

**WILSONVILLE CITY HALL
DEVELOPMENT REVIEW BOARD PANEL A**

MONDAY, FEBRUARY 10, 2014 - 6:30 P.M.

I. Call To Order:

II. Chairman's Remarks

III. Roll Call:

Mary Fierros Bower
Lenka Keith
Simon Springall

Ken Ruud
Jerry Greenfield
Council Liaison Julie Fitzgerald

IV. Citizen's Input:

V. City Council Liaison's Report:

VI. Consent Agenda:

A. Approval Of Minutes Of January 13, 2014 DRB Panel A Meeting

Documents: [January 13, 2014 Minutes.pdf](#)

VII. Public Hearing:

A. Resolution No. 268

Boones Ferry Pointe - The Human Bean Drive-up Coffee Kiosk: SFA Design Group and CB Anderson Architects - Representatives for Wilsonville Devco LLC - Applicant/Owner. The applicant is requesting approval of a Stage II Final Plan revision, Site Design Review and Master Sign Plan revision and Sign Waiver for development of a new 450 square foot drive-thru coffee kiosk at the corner of 95th Avenue and Boones Ferry Road. The subject site is located on Tax Lot 302 of Section 2DB, T3S, R1W, Washington County, Oregon. Staff: Daniel Pauly

Case Files: DB13-0046 - Stage II Final Plan Revision
DB13-0047 - Site Design Review
DB13-0048 - Master Sign Plan Revision and Sign Waiver

This item was continued to this date and time certain at the January 13, 2014 DRB Panel A meeting.

Documents: [2.10.2014 Human Bean DRB meeting record.pdf](#)

B. Resolution No. 269.

110th Avenue Street Vacation: Stacy Connery, AICP, Pacific Community Design, Inc. - representative for Fred Gast, Polygon Northwest Company - Applicant/Petitioner. The applicant is requesting approval of a request for the City to vacate portions of SW 110th Avenue between SW Mont Blanc Avenue and SW Tooze/Boeckman Road. Staff: Daniel Pauly

Case File: DB14-0001 - Street Vacation

The DRB action on the Street Vacation is a recommendation to the City Council.

Documents: [110th Ave Street Vacation packet 2.3.2014.pdf](#)

VIII. **Board Member Communications**

IX. **Staff Communications**

X. **Adjournment**

Assistive Listening Devices (ALD) are available for persons with impaired hearing and can be scheduled for this meeting. The City will also endeavor to provide the following services, without cost, if requested at least 48 hours prior to the meeting.

- Qualified sign language interpreters for persons with speech or hearing impairments.
- Qualified bilingual interpreters.
- To obtain such services, please call the Planning Assistant at 503 682-4960

DEVELOPMENT REVIEW BOARD MEETING

MONDAY, FEBRUARY 10, 2014

6:30 PM

VI. Consent Agenda:

- A. Approval of minutes from January 13, 2014 DRB
Panel A meeting**

Wilsonville City Hall
29799 SW Town Center Loop East
Wilsonville, Oregon

**Development Review Board – Panel A
Minutes–January 13, 2014 6:30 PM**

I. Call to Order

Chair Mary Fierros Bower called the meeting to order at 6:31 p.m.

II. Chair’s Remarks

The Conduct of Hearing and Statement of Public Notice were read into the record.

III. Roll Call

Present for roll call were: Mary Fierros Bower, Lenka Keith, Ken Ruud, Jerry Greenfield, and Simon Springall. Councilor Liaison Susie Stevens was absent.

Staff present: Blaise Edmonds, Barbara Jacobson, Chris Neamtzu, Daniel Pauly, and Mike Ward

IV. Citizens’ Input This is an opportunity for visitors to address the Development Review Board on items not on the agenda. There were no comments.

V. City Council Liaison Report

No report was provided due to Councilor Stevens’ absence.

VI. Election of 2014 Chair and Vice Chair:

- Chair

Lenka Keith nominated Mary Fierros Bower as the 2014 DRB-Panel A Chair. Ken Ruud seconded the nomination. Mary Fierros Bower was elected as the 2014 DRB-Panel A Chair by a 4 to 0 to 1 vote with Jerry Greenfield abstaining.

- Vice-Chair

Lenka Keith nominated Ken Ruud as the 2014 DRB-Panel A Vice-Chair. Mary Fierros Bower seconded the nomination. Ken Ruud was elected as the 2014 DRB-Panel A Chair by a 4 to 0 to 1 vote with Jerry Greenfield abstaining.

VII. Consent Agenda:

- A. Approval of minutes of December 9, 2013 DRB Panel A meeting

Ken Ruud moved to approve the December 9, 2013 DRB-A meeting minutes as presented. Lenka Keith seconded the motion, which passed 4 to 0 to 1 with Jerry Greenfield abstaining.

VIII. Public Hearing:

- A. **Resolution No. 267. Jory Trail Parking Lot Addition and Modification: Otak, Inc – Representative for CRP Holland Brenchley Estates, LP – Applicant/Owner.** The applicant is requesting approval of modifications to the approved Stage II final plan and Site Design Review plans for Jory Trail Apartments for 40 additional parking spaces and modification of 26 existing parking spaces to add carports. The subject site is located on Tax Lot 100 of Section 14A, T3S, R1W, Clackamas County, Oregon. Staff: Blaise Edmonds

Chair Fierros Bower called the public hearing to order at 6:37 p.m. and read the conduct of hearing format into the record. All Board members declared for the record that they had visited the site. No board member, however, declared a conflict of interest, bias, or conclusion from a site visit. No board member participation was challenged by any member of the audience.

Blaise Edmonds, Manager of Current Planning, announced that the criteria applicable to the application were stated on page 3 of the Staff report, which was entered into the record. Copies of the report were made available to the side of the room.

Mr. Edmonds presented the Staff report via PowerPoint with the following key additional comments:

- He entered into the record as Exhibit B3 an email received from Brenner Daniels, Development Director of Holland Partner Group to City Planner Amanda Hoffman agreeing to the elimination of four parking spaces near the right in/right out as recommended by the City. He read the email message and noted that Exhibit B3 was emailed to the Board earlier in the day.
- The application requests A for a revised Stage II Final Plan and site design review primarily involved adding additional parking and new carports to the existing project. He noted the locations of the nearby Napa store and Wilsonville Family Fun Center. The Jory Trail at the Grove Apartments were almost fully occupied, and even though the parking exceeding minimum Development Code parking requirements when approved, there was demand for additional parking on site.
 - He indicated the proposed locations of the additional parking spaces, which included 27 spaces in the southeast corner of the site; 24 carports located mostly at the west end of the project; and 13 spaces in five different locations throughout the site. He noted the trees in the southeast corner next to the apartments would be preserved, and that three parking spaces would need to be removed to create a driveway access to the proposed 27 spaces in the southeast corner.
 - On the Landscape Plan, the Applicant proposed a Pink India Hawthorn hedge, an evergreen flowering hedge that would grow to a substantial size, and Kinnikinnick ground cover to create a nice buffer between SW Parkway and the new parking lot. Two-inch caliber English Oak trees were also being added throughout the site.
- One issue was that the Applicant originally proposed removing two trees in order to add four additional parking spaces close to the entrance on SW Parkway Ave; however, DKS & Associates believed it would be dangerous to have parking so close to a major driveway into the project given the 40 mph speed limit on SW Parkway Ave. The Application had agreed to not remove the trees to create those parking spaces, reducing the original request of 40 new parking spaces to 36 spaces.
 - He reviewed Staff proposed Finding A20 under the Stage II Approval that reflected that change in the proposed number of parking spaces. One critical point was that the proposal would result in the project having 98 spaces above the minimum Parking Code requirements. Hopefully, it would provide sufficient parking so that the upset residents would not cancel their leases and move.
- He concluded that Staff recommended approval of the applications with conditions, displaying a picture of the southeast corner of the site where the new 27 space parking lot was proposed. (Slide 9)

Jerry Greenfield noted the location for the hedge seemed very narrow, so tight pruning would be needed.

Mr. Edmonds explained the space on the slide appeared narrow, but the actual space for the hedge was approximately two feet wide. He believed that grass was shown extending around the corner toward the driveway entrance, but deferred to the Applicant for clarification.

Simon Springall noted the paragraph at the top on Page 17 of 47 in the Staff report regarding a permanent built-in irrigation system referenced proposed Condition PDP 2 at the end of the sentence, but he could not find that condition.

Mr. Edmonds replied he did not see a Condition PDP 2 either, but one could be added that all landscape coverage be fully irrigated by an automatic or drip irrigation system. The Development Code required that landscaping be irrigated. The Applicant had fully irrigated the site and he assumed they would irrigate but the Board could add a condition if they wanted to play it safe or delete that last sentence.

Mr. Springall asked if the paved trail shown in Slide 6 that ran east-west along the south edge and extended along the west corner of the site would be replaced since the Applicant would not want people walking across the parking lot.

Mr. Edmonds replied the trail would be eliminated as he understood the Applicant thought enough sidewalks would now exist along the south side of the apartments for the residents to use as a path.

Mr. Springall asked if pedestrian connectivity was being discouraged by moving the trail.

Mr. Edmonds deferred to the Applicant. He acknowledged that no pedestrian exit existed through the hedge, adding he believed the Applicant made a conscious effort to focus the pedestrian system down the sidewalk and not through the parking lot.

Mr. Springall noted the existing did extend onto SW Parkway Ave near the Napa parking lot.

Ken Ruud noticed no changes were proposed to the outdoor lighting and asked if the existing lighting would be moved or be retained.

Mr. Edmonds replied there were no proposals for lighting in the new parking area, but it was a discussion topic in the Staff report. In the event the Applicant decided lighting was necessary, a Class I Administrative Review would be required for approval. There was no lighting in the area currently proposed to be a new parking lot.

Mr. Ruud noted there were three or four light posts lighting the existing pathway.

Mr. Edmonds deferred to the Applicant, adding that Amanda Hoffman had written the Staff report, but had recently resigned from her position so he was not aware of all the details at this time. He confirmed Staff sent notices to the respective departments, including police and fire. He had talked with Ms. Hoffman on her last day and she had not received any comments from those divisions.

Lenka Keith asked if the crushed rock path, shown as a dashed line, was the only direct connection between the new parking lot and Building 6.

Mr. Edmonds answered yes, noting that crushed rock or bark protected the roots of the trees better than excavating for a concrete pathway.

Ms. Keith inquired about possibly installing an elevated wooden path, similar to a deck or ramp.

Mr. Edmonds replied that gravel paths were commonly used through natural areas, adding that a wooden path required a lot more maintenance and could be slick during certain times of the year.

Ms. Keith stated that her questions stemmed from considering women having to walk through the crushed rock wearing heels, which would be uncomfortable and a possible safety issue.

Mr. Edmonds replied women would not want their heels to get stuck in between the wooden boards either.

Chair Fierros Bower asked if the number of proposed parking spaces would be sufficient long term.

Mr. Edmonds replied the Applicant had looked at every conceivable corner of the site and had maxed out their parking options. He believed the Applicant needed to do more policing on how residents utilized their garages, which should be used only for cars and not storage. Part of the issue was that the Applicant did not anticipate more than one family renting the four-plexes. College students sharing rooms in the four-plexes resulted in many more cars per unit, thereby increasing the parking demand beyond what was originally planned. The Applicant was also trying to attract college students from OIT, but they could speak to the issues that lead to a higher demand for parking.

Chair Fierros Bower called for the Applicant's presentation.

Brenner Daniels, Development Director, Jory Trail at the Grove, Holland Development, 1111 Main Street, Suite 700, Vancouver WA, 98660 stated Jory Trail at the Grove had 324 total units and the original Development Plan had 530 parking spaces, which included 118 garages, 138 carports, and 270 surface spaces. Most of the unanticipated parking demand was coming from roommate situations the two-bedroom units because a lot of the time four people instead of two would be occupying the units, resulting in four cars per unit instead of just two.

- The parking shortage resulted in excess cars parking at the south and southeast end of Ash Meadows at the main entrance to The Grove. In addition, guests were also taking parking spaces during the day, and specifically at night, which prevented some residents from parking near their building.
- At the southeast corner specifically, there was a problem with the zonal parking. People obviously wanted to park by their building, but as the full site plan revealed, Building 6 had the least amount of zonal parking and was the main area that needed the additional parking.
- He confirmed 24 new carports were proposed on the southwest corner of the property.
- Jory Trail was currently 95 percent leased, and the Applicant did anticipate that with the addition of the 27 spaces and modifying the 24 open spaces into carports would alleviate the parking issues and provide a long term solution.

Don Hanson, OTAK, 1111 Main Street, Suite 700, Vancouver WA, 98660, stated that while the Applicant was happy the roommates were occupying those units, they brought more cars than anticipated. The best way to address most of the parking issues was on the southwest corner of the property, which was behind the auto parts store, so no one would be disrupted. In addition, screening already existed on the south side and that location was where the parking was most needed.

- The Applicant completely agreed with the City on eliminating the four spaces near the entry, so 36 spaces were proposed to solve the problem along with some parking property management.
- He confirmed an irrigation system was already present in the subject area that watered the lawn, so it would be modified to fit around the edge of the new parking area.
- Lighting was not shown on the plan; there was a lot of spill over lighting from the public right-of-way from Parkway Ave, as well as the can lighting off the three levels of the building that illuminate the sidewalk.
 - If the parking lot were lit, the Applicant would use the same fixtures as used on the other portions of the property, which he believed were about 16-ft to 18-ft poles and adding those could easily be worked out with Staff when the construction drawings were submitted. He indicated that he

would put any additional lighting in parking lot area between two other poles indicated because it would illuminate the area that was furthest from a light source.

- He explained that an understory native seed mix was used in the dotted areas of the Landscape Plan near Building 6 because of the over story trees that had been saved. To preserve those native trees, their arborist advised not over irrigating that area and let the native mix flourish.
 - Preserving the trees was the reason for the gravel path, adding they did not want to do any more hard surface area within the canopy of the trees. The path would not be loose gravel, but rather compacted and rolled to create a safe walking surface from the parking lot to the walkway.
- Additional landscaping would also be placed around the parking lot, giving it a pleasant edge against Parkway Ave, which was the most visible side.
- He displayed Staff's photo with the street level view (Slide 9), noting that the stakes roughly indicated the parking area and that the over story trees, the existing native trees, were on the right hand side with the auto parts store seen over the hedge to the south.
- He noted the Applicant had widened the sidewalk all along Parkway Ave to provide a combination bike pedestrian way.

Mr. Ruud asked if the two or three existing light posts shown over the path near the hedge would be removed.

Mr. Hanson replied the light poles would be retained and indicated that additional light poles could be placed at the turn point in the parking lot. The Applicant did not want any lighting to glare over into the public right-of-way because a controlled light zone ran along Parkway Ave.

Mr. Springall said it appeared that the existing lights along the hard trial on the southwest side of the site would have to be removed because they would be in the new parking spaces.

Mr. Hanson agreed they would be shifted out of the pavement area and to the north because he anticipated pedestrians would walk along that edge.

Mr. Springall asked how pedestrian access would be maintained to Town Center from the south side of the development.

Mr. Hanson noted the Applicant's drawing did not show a potential walkway link from the new parking area, but he suggested placing a walkway along the north side of the new parking lot, which would align with where people might walk in the parking lot and link to the gravel pathway creating better connectivity. He agreed with Mr. Springall's assessment that there was a destination to the southeast, the Town Center.

Mr. Greenfield asked the height of the hedge.

Mr. Hanson replied the intent was for the hedge to rise above the headlights so the residents could still see over it but not have the glare from the headlights.

Ms. Keith asked how many one-bedroom units the complex had because she was trying to understand the parking demand as it related to the unit types.

Mr. Daniels replied the complex was made up of about 80 percent of one and two bedroom units, 4 percent of four-bedroom units, and the remainder was three-bedroom units. While the four-bedroom units did cause some of the problem, it was mainly the two- and three-bedroom units.

Mr. Greenfield asked if all the carports were spoken for.

Mr. Daniels replied yes, the majority were, adding the carports were assigned to allow people to park closer to their building.

Mr. Hanson summarized that the changes discussed included a walkway link to Parkway Ave directed towards Building 6 past the parking lot and that lighting would be adjusted as required to fit the new circulation and parking pattern.

Chair Fierros Bower called for public testimony in favor of, opposed and neutral to the application. There was none.

The Board briefly reviewed the proposed changes to the Staff report that had been discussed and Mr. Edmonds providing language for new Conditions PDB2 and PDB3.

Chair Fierros Bower closed the public hearing at 7:18 pm.

Simon Springall moved to amend the Staff report with the following changes:

- **Add Exhibit B3.**
- **Amend Finding A20 as shown in Staff's PowerPoint.**
- **Delete the last sentence of the second paragraph on Page 17 of 19, "~~With proposed condition PDB2 this can be accomplished.~~"**
- **Add Condition PDB2, "The Applicant shall install a pedestrian walkway directed toward Building 6 on the north side of the 27 space parking lot connecting the new parking lot to SW Parkway Ave."**
- **Add Condition PDB3, "Maintain existing lighting levels in the parking lot with consideration of additional lighting if necessary for safety."**

The motion was seconded by Lenka Keith and passed unanimously.

Jerry Greenfield moved to adopt Resolution No. 267. **Simon Springall** seconded the motion, which passed unanimously.

Chair Fierros Bower read the rules of appeal into the record.

- B. Resolution No. 268. Boones Ferry Pointe – The Human Bean Drive-up Coffee Kiosk: SFA Design Group and CB Anderson Architects – Representatives for Wilsonville Devco LLC – Applicant/Owner.** The applicant is requesting approval of a Stage II Final Plan revision, Site Design Review and Master Sign Plan revision and Sign Waiver for development of a new 450 square foot drive-thru coffee kiosk at the corner of 95th Avenue and Boones Ferry Road. The subject site is located on Tax Lot 302 of Section 2DB, T3S, R1W, Washington County, Oregon. Staff: Daniel Pauly

Case Files: DB13-0046 – Stage II Final Plan Revision
DB13-0047 – Site Design Review
DB13-0048 – Master Sign Plan Revision and Sign Waiver

Chair Fierros Bower called the public hearing to order at 7:22 p.m. and read the conduct of hearing format into the record. All Board members declared for the record that they had visited the site. No board member, however, declared a conflict of interest, bias, or conclusion from a site visit. No board member participation was challenged by any member of the audience.

Daniel Pauly, Associate Planner, announced that the criteria applicable to the application were stated on page 2 of the Staff report, which was entered into the record. Copies of the report were made available to the side of the room.

Mr. Pauly entered several new exhibits into the record as follows:

- Exhibit A3: Email dated January 13, 2014 from Daniel Pauly to Barbara Jacobson noting the dates that information was submitted to Garry LaPoint over the last month on the project.
- Exhibit B4: Email correspondence received from the Applicant on January 8, 2014 regarding patio furniture.
- Exhibit B5: Site Plan, Sheet A1.0 submitted by the Applicant showing maximum queuing for The Human Bean drive-thru.
- Exhibit C4: Comments received from the Public Works Department Plan Review.
- Exhibit D2: Cover letter and Memorandum in Opposition from Wallace W. Lien, which included a number of pictures of the site and several site maps indicating circulation flows for the subject businesses and
- Exhibit D3: Traffic videos and photos submitted by Wallace W. Lien that were included on DVDs and flash drives received January 14, 2014, originally entered into the record as Exhibits D3 and D4.
- Exhibit D4: Letter received on January 14, 2014 from Garry LaPoint via email titled, “Proposed—Convenient Coffee Store Business” requesting a continuance of the public hearing.
- He noted the Cease and Desist Order dated November 19, 2013 that was distributed to the Board was already part of existing Exhibit D1, as was the Washington County document regarding the recording of a Restrictive Covenant.

Mr. Pauly presented the Staff report via PowerPoint, noting the site’s location and surrounding properties, with these comments:

- He provided a brief history of the area, explaining that the subject property was part of Edwards Business Center Industrial Master Plan, which dated back to the 1970s and envisioned a variety of industrial and commercial uses typical in that era. The Master Plan designated the subject site as commercial but did not designate a specific type of commercial.
 - Previously, the City had received an application for an office building, which was never built. In March 2013, the Development Review Board (DRB) reviewed an application that included the Carle’s Jr. along with a multi-tenant building.
 - Because the Applicant was able to locate the tenants for the multi-tenant building, they were requesting to replace the multi-tenant building with the proposed coffee kiosk.
- The Stage II Final Plan revision regarded the function of the development along with the traffic, parking, circulation and overall aesthetics. The area subject to the proposed revisions was highlighted in yellow on the Site Plan (Slide 5), and included a 450 sq ft coffee kiosk drive thru with an adjacent patio area surrounded by the drive thru lane as well as landscaping and parking.
 - Traffic. Generally, PM peak hours were used to determine level of service (LOS). While the PM Peak trips shown in the table of Slide 7 were not usual for this kind of project, compared to what was previously planned for the site, it was not an issue in terms of the City’s PM peak levels of service at the adjoining intersections.
 - Parking. The proposed project had 35 spaces, just over the minimum parking requirement of 33 spaces.
 - Circulation. Added Exhibit B5 showed how the drive thru was placed on that area of the site to allow for the maximum queuing of vehicles. A lot of vehicles would be coming in and out, and although the circulation was not ideal, based on testimony and the information received from the traffic consultants in preparation of the Staff report, Staff did not see any criteria that would lead them to believe the circulation would not work. Information about the circulation was available in

the videos submitted, but as this point, Staff recommended approval based on the circulation on this portion of the site.

- Pedestrian Circulation & Bike Facilities. Since the original Stage II Final Plan was adopted, additional standards had been adopted in the City's Transportation System Plan (TSP) to increase pedestrian circulation and bicycle facilities.
 - With all the vehicle circulation interior to the site, the safest and most direct area for pedestrian traffic would be the sidewalk. Separating pedestrians through the middle of the site would be really difficult with the amount of necessary circulation.
 - Good connectivity would be provided by connecting pedestrians to the sidewalk to the west of the site. A pathway would also be provided from the parking spaces on the east side of the property near the trash enclosures up to the coffee drive thru to allow employees to carry trash down to the receptacle location previously approved at the center of the site for easier access by collection vehicles.
 - New Development Code spacing standards required bike racks to have five feet of clearance and to be no more than 30 ft from the main pedestrian entrance. A condition of approval required the Applicant to work with Staff on these particular items since there would be some room on the patio to adjust those distances to ensure all the bike standards were met.
- Mixed Solid Waste and Recycling Enclosure. No changes were proposed to the original approval. The enclosure was actually oversized since the proposed building was smaller than that previously approved.
- Site Design Review considered the architecture and materials of a project. The original application for Boones Ferry Point discussed using small town architecture and traditional materials similar to Old Town Square or along Wilsonville Rd.
 - The proposal continued that same theme by using the same brick used on the base of Carl's Jr and similar to what had been proposed on the multi-tenant building. The variety of vertical lap siding and board and batten siding would also match the Carl's Jr but with different colors. Similar to Carl's Jr the new building would also have a tower with the same shape, but with different colors to complement but not look exactly the same as the Carl's Jr Architecturally, Staff believed the proposed building would blend in well with the rest of the site.
 - Most of the landscaping was already installed and provided the necessary landscaping typical for this type of development so Staff definitely supported what was proposed and had been installed.
 - The Applicant used the performance method of the outdoor lighting ordinance. Staff looked at the horizontal foot candles, which were essentially the same low level at the property line as before, and assumed that the vertical foot candles at the property would be similar. No issues had been identified with the outdoor lighting which complied with the Development Code.
- Revisions were proposed to the Master Sign Plan, as obviously, the building was changing, and a Sign Area Waiver was requested. No changes were proposed to the free standing signs previously approved and built; only the panels would be changed for the appropriate tenants.
 - According to the updated Sign Code, all four facades of the proposed building would be sign eligible. The Applicant only proposed signs on three facades, but each sign's area was allowed to be equal to the linear length of the façade. The Development Code would allow just less than 13 sq ft of signage the north façade and slightly more than 34 sq ft on the east and west facades
 - In the Applicant's submittal requested a waiver to allow the sign on the north facade to be increased to match the other signs, which made sense, architecturally, the sides of the building were the same on that portion.
 - Although the Applicant's measurement method in the submittal did not match the Development Code, the main thing was that the Sign Code revisions allowed more flexibility for future rebranding or new tenants with less process because the prior Sign Code was too specific.
 - Staff recommended approving the waiver as well as 25.4 sq ft on the other two signs which was essentially the area within a rectangle drawn around the entire sign.

- Pictures of the building signs were displayed. The signs were typical of similar tenants in Wilsonville and fit nicely within the architectural feature and the area of the building designed as a sign band.
- The Applicant's directional signs were not exempt from the Sign Code because they were illuminated. The signs were shown to be slightly more than six sq ft, so a condition required that the signs stay within the Code allowed six sq ft.
- A hedge was required for Carl's Jr to screen the menu board from offsite view, but the menu for the proposed coffee kiosk was oriented so not to be visible from offsite, therefore screening was not required. The Staff report noted that if that changed over time, a hedge might be required in the future.
- He noted Staff had specifics on the Development Code criteria regarding circulation and whether the traffic generation met the LOS. Section 4.421 stated, "Drives, Parking, Circulation. With respect to vehicular and pedestrian circulation, including walkways, interior drives and parking, special attention shall be given to location number of access points, general interior circulation, separation of pedestrian vehicle or traffic, an arrangement of parking areas that are safe and convenient and in so far as practicable, do not detract from the design of proposed buildings and structures and neighboring properties." He asked the Board to keep that language in mind as they listen to testimony and review submitted materials.
- He reiterated that as Staff prepared the report, no compelling evidence was found indicating that the parking and circulation would not work. It might be less than perfect, but it was acceptable under the Development Code format.

Lenka Keith asked about the location of the Thank You and Do Not Enter on-site directional signs.

Mr. Pauly indicated the signs' locations on the Site Plan, on the right adjacent to the sidewalk at the drive thru entrance and on the left side of the drive thru exit.

Ms. Keith stated her concern was that the landscaping or Do Not Enter sign at the end of the drive thru would block visibility and create conflict between the cars exiting the drive thru and those backing out of the ADA parking space.

Mr. Pauly stated most drive thrus have that type of parking and circulation. He noted the traffic consultant might have some ideas about providing extra safety in that area.

Ken Ruud asked if the Staff had adequate time to review the new information and if so, did Mr. Pauly recommend any changes based on the new information provided.

Mr. Pauly deferred to Mike Ward and Scott Mansur of DKS & Associates since they had more time to review the information, especially the video exhibits. Mr. Ward and Mr. Mansur worked on how the shared driveway functioned, which was one of the biggest questions when all the changes occurred with the development of the property. There seemed to be enough area for queuing and for cars to move around internally, but whether the entrance and exit off 95th Ave would remain consistent was the question.

Mike Ward, City Engineer, stated the City was predominantly concerned with traffic on the public roadways and intersections, and how those facilities operate, and whether they maintain a LOS "D" and above, which this proposal did. In terms of internal circulation, the City was concerned with safety, but none of the issues raised today gave Staff or the consultants any concern. All the issues that had been raised were things they had already thought about and still believed were as safe as they could be made. There were several instances in the videos where people could be seen pulling into an exit lane, even

though big thermoplastic arrows were painted on the ground clearly showing the drivers not going in the right direction.

- The shared driveway involved development agreements between the City and the owners of Carl's Jr, the Chevron and Holiday Inn, and if everyone would agree, the City would be happy to install Do Not Enter signs on the exit only lanes which could make it a little safer. However, to some degree the issue was people were driving where they were not allowed to drive and the City could not necessarily impact that situation. He asked Scott Mansur to address some of the issues that had been raised today.

Scott Mansur, DKS & Associates stated he was the original traffic engineer that reviewed and approved the traffic study for the original Carl's Jr development and also did the supplemental memo dated September 5, 2013 related to the coffee kiosk before the Board this evening, so he had been involved since the beginning. He had reviewed all the information in detail and wanted to respond to a few things.

- With regard to using PM peak hours, City Code Section 4.140 discussed evaluating the peak hour of adjacent streets. In the City of Wilsonville, the PM peak hour was the critical peak analysis period that had been selected and used for the last 20 years when analyzing traffic volumes.
 - The LaPoint Group discussed using the AM peak hour. While there would be considerable additional traffic from the coffee kiosk in the AM peak hour, it was important to realize that those coffee kiosk trips were 90 percent pass by traffic, which was documented in his September 5, 2013 memo. The majority of the traffic going to the kiosk was already on the adjacent street and would be making the maneuver to go in and out of the driveway. He agreed it would add traffic internally to the site, but when analyzing offsite intersections, the proposal would not impact the traffic; it was more of an internal circulation evaluation.
 - The internal circulation was also evaluated along with the type of queuing and storage that would be made, even in the AM peak hour, and he had no concerns that the traffic volume from the kiosk would backup off the Carl's Jr site. While there may be some queuing that backed up onto the Carl's Jr site, he did not see traffic backing up on the Chevron site.
- He noted there was discussion about the LaPoint Group talking to DKS & Associates, and clarified that DKS did not speak to anyone that has been involved in the process, and nothing had been documented from DKS.
 - From his evaluations, some of the information was not correct, so he believed there was some misunderstanding in the discussion, and he recommended that the LaPoint Group go through the City and talk to the Staff who were actually working on the project.
 - Page 13 of the memo from the LaPoint Group referred to the coffee kiosk and a study from Gibson Traffic Consultants, which he also reviewed. That memo referred to the coffee kiosk as a proposed 2,790 sq ft site with a coffee drive thru; however, as indicated in Staff's PowerPoint, the drive thru kiosk would actually be 450 sq ft, making it significantly lower than what the LaPoint Group estimated. The 450 sq ft was consistent with the original memo from DKS. The estimates in the LaPoint Group's memo were based on a little more than five times the kiosk's size, resulting in an inaccuracy.
 - The LaPoint Group also referenced ITE Code 934 and the reference from the Gibson Traffic Consultants was probably an old study that was before the ITE Trip Generation Handbook, which was a national handbook that looks at different uses and creates trip generation rates that are applied per square foot. Code 934 was actually for a fast food use. The September 5, 2013 memo from DKS stated the correct ITE Code for the coffee kiosk was actually ITE 938, which was a coffee shop with drive thru and no indoor seating. Therefore, the references in the LaPoint Group's memo were based on an inaccurate ITE Code for the actual use for the coffee drive thru.
- He concluded that based on DKS & Associates' evaluation and analyzing the information in the LaPoint Group memo, he with Mr. Ward that there was no information that would make him recommend any changes that were different from their original reports.

Mr. Pauly stated Staff had time to look at the newly submitted information this afternoon and felt comfortable with what they had reviewed, but he certainly understood that the DRB had not been able to view the reading materials and videos mentioned. The Board could either view some of the videos this evening or choose to leave the record open and continue the hearing in order to review them at a later time.

Chair Fierros Bower asked what the hours of operation were for the coffee kiosk.

Mr. Pauly replied the hours of operation were 5 am to 9 pm, which was also stated in the materials.

Mr. Ruud asked what type of specialty vehicles would be entering and exiting the site given the three unique businesses, convenience store/gas station, fast food restaurant, and upscale coffee kiosk, and if there were any concerns with the time of day they would be allowed with regard to the safety of the lot.

Mr. Pauly replied one of the issues raised, and seen in the video, was the Carl's Jr delivery truck was not parking at the place designated in the original DRB approval for delivery parking. If the delivery trucks complied with that original approval, it would alleviate some of the issues.

Mr. Ward added Staff did question whether a grease interceptor pump truck could pass through that area since the grease interceptor would be placed in the drive thru for the coffee kiosk. Engineering had been told the pumping company had cleared the drive thru as being able to accept the grease interceptor pump truck. Garbage would be collected at the shared station by the Chevron's garbage facility so it would not be directly on the coffee kiosk site. Staff did not anticipate any other large vehicles that would need to enter the site.

Mr. Pauly stated the Applicant would be better able to address the nature of the deliveries for The Human Bean. He understood deliveries were to be at the same location as the original approval which was by the trash enclosure. Obviously, it would take some coordination amongst the property owners since at one point in the videos, the Carl's Jr delivery truck and Chevron fuel truck were there at the exact same time, which caused some issues on the site.

Mr. Mansur believed that was one good point that was raised because a managed approach would be needed to ensure both facilities were not occurring at the same time. There was also an issue raised regarding emergency vehicles. DKS evaluated the site, which had two entrances and exits to both new businesses, but if both of those areas were blocked at the same time, it would create a problem and need to be worked out.

Chair Fierros Bower asked if the Applicant would be sharing the trash enclosures with the other business on the site.

Mr. Ward replied the Carl's Jr had its trash enclosure on the south side of the Carl's Jr building, while the Chevron and proposed trash enclosures were adjacent to each other. He noted the enclosure for The Human Bean was highlighted in yellow on Slide 11.

Mr. Pauly added they were adjacent, but separate and had different height and depths.

Simon Springall noted the water pooling issue in the Staff report and asked Mr. Pauly to explain what was happening and how it affected the application.

Mr. Pauly responded the grading for the part of the site affected by the pooling water was not changing with the application. The Building Department was working on obtaining a permit to fix the issue, but

that was being resolved by Building through technical means and based on the necessity to give final occupancy, even for Carl's Jr Nothing that the DRB was looking at would affect that one way or another.

- The real issue was that runoff from the original site, which had been just dirt, was pooling over the area where gas deliveries took place and water mixing with the gasoline could be a big issue. A trench was put in as an ad hoc measure, which also caused issues even in the circulation because it was quite severe and also made some of the parking spots on LaPoint's property not as useable, unless one had tall vehicle. All these items were in the process of being resolved through the parties working with the Building Department.

Mr. Springall confirmed there would be four bike parking places on the drive thru and that the report stated the bike rack was too close to the building but too far from the drive thru window. He asked how close it currently was to the building.

Mr. Pauly replied it would be about 3½ to 4 ft; he was uncertain of the exact distance. He explained that from Staff's perspective there was room to make adjustments to meet those needs, so just recommending the condition of approval to allow the Applicant to work with Staff would ensure the best location.

Mr. Springall said he did not see a problem with it being slightly more than 30 ft from the window because it was close to the building, but having enough space to get the bikes in and out of the bike rack would be most important. He asked if legal counsel had a chance to review the LaPoint memo, which mentioned her name a few times.

Barbara Jacobson, Assistant City Attorney, suggested allowing the Applicant to give their testimony along with any other parties, and then once all the testimony had been heard, the Board could discuss the issues and next steps.

Ms. Keith asked about the entrance to The Human Bean drive way leading up to the stacking lane. She noted the landscaped projection with the light pole near the six parking spaces and asked if some of those spaces could be moved to the Carl's Jr parking, because she was worried the little projection would force people to face the traffic exiting the drive thru. She wanted to know if there was a way to remedy the issue and not have the projection out there, such as having angled parking that might provide more space.

Mr. Pauly noted some required landscaping was also included there. The Applicant only had two extra spaces, so parking was pretty tight. He was sure there could be other solutions and the Applicant could respond to that as well. He knew from his own experience that the Applicant looked long and hard to make parking work and provide the necessary circulation on the tight site.

Chair Fierros Bower called for the Applicant's presentation.

Ben Altman, SFA Design Group, representing the Applicant, commended Mr. Pauly on his summary of the application, noting he would not spend time repeating the same information, but wanted to focus on a couple things in reference to the site circulation and queuing.

- He noted Exhibit B5 the Board received this evening showed the maximum queuing capability for the two drive ups for Carl's Jr and the coffee kiosk. There was potential for 16 cars to queue up for the coffee kiosk and 18 cars for Carl's Jr and that was without interfering with site circulation exiting or spilling over onto the Chevron site.
- Recognizing people's impatience when waiting in line, he believed the queue would be somewhat self-regulating because people would not stack up and wait ten minutes for a coffee; if the line was backed up too far, they would go to the Chevron or somewhere else. He did not see a situation happening where the traffic backed up clear to the street because people were too impatient to wait in

line that long. He believed the self-policing manner provided for on the site was consistent with the Development Code requirement for providing a safe and convenient circulation pattern.

- Additional pedestrian circulation was provided from the street to the site, as well as from the parking to the back of the building.
- The projection noted by Ms. Keith served two key functions. One, it protected the cars parked there from other vehicles passing between Chevron and The Human Bean. Second, it met the City's Code requirement for a landscape island linked with parking to provide shade tree coverage. The curve of the projection would also help customers find the drive thru lane.
- Regarding the challenges with the truck deliveries, he noted that the original approval designated that the delivery trucks park adjacent to the trash enclosure, which was actually located within the cross easement between the two properties.
 - Since Carl's Jr had been open, Chevron employees had been chasing the trucks out of there, which was why they were not parked where the approval had shown. He agreed truck deliveries still needed to be worked out between the two sites, since there was an issue when the fueling trucks were there in the same general area. It was always the general intent that the delivery trucks would be there for a short period of time and that they might possibly block some parking temporarily, but the main issue was to resolve the deliveries between the two sites, so they would not interfere with each other.
- Regarding the storm drainage, he clarified that the area in question was at the transition between the two sites. The original paving for the Chevron site tapered out and was graded so it sheet flowed off the northwest corner of the site onto what was now the subject Boones Ferry Pointe Site. When this site came in with the current project plan, a ridge was created with the pavement to separate the flow and control the drainage on the Boones Ferry Pointe site, but it was not picked up because it did not top off site enough to show that once the ridge went in, there was nowhere for the water to drain off site again. It was being worked out so the runoff water drained back into the drainage system the Chevron had in the northwest corner of the site.
- He said he had nothing more to add at this point, but knew the Applicant would need to respond to some testimony.

Josh Veentjer, Wilsonville Devco, LLC, stated, in response to Ms. Keith's concern about potential accidents between cars exiting the drive thru and handicap vehicles backing up, he noted that identified on the Site Plan opposite of the Do Not Enter sign was a Yield to Pedestrians sign.

Jerry Greenfield asked who would be responsible for correcting the drainage problem.

Mr. Veentjer replied he was, adding that they had done everything in their power to draft an engineered plan showing specifications of everything that they would do and had submitted that to the City and LaPoint. The City had approved that plan which was ready for permit and the Applicant was waiting for LaPoint's response and approval to provide consent to finish the remedial work on the site.

Mr. Springall stated that shortly after the Carl's Jr opened, a large inflatable star was put up as advertising that was not approved. He asked if a large inflatable coffee cup would be put up.

Mr. Veentjer answered no. He was not aware of the star until after it was put up by the tenant; It was the tenant's decision, and not within his control. He believed the City addressed that issue almost immediately and the star was taken down.

Chair Fierros Bower stated if the vehicles were to queue up in the drive thru as shown in Exhibit B5, she did not see enough room for a vehicle to exit past the vehicles waiting in line. She asked the Applicant to show the Board how a vehicle would exit in that situation.

Mr. Altman replied the Board could expect to take one car out of the Carl's Jr link of queued cars for a pass through, because the driveway between Carl's Jr and the nine parking spaces to the east was a two-way flow and a driveway exit for the coffee kiosk. He indicated on the slide the direction and flow of the traffic through the two-way driveway, adding that at the transition point, it would have to be a "good driver policy" where someone would let another through.

Mr. Veentjer added Exhibit B5 was a bit deceiving because there was more room on site for circulation than it appeared. The exhibit over exaggerated the extent of the queuing lane because no one would have the patience to wait in a queuing lane that far out on the property. The exhibit illustrated that maximum queuing on the Applicant's site would not conflict with Chevron's property and circulation. Traditionally, these coffee kiosks they have double drive thrus and customers actually order from a person at the drive up window. On this site with one drive thru, the Applicant implemented a pre-order menu, as illustrated in Mr. Pauly's presentation, so orders would be taken at a menu similar to Carl's Jr to speed up the process of the queuing lane.

Mr. Altman noted the exit arrows going this way on Exhibit B5 were missing on the drawing.

Mr. Veentjer stated they could address the arrows very easily and confirmed they would be painted on the pavement.

Mr. Springall stated that he went to look at the site on Sunday so it was pretty quiet, but it looked like the direction for The Human Bean drive thru was to the Carl's Jr side of the parking lot, in the center where the trash enclosures were, rather than on the east side, on the Chevron side. If there was no queuing, it seemed traffic would likely continue straight through and he asked if that would cause an issue or was the Applicant going to specifically sign the traffic for the coffee kiosk to the east.

Mr. Veentjer replied the coffee business was very complementary to the Carl's Jr business because their peak would be in the morning when Carl's Jr's was not; so the access and circulation for both businesses would also be complementary. Naturally, when someone drove into the site, they would immediately take a left at the stop bar to enter into through the parking lot in front of Carl's Jr. This would be the primary entrance to the site and where the Applicant preferred to have the vehicles. The intent with the cross easement was to have another access point, but also for the benefit of the consumers to be able to get gas or lunch after they had a cup of coffee.

Mr. Springall confirmed that the queue shown in Exhibit B5 for The Human Bean would most likely never be that long, and that vehicles would queue up toward the Chevron.

Mr. Veentjer stated approximately 16 vehicles were stacked up for The Human Bean in Exhibit B5, which drafted that way to illustrate the maximum amount of vehicles that could potentially be in either queuing lane at any given time. The likelihood of it happening was probably zero, but it showed the maximum number of vehicles that could be on the Applicant's site without conflicting with Chevron's property.

George Morris, Holland & Knight, LLP, 111 SW 5th Ave., Portland, representing Wilsonville Devco, LLC, stated as Mr. Pauly mentioned, this property was the subject of the comprehensive development agreement that was entered into between the property owners before the initial development was approved. That development agreement addressed in great specificity many of the issues that were raised about the reciprocal use of the adjoining properties. He added there was also a reciprocal easement agreement that was entered into between the Chevron property and Wilsonville Devco property which contemplated and governed the reciprocal use of the access. Many of the issues raised in Mr. Lien's memorandum were issues that exist between Carl's Jr and Mr. LaPoint's property.

- He noted that Mr. Veentjer had conversations with Mr. LaPoint as early as July about The Human Bean, and the concept that he just found out about it in mid-December was not accurate. He had an email in the file where the Site Plan was emailed to Mr. LaPoint on August 7th, and Mr. Veentjer would indicate that he had at least two other conversations with Mr. LaPoint in October about the coffee kiosk, during which no objection was raised until they received the letter placed into the record in November from Mr. Lien.
- Given the fact that Mr. Lien submitted these documents and Mr. LaPoint submitted a letter that everyone received at 3:00 pm today, the Applicant was amenable to leaving the record open for a couple weeks, or however long the City believed it needed to adequately evaluate and address the issues, to ensure a full ventilation of the issues and no one was rushed into making a premature decision, and to allow opportunity for their land use counsel, Steve Pheiffer, respond.

Mr. Altman added the Applicant team had not seen the video that mentioned the traffic problems, so they would need to review that and respond in some way. As Mr. LaPoint described it, he understood that it was more related to the exit that the City Engineer spoke about of people entering the exit lane rather than the entry lane. He confirmed there was some confusion with the change in the design of the driveway that still needed to be sorted out by working with the City.

Chair Fierros Bower called for public testimony in favor of, opposed, and neutral to the application.

Wallace Lien, Land Use Lawyer, 1775 32nd Place NE, Salem, OR, 97301 apologized for getting the large amount of information to the Board so late, but he sent it as soon as possible as it played into the whole notion of the continuance that the Board heard counsel speak about.

- Mr. LaPoint had sent a letter requesting a continuance, even though he and his son, also an operator, could not attend tonight's meeting, even though they wished to testify directly being the owners of the adjacent property. They had asked him to put together a formal motion for continuance, but he did not believe an open record situation where they did not come back to look and talk would be appropriate because of the videos and new evidence that had come in this evening.
 - He had not seen the queuing map (Exhibit B5) and there were a lot of things the Applicant had not seen either. Their motion for continuance was really to come back physically after the Board and everyone had an opportunity to look at the videos and sort through all the material to have a frank and complete discussion about the issues, rather than trying to sort out all the material provided by the attorneys, now and in rebuttal, which the Board would be stuck listening to or trying to read. He explained that his motion was for a true continuance where the Board sets a time, whether it was two weeks or longer, when the LaPoint's could talk to the Board about the situation and the Board could ask questions after viewing the videos.
- The videos were remarkable and showed a graphic accident that happened in late November at the entrance to this property that was really hard to believe. There was a 20-minute section that involved four different cameras, which was a bit difficult to follow, as one had to track a car from one panel to another, the video was a bit annotated to point things out.
 - The video clearly showed the incredible problems with circulation, not just at the entrance of 95th Ave which was a big problem. The accident was caused by a car turning left from 95th Ave into the exit row, another car just followed it, and while the third car tried to make it too, but were T-boned by a semi-truck right at that entrance. There were countless entries into the exit areas, U-turns, and exits out of entry areas.
 - He indicated the south access into the Holiday Inn on the Site Plan and noted that video after video showed cars from the Carl's Jr going across the traffic and the wrong way into the Holiday Inn and he indicated other driver errors that create tremendous conflict.
 - There was about a 15-minute file on the video that showed the blockage everyone referred to earlier in the discussion. It was not his client's problem and it was not their delivery truck. Where was Carl's Jr? The burden of proof was on the Applicant's site design, so it was their problem.

- He showed where the Carl's Jr delivery truck parked and the video showed that in order for the truck to get into the spot, it took about three turns for the truck to be able to get in and then it completely blocked the area. From a timing point, it appeared the truck was parked there about 20 to 40 minutes so that entire time, that area, which was identified as the main entrance and exit to Carl's Jr and The Human Bean, would be completely blocked. The video showed the delivery truck sitting in that location and he understood the truck came about three or four times a week, which Carl's Jr would have to confirm. He indicated that the gasoline tanker trucks parked near the trash enclosure when they deliver one to three times a day to the Chevron, and the 15-minute video showed the tankers blocking the entire area to the east across the easement and a delivery truck blocking the entrances to the Carl's Jr and Human Bean, completely blocking vehicle access to Carl's Jr and The Human Bean.
- The manipulations seen on the video were incredible. He indicated some of the amazing maneuvers people did to get around the delivery trucks when both entrances were blocked, including driving and backing into the Carl's Jr drive thru, but Mr. Altman had stated it would get congested sometimes and that people would just turn around and leave.
- The gas station's circulation ran counter clockwise on the site, as indicated in yellow on the drawing labeled, "Chevron Circulation" included in the packet he provided to the Board. He described the traffic circulation for the Chevron, adding that when blockage, queues, or parking issues occur, and a driver hit the area blocked by the delivery truck they would look for another place to go, just as Mr. Altman stated, and likely go against the flow of Chevron's traffic and create conflict, which could be seen on the video. There were no accidents in the 15 and 20 minute videos, but there were probably a dozen near collisions due to people crossing traffic and going head on without following the traffic patterns.
- He noted the area on the site plan with arrows that pointed to each other and asked what if the cars could not go the way the arrows directed because the delivery trucks blocked their path. There was direct conflict even on the Site Plan with the arrows pointing to each other.
- Another reason for the request for a continuance rather than the open record period was because they believed there were some defects in the notice and he had laid those out in his packet. The issues were more technical, but as a land use lawyer he was required to raise everything he could think of because he had to get it into the record and if not, they could not raise it on appeal later.
 - He believed a corrective measure would be to re-notice for the continued hearing, which would fix those items.
- They wanted to ensure that his memo and attachments (Exhibit D2), as well as the DVD and thumb drive, were officially placed in the record. He noted the information on the thumb drive and DVD were identical, but they did not know how everyone would want to access it, so two different ways were provided to access the video. He added Mr. Laidlaw submitted a packet of materials early on and he requested that it also officially be included in the record. (Exhibit D1)
- Another issue he wanted to discuss involved the property line separating the LaPoint Group property from the Devco property. As noted, some reciprocal easements existed, but that land was owned by LaPoint. He and his client's position was that because the City was approving a Site Plan that utilized traffic circulation on the LaPoint property, jurisdictionally the LaPoint's were parties and would need to be signers on the application or it would be jurisdictionally defective. He had laid out all those technically legal matters out in the memo.
- He said he got pinched by Mr. Mansur from DKS regarding the traffic study who said the site was only about 400 sq ft and that the ITE Code was 938, not 934. Mr. Lien stated he had only been handling this case for a week and all he had was the Staff report that had been posted. Attached to the Staff report was a DKS memo from Scott Mansur, which he confirmed was a part of the Applicant's notebook (Exhibit B). The memo identified the land use code for the coffee kiosk as fast food restaurant with drive thru ITE 934, but now Mr. Mansur was stating that it was 938 so he questioned which one was correct. Mr. Lien agreed with Mr. Mansur's report dated September 5, 2013, which stated it was ITE 934, a current designation. He suggested Mr. Mansur look at his own report.

- The report also showed 2,790 sq ft, not 490 sq ft, so again, it seemed like when it was convenient, it was smaller and when it was in the report, it was larger. Mr. Lien explained he did not like to get tweaked when he was using the data provided in Mr. Mansur's own report at the hearing.
- He understood the Wilsonville Code wanted the PM peak looked at first, but that did not mean putting blinders on and ignoring reality. Everyone in the room realized that the actual critical peak traffic period for The Human Bean was that period of time in the morning. According to the ITE manual, it was 7 am to 9 am not from 4 pm to 6 pm. The Board was deliberately ignoring the traffic when they blindly followed a code that stated the primary thing they wanted to look at was PM peak when in fact they had a specific use everyone agreed was AM peak. The numbers for AM peak were incredible; the difference between what the DRB approved last year for a small multi-use to a drive thru was incredible.
 - He asked the Board to imagine adding even 200 more traffic trips an hour on that site at 7 am on a Tuesday morning, and to really think about that when they watched the videos, because it simply would not work.
- Regarding the notion of pass by trips, the DKS representative told the Board correctly, but in a backward fashion. When looking at traffic count data from a City perspective, they would look only at the entrance at 95th Ave because that was the public facility. So, if a car was already on that facility and it simply pulled in and pulled back out that was a pass by trip. It would not have any impact on 95th Ave because it was already in the traffic stream, but once it entered the site, it was longer be a pass by trip, it was an onsite trip. Therefore, the notion of pass by trips did not count only on 95th Ave, but once they were on the site, they counted.
 - The numbers and extrapolation completed for the coffee shop further north on I-5 were dramatic: 300 trips and then a ratio was applied. He did not know who talked to who between DKS and LaPoint, but the bottom line was that the ITE use, which the Gibson folks did, also using ITE 934, they found that the AM peak would be 330 trips, which would be 175 in and a 155 out, and that was for the much smaller 1,800 sq ft property in Bellingham, WA. He did not know the exact square footage, but this proposal was larger and the ITE manual used square footage because that was what DKS did in their September 5th memo. He had extrapolated the 330 because it was a bigger site, and that was what the ITE said to do, and at 25 percent bigger it came to 419. But if it was not that big, say only 330 or even 200 trips; again imagine that much more traffic when looking at the video, the site simply could not handle the traffic safely or efficiently and therefore it violated the provision of the Wilsonville Code that Mr. Pauly pointed out. The traffic circulation was too much; it was marginal and perhaps functional when they had a multi-tenant building, but with a drive thru with an AM peak of that high of number, it would not work.
- He concluded that he looked forward to returning again after the Board had a chance to look at the video and he had a chance to look at all of Mr. Pauly's report. He noted he only got into the traffic issue simply because he did not have time to do anything else. He appreciated the Board's time.

Mr. Ruud confirmed Mr. Lien had visited a Human Bean and asked him to describe their business.

Mr. Lien replied he had visited one in Albany and it was almost identical to the one being proposed.

Mr. Ruud asked if The Human Bean used a similar process as Dutch Bros Coffee for ordering and waiting for coffee.

Mr. Lien replied The Human Bean was a Cadillac and Dutch Bros was a Chevrolet; The Human Bean was more than just driving up either side and getting your order.

Mr. Ruud stated it seemed that with 200 cars an hour in one drive thru lane, a little more than three people a minute would be going through the drive thru, which did not seem feasible with specialty coffee

and if multiple people were in the car. During a normal trip to Dutch Bros, it took a lot more than 15 seconds to get his coffee.

Mr. Lien said that Mr. Ruud might correct, adding that they did not have any specific information about this particular site and did not even know the right ITE classification to use, the one Mr. Mansur presented tonight or three months ago. He could not emphasize enough that this was the Applicant's problem; they had the burden of proof. If in fact, the deviation from this particular use was such that it was lesser traffic than what the ITE manual stated then it was up to the Applicant to bring that information in and hopefully they could provide that information at the next meeting.

Mr. Ruud stated as Mr. Lien mentioned, they had to think through the safety concerns, and he did not think it was feasible for 200 cars in an hour to go through that type of an establishment.

Mr. Lien stated he questioned how they would even do 70 cars in an hour based on that traffic. He visited the property several times that week, watched at videos taken over the last month or so, and looked at the report. Even if the report was right, if the PM peak was used with 70 cars and that was what it would be in the morning, could they imagine 70 cars, because he could not imagine 25 more cars that were there for the Carl's Jr now. If there were any issues with a delivery truck, garbage truck, or someone's stalled car it would be grid lock. He asked the Board to think about 70 cars while they watched the videos and how many more cars could really fit in that drive thru.

Mr. Ruud asked Mr. Lien to share the timeline of when the videos were captured. He recalled one letter mentioned they were given permission to take video of the site for an 18-hour period on a Sunday through Monday or was selected taping used to create the videos.

Mr. Lien replied he had not looked at the video material, but the files he viewed that were emailed to him had dates on them. He believed the accident was November 26, 2013, and then there was a short video on December 2, 2013 and another on December 6, 2013 which showed the blockage. Dates could be seen as the videos were viewed so the Board would know the time period they were viewing.

Mr. Ruud stated that it was different to him if they were looking at instances over a six-month period rather than over an 18-hour period due to the frequency. As an example if one went to a mall during the holidays, they could come up with a video of 200 to 500 near misses and incidents.

Mr. Lien added part of the problem was that the Carl's Jr just opened so they did not have a long period of time to track the traffic. Each video covered a certain period of time. The video for December 6th was 20 minutes long, so the Board would clearly see the chaos that happened during that period of time. The video of the accident was only about 20 seconds, but it was all in actual time.

Mr. Edmonds asked if Mr. Lien was proposing to provide to the DRB with the videos to review at their own leisure.

Mr. Lien stated a DVD and thumb drive had been provided to the City and he assumed the City could email them.

Mr. Pauly stated the files were fairly large, and suggested the Applicant provide additional files for the City to provide.

Mr. Edmonds asked counsel if the video had to be presented in a format of a full presentation during a public hearing or could it be sent to the Board members for their review. The videos lasted about an hour.

Mr. Lien noted still pictures were included as well the videos.

Mr. Edmonds noted some audience members did not get a chance to view the video either, and was concerned whether that was a legal issue if they said they did not get the opportunity to see the video because it was not presented during a public hearing format.

Mr. Lien believed it was like any other Staff report or file or traffic report that was available at City Hall; people could go in and view it but it had to be available during that period of time.

Mr. Edmonds clarified that if it was to be entered into the record, each Board member would need to have their own copy because they could not share a copy within the group since it would be collaboration outside of the public hearing format. He confirmed at least eight copies would be needed.

Mr. Lien stated he had the original information and he would leave the two packets he had with him and obtain six more copies to give the Board members. He noted each packet had two ways of viewing the material and included a DVD and flash drive.

Mr. Pauly clarified that the exhibit numbers in the record should reflect one DVD and flash drive as one exhibit.

Ms. Jacobson suggested the material be provided to the Applicant first, and then Mr. Lien could send the City a full set to distribute to the DRB.

Mr. Lien replied he would consider that.

Tom Berg, 15871 SE Van Zyl Dr, Damascus, OR, described his experience with the site, noting that he worked as a contractor for LaPoint Business Group in the subject location as well as others, and was also the primary contractor for the AGC Center, immediately west of the subject site across 95th Ave. He was familiar with the development of the Chevron station, the original South Sea's parcel acquired by George Brice who had submitted the office development complex, and with the traffic and impact of 95th Ave to Boones Ferry Rd and Commerce Circle, which went around the industrial and office development to the west.

- Tonight's discussion had been mostly about traffic, the impact on the sites and how they fit in a chronological order with the overall development, along with a few issues with the drainage. He noted the City had done an excellent job trying to control some of the major issues that have occurred on 95th Ave.
- He stated that the project, and particularly the drawings before the Board should have encompassed a larger, overall picture because of the nature of the impact. What was not emphasize enough was the size of the Holiday Inn, convention center, restaurant, and bar located directly south of the subject which used the majority of the access at the same entrance onto the subject parcels.
 - The changes made to 95th Ave reduced access on the two lanes south bound by removing one of the left turn only lanes for traffic flow and access for bike lanes and sidewalks.
- Since the Carl's Jr development started, he had been involved on a project for the AGC Center. Much of the work was on the exterior and roof, so he observed the subject site and traffic plan many times first hand being adjacent to the site on top of a four-story building which provided a good opportunity to view the site and establish some opinions.
- Regarding the ingress and egress, he said he participated in some of the meetings with City engineers and the planning department and some signage that was supposed to occur out on the street had not yet occurred. First and foremost was giving the Holiday Inn the access through this particular entrance way onto the subject site.

- Again, the Board should be looking at the overall impact on all parties involved, which would be a larger section of the Holiday Inn, all of the Chevron, Carl's Jr, and the proposed coffee kiosk.
- Some of the videos mentioned showed some of the difficulties with traffic that had occurred in the months of November and December and into January. Since the sign was relocated, additional cameras were put up for security on the property and a whole new system was added, so a tremendous amount of data was available that could be extracted to provide the Board all the information they wanted.
- The original plan showed that the multi-use facility on the north end of the property would not have a large effect on overall traffic plan. However, he could see how that could be handled through what was proposed. He knew that if Mr. LaPoint was present, he would talk about the conditions of the easement and that the easement and the development agreement were established with that particular usage for the subject site, the coffee kiosk. They had not been involved with any change in the easements or access through the LaPoint property from any documents that occurred in the development agreement for that particular usage; so the LaPoints should be present.
- He noted all the documentation, videos, and traffic issues were during the winter months which had the lowest volume of the Chevron station.
 - He noted Mr. LaPoint has been involved his whole life in the operation of service stations, gas stations, and convenience stores, but he had developed a reputation in the industry as being first and foremost. This Chevron location has pumped the highest gallon volume in a Chevron station in the three western states and the convenience store was the highest used convenience store in the region.
 - This was a huge impact now, in the middle of the winter when people were not on the roads. He had observed traffic that filled the entire left hand turn lane from the entrance onto the subject site all the way to the corner on 95th Ave where Commerce Circle went to the west, which indicated how popular the service station was in prime time.
- Carl's Jr was an asset being an excellent restaurant chain and it showed tremendous popularity. He noted comments made about the operator of Carl's Jr liking the idea of having a coffee kiosk and stated if he was operating a Carl's Jr at any location and was serving 250 to 500 breakfasts an hour and someone told him they wanted a coffee kiosk next door in the driveway, he would find that hard to believe. Coffee would be the number one beverage that they would sell all morning long and he could not believe that to be a common denominator for a good business relationship.
 - He knew that the number one and three items inside the convenience store was coffee; so there was definitely opportunity between those two locations for good coffee to be served. Coffee was also available at Holiday Inn.
- He wanted to emphasize the whole picture of what the gas station traffic looked like, adding that in pumping that much gas, Mr. LaPoint primarily won the game because he had a real high service ratio with people out on the islands. He provided quality service to the customers that came into the station which was why they came back. To continue providing quality service, one thing he needed was traffic flow, which had been designed from the beginning in a counter clock wise rotation that Mr. Lien mentioned, and Mr. Altman was aware of having worked on the site for a long time.
 - He indicated the corner of the canopy of the Chevron station and large concrete pad set up for refueling. He explained that if cars were queued going into the driveway of the Carl's Jr location, the assumption was that people wanting to go to the coffee kiosk would veer to the east toward the station, against the Chevron's flow of traffic, and along the property boundary line and supposed common easement (near the trash enclosures) to access the coffee kiosk. That did not fly very well.
 - The circular flow of traffic going counter clock wise enabled Chevron's customers to get quick and courteous service, but they would be confronted with a lot of oncoming traffic when trying to leave the property. He understood it was a tight site, but obvious problems would be created by approving this type of traffic flow in areas that were private property available to the public.

- The deliveries to both the Carl's Jr and Chevron station had been discussed, but deliveries to a food service location, not a mixed use, office-type facility, would also have to be added. Where were they going to park for deliveries, on the Chevron location?
 - He saw parking stalls and traffic plans that worked for cars, but that area of Wilsonville was an industrial zone with offices and businesses with a lot of boxed vans as well as vehicles with trailers. Where they would park? They could not fit through the drive thru or park at the Holiday Inn because the radii were too tight. Parking a tractor/trailer near the trash enclosures would block the designated fuel location for LaPoint Chevron and the designated parking for Carl's Jr's delivery trucks, which were supposed to be there afterhours.
 - The Holiday Inn parking lot was reconfigured with ingress and egress with this new plan to try to handle some of the problems, but it busted the lot up into smaller areas and put in landscape dividers which did not allow for larger trucks on the site. Big trucks could not park at the Chevron, or Carl's Jr and could not drive around the coffee kiosk, so how would all those people working in that area with those types of vehicles be accommodated?
 - He noted that he, Mr. Pauly, Mr. LaPoint and others were on the site talking about the drainage issue when a boxed van arrived. The person double parked and blocked traffic in the designated truck delivery parking area near the trash enclosures. He noted if that happened again with 400 customers passing through in an hour at seven or eight in the morning was unconsciousness.
 - This was not only something that was an inconvenience for traffic, but it regarded life safety issues and impact on a piece of property not designed for that type of traffic. If the subject area was properly used, it would provide more parking for a very good quality Carl's Jr and also provide services for the trucks and traffic, which should be a primary consideration instead of more density.
- He indicated the location of the fuel tank cover and asked if the City of Wilsonville and DEQ would really allow water to flow across tank filling areas onto a lot. He indicated that there was an extruded curb that directed the water into the existing drainage area and another catch basin which was the subject one for the improper drainage coming off of the new asphalt from the delivery route. He did not want to call it an ingress or egress because that was not the purpose of intent originally discussed when it was a mixed use building.
- He concluded by stating that Wilsonville had the highest volume Chevron in the region, a really good restaurant and he asked the Board to give those businesses an opportunity to grow and operate their businesses, and to be realistic about having the coffee kiosk. The whole site would be impacted.
- He strongly disagreed.

Chair Fierros Bower called for the Applicant's rebuttal.

Mr. Veentjer stated he appreciated the Boards patience and made the following comments regarding the issues raised:

- One of the biggest areas of concern raised by the LaPoint Group was the ingress and egress onto 95th Ave, and if they referenced the development agreement, the right turn out from the site at 45 to 50 degrees was actually proposed by Mr. LaPoint to service his large vehicles that frequented the site.
- The monument sign of Chevron's was relocated at the request of Mr. LaPoint to create an island and the Applicant complied with that request. All the improvements seen on site and reflected in the shared access agreement were all improvements they made and paid for to the benefit of Mr. LaPoint, Holiday Inn, their tenant and their future tenant.
- With regard to the concerns about the delivery trucks, he noted the deliveries for the Carl's Jr were all new routes since it just opened on November 12th, 2013. The agreement, which Mr. Pauly mentioned was in the original approval for the DRB, was that the delivery trucks were to park in front of the trash enclosures where a property line and reciprocal cross easement existed. The delivery trucks had

not had an opportunity to park at that designated location, because they have been requested to move by Chevron.

- The main point of access for The Human Bean was in front of Carl's Jr which was a natural ingress to The Human Bean. On the northeast side of the property was a reciprocal cross easement, and most vehicles entering the site did not know that existed, which was a large benefit to the Chevron customers to go onto the subject property after they have fueled their vehicles.
- He addressed the concern with large vehicles and parking by stating that most of those vehicles were Chevron's consumers. While Mr. Berg had raised a concern about large vehicles parking in front of the trash enclosures, he believed they had to lead by example, because if they parked their large vehicle there other people might think they could park there as well.
- There had been a large discrepancy between the traffic counts The Human Bean might generate. The Human Bean on average completed about \$1,000 a day in business, so between 5 am and 9 pm about 175 to 200 maximum trips would probably be generated per day.
- Regarding the relationship between Dutch Bros and The Human Bean, he noted The Human Bean had 50 locations and Dutch Bros had more than 200. Dutch Bros had been around longer and did a much higher volume of business.

Mr. Morris believed Mr. Lien was playing a little bit of a slight of hand with his traffic account. The Gibson Study was done for a building that was about 1,800 sq ft and he extrapolated based on the hypothetical view that the proposed building was 2,700 sq ft, but the building was 450 sq ft, which was in the record, application, and Staff report, so the traffic impact needed to be based on a 450 sq ft building.

- He stated that the Applicant was happy to continue leaving the record open, but were opposed to renouncing the hearing and a motion for a continuance, but he would leave that to Ms. Jacobson to decide and if she felt the City needed to do that, she could advise the Applicant.
- There was a lot of discussion about the cross easements and it was very important to understand that the development agreement was entered into about a year and half ago, and the easements were negotiated last summer, long after Mr. LaPoint was aware that Wilsonville Devco was proposing The Human Bean coffee kiosk at that location. Mr. LaPoint even supported the idea in his earlier conversations with Mr. Veentjer, and at one point, asked if he could manage the restaurant. The reciprocal easements and access agreement were negotiated, signed and recorded.
- The first time the Applicant had heard any dismay about the coffee kiosk being located was in the letter from Mr. Lien to Mr. Veentjer in which he suggested the operation of a coffee kiosk was a convenience store and that matter was now in litigation at Washington County, and as Ms. Jacobson correctly advised Mr. Laidlaw, it was a private matter of litigation between the parties.
- He noted that Mr. Berg was not aware that he represented Carl's Jr and spoke to Mr. Gjurgevich on the way to tonight's hearing that they were very much in favor of the Coffee Bean restaurant going in at this location, so any indication the application did not meet with the Carl's Jr approval was incorrect.

Mr. Veentjer added Carl's Jr favored The Human Bean so much they were actually the franchise operator; that was how complementary the business was to Carl's Jr.

Mr. Morris clarified that they were the franchisee.

Mr. Pauly suggested having Mr. Mansur address the discrepancies mentioned.

Chair Fierros Bower called for a brief recess at 9:28 pm and reconvened the meeting at 9:33 pm.

Mr. Mansur responded to some of the comments raised about the September 5, 2013 memo, noting that he had reviewed it again and there were no discrepancies in the memo.

- He explained that Table 1 referred to the original traffic study and the two land uses that were assumed: one was the fast food and drive thru, which was actually the 2,790 sq ft Carl's Jr, and a specialty retail center which was a little more than 3,000 sq ft. He clarified that he was referring to Table 2 on the next page, which regarded the current proposal and showed the size of Carl's Jr changed to 2,867 sq ft, and The Human Bean was 430 sq ft, which was the correct ITE land use code 938 for a coffee kiosk with a drive thru.
- The letter from the LaPoint Group referred to the coffee kiosk as 2,790 sq ft and they applied the fast food ITE Code 934, but both the square footage and ITE code were incorrect. Table 2 of the DKS memo indicated the ITE Code was 938 and the square footage was 430.

Mr. Ward added that even if the 1,800 sq ft was compared to a 450 sq ft facility, which was exactly a quarter of the size, and it was incorrectly assumed to be fast food and not the coffee generation, there would be a quarter of the trips in and out. Using that analysis and assuming it was similar to an I-5, Bellingham, WA in and out, instead of going from 330 to 412, 330 would be divided by four, which brought the trips down to about 82 trips.

- He said Mr. Mansur had noted a more conservative number, at about 100 trips, which was a trip in and a trip out. So the Bellingham equivalent, if the coffee kiosk was incorrectly assumed to be a fast food restaurant, would provide for 41 separate vehicles, or a vehicle every minute and a half. Mr. Mansur's analysis revealed that the coffee kiosk would handle a vehicle roughly every minute or slightly less. Those numbers were in line with the numbers the Applicant had provided as far as financials, and that was during AM peak hours, the morning rush. He clarified the coffee kiosk would serve a vehicle every minute to a minute and a half on average which totaled between the opposition's 41 to 65 vehicles being served in an hour.

Mr. Springall requested clarification from counsel about the discussion to leave the record open or have a continuance.

Ms. Jacobson replied the Board had two options. Although she was not worried about renouncing, she believed Mr. LaPoint's attorney was asking to have a continuance that kept the record fully open so the next time the Board met, on February 10th, the record would be completely left open and the Board would continue the hearing so that new people could come in and testify. For example, Mr. LaPoint could come in and give new testimony, as could the Applicant, and both sides could have people come in and testify in favor or in opposition of the application.

- The second option of leaving the record open was a bit more limiting because more written evidence could come in. In both instances, the Board would have time to review the video and all the other information that has come into the record tonight.
- The Board could continue the hearing, keeping the record fully open and allowing anyone to testify that wanted, or leave the record open to written testimony and at that point in time, request if someone wanted to make one to present additional evidence based the written testimony.
- If the Board was inclined to hear directly from Mr. LaPoint when he returned, she would continue the hearing and keep the record fully open; and she believed that everyone was open to a continuance.

Mr. Ruud asked to hear from the Applicant, as he heard one to two weeks was requested.

Mr. Veentjer stated the Applicant would agree to a continuance of two weeks to allow sufficient time for additional documentation and provide the Board time for a review and to make a decision.

Mr. Edmonds believed the Board would have to meet February 10th because the City could not meet the noticing requirements within two weeks.

Ms. Jacobson noted that this Board would not meet again until February 10th, and moving the hearing to a different DRB panel would not be fair to anyone. Staff would put the hearing on as the first agenda item for February 10th. She believed the application had until April to go through the land use process.

Mr. Morris agreed it did not make sense to start again with a new panel.

Ms. Jacobson confirmed that February 10th worked for the Applicant and reviewed the options available to the Board.

Mr. Springall confirmed the Board could leave the hearing open or closing the hearing and reopen the record at the February meeting.

Chair Fierros Bower moved to continue the public hearing for Resolution No. 268 to February 10, 2014. Simon Springall seconded the motion.

Mr. Ruud stated he was fully open to coming back on February 10th for further discussion, but after hearing the concerns from Mr. LaPoint's letter, he believed it was more about competition rather than traffic flow or the business itself. Mr. LaPoint had raised those issues with the City in the past and the City and Applicant have incorporated quite a few of his suggestions into the design for the existing Carl's Jr. Experts from both the City and Applicant had prepared, shown studies, assessed the situation, and had given the Board feedback that it would be safe, even though it would be tight and not ideal; but Wilsonville was a growing city and this issue would come up more often as more people come into the city.

Mr. Pauly added that the Board was likely to receive a pile of new materials last minute for the hearing in February. Pushing the decision to March could make meeting the 120-day land use deadline tight if there was an appeal to City Council. The Board could also leave the hearing open for two weeks in order to receive all the materials from both sides a couple weeks before the actual meeting date to be able review the submitted materials and be up to speed to be able to deliberate and make a decision on February 10th.

Ms. Jacobson confirmed the Board could keep the record open and allow additional testimony but make a cut off time for entering any additional material.

Mr. Pauly suggested identifying a deadline date for the material to be submitted.

Mr. Morris stated from the audience that would be the Applicant's preference.

Mr. Ruud understood Mr. LaPoint was on vacation outside the continental US until February 5th.

Mr. Pauly said Mr. LaPoint had called him today and he did have access to a computer to provide written testimony.

Ms. Jacobson noted the Board could allow materials to come in until February 6th which would help Mr. LaPoint's counsel and then the Board would decide on the 10th. She added there was always the option to continue the hearing or leave the record open again, but it would probably give them more assurance to get it done.

Mr. Greenfield clarified Staff was not suggesting a continuance, but leaving the record open until February 6th to avoid having material coming in on that day, and then the matter would be decided on February 10th.

Mr. Pauly suggested that the Board consider how much time they would need to feel comfortable with the volume of material that might be received before making its decision in February.

Ms. Keith stated that she preferred two weeks.

Ms. Jacobson agreed with leaving the record open for two weeks because it would allow either side time to review the materials and respond within seven days.

Chair Fierros amended her motion to hold the record open until January 27, 2014. Simon Springall seconded the motion, which passed unanimously.

Mr. Pauly reviewed the exhibits entered into the record, confirming that Exhibit D3 was the videos submitted on DVD and flash drive. He confirmed that he would also email the Board the exhibits list.

Mr. Ruud noted Mr. Greenfield was moving to the Planning Commission and asked if there was any issue with a new member coming on the Board who did not hear the testimony this evening.

Ms. Jacobson responded that the timing was not ideal. The new member could participate after listening to the full record; otherwise, the Board would still have a quorum without Mr. Greenfield.

Mr. Pauly confirmed Mr. Greenfield's first Planning Commission meeting would be Wednesday, February 19th, so technically, he could still continue on the Board for the February 10th meeting.

Ms. Jacobson asked if everyone was clear on how they were going to proceed.

Mr. Morris confirmed he understood correctly that the record would be kept open for two weeks, they would have seven days to respond and the next hearing would be on February 10, 2014.

IX. Board Member Communications:

There was none.

X. Staff Communications:

There was none.

XI. Adjournment

The meeting adjourned at 9:54 p.m.

Respectfully submitted,

Paula Pinyerd, ABC Transcription Services, Inc. for
Shelley White, Planning Administrative Assistant

DEVELOPMENT REVIEW BOARD MEETING

MONDAY, FEBRUARY 10, 2014

6:30 PM

VII. Public Hearing:

A. Resolution No. 268. Boones Ferry Pointe – The Human Bean Drive-up Coffee Kiosk: SFA Design Group and CB Anderson Architects – Representatives for Wilsonville Devco LLC – Applicant/Owner. The applicant is requesting approval of a Stage II Final Plan revision, Site Design Review and Master Sign Plan revision and Sign Waiver for development of a new 450 square foot drive-thru coffee kiosk at the corner of 95th Avenue and Boones Ferry Road. The subject site is located on Tax Lot 302 of Section 2DB, T3S, R1W, Washington County, Oregon. Staff: Daniel Pauly

Case Files: DB13-0046 – Stage II Final Plan Revision
DB13-0047 – Site Design Review
DB13-0048 – Master Sign Plan Revision
and Sign Waiver

This item was continued to this date and time certain at the January 13, 2014 DRB Panel A meeting.

**DEVELOPMENT REVIEW BOARD
RESOLUTION NO. 268**

A RESOLUTION ADOPTING FINDINGS AND CONDITIONS APPROVING A STAGE II FINAL PLAN REVISION, SITE DESIGN REVIEW AND MASTER SIGN PLAN REVISION AND SIGN WAIVER FOR DEVELOPMENT OF A NEW 450 SQUARE FOOT DRIVE-THRU COFFEE KIOSK AT THE CORNER OF 95TH AVENUE AND BOONES FERRY ROAD. THE SUBJECT SITE IS LOCATED ON TAX LOT 302 OF SECTION 2DB, T3S, R1W, WASHINGTON COUNTY, OREGON. SFA DESIGN GROUP AND CB ANDERSON ARCHITECTS – REPRESENTATIVES FOR WILSONVILLE DEVCO LLC – APPLICANT/OWNER.

WHEREAS, an application, together with planning exhibits for the above-captioned development, has been submitted in accordance with the procedures set forth in Section 4.008 of the Wilsonville Code, and

WHEREAS, the Planning Staff has prepared staff report on the above-captioned subject dated January 6, 2014, and

WHEREAS, said planning exhibits and staff report were duly considered by the Development Review Board Panel A at a scheduled meetings conducted on January 13, 2014 and February 10, 2014, at which time exhibits, together with findings and public testimony were entered into the public record, and

WHEREAS, the Development Review Board considered the subject and the recommendations contained in the staff report, and

WHEREAS, interested parties, if any, have had an opportunity to be heard on the subject.

NOW, THEREFORE, BE IT RESOLVED that the Development Review Board of the City of Wilsonville does hereby adopt the staff report dated January 6, 2014, attached hereto as Exhibit A1, with findings and recommendations contained therein, and authorizes the Planning Director to issue permits consistent with said recommendations for:

DB13-0046, DB13-0047, DB13-0048 Class 3 Stage II Final Plan Revision, Site Design Review, and Master Sign Plan Revision with Sign Waiver to replace a previously-approved but un-built multi-tenant commercial building at Boones Ferry Pointe with a drive-thru coffee kiosk and associated improvements..

ADOPTED by the Development Review Board of the City of Wilsonville at a regular meeting thereof this 10th day of February, 2014 and filed with the Planning Administrative Assistant on _____. This resolution is final on the 15th calendar day after the postmarked date of the written notice of decision per *WC Sec 4.022(.09)* unless appealed per *WC Sec 4.022(.02)* or called up for review by the council in accordance with *WC Sec 4.022(.03)*.

_____,
Mary Fierros Bower Chair, Panel A
Wilsonville Development Review Board

Attest:

Shelley White, Planning Administrative Assistant

DB13-0046 et seq
Boones Ferry Pointe:
The Human Bean Drive-Up Coffee Kiosk

February 10, 2014 DRB Panel A meeting record, including:

Exhibits entered into the record at the January 13, 2014 DRB Public Hearing:

- Exhibit B4: Email correspondence received from the Applicant on January 8, 2014 regarding patio furniture.
- Exhibit B5: Site Plan, Sheet A1.0 submitted by the Applicant showing maximum queuing for the Human Bean drive-thru.
- Exhibit C4: Comments received from the Public Works Department Plan Review.
- Exhibit A3: Email dated January 13, 2014 from Daniel Pauly to Barbara Jacobson noting the dates that information was submitted to Garry LaPoint over the last month on the project.
- Exhibit D2: Cover letter and Memorandum in Opposition from Wallace W. Lien, which included a number of pictures of the site and several site maps indicating circulation flows for the subject businesses and
- Exhibit D3: [Traffic videos and photos](#) submitted by Wallace W. Lien that were included on DVDs and flash drives received January 14, 2014.
- Exhibit D4: Letter received on January 14, 2014 from Garry LaPoint via email titled, “Proposed—Convenient Coffee Store Business” requesting a continuance of the public hearing.

Exhibits received after the January 13, 2014 meeting:

Added January 27, 2014:

- Exhibit B6: Applicant Submittal, January 27, 2014
- Exhibit D5: Wallace Lien Submittal, January 27, 2014
- Exhibit D6: [Traffic Photos and Video](#)

Added January 31, 2014:

- Exhibit D7: LaPoint Response, January 31, 2014
- Exhibit D8: Wallace Lien Rebuttal

Added February 4, 2014:

- Exhibit B7 – Applicant Rebuttal, February 3, 2014
- Exhibit B8 – Truck Turning Movement, February 3, 2014

Added February 10, 2014:

- Exhibit A4 – Memo from Staff to DRB



Pauly, Daniel

From: josh@pdvco.com
Sent: Wednesday, January 08, 2014 3:43 PM
To: Pauly, Daniel; Ben Altman (baltman@sfadg.com)
Subject: RE: Tables for Human Bean Patio Area

Hi Dan,

The Human Bean has selected the below patio furniture. Still waiting on specs but am told the fiberglass octagonal umbrellas will match the lighter beige of the building.



Let me know if you have questions in the interim.

Thank you,

Josh Veentjer, President
Pacific Development Ventures
503.201.1309 M
971.400.8552 O
josh@pdvco.com



Integrated Investment Partners is now Pacific Development Ventures. Please note my email address has changed.

From: Pauly, Daniel [<mailto:paul@ci.wilsonville.or.us>]
Sent: Thursday, January 02, 2014 11:10 AM
To: Ben Altman (baltman@sfadg.com)
Cc: josh@pdvco.com
Subject: Tables for Human Bean Patio Area

Have the furnishings for the Patio area next to the Human Bean been selected. If so can you provide me information on the design.

Thanks



Daniel Pauly, AICP | Associate Planner | City of Wilsonville | Planning Division
29799 SW Town Center Loop East | Wilsonville OR 97070 | ☎: 503.682.4960 | ✉: paul@ci.wilsonville.or.us

Disclosure: Messages to and from this E-mail address may be subject to Oregon Public Records Law.



CB ANDERSON ARCHITECT

7209 Greenwood Avenue N
Seattle, Washington 98103
206-782-2911
Fax 782-5624

CLIENT

Wilsonville Devco LLC
C/O Pacific Development Ventures
PO Box 916
Portland, OR 97207
(503) 201-1309

PROJECT

Boones Ferry Pointe
SW 95TH AVE & COMMERCE CIRCLE
WILSONVILLE, OREGON

DRAWING TITLE

ARCHITECTURAL SITE PLAN
430 SF Coffee Tenant

REVISIONS

- ▲
- ▲
- ▲
- ▲
- ▲

STAMP

DATE: OCT-3-2013

BLDG. SUBMITTAL DATE: ①
DATE: ②
DATE: ③

BID DATE:

Drawn: Cori Fultz

ARCH. NO.: 1199.COFFEE

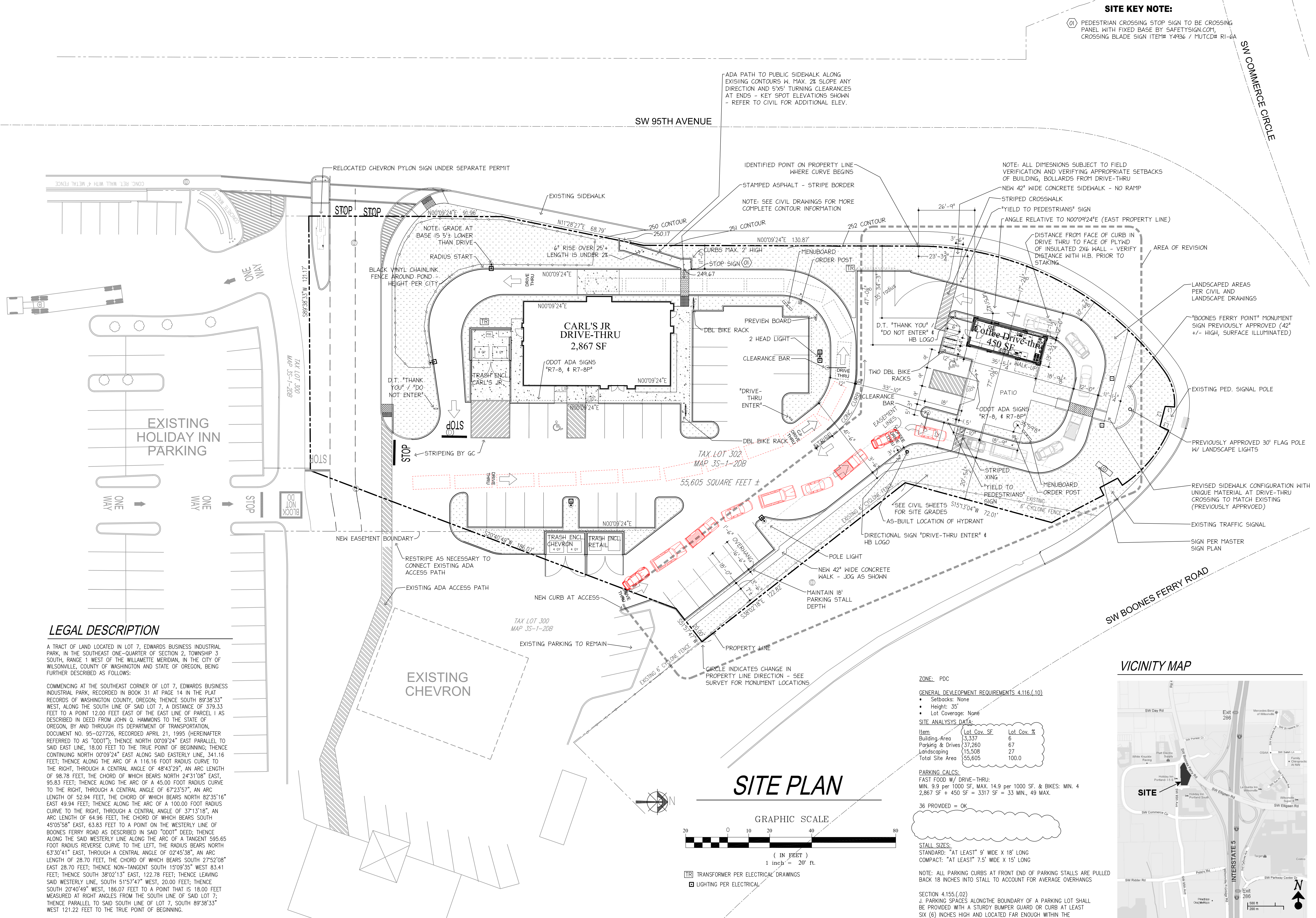
SCALE:

SHEET

A1.0

SITE KEY NOTE:

- ① PEDESTRIAN CROSSING STOP SIGN TO BE CROSSING PANEL WITH FIXED BASE BY SAFETYSIGN.COM
- CROSSING BLADE SIGN ITEM# Y4936 / MUTCD# R1-6A



LEGAL DESCRIPTION

A TRACT OF LAND LOCATED IN LOT 7, EDWARDS BUSINESS INDUSTRIAL PARK, IN THE SOUTHEAST ONE-QUARTER OF SECTION 2, TOWNSHIP 3 SOUTH, RANGE 1 WEST OF THE WILLAMETTE MERIDIAN, IN THE CITY OF WILSONVILLE, COUNTY OF WASHINGTON AND STATE OF OREGON, BEING FURTHER DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF LOT 7, EDWARDS BUSINESS INDUSTRIAL PARK, RECORDED IN BOOK 31 AT PAGE 14 IN THE PLAT RECORDS OF WASHINGTON COUNTY, OREGON; THENCE SOUTH 89°38'33" WEST, ALONG THE SOUTH LINE OF SAID LOT 7, A DISTANCE OF 379.33 FEET TO A POINT 12.00 FEET EAST OF THE EAST LINE OF PARCEL 1 AS DESCRIBED IN DEED FROM JOHN Q. HAMMONS TO THE STATE OF OREGON, BY AND THROUGH ITS DEPARTMENT OF TRANSPORTATION, DOCUMENT NO. 95-027726, RECORDED APRIL 21, 1995 (HEREINAFTER REFERRED TO AS "ODOT"); THENCE NORTH 00°09'24" EAST PARALLEL TO SAID EAST LINE, 18.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING NORTH 00°09'24" EAST ALONG SAID EASTERLY LINE, 341.16 FEET; THENCE ALONG THE ARC OF A 116.16 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 48°43'29", AN ARC LENGTH OF 98.78 FEET, THE CHORD OF WHICH BEARS NORTH 24°31'08" EAST, 95.83 FEET; THENCE ALONG THE ARC OF A 45.00 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 67°23'57", AN ARC LENGTH OF 52.94 FEET, THE CHORD OF WHICH BEARS NORTH 82°35'16" EAST 49.94 FEET; THENCE ALONG THE ARC OF A 100.00 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 37°13'18", AN ARC LENGTH OF 64.96 FEET, THE CHORD OF WHICH BEARS SOUTH 45°05'58" EAST, 63.83 FEET TO A POINT ON THE WESTERLY LINE OF BOONES FERRY ROAD AS DESCRIBED IN SAID "ODOT" DEED; THENCE ALONG THE SAID WESTERLY LINE ALONG THE ARC OF A TANGENT 595.65 FOOT RADIUS REVERSE CURVE TO THE LEFT, THE RADIUS BEARS NORTH 63°30'41" EAST, THROUGH A CENTRAL ANGLE OF 02°45'38", AN ARC LENGTH OF 28.70 FEET, THE CHORD OF WHICH BEARS SOUTH 27°52'08" EAST 28.70 FEET; THENCE NON-TANGENT SOUTH 15°09'35" WEST 83.41 FEET; THENCE SOUTH 38°02'13" EAST, 122.78 FEET; THENCE LEAVING SAID WESTERLY LINE, SOUTH 51°57'47" WEST, 20.00 FEET; THENCE SOUTH 20°40'49" WEST, 186.07 FEET TO A POINT THAT IS 18.00 FEET MEASURED AT RIGHT ANGLES FROM THE SOUTH LINE OF SAID LOT 7; THENCE PARALLEL TO SAID SOUTH LINE OF LOT 7, SOUTH 89°38'33" WEST 121.22 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM THAT PORTION THEREOF CONVEYED TO THE CITY OF WILSONVILLE FOR RIGHT-OF-WAY PURPOSES IN WARRANTY DEED RECORDED NOVEMBER 23, 2009 AS DOCUMENT NO. 2009-102082, WASHINGTON COUNTY DEED RECORDS.

SITE PLAN

GRAPHIC SCALE

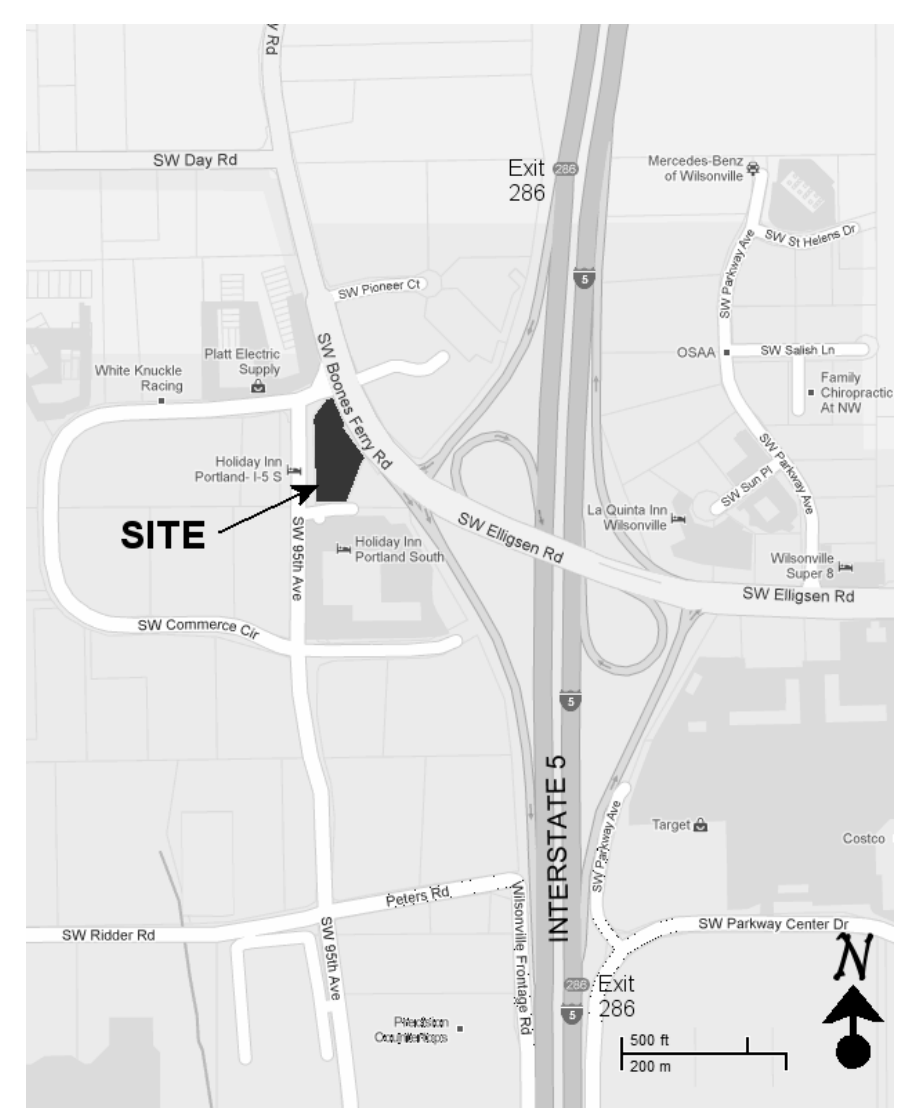


(IN FEET)
1 inch = 20' ft.

- TR TRANSFORMER PER ELECTRICAL DRAWINGS
- LIGHTING PER ELECTRICAL

NOTES:
DIMENSION AT BUILDINGS ARE TO FACE OF FOUNDATION
FACE OF STUD IS 5/8" IN FROM FACE OF FOUNDATION

VICINITY MAP



ZONE: PDC

GENERAL DEVELOPMENT REQUIREMENTS 4.116(.10)

- Setbacks: None
- Height: 35'
- Lot Coverage: None

SITE ANALYSIS DATA:

Item	Lot Cov. SF	Lot Cov. %
Building Area	13,337	6
Parking & Drives	37,260	67
Landscaping	15,508	27
Total Site Area	55,605	100.0

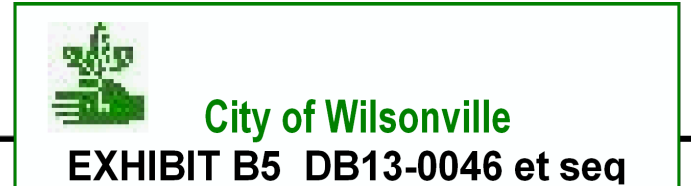
PARKING CALCS:
FAST FOOD W/ DRIVE-THRU:
MIN. 9.9 per 1000 SF, MAX. 14.9 per 1000 SF. & BIKES: MIN. 4
2,867 SF + 450 SF = 3317 SF = 33 MIN., 49 MAX.

36 PROVIDED = OK

STALL SIZES:
STANDARD: "AT LEAST" 9' WIDE X 18' LONG
COMPACT: "AT LEAST" 7.5' WIDE X 15' LONG

NOTE: ALL PARKING CURBS AT FRONT END OF PARKING STALLS ARE PULLED BACK 18 INCHES INTO STALL TO ACCOUNT FOR AVERAGE OVERHANGS

SECTION 4.155(.02)
J. PARKING SPACES ALONG THE BOUNDARY OF A PARKING LOT SHALL BE PROVIDED WITH A STURDY BUMPER GUARD OR CURB AT LEAST SIX (6) INCHES HIGH AND LOCATED FAR ENOUGH WITHIN THE BOUNDARY TO PREVENT ANY PORTION OF A CAR WITHIN THE LOT FROM EXTENDING OVER THE PROPERTY LINE OR INTERFERING WITH REQUIRED SCREENING OR SIDEWALKS.



KKG Foods CONVERSION BASED ON CKE PROTOTYPE VERSION 22-14

FILE NAME:

Public Works Plan Review Comment Form

Plans for Review: The Human Bean
 Return All Comments To: Dan Pauly
 Due Date: December 20, 2014

Name	Page No.	Comments	Engineering's Response
Randy Watson		I may have been missing it but where is the trash enclosure in the drawing? Also it may not be possible for grease pumping truck to drive through the drive through to service the grease interceptor? There shall be a water spigot located outside within 10 ft of the grease interceptor to allow for maintenance (pressure washing of the interceptor).	
Matt Baker			
Steve Munsterman			
Arnie Gray			
Jason Labrie			
House/Gering		No Comments	
Folz/Havens			

Pauly, Daniel

From: Pauly, Daniel
Sent: Monday, January 13, 2014 4:33 PM
To: Jacobson, Barbara
Subject: Dates for Getting info to Garry on Project

12/04/13 10:10 AM (503) 720-0341 Garry LaPoint IN-NEW

The above phone record shows I spoke with Garry on December 4 and offered to allow him to come in and look at the plans we had.

Sent application materials and staff report via email 12/20

Emailed PHN 12/23

Cease and desist submitted 11/22



Daniel Pauly, AICP | Associate Planner | City of Wilsonville | Planning Division
29799 SW Town Center Loop East | Wilsonville OR 97070 | ☎: 503.682.4960 | ✉: pauly@ci.wilsonville.or.us

Disclosure: Messages to and from this E-mail address may be subject to Oregon Public Records Law.

WALLACE W. LIEN
A PROFESSIONAL CORPORATION



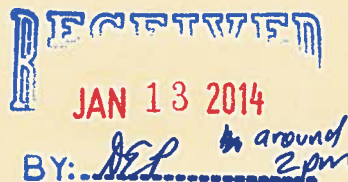
Wallace W. Lien

Attorney at Law

Contact by e-mail at
wallace.lien@lienlaw.com

January 13, 2014

Daniel Pauly, AICP
Associate Planner
City of Wilsonville
Planning Division
29799 SW Town Center Loop East
Wilsonville, OR 97070



Re: DB13-0046 (Stage II Final Plan Revision)
DB13-0047 (Site Plan Review)
DB13-0048 (Master Sign Plan Revision and Sign Waiver)

Dear Mr. Pauly:

Enclosed please find an original and ten copies of my client's Memorandum in Opposition to Applications for tonight's Development Review Board hearing on the above-referenced applications.

If you have any questions regarding this matter, please feel free to contact me at your convenience.

Yours truly,

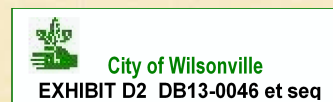
WALLACE W. LIEN, P.C.

A handwritten signature in blue ink that reads "Wallace W. Lien".

By: Wallace W. Lien

WWL:sdf

Enc: Memorandum in Opposition to Applications



BEFORE THE DEVELOPMENT REVIEW BOARD OF THE
CITY OF WILSONVILLE

In the Matter of the Application for)
a Stage II Final Plan Revision,)
Site Design Review and Master Sign)
Plan Revision and Sign Waiver of:)
WILSONVILLE DEVCO, LLC)
On property addressed as)
25250 SW 95th Avenue and identified as)
TL 302, Section 2DB, Township 3 South,)
Range 1 West, Willamette Meridian,)
City of Wilsonville, Washington County,)
Oregon)

Case Nos.
DB13-0046 (Stage II Final Plan Revision)
DB13-0047 (Site Plan Review)
DB13-0048 (Master Sign Plan Revision and
Sign Waiver)

**MEMORANDUM
IN OPPOSITION
TO APPLICATIONS**

COMES NOW, LaPoint Business Group, LLC, by and through its attorney, Wallace W. Lien, of Wallace W. Lien, P.C., and does hereby submit the following opposition memorandum to the above-referenced applications.

1. Motion for Continuance

My client does hereby move the DRB for a continuance of this hearing to a date certain in the future. A continued hearing is requested rather than an open record period in order to allow for clarity in the information being presented and the opportunity for questions related to the material. This motion is made pursuant to ORS 197.763(6), which states as follows:

*(6)(a) Prior to the conclusion of the initial evidentiary hearing, any participant may request an opportunity to present additional evidence, arguments or testimony regarding the application. **The local hearings authority shall grant such request by continuing the public hearing pursuant to paragraph (b) of this subsection or leaving the record open for additional written evidence, arguments or testimony pursuant to paragraph (c) of this subsection.** (Emphasis Supplied.)*

(b) If the hearings authority grants a continuance, the hearing shall be continued to a date, time and place certain at least seven days from the date of the initial

evidentiary hearing. An opportunity shall be provided at the continued hearing for persons to present and rebut new evidence, arguments or testimony. If new written evidence is submitted at the continued hearing, any person may request, prior to the conclusion of the continued hearing, that the record be left open for at least seven days to submit additional written evidence, arguments or testimony for the purpose of responding to the new written evidence.

(c) If the hearings authority leaves the record open for additional written evidence, arguments or testimony, the record shall be left open for at least seven days. Any participant may file a written request with the local government for an opportunity to respond to new evidence submitted during the period the record was left open. If such a request is filed, the hearings authority shall reopen the record pursuant to subsection (7) of this section.

(d) A continuance or extension granted pursuant to this section shall be subject to the limitations of ORS 215.427 or 227.178 and ORS 215.429 or 227.179, unless the continuance or extension is requested or agreed to by the applicant.

(e) Unless waived by the applicant, the local government shall allow the applicant at least seven days after the record is closed to all other parties to submit final written arguments in support of the application. The applicant's final submittal shall be considered part of the record, but shall not include any new evidence. This seven-day period shall not be subject to the limitations of ORS 215.427 or 227.178 and ORS 215.429 or 227.179.

ORS is directly applicable to these applications both as state law, and as provided for the procedure for the conduct of this hearing in the Public Hearing Notice issued December 23, 2013.

This motion is made on the grounds and for the reason that my client is the adjoining property owner in this case, and it is most immediately and adversely impacted by the proposed change from a low traffic impact office/retail building, to a high traffic impact drive thru convenience coffee store.

My client did not learn about this proposed change until mid-December when a dispute arose as to the location and functioning of a storm drain outlet serving the applicant's property, but trespassing onto my client's property. At a meeting to review this situation with City staff, my client's learned of the change from an office building to the convenient coffee store. My client's did

not receive the Public Hearing Notice until shortly thereafter. That gave them only 12-13 business days to address the issues raised by the proposed intensification of use of the adjoining property. To compound matters, that period occurred during the week of Christmas and New Years, when few professionals were available for consultation. I personally was out of the country from December 16, 2013 through January 7, 2014. Mr. LaPoint and his son, who operate and manage the Chevron station and fountain mart through their LLC have both been out of their offices, and in fact, both are currently on vacations that were planned long before notice of this hearing was received, and are unable to attend this DRB hearing.

This is a complex restructuring of a previously approved site plan, which my client got notice of just before the holidays. This timing has prevented a thorough analysis of the applications due to these previously planned vacations and holidays.

While this Memorandum will attempt to address, at least in summary fashion, important issues, my client reserves the right to raise additional issues as time permits further investigation into this application and its impacts during the continuance period.

2. Defective Public Hearing Notice

Pursuant to ORS and the WC, the notice of public hearing in a land use case is required to list the applicable approval criteria that governs the application. ORS 197.763(3)(b). In this case the notice lists 25 code provisions (some with multiple parts) as the approval criteria. In many cases the code sections cited do not appear to be approval criteria at all, but more importantly the list fails to include WC 4.003 which requires applications initiated under WC Chapter 4 to be consistent with the Comprehensive Plan. This is a mandatory provision, and must be listed in order for the notice of public hearing to be correct.

Further, ORS 197.763(3)(b) requires that all applicable criteria from the Comprehensive Plan must be listed as well. Since WC 4.003 requires consistency with the Comprehensive Plan, then it is necessary for the public hearing notice to also list those portions of the Comprehensive Plan that must be complied with.

With regard to WC 4.400 through 4.450, the notice does not specify which specific provisions in that code string that are applicable approval criteria. The notice simply says “as applicable.” Such a generic reference is not sufficient to put the public on notice of what the City believes the approval criteria among those code provisions actually are. Basically, such a reference simply leaves it up to the reader to make up their own mind which of the provisions of WC 4.400 through 4.450 apply to this case. It is the City’s responsible to determine which code provisions are applicable according to ORS 197.763(3)(b), and abrogating that responsibility to the public to sort out is error.

It is necessary for the City to re-notice this case and correct these errors before this proceeding is commenced again. Since a continuance is required to be granted as noted above, it is a convenient opportunity for the City to correct these notice issues when it issues the notice for the continued hearing.

3. Clarification of Contents of the Record

During my absence, the firm of Laidlaw & Laidlaw was engaged to provide assistance and coverage for litigation matters relating to this applicant and the legal disputes being raised. Mr. Alec Laidlaw submitted a brief letter to the City with attached pleadings putting the City on notice of litigation filed by the applicant against my client with regard to this change in use. This letter outlined the dispute between the applicant and my client about the legality of placing a convenient

coffee store on the applicant's property in light of a restrictive covenant that my client asserts prohibits that use. The pleadings attached to his letter laid out in some detail that controversy.

Ms. Jacobson, Assistant City Attorney answered the Laidlaw letter on January 3, 2014, by indicating that the provided information had no bearing on the land use case. My client respectfully disagrees with that analysis, as Wilsonville Code (WC) 4.006 specifically states that "A development may be used only in a manner that is not prohibited by law...." There is a restrictive covenant that is applicable to the subject property. If the court determines that the convenient coffee store proposed here violates that restrictive covenant (as my client asserts it will), a judgment will be entered declaring the use of the applicant's property for the convenient coffee store to be prohibited as a matter of law. Upon the entry of that judgment, WC 4.006 will come into play and the proposed use will then also be prohibited by City code. As such all information regarding the litigation is relevant to this proceedings.

My client does hereby request that the Laidlaw letter and attachments be officially entered into the Record of these proceedings, and that WC 4.006 be recognized as applicable to this application.

Since this case is dependent upon the prior approval of the complex, it is hereby requested the all planning files related to the original approval of the subject development be included in the official Record of this proceeding.

Attached to this Memorandum is a disk of photographs, and two videos, each of which will be discussed below. This disk, together with this Memorandum are requested to be made part of the official Record of this proceeding.

4. Jurisdictional Defect

This application is jurisdictionally deficient in that a necessary property owner is not a party, nor did that party consent, or sign onto the change in the site plan. My client owns the adjacent property, which is relied on to provide the primary access to the new convenient drive thru coffee store. Throughout the application in relationship to compliance with criteria, as well as on the site plan, it is clear the LaPoint property is a necessary and integral piece to this plan in order to provide internal traffic circulation and pedestrian access. As such the LaPoint property must be included in any site plan review of this change.

Further, there is no justification provided for a right to use the LaPoint property by the applicant for this new changed use. It is my client's position, one that will be taken up in Washington County Circuit Court at the appropriate time, that the easement referenced in the application and the site plan, which provides the necessary vehicular and pedestrian circulation and access was granted based on the intent of the parties that it would be used only for the office/retail building. The increase in traffic over the easement that will occur with the change from a small office/retail building to a drive through convenience coffee store is significant to the point of overburdening the easement as it is currently constituted. The law in Oregon is that the intent of the parties to an easement control its scope, and therefore the easement may not be used by the more intensive drive through convenience coffee store.

The application is jurisdictionally defective where there is no evidence provided that there is the legal right to use adjoining property for necessary access and internal circulation., and where the adjoining property owner is not a party to the applications.

5. Application Defects

My client's position, based even on its limited ability to review what materials were posted online, believes the application is substantively deficient and should not be approved. There is a lack of substantial evidence, and failure to comply with approval criteria that currently exists with this application. What follows is a short brief summary of currently identified issues. As noted above, additional material and issues may be raised during the continuance period.

A. Traffic - The primary issue in this case is the increase in traffic, particularly the am peak hour traffic that will be generated by the new convenient coffee store. In the prior approved site plan a low impact office retail building was proposed. Traffic would amount to a few employees who would come in the morning and leave at night, together with some customer traffic that would be dispersed over the course of the day. The proposed change adds a significantly higher number of traffic trips, particularly in the am peak hour. This is a proposed drive thru convenient coffee store, where the primary activity is going to be in the morning hours when customers traditionally drink coffee.

The access to the subject property as well as its internal circulation was marginal at best with a small office building, and will be a disaster with the high volume of morning traffic that will be generated from the proposed drive thru convenient coffee store. A simple review of the proposed site plan shows conflicting traffic with that of the LaPoint's Chevron and Fountain Mart, as well as conflicting internal cross traffic that will be incomprehensible to most drivers. With the stream of traffic already there going to the Chevron and to Carl's Jr, adding to that the significant increase from a drive thru coffee store will make a totally untenable situation.

Already there are problems being created by the opening of Carl's Jr. Semi-trucks making

product deliveries to Carl's Jr at the loading bay on the south side of the building regularly block the entire driveway to and from Carl's Jr forcing all Carl's Jr traffic onto the LaPoint property, which then causes a traffic conflict for those cars entering in to the traffic circulation of the Chevron station. There are photographs of this situation on the attached disk, and it should be noted that during the course of a meeting on-site regarding the storm drainage problems caused by the new development, city staff was able to observe the blockage, and in fact made contact with the driver, who apparently indicated he had no other place to off load the products and therefore could not move the truck.

It also must be remembered that the Chevron station is one of the highest volume gas sellers in the region. Double tanker gasoline trucks are in and out of the Chevron property once and sometimes twice every day to deliver gasoline. These deliveries take place opposite the trash receptacle area shown on the site plan, and invariably will block the driveway that connects the Chevron to the coffee store. In those cases, coffee store traffic will have to use the Carl's Jr access only, providing further circulation conflicts. Obviously if a gasoline off load occurs at the same time as the Carl's Jr. delivery, then all access to both the Carl' Jr and the drive thru convenient coffee store will be blocked and none of those customers will move at all.

On the attached disk is a 20 minute video of what happens when the Carl's Jr semi truck makes a delivery at the same time as a gasoline delivery to the Chevron. This video was made on January 8, 2014 and shows the chaos in traffic caused by Carl's Jr customers that arrive but are unable to access the main entrance because it is blocked by the Carl's Jr delivery truck, and are also unable to enter from the back entrance on the Chevron property due to its being blocked by the gasoline delivery truck.

What the video demonstrates is that the thwarted Carl's Jr customers stop in the traffic lanes;

they back up across lanes; they drive in the hotel exit only lane; they park in traffic lanes and walk to the store across traffic lanes; they circle in confusion around the gas aisles; they go across traffic directional lanes; one attempted to access the Carl's Jr by driving into the drive thru exit; and another tried the same thing but only backed into the drive thru exit. During this 20 minute period when both delivery trucks were on site, there were multiple near miss and close call accidents. The total blockage of ingress and egress to the applicant's property was not an isolated incident. As noted, gasoline deliveries occur daily at the Chevron, and my client reports that the Carl's Jr deliveries occur multiple times a week, and that at least once per week both deliveries occur at the same time causing the chaos shown on the video.

It should also be noted that the video shows that the Carl's Jr delivery truck takes several attempts at backing into the load out area before actually achieving success, and that upon exiting this truck blocks all of one main entrance lane of traffic and nearly all of the other. This means that during that exit maneuver, the entire entrance drive is blocked momentarily, and if there are cars incoming, the truck would not be able to exit and would be stopped in a position that would block all exit lanes to the highway.

This chaotic situation exists now with only the Carl's Jr in operation. When the drive thru convenient coffee store opens up and adds significantly more traffic to this property, gridlock is the only result.

The Chevron station was designed for a counter clockwise traffic circulation pattern, taking into account parking for the Fountain Mart and the gasoline truck deliveries. Cars enter the pump aisles, and leave in a circular fashion on the Chevron property and exit to the highway. No other property is needed, and all contingencies are accounted for. This Chevron traffic pattern, which has

worked so well, now is thrown into chaos by Carl's Jr traffic going in the wrong direction; crossing traffic directions; parking and backing up in the travel lanes; all of which disrupt the traffic pattern for the Chevron. Attached hereto is a packet of drawings using the proposed Site Plan as the master. These drawings show 1) the Chevron circulation pattern; 2) the Carl's Jr circulation pattern; 3) the proposed convenient coffee store circulation pattern; 4) the location of the delivery blockages; and 5) the circulation conflicts that arise normally and when the blockages occur.

The City should not allow further development on the applicant's property to adversely impact the existing Chevron business.

Given the current conditions, it would appear that the loading area for Carl's Jr is not correctly located. It also appears that as the Carl's Jr business grows, there will be a need for more deliveries; more traffic will come and go and the need for more parking will arise. It would further appear the Carl's Jr and the Chevron developments provide the maximum development that should be allowed on the applicant's property. The area proposed for a drive thru convenient coffee store should be better used to provide additional parking and to relocate the loading area so that deliveries do not block the Carl's Jr entrance/exit. In short, the current problems with traffic should be fixed before any thought is given to adding more traffic to the site.

In addition to the significant issues with internal vehicular circulation conflicts, there is no safe way for pedestrians to get to and from the drive thru convenient coffee store. For any pedestrian access to the coffee store, they have to cross over a line of cars going into the drive thru. For those coming from the Carl's Jr, there is not even a marked crossing provided. For those coming from the hotel or the Chevron, there is no marked path to get those pedestrians to the sidewalk. There are bike racks provided but no bike lanes to show the way for access to the coffee store. Adding the problems

with safe pedestrian and bike access, to the nightmare of the conflicting internal circulation pattern of the site with significant morning traffic is simply too much to be safe, and such should not be approved.

What is of major concern is what happens when an emergency occurs and the internal circulation is so convoluted, and/or the parking/unloading are such that emergency vehicles are unable to access any of the buildings. Fire protection and adequate access for fire equipment is critical to the Chevron. Any gasoline station must be careful about fire protection. Should traffic conflicts cause delay or inability of fire equipment to access the gas station or Carl's Jr, serious consequences will obviously arise. My client is very concerned about being able to maintain liability insurance, with the change in site plan and the traffic nightmare that will develop on the site from the coffee store. Not only is the gasoline component a concern for fire and emergency response, Carl's Jr has a full service kitchen with the potential for fire, and the coffee store will have high powered heating equipment again which is a concern for fire response. While it is understood these buildings and facilities are all designed to prevent fires, if something goes wrong and a fire does break out, it is imperative that the traffic generated on site not be so convoluted as to prevent timely emergency response.

While the internal circulation pattern is a current mess, and will be exacerbated significantly with the increase in morning traffic from a drive thru convenient coffee store, access from the highway to the development remains a critical concern and safety issue. The highway access is shared between the hotel, the Chevron, the Carl's Jr and whatever ends up where the office building is currently approved. The highway access is confusing. There are two entrance lanes to the south, one of which has an immediate conflict with the hotel ingress/egress then bends to the north and is

then segregated by lane dividers to a point where the second hotel entrance is located. Almost directly across from this hotel exit only is supposed to be the main entrance to the Carl's Jr. and supposedly also now to the coffee store. There are also two exit lanes, one left out only, the other right out only, plus the exit only access to the Chevron driveway.

The geography of the road and this entrance has caused confusion among drivers since the Carl's Jr. open. A typical problem is that drivers heading southbound and turning left across traffic to enter the premises use the exit lanes instead of the entrance lanes. In late November, a pickup was southbound and turned left into the exit lanes. The pickup cleared oncoming traffic, but it was followed by a passenger car who made the same incorrect turn and was hit full side on by a truck heading northbound. This accident was captured on the LaPoint security camera, and is included on the attached disk.

My client has not yet had the opportunity to retain its own traffic expert, but until that can happen several deficiencies in the applicant's traffic submittals must be pointed out. The DKS report dated September 5, 2013 analyzes only the pm peak hour change in traffic. My client contacted DKS who advised that they only reported pm peak hour changes because that is what they were instructed to do. Presumably by the applicant. DKS also advised my client that the am peak hour traffic would be five (5) times or more that which is reported for the pm peak. The ITE manual advises that for drive through coffee stores the critical peak hour is the am peak (7am to 9am), followed by the period from noon to 1pm, and with the pm peak significantly less in traffic counts at that period between 4pm and 6pm. It is disingenuous to submit a pm peak hour traffic analysis for a use that is generally accepted as having its highest traffic counts during the am peak hour. It would appear this was an attempt by the applicant to submit average daily traffic counts that do not accurately reflect

what will happen at the site.

Attached hereto is a packet of information from Gibson Traffic Consultants regarding a smaller (1,800 sq feet as compared to the proposed store here which is to be 2,790 sq feet - 45% bigger than what was analyzed) coffee drive through store near I-5 in Bellingham, Washington. This coffee store was also evaluated as an ITE §934 use. In this report the pm peak trips was set at a total of 70, with 33 in and 37 out. This is comparable to the DKS pm peak here for the larger store at 94, with 49 in and 45 out. Essentially the larger store generated approximately 25% more traffic, which is within the margin of error for the store size differential.

For the am peak hour, which is the critical analysis for this case, the total number of traffic trips in the am peak was 330, with 175 in and 155 out. Extrapolating those numbers by the 25% size increase we learned from the pm peak hour comparison, and it is believed that the am peak hour traffic count for this proposed coffee store will be 412, with 219 in and 193 out. This appears to be verified by the information provided by DKS to my client, that the am peak would be five (5) times the pm peak, a figure which would be 470 trips.

Therefore it is clear that new and accurate traffic data is necessary that reflects the worst case traffic situation that will occur on site. It is difficult to imagine the congestion on site when you add somewhere between 412 and 470 traffic trips to the existing traffic on site from Carl's Jr. and the Chevron. The site simply can not handle that volume of traffic.

In addition, the notion of pass-by trips not counting is not relevant to this analysis, as the primary problem here is internal traffic circulation and congestion, not ingress and egress to the site that negate pass by trips. Once those cars are on the site to go to the coffee store, they are no longer pass by trips, they are actual cars in the parking lot and the driveways, and crossing the other cars,

pedestrians and bikes that are also on site. While it is difficult to imagine adding over 400 cars going in and out from the site to the highway in the morning, once the cars are on-site they no longer become pass by trips and they must be accounted for.

B. Utilities - Storm drainage remains an issue for this development. A storm drain ditch was constructed by the applicant on the LaPoint property without permission or advance notice. City staff was placed on notice of this situation and has been on site to address corrective action. It is unknown what the current status of that situation is. To the extent storm water is generated from impervious surfaces constructed on the applicant's property, that storm water must be disposed of on the applicant's property and then only in accordance with city regulation and with city oversight and approval. This situation is not addressed in the current application which is a deficiency.

6. Conclusion

Traffic and congestion is already a problem for the subject development. Between cars coming in the exit aisle; Carl's Jr delivery semi-trucks off loading in front of the restaurant blocking all internal access not only to the subject property, but also providing significant impediment to traffic flow in and out of my client's property and businesses. And, these problems are occurring regularly now, when the Carl's Jr has only been open a short while and there is no development on the remainder of the property. To add a high volume drive thru convenient coffee store with significant am peak traffic counts to an already marginal to poor traffic circulation pattern is not good planning and this application should be denied.

HAND DELIVERED this 13th day of January, 2014.

/s/ Wallace W. Lien

Wallace W. Lien, OSB 79-3011
Attorney for LaPoint Business Group, LLC

ATTACHMENTS

- 1 Photo Disk
- 2 Gibson Traffic Report
- 3 Photo's of the site
- 4 Packet of Site Plan Drawings (5)

1309 Lakeway
GTC #07-220

TABLE 1

TRIP GENERATION SUMMARY

Proposed Land Use	Size	Average Daily Trips	Percent Average Daily Trips	AM Peak-Hour Trips		PM Peak-Hour Trips		Percent PM Peak-Hour Trips
				Total	Inbound/Outbound	Total	Inbound/Outbound	
Condominium	8 units	47	3.66%	4	1 3	4	3 1	1.75%
General Office	7,728 SF	85	6.63%	12	11 1	12	2 10	17.54%
Specialty Retail	5,828 SF	258	20.11%	4	2 2	16	7 9	15.79%
Coffee Shop	1,800 SF	893	69.60%	330	175 155	70	33 37	64.91%
Single-Family (Remove)	-2 units	-19	—	-2	-1 -1	-2	-1 -1	—
Condominium (Remove)	-4 units	-23	—	-2	0 -2	-2	-1 -1	—
Internal Crossover Reduction	—	-64	—	-27	-14 -13	-8	-4 -4	—
Pass-By Reduction	—	-477	—	-150	-80 -70	-36	-17 -19	—
TOTAL		700	100.00%	169	94 75	54	22 32	100.00%

1309 Lakeway
GTC #07-220

Trip Generation for: Weekday
(a.k.a.): Average Weekday Daily Trips (AWDT)

LAND USES	VARIABLE	ITE LU code	Gross Trips				Internal Crossover		NET EXTERNAL TRIPS BY TYPE						
			Trip Rate	% IN	% OUT	In+Out (Total)	% of Gross Trips	In+Out (Total)	IN BOTH DIRECTIONS		DIRECTIONAL ASSIGNMENTS				
									TOTAL	PASS-BY	DIVERTED LINK	NEW	PASS-BY	DIVERTED LINK	NEW
								In+Out (Total)	% of Ext. Trips	In+Out (Total)	In	Out	In+Out (Total)	In	Out
Condominium	8 units	230	5.86	50%	50%	47	5%	2	0%	45	0	0	45	0	0
General Office	7,728 ksqft	710	11.01	50%	50%	85	5%	4	0%	81	0	0	81	0	0
Specialty Retail	5,828 ksqft	814	44.32	50%	50%	258	5%	13	25%	245	61	31	184	31	0
Coffee Shop	1,800 ksqft	934	496.12	50%	50%	893	5%	45	49%	848	416	208	432	208	0
Single-Family (Remove)	-2 units	210	9.57	50%	50%	-19	0%	0	0%	-19	0	0	-19	0	0
Condominium (Remove)	-4 units	230	5.86	50%	50%	-23	0%	0	0%	-23	0	0	-23	0	0
Totals						1241		64		1177	477	477	700	288	238

The daily trip generation rate for Coffee Shop is based on the daily trip generation rate for fast-food restaurant with drive-through window.

1309 Lakeway
GTC #07-220

AM Peak-Hour

%	New ADT	New AM Peak Hour Trips		
		In	Out	Total
100%	700	94	75	169
1%	7.00	0.94	0.75	1.69
2%	14.00	1.88	1.50	3.38
3%	21.00	2.82	2.25	5.07
4%	28.00	3.76	3.00	6.76
5%	35.00	4.70	3.75	8.45
6%	42.00	5.64	4.50	10.14
7%	49.00	6.58	5.25	11.83
8%	56.00	7.52	6.00	13.52
9%	63.00	8.46	6.75	15.21
10%	70.00	9.40	7.50	16.90
11%	77.00	10.34	8.25	18.59
12%	84.00	11.28	9.00	20.28
13%	91.00	12.22	9.75	21.97
14%	98.00	13.16	10.50	23.66
15%	105.00	14.10	11.25	25.35
16%	112.00	15.04	12.00	27.04
17%	119.00	15.98	12.75	28.73
18%	126.00	16.92	13.50	30.42
19%	133.00	17.86	14.25	32.11
20%	140.00	18.80	15.00	33.80
21%	147.00	19.74	15.75	35.49
22%	154.00	20.68	16.50	37.18
23%	161.00	21.62	17.25	38.87
24%	168.00	22.56	18.00	40.56
25%	175.00	23.50	18.75	42.25
26%	182.00	24.44	19.50	43.94
27%	189.00	25.38	20.25	45.63
28%	196.00	26.32	21.00	47.32
29%	203.00	27.26	21.75	49.01
30%	210.00	28.20	22.50	50.70
31%	217.00	29.14	23.25	52.39
32%	224.00	30.08	24.00	54.08
33%	231.00	31.02	24.75	55.77
34%	238.00	31.96	25.50	57.46
35%	245.00	32.90	26.25	59.15
36%	252.00	33.84	27.00	60.84
37%	259.00	34.78	27.75	62.53
38%	266.00	35.72	28.50	64.22
39%	273.00	36.66	29.25	65.91
40%	280.00	37.60	30.00	67.60
41%	287.00	38.54	30.75	69.29
42%	294.00	39.48	31.50	70.98
43%	301.00	40.42	32.25	72.67
44%	308.00	41.36	33.00	74.36
45%	315.00	42.30	33.75	76.05
46%	322.00	43.24	34.50	77.74
47%	329.00	44.18	35.25	79.43
48%	336.00	45.12	36.00	81.12
49%	343.00	46.06	36.75	82.81
50%	350.00	47.00	37.50	84.50

%	New ADT	New AM Peak Hour Trips		
		In	Out	Total
100%	700	94	75	169
51%	357.00	47.94	38.25	86.19
52%	364.00	48.88	39.00	87.88
53%	371.00	49.82	39.75	89.57
54%	378.00	50.76	40.50	91.26
55%	385.00	51.70	41.25	92.95
56%	392.00	52.64	42.00	94.64
57%	399.00	53.58	42.75	96.33
58%	406.00	54.52	43.50	98.02
59%	413.00	55.46	44.25	99.71
60%	420.00	56.40	45.00	101.40
61%	427.00	57.34	45.75	103.09
62%	434.00	58.28	46.50	104.78
63%	441.00	59.22	47.25	106.47
64%	448.00	60.16	48.00	108.16
65%	455.00	61.10	48.75	109.85
66%	462.00	62.04	49.50	111.54
67%	469.00	62.98	50.25	113.23
68%	476.00	63.92	51.00	114.92
69%	483.00	64.86	51.75	116.61
70%	490.00	65.80	52.50	118.30
71%	497.00	66.74	53.25	119.99
72%	504.00	67.68	54.00	121.68
73%	511.00	68.62	54.75	123.37
74%	518.00	69.56	55.50	125.06
75%	525.00	70.50	56.25	126.75
76%	532.00	71.44	57.00	128.44
77%	539.00	72.38	57.75	130.13
78%	546.00	73.32	58.50	131.82
79%	553.00	74.26	59.25	133.51
80%	560.00	75.20	60.00	135.20
81%	567.00	76.14	60.75	136.89
82%	574.00	77.08	61.50	138.58
83%	581.00	78.02	62.25	140.27
84%	588.00	78.96	63.00	141.96
85%	595.00	79.90	63.75	143.65
86%	602.00	80.84	64.50	145.34
87%	609.00	81.78	65.25	147.03
88%	616.00	82.72	66.00	148.72
89%	623.00	83.66	66.75	150.41
90%	630.00	84.60	67.50	152.10
91%	637.00	85.54	68.25	153.79
92%	644.00	86.48	69.00	155.48
93%	651.00	87.42	69.75	157.17
94%	658.00	88.36	70.50	158.86
95%	665.00	89.30	71.25	160.55
96%	672.00	90.24	72.00	162.24
97%	679.00	91.18	72.75	163.93
98%	686.00	92.12	73.50	165.62
99%	693.00	93.06	74.25	167.31
100%	700.00	94.00	75.00	169.00

1309 Lakeway
GTC #07-220

PM Peak-Hour

%	New ADT	New PM Peak Hour Trips		
		In	Out	Total
100%	700	23	31	54
1%	7.00	0.23	0.31	0.54
2%	14.00	0.46	0.62	1.08
3%	21.00	0.69	0.93	1.62
4%	28.00	0.92	1.24	2.16
5%	35.00	1.15	1.55	2.70
6%	42.00	1.38	1.86	3.24
7%	49.00	1.61	2.17	3.78
8%	56.00	1.84	2.48	4.32
9%	63.00	2.07	2.79	4.86
10%	70.00	2.30	3.10	5.40
11%	77.00	2.53	3.41	5.94
12%	84.00	2.76	3.72	6.48
13%	91.00	2.99	4.03	7.02
14%	98.00	3.22	4.34	7.56
15%	105.00	3.45	4.65	8.10
16%	112.00	3.68	4.96	8.64
17%	119.00	3.91	5.27	9.18
18%	126.00	4.14	5.58	9.72
19%	133.00	4.37	5.89	10.26
20%	140.00	4.60	6.20	10.80
21%	147.00	4.83	6.51	11.34
22%	154.00	5.06	6.82	11.88
23%	161.00	5.29	7.13	12.42
24%	168.00	5.52	7.44	12.96
25%	175.00	5.75	7.75	13.50
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30%	210.00	6.90	9.30	16.20
31%	217.00	7.13	9.61	16.74
32%	224.00	7.36	9.92	17.28
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34%	238.00	7.82	10.54	18.36
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38%	266.00	8.74	11.78	20.52
39%	273.00	8.97	12.09	21.06
40%	280.00	9.20	12.40	21.60
41%	287.00	9.43	12.71	22.14
42%	294.00	9.66	13.02	22.68
43%	301.00	9.89	13.33	23.22
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45%	315.00	10.35	13.95	24.30
46%	322.00	10.58	14.26	24.84
47%	329.00	10.81	14.57	25.38
48%	336.00	11.04	14.88	25.92
49%	343.00	11.27	15.19	26.46
50%	350.00	11.50	15.50	27.00

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77%	539.00	17.71	23.87	41.58
78%	546.00	17.94	24.18	42.12
79%	553.00	18.17	24.49	42.66
80%	560.00	18.40	24.80	43.20
81%	567.00	18.63	25.11	43.74
82%	574.00	18.86	25.42	44.28
83%	581.00	19.09	25.73	44.82
84%	588.00	19.32	26.04	45.36
85%	595.00	19.55	26.35	45.90
86%	602.00	19.78	26.66	46.44
87%	609.00	20.01	26.97	46.98
88%	616.00	20.24	27.28	47.52
89%	623.00	20.47	27.59	48.06
90%	630.00	20.70	27.90	48.60
91%	637.00	20.93	28.21	49.14
92%	644.00	21.16	28.52	49.68
93%	651.00	21.39	28.83	50.22
94%	658.00	21.62	29.14	50.76
95%	665.00	21.85	29.45	51.30
96%	672.00	22.08	29.76	51.84
97%	679.00	22.31	30.07	52.38
98%	686.00	22.54	30.38	52.92
99%	693.00	22.77	30.69	53.46
100%	700.00	23.00	31.00	54.00

















Chevron

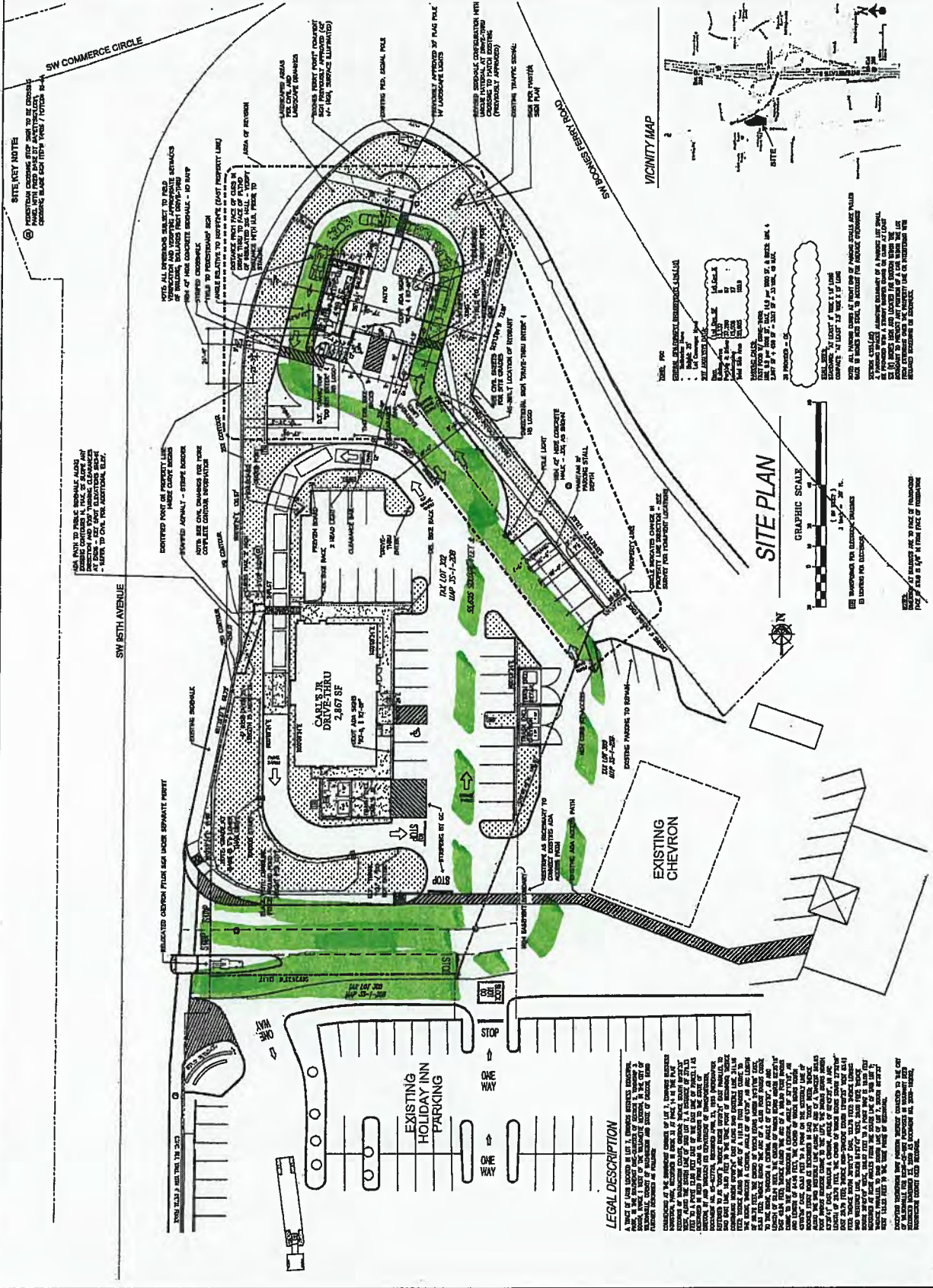
STOP
Please Wait Here
for fuel tank speed pump
Fountain Mart
Coca-Cola







84K Foods Conversion Based on OKE Prototype Version 22-14



SITE KEY NOTES

- 1. PROVISIONS CONCERNING STOP SIGNS TO BE CONSIDERED IN THE PREPARATION OF THE SITE PLAN.
- 2. CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE CITY OF WILSONVILLE, OREGON, CHAPTER 22.10.
- 3. ALL UTILITIES SHOWN ON THIS PLAN ARE BASED ON THE MOST RECENT RECORD DRAWINGS AND FIELD SURVEY DATA. THE CLIENT SHALL VERIFY THE LOCATION AND DEPTH OF ALL UTILITIES PRIOR TO CONSTRUCTION.
- 4. THE CLIENT SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF WILSONVILLE, OREGON, AND ANY OTHER AFFECTING AGENCIES.
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DATE

10/15/2022

SCALE

AS SHOWN

PROJECT

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CLIENT

Wilsonville Devco LLC

ARCHITECT

CB Anderson Architect

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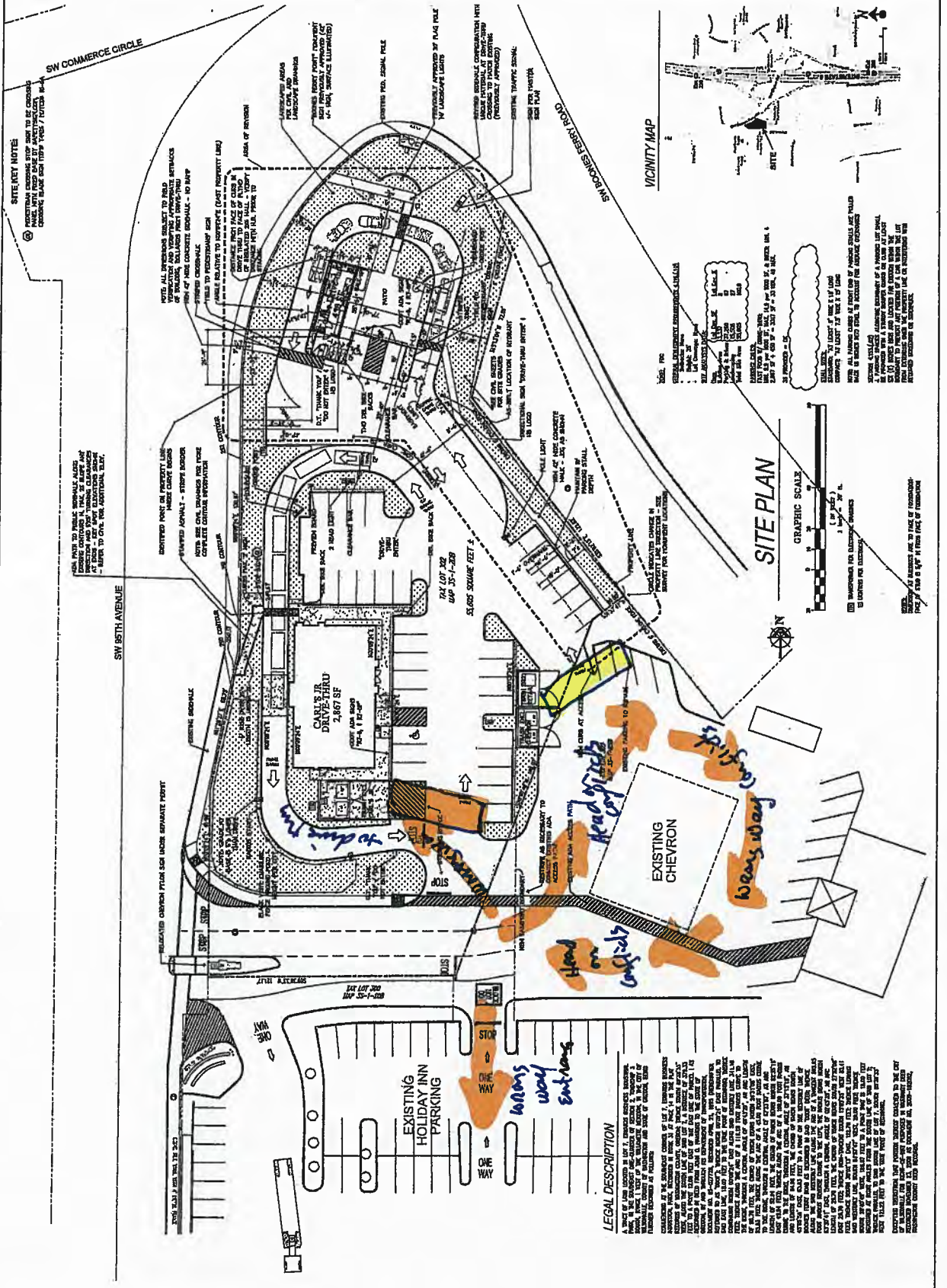
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Internal Circulation Conflicts

LaPoint Business Group, LLC
Db, Chevron North Wilsonville
Coca Cola Fountain Mart
25410 SW 95th Avenue
Wilsonville, Oregon 97071

Proposed - Convenient Coffee Store Business

DEVCO Property Development

DRB Meeting January 13, 2014

6:00 PM

I am the property owner and operator of the Chevron and Coca Cola Fountain Mart adjacent to the DEVCO development.

I ask the members of the hearing to grant a continuance for any additional development on our adjacent site by DEVCO.

I am not here in person tonight because of a scheduled vacation with non-refundable tickets or rooms, to meet with friends in Hawaii (Jan 5th – Feb. 5th). The trip was scheduled over a year ago after I (we) found out my wife's cancer had returned and is terminal. We also made an unexpected trip to San Diego for Christmas to see my daughter's first child (Frankie), which she adopted in September. We stayed to babysit with Frankie so my daughter and son-in-law could celebrate her 40th Birthday with friends on December 31, 2013 or New Year's Eve.

This continuance should be granted due to the date the notice of hearing was sent to me. December 23, 2013 I received an email from Dan Pauly that officially notified me of the proposed development and hearing date. Let's look at a calendar. December 23rd is a Monday, Christmas Eve is Tuesday, Christmas Wednesday, etc.....What were you folks doing that week and how busy were you? Then the next week was more special for us because after years of trying to have a baby my daughter was able to adopt our new grandson and needed us to babysit on December 31st so she could attend the overnight New Years Eve birthday party her husband and friends had arranged. To top it off, my attorney, Wallace Lien was out of the country from December 16, 2013 until January 7, 2014.

If you take out the holidays from this notice of hearing I did not have the normal three weeks to prepare for this hearing. In the future I think that holidays should be considered in the notice so that there is fifteen working days to prepare for a hearing.

Yesterday (Sunday) two of my company managers prepared a DVD with pictures and videos of the problems that DEVCO Development has created with the Carl's Jr. development. This DVD will show a very bad accident at the egress of our shared driveway. There has never been an injury accident at this shared ingress/egress since I bought the property in 1992. Just think if your spouse or child was on the passenger side of the SUV that got hit. The DVD will show the new Carl's Jr. site has created multiple parking, traffic, safety and pedestrian issues.

DEVCO now proposes another high volume traffic business that goes over my fuel tank loading zone area, which will be blocked one to three times per day for over an hour each time. The truck will have 4" fuel hoses stretched out 20 feet to my fuel tanks and after you see the lack of control we now have with customers, I have a disaster waiting to happen just like the accident at the entrance. I also have my fuel turbines, clean-outs and maintenance that is required by law that will block this curb cut for a half day or longer each time. I have three fuel tanks here.

I also worry about pedestrian safety in the highly congested site and need more time to address this problem.

I designed my site with a counter-clockwise traffic pattern for the Chevron Fuel Islands and the 30 degree parking for the Coca Cola Fountain Mart. This internal traffic pattern has served my business without problems. The Convenient Coffee Store proposal has traffic using the secondary entrance for Carl's Jr. and the primary entrance for the Convenient Coffee Store going head-on into each other as seen on the DVD. The DVD will also show the clockwise pattern of the DEVCO development customers use with total disregard to my fuel and store customers.

The DVD includes some snap-shots of the Carl's Jr. semi-truck parked and blocking the Carl's Jr. ingress. I also provided snap-shots of a few vehicles on my lot because DEVCO failed to provide or project the types of customers and/or the vehicles that would be using DEVCO site. DEVCO needs to use the property they have to accommodate their newly developed and successful Carl's Jr. vs. developing another high traffic business with inadequate parking, loading zone and over-sized vehicles. The encroachment of their customers parking and their customers parking needs is devastating to my business. DEVCO customer's block my only oversize area for my deliveries, over size customers vehicles and fuel delivery area. I can redirect my cameras and make another DVD if needed.

The DVD will also show my employees at the top of my queuing lane that I have needed for years to direct my customers and control my traffic during peak hours. Carl's Jr. needs an employee from 11am to 1pm during their peak lunch directing the customers to proper parking areas.

The DVD also will show the DEVCO site has NOT been IMPACTED with any of the above problems.

95th Avenue issues and solutions.

The south bound traffic in the center lane on 95th trying to enter the multiple businesses here now is getting backed up because of the traffic speed and number of vehicles traveling north on 95th Ave. With all the new improvements we have created many new problems that did not exist prior to the DEVCO Development. Adding another high traffic business will only exacerbate all of the above problems.

The south bound 95th /Commerce Circle traffic that uses our new ingress/egress for a U-turn's on the DVD is unbelievable. I have counted 25 vehicles doing that one day when I was on site.

The south stop light at 95th Avenue and Commerce Circle needs to be re-timed during peak hours to eliminate some of the problems above.

The Development Agreement with DEVCO and Holiday Inn is not complete with the Carl's Jr. Development. These defaults should be corrected before any further development begins on the DEVCO site.

Daniel Pauly asked me to call Dan Gjurjevich, franchise of Carl's Jr., as Mr. Gjurjevich would like to speak with me. I knew Mr. Gjurjevich as a longtime customer of my Chevron site. The first thing he said to me is that he wanted to be a good neighbor and I concurred with Mr. Gjurjevich. I explained that Mr. Josh Veentjer had made several statements to the city and me that were not what Mr. Veentjer intended to following through with. Mr. Veentjer is a developer from Southern California that is only looking to maximum the return on his investment. The problems we have will be left behind when Mr. Veentjer returns to Southern California and Mr. Gjurjevich and I will have to live with them. Mr. Gjurjevich lives in Wilsonville and I live just south of Wilsonville but have been doing business in Wilsonville since 1978. This is our home and community. We can do better.

With the above information, what my attorney was able to prepare and the DVD that took my manager from 9am Sunday to 2am Monday morning to prepare for you this weekend. I ask you to grant a continuance to discuss and resolve the many issues we have now before us. If developing a high traffic volume "Convenience Coffee Store" is a solution to the above problems, then you should approve the proposed development as submitted.

Sincerely,

Garry LaPoint

Steven L. Pfeiffer
PHONE: (503) 727-2261
FAX: (503) 346-2261
EMAIL: SPfeiffer@perkinscoie.com

January 27, 2014

VIA EMAIL

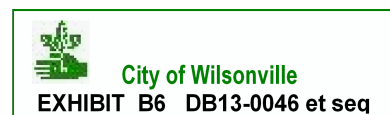
Daniel Pauly, AICP
City of Wilsonville
Planning Department
29799 SW Town Center Loop E
Wilsonville, OR 97070

**Re: The Human Bean, Wilsonville Devco LLC
DB13-0046, DB13-0047, DB13-0048**

Dear Daniel:

This office represents Wilsonville Devco, LLC, the applicant in the above-referenced applications. Enclosed for timely submittal in the first open record period, please find the following documents:

- Letter from me, dated January 27, 2014, responding to opposition comments and submitting additional testimony and evidence in support of the proposed coffee kiosk;
- Letter from Dan Gjurgevich, Carl's Jr. franchisee, dated January 24, 2014, in support of the proposed coffee kiosk; and
- Revised Site Plan, Automobile Turning Movement Plan, and Truck Turning Movements Plan with accompanying narrative, dated January 27, 2014.



LEGAL29155012.1

Daniel Pauly, AICP
January 27, 2014
Page 2

Please place these materials before the DRB and add these documents, and all attachments and exhibits, to the official record of this DRB proceeding.

Very truly yours,



Steven L. Pfeiffer

SLP:crl

Enclosures

Cc: Ben Altman, SFA Design Group (via email) (with encs.)
Craig Anderson, CB Anderson Architects (via email) (with encs.)
Wallace Lien, Esq.(via email) (with encs.)
Client (via email) (with encs.)
George J. Gregores, Esq. (via email) (with encs.)



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Portland, OR 97209-4128
PHONE: 503.727.2000
FAX: 503.727.2222
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January 27, 2014

VIA EMAIL

Daniel Pauly, AICP
City of Wilsonville
Planning Department
29799 SW Town Center Loop E
Wilsonville, OR 97070

**Re: The Human Bean, Wilsonville Devco LLC
DB13-0046, DB13-0047, DB13-0048**

Dear Daniel:

This office represents the applicant, Wilsonville Devco, LLC (“Applicant”), in the above-referenced applications for Stage II Final Plan Revision, Site Design Review and Master Sign Plan Revision and Sign Waiver (together, “Applications”) related to its proposal to construct a coffee kiosk at the corner of Boones Ferry Road and 95th Avenue (the “Site”). As you know, the Applicant had previously obtained Stage II Final Plan approval for a 3,150 square foot multi-tenant commercial building on the Site. The present Applications seek to replace the approved, but unbuilt, commercial building with a new 450 square foot drive-through coffee kiosk.

A hearing on this matter was held before the Development Review Board (“DRB”) on January 13, 2014. On that day, comments were submitted in opposition to the Applicant’s proposal by Garry LaPoint and his attorney, Wallace Lien (together, the “Opponent”). At the close of the hearing, the DRB held the record open for an additional fourteen (14) days to allow all interested parties to submit additional testimony and evidence. The purpose of this letter is to respond to the Opponent’s comments and to submit additional testimony and evidence in support of the Applications. As discussed in more detail below, the Opponents fail to demonstrate that the Applications violate any applicable Code standard or do not comply with any applicable approval criteria; therefore, the DRB should approve these Applications.

This letter is timely submitted within the first open record period. Please add this letter and its attachments to the official record of the DRB proceeding.

LEGAL29122709.4

1. The notice of the hearing was adequate, and the Opponent had actual notice.

The Opponent argues that the notice of the January 13, 2014 DRB hearing, received by Mr. LaPoint on December 23, 2013 was inadequate. To the contrary, however, it is clear that not only did the notice fulfill applicable legal requirements, the Opponent had actual notice and was able to meaningfully participate in the hearing, rendering any argument that the notice was defective irrelevant.

Pursuant to Wilsonville Development Code (“WDC”) 4.012(.02), notice of a quasi-judicial land use action that involves a public hearing must be mailed at least twenty (20) days and no more than forty (40) days prior to the public hearing to all owners of real property within 250 feet. Oregon Revised Statute (ORS) section 197.763(3)(f)(A) also requires that notice to surrounding property owners be mailed at least twenty (20) days prior to a hearing. In the present matter, notice of the DRB hearing scheduled for January 13, 2013 was issued on December 23, 2013. In fact, the Opponent admitted that on “December 23, 2013 I received an email from Dan Pauly that officially notified me of the proposed development and hearing date.” Letter from Garry LaPoint, dated January 13, 2013, p. 1. This amounts to a notice period of twenty-one (21) days, which exceeds the minimum notice of twenty (20) days required by WDC 4.012.02 and ORS 197.763. Accordingly, the Opponent was provided legally sufficient notice of the DRB hearing.

Moreover, the Opponent had actual notice of the proposed development. In his submittal, Mr. Lien asserts, “My client did not learn about this proposed change [to a coffee kiosk] until mid-December” Memorandum in Opposition , p. 2. However, an email from Mr. LaPoint to Mr. Veentjer, dated October 17, 2013, in which Mr. LaPoint asked if the “Coffee Shop” is going to be done belies Mr. Lien’s present statement. The October 17, 2013 email is attached as **Exhibit 1**. In addition, Mr. Lien wrote a letter to the Applicant, dated November 19, 2013, demanding that the Applicant cease and desist all activities relating to the siting and construction of the Human Bean coffee kiosk, which also contradicts the Opponent’s assertion regarding notice. The cease and desist letter is attached as Exhibit A, p. 12 to the letter from Alec Laidlaw to Daniel Pauly, dated January 3, 2014 and included in the hearing packet. Clearly, the Opponent knew about the proposed coffee kiosk by early to mid-October, well before sending the cease and desist letter to the Applicant to try to prevent its development. Additionally, the Opponent had actual notice of the hearing in this matter, as evidenced by his meaningful participation in the DRB proceeding.

Therefore, the Opponent’s substantial rights were not prejudiced and any deficiencies in the notice do not constitute reversible error. LUBA has held that technical deficiencies in a notice are mere procedural errors and do not provide a basis for reversal or remand unless the

Daniel Pauly, AICP
City of Wilsonville
January 27, 2014
Page 3

error prejudices a party's substantial rights. *Lange-Luttig v. City of Beaverton*, 39 Or. LUBA 80, 83-85 (2000). Here, the Opponent had the opportunity to be heard at the hearing and had enough lead time with the staff report to prepare a detailed, fifteen-page written testimonial in time for the hearing. That testimony belies the Opponent's assertion that an earlier notice was required and clearly demonstrates that the Opponent's substantial rights were not prejudiced.

The Opponent further asserts that the content of the notice, which lists the approval criteria applicable to the proposed development, was defective because it failed to list those criteria with the specificity required by ORS 197.763(3)(b). For the reasons discussed more fully below, the Opponent is mistaken, and his argument should be rejected by the DRB.

First, WDC 4.003, "Consistency with Plans and Laws," is a generic consistency requirement common to most development codes, which does not require a full listing of comprehensive plan provisions because such goals and policies are embodied in the direct decisional criteria contained in the WDC. Moreover, where goals and policies are not used as decisional criteria, they are not required to be listed on the notice. *See, e.g. BCT Partnership v. City of Portland*, 27 Or. LUBA 278 at *8 (1994) (finding that a failure to list plan policies that were not applied as decisional criteria by the local government does not constitute a violation of ORS 197.763(3)(b)).

Second, with regard to the alleged failure to list the individual criteria listed in WDC § 4.400 through 4.450, "Site Design Review," the notice provided sufficient specificity to put the Opponent on notice that certain sections within that range are applicable. The Oregon Land Use Board of Appeals ("LUBA") has found that ORS 197.763(3)(b) requires a local government to simply provide the detail necessary to direct the public to the actual code provisions that are deemed to be approval criteria. *Kingsley v. City of Sutherlin*, 49 Or. LUBA 242, 247 (2005). The City's notice clearly indicates which chapter and sections (chapter 4, sections 400 through 450) contain the site design review criteria, thereby informing the public that they may apply. LUBA has held that listing the criteria by section number provides acceptable notice. *Fjarli v. First Interstate Bank*, 33 Or. LUBA 451 (1997). Here, the City did just that by providing the public with a clearly-defined range of code sections that apply to the proposed development.

As demonstrated above, the notice in this matter was legally sufficient, and the DRB should reject the Opponent's assertions that the City committed any procedural error.

2. The Restrictive Covenant contractual dispute is not pertinent to the City's review.

The Opponent has asserted that the proposed development is "not permitted by law" pursuant to WDC 4.006 because of pending litigation between it and the Applicant (Wa. Co.

Case No. C138125CV). This litigation concerns a restrictive covenant that applies to the Applicant's use of the subject property. The restrictive covenant is a private contract between the Applicant and the Opponent, to which the City is not a party. Not only has that dispute yet to mature to the point where a court can rule on it, any such ruling pertains only to the contractual relationship between the parties. It cannot constitute a "law" for the purposes of WDC 4.006, which is reasonably interpreted to denote a law of general applicability. Private covenants are not land development criteria. In the event of a breach of a private restrictive covenant, a party may have recourse at law or equity, but cannot elevate such a dispute to the status of development criteria. Such an assertion would beg the City to circumvent due process requirements applying to the creation of a "law."

As Assistant City Attorney Barbara Jacobson stated in her letter to Alec Laidlaw, dated January 3, 2014, "[the private contractual dispute] has no bearing on the application made by the property owner to the Wilsonville Development Review Board. . . . I trust that if you and your client believe that approval of the application, if granted, will violate a contractual agreement and cause your client harm, you will seek the proper legal resource with the Washington County Circuit Court before which this matter is being heard, as and when needed to protect your client's interests." Ms. Jacobson's letter is attached as **Exhibit 2**. We fully concur with Ms. Jacobson's assessment. This unresolved private contractual dispute is irrelevant to the DRB's determination about whether the proposed development meets all applicable approval criteria and does not constitute a valid reason to deny approval.

Even if the City were to consider the restrictive covenant to be a law under WDC 4.006, it clearly allows a coffee kiosk because it restricts only those uses that would compete with the nearby Chevron: the dispensing of petroleum products and a "convenience store business." The restrictive covenant is attached as **Exhibit 3**. The Opponent's assertion that a small coffee stand is a "convenience store business" strains credulity and in any event, it is irrelevant to this land use action.

3. The Opponent is not a "necessary party."

The Opponent argues that the City does not have jurisdiction to review the proposed development for failing to add a "necessary party." A "necessary party" is a term of art in American civil procedure and is pertinent to litigation, but it has no application in a non-adversarial quasi-judicial land use review. The Opponent goes on to suggest that the "the LaPoint property must be included in any site plan review of this change." Memorandum in Opposition at 6. The Opponent's argument is confusing and unclear. To the extent the Opponent contends his consent to file the Applications was required, such argument should be

rejected. The Opponent's consent was not required because he does not own the property subject to the proposed development.

With regard to site access, the primary access and egress to/from the proposed coffee kiosk is via the shared driveway off of SW 95th Avenue. From this primary access/egress point, customers to the proposed coffee kiosk do not cross the LaPoint property. *See* revised Site Plan and accompanying narrative, dated January 27, 2014. The proposed coffee kiosk has a secondary access that crosses the LaPoint property. Applicant benefits from a reciprocal access cross-easement between the Applicant and the Opponent. The cross-easement is attached as **Exhibit 4**. This cross-easement provides ingress and egress over both properties benefitting the Applicant's property and the LaPoint property. It was created by the parties according to a development agreement dated August 3, 2012 ("Development Agreement"), a copy of which is attached as **Exhibit 5**. The City is aware of these reciprocal rights and is a party to the Development Agreement. Accordingly, it determined that the Applicant provided sufficient evidence of site access. Contrary to the bare assertions that the cross-easement restricts a coffee kiosk, the cross-easement and Development Agreement contain no such express restriction. The Development Agreement contemplates "other yet to be determined retail" on the Site, and a coffee kiosk fits squarely into such retail category. Opponent has provided no evidence to contradict the evidence provided by the Applicant, and the findings by the City, that demonstrate adequate site access.

Lastly, the Opponent's assertion that the outcome of possible future litigation¹ involving this reciprocal easement should be determinative of the City's consideration of the proposed development is legally unsupportable. Such future litigation, if it were to occur, has no bearing on this present quasi-judicial land use action.

4. The proposed coffee kiosk will not create an adverse traffic impact on nearby affected intersections.

The City's designated traffic engineer, DKS, provided a trip generation estimate ("TGE") dated November 5, 2013, demonstrating that the Proposed Development will generate approximately five (5) more driveway and thirteen (13) fewer primary p.m. peak trips than what was previously estimated for the site.² As such, the study found that "the small increase in driveway trips is not expected to negatively impact intersection operations." TGE at 3. We

¹ We note that the Opponent has admitted that a legal dispute concerning the access easement has yet to mature by indicating that the issue "will be taken up in the Washington County Circuit Court at the appropriate time." Memorandum in Opposition at 6.

² The baseline estimate is derived from case files DB 12-0074 through DB 12-0076, which approved an approximately 3,150 sq. ft. retail center where the 450 sq. ft. is now proposed.

reiterate this point because the trip generation of the proposed development must be viewed in the context of what was previously permitted as part of the prior site master plan—an approximately 3,150 sq. ft. “specialty retail” building. The bottom line is that this proposed coffee kiosk will generate fewer p.m. peak trips than the development previously contemplated and will not adversely affect intersection levels of service.

Additionally, DKS performed an AM Peak Hour Traffic Analysis, dated January 27, 2014 (“AM Peak Analysis”), attached as **Exhibit 6**. This AM Peak Analysis showed that the proposed coffee kiosk would generate only two (2) additional primary trips than at the PM peak hour. AM Peak Analysis, pp. 3-4. Given that the AM peak hour traffic volumes are lower than the PM peak hour traffic volumes at the study intersections, and that the coffee kiosk would generate minimally more primary trips at the AM peak hour, DKS found that the addition of the proposed coffee kiosk would produce minimal impacts to the study intersections, and that all study intersections, including the project driveway, would comfortably meet the City’s operating standards. AM Peak Analysis, pp. 5-8. Taken together, DKS’s initial TGE and the AM Peak Analysis demonstrate that the proposed coffee kiosk will not adversely impact study intersections in the AM or PM peak, and that all levels of service of affected intersections remain operating within the City’s standards.

While the Opponent asserts that pass-by trips have the same impact as primary trips on internal site circulation, , they do not have the same impact on the levels of service of affected intersections. The TGE specifically notes that while the proposed development “would generate slightly more trips than the previously-proposed retail center...it has a much higher pass-by trip rate...and therefore generates fewer primary trips.” TGE at 2. It goes on to state that “the small increase in driveway trips is not expected to negatively impact intersection operations.” Id. Compliance with WDC 4.140(.09)(J) does not hinge, as the Opponent suggests, on internal site circulation: it hinges on the levels of service of affected intersections. The TGE and AM Peak Analysis is sufficient proof of compliance with WDC 4.140(.09)(J) because DKS evaluated all likely-affected intersections and determined that the AM and PM peak levels of service would not be substantially affected by the proposed development.

Finally, the Opponent’s citation of the Gibson Traffic Consultant’s study of a 1,800 SF coffee shop is irrelevant because the proposed coffee kiosk is a different use than analyzed in that study (ITE § 938 vs. § 934), is substantially smaller, and affects different roadways for level of service purposes. For all of the above reasons, the DRB can find that the proposed development will not create an adverse traffic impact on surrounding intersections.

5. On-site circulation is adequate and safe.

The majority of the Opponent's arguments pertain to site circulation. At the outset, it is important to note that this property has been reviewed in at least six prior land use actions.³ In several of these, including the Stage II Final Plan for the 3,150 square foot multi-tenant commercial building, the City was provided the opportunity to review site circulation. The City found that the Site would provide adequate on-site circulation for a 3,150 square foot commercial building, and the Opponent did not oppose such project. The Applicant now proposes a much smaller building, a 450 square foot coffee kiosk, on the Site. Additionally, the Applicant proposes directional signs, directional striping, and a revised delivery truck circulation pattern to further ensure safe on-site circulation and to further accommodate deliveries for the Chevron station, the Carl's Junior, and the proposed coffee kiosk. See revised Site Plan, signage, delivery truck circulation/parking and accompanying narrative, dated January 27, 2014.

The Opponent's implication at the hearing that the Carl's Junior franchisee opposed the proposed coffee kiosk because of concerns about traffic congestion and on-site circulation is patently false. As shown in the letter from Dan Gjurgevich, franchisee of the Carl's Junior, to Daniel Pauly, dated January 24, 2014, Mr. Gjurgevich believes that the site circulation is sufficient to support the addition of a coffee kiosk and encourages the City to approve the proposed coffee kiosk. We suggest that the Opponent's strenuous objection to this new proposal is less about adequate on-site circulation and largely about trying to avoid market competition. In any event, the Opponent was fully aware of the complex circulation on the site—Mr. LaPoint entered into a detailed development agreement in 2012 that was largely intended to resolve site access and circulation challenges, and executed the reciprocal easement providing access to both properties. That the Opponent now regrets the promises made in that agreement does not provide an adequate basis upon which to challenge the Proposed Development.

In this case, the City carefully reviewed proposed site circulation, found it to be adequate, and provided specific site circulation findings to that effect under WDC 4.154. Moreover, as part of its review the City provided the opportunity for the Tualatin Valley Fire and Rescue (TVFR) to review the Proposed Development and recommend conditions of approval. The City received no concerns or comments from TVFR regarding the Proposed Development. It is

³ According to the Staff Report, prior land use actions include:

1. Edwards Business Center Industrial Park Plat-Stage I;
2. 97DB28 Stage II, Site Design Review, LaPoint Center;
3. DB06-0041, DB06-0043, DB06-0057, DB06-0042 Stage II Final Plan, Site Design Review;
4. Waiver to Building Height, Master Sign Plan for Brice Office Building (Expired);
5. DB12-0074 through DB12-0076 Stage II Final Plan, Site Design Review, and Master Sign Plan for fast food restaurant and multi-tenant commercial building; and
6. DB13-0027 Site Design Review for accent lighting on fast food restaurant.

important to note, however, that for fire/life/safety purposes, the proposed development has a much smaller impact than the originally-proposed retail building. TVFR did review the prior master plan (case file DB 12-0074, 0075, and 0076) and indicated that “Tualatin Valley Fire and Rescue endorses this proposal.” The TVFR comment is attached as **Exhibit 7**. That it provided no substantive comment regarding this proposal is clear evidence that TVFR’s endorsement has not been revoked and that the proposed development can be adequately accessed by emergency vehicles.

As to the Opponent’s other arguments regarding site circulation, we note that the Opponent did not cite any applicable approval criteria that the Proposed Development failed to meet. The twenty-seven minute-long video showing site circulation similarly demonstrates nothing that relates to an applicable criterion. What it does show is that during the rare periods when both the trucks serving the Carl’s Junior restaurant and the Chevron station are on site at the same time, patrons have some difficulty accessing the Carl’s Junior. This is neither surprising, nor is it enlightening for the purposes of a coffee kiosk. The collision captured by the Chevron’s cameras is unfortunate, but as it occurs off-site due to a motorist’s failure to yield during a left turn, it demonstrates nothing about the circulation of vehicles on the site and could have happened at any intersection with an unprotected left turn. For these reasons, such arguments should be disregarded.

6. Drainage facilities are sufficient to accommodate the coffee kiosk.

The Opponent argues that the Applicant constructed a drainage ditch over the Opponent’s property without permission. Regardless of the veracity of this allegation, it is at most a private trespass that has no bearing on the proposed development. The Opponent goes on to argue that the City did not address storm water in its review. Opponent is mistaken. Conditions of approval listed as PF 3 and PF 4 require that the proposed development connect its onsite storm drainage collection system to the Boone Ferry Point project, which will provide sufficient detention and storm water quality for the site. The City’s Engineering and Building divisions accordingly found that the proposed development meets all applicable storm water standards, as proposed and with the conditions of approval mentioned above.

Therefore, the Opponent’s argument regarding adequacy of drainage facilities should be rejected.

Conclusion.

For the reasons discussed above, at the DRB hearing, and in the Applicant’s Application submittals, the proposed development meets all applicable approval criteria, and the City

Daniel Pauly, AICP
City of Wilsonville
January 27, 2014
Page 9

observed proper procedures in processing the Applications. Therefore, the DRB should reject the Opponent's arguments and approve the Applications.

Very truly yours,



Steven L. Pfeiffer

SLP:crl

Enclosures

cc: Ben Altman, SFA Design Group (via email) (with encs.)
Craig Anderson, CB Anderson Architects (via email) (with encs.)
Wallace Lien, Esq.(via email) (with encs.)
Client (via email) (with encs.)
George J. Gregores, Esq. (via email) (with encs.)

From: Garry LaPoint [mailto:gl@eoni.com]
Sent: Thursday, October 17, 2013 12:25 PM
To: josh@pdvco.com; LaPoint, Jason
Subject: Re: Development Agreement final 7-6-12

Josh,

1. I talked with Tony and he said he has no one that can do the connections and wiring for the cameras. He said he does not do that type of work. Who will be doing the work?
2. When will your trash enclosure be done? I have two estimates for approx. \$7500.00 but have not scheduled any work yet. If you or your contractor can match or beat that estimates I will contract with you to do the work. If not, I need a reasonable amount of time to schedule masonry work and doors to be build and power coated.
3. What is your completion date? and is it firm? Is the Coffee Shop going to be done?

I just got home. I have the Easement Agreement and Amendment. I will try to get notarized and returned.

Garry



29799 SW Town Center Loop E
Wilsonville, Oregon 97070
(503) 682-1011
(503) 682-1015 Fax Administration
(503) 682-7025 Fax Community Development

January 3, 2014

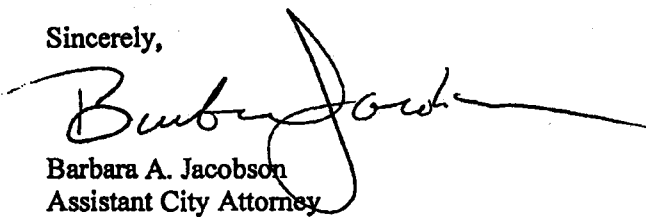
Alec J. Laidlaw
Laidlaw & Laidlaw
21590 Willamette Dr
West Linn OR 97068

Re: The Human Bean Coffee Store

Dear Mr. Laidlaw:

The City is in receipt of your letter dated January 3, 2014. Although we appreciate knowing that the dispute exists, it has no bearing on the application made by the property owner to the Wilsonville Development Review Board, which will be considered as scheduled. I trust that if you and your client believe that approval of the application, if granted, will violate a contractual agreement and cause your client harm, you will seek the proper legal recourse with the Washington County Circuit Court before which this matter is being heard, as and when needed to protect your client's interests.

Sincerely,



Barbara A. Jacobson
Assistant City Attorney

baj:tec

cc: Wallace W. Lien
Daniel Pauly



"Serving The Community With Pride"

EXHIBIT 2

Washington County, Oregon 2005-025345
03/10/2004 03:14:18 PM
0 4/8 Order Item# A DUYCK
\$26.00 \$8.00 \$11.00 - Total = \$45.00



0073007070039073450040018

I, Jerry Stewart, Director of Assessments and Taxation
and Washington County Clerk for Washington County,
Oregon, do hereby certify that the within instrument of
conveyance was recorded and recorded in the book of
records of said county.

Jerry M. Stewart, Director of Assessments and Taxation
& Official County Clerk



AFTER RECORDING MAIL TO:

Name Gary M. LaPoint
Address 10618 Crosby Road NE
City/State Woodburn, OR 97071

3/15/04

Document Title(s) (for transactions contained therein):
1. Restrictive Covenant

FARCO A/C NCS-M4877-OR

Title Data, Inc. CH P0810503 WX 2005025345.001

EXHIBIT B
Page 1 of 4

EXHIBIT A
PAGE 8



RESTRICTIVE COVENANT

FOR GOOD AND VALUABLE CONSIDERATION, the undersigned, hereby creates and imposes upon the real property described in Exhibit A attached hereto and by this reference made a part hereof, to be binding upon itself, its successors and assigns forever, the following restriction on use of the property:

The property described in Exhibit A attached hereto and by this reference, incorporated herein, shall not be used at any time to dispense petroleum products or any type of energy products that is used by the public for transportation. The sale of gasoline type products, diesel fuel(s), propane, natural gas, air or compressed air, or related products is strictly prohibited as is the operation of a convenience store business.

IN WITNESS WHEREOF, the undersigned, being the owner of the real property described above, has executed this restrictive covenant on the 8th day of March, 2005.

SOUTH SEA, LLC, an Oregon Limited Liability Company

BY George F. Brice III
George F. Brice III, Member

BY Zsuzsanna Brice
Zsuzsanna Brice, Member

STATE OF OREGON)
) "
County of Multnomah)

Before me, a notary public in and for the State of Oregon, personally appeared George F. Brice, III and Zsuzsanna Brice and acknowledged the foregoing to be their voluntary act and deed.



L. Weber
Notary Public for Oregon
My commission expires: 10/3/07



EXHIBIT A

LEGAL DESCRIPTION:

PARCEL 1:

A tract of land located in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, in the South one-half Section 2, Township 3 South, Range 1 West, of the Willamette Meridian, in the City of Wilsonville, County of Washington and State of Oregon, being further described as follows:

Commencing at the Southeast corner of said Lot 7; thence South 89°38'33" West, along the South line of said lot, a distance of 379.33 feet to a point 12 feet Easterly of the East line of Parcel 1 in Deed from John Q. Hammons to the State of Oregon, by and through its Department of Transportation, Fee No. 95027726, April 21, 1995 (herein after referred to as "ODOT"); thence North 00°09'24" East a distance of 12.00 feet parallel to and 12.00 feet Easterly of said "ODOT" line to the true point of beginning; thence North 00°09'24" East, parallel to & 12.00 feet Easterly of said "ODOT" line, a distance of 341.16 feet; thence along the arc of a curve to the right, said curve having a radius of 116.16 feet, arc length of 101.04 feet, central angle of 49°50'12", a chord bearing of North 25°04'30" East, and a chord length of 97.88 feet to a point of compound curvature; thence along the arc of a curve to the right, said curve having a radius of 45.00 feet, arc length of 53.94 feet, central angle of 33°01'29", a chord bearing South 71°56'03" East, and a chord length of 30.43 feet to a point of compound curvature; thence along the arc of a curve to the right, said curve having a radius of 100.00 feet, arc length of 61.13 feet, central angle of 35°01'29", a chord bearing of South 43°49'18" East, and a chord length of 60.18 feet to the intersection with the West line of Boones Ferry Road as described in said "ODOT" Deed and a point on a non-tangent curve to the left, said point having a radial bearing of North 63°41'28" East; thence along said "ODOT" Deed, along the arc of said non-tangent curve to the left, said curve having a radius of 595.65, arc length of 30.57 feet, central angle of 02°56'25", a chord bearing of South 27°46'44" East, and a chord length of 30.56 feet to along the Westerly line of Boones Ferry Road as described in said "ODOT" Deed; thence along said Westerly line South 15°09'35" West, a distance of 83.41 feet; thence South 38°02'13" East, a distance of 120.44 feet; thence South 57°57'47" West, a distance of 55.00 feet; thence South 20°29'49" West, a distance of 171.35 feet to a point that is 12 feet from, when measured at right angles, to the South line of said Lot 7; thence South 89°38'33" West, a distance of 97.95 feet, more or less, to the true point of beginning.

EXCEPTING THEREFROM that portion conveyed to Exxon Wilsonville, LLC, an Oregon limited liability company, by instrument recorded June 19, 2000 as Fee No. 2000-48397 and being more particularly described as follows:

A tract of land located in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, in the Southeast one-quarter of Section 2, Township 3 South, Range 1 West, of the Willamette Meridian, in the City of Wilsonville, County of Washington and State of Oregon, being further described as follows:



Commencing at the Southeast corner of Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, recorded in Book 31, page 14 in the Plat Records of Washington County, Oregon; thence South 89°38'33" West, along the South line of said Lot 7, a distance of 379.33 feet to a point 12.00 feet East of the East line of Parcel I as described in the Deed from John Q. Hammons to the State of Oregon, by and through its Department of Transportation, Document Number 95027726, recorded April 21, 1995; thence North 00°09'24" East parallel to said East line, 18.00 feet to the true point of beginning; thence North 89°38'33" East parallel to said South line of Lot 7, 95.10 feet; thence South 20°29'49" West, 6.42 feet to a point 12.00 feet Northerly when measured at right angles to the said South line of Lot 7; thence South 89°38'33" West parallel to said South line of Lot 7, 92.87 feet, more or less, to a point 12.00 feet East of the said East line of Parcel I; thence North 00°09'24" East parallel to said East line, 6.00 feet to the true point of beginning.

PARCEL II:

A tract of land located in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, in the Southeast one-quarter of Section 2, Township 3 South, Range 1 West, of the Willamette Meridian, in the City of Wilsonville, County of Washington and State of Oregon, being further described as follows:

Commencing at the Southeast corner of said Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, recorded in Book 31, page 14 in the Plat Records of Washington County, Oregon; thence South 89°38'33" West, along the South line of said Lot 7, a distance of 379.33 feet to a point 12.00 feet East of the East line of Parcel I as described in the Deed from John Q. Hammons to the State of Oregon, by and through its Department of Transportation, Document Number 95027726, recorded April 21, 1995 (herein after referred to as "ODOT"); thence North 00°09'24" East parallel to said East line, 18.00 feet; thence North 89°38'33" East parallel to said South line of Lot 7, 95.10 feet to the true point of beginning; thence North 20°29'49" East, 170.00 feet; thence North 57°57'47" East, 55.00 feet to the Westerly line of Doones Ferry Road as described in said "ODOT" Deed; thence along said Westerly line South 38°02'13" East, 2.34 feet; thence leaving said Westerly line South 51°57'47" West, 20.00 feet; thence South 20°40'49" West, 186.07 feet to a point 18.00 feet Northerly when measured at right angles to the said South line of Lot 7; thence South 89°38'33" West parallel to said South line of Lot 7, 26.13 feet, more or less, to the true point of beginning.

55
31

Washington County, Oregon
11/12/2013 11:41:50 AM
D-E Cnt=1 Stn=12 S PFEIFER
\$55.00 \$5.00 \$11.00 \$15.00 - Total = \$86.00

2013-097514

**Recorded At The Request Of
And When Recorded Mail To:**

George J. Gregores
Holland & Knight LLP
111 SW Fifth Ave, Suite 2300
Portland, OR 97204



01894749201300975140110117
I, Richard Hobernicht, Director of Assessment and
Taxation and Ex-Officio County Clerk for Washington
County, Oregon, do hereby certify that the within
instrument of writing was received and recorded in the
book of records of said county.



Richard Hobernicht, Director of Assessment and
Taxation, Ex-Officio County Clerk

AMENDMENT TO EASEMENT AGREEMENT

Date: October 24, 2013
Among: **WILSONVILLE DEVCO, LLC**
an Oregon limited liability company ("Wilsonville Devco")
And: **LAPPOINT BUSINESS GROUP, LLC**
an Oregon limited liability company ("LaPoint")

RECITALS

- A. ~~Wilsonville Devco~~ is the ~~owner~~ of the real property legally described in attached Exhibit A (the "Wilsonville Devco Property").
- B. ~~LaPoint~~ is the ~~owner~~ of the real property legally described in attached Exhibit B (the "LaPoint Property").
- C. Exxon of Wilsonville, L.L.C., an Oregon limited liability company, predecessor in interest to La Point as a previous owner of the LaPoint Property, and South Sea, L.L.C., an Oregon limited liability company, predecessor in interest to Wilsonville Devco as a previous owner of the Wilsonville Devco Property, executed and recorded a ~~Common Ingress and Egress Easement~~ on April 30, 2002 at Recorder No. 2002-051321, Official Records of Washington County, Oregon (the "Prior Agreement").
- D. ~~Wilsonville Devco~~ and ~~LaPoint~~ wish to amend the Prior Agreement in accordance with the terms of this Agreement, including vacating a portion of Wilsonville Devco's easement over the LaPoint Property, which area to be vacated is described in attached Exhibit C (the "Old Easement Area"), in exchange for the parties granting to each other a reciprocal cross-easement over the easement area described in attached Exhibit D (the "New Easement Area").

AGREEMENT

For valuable consideration, the receipt and sufficiency of which is hereby mutually acknowledged, Wilsonville Devco and LaPoint agree as follows:

EXHIBIT 4

1. **Vacation of Old Easement Area.** The Old Easement Area described in attached Exhibit C is hereby vacated and deleted from the Prior Agreement.

2. **Grant of Reciprocal Cross-Easement.** The parties hereby grant and convey to each other a permanent, mutual, reciprocal easement on, over, across and along the New Easement Area described on attached Exhibit D. A description of the New Easement Area and its relation to the Wilsonville Devco Property and the LaPoint Property is illustrated on attached Exhibit E. The New Easement Area is to be used principally for curb cuts between the Wilsonville Devco Property and the LaPoint Property, vehicular ingress and egress in connection therewith, and LaPoint's access to its trash enclosure on the Wilsonville Devco Property.

3. **Maintenance and Repairs.** Any maintenance and necessary repair of the pavement located on the New Easement Area, as determined necessary by Wilsonville Devco in its sole and absolute discretion, shall be paid for by Wilsonville Devco.

4. **Term.** The New Easement Area contained in this Agreement shall be effective commencing on the date of recordation of this Agreement in the Official Records of Washington County, Oregon, and shall remain in full force and effect thereafter, unless amended or terminated in accordance with Section 5 hereinafter.

5. **Modification.** This Agreement may only be modified, amended, revised or terminated by written instrument signed by Wilsonville Devco and LaPoint, or their respective successor(s) as the case may be.

6. **Indemnification.** Each party hereto agrees to defend, indemnify, and hold harmless the other party from and against any and all losses, claims, demands, or other liabilities whatsoever arising out of said party's own use of the roadway, or use by said party's successors, assigns, lessees, invitees, guests, tenants, customers, agents and employees.

7. **Attorney Fees.** In the event of any litigation arising under this Agreement, the prevailing party shall recover from the other reasonable attorney fees as determined by the trial or appellate court, as the case may be.

8. **Dispute Resolution.** Any controversy, dispute or question arising out of this Agreement shall be submitted to arbitration before a single arbitrator in Washington County, Oregon. Each party shall bear its own costs in any such proceeding. The decision of the arbitrator shall be final and binding upon the parties and may be enforced in any court of competent jurisdiction. To the fullest extent permitted by law, the parties irrevocably submit to the jurisdiction of such forum, and waive any objections they may have to either the jurisdiction or venue of such forum. Nothing contained herein shall in any way deprive either party of their right to obtain injunction or other equitable relief.

9. **Governing Law.** This Agreement shall be governed by, and construed and enforced in accordance with the laws of Oregon.

10. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument. Signature and

acknowledgment pages may be detached from the counterparts and attached to a single copy of this Agreement to physically form one document, which will be recorded in the Official Records of Washington County, Oregon.

11. Binding Effect. The terms of this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

[Signature Page Follows]

In Witness Whereof, the parties have executed this Agreement as of the date first written above.

WILSONVILLE DEVCO, LLC,
an Oregon limited liability company

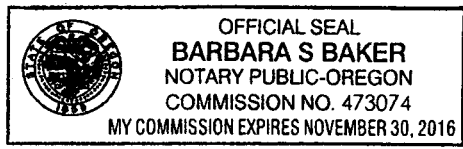
LAPOINT BUSINESS GROUP, LLC,
an Oregon limited liability company

By: [Signature]
Name: Josh Veentjer
Title: Managing Member

By: _____
Name: _____
Title: _____

STATE OF OREGON)
) ss
County of Clackamas)

This instrument was acknowledged before me on October 24, 2013 by Joshua Veentjer as Managing Member of Wilsonville Devco, LLC.



Barbara S. Baker
Notary Public - State of Oregon

STATE OF OREGON)
) ss
County of)

This instrument was acknowledged before me on _____, 2013 by _____ as _____ of LaPoint Business Group, LLC.

Notary Public - State of Oregon

Exhibit A

Legal Description of Wilsonville Devco Property

A tract of land located in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, in the Southeast one-quarter of Section 2, Township 3 South, Range 1 West of the Willamette Meridian, in the City of Wilsonville, County of Washington and State of Oregon, being further described as follows:

Commencing at the Southeast corner of Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, recorded in Book 31 at Page 14 in the Plat Records of Washington County, Oregon; thence South 89°38'33" West, along the South line of said Lot 7, a distance of 379.33 feet to a point 12.00 feet East of the East line of Parcel I as described in Deed from John Q. Hammons to the State of Oregon, by and through its Department of Transportation, Document No. 95-027726, recorded April 21, 1995 (hereinafter referred to as "ODOT"); thence North 00°09'24" East parallel to said East line, 18.00 feet to the true point of beginning; thence continuing North 00°09'24" East along said Easterly line, 341.16 feet; thence along the arc of a 116.16 foot radius curve to the right, through a central angle of 48°43'29", an arc length of 98.78 feet, the chord of which bears North 24°31'08" East, 95.83 feet; thence along the arc of a 45.00 foot radius curve to the right, through a central angle of 67°23'57", an arc length of 52.94 feet, the chord of which bears North 82°35'16" East 49.94 feet; thence along the arc of a 100.00 foot radius curve to the right, through a central angle of 37°13'18", an arc length of 64.96 feet, the chord of which bears South 45°05'58" East, 63.83 feet to a point on the Westerly line of Boones Ferry Road as described in said "ODOT" Deed; thence along the said Westerly line along the arc of a tangent 595.65 foot radius reverse curve to the left, the radius bears North 63°30'41" East, through a central angle of 02°45'38", an arc length of 28.70 feet, the chord of which bears South 27°52'08" East 28.70 feet; thence non-tangent South 15°09'35" West 83.41 feet; thence South 38°02'13" East, 122.78 feet; thence leaving said Westerly line, South 51°57'47" West, 20.00 feet; thence South 20°40'49" West, 186.07 feet to a point that is 18.00 feet measured at right angles from the South line of said Lot 7; thence parallel to said South line of Lot 7, South 89°38'33" West 121.22 feet to the true point of beginning.

EXCEPTING THEREFROM that portion thereof conveyed to the City of Wilsonville for right-of-way purposes in Warranty Deed recorded November 23, 2009 as Fee No. 2009-102082, Washington County Deed Records.

Exhibit B

Legal Description of LaPoint Property

TRACT 2: A tract of land located in Lot 7, "Edwards Business Industrial Park" in the Southeast one-quarter of Section 2, Township 3 South, Range 1 West, Willamette Meridian, in the City of Wilsonville in the County of Washington and State of Oregon, being further described as follows:

Beginning at the Southeast corner of said Lot 7 "Edwards Business Industrial Park" recorded in Book 31 at Page 14 in the Plat Records of Washington County, Oregon, the TRUE POINT OF BEGINNING; thence South 89°38'33" West, along the South line of said Lot 7, a distance of 379.33 feet to a point 12.00 feet East of the East line of Parcel 1 as described in the deed from John Q. Hammons to the State of Oregon, by and through its Department of Transportation, Document Number 95027726, recorded April 21, 1995 (herein after referred to as "ODOT"); thence North 00°09'24" East parallel to said East line of Parcel 1, 18.00 feet; thence North 89°38'33" East parallel to said South line, 121.22 feet; thence North 20°40'49" East, 186.07 feet; thence North 51°57'47" East, 20.00 feet to the westerly line of Boones Ferry Road as described in said Hammons to "ODOT" deed; thence along said westerly line South 38°02'13" East, 77.66 feet; thence North 46°33'47" East, 48.10 feet; thence South 40°56'40" East, 81.06 feet; thence along the arc of a 2,837.79 foot radius non-tangent curve to the right, said curve having a radial bearing of South 51°12'39" West, a central angle of 01°19'57", an arc length of 66.00 feet, the chord of which bears South 38°07'22" East, 66.00 feet; thence along the arc of a 116.96 foot radius non-tangent curve to the left, said curve having a radial bearing of South 74°41'25" East, through a central angle of 30°31'07", an arc length of 62.30 feet, the chord of which bears South 00°03'01" West, 61.56 feet more or less to the TRUE POINT OF BEGINNING, containing an area of 37,106 square feet, or 0.85 acres, more or less.

Exhibit C
Old Easement Area

September 24, 2013
NWS Project No. 787
Vacated Easement

A tract of land being a portion of that Common Ingress & Egress Easement described in Document No. 2002-051321, Deed Records of Washington County, Oregon, said tract of land being located in the southeast one-quarter of Section 2, Township 3 South, Range 1 West, Willamette Meridian, City of Wilsonville, Washington County, Oregon, being more particularly described as follows:

Commencing at the southeast corner of Lot 7, Edwards Business Industrial Park, thence along the south line of said Lot 7, South 89°38'33" West a distance of 207.12 feet to the southeast corner of said Common Ingress & Egress Easement and the Point of Beginning; thence along the most easterly line of said easement, North 00°21'27" West a distance of 150.29 feet to the most northerly corner thereof, said point being on the easterly boundary of that property conveyed to Wilsonville Devco, LLC by deed recorded May 24, 2012 as Document No. 2012-042053, Deed Records of Washington County, Oregon; thence along the easterly boundary of said Wilsonville Devco, LLC property, South 20°40'49" West a distance of 59.48 feet to a point; thence departing said easterly boundary, South 00°09'24" West a distance of 94.77 feet to a point on the south line of said Lot 7; thence along the south line of said Lot 7, North 89°38'33" East a distance of 22.20 feet to the Point of Beginning.

Said described tract of land contains 2,657 square feet, more or less.

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Scott F. Field
OREGON
JUNE 30, 1987
SCOTT F. FIELD
2011

RENEW: 12/31/2013

Exhibit C (continued)

EXHIBIT MAP – VACATED EASEMENT

LOCATED IN THE SE 1/4 OF SECTION 2, T. 3 S., R. 1 W.,
W.M., CITY OF WILSONVILLE, WASHINGTON COUNTY, OREGON
SEPTEMBER 24, 2013

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Scott F. Field

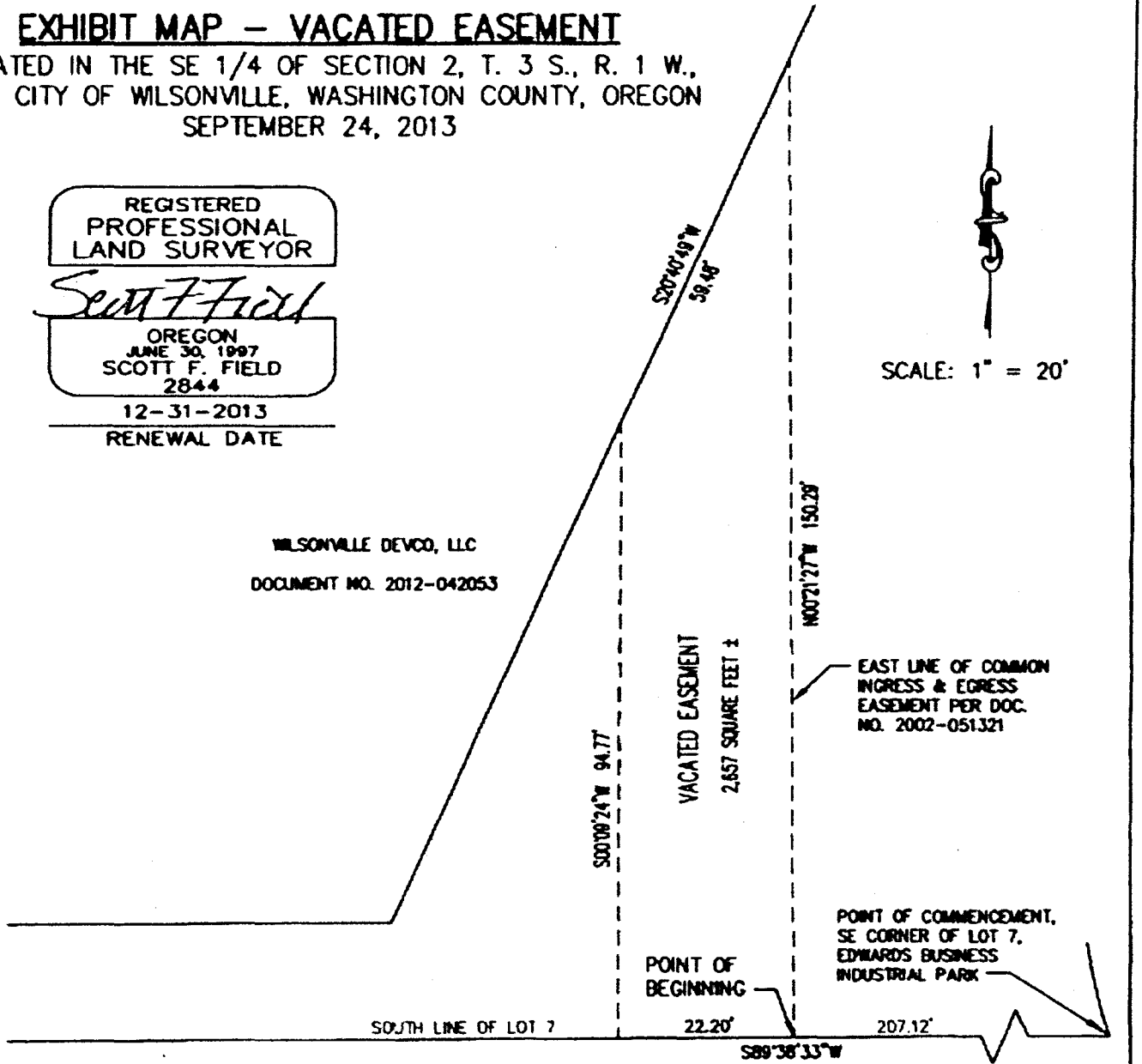
OREGON
JUNE 30, 1997
SCOTT F. FIELD
2844

12-31-2013
RENEWAL DATE

WILSONVILLE DEVCO, LLC
DOCUMENT NO. 2012-042053



SCALE: 1" = 20'



JOB NAME:	WILSONVILLE CARL'S JR.
JOB NUMBER:	787
DRAWING NUMBER:	787 EASE
DRAWN BY:	SFF
CHECKED BY:	CHS

**NORTHWEST
SURVEYING, Inc.**

1815 NW 169TH PLACE
SUITE 2090
BEAVERTON, OR 97006
PHONE: (503) 848-2127
FAX: (503) 848-2179

Exhibit D
New Easement Area

September 23, 2013
NWS Project No. 787
Cross Access Line

A line located in the southeast one-quarter of Section 2, Township 3 South, Range 1 West, Willamette Meridian, City of Wilsonville, Washington County, Oregon, being more particularly described as follows:

Commencing at the southeast corner of Lot 7, Edwards Business Industrial Park, thence along the south line of said Lot 7, South 89°38'33" West a distance of 379.33 feet to a point 12.00 feet east of the east line of Parcel I as described in deed from John Q. Hammons to the State of Oregon, by and through its Department of Transportation, recorded April 21, 1995 as Document No. 95-027726, Deed Records of Washington County, Oregon; thence parallel with said east line, North 00°09'24" East a distance of 18.00 feet to a 5/8 inch iron rod located at the southwest corner of that property conveyed to Wilsonville Devco, LLC by deed recorded May 24, 2012 as Document No. 2012-042053, Deed Records of Washington County, Oregon; thence along the south line of said Wilsonville Devco, LLC property, North 89°38'33" East a distance of 121.17 feet to the most southerly southeast corner thereof; thence along the easterly boundary of said Wilsonville Devco, LLC property, North 20°40'49" East a distance of 112.99 feet to the Point of Beginning; thence continuing along said easterly boundary, North 20°40'49" East a distance of 60.55 feet to the Point of Terminus.

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Scott F. Field

OREGON
JUNE 30, 1997
SCOTT F. FIELD
2844

REVIS: 12/31/2013

EXHIBIT MAP - CROSS ACCESS LINE

LOCATED IN THE SE 1/4 OF SECTION 2, T. 3 S., R. 1 W., W.M.,
CITY OF WILSONVILLE, WASHINGTON COUNTY, OREGON
SEPTEMBER 23, 2013

REGISTERED
PROFESSIONAL
LAND SURVEYOR
Scott F. Field
OREGON
JUNE 30, 1997
SCOTT F. FIELD
2844
12-31-2013
RENEWAL DATE

WILSONVILLE DEVCO, LLC
DOCUMENT NO. 2012-042053

SW 95TH AVENUE

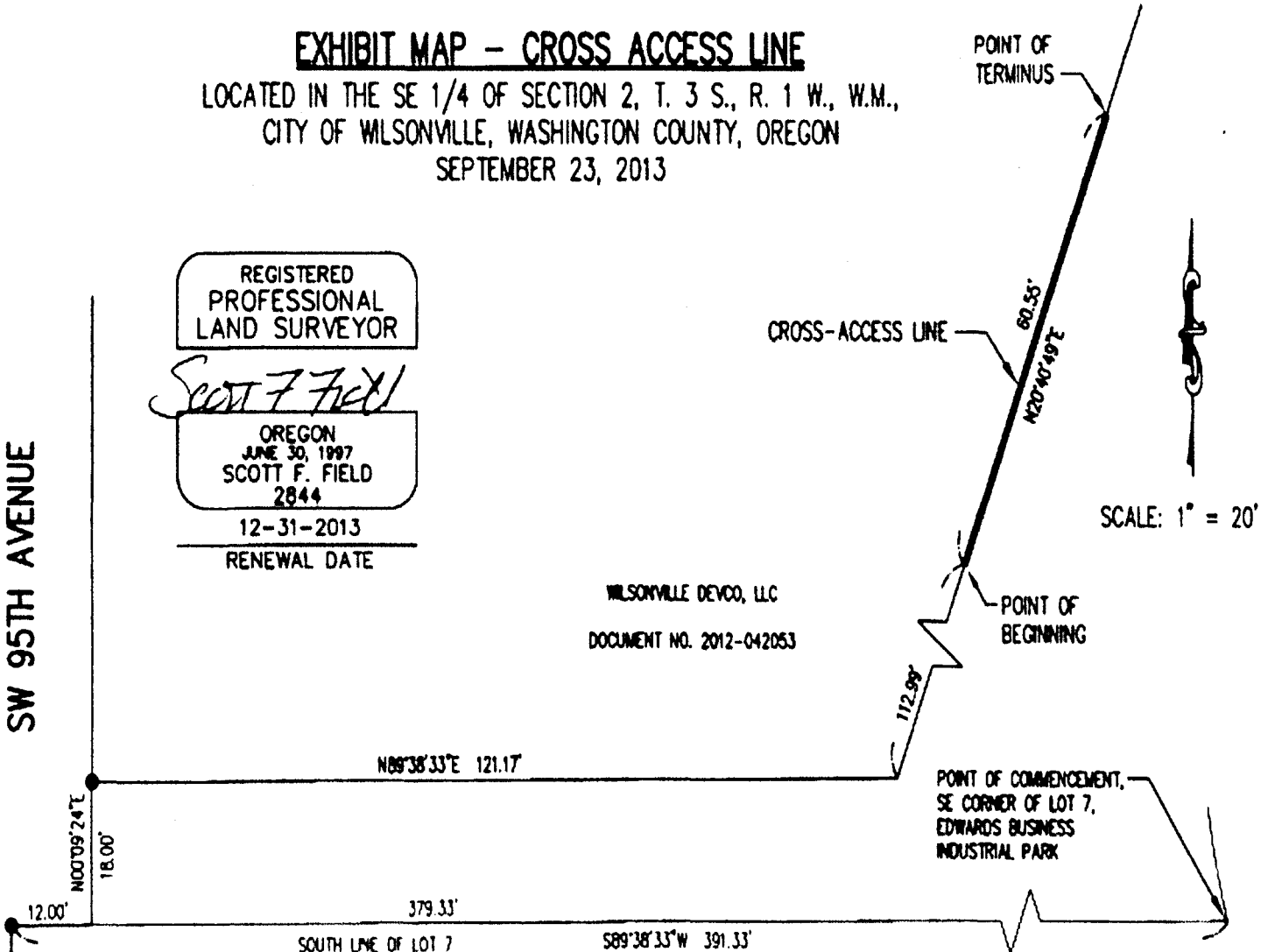


Illustration of New Easement Area
Exhibit E

EAST LINE OF PARCEL L
DOC. NO. 95-027726

JOB NAME:	WILSONVILLE CARL'S JR.
JOB NUMBER:	787
DRAWING NUMBER:	787 EASE
DRAWN BY:	SFF
CHECKED BY:	CHS

NORTHWEST
SURVEYING, Inc.

1815 NW 169TH PLACE
SUITE 2090
BEAVERTON, OR 97008
PHONE: (503) 848-2127
FAX: (503) 848-2179

#25859678_v1



01738562201200681010210219

I, Richard Hobernicht, Director of Assessment and Taxation and Ex-Officio County Clerk for Washington County, Oregon, do hereby certify that the within instrument of writing was received and recorded in the book of records of said county.

Richard Hobernicht, Director of Assessment and Taxation, Ex-Officio County Clerk



Exp

After recording, return to:
City Recorder
City of Wilsonville
29799 SW Town Center Loop E.
Wilsonville OR 97070

DEVELOPMENT AGREEMENT

This Development Agreement is entered into by and between the City of Wilsonville ("City"), Wilsonville Devco LLC, an Oregon limited liability company ("Developer"), and two neighboring impacted businesses, LaPoint Business Group, LLC, an Oregon limited liability company, operating a Chevron gasoline station and a convenience store ("LaPoint"), and WHI Hotel, LLC, an Oregon limited liability company operating as a Holiday Inn hotel ("Holiday Inn"). The effective date of this Development Agreement is July ¹⁷~~3~~, 2012 ("Effective Date"). All of the foregoing parties are referred to collectively as the "Parties" and in the singular as a "Party." "Shared Driveway Parties" are all of the Parties listed above, excluding the City.

RECITALS

- A. Developer proposes to construct a Carl's Jr. fast food restaurant and other yet to be determined retail ("Development") on its property located adjacent to the Holiday Inn and LaPoint businesses ("Developer Property"). The locations of the LaPoint property, Holiday Inn property, and Developer Property are legally described and depicted on the map attached hereto as Exhibit A, and are collectively referred to as the "Neighboring Properties."
- B. The proposed Development is located adjacent to 95th Avenue in Wilsonville, Oregon and would be accessed via 95th Avenue. The Neighboring Properties, including the Developer Property, share a common driveway ("Shared Driveway") that allows for access to 95th Avenue.
- C. The City intends to make certain improvements to 95th Avenue this summer ("Roadway Improvements"), whether or not this Development Agreement is entered into. Based on a traffic study recently conducted for the City by DKS Associates in conjunction with the proposed Development, dated May 2012, DKS, Developer, and the City have discussed a driveway configuration requiring certain enhancements and modifications be made to the proposed Roadway Improvements in order to better serve the proposed Development ("Enhanced Roadway Improvements"). The proposed Enhanced Roadway Improvements will cost the City approximately Forty Thousand Dollars to Sixty Thousand Dollars (\$40,000-\$60,000) more than the current scope of work for the Roadway Improvements.

- D. The City is willing to make the Enhanced Roadway Improvements in consideration for Developer making certain on-site improvements to the Neighboring Properties in order to help relieve congestion on the Shared Driveway and to make the traffic flow more smoothly to and from 95th Avenue ("Developer Improvements"). In consideration of the City making the Enhanced Roadway Improvements, Developer has agreed to make the Developer Improvements, more particularly described in **Section III** below.
- E. Holiday Inn and LaPoint support the Enhanced Roadway Improvements and Developer Improvements and agree to fully cooperate with the City and Developer in the construction of the Enhanced Roadway Improvements and Developer Improvements.
- F. Developer will be solely responsible for all costs associated with the Developer Improvements.

AGREEMENT

In consideration of the foregoing Recitals, and incorporating all of the above Recitals by reference in this Development Agreement as if fully set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, all of the above-named Parties agree as follows:

I. NEW DEVELOPMENT

Developer intends to construct a retail development on Developer's Property, which may contain a Carl's Jr. fast food restaurant and other retail stores. Nothing in this Development Agreement ensures that Developer's proposed development will be approved by the City. Developer will be required to go through all application and permitting processes required by the City for commercial development and to pay all fees required by the City to be paid for such commercial development in order to obtain approval to move forward with Developer's proposed Development ("Development Approval"). Nothing contained herein is a guarantee that Development Approval will be granted by the City.

II. CITY'S ENHANCED ROADWAY IMPROVEMENTS (City Obligations)

In consideration for Developer making the Developer Improvements, described in **Section III**, the City agrees to make the Enhanced Roadway Improvements generally depicted on **Exhibit B** and generally described as follows:

- Install a concrete sidewalk along the length of the Shared Driveway adjacent to 95th Avenue in the right-of-way.
- Bring storm manhole in right-of-way to grade.
- Install curb along northeast return of the Shared Driveway and 95th Avenue.
- Install concrete commercial Shared Driveway for access to 95th Avenue that lies within right-of-way north of the existing driveway back of curb;

- Transition existing sidewalk north of and adjacent to access drive to meet grades of new concrete driveway.
- Paint and maintain an approximately 50 foot "DO NOT BLOCK DRIVEWAY" signage on 95th Avenue at the inbound and outbound lanes, using eight inch or larger lettering.
- Allow one (1) inbound and two (2) outbound lanes of traffic into the Shared Driveway area at 95th Avenue within the right-of-way. (First 20 feet is one-way inbound and then converts to two lanes within the Shared Driveway.)
- Provide required legal notice to the Parties with respect to any changes being made to their access to 95th Avenue and an opportunity for the Parties to provide comments, understanding the Oregon Department of Transportation has the final authority with respect to any roadway modifications.
- City to stripe egress within the right-of-way.

III. DEVELOPER IMPROVEMENTS (Developer Obligations)

In consideration of the City's installation of the above-described Enhanced Roadway Improvements, Developer agrees to make the Developer Improvements generally depicted on **Exhibit B** and generally described as follows:

- Remove and install curb, gutter, and storm facilities, as necessary, to close the existing Holiday Inn egress to the Shared Driveway and create a new egress. The new egress shall include a driveway that is 16.6 feet wide and Developer shall place "Do Not Block" signage across twelve feet of space in front of the driveway so that cars in the stacking lane do not block Holiday Inn's egress driveway, as depicted on **Exhibit B**.
- Widen the existing Holiday Inn ingress from the Shared Driveway by approximately 5 feet by removing and installing the curb surrounding the Holiday Inn sign and replacing with crushed rock base and asphalt drive.
- Remove a parking stall island and existing tree on Holiday Inn property and replace with asphalt parking with section matching existing parking lot section.
- Add a parking stall island on Holiday Inn property.
- Narrow parking stall island on Holiday Inn property by removing and installing curb and asphalt.
- Remove the median island in the Shared Driveway and install asphalt.
- Install an entry landscape island and a pedestrian refuge island in the middle of the relocated portion of the Shared Driveway.
- Widen the Shared Driveway to four (4) lanes.
- Stripe the Shared Driveway to four (4) lanes, excepting the Shared Driveway entrance (right-of-way), which will be striped to three (3) lanes to discourage travel.
- Remove curb along LaPoint's western property line and install asphalt, as depicted on **Exhibit B**.
- Install stop bars and signs at Developer Property egress to the Shared Driveway and at Holiday Inn egress to the Shared Driveway, as depicted on **Exhibit B**.
- Provide construction easement to the City in order to allow the City to install NE curb return of Shared Driveway, to 95th, and for sidewalk transition and driveway construction.

- Adjust manholes and area inlets in the Shared Driveway to grade.
- All construction within the Shared Driveway or on Holiday Inn property shall be of the same standard as existing construction.
- Relocate Chevron sign and security cameras to either the Landscape Entry Island, centered North/South but as close to the right-of-way as LaPoint wishes to place the signage, as long as it does not overhang the right-of-way, including the sidewalk or, in the alternative, to be located on the southwest corner of Developer's Property next to or within the detention pond location to be agreed upon between Developer and LaPoint and as close to the right-of-way as LaPoint wishes to place the signage, as long as it does not overhang the right-of-way, including the sidewalk. If sign is relocated to Developer's Property, Developer shall provide LaPoint with a sign, access and maintenance easement. LaPoint will seek approval from Chevron to enter into a shared signage agreement with Developer for Developer's proposed fast food sign.
- If a shared signage agreement is entered into between Developer and LaPoint/Chevron, each party will be responsible for the maintenance of their own signage and will share in the maintenance cost or replacement of the pole equally, if any.
- Agreements between LaPoint and Developer, to be agreed upon in terms of markings and placement in order to dedicate the right-hand ingress lane for use as a stacking area for LaPoint gasoline station customers. LaPoint reserves the right to install reflective buttons or flexisticks to further identify the stacking area if gasoline station traffic later warrants, at LaPoint's sole cost and expense.
- Provide Holiday Inn a non-exclusive easement for egress over Developer's property located within the Shared Driveway.
- Preparation of **Exhibit B**, to this Development Agreement, as approved by all Parties and as attached hereto.
- Share one third of the cost of annual maintenance of all striping and signage painted within the boundary of the Shared Driveway.
- Provide an easement for and allow LaPoint to construct a trash enclosure and recycling area on Developer's property, adjacent to the proposed trash enclosure on Developer's eastern property line. LaPoint's trash enclosure must be constructed with like kind materials, craftsmanship and resemble the same aesthetic look as Developer's trash enclosure.
- Developer and LaPoint have agreed to amend the existing easement agreement by vacating a portion of Developer's easement over LaPoint's property in exchange for LaPoint granting Developer a reciprocal cross-easement on Developer's eastern property line and LaPoint's western property line for curb cuts between the properties and LaPoint's access to trash enclosure on Developer's Property, as illustrated on **Exhibit C** attached hereto. The amended easement agreement will be part of a separate agreement between Developer and LaPoint.
- Developer will include LaPoint's trash enclosure as part of Developer's plans for the purpose of DRB review and permit approval. The cost of the trash enclosure permit and construction will be at LaPoint's sole cost and expense.

The foregoing Developer Improvements shall be made at Developer's sole expense and are agreed to be a reasonable and agreed upon exchange for the Enhanced Roadway Improvements that the City has agreed to make in order to improve traffic flow to and from the Neighboring

Properties onto 95th Avenue. The foregoing Developer Improvements must be completed, inspected by the City, and deemed complete by the City before the City will issue any temporary occupancy permits to Developer, assuming Development Approval. In addition, regardless of whether Development Approval by the City is granted or denied, Developer will be legally obligated to make the Developer Improvements set forth herein, unless the City agrees otherwise, in its sole discretion to release Developer from any or all of the foregoing obligations, because the City will be constructing the Enhanced Roadway Improvements in consideration of and in reliance upon this Development Agreement, including Developer's agreement to make the Developer Improvements in exchange for the Enhanced Roadway Improvements. Developer's obligations hereunder will therefore run with the land and this Agreement will be recorded against all of the Neighboring Properties.

IV. LAPOINT AGREEMENT (LaPoint Obligations)

In consideration for the City's installation of the above-described Enhanced Roadway Improvements and Developer's construction of the Developer Improvements, both as generally described herein and generally depicted on **Exhibit B**, LaPoint agrees to allow the following with respect to its property, as also generally depicted on **Exhibit B**:

- Allow the current Chevron sign and light pole with security cameras to be relocated as described in Section III above.
- Cooperate with Developer in making all of the required improvements to the Shared Driveway, at Developer's cost, as provided for in Section III and as depicted on **Exhibit B**.
- Allow the Holiday Inn egress driveway portion of its easement to be relocated to the location on LaPoint property, as described above and as depicted on **Exhibit B**.
- Allow pavement signage to be installed by Developer across a twelve-foot area directly in front of the new egress driveway reading **DO NOT BLOCK**.
- Provide construction easement to allow construction of private ingress and egress improvements, as depicted on **Exhibit B**.
- Share one third of the cost of annual maintenance of all striping and signage painted within the boundary of the Shared Driveway.
- Pay all of the costs associated with the installation and maintenance of any reflective buttons or flexisticks to identify the stacking area.

Except for installation and maintenance of reflective buttons or flexisticks, which shall be LaPoint's responsibility, all of the foregoing work described in this Section IV will be done by Developer, at Developer's cost. LaPoint and Developer will work cooperatively with respect to timing of the foregoing removals and installations.

V. HOLIDAY INN AGREEMENT (Holiday Inn Obligations)

In consideration for the City's installation of the above-described Enhanced Roadway Improvements and Developer's construction of the Developer Improvements, both as generally described herein and generally depicted on Exhibit B, Holiday Inn agrees to allow the following with respect to its property, as also generally depicted on Exhibit B:

- Allow its current egress driveway to the Shared Driveway to be vacated and permanently closed and replaced by Developer, at Developer's cost and expense, with a new egress. The new egress shall include a driveway that is 16.6 feet wide, as depicted on Exhibit B.
- Relinquish three (3) parking spaces to accommodate the Developer Improvements, including relocation of Holiday Inn's easement to egress.
- Allow its existing ingress to be widened by approximately 5 feet in order to better accommodate trucks access.
- Restripe its parking stalls, as needed, at Holiday Inn's expense.
- Provide construction easement to allow construction of private ingress and egress improvements, as depicted on Exhibit B.
- Share one third of the cost of annual maintenance of all striping and signage painted within the boundary of the Shared Driveway.

Except for stall restriping (which shall be Holiday Inn's responsibility), all of the foregoing work described in this Section V will be done by Developer, at Developer's cost and expense. Holiday Inn and Developer will work cooperatively with respect to timing of the foregoing improvements.

VI. Obligations of All Shared Driveway Parties

All Shared Driveway Parties will use good faith reasonable efforts not to unreasonably interfere with or impede Shared Driveway usage. Developer and Holiday Inn agree that the right ingress lane will be used primarily by LaPoint as a stacking lane for gasoline station customers. The left ingress lane shall be used primarily by customers of Developer's Property and LaPoint's C-Store customers, vendors, diesel pumps and fuel deliveries. Holiday Inn recognizes and agrees that the egress driveway across the LaPoint property may occasionally be temporarily blocked by fuel trucks, RV's, delivery trucks, or large trucks with trailers from time-to-time entering the site, however, such blockage will be short term as the vehicles maneuver into place as the egress driveway crosses over the stacking lane. An area twelve feet (12 ft) in width will be clearly marked with DO NOT BLOCK letters painted on the pavement. LaPoint will use reasonable good faith efforts to monitor public compliance with this signage and require customers to move out of the DO NOT BLOCK area but Holiday Inn recognizes and agrees that at times a customer may fail to abide by the signage and LaPoint shall not have liability for such blockage. Holiday Inn customers will not be allowed to cut into the stacking lane and if such customers wish to get gasoline, they will be required to circle around to the end of the stacking lane. Developer and LaPoint may make minor revisions to striping, signage and traffic flow within the Shared Driveway area as they agree as long as such minor revisions do not impact traffic coming to or from 95th Avenue, do not impede the Holiday Inn ingress or egress, are not in violation of Development Review Board conditions of approval, and are in compliance with City permit

requirements. Redirection of traffic that could create a negative impact on traffic flow to and from 95th Avenue must be approved, in writing by the City, in accordance with City permitting requirements. The Parties agree that except as modified hereby, all ingress, egress and common area easements and other agreements between some or all of the Parties with respect to or relating to use of the Shared Driveway and Neighboring Properties shall remain in place (collectively "Shared Driveway/Neighboring Property Agreements"). Wherever those Shared Driveway/Neighboring Property Agreements directly conflict with the provisions of this Development Agreement, this Development Agreement will control.

VI. MISCELLANEOUS PROVISIONS

Section 6.1 – Further Assurances

Each Party shall execute and deliver any and all additional drawings, specifications, documents, and other assurances, and shall do any and all acts and things reasonably necessary in connection with the performance of its obligations hereunder, in good faith to carry out the intent of the Parties hereto. Developer understands and agrees that no occupancy permit will be granted for the Development until the Developer Improvements have been completed and approved by the City as meeting the requirements set forth herein.

Section 6.2 – Modification or Amendment

No amendment, change, or modification of this Development Agreement shall be valid unless in writing and signed by the Parties hereto.

Section 6.3 – Relationship

Nothing herein shall be construed to create an agency relationship or a partnership or joint venture between the Parties.

Section 6.4 – Maintenance

Nothing contained herein is intended to address anything concerning maintenance of the Shared Driveway. Maintenance is an issue to be negotiated between the owners of the Neighboring Properties who use the Shared Driveway.

Section 6.5 – Burden and Benefit

The covenants and agreements contained herein shall be binding upon and inure to the benefit of the Parties and their successors and assigns.

Section 6.6 – No Continuing Waiver

The waiver of any Party of any breach of this Development Agreement shall not operate or be construed to be a waiver of any subsequent breach.



Section 6.7 – Applicable Law

This Development Agreement shall be governed by and construed under the laws of the State of Oregon. Jurisdiction is in Clackamas County, Oregon.

Section 6.8 – Legal Fees

If any Party commences legal proceedings, including arbitration, mediation, or bankruptcy, for any relief against any other Party arising out of or related to this Development Agreement, or the breach thereof, the losing Party shall pay the prevailing Party's legal costs and expenses, including, but not limited to, arbitration costs, reasonable attorneys' fees, and expert witness fees, as determined by the court or the arbitrator at the trial level or on any appeal.

Section 6.9 – Time of Essence

Time is expressly declared to be of the essence of this Development Agreement.

Section 6.10 – Notices

All notices, demands, consents, approvals, and other communications which are required or desired to be given by any Party to each other hereunder shall be in writing and shall be faxed, hand delivered, or sent by overnight courier or United States Mail at its address set forth below, or at such other address as such Party shall have last designated by notice to the other. Notices, demands, consents, approvals, and other communications shall be deemed given when delivered, three (3) days after mailing by United States Mail, or upon receipt if sent by courier; provided, however, that if any such notice or other communication shall also be sent by telecopy or fax machine, such notice shall be deemed given at the time and on the date of machine transmittal.

To City: City of Wilsonville
 Attn: City Engineer
 29799 SW Town Center Loop East
 Wilsonville OR 97070

To Developer: Wilsonville Devco, LLC
 Attn: Josh Veentjer, Managing Member
 4188 SW Greenleaf Drive
 Portland OR 97221

To LaPoint: LaPoint Business Group, LLC
 Attn: Garry L. LaPoint, Registered Agent
 850 Lawson Ave
 Woodburn OR 97071



To Holiday Inn: Holiday Inn, Portland South Hotel & Convention Ctr.
 Attn: General Manager
 25425 SW 95th Ave
 Wilsonville OR 97070

Section 6.11 – Rights Cumulative

All rights, remedies, powers, and privileges conferred under this Development Agreement on the Parties shall be cumulative of and in addition to, but not restrictive of or in lieu of, those conferred by law.

Section 6.12 – Counterparts

This Development Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument.

Section 6.13 – No Third-Party Beneficiaries and No Assignment

None of the duties and obligations of any Party under this Development Agreement shall in any way or in any manner be deemed to create any rights in any person or entity other than the Parties hereto or their respective heirs, successors and assigns.

Section 6.14 – Obligations Run with Land

This Development Agreement shall run with the land and be binding upon any successors and assigns of any of the Parties hereto.

Section 6.15 – Dispute Resolution

6.15.1 Mediation. All disputes arising out of this Development Agreement shall first be submitted to mediation. Any Party desiring mediation shall provide the other Parties with a written notice (the “Request to Mediate”), which shall set forth the nature of the dispute. The Parties shall in good faith cooperate in the selection of a mediator and may adopt any procedural format that seems appropriate for the particular dispute. In the event a written settlement agreement is not executed by the Parties, in the Parties’ sole discretion, within twenty (20) days from the date of the Request to Mediate, or such longer time frame as may be agreed upon in writing by the Parties, any Party may make demand for arbitration pursuant to the following paragraph.

6.15.2 Arbitration or Litigation. Any dispute arising under this Development Agreement which is not resolved through mediation, may be submitted by any Party to arbitration, to be conducted in Wilsonville, Oregon before a single arbitrator selected by mutual agreement of the Parties. The arbitrator shall have substantial experience in commercial real estate and construction disputes. If the

Parties are unable to mutually select an arbitrator within twenty (20) days, then any Party may file an action in Clackamas County Circuit Court in lieu of arbitration and there will be no obligation to arbitrate. If arbitrated, judgment upon the arbitrator's award may be entered in any court having jurisdiction of the matter.

Section 6.16 – Representations and Warranties

Each of the Parties hereto represents and warrants that he/she is the authorized representative of the owners of each respective Neighboring Property and hereby warrants full authority to enter into this Agreement and bind all persons with ownership interest in the respective properties. The Parties signing below also hereby warrant that entry into this Development Agreement and the enforcement of its terms will not violate any loan covenants or other agreements pertaining to any of the land or improvements impacted hereby.

Section 6.17 – Legal Review

All of the Parties to this Development Agreement hereby affirm that they have been represented in the negotiation hereof by their own independent legal counsel who have reviewed this Development Agreement and advised their respective client concerning the same. Therefore it shall be interpreted accordingly and shall not be construed against the drafter. Any revisions that the Shared Driveway Parties wish to make to their respective easements not otherwise covered by this Development Agreement will be negotiated between them and the City will not be a party thereto.

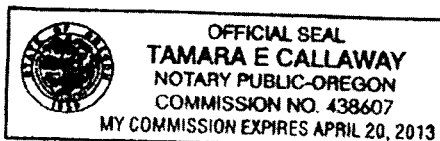
IN WITNESS WHEREOF, the Parties have hereunto set their hands as of the day and year first written above.

WILSONVILLE DEVCO, LLC
an Oregon limited liability company

By: [Signature]
Josh Veentjer
As Its: Managing Member

STATE OF OREGON)
) ss.
County of Clackamas)

This instrument was acknowledged before me on August 3, 2012,
by Josh Veentjer, as Managing Member of
Wilsonville Devco, LLC.



Tamara E. Callaway
Notary Public – State of Oregon

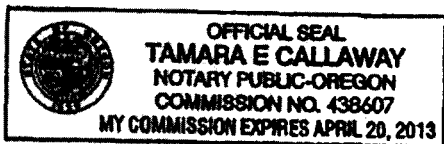
[Handwritten initials]

LAPOINT BUSINESS GROUP, LLC,
an Oregon limited liability company

By: [Signature]
Garry L. LaPoint
As Its: Active Member

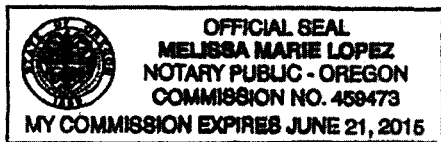
STATE OF OREGON)
) ss.
County of Clackamas)

This instrument was acknowledged before me on August 3, 2012,
by Garry L. LaPoint, as Active Member of
LaPoint Business Group, LLC.



[Signature]
Notary Public - State of Oregon

WHI HOTEL, LLC,
an Oregon limited liability company



By: [Signature]
Sungmin Park
As Its: Owner

STATE OF OREGON)
) ss.
County of Clackamas)

This instrument was acknowledged before me on 07/27, 2012,
by Sung-min Park, as OWNER of
WHI Hotel, LLC.

[Signature]
Notary Public - State of Oregon
[Signature]

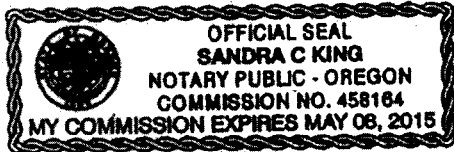
CITY OF WILSONVILLE,
an Oregon municipal corporation

By: *Bryan A Cosgrove*
Bryan Cosgrove
As Its: City Manager

STATE OF OREGON)
) ss.
County of Clackamas)

This instrument was acknowledged before me on August 6, 2012,
by Bryan Cosgrove, as the City Manager of the City of Wilsonville.

Sandra C King
Notary Public - State of Oregon



95th AVENUE

BOONES FERRY ROAD (OR141)

WILSONVILLE
DEVCO,
L.L.C.

LAPPOINT
BUSINESS
GROUP L.L.C.

WILSONVILLE HOLIDAY
PARTNERS, LLC

EXHIBIT A

SR

EXHIBIT "A"

A tract of land located in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, in the Southeast one-quarter of Section 2, Township 3 South, Range 1 West of the Willamette Meridian, in the City of Wilsonville, County of Washington and State of Oregon, being further described as follows:

Commencing at the Southeast corner of Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, recorded in Book 31 at Page 14 in the Plat Records of Washington County, Oregon; thence South 89°38'33" West, along the South line of said Lot 7, a distance of 379.33 feet to a point 12.00 feet East of the East line of Parcel 1 as described in Deed from John Q. Hammons to the State of Oregon, by and through its Department of Transportation, Document No. 95-027726, recorded April 21, 1995 (hereinafter referred to as "ODOT"); thence North 00°09'24" East parallel to said East line, 18.00 feet to the true point of beginning; thence continuing North 00°09'24" East along said Easterly line, 341.16 feet; thence along the arc of a 116.16 foot radius curve to the right, through a central angle of 48°43'29", an arc length of 98.78 feet, the chord of which bears North 24°31'08" East, 95.83 feet; thence along the arc of a 45.00 foot radius curve to the right, through a central angle of 67°23'57", an arc length of 52.94

feet, the chord of which bears North 82°35'16" East 49.94 feet; thence along the arc of a 100.00 foot radius curve to the right, through a central angle of 37°13'18", an arc length of 64.96 feet, the chord of which bears South 45°05'58" East, 63.83 feet to a point on the Westerly line of Boones Ferry Road as described in said "ODOT" Deed; thence along the said Westerly line along the arc of a tangent 595.65 foot radius reverse curve to the left, the radius bears North 63°30'41" East, through a central angle of 02°45'38", an arc length of 28.70 feet, the chord of which bears South 27°52'08" East 28.70 feet; thence non-tangent South 15°09'35" West 83.41 feet; thence South 38°02'13" East, 122.78 feet; thence leaving said Westerly line, South 51°57'47" West, 20.00 feet; thence South 20°40'49" West, 186.07 feet to a point that is 18.00 feet measured at right angles from the South line of said Lot 7; thence parallel to said South line of Lot 7, South 89°38'33" West 121.22 feet to the true point of beginning.

EXCEPTING THEREFROM that portion thereof conveyed to the City of Wilsonville for right-of-way purposes in Warranty Deed recorded November 23, 2009 as Fee No. 2009-102082, Washington County Deed Records.

EXHIBIT "A"

PARCEL I:

A parcel of land located in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, in the South one-half Section 2, Township 3 South, Range 1 West, of the Willamette Meridian, in the City of Wilsonville, County of Washington and State of Oregon, being further described as follows:

Commencing at the Southeast corner of said Lot 7; thence South 89°38'33" West, along the South line of said lot, a distance of 391.33 feet to the East line of Parcel I in Deed from John Q. Hammons, to the State of Oregon, by and through its Department of Transportation (herein after referred to as "ODOT"); thence North 00°09'24" East, along said "ODOT" Deed, a distance of 359.27 feet; thence continuing along said "ODOT" Deed, along the arc of a curve to the right, said curve having a radius of 128.16 feet, arc length of 140.62 feet, central angle of 062°51'50", a chord bearing of North 31°35'19" East, a chord length of 133.87 feet to the intersection with the South line of SW Commerce Circle as dedicated in the plat of EDWARDS BUSINESS INDUSTRIAL PARK; thence non-tangent North 70°34'24" East, along said street, a distance of 20.97 feet, and along the arc of a curve to the right, said curve having a radius 25.00 feet, arc length of 32.72 feet, central angle of 074°59'06", a chord bearing of South 71°56'03" East, and a chord length of 30.43 feet to the intersection with the West line of Boones Ferry as described in said "ODOT" Deed; thence along said "ODOT" Deed, along the arc of a non-tangent curve to the left, said curve having a radius of 1,001.93 feet, arc length of 12.00 feet, central angle of 000°41'10", a chord bearing of South 24°13'24" East, and a chord length of 12.00 feet to the intersection with the East line of said Lot 7; thence along the East line of said Lot 7, along the arc of a non-tangent curve to the left, said curve having a radius of 595.65 feet, arc length of 85.44 feet, central angle of 008°13'06", a chord bearing of South 25°08'24" East, and a chord length of 85.36 feet to the Westerly line of Boones Ferry Road as described in said "ODOT" Deed; thence non-tangent, along said Westerly line South 15°09'35" West, a distance of 83.41 feet, South 38°02'13" East, a distance of 200.44 feet, North 48°33'47" East, a distance of 48.10 feet, South 40°56'40" East, a distance of 81.06 feet, and along the arc of a non-tangent curve to the right, said curve having a radius of 2,837.79 feet, arc length of 17.49 feet, central angle of 00°21'11", a chord bearing of South 38°36'45" East, and a chord length of 17.49 feet to a point 100.00 feet North of, when measured at right angle to, the South line of said Lot 7; thence continuing along said "ODOT" Deed, along the arc of a non-tangent curve to the right, said curve having a radius of 2,837.79 feet, arc length of 48.51 feet, central angle of 00°58'46", a chord bearing of South 37°56'47" East, and a chord length of 48.51 feet, to the East line of said Lot 7; thence along the arc of a curve to the left, said curve having a radius of 116.96 feet, arc length of 62.30 feet, central angle of 030°31'07", a chord bearing South 00°03'01" West, and a chord length of 61.56 feet to the point of beginning.

EXCEPTING THEREFROM a tract of land located in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, in the South one-half Section 2, Township 3 South, Range 1 West, of the Willamette Meridian, in the City of Wilsonville, County of Washington and State of Oregon, being further described as follows:

Commencing at the Southeast corner of said Lot 7; thence South 89°38'33" West, along the South line of said lot, a distance of 379.33 feet to a point 12 feet Easterly of the East line of Parcel 1 in Deed from John Q. Hammons to the State of Oregon, by and through its Department of Transportation, Fee No. 95027726, April 21, 1995 (herein after referred to as "ODOT"); thence North 00°09'24" East a distance of 12.00 feet parallel to and 12.00 feet Easterly of said "ODOT" line to the true point of beginning; thence North 00°9'24" East, parallel to and 12.00 feet Easterly of said "ODOT" line, a distance of 347.16 feet; thence along the arc of a curve to the right, said curve having a radius of 116.16 feet, arc length of 101.04 feet, central angle of 49°50'12", a chord bearing of North 25°04'30" East, and a chord length of 97.88 feet to a point of compound curvature; thence along the arc of a curve to the right, said curve having a radius of 45.00 feet, arc length of 53.94 feet, central angle of 33°01'29", a chord bearing South 71°56'03" East, and a chord length of 30.43 feet to a point of compound curvature; thence along the arc of a curve to the right, said curve having a radius of 100.00 feet, arc length of

EXHIBIT "A"

(Continued)

61.13 feet, central angle of 35°01'29", a chord bearing of South 43°49'18" East, and a chord length of 60.18 feet to the intersection with the West line of Boones Ferry Road as described in said "ODOT" Deed and a point of a non-tangent curve to the left, said point having a radial bearing of North 63°41'28" East; thence along said "ODOT" Deed, along the arc of said non-tangent curve to the left, said curve having a radius of 595.65, arc length of 30.57 feet, central angle of 02°56'25", a chord bearing of South 27°46'44" East, and a chord length of 30.56 feet to along the Westerly line of Boones Ferry Road as described in said "ODOT" Deed; thence along said Westerly line South 15°09'35" West, a distance of 83.41 feet; thence South 38°02'13" East, a distance of 120.44 feet; thence South 57°57'47" West, a distance of 55.00 feet; thence South 20°29'49" West, a distance of 171.35 feet to a point that is 12 feet from, when measured at right angles, to the South line of said Lot 7; thence South 89°38'33" West, a distance of 97.95 feet, more or less, to the true point of beginning.

ALSO EXCEPTING THEREFROM that portion conveyed to Prairie Corp., an Oregon corporation, by instrument recorded July 19, 2000 as Fee No. 2000-48398, more particularly described as follows:

A tract of land located in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, in the Southeast one-quarter of Section 2, Township 3 South, Range 1 West, of the Willamette Meridian, in the City of Wilsonville, County of Washington and State of Oregon, being further described as follows:

Commencing at the Southeast corner of said Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, recorded in Book 31, Page 14 in the Plat Records of Washington County, Oregon; thence South 89°38'33" West, along the South line of said Lot 7, a distance of 379.33 feet to a point 12.00 feet East of the East line of Parcel I as described in the Deed from John Q. Hammons to the State of Oregon, by and through its Department of Transportation, Document Number 95027726, recorded April 21, 1995 (herein after referred to as "ODOT"); thence North 00°09'24" East parallel to said East line, 18.00 feet; thence North 89°38'33" East parallel to said South line of Lot 7, 95.10 feet to the true point of beginning; thence North 20°29'49" East, 170.00 feet; thence North 57°57'47" East, 55.00 feet to the Westerly line of Boones Ferry Road as described in said "ODOT" Deed; thence along said Westerly line South 38°02'13" East, 2.34 feet; thence leaving said Westerly line South 51°57'47" West, 20.00 feet; thence South 20°40'49" West, 186.07 feet to a point 18.00 feet Northerly when measured at right to the said South line of Lot 7; thence South 89°38'33" West parallel to said South line of Lot 7, 28.13 feet, more or less, to the true point of beginning.

ALSO EXCEPTING THEREFROM that portion thereof conveyed to State of Oregon, by and through its Department of Transportation, in Deed recorded April 21, 1995, as Fee No. 95027726.

FURTHER EXCEPTING THEREFROM that portion dedicated to the City of Wilsonville for street purposes by instrument recorded March 7, 2003 as Fee No. 2003-034138.

PARCEL II:

A tract of land located in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, recorded in Book 31, Page 14 in the Plat Records of Washington County, Oregon; thence South 89°38'33" West, along the South line of said Lot 7, a distance of 379.33 feet to a point 12.00 feet East of the East line of Parcel I as described in the Deed from John Q. Hammons to the State of Oregon, by and through its Department of Transportation, Document Number 95027726, recorded April 21, 1995; thence North 00°09'24" East parallel to said East line, 18.00 feet to the true point of beginning; thence North 89°38'33" East parallel to said South line of Lot 7, 95.10 feet; thence South 20°29'49" West, 6.42 feet to a point 12.00 feet Northerly when measured at right angles to the said South line of Lot 7; thence South 89°38'33" West parallel to said South line of Lot 7, 92.87 feet, more or less, to a point 12.00 feet East of the said East line of Parcel I; thence North 00°09'24" East parallel to said East line, 6.00 feet to the true point of beginning.

EXHIBIT "A"
(Continued)

EXCEPTING THEREFROM that portion dedicated to the City of Wilsonville for street purposes by instrument recorded March 7, 2003 as Fee No. 2003-034138.



EXHIBIT "A"

PARCEL I:

A portion of Lot 8, EDWARDS BUSINESS INDUSTRIAL PARK NO. 2, a duly recorded subdivision in Washington County, Oregon located in the Southeast one quarter of Section 2, Township 3 South, Range 1 West of the Willamette Meridian, in the City of Wilsonville, County of Washington and State of Oregon, said portion of Lot 8 being more particularly described as follows:

Beginning at a 2 inch iron pipe at the initial point of said Edwards Business Industrial Park No. 2, said initial point being on the Westerly line of S.W. Frontage Road, also known as Lower Boones Ferry Road; thence following the boundary of said Lot 8, along the arc of a 117.00 foot radius non-tangent curve left through a central angle of 15°30'25", an arc distance of 31.67 feet (the chord of which bears South 22°58'48" East, a distance of 31.57 feet) to a 5/8 inch iron rod (Plat record: central angle, 15°30'50"; radius 117 feet; arc length 31.68 feet; chord, South 22°58'17" East, a distance of 31.58 feet); thence South 30°34'43" East a distance of 213.04 feet to a 5/8 inch iron rod (Plat record: South 30°34'28" East a distance of 212.92 feet); thence South 00°05'07" East a distance of 130.27 feet to a 5/8 inch iron rod (Plat record: South 00°07'50" East a distance of 130.27 feet); thence South 30°08'18" east a distance of 136.08 feet to a 5/8 inch iron rod (Plat record: South 30°03'30" East a distance of 136.04 feet); thence South 59°37'27" West a distance of 13.17 feet to a 5/8 inch iron rod (Plat record: South 59°58'30" West a distance of 13.10 feet); thence Southwesterly along the arc of a 243.00 foot radius curve right through a central angle of 29°42'03" an arc distance of 125.97 feet to a 5/8 inch iron rod (the chord of which bears South 74°47'32" West a distance of 124.58 feet) (Plat record: central angle 29°42'03"; radius 243.00 feet; arc length 125.97 feet; chord, South 74°47'32" West, 124.58 feet); thence South 89°38'33" West (Plat record: South 89°38'33" West) a distance of 410.18 feet (Survey Number 26,398 Record: 410.17 feet) to a 5/8 inch iron rod at the intersection of the Southerly boundary of said Lot 8 and the Easterly right of way line of 95th Avenue; thence North 44°12'00" West a distance of 50.04 feet to a 5/8 inch iron rod 36.00 feet opposite and Easterly of Engineers Centerline Station 66+45.00, when measured at right angles to the centerline of 95th Avenue; thence North 00°08'50" East a distance of 405.00 feet to a 5/8 inch iron rod 36.00 feet opposite and Easterly of Engineer's Centerline Station 70+50.00 when measured at right angle to the centerline of 95th Avenue; thence North 89°51'10" West a distance of 5.00 feet to a 5/8 inch iron rod 31.00 feet opposite and Easterly of said Engineer's Centerline Station 70+50.00; thence North 00°08'50" East a distance of 58.91 feet to a 5/8 inch iron rod marking the intersection of the Easterly right of way line of 95th Avenue and the Northerly boundary of said Lot 8; thence leaving the Easterly right of way line of 95th Avenue and following the Northerly line of said Lot 8 North 89°37'29" East (Plat record: bearing North 89°38'33" East) a distance of 391.26 feet to the 2 inch iron pipe marking the initial point of said Edwards Business Industrial Park No. 2 and the point of beginning of this described tract of land.

PARCEL II:

Easement rights as set forth in Reciprocal Easement Agreement dated December 27, 1996 and recorded January 6, 1997 as Records's Fee No. 97-005009, described as follows:

A tract of land located in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK as recorded in Book 38, Page 14, Washington County, Oregon Plat Records, being situated in the Southeast one quarter of Section 2, Township 3 South, Range 1 West of the Willamette Meridian, Washington County, Oregon, said tract of land being more particularly described as follows:

Beginning at a 2 inch iron pipe marking the initial point of said Edwards Business Industrial Park; thence South 89°37'29" West (Plat record: Bearing South 89°38'33" West) along the Southerly boundary of said Lot 7, a distance of 391.26 feet to a point marking the intersection of the Southerly line of said Lot 7 and the Easterly line

EXHIBIT "A"

(Continued)

of 95th Avenue as acquired by the State of Oregon and the true point of beginning of this described tract of land; thence North $00^{\circ}08'50''$ East along said Easterly line, 20.00 feet; thence South $89^{\circ}51'10''$ East leaving said Easterly right of way, 51.00 feet; thence South $53^{\circ}16'00''$ East, 32.38 feet to a point on the Southerly line of said Lot 7; thence South $89^{\circ}37'29''$ West along the Southerly line of said Lot 7, a distance of 77.00 feet to the true point of beginning.



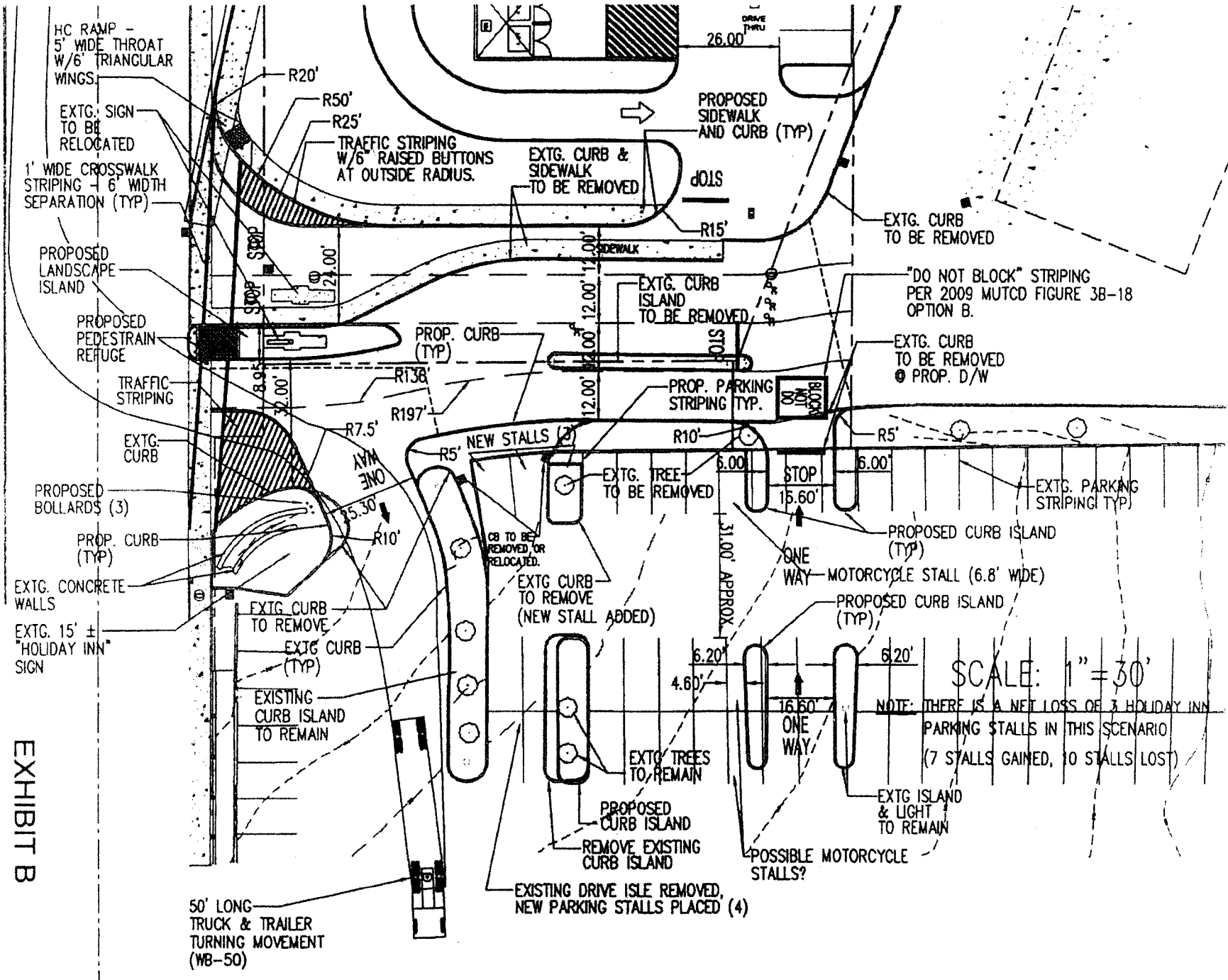


EXHIBIT B

2/1

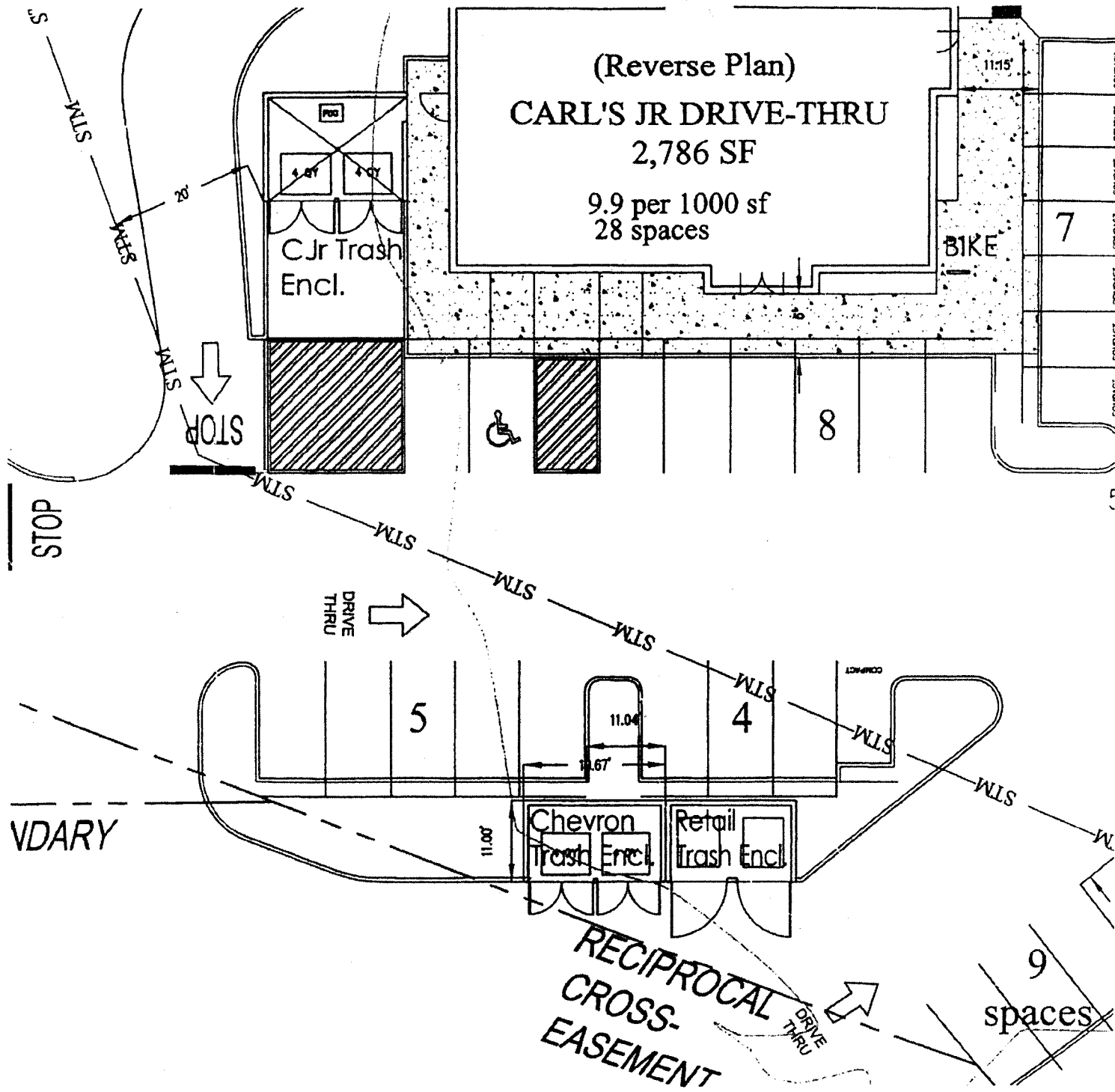


EXHIBIT C

AS



117 Commercial Street NE
Suite 310
Salem, OR 97301
503.391.8773
www.dksassociates.com

MEMORANDUM

DATE: January 27, 2014
TO: Mike Ward, City of Wilsonville
Steve Adams, City of Wilsonville
FROM: Scott Mansur, P.E. *SM*
Brad Coy, P.E.



SUBJECT: Carl's Jr./Human Bean A.M. Peak Hour Traffic Analysis

P13003-001

This memorandum documents the a.m. peak hour traffic analysis of the proposed Human Bean coffee kiosk building adjacent to the Carl's Jr. restaurant on the southeast corner of the Boones Ferry Road/95th Avenue intersection in Wilsonville, Oregon. The purpose of this memorandum is to determine what traffic impacts the proposed coffee kiosk is expected to have on the site driveway and adjacent intersections during the a.m. peak hour. Figure 1 shows the proposed project site and the study intersections. Traditionally, the City of Wilsonville has focused peak hour operations during the p.m. peak hour which is when the highest adjacent street traffic volumes typically take place.

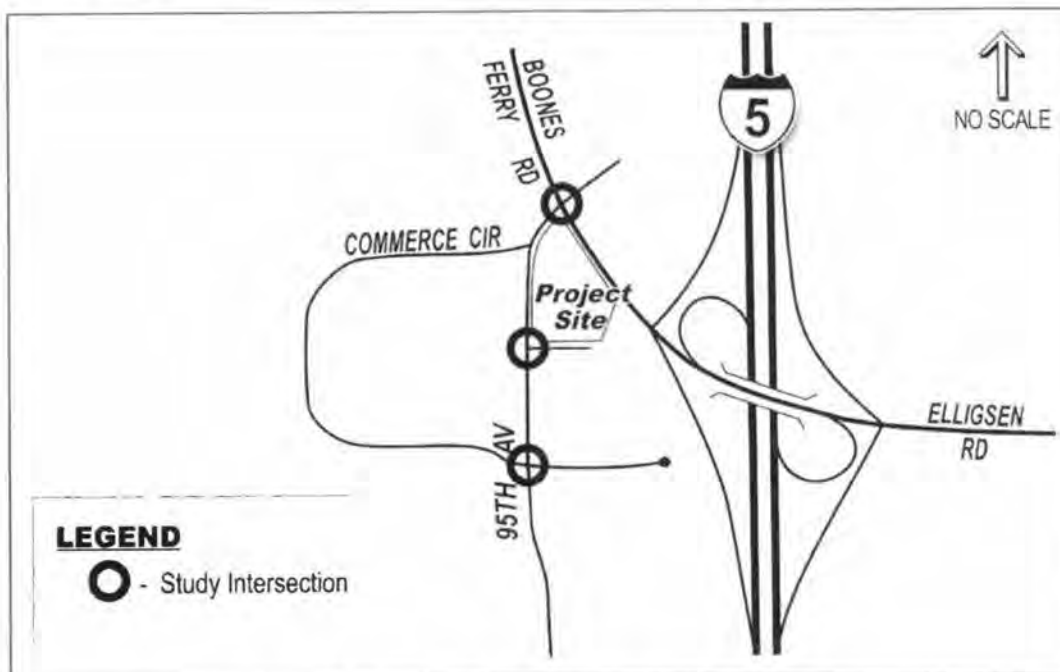


Figure 1: Project Site and Study Intersections



The sections of this memorandum address trip generation for “The Human Bean” coffee kiosk, trip generation comparison (p.m. peak hour), existing traffic conditions, and a.m. peak hour project impacts.

Trip Generation for “The Human Bean” Coffee Kiosk

Trip generation is the method of estimating how many vehicles a development is expected to add to the roadway network during a specified period (i.e., such as the number trips from a coffee kiosk during the a.m. peak hour). The standard method for performing trip generation is outlined in the Institute of Transportation Engineers (ITE) *Trip Generation Manual*.¹ This manual also provides average trip rates that can be considered for various land uses. However, some land uses (such as ITE Land Use Code 938: “Coffee/Donut Shop with Drive-Through Window and No Indoor Seating”) have significantly less data and may not even include the most important independent variables (such as the trip rate associated with the number of drive-thrus, which is not included for a coffee kiosk). In these situations, the rates provided may not be accurate and traffic engineers are highly encouraged to collect local data.

In order to account for the particular vehicle trip generation characteristics specific to The Human Bean coffee kiosks and ensure more accurate trip generation rates, a.m. peak hour trip counts were performed for three existing “The Human Bean” coffee kiosks in the region, which were coordinated with City staff.²

- **The Human Bean:** 8355 SW Beaverton-Hillsdale Hwy, Beaverton
- **The Human Bean:** 952 Lafayette St SE, Albany
- **The Human Bean:** 998 SE Oak St, Hillsboro

Table 1 summarizes the results of the a.m. peak hour vehicle trip generation surveys. Because the kiosk is specialized to target drive-thru vehicles, this is the most important independent variable that influences the number of vehicles that a kiosk can serve. The number of drive-thru windows provides a more accurate correlation with total vehicle trips than the typical kiosk’s square footage. Of the sites counted, two kiosks had two drive-thru windows while one had only one drive-through window. As shown in Table 1, the site with only one drive-thru window served approximately half as many vehicles as the other two sites. All three sites served approximately 50 to 60 vehicles per drive-thru window (with an average rate of 54 trips per drive-thru window).

Table 1: A.M. Peak Hour Trip Generation for Existing “The Human Bean” Coffee Kiosks

Coffee Kiosk Location	Size	Date	A.M. Peak Hour Trips (Vehicles)	Rate (Trips per Drive-thru Window)
Beaverton (8355 SW Beaverton-Hillsdale Hwy)	2 drive-thru windows	1/24/2014	120 (60 in, 60 out)	60
Albany (952 Lafayette St SE)	2 drive-thru windows	1/24/2014	98 (49 in, 49 out)	49
Hillsboro (998 SE Oak St)	1 drive-thru window	1/24/2014	52 (26 in, 26 out)	52
Average A.M. Peak Hour Trip Rate:				54

¹ *Trip Generation, 9th Edition*, Institute of Transportation Engineers, 2012

² Phone call with Mike Ward, City of Wilsonville, January 23, 2014.



Table 2 provides the trip generation estimates for the proposed “The Human Bean” coffee kiosk adjacent to the Carl’s Jr. restaurant on the southeast corner of the Boones Ferry Road/95th Avenue intersection. Consistent with previous analysis for the project site, a 10% internal trip rate was assumed for drivers visiting multiple land uses on the site (including the existing Carl’s Jr., Chevron, and Holiday Inn). In addition, coffee kiosks are very significant attractors of pass-by trips, as documented in the ITE *Trip Generation Manual*.³ As shown in Table 2, the proposed “The Human Bean” coffee kiosk would generate approximately 50 (25 in, 25 out) a.m. peak hour driveway trips, with 44 (22 in, 22 out) a.m. peak hour pass-by trips (attracted from 95th Avenue) and 6 (3 in, 3 out) a.m. peak hour primary trips.

Table 2: “The Human Bean” Coffee Kiosk Trip Generation

Land Use (ITE Code)	Size	A.M. Peak Hour Trip Generation Rate	A.M. Peak Hour Trips		
			In	Out	Total
“The Human Bean” Coffee Kiosk with Drive-Through Window and No Indoor Seating (Comparable to ITE 938)	1 drive-thru window	54 trips/drive-thru window	27	27	54
Total Trips			27	27	54
<i>Internal Trips (10% of Total)</i>			<i>-2</i>	<i>-2</i>	<i>-4</i>
Driveway Trips			25	25	50
<i>Pass-by Trips (89% of Driveway)</i>			<i>-22</i>	<i>-22</i>	<i>-44</i>
New Primary Trips			3	3	6

Trip Generation Comparison (P.M. Peak Hour)

To better understand the context of the a.m. peak hour trip generation, a comparison was performed with the p.m. peak hour trip generation estimates previously performed for the project site. In providing this comparison, it is very important to note that the p.m. peak hour has higher overall traffic volumes on the study area roadways. Therefore, no conclusions related to operations should be drawn from this comparison, which is only provided for illustrative purposes. The most important analysis that should be used as the basis for project impacts is the a.m. peak hour intersection operations analysis, which is provided later in this memorandum.

The project site was originally intended to include a Carl’s Jr. restaurant and a 3,150 square foot specialty retail center. Table 3 shows the trip generation from the original transportation impact analysis, but only as it relates to the specialty retail center (because the Carl’s Jr. restaurant has now been constructed).⁴ The original analysis estimated the non-restaurant portion of the site would generate 27 (12 in, 16 out) p.m. peak hour driveway trips and 18 (8 in, 10 out) p.m. peak hour primary trips. While this includes approximately half as much driveway traffic, it also includes more than triple as many new trips being added to the total study area network.

³ *Trip Generation, 9th Edition*, Institute of Transportation Engineers, 2012

⁴ *Carl’s Jr. Traffic Impact Study*, DKS Associates, May 2012



Table 3: Carl's Jr. and Retail Center Trip Generation from Original Analysis

Land Use (ITE Code)	Size	P.M. Peak Hour Trip Generation Rate	P.M. Peak Hour Trips		
			In	Out	Total
Specialty Retail Center (814)	3.38 KSF ^a	8.88 trips/KSF ^a	13	17	30
Total Trips			13	17	30
<i>Internal Trips</i>			-1	-2	-3
Driveway Trips			12	15	27
<i>Pass-by Trips</i>			-4	-5	-9
New Primary Trips			8	10	18

^a KSF = 1,000 square feet

When the proposed specialty retail center was instead changed to a drive-through coffee kiosk, additional p.m. peak hour trip generation was performed.⁵ Table 4 shows the trip generation for the coffee kiosk only (because the Carl's Jr. restaurant has now been constructed). In the p.m. peak hour, the coffee kiosk is expected to generate 28 (14 in, 14 out) p.m. peak hour driveway trips and 4 (2 in, 2 out) p.m. peak hour primary trips. This is only slightly less than the a.m. peak hour trip generation estimates, particularly with regards to the new primary trips.

Table 4: Proposed Carl's Jr. and Coffee Kiosk Trip Generation

Land Use (ITE Code)	Size	P.M. Peak Hour Trip Generation Rate	P.M. Peak Hour Trips		
			In	Out	Total
Coffee/Donut Shop with Drive-Through Window and No Indoor Seating (938)	0.43 KSF ^a	75.0 trips/KSF ^a	16	16	32
Total Trips			16	16	32
<i>Internal Trips</i>			-2	-2	-4
Driveway Trips			14	14	28
<i>Pass-by Trips</i>			-12	-12	-24
New Primary Trips			2	2	4

^a KSF = 1,000 square feet

⁵ *Wilsonville Carl's Jr. Coffee Kiosk Trip Generation*, memorandum prepared by DKS Associates, September 5, 2013.



Existing AM Peak Traffic Conditions

Existing AM peak hour traffic conditions were evaluated for the study intersections. The existing traffic volumes and operating conditions are provided in this section.

Existing Traffic Volumes

Traffic volume turn movement counts were performed at the project driveway for the a.m. peak period (i.e., between 6:00 a.m. and 9:00 a.m.) on January 24, 2014. Figure 2 shows the highest hourly volumes assumed for the intersection analysis. It should be noted that the a.m. peak hour volumes are lower than the p.m. peak hour volumes at the study intersections.

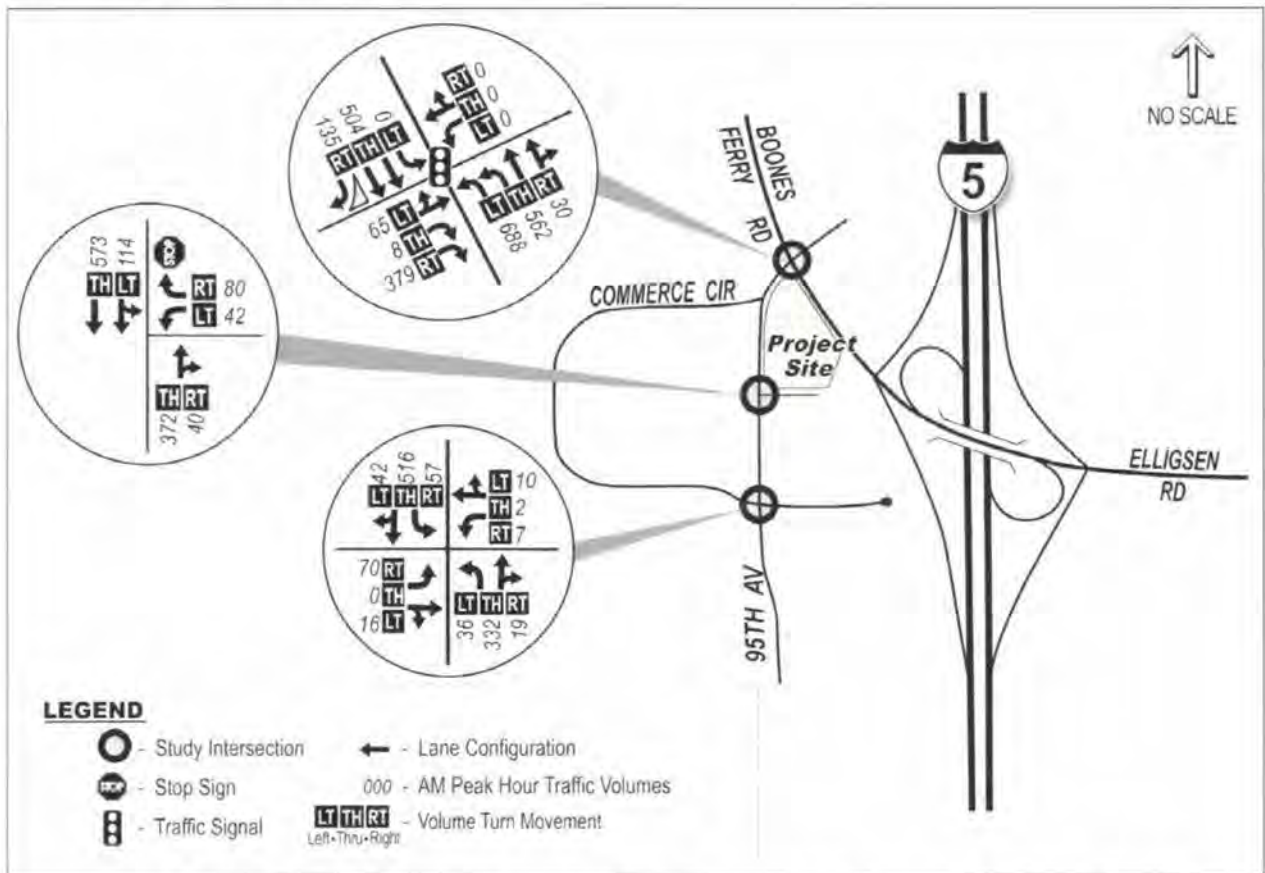


Figure 2: 2014 Existing Study Intersection Turn Movement Volumes (A.M. Peak Hour)

Existing Intersection Operations

The existing a.m. peak hour intersection operations at the study intersections were determined based on the 2000 Highway Capacity Manual methodology.⁶ The estimated average delay, level of service (LOS), and volume

⁶ 2000 Highway Capacity Manual, Transportation Research Board, Washington DC, 2000.



to capacity (v/c) ratio are shown in Table 5. The Boones Ferry Road/95th Avenue and Commerce Circle/95th Avenue intersections currently meet the City of Wilsonville's level of service (LOS) "D" operating standard. The LOS standard does not apply to the 95th Avenue/Holiday Inn-Chevron Gas driveway because it is designated as a private driveway, however its operations are still within the desired range.

Table 5: 2014 Existing A.M. Peak Hour Intersection Operating Conditions

Intersection	Operating Standard	A.M. Peak Hour			Meets Standards?
		Delay	LOS	V/C	
Signalized					
Boones Ferry Road/95 th Avenue	LOS D	18.9	B	0.54	Yes
Commerce Circle/95 th Avenue	LOS D	5.7	A	0.50	Yes
Unsignalized Two-Way Stop					
95 th Avenue/Holiday Inn-Chevron Gas	N/A ^a	17.3	A/C	0.26	N/A ^a

Signalized Intersections:

LOS = Level of Service of Intersection
 V/C = Volume-to-Capacity Ratio of Intersection

Unsignalized Intersections:

LOS = Level of Service of Major Street/Minor Street
 V/C = Volume-to-Capacity Ratio of Worst Movement

Bold Underlined values do not meet standards.

^a The City's LOS D standard does not apply to private driveways.

A.M. Peak Hour Project Impacts

Traffic analysis was also performed for the a.m. peak hour with the addition of project traffic from the proposed "The Human Bean" coffee kiosk. Trip distribution was performed to determine where to add the project traffic. Then, the future traffic volumes were estimated and future study intersection operations were performed.

Trip Distribution

The trip distribution for the proposed "The Human Bean" coffee kiosk project traffic was based on existing traffic patterns in the study area and is consistent with prior analysis. Figure 3 shows the trip distribution percentages as well as the resulting project traffic volumes (both primary and pass-by trips) that were routed through the study area roadway network.

Future Traffic Volumes

The project traffic volumes (shown in Figure 3) were added to the existing traffic volumes (shown in Figure 2) to estimate the future traffic volumes, which are shown in Figure 4. These volumes were the basis for the estimating project impacts during the a.m. peak hour.

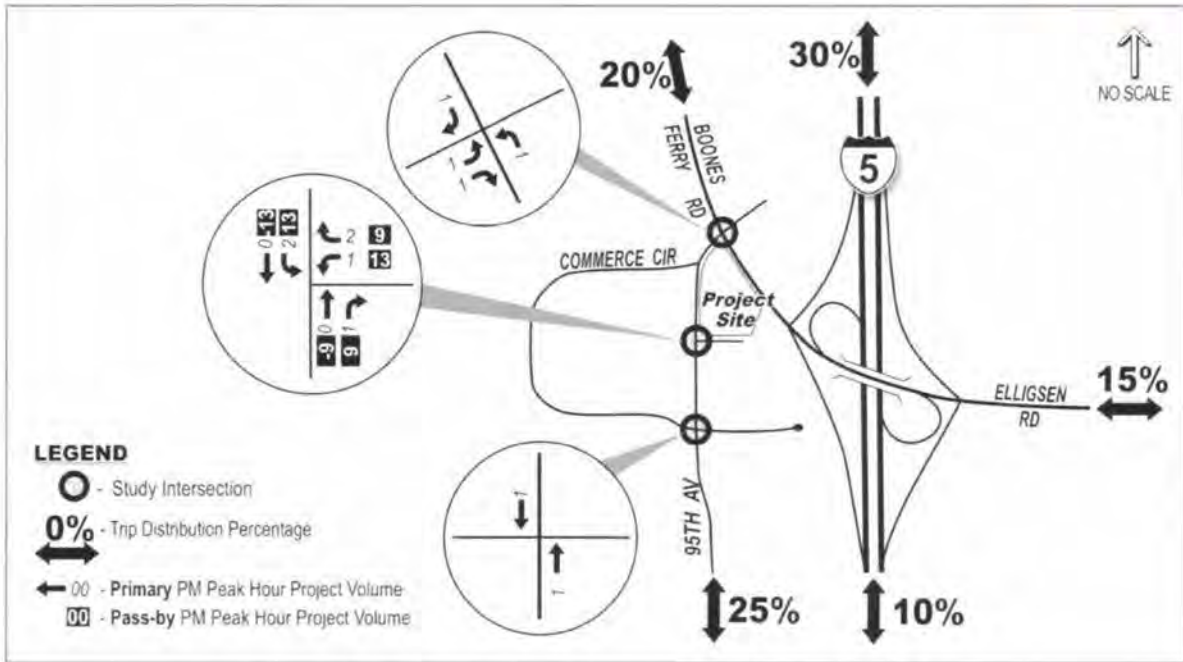


Figure 3: Project Traffic Volumes and Trip Distribution

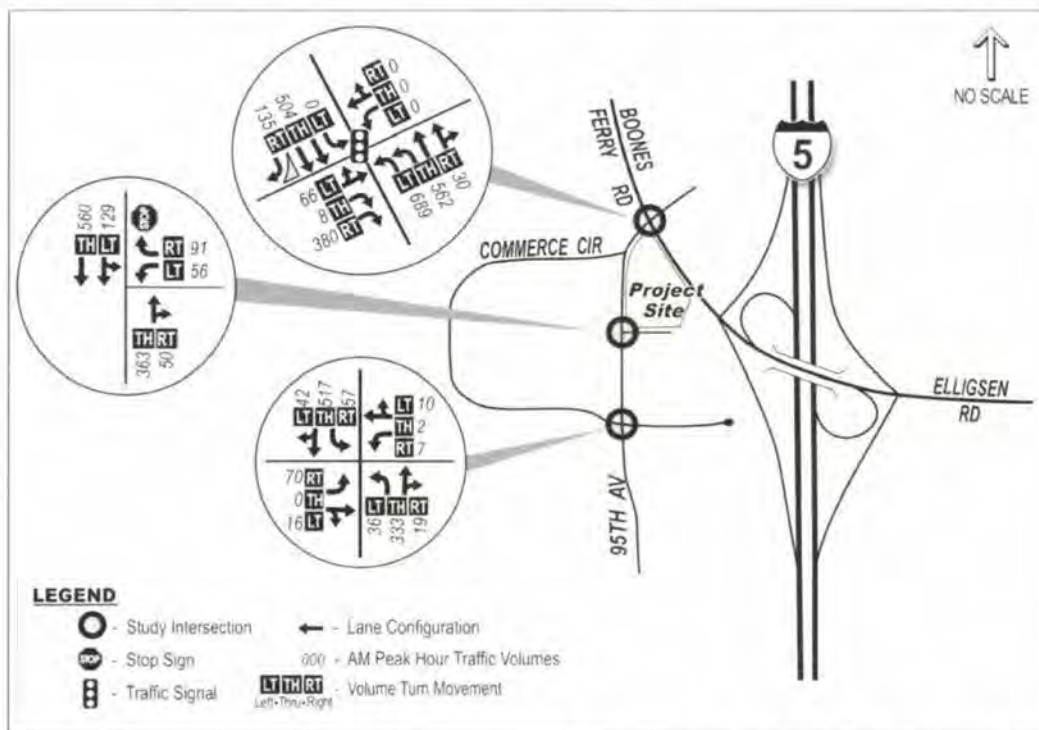


Figure 4: Future Study Intersection Turn Movement Volumes with Addition of Coffee Kiosk (A.M. Peak Hour)



Future Study Intersection Operations

Table 6 lists the average delay, level of service (LOS), and volume to capacity (v/c) ratio for the study intersections under a.m. peak hour conditions with the addition of the coffee kiosk traffic volumes. As shown, all study intersections—including the project driveway—would comfortably meet the City’s operating standards. Very minimal impacts are expected to occur at the study intersections from the addition of the coffee kiosk.

Table 6: Future A.M. Peak Hour Intersection Operating Conditions (with Coffee Kiosk)

Intersection	Operating Standard	Existing + Project + Stage II			Meets Standards?
		Delay	LOS	V/C	
Signalized					
Boones Ferry Road/95 th Avenue	LOS D	19.0	B	0.54	Yes
Commerce Circle/95 th Avenue	LOS D	5.7	A	0.50	Yes
Unsignalized Two-Way Stop					
95 th Avenue/Holiday Inn-Chevron Gas	N/A ^a	19.2	A/C	0.29	N/A ^a

Signalized Intersections:

LOS = Level of Service of Intersection
 V/C = Volume-to-Capacity Ratio of Intersection

Unsignalized Intersections:

LOS = Level of Service of Major Street/Minor Street
 V/C = Volume-to-Capacity Ratio of Worst Movement

Bold Underlined values do not meet standards.

^a The City's LOS D standard does not apply to private driveways; however, LOS D operations are preferred.

Summary

There are no operating concerns at the study intersections or project driveway during the a.m. peak hour. This confirms that the p.m. peak hour is the worst case scenario for the project intersections. Therefore, no additional impacts have been identified, and our prior mitigations and recommendations as identified in the *Carl's Jr. Traffic Impact Study* are still consistent.⁷

Please let us know if you have any questions or comments.

⁷ *Carl's Jr. Traffic Impact Study*, DKS Associates, May 2012



Appendix

Weekday AM Peak Hour Traffic Counts

Level of Service Descriptions

HCM Analysis – Existing

HCM Analysis – Existing with Project



Weekday AM Peak Hour Traffic Counts



7409 SW Tech Center Dr, Ste B150
 Tigard, OR 97223
 971-223-0003
www.qualitycounts.net

Site Code: 12313207
 Location: SW Boones Ferry Rd & SW Commerce Cir/SW 95th Ave
 Date: 1/24/2013

Peak Hour: 6:55AM-7:55AM
 Peak 15-minutes: 7:30AM-7:45AM
 Peak Hour Factor: 0.913

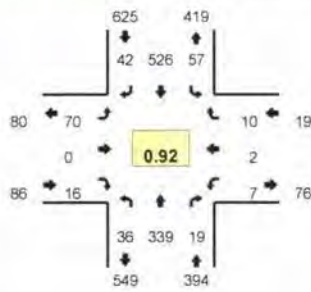
	SW Boones Ferry Rd (Southbound)					Business Park Dwy (Westbound)					SW Boones Ferry Rd (Northbound)					SW 95th Ave (Eastbound)					SW Commerce Cir (Eastbound)					Interval Totals	Hourly Totals	15-minute Totals
	U-Turns	Right to SW Commerce Cir	Right	Thru	Left	U-Turns	Right	Thru to SW Commerce Cir	Thru	Left	U-Turns	Right	Thru	Left	Left to SW Commerce Cir	U-Turns	Right	Thru	Left	Left to SW Commerce Cir	U-Turns	Right to SW 95th Ave	Right to SW Boones Ferry Rd	Thru to Business Park Dwy	Left to SW Boones Ferry Rd			
6:00 AM	0	0	2	8	0	0	0	1	0	0	1	21	18	8	0	6	0	2	0	0	0	0	0	0	0	67		
6:05 AM	0	2	4	12	0	0	0	0	0	0	0	19	23	3	0	13	0	2	0	0	0	0	0	0	0	78		
6:10 AM	0	0	8	8	0	0	0	0	1	0	0	22	22	11	0	12	0	5	0	0	1	0	0	0	0	90		235
6:15 AM	0	0	5	14	0	0	0	1	0	0	0	19	43	4	0	17	0	0	0	0	0	0	0	0	0	103		271
6:20 AM	0	2	5	23	0	0	0	0	0	0	0	31	38	13	0	11	0	4	0	0	0	0	0	0	0	127		320
6:25 AM	0	3	6	19	0	0	0	0	0	0	1	38	42	9	0	23	0	2	0	0	0	0	0	0	0	143		373
6:30 AM	0	2	3	13	0	0	0	0	0	0	1	44	60	6	0	23	0	1	0	0	0	0	0	0	0	153		423
6:35 AM	0	0	5	26	0	0	0	1	0	0	0	52	53	8	0	17	0	1	0	0	0	0	0	0	0	164		460
6:40 AM	0	3	2	43	0	0	0	0	0	0	4	56	55	12	0	18	0	8	0	0	1	0	0	0	0	202		519
6:45 AM	0	1	8	33	0	0	0	0	0	0	0	52	58	13	0	21	0	7	0	0	1	0	0	0	0	194		560
6:50 AM	0	2	7	31	0	0	0	0	0	0	2	40	77	17	0	28	0	4	0	0	0	0	0	0	0	208		604
6:55 AM	0	4	9	38	0	0	0	0	0	0	1	50	69	19	0	30	0	2	0	0	0	0	0	0	0	222	1751	624
7:00 AM	0	0	9	40	0	0	0	0	0	0	1	31	42	13	0	14	0	5	0	0	0	0	0	0	0	155	1839	585
7:05 AM	0	4	2	29	0	0	0	0	0	0	0	52	37	7	0	25	2	5	0	0	2	0	0	0	0	165	1926	542
7:10 AM	0	0	8	44	0	0	0	0	0	0	4	40	47	6	0	27	0	6	0	0	1	0	0	0	0	183	2019	503
7:15 AM	0	1	9	48	0	0	0	0	0	0	1	54	48	11	0	28	0	2	0	0	1	0	0	0	0	203	2119	551
7:20 AM	0	3	10	27	0	0	0	0	0	0	1	41	45	9	0	25	0	0	0	0	0	0	0	0	0	181	2153	547
7:25 AM	0	3	7	43	0	0	0	0	0	0	6	54	52	5	0	36	1	4	0	0	3	0	0	0	0	214	2224	578
7:30 AM	0	1	14	47	0	0	0	0	0	0	3	48	47	11	0	29	1	11	0	0	2	0	0	0	0	214	2285	589
7:35 AM	0	3	6	51	0	0	0	0	0	0	1	46	45	8	0	32	2	10	0	0	0	0	0	0	0	202	2323	630
7:40 AM	0	2	11	52	0	0	0	0	0	0	6	59	48	8	0	38	0	8	0	0	3	0	0	0	0	231	2352	647
7:45 AM	0	3	10	42	0	0	0	0	0	0	3	43	48	10	0	40	0	4	0	0	2	0	0	0	0	205	2363	638
7:50 AM	0	7	9	43	0	0	0	0	0	0	3	44	46	11	0	40	1	5	0	0	0	0	0	0	0	209	2364	645
7:55 AM	0	3	7	32	0	0	0	0	0	0	2	34	52	12	0	30	1	6	0	0	0	0	0	0	0	179	2321	593
8:00 AM	0	2	6	41	1	0	0	0	0	0	1	34	48	12	0	25	0	6	0	0	3	0	0	0	0	179	2345	567
8:05 AM	0	6	8	34	0	0	0	0	0	0	5	37	39	10	0	30	0	4	0	0	0	0	0	0	0	173	2353	531
8:10 AM	0	2	10	38	0	0	0	0	0	0	3	34	27	8	0	29	2	4	0	0	2	0	0	0	0	159	2329	511
8:15 AM	0	0	8	36	0	0	0	0	0	0	2	32	32	8	0	24	1	6	0	0	2	0	0	0	0	151	2277	483
8:20 AM	0	3	10	43	0	0	0	0	0	0	3	32	45	3	0	27	0	1	0	0	2	0	0	0	0	169	2285	479
8:25 AM	0	1	4	29	0	0	0	0	0	0	7	25	54	9	0	43	0	3	0	0	2	0	0	0	0	177	2248	497
8:30 AM	0	1	3	35	0	0	0	0	0	0	4	24	48	7	0	33	0	6	0	0	0	0	0	0	0	161	2195	507
8:35 AM	0	1	10	34	0	0	0	0	0	0	2	24	26	8	0	26	0	5	0	0	4	0	0	0	0	140	2133	478
8:40 AM	0	1	7	29	0	0	0	0	0	0	7	38	29	8	0	32	0	6	0	0	0	0	0	0	0	157	2059	458
8:45 AM	0	2	8	29	0	0	0	0	0	0	5	32	28	7	0	20	0	4	0	0	4	0	0	0	0	139	1993	436
8:50 AM	0	0	7	38	0	0	0	0	0	0	2	28	29	7	0	26	1	5	0	0	1	0	0	0	0	144	1928	440
8:55 AM	0	2	8	40	0	0	0	0	0	0	4	19	38	5	0	33	1	3	0	0	1	0	0	0	0	154	1903	437
Totals	0	70	255	1192	1	0	0	1	2	1	0	87	1349	1558	322	0	929	13	157	0	0	38	0	0	0			

Type of peak hour being reported: System Peak

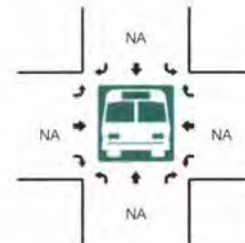
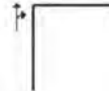
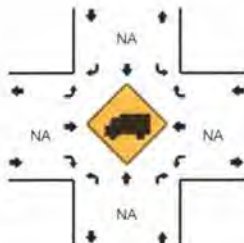
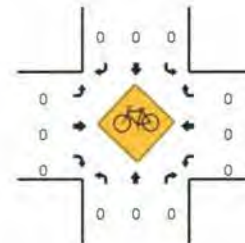
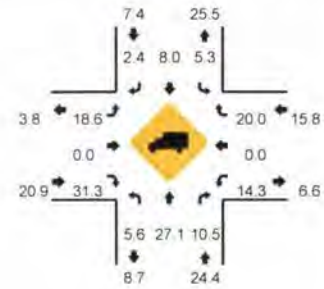
Method for determining peak hour: Total Entering Volume

LOCATION: SW 95th Ave -- SW Commerce Cir (South Int)
 CITY/STATE: Wilsonville, OR

QC JOB #: 12313211
 DATE: Fri, Jan 24 2014



Peak-Hour: 7:10 AM -- 8:10 AM
 Peak 15-Min: 7:35 AM -- 7:50 AM



5-Min Count Period Beginning At	SW 95th Ave (Northbound)				SW 95th Ave (Southbound)				SW Commerce Cir (South Int) (Eastbound)				SW Commerce Cir (South Int) (Westbound)				Total	Hourly Totals
	Left	Thru	Right	U	Left	Thru	Right	U	Left	Thru	Right	U	Left	Thru	Right	U		
6:40 AM	2	21	1	0	2	47	6	0	3	0	1	0	1	0	2	0	86	
6:45 AM	5	13	0	0	1	55	6	0	7	1	1	0	2	0	2	0	93	
6:50 AM	4	23	0	0	1	67	10	0	5	0	0	0	0	0	0	0	110	
6:55 AM	3	23	0	0	2	57	8	0	4	0	3	0	0	0	0	0	100	830
7:00 AM	3	20	0	0	1	48	4	1	0	0	2	0	0	0	0	0	79	877
7:05 AM	1	25	0	0	0	33	3	0	4	0	3	0	0	0	1	0	70	910
7:10 AM	0	26	1	0	1	48	1	0	6	0	2	0	2	0	0	0	87	953
7:15 AM	0	18	0	0	4	54	4	0	6	0	0	0	0	1	2	0	89	988
7:20 AM	2	26	1	0	3	38	7	0	1	0	2	0	0	0	1	0	81	1027
7:25 AM	5	30	2	0	7	36	3	0	5	0	1	0	0	0	3	0	92	1045
7:30 AM	2	23	3	0	8	42	4	0	17	0	3	0	1	0	0	0	103	1073
7:35 AM	2	31	2	0	5	34	7	0	11	0	1	0	2	0	1	0	96	1086
7:40 AM	2	28	0	0	4	49	3	0	8	0	2	0	0	1	0	0	97	1097
7:45 AM	6	39	1	0	7	53	3	0	3	0	1	0	1	0	0	0	114	1118
7:50 AM	5	36	4	0	1	49	4	0	0	0	1	0	0	0	1	0	101	1109
7:55 AM	6	26	2	0	6	42	2	0	3	0	0	0	0	0	0	0	87	1096
8:00 AM	2	25	2	0	3	41	2	0	5	0	1	0	1	0	2	0	84	1101
8:05 AM	4	31	1	0	8	40	2	0	5	0	2	0	0	0	0	0	93	1124
8:10 AM	4	27	0	0	2	38	2	0	6	0	1	0	2	0	1	0	83	1120
8:15 AM	4	26	1	0	2	43	0	0	5	0	0	0	1	0	0	0	82	1113
8:20 AM	3	22	1	0	2	41	5	0	1	0	1	0	1	0	0	0	77	1109
8:25 AM	0	29	2	0	1	40	6	0	2	0	2	0	2	0	0	0	84	1101
8:30 AM	1	35	0	0	0	43	4	0	1	0	0	0	1	0	1	0	86	1084
8:35 AM	2	26	1	0	4	36	2	0	6	0	1	0	2	0	2	0	82	1070
Peak 15-Min Flowrates	Northbound				Southbound				Eastbound				Westbound				Total	
	Left	Thru	Right	U	Left	Thru	Right	U	Left	Thru	Right	U	Left	Thru	Right	U		
All Vehicles	40	392	12	0	64	544	52	0	88	0	16	0	12	4	4	0	1228	
Heavy Trucks	0	96	4		4	20	0		16	0	4		0	0	4		148	
Pedestrians	0	0	0		0	0	0		0	0	0		0	4	0		4	
Bicycles	0	0	0		0	0	0		0	0	0		0	0	0		0	
Railroad																		
Stopped Buses																		

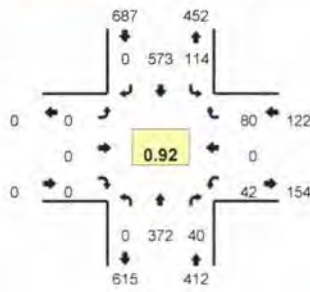
Comments:

Type of peak hour being reported: System Peak

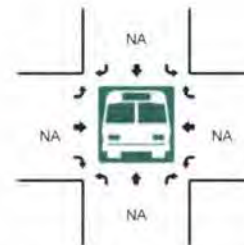
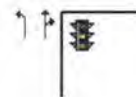
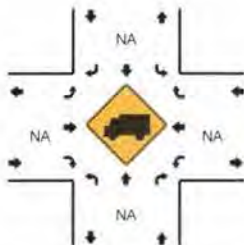
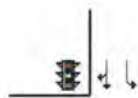
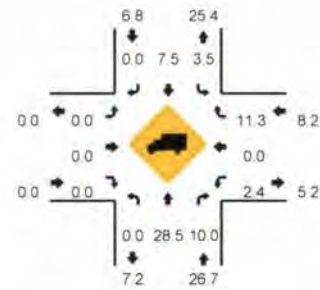
Method for determining peak hour: Total Entering Volume

LOCATION: SW 95th Ave -- Chevron/Holiday Inn Access
CITY/STATE: Wilsonville, OR

QC JOB #: 12313209
DATE: Fri, Jan 24 2014



Peak-Hour: 7:10 AM -- 8:10 AM
Peak 15-Min: 7:35 AM -- 7:50 AM



5-Min Count Period Beginning At	SW 95th Ave (Northbound)				SW 95th Ave (Southbound)				Chevron/Holiday Inn Access (Eastbound)				Chevron/Holiday Inn Access (Westbound)				Total	Hourly Totals
	Left	Thru	Right	U	Left	Thru	Right	U	Left	Thru	Right	U	Left	Thru	Right	U		
6:40 AM	0	25	3	0	12	48	0	0	0	0	0	0	8	0	1	0	97	
6:45 AM	0	19	1	0	10	52	0	0	0	0	0	0	3	0	5	0	90	
6:50 AM	0	26	5	0	11	66	0	0	0	0	0	0	9	0	6	0	123	
6:55 AM	0	27	1	0	4	65	0	0	0	0	0	0	4	0	6	0	107	946
7:00 AM	0	15	1	0	11	52	0	0	0	0	0	0	3	0	2	0	84	994
7:05 AM	0	26	7	0	8	33	0	0	0	0	0	0	1	0	11	0	86	1033
7:10 AM	0	30	3	0	10	45	0	0	0	0	0	0	5	0	4	0	97	1075
7:15 AM	0	25	1	0	5	55	0	0	0	0	0	0	4	0	4	0	94	1097
7:20 AM	0	23	4	0	9	43	0	0	0	0	0	0	2	0	3	0	84	1124
7:25 AM	0	33	3	0	11	39	0	0	0	0	0	0	3	0	7	0	96	1138
7:30 AM	0	37	2	0	13	56	0	0	0	0	0	0	4	0	6	0	118	1167
7:35 AM	0	41	3	0	10	46	0	0	0	0	0	0	8	0	5	0	113	1189
7:40 AM	0	28	5	0	14	46	0	0	0	0	0	0	2	0	13	0	108	1200
7:45 AM	0	34	4	0	4	59	0	0	0	0	0	0	3	0	8	0	112	1222
7:50 AM	0	32	5	0	8	48	0	0	0	0	0	0	3	0	12	0	108	1207
7:55 AM	0	28	3	0	8	48	0	0	0	0	0	0	2	0	6	0	95	1195
8:00 AM	0	26	4	0	8	43	0	0	0	0	0	0	3	0	6	0	90	1201
8:05 AM	0	35	3	0	14	45	0	0	0	0	0	0	3	0	6	0	106	1221
8:10 AM	0	30	3	0	6	35	0	0	0	0	0	0	5	0	6	0	85	1209
8:15 AM	0	24	4	0	6	39	0	0	0	0	0	0	5	0	8	0	86	1201
8:20 AM	0	21	4	0	10	44	0	0	0	0	0	0	3	0	8	0	90	1207
8:25 AM	0	31	0	0	12	45	0	0	0	0	0	0	4	0	11	0	103	1214
8:30 AM	0	34	2	0	6	44	0	0	0	0	0	0	1	0	8	0	95	1191
8:35 AM	0	28	6	0	11	38	0	0	0	0	0	0	4	0	4	0	91	1169
Peak 15-Min Flowrates	Northbound				Southbound				Eastbound				Westbound				Total	
	Left	Thru	Right	U	Left	Thru	Right	U	Left	Thru	Right	U	Left	Thru	Right	U		
All Vehicles	0	412	48	0	112	604	0	0	0	0	0	0	52	0	104	0	1332	
Heavy Trucks	0	104	4	0	0	24	0	0	0	0	0	0	0	0	4	0	136	
Pedestrians	0	4	0	0	0	0	0	0	0	0	0	0	0	0	0	0	4	
Bicycles	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
Railroad																		
Stopped Buses																		

Comments:



7409 SW Tech Center Dr, Ste B150
 Tigard, OR 97223
 971-223-0003
www.qualitycounts.net

952 Lafayette St SE, Albany

Site Code: 12313203
 Location: Hill St SE & Human Bean Coffee
 Date: 1/24/2014
 Two drive-thru and a walkup window

	Pedestrians Approaching Human Bean Coffee	Cars Approaching Human Bean Coffee	Interval Total	Hour Total (Veh)
6:00	0	5	5	
6:05	0	2	2	
6:10	0	4	4	
6:15	0	1	1	
6:20	0	0	0	
6:25	0	1	1	
6:30	0	0	0	
6:35	0	2	2	
6:40	0	3	3	
6:45	0	3	3	
6:50	0	0	0	
6:55	0	1	1	22
7:00	0	2	2	19
7:05	0	1	1	18
7:10	0	2	2	16
7:15	0	4	4	19
7:20	0	4	4	23
7:25	0	2	2	24
7:30	0	7	7	31
7:35	0	5	5	34
7:40	0	5	5	36
7:45	0	5	5	38
7:50	0	2	2	40
7:55	0	5	5	44
8:00	0	1	1	43
8:05	1	5	6	47
8:10	0	3	3	48
8:15	1	4	5	48
8:20	0	5	5	49
8:25	0	2	2	49
8:30	0	1	1	43
8:35	2	4	6	42
8:40	0	1	1	38
8:45	0	5	5	38
8:50	0	7	7	43
8:55	0	1	1	39
Total	4	105		

998 SE Oak St, Hillsboro

Site Code: 12313205
 Location: SE 10th Ave & Human Bean Coffee
 Date: 1/24/2014
 1 drive-thru and a sitdown inside

	Pedestrians Approaching Human Bean Coffee	Cars Approaching Human Bean Coffee	Interval Total	Hour Total
6:00		0	0	
6:05		1	1	
6:10		1	1	
6:15	1	0	1	
6:20		0	0	
6:25		2	2	
6:30		2	2	
6:35	1	1	2	
6:40	1	2	3	
6:45		1	1	
6:50	1	0	1	
6:55		0	0	10
7:00	1	1	2	11
7:05		2	2	12
7:10		1	1	12
7:15		2	2	14
7:20	1	3	4	17
7:25		3	3	18
7:30		1	1	17
7:35		3	3	19
7:40	1	1	2	18
7:45		1	1	18
7:50	1	3	4	21
7:55	3	3	6	24
8:00	1	1	2	24
8:05	1	1	2	23
8:10	2	3	5	25
8:15	1	3	4	26
8:20		2	2	25
8:25		2	2	24
8:30		1	1	24
8:35		2	2	23
8:40	1	1	2	23
8:45		0	0	22
8:50		1	1	20
8:55	3	0	3	17
Total	20	51		

8355 SW Beaverton-Hillsdale Hwy, Beaverton

Site Code: 12313201
 Location: SW Norse Ln & Human Bean Coffee
 Date: 1/24/2014
 Two drive-thru and a walkup window

	Pedestrians Approaching Human Bean Coffee	Cars Approaching Human Bean Coffee	Interval Total	Hour Total
6:00			0	
6:05			0	
6:10			0	
6:15			0	
6:20	1	7	8	
6:25		1	1	
6:30		4	4	
6:35		4	4	
6:40		5	5	
6:45		5	5	
6:50		2	2	
6:55		5	5	33
7:00		4	4	37
7:05		1	1	38
7:10		2	2	40
7:15		11	11	51
7:20	1	7	8	51
7:25		6	6	56
7:30		0	0	52
7:35		4	4	52
7:40		6	6	53
7:45		9	9	57
7:50		1	1	56
7:55		3	3	54
8:00		4	4	54
8:05		4	4	57
8:10		5	5	60
8:15		7	7	56
8:20		8	8	57
8:25		5	5	56
8:30		4	4	60
8:35		4	4	60
8:40		4	4	58
8:45		5	5	54
8:50		4	4	57
8:55		4	4	58
Total	2	145		



Level of Service Descriptions

TRAFFIC LEVELS OF SERVICE

Analysis of traffic volumes is useful in understanding the general nature of traffic in an area, but by itself indicates neither the ability of the street network to carry additional traffic nor the quality of service afforded by the street facilities. For this, the concept of *level of service* has been developed to subjectively describe traffic performance. Level of service can be measured at intersections and along key roadway segments.

Level of service categories are similar to report card ratings for traffic performance. Intersections are typically the controlling bottlenecks of traffic flow and the ability of a roadway system to carry traffic efficiently is generally diminished in their vicinities. Levels of Service A, B and C indicate conditions where traffic moves without significant delays over periods of peak travel demand. Level of service D and E are progressively worse peak hour operating conditions and F conditions represent where demand exceeds the capacity of an intersection. Most urban communities set level of service D as the minimum acceptable level of service for peak hour operation and plan for level of service C or better for all other times of the day. The *Highway Capacity Manual* provides level of service calculation methodology for both intersections and arterials.¹ The following two sections provide interpretations of the analysis approaches.

¹ 2000 *Highway Capacity Manual*, Transportation Research Board, Washington D.C., 2000, Chapters 16 and 17.

UNSIGNALIZED INTERSECTIONS (Two-Way Stop Controlled)

Unsignalized intersection level of service is reported for the major street and minor street (generally, left turn movements). The method assesses available and critical gaps in the traffic stream which make it possible for side street traffic to enter the main street flow. The *2000 Highway Capacity Manual* describes the detailed methodology. It is not unusual for an intersection to experience level of service E or F conditions for the minor street left turn movement. It should be understood that, often, a poor level of service is experienced by only a few vehicles and the intersection as a whole operates acceptably.

Unsignalized intersection levels of service are described in the following table.

Level of Service	Expected Delay	(Sec/Veh)
A	Little or no delay	0-10.0
B	Short traffic delay	>10.1-15.0
C	Average traffic delays	>15.1-25.0
D	Long traffic delays	>25.1-35.0
E	Very long traffic delays	>35.1-50.0
F	Extreme delays potentially affecting other traffic movements in the intersection	> 50

Source: *2000 Highway Capacity Manual*, Transportation Research Board Washington, D.C.

SIGNALIZED INTERSECTIONS

For signalized intersections, level of service is evaluated based upon average vehicle delay experienced by vehicles entering an intersection. Control delay (or signal delay) includes initial deceleration delay, queue move-up time, stopped delay, and final acceleration delay. In previous versions of this chapter of the HCM (1994 and earlier), delay included only stopped delay. As delay increases, the level of service decreases. Calculations for signalized and unsignalized intersections are different due to the variation in traffic control. The *2000 Highway Capacity Manual* provides the basis for these calculations.

Level of Service	Delay (secs.)	Description
A	≤10.00	Free Flow/Insignificant Delays: No approach phase is fully utilized by traffic and no vehicle waits longer than one red indication. Most vehicles do not stop at all. Progression is extremely favorable and most vehicles arrive during the green phase.
B	10.1-20.0	Stable Operation/Minimal Delays: An occasional approach phase is fully utilized. Many drivers begin to feel somewhat restricted within platoons of vehicles. This level generally occurs with good progression, short cycle lengths, or both.
C	20.1-35.0	Stable Operation/Acceptable Delays: Major approach phases fully utilized. Most drivers feel somewhat restricted. Higher delays may result from fair progression, longer cycle lengths, or both. Individual cycle failures may begin to appear at this level, and the number of vehicles stopping is significant.
D	35.1-55.0	Approaching Unstable/Tolerable Delays: The influence of congestion becomes more noticeable. Drivers may have to wait through more than one red signal indication. Longer delays may result from some combination of unfavorable progression, long cycle lengths, or high v/c ratios. The proportion of vehicles not stopping declines, and individual cycle failures are noticeable.
E	55.1-80.0	Unstable Operation/Significant Delays: Volumes at or near capacity. Vehicles may wait through several signal cycles. Long queues form upstream from intersection. These high delay values generally indicate poor progression, long cycle lengths, and high v/c ratios. Individual cycle failures are a frequent occurrence.
F	≥80.0	Forced Flow/Excessive Delays: Represents jammed conditions. Queues may block upstream intersections. This level occurs when arrival flow rates exceed intersection capacity, and is considered to be unacceptable to most drivers. Poor progression, long cycle lengths, and v/c ratios approaching 1.0 may contribute to these high delay levels.






















Source: *2000 Highway Capacity Manual*, Transportation Research Board, Washington D.C.



HCM Analysis – Existing

HCM Signalized Intersection Capacity Analysis
1: 95th Avenue & Boones Ferry Road

Carl's Jr./Human Bean Traffic Analysis
Existing AM Peak Hour

												
Movement	EBL	EBT	EBR	WBL	WBT	WBR	NBL	NBT	NBR	SBL	SBT	SBR
Lane Configurations												
Volume (vph)	65	8	379	0	0	0	688	562	30	0	504	135
Ideal Flow (vphpl)	1900	1900	1900	1900	1900	1900	1900	1900	1900	1900	1900	1900
Total Lost time (s)		4.0	4.0				4.0	4.0			4.0	4.0
Lane Util. Factor		1.00	0.88				0.97	0.95			0.95	1.00
Fr _t		1.00	0.85				1.00	0.99			1.00	0.85
Fl _t Protected		0.96	1.00				0.95	1.00			1.00	1.00
Satd. Flow (prot)		1468	2274				3242	3389			3167	1553
Fl _t Permitted		0.75	1.00				0.95	1.00			1.00	1.00
Satd. Flow (perm)		1149	2274				3242	3389			3167	1553
Peak-hour factor, PHF	0.91	0.91	0.91	0.91	0.91	0.91	0.91	0.91	0.91	0.91	0.91	0.91
Adj. Flow (vph)	71	9	416	0	0	0	756	618	33	0	554	148
RTOR Reduction (vph)	0	0	141	0	0	0	0	1	0	0	0	87
Lane Group Flow (vph)	0	80	275	0	0	0	756	650	0	0	554	61
Heavy Vehicles (%)	27%	0%	25%	0%	0%	0%	8%	6%	0%	0%	14%	4%
Turn Type	Perm		pm+ov	Perm			Prot			Prot		Perm
Protected Phases		8	1		4		1	6		5	2	
Permitted Phases	8		8	4								2
Actuated Green, G (s)		11.1	53.0				41.9	85.9			40.0	40.0
Effective Green, g (s)		11.1	53.0				41.9	85.9			40.0	40.0
Actuated g/C Ratio		0.11	0.50				0.40	0.82			0.38	0.38
Clearance Time (s)		4.0	4.0				4.0	4.0			4.0	4.0
Vehicle Extension (s)		3.0	3.0				3.0	3.0			3.0	3.0
Lane Grp Cap (vph)		121	1234				1294	2773			1206	592
v/s Ratio Prot			0.09				c0.23	0.19			c0.17	
v/s Ratio Perm		c0.07	0.03									0.04
v/c Ratio		0.66	0.22				0.58	0.23			0.46	0.10
Uniform Delay, d ₁		45.1	14.5				24.7	2.1			24.4	20.9
Progression Factor		1.00	1.00				1.00	1.00			1.00	1.00
Incremental Delay, d ₂		12.8	0.1				1.9	0.2			0.3	0.1
Delay (s)		57.9	14.6				26.7	2.3			24.7	21.0
Level of Service		E	B				C	A			C	C
Approach Delay (s)		21.6		0.0			15.4			23.9		
Approach LOS		C		A			B			C		

Intersection Summary			
HCM Average Control Delay	18.9	HCM Level of Service	B
HCM Volume to Capacity ratio	0.54		
Actuated Cycle Length (s)	105.0	Sum of lost time (s)	12.0
Intersection Capacity Utilization	48.6%	ICU Level of Service	A
Analysis Period (min)	15		

c Critical Lane Group

HCM Unsignalized Intersection Capacity Analysis
 2: Chevron-Holiday Inn/Project Driveway & 95th Avenue

Carl's Jr./Human Bean Traffic Analysis
 Existing AM Peak Hour























Movement	WBL	WBR	NBT	NBR	SBL	SBT
Lane Configurations						
Volume (veh/h)	42	80	372	40	114	573
Sign Control	Stop		Free			Free
Grade	0%		0%			0%
Peak Hour Factor	0.92	0.92	0.92	0.92	0.92	0.92
Hourly flow rate (vph)	46	87	404	43	124	623
Pedestrians			1			
Lane Width (ft)			12.0			
Walking Speed (ft/s)			4.0			
Percent Blockage			0			
Right turn flare (veh)						
Median type			None			None
Median storage (veh)						
Upstream signal (ft)			543			580
pX, platoon unblocked						
vC, conflicting volume	986	426			448	
vC1, stage 1 conf vol						
vC2, stage 2 conf vol						
vCu, unblocked vol	986	426			448	
tC, single (s)	6.8	7.1			4.2	
tC, 2 stage (s)						
tF (s)	3.5	3.4			2.2	
p0 queue free %	79	84			89	
cM capacity (veh/h)	217	552			1095	

Direction, Lane #	WB 1	WB 2	NB 1	SB 1	SB 2
Volume Total	46	87	448	332	415
Volume Left	46	0	0	124	0
Volume Right	0	87	43	0	0
cSH	217	552	1700	1095	1700
Volume to Capacity	0.21	0.16	0.26	0.11	0.24
Queue Length 95th (ft)	19	14	0	10	0
Control Delay (s)	26.0	12.7	0.0	4.0	0.0
Lane LOS	D	B		A	
Approach Delay (s)	17.3		0.0	1.8	
Approach LOS	C				

Intersection Summary					
Average Delay			2.7		
Intersection Capacity Utilization			54.5%	ICU Level of Service	A
Analysis Period (min)			15		

HCM Signalized Intersection Capacity Analysis
3: Commerce Circle & 95th Avenue

Carl's Jr./Human Bean Traffic Analysis
Existing AM Peak Hour

												
Movement	EBL	EBT	EBR	WBL	WBT	WBR	NBL	NBT	NBR	SBL	SBT	SBR
Lane Configurations												
Volume (vph)	70	0	16	7	2	10	36	332	19	57	516	42
Ideal Flow (vphpl)	1900	1900	1900	1900	1900	1900	1900	1900	1900	1900	1900	1900
Total Lost time (s)	4.0	4.0		4.0	4.0		4.0	4.0		4.0	4.0	
Lane Util. Factor	1.00	1.00		1.00	1.00		1.00	1.00		1.00	1.00	
Frbp, ped/bikes	1.00	0.98		1.00	1.00		1.00	1.00		1.00	1.00	
Flpb, ped/bikes	1.00	1.00		1.00	1.00		1.00	1.00		1.00	1.00	
Frt	1.00	0.85		1.00	0.87		1.00	0.99		1.00	0.99	
Flt Protected	0.95	1.00		0.95	1.00		0.95	1.00		0.95	1.00	
Satd. Flow (prot)	1517	1205		1579	1419		1703	1493		1716	1747	
Flt Permitted	0.75	1.00		0.75	1.00		0.39	1.00		0.54	1.00	
Satd. Flow (perm)	1196	1205		1240	1419		703	1493		967	1747	
Peak-hour factor, PHF	0.92	0.92	0.92	0.92	0.92	0.92	0.92	0.92	0.92	0.92	0.92	0.92
Adj. Flow (vph)	76	0	17	8	2	11	39	361	21	62	561	46
RTOR Reduction (vph)	0	15	0	0	10	0	0	3	0	0	4	0
Lane Group Flow (vph)	76	2	0	8	3	0	39	379	0	62	603	0
Confl. Peds. (#/hr)			1	1					1	1		
Heavy Vehicles (%)	19%	0%	31%	14%	0%	20%	6%	27%	10%	5%	8%	2%
Turn Type	Perm			Perm			Perm			Perm		
Protected Phases		4			8			2			6	
Permitted Phases	4			8			2			6		
Actuated Green, G (s)	5.9	5.9		5.9	5.9		31.1	31.1		31.1	31.1	
Effective Green, g (s)	5.9	5.9		5.9	5.9		31.1	31.1		31.1	31.1	
Actuated g/C Ratio	0.13	0.13		0.13	0.13		0.69	0.69		0.69	0.69	
Clearance Time (s)	4.0	4.0		4.0	4.0		4.0	4.0		4.0	4.0	
Vehicle Extension (s)	3.0	3.0		3.0	3.0		3.0	3.0		3.0	3.0	
Lane Grp Cap (vph)	157	158		163	186		486	1032		668	1207	
v/s Ratio Prot		0.00			0.00			0.25			c0.35	
v/s Ratio Perm	c0.06			0.01			0.06			0.06		
v/c Ratio	0.48	0.01		0.05	0.02		0.08	0.37		0.09	0.50	
Uniform Delay, d1	18.1	17.0		17.1	17.0		2.3	2.9		2.3	3.3	
Progression Factor	1.00	1.00		1.00	1.00		1.00	1.00		1.00	1.00	
Incremental Delay, d2	2.3	0.0		0.1	0.0		0.3	1.0		0.3	1.5	
Delay (s)	20.5	17.1		17.2	17.1		2.6	3.9		2.6	4.8	
Level of Service	C	B		B	B		A	A		A	A	
Approach Delay (s)		19.9			17.1			3.8			4.6	
Approach LOS		B			B			A			A	

Intersection Summary

HCM Average Control Delay	5.7	HCM Level of Service	A
HCM Volume to Capacity ratio	0.50		
Actuated Cycle Length (s)	45.0	Sum of lost time (s)	8.0
Intersection Capacity Utilization	53.6%	ICU Level of Service	A
Analysis Period (min)	15		
c Critical Lane Group			



HCM Analysis – Existing with Project

HCM Signalized Intersection Capacity Analysis
1: 95th Avenue & Boones Ferry Road

Carl's Jr./Human Bean Traffic Analysis
Existing + Human Bean AM Peak Hour

Movement	EBL	EBT	EBR	WBL	WBT	WBR	NBL	NBT	NBR	SBL	SBT	SBR
Lane Configurations		↕	↗↘	↖	↗		↗↘	↕↗		↖	↕↗	↗
Volume (vph)	66	8	380	0	0	0	689	562	30	0	504	136
Ideal Flow (vphpl)	1900	1900	1900	1900	1900	1900	1900	1900	1900	1900	1900	1900
Total Lost time (s)		4.0	4.0				4.0	4.0			4.0	4.0
Lane Util. Factor		1.00	0.88				0.97	0.95			0.95	1.00
Frt		1.00	0.85				1.00	0.99			1.00	0.85
Flt Protected		0.96	1.00				0.95	1.00			1.00	1.00
Satd. Flow (prot)		1467	2274				3242	3389			3167	1553
Flt Permitted		0.75	1.00				0.95	1.00			1.00	1.00
Satd. Flow (perm)		1147	2274				3242	3389			3167	1553
Peak-hour factor, PHF	0.91	0.91	0.91	0.91	0.91	0.91	0.91	0.91	0.91	0.91	0.91	0.91
Adj. Flow (vph)	73	9	418	0	0	0	757	618	33	0	554	149
RTOR Reduction (vph)	0	0	141	0	0	0	0	1	0	0	0	87
Lane Group Flow (vph)	0	82	277	0	0	0	757	650	0	0	554	62
Heavy Vehicles (%)	27%	0%	25%	0%	0%	0%	8%	6%	0%	0%	14%	4%
Turn Type	Perm		pm+ov	Perm			Prot			Prot		Perm
Protected Phases		8	1		4		1	6		5	2	
Permitted Phases	8		8	4								2
Actuated Green, G (s)		11.2	53.0				41.8	85.8			40.0	40.0
Effective Green, g (s)		11.2	53.0				41.8	85.8			40.0	40.0
Actuated g/C Ratio		0.11	0.50				0.40	0.82			0.38	0.38
Clearance Time (s)		4.0	4.0				4.0	4.0			4.0	4.0
Vehicle Extension (s)		3.0	3.0				3.0	3.0			3.0	3.0
Lane Grp Cap (vph)		122	1234				1291	2769			1206	592
v/s Ratio Prot			0.09				c0.23	0.19			c0.17	
v/s Ratio Perm		c0.07	0.03									0.04
v/c Ratio		0.67	0.22				0.59	0.23			0.46	0.10
Uniform Delay, d1		45.1	14.5				24.8	2.2			24.4	21.0
Progression Factor		1.00	1.00				1.00	1.00			1.00	1.00
Incremental Delay, d2		13.6	0.1				2.0	0.2			0.3	0.1
Delay (s)		58.8	14.6				26.8	2.4			24.7	21.0
Level of Service		E	B				C	A			C	C
Approach Delay (s)		21.9			0.0			15.5			23.9	
Approach LOS		C			A			B			C	

Intersection Summary

HCM Average Control Delay	19.0	HCM Level of Service	B
HCM Volume to Capacity ratio	0.54		
Actuated Cycle Length (s)	105.0	Sum of lost time (s)	12.0
Intersection Capacity Utilization	48.6%	ICU Level of Service	A
Analysis Period (min)	15		

c Critical Lane Group

HCM Unsignalized Intersection Capacity Analysis
 2: Chevron-Holiday Inn/Project Driveway & 95th Avenue

Carl's Jr./Human Bean Traffic Analysis
 Existing + Human Bean AM Peak Hour



Movement	WBL	WBR	NBT	NBR	SBL	SBT
Lane Configurations						
Volume (veh/h)	56	91	363	50	129	560
Sign Control	Stop		Free			Free
Grade	0%		0%			0%
Peak Hour Factor	0.92	0.92	0.92	0.92	0.92	0.92
Hourly flow rate (vph)	61	99	395	54	140	609
Pedestrians			1			
Lane Width (ft)			12.0			
Walking Speed (ft/s)			4.0			
Percent Blockage			0			
Right turn flare (veh)						
Median type			None			None
Median storage veh						
Upstream signal (ft)			543			580
pX, platoon unblocked						
vC, conflicting volume	1008	422			449	
vC1, stage 1 conf vol						
vC2, stage 2 conf vol						
vCu, unblocked vol	1008	422			449	
tC, single (s)	6.8	7.1			4.2	
tC, 2 stage (s)						
tF (s)	3.5	3.4			2.2	
p0 queue free %	71	82			87	
cM capacity (veh/h)	207	556			1094	

Direction, Lane #	WB 1	WB 2	NB 1	SB 1	SB 2
Volume Total	61	99	449	343	406
Volume Left	61	0	0	140	0
Volume Right	0	99	54	0	0
cSH	207	556	1700	1094	1700
Volume to Capacity	0.29	0.18	0.26	0.13	0.24
Queue Length 95th (ft)	29	16	0	11	0
Control Delay (s)	29.6	12.9	0.0	4.3	0.0
Lane LOS	D	B		A	
Approach Delay (s)	19.2		0.0	2.0	
Approach LOS	C				

Intersection Summary					
Average Delay			3.4		
Intersection Capacity Utilization			54.7%	ICU Level of Service	A
Analysis Period (min)			15		

HCM Signalized Intersection Capacity Analysis
3: Commerce Circle & 95th Avenue

Carl's Jr./Human Bean Traffic Analysis
Existing + Human Bean AM Peak Hour

Movement	EBL	EBT	EBR	WBL	WBT	WBR	NBL	NBT	NBR	SBL	SBT	SBR
Lane Configurations												
Volume (vph)	70	0	16	7	2	10	36	333	19	57	517	42
Ideal Flow (vphpl)	1900	1900	1900	1900	1900	1900	1900	1900	1900	1900	1900	1900
Total Lost time (s)	4.0	4.0		4.0	4.0		4.0	4.0		4.0	4.0	
Lane Util. Factor	1.00	1.00		1.00	1.00		1.00	1.00		1.00	1.00	
Frbp, ped/bikes	1.00	0.98		1.00	1.00		1.00	1.00		1.00	1.00	
Flpb, ped/bikes	1.00	1.00		1.00	1.00		1.00	1.00		1.00	1.00	
Frt	1.00	0.85		1.00	0.87		1.00	0.99		1.00	0.99	
Flt Protected	0.95	1.00		0.95	1.00		0.95	1.00		0.95	1.00	
Satd. Flow (prot)	1517	1205		1579	1419		1703	1493		1716	1747	
Flt Permitted	0.75	1.00		0.75	1.00		0.39	1.00		0.53	1.00	
Satd. Flow (perm)	1196	1205		1240	1419		701	1493		966	1747	
Peak-hour factor, PHF	0.92	0.92	0.92	0.92	0.92	0.92	0.92	0.92	0.92	0.92	0.92	0.92
Adj. Flow (vph)	76	0	17	8	2	11	39	362	21	62	562	46
RTOR Reduction (vph)	0	15	0	0	10	0	0	3	0	0	4	0
Lane Group Flow (vph)	76	2	0	8	3	0	39	380	0	62	604	0
Confl. Peds. (#/hr)			1	1					1	1		
Heavy Vehicles (%)	19%	0%	31%	14%	0%	20%	6%	27%	10%	5%	8%	2%
Turn Type	Perm			Perm			Perm			Perm		
Protected Phases		4			8			2			6	
Permitted Phases	4			8			2			6		
Actuated Green, G (s)	5.9	5.9		5.9	5.9		31.1	31.1		31.1	31.1	
Effective Green, g (s)	5.9	5.9		5.9	5.9		31.1	31.1		31.1	31.1	
Actuated g/C Ratio	0.13	0.13		0.13	0.13		0.69	0.69		0.69	0.69	
Clearance Time (s)	4.0	4.0		4.0	4.0		4.0	4.0		4.0	4.0	
Vehicle Extension (s)	3.0	3.0		3.0	3.0		3.0	3.0		3.0	3.0	
Lane Grp Cap (vph)	157	158		163	186		484	1032		668	1207	
v/s Ratio Prot		0.00			0.00			0.25			c0.35	
v/s Ratio Perm	c0.06			0.01			0.06			0.06		
v/c Ratio	0.48	0.01		0.05	0.02		0.08	0.37		0.09	0.50	
Uniform Delay, d1	18.1	17.0		17.1	17.0		2.3	2.9		2.3	3.3	
Progression Factor	1.00	1.00		1.00	1.00		1.00	1.00		1.00	1.00	
Incremental Delay, d2	2.3	0.0		0.1	0.0		0.3	1.0		0.3	1.5	
Delay (s)	20.5	17.1		17.2	17.1		2.6	3.9		2.6	4.8	
Level of Service	C	B		B	B		A	A		A	A	
Approach Delay (s)		19.9			17.1			3.8			4.6	
Approach LOS		B			B			A			A	

Intersection Summary

HCM Average Control Delay	5.7	HCM Level of Service	A
HCM Volume to Capacity ratio	0.50		
Actuated Cycle Length (s)	45.0	Sum of lost time (s)	8.0
Intersection Capacity Utilization	53.6%	ICU Level of Service	A
Analysis Period (min)	15		
c Critical Lane Group			



February 26, 2013

Daniel Pauly
Associate Planner
City of Wilsonville
Wilsonville, Oregon
97070



City of Wilsonville
EXHIBIT C4 DB12-0074 et al

Re: Case File DB 12-0074 thru 12-0076, New Fast Food Restaurant and Retail Building

Dear Mr. Pauly,

Thank you for the opportunity to review the proposed site plan surrounding the above named development project. Tualatin Valley Fire & Rescue endorses this proposal predicated on the following criteria and conditions of approval:

- 1) **SURFACE AND LOAD CAPACITIES:** Fire apparatus access roads shall be of an all-weather surface that is easily distinguishable from the surrounding area and is capable of supporting not less than 12,500 pounds point load (wheel load) and 60,000 pounds live load (gross vehicle weight). You may need to provide documentation from a registered engineer that the design will be capable of supporting such loading. (OFC D102.1) ***Applicable to the parking lot.***
- 2) **PAINTED CURBS:** Where required, fire apparatus access roadway curbs shall be painted red and marked "NO PARKING FIRE LANE" at approved intervals. Lettering shall have a stroke of not less than one inch wide by six inches high. Lettering shall be white on red background. (OFC 503.3) ***Provide curb lane striping along the face of the curb at the landscape island housing the new fire hydrant.***
- 3) **COMMERCIAL BUILDINGS - REQUIRED FIRE FLOW:** The required fire flow for the building shall not exceed 3,000 gallons per minute (GPM) or the available GPM in the water delivery system at 20 psi, whichever is less as calculated using IFC, Appendix B. A worksheet for calculating the required fire flow is available from the Fire Marshal's Office. (OFC B105.3) ***Please provide a current fire flow test of the nearest fire hydrant demonstrating available flow at 20 psi residual pressure as well as fire flow calculation worksheets. Please forward copies to both TVF&R as well as local building department. Fire flow calculation worksheets as well as instructions are available on our web site at www.tvfr.com.***
- 4) **FIRE HYDRANTS – COMMERCIAL BUILDINGS:** Where a portion of the building is more than 400 feet from a hydrant on a fire apparatus access road, as measured in an approved route around the exterior of the building, on-site fire hydrants and mains shall be provided. This distance may be increased to 600 feet for buildings equipped throughout with an approved automatic sprinkler system. (OFC 507.5.1) ***The proposed fire hydrant is obstructed by passenger vehicle parking stalls. Please relocate the new fire hydrant from its proposed location to the landscape island to the south.***
- 5) **REFLECTIVE HYDRANT MARKERS:** Fire hydrant locations shall be identified by the installation of reflective markers. The markers shall be blue. They shall be located adjacent and to the side of the centerline of the access road way that the fire hydrant is located on. In case that there is no center line, then assume a centerline, and place the reflectors accordingly. (OFC 510.1)
- 6) **PHYSICAL PROTECTION:** Where fire hydrants are subject to impact by a motor vehicle, guard posts, bollards or other approved means of protection shall be provided. (OFC 507.5.6) ***Please provide bollards at the new fire hydrant.***
- 7) **CLEAR SPACE AROUND FIRE HYDRANTS:** A 3 foot clear space shall be provided around the circumference of fire hydrants. (OFC 507.5.5)

EXHIBIT 7

- 8) **ACCESS AND FIRE FIGHTING WATER SUPPLY DURING CONSTRUCTION:** Approved fire apparatus access roadways and fire fighting water supplies shall be installed and operational prior to any combustible construction or storage of combustible materials on the site. (OFC 1410.1 & 1412.1)
- 9) **KNOX BOX:** A Knox Box for building access is required for this building. Please contact the Fire Marshal's Office for an order form and instructions regarding installation and placement. (OFC 506.1)
Provide a Knox box at each new building.
- 10) **PREMISES IDENTIFICATION:** Buildings shall have approved address numbers, building numbers or approved building identification placed in a position that is plainly legible and visible from the street or road fronting the property. These numbers shall contrast with their background. Address numbers shall be Arabic numerals or alphabet numbers. Numbers shall be a minimum of 4 inches high with a ½ inch stroke. (OFC 505.1) ***Please provide a physical address for each new building visible from the approaching roadway.***
- 11) **FIRE DEPARTMENT ACCESS TO EQUIPMENT:** Fire protection equipment shall be identified in an approved manner. Rooms containing controls for HVAC, fire sprinklers risers and valves or other fire detection, suppression or control features shall be identified with approved signs. (OFC 509.1)

If you have questions or need further clarification, please feel free to contact me at 503-259-1404.

Sincerely,

Drew S. DeBois

Drew DeBois
Deputy Fire Marshal II/CFI

Copy: D. Walters, COW, File



January 24, 2014

Daniel Pauly, AICP
City of Wilsonville
Planning Division
29799 SW Town Center Loop E
Wilsonville, OR 97070

Re: Wilsonville Devco Human Bean Coffee Kiosk

Dear Mr. Pauly,

I am the franchisee of the Carl's Jr. restaurant at 25300 SW 95th Ave. I wish to submit this letter to express my support for the Human Bean Coffee kiosk proposed by Josh Veentjer and Wilsonville Devco.

I have been part of the Carl's Jr. business, both as an employee and franchisee, for over thirty seven years. Our seventeen franchises are located throughout the Portland area. As a Wilsonville resident, I worked hard to bring a store to my hometown. This last year that goal was accomplished and we could not be more satisfied with the outcome.

It is my understanding that there has been opposition to a coffee kiosk near Carl's Junior because of perceived problems with the movement of vehicles on the site. I want to make it clear that although the layout of this site is not perfect, it is more than sufficient for our purposes. I have worked hard with Mr. Veentjer and Mr. LaPoint to ensure that site circulation would be adequate for a new business on this site. This work included a detailed analysis of our restaurant as part of the City's last master plan review as well as a comprehensive development agreement and cross easement, all of which address vehicle movement on this site. I believe that a coffee kiosk is consistent with what we planned for originally and that the amended master plan will be more than sufficient to support a coffee kiosk on our site without unreasonably burdening any of the nearby businesses or creating safety concerns.

While I respect Mr. LaPoint's opposition to the coffee kiosk, I do not share it, and encourage the City to approve Mr. Veentjer's proposal.

Sincerely,

Dan Gjurgevich

Boones Ferry Pointe

January 27, 2014

Re: Revised site plan, delivery truck circulation/parking and The Human Bean vehicular circulation pattern.

The Applicant has revised the site plans to improve the circulation by adding directional signs, directional striping, and signs at the shared driveway (located within the right-of-way). Additionally, the Applicant has included revised delivery truck circulation patterns and designated unloading areas and vehicular circulation patterns for The Human Bean. All of which is illustrated and further described as follows;

Directional signs: Two (2) directional signs have been added at the primary access of the Applicants property, directing consumers of both Carl's Jr. and The Human Bean through the main entrance in front of Carl's Jr. See Exhibits A and B.

Additional striping: New directional arrows and a hatched yellow line to define the main access drive in front of Carl's Jr. See Exhibit A.

Signs within the right-of-way: Four (4) signs have been added to depict and safely warn vehicles approaching from 95th Avenue of the "entrance" and "exit" of the shared driveway. Applicant is proposing an "entrance only" sign on each side of the ingress and an "exit only" on each side of the egress. See Exhibits A and C.

The Human Bean vehicular circulation: As defined by the directional signs, The Human Bean vehicular circulation will enter upon the premises from the shared driveway onto Applicant's property through the main entrance in front of Carl's Jr., continuing on into and through its drive-through and exiting the same, in front of Carl's Jr. This is illustrated on the circulation pattern attached hereto. See Exhibit D.

Delivery truck circulation and parking: The circulation will remain as previously agreed upon, however, Carl's Jr. delivery trucks designated area has been pushed back whereby its 100% within the applicants property and will not impact Chevron's fuel deliveries or its consumers ability to access the applicants site. If Chevron's tanker is present while Carl's Jr. is receiving a delivery, Carl's Jr. truck has the ability from this designated area to reverse and maneuver in front of Carl's Jr. and exit the property through its main entrance. The Human Bean's deliveries are made by vans and/or trucks that range from box vans to semi-truck trailers. The semi-truck trailer deliveries are currently made by Core Mark whom is said to be very accommodating to their existing sites as they are generally small and tight. With that said, they will make deliveries with a 32' truck/trailer. Their designated delivery truck circulation and area would be the same as Carl's Jr. Alternatively, we created another option closer to their building (depicted on site plan) in the event The Human Bean delivery coincided with Carl's Jr. and Chevrons. See Exhibit E.

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Exhibit "B"

Proposed Directional Signs

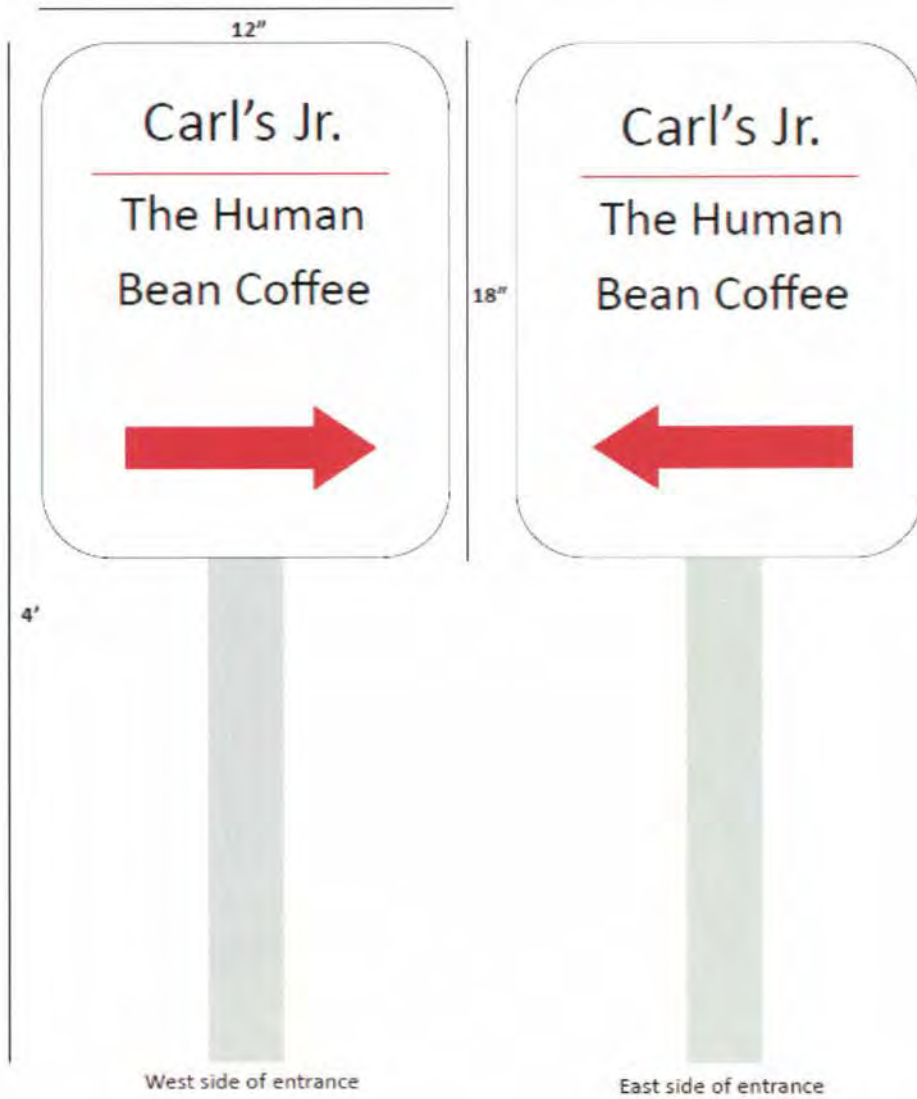
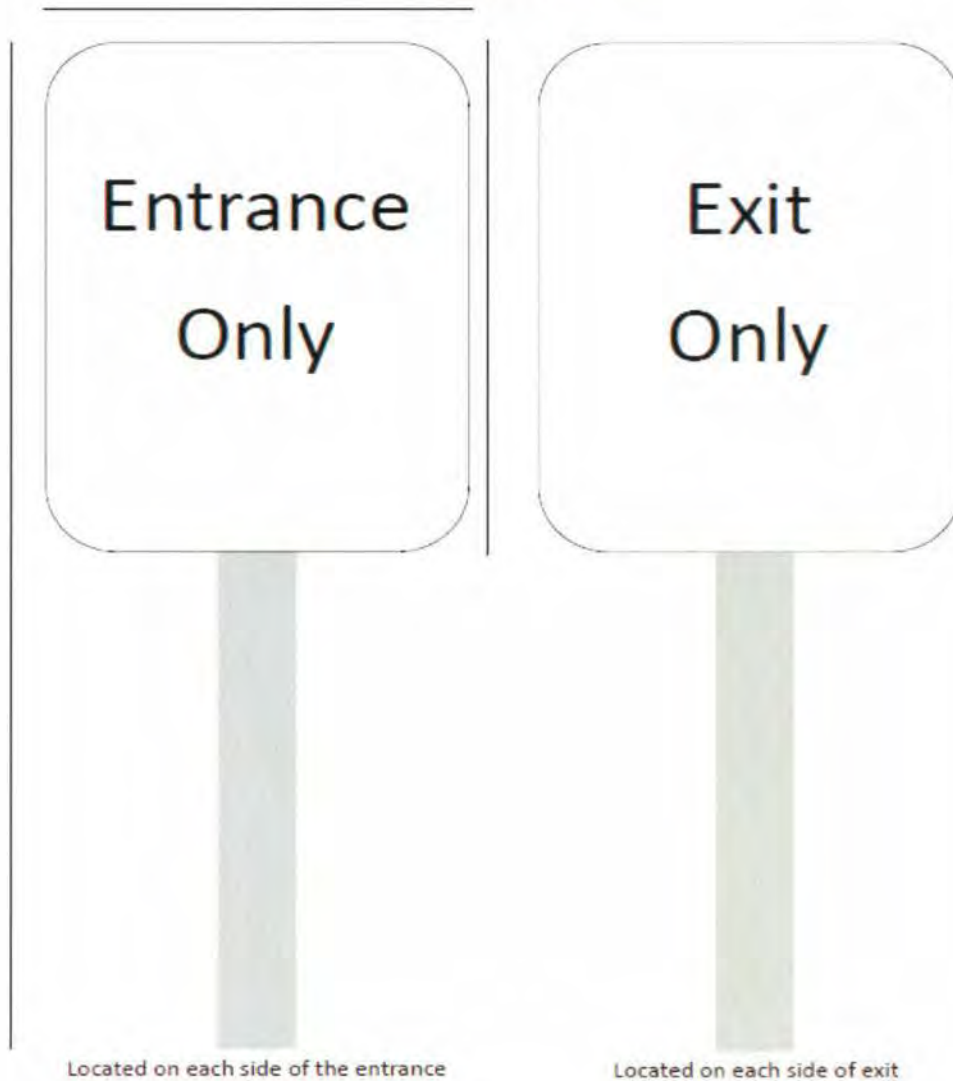
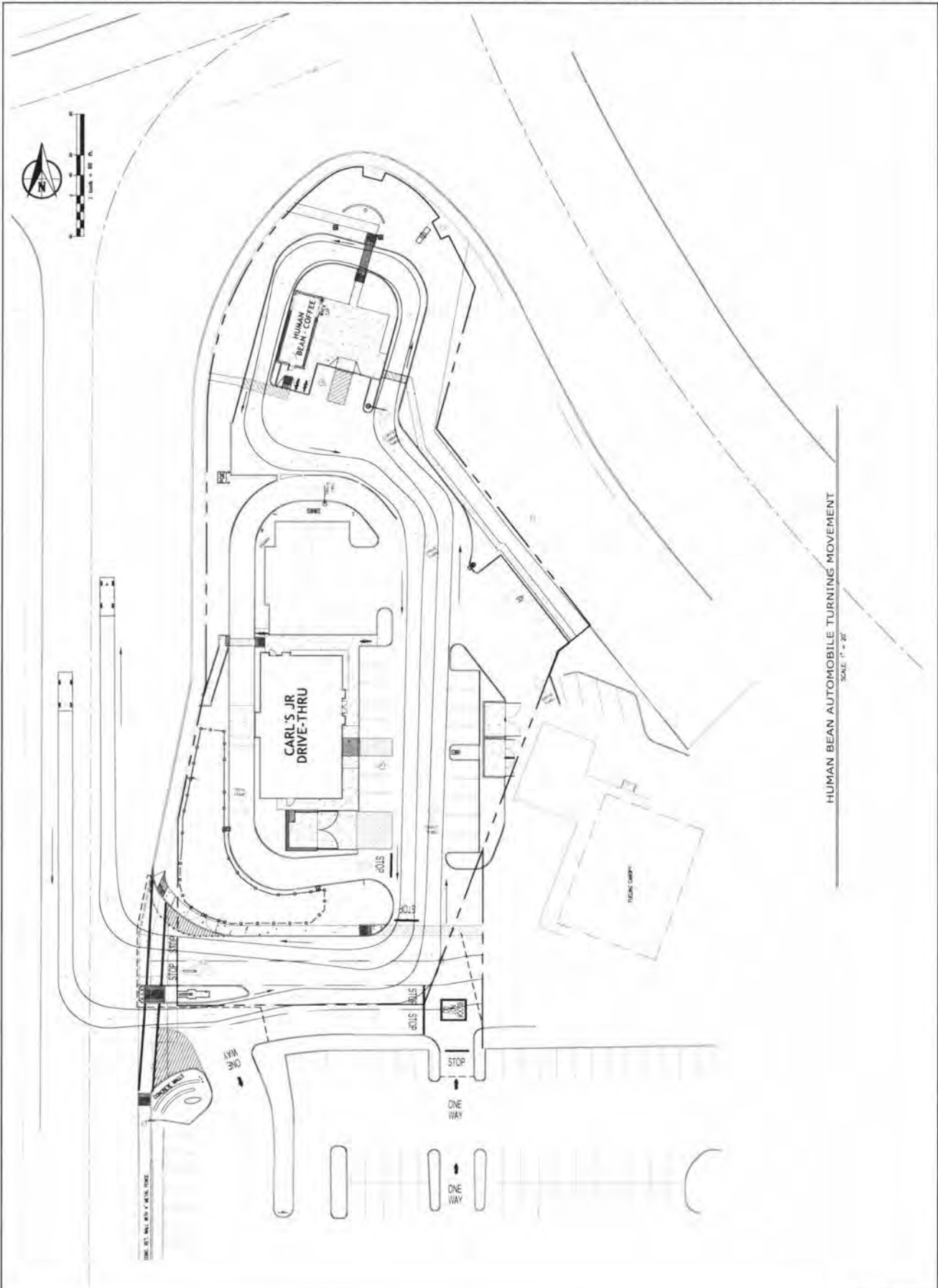


Exhibit "C"

Entrance Only/Exit Only signs within right-of-way

Signs to be located within the right of way on 95th
Height and dimensions of signs to be determined by
City of Wilsonville





KWKG CONVERSION BASED ON CKE PROTOTYPE VERSION 22-14

KITTEDGE ENGINEERS, LLC
 5555 SW 20TH AVENUE
 ALOHA, OR 97007
 TEL: (503) 708-2843

Boones Ferry Pointe
 58 9TH AVE & COMMERCE CIRCLE
 BOONES FERRY, OR 97001

PROPOSED TRUCK TURNING MOVEMENTS

DATE: 11/14/2014
 DRAWN BY: [unintelligible]
 CHECKED BY: [unintelligible]
 SCALE: 1" = 20'
 SHEET: [unintelligible]

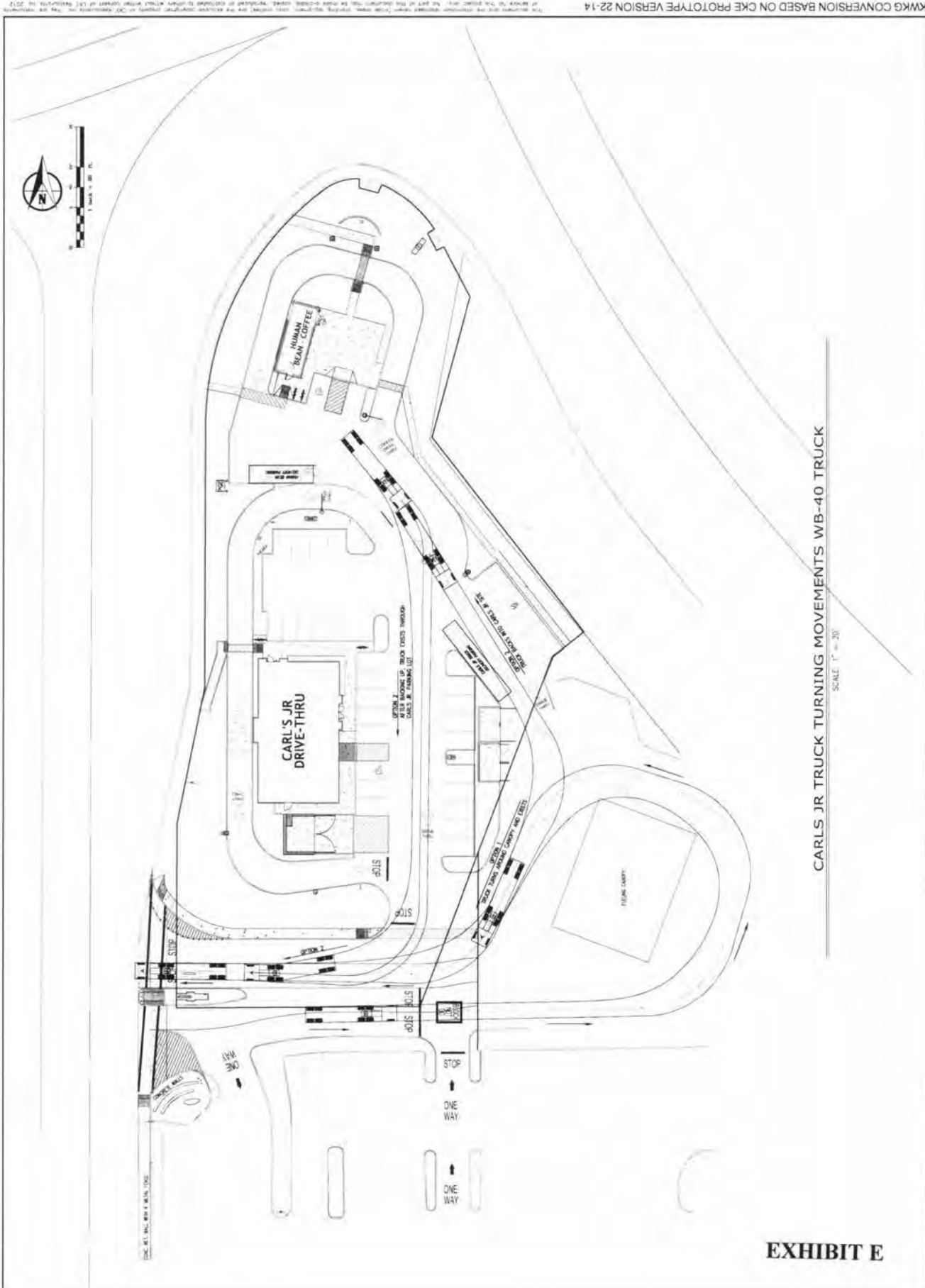


EXHIBIT E

CARLS JR TRUCK TURNING MOVEMENTS WB-40 TRUCK

KWKG CONVERSION BASED ON CKE PROTOTYPE VERSION 22-14

BEFORE THE DEVELOPMENT REVIEW BOARD OF THE
CITY OF WILSONVILLE

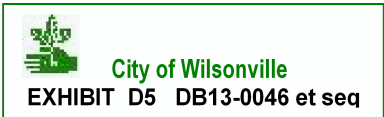
In the Matter of the Application for)	
a Stage II Final Plan Revision,)	
Site Design Review and Master Sign	)	Case Nos.
Plan Revision and Sign Waiver of:	)	DB13-0046 (Stage II Final Plan Revision)
	)	DB13-0047 (Site Plan Review)
WILSONVILLE DEVCO, LLC	)	DB13-0048 (Master Sign Plan Revision and
	)	Sign Waiver)
On property addressed as)	
25250 SW 95 th Avenue and identified as)	
TL 302, Section 2DB, Township 3 South,	)	OPEN RECORD
Range 1 West, Willamette Meridian,	)	SUBMITTAL OF
City of Wilsonville, Washington County,	)	LAPOINT BUSINESS GROUP
Oregon)	

COMES NOW, LaPoint Business Group, LLC, by and through its attorney, Wallace W. Lien, of Wallace W. Lien, P.C., and does hereby submit the following new argument and information in opposition to the above-referenced applications.

1. Jurisdictional Defect

My client has previously made the point that the subject application relies on their property for access and circulation, as well as for a loading zone in front of the trash enclosures, without its consent or approval, or signing onto the application. Where an entity's property is relied on as part of a development plan on adjacent property, that entity must be made an applicant, or at least in some way consent to the process. That has not happened in this case, and the jurisdictional defect continues. See the discussion that follows regarding the code provisions that require LaPoint's signature or consent to make this application valid.

During the course of the public hearing, one of the staff exhibits showed the circulation pattern for the new coffee store as being on my client's property. Further testimony was that coffee



store and Carl's Jr customers would have the option of using the Carl's Jr entrance, or to use my client's property to come around behind the trash enclosures to get in line for the drive through windows. It was represented to the DRB that the applicant had an easement, or some other access right which would allow its customers to traverse over and across the LaPoint property as shown on the map exhibit.

In addition, when my client pointed out that the Carl's Jr delivery trucks have tried to unlawfully park in the loading area immediately in front of the Carl's Jr store blocking the entire access route on the applicants' property, the DRB was told that the required loading zone for Carl's Jr, and for this new proposed coffee store is on my client's property immediately in front of the trash enclosures, which would make that loading area on LaPoint property. The DRB was again told that the applicant had an easement, or some other right to use this location on the LaPoint property for off loading and deliveries.

We have previously asked that evidence of such right to use LaPoint property by the applicant be produced, to no avail. LaPoint has taken the position from the beginning of this case, that no such easements or rights to use this portion of its property exist. Since my client's assertion to that affect has not been taken into account, I had a title report performed on the LaPoint property to show every easement and recorded instrument that affects the LaPoint property. The title report itself is attached hereto as Exhibit 1, and copies of the relevant title instruments are attached hereto as Exhibit 2.

Documents with relevance to this proceeding are Exception #5, providing joint access between LaPoint and the hotel to 95th and allowance for the sign. This easement does not include the applicant or any predecessor and does not touch or concern the applicants' property.

Exception #6 is a common access easement between the predecessor to applicant (South Sea)

and LaPoint (Exxon), and provides for a triangular shaped easement on a portion of the LaPoint property that terminates along the LaPoint northern boundary about where the trash enclosures are currently located. Exhibit F to this easement shows the easement area in an easy to view map form. This easement clearly specifies that there shall be NO PARKING allowed, and No OBSTRUCTIONS allowed in the easement area. There is no allowance for any loading or delivery zone, in fact the easement is quite to the contrary that no parking of any kind there is allowed. Therefore when the applicant complains that LaPoint personnel will not allow Carl's Jr trucks to park and load and unload in that location, such was perfectly appropriate and lawful given the restrictions in this easement.

This common easement was amended (#2013-097514) on October 24, 2013 between the applicant and LaPoint to shrink the triangular easement by 22.2', giving the applicant less of an easement on LaPoint property than it had before, and providing for a new cross reciprocal easement that covers only a 65' long section of the northern most common boundary to allow the curb that was there previously to be removed. This amendment did not change the NO PARKING, NO OBSTRUCTION provision of the original easement, and it did not provide for an easement for circulation of applicants' traffic over and across that portion of the LaPoint property from the edge of the revised easement to the common line where the easement agreed the curb should be removed. In other words there is a easement gap from the end of the revised easement area to the location of the new curb cut, that does not allow applicants' customers to circulate over all of the LaPoint property. Further, there is nothing that provides any sort of loading zone rights on the LaPoint property in front of the trash enclosures for use of Carl's Jr or the new coffee store.

Because there is no legal right for the applicant to use the LaPoint property for its circulation

pattern, and since there is no right for loading and unloading on the LaPoint property for either the Carl's Jr or the new coffee store, the application is jurisdictionally deficient. Property is being impacted without the owner signing on to the application, or otherwise being in agreement with the application. The City has no legal right to make a decision that would allow traffic circulation over and across the entirety of the LaPoint property, or which would approve a loading area on LaPoint property in front of the trash enclosures.

The application as currently under consideration must be denied. The only alternative would be to require a new amended application that provided for all internal circulation and loading areas for the Carl's Jr and the new coffee store to be located solely and exclusively on the applicant's property.

2. Violation of Code

This application violates numerous provisions of the Wilsonville Development Code (WDC) in relationship to ownership, circulation and loading.

WDC 4.035.04(3) requires this application to provide "proof" that the "property affected" by the application is in the "exclusive ownership of the applicant." Alternatively, the applicant may provide the consent from other property owners whose property is implicated in the development. This provision is a mandatory provision that must be complied with according to the Notice of Public Hearing in this matter. WDC 4.035.04(3) is violated here where the LaPoint property is proposed to be utilized for circulation and loading, without any legal right to do so, and without the consent of LaPoint. See above discussion regarding lack of jurisdiction.

WDC 4.035.04(6a) requires the applicant to show on its site plan proposal all "loading areas", the "direction of traffic flow into and out of ... loading areas", and the location of "each

loading berth and areas of turning and maneuvering vehicles.” The proposed site plan does not show any loading area at all, let alone comply with the details of this provision. WDC 4.035.04(6a) is violated by this application.

WDC 4.400.02(A) requires that site plans be designed in a “manner that insures proper functioning of the site.” The internal circulation of the site does not work within any concept of proper functioning. Between loading trucks blocking the Carl’s Jr site and the myriad of choke points, not to mention the lack of pedestrian circulation and the lack of an accessible loading area, the site does not function safely or efficiently at all. Previous testimony and video’s show the chaos of traffic on the site. Information submitted below further affirms the unsafe conditions that currently exist, even without adding a new drive through coffee store. WDC 4.400.02(A) is listed as a mandatory approval criteria for this application in the public hearing notice, and is violated here.

WDC 4.421.01(C) is also listed as an approval criteria. This code provision deals with internal circulation, and reads as follows:

*With respect to vehicular and pedestrian circulation, including **walkways, interior drives and parking, special attention** shall be given to location and number of **access points, general interior circulation, separation of pedestrian and vehicular traffic, and arrangement of parking areas that are safe and convenient** and, insofar as practicable, **do not detract from** the design of proposed buildings and structures and **the neighboring properties.** Emphasis Supplied.*

This provision is violated in that the applicant’s proposed internal circulation, the number and location of access points and the pedestrian walkways are not safe and convenient, and do detract from and create safety issues for the neighboring property. The prior testimony and video regarding the circulation chaos that currently exists, is further affirmed by recent traffic accidents on site that are discussed below. This provision is violated.

WDC 4.154 is an approval criteria that requires the creation of safe, direct and convenient

pedestrian access and circulation. This is an important criteria in this application as the proposed coffee store has a pedestrian walk up area, and outdoor seating. It is additionally important for employee's that must load and unload products for the existing Carl's Jr, and for the new coffee store, and for the carrying out of garbage. The trash containers, which we are told include the area immediately in front of them as the loading area, are located in the middle of the parking lot, with proposed traffic circulation moving directly through that area. There is no sidewalk leading to the trash enclosure/loading area, and nothing proposed for paint even on the asphalt. In, addition, there is no connectivity to the LaPoint property as the sidewalk ends at the property line (into a bark dust landscaped area) with no access point to any other pedestrian access. This provision is violated by this application.

WDC 4.155.03(A) is an approval criteria that requires this development to provide designated loading and delivery areas, that are designed with access and maneuvering areas adequate to serve the functional needs of the site. This provision further requires separate loading and delivery areas and circulation from customer and employee and pedestrian circulation patterns. To the greatest extent possible, this provision requires separation of pedestrian and vehicle traffic, and requires circulation patterns with regard to loading and delivery areas to be "clearly marked". This proposal not only does not mark the loading and delivery areas, either for the Carl's Jr or the new coffee store, there is no way for employees to access the loading and delivery area without crossing the access driveway in an area that is not clearly marked, and which is located immediately in a high traffic circulation pattern. WDC 4.155.03(A) is violated in this application.

WDC 4.430.02(G) requires trash areas to be accessible and not obstructed by pedestrian or vehicular traffic movement. The proposed circulation plan involved for the current Carl's Jr and the

proposed new coffee store proposes an internal circulation for traffic right in front of the trash enclosures. Such a circulation pattern does in fact prohibit the trash enclosures from being accessible. There is no pedestrian walk ways for employees to get to the trash enclosures, and employees will have to cross an access driveway to get to the enclosures. This creates a safety hazard not only for the employee that is taking out the garbage, but the traffic that has to account for pedestrians at a location that is not marked. Further, on collection day, when the garbage trucks appear to load the garbage, those trucks will completely block this area from any internal circulation. A car coming into the drive may not see the garbage truck until it is already committed to that access route, and will either have to stop (thus plugging up both that access drive, but also stopping cars that are leaving the gas station), or the car will attempt to back up and turn around which will be in the middle of traffic going in both ways. Again a tremendous safety hazard. WDC 4.430.02(G), which is a listed approval criteria is violated with the current design.

3. New Accident Information

Since the DRB hearing on January 13, 2014, there have been two accidents on the applicant's property between vehicles coming and going in the chaotic internal circulation pattern that currently exists. The first accident occurred just a few days after the DRB hearing. My client was unable to obtain detailed information or photographs of that accident. The second occurred on January 22, 2013. Attached hereto as Exhibit 3 are a series of photographs showing this accident. Note that the accident occurred between vehicles heading in opposite directions and in a pedestrian walkway. My client was told this accident was substantially similar to the one the week before. In addition to the photographs submitted herewith, my client will deliver another DVD (with sufficient copies for all DRB members to have to review) of the traffic circulation pattern on this site. This video shows

traffic during the 3pm afternoon hour, and the chaos that exists speaks for itself. This video should be considered to be Exhibit 4 hereto.

4. Request to Reopen the Record for Testimony

Please consider this Memorandum to be my client's request that the DRB reconsider its decision to not accept testimony at its February 10, 2014 meeting. As was pointed out in the previous hearing, Mr. LaPoint and his son were both gone on pre-planned vacations and were unable to attend and provide testimony. Both will be available on February 10th, and as the owners and operators of the adjacent property, they request the ability to tell their story directly to the DRB. In the event this request is denied, Mr. LaPoint has asked that I include his letter as an open record submittal. His letter is attached hereto as Exhibit 5.

5. Conclusion

The internal circulation of traffic, the lack of identified pedestrian walkways, and the problem with not having a safe loading and delivery area all create specific violations of the WDC. The site is currently unsafe, and will become much more so with the addition of new traffic for the coffee store. Until circulation and loading are worked out, this development can not comply with the WDC and must be denied.

ELECTRONICALLY DELIVERED this 27TH day of January, 2014.

Wallace W. Lien

Wallace W. Lien, OSB 79-3011
Attorney for LaPoint Business Group, LLC

ATTACHMENTS

1. Title Report
2. Exceptions Packet
3. Photographs of Accident
4. DVD of traffic patterns on January 22, 2013 (to be hand delivered by a LaPoint courier)
5. LaPoint Letter



First American

First American Title Company of Oregon

121 SW Morrison St, FL 3

Portland, OR 97204

Phn - (503)222-3651 (800)929-3651

Fax - (877)242-3513

MULTNOMAH COUNTY TITLE UNIT

FAX (877)242-3513

Title Officer: **Jenny White**

(503)222-3651

jwhite@firstam.com

LOT BOOK REPORT

Wallace W Lien Attorney at Law
1775 32nd PL NE STE A
Salem, OR 97303

Order No.: 7019-2199489

January 17, 2014

Attn: Wallace Lien
Phone No.: (503)585-0105 - Fax No.: (503)585-0106
Email: wallace.lien@lienlaw.com

Re:

Fee: \$500.00

We have searched our Tract Indices as to the following described property:

The land referred to in this report is described in Exhibit A attached hereto.

and as of January 13, 2014 at 8:00 a.m.

We find that the last deed of record runs to

LaPoint Business Group, LLC, an Oregon limited liability company

We find the following apparent encumbrances prior to the effective date hereof:

1. Restrictive Covenant to Waive Remonstrance, pertaining to street improvements including the terms and provisions thereof
Recorded: February 6, 1974 in Book 961, page 997
2. Restrictive Covenant to Waive Remonstrance, pertaining to street improvements including the terms and provisions thereof
Recorded: February 6, 1974 in Book 962, page 1
3. Abutter's rights of ingress and egress to or from Boones Ferry Road have been relinquished in the document recorded April 21, 1995 as Fee No. 95-027726 of Official Records.

4. Easement, including terms and provisions contained therein:
Recording Information: April 21, 1995 as Fee No. 95-027726
In Favor of: The State of Oregon, by and through its Department of Transportation
For: Slope, drainage, retaining wall, gas, water, electric and communication service lines, fixtures and facilities and utilities and incidental purposes
Affects: The Easterly portion of Parcel I
5. Reciprocal Easement Agreement, including terms and provisions thereof.
Recorded: January 16, 1997 as Fee No. 97005009
6. Common Ingress and Egress Easement, including terms and provisions thereof.
Recorded: April 30, 2002 as Fee No. 2002 051321

Modification and/or amendment by instrument:
Recording Information: November 12, 2013 as Fee No. 2013 097514
7. Easement, including terms and provisions contained therein:
Recording Information: March 7, 2003 as Fee No. 2003-034139
In Favor of: The City of Wilsonville
For: Pipeline and incidental purposes
Affects: The Easterly portion of Parcel I
8. Deed of Trust and the terms and conditions thereof.
Grantor/Trustor: LaPoint Business Group, LLC, an Oregon limited liability company
Grantee/Beneficiary: West Coast Bank
Trustee: West Coast Trust
Amount: \$1,393,337.46
Recorded: November 08, 2005
Recording Information: 2005 140373
9. Assignment of leases and/or rents and the terms and conditions thereof:
Assignor: Lapoint Business Group, LLC, an Oregon Limited Liability Company
Assignee: West Coast Bank
Recorded: November 08, 2005
Recording Information: 2005 140374
10. Financing Statement, indicating a Security Agreement
Debtor: Lapoint Business Group, LLC
Secured Party: West Coast Bank
Recorded: November 08, 2005
Recording Information: 2005 140375

A Notice of Continuation of said Financing Statement was recorded October 19, 2010 as Fee No. 2010 083153.

11. Line of Credit Trust Deed, including the terms and provisions thereof, given to secure an indebtedness of up to \$290,000.00.

Grantor: LaPoint Business Group, LLC, an Oregon limited liability company
Beneficiary: West Coast Bank
Trustee: West Coast Trust
Dated: November 04, 2005
Recorded: November 08, 2005
Recording Information: 2005 140376

12. Assignment of leases and/or rents and the terms and conditions thereof:

Assignor: Lapoint Business Group, LLC, an Oregon Limited Liability Company
Assignee: West Coast Bank
Recorded: November 08, 2005
Recording Information: 2005 140377

13. Financing Statement, indicating a Security Agreement

Debtor: Lapoint Business Group, LLC
Secured Party: West Coast Bank
Recorded: November 08, 2005
Recording Information: 2005 140378

A Notice of Continuation of said Financing Statement was recorded October 19, 2010 as Fee No. 2010 083154.

14. Right of First Refusal Agreement and the terms and conditions thereof:

Between: Exxon Wilsonville, LLC, an Oregon limited liability company,
Lapoint Business Group, LLC
And: Chevron U.S.A., Inc., a Pennsylvania corporation
Recording Information: February 14, 2006 as Fee No. 2006-017686

15. Development Agreement, including terms and provisions thereof.

Recorded: August 17, 2012 as Fee No. 2012 068101

16. Easement Agreement and the terms and conditions thereof:

Between: Wilsonville Devco, LLC an Oregon Limited Liability Company
And: LaPoint Business Group, LLC, an Oregon Limited Liability Company
Recording Information: November 12, 2013 as Fee No. 2013 097513

We have also searched our General Index for Judgments and State and Federal Liens against the Grantee(s) named above and find:

1. Proceedings pending in the Circuit Court for Washington County, Oregon .
Suit No.: C138125CV
Filed: December 16, 2013
Plaintiff: Wilsonville Devco, LLC
Defendant: Lapoint Business Group, LLC
Being a suit for: Civil declaratory judgment

We find the following unpaid taxes and city liens:

1. Taxes for the year 2013-2014
Tax Amount \$ 13,253.34
Unpaid Balance: \$ 8,835.56 , plus interest and penalties, if any
Code No.: 088.08
Map & Tax Lot No.: 3S12DB-00300
Property ID No.: R585147
2. Taxes for the year 2013-2014
Tax Amount \$ 6,527.73
Unpaid Balance: \$ 2,175.85 , plus interest and penalties, if any.
Code No.: 088.08
Map & Tax Lot No.: 3S12DB-00300
Property ID No.: R2179930 (Affects Machinery/Equipment)
3. City liens, if any, of the City of Wilsonville.

THIS IS NOT a title report since no examination has been made of the title to the above described property. Our search for apparent encumbrances was limited to our Tract Indices, and therefore above listings do not include additional matters which might have been disclosed by an examination of the record title. We assume no liability in connection with this Lot Book Service and will not be responsible for errors or omissions therein. The charge for this service will not include supplemental reports, rechecks or other services.

Exhibit "A"

Real property in the County of Washington, State of Oregon, described as follows:

PARCEL I:

A parcel of land located in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, in the South one-half Section 2, Township 3 South, Range 1 West, of the Willamette Meridian, in the City of Wilsonville, County of Washington and State of Oregon, being further described as follows:

Commencing at the Southeast corner of said Lot 7; thence South 89°38'33" West, along the South line of said lot, a distance of 391.33 feet to the East line of Parcel I in Deed from John Q. Hammons, to the State of Oregon, by and through its Department of Transportation (herein after referred to as "ODOT"); thence North 00°09'24" East, along said "ODOT" Deed, a distance of 359.27 feet; thence continuing along said "ODOT" Deed, along the arc of a curve to the right, said curve having a radius of 128.16 feet, arc length of 140.62 feet, central angle of 062°51'50", a chord bearing of North 31°35'19" East, a chord length of 133.67 feet to the intersection with the South line of SW Commerce Circle as dedicated in the plat of EDWARDS BUSINESS INDUSTRIAL PARK; thence non-tangent North 70°34'24" East, along said street, a distance of 20.97 feet, and along the arc of a curve to the right, said curve having a radius 25.00 feet, arc length of 32.72 feet, central angle of 074°59'06", a chord bearing of South 71°56'03" East, and a chord length of 30.43 feet to the intersection with the West line of Boones Ferry as described in said "ODOT" Deed; thence along said "ODOT" Deed, along the arc of a non-tangent curve to the left, said curve having a radius of 1,001.93 feet, arc length of 12.00 feet, central angle of 000°41'10", a chord bearing of South 24°13'24" East, and a chord length of 12.00 feet to the intersection with the East line of said Lot 7; thence along the East line of said Lot 7, along the arc of a non-tangent curve to the left, said curve having a radius of 595.65 feet, arc length of 85.44 feet, central angle of 008°13'06", a chord bearing of South 25°08'24" East, and a chord length of 85.36 feet to Westerly line of Boones Ferry Road as described in said "ODOT" Deed; thence non-tangent, along said Westerly line South 15°09'35" West, a distance of 83.41 feet, South 38°02'13" East, a distance of 200.44 feet, North 46°33'47" East, a distance of 48.10 feet, South 40°56'40" East, a distance of 81.06 feet, and along the arc of a non-tangent curve to the right, said curve having a radius of 2,837.79 feet, arc length of 17.49 feet, central angle of 00°21'11", a chord bearing of South 38°36'45" East, and a chord length of 17.49 feet to a point 100.00 feet North of, when measured at right angle to, the South line of said Lot 7; thence continuing along said "ODOT" Deed, along the arc of a non-tangent curve to the right, said curve having a radius of 2,837.79 feet, arc length of 48.51 feet, central angle of 00°58'46", a chord bearing of South 37°56'47" East, and a chord length of 48.51 feet, to the East line of said Lot 7; thence along the arc of a curve to the left, said curve having a radius of 116.96 feet, arc length of 62.30 feet, central angle of 030°31'07", a chord bearing of South 00°03'01" West, and a chord length of 61.56 feet to the point of beginning.

EXCEPTING THEREFROM a tract of land located in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, in the South one-half Section 2, Township 3 South, Range 1 West, of the Willamette Meridian, in the City of Wilsonville, County of Washington and State of Oregon, being further described as follows:

Commencing at the Southeast corner of said Lot 7; thence South 89°38'33" West, along the South line of said lot, a distance of 379.33 feet to a point 12 feet Easterly of the East line of Parcel 1 in Deed from John Q. Hammons to the State of Oregon, by and through its Department of Transportation, Fee No. 95027726, April 21, 1995 (herein after referred to as "ODOT"); thence North 00°09'24" East a distance of 12.00 feet parallel to and 12.00 feet Easterly of said "ODOT" line to the true point of beginning; thence North 00°09'24" East, parallel to & 12.00 feet Easterly of said "ODOT" line, a distance of 347.16 feet; thence along the arc of a curve to the right, said curve having a radius of 116.16 feet, arc length of 101.04 feet, central angle of 49°50'12", a chord bearing of North 25°04'30" East, and a chord length of 97.88 feet to a point of compound curvature; thence along the arc of a curve to the right, said curve having a radius of 45.00 feet, arc length of 53.94 feet, central angle of 33°01'29", a chord bearing South 71°56'03" East, and a chord length of 30.43 feet to a point of compound curvature; thence along the arc of a curve to the right, said curve having a radius of 100.00 feet, arc length of 61.13 feet, central angle of 35°01'29", a chord bearing of South 43°49'18" East, and a chord length of 60.18 feet to the intersection with the West line of Boones Ferry Road as described in said "ODOT" Deed and a point on a non-tangent curve to the left, said point having a radial bearing of North 63°41'28" East; thence along said "ODOT" Deed, along the arc of said non-tangent curve to the left, said curve having a radius of 595.65, arc length of 30.57 feet, central angle of 02°56'25", a chord bearing of South 27°46'44" East, and a chord length of 30.56 feet to along the Westerly line of Boones Ferry Road as described in said "ODOT" Deed; thence along said Westerly line South 15°09'35" West, a distance of 83.41 feet; thence South 38°02'13" East, a distance of 120.44 feet; thence South 57°57'47" West, a distance of 55.00 feet; thence South 20°29'49" West, a distance of 171.35 feet to a point that is 12 feet from, when measured at right angles, to the South line of said Lot 7; thence South 89°38'33" West, a distance of 97.95 feet, more or less, to the true point of beginning.

ALSO EXCEPTING THEREFROM that portion conveyed to Prairie Corp., an Oregon corporation, by instrument recorded July 19, 2000 as Fee No. 2000-48398, more particularly described as follows:

A tract of land located in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, in the Southeast one-quarter of Section 2, Township 3 South, Range 1 West, of the Willamette Meridian, in the City of Wilsonville, County of Washington and State of Oregon, being further described as follows:

Commencing at the Southeast corner of said Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, recorded in Book 31, page 14 in the Plat Records of Washington County, Oregon; thence South 89°38'33" West, along the South line of said Lot 7, a distance of 379.33 feet to a point 12.00 feet East of the East line of Parcel I as described in the Deed from John Q. Hammons to the State of Oregon, by and through its Department of Transportation, Document Number 95027726, recorded April 21, 1995 (herein after referred to as "ODOT"); thence North 00°09'24" East parallel to said East line, 18.00 feet; thence North 89°38'33" East parallel to said South line of Lot 7, 95.10 feet to the true point of beginning; thence North 20°29'49" East, 170.00 feet; thence North 57°57'47" East, 55.00 feet to the Westerly line of Boones Ferry Road as described in said "ODOT" Deed; thence along said Westerly line South 38°02'13" East, 2.34 feet; thence leaving said Westerly line South 51°57'47" West, 20.00 feet; thence South 20°40'49" West, 186.07 feet to a point 18.00 feet Northerly when measured at right angles to the said South line of Lot 7; thence South 89°38'33" West parallel to said South line of Lot 7, 26.13 feet, more or less, to the true point of beginning.

FURTHER EXCEPTING THEREFROM that portion dedicated to the City of Wilsonville for street purposes by instrument recorded March 7, 2003 as Fee No. 2003-034138.

PARCEL II:

A tract of land located in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, in the Southeast one-quarter of Section 2, Township 3 South, Range 1 West, of the Willamette Meridian, in the City of Wilsonville, County of Washington and State of Oregon, being further described as follows:

Commencing at the Southeast corner of Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, recorded in Book 31, page 14 in the Plat Records of Washington County, Oregon; thence South $89^{\circ}38'33''$ West, along the South line of said Lot 7, a distance of 379.33 feet to a point 12.00 feet East of the East line of Parcel I as described in the Deed from John Q. Hammons to the State of Oregon, by and through its Department of Transportation, Document Number 95027726, recorded April 21, 1995; thence North $00^{\circ}09'24''$ East parallel to said East line, 18.00 feet to the true point of beginning; thence North $89^{\circ}38'33''$ East parallel to said South line of Lot 7, 95.10 feet; thence South $20^{\circ}29'49''$ West, 6.42 feet to a point 12.00 feet Northerly when measured at right angles to the said South line of Lot 7; thence South $89^{\circ}38'33''$ West parallel to said South line of Lot 7, 92.87 feet, more or less, to a point 12.00 feet East of the said East line of Parcel I; thence North $00^{\circ}09'24''$ East parallel to said East line, 6.00 feet to the true point of beginning.

EXCEPTING THEREFROM that portion dedicated to the City of Wilsonville for street purposes by instrument recorded March 7, 2003 as Fee No. 2003-034138.

NOTE: This Legal Description was created prior to January 01, 2008.

14137

COVENANT

600

Recorded by
Fidelity National
Title Insurance Company

9/14/34-68515-8

The undersigned owners of the real property in the City of Wilsonville, Oregon, described below, hereby consent to the formation of a local improvement district by the City of Wilsonville for the purpose of improving public streets upon which the described property abuts. In addition, the undersigned expressly waives all present and future opposition and remonstrance against the improvement of such abutting streets to city street standards, and agrees to pay appropriate assessments therefor, as the same may be undertaken pursuant to Oregon Revised Statutes, Chapter 223.

The undersigned owners agree that their successors and assigns shall be bound by this covenant. This covenant shall constitute a covenant running with the land and shall be binding upon any transferee from the present owners in the event of a sale or conveyance of the described premises or any part thereof at a future time.

The property affected by this covenant is described as follows:

A parcel of land in the South 1/2 of Section 2, T3S, R1W, W.M., Washington County, Oregon, described as follows:

Commencing at the South 1/4 corner of said Section 2, running thence northerly 20 feet, more or less, to the north line of Washington County Road No. 561 (S.W. Ridder Road), the TRUE POINT OF BEGINNING; thence westerly, along the northerly line of County Road 561 to the southeast corner of that tract of land designated as "Parcel No. 2", conveyed to the United States of America, as recorded in Book 189 at page 49 of the Washington County Records; thence N 00° 22' 04" W, 658.48 feet to the northeast corner of the said United States of America tract; thence S 89° 39' 02" W, 555.00 feet to the northwest corner of said tract; thence northerly along the east line of the Bonneville Power Administration Easement, N 00° 21' 27" W, 1082.38 feet; thence N 89° 36' 39" E,

BOOK 961 PAGE 997

OWNER NATIONAL TITLE INS. CO. HAS RECORDED THIS INSTRUMENT BY REGISTRY AND HAS EXAMINED IT FOR ACCURACY AND SUFFICIENCY ON AS TO ITS EFFECT UPON THE TITLE TO ANY REAL PROPERTY THAT MAY BE DESCRIBED THEREIN.

14137

1984.31 feet to a point on the west line of R.H. BALDOCK FREEWAY right of way (Interstate No. 5); thence southerly along the west line of said R.H. BALDOCK FREEWAY as follows:

S 26° 31' 04" W, 12.10 feet; thence along the arc of a curve to the left 117.87 feet, (Radius = 117.00 feet, delta = 57° 43' 14", and the long chord bears S 01° 50' 05" E, 112.95 feet); thence S 30° 34' 28" E, 212.92 feet; thence S 22° 52' 30" E, 224.20 feet; thence S 07° 50' 35" E, 97.75 feet; thence S 25° 56' 25" E, 436.00 feet; thence S 00° 03' 30" E, 73.40 feet; thence S 05° 00' 03" E, 351.21 feet, thence S 00° 05' 53" E, 114.24 feet, to a point on the north line of Washington County Road No. 558; thence leaving said R.H. BALDOCK FREEWAY and running southwesterly and westerly, along the northerly line of County Road No. 558 and 561 to the point of beginning. Containing 79.17 acres, more or less.

DATED this 4th day of February, 1974

Paul E. Doty
Paul E. Doty

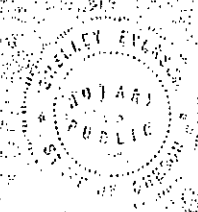
Grace E. Doty
Grace E. Doty

STATE OF OREGON)
County of ~~Washington~~ ^{Washington}) ss.

Personally appeared the above named Paul E. Doty, and acknowledged the foregoing instrument to be his voluntary act and deed.

Before me this 4 day of FEBRUARY, 1974

Sherry Exum
NOTARY PUBLIC for OREGON
My Commission Expires: 12/1/76



BOOK 961 PAGE 998

14137

STATE OF OREGON)
WASHINGTON) ss.
County of Multnomah)

Personally appeared the above named Grace B. Doty, and
acknowledged the foregoing instrument to be her voluntary act
and deed.

Before me this 4th day of FEBRUARY, 1974.

Shelley Everson
Notary Public for Oregon
My Commission Expires: 12/1/76



INDEXED

STATE OF OREGON
County of Washington

I, Roger Thomassen, Director of Records
and Elections and Ex-Officio Recorder of Coun-
ty, for said county, do hereby certify
that the within instrument of filing was
received and recorded in book of records
No. _____
of said County.

Witness my hand and seal of office
ROGER THOMASSEN, Director of
Records & Elections
Deputy

COVENANT

The undersigned owner of the real property in the City of Wilsonville, Oregon, described below, hereby consents to the formation of a local improvement district by the City of Wilsonville for the purpose of improving public streets upon which the described property abuts. In addition, the undersigned expressly waives all present and future opposition and remonstrance against the improvement of such abutting streets to city street standards, and agrees to pay appropriate assessments therefor, as the same may be undertaken pursuant to Oregon Revised Statutes, Chapter 223.

The undersigned owner agrees that its successors and assigns shall be bound by this covenant. This covenant shall constitute a covenant running with the land and shall be binding upon any transferee from the present owner in the event of a sale or conveyance of the described premises or any part thereof at a future time.

The property affected by this covenant is described as follows:

A parcel of land in the South 1/2 of Section 2, T3S, R1W, W.M., Washington County, Oregon, said parcel being a portion of that tract conveyed to Paul E. Doty and Grace E. Doty, husband and wife at page 679 of Washington County Deed book 397, described as follows:

Beginning at a 5/8 inch Iron Rod on the west right of way line of State Highway No. 217 (Boones Ferry Road) which bears S 89° 30' 16" W 2272.45 feet and S 00° 29' 44" E 83.73 feet from the east one-quarter corner of said section; thence along said Right of Way and the Westerly Right of Way of State

PIONEER NATIONAL TITLE INS. CO. HAS RECORDED THIS INSTRUMENT AS AN ACCOMMODATION ONLY AND HAS NOT EXAMINED IT FOR REGULARITY AND EFFICIENCY OR AS TO ITS EFFECT UPON THE TITLE TO ANY REAL PROPERTY THAT MAY BE DESCRIBED THEREIN.

UPR 2-11-60

14138

Highway Entrance-Exit road to Interstate Highway No. 5 as follows:

S. 13° 53' 04" E 5.82 feet; S 17° 09' 36" E 290.85 feet to Sta. "S" 122+00.04 P.T. 30 feet left; S 15° 13' 07" E 152.05 feet to Sta. "S" 120+50.04 P.C.C. 40 feet left; S 21° 55' 25" E 164.67 feet to Sta. "S" 119+00.04 P.C.C. 60 feet left being a point on a non-tangent curve; thence along said curve to the left whose elements are, Radius 1014.93 feet, tangent 151.09 feet, delta 16° 56' 05", arc length 298.89 feet, chord bearing S 45° 11' 09" E; S 26° 31' 04" E 4.04 feet to a 5/8" Iron Rod; thence leaving said Right of Way S 89° 36' 39" W 1987.99 feet; thence N 00° 19' 52" W 800.0 feet; thence N 89° 36' 39" E 1593.77 feet to the point of beginning. Containing 31.85 acres.

DATED this 1st day of February, 1974.

EDWARDS INDUSTRIES, INC.

By Allen Edwards Jr
By Harriet G. Lee

STATE OF OREGON)
County of Washington) ss

Personally appeared Allen Edwards, Jr., who being duly sworn did say that he is President of Edwards Industries, Inc. and that said instrument was signed in behalf of said corporation by authority of its board of directors, and he acknowledged said instrument to be its voluntary act and deed.

Before me this 1st day of February, 1974.

Shelley Ewison
NOTARY PUBLIC for OREGON
My Commission Expires 12/7/76

INDEXED,

Filed for record 2-6 1974 at 3:27 P.M.
ROGER THOMSEN, Director of Records & Elections
By JTC Deputy

STATE OF OREGON }
County of Washington } SS

I, Jerry R. Hanson, Director of Assessment and Taxation and Ex-Origo County Clerk for said county, do hereby certify that the within instrument of writing was received and recorded in book for year of said



Doc : 95027726
Rect: 142219 38.00
04/21/1995 02:31:24PM

ODOT
File 6244-003
10B-6-6

DEED

JOHN Q. HAMMONS, Grantor, for the true and actual consideration of
\$ 520,000.00 does convey unto the STATE OF OREGON, by and through its DEPARTMENT
OF TRANSPORTATION, Grantee, fee title to the following described property:

PARCEL 1 - Fee

A parcel of land lying in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, Washington County, Oregon and being a portion of that property described in that deed to John Q. Hammons, recorded as Microfilm Document No. 80-033104 of Washington County Book of Records; the said parcel being that portion of said property included in a strip of land variable in width, lying on each side of the center line of relocated 95th Avenue which center line is described as follows:

Beginning at Engineer's center line Station "95th" 65+10, said station being 1118.61 feet North and 2283.96 feet West of the Southeast corner of Section 2, Township 3 South, Range 1 West, W.M.; thence North 1° 18' 17" East 67.83 feet; thence North 1° 48' 17" East 890.32 feet; thence on a 159.16 foot radius curve right (the long chord of which bears North 37° 00' 16.5" East 183.48 feet) 195.56 feet; thence North 72° 12' 16" East 78.71 feet to Engineer's center line Station "95th" 77+42.42.

The widths in feet of the strip of land above referred to are as follows:

Station	to	Station	Width on Westerly Side of Center Line	Width on Easterly Side of Center Line
"95th"70+95		"95th"74+68.15	38	
"95th"74+68.15		"95th"75+25	50 in a straight line to 135	
"95th"75+25		"95th"76+00	135	
"95th"70+50		"95th"77+42.42		31

TA 26-44133
02-11-91

Bearings are based upon the Oregon Coordinate System of 1927, north zone.

The parcel of land to which this description applies contains 33,400 square feet, more or less.

PARCEL 2 - Fee

A parcel of land lying in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, Washington County, Oregon and being a portion of that property described in that deed to John Q. Hammons, recorded as Microfilm Document No. 80-033104 of Washington County Book of Records; the said parcel being that portion of said property lying Easterly of the following described line:

3-9-95

Tax Stmt and
RETURN TO
OREGON DEPARTMENT OF TRANSPORTATION
RIGHT OF WAY SECTION
417 TRANSPORTATION BLDG.
SALEM, OREGON 97310

Account No.: _____
Property Address: _____

Beginning at a point opposite and 27 feet Southwesterly of Engineer's Station "D1" 414+00 on the "D1" center line; thence Northwesterly parallel with said center line to a point opposite Engineer's Station "D1" 412+00; thence Northwesterly in a straight line to a point opposite 61 feet Southwesterly of Engineer's Station "SR2" 117+76.20 on the "SR2" center line; thence Northwesterly parallel with said last mentioned center line to a point opposite Engineer's Station "SR2" 118+62; thence Northwesterly in a straight line to a point opposite and 47 feet Southwesterly of Engineer's Station "SR2" 120+02.15 on last mentioned center line; thence Northwesterly parallel with said last mentioned center line to a point opposite Engineer's Station "SR2" 120+87.47.

The "D1" center line referred to herein is described as follows:

Beginning at Engineer's center line Station "D1" 410+84.37, said station being 1929.07 feet North and 1931.01 feet West of the Southeast corner of Section 2, Township 3 South, Range 1 West, W.M.; thence on a 2864.79 foot radius curve right (the long chord of which bears South 34° 43' 24.5" East 472.48 feet) 473.02 feet to Engineer's center line Station "D1" 415+37.39.

The "SR2" center line referred to herein is described as follows:

Beginning at Engineer's center line Station "SR2" 111+65+15, said station being 1618.82 feet North and 1401.22 feet West of the Southeast corner of Section 2, Township 3 South, Range 1 West, W.M.; thence on a spiral curve right (the long chord of which bears North 64° 34' 50" West 299.67 feet) 300 feet; thence on a 954.93 foot radius curve right (the long chord of which bears North 39° 54' 38" West 611.36 feet) 622.31 feet; thence on a spiral curve right (the long chord of which bears North 15° 14' 26" West 299.67 feet) 300 feet to Engineer's center line Station "SR2" 123+87.47.

Bearings are based upon the Oregon Coordinate System of 1927, north zone.

The parcel of land to which this description applies contains 4,500 square feet, more or less.

PARCEL 3 - Fee

A parcel of land lying in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, Washington County, Oregon and being a portion of that property described in that deed to John Q. Hammons, recorded as Microfilm Document No. 80-033104 of Washington County Book of Records; the said parcel being that portion of said property lying between lines at right angles to the "SR2" center line at Engineer's Stations "SR2" 117+45 and "SR2" 119+80 and included in a strip of land variable in width, lying on the Southwesterly side of said center line which center line is described in Parcel 2.

The widths in feet of the strip of land above referred to are as follows:

Station	to	Station	Width on Southwesterly Side of Center Line
"SR2"117+45		"SR2"119+25	110 in a straight line to 110
"SR2"119+25		"SR2"119+80	110 in a straight line to 48

ODOT
File 6244-003
10B-6-6

EXCEPT therefrom Parcel 2.

Bearings are based upon the Oregon Coordinate System of 1927, north zone.

The parcel of land to which this description applies contains 10,700 square feet, more or less.

TOGETHER WITH all abutter's rights of access between Boones Ferry Road Northeasterly of Engineer's Station "95th" 76+45 and Grantor's remaining real property.

PARCEL 4 - Fee

A parcel of land lying in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, Washington County, Oregon and being a portion of that property described in that deed to John Q. Hammons, recorded as Microfilm Document No. 80-033104 of Washington County Book of Records; the said parcel being that portion of said property lying Westerly of Parcel 1.

The parcel of land to which this description applies contains 19,490 square feet, more or less.

ALSO, all of Grantor's right, title and interest in and to that easement for parking and/or ingress and egress described in that document recorded as Document #79018929, Washington County Records. That affects abutting property that lies westerly of the property conveyed herein.

Grantor also grants to Grantee, its successors and assigns, a permanent easement to construct and maintain a retaining wall upon and across the hereinafter described Parcel 5, and permanent easements to construct and maintain slopes upon the hereinafter described Parcels 6 and 7, and permanent easements to relocate, construct and maintain water, gas, electric and communication service lines, fixtures and facilities, and appurtenances therefor, upon, over, through, and across the hereinafter described Parcels 5, 6, and 7, and permanent easements for the construction, installation and maintenance of a sign upon the hereinafter described Parcels 8 and 9, and a permanent easement for the construction, operation, and maintenance of drainage facilities over, under, and across the hereinafter described Parcel 10, said property described as follows:

PARCEL 5 - Permanent Easement for Retaining Wall, Water, Gas, Electric and Communication Service Lines, Fixtures and Facilities

A parcel of land lying in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, Washington County, Oregon and being a portion of that property described in that deed to John Q. Hammons, recorded as Microfilm Document No. 80-033104 of Washington County Book of Records; the said parcel being that portion of said property included in a strip of land 43 feet in width, lying on the Westerly side of the center line of relocated 95th Avenue which center line is described in Parcel 1.

EXCEPT therefrom Parcel 1.

The parcel of land to which this description applies contains 1,700 square feet, more or less.

PARCEL 6 - Permanent Easement for Slopes, Water, Gas, Electric and Communication Service Lines, Fixtures and Facilities

A parcel of land lying in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, Washington County, Oregon and being a portion of that property described in that deed to John Q. Hammons, recorded as Microfilm Document No. 80-033104 of Washington County Book of Records; the said parcel being that portion of said property lying Westerly of Parcels 2 and 3; Easterly of Parcel 1 and Northwesterly and Northeasterly of the following described line:

Beginning at point opposite and 40 feet Easterly of Engineer's Station "95th" 70+00 on the center line of relocated 95th Avenue; thence Northerly in a straight line to a point opposite and 58 feet Southeasterly of Engineer's Station "95th" 75+50 on said center line; thence Northeasterly in a straight line to a point opposite and 50 feet Southeasterly of Engineer's Station "95th" 76+00 on said center line; thence Southeasterly in a straight line to a point opposite and 80 feet Southwesterly of Engineer's Station "SR2" 120+25 on the "SR2" center line; thence Southeasterly parallel with said last mentioned center line to a point opposite Engineer's Station "SR2" 119+00 on said last mentioned center line which center line is described in Parcel 2.

The center line of relocated 95th Avenue referred to herein is described in Parcel 1.

The parcel of land to which this description applies contains 17,950 square feet, more or less.

PARCEL 7 - Permanent Easement for Slopes, Water, Gas, Electric and Communication Service Lines, Fixtures and Facilities

A parcel of land lying in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, Washington County, Oregon and being a portion of that property described in that deed to John Q. Hammons, recorded as Microfilm Document No. 80-033104 of Washington County Book of Records; the said parcel being that portion of said property lying Southwesterly of Parcel 2; Southeasterly of Parcel 3 and included in a strip of land 60 feet in width, lying on the Southwesterly side of the "D1" center line which center line is described in Parcel 2.

The parcel of land to which this description applies contains 5,200 square feet, more or less.

PARCEL 8 - Permanent Easement for Sign

A parcel of land lying in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, Washington County, Oregon and being a portion of that property described in that deed to John Q. Hammons, recorded as Microfilm Document No. 80-033104 of Washington County Book of Records; the said parcel being that portion of said property lying between lines at right angles to the center line of relocated 95th Avenue at Engineer's Stations "95th" 71+58 and "95th" 71+63 and included in a strip of land 36 feet in width, lying on the Easterly side of said center line which center line is described in Parcel 1.

ODOT
File G244-003
100-0-0

EXCEPT therefrom Parcel 1.

The parcel of land to which this description applies contains 25 square feet, more or less.

PARCEL 9 - Permanent Easement for Sign

A parcel of land lying in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, Washington County, Oregon and being a portion of that property described in that deed to John Q. Hammons, recorded as Microfilm Document No. 80-033104 of Washington County Book of Records; the said parcel being that portion of said property lying between lines at right angles to the center line of relocated 95th Avenue at Engineer's Stations "95th" 74+08 and "95th" 74+13 and included in a strip of land 36 feet in width, lying on the Easterly side of said center line which center line is described in Parcel 1.

EXCEPT therefrom Parcel 1.

The parcel of land to which this description applies contains 25 square feet, more or less.

PARCEL 10 - Permanent Easement for Drainage Facilities

A parcel of land lying in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, Washington County, Oregon and being a portion of that property described in that deed to John Q. Hammons, recorded as Microfilm Document No. 80-033104 of Washington County Book of Records; the said parcel being that portion of said property included in a strip of land 10 feet in width, 5 feet on the each side of the following described line:

Beginning at a point opposite and 31 feet Southeasterly of Engineer's Station "95th" 75+95 on the center line of relocated 95th Avenue; thence Southeasterly in a straight line to a point opposite and 200 feet Southeasterly of Engineer's Station "95th" 77+20 on said center line which center line is described in Parcel 1.

EXCEPT therefrom Parcels 1 and 3.

The parcel of land to which this description applies contains 1,425 square feet, more or less.

IT IS UNDERSTOOD that the easements herein granted do not convey any right, or interest in the above-described Parcels 5, 6, 7, 8, 9, 10, except for the purposes stated herein, nor prevent Grantor from the use of said property; provided, however, that such use shall not be permitted to interfere with the rights herein granted or endanger the lateral support of the highway, or to interfere in any way with the relocation, construction, and maintenance of said utilities, and their appurtenances, as granted hereinabove.

Also the rights of the owner of any relocated utilities shall be the same as previously existed in that portion of the utilities being relocated.

IT IS ALSO UNDERSTOOD that these easements shall be subject to the same conditions, terms and restrictions contained in the easements, licenses and/or permits granted to the owner of any facilities being relocated.

IT IS ALSO UNDERSTOOD that Grantor shall not place or erect any buildings or structures upon the easement areas without the written consent of Grantee.

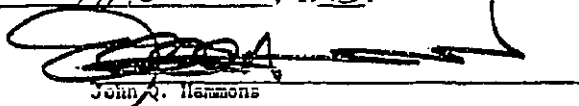
IT IS FURTHER UNDERSTOOD that nothing herein contained is intended to create any obligation on the part of Grantee for the maintenance of said utilities.

Grantor agrees, the consideration recited herein is just compensation for the property, including any and all damages to Grantor's remaining property, if any, which may result from the acquisition or use of said property and the construction or improvement of the highway.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930.

It is understood and agreed that the delivery of this deed is hereby tendered and that terms and obligations hereof shall not become binding upon the State of Oregon Department of Transportation, unless and until accepted and approved by the recording of this document.

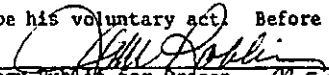
Dated this 11th day of APRIL, 1995.


John Q. Hammons

MISSOURI
STATE OF OREGON, County of CREENE

APRIL 11, 1995. Personally appeared the above named John Q. Hammons, who acknowledged the foregoing instrument to be his voluntary act. Before me:

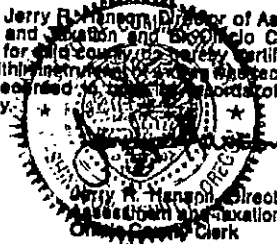



Notary Public for Oregon MISSOURI
My Commission expires 10-26-96

JAN ROBBINS Notary Public
Creene County State of Missouri
My Commission Expires Oct 26, 1996

STATE OF OREGON
County of Washington 88

I, Jerry R. Henson, Director of Assessment and Taxation and Clatsop County Clerk for said County, do hereby certify that the within instrument was received and recorded in the records of said county.



Jerry R. Henson, Director of Assessment and Taxation, Clatsop County Clerk

After Recording, Return To:

Frank Forcell, Jr.
10700 SW Beaverton Hillsdale Hwy
Suite #414
Beaverton, Oregon 97005

Doc : 97005009
Rect: 178937 88.00
01/16/1997 03:06:09pm

TRANSACTION
TITLE INSURANCE W1557724 (12 2 1996)

RECIPROCAL EASEMENT AGREEMENT

DATE: December 27, 1996
PARTIES: Delta Inn, Inc., an Oregon Corporation
15075 SW Koll Parkway, Suite J
Beaverton, Oregon 97006

Garry L. LaPoint and Katherine M. LaPoint
10618 Crosby Road, N.E.
Woodburn, Oregon 97071

RECITALS:

The parties to this agreement intend to create: (a) permanent, mutual, reciprocal easements and a mutual right-of-way for use by them as a roadway for public and private use; and (b) a permanent sign easement appurtenant to, and for the benefit of the property described as Exhibit A. Such easements shall be appurtenant to and shall benefit all of the property described in Exhibits "A", "B" and "C" (the "Benefited Properties").

The parties also have the right upon request to create permanent easements for utility purposes within the easement area.

The parties therefore agree as follows:

AGREEMENTS:

SECTION 1. Grant of Easements; Establishment of Right of Way.

1.1 The parties hereby grant and convey to each other permanent, mutual reciprocal rights-of-way, over, across, and along the real property described in Exhibits

1-RECIPROCAL EASEMENT AGREEMENT

1-12

"A-1" and "B-1" (the "Easement Area"), attached hereto and incorporated herein by this reference. Such easements shall form a continuous right-of-way as described in Exhibits "A-1" and "B-1". Delta Inn, Inc., an Oregon corporation hereby grants to Garry L. LaPoint and Katherine M. LaPoint such easement rights respecting the property described in Exhibit "A-1", which shall be appurtenant to and benefit the properties described in Exhibits "B" and "C". Garry L. LaPoint and Katherine L. LaPoint reciprocally grants to Delta Inn, Inc., an Oregon corporation, such easement rights respecting the property described in Exhibit "B-1", which shall be appurtenant to and benefit the property described in Exhibit "A".

1.2 Such easements and right-of-way may be used for vehicular and pedestrian ingress and egress purposes to and from the Benefited Properties and for no other purposes whatsoever. Neither party shall have the right to park, load or unload any vehicle in the right-of-way, other than under emergency conditions. Use of the right-of-way shall be on a regular, continuous, non-exclusive, nonpriority basis, benefiting the parties, their successors, grantees, assigns, lessees, mortgagees, invitees, guests, customers, agents and employees. However, neither party's rights hereunder shall lapse in the event of that party's failure to use the easement and right-of-way on a continuous basis.

SECTION 2. Maintenance and Repair; Taxes and Insurance.

2.1 The cost of periodic maintenance and necessary repairs to the private roadway shall be borne exclusively by Delta Inn, Inc. as to the property described in attached Exhibit "A-1" and exclusively by Garry L. LaPoint and Katherine M. LaPoint as to the property described in attached Exhibit "B-1". Such maintenance and repairs shall be performed by the respective parties on a prompt, diligent and regular basis in accordance with the generally accepted street and road maintenance standards then existing under the laws of the City of Wilsonville and State of Oregon, including but not limited to prompt (i) patching or filling of damage to the pavement as needed, and/or (ii) resurfacing as needed.

2.2 Subject to paragraph 2.3 below, if a party fails to perform any such necessary maintenance and repairs as required, the other party, upon 15 days' prior written notice to the nonperforming party, may cause such work to be done with a right of reimbursement from the first party for all sums necessarily and properly expended to remedy such failure.

2.3 If the roadway becomes impassable or ingress or egress is impeded or curtailed because of a party's failure to maintain the roadway as required herein, the other party may demand by written notice that remedial work be performed immediately. If such work is not so performed the other party shall have the rights of self-help and reimbursement as provided in paragraph 2.2 above.

2-RECIPROCAL EASEMENT AGREEMENT

001493

SECTION 3. Additional Easements

3.1 Garry L. LaPoint and Katherine M. LaPoint hereby grant to Delta Inn, Inc. a permanent easement for signage purposes ten feet (10') in width over the northern ten foot (10') strip of land along and abutting the northern and northeastern boundary of the easement area described on Exhibit "B-1". This easement shall be appurtenant to and for the benefit of the property described in Exhibit "A". In addition to the foregoing, Delta Inn, Inc. shall also have an easement to run electrical lines over the signage easement area to serve the sign which may be constructed thereon.

Delta Inn, Inc. agrees that such right for signage shall be subject and subordinate to the rights of Garry and Katherine LaPoint to utilize the signage easement area for reasonable signage purposes benefiting their adjacent property. Garry and Katherine LaPoint agree to use good faith efforts in allowing Delta Inn, Inc. the right to construct, use and maintain signage on the signage easement area.

Delta Inn, Inc. (or its successors and assigns) shall, at its sole expense, construct and maintain any sign located on the sign easement area and any electrical lines serving such sign. Any sign constructed on the sign easement area shall at all times comply with all applicable, governmental laws, rules, regulations and ordinances.

3.2 Upon the request of either party, the other party shall grant to the requesting party (or its designee) such reasonable, additional permanent, non-exclusive, appurtenant easements under or within the Easement Area necessary for installing, repairing or maintaining water, gas, sewer, storm drainage, electrical or telephone lines and facilities servicing all or a portion of the property benefited by this agreement. In no event shall any such easement extend beyond the boundary of the Easement Area. The cost of all such installation, repair and maintenance shall be borne by the party requesting the grant of such easement (or its designee), unless the grantor of such easement shall also use such easement for similar purposes. If the grantor of the easements so uses the lines or facilities installed within such easement, the parties shall jointly share such costs.

3.3 No installation, repair or maintenance of any such utility line or facility shall curtail or unreasonably impede use of the private roadway for vehicular and pedestrian ingress and egress and shall be completed in a prompt and workmanlike manner.

SECTION 4. Condemnation; Dedication

4.1 In the event that the private roadway or any part thereof is taken by power of eminent domain, or is conveyed under threat of condemnation and such taking will render

3-RECIPROCAL EASEMENT AGREEMENT

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the private roadway unusable for normal, regular, two-way vehicular ingress and egress, this access easement shall terminate. If such taking does not render the private roadway so unusable, the obligations of a party whose portion of the roadway is taken shall be abated to the extent of such taking, but this agreement shall otherwise continue in full force and effect. To the extent any utility easements are created pursuant to Section 3, a party may elect to relocate such easements, at its sole expense within the Easement Area. Proceeds from any such condemnation shall belong exclusively to the fee title owner of the property so taken. In the event that the access easement created herein shall terminate due to condemnation, then the parties shall, in good faith, agree to negotiate for alternative access easements across each party's property, but only to the extent that other reasonable access to the other's property is not otherwise available.

4.2 If the parties are requested by an appropriate governmental jurisdiction to dedicate the private roadway for public use, or if one of the parties so requests such a dedication, each party shall promptly execute and deliver to such jurisdiction deeds conveying their respective portions of the roadway for such purposes.

SECTION 5. Breach of Obligations

In the event either party shall fail to perform its obligations under this agreement, the other party shall be entitled to require such performance by suit for specific performance or, where appropriate, through injunctive relief. Such remedies shall be in addition to any other remedies afforded under Oregon law and those rights of self-help and reimbursement specifically granted in paragraphs 2.2 and 2.3 of this agreement.

SECTION 6. Attorney Fees

In the event of any litigation arising under this agreement, the prevailing party shall recover from the losing party the prevailing party's reasonable attorney fees at trial or on appeal as adjudged by the trial or appellate court.

SECTION 7. Maintenance.

The parties shall maintain in good condition and repair, or cause to be maintained and kept in repair, the parking, driveways and other common areas situated on their respective properties. Such obligation shall, without limiting the generality thereof, include the following:

- A. Maintaining the surfaces at such grades and levels that they may be used and enjoyed as contiguous and homogeneous common areas and maintaining the surfaces in a level, smooth and evenly covered condition with the type of

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surface material originally installed or of similar quality, use and durability; and

B. Removing all papers, debris, snow, ice, filth and refuse and thoroughly sweeping the areas to the extent reasonably necessary to keep these areas in a neat, clean and orderly condition; and

C. Placing, keeping in repair, and replacing any necessary appropriate striping markers and lines; and operating, keeping in repair and replacing, when necessary, artificial lighting facilities as shall be reasonably required.

SECTION 8. Compliance with Laws and Regulations - Indemnities.

Each of the parties shall, with respect to their respective properties, comply with all laws, rules, regulations and requirements of all public authorities, and shall indemnify, defend and hold each other harmless against all claims, demands, loss, damage, liabilities and expenses and all suits, actions and judgments (including, but not limited to, costs and attorney fees) arising out of, or in any way related to, its failure to maintain their respective properties in a safe condition. Each party shall give prompt and timely notice of any claim made or suit or action commenced against another party which in any way would result in indemnification under this Reciprocal Easement Agreement.

SECTION 9. Tax Payments.

Each party shall keep current the payment of all real estate taxes and assessments on its respective property, subject only to the right to defer payments in a manner provided by law and/or in connection with a bonafide contest of such taxes or assessments, so long as the rights of the other party shall not be jeopardized by such deferral.

SECTION 10. Effect of The Agreement

The easements granted hereunder shall run with the land as to all property burdened and benefited by such easements, including any division or partition of such property. The rights, easements, covenants, liabilities and obligations contained in this agreement shall bind, burden and benefit each party's successors and assigns, lessees, mortgagees (or beneficiaries in a deed of trust).

Delta Inn, Inc.

By: 
Its: President

5-RECIPROCAL EASEMENT AGREEMENT

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Garry L. LaPoint

[Handwritten signature of Garry L. LaPoint]

Katherine M. LaPoint

[Handwritten signature of Katherine M. LaPoint]

Chevron U.S.A., Inc., A Pennsylvania Corporation, hereby consents to the above grants of easements and agrees that its lien on the Property described on the attached B and C is and shall always be subject to and subordinate to the Reciprocal Easement Agreement granted herein.

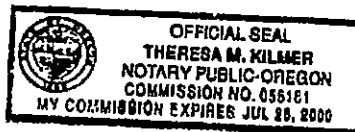
CHEVRON, U.S.A., INC.

By

[Handwritten signature]
Its: ASSISTANT SECRETARY

STATE OF OREGON)

County of Multnomah)ss.



The foregoing instrument was acknowledged before me this 27th day of December, 1996, by Sung Lee Kim, President of Delta Inn, Inc., an Oregon corporation, on behalf of the corporation.

[Handwritten signature of Theresa M. Kilmer]
NOTARY PUBLIC FOR OREGON
My Commission Expires: 7/25/00

STATE OF OREGON)

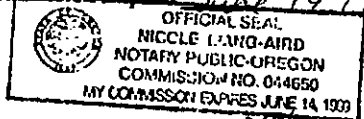
County of Clackamas)ss.

The foregoing instrument was acknowledged before me this 27th day of December, 1996, by Garry L. LaPoint.

[Handwritten signature of Nicole Liang-Aird]
NOTARY PUBLIC FOR OREGON
My Commission Expires: June 14 99

STATE OF OREGON)

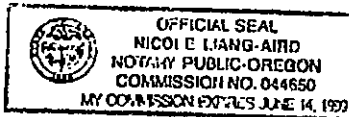
County of Clackamas)ss.



The foregoing instrument was acknowledged before me this 27th day of December, 1996, by Katherine M. LaPoint.

[Handwritten signature of Nicole Liang-Aird]

6-RECIPROCAL EASEMENT AGREEMENT



6

NOTARY PUBLIC FOR CALIFORNIA
My Commission Expires: 11-28-97

STATE OF CALIFORNIA)
)ss.
County of SAN FRANCISCO)

The foregoing instrument was acknowledged before me this 23rd day of December, 1996, by F.G. SOLER ASSISTANT SECRETARY of Chevron, U.S.A., Inc.



T.L. Kurpiski
NOTARY PUBLIC FOR
My Commission Expires: 11-28-97

Grantor's/Grantee's Name
and Address:

Delta Inn, Inc.
Sung Lee Kim, President
15075 SW Koll Parkway, Suite J
Beaverton, Oregon 97006

Grantee's/Grantor's Name
and Address:

Garry L. and Katherine M. LaPoint
10618 Crosby Road, N.E.
Woodburn, Oregon 97071

7-RECIPROCAL EASEMENT AGREEMENT

7

C O 1 A 9 7

DESCRIPTION:

Exhibit 'A' to Reciprocal Easement

3RD AMENDED LEGAL DESCRIPTION:

A portion of Lot 8, EDWARDS BUSINESS PARK NO. 2, a duly recorded subdivision in Washington County, Oregon located in the Southeast one-quarter of Section 2, Township 3 South, Range 1 West of the Willamette Meridian, in the City of Wilsonville, County of Washington and State of Oregon, said portion of Lot 8 being more particularly described as follows:

Beginning at a 2 inch iron pipe at the Initial Point of said EDWARDS BUSINESS PARK NO. 2, said Initial Point being on the Westerly line of SW Frontage Road, also known as Lower Boones Ferry Road, thence following the boundary of said Lot 8, along the arc of a 117.00 foot radius non-tangent curve left through a central angle of $15^{\circ}30'25''$, an arc distance of 31.67 feet (the chord of which bears South $22^{\circ}58'48''$ East, a distance of 31.57 feet) to a 5/8 inch iron rod (Plat Record: central angle, $15^{\circ}30'50''$; radius 117.00 feet; arc length 31.68 feet; chord; South $22^{\circ}56'17''$ East, a distance of 31.58 feet); thence South $30^{\circ}34'43''$ East a distance of 213.04 feet to a 5/8 inch iron rod (Plat Record; South $30^{\circ}34'26''$ East a distance of 212.92 feet); thence South $00^{\circ}05'07''$ East a distance of 130.27 feet to a 5/8 inch iron rod (Plat Record South $00^{\circ}07'50''$ East a distance of 130.27 feet); thence South $30^{\circ}06'16''$ East a distance of 136.08 feet to a 5/8 inch iron rod (Plat Record South $30^{\circ}03'30''$ East a distance of 136.04 feet); thence South $69^{\circ}37'27''$ West a distance of 13.17 feet to a 5/8 inch iron rod (Plat Record South $69^{\circ}56'30''$ West a distance of 13.10 feet); thence Southwesterly along the arc of a 243.00 foot radius curve right through a central angle of $29^{\circ}42'03''$ an arc distance of 125.97 feet to a 5/8 inch iron rod, (the chord of which bears South $74^{\circ}47'32''$ West a distance of 124.56 feet) (Plat Record: central angle $29^{\circ}42'03''$; radius 243.00 feet; arc length 125.97 feet; chord, South $74^{\circ}47'32''$ West, 124.56 feet); thence South $89^{\circ}38'33''$ West (Plat Record: South $89^{\circ}38'33''$ West) a distance of 410.16 feet (Survey Number 26, 398 Record, 410.17 feet) to a 5/8 inch iron rod at the intersection of the Southerly boundary of said Lot 8 and the Easterly right of way line of 95th Avenue; thence North $44^{\circ}12'00''$ West a distance of 50.04 feet to 5/8 inch iron rod 36.00 feet opposite and easterly of Engineers Centerline Station 66+46.00, when measured at right angles to the center line of 95th Avenue; thence North $00^{\circ}08'50''$ East a distance of 405.00 feet to a 5/8 inch rod 36.00 feet opposite and Easterly of Engineer's Centerline Station 70+50.00 when measured at right angle to the center line of 95th Avenue; thence North $89^{\circ}37'29''$ East a distance of 5.00 feet to a 5/8 inch iron rod 31.00 feet opposite and Easterly of said Engineer's Centerline Station 70+50.00, thence North $00^{\circ}08'50''$ East a distance of 58.91 feet to a 5/8 inch iron rod marking the intersection of the Easterly right of way line of 95th Avenue and the Northerly boundary of said Lot 8; thence leaving the Easterly right of way line of 95th Avenue and following the Northerly line of said Lot 8 North $89^{\circ}37'29''$ East (Plat Record bearing North $89^{\circ}38'33''$ East) a distance of 391.26 feet to the 2 inch iron pipe marking the Initial Point of said EDWARDS BUSINESS PARK NO. 2 and the point of beginning of this described tract of land.

December 23, 1996

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EXHIBIT "A-1"

**Easement Description
95th Avenue Access
(Over Lot 8, Edwards Business Park No. 2)**

A tract of land located in Lot 8, EDWARDS BUSINESS INDUSTRIAL PARK No. 2 as recorded in Book 43, Page 11, Washington County, Oregon Plat Records, being situated in the Southeast one-quarter (SE 1/4) of Section 2, Township 3 South, Range 1 West of the Willamette Meridian, Washington County, Oregon; said tract of land is more particularly described as follows:

Beginning at a 2 inch iron pipe marking the Initial Point of said EDWARDS BUSINESS INDUSTRIAL PARK; thence South 89 degrees 37' 29" West (Plat Record Bearing South 89 degrees 38' 33" West) along the Northerly boundary of said Lot 8, 391.26 feet to a point marking the intersection of the Northerly line of said Lot 8 and the Easterly line of 95th Avenue as acquired by the State of Oregon and the TRUE POINT OF BEGINNING of this described tract of land; thence South 00 degrees 08' 50" West along said Easterly right-of-way line 17.00 feet; thence South 89 degrees 51' 10" East leaving said Easterly right-of-way line, 51.00 feet; thence North 55 degrees 53' 45" East, 31.45 feet to a point on Northerly line of said Lot 8; thence South 89 degrees 37' 29" West along the Northerly line of said Lot 8, 77.00 feet to the TRUE POINT OF BEGINNING, containing 1106 square feet.

EXHIBIT "B"

TL 300 Legal Description
Remainder of Lot 7, EXCEPT the South 100'
EDWARDS BUSINESS INDUSTRIAL PARK

A parcel of land located in Lot 7 "EDWARDS BUSINESS INDUSTRIAL PARK" in the South one-half of Section 2, Township 3 South, Range 1 West, of the Willamette Meridian, in the County of Washington and State of Oregon, being further described as follows:

Commencing at the Southeast corner of said Lot 7; thence South $89^{\circ}38'33''$ West, along the South line of said lot, a distance of 391.33 feet to the East line of that deed for road purposes from John Q. Hammone to the State of Oregon, by and through its Department of Transportation (herein after referred to as "ODOT"); thence North $00^{\circ}09'24''$ East, along said "ODOT" Deed, a distance of 100.00 feet to a point 100.00 feet North of, when measured at right angles to, the South line of said Lot 7, and the true point of beginning; thence continuing North $00^{\circ}09'24''$ East, along said "ODOT" Deed, a distance of 259.27 feet; thence continuing along said "ODOT" deed, along the arc of a curve to the right, said curve having a radius of 128.16 feet, arc length of 140.62 feet, central angle of $082^{\circ}51'50''$, a chord bearing of North $31^{\circ}35'19''$ East, and a chord length of 133.67 feet to the intersection with the South line of S.W. Commerce Circle as dedicated in the Plat of "EDWARDS BUSINESS INDUSTRIAL PARK"; thence non-tangent North $70^{\circ}34'24''$ East, along said street, a distance of 20.97 feet, and along the arc of a curve to the right, said curve having a radius of 25.00 feet, arc length of 32.72 feet, central angle of $074^{\circ}59'06''$, a chord bearing of South $71^{\circ}56'03''$ East, and a chord length of 30.43 feet to the intersection with the West line of Boones Ferry Road as described in said "ODOT" Deed; thence along said "ODOT" Deed, along the arc of a non-tangent curve to the left, said curve having a radius of 1,001.93 feet, arc length of 12.00 feet, central angle of $000^{\circ}41'10''$, a chord bearing of South $24^{\circ}13'24''$ East, and a chord length of 12.00 feet to the intersection with the East line of said Lot 7; thence along the East line of said Lot 7, along the arc of a non-tangent curve to the left, said curve having a radius of 350.00 feet, arc length of 85.44 feet, central angle of $009^{\circ}13'06''$, a chord bearing of South $25^{\circ}08'24''$ East, and a chord length of 85.36 feet to Westerly line of Boones Ferry Road as described in said "ODOT" Deed; thence non-tangent, along said Westerly line South $16^{\circ}09'35''$ West, a distance of 83.41 feet, South $38^{\circ}02'13''$ East, a distance of 200.44 feet, North $46^{\circ}33'47''$ East, a distance of 48.10 feet, South $40^{\circ}56'40''$ East, a distance 81.06 feet, and along the arc of a non-tangent curve to the right, said curve having a radius of 2,837.79 feet, arc length of 17.49 feet, central angle of $00^{\circ}21'11''$, a chord bearing of South $38^{\circ}36'45''$ East, and a chord length of 17.49 feet, to a point 100.00 feet North of, when measured at right angles to, the South line of said Lot 7; thence South $89^{\circ}38'33''$ West, parallel with said South line 361.28 feet to the true point of beginning. The above described parcel contains 69,894 square feet or 1.605 acres.

December 27, 1996

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EXHIBIT "B-1"

**Easement Description
95th Avenue Access
(Over Lot 7, Edwards Business Park)**

A tract of land located in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK as recorded in Book 38, Page 14, Washington County, Oregon Plat Records, being situated in the Southeast one-quarter (SE 1/4) of Section 2, Township 3 South, Range 1 West of the Willamette Meridian, Washington County, Oregon; said tract of land is more particularly described as follows:

Beginning at a 2 inch iron pipe marking the Initial Point of said EDWARDS BUSINESS INDUSTRIAL PARK; thence South $89^{\circ}37'29''$ West (Plat Record Bearing South $89^{\circ}38'33''$ West) along the Southerly boundary of said Lot 7, a distance of 391.26 feet to a point marking the intersection of the Southerly line of said Lot 7 and the Easterly line of 95th Avenue as acquired by the State of Oregon and the true point of beginning of this described tract of land; thence North $00^{\circ}08'50''$ East along said Easterly line, 20.00 feet; thence South $89^{\circ}51'10''$ East leaving said Easterly right-of-way, 51.00 feet; thence South $53^{\circ}16'00''$ East, 32.38 feet to a point of the Southerly line of said Lot 7; thence South $89^{\circ}37'29''$ West along the Southerly line of said Lot 7, a distance of 77.00 feet to the true point of beginning.

December 23, 1996

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EXHIBIT "C"

**TL 400 Legal Description
South 100' of Remainder of Lot 7
EDWARDS BUSINESS INDUSTRIAL PARK**

A parcel of land located in Lot 7 "EDWARDS BUSINESS INDUSTRIAL PARK" in the South one-half of Section 2, Township 3 South, Range 1 West, of the Willamette Meridian, in the County of Washington and State of Oregon being further described as follows:

Beginning at the Southeast corner of said Lot 7; thence South $89^{\circ}38'33''$ West, along the South line of said lot, a distance of 391.33 feet to the East line of that deed for road purposes from John Q. Hammons to the State of Oregon, by and through its Department of Transportation (herein after referred to as "ODOT"); thence North $00^{\circ}09'24''$ East, along said "ODOT" Deed, a distance of 100.00 feet to a point 100.00 feet North of, when measured at right angles to, the South line of said Lot 7; thence North $89^{\circ}38'33''$ East parallel with the South line of said Lot 7, a distance of 361.28 feet to the intersection with the West line of Boones Ferry Road as described in said "ODOT" Deed; thence along said "ODOT" Deed, along the arc of a non-tangent curve to the right, said curve having a radius of 2,837.79 feet, arc length of 48.51 feet, central angle of $00^{\circ}58'48''$, a chord bearing of South $37^{\circ}56'47''$ East, and a chord length of 48.51 feet, to the East line of said Lot 7; thence along the arc of a curve to the left, said curve having a radius of 116.96 feet, arc length of 62.30 feet, central angle of $030^{\circ}31'07''$, a chord bearing of South $00^{\circ}03'01''$ West, and a chord length of 61.56 feet to the true point of beginning. The above described parcel contains 38,383 square feet or 0.881 acres.

December 27, 1996

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Washington County, Oregon 2002-051321

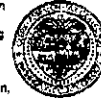
04/30/2002 03:00:20 PM
D-E Cnt#1 Str#7 D HOFFMAN
\$40.00 \$6.00 \$11.00 - Total=\$57.00



00093872200200513210080083

I, Jerry Hanson, Director of Assessment and Taxation and Ex-Officio County Clerk for Washington County, do hereby certify that the within instrument of writing was received and recorded in the book of records of said county.

Jerry Hanson
Jerry R. Hanson, Director of Assessment and Taxation, Ex-Officio County Clerk



AFTER RECORDING RETURN TO:

BRICE INVESTMENT REALTY
9450 SW COMMERCE CIRGLE #111
WILSONVILLE, OR 97070

40
116

Recorded By Ticor Title
Courtesy Only. Not Examined

COMMON INGRESS & EGRESS EASEMENT

KNOW ALL MEN BY THESE PRESENTS, that Exxon of Wilsonville, L.L.C., an Oregon Limited Liability Company, hereinafter referred to as "The Party of the First Part", and South Sea, L.L.C., an Oregon Limited Liability Company, hereinafter referred to as "The Party of the Second Part", both parties as grantors, their heirs, successors and assigns, do hereby grant a non-exclusive reciprocal easement for the purpose of pedestrian and vehicular ingress and egress, upon, over and across the following described tracts of land, more particularly described in Exhibits "A" and "B" and shown on Exhibits "C" and "D", said easement being more particularly described in Exhibit "E" and shown on Exhibit "F", attached hereto and thereby made a part thereof, to wit:

SEE ATTACHED EXHIBITS

And as said parcels of real estate adjoin each other; and said grantors', in consideration of the mutual promises of the parties each to the other contained herein and the mutual benefits to each flowing therefrom, do covenant and agree with other that they shall grant each other mutual ingress and egress rights to each other's land as herein without restriction, except as noted.

The location of the subject Mutual Perpetual Reciprocal Ingress and Egress Easement is as shown on the attached diagram, Exhibit F:

This reciprocal easement is subject to the following conditions:

1. Ingress to this easement shall be without restriction to either party hereto.
2. All owners shall keep the easement free and clear for vehicular and pedestrian access at all times. No parking will be allowed within the easement, nor shall any item or thing be allowed that would obstruct or impede emergency vehicle access.
3. The cost of construction and future roadway repairs, shall be apportioned equally among the affected owners, based on parcel area. Said improvements shall be jointly agreed upon prior to construction. In the event of any owner of the above described properties damages said roadway access, by excessive use or by construction or improvement of the real property to which the easement applies, it shall be the obligation of said owner to repair the same, within 5 calendar days of the damage, unless otherwise agreed by all parties concerned.

The obligations and benefits of this agreement run with the land and are binding upon the owners herein above noted and shall apply to the parties' heirs, successors and assigns. Damages as may arise from misuse by parties to this agreement shall be recoverable in a court of law under due process.

It is understood and agreed upon that this agreement, as written, covers all agreements and stipulations between the parties and that no statements or representations, oral or written, have been made modifying, adding to or changing the terms of this agreement.



2002-51321

"EXHIBIT A"

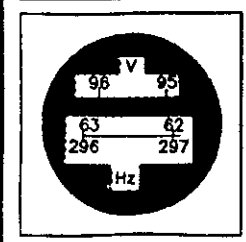
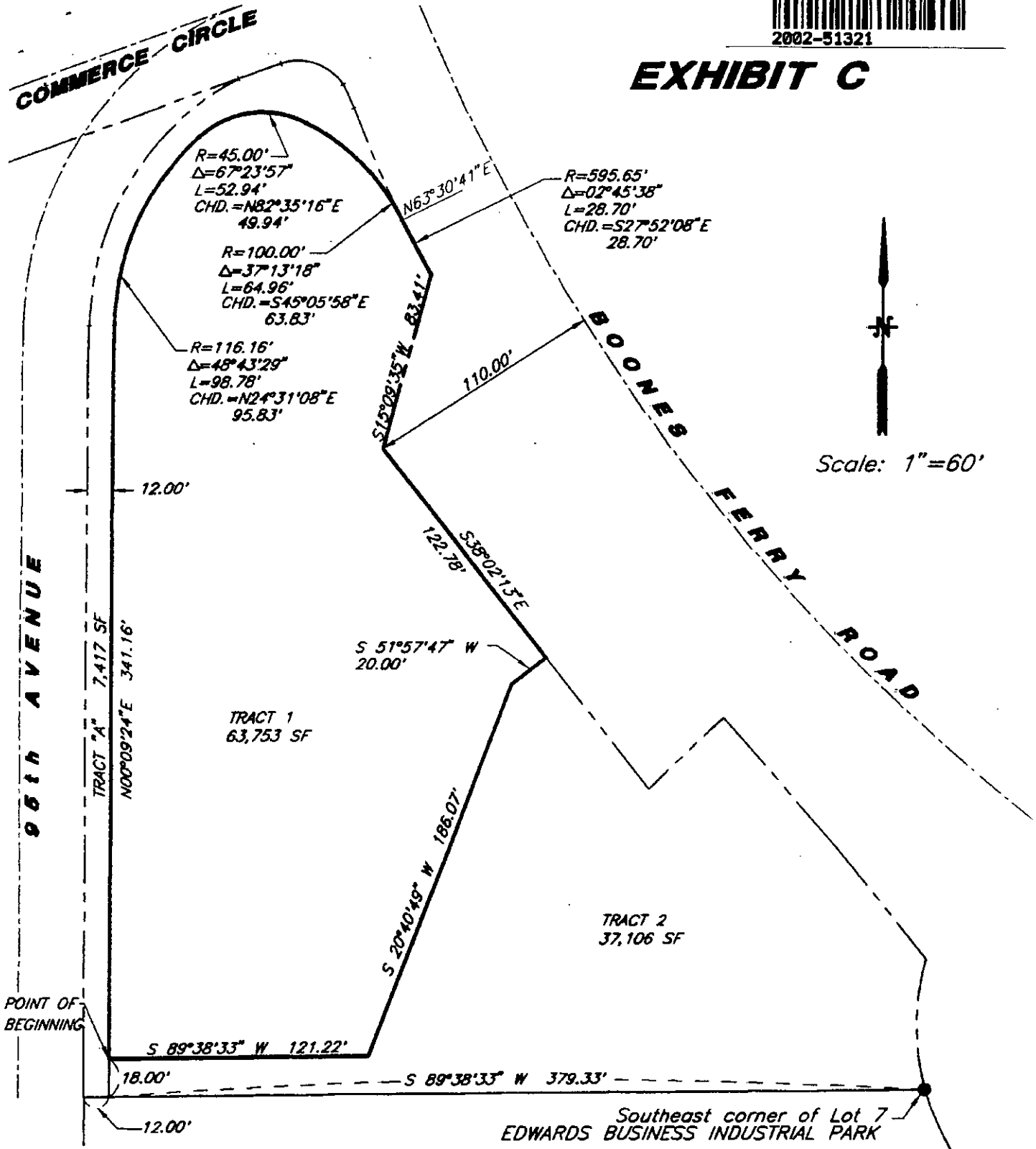
TRACT 1: A tract of land located in Lot 7, "Edwards Business Industrial Park" in the Southeast one-quarter of Section 2, Township 3 South, Range 1 West, Willamette Meridian, in the City of Wilsonville, County of Washington and State of Oregon, being further described as follows:

Commencing at the Southeast corner of said Lot 7 "Edwards Business Industrial Park" recorded in Book 31 at Page 14 in the Plat Records of Washington County, Oregon; thence South $89^{\circ}38'33''$ West, along the South line of said Lot 7, a distance of 379.33 feet to a point 12.00 feet East of the East line of Parcel 1 as described in the deed from John Q. Hammons to the State of Oregon, by and through its Department of Transportation, Document Number 95027726, recorded April 21, 1995 (herein after referred to as "ODOT"); thence North $00^{\circ}09'24''$ East parallel to said East line, 18.00 feet to the TRUE POINT OF BEGINNING; thence continuing North $00^{\circ}09'24''$ East along said easterly line, 341.16 feet; thence along the arc of a 116.16 foot radius curve to the right, through a central angle of $48^{\circ}43'29''$, an arc length of 98.78 feet, the chord of which bears North $24^{\circ}31'08''$ East, 95.83 feet; thence along the arc of a 45.00 foot radius curve to the right, through a central angle of $67^{\circ}23'57''$; an arc length of 52.94 feet, the chord of which bears North $82^{\circ}35'16''$ East, 49.94 feet; thence along the arc of a 100.00 foot radius curve to the right, through a central angle of $37^{\circ}13'18''$, an arc length of 64.96 feet, the chord of which bears South $45^{\circ}05'58''$ East, 63.83 feet to a point on the westerly line of Boones Ferry Road as described in said "ODOT" Deed; thence along the said westerly line along the arc of a tangent 595.65 foot radius reverse curve to the left, the radius bears North $63^{\circ}30'41''$ East, through a central angle of $02^{\circ}45'38''$, an arc length of 28.70 feet, the chord of which bears South $27^{\circ}52'08''$ East, 28.70 feet; thence non-tangent South $15^{\circ}09'35''$ West, 83.41 feet; thence South $38^{\circ}02'13''$ East, 122.78 feet; thence leaving said westerly line, South $51^{\circ}57'47''$ West, 20.00 feet; thence South $20^{\circ}40'49''$ West, 186.07 feet to a point that is 18.00 feet measured at right angles from the South line of said Lot 7; thence parallel to said South line of Lot 7, South $89^{\circ}38'33''$ West, 121.22 feet to the TRUE POINT OF BEGINNING, containing 63,753 square feet or 1.46 acres, more or less.



2002-51321

EXHIBIT C



DE HAAS
&
Associates, Inc.
Consulting Engineers & Surveyors

Suite 300 - AGC Center
9450 S.W. Commerce Circle
Wilsonville, Oregon 97070

PHONE: (503) 682-2450
FAX: 682-4018

Tract 1	
DATE	June 7, 2000
FILE No.	97.940.902



"EXHIBIT B"

TRACT 2: A tract of land located in Lot 7, "Edwards Business Industrial Park" in the Southeast one-quarter of Section 2, Township 3 South, Range 1 West, Willamette Meridian, in the City of Wilsonville in the County of Washington and State of Oregon, being further described as follows:

Beginning at the Southeast corner of said Lot 7 "Edwards Business Industrial Park" recorded in Book 31 at Page 14 in the Plat Records of Washington County, Oregon, the TRUE POINT OF BEGINNING; thence South $89^{\circ}38'33''$ West, along the South line of said Lot 7, a distance of 379.33 feet to a point 12.00 feet East of the East line of Parcel 1 as described in the deed from John Q. Hammons to the State of Oregon, by and through its Department of Transportation, Document Number 95027726, recorded April 21, 1995 (herein after referred to as "ODOT"); thence North $00^{\circ}09'24''$ East parallel to said East line of Parcel 1, 18.00 feet; thence North $89^{\circ}38'33''$ East parallel to said South line, 121.22 feet; thence North $20^{\circ}40'49''$ East, 186.07 feet; thence North $51^{\circ}57'47''$ East, 20.00 feet to the westerly line of Boones Ferry Road as described in said Hammons to "ODOT" deed; thence along said westerly line South $38^{\circ}02'13''$ East, 77.66 feet; thence North $46^{\circ}33'47''$ East, 48.10 feet; thence South $40^{\circ}56'40''$ East, 81.06 feet; thence along the arc of a 2,837.79 foot radius non-tangent curve to the right, said curve having a radial bearing of South $51^{\circ}12'39''$ West, a central angle of $01^{\circ}19'57''$, an arc length of 66.00 feet, the chord of which bears South $38^{\circ}07'22''$ East, 66.00 feet; thence along the arc of a 116.96 foot radius non-tangent curve to the left, said curve having a radial bearing of South $74^{\circ}41'25''$ East, through a central angle of $30^{\circ}31'07''$, an arc length of 62.30 feet, the chord of which bears South $00^{\circ}03'01''$ West, 61.56 feet more or less to the TRUE POINT OF BEGINNING, containing an area of 37,106 square feet, or 0.85 acres, more or less.



2002-51321

EXHIBIT D

COMMERCE CIRCLE

95th AVENUE

BOONES FERRY ROAD

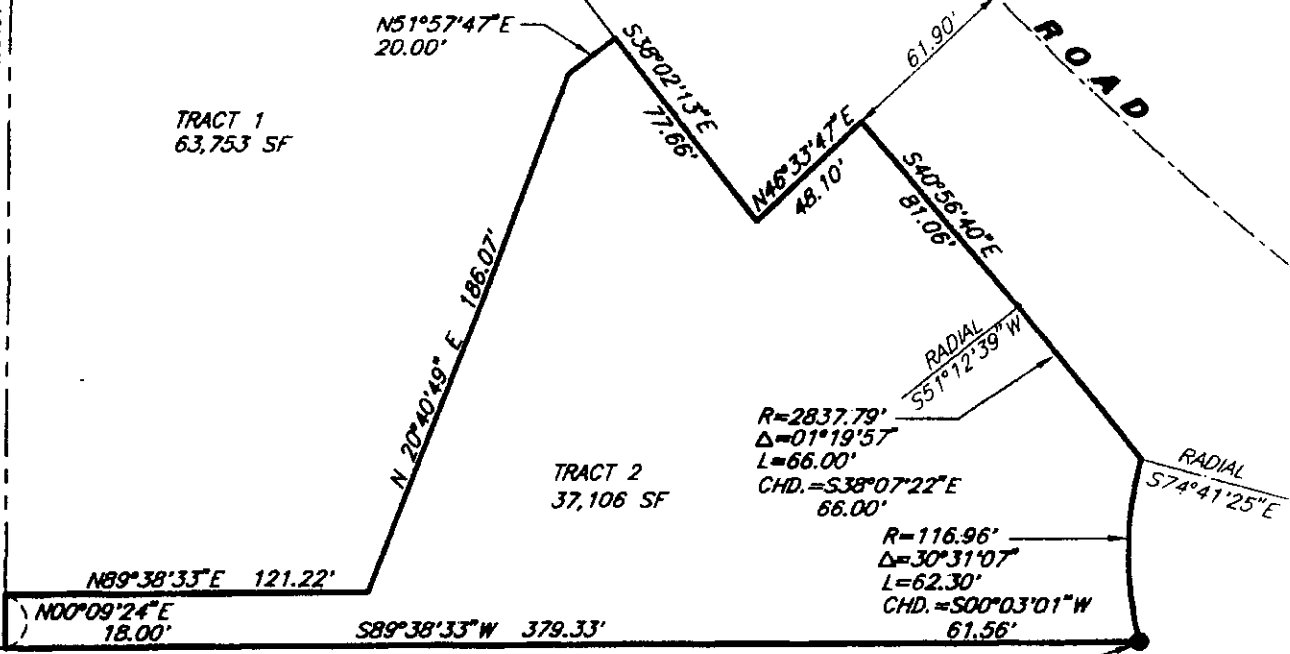


Scale: 1"=60'

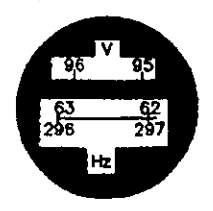
TRACT "A" 7,417 SF

TRACT 1
63,753 SF

TRACT 2
37,106 SF



POINT OF BEGINNING
Southeast corner of Lot 7
EDWARDS BUSINESS INDUSTRIAL PARK



DE HAAS & Associates, Inc.

Consulting Engineers & Surveyors

Suite 300 - AGC Center
9450 S.W. Commerce Circle
Wilsonville, Oregon 97070

PHONE: (503) 682-2450
FAX: 682-4018

Tract 2
DATE June 7, 2000
FILE No. 97.940.902



2002-51321

EXHIBIT E

COMMON INGRESS & EGRESS EASEMENT

A common Ingress and Egress Easement between Tract 1 and Tract 2 located in Lot 7, "Edwards Business Industrial Park" in the South one-half of Section 2, Township 3 South, Range 1 West, Willamette Meridian, in the County of Washington and State of Oregon, being further described as follows:

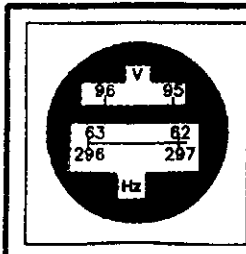
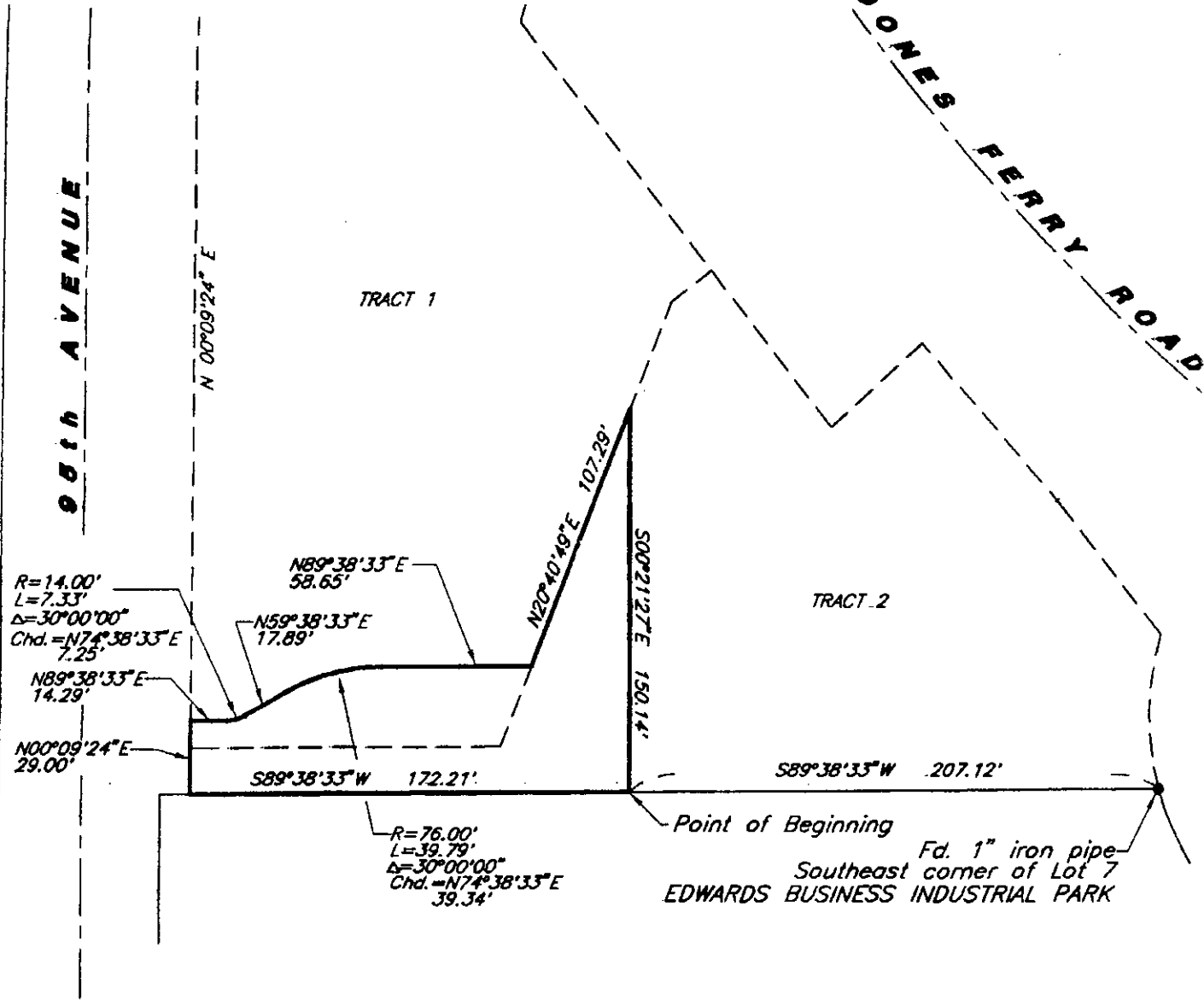
Commencing at the Southeast corner of Lot 7 of "Edwards Business Industrial Park"; thence South $89^{\circ}38'33''$ West, along the South line of said lot a distance of 207.12 feet to the POINT OF BEGINNING; thence continuing along said South line South $89^{\circ}38'33''$ West, 172.21 feet to a point 12.00 feet East of the East line of Parcel 1 as described in the Deed from John Q. Hammons to the State of Oregon, by and through its Department of Transportation in document Number 95027726, recorded April 21, 1995; thence North $00^{\circ}09'24''$ East, parallel to said East line 29.00 feet; thence North $89^{\circ}38'33''$ East, 14.29 feet; thence along the arc of a curve to the left, said curve having a radius of 14.00 feet, through a central angle of $30^{\circ}00'00''$ (the chord of which bears North $74^{\circ}38'33''$ East, 7.25 feet), a distance of 7.33 feet; thence North $59^{\circ}38'33''$ East, 17.89 feet; thence along the arc of a curve to the right, having a radius of 76.00 feet; through a central angle of $30^{\circ}00'00''$, (the chord of which bears North $74^{\circ}38'33''$ East, 39.34 feet), a distance of 39.79 feet; thence North $89^{\circ}38'33''$ East, 58.65 feet; thence North $20^{\circ}40'49''$ East, 107.29 feet; thence South $00^{\circ}21'27''$ East, 150.14 feet, more or less, to the POINT OF BEGINNING.

940ease6.J14



2002-51321

EXHIBIT F



DE HAAS
 &
ssociates, Inc.
 Consulting Engineers & Surveyors

Suite 300 - AGC Center
 9450 S.W. Commerce Circle
 Wilsonville, Oregon 97070

PHONE: (503) 682-2450
 FAX: 682-4018

COMMON INGRESS & EGRESS EASEMENT	
DATE	June 7, 2000
FILE No.	97.940.902

55
31

Washington County, Oregon 2013-097514
11/12/2013 11:41:50 AM
D-E Cnt=1 Stn=12 S PFETPER
\$55.00 \$5.00 \$11.00 \$15.00 - Total = \$86.00



01894749201300975140110117

I, Richard Hobernicht, Director of Assessment and Taxation and Ex-Officio County Clerk for Washington County, Oregon, do hereby certify that the within instrument of writing was received and recorded in the book of records of said county.
Richard Hobernicht, Director of Assessment and Taxation, Ex-Officio County Clerk



**Recorded At The Request Of
And When Recorded Mail To:**

George J. Gregores
Holland & Knight LLP
111 SW Fifth Ave, Suite 2300
Portland, OR 97204

AMENDMENT TO EASEMENT AGREEMENT

Date: October 24, 2013
Among: **WILSONVILLE DEVCO, LLC**
an Oregon limited liability company ("Wilsonville Devco")
And: **LAPPOINT BUSINESS GROUP, LLC**
an Oregon limited liability company ("LaPoint")

RECITALS

- A.** Wilsonville Devco is the owner of the real property legally described in attached Exhibit A (the "Wilsonville Devco Property").
- B.** LaPoint is the owner of the real property legally described in attached Exhibit B (the "LaPoint Property").
- C.** Exxon of Wilsonville, L.L.C., an Oregon limited liability company, predecessor in interest to La Point as a previous owner of the LaPoint Property, and South Sea, L.L.C., an Oregon limited liability company, predecessor in interest to Wilsonville Devco as a previous owner of the Wilsonville Devco Property, executed and recorded a Common Ingress and Egress Easement on April 30, 2002 at Recorder No. 2002-051321, Official Records of Washington County, Oregon (the "Prior Agreement").
- D.** Wilsonville Devco and LaPoint wish to amend the Prior Agreement in accordance with the terms of this Agreement, including vacating a portion of Wilsonville Devco's easement over the LaPoint Property, which area to be vacated is described in attached Exhibit C (the "Old Easement Area"), in exchange for the parties granting to each other a reciprocal cross-easement over the easement area described in attached Exhibit D (the "New Easement Area").

AGREEMENT

For valuable consideration, the receipt and sufficiency of which is hereby mutually acknowledged, Wilsonville Devco and LaPoint agree as follows:

1. **Vacation of Old Easement Area.** The Old Easement Area described in attached Exhibit C is hereby vacated and deleted from the Prior Agreement.

2. **Grant of Reciprocal Cross-Easement.** The parties hereby grant and convey to each other a permanent, mutual, reciprocal easement on, over, across and along the New Easement Area described on attached Exhibit D. A description of the New Easement Area and its relation to the Wilsonville Devco Property and the LaPoint Property is illustrated on attached Exhibit E. The New Easement Area is to be used principally for curb cuts between the Wilsonville Devco Property and the LaPoint Property, vehicular ingress and egress in connection therewith, and LaPoint's access to its trash enclosure on the Wilsonville Devco Property.

3. **Maintenance and Repairs.** Any maintenance and necessary repair of the pavement located on the New Easement Area, as determined necessary by Wilsonville Devco in its sole and absolute discretion, shall be paid for by Wilsonville Devco.

4. **Term.** The New Easement Area contained in this Agreement shall be effective commencing on the date of recordation of this Agreement in the Official Records of Washington County, Oregon, and shall remain in full force and effect thereafter, unless amended or terminated in accordance with Section 5 hereinafter.

5. **Modification.** This Agreement may only be modified, amended, revised or terminated by written instrument signed by Wilsonville Devco and LaPoint, or their respective successor(s) as the case may be.

6. **Indemnification.** Each party hereto agrees to defend, indemnify, and hold harmless the other party from and against any and all losses, claims, demands, or other liabilities whatsoever arising out of said party's own use of the roadway, or use by said party's successors, assigns, lessees, invitees, guests, tenants, customers, agents and employees.

7. **Attorney Fees.** In the event of any litigation arising under this Agreement, the prevailing party shall recover from the other reasonable attorney fees as determined by the trial or appellate court, as the case may be.

8. **Dispute Resolution.** Any controversy, dispute or question arising out of this Agreement shall be submitted to arbitration before a single arbitrator in Washington County, Oregon. Each party shall bear its own costs in any such proceeding. The decision of the arbitrator shall be final and binding upon the parties and may be enforced in any court of competent jurisdiction. To the fullest extent permitted by law, the parties irrevocably submit to the jurisdiction of such forum, and waive any objections they may have to either the jurisdiction or venue of such forum. Nothing contained herein shall in any way deprive either party of their right to obtain injunction or other equitable relief.

9. **Governing Law.** This Agreement shall be governed by, and construed and enforced in accordance with the laws of Oregon.

10. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument. Signature and

acknowledgment pages may be detached from the counterparts and attached to a single copy of this Agreement to physically form one document, which will be recorded in the Official Records of Washington County, Oregon.

11. Binding Effect. The terms of this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

[Signature Page Follows]

In Witness Whereof, the parties have executed this Agreement as of the date first written above.

WILSONVILLE DEVCO, LLC,
an Oregon limited liability company

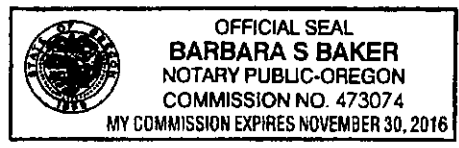
LAPOINT BUSINESS GROUP, LLC,
an Oregon limited liability company

By: [Signature]
Name: Josh Veentjer
Title: Managing member

By: _____
Name: _____
Title: _____

STATE OF OREGON)
) ss
County of Clackamas)

This instrument was acknowledged before me on October 24, 2013 by Joshua Veentjer as Managing Member of Wilsonville Devco, LLC.



Barbara S. Baker
Notary Public - State of Oregon

STATE OF OREGON)
) ss
County of _____)

This instrument was acknowledged before me on _____, 2013 by _____ as _____ of LaPoint Business Group, LLC.

Notary Public - State of Oregon

Exhibit A

**Legal Description of
Wilsonville Devco Property**

A tract of land located in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, in the Southeast one-quarter of Section 2, Township 3 South, Range 1 West of the Willamette Meridian, in the City of Wilsonville, County of Washington and State of Oregon, being further described as follows:

Commencing at the Southeast corner of Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, recorded in Book 31 at Page 14 in the Plat Records of Washington County, Oregon; thence South 89°38'33" West, along the South line of said Lot 7, a distance of 379.33 feet to a point 12.00 feet East of the East line of Parcel I as described in Deed from John Q. Hammons to the State of Oregon, by and through its Department of Transportation, Document No. 95-027726, recorded April 21, 1995 (hereinafter referred to as "ODOT"); thence North 00°09'24" East parallel to said East line, 18.00 feet to the true point of beginning; thence continuing North 00°09'24" East along said Easterly line, 341.16 feet; thence along the arc of a 116.16 foot radius curve to the right, through a central angle of 48°43'29", an arc length of 98.78 feet, the chord of which bears North 24°31'08" East, 95.83 feet; thence along the arc of a 45.00 foot radius curve to the right, through a central angle of 67°23'57", an arc length of 52.94 feet, the chord of which bears North 82°35'16" East 49.94 feet; thence along the arc of a 100.00 foot radius curve to the right, through a central angle of 37°13'18", an arc length of 64.96 feet, the chord of which bears South 45°05'58" East, 63.83 feet to a point on the Westerly line of Boones Ferry Road as described in said "ODOT" Deed; thence along the said Westerly line along the arc of a tangent 595.65 foot radius reverse curve to the left, the radius bears North 63°30'41" East, through a central angle of 02°45'38", an arc length of 28.70 feet, the chord of which bears South 27°52'08" East 28.70 feet; thence non-tangent South 15°09'35" West 83.41 feet; thence South 38°02'13" East, 122.78 feet; thence leaving said Westerly line, South 51°57'47" West, 20.00 feet; thence South 20°40'49" West, 186.07 feet to a point that is 18.00 feet measured at right angles from the South line of said Lot 7; thence parallel to said South line of Lot 7, South 89°38'33" West 121.22 feet to the true point of beginning.

EXCEPTING THEREFROM that portion thereof conveyed to the City of Wilsonville for right-of-way purposes in Warranty Deed recorded November 23, 2009 as Fee No. 2009-102082, Washington County Deed Records,

Exhibit B

**Legal Description of
LaPoint Property**

TRACT 2: A tract of land located in Lot 7, "Edwards Business Industrial Park" in the Southeast one-quarter of Section 2, Township 3 South, Range 1 West, Willamette Meridian, in the City of Wilsonville in the County of Washington and State of Oregon, being further described as follows:

Beginning at the Southeast corner of said Lot 7 "Edwards Business Industrial Park" recorded in Book 31 at Page 14 in the Plat Records of Washington County, Oregon, the TRUE POINT OF BEGINNING; thence South $89^{\circ}38'33''$ West, along the South line of said Lot 7, a distance of 379.33 feet to a point 12.00 feet East of the East line of Parcel 1 as described in the deed from John Q. Hammons to the State of Oregon, by and through its Department of Transportation, Document Number 95027726, recorded April 21, 1995 (herein after referred to as "ODOT"); thence North $00^{\circ}09'24''$ East parallel to said East line of Parcel 1, 18.00 feet; thence North $89^{\circ}38'33''$ East parallel to said South line, 121.22 feet; thence North $20^{\circ}40'49''$ East, 186.07 feet; thence North $51^{\circ}57'47''$ East, 20.00 feet to the westerly line of Boones Ferry Road as described in said Hammons to "ODOT" deed; thence along said westerly line South $38^{\circ}02'13''$ East, 77.66 feet; thence North $46^{\circ}33'47''$ East, 48.10 feet; thence South $40^{\circ}56'40''$ East, 81.06 feet; thence along the arc of a 2,837.79 foot radius non-tangent curve to the right, said curve having a radial bearing of South $51^{\circ}12'39''$ West, a central angle of $01^{\circ}19'57''$, an arc length of 66.00 feet, the chord of which bears South $38^{\circ}07'22''$ East, 66.00 feet; thence along the arc of a 116.96 foot radius non-tangent curve to the left, said curve having a radial bearing of South $74^{\circ}41'25''$ East, through a central angle of $30^{\circ}31'07''$, an arc length of 62.30 feet, the chord of which bears South $00^{\circ}03'01''$ West, 61.56 feet more or less to the TRUE POINT OF BEGINNING, containing an area of 37,106 square feet, or 0.85 acres, more or less.

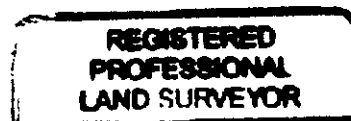
Exhibit C
Old Easement Area

September 24, 2013
NWS Project No. 787
Vacated Easement

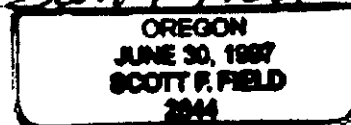
A tract of land being a portion of that Common Ingress & Egress Easement described in Document No. 2002-051321, Deed Records of Washington County, Oregon, said tract of land being located in the southeast one-quarter of Section 2, Township 3 South, Range 1 West, Willamette Meridian, City of Wilsonville, Washington County, Oregon, being more particularly described as follows:

Commencing at the southeast corner of Lot 7, Edwards Business Industrial Park, thence along the south line of said Lot 7, South 89°38'33" West a distance of 207.12 feet to the southeast corner of said Common Ingress & Egress Easement and the Point of Beginning; thence along the most easterly line of said easement, North 00°21'27" West a distance of 150.29 feet to the most northerly corner thereof, said point being on the easterly boundary of that property conveyed to Wilsonville Devco, LLC by deed recorded May 24, 2012 as Document No. 2012-042053, Deed Records of Washington County, Oregon; thence along the easterly boundary of said Wilsonville Devco, LLC property, South 20°40'49" West a distance of 59.48 feet to a point; thence departing said easterly boundary, South 00°09'24" West a distance of 94.77 feet to a point on the south line of said Lot 7; thence along the south line of said Lot 7, North 89°38'33" East a distance of 22.20 feet to the Point of Beginning.

Said described tract of land contains 2,657 square feet, more or less.



Scott F. Field



RENEW: 12/31/2013

Exhibit C (continued)

EXHIBIT MAP - VACATED EASEMENT

LOCATED IN THE SE 1/4 OF SECTION 2, T. 3 S., R. 1 W.,
W.M., CITY OF WILSONVILLE, WASHINGTON COUNTY, OREGON
SEPTEMBER 24, 2013

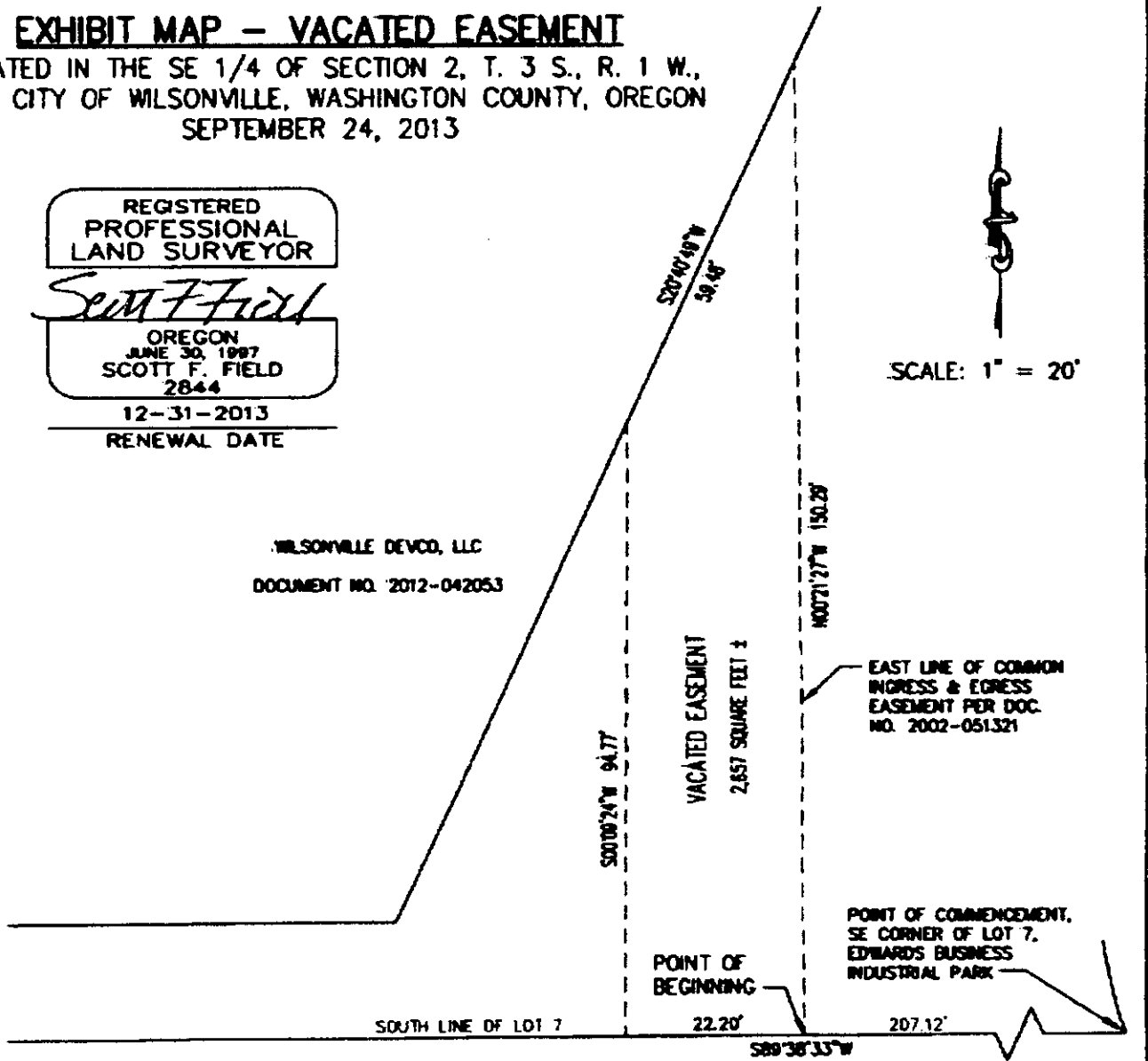
REGISTERED
PROFESSIONAL
LAND SURVEYOR

Scott F. Field

OREGON
JUNE 30, 1997
SCOTT F. FIELD
2844

12-31-2013
RENEWAL DATE

WILSONVILLE DEVCO, LLC
DOCUMENT NO. 2012-042053



SCALE: 1" = 20'

JOB NAME:	WILSONVILLE CARL'S JR.
JOB NUMBER:	787
DRAWING NUMBER:	787 EASE
DRAWN BY:	SFF
CHECKED BY:	CHS

**NORTHWEST
SURVEYING, Inc.**

1815 NW 169TH PLACE
SUITE 2090
BEAVERTON, OR 97006
PHONE: (503) 848-2127
FAX: (503) 848-2179

Exhibit D
New Easement Area

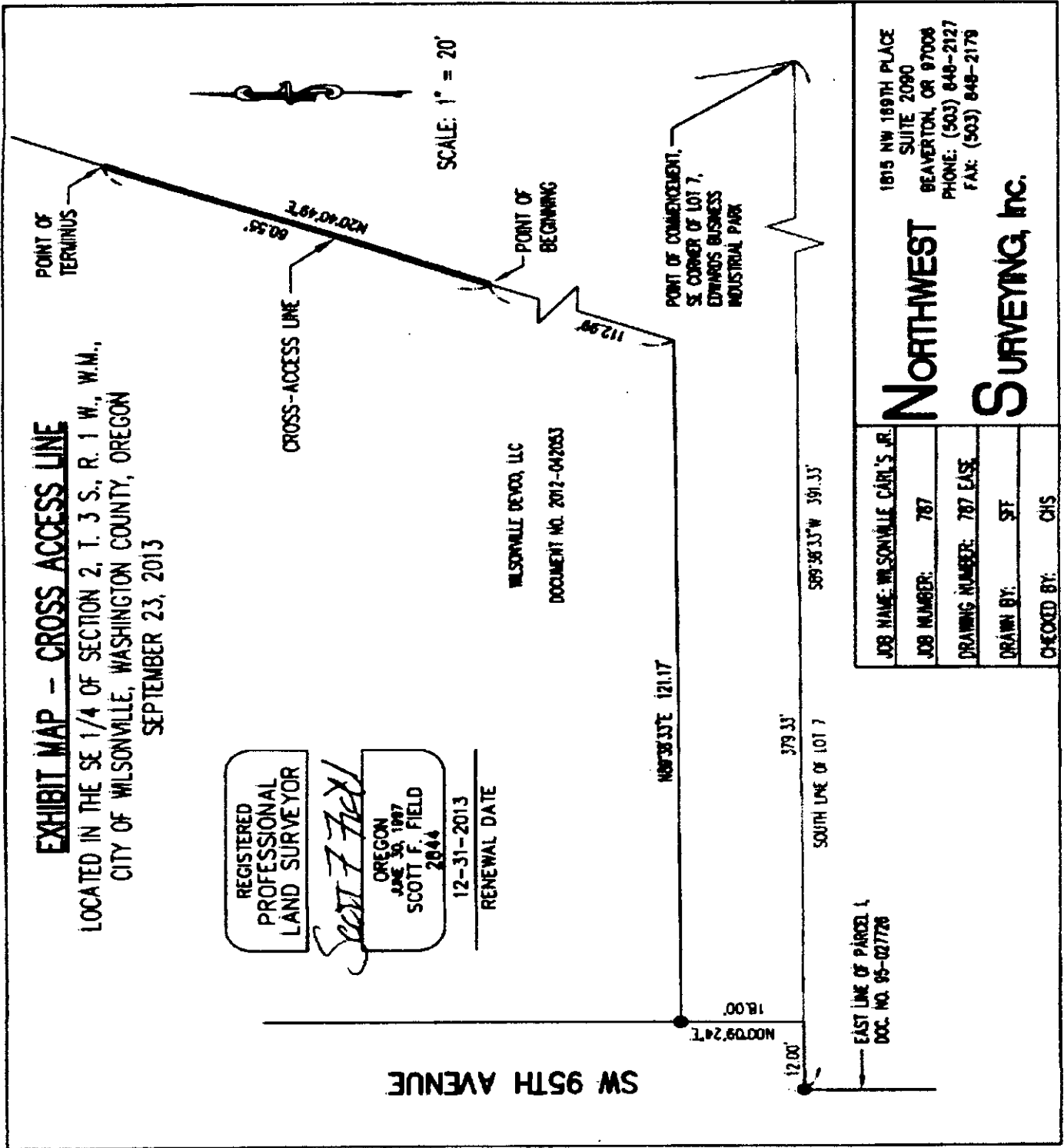
September 23, 2013
NWS Project No. 787
Cross Access Line

A line located in the southeast one-quarter of Section 2, Township 3 South, Range 1 West, Willamette Meridian, City of Wilsonville, Washington County, Oregon, being more particularly described as follows:

Commencing at the southeast corner of Lot 7, Edwards Business Industrial Park, thence along the south line of said Lot 7, South 89°38'33" West a distance of 379.33 feet to a point 12.00 feet east of the east line of Parcel I as described in deed from John Q. Hammons to the State of Oregon, by and through its Department of Transportation, recorded April 21, 1995 as Document No. 95-027726, Deed Records of Washington County, Oregon; thence parallel with said east line, North 00°09'24" East a distance of 18.00 feet to a 5/8 inch iron rod located at the southwest corner of that property conveyed to Wilsonville Devco, LLC by deed recorded May 24, 2012 as Document No. 2012-042053, Deed Records of Washington County, Oregon; thence along the south line of said Wilsonville Devco, LLC property, North 89°38'33" East a distance of 121.17 feet to the most southerly southeast corner thereof; thence along the easterly boundary of said Wilsonville Devco, LLC property, North 20°40'49" East a distance of 112.99 feet to the Point of Beginning; thence continuing along said easterly boundary, North 20°40'49" East a distance of 60.55 feet to the Point of Terminus.

REGISTERED
PROFESSIONAL
LAND SURVEYOR
Scott F. Field
OREGON
JUNE 30, 1997
SCOTT F. FIELD
2844
RECEIVED 12/31/2013

Exhibit E
Illustration of New Easement Area



1815 NW 189TH PLACE SUITE 2090 BEAVERTON, OR 97006 PHONE: (503) 648-2127 FAX: (503) 648-2179	
NORTHWEST	
SURVEYING, Inc.	
JOB NAME: WILSONVILLE CARL'S, JR.	
JOB NUMBER: 787	
DRAWING NUMBER: 787 EASE	
DRAWN BY: SF	
CHECKED BY: CHS	

Pacific NW Title
02214342-W
T.O.

Washington County, Oregon 2003-034139
03/07/2003 02:53:11 PM
D-E Cnt=1 Stn=7 K GRUNEWALD
\$25.00 \$6.00 \$11.00 - Total = \$42.00

25-6
11

PIPELINE EASEMENT
Grantor - Limited Liability Company



00278475200300341380050056

After recording, return to:
CITY RECORDER
CITY OF WILSONVILLE
30000 SW TOWN CENTER LOOP, E.
WILSONVILLE OR 97070

I, Jerry Hanson, Director of Assessment and Taxation and Ex-Officio County Clerk for Washington County, Oregon, do hereby certify that the within instrument of writing was received and recorded in the book of records of said county.

Jerry Hanson

Jerry R. Hanson, Director of Assessment and Taxation, Ex-Officio County Clerk



KNOW ALL MEN BY THESE PRESENTS, that EXXON OF WILSONVILLE, LLC., AN OREGON LIMITED LIABILITY COMPANY, hereinafter referred to as "Grantor", for the consideration hereinafter stated, does forever grant unto the CITY OF WILSONVILLE, a municipal corporation, hereinafter referred to as "Grantee", a permanent right-of-way and easement over and along the full width and length of the premises described as follows, to-wit:

1. Legal description is set forth in EXHIBIT "A" attached hereto, and incorporated by reference herein.
2. A map of the above legal description is set forth in EXHIBIT "B" and incorporated by reference herein.

together with a temporary working easement as follows: _____

The temporary working easement shall be effective only for and during the time of the initial construction and laying of the pipeline hereinafter described.

The true and actual consideration paid for this transfer, stated in terms of dollars, is \$ 0. *However, the actual consideration consists of or includes other property or value given or promised which is (the whole/~~part of the~~) consideration (indicate which)*. (If not applicable, the sentence between the symbols * should be deleted. See ORS 93.030.)

In the event the permanent right-of-way and easement shall no longer serve a public purpose, it shall revert back to the Grantor, its successors and/or assigns; and

TO HAVE AND TO HOLD the above described permanent right-of-way and easement unto said Grantee in accordance with the conditions and covenants as follows:

1. The permanent right-of-way and easement shall include the right, privilege, and authority, to the said City of Wilsonville, to excavate for, and to construct, build, install, lay, patrol, operate, maintain, repair, replace and remove an underground sanitary sewer, storm drain, or water pipeline or pipelines, with all appurtenances incident thereto or necessary therewith, including aboveground valve boxes, fire hydrants or manholes, for the purpose of carrying and conveying sewage wastes, surplus waters, or potable water as the case may be, and for similar uses in, under, and across the said premises, and to cut and remove from said right-of-way any trees and other obstructions which may endanger the safety or interfere with the use of said pipelines, appurtenances attached to or connected therewith; and the right of ingress and egress to and over said above described premises at any and all times for doing anything necessary, useful, or convenient for the enjoyment of the easement hereby granted. No building shall be constructed over the pipeline easement right-of-way.



2003-34139

2. Grantee will indemnify and hold harmless the Grantor, its successors and/or assigns from claims for injury to person or property as a result of the negligence of the Grantee, its agents or employees in the construction, operation, or maintenance of said pipeline.

3. The City of Wilsonville, upon the initial installation, and upon each and every occasion that the same be repaired, replaced, renewed, added to, or removed, shall restore the premises of the Grantor, and any improvements disturbed by the City, to as good condition as they were prior to any such installation work, including, but not limited to, the restoration of any topsoil, lawn and nursery stock of like kind and quality subject to reasonable substitution as may be necessitated by obstruction or interference with the use granted herein.

4. Grantor may, at its option and expense, relocate said right-of-way, easement and associated public appurtenances and utilities, provided such relocation is accepted by the City as complying with applicable codes and standards, land use laws and regulations.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930.

IN WITNESS WHEREOF, the undersigned grantor has executed this easement, this 12 day of September, 2002

GRANTOR: Eysen of Wilsonville, LLC
(Name of Limited Liability Company)

By: [Signature]
(Agent)
Katherine M LaPoint
(Agent)

STATE OF OREGON)
County of Clackamas) ss

On this 12 day of September, 2002, before me, a notary public in and for said County and State, personally appeared Garry L. LaPoint and Katherine M. LaPoint known to me to be the person whose names are subscribed to the within instrument and acknowledged that they executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on the day and year above written.

[Signature]
NOTARY PUBLIC FOR OREGON
My Commission Expires: 11/29/03





STATE OF OREGON)
County of _____) ss

On this _____ day of _____, 200__, before me, a notary public in and for said County and State, personally appeared _____, known to me to be the person whose name _____ subscribed to the within instrument and acknowledged that _____ executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on the day and year above written.

NOTARY PUBLIC FOR OREGON
My Commission Expires: _____

APPROVED AS TO FORM
this 27 day of March, 2003.

Michael E. Kohlhoff
Michael E. Kohlhoff, City Attorney
City of Wilsonville, Oregon

APPROVED AS TO LEGAL DESCRIPTION
this 27th day of February, 2003.

Michael A. Stone
Michael A. Stone, P.E., City Engineer
City of Wilsonville, Oregon

ACCEPTED on behalf of the City of Wilsonville, OR,
this 28th day of February, 2003.

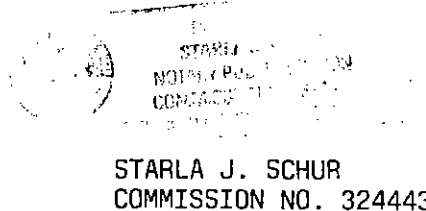
Arlene Loble
Arlene Loble, City Manager

ATTESTED TO:
Sandra C. King
Sandra C. King, CMC, City Recorder
Date: 2/28/03

STATE OF OREGON)
County of Clackamas) ss

On this 28th day of February, 2003, before me personally appeared Arlene Loble, personally known to me to be the person whose name is subscribed to this instrument, and acknowledged that she executed the same.

Starla J. Schur
NOTARY PUBLIC FOR OREGON
My Commission Expires: June 16, 2003





2003-34139

EXHIBIT A
TRACT 2

WATERLINE EASEMENT

A 15.00 foot wide Public Waterline Easement located in Lot 7 of "EDWARDS BUSINESS INDUSTRIAL PARK" within the South one-half of Section 2, Township 3 South, Range 1 West, Willamette Meridian, City of Wilsonville, Washington County, Oregon the centerline of which being particularly described as follows:

Commencing at the Southeast corner of Lot 7, "EDWARDS BUSINESS INDUSTRIAL PARK", City of Wilsonville, Washington County, Oregon; thence along the westerly line of Boones Ferry Road as described in the deed from John Q. Hammons to the State of Oregon by and through its Department of Transportation recorded April 21, 1995 as Document Number 95027726; along the arc of a 116.96 foot radius non-tangent curve to the right, said curve having a radial bearing of North 74°47'51" East, central angle of 30°31'07", arc length of 62.30 feet, the chord of which bears North 00°03'13" East, 61.55 feet; thence along the arc of a 2837.79 foot non-tangent curve to the left, said curve having a radial bearing of South 52°32'36" West, a central angle of 01°19'57", an arc length of 66.00 feet, (the chord of which bears North 38°07'22" West, 66.00 feet); thence continuing on a non-tangent line along said westerly line North 40°56'40" West, 81.06 feet; thence South 46°33'47" West, 48.10 feet; thence North 38°02'13" West, 13.49 feet; thence leaving said westerly line South 51°57'47" West, 7.50 feet to the TRUE POINT OF BEGINNING of said centerline; thence North 38°02'13" West parallel to said westerly line of Boones Ferry Road, 64.17 feet; and the terminus of said centerline, said terminus being on the northerly line of Tract 2 of a property line adjustment survey as shown on Survey Number 28,198, Washington County Survey Records, the sidelines of said easement being lengthened or shortened to terminate at said northerly boundary of said Tract 2, the easement area encompassing 963 square feet, more or less.

940WEASE.820

Expires 12/31/03

REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
JULY 12, 1983
MALCOLM N. CLARK
601

EXHIBIT B



WESTERLY LINE
BOONES FERRY ROAD
ODOT DEED
DOC NO 95027726

Exp. 12/31/03

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Malcolm N. Clark

OREGON
JULY 12, 1963
MALCOLM N. CLARK
601

95th AVENUE

COMMERCE CIRCLE

BOONES FERRY ROAD

ROAD

Scale: 1"=60'

RADIUS= 100.00'
Δ= 37°13'18"
ARC= 64.96'
CHORD= 63.83'
CHORD BRG= S 45°05'58"E

RADIUS= 45.00'
Δ= 67°23'57"
ARC= 52.94'
CHORD= 49.94'
CHORD BRG= N 82°35'16"E

RADIUS= 116.16'
Δ= 45°43'29"
ARC= 98.78'
CHORD= 95.83'
CHORD BRG= N 24°31'08"E

RADIUS= 595.65'
Δ= 02°45'38"
ARC= 28.70'
CHORD= 28.70'
CHORD BRG= N 27°52'08"W

RADIAL N 63°30'41"E

N 15°09'35"E 83.41'

94.96'

110.00'

N 38°02'13"W
126.53'

S 51°57'47"W
20.00'

TRACT 1
SN 28,198

TRACT 2
15' PUBLIC
WATERLINE EASEMENT

WESTERLY LINE
BOONES FERRY ROAD
ODOT DEED
DOC NO 95027726

TRUE POINT OF
BEGINNING
TRACT 2 EASEMENT

N 35°02'13"W
77.66'

S 46°33'47"W
48.10'

N 40°55'40"W
81.06'

S 51°57'47"W
7.50'

TRACT 2
SN 28,198

RADIUS= 2837.79'
Δ= 01°19'57"
ARC= 66.00'
CHORD= 66.00'
CHORD BRG= N 38°07'22"W

S 20°40'49"W
186.08'

RADIAL
S 52°32'36"W

RADIUS= 116.96'
Δ= 30°31'07"
ARC= 62.30'
CHORD= 61.55'
CHORD BRG= N 00°03'13"E

RADIAL
N 74°47'51"E

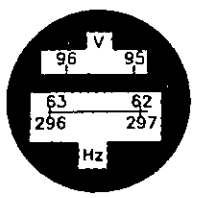
S 89°38'33"W 121.22'

18.00'

S 89°38'33"W 371.83'

SOUTHEAST CORNER LOT 7
EDWARDS BUSINESS INDUSTRIAL PARK

FD 1" IRON PIPE



DE HAAS
&
ssociates, Inc.

Consulting Engineers & Surveyors

Suite 300 - AGC Center
9450 S.W. Commerce Circle
Wilsonville, Oregon 97070

PHONE: (503) 682-2450
FAX: 682-4018

Waterline Easement

DATE

October 9, 2000

FILE No.

97.940.902



01738562201200681010210219

I, Richard Hobernicht, Director of Assessment and Taxation and Ex-Officio County Clerk for Washington County, Oregon, do hereby certify that the within instrument of writing was received and recorded in the book of records of said county.

Richard Hobernicht
Richard Hobernicht, Director of Assessment and Taxation, Ex-Officio County Clerk



EJH

After recording, return to:
City Recorder
City of Wilsonville
29799 SW Town Center Loop E.
Wilsonville OR 97070

DEVELOPMENT AGREEMENT

This Development Agreement is entered into by and between the City of Wilsonville ("City"), Wilsonville Devco LLC, an Oregon limited liability company ("Developer"), and two neighboring impacted businesses, LaPoint Business Group, LLC, an Oregon limited liability company, operating a Chevron gasoline station and a convenience store ("LaPoint"), and WHI Hotel, LLC, an Oregon limited liability company operating as a Holiday Inn hotel ("Holiday Inn"). The effective date of this Development Agreement is July ^{AVV} 3, 2012 ("Effective Date"). All of the foregoing parties are referred to collectively as the "Parties" and in the singular as a "Party." "Shared Driveway Parties" are all of the Parties listed above, excluding the City.

RECITALS

- A. Developer proposes to construct a Carl's Jr. fast food restaurant and other yet to be determined retail ("Development") on its property located adjacent to the Holiday Inn and LaPoint businesses ("Developer Property"). The locations of the LaPoint property, Holiday Inn property, and Developer Property are legally described and depicted on the map attached hereto as Exhibit A, and are collectively referred to as the "Neighboring Properties."
- B. The proposed Development is located adjacent to 95th Avenue in Wilsonville, Oregon and would be accessed via 95th Avenue. The Neighboring Properties, including the Developer Property, share a common driveway ("Shared Driveway") that allows for access to 95th Avenue.
- C. The City intends to make certain improvements to 95th Avenue this summer ("Roadway Improvements"), whether or not this Development Agreement is entered into. Based on a traffic study recently conducted for the City by DKS Associates in conjunction with the proposed Development, dated May 2012, DKS, Developer, and the City have discussed a driveway configuration requiring certain enhancements and modifications be made to the proposed Roadway Improvements in order to better serve the proposed Development ("Enhanced Roadway Improvements"). The proposed Enhanced Roadway Improvements will cost the City approximately Forty Thousand Dollars to Sixty Thousand Dollars (\$40,000-\$60,000) more than the current scope of work for the Roadway Improvements.

[Signature]

- D. The City is willing to make the Enhanced Roadway Improvements in consideration for Developer making certain on-site improvements to the Neighboring Properties in order to help relieve congestion on the Shared Driveway and to make the traffic flow more smoothly to and from 95th Avenue ("Developer Improvements"). In consideration of the City making the Enhanced Roadway Improvements, Developer has agreed to make the Developer Improvements, more particularly described in **Section III** below.
- E. Holiday Inn and LaPoint support the Enhanced Roadway Improvements and Developer Improvements and agree to fully cooperate with the City and Developer in the construction of the Enhanced Roadway Improvements and Developer Improvements.
- F. Developer will be solely responsible for all costs associated with the Developer Improvements.

AGREEMENT

In consideration of the foregoing Recitals, and incorporating all of the above Recitals by reference in this Development Agreement as if fully set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, all of the above-named Parties agree as follows:

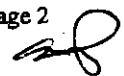
I. NEW DEVELOPMENT

Developer intends to construct a retail development on Developer's Property, which may contain a Carl's Jr. fast food restaurant and other retail stores. Nothing in this Development Agreement ensures that Developer's proposed development will be approved by the City. Developer will be required to go through all application and permitting processes required by the City for commercial development and to pay all fees required by the City to be paid for such commercial development in order to obtain approval to move forward with Developer's proposed Development ("Development Approval"). Nothing contained herein is a guarantee that Development Approval will be granted by the City.

II. CITY'S ENHANCED ROADWAY IMPROVEMENTS (City Obligations)

In consideration for Developer making the Developer Improvements, described in **Section III**, the City agrees to make the Enhanced Roadway Improvements generally depicted on **Exhibit B** and generally described as follows:

- Install a concrete sidewalk along the length of the Shared Driveway adjacent to 95th Avenue in the right-of-way.
- Bring storm manhole in right-of-way to grade.
- Install curb along northeast return of the Shared Driveway and 95th Avenue.
- Install concrete commercial Shared Driveway for access to 95th Avenue that lies within right-of-way north of the existing driveway back of curb;



- Transition existing sidewalk north of and adjacent to access drive to meet grades of new concrete driveway.
- Paint and maintain an approximately 50 foot "DO NOT BLOCK DRIVEWAY" signage on 95th Avenue at the inbound and outbound lanes, using eight inch or larger lettering.
- Allow one (1) inbound and two (2) outbound lanes of traffic into the Shared Driveway area at 95th Avenue within the right-of-way. (First 20 feet is one-way inbound and then converts to two lanes within the Shared Driveway.)
- Provide required legal notice to the Parties with respect to any changes being made to their access to 95th Avenue and an opportunity for the Parties to provide comments, understanding the Oregon Department of Transportation has the final authority with respect to any roadway modifications.
- City to stripe egress within the right-of-way.

III. DEVELOPER IMPROVEMENTS (Developer Obligations)

In consideration of the City's installation of the above-described Enhanced Roadway Improvements, Developer agrees to make the Developer Improvements generally depicted on **Exhibit B** and generally described as follows:

- Remove and install curb, gutter, and storm facilities, as necessary, to close the existing Holiday Inn egress to the Shared Driveway and create a new egress. The new egress shall include a driveway that is 16.6 feet wide and Developer shall place "Do Not Block" signage across twelve feet of space in front of the driveway so that cars in the stacking lane do not block Holiday Inn's egress driveway, as depicted on **Exhibit B**.
- Widen the existing Holiday Inn ingress from the Shared Driveway by approximately 5 feet by removing and installing the curb surrounding the Holiday Inn sign and replacing with crushed rock base and asphalt drive.
- Remove a parking stall island and existing tree on Holiday Inn property and replace with asphalt parking with section matching existing parking lot section.
- Add a parking stall island on Holiday Inn property.
- Narrow parking stall island on Holiday Inn property by removing and installing curb and asphalt.
- Remove the median island in the Shared Driveway and install asphalt.
- Install an entry landscape island and a pedestrian refuge island in the middle of the relocated portion of the Shared Driveway.
- Widen the Shared Driveway to four (4) lanes.
- Stripe the Shared Driveway to four (4) lanes, excepting the Shared Driveway entrance (right-of-way), which will be striped to three (3) lanes to discourage travel.
- Remove curb along LaPoint's western property line and install asphalt, as depicted on **Exhibit B**.
- Install stop bars and signs at Developer Property egress to the Shared Driveway and at Holiday Inn egress to the Shared Driveway, as depicted on **Exhibit B**.
- Provide construction easement to the City in order to allow the City to install NE curb return of Shared Driveway, to 95th, and for sidewalk transition and driveway construction.

- Adjust manholes and area inlets in the Shared Driveway to grade.
- All construction within the Shared Driveway or on Holiday Inn property shall be of the same standard as existing construction.
- Relocate Chevron sign and security cameras to either the Landscape Entry Island, centered North/South but as close to the right-of-way as LaPoint wishes to place the signage, as long as it does not overhang the right-of-way, including the sidewalk or, in the alternative, to be located on the southwest corner of Developer's Property next to or within the detention pond location to be agreed upon between Developer and LaPoint and as close to the right-of-way as LaPoint wishes to place the signage, as long as it does not overhang the right-of-way, including the sidewalk. If sign is relocated to Developer's Property, Developer shall provide LaPoint with a sign, access and maintenance easement. LaPoint will seek approval from Chevron to enter into a shared signage agreement with Developer for Developer's proposed fast food sign.
- If a shared signage agreement is entered into between Developer and LaPoint/Chevron, each party will be responsible for the maintenance of their own signage and will share in the maintenance cost or replacement of the pole equally, if any.
- Agreements between LaPoint and Developer, to be agreed upon in terms of markings and placement in order to dedicate the right-hand ingress lane for use as a stacking area for LaPoint gasoline station customers. LaPoint reserves the right to install reflective buttons or flexisticks to further identify the stacking area if gasoline station traffic later warrants, at LaPoint's sole cost and expense.
- Provide Holiday Inn a non-exclusive easement for egress over Developer's property located within the Shared Driveway.
- Preparation of **Exhibit B**, to this Development Agreement, as approved by all Parties and as attached hereto.
- Share one third of the cost of annual maintenance of all striping and signage painted within the boundary of the Shared Driveway.
- Provide an easement for and allow LaPoint to construct a trash enclosure and recycling area on Developer's property, adjacent to the proposed trash enclosure on Developer's eastern property line. LaPoint's trash enclosure must be constructed with like kind materials, craftsmanship and resemble the same aesthetic look as Developer's trash enclosure.
- Developer and LaPoint have agreed to amend the existing easement agreement by vacating a portion of Developer's easement over LaPoint's property in exchange for LaPoint granting Developer a reciprocal cross-easement on Developer's eastern property line and LaPoint's western property line for curb cuts between the properties and LaPoint's access to trash enclosure on Developer's Property, as illustrated on **Exhibit C** attached hereto. The amended easement agreement will be part of a separate agreement between Developer and LaPoint.
- Developer will include LaPoint's trash enclosure as part of Developer's plans for the purpose of DRB review and permit approval. The cost of the trash enclosure permit and construction will be at LaPoint's sole cost and expense.

The foregoing Developer Improvements shall be made at Developer's sole expense and are agreed to be a reasonable and agreed upon exchange for the Enhanced Roadway Improvements that the City has agreed to make in order to improve traffic flow to and from the Neighboring

Properties onto 95th Avenue. The foregoing Developer Improvements must be completed, inspected by the City, and deemed complete by the City before the City will issue any temporary occupancy permits to Developer, assuming Development Approval. In addition, regardless of whether Development Approval by the City is granted or denied, Developer will be legally obligated to make the Developer Improvements set forth herein, unless the City agrees otherwise, in its sole discretion to release Developer from any or all of the foregoing obligations, because the City will be constructing the Enhanced Roadway Improvements in consideration of and in reliance upon this Development Agreement, including Developer's agreement to make the Developer Improvements in exchange for the Enhanced Roadway Improvements. Developer's obligations hereunder will therefore run with the land and this Agreement will be recorded against all of the Neighboring Properties.

IV. LAPOINT AGREEMENT (LaPoint Obligations)

In consideration for the City's installation of the above-described Enhanced Roadway Improvements and Developer's construction of the Developer Improvements, both as generally described herein and generally depicted on **Exhibit B**, LaPoint agrees to allow the following with respect to its property, as also generally depicted on **Exhibit B**:

- Allow the current Chevron sign and light pole with security cameras to be relocated as described in Section III above.
- Cooperate with Developer in making all of the required improvements to the Shared Driveway, at Developer's cost, as provided for in Section III and as depicted on **Exhibit B**.
- Allow the Holiday Inn egress driveway portion of its easement to be relocated to the location on LaPoint property, as described above and as depicted on **Exhibit B**.
- Allow pavement signage to be installed by Developer across a twelve-foot area directly in front of the new egress driveway reading DO NOT BLOCK.
- Provide construction easement to allow construction of private ingress and egress improvements, as depicted on **Exhibit B**.
- Share one third of the cost of annual maintenance of all striping and signage painted within the boundary of the Shared Driveway.
- Pay all of the costs associated with the installation and maintenance of any reflective buttons or flexisticks to identify the stacking area.

Except for installation and maintenance of reflective buttons or flexisticks, which shall be LaPoint's responsibility, all of the foregoing work described in this Section IV will be done by Developer, at Developer's cost. LaPoint and Developer will work cooperatively with respect to timing of the foregoing removals and installations.

V. HOLIDAY INN AGREEMENT (Holiday Inn Obligations)

In consideration for the City's installation of the above-described Enhanced Roadway Improvements and Developer's construction of the Developer Improvements, both as generally described herein and generally depicted on **Exhibit B**, Holiday Inn agrees to allow the following with respect to its property, as also generally depicted on **Exhibit B**:

- Allow its current egress driveway to the Shared Driveway to be vacated and permanently closed and replaced by Developer, at Developer's cost and expense, with a new egress. The new egress shall include a driveway that is 16.6 feet wide, as depicted on **Exhibit B**.
- Relinquish three (3) parking spaces to accommodate the Developer Improvements, including relocation of Holiday Inn's easement to egress.
- Allow its existing ingress to be widened by approximately 5 feet in order to better accommodate trucks access.
- Restripe its parking stalls, as needed, at Holiday Inn's expense.
- Provide construction easement to allow construction of private ingress and egress improvements, as depicted on **Exhibit B**.
- Share one third of the cost of annual maintenance of all striping and signage painted within the boundary of the Shared Driveway.

Except for stall restriping (which shall be Holiday Inn's responsibility), all of the foregoing work described in this Section V will be done by Developer, at Developer's cost and expense. Holiday Inn and Developer will work cooperatively with respect to timing of the foregoing improvements.

VI. Obligations of All Shared Driveway Parties

All Shared Driveway Parties will use good faith reasonable efforts not to unreasonably interfere with or impede Shared Driveway usage. Developer and Holiday Inn agree that the right ingress lane will be used primarily by LaPoint as a stacking lane for gasoline station customers. The left ingress lane shall be used primarily by customers of Developer's Property and LaPoint's C-Store customers, vendors, diesel pumps and fuel deliveries. Holiday Inn recognizes and agrees that the egress driveway across the LaPoint property may occasionally be temporarily blocked by fuel trucks, RV's, delivery trucks, or large trucks with trailers from time-to-time entering the site, however, such blockage will be short term as the vehicles maneuver into place as the egress driveway crosses over the stacking lane. An area twelve feet (12 ft) in width will be clearly marked with DO NOT BLOCK letters painted on the pavement. LaPoint will use reasonable good faith efforts to monitor public compliance with this signage and require customers to move out of the DO NOT BLOCK area but Holiday Inn recognizes and agrees that at times a customer may fail to abide by the signage and LaPoint shall not have liability for such blockage. Holiday Inn customers will not be allowed to cut into the stacking lane and if such customers wish to get gasoline, they will be required to circle around to the end of the stacking lane. Developer and LaPoint may make minor revisions to striping, signage and traffic flow within the Shared Driveway area as they agree as long as such minor revisions do not impact traffic coming to or from 95th Avenue, do not impede the Holiday Inn ingress or egress, are not in violation of Development Review Board conditions of approval, and are in compliance with City permit

requirements. Redirection of traffic that could create a negative impact on traffic flow to and from 95th Avenue must be approved, in writing by the City, in accordance with City permitting requirements. The Parties agree that except as modified hereby, all ingress, egress and common area easements and other agreements between some or all of the Parties with respect to or relating to use of the Shared Driveway and Neighboring Properties shall remain in place (collectively "Shared Driveway/Neighboring Property Agreements"). Wherever those Shared Driveway/Neighboring Property Agreements directly conflict with the provisions of this Development Agreement, this Development Agreement will control.

VI. MISCELLANEOUS PROVISIONS

Section 6.1 – Further Assurances

Each Party shall execute and deliver any and all additional drawings, specifications, documents, and other assurances, and shall do any and all acts and things reasonably necessary in connection with the performance of its obligations hereunder, in good faith to carry out the intent of the Parties hereto. Developer understands and agrees that no occupancy permit will be granted for the Development until the Developer Improvements have been completed and approved by the City as meeting the requirements set forth herein.

Section 6.2 – Modification or Amendment

No amendment, change, or modification of this Development Agreement shall be valid unless in writing and signed by the Parties hereto.

Section 6.3 – Relationship

Nothing herein shall be construed to create an agency relationship or a partnership or joint venture between the Parties.

Section 6.4 – Maintenance

Nothing contained herein is intended to address anything concerning maintenance of the Shared Driveway. Maintenance is an issue to be negotiated between the owners of the Neighboring Properties who use the Shared Driveway.

Section 6.5 – Burden and Benefit

The covenants and agreements contained herein shall be binding upon and inure to the benefit of the Parties and their successors and assigns.

Section 6.6 – No Continuing Waiver

The waiver of any Party of any breach of this Development Agreement shall not operate or be construed to be a waiver of any subsequent breach.



Section 6.7 – Applicable Law

This Development Agreement shall be governed by and construed under the laws of the State of Oregon. Jurisdiction is in Clackamas County, Oregon.

Section 6.8 – Legal Fees

If any Party commences legal proceedings, including arbitration, mediation, or bankruptcy, for any relief against any other Party arising out of or related to this Development Agreement, or the breach thereof, the losing Party shall pay the prevailing Party's legal costs and expenses, including, but not limited to, arbitration costs, reasonable attorneys' fees, and expert witness fees, as determined by the court or the arbitrator at the trial level or on any appeal.

Section 6.9 – Time of Essence

Time is expressly declared to be of the essence of this Development Agreement.

Section 6.10 – Notices

All notices, demands, consents, approvals, and other communications which are required or desired to be given by any Party to each other hereunder shall be in writing and shall be faxed, hand delivered, or sent by overnight courier or United States Mail at its address set forth below, or at such other address as such Party shall have last designated by notice to the other. Notices, demands, consents, approvals, and other communications shall be deemed given when delivered, three (3) days after mailing by United States Mail, or upon receipt if sent by courier; provided, however, that if any such notice or other communication shall also be sent by telecopy or fax machine, such notice shall be deemed given at the time and on the date of machine transmittal.

To City: City of Wilsonville
 Attn: City Engineer
 29799 SW Town Center Loop East
 Wilsonville OR 97070

To Developer: Wilsonville Devco, LLC
 Attn: Josh Veentjer, Managing Member
 4188 SW Greenleaf Drive
 Portland OR 97221

To LaPoint: LaPoint Business Group, LLC
 Attn: Garry L. LaPoint, Registered Agent
 850 Lawson Ave
 Woodburn OR 97071



To Holiday Inn: Holiday Inn, Portland South Hotel & Convention Ctr.
 Attn: General Manager
 25425 SW 95th Ave
 Wilsonville OR 97070

Section 6.11 – Rights Cumulative

All rights, remedies, powers, and privileges conferred under this Development Agreement on the Parties shall be cumulative of and in addition to, but not restrictive of or in lieu of, those conferred by law.

Section 6.12 – Counterparts

This Development Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument.

Section 6.13 – No Third-Party Beneficiaries and No Assignment

None of the duties and obligations of any Party under this Development Agreement shall in any way or in any manner be deemed to create any rights in any person or entity other than the Parties hereto or their respective heirs, successors and assigns.

Section 6.14 – Obligations Run with Land

This Development Agreement shall run with the land and be binding upon any successors and assigns of any of the Parties hereto.

Section 6.15 – Dispute Resolution

6.15.1 Mediation. All disputes arising out of this Development Agreement shall first be submitted to mediation. Any Party desiring mediation shall provide the other Parties with a written notice (the “Request to Mediate”), which shall set forth the nature of the dispute. The Parties shall in good faith cooperate in the selection of a mediator and may adopt any procedural format that seems appropriate for the particular dispute. In the event a written settlement agreement is not executed by the Parties, in the Parties’ sole discretion, within twenty (20) days from the date of the Request to Mediate, or such longer time frame as may be agreed upon in writing by the Parties, any Party may make demand for arbitration pursuant to the following paragraph.

6.15.2 Arbitration or Litigation. Any dispute arising under this Development Agreement which is not resolved through mediation, may be submitted by any Party to arbitration, to be conducted in Wilsonville, Oregon before a single arbitrator selected by mutual agreement of the Parties. The arbitrator shall have substantial experience in commercial real estate and construction disputes. If the

Parties are unable to mutually select an arbitrator within twenty (20) days, then any Party may file an action in Clackamas County Circuit Court in lieu of arbitration and there will be no obligation to arbitrate. If arbitrated, judgment upon the arbitrator's award may be entered in any court having jurisdiction of the matter.

Section 6.16 – Representations and Warranties

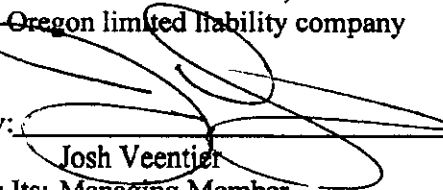
Each of the Parties hereto represents and warrants that he/she is the authorized representative of the owners of each respective Neighboring Property and hereby warrants full authority to enter into this Agreement and bind all persons with ownership interest in the respective properties. The Parties signing below also hereby warrant that entry into this Development Agreement and the enforcement of its terms will not violate any loan covenants or other agreements pertaining to any of the land or improvements impacted hereby.

Section 6.17 – Legal Review

All of the Parties to this Development Agreement hereby affirm that they have been represented in the negotiation hereof by their own independent legal counsel who have reviewed this Development Agreement and advised their respective client concerning the same. Therefore it shall be interpreted accordingly and shall not be construed against the drafter. Any revisions that the Shared Driveway Parties wish to make to their respective easements not otherwise covered by this Development Agreement will be negotiated between them and the City will not be a party thereto.

IN WITNESS WHEREOF, the Parties have hereunto set their hands as of the day and year first written above.

WILSONVILLE DEVCO, LLC
an Oregon limited liability company

By: 
Josh Veentjer
As Its: Managing Member

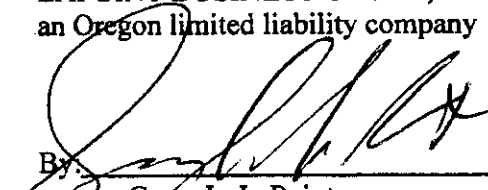
STATE OF OREGON)
) ss.
County of Clackamas)

This instrument was acknowledged before me on August 3, 2012,
by Josh Veentjer, as Managing Member of
Wilsonville Devco, LLC.



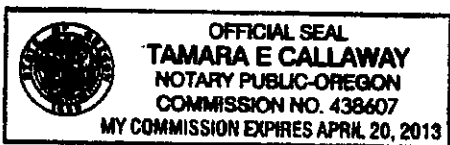

Notary Public – State of Oregon

LAPOINT BUSINESS GROUP, LLC,
an Oregon limited liability company

By: 
Garry L. LaPoint
As Its: Active Member

STATE OF OREGON)
) ss.
County of Clackamas)

This instrument was acknowledged before me on August 3, 2012,
by Garry L. LaPoint, as Active Member of
LaPoint Business Group, LLC.




Notary Public - State of Oregon

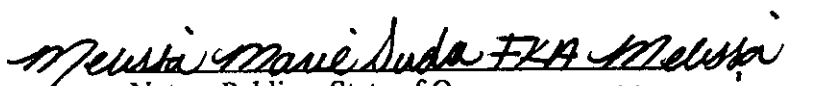
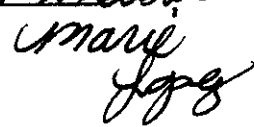
WHI HOTEL, LLC,
an Oregon limited liability company



By: 
Sungmin Park
As Its: Owner

STATE OF OREGON)
) ss.
County of Clackamas)

This instrument was acknowledged before me on 07/27/12, 2012,
by Sung-min Park, as Owner of
WHI Hotel, LLC.


Notary Public - State of Oregon


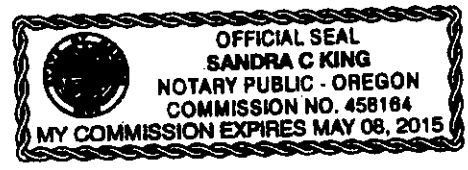
CITY OF WILSONVILLE,
an Oregon municipal corporation

By: *Bryan A. Cosgrove*
Bryan Cosgrove
As Its: City Manager

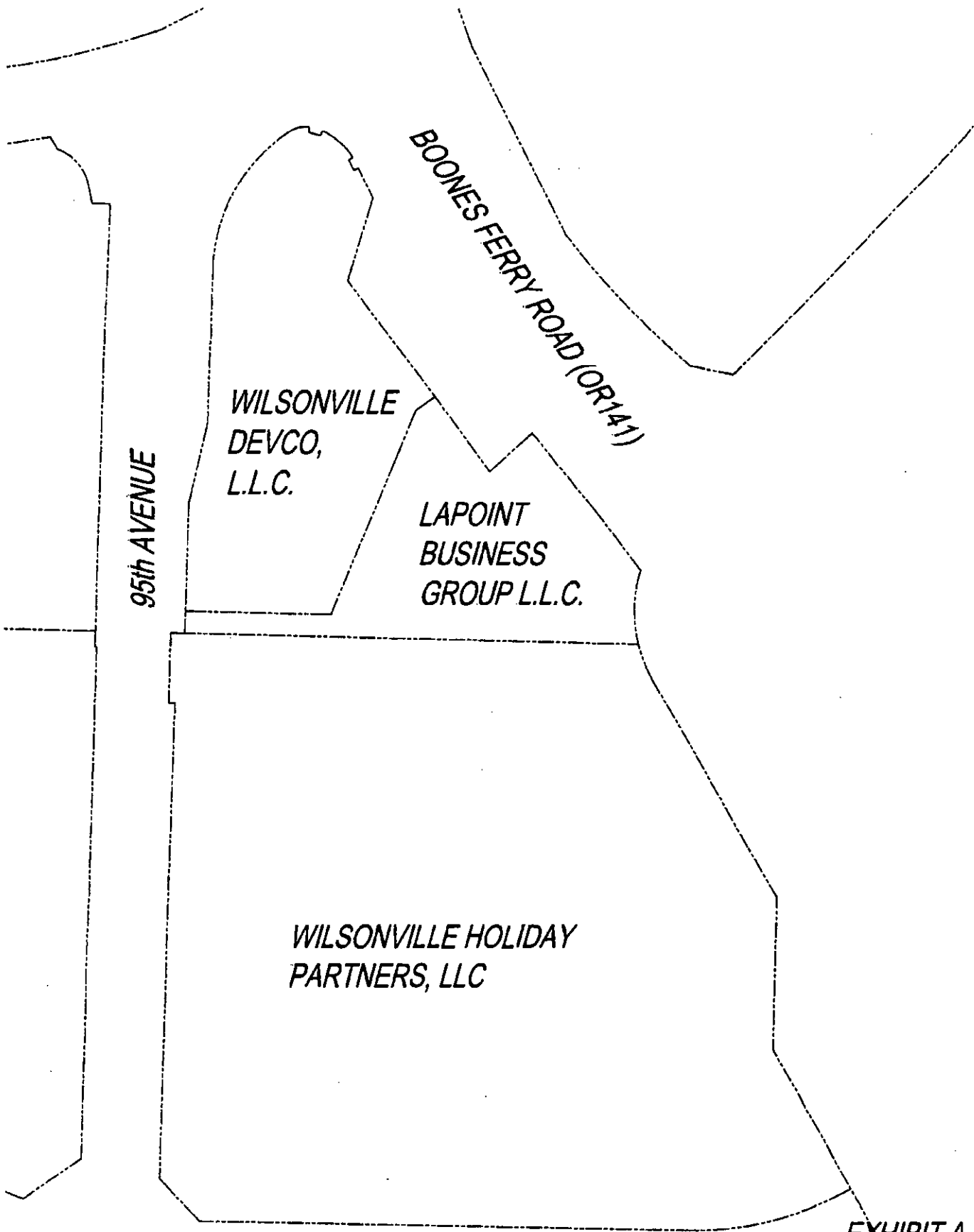
STATE OF OREGON)
) ss.
County of Clackamas)

This instrument was acknowledged before me on August 6, 2012,
by Bryan Cosgrove, as the City Manager of the City of Wilsonville.

Sandra C King
Notary Public – State of Oregon



carl's jr'development agr



95th AVENUE

BOONES FERRY ROAD (OR141)

WILSONVILLE
DEVCO,
L.L.C.

LAPPOINT
BUSINESS
GROUP L.L.C.

WILSONVILLE HOLIDAY
PARTNERS, LLC

EXHIBIT A
SR

EXHIBIT "A"

A tract of land located in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, in the Southeast one-quarter of Section 2, Township 3 South, Range 1 West of the Willamette Meridian, in the City of Wilsonville, County of Washington and State of Oregon, being further described as follows:

Commencing at the Southeast corner of Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, recorded in Book 31 at Page 14 in the Plat Records of Washington County, Oregon; thence South 89°38'33" West, along the South line of said Lot 7, a distance of 379.33 feet to a point 12.00 feet East of the East line of Parcel I as described in Deed from John Q. Hammons to the State of Oregon, by and through its Department of Transportation, Document No. 95-027726, recorded April 21, 1995 (hereinafter referred to as "ODOT"); thence North 00°09'24" East parallel to said East line, 18.00 feet to the true point of beginning; thence continuing North 00°09'24" East along said Easterly line, 341.16 feet; thence along the arc of a 116.16 foot radius curve to the right, through a central angle of 48°43'29", an arc length of 98.78 feet, the chord of which bears North 24°31'08" East, 95.83 feet; thence along the arc of a 45.00 foot radius curve to the right, through a central angle of 67°23'57", an arc length of 52.94 feet, the chord of which bears North 82°35'16" East 49.94 feet; thence along the arc of a 100.00 foot radius curve to the right, through a central angle of 37°13'18", an arc length of 64.96 feet, the chord of which bears South 45°05'58" East, 63.83 feet to a point on the Westerly line of Boones Ferry Road as described in said "ODOT" Deed; thence along the said Westerly line along the arc of a tangent 595.65 foot radius reverse curve to the left, the radius bears North 63°30'41" East, through a central angle of 02°45'38", an arc length of 28.70 feet, the chord of which bears South 27°52'08" East 28.70 feet; thence non-tangent South 15°09'35" West 83.41 feet; thence South 38°02'13" East, 122.78 feet; thence leaving said Westerly line, South 51°57'47" West, 20.00 feet; thence South 20°40'49" West, 186.07 feet to a point that is 18.00 feet measured at right angles from the South line of said Lot 7; thence parallel to said South line of Lot 7, South 89°38'33" West 121.22 feet to the true point of beginning.

EXCEPTING THEREFROM that portion thereof conveyed to the City of Wilsonville for right-of-way purposes in Warranty Deed recorded November 23, 2009 as Fee No. 2009-102082, Washington County Deed Records.

EXHIBIT "A"

PARCEL I:

A parcel of land located in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, in the South one-half Section 2, Township 3 South, Range 1 West, of the Willamette Meridian, in the City of Wilsonville, County of Washington and State of Oregon, being further described as follows:

Commencing at the Southeast corner of said Lot 7; thence South 89°38'33" West, along the South line of said lot, a distance of 391.33 feet to the East line of Parcel I in Deed from John Q. Hammons, to the State of Oregon, by and through its Department of Transportation (herein after referred to as "ODOT"); thence North 00°09'24" East, along said "ODOT" Deed, a distance of 359.27 feet; thence continuing along said "ODOT" Deed, along the arc of a curve to the right, said curve having a radius of 128.16 feet, arc length of 140.62 feet, central angle of 082°51'50", a chord bearing of North 31°35'19" East, a chord length of 133.67 feet to the intersection with the South line of SW Commerce Circle as dedicated in the plat of EDWARDS BUSINESS INDUSTRIAL PARK; thence non-tangent North 70°34'24" East, along said street, a distance of 20.97 feet, and along the arc of a curve to the right, said curve having a radius 25.00 feet, arc length of 32.72 feet, central angle of 074°59'06", a chord bearing of South 71°56'03" East, and a chord length of 30.43 feet to the intersection with the West line of Boones Ferry as described in said "ODOT" Deed; thence along said "ODOT" Deed, along the arc of a non-tangent curve to the left, said curve having a radius of 1,001.93 feet, arc length of 12.00 feet, central angle of 000°41'10", a chord bearing of South 24°13'24" East, and a chord length of 12.00 feet to the intersection with the East line of said Lot 7; thence along the East line of said Lot 7, along the arc of a non-tangent curve to the left, said curve having a radius of 595.65 feet, arc length of 85.44 feet, central angle of 008°13'06", a chord bearing of South 25°08'24" East, and a chord length of 85.38 feet to the Westerly line of Boones Ferry Road as described in said "ODOT" Deed; thence non-tangent, along said Westerly line South 15°09'35" West, a distance of 83.41 feet, South 38°02'13" East, a distance of 200.44 feet, North 46°33'47" East, a distance of 48.10 feet, South 40°56'40" East, a distance of 81.06 feet, and along the arc of a non-tangent curve to the right, said curve having a radius of 2,837.79 feet, arc length of 17.49 feet, central angle of 00°21'11", a chord bearing of South 38°36'45" East, and a chord length of 17.49 feet to a point 100.00 feet North of, when measured at right angle to, the South line of said Lot 7; thence continuing along said "ODOT" Deed, along the arc of a non-tangent curve to the right, said curve having a radius of 2,837.79 feet, arc length of 48.51 feet, central angle of 00°58'46", a chord bearing of South 37°56'47" East, and a chord length of 48.51 feet, to the East line of said Lot 7; thence along the arc of a curve to the left, said curve having a radius of 116.96 feet, arc length of 62.30 feet, central angle of 030°31'07", a chord bearing South 00°03'01" West, and a chord length of 61.56 feet to the point of beginning.

EXCEPTING THEREFROM a tract of land located in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, in the South one-half Section 2, Township 3 South, Range 1 West, of the Willamette Meridian, in the City of Wilsonville, County of Washington and State of Oregon, being further described as follows:

Commencing at the Southeast corner of said Lot 7; thence South 89°38'33" West, along the South line of said lot, a distance of 379.33 feet to a point 12 feet Easterly of the East line of Parcel 1 in Deed from John Q. Hammons to the State of Oregon, by and through its Department of Transportation, Fee No. 95027726, April 21, 1995 (herein after referred to as "ODOT"); thence North 00°09'24" East a distance of 12.00 feet parallel to and 12.00 feet Easterly of said "ODOT" line to the true point of beginning; thence North 00°9'24" East, parallel to and 12.00 feet Easterly of said "ODOT" line, a distance of 347.16 feet; thence along the arc of a curve to the right, said curve having a radius of 116.16 feet, arc length of 101.04 feet, central angle of 49°50'12", a chord bearing of North 25°04'30" East, and a chord length of 97.88 feet to a point of compound curvature; thence along the arc of a curve to the right, said curve having a radius of 45.00 feet, arc length of 53.94 feet, central angle of 33°01'29", a chord bearing South 71°56'03" East, and a chord length of 30.43 feet to a point of compound curvature; thence along the arc of a curve to the right, said curve having a radius of 100.00 feet, arc length of

EXHIBIT "A"

(Continued)

61.13 feet, central angle of 35°01'29", a chord bearing of South 43°49'18" East, and a chord length of 60.18 feet to the intersection with the West line of Boones Ferry Road as described in said "ODOT" Deed and a point on a non-tangent curve to the left, said point having a radial bearing of North 63°41'28" East; thence along said "ODOT" Deed, along the arc of said non-tangent curve to the left, said curve having a radius of 595.65, arc length of 30.57 feet, central angle of 02°56'25", a chord bearing of South 27°46'44" East, and a chord length of 30.56 feet to along the Westerly line of Boones Ferry Road as described in said "ODOT" Deed; thence along said Westerly line South 15°09'35" West, a distance of 83.41 feet; thence South 38°02'13" East, a distance of 120.44 feet; thence South 57°57'47" West, a distance of 55.00 feet; thence South 20°29'49" West, a distance of 171.35 feet to a point that is 12 feet from, when measured at right angles, to the South line of said Lot 7; thence South 89°38'33" West, a distance of 97.95 feet, more or less, to the true point of beginning.

ALSO EXCEPTING THEREFROM that portion conveyed to Prairie Corp., an Oregon corporation, by instrument recorded July 19, 2000 as Fee No. 2000-48398, more particularly described as follows:

A tract of land located in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, in the Southeast one-quarter of Section 2, Township 3 South, Range 1 West, of the Willamette Meridian, in the City of Wilsonville, County of Washington and State of Oregon, being further described as follows:

Commencing at the Southeast corner of said Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, recorded in Book 31, Page 14 in the Plat Records of Washington County, Oregon; thence South 89°38'33" West, along the South line of said Lot 7, a distance of 379.33 feet to a point 12.00 feet East of the East line of Parcel I as described in the Deed from John Q. Hammons to the State of Oregon, by and through its Department of Transportation, Document Number 95027726, recorded April 21, 1995 (herein after referred to as "ODOT"); thence North 00°09'24" East parallel to said East line, 18.00 feet; thence North 89°38'33" East parallel to said South line of Lot 7, 95.10 feet to the true point of beginning; thence North 20°29'49" East, 170.00 feet; thence North 57°57'47" East, 55.00 feet to the Westerly line of Boones Ferry Road as described in said "ODOT" Deed; thence along said Westerly line South 38°02'13" East, 2.34 feet; thence leaving said Westerly line South 51°57'47" West, 20.00 feet; thence South 20°40'49" West, 186.07 feet to a point 18.00 feet Northerly when measured at right to the said South line of Lot 7; thence South 89°38'33" West parallel to said South line of Lot 7, 26.13 feet, more or less, to the true point of beginning.

ALSO EXCEPTING THEREFROM that portion thereof conveyed to State of Oregon, by and through its Department of Transportation, in Deed recorded April 21, 1995, as Fee No. 95027726.

FURTHER EXCEPTING THEREFROM that portion dedicated to the City of Wilsonville for street purposes by instrument recorded March 7, 2003 as Fee No. 2003-034138.

PARCEL II:

A tract of land located in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, recorded in Book 31, Page 14 in the Plat Records of Washington County, Oregon; thence South 89°38'33" West, along the South line of said Lot 7, a distance of 379.33 feet to a point 12.00 feet East of the East line of Parcel I as described in the Deed from John Q. Hammons to the State of Oregon, by and through its Department of Transportation, Document Number 95027726, recorded April 21, 1995; thence North 00°09'24" East parallel to said East line, 18.00 feet to the true point of beginning; thence North 89°38'33" East parallel to said South line of Lot 7, 95.10 feet; thence South 20°29'49" West, 6.42 feet to a point 12.00 feet Northerly when measured at right angles to the said South line of Lot 7; thence South 89°38'33" West parallel to said South line of Lot 7, 92.87 feet, more or less, to a point 12.00 feet East of the said East line of Parcel I; thence North 00°09'24" East parallel to said East line, 6.00 feet to the true point of beginning.

EXHIBIT "A"
(Continued)

EXCEPTING THEREFROM that portion dedicated to the City of Wilsonville for street purposes by instrument recorded March 7, 2003 as Fee No. 2003-034138.



EXHIBIT "A"

PARCEL I:

A portion of Lot 8, EDWARDS BUSINESS INDUSTRIAL PARK NO. 2, a duly recorded subdivision in Washington County, Oregon located in the Southeast one quarter of Section 2, Township 3 South, Range 1 West of the Willamette Meridian, in the City of Wilsonville, County of Washington and State of Oregon, said portion of Lot 8 being more particularly described as follows:

Beginning at a 2 inch iron pipe at the initial point of said Edwards Business Industrial Park No. 2, said initial point being on the Westerly line of S.W. Frontage Road, also known as Lower Boones Ferry Road; thence following the boundary of said Lot 8, along the arc of a 117.00 foot radius non-tangent curve left through a central angle of 15°30'25", an arc distance of 31.67 feet (the chord of which bears South 22°58'48" East, a distance of 31.57 feet) to a 5/8 inch iron rod (Plat record: central angle, 15°30'50"; radius 117 feet; arc length 31.68 feet; chord, South 22°58'17" East, a distance of 31.58 feet); thence South 30°34'43" East a distance of 213.04 feet to a 5/8 inch iron rod (Plat record: South 30°34'28" East a distance of 212.92 feet); thence South 00°05'07" East a distance of 130.27 feet to a 5/8 inch iron rod (Plat record: South 00°07'50" East a distance of 130.27 feet); thence South 30°06'16" east a distance of 136.08 feet to a 5/8 inch iron rod (Plat record: South 30°03'30" East a distance of 136.04 feet); thence South 59°37'27" West a distance of 13.17 feet to a 5/8 inch iron rod (Plat record: South 59°56'30" West a distance of 13.10 feet); thence Southwesterly along the arc of a 243.00 foot radius curve right through a central angle of 29°42'03" an arc distance of 125.97 feet to a 5/8 inch iron rod (the chord of which bears South 74°47'32" West a distance of 124.56 feet) (Plat record: central angle 29°42'03"; radius 243.00 feet; arc length 125.97 feet; chord, South 74°47'32" West, 124.56 feet); thence South 89°38'33" West (Plat record: South 89°38'33" West) a distance of 410.16 feet (Survey Number 26,398 Record: 410.17 feet) to a 5/8 inch iron rod at the intersection of the Southerly boundary of said Lot 8 and the Easterly right of way line of 95th Avenue; thence North 44°12'00" West a distance of 50.04 feet to a 5/8 inch iron rod 36.00 feet opposite and Easterly of Engineers Centerline Station 66+45.00, when measured at right angles to the centerline of 95th Avenue; thence North 00°08'50" East a distance of 405.00 feet to a 5/8 inch iron rod 36.00 feet opposite and Easterly of Engineer's Centerline Station 70+50.00 when measured at right angle to the centerline of 95th Avenue; thence North 89°51'10" West a distance of 5.00 feet to a 5/8 inch iron rod 31.00 feet opposite and Easterly of said Engineer's Centerline Station 70+50.00; thence North 00°08'50" East a distance of 58.91 feet to a 5/8 inch iron rod marking the intersection of the Easterly right of way line of 95th Avenue and the Northerly boundary of said Lot 8; thence leaving the Easterly right of way line of 95th Avenue and following the Northerly line of said Lot 8 North 89°37'29" East (Plat record: bearing North 89°38'33" East) a distance of 391.26 feet to the 2 inch iron pipe marking the initial point of said Edwards Business Industrial Park No. 2 and the point of beginning of this described tract of land.

PARCEL II:

Easement rights as set forth in Reciprocal Easement Agreement dated December 27, 1998 and recorded January 6, 1997 as Records's Fee No. 97-005009, described as follows:

A tract of land located in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK as recorded in Book 38, Page 14, Washington County, Oregon Plat Records, being situated in the Southeast one quarter of Section 2, Township 3 South, Range 1 West of the Willamette Meridian, Washington County, Oregon, said tract of land being more particularly described as follows:

Beginning at a 2 inch iron pipe marking the initial point of said Edwards Business Industrial Park; thence South 89°37'29" West (Plat record: Bearing South 89°38'33" West) along the Southerly boundary of said Lot 7, a distance of 391.26 feet to a point marking the intersection of the Southerly line of said Lot 7 and the Easterly line

EXHIBIT "A"
(Continued)

of 95th Avenue as acquired by the State of Oregon and the true point of beginning of this described tract of land; thence North $00^{\circ}08'50''$ East along said Easterly line, 20.00 feet; thence South $89^{\circ}51'10''$ East leaving said Easterly right of way, 51.00 feet; thence South $53^{\circ}16'00''$ East, 32.38 feet to a point on the Southerly line of said Lot 7; thence South $89^{\circ}37'29''$ West along the Southerly line of said Lot 7, a distance of 77.00 feet to the true point of beginning.



40
31

Washington County, Oregon
11/12/2013 11:41:50 AM
D-E Cnt=1 Str=12 S PFEIFER
\$40.00 \$5.00 \$11.00 \$15.00 - Total = \$71.00

2013-097513

**Recorded At The Request Of
And When Recorded Mail To:**

George J. Gregores
Holland & Knight LLP
111 SW Fifth Ave, Suite 2300
Portland, OR 97204



01894748201300975130080081

I, Richard Hobernicht, Director of Assessment and
Taxation and Ex-Officio County Clerk for Washington
County, Oregon, do hereby certify that the within
instrument of writing was received and recorded in the
book of records of said county.

Richard Hobernicht, Director of Assessment and
Taxation, Ex-Officio County Clerk



EASEMENT AGREEMENT

Date: October 24, 2013
Among: **WILSONVILLE DEVCO, LLC**
an Oregon limited liability company ("Grantor")
And: **LAPPOINT BUSINESS GROUP, LLC**
an Oregon limited liability company ("Grantee")

RECITALS

- A. Grantor is the owner of the real property legally described in attached Exhibit A (the "Grantor Property").
- B. Grantee is the owner of the real property legally described in attached Exhibit B (the "Grantee Property").
- C. Grantor wishes to grant a non-exclusive easement for and to allow Grantee to construct a trash enclosure and recycling area on Grantor's Property, adjacent to the trash enclosure on Grantor's eastern property line.

AGREEMENT

For valuable consideration, the receipt and sufficiency of which is hereby mutually acknowledged, Grantor and Grantee agree as follows:

1. **Grant of Easement.** Grantor conveys to Grantee, for the benefit of the Grantee Property, a nonexclusive easement (the "Easement") over and across that portion of Grantor Property described in attached Exhibit C (the "Easement Area") for and to allow Grantee to construct a trash enclosure and recycling area on Grantor's Property adjacent to the trash enclosure on Grantor's eastern property line and to access said trash enclosure from Grantee's Property, which Easement Area is illustrated on attached Exhibit D.
2. **Construction of Grantee's Trash Enclosure.** Grantee's trash enclosure must be constructed with like materials, craftsmanship and resemble the same aesthetic look as Grantor's trash enclosure. The cost of the construction of Grantee's trash enclosure shall be borne by Grantee.

3. Maintenance and Repairs. Any maintenance and necessary repair of the pavement and trash enclosure located on the Easement Area, as determined necessary by Grantor in its sole and absolute discretion, shall be paid for by Grantee.

4. Term. The Easement contained in this Agreement shall be effective commencing on the date of recordation of this Easement Agreement in the Official Records of Washington County, Oregon, and shall remain in full force and effect thereafter, unless amended or terminated in accordance with Section 5 hereinafter.

5. Modification. This Agreement may only be modified, amended, revised or terminated by written instrument signed by Grantor and Grantee, or their respective successor(s) as the case may be.

6. Indemnification. Grantee shall indemnify and hold Grantor harmless from any claims, demands, losses and expenses, including attorney fees, arising from Grantee's use of the Easement Area. Grantee further assumes the risk of its use of the Easement Area, and Grantor shall not be liable to Grantee for injury or harm arising from the physical condition of the Easement Area, provided that such condition is reasonably detectable by Grantee.

7. Attorney Fees. In the event of any litigation arising under this Agreement, the prevailing party shall recover from the other reasonable attorney fees as determined by the trial or appellate court, as the case may be.

8. Dispute Resolution. Any controversy, dispute or question arising out of this Agreement shall be submitted to arbitration before a single arbitrator in Washington County, Oregon. Each party shall bear its own costs in any such proceeding. The decision of the arbitrator shall be final and binding upon the parties and may be enforced in any court of competent jurisdiction. To the fullest extent permitted by law, the parties irrevocably submit to the jurisdiction of such forum, and waive any objections they may have to either the jurisdiction or venue of such forum. Nothing contained herein shall in any way deprive either party of their right to obtain injunction or other equitable relief.

9. Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with the laws of Oregon.

10. Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument. Signature and acknowledgment pages may be detached from the counterparts and attached to a single copy of this Agreement to physically form one document, which will be recorded in the Official Records of Washington County, Oregon.

11. Binding Effect. The terms of this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

[Signature Page Follows]

In Witness Whereof, the parties have executed this Agreement as of the date first written above.

GRANTOR:

WILSONVILLE DEVCO, LLC,
an Oregon limited liability company

By: [Signature]

Name: Josh Veentjer

Title: managing member

GRANTEE:

LAPPOINT BUSINESS GROUP, LLC,
an Oregon limited liability company

By: _____

Name: _____

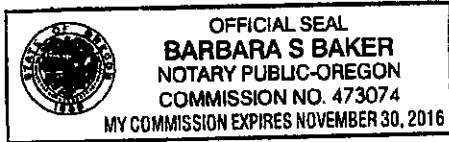
Title: _____

STATE OF OREGON)

) ss

County of Clackamas)

This instrument was acknowledged before me on October 24, 2013 by
Joshua Veentjer as Managing member of Wilsonville Devco, LLC.



Barbara S. Baker
Notary Public - State of Oregon

STATE OF OREGON)

) ss

County of)

This instrument was acknowledged before me on _____, 2013 by
_____ as _____ of LaPoint Business Group, LLC.

Notary Public - State of Oregon

Exhibit A

Grantor Property

A tract of land located in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, in the Southeast one-quarter of Section 2, Township 3 South, Range 1 West of the Willamette Meridian, in the City of Wilsonville, County of Washington and State of Oregon, being further described as follows:

Commencing at the Southeast corner of Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, recorded in Book 31 at Page 14 in the Plat Records of Washington County, Oregon; thence South 89°38'33" West, along the South line of said Lot 7, a distance of 379.33 feet to a point 12.00 feet East of the East line of Parcel I as described in Deed from John Q. Hammons to the State of Oregon, by and through its Department of Transportation, Document No. 95-027726, recorded April 21, 1995 (hereinafter referred to as "ODOT"); thence North 00°09'24" East parallel to said East line, 18.00 feet to the true point of beginning; thence continuing North 00°09'24" East along said Easterly line, 341.16 feet; thence along the arc of a 116.16 foot radius curve to the right, through a central angle of 48°43'29", an arc length of 98.78 feet, the chord of which bears North 24°31'08" East, 95.83 feet; thence along the arc of a 45.00 foot radius curve to the right, through a central angle of 67°23'57", an arc length of 52.94 feet, the chord of which bears North 82°35'16" East 49.94 feet; thence along the arc of a 100.00 foot radius curve to the right, through a central angle of 37°13'18", an arc length of 64.96 feet, the chord of which bears South 45°05'58" East, 63.83 feet to a point on the Westerly line of Boones Ferry Road as described in said "ODOT" Deed; thence along the said Westerly line along the arc of a tangent 595.65 foot radius reverse curve to the left, the radius bears North 63°30'41" East, through a central angle of 02°45'38", an arc length of 28.70 feet, the chord of which bears South 27°52'08" East 28.70 feet; thence non-tangent South 15°09'35" West 83.41 feet; thence South 38°02'13" East, 122.78 feet; thence leaving said Westerly line, South 51°57'47" West, 20.00 feet; thence South 20°40'49" West, 186.07 feet to a point that is 18.00 feet measured at right angles from the South line of said Lot 7; thence parallel to said South line of Lot 7, South 89°38'33" West 121.22 feet to the true point of beginning.

EXCEPTING THEREFROM that portion thereof conveyed to the City of Wilsonville for right-of-way purposes in Warranty Deed recorded November 23, 2009 as Fee No. 2009-102082, Washington County Deed Records,

Exhibit B

Grantee Property

TRACT 2: A tract of land located in Lot 7, "Edwards Business Industrial Park" in the Southeast one-quarter of Section 2, Township 3 South, Range 1 West, Willamette Meridian, in the City of Wilsonville in the County of Washington and State of Oregon, being further described as follows:

Beginning at the Southeast corner of said Lot 7 "Edwards Business Industrial Park" recorded in Book 31 at Page 14 in the Plat Records of Washington County, Oregon, the TRUE POINT OF BEGINNING; thence South 89°38'33" West, along the South line of said Lot 7, a distance of 379.33 feet to a point 12.00 feet East of the East line of Parcel 1 as described in the deed from John Q. Hammons to the State of Oregon, by and through its Department of Transportation, Document Number 95027726, recorded April 21, 1995 (herein after referred to as "ODOT"); thence North 00°09'24" East parallel to said East line of Parcel 1, 18.00 feet; thence North 89°38'33" East parallel to said South line, 121.22 feet; thence North 20°40'49" East, 186.07 feet; thence North 51°57'47" East, 20.00 feet to the westerly line of Boones Ferry Road as described in said Hammons to "ODOT" deed; thence along said westerly line South 38°02'13" East, 77.66 feet; thence North 46°33'47" East, 48.10 feet; thence South 40°56'40" East, 81.06 feet; thence along the arc of a 2,837.79 foot radius non-tangent curve to the right, said curve having a radial bearing of South 51°12'39" West, a central angle of 01°19'57", an arc length of 66.00 feet, the chord of which bears South 38°07'22" East, 66.00 feet; thence along the arc of a 116.96 foot radius non-tangent curve to the left, said curve having a radial bearing of South 74°41'25" East, through a central angle of 30°31'07", an arc length of 62.30 feet, the chord of which bears South 00°03'01" West, 61.56 feet more or less to the TRUE POINT OF BEGINNING, containing an area of 37,106 square feet, or 0.85 acres, more or less.

Exhibit C

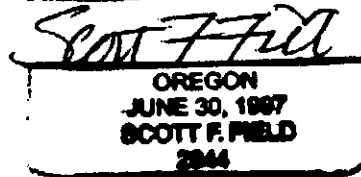
Easement Area

September 23, 2013
NWS Project No. 787
Trash Enclosure Easement

A tract of land located in the southeast one-quarter of Section 2, Township 3 South, Range 1 West, Willamette Meridian, City of Wilsonville, Washington County, Oregon, being more particularly described as follows:

Commencing at the southeast corner of Lot 7, Edwards Business Industrial Park, thence along the south line of said Lot 7, South 89°38'33" West a distance of 379.33 feet to a point 12.00 feet east of the east line of Parcel 1 as described in deed from John Q. Hammons to the State of Oregon, by and through its Department of Transportation, recorded April 21, 1995 as Document No. 95-027726, Deed Records of Washington County, Oregon; thence parallel with said east line, North 00°09'24" East a distance of 18.00 feet to a 5/8 inch iron rod located at the southwest corner of that property conveyed to Wilsonville Devco, LLC by deed recorded May 24, 2012 as Document No. 2012-042053, Deed Records of Washington County, Oregon; thence along the south line of said Wilsonville Devco, LLC property, North 89°38'33" East a distance of 121.17 feet to the most southerly southeast corner thereof; thence along the easterly boundary of said Wilsonville Devco, LLC property, North 20°40'49" East a distance of 119.17 feet to the Point of Beginning; thence continuing along said easterly boundary, North 20°40'49" East a distance of 21.00 feet; thence departing said easterly boundary, North 89°50'37" West a distance of 20.52 feet to a point; thence South 00°09'23" West a distance of 19.67 feet to a point; thence South 89°50'37" East a distance of 13.17 feet to the Point of Beginning.

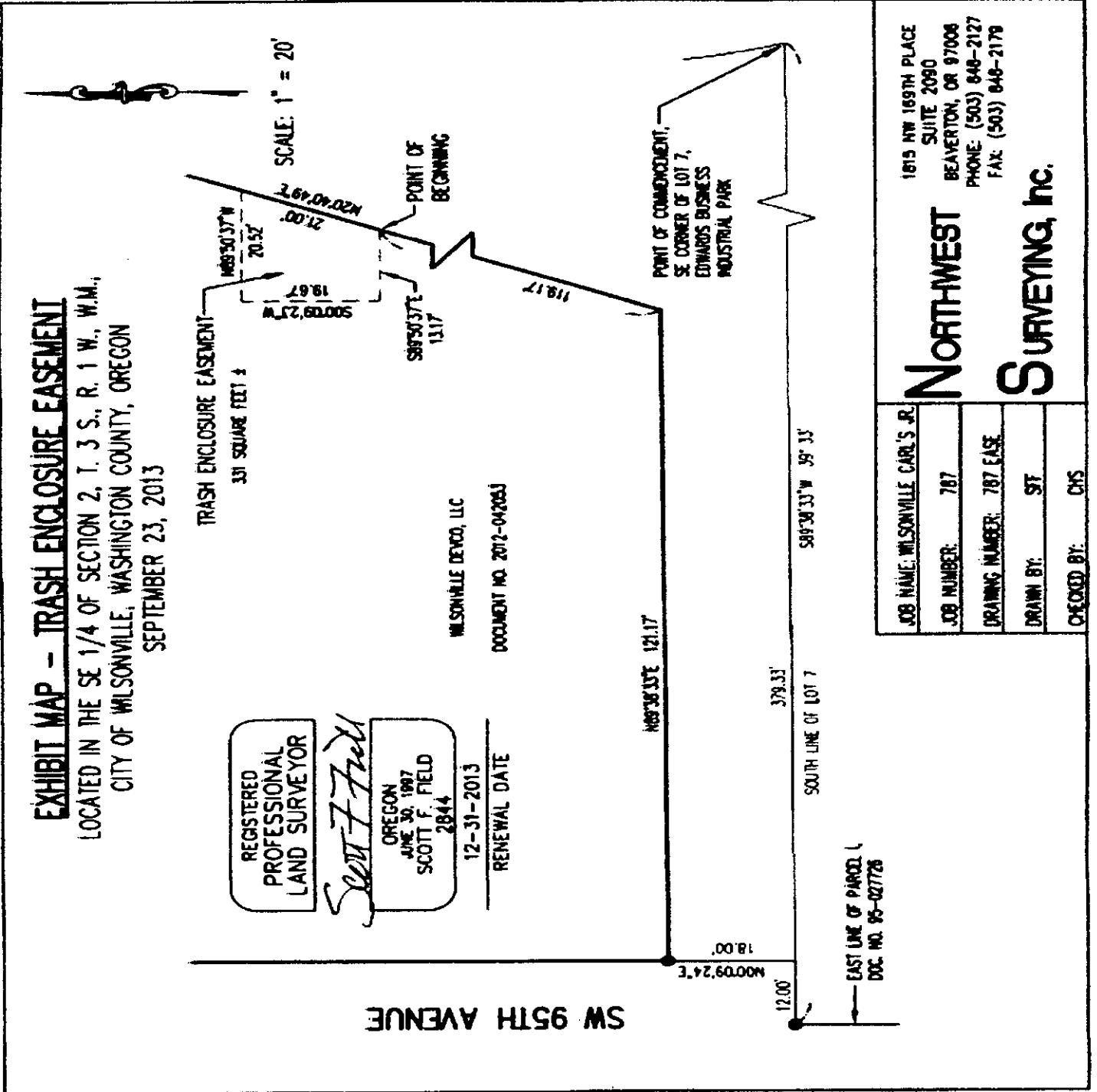
Said described tract of land contains 331 square feet, more or less.



REVISION: 12/31/2013

Exhibit D

Illustration



1815 NW 189TH PLACE SUITE 2080 BEAVERTON, OR 97008 PHONE: (503) 848-2127 FAX: (503) 848-2178	
<h1>NORTHWEST SURVEYING, Inc.</h1>	
JOB NAME: WILSONVILLE CARLS, JR.	
JOB NUMBER: 787	
DRAWING NUMBER: 787 EASE	
DRAWN BY: ST	
CHECKED BY: CHS	













LaPoint Business Group, LLC
dba, Chevron North Wilsonville
Coca Cola Fountain Mart
25410 SW 95th Avenue
Wilsonville, Oregon 97071

DEVCO Property Development
DRB Meeting February 10, 2014

I am the property owner and operator of the Chevron and Coca Cola Fountain Mart adjacent to the DEVCO development.

I ask the members of the DRB Board two questions:

1. Can Devco develop and operate their developments within their property?
2. Does the development meet the required WDC's and/or intent of the WDC's?

I have operated my development for 15 years within the boundaries of my property. The original development has led to several compromises of my property and business. Phase I has caused an unforeseen traffic chaos. Parking and delivery areas for my vendors and customers have been compromised. The Devco development has been un-affected by these new problems because Devco development relies on my property to conduct their business. My property is being used to make their development(s) functional beyond the intent of our original agreement(s).

It's clear phase II of Devco's development has drastically changed what I originally agreed to. The traffic problems and/or chaos will exacerbate on my site ONLY. This proposed development will also create several new problems. The pedestrian and bicycle traffic will cut through my pump islands and across my fuel delivery area. The new proposed development will create additional head on traffic and several new choke points on both sites.(See Attached)

1. I want to operate my business(s) on my site and will not use any Devco property to do so.
2. I want Devco to operate their business(s) on their site without the use of my property.

Thank You,

Garry LaPoint

Pauly, Daniel

From: gl@eoni.com
Sent: Friday, January 31, 2014 11:35 AM
To: Pauly, Daniel
Cc: Jason LaPoint; Wallace Lien
Subject: Site plan solution
Attachments: DRB Response to Steve Pfeiffer 1a (2).pdf; new easement solutions 1.doc

Good Morning Dan,

Please see attached cooperation by LaPoint Business Group LLC to resolve Devco's site plan issues as I promised you earlier this month I would do.

Garry LaPoint



City of Wilsonville

EXHIBIT D7 DB13-0046 et seq

LaPoint Business Group, LLC
25410 SW 95th Avenue
Wilsonville, Oregon 97071

January 29, 2014

To City of Wilsonville Planning Department and DRB Board Members

The LaPoint Business Group LLC and its members appreciate the solutions and new information presented in Exhibit B6 to address our concerns with the proposed Coffee Kiosk. Devco's new internal traffic circulation (Exhibit D) resolved our current traffic concerns with our property. Thank you to the City of Wilsonville for kindly requesting a detailed A.M. traffic study from DKS. DKS study(s) confirms the internal traffic circulation in the Devco Developments and Exhibit D will work in harmony.

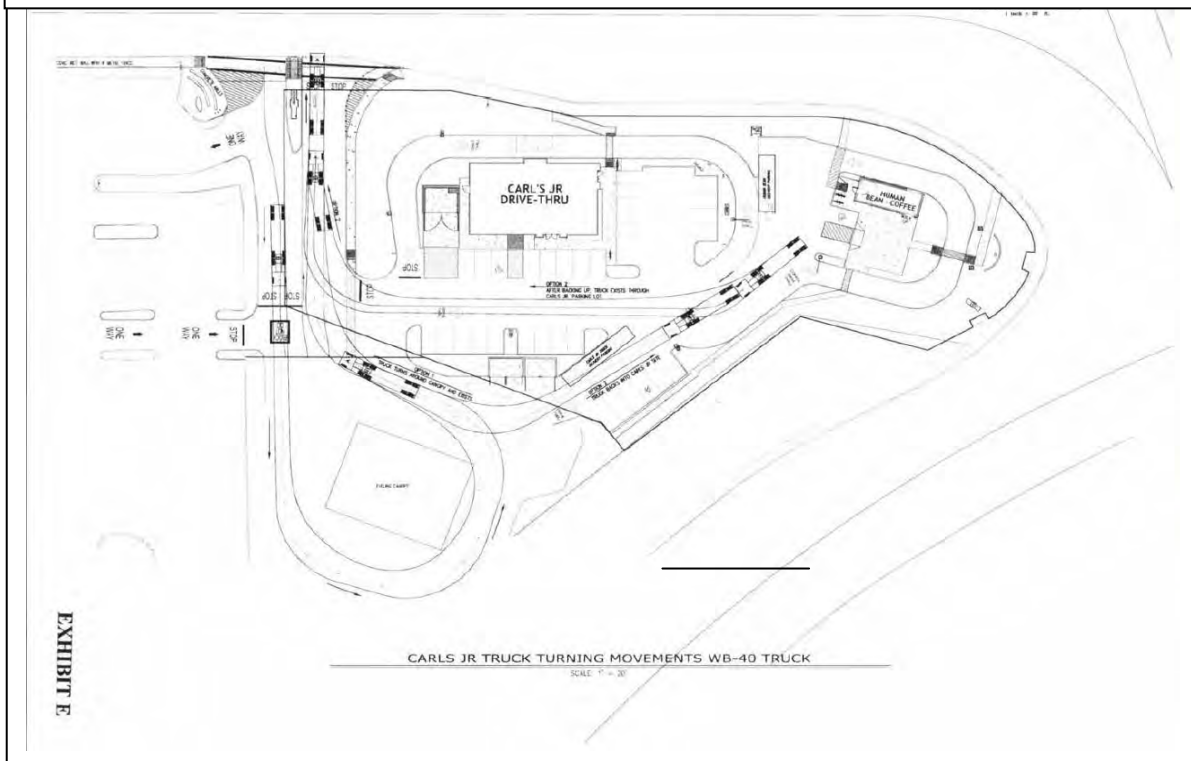
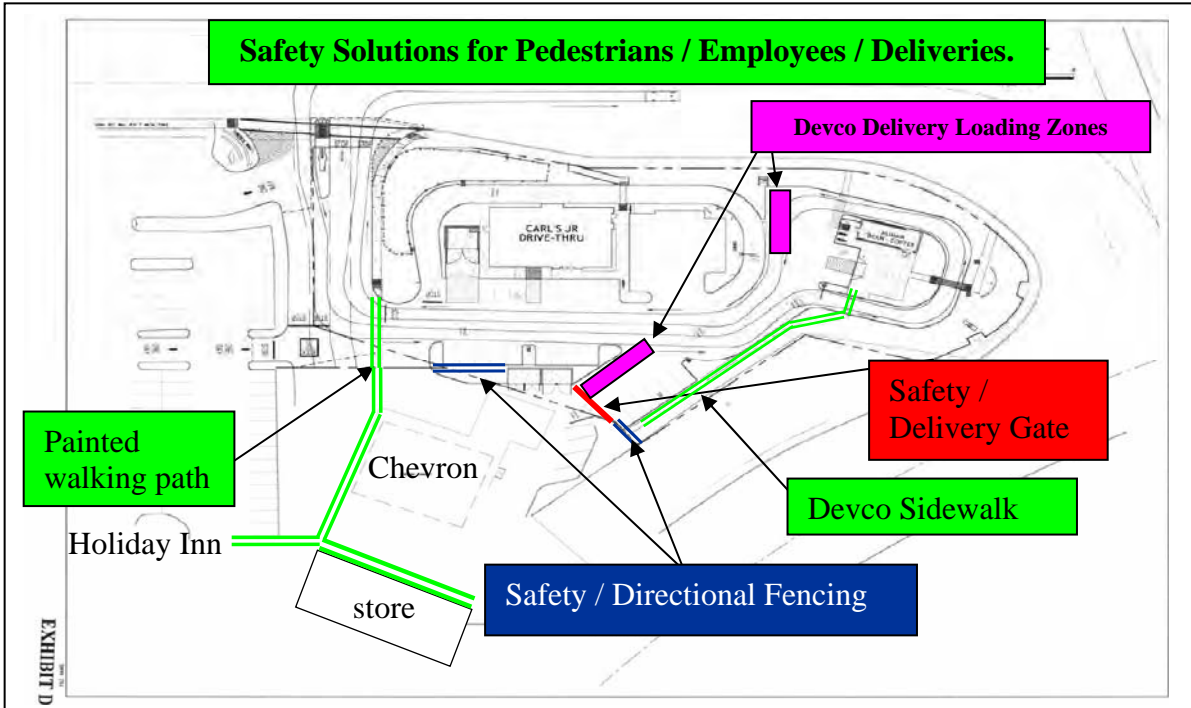
LaPoint Business Group LLC and Devco will write a new easement with a passage for a semi delivery truck to access Carl's Jr. and Human Bean Loading Zones (Exhibit E). LaPoint Business Group LLC agrees to the current solutions with one more simple improvement of a safety/delivery gate. The improvement of a safety/delivery gate, across the north curb-cut, will not change Devco's internal traffic circulation as proposed to the DRB Board in (Exhibit D) or change the loading zone in (Exhibit E). The safety/delivery gate will assure compliance with Devco's proposed internal traffic circulation (Exhibit D), but will remain closed except during deliveries. This simple improvement on a new easement agreement will enhance the solutions provided in (Exhibit B6). In addition, the improvement of a small fence from the north ODOT fence to the new safety/delivery gate would resolve the safety issues raised with crossing pedestrian and bicycle traffic going to the Human Bean walk-up window and outside seating area from Holiday Inn and our site. The small fence would encourage the use of the painted side walk that is the only approved pedestrian walk-way between Holiday Inn, Chevron, and Devco Developments.

Thank you for keeping the record open for 14 days to give Devco the necessary time to resolve our mutual concerns that ensure onsite efficiency and customer safety. We appreciate everyone's time and effort in this matter and we anticipate the citizens of Wilsonville will safely enjoy their new Coffee Kiosk.

Sincerely,

Garry LaPoint
LaPoint Business Group LLC

LaPoint Business Group, LLC
25410 SW 95th Avenue
Wilsonville, Oregon 97071



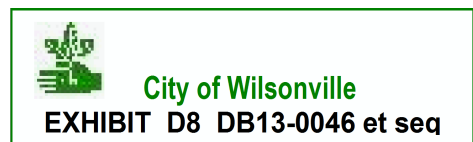
BEFORE THE DEVELOPMENT REVIEW BOARD OF THE
CITY OF WILSONVILLE

In the Matter of the Application for)	
a Stage II Final Plan Revision,)	
Site Design Review and Master Sign	)	Case Nos.
Plan Revision and Sign Waiver of:	)	DB13-0046 (Stage II Final Plan Revision)
	)	DB13-0047 (Site Plan Review)
WILSONVILLE DEVCO, LLC	)	DB13-0048 (Master Sign Plan Revision and
	)	Sign Waiver)
On property addressed as)	
25250 SW 95 th Avenue and identified as)	
TL 302, Section 2DB, Township 3 South,	)	OPEN RECORD
Range 1 West, Willamette Meridian,	)	REBUTTAL
City of Wilsonville, Washington County,)	
Oregon)	

COMES NOW, LaPoint Business Group, LLC, by and through its attorney, Wallace W. Lien, of Wallace W. Lien, P.C., and does hereby submit the following rebuttal information to that new argument and information submitted by the applicant’s representative during the open record period.

1. LaPoint Did Not Have Actual Notice

The applicant alleges that my client had actual notice of the filing of the specific applications noted above. It relies on general conversations and emails for that allegation. While it is true that my client was told there was a proposal for a drive through convenient coffee store, they were not told any of the details, nor were they informed that any land use applications had already been filed. The existence of the specific land use applications, detailing the elements of the proposal and its site plan were not provided to my client, even though they were known at the time of those discussions. To have actual notice of something requires that there is knowledge of the applications themselves, not just some general discussion that some drive through coffee store was being proposed. Since this application had been in the works, and was actually filed months before the notice of hearing was



issued, why didn't the applicant share this information with my client? It would appear that the failure to divulge the actual status of these applications was a deliberate attempt to limit the amount of time my client had to respond to the planning details.

2. There is No Easement for Complete Circulation through LaPoint Property

Applicant's representative cites to the Easement Amendment and states that document provides a full right to circulation. However, as was pointed out in our earlier submittal, this easement is for a linear portion of the common boundary, which does not fill the easement gap to allow applicant's traffic to circulate over and across the entirety of the LaPoint property. All one needs to do is read the legal description (which is Exhibit D to the Easement Amendment), and look at the map (which is Exhibit E to the Easement Amendment) to see that the so called cross reciprocal easement is nothing more than a 60 foot linear portion of the common boundary. There is no easement for applicant traffic over and across the LaPoint property to the east of that line. It is not described in the legal, and it certainly is not shown on the map.

3. Morning Peak Hour Traffic

My client appreciates that the applicant has now recognized what everyone previously agreed to, that is that for a drive through coffee convenient store the traffic is heaviest in the morning hours. The new analysis however continues to be flawed in ignoring the on-site circulation problems created by what it dismissed as pass by trips. While the cars may be passing by the property entrance on 95th Street on route to another location when they decide to stop by for a cup of coffee, but once they turn off the highway, they are no longer passing by, but become a part of the internal circulation. Not accounting for those is head in the sand logic. My client has tendered several video's showing the chaos of internal traffic circulation that exists now. Putting in another drive through, and adding

significant new traffic, without correcting the existing problem is an invitation to continued further accidents on this site.

4. Case is About Bad Traffic Circulation Not Competition

Despite the comments of one of the DRB members at the public hearing, and the echo of that in the applicant's representative submittal, this case is not about competition. It is about traffic. Pure and simply, the applicant has over-built its site. While on paper it might have appeared to be workable in theory when approved, however, now that the Carl's Jr is in full operation, it is clear the internal circulation pattern creates nothing but chaos. At times when deliveries are being made the situation is untenable. Applicant calls the situation adequate and safe. How can that be when there have been two accidents on its property in less than two weeks due to poor circulation.

It must be remembered that the Chevron station is planned in such a way that it does not need the property of any other owner to conduct its business. Traffic comes in on the Chevron easement, enters the Chevron site and circulates in a counter clockwise movement (always on the Chevron property) and exits on the Chevron easement. Yet, applicant does not have sufficient room on its site to provide for on-site circulation, let alone providing a loading zone, and has to encroach on the Chevron property. Now that encroachment is proposed to be exacerbated with a new drive through, that not only needs the Chevron property for circulation to get coffee customers into the drive through lane, but it also needs the Chevron property for loading and deliveries.

My client is not opposed to the Human Bean because of competition, but because it brings with it the need to unlawfully use its property in such a way as to clog the driveway and otherwise inhibit his own customers. If anything, this case is about protecting the safety of the Chevron customers who will be subject to all the additional traffic.

5. New Site Plan

The applicant's January 27, 2014 submittal contains new site plan drawings relating to internal circulation. Exhibit D shows an internal circulation pattern that contains both Carl's Jr and Human Bean traffic on the applicant's property without any encroachment onto the Chevron site. My client applauds this modification, and provided it can be enforced, is in full agreement with this modification.¹ One additional sign should be added that notes that no access is allowed through the Chevron property. This could be added to the new proposed signs, or on an additional sign. In addition, perhaps it could be painted on the pavement. To fully ensure such on-site circulation, my client proposes a gate be placed across the driveway from the corner of the trash enclosures to a point at the edge of the curbed landscaping. This gate would ensure total on site circulation by customers of the Carl's Jr and the Human Bean.

Exhibit E to this site plan modification shows a new loading/delivery route. The aforementioned gate could be made such that delivery trucks could open and close it in order to make its deliveries, however this plan involves a significant portion of the Chevron property that would be used by the applicant generated vehicles. While it appears the applicant has some dispute with regard to its easement rights to circulate around the east side of the trash enclosures, there is no question the applicant does not have an easement for the use of remainder of the Chevron property as is depicted on this map, or the right to stop and load and unload merchandise.

As my client has repeatedly stated, it is not in agreement with any use of its property by the applicant as proposed in the original site plan, or as shown for deliveries on this Exhibit E. Further,

¹My client's letter together with his modification of Exhibit D, showing the location of the gate that would ensure public compliance with the new site plan was submitted directly under separate cover.

the applicant has shown no right for parking or loading or unloading or deliveries of any sort on the Chevron property. This application can not be approved without a designated loading/delivery area being established on the applicant's property. Nothing in Exhibit E changes that.

6. Conclusion

The new modified site plan is an improvement, and with the safety gate installed, it would provide effective enforcement of the plan. However, until the applicant can adequately address how loading and deliveries will take place using only its own property, the application is flawed and should be denied.

ELECTRONICALLY DELIVERED this 31st day of January, 2014.

Wallace W. Lien

Wallace W. Lien, OSB 79-3011
Attorney for LaPoint Business Group, LLC

DB13-0046 et seq
Boones Ferry Pointe:
The Human Bean Drive-Up Coffee Kiosk

Exhibits received after the January 13, 2014 meeting (post DRB Packet production):

Added February 4, 2014:

- Exhibit B7 – Applicant Rebuttal, February 3, 2014
- Exhibit B8 – Truck Turning Movement, February 3, 2014

Steven L. Pfeiffer
PHONE: (503) 727-2261
FAX: (503) 346-2261
EMAIL: SPfeiffer@perkinscoie.com

February 3, 2014



VIA E-MAIL

Daniel Pauly, AICP
City of Wilsonville
29799 SW Town Center Loop E
Wilsonville, OR 97070-6499

**Re: The Human Bean, Wilsonville Devco LLC; Second Open Record Period
DB 13-0046, DB 13-0047, DB 13-0048**

Dear Mr. Pauly:

As you know, this office represents the Applicant, Wilsonville Devco, LLC (“Applicant”), in the above-referenced applications related to its proposal to construct a coffee kiosk at the corner of Boones Ferry Road and 95th Avenue (the “Site”). This letter rebuts the additional comments made by Garry LaPoint, dated January 29, 2014, and by his attorney, Wallace Lien, dated January 27 and January 31, 2014 (together, the “Opponent”), submitted during the open record periods. As discussed in more detail below, the development proposal complies with all applicable approval criteria; therefore, the DRB should approve these applications.

This letter is timely submitted within the second open record period. Please add this letter and its attachments to the official record of the DRB proceeding.

1. Resolution of Traffic Concerns.

At the outset, we would like to note we are pleased that The Human Bean Automobile Turning Movement Plan and the DKS AM Peak Traffic Study has resolved Mr. LaPoint’s traffic concerns and has confirmed for Mr. LaPoint that internal traffic circulation on the Site will work in harmony. *See* LaPoint letter, dated January 29, 2014, referencing Exhibit D and Exhibit 6 to Applicant’s January 27, 2014 submittal. While we appreciate Mr. LaPoint’s suggestion to install a safety/delivery gate and fence across the property line between the LaPoint property and the Applicant’s property, which shall remain closed except during deliveries, as discussed in more detail below, such gate cannot be imposed as part of this land use review.

LEGAL29196604.4

Daniel Pauly, AICP
City of Wilsonville
February 3, 2014
Page 2

First, as detailed more fully in the section below discussing the cross-easement, the location of the proposed gate is the exact location of an existing cross-easement for vehicular ingress and egress benefiting both the LaPoint property and the Applicant's property. The proposed gate would directly contradict such cross-easement, and would constitute a breach of the private contract.

Secondly, even if the Applicant agreed to the proposed gate, a third party (Carl's Jr.) enjoys the benefit of the cross-easement and built its development in reliance on the cross-easement. The proposed gate could not be installed without interfering with the rights of Carl's Jr., whose development was previously approved by the City, and whose development is not a part of the current applications. In short, the cross-easement over which the safety/delivery gate is proposed is a private contract that cannot be amended through this land use process and that cannot be modified by the DRB. Therefore, the DRB cannot condition approval of the proposed development on the installation of the proposed gate.

However, in lieu of the proposed gate and fence, the Applicant proposes some additional improvements to address Mr. LaPoint's safety concerns. These improvements are described and illustrated in the attached **Exhibit A**. Specifically, the Applicant proposes 1) two additional directional signs directing customers of the coffee kiosk to exit using the drive aisle in front of Carl's Jr. to the shared driveway; 2) the addition of new sidewalk to the LaPoint property connecting the Applicant's proposed sidewalk on its northern property line; and 3) a painted crosswalk from the end of the sidewalk to Chevron's storefront. The Applicant believes that these proposed improvements will enhance pedestrian and bicycle safety on the Site and on the LaPoint property.

For the reasons stated above, the DRB can find that the Opponent's traffic concerns are resolved. While requiring the proposed safety/delivery gate and fence would be improper and unnecessary, the DRB can find that the Applicant's proposed additional improvements further enhance Site safety. Given Mr. LaPoint's January 29, 2014 letter stating that his traffic concerns were resolved, and that he anticipates "the citizens of Wilsonville will safely enjoy their new Coffee Kiosk," it is unclear how relevant Mr. Lien's January 27 and January 31, 2014 letters are to this proceeding. Nevertheless, we address Mr. Lien's comments in full below.

2. Adequate Legal Notice.

The Opponent continues to argue that Mr. LaPoint did not receive adequate legal notice of the these Applications, in the face of clear facts to the contrary. Not only did Mr. LaPoint admit to receiving notice from the City on December 23, 2013, the City's notarized record of mailing demonstrates that Mr. LaPoint was on the list of individuals notified by that mailing. The record of mailing is attached as **Exhibit B**. There is no dispute that the notice was mailed on

December 23, twenty-one (21) days before the January 13 hearing. Therefore, there is clear evidence that Mr. LaPoint was mailed the notice within the statutory twenty (20) day time limit established by 197.763(3)(f)(A).

For these reasons, the DRB can find that the Opponent received adequate legal notice of the proposed development and that the City committed no procedural error in its mailing of notice.

3. There is No “Jurisdictional Defect” Caused by an Easement Gap.

The Opponent continues to assert that the City, by and through the DRB, does not have the “jurisdiction” to review the proposed development because the Opponent contends the Applicant relies on the LaPoint property for traffic circulation, to which Mr. LaPoint has not agreed nor consented. To the contrary, and as discussed in more detail below, the Applicant and Mr. LaPoint enjoy a cross-easement that provides unrestricted access for vehicular ingress and egress over the entirety of each other’s property. Therefore, the Applicant possesses all of the necessary property rights to serve the proposed development, and the Opponent is not a “necessary party” to the applications and need not have been a signatory to these applications.

As an initial matter, it is important to point out that vehicular traffic to and from the proposed coffee kiosk can occur entirely within the Applicant’s Site, without ever crossing onto the LaPoint property. This vehicular traffic turning movement is demonstrated on Exhibit D to the Applicant’s January 27, 2014 letter, which Mr. LaPoint cited to as resolving his traffic concerns. Moreover, it is important to note that most of the deliveries to the coffee kiosk will utilize vans or light trucks, given its modest stocking demands, which can be adequately accommodated entirely within the Applicant’s Site. The delivery route is shown on the attached **Exhibit C**.

While larger delivery trucks may be used on occasion, such as when deliveries with other destinations are combined, the Opponent’s main concern appears to be the traffic movement of passenger vehicles. This is made apparent by Mr. LaPoint’s January 29, 2014 letter, in which he proposes a safety/delivery gate, which he suggests remain closed except for to allow deliveries. Mr. LaPoint’s proposal results in the conclusion that he is not opposed to the use of his property for deliveries, but rather, he is opposed to allowing passenger vehicles to cross from the Applicant’s property onto his property. Mr. LaPoint’s position is curious, given that any passenger vehicles traveling from the coffee kiosk to the LaPoint property would most likely become gas/convenience store customers. Nevertheless, Mr. LaPoint has no basis for restricting ingress and egress of passenger vehicles or delivery trucks over and across the existing cross-easement.

Access and circulation rights for both the Applicant's and LaPoint's properties are defined by a Development Agreement established in 2012 ("Development Agreement"). *See* Exhibit 5 to Applicant's January 27, 2014 submittal). The Development Agreement contemplated the existing access rights and that both a Carl's Jr. and a then-unnamed retail-type development would be established on the Site. In conjunction with this agreement, a shared reciprocal access easement and an amendment to easement agreement, which created the cross-easement (Wa. Co. Doc. 2002-051321, 2013-097514), provides access to the Site. *See* Exhibit 4 to Applicant's January 27, 2014 submittal. The cross-easement was specifically designed to allow "vehicular ingress and egress" between the Applicant's and LaPoint's properties, and as correctly described by Mr. Lien, consists of a 60.55 foot line along the joint property line, over which vehicles have the unrestricted right to cross. This means that a vehicle on the LaPoint property may enter the Applicant's property over the cross-easement and has the right to go anywhere on the Applicant's property. Conversely, a vehicle on the Applicant's property may enter the LaPoint property over the cross-easement and has the right to go anywhere on the LaPoint property. The point of the cross-easement was to increase the customer base of each retail establishment by allowing gas customers to enter the Applicant's property to buy fast food and coffee, and to allow Carl's Jr. and coffee kiosk customers to enter the LaPoint property to buy gas and convenience store sundries.

Opponent contends that the cross-easement does not provide a full right to circulation over and across the entirety of the LaPoint property. However, Opponent's reading of the cross-easement renders it completely meaningless, which is contrary to established law. If the cross-easement does not allow circulation over the entirety of each other's property, what does it allow? Surely, the parties entered into a cross-easement to allow some movement over each other's property. Since there is no express restriction or limitation of movement on either property, the only reasonable interpretation is that the full range of circulation movement on each property was intended by the parties.

The DRB can find, therefore, that the Applicant possesses the property rights and access necessary to serve the proposed development.

4. Site Circulation Pattern is Adequate.

The Opponent argues that the existing site circulation pattern is insufficient to serve the Chevron station, Carl's Jr., and the proposed coffee kiosk. We note that most of the Opponent's assertions concern the relationship between the Chevron station and the Carl's Jr., and emphasize that those circulation conflicts, if any, are not at issue in these Applications. Indeed, the majority of the Opponent's comments, including the videos showing vehicles circulating on the Site, are directed towards the Carl's Jr., and more specifically, the loading requirements for the Carl's Jr. These are simply not at issue here. The circulation pattern between the Carl's Jr. and the

Chevron station has been established by agreement and approved by the City; any private disagreements about how the respective businesses operate do not concern these Applications and are not proper for the City to consider when reviewing them. Where circulation standards apply to this Application, the Applicant has demonstrated compliance with all applicable criteria. Therefore, the DRB may find that the site circulation that serves the coffee kiosk is adequate.

We note initially that the vehicle circulation plans for both the Applicant's and the Opponent's properties have been reviewed on multiple occasions. In July of 2012, the Applicant, Holiday Inn, the City, and Opponent entered into the Development Agreement, which established rights and responsibilities of each party respecting site access and circulation. The Development Agreement contemplated both a Carl's Jr. and a yet-to-be named retail use on the Applicant's property. It also called for the system of easements that are in place today and clearly evidences the party's mutual understanding of how vehicle circulation would work on the Site. This understanding was further developed as part of the previous Stage II Planned Development and Site Plan reviews (DB 12-0074, 0075, and 0076) that were approved early last year. Note that the Opponent was a co-applicant for that application. While we do not concede that the Opponent's signature on the previous applications was required, it is instructive insofar as the Opponent, not more than one year ago, was entirely at ease with the circulation system that would serve the Carl's Jr. and then-unnamed "future retail."

Insofar as the Opponent has made some mention of the loading requirements for the Human Bean, it is important to note that the loading demands of a coffee kiosk are minor. In general, the coffee kiosk can be adequately stocked by vans or light trucks, which turning movements can be accommodated completely within the Applicant's Site. A separate loading berth is not necessary for such vans or light trucks, which can park in existing parking stalls for loading and unloading. As such, the modest loading demand of the kiosk does not adversely impact the proposed vehicle circulation pattern. This point is consistent with Staff's finding on page 23 of the Staff Report.

As to the alleged reports of accidents onsite, the Opponent has failed to demonstrate that they were caused by the existing site design. In any event, these reports are intended to argue against an existing site circulation pattern to which the Opponent has given express consent, as discussed above.

Where the Opponent does attempt to address the circulation criteria that apply to these Applications, we have provided the following responses:

a) WDC 4.035(.04).3 - Site Development Permit Application.

“Proof that the property affected by the application is in the exclusive ownership of the applicant, or that the applicant has the consent of all individuals or partners in ownership of the affected property.”

The Opponent asserts that the Applicant does not own and/or have rights to enough property to serve the proposed development without the Opponent’s signature on the Applications. Opponent is mistaken. As discussed at length above, the Applicant has shown (1) that all vehicle circulation necessary for the coffee kiosk occurs on the Applicant’s property and easement, and (2) has provided sufficient documentation of that ownership and easement. As discussed above, the easement is a property right of the Applicant, to which the Opponent consented to in 2002 and later in 2013. (Wa. Co. Doc. 2002-051321, 2013-097514.) Staff found accordingly that “the applicant has provided all of the applicable general submission requirements contained in this subsection.” Staff Report at 14.

For all of these reasons, the DRB may find that this criterion has been met.

b) WDC 4.035(.04).6.a – Site Development Permit Application.

“Streets, private drives, driveways, sidewalks, pedestrian ways, off-street parking, loading areas, garbage and recycling storage areas, power lines and railroad tracks, and shall indicate the direction of traffic flow into and out of off-street parking and loading areas, the location of each parking space and each loading berth and areas of turning and maneuvering vehicles.”

The Opponent argues that the site plans submitted by the Applicant do not show sufficient loading areas or otherwise comply with this criterion. We reiterate Staff’s finding that all applicable submittal requirements have been met. The site plans submitted with the Application, as well as those submitted during these open record periods, adequately demonstrate planned turning movements. They include a detailed plan of drive aisle striping and vehicle stacking, directional arrows and traffic flow, pedestrian walkways and crossings, parking spaces, traffic signs, trash enclosures, and all other aspects of the proposed development. As mentioned above, the modest stocking demands of the coffee kiosk can be met by delivery van or light truck, which can park in a parking stall for loading and unloading. *See Exhibit C.* Additionally, the Applicant submitted Exhibit E to its January 27, 2014 submittal, which shows the location of the coffee kiosk delivery parking/loading berth in the rare instance a larger truck is necessary.

Therefore, the DRB can find that this criterion is met.

c) WDC 4.400.02(A) – Purpose and Objectives of Site Design Review.

“Assure that Site Development Plans are designed in a manner that insures proper functioning of the site and maintains a high quality visual environment.”

The Opponent argues that the existing site circulation is not consistent with this objective. First, note that this is an aspirational purpose statement for the Site Design Review section and is intended to guide the DRB in its review of proposed site designs. It is not a clear and objective criterion, does not require a specific showing by the Applicant, nor does it define what is meant by “proper functioning of the site.” It is therefore not directly applicable to the proposed development.

Even so, Staff did address this criterion on page 32 of the Staff Report and found that the Application was consistent with the purpose and objectives of Site Design Review. The specifics of the site circulation plan are discussed below.

This purpose statement is implemented by WDC 4.154(.01), which does contain criteria for site circulation. The Applicant provided responses to this criterion in the revised Application, dated December 9, 2013. Staff found this response acceptable. This, coupled with the Development Agreement, the submitted site plans, and Applicant’s responses, clearly demonstrate orderly and safe site circulation. The DRB can therefore find that the proposed development is consistent with this purpose statement.

d) WDC 4.421(.01).C. – Criteria and Application of Design Standards.

“Drives, Parking and Circulation. With respect to vehicular and pedestrian circulation, including walkways, interior drives and parking, special attention shall be given to location and number of access points, general interior circulation, separation of pedestrian and vehicular traffic, and arrangement of parking areas that are safe and convenient and, insofar as practicable, do not detract from the design of proposed buildings and structures and the neighboring properties.”

The Opponent asserts that the “circulation chaos that currently exists” demonstrates that this objective was not met. While we do not agree that “circulation chaos” is occurring on the Site, we point out that the existing Site circulation has been reviewed by the Opponent, and consented to the Development Agreement and the 2013 Stage II Planned Development and Site Plan. Again, such assertions address site *operation*, not design, and are not applicable to these Applications.

Also, like the code section discussed above, this provision is not a discrete criterion; rather it describes an aspirational design objective upon which the DRB should review the proposed development. It is therefore not directly applicable to the proposed development.

Nonetheless, the Applicant provided evidence of safe and convenient circulation on the Site and Staff determined that evidence to be sufficient for the purpose of this particular design objective. The enclosed site plan demonstrates a clear plan for pedestrian ways, parking spaces, drive aisles, and pedestrian crossings. Specifically, they show the following:

- Two separate pedestrian connections to the sidewalk, both the North and East, each with its own striped drive aisle crossing;
- Circulation and stacking patterns for vehicles visiting the coffee kiosk, with safe stacking for at least seven (7) vehicles;
- Directional arrows separating traffic flow;
- Eight (8) adjacent parking spaces;
- Paved walkways connect the parking spaces to the coffee kiosk, with striped drive aisle crossings;
- A patio area near the coffee kiosk to provide pedestrians with a safe space to drink their coffee other than the parking lot; and
- A paved connection to the Opponent’s property to allow, if desired, those who are fueling their cars to walk to the coffee kiosk.

In summary, the Applicant has provided substantial evidence that access and circulation serving the coffee kiosk will be adequate as proposed, and the DRB can find that the proposed development is consistent with this design objective on that basis.

e) WDC 4.154 – On-Site Pedestrian Access and Circulation.

“These criteria require a continuous pathway system that is safe, direct, and convenient, as well as vehicle/pathway separation, crosswalks, and appropriate markings.”

The Opponent argues generally that these criteria are not met. Staff addressed such criteria on pages 21 and 22 of the Staff Report. The Applicant has provided evidence of safe and convenient circulation on the Site, and Staff determined that evidence to be sufficient. As

discussed in detail above, site plans show a clear plan for pedestrian ways, parking spaces, drive aisles, and pedestrian crossings necessary to connect the proposed coffee kiosk with its associated parking, and Site access. The DRB can therefore find that this criterion is met.

The Opponent also suggests that this criterion should be expanded to include requirements of a path to the shared trash enclosures and, oddly, a path across the LaPoint property. The Applicant has proposed, and Staff has found, that the existing pedestrian system can adequately and safely allow Human Bean employees and customers to move about the Site. Staff noted, "this includes two connections to the 95th Avenue sidewalk, which connects to Carl's Jr. and Holiday Inn as well as a pathway connection to the east to provide access to parking, trash enclosures, and the Chevron property." Staff Report at 20-21. An employee would be required to cross approximately 20 feet of drive aisle that is lit with two pole lights to access the trash enclosure. Vehicle speeds within these drive aisles are minimal; in any event, nearly all retail parking lots function with pedestrians continually walking across them. The Applicant believes, and Staff concurs, that this design is safe. The path connecting the Chevron station to the coffee kiosk necessarily ends at the property line because the LaPoint property is not subject to this proposal. Nevertheless, the Applicant has proposed additional improvements to enhance pedestrian and bicycle safety, as described in Section 1, above.

f) WDC 4.155(.03).A – On-Site Pedestrian Access and Circulation.

“Parking and loading or delivery areas shall be designed with access and maneuvering area adequate to serve the functional needs of the site and shall:

1. Separate loading and delivery areas and circulation from customer and/or employee parking and pedestrian areas. Circulation patterns shall be clearly marked; and

2. To the greatest extent possible, separate vehicle and pedestrian traffic.”

The Opponent argues that sufficient loading areas for the Carl's Jr. and the coffee kiosk are not shown on the site plans. As to the Carl's Jr., we re-iterate that it is not the subject of these Applications and, although Staff determined that loading for that business is adequate, it need not be demonstrated on this Application. With regard to the coffee kiosk, the delivery van or light delivery truck can load and unload in a parking stall. As a worst case scenario, Exhibit E to Applicant's January 27, 2014 submittal shows the delivery parking/loading for The Human Bean in the rare instance a larger delivery truck is necessary. The DRB can therefore find that this criterion is met.

g) WDC 4.430(.02)(G) – Design of Trash and Recycling Enclosures.

“The storage area shall be accessible for collection vehicles and located so that the storage area will not obstruct pedestrian or vehicle traffic movement on the site or on public streets adjacent to the site.”

The Opponent generally asserts that the existing and proposed circulation prevents the existing trash enclosures from being safely accessed. The Applicant has provided ample evidence that, if needed, Human Bean employees have a relatively direct and safe access to the existing trash enclosures. However, this criterion addresses the design of new trash enclosure areas. Staff rightly concluded that it was satisfied insofar as no new trash enclosures are proposed. Staff Report at 33. We believe that Staff’s finding provides an adequate basis for the DRB to find that this criterion is met, but also further suggest that it does not apply to the proposed development because no new trash enclosures are proposed.

Opponent’s arguments to the contrary are not well taken because Opponent consented to the location of the shared trash enclosure in the Development Agreement and the 2013 Stage II Planned Development and Site Plan. Any suggestion that these criteria are applicable and not met by these Applications amounts to a collateral attack on previously-approved development plans.

5. Hearing May be Re-Opened on a Limited Basis.

The Opponent requests that the DRB allow additional testimony at its February 10, 2014 hearing. While the Applicant does not oppose the Opponent having an opportunity to speak directly to the DRB, such testimony, if allowed, should be subject to limitations as to time and substance. The Applicant does not oppose allowing the Opponent a maximum of ten (10) minutes to orally summarize his position to the DRB, so long as the Applicant is given the same opportunity. However, any new evidence or new argument not previously submitted to the DRB shall be prohibited.

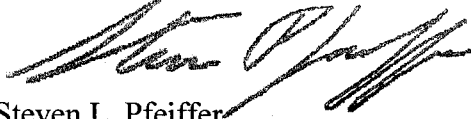
6. Conclusion.

For the reasons discussed above, at the DRB hearing, and in the Applicant’s Application submittals, the proposed development meets all applicable approval criteria, and the City

Daniel Pauly, AICP
City of Wilsonville
February 3, 2014
Page 11

observed proper procedures in processing the Applications. Therefore, the DRB should reject the Opponent's arguments and approve the Applications.

Very truly yours,



Steven L. Pfeiffer

SLP:crl

Enclosures

cc: Ben Altman, SFA Design Group (via email) (with encs.)
Craig Anderson, CB Anderson Architects (via email) (with encs.)
Wallace Lien, Esq.(via email) (with encs.)
Client (via email) (with encs.)
George J. Gregores, Esq. (via email) (with encs.)

Boones Ferry Pointe and Chevron

February 3, 2014

Re: Revised site plan to include new directional signs and extend pedestrian pathway.

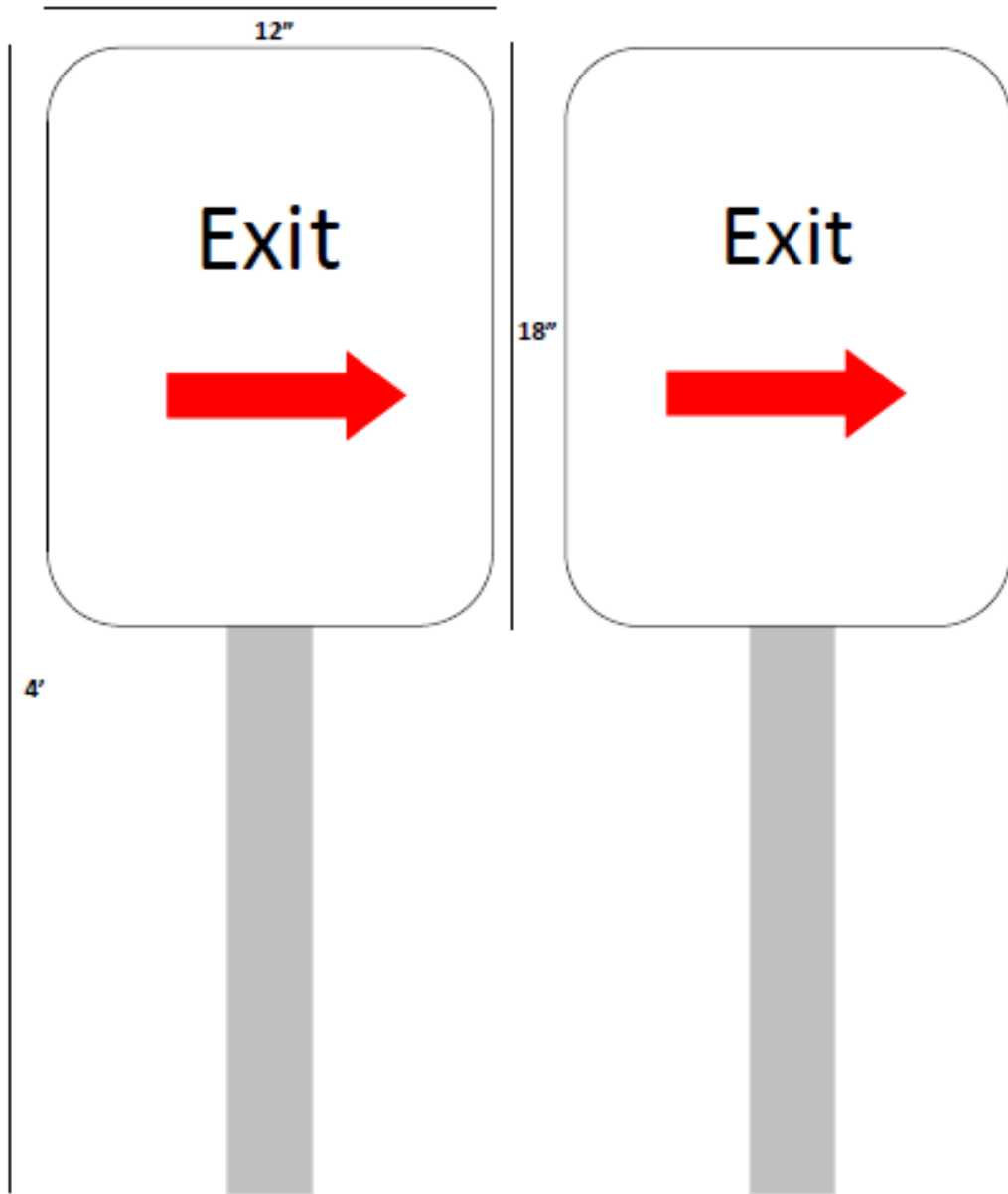
The Applicant respects LaPoint's concerns for pedestrian and bicycle safety therefore is proposing a revised site plan to improve the pedestrian and bicycle access by having two (2) safe pathways to and from Chevron. Applicant believes a fence would promote pedestrians to travel through the center of the respective sites where vehicles travel. The new pedestrian pathway would serve as a more direct route from the Commerce Circle intersection and would be safer than the currently approved pathway and provide Chevron employees with safe passage to its trash enclosure. Applicant further respects the recommendations of Mr. Wallace Lien and is proposing new directional signs within the interior of Applicants site to direct Applicants vehicles to exit in front of Carl's Jr. Applicant believes these simple additions can safely and effectively address pedestrian and bicycle safety and vehicle circulation concerns. All of which is illustrated and further described as follows;

Directional signs: Two (2) directional signs are proposed within the interior of Applicants property, directing consumers of both Carl's Jr. and The Human Bean to exit through the primary exit in front of Carl's Jr. See Exhibit A and Exhibit B.

Extended Pedestrian Pathway: New sidewalk added on Chevron's property connecting to Applicants proposed sidewalk on its northern property line. Hatched marks could be painted from the end of the sidewalk to Chevron's storefront. This pathway would be the safest option for pedestrians and bicycles to access Chevron. This would also provide Chevron's employees with a safe passage to its newly constructed trash enclosure on Applicants property. See Exhibit A.

Exhibit "B"

Proposed Directional Signs



**AFFIDAVIT OF MAILING AND POSTING NOTICE OF
PUBLIC HEARING IN THE CITY OF WILSONVILLE**

STATE OF OREGON)

COUNTIES OF CLACKAMAS)
AND WASHINGTON)

CITY OF WILSONVILLE)

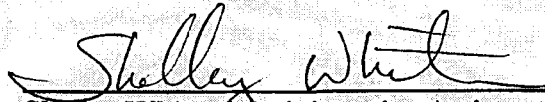
I, Shelley L. White, do hereby certify that I am Administrative Assistant for the City of Wilsonville, Counties of Clackamas and Washington, State of Oregon, that the attached copy of Notice of Public Hearing is a true copy of the original notice; that on December 23, 2013, I did cause to be mailed copies of such notice of said public hearing in the exact form hereto attached to the following property owners:

See Attached List

Also notice was posted at the following locations:

- City Hall, 29799 SW Town Center Loop, East, Wilsonville OR 97070
- Wilsonville Community Center, 7965 SW Wilsonville Road, Wilsonville, OR 97070
- Library, 8200 SW Wilsonville Road, Wilsonville OR 97070
- City of Wilsonville Web Site

Witness my hand this 23rd day of December 2013

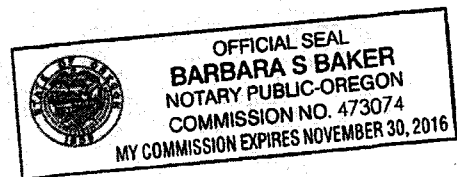


Shelley White, Administrative Assistant

Acknowledged before me this 23rd day of December 2013



NOTARY PUBLIC STATE OF OREGON



**EXPLANATION OF PUBLIC HEARING NOTICE
AND OPPORTUNITY TO COMMENT ON PROPOSED DEVELOPMENT
Boones Ferry Pointe: The Human Bean Drive-up Coffee Kiosk**

This notice informs you of your opportunity to comment on the development of a new 450 square foot drive-thru coffee kiosk at the corner of 95th Avenue and Boones Ferry Road in North Wilsonville and associated improvements, including landscaping and signs.

Comments are encouraged to address specific components of the development such as architecture, site design, signs, traffic, parking, etc. A list of criteria in the City code applicable to review of the development can be found in the attached Notice of Public Hearing.

You can provide comments by submitting them in writing, or by testifying in person at the Public Hearing

Frequently Asked Question about Providing Written Comments:

To whom should I address my written comments?

Please address comments to "Development Review Board Members"

How do I submit written comments?

Email is best. Comments can be emailed to the Planning Staff Member reviewing the application. Daniel Pauly, at pauly@ci.wilsonville.or.us . They can also be mailed to :Planning Division, Attn: Daniel Pauly, 29799 SW Town Center Loop East, Wilsonville, OR 97070 or delivered in person 8:00 to 5:00 on days City Hall is opened (typically Mon-Fri) at the address above.

When should written comments be submitted?

- For comments to be considered in preparing the staff report and to be sent to the DRB for their review prior to the Public Hearing they must be received by City Staff no later than 4 p.m. on January 3, 2014.
- For staff to prepare copies of the comments for the hearing they must be received no later than 2 p.m. the day of the hearing.
- You can bring your own copies to the Public Hearing to present when you testify if you do not meet the deadlines above.

Where and When to come to attend or testify at the Public Hearing

WHERE (Public Hearing): City Hall Council Chambers, 29799 SW Town Center Loop East, Wilsonville, OR 97070

WHEN: January 13, 2014 at 6:30 pm.

City Case Files for Application:

DB13-0046 Stage II Final Plan Revision
DB13-0047 Site Design Review
DB13-0048 Master Sign Plan Revision and Sign Waiver

PUBLIC HEARING NOTICE FOR HEARING JANUARY 13, 2014

Wilsonville Development Review Board Panel 'A'

Notice Date: December 23, 2013

**PUBLIC NOTICE
CITY OF WILSONVILLE**

DEVELOPMENT REVIEW BOARD PANEL A

NOTICE IS HEREBY GIVEN that a PUBLIC HEARING will be held by the **Development Review Board (DRB)** of the City of Wilsonville on **Monday, January 13, 2014 at 6:30 P.M.** at City Hall, at 29799 SW Town Center Loop E, Wilsonville, Oregon, or to such other place to which the Development Review Board may adjourn.

CASE FILES TO BE CONSIDERED: DB13-0046 Stage II Final Plan Revision
DB13-0047 Site Design Review
DB13-0048 Master Sign Plan Revision and Sign Waiver

OWNER/APPLICANT: Josh Veentjer, Wilsonville Devco LLC

**APPLICANT'S
REPRESENTATIVES:** Ben Altman, SFA Design Group
Craig Anderson, CB Anderson Architects

LOCATION: Southeast corner of the 95th Avenue/ Boones Ferry Road intersection near Elligsen Road/I-5 Interchange Described as Tax Lot 0302, Section 2DB, Township 3 South, Range 1 West, Willamette Meridian, City of Wilsonville, Washington County, Oregon, as depicted on the map below.

CONTACT: Daniel Pauly AICP, Associate Planner, at (503) 682-4960.

REQUEST: Boones Ferry Pointe: New 450 square foot drive-thru coffee shop to replace an approved but un-built multi-tenant commercial building at the corner of 95th Avenue and Boones Ferry Road in North Wilsonville.

APPLICABLE CRITERIA

Planning and Land Development Ordinance: Section 4.008, Section 4.009, Section 4.010, Section 4.011, Section 4.014, Section 4.031, Subsection 4.035 (.04), Subsection 4.035 (.05), Section 4.110, Section 4.116, Section 4.118, Section 4.131, Section 4.140, Section 4.154, Section 4.155, Sections 4.156.01 through 4.156.11, Section 4.167, Section 4.171, Section 4.175, Section 4.176, Section 4.177, Section 4.179, Sections 4.199.20 through 4.199.60, Sections 4.300 through 4.320, Sections 4.400 through 4.450 as applicable.

Copies of the approval criteria are available from the Wilsonville Planning Division, located at 29799 SW Town Center Loop East. All testimony and evidence shall be directed to the applicable criteria or the person providing testimony shall state which other criteria they believe applies to this application. A complete copy of the relevant file information, including the staff

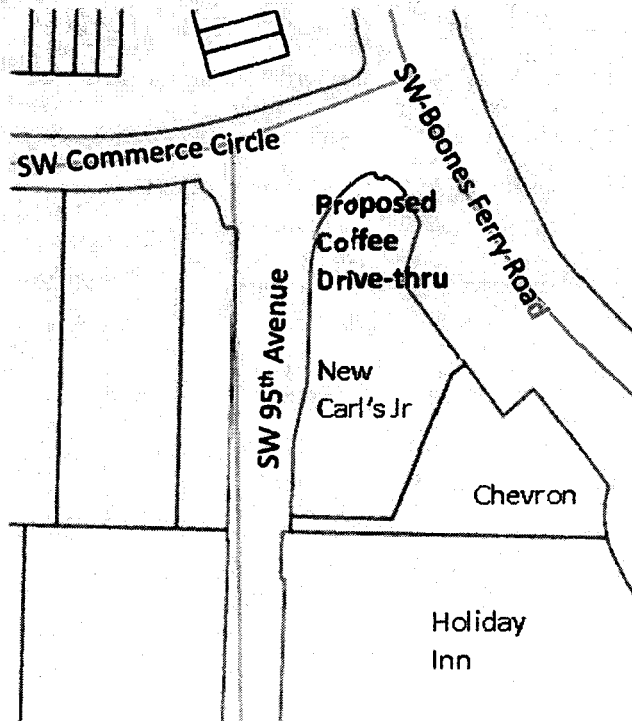
report and recommendations, will be available for inspection seven days prior to the hearing. Copies may be provided at the cost of twenty-five cents per page. Copies will also be available for review at the Wilsonville Public Library.

Any interested party may testify at the public hearing or submit written testimony at or prior to the hearing. **Written comments must be received at City Hall by January 3, 2014, to be included in the staff report.** Mail written statements to City Planning Division, 29799 SW Town Center Loop East, Wilsonville OR 97070 or email to Associate Planner: Daniel Pauly pauly@ci.wilsonville.or.us . The procedures that govern the hearing will be stated at the meeting and are found in Chapter 2.560 of the Wilsonville Code and ORS 197.763.

Please be advised that any issue that is intended to provide a basis for appeal must be raised before the close of the Development Review Board hearing, in person or by letter, with sufficient specificity to afford the Development Review Board and the parties an opportunity to respond to the issue. Failure to raise an issue with sufficient specificity will preclude any appeal on that issue. Parties with standing may appeal the decision of the Development Review Board to the City Council.

Assistive Listening Devices (ALD) are available for persons with impaired hearing and can be scheduled for this meeting. The City will also endeavor to provide qualified sign language interpreters and/or qualified bilingual interpreters, without cost, if requested at least 48 hours prior to the meeting. To obtain such services, please call Shelley White, Planning Administrative Assistant at (503) 682-4960.

Inquiries pertaining to these hearings may be made to Daniel Pauly, AICP, Associate Planner at (503) 682-4960.



AGC CENTER LLC
9450 SW COMMERCE CIRCLE #200
WILSONVILLE, OR 97070-8859

KOPA12 LLC
10200 SW COMMERCE CIRCLE
WILSONVILLE, OR 97070-8601

LAPOINT BUSINESS GROUP LLC
10618 CROSBY RD
WOODBURN, OR 97071-9778

OREGON STATE OF
3930 FAIRVEW INDUSTRIAL DR SE
SALEM, OR 97302-1166

RIVERWOOD BUSINESS CENTER LLC
1501 SW TAYLOR ST STE #100
PORTLAND, OR 97205-1941

RIVERWOOD INDUSTRIAL CAMPUS
NO ADDRESS

SW 95 LLC &
25425 SW 95TH AVE
WILSONVILLE, OR 97070-7201

WILSONVILLE DEVCO LLC
4188 SW GREENLEAF DR
PORTLAND, OR 97221-3225

WPC WILSONVILLE LLC
307 LEWERS ST #600
HONOLULU, HI 96815-2364

DAN GJURGEVICH
KGK FOODS, INC.
P.O. BOX 1012
WILSONVILLE, OR 97070

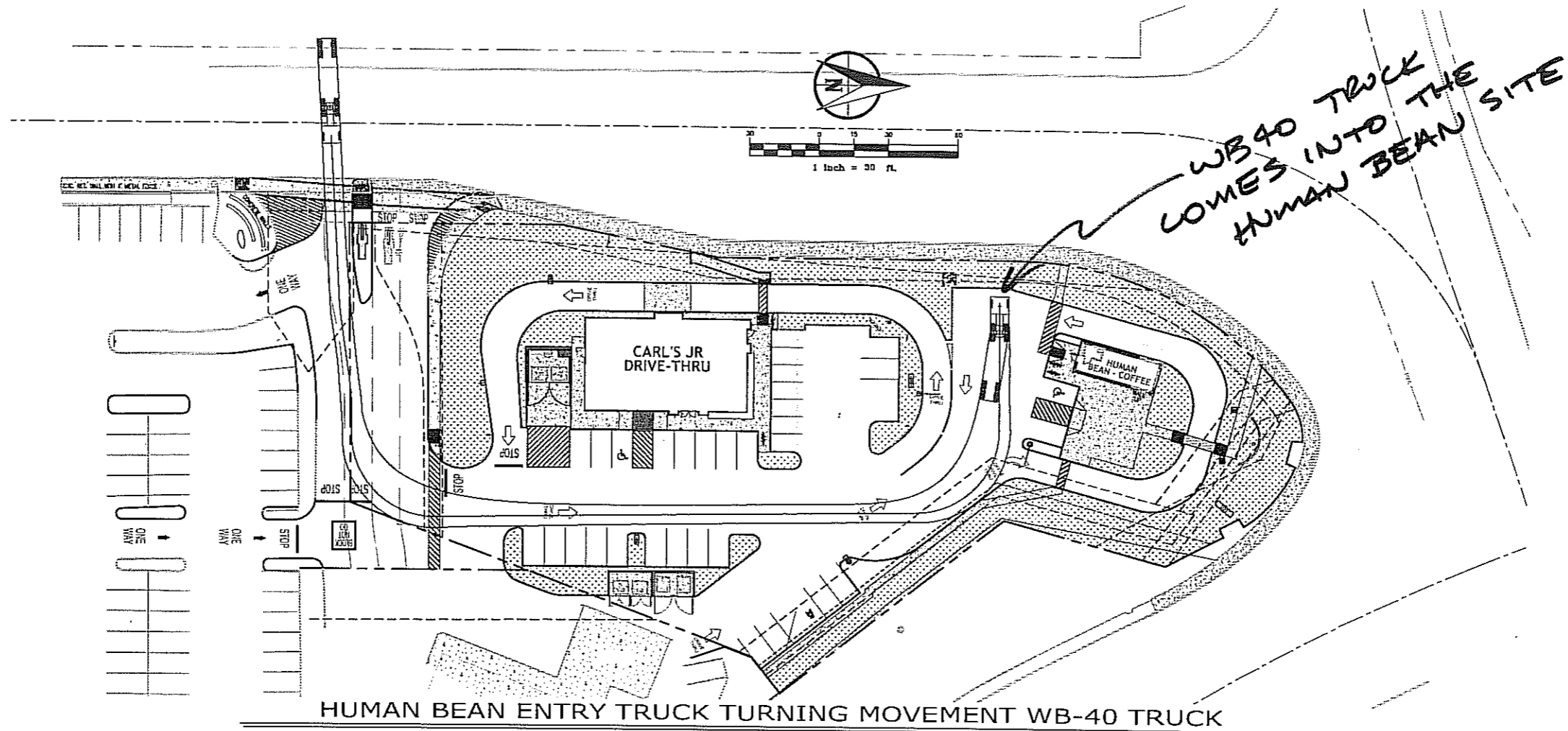
BEN ALTMAN
SFA DESIGN GROUP
9020 SW WASHINGTON SQ. DR. STE 505
PORTLAND, OR 97223

JOSH VEENTJER
WILSONVILLE DEVCO LLC
P.O. BOX 6437
LA QUINTA, CA 92248

CRAIG ANDERSON
CB ANDERSON ARCHITECTS
7209 GREENWOOD AVE. N.
SEATTLE, WA 98103

JOSH VEENTJER
WILSONVILLE DEVCO LLC
P.O. BOX 916
PORTLAND, OR 97207

JOSH VEENTJER
WILSONVILLE DEVCO LLC
50550 MANDARINA
LA QUINTA, CA 92253

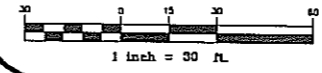
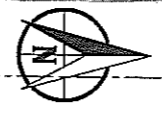


HUMAN BEAN ENTRY TRUCK TURNING MOVEMENT WB-40 TRUCK

SCALE: 1" = 30'

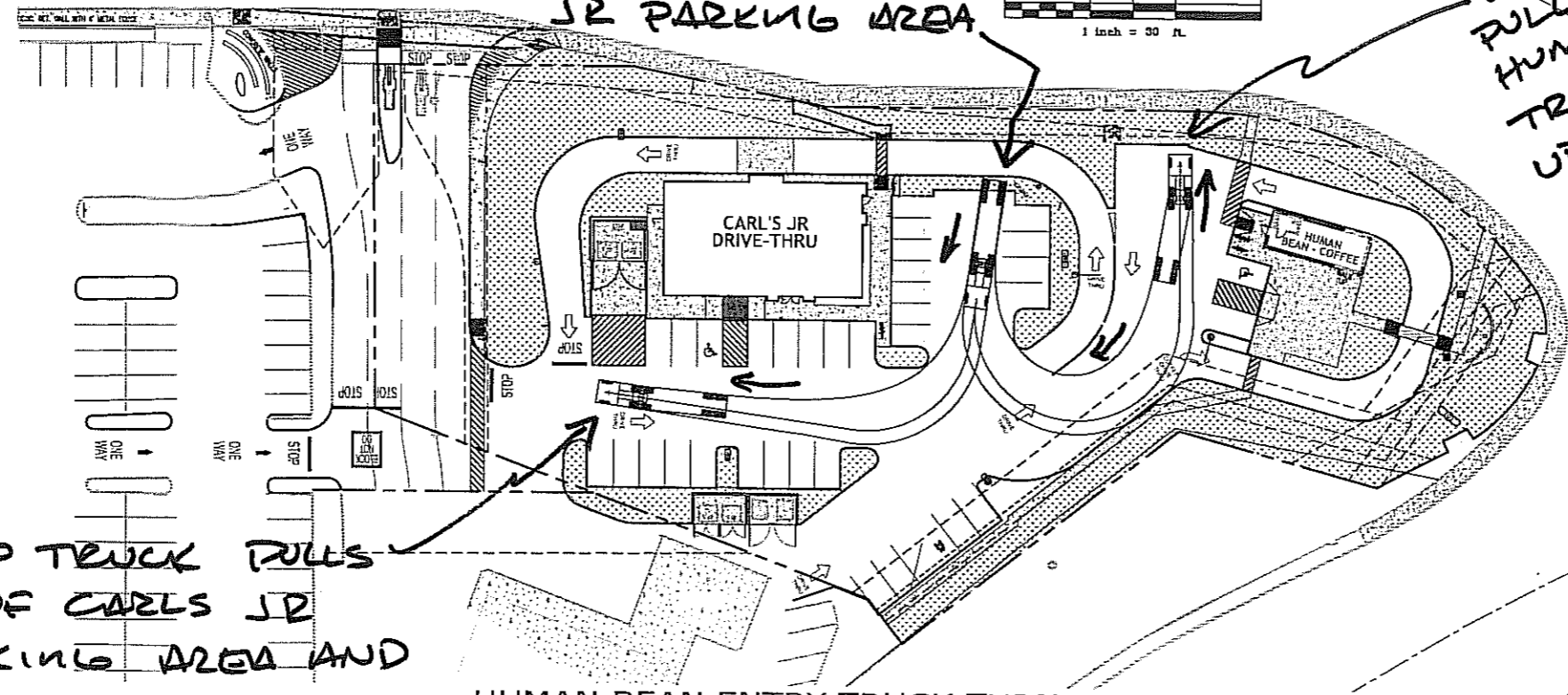
1" = 60' 11" x 17"

WB 40 TRUCK LOCATION
 AFTER BACKING OUT
 OF THE HUMAN BEAN
 SITE AND INTO CARLS
 JR PARKING AREA



WB-40 TRUCK
 PULLS INTO THE
 HUMAN BEAN SITE,
 TRUCK THEN BACKS
 UP INTO A LOOP
 CARLS JR
 PARKING LOT.

WB 40 TRUCK PULLS
 OUT OF CARLS JR
 PARKING AREA AND
 EXITS SITE,



HUMAN BEAN ENTRY TRUCK TURNING MOVEMENT WB-40 TRUCK

EXIT

SCALE: 1" = 30'

1" = 60' 11" x 17"

DB13-0046 et seq
Boones Ferry Pointe:
The Human Bean Drive-Up Coffee Kiosk

Exhibits entered into the record at the February 10, 2014 meeting:

- Exhibit A4 – Staff Memo to DRB

PLANNING DIVISION MEMORANDUM

February 10, 2014

To: Development Review Board Panel A

From: Daniel Pauly AICP, Associate Planner

Re: The Human Bean Update and Recommend Staff Report Changes for DB13-0046 et. seq.

A number of materials have been submitted during the open record period and in response and rebuttal to those submittals. This memo covers two topics in these materials, the additional a.m. peak traffic study and internal site circulation, including delivery traffic. This memo will be Exhibit A4.

An a.m. peak traffic study has been completed by DKS and included in Exhibit B6, applicants open record submittal. The report concludes “there are no operating concerns at the study intersections or project driveway during the a.m. peak hour.”

Internal site circulation and parking for larger vehicles including delivery trucks remains a discussion point. As far as vehicle circulation, the applicant has proposed additional striping and site directional signage to aid circulation. Exhibit E of Exhibit B6 shows delivery truck circulation using LaPoint’s property for ingress circulation, but parking on the Wilsonville Devco property to avoid conflicts with fuel delivery. However, there remains disagreement among the property owners whether the current easements and agreement allow such circulation. The easement disagreement will need to be resolved privately by the parties. In Exhibit B8 Wilsonville Devco shows a workable Human Bean delivery truck circulation in the case that it is determined they are unable to use LaPoint’s property. The scope of the current review is limited to the Human Bean and Carl’s Jr deliveries and site circulation are out of that scope.

Staff recommends the DRB amend the staff report findings related to circulation as follows. Changes are in ***bold italic underline text***:

Subsection 4.155 (.03) A. Functional Design of Parking, Loading, and Delivery Areas

A31. **Review Criteria**: “Parking and loading or delivery areas shall be designed with access and maneuvering area adequate to serve the functional needs of the site and shall:

1. Separate loading and delivery areas and circulation from customer and/or employee parking and pedestrian areas. Circulation patterns shall be clearly marked.
2. To the greatest extent possible, separate vehicle and pedestrian traffic.”

Finding: These criteria are satisfied.

Explanation of Finding: Sheet DD5 “Proposed Truck Turning Movements” of Exhibit B2 of DB12-0074 through 0076 demonstrates sufficient access and maneuvering areas for delivery trucks, both for the Chevron fuel and Carl’s Jr. and the coffee kiosk. Staff notes fuel off-loading, and restaurant **and** other commercial delivery parking are in the same area

of the site separating these operations from the general employee and customer parking and pedestrian areas. The access and maneuvering areas for passenger vehicle parking areas appears sufficient providing adequate space for two-way travel. As shown in Exhibits B6 and B7 additional pavement markings and signs are being added to aid in vehicle circulation. The applicant states in their compliance narrative in their notebook, Exhibit B1, that “care has been given to the extent practicable to separate vehicle and pedestrian traffic.” Staff has reviewed the site plan and found no code supported site changes to further separate pedestrian and vehicle traffic. Staff notes disagreement exists between LaPoint and Wilsonville Devco concerning the extent of the easement that would allow deliveries trucks to access the Wilsonville Devco site via LaPoint’s property as shown on Exhibit E of Exhibit B6. Exhibit B8 shows an alternative for larger trucks delivering to the Human Bean in the case that private resolution of the easement disagreement does not allow the trucks to maneuver on LaPoint’s property. Exhibit B8 shows adequate truck access and circulation to the Human Bean portion of the site. For a development of the proposed size Wilsonville Development Code does not require a separate loading/delivery area, and therefore as is typical of fast food and coffee kiosk type uses in general, the deliveries by necessity happen in the customer/employee parking and circulation areas.

Subsection 4.155 (.03) D. Parking Connectivity and Efficient On-site Circulation

A34. **Review Criteria:** “Where possible, parking areas shall be designed to connect with parking areas on adjacent sites so as to eliminate the necessity of utilizing the public street for multiple accesses or cross movements. In addition, on-site parking shall be designed for efficient on-site circulation and parking.”

Finding: These criteria are satisfied.

Explanation of Finding: The proposed development adds to an existing commercial center that includes a fuel station, convenience market, sit down restaurant, convention center, and hotel. The proposed uses as well as the existing Chevron and Holiday Inn share a common driveway off 95th Avenue and their access and parking areas are interconnected. Joint use of many the access and maneuvering areas is covered in a Development Agreement. Two factors commonly considered to determine such efficiency include proximity of parking to likely destinations, and direct vehicle and pedestrian paths between destinations with limited choke points. To the extent practicable parking is provided close to the coffee kiosk for short, efficient pedestrian trips after parking. Where parking is further away towards Chevron a direct pedestrian path is provided to the coffee kiosk. Multiple pedestrian accesses from the public sidewalk are provided, including ones providing the most direct path from the sidewalk to business entrances. All vehicles enter the site through a shared driveway with Holiday Inn and Chevron. While this could become a choke point, care has been taken to design the driveway for optimal performance to minimize traffic delays, as reflected in the Development Agreement. Straight drive aisles and multiple access points allow for direct vehicle travel within the site. As shown in Exhibits B6 and B7 additional signs and pavement markings have been added to further aid in directing circulation thus aiding efficiency.

Subsection 4.421 (.01) and (.02) Site Design Review-Design Standards

- B4. **Review Criteria:** This subsection lists the design standards for Site Design Review. Listed A through G. Pursuant to subsection (.02) “The standards of review outlined in Sections (a) through (g) above shall also apply to all accessory buildings, structures, exterior signs and other site features, however related to the major buildings or structures.”

Finding: These criteria are satisfied.

Explanation of Finding: The applicant has provided sufficient information demonstrating compliance with the standards of this subsection. Among the information provided is a written response to these standards on page 18-20 of the compliance narrative in the applicant’s notebook, Exhibit B1. Staff notes a patio area has been provided without information on the planned furnishings. Condition of Approval PDB 9 ensures the furnishings are durable and match or complement the building, thus helping ensure site design review standards are met. *Among the design standards is a requirement that special attention be paid to general circulation and parking areas that are safe and convenient. As shown by the number of added signs and markings, as well as specific drawings for different truck circulation scenarios (see Exhibits B6, B7, and B8), the applicant has demonstrate special attention has been given to site circulation and safe and convenient parking areas.*

DEVELOPMENT REVIEW BOARD MEETING

MONDAY, FEBRUARY 10, 2014

6:30 PM

VII. Public Hearing:

B. Resolution No. 269. 110th Avenue Street Vacation: Stacy Connery, Pacific Community Design, Inc. – Representative for Fred Gast, Polygon Northwest Company – Applicant / Petitioner. The applicant is requesting approval of a request for the City to vacate portions of SW 110th Avenue between SW Mont Blanc Avenue and SW Tooze/Boeckman Road. Staff: Daniel Pauly

Case File: DB14-0001 – Street Vacation

The DRB action on the Street Vacation is a recommendation to the City Council.

**DEVELOPMENT REVIEW BOARD
RESOLUTION NO. 269**

A RESOLUTION ADOPTING FINDINGS RECOMMENDING APPROVAL OF A REQUEST FOR THE CITY TO VACATE PORTIONS OF SW 110TH AVENUE BETWEEN SW MONT BLANC AVENUE AND SW TOOZE/BOECKMAN ROAD. STACY CONNERY, AICP, PACIFIC COMMUNITY DESIGN, INC. – REPRESENTATIVE FOR FRED GAST, POLYGON NW COMPANY- APPLICANT/PETITIONER.

WHEREAS, an application, together with planning exhibits for the above-captioned development, has been submitted in accordance with the procedures set forth in Section 4.008 of the Wilsonville Code, and

WHEREAS, the Planning Staff has prepared staff report on the above-captioned subject dated February 3, 2014, and

WHEREAS, said planning exhibits and staff report were duly considered by the Development Review Board Panel A at a scheduled meeting conducted on February 10, 2014, at which time exhibits, together with findings and public testimony were entered into the public record, and

WHEREAS, the Development Review Board considered the subject and the recommendations contained in the staff report, and

WHEREAS, interested parties, if any, have had an opportunity to be heard on the subject.

NOW, THEREFORE, BE IT RESOLVED that the Development Review Board of the City of Wilsonville does hereby adopt the staff report dated February 3, 2014, attached hereto as Exhibit A1, with findings and recommendations contained therein as a recommendation to the City of Wilsonville City Council:

DB14-0001 Quasi-judicial Street Vacation of Portions of SW 110th Avenue.

ADOPTED by the Development Review Board of the City of Wilsonville at a regular meeting thereof this 10th day of February, 2014 and filed with the Planning Administrative Assistant on _____.

Mary Fierros-Bower, Chair, Panel A
Wilsonville Development Review Board

Attest:

Shelley White, Planning Administrative Assistant

Exhibit A1
STAFF REPORT
WILSONVILLE PLANNING DIVISION

SW 110th Avenue Street Vacation, PDP 3 and 4 East
“Tonquin Meadows”

DEVELOPMENT REVIEW BOARD PANEL ‘A’
QUASI-JUDICIAL PUBLIC HEARING FOR STREET VACATION
STAFF REPORT

HEARING DATE	February 10, 2014
DATE OF REPORT:	February 3, 2014

APPLICATION NO.:	DB14-0001 Vacation of a Portion of SW 110th Avenue Right-of-Way
REQUEST/SUMMARY:	The Development Review Board is being asked to review a Quasi-judicial Street Vacation
LOCATION:	Portions of SW 110 th Avenue between SW Mont Blanc Street and SW Tooze Road/SW Boeckman Road.
ADJACENT PROPERTY OWNERS:	Donald E. Bischoff and Sharon L. Lund (Tax Lot 180) Polygon at Villebois III LLC (Tax Lots 2916 and 2919) Polygon at Villebois V LLC (Tax Lot 301)
PETITIONER:	Fred Gast, Polygon NW Company
APPLICANT’S REP.:	Stacy Connery, AICP, Pacific Community Design, Inc.
COMPREHENSIVE PLAN MAP DESIGNATION:	Residential-Village
ZONE MAP CLASSIFICATIONS:	V (Village)
STAFF REVIEWERS:	Daniel Pauly AICP, Associate Planner Steve Adams PE, Development Engineering Manager
STAFF RECOMMENDATION:	<u>Recommend approval with Conditions</u> of the requested Street Vacation to City Council.

APPLICABLE REVIEW CRITERIA

DEVELOPMENT CODE	
Section 4.008	Application Procedures-In General
Section 4.009	Who May Initiate Application
Section 4.010	How to Apply
Section 4.011	How Applications are Processed
Section 4.014	Burden of Proof
Subsection 4.031 (.01) L.	Authority of the Development Review Board: Street Vacations
Subsection 4.032 (.01) D.	Authority of the Planning Commission: Street Vacations
Subsection 4.033 (.01) H.	Authority of the City Council: Street Vacations
Subsection 4.034 (.07)	Street Vacation Review Standards and Procedures
OTHER PLANNING DOCUMENTS	
Villebois Village Master Plan	
Transportation Systems Plan	
SAP East Approval Documents	
PDP 3 East Approval Documents	
PDP 4 East Approval Documents	
OREGON REVISED STATUTES	
ORS 271.080	Vacation in incorporated cities; petition; consent of property owners.
ORS 271.120	Vacation hearing; determination.
ORS 271.140	Title to vacated areas.
ORS 271.150	Vacation records to be filed; costs.
ORS 271.190	Vacation consent of owners of adjoining properties; other required approval.
ORS 271.200	Vacation Petition; notice

BACKGROUND/SUMMARY:

SW 110th Avenue has long served as a north south connection on the west side of Wilsonville. Historically it connected SW Brown Rd./SW Camelot directly north to SW Tooze Road. The Villebois Village Master Plan, originally adopted in 2003, shows a new circulation system replacing SW 110th and the north-south connectivity it provided. During the earlier phases of Villebois development the most southerly portion of the original SW 110th Avenue was vacated and is now a pedestrian connection with plantings extending from SW Camelot Street to the SW Costa Circle/SW Barber Street round-a-bout. The portions of the original SW 110th Avenue between the pedestrian connection and the southernmost portion of proposed vacation have been converted to the SW Costa Circle/SW Barber Street round-a-bout and a segment of SW Costa Circle East. The proposed vacation allows the conversion of much of the remainder of SW 110th Avenue into private park areas, as shown in the Villebois Village Master Plan. Some segments of the right-of-way will not be vacated, but be incorporated into planned streets including SW Villebois Drive North, SW Berlin Avenue, and SW Stockholm Avenue. The very northern portion of SW 110th Avenue will remain to provide access to a property on the west side of SW 110th just south of SW Tooze Road not yet proposed for development. The north-south

connectivity of SW 110th Avenue will be replaced by a new segment of SW Villebois Drive North which will connect from a new round-a-bout at SW Costa Circle to the existing round-a-bout on SW Boeckman Rd./SW Tooze Rd. just west of the Boeckman bridge. The demolition of SW 110th and construction of the new SW Villebois Drive North segment is currently planned later this year together with Polygon Homes construction of a new subdivision previously approved.



CONCLUSION AND CONDITIONS OF APPROVAL:

Staff has reviewed the applicant’s analysis of compliance with the applicable criteria. This Staff report adopts the applicant’s responses as Findings of Fact except as noted in the Findings. Based on the Findings of Fact and information included in this Staff Report, and information received from a duly advertised public hearing, staff recommends that the Development Review Board recommend approval of the proposed application (DB14-0001) to City Council with the following conditions:

<p>Conditions:</p>
<p>PF 1. Concurrently with the 110th Avenue Right-of-Way vacation, the Applicant shall file Temporary Public Access Easements over the same described parcels being vacated to allow legal continued use of 110th Avenue prior to its demolition and reconfiguration of the street network.</p>
<p>PF 2. For any public or private utilities currently located within the proposed vacated Right-of-Way, and anticipated to remain in this location, Applicant shall provide public or private utility easements on City approved forms. For public easements these shall be minimum</p>

15-foot wide easements centered on the utility. For private easements they shall be of sufficient width as needed by the private utility and as approved by the City.
PF 3. The future demolition of 110th Avenue and construction of the street network in Tonquin Meadows will need to be coordinated with the City to minimize impacts to the traveling public.

MASTER EXHIBIT LIST:

The following exhibits are hereby entered into the public record by the Development Review Board as confirmation of its consideration of the application as submitted. This is the exhibit list that includes exhibits for Planning Case File DB14-0001.

- A1.** Staff report and findings (this document)
- A2.** Staff’s Slide Presentation (available at public hearing)
- B1.** Applicant’s Submitted Materials
 - Narrative
 - Copy of Application Form
 - Signed Petition, Petition Exhibits & Property Ownership Info
 - Legal Description and Sketch
 - Copy of PDP 3E & 4E Phasing Plan
- C1.** Comments and Conditions from Engineering Division
- C2.** Comments from Public Works Department

FINDINGS OF FACT:

1. Prior land use actions include:

Legislative:

- 02PC06 - Villebois Village Concept Plan
- 02PC07A - Villebois Comprehensive Plan Text
- 02PC07C - Villebois Comprehensive Plan Map
- 02PC07B - Villebois Village Master Plan
- 02PC08 - Village Zone Text
- 04PC02 – Adopted Villebois Village Master Plan
- LP-2005-02-00006 – Revised Villebois Village Master Plan
- LP-2005-12-00012 – Revised Villebois Village Master Plan (Parks and Recreation)
- LP13-0005 – Revised Villebois Village Master Plan

Quasi Judicial:

- 04 DB 22 et seq – SAP-East
- DB12-0042 et seq – PDP-3E Tonquin Meadows
- DB12-0050 et seq – PDP-4E Tonquin Meadows No. 2
- DB13-0013 et seq – PDP-4C Polygon Northwest at Villebois No. 2
- AR13-0046 PDP 3 and 4 East Phasing Amendment

2. The applicant has complied with Sections 4.013-4.031 of the Wilsonville Code, said sections pertaining to review procedures and submittal requirements. The required public notices have been sent and all proper notification procedures have been satisfied.

CONCLUSIONARY FINDINGS:

Planning and Land Development Ordinance

Subsections 4.031 (.01) L., 4.032 (.01) D., Subsection 4.033 (.01) H. Authority to Review Street Vacations

1. **Review Criteria:** These subsections define the roles of the Development Review Board, the Planning Commission, and City Council for street vacations. The Development Review Board is authorized to make recommendations to City Council for street vacations where a specific development application has been filed for the subject property. The Planning Commission is authorized to make recommendations to City Council for street vacations where no specific development application has been filed for the subject property. City Council takes final action on street vacation applications.

Finding: These criteria are satisfied.

Details of Finding: Specific development applications have been filed and approved by the City for the land being vacated subject to approval of the street vacation. The land is approved to be development as private park space. See case files DB12-0042 (Preliminary Development Plan, Villebois Phase 3 East), DB12-0048 (Final Development Plan for Parks and Open Space, Villebois Phase 3 East), DB12-0050 (Preliminary Development Plan, Villebois Phase 4 East), and DB12-0054 (Final Development Plan for Parks and Open Space, Villebois Phase 4 East). Due to the previous submission of specific development application for the subject land, the Development Review Board is reviewing the street vacation to make a recommendation to City Council. The City Council will then take the final action on the request.

Subsection 4.034 (.07) Standards for Street Vacation

2. **Review Criteria:** “Applications for street vacations shall be reviewed in accordance with the standards and procedures set forth in ORS 271.

Finding: These criteria are satisfied.

Details of Finding: As shown in Findings 9 -16 below, the request is being reviewed in accordance with ORS 271.

Previous Land Use Approvals

DB12-0042 SAP-East PDP 3E, Preliminary Development Plan, Condition of Approval PFA 34.

3. **Review Criteria:** “The City understands that the Applicant will also construct Villebois Drive west of the development through its intersection with Costa Circle, and construct Costa Circle from this intersection to its present location at Mt. Blanc. Existing transition between Costa Circle and 110th Avenue shall be demolished with construction of the new roadway.

With completion of this roadway construction, 110th Avenue will be closed. Applicant shall submit the required exhibits and work with the City to abandon or transfer the existing right-of-way and create easements for the underground private and/or public utilities that remain. See also PDA 2.”

Finding: These criteria are satisfied.

Details of Finding: PDP 3E (Casefile No. DB12-0042) and PDP 4E (Casefile DB12-0053) received planning approval on November 12, 2012. PDP 3E and PDP 4E phasing was amended on November 19th, 2013 with Casefile AR13-0046, which allows development of Phase I areas of PDP 3E and PDP 4E and Phase II of PDP 3E and PDP 4E to occur concurrently. Construction of improvements will occur with Phase I of PDP 3E and PDP 4E and will begin upon approval of construction plans and issuance of permits. The existing transition between Costa Circle and 110th Avenue will be demolished with roadway construction. Portions of 110th Avenue within the subject site will be close with completion of roadway construction.

This application provides the required exhibits for vacation of the necessary portions of 110th Avenue. The Final Plat for the 1st phase of Tonquin Meadows will address further transfer of the vacated areas and any easements that are necessary. Separate documents addressing any easements outside of areas to be platted will be provided in conjunction with the Final Plat.

Approval of this application for ROW vacation of portions of SW 110th Avenue will allow the Applicant to comply with Condition PFA 34.

Transportation Systems Plan

Table 5-4. Higher Priority Projects (Southwest Quadrant) Roadway Extensions

4. **Review Criteria:**

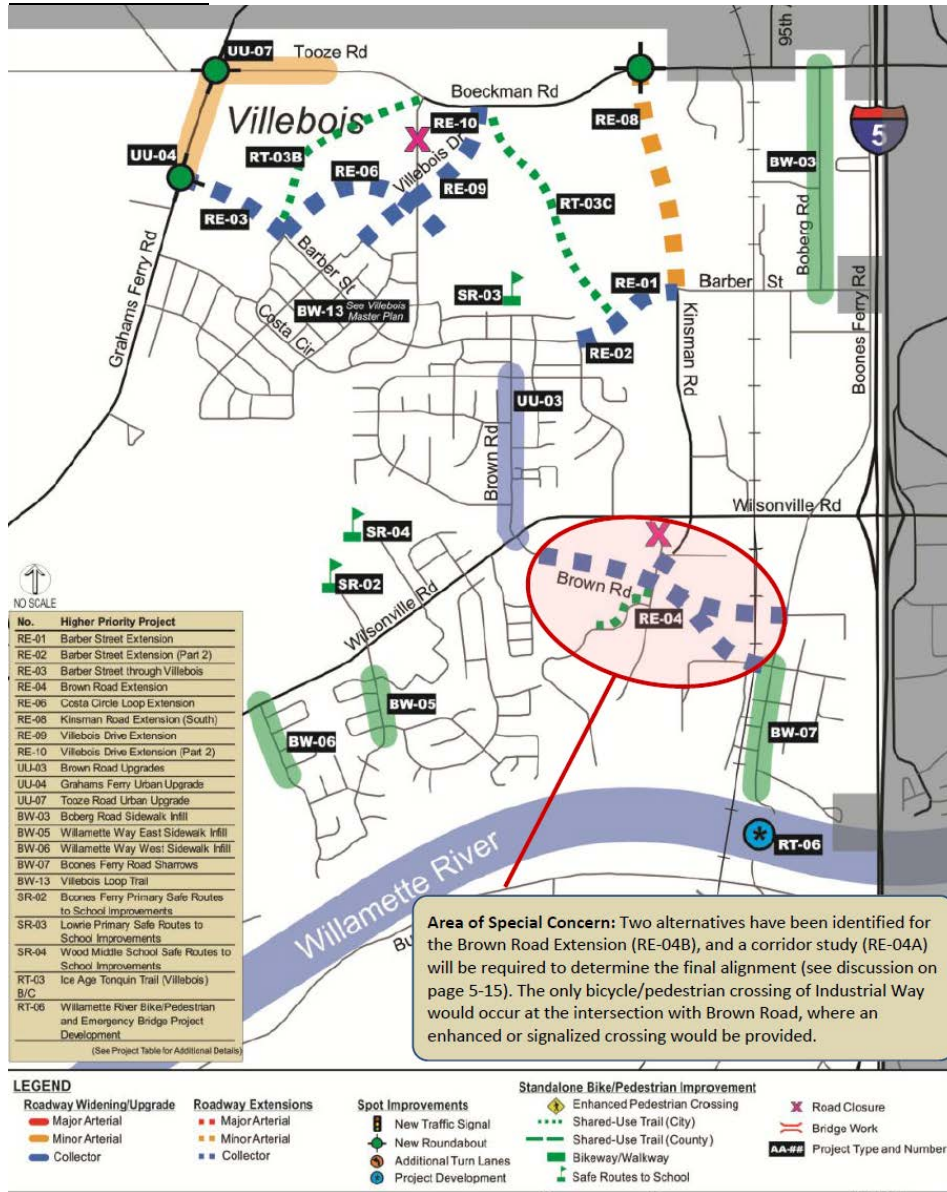
RE-09	Villebois Drive Extension	Construct 2-lane roadway with bike lanes, sidewalks, and transit stop improvements from Costa Circle to Coffee Lake Drive	\$390,000
RE-10	Villebois Drive Extension (Part 2)	Construct 2-lane roadway with bike lanes, sidewalks, and transit stop improvements from Coffee Lake Drive to Boeckman Road	\$250,000

Finding: These criteria are satisfied.

Details of Finding: The listed extensions of Villebois Drive in the Transportation System Plan are planned to be constructed as part of Construction Phase 1 of PDP 3 and 4 East as shown in the phasing plan approved in Case File AR13-0046, and will replace the north-south connectivity between Villebois and SW Boeckman Road/SW Tooze Road.

Figure 5-5. Higher Priority Projects (Southwest Quadrant)

5. Review Criteria:



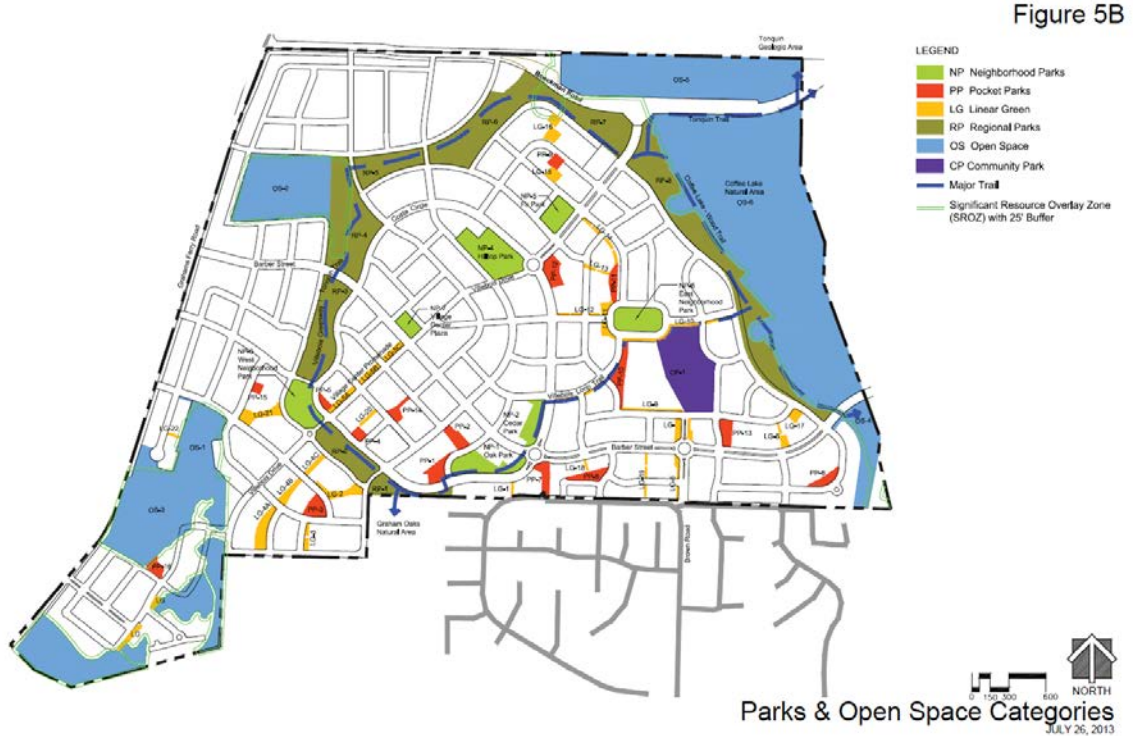
Finding: This criterion is satisfied.

Details of Finding: The closure of SW 110th is shown by the red "X" in Figure 5-5 in association with projects RE-09 and RE-10, extension of SW Villebois Drive.

Villebois Village Master Plan

Figure 5B Parks and Open Space Categories

6. **Review Criteria:**

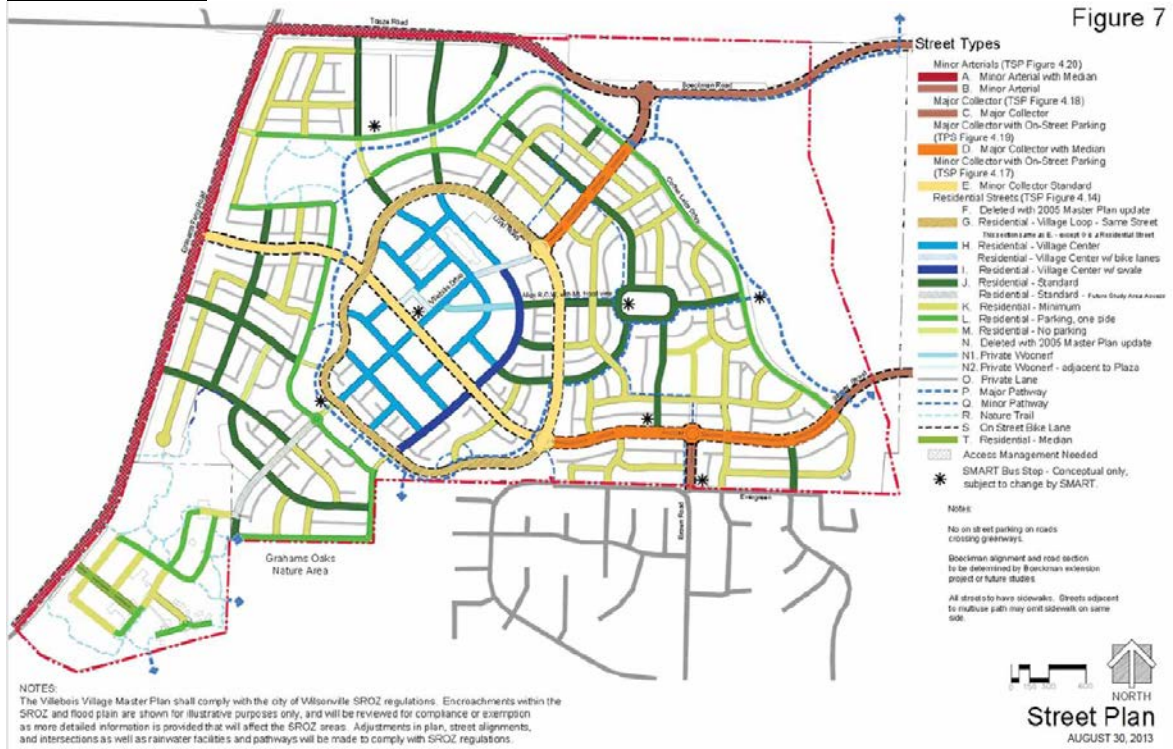


Finding: This criterion is satisfied.

Details of Finding: This and other figures show the intention for the portions of SW 110th being vacated to become private parks.

Figure 7 Street Plan

7. **Review Criteria:**



Finding: This criterion is satisfied.

Details of Finding: This and other figures show how SW 110th is not planned as part of the circulation and street system in the Villebois Village Master Plan.

Figure 8. Proposed Arterial and Collector System

8. **Review Criteria:**

Figure 8



Finding: This criterion is satisfied.

Details of Finding: Figure 8 of the Villebois Village Master Plan shows SW 110th Avenue as an “Existing street replaced by the Villebois Circulation Plan.”

Oregon Revised Statutes

ORS 271.080 (1) Petition for Street Vacation in Incorporated Cities

9. **Review Criterion:** “Whenever any person interested in any real property in an incorporated city in this state desires to vacate all or part of any street, avenue, boulevard, alley, plat, public square or other public place, such person may file a petition therefor setting forth a description of the ground proposed to be vacated, the purpose for which the ground is proposed to be used and the reason for such vacation.”

Finding: This criterion is satisfied.

Details of Finding: Polygon Homes has filed the described petition. Previous land use actions by the City approve Polygon, contingent on the vacation, to construct private parks on the vacated right-of-way. The reason for the vacation is clear in previous land use approvals and the record of this request, including the connectivity provided by SW 110th being provided by planned new roads.

ORS 271.080 (2) Consent of Adjoining Property Owners

10. **Review Criterion:** “There shall be appended to such petition, as a part thereof and as a basis for granting the same, the consent of the owners of all abutting property and of not less than two-thirds

in area of the real property affected thereby. The real property affected thereby shall be deemed to be the land lying on either side of the street or portion thereof proposed to be vacated and extending laterally to the next street that serves as a parallel street, but in any case not to exceed 200 feet, and the land for a like lateral distance on either side of the street for 400 feet along its course beyond each terminus of the part proposed to be vacated. Where a street is proposed to be vacated to its termini, the land embraced in an extension of the street for a distance of 400 feet beyond each terminus shall also be counted. In the vacation of any plat or part thereof the consent of the owner or owners of two-thirds in area of the property embraced within such plat or part thereof proposed to be vacated shall be sufficient, except where such vacation embraces street area, when, as to such street area the above requirements shall also apply. The consent of the owners of the required amount of property shall be in writing.”

Finding: This criterion is satisfied.

Details of Finding: The petition has been signed by all owners of abutting property, who are also the owners of more than two-thirds (2/3) of real property affected thereby. The total size of real property affected thereby is 699,961 SF. The sum of the area of real property affected thereby that is also within the abutting tax lots is 518,679 SF, or 74% of the total real property affected thereby. Given that the petition has been signed by all owners of abutting property, consent of property owners for 74% (i.e. greater than two-thirds) of the area of the real property affected has been provided on the attached petition.

ORS 271.090 Submission of Street Vacation Petition to City

11. **Review Criteria:** “The petition shall be presented to the city recorder or other recording officer of the city. If found by the recorder to be sufficient, the recorder shall file it and inform at least one of the petitioners when the petition will come before the city governing body. A failure to give such information shall not be in any respect a lack of jurisdiction for the governing body to proceed on the petition.”

Finding: These criteria are satisfied.

Details of Finding: The petition has been submitted to the City, and Polygon has been informed of the hearing dates before the Development Review Board and City Council.

ORS 271.100 City Action of Street Vacation Petition

12. **Review Criteria:** “The city governing body may deny the petition after notice to the petitioners of such proposed action, but if there appears to be no reason why the petition should not be allowed in whole or in part, the governing body shall fix a time for a formal hearing upon the petition.”

Finding: These criteria are satisfied.

Details of Finding: The vacation of these portions of SW 110th have long been showed in City adopted master plans and a development application was approved by the City to develop the vacated right-of-way contingent on approval of the vacation. The City is setting and holding public hearings to consider the petition.

ORS 271.110 Notice of Hearing

13. **Review Criteria:** This section prescribes the notices required for street vacation hearings including newspaper publication and posting of notices along the right-of-way to be vacated.

Finding: These criteria are satisfied.

Details of Finding: The noticing requirements required by ORS 271.110 have or will be met prior to the hearing.

ORS 271.120 Hearing; determination

14. **Review Criteria:** “At the time fixed by the governing body for hearing the petition and any objections filed thereto or at any postponement or continuance of such matter, the governing body shall hear the petition and objections and shall determine whether the consent of the owners of the requisite area has been obtained, whether notice has been duly given and whether the public interest will be prejudiced by the vacation of such plat or street or parts thereof. If such matters are determined in favor of the petition the governing body shall by ordinance make such determination a matter of record and vacate such plat or street; otherwise it shall deny the petition. The governing body may, upon hearing, grant the petition in part and deny it in part, and make such reservations, or either, as appear to be for the public interest.”

Finding: These criteria are satisfied.

Details of Finding: The consent of the owners of the requisite area have been obtained as shown with the attached petitions, notice has been given as prescribed. Public policy, as shown in the Villebois Village Master Plan and Transportation Systems Plan, has long been to vacate the proposed area upon replacement with streets planned as part of the Villebois development. After receiving a recommendation from the Development Review Board the City Council would vacate the street by ordinance.

ORS 271.140 Title to Vacated Areas

15. **Review Criteria:** “The title to the street or other public area vacated shall attach to the lands bordering on such area in equal portions; except that where the area has been originally dedicated by different persons and the fee title to such area has not been otherwise disposed of, original boundary lines shall be adhered to and the street area which lies on each side of such boundary line shall attach to the abutting property on such side. If a public square is vacated the title thereto shall vest in the city.”

Finding: These criteria are satisfied.

Details of Finding: It is understood the title to portions of the street to be vacated will be attached to the lands bordering the subject area in equal portions.

ORS 271.150 Vacation Records to be Filed

16. **Review Criteria:** “The title to the street or other public area vacated shall attach to the lands bordering on such area in equal portions; except that where the area has been originally dedicated by different persons and the fee title to such area has not been otherwise disposed of, original boundary lines shall be adhered to and the street area which lies on each side of such boundary line shall attach to the abutting property on such side. If a public square is vacated the title thereto shall vest in the city.”

Finding: These criteria are satisfied.

Details of Finding: It is understood the ordinance will be recorded as required by this section, the cost of which will be borne by the petitioner.

RECEIVED
JAN 06 2014

NARRATIVE & COMPLIANCE REPORT
SW 110TH AVENUE ROW VACATION


BY:.....

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LIST OF EXHIBITS

- A COPY OF APPLICATION FORM
- B SIGNED PETITION, PETITION EXHIBITS & PROPERTY OWNERSHIP INFO
- C LEGAL DESCRIPTION AND SKETCH
- D COPY OF PDP 3E & PDP 4E PHASING PLAN

 City of Wilsonville
Exhibit B1 DB14-0001

I. PROPOSAL SUMMARY

GENERAL INFORMATION

Applicant/Property Owner:

Polygon Northwest Company

Applicant's Representative:

Pacific Community Design, Inc.
12564 SW Main Street
Tigard, OR 97223
(503) 941-9484
Contacts: Stacy Connery, AICP
Patrick Espinosa, PE
Travis Jansen, PLS

Subject Site:

Portions of SW 110th Avenue ROW in
Villebois SAP East, PDP 3E and PDP
4E (Tonquin Meadows & Tonquin
Meadows No. 2)

Abutting Tax Lots:

2916, 2919, 180 & 301 on Map
3S1W15

REQUEST & PROJECT DESCRIPTION

The Applicant requests approval of a Street Vacation for portions of SW 110th Avenue ROW within Villebois PDP 3E and PDP 4E (also known as Tonquin Meadows & Tonquin Meadows No. 2). Exhibit C is a legal description and sketch that depicts the area of the proposed ROW vacation.

The City approved SAP East PDP 3E (Casefile No. DB12-0042) and PDP 4E (Casefile No. DB12-0053) on November 19, 2012. PDP 3E and PDP 4E phasing was amended on November 19th, 2013 with Casefile AR13-0046, which allows development of Phase I areas of PDP 3E and PDP 4E and Phase II areas of PDP 3E and PDP 4E to occur concurrently (see Phasing Plan in Exhibit D). Construction of improvements will occur with Phase I of PDP 3E and PDP 4E and will begin upon approval of construction plans and issuance of permits. Street improvements to be provided with PDP 3E and PDP 4E include the construction of Costa Circle East and SW Villebois Drive North, replacing the connections provided through the portions of SW 110th Avenue within the subject area. The existing transition between Costa Circle and 110th Avenue will be demolished with this roadway construction. Portions of 110th Avenue within the subject site will be closed with completion of roadway construction. The locations of LG-15, NP-5 (Fir Park), and PP-12 shown on the PDP 3E & PDP 4E Phasing Plan (see Exhibit D) include the areas of proposed ROW vacation. The portions of 110th Avenue ROW retained within the site will be incorporated into Stockholm Drive, Berlin Avenue, Villebois Drive N, and SW Costa Circle East, respectively. Vacation of 110th Avenue ROW within the subject site is needed to affect the planned change in circulation and to establish the planned parks.

At this time, land development has not been proposed or approved for Tax Lots 700 and 800 on Map 3S1W15. Accordingly, the northern limit of the ROW vacation area is the southern property line of Tax Lot 800. Sufficient area south of the driveway of Tax Lot 800 remains for turnaround purposes.

Compliance with applicable sections of the City of Wilsonville Planning & Land Development Ordinance are addressed in Section II of this Narrative. Section III addresses compliance with the relevant conditions of approval of Casefile No. DB12-0042. Section III addresses compliance with ORS 271.

II. WILSONVILLE PLANNING & LAND DEVELOPMENT ORDINANCE

4.031 AUTHORITY OF THE DEVELOPMENT REVIEW BOARD

(.01) As specified in Chapter 2 of the Wilsonville Code and except as specified herein, the Board shall have authority to act on the following types of applications:

- L. Street vacations, where a specific development application has been filed for the subject property. If no specific development has been filed for the subject property, the vacation request shall be considered by the Planning Commission. Action of the Planning Commission or Board on a street vacation request shall be a recommendation to the City Council.**

Response: The area of SW 110th Avenue to be vacated is within SAP East PDP 3E (Casefile No. DB12-0042) and PDP 4E (Casefile No. DB12-0053), which were approved on November 12, 2012. The proposed ROW vacation is subject to review by the DRB, which will make a recommendation to City Council.

4.033 AUTHORITY OF THE CITY COUNCIL

(.01) Upon appeal, the City Council shall have final authority to act on all applications filed pursuant to Chapter 4 of the Wilsonville Code, with the exception of applications for expedited land divisions, as specified in Section 4.232. Additionally, the Council shall have final authority to interpret and enforce the procedures and standards set forth in this Chapter and shall have final decision-making authority on the following:

- H. Final actions on street vacation applications.**

Response: As described above, the proposed street vacation is subject to initial review by the DRB. The Applicant acknowledges that the City Council has final decision-making authority on the proposed ROW vacation.

4.034 APPLICATION REQUIREMENTS

Applications shall be reviewed as follows:

(.07) Applications for street vacations shall be reviewed in accordance with the standards and procedures set forth in ORS 271.

Response: Compliance with the applicable sections of ORS 271 is addressed in Section IV of this Narrative.

III. CONDITIONS OF APPROVAL

DB12-0042 SAP-EAST PDP 3E, PRELIMINARY DEVELOPMENT PLAN

PFA 34. The City understands that the Applicant will also construct Villebois Drive west of the development through its intersection with Costa Circle, and construct Costa Circle from this intersection to its present location at Mt. Blanc. Existing transition between Costa Circle and 110th Avenue shall be demolished with construction of the new roadway.

With completion of this roadway construction, 110th Avenue will be closed. Applicant shall submit the required exhibits and work with the City to abandon or transfer the existing right-of-way and create easements for the underground private and/or public utilities that remain. See also PDA 2.

Response: PDP 3E (Casefile No. DB12-0042) and PDP 4E (Casefile DB12-0053) received planning approval on November 12, 2012. PDP 3E and PDP 4E phasing was amended on November 19th, 2013 with Casefile AR13-0046, which allows development of Phase I areas of PDP 3E and PDP 4E and Phase II of PDP 3E and PDP 4E to occur concurrently. Construction of improvements will occur with Phase I of PDP 3E and PDP 4E and will begin upon approval of construction plans and issuance of permits. The existing transition between Costa Circle and 110th Avenue will be demolished with roadway construction. Portions of 110th Avenue within the subject site will be close with completion of roadway construction.

This application provides the required exhibits for vacation of the necessary portions of 110th Avenue. The Final Plat for the 1st phase of Tonquin Meadows will address further transfer of the vacated areas and any easements that are necessary. Separate documents addressing any easements outside of areas to be platted will be provided in conjunction with the Final Plat.

Approval of this application for ROW vacation of portions of SW 110th Avenue will allow the Applicant to comply with Condition PFA 34.

IV. OREGON ADMINISTRATIVE RULE (ORS) 271

271.080 VACATION IN INCORPORATED CITIES; PETITION; CONSENT OF PROPERTY OWNERS

- (1) Whenever any person interested in any real property in an incorporated city in this state desires to vacate all or part of any street, avenue, boulevard, alley, plat, public square or other public place, such person may file a petition therefor setting forth a description of the ground proposed to be vacated, the purpose for which the ground is proposed to be used and the reason for such vacation.
- (2) There shall be appended to such petition, as a part thereof and as a basis for granting the same, the consent of the owners of all abutting property and of not less than two-thirds in area of the real property affected thereby. The real property affected thereby shall be deemed to be the land lying on either side of the street or portion thereof proposed to be vacated and extending laterally to the next street that serves as a parallel street,

but in any case not to exceed 200 feet, and the land for a like lateral distance on either side of the street for 400 feet along its course beyond each terminus of the part proposed to be vacated. Where a street is proposed to be vacated to its termini, the land embraced in an extension of the street for a distance of 400 feet beyond each terminus shall also be counted. In the vacation of any plat or part thereof the consent of the owner or owners of two-thirds in area of the property embraced within such plat or part thereof proposed to be vacated shall be sufficient, except where such vacation embraces street area, when, as to such street area the above requirements shall also apply. The consent of the owners of the required amount of property shall be in writing.

Response: This application is a petition for vacation of portions of SW 110th Avenue ROW, as depicted on the attached legal description and sketch (see Exhibit C). This Narrative describes the purpose of the proposed street vacation. Exhibit B includes a copy of the signed petition with an attached map and list that demonstrates the areas of proposed ROW vacation, and the abutting properties and real property affected thereby. The petition has been signed by all owners of abutting property, who are also the owners of more than two-thirds (2/3) of real property affected thereby. The total size of real property affected thereby is 699,961 SF. The sum of the area of real property affected thereby that is also within the abutting tax lots is 518,679 SF, or 74% of the total real property affected thereby. Given that the petition has been signed by all owners of abutting property, consent of property owners for 74% (i.e. greater than two-thirds) of the area of the real property affected has been provided on the attached petition.

271.120 HEARING; DETERMINATION

At the time fixed by the governing body for hearing the petition and any objections filed thereto or at any postponement or continuance of such matter, the governing body shall hear the petition and objections and shall determine whether the consent of the owners of the requisite area has been obtained, whether notice has been duly given and whether the public interest will be prejudiced by the vacation of such plat or street or parts thereof. If such matters are determined in favor of the petition the governing body shall by ordinance make such determination a matter of record and vacate such plat or street; otherwise it shall deny the petition. The governing body may, upon hearing, grant the petition in part and deny it in part, and make such reservations, or either, as appear to be for the public interest.

Response: The Applicant understands that the governing body shall hear the petition and objections, and determine whether the requirements for street vacation have been met. Compliance with ORS 271.080 is addressed above. The signed petition is provided as Exhibit B. A legal description and sketch are provided as Exhibit C.

271.140 TITLE TO VACATED AREAS

The title to the street or other public area vacated shall attach to the lands bordering on such area in equal portions; except that where the area has been originally dedicated by different persons and the fee title to such area has not been otherwise disposed of, original boundary lines shall be adhered to and the street area which lies on each side of such boundary line shall attach to the

abutting property on such side. If a public square is vacated the title thereto shall vest in the city.

Response: The Applicant understands that the title to portions of the street to be vacated will be attached to the lands bordering the subject area in equal portions.

271.150 VACATION RECORDS TO BE FILED; COSTS

A certified copy of the ordinance vacating any street or plat area and any map, plat or other record in regard thereto which may be required or provided for by law, shall be filed for record with the county clerk. The petitioner for such vacation shall bear the recording cost and the cost of preparing and filing the certified copy of the ordinance and map. A certified copy of any such ordinance shall be filed with the county assessor and county surveyor.

Response: ORS 271.150 addresses the final ordinance procedure and accompanying fee for filing and recording. The Applicant acknowledges that the petitioner bears the recording cost and the cost of preparing and filing the certified copy of the ordinance and map, and will carry out this responsibility at the time when the final ordinance is prepared.

271.190 CONSENT OF OWNERS OF ADJOINING PROPERTY; OTHER REQUIRED APPROVAL

No vacation of all or part of a street, alley, common or public place shall take place under ORS 271.180 unless the consent of the persons owning the property immediately adjoining that part of the street or alley to be vacated is obtained thereto in writing and filed with the auditor or clerk of the city or town. No vacation shall be made of any street, alley, public place or part thereof, if within 5,000 feet of the harbor or pierhead line of the port, unless the port commission, or other bodies having jurisdiction over docks and wharves in the port district involved, approves the proposed vacation in writing.

Response: Compliance with ORS 271.080 is addressed above. The area of proposed ROW vacation is not within 5,000 feet of a harbor or pierhead line of a port.

271.200 PETITION; NOTICE

- (1) Before any street, alley, common or public place or any part thereof is vacated, or other right granted by any city governing body under ORS 271.180 to 271.210 the applicant must petition the governing body of the city or town involved, setting forth the particular circumstances of the case, giving a definite description of the property sought to be vacated, or of the right, use or occupancy sought to be obtained, and the names of the persons to be particularly affected thereby. The petition shall be filed with the auditor or clerk of the city or town involved 30 days previous to the taking of any action thereon by the city governing body.
- (2) Notice of the pendency of the petition, containing a description of the area sought to be vacated or right, use or occupancy sought to be obtained, shall be published at least once each week for three successive weeks prior to expiration of such 30-day period in a newspaper of general circulation in the county wherein the city or town is located.

Response: This application is a petition to the City to vacate portions of ROW, as depicted on the attached legal description and sketch (see Exhibit C). This Narrative describes the circumstance of the proposed street vacation. A copy of the petition signed by abutting property owners, who are also more than 2/3 of owners of real property affected thereby, and a list of the names of the affected property owners is provided as Exhibit B.

V. CONCLUSION

This narrative and the attached exhibits demonstrate compliance with the applicable provisions of the City of Wilsonville Planning & Land Development Ordinance, relevant conditions of approval, and ORS 271. Therefore, the Applicant respectfully requests approval of the proposed street vacation.

EXHIBIT A
Copy of Application

CITY OF WILSONVILLE

29799 SW Town Center Loop East
Wilsonville, OR 97070
Phone: 503.682.4960
Fax: 503.682.7025

Web: www.ci.wilsonville.or.us

Pre-Application meeting date:

Planning Division Development Permit Application

Final action on development application or zone change is required within 120 days in accordance with provisions of ORS 227.175

A pre application conference is normally required prior to submittal of an application. Please visit the City's website for submittal requirements

Incomplete applications will not be scheduled for public hearing until all of the required materials are submitted.

TO BE COMPLETED BY APPLICANT:

Please PRINT legibly

Applicant:

Polygon Northwest Company (Fred Gast)

Address: 109 E. 13TH ST., Vancouver, WA 98660

Phone: 360-695-7700

Fax: 360-693-4442

E-mail: fred.gast@polygonhomes.com

Authorized Representative:

Pacific Community Design (Stacy Connery)

Address: 12564 SW Main Street, Tigard, Oregon 97223

Phone: 503-941-9484

Fax: 503-941-9485

E-mail: stacy@pacific-community.com

Property Owner:

same as applicant

Address:

Phone:

Fax:

E-mail:

Property Owner's Signature:

Printed Name: FRED GAST

Date: 11/15/2013

Applicant's Signature (if different from Property Owner):

Printed Name:

Date:

Site Location and Description:

Project Address if Available: _____ Suite/Unit _____

Project Location: SW 110th Avenue w/in Villebois PDP 3E & PDP 4E

Tax Map #(s): 3 1W 15 Tax Lot #(s): _____ County: Washington Clackamas

Request: Vacation of ROW along remaining portions of SW 110th Avenue w/in Villebois PDP 3E & PDP 4E

Project Type: Class I Class II **Class III**

Residential

Commercial

Industrial

Other (describe below)

Application Type:

Annexation

Appeal

Comp Plan Map Amend

Conditional Use

Final Plat

Major Partition

Minor Partition

Parks Plan Review

Plan Amendment

Planned Development

Preliminary Plat

Request to Modify Conditions

Request for Special Meeting

Request for Time Extension

Signs

Site Design Review

SROZ/SRIR Review

Staff Interpretation

Stage I Master Plan

Stage II Final Plan

Type C Tree Removal Plan

Tree Removal Permit (B or C)

Temporary Use

Variance

Villebois SAP

Villebois PDP

Villebois PDP

Waiver

Zone Map Amendment

Other Street Vacation

CITY OF WILSONVILLE

29799 SW Town Center Loop East
Wilsonville, OR 97070
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Fax: 503.682.7025
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NOV 06 2013

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Fax: 360-693-4442

E-mail: fred.gast@polygonhomes.com

Authorized Representative:

Pacific Community Design (Stacy Connery) BY: _____

Address: 12564 SW Main Street, Tigard, Oregon 97224

Phone: 503-941-9484

Fax: 503-941-9485

E-mail: stacy@pacific-community.com

RECEIVED
NOV 06 2013

BY: _____

Property Owner:

same as applicant


Address: _____

Phone: _____

Fax: _____

E-mail: _____

Property Owner's Signature:


Printed Name: Fred Gast Date: 11/15/2013

Applicant's Signature (if different from Property Owner):

Printed Name: _____ Date: _____

Site Location and Description:

Project Address if Available: _____ Suite/Unit _____

Project Location: SW 110th Avenue w/in Villebois PDP 3E & PDP 4E

Tax Map #(s): 3 1W 15 Tax Lot #(s): _____ County: Washington Clackamas

Request: Vacation of ROW along remaining portions of SW 110th Avenue w/in Villebois PDP 3E & PDP 4E

Project Type: Class I Class II **Class III**

Residential Commercial Industrial Other (describe below)

Application Type:

- | | | | |
|--|---|--|---|
| <input type="checkbox"/> Annexation | <input type="checkbox"/> Appeal | <input type="checkbox"/> Comp Plan Map Amend | <input type="checkbox"/> Conditional Use |
| <input type="checkbox"/> Final Plat | <input type="checkbox"/> Major Partition | <input type="checkbox"/> Minor Partition | <input type="checkbox"/> Parks Plan Review |
| <input type="checkbox"/> Plan Amendment | <input type="checkbox"/> Planned Development | <input type="checkbox"/> Preliminary Plat | <input type="checkbox"/> Request to Modify Conditions |
| <input type="checkbox"/> Request for Special Meeting | <input type="checkbox"/> Request for Time Extension | <input type="checkbox"/> Signs | <input type="checkbox"/> Site Design Review |
| <input type="checkbox"/> SROZ/SRIR Review | <input type="checkbox"/> Staff Interpretation | <input type="checkbox"/> Stage I Master Plan | <input type="checkbox"/> Stage II Final Plan |
| <input type="checkbox"/> Type C Tree Removal Plan | <input type="checkbox"/> Tree Removal Permit (B or C) | <input type="checkbox"/> Temporary Use | <input type="checkbox"/> Variance |
| <input type="checkbox"/> Villebois SAP | <input type="checkbox"/> Villebois PDP | <input type="checkbox"/> Villebois PDP | <input type="checkbox"/> Waiver |
| <input type="checkbox"/> Zone Map Amendment | <input checked="" type="checkbox"/> Other Street Vacation | | |

EXHIBIT B

Signed Petition, Petition Exhibits & Property Ownership Info

Street Vacation Petition

This petition must be signed by all abutting property owners, and the owners of not less than 2/3 of the area of the real property "affected thereby", as defined in ORS 271.080 (2) and as shown on the attached Street Vacation Map, attached hereto as **Exhibit A**. All signatures must be in ink. A listing of the names and addresses of all abutting and affected area property owners, as shown on the attached Street Vacation Map, was obtained from the Clackamas County real property tax roll records and is attached hereto as **Exhibit B**.


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We, the owner in fee simple of the following described real properties consent to the vacation of all that portion of SW 110th Avenue, in the City of Wilsonville, Clackamas County, Oregon, as shown on the attached Street Vacation Map, and as described in the application narrative, attached hereto as **Exhibit C**.

1) Polygon at Villebois III, LLC
Property Owner's Name

No site address; Reference Parcel 31W15 02916
Property Street Address and Legal Description

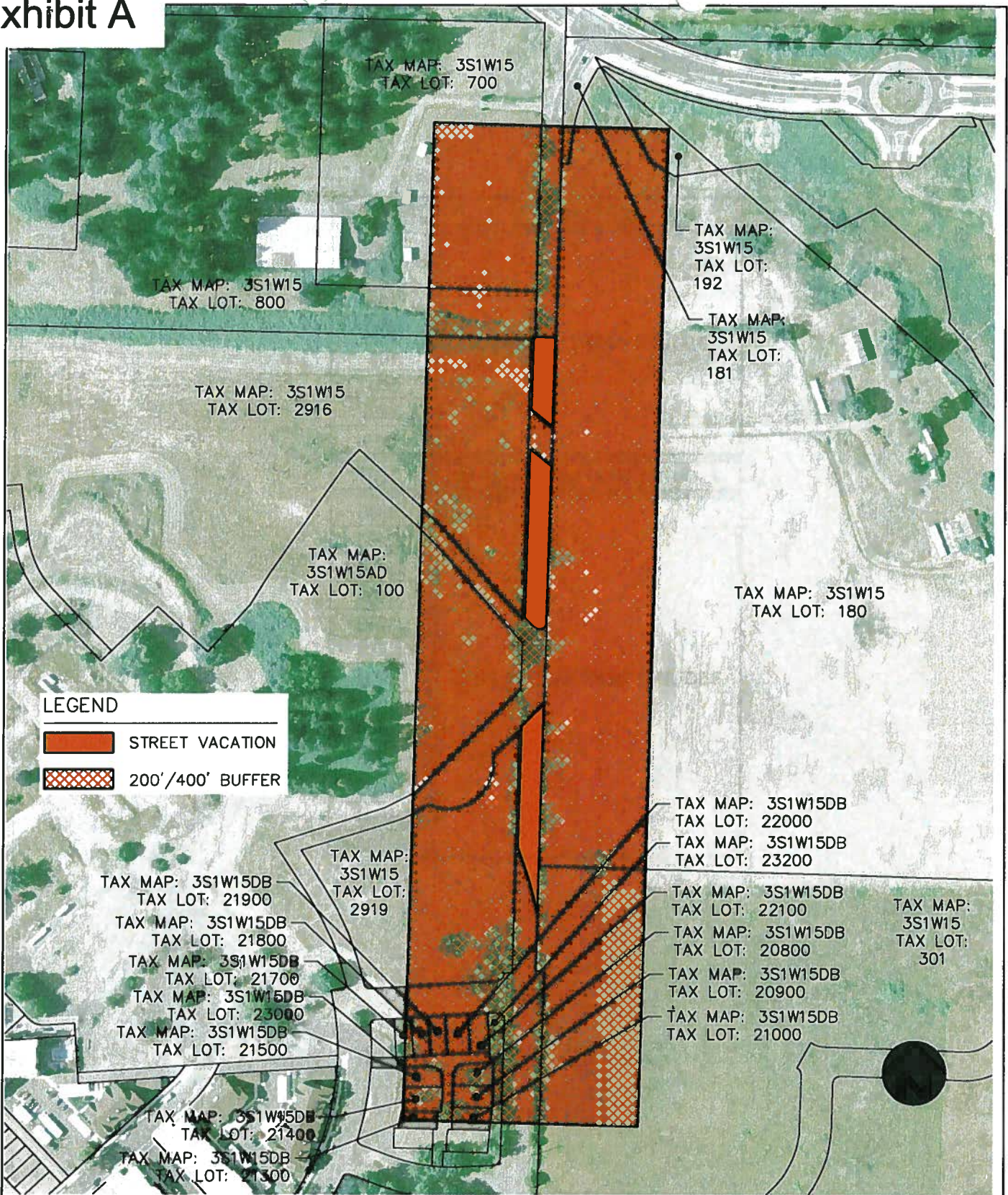
No site address; Reference Parcel 31W15 02919
Property Street Address and Legal Description


Signature

01/09/14
Date

Exhibit A

N:\proj\395-025\09 Drawings\06 Survey\Legal\395025.Street Vacation.Lots.2013-12-12.dwg - SHEET: Legal Desc Dec. 18, 13 - 10:52 AM.cll



DRAWN BY: CLL DATE: 12/12/13
 REVIEWED BY: TCJ DATE: 12/12/13
 PROJECT NO.: 395-025
 SCALE: 1"=250'
 PAGE 1 OF 2



12564 SW Main St
 Tigard, OR 97223
 [T] 503-941-9484
 [F] 503-941-9485

N:\proj\395-025\09 Drawings\06 Survey\Legal\395025.Street Vacation Lots.2013-12-12.dwg - \$HEET: Legal Desc [2] Dec. 18, 13 - 10:52 AM cll

TAX MAP	TAX LOT #
3 SOUTH 1 WEST SECTION 15	180
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	192
	301
	700
	800
	2916
	2919
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3 SOUTH 1 WEST SECTION 15 DB	20800
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PAGE 2 OF 2



12564 SW Main St
Tigard, OR 97223
[T] 503-941-9484
[F] 503-941-9485

Exhibit B

REPARCEL	OWNER	OWNERFIRST	OWNERLAST	MAILADDRESS	MAILCITY	MAILSTATE	MAILZIP
31W15 00700	Roger Chang	Roger	Chang	3205 Edgemont Rd	Lake Oswego	OR	97035
31W15 00800	Roger Chang	Roger	Chang	3205 Edgemont Rd	Lake Oswego	OR	97035
31W15 00180	Donald Bischoff	Donald	Bischoff	16300 SW 192nd Ave	Sherwood	OR	97140
31W15 00301	Polygon At Villebois LLC	Polygon At Villebois LLC		109 E 13th St #200	Vancouver	WA	98660
31W15 00181	Wilsonville Urban Renewal Agency	Wilsonville Urban Renewal Agency		29799 SW Town Center Loop E	Wilsonville	OR	97070
31W15 00192	Wilsonville Urban Renewal Agency	Wilsonville Urban Renewal Agency		29799 SW Town Center Loop E	Wilsonville	OR	97070
31W15AD00100	Rcs-Villebois Dev LLC	Rcs-Villebois Dev LLC		371 Centennial Pkwy #200	Louisville	CO	80027
31W15 02916	Pnw Home Builders LLC	Pnw Home Builders LLC		109 E 13th St #200	Vancouver	WA	98660
31W15 02919	Pnw Home Builders LLC	Pnw Home Builders LLC		109 E 13th St #200	Vancouver	WA	98660
31W15DB20800	Lorenzo & Laura Young	Lorenzo & Laura	Young	28949 SW Costa Cir E	Wilsonville	OR	97070
31W15DB20900	Jeffrey Barram	Jeffrey	Barram	28955 SW Costa Cir E	Wilsonville	OR	97070
31W15DB21000	Julie Helmke	Julie	Helmke	28969 SW Costa Cir E	Wilsonville	OR	97070
31W15DB21300	Sheryl Dischner	Sheryl	Dischner	28962 SW Orleans Ave	Wilsonville	OR	97070
31W15DB21400	James Woodin	James	Woodin	28954 SW Orleans Ave	Wilsonville	OR	97070
31W15DB21500	Austin Joyner	Austin	Joyner	28926 SW Orleans Ave	Wilsonville	OR	97070
31W15DB21700	Juan & Michele Vasquez	Juan & Michele	Vasquez	11124 SW Mont Blanc St	Wilsonville	OR	97070
31W15DB21800	Daniel Solvan	Daniel	Solvan	11118 SW Mont Blanc St	Wilsonville	OR	97070
31W15DB21900	Millian Stewart	Millian	Stewart	11106 SW Mont Blanc St	Wilsonville	OR	97070
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Street Vacation Petition

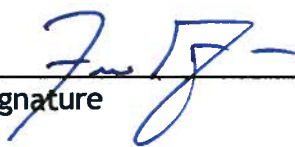
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2) Polygon at Villebois V, LLC
Property Owner's Name

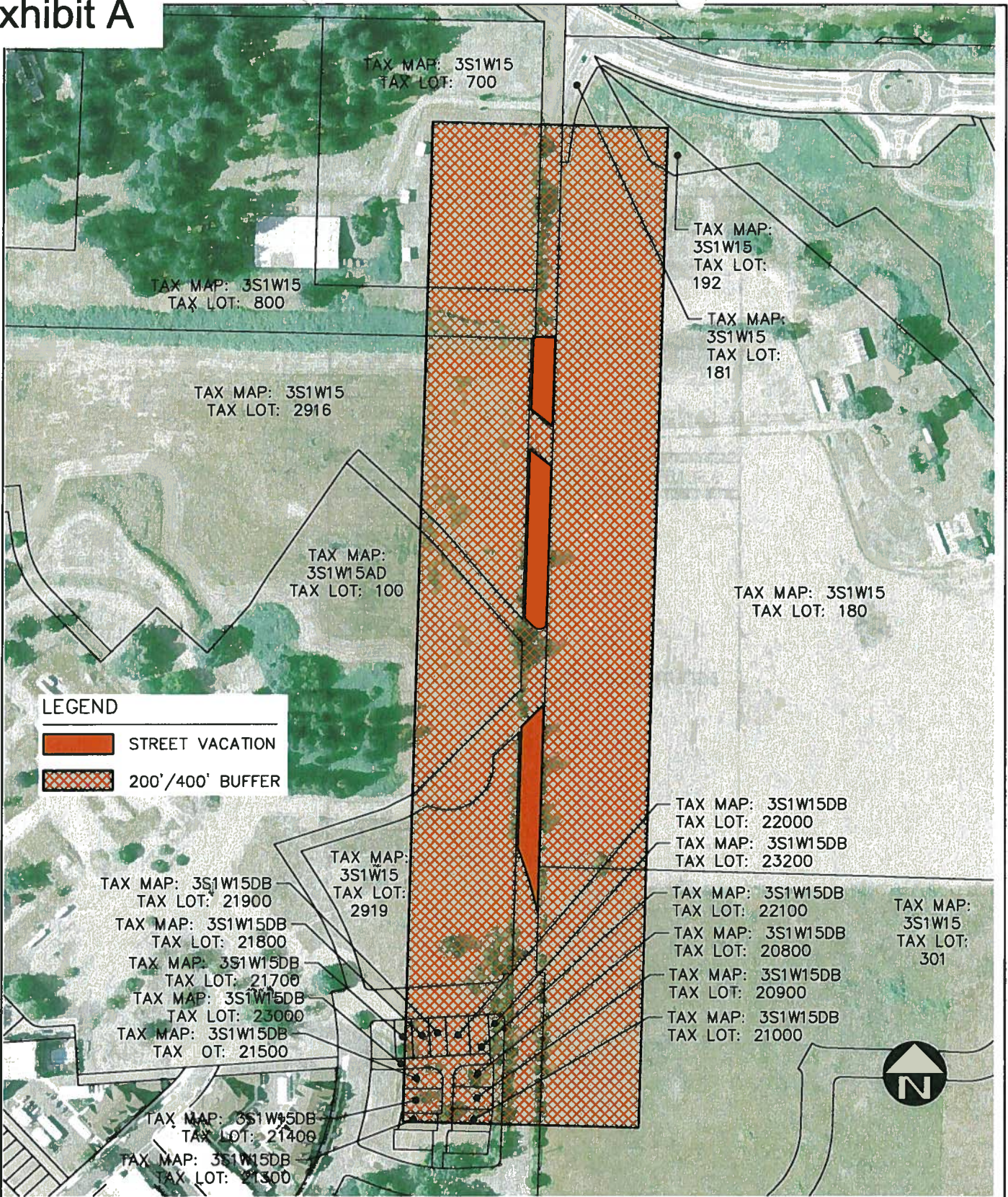
29092 SW 110th Ave, Wilsonville, Oregon 97070; Reference Parcel 31W15 00301
Property Street Address and Legal Description


Signature

01/09/14
Date

Exhibit A

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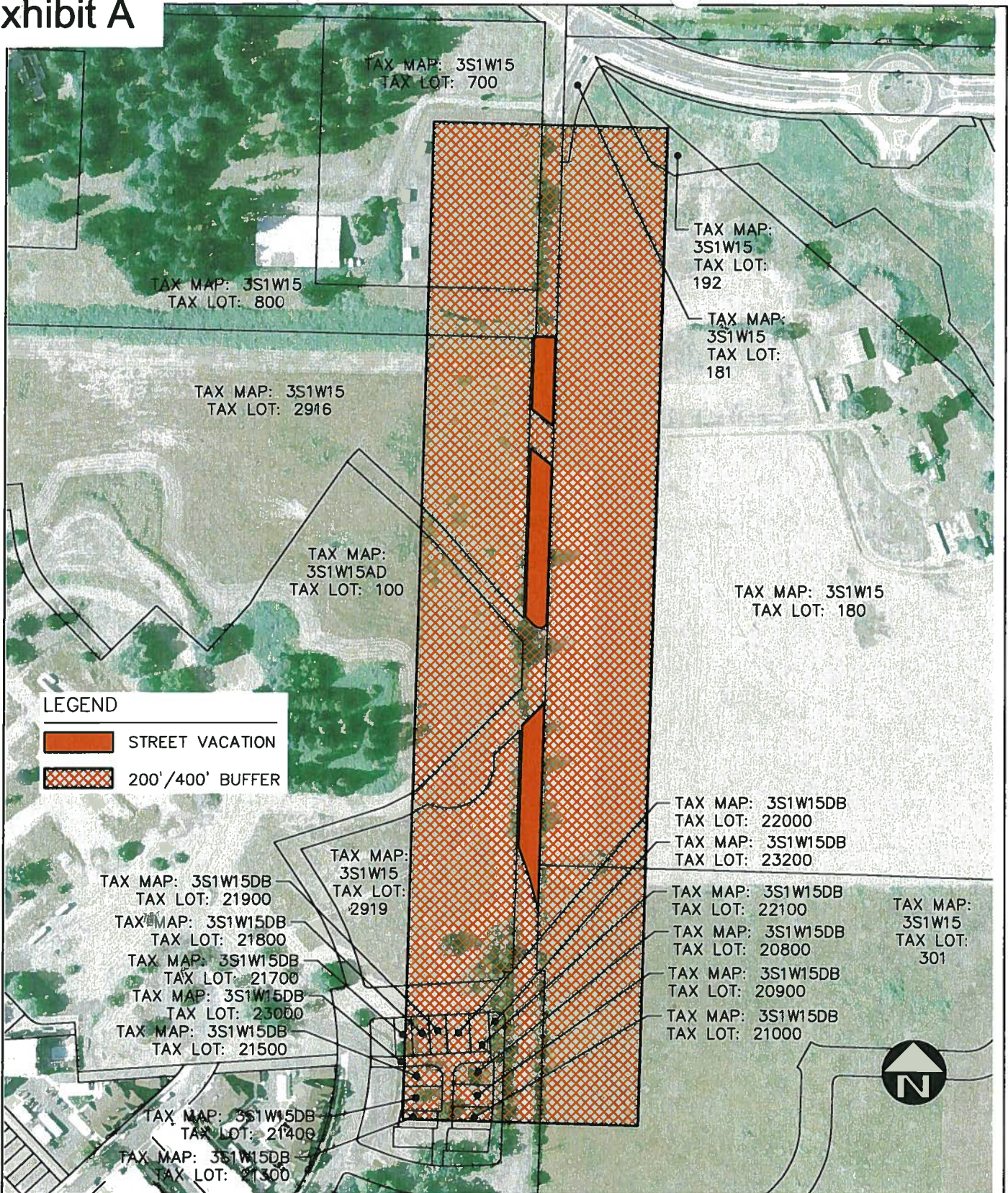
3) Donald Bischoff
Property Owner's Name

No Site Address; Reference Parcel 31W15 00180
Property Street Address and Legal Description

Donald Bischoff
Signature

12-19-13
Date

Exhibit A



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31W15DB23200	Polygon NW at Villebois HOA	Polygon NW at Villebois HOA		1200 NW Naito Pkwy #650	Portland	OR	97209

EXHIBIT C
Legal Description & Sketch



EXHIBIT A

December 24, 2013

LEGAL DESCRIPTION
Right-of-Way Vacation

Job No. 395-025

Three tracts of land being portions of SW 110th Avenue (County Road No. 355) Right-of-Way located in the Northeast Quarter of Section 15, Township 3 South, Range 1 West, Willamette Meridian, City of Wilsonville, Clackamas County, State of Oregon, more particularly described as follows:

Tract 1

BEGINNING at the Northeast corner of Tract "OO", plat of "Tonquin Woods at Villebois No. 4";

thence South 88° 24'59" East, a distance of 40.00 feet to a point on the easterly Right-of-Way line of SW 110th Avenue;

thence along said easterly Right-of-Way line, South 01° 35'01" West, a distance of 166.59 feet;

thence leaving said easterly Right-of-Way line, North 50° 46'32" West, a distance of 2.28 feet;

thence along a 770.50 foot radius tangential curve to the right, arc length of 24.11 feet, central angle of 01° 47'33", chord distance of 24.10 feet, and chord bearing of North 49° 52'45" West;

thence North 48° 58'59" West, a distance of 25.04 feet to a point on the westerly Right-of-Way line of said SW 110th Avenue;

thence along said westerly Right-of-Way line, North 01° 35'01" East, a distance of 134.28 feet to the POINT OF BEGINNING.

Containing 6,024 square feet, more or less.

Tract 2

BEGINNING at the most southerly corner of Tract "NN", plat of "Tonquin Woods at Villebois No. 4";

thence along the westerly Right-of-Way line of SW 110th Avenue, North 01° 35'01" East, a distance of 317.69 feet;

thence leaving said westerly Right-of-Way line, along a 829.50 foot radius non-tangential curve, concave northeasterly, with a radius point bearing North 39° 24'48" East, arc length of

2.73 feet, central angle of 00° 11' 19", chord distance of 2.73 feet, and chord bearing of South 50° 40' 52" East;

thence South 50° 46' 32" East, a distance of 47.79 feet to a point on the easterly Right-of-Way line of said SW 110th Avenue;

thence along said easterly Right-of-Way line, South 01° 35' 01" West, a distance of 301.53 feet;

thence leaving said easterly Right-of-Way line, along a 15.00 foot radius non-tangential curve, concave northerly, with a radius point bearing North 50° 40' 50" West, arc length of 24.85 feet, central angle of 94° 54' 18", chord distance of 22.10 feet, and chord bearing of South 86° 46' 19" West;

thence North 45° 46' 32" West, a distance of 24.44 feet to the POINT OF BEGINNING.

Containing 12,657 square feet, more or less.

Tract 3

COMMENCING at the most northerly corner of Parcel 2, Partition Plat No. 2010-046;

thence along the westerly Right-of-Way line of SW 110th Avenue, South 01° 35' 01" West, a distance of 68.95 feet to the POINT OF BEGINNING;

thence leaving said westerly Right-of-Way line, North 46° 43' 10" East, a distance of 19.16 feet;

thence along a 646.00 foot radius tangential curve to the left, arc length of 38.44 feet, central angle of 03° 24' 32", chord distance of 38.43 feet, and chord bearing of North 45° 00' 54" East to a point on the easterly Right-of-Way line of SW 110th Avenue;

thence along said easterly Right-of-Way line, South 01° 35' 01" West, a distance of 388.84 feet;

thence leaving said easterly Right-of-Way line, along a 788.00 foot radius non-tangential curve, concave westerly, with a radius point bearing South 77° 24' 40" West, arc length of 124.82 feet, central angle of 09° 04' 33", chord distance of 124.69 feet, and chord bearing of North 17° 07' 37" West to a point on the westerly Right-of-Way line of SW 110th Avenue;

thence along said westerly Right-of-Way line, North 01° 35' 01" East, a distance of 229.31 feet to the POINT OF BEGINNING.

Containing 12,139 square feet, more or less.

Basis of bearings being plat of "Tonquin Woods at Villebois No. 4", Clackamas County Survey Records.

REGISTERED
PROFESSIONAL
LAND SURVEYOR



OREGON
JULY 9, 2002
TRAVIS C. JANSEN
57751

RENEWS: 6/30/2015

EXHIBIT D

Copy of PDP 3E and PDP 4E Phasing Plan



POLYGON NW COMPANY
 (T) (360) 696-7200 (F) 360-693-4443
 WWW.POLYGONHOMES.COM

DATE: 01/22/2013

REVISIONS
 NO. DATE DESCRIPTION

Tonquin Meadows & Tonquin Meadows No. 2

Phasing Plan



(T) 503-241-9484 (F) 503-241-9485

PROJECT NO.: 3086-026
 PLANNING:
 REVIEWED BY: J.K.

A

LEGEND:

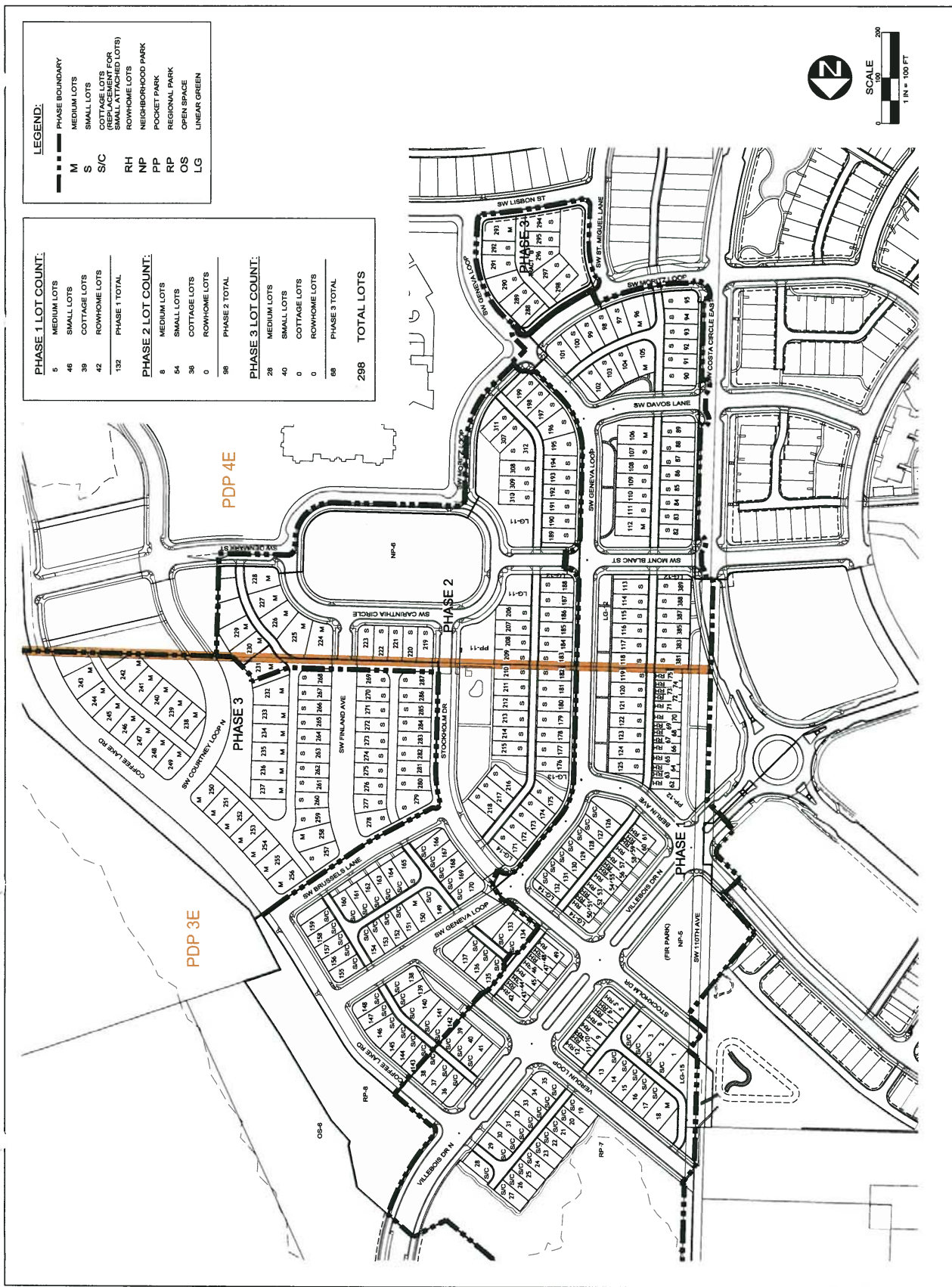
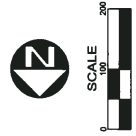
- PHASE BOUNDARY
- M MEDIUM LOTS
- S SMALL LOTS
- S/C COTTAGE LOTS
- RH ROWHOME LOTS
- NP NEIGHBORHOOD PARK
- PP POCKET PARK
- RP REGIONAL PARK
- OS OPEN SPACE
- LG LINEAR GREEN

PHASE 1 LOT COUNT:	
5	MEDIUM LOTS
46	SMALL LOTS
39	COTTAGE LOTS
42	ROWHOME LOTS
132	PHASE 1 TOTAL

PHASE 2 LOT COUNT:	
8	MEDIUM LOTS
54	SMALL LOTS
36	COTTAGE LOTS
0	ROWHOME LOTS
98	PHASE 2 TOTAL

PHASE 3 LOT COUNT:	
28	MEDIUM LOTS
40	SMALL LOTS
0	COTTAGE LOTS
0	ROWHOME LOTS
68	PHASE 3 TOTAL

TOTAL LOTS	
298	TOTAL LOTS



**EXHIBIT C1
PLANNING DIVISION
STAFF REPORT**

**SW 110th AVENUE STREET VACATION
VILLEBOIS SAP EAST PDP 3 AND 4**

**DEVELOPMENT REVIEW BOARD PANEL ' ___ ' ,
QUASI JUDICIAL HEARING**

Public Hearing Date:

Date of Report:

Application Numbers:

**Request A: DB14-0001 Vacation OF A Portion of SW
110th Avenue Right-of-Way**

Property

Owners/Applicants:

**PD = Planning Division conditions
BD – Building Division Conditions
PF = Engineering Conditions.
NR = Natural Resources Conditions
TR = SMART/Transit Conditions
FD = Tualatin Valley Fire and Rescue Conditions**

CONDITIONS OF APPROVAL

- PFA 1. Concurrently with the 110th Avenue Right-of-Way vacation, the Applicant shall file Temporary Public Access Easements over the same described parcels being vacated to allow legal continued use of 110th Avenue prior to its demolition and reconfiguration of the street network.**
- PFA 2. For any public or private utilities currently located within the proposed vacated Right-of-Way, and anticipated to remain in this location, Applicant shall provide public or private utility easements on City approved forms. For public easements these shall be minimum 15-foot wide easements centered on the utility. For private easements they shall be of sufficient width as needed by the private utility and as approved by the City.**
- PFA 3. The future demolition of 110th Avenue and construction of the street network in Tonquin Meadows will need to be coordinated with the City to minimize impacts to the traveling public.**

Public Works Plan Review Comments

Plans for Review: 110th Ave ROW Vacation Return All Comments To: Dan Pauly
 Issue Date: January 16/17, 2014 Due Date: January 30, 2014

Name	Page No.	Comments	Engineering's Response
Randy Watson			
Matt Baker		No Comments	
Steve Munsterman		No Comments	
Arnie Gray		No Comments	
Ralph Thorp		Still need to provide water to City irrigation meter at 110 th and Tooze. Maybe install new meter at the roundabout?	
Jason Labrie / Steve Gering		No Comments	
Mark Folz / Paul Havens		No Comments	