

COOPERATIVE IMPROVEMENT AGREEMENT

818 Powell Butte, LLC; aka Crossing Trails Resort and Crook County
OR 126 Transportation Improvements

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," and 818 Powell Butte, LLC, an Oregon limited liability company, acting by and through its senior officers, hereinafter referred to as "Crossing Trails," and Crook County, hereinafter referred to as "County," collectively referred to hereinafter as the "Parties."

RECITALS

1. OR 126 and OR 26 are part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission.
2. Parrish Lane, Wiley Road, and Reif Road are part of the County Road system under the jurisdiction and control of the County Court.
3. Crossing Trails filed a land use application, hereinafter referred to as the "Application," with the County, seeking development approval for a destination resort on approximately 580 acres of private land located east of the intersection of Parrish Lane and Wiley Road outside of Prineville, Oregon in the vicinity of the rural community of Powell Butte. The proposed resort, hereinafter referred to as the "Resort," will include one 18-hole golf course, 500 single-family dwelling units, 150 units of overnight accommodations, recreational amenities and associated infrastructure. The location and boundaries of the Resort are depicted on Exhibit A, attached hereto and by this reference made a part hereof.
3. OTAK prepared a Traffic Impact Analysis dated July 1, 2008, hereinafter referred to as "OTAK Traffic Analysis," in connection with the Resort. The OTAK Traffic Analysis concluded that the traffic generated from the Resort will adversely impact seven intersections with the state highway system. Table 3 of the OTAK Traffic Analysis, marked as Exhibit B and by this reference made a part hereof, identifies transportation improvements and Recommended Proportional Mitigation Costs to construct improvements.
4. STATE approved a design exception for identified improvements at the intersection of Parrish Lane and Highway 126. This design exception is identified in a letter dated July 29, 2008, which is marked as Exhibit C and by this reference made a part hereof.
5. The County approved the Application with 45 conditions of approval. Conditions 35 and 36 require that STATE and Crossing Trails complete an agreement to establish the timing and funding of the transportation improvements required to satisfy the

mitigation measures identified in Exhibit B. This agreement is intended to address those conditions.

6. STATE appealed the County decision to approve the Application to the Land Use Board of Appeals ("LUBA"). That matter has been consolidated with an additional appeal of the County decision and is identified as LUBA Nos. 2009-016/018. The consolidated appeal is currently pending before LUBA. This Agreement is intended to settle the matters between STATE and the County that prompted the STATE's appeal.
7. By the authority granted in ORS 366.425, STATE may accept deposits of money or an irrevocable letter of credit from any county, city, road district, person, firm, or corporation for the performance of work on any public highway within the state. Money so deposited shall be disbursed for the purpose for which it was deposited.
8. By the authority granted in ORS 190.110, 366.572 and 366.576, STATE may enter into cooperative improvement agreements with counties, cities and units of government 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.
9. 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 that STATE deems necessary for the safe and expeditious control of traffic.

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. The Parties agree that Crossing Trails will mitigate the transportation impacts associated with the development of the Resort in the manner identified in Exhibit B by contributing funds to develop identified transportation infrastructure improvements on OR 126 and Highway 26, and by constructing identified transportation improvements at Parrish Lane and Highway 126 and at Wiley Road and Highway 126. This Agreement identifies the commitments and funding schedule to develop each transportation improvement.

Crossing Trails Obligations

1. Prior to the County recording the Phase 1 plat, Crossing Trails shall convey to STATE a sum of \$289,250 for its proportionate share of the transportation improvements needed at the intersection of Powell Butte Highway and Highway 126 (Line 1 of Table 3 of Exhibit B) and at the intersection of Veteran's Way and Highway 126 (Line 2 of Table 3 of Exhibit B).

2. Before the first building permit for any structure is issued for the development, Crossing Trails shall construct or cause to have constructed the identified improvements at Parrish Lane and Highway 126 (Line 4 of Table 3 of Exhibit B), consistent with the design of and subject to the conditions of the design exception described by Exhibit C, and shall cause to have constructed the modifications to close the intersection of Wiley Road at Highway 126, (Line 7 of Table 3 of Exhibit B). The proposed improvements include construction of a left turn lane with a turn refuge, pavement striping, marking, grading and the closure of the Wiley Street connection at Highway 126 to traffic
 - a. The proposed improvements are estimated to cost approximately \$250,000. The estimate for the cost of these improvements is subject to change. Crossing Trails shall be responsible for the actual cost of the improvements.
 - b. Crossing Trails will need to obtain a permit to "Occupy or Perform Operations upon a State Highway" from STATE, as well as any needed land use permits, building permits and engineering design review approval from the County. Crossing Trails agrees to comply with all provisions of said permits and shall require its developers, contractors, consultants or subcontractors performing such work to comply with such provisions.
 - c. Crossing Trails shall conduct the necessary field surveys, environmental studies, including compliance with ORS 358.920; identify and obtain required permits; arrange for the relocation or reconstruction of any conflicting utility facilities, and perform all preliminary engineering and design work required to produce plans, specifications, and cost estimates.
 - d. Crossing Trails shall, prior to its advertisement for construction bid proposals, provide the preliminary and final plans and specifications for the improvements to STATE for review and written concurrence. The plans must be approved by STATE Office of State Traffic Engineer. STATE shall coordinate all such review.
 - e. Crossing Trails shall cause the improvements to be designed and constructed in accordance with ODOT standards.
 - f. Crossing Trails shall, upon STATE's written review and concurrence with final plans, prepare the contract and bidding documents, advertise for construction bid proposals, award all contracts, pay all contractor costs, furnish all construction engineering, field testing of materials, technical inspection, and project manager services for the administration of the contract.
 - g. Crossing Trails shall contract with a general contractor who is pre-qualified and who is registered with the Construction Contractor's Board to function as the general contractor for the performance of this work. All obligations of Crossing Trails stated in this agreement shall remain the responsibility of

- Crossing Trails regardless of whether or not a contractor performs the work. It is Crossing Trails' responsibility to inform contractor of its obligations.
- h. Crossing Trails shall lay out and paint the necessary lane lines and erect the required directional and traffic control signing for the improvement.
 - i. Crossing Trails must submit a performance bond equal to or greater than the estimated cost of the Improvement before STATE will issue a permit to occupy and perform operations on a state highway.
 - j. Crossing Trails will certify at the time of Final Development Plan Approval that sufficient funds will be available to construct the improvements and authorizes the expenditure of those funds to finance costs of the improvements.
 - k. All employers, including Crossing Trails, that employ workers who work under this Agreement shall comply with ORS 656.017 and provide the required Worker's Compensation coverage unless such employers are exempt under ORS 656.126. Crossing Trails shall ensure that each of its subcontractors complies with these requirements.
 - l. Crossing Trails acknowledges and agrees that ODOT, the Secretary of State's Office of the State of Oregon, the federal government, and their duly authorized representatives shall have access to the books, documents, papers and records of Crossing Trails that are directly pertinent to the construction of the transportation improvements identified in this Agreement for the purpose of making audit, examination, excerpts and transcripts for a period of six (6) years after the completion of the improvements. Copies of the applicable records shall be made available upon request. Payment for costs of copies is reimbursable by STATE.
 - m. Crossing Trails 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, Crossing Trails 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.
 - n. Crossing Trails shall construct the improvements in accordance with the requirements of ORS 276.071, including the public contracting laws within ORS Chapters 279A, 279B and 279C.

- o. If Crossing Trails chooses to assign its contracting responsibilities to a consultant or contractor, Crossing Trails shall inform the consultant or contractor of the requirements of ORS 276.071, to ensure that the public contracting laws within ORS Chapters 279A, 279B and 279C are followed.
- p. Crossing Trails shall include the following Special Provisions in all construction contract work for these improvements, or, if Crossing Trails is performing any of the improvement activities under this agreement, said stipulations shall apply to Crossing Trails:
 - i. Contractor shall indemnify STATE and COUNTY and name STATE and COUNTY as a third party beneficiaries of the resulting contract, and to obtain and keep in effect during the term of the contract Comprehensive or Commercial General Liability Insurance covering bodily injury and property damage. This insurance shall include personal injury coverage, contractual liability coverage for the indemnity provided under this Agreement and products/completed operations liability.
 - ii. Contractor shall indemnify defend and hold harmless Crossing Trails, STATE and COUNTY and their officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever resulting from, arising out of, or relating to the activities of Contractor or its officers, employees, sub-contractors, or agents under this Contract.
 - iii. **Commercial General Liability.** Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this Contract, Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverages that are satisfactory to STATE and COUNTY. This insurance shall include personal and advertising injury liability, products and completed operations. Coverage may be written in combination with Automobile Liability Insurance (with separate limits). Coverage shall be written on an occurrence basis. If written in conjunction with Automobile Liability the combined single limit per occurrence shall not be less than \$ 1,000,000 for each job site or location. Each annual aggregate limit shall not be less than \$ 2,000,000.
 - iv. **Automobile Liability.** Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this Contract, Commercial Business Automobile Liability Insurance covering all owned, non-owned, or hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits). Combined single limit per occurrence shall not be less than \$1,000,000.

- v. **Additional Insured.** The liability insurance coverage, except Professional Liability, Errors and Omissions, or Workers' Compensation, if included, required for performance of the Contract shall include STATE and COUNTY and its divisions, officers and employees as Additional Insured but only with respect to the Contractor's activities to be performed under this Contract. Coverage shall be primary and non-contributory with any other insurance and self-insurance.
 - vi **Notice of Cancellation or Change.** There shall be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written notice from the Contractor or its insurer(s) to STATE and COUNTY. Any failure to comply with the reporting provisions of this clause shall constitute a material breach of Contract and shall be grounds for immediate termination of this Contract.
- Q. Crossing Trails is responsible for and ensures that all survey monuments recorded with a county and within or adjacent to the highway right-of-way shall be preserved in accordance with ORS 209.140 and 209.150. Any such monumentation that is damaged or removed during the course of constructing the improvements must be replaced in compliance with ORS Chapter 209 stipulations, the ODOT Right of Way Monumentation Policy, and at Crossing Trails' own expense. Crossing Trails is also responsible, at its own expense, for replacement of any additional ODOT survey marks or other monumentation not recorded with a county that are damaged or removed during the course of the construction of the improvements identified in (2) above. In the event of such replacement, Crossing Trails shall contact STATE's Geometronics Unit for replacement procedures.
- R. Crossing Trails shall, upon successful completion and acceptance of the improvement by STATE, relinquish all physical improvements made as part of the improvement within STATE jurisdiction to STATE. Any and all design drawings, manufacturer or contractor's warranties, guarantees, operation manuals or similar items necessary to operate or maintain the physical improvements will be provided to STATE at the time of relinquishment.
- S. Upon completion of the improvement, Crossing Trails shall submit three (3) sets of "As Constructed" drawings ODOT District. One set shall be half size 11 "x17" Mylars, the remaining sets shall be half size (11 "x 17") prints.

3. Crossing Trails or its successors and assigns will convey to STATE an amount of \$215,700 as adjusted for inflation as described in (c), to pay for its proportionate share of improvements at Millican Road, Tom McCall Road and Highway 126 (line 5, Table 3 of Exhibit B) and at Highway 26 and Highway 126 (Line 6, Table 3 of Exhibit B), and for the cost of making improvements, as mutually agreed by County and ODOT, to Reif Road at Highway 126 (Line 3, Table 3 of Exhibit B). Crossing Trails' contribution to the improvements to Reif Road at Highway 126 shall be \$50,000.
 - a. Crossing Trails will provide an irrevocable letter of credit in the amount of \$215,700 to STATE to secure this obligation prior to the County recording the Phase 1 plat.
 - b. The \$215,700 obligation shall be paid in full to STATE no later than three years after the Phase 1 plat is recorded.
 - c. The \$215,700 contribution by Crossing Trails is stated in 2008 dollars and shall be adjusted annually for inflation. The index for calculation shall be the Bureau of Transportation Services (BTS), and calculations shall occur annually on the anniversary date of the last signature of this Agreement.
4. Crossing Trails' contract manager is Gene Gramzow, c/o Martin Hall, 380 Q St, Suite 240, Springfield, OR 97477, (541) 343-9714, MSHFT@aol.com, or assigned designee upon individual's absence. State's project contact shall be notified in writing of any contact information changes during the term of this Agreement.
5. The obligations of Crossing Trails contained herein are contingent upon approval of the Final Development Plan and Phase 1 Plat.

STATE OBLIGATIONS

1. STATE shall coordinate with County and affected stakeholders to develop transportation improvements to be constructed at the intersection of Powell Butte Highway and Highway 126, and at Highway 26 and Highway 126 and signal improvements at Veterans Way and Highway 126. STATE and County shall enter into a Cooperative Improvement Agreement prior to the construction of those improvements. This Agreement is not intended to address County and STATE obligations associated with those future improvements.
2. STATE shall develop transportation improvements at Millican Way, Tom McCall Road and Highway 126 and at the intersection of Highway 126 and Highway 26 and at the intersection of Reif Road and Highway 126. County and STATE shall enter into a Cooperative Improvement Agreement prior to the construction of those improvements. This agreement is not intended to address County or STATE obligations associated with those future improvements

3. STATE warrants and represents that it will utilize any sums paid by Crossing Trails pursuant to the terms of this Agreement solely for purposes related to the identified improvements. This includes performing the necessary preliminary engineering, right of way acquisition, construction and other related transportation work on projects in the Highway 126 corridor.
4. Any amounts paid by Crossing Trails under this section shall be placed into a segregated account and released to STATE at such time STATE commences work on the improvements.
5. STATE hereby grants Crossing Trails and County, and/or contractors the right to enter onto and occupy STATE right of way upon issuance of STATE required permits for the performance of necessary preliminary engineering and construction of the improvements at the intersection of Parrish Lane and Highway 126 at the intersection of Wiley Road and Highway 126.
6. STATE's manager for the construction and approval of the improvements is Rick Williams, 63085 N Hwy. 97, Suite 107, Bend, OR 97701, (541) 388- 6458 Ext 435, richard.l.williams@odot.state.or.us, or assigned designee upon individual's absence. Crossing Trails and County's project contacts shall be notified in writing of any contact information changes during the term of this Agreement.
7. STATE's project contact is Mark DeVoney, Region 4 Program and Planning Manager, 63085 N Hwy. 97, Suite 107, Bend, OR 97701, (541) 388-6333, mark.devoney@odot.state.or.us, or assigned designee upon individual's absence. Crossing Trails and County's project contacts shall be notified in writing of any contact information changes during the term of this Agreement.
8. In consideration of the obligations of the Parties under this Agreement, STATE agrees to move to dismiss its appeal No. 2009-016 at LUBA upon final execution of this Agreement.

COUNTY OBLIGATIONS

1. County shall not record Crossing Trails' Phase 1 plat until it receives proof from STATE that STATE has received payment of \$289,250 and an irrevocable letter of credit securing the future payment of \$215,700.
2. County shall not issue a building permit for any structure within the Resort until it receives confirmation from STATE that the improvements to Parrish Lane and Highway 126 and at the intersection of Wiley Road and Highway 126 have been satisfactorily completed.

3. By requiring the mitigation measures identified in the Conditions of Approval and in Table 3 of Exhibit B the County is approving the closure of the intersection of Wiley at Highway 126, consistent with ORS 374.060 and to the extent required under ORS 374.065.
4. County acknowledges the effect and scope of ORS 105.755 and agrees that all acts necessary to complete construction of the transportation improvements which may alter or change the grade of existing county roads are being accomplished at the direct request of County.
5. County shall authorize execution of this Agreement during a regular convened session of its County Court.
6. County's contract manager is Penny L. Keller, Roadmaster, 1306 N. Main, Prineville, OR 97754, (541) 447-4644 or assigned designee upon individual's absence. State's project contact shall be notified in writing of any contact information changes during the term of this Agreement.

GENERAL PROVISIONS

1. The terms of this Agreement shall begin on the date all required signatures are obtained and shall terminate upon completion of the identified improvements and final payment by Crossing Trails.
2. Termination. This Agreement may be terminated by mutual written consent of the parties. STATE may terminate the agreement (after providing Crossing Trails written notice and opportunity to cure totaling 60 days) under any of the following conditions:
 - a. Crossing Trails fails to provide funds, securities or improvements called for by this Agreement within the time specified herein or any extension thereof.
 - b. Crossing Trails 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.
 - c. Any sums paid by Crossing Trails and already used towards improvements as defined in Project shall not be reimbursable in the event that this Agreement is terminated.
 - d. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the parties prior to termination.

3. Crossing Trails shall, to the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, indemnify, defend, save, and hold harmless the State of Oregon, Oregon Transportation Commission and its members, Department of Transportation, its officers and employees, and County, its officers and employees from any and all claims, suits, and liabilities that are in any way related to work physically performed by Crossing Trails, its agents, contractors or representatives in connection with fulfilling its responsibilities under this Agreement.
4. Notwithstanding the foregoing defense obligations under paragraph 3 above, neither Crossing Trails nor any attorney engaged by Crossing Trails shall defend any claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State of Oregon may, at anytime at its election assume its own defense and settlement in the event that it determines that Crossing Trails is prohibited from defending the State of Oregon, or that Crossing Trails is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue any claims it may have against Crossing Trails if the State of Oregon elects to assume its own defense.
5. Fax Signatures. 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.
6. Integration. 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.

IN WITNESS WHEREOF, the parties hereto have set their hands as of the day and year hereinafter written.

The Oregon Transportation Commission approved this project on March 22, 2007 and delegated authority to the Deputy Director, Highways, to approve and sign agreements relating to this Project.

Signature Page Follows

818 Powell Butte, LLC (aka Crossing Trails), by and through its senior officers

By [Signature]
Date 6-24-09

By _____
Date _____

Crossing Trails Contact:

Gene Gramzow
c/o Martin Hall
380 Q St, Suite 240
Springfield, OR 97477
(541) 343-9714
MSHFT@aol.com

CROOK COUNTY, by and through its
County Court

By [Signature]
Board Judge MIKE McCABE

Date 6/17/09

By _____
Recorder

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By _____
County Counsel

Date _____

STATE OF OREGON, by and through
its Department of Transportation

By [Signature]
Deputy Director, Highways
Date 06/24/09

APPROVAL RECOMMENDED

By [Signature]
Technical Services Manager/Chief
Engineer
Date 8-6-09

By [Signature]
Region 4 Manager
Date 06-29-09

By [Signature]
Region 4 Program and Planning
Manager
Date 6/26/09

APPROVED AS TO LEGAL SUFFICIENCY

By [Signature]
Assistant Attorney General
Date: 6/14/09

State Contact:

Mark DeVoney – Region 4 Program
and Planning Manager:
63085 N Hwy. 97, Suite 107
Bend, Or 97701
(541) 388-6333
mark.devoney@odot.state.or.us

County Contact:

Penny L. Keller – Roadmaster
1306 N. Main
Prineville, OR 97754
(541) 447-4644

Exhibit A
 Page 1 of 2

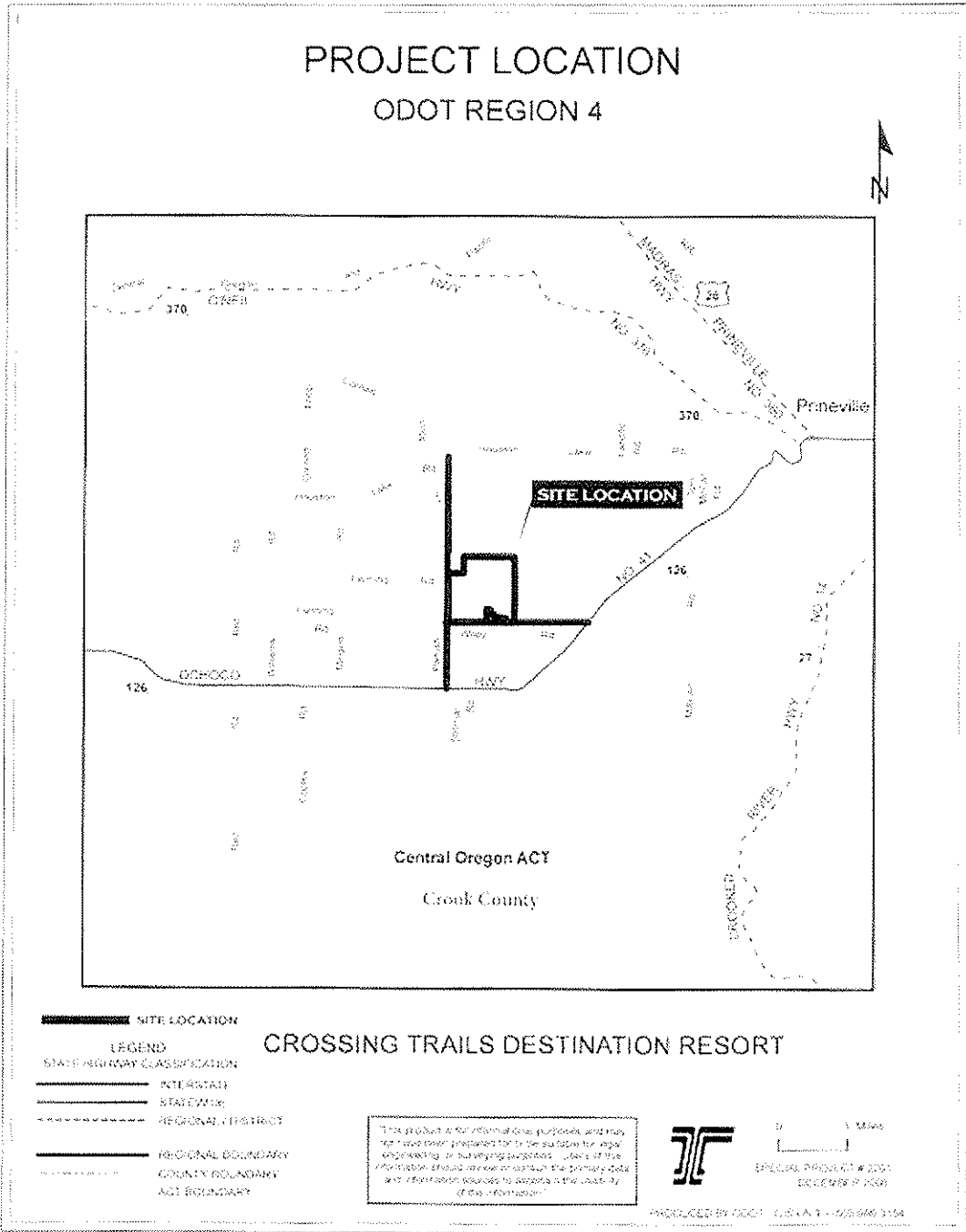


Exhibit A
Page 2 of 2

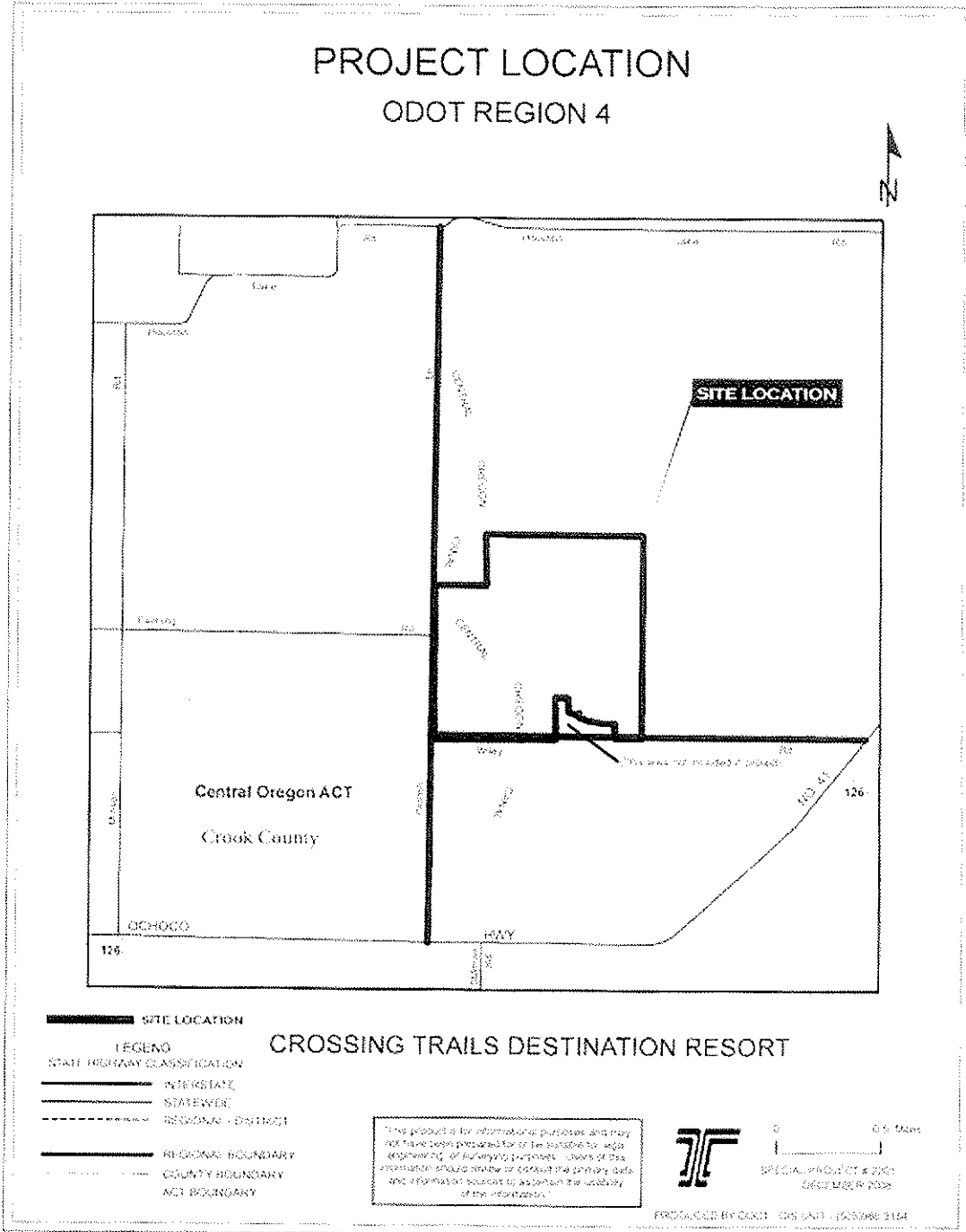


Exhibit B

Bill Zelenka, Planning Director
Heidi Borer, Land Use Counsel and Planner
Analysis of Traffic Impacts to State Highways from the Proposed Crossing Trails Destination Resort

Page 7
July 1, 2008

Table 3
Summary of Recommended Proportional Mitigation Costs By Intersection

Intersection	Mitigation		V/C Ratio Standard Exceeded On or Before 2028		Traffic Attributed to the Project and Contributing to the Impact percent of total***	Suggested Proportional Share of Mitigation Cost by Intersection	
	measure*	cost**	without project	due to project		percent of cost	cost
Powell Butte Hwy and Hwy 126	interchange	\$6,000,000	yes	no	4.7	4.7	\$282,000
Veterans Wy and Hwy 126	traffic signal	\$250,000	yes	no	2.9	2.9	\$7,250
Reif Road and Hwy 126	closure	\$50,000	yes	yes	6.3	100.0	\$50,000
Parrish Ln and Hwy 126	left turn lane	\$200,000	no	yes	100.0	100.0	\$200,000
Millican Rd, Tom McCall Rd, and Hwy 126	interchange	\$5,400,000	yes	no	2.4	2.4	\$129,600
Hwy 26 and Hwy 126	roundabout	\$1,900,000	yes	no	1.9	1.9	\$36,100
Wiley Rd and Hwy 126	closure	\$50,000		yes	100.0	100.0	\$50,000
Total		\$13,850,000					\$754,950

- * Identified by ODOT
- ** Estimated by ODOT
- *** Estimated by Group MacKenzie

Exhibit C
Page 1 of 6



**ENGINEERING SERVICES
DESIGN EXCEPTION REVIEW**

Page 1 of 1

Review Date:	September 3, 2008
Key No:	
Control No:	D4-04
Reviewer:	Christopher Henson

Project Name:	OR 126; Pamish Road (Crossing Trails Resort)	Rte	OR 126
Highway:	Ochoco Hwy	State No:	
County:	Crook		
Region:	4		
Design Exception:	Channelization		
Submitted By:	Jeffrey D. Fuchs, P.E.		

DETAILS

Design Speed: 70 MPH KPH
 3R 4R
 NHS Non NHS
 Freight Route
 Functional Classification: Rural Expressway

RESEARCH DATA

HDM PAGE _____
 AASHTO PAGE _____
 MEMO TO DESIGNERS PAGE _____
 ROADSIDE DESIGN GUIDE PAGE _____
 BIKE/PEP PAGE _____
 OTHER Channelization Tech Bulletin

RECOMMENDED ACTION

(APPROVE OR REJECT WITH JUSTIFICATION)

Approve -

The developer is required to build left turn channelization to mitigate traffic impacts as a result of the proposed development. In order to provide a full standard design, the developer would have to purchase property from adjacent property owners who are not willing to sell for a feasible price (asking price is \$4.66 million or about 20 times the cost of the project).

The substandard elements are a 14 ft median (standard is 16 ft) and 4 ft shoulders (standard is 10 ft). In addition, a 1:4 foreslope would be used to stay within right-of-way where needed. These cross-sectional elements are consistent and compatible with this section of highway. It would be preferable to get at least 6' shoulders through the channelization; however, this appears to be the best solution that will fit within the right of way. The District Office worked with Region Staff on this development and they all support the exception request.

Content last updated 9/3/2008 9:46 AM

Form 11-SEP-2006

Exhibit C
Page 2 of 6



Oregon

Theodore R. Kulongoski, Governor

Department of Transportation

Region 4, Tech Center
63034 O. B. Riley Rd
Bend, Oregon 97701
Voice (541) 388-6247
Fax (541) 385-0476

August 6, 2008

To: Steve Lindland
Roadway Engineering Unit Manager

From: Michael Morris
Region 4 Roadway Manager

Subject: Design Exception
OR126: Parrish Road (Crossing Trails Resort)
Ochoco Hwy. #41, MP. 10.84

Dear Steve,

Attached is a design exception letter for your review and approval. The above mentioned developer project proposes to construct a left turn lane in response to District 10's access permitting process. The consultant hired by the developer that wrote this request is Bussard Williams Development Consultants, and the main contact in the District office is Robert Morrow.

I reviewed and commented on a draft of this letter, the consultant incorporated my comments and then stamped and submitted the final version. The District Office has worked with our Region Planning and Traffic folks on this proposed development, and we all agree that we can support the design exception request.

The design exception request is for median, travel lane and shoulder widths, plus shoulder slope. 4R standards and Standard Drawing RD215 require for this type of facility a 16' median, 14' through lanes and 10' shoulders with 1:6 side slopes. The project proposes to construct a 14' wide median with 12' travel lanes and 4' shoulders on both sides of the highway with 1:4 side slopes. This section of OR126 is a SIP Category 2 with current ADT around 8,500. The design exception is being sought due to the inability of the developer to be able to acquire the necessary right of way from the private property owner, consistency with adjacent sections of highway and the interim nature of the project (County TSP shows OR126 going to 4 lanes).

If you have any questions or need further information please give me a call.

Thank you,

A handwritten signature in black ink, appearing to read "Michael L. Morris".

Michael L. Morris, P.E.
Region 4 Roadway Unit Manager

Exhibit C
Page 3 of 6

OREGON DEPARTMENT OF TRANSPORTATION
DESIGN EXCEPTION REQUEST

*Received
8/20/08*

For Roadway Section Office use only	
Control No:	D4-04

Section:	OR126 at SW Parrish Lane	Route No.:	OR126
Highway Name:	Ochoco Highway		
County:	Crook	Region:	4
		Key No.:	TBD
		EA No.:	TBD

PROJECT DATA

Functional Classification:	Rural Expressway		
Current ADT (Year):	8500 (2006)	Design ADT (Year):	8912 ('08)
% Trucks:	<10%	Freight Route:	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Posted Speed:	55	Design Speed:	70
		Bid Date:	TBD
Funding:	Private		
Current Estimate:	\$248,000**	Additional Cost to Meet Standard:	\$4,892,000**
Cost over \$5 M:	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	SIP	Design Standard:
Cost over \$1 M:	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Category: 2	3R <input type="checkbox"/> 4R <input checked="" type="checkbox"/>
NHS:	<input checked="" type="checkbox"/>	Federal Highway Approval Required:	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Non NHS:	<input type="checkbox"/>		

Design Exceptions		
<input type="checkbox"/> Design Speed	<input type="checkbox"/> Pavement Cross Slope	<input type="checkbox"/> Design Life and V/C Ratio
<input checked="" type="checkbox"/> Lane Width	<input type="checkbox"/> Superlevation	<input type="checkbox"/> Bike Lane/Multi-Use Path Width
<input checked="" type="checkbox"/> Shoulder Width/Shy Distance	<input type="checkbox"/> Clear Zone	<input type="checkbox"/> Sidewalk Width
<input type="checkbox"/> Bridge Width	<input type="checkbox"/> Structural Capacity	<input checked="" type="checkbox"/> Median Width
<input type="checkbox"/> Horizontal Alignment	<input type="checkbox"/> ADA Standards	<input type="checkbox"/> Parking Width
<input type="checkbox"/> Vertical Alignment	<input type="checkbox"/> Spiral Length	<input type="checkbox"/> Diagonal Parking
<input type="checkbox"/> Grade	<input type="checkbox"/> Superlevation Runoff	<input type="checkbox"/> Bridge Rail
<input type="checkbox"/> Stopping Sight Distance	<input type="checkbox"/> Pavement Design Life	<input type="checkbox"/> Vertical Clearance
<input checked="" type="checkbox"/> (Other) Shoulder foreslope		

Description of Exception:

12-ft through lanes (standard is 14-ft), 14-ft median (standard is 16-ft), 1:4 fore slope where needed to stay in right-of-way (standard is 1:6), and 4-ft shoulder width (standard is 10-ft). Referenced standards refer to Oregon Standard Drawing RD215 and Table 7-1.

Description of Project (From Prospectus):

New eastbound left turn lane onto SW Parrish Lane from OR126 - Ochoco Highway and westbound left-turn refuge on Highway 126 between Parrish Lane and Stillman Road.

Location of Design Feature:

The work will occur within existing ODOT right-of-way at an existing intersection in a rural area near the unincorporated community of Powell Butte in Crook County. The taper for the left turn lane on OR126 will extend from approximately 1100-ft east of Parrish Lane to the Intersection. The left-turn refuge will extend from the Parrish intersection to the existing left turn lane onto Stillman Road, which is approximately 1300-ft west of Parrish Lane.

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Crash History & Potential: (Specifically as it applies to requested exception)

In the past five years, there have been eight crashes within one-half mile of the intersection.

Four crashes were rear-end collisions, which were deemed to have been caused by failure to avoid a stopped, parked, or turning vehicle ahead by either driving too fast for conditions or following too closely. Three of the four rear end collisions occurred at the Parrish Lane OR126 intersection. Two of the rear end collisions crashes occurred in the eastbound direction and two in the westbound direction.

Three crashes were due to hitting fixed objects. In all three cases it was determined that the drivers were driving too fast for conditions and left the roadway. In each case, the vehicle drove into the roadside ditch and overturned. All of these accidents happened to the east of the intersection near milepost 11.00. All three fixed object occurred in the eastbound direction. One collision occurred in the rain. Two collisions occurred when it wasn't raining. All three collisions occurred during daylight hours. All three involved driving too fast for conditions.

The eighth crash was due to hitting an animal on the roadway. The crash occurred at night and was deemed to have been caused by speeding.

Reasons For Not Attaining Standard: (Such As Cost/ Benefit, Crash History, Environmental, Etc.)

1. The lack of available right-of-way is the primary reason for not meeting full design standards. The existing right-of-way along this stretch of OR 126 is 60-ft wide. Building this section of roadway to full design standards would require additional right of way on both sides of highway.

All property adjacent to the highway is held in private ownership. Prior to submitting this request for a design exception, the developer of Crossing Trails Resort approached the private property owners adjacent to Highway 126. The property owners were unwilling to sell a 20-ft strip of land that would be to widen the highway to full design standards.

2. The intersection channelization improvements are interim. In the County TSP, Highway 126 is planned for eventual widening to a four lane controlled access facility.

3. Excessive cost is also a primary reason for not meeting design full design standards. Property owners adjacent to the highway were unwilling to sell a 20-ft strip of property along the frontage of parcels. Instead the property owners asked for a Crossing Trails to purchase both effected parcels for a combined price of \$4.66-million.

4. The proposed design exceptions match existing conditions in the project vicinity. The left turn lane from Stillman Road onto Highway 126 appears to be very similar to the design proposed for the Parrish Lane intersection. Shoulders in the project vicinity vary in width from 3- to 5-ft. The shoulder widths proposed in this exception request fall within that range.

5. Based on conversations with ODOT staff in Region Office, Design Standard Detail RD215 that describes ODOT intersection standards is currently being revised. The current drawing requires through lane widths of 14-ft. The revised standard will require 12-ft wide through lanes. Based on this anticipated change the 12-ft lanes proposed by this project will meet the future design standard.

Based on conversations with ODOT staff in the Region Office we also understand that the taper rate, which is currently 70:1 for 70 MPH design speed will be reduced to a maximum taper rate of 55:1. The design proposed for this project meets the future design standard.

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Channelization
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Form Updated: 22MAY2007

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6. Short segments of 4:1 shoulder fore slope are required in order to stay within ODOT's existing right-of-way. The full design standard is 6:1. AASHTO design standards consider 4:1 fore slopes recoverable. While 6:1 slopes are ideal, 4:1 slopes are acceptable from a safety standpoint.

7. The proposed 14-ft left turn lane consists of a 14-ft lane and a 2-ft wide painted median between the turn lane and the westbound through lane. The 2-ft wide median is adequate to provide separation between through traffic and traffic waiting to turn left onto Parrish. Westbound traffic will taper into the through lane east of Stillman Road. The center refuge lane between Stillman Road and Parrish lane will provide adequate protection for vehicles waiting to turn left onto Parrish Lane.

Effect on Other Standards:

None.

Compatibility with Adjacent Sections:

The proposed improvements are compatible with adjacent sections of roadway. The proposed left turn lane matches the existing turn lane at Stillman Road. The left turn refuge that extends to Stillman Road replaces the existing eastbound taper for the Stillman left-turn lane. Shoulders in the project vicinity vary from 3- to 5-ft. The 4-ft shoulders proposed by this project fall within that range.

Probable Time before Reconstruction of Section:

According to ODOT Region 4 Highway Manager, there are no known reconstruction projects planned for this affected section of Highway 126 within the next five years. Crook County's TSP includes plan for eventually widening OR126 from two lanes to four lanes.

Mitigation For Exception Included In Design:

Mitigation is not proposed for these improvements. The proposed improvements at Parrish Lane will improve functionality and safety of the existing intersection. There is currently not a turn lane for vehicles turning onto Parrish Lane. By providing a left turn lane, the proposed channelization should greatly reduce the probability of rear-end collisions for vehicles waiting to turn onto Parrish lane.

The proposed left turn refuge between Parrish Lane and Stillman will provide refuge for vehicles turning left from Parrish Lane onto the highway.

As part of rechannelization and widening the project will improve the pavement surface, which will improve pavement friction, making this section of roadway safer than existing conditions.

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Supporting Documentation (include the appropriate Plan Section, Cross Section, Alignments
Sheets & Plan Details): See attached channelization plan.

Signatures

Prepared By:


(Engineer of Record)

Date:

4.24.2008

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Zip:	97702		


Concurred By:


(ODOT Program Manager, Area Manager, District Manager,
BDU, Private Public Partnerships, Local Government)

Date:

8/8/08

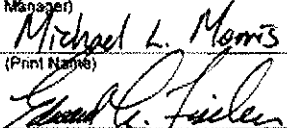
Concurred By:


(ODOT Region Tech Center Manager or Region Roadway
Manager)

Date:

8-8-08

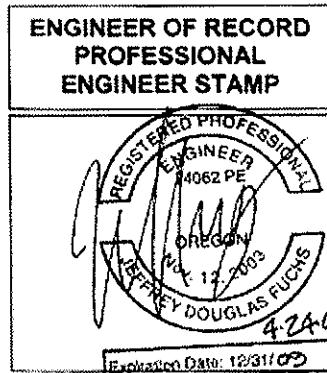
Approved By:


(State Roadway Engineer)
Edward L. Fischer, P.E., PTOE

Date:

9/8/08

PREPARED BY:



APPROVED BY:

