### INTRODUCTION

The table below lists each of the statements from the Recall Petition that Ward 7 City Councilor, Claire Syrett, has claimed is "False" in her lawsuit by which Syrett intends to block a vote by her constituents.

For each statement in the petition, direct excepts from the **MovingAhead** project's "ALTERNATIVES ANALYSIS REPORT – SEPTEMBER 2018" are provided to substantiate the basis for the respective petition statement. The attached pages from MovingAhead's "Multimodal Transit Corridor Concept Plans – July 2017" provide drawings related to the excerpts from the "Alternatives Analysis Report" cited below. Each drawing depicts travel lanes and a "*Proposed* Construction Footprint" (emphasis added).

The table lists each corresponding explanation from Syrett's lawsuit whereby she asserts that a statement is false.

Each claim is evaluated for its legal merit with respect to ORS 260.352(1) and (5), which are the legal basis for the lawsuit. The operative elements in these to statutory sections are:

ORS 260.352(1): "No person shall cause to be ... published ... with knowledge or with reckless disregard that the ... publication ... contains a false statement of material fact relating to any candidate ...."

ORS 260.352(5): "... the plaintiff must show by clear and convincing evidence that the defendant violated subsection (1) of this section."

Thus, as the plaintiff, Claire Syrett must provide "convincing evidence" that:

- a) Statement(s) on the petition application were false not just uncertain.
- b) The petitioners *knew* that the statements were false or acted *with reckless disregard* (for example, by not even basing the petition statements on credible evidence.

#### **SUMMARY**

As the detailed analysis of the petition statement, the evidence on which the statements were based, and Syrett's arguments in her lawsuit make clear, the lawsuit fails to meet either of the necessary criteria in ORS 260.352(1) and (5). The statements are not false, and the petitioners were diligent in basing their statements on documentation published by Lane Transit District (LTD) and the MovingAhead project team.

#### **PREFACE**

As reported in *The Register-Guard* (August 19, 2022):

"'It is might, not will,' [LTD] transit district spokesperson Pat Walsh said in an email."

This is the explicit expression of the basis upon which all of Syrett's claims are made, *i.e.*, that the petition statements are based only on a record of outcomes (e.g., removal of two car lanes on River Road) that "might" happen. The lawsuit boils down to this: A claim that something will happen is false if there is any uncertainty at all.

That argument is baseless. First off, Claire Syrett voted to approve plans for the specific "EmX Alternative" for River Road that was described in detail in MovingAhead's "Alternatives Analysis Report." All relevant statements in the report used the word "would," not "might." For example, "The number of general-purpose lanes **would** be reduced ..." (emphasis added) on page 5-10 of the report. Had the report consistently used the word "might," the case would be

different – but that's not what the report used, and for good reason. Each of the alternatives considered by Councilor Syrett and the other councilors was in substance a *proposal*, and the City Council's job was to choose for each of the different routes assessed in the report between a "No-Build" alternative, which meant no project was approved, and approval of either an "Enhanced Corridor" project or an "EmX" project. When Syrett voted for the "EmX Alterative" for the River Road corridor, she voted to approve the project that was described in the report. The report's detailed description of the outcomes of that choice was a reliable basis for the petition statements.

The consistent use of "would" in *all* of the alternatives for all corridors was precisely the proper grammatical choice. "Would" in this instance is the subjunctive form to be used when what is stated as "would" occur is *conditional*. Every future action or impact was expressed in this subjunctive form for the obvious reason that *the described events were conditional on an alternative being selected to become a project*. In simple terms, the selected projects' stated outcomes will occur if the project is implemented; whereas a rejected projects' stated outcomes will not occur.

The lack of merit in Syrett's claims are not just because of her implicit misrepresentation that all future actions "might" rather than "would" occur. Simply looking at the substance of the "EmX Alternative" on River Road confirms that, with the Council's approval of this project, a statement that the project "will remove two lanes for cars on River Road" is the only reasonable conclusion from reading the text and examining the diagrams that are in the report. Dedicated "BRT" lanes are a defining, inherent, and inseparable element of "EmX" on River Road; and there is no reasonably imaginable way that EmX on River Road can be accomplished without removing two travel lanes. The same is true for the reports statements about taking of private property, tree and parking removal, and the increase in congestion. While some details of the EmX design on River Road might be tweaked prior to implementation, e.g., a few trees spared, the material substance of the petition statements is true.

Of course, if EmX were never constructed on River Road, then none of the impacts in the petition statements will happen. But the whole petition statement is clear from the beginning that it is the <u>project</u> that will create the impacts (e.g., "Claire Syrett voted to advance the multimillion dollar MovingAhead **project** that will remove two lanes for cars on River Road ..." Emphasis added.) There is no claim or insinuation that Syrett somehow voted unconditionally "to remove two lanes for cars on River Road."

In summary, nothing in Syrett's explanation even begins to prove that any of the petition statements is *false*. The extent of Syrett's argument is limited to this: Because there can't be 100.00% certainty that if EmX is implemented on River Road, the impacts described in the petition statements will occur, the statements cannot be considered "true" and is therefore not just uncertain, but "false." Such an extreme standard for what is a knowingly "false" statement would make a great deal of campaign discourse in violation of ORS 260.352(1).

Furthermore, and the final nail-in-the-coffin of Syrett's lawsuit is that the standard in ORS 260.352(5) is: "To prevail in such an action, the plaintiff must show by clear and convincing evidence that the defendant violated subsection (1) of this section." And, subsection (1) prohibits a statement that "contains a false statement of material fact." Syrett's lawsuit goes no further than to claim that several petition statements may not be "true" regarding some marginal design elements that may be revised in the final implementation.

Statements in the Recall Petition, Which Are Challenged by Clair Syrett	Statements in MovingAhead's "ALTERNATIVES ANALYSIS REPORT" SEPTEMBER 2018	Claire Syrett's Claims of "False" Statements in Her Lawsuit	Evaluation of Claire Syrett's Claims
A.  "Claire Syrett voted to advance the multimillion dollar MovingAhead project that will remove two lanes for cars on River Road and replace them with dedicated EmX bus lanes."	EmX Alternatives are characterized by exclusive guideways (BAT or bus-only lanes) 1-19  A business access and transit (BAT) lane is reserved for buses and turning vehicles only BAT lanes are restricted to transit vehicles except where vehicles enter or exit adjacent property or where they need to make a right turn at an intersection EmX Alternatives would use BAT lanes. 1-29  The number of general-purpose lanes would be reduced to construct BAT lanes, which would reduce vehicular capacity and allow buses and right-turning vehicles only on River Road from Northwest Expressway to approximately Kourt Drive. (Emphasis Added) 5-10  Figure 5-2: River Road Corridor EmX Alternative See diagram 2 "Business Access & Transit Lanes" cross-section showing only two lanes for cars. 5-12	"MovingAhead is still in the planning/proposal stage. It does not approve or implement any specific project. The actual configuration of EmX on River Road has not been determined."	Syrett voted on the selection of a "preferred alternative" for implementation on the River Road corridor, based on a highly detailed specification of that alternative, including its essential characteristics and its impacts.  Contrary to Syrett's claim, this decision happened after the planning and analysis was substantially complete. The proposals were fully developed when the City Council selected among them.  Removing two lanes for cars is an inherent, essential, and inseparable aspect of the "EmX Alternative" on River Road. The actual configuration regarding this aspect has been determined. If the EmX Alternative for River Road is implemented, it is unequivocally true that two lanes for cars will be removed.  The petition statement is TRUE. This claim by Syrett is meritless.

# В.

"This will leave only one lane for cars in each direction and take substantial private property from businesses and residences, including removal of parking and trees."

# Figure 5-2: River Road Corridor EmX Alternative

See diagram 2 "Business Access & Transit Lanes" cross-section showing only two lanes for cars. 5-12

The EmX Alternative would *require* 37 partial and 3 full property acquisitions from commercial and industrial, public and institutional, and residential parcels, comprising an estimated 2.2 acres. Both River Road Corridor build alternatives have the potential to displace businesses. (Emphasis added) 5-18

Property acquisition *would* impact off-street parking for 1 parcel under the Enhanced Corridor Alternative and for 7 parcels under the EmX Alternative. In addition, drive-through circulation would be impacted at 4 commercial properties under the Enhanced Corridor Alternative and 6 commercial properties under the EmX Alternative. These impacts would potentially result in the full acquisition of 2 commercial properties and displacement of up to 4 businesses under the Enhanced Corridor Alternative and 3 full acquisitions and 6 business displacements under the EmX Alternative. (Emphasis added) 5-18

a total of 2.2 acres [of land would potentially be acquired] from 40 parcels for the EmX Alternative ... up to 118 medium and large street trees would be removed under the EmX Alternative. 5-21

the EmX Alternative would result in removal of 31 off-street parking stalls at 7 properties. 5-23

Under the EmX Alternative up to 118 medium to large street trees and 7 to 9 medium to large landscape trees outside of the Charter Tree boundary and 14 trees within the Charter Tree boundary would be potentially removed. 5-40

Both build alternatives would result in removal of off-street parking stalls [31 for EmX alternative], as listed in Table 5-22. Further, both the Enhanced Corridor and EmX Alternatives would require changes to on-site circulation that would result in displacement of up to 4 or 6 businesses with drive-throughs, respectively. 5-43

"The passage of the MovingAhead Resolution has not authorized any changes to the transportation infrastructure, including taking of private property or tree removal; only an actual authorized project could do that. The extent to which any private property, if any, may be impacted should a transportation project be implemented on River Road is not known at this time."

As described above, the inherent, essential, and inseparable aspects of the "EmX Alternative" on River Road require: Two BAT lanes, one lane in each direction for cars, a center "refuge lane" (so that the two travel lanes for cars are not impeded by left-turning vehicles), and a bike lane in each direction.

The fundamental design of this EmX Alternative can be accommodated *only* by acquiring additional, land outside the current right-of-way for construction.

As documented in the MovingAhead report, It is unequivocally *true* that this requirement will result in taking substantial private property from businesses and residences, including removal of parking and trees.

The petition statement is TRUE. This claim by Syrett is meritless.

C.	River Road is currently a heavily traveled roadway owned and	"The purpose of the	Sta
"Traffic congestion will	managed by the City of Eugene (City) with an average daily traffic	MovingAhead planning	on
increase."	(ADT) volume of more than 32,000 vehicles near its intersection	project is to consider	con
	with the Randy Papé Beltline Highway. 5-4	proposals that will	Alte
	The number of general-purpose lanes would be reduced to	reduce traffic	cor
	construct BAT lanes, which would reduce vehicular capacity and	congestion."	Ν
	allow buses and right-turning vehicles only on River Road from		"En
	Northwest Expressway to approximately Kourt Drive. (Emphasis		pro
	Added) 5-10		con
	Volume-to-capacity (v/c) ratio is used as a principal measure		inte
	of congestion. The "V" represents the volume or the number of		Т
	vehicles that are using the roadway at any particular period. The		clai
	"C" represents the capacity of a roadway at its adopted LOS. 9-13		
	Summary from data in Table 9-5: P.M. Peak Hour Study		
	Intersection Performance at 9-15 and 16.		

Stating a "Purpose" has no bearing at all on whether or not the planned configuration and operation of the EmX Alternative on River Road would impact congestion.

MovingAhead's report shows that the "EmX Alternative" increases the projected "principle measure" of congestion(v/c) at every River Road intersection.

The petition statement is TRUE. This claim by Syrett is meritless.

All 7 intersections on River Road north of Northwest Expressway show increases in v/c ratios from current levels to levels under the EmX alternative.

• Irving Road/ Hunsaker Lane: 53%

• Ruby Avenue/ Division Avenue: 14%

• Randy Papé Beltline westbound on-ramp: 4%

• Randy Papé Beltline eastbound on-ramp: 20%

• Silver Lane/ River Avenue: 8%

• Maxwell Road/E. Rosewood Avenue: 49%

• Horn Lane/ Arbor Drive: 37%

Average: 26%

## D.

"Syrett supports MovingAhead's EmX plan despite the fact that taxes will need to increase to support operations and maintenance for a system which cannot be re-routed to accommodate changes in ridership."

Payroll taxes make up the largest portion of LTD's general fund revenues, and while long-term growth is highly likely for this revenue source, short-term fluctuations created by changes to the local economy are more difficult to anticipate. Because the **payroll tax represents such a significant portion of the general fund**, a small change in its projected growth rate can significantly affect downstream revenues. Without adjusting for inflation, **LTD estimates payroll tax revenues to grow 3% annually**. (Emphasis added) 10-9

As described earlier, LTD's primary source of operating revenue is the payroll tax. ... The implications of this are that service levels on opening day may be lower than assumed in current forecasts. 10-11

"This statement is false because, while the WorkingAhead [sic] project's mandate includes identifying funding sources from existing state resources and federal matching programs, not from local taxes. Whether LTD transit tax, which funds transit operations, will need to be increased to support MovingAhead proposals is not known at this time."

There is no debate that the EmX Alternative on River Road is a very large investment in infrastructure that is essentially permanent.

The MovingAhead report itself projects that "payroll tax revenues to grow 3% annually."

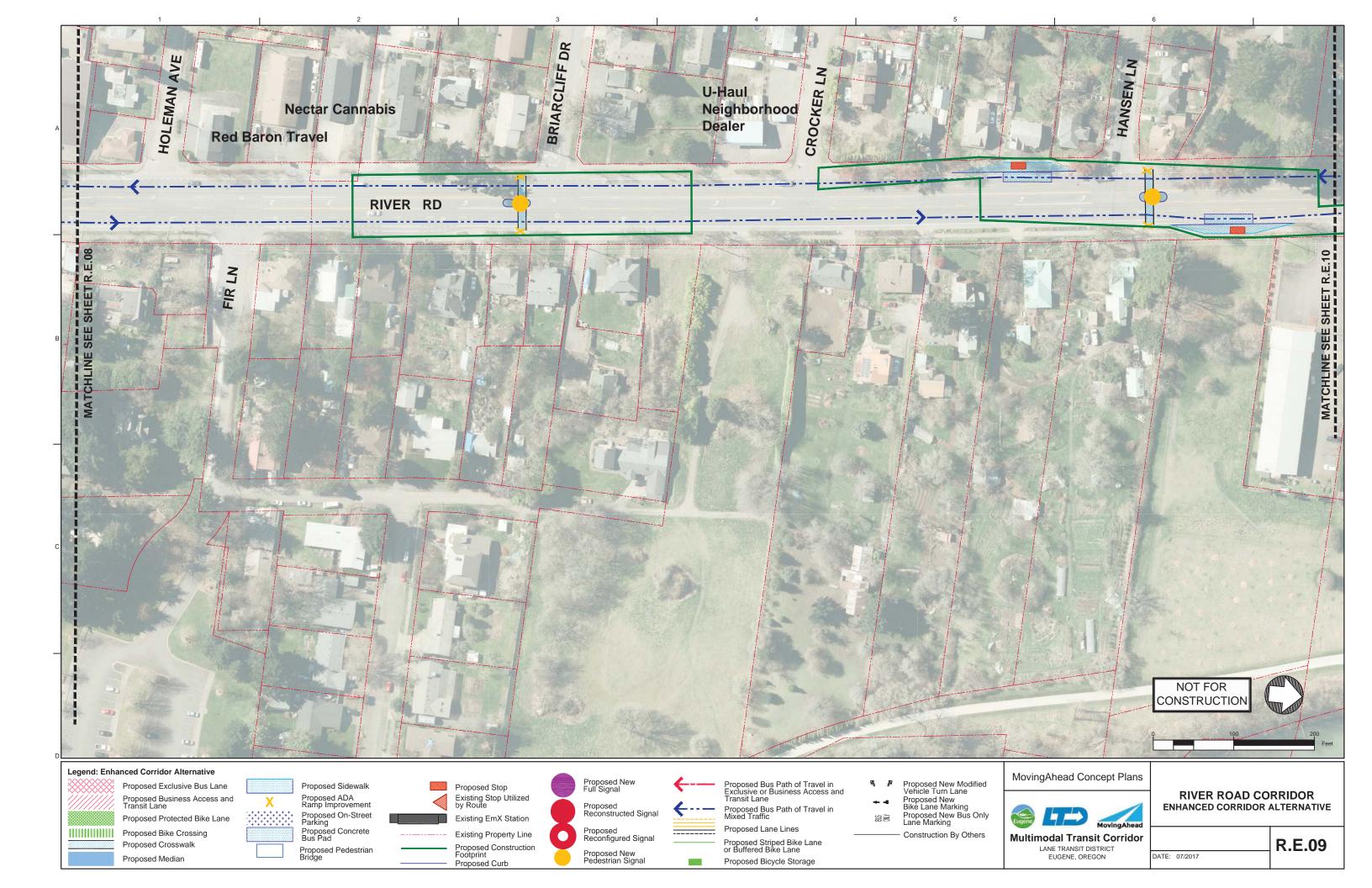
Because the MovingAhead plans are not integrated with mixed use development plans, there is no assurance that EmX on River Road won't fall as far below ridership projections and fare revenues as the West Eugene EmX Extension (WEEE) has done.

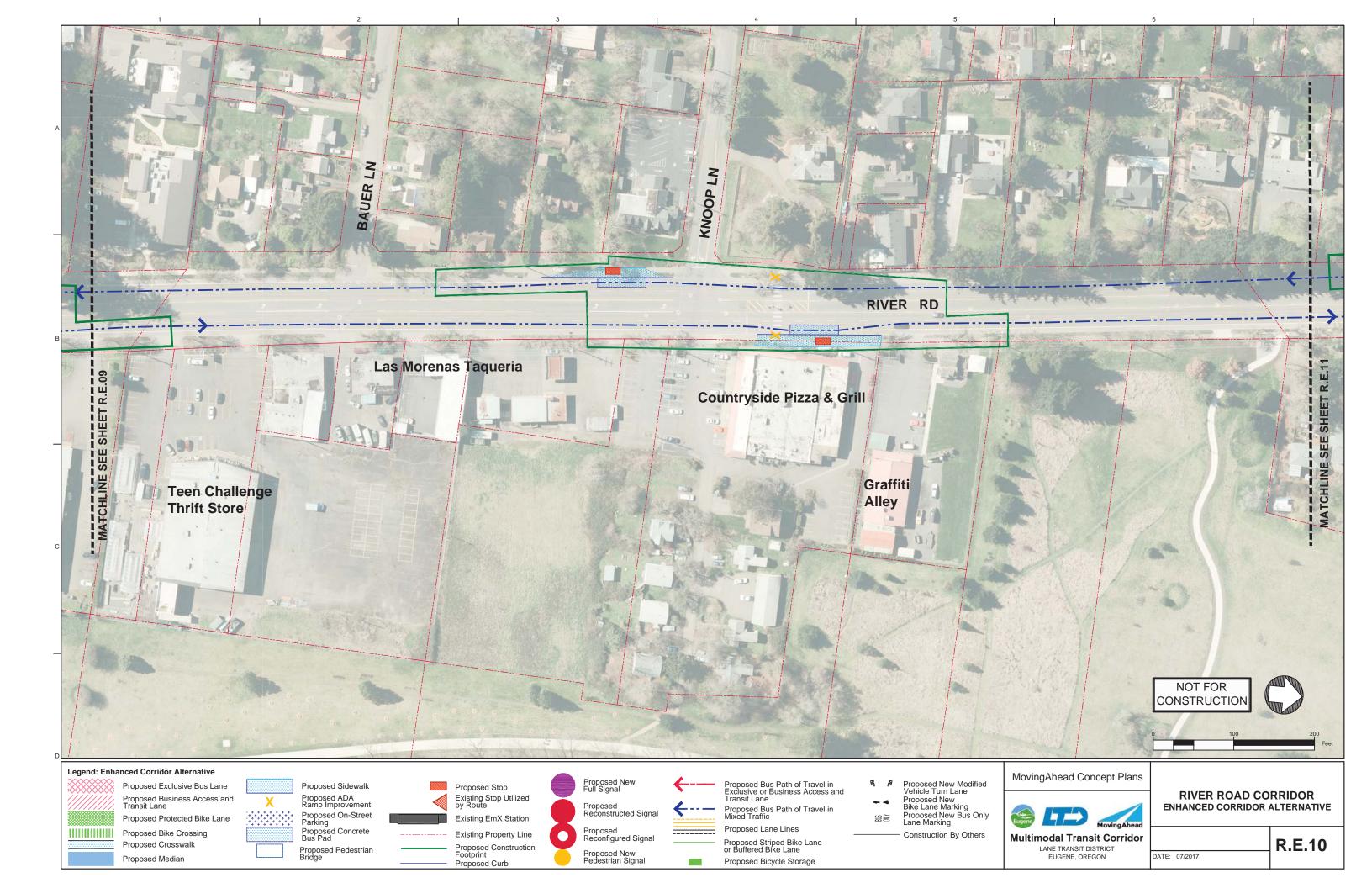
As with the millions sunk into WEEE and the substantial ongoing subsidy of WEEE required to maintain the minimum "Bus Rapid Transit" frequency of service, there would be only the following choices for EmX on River Road:

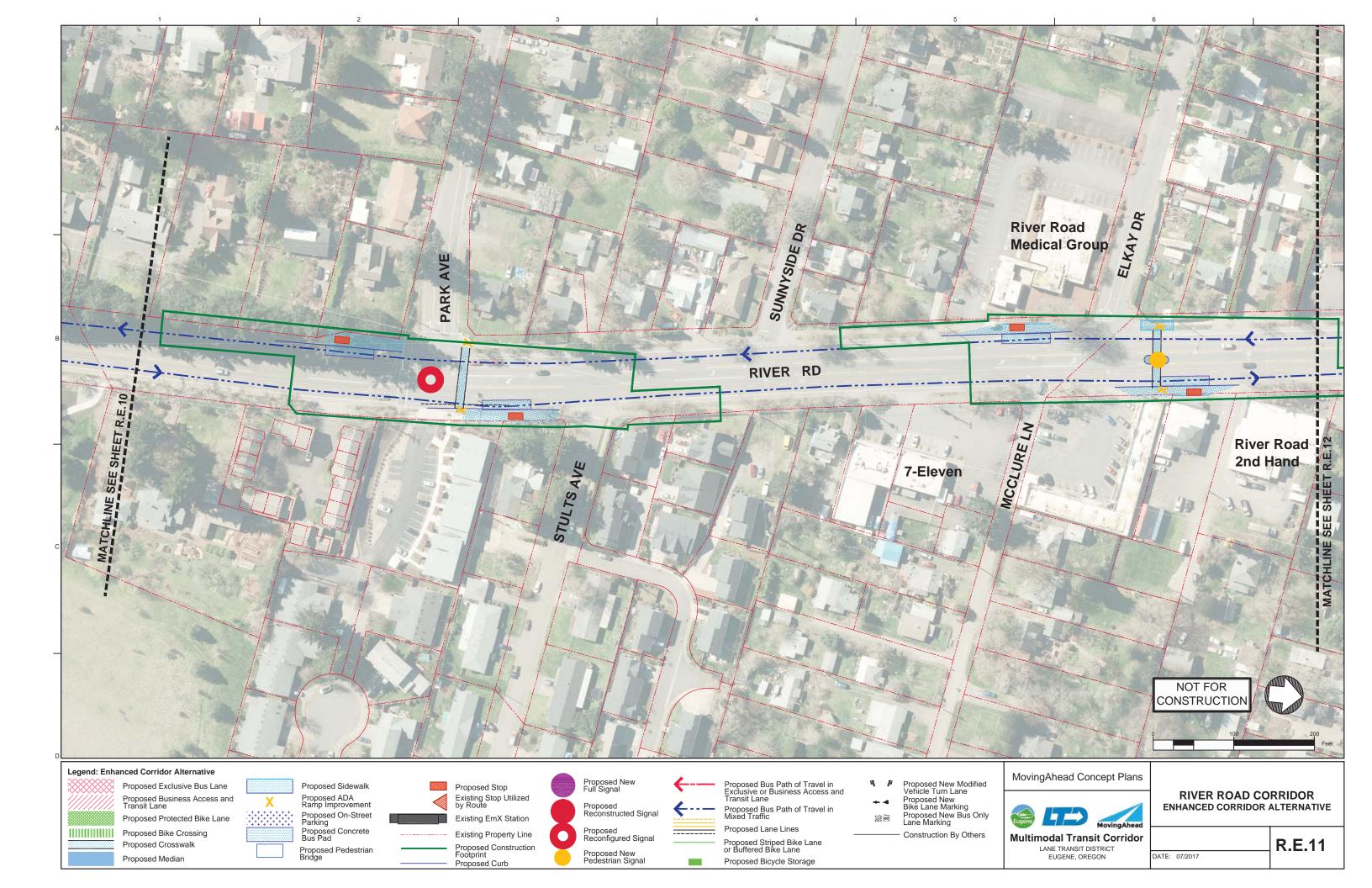
- Abandon the service,
- Reduce the service to below the level that would produce the claimed benefits, or
- Increase subsidies from the payroll tax.

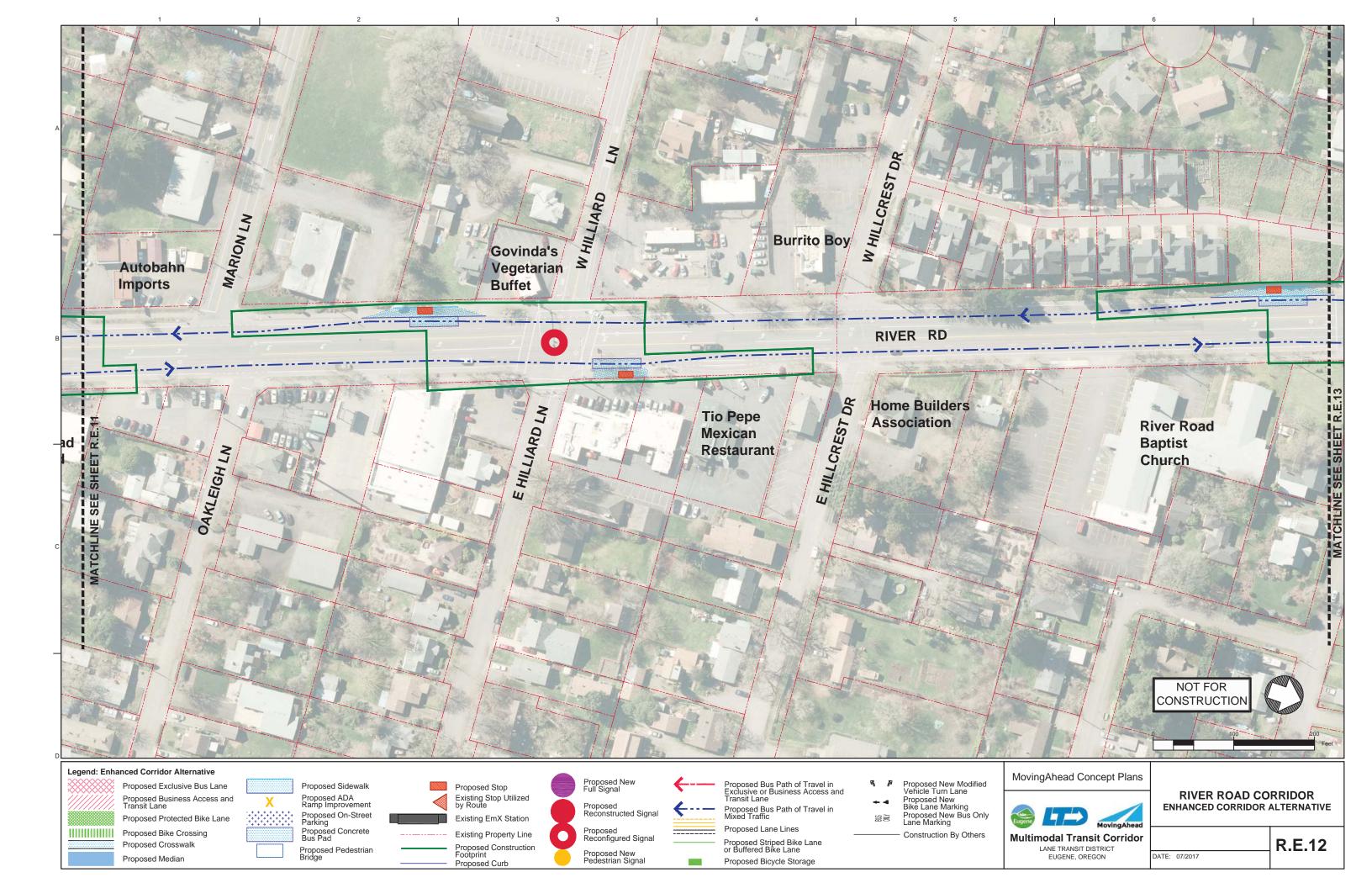
The petition statement is not false. It is a reasonable opinion, based on substantial evidence.

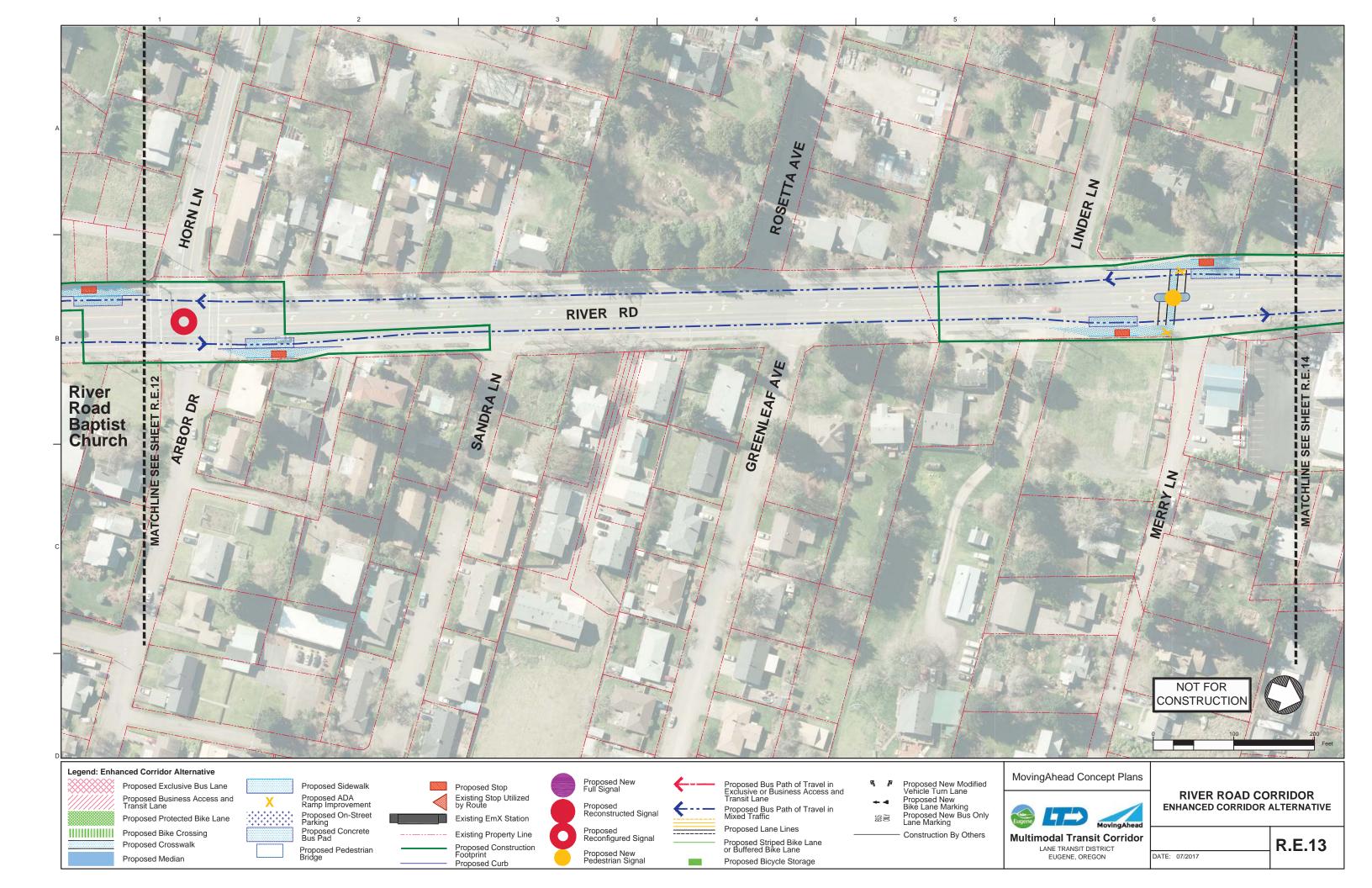
This claim by Syrett is meritless.

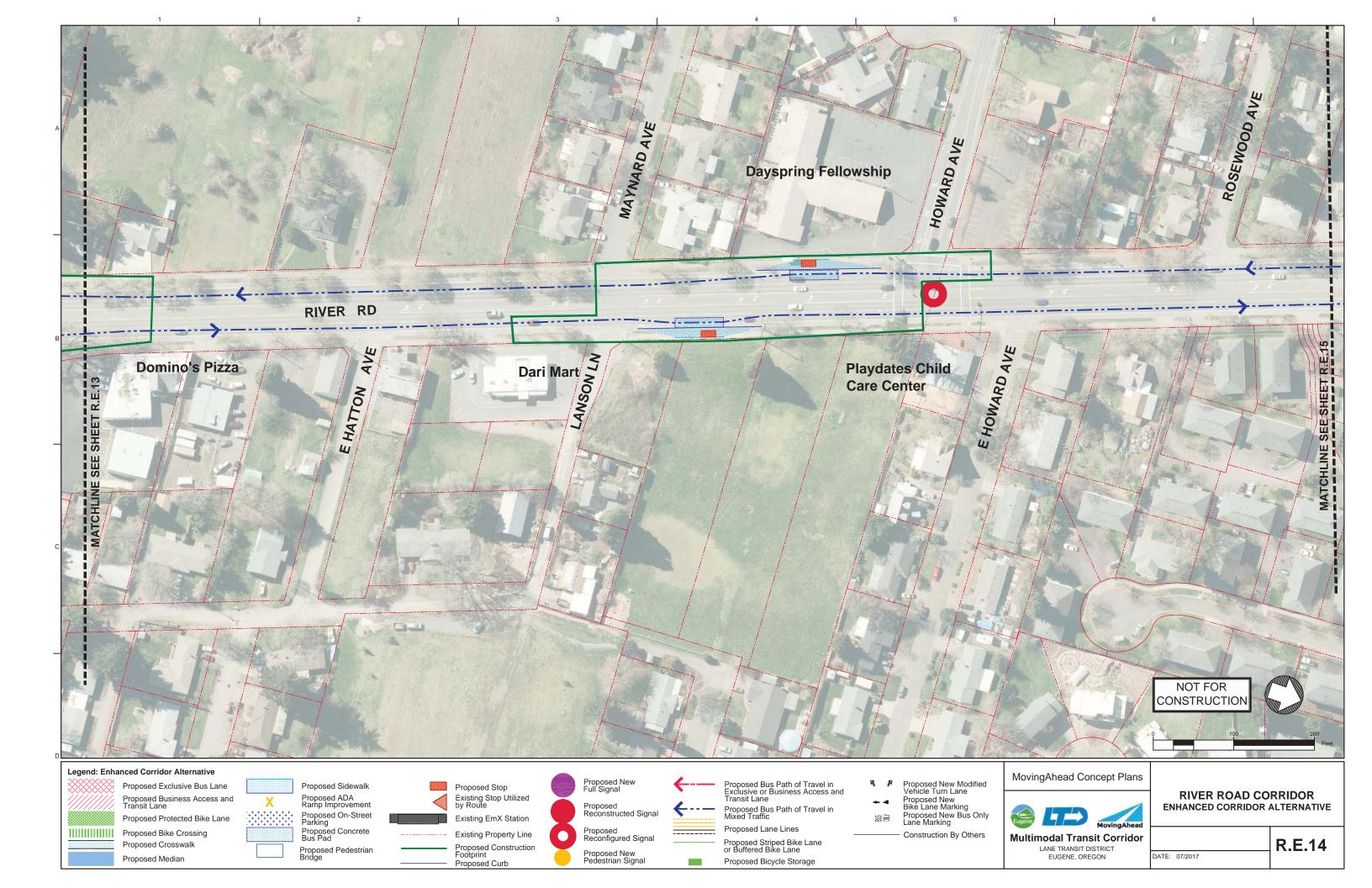


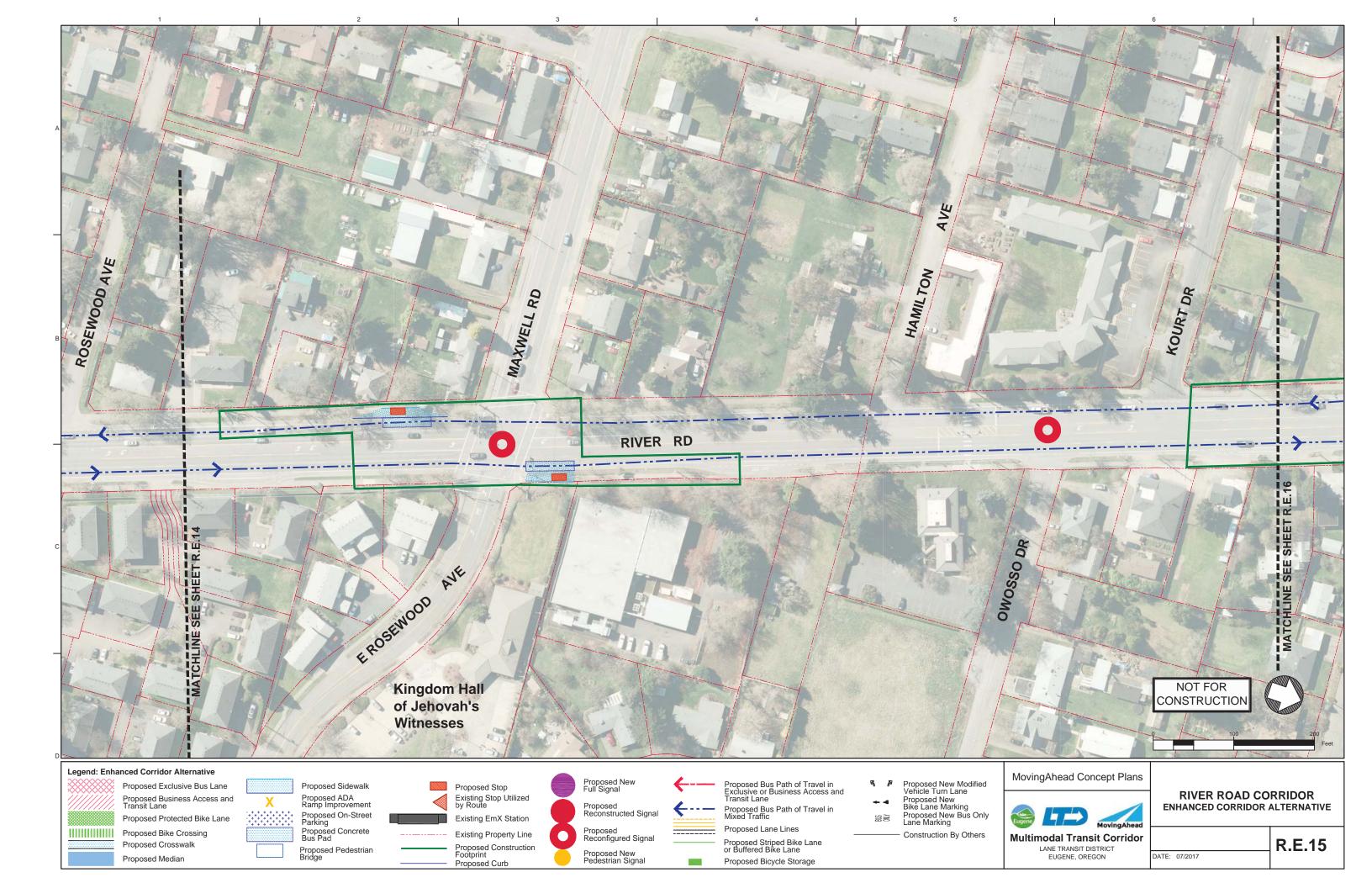


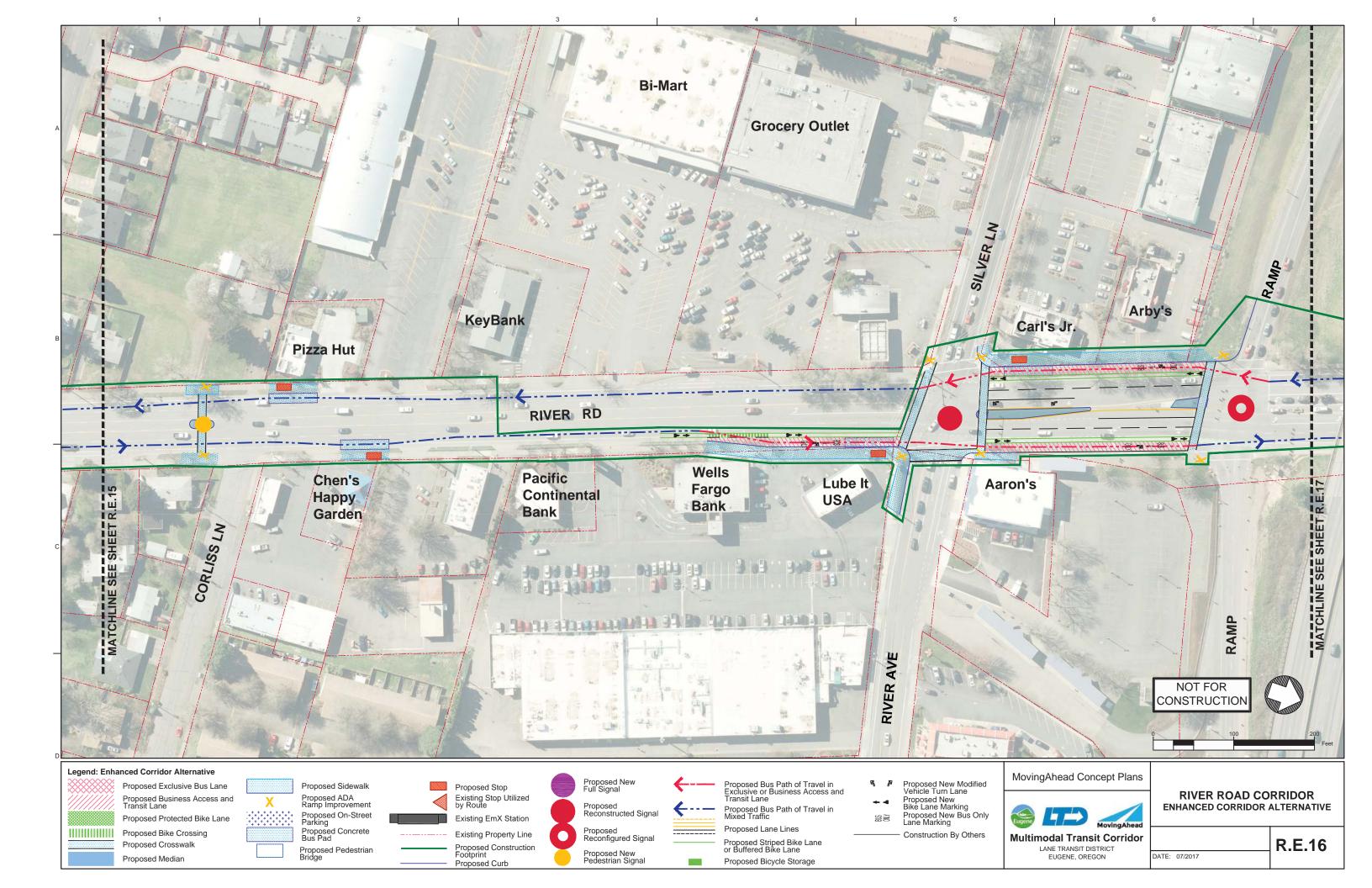


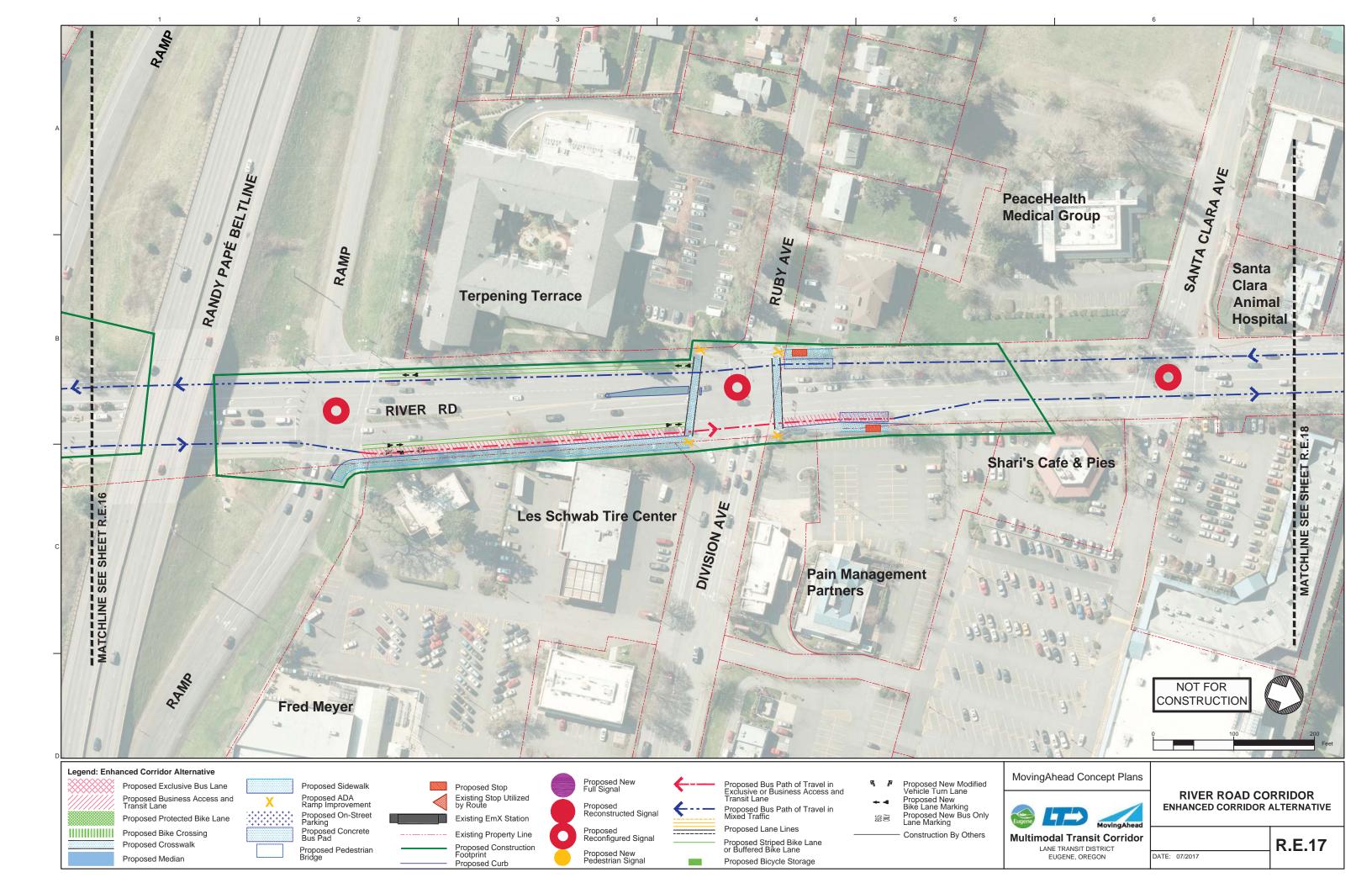


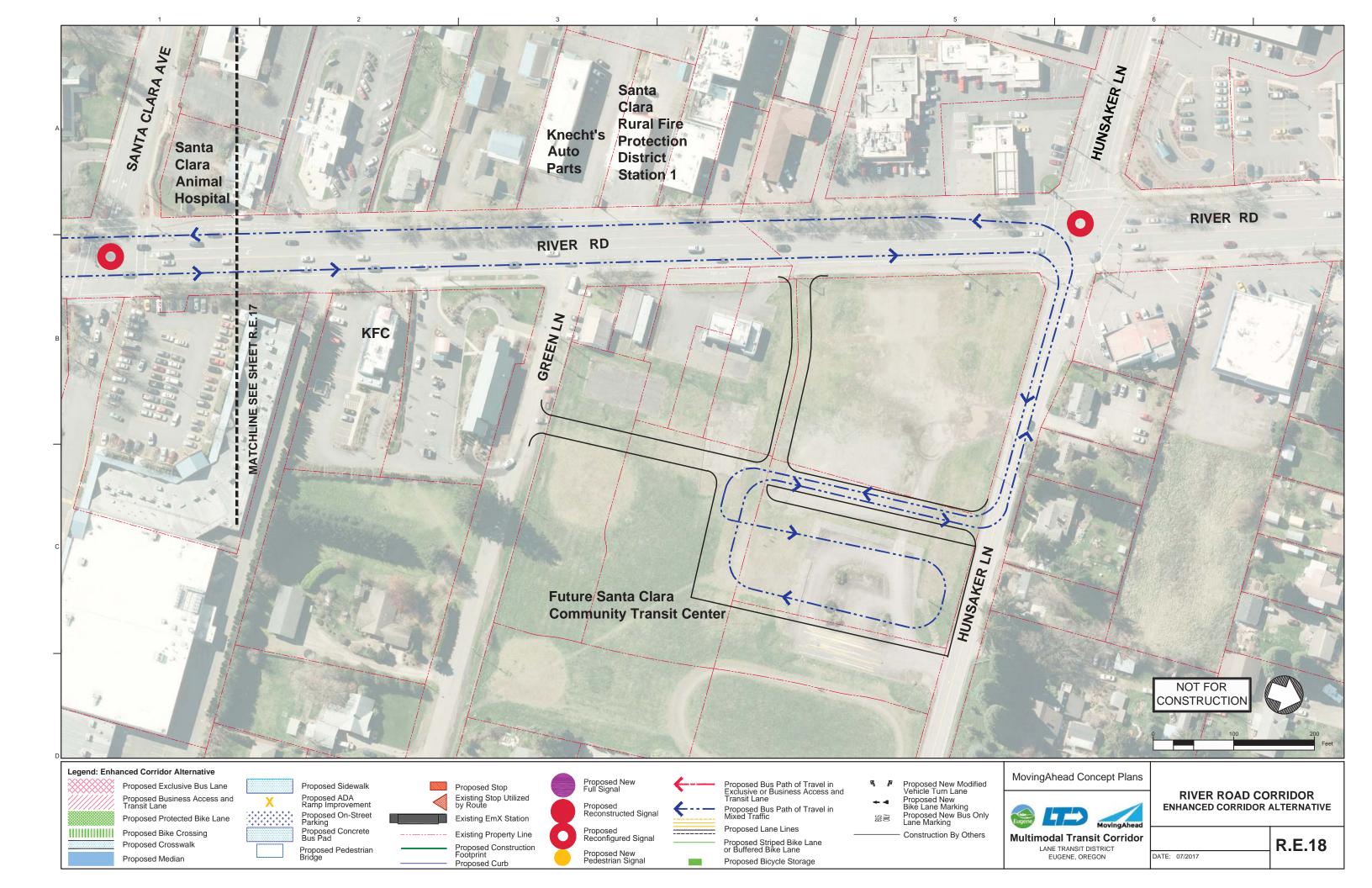




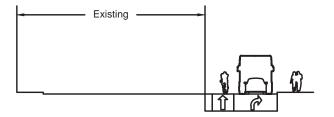








# RIVER ROAD CORRIDOR: ENHANCED CORRIDOR ALTERNATIVE REPRESENTATIVE CROSS SECTIONS



Business Access and Transit Lane with Intersection Queue Jump River Road and Silver Lane Avenue Intersection Facing North
River Road and Division Avenue Intersection Facing North



Business Access and Transit Lane -

River Road From Silver Lane to Randy Papé Beltline Interchange Facing North River Road From Randy Papé Beltline Interchange to Division Avenue Facing North

# NOTES:

- CROSS SECTIONS ARE ONLY SHOWN FOR AREAS WHERE CIVIL CONSTRUCTION IMPROVEMENTS ARE PROPOSED FOR THIS ALTERNATIVE.
- 2. CROSS SECTIONS ARE REPRESENTATIVE AND INTENDED TO ACCOMPANY THE CONCEPTUAL DESIGN PLANS INCLUDED IN THIS SET.

NOT FOR CONSTRUCTION

NOT TO SCALE

MovingAhead Concept Plans

SECTIONS
RIVER ROAD CORRIDOR
ENHANCED CORRIDOR ALTERNATIVE

Multimodal Transit Corridor

LANE TRANSIT DISTRICT

EUGENE, OREGON

DATE: 07/2017 R.E.19