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Richard Benner  
Office of Metro Attorney  
600 NE Grand Avenue  
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Mark Greenfield  
Attorney for TriMet  
14745 NW Gillihan Rd.  
Portland, OR 97231

By Mail and Email  
Re: Columbia River Crossing LUFO

Dear Dick and Mark,

Based upon the presentation to the TriMet Board at its meeting July 13, and Metro Resolution No. 11-4264, it appears that TriMet intends to submit an application to Metro for approval of a "Land Use Final Order" (LUFO) under Chapter 12 Oregon Laws 1996 Special Session (the "Statute"). I am writing on behalf of Plaid Pantries, Inc.

If it applies for a LUFO for CRC, TriMet will have been maneuvered into the position of land use applicant for the entire CRC bridge project, not merely the transit component. The evidence outlined below indicates that the state legislature intended that the LUFO Statute, passed in a special session in 1996, be used for the South North Light Rail transit, not for a massive new bridge project crossing the Columbia River.

1. The definition of "Project" in Section 1 (18) of the special 1996 legislation is limited to areas inside the Urban Growth Boundary. The CRC bridge is north of the UGB, so it cannot be part of the "Project" as defined in the Statute. Therefore the LUFO procedure does not apply to land use approvals for a bridge spanning the Columbia River.

2. The definition of "Highway Improvements" which can be included in a LUFO decision is limited by Section 1 (12) of the Statute. Highway Improvements must be part of the "Project." In the circumstance of the CRC, the Light Rail improvements have little to do with the interstate bridge and accompanying highway improvements. And the bridge is not part of the South North Max Light Rail Project within the Portland Metropolitan Area Urban Growth Boundary.

3. Moreover, the need for the LUFO process was expressly justified by the need for funding from "... in the upcoming federal transportation authorization act" in 1996 and the "unique circumstances" then in effect. Section 2 (C) . This time frame became obsolete long ago. This legislative finding makes it obvious that the LUFO process was never intended to be used 15 years later to provide land use review for an interstate bridge that happens to be built alongside of a light rail project.

4. Certain Comprehensive Plan provisions were considered by LCDC in drafting the criteria for LUFO. They are listed in the LCDC staff report, but Comprehensive Plan criteria concerning the bridge were not included in the list, and therefore presumably were not considered relevant in drafting the LUFO approval criteria. This is a strong indication that the LUFO procedure was not intended for use in approving the interstate bridge.

5. In any event it appears that LCDC did not issue a final order establishing the LUFO criteria, pursuant to Section 4 of the Statute. Final orders must be in writing. ORS 183.310(6)(b). My paralegal has conducted a diligent search and inquiry with the LCDC and the State Archives Office. So far as we can determine, there is no LCDC final order adopting the LUFO criteria. If the criteria were not adopted by an LCDC final order, the LUFO procedure cannot be used for land use approvals.

Under the circumstances, the TriMet Board should not submit a LUFO application for approval of the highway improvements and accompanying interstate motor vehicle bridge.



Michael J. Lilly

cc: Chris Girard