

# INTERGOVERNMENTAL AGREEMENT

Agreement No. \_\_\_\_\_

This Agreement is between the State of Oregon acting by and through its Parks and Recreation Department (“OPRD”) and the City of Portland (“LOCAL GOVERNMENT”), acting by and through its Bureau of Environmental Services (“BES”), each a “Party” and, together, the “Parties.”

## SECTION 1: AUTHORITY

This Agreement is authorized by ORS 190.110.

## SECTION 2: PURPOSE

### Overview

The existing pipe culvert that carries Tryon Creek under SW Boones Ferry Road is undersized and requires replacement. The primary goals for the project are to pass the 25-year storm event under the roadway without surcharge, to restore the stream to a more natural state thus improving fish habitat, to improve stream hydraulics to reduce debris racking and scour, and to improve the transportation connectivity to safely accommodate pedestrian and wildlife passage.

### Existing Conditions

Tryon Creek main stem flows through neighborhoods, commercial centers, several Portland Parks and Metro natural areas, Tryon Creek State Natural Area (TCSNA) and into the Willamette River at the city of Lake Oswego. The Creek is home to populations of ESA listed salmonid species including steelhead trout (*Oncorhynchus mykiss*), coho salmon (*O. kisutch*) and Chinook salmon (*O. tshawytscha*). Other native fish include coastal cutthroat trout (*O. clarki*), Pacific lamprey (*Entosphenus tridentatus*) and western brook lamprey (*Lampetra richardsoni*). Terrestrial mammal species include black-tailed deer (*Odocoileus hemionus columbianus*) and North American beaver (*Castor canadensis*). Sensitive avian species include pileated woodpecker (*Dryocopus pileatus*), olive-sided flycatcher (*Contopus cooperi*) and band-tailed pigeon (*Patagioenas fasciata*).

At SW Boones Ferry Road (river mile 2.68), Tryon Creek flows through a 60-inch diameter corrugated metal culvert approximately 140 feet in length. There is a drop from the culvert outlet to stream surface at times as great as twelve inches. A grated concrete debris rack is located at the upstream end of the culvert which includes a vertical drop of approximately 15 inches that essentially blocks all upstream fish passage. Concurrently, during high flows, excessive velocities in the culvert prevent upstream passage of fish. There is currently no passage provision for wildlife or pedestrians.

The need for the Boones Ferry Culvert Replacement was identified in the 2005 Fanno and Tryon Creeks Watershed Management Plan and further evaluated in the 2008 Fanno/Tryon Water Quality and TMDL CIP Predesign Report.

The location is cited as a priority for trail connectivity and/or undercrossing in a number of local and regional planning efforts including: 2013 Tryon Creek State Natural Area Comprehensive Plan; 2000 City of Portland’s Southwest Urban Trail Plan; 2014 Metro Regional Trails Map; 2008 “Connecting Green” Blue Ribbon Committee for Trails Selection: Hillsdale to Lake Oswego Trail; City of Lake Oswego Trails and Pathways Master Plan; and Portland Parks and Recreation Recreational Trails Strategy. Currently, pedestrians are directed to local streets and must cross busy, high-speed Boones Ferry Road to access TCSNA to the south or Marshall Park to the north. A demand trail has been developed through TCSNA riparian and wetland resources and crosses Tryon Creek by using the existing culvert.

This Partnership seeks to address the most significant barrier to completing the Hillsdale to Lake Oswego Trail by replacing this undersized culvert with a bridge to include fish, wildlife and pedestrian passage. The project is in City of Portland right of way, Tryon Creek State Natural Area and on two adjacent private properties.

The project will significantly improve the connection between the upper and lower watersheds for pedestrian, fish and wildlife passage. Nearly two miles of upper watershed streams, currently not accessible to migratory fish, will be made accessible for fish movement.

An Intergovernmental Agreement has been authorized by the LOCAL GOVERNMENT City Council to accept a grant in the amount of \$650,000 from METRO as part of the Boones Ferry Fish, Wildlife, and Trail Passage Partnership Project (Ordinance No. 187321). As part of this Partnership Project an in-kind match from OPRD was provided to cover costs related to trail construction, structures and signs, and log stringer foot bridges including footers and permits.

### SECTION 3: EFFECTIVE DATE AND DURATION

This Agreement is effective on the date it is signed by all Parties and continues in full force and effect as described below or until terminated in accordance with Section 16. The duration of this agreement is outlined with three distinct timeframes as described below.

Duration	Responsibility Element (further described in Exhibit A)
Spring 2018-Fall 2020	Design, Permitting, and Construction—See Exhibit A, Responsibility Items under LOCAL GOVERNMENT.
Fall 2020-Fall 2024	Planting, Seeding, Maintenance, and Monitoring—See Exhibit A, Responsibility Items under LOCAL GOVERNMENT and Items under OPRD.
Indefinitely	Access and Maintenance—See Exhibit A, Responsibility Items under LOCAL GOVERNMENT and Items under OPRD.

## **SECTION 4: AUTHORIZED REPRESENTATIVES**

### **4.1 OPRD's Authorized Representative is:**

Name: Iris Benson

Title: Park Manager, Tryon Creek Management Unit

Address: 11321 SW Terwilliger Blvd.

Portland, OR 97219

Phone: 503-630-7150 ext. 4

Email: Iris.Benson@oregon.gov

### **4.2 LOCAL GOVERNMENT's Authorized Representative is:**

Name: Amin Wahab

Title: Environmental Program Manager, West Watershed

Address: 1120 SW 5th Ave., Room 1000

Portland, OR 97204

Phone: 503-823-7895

Email: Amin.Wahab@portlandoregon.gov

### **4.3 A Party may designate a new Authorized Representative by written notice to the other Party.**

## **SECTION 5: RESPONSIBILITIES OF EACH PARTY**

### **5.1 LOCAL GOVERNMENT and OPRD shall perform the work set forth on Exhibit A, attached hereto and incorporated herein by this reference.**

### **5.2 LOCAL GOVERNMENT shall bear all costs associated with a Land and Water Conservation Fund conversion pursuant to the Land and Water Conservation Act, should such conversion occur.**

### **5.3 OPRD shall seek concurrence from the National Park Service (NPS), who administers the Land and Water Conservation Fund program, that this fish passage and transportation safety project does not trigger a conversion of parkland; however, final determination is solely the right and responsibility of the NPS. Should a conversion occur, OPRD will be the party responsible for submitting documentation to NPS with a request for approval, dependent upon timely delivery of required supporting documents to be provided by LOCAL GOVERNMENT at its sole expense.**

## **SECTION 6: COMPENSATION AND PAYMENT TERMS**

### **6.1 No Payment is exchanged**

## **SECTION 7: REPRESENTATIONS AND WARRANTIES**

LOCAL GOVERNMENT represents and warrants to OPRD that:

- 7.1** LOCAL GOVERNMENT is a city duly organized and validly existing. LOCAL GOVERNMENT has the power and authority to enter into and perform this Agreement;
- 7.2** The making and performance by LOCAL GOVERNMENT of this Agreement (a) have been duly authorized by LOCAL GOVERNMENT, (b) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative OPRD or any provision of LOCAL GOVERNMENT's charter or other organizational document and (c) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which LOCAL GOVERNMENT is party or by which LOCAL GOVERNMENT may be bound or affected. No authorization, consent, license, approval of, or filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by LOCAL GOVERNMENT of this Agreement, other than those that have already been obtained;
- 7.3** This Agreement has been duly executed and delivered by LOCAL GOVERNMENT and constitutes a legal, valid and binding obligation of LOCAL GOVERNMENT enforceable in accordance with its terms;
- 7.4** LOCAL GOVERNMENT has the skill and knowledge possessed by well-informed members of the industry, trade or profession most closely involved in providing the services under this Agreement, and LOCAL GOVERNMENT will apply that skill and knowledge with care and diligence to perform its obligations under this Agreement in a professional manner and in accordance with the highest standards prevalent in the related industry, trade or profession; and
- 7.5** LOCAL GOVERNMENT shall, at all times during the term of this Agreement, be qualified, professionally competent, and duly licensed to perform its obligations under this Agreement.

The representations and warranties set forth in this section are in addition to, and not in lieu of, any other representations or warranties provided by LOCAL GOVERNMENT.

## **SECTION 8: OVERNIN LAW, CONSENT TO JURISDICTION**

This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively "Claim") between OPRD or any department of the State of Oregon, or both, and LOCAL GOVERNMENT that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Multnomah County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this Section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or



otherwise, to or from any Claim or from the jurisdiction of any court. LOCAL GOVERNMENT, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

## **SECTION 9: [RESERVED]**

## **SECTION 10: CONTRIBUTION**

- 10.1** 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 (a “Third Party Claim”) against a Party (the “Notified Party”) with respect to which the other Party (the “Other Party”) may have liability, the Notified Party shall promptly notify the Other Party in writing of the Third Party Claim and deliver to the Other Party, along with the written notice, a copy of the claim, process and all legal pleadings with respect to the Third Party Claim that have been received by the Notified Party. 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 the Other Party of the notice and copies required in this Section and a meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to the Other Party’s contribution obligation under this Section 10 with respect to the Third Party Claim.
- 10.2** With respect to a Third Party Claim for which OPRD is jointly liable with LOCAL GOVERNMENT (or would be if joined in the Third Party Claim ), OPRD 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 LOCAL GOVERNMENT in such proportion as is appropriate to reflect the relative fault of OPRD on the one hand and of LOCAL GOVERNMENT on the other hand in connection with the events that resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of OPRD on the one hand and of LOCAL GOVERNMENT 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. OPRD’s contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if the State had sole liability in the proceeding.
- 10.3** With respect to a Third Party Claim for which LOCAL GOVERNMENT is jointly liable with OPRD (or would be if joined in the Third Party Claim), LOCAL GOVERNMENT 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 OPRD in such proportion as is appropriate to reflect the relative fault of LOCAL GOVERNMENT on the one hand and of OPRD on the other hand in connection with the events that resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of LOCAL GOVERNMENT on the one hand and of OPRD 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. LOCAL

GOVERNMENT's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if it had sole liability in the proceeding.

## **SECTION 11: DEFAULT**

LOCAL GOVERNMENT will be in default under this Agreement upon the occurrence of any of the following events:

- 11.1** LOCAL GOVERNMENT fails to perform, observe or discharge any of its covenants, agreements or obligations under this Agreement;
- 11.2** Any representation, warranty or statement made by LOCAL GOVERNMENT in this Agreement or in any documents or reports relied upon by OPRD to measure the delivery of services, the expenditure of funds or the performance by LOCAL GOVERNMENT is untrue in any material respect when made. This specifically includes but is not limited to the Joint Permit Application dated October 2016, which is incorporated herein by reference;
- 11.3** LOCAL GOVERNMENT (a) applies for or consents to the appointment of, or taking of possession by, a receiver, custodian, trustee, or liquidator of itself or all of its property, (b) admits in writing its inability, or is generally unable, to pay its debts as they become due, (c) makes a general assignment for the benefit of its creditors, (d) is adjudicated a bankrupt or insolvent, (e) commences a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (f) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (g) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against it in an involuntary case under the Bankruptcy Code, or (h) takes any action for the purpose of effecting any of the foregoing; or
- 11.4** A proceeding or case is commenced, without the application or consent of LOCAL GOVERNMENT, in any court of competent jurisdiction, seeking (a) the liquidation, dissolution or winding-up, or the composition or readjustment of debts of LOCAL GOVERNMENT, (b) the appointment of a trustee, receiver, custodian, liquidator, or the like of LOCAL GOVERNMENT or of all or any substantial part of its assets, or (c) similar relief in respect to LOCAL GOVERNMENT under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, and such proceeding or case continues undismissed, or an order, judgment, or decree approving or ordering any of the foregoing is entered and continues unstayed and in effect for a period of sixty consecutive days, or an order for relief against LOCAL GOVERNMENT is entered in an involuntary case under the Federal Bankruptcy Code (as now or hereafter in effect).

## **SECTION 12: OPRD DEFAULT**

OPRD will be in default under this Agreement if OPRD fails to perform, observe or discharge any of its covenants, agreements, or obligations under this Agreement.

## **SECTION 13: REMEDIES**

- 13.1** If LOCAL GOVERNMENT does not comply with any term or condition or does not fulfill any obligation of this Agreement within thirty (30) days after written notice by OPRD specifying the nature of the default with reasonable particularity, LOCAL GOVERNMENT shall be allowed to cure said default; However, if the default is of such a nature that it cannot be completely remedied within the thirty (30) day period, LOCAL GOVERNMENT shall not be in default if LOCAL GOVERNMENT begins correction of the default within the thirty (30) day period and thereafter proceeds with reasonable diligence and in good faith to correct the default as soon as practical and to completion.
- 13.2** If OPRD does not comply with any term or condition or does not fulfill any obligation of this Agreement within thirty (30) days after written notice by LOCAL GOVERNMENT specifying the nature of the default with reasonable particularity, OPRD shall be allowed to cure said default; However, if the default is of such a nature that it cannot be completely remedied within the thirty (30) day period, OPRD shall not be in default if OPRD begins correction of the default within the thirty (30) day period and thereafter proceeds with reasonable diligence and in good faith to correct the default as soon as practical and to completion

## **SECTION 14: RECOVERY OF OVERPAYMENTS**

If payments to LOCAL GOVERNMENT under this Agreement, or any other agreement between OPRD and LOCAL GOVERNMENT, exceed the amount to which LOCAL GOVERNMENT is entitled, OPRD may, after notifying LOCAL GOVERNMENT in writing, withhold from payments due LOCAL GOVERNMENT under this Agreement, such amounts, over such periods of times, as are necessary to recover the amount of the overpayment.

## **SECTION 15: LIMITATION OF LIABILITY**

EXCEPT FOR LIABILITY ARISING UNDER OR RELATED TO SECTION 10, NEITHER PARTY WILL BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, OR OTHER INDIRECT DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, REGARDLESS OF WHETHER THE LIABILITY CLAIM IS BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, PRODUCT LIABILITY OR OTHERWISE. NEITHER PARTY WILL BE LIABLE FOR ANY DAMAGES OF ANY SORT ARISING SOLELY FROM THE TERMINATION OF THIS AGREEMENT IN ACCORDANCE WITH ITS TERMS.

## **SECTION 16: TERMINATION**

- 16.1** This Agreement may be terminated for cause and by mutual written consent of the Parties.
- 16.2** OPRD may terminate this Agreement as described below. If the Agreement is terminated the LOCAL GOVERNMENT is not required to remove improvements or make any changes to the land as originally authorized by OPRD in this IGA.
- 16.2.1** Upon 30 days advance written notice to LOCAL GOVERNMENT for cause;
- 16.2.2** Immediately upon written notice to LOCAL GOVERNMENT, if OPRD fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient

in OPRD's reasonable administrative discretion, to perform its obligations under this Agreement, subject to remedy described in Section 13;

**16.2.3** Immediately upon written notice to LOCAL GOVERNMENT, if federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that OPRD's performance under this Agreement is prohibited or OPRD is prohibited from paying for such performance from the planned funding source;

**16.2.4** Immediately upon written notice to LOCAL GOVERNMENT, if LOCAL GOVERNMENT is in default under this Agreement and such default remains uncured 30 days after written notice thereof to LOCAL GOVERNMENT as described in Section 13; or

**16.2.5** As otherwise expressly provided in this Agreement.

**16.3** LOCAL GOVERNMENT may terminate this Agreement as follows:

**16.3.1** Immediately upon written notice to OPRD, if LOCAL GOVERNMENT fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient, in LOCAL GOVERNMENT's reasonable administrative discretion, to perform its obligations under this Agreement;

**16.3.2** Immediately upon written notice to OPRD, if federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that LOCAL GOVERNMENT's performance under this Agreement is prohibited or LOCAL GOVERNMENT is prohibited from paying for such performance from the planned funding source;

**16.3.3** Immediately upon written notice to OPRD, if OPRD is in default under this Agreement and such default remains uncured 30 days after written notice thereof to OPRD as described in Section 13; or

**16.3.4** If this Agreement is terminated the compensatory wetland mitigation site will remain in perpetuity as outlined in Section 21.

**16.3.5** As otherwise expressly provided in this Agreement.

**16.4** Upon receiving a notice of termination of this Agreement, LOCAL GOVERNMENT will immediately cease all activities under this Agreement, unless OPRD expressly directs otherwise in such notice. Upon termination, LOCAL GOVERNMENT will deliver to OPRD all documents, information, works-in-progress, Work Product and other property that are or would be deliverables under the Agreement. And upon OPRD's reasonable request, LOCAL GOVERNMENT will surrender all documents, research or objects or other tangible things needed to complete the work that was to have been performed by LOCAL GOVERNMENT under this Agreement.

## **SECTION 17: INSURANCE**

OPRD understands and acknowledges that LOCAL GOVERNMENT is self-insured.

## **SECTION 18: NONAPPROPRIATION**

OPRD's obligation to pay any amounts and otherwise perform its duties under this Agreement is conditioned upon OPRD receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow OPRD, in the exercise of its reasonable administrative discretion, to meet its obligations under this Agreement. Nothing in this Agreement may be construed as permitting any violation of Article XI, section 7 of the Oregon Constitution or any other law limiting the activities, liabilities or monetary obligations of OPRD.

## **SECTION 19: AMENDMENTS**

The terms of this Agreement may not be altered, modified, supplemented or otherwise amended, except by written agreement of the Parties.

## **SECTION 20: NOTICE**

Except as otherwise expressly provided in this Agreement, any notices to be given relating to this Agreement must be given in writing by facsimile, email, personal delivery, or postage prepaid mail, to a Party's Authorized Representative at the physical address, fax number or email address set forth in Section 4, or to such other addresses as either Party may indicate pursuant to this Section 20. Any notice so addressed and mailed becomes effective five (5) days after mailing. Any notice given by personal delivery becomes effective when actually delivered. Any notice given by email becomes effective upon the sender's receipt of confirmation generated by the recipient's email system that the notice has been received by the recipient's email system. Any notice given by facsimile becomes effective upon electronic confirmation of successful transmission to the designated fax number.

## **SECTION 21: SURVIVAL**

All rights and obligations of the Parties under this Agreement will cease upon termination of this Agreement, other than the rights and obligations arising under Sections 5, 8, 9, 10, 14, 15, 21 and the compensatory wetland mitigation site will remain in perpetuity as outlined in Exhibit A, Responsibilities item 2 hereof and those rights and obligations that by their express terms survive termination of this Agreement; provided, however, that termination of this Agreement will not prejudice any rights or obligations accrued to the Parties under this Agreement prior to termination.

## **SECTION 22: SEVERABILITY**

The Parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining

terms and provisions will not be affected, and the rights and obligations of the Parties will be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

## **SECTION 23: COUNTERPARTS**

This Agreement may be executed in several counterparts, including by electronic means, all of which when taken together shall constitute one agreement, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of the Agreement so executed constitutes an original.

## **SECTION 24: COMPLIANCE WITH LAW**

In connection with their activities under this Agreement, the Parties shall comply with all applicable federal, state and local law.

## **SECTION 25: INDEPENDENT CONTRACTORS**

The Parties agree and acknowledge that their relationship is that of independent contracting parties and that LOCAL GOVERNMENT is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265 or otherwise.

## **SECTION 26: INTENDED BENEFICIARIES**

OPRD and LOCAL GOVERNMENT are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement provides, is intended to provide, or may be construed to provide any direct or indirect benefit or right to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of this Agreement.

## **SECTION 27: FORCE MAJEURE**

Neither Party is responsible for any failure to perform or any delay in performance of any obligations under this Agreement caused by fire, civil unrest, labor unrest, natural causes, or war, which is beyond that Party's reasonable control. Each Party shall, however, make all reasonable efforts to remove or eliminate such cause of failure to perform or delay in performance and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement. OPRD may terminate this Agreement upon written notice to LOCAL GOVERNMENT after reasonably determining that the failure or delay will likely prevent successful performance of this Agreement.

## **SECTION 28: ASSINMENT AND SUCESSORS IN INTEREST**

Neither Party may assign or transfer its interest in this Agreement without the prior written consent of the other Party and any attempt by a Party to assign or transfer its interest in this

Agreement without such consent will be void and of no force or effect. A Party's consent to the other Party's assignment or transfer of its interest in this Agreement will not relieve the assigning or transferring Party of any of its duties or obligations under this Agreement. The provisions of this Agreement will be binding upon and inure to the benefit of the Parties hereto, and their respective successors and permitted assigns.

## **SECTION 29: SUBCONTRACTS**

OPRD's consent to this IGA will not relieve LOCAL GOVERNMENT of any of its duties or obligations under this Agreement.

Should LOCAL GOVERNMENT contract with third parties to perform any of the work on OPRD owned property, LOCAL GOVERNMENT will require those third parties to carry insurance in the amounts specified on EXHIBIT B, and for third party to provide a certificate naming the State of Oregon, its Parks and Recreation Department, and its commissioners, divisions, officers, agents and employees as additional insureds.

Said third parties shall also be required to indemnify the State of Oregon, its Parks and Recreation Department, and its commissioners, divisions, officers, agents and employees.

## **SECTION 30: TIME IS OF THE ESSENCE**

Time is of the essence in LOCAL GOVERNMENT's performance of its obligations under this Agreement.

## **SECTION 31: MERER, WAIVER**

This Agreement and all exhibits and attachments, if any, 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 or consent under this Agreement binds either Party unless in writing and signed by both Parties. Such waiver or consent, if made, is effective only in the specific instance and for the specific purpose given. EACH PARTY, BY SIGNATURE OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

## **SECTION 32: RECORDS MAINTENANCE AND ACCESS**

LOCAL GOVERNMENT shall maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles. In addition, LOCAL GOVERNMENT shall maintain any other records, books, documents, papers, plans, records of shipments and payments and writings of LOCAL GOVERNMENT, whether in paper, electronic or other form, that are pertinent to this Agreement in such a manner as to clearly document LOCAL GOVERNMENT's performance. All financial records, other records, books, documents, papers, plans, records of shipments and payments and writings of LOCAL GOVERNMENT, whether in paper, electronic or other form, that are pertinent to this Agreement, are collectively referred to

as "Records." LOCAL GOVERNMENT acknowledges and agrees that OPRD and the Oregon Secretary of State's Office and the federal government and their duly authorized representatives will have access to all Records to perform examinations and audits and make excerpts and transcripts. LOCAL GOVERNMENT shall retain and keep accessible all Records permanently. Subject to foregoing minimum records retention requirement, LOCAL GOVERNMENT shall maintain Records in accordance with the records retention schedules set forth in OAR Chapter 166.

### **SECTION 33: HEADINS**

The headings and captions to sections of this Agreement have been inserted for identification and reference purposes only and may not be used to construe the meaning or to interpret this Agreement.

### **SECTION 34: [RESERVED]**

### **SECTION 35: AREEMENT DOCUMENTS**

This Agreement consists of the following documents, which are listed in descending order of precedence: this Agreement less all exhibits and attached Exhibit A (Statement of Work).

### **SECTION 36: SINATURES**

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the dates set forth below.

**STATE OF OREGON acting by and through its  
Oregon Parks and Recreation Department (OPRD)**

\_\_\_\_\_  
Name, Title

\_\_\_\_\_  
Date

**CITY OF PORTLAND (LOCAL GOVERNMENT)**

\_\_\_\_\_  
Michael Jordan, Director

\_\_\_\_\_  
Date

Approved as to form:

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
Date



## **EXHIBIT A**

### **STATEMENT OF WORK**

#### **PROJECT GOALS & OBJECTIVES**

Environmental Services and its partners are working on a project to replace a culvert on Tryon Creek under SW Boones Ferry Road. The existing culvert blocks all upstream fish passage and is too small to allow adequate flow during wet weather. The project will:

- Allow fish to pass into Upper Tryon Creek and Arnold Creek upstream of Boones Ferry Road;
- Improve stream flow;
- Install large wood and rock to protect fish habitat, reduce erosion and improve water quality;
- Protect an exposed sewer pipe on Tryon Creek upstream of the culvert;
- Provide pedestrian and wildlife passage through the new bridge;
- Provide trail connectivity to the Tryon Creek State Natural Area North Creek Trailhead;
- Establish and enhance native forest and wetland plant communities.

#### **PROJECT COSTS**

The total estimated project cost is \$8.8 million. The LOCAL GOVERNMENT is responsible for all design, permitting, construction costs of the bridge replacement project and associated work as described below. The LOCAL GOVERNMENT will retain ownership of all assets constructed with LOCAL GOVERNMENT funds.

#### **PROJECT LOCATION**

Project boundaries are shown in Attachment 1 – Project Map. The project site is located in the Tryon Creek watershed, at the intersection of SW Boones Ferry Rd & SW Arnold St. The project area includes right-of-way, a portion of Tryon Creek State Natural Area, property jointly owned by LOCAL GOVERNMENT and Metro, and private property.

#### **RESPONSIBILITIES**

##### **LOCAL GOVERNMENT shall:**

1. Work with OPRD to develop project plans, plant lists, and site designs.
2. Include OPRD in all meetings and communications, as necessary.
3. Submit and acquire all necessary permitting for SW Boones Ferry Road bridge, stream enhancement, compensatory wetland mitigation, and trail from SW Boones Ferry Road to 100yr floodplain line north of Arnold Creek.
4. Construct all elements of the Tryon Creek at Boones Ferry Road Culvert Replacement project as outlined in the proposed condition site plan Attachment 2.

5. Construct the trail from SW Boones Ferry Road to Arnold Creek as shown in Attachment 2.
6. Construct all elements related to Compensatory Wetland Mitigation. See Attachment 3 - Department of State Lands Permit #59499.
7. Monitor and maintain critical features of stream enhancement elements (i.e., streambanks, vegetated revetments, large woody debris, rock weirs).
8. Repair for major failures of trail adjacent to wetland mitigation area as related to hydrology and vegetation of CWM site.
9. Provide maintenance of the trail within the right-of-way including the stairs and post and rail fence that requires material costs & repair (i.e., replacement of stairs, fence, etc).
10. Perform monitoring and reporting for CWM site in conformance with Department of State Lands routine monitoring guidelines for the required timeframe of 5-years (see table below).
11. Plant and establish native trees, shrubs, and herbaceous plants over a 2.23-acre revegetation area, including site preparation, maintenance, and monitoring, unless otherwise specified in this agreement, according to tentative schedule in table below.

<b>Schedule*</b>	<b>Task</b>	<b>Details</b>
Ongoing – Spring 2020	Site Preparation: Invasive Plant Removal & Erosion Control	<ul style="list-style-type: none"> <li>• Invasive plant removal may include cutting, manual or mechanical clearing, or herbicide application.</li> <li>• Erosion control and seeding, as needed.</li> </ul>
Fall 2020 – Winter 2021	Planting & Seeding	<ul style="list-style-type: none"> <li>• Includes all labor and materials for plantings of native trees, shrubs, and groundcovers.</li> </ul>
Summer 2021 – Fall 2024	Monitoring	<ul style="list-style-type: none"> <li>• Informal monitoring seasonally of 2.23-acre revegetation area to assess conditions and prescribe treatments.</li> <li>• Monitor permanent plots of CWM site using annual visual estimates of cover, species diversity, and density of woody vegetation. Submit annual reports to permit agencies.</li> </ul>
Spring 2021 – Fall 2024	Establishment Maintenance	<ul style="list-style-type: none"> <li>• Perform vegetation management by cutting, mowing, and applying herbicide to non-native vegetation</li> <li>• Ensure installed plants are “free to grow”.</li> <li>• Interplant and seed as needed to establish desired native plant communities.</li> </ul>
Winter 2024 – Summer 2029	Extended Maintenance (only if necessary)	<ul style="list-style-type: none"> <li>• Perform additional vegetation management and/or interplanting as needed to comply with permit performance metrics and conditions.</li> </ul>

12. LOCAL GOVERNMENT workers or agents shall carry credentials identifying them as BES workers or agents when they are present at the project site(s).

**OPRD will:**

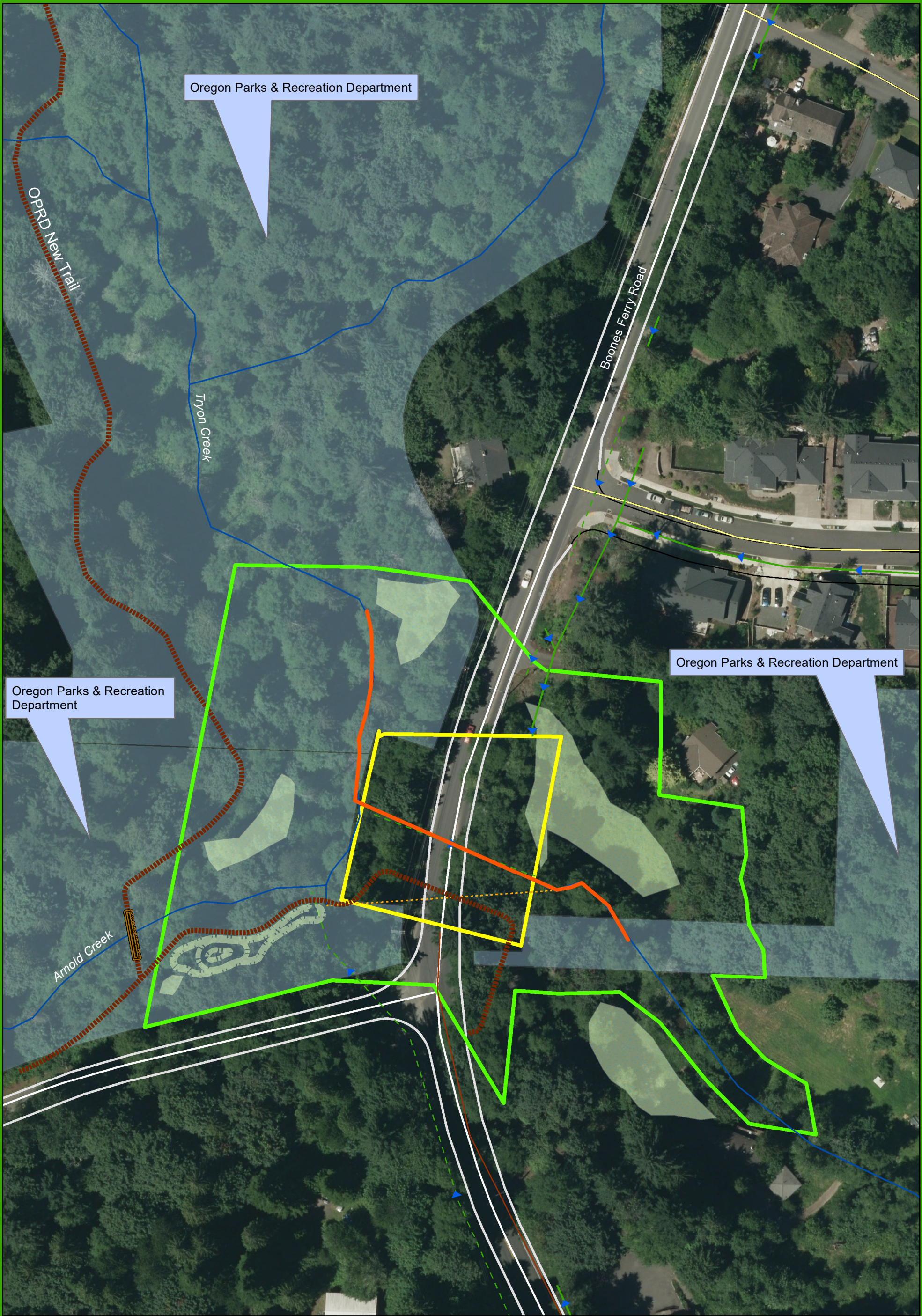
1. Allow and provide access for representatives of the LOCAL GOVERNMENT to enter upon the areas described and depicted in Attachment 4 for the purposes of constructing, reconstructing, installing, maintaining, and monitoring the project. Access shall accommodate all site preparation, installation, and maintenance activities.
2. Protect compensatory wetland mitigation site in perpetuity, including the prohibition of any activity that would alter hydrology of the site, remove vegetation other than that required for maintenance (e.g. weed treatments or tree thinning for habitat improvements), or remove or place material into the wetland.
3. Perform routine maintenance of the trail within the right-of-way adjacent to the Boones Ferry Road Bridge and the trail to SW Arnold St. This is no-cost maintenance, staff time only, of the trail that includes brushing, tread upkeep, etc. Responsible for all trail maintenance on OPRD property.
4. Include LOCAL GOVERNMENT'S representative in all meetings and communications, as necessary.
5. Acknowledge that LOCAL GOVERNMENT revegetation projects are maintained for plant survival and ecological function, not aesthetics, and project site may appear "natural" or "weedy." LOCAL GOVERNMENT will not respond to requests for weeding, mulching, mowing, etc. unless installed plants are at risk or project goals are not being met.
6. Acknowledge that LOCAL GOVERNMENT's herbicide application practices are consistent with OPRD's integrated pest management (IPM) policies and directives.

**DISCLAIMER**

LOCAL GOVERNMENT shall not be responsible for costs associated with replacing native planting projects within or beyond the project scope in the event of natural catastrophes including, but not limited to, severe flooding, fire, drought, and earthquake.

## **Attachment 1 Project Map**





- Arnold Creek Bridge
- Proposed CWM Area
- Instream Restoration
- OPRD New Trail

- Upland Riparian Restoration
- Culvert Replacement Area
- Existing Wetlands
- Publicly Owned Taxlots

- Storm Gravity Main
- Culvert
- Open Channel
- Stormwater Culvert

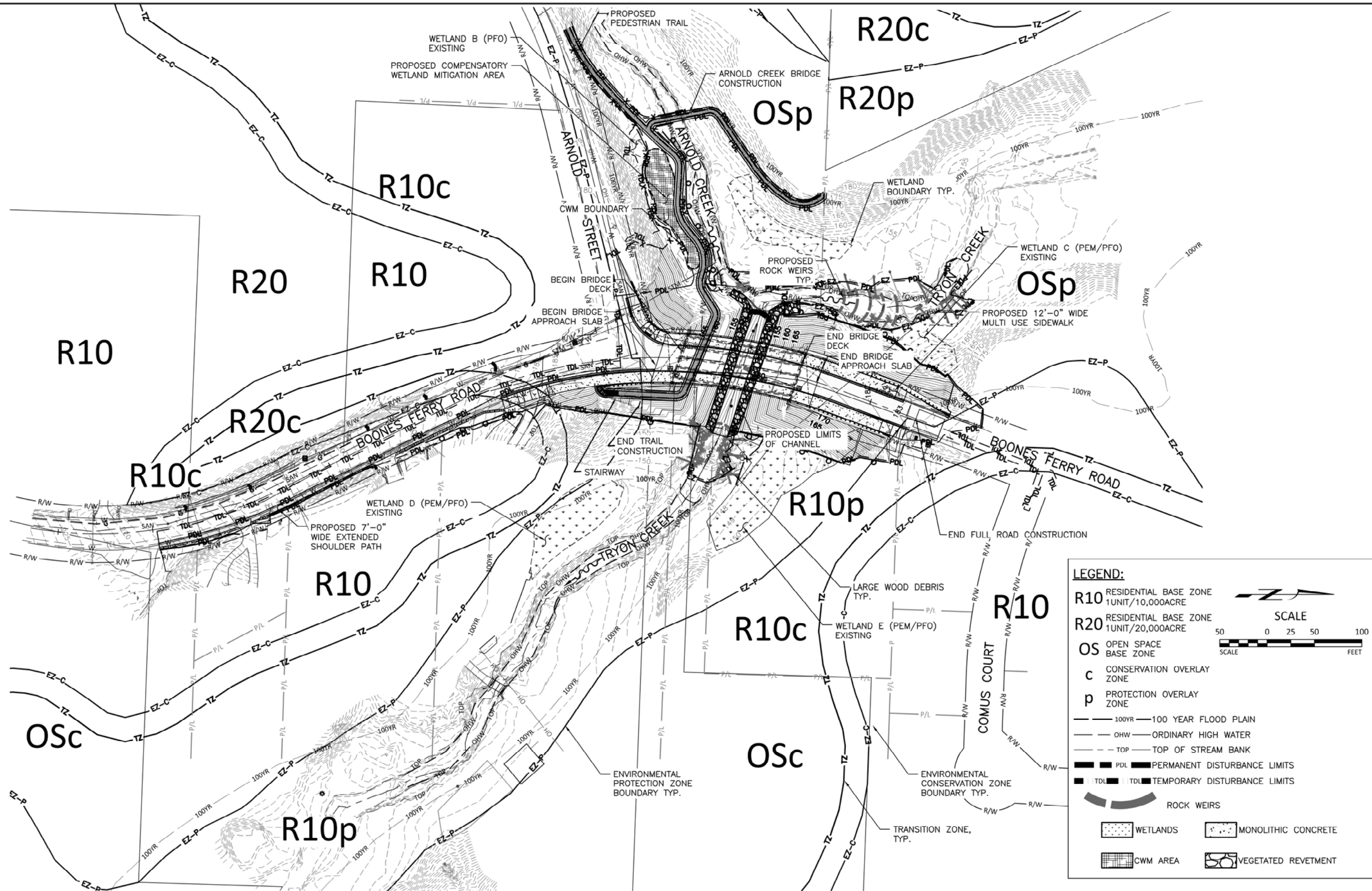
**SW Boones Ferry  
Project Map**

N 50 Feet



## **Attachment 2 Proposed Condition Site Plan**

Q:\RICKW\08682 SW BOONES FERRY\08682\_L08-REVISED.DWG 3/16/2017 2:01:45 PM SPEREZ



**LEGEND:**

**R10** RESIDENTIAL BASE ZONE  
1 UNIT/10,000ACRE

**R20** RESIDENTIAL BASE ZONE  
1 UNIT/20,000ACRE

**OS** OPEN SPACE  
BASE ZONE

**c** CONSERVATION OVERLAY  
ZONE

**p** PROTECTION OVERLAY  
ZONE

— 100YR — 100 YEAR FLOOD PLAIN

— OHW — ORDINARY HIGH WATER

— TOP — TOP OF STREAM BANK

— PDL — PERMANENT DISTURBANCE LIMITS

— TDL — TEMPORARY DISTURBANCE LIMITS

— ROCK WEIRS

WETLANDS

MONOLITHIC CONCRETE

CWM AREA

VEGETATED REVETMENT

SCALE  
50 0 25 50 100  
SCALE FEET

Q:\RICHMAN\E08682.dwg				XREF(S) USED: _____ ROTATION ANGLE: 270d _____ CONSTRUCTED BY _____ PROJECT COMPLETED _____ MAP CORRECTED BY _____ CHECKED BY _____ FINAL MAP DATA _____ DRAWING NAME: E08682_L08-REVISED.dwg				DESIGNED BY BRB _____ DATE APPD. _____ DRAWN BY SLP _____ PROGRAM MGR. _____ CHECKED BY BSW _____ CONST. MGR. _____ DESIGN MGR. HAW _____				CITY OF PORTLAND ENVIRONMENTAL SERVICES  NICK FISH WILLIAM F. RYAN, P.E. COMMISSIONER CHIEF ENGINEER				 PORTLAND BUREAU OF TRANSPORTATION DAN SALTZMAN STEVE TOWNSEN, P.E. COMMISSIONER CITY ENGINEER				LUR								TRYON CREEK AT BOONES FERRY ROAD CULVERT REPLACEMENT  PROPOSED CONDITIONS PLAN				1/4 SECTION 4128 JOB NO. E08682 SHEET NO. L08 10 OF 27																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																							
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**Attachment 3 DSL Permit #59499**



Department of State Lands  
775 Summer Street, Suite 100  
Salem, OR 97301-1279  
☎ 503-986-5200

Permit No.:	59499-RF
Permit Type:	Removal/Fill
Waterway:	Tryon Creek, Arnold Creek, and Wetlands
County:	Multnomah
Expiration Date:	April 13, 2018

**CITY OF PORTLAND**

**IS AUTHORIZED IN ACCORDANCE WITH ORS 196.800 TO 196.990 TO PERFORM THE OPERATIONS DESCRIBED IN THE ATTACHED COPY OF THE APPLICATION, SUBJECT TO THE SPECIAL CONDITIONS LISTED ON ATTACHMENT A AND TO THE FOLLOWING GENERAL CONDITIONS:**

1. This permit does not authorize trespass on the lands of others. The permit holder shall obtain all necessary access permits or rights-of-way before entering lands owned by another. For new linear facility projects, the removal-fill activity cannot occur until the permit holder obtains either the landowner's consent, a right, title or interest with respect to the property that is sufficient to undertake the removal or fill activity, or a court order or judgment authorizing the use of the property.
2. This permit does not authorize any work that is not in compliance with local zoning or other local, state, or federal regulation pertaining to the operations authorized by this permit. The permit holder is responsible for obtaining the necessary approvals and permits before proceeding under this permit.
3. All work done under this permit shall comply with Oregon Administrative Rules, Chapter 340; Standards of Quality for Public Waters of Oregon. Specific water quality provisions for this project are set forth on Attachment A.
4. Violations of the terms and conditions of this permit are subject to administrative and/or legal action, which may result in revocation of the permit or damages. The permit holder is responsible for the activities of all contractors or other operators involved in work done at the site or under this permit.
5. Employees of the Department of State Lands (DSL) and all duly authorized representatives of the Director shall be permitted access to the project area at all reasonable times for the purpose of inspecting work performed under this permit.
6. Any permit holder who objects to the conditions of this permit may request a hearing from the Director, in writing, within twenty-one (21) calendar days of the date this permit was issued.
7. In issuing this permit, DSL of State Lands makes no representation regarding the quality or adequacy of the permitted project design, materials, construction, or maintenance, except to approve the project's design and materials, as set forth in the permit application, as satisfying the resource protection, scenic, safety, recreation, and public access requirements of ORS Chapters 196, 390, and related administrative rules.
8. City of Portland shall defend and hold harmless the State of Oregon, and its officers, agents, and employees from any claim, suit, or action for property damage or personal injury or death arising out of the design, material, construction, or maintenance of the permitted improvements.
9. Authorization from the U.S. Army Corps of Engineers may also be required.

**NOTICE:** If removal is from state-owned submerged and submersible land, the City of Portland shall comply with leasing and royalty provisions of ORS 274.530. If the project involves creation of new lands by filling on state-owned submerged or submersible lands, you shall comply with ORS 274.905 to 274.940 if you want a transfer of title; public rights to such filled lands are not extinguished by issuance of this permit. This permit does not relieve the City of Portland of an obligation to secure appropriate leases from DSL of State Lands, to conduct activities on state-owned submerged or submersible lands. Failure to comply with these requirements may result in civil or criminal liability. For more information about these requirements, please contact Department of State Lands, 503-986-5200.

Lori Warner-Dickason, Northern Region Manager  
Aquatic Resource Management  
Oregon Department of State Lands

  
Authorized Signature

  
Date Issued

## ATTACHMENT A

Permit Holder: City of Portland

Project Name: Tryon Creek at Boones Ferry Road Culvert Replacement

Special Conditions for Removal/Fill Permit No. 59499-RF

### READ AND BECOME FAMILIAR WITH CONDITIONS OF YOUR PERMIT.

The project site may be inspected by the Department of State Lands (DSL) as part of our monitoring program. DSL has the right to stop or modify the project at any time if you are not in compliance with these conditions. A copy of this permit shall be available at the work site whenever authorized operations are being conducted.

1. **Responsible Party:** By signature on the application, Marc Peters is acting as the representative of City of Portland. By proceeding under this permit, City of Portland agrees to comply with and fulfill all terms and conditions of this permit, unless the permit is officially transferred to another party as approved by DSL.
2. **Authorization to Conduct Removal and/or Fill:** This permit authorizes the placement of up to 569 cubic yards and removal of up to 180 cubic yards of material in T1S R1E Section 28D, Tax Lot 100; T1S R1E Section 33AA, Tax Lots 2700, 2800, and 2900; and T1S R1E Section 33AB, Tax Lot 100; within Tryon Creek, Arnold Creek, and wetlands, in Multnomah County, as described in the attached permit application, map and drawings, received February 1, 2017. In the event information in the application conflicts with these permit conditions, the permit conditions prevail. See Attachment B for project location(s).
3. **Work Period in Jurisdictional Areas:** Fill or removal activities below the ordinary high water elevation of Tryon Creek and Arnold Creek shall be conducted between July 15 and September 30, unless otherwise coordinated with Oregon Department of Fish and Wildlife and approved in writing by DSL. Work is prohibited when fish eggs are present within the reach where the authorized activities are being conducted.
4. **Authorization to Conduct Compensatory Mitigation:** This permit also authorizes removal and fill activities necessary to complete the required compensatory mitigation. See Attachment B for project location(s).
5. **Changes to the Project or Inconsistent Requirements from Other Permits:** It is the City of Portland's responsibility to ensure that all state, federal and local permits are consistent and compatible with the final approved project plans and the project as executed. Any changes made in project design, implementation and/or operating conditions to comply with conditions imposed by other permits resulting in removal/fill activity must be approved by DSL prior to implementation.
6. **DSL May Halt or Modify:** DSL retains the authority to temporarily halt or modify the project or require rectification in case of unforeseen damage.
7. **DSL May Modify Conditions Upon Permit Renewal:** DSL retains the authority to modify conditions upon renewal, as appropriate, pursuant to the applicable rules in effect at the time of the request for renewal or to protect waters of this state.

### **Pre-Construction**

8. **Local Government Approval Required Before Beginning Work:** Prior to the start of construction, the City of Portland shall obtain an Environmental Review / Land Use Review from the City of Portland.
9. **Stormwater Management Approval Required Before Beginning Work:** Prior to the start of construction, the City of Portland shall obtain a National Pollution Discharge Elimination System (NPDES) permit from the Oregon Department of Environmental Quality (DEQ), if one is required by DEQ.
10. **Pre-construction Resource Area Fencing or Flagging:** Prior to any site grading, the boundaries of the avoided wetlands, waterways, and riparian areas adjacent to the project site must be surrounded by noticeable construction fencing or flagging. The marked areas must be maintained during construction of the project and be removed immediately upon project completion.

### **General Construction Conditions**

11. **Water Quality Certification:** The Department of Environmental Quality (DEQ) may evaluate this project for a Clean Water Act Section 401 Water Quality Certification (WQC). If the evaluation results in issuance of a Section 401 WQC, that turbidity condition will govern any allowable turbidity exceedance and monitoring requirements.
12. **Erosion Control Methods:** The following erosion control measures (and others as appropriate) shall be installed prior to construction and maintained during and after construction as appropriate, to prevent erosion and minimize movement of soil into waters of this state.
  - a. All exposed soils shall be stabilized during and after construction in order to prevent erosion and sedimentation.
  - b. Filter bags, sediment fences, sediment traps or catch basins, leave strips or berms, or other measures shall be used to prevent movement of soil into waterways and wetlands.
  - c. To prevent erosion, use of compost berms, impervious materials or other equally effective methods, shall be used to protect soil stockpiled during rain events or when the stockpile site is not moved or reshaped for more than 48 hours.
  - d. Unless part of the authorized permanent fill, all construction access points through, and staging areas in, riparian and wetland areas shall use removable pads or mats to prevent soil compaction. However, in some wetland areas under dry summer conditions, this requirement may be waived upon approval by DSL. At project completion, disturbed areas with soil exposed by construction activities shall be stabilized by mulching and native vegetative plantings/seeding. Sterile grass may be used instead of native vegetation for temporary sediment control. If soils are to remain exposed more than seven days after completion of the work, they shall be covered with erosion control pads, mats or similar erosion control devices until vegetative stabilization is installed.
  - e. Where vegetation is used for erosion control on slopes steeper than 2:1, tackified seed mulch shall be used so the seed does not wash away before germination and rooting.
  - f. Dredged or other excavated material shall be placed on upland areas having stable slopes and shall be prevented from eroding back into waterways and wetlands.
  - g. Erosion control measures shall be inspected and maintained as necessary to ensure their continued effectiveness until soils become stabilized.



- h. All erosion control structures shall be removed when the project is complete and soils are stabilized and vegetated.

13. **Hazardous, Toxic, and Waste Material Handling:** Petroleum products, chemicals, fresh cement, sandblasted material and chipped paint, wood treated with leachable preservatives or other deleterious waste materials shall not be allowed to enter waters of this state. Machinery refueling is to occur at least 150 feet from waters of this state and confined in a designated area to prevent spillage into waters of this state. Barges shall have containment system to effectively prevent petroleum products or other deleterious material from entering waters of this state. Project-related spills into waters of this state or onto land with a potential to enter waters of this state shall be reported to the Oregon Emergency Response System (OERS) at 1-800-452-0311.
14. **Federally Listed Endangered or Threatened Species:** When listed species are present, the authorization holder shall comply with the Federal Endangered Species Act. If previously unknown listed species are encountered during construction, all construction activity shall immediately cease and the permit holder shall contact DSL.
15. **Archaeological Resources:** If any archaeological resources and/or artifacts are encountered during construction, all construction activity shall immediately cease. The State Historic Preservation Office shall be contacted at 503-986-0674.
16. **Hazards to Recreation, Navigation or Fishing:** The activity shall be timed so as not to unreasonably interfere with or create a hazard to recreational or commercial navigation or fishing.
17. **Construction Corridor:** There shall be no removal of vegetation or heavy equipment operating or traversing outside the designated construction corridor or footprint (Sheets 3-9).
18. **Operation of Equipment in the Water:** Work shall be conducted from top of bank. Heavy equipment may not be positioned on or traverse areas below ordinary high water or highest measured tide at any time.
19. **Work Area Isolation:** The work area shall be isolated from the water during construction by using a coffer dam or similar structure. All structures and materials used to isolate the work area shall be removed immediately following construction and water flow returned to pre-construction conditions.
20. **Fish Salvage Required:** Fish must be salvaged from the isolation area. Fish salvage is the responsibility of the City of Portland; the City of Portland or project sponsors may need to hire a private contractor to do this. Permits from NOAA fisheries and ODFW Fish Research are required to salvage fish. Permit information may be obtained by contacting ODFW Research at 503-947-6254 or Fish.Research@state.or.us.
21. **Fish Passage Required:** The project shall meet Oregon Department of Fish and Wildlife requirements for fish passage.
22. **Stream Diversion Prohibited:** The stream shall not be diverted from the natural bed.

23. **Raising or Redirecting Water:** The project must not cause water to rise or be redirected and result in damage to structures or property on the project site as well as adjacent, nearby, upstream, and downstream of the project site.
24. **Trenching in Wetlands:** During trenching or excavation, the top layer of soil shall be separated from the rest of the excavated material and put back on top when the trench or pit is back-filled. If the native underlying soils are not used as bedding material and a coarser, non-native soil or other material is used, preventative measures such as clay or concrete plugs shall be used so that underground hydraulic piping does not dewater the site and adjacent wetlands.
25. **Temporary Ground Disturbances:** All temporarily disturbed areas shall be returned to original ground contours at project completion, as proposed in the application.

**Mitigation Conditions / Monitoring Conditions**

**Compensatory Wetland Mitigation**

The following conditions apply to the actions proposed in the application dated February 1, 2017.

26. **Acreage and Type:** Construction shall be conducted according to the acreages and methods described in the table below.

Acres	Cowardin/HGM Class	Method
Authorized Permanent Impacts		
0.036	palustrine forested slope	
Minimum Required Compensatory Mitigation		
0.054	palustrine forested depressional	creation

27. **Mitigation Site Location:** Mitigation shall be conducted on-site. The center-point of the mitigation site is 45.4467 degrees Latitude, -122.6879 degrees Longitude. The current legal description is Township 1S, Range 1E, Section 33AB, Tax Lot 100 as shown on Sheets 3-9 of the mitigation plan.
28. **Timing of Mitigation Site Grading:** Mitigation site grading shall be completed prior to or within the same construction season as the commencement of the wetland impacts.
29. **Signs Required:** Signs shall be posted along the mitigation site perimeter stating that the area behind the sign is a protected site.
30. **GIS Data:** A georeferenced shapefile (.shp) shall be submitted to DSL prior to mitigation site release that documents the spatial extent of the mitigation site(s), including buffers. The shapefile shall conform to the Oregon Lambert (Intl. Feet) projection.
31. **Long-term Maintenance Required (see OAR 141-085-0705(1)(j)):** Long-term site maintenance will be provided by the City of Portland unless or until transferred according to OAR 141-085-0585 (8).

### **Monitoring and Reporting Requirements**

- 32. Post-Construction Report Required:** A post-construction report demonstrating as-built conditions and discussing any variation from the approved plan shall be provided to DSL within 90 days of revegetation. The post-construction report shall include:
- a. A scaled drawing, accurate to 1-foot elevation, clearly showing the following:
    1. Finished contours of the site.
    2. Current tax lot and right-of-way boundaries.
    3. Photo point locations.
  - b. Photos from fixed photo points. This should clearly show the site conditions, and any signage, and fencing required.
  - c. A narrative that describes any deviation from the approved mitigation plan.
- 33. Term of Monitoring; Annual Monitoring Reports Required:** The City of Portland shall monitor the site to determine whether the site is meeting performance standards for a minimum period of 5 growing seasons after completion of all the initial plantings. Annual monitoring reports are required.
- 34. Annual Monitoring Report Due Date:** Annual monitoring reports are due by December 31st of each year.
- 35. Extension of the Monitoring Period:** The monitoring period may be extended, at the discretion of DSL, for failure to provide monitoring reports, failure of the site to meet performance standards for two consecutive years (without irrigation or replanting) or when needed to evaluate re-planting or other corrective or remedial actions.
- 36. Release of Monitoring Obligation:** Monitoring is required until DSL has officially released the site from further monitoring.
- 37. Failure to Submit Monitoring Reports:** Failure to submit the required monitoring report by the due date may result in an extension of the monitoring period, forfeiture of the financial security and/or enforcement action.
- 38. Contents of the Annual Monitoring Report:** The annual monitoring report shall include the following information:
- a. Completed Monitoring Report Cover Sheet, which includes permit number, permit holder name, monitoring date, report year, performance standards, and a determination of whether the site is meeting performance standards.
  - b. Site location map(s) that clearly shows the impact site and mitigation site boundaries.
  - c. Site Plan that clearly shows at least the following.
    1. Current tax lot and right-of-way boundaries.
    2. Permanent monitoring plot locations that correspond to the data collected and fixed photo-points. These points should be overlaid on the as-built map.
    3. Mitigation's creation area identified.
  - d. A brief narrative that describes maintenance activities and recommendations to meet success criteria. This includes when irrigation occurred and when the above ground portion of the irrigation system was or will be removed from the site.

- e. Data collected to support the conclusions related to the status of the site relative to the performance standards listed in this permit (include summary/analysis in the report and raw data in the appendix). Data should be submitted using the DSL Mitigation Monitoring Vegetation Spreadsheet or presented in the same format as indicated in DSL's Routine Monitoring Guidance for Vegetation.
- f. Photos from fixed photo points (include in the appendix).
- g. Other information necessary or required to document compliance with the performance standards listed in this permit.

39. **Corrective Action May Be Required:** DSL retains the authority require corrective action in the event the performance standards are not accomplished at any time within the monitoring period.

### **Performance Standards**

**To be deemed successful, the mitigation areas including buffers shall meet the following performance standards, as determined by DSL:**

- 40. **Establishment of Permanent Monitoring Locations Required:** Permanent plot locations shall be established during the first annual monitoring in sufficient number and locations to be representative of the site. The permanent plot locations shall be clearly marked on the ground.
- 41. **Wetland Acreage Required:** The mitigation site will have a minimum of 0.054 acres of palustrine forested (Cowardin) class wetland as determined by a Wetland Delineation Light, as specified by DSL, during spring of a year when precipitation has been near normal, vegetation has been established, and irrigation has been removed for at least two years. Acreage shall be documented in a GIS shapefile (.shp) including attribute information for each unique wetland polygon identifying the size as well as HGM and Cowardin classes.

### ***Shrub-dominated and Forested Wetlands***

- 42. **Native Species Cover:** The cover of native species, as defined in the USDA Plants Database, in the herbaceous stratum is at least 60%.
- 43. **Invasive Species Cover:** The cover of invasive species is no more than 10%. A plant species should automatically be labeled as invasive if it appears on the current Oregon Department of Agriculture noxious weed list, plus known problem species including *Phalaris arundinacea*, *Mentha pulegium*, *Holcus lanatus*, *Anthoxanthum odoratum*, and the last crop plant if it is non-native. Non-native plants should be labeled as such if they are listed as non-native on the USDA Plants Database. Beginning in Year 2 of monitoring, DSL will consider a non-native plant species invasive if it comprises more than 15% cover in 10% or more of the sample plots in any habitat class, and increases in cover or frequency from the previous monitoring period. Plants that meet this definition will be considered invasive for all successive years of monitoring. After the site has matured to the stage when desirable canopy species reach 50% cover, the cover of invasive understory species may increase but may not exceed 30%.
- 44. **Bare Substrate Cover:** Bare substrate represents no more than 20% cover.
- 45. **Woody Vegetation:** The density of woody vegetation is at least 1,600 live native plants (shrubs) and/or stems (trees) per acre OR the cover of native woody vegetation on the site is at least 50%.

Native species volunteering on the site may be included, dead plants do not count, and the standard shall be achieved for 2 years without irrigation.

46. **Species Diversity:** By Year 3 and thereafter, there are at least 6 different native species. To qualify, a species shall have at least 5% average cover in the habitat class, **and** occur in at least 10% of the plots sampled.
47. **Moisture Prevalence Index:** Prevalence Index total for all strata is  $<3.0$ .

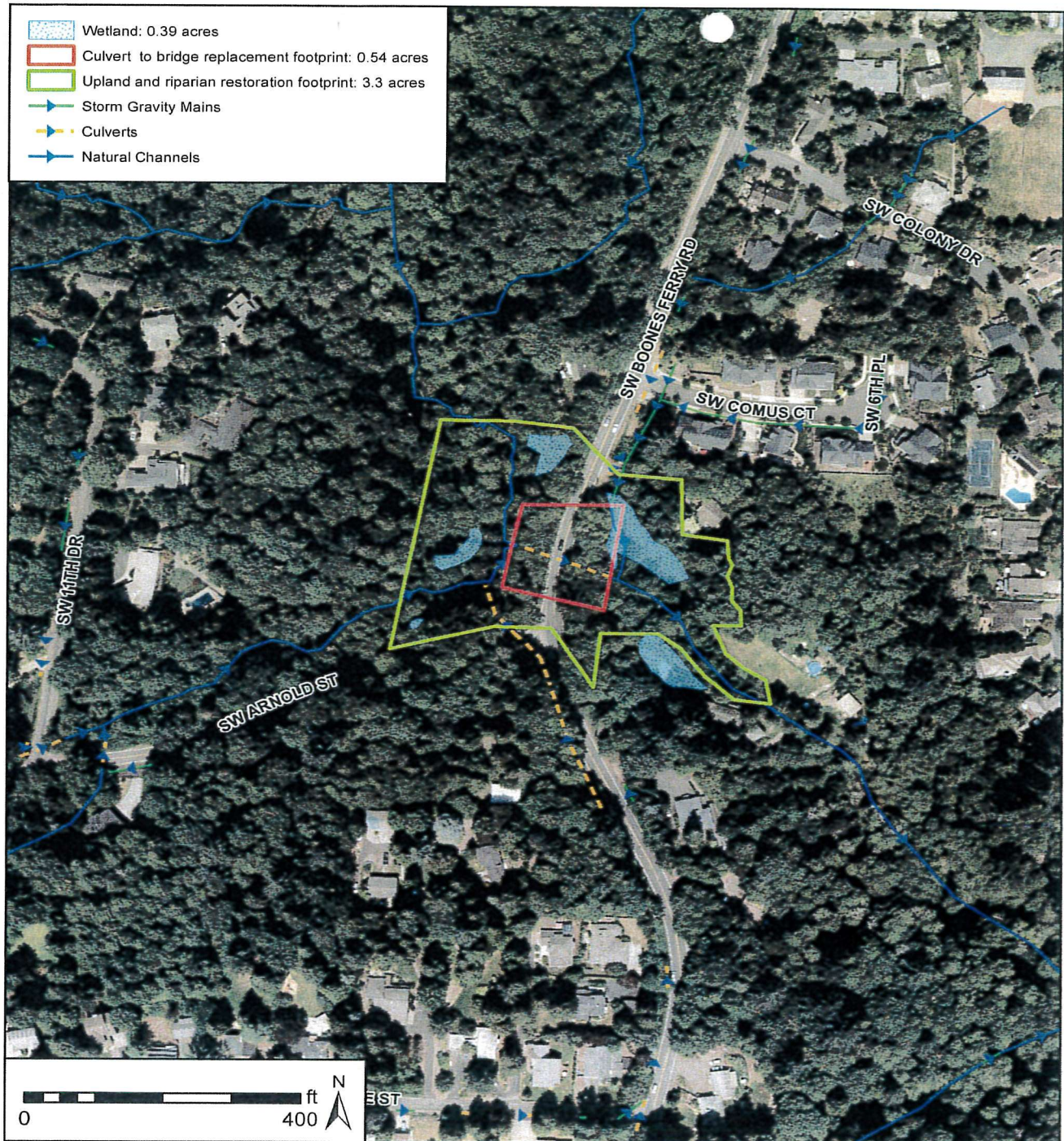


## ATTACHMENT B

Permit Holder: City of Portland

Project Name: Tryon Creek at Boones Ferry Road Culvert Replacement

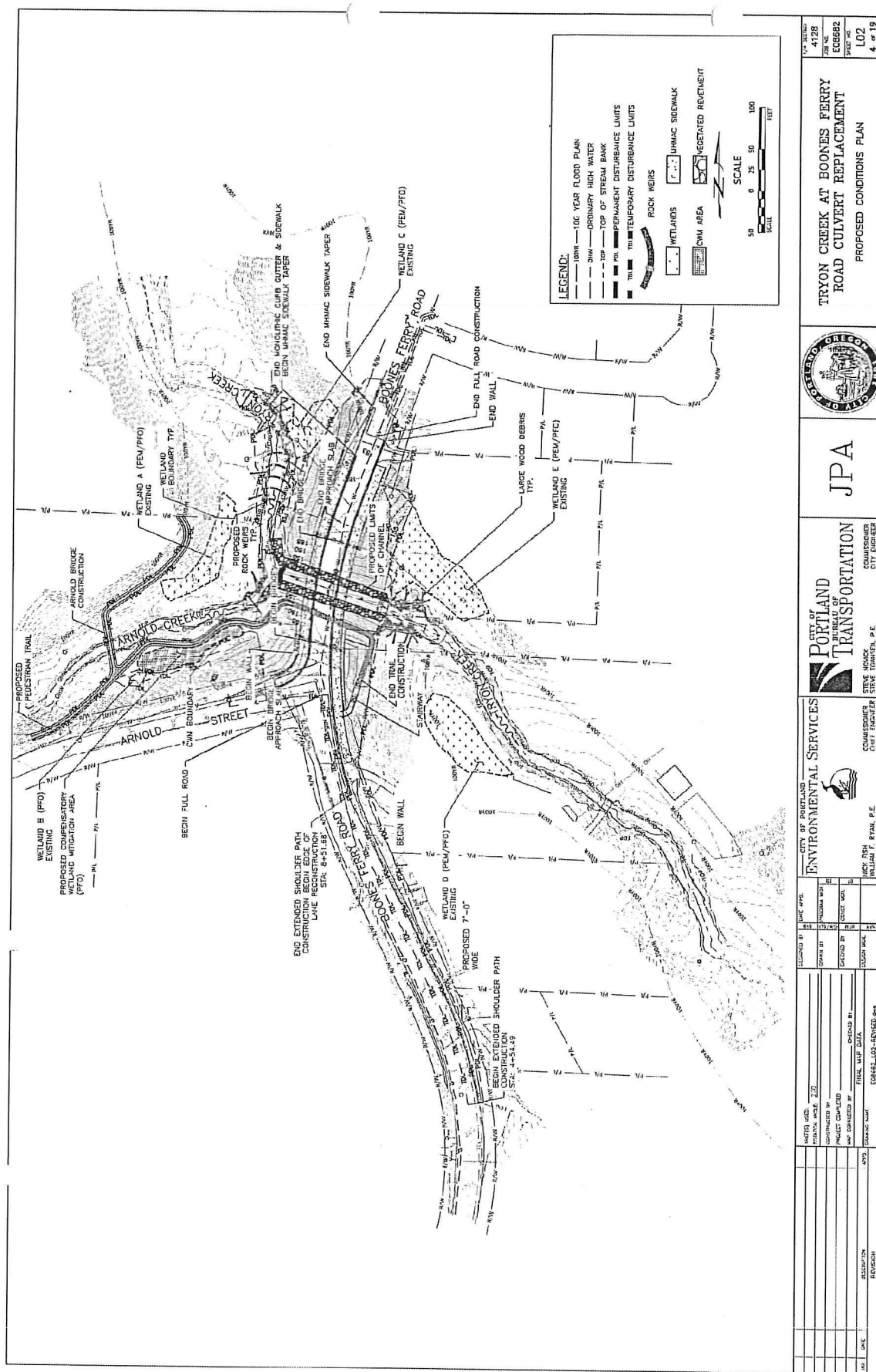
Maps and Drawings for Removal/Fill Permit No. 59499-RF

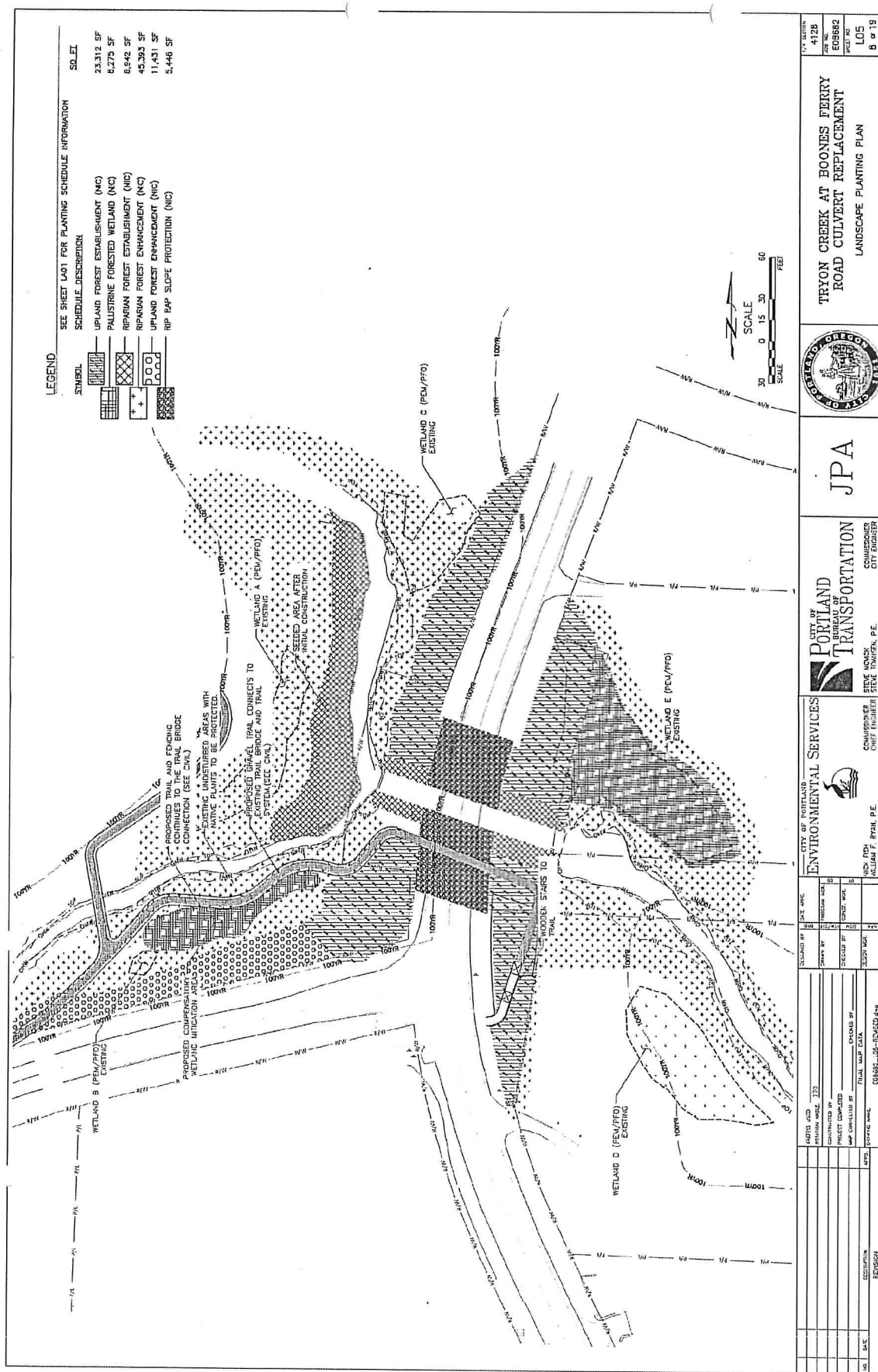


Tryon Creek, Boones Ferry Road Culvert Replacement - E08682  
Aerial Photograph

Figure 1







## **Attachment 4 Construction and Maintenance Area**

R/W # 8334-1  
S.W. BOONES FERRY CULVERT REPLACEMENT  
1S1E28D 100 – 1S1E33AB 100  
CONSTRUCTION AND MAINTENANCE AREA

**EXHIBIT A**

A tract of land being a portion of the Southeast One-Quarter of Section 28 and the Northeast One-Quarter of Section 33, Township 1 South, Range 1 East of the Willamette Meridian, City of Portland, County of Multnomah, State of Oregon, being more particularly described as follows:

Commencing at the Southeast corner of Lot 1 of the duly recorded Plat of Cedar Crest, Multnomah County Plat Records, also being a point of a non-tangent circular curve;

Thence, along the East line of said Lot 1, also being the West Right-of-Way line of S.W. Boones Ferry Road, 30.00 feet from centerline, Northerly a distance of 49.72 feet along the arc of a non-tangent circular curve to the right, of which the radius point lies North 89°03'54" East, a radial distance of 550.87 feet, through a central angle of 05°10'18" (long chord bears North 1°39'04" East, a distance of 49.71 feet) to a point of non-tangency;

Thence, North 85°45'47" West, a distance of 50.00 feet, to the POINT OF BEGINNING;

Thence, North 85°45'47" West, a distance of 50.00 feet, to a point of a non-tangent circular curve;

Thence, Northerly a distance of 156.20 feet along the arc of a non-tangent circular curve to the right, of which the radius point lies South 85°47'33" East, a radial distance of 650.87 feet, through a central angle of 13°45'00" (long chord bears North 11°04'57" East, a distance of 155.82 feet) to a point of non-tangency;

Thence, North 72°02'33" West, a distance of 20.00 feet, to a point of a non-tangent circular curve;

Thence, Northerly a distance of 28.85 feet along the arc of a non-tangent curve to the right of which the radius point lies South 72°02'33" East a radius of 670.87 feet, and having a central angle of 02°27'50" (long chord bears North 19°11'22" East, a distance of 28.85 feet) to a point of tangency;

Thence, North 20°25'17" East, a distance of 113.13 feet;

Thence, South 69°34'43" East, a distance of 70.00 feet;

Thence, South 20°25'17" West, a distance of 77.25 feet;

Thence, South 69°34'43" East, a distance of 25.00 feet;

Thence, South 20°25'17" West, a distance of 35.88 feet, to a point of a tangent circular curve;

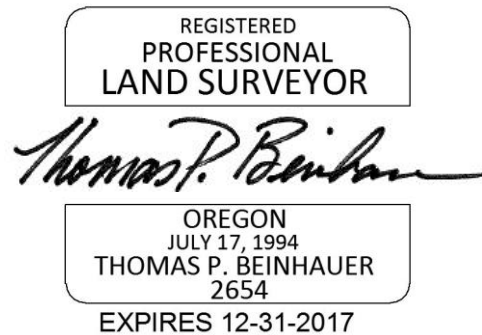
Thence, Southerly a distance of 24.77 feet along the arc of a circular curve to the left having a radius of 575.87 feet and a central angle of  $02^{\circ}27'50''$  (long chord bears South  $19^{\circ}11'22''$  West, a distance of 24.77 feet) to a point of non-tangency;

Thence, North  $72^{\circ}02'33''$  West, a distance of 25.00 feet, to a point of a non-tangent circular curve, said point also being 80.00 feet, from the centerline of S.W. Boones Ferry Road;

Thence, Southerly, parallel with said centerline, a distance of 144.20 feet along the arc of a non-tangent curve to the left of which the radius point lies South  $72^{\circ}02'33''$  East a radius of 600.87 feet, and having a central angle of  $13^{\circ}45'00''$  (long chord bears South  $11^{\circ}04'57''$  West, a distance of 143.85 feet), to the POINT OF BEGINNING.

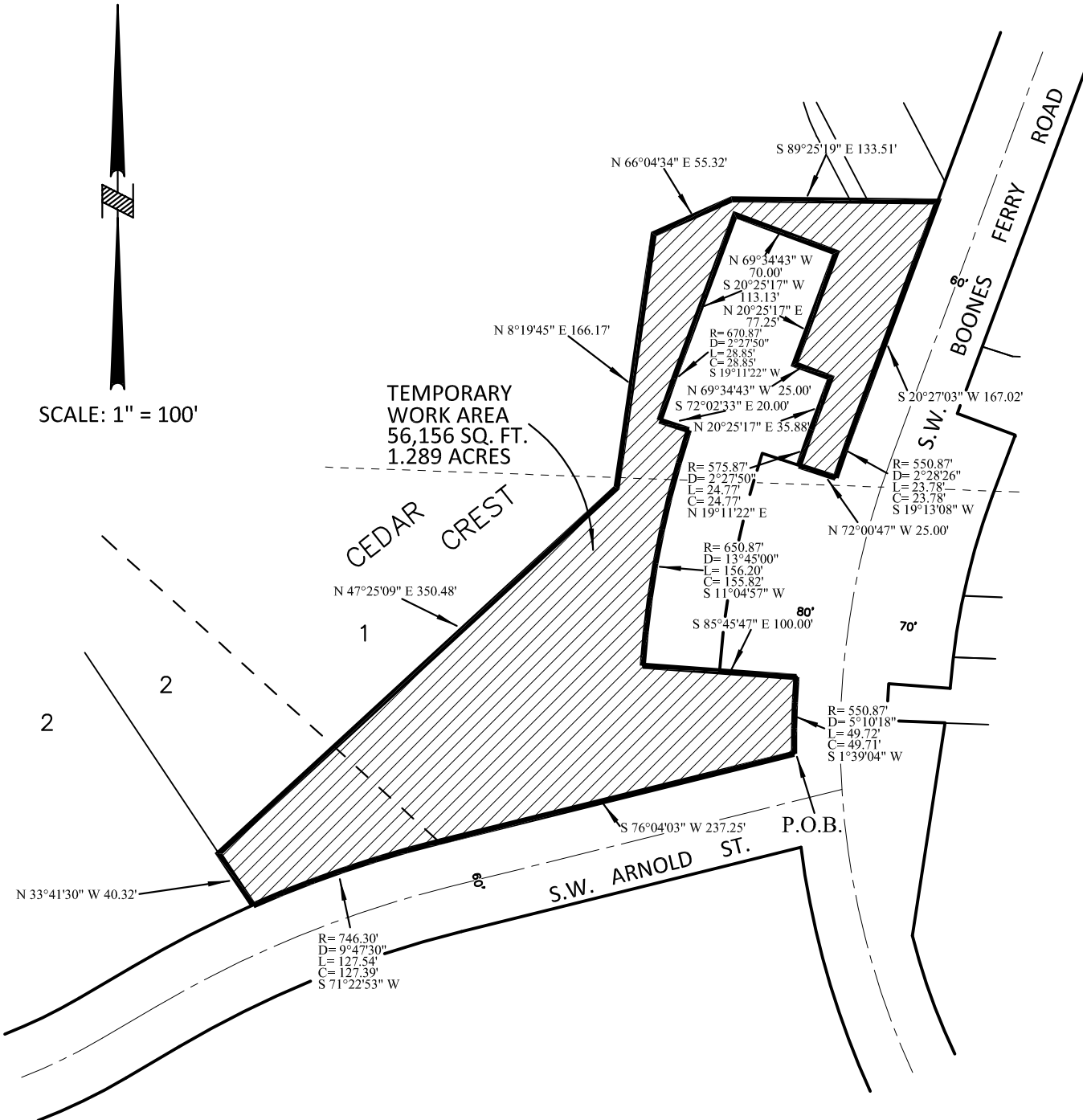
Containing 18,873 square feet.

Project 58682  
April 25, 2017



# EXHIBIT B

R/W # 8334-1  
 TRYON CREEK AT BOONES FERRY  
 ROAD CULVERT REPLACEMENT  
 1S1E28D TAX LOT 100  
 1S1E33AB TAX LOT 100



**PBOT**  
 PORTLAND BUREAU OF TRANSPORTATION

SURVEY DEPARTMENT,  
 1120 SW 5TH AVE., SUITE 800  
 PORTLAND, OREGON 97204  
 PHONE 503-823-7150

JOB # 58682  
 REVISED: JANUARY 8, 2018

R/W # 8334-1  
S.W. BOONES FERRY CULVERT REPLACEMENT  
1S1E28D 100 – 1S1E33AB 100  
TEMPORARY WORK AREA

**EXHIBIT A**

A tract of land being a portion of the Southeast One-Quarter of Section 28 and the Northeast One-Quarter of Section 33, Township 1 South, Range 1 East of the Willamette Meridian, City of Portland, County of Multnomah, State of Oregon, being more particularly described as follows:

Beginning at the Southeast corner of Lot 1 of the duly recorded Plat of Cedar Crest, Multnomah County Plat Records, also being the intersection of the North Right-of-Way line of S.W. Arnold Street, 60.00 feet in width, and the West Right-of-Way line of S.W. Boones Ferry Road, 30.00 feet from centerline;

Thence, along the North Right-of-Way line of S.W. Arnold Street, South  $76^{\circ}04'03''$  West, a distance of 237.25 feet, to a point of circular curve;

Thence, continuing along said North Right-of-Way line, a distance of 127.54 feet along the arc of a 746.30 foot radius circular curve to the left, through a central angle of  $9^{\circ}47'30''$  (long chord bears, South  $71^{\circ}22'53''$  West, a distance of 127.39 feet) to a point of non-tangency, also being the Southeast corner of that tract of land conveyed by deed to Janet G. O'Hollaren and Kevin J. O'Hollaren, recorded in Document No. 2016-138840, Multnomah County Deed Records;

Thence, leaving said Right-of-Way line, along the Easterly line of Said O'Hollaren tract, North  $33^{\circ}41'30''$  West, a distance of 40.32 feet;

Thence, leaving said Easterly line, North  $47^{\circ}25'09''$  East, a distance of 350.48 feet;

Thence, North  $08^{\circ}19'45''$  East, a distance of 166.17 feet;

Thence, North  $66^{\circ}04'34''$  East, a distance of 55.32 feet;

Thence, South  $89^{\circ}25'19''$  East, a distance of 133.51 feet, to a point on the west Right-of-Way line of S.W. Boones Ferry Road, 30.00 feet from centerline;

Thence, along said West Right-of-Way line. South  $20^{\circ}27'03''$  West, a distance of 167.02 feet, to a point of tangent circular curve;

Thence, Southerly a distance of 23.78 feet along the arc of a circular curve to the left having a radius of 550.87 feet and a central angle of  $02^{\circ}28'26''$  (long chord bears South  $19^{\circ}13'08''$  West, a distance of 23.78 feet) to a point of non-tangency;

Thence, North  $72^{\circ}00'47''$  West, a distance of 25.00 feet, to a point of non-tangent circular curve;



Thence, Northerly a distance of 24.77 feet along the arc of a non-tangent circular curve to the right having a radius of 575.87 feet and a central angle of  $02^{\circ}27'50''$  (long chord bears North  $19^{\circ}11'22''$  East, a distance of 24.77 feet) to a point of tangency;

Thence, North  $20^{\circ}25'17''$  East, a distance of 35.88 feet;

Thence, North  $69^{\circ}34'43''$  West, a distance of 25.00 feet;

Thence, North  $20^{\circ}25'17''$  East, a distance of 77.25 feet;

Thence, North  $69^{\circ}34'43''$  West, a distance of 70.00 feet;

Thence, South  $20^{\circ}25'17''$  West, a distance of 113.13 feet, to a point of a tangent circular curve;

Thence, Southerly, a distance of 28.85 feet along the arc of a circular curve to the left having a radius of 670.87 feet and a central angle of  $02^{\circ}27'50''$  (long chord bears South  $19^{\circ}11'22''$  West, a distance of 28.85 feet) to a point of non-tangency;

Thence, South  $72^{\circ}02'47''$  East, a distance of 20.00 feet, to a point of non-tangent circular curve;

Thence, Southerly, a distance of 156.20 feet along the arc of a non-tangent circular curve to the left of which the radius point lies South  $72^{\circ}02'33''$  East a radius of 650.87 feet, and having a central angle of  $13^{\circ}45'00''$  (long chord bears South  $11^{\circ}04'57''$  West, a distance of 155.82 feet) to a point of non-tangency;

Thence, South  $85^{\circ}45'47''$  East, a distance of 100.00 feet, to a point on the Westerly Right-of-Way line of S.W. Boones Ferry Road, 30.00 feet from centerline, also being a point of non-tangent circular curve;

Thence, Southerly along said Right-of-Way line, a distance of 49.72 feet along the arc of a non-tangent circular curve to the left of which the radius point lies South  $85^{\circ}45'47''$  East a radius of 550.87 feet, and having a central angle of  $05^{\circ}10'18''$  (long chord bears South  $1^{\circ}39'04''$  West, a distance of 49.71 feet) to the POINT OF BEGINNING.

Containing 56,156 square feet, 1.289 Acres.

Project 58682

Revised: October 11, 2017

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

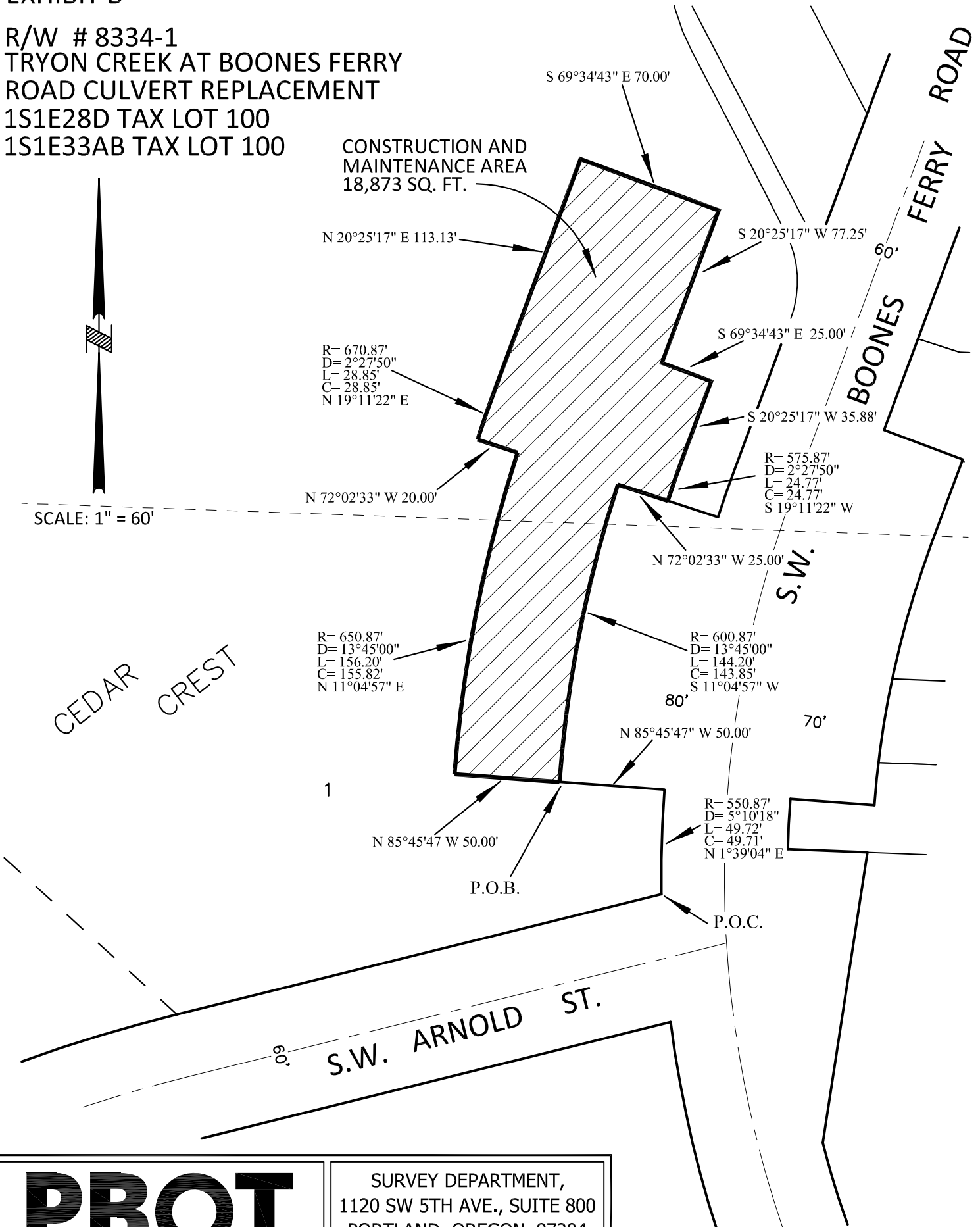
*Thomas P. Beinbauer*

OREGON  
JULY 17, 1994  
THOMAS P. BEINHAUER  
2654

EXPIRES 12-31-2017

# EXHIBIT B

R/W # 8334-1  
TRYON CREEK AT BOONES FERRY  
ROAD CULVERT REPLACEMENT  
1S1E28D TAX LOT 100  
1S1E33AB TAX LOT 100



**PBOT**  
PORTLAND BUREAU OF TRANSPORTATION

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PORTLAND, OREGON 97204  
PHONE 503-823-7150

JOB # 58682  
REVISED: JANUARY 8, 2018

R/W # 8334-1  
S.W. BOONES FERRY CULVERT REPLACEMENT  
1S1E33AA 2700  
CONSTRUCTION AND MAINTENANCE AREA

**EXHIBIT A**

A tract of land being a portion of Lot 15 of the Duly recorded Plat of Huddleson Homes, Multnomah County Plat Records, situated in the Northeast One-Quarter of Section 33, Township 1 South, Range 1 East of the Willamette Meridian, City of Portland, County of Multnomah, State of Oregon, being more particularly described as follows:

Beginning at the Northwest corner that tract of land conveyed to Aaron McDuffie and Heather McDuffie by deed recorded in Document No. 2004-195067, Multnomah County Deed Records;

Thence, along the North line of said McDuffie tract and said line's Westerly projection, North  $87^{\circ}53'21''$  West, a distance of 37.81 feet, to a non-tangent circular curve;

Thence, Northerly a distance of 23.96 feet along the arc of a non-tangent circular curve to the right having a radius of 633.54 feet, through a central angle of  $02^{\circ}10'00''$  (long chord bears North  $2^{\circ}48'48''$  East, a distance of 23.96 feet) to a point of non-tangency;

Thence, South  $85^{\circ}47'33''$  East, a distance of 40.00 feet, to a point of non-tangency;

Thence, Northerly a distance of 20.27 feet along the arc of a non-tangent circular curve to the right having a radius of 450.87 feet through a central angle of  $02^{\circ}34'31''$  (long chord bears North  $5^{\circ}29'39''$  East, a distance of 20.26 feet) to a point of non-tangency;

Thence, South  $87^{\circ}54'19''$  East, a distance of 85.71 feet;

Thence, South  $40^{\circ}13'19''$  East, a distance of 58.12 feet, to a point on the North line of said McDuffie tract;

Thence, along the North line of said McDuffie tract, North  $87^{\circ}47'22''$  West, a distance of 128.51 feet to the Point of Beginning.

Containing 5,483 square feet.

Project 58682  
Revised: September 18, 2017

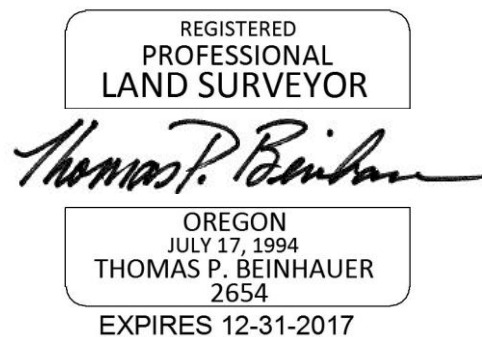
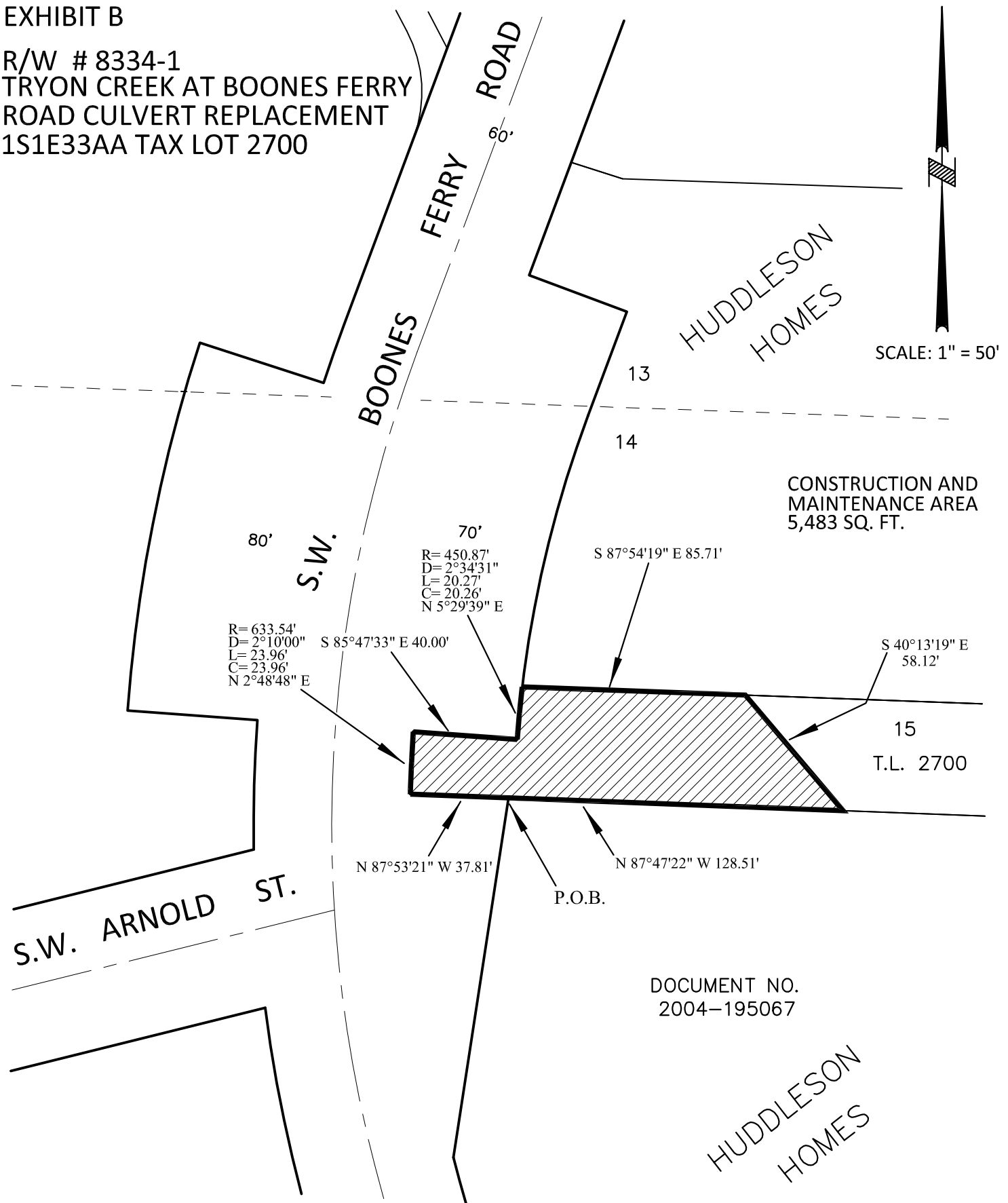


EXHIBIT B

R/W # 8334-1  
TRYON CREEK AT BOONES FERRY  
ROAD CULVERT REPLACEMENT  
1S1E33AA TAX LOT 2700



DOCUMENT NO.  
2004-195067

**PBOT**  
PORTLAND BUREAU OF TRANSPORTATION

SURVEY DEPARTMENT,  
1120 SW 5TH AVE., SUITE 800  
PORTLAND, OREGON 97204  
PHONE 503-823-7150

JOB # 58682  
REVISED: JANUARY 8, 2018

R/W # 8334-1  
S.W. BOONES FERRY CULVERT REPLACEMENT  
1S1E33AA 2700  
SLOPE PROTECTION AREA

**EXHIBIT A**

A tract of land being a portion of Lot 15 of the duly recorded Plat of Huddleson Homes, Multnomah County Plat Records, situated in the Northeast One-Quarter of Section 33, Township 1 South, Range 1 East of the Willamette Meridian, City of Portland, County of Multnomah, State of Oregon, being more particularly described as follows:

Beginning at the Northwest corner that tract of land conveyed to Aarron and Heather McDuffie by deed recorded in Document No. 2004-195067, Multnomah County Deed Records;

Thence, along the Westerly projection of the North line of said McDuffie tract, North  $87^{\circ}53'21''$  West, a distance of 37.81 feet, to a point of non-tangent circular curve;

Thence, Northerly, a distance of 23.96 feet along the arc of a non-tangent circular curve to the right, having a radius of 633.54 feet through a central angle of  $02^{\circ}10'00''$  (long chord bears North  $2^{\circ}48'48''$  East, a distance of 23.96 feet) to a point of non-tangency;

Thence, South  $85^{\circ}47'33''$  East, a distance of 40.00 feet;

Thence, South  $8^{\circ}21'23''$  West, a distance of 22.63 feet, to the POINT OF BEGINNING.

Containing 906 square feet.

Project 58682  
Revised: March 1, 2018

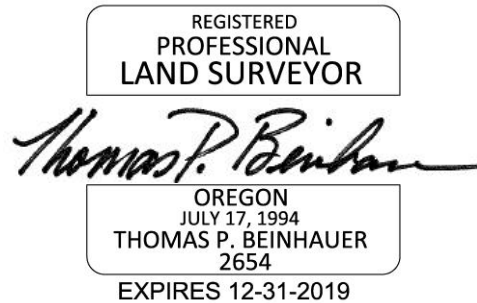
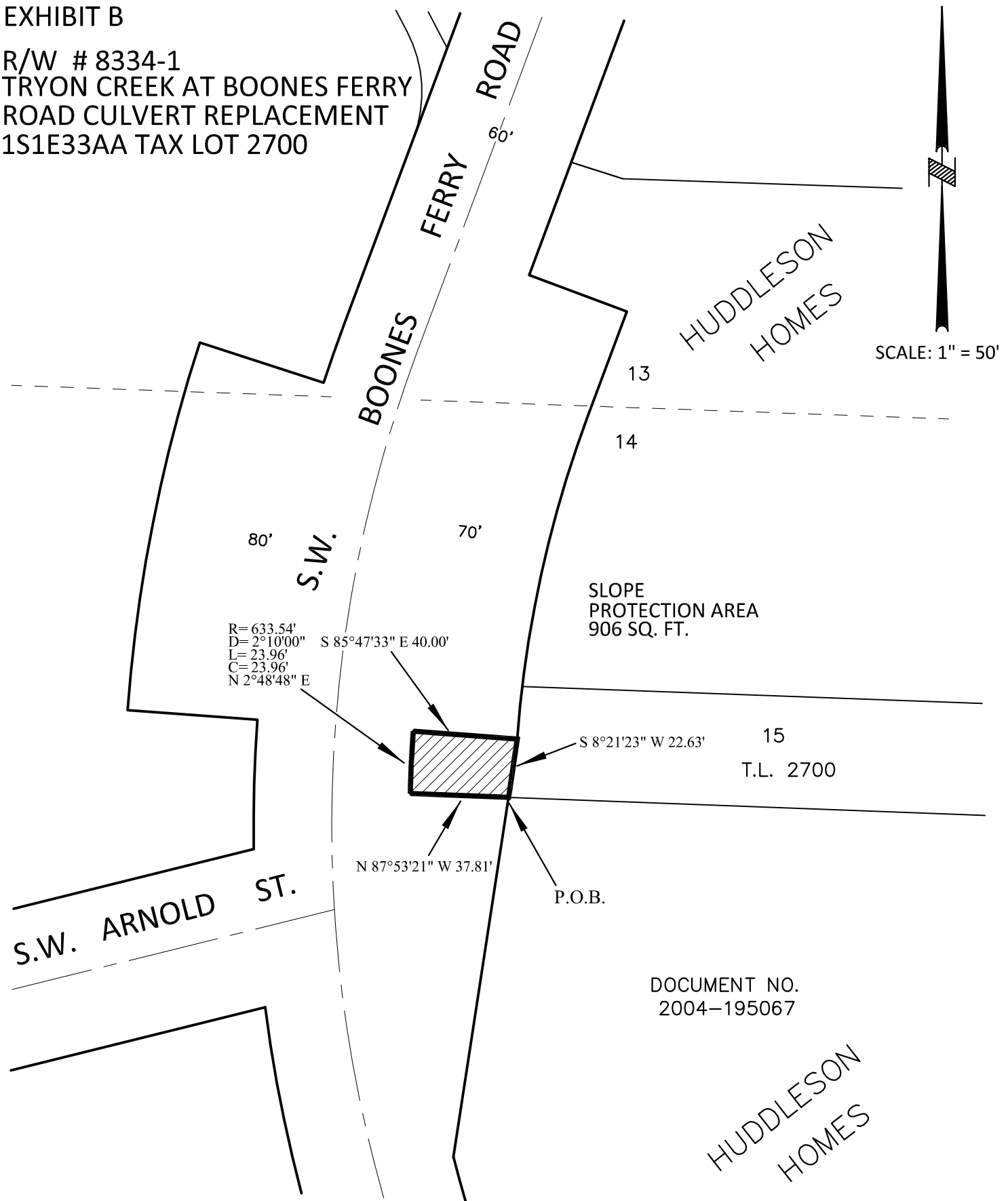


EXHIBIT B

R/W # 8334-1  
TRYON CREEK AT BOONES FERRY  
ROAD CULVERT REPLACEMENT  
1S1E33AA TAX LOT 2700



DOCUMENT NO.  
2004-195067

HUDDLESON  
HOMES

**PBOT**  
PORTLAND BUREAU OF TRANSPORTATION

SURVEY DEPARTMENT,  
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PORTLAND, OREGON 97204  
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JOB # 58682  
REVISED: MARCH 1, 2018