



**City of Sherwood  
PLANNING COMMISSION  
Sherwood City Hall  
22560 SW Pine Street  
Sherwood, OR 97140  
April 22, 2008 – 7PM**

1. **Call to Order/Roll Call**
2. **Agenda Review**
3. **Consent Agenda – none**
4. **Staff Announcements**
5. **Council Announcements** (Mayor Keith Mays, Planning Commission Liaison)
6. **Community Comments** (*The public may provide comments on any non-agenda item*)
7. **New Business:**
  - a. **Public hearing –Appeal of Provident Development Group Road (SP 07-07)– The original application proposed:** site plan approval to construct a 475 foot long private cul-de-sac road across tax lot 900 to serve tax lot 500 within a 50 foot wide private access easement. The decision was approved by the Planning Department on 3/7/08. On 3/21/08 and appeal was filed. The issues raised on appeal are: the proposed site plan cannot be approved since the applicant does not have the needed property interest to implement the requested actions; the findings in the decision are inadequate to justify an approval; and there was substantial evidence in the whole record to support the decision.
  - b. **Public Hearing – Peterson Old Town Office Site Plan Review (SP 08-02) -** The applicant is proposing to construct a 7,000 square foot (two 3,500 square foot stories) office building on the corner of SW Pine Street and SW 2<sup>nd</sup> Street in Sherwood's Old Town Overlay District. The application includes the building, landscaping and five (5) alley-loaded parking spaces. This site is zoned Retail Commercial (RC).
  - c. **Brookman Road Concept Plan** – discussion/presentation of Final Report *\*\*Final report is not included in the PC packet, it will be distributed at or before the meeting and will be made available to the public via the internet at that time as well.\*\**
8. **Comments from Commission**
9. **Next Meeting:** May 13, 2008 – Nothing currently scheduled
10. **Adjournment**



## MEMORANDUM

22560 SW Pine St  
Sherwood, OR 97140  
Tel 503-625-5522  
Fax 503-625-5524

To: Planning Commission

From: Julia Hajduk, Planning Manager *JPH*

Date: April 15, 2008

RE: Provident Development Group Road appeal

An appeal has been filed for the Provident Development Group Road. The decision was a Type II, staff decision. Exhibit 1 is a copy of the appeal. You will note that the issues for appeal are very general; therefore, staff is not preparing a staff report addressing the issues under appeal. Exhibit 2 is the staff decision with exhibits A-E.

Contrary to the code section 16.76.040, because this appeal is the first public hearing, by law the hearing is "de novo" and additional testimony may be provided prior to or at the hearing and anyone may testify regardless of having provided written comments during the staff review phase.



Pacwest Center, 1211 SW 5th Ave., Suite 1900, Portland, OR 97204 | Phone 503.222.9981 | Fax 503.796.2900 | www.schwabe.com

**PETER LIVINGSTON**  
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March 20, 2008

**VIA OVERNIGHT COURIER**

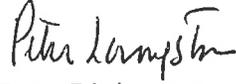
Ms. Julia Hajduk  
Planning Manager  
City of Sherwood  
22560 SW Pine Street  
Sherwood, OR 97140

Re: Provident Development Group, LC  
SP 07-07  
Our File No.: 117935/157587

Dear Julia:

Enclosed for filing is a Notice of Appeal (Types I and II) of the captioned decision on behalf of J. Patrick Lucas. I enclose a check for \$250 as a filing fee.

Very truly yours,

  
Peter Livingston

PLI:mca  
cc: Mr. J. Patrick Lucas



Home of the Tualatin River National Wildlife Refuge

# NOTICE OF APPEAL TYPES I & II

TAX LOT: 500  
MAP NO: 25129D  
CASE NO: SP 07-07

TO:

APPEAL BY: J. Patrick Lucas  
(Appellant's Name)

ON FILE # SP 07-07 at 14843 SW Oregon St. / TL 500  
(address/tax lot number)

The undersigned in the above-entitled matter does hereby appeal from that certain decision of the Planning Director rendered on the 7th day of March, 2008, upon the following grounds: *(Please provide on a separate sheet the reasons why you think the Appeal Authority should render a different decision than that rendered by the Planning Director.)*

Peter Lumpkin Date Signed: March 20, 2008  
for Appellant  
Schwabe, Williamson & Wyatt  
1211 SW 5th Ave., Ste. 1700  
Portland, OR 97204-3795  
Address Phone No. 503-796-2892

### To be filled out by City Staff

Received by: Zoe Monahan Date: 3/21/08  
(authorized Staff member)

\* Fee: \$250<sup>00</sup> Receipt No.: 1356

\*See City of Sherwood current Fee Schedule, located at [www.ci.sherwood.or.us](http://www.ci.sherwood.or.us). Click on City Government/Departments/Finance.

### APPEAL

Persons who are a party to the decision and who have a basis for an appeal based on an issue that has been raised, are eligible to appeal this decision not more than 14 days after the date on which the action took place. For the applicant, the 14 days are counted from the date the decision was mailed.

**STATEMENT OF REASONS**

**Appeal of Type II Decision: Provident Development Group, LC**

**File No. SP 07-07**

**Appellant: J. Patrick Lucas**

The proposed site plan cannot be approved because the applicant does not have the property interest necessary to implement the requested approval.

The findings in the challenged decision are insufficient to justify approval.

The findings in the challenged decision are not supported by substantial evidence in the whole record.

**CITY OF SHERWOOD**  
**Staff Report and Notice of Decision**

**File No: SP 07-07 Provident Devel**

PLANNING DEPARTMENT

App. Submitted: May 31, 2007  
 App. Complete: November 13, 2007  
 120-day Deadline: March 26, 2008  
 (extended)



Julia Hajduk, Planning Manager

**I. PROPOSAL/BACKGROUND**

The applicant has requested site plan approval in order to construct a 475 foot long private cul-de-sac across tax lot 900 to serve tax lot 500 within a 500 foot wide private access easement. No other development is proposed associated with this application at this time. The applicant's proposal is included as Exhibit A.

**A. Applicant/owner information**

<p><u>Applicant:</u>                  Provident Development Group, LC                  Attn. Dan Fletcher                  8312 W. Northview Street, Suite 120                  Boise, ID 83704</p>	<p><u>Applicant's representative:</u></p>
<p><u>Owner tax lot 500:</u>                  Oregon Self Storage Sherwood LC                  8312 W. Northview Street, Suite 120                  Boise, ID 83704</p>	<p>Owner/tax lot 900                  Patrick Lucas                  20512 SW Roy Rogers Road, Suite 150                  Sherwood, OR 97140</p>

- B. Location: The property is located on the north side of SW Oregon Street and south of the Southern Pacific Railroad. The property address is 14843 SW Oregon Street, tax lot 500 on Washington County Assessor Map 2S129D and tax lot 900 on Assessor Map 2S129D (no address).
- C. Parcel Size: tax lot 500 (2S129D000500) is 4 acres and tax lot 900 (2S129D000900) is 1.5 acres according to Washington County assessment and taxation. The only area subject to the site plan request is the 50 foot wide access easement on tax lot 900 consisting of approximately 23,750 square feet.
- D. Site Characteristics and Property History: The area proposed for the subject road is currently vacant and undeveloped. Both tax lots involved in this application are also currently vacant, but the property has the remnants of what used to be the Frontier Leather Co. ("Tannery"). In February 2004, the former Tannery building caught fire, and was destroyed beyond repair. The existing building remnants on the site are in the process of being removed. The site is currently under an agreement with DEQ for clean-up of hazardous materials. The site has a gentle slope and no known Goal 5 resources. However, there were apparently small isolated wetlands that were approved by DSL to be filled in July 2003.

Tax lot 900 has an approved preliminary site plan (SP 07-08) submitted by the property owner of that property which included tax lots 1000 and 1001 as well. The decision on that application does

not provide an access consistent with the one proposed in this application and there is debate among the property owner and the applicant regarding the legality of each to submit for review and construct within the easement. Staff has determined, after consult with the City Attorney, that this debate and issue is a civil matter. Staff's evaluation of each site plan will be reviewed on their own merit to ensure compliance with the code and to ensure that development of one does not preclude the development of another adjacent property.

- E. Zoning Classification and Comprehensive Plan Designation: The existing zone is Light Industrial (LI). Per section 16.32.010, the purpose of the LI zone is to provide for the manufacturing, processing, assembling, packaging and treatment of products which have been previously prepared from raw materials. Industrial establishments shall not have objectionable external features and shall feature well-landscaped sites and attractive architectural design, as determined by the Commission.
- F. Adjacent Zoning and Land Use: The subject site is located on SW Oregon Street on the north-east side of the City. Surrounding uses include open industrial areas to the north and east, a planned unit development to the west, and two (2) residential developments to the south of the site. The Southern Pacific Railroad separates the site from uses to the west and SW Oregon Street separates the site from uses to the south.
- G. Review Type: Because the total square footage of building and parking area is less than 15000 square feet, the site plan is considered a "fast track" site plan which requires a Type II review and decision by staff after a public comment period and notice. An appeal would be heard by the Planning Commission.
- H. Public Notice and Hearing: Notice of the application was posted on-site, in five set locations in the City and mailed to property owners within 100 feet of the site on November 16, 2007 in accordance with Section 3.202 and 3.203 of the SZCDC.
- I. Review Criteria: Sherwood Zoning and Community Development Code, 16.32 (Light Industrial - LI), 16.58.010 (Clear Vision), 16.58.030 (Fences, Walls and Hedges), 16.90 (Site Planning), 16.92 (Landscaping), 16.94 (Off-Street Parking), 16.96 (On-Site Circulation), Division VI - 16.104-16.118 (Public Improvements), 16.142 (Parks and Open Space) and 16.154 (Heat and Glare).

## II. PUBLIC COMMENTS

Public notice was mailed, posted on the property and in five locations throughout the City on November 16, 2007. Staff received public comments which are summarized and responded to immediately below:

**Kathy and Bob Michaud-Tradd, 22136 SW Hall Street** – provided comments indicating that they encouraged denial of the request "until the toxic and unsightly Tannery mess is cleaned up" they encourage denial of any development for all the surrounding tax lots. They further questioned whether it was safe for any dirt to be moved.

**Response:** DEQ is closely monitoring this site and any and all activities associated with moving or removing dirt must be approved by DEQ. In many cases the approval to develop or re-develop a property is what enables a property such as this to be cleaned up. A condition of approval is imposed within this decision to ensure that DEQ signs off on the construction of the road.

**Dave Wechner, AKS, 12011 NE 99<sup>th</sup> Street suite 1530, Vancouver, WA** – Mr. Wechner provided a detailed letter (Exhibit B) which raised concern that the application process was flawed because the request involved 23,750 square feet of area (and therefore, it is asserted that a Type III process with

public hearing before the Hearings Officer) is required and the owner of tax lot 900 did not sign the application and has not consented to the construction on his property.

**Response:** While is it correct that the City traditionally requires the property owner signature on a land use application, consultation with the City Attorney provided confirmation that because of the easement and the fact that it is to the benefit of the applicant, this gives them the authority to submit an application. This is the same way public agencies such as BPA and PGE have the ability to construct structures on easements. The issue of ownership and signature was thoroughly discussed with the City Attorney before this application was deemed complete and therefore staff does not concur with the assertion that this is a flaw in the application.

Regarding the type of application for determine the appropriate process; the code is clear that using square feet of floor area and/or parking area is the determining factor in determining the type of application (Type II, III or IV). Because this site plan is proposing neither parking nor floor area, the base site plan square footage (and fee) was used. This same assessment has been consistently used when determining the fee for outdoor storage areas. Based on this information, staff does not concur with the assertion hat this should be processed as a Type III application.

**Peter Livingston, Schwabe, Williamson & Wyatt, 1211 SW 5<sup>th</sup> Ave, Suite1900, Portland, OR** – Mr. Livingston also submitted testimony (Exhibit C) questioning the legality of the City accepting and processing this application without the property owner of tax lot 900's approval or signature. Submitted with Mr. Livingston's letter was a copy of the July 1, 200 declaration of private access and utility easement and Mr. Livingston indicates that the easement does not authorize the construction of a road or the filing of an application for site plan review.

**Response:** Please see response above. In addition it should be noted that the City reviewed a copy of the easement (provided by the applicant) prior to deeming the application complete and determined, after consult with the City Attorney, that the easement itself allows the applicant to submit a land use application. The City can not deny an easement holder the ability to act within the bounds of that easement (provided it meets City standards) simply because the current owner of the land under the easement does not concur. If this were the case, any easement would be worthless immediately upon the granting of it.

No other public comments were received within the posted comment period ending on December 3, 2008.

### III. AGENCY COMMENTS

Staff sent e-notice to affected agencies on November 13, 2008. The following is a summary of the comments received. Copies of full comments are included in the record unless otherwise noted.

**Division to State Lands (DSL)** provided comments indicating that "any impacts to wetlands or waterways may require a permit from DSL.

*Staff response:* Staff is not aware of any wetlands in the area of the proposed road. Prior research for previous and use application on this property revealed wetlands did exist but received approval from DSL to fill in 2003. A condition of approval shall be verification of that prior fill approval and that no wetlands currently exist.

**Kinder Morgan Energy** has reviewed the proposal and indicated that they do not have a conflict with the proposal.

**Pride Disposal** provided comments stating that the private access road is accessible to their trucks and that they will review the plans further when a development plan is submitted in the future for the parcel.

**The Sherwood Engineering Department** provided comments which have been incorporated into this decision and are also attached as Exhibit D. The Engineering Department also provided some general comments, which are provided below:

Grading and Erosion Control:

Retaining walls within public easements or the public right-of-way shall require engineering approval. Retaining walls with a height of 4 feet or higher located on private property will require a permit from the building department.

City policy requires that prior to grading, a permit is obtained from the Building Department for all grading on the private portion of the site.

The Engineering Department requires a grading permit for all areas graded as part of the public improvements. The Engineering permit for grading of the public improvements is reviewed, approved and released as part of the public improvement plans.

Other Engineering Issues:

Public easements are required over all public utilities outside the public right-of-way. Easements dedicated to the City of Sherwood are exclusive easements unless otherwise authorized by the City Engineer. An eight-foot wide public utility easement is also required adjacent to the right-of-way of all street frontage. An Engineering Department review of all easements shall occur prior to the Applicant's recording of the easement. The City will require original recorded easement(s) returned to the City prior to the release of public improvement plans.

All existing and proposed utilities shall be placed underground.

At the City's discretion Applicant may be required to install infrastructure for Sherwood Broadband as noted in City Ordinances 2005-17 and 2005-74.

Obtain a right-of-way permit for any work required in the public right-of-way, (reference City Ordinance 2006-20).

Staff suspects this site is currently in the process of an environmental clean-up with oversight by DEQ. It is engineering staff's recommendation that no development of the site occur until DEQ has signed-off on the clean-up. This same requirement should apply to neighboring property where the Applicant proposes off-site utilities.

The City Engineer may require a geotech report if questions arise regarding the constructability of the proposed public improvements.

**Clean Water Services** has reviewed the proposal and have provided comments that are discussed within this decision and attached as Exhibit E. In addition, a Service Provider Letter has been provided (07-004086) that indicates that no sensitive areas appear to exist on site or within 200 feet of the site.

**PGE, Tualatin Valley Water District, Tualatin Valley Fire and Rescue, NW Natural Gas**, were also given the opportunity to comment on the proposal, but provided no written comments.

**Bonneville Power Administration (BPA), Oregon Department of Transportation (ODOT), City of Sherwood Public Works, and Washington County** reviewed the proposal and indicated that they did not have any comments.

**DEQ** has not provided written comments, however staff has been in contact with them many times regarding this property as it is part of the former Tannery contamination site. Prior to issuance of any

permits on this site, including grading and storm discharge onto the adjacent orphan site (2S129D000600), staff will require sign-off from DEQ.

#### IV. SITE PLAN REVIEW – REQUIRED FINDINGS (SECTION 16.90.020)

**A. The proposed development meets applicable zoning district standards and all provisions of Chapters V, VI, VIII and IX.**

The relevant criteria are found in Division V, VI, VIII and IX. Compliance with these criteria is discussed in Section IV – Applicable Code Provisions, below. Chapter 16.158 is not applicable to this site plan application as there are no Historic Resources on the site and it is not located in the Old Town Overlay.

**FINDING:** Compliance with the relevant criteria are discussed and conditioned as necessary throughout this report, therefore, this standard is satisfied.

**B. The proposed development can be adequately served by services conforming to the Community Development Plan, including but not limited to water, sanitary facilities, storm water, solid waste, parks and open space, public safety, electric power and communications.**

The proposal is to construct a private street with utilities. No other development is proposed at this time. Section C.C.16.118 of this report discusses the private and public utility provisions in more detail and recommends conditions as needed to ensure compliance.

**FINDING:** As discussed above, necessary requirements are discussed in detail and conditioned further in this report, ensuring this standard will be met.

**C. Covenants, agreements, and other specific documents are adequate, in the City's determination, to assure an acceptable method of ownership, management and maintenance of structures, landscaping and other on-site features.**

The development is within an access easement which is not owned by the applicant (although the easement is to their benefit). The site plan approval granted for SP 07-08 required covenants but it is not possible for the applicant to further bind this easement. Regardless, no restrictions of agreements are deemed necessary by this proposal.

**FINDING:** As discussed above, this standard is satisfied.

**D. The proposed development preserves significant natural features to the maximum feasible extent, including but not limited to natural drainageways, wetlands, trees, vegetation, scenic views and topographical features, and conforms to the applicable provisions of Chapters 5 and 8 of this Code.**

The area of development is vacant with no significant trees, drainageways, views, vegetation or topographical features. Historically a few small isolated wetlands were approved for filling by DSL in 2003. Clean Water Services has indicated in their Service Provider Letter that there are no sensitive areas that exist within 200 feet of the subject site.

**FINDING:** Based on the discussion above, this standard has been addressed.

- E. For a proposed site plan in the Neighborhood Commercial (NC), Office Commercial (OC), Office Retail (OR), Retail Commercial (RC), General Commercial (GC), Light Industrial (LI), and General Industrial (GI) zones, except in the Old Town Overlay Zone, the proposed use shall satisfy the requirements of Section 6.307 Highway 99W Capacity Allocation Program, unless excluded herein.

**FINDING:** The site plan does not include the construction of any buildings or approval for any uses other than the private access road, as such, this standard is not applicable but will be reviewed for future site plan applications submitted for the properties.

- F. For developments that are likely to generate more than 400 average daily trips (ADTs), or at the discretion of the City Engineer, the applicant shall provide adequate information, such as a traffic impact analysis or traffic counts, to demonstrate the level of impact to the surrounding street system. The developer shall be required to mitigate for impacts attributable to the project. The determination of impact or effect and the scope of the impact study shall be coordinated with the provider of the affected transportation facility.

**FINDING:** The construction of the road will not generate any trips. Compliance with this standard will be evaluated when a future site plan application is submitted for the construction of buildings.

- G. The proposed commercial, multi-family development, and mixed-use development is oriented to the pedestrian and bicycle, and to existing and planned transit facilities. Urban design standards shall include the following:

1. Primary, front entrances shall be located and oriented to the street, and have significant articulation and treatment, via facades, porticos, arcades, porches, portal, forecourt, or stoop to identify the entrance for pedestrians. Additional entrance/exit points for buildings, such as a postern, are allowed from secondary streets or parking areas.

2. Buildings shall be located adjacent to and flush to the street, subject to landscape corridor and setback standards of the underlying zone.

3. The architecture of buildings shall be oriented to the pedestrian and designed for the long term and be adaptable to other uses. Aluminum, vinyl, and T-111 siding, metal roofs, and artificial stucco material shall be prohibited. Street facing elevations shall have windows, transparent fenestration, and divisions to break up the mass of any window. Roll up and sliding doors are acceptable. Awnings that provide a minimum 3 feet of shelter from rain shall be installed unless other architectural elements are provided for similar protection, such as an arcade.

4. As an alternative to the above standards G.1-3, the Old Town Design Standards (Section 9.202) may be applied to achieve this performance measure.

**FINDING:** This standard is not applicable at this time, because the only thing proposed is an access road to serve tax lot 500.

## V. APPLICABLE CODE PROVISIONS

### A. Division II– Land Use and Development

The only applicable provision of Division II is 16.58 (Visual Clearance). Compliance with the standards in these sections is discussed below:

#### 16.58.010 Clear Vision Areas

A clear vision area shall be maintained on the corners of all property at the intersection of two (2) streets, intersection of a street with a railroad, or intersection

of a street with an alley or private driveway. (Ord. 96-1014 § 1; 86-851)

A clear vision area shall consist of a triangular area, two (2) sides of which are lot lines measured from the corner intersection of the street lot lines for a distance specified in this regulation; or, where the lot lines have rounded corners, the lot lines extended in a straight line to a point of intersection, and so measured, and the third side of which is a line across the corner of the lot joining the non-intersecting ends of the other two (2) sides. (Ord. 86-851 § 3)

A clear vision area shall contain no planting, sight obscuring fence, wall, structure, or temporary or permanent obstruction exceeding two and one-half (2-1/2) feet in height, measured from the top of the curb, or where no curb exists, from the established street center line grade, except that trees exceeding this height may be located in this area, provided all branches and foliage are removed to the height of seven (7) feet above the ground. (Ord. 86-851 § 3)

The following requirements shall govern clear vision areas:

A. In a residential zone, the minimum distance shall be thirty (30) feet, or at intersections including an alley, ten (10) feet.

B. In commercial and industrial zones, the minimum distance shall be fifteen (15) feet, or at intersections including an alley, ten (10) feet, except that when the angle of intersection between streets, other than an alley, is less than thirty (30) degrees, the distance shall be twenty-five (25) feet.

C. Where no yards are required, buildings may be constructed within the clear vision area.

The proposal provides access to Oregon Street via a private street. The plans submitted do not show landscaping details. The applicant has not addressed the required clear vision triangles; however, this standard could be easily met by submitting a landscaping plan verifying landscaping within the vision clearance triangle will be less than two and one half feet in height.

**FINDING:** As discussed above, staff can not confirm that this standard has been met. If the applicant meets the condition below, this standard will be met.

**CONDITION:** Prior to Final Site Approval, the applicant must submit a plan that shows visual clearance is maintained according to the standards of 16.58.010.

## **B. Division V - Community Design**

The applicable provisions of Chapter 16.90 include: 16.90 (Site Planning), 16.92 (Landscaping), 16.94 (Off-street parking and Loading), and 16.96 (On-site Circulation). Compliance with the standards in these sections is discussed below:

### **16.92.010 Landscape Plan**

All proposed developments for which a site plan is required pursuant to Section 16.90.020 shall submit a landscaping plan which meets the standards of Section 16.92. All areas not occupied by structures, paved roadways, walkways, or patios shall be landscaped or maintained according to an approved site plan.

The proposal will only develop the area within the easement. The proposal indicates an eleven foot landscape strip will be located on the east side of the property. The plans are unclear regarding what will be installed west of the sidewalk on the west side of the drive. Because tax lot 900 has an approved site plan, it is possible that this area will be improved with pavement. However the applicant will need to submit verification of what is proposed within this area.

**FINDING:** As discussed above, this standard has not been satisfied. If the applicant complies with the condition below, this standard will be met.

**CONDITION:** Prior to final site plan approval and issuance of permits, submit a landscape plan that provides detail on the plants to be installed in the landscape strip.

#### 16.92.020 Landscaping Materials

**16.92.020.1 Varieties** - Required landscaped areas shall include an appropriate combination of evergreen or deciduous trees and shrubs, evergreen ground cover, and perennial plantings. Trees to be planted in or adjacent to public rights-of-way shall meet the requirements of Section 16.92.

The only required landscaping is street trees within the landscape strip. Compliance with the street tree standards is discussed and conditioned further in this report.

**FINDING:** Based on the analysis above, this standard has been satisfied.

**16.92.020.2 Establishment of Healthy Growth and Size** - Required landscaping materials shall be established and maintained in a healthy condition and of a size sufficient to meet the intent of the approved landscaping plan. Specifications shall be submitted showing that adequate preparation of the topsoil and subsoil will be undertaken.

A landscape plan has not been submitted therefore, staff can not verify this standard is met. This standard could be easily met by submitting details on the planting and maintenance specification to be applied during planting.

**FINDING:** Based on the analysis above this standard has not been satisfied. If the applicant complies with the condition below, this standard will be met.

**CONDITION:** Prior to final site plan approval and issuance of permits, submitting details on the planting and maintenance specification to be applied during planting.

**16.92.020.4 Existing Vegetation** - All developments subject to site plan review as per Section 16.90.020 and required to submit landscaping plans as per Section 16.92.020 shall preserve existing trees, woodlands and vegetation on the site to the maximum extent possible, as determined by the Commission, in addition to complying with the provisions of Section 16.142.060.

The plans do not indicate existing vegetation to remain, nor does it appear that existing vegetation is of a quality that would require saving.

**FINDING:** Based on the analysis above, the applicant is not required to preserve existing landscaping.

#### 16.92.030 Landscaping Standards

**16.92.030.01 Perimeter Screening and Buffering** - A minimum six (6) foot high sight-obscuring wooden fence, decorative masonry wall, or evergreen screen shall be required along property lines separating single and two-family uses from multi-family uses, and along property lines separating residential zones from commercial or industrial uses. In addition, plants and other landscaping features may be required by the Commission in locations and sizes necessary to protect the privacy of residences and buffer any adverse effects of adjoining uses.

**FINDING:** This standard is not applicable as the area of development is not adjacent to a residential zone or development.

**16.92.030.3 - Visual Corridors**

New developments shall be required to establish landscaped visual corridors along Highway 99W and other arterial and collector streets, consistent with the Natural Resources and Recreation Plan Map, Appendix C of the Community Development Plan, Part II, and the provisions of Section 16.142.

**FINDING:** The site takes access from SW Oregon Street, which is classified as a collector however because the only development along Oregon Street will be the street connection, this standard can not be applied.

**16.96 On-Site Circulation**

**16.96.010 – On-site pedestrian and bicycle circulation**

On-site facilities shall be provided that accommodate safe and convenient pedestrian access within new subdivisions, multi-family developments, planned unit developments, shopping centers and commercial districts, and connecting to adjacent residential areas and neighborhood activity centers within one half mile of the development. Neighborhood activity centers include but are not limited to existing or planned schools, parks, shopping areas, transit stops or employment centers. All new development, (except single family detached housing), shall provide a continuous system of private pathways/sidewalks at least 6 feet wide.

The plans provide a sidewalk along the private street to serve tax lot 500. At this time, no further development is proposed on tax lot 500. This standard will be applied at time of future site plan as well.

**FINDING:** As discussed above, this standard has been met.

**16.96.010.02 – Joint Access**

Two (2) or more uses, structures, or parcels of land may utilize jointly the same ingress and egress when the combined ingress and egress of all uses, structures, or parcels of land satisfied the other requirements of this Code, provided that satisfactory legal evidence is presented to the City in the form of deeds, easements, leases, or contracts to clearly establish the joint use.

The private street will provide access to 2 or more uses. This is already provided for in the current joint access easement. The owner of the easement, through SP 07-08 has been conditioned to provide access to additional parcels; however that does not affect the proposed private street.

**FINDING:** This standard has been met.

**16.96.010.03 - Connection to Streets**

A. Except for joint access as per Section 5.401.02, all ingress and egress to a use or parcel shall connect directly to a public street, excepting alleyways.

B. Required private sidewalks shall extend from the ground floor entrances or the ground floor landing of stairs, ramps or elevators to the public sidewalk or curb of the public street which provides required ingress and egress.

**FINDING:** Construction of the private street will allow tax lot 500 to meet this standard.

**16.96.010.04 - Maintenance of Required Improvements**

**Required ingress, egress and circulation improvements shall be kept clean and in good repair.**

**FINDING:** The applicant has not indicated how maintenance of access will be insured. If the applicant satisfies the following condition, this standard will be met.

**CONDITION:** Prior to final site plan approval, the applicant is required to submit access maintenance agreements that insures ingress, egress and circulation improvements shall be kept clean and in good repair.

**16.96.010.05 - Access to Major Roadways**

**Points of ingress or egress to and from Highway 99W and arterials designated on the Transportation Plan Map, attached as Appendix C of the Community Development Plan, Part II, shall be limited as follows: C. all site plans for new development submitted to the City for approval after the effective date of this Code shall show ingress and egress from existing or planned local or collector streets, consistent with the Transportation Plan Map and Section VI of the Community Development Plan.**

The subject site will gain access from SW Oregon Street, which is designated as a collector Street, which is consistent with the Transportation Plan Map and the Community Development Plan.

**FINDING:** Based on the analysis above, this standard has been satisfied.

**16.96.030. Minimum Non-Residential Standards**

**16.96.030.01.B - Driveways**

**States that industrial developments with 250+ required parking spaces shall have 2 driveways that are a minimum of 24 feet in width each.**

**FINDING:** No development other than the drive is proposed on tax lot 500, therefore, this standard can not be reviewed at this time.

**16.96.030.02. Sidewalks and Curbs**

**A. Industrial and Commercial: A system of private pedestrian sidewalks/pathways extending throughout the development site shall connect to existing development, to public rights-of-way with or without improvements, to parking and storage areas, and to connect all building entrances to one another. The system shall also connect to transit facilities within 500 feet of the site, and future phases of development and whenever possible to parks and open spaces.**

**FINDING:** No buildings are proposed on tax lot 500 therefore this standard is not applicable at this time.

**B. Curbs shall also be required at a standard approved by the Hearing Authority. Private pathways/sidewalks shall be connected to public rights-of-way along driveways but may be allowed other than along driveways if approved by the Hearing Authority.**

The applicant's site plan shows a curb line along both sides of the private street. A pedestrian connection on the west side of the driveway is shown. As discussed further in

this report, in order to meet local street standards a walkway on both sides will be required. This is discussed and conditioned further in this report.

**FINDING:** Based on the analysis above, this criterion is satisfied.

**C. Private Pathway/Sidewalk Design.** Private pathway surfaces shall be concrete, brick/masonry pavers, or other durable surface, at least 6 feet wide and conform to ADA standards. Where the system crosses a parking area, driveway or street, it shall be clearly marked with contrasting paving materials or raised crosswalk (hump). At a minimum all crosswalks shall include paint striping.

The Preliminary Site Plan shows the proposed pedestrian sidewalk to be 5-feet in width and does not provide information on the material to be used.

**FINDING:** As discussed above, this standard has not been met. This standard can be met through compliance with the condition below.

**CONDITION:** Prior to final site plan approval and issuance of building permits, the applicant must submit revised plans that show a 6 foot wide walkway on both sides of the driveway constructed of concrete, brick/masonry pavers, or other durable surface.

**D. Exceptions.** Private pathways/sidewalks shall not be required where physical or topographic conditions make a connection impracticable, where buildings or other existing development on adjacent lands physically preclude a connection now or in the future considering the potential for redevelopment; or pathways would violate provisions of leases, restrictions or other agreements.

**FINDING:** The applicant has not requested exceptions to the private pathway/sidewalk standards. Therefore, this standard does not apply.

## **C. Division VI - Public Improvements**

### **16.108– Streets**

#### **16.108.030.01 – Required Improvements**

Except as otherwise provided, all developments containing or abutting an existing or proposed street, that is either unimproved or substandard in right-of-way width or improvement, shall dedicate the necessary right-of-way prior to the issuance of building permits and/or complete acceptable improvements prior to issuance of occupancy permits.

#### **16.108.030.04 - Extent of Improvements**

Streets required pursuant to Section 16.108 shall be dedicated and improved consistent with Chapter 6 of the Community Development Plan, the Transportation System Plan and applicable City standards and specifications included in the Standard Transportation Drawings, and shall include curbs, sidewalks, catch basins, street lights, and street trees. Improvements shall also include any bikeways designated on the Transportation System Plan map.

Catch basins shall be installed and connected to storm sewers and drainage ways. Upon completion of the improvements, monuments shall be re-established and protected in monument boxes at every public street intersection and all points of curvature and points of tangency of their center lines. Street signs shall be installed at all street intersections and street lights shall be installed and served from an

**underground source of supply unless other electrical lines in the development are not underground.**

Transportation

As per the applicant’s narrative, they are applying for Site Plan approval to allow a private road to be built to modified public standards as agreed upon with former City of Sherwood staff. Documentation is not provided to clarify the specifics of the agreement, nor is there any indication of what road standards were agreed to be modified.

City code section 16.118.050 specifies “The construction of new private streets shall be prohibited unless it provides principal access to two or fewer lots or parcels i.e. flag lots”. In this case the area of the easement could allow for access to four tax lots: 2S129D000500, (the subject site), 2S129D000900, (the site with the private easement), 2S129D0006000, (to the east) and 2S129D000602, (also the east). Of these four lots, it seems possible that two or more could be partitioned again creating additional lots accessing the proposed private street. (While not currently under review for a partition, the applicant’s design shows a possible future partition and tax lot 2S129D000600 to the east exceeds 20 acres and also has the potential for partitioning.)

Also of concern is the alignment of the proposed private drive. Sheet SP1 of the Applicant’s design shows a 9 foot offset at the Oregon Street intersection with the existing Roy Street and the proposed Private Drive. Access spacing and alignment specifications require streets directly align whenever feasible. The applicant will need to coordinate with the Engineering Department to develop a design that meets the alignment issues and provides as much of the private street built to public standards as possible within the 50 foot wide access easement at the intersection until is it able to transition back further and provide the full public street standards.

Staff has reviewed the proposal and finds that it does not fully comply with Section 16.118.050 of the code which reads, “Unless otherwise specifically authorized, a private street shall comply with the same street standards as a public street identified in the Community Development Code and Transportation System Plan.”

<p>A typical street standard for a local street can be seen in Figure 8-5a of the Transportation System Plan, (TSP), and would include the following:</p>	<p>When viewing the private access road cross section as shown on sheet C5.0 of the Applicant’s engineering design one sees:</p>
<ul style="list-style-type: none"> <li>• 52 foot right-of-way dedication</li> </ul>	<ul style="list-style-type: none"> <li>• 50 foot private easement</li> </ul>
<ul style="list-style-type: none"> <li>• A minimum of 28 feet for the drivable surface</li> </ul>	<ul style="list-style-type: none"> <li>• The minimum 28 feet of driving surface</li> </ul>
<ul style="list-style-type: none"> <li>• 6 inch wide top of curb</li> </ul>	<ul style="list-style-type: none"> <li>• A top of curb measurement incorporated into a 5 foot wide sidewalk</li> </ul>
<ul style="list-style-type: none"> <li>• 5 foot wide planter, (landscape), strip, (not including top of curb)</li> </ul>	<ul style="list-style-type: none"> <li>• No planter strip on the west side, 11 feet on the east side</li> </ul>
<ul style="list-style-type: none"> <li>• A minimum 6 foot wide sidewalk</li> </ul>	<ul style="list-style-type: none"> <li>• 5 foot wide sidewalk (which includes the curb) on the west side, no sidewalk on the west side.</li> </ul>
<ul style="list-style-type: none"> <li>• Street trees and street lights within the planter strip.</li> </ul>	<ul style="list-style-type: none"> <li>• No street trees or street lights</li> </ul>
<p>The City’s construction standards call for a road base consisting of:</p> <ul style="list-style-type: none"> <li>• 4 inches of asphalt, over</li> <li>• 3 inches of ¾”-0 crushed rock, over</li> <li>• 8 inches of 1 ½”-0 crushed rock, over 1 layer of geotextile fabric</li> </ul>	<p>The applicant’s proposed road base is:</p> <ul style="list-style-type: none"> <li>• 3 inches of asphalt, over</li> <li>• 10 inches of ¾”-0 crushed rock</li> </ul>

As the above table illustrates the plans do not demonstrate the proposed private street will be built to public standards. Because the applicant can not dedicate right of way, it is not possible to require the street to be dedicated to the public in which case a  $\frac{3}{4}$  street improvement could be considered, more closely matching the applicant's proposed street. As such, in order to meet the standards, the applicant must provide a 6 foot wide sidewalk on both sides of the private street and a 5 foot wide landscape strip on both sides of the private street, exclusive of the curb. In addition, street trees must be provided and the road base built to the City standards. Because SP 07-08 has been approved and includes development adjacent to the western portion of the access easement, it is acceptable, provided public easements are granted, to meet the sidewalk standard on the western side of the drive consistent with the site plan approval for SP 07-08. Because the applicant is providing an 11 foot landscape strip on the eastern side of the property it is anticipated that the required landscape strip and sidewalk can be provided.

The City Council determined on appeal of SP 07-08 that the access did not provide access to more than 2 parcels; however the private street construction still must fully comply with current standards as discussed above. It should be noted; however that the applicant could not partition the property further to provide more than 2 parcels to take access of the private street without it being publicly dedicated or, potentially, a variance to the standard being granted.

The cul-de-sac radius provided within the existing easement exceeds the city requirement of 40 feet but is less than generally required by TVF&R for emergency access. This is discussed in more detail further in this report under Section 16.116.010.

**FINDING:** As discussed above, this standard has not been met because the applicant has not proposed a street complying with local street standards. It is possible to meet these standards, however, if the applicant complies with the condition below.

**CONDITION:** Prior to final site plan approval and issuance of building permits, submit revised plans for review and approval that show the minimum pavement width, landscaping and sidewalk on both sides of the private street. In addition, the construction plans must include a road base consisting of 4 inches of asphalt, over 3 inches of  $\frac{3}{4}$ "-0 crushed rock, over 8 inches of 1  $\frac{1}{2}$ "-0 crushed rock, over 1 layer of geotextile fabric.

#### **16.108.040.03 - Underground Utilities**

**All public and private underground utilities, including sanitary sewers and storm water drains, shall be constructed prior to the surfacing of streets. Stubs for service connections shall be long enough to avoid disturbing the street improvements when service connections are made.**

The applicant has shown all new improvements to serve their development will be located underground. Overhead utility lines are discussed further and conditioned in this report under section 16.118.030 "underground facilities."

**FINDING:** This standard has been met.

#### **16.108.050.11-Transit Facilities**

**Developments along existing or proposed transit routes, as illustrated in Figure 7-2 in the TSP, shall be required to provide areas and facilities for bus turnouts, shelters, and other transit-related facilities to Tri-Met specifications. Transit facilities shall also meet the following requirements:**

- 1. Locate buildings within 20 feet of or provide a pedestrian plaza at major transit stops.**

2. Provide reasonably direct pedestrian connections between the transit stop and building entrances on the site.
3. Provide a transit passenger landing pad accessible to disabled persons (if not already existing to transit agency standards).
4. Provide an easement or dedication for a passenger shelter and underground utility connection from the new development to the transit amenity if requested by the public transit provider.
5. Provide lighting at a transit stop (if not already existing to transit agency standards).

**FINDING:** SW Oregon Street is not part of a future transit route as verified in the TSP. Therefore, this standard does not apply.

#### **16.110- Sanitary Sewers**

**Sanitary sewers shall be installed to serve all new developments and shall connect to existing sanitary sewer mains. Sanitary Sewers shall be constructed, located, sized and installed at standards consistent 6.402.01.**

The applicant proposes to extend a new 8 inch diameter sanitary line from the existing sanitary main located in Oregon Street. The new line is proposed within a public sanitary easement located inside of an existing 50 foot private access and utility easement. The public easement has not been dedicated and would be within the access easement across tax lot 2S129D000900, and for the benefit of the subject site. Sheet C5.0 of the applicant's engineering design indicates pipe cover of less than 18 inches at the northern end of the proposed sanitary line which is less than that required by CWS Design and Construction Standards, (reference section 5.06.7.b of the CWS standards). The City requires sanitary designs match specifications and requirements set forth in the Clean Water Services Design and Construction Standards. It may be possible to comply with the CWS standards through modifications to the plan, for example through building up the site.

**FINDING:** As discussed above, this standard has not been met. It may be possible to meet the standards with modifications to comply with the CWS standards regarding line coverage and through the dedication of the public utility easement as proposed by the applicant. If the applicant complies with the condition below, this standard will be met.

**CONDITION:** Obtain approval from the Engineering Department for the new sanitary sewer connection prior to issuance of building permits. The plans for sanitary sewer must provide for the line to be located in accordance with CWS standards which generally includes location within a public utility easement, line coverage requirements and in full compliance with City and CWS standards.

#### **6.112.010 – Water Supply**

**Water lines and fire hydrants conforming to City and Fire District standards shall be installed to serve all building sites in a proposed development in compliance with 6.500.**

The City contracts with Tualatin Valley Water District (TWWD) for review and approval of engineering plans related to the water system. The applicant proposes to extend a new water line from the existing water main located in SW Oregon Street. The new line would be extended to the site via the private access and utility easement noted above. As conditioned above, a public utility easement will be required where private lines cross private property lines.

TVWD provided no comments on this project; however when issuing land use comments for SP 07-08, TVWD required the private access and utility easement to be dedicated as public right-of-way. The City requires water designs match specifications and requirements set forth by TVWD. A condition of SP 07-08 was the dedication of the street as right of way unless ultimately deemed unnecessary to comply with other agency standards. If TVWD does not continue to require the street to be dedicated to comply with their standards for SP 07-08, this would also apply to the subject application. TVWD will review the engineering plans, including the water connection, and will provide comments to engineering to ensure full compliance with their standards.

**FINDING:** The applicant's plans appear feasible but will require review and approval of the public improvement plans by the Engineering Department and Tualatin Valley Water District.

**CONDITION:** Obtain approval from the Tualatin Valley Water District for the water system proposed or show how water can be extended to adjoining properties through an alternative public street.

#### **16.114 - Storm Water**

**Storm water facilities, including appropriate source control and conveyance facilities, shall be installed in new developments and shall connect to the existing downstream drainage system consistent with the Comprehensive Plan.**

The applicant proposes the collection of storm water via catch basins from the private street located within the private utility and access easement. These catch basins would be piped to the applicant's property and connect to a proposed on-site storm system. This storm system would drain to a water quality facility proposed near the northern corner of the applicant's site. The water quality facility discharges via a pipe to the neighboring property where the storm water flows overland to Cedar Creek. A concern with the applicant's design is that CWS standards require storm lines crossing property lines be public and built to public standards. Additionally storm water collected from multiple parcels must be treated in a public facility. In this case the applicant does not indicate if the storm system will be public nor do they indicate the required public tract over the proposed water quality facility. Of additional concern is whether the applicant has permission to discharge storm water upon the neighboring property.

Additionally the applicant proposes a 12 inch corrugated metal pipe under the proposed access road located with the private access and utility easement. This pipe would allow storm water from tax lot 2S129D000900 to flow to neighboring tax lot 2S129D000600 to the east. The corrugated metal pipe proposed under the access easement does not meet CWS standards for pipe material, is not proposed as public and again allows storm discharge on neighboring property without documented approval.

These same issues were discussed and conditioned with SP 07-08 on the adjacent parcel. General conversations with DEQ indicate that it may be possible to obtain permission to discharge storm water to tax lot 600. If it is not possible to discharge to tax lot 600, the storm system must be re-designed to discharge to an approved (or approvable) public system. The City requires storm water designs match specifications and requirements set forth in the Clean Water Services Design and Construction Standards and as currently proposed, the plans do not comply.

**FINDING:** Based on the analysis above, the applicant has not adequately shown how the storm water facilities will be addressed. However, it appears feasible to provide the necessary storm water facilities. If the applicant obtains approval from the Engineering

Department showing the storm water facilities treating all of the site discharge in compliance with the CWS standards, this standard will be met.

**CONDITION:** Prior to approval of the public improvement plans, the applicant shall:

1. submit revised storm drainage plans that reflect storm water treatment for the entire site accordance with CWS standards including, but not limited to: lines crossing property lines being built to public standards in public easements and treated in a public facility in a public tract.
2. Submit documentation confirming approval for storm lines and discharge of storm water on neighboring property.

#### **16.116.010 - Fire Protection**

**When land is developed so that any commercial or industrial structure is further than 250 feet or any residential structure is further than 500 feet from an adequate water supply for fire protection, as determined by the Fire District, the developer shall provide fire protection facilities necessary to provide adequate water supply and fire safety.**

Tualatin Valley Fire and Rescue did not provide written comments on this proposal. The Development Reviewer in the Engineering Department indicated a verbal communication with TVF&R indicating concern about the half cul-de-sac construction; however this is in accordance with the platted partition. It is likely that TVF&R will have additional comments regarding the turning radius of the cul-de-sac when formal development on tax lot 500 is proposed. Because no buildings are being proposed and the street is within the easement in accordance with the prior partition, no additional fire protection is needed. However, it is recommended that the application coordinate with TVF&R prior to construction to ensure that when they are ready to submit a land use application they do not have significant revisions to the cul-de-sac to meet TVF&R requirements at that time.

**FINDING:** As discussed above, this standard is satisfied because the only thing constructed at this time is the street. It is recommended however that the applicant coordinate with TVF&R to ensure the cul-de-sac conforms in the future when buildings are proposed and emergency access provision will be more thoroughly reviewed.

#### **16.118.010 - Public and Private Utilities**

##### **16.118.020 Standard**

**A. Installation of utilities shall be provided in public utility easements and shall be sized, constructed, located and installed consistent with this Code, Chapter 7 of the Community Development Code, and applicable utility company and City standards.**

**B. Public utility easements shall be a minimum of eight feet in width unless a reduced width is specifically exempted by the City Engineer.**

**C. Where necessary, in the judgment of the City Manager or his designee, to provide for orderly development of adjacent properties, public and franchise utilities shall be extended through the site to the edge of adjacent property (ies).**

**D. Franchise utility conduits shall be installed per the utility design and specification standards of the utility agency.**

**E. Public Telecommunication conduits and appurtenances shall be installed per the City of Sherwood telecommunication design standards.**

**F. Exceptions: Installation shall not be required if the development does not require any other street improvements. In those instances, the developer shall pay a fee in lieu that will finance installation when street or utility improvements in that location occur.**

The applicant indicated in their narrative that easements would be granted as needed. No public utility easements currently exist, however the applicant has been previously conditioned to provide a public utility easement. Furthermore, the owner of tax lot 500 was conditioned in their application (SP 07-08) to dedicate a public utility easement along within the private utility and access easement. The applicant has not shown conduits including public telecommunication conduits will be installed within the private drive. While this will be reviewed at time of development of tax lot 500, it is appropriate to install the conduits at this time to avoid the need to tear up the street after it is constructed.

**FINDING:** This standard has not been met because the submitted plans do not show all required easements and does not show all required utilities within the necessary easements.

**CONDITION:** Submit public improvement plans for review and approval that shows all public utilities and easements, including fiber optic to meet the above standards.

**16.118.030 – Underground facilities - Except as otherwise provided, all utility facilities, including but not limited to, electric power, telephone, natural gas, lighting, and cable television, shall be placed underground, unless specifically authorized for above ground installation, because the points of connection to existing utilities make underground installation impractical, or for other reasons deemed acceptable by the Commission.**

The plans show overhead lines exist and will remain. Because this proposal only involves the construction of a street and additional development is expected, it is not appropriate to burden this application with the costs of extensive undergrounding. However, staff has concerns about the power line along the Oregon Street frontage and the location of the guy wire holding the pole in place. The plans indicate the guy wire will be removed, however additional review and approval from PGE will be needed to ensure the guy wire is relocated and/or the power line undergrounded.

**FINDING:** Staff cannot verify that this standard has been met because it is not clear which lines on the plans are existing overhead utilities. This standard could be met as conditioned below.

**CONDITION:** Include in the public improvement plans the details for undergrounding the existing overhead line along Oregon Street or submit documentation and receive authorization from the Planning Department that existing overhead lines are exempt from undergrounding per 16.118.030 or 16.118.040.

If undergrounding of the overhead line along Oregon Street is exempt and/or not possible, documentation from PGE what the existing guy wire re-location is approved will be required.

#### **D. Division VIII- Environmental Resources**

##### **16.142.030.A Visual Corridors**

This standard was discussed under Section V. 16.92.030.3 and found to be in compliance.

**FINDING:** This standard was discussed and approved earlier in this decision.

**16.142.050. Trees along Public Streets or on Other Public Property**

**Trees are required to be planted by the land use applicant a minimum of one (1) tree for every twenty-five (25) feet of public street frontage within any new development. Planting of such trees shall be a condition of development approval. The trees must be a minimum of two (2) inches DBH and minimum height of six (6) feet.**

Because this private street is required to be built to public standards, one tree for every 25 feet is required. The applicant has not shown any trees. Based on the frontage on both sides (approximately 525 feet on west side and 450 feet on east side), a minimum of 18 trees would be required along the east side of the street and 21 trees along the west side of the street.

**FINDING:** Based on the discussion above, this standard is not met. If the applicant complies with the condition below, this standard will be met.

**CONDITION:** Prior to final site plan approval and issuance of building permits, submit a landscape plan that shows a total of 39 street trees to be planted along the private street that are a minimum of two inches in diameter and a minimum height of six feet.

**16.142.060 - Trees on Property Subject to Certain Land Use Applications**

**All site developments subject to Section 5.202 shall be required to preserve trees or woodlands to the maximum extent feasible within the context of the proposed land use plan and relative to other policies and standards of the City Comprehensive Plan, as determined by the City.**

There are no trees within the easement area, therefore this standard does not apply.

**FINDING:** As discussed above, this standard has been met.

**16.154 - Heat and Glare**

**Except for exterior lighting, all other permitted commercial, industrial, and institutional uses shall conduct any operations producing excessive heat or glare entirely within enclosed buildings. Exterior lighting shall be directed away from adjoining properties, and the use shall not cause such glare or lights to shine off site in excess of one-half (0.5) foot candle when adjoining properties are zoned for residential uses.**

**FINDING:** The only lighting to be provided is street lighting conditioned within this report, therefore, this standard does not apply.

**Decision**

Based upon review of the applicant's submittal information, review of the code, agency comments and consideration of the applicant's revised submittal, staff finds that the proposed site plan does not fully comply with the standards but can be conditioned to comply. Therefore, staff **approves SP 07-07, Provident Development Group Road, with conditions.**

## VII. CONDITIONS OF APPROVAL

### A. General Conditions - The following applies throughout development and occupancy of the site:

1. Compliance with the Conditions of Approval is the responsibility of the developer or its successor in interest.
2. This land use approval shall be limited to the preliminary plans submitted by the applicant (Exhibit A), except as indicated in the conditions of the Notice of Decision.
3. The developer is responsible for all costs associated with public facility improvements.
4. **This approval is valid for a period of two (2) years from the date of the decision notice.** Extensions may be granted by the City as afforded by the Sherwood Zoning and Community Development Code.
5. Unless specifically exempted in writing by the final decision, the development shall comply with all applicable City of Sherwood and other applicable agency codes and standards except as modified below:

### B. Prior to grading the site:

1. Obtain City of Sherwood Building Department approval of grading plans, retaining walls and erosion control.
2. Any existing wells, septic systems and underground storage tanks shall be abandoned in accordance with Oregon state law, and verification of such shall be provided to the City Engineer.
3. A demolition permit shall be obtained from the Sherwood Building Department prior to demolishing any structures.
4. A temporary use permit must be obtained from the Planning Department prior to placing a construction trailer on-site.
5. Install tree protection fencing around trees to be retained on site.
6. Submit confirmation from DEQ that grading is in accordance with approved agreements between the developer and DEQ.
7. Submit verification of prior DSL wetland fill approval and/or that no wetlands currently exist.

### C. Prior to approval of the public improvement plans, submit plans for review and approval consistent with City standards, including, but not limited to:

1. The plans for sanitary sewer must provide for the line to be located in accordance with CWS standards which generally includes location within a public utility easement, line coverage requirements and in full compliance with City and CWS standards.
2. Obtain approval from the Tualatin Valley Water District for the water system proposed or show how water can be extended to adjoining properties through an alternative public street.
3. Submit revised storm drainage plans that reflect storm water treatment for the entire site accordance with CWS standards including, but not limited to: lines crossing property lines being built to public standards in public easements, unless otherwise approved by CWS, and treated in a public facility in a public tract.
4. Submit documentation confirming approval for storm lines and discharge of storm water on neighboring property.
5. Show all public utilities and easements, including fiber optic to meet the above standards.
6. Include in the public improvement plans the details for under grounding the existing overhead line along Oregon Street or submit documentation and receive authorization from the Planning Department that existing overhead lines are exempt from under grounding per 16.118.030 or 16.118.040.

- a. If under grounding of the overhead line along Oregon Street is exempt and/or not possible, documentation from PGE what the existing guy wire re-location is approved will be required.
  7. Provide to the City documentation from DEQ approving the environmental clean-up and release of the site for construction. Such documentation shall also be included for any parcels containing off-site improvements benefiting this project.
  8. Submit private street designs to Engineering for review and approval that show the minimum pavement width, landscaping and sidewalk on both sides of the private street. In addition, the construction plans must include a road base consisting of 4 inches of asphalt, over 3 inches of ¾"-0 crushed rock, over 8 inches of 1 ½"-0 crushed rock, over 1 layer of geotextile fabric.
- D. Prior to Final Site Plan approval:
1. Submit a plan that shows visual clearance is maintained according to the standards of 16.58.010.
  2. Submit a landscape plan that provides detail on the plants to be installed in the landscape strip.
  3. Submit details on the planting and maintenance specification to be applied during planting.
  4. Submit access maintenance agreements that insures ingress, egress and circulation improvements shall be kept clean and in good repair.
  5. Submit revised plans that show a 6 foot wide walkway on both sides of the driveway constructed of concrete, brick/masonry pavers, or other durable surface.
  6. Submit a landscape plan that shows a total of 39 street trees to be planted along the private street that are a minimum of two inches in diameter and a minimum height of six feet.
- E. Prior to issuance of building permits (other than grading):
1. Obtain approval from the Engineering Department for the public improvement plans.
  2. Obtain Final site plan approval.
- F. Prior to receiving an occupancy permit for any part of the building:
1. The site must be constructed in accordance with approved Final Site Plan and inspected by the Planning Department.
- G. On-going Conditions
1. The continual operation of the property shall comply with the applicable requirements of the Sherwood Zoning and Community Development Code.
  2. The site shall be maintained in accordance with the approved site plan. In the event that landscaping is not maintained, in spite of the assurances provided, this would become a code compliance issue.
  3. The applicant will be required to comply with all local fire codes, and Federal and State regulations in regard to hazardous, corrosive, flammable, or explosive materials.

## VIII. Exhibits

- A. Applicant's submittal with narrative and supporting documents dated October 2007
- B. Memo from Dave Wechner dated November 30, 2007
- C. Memo from Peter Livingston dated November 30, 2007
- D. Engineering comments dated December 17, 2007
- E. Clean Water Services comments dated November 19, 2007

VIII. APPEAL

As per Section 3.402 of the Sherwood Zoning and Community Development Code (SZCDC), the decision of Staff detailed above will become final unless an appeal is received by the City Recorder from a person who has testified in writing. The appeal deadline is **5:00 PM on March 21, 2008** (14 calendar days from the date this decision was made and mailed).

STATE OF OREGON )

Washington County )

I, Keren Braun for the Planning Department of the City of Sherwood, State of Oregon, in Washington County, do hereby certify that the Notice of Decision on Case No. SP 07-07 Provident Development Group Road was placed in a U.S. Postal receptacle on March 7<sup>th</sup>, 2008

Keren Braun  
Planning Department  
City of Sherwood

**Exhibit A**

See Planning File for Applicant's submittal with narrative and supporting documents dated October 2007

ENGINEERING PLANNING  
FORESTRY

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Vancouver, WA 98682  
Phone: (360) 882-0419  
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November 30, 2007

Julia Hajduk, Planning Manager  
City of Sherwood  
22560 SW Pine Street  
Sherwood, Oregon 97140

**Re: SP 07-07 Provident Development Group Road**

Dear Julia:

Our office received a copy of the public notice distributed for the Provident Development Group Road, your case file SP 07-07. I noted in the description:

*The applicant has requested site plan approval to construct a 475 foot long private cul-de-sac road across tax lot 900 to serve tax lot 500 within a 50 foot wide private access easement. No other development is proposed associated with this application at this time. It is anticipated that future development applications for tax lot 500 would be forthcoming.*

Processing the application appears to have two fundamental flaws:

1. It is unclear from this notice how much development is actually occurring within the access easement, but at a length of 475 feet, and easement width of 50 feet, there could be as much as 23,750sf of development occurring on the site. The threshold for a "Fast Track" Site Plan application is 15,000sf or less. Therefore, the Type III Site Plan Review process should be applied to this development.
2. The owner of tax lot #900 did not sign the land use application, and has not consented to road construction by Provident on his property. Therefore, the application is not technically complete per SZCDC 16.70.030, as the owner of property subject to the land use action has not signed the land use application.

In the November 27, 2007 public hearing for the Oregon Street Industrial building property on tax lot #900, this project was cited, but no details were available. In the interest of public involvement, Goal 1 of the Oregon Land Use Goals, this development certainly demands broader participation than the limited scope available in the "Fast Track" procedure.

Of particular concern, is the fact that development is not only proposed by the applicant for their property, but *on an adjacent property they do not own*. The road proposed is not within a separate tract or right-of-way, but within an access easement. The owner of tax lot #900 did not sign the land use application, and would potentially be subject to the penalty of SZCDC 16.70.050, and prevented from submitting a land use application for the same type of development on his property should this application be denied. For years, Sherwood has consistently returned applications to prospective applicants as incomplete under 16.70.030 if the land owner signature is absent from the application.

To summarize, in the interest of public participation and compliance with the Sherwood Code, the signature of a property owner on an application for development is a basic requirement that cannot be ignored, and the procedural ordinance dictates a Type III application procedure must be used for this level of development when a technically complete application is submitted.

I urge you to return application SP 07-07 to the applicant, with directions to obtain proper land owner signatures, and upon acceptance of a complete application, process this request as a Type III land use permit.

You will receive a letter from Peter Livingston dated November 30, 2007 citing statute and case law that substantiates the argument above in regards to the issue of landowner signature on the application form.

This letter is forwarded to the Planning Commission Chair Patrick Allen, to clarify the issue in regards to SP 07-08 Oregon Street Industrial Building, as this proposed application is germane to the decision on that development and should be included in the record, open until December 8, 2007.

Sincerely,

***AKS Engineering and Forestry, LLC***



David L. Wechner, M.S. AICP  
Principal

C: John Patrick Lucas, Pacific III, LLC  
Patrick Allen, Chair, Sherwood Planning Commission  
Peter Livingston, Attorney Schwabe, Williamson & Wyatt



Pacwest Center, 1211 SW 5th Ave., Suite 1900, Portland, OR 97204 | Phone 503.222.9981 | Fax 503.796.2900 | www.schwabe.com

PETER LIVINGSTON  
Admitted in Oregon and Washington  
Direct Line: 503-796-2892  
Home Phone: (503) 233-9313  
E-Mail: [plivingston@schwabe.com](mailto:plivingston@schwabe.com)

November 30, 2007

VIA E-MAIL [JHAJDUK@CI.SHERWOOD.OR.US](mailto:JHAJDUK@CI.SHERWOOD.OR.US)

Julia Hajduk  
Planning Manager  
Planning Department  
City of Sherwood  
22560 SW Pine Street  
Sherwood, OR 97140

Re: Site Plan Approval  
Application of Provident Development Group, LC  
Case File No. SP 07-07  
Our File No.: 117935

Dear Ms. Hajduk:

We represent J. Patrick Lucas. Mr. Lucas or an entity controlled by Mr. Lucas is the owner of Tax Lot 900. The 475 foot long private cul-de-sac road proposed by the captioned site plan application would cross Tax Lot 900. Mr. Lucas has not consented to the filing of the subject application and, in fact, opposes it.

ORS 227.175(1) authorizes only an owner of land (or, presumably, the owner's authorized representative) to apply for a permit or zone change. The city's own application form requires the signature of the applicant and the property owner to indicate: "*I am the owner/authorized agent of the owner empowered to submit this application* and affirm that the information submitted with this application is correct to the best of my knowledge."

There is a July 1, 2000 Declaration of Private Access and Utility Easement over the property, attached, which creates "a permanent private access and utility easement over, under and across that portion of the 'Parcel 1' as described in Exhibit 'A' attached for the benefit of 'Parcel 2.'" This non-exclusive access easement does not authorize the construction of a road or the filing of an application for site plan review for the construction of a road.

Portland, OR 503.222.9981 | Salem, OR 503.540.4262 | Bend, OR 541.749.4044  
Seattle, WA 206.622.1711 | Vancouver, WA 360.694.7551 | Washington, DC 202.488.4302

Julia Hajduk  
November 30, 2007  
Page 2

Mr. Lucas has not authorized anyone to submit an application for site plan approval that would allow the construction of a road on Tax Lot 900. Therefore, the city must deny the application.

Very truly yours,



Peter Livingston

PLI:tag

cc: J. Patrick Lucas





DECLARATION

1. **Declaration of Easement.** Declarant, as owner of the properties, declares that the Properties shall be held and conveyed subject to and together with the Easement, in accordance with the terms and provisions of this Easement, and Declarant grants and conveys the Easement as an appurtenance to and encumbrance on the Properties, the benefits and burdens of which Easement, as set out in this Easement shall run with the properties.
2. **Duration of Easement.** The Easement is and shall be a permanent private access and utility easement over, under and across that portion of "Parcel 1" as described in Exhibit "A" attached for the benefit of "Parcel 2".
3. **Maintenance.** The Declarant shall be 100% responsible for the maintenance of the easement area.
4. **Additional Provisions.** Any person who enjoys the benefits of the Easement shall hold and save the owner or owners of the servient parcel or parcels burdened by this Easement harmless from any and all claims of third parties arising from said benefited person's use of the rights created by this Easement. Any person who enjoys the benefit of the Easement and who is responsible for damage to a servient parcel arising from negligence or abnormal use of the Easement shall repair such damage and restore the affected property at the responsible person's sole expensed.
5. **Future Ownership.** This Easement shall run with, benefit and burden the Property and shall benefit and bind the owners of the Property and their respective successors in interest.
6. **Attorney's Fees.** In the event of action, arbitration, litigation or appeal to enforce any provision of this Agreement, the prevailing party shall be entitled to reasonable attorney fees and court cost.

Dated this 1 day of July 2002.

Pacific III, LLC, an Oregon limited liability company

By:   
John P. Lucas, Managing Partner

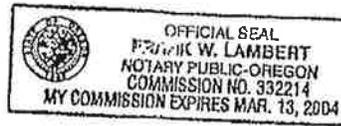


2002-111387

STATE OF OREGON,  
County of CLATSOP )ss.

The foregoing instrument was acknowledged before me this 10<sup>th</sup> day of JULY,  
2002, by John P. Lucas, Managing Partner, Pacific III, LLC, an Oregon limited liability company,  
on behalf of the limited liability company.

Notary Public for Oregon  
My Commission Expires:





**OLSON**  
ENGINEERING INC.

LAND SURVEYORS  
ENGINEERS

(360) 695-1385  
1111 Broadway  
Vancouver, WA  
98660

EXHIBIT "A"

LEGAL DESCRIPTION FOR LUCAS DEVELOPMENT  
Proposed Access and Utility Easement

June 21, 2002

A parcel of land situated in the Southeast quarter of Section 29, Township 2 South, Range 1 West of the Willamette Meridian, in the City of Sherwood, Washington County, Oregon, being more particularly described as follows:

COMMENCING at the Southwest corner of the Southeast quarter of said Section 29;

THENCE North 89° 59' 00" East along the South line of said Southeast quarter of Section 29 a distance of 1667.82 feet to the TRUE POINT OF BEGINNING;

THENCE North 00° 01' 00" West a distance of 70.00 feet;

THENCE North 04° 37' 22" East a distance of 103.77 feet;

THENCE North 00° 01' 00" West a distance of 163.16 feet to a point on a 15.00 foot radius curve to the left;

THENCE around said 15.00 foot radius curve to the left (the long chord of which bears North 32° 51' 32" West a distance of 16.27 feet) a distance of 17.20 feet to a point on a 70.00 foot radius curve to the right;

THENCE around said 70.00 foot radius curve to the right (the long chord of which bears North 12° 08' 28" East a distance of 136.86 feet) a distance of 190.20 feet;

THENCE North 89° 59' 00" East a distance of 30.00 feet to a point on the West line of that parcel conveyed to Frontier Leather company by document recorded in Book 467, Page 108 (dated July 2, 1962), Washington County Deed Records;

THENCE South 00° 01' 00" East along said West line a distance of 312.64 feet;

THENCE South 04° 37' 22" West a distance of 103.77 feet;

THENCE South 00° 01' 00" East a distance of 67.97 feet to the South line of said Section 29;

175



**OLSON**  
ENGINEERING INC.

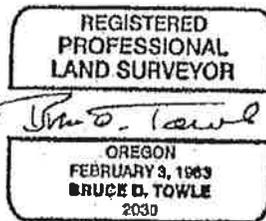
LAND SURVEYORS  
ENGINEERS

EXHIBIT "A" CONTINUED

(360) 695-1385  
1111 Broadway  
Vancouver, WA  
98660

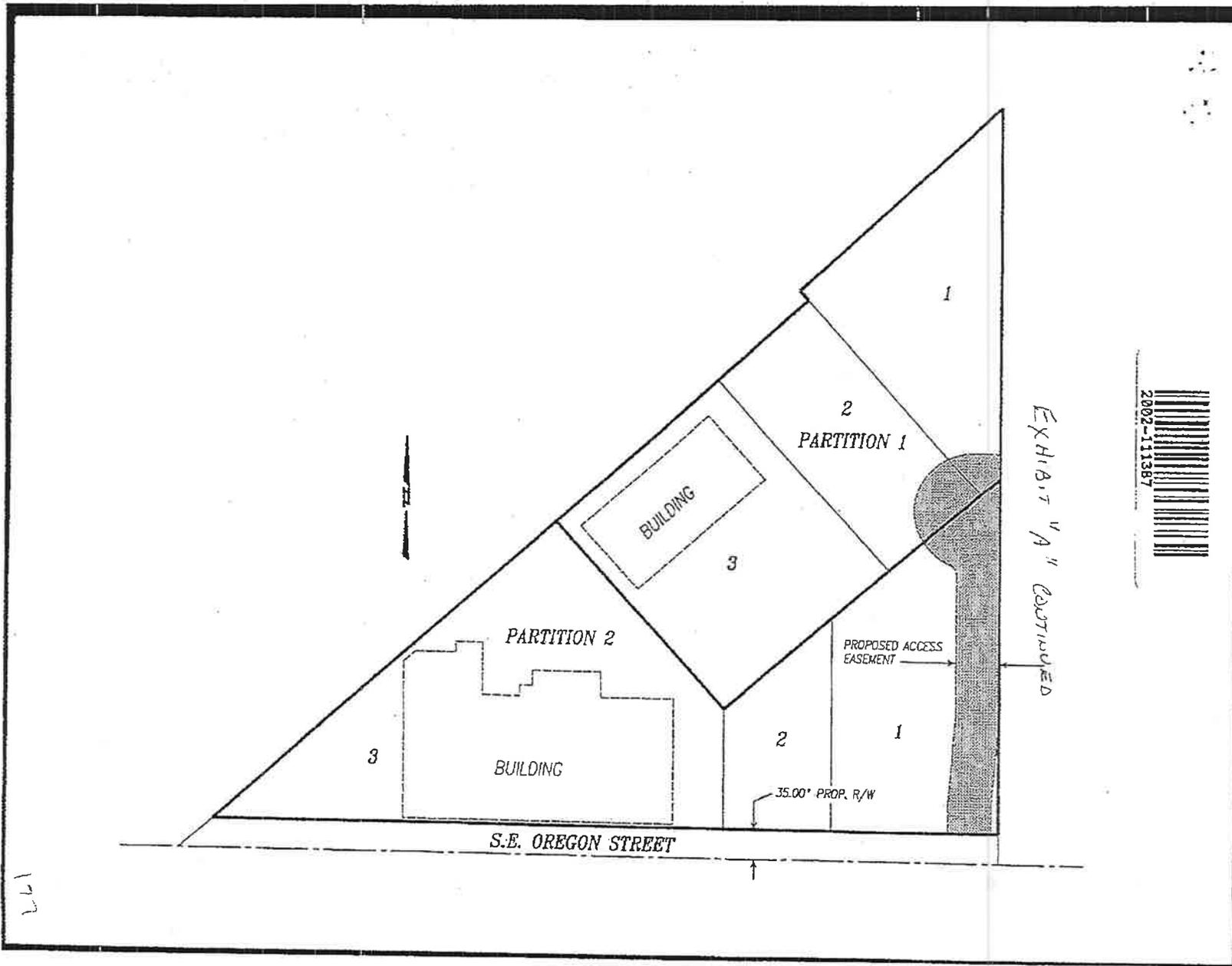
THENCE South 89° 59' 00" West along said South line a distance of 50.00 feet to the TRUE POINT OF BEGINNING.

EXCEPT any portion thereof lying within N.E. Oregon Street.



RENEWAL DATE: 6/30/04

6124102



2802-11387



EXHIBIT "A" CONTINUED

177

# Engineering Land Use Application Comments

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To: Julia Hajduk, Planning Manager

From: Lee Harrington, Engineering Department

Project: Sherwood Industrial Site, Provident Development,  
14843 SW Oregon St, (2S129D000500), SP 07-07

Date: December 17, 2007

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I reviewed the information provided for the above-cited project and have the following comments. Generally, the project will need to meet the engineering and design standards of the City of Sherwood, Tualatin Valley Water District, (TVWD) and Clean Water Services (CWS). Additional requirements are outlined below.

## Sanitary Sewer

The Applicant proposes to extend a new 8 inch diameter sanitary line from the existing sanitary main located in Oregon Street. The new line is proposed within a public sanitary easement located inside of an existing 50 foot private access and utility easement. This access easement is across the neighboring property, tax lot 2S129D000900, and for the benefit of the subject site. Sheet C5.0 of the Applicant's engineering design indicates pipe cover of less than 18 inches at the northern end of the proposed sanitary line. The proposed pipe cover is less than that required by CWS Design and Construction Standards, (reference section 5.06.7.b).

The City requires sanitary designs match specifications and requirements set forth in the Clean Water Services Design and Construction Standards.

## Water

The City contracts with TVWD for review and approval of engineering plans related to the water system. The applicant proposes to extend a new water line from the existing water main located in SW Oregon Street. The new line would be extended to the site via the private access and utility easement noted above.

When issuing land use comments for the neighboring property containing the private access and utility easement, TVWD required the private access and utility easement be dedicated as public right-of-way. This would then allow water service to the Provident site via public right-of-way as necessitated by TVWD specifications.

The City requires water designs match specifications and requirements set forth by TVWD.

## Storm Sewer

The Applicant proposes the collect storm water via catch basins from the private street located within the aforementioned private utility and access easement on the neighboring property. These catch basins would be piped to the Applicant's property and connect to a proposed on-

Project: Sherwood Industrial Site, Provident Development Group Road  
Date: December 17, 2007  
Page: 2 of 5

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site storm system. This storm system would drain to a water quality facility proposed near the northern corner of the Applicant's site. The water quality facility discharges via a pipe to the neighboring property where the storm water flows overland to Cedar Creek.

Additionally the Applicant proposes a 12 inch corrugated metal pipe under the proposed access road located with the private access and utility easement. This pipe would allow storm water from tax lot 2S129D000900 to flow to neighboring tax lot 2S129D000600 to the east.

A major concern with the Applicant's design is that CWS standards require storm lines crossing property lines be public and built to public standards. Additionally storm water collected from multiple parcels must be treated in a public facility. In this case the Applicant does not indicate if the storm system will be public nor do they indicate the required public tract over the proposed water quality facility.

Of additional concern is whether the Applicant has permission to discharge storm water upon the neighboring property.

The corrugated metal pipe proposed under the access easement does not meet CWS standards for pipe material, is not proposed as public and again allows storm discharge on neighboring property without documented approval.

The City requires storm water designs match specifications and requirements set forth in the Clean Water Services Design and Construction Standards.

#### Transportation

As per the Applicant's Narrative, they are applying for Site Plan approval to allow a private road to be built to modified public standards as agreed upon with former City of Sherwood staff. Documentation is not provided to clarify the specifics of the agreement, nor is there any indication of what road standards were agreed to be modified.

City code section 16.108.030 (5) requires requests for street modifications are submitted with or prior to the appropriate land use action. Such modifications require a letter of concurrency from the City Engineer prior to the actual land use decision.

City code section 16.118.050 specifies "The construction of new private streets shall be prohibited unless it provides principal access to two or fewer lots or parcels i.e. flag lots". In this case the area of the easement could allow for access to four tax lots: 2S129D000500, (the subject site), 2S129D000900, (the site with the private easement), 2S129D000600, (to the east) and 2S129D000602, (also the east).

Of these four lots, it seems likely that two or more will likely be partitioned again creating additional lots accessing the proposed private street. One of these lots is the subject site. While not currently under review for a partition, the Applicant's design shows a possible future partition. Additionally tax lot 2S129D000600 to the east exceeds 20 acres and also has the potential for partitioning.

Also of concern is the alignment of the proposed private drive. Sheet SP1 of the Applicant's design shows a 9 foot offset at the Oregon Street intersection with the existing Roy Street and the proposed Private Drive. Access spacing and alignment specifications require streets directly align whenever feasible.

Section 16.118.050 of the code also reads, "Unless otherwise specifically authorized, a private street shall comply with the same street standards as a public street identified in the Community Development Code and Transportation System Plan."

A typical street standard for a local street can be seen in Figure 8-5a of the Transportation System Plan, (TSP), and would include the following:

- 52 foot right-of-way dedication
- A minimum of 28 feet for the drivable surface
- 6 inch wide top of curb
- 5 foot wide planter, (landscape), strip, (not including top of curb)
- A minimum 6 foot wide sidewalk
- Street trees and street lights within the planter strip.

Additionally the City's construction standards call for a road base consisting of:

- 4 inches of asphalt, over
- 3 inches of ¾"-0 crushed rock, over
- 8 inches of 1 ½"-0 crushed rock, over
- 1 layer of geotextile fabric

When viewing the private access road cross section as shown on sheet C5.0 of the Applicant's engineering design one sees:

- 50 foot private easement
- The minimum 28 feet of driving surface
- A top of curb measurement incorporated into a 5 foot wide sidewalk
- No planter, (landscape), strip
- No street trees or street lights

Additionally the Applicant's proposed road base is:

- 3 inches of asphalt, over
- 10 inches of ¾"-0 crushed rock

Besides the substandard depth and width the proposed private street does not match the code requirements regarding access to two or fewer lots. The City requires road designs match specifications and requirements set forth in the code and the construction standards.

#### Grading and Erosion Control:

Retaining walls within public easements or the public right-of-way shall require engineering approval. Retaining walls with a height of 4 feet or higher located on private property will require a permit from the building department.

City policy requires that prior to grading, a permit is obtained from the Building Department for all grading on the private portion of the site.

Project: Sherwood Industrial Site, Provident Development Group Road  
Date: December 17, 2007  
Page: 4 of 5

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The Engineering Department requires a grading permit for all areas graded as part of the public improvements. The Engineering permit for grading of the public improvements is reviewed, approved and released as part of the public improvement plans.

Other Engineering Issues:

Public easements are required over all public utilities outside the public right-of-way. Easements dedicated to the City of Sherwood are exclusive easements unless otherwise authorized by the City Engineer. An eight-foot wide public utility easement is also required adjacent to the right-of-way of all street frontage. An Engineering Department review of all easements shall occur prior to the Applicant's recording of the easement. The City will require original recorded easement(s) returned to the City prior to the release of public improvement plans.

All existing and proposed utilities shall be placed underground.

At the City's discretion Applicant may be required to install infrastructure for Sherwood Broadband as noted in City Ordinances 2005-17 and 2005-74.

Obtain a right-of-way permit for any work required in the public right-of-way, (reference City Ordinance 2006-20).

Staff suspects this site is currently in the process of an environmental clean-up with oversight by DEQ. It is engineering staff's recommendation that no development of the site occur until DEQ has signed-off on the clean-up. This same requirement should apply to neighboring property where the Applicant proposes off-site utilities.

The City Engineer may require a geotech report if questions arise regarding the constructability of the proposed public improvements.

Summary:

Unknown issues for this project as noted above involve utilities such as the sanitary, storm, and water system as well as the design of the road. Each of these issues must be addressed before the engineering department can recommend approval of the Applicant's site plan.

For the sanitary system, it seems possible increasing the road elevation could allow for proper depth of the sanitary sewer.

For the water system, Staff is unsure if the Applicant has ability to dedicate right-of-way on the neighboring tax lot, (2S129D000900), to allow water service as per TVWD requirements.

For the storm system, it seems likely the Applicant could build the system to public standards, with the necessary public easements and a tract, (dedicated to the City), over the water quality facility. This however does not address if storm discharge across and on neighboring tax lot 2S129D0006000 is agreeable. Also unknown is the acceptability to the owners of tax lots 2S129D000900 and 2S129D000600 for storm water to pass under the proposed road via a culvert and then flow over overland across tax lot 2S129D000600. These issues are significant and staff is uncertain of a land use condition that would allow resolution.

Regarding the road design, it is unknown if the Applicant has the ability to dedicate and thus make the road public as required by code. Even if this was possible, current standards call for a minimum right-of-way width of 52 feet and the current access easement measures 50 feet. Should

Project: Sherwood Industrial Site, Provident Development Group Road  
Date: December 17, 2007  
Page: 5 of 5

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width requirements and the public nature of the road prove unfeasible, it seems possible the Applicant could build 2/3 of a private road meeting public road standards. A disadvantage of this design would likely be retaining walls along the eastern portion of the street requiring relocation at the time of future development of the neighboring lots, (2S129D000600 and 2S129D000602). While such road may not be considered the ultimate design, it is a feasible and possible solution in this situation.

Another road option is for the Applicant to submit for and obtain a letter of concurrency from the City Engineer for specific road modifications as per the necessary code requirements. Under this situation, Staff recommends a public access easement be placed over the area in question. This once again raises the question of how much latitude the Applicant has over a neighbor's property.

Given the uncertainty of the above issues, and in particular the storm water issues, Engineering Staff cannot recommend site plan approval of the Applicant's proposal.

**MEMORANDUM**

DATE: November 19, 2007

FROM: David Schweitzer, Clean Water Services

TO: Julia Hajduk, Planning Manager City of Sherwood

SUBJECT: Review Comments – SP 07-07 Tax Lot 500 Access Road.

**GENERAL COMMENTS**

- This Land Use Review by Clean Water Services (District) of 2S1 29D0-00500 and -00900 does not constitute approval of storm or sanitary sewer compliance with the NPDES permit held by the District. The District, prior to issuance of any connection permit, must review and approve final construction plans.
- All provisions of the development submittal shall be in accordance with current Clean Water Services (CWS) Design and Construction Standards, presently Resolution and Order No. 07-20 (R&O 07-20) and all current Intergovernmental Agreements between the City and CWS.
- Final construction plans must be reviewed and approved by CWS for conformance with current Design and Construction Standards.
- A Stormwater Connection Permit shall be authorized by CWS prior to construction of sanitary sewer, storm and surface water systems, and final plat approval.
- All public storm and sanitary easements shall be shown on the final stamped and signed construction plans.

**SANITARY SEWER**

- The engineer shall verify public sanitary sewer availability to adjacent properties and extend public sanitary sewer to provide service to adjacent properties in accordance with current CWS Design and Construction Standards, (presently R&O No. 07-20).

## STORM DRAINAGE AND WATER QUALITY

- The Developer shall provide a water quality facility to treat all impervious surfaces being constructed or preserved as part of this development, including any half street improvements. If the proposed water quality treatment facility on Tax/Map lot 2S1 29D0-00900 treats multiple tax lots and/or flows from the public Right Of Way, the facility shall be a CWS standard facility for water quality treatment of storm flows in accordance with current Design and Construction Standards. The facility shall be placed in a separate 'Tract' with public easements and not part of any buildable lot. Access to the facility shall be provided according to R&O 07-20 4.02.4
- Final construction plans shall show all existing and proposed public and private storm conveyance and easements.
- A hydraulic and hydrological analysis of the existing drainage and downstream storm conveyance system, in accordance with current CWS Design and Construction Standards is required. The applicant is responsible for mitigating downstream storm conveyance if the existing system does not have the capacity to convey the runoff volume from 25 – year, 24 – hour storm event.

## SENSITIVE AREA

- A CWS Sensitive Area Pre-Screening Site Assessment 07-004086 for Map/Tax 2S1 29D0-00500 and-00900 has been issued on October 08, 2007. Sensitive areas do not appear to exist on site or within 200' of the site. This Site Assessment will serve as the Service Provider Letter for this project.

## EROSION CONTROL

- Provide erosion control in accordance with current CWS Design and Construction Standards.
- All sites exceeding one acre of disturbed area shall require a DEQ, NPDES 1200C permit.

## **NARRATIVE**

### **GENERAL DESCRIPTION**

The applicant, Provident Development Group LLC, is applying for a Site Plan Review to allow a private road to be built to modified public road standards as agreed upon with former City of Sherwood staff within an existing private access and utility easement in the Light Industrial (LI) zone on two tax parcels.

The site address is 14843 SW Oregon Street, Sherwood, Oregon. The property is further identified as tax assessor's parcel numbers 2S129D000500 and 2S129D000900 located in the southeast quarter of Section 29, Township 2 South, Range 1 West of the Willamette Meridian.

### **EXISTING CONDITIONS**

The subject parcels are currently vacant and unused. There was a building that has been demolished from parcel 2S129D000500, and scattered remnants of the foundation and other concrete still exist. Existing vegetation consists mainly of blackberries, grasses, thistle, weeds and other small shrubs. There are no significant trees on site. Refer to the Existing Condition Plan for more information.

### **CITY OF SHERWOOD CODE COMPLIANCE**

The following is a discussion of the applicable review criteria found in Chapters 5, 6 and 8 of Title 16 of the City of Sherwood Zoning and Community Development Code. These specific chapters are outlined in the letter of incompleteness from Julia Hajduk, dated June 22, 2007. It is assumed that all other zoning code sections do not apply to this application.

#### **Chapter 16.90 – Site Planning**

A Site Plan Review application has been previously submitted to allow development of a private road to modified public road standards. A letter from Julia Hajduk, dated June 22, 2007, indicates that the previously submitted material was incomplete to constitute a fully complete Site Plan submittal. This narrative, in addition to the other requested submittal material outlined in the letter, is being submitted to supplement the previous site plan application.

#### **Chapter 16.92 - Landscaping**

An 11-foot wide landscape strip has been provided between the edge of pavement and the eastern property line. This area will be planted with Arborvitae (*Thuja occidentalis* 'Smaragd') to provide for a 6-foot high sight-obscuring planting at maturity.



There are no proposed off-street parking areas to be landscaped.

#### **Chapter 16.94 – Off-Street Parking and Loading**

There is no proposed off-street parking or loading areas. Therefore, this chapter does not apply.

#### **Chapter 16.96 – On-Site Circulation**

There is an existing 50-foot private access and utility easement over parcel 2S129D000900 allowing access to parcel 2S129D000500. The proposed private road and cul-de-sac will provide joint access to the two lots, meeting the joint access standards of combining ingress and egress points. This road will connect to a public street, SW Oregon Street. The proposed street will also contain a 5-foot wide attached sidewalk that connects to SW Oregon Street that will allow for a future pedestrian connection once the parcels are developed. Two driveways are proposed to access parcel 2S129D000500 from the cul-de-sac.

#### **Chapter 16.98 – On-Site Storage**

There is no proposed on-site storage. Therefore, this chapter does not apply.

#### **Chapter 16.102 - Signs**

There are no proposed signs. Therefore, this chapter does not apply.

#### **Chapter 16.104 – General Provisions**

The construction of the private road will meet a modified public road standard for a half-width road as previously agreed upon with former City of Sherwood staff. Additionally, sanitary sewer and water will be installed and stubbed to parcel 2S129D000500 to allow for future development. These private improvements will serve substantially the same function as equivalent public facilities, and shall generally be provided and improved at the standards established by the City of Sherwood Code and other City regulations.

#### **Chapter 16.106 – Improvement Plan Review**

All necessary submittals, permits, agreements, inspections, etc. shall take place prior to, during and following construction of the road as required.

## **Chapter 16.108 – Streets**

The proposed road will meet the minimum standards for improvements as modified through an agreement with former City of Sherwood staff. The proposed road will provide a 28-foot full-width paved roadway, a 5-foot wide concrete sidewalk on the west side of the road and cul-de-sac, curb and gutter. Also proposed is an 11-foot open space landscape strip along the eastern property line. The cul-de-sac will provide a 70-foot radius paved turnaround area.

A future road extension is not proposed with this road, as the northwestern property line of this site is bordered by the Southern Pacific Railroad right-of-way, where access across the railroad is limited.

The cul-de-sac is approximately 475 feet long, as measured from the near side of SW Oregon Street to the end of the cul-de-sac. This exceeds the maximum 100-foot length for a cul-de-sac within a public right-of-way. However, this is proposed to be a private road located within an existing 50-foot private access and utility easement. Additionally, the proposed radius of the cul-de-sac is 70 feet, far exceeding the minimum 40-foot required radius. The larger radius is allowed, as this is a Light Industrial zone, and large vehicle and truck users will require a larger turning area. In essence, this road can be viewed as a shared access parking lot, where lengths of drive aisles and turn around areas far exceed those required for public streets.

A 5-foot wide concrete sidewalk is proposed along the entire west side of the proposed road and cul-de-sac. Handicap ramps shall be provided at the intersection with SW Oregon Street. As this is a private road located in a Light Industrial zone, bicycle paths are not proposed.

Refer to the engineering plans for more information.

## **Chapter 16.110 – Sanitary Sewers**

Sanitary sewer is proposed to be installed from a line within the SW Oregon Street right-of-way within the 50-foot private access and utility easement with construction of the road, providing sanitary sewer service to parcel 2S129D000500. The design and installation of the sanitary sewer will meet applicable City of Sherwood design standards. A 15-foot sanitary sewer easement will be dedicated to the City of Sherwood. Refer to the Utility Plan for more information.

## **Chapter 16.112 – Water Supply**

A private water line is proposed to be installed from a line within the SW Oregon Street right-of-way within the 50-foot private access and utility easement with construction of the road, providing water service to parcel 2S129D000500. The design and installation of the water lines will meet applicable City of Sherwood design standards. Additionally, fire hydrants as approved by the Fire Marshal shall also be installed. Refer to the Utility Plan for more information.

### **Chapter 16.114 – Storm Water**

Stormwater quality treatment and quantity control will be provided to handle stormwater runoff from impervious surfaces. The design and installation of the stormwater facilities will meet applicable City of Sherwood design standards. The stormwater system will be designed to handle stormwater from a future light industrial development on parcel 2S129D000500, as well as stormwater from the proposed road. A stormwater access and inspection easement will be provided as per the requirements of the City of Sherwood. Refer to the Utility Plan for more information.

### **Chapter 16.116 – Fire Protection**

Fire hydrants will be provided and installed as approved by the Fire Marshal. Proposed water lines will be sized sufficiently to provide for domestic water service, fire hydrant protection and/or sprinklering of any proposed buildings on parcel 2S129D000500.

### **Chapter 16.118 – Public and Private Utilities**

It is anticipated that public telecommunication conduits as well as conduits for franchise utilities including, but not limited to, electric power, telephone, natural gas, lighting, and cable television will be installed with the construction of the road to serve parcel 2S129D000500. Easements shall be dedicated as required.

This proposal is for a private street built to modified public road standards. This road will provide access to parcel 2S129D000500. This road may also provide access to parcel 2S129D000900. However, Chapter 16.118.050 indicates that private roads shall be prohibited unless it provides principal access to two or fewer lots. The applicant is proposing a future land division of parcel 2S129D000500 into two lots. In order to do this, the applicant must provide access to the lots either via a private road or a public road. Since the applicant does not have the power to dedicate this road to the City of Sherwood (the applicant does not own parcel 2S129D000900) for a public road, a private road is the only option. As indicated earlier in the narrative, the road also meets the City's other criteria for providing for joint access and circulation, limiting the number of access points to numerous properties located along SW Oregon Street. Additionally, this road, a private improvement, will serve substantially the same function as an equivalent public improvement (Chapter 16.104). Therefore, it is requested that a private road be built to modified public road standards and an allowance of access from the road to parcel 2S129D000900.

### **Chapter 16.132 – General Provisions**

Environmental resources, as applicable, shall be addressed in this application.

**Chapter 16.134 – Special Resource Zones**

The site does not lie within a floodplain. Therefore, this chapter does not apply.

**Chapter 16.136 – Procedures**

This application shall meet the procedures for environmental resources, as applicable.

**Chapter 16.138 – Mineral Resources**

There is no proposed mineral extraction. Therefore, this chapter does not apply.

**Chapter 16.140 – Solid Waste**

This proposal is not for a solid waste facility. Therefore, this chapter does not apply.

**Chapter 16.142 – Parks and Open Space**

This proposal is for the construction of a private road to public road standards. There is no requirement for planting street trees along private roads. Additionally, there are no significant trees presently on the site where the road is to be built. Therefore, this chapter does not apply.

**Chapter 16.144 – Wetland, Habitat and Natural Areas**

There are no known wetland, habitat or natural areas in the area where the proposed road is to be constructed. Therefore, this chapter does not apply.

**Chapter 16.146 - Noise**

The subject parcels do not abut special care, institutional, or parks or recreational facilities. Therefore, this chapter does not apply. The project will comply with OAR340-35-035 as applicable.

**Chapter 16.148 – Vibrations**

The project will not cause any vibrations over and above usual construction activities. Therefore, this chapter does not apply.

### **Chapter 16.150 – Air Quality**

This project will comply with all required State air quality standards and shall comply with OAR340-21-060.

### **Chapter 16.152 – Odors**

The project will not cause the emission of any odors over and above usual construction activities. Therefore, this chapter does not apply.

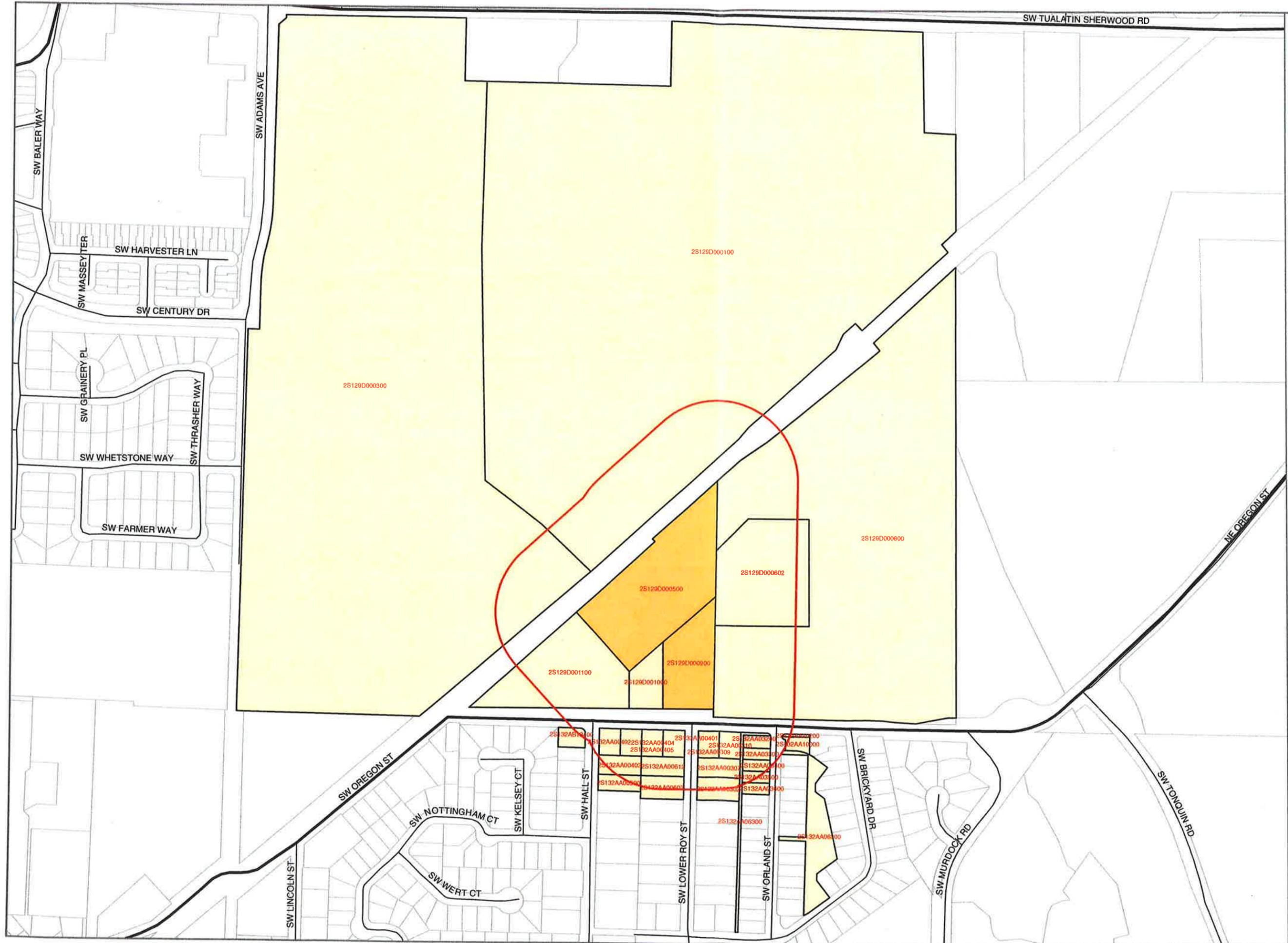
### **Chapter 16.154 – Heat and Glare**

The project will not cause excessive heat or glare. Therefore, this chapter does not apply.

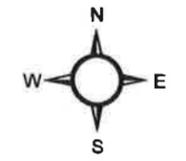
### **Chapter 16.156 – Energy Conservation**

There are no buildings proposed with this project. Therefore, this chapter does not apply.

**Prior to issuance of a decision and/or staff report by City of Sherwood staff, it is respectfully requested that a draft decision/staff report be supplied to the applicant for review prior to finalization.**



-  300 Feet
-  Subject Parcels
-  Radius
-  Taxlots



PRELIMINARY HYDROLOGY REPORT  
Technical Information Report

City of Sherwood

Sherwood Industrial Site

Case # SP 07-07

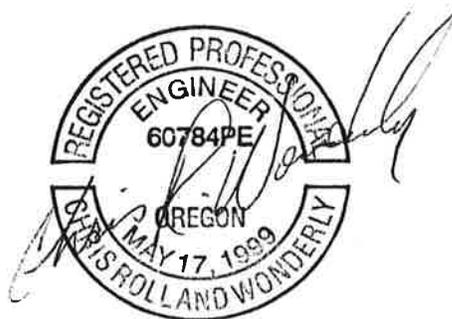
Provident Development Group, LLC

8312 W. Northview Street

Boise, Idaho 83704

(208) 322-5390

PROJECT NO. 7428.01.01



EXPIRES: 6/30/08

10/05/07

October 05, 2007

Designed by: Gregory C. Oehley E.I.T.

Reviewed by: Chris R. Wonderly, P.E.

Olson Engineering, Inc.  
1111 Broadway  
Vancouver, WA 98660  
(360) 695-1385

REVISION	BY	DATE	COMMENTS

## HYDROLOGICAL ANALYSIS:

The proposed site lies on an approximately 4.4 acre triangular parcel. The Northern and Eastern portions of the site are bordered by the Southern Pacific Railroad right-of-way, West of the site is vacant property. The Southern portion of the site is bordered by Oregon Street with existing developed and undeveloped commercial industrial property. The site slopes uniformly from Southwest to Northeast, ranging in elevation from 185 to 165 feet. Current land cover consists of concrete and gravel pads, several gravel access roads, and grassy areas. Current land use is light industrial.

The proposed site includes approximately 4.29 acres of new impervious roof and pavement areas, and approximately 0.10 acres of new landscape area. Construction will also include a private access road and turn-around from Oregon Street to the proposed site.

All onsite developed runoff, as well as, all the runoff from the proposed access road will be collected and routed to a proposed stormwater system. The system will discharge to an existing ditch line North of the site. This ditch line flows North and East, eventually discharging into Rock Creek.

For stormwater quality, a swale is proposed as the BMP for the project to meet water quality requirements. The swale will be 100ft long and 10ft wide, which was determined using HydroCAD after calculating the water quality flow rate based on site area. There are no downstream capacity issues; therefore, onsite detention is not required.

See attached water quality calculations and HydroCAD analysis.

## WATER QUALITY FLOW CALCULATIONS:

$$\text{W.Q. Flow} = \frac{0.36 \text{ in} \times \text{Area (sf)}}{12(\text{in/ft}) (4 \text{ hr}) (60 \text{ min/hr}) (60 \text{ sec/min})}$$

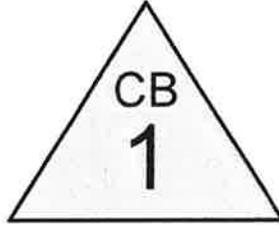
Area flowing to swale = 191228 sf (includes site and access road)

Therefore:

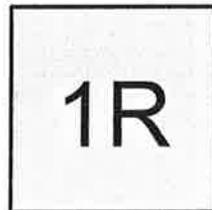
$$\text{W.Q. Flow} = \frac{0.36 \text{ in} \times 191228 \text{ sf}}{12(\text{in/ft}) (4 \text{ hr}) (60 \text{ min/hr}) (60 \text{ sec/min})}$$

$$= 0.40 \text{ cfs}$$

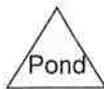
The calculated flow above (0.40cfs) is then used in HydroCAD to determine the size of the swale necessary for treatment. See the HydroCAD calculations which follow.



Water Quality Flow as  
Calculated



Swale



**Pond 1: Water Quality Flow as Calculated**

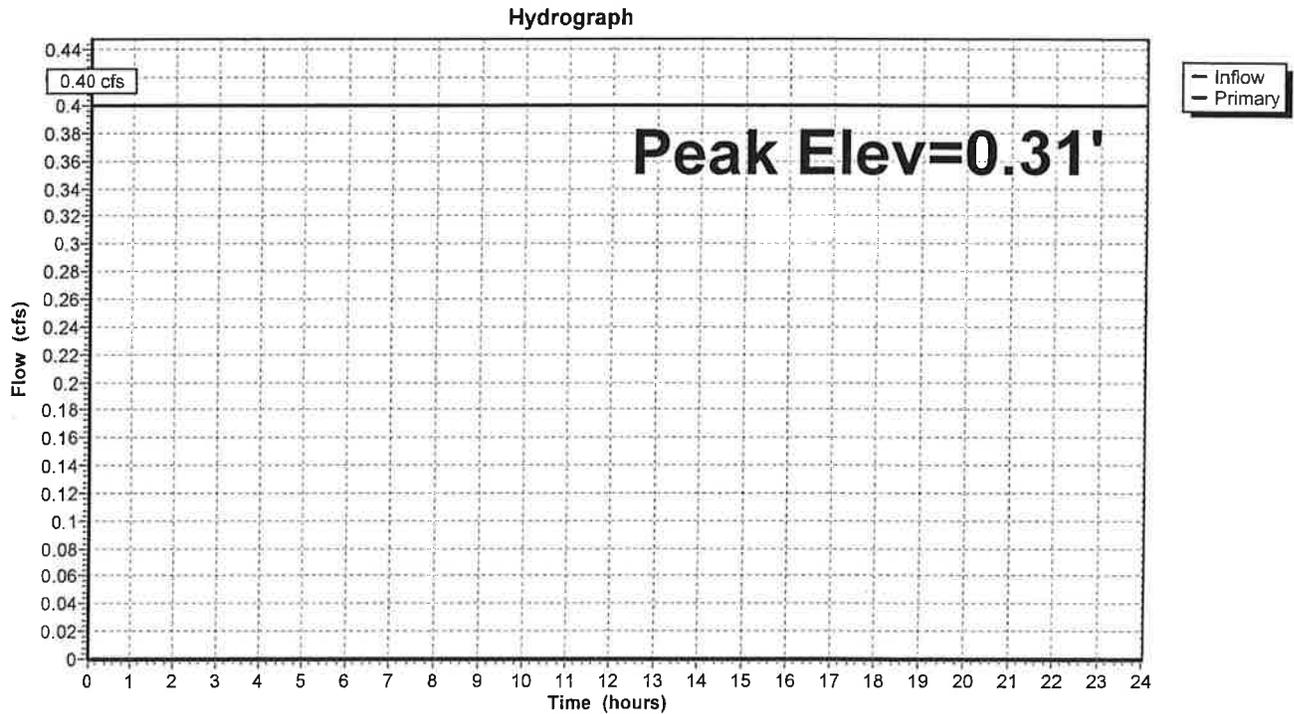
Inflow = 0.40 cfs @ 0.00 hrs, Volume= 0.795 af, Incl. 0.40 cfs Base Flow  
 Outflow = 0.40 cfs @ 0.00 hrs, Volume= 0.795 af, Atten= 0%, Lag= 0.0 min  
 Primary = 0.40 cfs @ 0.00 hrs, Volume= 0.795 af

Routing by Stor-Ind method, Time Span= 0.00-24.00 hrs, dt= 0.05 hrs  
 Peak Elev= 0.31' @ 0.00 hrs

Device	Routing	Invert	Outlet Devices
#1	Primary	0.00'	12.0" Vert. Orifice/Grate C= 0.600

Primary OutFlow Max=0.40 cfs @ 0.00 hrs HW=0.31' (Free Discharge)  
 ↑1=Orifice/Grate (Orifice Controls 0.40 cfs @ 1.90 fps)

**Pond 1: Water Quality Flow as Calculated**



**Reach 1R: Swale**

Inflow = 0.40 cfs @ 0.00 hrs, Volume= 0.795 af  
 Outflow = 0.40 cfs @ 3.55 hrs, Volume= 0.784 af, Atten= 0%, Lag= 213.0 min

Routing by Stor-Ind+Trans method, Time Span= 0.00-24.00 hrs, dt= 0.05 hrs  
 Max. Velocity= 0.18 fps, Min. Travel Time= 9.3 min  
 Avg. Velocity = 0.18 fps, Avg. Travel Time= 9.4 min

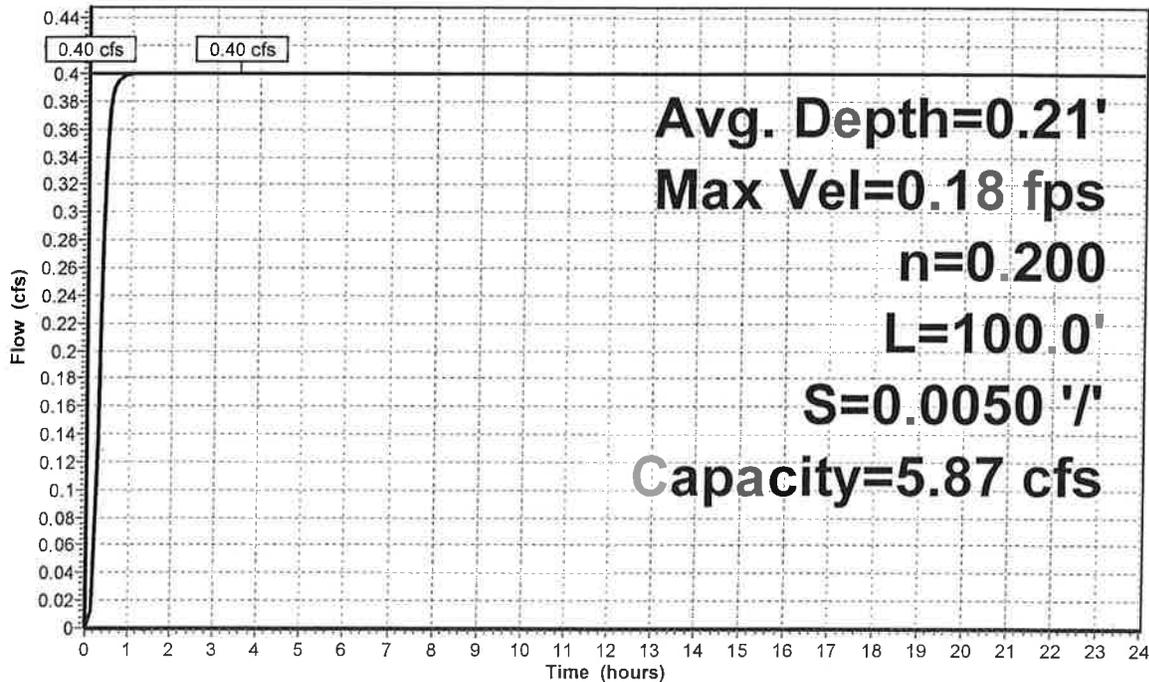
Peak Storage= 224 cf @ 3.40 hrs, Average Depth at Peak Storage= 0.21'  
 Bank-Full Depth= 1.00', Capacity at Bank-Full= 5.87 cfs

10.00' x 1.00' deep channel, n= 0.200  
 Side Slope Z-value= 3.0 ' / ' Top Width= 16.00'  
 Length= 100.0' Slope= 0.0050 ' / '  
 Inlet Invert= 0.00', Outlet Invert= -0.50'



**Reach 1R: Swale**

Hydrograph



Sensitive Area Pre-Screening  
Site Assessment

CWS File Number

Jurisdiction: <u>CITY OF SHERWOOD</u>	
Property Information: (example 1S234AB01400) Taxlot ID(s): <u>2S129D000500</u>	Owner Information: Name: <u>CHIP GALLAGHER</u> Company: <u>OREGON SELF STORAGE SHERWOOD LLC</u> Address: <u>8312 W. NORTHVIEW ST., STE. 120</u> <u>BOISE, ID 83704</u> Phone/Fax: <u>(208) 322-5390 / (208) 376-6642</u> E-mail: <u>visserblding@aol.com</u>
Site Address: <u>14843 SW OREGON STREET</u> <u>SHERWOOD, OR</u> Nearest Cross Street: <u>ROY STREET</u>	Applicant Information: Name: <u>CHRIS WONDERLY</u> Company: <u>OLSON ENGINEERING, INC.</u> Address: <u>1111 BROADWAY ST</u> <u>VANCOUVER, WA 98660</u> Phone/Fax: <u>(360) 695-1385 / (360) 695-8117</u> E-mail: <u>chris@olsonenr.com</u>
Development Activity: Check all that apply Addition to Single Family Residence (rooms, deck, garage) <input type="checkbox"/> Lot Line Adjustment <input type="checkbox"/> Minor Land Partition <input checked="" type="checkbox"/> Residential Condominium <input type="checkbox"/> Commercial Condominium <input type="checkbox"/> Residential Subdivision <input type="checkbox"/> Commercial Subdivision <input type="checkbox"/> Single Lot Commercial <input type="checkbox"/> Multi Lot Commercial <input type="checkbox"/> Other <u>DETERMINATION OF ACCESS ROAD</u> <u>CLASSIFICATION (PRIVATE OR PUBLIC)</u>	Will the project involve any off-site work: YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> Unknown <input type="checkbox"/> Location and description of off-site work: <u>CONSTRUCTION OF AN ACCESS ROAD ACROSS 2S129D000900</u>
Additional comments or information that may be needed to understand your project: <u>THIS APPLICATION WITH THE CITY IS TO DETERMINE THE ACCESS ROAD CLASSIFICATION (PRIVATE OR PUBLIC)</u>	

This application does NOT replace the need for Grading and Erosion Control Permits, Connection Permits, Building Permits, Site Development Permits, DEQ 1200-C Permit or other permits as issued by the Department of Environmental Quality, Department of State Lands and/or Department of the Army COE. All required permits and approvals must be obtained and completed under applicable local, state, and federal law.

By signing this form, the Owner or Owner's authorized agent or representative, acknowledges and agrees that employees of Clean Water Services have authority to enter the project site at all reasonable times for the purpose of inspecting project site conditions and gathering information related to the project site. I certify that I am familiar with the information contained in this document, and to the best of my knowledge and belief, this information is true, complete, and accurate.

Print/Type Name: CHRIS WONDERLY Print/Type Title: PRINCIPLE

Signature: Chris Wonderly Date: 10/02/07

**FOR DISTRICT USE ONLY**

- Sensitive areas potentially exist on site or within 200' of the site. **THE APPLICANT MUST PERFORM A SITE ASSESSMENT PRIOR TO ISSUANCE OF A SERVICE PROVIDER LETTER.** If Sensitive Areas exist on the site or within 200 feet on adjacent properties, a Natural Resources Assessment Report may also be required.
- Based on review of the submitted materials and best available information Sensitive areas do not appear to exist on site or within 200' of the site. This Sensitive Area Pre-Screening Site Assessment does NOT eliminate the need to evaluate and protect water quality sensitive areas if they are subsequently discovered. This document will serve as your Service Provider letter as required by Resolution and Order 07-20, Section 3.02.1. All required permits and approvals must be obtained and completed under applicable local, State, and federal law.
- Based on review of the submitted materials and best available information the above referenced project will not significantly impact the existing or potentially sensitive area(s) found near the site. This **Sensitive Area Pre-Screening Site Assessment** does **NOT** eliminate the need to evaluate and protect additional water quality sensitive areas if they are subsequently discovered. This document will serve as your Service Provider letter as required by Resolution and Order 07-20, Section 3.02.1. All required permits and approvals must be obtained and completed under applicable local, state, and federal law.
- This Service Provider Letter is not valid unless \_\_\_\_\_ CWS approved site plan(s) are attached.
- The proposed activity does not meet the definition of development or the lot was platted after 9/9/95 ORS 92.040(2). NO SITE ASSESSMENT OR SERVICE PROVIDER LETTER IS REQUIRED.

Reviewed By: \_\_\_\_\_ Date: \_\_\_\_\_



**First American Title Insurance Company  
National Commercial Services**

**200 SW Market Street, Suite 250  
Portland, OR 97201**

October 05, 2005

Roy Dee Fisher and Amanda Fisher  
6505 Eugene Lane  
Boise, ID 83703

Title Officer: Jennifer Watson  
Phone: (503)790-7866

Order Number: NCS-170137-OR1

Escrow Officer: Mavis Kimball  
Phone: (503)795-7600

Property: 14843 SE Oregon, Sherwood, OR

Attached please find the following item(s):

A Policy of Title Insurance

Thank You for your confidence and support. We at First American Title Company maintain the fundamental principle:

***Customer First!***

# Policy of Title Insurance



ISSUED BY

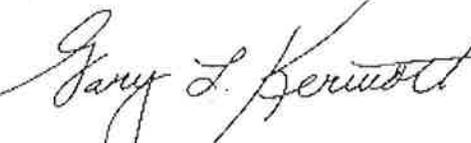
## *First American Title Insurance Company*

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS AND STIPULATIONS, FIRST AMERICAN TITLE INSURANCE COMPANY, a California corporation, herein called the Company, insures, as of Date of Policy shown in Schedule A, against loss or damage, not exceeding the Amount of Insurance stated in Schedule A, sustained or incurred by the insured by reason of:

1. Title to the estate or interest described in Schedule A being vested other than as stated therein;
2. Any defect in or lien or encumbrance on the title;
3. Unmarketability of the title;
4. Lack of a right of access to and from the land;
5. The invalidity or unenforceability of the lien of the insured mortgage upon the title;
6. The priority of any lien or encumbrance over the lien of the insured mortgage;
7. Lack of priority of the lien of the insured mortgage over any statutory lien for services, labor or material:  
(a) arising from an improvement or work related to the land which is contracted for or commenced prior to Date of Policy; or  
(b) arising from an improvement or work related to the land which is contracted for or commenced subsequent to Date of Policy and which is financed in whole or part by proceeds of the indebtedness secured by the insured mortgage which at Date of Policy the insured has advanced or is obligated to advance;
8. Any assessments for street improvements under construction or completed at Date of Policy which now have gained or hereafter may gain priority over the insured mortgage; or
9. The invalidity or unenforceability of any assignment of the insured mortgage, provided the assignment is shown in Schedule A, or the failure of the assignment shown in Schedule A to vest title to the insured mortgage in the named insured assignee free and clear of all liens.

The Company will also pay the costs, attorneys' fees and expenses incurred in defense of the title or the lien of the insured mortgage, as insured, but only to the extent provided in the Conditions and Stipulations.

*First American Title Insurance Company*

BY  PRESIDENT

ATTEST  SECRETARY



*First American Title Insurance Company*

**SCHEDULE A**

Premium: \$1,694.00

Amount of Insurance: \$500,000.00

Policy Number: NCS-170137-OR1

Date of Policy: September 28, 2005 at 3:19 PM

1. Name of Insured:

Roy Dee Fisher and Amanda Fisher

2. The estate or interest in the land which is encumbered by the insured mortgage is:

Fee Simple

3. Title to the estate or interest in the land is vested in:

Oregon Self Storage Sherwood, L.L.C., an Oregon limited liability company

4. The insured mortgage and assignments thereof, if any, are described as follows:

A deed of trust to secure an indebtedness in the original principal amount of \$500,000.00 recorded September 28, 2003 as Document No. 2005-119016 of Official Records.

Dated: August 16, 2005  
Trustor: Oregon Self Storage Sherwood LLC  
Trustee: First American Title Insurance Company  
Beneficiary: Roy Dee Fisher and Amanda Fisher

**SCHEDULE A**  
(Continued)

5. The land referred to in this policy is described as follows:

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

A parcel of land situated in the Southeast one-quarter of Section 29, Township 2 South, Range 1 West of the Willamette Meridian, in the City of Sherwood, County of Washington and State of Oregon, being more particularly described as follows:

Commencing at the Southwest corner of the Southeast one-quarter of said Section 29; thence North 89°59'00" East, along the South line of said Southeast one-quarter of Section 29, a distance of 1726.21 feet to the Southerly extension of the West line of that parcel conveyed to Frontier Leather Company by document recorded in Book 467, page 108, Washington County Deed Records; thence North 00°01'00" West along said West line and the Southerly extension thereof, a distance of 347.41 feet to the Southwest corner of that parcel conveyed to Transpacific International, Inc. by document recorded as Fee No. 96082349, Washington County Deed Records; thence North 89°59'00" East, along the South line thereof, a distance of 350.00 feet to the Southeast corner thereof; thence North 00°01'00" West along the East line thereof a distance of 400.00 feet to the Northeast corner thereof; thence South 89°59'00" West along the North line thereof a distance of 225.00 feet to an angle point therein; thence South 44°59'00" West continuing along said North line a distance of 176.78 feet to a point on the West line of the aforementioned Frontier Leather Company parcel and the true point of beginning; thence South 00°01'00" East along said West line a distance of 168.36 feet; thence South 48°52'28" West a distance of 426.44 feet; thence North 42°10'49" West a distance of 295.85 feet to the Southeasterly right-of-way line of the Southern Pacific Railroad, said point being 45.00 feet from, when measured at right angles to, the center line of said railroad; thence North 47°49'15" East along said Southeasterly right-of-way line a distance of 396.92 feet to an angle point therein; thence North 42°10'45" West continuing along said Southeasterly right-of-way line a distance of 15.00 feet; thence North 47°49'15" East continuing along said Southeasterly right-of-way line a distance of 318.04 feet to the Northwest corner of the aforementioned Frontier Leather Company parcel; thence South 00°01'00" East along said West line a distance of 261.58 feet to the true point of beginning.

**SCHEDULE B**  
**EXCEPTIONS FROM COVERAGE**

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

**PART ONE**

1. City liens, if any, for the city of Sherwood.
2. These premises are within the boundaries of the Clean Water Services District and are subject to the levies and assessments thereof.
3. An easement for underground water pipe line and incidental purposes, recorded June 11, 1953 in Book 345 of Deeds, Page 623.  
In Favor of: City of Sherwood  
Affects: Reference is made to the document for the exact location
4. The terms and provisions contained in the document entitled "Agreement" recorded May 7, 1964 as Book 512, page 337 of Official Records. Between City of Sherwood and Frontier Leather Company, an Oregon corporation.
5. The terms and provisions contained in the document entitled "Permanent Easement Agreement" recorded August 8, 1995 as Fee No. 95055118 of Official Records. Between Linke Enterprises of Oregon, Inc., an Oregon corporation, formerly known as Frontier Leather Company, Inc. and Transpacific International, Inc., an Oregon corporation.
6. The terms and provisions contained in the document entitled "State of Oregon Well Ownership Information Form" recorded January 3, 2000 as Fee No. 2000-000212 of Official Records. Well Id No.: L29958
7. The terms and provisions contained in the document entitled "State of Oregon Well Ownership Information Form" recorded January 3, 2000 as Fee No. 2000-000213 of Official Records. Well Id No.: L29959
8. The terms and provisions contained in the document entitled "State of Oregon Well Ownership Information Form" recorded January 3, 2000 as Fee No. 2000-000214 of Official Records. Well Id No.: L29960
9. The terms and provisions contained in the document entitled "State of Oregon Well Ownership Information Form" recorded January 3, 2000 as Fee No. 2000-000215 of Official Records. Well Id No.: L29961
10. The terms and provisions contained in the document entitled "Prospective Purchaser Agreement" recorded March 19, 2002 as Fee No. 2002-032053 of Official Records. Between Oregon Department of Environmental Quality and Pacific III, LLC.

11. The terms and provisions contained in the document entitled "Declaration of Private Access and Utility Easement" recorded September 24, 2002 as Fee No. 2002-111387 of Official Records.
  12. The terms and provisions contained in the document entitled "Declaration of Private Access and Utility Easement" recorded September 24, 2002 as Fee No. 2002-111388 of Official Records.
-

**SCHEDULE B**  
(Continued)

**PART TWO**

In addition to the matters set forth in Part One of this Schedule, the title to the estate or interest in the land described or referred to in Schedule A is subject to the following matters, if any be shown, but the Company insures that these matters are subordinate to the lien or charge of the insured mortgage upon the estate or interest:

None

### EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

- 1.(a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to
  - (i) the occupancy, use, or enjoyment of the land;
  - (ii) the character, dimensions or location of any improvement now or hereafter erected on the land;
  - (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or
  - (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
- (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims, or other matters:
  - (a) created, suffered, assumed or agreed to by the insured claimant;
  - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
  - (c) resulting in no loss or damage to the insured claimant;
  - (d) attaching or created subsequent to Date of Policy (except to the extent that this policy insures the priority of the lien of the insured mortgage over any statutory lien for services, labor or material or the extent insurance is afforded herein as to assessments for street improvements under construction or completed at Date of Policy); or
  - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage.
4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with applicable doing business laws of the state in which the land is situated.
5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.
6. Any statutory lien for services, labor or materials (or the claim of priority of any statutory lien for services, labor or materials over the lien of the insured mortgage) arising from an improvement or work related to the land which is contracted for and commenced subsequent to Date of Policy and is not financed in whole or in part by proceeds of the indebtedness secured by the insured mortgage which at Date of Policy the insured has advanced or is obligated to advance.
7. Any claim, which arises out of the transaction creating the interest of the mortgage insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
  - (i) the transaction creating the interest of the insured mortgagee being deemed a fraudulent conveyance or fraudulent transfer; or
  - (ii) the subordination of the interest of the insured mortgagee as a result of the application of the doctrine of equitable subordination; or
  - (iii) the transaction creating the interest of the insured mortgagee being deemed a preferential transfer except where the preferential transfer results from the failure:
    - (a) to timely record the instrument of transfer; or
    - (b) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

### CONDITIONS AND STIPULATIONS

#### 1. DEFINITION OF TERMS.

The following terms when used in this policy mean:

- (a) "insured": the insured named in Schedule A. The term "insured" also includes:
  - (i) the owner of the indebtedness secured by the insured mortgage and each successor in ownership of the indebtedness except a successor who is an obligor under the provisions of Section 12(c) of these Conditions and Stipulations (reserving, however, all rights and defenses as to any such successor that the Company would have had against any predecessor insured, unless the successor acquired the indebtedness as a purchaser for value without knowledge of the asserted defect, lien, encumbrance, adverse claim or other matter insured against by this policy as affecting title to the estate or interest in the land);
  - (ii) any governmental agency or governmental instrumentality which is an insurer or guarantor under an insurance contract or guaranty insuring or guaranteeing the indebtedness secured by the insured mortgage, or any part thereof, whether named as an insured herein or not;
  - (iii) the parties designated in Section 2(a) of these Conditions and Stipulations.
- (b) "insured claimant": an insured claiming loss or damage.
- (c) "knowledge" or "known": actual knowledge, not constructive knowledge or notice which may be imputed to an insured by reason of any public records as defined in this policy or any other records which impart constructive notice of matters affecting the land.
- (d) "land": the land described or referred to in Schedule A, and improvements affixed thereto which by law constitute real property. The term "land" does not include any property beyond the lines of the area specifically described or referred to in Schedule A, nor any right, title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways, but nothing herein shall modify or limit the extent to which a right of access to and from the land is insured by this policy.
- (e) "mortgage": mortgage, deed of trust, trust deed, or other security instrument.
- (f) "public records": records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge. With respect to Section 1(a)(iv) of the Exclusions From Coverage, "public records" shall also include environmental protection liens filed in the records of the clerk of the United States district court for the district in which the land is located.

(g) "unmarketability of the title": an alleged or apparent matter affecting the title to the land, not excluded or excepted from coverage, which would entitle a purchaser of the estate or interest described in Schedule A or the insured mortgage to be released from the obligation to purchase by virtue of a contractual condition requiring the delivery of marketable title.

## 2. CONTINUATION OF INSURANCE.

(a) **After Acquisition of Title:** The coverage of this policy shall continue in force as of Date of Policy in favor of

(i) an insured who acquires all or any part of the estate or interest in the land by foreclosure, trustee's sale, conveyance in lieu of foreclosure, or other legal manner which discharges the lien of the insured mortgage;

(ii) a transferee of the estate or interest so acquired from an insured corporation, provided the transferee is the parent or wholly-owned subsidiary of the insured corporation, and their corporate successors by operation of law and not by purchase, subject to any rights or defenses the Company may have against any predecessor insureds; and

(iii) any governmental agency or governmental instrumentality which acquires all or any part of the estate or interest pursuant to a contract of insurance or guaranty insuring or guaranteeing the indebtedness secured by the insured mortgage.

(b) **After Conveyance of Title:** The coverage of this policy shall continue in force as of Date of Policy in favor of an insured only so long as the insured retains an estate or interest in the land, or holds an indebtedness secured by a purchase money mortgage given by a purchaser from the insured, or only so long as the insured shall have liability by reason of covenants of warranty made by the insured in any transfer or conveyance of the estate or interest. This policy shall not continue in force in favor of any purchaser from the insured of either

(i) an estate or interest in the land, or

(ii) an indebtedness secured by a purchase money mortgage given to an insured.

(c) **Amount of Insurance:** The amount of insurance after the acquisition or after the conveyance shall in neither event exceed the least of:

(i) The amount of insurance stated in Schedule A;

(ii) The amount of the principal of the indebtedness secured by the insured mortgage as of Date of Policy, interest thereon, expenses of foreclosure, amounts advanced pursuant to the insured mortgage to assure compliance with laws or to protect the lien of the insured mortgage prior to the time of acquisition of the estate or interest in the land and secured thereby and reasonable amounts expended to prevent deterioration of improvements, but reduced by the amount of all payments made; or

(iii) The amount paid by any governmental agency or governmental instrumentality, if the agency or instrumentality is the insured claimant, in the acquisition of the estate or interest in satisfaction of its insurance contract or guaranty.

## 3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT.

The insured shall notify the Company promptly in writing

(i) in **case of any litigation as set forth** in Section 4(a) below,

(ii) in **case knowledge shall come to an insured hereunder** of any claim of title or interest which is adverse to the title to the estate or interest or the lien of the insured mortgage, as insured, and which might cause loss or damage for which the Company may be liable by virtue of this policy, or

(iii) if title to the estate or interest or the lien of the insured mortgage, as insured, is rejected as unmarketable. If prompt notice shall not be given to the Company, then as to the insured all liability of the Company shall terminate with regard to the matter or matters for which prompt notice is required; provided, however, that failure to notify the Company shall in no case prejudice the rights of any insured under this policy unless the Company shall be prejudiced by the failure and then only to the extent of the prejudice.

## 4. DEFENSE AND PROSECUTION OF ACTIONS; DUTY OF INSURED CLAIMANT TO COOPERATE.

(a) Upon written request by the insured and subject to the options contained in Section 6 of these Conditions and Stipulations, the Company, at its own cost and without unreasonable delay, shall provide for the defense of such insured in litigation in which any third party asserts a claim adverse to the title or interest as insured but only as to those stated causes of action alleging a defect, lien or encumbrance or other matter insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the insured to object for reasonable cause) to represent the insured as to those stated causes of action and shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs or expenses incurred by an insured in the defense of those causes of action which allege matters not insured against by this policy.

(b) The Company shall have the right, at its own cost, to institute and prosecute any action or proceeding or to do any other act which in its opinion may be necessary or desirable to establish the title to the estate or interest or the lien of the insured mortgage, as insured, or to prevent or reduce loss or damage to an insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable hereunder, and shall not thereby concede liability or waive any provision of this policy. If the Company shall exercise its rights under this paragraph, it shall do so diligently.

(c) Whenever the Company shall have brought an action or interposed a defense as required or permitted by the provisions of this policy, the Company may pursue any litigation to final determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from any adverse judgment or order.

(d) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding, the insured shall secure to the Company the right to so **prosecute** or provide **defense** in the action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of the insured for this purpose. Whenever requested by the Company, the insured, at the Company's expense, shall give the Company all reasonable aid

(i) in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and

(ii) in any other lawful act which in the **opinion of the Company may be necessary** or desirable to **establish the title to the estate or interest or the lien of the insured mortgage, as insured. If the Company is prejudiced by the failure of an insured to furnish the required cooperation, the Company's obligations to such insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.**

## 5. PROOF OF LOSS OR DAMAGE.

In addition to and after the notices required under Section 3 of these Conditions and Stipulations have been provided the Company, a proof of loss or damage signed and sworn to by the insured claimant shall be furnished to the Company within 90 days after the insured claimant shall ascertain the facts giving rise to the loss or damage. The proof of loss or damage shall describe the defect in, or lien or encumbrance on the title, or other matter insured against by this policy which constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage. If the Company is prejudiced by the failure of an insured claimant to provide the required proof of loss or damage, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such proof of loss or damage.

In addition, the insured claimant may reasonably be required to submit to examination under oath by any authorized representative of the Company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the Company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Date of Policy, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the insured claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the loss or damage. All information designated as confidential by an insured claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the insured claimant to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information from third parties as required in this paragraph, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to that claim.

**6. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY.**

In case of a claim under this policy, the Company shall have the following additional options:

(a) To Pay or Tender Payment of the Amount of Insurance or to Purchase the Indebtedness.

(i) to pay or tender payment of the amount of insurance under this policy together with any costs, attorneys' fees and expenses incurred by the insured claimant, which were authorized by the Company, up to the time of payment or tender of payment and which the Company is obligated to pay; or  
(ii) to purchase the indebtedness secured by the insured mortgage for the amount owing thereon together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of purchase and which the Company is obligated to pay.

If the Company offers to purchase the indebtedness as herein provided, the owner of the indebtedness shall transfer, assign, and convey the indebtedness and the insured mortgage, together with any collateral security, to the Company upon payment therefor.

Upon the exercise by the Company of the options provided for in paragraphs a(i) or (ii), all liability and obligations to the insured under this policy, other than to make the payment required in those paragraphs, shall terminate, including any liability or obligation to defend, prosecute or continue any litigation, and the policy shall be surrendered to the Company for cancellation.

(b) To Pay or Otherwise Settle With Parties Other than the Insured or With the Insured Claimant.

(i) to pay or otherwise settle with other parties for or in the name of an insured claimant any claim insured against under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay; or

(ii) to pay or otherwise settle with the insured claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in paragraphs b(i) or (ii), the Company's obligations to the insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute or continue any litigation.

**7. DETERMINATION AND EXTENT OF LIABILITY.**

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the insured claimant who has suffered loss or damage by reason of matters insured against by this policy and only to the extent herein described.

(a) The liability of the Company under this policy shall not exceed the least of:

(i) the amount of insurance stated in Schedule A, or, if applicable, the amount of insurance as defined in Section 2(c) of these Conditions and Stipulations;

(ii) the amount of the unpaid principal indebtedness secured by the insured mortgage as limited or provided under Section 8 of these Conditions and Stipulations or as reduced under Section 9 of these Conditions and Stipulations, at the time the loss or damage insured against by this policy occurs, together with interest thereon; or

(iii) the difference between the value of the insured estate or interest as insured and the value of the insured estate or interest subject to the defect, lien or encumbrance insured against by this policy.

(b) In the event the insured has acquired the estate or interest in the manner described in Section 2(a) of these Conditions and Stipulations or has conveyed the title, then the liability of the Company shall continue as set forth in Section 7(a) of these Conditions and Stipulations.

(c) The Company will pay only those costs, attorneys' fees and expenses incurred in accordance with Section 4 of these Conditions and Stipulations.

**8. LIMITATION OF LIABILITY.**

(a) If the Company establishes the title, or removes the alleged defect, lien or encumbrance, or cures the lack of a right of access to or from the land, or cures the claim of unmarketability of title, or otherwise establishes the lien of the insured mortgage, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby.

(b) In the event of litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom, adverse to the title or to the lien of the insured mortgage, as insured.

(c) The Company shall not be liable for loss or damage to any insured for liability voluntarily assumed by the insured in settling any claim or suit without the prior written consent of the Company.

(d) The Company shall not be liable for:

(i) any indebtedness created subsequent to Date of Policy except for advances made to protect the lien of the insured mortgage and secured thereby and reasonable amounts expended to prevent deterioration of improvements; or

(ii) construction loan advances made subsequent to Date of Policy, except construction loan advances made subsequent to Date of Policy for the purpose of financing in whole or in part the construction of an improvement to the land which at Date of Policy were secured by the insured mortgage and which the insured was and continued to be obligated to advance at and after Date of Policy.

**9. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY.**

(a) All payments under this policy, except payments made for costs, attorneys' fees and expenses, shall reduce the amount of the insurance pro tanto. However, any payments made prior to the acquisition of title to the estate or interest as provided in Section 2(a) of these Conditions and Stipulations shall not reduce pro tanto the amount of the insurance afforded under this policy except to the extent that the payments reduce the amount of the indebtedness secured by the insured mortgage.

(b) Payment in part by any person of the principal of the indebtedness, or any other obligation secured by the insured mortgage, or any voluntary partial satisfaction or release of the insured mortgage, to the extent of the payment, satisfaction or release, shall reduce the amount of insurance pro tanto. The amount of insurance may thereafter be increased by accruing interest and advances made to protect the lien of the insured mortgage and secured thereby, with interest thereon, provided in no event shall the amount of insurance be greater than the amount of insurance stated in Schedule A.

(c) Payment in full by any person or the voluntary satisfaction or release of the insured mortgage shall terminate all liability of the Company except as provided in Section 2(a) of these Conditions and Stipulations.

**10. LIABILITY NONCUMULATIVE.**

If the insured acquires title to the estate or interest in satisfaction of the indebtedness secured by the insured mortgage, or any part thereof, it is expressly understood that the amount of insurance under this policy shall be reduced by any amount the Company may pay under any policy insuring a mortgage to which exception is taken in Schedule B or to which the insured has agreed, assumed or taken subject, or which is hereafter executed by an insured and which is a charge or lien on the estate or interest described or referred to in Schedule A, and the amount so paid shall be deemed a payment under this policy.

**11. PAYMENT OF LOSS.**

(a) No payment shall be made without producing this policy for endorsement of the payment unless the policy has been lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of the Company.

(b) When liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions and Stipulations, the loss or damage shall be payable within 30 days thereafter.

**12. SUBROGATION UPON PAYMENT OR SETTLEMENT.**

**(a) The Company's Right of Subrogation.**

Whenever the Company shall have settled and paid a claim under this policy, all right of subrogation shall vest in the Company unaffected by any act of the insured claimant.

The Company shall be subrogated to and be entitled to all rights and remedies which the insured claimant would have had against any person or property in respect to the claim had this policy not been issued. If requested by the Company, the insured claimant shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect this right of subrogation. The insured claimant shall permit the Company to sue, compromise or settle in the name of the insured claimant and to use the name of the insured claimant in any transaction or litigation involving these rights or remedies.

If a payment on account of a claim does not fully cover the loss of the insured claimant the Company shall be subrogated to all rights and remedies of the insured claimant after the insured claimant shall have recovered its principal, interest and costs of collection.

**(b) The Insured's Rights and Limitations.**

Notwithstanding the foregoing, the owner of the indebtedness secured by an insured mortgage, provided the priority of the lien of the insured mortgage or its enforceability is not affected, may release or substitute the personal liability of any debtor or guarantor, or extend or otherwise modify the terms of payment, or release a portion of the estate or interest from the lien of the insured mortgage, or release any collateral security for the indebtedness.

When the permitted acts of the insured claimant occur and the insured has knowledge of any claim of title or interest adverse to the title to the estate or interest or the priority or enforceability of the lien of the insured mortgage, as insured, the Company shall be required to pay only that part of any losses insured against by this policy which shall exceed the amount, if any, lost to the Company by reason of the impairment by the insured claimant of the Company's right of subrogation.

**(c) The Company's Rights Against Non-Insured Obligors.**

The Company's right of subrogation against non-insured obligors shall exist and shall include, without limitation, the rights of the insured to indemnities, guaranties, other policies of insurance or bonds, notwithstanding any terms or conditions contained in those instruments which provide for subrogation rights by reason of this policy.

The Company's right of subrogation shall not be avoided by acquisition of the insured mortgage by an obligor (except an obligor described in Section 1(a)(ii) of these Conditions and Stipulations) who acquires the insured mortgage as a result of an indemnity, guarantee, other policy of insurance, or bond and the obligor will not be an insured under this policy, notwithstanding Section 1(a)(i) of these Conditions and Stipulations.

**13. ARBITRATION. (DOES NOT APPLY IN STATE OF MISSOURI)**

Unless prohibited by applicable law, either the Company or the insured may demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the insured arising out of or relating to this policy, any service of the Company in connection with its issuance or the breach of a policy provision or other obligation. All arbitrable matters when the Amount of Insurance is \$1,000,000 or less shall be arbitrated at the option of either the Company or the insured. All arbitrable matters when the Amount of Insurance is in excess of \$1,000,000 shall be arbitrated only when agreed to by both the Company and the insured. Arbitration pursuant to this policy and under the Rules in effect on the date the demand for arbitration is made or, at the option of the insured, the Rules in effect at Date of Policy shall be binding upon the parties. The award may include attorneys' fees only if the laws of the state in which the land is located permit a court to award attorneys' fees to a prevailing party. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

The laws of the situs of the land shall apply to an arbitration under the Title Insurance Arbitration Rules.

A copy of the Rules may be obtained from the Company upon request.

**14. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT.**

(a) This policy together with all endorsements, if any, attached hereto by the Company is the entire policy and contract between the insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

(b) Any claim of loss or damage, whether or not based on negligence, and which arises out of the status of the lien of the insured mortgage or of the title to the estate or interest covered hereby or by any action asserting such claim, shall be restricted to this policy.

(c) No amendment of or endorsement to this policy can be made except by a writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, or validating officer or authorized signatory of the Company.

**15. SEVERABILITY.**

In the event any provision of this policy is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision and all other provisions shall remain in full force and effect.

**16. NOTICES, WHERE SENT.**

All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this policy and shall be addressed to the Company at 1 First American Way, Santa Ana, California, 92707 or to the office which issued this policy.

# RAMIS CREW CORRIGAN, LLP

ATTORNEYS AT LAW

1727 NW Hoyl Street  
Portland, Oregon 97209  
Telephone: (503) 222-4402  
Fax: (503) 243-2944  
www.rcclawyers.com

Timothy V. Ramis  
[jennyd@rcclawyers.com](mailto:jennyd@rcclawyers.com)

SENT VIA EMAIL AND US MAIL

August 6, 2007

Dan Fletcher &  
Chip Gallagher  
Provident Development Group  
8321 West North View Street, Suite 120  
Boise, ID 83704

Re: Use of Easement to Satisfy City of Sherwood Project Requirements

Dear Dan and Chip,

I have reviewed the documents you sent with respect to the easement needed for your project in Sherwood, Oregon. After close review of the title report, we have identified with certainty the easement that would allow you to make the improvements that the City requires. You have the right to use the existing easement recorded in September as Document Number 2002 – 111387 for the purpose of performing your project. A copy of the specific easement and the legal description of the easement area are attached.

Please do not hesitate to call or email us with any questions or concerns about this matter. As discussed, we are setting up an appointment among City of Sherwood officials and yourselves, and will be contacting you soon with the time and date of the meeting.

Sincerely,

*Timothy V. Ramis* bj jld

Timothy V. Ramis

TVR/jld  
Enclosures as Noted

RECORDED BY OREGON TITLE AS AN ACCOMMODATION ONLY NO LIABILITY IS ACCEPTED FOR THE CONDITION OF TITLE OR FOR THE VALIDITY, SUFFICIENCY, OR EFFECT OF THIS DOCUMENT.

B. F. Wilson

OREGON TITLE INS. CO. 02-AD-92 136

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14  
5

AFTER RECORDING RETURN TO:  
Pacific III, LLC  
PO Box 1605  
Tualatin, OR 97062

Washington County, Oregon 2002-111387  
08/24/2002 03:42:43 PM  
D-E Cnt:2 WTP:3 T EAKIN  
\$30.00 \$5.00 \$6.00 \$11.00 - Total=\$52.00



00189409200201113870080069  
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



DECLARATION OF PRIVATE  
ACCESS AND UTILITY  
EASEMENT

Recitals

- A. **Declarant:** means Pacific III, LLC, an Oregon limited liability company.
- B. **Properties:** means:
  - 1. That parcel of land described in deed to Pacific III, LLC, recorded April 18, 2002 in Instrument #2002-046151, Deed Records of Washington County, Oregon, herein "Parcel 1".
  - 2. That parcel of land described in deed to Pacific III, LLC, recorded June 4, 2001 in Instrument #2001052622, Deed Records of Washington County, Oregon, herein "Parcel 2".
- C. **Easement:** means a permanent non-exclusive access easement and private utility easement over, under and across that portion of the "Parcel 1" as described in Exhibit "A" attached for the benefit of "Parcel 2".
- D. **Purpose.** The purpose of this Easement is to create a permanent private access and utility easement over, under and across that portion of the "Parcel 1" as described in Exhibit "A" attached for the benefit of "Parcel 2".

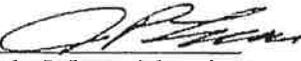


DECLARATION

1. **Declaration of Easement.** Declarant, as owner of the properties, declares that the Properties shall be held and conveyed subject to and together with the Easement, in accordance with the terms and provisions of this Easement, and Declarant grants and conveys the Easement as an appurtenance to and encumbrance on the Properties, the benefits and burdens of which Easement, as set out in this Easement shall run with the properties.
2. **Duration of Easement.** The Easement is and shall be a permanent private access and utility easement over, under and across that portion of "Parcel 1" as described in Exhibit "A" attached for the benefit of "Parcel 2".
3. **Maintenance.** The Declarant shall be 100% responsible for the maintenance of the easement area.
4. **Additional Provisions.** Any person who enjoys the benefits of the Easement shall hold and save the owner or owners of the servient parcel or parcels burdened by this Easement harmless from any and all claims of third parties arising from said benefited person's use of the rights created by this Easement. Any person who enjoys the benefit of the Easement and who is responsible for damage to a servient parcel arising from negligence or abnormal use of the Easement shall repair such damage and restore the affected property at the responsible person's sole expensed.
5. **Future Ownership.** This Easement shall run with, benefit and burden the Property and shall benefit and bind the owners of the Property and their respective successors in interest.
6. **Attorney's Fees.** In the event of action, arbitration, litigation or appeal to enforce any provision of this Agreement, the prevailing party shall be entitled to reasonable attorney fees and court cost.

Dated this 1 day of July 2002.

Pacific III, LLC, an Oregon limited liability company

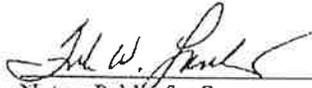
By:   
John P. Lucas, Managing Partner



2002-111387

STATE OF OREGON,  
County of CLATSOP )ss.

The foregoing instrument was acknowledged before me this 1st day of July,  
2002, by John P. Lucas, Managing Partner, Pacific III, LLC, an Oregon limited liability company,  
on behalf of the limited liability company.

  
\_\_\_\_\_  
Notary Public for Oregon  
My Commission Expires:





2002-111387



LAND SURVEYORS  
ENGINEERS

(360) 695-1385  
1111 Broadway  
Vancouver, WA  
98660

EXHIBIT "A"

LEGAL DESCRIPTION FOR LUCAS DEVELOPMENT  
Proposed Access and Utility Easement

June 21, 2002

A parcel of land situated in the Southeast quarter of Section 29, Township 2 South, Range 1 West of the Willamette Meridian, in the City of Sherwood, Washington County, Oregon, being more particularly described as follows:

COMMENCING at the Southwest corner of the Southeast quarter of said Section 29;

THENCE North 89° 59' 00" East along the South line of said Southeast quarter of Section 29 a distance of 1667.82 feet to the TRUE POINT OF BEGINNING;

THENCE North 00° 01' 00" West a distance of 70.00 feet;

THENCE North 04° 37' 22" East a distance of 103.77 feet;

THENCE North 00° 01' 00" West a distance of 163.16 feet to a point on a 15.00 foot radius curve to the left;

THENCE around said 15.00 foot radius curve to the left (the long chord of which bears North 32° 51' 32" West a distance of 16.27 feet) a distance of 17.20 feet to a point on a 70.00 foot radius curve to the right;

THENCE around said 70.00 foot radius curve to the right (the long chord of which bears North 12° 08' 28" East a distance of 136.86 feet) a distance of 190.20 feet;

THENCE North 89° 59' 00" East a distance of 30.00 feet to a point on the West line of that parcel conveyed to Frontier Leather company by document recorded in Book 467, Page 108 (dated July 2, 1962), Washington County Deed Records;

THENCE South 00° 01' 00" East along said West line a distance of 312.64 feet;

THENCE South 04° 37' 22" West a distance of 103.77 feet;

THENCE South 00° 01' 00" East a distance of 67.97 feet to the South line of said Section 29;

175



**OLSON**  
ENGINEERING INC.

LAND SURVEYORS  
ENGINEERS

EXHIBIT "A" CONTINUED

(360) 695-1385  
1111 Broadway  
Vancouver, WA  
98660

THENCE South 89° 59' 00" West along said South line a distance of 50.00 feet to the TRUE POINT OF BEGINNING.

EXCEPT any portion thereof lying within N.E. Oregon Street.

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

*Bruce D. Towle*

OREGON  
FEBRUARY 3, 1963  
BRUCE D. TOWLE  
2030

RENEWAL DATE: 6/30/04

6124102



EXHIBIT "A" CONTINUED

2002-11387



177



Date: 4-22-08

Agenda Item: 7a

Other: \_\_\_\_\_

I have read & understand Rules for Mtgs, Resolution 98-743

Applicant:  Proponent:  Opponent:

Name: PATRICK LUCAS

Address: 20512 SW Roy Rogers

City/State/Zip: Sherwood OR

Phone: 503-217-5790

I represent:  Myself  Other

Date: 4/22/08

Agenda Item: Provident

Other: \_\_\_\_\_

I have read & understand Rules for Mtgs, Resolution 98-743

Applicant:  Proponent:  Opponent:

Name: Bill Monahan

Address: Two Centurypointe Dr.

City/State/Zip: Lake Oswego, OR 97035

Phone: 503-588-5519

I represent:  Myself  Other  
Provident

Date: 4/22/08

Agenda Item: Pine St. Office Bldg

Other: \_\_\_\_\_

I have read & understand Rules for Mtgs, Resolution 98-743

Applicant:  Proponent:  Opponent:

Name: Brent Peterson

Address: 22300 NE Fuller Springs Rd

City/State/Zip: Dunbar OR 97115

Phone: \_\_\_\_\_

I represent:  Myself  Other

Date: 4-22-08

Agenda Item: Provident Level

Other: \_\_\_\_\_

I have read & understand Rules for Mtgs, Resolution 98-743

Applicant:  Proponent:  Opponent:

Name: Mike Osborn <sup>Esq</sup> Engineering

Address: 1111 Broadway

City/State/Zip: Van Wert OH 44880

Phone: 360698-1388

I represent:  Myself  Other

# **APPROVED MINUTES**

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**City of Sherwood, Oregon**  
**Planning Commission Minutes**  
**April 22, 2008**

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**Commission Members Present:**

Chair Allen  
Jean Lafayette  
Todd Skelton  
Lisa Walker

**Staff:**

Julia Hajduk, Planning Manager  
Heather Austin, Senior Planner  
Karen Brown, Recording Secretary

**Council Liaison** – Keith Mays (absent)

**Commission Members Absent:**

Adrian Emery and Matt Nolan

**City Attorney** – Paul Elsner

**1. Call to Order/Roll Call** – Karen Brown called roll. Commissioners Emery and Nolan were absent. Chair Allen moved directly to new business with the intent to return to the non-quorum agenda items afterwards.

Agenda items 2-7 were moved to the end of the agenda

**7. New Business – Public Hearing – SP 07-07; Provident Development Group Road Appeal:** This appeal was filed by Patrick Lucas. Chair Allen gave an overview of the meetings schedule and the processes that would be followed for each by reading the Public Hearing Disclaimer. Chair Allen asked that members of the commission disclose any exparte contacts, bias or conflicts of interest. Chair Allen disclosed that there is a letter submitted by Kathy Michaud-Tradd and her husband. Ms. Michaud-Tradd was Chair Allen's daughter's pre-school teacher ten years ago and he occasionally talks to her but this shouldn't cause any bias. Jean Lafayette disclosed that she has attended other public hearings from DEQ regarding this site. She added she lives close to the site and doesn't believe that this would cause any bias. No audience members challenged the participation of any Commission member.

Chair Allen opened the hearing at 7:25 PM.

Planning Manager Julia Hajduk addressed the commission. She stated that there is a 120-day issue and that the extension runs out on Friday, April 25<sup>th</sup>, 2008. If there is no decision made tonight, Commission will exceed the 120-day limit. She added that this is a staff-level decision because there is no square footage or parking area proposed; so it's a fast-tracked site plan. The complicating factor is that it's an easement that is not owned by the applicant. Staff and the City Attorney reviewed the easement information and determined that the applicant had the right to submit the application for this easement. Basically, it's a private street built to public standards

and it's approved with conditions in the Notice of Decision. The appeal was filed on March 20<sup>th</sup>, 2008. Because of the general reasons stated in the appeal, staff has nothing more to add at this time and will reserve the remaining time for rebuttal. Julia added that Exhibit 3 was just submitted by the appellant and added to the record right before this hearing. To clarify, Exhibit 1 is the appellant's appeal, Exhibit 2 is the Notice of Decision with exhibits included in the record, and Exhibit 3 is the Notice of Decision for the Oregon Street Industrial Park. Julia then received an Exhibit 4 and distributed it to the Commission.

Peter Livingston, Appellant's Representative, 1211 SW 5<sup>th</sup> Ave, Portland, Oregon. Mr. Livingston stated that the letter just distributed was a listing of documents found in this record or in the record of SP 07-07. Mr. Livingston outlined the subject of the documents submitted to the Planning Commission.

Mr. Livingston continued that the documents established that Mr. Lucas, the Provident Development Group and the city staff agreed that the approval in SP 07-08 was inconsistent with the current proposal of SP 07-07. He summarized that ORS 227.175 stated only an owner or authorized representative could apply for a land use permit or zone change otherwise two parties could have vested rights to incompatible development on the same property. Mr. Lucas already has a vested right to develop the property as approved in SP 07-08. He added that the city should not grant land use approval for a development that's incompatible with Mr. Lucas's development. The only argument made to approve this current application is that utility companies routinely make improvements on their easements and they apply for those improvements with the local government and with the consent of the property owner. There is no case that someone with an easement could apply over the objections of the property owner and to allow that violates the explicit language of the statute.

Chair Allen asked if the utility company who applies also violates the explicit language in the statute even if there is no objection. Mr. Livingston replied that the objection could be made in each case. Chair Allen asked if the statute language reads that only the owner of the land may apply, then utility companies shouldn't be able to apply. Mr. Livingston concurred and added that unless somebody objects, the rule gets broken. The reason for the statute is that if you don't follow the rule when there is an objection, then you have the problem of incompatible development being approved for the same property. The City took an unclear position on this issue. The City stated it's a civil matter and approved both site plans, or, the City determined that the easement gave a property right to Mr. Monahan's client to apply for development. He added that the statute was clear and what's happening was a violation of statutory law. Provident should sue Mr. Lucas and demand that he sign an application. There was already a final decision in SP 07-08 which provided for a private street from tax lot 500 over tax lot 900 to Oregon Street. The application tonight should be denied.

Patrick Lucas, 20512 SW Roy Rogers Road, Sherwood, Oregon. He stated that the main issue was access to driveway or road to tax lot 900 and Provident's application doesn't have any access to the road. He stated that the parking ratio was 1.6 per 1,000 square feet for industrial and he will lose 32 to 40 spaces and that this reduced the buildable area of the property by 20,000 to 25,000 square feet which rendered his property worthless. He has approval that gave restricted parking which was better than no parking. Mr. Lucas added he received final DEQ sign-off on the site two weeks ago.

Chair Allen asked Mr. Livingston if the two applications proposed constructing two different things in the same space. Mr. Livingston concurred.

Lisa Walker asked if the main issues were the parking spaces and access to the property. Mr. Livingston concurred.

Commissioners had no further questions for the appellant.

Bill Monahan, Provident Development Group's Representative, 2 Centerpointe Drive, Lake Oswego, Oregon. Mr. Monahan explained that his client bought the property from Mr. Lucas in 2003 which already had an easement created by Mr. Lucas in 2002. He added that the access drive proposal was consistent with the city's standards and it was consistent with the rights that one would have within an easement. This proposal was to utilize what was paid for in a manner that did not detract from Mr. Lucas's opportunity to use his property and Mr. Lucas had a legal obligation that he sold to Provident which was the opportunity to have access across his property. Mr. Monahan reiterated that he was only talking about how Provident's application fit within the criteria of the City of Sherwood.

Mike Odren, Olsen Engineering, 1111 Broadway, Vancouver, Washington, 98660. Mr. Odren gave a brief history of the property by stating that in December of 2003, the property was approved for a mini-storage facility. There was a proposed private access road through the easement. The applicant decided not to pursue the development and placed it on hold until it then expired. Mr. Odren stated that Provident applied for the access road into this property and the original road was provided for in the original application. He explained that staff wanted to see a private road built to public road standards and that staff agreed to condition Provident to follow these standards. He added that the minimum road right of way width would be 52 feet for this classification but Provident only had a 50 foot easement, thus, Provident agreed to provide the road as conditioned. He ended by stating that absent was the ability to dedicate right of way for a public road and the road layout on the site plan is the same road applied for in 2003.

Mr. Monahan referred to Mr. Livingston's letter of April 22<sup>nd</sup> and how Mr. Lucas's earlier application's plans and conditions were changed over time. Provident's comments were addressed specifically to how vehicles would back up onto the access drive which caused concerns to their use of the access. Some issues were addressed by the City and will be sorted out in Mr. Lucas's application. He added that his client had the right to utilize that access easement for industrial property. The proposed access drive will serve both his client's and Mr. Lucas's property. Mr. Monahan stated staff considered both applications so the approval could be done in a way to serve both of them. Provident was willing to enter into an agreement with Mr. Lucas in order to finalize his plans. He emphasized the concern that Provident had about Mr. Lucas not moving forward in a timely manner. Mr. Lucas promised Provident since 2003 that he would build the road and Provident needed to have access to the property but had no guarantee about timeliness. Mr. Monahan stated that Provident had a statutory right to make an application and Oregon law showed that an easement holder could reasonably use the property when it was necessary and convenient so long as it didn't create an unreasonable situation for the estate holder. Mr. Lucas didn't prove that Provident's constructing an access to serve both properties would unnecessarily create a burden on his property. Mr. Monahan stated that Mr. Lucas bargained, sold and received the benefits of the compensation for the easement and that Provident was entitled to this easement.

Jean Lafayette asked Mr. Monahan if he had the regulation regarding the Oregon law to which he referred. He replied that it was based on related easement cases.

Mr. Monahan stated that Mr. Livingston referred to two specific Oregon case law decisions and paraphrased from them that a use was neither inconsistent with serving estate owner's rights nor unreasonably interfered with those rights if the use was or should have been contemplated by both parties at the time the easement was created. He added that the location of the easement in question now was on the exterior limit of the property and placed there so Mr. Lucas would have maximum development opportunity. The intent was for a road to be there in this industrial zone. He added that Provident was within their rights to apply for and receive approval to build this road.

Jean Lafayette asked Mr. Monahan why he didn't just build the road that Mr. Lucas wanted instead of what Provident wanted. He replied they were building a road that Mr. Lucas wanted even when Provident didn't have the ability to apply for parking on the road. Provident believed Mr. Lucas's road would meet their needs but that the issue was timeliness.

Chair Allen asked Mr. Monahan that if Mr. Lucas built the road, would Provident be happy. Mr. Monahan replied that Provident's concern was that they would have to build the road because Mr. Lucas may not build the road with the development he was currently proposing.

Chair Allen added that if the Commission denies Mr. Lucas's appeal and approves Provident's application, they could both build the road. Mr. Monahan concurred but added that they would seek reimbursement because the contract was that Mr. Lucas would build the road but after five years, this hasn't happened.

Mr. Odren added that both applications had the same set of standards to meet regarding the road and the only difference was that Provident wanted to build it now.

Julia Hajduk stated as conditioned, both applications were essentially the same and that Provident was within the 50 foot easement so it wasn't exactly the same as Mr. Lucas's project as Mr. Lucas's road might be wider with parking due to more room on his property. Mr. Monahan added that Mr. Lucas could adjust the road Provident builds in the future as long as the road was within the city's standards.

Chair Allen asked if anyone was present to testify in support or in opposition of the appeal. No one came forward. Chair Allen then moved to rebuttal and informed Mr. Lucas he only had eight minutes.

Mr. Livingston stated that who was right and who was wrong was irrelevant to a land use hearing. He referred back to the statute that stated only a property owner could apply and that there couldn't be two approvals that covered the same property. He stated that the application tonight was not consistent and should be denied. He knew that Provident objected to back-out parking but that this was a dispute about the scope of the easement which should be settled in court and not in front of the Planning Commission. He stated that the parties were in discussion and should reach an agreement on this issue.

Jean Lafayette asked Mr. Livingston if he wanted the Commission to consider a specific finding in this matter. He replied that the application tonight should be rejected.

Commissioner Skelton asked if this was an application for a permit or for a zone change (referring to the ORS citation previously provided to the Commission). Mr. Livingston stated it was a site plan approval and the permit should be covered in that. He then asked that the hearing be continued.

Commissioners had no further questions.

Mr. Monahan stated that there was a code provision that allowed for Provident's application and that Staff tried to keep the two applications separate but if there were inconsistencies, he was hopeful that staff addressed them in their review. He was concerned that Mr. Lucas's application would not go forward and asked if Provident should withdraw their application and resubmit in two years. Provident had a right to this application right now. Mr. Monahan stated that he did object to the back-out parking and he could not suggest that there was a probability of an agreement tonight as his client needs access to the property.

Commissioners had no further questions and Chair Allen asked for staff's final comments.

Julia Hajduk explained that the appellant requested that the hearing be continued but there was a 120-day issue.

Paul Elsner, City Attorney, explained that by statute they had a right to keep the record open for at least seven days and could continue if there was a waiver of the 120 days.

Chair Allen asked if the applicant had the right to ask for a continuance. Mr. Elsner explained that they don't have a right to a continuance unless the code provided for one. Heather Austin checked the code while Julia continued her rebuttal.

Julia stated that when the application was first submitted, the applicant was not the owner and the owner had not signed therefore deeming the submittal incomplete. The applicant then submitted documentation that raised the issue of ownership. Julia explained that the ownership issue was discussed with the City Attorney and determined not to be an issue. Julia felt that the applicant did have the right to submit this application but at the same time, Planning had another application from the property owner. Staff reviewed both on their own merit to ensure that the code was being met and she was certain that the two applications are consistent, as conditioned.

Paul Elsner reiterated that "owner" or "applicant" was defined in Washington County code as public agencies that have the right of condemnation or eminent domain. He added that Mr. Livingston's definition of the word "owner" was not consistent with past practices. He stated that Provident couldn't build a house or structure on the easement and that staff made the analysis that was consistent with the code that this application was not inconsistent with the ownership interest that Provident had in the easement.

Lisa Walker asked staff if they thought the two applications would be working together. Julia answered that that was the ideal.

Chair Allen asked if they both could begin construction on the basis of their approval and Julia concurred.

Lisa Walker added that both applications had a two-year time frame and the Commission couldn't compel one to build before the other before the expiration date.

Julia added that the assertion that we couldn't have two approvals on the same property was not correct.

Jean Lafayette was concerned that the staff report stated that the two are not compatible. Julia added that they're not compatible as proposed but they are compatible as conditioned.

Chair Allen asked if the condition of one application could make a reference to the conditions of another unrelated application. He then asked if they could remove all doubt by specifying that the road had to be completely consistent with the road conditioned in SP 07-08.

Jean Lafayette asked if they could build the 50 feet exactly to the specifications of the approved SP 07-08.

Paul Elsner didn't think that this would be a problem and Julia added that that was essentially what was done.

Chair Allen then repeatedly reminded the audience that he was not going to recognize any more public testimony.

Heather Austin, Senior Planner, read section 16.72.0503A from the code which allowed for the hearing to be continued.

Chair Allen asked the applicant if they were willing to extend the 120-day deadline. Since the applicants needed time to confer, Chair Allen granted a five minute recess.

*While SP 07-07 was recessed, Chair Allen chose to move forward with the next hearing.*

**New Business – Public Hearing – SP 08-02; Peterson Old Town Office:** Chair Allen opened the hearing by reading the overview of the meeting's procedures from the Public Hearing Disclaimer. Chair Allen asked that members of the Commission disclose any exparte contacts, bias or conflicts of interest.

There were no disclosures and no audience members challenged the participation of any Commissioner.

Heather Austin, Senior Planner, described the office building on 2<sup>nd</sup> Street and Pine Street to be 7,000 square feet, with two 3,500 square foot stories stacked one on the other. She explained that the site was currently bare as the single family home that was previously there was destroyed by two fires in 2006-2007. She stated that the staff report discussed French doors which were not permitted in Old Town and the proposed doors did not meet the technical definition of French doors.

Jean Lafayette asked how the doors were different than the City Hall building and Heather responded that the definition of French doors meant multiple, small panes.

Chair Allen asked if faux-stone was prohibited and Heather responded yes.

Heather continued that staff recommended approval with the conditions listed which include bike parking, landscaping in the parking and its edges, or, enclosing the parking area by continuing the façade of the building. She added that the recommended street improvements included a new sidewalk and street trees on Pine Street, a half-street improvement on 2<sup>nd</sup> Street that included a curb because a half-street improvement can't be built with a traditional woonerf curb. Staff didn't believe that they would necessarily see woonerf-style as is found in the core of Old Town, but staff could do a curbless design from where the curb was now by having a traditional style and having valley gutters to the side and removing the curb. Heather continued that staff's only recommendation at this time was that due to a street fee in lieu not existing, this design can be easily transitioned in to a curbless street section in the future.

For the alley, staff recommended hard surface improvement because the applicant was proposing to take vehicular access from the alley.

Staff would like the overhead wires to be undergrounded and a condition that the application shows how the building connects to the sidewalk to satisfy ADA requirements.

An 8 foot PUE (public utility easement) required along a right of way is not feasible in Old Town as buildings are required to be built to the property line. Heather continued that Old Town was also developed with alleys which was where the majority of the utilities were located and our Community Development Director stated that the 8 foot PUE was not necessary in Old Town. Staff recommended that the applicant not be conditioned to provide the 8 foot PUE. Staff will propose code changes with the next round of code updates to reflect this.

Staff recognized that there was no room for a visual corridor due to building the building right to the property line.

Jean Lafayette asked if there could be a formal process in which the Planning Commission could agree with this interpretation so for the next application, there wouldn't be a need for explaining all of this over and over.

Heather replied that if the Commission agreed with these findings, then it should be applicable to future applications.

Jean Lafayette would like to see a formal interpretation that the Old Town Design Standards supercede the PUE and the visual corridor as two separate actions rather than just pointing at the site plan.

Julia stated that she could bring a Director's interpretation of this to the next meeting as a separate action from the site-specific approval.

Heather asked if they should do this with the PUE and the visual corridor and Jean agreed.

Jean Lafayette asked Heather if she would address the most recent information received by the Planning Commission. Heather called attention to Figure 1, a depiction between curbs and woonerf, and that Staff believed the curb could be removed to have a valley gutter on each side. She referred to CF3 on page 31 of the staff report. Heather was not sure if this meant a full tear out of Pine Street sidewalk or not and asked Lee Harrington to come forward.

Lee Harrington, Senior Project Engineer for the City of Sherwood, explained that the applicant requested to add an additional portion of sidewalk to the existing sidewalk without tearing out the existing sidewalk. He continued that it was feasible but we needed to determine if Pine Street was to be redone in a woonerf design, would we want the concrete to have a different scoring pattern or a different color, or should it be in the design that was adjacent to it? Staff suggested to go with the new scoring pattern.

Heather referred to figure 2 which related to 2<sup>nd</sup> Street. She explained that when blocks develop, there will be a transition until the neighboring property develops or the city comes up with funding to do the improvements.

Chair Allen asked if there should be a curb now and in the future, transition to figure 2?

Heather responded that figure 2 was what it would look like at this time. She added that the applicant was saying that the curb was going to jut out after this property transitioned back to the non-dedicated property next door. She stated that this was common for development unless the entire block developed at the same time.

Heather referred to an Associated Press article about a preservation group recommending to preserve buildings and making the argument that preservation applied to streets also. Heather added that if the street section on 2<sup>nd</sup> Street that she recommended be conditioned, had to be torn out completely to comply with downtown streetscapes in the future, she may see merit to this, but at this point, this wasn't the case. She believed a curb at this point would help the street function.

Exhibit D was from TVF&R that didn't make the initial packets as it came in after the distribution.

Commissioner Lafayette asked to make a reference to the submitted letter on page 18.16.1.16.

TVF&R requested a fire flow calculation worksheet and staff will add an appropriate condition for this. Heather referred to C1E and believed that the condition was already addressed.

Staff's recommendation was that the Commission approve this application with the conditions with the exception of a typo, on page 30. Condition C.1 should read "submit to the Engineering Department".

Lisa Walker asked when the downtown street master plan (inaudible gap on tape) would be funded. Heather responded that it was not funded nor on the horizon so it may be ten years out. Chair Allen added that SURPAC has talked about scaling back future phases to look at core streets and that 2<sup>nd</sup> Street is not even mentioned.

Chair Allen then asked the applicant to testify.

Brent Peterson, 22300 NE Hidden Springs Road, Dundee, Oregon. He explained that the lot on 2<sup>nd</sup> Street was 50 feet deep and asked if he was required to make the street 5 feet wider and put a curb in for the entire 50 feet of the property?

Heather responded that the applicant's Engineer showed a decent transition and she referred to the Sunset Partition project as an example.

Chair Allen clarified that the applicant's property line was at the beginning of the transition so all of the transition was on his property. The applicant felt that this was inefficient.

Heather stated that future development won't have to come on to the applicant's property because the transition happened within the area he already dedicated even though he built this curb that transitions it. They would tear out that curb in the right of way and match it for the next transition.

Mr. Peterson stated that this was wasteful.

Chair Allen reiterated that the curb that had to come out was fairly minor and the curb would be removed in the far future.

Mr. Peterson asked if the sidewalk will be widened on Pine Street. Chair Allen responded that the Planning Commission would decide this tonight.

Mr. Peterson asked about his building's elevation. Heather responded that pre-application notes, while preliminary, are still applicable in this case and that the finished floor elevation was the exact same as across the street and the applicant showed this already. The elevation as it is shown didn't prohibit a woonerf in the future.

Planning Commission had no questions for the applicant.

Chair Allen asked for testimony from proponents and then opponents of this application. Nobody came forward so Chair Allen closed the public hearing and referred back to Staff for their final comments.

Heather concluded that the Engineer for the applicant was correct in his design (shown in Figure 2) but she felt that the recommended conditions were still acceptable.

Jean Lafayette clarified that Heather preferred the top street profile on Figure 1 and Heather agreed.

Chair Allen added that the only issue remaining was adding a foot or building a new 8-foot sidewalk. This was on Pine Street and it matched up to the existing improvements on the new system.

Heather corrected that it matched the current existing but that the streetscapes stopped at 1<sup>st</sup> Street so this section of Pine Street didn't have anything.

Commissioner Lafayette stated she would add a foot and Commissioners Skelton and Walker agreed.

Heather recommended changing the conditions and the finding to match. She referred to the discussion and finding on page 16 which she changed to read "...construct a sidewalk matching the downtown streetscapes design width..." and Commissioner Lafayette agreed. Heather will change the recommended condition C.1.f.1 on page 30 of the staff report to reflect those changes.

Commissioner Lafayette moved that the Planning Commission approve SP 08-02 based on the adoption of the staff report findings and fact, public testimony, staff recommendation, agency comments, applicant comments and findings and conditions as revised.

Commissioner Skelton seconded. Vote was taken:

Yes – 4                      No – 0                      Abstain - 0

Motion carried.

Chair Allen called for a short break.

The Commission reconvened.

***Chair Allen reconvened the hearing for SP 07-07***

Julia Hajduk stated that Provident was willing to grant a 120-day extension to the next Planning Commission meeting on May 13, 2008, for the purpose of continuing this hearing.

Chair Allen asked if public testimony would continue at the next meeting? Paul Elsner, City Attorney, stated that the record must remain open for 7 days which would allow for new evidence. Rebuttals could come in 7 days after that but no new evidence should come in during the rebuttal period.

Mr. Livingston requested clarification. Julia stated the Commission must grant the request of continuance or leave the record open. If at the next hearing the applicant asked for another continuance, the extension did not have to be granted.

Commissioner Lafayette added that historically, during the first 7 days, everyone submits items and then the record closes. Afterwards, it's the applicant that gets the next 7 days to rebut.

Julia asked if the applicant or appellant gets the 7 days to rebut?

Chair Allen clarified that it was the applicant since this was the first evidentiary hearing.

Heather added that the code stated that any participant may file a written request with the local government for an opportunity to respond to the new evidence. She added that we had to leave

the record open for 7 days and then any participant can request that you let them have a chance to respond, but you didn't automatically have to give anyone a chance to respond.

Mr. Elsner referred to and read statute 197.763.6A, 6B and 6C. Chair Allen added that our code was consistent with the statute.

Chair Allen reconvened the hearing for SP 07-07 and stated the written record will be held open for 7 days and that the following 7 days was for applicant rebuttal to new testimony. No new testimony will be allowed at the next hearing.

Mr. Monahan clarified that the record will be left open for 7 days for both the appellant and the applicant to submit additional information by 5:00 PM on April 29, 2008. He clarified that the second set of 7 days was for the applicant only to respond by 5:00 PM on May 6, 2008.

Chair Allen concurred and agreed that the Planning Commission would meet on May 13, 2008. He added that even though this was an appeal, it was also the first evidentiary hearing.

Chair Allen clarified for the record that the appellant had the right to request time to respond to new evidence submitted by any party.

Commissioners Walker and Lafayette preferred that any evidence submitted after the distribution of the Planning Commission packets be emailed or resent out in a second packet. Julia agreed.

Commissioner Lafayette moved that the Planning Commission continue SP 07-07 to a date certain of May 13, 2008, and that additional submittals will be based on the timeline previously outlined.

Commissioner Walker seconded. Vote was taken:

Yes – 4                      No – 0                      Abstain - 0

Chair Allen went back to the agenda items previously skipped:

2.     **Agenda Review** - The agenda was not reviewed as the Commission moved directly to new business.
3.     **Consent Agenda** – There were no consent agenda items for the Commission to consider.
4.     **Staff Announcements** – Staff announcements were made after the close of new business.

Julia briefed the Commissioners on the Brookman Road Concept Plan. She was planning on discussing this in more detail at the May 13<sup>th</sup> meeting. On May 20<sup>th</sup>, there will be a joint Planning Commission-City Council meeting. This will give Commissioners a month to prepare questions for the consultants. She will have the City web-site updated and she will send an email to interested parties with this information as well.

In June, an intern will begin a sign inventory to identify the extent of any non-conforming signs and also to evaluate the sign code.

Chair Allen asked Julia when the time period ended for signs to conform with the height restrictions? She responded that it was 5 years from when the sign ordinance was adopted in May of 2004.

Julia stated that Planning will begin work on Adams Avenue North concept plan. This was the area that was brought in for the Adams Avenue extension. Area 48 concept plan will be gearing up this summer.

Commissioner Lafayette was concerned about the Oregon Street crossing based on the current transportation plan and asked Julia if someone was looking at the issues connected to this project.

Julia confirmed that Tom Pessemier, Community Development Director, covered this issue at a previous Planning Commission meeting and explained the analysis of the Adams Avenue extension.

Commissioner Lafayette wanted to make sure that the transportation plan was valid. Julia responded that there could be modifications to the transportation system plan.

She continued that commercial/industrial design standards will be addressed by Heather at the next meeting.

Chair Allen wanted the issues of faux-stone and French doors added to the list of items to clean-up. Julia stated that she has identified some Old Town code clean-up items.

Julia announced that three applications were received for the current Planning Commission vacancy.

Julia relayed that Arbor Day was a nice event with the Boy Scouts and staff.

5. **City Council Comments** – No City Council comments were made.
6. **Community Comments** – No community comments were made.
7. **Old Business** – No old business was discussed.

Chair Allen adjourned the meeting at 9:15 PM.

End of minutes.