



Resolution No. 2002-025

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO
ENTER INTO THE SMITH FARMS ESTATES SETTLEMENT AGREEMENT**

WHEREAS, litigation involving utility easements through property known as Smith Farms Estates has been ongoing between the City and the owners of such property; and

WHEREAS, the parties have reached an agreement to settle such dispute; and

WHEREAS, the City Council finds that it is in the City's best interest to settle and conclude the matter;

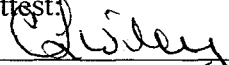
NOW, THEREFORE, THE CITY OF SHERWOOD RESOLVES AS FOLLOWS:

Section 1. The City Manager is authorized to sign the attached Settlement Agreement.

Section 2. The City Manager is authorized to take all necessary steps to effectuate the Settlement Agreement.

Duly passed by the City Council this 28th day of May 2002.

Attest:



C.L. Wiley, City Recorder



Mark Cottle, Mayor

SETTLEMENT AGREEMENT

PARTIES:

THE CITY OF SHERWOOD, an
Oregon municipal corporation (hereinafter "City")

RUTH M. TORRA, as Trustee of The Ruth
M. Torra 1995 Trust, under the Declaration and
Trust Agreement dated August 3, 1995, as to
an undivided interest and CAROLYN M. LESHER,
as to an undivided interest (hereinafter "Owner")

RECITALS:

A. Owner owns that certain real property known as Smith Farms Estates manufactured home park located in the City of Sherwood.

B. City has initiated condemnation proceedings in Washington County Circuit Court to acquire storm drain, sanitary sewer, and water lines and easements ("utility facilities") entitled:

City of Sherwood v. Laurence A. Leshner and Carolyn M. Leshner, Trustees U/D/T dated July 11, 1994 F/B/O the Leshner Family Trust; Ruth M. Torra, as trustee of the Ruth M. Torra 1995 Trust, under the Declaration and Trust Agreement dated August 3, 1995; Washington Mutual Bank, a Washington corporation; and U.S. Bank, N.A., Case No. C010740CV in the Circuit Court for the County of Washington

The legal descriptions for the utility facilities easements are attached as Exhibit "A" and by this reference incorporated herein.

C. Owner has denied that City has the right to condemn utility facilities, at least in the manner in which the City is currently proceeding.

D. City is interested in acquiring Owner's agreement with regard to the design/realignment of Meinecke Road and the extension of Smith Farms Blvd south to Meinecke Road. City is also interested in acquiring an easement for Cedar Creek Greenway Trail across Owner's property.

E. The parties wish to avoid the expense and uncertainty of litigation and unless specifically excepted wish to compromise and settle all matters as set forth herein.

NOW, THEREFORE based on the mutual promises and consideration herein, the parties agree as follows:

AGREEMENT:

1. City shall pay to Owner \$50,000.00 plus actual attorney fees incurred by Owner up to a maximum of \$9,500.00. Such payment shall be made as follows:

a. \$45,000.00 plus attorney fees shall be paid upon entry of the Stipulated Judgment referenced below and execution of this Agreement.

b. The remaining \$5,000.00 shall be paid to Owner upon the execution and recordation of the Greenway/Trail easement or within ninety (90) days after the date of this Agreement, whichever occurs first.

2. Owner conveys any and all interest they may have in the utility facilities referenced above. Owner understands and agrees that use of the utility facilities shall be in accordance with City rates, regulations and procedures for such easements and facilities. It is expressly understood and agreed that City has the sole discretion regarding the use of such utility facilities. Upon entry of the Stipulated Judgment and execution of this Agreement and payment of \$45,000.00 and attorney fees as set forth above, such utility facilities shall be public, and Owner shall have no right or ability to charge, collect, or impose any charges or fees against the City or any authorized user of the utility facilities. City shall be responsible for all maintenance on such public lines. City shall not be responsible for any individual service or lateral lines.

3. Owner shall convey a public easement to City for a recreational (Greenway) trail in the vicinity of Cedar Creek adjacent to the developed portion of Smith Farms Estates manufactured home park. Such public easement shall vary in width from a minimum of twelve feet (12') to a maximum of fifty feet (50') at the location of City's choosing, however no portion of the easement shall be closer than twenty-five feet (25') from any manufactured home or other structure currently sited at Smith Farms Estates manufactured home park. The trail shall be open to the general public. The exact description for the trail cannot be ascertained at this time because of seasonal flooding. Owner and City agree that the Greenway/Trail easement form shall be as set forth in Exhibit "B" attached and by this reference incorporated herein. Owner and City agree that they shall sign such easement when the legal description complying with the requirement set forth in this section is presented to them or within ten (10) days after. The execution and recordation of such

Greenway/Trail easement is a substantial and material part of this Settlement Agreement, and Owner agrees that specific performance may be granted to City should the easement not be signed and delivered as set forth herein.

City shall construct a minimum 8 foot wide connecting trail from Smith Farms Estates manufactured home park to the main trail. Such connecting trail shall be constructed in conjunction with the main Cedar Creek trail. The construction of the trails is not in the City's 2001-02 budget and City can make no guarantee as the timing of the construction of the main trail.

4. Owner hereby agrees to the realignment/design for the new Meinecke Road intersection and the Smith Blvd. extension to Meinecke Road as set forth in Exhibit "C" attached and by this reference incorporated herein. Such agreement by Owner includes the following:

a. Owner hereby withdraws and shall not renew any opposition to the Oregon Department of Transportation (ODOT) and City plans and shall allow surveyors, engineers and other technical staff, whether direct employees of ODOT and City or otherwise to gather survey and soil data, and do all other work reasonably necessary either directly or indirectly for the road project as defined in Exhibit "C" attached. Such work may include utility construction and/or relocation not necessarily shown on Exhibit "C".

b. City shall build a 6-foot high masonry wall on the west side of the manufactured home park to shelter the park from the new road. This wall shall have an entry for emergency vehicles only with a metal or wood gate. Owner shall be responsible for maintenance of the masonry wall and gate.

c. City agrees that Owner shall be entitled to just compensation for any real and/or personal property to be taken as part of the Meinecke Road project in the manner allowed by law. However, Owner waives the right, if any, to compensation for loss and/or change of access to Highway 99. In addition, Owner hereby agrees not to object to the right and authority of City and/or ODOT to take property with regard to the Meinecke Road project as defined in Exhibit "C" attached. This Agreement shall be a defense and a bar to any claim by Owner with regard to the Highway 99 access issue and the authority to take as stated herein.

5. Owner hereby releases and waives any and all claims against City and any authorized users of the utility facilities. Such release and waiver shall include, but is not limited to any claims for trespass, direct or indirect use/connection of the utility facilities or reimbursement; the understanding of the parties being that except for the just compensation

for the Meinecke Road project to be determined pursuant to Section 4(c) above, this Agreement resolves and settles all matters between the parties, known or unknown, stated or unstated as of the date of this Agreement.

6. Owner understands and agrees that City must receive good and marketable title to the utility facilities and Greenway/Trail easements referenced herein. Owner warrants good and marketable title to such easements. If for any reason, good and marketable title cannot be delivered to City within thirty (30) days of the date of this Agreement, this Agreement shall automatically be null and void and of no further binding effect.

7. This Agreement contains the entire agreement of the parties and supersedes all prior written and oral negotiations and agreements with respect to the property. Any modifications, changes, additions, or deletions to this Agreement must be approved by Owner and City, in writing.

8. If an action is instituted to enforce any term of this Agreement, the prevailing party shall recover from the losing party reasonable attorney fees incurred in such action as set by the trial court and, in the event of appeal, as set by the appellate courts.

CITY OF SHERWOOD, an Oregon
municipal corporation

THE RUTH M. TORRA 1995 TRUST,
under the Declaration and Trust
Agreement dated August 3, 1995

By: _____
Ross Schultz, City Manager

By: _____
Ruth M. Torra, Trustee

Dated: _____

Dated: _____

Carolyn M. Leshner

Dated: _____



WESTLAKE

CONSULTANTS INC.

ENGINEERING SURVEYING PLANNING

Phone: 503 684-0652

Fax: 503 624-0157

City of Sherwood
Smith Farms Estates – Sewer Easement
Project No. 1333-04
December 27, 2000

PROPERTY DESCRIPTION

Two strips of land situate in the southeast one-quarter of Section 30, and the northeast one-quarter of Section 31, both T. 2 S., R. 1 W., Willamette Meridian, City of Sherwood, Washington County, Oregon, being those portions of that property conveyed to Laurence A. Leshner and Carolyn M. Leshner, Trustees U/D/T dated July 11, 1994, F/B/O the Leshner Family Trust, and Ruth M. Torra, as Trustee, by Document No. 98041524 Washington County Deed Records, being 15.00-foot wide and lying 7.50-foot each side of the centerlines described as follows:

Beginning at a point on the most westerly line of said property, also being the most westerly line of Parcel 3, Partition Plat 1992-013, Washington County Records, said point bears North $00^{\circ}39'41''$ West, 7.50 feet from the southwest corner thereof;

thence parallel with the south line of said Parcel 3, North $89^{\circ}34'20''$ East, 48.52 feet to an angle point;

thence, North $22^{\circ}13'07''$ East, 102.01 feet to an angle point, said point lying on a line parallel with and 7.50 feet southeasterly of the most northerly westerly line of said Parcel 3;

thence along said parallel line, North $34^{\circ}34'05''$ East, 236.02 feet to an angle point, said point lying on a line parallel with and 7.50 feet south of the north line of said Parcel 3;

thence along said parallel line, North $89^{\circ}34'20''$ East, 282.45 feet to an angle point, said point lying on a line parallel with and 7.50 feet southeasterly of the most westerly northwesterly line of that property described as "Parcel 1" in said Document No. 98041524;

thence along said parallel line, North $49^{\circ}18'20''$ East, 142.42 feet to an angle point;

thence along the existing facilities, the following seven courses:

North $83^{\circ}08'15''$ East, 231.16 feet;

Exhibit A page 1 of 8

Property Description
City of Sherwood
Smith Farms Estates - Sewer Easement
Project No. 1333-04
December 27, 2000
Page 2

North 03°41'31" West, 56.60 feet;

North 50°20'27" East, 280.52 feet;

North 55°57'12" East, 99.88 feet;

North 15°10'29" West, 38.38 feet;

North 48°37'17" East, 199.88 feet;

and North 48°28'20" East, 56.36 feet to an existing 20-foot wide perpetual easement to the Unified Sewerage Agency, and the end of this centerline description.

AND, Beginning at a point on the south line of that property described as "Parcel I" in said Document No. 98041524, also being a point on the north line of Tract "A", Robin's Run subdivision, said point bears North 89°34'20" East, 585.14 feet from the northeast corner of Parcel 3, Partition Plat 1992-013;

thence along the existing facilities, the following five courses:

North 00°48'20" West, 88.63 feet;

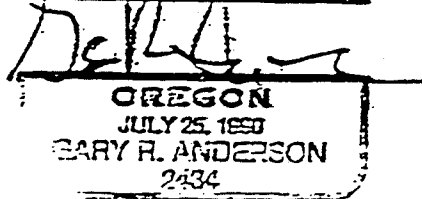
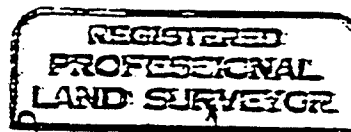
North 76°15'18" East, 106.36 feet;

North 06°53'00" East, 146.32 feet;

North 60°53'59" East, 88.06 feet;

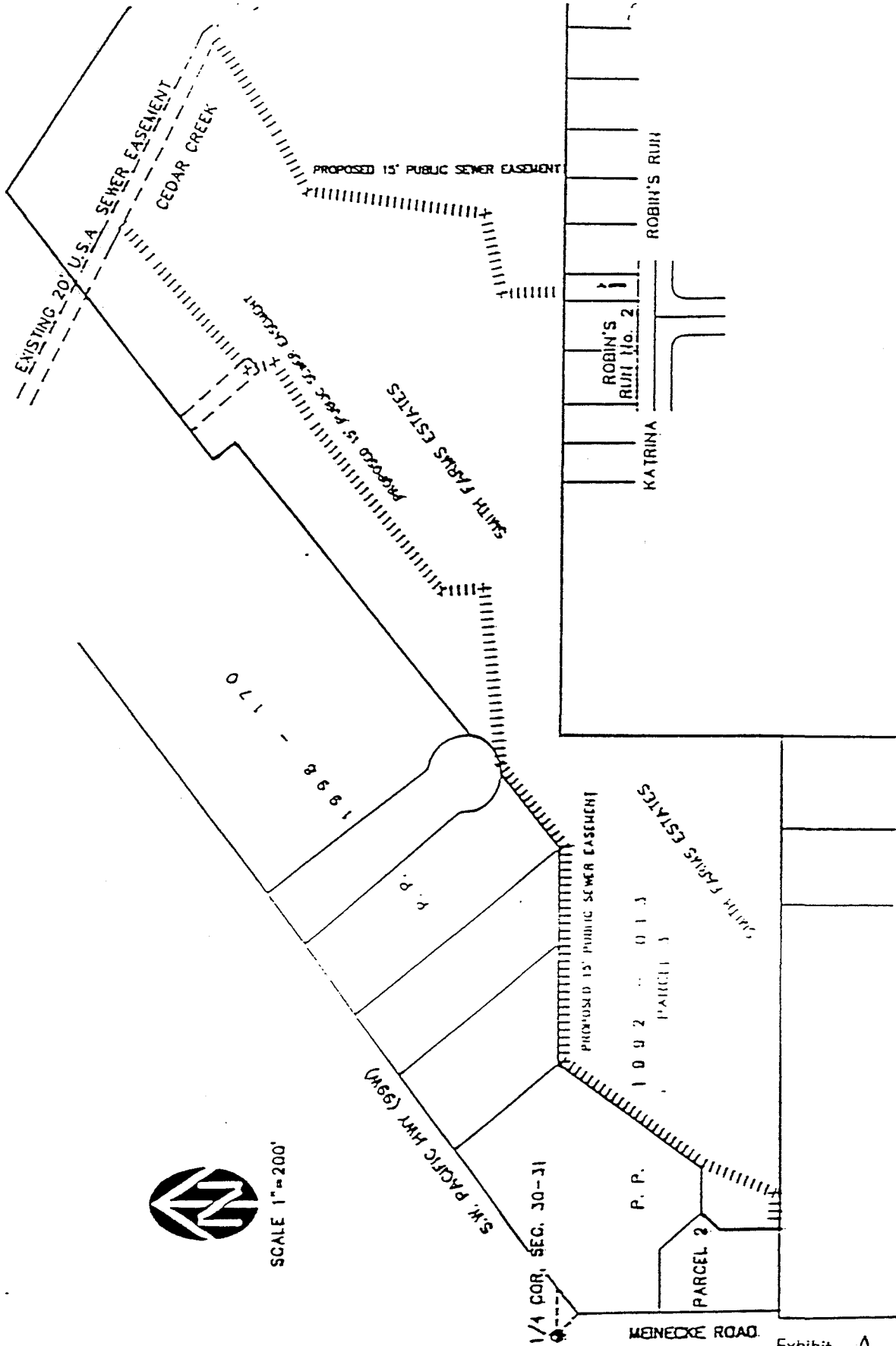
and North 56°28'00" East, 146.31 feet to an existing 20-foot wide perpetual easement to the Unified Sewerage Agency, and the end of this centerline description.

The total area contained in both strips being 36,750 square feet, more or less.



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Revised 12/31/01



SCALE 1"=200'

Exhibit A page 3 of 5

EASEMENT EXHIBIT

SE 1/4 SEC. 30, & NE 1/4 SEC. 31,
T 2 S, R 1 W, WM
CITY OF SHERWOOD, OREGON

DATE	12/27/00
DRAWN BY	GRA
CHECKED BY	
REVISIONS	
JOB NO.	1333-04

WESTLAKE
CONSULTANTS INC.

ENGINEERING ♦ SURVEYING ♦ PLANNING

PACIFIC CORPORATE CENTER
15115 S.W. SEQUOIA PARKWAY, SUITE 150 (503) 884-7622
TIGARD, OREGON 97224 FAX (503) 824-3157



WESTLAKE

CONSULTANTS INC.

ENGINEERING SURVEYING PLANNING

Phone: 503 684-0657

Fax: 503 624-0157

City of Sherwood
Smith Farms Estates – Water Easement
Project No. 1333-04
December 27, 2000

PROPERTY DESCRIPTION

A strip of land situate in the southeast one-quarter of Section 30, and the northeast one-quarter of Section 31, both T. 2 S., R. 1 W., Willamette Meridian, City of Sherwood, Washington County, Oregon, being that portion of the property conveyed to Laurence A. Leshner and Carolyn M. Leshner, Trustees U/D/T dated July 11, 1994, F/B/O the Leshner Family Trust, and Ruth M. Torra as Trustee, by Document No. 98041524, Washington County Deed Records, being 10.00-foot wide and lying 5.00-foot each side of the centerline described as follows:

Beginning at a point on the most westerly line of said property, also being the most westerly line of Parcel 3, Partition Plat 1992-013, Washington County Records, said point bears North $00^{\circ}39'41''$ West, 20.00 feet from the southwest corner thereof;

thence along the existing facilities, the following eleven courses:

North $89^{\circ}34'20''$ East, 46.37 feet;

North $56^{\circ}54'27''$ East, 22.46 feet;

North $25^{\circ}41'39''$ East, 67.97 feet;

North $62^{\circ}28'00''$ East, 68.93 feet;

North $89^{\circ}34'20''$ East, 387.28 feet;

North $00^{\circ}00'47''$ West, 169.86 feet;

South $88^{\circ}18'48''$ East, 110.30 feet;

North $07^{\circ}13'06''$ East, 96.51 feet;

EXHIBIT A 4 3

Property Description
City of Sherwood
Smith Farms Estates - Water Easement
Project No. 1333-04
December 27, 2000
Page 2

North 02°01'03" West, 19.20 feet;

North 04°39'56" West, 8.64 feet;

and North 43°54'19" West, 21.51 feet to the northwesterly line of said property, also being the southeasterly line of that property dedicated to the City of Sherwood by Document No. 82020540, Washington County Deed Records, and the end of this centerline description.

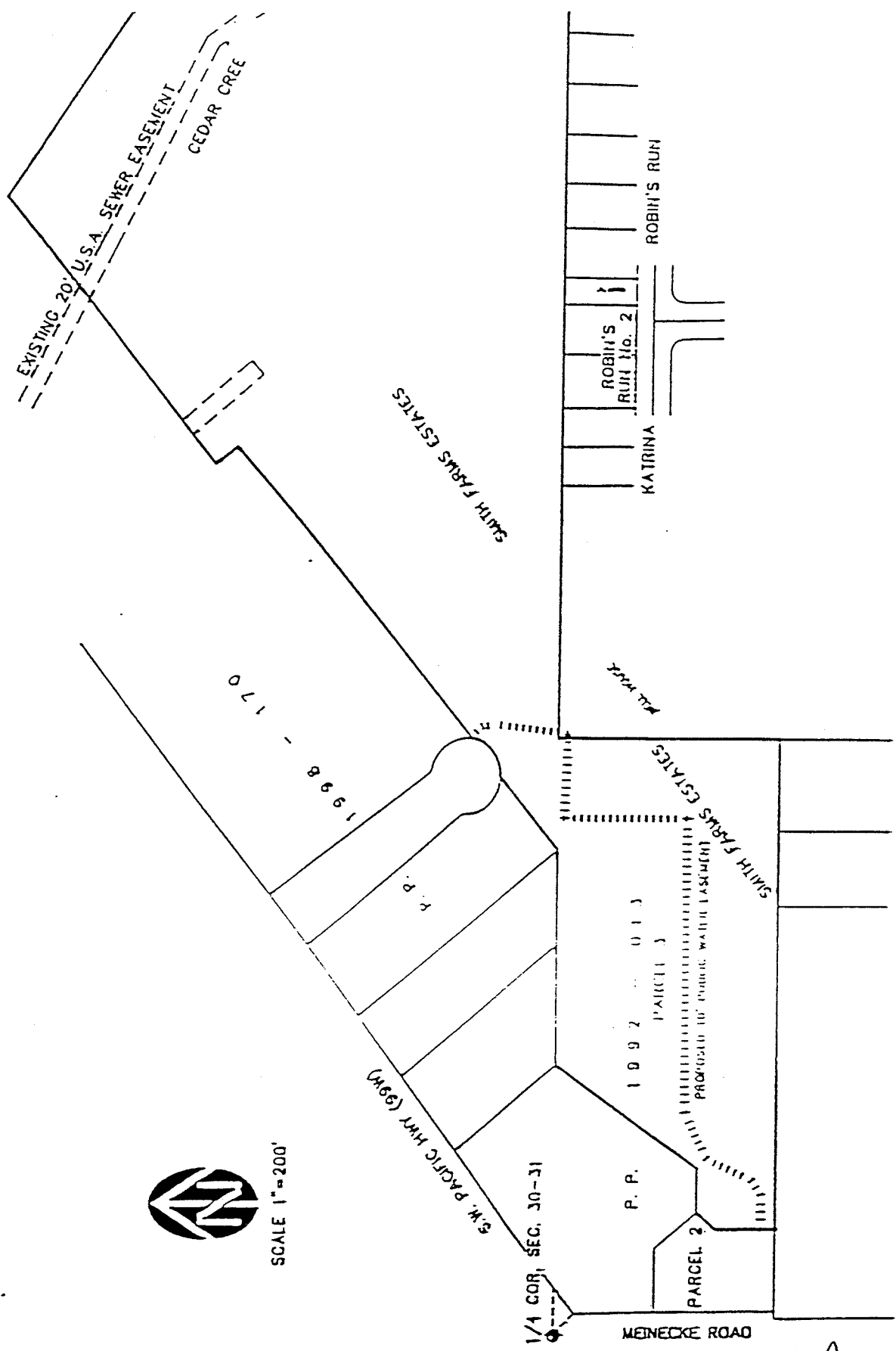
The area contained being 10,030 square feet, more or less.

REGISTERED
PROFESSIONAL
LAND SURVEYOR

[Signature]
OREGON
JULY 25, 1990
GARY R. ANDERSON
2492

[Signature] 12/31/01

|||



SCALE 1"=200'

Exhibit A page 6 of 5

EASEMENT EXHIBIT

SE 1/4 SEC. 30, & NE 1/4 SEC. 31,
T 2 S, R 1 W, WM
CITY OF SHERWOOD, OREGON

DATE	12/27/00
DRAWN BY	GRA
CHECKED BY	
REVISIONS	
JOB NO.	1333-04

WESTLAKE
CONSULTANTS INC.

ENGINEERING ♦ SURVEYING ♦ PLANNING

PACIFIC CORPORATE CENTER
15115 S.W. SEQUOIA PARKWAY, SUITE 150 (503) 524-7222
TIGARD, OREGON 97224 FAX (503) 524-7122



WESTLAKE

CONSULTANTS INC.

ENGINEERING SURVEYING PLANNING

Phone: 503 684-0652

Fax: 503 624-0157

City of Sherwood
Smith Farms Estates – Storm Drainage Easement
Project No. 1333-04
December 27, 2000

PROPERTY DESCRIPTION

A strip of land situate in the southeast one-quarter of Section 30, T. 2 S., R. 1 W., Willamette Meridian, City of Sherwood, Washington County, Oregon, being that portion of the property conveyed to Laurence A. Leshner and Carolyn M. Leshner, Trustees U/D/T dated July 11, 1994, F/B/O the Leshner Family Trust, and Ruth M. Torra, as Trustee, by Document No. 98041524, Washington County Deed Records, being 15.00-foot wide and lying 7.50-foot each side of the centerline described as follows:

Beginning at a point on the south line of that property described as "Parcel I" in said Document No. 98041524, also being a point on the north line of Tract "A", Robin's Run subdivision, said point bears North 89°34'20" East, 578.81 feet from the northeast corner of Parcel 3, Partition Plat 1992-013;

thence along the existing facilities, the following four courses:

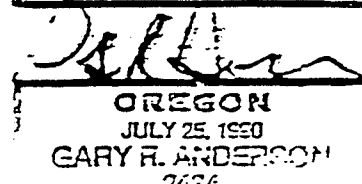
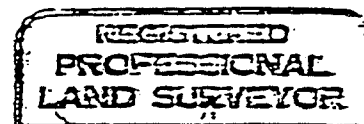
North 00°57'40" West, 131.61 feet;

North 01°47'59" East, 157.25 feet;

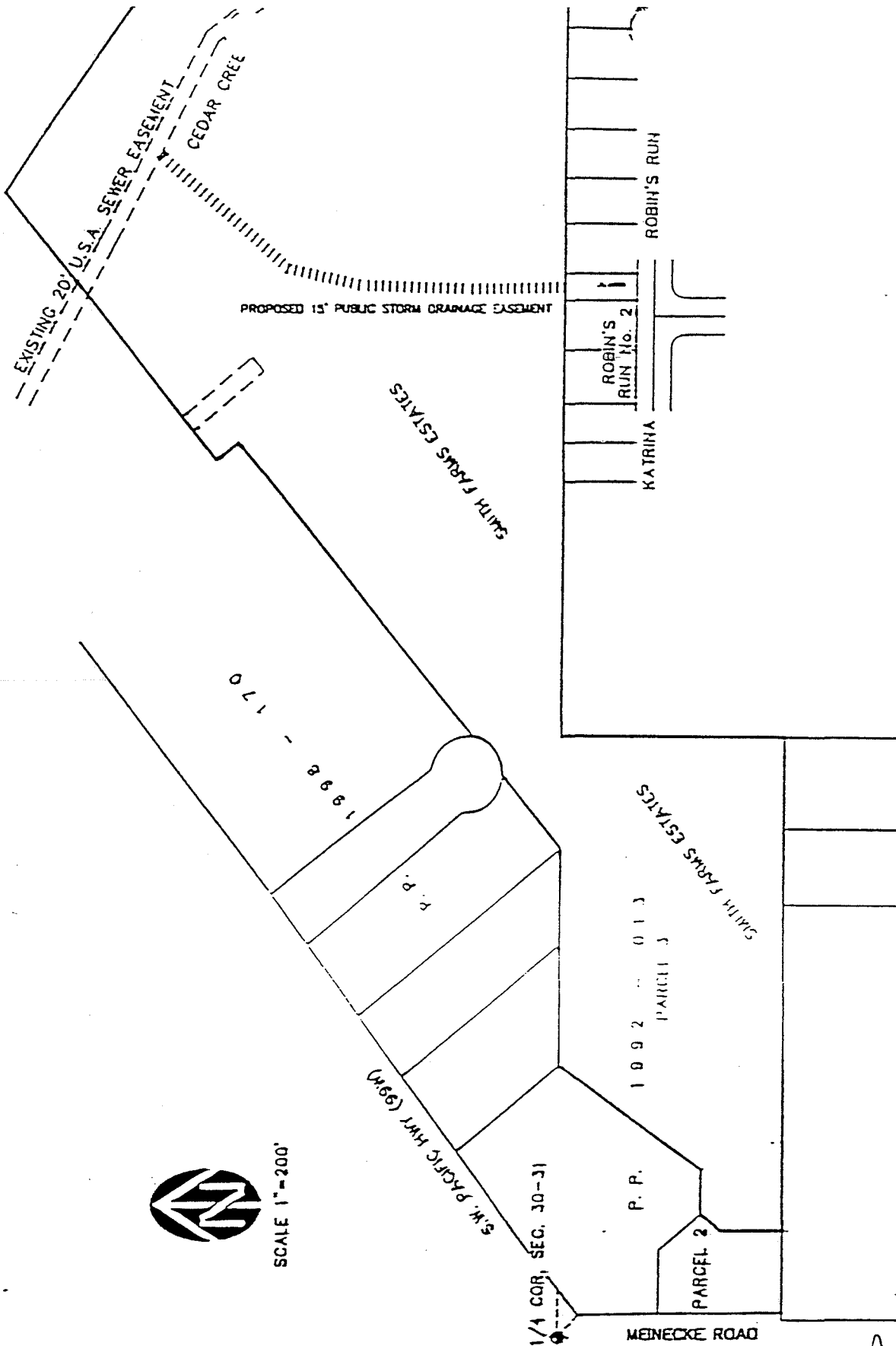
North 12°19'02" East, 101.90 feet;

and North 41°29'58" East, 228.16 feet to Cedar Creek, and the end of this centerline description.

The area contained being 9,285 square feet, more or less.



Revised 12/31/01 Exhibit A page 1 of 2



SCALE 1"=200'

Exhibit A page 8

EASEMENT EXHIBIT

SE 1/4 SEC. 30, & NE 1/4 SEC. 31,
T 2 S, R 1 W, WM
CITY OF SHERWOOD, OREGON

DATE	12/27/00
DRAWN BY	GRA
CHECKED BY	
REVISIONS	
JOB NO.	1333-04

WESTLAKE
CONSULTANTS INC.

ENGINEERING ♦ SURVEYING ♦ PLANNING

PACIFIC CORPORATE CENTER
15115 S.W. SEQUOIA PARKWAY, SUITE 150 (503) 834-2652
TIGARD, OREGON 97224 FAX (503) 834-3157

After Recording, Return to:

Until a Change is Requested,

Send all Tax Statements to:

E. Shannon Johnson
Lien & Johnson
4855 River Road N.
Keizer, OR 97303

NO CHANGE

EXCLUSIVE GREENWAY/TRAIL EASEMENT

THIS EASEMENT AGREEMENT is made this _____ day of _____, 2002, by and between RUTH M. TORRA, as Trustee of The Ruth M. Torra 1995 Trust, under the Declaration and Trust Agreement dated August 3, 1995, as to an undivided interest and CAROLYN M. LESHER, as to an undivided interest, hereinafter referred to as the Grantor, and the City of Sherwood, an Oregon municipal corporation, hereinafter referred to as the Grantee, for the purpose of establishing a greenway/trail easement for general use by the public.

RECITALS:

A. Grantor is the owner of the real property which is located in Washington County as described in Exhibit "A" attached and by this reference incorporated herein.

B. Grantee wishes to acquire an easement for the benefit of the general public for pedestrian and recreational purposes across a portion of Grantor's property adjacent to and/or near Cedar Creek.

C. Grantor wishes to grant such easement for general public use subject to the conditions and restrictions set forth herein.

FOR AND IN CONSIDERATION OF the mutual promises, covenants, and agreements contained herein, the parties do hereby agree as follows:

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1. Grantor does hereby convey and warrant unto the Grantee an exclusive easement, for general and recreational use by the public over and across the following described property:

See Exhibit "B" attached, which by this reference is incorporated herein.

2. Grantor hereby acknowledges fair and adequate consideration for the grant of this Easement as a condition of that certain Settlement Agreement dated _____.

3. Grantee and the general public shall have all rights of general and recreational use over and across said property. Grantee shall have the right to inspect, maintain and replace any walkway improvements, lighting and appurtenant fixtures on and about the easement area.

4. Grantee agrees to return the area to its previous state as near as reasonably possible considering pavement, walkway and/or lighting installation.

5. The easement shall be perpetual and may be terminated only by Grantee expressly in writing. The easement shall not be terminated by failure of purpose, change of circumstances, abandonment, nonuse, or misuse accept as and to the extent otherwise provided in this document.

6. This easement agreement shall bind and inure to the benefit of, as the circumstances may require, not only the immediate parties hereto, but also their respective heirs, executors, administrators, and successors in interest as well.

7. In the event of a dispute over this easement agreement, the prevailing party shall be entitled to reimbursement of all reasonable attorney fees, costs, and disbursements incurred in the dispute before litigation, at trial and on appeal, if any.

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8. In construing this agreement and where the context so requires, words in the singular include the plural; the masculine includes the feminine and the neuter; and generally, all changes shall be made or implied so that this instrument shall apply both to individuals and to corporations.

GRANTEE:

GRANTOR:

CITY OF SHERWOOD, an Oregon
municipal corporation

RUTH M. TORRA 1995 TRUST,
dated August 3, 1995

By: _____
Ross Schultz, City Manager

By: _____
Ruth M. Torra

Dated: _____

Dated: _____

Carolyn M. Leshner

Dated: _____

STATE OF OREGON)
) ss.
County of Washington)

SUBSCRIBED AND SWORN to before me this _____ day of _____, 2002, by Ross Schultz, City Manager of the City of Sherwood.

NOTARY PUBLIC FOR OREGON
My Commission Expires: _____

STATE OF _____)
) ss.
County of _____)

SUBSCRIBED AND SWORN to before me this _____ day of _____, 2002, by Carolyn M. Lesher.

NOTARY PUBLIC FOR _____
My Commission Expires: _____

STATE OF _____)
) ss.
County of _____)

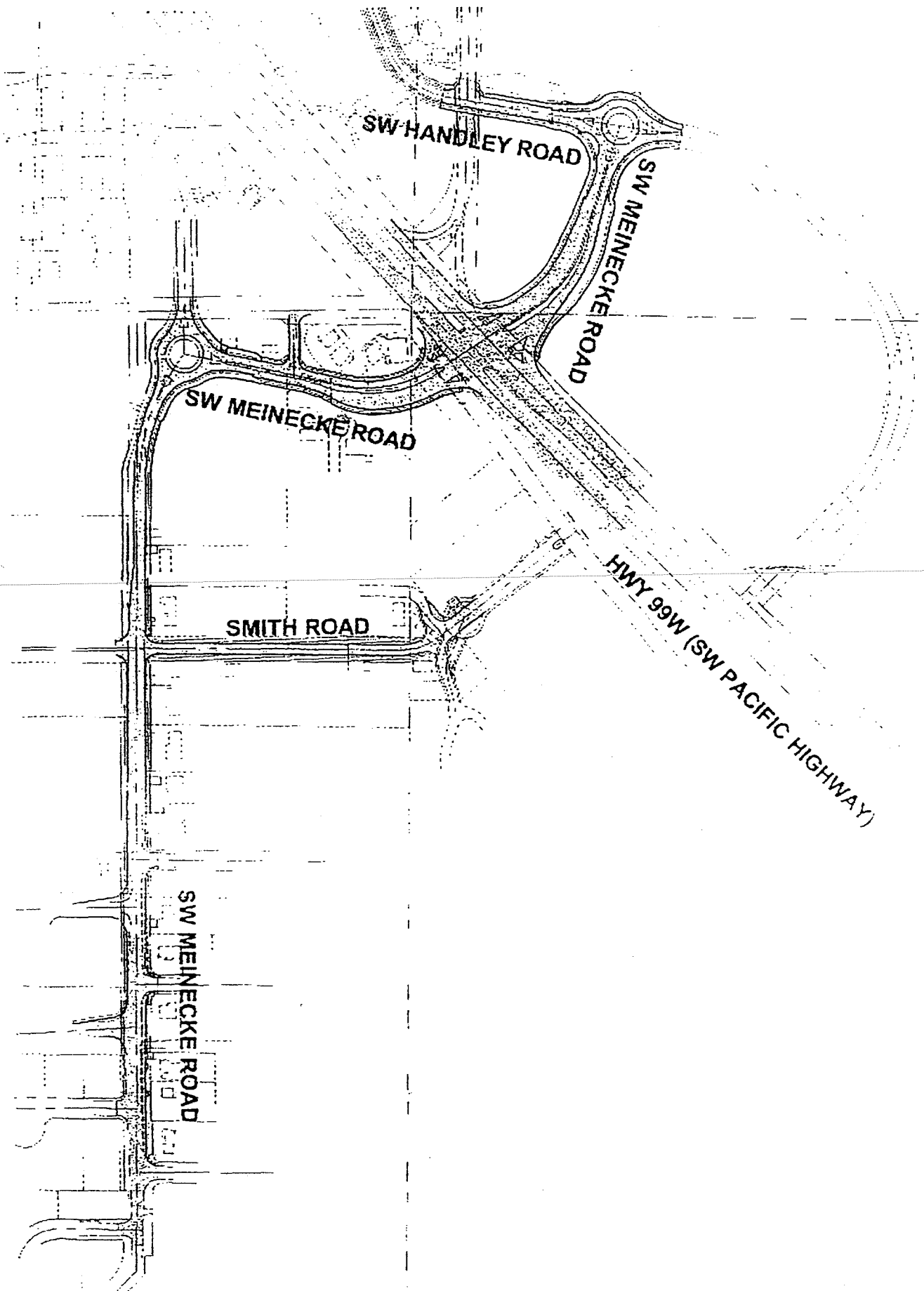
SUBSCRIBED AND SWORN to before me this _____ day of _____, 2002, by Ruth M. Torra, Trustee of the Ruth M. Torra 1995 Trust dated August 3, 1995

NOTARY PUBLIC FOR _____
My Commission Expires: _____

EXHIBITS "A" AND "B"
TO EXCLUSIVE GREENWAY/TRAIL EASEMENT

DRAFT

Exhibits to the Exclusive Greenway/Trail Easement will be attached when document is finalized.



SW HANDLEY ROAD

SW MEINECKE ROAD

SW MEINECKE ROAD

SMITH ROAD

HWY 99W (SW PACIFIC HIGHWAY)

SW MEINECKE ROAD

80%