



PLANNING COMMISSION AGENDA
August 13, 2015 7:00 PM
NEWBERG PUBLIC SAFETY BUILDING
401 EAST THIRD STREET

I. CALL MEETING TO ORDER

II. ROLL CALL

III. PUBLIC COMMENTS (5-minute maximum per person – for items not on the agenda)

IV. CONSENT CALENDAR (items are considered routine and are not discussed unless requested by the commissioners)

1. Approval of June 11 and June 25, 2015 Planning Commission Meeting Minutes

V. QUASI-JUDICIAL PUBLIC HEARING (complete registration form to give testimony - 5 minute maximum per person except for principals, unless otherwise set by majority motion of the Planning Commission). No new public hearings after 10 p.m. except by majority vote of the Planning Commissioners.

1. APPLICANT: Leonard Johnson (contact – Mart Storm) (continued from 6/25/15)

REQUEST: Highlands at Hess Creek phases 4 & 5 - Subdivision tentative plan approval.

LOCATION: South end of Kennedy Drive and Corrine Drive

TAX LOT: 3220-1400

FILE NO.: SUB3-15-001

ORDER NO.: 2015-18

CRITERIA: Newberg Development Code Section 15.235.060(A)

2. APPLICANT: ProLand LLC (representing Verizon Wireless)

REQUEST: Appealed to Planning Commission – Design review/variance approval for a 70-foot tall cellular communications tower, with reduced setback requirement.

LOCATION: 2401 E. Hancock Street

TAX LOT: 3220AB-202

FILE NO.: DR2-15-003/VAR-15-001

ORDER NO.: 2015-19

CRITERIA: Newberg Development Code Section 15.220.050(B), 15.445.190, 15.215.040

VI. LEGISLATIVE PUBLIC HEARINGS (complete registration form to give testimony - 5 minute maximum per person, unless otherwise set by majority motion of the Planning Commission)

1. DEVELOPMENT CODE AMENDMENT: Temporary and Portable signs

The proposal:

1. Adds a new section for a temporary sign permit program that will allow additional temporary and portable signs on private property in the C-2, C3, and Institutional zones.
2. Adds new language to address the use of pennants, streamers, and inflatable objects.
3. Adds new language to clarify the definition of a flag display and flag use on holidays.
4. Modifies existing sign code language to clarify the intent of the code.
5. Allows additional signs in the public right-of-way.

FILE NO.: DCA-14-001

RESOLUTION NO.: 2014-308

VII. ITEMS FROM STAFF

1. Update on Council items
2. Other reports, letters or correspondence
3. Next Planning Commission meeting: September 10, 2015

VIII. ITEMS FROM COMMISSIONERS

IX. ADJOURNMENT

FOR QUESTIONS PLEASE STOP BY, OR CALL 503-537-1240, COMMUNITY DEVELOPMENT DEPT. – P.O. BOX 970 – 414 E. FIRST STREET

ACCOMMODATION OF PHYSICAL IMPAIRMENTS: *In order to accommodate persons with physical impairments, please notify the City Recorder's Office of any special physical or language accommodations you may need as far in advance of the meeting as possible as and no later than 48 business hours prior to the meeting. To request these arrangements, please contact the City Recorder at (503) 537-1283. For TTY services please dial 711.*

NEWBERG PLANNING COMMISSION MINUTES
June 11, 2015, 7:00 PM
PUBLIC SAFETY BUILDING (401 E. THIRD STREET)

Chair Gary Bliss called the meeting to order at 7:00 p.m.

ROLL CALL

Members Present:	Gary Bliss, Chair	Philip Smith	Jason Dale
	Matthew Fortner	Allyn Edwards	Cathy Stuhr
		Luis Saavedra/student	

Members Absent: Art Smith excused

Staff Present: Steve Olson, Associate Planner
Doug Rux, Community Development Director
Bobbie Morgan, Planning Secretary
Kaaren Hoffman, City Engineer

PUBLIC COMMENTS: None.

CONSENT CALENDAR: PC Philip Smith said there was an error in last month's meeting minutes on page 3. The comments he made were attributed to Commissioner Art Smith and should be corrected to his name.

MOTION: Commissioner Philip Smith moved to adopt the meeting minutes for May 14, 2015, as amended. Seconded by Commissioner Cathy Stuhr and passed 6-0.

QUASI-JUDICIAL HEARING:

APPLICANT: DJ2 Holdings, LLC

REQUEST: Comprehensive Plan map amendment from LDR (low density residential) to HDR (high density residential), with corresponding Zoning map amendment from R-1 to R-3.

LOCATION: 1317 Villa Road

TAX LOT: 3217BC-800 **FILE NO.:** CPA-15-001/ZMA3-15-001

RESOLUTION NO.: 2015-307

CRITERIA: Newberg Development Code 15.302.030(A) (3), applicable Comprehensive Plan goals and policies

Chair Gary Bliss reopened the hearing at 7:05 p.m. He asked if any Commissioner had ex parte contact to declare since the last hearing. There was none.

The public testimony portion of the hearing was closed at the meeting on May 14, 2015, and the hearing would be continued at the point of deliberation.

Final Comments from Staff and recommendation:

AP Steve Olson commented the resolution was updated with the current date, but the contents were the same. Staff recommended adoption of the resolution which included the findings that stated the proposal met the Development Code criteria and applicable Comprehensive Plan Goals and Policies.

PC Cathy Stuhr asked for clarification on page 466 & 467 of the packet regarding the State Transportation Planning Rule. She questioned if the application met Criteria C as it worsened the performance of an intersection, but the report said it would not significantly affect the transportation system.

AP Steve Olson replied ODOT's analysis said it was at acceptable levels and did not significantly affect the transportation system. They were relying on ODOT's interpretation and analysis, and agreed with it.

Chair Gary Bliss asked about the City's project on Villa Road. The design of the half street in front of this project might put a height differential in the southbound and northbound lanes. Was there adequate room for the road and sidewalks?

CE Kaaren Hoffman explained construction would begin in 2016. The design was not done yet to know what the differential would be, or how it would be addressed. There would be bicycle and pedestrian connectivity, but she did not know if they would be on both sides of the road or only one side.

Planning Commission Deliberation including discussion of criteria with findings of fact:

MOTION: Commissioner Philip Smith moved to adopt Resolution No. 2015-307 as prepared by staff. Commissioner Allyn Edwards seconded the motion.

PC Phillip Smith said the proposal was to rezone from R-1 to R-3. Improvements were needed and the developer would have to pay for the improvements. There was a need for R-3 land. The location was good and fit the City's adopted plan to spread R-3 through the City and not concentrate it in one area. The owner of the land wanted to develop this way to meet the City's needs. It did bring change to the neighborhood and the Code protected what could be put on the property. The neighbors were concerned that R-3 would be too much, but design review would get into the details which was not this current stage. There was also concern about safety, especially regarding traffic and pedestrian access on Villa Road. The main complaint was due to the train trestle, hill, and curve on Villa Road and testimony stated it presented an unsolvable problem. He did not agree that it was unsolvable, as good engineering could significantly improve the road. He especially wanted to see a street design that addressed pedestrian, vehicle, and bicycle safety. He planned to vote in favor of the zone change.

PC Cathy Stuhr agreed traffic was the most important issue and there was a need for higher density land. They heard loud and clear that traffic was already a bad situation and this project would likely worsen it. It would also make it worse around George Fox. She questioned if the application met the State Transportation Planning Rule and she thought it was possible to interpret that it did not. She was concerned about the issues of parking and speeding that to date had not been solved. She was also concerned that there was adequate infrastructure to serve the site. It was not efficient to put the highest possible density in an area that already had significant pedestrian and bike traffic issues and unique characteristics. There were significant challenges to remedy the existing conflicts that would be exacerbated by this project.

PC Allyn Edwards commented it had been determined that there was a need for high density housing. The type of housing could be controlled through the design review process. The type of housing could also reduce the concerns of traffic, such as condominiums or permanent housing that catered to families. He asked if the sidewalks could be built around the trestle rather than through it.

City Engineer Kaaren Hoffman answered it was a possibility. The design would be completed in the fall/winter of 2015.

PC Allyn Edwards thought there was a need and it was a matter of how the design review would be presented.

Student Luis Saavedra said it all depended on how it was designed.

PC Matthew Fortner was most concerned about safety. If they disregarded the warnings, it could be a problem in the future. It was originally zoned R-1 for a reason. There were other properties in the City that could be converted to R-3.

PC Phillip Smith discussed the definition of “significantly affect” and agreed with Commissioner Stuhr that this project significantly affected the transportation system and needed to be mitigated. The real problem with Villa Road was not this project but the larger development that would happen in the future on the north side of Mountain View. He thought it met the definition and they could ask for mitigation. He did not think it could be denied on that basis since it met City goals, served City interest, and was what the owner of the property wanted to do.

Chair Gary Bliss had looked over the criteria for the zone change. There was a shortage of high density residential. It provided diversity in housing. Public services could reasonably be made available. The sewer issue could be addressed during design review. The City was going to make improvements to Villa Road. Approving the rezoning was not approving the development. Conditions could be made on the development if needed. He thought it was in compliance with the State Transportation Planning Rule, it met the objective of the City’s Comprehensive Plan and Development Code, there was a public need, it was adjacent to a major collector, and it provided an adequate supply of rental properties. The City and developer needed to work together to come up with a plan where it could be done concurrently. He was ready to vote in favor of the motion.

PC Cathy Stuhr asked if they were comfortable with the findings to support the decision. There had been many comments made that the future road plan was going to address all of the concerns that had been raised.

AP Steve Olson said they did not have any more information to add, as the Villa road improvement design was not complete.

Chair Gary Bliss said in order to make a right in, right out work on Villa Road they needed a median as people ignored signs. There needed to be a barrier.

PC Jason Dale thought whether this was developed as R-1 or R-3, the roadway would be designed the same. The only difference was the volume of the traffic based upon the extra residents, but he did not think it was a significant difference. He thought it should be approved.

Motion passed 5-1-1 with PC Cathy Stuhr opposed and PC Art Smith absent.
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AP Steve Olson said the next step in the process was sending the recommendation to the City Council which was scheduled for July 6.

ITEMS FROM STAFF:

CD Doug Rux reviewed the staff report he presented to the Council at the last Council meeting and stated the Affordable Housing Commission had developed a set of recommendations on the Affordable Housing Trust Fund that would go to the Council on June 15. Staff was continuing to have discussions regarding the Crestview Crossing project.

ITEMS FROM COMMISSIONERS:

PC Allyn Edwards commented on staff's proactive role with the community.

CD Doug Rux said he, the City Manager, and staff were discussing meeting with people who had done developments in Newberg in the past to get their perspective for what the issues were and what needed to be adjusted. They were also looking at improving internal processes and staff reports to make things more user friendly and transparent.

PC Allyn Edwards thanked him for the efforts being made.

Chair Gary Bliss adjourned the meeting at 7:55 p.m.

Approved by the Newberg Planning Commission this ____ day of _____, 2015.

Bobbie Morgan, Planning Secretary

Gary Bliss, Planning Commission Chair

NEWBERG PLANNING COMMISSION MINUTES
June 25, 2015, 7:00 PM
PUBLIC SAFETY BUILDING (401 E. THIRD STREET)

Chair Gary Bliss called the meeting to order at 7:00 p.m.

ROLL CALL

Members Present:	Gary Bliss, Chair	Jason Dale
	Allyn Edwards	Cathy Stuhr
	Art Smith	

Members Absent: Luis Saavedra/student
Philip Smith
Matthew Fortner

Staff Present: Steve Olson, Associate Planner
Doug Rux, Community Development Director
Bobbie Morgan, Planning Secretary
Jason Wuertz, Engineering
Jacque Betz, City Manager

PUBLIC COMMENTS:

None

CONSENT CALENDAR:

None

QUASI-JUDICIAL HEARING:

APPLICANT: Leonard Johnson (contact – Mart Storm)

Request: Highlands at Hess Creek Phases 4 & 5 – subdivision tentative plan approval.

Location: South end of Kennedy Drive and Corrine Drive

Tax Lot: 3220-1400

File Number: SUB3-15-001

Criteria: Newberg Development Code Section 15.235.060(A)

Chair Gary Bliss opened the hearing at 7:05 p.m. and read the quasi-judicial hearing process. He asked if there were any abstentions, bias, or ex parte contacts to declare. There were none.

Staff Report: AP Steve Olson presented the staff report. This application was for a 27 lot subdivision for single family homes. It was located at the south end of Kennedy Drive and Corrine Drive and was zoned R-2. He showed pictures of the site, including the stream corridor and surrounding properties. Access to the site would be from Kennedy and Corrine Drives and the whole neighborhood was accessed from 1st Street and Highway 219. Some safety improvements were planned for Highway 219 and 2nd and a traffic signal at Highway 219 and Everest. The improvements would be completed by ODOT and the City as part of the TSP. For utilities, there was a water line that would be extended through Kennedy and a storm water detention pond constructed in an earlier phase would be used for this development. There would also be street improvements made during Phase 4. There was a 40 foot wide tract to provide access and a sanitary sewer easement to the south. The stream corridor was a zoning overlay. He reviewed the criteria for a subdivision. The issues to be addressed for the stream corridor tract were the plan had to show who would own the property, how it would

have access, and clarify it was a tract. The 40 foot wide tract with an access easement to the south would provide access to the CPRD property. Newberg did not allow private streets, so the two options were to either extend the public street to the south or to extend a driveway. Per Code, driveways could only serve three lots and they did not know how the property would be developed in the future. One criteria of the subdivision was it could not adversely affect the development of adjoining land. The access easement did put a constraint on it. The only way it would not put a constraint was putting in a street stub. The condition of approval was to replace the tract with a public right-of-way and a street stub. The intent of the CF zone was for parks and open space, but there were a variety of uses that could potentially be on the site. The subdivision complied with Code standards. In R-2 the minimum lot sizes were 3,000 square feet, and the applicant was proposing around 5,000 square feet. The lots had to have 25 feet of frontage and be 30 feet wide at the front building line, and almost all the lots were 50 feet wide. The water and sanitary sewer line needed to be extended to the south, which would be a condition of approval. Condition 1b regarding the stormwater extension needed to be removed as the property to the south's elevation dropped off to the south and there were other stormwater options for the area. The last condition was that improvements had to be completed prior to final plat approval. Staff recommended approval with conditions.

Public Testimony

Proponents:

Mart Storm, applicant, stated this was the final application for a subdivision started in 2006. The usable lots were in the 5,000 square foot range which was consistent with the other lots in the area. It was completing a project that would be consistent with everything that was already there. The historic storm water flow off the park always went to the south and it would not accomplish anything to stub a storm drain into it. The stormwater facility was sized and designed to facilitate the historic flow to the subdivision, but not to the south. There were two manholes adjacent to the park on the sewer system that the park had access to through an easement and he hoped he would not have to stub a third sewer stub to it if a street was put on the east side. Regarding access to the park, his attorney had proposed a compromise. He further explained the 15 foot utility easement and available manholes adjacent to the park. He thought they would extend Corrine to the park property, but he could put in on Kennedy as well. He had negotiated the ownership of the stream corridor with CPRD as he wanted to keep it for potential density transfers until the subdivision was done so he could transfer density if needed. He had an agreement with CPRD that he would give the stream corridor back to them as a charitable contribution when he was done. It would ultimately be attached to the park.

Matt Willcuts had no comments.

Opponents:

Joe Darbey was representing the Darbey Family Trust, property owner to the east of this development. He had been in discussion with Mr. Storm on protecting an easement for sewer that was done in 2007. He would like to see on a map where the easement was located.

Don Clements, Superintendent of Chehalem Park and Recreation District, explained the reason they wanted access to the CPRD property was it was labeled as surplus property and could potentially be sold. If they did decide to sell the property, they would come back to the Planning Commission for a zone change. The only concern they had was to make sure they had access to the property for future development. There was intent to put a neighborhood park there, but they were trying to keep the options open.

AP Steve Olson presented a 10 page letter that came in from Andrew Stamp, the attorney representing the applicant.

PC Allyn Edwards asked the applicant if it was possible to save Lot 95 if there was a single lane in and a single lane out of the subdivision. Mr. Storm thought it would work for park access, but not for a subdivision access. The subdivision street width needed to be 54 feet to be a public street.

PC Art Smith said the greatest likelihood was the CPRD property would be a park. Mr. Storm said it was zoned to be a park and he thought at least a portion would be a park. The question came down to did they build a 100 feet of public street now or something that would better fit a park or build nothing.

Chair Gary Bliss recessed the meeting for a five minute break to read the letter submitted by the applicant's attorney.

After reconvening the meeting, Chair Gary Bliss asked if testimony needed to be submitted a week before the meeting.

AP Steve Olson said that was part of the Planning Commission's rules but they could vote to accept the testimony. He then commented on the letter. One point that was brought up was Phase 1 and 2 divided two-thirds of the property and the applicant did show a concept plan for a third phase with a loop road. There was no approval of the future street plan. Only the streets in Phase 1 and 2 were approved and there was no binding future street plan based on those phases. Based on Mr. Darbey's earlier testimony, he asked the applicant to clarify how the southwest corner access and maintenance would work. The letter referenced Dolan vs. the City of Tigard and the need for findings on the conditions. These were points not raised before, and the findings would need to be modified. He suggested continuing the hearing for staff to modify the findings.

CD Doug Rux said another new piece of testimony was provided by Mr. Clements about the potential surplus of property and that the intent was to build a neighborhood park. The findings would need to reflect that information as well.

PC Cathy Stuhr stated the letter indicated Mr. Storm was not in favor of building the road. Mr. Storm responded that he was fine with dedicating the right-of-way, but not constructing the street. A park needed less access than a public street. They did not want to build a full public street if all that was going to be on the property was a park.

PC Art Smith thought the decision the Commission had to make was based on their best knowledge of what was now and there was a lot of speculation on what might be.

Chair Gary Bliss asked Mr. Clements about his discussions with the applicant. Mr. Clements said he had not been contacted by the applicant.

PC Allyn Edwards said the objective was to determine if this was a good land use for the applicant, and he thought the issues had been addressed. He thought the letter submitted by the attorney was irrelevant.

AP Steve Olson asked for clarification on the Darbey easement. CD Doug Rux explained the situation further, and that the issue was placing a private and public easement on top of each other.

Mr. Storm explained public utility easements and private access easements overlapped regularly. The private access allowed the Darbeys access to the other side of the stream, which was a 25 foot easement.

<p>Motion: Commissioner Jason Dale moved to continue the hearing for SUB3-15-001 to August 13, 2015, at 7:00 p.m. Seconded by Commissioner Art Smith and passed 4-0-1 (with PC Allyn Edwards abstaining).</p>
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ITEMS FROM STAFF:

None

ITEMS FROM COMMISSIONERS:

Chair Gary Bliss commented on a winery who was thinking of pairing marijuana with wine. CD Doug Rux had not heard anything about that.

PC Cathy Stuhr suggested a future discussion on phased subdivisions and cumulative traffic impacts.

PC Allyn Edwards asked that staff try to make sure any easements be researched on applications. CD Doug Rux said staff was continuing to work on it.

Chair Gary Bliss asked AP Steve Olson that a new map with all of these issues be submitted by the applicant.

Chair Gary Bliss adjourned the meeting at 8:36 p.m.

Approved by the Newberg Planning Commission this ____ day of _____, 2015.

Bobbie Morgan, Planning Secretary

Gary Bliss, Planning Commission Chair

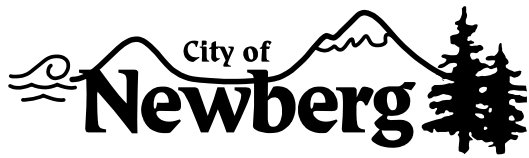
OUTLINE FOR QUASI-JUDICIAL PUBLIC HEARING
Newberg Planning Commission

- 1. CALL TO ORDER**
OPEN THE PUBLIC HEARING, ANNOUNCE THE PURPOSE, DISCUSS TESTIMONY PROCEDURE, AND TIME ALLOTMENTS
- 2. CALL FOR ABSTENTIONS, BIAS, EX PARTE CONTACT, AND OBJECTIONS TO JURISDICTION**
- 3. LEGAL ANNOUNCEMENT**
READ “QUASI-JUDICIAL ANNOUNCEMENTS” SHEET
- 4. STAFF REPORT**
COMMISSION MAY ASK BRIEF QUESTIONS FOR CLARIFICATION
- 5. PUBLIC TESTIMONY**
5 MINUTE TIME LIMIT PER SPEAKER (15 MINUTE LIMIT FOR APPLICANT AND PRINCIPAL OPPONENT). SPEAKER GOES TO WITNESS TABLE, STATES NAME & PRESENTS TESTIMONY. COMMISSION MAY ASK QUESTIONS OF SPEAKERS.
 - A. APPLICANT(S)
 - B. OTHER PROPONENTS
 - C. OPPONENTS AND UNDECIDED
 - D. STAFF READS WRITTEN CORRESPONDENCE (TIME LIMIT APPLIES)
 - E. APPLICANT REBUTTAL
- 6. CLOSE OF PUBLIC TESTIMONY PORTION OF HEARING**
- 7. FINAL COMMENTS FROM STAFF AND RECOMMENDATION**
- 8. PLANNING COMMISSION DELIBERATION INCLUDING DISCUSSION OF CRITERIA WITH FINDINGS OF FACT**
- 9. ACTION BY THE PLANNING COMMISSION**
 - A. ORDER OR RESOLUTION – Usually requires passage of order if the commission is the final decision maker, or a resolution if the commission is only advisory to the council.
 - B. VOTE – Vote is done by roll call.
 - C. COMBINATION – Can be combined with other commission action; separate vote on each action is required.

**QUASI-JUDICIAL
PUBLIC HEARING PROCESS
TESTIMONY AND EVIDENCE REQUIREMENTS**

ORS 197.763 requires certain statements to be made at the commencement of a public hearing.

- The applicable City and State zoning criteria must be listed. This means that we must advise you of the standards that must be satisfied by the applicant prior to our approval of an application. The Planning Staff will list the applicable criteria during his or her presentation of the staff report.
- Persons wishing to participate in this hearing must direct their testimony or the evidence toward the criteria stated by the Planner or other specific City or State criteria which you believe apply. You must tell us why the testimony or evidence relates to the criteria.
- Any issue which might be raised in an appeal of this case to the Land Use Board of Appeals (LUBA) must be raised in person or by letter at the local level prior to the City approving or denying the application. The law states that the issue must be raised in enough detail to afford the decision-maker and the parties an opportunity to respond. This part of the law is also known as the "raise it or waive it" requirement. If you do not bring it up now, you can't bring it up at LUBA.
- Failure of the applicant to raise constitutional or other issues relating to proposed conditions of approval in enough detail to allow the local government or its designee to respond to the issue precludes an action for damages in Circuit Court.
- Prior to the conclusion of the initial evidentiary hearing on an application, any participant may request an opportunity to present additional evidence or testimony regarding the application. The Planning Commission will grant such a request through a continuance or extension of the record.



Community Development Department

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503-537-1240 ▪ Fax 503-537-1272 ▪ www.newbergoregon.gov

PLANNING COMMISSION STAFF REPORT

Highlands at Hess Creek Phases 4 & 5

Subdivision Tentative Plan application

FILE NUMBER:	SUB3-15-001
REQUEST:	Approval for a Subdivision tentative plan to divide a 10.94 acre parcel into 27 lots for single-family detached homes. The applicant submitted a revised subdivision plan on 7/31/15 to address transportation and access issues.
APPLICANT:	Leonard Johnson (contact – Mart Storm)
OWNER:	Leonard Johnson
LOCATION:	The south end of Corinne Drive and Kennedy Drive, tax lot 3220-1400
DESIGNATION:	Comprehensive Plan designation of MDR (Medium Density Residential); Zoning designation of R-2 (Medium Density Residential), with a Stream Corridor overlay on approximately half the parcel.
CODE CRITERIA:	Newberg Development Code § 15.235.060(A)
HEARING DATE:	Planning Commission Hearing – August 13, 2015 (continued from June 25, 2015)

ATTACHMENTS:

Planning Commission Order 2015-18 with:

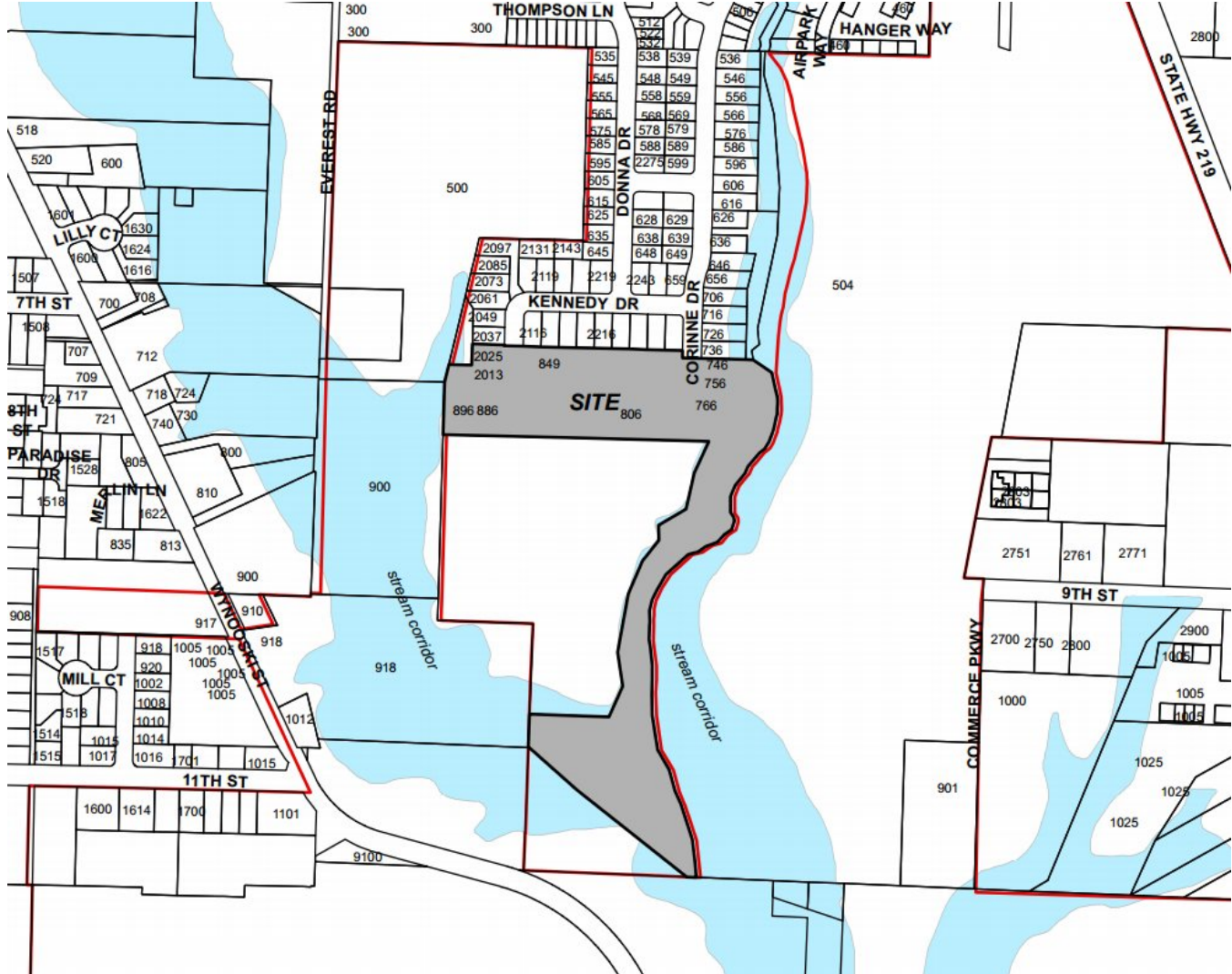
Exhibit A: Findings

Exhibit B: Conditions of approval

Exhibit C: Tentative plan

1. Aerial photo with zoning
2. Public & Agency Comments
3. Revised Subdivision drawings 7.31.15
4. Original Application
5. Newberg Development Code & Comprehensive Plan
(by reference)

Location Map: tax lot 3220-1400



Proposal

The applicant has requested a Subdivision tentative plan approval for Highlands at Hess Creek phases 4 and 5. The application would divide a 10.94 acre site into 27 lots for single-family detached homes. Part of the site is in the Stream Corridor overlay zone, which requires that the subdivision application be reviewed by the Planning Commission. The applicant submitted a revised subdivision plan on 7/31/15 to address transportation and access issues.

Process

This is a Type III application for a Subdivision tentative plan. This will be a quasi-judicial hearing, and after taking public testimony the Planning Commission will make a decision on the application based on the criteria listed in the attached findings.

Noticing: Important dates related to this application are:

1. 6/10/15: The Community Development Director deemed the application complete.
2. 6/4/15: The applicant mailed notice to the property owners within 500 feet of the site.
3. 6/10/15: The applicant posted notice on the site.
4. 6/10/15: The Newberg Graphic published notice of the Planning Commission hearing.
5. 6/25/15: The Planning Commission held a quasi-judicial hearing to consider the application, and continued the hearing to 8/13/15.
6. 8/13/15: The Planning Commission will continue the hearing to consider the application.

Criteria: The following criteria apply to the subject proposal:

15.235.060 Subdivision requirements – Type II and Type III.

A. The director (Type II) or planning commission (Type III) shall approve a subdivision of four parcels or more under a Type II or Type III procedure if the resulting parcels comply with the following approval criteria:

- 1. Approval does not impede the future best use of the remainder of the property under the same ownership or adversely affect the safe and healthful development of such remainder or adjoining land or access thereto.**
- 2. The subdivision complies with this code including but not limited to NMC 15.340.010 through 15.440.080 and NMC 15.235.030 et seq.**
- 3. Either:**
 - a. Improvements required to be completed prior to final plat approval; or**
 - b. The subdivider will substantially complete, as defined by city policies, required improvements prior to final plat approval, and enter into a performance agreement to complete the remaining improvements. The performance agreement shall include security in a form acceptable to the city in sufficient amount to insure completion of all required improvements; or**
 - c. A local improvement district shall have been formed to complete the required improvements; or**
 - d. The required improvements are contained in a city or other government agency capital improvement project that is budgeted and scheduled for construction.**

Site Information

The site is located south of Highlands at Hess Creek Phases 1-3, and is at the end of Kennedy and Corrine Drives. It is currently a flat empty field with a small Stream Corridor overlay on the western edge of the property and a large Stream Corridor overlay on the southeast part of the site. There are many mature trees in the stream corridor.

Surrounding uses:

- North: Single family homes, R-2 (medium density residential) zoning.
- East: A wide stream corridor, then the airport.
- West: A wide stream corridor, then residential.

- South: A vacant parcel owned by Chehalem Park and Recreation District (CPRD), zoned CF (Community Facility).

Access and Transportation: The proposed site is accessed through existing local residential roads. Donna Drive, Corinne Drive, and Kennedy Drive are used for access. The nearest major road is State Highway 219, which is a Minor Arterial. Existing access safety concerns exist at the intersections of 2nd Street and Highway 219, and at the intersection of Everest Road and Highway 219. ODOT and the City are planning on installing safety improvements at these intersections in the future. The traffic impact of this development does not significantly increase the safety concerns at these intersections, as the problem exists currently.

Full city residential streets will be constructed through the development to serve all lots, as well as a full street stub will need to be constructed to provide access to tax lot R3220 01101.

Utilities:

- a. Sanitary Sewer: The project will connect to the existing 8" sanitary sewer line in Kennedy Drive.
- b. Water: The project will connect to and complete the loop of the existing 8" water line in Kennedy Drive.
- c. Storm: The project has existing and proposed stormwater infrastructure to serve the development. The preliminary stormwater report specifies that detention is only provided for the 25 year storm event. All net new impervious area shall be detained for ½ of the 2 year, 10 year, and 25 year storm events. Water quality also must be provide for all net new impervious area. NMC 13.25.260 & 13.25.270

Agency Comments:

The application was routed to several public agencies for review and comment. Comments and recommendations from city departments have been incorporated into the findings and conditions. The findings are jointly written by the Planning Division and Engineering Department. As of the writing of this report, the city received the following agency comments (summarized below – the full text is in Attachment 2):

- **Oregon Dept. of Transportation:** No comments.
- **Oregon Dept. of State Lands (summarized):** The national wetlands inventory shows a wetland/waterway on the property. Based on a review of the available information, it does not appear that the proposed grading and site development will impact jurisdictional wetlands or waterways. DSL will require a permit for any impacts to these streams that is 50 cubic yards or greater.
- **Chehalem Park and Recreation District (summarized):** CPRD requests that a street and all utilities be extended to their property south of the proposed subdivision, instead of having an access easement. They would be satisfied with an extension of either Kennedy Drive or Corrine Drive to their property.
- **Police Dept. (summarized):** The Police Department had concerns about the amount of off-street and on-street parking, congestion due to on-street parking on both sides of the street, and additional traffic problems at the neighborhood access points to Hwy 219 (Church, Everest, and Second Streets).
- **Frontier:** No conflict with FTR facilities. Frontier Communications is currently working on a design to provide FIOS Fiber within the Highlands at Hess Creek Phase No. 4 and 5.

- **Waste Management:** Reviewed, no conflict. All trash and recycling carts will be set out on a city street on pickup day.

Public Comment:

As of the writing of this staff report, the city has received no written public comments.

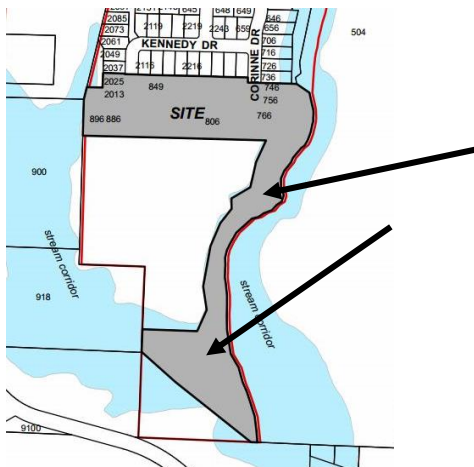
Issues & Analysis summary:

1. Access/utilities to the CPRD property to the south:

The applicant's original proposal showed that access to tax lot 3220-1101, owned by CPRD, would be provided through an access easement over a 40 foot wide tract. This would limit the future development of the property to three lots. The CF zone is primarily intended for parks and open space, but some other uses are also allowed (basic utilities, transportation facilities, emergency services) while others are conditional uses (churches, schools, community services). The CPRD parcel is undeveloped, and it is not known if it will develop as a single parcel or multiple parcels in the future. The access easement constrains the potential development of the property. For this reason the access easement needs to be replaced with a street extension and public right-of-way dedication to the property line of tax lot 3220-1101. The public water line needs to be extended within the right-of-way extension.

The applicant supplied a revised subdivision preliminary plan on 7/31/15 that replaced the access easement with a street stub that extends Kennedy Drive, and a water line, to the southern property line. It also shows the location of the access easement to the Darby property west of the site.

2. **Long southern stream corridor tract:** The plat does not show the full extent of the parcel. There is a long southern section in the Stream Corridor overlay. This parcel would become landlocked as a result of this subdivision. The applicant needed to submit a revised tentative plan that shows how this parcel will have access, clarify that it is a tract (not a buildable parcel), and state who will own it. The revised 7/31/15 subdivision preliminary plan shows a proposed access easement across the CPRD property to provide access to the stream corridor tract. The access and ownership plan would need to be finalized as part of the final plat review.



3. **Traffic at Everest/Hwy 219:** Existing safety improvements are planned for the intersections of Hwy 219 and 2nd Street, and Hwy 219 and Everest Road. Plans include the installation of a median for right in / right out turning restrictions at Hwy 219 and 2nd street, and a traffic signal at the intersection of Hwy 219 and Everest Road (pending a signal warrants study). These improvements will be completed by ODOT and the City. The proposed development does not significantly impact the existing safety concerns at these intersections. No traffic study is required because the development is not expected to generate more than 40 trips in the PM peak hour; it is expected to generate approximately 27 trips in the PM peak hour.
4. **Off-street parking:** The subdivision will be for single family homes, each of which will have at least two off-street parking spaces. Most will probably have four (two in a garage, two in a driveway).

STAFF RECOMMENDATION: At this writing, staff recommends the following motion:

Move to adopt Planning Commission Order 2015-18, which approves the revised 7/31/15 subdivision tentative plan with the attached conditions.



PLANNING COMMISSION ORDER NO. 2015-18

AN ORDER APPROVING SUB3-15-001 FOR THE HIGHLANDS AT HESS CREEK – PHASE 4 AND 5 SUBDIVISION AT THE SOUTH END OF KENNEDY DRIVE AND CORRINE DRIVE, YAMHILL COUNTY TAX LOT 3220-1400.

RECITALS

1. Leonard Johnson submitted an application for tentative plan approval for a 27 lot subdivision at the south end of Kennedy Drive and Corrine Drive, Yamhill County tax lot 3220-1400.
2. After proper notice, the Newberg Planning Commission held a hearing on June 25, 2015, to consider the application. The Commission considered testimony, deliberated, and continued the meeting to August 13, 2015. The applicant submitted a revised tentative subdivision plan on July 31, 2015 to address access issues.
3. On August 13, 2015 the Planning Commission deliberated and found that the revised application, as conditioned, meets the applicable criteria as shown in the findings shown in Exhibit “A”.

The Newberg Planning Commission orders as follows:

1. The tentative subdivision plan application SUB3-15-001 is hereby approved, subject to the conditions contained in Exhibit “B”. Exhibit "B" is hereby adopted and by this reference incorporated.
2. The findings shown in Exhibit “A” are hereby adopted. Exhibit "A" is hereby adopted and by this reference incorporated.
3. This order shall be effective August 28, 2015 unless appealed prior to that date.
4. This order shall expire two years after the effective date above if the applicant does record the final plat by that time, unless an extension is granted per Newberg Development Code 15.235.130(B).

Adopted by the Newberg Planning Commission this 13th day of August, 2015.

ATTEST:

Planning Commission Chair

Planning Commission Secretary

List of Exhibits:

Exhibit “A”: Findings
Exhibit “B”: Conditions
Exhibit “C”: Tentative plan

**Highlands at Hess Creek phases 4 & 5: Subdivision tentative plan
SUB3-15-001**

I. SUBDIVISION CRITERIA THAT APPLY: Newberg Development Code 15.235.060(A).

The Director (Type II) or Planning Commission (Type III) shall approve a subdivision of four parcels or more under a Type II or Type III procedure if the resulting parcels comply with the following approval criteria:

1. Approval does not impede the future best use of the remainder of the property under the same ownership or adversely affect the safe and healthful development of such remainder or adjoining land or access thereto.

15.405.030 Lot dimensions and frontage.

D. Frontage.

1. No lot or development site shall have less than the following lot frontage standards:

a. Each lot or development site shall have either frontage on a public street for a distance of at least 25 feet or have access to a public street through an easement that is at least 25 feet wide. No new private streets, as defined in NMC 15.05.030, shall be created to provide frontage or access.

b. Each lot in an R-2 and R-3 zone shall have a minimum width of 30 feet at the front building line.

15.05.030 Definitions.

“Private drive” means a private way which affords principal means of access to three or fewer lots (see also “service drive”).

“Private street” means a private way which affords principal means of access to four or more lots (see also “service drive”).

15.505.110 Future extension of streets.

Where the subdivision or partition is adjacent to land likely to be divided in the future, streets shall continue through to the boundary lines of the area under the same ownership of which the subdivision or partition is a part, where the director determines that such continuation is necessary to provide for the orderly division of such adjacent land or the transportation and access needs of the community. [Ord. 2494, 4-6-98; Ord. 2451, 12-2-96. Code 2001 § 151.690.]

15.235.190 Dedication.

A. Generally. The director may require right-of-way for adequate and proper streets, including arterials, collector streets, local streets, and other streets, to be dedicated to the public by the applicant of such design and in such locations as are necessary to facilitate provision for the transportation and access needs of the community and the subject area in accordance with the purpose of this code.

Finding:

Long southern stream corridor tract: The applicant is subdividing their entire parcel, but the plat does not show the full extent of the parcel. There is a long southern section, south of lot 94, in the Stream Corridor overlay, which will presumably become a tract. The revised 7/31/15 subdivision plan shows that this parcel could potentially have access through an access easement on CPRD's tax lot 3220-1101. The applicant will need to finalize the access and ownership plan for this tract before final plat approval.

Access/utilities to tax lot 3220-1101 south of the site: The applicant's revised 7/31/15 proposal shows that access to tax lot 3220-1101, owned by CPRD, will be provided through a street stub to the property line. Kennedy Drive will be extended south, with a 54 foot wide right-of-way. A water line will be extended south within the Kennedy Drive stub. The plan also shows an access easement extended west across lots 83 and 84 to provide access to the Darby parcel, tax lot 3220-1000.

The original plan for this application (phases 4 & 5 of Highlands at Hess Creek) showed an access easement instead of a street stub providing access to tax lot 3220-1101 south of the site. The earlier Phase 1 approval for the Highlands at Hess Creek subdivision showed this access easement, as well, but that was only a concept plan. It was not approved as the future street plan for the later phases of the subdivision. There are specific findings that would have had to be made addressing NDC 15.235.110 (criteria for approval of a future street plan), and that did not occur during Phase 1.

The CPRD lot (tax lot 3220-1101) is undeveloped. It is in the CF (Community Facility) zone. The CF zone is primarily intended for parks and open space, but some other uses are also allowed (basic utilities, transportation facilities, emergency services, golf course) while others are conditional uses (churches, schools, colleges, community services, cemetery, heliport). Under code section 15.505.110 listed above, if the site was considered likely to be divided in the future then there would be no question that a street would need to be extended to the property. If the site was zoned R-1 or R-2 then it would be considered very likely to be divided in the future.

The CPRD site in the CF zone is different, because there is no way to determine at this point if the lot will be further divided in the future. If the site was going to indefinitely remain a single lot then a driveway in an access easement could be adequate. The site is 9 acres, so it is large enough to potentially contain more than one use. An access easement would limit the ability to divide the property into more than three lots, so an access easement would constrain the potential future development of tax lot 3220-1101. The criteria requires that approval of the subdivision not adversely affect the safe and healthful development of adjoining land or access thereto. Having only an access easement for street frontage would constrain the potential development of tax lot 3220-1101, so it would adversely affect the access and development of the parcel.

One commenter stated that findings cannot be based on speculative facts. The commenter went on to state

that because tax lot 3220-1101 is owned by the Parks District and is zoned CF that it would be developed as a single park parcel and would only need an access easement instead of a street. That is speculation, because it presumes to know how the site will develop in the future. The city is not speculating about how the site will be developed. The CPRD site is fairly large and could be developed in multiple ways with multiple uses. Not speculating about the future development plan for the site means that a street stub is required for access to avoid constraining the development options for the parcel.

One commenter stated that the subdivision approval must be consistent with the Comprehensive Plan, and implied that only development of tax lot 3220-1101 as a single park parcel would comply with the Comprehensive Plan. The Development Code is the document that implements the Comprehensive Plan, and is acknowledged as being consistent with the Comprehensive Plan. The Development Code lists several uses that are allowed outright or conditionally in the CF zone. If the site was developed as a single park parcel that would be consistent with the Comprehensive Plan. If the site was subdivided and developed with several of the uses allowed in the CF zone then that would also be consistent with the Development Code and the Comprehensive Plan.

Dolan findings: The issue that the original subdivision proposal created was limiting the access and future development potential of tax lot 3220-1101 by providing an access easement instead of a street connection for access. City development policies require “to and through” extension of streets and utilities to enable the future development of adjacent parcels. The revised 7.31.15 subdivision plan resolves the access issue by providing a street connection to tax lot 3220-1101 that provides adequate access. The street stub is the solution to the access issue created by the original proposal, which demonstrates that there is a nexus between the street stub and the access “to and through” policy. The cost of the street stub connection is proportional to the access issue and the scope of the subdivision development because street stub connections are the normal and typical provisions made to provide access to adjoining properties during a subdivision. The stub is the minimum length and size needed to accomplish the provision of access to tax lot 3220-1101, and is not an extraordinary requirement.

For the reasons listed above, approval of the subdivision as conditioned would not impede the future best use of the remainder of the property or adversely affect the safe and healthful development of adjoining land or access thereto.

2. The subdivision complies with this code including but not limited to 15.340.010 through 15.440.080 and 15.235.030 et seq.

Finding: The lot standards and development standards are addressed in detail below in section II.

3. Either:

a. Improvements required to be completed prior to final plat approval; or

b. The sub divider will substantially complete, as defined by city policies, required improvements prior to final plat approval, and enter into a performance agreement to complete the remaining improvements. The performance agreement shall include security in a form acceptable to the city in sufficient amount to insure completion of all required improvements; or

c. A local improvement district shall have been formed to complete the

required improvements; or

d. The required improvements are contained in a city or other government agency capital improvement project that is budgeted and scheduled for construction.

Finding: The required public improvements will be completed prior to final plat approval.

II. Applicable Lot Requirement: Newberg Development Code 15.405.010, Lot Area; Lot Areas per Dwelling Unit

A. In the following districts, each lot or development site shall have an area as shown below except as otherwise permitted by this code:

2. In the R-2, R-3, and RP districts, each lot or development site shall have a minimum area of 3,000 square feet or as may be established by a subdistrict. In the R-2 and R-P districts, the average size of lots in a subdivision intended for single-family development shall not exceed 5,000 square feet.

C. In calculating lot area for this section, lot area does not include land within public or private streets. In calculating lot area for maximum lot area/minimum density requirements, lot area does not include land within stream corridors, land reserved for public parks or open spaces, commons buildings, land for preservation of natural, scenic, or historic resources, land on slopes exceeding 15 percent or for avoidance of identified natural hazards, land in shared access easements, public walkways, or entirely used for utilities, land held in reserve in accordance with a future development plan, or land for uses not appurtenant to the residence.

Finding: All of the lots are at least 3,000 square feet, and exceed the minimum standard. The average lot size, excluding area in the stream corridor, is 4,831 square feet, so the average lot size does not exceed 5,000 square feet. This criterion is met.

III. Applicable Lot Requirements – Newberg Development Code 15.405.030 Lot Dimensions and Frontage

A. Width. Widths of lots shall conform to the standards of this code.

B. Depth to Width Ratio. Each lot and parcel shall have an average depth between the front and rear lines of not more than two and one-half times the average width between the side lines. Depths of lots shall conform to the standards of this code. Development of lots under 15,000 square feet are exempt from the lot depth to width ratio requirement.

C. Area. Lot sizes shall conform to standards set forth in this code. Lot area calculations shall not include area contained in public or private streets as defined by this code.

D. Frontage.

1. No lot or development site shall have less than the following lot frontage standards:

a. Each lot or development site shall have either frontage on a public street for a distance of at least 25 feet or have access to a public street through an easement that is at least 25 feet wide. No new private streets, as defined in NMC 15.05.030, shall be created to provide frontage or access.

b. Each lot in an R-2 and R-3 zone shall have a minimum width of 30 feet at the front building line.

c. Each lot in an R-1, AI, or RP zone shall have a minimum width of 50 feet at the front building line.

d. Each lot in an AR zone shall have a minimum width of 45 feet at the front building line.

2. The above standards apply with the following exceptions:

a. Legally created lots of record in existence prior to the effective date of the ordinance codified in this code.

b. Lots or development sites which, as a process of their creation, were approved with sub-standard widths in accordance with provisions of this code.

c. Existing private streets may not be used for new dwelling units, except private streets that were created prior to March 1, 1999, including paving to fire access roads standards and installation of necessary utilities, and private streets allowed in the airport residential and airport industrial districts.

Finding: All of the lots in the subdivision have at least 25 feet of frontage on a street or through an access easement, and are at least 30 feet wide at the front building line. This criterion is met.

IV. Applicable Development Standards

NDC 15.510.040: Water Supply. All lots and parcels within subdivisions and partitions shall be served by the water system of the City of Newberg.

Findings: There is an existing 8" waterline in Kennedy Drive and Corinne Drive. The proposed water design includes extending the public main line and completing the loop, and extending the water line south in the stub of Kennedy Drive. The water design will be reviewed in detail when construction plans are submitted.

Water SDC's – In accordance with Newberg Municipal Code this design review does increase the impacts to the water system and is therefore not exempt from water SDC charges.

Domestic and Fire water flow calculations will be required to be submitted to the Engineering Services Department for the proposed development that conform to the City Building Division requirements indicating that minimum service pressures are available at the future highest fixtures in the development.

Location of fire hydrants shall be approved by Newberg Fire Department prior to submittal of construction design plans.

NDC 15.510.050: Sewage. All lots and parcels within subdivisions and partitions shall, where practicable, as determined by the Director, in accordance with the provisions of this Code, be served by the sewage system of the City.

Findings: There is currently an 8” wastewater line that runs through the proposed site. The plans show wastewater service will be connected to this existing line. The sewer design appears to comply with the engineering standards design manual, but will be reviewed in detail when construction plans are submitted.

Sanitary SDC’s – In accordance with Newberg Municipal Code this design review does increase the impacts to the public wastewater system and is therefore not exempt from sanitary SDC charges.

The sanitary sewer easement appears to meet engineering standards design manual section 2.3.3, but will be reviewed in detail when construction plans are submitted. A commercial driveway and paved maintenance access shall be provided through the entire easement.

NDC 15.510.060: Land Surface Drainage. Such grading shall be done and such drainage facilities shall be constructed by the land divider as are adequate for the purpose of proper drainage of the partition or subdivision, of areas affected thereby, and for the preservation of healthful and convenient surroundings and conditions for residents of the subdivision or partition, and for the general public, in accordance with specifications adopted by the City Council under 15.510.030.

Findings: The developer has submitted a preliminary stormwater report dated May 26, 2015. The stormwater design utilizes a regional facility for the water quality and quantity control. Stormwater will discharge into an existing 12-inch storm drain pipe, out-falling into a natural drainage. The stormwater report and design use an assumption that the detention requirements are to match the 25-year peak flow event. Per NMC 13.25.260 & 13.25.270, as well as the engineering standards manual section 4, stormwater detention shall be provided for ½ of the 2 year, 2 year, 10 year, and 25 year storms.

Approval of this project is conditioned on the applicant meeting the city’s stormwater code (ordinance No. 2021-2754) and the engineering standards manual section 4. LIDA is the City’s preferred method of water quality and quantity facility per section 4.7.3 of the Engineering Standards Manual. Given that the development utilizes an existing stormwater basin, it is reasonable to assume the use of a regional facility for this development. Submit a final engineer's storm water report per the City of Newberg

Engineering Design Standards Manual Section 4.4. All storm drain and detention/water quality facilities to be maintained privately with a storm water maintenance agreement.

This development disturbs more than one acre of land and therefore an issued DEQ 1200-C permit shall be submitted to the City with the construction plan review submittal. No grading shall occur prior to the issuance of the 1200-C permit

Stormwater SDC's – In accordance with Newberg Municipal Code, this design review does increase the impacts to the public improvement facility and is therefore not exempt from stormwater SDC charges.

NDC 15.505.030: Streets and Alleys. The land divider or developer shall grade and pave all streets and alleys in the subdivision or partition to the width specified in 15.505.060, and provide for drainage of all such streets and alleys, construct curbs and gutters within the subdivision or partition in accordance with specifications adopted by the City Council under 15.510.030. Such improvements shall be constructed to specifications of the City under the supervision and direction of the Director. It shall be the responsibility of the land divider or developer to provide street signs

Findings: The proposed development takes access from local streets including Kennedy Drive, Donna Drive and Corinne Drive. Full street improvements will be provided through the development for access to all lots, including an extension of Kennedy Drive south to tax lot 3220-1101 (per the revised 7/31/15 subdivision plan). The applicant intends to construct all of the street and utility improvements at one time. In the event that bad weather prevents the completion of improvements within the eastern Phase 5 section, however, the length of the street in Phase 4 will be short enough that a temporary turnaround would not be required.

The development will require substantial heavy construction traffic. Developer shall be responsible for the repair and replacement of any off-site city infrastructure, including streets, which are damaged by construction activities.

Transportation SDC's – In accordance with Newberg Municipal Code this design review does increase the impacts to the public transportation system and is therefore not exempt from transportation SDC charges.

NDC 15.505.040: Existing Streets. A subdivision, partition or development requiring a Type II design review abutting or adjacent to an existing road of inadequate width, shall dedicate additional right-of-way to and improve the street to the width specified in 15.505.060.

NDC 15.505.210: Sidewalks. Sidewalks shall be located and constructed in accordance with the provisions of 15.510.030. Minimum width is five feet.

15.505.220 Public walkways.

A. The review body for a design review or land division may require easements for and construction of public walkways where such walkway is needed for the public safety and convenience or where the walkway is necessary to meet the standards of this code or a walkway plan. Public walkways are to connect to cul-de-sacs, to pass through oddly shaped or unusually long blocks, to provide for networks of public paths according to adopted plans, or to provide access to schools, parks or other community destinations or public areas of such design, width, and location as reasonably required to facilitate public use. Where possible, said dedications may also be employed to accommodate public utilities.

NDC 15.510.070: Street Trees. Street trees shall be provided adjacent to all public rights-of-way abutting or within a subdivision or partition. Street trees shall be installed in accordance with the provisions of 15.420.010(B) (4).

Finding: Sidewalks and street trees will be provided along each lot frontage. The applicant needs to submit a street tree plan showing a species listed on the City's preferred street tree list. This criterion is met, as conditioned.

V. Overlays

A. **Airport Overlay:** The site is located within the airport overlay zone. The main effect of the overlay is to limit the height of structures. Because of the actual distance from the runway, the height limits of the R-2 base zone are lower than the height limits set by the airport overlay, so the overlay will have little effect on building. There is an existing easement over the property relating to noise and airport operations.

B. **Stream Corridor Overlay:** A portion of the property at the western and eastern edges is within the stream corridor overlay. No grading or development is proposed within the stream corridor areas.

Conclusion: Based on the above-mentioned findings, the application meets the required criteria within the Newberg Development Code, subject to completion of the attached conditions.

Exhibit B: Conditions to Order 2015-18

Highlands at Hess Creek phases 4 & 5 SUB3-15-001

A. The applicant must provide the following information for review and approval prior to construction of any improvements:

1. Construction Plans must be submitted for all infrastructure per the requirements below.

General Requirements:

- a. An engineering permit is required. Submit engineered construction plans for review and approval of all utilities, public street improvements, and any new public streets being constructed. Please note that additional Engineering Services Department plan review application and fees apply for review of plans. Submit any required easements for review and approval, and record approved easements.
- b. No construction of, or connection to, any existing or proposed public utility/improvements will be permitted until all plans are approved and all necessary permits have been obtained
- c. Staff reserves the right to require revisions/modifications to the public improvement construction plans and completed street improvements, if additional modifications or expansion of the sight distance onto adjacent streets is required.
- d. All survey monuments on the subject site or that may be subject to disturbance within the construction area, or the construction of any off-site improvements shall be adequately referenced and protected prior to commencement of any construction activity. If the survey monuments are disturbed, moved, relocated or destroyed as a result of any construction, the project shall, at its cost, retain the services of a registered professional land surveyor in the State of Oregon to restore the monument to its original condition and file the necessary surveys as required by Oregon State law. A copy of any recorded survey shall be submitted to Engineering staff.

The plans must note the following:

Utilities:

1. Storm Sewer Requirements:
 - a. The system shall be reviewed and approved by the City of Newberg Engineering Department prior to issuance of Permits for the development.

- b. **Stormwater Report:** Submit a final engineer's storm water report per the City of Newberg Engineering Design Standards Manual and findings noted in Exhibit A of the staff report. All stormwater detention/water quality facilities proposed to serve public right-of-way shall be publicly owned and privately maintained with a storm water maintenance agreement. Private facilities shall also be privately maintained with a storm water maintenance agreement.
 - c. **Stormwater SDC's** – In accordance with Newberg Municipal Code, this design review does increase the impacts to the public improvement facility and is therefore not exempt from stormwater SDC charges.
- 2. **Sanitary Sewer Requirements**
 - a. **Sanitary sewer SDCs** - In accordance with Newberg Municipal Code this design review does increase the impacts to the public wastewater system and is therefore not exempt from sanitary SDC charges.
 - b. Provide a commercial driveway and paved maintenance access through the sanitary sewer easement.
- 3. **Water Requirements**
 - a. Location of fire hydrants shall be approved by Newberg Fire Department prior to submittal of construction design plans.
 - b. The water system shall be extended to the South property (TL R3220 01101) through a full width public right-of way stub.
 - c. Fire flow calculations will be required to be submitted to the Engineering Services Department for the proposed development that conform to the City of Newberg Fire Department standards, indicating that the development will meet the minimum service requirements.
 - d. Domestic water flow calculations will be required to be submitted to the Engineering Services Department for the proposed development that conform to the City Building Division requirements indicating that minimum service pressures are available at the future highest fixtures in the development.
 - e. **Water SDC's** – In accordance with Newberg Municipal Code this design review does increase the impacts to the water system and is therefore not exempt from water SDC charges.
- 4. **General Utility Requirements:**
 - a. The applicant shall obtain written approval from the appropriate source to construct any utilities or improvements within easement areas.

5. Streets:
 - a. Developer shall be responsible for the repair and replacement of any off-site city infrastructure, including streets, which are damaged by construction activities.
 - b. Developer shall dedicate full street right-of-way and a city standard residential street for access to the property to the South (TL R3220 01101)
 - c. Transportation SDC's – In accordance with Newberg Municipal Code this design review does increase the impacts to the public transportation system and is therefore not exempt from transportation SDC charges.
3. **Street Tree Plan:** Provide a landscape plan that identifies all planned tree species for street trees and common landscaping in accordance with NDC 15.420.010. A landscape bond will be required for installation of street trees.
4. **Grading:** Obtain a DEQ 1200-C permit and a city grading permit prior to grading.

B. The applicant must complete the following prior to final plat approval.

1. **Southeastern stream corridor tract:** Show the full extent of the parcel on the final plat, show ownership of the tract, and finalize the access for the tract; if access is over the CPRD property then supply a copy of the access easement.
2. **Substantially Complete the Construction Improvements:** Prior to final plat approval, the applicant must substantially complete the construction improvements and secure for them in accordance with city policy. Complete construction and call for a walk-through inspection with the Engineering Services Department (503-537-1273).
 - a. Construct all public streets according to city standards for local residential streets.
 - b. Construct all approved public utility lines, including stormwater facilities.

C. Final Plat Application: In accordance with NDC 15.235.150, submit the following for City review of the final plat application. Construction improvements should be substantially complete at this point.

1. **Application Materials:**
 - a. Type I application form (found either at City Hall or on the website – www.newbergoregon.gov in the Planning Forms section) with the appropriate fees.
 - b. A current title report (within 6 months old) for the property. Include copies of all existing easements and CC&Rs that pertain to the property.
 - c. A written response to these Conditions of Approval that specifies how each condition has been met.

- d. Two blue-line copies of the final subdivision plat for preliminary review by the City Engineering Services Department. The City Engineer will make red-line comments on these sheets for your surveyor/engineer to correct prior to printing final Mylar copies.
 - e. Any other documents required for review.
- 2. **Dedications/Easements Required:** The plat must show the following:
 - a. Easements:
 - i. All utility, sanitary sewer, water and storm drainage easements to the City.
 - ii. 10 ft utility easements along all frontages.
 - b. Dedications of Right-Of-Way as shown on the tentative plat and required by these conditions.
- 3. **Documents Required:** Provide the following documents for review and approval:
 - a. A signed and notarized performance agreement that assures construction and performance in accordance with the approved final plans.
 - b. A bond for street tree planting in an amount to be approved by the Planning Division.
 - c. Complete a subdivision agreement with the City of Newberg. The completed subdivision agreement shall be recorded by the applicant at the time of the final plat recordation.
 - d. A final draft copy of any Codes, Covenants and Restrictions (CC&Rs) for the subdivision. Planning staff will review the proposed CC&Rs for compliance with City Code prior to recordation.
- 4. **Final Mylar Copies of the Subdivision Plat:** Submit two final mylar copies of the corrected final subdivision plat (after red-line corrections have been made). Original plats shall be in substantial conformity to the approved tentative plan and shall conform to the Yamhill County Surveyor's specifications and requirements pertaining to material that has the characteristics of adequate strength, permanency, as well as suitability for binding and copying. Plats shall be in clear and legible form and may be placed on as many sheets as necessary, but a face sheet and an index page shall be included for all plats placed upon three or more sheets. Scale requirements shall be the same as specified for the tentative plans.

D. The final plat process must be completed prior to issuance of any building permits. The City will review the final plat application after the applicant has completed all of the conditions of approval listed above.

1. **City Review:** In accordance with NDC 15.235.160 and 15.235.180, Planning staff shall determine that:
 - a. Streets, roads, and alleys for public use are dedicated without any reservation or restriction other than reversionary rights upon vacation of any such street or road and easements for public utilities.
 - b. The proposal complies with this code.
 - c. The plat is in substantial conformity with the provisions of the tentative plan for the subdivision, as approved.
 - d. The plat contains a donation to the public of all common improvements, including but not limited to streets, roads, parks, sewage disposal and water supply systems.
 - e. Explanations of all common improvements required as conditions of approval of the tentative plan of the subdivision have been accounted for and referenced on the plat.
 - f. There will exist an adequate quantity and quality of water and an adequate sewage disposal system to support the proposed use of the land described in the plat.
 - g. Either:
 - i. Improvements as required by this code or as a condition of tentative plan approval have been filed with the Director; or
 - ii. A performance agreement (bond) or suitable substitute as agreed upon by the city and applicant has been filed with the Director in sufficient amount to insure the completion of all required improvements; or
 - iii. A petition for improvements has been properly executed by the applicant who is effecting the subdivision and will be assessed for said improvements.
 - h. Taxes, as well as public liens, assessments and fees, with respect to the subdivision area have been paid, or adequate guarantee has been provided assuring said taxes, liens, assessments and fees will be paid prior to recordation.
 - i. The sub divider has entered into agreement with the city relating to completion of improvements, payment of sewer and water hookup fees, inspection fees, public lands payments, monumentation or any other elements deemed relevant to the purpose of this or any other city ordinance, state statute or federal law.
 - j. If the conditions set at the time of tentative land division approval are not fulfilled and the final plat or final map is not recorded by the tentative plan expiration date, the tentative land division approval is null and void.

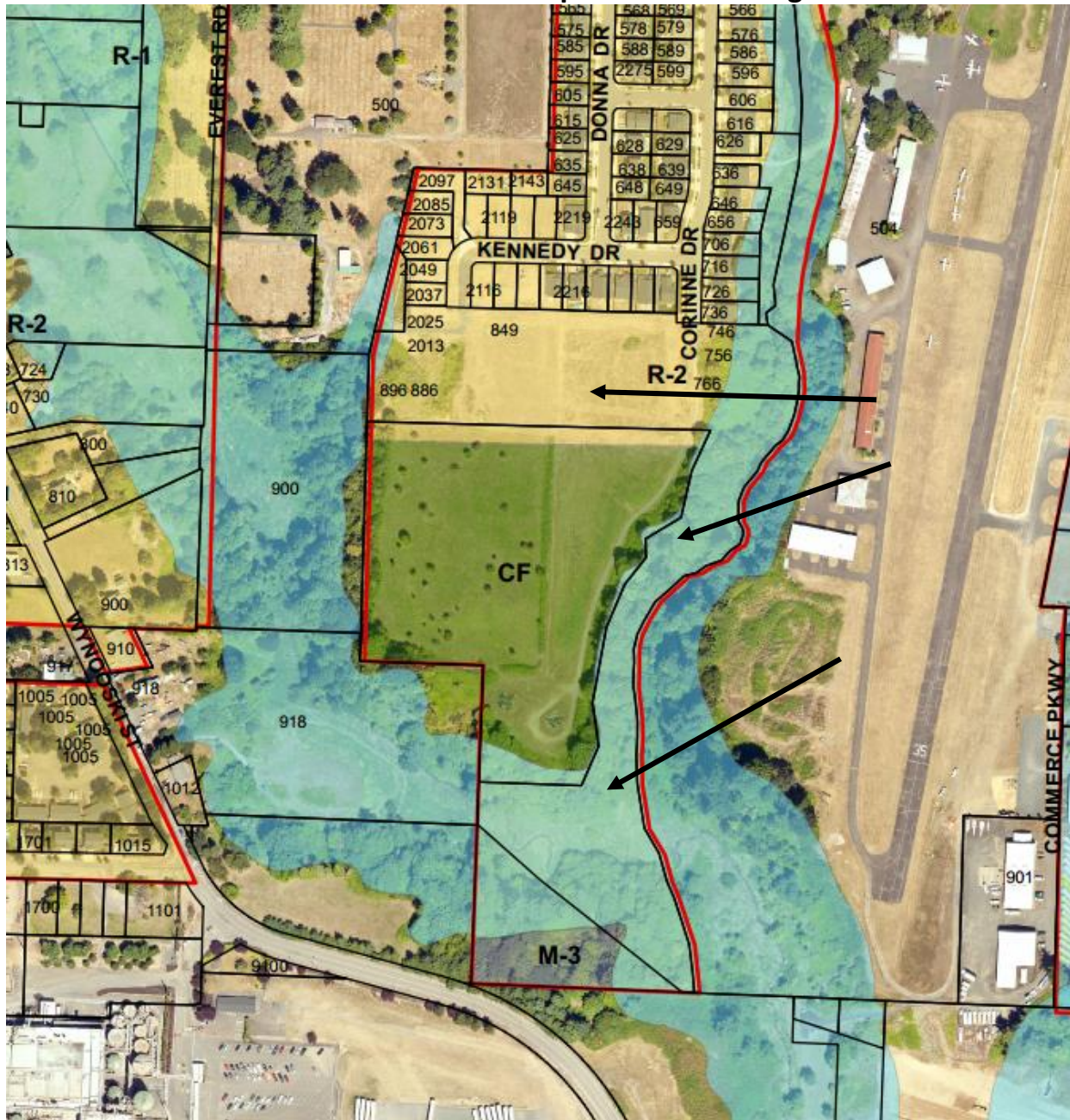
2. **Required Signatures:** According to NDC 15.235.180, approval of a final subdivision plat must be acknowledged and signed by the following:
 - a. Community Development Director
 - b. The County Assessor
 - c. The County Surveyor
 - d. The City Recorder
3. **Recording:** Deliver the approved subdivision plat to the office of the County Clerk for recording. The County Clerk's office is located at 414 NE Evans St, McMinnville, OR 97128.
4. **Completion:** Return an exact copy of the recorded plat to the Director to complete the subdivision process.

E. Development Notes:

1. **Postal Service:** The applicant shall submit plans to the Newberg Postmaster for approval of proposed mailbox delivery locations. Contact the Newberg Post Office for assistance at 503-554-8014.
2. **PGE:** PGE can provide electrical service to this project under terms of the current tariff which will involve developer expense and easements. Contact the Service & Design Supervisor, PGE, at 503-463-4348.
3. **Frontier:** The developer must coordinate trench/conduit requirements with Frontier. Contact the Engineering Division, Frontier, at 541-269-3375.
4. **Addresses:** The Planning Division will assign addresses for the new subdivision. Planning Division staff will send out notice of the new addresses after they receive a recorded mylar copy of the final subdivision plat.

[illegible]

Attachment 1: Aerial photo with zoning





503-537-2909
fax 503-538-9669
125 South Elliott Road
Newberg, OR 97132
cprdnewberg.org

June 9, 2015

Mr. Steve Olson
City of Newberg
414 E. First Street
P.O. Box 970
Newberg, OR 97132

Ref: Highlands at Hess Creek Phase 4 & 5

Mr. Steve Olson,

Please see the two enclosures that illustrate our desire to have a road and all utilities connected to Chehalem Park and Recreation District property, south of the proposed development. Your help in this matter will be appreciated. We find it acceptable for Kennedy Drive or Corrine Drive to connect. We will attend the meeting on June 25, 2015. We assume the meeting will start 7 p.m. at the Public Safety Building. Please let me know if otherwise. If you need additional information, please contact me at (503) 537-4165.

Sincerely,

A handwritten signature in black ink, appearing to read "W. Don Clements".

W. Don Clements, Superintendent

Cc: Board of Directors

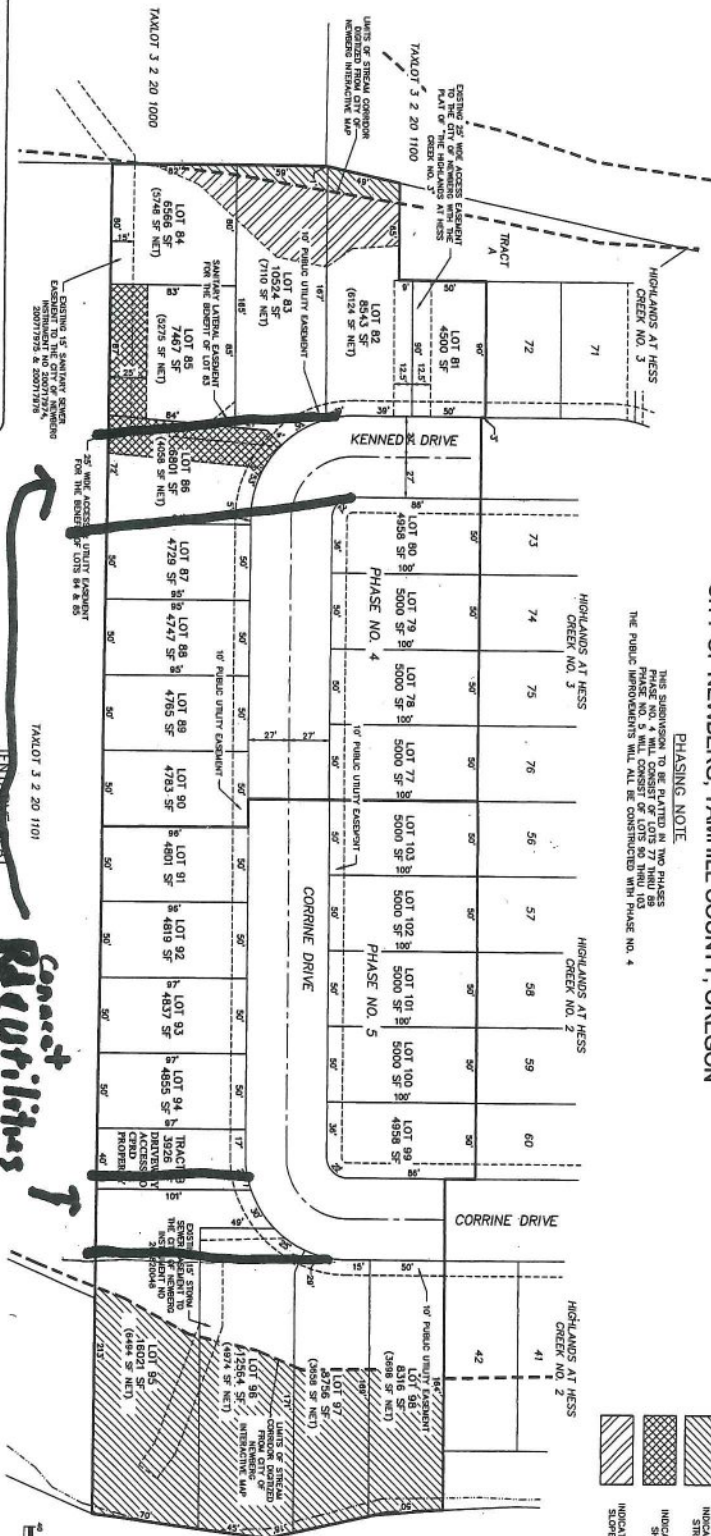
TAX LOT 3 2 20 1400
CITY OF NEWBERG, YAMHILL COUNTY, OREGON

PHASING NOTE

THIS SUBDIVISION TO BE PLATTED IN TWO PHASES. PHASE NO. 4 WILL CONSIST OF LOTS 77 THRU 89. PHASE NO. 5 WILL CONSIST OF LOTS 90 THRU 103. THE PUBLIC IMPROVEMENTS WILL ALL BE CONSTRUCTED WITH PHASE NO. 4.

AVANCE (NET) LOT AREA: 1906 SF
NET LOT AREA: 1906 SF
COUNTY: CLATSOP
AREA IN THE STREAM CORRIDOR: SHARED ACCESS
EASMENTS OR WITH SLOPES EXCEEDING 15%:
C.O.N. CODE: 15-405-010-A,2 & 15-405-010-C.

INDICATES LOT AREA WITH SLOPES EXCEEDING 15%	INDICATES LOT AREA IN STREAM CORRIDOR	INDICATES LOT AREA IN SHARED ACCESS EASEMENT



Concert
Rarities

BENCH MARK INFORMATION

THE DATUM FOR THIS SURVEY IS BASED UPON A BRASS CAP STAMPED "YAMHILL COUNTY PAR 3A M-2" LOCATED 56' SOUTH OF HIGHWAY 219, 25 FEET EAST OF THE CENTERLINE OF EVEREST ROAD.

ELEVATION: 167.10 YAMHILL COUNTY DATUM

<u>SITE INFORMATION</u>	
SITE AREA:	215,076 SF (4.94 AC)
ZONING:	R2
TAX MAP:	35 2W 20
TAX LOTS:	1400
NUMBER OF LOTS:	27

PROJECT CONTACTS

OWNER: LEONARD JOHNSON
3375 WEST 3RD ROAD
HILLSBORO, OREGON 97128
(503) 556-9130

ENGINEER: DIERVO DESIGN
8205 SW MARBYS AVE., SUITE 180
BEAVERTON, OREGON 97008
ATTN: ERIC SWANIS
(503) 653-8180

SUBMITTER: LEAN AND MACDONALD & ASSOC., LLC
3705 RIVERSIDE DRIVE
MICHAELVILLE, OREGON 97128
CONTACT: KATI DUNOCEL
503-473-7504

RECEIVED
MAY 26 2015

DRAWING INDEX

- 1 COVER SHEET - TENTATIVE PLAT
- 2 EXISTING CONDITIONS & DEMOLITION PLAN
- 3 AERIAL PLAN
- 4 SITE & UTILITY PLAN
- 5 GRADING & EROSION CONTROL PLAN

VICINITY MAP

NOT TO SCALE

A diagram of a single crystal with a slip plane labeled α and a slip direction labeled 1 . The crystal is divided into two regions, labeled 5 and 6 .

PLANNING DOCUMENTS
COVER SHEET
TENTATIVE PLAT

**THE HIGHLANDS AT HESS CREEK
PHASE NO. 4 & PHASE NO. 5
A SUBDIVISION OF
TAX LOT 3 2 20 1400
CITY OF NEWBERG, OREGON**

RECEIVED
MAY 26 2015

EMERIO
Design

8285 SW HINDUS AVENUE, SUITE 180
BEACHTON, OREGON 97006
TEL: (503) 748-8812
FAX: (503) 850-8582
www.emeriodesign.com

REVISIONS

REVISIONS		
NO.	DATE	DESCRIPTION
07	000	

37/332

EMERG PROJECT No. 244-001



**Newberg-Dundee
Police Department**
P. O. Box 970
401 E. Third Street
Newberg, OR 97132
503-538-8321
Brian T. Casey
Chief of Police

To: Planning and Building Department

From: Chris Bolek

**Re: File No. SUB 3-15-001
27 Lot Subdivision South of 736 Corinne Drive**

Date: June 01, 2015

This subdivision is a twenty-seven (27) home project. I believe that it is safe to assume there is the potential for some of these to be rentals. Furthermore, some of these renters may be university students, each with a vehicle.

In the submitted document entitled "*Narrative for the Highlands at Hess Creek Phases 4 and 5*", the area listed in *15.440 Off-Street Parking, Bicycle Parking and Private Walkways*, page #4 indicates that there will be no off-street parking, bicycle parking or private walkways incorporated into this phase.

This infers to me that area residents will be using the City Street to park their vehicles, recreational vehicles and visitor vehicles.

The plans call for a 32' wide street. City Code (15.505.060) allows this width for a local residential street, but also requires 12' travel lanes as well as eight foot parking lanes, leaving a total of eight feet for street parking; a total of a four foot parking strip on either of the street. I submit that this is insufficient for the ease of area residents. Allowing parking on both sides of the street will congest the travel lanes, make it difficult for residents to get into and out of their driveways and potentially could affect the peaceful interactions of a neighborhood.

I recognize item # 2.5 of the attached CC and Rs cover parking issues. However, it often seems that CC and Rs do not always effectively address issues such as parking as well as the subsequent remedy.

On page #2 of this same document, under Item "C", it indicates that a traffic study is not warranted.

It may not be warranted for this specific subdivision; however it does not appear to take into account the accumulative effect of this subdivision in conjunction with the existing homes and neighborhoods. I am concerned that the three ingress and egress access points to this area are already strained and will become overwhelmed with additional traffic that this development will generate along with the existing traffic. I am also concerned with parking on both sides of the street will restrict access of emergency

vehicles when needed. In reality given the location of this development, there will be only two such points in primary use.

ATTACHMENT 2

The ingress / egress points to arterial roadways are as follows:

- Church Street / Highway 219
- Everest Street / Highway 219
- E. Second Street / Highway 219

In the coming months, ODOT will restrict access at E. Second Street and Highway 219; allowing only right-hand turns onto and off of the highway from both sides of E. Second Street. While this will likely reduce the potential for crashes at this intersection, it will certainly raise that potential at the other two intersections, primarily Everest / Highway 219 by raising the number of cars trying to enter onto or crossover the highway here.

Based on these concerns, I would like to respectfully suggest the following for consideration:

- Allow parking on one side of the street only.
- Adequate parking restrictions so as to not block alleys or driveway accesses (to CPRD for example) with adequate signage that gives police the necessary tools to help residents with parking issues.
- Complete a traffic study to determine the actual effect of this additional traffic at the three listed intersections / accesses to Hwy 219, the only arterial out of the residential area that connects to other areas within and outside of Newberg.

Respectfully submitted,



Chris Bolek

Newberg-Dundee Police Department

Steve Olson

From: HOWARD Heather <heather.howard@state.or.us>
Sent: Thursday, May 28, 2015 2:31 PM
Subject: WLUN #2015-0163-DSL Response (City #SUB3-15-001)
Attachments: WN2015-0163-Notice.pdf; WN2015-0163-Response.pdf

We have completed our review of the Wetland Land Use Notification that was prepared for **Leonard Johnson (Attn.: Mart Storm)**. The WLUN form was submitted to the Department for review/response and given the file number **WN2015-0163**.

The results and conclusions from that review are explained in the attached pdf documents. If the attached documents are illegible or difficult to open, you may contact the Department and request paper copies. Otherwise, please review the attachments carefully and direct any questions or comments to Jurisdiction Coordinator, Chris Stevenson at (503) 986-5246. Thank you for your interest in the project.

Oregon Department of State Lands
Aquatic Resource Management Section
775 Summer St. NE, Ste. 100
Salem, OR 97301-1279
Fax: (503) 378-4844
<http://www.oregonstatelands.us>



WETLAND LAND USE NOTIFICATION RESPONSE
OREGON DEPARTMENT OF STATE LANDS
 775 Summer Street NE, Suite 100, Salem, OR 97301-1279
 Phone (503) 986-5200
www.oregonstatelands.us

DSL File Number: WN2015-0163

Cities and counties have a responsibility to notify the Department of State Lands (DSL) of certain activities proposed within wetlands mapped on the Statewide Wetlands Inventory. Steve Olson from city of Newberg submitted a WLUN pertaining to local case file #: SUB3-15-001.

Activity location:

township: 03S	range: 02W	section: 20	quarter-quarter section:
tax lot(s): 1400			
street address: S of 736 Corinne Dr, Newberg			
city: Newberg		county: Yamhill	
latitude: 45.294457		longitude: -1212.957084	

Mapped wetland/waterway features:

☒ The national wetlands inventory shows a wetland/waterway on the property.

Oregon Removal-Fill requirement (s):

☒ A state permit is required for 50 cubic yards or more of removal and/or fill in wetlands, below ordinary high water of streams, within other waters of the state, or below highest measured tide where applicable.

Your activity:

☒ A state permit will not be required for the proposed project because based on the submitted site plan the project appears to avoid impacts to jurisdictional wetlands and waters.

Contacts:

☒ A permit may be required by the U.S. Army Corps of Engineers (503-808-4373).

☒ This is a preliminary jurisdictional determination and is advisory only.

Comments: Based on a review of the available information, it does not appear that the proposed grading and site development will impact jurisdictional wetlands or waterways.

Streams have been identified on the east and west of the proposed site. DSL will require a permit for any impacts to these streams that is 50 cubic yards or greater.

Response by: Chitra Stovenson date: 05/28/2015

ANDREW H. STAMP, P.C.
ATTORNEY AT LAW
Kruse-Mercantile Professional Offices, Suite 16
4248 Galewood St.
Lake Oswego, OR 97035

Admitted in Oregon.

Tele: 503.675.4318
Fax: 503.675.4319
andrewstamp@comcast.net

25 June 2015

VIA E MAIL

City of Newberg Planning Commission
c/o Community Development Department
P.O. Box 970
414 E. First Street
Newberg, OR 97132

Re: Highlands at Hess Creek Phases 4 & 5 (SUB3-15-001)

Dear Members of the Planning Commission:

I am a land use attorney representing Mart Storm and Leonard Johnson with regard to the above cited application. This letter responds to the Staff Report issued on or about June 18, 2015. Please enter this letter into the record of this case.

I. Issue, Background, and Proposed Solution.

At issue is staff's proposed conditions related to street dedications and improvements which staff alleges are potentially needed to serve park property in the future, but only if the park property is subdivided in the future.

This is not the first time the issue of access to the park has arisen. Indeed, it is an issue that has already been resolved. When the City first approved the concept plan and Phase I subdivision for Highland at Hess Creek, it addressed the issue in its findings, as follows:

Approval does not impeded the future best use of the remainder of the property, and in fact would facilitate the future planned development of the remainder of the property. Adjoining properties would not be adversely affected by the approval and development of this property. The applicants have been in communication with the adjoining property owners and have entered into a street access and utility access agreement with the

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property to the north that is contingent upon the approval of the development. The property owner to the west, Chehalem Park and Recreation District, is currently in negotiations with the applicants for a land swap to facilitate both phase 3 of this subdivision and also the creation of a public park on the southern portion of the property.

See Exhibit 1 (Findings and Conditions SUB 06-006). The results of this negotiation with Chehalem Parks and Recreation District (“CPRD”) was a 25’ wide “Temporary Access and Utility Easement” which would expire at such time as the land over which it ran was dedicated to the public as ROW. *See* Exhibit 2 (Instrument 200802862, dated 7 February 2008). It was the parties understanding that this 25 foot easement satisfied both the applicant’s and CPRD’s access needs for the park property, and the applicant moved forward in reliance of this agreement.

However, staff now seeks to upset the investment-backed expectations of the applicant by insisting both on additional ROW dedication and also expensive full street improvements. In the sections below, we detail why staff’s “oversizing” demands are unlawful, and preserve our right to appeal any decision on the basis of unlawful exactions. ORS 197.796(1). Nonetheless, in the spirit of compromise, the applicant is willing to offer the following alternative to staff’s proposal:

- Applicant agrees to dedicate a tract of land 54 feet in width (“Tract D”) over and across the remaining portion of the existing “Temporary Access and Utility Easement” dated 7 February 2008 (Instrument 200802862).
- Construct a 16 foot wide access road on Tract D for the benefit of CPRD.

Although this compromise will cost the applicant an additional lot, it will save the applicant the cost of providing a full street improvement to support hypothetical speculative land uses which may not even come to pass. We urge the Planning Commission to approve these alternative conditions in lieu of the staff proposal.

II. Detailed Facts.

Staff’s proposed condition A(1)(b) in “Exhibit B” to the Staff Report states as follows:

- b. Full width right-of-way and local street extension to tax lot 3220-1101. Either Kennedy Drive or Corrine Drive can be extended. Tract B can be removed. All lots must continue to meet the R-2 Development standards.

In addition, proposed condition A (Utilities)((5)(b) similarly states:

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- b. “Developer shall dedicate full street right-of-way and a city standard residential street for access to the property to the South. (TL R 3220 01101).”

Staff seeks to justify the proposed exaction via the following proposed findings of fact and conclusions of law:

Access/utilities to tax lot 3220-1101 south of the site: The applicant’s proposal shows that access to tax lot 3220-1101, owned by CPRD, will be provided through an access easement over Tract B, a 40 foot wide tract. Newberg’s Development Code does not allow private streets, so the access easement can only contain a driveway. A driveway, under the Development Code, can only serve as access for three lots. The Development Code does allow an access easement to qualify as frontage for a lot.

The CPRD lot is undeveloped. It is in the CF (Community Facility) zone. The CF zone is primarily intended for parks and open space, but some other uses are also allowed (basic utilities, transportation facilities, emergency services) while others are conditional uses (churches, schools, community services). Under code section 15.505.110 listed above, if the site was considered likely to be divided in the future then there would be no question that a street would need to be extended to the property. If the site was zoned R-1 or R-2 then it would be considered very likely to be divided in the future.

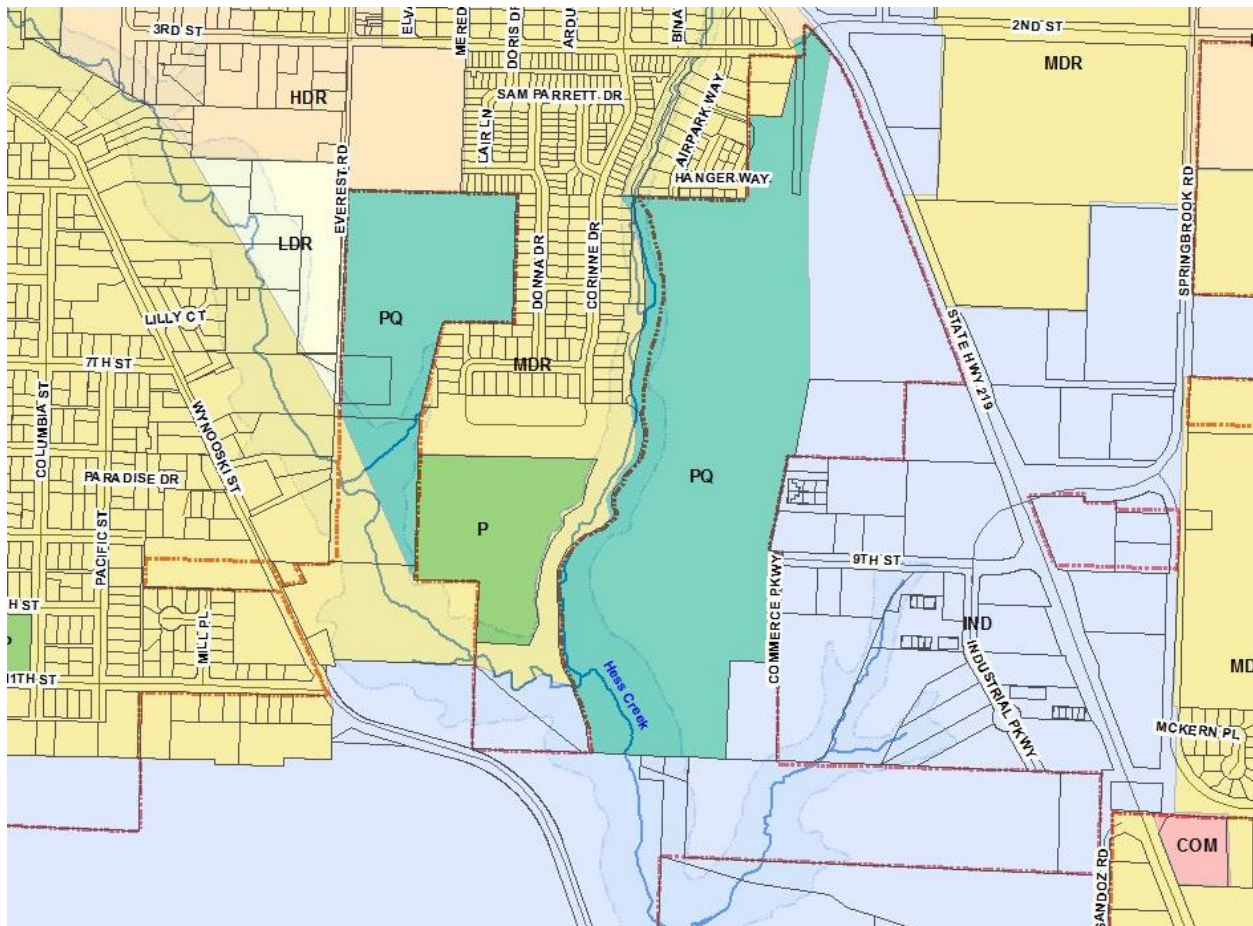
The CF site is different, because there is no way to determine at this point if the lot will be further divided in the future. If the site was going to indefinitely remain a single lot then a driveway in an access easement could be adequate. The site is 9 acres, so it is large enough to potentially contain more than one use. An access easement would limit the ability to divide the property into more than three lots, so an access easement does constrain the potential future development of tax lot 3220-1101. The criteria requires that approval of the subdivision not adversely affect the safe and healthful development of adjoining land or access thereto. Having only an access easement for street frontage would constrain the potential development of tax lot 3220-1101, so it would adversely affect the access and development to the parcel. For that reason, the access easement in Tract B needs to be replaced with a public street extension within public right-of-way. The public water line also needs to be extended within the right-of-way to the property

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line. The street stub to the south could be an extension of either Kennedy Drive or Corrine Drive. (Emphasis in Original).

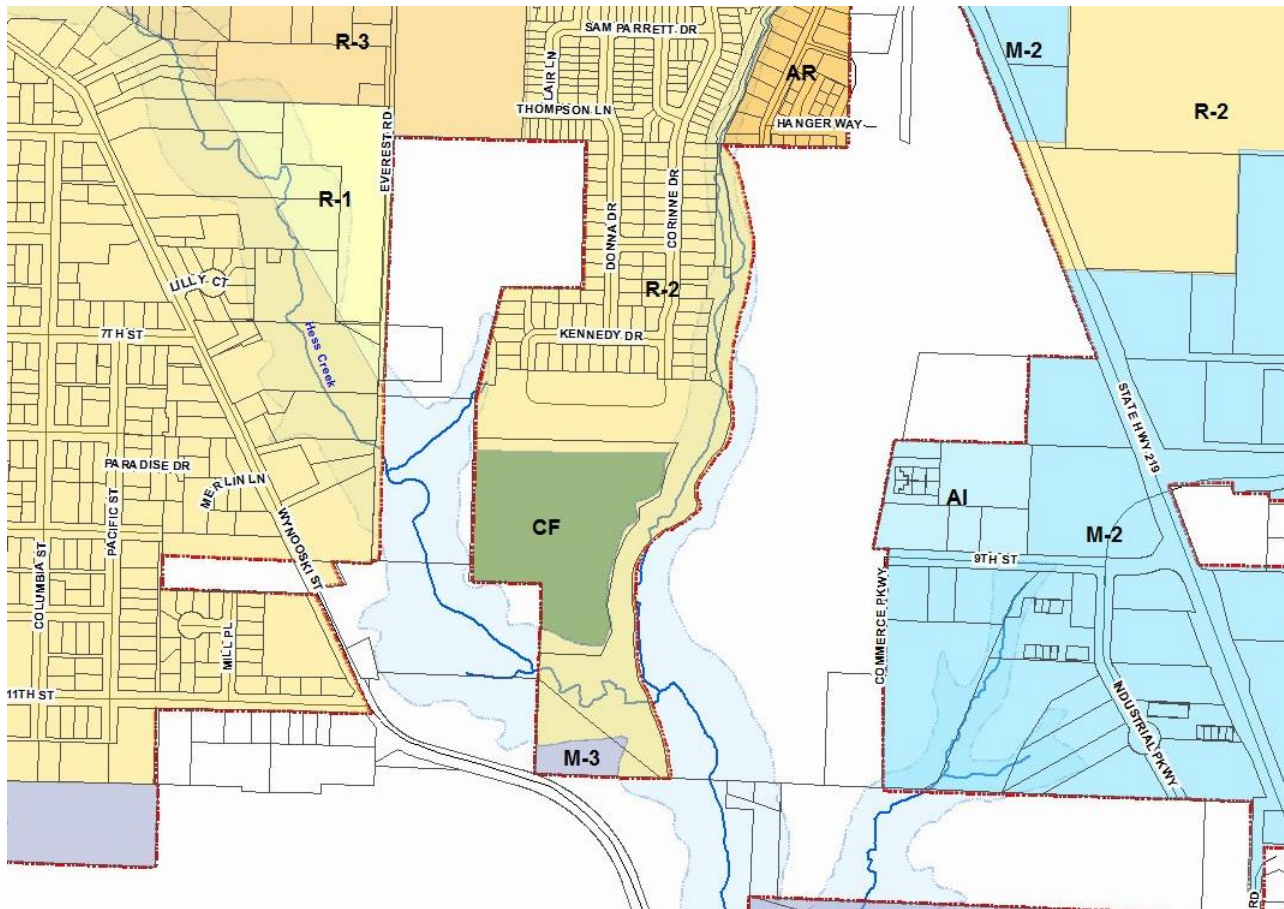
For the reasons listed above, approval of the subdivision as conditioned would not impede the future best use of the remainder of the property or adversely affect the safe and healthful development of adjoining land or access thereto.

The current Comprehensive Plan designation for the CPRD property, 3220-1101, is “Park.”



Similarly, the current zoning designation is “Community Facility”:

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Contrary to the speculative testimony provided in the staff report concerning the future subdivision of the park property for hypothetical schools, churches, etc., CPRD has stated all along that it is going to build a park on this property. In a recent article published by the Newberg Graphic, CPRD Superintendent Don Clements is quoted as saying that those plans are still on track:

“We always planned on developing a neighborhood playground there, a neighborhood park, and that’s still in the planning process,” CPRD Superintendent Don Clements said. “That’s really what we originally bought the property for many, many years ago because there was nothing there but we knew that would all eventually develop.”

* * * * *

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Clements said the plan has been to develop the park as soon as possible and that working on grants could start as early as next year.

See Colin Staub, *Hess Creek Development Reaches Final Stage*, Newberg Graphic, 17 June 2015. Exhibit 3. Given this testimony, it is unclear why staff has concerns about potential future subdivisions of the property. Regardless, there is no substantial evidence to support staff's proposed finding, and the condition of approval must be deleted.

III. Legal Analysis.

A. Findings May Not Be Based on Speculative Facts.

As the Planning Commission is well aware, its findings must be supported by substantial evidence in the whole record. ORS 197.828(2)(a). The term "substantial evidence" means "evidence that a reasonable person could accept as adequate to support a conclusion." *Constant Velocity Corp v. City of Aurora*, 136 Or App 81, 901 P2d 258 (1995). A statement made by a party or staff will not be considered to be "substantial" in nature unless there is an adequate foundation supporting that testimony. As examples, consider the following cases:

- *Worcester v. City of Cannon Beach*, 10 Or LUBA 307 (1983). LUBA held that when a person who is alleged to be an "expert witness" does not offer any supporting documentation, does not state how he arrived at his conclusions, and does not explain how he is qualified to make conclusions of a scientific nature, LUBA will not find the testimony to constitute substantial evidence. *Id.* at 310. In
- *Palmer v. Lane County*, 29 Or LUBA 436 (1995). LUBA held that on a statement in a land use application that "a total of 500,000 to 600,000 yards of rock appears to be available at this site depending upon the unexposed rock formations" does not constitute "evidence" because there was no support for the statement. *Id.* at 441.
- *DLCD v. Curry County*, 31 Or LUBA (1996). LUBA disapproved a finding stating that "[t]here can be no conflict with nearly permitted users on nearly lands." LUBA described the finding as "simply a conclusion" that fails to explain why such conflicts will not occur.

Statements will also not be considered to be substantial evidence if they are based on speculative assumptions about future uses or land or other speculative facts. See *Oregon Shores Conservation Coalition v. Coos County*, 50 Or LUBA 444 (2005) (citing cases); *DLCD v. Klamath County*, 40 Or LUBA 221, 233 (2001) (finding of compliance with TPR not sustainable when those findings are based on speculative unplanned future road improvements).

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In this case, the applicable approval criteria, NDC 15.505.110 and 15.235.190, allow the director to demand dedications of real property for ROW when that dedication is necessary to facilitate provision “for the transportation and access needs of the community.”

In this case, staff’s proposed dedication is not “necessary.” Staff concedes that under current zoning and conditions, a driveway in an access easement is adequate to serve the property if it remains in a single lot configuration or if it is divided into three or less lots. However, staff justifies its demanded road exaction by asserting that “there is no way to determine at this point if the lot will be further divided in the future.” Staff Report at p. 12 of 98. To the contrary, any finding in support of an exaction needs to be based on the current comprehensive plan designation and zoning map, as well as any planning documents that have been adopted for TL 1101.

Staff speculates that tax lot 1101 may be subdivided in the future. However, CPRD confirmed as recently as June 17th 2015 that there are no plans to do so, and that a park will in fact be built on the property. In fact, CPRD has the site listed in their 2010 Heritage Trail Strategic Plan as a park named “Friends Park.” The same park is shown on CPRD’s Heritage Trails Phase I Master Plan.” Thus, given that that the owner of the property as already completed planning for the site, it would be speculative to conclude that further partitioning or subdivision is planned or needed, and any discussion of future subdivision is also purely speculative.

Staff also notes that “having only one easement for street frontage would constrain the potential development of TL 3220-1101.” However, the current zoning of TL 1101 also constrains the potential development of TL 1101, so there is no need to speculate about future subdivision of the property. Even if staff is correct that the site is “large enough to potentially contain more than one use,” there are no uses other than a park currently proposed or planned for the site.

B. Comprehensive Plan as Law / Goal 2 Consistency Doctrine

This case also potentially raises the issue of whether information contained in a Comprehensive Plan or zoning map can be ignored in favor of new “unofficial” factual information that is inconsistent with that map. The short answer is “No.” This is sometimes referred to as the “Goal 2 consistency” requirement / doctrine. Most commonly, the issue arises when a local government attempts to rely on facts set forth in either “adopted” or “unadopted” plans or maps that conflict with facts or maps set forth in the Comprehensive Plan.

The Court of Appeals has addressed this issue in a variety of contexts, and has consistently found that the comprehensive plan, zoning maps, and adopted factual information controls over inconsistent data, even when the parties all conceded that the inconsistent data is more recent and more accurate. *D.S. Parklane Development, Inc. v. Metro*, 35 Or LUBA 516 (1999), *aff’d as modified*, 165 Or App 1, 22, 994 P2d 1205 (2000); *Residents of Rosemont v. Metro*, 38 Or LUBA 199 (2000), *aff’d in part, rev’d in part*, 173 Or App 321, 333-34, 21 P3d

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1108 (2001); *1000 Friends of Oregon v. Metro*, 38 Or LUBA 565, *aff'd in part, rev'd in part*, 174 Or App 406, 26 P3d 151 (2001) (“*Ryland Homes*”); *1000 Friends of Oregon v. City of Dundee*, 203 Or App 207, 124 P3d 1249 (2005). In the *1000 Friends v. City of Dundee* case, the court stated:

In sum, a planning decision based on a study contemplated by a comprehensive plan but not incorporated into the comprehensive plan after the study is carried out is not a planning decision that is made on the basis of the comprehensive plan and acknowledged planning documents, as is required by Goal 2. *D.S. Parklane Development, Inc.*, 165 Or. App. at 22. That is not a matter of mere abstract concern. Rather, it goes to the heart of the practical application of the land use laws: The comprehensive plan is the fundamental document that governs land use planning. Citizens must be able to rely on the fact that the acknowledged comprehensive plan and information integrated in that plan will serve as the basis for land use decisions, rather than running the risk of being “sandbagged” by government’s reliance on new data that is inconsistent with the information on which the comprehensive plan was based. LUBA erred in concluding otherwise.

To the extent that the staff notes that “if the property was zoned R-1 or R-2, then it would be considered very likely to be divided in the future.” Staff Report at p. 12 of 98. However, the property is zoned CF and that is the limit of what can be considered.

C. Applicability of *Dolan v. City of Tigard*.

As the Planning Commission is aware, the U.S. Constitution prohibits a local government from taking private property for public use. A local government is entitled to demand exactions to mitigate impacts created by proposed development. *See generally Nollan v. California Coastal Comm’n*, 483 US 825, 834, 107 SCt 3141 (1987), *Dolan v. City of Tigard*, 512 US at 379, 114 S. Ct. 2309 (1994). Although the analysis needed to support an exaction is complex and time consuming, there exists a case from state of Washington case makes a particularly noble attempt to break the *Nollan/Dolan* test down into four separate “bite-size” inquiries. *Burton v. Clark County*, 958 P2d 343 (Wash App Div. 2 1998). Although not necessarily binding case law in Oregon, the *Burton* “four-part test” framework is a good one for explaining federal taking jurisprudence to non-lawyers, and for this reason alone we use it here.

1. Step One: Identification of a Public Problem

When a government body requires exaction of a property interest as a condition for approval of a development, the exaction will be considered a taking unless it substantially advances a legitimate state interest. *Nollan v. California Coastal Comm’n*, 483 US 825, 834, 107

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SCt 3141 (1987). Thus, when the government conditions a land-use permit, it must identify a public problem or problems that the condition is designed to address. If the government can identify only a private problem, or no problem at all, the government lacks a “legitimate state interest” or “legitimate public purpose” in regulating the project.

In this case, staff concludes that “having only an access easement for street frontage would constrain the potential development of tax lot 3220-1101.” Note that the issue is not whether the current 25 foot wide easement is too small to serve as an access to a nine (9) acre park: staff concedes that it is in fact adequate. Indeed, CPRD previously stated that the easement was satisfactory to meet their needs, and it negotiated an arms-length agreement with the applicant’s predecessor for that easement. For this reason, there is no public problem.

2. Step Two: Show that the Development for Which a Permit is Sought Will Create or Exacerbate the Identified Public Problem.

Second, the government must show that the development for which a permit is sought will create or exacerbate the identified public problem. This is the first of two “nexus” issues. Under *Nollan*, there must be a nexus between the development itself and the identified public problem; that the necessary relationship will exist if the development will create or exacerbate the identified problem. The necessary relationship will not exist if the development will not adversely impact the identified public problem. Thus, even assuming there is a public problem due to the existing width of the road, the county needs to show that the development will create or exacerbate the identified problem.

In this case, even if it were true that the existing access to TL 1101 is inadequate to meet the potential future needs of the CPRD land, the fact that the applicant is building on its land does not exacerbate that problem in any way.

3. Step Three: Establish a Nexus Between the Problem and the Proposed Solution.

Third, the government must show that its proposed condition or exaction (which in plain terms is just the government’s proposed solution to the identified public problem) tends to solve, or at least to alleviate, the identified public problem. This is second aspect of the “nexus” issue: the government must show a relationship (“nexus”) between the proposed solution and the identified problem, and such relationship cannot exist unless the proposed solution has a tendency to solve or alleviate the identified problem. As with negligence, a legitimate state interest “in the air, so to speak, will not do.” *Palsgraf v. Long Island R.R. Co.*, 162 N.E. 99 (NY 1928). To meet *Nollan*’s “essential nexus” requirement, the state interest advanced by the exaction must be the same one that would be served by outright denial of the development. *Nollan*, 483 U.S. at 834-37, 107 S.Ct. at 3147-49.

In this case, staff has not identified the proposed ROW exaction and oversized street does not “have a tendency to solve or alleviate the identified problem,” because no problem exists.

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4. Step Four: Establish the Proportionality of the Fee

The fourth and final step requires the government to show that its proposed solution to the identified public problem is “roughly proportional” to that part of the problem that is created or exacerbated by the landowner's development. Thus, as already seen, the *Dolan* Court posed the question, “[W]hat is the required degree of connection between [1] the exactions imposed by the city and [2] the projected impacts of the proposed development.”

In this case, the applicant would lose two lots if it is required to make the requested dedication to the government, even though it is not creating any problem for the *current* development plans for TL 1101. Staff has not shown that the additional ROW dedication and street improvement requirement is “roughly proportional” to any problem created by the applicant.

Finally, we wish to preserve the issue that ORS 197.522 allows denial of a land use application only in situations where the government cannot fashion reasonable conditions that meet applicable land use standards. In this case, the applicant has already provided a reasonable alternative to the “one-size-fits all” approach for which staff advocates. The applicant proposes to dedicate a “Track D” to the city in favor of CPRD and will install a 16' access road on Tract D for the benefit of CPRD.

IV. CONCLUSION.

We thank the Planning Commission for its time and attention to this matter.

Sincerely,

ANDREW H. STAMP, P.C.

Andrew H. Stamp

Andrew H. Stamp

AHS:ahs
cc: client (Via email)

EXHIBIT A: FINDINGS & CONDITIONS
SUB3-06-006

A 60-lot phased subdivision on the northernmost 10.2 acres of the approximately 25.5 acre property located south of Third Street, west of Sportsman Airpark and east of Friends Cemetery.

I. APPLICABLE SUBDIVISION CRITERIA - NEWBERG DEVELOPMENT CODE § 151.242.2 TYPE II AND TYPE III

(A) *The Director (Type II) or Planning Commission (Type III) shall approve a subdivision of four parcels or more under a Type II or Type III procedure if the resulting parcels comply with the following approval criteria:*

- (1) *Approval does not impede the future best use of the remainder of the property under the same ownership or adversely affect the safe and healthful development of such remainder or adjoining land or access thereto.*

FINDING: Approval does not impede the future best use of the remainder of the property, and in fact would facilitate the future planned development of the remainder of the property. Adjoining properties would not be adversely affected by the approval and development of this property. The applicants have been in communication with the adjoining property owners and have entered into a street access and utility access agreement with the property to the north that is contingent upon the approval of the development. The property owner to the west, Chehalem Park and Recreation District, is currently in negotiations with the applicants for a land swap to facilitate both phase 3 of this subdivision and also the creation of a public park in the southern portion of the property.

- (2) *The subdivision complies with this code including but not limited to §§ 151.450 through 151.617 and §§ 151.241.1 et seq.*

FINDING: The subdivision complies with all applicable code criteria.

(3) *Either:*

- (a) *Improvements required to be completed prior to final plat approval; or*
- (b) *The subdivider will substantially complete, as defined by city policies, required improvements prior to final plat approval, and enter into a performance agreement to complete the remaining improvements. The performance agreement shall include security in a form acceptable to the city in sufficient amount to insure completion of all required improvements; or*
- (c) *A local improvement district shall have been formed to complete the required improvements; or*
- (d) *The required improvements are contained in a city or other government agency capital improvement project that is budgeted and scheduled for construction.*

FINDING: The developer will be required to substantially complete the required improvements before final plat approval will be granted, and to bond for the remainder of the improvements.

II. APPLICABLE STREAM CORRIDOR REQUIREMENTS – NEWBERG DEVELOPMENT CODE § 151.471
STREAM CORRIDOR ACTIVITIES REQUIRING A TYPE II PROCESS

EXHIBIT 1

PAGE _____

The installation, construction or relocation of the following improvements shall be processed as a Type II decision. The proposal shall be accompanied by a plan as identified in § 151.472 and conform to the mitigation standards contained in § 151.473.

- (A) Public or private street crossings, sidewalks, pathways, and other transportation improvements that generally cross the stream corridor in a perpendicular manner.*
- (B) Bridges and other transportation improvements that bridge the wetland area;*
- (C) Railroad trackage crossings over the SC Overlay Sub-district that bridge the wetland area;*
- (D) Water, waste water, and storm water systems already listed within approved City of Newberg master infrastructure plans;*
- (E) New single family residences which meet all of the following requirements.*
 - (1) The lot was created prior to December 4, 1996, is currently vacant, has at least 75% of the land area located within the SC Overlay Sub-district and has less than 5,000 square feet of buildable land located outside the SC Overlay Sub-district.*
 - (2) No more than one single family house and its expansion is permitted on the property which shall occupy a coverage area not to exceed 1,500 square feet in area.*
 - (3) The single family structure shall be sited in a location which minimizes the impacts to the stream corridor.*
 - (4) The improvements and other work are not located within the 100 year flood boundary.*
- (F) Reduced front yard setback. Properties within the SC Sub-district may reduce the front yard setback for single family residences or additions where the following requirements are met.*
 - (1) The reduction in the front yard setback will allow no less than five feet between the property line and the proposed structure.*
 - (2) The reduction in the setback will allow the footprint of the proposed structure or addition to be located entirely out of the SC Overlay Sub-district.*
 - (3) Two, 20 foot deep off-street parking spaces can be provided which do not project into the street right-of-way.*
 - (4) Maximum coverage within the Stream Corridor Sub-district shall not exceed 1,500 square feet.*
- (G) Temporary construction access associated with authorized Type II uses. The disturbed area associated with temporary construction access shall be restored pursuant to § 151.470.*
- (H) Grading and fill for recreational uses and activities, which shall include revegetation, and which do not involve the construction of structures or impervious surfaces.*
- (I) Public parks.*
- (J) Stream corridor enhancement activities which are reasonably expected to enhance stream corridor resource values and generally follow the restoration standards in § 151.470.*

FINDING: The Stream Corridor overlay is on the eastern edge of the property and will be in the backyards of many of the new lots. Most of the stream corridor is unaffected by the subdivision improvements. The applicant is providing a public access and utility easement between lots 33 and 34 that will be used for residents to access the stream corridor in addition to carrying storm water to outfall into the stream. Upon creation of phase 3 of this subdivision, the applicants plan to incorporate a trail system that links the (proposed) park to the south, as well as a possible bridge to the airport hangars in the east. Mitigation of any damage due to construction is required by the restoration of the natural grade and planting of native plants. The applicant needs to submit more detailed drawings of the storm outfall to the stream showing any adverse impacts, along with a plan that indicates how any impacts will be mitigated.

III. APPLICABLE STREAM CORRIDOR REQUIREMENTS – NEWBERG DEVELOPMENT CODE § 151.476 STREAM CORRIDOR ACTIVITIES – DENSITY TRANSFER

For residential development proposals on lands which contain the SC Overlay Sub-district, a transfer of density shall be permitted within the development proposal site. The following formula shall be used to calculate the density that shall be permitted for allowed residential use on the property:

- (A) *Step 1. Calculate Expected Maximum Density. The Expected Maximum Density (EMD) is calculated by multiplying the acreage of the property by the density permitted within the Newberg comprehensive plan.*
- (B) *Step 2. The density that shall be permitted on the property shall be equal to the EMD obtained in Step 1, provided:*
 - (1) *The density credit can only be transferred to that portion of the development site that is not located within the designated stream corridor; and*
 - (2) *The minimum lot size required for residential dwellings, in the base zone, shall not be reduced by more than 20%; and*
 - (3) *The maximum dwelling units per net acre of buildable land, outside the SC boundary, shall not be increased by more than 20%; and*
 - (4) *The types of residential uses and other applicable standards permitted in the zone shall remain the same; and*
 - (5) *All other uses shall comply with applicable standards and criteria of the Newberg Development Code.*

FINDING: The Expected Maximum Density, calculated by multiplying the acreage (10.2) by the permitted density (8.8 du/acre), equals 89 permitted dwelling units. The site property is zoned R-2 with a minimum lot size of 5,000 square feet. According to Step 2 above, the lot size may be reduced up to 20% to equal 4,000 square feet.

The applicants are proposing 60 lots, which is well below the permitted density of 89 units. They are utilizing the stream corridor density transfer provision to reduce the minimum lot size allowed from 5,000 square feet down to 4,000 square feet. Under this provision, 38 of the 60 lots will range from 4,100 square feet up to 4,957 square feet. The proposal meets this criterion.

IV. APPLICABLE AIRPORT RESIDENTIAL OVERLAY (ARO) SUB-DISTRICT REQUIREMENTS – NEWBERG DEVELOPMENT CODE § 151.449.5 NOTICES AND RESTRICTIONS REQUIRED FOR DEVELOPMENT WITHIN THE ARO SUB-DISTRICT

- (A) *Avigation Easement. When a subdivision plan or partition is required for any property within the ARO Sub-District, the property owner shall dedicate an avigation easement to the City over and across that property. The easement shall hold the City, public and airfield, harmless from any damages caused by noise, fumes, dust, fuel, fuel particles, or other effects that may be caused by the operation of aircraft taking off, landing, or operating on or near the airfield, not including the physical impact of aircraft or parts thereof.*
- (B) *Notification of Buyers. No person shall sell, nor offer for sale, any property within the ARO Sub-District unless the prospective buyer has been notified of the fact that the property is within the ARO Sub-District. When property ownership is transferred, the property deed*

- shall be amended to note that the property is within the Airport Residential Overlay Subdistrict.*
- (C) *Agree to Noise Abatement. No person shall sell, nor offer for sale, any property within the ARO Sub-District unless the prospective buyer agrees to follow Aircraft Owners and Pilots Association (AOPA) standard noise abatement procedures, or the most recent noise abatement procedures established at the airport.*
 - (D) *CC&Rs: The applicant for a subdivision or design review in the ARO Sub-District in shall provide a copy of the CC&Rs in conformance to the requirements listed above.*

FINDING: The applicant has stated that they will supply an avigation easement to the City as part of the final plat application and prior to recordation of the final plat. They will also submit CC&Rs that will include language regarding notification to buyers and the AOPA standard noise abatement procedures. Both of these items will be required at the final plat application stage and prior to recordation of the plat.

V. APPLICABLE LOT REQUIREMENTS – NEWBERG DEVELOPMENT CODE § 151.565 LOT AREA; LOT AREAS PER DWELLING UNIT

- (A) *In the following districts, each lot or development site shall have an area as shown below except as otherwise permitted by this code.*
 - (1) *In the R-1 District, each lot or development site shall have a minimum area of 7,500 square feet or as may be established by a sub-district.*
 - (2) *In the R-2, R-3, RP, C-1, C-2, and C-3 Districts, each lot or development site shall have a minimum of 5,000 square feet or as may be established by a sub-district.*
- (B) *Lot or development site area per dwelling unit.*
 - (1) *In the R-1 District, there shall be a minimum of 7,500 square feet per dwelling unit.*
 - (2) *In the R-2 and RP Districts, there shall be a minimum of 3,750 square feet of lot or development site area per dwelling unit.*
- (C) *In calculating lot area for this section, lot area does not include land within public or private streets.*

FINDING: The property is zoned R-2, which would require minimum lot sizes of 5,000 square feet. However, because the property contains land within the Stream Corridor overlay the applicants are allowed to utilize the density transfer provision and reduce the allowed lot sizes by 20% to 4,000 square feet. The proposed lot sizes range from 4,100 square feet to 9,333 square feet. Therefore, the application meets this criterion.

VI. APPLICABLE LOT REQUIREMENTS – NEWBERG DEVELOPMENT CODE § 151.567 LOT DIMENSIONS AND FRONTAGE

- (A) *Width. Widths of lots shall conform to the standards of this code.*
- (B) *Depth. Each lot and parcel shall have an average depth between the front and rear lines of not more than two and one-half times the average width between the side lines. Depths of lots shall conform to the standards of this code.*
- (C) *Area. Lot sizes shall conform to standards set forth in this code. Lot area calculations shall not include area contained in public or private streets as defined by this code.*
- (D) *Frontage.*
 - (1) *No lot or development site shall have less than the following lot frontage standards:*

- (a) *Each lot or development site shall have either frontage on a public street for a distance of at least 25 feet or have access to a public street through an easement that is at least 25 feet wide. Not new private streets, as defined in §§ 151.003, shall be created to provide frontage or access.*
- (b) *Each lot in an R-1, R-2, R-3 or RP Zone shall have a minimum width of 50 feet at the front building line.*

FINDING: Each of the proposed 60 lots are 50 feet wide and have at least 25 feet of frontage on a public street. The proposed lots meet the required area standards as set forth in § 151.565 and adjusted by §151.476(B). The majority of the lots meet the average width to depth ratio of two and one-half times the average width; however, the depth of lots 28-42 exceeds the allowed width to depth ratio. A variance or redesign of the lots will be required to address this discrepancy. The applicant must either apply and obtain approval of a variance to the width to depth ratio prior to final plat application, or redesign these lots to meet the width to depth ratio standard.

VII. APPLICABLE SUBDIVISION CRITERIA - NEWBERG DEVELOPMENT CODE § 151.242.1
SUBDIVISION APPLICATIONS

- (A) *Drafting. The tentative plan shall show all pertinent information, normally at a scale of one inch equals 100 feet. For subdivision, the scale may be increased or decreased to fit standard size sheets of 18 inches by 24 inches. However, in all multiples of 100 feet to the inch. Tentative plans for subdivisions shall be prepared by an Oregon Registered Engineer or Oregon Licensed Land Surveyor.*

FINDING: The tentative plan has been prepared by an Oregon Licensed Land Surveyor.

- (B) *Information required. The application itself or the tentative plan must contain the following information with respect to the subject area:*
 - (1) *Name and block numbering of proposed subdivisions. Except for the words "town," "city," "place," "court," "addition," or similar words, the name shall be clearly different than, and clearly pronounced different than, the name of any other subdivision in the county, unless the subject subdivision is contiguous to or platted by the same party that platted the preceding subdivision bearing that name. All subdivisions must continue the block numbers of the subdivision of the same name last filed.*

FINDING: The applicant has named the subdivision Highlands at Hess Creek. The subdivision is not an extension of any contiguous subdivision.

- (2) *The date, north point, and scale of the drawing, and sufficient description to define the location and boundaries of the proposed subdivision and the names of all recorded subdivisions contiguous to such area.*
- (3) *The names and addresses of the owner and engineer or surveyor.*

FINDING: The tentative plat includes the date, north point, and scale, together with the name and address of the owner and engineer or surveyor. The names of adjacent properties and tentative recorded subdivisions are included.

- (4) *The location of existing and proposed right-of-way lines for existing or projected streets as shown on the transportation system plan.*
- (5) *The locations, names and widths and grades of all existing and proposed streets and roads.*
- (6) *Contours on the site and within 100 feet of the site.*
 - (a) *One-foot contour intervals for ground slopes up to five percent.*
 - (b) *Two-foot contour intervals for ground slopes between five and ten percent.*
 - (c) *Five-foot contour intervals for ground slopes exceeding ten percent.*

FINDING: Existing and proposed right-of-way lines are included on the tentative plan. The existing conditions plan provides one-foot contours for the site. Street dedications to supply right-of-way in compliance with the City's street specifications will be provided by the approval of the tentative plan.

- (7) *Preliminary site grading plan, prepared by an Oregon registered engineer or land surveyor.*
- (8) *The approximate width and location of all existing and proposed easements for public utilities, and all reserve strips proposed to satisfy requirements which may be required as provided for in § 151.687 of this code.*

FINDING: The applicant has supplied a preliminary grading plan, prepared by an Oregon registered engineer. The proposed utility plan shows the proposed easements and reserve strips.

- (9) *The approximate radii of all curves.*
- (10) *The general design of the proposed subdivision including the approximate dimension of all proposed lots and parcels.*

FINDING: Approximate radii of all curves, and the general design and dimensions of the proposed subdivision are indicated on the preliminary plat.

- (11) *The approximate location of areas subject to inundation of storm water, and the location, width, and direction or flow of all water courses.*

FINDING: Water courses have been identified on the preliminary plat.

- (12) *The existing and proposed uses of the property, including the location of all existing structures that the applicant intends will remain in the subject area.*

FINDING: There is an existing dwelling, barn and propane tank on the parcel that are identified on the existing conditions plan. The applicant indicates that all existing structures will be removed prior to development.

- (13) *The domestic water system proposed to be installed, including the source, quality, and quantity of water, if from other than a public water supply.*
- (14) *All proposals for sewage disposal, flood control and easements or deeds for drainage land, including profiles of proposed drainage ways.*

FINDING: The project will be served by City water and sewer service.

- (15) *All public areas proposed to be dedicated by the applicant and the proposed uses thereof.*

FINDING: The applicant is dedicating land to construct public streets through the subdivision. In addition, they are proposing a public access and utility easement down to the stream corridor. These public areas are shown on the tentative plat.

- (16) *All public improvements proposed to be made or installed, and the time within which such improvements are envisioned to be completed.*

FINDING: All proposed public improvements and their timing are indicated on the site plan.

- (17) *A legal description and drawing of the boundaries of the entire area owned by the applicant of which the proposed subdivision is a part; provided that where the proposal comprises all of such area a written statement of such fact shall accompany the tentative plan.*

FINDING: The applicant provided a legal description of the site as part of the application process.

- (18) *Outline and location of existing buildings, features, and trees (in excess of four inches d.b.h.) to remain in place on the site and within 100 feet of the site.*
 (19) *Outline and location of existing buildings, features, and trees (in excess of four inches d.b.h.) to be removed on the site.*

FINDING: There is an existing dwelling, barn and propane tank on the site that will be removed. The applicant has shown these structures as well as existing trees on the site to be removed. The applicant will need to preserve any existing trees within the stream corridor.

- (C) *Traffic study. A traffic study shall be submitted for any project that generates in excess of 40 trips per p.m. peak hour. This requirement may be waived by the Director when a determination is made that a previous traffic study adequately addresses the proposal and/or when off-site and frontage improvements have already been completed which adequately mitigate any traffic impacts and/or the proposed use is not in a location which is adjacent to an intersection which is functioning at a poor level of service. A traffic study may be required by the Director for projects below 40 trips per p.m. peak hour where the use is located immediately adjacent to an intersection functioning at a poor level of service*

FINDING: The size of this proposed subdivision warrants the need for a traffic study. Because this subdivision is adjacent to the Orchards Lair subdivision, the two subdivisions are very similar in size and impact, and they are going through the approval process so closely together, they have agreed to both pay a pro-rate share for a common traffic study.

The applicant's traffic study shows that traffic operation at the Everest/219 intersection and 2nd/219 intersection will not meet standards with the development of this project. The study concluded that a traffic signal at 219 and Everest was inappropriate due to the proximity of Villa Road. The traffic study proposes some improvements to mitigate the impact: install a median to convert the 2nd/219 intersection to right-in/right-out operation, and properly locate utility equipment and maintain landscaping along E. 3rd Street to ensure adequate sight distance for vehicles entering and exiting the site. Signage could be

used to encourage drivers who wish to turn left from Everest onto 219 to instead use Church Street to turn right onto 219 then left on Villa Road to Hwy 99W during peak traffic hour periods. The median in the 2nd/219 intersection was required to be constructed as a condition of approval of the Orchards Lair I subdivision, and is listed in the City's Transportation System Plan. The City hired an engineering firm (Hopper Dennis Jellison, PLLC) to review the traffic study and proposed mitigation. Hopper Dennis Jellison concluded that the proposed mitigation was helpful but inadequate, and that a signal was warranted at the intersection of 219 and Everest.

In order to mitigate the impacts, the applicant is required to do the following:

Interim Improvements: the mitigation improvements proposed by the applicant will be considered interim improvements and must either be completed or secured for in accordance with City policy prior to the issuance of the first certificate of occupancy in the subdivision. The Orchards Lair I and Orchards Lair II subdivisions have been conditioned to construct the Highway 219/2nd Street improvement, but it is also necessary for the Highlands at Hess Creek subdivision. If the Highway 219/2nd Street improvement has not already been constructed as part of the Orchards Lair subdivisions, it shall be constructed prior to the issuance of the first certificate of occupancy in the Highlands at Hess Creek subdivision, or as determined by the Public Works Director. A portion and/or all of these improvements may become SDC creditable.

Improvements to Everest/219:

1. Prepare, under City direction, a traffic study to ODOT and City specifications for OR219 in the vicinity of the development. Meet with City staff and ODOT staff to prepare the scope of the traffic study. The traffic study shall consider the impacts of site generated traffic and other development in the area bounded by OR219, Hess Creek and Sportsman Airpark. The study shall evaluate the potential for traffic signal installation at the OR219/Everest intersection. The traffic study also shall evaluate options to address issues, including the extension of Sitka Avenue to Second Street and installation of a traffic signal at that location. The study shall consider pedestrian needs.
2. The City-approved identified solution may require an amendment to the Newberg Transportation System Plan. If so, the applicant shall prepare the proper documentation to consider an amendment to the plan. City staff will lead the public process for consideration of the amendment.
3. If adopted, the identified solution could be considered for inclusion in the City's transportation SDC list. If so, the applicant shall prepare the proper documentation to consider an amendment to the SDC list by the City Council. City staff will lead the public process for consideration of the amendment.
4. Prepare an engineering design and construct the improvements identified in the traffic study, including necessary permitting.
5. Eligible costs for the above will be reimbursed from SDCs. If right-of-way acquisition is necessary, staff will lead the process.

6. This process will occur in parallel with the completion of the subdivision but could require a substantial amount of time. The approval of the subdivision final plat and certificate of occupancy for homes in the subdivision is not conditional on the completion of this process. If ODOT will not allow the construction of a signal or other identified improvement at 219 and Everest then the applicant cannot be required to construct the improvement. The applicant will not be reimbursed for costs incurred to that point, and will be required to turn over the design work for the identified solution to the City.

VIII. APPLICABLE DEVELOPMENT STANDARDS

NDC § 151.718: Water Supply. All lots and parcels within subdivisions and partitions shall be served by the water system of the City of Newberg.

NDC § 151.719: Sewage. All lots and parcels within subdivisions and partitions shall, where practicable, as determined by the Director, in accordance with the provisions of this Code, be served by the sewage system of the City.

NDC § 151.720: Land Surface Drainage. Such grading shall be done and such drainage facilities shall be constructed by the land divider as are adequate for the purpose of proper drainage of the partition or subdivision, of areas affected thereby, and for the preservation of healthful and convenient surroundings and conditions for residents of the subdivision or partition, and for the general public, in accordance with specifications adopted by the City Council under § 151.717.

NDC § 151.721: Streets and Alleys. The land divider shall grade and pave all streets and alleys in the subdivision or partition to the width specified in § 151.686, and provide for drainage of all such streets and alleys, construct curbs and gutters within the subdivision or partition in accordance with specifications adopted by the City Council under § 151.717. Such improvements shall be constructed to specifications of the City under the supervision and direction of the Director. It shall be the responsibility of the land divider to provide street signs.

NDC § 151.722: Existing Streets. A subdivision or partition abutting or adjacent to an existing road of inadequate width, shall dedicate additional right-of-way to and improve the street to the width specified in § 151.686.

NDC § 151.723: Sidewalks. Sidewalks shall be located and constructed in accordance with the provisions of § 151.717.

NDC § 151.724: Pedestrian Ways. A walk strip, not less than five feet in width, shall be paved in the center of all dedicated pedestrian ways. Such paving shall conform to specifications adopted by the City Council under NDC § 151.717.

NDC § 151.725: Street Trees. Street trees shall be provided adjacent to all public rights-of-way abutting or within a subdivision or partition. Street trees shall be installed in accordance with the provisions of § 151.580(B)(4).

FINDING: The proposed utility plan extends public water lines south from Third Street through the Orchards Lair II subdivision. Public sewer lines will either be extended north from an existing sanitary

manhole located in the southern portion of the property within the stream corridor boundary or extended east from an existing sanitary manhole located on tax lot 3220-01000. All public sewer lines outside of the right-of-way shall be located within a minimum 15 ft easement or wider depending on sewer depth. The proposed storm water system will run down a 20 ft wide public access and utility easement from Corinne Dr east to outfall into the stream. The applicant will need to submit a detail of the outfall to the stream and will need a plan to minimize the impacts of the outfall. Restoration will be required as needed to mitigate any adverse impacts to the stream corridor.

The applicant will construct public streets to serve the development. The streets will have a 54 ft right-of-way with 5 ft sidewalks, planter strips, curbs and gutters on both sides. The layout of the new public streets will line up with the streets in the Orchards Lair II subdivision to the north. The subdivider will be required to bond for installation of street trees. Street trees will be installed on each parcel prior to issuance of building occupancy. The applicant must submit a street tree plan to the Planning & Building Director for review and approval.

IX. APPLICABLE NEWBERG COMPREHENSIVE PLAN SECTION – PUBLIC FACILITIES AND SERVICES, ALL FACILITIES AND SERVICES POLICY #1.H.

The policy states that new residential areas shall have: paved streets, curbs, pedestrian ways, water, sewer, storm drainage, street lights and underground utilities.

FINDING: Utilities are available and can be extended to serve the site. Paved access will be provided to the site by the applicant.

AFTER RECORDING RETURN TO:
Newberg Communities, LLC
14845 SW Murray Scholls Suite 110
Beaverton, OR 97007

OFFICIAL YAMHILL COUNTY RECORDS
JAN COLEMAN, COUNTY CLERK

200802862

\$36.00



00293513200800028620030038

02/20/2008 03:43:38 PM

DMR-EDMR Cnt=1 Stn=2 ANITA
\$15.00 \$10.00 \$11.00

TEMPORARY ACCESS AND UTILITY EASEMENT

Newberg Communities, LLC, an Oregon Limited Liability Company hereby dedicates a non-exclusive temporary easement and right-of-way for access and utilities to Chehalem Park & Recreation District as described as:

See Exhibit "A" Attached

GRANTOR reserves the right to use the surface of the land for any purpose that will not be inconsistent or interfere with the use of the easement. No building shall be placed upon, under, or within the property subject to the foregoing easement during the term thereof.

Any portion of this easement, over which a public right-of-way is dedicated for street purposes, shall automatically expire and be extinguished upon dedication of the coincident public right-of-way. Notwithstanding said automatic expiration, any portion of this easement which remains outside the limits of a dedicated public right of way shall continue to exist indefinitely and permanently as an access and utility easement for the use of the beneficiary herein stated.

DATED this 17th day of Feb January, 2008

Newberg Communities, LLC

BY: [Signature]
Michael J. Hanks, Member

STATE OF OREGON, County of Yamhill) ss.

February The foregoing instrument was acknowledged before me this 17th day of January, 2008 by Michael J. Hanks as Member of Newberg Communities, LLC, an Oregon Limited Liability Company



[Signature]
NOTARY PUBLIC FOR OREGON
My Commission Expires: 5/6/10

EXHIBIT

2

PAGE

FIRST AMERICAN TITLE 1780

Exhibit "A" - Page 2

Matt Dunckel & Assoc.
Land Surveyors
3765 Riverside Drive
McMinnville, OR 97128
Phone: 503-472-7904
Fax: 503-472-0367
E-Mail: matt@dunckelassoc.com

Date: 15 Dec. 2007

NEWBERG COMMUNITIES, LLC – Legal Description of Access & Utilities
Easement to "New" TL 1101

A 25.00 foot wide access and utilities easement in Section 20, Township 3 South, Range 2 West, Yamhill County, Oregon, the centerline of which is more particularly described as follows:

Beginning on the south line of HIGHLANDS AT HESS CREEK – Phase 1 at a point that is North $85^{\circ}37'46''$ East 14.54 feet from the southeast corner of Lot 25 of HIGHLANDS AT HESS CREEK – Phase 1, said point also being North $73^{\circ}54'58''$ East 336.55 feet from the northeast corner of Parcel 1 of Yamhill County Partition Plat 97-61; thence South $00^{\circ}08'03''$ East 108.04 feet to the beginning of a curve concave to the west having a radius of 172.50 feet; thence southerly 57.10 feet along said curve (chord=South $09^{\circ}20'54''$ West 56.84 feet) to the beginning of a curve concave to the east having a radius of 197.50 feet; thence southerly 65.37 feet along said curve (chord=South $09^{\circ}20'54''$ West 65.07 feet); thence South $00^{\circ}08'03''$ East 421.43 feet as shown by Exhibit "A1".

Exhibit "A1"

Location: SE 1/4 Section 20, T. 3 S., R. 2 W.,
WM., R. Everest DLC #, City of Newberg,
Yamhill County, OR

Tax Map: 3220

Date: 15 Dec. 2007

Scale: 1" = 200'

TL 1100
Parcel 2
of PT 97-61

NE cor. Parcel 1 of
PT 97-61, 5/8"IR

5/8"IR, plat of
FRIENDS CEMETARY

Parcel 1
of PT 97-61

"A"
portion of TL 1101 to
be added to TL-1400
4.46 Acres

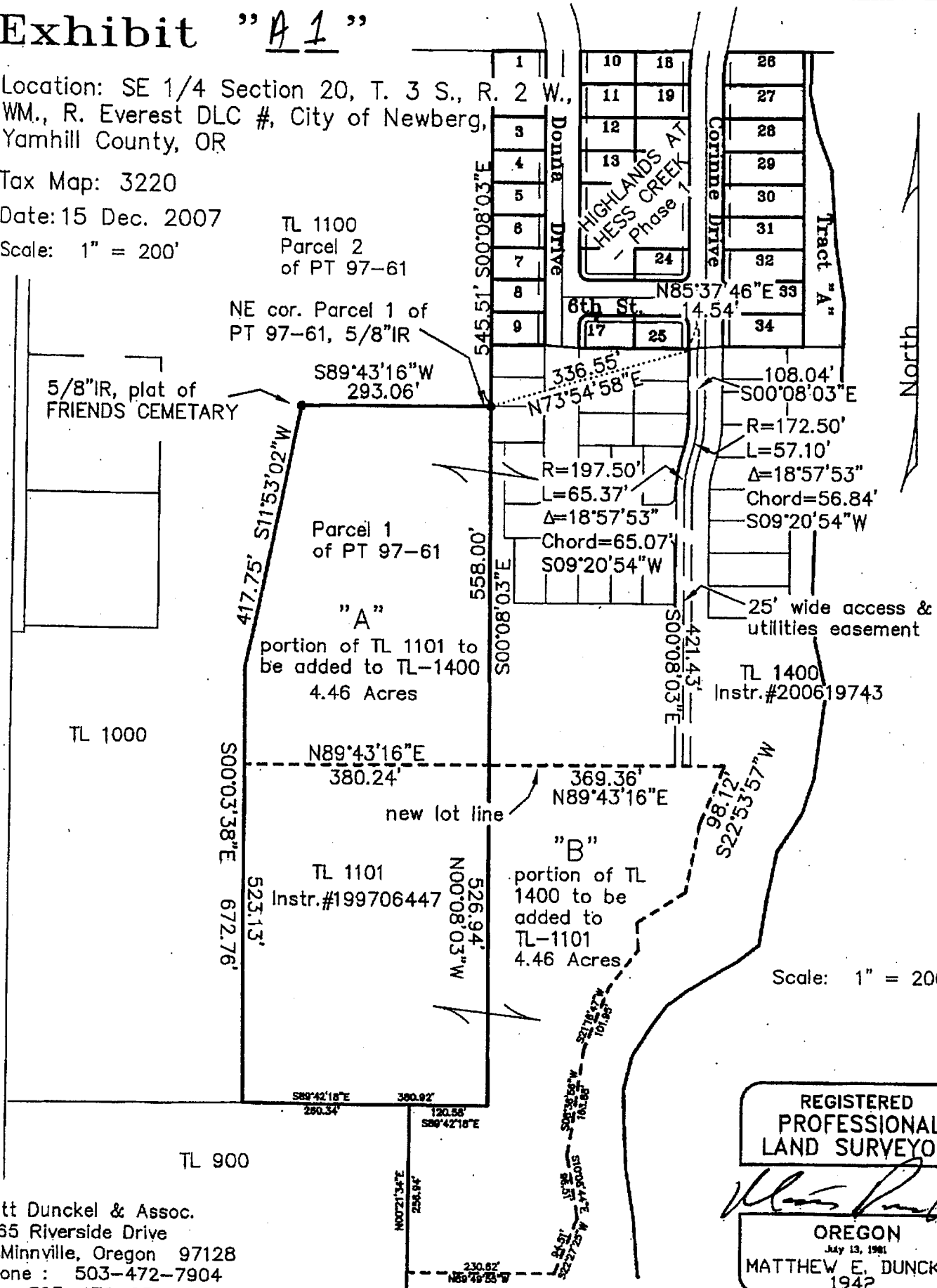
TL 1000

TL 1101
Instr.#199706447

TL 900

Matt Dunckel & Assoc.
3765 Riverside Drive
McMinville, Oregon 97128
Phone : 503-472-7904
Fax: 503-472-0367
Email: matt@dunckelassoc.com

65/332



Scale: 1" = 200'


REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
July 13, 1981
MATTHEW E. DUNCKEL
1942

Renewable 31 December 2007

5766

Hess Creek development reaches final stage

Created on Wednesday, 17 June 2015 01:00 | Written by [Colin Staub](#) | 

[0 Comments](#)

Twenty-seven houses will round out subdivision at more than 100 new homes

The Highlands at Hess Creek development at the south end of Newberg was not projected to be a decade-long project, but as it began in 2006 and has spanned the housing crash and recovery, that's the way it turned out.

Seventy-six houses have been built in the development, a number that will expand as the builders move into the final phase of the project, for which a public hearing will take place next week.

This phase will see the addition of 27 new houses to bring the final number of new units to more than 100, contractor Mart Storm of RA Storm Company, who is building the houses, said last week.

A prior Willcuts Company Realtors project north of the Highlands site brought 135 smaller houses to the area at the entrance to the subdivision.

Architecturally the houses are planned to be in the same style as those built during the Highlands development's other phases, with an estimated similar price point once they hit the market.

"We completed a phase a year ago with 16 lots and those are \$250,000 to \$280,000. I would think these would be similar," Storm said.

This phase of the subdivision will connect the development with a nine-acre piece of property owned by Chehalem Park and Recreation District. Plans for the property have been kicked around for quite a while.

"We always planned on developing a neighborhood playground there, a neighborhood park, and that's still in the planning process," CPRD Superintendent Don Clements said. "That's really what we originally bought the property for many, many years ago because there was nothing there but we knew that would all eventually develop."

Although the park has not yet materialized the land has gone through a few uses.

In August 2007 the Luke McKern house, built in 1873, and its associated 1859 barn were moved onto the CPRD property from their former home at 1180 Springbrook Road following the purchase of that property by developer Coyote Homes. The Friends of Historic Newberg coordinated with CPRD and the development company to make that happen.

The structures sat on the CPRD lot for several years until they were burned to the ground, the barn in October 2011 and the house in January 2012.

While the Newberg-Dundee Police Department was leaning toward arson as the cause of the fires and even were close to making an arrest at one point, the case was never closed and remains unsolved.

With the new development coming the park is potentially closer to being a reality.

"It's been my experience that CPRD develops parks after the houses are all constructed and the need is there," Storm said. "I know homeowners that bought earlier would like it done."

Clements said the plan has been to develop the park as soon as possible and that working on grants could start as early as next year.

As far as approval criteria for the Highlands development, while many land division proposals require only a decision by the community development director, because the Highlands project is located partially in a stream corridor overlay zone it requires planning commission approval to move forward.



GARY ALLEN - Coming soon - An application has been submitted for the final phase of the Highlands at Hess Creek development, which has so far brought 76 new houses into the city and with this phase will top 100. Built by contractor Mart Storm, the project has spanned 10 years due to the housing market crash shortly after it began.

EXHIBIT 3
PAGE _____

Stream corridors are present on all streams in the city from Springbrook to Hess to Chehalem creeks. They are typically placed at the top of the bank at the edge of the stream's canyon.

"It's an area that's supposed to remain in its natural state and not be developed," City Planner Steve Olson said.

The eastern and western boundaries of the Highlands development fall under this overlay from their proximity to Hess Creek and Olson said those sections of the property will be untouched by the development.

Even if the overlay zone was not part of the city's development code, building on areas it covers would be difficult.


"Part of our topography in Newberg is that the streams tend to be canyons anyway," Olson said, meaning the areas are naturally unsuitable for construction.

A traffic study was not required for the Highlands proposal: guidelines set by the Institute of Transportation Engineers estimate residential evening trip generation as one trip per lot, meaning this development is expected to have a 27-trip addition to the peak traffic period for the area. The city only requires a traffic study when more than 40 trips will be generated.

Storm said construction of the street and utility improvements will begin as soon as possible once the proposal is approved, with individual lots becoming available for house construction as early as the fall. Completed homes could hit the market in fall 2016, rounding off the 10-year project.

Given the timing and the volatile state of the market throughout the development project, the builders are happy with the timeframe of the project.

"We felt fortunate to be done in 10 years," Storm said.

0 Comments**Pamplin Media** **Login** ▾ **Recommend** **Share****Sort by Best** ▾

Be the first to comment.

AROUND THE WEB**WHAT'S THIS?****Microsoft**

1 Billion people use Office. Now only \$8.25/mon.

Stansberry Research

New U.S. Currency Law Now In Effect

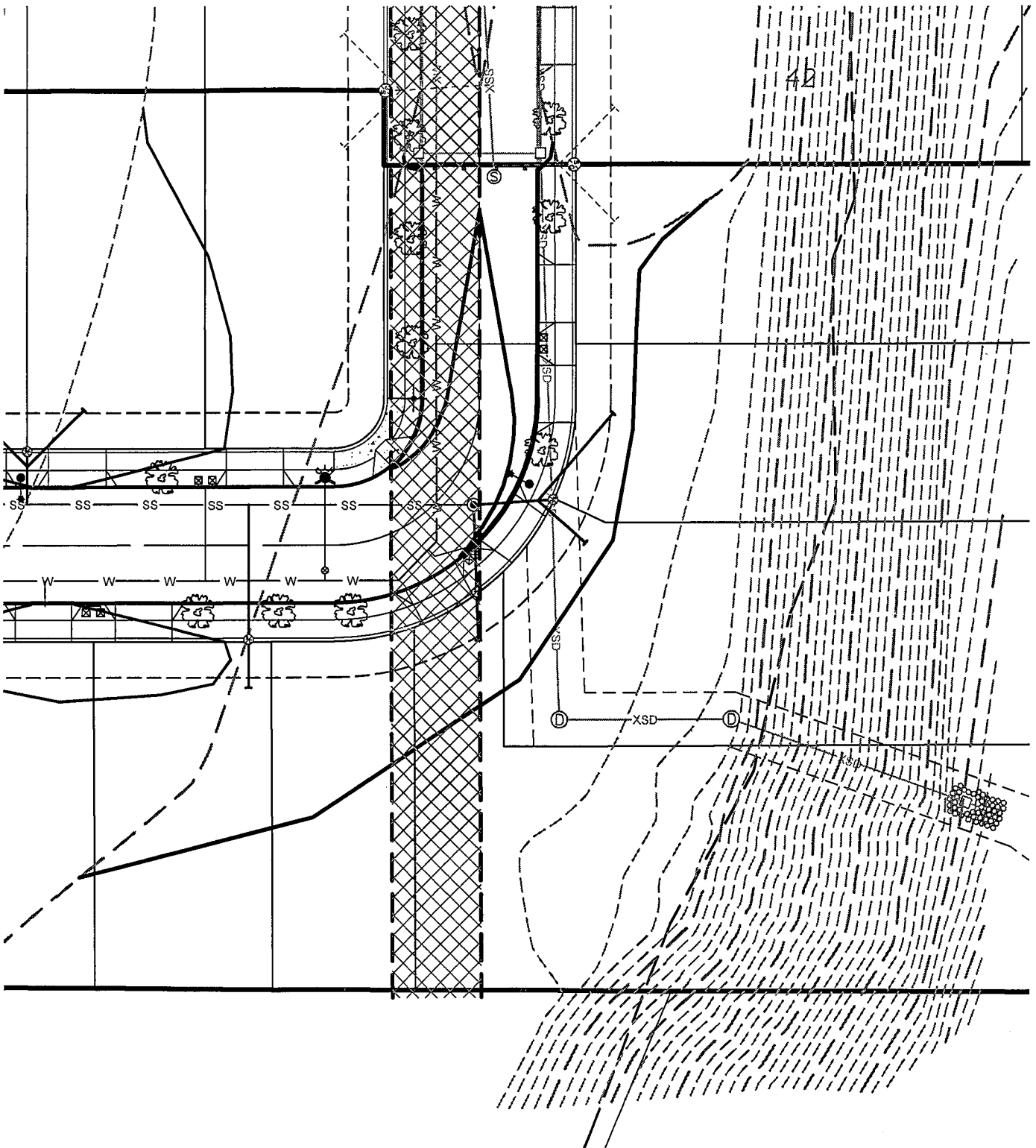


EXHIBIT 4
PAGE _____

THE HIGHLANDS AT HESS CREEK PHASE NO. 4 & PHASE NO. 5 COVER SHEET

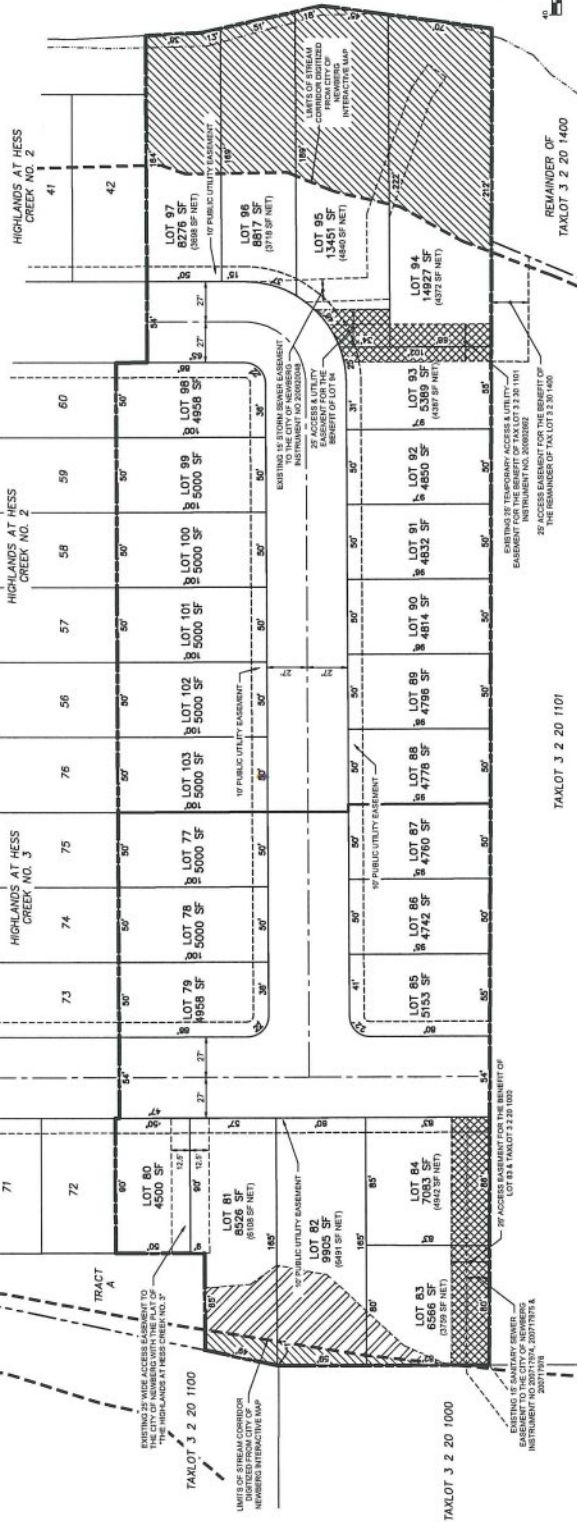
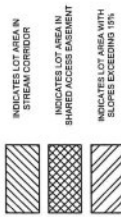
TAX LOT 3 2 20 1400
CITY OF NEWBERG, YAMHILL COUNTY, OREGON

PHASING NOTE

THIS SUBDIVISION TO BE IN PHASE NO. 4 & PHASE NO. 5
PHASE NO. 4 WILL CONSIST OF LOTS 77 THRU 87
PHASE NO. 5 WILL CONSIST OF LOTS 88 THRU 103

THE HIGHLANDS AT HESS CREEK PHASE NO. 4 & PHASE NO. 5 A SUBDIVISION OF TAX LOT 3 2 20 1400 CITY OF NEWBERG, OREGON	COVER SHEET TENTATIVE PLAT	REVISIONS NO. DATE DESCRIPTION	
		NO. DATE DESCRIPTION	

AVERAGE (NET) LOT AREA: 4831 SF
NET LOT AREA COMPUTED BY SUBTRACTING THE LOT
AREA OF THE LOT AREA FROM THE TOTAL LOT
AREA OF THE LOT AREA. LOT AREA
EASEMENTS WITH SLOPES EXCEEDING 15%
C.D.M. CODE 15.005.010-A.2, & 15.460.010-C.



PROJECT CONTACTS

OWNER:
LEONARD JOHNSON
3375 WEST SIDE ROAD
MCMINVILLE, OREGON 97128
(503) 550-8130

ENGINEER:
EMERO DESIGN
2000 S. W. 10TH AVE. SUITE 100
BEAVERTON, OREGON 97008
ATTN: ERIC EVANS
(503) 853-1910

SURVEYOR:
LELAND MACDONALD & ASSOC., LLC
3785 REVERDE DRIVE
MCMINVILLE, OREGON 97128
(503) 550-8130

BENCH MARK INFORMATION

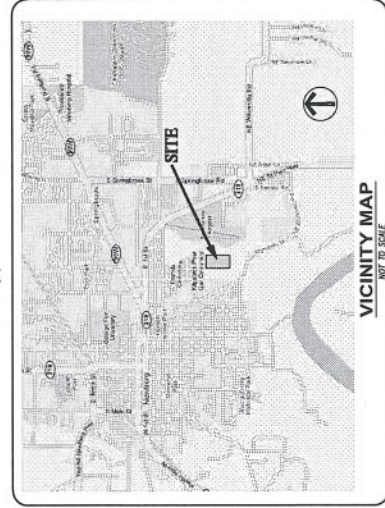
THE DATUM FOR THIS SURVEY IS BASED UPON A 3" BRASS
CAP STAMPED "YAMHILL COUNTY PARR SAT M-2" LOCATED
50' SOUTH OF HIGHWAY 210, 25 FEET EAST OF THE
CENTERLINE OF EVERETT ROAD
ELEVATION: 187.10 YAMHILL COUNTY DATUM

SITE INFORMATION

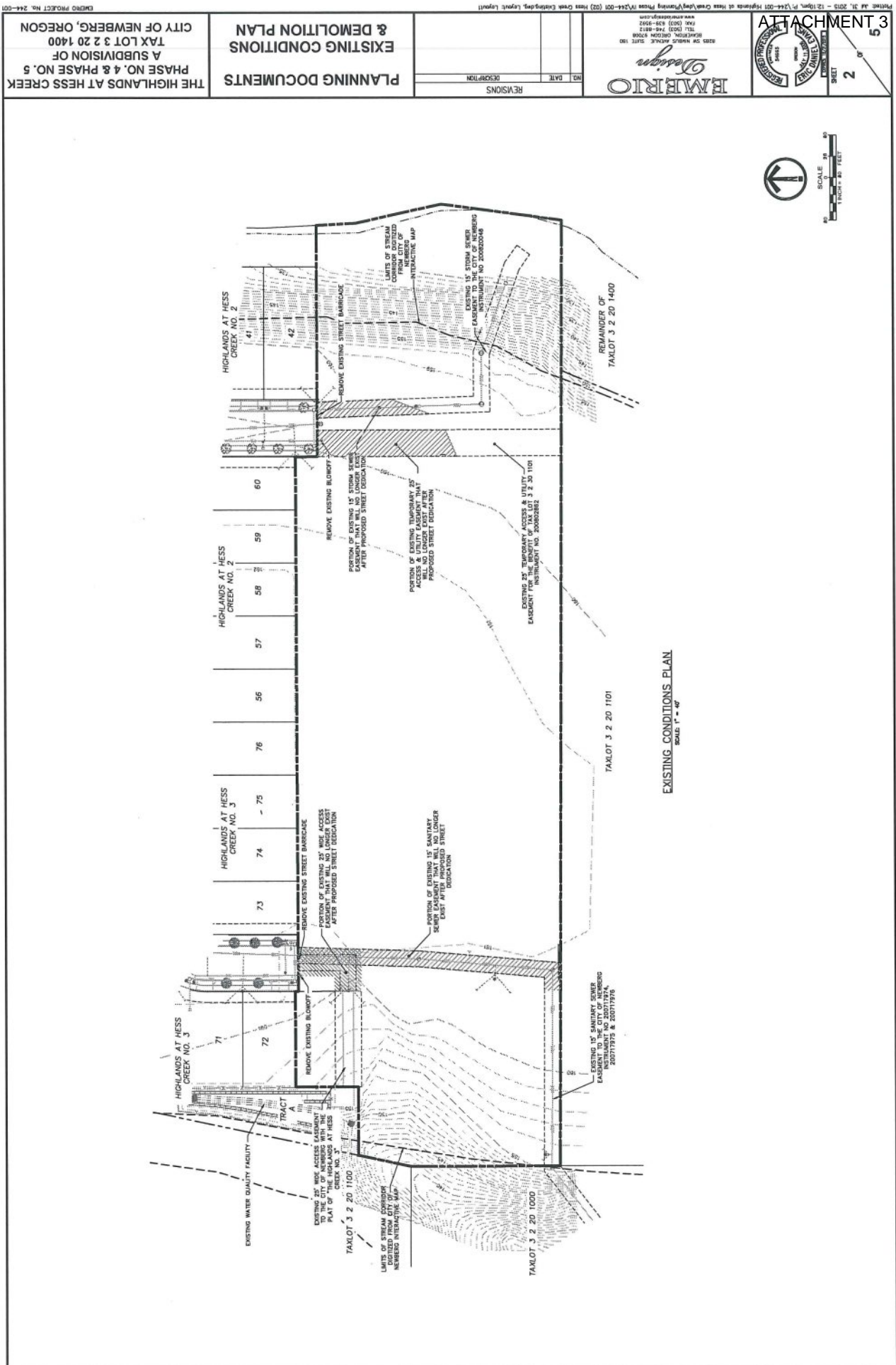
SITE AREA: 215,076 SF (4.94 AC)
ZONING: R2
TAX MAP: 35 2W 20
TAX LOTS: 1400
NUMBER OF LOTS: 27

DRAWING INDEX

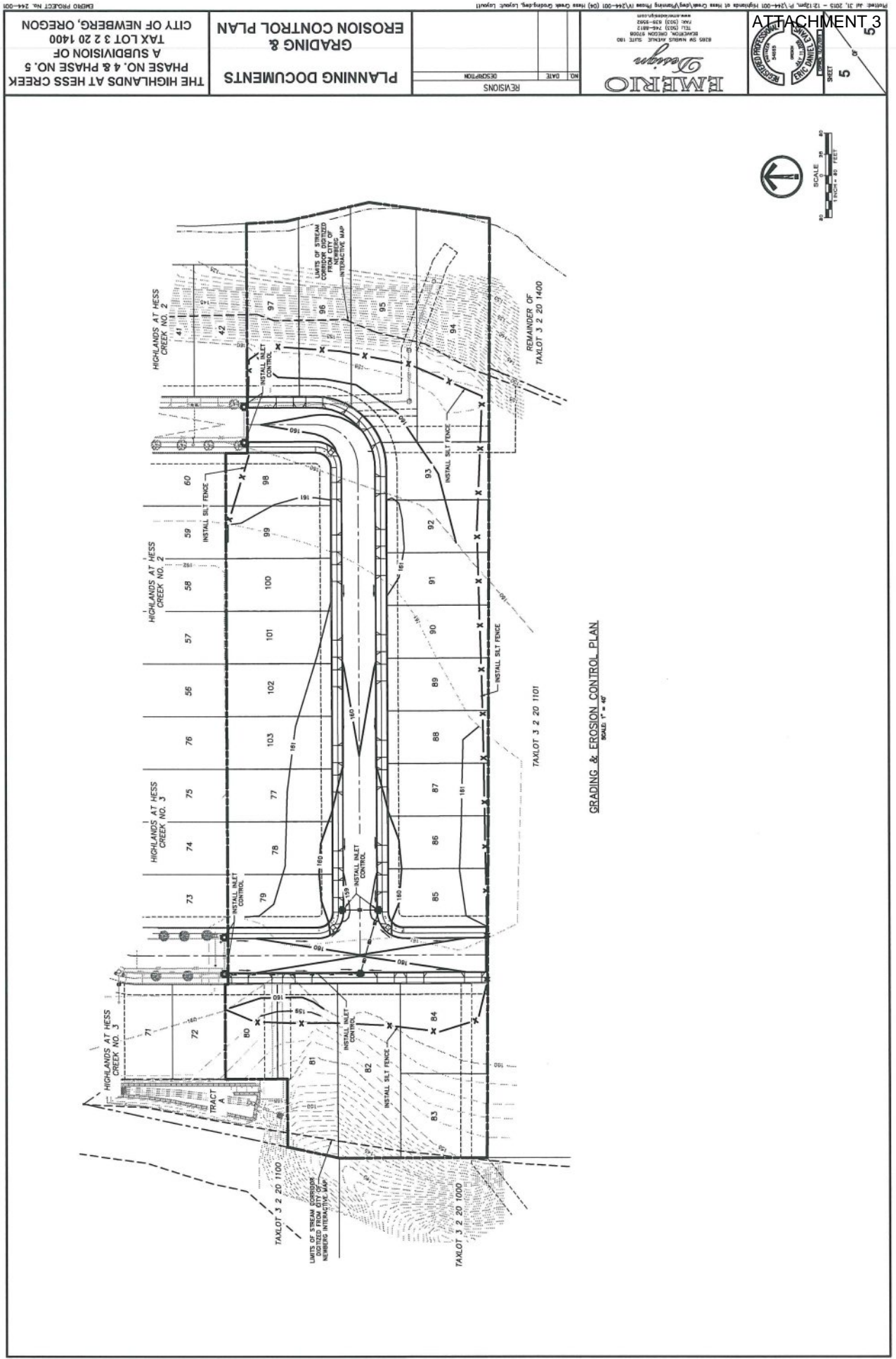
- 1 COVER SHEET - TENTATIVE PLAT
- 2 EXISTING CONDITIONS & DEMOLITION PLAN
- 3 AERIAL PLAN
- 4 SITE & UTILITY PLAN
- 5 GRADING & EROSION CONTROL PLAN

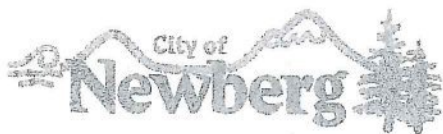


VICINITY MAP
NOT TO SCALE









TYPE II APPLICATION (LAND USE) -- 2015

File #: 50B3-15-001

TYPES - PLEASE CHECK ONE:

- ☐ Design review
☐ Tentative Plan for Partition
☒ Tentative Plan for Subdivision

- ☐ Type II Major Modification
☐ Variance
☐ Other: (Explain) _____

APPLICANT INFORMATION:

APPLICANT: Leonard Johnson
 ADDRESS: 3375 WESTSIDE RD MCMINNVILLE OR 97128
 EMAIL ADDRESS: NICK@SLAWBUILT.COM
 PHONE: 503-550-8130 MOBILE: _____ FAX: _____
 OWNER (if different from above): _____ PHONE: _____
 ADDRESS: _____
 ENGINEER/SURVEYOR: EMERIO DESIGN PHONE: 503-970-9507
 ADDRESS: 8285 SW NIMBUS AVE SUITE 180 BEAVERTON OR 97008

GENERAL INFORMATION:

PROJECT NAME: HIGHLANDS PHASE 4 PROJECT LOCATION: newberg or
 PROJECT DESCRIPTION/USE: 25 lot single family subdivision
 MAP/TAX LOT NO. (i.e. 3200AB-400): R3220 01400 ZONE: R2 SITE SIZE: 5 SQ. FT. ☐ ACRE ☒
 COMP PLAN DESIGNATION: medium density resident TOPOGRAPHY: flat
 CURRENT USE: vacant
 SURROUNDING USES:
 NORTH: mdr SOUTH: vacant
 EAST: vacant WEST: vacant

SPECIFIC PROJECT CRITERIA AND REQUIREMENTS ARE ATTACHED

General Checklist: ☐ Fees ☐ Public Notice Information ☐ Current Title Report ☐ Written Criteria Response ☐ Owner Signature

For detailed checklists, applicable criteria for the written criteria response, and number of copies per application type, turn to:

Design Reviewp. 12
 Partition Tentative Platp. 14
 Subdivision Tentative Platp. 17
 Variance Checklistp. 20

The above statements and information herein contained are in all respects true, complete, and correct to the best of my knowledge and belief. Tentative plans must substantially conform to all standards, regulations, and procedures officially adopted by the City of Newberg. All owners must sign the application or submit letters of consent. Incomplete or missing information may delay the approval process.

4/8/15
 Applicant Signature Date

Leonard Johnson
 Print Name

4/8/15
 Owner Signature Date

Leonard Johnson
 Print Name

Attachments: General Information, Fee Schedule, Criteria, Checklists

Current Title Report



First American

First American Title Company of Oregon
825 NE Evans Street
McMinnville, OR 97128
Phn - (503)376-7363
Fax - (866)800-7294

FOR ALL QUESTIONS REGARDING THIS PRELIMINARY REPORT, PLEASE CONTACT:

Clayton Carter, Title Officer

Phone: (503)376-7363 - Fax: (866)800-7294 - Email: ctcarter@firstam.com

Mart Storm
22965 Sunnycrest Road
Newberg, OR 97132

Order No.: 1039-2404451

March 06, 2015

Phone No.: - Fax No.:
Email:

Preliminary Title Report

County Tax Roll Situs Address: N/A, Newberg, OR 97132

Proposed Insured Lender:

2006 ALTA Owners Standard Coverage	Liability \$	Premium \$	
2006 ALTA Owners Extended Coverage	Liability \$	Premium \$	
2006 ALTA Lenders Standard Coverage	Liability \$	Premium \$	
2006 ALTA Lenders Extended Coverage	Liability \$	Premium \$	
Endorsement 9, 22 & 8.1		Premium \$	
Govt Service Charge		Cost \$	20.00
Other		Cost \$	

We are prepared to issue Title Insurance Policy or Policies of First American Title Insurance Company, a Nebraska Corporation in the form and amount shown above, insuring title to the following described land:

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

and as of March 02, 2015 at 8:00 a.m., title to the fee simple estate is vested in:

Leonard J. Johnson

Subject to the exceptions, exclusions, and stipulations which are ordinarily part of such Policy form and the following:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records; proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.

This report is for the exclusive use of the parties herein shown and is preliminary to the issuance of a title insurance policy and shall become void unless a policy is issued, and the full premium paid.

Preliminary Report

Order No.: 1039-2404451

Page 2 of 7

2. Facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the land or by making inquiry of persons in possession thereof.
3. Easements, or claims of easement, not shown by the public records; reservations or exceptions in patents or in Acts authorizing the issuance thereof; water rights, claims or title to water.
4. Any encroachment (of existing improvements located on the subject land onto adjoining land or of existing improvements located on adjoining land onto the subject land), encumbrance, violation, variation, or adverse circumstance affecting the title that would be disclosed by an accurate and complete land survey of the subject land.
5. Any lien, or right to a lien, for services, labor, material, equipment rental or workers compensation heretofore or hereafter furnished, imposed by law and not shown by the public records.

The exceptions to coverage 1-5 inclusive as set forth above will remain on any subsequently issued Standard Coverage Title Insurance Policy.

In order to remove these exceptions to coverage in the issuance of an Extended Coverage Policy the following items are required to be furnished to the Company; additional exceptions to coverage may be added upon review of such information:

- A. Survey or alternative acceptable to the company
- B. Affidavit regarding possession
- C. Proof that there is no new construction or remodeling of any improvement located on the premises. In the event of new construction or remodeling the following is required:
 - i. Satisfactory evidence that no construction liens will be filed; or
 - ii. Adequate security to protect against actual or potential construction liens;
 - iii. Payment of additional premiums as required by the Industry Rate Filing approved by the Insurance Division of the State of Oregon
6. Water rights, claims to water or title to water, whether or not such rights are a matter of public record.
7. The rights of the public in and to that portion of the premises herein described lying within the limits of streets, roads and highways.
8. Rights of the public and of governmental bodies in and to that portion of the premises herein described lying below the high water mark of Unnamed Creek.
9. Governmental rights in connection with flood control and propagation of anadromous fish and public rights of fishing and recreational navigation in and to the water, bed and shoreline of the Unnamed Creek.
10. Any adverse claim based upon the assertion that some portion of said land has been removed from or brought within the boundaries thereof by an avulsive movement of the Unnamed Creek or has been formed by the process of accretion or reliction or has been created by artificial means or has accreted to such portion so created.

First American Title

Preliminary Report

Order No.: 1039-2404451

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11. The rights of the public in and to that portion of the premises herein described lying within the limits of streets, roads and highways.
12. Covenant of Waiver of Rights and Remedies, including terms and provisions thereof.
Recorded: April 24, 2006 as Instrument No. 200608957
13. Easement, including terms and provisions contained therein:
Recording Information: August 13, 2007 as Instrument No. 200717975
In Favor of: City of Newberg
For: Sanitary sewer line
14. Aircraft Operation, Sound, Air Space and Avigation Easement Agreement and the terms and conditions thereof:
Between: Newberg Communities, LLC
And: City of Newberg
Recording Information: January 28, 2008 as Instrument No. 200801468
15. Easement, including terms and provisions contained therein:
Recording Information: January 28, 2008 as Instrument No. 200801470
In Favor of: City of Newberg
For: Public storm drainage
16. Easement, including terms and provisions contained therein:
Recording Information: February 20, 2008 as Instrument No. 200802862
For: Temporary access and utility
17. Limited access provisions contained in Deed to the State of Oregon, by and through its Department of Transportation recorded June 2, 2014 as Instrument No. 201406229 Deed of Records, which provides that no right of easement or right of access to, from or across the State Highway other than expressly therein provided for shall attach to the abutting property.

- END OF EXCEPTIONS -

NOTE: According to the public record, the following deed(s) affecting the property herein described have been recorded within 24 months of the effective date of this report: Statutory Bargain and Sale Deed recorded September 09, 2013 as Instrument No. 201314302, Newberg Communities, LLC to Leonard J. Johnson.

NOTE: Taxes for the year 2014-2015 PAID IN FULL

Tax Amount: \$10,395.12
Map No.: R3220 01400
Property ID: 55601
Tax Code No.: 29.0

Situs Address as disclosed on Yamhill County Tax Roll:

N/A, Newberg, OR 97132

First American Title

Preliminary Report

Order No.: 1039-2404451
Page 4 of 7

**THANK YOU FOR CHOOSING FIRST AMERICAN TITLE!
WE KNOW YOU HAVE A CHOICE!**

RECORDING INFORMATION

Filing Address: **Yamhill County**
535 NE Fifth Street
McMinnville, OR 97128

Recording Fees: \$ **41.00** for the first page
\$ **5.00** for each additional page

cc: City Of Newberg

First American Title

Preliminary Report

Order No.: 1039-2404451

Page 5 of 7



First American Title Insurance Company

SCHEDULE OF EXCLUSIONS FROM COVERAGE

ALTA LOAN POLICY (06/17/06)

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 that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - (i) the occupancy, use, or enjoyment of the Land;
 - (ii) the character, dimensions, or location of any improvement erected on the Land;
 - (iii) the subdivision of land; or
 - (iv) environmental protection;
 or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
- (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
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 (however, this does not modify or limit the coverage provided under Covered Risk 11, 13, or 14); or
 - (e) resulting in loss or damage that 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 an Insured to comply with applicable doing-business laws of the state where the Land is situated.
5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that 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 claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is
 - (a) a fraudulent conveyance or fraudulent transfer, or
 - (b) a preferential transfer for any reason not stated in Covered Risk 13(b) of this policy.
7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the Insured Mortgage in the Public Records. This Exclusion does not modify or limit the coverage provided under Covered Risk 11(b).

ALTA OWNER'S POLICY (06/17/06)

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 that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - (i) the occupancy, use, or enjoyment of the Land;
 - (ii) the character, dimensions, or location of any improvement erected on the Land;
 - (iii) the subdivision of land; or
 - (iv) environmental protection;
 or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
- (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
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 (however, this does not modify or limit the coverage provided under Covered Risks 9 and 10); or
 - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Title.
4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the Title as shown in Schedule A, is
 - (a) a fraudulent conveyance or fraudulent transfer; or
 - (b) a preferential transfer for any reason not stated in Covered Risk 9 of this policy.
5. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

SCHEDULE OF STANDARD EXCEPTIONS

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records; proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the land or by making inquiry of persons in possession thereof.
3. Easements, or claims of easement, not shown by the public records; reservations or exceptions in patents or in Acts authorizing the issuance thereof; water rights, claims or title to water.
4. Any encroachment (of existing improvements located on the subject land onto adjoining land or of existing improvements located on adjoining land onto the subject land), encumbrance, violation, variation, or adverse circumstance affecting the title that would be disclosed by an accurate and complete land survey of the subject land.
5. Any lien or right to a lien, for services, labor, material, equipment rental or workers compensation heretofore or hereafter furnished, imposed by law and not shown by the public records.

NOTE: A SPECIMEN COPY OF THE POLICY FORM (OR FORMS) WILL BE FURNISHED UPON REQUEST

TI 149 Rev. 7-22-08

First American Title

Preliminary Report

Order No.: 1039-2404451

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*First American Title***Privacy Information****We Are Committed to Safeguarding Customer Information**

In order to better serve your needs now and in the future, we may ask you to provide us with certain information. We understand that you may be concerned about what we will do with such information - particularly any personal or financial information. We agree that you have a right to know how we will utilize the personal information you provide to us. Therefore, together with our subsidiaries we have adopted this Privacy Policy to govern the use and handling of your personal information.

Applicability

This Privacy Policy governs our use of the information that you provide to us. It does not govern the manner in which we may use information we have obtained from any other source, such as information obtained from a public record or from another person or entity. First American has also adopted broader guidelines that govern our use of personal information regardless of its source. First American calls these guidelines its Fair Information Values.

Types of Information

Depending upon which of our services you are utilizing, the types of nonpublic personal information that we may collect include:

- Information we receive from you on applications, forms and in other communications to us, whether in writing, in person, by telephone or any other means;
- Information about your transactions with us, our affiliated companies, or others; and
- Information we receive from a consumer reporting agency.

Use of Information

We request information from you for our own legitimate business purposes and not for the benefit of any nonaffiliated party. Therefore, we will not release your information to nonaffiliated parties except: (1) as necessary for us to provide the product or service you have requested of us; or (2) as permitted by law. We may, however, store such information indefinitely, including the period after which any customer relationship has ceased. Such information may be used for any internal purpose, such as quality control efforts or customer analysis. We may also provide all of the types of nonpublic personal information listed above to one or more of our affiliated companies. Such affiliated companies include financial service providers, such as title insurers, property and casualty insurers, and trust and investment advisory companies, or companies involved in real estate services, such as appraisal companies, home warranty companies and escrow companies. Furthermore, we may also provide all the information we collect, as described above, to companies that perform marketing services on our behalf, on behalf of our affiliated companies or to other financial institutions with whom we or our affiliated companies have joint marketing agreements.

Former Customers

Even if you are no longer our customer, our Privacy Policy will continue to apply to you.

Confidentiality and Security

We will use our best efforts to ensure that no unauthorized parties have access to any of your information. We restrict access to nonpublic personal information about you to those individuals and entities who need to know that information to provide products or services to you. We will use our best efforts to train and oversee our employees and agents to ensure that your information will be handled responsibly and in accordance with this Privacy Policy and First American's Fair Information Values. We currently maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

Information Obtained Through Our Web Site

First American Financial Corporation is sensitive to privacy issues on the Internet. We believe it is important you know how we treat the information about you we receive on the Internet. In general, you can visit First American or its affiliates' Web sites on the World Wide Web without telling us who you are or revealing any information about yourself. Our Web servers collect the domain names, not the e-mail addresses, of visitors. This information is aggregated to measure the number of visits, average time spent on the site, pages viewed and similar information. First American uses this information to measure the use of our site and to develop ideas to improve the content of our site. There are times, however, when we may need information from you, such as your name and email address. When information is needed, we will use our best efforts to let you know at the time of collection how we will use the personal information. Usually, the personal information we collect is used only by us to respond to your inquiry, process an order or allow you to access specific account/profile information. If you choose to share any personal information with us, we will only use it in accordance with the policies outlined above.

Business Relationships

First American Financial Corporation's site and its affiliates' sites may contain links to other Web sites. While we try to link only to sites that share our high standards and respect for privacy, we are not responsible for the content or the privacy practices employed by other sites.

Cookies

Some of First American's Web sites may make use of "cookie" technology to measure site activity and to customize information to your personal tastes. A cookie is an element of data that a Web site can send to your browser, which may then store the cookie on your hard drive. FirstAm.com uses stored cookies. The goal of this technology is to better serve you when visiting our site, save you time when you are here and to provide you with a more meaningful and productive Web site experience.

Fair Information Values

Fairness We consider consumer expectations about their privacy in all our businesses. We only offer products and services that assure a favorable balance between consumer benefits and consumer privacy.

Public Record We believe that an open public record creates significant value for society, enhances consumer choice and creates consumer opportunity. We actively support an open public record and emphasize its importance and contribution to our economy.

Use We believe we should behave responsibly when we use information about a consumer in our business. We will obey the laws governing the collection, use and dissemination of data.

Accuracy We will take reasonable steps to help assure the accuracy of the data we collect, use and disseminate. Where possible, we will take reasonable steps to correct inaccurate information. When, as with the public record, we cannot correct inaccurate information, we will take all reasonable steps to assist consumers in identifying the source of the erroneous data so that the consumer can secure the required corrections.

Education We endeavor to educate the users of our products and services, our employees and others in our industry about the importance of consumer privacy. We will instruct our employees on our fair information values and on the responsible collection and use of data. We will encourage others in our industry to collect and use information in a responsible manner.

Security We will maintain appropriate facilities and systems to protect against unauthorized access to and corruption of the data we maintain.

Form 50-PRIVACY (9/1/10)

Page 1 of 1

Privacy Information (2001-2010 First American Financial Corporation)

Preliminary Report

Order No.: 1039-2404451

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Exhibit "A"

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

A tract of land in Section 20, Township 3 South, Range 2 West, Yamhill County, Oregon, being more particularly described as follows:

Beginning at the Northeast corner of Parcel 1 of Yamhill County Partition Plat No. 97-61; thence South 89° 43' 16" West 293.06 feet to and iron rod at the Northwest corner of said tract; thence South 11° 53' 02" West 417.75 feet along the West line of said tract; thence South 00° 03' 38" East 149.63 feet along said West line to an iron rod; thence North 89° 43' 16" East 380.24 feet to an iron rod; thence North 89° 43' 16" East 369.36 feet to an iron rod; thence South 22° 53' 57" West 98.12 feet to an iron rod; thence South 11° 31' 25" West 105.12 feet to an iron rod; thence South 57° 43' 28" West 89.89 feet to an iron rod; thence South 02° 43' 35" East 42.05 feet to an iron rod; thence South 36° 52' 12" West 75.00 feet to an iron rod; thence South 21° 16' 47" West 101.95 feet to an iron rod; thence South 08° 36' 56" West 166.88 feet to an iron rod; thence South 10° 08' 44" East 96.51 feet to an iron rod; thence South 22° 27' 25" West 94.51 feet to an iron rod; thence North 89° 49' 55" West 230.62 feet to an iron rod; thence North 89° 49' 55" West 0.42' feet to the West line of that tract of land described in deed from Randal S. Sebastian to Newberg Communities, LLC and recorded August 25, 2006 in Instrument No. 200619743, Yamhill County Deed Records; thence South 00° 21' 34" West 436.06 feet to the Southwest corner of said Newberg Communities, LLC tract; thence South 89° 25' East 500 feet to the Southeast corner of said tract; thence in a Northeasterly direction to the junction of two small creeks; thence in a Northerly direction up one of said creeks to the Southeast corner of HIGHLANDS AT HESS CREEK - Phase 1; thence South 89° 51' 57" West 186.56 feet along the South line of HIGHLANDS AT HESS CREEK - Phase 1; thence South 85° 37' 46" West 54.15 feet along said South line; thence South 89° 51' 57" West 170.08 feet along said line; thence North 85° 53' 52" West 54.15 feet along said line; thence South 89° 51' 57" West 85.01 feet along said line to the Southwest corner of HIGHLANDS AT HESS CREEK - Phase 1; thence South 00° 08' 03" East 95.41 feet to the point of beginning.

SAVE AND EXCEPT that portion conveyed to the State of Oregon, by and through its Department of Transportation in Warranty Deed recorded June 2, 2014 as Instrument No. 201406229.

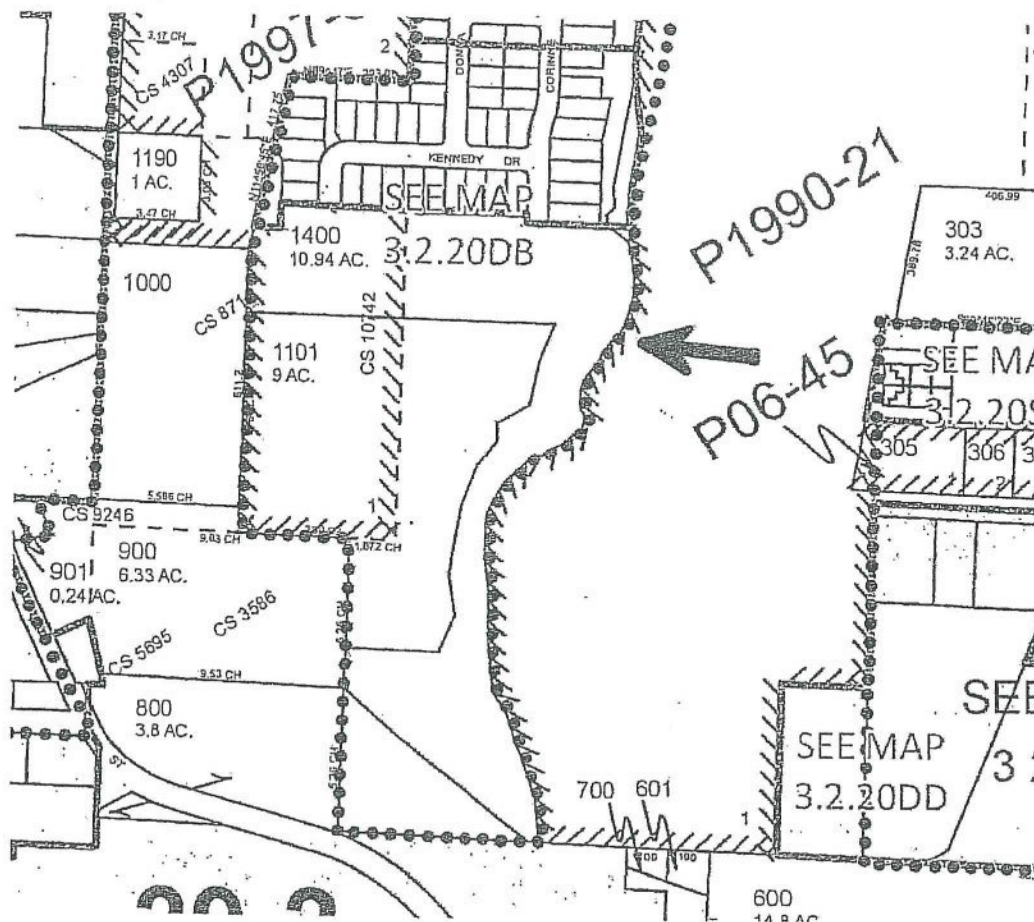
ALSO EXCEPT those portions platted as HIGHLANDS AT HESS CREEK - Phase 2 and HIGHLANDS AT HESS CREEK - Phase 3.



First American



This map is furnished for illustration and to assist in property location. The company assumes no liability for any variation in dimensions by location ascertainable by actual survey



Narrative for the Highlands at Hess Creek Phases 4 and 5:

Chapter 15.235 SUBDIVISIONS

Sections:

15.235.050 Subdivision applications.

A. Drafting. The tentative plan shall show all pertinent information, normally at a scale of one inch equals 100 feet. For subdivision, the scale may be increased or decreased to fit standard size sheets of 18 inches by 24 inches. However, in all multiples of 100 feet to the inch.

Answer: The tentative plan meets the requirements above

B. Information Required. The application itself or the tentative plan must contain the following information with respect to the subject area:

1. Name and block numbering of proposed subdivisions. Except for the words "town," "city," "place," "court," "addition," or similar words, the name shall be clearly different than, and clearly pronounced differently than, the name of any other subdivision in the county, unless the subject subdivision is contiguous to or platted by the same party that platted the preceding subdivision bearing that name. All subdivisions must continue the block numbers of the subdivision of the same name last filed.
2. The date, north point, and scale of the drawing, and sufficient description to define the location and boundaries of the proposed subdivision and the names of all recorded subdivisions contiguous to such area.
3. The names and addresses of the owner and engineer or surveyor.
4. The location of existing and proposed right-of-way lines for existing or projected streets as shown on the transportation system plan.
5. The locations, names and widths and grades of all existing and proposed streets and roads.
6. Contours on the site and within 100 feet of the site.
 - a. One-foot contour intervals for ground slopes up to five percent.
 - b. Two-foot contour intervals for ground slopes between five and 10 percent.
 - c. Five-foot contour intervals for ground slopes exceeding 10 percent.
7. Preliminary site grading plan, prepared by an Oregon registered engineer or land surveyor.
8. The approximate width and location of all existing and proposed easements for public utilities, and all reserve strips proposed to satisfy requirements which may be required as provided for in NMC 15.505.080.

9. The approximate radii of all curves.
10. The general design of the proposed subdivision including the approximate dimension of all proposed lots and parcels.
11. The approximate location of areas subject to inundation of stormwater, and the location, width, and direction or flow of all watercourses.
12. The existing and proposed uses of the property, including the location of all existing structures that the applicant intends will remain in the subject area.
13. The domestic water system proposed to be installed, including the source, quality, and quantity of water, if from other than a public water supply.
14. All proposals for wastewater disposal, flood control and easements or deeds for drainage land, including profiles of proposed drainage ways.
15. All public areas proposed to be dedicated by the applicant and the proposed uses of the public areas.
16. All public improvements proposed to be made or installed, and the time within which such improvements are envisioned to be completed.
17. A legal description and drawing of the boundaries of the entire area owned by the applicant of which the proposed subdivision is a part; provided, that where the proposal comprises all of such area a written statement of such fact shall accompany the tentative plan.
18. Outline and location of existing buildings, features, and trees (in excess of four inches dbh) to remain in place on the site and within 100 feet of the site.
19. Outline and location of existing buildings, features, and trees (in excess of four inches dbh) to be removed on the site.
20. Such additional information as is required by the director.

Answer: The items have been addressed and are contemplated on the plans.

C. Traffic Study. A traffic study shall be submitted for any project that generates in excess of 40 trips per p.m. peak hour. This requirement may be waived by the director when a determination is made that a previous traffic study adequately addresses the proposal and/or when off-site and frontage improvements have already been completed which adequately mitigate any traffic impacts and/or the proposed use is not in a location which is adjacent to an intersection which is functioning at a poor level of service. A traffic study may be required by the director for projects below 40 trips per p.m. peak hour where the use is located immediately adjacent to an intersection functioning at a poor level of service. The traffic study shall be conducted according to the City of Newberg design standards. [Ord. 2619, 5-16-05; Ord. 2507, 3-1-99; Ord. 2451, 12-2-96. Code 2001 § 151.242.1.]

Answer: Per the 9th Edition of the ITE, residential pm peak trip generation is one per lot. This development proposes 27 lots for a total pm peak of 27. This is less than the 40 trip threshold to require a traffic study.

15.235.060 Subdivision requirements – Type II and Type III.

A. The director (Type II) or planning commission (Type III) shall approve a subdivision of four parcels or more under a Type II or Type III procedure if the resulting parcels comply with the following approval criteria:

1. Approval does not impede the future best use of the remainder of the property under the same ownership or adversely affect the safe and healthful development of such remainder or adjoining land or access thereto.

Answer: The approval would help for the continuation of the development. It would add value to the community as it would help connect to the parcel owned by Chehalem Parks and Recreation via proposed Tract B. Hence adding additional recreational use for the community.

2. The subdivision complies with this code including but not limited to NMC 15.340.010 through 15.440.080 and NMC 15.235.030 et seq.

In efforts to help address the NMC 15.340- thru 440.080 I have inserted the headings below to address via separate answers:

Division 15.400 Development Standards

15.405 Lot Requirements

Answer: the lots meet the minimum lot size, and width to depth ratio to the maximum extent practical and utilizing lot averaging to meet code provisions.

15.410 Yard Setback Requirements

Answer: The lot dimensions are designed for standard house sizes, as such the Yard setback requirements are addressed in the site plan.

15.415 Building and Site Design Standards

Answer: The site and construction will be substantially similar to phases 2 and phases 3 of the Highlands.

15.420 Landscaping and Outdoor Areas

Answer: The site does not include nor has any outside landscaping on any tracks at this time. The individual lots will include landscaping as a function of the building. All needed street trees will be installed per the instructions of the City.

15.425 Exterior Lighting

Answer: The exterior lighting will be a result of the house construction and also the street light design. The lighting plan will be primarily a continuation of phases 2 and 3.

Answer: The application includes

15.430 Underground Utility Installation

Answer: The underground utilities will connect to the existing system. The maps show the storm outfall is connected to the existing water quality and detention pond system in Tract A of Phase 3, water is an extension of phase 2 and 3. Sewer is already installed in the identified road way.

15.435 Signs

Answer: The signage standards for street signs will be met.

15.440 Off-Street Parking, Bicycle Parking, and Private Walkways

Answer: no off street parking, bicycle parking and private walkways are incorporated into this phase.

3. Either:

Answer: We will comply with all city requirements regarding completion and/or substantial completion prior to the recordation of the plat.

- a. Improvements required to be completed prior to final plat approval; or
- b. The subdivider will substantially complete, as defined by city policies, required improvements prior to final plat approval, and enter into a performance agreement to complete the remaining improvements. The performance agreement shall include security in a form acceptable to the city in sufficient amount to insure completion of all required improvements; or
- c. A local improvement district shall have been formed to complete the required improvements; or
- d. The required improvements are contained in a city or other government agency capital improvement project that is budgeted and scheduled for construction.

B. A subdivision shall be processed under the Type II or Type III procedure. Notice shall be mailed to the applicant and those identified by this code to receive notice. [Ord. 2619, 5-16-05; Ord. 2529, 7-3-00; Ord. 2451, 12-2-96. Code 2001 § 151.242.2.]

15.235.070 Future street plan required.

A. A future street plan shall not be required for any portion of an area for which a proposed street layout has been established by either the Newberg comprehensive plan, its implementing ordinances, or a future street plan previously approved by a hearing body.

Answer: There is no planned extension of public streets beyond this development. Access thru Tract B will be granted to CPRD to provide for future park development.

B. A future street plan is a conceptual plan in that its adoption does not establish a precise alignment. The plan shall demonstrate how access can be provided to adjoining parcels. The director may require that a traffic study be submitted where access to the land division includes streets that are classified as a collector or greater functional classification status.

C. Except as provided in subsection (A) of this section, a future street plan shall be filed and reviewed as part of an application for a partition or subdivision. [Ord. 2619, 5-16-05; Ord. 2451, 12-2-96. Code 2001 § 151.243.1.]

15.235.080 Type III future street plan.

The city council or planning commission may initiate a future street plan for any area which impacts traffic conditions inside the urban growth boundary, providing the street plan is given consideration through a Type III procedure. [Ord. 2451, 12-2-96. Code 2001 § 151.244.]

Answer: With the captured portion of this land. Easterly is the canyon, to the South is the park, west is the Hess creek canyon, the street layout is minimal and has been efficiently planned for.

15.235.090 Recording and filing a future street plan.

Upon final approval, a future street plan shall be recorded with the county recorder's office as follows:

A. Evidence of recordation shall be provided to the director by the applicant; or if there is no applicant, the director shall record the future street plan.

B. Filed by the director in the future street plan index. [Ord. 2451, 12-2-96. Code 2001 § 151.245.]

15.235.100 Revision of a future street plan.

An approved future street plan may be revised by the director under a Type II procedure in conjunction with a land division application or by the planning commission under a Type III procedure. An approved future street plan may be revised by the city council in conjunction with a revision of the Newberg comprehensive plan or implementing ordinances or resolutions. [Ord. 2451, 12-2-96. Code 2001 § 151.246.]

15.235.110 Criteria for approval of a future street plan.

A. Approval does not impede the future best use of the remainder of the property under the same ownership or adversely affect the safe and healthful development of such remainder or any adjoining land or access thereto; and

Answer: Approval of this development will not impede future best use of this property or any adjacent land.

B. The future street plan complies with this code and it's implementing ordinances and resolutions, and standards and policies of the Newberg comprehensive plan and the Newberg transportation system plan.

C. Except as provided by the provisions of this code, approval as stipulated herein does not relieve the applicant from other applicable provisions of the Oregon Revised Statutes or contained elsewhere in this code.

D. The future street plan shall adequately serve traffic with an origin in, and destination to, the area of the plan.

E. The future street plan shall provide for the logical extension of streets, to serve circulation and access needs within a district or neighborhood. [Ord. 2619, 5-16-05; Ord. 2451, 12-2-96. Code 2001 § 151.247.]

15.235.120 Tentative plan expiration date.

Within two years following the effective date of the approval of a tentative land division plan, the subdivider or partitioner shall complete all required conditions, submit the final plat to the director for review and approval, and record the final plat with the county recorder. [Ord. 2529, 7-3-00; Ord. 2451, 12-2-96. Code 2001 § 151.248.]

Answer: We agree with this condition.

15.235.130 Extension of partitions and subdivisions.

A. Partition Extension. The director may, upon written request of the applicant prior to the expiration of the approval and following the Type I procedure, grant a one-time extension for an additional six months upon a written finding that the facts upon which the approval was based have not significantly changed. If the director makes a finding that the circumstances have changed to a minor extent, through the Type II process the director may add conditions to the partition to bring the partition into compliance with all current standards and ordinances and extend the expiration date for up to six months. If conditions have substantially changed the director shall direct the applicant to refile the application for a new partition.

B. Subdivision Extension. Upon written request of the applicant prior to the expiration of the approval and following the Type I procedure, the director may grant a one-time extension for an additional six months upon a written finding that the facts upon which the approval was based have not significantly changed. If the director makes a finding that the circumstances have changed to a minor extent, through the Type II process, or Type III process, an extension may be granted. The Type II process shall be used if original approval was a Type II. The Type III process shall be used if the original approval was a Type III. The director or planning commission may add conditions to the subdivision to bring the subdivision into compliance with all current standards and ordinances and extend the expiration date for up to six months. If conditions have substantially changed the director shall direct the applicant to refile the application for a new subdivision.

Answer: At this time, no extension is being asked for.

C. Phased Subdivisions. Each filing of a final plat (phase) shall extend the expiration of the tentative plan by 12 months from the date of its expiration or the date of the previously filed final plat, whichever is later. Prior to the expiration of each phase, the applicant may apply for an extension to the phase which is about to expire through subsection (B) of this section. The extension of a phase under subsection (B) of this section shall also extend any subsequent phases. The total number of extensions shall not extend the tentative plan more than five years from its approval. [Ord. 2451, 12-2-96. Code 2001 § 151.249.]

Answer: This subdivision is set up to be constructed in two phases. The timing for each phase will be determined by market factors.

15.235.140 Modifications of an approved tentative plan.

Following tentative plan approval, an applicant may make modifications to the plan consistent with the following procedures. The director will determine whether the proposed modification is a minor or major modification.

Answer: No modifications of an approval are being requested.

A. Minor modifications are those in keeping with the general layout and pattern of the approved plan and include minor relocations of property lines, streets, walkways and alleys, changes in the site utilities, and changes which do

not increase the number of lots by more than five percent. The director may approve a minor modification under a Type I procedure upon finding that the modification is substantially consistent with the approved tentative plan, is consistent with the provisions of this code and the conditions of approval, and does not have substantially greater impacts on surrounding properties than the original tentative plan.

B. Other modifications including changes which increase the number of lots by more than five percent, changes in the patterns of streets, alleys, or walkways, changes in the site utilities and substantial changes to the conditions of approval are major modifications. A change in the whole application or substantive parts of an application shall be considered a new application. Major modifications may be approved using the same procedure as the original application. The criteria for approval shall be those for tentative plan approval.

C. An application for a modification shall be considered a new application for purposes of the 120-day time limit for processing applications in accordance with NMC 15.100.100 and state statutes. The applicant shall acknowledge in writing that this is a new application for purposes of the 120-day rule.

D. The city council shall establish a fee for modification of approved tentative plans by resolution. [Ord. 2590, 11-6-03. Code 2001 § 151.249.2.]

15.235.150 Final partition map and subdivision plat – Drafting requirements.

A. Partition Plats. The application for final partition plat approval shall include one original and two copies drawn in black India ink in clear and legible form. Original plats shall be in substantial conformity to the Yamhill County surveyor's specifications and requirements, but in any event, scale requirements shall be the same as specified for tentative plans. Sheet dimensions and size shall be specified by the county recording officer for partition plats offered for record.

B. Subdivision Plats.

1. The application for a final subdivision plat approval shall include one original and two copies, 18 inches by 24 inches in size, and drawn with black India ink. Original plats shall be in substantial conformity to the approved tentative plan and shall conform to the Yamhill County surveyor's specifications and requirements pertaining to material that has characteristics of adequate strength and permanency, as well as suitability for binding and copying.

2. Plats shall be in clear and legible form and may be placed on as many sheets as necessary, but a face sheet and an index page shall be included for all plats placed upon three or more sheets. Scale requirements shall be the same as specified for tentative plans. Lettering and the dedication and affidavit of the surveyor shall be of such size or type as will be clearly legible, and no part of the plat shall come nearer than one inch to any edge of any sheet. [Ord. 2619, 5-16-05; Ord. 2451, 12-2-96. Code 2001 § 151.250.1.]

Answer: The Surveyor shall comply with all standards that the City requests for the Subdivision Plat to be completed.

15.235.160 Submission and review of final plat or final partition map.

A. The final plat or final partition map shall be submitted to the director for final approval. Through a Type I procedure, the director shall determine whether the material conforms with the tentative plan approval requirements and with the applicable requirements of this code. If the director determines that the material does not conform, the applicant shall make corrections.

B. The director shall determine that:

1. Streets, roads, and alleys for public use are dedicated without any reservation or restriction other than reversionary rights upon vacation of any such street or road and easements for public utilities.
2. Streets and roads held for private use and indicated on the tentative plan of such subdivision or partition have been approved by the city.
3. The proposal complies with this code.
4. The plat is in substantial conformity with the provisions of the tentative plan for the subdivision or partition, as approved.
5. The plat contains a donation to the public of all common improvements, including but not limited to streets, roads, parks, wastewater disposal and water supply systems.
6. Explanations of all common improvements required as conditions of approval of the tentative plan of the subdivision or the partition have been accounted for and referenced on the plat.
7. There will exist an adequate quantity and quality of water and an adequate wastewater disposal system to support the proposed use of the land described in the plat.
8. Either:
 - a. Improvements as required by this code or as a condition of tentative plan approval have been filed with the director; or
 - b. A performance agreement (bond) or suitable substitute as agreed upon by the city and applicant has been filed with the director in sufficient amount to insure the completion of all required improvements; or
 - c. A petition for improvements has been properly executed by the applicant who is effecting the partition or subdivision and will be assessed for said improvements.
9. Taxes, as well as public liens, assessments and fees, with respect to the subdivision area have been paid, or adequate guarantee has been provided assuring said taxes, liens, assessments and fees will be paid prior to recordation.
10. The subdivider has entered into agreement with the city relating to completion of improvements, payment of wastewater and water hookup fees, inspection fees, public lands payments, monumentation or any other elements deemed relevant to the purpose of this or any other city ordinance, state statute or federal law.

Answer: We intent to meet all the needs of the City and Director in sufficient specificity.

C. If the conditions set at the time of tentative land division approval are not fulfilled and the final plat or final map is not recorded by the tentative plan expiration date, the tentative land division approval is null and void. [Ord. 2619, 5-16-05; Ord. 2451, 12-2-96. Code 2001 § 151.250.2.]

15.235.170 Information required.

The proposed subdivision or partition plat must contain the following information with respect to the subject area:

- A. The lengths of all chords, radii points of curvature, and tangent bearings shown.
- B. The lot lines of all lots within the subdivision, or all parcel lines within the partition, with dimensions in feet and hundredths of feet and with all bearings shown. Area in square feet for each lot or parcel.
- C. Numbers designating each block and lot in subdivisions, lots in each block to be numbered consecutively.
- D. Where a plat is an addition to a plat previously recorded, numbers of blocks and lots in consecutive continuation from such previous plat.
- E. The description and location of all permanent reference monuments, including a tie to the city coordinate system.
- F. An affidavit of a surveyor who is an Oregon registered engineer or Oregon licensed land surveyor, and who surveyed the subdivision or partition, conforming to the requirements of the Oregon Revised Statutes.
- G. The date, north point, and scale of the drawing, and a sufficient description to define the location and boundaries of the subdivision or partition.
- H. The locations, names and widths of all streets, existing or created.
- I. The location, dimensions and purpose of all recorded and proposed public and private easements and all reserve strips shall be shown on the subdivision or partition plat along with the county clerk's recording reference if the easement has been recorded with the county clerk.
- J. Before a partition or subdivision can be approved, there shall appear thereon a restriction providing that no building, structure, or other obstruction shall be placed or located on or in a public utility easement.
- K. A designation of all areas covered by water, and the approximate location and direction of flow of all watercourses.
- L. A designation of all areas dedicated by the applicant, including proposed uses, and an effective written dedication of the areas.
- M. Designation of all donations to the public of all common improvements, including but not limited to streets, roads, parks, wastewater disposal and water systems, the donation of which was made a condition of approval of the tentative plan for the subdivision or partition.
- N. A copy of all protective deed restrictions being proposed.

O. A title report issued by a title insurance company licensed by the State of Oregon, verifying ownership by the applicant of the real property that is to be dedicated to the public. [Ord. 2619, 5-16-05; Ord. 2451, 12-2-96. Code 2001 § 151.250.3.]

Answer: All conditions above have been met in this approval.

15.235.180 Approval signatures for final partition map and subdivision plat.

A. Approval of a final partition map, together with the effective date, shall be noted in writing on the final map by the director.

B. Approval of a final subdivision plat shall be acknowledged by including on the plat the authorized signature of:

1. The director, whose signature shall certify that the final plat conforms to the conditions of tentative plan approval.
2. The county assessor certifying that all taxes on the property have been paid or bonded for in accordance with state law.
3. The county or city surveyor, certifying the subdivision plat complies with applicable survey laws.
4. The city recorder, whose signature shall certify that all liens on the property have been paid.

C. Deliver the approved subdivision plat to the office of the county clerk for recording.

D. Return an exact copy of the recorded plat to the director. The copy shall be made with permanent black India-type ink or silver halide permanent photocopy on three millimeter polyester film. [Ord. 2451, 12-2-96. Code 2001 § 151.251.]

Cross-reference: See ORS 92.095 for prepayment of taxes before recording of subdivision plats can occur.

Article II. Standards for Land Divisions

15.235.190 Dedication.

A. Generally. The director may require right-of-way for adequate and proper streets, including arterials, collector streets, local streets, and other streets, to be dedicated to the public by the applicant of such design and in such locations as are necessary to facilitate provision for the transportation and access needs of the community and the subject area in accordance with the purpose of this code.

B. Special Safety Requirements. Where necessary to ensure safety, reduce traffic hazards, and promote the welfare of the general public and residents of the subject area, the director may require that local streets be so designated as to discourage their use by nonlocal traffic.

C. Ownership Verification of Dedications. In the event approval of a land division is conditioned upon the dedication of a portion of the area to the public, the applicant shall submit to the director a title report issued by a title insurance company licensed in the State of Oregon, verifying ownership by the applicant of the real property that is to be dedicated to the public.

D. Approval Required on Dedications. No instrument dedicating land to the public shall be accepted for recording unless such instrument bears the approval of the director.

E. Inclusion of a transportation route in the transportation plan is intended to indicate the public's need to acquire a public right-of-way in the area through legally and constitutionally allowed means. Notwithstanding other provisions of this code or the comprehensive plan, inclusion of such a route does not restrict the use of the property by the owner who owns the property when the route is first included in any city plan, unless the review body finds the restriction is exempt from those provisions of ORS Chapter 197, as amended by Ballot Measure 49, passed November 6, 2007, or that just compensation will be paid in accordance with that section. [Ord. 2619, 5-16-05; Ord. 2451, 12-2-96. Code 2001 § 151.252.1.]

15.235.200 Lot and parcel side lines.

As far as is practicable, lot and parcel side lines shall run at right angles to the street upon which the lots or parcels face, except that on curved streets they shall be radial to the curve. [Ord. 2619, 5-16-05; Ord. 2451, 12-2-96. Code 2001 § 151.252.2.]

Answer: The tentative plat use right angles for the lot designs to the maximum extent practicable.

Penalty: See NMC 15.05.120.

15.235.210 Suitability for intended use.

All lots and parcels shall be suitable for the purpose for which they are intended to be used. No lot or parcel shall be of such size or design as to be detrimental to the health, safety, or sanitary needs of the residents of the subdivision or partition, or of such lot or parcel, as determined by the director, in accordance with this code. [Ord. 2619, 5-16-05; Ord. 2451, 12-2-96. Code 2001 § 151.252.3.]

Answer: All lots will be used for productive and quality housing.

**CITY OF NEWBERG
SAMPLE POSTED NOTICE**

Land Use Notice

FILE # (insert the file number assigned to you at the time of application)

PROPOSAL: 27 Lot Subdivision

FOR FURTHER INFORMATION, CONTACT:

City of Newberg
Planning & Building Department
414 E First Street
Phone: 503-537-1240

2'

3'

Notice must be white with black letters, and must be landscape orientation, as shown above.
The notice must be lettered using block printing or a "sans-serif" font, such as Arial.

CC & R's

AFTER RECORDING RETURN TO:
 Newberg Communities, LLC
 14845 Sw Murray Scholls, Suite 110 – PMB 515
 Beaverton, OR 97007

SEND ALL TAX STATEMENTS TO:
 No Change

CONDITIONS COVENANTS AND RESTRICTIONS

This DECLARATION OF CONDITIONS, COVENANTS, AND RESTRICTIONS FOR HIGHLAND AT HESS CREEK – PHASE 2, a subdivision in the City of Newberg, Yamhill County, Oregon (herein known as the “Declaration”) is hereby made and executed this ____ day of _____, 2008, by the Undersigned (who constitutes and is the sole owner of real property more particularly described on attached Exhibit “A”);

RECITALS:

WHEREAS, the undersigned Owner desires to create specific conditions, covenants and restrictions contained herein for the benefit of all of the parcels set forth on a portion of the real property set forth on attached Exhibit “A” and any modifications thereto and their present and subsequent Owners. The undersigned owner does hereby state that subsequent to the date of execution hereof, a subdivision plat known as HIGHLANDS AT HESS CREEK – PHASE 2 consisting of twenty six (26) residential lots will be recorded associated with the said real property with a copy of the subdivision plat attached hereto as Exhibit “B” with the entire subdivision plat herein known as “affected property”.

SECTION 1- DEFINITIONS

The following words and terms, when used in this Declaration, and supplemental Declarations or any changes, amendments, or modifications hereto, shall have the following meanings:

1.1 “Lot or Parcel” shall mean and refer to any of the existing parcels or any modifications thereto which are contained within the affected property.

1.2 “Owner” shall mean and refer to the Owner of record, whether one or more persons or

2.3 No noxious or offensive activity shall be permitted upon any Lot or in any area or part of the affected property, nor shall anything be done or maintained thereon that may be or become an annoyance or nuisance to any Owner or detract from the value of the affected property as a high-class residential neighborhood.

2.4 No personal property such as a trailer, recreational vehicle, boat, camper unit, farm equipment, or tent shall be placed, stored or parked on any Lot, or in any part of the affected property unless it is stored so that it must be sufficiently screened from public view; provided, however, that such parking is in conformity with any applicable municipal ordinances and regulations.

2.5 Each Lot shall provide adequate room for the parking of private vehicles, and said private vehicles shall not be allowed to be parked in any portion of the said property so that they become a sight nuisance from any portion of the street which acts as an access to the entire affected property. No owner shall permit any vehicle which is inoperable to remain parked upon any Lot or open space or upon any street for a period in excess of forty eight (48) hours.

2.6 No television antennas or radio aerials shall be permitted upon any Lot, House, or any part of or area of the affected property. Small size satellite receivers and dishes shall be permitted on a Lot, House, or any part of or area in the affected property only if such are screened from view of any street and are not placed on the roof of any structure. All utilities shall be installed underground, as no overhead wires or service drops for the distribution of electricity or any other telecommunication purposes, nor any poles, towers, or other supporting structures shall be erected, placed, or maintained on any Lots. Clotheslines shall be screened so as to not be viewed from any Street.

2.7 No Lot, or area in or part of the affected property shall be used or maintained as a dumping site or depository for rubbish, refuse, trash, garbage, or any other form or type of waste. Any such waste is be stored in a location which is not visible from any Street within the affected property in a suitable and sanitary container until such waste is picked up or removed. Any containers or other equipment for the storage or disposal of such waste shall be maintained and operated in a safe and sanitary manner and shall not cause or be a form of nuisance to any resident in the affected property. Trimmings, cuttings and like debris may be composted on any Lot provided they are maintained in a singular enclosed location not visible from any Street and so as not to become an annoyance or nuisance to any other resident in the affected property.

2.8 No sign or other advertising device shall be erected or constructed upon or placed within or on any Lot or house in any area or part of the affected property except for garage sale signs, political signs, and one (1) sign not larger than eighteen (18) inches by twenty-four (24) inches advertising such House for sale, rent or for a City of Newberg permitted home based business. The Declarant or its designee may maintain and place "for sale" signs for purposes of marketing the said subdivision that are excluded from these said restrictions.

2.9 No Owner, invitee, or licensee shall allow any activity to occur which will cause a

level of noise to be offensive or disruptive to any one else within the affected property.

2.10 No structure of a temporary character or nature such as trailer, tent, shack, garage, barn, or other outbuilding shall be used on Lot, at any time, as a residence either temporarily or permanently. Declarant or its designee reserves the right to locate a temporary construction office within the subdivision while the subdivision and homes are being constructed.

2.11 During the period of time through and including one (1) year from the date of recording of the subdivision plat, the construction of all fences, retaining walls, and other structures (including swimming pools, greenhouses, storage sheds, etc.) must be approved by the Declarant or its designee. A detail plan of the proposed construction including the shape, colors, height, type of materials, proposed location on the Lot, and location and number of trees that are proposed to be removed must be provided to the Declarant or its designee for review and approval prior to commencing any construction, and at least ten (10) days prior to application for any building permit. Approval of the proposed construction is at the discretion of the Declarant or its designee, as the Declarant or its designee shall consider quality of the specified material, harmony with existing and planned structures and location with respect to topography and finished grade elevation of the Lot and of the other Lots in the subdivision.

2.11.1 No fence, either sight or non-sight obscuring, in excess of three (3) feet in height may be located between the building line and the front yard sidewalk, and in the case of a corner lot, the building line and the sidewalk abutting the side yard. The maximum height of any fence located on the remainder of the Lot shall be six (6) feet and must be constructed of cedar and be a "good neighbor" construction type with similar material and style to other fences existing within the subdivision at the time that construction is commenced by the said applicant.

2.11.2 No trade, craft, business, profession, commercial, or similar type activity of any kind or nature shall be conducted on any Lot, nor shall any goods, equipment, vehicles, materials or supplies used in connection with any trade, craft, business, profession, commercial, or similar type activity be kept or stored on any Lot, (unless allowed and permitted by the City of Newberg) excepting the right of any homebuilder, contractor, and the Declarant or Declarant's affiliates or Declarant's designee, to construct the infrastructure of the subdivision and residences on the said Lots, and to store construction equipment and materials on said Lots in the normal course of construction of said infrastructure, residences, and/or model homes for the purposes of sales in said phases. Furthermore, during the course of construction of a dwelling, the Owner and/or his contractor shall be authorized to store construction materials and equipment on the said Lot in the normal course of construction, subject to the provisions of Section 3.13.

2.12 Rubbish and Trash. No Lot or part of the Common Area shall be used as a dumping ground for trash or rubbish of any kind. All garbage and other waste shall be kept in appropriate containers for timely and proper disposal, out of public view. Yard rakings, dirt and other material resulting from landscaping work shall not be dumped onto streets, the Common Areas or any other Lots. Each owner is responsible for trash disposal, and shall only place individual trash containers in the public street (not alleyways) within 12 hours of the scheduled

trash collection time and such owners shall remove the individual trash containers from the public street and from public view within 12 hours after collection.

SECTION 3- BUILDING STANDARDS

3.1 No lot shall be used except for residential purposes as a single-family dwelling. There are no mobile homes or manufactured homes allowed whatsoever in any portion of the affected property. No building shall be constructed on any Lot other than one single family dwelling not to exceed 2 stories in height and an attached private garage of sufficient size to store a minimum of one (1) vehicle, as long as an additional off-street parking space is available, otherwise two (2) garage parking spaces are required. All houses shall be constructed to a minimum of 1,000 sq. ft. excluding the garage area and open porches. All houses shall be constructed with all roofing material at a minimum architectural composition or better, i.e., no 3-tab roofing is allowed, with the said roofing colors to be the same colors as all other houses in the affected property.

3.1.1 The foregoing provisions shall not exclude the construction of a private greenhouse, storage shed, private swimming pool, or a shelter for the protection of such swimming pool or for the storage of a boat, and/or camping trailer or motor home which are utilized for personal use; provided, however, that the location of such structure is required to be in conformity with the applicable municipal regulations, and furthermore are compatible in design, construction, and decoration with the residence that is constructed on the said Lot, and placed on the said Lot.

3.1.2 The Declarant or its designee reserves the right to permit exceptions to the dwelling size requirement in selected locations. The Declarant or its designee may permit exceptions where architectural design enhancements provide an overall appearance and value in conformance with the remainder of the property. Such exceptions shall be made at the sole discretion of the Declarant or its designee. Under no circumstance shall a total number of exceptions be granted that exceed a total of one half of the total number of Lots.

3.1.3 Completion of construction of any dwelling including exterior decoration shall occur within six (6) months from the date of commencement of the said construction. During this construction period of time, the following shall occur:

3.1.3.1 All Lots shall be kept in a neat and orderly condition free of brush, vines, weeds, and other debris.

3.1.3.2 All grass on the Lot shall be cut or mowed at sufficient intervals to prevent creation of a nuisance or fire hazard.

3.1.3.3 All contractors and builders shall keep their job site orderly and in clean condition and shall periodically, during the course of construction, remove all construction waste materials. In the event of hardship due to inclement weather conditions, this provision may be

extended by the Declarant or its designee for a reasonable period of time.

3.2 Landscaping. Prior to the occupancy of the house on a specific Lot, the front yard of the Lot upon which said house has been erected or constructed shall be fully and completely landscaped as to the planting of cultivated grass lawns. Within six (6) months from the date of occupancy, landscaping associated with the back and side yards of the said Lot must be completed. Owners are strongly encouraged to use sod for the planting of lawns. At all times after substantial completion of the construction of a House on a Lot in the affected area and before the installation of landscaping, all yards shall be maintained so as not to be offensive in appearance nor cause or present any sort or form of hazardous or dangerous condition.

3.2.1 Watering, trimming, and all maintenance associated with the street trees required by the City of Newberg which are planted along certain streets of the subdivision are the responsibility of the owner of the Lot which is contiguous to the said trees.

3.3 Setbacks from Property Lines. Minimum setbacks on all Lots in the affected property shall be governed by the applicable City of Newberg development and airport overlay ordinances, if applicable.

3.4 Rain gutters and downspouts. As noted and approved by the City Building Department shall be installed.

3.5 Rubbish and Trash. No Lot or part of the Common Area shall be used as a dumping ground for trash or rubbish of any kind. All garbage and other waste shall be kept in appropriate containers for timely and proper disposal, out of public view. Yard rakings, dirt and other material resulting from landscaping work shall not be dumped onto streets, the Common Areas or any other Lots. Each owner is responsible for trash disposal, and shall only place individual trash containers in the public street (not alleyways) within 12 hours of the scheduled trash collection time and such owners shall remove the individual trash containers from the public street and from public view within 12 hours after collection.

SECTION 4- EASEMENTS.

4.1 Ingress/egress, utility, drainage, and sidewalk easements are set forth on the plat of HIGHLANDS AT HESS CREEK - PHASE I.

SECTION 5- MAINTENANCE OF LOTS

5.1 Each Owner of any Lot in the affected property shall maintain the condition of said

Lot and any improvements thereon including, without limitation, any House, building, fencing, structure, landscaping, sidewalks, driveways, trees, shrubs, or other vegetation thereon in a reasonably clean, neat, attractive and visually pleasing manner so as to not detract from the affected property being a high-class residential neighborhood.

SECTION 6- COMMON AREA

6.1 No Common Areas exist as set forth on the plat of HIGHLANDS AT HESS CREEK – PHASE 1

SECTION 7- ARCHITECTURAL REVIEW COMMITTEE (ARC)

7.1 No improvement shall be commenced, erected, placed or altered on any Lot until the construction plans and specifications showing the nature, shape, heights, materials, colors, and proposed location of the improvement have been submitted to and approved in writing by the ARC. It is the intent and purpose of this Declaration to assure quality of workmanship and materials and to assure harmony of exterior design with the existing improvements and landscaping. The ARC is not responsible for determining compliance with structural and building codes, solar ordinances, zoning codes or other governmental regulations, all of which are the responsibility of the Lot Owners. The procedure and specific requirements for review and approval of construction may be set forth in design guidelines adopted from time to time by the ARC. Construction by the Declarant is presumed to have been approved and is thereby exempt from the review. In all cases which the ARC consent is required by this Declaration, the Provision of this Article shall apply.

7.2 The ARC shall consist of no fewer than three (3) members and no more than five (5) members. The Declarant reserves the right to appoint all members of the ARC and all replacements thereto until turnover. The Declarant may appoint a single person to serve as the ARC.

7.3 Except as otherwise provided in this Declaration, a majority of the members of the ARC shall have the power to act on behalf of the ARC, without the necessity of a meeting and without the necessity of consulting the remaining members of the ARC. The ARC may render its decision only by written instrument setting forth the action taken by the members consenting thereto.

7.4 The ARC shall consider and act upon the proposals and/or plans submitted pursuant to this Article. The ARC, from time to time and at its sole discretion, may adopt architectural rules, regulations, and guidelines ("Architectural Standards"). The Architectural Standards shall interpret and implement the provisions of this Declaration for architectural review and guidelines for architectural design, placement of buildings, color schemes, exterior finishes and

materials and similar features which may be used in the Property; provided, however that the Architectural Standards shall not be in derogation of the minimum standards established by this Declaration.

7.5 The ARC shall render its approval or denial decision with respect to the construction proposal within twenty (10) working days after it has received all material required by it with respect to the application. All decisions shall be in writing. In the event that ARC fails to render its decision of approval or denial in writing within sixty (30) day of receiving all material required by it with respect to the proposal, the application shall be deemed approved. Approval by the ARC does not imply government approval which is solely the responsibility of the Owner.

7.6 The ARC may, at its sole discretion, withhold consent to any proposed work if the ARC finds the proposed work would be inappropriate for the particular Lot or incompatible with the design standards that the ARC intends for the Property. Consideration such as sitting or location on the Lot, shape, size, color, design, height, solar access, or other affect on the enjoyment of other Lots of the Common Area, and any other factors which the ARC reasonably believe to be relevant, may be taken into consideration by the ARC in determining whether or not to consent to any proposed work.

7.7 Consent by the ARC to any matter proposed to it or within its jurisdiction shall not be deemed to constitute a precedent or waiver impairing the ARC's right to withhold approval as to any similar matter thereafter proposed or submitted to it for consent.

7.9 The ARC's consent to any proposed work shall automatically be revoked three (6) months after issuance unless construction of the work has been commenced or the Owner has applied for and received an extension of time from the ARC.

7.10 The ARC shall inspect, from time to time, all work performed and determine whether it is in substantial compliance with the approval granted. If the ARC finds that the work was not performed in substantial conformance with the approval granted, or if the ARC finds that the approval required was not obtained, the ARC shall notify the Owner in writing of the noncompliance. The notice shall specify the particulars of any noncompliance and shall require the Owner to take the necessary action to bring the work into compliance with the approved project.

7.11 If the ARC determines that an Owner has not constructed an improvement consistent with the specifications on which approval is based, and if the Owner fails to diligently commence to remedy such noncompliance in accordance with the provisions of the notice of noncompliance, then at the expiration of the third (3rd) day from the date of such notification, the ARC shall provide a notice of a hearing to consider the Owner's continuing noncompliance. The hearing shall be set no more than thirty (30) days from the date of the notice of noncompliance. At the hearing, if the ARC finds that there is a non valid reason for the continuing noncompliance, the ARC shall determine the estimated costs of correcting it. The ARC shall then require the Owner to remedy or remove the same within a period of not more than ten (10) days from the date of the ARC's Determination. If the Owner does not comply with the ARC's ruling within such period or

within *any* extension of such period as the ARC, at its discretion, may grant, the Association may (a) remove the noncomplying improvement, (b) remedy the noncompliance, or (c) fine Owner and his Lot, including all attorney's fees and other costs expended and incurred to enforce compliance before suit or action is filed and at trial or on any appeal or review therefrom.

7.12 Neither the ARC, their agents, nor any member thereof shall be liable to any Owner, Occupant, or builder for any damage, loss or prejudice suffered or claimed to be suffered arising from any action by the ARC or a member thereof or failure of the ARC or a member thereof, provided only that the member has acted in good faith in accordance with the actual knowledge possessed by him.

7.13 Within fifteen (15) working days after written request is delivered to the ARC by an Owner, and upon payment to the ARC of a reasonable fee fixed by the ARC to cover costs, the ARC shall provide such Owner with a certificate executed by the Chairman of the ARC, and acknowledged, certifying with respect to any Lot owned by the Owner, that as of the date thereof either (a) all improvements made or done upon or within such Lot by the Owner comply with this Declaration, or (b) such improvements do not so comply, in which event, the certificate shall also identify the noncomplying improvements and set forth with particularity the nature of such noncompliance. The Owner, his/her/their heirs, devisees, successors and assigns shall be entitled to rely on the certificate with respect to the matters set forth. The certificate shall be conclusive as between the Declarant, the ARC the Association and all Owners, and all such persons deriving an interest through any of them.

SECTION 8- AMENDMENTS OR MODIFICATIONS.

8.1 This Declaration may be amended or modified by an instrument signed by not less than eighty-five percent (85%) of the then Owners of Lots in the affected property.

8.2 Any and all amendments or modifications to this Declaration must be in writing and shall be recorded as an amendment or modification to this Declaration in the official and public records of Yamhill County, Oregon.

SECTION 9- DURATION OF THESE CCR'S.

9.1 The covenants, conditions and restrictions of this Declaration and any and all amendments and modifications hereto shall run with and bind the land and inure to the benefit of any and all Owners of Lots in the affected property, their legal representatives, heirs, successors and assigns for a term of thirty (30) years from the date this original Declaration is recorded in the official and public records of Yamhill County, Oregon. After such date, the original Declaration

and any and all amendments and modifications hereto shall be automatically extended and renewed for successive periods of ten (10) years unless and until an instrument terminating the Declaration and any amendments thereto signed by the then Owners of eighty-five percent (85%) of the Lots has been executed and recorded in the official records of Yamhill County, Oregon prior to the commencement of any ten (10) year period.

SECTION 10- MISCELLANEOUS OTHER PROVISIONS.

10.1 In constructing this Declaration, or any part hereof, stipulations that are necessary to make this Declaration or any of its terms or provisions reasonable are hereby implied. Invalidity of any of the provisions of this Declaration shall in no way affect the validity of any of the other provisions hereof which shall remain in full force and effect.

10.2 Any provision of this Declaration and any amendments thereto shall bind and inure to the benefit of and be enforceable by the Owner or Owners of any Lot or Lots, their legal representatives, successors heirs and assigns under any type of legal or equitable relief. Failure by the Owner or Owners of any Lot or Lots, their legal representatives, successors, heirs or assigns to enforce any condition, charge or restriction of this Declaration shall in no event be deemed a waiver of the right to do so. In case any suit or action is required to be filed to enforce any term or provision hereof, the non-prevailing party is required to pay the prevailing party's costs and attorney fees incurred in enforcement, both at trial and on appeal.

10.3 By the recording of this Declaration, each Owner shall be deemed to have consented and agreed to every term, condition, covenant and restriction contained herein.

10.4 Mortgage Protection.

10.4.1 Except upon the approval of Mortgagees holding Mortgages of Lots which have at least eighty-five percent (85%) of the votes of Lots which are subject to Mortgages, no amendments may be made to this Declaration which add to or amend any material provision of the Declaration which establish, provide for, govern or regulate any of the following:

10.4.2 Termination of this Declaration or any amendment thereto shall require the consent of not less than eighty-five percent (85%) of the Mortgagees holding an interest in Lots. Any such Termination of this Declaration shall be carried out by the Owners pursuant to the provisions of the Declaration, and only after a vote of the Owners as required by this Declaration.

10.4.3 The provisions of Section 8 are intended only to be a limitation on the right of the Owners to amend the Declaration, and any such amendments to the Declaration shall be made only upon full compliance with the provisions of such relating to the procedure and percentage of votes required for such amendment.

10.4.4 Any Mortgagee who receives a written request to approve an amendment to

the Declaration or any other action to be taken, shall be deemed to have given such approval unless such Mortgagees written objection to such action is delivered to the Owners within thirty (30) days after the date of the written request.

10.5 Default by an Owner of any Obligation of the said Owner.

10.5.1 Failure by an Owner to cure any breach of the terms and conditions of these CCR's shall be a default by such Owner of his or her obligations pursuant to these CCR's. In case any Owner (including the Declarant) thereof is required to retain the services of an attorney to enforce any term or condition of these said CCR's, the non-prevailing party is liable for the payment of attorney fees and costs incurred by the prevailing party, both at trial and on appeal.

10.6 Any notice under this Declaration and any amendment thereto shall be in writing and shall be effective when actually delivered or when deposited in the mail, registered or certified, addressed to the specific Owner at the mailing address of the Owner.

10.7 As used hereunder, the singular shall include the plural and the plural the singular, and the masculine and neuter shall each include the masculine, feminine, and neuter as the context requires. All captions used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Declaration and any amendments thereto.

10.8 If any term or provision hereof is determined to be invalid, that invalidity has no effect upon the remaining terms and provisions hereof.

10.9 Any decisions required by the Declarant or its designee must be in writing setting forth the action taken in order to be enforceable.

10.10 Failure by the Declarant and/or its designee to require performance by any other party of any of the provisions hereof shall in no way affect the Declarant's and/or its designee's rights hereunder to enforce the same, nor shall any waiver of the Declarant and/or its designee of any breach hereof be held to be a waiver of any succeeding breach, or a waiver of this non-waiver clause.

10.11 So long as the Declarant and/or its designees and/or its assigns have acted in good faith based upon actual knowledge possessed by the Declarant and/or designees and/or its assigns, neither the Declarant (including any officer and/or member) and/or its designees or assigns, to the fullest extent possible, shall be liable to any owner, occupant, contractor, builder, or any others for any damages, losses, or prejudice incurred, suffered, or claimed on account of any action or failure to act by the Declarant and/or its designees and/or its assigns.

10.12 Owners are responsible for the maintenance and repairs of the public sidewalk and landscaping fronting their respective property lines.

10.13 There is no direct motor vehicle access from any lot in the said subdivision

to 3rd Street.

10.14 The Owners hold the City of Newberg, public, and the Sportsman's Airpark harmless from any damages caused by noise, fumes, dust, fuel, fuel particles or other effects that may be caused by the operation of aircraft taking off, landing or operating on or near the airfield, not including the physical impact of aircraft or parts thereof.

10.15 No Owner shall sell, nor offer for sale, any property within the AIO Sub-District unless the prospective buyer has been notified of the fact that the property is within the AIO SubDistrict. When Property ownership is transferred, the property deed shall be amended to note that the property is within the Airport Industrial Overlay Sub-district.

10.16 No Owner shall sell, nor offer for sale, any property within the ALO Sub-District unless the prospective buyer agrees to follow Aircraft Owners and Pilots Association (AOPA) standard noise abatement procedures, or the most recent noise abatement procedures established at the airport.

This said Declaration has been executed by at least 85% of the Owners.

**Newberg Communities, LLC, an Oregon Limited
Liability Company .**

By: Michael Hanks
Its: Member

STATE OF OREGON)
) SS.
County of Yamhill)

Personally appeared the above-named Michael Hanks before me who stated that he was a member of Newberg Communities, LLC and who further stated that he was authorizing this said document with the authority of the Members and acknowledged execution of the foregoing document to be his voluntary act and deed.

Notary Public of Oregon

My commission expires: _____

EMERIO *Design*

CIVIL ENGINEERS & PLANNERS

Date: May 26, 2015

To: City of Newberg, Engineering Review Staff

From: Eric Evans, PE – Emerio Design LLC

RE: Highlands at Hess Creek Phase 4 & 5

Please find the attached storm drainage report for phase three of the Highlands at Hess Creek Subdivision. In this report you will find phase four and five were "master-planned" to address city of Newberg storm water requirements at the time phase three was constructed. Specifically water quality and detention were calculated to be addressed in the pond/swale located on the western edge of the site.

Should you have further questions or comments on this matter, please to not hesitate to call me at 503-853-1910.

Sincerely,



Eric Evans, PE
Project Manager



EXPIRES 12-31-15



 CIVIL ENGINEERS & PLANNERS

Final Stormwater Management Report

The Highlands at Hess Creek Subdivision No. 3

Emerio Project Number: 244-001

City of Newberg Project Number: SUB3-12-004



EXPIRES 12-31-15

Prepared For:
Newberg Communities, LLC
PO Box 486
Newberg, Oregon 97132
Contact: Mart Storm

Prepared By:
Eric D. Evans, PE
Emerio Design, LLC
6107 SW Murray Blvd., Suite 147
Beaverton, Oregon 97008
(503) 853-1910
eric@emeriodesign.com

Submittal #	Date	Returned	Comments
One			

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APPENDIX B

- (1) Soils Maps—"Soils Survey for Yamhill County"
- (2) Curve Number Table

APPENDIX C

- (1) Swale Sizing Spreadsheet
- (2) Pre Developed Hydrocad Plots
- (3) Post Developed Hydrocad Plots

APPENDIX D

- (1) Post-Developed Basin Map

Project Overview and Description:

The proposed site will include a new subdivision in several phases. At this time 16 new lots are proposed. Three existing lots and road frontage will also be collected and detained. Future phases will create 28 new lots. A detention/water quality pond will be created on the western boundary of the site.

Soil Classification:

The NRCS soil survey of Yamhill County, Oregon classifies the onsite soils as Woodburn Silt Loam. The associated hydrologic group of this soil is C. The associated curve numbers utilized in this design is 79 and 86 for pervious surfaces, Pre and Post-Developed respectively. A curve number of 98 is set for impervious surfaces, reference appendixes B(1) and B(2).

Basin Delineation:

The site is modeled in three separate catchment areas. These are onsite to detention/treatment (Area A), Onsite without detention/treatment (Area B) and existing offsite upstream area to detention/treatment (Area C). Reference appendix D(1) for a basin map and area tabulation.

Water Quantity/Detention:

In conversation with city staff, the only detention standard to be met within the city of Newberg is to match the 25-year peak flow pre to post. Using Hydrocad V8.00 the three basins described above were modeled in both the pre to post developed condition. Reference the pre and post developed Hydrocad plots in appendix C(2,3).

Pre-developed Condition Modeling: To determine the allowable release rate, Area C in its current condition was modeled. This was combined with area A and B being considered as grassy surfaces. This created an allowable release rate of 2.94 CFS for the design event.

Post-developed Condition Modeling: Basins A and C were routed to the pond for detention. Basin B is allowed to leave the site without the benefit of detention. However, the sum of the two runoffs, downstream of the pond plus downstream of

the area B were considered as the overall post developed release rate. This resultant sum is 2.52 CFS. Which is less than the pre-developed case, as such, the requirement for detention is satisfied.

Water Quality:

It is the goal of this project to provide complete water quality treatment for the site (current and future) as well as the upstream contributing areas. The impervious area yields a treatment flow based on Cleanwater Services code. Finally this flow rate is used to size an appropriate water quality swale. See appendix C(1). The resultant water quality facility has the following geometry and characteristics.

WQ Flow	0.26 CFS
Width	2 Feet
Length	122 Feet
Side Slope	4:1
Longitudinal Slope	0.50%
Flow Depth	0.39 Feet
Residence Time	11.2 Minutes

Note that a portion of the site does not drain to treatment. To mitigate for this lack of treatment, two methods have been employed. First, area C is treated in lieu of non-treated areas. Second, overtreatment is offered by the onsite facility by modeling the flow to the swale as if it contained flow from this not treated area.

Conveyance Analysis:

An onsite conveyance analysis was performed using the same 25-year return period standards. Three specific pipe reaches were analyzed. Each is described below.

The eight inch in easement on lot 67 has a design flow of 0.44 CFS. Considering a Manning's N of 0.013 and a minimum slope of 0.65%, this pipe has the capacity to convey 1.05 CFS, the capacity exceeds the design flow.

The twelve inch pipe in the public ROW flowing south to CB01C has a design flow of 1.41 CFS. Considering a Manning's N of 0.013 and a minimum slope of 0.65%, this pipe has the capacity to convey 3.10 CFS, the capacity exceeds the design flow.

The twelve inch pipe in the public ROW flowing north to CB01C has a design flow of 2.56 CFS. Considering a Manning's N of 0.013 and a minimum slope of 0.69%, this pipe has the capacity to convey 3.19 CFS, the capacity exceeds the design flow.

Lastly, the fifteen inch pipe to the water quality facility has a design flow of 4.41 CFS. Considering a Manning's N of 0.013 and a minimum slope of 1.00%, this pipe has the capacity to convey 6.97 CFS, the capacity exceeds the design flow.

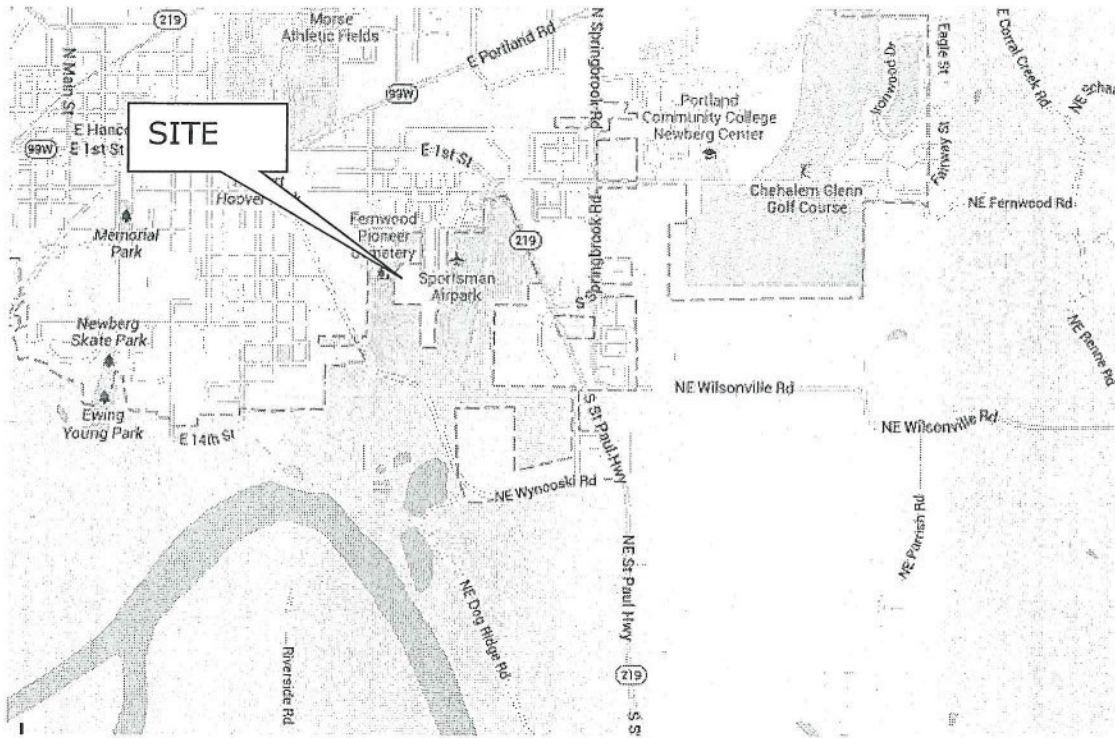
Based on the analysis above, each of the proposed pipe reaches has the capacity to convey proposed and future design flows.

Conclusion:

The design of the proposed site satisfies conveyance, water quality and detention standards for the City of Newberg.

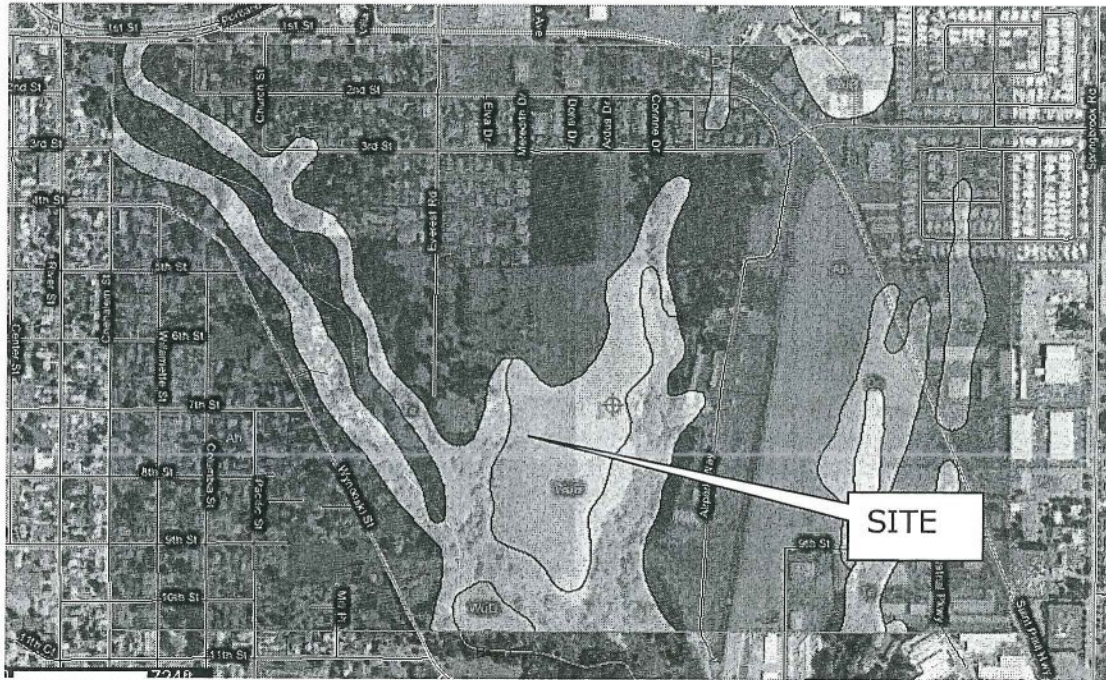
Appendix A:

Appendix A(1)
Vicinity Map



Appendix B:

Appendix B(1)
Soil Classification



Tables — Hydrologic Soil Group — Summary By Map Unit

Summary by Map Unit — Yamhill Area, Oregon (OR679)

Map unit symbol	Map unit name	Rating	Acres in AOI	Percent of AOI
Ah	Aloha silt loam	C/D	252.2	72.4%
Dc	Dayton silt loam, thick surface	D	14.1	4.0%
Te	Terrace escarpments		43.3	12.4%
Wc	Wapato silty clay loam	C/D	10.7	3.1%
WuB	Woodburn silt loam, 0 to 7 percent slopes	C	26.3	7.6%
WuD	Woodburn silt loam, 12 to 20 percent slopes	C	1.8	0.5%
Totals for Area of Interest			348.3	100.0%

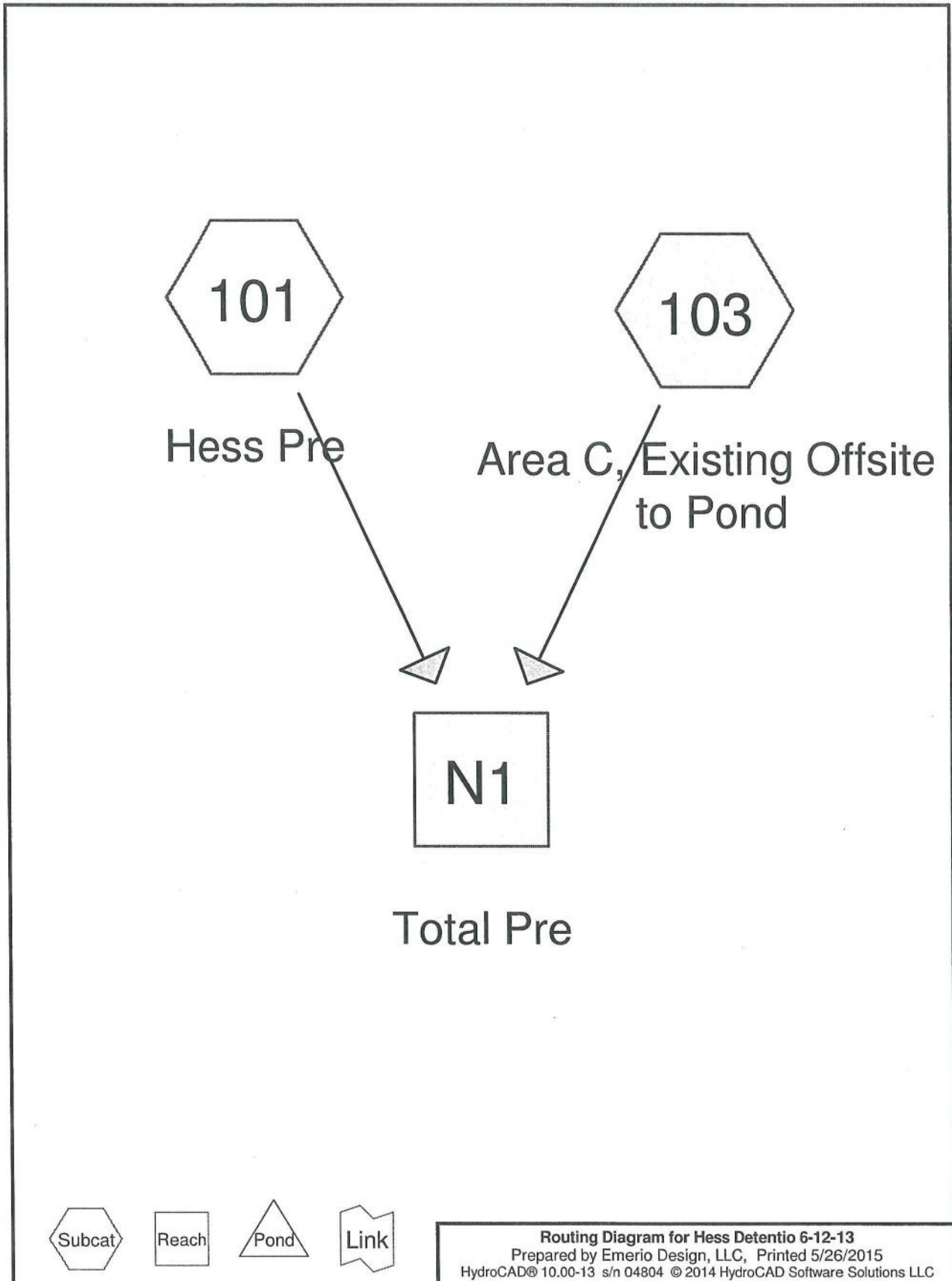
Appendix B(2)
Curve Number Table

RUNOFF CURVE NUMBERS (TR55)

Table 2-2a: Runoff curve numbers for urban areas ¹

Cover description		CN for hydrologic soil group			
Cover type and hydrologic condition	Average percent impervious area ²	A	B	C	D
<i>Fully developed urban areas (vegetation established)</i>	Post CN = 86				
Open space (lawns, parks, golf courses, cemeteries, etc.) ³ :	PRE CN = 79				
Poor condition (grass cover <50%)		68	79	86	89
Fair condition (grass cover 50% to 75%)		49	69	79	84
Good condition (grass cover >75%)		39	61	74	80
Impervious areas:					
Paved parking lots, roofs, driveways, etc. (excluding right-of-way)		98	98	98	98
Streets and roads:					
Paved; curbs and storm sewers (excluding right-of-way)		98	98	98	98
Paved; open ditches (including right-of-way)		83	89	92	93
Gravel (including right-of-way)		76	85	89	91
Dirt (including right-of-way)		72	82	87	89
Western desert urban areas:					
Natural desert landscaping (pervious areas only) ⁴		63	77	85	88
Artificial desert landscaping (impervious weed barrier, desert shrub with 1- to 2-inch sand or gravel mulch and basin borders)		96	96	96	96
Urban districts:					
Commercial and business	85	89	92	94	95
Industrial	72	81	88	91	93
Residential districts by average lot size:					
1/8 acre or less (town houses)	65	77	85	90	92
1/4 acre	38	61	75	83	87
1/3 acre	30	57	72	81	86
1/2 acre	25	54	70	80	85
1 acre	20	51	68	79	84
2 acres	12	46	65	77	82

Appendix C:



Hess Detentio 6-12-13

Prepared by Emerio Design, LLC

HydroCAD® 10.00-13 s/n 04804 © 2014 HydroCAD Software Solutions LLC

Type IA 24-hr 25-Year Rainfall=3.90"

Printed 5/26/2015

Page 2

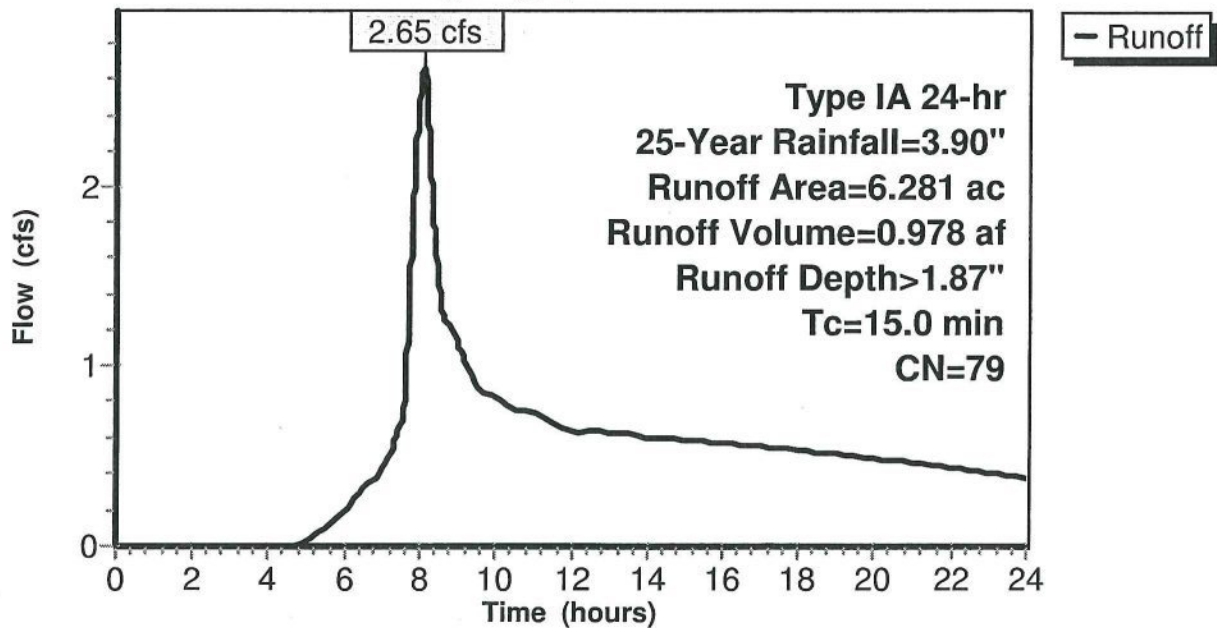
Summary for Subcatchment 101: Hess Pre

Runoff = 2.65 cfs @ 8.08 hrs, Volume= 0.978 af, Depth> 1.87"

Runoff by SCS TR-20 method, UH=SCS, Weighted-CN, Time Span= 0.00-24.00 hrs, dt= 0.01 hrs
Type IA 24-hr 25-Year Rainfall=3.90"

Area (ac)	CN	Description
* 6.281	79	
6.281		100.00% Pervious Area

Tc (min)	Length (feet)	Slope (ft/ft)	Velocity (ft/sec)	Capacity (cfs)	Description
15.0					Direct Entry,

Subcatchment 101: Hess Pre**Hydrograph**

Hess Detentio 6-12-13

Type IA 24-hr 25-Year Rainfall=3.90"

Prepared by Emerio Design, LLC

Printed 5/26/2015

HydroCAD® 10.00-13 s/n 04804 © 2014 HydroCAD Software Solutions LLC

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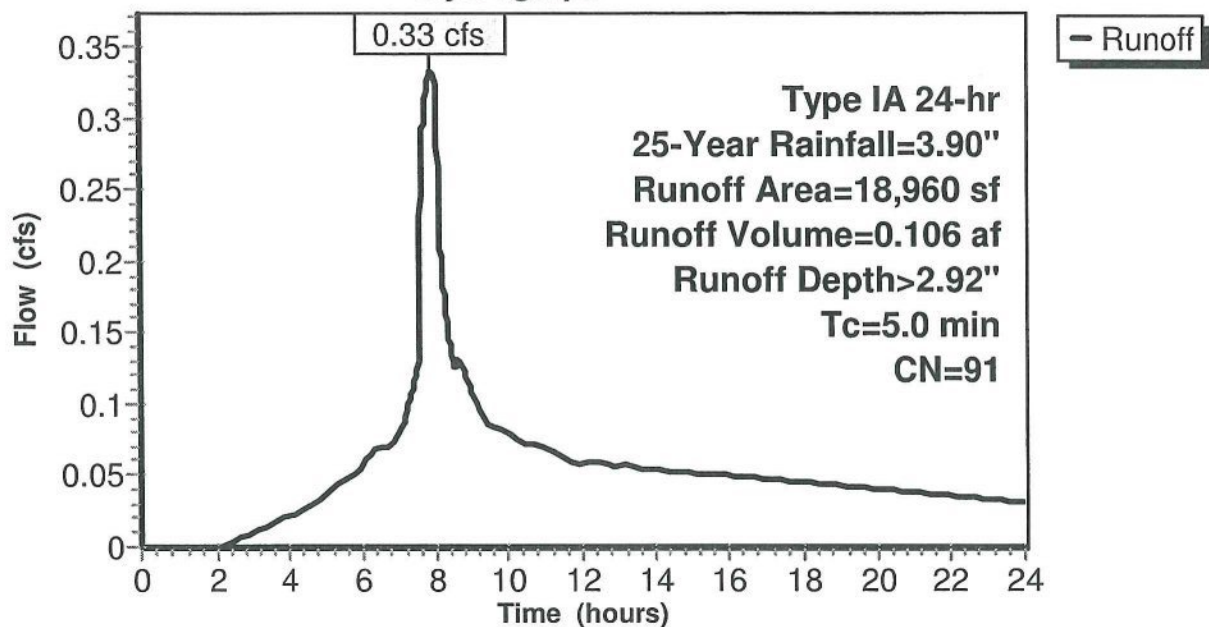
Summary for Subcatchment 103: Area C, Existing Offsite to Pond

Runoff = 0.33 cfs @ 7.89 hrs, Volume= 0.106 af, Depth> 2.92"

Runoff by SCS TR-20 method, UH=SCS, Weighted-CN, Time Span= 0.00-24.00 hrs, dt= 0.01 hrs
Type IA 24-hr 25-Year Rainfall=3.90"

	Area (sf)	CN	Description
*	8,370	98	
*	10,590	86	
	18,960	91	Weighted Average
	10,590		55.85% Pervious Area
	8,370		44.15% Impervious Area

Tc (min)	Length (feet)	Slope (ft/ft)	Velocity (ft/sec)	Capacity (cfs)	Description
5.0					Direct Entry,

Subcatchment 103: Area C, Existing Offsite to Pond**Hydrograph**

Hess Detentio 6-12-13

Prepared by Emerio Design, LLC

HydroCAD® 10.00-13 s/n 04804 © 2014 HydroCAD Software Solutions LLC

Type IA 24-hr 25-Year Rainfall=3.90"

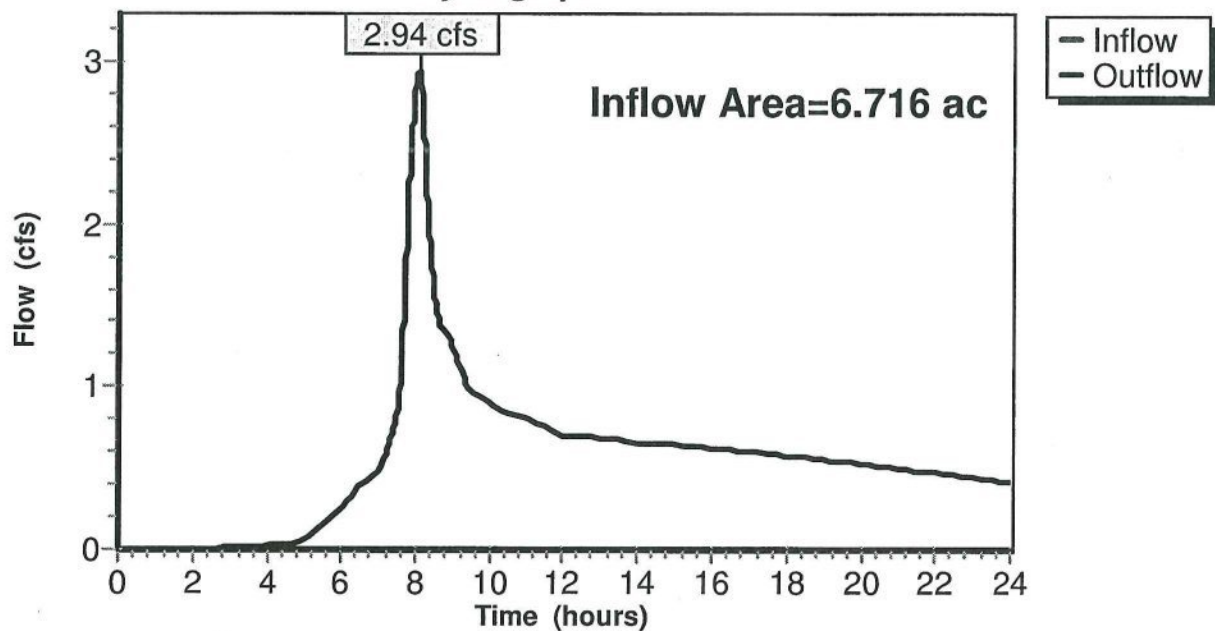
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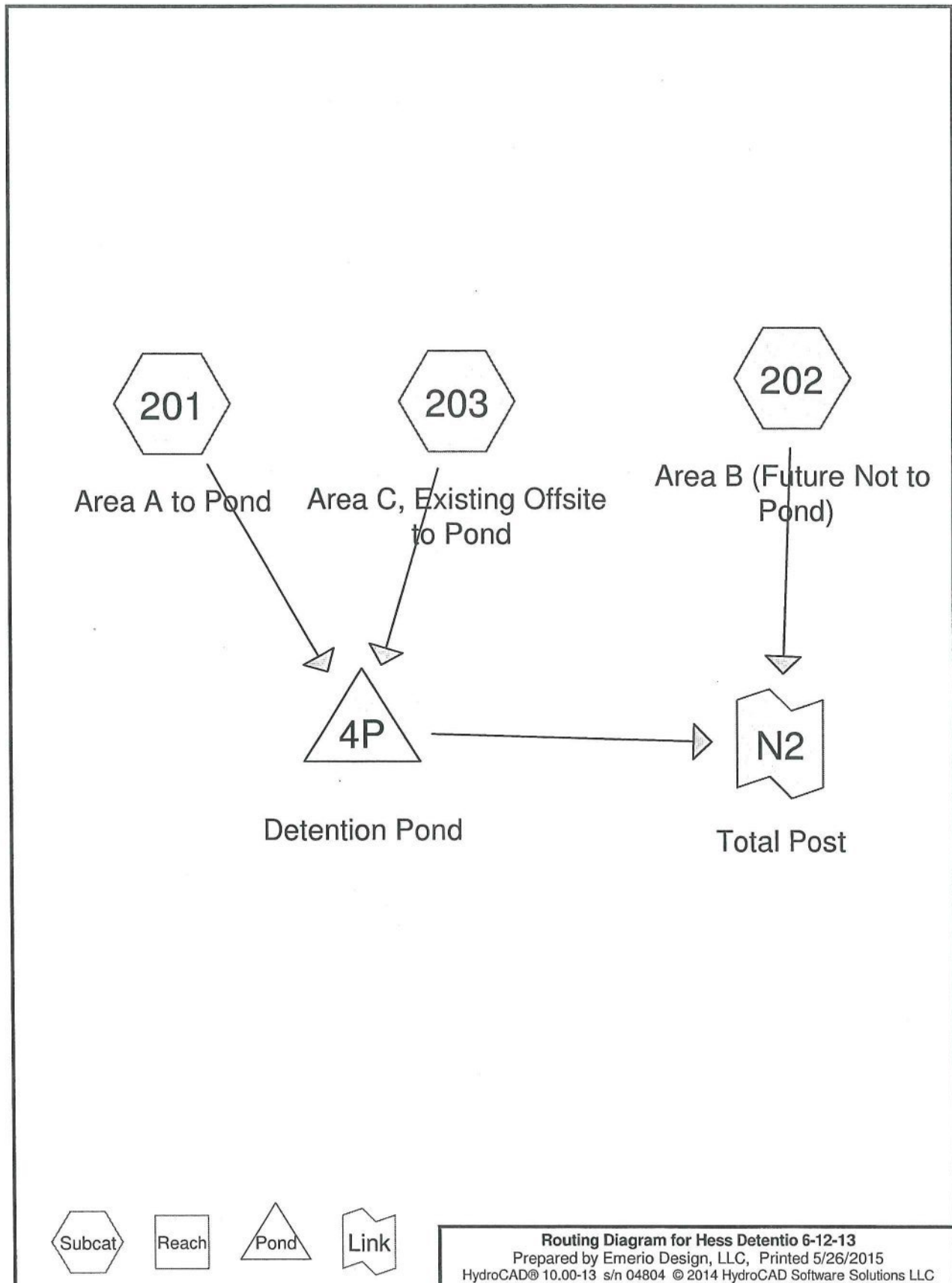
Page 4

Summary for Reach N1: Total Pre

Inflow Area = 6.716 ac, 2.86% Impervious, Inflow Depth > 1.94" for 25-Year event
Inflow = 2.94 cfs @ 8.04 hrs, Volume= 1.084 af
Outflow = 2.94 cfs @ 8.04 hrs, Volume= 1.084 af, Atten= 0%, Lag= 0.0 min

Routing by Stor-Ind method, Time Span= 0.00-24.00 hrs, dt= 0.01 hrs

Reach N1: Total Pre**Hydrograph**



Hess Detentio 6-12-13

Prepared by Emerio Design, LLC

HydroCAD® 10.00-13 s/n 04804 © 2014 HydroCAD Software Solutions LLC

Type IA 24-hr 25-Year Rainfall=3.90"

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Page 2

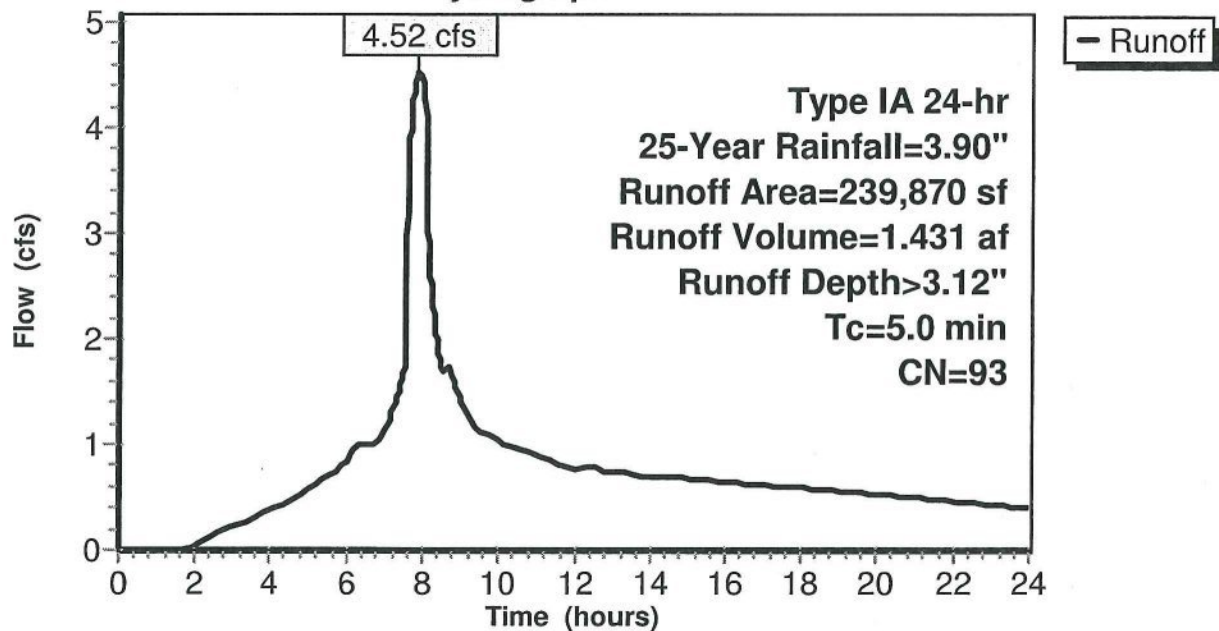
Summary for Subcatchment 201: Area A to Pond

Runoff = 4.52 cfs @ 7.88 hrs, Volume= 1.431 af, Depth> 3.12"

Runoff by SCS TR-20 method, UH=SCS, Weighted-CN, Time Span= 0.00-24.00 hrs, dt= 0.01 hrs
Type IA 24-hr 25-Year Rainfall=3.90"

	Area (sf)	CN	Description
*	143,340	98	
*	96,530	86	
	239,870	93	Weighted Average
	96,530		40.24% Pervious Area
	143,340		59.76% Impervious Area

Tc (min)	Length (feet)	Slope (ft/ft)	Velocity (ft/sec)	Capacity (cfs)	Description
5.0					Direct Entry,

Subcatchment 201: Area A to Pond**Hydrograph**

Hess Detentio 6-12-13

Type IA 24-hr 25-Year Rainfall=3.90"

Prepared by Emerio Design, LLC

Printed 5/26/2015

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Page 3

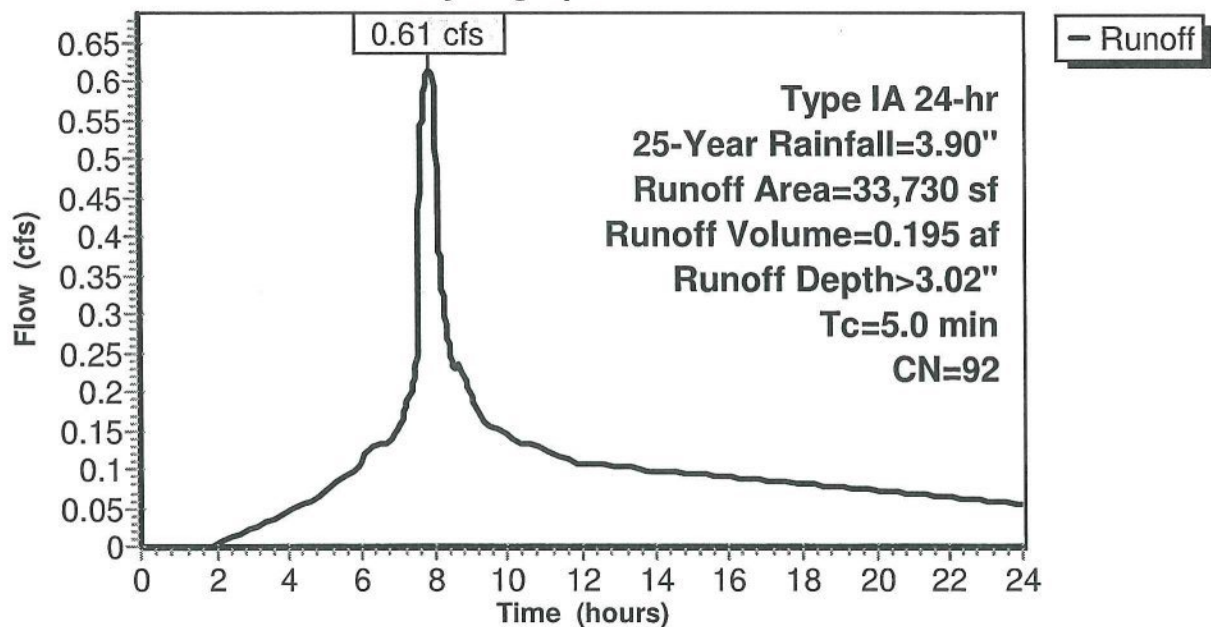
Summary for Subcatchment 202: Area B (Future Not to Pond)

Runoff = 0.61 cfs @ 7.89 hrs, Volume= 0.195 af, Depth> 3.02"

Runoff by SCS TR-20 method, UH=SCS, Weighted-CN, Time Span= 0.00-24.00 hrs, dt= 0.01 hrs
Type IA 24-hr 25-Year Rainfall=3.90"

	Area (sf)	CN	Description
*	16,930	98	
*	16,800	86	
	33,730	92	Weighted Average
	16,800		49.81% Pervious Area
	16,930		50.19% Impervious Area

Tc (min)	Length (feet)	Slope (ft/ft)	Velocity (ft/sec)	Capacity (cfs)	Description
5.0					Direct Entry,

Subcatchment 202: Area B (Future Not to Pond)**Hydrograph**

Hess Detentio 6-12-13

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Type IA 24-hr 25-Year Rainfall=3.90"

Printed 5/26/2015

Page 4

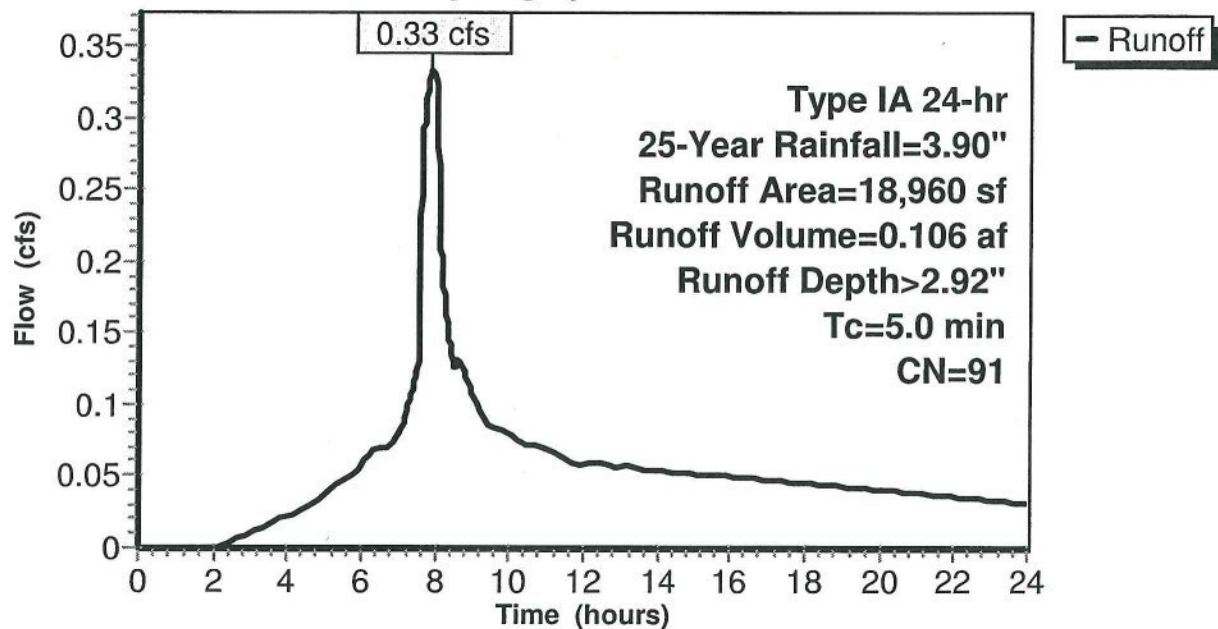
Summary for Subcatchment 203: Area C, Existing Offsite to Pond

Runoff = 0.33 cfs @ 7.89 hrs, Volume= 0.106 af, Depth> 2.92"

Runoff by SCS TR-20 method, UH=SCS, Weighted-CN, Time Span= 0.00-24.00 hrs, dt= 0.01 hrs
Type IA 24-hr 25-Year Rainfall=3.90"

	Area (sf)	CN	Description
*	8,370	98	
*	10,590	86	
	18,960	91	Weighted Average
	10,590		55.85% Pervious Area
	8,370		44.15% Impervious Area

Tc (min)	Length (feet)	Slope (ft/ft)	Velocity (ft/sec)	Capacity (cfs)	Description
5.0					Direct Entry,

Subcatchment 203: Area C, Existing Offsite to Pond**Hydrograph**

Hess Detentio 6-12-13

Type IA 24-hr 25-Year Rainfall=3.90"

Prepared by Emerio Design, LLC

Printed 5/26/2015

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Page 5

Summary for Pond 4P: Detention Pond

Inflow Area = 5.942 ac, 58.61% Impervious, Inflow Depth > 3.10" for 25-Year event
 Inflow = 4.85 cfs @ 7.88 hrs, Volume= 1.536 af
 Outflow = 2.05 cfs @ 8.39 hrs, Volume= 1.536 af, Atten= 58%, Lag= 30.5 min
 Primary = 2.05 cfs @ 8.39 hrs, Volume= 1.536 af

Routing by Stor-Ind method, Time Span= 0.00-24.00 hrs, dt= 0.01 hrs
 Peak Elev= 153.85' @ 8.39 hrs Surf.Area= 2,292 sf Storage= 6,758 cf

Plug-Flow detention time= 15.7 min calculated for 1.536 af (100% of inflow)
 Center-of-Mass det. time= 15.6 min (724.4 - 708.8)

Volume	Invert	Avail.Storage	Storage Description
#1	150.50'	9,446 cf	Custom Stage Data (Prismatic) Listed below (Recalc)

Elevation (feet)	Surf.Area (sq-ft)	Inc.Store (cubic-feet)	Cum.Store (cubic-feet)
150.50	200	0	0
151.00	2,055	564	564
152.00	2,135	2,095	2,659
153.00	2,220	2,178	4,836
154.00	2,305	2,263	7,099
155.00	2,390	2,348	9,446

Device	Routing	Invert	Outlet Devices
#1	Primary	149.00'	12.0" Round Culvert L= 25.0' RCP, mitered to conform to fill, Ke= 0.700 Inlet / Outlet Invert= 149.00' / 148.75' S= 0.0100 '/' Cc= 0.900 n= 0.013, Flow Area= 0.79 sf
#2	Device 1	149.20'	6.0" Vert. Orifice/Grate C= 0.620
#3	Device 1	153.85'	2.2' long x 0.5' breadth Broad-Crested Rectangular Weir Head (feet) 0.20 0.40 0.60 0.80 1.00 Coef. (English) 2.80 2.92 3.08 3.30 3.32

Primary OutFlow Max=2.05 cfs @ 8.39 hrs HW=153.85' (Free Discharge)

1=Culvert (Passes 2.05 cfs of 6.96 cfs potential flow)

2=Orifice/Grate (Orifice Controls 2.05 cfs @ 10.44 fps)

3=Broad-Crested Rectangular Weir (Weir Controls 0.00 cfs @ 0.11 fps)

Hess Detentio 6-12-13

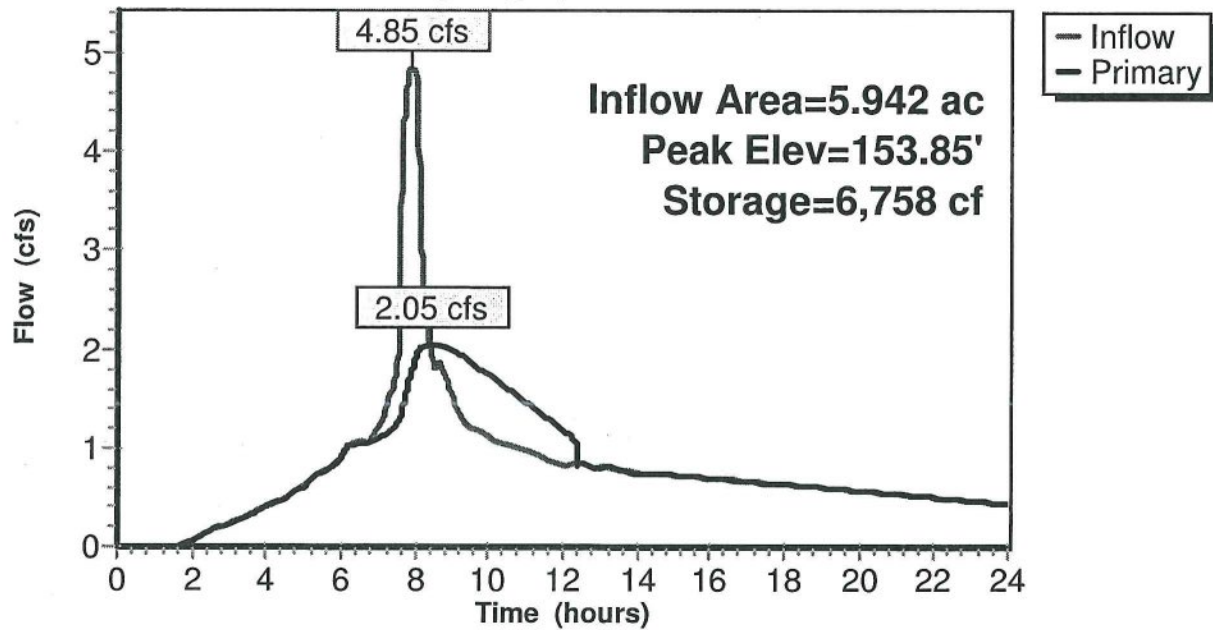
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Type IA 24-hr 25-Year Rainfall=3.90"

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Pond 4P: Detention Pond**Hydrograph**

Hess Detentio 6-12-13

Type IA 24-hr 25-Year Rainfall=3.90"

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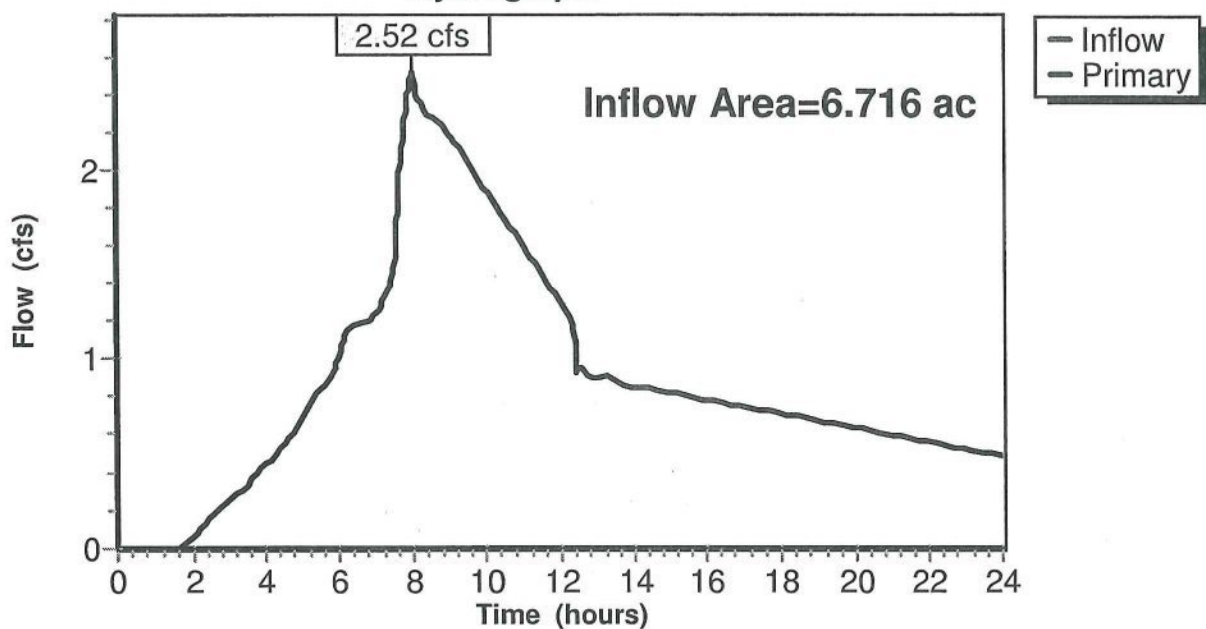
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Page 7

Summary for Link N2: Total Post

Inflow Area = 6.716 ac, 57.64% Impervious, Inflow Depth > 3.09" for 25-Year event
Inflow = 2.52 cfs @ 8.03 hrs, Volume= 1.731 af
Primary = 2.52 cfs @ 8.03 hrs, Volume= 1.731 af, Atten= 0%, Lag= 0.0 min

Primary outflow = Inflow, Time Span= 0.00-24.00 hrs, dt= 0.01 hrs

Link N2: Total Post**Hydrograph**

Appendix D:

DRAINAGE BASIN MAP
THE HIGHLANDS AT HESS CREEK PHASE 3 & FUTURE

EXHIBIT D(1)

PROJECT NO. 244-001

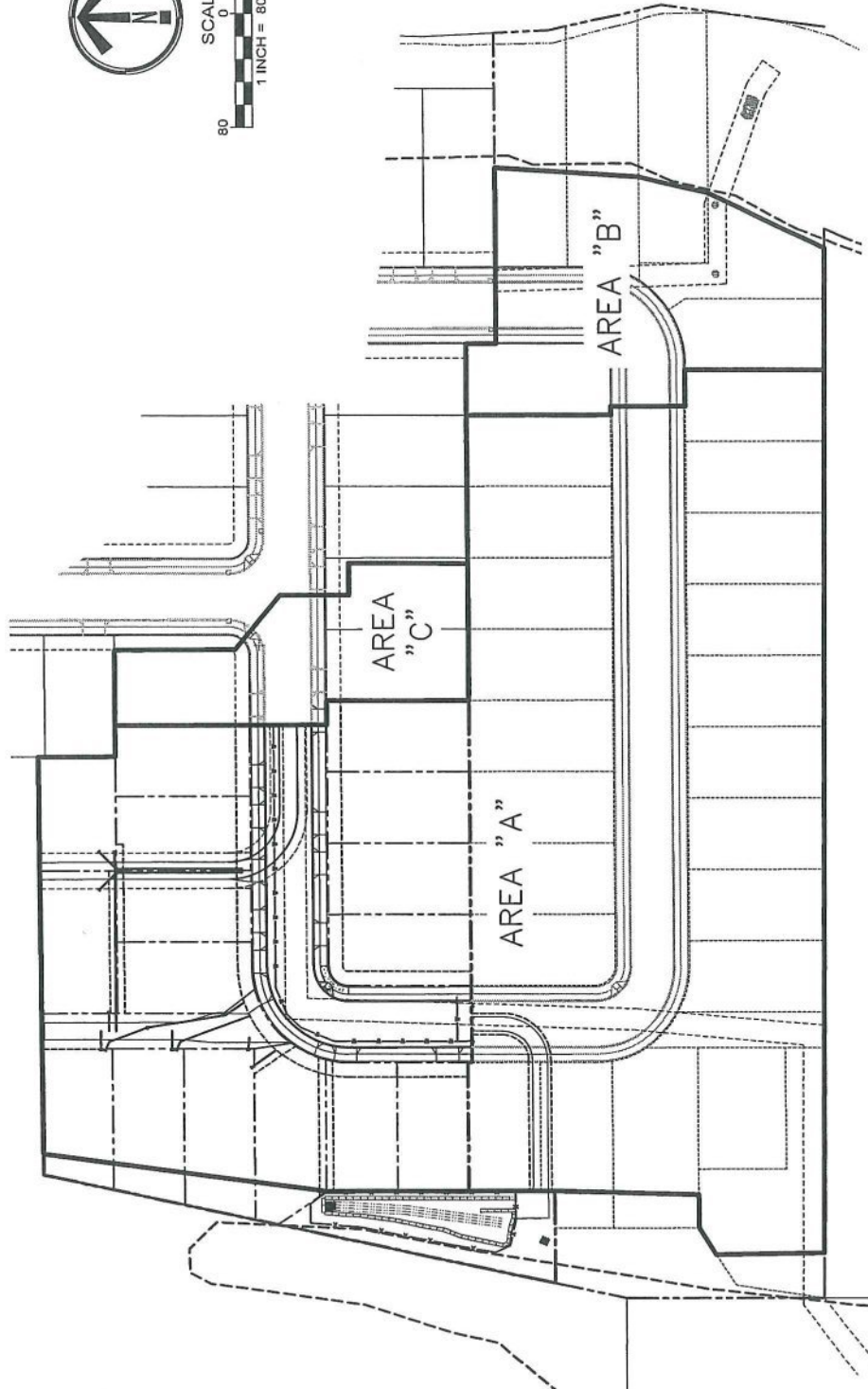
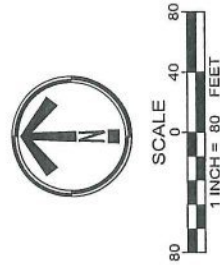
ORIG. DATE:

DRAWN BY: RR

SHEET NO.

ATTACHMENT 4

AREA "A"				AREA "B"				AREA "C"			
ON SITE AREA				ON SITE AREA				OFF SITE AREA			
DRAINS TO POND				DRAINS TO EAST				DRAINS TO EAST			
ROW	IMPERVIOUS	PERVIOUS	TOTAL	ROW	IMPERVIOUS	PERVIOUS	TOTAL	ROW	IMPERVIOUS	PERVIOUS	TOTAL
PVT DWY	40,080 SF	6,460 SF	46,540 SF	LOTS (6)	1,090 SF	7,520 SF	8,610 SF	LOTS (3)	450 SF	4,200 SF	4,650 SF
LOTS (37)	5,580 SF	0 SF	5,580 SF	TOTAL	15,840 SF	9,280 SF	25,120 SF	TOTAL	7,920 SF	6,390 SF	14,310 SF
TOTAL	97,680 SF	90,070 SF	187,750 SF		16,930 SF	16,800 SF	33,730 SF		8,370 SF	10,590 SF	18,960 SF
	143,340 SF	96,530 SF	239,870 SF								



THE HIGHLANDS AT HESS CREEK PHASE NO. 4 & PHASE NO. 5 COVER SHEET

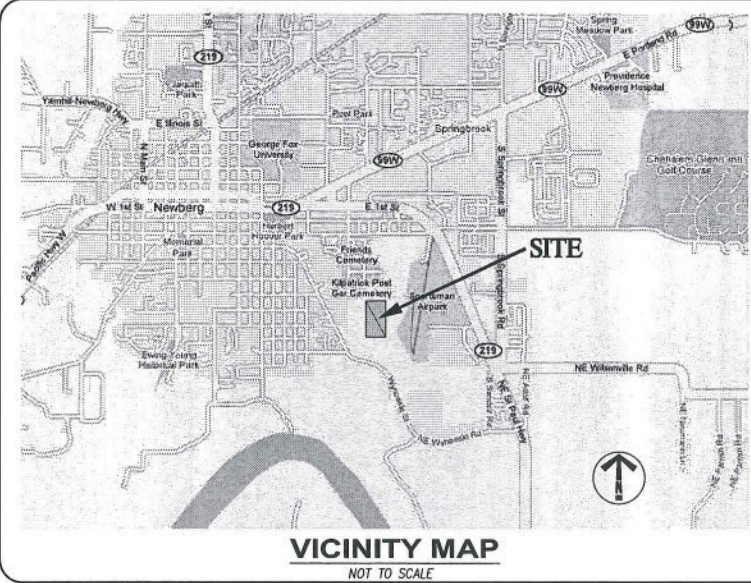
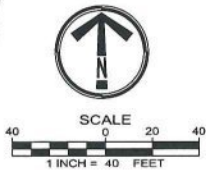
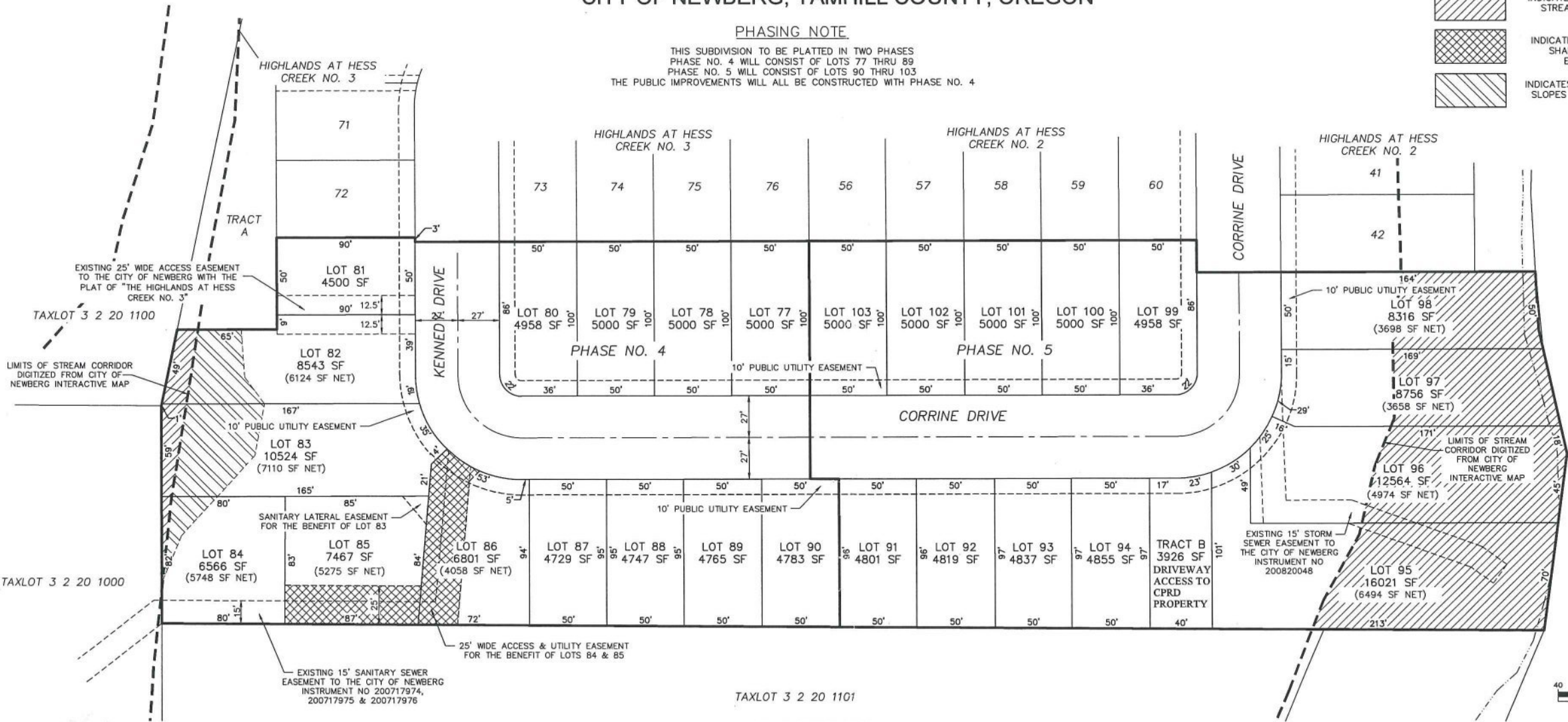
TAX LOT 3 2 20 1400
CITY OF NEWBERG, YAMHILL COUNTY, OREGON

PHASING NOTE

THIS SUBDIVISION TO BE PLATTED IN TWO PHASES
PHASE NO. 4 WILL CONSIST OF LOTS 77 THRU 89
PHASE NO. 5 WILL CONSIST OF LOTS 90 THRU 103
THE PUBLIC IMPROVEMENTS WILL ALL BE CONSTRUCTED WITH PHASE NO. 4

AVERAGE (NET) LOT AREA: 4996 SF
NET LOT AREA COMPUTED BY SUBTRACTING THE LOT
AREA IN THE STREAM CORRIDOR, SHARED ACCESS
EASEMENTS OR WITH SLOPES EXCEEDING 15%
C.O.N. CODE 15.405.010-A.2. & 15.405.010-C.

- INDICATES LOT AREA IN
STREAM CORRIDOR
- INDICATES LOT AREA IN
SHARED ACCESS
EASEMENT
- INDICATES LOT AREA WITH
SLOPES EXCEEDING 15%



TAXLOT 3 2 20 1101

TENTATIVE PLAT
SCALE: 1" = 40'

BENCH MARK INFORMATION

THE DATUM FOR THIS SURVEY IS BASED UPON A 3"
BRASS CAP STAMPED "YAMHILL COUNTY PARR SAT
M-2" LOCATED 56' SOUTH OF HIGHWAY 219, 25
FEET EAST OF THE CENTERLINE OF EVEREST ROAD
ELEVATION: 187.10 YAMHILL COUNTY DATUM

SITE INFORMATION

SITE AREA: 215,076 SF (4.94 AC)
ZONING: R2
TAX MAP: 3S 2W 20
TAX LOTS: 1400
NUMBER OF LOTS: 27

PROJECT CONTACTS

OWNER: LEONARD JOHNSON
3375 WEST SIDE ROAD
MCMINNVILLE, OREGON 97128
CONTACT: MART STORM
(503) 550-8130

ENGINEER: EMERIO DESIGN
8285 SW NIMBUS AVE., SUITE 180
BEAVERTON, OREGON 97008
ATTN: ERIC EVANS
(503) 853-1910

SURVEYOR: LELAND MACDONALD & ASSOC., LLC
3765 RIVERSIDE DRIVE
MCMINNVILLE, OREGON 97128
CONTACT: MATT DUNCKEL
503-472-7904

DRAWING INDEX

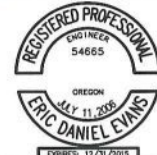
- 1 COVER SHEET - TENTATIVE PLAT
- 2 EXISTING CONDITIONS & DEMOLITION PLAN
- 3 AERIAL PLAN
- 4 SITE & UTILITY PLAN
- 5 GRADING & EROSION CONTROL PLAN

THE HIGHLANDS AT HESS CREEK
PHASE NO. 4 & PHASE NO. 5
A SUBDIVISION OF
TAX LOT 3 2 20 1400
CITY OF NEWBERG, OREGON

PLANNING DOCUMENTS
COVER SHEET
TENTATIVE PLAT

REVISIONS
NO. DATE DESCRIPTION

EMERIO
Design

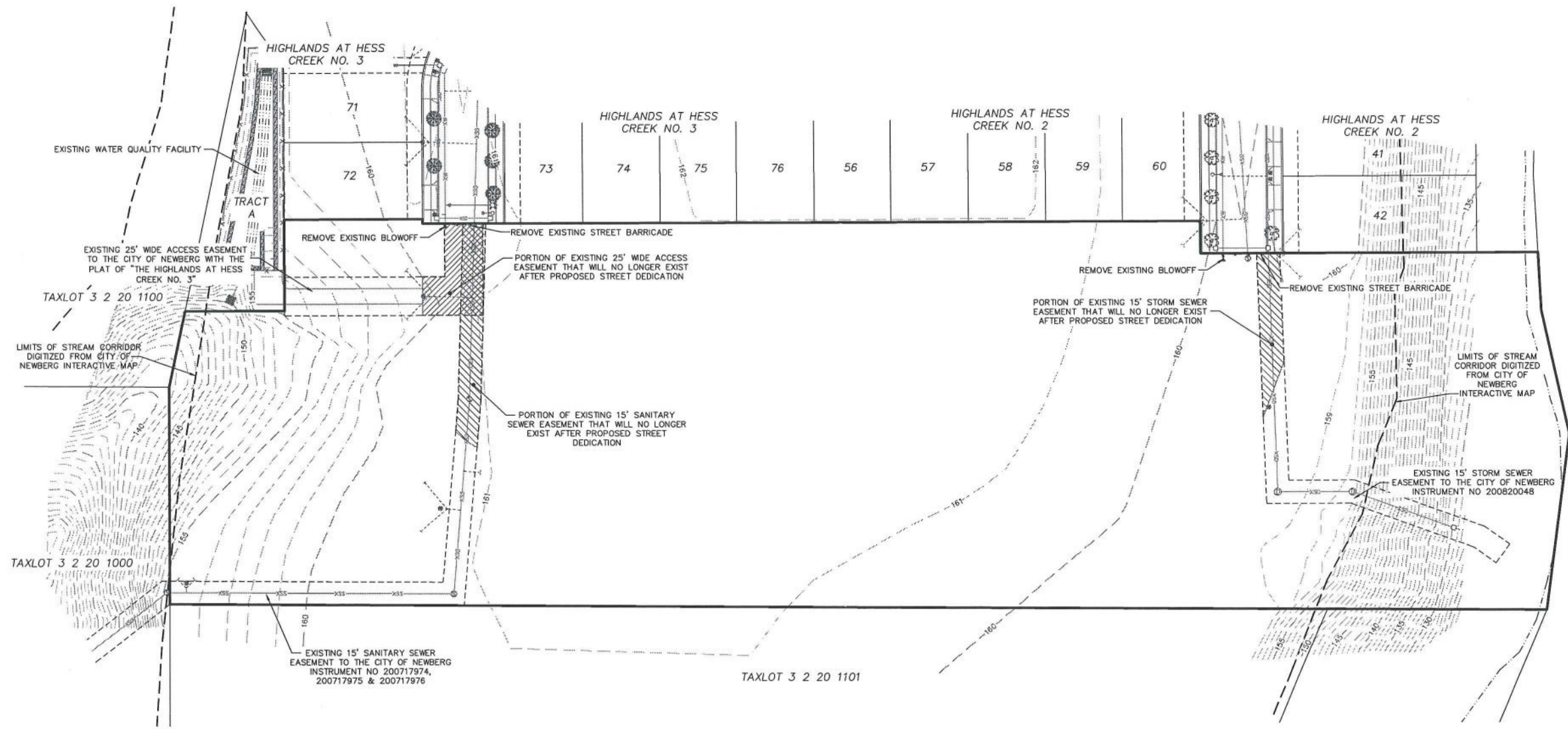


SHEET
1 OF 5

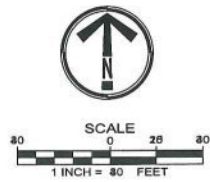
RECEIVED

MAY 26 2015

Initial:



EXISTING CONDITIONS PLAN
SCALE: 1" = 40'

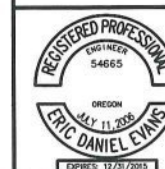


THE HIGHLANDS AT HESS CREEK
PHASE NO. 4 & PHASE NO. 5
A SUBDIVISION OF
TAX LOT 3 2 20 1400
CITY OF NEWBERG, OREGON

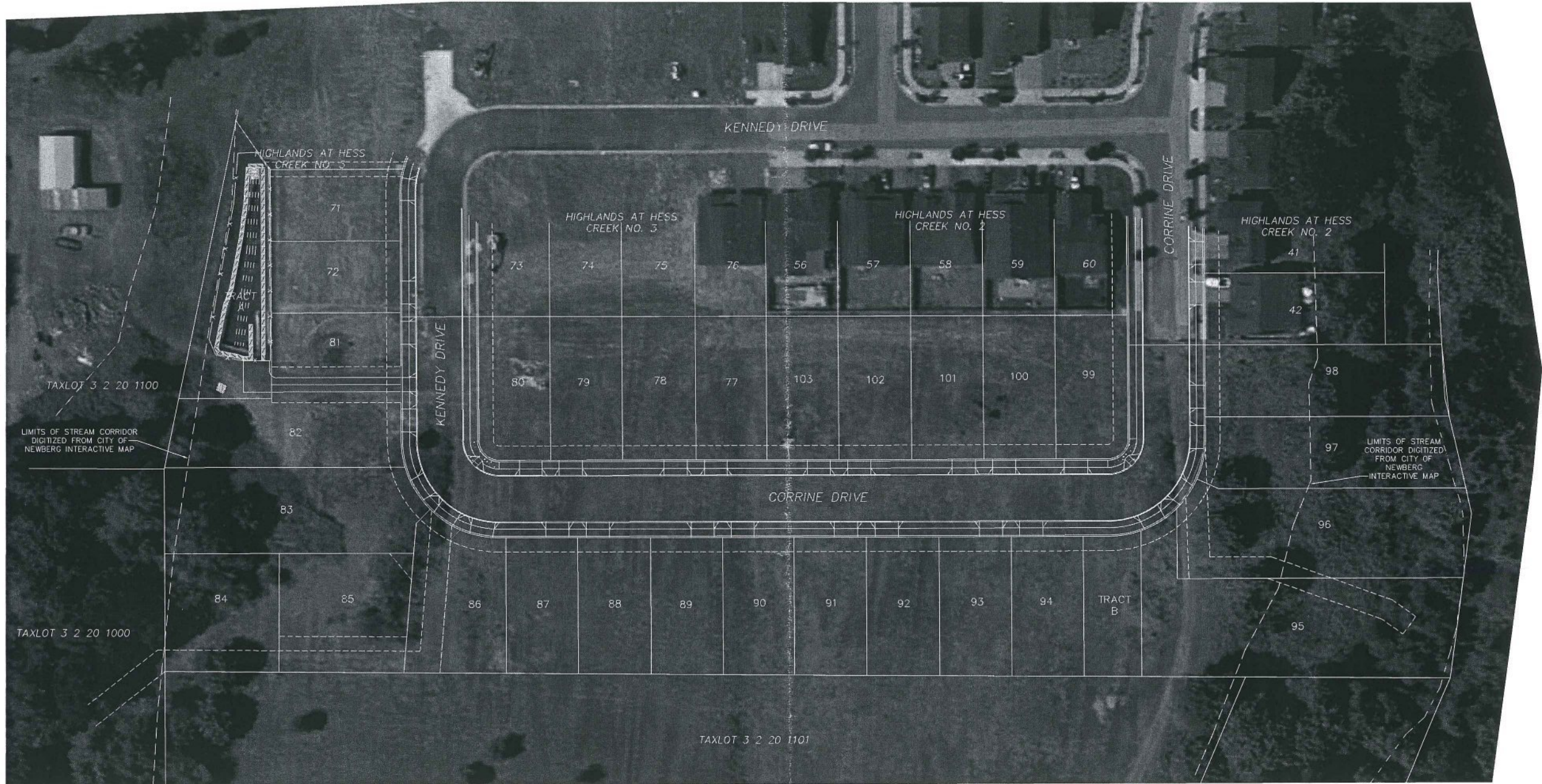
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EXISTING CONDITIONS
& DEMOLITION PLAN

REVISIONS	
NO.	DESCRIPTION

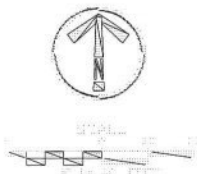
EMERIO
Design
8285 SW HAMBURG AVENUE SUITE 180
BEAVERTON, OREGON 97008
TEL: (503) 748-5812
FAX: (503) 639-9592
www.emeriodesign.com



SHEET
2
OF
5



AERIAL PLAN
SCALE: 1" = 40'

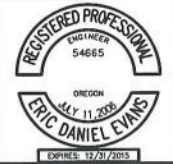


THE HIGHLANDS AT HESS CREEK
PHASE NO. 4 & PHASE NO. 5
A SUBDIVISION OF
TAX LOT 3 2 20 1400
CITY OF NEWBERG, OREGON

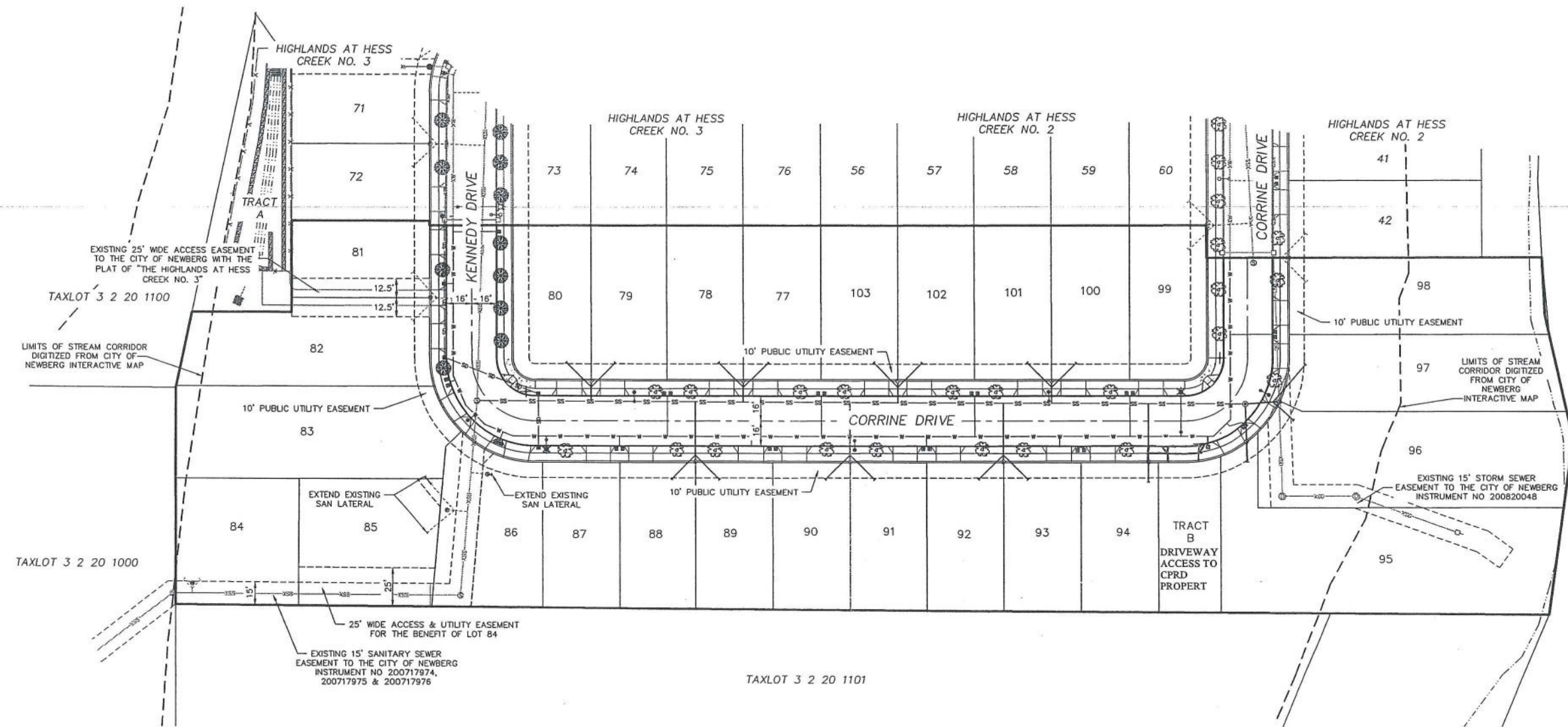
PLANNING DOCUMENTS
AERIAL PLAN

REVISIONS	
NO.	DESCRIPTION

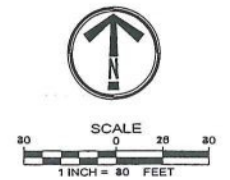
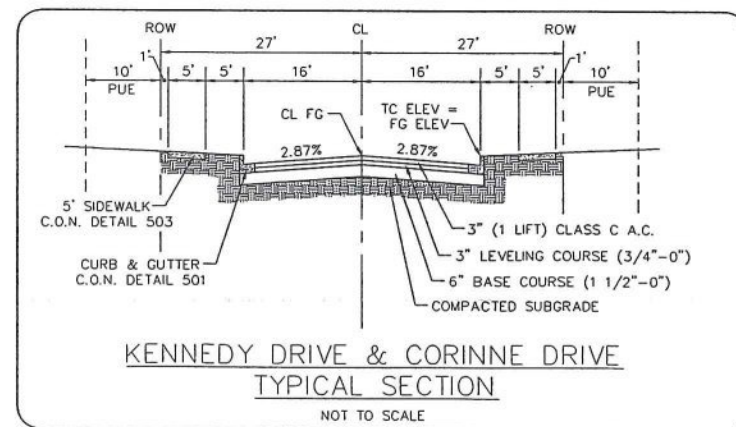
EMERIO
Design
8225 SW MURDER AVENUE SUITE 100
BEAVERTON, OREGON 97008
TEL: (503) 745-8812
FAX: (503) 635-9592
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SHEET
3
OF
5



SITE & UTILITY PLAN
SCALE: 1" = 40'



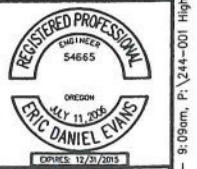
THE HIGHLANDS AT HESS CREEK
PHASE NO. 4 & PHASE NO. 5
A SUBDIVISION OF
TAX LOT 3 2 20 1400
CITY OF NEWBERG, OREGON

PLANNING DOCUMENTS

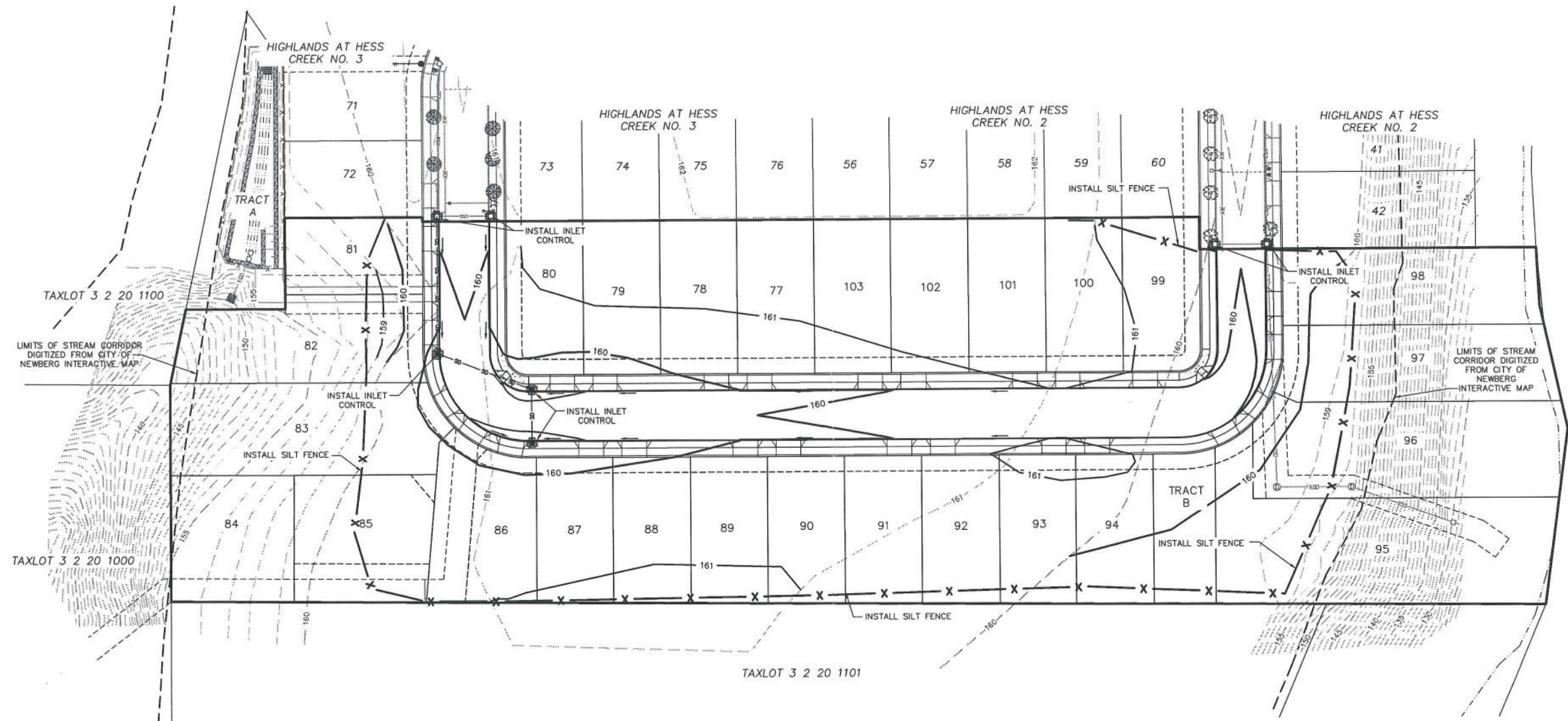
SITE & UTILITY PLAN

REVISIONS	
NO.	DESCRIPTION

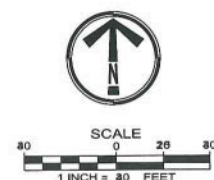
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8285 SW NIMBUS AVENUE, SUITE 180
BEAVERTON, OREGON 97008
TEL: (503) 746-8812
TEL: (503) 639-9592
FAX: (503) 639-9592
www.emeriodesign.com



SHEET
4 OF 5
led: Apr 21, 2015



GRADING & EROSION CONTROL PLAN
SCALE: 1" = 40'

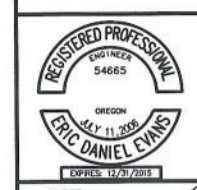


THE HIGHLANDS AT HESS CREEK
PHASE NO. 4 & PHASE NO. 5
A SUBDIVISION OF
TAX LOT 3 2 20 1400
CITY OF NEWBERG, OREGON

PLANNING DOCUMENTS
GRADING &
EROSION CONTROL PLAN

NO.	DATE	REVISIONS DESCRIPTION

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8235 SW NIMBUS AVENUE SUITE 180
BEAVERTON, OREGON 97008
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FAX: (503) 745-8612
www.emeriodesign.com



SHEET
5 OF 5



Community Development Department

P.O. Box 970 ▪ 414 E First Street ▪ Newberg, Oregon 97132

503-537-1240 ▪ Fax 503-537-1272 ▪ www.newbergoregon.gov

PLANNING COMMISSION APPEAL STAFF REPORT VERIZON CELLULAR TOWER DESIGN REVIEW/VARIANCE

HEARING DATE: August 13, 2015

FILE NO: DR2-15-003/VAR-15-001

REQUEST: Appeal of a design review approval for a new cellular tower & variance approval to reduce a setback

LOCATION: 2401 E. Hancock Street

TAX LOT: 3220AB-202

APPLICANT: Proland LLC (representing Verizon Wireless)

ZONE: M-2 (Light Industrial)

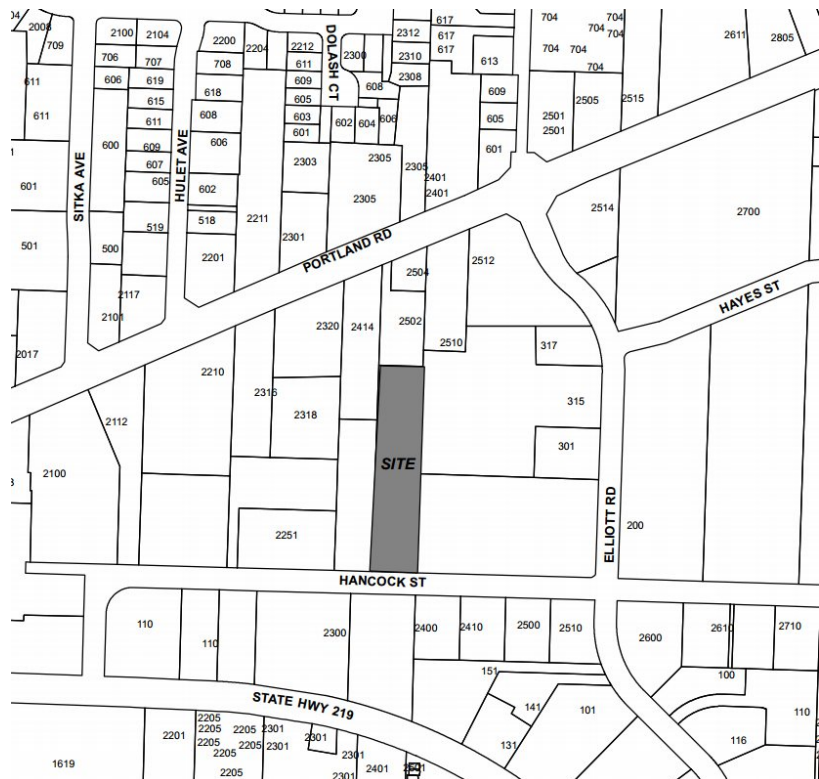
OVERLAYS: Airport Overlay

CONTENTS

Order 2015-19 with
Exhibit A: Findings
Exhibit B: Conditions

Attachments:

1. Aerial Photo
2. Site Plan
3. Appeal application
4. Approval decision 7.2.15
5. Project application
6. Public Comments received



Description of application:

The applicant has requested design review approval for a new 70 foot tall cellular communications tower, with related ground equipment. The code requires a 21 foot setback from existing buildings on the site; the cell tower will meet this on the south side but will only be setback 11.5 feet from a building on the north side of the tower, so they have requested a variance to the setback standard.

Process:

The Design Review/Variance request is a Type II application and follows the procedures in Newberg Development Code 15.100.030. Following a 14 day public comment period, the Community Development Director makes a decision on the application based on the criteria listed in the attached findings. The Director's decision is final unless appealed.

The application was approved with conditions by the Community Development Director, and appealed to the Planning Commission. The Planning Commission hearing is a new hearing, so new testimony is allowed to be entered into the record. The Planning Commission can either affirm the staff approval, affirm the staff approval with modified conditions, or deny the application.

Important dates related to this application are as follows:

Noticing:

1. 5/27/15: The Community Development Director deemed the application complete.
2. 5/22/15: The applicant mailed notice to the property owners within 500 feet of the site.
3. 5/25/15: The applicant posted notice on the site.
4. 7/2/15: The Community Development Director issued a decision on the application.
5. 7/16/15: The decision was appealed to the Planning Commission.
6. 7/24/15: The city mailed notice of the appeal hearing to the property owners within 500 feet of the site.
7. 7/29/15: Notice was posted in *The Newberg Graphic*.
8. 8/13/15: The Planning Commission will hold a hearing to review the proposal.

Site Information:

The site is approximately 1.4 acres and contains three existing industrial buildings with a mix of businesses. The site is relatively flat, with a slight slope to the south. The site was developed in 2008, and meets current Development Code standards for parking, landscaping and setbacks.

Surrounding uses:

- North/northwest - commercial development (dentist, retail, office), C-2 zone.
- East – commercial development (mini-storage) on northern section, undeveloped land (potential new mini-storage) on southern section, C-2 zone.
- West – undeveloped commercial land, C-2 zone.
- South – commercial development (Wilco farm store), C-2 zone.

Existing conditions: The site has vehicle access from Hancock Street, which is classified as a local road. An 18" stormwater conveyance pipe is located in Hancock Street and can accommodate the additional runoff created by this development. No new water or wastewater services are proposed.

Agency Comments:

The application was routed to several public agencies for review and comment. Comments and recommendations from city departments have been incorporated into the findings and conditions. The agency comments are summarized below; the full text is included in Attachment 3.

Federal Aviation Administration (FAA): The FAA completed a "Determination of No Hazard to Air Navigation" letter, with conditions regarding notification (when construction is completed, or if project abandoned) and future changes.

Sportsman Airpark commented that the FAA "Determination of No Hazard to Air Navigation" conditions need to part of the approval conditions.

Oregon Dept. of Aviation (ODA): The ODA commented on **June 8, 2015** that, based on their preliminary review, the proposed cell tower would cause a disruption to the operations of the Sportsman Airpark, specifically the approach/departure procedures from runway 17-35. In addition, due to its location and height, the applicant would be required to file a FAA form 7460-1 with the ODA as required in OAR 738-70. ODA recommended that the cell tower be relocated or lowered away from the approach/departure to ensure safety to air navigation.

Based on the June 8th ODA comments and by requirements in the Newberg Development Code, the applicant was conditioned to:

***ODA approval:** File a FAA form 7460-1 with the ODA, and provide a written statement from the Oregon Department of Aviation (ODA) that the application has been found to comply with the applicable regulations of the Department, or a statement that no such compliance is required.*

The applicant submitted information about the proposal to the ODA for their review. On **July 9, 2015** the ODA issued a second letter. After conducting an aeronautical study of the 70 foot tall proposed structure, ODA commented that:

- Notice to the FAA is required. The structure does exceed Obstruction Standards of OAR 738-70-0100 and exceeds FAA FAR 77.9 for RWY 17.
- Any changes to the original application will void this determination.
- ODA does not object with conditions to the construction described in this proposal. This determination does not constitute ODA approval or disapproval of the physical development involved in the proposal. It is a determination with respect to the safe and efficient use of navigable airspace by aircraft and with respect to the safety of persons and property on the ground.
- Marking and lighting are necessary for aviation safety due to proximity to the Newberg airport. We recommend it be installed and maintained in accordance with FAA Advisory Circular AC70/7460-1K Change 2.
- The ODA no longer recommended that the tower height be lowered or that the tower be relocated.

Public Comments:

As of the writing of this report, the city has received several written public comments. They are summarized below, and the full comments are included in Attachment 6.

One comment was concerned about possible long-term health risks to other people in the vicinity (including a day care facility) from close proximity to a cell phone tower, and urged that the city not grant a variance to the setback standard.

Another comment was also opposed to approving the variance and design review due to close proximity to a high density residential area and day care facility, and concerns that they could be adversely affected by radiation from the tower. They were also concerned about the proximity of the airport, and commented that the 21-foot setback was established to protect the privacy, value and efficacy of surrounding businesses.

The third comment was concerned about two potential public safety issues: that the height of the tower could pose a hazard to the airport, and that radiation from the tower could be a health hazard to people near the tower. They thought that the applicant should be required to provide documentation that the tower would not create hazards for the airport or radiation hazards for nearby people. They were also concerned about the size of the variance request, and thought that such a large reduction in the standard (nearly 50%) could create a negative precedent that would be cited by other applicants in the future, to the detriment of the community as a whole.

Appeal application:

The appellant, Marsha Matthiesen, has listed two main objections to the Community Development Director's approval. The objections are summarized below.

1. Long term risk from radiation: The appellant stated that surrounding uses include the Family Pet Clinic and a daycare center. These businesses will be exposed to long-term risks from radiation, the effects of which have not been fully determined.
2. Airport safety: The appellant stated that small planes that come into Sportsmans Airpark often need to adjust planned flight patterns in order to land safely.

Issues and Analysis summary:

1. Radiation from cell towers: The Newberg Development Code does not directly regulate radiation and emissions from cellular communication towers. These issues are regulated by the Federal Communication Commission (FCC). The Development Code requires that the following statement be a condition of approval:

15.445.210 Conditions of approval.

The following conditions of approval must be met prior to issuance of a building permit for any telecommunications facility:

A. Agency Statements. The applicant shall provide the following information in writing from the appropriate responsible official:

1. Confirmation that a Federal Communications Commission (FCC) antenna structure registration application (FCC 854 Form) has been approved, or a statement that an application is not required.

The applicant will be required to show that they have received FCC approval for their proposed structure.

2. Proximity to the airport: The applicant is required to show that the proposed tower meets all Federal Aviation Administration (FAA) and Oregon Department of Aviation (ODA) requirements before a building permit will be approved for the cellular tower. The FAA has issued a "Determination of No Hazard to Air Navigation" letter with some conditions, which will be conditions of approval for the project. The ODA issued a letter on June 8, 2015 saying that, based on their preliminary review, the tower would create a problem for airport operations and required additional review by the ODA. The ODA later issued another letter on July 9, 2015 saying that, based on an aeronautical study, they no longer objected to the proposed structure provided it met conditions for marking and lighting. These conditions will be made part of the conditions of approval.

3. Variance request: There was a concern expressed that the variance approval could create a precedent for other future variances. A variance application is unique to a specific project on a specific site, however, so each variance is unique and does not set a precedent for other decisions.

STAFF RECOMMENDATION: Staff recommends that following motion:

Move to adopt Planning Commission Order 2015-19, which approves the requested design review/variance application as conditioned. The findings and conditions of the original approval have been modified to include the updated comments/conditions from the ODA.



PLANNING COMMISSION ORDER 2015-19

AN ORDER APPROVING DR2-15-003/VAR-15-001 FOR A CELLULAR COMMUNICATIONS TOWER AT 2401 E. HANCOCK STREET, YAMHILL COUNTY TAX LOT 3220AB-202.

RECITALS

1. ProLand LLC, representing Verizon Wireless, submitted an application for design review approval for a cellular communications tower, and a variance application to reduce the setback requirement from a building on the site. The site is located at 2401 E. Hancock Street, Yamhill County tax lot 3220AB-202.
2. After proper notice, the Community Development Director approved the application with conditions on July 2, 2016.
3. On July 16, 2015 the decision was appealed to the Planning Commission by the appellant, Marsha Mathiessen.
4. After proper notice, the Newberg Planning Commission held a hearing on August 13, 2015 to consider the application. The Commission considered testimony, and deliberated.
5. The Newberg Planning Commission finds that the application meets the applicable criteria as shown in the findings shown in Exhibit "A".

The Newberg Planning Commission orders as follows:

1. The design review/variance application DR2-15-003/VAR-15-001 is hereby approved, subject to the conditions contained in Exhibit "B". Exhibit "B" is hereby adopted and by this reference incorporated.
2. The findings shown in Exhibit "A" are hereby adopted. Exhibit "A" is hereby adopted and by this reference incorporated.
3. This order shall be effective August 28, 2015 unless appealed prior to that date.

4. This order shall expire one year after the effective date above if the applicant does not obtain building permits for this project, unless an extension is granted per Newberg Development Code 15.220.020(C).

Adopted by the Newberg Planning Commission this 13th day of August, 2015.

ATTEST:

Planning Commission Chair

Planning Commission Secretary

List of Exhibits:

Exhibit "A": Findings

Exhibit "B": Conditions

Exhibit “A” to Planning Commission Order 2015-19

Findings –File DR2-15-003/VAR-15-001 Verizon Cellular Tower

A. Design Review; Criteria That Apply - Newberg Development Code 15.220.050(B):

1. Design compatibility. The proposed design review request incorporates an architectural design which is compatible with and/or superior to existing or proposed uses and structures in the surrounding area. This shall include, but not be limited to, building architecture, materials, colors, roof design, landscape design, and signage.

Finding: There are specific design standards for cell towers that will be addressed below. The tower will be lit and painted in accordance with the FAA and ODA regulations.

2. Parking and On-Site Circulation. Parking areas shall meet the requirements of NMC 15.440.010. Parking studies may be required to determine if adequate parking and circulation are provided for uses not specifically identified in NMC 15.440.010. Provisions shall be made to provide efficient and adequate on-site circulation without using the public streets as part of the parking lot circulation pattern. Parking areas shall be designed so that vehicles can efficiently enter and exit the public streets with a minimum impact on the functioning of the public street.

Finding: The site has existing industrial buildings with adequate parking. The cell tower application does not remove any existing parking spaces.

3. Setbacks and General Requirements. The proposal shall comply with NMC 15.415.010 through 15.415.060 dealing with height restrictions and public access; and NMC 15.405.010 through 15.405.040 and NMC 15.410.010 through 15.410.070 dealing with setbacks, coverage, vision clearance, and yard requirements.

Finding: The cell tower criteria have specific setback standards, which will be addressed below. The M-2 zone does not have a set height limit; the actual height limit is set by the Airport Overlay zone, which is addressed in a finding below. The cell tower proposal does not create a vision clearance issue on the site, and does meet the standard M-2 setbacks.

4. Landscaping Requirements. The proposal shall comply with NMC 15.420.010 dealing with landscape requirements and landscape screening.

Finding: The existing site has 16.13% landscaping, which exceeds the 15% landscaping minimum. The cell tower proposal will remove 551 square feet of landscaping, so the post-development site would have 15.27% landscaping and still meets the minimum landscaping standard. Following compliance with design review conditions, the landscape plan and parking lot complies with NMC 15.420.010. All areas subject to the final design review plan and not otherwise improved are landscaped.

5. Signs. Signs shall comply with NMC 15.435.010 et seq. dealing with signs.

Finding: No signs are included in this review. If the FCC and FAA require any signage then the applicant will install the required signs.

6. Manufactured Home, Mobile Home and RV Parks. Manufactured home, mobile home, and recreational vehicle parks shall also comply with the standards listed in NMC 15.445.050 et seq. in addition to the other criteria listed in this section.

Finding: Not applicable. The development proposal is not a manufactured home, mobile home, or RV park.

7. Zoning District Compliance. The proposed use shall be listed as a permitted or conditionally permitted use in the zoning district in which it is located as found in NMC 15.304.010 through 15.328.040. Through this site review process, the director may make a determination that a use is determined to be similar to those listed in the applicable zoning district, if it is not already specifically listed. In this case, the director shall make a finding that the use shall not have any different or more detrimental effects upon the adjoining neighborhood area than those specifically listed.

Finding: The site is zoned M-2 (Light Industrial). A cellular communication tower is an allowed use in the M-2 zone. It is more than 2,000 feet from the nearest cell tower, so it does not require a conditional use permit.

8. Subdistrict Compliance. Properties located within subdistricts shall comply with the provisions of those subdistricts located in NMC 15.340.010 through 15.348.060.

Finding: The proposed tower location is within the Airport Overlay subdistrict, Transitional Surface. This subdistrict limits the height of the proposed structure to approximately 80-90 feet, as interpreted by city staff. The proposed tower is 70 feet tall, so it appears to meet the height limits. The Development Code also requires notice to the FAA to verify that the structure is below the height limits. The applicant supplied notice to the FAA, and received a "Determination of No Hazard to Air Navigation" letter, which included conditions such as notifying the FAA when construction was complete or the design changed. The Development Code criteria below for cellular towers have more specific requirements for FAA and ODA notification when a cellular tower is proposed, so the specific FAA and ODA conditions will be addressed below in the cellular tower criteria.

9. Alternative Circulation, Roadway Frontage Improvements and Utility Improvements. Where applicable, new developments shall provide for access for vehicles and pedestrians to adjacent properties which are currently developed or will be developed in the future. This may be accomplished through the provision of local public streets or private access and utility easements. At the time of development of a parcel, provisions shall be made to develop the adjacent street frontage in accordance with city street standards and the standards contained in the transportation plan. At the discretion of the city, these improvements may be deferred through use of a deferred improvement agreement or other form of security.

Finding: The project meets the applicable development code and municipal code requirements as detailed below and as conditioned. No transportation improvements are proposed. Access to the site is provided from Hancock Street, and is adequate. No water or wastewater connections or improvements are proposed.

Stormwater: NMC 13.25.040 No person shall undertake a ground disturbing project without having provided erosion and sediment controls that address erosion caused by wind or rain. 13.25.260 & 13.25.270 Projects that create a new impervious areas of 500 square feet or more shall use techniques or create stormwater facilities that maintain the water quality and beneficial uses of the receiving watercourse. 13.25.280 Prior to an applicant receiving a permit for a project, the director shall determine the stormwater requirements of the project. They shall provide a summary of the project, design flow calculations, and proposed methods for treating stormwater to the director for review and approval in accordance with requirements specified in the design standards manual.

Findings: The developer has not proposed any new stormwater connections or facilities. It is assumed that the new impervious area surface water will surface flow to existing stormwater infrastructure on the site. It appears that this development will add more than 500 sq. ft. of net new impervious area.

Approval of this project is conditioned on the applicant meeting the city's stormwater code (ordinance No. 2021-2754) and the engineering standards manual. A possible way to meet this ordinance is to reduce the net new impervious area to be less than 500 sq. ft. Open graded, pervious rock surfaces are considered to be pervious. Alternatively, stormwater facilities may be installed per the engineering standards manual. If net new impervious area is less than 500 sq. ft., submit a memo summarizing the impervious area surface area calculations, including a description of pervious materials proposed to be installed. If net new impervious area is more than 500 sq. ft., submit a final engineer's storm water report per the City of Newberg Engineering Design Standards Manual. All onsite storm drain and detention/water quality facilities to be private and maintained by private property owner with storm water maintenance agreement.

10. Traffic Study Improvements. If a traffic study is required, improvements identified in the traffic study shall be implemented as required by the director.

Finding: A traffic study was not required for this project, as it is only expected to generate a few trips to the site.

B. Cellular tower; Criteria That Apply - Newberg Development Code 15.220.050(B):

15.445.190 Approval criteria.

New transmission towers or replacement of existing towers may be allowed, based on findings by the approval authority that the following criteria are met:

A. A good faith effort has been made to demonstrate that an existing tower cannot accommodate the proposed antennas and/or transmitter.

Finding: The applicant did contact the owners of the existing towers in the area about colocation, as required. The applicant also included a RF study letter, which noted that the existing tower sites in Newberg were too far away from east Newberg to improve service in that area. Improving service coverage is an important consideration, as the public increasingly relies on cellular phones instead of

land-line phones for general communication and for emergency (911) calls. The applicant has made a good faith effort to demonstrate that existing towers cannot accommodate the proposed project, primarily because existing towers are not close enough to east Newberg to improve service coverage in that area.

B. The tower and associate structures meet the setback, landscaping, parking and vegetation requirements of NMC 15.445.220.

Finding: The proposed tower has landscaping around the ground equipment area. Some shrubs need to be added along the western edge of the fenced area to buffer the view of the equipment. They are to be evergreen, at least 4 feet tall, and spaced no more than 5 feet on center. As conditioned, the proposal meets the landscaping and parking requirements. The tower meet the 21 foot setback requirement on all sides except the north, where it is 9'5" from the existing building. The applicant has requested a variance to the setback from this northern building; if the variance is approved then the application will meet this criterion.

C. The proposed tower has been structurally designed to accommodate the maximum number of additional users technically practicable.

Finding: The drawings demonstrate that the tower has been designed to accommodate additional antennas.

D. The tower has minimal visual impact on the environment.

Finding: The proposed tower is on an industrial site, and matches the character of the surroundings. At 70 feet tall, it is relatively short for a cellular tower which will reduce its impact on the environment. It will be painted and/or lit as required by the FAA and ODA to provide proper visibility for air navigation.

E. The tower meets the design review provisions of NMC 15.220.030.

Finding: As noted in the design review findings above, the proposal meets the design review provisions of the NMC 15.220.030.

F. The tower does not intrude into the airport imaginary surface areas as defined in NMC 15.05.030. [Ord. 2536, 11-6-00. Code 2001 § 151.671.]

Conditions of approval:

- 2. Confirmation that the Federal Aviation Administration (FAA) has been notified and that the facility has not been found to be a hazard to air navigation under FAA regulations, or a statement that compliance is not required.***
- 3. A statement from the Oregon State Department of Aviation (OSDA) that the application has been found to comply with the applicable regulations of the Department, or a statement that no such compliance is required.***

Finding: The applicant notified the FAA about the proposed project and received a "Determination of No Hazard to Air Navigation" letter, which included conditions regarding notification to the FAA when the project is completed, or abandoned, or changed. The FAA conditions in the "Determination of No Hazard to Air Navigation" letter shall be made conditions of approval for this project.

The Oregon Dept. of Aviation (ODA) was notified of the application and commented on **June 8, 2015** that, based on their preliminary review, the proposed cell tower would cause a disruption to the operations of the Sportsman Airpark, specifically the approach/departure procedures from runway 17-35. In addition, due to its location and height, the applicant would be required to file a FAA form 7460-1 with the ODA as required in OAR 738-70. ODA recommended that the cell tower be relocated or lowered away from the approach/departure to ensure safety to air navigation.

The applicant submitted information about the proposal to the ODA for their review. On **July 9, 2015** the ODA issued a second letter. After conducting an aeronautical study of the 70 foot tall proposed structure, ODA commented that:

- Notice to the FAA is required. The structure does exceed Obstruction Standards of OAR 738-70-0100 and exceeds FAA FAR 77.9 for RWY 17.
- Any changes to the original application will void this determination.
- ODA does not object with conditions to the construction described in this proposal. This determination does not constitute ODA approval or disapproval of the physical development involved in the proposal. It is a determination with respect to the safe and efficient use of navigable airspace by aircraft and with respect to the safety of persons and property on the ground.
- Marking and lighting are necessary for aviation safety due to proximity to the Newberg airport. We recommend it be installed and maintained in accordance with FAA Advisory Circular AC70/7460-1K Change 2.
- The ODA no longer recommended that the tower height be lowered or that the tower be relocated.

15.445.200 Application requirements.

An application for approval of a Type II or Type III decision for a radio or television transmission tower shall contain at least the following information before it is complete:

A. Site Plan. Site plan or plans to scale specifying the location of tower(s), guy anchors (if any), transmission building and/or other accessory uses, access, parking, fences, landscaped areas, and adjacent land uses. Such plan shall also demonstrate compliance with NMC 15.445.220(B) and (C).

B. Landscape Plan. Landscape plan to scale indicating size, spacing and type of plantings required in NMC 15.445.220(H).

C. Engineer's Report. Report from a professional engineer licensed in the State of Oregon, documenting the following:

1. Tower height and design, including technical, engineering, economic, and other pertinent factors governing selection of the proposed design. A cross-section of the tower structure shall be included.

2. Total anticipated capacity of the structure, including number and types of antennas which can be accommodated.

3. Evidence of structural integrity of the tower structure as required by the building official.

4. Failure characteristics of the tower and demonstration that the site and setbacks are of adequate size to contain debris.

5. Ice hazards and mitigation measures which have been employed, including increased setbacks and/or de-icing equipment.

6. Specific design and reconstruction plans indicating the means by which the shared use provisions of this section will be met. This submission is required only in the event that the applicant intends to meet the shared use requirements of this section by subsequent reinforcement and reconstruction of the tower.

7. The requirement of subsection (C)(6) of this section may be deferred if:

a. At the time the building permit for the tower is issued, there are no applications before the FCC that could use the tower; or

b. The applications which are before the FCC have contractual arrangements for the use of other towers.

D. Letter of Intent.

1. The applicant shall provide a letter of intent to lease excess space on the tower structure and to lease additional applicant-controlled excess land on the tower site when the shared-use potential of the tower is absorbed, if structurally and technically possible. A reasonable pro rata charge may be made for shared use, consistent with an appropriate sharing of construction, financing and maintenance costs. Fees may also be charged for any structural or RF changes necessitated by such shared use. Such sharing shall be a condition of approval if approval is granted.

2. The applicant shall base charges on generally accepted accounting principles and shall explain the elements included in the charge, including, but not limited to, a pro rata share of actual site selection and processing costs, land costs, site design, construction and maintenance costs, finance costs, return on equity, and depreciation.

E. Tower Capacity. The applicant shall quantify the additional tower capacity anticipated, including the approximate number and types of antennas. The applicant shall also describe any limitations on the ability of the tower to accommodate other uses, e.g., radio frequency interference, mass height, frequency or other characteristics. The applicant shall describe the technical options available to overcome those limitations and reasons why the technical options considered were not chosen to be incorporated. The approval authority shall approve those limitations if they cannot be overcome by reasonable technical means.

F. Evidence of Lack of Space. Evidence of the lack of space on all suitable existing towers to locate the proposed antenna and of the lack of space on existing tower sites to construct a tower for the proposed antenna.

G. Written Authorization. Written authorization from adjoining property owners if needed, under NMC 15.445.220(C).

H. Written Evidence. Written evidence from the Federal Communications Commission related to a request for approval of a reduction in the capacity of the proposed tower under NMC 15.445.220(D), if needed. [Ord. 2536, 11-6-00. Code 2001 § 151.672.]

Finding: The application include site plans, a landscaping plan, an engineer's report, a letter of intent to lease space, information about the tower capacity, and a good faith effort about lack of space. Written authorization from adjoining property owners was not required, as the tower does not have guy wires. The applicant did not request FCC approval for a reduction in the capacity of the tower.

15.445.210 Conditions of approval.

The following conditions of approval must be met prior to issuance of a building permit for any telecommunications facility:

A. Agency Statements. The applicant shall provide the following information in writing from the appropriate responsible official:

1. Confirmation that a Federal Communications Commission (FCC) antenna structure registration application (FCC 854 Form) has been approved, or a statement that an application is not required.

2. Confirmation that the Federal Aviation Administration (FAA) has been notified and that the facility has not been found to be a hazard to air navigation under FAA regulations, or a statement that compliance is not required.

3. A statement from the Oregon State Department of Aviation (OSDA) that the application has been found to comply with the applicable regulations of the Department, or a statement that no such compliance is required.

4. The director may waive the statements in subsections (A)(1) through (3) of this section when the applicant demonstrates that a good faith, timely effort was made to obtain such responses but that no such response was forthcoming, provided the applicant conveys any response received; and further, provided any subsequent response that is received is conveyed to the approval authority as soon as possible.

Findings: The FCC requirement will be made a conditions of approval. The applicant has furnished confirmation that the FAA has been notified and found the proposal to not be a hazard to air navigation, subject to certain conditions. The FAA conditions will be added to the design review conditions of approval. The applicant has also furnished confirmation that the ODA has been notified and found that the proposal meets ODA requirements, subject to certain conditions for marking and lighting. The ODA conditions will be added to the design review conditions of approval.

15.445.220 Installation standards.

A. Shared Use of Existing Towers. The applicant shall make a good faith effort to substantially demonstrate that no existing tower can accommodate the applicant's proposed antenna/transmitter as described below.

1. The applicant shall contact the owners of all existing towers, of a height roughly equal to or greater than the height of the tower proposed by the applicant. A list shall be provided of all owners contacted, the date of such contact, and the form and content of such contact.

2. Such contact shall be made in a timely manner; that is, sufficiently before the filing of an application for a hearing to include a response into the application when filed.

a. Where an existing tower is known to have capacity for additional antennas of the sort proposed, the application for a new tower shall not be deemed complete until the owner of the existing tower responds. Failure of a listed owner to respond shall not be relevant to the approval authority if a timely, good faith effort was made to obtain a response and a response was not received within 30 days of the request.

b. The director shall maintain and provide, on request, records of responses from each owner.

c. Once an owner demonstrates an antenna of the sort proposed by the applicant cannot be accommodated on the owner's tower as described below, the owner need not be contacted by future applicants for antennas of the sort proposed.

3. The applicant shall provide the following information from each owner contacted:

a. Identification of the site by location, tax lot number, existing uses, and tower height.

b. Whether each such tower could structurally accommodate the antenna proposed by the applicant without requiring structural changes be made to the tower. To enable the owner to respond, the applicant shall provide each such owner with the height, length, weight, and other relevant data about the proposed antenna.

c. Whether each such tower could structurally accommodate the proposed antenna if structural changes were made, not including totally rebuilding the tower. If so, the owner shall specify in general terms what structural changes would be required.

d. If structurally able, would shared use by such existing tower be precluded for reasons related to RF interference. If so, the owner shall describe in general terms what changes in either the existing or proposed antenna would be required to accommodate the proposed tower, if at all.

e. If shared use is possible based on subsections (A)(3)(a) through (d) of this section, the fee an owner of an existing tower would charge for such shared use.

4. Shared use is not precluded simply because a reasonable fee for shared use is charged, or because of reasonable costs necessary to adapt the existing and proposed uses to a shared tower. The approval authority may consider expert testimony to determine whether the fee and costs are reasonable. Costs exceeding new tower development are presumed unreasonable.

Finding: As noted above, the applicant contacted the owners of existing towers, and made a good faith effort to demonstrate that no existing tower can accommodate the proposed project.

B. Tower Setbacks.

1. Only one tower per lot is authorized. Towers shall be set back from any existing structure on the site, abutting properties, and public rights-of-way a minimum distance equal to 30 percent of the height of the tower, measured from the base of the tower to the structure, abutting property or public right-of-way. All towers shall be set back from a residential zone a distance equal to or greater than 100 percent of the tower height, measured from the base of the tower to the nearest property line of a residentially zoned lot. The setback requirements of this section shall not apply towards:

a. Antennas incorporated into, and no more than 18 feet above, existing or new buildings;

b. Antennas incorporated into, and no more than 18 feet above, existing structures;

c. Antenna support structures incorporated into, and no more than 18 feet above, existing or new buildings.

2. Towers must meet all setback, design and landscape requirements of the code.

3. No new tower may be installed closer than 2,000 feet from any existing or proposed tower, unless approved through the Type III conditional use permit process.

Finding: The tower is 70 feet tall, so the required setback from abutting properties, public rights-of-way and adjacent structures is 21 feet. The tower setbacks exceed the required setback from abutting properties and public rights-of-way, and meets the setback from the southern adjacent building. It does not meet the setback from the northern building (has a 9'5" setback), so the applicant has requested a variance to the setback from this building. If the variance is approved then this criterion is met. There are no other towers within 2,000 feet of this proposed tower.

C. Guy Setback.

1. Guy anchors shall be set back a minimum of 25 feet from any property line, public property or street abutting the site.

2. A guy anchor may be located on an adjoining property when:

a. The owner of the adjoining property on which it is to be placed authorizes it in writing; and

b. The guy anchor meets the requirements of subsection (C)(2)(a) of this section as to all other setback requirements.

c. Guy anchors may be located within required landscape areas.

Finding: There are no guy wires on the tower.

D. Required Sharing of New Towers. All new towers shall be designed to structurally accommodate the maximum number of additional users technically practicable, but in no case less than the following:

1. For television antenna towers, at least three high-power television antennas and one microwave facility or two FM antennas, and at least one two-way radio antenna for every 10 feet of the tower over 200 feet.

2. For any other towers, at least one two-way radio antenna for every 10 feet of the tower, or at least one two-way radio antenna for every 20 feet of the tower and at least one microwave facility.

3. Such other combination as found by the approval authority to provide the maximum possible number of foreseeable users.

a. Such requirements may be reduced if the Federal Communications Commission provides a written statement that no more licenses for those broadcast frequencies that could use the tower will be available in the foreseeable future.

b. Such requirements may be reduced if the size of the tower required significantly exceeds the size of the existing towers in the area and would create an unusually onerous visual impact that would dominate and alter the visual character of the area when compared to the impact of other existing towers. This provision is only to be applied in unusual circumstances not resulting from the applicant's action or site selection unless no other site is possible.

4. Additional antennas and accessory uses to existing antennas may be added to an existing tower, under a Type I application, if the existing tower meets the setback and landscaping requirements of subsections (B), (C) and (G) of this section. Accessory uses shall include only such buildings and facilities necessary for transmission function and satellite ground stations associated with them, but shall not include broadcast studios, offices, vehicle storage areas, nor other similar uses not necessary for the transmission function. Accessory uses may include studio facilities for emergency broadcast purposes or for other special, limited purposes found by the approval authority not to create significant additional impacts nor to require construction of additional buildings or facilities exceeding 25 percent of the floor area of other permitted buildings.

Finding: The proposed tower is not a television antenna tower or a two-way radio antenna. It has been designed to allow additional cellular antennas.

5. If a new tower is approved, the applicant shall:

a. Record the letter of intent required in NMC 15.445.200(D) in miscellaneous deed records of the office of the county recorder;

b. Respond in a timely, comprehensive manner to a request for information from a potential shared use applicant required under subsection (A) of this section;

c. Negotiate in good faith for shared use by third parties; and

d. Allow shared use where the third party seeking such use agrees in writing to pay reasonable pro rata charges for sharing, including all charges necessary to modify the tower and transmitters to accommodate shared use, but not total tower reconstruction,

and to observe whatever technical requirements are necessary to allow shared use without creating interference.

e. Grounds for Suspension or Revocation.

i. Willful, knowing failure of an owner whose tower was approved after November 6, 2000, to comply with the requirement of subsections (D)(5)(a) through (d) of this section shall be grounds for suspension or revocation of the use. Following report of such failure, the director shall schedule a hearing to determine whether the use should be suspended or revoked. The hearing shall be processed as a Type III public hearing before the planning commission.

ii. Such conditions shall run with the land and be binding on subsequent purchasers of the tower site.

Finding: These conditions will become conditions of approval.

E. Visual Impact. The applicant shall demonstrate that the tower can be expected to have the least visual impact on the environment, taking into consideration technical, engineering, economic and other pertinent factors. Towers shall be painted and lighted as follows:

1. Towers 200 feet or less in height shall be painted in accordance with regulations of the Federal Aviation Administration and/or Oregon State Department of Aviation. Where such regulations do not apply, towers shall be camouflaged. All new towers and antennas must either be camouflaged or employ appropriate stealth technologies that are visually compatible with a host building or structure, or the surrounding natural environment. The type of camouflage may include trees, flagpoles, bell towers, smoke stacks, steeples; however, other types of camouflage may be approved at the discretion of the decision making body.

2. Towers more than 200 feet in height shall be painted in accordance with regulations of the Federal Aviation Administration and the Oregon State Department of Aviation.

3. Towers shall be illuminated as required by the Federal Aviation Administration and the Oregon State Department of Aviation.

4. Towers shall be the minimum height necessary to provide parity with existing similar tower-supported antennas and shall be freestanding where the negative visual effect is less than would be created by use of a guyed tower.

Finding: The proposed tower is less than 200 feet tall, and will be painted and/or lit as required by the FAA and ODA to ensure adequate visibility for air navigation. The tower is freestanding, not guyed.

F. Parking. A minimum of two parking spaces shall be provided on each site; an additional parking space for each two employees shall be provided at facilities which require on-site personnel. The director may authorize the joint use of parking facilities subject to the requirements of NMC 15.440.050.

Finding: The site has existing parking spaces for the industrial buildings. The parking for the cellular tower will only be used occasionally by maintenance personnel, so it is reasonable for the cellular tower to share the existing parking on the site. There are no on-site personnel for the cellular tower.

G. Vegetation. Existing landscaping on the site shall be preserved to the greatest practical extent. The applicant shall provide a site plan showing existing significant vegetation to be removed, and vegetation to be replanted to replace that lost.

H. Landscaping. Landscape material shall include the following:

- 1. For towers 200 feet tall or less, a 20-foot-wide landscape buffer is required immediately adjacent to the structure containing the telecommunications facility. At least one row of evergreen trees or shrubs, not less than four feet high at the time of planting, and spaced not more than 15 feet apart, shall be provided within the landscape buffer. Shrubs should be of a variety which can be expected to grow to form a continuous hedge at least five feet in height within two years of planting. Trees and shrubs in the vicinity of guy wires shall be of a kind that would not exceed 20 feet in height or would not affect the stability of the guys, should they be uprooted, and shall not obscure visibility of the anchor from the transmission building or security facilities and staff.*
- 2. For towers more than 200 feet tall, a 40-foot-wide landscape buffer shall be provided immediately adjacent to the structure containing the telecommunications facility. Provide at least one row of evergreen shrubs spaced not more than five feet apart which will grow to form a continuous hedge at least five feet in height within two years of planting; one row of deciduous trees, not less than one-and-one-half-inch caliper measured three feet from the ground at the time of planting, and spaced not more than 20 feet apart; and at least one row of evergreen trees, not less than four feet at the time of planting, and spaced not more than 15 feet apart. Trees and shrubs in the vicinity of guy wires shall be of a kind that would not exceed 20 feet in height or would not affect the stability of the guys, should they be uprooted, and shall not obscure visibility of the anchor from the transmission building or security facilities and staff.*
- 3. In lieu of these standards, the approval authority may allow use of an alternate detailed plan and specifications for landscaping, screening, plantings, fences, walls, structures and other features designed to camouflage, screen and buffer towers and accessory uses. The plan shall accomplish the same degree of screening achieved in subsections (H)(1) and (2) of this section, except as lesser requirements are desirable for adequate visibility for security purposes.*
- 4. Grounds maintenance, including landscaping, shall be provided and maintained for the duration of the use, to encourage health of plant material and to protect public health and safety. The maintenance shall be the responsibility of the property owner, and/or the lessee of the property, and/or the owner of the tower.*

Finding: The proposed tower preserves as much of the existing landscaping as possible, and includes a chain link fence for privacy screening. The site has industrial buildings buffering the view of the site on three sides. The applicant shall add evergreen shrubs along the western edge of the fenced area to provide screening. The shrubs shall be at least 4 feet tall and spaced no more than 5 feet on center.

C. Variance; Criteria That Apply - Newberg Development Code 15.215.040:

- A. That strict or literal interpretation and enforcement of the specified regulation would result in practical difficulty or unnecessary physical hardship inconsistent with the objectives of this code.***

Finding: The required tower setback is 30% of the height of the tower from any existing structure on the site, abutting properties, and public rights-of-way. The tower is 70 feet tall, so the required setback is 21 feet. The tower is setback 32 feet from the property to the east, and approximately 80 feet from the property to the west, so it meets the setback from abutting properties. It is setback over 200 feet from any public rights-of-way, so it meets the setback from public rights-of-way. It is setback over 22 feet from the southern building on the site, and 9' 5" from the northern building; the only setback it does not meet is from the building north of it on the site. The setback does result in a practical difficulty for the applicant, as there does not appear to be another location on the property where a cellular tower could be installed. The question is to determine what the objective or purpose of the setback standard is.

The Development Code section on cellular towers states that the purpose of the code section is:

15.445.180 Description and purpose.

The purpose of this article is to:

- A. Allow new transmission towers, but only when necessary to meet functional requirements of the broadcast industry.*
- B. Minimize visual impacts of towers through careful design, siting and vegetative screening.*
- C. Avoid potential damage to adjacent properties from tower failure and falling ice, through engineering and careful siting of tower structures.*
- D. Lessen impacts on surrounding residential areas.*
- E. Maximize use of any new transmission tower so as to minimize the need to construct new towers. [Ord. 2536, 11-6-00. Code 2001 § 151.670.]*

Based on this purpose section, the objective of the setback standard was to avoid potential damage to adjacent properties from tower failure and falling ice. The tower meets the setback standard from adjacent properties, the public rights-of-way, and the building to the south. The only building that is potentially more at risk of damage from tower failure or falling ice is the building to the north, which is owned by Total Concept Development, who signed the application for the cell tower and consented to the tower location. The proposed setback variance does not increase the potential damage to adjacent properties, so the setback requirement from the northern building does create a practical difficulty that is inconsistent with the objective of the Development Code.

- B. That there are exceptional or extraordinary circumstances or conditions applicable to the property involved or to the intended use of the property which do not apply generally to other properties classified in the same zoning district.***

Finding: The property is long and narrow, which limits the potential locations for a cellular tower on the site. The M-2 (Light Industrial) zone allows intensive development of the site, and cellular towers are an allowed use in the zone. The intensive development of the long narrow site created an exceptional condition which does not generally apply to other M-2 properties.

C. That strict or literal interpretation and enforcement of the specified regulation would deprive the applicant of privileges enjoyed by the owners of other properties classified in the same zoning district.

Finding: The Development Code does not encourage the construction of new cellular towers, but it acknowledges they are necessary when co-location will not be effective, and makes them an allowed use in the M-2 zone. A literal interpretation of the setback standard would deprive the applicant of the ability to install a cellular tower on this site, and deprive the applicant of a privilege enjoyed by the owners of other M-2 properties.

D. That the granting of the variance will not constitute a grant of special privilege inconsistent with the limitations on other properties classified in the same zoning district.

Finding: Granting the variance would give the property owner the same development rights for cellular towers as other M-2 property owners, so it would not be a special privilege.

E. That the granting of the variance will not be detrimental to the public health, safety or welfare or materially injurious to properties or improvements in the vicinity. [Ord. 2451, 12-2-96. Code 2001 § 151.163.]

Finding: The proposed tower will meet the setbacks from the public rights-of-way and from adjacent properties, so granting the variance would not be detrimental to public health or safety, or materially injurious, to properties or improvements in the vicinity. The only building that may have a potential increased risk due to tower failure or ice is the building to the north, which is owned by Total Concept Development; this is the same property owner that has signed a lease for the cell tower and signed the design review/variance application. The only building that they have potentially put at greater risk is their own, so granting the variance will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity.

CONCLUSION: Based on the above mentioned findings, the project meets the criteria required within the Newberg Development Code, subject to completion of the attached conditions.

Exhibit B to Planning Commission Order 2015-19
Conditions - File DR2-15-003/VAR-15-001
Verizon Cellular Tower

A. THE FOLLOWING MUST BE COMPLETED BEFORE THE CITY WILL ISSUE A BUILDING PERMIT:

1. **Permit Submittal:** Submit a building permit application and two (2) complete working drawing sets of the proposed project. Show all the features of the plan approved through design review, including the following:
 - a. Grading plan
 - b. Mechanical details
 - c. Structural details
2. **Conditions of Approval:** Either write or otherwise permanently affix the conditions of approval contained within this report onto the first page of the plans submitted for building permit review.
3. **Landscaping plan:** Provide a revised landscaping plan showing evergreen shrubs along the western edge of the fenced area to provide screening. The shrubs shall be at least 4 feet tall and spaced no more than 5 feet on center.
4. **FCC approval:** Provide written confirmation from the appropriate responsible official that a Federal Communications Commission (FCC) antenna structure registration application (FCC 854 Form) has been approved, or a statement that an application is not required.
5. **ODA approval:** The conditions in the ODA July 9, 2015 letter shall be made conditions of approval for this project (see below):

Aviation Reference: 2015-ODA-133-OE

The Oregon Department of Aviation (ODA) has conducted an aeronautical study of these proposed new structure(s) and has determined that notice to the FAA is required. The structure does exceed Obstruction Standards of OAR 738-70-0100 and Exceeds FAA FAR 77.9 for RWY 17.

This determination is based, in part, on the foregoing description which includes specific coordinates and heights. Any changes to the original application will void this determination. Any future construction or alteration to the original application will require a separate notice from ODA.

This determination will expire (12) months from the date of this letter if construction has not been started.

Mitigation Recommendation:

- ☒ We do not object with conditions to the construction described in this proposal. This determination does not constitute ODA approval or disapproval of the physical development involved in the proposal. It is a determination with respect to the safe and efficient use of navigable airspace by aircraft and with respect to the safety of persons and property on the ground.
- ☒ Marking and lighting are necessary for aviation safety do to proximity to Newberg airport. We recommend it be installed and maintained in accordance with FAA Advisory Circular AC70/7460-1K Change 2

6. **FAA approval:** The conditions in the FAA "Determination of No Hazard to Air Navigation" letter shall be made conditions of approval for this project (see below):

This aeronautical study revealed that the structure does not exceed obstruction standards and would not be a hazard to air navigation provided the following condition(s), if any, is(are) met:

It is required that FAA Form 7460-2, Notice of Actual Construction or Alteration, be e-filed any time the project is abandoned or:

- ☐ At least 10 days prior to start of construction (7460-2, Part 1)
☒ Within 5 days after the construction reaches its greatest height (7460-2, Part 2)

Based on this evaluation, marking and lighting are not necessary for aviation safety. However, if marking/lighting are accomplished on a voluntary basis, we recommend it be installed and maintained in accordance with FAA Advisory circular 70/7460-1 K Change 2.

This determination expires on 10/02/2016 unless:

- (a) the construction is started (not necessarily completed) and FAA Form 7460-2, Notice of Actual Construction or Alteration, is received by this office.
- (b) extended, revised, or terminated by the issuing office.
- (c) the construction is subject to the licensing authority of the Federal Communications Commission (FCC) and an application for a construction permit has been filed, as required by the FCC, within 6 months of the date of this determination. In such case, the determination expires on the date prescribed by the FCC for completion of construction, or the date the FCC denies the application.

NOTE: REQUEST FOR EXTENSION OF THE EFFECTIVE PERIOD OF THIS DETERMINATION MUST BE E-FILED AT LEAST 15 DAYS PRIOR TO THE EXPIRATION DATE. AFTER RE-EVALUATION OF CURRENT OPERATIONS IN THE AREA OF THE STRUCTURE TO DETERMINE THAT NO SIGNIFICANT AERONAUTICAL CHANGES HAVE OCCURRED, YOUR DETERMINATION MAY BE ELIGIBLE FOR ONE EXTENSION OF THE EFFECTIVE PERIOD.

This determination is based, in part, on the foregoing description which includes specific coordinates, heights, frequency(ies) and power. Any changes in coordinates, heights, and frequencies or use of greater power will void this determination. Any future construction or alteration, including increase to heights, power, or the addition of other transmitters, requires separate notice to the FAA.

This determination does include temporary construction equipment such as cranes, derricks, etc., which may be used during actual construction of the structure. However, this equipment shall not exceed the overall heights as indicated above. Equipment which has a height greater than the studied structure requires separate notice to the FAA.

This determination concerns the effect of this structure on the safe and efficient use of navigable airspace by aircraft and does not relieve the sponsor of compliance responsibilities relating to any law, ordinance, or regulation of any Federal, State, or local government body.

Any failure or malfunction that lasts more than thirty (30) minutes and affects a top light or flashing obstruction light, regardless of its position, should be reported immediately to (877) 487-6867 so a Notice to Airmen (NOTAM) can be issued. As soon as the normal operation is restored, notify the same number.

A copy of this determination will be forwarded to the Federal Communications Commission (FCC) because the structure is subject to their licensing authority.

7. **Letter of intent:**

- a. *Before a permit is issued: Record the letter of intent required in NMC 15.445.200(D) in miscellaneous deed records of the office of the county recorder;*

- b. *After a building permit is issued:*
 - b. *Respond in a timely, comprehensive manner to a request for information from a potential shared use applicant required under subsection (A) of this section;*
 - c. *Negotiate in good faith for shared use by third parties; and*
 - d. *Allow shared use where the third party seeking such use agrees in writing to pay reasonable pro rata charges for sharing, including all charges necessary to modify the tower and transmitters to accommodate shared use, but not total tower reconstruction, and to observe whatever technical requirements are necessary to allow shared use without creating interference.*
 - e. *Grounds for Suspension or Revocation.*
 - i. *Willful, knowing failure of an owner whose tower was approved after November 6, 2000, to comply with the requirement of subsections (D)(5)(a) through (d) of this section shall be grounds for suspension or revocation of the use. Following report of such failure, the director shall schedule a hearing to determine whether the use should be suspended or revoked. The hearing shall be processed as a Type III public hearing before the planning commission.*
 - ii. *Such conditions shall run with the land and be binding on subsequent purchasers of the tower site.*

8. Construction Plans must be submitted for all infrastructure per the requirements below.

General Requirements:

- a. All survey monuments on the subject site or that may be subject to disturbance within the construction area, or the construction of any off-site improvements shall be adequately referenced and protected prior to commencement of any construction activity. If the survey monuments are disturbed, moved, relocated or destroyed as a result of any construction, the project shall, at its cost, retain the services of a registered professional land surveyor in the State of Oregon to restore the monument to its original condition and file the necessary surveys as required by Oregon State law. A copy of any recorded survey shall be submitted to Staff.
- b. The applicant shall obtain written approval from the appropriate source to construct any utilities or improvements within easement areas.

The plans must note the following:

Utilities:

1. Storm Sewer Requirements:

- a. The system shall be reviewed and approved by the City of Newberg Public

Works Department prior to issuance of Building Permits for the development.

- b. **Stormwater Report:** If net new impervious area is less than 500 sqft, submit a memo summarizing the impervious area surface calculations, including a description of pervious materials proposed to be installed. If net new impervious area is more than 500sqft, submit a final engineer's storm water report per the City of Newberg Engineering Design Standards. All onsite storm drain and detention/water quality facilities to be private and maintained by private property owner with storm water maintenance agreement.
- c. **Stormwater SDC's** – In accordance with Newberg Municipal Code, this design review does increase the impacts to the public improvement facility and is therefore not exempt from stormwater SDC charges.

2. **Streets:**

- a. Developer shall be responsible for the repair and replacement of any off-site city infrastructure, including streets, which are damaged by construction activities.

- 9. **Grading:** Obtain an erosion control permit and install, operate and maintain adequate erosion control measures in conformance with the standards adopted by the City of Newberg during the construction of any public/private utility and building improvements until such time as approved permanent vegetative materials have been installed.

B. THE FOLLOWING MUST BE ACCOMPLISHED PRIOR TO OCCUPANCY

- 1. **All conditions** noted above must be completed prior to occupancy.
- 2. **Fire Department Requirements:** This project is subject to compliance with all Fire Department standards relating to access and fire protection.
- 3. **Design Review Conditions:** Contact the Planning Division (503-537-1240) to verify that all design review conditions have been completed.
- 4. **Site Inspection:** Contact the Building Division (503-537-1240) for Building, Mechanical, and Plumbing final inspections. Contact the Fire Department (503-537-1260) for Fire Safety final inspections. Contact Yamhill County (503-538-7302) for electrical final inspections. Contact the Planning Division (503-537-1240) for landscaping final inspections.

C. DEVELOPMENT NOTES

- 1. Systems development charges (SDCs) will be collected when building permits are issued. For questions regarding SDCs please refer to the city fee packet and contact the Engineering Division.

Attachment 1: Aerial Photo



[illegible]



JUL 16 2015

ATTACHMENT 3
APPEAL APPLICATION 2015

OFFICE USE ONLY: (Pre-Application Conference is Optional for Type I)
Total App Fee: _____ File #: _____ Project Cost: _____
Less Pre-App Fee: _____ Date: _____ Receipt: _____
Balance Due: _____ Date: _____ Receipt: _____

TYPE - PLEASE CHECK ONE:

- Initial: JP 4:25 pm
- ☐ Appeal of a Type I Decision (i.e. Design Review for a Duplex, Sign, or Single Family Residence)
☒ Appeal of a Type II Decision (i.e. Variance, or Design Review, Subdivision)
☐ Appeal of a Type III Decision (i.e. Conditional Use Permit)
☐ Appeal of Peddler, Solicitor, or Temporary Merchant
☐ Other (explain): _____

APPLICANT INFORMATION:

APPLICANT: Proland LLC (representing Verizon Wireless) Derek Budig

ADDRESS: S. 2607 Southeast Blvd., B-214 Spokane, WA 99203

PHONE: _____ MOBILE: _____ FAX: _____

CO-APPLICANT (if applicable): Total Concept Development LLC PHONE _____

ADDRESS: Applicant: Marsha A. Matthiesen (Family Pet Clinic LLC) 1320 N.W. Akber Crest Ct. Dundee, OR 97115 131 N. Elliot Rd. Newberg

GENERAL INFORMATION:

503 534-5533 Dr. Dan
Dr. Randy

PROJECT NAME: (Verizon-Hancock Street)

FILE NUMBER OF PROJECT BEING APPEALED: DR2-15-003/VAR-15-001

PROJECT LOCATION: 2401 E. Hancock Street

PROJECT DESCRIPTION / USE: Verizon Cell Tower (70' tall)

BRIEFLY DESCRIBE THE REASON FOR YOUR APPEAL: surrounding uses should include Family Pet Clinic of Newberg LLC and a Daycare Center. These established businesses will be exposed to long term risks from radiation that effects have not fully been determined. Newberg may be inadvertently be putting its citizens in a possible liability position by allowing a near 50% variance for Verizon when other less populated locations are readily available. The small planes that come into Sportsman's Air Park often need to adjust planned flight patterns in order to land safely. Thank You for your consideration.

SPECIFIC APPEAL REQUIREMENTS ARE ATTACHED

General Checklist: ☒ Fees ☐ Notice Information ☒ Written Response Supporting Appeal.

THE ABOVE STATEMENTS AND INFORMATION HEREIN CONTAINED ARE IN ALL RESPECTS TRUE, COMPLETE, AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF. I AFFIRM THAT I WAS PARTY TO THE INITIAL PROCEEDINGS.

(Family Pet Clinic of Newberg)
Marsha A. Matthiesen 7-16-15
Applicant Signature Date

Marsha A. Matthiesen 7-16-15
Owner Signature Date

Marsha A. Matthiesen
Print Name

Marsha A. Matthiesen
Print Name

GENERAL INFORMATION

Appeal Process

- Type I:** An appeal of a Type I decision by the Director may be appealed within 14 calendar days of the date of the decision by the Director. Appeals may be made only by an Affected Party, Type I (the person or party submitting the application). Appeals of a Type I application are processed as a Type III Procedure and proceed to the Planning Commission.
- Type II:** An appeal of a Type II decision by the Director may be appealed within 14 calendar days of the date of the decision. Appeals may be made only by an Affected Party, Type II (the applicant, any party entitled to receive notice of the decision, or anyone providing written comments within 14 calendar days prior to the date of the decision). Appeals of a Type II application are processed as a Type III Procedure and proceed to the Planning Commission.
- Type III:** An appeal of a Type III decision by the Planning Commission must occur within 14 calendar days of the Planning Commission's written decision. Appeals may be made only by an Affected Party, Type III.
- Type III actions that require an ordinance to be adopted in order to become effective shall be reviewed by the City Council as a new hearing. The City Council shall receive the recommendation from the Planning Commission to the City Council on these actions. The action will not be considered final for the purpose of appeals, until a final decision is rendered by the City Council.

The initial appeal of a Type I, Type II, or Type III decision shall be a new hearing. Any second appeal to the city council of a Type I or Type II decision shall be a record hearing unless the applicant requests a new hearing and waives the 120-day time limit for processing applications in accordance with NMC 15.100.100 and state statutes. Appeal of a Type II decision must be based on the written comments raised prior to the expiration notice comment period pursuant to NMC 15.100.220. Appeal of a Type III decision made by the planning commission must be based on the written or oral testimony and evidence raised in the record of the planning commission.

The record shall include:

- A factual report prepared by the Director.
- All exhibits, material, pleadings, memoranda, stipulations, and motions submitted by any party and reviewed or considered in reaching the decision under review.
- The minutes of the hearing and a detailed summary of the evidence.

Peddler, Solicitor, or Temporary Merchant: Any applicant for a license or registration which is denied may appeal the decision to the city manager. The city manager may accept or reject the decision of city staff, waive any requirements imposed, or refer the matter to the city council. The applicant may appeal the decision of the city manager to the city council. All appeals must be made by submitting a formal request of an appeal to the city manager, together with a nonrefundable processing fee as established by city council resolution. (No fee as of 04/04/2013)

• Submit Application

- Pay Fees (and deposit for transcript if required)
- Complete Appeal Form
- Submit other required information



Oregon

Kate Brown, Governor



3040 25th Street, SE
Salem, OR 97302-1125
Phone: (503) 378-4880
Toll Free: (800) 874-0102
FAX: (503) 373-1688

June 8, 2015

Steve Olson, AICP
Interim Planning and Building Director
Planning Division
PO Box 970
Newberg, Oregon, 97132

SUBJECT: DR2-15-003/VAR-15-001 (Verizon – Hancock Street)

This letter is in response to the city of Newberg's application for a new Verizon cell tower located between two industrial buildings at 2401 East Hancock Street, north of Sportsman Airpark. After a preliminary review of the proposed application the Oregon Department of Aviation (ODA) has prepared the following comments.

The proposed cell tower would cause a disruption to the operations of the Sportsman Airpark specifically the approach/departure procedures from runway 17-35. In addition, due to its location and height, the applicant would be required to file a FAA form 7460-1 with the Oregon Department of Aviation, as required in OAR 738-70. ODA would recommend the cell tower be relocated or lowered away from the approach/departure to ensure safety to air navigation.

Thank you for allowing ODA to comment on this development proposal. If you have any questions or need further information please feel free to contact me at 503-378-2529 or Jeff.Caines@aviation.state.or.us or Heather Peck – Projects and Planning Manager at 503-378-3168 or Heather.Peck@aviation.state.or.us.

Sincerely,

Jeff Caines, AICP
Aviation Planner

RECEIVED

JUN 10 2015

June 9, 2015

City of Newberg
Community Development Department
PO Box 970
Newberg, Oregon 97132

Initial: _____

RE: Written comments on File No. DR2-15-003/VAR-15-001

This letter is in regards to the application by ProLand LLC, on behalf of Verizon Wireless, for the installation of a 70 foot tall cellular communication tower on property owned by Total Concept Development LLC. As an adjacent property owner I have three concerns that I feel need to be properly addressed and answered by the City of Newberg before the application move any further in the process.

The following written comments are provided by me on File No. DR2-15-003/VAR-15-001 addressing my concerns;

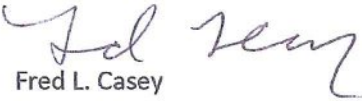
The first two are in regards to what I feel are public safety issues.

Number one. The height of the cellular tower at a proposed height of seventy (70) feet is potentially in the flight patterns of the local airport, Sportsman Airpark, and may demonstrate potential hazards to both aircraft and the immediate area of the tower. Certified documentation needs to be provided by the applicant, demonstrating that there is no potential conflict or danger to aircraft, the immediate property owners, or general public as a result of its proposed height.

The second safety concern is the possibility of radiation emissions in the immediate area from the proposed cellular tower as a result of the of the proposed antenna array. Currently in the City of Portland there is ongoing discussions concerning radiation omissions from cellular towers, and the potential health issues associated with them. As an adjacent property owner, I know that there will be persons in the immediate vicinity of the tower, both on the property of the proposed tower location, and on my adjacent property, that may be exposed to any radiation emissions from it. I feel the petitioner needs to provide the City of Newberg the adequate information certifying there is, or there is not the presence of any potential health hazards, or radiation being emitted from this tower.

Finally, the applicants request for a variance on the location of the proposed tower raises my third concern. Current city ordinance requires a minimum 21 foot setback from nearby buildings. Granting a variance of nearly 50% less than the required 21 feet seems excessive, and

I think that this may establish a precedent that that could come back to haunt the city at a later date. The granting of a variance this large may be used in the future by other applicants, citing this as an example of why any future variance requests should be granted, which may be detrimental to the community as a whole.



Fred L. Casey

PO Box 188

Newberg, Oregon 97132

June 7, 2015

Written Comments: File No. DR2-15-003/VAR-15-001
City of Newberg
Community Development Dept.
P.O. Box 970
Newberg, OR 97132

RECEIVED

JUN 10 2015

Initial: _____

Dear Sirs:

We believe that a cellular communications tower would visually and possibly ^{pose} health risks to the other land owners in that vicinity. We are the owners of Family Pet Clinic of Newberg, LLC at 131 N. Elliott Road which is very close to the proposed site. Next to our clinic is a children's daycare center. As no one knows what the long term health risks of close proximity to cell phone towers may be, we strongly urge that the city not grant the applicant a variance to the setback standard.

Thank You,

Marsha A. Matthiesen

Daniel J. Matt, D.V.M.

Randall J. Matthiesen, D.V.M.

June 1, 2015

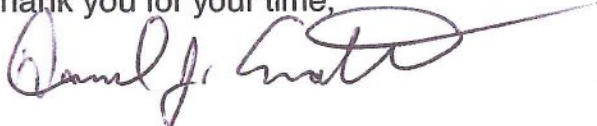
Dear City of Newberg,

We are writing to protest the variance of the setback standard requested by Verizon Wireless for their new cellular communications tower for several reasons.

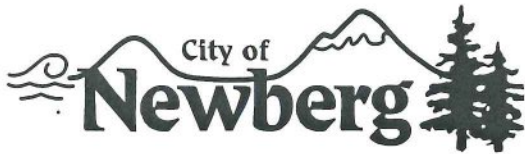
The proposed location for the cell tower is extremely close to a high density residential area as well as a well-established day-care facility (lot #141). The residents of the neighborhood as well as the children at the day-care may be adversely affected by the radiation known to be emitted from all cellular towers. It is not acceptable to allow a variance for something that can harm our city's citizens. We are also concerned about the proximity to Newberg's airport. It is foolish, not to mention dangerous, to build such a tall structure so close to an airport. A cellular communications tower will not only pose a threat to our people and our airport, but it will lower the property values all around it—why should we allow that in town? Our last concern is this: the 21 foot set-back rule was established for a reason: to protect the privacy, value, and efficacy of the buildings lived in and businesses run by the tax-paying citizens of Newberg. If we change the rules for large companies like Verizon, which can well afford to build in a more appropriate location, what does that say to other big companies who want to build here at the expense of our citizens.

There is no compelling reason to allow a variance in the setback standard yet every reason to deny it—mainly the safety and well-being of the residents and businesses of Newberg. Let Verizon find a building site that doesn't require a variance; our locally owned businesses are expected to so they can as well!

Thank you for your time,



Daniel and Jennifer Matthiesen
Family Pet Clinic
131 N. Elliott Rd.
Newberg, OR 97132



Community Development Department

P.O. Box 970 • 414 E First Street • Newberg, Oregon 97132
 503-537-1240 • Fax 503-537-1272 • www.newbergoregon.gov

NOTICE OF DECISION

Verizon cellular tower design review/variance

File DR2-15-003/VAR-15-001

July 2, 2015

Derek Budig
 ProLand LLC (representing Verizon)
 S. 2607 Southeast Blvd., B-214
 Spokane, WA 99203

All persons providing comments

The Newberg Community Development Director has approved the proposed design review/variance DR2-15-003/VAR-15-001 for a cellular tower design review and setback variance at 2401 E. Hancock Street, tax lot 3220AB-202, subject to the conditions listed in the attached report. The decision will become effective on July 17, 2015 unless an appeal is filed.

You may appeal this decision to the Newberg Planning Commission within 14 calendar days of this decision in accordance with Newberg Development Code 15.100.170. All appeals must be in writing on a form provided by the Planning Division. Anyone wishing to appeal must submit the written appeal form together with the required fee of \$451 to the Planning Division within 14 days of the date of this decision.

The deadline for filing an appeal is 4:30 pm on July 16, 2015.

At the conclusion of the appeal period, please remove all notices from the site.

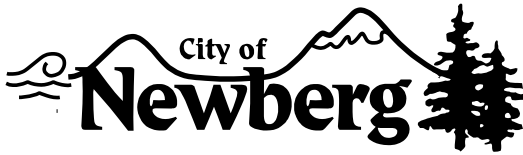
Design review approval is only valid for one year from the effective date above. If building or construction permits are not issued within this time period, then design review approval becomes null and void and no construction may take place. If design review approval on your project is approaching its expiration date, contact the Planning Division regarding extension opportunities.

Please note that final building plans submitted for building permit review must comply with the attached conditions. You must comply with all conditions required through the design review process before final occupancy will be granted.

If you have any questions; please contact me at 503-537-1215 or steve.olson@newbergoregon.gov.

Sincerely,

Steve Olson, Associate Planner



DECISION AND FINDINGS
VERIZON CELLULAR TOWER DESIGN REVIEW/VARIANCE

FILE NO: DR2-15-003/VAR-15-001

REQUEST: Design review approval for a new cellular tower/variance approval to reduce a setback

LOCATION: 2401 E. Hancock Street

TAX LOT: 3220AB-202

APPLICANT: Proland LLC (representing Verizon Wireless)

ZONE: M-2 (Light Industrial)

OVERLAYS: Airport Overlay

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Section II: Findings

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Attachments:

1. Aerial Photo
2. Site Plan
3. Public Comments/
Correspondence Received
4. Application (by reference)



Section I: Application Information

Proposal:

The applicant has requested design review approval for a new 70 foot tall cellular communications tower, with related ground equipment. The code requires a 21 foot setback from existing buildings on the site; the cell tower will meet this on the south side but will only be setback 11.5 feet from a building on the north side of the tower, so they have requested a variance to the setback standard.

Process:

The Design Review/Variance request is a Type II application and follows the procedures in Newberg Development Code 15.100.030. Following a 14 day public comment period, the Community Development Director makes a decision on the application based on the criteria listed in the attached findings. The Director's decision is final unless appealed. Important dates related to this application are as follows:

Noticing:

1. 5/27/15: The Community Development Director deemed the application complete.
2. 5/22/15: The applicant mailed notice to the property owners within 500 feet of the site.
3. 5/25/15: The applicant posted notice on the site.
4. 7/2/15: The Community Development Director issued a decision on the application.

Site Information:

The site is approximately 1.4 acres and contains three existing industrial buildings with a mix of businesses. The site is relatively flat, with a slight slope to the south. The site was developed in 2008, and meets current Development Code standards for parking, landscaping and setbacks.

Surrounding uses:

- North/northwest - commercial development (dentist, retail, office), C-2 zone.
- East – commercial development (mini-storage) on northern section, undeveloped land (potential new mini-storage) on southern section, C-2 zone.
- West – undeveloped commercial land, C-2 zone.
- South – commercial development (Wilco farm store), C-2 zone.

Existing conditions: The site has vehicle access from Hancock Street, which is classified as a local road. An 18" stormwater conveyance pipe is located in Hancock Street and can accommodate the additional runoff created by this development. No new water or wastewater services are proposed.

Agency Comments:

The application was routed to several public agencies for review and comment. Comments and recommendations from city departments have been incorporated into the findings and conditions. The agency comments are summarized below; the full text is included in Attachment 3.

Federal Aviation Administration (FAA): The FAA completed a “Determination of No Hazard to Air Navigation” letter, with conditions regarding notification (when construction is completed, or if project abandoned) and future changes.

Sportsman Airpark commented that the FAA “Determination of No Hazard to Air Navigation” conditions need to part of the approval conditions.

Oregon Dept. of Aviation (ODA): The ODA commented that, based on their preliminary review, the proposed cell tower would cause a disruption to the operations of the Sportsman Airpark, specifically the approach/departure procedures from runway 17-35. In addition, due to its location and height, the applicant would be required to file a FAA form 7460-1 with the ODA as required in OAR 738-70. ODA recommended that the cell tower be relocated or lowered away from the approach/departure to ensure safety to air navigation.

Public Comments:

As of the writing of this report, the city has received three written public comments. They are summarized below, and the full comments are included in Attachment 3.

One comment was concerned about possible long-term health risks to other people in the vicinity (including a day care facility) from close proximity to a cell phone tower, and urged that the city not grant a variance to the setback standard.

Another comment was also opposed to approving the variance and design review due to close proximity to a high density residential area and day care facility, and concerns that they could be adversely affected by radiation from the tower. They were also concerned about the proximity of the airport, and commented that the 21-foot setback was established to protect the privacy, value and efficacy of surrounding businesses.

The third comment was concerned about two potential public safety issues: that the height of the tower could pose a hazard to the airport, and that radiation from the tower could be a health hazard to people near the tower. They thought that the applicant should be required to provide documentation that the tower would not create hazards for the airport or radiation hazards for nearby people. They were also concerned about the size of the variance request, and thought that such a large reduction in the standard (nearly 50%) could create a negative precedent that would be cited by other applicants in the future, to the detriment of the community as a whole.

Issues and Analysis summary:

1. Radiation from cell towers: The Newberg Development Code does not directly regulate radiation and emissions from cellular communication towers. These issues are regulated by the Federal Communication Commission (FCC). The Development Code requires that the following statement be a condition of approval:

15.445.210 Conditions of approval.

The following conditions of approval must be met prior to issuance of a building permit for any telecommunications facility:

A. Agency Statements. The applicant shall provide the following information in writing from the appropriate responsible official:

1. Confirmation that a Federal Communications Commission (FCC) antenna structure registration application (FCC 854 Form) has been approved, or a statement that an application is not required.

The applicant will be required to show that they have received FCC approval for their application.

2. Proximity to the airport: The applicant is required to show that they have approval from the Federal Aviation Administration (FAA) and the Oregon Department of Aviation (ODA) before a building permit will be approved for the cellular tower. The FAA has issued a "Determination of No Hazard to Air Navigation" letter with some conditions, which would become conditions of approval for the project. The ODA has issued a letter saying that, based on their preliminary review, the tower would create a problem for airport operations and required additional review by the ODA. The project will be conditioned to provide:

3. A statement from the Oregon State Department of Aviation (OSDA) that the application has been found to comply with the applicable regulations of the Department, or a statement that no such compliance is required.

3. Variance request: There was a concern expressed that the variance approval could create a precedent for other future variances. A variance application is unique to a specific project on a specific site, however, so each variance is unique and does not set a precedent for other decisions.

Section II: Findings –File DR2-15-003/VAR-15-001 Verizon Cellular Tower

A. Design Review; Criteria That Apply - Newberg Development Code 15.220.050(B):

1. Design compatibility. The proposed design review request incorporates an architectural design which is compatible with and/or superior to existing or proposed uses and structures in the surrounding area. This shall include, but not be limited to, building architecture, materials, colors, roof design, landscape design, and signage.

Finding: There are specific design standards for cell towers that will be addressed below. The tower will be painted in accordance with the FAA and ODA regulations.

2. Parking and On-Site Circulation. Parking areas shall meet the requirements of NMC 15.440.010. Parking studies may be required to determine if adequate parking and circulation are provided for uses not specifically identified in NMC 15.440.010. Provisions shall be made to provide efficient and adequate on-site circulation without using the public streets as part of the parking lot circulation pattern. Parking areas shall be designed so that vehicles can efficiently enter and exit the public streets with a minimum impact on the functioning of the public street.

Finding: The site has existing industrial buildings with adequate parking. The cell tower application does not remove any existing parking spaces.

3. Setbacks and General Requirements. The proposal shall comply with NMC 15.415.010 through 15.415.060 dealing with height restrictions and public access; and NMC 15.405.010 through 15.405.040 and NMC 15.410.010 through 15.410.070 dealing with setbacks, coverage, vision clearance, and yard requirements.

Finding: The cell tower criteria have specific setback standards, which will be addressed below. The M-2 zone does not have a set height limit; the actual height limit is set by the Airport Overlay zone, which is addressed in a finding below. The cell tower proposal does not create a vision clearance issue on the site, and does meet the standard M-2 setbacks.

4. Landscaping Requirements. The proposal shall comply with NMC 15.420.010 dealing with landscape requirements and landscape screening.

Finding: The existing site has 16.13% landscaping, which exceeds the 15% landscaping minimum. The cell tower proposal will remove 551 square feet of landscaping, so the post-development site would have 15.27% landscaping and still meets the minimum landscaping standard. Following compliance with design review conditions, the landscape plan and parking lot complies with NMC 15.420.010. All areas subject to the final design review plan and not otherwise improved are landscaped.

5. Signs. Signs shall comply with NMC 15.435.010 et seq. dealing with signs.

Finding: No signs are included in this review. If the FCC and FAA require any signage then the applicant will install the required signs.

6. Manufactured Home, Mobile Home and RV Parks. Manufactured home, mobile home, and recreational vehicle parks shall also comply with the standards listed in NMC 15.445.050 et seq. in addition to the other criteria listed in this section.

Finding: Not applicable. The development proposal is not a manufactured home, mobile home, or RV park.

7. Zoning District Compliance. The proposed use shall be listed as a permitted or conditionally permitted use in the zoning district in which it is located as found in NMC 15.304.010 through 15.328.040. Through this site review process, the director may make a determination that a use is determined to be similar to those listed in the applicable zoning district, if it is not already specifically listed. In this case, the director shall make a finding that the use shall not have any different or more detrimental effects upon the adjoining neighborhood area than those specifically listed.

Finding: The site is zoned M-2 (Light Industrial). A cellular communication tower is an allowed use in the M-2 zone. It is more than 2,000 feet from the nearest cell tower, so it does not require a conditional use permit.

8. Subdistrict Compliance. Properties located within subdistricts shall comply with the provisions of those subdistricts located in NMC 15.340.010 through 15.348.060.

Finding: The proposed tower location is within the Airport Overlay subdistrict, Transitional Surface. This subdistrict limits the height of the proposed structure to approximately 80-90 feet, as interpreted by city staff. The proposed tower is 70 feet tall, so it appears to meet the height limits. The Development Code also requires notice to the FAA to verify that the structure is below the height limits. The applicant supplied notice to the FAA, and received a "Determination of No Hazard to Air Navigation" letter, which included conditions such as notifying the FAA when construction was complete or the design changed. The Development Code has more specific requirements for FAA and ODA notification when a cellular tower is proposed, so the specific FAA and ODA conditions will be addressed below in the cellular tower criteria.

9. Alternative Circulation, Roadway Frontage Improvements and Utility Improvements. Where applicable, new developments shall provide for access for vehicles and pedestrians to adjacent properties which are currently developed or will be developed in the future. This may be accomplished through the provision of local public streets or private access and utility easements. At the time of development of a parcel, provisions shall be made to develop the adjacent street frontage in accordance with city street standards and the standards contained in the transportation plan. At the discretion of the city, these improvements may be deferred through use of a deferred improvement agreement or other form of security.

Finding: The project meets the applicable development code and municipal code requirements as detailed below and as conditioned. No transportation improvements are proposed. Access to the site is provided from Hancock Street, and is adequate. No water or wastewater connections or improvements are proposed.

Stormwater: NMC 13.25.040 No person shall undertake a ground disturbing project without having provided erosion and sediment controls that address erosion caused by wind or rain. 13.25.260 & 13.25.270 Projects that create a new impervious areas of 500 square feet or more shall use techniques or create stormwater facilities that maintain the water quality and beneficial uses of the receiving watercourse. 13.25.280 Prior to an applicant receiving a permit for a project, the director shall determine the stormwater requirements of the project. They shall provide a summary of the project, design flow calculations, and proposed methods for treating stormwater to the director for review and approval in accordance with requirements specified in the design standards manual.

Findings: The developer has not proposed any new stormwater connections or facilities. It is assumed that the new impervious area surface water will surface flow to existing stormwater infrastructure on the site. It appears that this development will add more than 500 sq. ft. of net new impervious area.

Approval of this project is conditioned on the applicant meeting the city's stormwater code (ordinance No. 2021-2754) and the engineering standards manual. A possible way to meet this ordinance is to reduce the net new impervious area to be less than 500 sq. ft. Open graded, pervious rock surfaces are considered to be pervious. Alternatively, stormwater facilities may be installed per the engineering standards manual. If net new impervious area is less than 500 sq. ft., submit a memo summarizing the impervious area surface area calculations, including a description of pervious materials proposed to be installed. If net new impervious area is more than 500 sq. ft., submit a final engineer's storm water report per the City of Newberg Engineering Design Standards Manual. All onsite storm drain and detention/water quality facilities to be private and maintained by private property owner with storm water maintenance agreement.

10. Traffic Study Improvements. If a traffic study is required, improvements identified in the traffic study shall be implemented as required by the director.

Finding: A traffic study was not required for this project, as it is only expected to generate a few trips to the site.

B. Cellular tower; Criteria That Apply - Newberg Development Code 15.220.050(B):

15.445.190 Approval criteria.

New transmission towers or replacement of existing towers may be allowed, based on findings by the approval authority that the following criteria are met:

A. A good faith effort has been made to demonstrate that an existing tower cannot accommodate the proposed antennas and/or transmitter.

Finding: The applicant did contact the owners of the existing towers in the area about colocation, as required. The applicant also included a RF study letter, which noted that the existing tower sites in Newberg were too far away from east Newberg to improve service in that area. Improving service coverage is an important consideration, as the public increasingly relies on cellular phones instead of land-line phones for general communication and for emergency (911) calls. The applicant has made a good faith effort to demonstrate that existing towers cannot accommodate the proposed project.

B. The tower and associate structures meet the setback, landscaping, parking and vegetation requirements of NMC 15.445.220.

Finding: The proposed tower has landscaping around the ground equipment area. Some shrubs need to be added along the western edge of the fenced area to buffer the view of the equipment. They are to be evergreen, at least 4 feet tall, and spaced no more than 5 feet on center. As conditioned, the proposal meets the landscaping and parking requirements. The tower meet the 21 foot setback requirement on all sides except the north, where it is 9'5" from the existing building. The applicant has requested a variance to the setback from this northern building; if the variance is approved then the application will meet this criterion.

C. The proposed tower has been structurally designed to accommodate the maximum number of additional users technically practicable.

Finding: The drawings demonstrate that the tower has been designed to accommodate additional antennas.

D. The tower has minimal visual impact on the environment.

Finding: The proposed tower is on an industrial site, and matches the character of the surroundings. At 70 feet tall, it is relatively short for a cellular tower which will reduce its impact on the environment. It will be painted and/or lit as required by the FAA and ODA to provide proper visibility for air navigation.

E. The tower meets the design review provisions of NMC 15.220.030.

Finding: As noted in the design review findings above, the proposal meets the design review provisions of the NMC 15.220.030.

F. The tower does not intrude into the airport imaginary surface areas as defined in NMC 15.05.030. [Ord. 2536, 11-6-00. Code 2001 § 151.671.]

Conditions of approval:

- 2. Confirmation that the Federal Aviation Administration (FAA) has been notified and that the facility has not been found to be a hazard to air navigation under FAA regulations, or a statement that compliance is not required.***
- 3. A statement from the Oregon State Department of Aviation (OSDA) that the application has been found to comply with the applicable regulations of the Department, or a statement that no such compliance is required.***

Finding: The applicant notified the FAA about the proposed project and received a “Determination of No Hazard to Air Navigation” letter, which included conditions regarding notification to the FAA when the project is completed, or abandoned, or changed. The FAA conditions in the “Determination of No Hazard to Air Navigation” letter shall be made conditions of approval for this project.

The Oregon Dept. of Aviation (ODA) was notified of the application and commented that, based on their preliminary review, the proposed cell tower would cause a disruption to the operations of the Sportsman Airpark, specifically the approach/departure procedures from runway 17-35. In addition, due to its location and height, the applicant would be required to file a FAA form 7460-1 with the ODA as required in OAR 738-70. ODA recommended that the cell tower be relocated or lowered away from the approach/departure to ensure safety to air navigation. The applicant will be conditioned that before a building permit can be approved for the proposed tower they shall file a FAA form 7460-1 with the ODA, and to obtain a statement from the ODA that the application has been found to comply with the applicable regulations of the department, or a statement that no such compliance is required.

15.445.200 Application requirements.

An application for approval of a Type II or Type III decision for a radio or television transmission tower shall contain at least the following information before it is complete:

A. Site Plan. Site plan or plans to scale specifying the location of tower(s), guy anchors (if any), transmission building and/or other accessory uses, access, parking, fences, landscaped areas, and adjacent land uses. Such plan shall also demonstrate compliance with NMC 15.445.220(B) and (C).

B. Landscape Plan. Landscape plan to scale indicating size, spacing and type of plantings required in NMC 15.445.220(H).

C. Engineer’s Report. Report from a professional engineer licensed in the State of Oregon, documenting the following:

1. Tower height and design, including technical, engineering, economic, and other pertinent factors governing selection of the proposed design. A cross-section of the tower structure shall be included.

2. Total anticipated capacity of the structure, including number and types of antennas which can be accommodated.

3. Evidence of structural integrity of the tower structure as required by the building official.

4. Failure characteristics of the tower and demonstration that the site and setbacks are of adequate size to contain debris.

5. Ice hazards and mitigation measures which have been employed, including increased setbacks and/or de-icing equipment.

6. Specific design and reconstruction plans indicating the means by which the shared use provisions of this section will be met. This submission is required only in the event that the applicant intends to meet the shared use requirements of this section by subsequent reinforcement and reconstruction of the tower.

7. The requirement of subsection (C)(6) of this section may be deferred if:

a. At the time the building permit for the tower is issued, there are no applications before the FCC that could use the tower; or

b. The applications which are before the FCC have contractual arrangements for the use of other towers.

D. Letter of Intent.

1. The applicant shall provide a letter of intent to lease excess space on the tower structure and to lease additional applicant-controlled excess land on the tower site when the shared-use potential of the tower is absorbed, if structurally and technically possible. A reasonable pro rata charge may be made for shared use, consistent with an appropriate sharing of construction, financing and maintenance costs. Fees may also be charged for any structural or RF changes necessitated by such shared use. Such sharing shall be a condition of approval if approval is granted.

2. The applicant shall base charges on generally accepted accounting principles and shall explain the elements included in the charge, including, but not limited to, a pro rata share of actual site selection and processing costs, land costs, site design, construction and maintenance costs, finance costs, return on equity, and depreciation.

E. Tower Capacity. The applicant shall quantify the additional tower capacity anticipated, including the approximate number and types of antennas. The applicant shall also describe any limitations on the ability of the tower to accommodate other uses, e.g., radio frequency interference, mass height, frequency or other characteristics. The applicant shall describe the technical options available to overcome those limitations and reasons why the technical options considered were not chosen to be incorporated. The approval authority shall approve those limitations if they cannot be overcome by reasonable technical means.

F. Evidence of Lack of Space. Evidence of the lack of space on all suitable existing towers to locate the proposed antenna and of the lack of space on existing tower sites to construct a tower for the proposed antenna.

G. Written Authorization. Written authorization from adjoining property owners if needed, under NMC 15.445.220(C).

H. Written Evidence. *Written evidence from the Federal Communications Commission related to a request for approval of a reduction in the capacity of the proposed tower under NMC 15.445.220(D), if needed. [Ord. 2536, 11-6-00. Code 2001 § 151.672.]*

Finding: The application include site plans, a landscaping plan, an engineer's report, a letter of intent to lease space, information about the tower capacity, and a good faith effort about lack of space. Written authorization from adjoining property owners was not required, as the tower does not have guy wires. The applicant did not request FCC approval for a reduction in the capacity of the tower.

15.445.210 Conditions of approval.

The following conditions of approval must be met prior to issuance of a building permit for any telecommunications facility:

A. Agency Statements. *The applicant shall provide the following information in writing from the appropriate responsible official:*

- 1. Confirmation that a Federal Communications Commission (FCC) antenna structure registration application (FCC 854 Form) has been approved, or a statement that an application is not required.*
- 2. Confirmation that the Federal Aviation Administration (FAA) has been notified and that the facility has not been found to be a hazard to air navigation under FAA regulations, or a statement that compliance is not required.*
- 3. A statement from the Oregon State Department of Aviation (OSDA) that the application has been found to comply with the applicable regulations of the Department, or a statement that no such compliance is required.*
- 4. The director may waive the statements in subsections (A)(1) through (3) of this section when the applicant demonstrates that a good faith, timely effort was made to obtain such responses but that no such response was forthcoming, provided the applicant conveys any response received; and further, provided any subsequent response that is received is conveyed to the approval authority as soon as possible.*

Findings: These conditions will be made conditions of approval.

15.445.220 Installation standards.

A. Shared Use of Existing Towers. *The applicant shall make a good faith effort to substantially demonstrate that no existing tower can accommodate the applicant's proposed antenna/transmitter as described below.*

- 1. The applicant shall contact the owners of all existing towers, of a height roughly equal to or greater than the height of the tower proposed by the applicant. A list shall be provided of all owners contacted, the date of such contact, and the form and content of such contact.*

2. Such contact shall be made in a timely manner; that is, sufficiently before the filing of an application for a hearing to include a response into the application when filed.

a. Where an existing tower is known to have capacity for additional antennas of the sort proposed, the application for a new tower shall not be deemed complete until the owner of the existing tower responds. Failure of a listed owner to respond shall not be relevant to the approval authority if a timely, good faith effort was made to obtain a response and a response was not received within 30 days of the request.

b. The director shall maintain and provide, on request, records of responses from each owner.

c. Once an owner demonstrates an antenna of the sort proposed by the applicant cannot be accommodated on the owner's tower as described below, the owner need not be contacted by future applicants for antennas of the sort proposed.

3. The applicant shall provide the following information from each owner contacted:

a. Identification of the site by location, tax lot number, existing uses, and tower height.

b. Whether each such tower could structurally accommodate the antenna proposed by the applicant without requiring structural changes be made to the tower. To enable the owner to respond, the applicant shall provide each such owner with the height, length, weight, and other relevant data about the proposed antenna.

c. Whether each such tower could structurally accommodate the proposed antenna if structural changes were made, not including totally rebuilding the tower. If so, the owner shall specify in general terms what structural changes would be required.

d. If structurally able, would shared use by such existing tower be precluded for reasons related to RF interference. If so, the owner shall describe in general terms what changes in either the existing or proposed antenna would be required to accommodate the proposed tower, if at all.

e. If shared use is possible based on subsections (A)(3)(a) through (d) of this section, the fee an owner of an existing tower would charge for such shared use.

4. Shared use is not precluded simply because a reasonable fee for shared use is charged, or because of reasonable costs necessary to adapt the existing and proposed uses to a shared tower. The approval authority may consider expert testimony

to determine whether the fee and costs are reasonable. Costs exceeding new tower development are presumed unreasonable.

Finding: As noted above, the applicant contacted the owners of existing towers, and made a good faith effort to demonstrate that no existing tower can accommodate the proposed project.

B. Tower Setbacks.

1. Only one tower per lot is authorized. Towers shall be set back from any existing structure on the site, abutting properties, and public rights-of-way a minimum distance equal to 30 percent of the height of the tower, measured from the base of the tower to the structure, abutting property or public right-of-way. All towers shall be set back from a residential zone a distance equal to or greater than 100 percent of the tower height, measured from the base of the tower to the nearest property line of a residentially zoned lot. The setback requirements of this section shall not apply towards:

a. Antennas incorporated into, and no more than 18 feet above, existing or new buildings;

b. Antennas incorporated into, and no more than 18 feet above, existing structures;

c. Antenna support structures incorporated into, and no more than 18 feet above, existing or new buildings.

2. Towers must meet all setback, design and landscape requirements of the code.

3. No new tower may be installed closer than 2,000 feet from any existing or proposed tower, unless approved through the Type III conditional use permit process.

Finding: The tower is 70 feet tall, so the required setback from abutting properties, public rights-of-way and adjacent structures is 21 feet. The tower setbacks exceed the required setback from abutting properties and public rights-of-way, and meets the setback from the southern adjacent building. It does not meet the setback from the northern building (has a 9'5" setback), so the applicant has requested a variance to the setback from this building. If the variance is approved then this criterion is met. There are no other towers within 2,000 feet of this proposed tower.

C. Guy Setback.

1. Guy anchors shall be set back a minimum of 25 feet from any property line, public property or street abutting the site.

2. A guy anchor may be located on an adjoining property when:

a. The owner of the adjoining property on which it is to be placed authorizes it in writing; and

b. The guy anchor meets the requirements of subsection (C)(2)(a) of this section as to all other setback requirements.

c. Guy anchors may be located within required landscape areas.

Finding: There are no guy wires on the tower.

D. Required Sharing of New Towers. All new towers shall be designed to structurally accommodate the maximum number of additional users technically practicable, but in no case less than the following:

1. For television antenna towers, at least three high-power television antennas and one microwave facility or two FM antennas, and at least one two-way radio antenna for every 10 feet of the tower over 200 feet.

2. For any other towers, at least one two-way radio antenna for every 10 feet of the tower, or at least one two-way radio antenna for every 20 feet of the tower and at least one microwave facility.

3. Such other combination as found by the approval authority to provide the maximum possible number of foreseeable users.

a. Such requirements may be reduced if the Federal Communications Commission provides a written statement that no more licenses for those broadcast frequencies that could use the tower will be available in the foreseeable future.

b. Such requirements may be reduced if the size of the tower required significantly exceeds the size of the existing towers in the area and would create an unusually onerous visual impact that would dominate and alter the visual character of the area when compared to the impact of other existing towers. This provision is only to be applied in unusual circumstances not resulting from the applicant's action or site selection unless no other site is possible.

4. Additional antennas and accessory uses to existing antennas may be added to an existing tower, under a Type I application, if the existing tower meets the setback and landscaping requirements of subsections (B), (C) and (G) of this section. Accessory uses shall include only such buildings and facilities necessary for transmission function and satellite ground stations associated with them, but shall not include broadcast studios, offices, vehicle storage areas, nor other similar uses not necessary for the transmission function. Accessory uses may include studio facilities for emergency broadcast purposes or for other special, limited purposes found by the approval authority not to create significant additional impacts nor to require construction of additional buildings or facilities exceeding 25 percent of the floor area of other permitted buildings.

Finding: The proposed tower is not a television antenna tower or a two-way radio antenna. It has been designed to allow additional cellular antennas.

5. If a new tower is approved, the applicant shall:

- a. Record the letter of intent required in NMC 15.445.200(D) in miscellaneous deed records of the office of the county recorder;**
- b. Respond in a timely, comprehensive manner to a request for information from a potential shared use applicant required under subsection (A) of this section;**
- c. Negotiate in good faith for shared use by third parties; and**
- d. Allow shared use where the third party seeking such use agrees in writing to pay reasonable pro rata charges for sharing, including all charges necessary to modify the tower and transmitters to accommodate shared use, but not total tower reconstruction, and to observe whatever technical requirements are necessary to allow shared use without creating interference.**
- e. Grounds for Suspension or Revocation.**
 - i. Willful, knowing failure of an owner whose tower was approved after November 6, 2000, to comply with the requirement of subsections (D)(5)(a) through (d) of this section shall be grounds for suspension or revocation of the use. Following report of such failure, the director shall schedule a hearing to determine whether the use should be suspended or revoked. The hearing shall be processed as a Type III public hearing before the planning commission.**
 - ii. Such conditions shall run with the land and be binding on subsequent purchasers of the tower site.**

Finding: These conditions will become conditions of approval.

E. Visual Impact. The applicant shall demonstrate that the tower can be expected to have the least visual impact on the environment, taking into consideration technical, engineering, economic and other pertinent factors. Towers shall be painted and lighted as follows:

- 1. Towers 200 feet or less in height shall be painted in accordance with regulations of the Federal Aviation Administration and/or Oregon State Department of Aviation. Where such regulations do not apply, towers shall be camouflaged. All new towers and antennas must either be camouflaged or employ appropriate stealth technologies that are visually compatible with a host building or structure, or the surrounding natural environment. The type of camouflage may include trees, flagpoles, bell towers, smoke stacks, steeples; however, other types of camouflage may be approved at the discretion of the decision making body.**

2. Towers more than 200 feet in height shall be painted in accordance with regulations of the Federal Aviation Administration and the Oregon State Department of Aviation.

3. Towers shall be illuminated as required by the Federal Aviation Administration and the Oregon State Department of Aviation.

4. Towers shall be the minimum height necessary to provide parity with existing similar tower-supported antennas and shall be freestanding where the negative visual effect is less than would be created by use of a guyed tower.

Finding: The proposed tower is less than 200 feet tall, and will be painted and/or lit as required by the FAA and ODA to ensure adequate visibility for air navigation. The tower is freestanding, not guyed.

F. Parking. A minimum of two parking spaces shall be provided on each site; an additional parking space for each two employees shall be provided at facilities which require on-site personnel. The director may authorize the joint use of parking facilities subject to the requirements of NMC 15.440.050.

Finding: The site has existing parking spaces for the industrial buildings. The parking for the cellular tower will only be used occasionally by maintenance personnel, so it is reasonable for the cellular tower to share the existing parking on the site. There are no on-site personnel for the cellular tower.

G. Vegetation. Existing landscaping on the site shall be preserved to the greatest practical extent. The applicant shall provide a site plan showing existing significant vegetation to be removed, and vegetation to be replanted to replace that lost.

H. Landscaping. Landscape material shall include the following:

1. For towers 200 feet tall or less, a 20-foot-wide landscape buffer is required immediately adjacent to the structure containing the telecommunications facility. At least one row of evergreen trees or shrubs, not less than four feet high at the time of planting, and spaced not more than 15 feet apart, shall be provided within the landscape buffer. Shrubs should be of a variety which can be expected to grow to form a continuous hedge at least five feet in height within two years of planting. Trees and shrubs in the vicinity of guy wires shall be of a kind that would not exceed 20 feet in height or would not affect the stability of the guys, should they be uprooted, and shall not obscure visibility of the anchor from the transmission building or security facilities and staff.

2. For towers more than 200 feet tall, a 40-foot-wide landscape buffer shall be provided immediately adjacent to the structure containing the telecommunications facility. Provide at least one row of evergreen shrubs spaced not more than five feet apart which will grow to form a continuous hedge at least five feet in height within two years of planting; one row of deciduous trees, not less than one-and-one-half-inch caliper measured three feet from the ground at the time of planting, and spaced not more than 20 feet apart; and at least one row of evergreen trees, not less than four feet at the time of planting, and spaced not more than

15 feet apart. Trees and shrubs in the vicinity of guy wires shall be of a kind that would not exceed 20 feet in height or would not affect the stability of the guys, should they be uprooted, and shall not obscure visibility of the anchor from the transmission building or security facilities and staff.

3. In lieu of these standards, the approval authority may allow use of an alternate detailed plan and specifications for landscaping, screening, plantings, fences, walls, structures and other features designed to camouflage, screen and buffer towers and accessory uses. The plan shall accomplish the same degree of screening achieved in subsections (H)(1) and (2) of this section, except as lesser requirements are desirable for adequate visibility for security purposes.

4. Grounds maintenance, including landscaping, shall be provided and maintained for the duration of the use, to encourage health of plant material and to protect public health and safety. The maintenance shall be the responsibility of the property owner, and/or the lessee of the property, and/or the owner of the tower.

Finding: The proposed tower preserves as much of the existing landscaping as possible, and includes a chain link fence for privacy screening. The site has industrial buildings buffering the view of the site on three sides. The applicant shall add evergreen shrubs along the western edge of the fenced area to provide screening. The shrubs shall be at least 4 feet tall and spaced no more than 5 feet on center.

C. Variance; Criteria That Apply - Newberg Development Code 15.215.040:

A. That strict or literal interpretation and enforcement of the specified regulation would result in practical difficulty or unnecessary physical hardship inconsistent with the objectives of this code.

Finding: The required tower setback is 30% of the height of the tower from any existing structure on the site, abutting properties, and public rights-of-way. The tower is 70 feet tall, so the required setback is 21 feet. The tower is setback 32 feet from the property to the east, and approximately 80 feet from the property to the west, so it meets the setback from abutting properties. It is setback over 200 feet from any public rights-of-way, so it meets the setback from public rights-of-way. It is setback over 22 feet from the southern building on the site, and 9' 5" from the building; the only setback it does not meet is from the building north of it on the site. The setback does result in a practical difficulty for the applicant, as there does not appear to be another location on the property where a cellular tower could be installed. The question is to determine what the objective or purpose of the setback standard is.

The Development Code section on cellular towers states that the purpose of the code section is:

15.445.180 Description and purpose.

The purpose of this article is to:

A. Allow new transmission towers, but only when necessary to meet functional requirements of the broadcast industry.

- B. Minimize visual impacts of towers through careful design, siting and vegetative screening.*
- C. Avoid potential damage to adjacent properties from tower failure and falling ice, through engineering and careful siting of tower structures.*
- D. Lessen impacts on surrounding residential areas.*
- E. Maximize use of any new transmission tower so as to minimize the need to construct new towers. [Ord. 2536, 11-6-00. Code 2001 § 151.670.]*

Based on this purpose section, the objective of the setback standard was to avoid potential damage to adjacent properties from tower failure and falling ice. The tower meets the setback standard from adjacent properties, the public rights-of-way, and the building to the south. The only building that is potentially more at risk of damage from tower failure or falling ice is the building to the north, which is owned by Total Concept Development, who signed the application for the cell tower and consented to the tower location. The proposed setback variance does not increase the potential damage to adjacent properties, so the setback requirement from the northern building does create a practical difficulty that is inconsistent with the objective of the Development Code.

B. That there are exceptional or extraordinary circumstances or conditions applicable to the property involved or to the intended use of the property which do not apply generally to other properties classified in the same zoning district.

Finding: The property is long and narrow, which limits the potential locations for a cellular tower on the site. The M-2 (Light Industrial) zone allows intensive development of the site, and cellular towers are an allowed use in the zone. The intensive development of the long narrow site created an exceptional condition which does not generally apply to other M-2 properties.

C. That strict or literal interpretation and enforcement of the specified regulation would deprive the applicant of privileges enjoyed by the owners of other properties classified in the same zoning district.

Finding: The Development Code does not encourage the construction of new cellular towers, but it acknowledges they are necessary when co-location will not be effective, and makes them an allowed use in the M-2 zone. A literal interpretation of the setback standard would deprive the applicant of the ability to install a cellular tower on this site, and deprive the applicant of a privilege enjoyed by the owners of other M-2 properties.

D. That the granting of the variance will not constitute a grant of special privilege inconsistent with the limitations on other properties classified in the same zoning district.

Finding: Granting the variance would give the property owner the same development rights for cellular towers as other M-2 property owners, so it would not be a special privilege.

E. That the granting of the variance will not be detrimental to the public health, safety or welfare or materially injurious to properties or improvements in the vicinity. [Ord. 2451, 12-2-96. Code 2001 § 151.163.]

Finding: The proposed tower will meet the setbacks from the public rights-of-way and from adjacent properties, so granting the variance would not be detrimental to public health or safety, or materially injurious, to properties or improvements in the vicinity. The only building that may have a potential increased risk due to tower failure or ice is the building to the north, which is owned by Total Concept Development; this is the same property owner that has signed a lease for the cell tower and signed the design review/variance application. The only building that they have potentially put at greater risk is their own, so granting the variance will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity.

CONCLUSION: Based on the above mentioned findings, the project meets the criteria required within the Newberg Development Code, subject to completion of the attached conditions.

Section III: Conditions –File DR2-15-003/VAR-15-001 Verizon Cellular Tower

A. THE FOLLOWING MUST BE COMPLETED BEFORE THE CITY WILL ISSUE A BUILDING PERMIT:

1. **Permit Submittal:** Submit a building permit application and two (2) complete working drawing sets of the proposed project. Show all the features of the plan approved through design review, including the following:
 - a. Grading plan
 - b. Mechanical details
 - c. Structural details
2. **Conditions of Approval:** Either write or otherwise permanently affix the conditions of approval contained within this report onto the first page of the plans submitted for building permit review.
3. **Landscaping plan:** Provide a revised landscaping plan showing evergreen shrubs along the western edge of the fenced area to provide screening. The shrubs shall be at least 4 feet tall and spaced no more than 5 feet on center.
4. **FCC approval:** Provide written confirmation from the appropriate responsible official that a Federal Communications Commission (FCC) antenna structure registration application (FCC 854 Form) has been approved, or a statement that an application is not required.
5. **ODA approval:** File a FAA form 7460-1 with the ODA, and provide a written statement from the Oregon Department of Aviation (ODA) that the application has been found to comply with the applicable regulations of the Department, or a statement that no such compliance is required.
6. **FAA approval:** The conditions in the FAA “Determination of No Hazard to Air Navigation” letter shall be made conditions of approval for this project (see below):

This aeronautical study revealed that the structure does not exceed obstruction standards and would not be a hazard to air navigation provided the following condition(s), if any, is(are) met:

It is required that FAA Form 7460-2, Notice of Actual Construction or Alteration, be e-filed any time the project is abandoned or:

- ☐ At least 10 days prior to start of construction (7460-2, Part 1)
☒ Within 5 days after the construction reaches its greatest height (7460-2, Part 2)

Based on this evaluation, marking and lighting are not necessary for aviation safety. However, if marking/lighting are accomplished on a voluntary basis, we recommend it be installed and maintained in accordance with FAA Advisory circular 70/7460-1 K Change 2.

This determination expires on 10/02/2016 unless:

- (a) the construction is started (not necessarily completed) and FAA Form 7460-2, Notice of Actual Construction or Alteration, is received by this office.
- (b) extended, revised, or terminated by the issuing office.
- (c) the construction is subject to the licensing authority of the Federal Communications Commission (FCC) and an application for a construction permit has been filed, as required by the FCC, within 6 months of the date of this determination. In such case, the determination expires on the date prescribed by the FCC for completion of construction, or the date the FCC denies the application.

NOTE: REQUEST FOR EXTENSION OF THE EFFECTIVE PERIOD OF THIS DETERMINATION MUST BE E-FILED AT LEAST 15 DAYS PRIOR TO THE EXPIRATION DATE. AFTER RE-EVALUATION OF CURRENT OPERATIONS IN THE AREA OF THE STRUCTURE TO DETERMINE THAT NO SIGNIFICANT AERONAUTICAL CHANGES HAVE OCCURRED, YOUR DETERMINATION MAY BE ELIGIBLE FOR ONE EXTENSION OF THE EFFECTIVE PERIOD.

This determination is based, in part, on the foregoing description which includes specific coordinates, heights, frequency(ies) and power. Any changes in coordinates, heights, and frequencies or use of greater power will void this determination. Any future construction or alteration, including increase to heights, power, or the addition of other transmitters, requires separate notice to the FAA.

This determination does include temporary construction equipment such as cranes, derricks, etc., which may be used during actual construction of the structure. However, this equipment shall not exceed the overall heights as indicated above. Equipment which has a height greater than the studied structure requires separate notice to the FAA.

This determination concerns the effect of this structure on the safe and efficient use of navigable airspace by aircraft and does not relieve the sponsor of compliance responsibilities relating to any law, ordinance, or regulation of any Federal, State, or local government body.

Any failure or malfunction that lasts more than thirty (30) minutes and affects a top light or flashing obstruction light, regardless of its position, should be reported immediately to (877) 487-6867 so a Notice to Airmen (NOTAM) can be issued. As soon as the normal operation is restored, notify the same number.

A copy of this determination will be forwarded to the Federal Communications Commission (FCC) because the structure is subject to their licensing authority.

7. Letter of intent:

- a. *Before a permit is issued: Record the letter of intent required in NMC 15.445.200(D) in miscellaneous deed records of the office of the county recorder;*
- b. *After a building permit is issued:*

b. Respond in a timely, comprehensive manner to a request for information from a potential shared use applicant required under subsection (A) of this section;

c. Negotiate in good faith for shared use by third parties; and

d. Allow shared use where the third party seeking such use agrees in writing to pay reasonable pro rata charges for sharing, including all charges necessary to modify the tower and transmitters to accommodate shared use, but not total tower reconstruction, and to observe whatever technical requirements are necessary to allow shared use without creating interference.

e. Grounds for Suspension or Revocation.

i. Willful, knowing failure of an owner whose tower was approved after November 6, 2000, to comply with the requirement of subsections (D)(5)(a) through (d) of this section shall be grounds for suspension or revocation of the use. Following report of such failure, the director shall schedule a hearing to determine whether the use should be suspended or revoked. The hearing shall be processed as a Type III public hearing before the planning commission.

ii. Such conditions shall run with the land and be binding on subsequent purchasers of the tower site.

8. Construction Plans must be submitted for all infrastructure per the requirements below.

General Requirements:

- a. All survey monuments on the subject site or that may be subject to disturbance within the construction area, or the construction of any off-site improvements shall be adequately referenced and protected prior to commencement of any construction activity. If the survey monuments are disturbed, moved, relocated or destroyed as a result of any construction, the project shall, at its cost, retain the services of a registered professional land surveyor in the State of Oregon to restore the monument to its original condition and file the necessary surveys as required by Oregon State law. A copy of any recorded survey shall be submitted to Staff.
- b. The applicant shall obtain written approval from the appropriate source to construct any utilities or improvements within easement areas.

The plans must note the following:

Utilities:

1. Storm Sewer Requirements:

- a. The system shall be reviewed and approved by the City of Newberg Public Works Department prior to issuance of Building Permits for the development.
- b. Stormwater Report: If net new impervious area is less than 500 sqft, submit a memo summarizing the impervious area surface calculations, including a description of pervious materials proposed to be installed. If net new impervious area is more than 500sqft, submit a final engineer's storm water report per the City of Newberg Engineering Design Standards. All onsite storm drain and detention/water quality facilities to be private and maintained by private property owner with storm water maintenance agreement.
- c. Stormwater SDC's – In accordance with Newberg Municipal Code, this design review does increase the impacts to the public improvement facility and is therefore not exempt from stormwater SDC charges.

2. Streets:

- a. Developer shall be responsible for the repair and replacement of any off-site city infrastructure, including streets, which are damaged by construction activities.

9. **Grading:** Obtain an erosion control permit and install, operate and maintain adequate erosion control measures in conformance with the standards adopted by the City of Newberg during the construction of any public/private utility and building improvements until such time as approved permanent vegetative materials have been installed.

B. THE FOLLOWING MUST BE ACCOMPLISHED PRIOR TO OCCUPANCY

- 1. **All conditions** noted above must be completed prior to occupancy.
- 2. **Fire Department Requirements:** This project is subject to compliance with all Fire Department standards relating to access and fire protection.
- 3. **Design Review Conditions:** Contact the Planning Division (503-537-1240) to verify that all design review conditions have been completed.
- 4. **Site Inspection:** Contact the Building Division (503-537-1240) for Building, Mechanical, and Plumbing final inspections. Contact the Fire Department (503-537-1260) for Fire Safety final inspections. Contact Yamhill County (503-538-7302) for electrical final inspections. Contact the Planning Division (503-537-1240) for landscaping final inspections.

C. DEVELOPMENT NOTES

1. Systems development charges (SDCs) will be collected when building permits are issued. For questions regarding SDCs please refer to the city fee packet and contact the Engineering Division.

Attachment 1: Aerial Photo

