maintenance responsibilities and ownership of the road and bridge has already cost the water control district missed opportunities with regard to potential federal funding.

As an important first step in working toward obtaining a safe and passable bridge, we would like the County to clarify with ODOT that the County is the owner of this facility consistent with the 1981 road dedication. In so doing, we are not seeking to convert this "public road" to a "county road," or impose the maintenance responsibilities of a "county road" on the facility. Instead, we are merely seeking to clarify a misunderstanding with ODOT for the purposes of obtaining the desired federal funding for the facility. We would appreciate any assistance that you can provide us on this issue.

Please do not hesitate to contact me should you have any questions or concerns regarding any of the foregoing. I look forward to speaking with you tomorrow afternoon.

Very Truly Yours,

HUTCHINSON, COX, COONS,
DuPRIEST, ORR & SHERLOCK, P.C.



Zack P. Mittge

ZPM/erl

cc: Client

Enclosures:

July 14, 2009 Letter from Bruce Johnson to Craig Marks, Dearborn Water [Control] District
August 19, 1981 "Final Order Approving a Road Dedication of Dearborn Island Road"



Oregon

Theodore R. Kulongoski, Governor

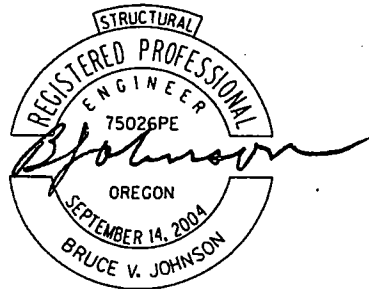
Department of Transportation

Transportation Building
355 Capitol St. NE, Rm. 301
Salem, OR 97301-3871

July 14, 2009

FILE CODE:

Craig Marks, President
Deerborn Water District
c/o Darrell Roberts
91550 Dearborn Island Road
Blue River, OR 97413



Bruce V. Johnson, P.E., S.E.
State Bridge Engineer

**RE: Load Restriction Recommendation
 McKenzie River (Dearborn Island Road) Bridge (Br. No. 18753)
 Dearborn Water District
 Lane County**

The McKenzie River Bridge (Br. No. 18753) is a 14 feet wide, 128 feet long, two span bridge consisting of a rail car and a steel pony truss. During the June 2009 inspection, the inspector noted that both the superstructure and the substructure are in "Serious" condition. The superstructure rating is based on the bottom chord members of the truss which show significant deterioration including section loss, loose connections, and large holes in the bottom flange. The substructure has severely twisted and buckled piling due to collisions from drift. Four of the five piles at Bent 2 are also not plumb compromising the capacity of the structure.

The bridge is currently posted at 10 tons based on the load rating completed in 2002 when the bridge was in "Fair" condition. National bridge evaluation standards direct that only sound material should be

used when calculating the strength of deteriorated sections. The piling at Bent 2 are deteriorated (bent flanges, twisted piles, broken welds, out-of-plumb) to a point where the section can not be accurately modeled for capacity. We recommend the bridge be posted at 3 tons for all vehicles. This is the minimum rating for a bridge to remain open and be in compliance with federal standards.

Repairs / Closure

With repairs to the piles at Bent 2, this bridge could be posted at 10 tons. Without repairs, this bridge should be closed not later than January 1st 2010 and remain closed until repaired or replaced.

Replacement

This bridge is in "Serious" condition, replacement is recommended.

Posting Responsibility

ODOT recommends this bridge be posted for load until the bridge is replaced. It is ultimately the water district's responsibility to have the structure posted. The correct posting signs should be in place no later than September 1, 2009. The posting sign that reflects the current status of the bridge is shown in figure R12-5 on the last page of this letter.

To assist us in managing the bridge load rating program, please let us know as soon as the new posting signs are installed, or the bridge has been replaced. Please send a digital image of the posting sign to verify the posting complies with ODOT recommendations. Contact Nam Bui, Local Agency Load Rating Engineer, (503) 986-3382, for any questions on these issues.

cc: Bill Morgan, Lane County Public Works Engineer
Bert Hartman, Bridge Program Unit Manager
Gary Bowling, Bridge Operations Managing Engineer
Steve Tuttle, Local Agency Coordinator
Tim Rogers, FHWA Oregon Division Bridge Engineer
Holly Winston, Senior Local Bridge Standards Engineer

bc: Richard Groff, Senior Load Rating Engineer
Joe Charbonneau, Load Rating Engineer
Nam Bui, Local Agency Load Rating Engineer
John Milcarek, Load Rater

FILED
AUG 21 1981
IN THE BOARD OF COMMISSIONERS
OF LANE COUNTY, OREGON

IN THE BOARD OF COMMISSIONERS
OF LANE COUNTY, OREGON

ORDER NO.

81-7-29-10

FINAL ORDER APPROVING
A ROAD DEDICATION OF
DEARBORN ISLAND ROAD
RD 80-400

AND ADOPTING FINDINGS
OF FACT

THIS MATTER coming before the Board upon the application by the Dearborn Water Control District and the United States Forest Service for dedication of a portion of Dearborn Island Road more particularly described in RD 80-400, and

WHEREAS, all necessary procedures have been complied with for road dedication, including notice, and

WHEREAS, the Board held a public hearing on the proposed dedication on July 15, 1981 in accordance with Lane Code Chapter 15, and

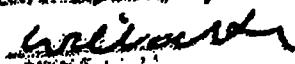
WHEREAS, the Board is of the opinion that approving the dedication is in the public interest, now, therefore, it is hereby

ORDERED:

1. That the road more particularly described in RD 80-400 be and the same is hereby dedicated as a public road.
2. In support of this action, the Board of Commissioners does hereby adopt the Findings of Fact set forth in Exhibit "A."

Adopted this 19 th day of August, 19 81


Chairman, Lane County Board of Commissioners

APPROVED
DATE 7/21/81

CITY CLERK

Final Order Approving the Dedication of a Public Road
and Adopting Findings of Fact
RD 80-400
MP 33335-112

**FINDINGS OF FACT AND CONCLUSIONS OF LAW
IN THE MATTER OF AN APPLICATION BY
DEARBORN WATER CONTROL DISTRICT
FOR ROAD DEDICATION RD 80-400**

1. Nature of Decision and Applicable Criteria:

This is a decision approving a road dedication. The criteria applicable to this decision are those provided in Lane Code Chapter 15, Roads.

2. Background Facts and Procedures:

The Dearborn Water Control District and the United States Forest Service applied for a road dedication on October 14, 1980. The proposed Board action would establish a portion of Dearborn Island Road as a dedicated public road. The proposed road dedication is located adjacent to and on Dearborn Island, south of the intersection of the McKenzie Highway with McKenzie River Drive. See Vicinity Map attached as Exhibit "B" and herein incorporated by reference.

The application was approved by the Lane County Planning Commission on January 20, 1981. A public hearing was held by the County Board of Commissioners on July 15, 1981. After hearing testimony and reviewing the evidence, the Board finds that the proposed road dedication complies with all applicable Lane Code criteria, by a vote of 3-0. (Freeman, t'Hooft, Rust.)

3. Lane Code Chapter 15, Roads:

Under LC 15.100, the purpose of road dedications is "to ensure that an appropriate portion of right-of-way and improvement costs are provided for by abutting properties without general public cost."

4. Public roads must normally comply with certain minimum standards. Although the portion of Dearborn Island Road proposed to be dedicated as a public road does not currently meet the standards in Lane Code Chapter 15, the Board finds that the considerable expense necessary to bring it up to Lane Code standards is not justified by the amount of traffic using the road.

The Land Use Board of Appeals, however, in Geske v. Lane County, LUBA No. 81-006, held that the standards for public roads may be determined by the County on a case-by-case basis. The Board concludes that because the Dearborn Island Water District residents agree to maintain the proposed public road, there is no present or future financial responsibility incurred by the County as a result of the proposed public road dedication. It is in

the public interest, therefore, in this case, to waive the minimum standards normally imposed by Lane Code Chapter 15.

5. The Board finds that the proposed public road dedication has no land use impact and that the County accepts no financial responsibility upon approval of the dedication of a portion of Dearborn Island Road as a public road.
6. There was no public opposition to the proposed dedication of a portion of Dearborn Island Road as a public road.

Conclusions of Law

1. The proposed dedication of a public road meets the applicable criteria; therefore, the Board concludes that approval is in the public's best interest.