

EUGENE CITY COUNCIL

AGENDA ITEM SUMMARY



Action: Adoption of Resolution 5012 Authorizing the Institution of Proceedings in Eminent Domain for the Acquisition of Property Interests for the West Bank Willamette River Pedestrian/Bicycle Extension Path Project

Meeting Date: July 26, 2010
Department: Public Works-Engineering
www.ci.eugene.or.us

Agenda Item Number: 5
Staff Contact: Mark Schoening
Contact Telephone Number: 541-682-5243

ISSUE STATEMENT

The council is being requested to adopt a resolution (Attachment A) authorizing the institution of proceedings in eminent domain (condemnation) for the acquisition of property interests from the remaining property ownership for the construction of the pedestrian/bicycle path at Beltline Highway on the west bank of the Willamette River.

BACKGROUND

The proposed pedestrian /bicycle path is to provide the extension and connection of the present bike path ending on the south side of the Beltline Highway to the north, to Beaver Street, to provide a safer connection to downtown Eugene and the present path serving neighborhoods in northern River Road and Santa Clara areas.

All properties needed for this project have been acquired with the exception of one. That property is occupied by Delta Sand and Gravel Company and owned by Delta Property Company, A Limited Partnership. The acquisition has now become a critical path item per the terms of the federal Transportation Enhancement funding to obtain the obligation of funding to enable construction of the proposed improvements. Federal funding for the project is contingent on the City's ability to complete all State and Federal clearances for the project by September 2010; acquisition of this property is the final clearance needed. Adoption of the resolution will empower Public Works Engineering to proceed with timely acquisition of necessary rights-of-way. Discussions between City staff and Delta regarding details of the project and measures to minimize and mitigate impact to the public and to Delta's operation as a result of the project began over two years ago.

Building a tunnel for the path under Delta's main entrance to eliminate conflicts between path users and vehicles using the entrance was one of the main changes to the original project concept the City made as a result of these discussions. This tunnel provides a considerable safety benefit to path users and will significantly mitigate potential impacts to Delta's operation by eliminating conflicts at that entrance. Adding this tunnel to the project required the City to request an additional \$800,000 in funding from Federal Highway Administration, and also resulted in the need for the right-of-way acquisition from Delta. Appraisals have been prepared and negotiations with the affected property owners are ongoing consistent with the Federal Relocation and Real Property Acquisition Act and Oregon Revised Statutes.

At this time, initiation of condemnation action may be necessary to obtain the required legal possession. The authorization of the condemnation provides further documentation to property owners regarding income tax benefits available to them when properties are sold under threat of condemnation per IRS Code 1033.

Owners of property needed for public projects such as this one are offered just compensation for the required property interests as determined by an appraisal. Just compensation includes the appraised value of all the property rights and improvements within the acquisition area, including consideration of financial damages to the remainder parcel in the case of a partial acquisition. In this case, the property rights being acquired are in the form of a permanent path easement and a temporary construction easement. Acquisition procedures, guided by Federal Regulations and Oregon Revised Statutes have been designed to protect both owners of properties needed for public projects as well as the public agency and public funds.

The City's goal is to certify right-of-way and have federal funds obligated by September 30, 2010, with construction scheduled to begin in October/November 2010. Passage of this resolution will allow the City to acquire the necessary property rights consistent the federal and state statutes and requirements.

RELATED CITY POLICIES

The West Bank Trail Extension bicycle and pedestrian project has been included in the Metropolitan Transportation Improvement Program (MTIP) and is supported by transportation system plan (Transplan) policies. It was identified as a needed project because the existing connection is not direct, nor is it perceived as a safe route for pedestrians and bicyclists.

COUNCIL OPTIONS

The council's options are to adopt the resolution authorizing the use of eminent domain to acquire the remaining property rights or to direct staff to continue attempting to negotiate purchase of the property without the power of eminent domain.

CITY MANAGER'S RECOMMENDATION

Staff recommends that the council adopt the resolution authorizing acquisition through the eminent domain process of the needed property interests for the purposes of construction of the proposed public path.

SUGGESTED MOTION

Move to adopt Resolution 5012, authorizing the institution of proceedings in eminent domain for the acquisition of property interests (tax map 17-03-18-00 lot 699 and tax map 17-04-12-40 lot 800) for the bicycle pedestrian path extension.

ATTACHMENTS

- A. Resolution including Exhibit A
- B. Aerial Map

FOR MORE INFORMATION

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RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE INSTITUTION OF PROCEEDINGS IN EMINENT DOMAIN FOR THE ACQUISITION OF PROPERTY INTERESTS FOR THE WEST BANK WILLAMETTE RIVER PEDESTRIAN/BICYCLE EXTENSION PATH PROJECT.

The City Council of the City of Eugene finds that:

A. The City Council has authority under provisions of the City Charter and applicable state law to institute proceedings in eminent domain for the acquisition by condemnation of private property for public purposes, including rights-of-way and easements for improvement projects.

B. In February, 2006, the Oregon Transportation Commission approved a Federal Highway Administration transportation enhancement grant to construct a pedestrian-bicycle path in the vicinity of the Beltline Highway and the Willamette River. The West Bank Extension Project (“the Project”) has been in planning and design for years. Environmental documentation is nearing completion and the Project is consistent with the adopted Metropolitan Transportation Improvement Program (MTIP) and Transplan policies.

C. The Project requires acquisition of property rights owned by Delta Property Company, a limited partnership. City staff has contacted the property owner and delivered an Offer to Purchase, but an agreement has not yet been reached. Timely acquisition of the easement is necessary in order to complete the Project. All of the permanent easements and temporary construction easements needed for construction of the Project are depicted on the map attached as Exhibit A to this Resolution.

D. The public good realized from the project far outweighs any damage which the property owner might sustain, particularly in light of the City’s obligation to provide just compensation to the affected property owner.

Now, therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EUGENE, A Municipal Corporation of the State of Oregon, as follows:

Section 1. Based upon the above findings, which are adopted and incorporated herein by reference, the City Council of the City of Eugene finds, declares, and determines it necessary to acquire permanent easement rights of approximately .52 of an acre and a temporary construction easement area of approximately .23 of an acre, more particularly depicted on Exhibit A attached to this Resolution and incorporated herein by reference. The acquisition is necessary in order to construct the pedestrian-bicycle path under Beltline Highway and extending it adjacent to Division Avenue, including construction of a path undercrossing at the Delta Sand and Gravel

Company entrance driveway in accordance with the design prepared by the City Engineer and approved by the City Manager.

Section 2. The City Council directs that the City Manager or the Manager's designee shall continue negotiations with the affected property owner to acquire the needed property interests and, if necessary, institute proceedings in eminent domain for the condemnation of the real property interests described in Section 1. At least 40 days prior to the filing of any action for condemnation, the City Manager or the Manager's designee shall make a written offer to the owner or parties having an interest in the property of a stated amount as compensation therefore and for any compensable damages to the remaining property.

Section 3. The City Council further directs that the City Manager or the Manager's designee shall obtain for the City immediate possession of the real property interests described in Section 1 if negotiations will delay the construction of the described improvement.

Section 4. The City Council declares that the improvement described above is for a public purpose, is necessary for the public welfare, is the most compatible with the greatest public good and the least private injury, and is authorized under the laws of the State of Oregon and Charter and ordinances of the City of Eugene.

Section 5. The City Council further declares that the real property interest described in Section 1 shall be used by the City of Eugene for public purposes at the earliest possible date and, in any event, no later than ten years from the date this Resolution is adopted by the Council.

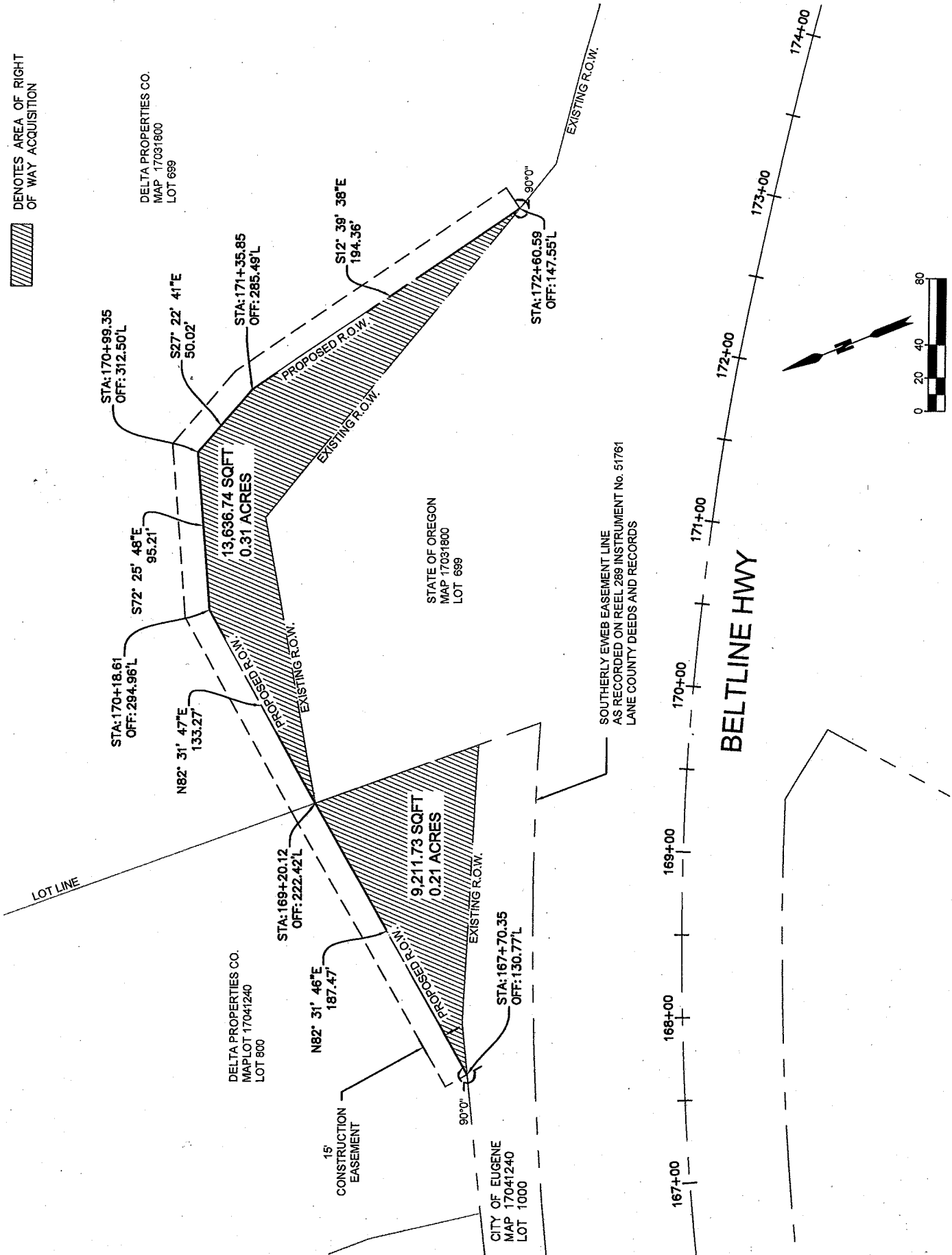
Section 6. This Resolution shall become effective immediately upon its adoption.

The foregoing Resolution adopted the ___ day of _____, 2010.

City Recorder

EXHIBIT "B"

DENOTES AREA OF RIGHT OF WAY ACQUISITION

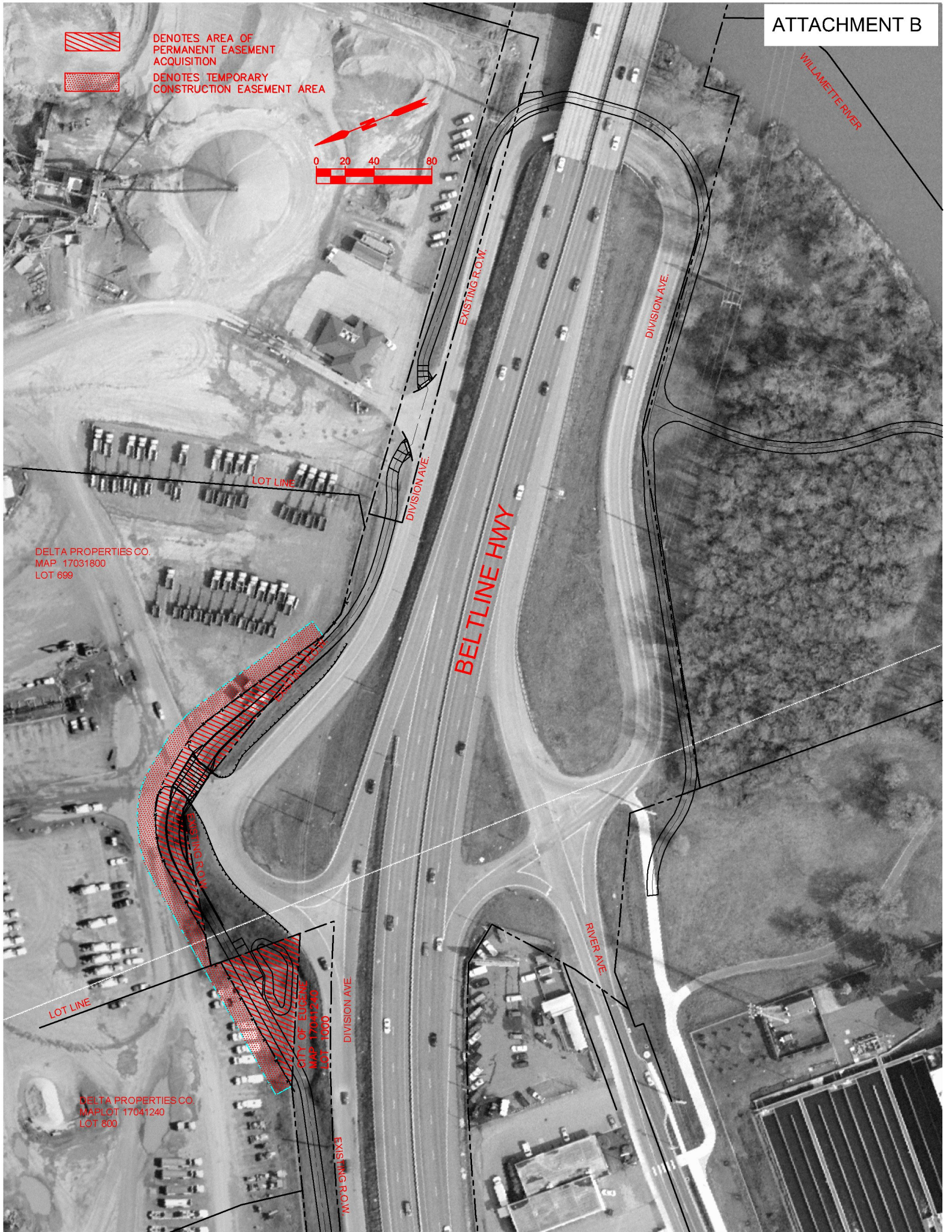
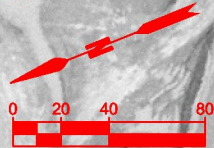




DENOTES AREA OF PERMANENT EASEMENT ACQUISITION



DENOTES TEMPORARY CONSTRUCTION EASEMENT AREA



WILLAMETTE RIVER

BELTLINE HWY

EXISTING R.O.W.

DIVISION AVE

DIVISION AVE

LOT LINE

DELTA PROPERTIES CO
MAP 17031800
LOT 699

EXISTING R.O.W.

RIVER AVE

LOT LINE

CITY OF EUGENE
MAP 17094245
LOT 1000

DIVISION AVE

EXISTING R.O.W.

DELTA PROPERTIES CO
MAPLOT 17041240
LOT 800