



Bi-State Bridge Replacement Working Group Agenda

Meeting Date: January 23, 2023

Meeting Time: 2:00-4:00p

Location: 1000 E. Port Marina Drive, Hood River, OR

Zoom Meeting

<https://us06web.zoom.us/j/88490950292?pwd=c3RLaXZWMzFUR2JzOGtNZDFDMjk5UT09>

Meeting ID: 884 9095 0292

Passcode: 396314

Members: Chair, Mike Fox (Commissioner), Port of Hood River; Vice Chair, Jake Anderson (Commissioner), Klickitat County; Catherine Kiewit (Mayor), City of Bingen; Marla Keethler (Mayor), City of White Salmon; Paul Blackburn (Mayor), City of Hood River; Arthur Babitz (Commissioner), Hood River County

Alternates: Kristi Chapman (Commissioner), Port of Hood River; Jennifer Euwer (Commission Chair), Hood River County; Joe Sullivan (Councilor), City of Bingen; Jason Hartmann (Councilor), City of White Salmon; David Sauter (Commissioner), Klickitat County; Jessica Metta (Councilor), City of Hood River.

Staff/Consultants: Kevin Greenwood (Executive Director), Port of Hood River; Genevieve Scholl (Deputy Executive Director), Port of Hood River; Michael Shannon (Project Manager – Bridge Replacement), HNTB.

1) Welcome

2) Approval of Minutes (2 Min)

- Bi-State Working Group Meeting Minutes 01/09/2023

3) Review Action Items (10 Min)

Priority	Description/ Expected Outcome	Assigned To	Date Assigned	Due Date	Resolution/ Current Status	Status
Med	Track progress of BO following ODOT's commitment to have a draft in Mid-October Primary Contacts: Dennis Reicht: ODOT Tom Loynes – NMFS Liaison and Cash Chesselet – ODOT Environmental Program Coordinator – NMFS Liaison	Mike Shannon	9/19/2022	10/17/2022 10/31/2022 11/14/2022 12/12/2022 01/09/2023 01/23/2023	10/17/2022 Staff will follow up with ODOT next week on Draft Document 10/31/2022 – Dennis said that Tom and Cash met with QC and NMFS and that it was their priority to get most of the draft completed this week. 11/14/2022 – Dennis ODOT indicated continued delays due to staff working on Abernathy Bridge issues 12/12-2022 – Carol ODOT emailed that the draft is 2-3 weeks out due to workload delays associated with Abernathy Bridge and Training 1/9/2023 - ODOT has requested for the information related to Temporary Work Bridges and Barges to be updated an increase in our information can calculations based on recent events on similar projects.	In Progress

Contact: Michael Shannon, (425) 577-8071 or mwshannon@hntb.com



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					The information is being coordinated with ODOT 1/23/22 – The project team met with ODOT on 1/13/23 to discuss modifications need to the BiOp. ODOT is meeting with FHWA on 1/19/23 to get direction on how to proceed with modifications. Team is working on modifications to progress the work pending the information from FHWA	
Med	Track Progress of the Final BO	Mike Shannon	9/19/2022	1/31/2023	No Update	In Progress
High	Recommendations on approach for appointees to the HRWSBA	Mike Shannon/Steve Siegel	10/03/2022	10/17/22	10/17/2022 – Options discussed with the BSWG 10/31/2022 – Decision on approach 11/14/2022 – additional coordination needed by the counties 12/12/2022 – Hood River County has draft in review, Klickitat will review Hood River draft and is in progress of developing process. 12/23/2022 – Hood River Comm is in the process of reviewing and finalizing their process. Klickitat will follow	In Progress

4) Informational Items

Time	Discussion Topic	Owner/Presenter
30 Min	Communications Update <ul style="list-style-type: none"> • Communications Plan • Web Site • Approach to BSWG Review of Communications 	Jessica/Alice
10 Min	Washington - Gorge-Ous Night Feb 7 th and 8 th <ul style="list-style-type: none"> • Attendance • Materials • Sponsorship Oregon – Gorge-Ous Night Feb 15 th <ul style="list-style-type: none"> • Attendance • Materials • Hearing DC <ul style="list-style-type: none"> • Late April Trip • Monthly Update Calls 	Mike Shannon
10 Min	Hood River – White Salmon Bridge Authority (HRWSBA) <ul style="list-style-type: none"> • Primary Place of Business Determination – Need Action to Approve Location 	Mike Shannon/Steve S/Kevin G

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	<ul style="list-style-type: none"> • Legal Reviews – only pending Klickitat County Review • Local Appointments (Hood River and Klickitat Resolution) • Next Version 	
10 Min	<p>Funding Finance & Tolling</p> <p>WSTC T&R Study</p> <ul style="list-style-type: none"> • Meeting on January 18 & 19 • Next Update? Late Feb or March <p>Pending Grant Submittals</p> <ul style="list-style-type: none"> • Raise Planning 2023 • MPDG (INFRA/Rural/Mega) • BIP • SS4A • Grant Reporting Update <p>Current Grant Funding</p> <ul style="list-style-type: none"> • WA • ARPA (Oregon) • Build 20 	Mike Shannon/Brian Munoz
10 Min	<p>Treaty MOA's</p> <ul style="list-style-type: none"> • Treaty Tribe MOA Sub-Schedule • Yakama • Nez Perce • Umatilla (CTUIR) • Warm Springs 	Mike Shannon
15 Min	<p>RBMC</p> <ul style="list-style-type: none"> • Sub-Schedule Review • PDB Procurement/Preliminary Engineering • Key Stake Holder Coordination • Geotechnical Investigation • Survey • Right of Way • Permitting 	Mike Shannon/Brian Munoz
5 Min	<p>NEPA/FEIS/ROD</p> <ul style="list-style-type: none"> • Sec. 106 MOA • BiOp • Schedule • ODOT scheduled to meet with BSWG on Feb 6th. 	Mike Shannon

5) Upcoming Actions (2 Min)

Description/	Anticipated Action Date
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Expected Outcome	
ODOT Tech Services IGA	TBD
CFA Approval	March
BiOp	January
Treaty Tribe MOA's	May

6) New Action Items

Priority	Description/ Expected Outcome	Assigned To	Due Date

Next Meeting, February 06, 2023



BRIDGE REPLACEMENT PROJECT

Bi-State Working Group Meeting Summary

Monday, January 9, 2023 | 2:00 p.m. – 4:00 p.m.
Port of Hood River – Via Zoom
1000 E Port Marina Drive, Hood River OR 97031

In Attendance:

Members: Chair, Mike Fox (Commissioner), Port of Hood River; Vice Chair, Jake Anderson (Commissioner), Klickitat County; Catherine Kiewit (Mayor), City of Bingen; Marla Keethler (Mayor), City of White Salmon. Paul Blackburn (Mayor), City of Hood River.

Alternates: Kristi Chapman (Commissioner), Port of Hood River; Arthur Babitz (Commissioner), Hood River County.

Staff/Consultants: Kevin Greenwood (Executive Director), Port of Hood River; Michael Shannon (Project Manager), HNTB; Jessica Pickul, JLA; Kary Witt, HNTB; Alice Hodge, JLA; Paul Huston, HNTB; Brian Munoz, HNTB; Steve Siegel, Siegel Consulting.

Guests: Abigail Elder, City of Hood River; Steve Howe; Rick Krebs; Drew Clark.

Welcome

Michael Shannon called the meeting to order at 2:00 p.m.

Approval of Minutes

The Bi-State Working Group (BSWG) minutes for December 12 were approved by consensus.

Review of Previous Action Items

Michael Shannon, HNTB Project Manager, reported that Oregon Department of Transportation (ODOT) had received information on a recent project that caused them to re-look at some of the information provided on the Bridge Replacement project. HNTB is addressing ODOT's concerns.

Informational Items

- a. **Gorge-ous Night** – Shannon noted that Gorge-ous Night will be on February 7 and 8 in Olympia, Washington, and February 15 in Salem, Oregon. Meetings have been scheduled with Senator Curtis King, Senator Marko Liias, and Representative Andrew Barkis. Gorge-ous Night is an evening event that is hosted by the legislator representing the region. The event provides the opportunity to network. The Bi-State Working Group (BSWG) members were encouraged to attend.
- b. **Bi-State Bridge Commission (BSBC) Name** – Mayor Catherine Kiewit summarized the results for the new name of the BSBC. The name with the highest votes was Hood River-White Salmon Bridge

Authority. BSWG consensus was to name the new BSBC, Hood River-White Salmon Bridge Authority.

- c. **Local Appointments** – Local government nominations and appointments process is under discussion in Hood River County and Klickitat County. Commissioner Arthur Babitz commented that Hood River County is currently revising their resolution for local appointments. Commissioner Jake Anderson noted that Klickitat County will wait to review Hood River County’s resolution.

Commissioner Fox provided a document that summarizes the new Bridge Authority. The document defines success and explains the first phase as well as managing the Bridge Authority through the life of the bridge. The document also discusses the type of experience needed for a well-balanced team. Commissioner Fox is seeking consensus to use this document as informational guidance for both counties. Mayor Marla Keethler expressed her concern that the new Bridge Authority will change what the BSWG has already worked through. A discussion ensued regarding Mayor Keethler’s concern.

- d. **Primary Place of Business (PPB)** – Alice Hodge, JLA, summarized the results of the survey that was conducted to help determine the PPB. A total of 1,925 responses were received and 556 comments were submitted. The clear preference is to locate the PPB in Hood River. Hodge’s is seeking a final recommendation. The BSWG concluded that further discussion will need to take place at their next meeting. The BSWG also requested a copy of the memo that reviews the Public Utility Tax.
- e. **Project Delivery Method** – Paul Huston, HNTB, provided a brief overview of the Delivery Method Evaluations. Based on the evaluation Progressive Design Build (PDB) is the most advantageous method for this project. Huston turned to Steve Howe, HNTB, for a brief overview of PDB. Howe noted that PDB is a type of contract where you hire a designer and contractor that are on the same team. The advantage of this method is that the designer will package the project in a way that makes use of the funding, and the contractor will build each of those packages individually. There was BSWG consensus to recommend Progressive Design Build method to the Port Commission for approval.
- f. **Grant Status** – Shannon reported that they did not receive any grants that they applied for in 2023. They did, however, receive comments that they will be addressing. HNTB will provide a full summary of the comments before the next meeting. Shannon noted that there is another funding opportunity through the Raise Planning Grant. The application is due February 28 and the asking amount will be for \$5 million. The application will focus on a planning grant that will evaluate bike and pedestrian connections and transit services to the new bridge. A handout was provided that summarizes the grant reimbursements.
- g. **Treaty MOA’s** – Shannon commented that a revised draft of the Yakama MOA was submitted to ODOT for submittal to Yakama. A draft MOA for Umatilla is underway using the Yakama MOA as a template. The Federal Highway Administration (FHWA) has sent the draft letter to Warm Springs requesting government to government consultation on the MOA. A Treaty MOA Development Summary Schedule is included in the packet.
- h. **RBMC** – Shannon noted that the packet includes a Geotechnical Subsurface Explorations Schedule and provided a brief overview. The schedule will start on February 6. A Survey and Mapping Summary Schedule was also provided in the packet.

- i. **HNTB Amendment 2** – Kevin Greenwood, Executive Director, commented that Amendment 2 proposes additional work that includes an increase in marketing and communication, financing modeling, grant writing and technical review, and increased environmental coordination with tribes/agencies. Greenwood added that Arup was hired to provide a peer review of the proposal, and a copy of Arup’s memo is included in the packet. There was BSWG consensus to recommend Amendment 2 to the Port Commission for approval.

New Action Items

- a. Further discussion on PPB at the next BSWG meeting.
- b. Resend copy of Public Utility tax memo to BSWG.

Adjourn

Shannon noted that the NEPA/FEIS presentation has been deferred to the next BSWG meeting. Next meeting is on January 23. The meeting adjourned at 4:08 p.m.

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HOOD RIVER–WHITE SALMON BRIDGE REPLACEMENT

Project Director Report
January 23, 2023

The following summarizes Replacement Bridge Project activities from January 09, 2023, to January 23, 2023:

PROJECT MANAGEMENT

- *RBMC team is continuing to meet with WSP, ODOT and Federal Highway Administration (FHWA) related to the NEPA/FEIS process and Treaty Tribe Memorandum of Agreement (MOA's).*
- *Grant Tracking for WA, ARPA, Build Grants will be on going each quarter. The next submittal is for the Washington and ARPA grants will be going the week of January 9th.*
- *Continued Legislative Outreach with Oregon and Washington will continue as each state goes into session for 2023.*
- *We are progressing preliminary engineering tasks as well as kicking off the development of our Progressive Design Build RFP.*

COMMUNICATIONS

- *Communications Plan has been developed for January and February (see packet)*
- *The web site has been soft launched to allow for internal review prior to the full launch*
- *A review process has been established for release of all media messaging (see packet)*

GOVERNMENT AFFAIRS UPDATE

- *State Legislative Activities*
 - *Oregon*
 - *Gorge-ous Night is set for Feb 15th in Salem*
 - *Hearing will be targeted for the end of April*
 - *Working on letters of support from labor unions*
 - *Washington*
 - *Gorge-ous Night is set for Feb 7th and 8th in Olympia*
 - *Attendees:*
 - *Jake Anderson*
 - *Marla Keethler*
 - *Catherine Kiewit*
 - *Mike Fox*
 - *Kevin Greenwood*
 - *Meetings are scheduled on Feb 8th with:*
 - *Sen King 8:30 (Anderson, Keethler, Kiewit, Greenwood, Fox)*
 - *Sen Liias 1:00 (Anderson, Keethler, Kiewit, Greenwood, Fox)*
 - *Rep Barkis 1:30 (Anderson, Keethler, Kiewit, Greenwood, Fox)*

- Rep Mosbrucker 9:00 (Anderson, Keethler, Kiewit, Greenwood, Fox)
 - Rep Fey 2:30 (Anderson, Keethler, Kiewit, Greenwood, Fox)
- *Federal Legislative Activities*
 - Hal will be setting up monthly virtual meetings with key congressional members in 2023
 - We are planning to make two trips per year to DC in support of funding requests
 - Looking at the end of April for the first trip
- We will be working with Oregon and Washington and Federal lobbyist to update the Legislative Strategy for the next 3 years.

HOOD RIVER-WHITE SALMON BRIDGE AUTHORITY

- The financial analysis on the Primary Place of business was distributed to the BSWG for information prior to finalizing a decision on the Primary Place of business (PPB) (see packet)
- The county appoint process is advancing in both counties. Hood River County is updating their existing bylaws, they are targeting February for approval of the process. Klickitat County legal is review 3rd draft of the CFA and should have comments by the end of January.
- The 4th Draft of the Commission Formation Agreements (CFA) will be distributed for review once the Primary Place of Business has been finalized and Klickitat County finalizes their comments

FUNDING FINANCE & TOLLING

- *Washington State Transportation Commission (WSTC) T&R Analysis*
 - HNTB and the PORT continue to coordinate with WSTC
 - WSTC meeting on January 18th and 19th. (PDF of presentation in packet)
 - *Meeting Actions:*
 - Select up to 8 preliminary tolling scenarios
 - Feedback on discount options
 - Low-income users
 - Frequent users
 - *Update on Travel Survey and Freight Interviews*
 - 2,560 completed surveys (goal was 600)
 - Freight interviews with 14 shippers and 5 carriers (goal was 20)
 - *Schedule Milestones:*
 - March 2023 – WSTC approves two refined tolling scenarios for further analysis
 - May 2023 – Draft Study findings and recommendations presented to WSTC
 - June 2023 – Final Report of findings and recommendations presented to WSTC and submitted to Washington State Legislature
 - Looking to schedule an update in Late Feb or March for the BSWG.

PENDING GRANT FUNDING UPDATES

- *Raise Planning Grant (2023)*

- *Notice of Funding Opportunity (NOFO) issued: 11/30/22, Update to NOFO received on 12/14/22*
- *Application Due: 2/28/23*
- *For Rural Applications Min \$1M/Max \$25M (\$750M available to the program)*
- *Our application will focus on a planning grant that will evaluate Bike/Ped connections and Transit services access/connections to the new bridge. With a focus on how the bridge is a vital part of a transportation system.*
- *Meetings have been held with CAT, MCEDD and ODOT to discuss letters of support and inform the team that is developing the Grant Application*
- *USDOT has released training/informational videos to assist in the development of Grant Application – staff has been reviewing the training/informational material*
- *Safe Streets and Roads for All Grant Program (SS4A)*
 - *Next Opening April 2023*
 - *2023 NOFO Spring 2023*
- *Multimodal Project Discretionary Grant (MPDG)*
 - *Next Opening - Spring 2023*
 - *2023 NOFO not released*
 - *INFRA (\$8 B available over 4 years FY22 to FY26)*
 - *MEGA (\$5 B available over 4 years FY22 to FY26)*
 - *Rural (\$2 B available over 4 years FY22 to FY26)*
 - *The project was notified that it was not successful in obtaining any 2022 grant funding from the MPDG. A Debrief is being targeted for April 2023 in DC.*
 - *MPDG Comments from USDOT*
 - *C. The project will be cost-effective (49 USC 6701(f))*
 - *D. With respect to related non-Federal financial commitments, 1 or more stable and dependable sources of funding and financing are available to (i) construct, operate, and maintain the project; and (ii) cover cost increases (49 USC 6701(f))*
 - *E. The applicant has, or will have, sufficient legal, financial, and technical capacity to carry out the project (49 USC 6701(f))*
- *Bridge Investment Program (BIP)*
 - *Next Opening – Summer 2023*
 - *2023 NOFO – Summer 2023*

EXCUTED GRANT FUNDING UPDATES

- *Build20*
 - *Grant Awarded 9/23/22*
 - *Funding: \$5M – Federal Share, \$1.25M Local Match (Washington Grant) – Total \$6.25M with an Expenditure Deadline of 12/31/2024*
 - *Total Submitted for Reimbursement: \$0*
 - *Total Reimbursement received to date: \$0*
 - *Remaining Funds: \$5 million*
 - *We have received our certification from FHWA on 12/21/22. We are waiting on FHWA to set up next round of training.*

Next reimbursement submittal pending coordination with FHWA

- **ARPA (Oregon Grant)**
 - *Grant Awarded 5/12/22*
 - *Funding: \$5M with an Expenditure Deadline of 12/31/26*
 - *Total Submitted for Reimbursement: \$225,353.30*
 - *Total Reimbursement received to date: \$225,353.30*
 - *Remaining Funds: \$4,774,646.70*
 - *4th Quarter reimbursement submitted on January 10th, 2023.*
Next reimbursement submittal April 2023
- **WA SB 5165 Grant**
 - *Grant Awarded 2/2/22*
 - *Funding: \$5M with an Expenditure Deadlines of 6/30/23 (\$3M) and 6/30/23 (\$2M)*
 - *Total Submitted for Reimbursement: \$1,341,149.25*
 - *Total Reimbursement received to date: \$384,693.39*
 - *Remaining Funds: \$3,658,850.75*
 - *4th Quarter reimbursement submitted for \$956,455.86*
Next reimbursement submittal will be April 2023.

TREATY TRIBE MOA'S

- *A Semi-weekly meeting has been set up with ODOT and FHWA specific to advancing the Treaty Tribe MOA's. A collaboration space has been created on the Project Portal site.*
 - **Yakama Nation (YN).**
 - *Updated Draft MOA was submitted to ODOT on 1/11/23 (see packet)*
 - *Roy Watters (Tribal Liaison) with ODOT is expected to submit the MOA to Yakama by 1/20/23*
 - **Nez Perce**
 - *The Draft MOA was submitted to ODOT on 1/17/23*
 - **Umatilla (CTUIR).**
 - *The Draft MOA was submitted to ODOT on 1/17/23.*
 - *Meeting and Presentation schedule with CTUIR Fish and Wildlife commission is for 1/24/23*
 - *Topics will cover Project Update, Request for Letter of Support, Update on CTUIR toll exemption request, Treaty MOA and Work Force Development*
 - *Attendees: ODOT, FHWA, Commissioner Fox, RBMC*
 - **Warm Springs.**
 - *ODOT managing this relationship. FHWA has sent the G2G letter to Warm Springs requesting Govt. to Govt. consultation on the MOA on 12/27/22 (See Packet).*
 - *Warm Springs has changed its tribal leadership and a new letter is being sent to Warm Springs*

- *The Draft MOA was submitted to ODOT on 1/17/23, ODOT responded that they cannot submit the MOA until FHWA receives a response to the G2G request.*

RBMC

PROGRESSIVE DESIGN BUILD RFQ/RFP

- *Sub-schedule is being developed for the procurement of the Progressive Design Build Team*
- *RMBC internal Kick-off meeting was held on 1/18/23*
- *Meeting with WSDOT Olympic Region to review their Progressive DB approach and discuss lessons learned was held on 1/18/23.*
- *WSDOT RFP/RFQ and Contract will be the basis of our PDB RFP/RFQ and contract but will be modified to focus on ODOT criteria.*
- *Meetings are being schedule with WSDOT and ODOT staff to coordinate their involvement in the PDB development, procurement, and project.*

KEY STAKE HOLDERS

RAILROAD

- *Kickoff/Update meeting has been schedule with BNSF on 1/25/23*

GEOTECHNICAL

- *The Geotechnical subsurface exploration plan has been finalized (see packet)*
- *The two Oregon on land borings will begin Feb 6th and a coordination meeting is being scheduled with Port staff to review the logistics of boing in the parking lot (see packet).*
- *The cultural resource monitoring has been coordinated with ODOT and the team is scheduled for the Feb 6th.*
- *Coordination with the tribes will work through ODOT but it is likely the PORT will be asked to fund the tribal monitoring costs.*

SURVEY

- *A sub-schedule for survey activities has been developed and attached. The activities will include development of a base map, verifying and setting control points, identification and mapping of exiting utilities, identification of jurisdictional ownership lines for ODOT, WSDOT and local agencies, location and mapping of Geotechnical Borings.*
- ***Week of January 13:*** *Field crew recovered survey control on both sides of the river established by HHPR for the 2019 aerial mapping and measured their positions in OCRS Columbia River West Zone.*
- ***Week of January 23:*** *Field crew will search for right of way monuments, do topographic mapping on Washington side downstream of current bridge, between SR14 and the BNSR right of way*

RIGHT OF WAY

- *Coordination has begun with WSDOT and ODOT to define the jurisdictional limits for both agencies.*

- *Our right of way team is coordinating with the two property owners in Washington that will need to provide Right of Entry for the geotechnical borings. The two owners are a private owner and Klickitat County. Both are moving forward and no issues are anticipated in getting the right of entries.*
- *The SDEIS preferred alternative does indicate a potential whole take of the private landowner and we will need to coordinate with the BSWG and PORT on when to move forward with discussion with the landowner on this action.*

PERMITTING

- **SHPO Permit for Upland Work in Oregon** – *This permit was issued on 1/19/23. CTOGR included some standard stipulations in their permit comments. The Oregon UPLAND boring work can proceed. (See Packet)*
- **USACE Permit** – *USACE issued a provisional permit in late December. They will finalize the permit once DEQ provides the 401 C water quality certification. All SHPO/tribal coordination for the in-water and WA. borings has been completed by USACE.*
- **DEQ Permit** – *The permit application was submitted to DEQ on 1/13/23. Expect DEQ to issue the 401 C in the next 2-3 months. As noted above, once DEQ issues their permit USACE will issued their final permit verification. USACE is just waiting on DEQ.*
- **DSL Short Term Access Agreement** – *This approval was issued in September 2022.*
- **DSL No Permit Needed Letter** – *This letter was issued yesterday confirming the work does not require a DSL Removal-Fill Permit.*
- **WDFW Hydraulic Permit Approval** – *The original HPA was modified with new project information and schedule on January 11th. The HPA includes several standard BMPs and notification requirements. Notification must be made at least three days prior to in-water work on WA. side.*
- **City of White Salmon SEPA and SMP Exemption Letter** – *The City provided a draft exemption letter yesterday for me to review, I provide some edits today and expect to get the final letter within the next week. City concurs no permits/approvals are needed from the City for this work.*
- **WDNR Aquatic Lands ROE Permit** – *This application (JARPA) will be submitted when we get the two landowner signatures on the WA. side (Klickitat Co. and Shin Jin Ko).*
- **NMFS Slopes V Compliance** - *The USACE has determined that the work as proposed will result in No Effect on listed fish based on the standard BMPs to be included (SLOPES V BMPs) and the short duration, confined nature of the work. We were able to avoid getting NMFS involved.*

When USACE issues the verification, it will also include the necessary ESA/NMFS compliance. The provisional verification discusses this and application of SLOPES V. So this task/compliance need will get completed when USACE issues the permit (without NMFS involvement), which will happen once the DEQ permit lands.

- *All permits are in hand except for the three approvals highlighted above. The DEQ permit application was submitted to DEQ on 1/13/23 after they issue their permit USACE will immediately take the “provisional” moniker off of the provisional verification. We will submit the JARPA to WDNR once we get the landowner approvals/signatures noted above. Once submitted WDNR should be able to turn around the permit within two months. There is a \$25 fee for this permit.*

FINAL EIS/RECORD OF DECISION

- *Environmental Impact Statement technical reports are available at <https://cdxapps.epa.gov/cdx-enepa-ii/public/action/eis/details?eisId=314171>*
- *11/30 Update from Carol Sneed with ODOT indicated that ODOT has moved the completion date to the end of Dec from the starting expectation of Mid October. Stating they have been impacted by activities on the Abernathy Bridge project that is under construction and training.*
- *1/4 Update – ODOT has experienced recent impacts to existing bridge projects within ODOT has led to them having to increase environmental impacts post NEPA which has impacted cost and schedule significantly on these projects. These lessons learned have led to ODOT asking for an increased factor of safety on our project that will minimize the chance of our project needing an increased area. We are updating the project information to address these concerns and have a follow up meeting with ODOT on 1/13.*
- *A coordination meeting was held with ODOT on 1/13, where the NEPA and RBMC teams provided revised data to ODOT for the Biological Opinion. ODOT has updated the team that a meeting was held with FHWA on 1/19/23 but not update on the outcome of that meeting has been shared. Based on the outcome of the meeting on 1/19 ODOT will direct the NEPA team on how to proceed or if a follow up meeting is needed with FHWA. The outcome of these meetings will define how ODOT will move forward with the Biological Opinion. We will follow up with ODOT next week and have scheduled for them to attend the Feb 6th BSWG meeting and provide an update.*

OTHER ITEMS

KEY MEETINGS

Date:	Subject:
<i>01/09/23, 1/17/23</i>	<i>WSP Check in</i>
	<i>RBMC Check in</i>
	<i>Communication Check in</i>
<i>1/19/23</i>	<i>Geotechnical Task Lead</i>
<i>1/18/23, 1/19/23</i>	<i>Washington State Transportation Commission</i>
<i>1/10/23</i>	<i>Columbia River Gorge Commission</i>
<i>1/10/23, 1/13/23,</i>	<i>Treaty Right MOA meeting with ODOT</i>
<i>1/10/23, 1/17/23</i>	<i>PORT Staff Meeting</i>
<i>1/09/23</i>	<i>RBMC Task Lead Coordination</i>
<i>1/10/23</i>	<i>Gorge-ous Night Prep</i>
<i>1/11/23</i>	<i>2023 Raise Grant Coordination</i>
<i>1/12/23</i>	<i>Cultural Resource Coordination with ODOT and FHWA</i>
<i>1/13/23</i>	<i>Sen. Merkley Town Hall</i>
<i>1/17/23</i>	<i>Terra Lingley (ODOT) – Letter of Support for Raise Grant Application</i>
<i>1/17/23</i>	<i>Klickitat County Board of Commissioners Presentation</i>
<i>1/17/23</i>	<i>RBMC Regulatory Compliance/Tribal Task Lead Coordination</i>
<i>1/18/23</i>	<i>Washington DC Strategy Session with Hal H</i>
<i>1/18/23</i>	<i>Ricky Bhalla (WSDOT) PDB Coordination</i>
<i>1/19/23</i>	<i>RBMC Geotech Task Lead Coordination</i>
<i>1/19/23</i>	<i>Oregon Legislative Strategy Session</i>

MEMORANDUM

TO: Port of Hood River

FROM: Pacifica Law Group LLP

DATE: October 11, 2022

SUBJECT: Applicability of Oregon and Washington State Taxes to Activities of Bi-state Authority to Replace the Hood River Bridge

Summary

Washington and Oregon have authorized the formation of a bi-state public corporation (the “Commission”) to develop, own, and operate a bridge to replace the existing Hood River Bridge. The following memorandum addresses how Washington and Oregon state and local excise taxes may apply to the Commission’s activities, and how the location of the Commission’s primary place of business might impact such tax liability. As discussed in Section II, if the Commission’s primary place of business is in Oregon, the Commission would likely not pay taxes to the State of Oregon. Furthermore, a tax exemption for certain interstate bridges (the “Interstate Bridge Exemption”) would probably exempt the Commission from Washington excise taxes, once the new bridge is constructed and operational. Washington excise taxes would probably apply to the Commission’s activities until the time the new bridge is constructed and operational, notably including state and local sales and use taxes on materials and certain taxable services received in Washington in connection with the new bridge’s construction. However, given the novel legal issues that could arise from the intersection of the Interstate Bridge Exemption and the new law authorizing the Commission’s formation, it would be helpful to confirm with the Washington Department of Revenue (“DOR”) the applicability of the Interstate Bridge Exemption to the Commission’s activities. As discussed in Section III, if the Commission’s primary place of business is in Washington, the Commission would likely owe the aforementioned excise taxes to the State of Washington, but not to Oregon.

I. Introduction

Pursuant to Chapter 7, Oregon Laws 2022 (the “Oregon Act”) and Chapter 89, Washington Laws of 2022 (the “Washington Act,” and together with the Oregon Act, the “Acts”), the Oregon and Washington legislatures respectively authorized formation of a bi-state public corporation (a “Commission”) to own, develop, finance, equip, and operate a bridge to replace the existing Hood River Bridge. The Acts provide that the laws of the Commission’s “primary place of business” will generally govern the Commission’s activities, including with respect to audits,

financial administration, public records, and open public meetings requirements.¹ In addition, with respect to taxation, the Washington Act expressly provides as follows:

Notwithstanding anything in the laws of either state to the contrary, the commission shall not be required to pay any tax or assessment, or any in lieu of tax or assessment, by either state, or by any political subdivision, municipality, or district thereof including, but not limited to, any property tax, sales and use tax, or other tax or assessment upon real or personal property acquired or otherwise under the control of the commission, or upon any activity or expenditure of the commission, or upon the revenues of the commission, except to the extent that a municipal corporation would be subject to such a tax or assessment.²

The Oregon Act similarly states:

(1) Notwithstanding the laws of this state or the State of Washington and except as provided in subsection (2) of this section, a state or political subdivision may not require the commission to pay a tax or assessment, or an in lieu of tax or assessment, including but not limited to a property tax, sales tax, use tax or other tax or assessment upon real property or personal property acquired or otherwise under the control of the commission, or upon an activity or expenditure of the commission, or upon the revenues of the commission.

(2) Notwithstanding subsection (1) of this section, a state or political subdivision may require a commission to pay a tax or assessment to the same extent as a municipal corporation.³

Accordingly, the Commission is subject to state and local taxes of Oregon and Washington, and exemptions therefrom, on the same basis as any other municipal corporation.

II. Analysis of Tax Liability if Commission’s Primary Place of Business is in Oregon

A. Oregon Taxes

Property tax. Public property used for the corporate purposes of a municipal corporation is exempt from property taxation under Oregon law.⁴ Public property leased to private taxpayers is subject to tax, absent a specific exemption.⁵ Accordingly, to the extent the Commission owns

¹ Oregon Laws 2022, Ch. 7 §§ 3(c), 13; RCW 47.87.030(c), 47.87.130. “Primary place of business” means the state and county within which the principal headquarters office of the Commission is established in a commission formation agreement, notwithstanding a subsequent relocation of the principal headquarters office of the commission. Oregon Laws 2022, Ch. 7 § 2(15), 13; RCW 47.87.020(16).

² RCW 47.87.120.

³ Oregon Laws 2022, Ch. 7 § 12.

⁴ ORS 307.090.

⁵ ORS 307.110. Such an exemption applies to “[r]eal property owned or leased by any municipality and real and personal property owned or leased by any dock commission of any city or by any airport district or port organized under the laws of this state . . . to the extent to which such property is . . . [l]eased, subleased, rented or preferentially assigned for the purpose of the berthing of ships, barges or other watercraft . . . the discharging, loading or handling of cargo therefrom or for storage of such cargo directly incidental to transshipment, or the cleaning or decontaminating of agricultural commodity cargo, to the extent the property does not further alter or process an agricultural commodity.” ORS 307.120(1)(a).

and operates the property in question (including the bridge), it should be exempt from ad valorem taxes. If the property is leased to a private entity it may become taxable absent another exemption.

In 2017, the Oregon legislature passed a law authorizing local cities, counties and ports to construct and maintain the Hood River Bridge, and enter into contracts to do the same, including with private parties. The legislation included a specific exemption from property taxes for the “bridge project,” defined as a project to replace the Hood River Bridge undertaken by a private entity through agreement with the Port of Hood River.⁶ The definitions in the statute are specific to the Port, however, and would not apply to a bridge replacement contract undertaken by a private party through agreement with the Commission.

Construction excise tax. Local governments in Oregon may impose construction excise taxes on real property improvements to support affordable housing, subject to limitations and restrictions.⁷ One such exemption applies in the case of “public improvements” defined as “a project for construction, reconstruction or major renovation on real property by or for a contracting agency.”⁸ “Contracting agency,” in turn, means “a public body authorized by law to conduct a procurement,” including public corporations.⁹ Because the Hood River Bridge replacement project constitutes a reconstruction or major renovation, and the Commission is a public corporation authorized to conduct procurements,¹⁰ the “public improvements” tax exemption likely applies.

Corporation excise tax. Oregon imposes a corporate excise tax on business corporations, with taxable income measured commensurate with the federal Internal Revenue Code (“IRC”).¹¹ Governmental units, such as states and their political subdivisions, are generally not subject to federal income tax.¹² The IRC has defined “political subdivision” to denote “any division of any State or local governmental unit which is a municipal corporation or which has been delegated the right to exercise part of the sovereign power of the unit,” such as the power of eminent domain.¹³ Applied here, the Commission is a municipal corporation with the power of eminent domain, the purpose of which is to construct and operate a toll bridge.¹⁴ The Commission is therefore likely a governmental unit subject to neither the federal income tax, nor, accordingly, the corporation

⁶ ORS 381.310(1), (1)(b).

⁷ ORS 320.171.

⁸ ORS 320.173(2); ORS 279A.010(1)(cc).

⁹ ORS 279A.010(1)(b), (y); ORS 174.109; ORS 174.117(1)(a).

¹⁰ Oregon Laws 2022, Ch. 7 §§ 5(1)(a), 2(7), 2(5).

¹¹ ORS 317.013, 317.018. *See also* Oregon Department of Revenue, “Nonprofit and tax-exempt organizations including cooperatives and homeowners associations,” <https://www.oregon.gov/dor/programs/businesses/Pages/corpnonprofit.aspx> (“If the IRS has determined that you’re an exempt organization, you’re also exempt from Oregon corporation excise and income taxes.”).

¹² Internal Revenue Service, “Governmental Information Letter” (June 14, 2022), <https://www.irs.gov/government-entities/federal-state-local-governments/governmental-information-letter#:~:text=Governmental%20units%20such%20as%20states,as%20the%20power%20to%20tax>

¹³ 26 C.F.R. § 1.103-1. In addition, by letter ruling, bridge, airport, turnpike, port, and similar authorities created by state law and designated as public corporations, which finance, construct, maintain, and operate public transportation facilities, are generally considered political subdivisions. *See, e.g.*, Internal Revenue Service Rev. Rul. 77-165, 1977-1 C.B. 21.

¹⁴ Oregon Laws 2022, Ch. 7 § 2.

excise tax. The corporate activity tax likewise does not apply to “governmental entities” such as the Commission.¹⁵

B. Washington Taxes

Interstate Bridge Exemption from certain excise taxes. Washington law generally requires that public service businesses (including toll bridges) pay state excise taxes. As discussed in further detail in Section III.B, *infra*, these taxes include a public utility tax (“PUT”) on the gross income of a public service business’s operations,¹⁶ a business and operations (“B&O”) tax on the gross receipts of a municipal corporation’s “enterprise activities,”¹⁷ and state and local sales and use taxes. However, under Washington law, interstate bridges satisfying certain statutory elements are exempt from such taxes. As RCW 84.36.230 provides:

Any bridge, including its approaches, over rivers or bodies of water forming interstate boundaries, which bridge has been constructed or acquired and is being operated by any foreign state bordering upon such common interstate boundary, or which has been constructed or acquired and is being operated by any county, city or other municipality of such foreign state, shall be exempt from all property and other taxes in the state of Washington, if the foreign state exempts from all taxation any bridge or bridges constructed or acquired and being operated by the state of Washington or any county, city or other municipality thereof.

Oregon has satisfied the reciprocity element of this exemption by adopting ORS 381.824, which states:

Every bridge that passes over a river or body of water forming a boundary between this state and another state, and that has been constructed or acquired and is being operated by the other state or by any county, city, port or other municipality of the other state, together with its approaches, is exempt from all property and other taxes in this state, if the other state exempts from all taxation every such interstate bridge, together with its approaches, constructed or acquired and operated by this state or by any county, city, port or other municipality of this state.

Therefore, whether this exemption (the “Interstate Bridge Exemption”) applies to a bridge turns upon whether two remaining elements are present: First, the bridge must have been “constructed or acquired” and be in operation. Second, a foreign state or a municipality of such state must operate the bridge.

Applying the first element to the new Hood River Bridge project, the exemption probably does not apply to the Commission’s activities until such time as the new bridge is constructed and operational. In effect, this means that Washington excise taxes may apply to the Commission prior

¹⁵ ORS 317A.100(4)(i).

¹⁶ WAC 458-20-179(101)(b); RCW 82.16.010(7)(a); RCW 82.16.020(1).

¹⁷ RCW 82.04.220(1).).

to that time, notably state and local sales and use taxes relating to the bridge's construction.¹⁸ This reading is consistent with provisions in the Washington Act exempting the Commission from certain construction sales and use taxes, and allowing deferral of certain other construction sales and use taxes, as described below.

Applying the second element, the Commission would probably qualify for the Interstate Bridge Exemption as a municipality of a foreign state (*i.e.*, Oregon), though there is some uncertainty in this regard. Pursuant to the Washington Act, the Commission is a public corporation formed under the laws of—and composed of local governments from—both states, governed by the laws of the Commission's primary place of business, taxable to the same extent a municipal corporation is subject to taxation by either state.¹⁹ The exemption appears most likely to apply if the Commission's primary place of business is in Oregon, in which case the Commission would be subject to Oregon law, and taxable on the same basis as other Oregon municipal corporations. Under such circumstances, the Commission should be treated as indistinguishable from any other "municipality of [a] foreign state" for the purposes of the Interstate Bridge Exemption. However, given the novel intersection of the Acts and the Interstate Bridge Exemption, and in particular the Commission's bi-state character, it would be helpful to confirm with the Washington DOR the applicability of the exemption to the Commission's activities.

Sales and use tax. Washington's retail sales tax applies to retail sales made to municipal corporations, unless a specific exemption applies.²⁰ "Retail sales," in this context, includes the sale of tangible personal property not subject to a specified exemption,²¹ as well as the sale of certain labor and services rendered.²² Services potentially subject to the sales tax that the Commission may necessarily procure in order to construct and operate a toll bridge include construction services (subject to the public roads exemption discussed below), and digital goods and automated services.²³ As discussed above, assuming the Interstate Bridge Exemption applies to the Commission, the Commission would still likely need to pay sales and use tax until such time that the new Hood River Bridge is operational.

Washington's sales tax system is destination-based, meaning sales tax liability does not depend on the purchaser's primary place of business, but rather on the location where the purchaser receives the taxable good or service (*i.e.*, the destination).²⁴ Accordingly, if a purchaser (such as

¹⁸ A less probable outcome would result if the Washington DOR instead interpreted the Interstate Bridge Exemption to apply only to bridges that existed at the time of the statute's adoption and therefore not to apply to the new bridge. The Commission might argue in response that, because the new bridge replaces an existing operational bridge, the exemption not only applies but also that the first element has already been satisfied. This argument is undercut by the Washington Act provisions that contemplate that the Commission would be subject to construction sales and use taxes absent the exemption and deferral granted under the act. Given the significance of this potential ambiguity in the law, it would be helpful to confirm the Washington DOR's interpretation of the scope of this exemption.

¹⁹ RCW 47.87.030(1), (2)(c); RCW 47.87.130; RCW 47.87.120.

²⁰ WAC 458-20-189(5)(a).

²¹ RCW 82.08.020(1)(a). "Tangible personal property" means "personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses," including "electricity, water, gas, steam, and prewritten computer software." RCW 82.08.010(7).

²² RCW 82.08.020(1)(c); RCW 82.04.050(2).

²³ See RCW 82.04.050(2)(b), 82.04.050(8).

²⁴ RCW 82.32.730.

the Commission or a contractor) receives goods or services within Washington, the seller thereof must collect sales tax based on the tax rate of the jurisdiction in which the purchaser received the goods or services.

Washington’s “use tax” applies to a purchaser’s use of goods and services when the purchaser has not paid retail sales tax. Accordingly, if a purchaser makes a taxable purchase out-of-state for use in Washington, and does not pay sales tax (or pays less in sales tax than the rate levied within the local jurisdiction where the purchaser will receive the good or service purchased), the purchaser must, at the time of purchase, remit use tax on the value of such items at a rate equal to the sales tax rate.²⁵ The current combined state and local sales and use tax rate in Klickitat County, Washington is 7.5%.²⁶

Although a municipal corporation’s sales and use tax liability does not depend on the location of the entity’s primary place of business, locating the entity in a particular jurisdiction, as a practical matter, is likely to result in the entity receiving certain goods and services at that location. For example, if the Commission’s administrative offices are in Klickitat County, the Commission will likely receive certain materials and supplies in connection with its administrative and other operating activities at that location, and pay Washington state and local sales and use tax on these items.

The Commission will receive other goods and services in Washington regardless of the location of the Commission’s primary place of business or any particular administrative and operating facilities. Most notably, contractors will construct the Washington side of the bridge in Washington—the expenses upon which the Commission must pay Washington sales tax, subject to the public road construction exemption discussed in the following section.

Exemption for Labor and Services on Public Roads Construction. The Washington Act expressly provides that the public road construction exemption applies to taxes the Commission would otherwise owe from construction of a bridge.²⁷ This exemption excludes from the definition of retail sale the “sale of or charge made for labor and services rendered in respect to the building, repairing, or improving of any . . . bridge . . . which is owned by a municipal corporation . . . and which is used or to be used primarily for foot or vehicular traffic including mass transportation vehicles of any kind.”²⁸ The exemption does *not* apply, however, to materials used in constructing public bridges. Consequently, contractors must pay retail sales or use tax on all materials placed in or on public roads and on purchases of equipment and supplies. The retail sales tax applies to purchased materials as well as materials provided by others or manufactured by the contractor.²⁹

²⁵ RCW 82.12.020; WAC 458-20-189(7)(a).

²⁶ Washington State Department of Revenue, “Local sales & use tax rates and changes” (effective July 1–September 30, 2022), <https://dor.wa.gov/forms-publications/forms-subject/local-sales-use-tax-rates-county>.

²⁷ RCW 47.87.090(5) (citing RCW 82.04.050(10)).

²⁸ RCW 82.04.050(10).

²⁹ Also exempt from the sales and use tax are “sales of, cost of, or charges made for labor and services performed in respect to the mining, sorting, crushing, screening, washing, hauling, and stockpiling of sand, gravel and rock when such sand, gravel, or rock is taken from a pit or quarry which is owned by or leased to a county or a city, and such sand, gravel, or rock is (1) either stockpiled in said pit or quarry for placement or is placed on the street, road, place,

In effect, this exemption provides a partial tax subsidy to municipal corporations engaged in public road and bridge construction. Washington does not tax the portion of the contract price consisting of the contractors' labor and services, but does tax the materials the contractor uses or consumes in the construction.³⁰

Deferral. In addition, the Washington Act specifically provides that “state and local sales and use taxes on the site preparation for, the construction of, the acquisition of any related machinery and equipment that will become a part of, and the rental of equipment for use in, the bridge” are eligible for deferral.³¹ The recipient of a deferral must begin payment of the deferred tax five years after the bridge's completion, and must pay the outstanding tax over 10 years.³²

III. Analysis of Tax Liability if Commission's Primary Place of Business is in Washington

A. Oregon Taxes

As discussed in Section II.A, *supra*, Oregon taxes would likely not apply to the Commission's activities in Oregon. Accordingly, Oregon taxes would also likely not apply to the Commission's activities in Washington.³³ To the extent any Oregon taxes might otherwise apply, the Interstate Bridge Exemption, as discussed in Section II.B, would likely prevent Oregon from imposing such taxes.

B. Washington Taxes

Public utility tax. If the Commission's primary place of business were in Washington, the state's public utility tax (the “PUT”) on public service businesses would likely apply to the Commission's activities. The PUT applies to any “public service business subject to control by the state, or having the powers of eminent domain, or any business declared by the legislature to be of a public service nature.”³⁴ “Public service business,” for these purposes, includes the operation of toll bridges.³⁵ Because the Commission will operate a toll bridge, enjoy the power of eminent domain, and perform an essential public function, the PUT would likely apply to Commission activities.³⁶ Furthermore, if located in Washington, the Commission would not benefit from the Interstate Bridge Exemption.³⁷

or highway of the county or city by the county or city itself, or (2) sold by the county or city to a county, or a city at actual cost for placement on a publicly owned street, road, place, or highway.” RCW 82.08.0275.

³⁰ See generally Municipal Research and Services Center, “Sales and Use Taxes in Public Work Contracts” (Apr. 2, 2021), <https://mrsc.org/Home/Explore-Topics/Public-Works/Purchasing-and-Bidding/Purchasing-and-Bidding-for-Washington-State-Local/Purchasing-and-Bidding-Public-Works-Contracts/Purchasing-and-Bidding-Sales-and-Use-Tax-Issues.aspx>.

³¹ RCW 47.87.150(1)(a).

³² RCW 47.87.150(3).

³³ Oregon Laws 2022, Ch. 7 § 12.

³⁴ WAC 458-20-179(101)(b).

³⁵ RCW 82.16.010(7)(a).

³⁶ RCW 47.87.070(2); RCW 47.87.030(1).

³⁷ See § II.B, *supra*.

The State PUT is equal to the gross income of the business's operations, multiplied by the applicable tax rate.³⁸ The basic tax rate applicable to toll bridge public service businesses such as the Commission is 1.8 percent, plus an additional seven percent multiplied by the basic tax rate, for a total State PUT of 1.926 percent.³⁹

Business and occupation tax. Washington B&O taxes may also apply to the Commission's business activities, but only if such activities are *not* subject to the PUT, or to a PUT or B&O tax exemption.⁴⁰ B&O taxes specifically apply to municipal corporations' "enterprise activities," meaning activities "financed and operated in a manner similar to a private business enterprise."⁴¹ The definition includes "activities which are generally in competition with private business enterprises and which are over fifty percent funded by user fees," but excludes "exclusively governmental" activities such as license and permit fees, inspection fees, public records fees, and processing fees.⁴²

Washington's B&O tax is a gross receipt tax measured on the value of products, the gross proceeds of sales, or the gross income of the business.⁴³ The B&O tax rate varies depending upon the classification for the taxable activity. For instance, the rate for public road contractors is 0.484 percent upon the total contract price.⁴⁴

Assuming the Commission's primary place of business is in Washington, and that the PUT therefore applies to the Commission's toll bridge activities (*i.e.*, that the Interstate Bridge Exemption does *not* apply), the PUT supersedes any B&O tax otherwise applicable to such activities. However, should the Commission engage in other "enterprise activities"—such as granting licenses for use of real property—these other activities may be subject to the B&O tax.⁴⁵

Cities and towns in the State also have authority to impose a B&O tax on the income of public utilities providing services within such jurisdiction's boundaries.⁴⁶ The City of White

³⁸ RCW 82.16.020(1). "Gross income," for these purposes, "means the value proceeding or accruing from the performance of the particular public service or transportation business involved, including operations incidental thereto, but without any deduction on account of the cost of the commodity furnished or sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses." RCW 82.16.010(3).

³⁹ RCW 82.16.020(1)(f), (2); RCW 82.02.030.

⁴⁰ RCW 82.04.310(1); WAC 458-20-179(103) ("The B&O tax does not apply to any business activities for which the PUT is specifically imposed, including amounts derived from activities for which a deduction from the PUT is available under RCW 82.16.050.")

⁴¹ WAC 458-20-189(2)(a).

⁴² *Id.*; WAC 458-20-189(3)(c)(i). "User fee" in this context, "means a charge imposed on individuals or entities to access facilities, receive services, or participate in activities." WAC 458-20-189(2)(e).

⁴³ RCW 82.04.220(1).

⁴⁴ WAC 458-20-171; Washington State Department of Revenue, "Business & occupation tax classifications" (2022), <https://dor.wa.gov/taxes-rates/business-occupation-tax/business-occupation-tax-classifications>.

⁴⁵ *See, e.g.*, WAC 458-20-179(103) ("[M]any persons engaged in business activities subject to the PUT are also engaged in other business activities subject to the B&O tax. For example, a gas distribution company operating a system for the distribution of natural gas for sale may also make retail sales of gas appliances.")

⁴⁶ *See* Municipal Research and Services Center, "Revenue Guide for Washington Cities and Towns" (Mar. 2022), at 85, available at <https://mrsc.org/getmedia/d317f211-fc63-4b7a-b362-cb17993d5fe5/Revenue-Guide-For-Washington-Cities-And-Towns.pdf.aspx?ext=.pdf>.

Salmon, which sits on the Washington side of the Hood River Bridge, does not currently impose a utility tax applicable to toll bridges.

Property tax. Under Washington law, real property owned by a municipal corporation is exempt from ad valorem property taxes.⁴⁷ The Commission would owe leasehold excise taxes on municipal property leased to a taxable person, absent an applicable exemption.⁴⁸ The Commission’s conveyance of property may also be subject to a real estate excise tax, unless exempt because, for instance, it constitutes a sale by a municipal corporation.⁴⁹ Each of the statutory exemptions to leasehold excise taxes and real estate excise taxes are fact specific, and the availability of any exemption will depend on the nature and structure of the particular transaction. Depending on the transaction’s structure, the parties may pass tax obligations through to tenants or otherwise reallocate such obligations by contract.

State and local sales and use taxes. If the Commission’s place of business is located in Washington, Washington state and local sales and use taxes will apply in the manner discussed in Section II.B, *supra*. However, because the Interstate Bridge Exemption would not apply to the Commission’s payment of Washington taxes under such circumstances, the Commission would still likely need to pay sales and use tax even after such time as the new Hood River Bridge is operational.

* * *

The following summary table—based upon the foregoing analysis—compares the taxes that would likely apply to the Commission, both before and after the new Hood River Bridge is constructed and operational, depending upon the Commission’s principal place of business:

Principal place of business	Taxes before bridge is operational	Taxes once bridge is operational
Oregon	<ul style="list-style-type: none"> • WA sales and use taxes 	
Washington (“WA”)	<ul style="list-style-type: none"> • WA sales and use taxes • WA PUT (if income) • WA B&O Tax (if income) 	<ul style="list-style-type: none"> • WA sales and use taxes • WA PUT • WA B&O Tax

⁴⁷ RCW 84.36.010; WA. ST. CONST. art. VII, section 1.

⁴⁸ Chapter 82.29A RCW.

⁴⁹ Chapter 82.45 RCW; RCW 82.45.010(3)(n).

Hood River Bridge T&R Study

WSTC January Commission Meeting

January 18, 2023



**CDM
Smith**

Carl See - WSTC

Tim Boesch, AICP PMP - CDM Smith

Study Purpose

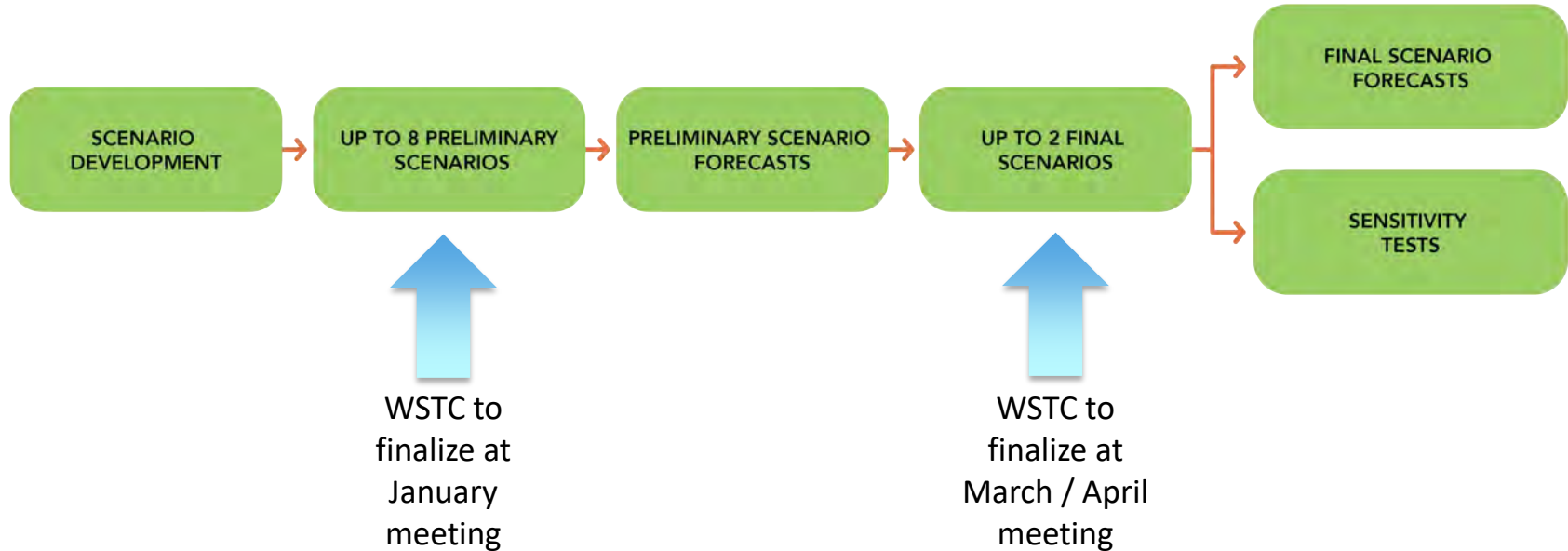
- Inform the toll funding capacity for a replacement Hood River Bridge
- Help inform a future investment grade traffic & revenue study
- Develop a final report for Washington State Legislature

Preliminary Scenarios

- Develop up to eight preliminary toll rate and policy scenarios
- Informs development of two tolling scenarios for final analysis
- Final two tolling scenarios may differ from the preliminary scenarios

The Port of Hood River and the Bi-State Working Group are providing input on potential toll rate increases on the current bridge for FY 2024 – FY 2030, expected replacement bridge costs, and existing and future operations and maintenance costs. The Bi-State Bridge Authority, authorized by both Oregon and Washington, will have final rate setting authority.

Study Scenarios Process



Tolling Scenario Structure

Pre-completion (*Current bridge*)

- Four pre-completion scenarios, including no change
- Rate increases starting as soon as July 1, 2023
- Tolling payment remains cash-credit or BreezeBy

Post-completion (*Replacement Bridge*)

- Two post-completion escalation scenarios
- Rate increases starting as soon as July 1, 2030
- Toll payment is all electronic (video or BreezeBy)
- Include \$1.00 surcharge for video toll rate compared to prior cash-credit toll rate

Tolling Scenario Structure

Assumptions:

- Current axle toll multipliers assumed to remain unchanged
- Current toll-free exemptions and agreements assumed to remain unchanged*

Additional Considerations:

- Traffic data does not support need for time of day, day of week, nor seasonal pricing
- New low-income or high-frequency discount plans may be appropriate

Preliminary Tolling Scenarios for Discussion

		Scenario 1A	Scenario 1B	Scenario 2A	Scenario 2B	Scenario 3A	Scenario 3B	Scenario 4A	Scenario 4B
<i>Pre-Completion (FY24-30)</i>		<i>No change</i>		<i>100% increase in FY24</i>		<i>\$0.25 annual increase for Cash & BreezeBy thru FY'27</i>		<i>\$0.50 annual increase for Cash & \$0.25 for BreezeBy thru FY'30</i>	
FY'24	BreezeBy	\$1.00	\$1.00	\$2.00	\$2.00	\$1.25	\$1.25	\$1.25	\$1.25
	Cash	\$2.00	\$2.00	\$4.00	\$4.00	\$2.25	\$2.25	\$2.50	\$2.50
FY'30	BreezeBy	\$1.00	\$1.00	\$2.00	\$2.00	\$2.00	\$2.00	\$2.75	\$2.75
	Cash	\$2.00	\$2.00	\$4.00	\$4.00	\$3.00	\$3.00	\$5.50	\$5.50
<i>Post Completion (FY31-51)</i>		<i>2.5% Annual Increase</i>	<i>15% Increase every 5 yr starting in FY31</i>	<i>2.5% Annual Increase</i>	<i>15% Increase every 5 yr starting in FY36</i>	<i>2.5% Annual Increase</i>	<i>15% Increase every 5 yr starting in FY36</i>	<i>2.5% Annual Increase</i>	<i>15% Increase every 5 yr starting in FY36</i>
FY'31	BreezeBy	\$1.02	\$1.15	\$2.05	\$2.00	\$2.05	\$2.00	\$2.82	\$2.75
	Video	\$3.05	\$3.30	\$5.10	\$5.00	\$4.07	\$4.00	\$6.64	\$6.50
FY'51	BreezeBy	\$1.69	\$1.95	\$3.35	\$3.50	\$3.35	\$3.50	\$4.61	\$4.75
	Video	\$5.01	\$5.75	\$8.35	\$8.75	\$6.66	\$7.00	\$10.88	\$11.35

Low Income & Frequency Discount Options

- Low Income Users (200% or less of area median household income)
 - 50% discount on BreezeBy transactions
- Frequent Users (2 options)
 - 50% discount on all transactions after minimum 20 trips in a month
 - Unlimited flat fee monthly pass (set at rate for 20 trips in a month)
- Consideration of options proposed as part of analysis (sensitivity tests) for final two tolling scenarios
 - Discount amounts are preliminary with capacity to revise ahead of conducting the analysis in Spring 2023

Discussion

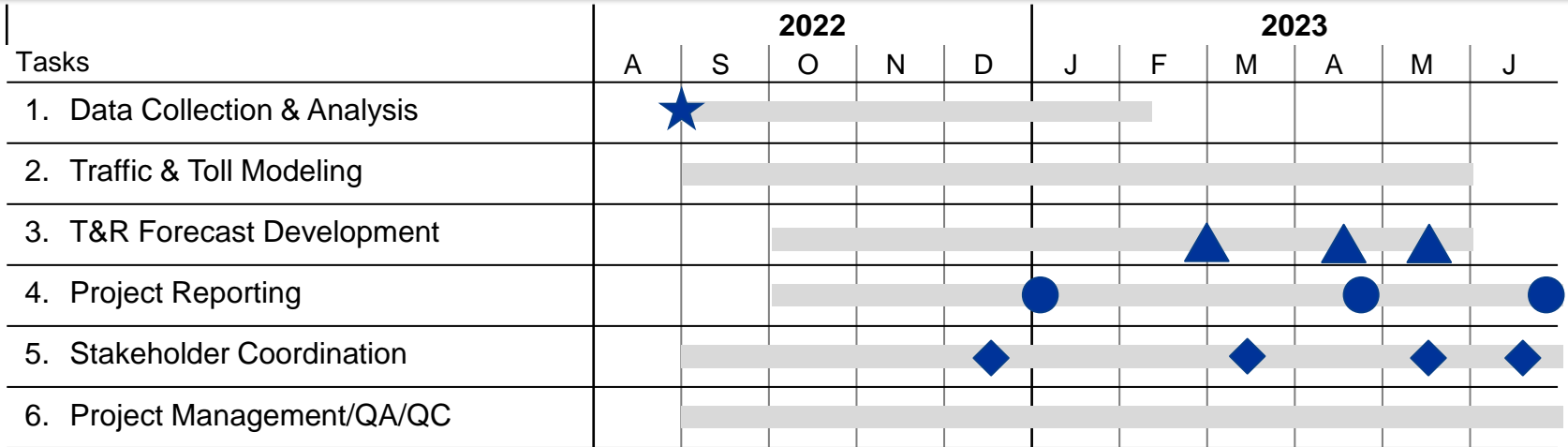
- Requested Action:
 - Select up to eight preliminary tolling scenarios
 - Feedback on discount options for analysis with final two scenarios



Travel Survey and Freight Interviews Update

- Passenger Car Stated Preference Survey Completed
 - 2,560 completions – 4x goal of 600 completions
 - Included 1,045 Oregon and 1,379 Washington
 - Strong response from email and US mail
 - 34 Spanish responses – good response from focused outreach
- Freight Shipper / Carrier Interviews
 - Contacted 53 shippers/carriers resulting in 19 interviews (goal of 20)
 - 14 freight shippers and 5 freight carriers
 - Interviewees included major long-haul trucking firms and major local employers, and freight generators such as ports

Project Update - Schedule



Month	Key Milestones
Aug 2022	Notice To Proceed
Nov 2022	Potential Scenarios
Dec 2022	WSTC briefing, Report Outline
Mar 2023	Preliminary T&R forecasts (8 scenarios)

Month	Key Milestones
Apr 2023	Refined T&R forecasts (2 scenarios)
Apr 2023	Draft T&R Report
May 2023	WSTC meeting, final T&R forecasts
Jun 2023	WSTC meeting, final T&R Report

Questions / Contact:

Carl See

Deputy Director

Washington State Transportation Commission

seecarl@wstc.wa.gov

360-705-7070

**MEMORANDUM OF AGREEMENT FOR THE
HOOD RIVER-WHITE SALMON BRIDGE REPLACEMENT PROJECT
BETWEEN
THE PORT OF HOOD RIVER
AND
THE CONFEDERATED TRIBES AND BANDS OF THE YAKAMA NATION
AND
THE FEDERAL HIGHWAY ADMINISTRATION**

IDENTIFICATION OF PARTIES AND PROJECT

This Memorandum of Agreement (Agreement) is entered into between the Port of Hood River (POHR), the Confederated Tribes and Bands of the Yakama Nation (Tribe), and the Federal Highway Administration (FHWA). The POHR, Tribe, and FHWA are hereinafter collectively referred to as "Parties" and individually as "Party." The Parties hereby agree, as allowed and limited by applicable law, to the following terms and conditions governing the Hood River-White Salmon Bridge Replacement Project.

For purposes of this Agreement, the Hood River-White Salmon Bridge Replacement Project (Project) is defined as the proposed activities related to the replacement of the Hood River-White Salmon Bridge described in the Supplemental Draft Environmental Impact Statement/Record of Decision (SDEIS) issued by the FHWA (lead federal agency) and the POHR in November 2020, including any terms or conditions required by federal, state, or local permits and other authorizations for the Project.

PURPOSE OF AGREEMENT

The purpose of this Agreement is to fully and fairly resolve the issues associated with potential Project impacts on the Tribe's rights and interests. This Agreement delineates the Parties' commitments related to avoiding, minimizing, and resolving the Project impacts on Treaty rights.

RECITALS

1. The FHWA and POHR issued a SDEIS in November 2020, in which the preferred alternative was identified for replacement of the Hood River-White Salmon Bridge.

2. The POHR will require a temporary construction zone easement and a permanent aerial easement over an in-water portion of the WSTFAS boundary for operation of the bridge identified as the preferred alternative. The POHR will coordinate with the Bureau of Indian Affairs (BIA) to obtain the necessary easements.

3. With regard to fishing activities, the Tribe is a successor in interest to tribes and bands that were parties to the 1855 Treaty with the Yakama, 12 Stat. 951, in which the Indian signatories reserved the right to fish at usual and accustomed grounds and stations. The Tribe has adjudicated Treaty fishing and gathering rights, including the right to take fish at its usual and accustomed fishing grounds and stations (*Sohappy v. Smith*, 302 F. Supp. 899, D. Or. 1969). The Project will be constructed within the Tribe's usual and accustomed area.

4. The Parties concur that this Agreement is consistent with the Treaty rights of the signatory Tribe and the United States' trust obligation to the Tribe but does not create an independent trust obligation. The Tribe specifically represents and warrants that no approval of this Agreement by the Secretary of the Interior or the Bureau of Indian Affairs or any other federal agency or official is required for the Tribe to execute this Agreement or for this Agreement to be effective and binding upon the Tribe.

5. The Tribe attaches religious and cultural significance to historic properties that will be affected by the Project. The POHR and FHWA consulted with the Tribe in the development of a separate Memorandum of Agreement (MOA) under Section 106 of the National Historic Preservation Act, to take into account the effects of the Project on historic properties. A copy of the MOA under Section 106 of the National Historic Preservation Act is attached to this Agreement as **Attachment A**.

6. Tribe members utilize fishing sites along the shore of the Columbia River and frequently access the White Salmon Treaty Fishing Access Site (WSTFAS). Tribe member commercial gillnet sites are registered with the Tribe and are site-based. Project construction and subsequent Project site operations could temporarily affect the exercise of Treaty fishing rights by certain members of the Tribe whose registered commercial gillnet sites are in or near the Project area.

7. The Parties have met on a government-to-government basis to explore opportunities for modification of the Project that would avoid or minimize potential temporary impacts on the exercise of Treaty fishing rights. The Parties also discussed measures to minimize and resolve potential temporary Project impacts.

8. This Agreement is the result of the government-to-government consultations and reflects mutual commitments and undertakings of the Parties pertaining to the Project.

NOW, THEREFORE, pursuant to Oregon Revised Statutes (ORS) Section 190.110 and Chapter 777 ORS, the above recitals are incorporated herein as if fully set forth below, and in consideration of the terms, conditions, covenants, and performances contained herein, or attached and incorporated and made a part hereof,

IT IS MUTUALLY AGREED AS FOLLOWS:

TERMS AND CONDITIONS

1. Selected Alternative. The POHR and FHWA intend to implement the Project described as the preferred alternative in the Hood River-White Salmon Bridge Replacement Project SDEIS issued by the FHWA in November 2020. The Representation of overwater Project limits of construction on the Columbia River (**Attachment B**), attached hereto and by this reference made a part of this Agreement, represents the Project selected alternative and the overwater limits of construction. The overwater Project limits of construction are hereinafter referred to as the Bridge Site in this Agreement. The Parties recognize that Project construction is subject to completion of the Draft FEIS and issuance of a Record of Decision (ROD) by the FHWA, the availability of funds, and the timely receipt of necessary federal, state, and local regulatory approvals. The Parties recognize that the Bridge Site, Project design, and Project schedule may be modified during the design and construction process consistent with the requirements of the National Environmental Policy Act (NEPA). However, the Project significant adverse environmental impacts will not exceed those described in the SDEIS unless the POHR and FHWA have identified additional impacts to report in the Draft FEIS and have communicated this information to the Tribe. Although the Project is not yet fully funded, this Agreement addresses impacts for the entire Project.

2. Columbia River Construction Procedures; Construction Zone Mitigation Payment; Tribe Consulting Services Reimbursement.

A. Impacts on Treaty-Protected Fishing Rights. The Tribe has expressed concern about the impact of the Project on its Treaty-protected fishing rights in areas that will be affected by the Project. The Parties agree impacts from the Project to the Tribe's Treaty-protected fishing rights are likely, and that it is difficult to assess and quantify those potential impacts. The Parties believe potential effects may include interference or impact to Treaty fishing location access because of the need for Construction Safety Zones around vessel, barge, platform, or other construction equipment. Construction Safety Zones may be required in conjunction with Project activities such as tug and barge activities, temporary work bridges, replacement of the bridge structure, and bridge demolition. The Construction Safety Zones are necessary to protect persons and

vessels from hazards associated with Project activities. Impacts of proposed Project activities are described in the SDEIS. Accordingly, the Parties agree that the POHR measures and contributions described in this Agreement are reasonable and appropriate to mitigate the anticipated Project impacts on access to Treaty fishing locations.

B. Management of Columbia River Construction Activities

- i. **Goal.** The POHR recognizes and acknowledges the importance of the Columbia River and the WSTFAS to the Tribe and its Treaty-protected fishing rights, and that the Project impacts those rights. The Parties' goal is to advance Project work and minimize the interference with Treaty-protected fishing rights. In order to achieve that goal, the POHR will manage work on the Project according to the standards set forth in this section of the Agreement.
- ii. **Standards and Procedures.** The Parties agree to implement the standards set forth in Terms and Conditions Subsection 2.C and the procedures set forth in Terms and Conditions Subsection 2.D of this Agreement. The Parties also anticipate that there may be some adjustment in either or both subsections as work on the Project proceeds. Each Party will make appropriate modifications through written amendment to this Agreement, as necessary.

C. Standards for protection of the Tribe's Treaty-protected fishing rights. The POHR agrees to observe and implement the following standards during Project design and construction.

- i. The POHR will conduct Project work during active construction in a manner that minimizes impacts to fishers to the extent practicable.
- ii. The Tribe and POHR commit to developing Operational Protocols for coordination of Project in-water construction, tug and barge movements, and Tribe fishing activities. The Operational Protocols will be consistent with Treaty rights and with the POHR safety, security, and other operational requirements. The development of Operation Protocols will be implemented upon availability of sufficient design and construction phasing details. The POHR and Tribe agree to update these protocols as appropriate to capture revisions to the construction schedule or fish run information, but no less often than annually in [DATES] of each year.

During the construction period, a Construction Safety Zone will be established restricting access to the active construction area (Construction Zone) by vessels and

fishers. A section of the Construction Safety Zone is located over an in-water portion of the WSTFAS boundary, this area will require a temporary easement from the BIA. The boundaries of the Construction Zone are defined in **Attachment B**. The zone will be a variable type and will be set annually, taking into account construction sequencing and staging needs for that year's activities. **[NTD: Attachment B will define the Construction Zone, a draft area has been highlighted in Attachment B. Details such as making it a fixed zone that is established at the beginning and remains throughout the project, or a variable zone over time as different phases of the Project are completed will need to be agreed to; This section will also define how the boundaries of the Construction Zone will be shown on the river (buoys, booms, GPS, etc.).**

- D. **Procedures to facilitate work on the Project while ensuring protection of the Tribe's Treaty-protected fishing rights.** The Parties will implement and abide by the following procedures to carry out the goal and standards spelled out above. For the purpose of this Subsection 2.D, the term "days" shall refer to business days and shall exclude weekends and holidays.
- i. The Tribe will notify the POHR through e-mail and keep the POHR informed of the timing of the opening of the Tribe's fishing season(s), including commercial, ceremonial, and subsistence fisheries. The Tribe will notify the POHR a minimum of 90 days prior to the date a fishery will open.
 - ii. The POHR will provide Project construction work schedule updates at least twice monthly, and more frequently as appropriate, to the Tribe via e-mail addressed to individuals designated by the Tribe.
 - iii. The Tribe will, through its established channels, be responsible for communicating information about the Construction Zone to individuals licensed to fish under Tribal law and other Tribal members, including limits on access to sites within the Construction Zone during Project activities. The Tribe will ensure that compliance with the terms of this Agreement by fishers is a condition of permits authorizing fishing during the Project.
 - iv. **[NTD: Enforcement mechanism/agency to be added – CRITFC]**.
 - v. Onsite conflicts between fishers and Project personnel shall be resolved expeditiously, to minimize interference with Project activities and ensure the safety of fishers and Project personnel. The Parties designate the following representatives with authority to resolve such onsite conflicts. The authorized representatives shall

be contacted immediately when a conflict is occurring, or a conflict is anticipated to occur: [NTD: Identify in this section someone with authority to temporarily shut down operations in the interests of safety (POHR) or have noncompliant fishers removed from the Project area (Tribe/CRITFC). Contact information will be added in this section and include cell phone number at a minimum.]

a) Tribe

b) POHR

vi. **Construction Zone Mitigation Payment.** The POHR agrees to compensate the Tribe [AMOUNT] as mitigation for impacts to the Tribe’s fishers whose Treaty fishing sites are located within the Construction Zone (Construction Zone Mitigation Payment). This is an annual lump-sum payment and is intended to compensate Tribe fishers for gear moves, lost or damaged equipment, lost fishing time, fish that were not caught, and all other impacts arising from the imposition of the Construction Zone. The POHR shall make the Construction Zone Mitigation Payment to the Tribe within sixty (60) calendar days after the first contract is issued by the POHR for construction of the Project and then annually on [DATE] during Project activities requiring a Construction Zone. The Tribe, at its sole discretion, shall determine which fishers are impacted by the Construction Zone and the appropriate means of calculating the share of the Construction Zone Mitigation Payment each fisher shall receive. In the event the Tribe does not distribute the total amount each year for Construction Zone Mitigation Payments to individual fishers, the Tribe agrees to use the remaining funds for fisheries purposes.

vii. **Tribe Consulting Services Reimbursement.** The POHR will reimburse the Tribe for services performed by its staff throughout the Project. The scope and budget for these services will be documented in Task Orders prior to the commencement of work by the Tribe. The Tribe shall provide monthly invoices for services for the first

six months of Project activity until the Parties obtain an understanding of the level of effort required. Thereafter, for the remainder of the Project, the Tribe shall provide an annual accounting rather than monthly invoices. The services provided by the Tribe may include:

- a) Notifications required under this Agreement regarding the timing of the opening of the Tribe's fishing season(s), including commercial, ceremonial, and subsistence fisheries.
- b) Communication with Tribe fishers regarding limits on access to sites within the Construction Zone during Project activities and issuance of permits requiring compliance with the terms of this Agreement.

3. **Sources of Funding.** The POHR shall be entitled to provide the payments under this Agreement through any available source of funds, including but not limited to, cooperative agreements and grant funding.

4. **No Third-Party Beneficiaries.** Nothing in this Agreement shall be construed as existing for the benefit of, or as being enforceable by, any party not a signatory hereto. The POHR's agreement to compensate the Tribe as mitigation for impacts to the Tribe fishers whose Treaty fishing sites are located within the Construction Zone shall not be construed as conferring a right to a Construction Zone Mitigation Payment by any person other than the Tribe.

5. **Shoreline Restoration.** The POHR will invite the Tribe to provide input for Project planning and design associated with construction and restoration activities involving riparian areas adjacent to the Columbia River. The POHR shall consider input from the Tribe, but this provision does not grant the Tribe approval or other authority unless otherwise agreed in writing by the Parties.

6. **Amendment.** This Agreement may be amended by written supplement to this Agreement. Such amendments and changes made under this Agreement shall be made in writing and signed by Lead Representatives of all the Parties, as noted in Section 15. Any supplemental agreement shall be unanimously agreed upon in writing prior to undertaking any work or incurring any costs covered by such agreement.

7. **Technical Attachments and Exhibits.** All Exhibits and Attachments to this Agreement may be subject to modification with the written approval from the Designated Representatives of all Parties, as noted in Section 15, without formally amending this Agreement. In the event the Parties' Designated Representatives amend the Exhibits and Attachments, the amendment

to these Exhibits and Attachments becomes effective as of the latest day and year of approval written by the Parties.

8. **No Objection to Project.** As long as the POHR is in compliance with the provisions of this Agreement, the terms of any permits, and the provisions of all applicable laws, the Tribe agrees that it will not object to or otherwise oppose the Project in any federal, state, or local regulatory, administrative, or judicial proceedings associated with the permitting, financing, and construction of the Project, including any permit modifications or NEPA reevaluations for the Project that do not materially increase the impacts of the Project on the exercise of Treaty fishing rights beyond those described in the Draft FEIS, so long as this Agreement remains in effect. Upon the written electronic mail request of the POHR, the Tribe agrees to transmit a letter to the US Coast Guard and US Army Corps of Engineers, referencing the Project, stating that the Tribe does not oppose the issuance of federal permit approval for the Project. This letter will be sent no later than five (5) business days following receipt of the written electronic mail request. The Tribe will also send a copy of the letter to the POHR and FHWA Designated Lead Representatives noted in Section 15.

9. **Records Retention and Audits.** During the term of this Agreement and for a period not less than six (6) years from the date of final payment by the POHR, the records and accounts pertaining to the work provided by the Tribe and accounting therefore are to be kept available for inspection and audit by the State of Oregon and the federal government and copies of all records, accounts, documents, or other data pertaining to the work provided by the Tribe will be furnished upon request. If any litigation, claim, or audit is commenced, the records and accounts, along with supporting documentation, shall be retained until said litigation, claim, or audit finding has been resolved even though such litigation, claim, or audit continues past the six- (6-) year retention period.

10. **Release.** The Parties agree that the terms of this Agreement constitute a full and fair mitigation of the impacts to the exercise of Treaty fishing rights resulting from the Construction Zone and the Project activities.

11. **Integration and Severability.** This Agreement constitutes a single integrated contract that expresses the entire agreement of the Parties hereto. Any prior representations or agreements, whether oral or written, in regard to this Agreement or its subject matter are hereby superseded in their entirety by this Agreement. If any provision of this Agreement is held invalid, it shall be considered severable from the remainder, and the remaining provisions shall be given full force and effect, provided that such remainder conforms to the terms and requirements of applicable law and the intent of this Agreement.

12. **Termination.** In the event that the FHWA and POHR make material modifications to the Project that may increase the adverse impact of the Project on the Tribe's access to its usual and accustomed Treaty fishing grounds and stations, then the Tribe may withdraw from this Agreement after providing at least thirty (30) calendar days written notice to the other Parties and after complying with the dispute resolution requirements of Section 14 of this Agreement. Any dispute about whether modifications to the Project are "material" or whether they result in increased adverse impacts to the Tribe's access to its usual and accustomed Treaty fishing grounds and stations shall be resolved in accordance with the dispute resolution provisions of Section 14. In the event that the Tribe withdraws from this Agreement pursuant to this Section, the Tribe agrees to enter into additional negotiations with the POHR regarding the extent of the modified Project's increased adverse impact to the Tribe's access to its usual and accustomed Treaty fishing grounds and stations. In the event that the Parties enter into a subsequent agreement regarding the Project impact to the Tribe's Treaty fishing access rights, any mitigation or compensation already provided to the Tribe by the POHR shall be included in any new agreement negotiated by the Parties.

13. **Agreement Binding.** The terms and conditions of this Agreement shall be binding on and shall inure to the benefit of the Parties and their respective successors and assigns.

14. **Dispute Resolution Process**

A. The Parties shall make good faith efforts to quickly and collaboratively resolve any dispute arising under or in connection with this Agreement. The dispute resolution process outlined in this Section applies to disputes arising under or in connection with the terms of this Agreement.

B. **Informal Resolution.** The informal resolution process begins at the staff level and is raised to the higher organizational levels, if necessary. In the event that the Parties are unable to resolve the dispute, the Parties shall submit the matter to non-binding mediation facilitated by a mutually agreed-upon mediator. The Parties shall share equally in the cost of the mediator. Each Party agrees to compromise to the fullest extent possible in resolving the dispute in order to avoid delays or additional incurred cost to the Project.

C. Resolution of disputes through this process shall be memorialized in writing, incorporated by reference into this Agreement. The Parties agree that they shall have no right to seek relief in a court of law until and unless the Dispute Resolution process has been exhausted.

15. **Lead and Designated Representatives**

A. Lead Representatives

- i. Yakama Nation
Chairperson
Yakama Nation
401 Fort Road
Toppenish, Washington 98948
(509) 865-5121

- ii. POHR
Executive Director
Port of Hood River
1000 E Port Marina Drive
Hood River, Oregon 97031
(541) 386-1645

- iii. FHWA
Division Administrator
Federal Highway Administration
Oregon Division
530 Center Street NE
Salem, Oregon 97301
(503) 399-5749

B. Designated Representatives

- i. Yakama Nation
[CONTACT]
Yakama Nation
[ADDRESS]
[(XXX) XXX-XXXX]

- ii. POHR
[CONTACT]
Port of Hood River
[ADDRESS]
[(XXX) XXX-XXXX]

- iii. FHWA
Federal Highway Administration

Oregon Division
530 Center Street NE
Salem, Oregon 97301
(503) 399-5749

16. **Reservation of Rights, No Waiver of Claims.** Except as provided in Sections 2 and 10 of this Agreement, by entering into this Agreement, the Tribe does not waive any rights to exercise its Treaty rights, and any and all such rights are hereby expressly reserved. Nothing in this Agreement is intended to or shall be construed to constitute an admission by any Party that the geographic areas referenced in this Agreement corresponds to, defines, or otherwise represents an accurate final legal description of the Tribe's usual and accustomed fishing areas.

17. **Indemnification.** To the maximum extent authorized by law, the Parties shall indemnify and hold harmless one another and their employees and/or officers from, and shall process and defend at each Party's own expense, any and all claims, demands, suits at law or equity, actions, penalties, losses, damages (both to persons and/or property), or costs, of whatsoever kind or nature, brought against a Party arising out of, in connection with, or incident to another Party's own negligent performance or failure to perform any aspect of this Agreement; provided, however, that if such claims are caused by or result from the concurrent negligence of the Parties, their employees and/or officers, or involve those actions covered by ORS §30.140, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the Parties, their employees and/or officers. The Parties agree that their obligations under this Section extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents. For this purpose, the Parties, by mutual negotiation, hereby waive, with respect to the other Parties only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of ORS Chapter 656.

The provisions of this Section shall survive the termination of this Agreement.

18. **Waiver of Sovereign Immunity and Venue**

- A. The Tribe expressly agrees to a limited waiver of sovereign immunity. The waiver is limited to actions brought by the POHR for breach, termination, enforcement of Agreement provisions, including the outcome of the dispute resolution provided in Section 14 herein, and interpretation or validity thereof, including the determination of the scope or applicability of this Agreement. This limited waiver is available solely to claims by the POHR and not by any other entity, individual, or third party, not a Party to this Agreement. The Tribe agrees not to invoke sovereign immunity as a defense to a

claim upon its insurance policy in connection with the enforcement of the rights of the POHR.

- B. The Tribe consents to the jurisdiction of any court of competent jurisdiction in the event that a Party to this Agreement deems it necessary to institute legal action or proceedings to enforce any right or obligation under this Agreement if dispute resolution pursuant to Section 14 fails.
- C. The Parties further agree that the venue for any such action or proceedings arising out of this Agreement shall be in Oregon state court or federal court.

19. **Insurance**

- A. **General Requirements.** During the term of the Agreement, the Tribe shall maintain in full force and at its own expense each insurance coverage or policy noted below, from insurance companies that are authorized to transact insurance and issue coverage in the state of Oregon and are acceptable to the POHR. The Tribe shall pay for all deductibles.
- B. **Commercial General Liability.** The Tribe shall obtain, at its expense, and keep in effect during the term of this Agreement, Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverage that is satisfactory to the POHR. This insurance shall include personal injury liability, products and completed operations, and contractual liability coverage for the indemnity provided under this Agreement, on an occurrence basis. Combined single limit per occurrence shall not be less than \$1,000,000. Each annual aggregate limit shall not be less than \$1,000,000.
- C. **Automobile Liability Insurance: Automobile Liability.** Tribe shall obtain, at its expense, and keep in effect during the term of this Agreement, Automobile Liability Insurance covering all owned, non-owned, or hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance. Combined single limit per occurrence shall not be less than \$1,000,000.
- D. **Additional Insured—Waiver of Reliance on Sovereign Immunity Defenses.** The liability insurance coverage required for performance of the Agreement shall include the POHR as Additional Insured with respect to the Tribe activities to be performed under this Agreement. Coverage shall be primary and non-contributory with any other insurance and self-insurance. Neither the insurer nor the Tribe may invoke tribal sovereign immunity up to the limits of the policy in any state or federal court, including when the Tribe or an entity of the Tribe is a named defendant. The Tribe

insurance policies required by this Agreement must have an endorsement providing that neither the insurer or the Tribe may invoke tribal sovereign immunity up to the limits of the policy in any state or federal court, including when the Tribe or an entity of the Tribe is a named defendant.

- E. **Certificate(s) of Insurance.** Prior to performing under the Agreement, as evidence of the insurance coverage required by this Agreement, the Tribe shall furnish Certificate(s) of Insurance for all required insurance to POHR prior to its commencement of work under this Agreement. The Tribe's failure to present the required documents within thirty (30) calendar days of written request by the POHR shall result in immediate suspension of the POHR's obligations under Section 2 of the Agreement until such documentation is provided. The Certificate(s) will specify all parties who are endorsed on the policy as Additional Insured (or Loss Payees).

20. **Governing Law.** The Parties agree that this Agreement and all questions concerning the performance of this Agreement shall be interpreted, construed, and enforced in all respects in accordance with applicable laws of the State of Oregon, without reference to rules relating to the choice of law.

21. **Authority to Sign.** The Tribe represents, warrants, and covenants that it has the authority to enter into this Agreement, and that its execution and delivery have been duly authorized. As part of this Agreement, the Tribe will furnish a copy of the resolution of the Tribal Council granting authority of the undersigned to execute this Agreement on behalf of the Tribe no later than five (5) business days following execution of this Agreement, which will be appended to this Agreement as **Attachment C**. The POHR represents, warrants, and covenants that it has the authority to enter into this Agreement, and that its execution and delivery have been duly authorized. The FHWA acknowledges that the terms of this Agreement were reached after government-to-government consultations. The FHWA further agrees that this Agreement shall not be construed in favor of or against any Party. The FHWA represents that it has authority to sign this Agreement on behalf of its respective client Party, that it has read this Agreement and understand its contents.

22. **Declaration.** The undersigned hereby declare that the terms of this Agreement have been completely read and fully understood and voluntarily accepted for the purpose of making the full and final compromise, adjustment, and settlement of any and all claims between the Parties, disputed or otherwise, prior to the date of this Agreement, and for the express purpose of precluding forever any additional claims between the Parties arising out of, or in any way connected with, the Project interference with the Tribe Treaty fishing rights,

including construction and operations associated with the Project, except for claims arising from the duties and obligations of the Parties under this Agreement.

IN WITNESS WHEREOF, the Parties hereto agree to the terms and conditions of this Agreement as of the day and year last written below.

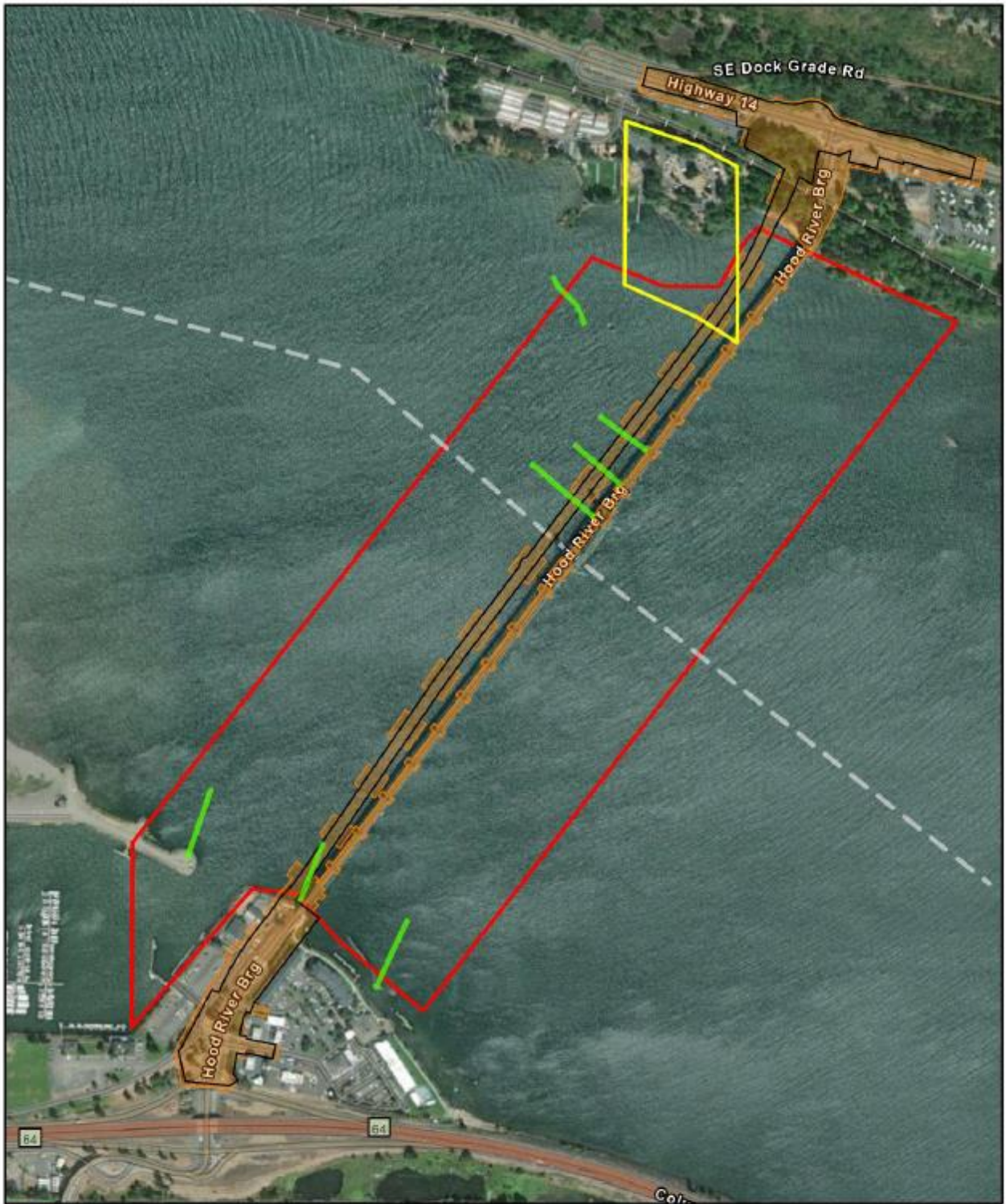
<p>CONFEDERATED TRIBES AND BANDS OF THE YAKAMA NATION</p> <p>TBD</p> <p>FEDERAL HIGHWAY ADMINISTRATION</p> <p>FHWA concurs with the intent and form of this Agreement.</p> <p>TBD</p>	<p>PORT OF HOOD RIVER</p> <p>TBD</p> <p>APPROVED AS TO FORM</p> <p>TBD (PORT LEGAL)</p>
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ATTACHMENT A

NATIONAL HISTORIC PRESERVATION ACT §106 MOA]

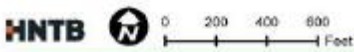
INSERT ATTACHMENT A

ATTACHMENT B
OVERWATER CONSTRUCTION ZONE MAP



- ▭ Overwater Construction Zone
- ▭ Temporary Construction Easement
- Permanent Acquisition
- ▭ White Salmon TFAS Parcel Boundary
- ▬ Existing Gillnet Anchorages

Overwater Construction Zone Map



ATTACHMENT C

YAKAMA NATION SOVEREIGN IMMUNITY WAIVER AUTHORIZATION RESOLUTION

INSERT ATTACHMENT C



U.S. Department
of Transportation
**Federal Highway
Administration**

Oregon Division

December 27, 2022

530 Center Street NE, Suite 420
Salem, OR 97301
Office: 503-399-5749
Fax: 503-399-5838
www.fhwa.dot.gov/ordiv

In Reply Refer To:
HAD-OR

Jonathan Smith
Tribal Chairman
Confederated Tribes of the Warm Springs Reservation of Oregon
jonathanwsmith@wstribes.org
1233 Veterans Street, PO Box C
Warm Springs, OR 97761

Subject: Hood River-White Salmon Bridge Replacement Project
Location: Hood River, Oregon and White Salmon, Washington
Action: Government to Government Consultation on Treaty Fishing Rights

RE: Request for Meeting to Consult on Potential Impacts to Treaty Fishing Rights

Dear Chairman, Smith:

We are writing to request an opportunity to provide a brief description of the Hood River-White Salmon Bridge Replacement Project, answer any questions you may have, and identify any issues or concerns the Tribe may have regarding potential impacts. We recognize the Tribe reserved fishing rights in the Treaty of 1855 and that an active fishery continues in the vicinity of the proposed bridge replacement project. The Federal Highway Administration (FHWA) seeks this opportunity as part of our ongoing efforts to have meaningful government-to-government consultation with the Confederated Tribes of the Warm Springs Reservation of Oregon. The Federal Highway Administration, with the Port of Hood River, and the Oregon Department of Transportation (ODOT) as joint lead agencies, is in the process of conducting coordination regarding the development of a Memorandum of Agreement (MOA) related to your reserved fishing rights and how they may be impacted by the project to replace the existing Hood River-White Salmon Bridge between Hood River, Oregon, and White Salmon, Washington.

The primary purpose of this project is to improve multi-modal transportation of people and goods across the Columbia River between the Hood River and White Salmon/Bingen communities by replacing the existing Hood River-White Salmon Bridge. The need for the project is to rectify current and future transportation and structural inadequacies and deficiencies of the bridge.

Resources potentially impacted during construction or operation include water resources, fish, historic and archaeological resources, parks and recreation, navigation, traffic, social and community resources, and others.

If you have any questions or would like to discuss in more detail, you can contact me at keith.lynch@dot.gov / (503) 399-5749 or Mike Morrow at (503) 316-2552. You may also contact Roy Watters, ODOT Archaeologist and Tribal Liaison at (503) 986-3375, roy.watters@odot.state.or.us.

We look forward to your response to this request. Please respond to Mike Morrow, FHWA Senior Field Operations Engineer, at mike.morrow@dot.gov, by phone at (503) 399-5749 or by mail to 530 Center Street NE, Suite 420, Salem, OR 97301.

Sincerely,

Keith Lynch
Oregon Division Administrator
Federal Highway Administration

Email Copies to:

Bobby Brunoe, General Manager and THPO, Robert.brunoe@ctwsbnr.org

Brad Houslet, Planning Department, brad.houslet@ctwsbnr.org

Christian Nauer, Archaeologist, christian.nauer@ctwsbnr.org

Mike Morrow, Federal Highway Administration, mike.morrow@dot.gov

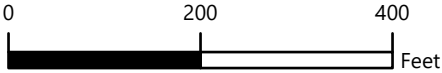
Thomas Parker, Federal Highway Administration, thomas.w.parker@dot.gov

Roy Watters, Archaeologist and Tribal Liaison, ODOT, roy.watters@odot.state.fl.us

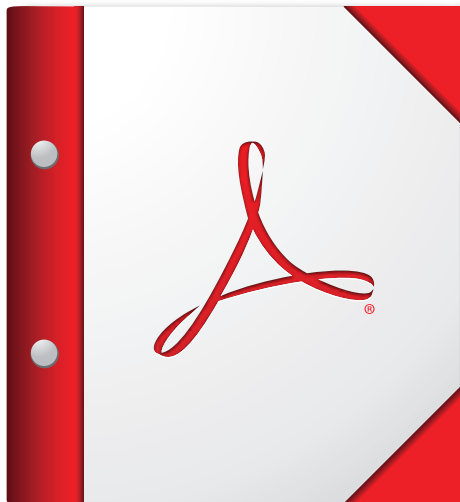


LEGEND

- ⊕ APPROX. LOCATION OF HISTORICAL BORING
- ⊗ PROPOSED BORING LOCATION
- ⬇ PROPOSED CPT LOCATION
- APPROX. LOCATION OF PREFERRED EC-2 ALIGNMENT
- APPROX. ODOT ROW BOUNDARY



GRI HNTB
 POHR BRIDGE REPLACEMENT
PROPOSED OREGON UPLAND EXPLORATIONS



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