

Memorandum Date: November 17, 2008
Meeting Date: December 3, 2008

W8C

TO: Board of County Commissioners
DEPARTMENT: Public Works
PRESENTED BY: Ed Chastain, Transportation Planning
AGENDA ITEM TITLE: ORDER/IN THE MATTER OF DELEGATING AUTHORITY TO THE CITY OF WESTFIR TO ALLOW THE CITY TO PURSUE THE ESTABLISHMENT OF A TRAIN WHISTLE QUIET ZONE FOR CROSSING NUMBER CF-583.80(ODOT)/766237R(USDOT) ON WINFREY ROAD

I. MOTION

A motion to approve the Order is requested.

II. AGENDA ITEM SUMMARY

Delegating authority to the City of Westfir is necessary to enable the City to act on behalf of Lane County for the purpose of establishing a quiet zone at the Winfrey Road railroad crossing. **Attachment A** is the proposed Order. This action will satisfy a federal requirement that the City of Westfir and Lane County either work together to establish the quiet zone or that the County delegate authority to the City to act on its behalf. County involvement is required because Winfrey Road is under the County's jurisdiction. The railroad maintains existing railroad safety features. The only other improvements necessary are two motor vehicle traffic signs, one in each direction, "No Train Horn". Approval of the Order will delegate authority to the City sufficient to allow it to pursue establishment of the quiet zone.

The Order will also delegate authority to the County Administrator to sign an intergovernmental agreement with the City (Exhibit A to the proposed Order) regarding operational responsibilities for the quiet zone. Finally, the Order authorizes the Board Chair to send a letter to the City supporting the delegation as required by the Union Pacific Railroad to establish the quiet zone. A proposed draft of the letter is attached to this memorandum.

III. BACKGROUND/IMPLICATIONS OF ACTION

A. Board Action and Other History

49 Code of Federal Regulations (CFR), Section 222.37 governs who may establish a quiet zone. It reads in part, "A public authority may establish quiet zones irrespective of State laws covering the subject matter of sounding and silencing locomotive horns at public highway-rail grade crossings." The City, as a public authority, has initiated the process specified by the federal law to establish a train whistle quiet zone at the Winfrey Road railroad crossing.

Railroad quiet zone provisions were first published in the Federal Register on June 24, 2005, and since then a number of citizens and communities have shown interest in establishing quiet zones. The Board held a discussion with the County Engineer on February 8, 2006, after receiving such a request from a Jasper citizen. The Board gave informal direction to facilitate the process as long as the costs were borne by the applicant or those who benefit. In Jasper,

additional improvements would have been required at the crossings to establish a quiet zone. The costs were prohibitive to the citizen, so they were not pursued further.

Westfir and Oakridge have expressed interest in quiet zones. Westfir requested an onsite review with Lane County, Oregon Department of Transportation Rail, and Union Pacific Railroad to review two crossings. One would require improvements and would likely cause a driveway to be relocated, and the property owner wasn't in favor of the quiet zone so the City dropped their pursuit of a quiet zone at that crossing. However the crossing on Winfrey Road has low traffic volume and the existing railroads safety features, including gates, a bell, flashing lights, and "crossbucks", mean no additional improvements will be necessary, so the City wants to pursue a quiet zone in this location.

Westfir's Mayor, Neil Friedman, brought you a request for the Winfrey Road quiet zone during the public comment portion of your July 23rd regular meeting. Since then Transportation Planning staff has been working with the City to assemble the necessary documents to implement the request. The City passed Resolution No. 307 (Attachment B) on August 13, 2008 to enter into an IGA with the County covering any improvements necessary to establish a quiet zone at the Winfrey Road railroad crossing.

The City of Oakridge has expressed interest in a quiet zone through town that would include a crossing on the County's Fish Hatchery Road, and that request may come to the Board in the future.

B. Policy Issues

The Lane County Home Rule Charter, Section 8 provides guidelines on Intergovernmental Cooperation and Transfer of Functions. The policies listed in Section 8 give authority to the Board of County Commissioners to enter into intergovernmental contracts. Subsection 2 of Section 8 allows the transfer of functions from the County to be performed by a local government. The matter before you relates to this section.

C. Board Goals

The Board is being asked to delegate authority to the City for the purpose of establishing a quiet zone at the Winfrey Road railroad crossing. Two goals from the Strategic Plan, page 8, are relevant:

- *Contribute to appropriate community development in the areas of transportation and telecommunications infrastructure, housing, growth management, and land development.*
- *Maintain a healthy environment with regard to air quality, water quality, waste management, land use and parks.*

D. Financial and/or Resource Considerations

The main financial consideration is potential liability in the event of an accident due to the absence of a train horn as the railroad passes the crossing. Liability is thought to be limited because any injury or damages would have to show that such injury or damages were a direct result of the absence of the horn sound, despite the existence of gates blocking passage, flashing lights, and warning bell. The proposed Intergovernmental Agreement in Exhibit A to the Order specifies that the County assumes no liability for any potential claims associated with the quiet zone.

In addition, delegation of authority requires staff time processing the request, and the County Sign Shop produced the two required signs costing approximately \$60.

E. Analysis

This action would satisfy a federal requirement that the City of Westfir and Lane County either work together to establish the quiet zone or that the County delegate authority to the City to act on its behalf. County involvement is required because Winfrey Road is under the County's jurisdiction. Although Winfrey Road is maintained by the County, it is almost entirely within the city limits of Westfir. Delegating authority to the City to establish the quiet zone on behalf of the County makes sense since Winfrey Road primarily serves City residents.

The City acted in good faith by passing Resolution 307 where they agreed to enter into an IGA and take responsibility for any necessary improvements to establish the quiet zone. The federal law specifies improvements based upon a "risk index" measurement.

Existing railroad improvements include gates, a warning bell, flashing lights, and railroad crossing "crossbucks", all maintained by the Union Pacific Railroad. The only improvements necessary to establish the quiet zone at this location are two advanced warning signs prescribed by the Federal Highway Administration's Manual on Uniform Traffic Control Devices (MUTCD) reading "No Train Horn."

The question of liability is one that cannot be specifically measured, although the railroad maintains safety improvements, and therefore would likely be responsible in the event they fail. A claim for damages stating that the establishment of the quiet zone was directly responsible for an injury or damage would have to show that the absence of the train whistle was the reason that the injury or damage occurred. The IGA with the city specifies that the County assumes no liability for any claims. Liability questions are most appropriately addressed to Legal Counsel.

IV. Alternatives/Options

1. Move approval of the proposed Order.
2. Decline to approve the proposed Order.

V. TIMING/IMPLEMENTATION

If the Order is approved, staff will promptly process the IGA and signature of the letter.

VI. RECOMMENDATION

Option 1.

VII. FOLLOW-UP

None.

VIII. ATTACHMENTS

- A. Order and Exhibit A
- B. City of Westfir Resolution No. 307
- C. Draft Letter from the Board to the City of Westfir.
- D. Letter Dated August 11, 2008 from the City of Westfir to the Board of County Commissioners
- E. Vicinity Map
- F. Photos of the Winfrey Road RR Crossing Improvements

BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF LANE COUNTY, OREGON

ORDER NO.

-) IN THE MATTER OF DELEGATING
-) AUTHORITY TO THE CITY OF WESTFIR
-) TO ALLOW THE CITY TO PURSUE THE
-) ESTABLISHMENT OF A TRAIN WHISTLE
-) QUIET ZONE FOR CROSSING NUMBER
-) CF-583.80(ODOT)/766237R(USDOT) ON
-) WINFREY ROAD

WHEREAS, in cooperation with the Union Pacific Railroad, the City of Westfir wishes to establish a quiet zone adjacent to their city limits at crossing number CF-583.80(ODOT)/766237R(USDOT) on Winfrey Road, a county road; and

WHEREAS, certain county roads near or within the city's limits and at the public grade crossing require county coordination with the City of Westfir, and the Federal Railroad Administration and affected state agencies to establish railroad quiet zones; and

WHEREAS, the Code of Federal Regulations, specifically 49 CFR 222.37, provides for the delegation of authority to one public authority for the purpose of establishing a quiet zone where a public grade crossing is under the authority and control of more than one public authority; and

WHEREAS, the City Council of Westfir took action on August 13, 2008, and requested that Lane County delegate authority to the city to pursue the establishment of a quiet zone; and

WHEREAS, the city has agreed to take such actions as are necessary to establish a quiet zone and have agreed to cover all costs associated with any additional safety measures that may be necessary to establish a quiet zone; and

WHEREAS, the city has agreed to enter into an intergovernmental agreement (IGA) with the county defining the terms for establishment of a quiet zone and associated costs for additional safety measures necessary to establish a quiet zone; and

WHEREAS, delegating authority to the City of Westfir for the purpose of establishing a quiet zone, and delegating authority to the County Administrator to sign the above-referenced IGA on behalf of the county, will enhance the operational efficiency of Lane County; NOW, THEREFORE, IT IS HEREBY

ORDERED, that Lane County delegates limited authority to the City of Westfir, with respect to county roads located at public grade crossing number CF-583.80(ODOT)/766237R(USDOT), sufficient to allow the city to work with the Union Pacific Railroad, the Federal Railroad Administration and affected state agencies, to establish a quiet zone through the city.

IT IS FURTHER ORDERED that the County Administrator is delegated authority to execute an intergovernmental agreement with the city regarding the operation and maintenance of the quiet zone in a form substantially in conformance with Exhibit A to this Order.

IT IS FURTHER ORDERED that the Board Chair is authorized to sign a letter on behalf of the Board in support of the efforts of the City of Westfir to establish a train whistle quiet zone.

DATED this ___ day of December, 2008.

Faye Stewart Chair,
Lane County Board of Commissioners

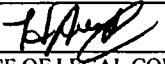
APPROVED AS TO FORM
Date 11-20-08 Lane County

OFFICE OF LEGAL COUNSEL

Exhibit A
INTERGOVERNMENTAL AGREEMENT
For
Operation and Maintenance of a Railroad Quiet Zone

THIS AGREEMENT is entered into by and between **LANE COUNTY**, a political subdivision of the State of Oregon, ("**COUNTY**"), and the **CITY OF WESTFIR**, a municipal corporation, ("**CITY**").

RECITALS

1. ORS 190.010 and the Lane County Home Rule Charter provide that units of local government may enter into agreements for the performance of any or all functions and activities that a party to the agreements, its officers or agents, have authority to perform.
2. ORS 373.260(1)(b) provides that counties, and cities with populations of less than 100,000 may enter into intergovernmental agreements for the construction, improvement or repair of, any road outside the corporate limits of the **CITY** but leading to it.
3. **COUNTY** and **CITY** have determined that it is to the City's benefit and to the general public's benefit for the City to establish a quiet zone for the railroad crossing at Winfrey Road, a Lane County road, mile post 0.41, serving Union Pacific Railroad, Crossing No. CF-583.80 (ODOT)/766237R(USDOT).
4. 49 CFR 222.37(a) requires that, if a proposed quiet zone includes public grade crossings under the authority and control of more than one public authority the public authorities must agree to establishment of the quiet zone, and must jointly, or by delegation provided to one of the authorities, take the actions required by the federal rule. The proposed Westfir quiet zone includes County road facilities.
5. Union Pacific Railroad maintains existing railroad safety features including gates, a bell, flashing lights, and "crossbucks".
6. The quiet zone at Union Pacific Railroad, Crossing No. CF-583.80/766237R will be subject to annual review by ODOT Rail Division under a delegation of authority from Federal Railroad Administration to ensure that the Quiet Zone Risk Index for vehicular traffic remains at, or below, the Nationwide Significant Risk Threshold.
7. The **CITY** took action on August 13, 2008 to request that the **COUNTY** delegate its authority to the city to establish a quiet zone.
8. The **COUNTY** took action on December 3, 2008 to delegate authority to the city to establish a quiet zone for the railroad crossing improvements located at Union Pacific Railroad, Crossing No. CF-583.80/766237R.
9. **COUNTY** and **CITY** desire to enter into an agreement where **CITY** operates and maintains, at its sole expense, the quiet zone described above.

AGREEMENTS

CITY and **COUNTY** agree:

10. Further to the delegation of authority reflected in County Board Order No. _____, CITY will take such actions as required to establish the quiet zone, and will be financially or otherwise responsible, now and in the future, for any required supplementary safety measures to maintain the quiet zone unless furnished by and at the expense of the Railroad. County is not financially or otherwise responsible, now and in the future, for any supplementary safety measures required to maintain the quiet zone. Railroad crossing improvements subject to this Agreement are located at Union Pacific Railroad Crossing No. CF-583.80/766237R.

11. In the event of damage, injury or other claim associated with implementation of the quiet zone at the Winfrey Road railroad crossing, the County assumes no liability for such a claim.

12. The applicable provisions of the Lane Manual setting forth standard provision for public contracts (LM 21.130) are incorporated by this references as if fully set forth.

INDEMNITY

13. Each of the parties agrees to defend, indemnify and hold the other harmless from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses, resulting from or arising out of any negligent performance or failure to perform on the part of the indemnifying party, its officers, employees or agents. Further, City agrees to defend, indemnify and hold County harmless from all claims, suits, actions, losses, damages, liabilities, costs and expenses, arising from the establishment, operation or maintenance of the quiet zone. The parties' indemnity and hold harmless obligations are subject to the limitations of the Oregon Tort Claims Act and any applicable limitations of the Oregon Constitution.

TERM AND TERMINATION

14. CITY and COUNTY understand and agree between them that this Agreement is intended to govern the rights, duties and obligations between the parties during the time period that the quiet zone is in existence. Accordingly, the term of this Agreement is for as long as the quiet zone that is the subject of this Agreement is in effect for the Union Pacific Railroad crossing at Winfrey Road.

15. This Agreement may be terminated as follows: (a) by the mutual consent of both parties, (b) by COUNTY following written notice to CITY at least ninety (90) days prior to the stated termination date, or (c) by either party upon notice to the other party following the termination of the quiet zone by federal or state authorities. This Agreement may not be terminated unilaterally by CITY at any time prior to termination of the quiet zone.

16. Claims or defenses arising under paragraphs 11, 12 and 13 above, survive termination of this Agreement.

AMENDMENTS

17. This Agreement may be amended by agreement of the parties. No amendment to this Agreement is effective unless made in writing and signed by both parties.

CITY OF WESTFIR

LANE COUNTY, OREGON

By: _____
Neil Friedman, Mayor

By: _____
Jeff R. Spartz, County Administrator

Date: _____

Date: _____

APPROVED AS TO FORM
Date _____ Lane County

OFFICE OF LEGAL COUNSEL

**RESOLUTION NO. 307
A RESOLUTION TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT
WITH LANE COUNTY FOR THE ESTABLISHMENT OF A TRAIN WHISTLE
QUIET ZONE**

WHEREAS, the City of Westfir wishes to establish a train whistle quiet zone that includes Crossing No. CF-583.80/766237R on Winfrey Road 6126, and

WHEREAS, Winfrey Road is under the domain of Lane County,

WHEREAS, Union Pacific requires documentation that Lane County has delegated to the City of Westfir the authority to establish a Quiet Zone on this crossing,

NOW, THEREFORE, BE IT RESOLVED to:

1. Enter into an Intergovernmental Agreement with Lane County that gives the City of Westfir the authority to establish a train whistle quiet zone on Union Pacific Crossing No. CF-583.80/766237R; and
2. The City of Westfir agrees to take financial responsibility for improvements to Crossing No. CF-583.80/766237R and for any other costs associated with the quiet zone; and
3. The City of Westfir agrees to obtain a facilities permit from Lane County for any required improvements; and
4. The City of Westfir agrees to provide to Lane County the information that will be put in a letter to Union Pacific advising them that Lane County is giving the City of Westfir the authority to establish the quiet zone.

PASSED BY THE COMMON COUNCIL and approved by the Mayor this 13
day of August, 2008.

ATTEST: Elizabeth Murray
Elizabeth Murray, City Recorder

Neil Friedman
Neil Friedman, Mayor

AYES: 3

NAYS: 0



Bill Dwyer
Bill Fleenor
Bobby Green, Sr.
Peter Sorenson
Faye Hills Stewart

December 3, 2008

Neil Friedman, Mayor
City of Westfir
47411 Westoak Road
Westfir, OR 97492

Dear Mayor Friedman:

The City of Westfir has asked Lane County to support its efforts to establish a train whistle quiet zone that would include railroad crossing No. CF-583.80(ODOT)/766237R(USDOT), located on Winfrey Road (No. 26), which is under the authority and control of Lane County.

Lane County supports the City of Westfir in this effort, provided the City of Westfir will be responsible for any improvements to the railroad crossing that are required for the establishment of the quiet zone. The City of Westfir has agreed to enter into an Intergovernmental Agreement with Lane County representing that it will take financial responsibility for any improvements to the railroad crossing that are necessary to establish and maintain the quiet zone and for any related costs associated with the quiet zone. At this time, as you know, no additional improvements are required, pursuant to information from the Oregon Department of Transportation Rail Division. A signed copy of the Board Order delegating this authority is enclosed.

The Order delegates to the City of Westfir the authority to act on its behalf and take such actions as are required for the establishment of a train whistle quiet zone that will include crossing No. CF-583.80/766237R. The crossing is located on Winfrey Road (No. 26), which is under the authority and control of Lane County.

Sincerely,

Faye Stewart Chair,
Lane County Board of Commissioners



CITY OF WESTFIR

P.O. BOX 298
47441 WESTOAK ROAD
Westfir, OR 97482

Telephone 541-782-3733
Fax 541-782-3983

August 11, 2008

Lane County Board of Commissioners
125 E. 8th Avenue
Eugene, OR 97401

RE: City of Westfir
Westfir Quiet Zone

Dear Board of Commissioners,

The City of Westfir has been trying for several years to establish a train whistle quiet zone that would include only one crossing, No. CF-583.80/766237R (Winfrey Road 6126). Lane County has been cooperative and has supported us in our efforts with the understanding that the City of Westfir will be responsible for any improvements to the crossing, as indicated in a letter dated March 7, 2007.

Unfortunately, we learned in March, 2008 that Union Pacific Railroad was not aware that the road was under the authority and control of Lane County. Steve Berki, U.P., said in a letter dated March 27, 2008 that because the road is under the authority and control of Lane County, "both public authorities must agree to establishment of the quiet zone, and must jointly or by delegation provided to one of the authorities, take such actions as are required by this part (Section 227.37 of the Train Horn Rule)". Therefore, the City of Westfir would like to request that Lane County formally delegate to the City of Westfir the authority to establish this quiet zone.

The City of Westfir is willing to enter into an Intergovernmental Agreement with Lane County that states that the City of Westfir will take financial responsibility for improvements and other any other costs associated with the quiet zone, and that Westfir will obtain a facilities permit from Lane County for any required improvements.

In addition, we would like to ask Lane County to prepare a letter that will be included in the Notice of Establishment packet delegating the authority to establish a quiet zone at this crossing to the City of Westfir. This letter should be signed by Lane County's legal counsel and include the following:

"Lane County hereby delegates to the City of Westfir the authority to act on their behalf in the establishment of a train whistle quiet zone that will include Crossing No. CF-

Lane County Board of Commissioners
August 11, 2008
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583.80/766237R. This crossing is located on Winfrey Road 6126 in Westfir, which is under the authority and control of Lane County. The City of Westfir agrees to take financial responsibility for any required improvements to this crossing and for any other costs associated with the quiet zone and to get a facility permit from Lane County for any required improvements.”

The City of Westfir is anxious to get this quiet zone established and would appreciate a timely response from Lane County. Our residents have been waiting a very long time for this process to be completed.

Please feel free to contact me at 782-3733 if you have any questions regarding this matter. You can also send an email to westfircity@qwestoffice.net.

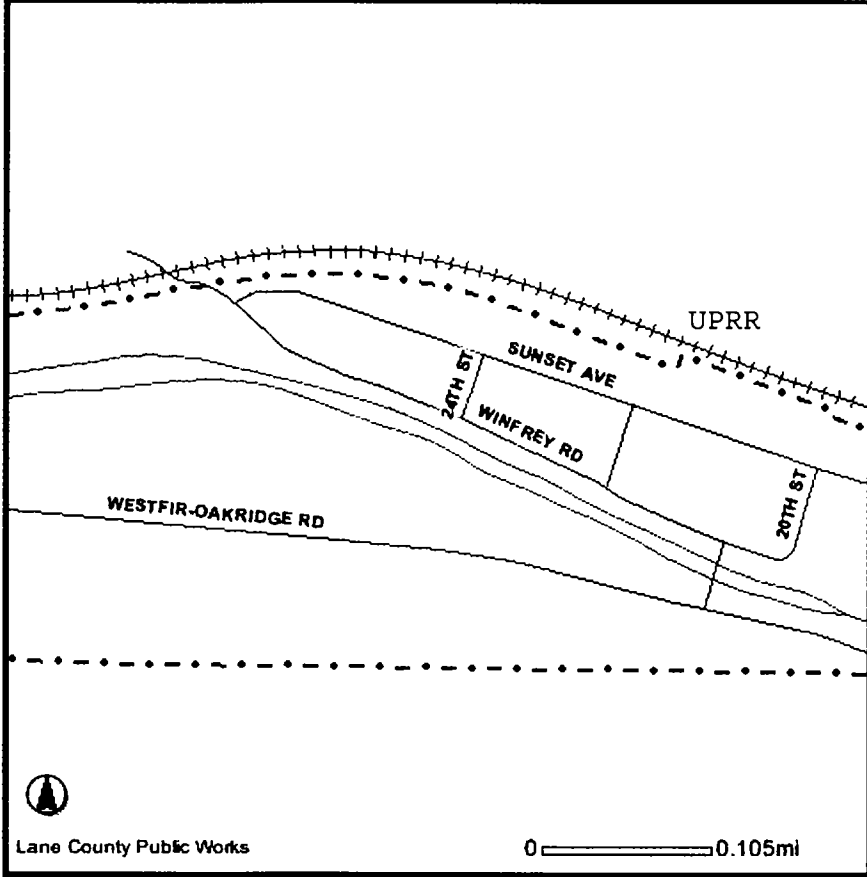
Thank you for your help with this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Neil Friedman", with a long, sweeping underline.

Neil Friedman, Mayor
City of Westfir

Winfrey Road Vicinity Map



- Legend**
- Road Names
 - - - LC Boundary
 - City/Town
 - Roads(LC Inventory)
 - + - + - Railroads
 - · - · - UGBs
 - Rivers

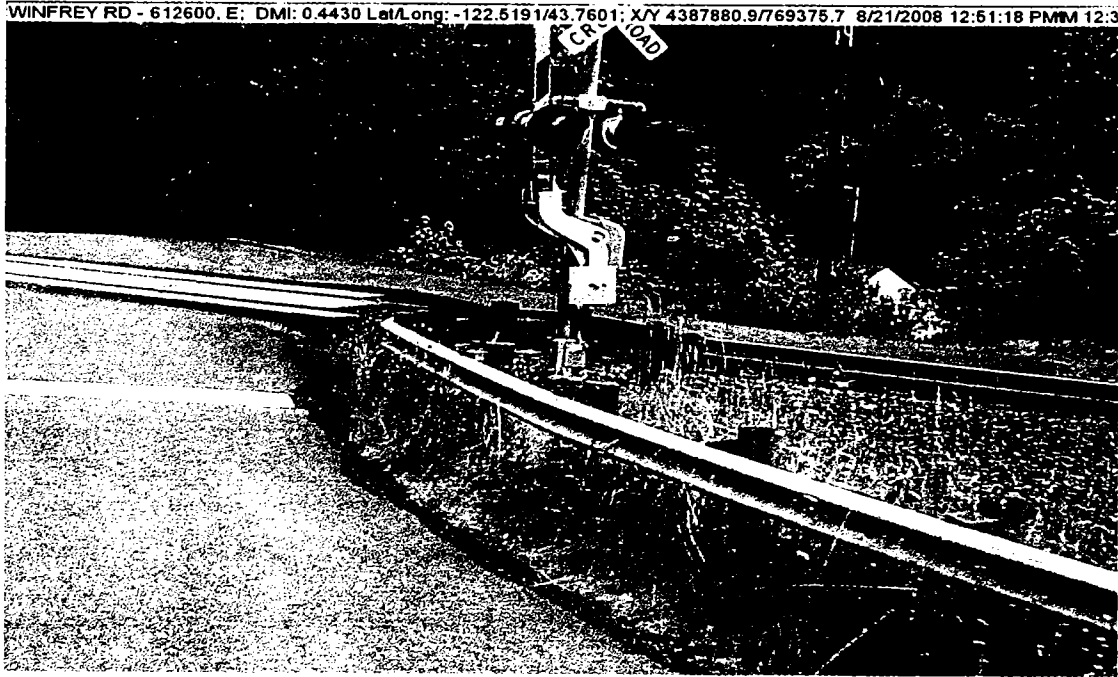


Lane County Public Works

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Winfrey Road Railroad Crossing Improvements

West Side RR Crossing Improvements



East Side RR Crossing Improvements

