



CITY OF

West Linn

PLANNING DIRECTOR DECISION

APPLICANT: TROY AND GINA BUNDY, 1215 NINTH STREET

FILE NO.: WAP-09-03

REQUEST: WATER RESOURCE AREA PROTECTION PERMIT (WAP) TO ALLOW STRUCTURES, LANDSCAPING AND OTHER DEVELOPMENT IN A WATER RESOURCE AREA TRANSITION AND SETBACK, A RIPARIAN CORRIDOR AND AN OPEN SPACE EASEMENT LOCATED AT 1215 NINTH STREET.

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SPECIFIC DATA

**OWNER/
APPLICANT:** Troy and Gina Bundy, 1215 Ninth Street, West Linn, OR 97068

LOCATION: 1215 Ninth Street

SITE SIZE: 21,539 square feet

**LEGAL
DESCRIPTION:** Clackamas County Assessor's Map 3-1E-2AB, Tax Lot 8201

ZONING: R-10

**COMP PLAN
DESIGNATION:** Low Density Residential

**APPROVAL
CRITERIA:** Community Development Code (CDC) Chapter 32, Water Resource Area Protection

120-DAY RULE: The City of West Linn is required to exhaust all local review of this case prior to April 9, 2010.

PUBLIC NOTICE: Public notice was mailed to all Neighborhood Associations and affected property owners within 500 feet of the perimeter of the property on January 27, 2010. The property was posted with a sign on January 28, 2010. The application has also been posted on the City's website. Therefore, notice requirements have been satisfied.

SPECIFIC PROPOSAL:

The applicant requests a Water Resources Area Protection (WPA) permit to allow a swimming pool and associated patio, fire pit, landscaping, drainage and other development in (1) the 65-foot wide transition area and structural setback area of an inventoried wetland designated per CDC Chapter 32, (2) in a recorded open space conservation easement that was conveyed to the City of West Linn; and (3) in a 100-foot wide Riparian Corridor designated per CDC Chapter 32.

Wetlands designated on the City of West Linn's adopted West Linn Wetland, Riparian and Wildlife Inventory, 2003 (WI-02) lie to the north of the applicant's rear property line. The wetlands are located on property owned by Portland General Electric (PGE). Aerial photographs taken in 2007 show the wetland area was intact at that time. Subsequent to that date, the applicant apparently removed the native trees and vegetation, filled and graded the wetland and landscaped it with turf edged with bark mulch and tiki lights. This landscaped fill area extends

about 35-40 feet beyond the rear property line of the lot at 1215 Ninth Street as well as behind the neighboring lot at 1221 Ninth Street (see Attachment PD-2). The applicant explains in their submittal (Attachment PD-8) that they cleared this area and landscaped it to reduce a perceived fire hazard associated with trees and vegetation in the wetland area, to reduce mosquitoes and to clear the area of debris and materials that had been dumped by previous homebuilder(s). The applicant states in their submittal that no fill or dirt was dumped in the wetlands.

BACKGROUND:

Chronology of Events

June 12, 2001

In concert with a lot line adjustment, an open space conservation easement document was recorded with Clackamas County primarily to protect the wetland. The conservation easement encumbered both lots at 1215 and 1221 Ninth Street, extending between 30-40 feet onto both properties from their respective north lot lines. The easement prohibits, among other things, any construction in those areas, manipulation or alteration of natural water courses, marshes, or habitat area, removal of native vegetation or planting non-native plant material without written approval from the City of West Linn (see Attachment PD-5).

2001

A house was constructed at 1215 Ninth Street house outside of the conservation easement.

February 2003

The West Linn Wetland, Riparian and Wildlife Inventory was prepared to address Statewide Planning Goal 5 requirements. That inventory identified and cataloged (WI-02) the wetlands at the rear of the subject property and the natural attributes and functions that made them worthy of protection. The inventory indicated that the wetlands are the largest in the city.

July 9, 2009

Gina Bundy submitted an application for a building permit (Permit 09-454) for pool construction at 1215 Ninth Street.

July 15, 2009

At the Development Review Committee meeting, staff identified the conflict between the proposed pool location and the wetlands identified on the City's GIS mapping system and associated wetlands transition zone that covers much of the lot at 1215 Ninth Street. Consequently, the requested building permit for a pool was not issued. The property owner was advised that the proposed pool location was in the wetlands transition zone, and within the riparian corridor and a recorded conservation easement. Staff stated that further review would be required and that work in such areas requires a water resource area permit.

July/August 2009 (exact date unknown)

The property owner, Gina Bundy, telephoned John Nomie of the Building Department and asked about the status of the permit. In the course of the conversation, Mrs. Bundy admitted that the pool had already been installed.

November 2009

Jerilyn Evans of 1221 Ninth Street, which abuts the lot at 1215 Ninth Street, called to complain about the lack of a fence around the swimming pool and that it represents an attractive nuisance and hazard for her children.

November 4, 2009

Associate Planner Peter Spir and Shaun Rohret, Storm Drainage Engineer, visited 1215 Ninth Street and noted that the pool had been installed along with extensive poolside features (e.g., a patio, decking and a fire pit). In addition, the PGE property to rear of site had been cleared and grubbed, including the removal of all native vegetation and trees. The area had then been apparently filled, graded and covered with grass turf. This landscaped area on PGE land extends 110 feet across the width of the applicant's property, about 40 feet to the north, and about 20 feet westward behind the lot at 1221 Ninth Street (see Attachment PD-2). In order to drain water that would have been captured by the wetlands, the applicants had a shallow gravel and rock drainage channel, edged in bark mulch, constructed along their rear property line. The drainage extends westward onto the adjacent property at 1221 Ninth Street. The applicants were beginning to install a gate and fence around the property. Structural encroachments (i.e., a tool shed and fence) on the lot at 1221 Ninth Street were also noted.

Staff explained the restrictions on construction and site modification in the conservation easement and wetland areas and associated transition/setback areas. Staff also told Mrs. Bundy that it looked as if excavated dirt from the pool site had been dumped in the wetlands. Staff also spoke to Brian Evans of 1221 Ninth Street regarding the encroachments at the rear of his yard, including the fence and tool shed.

November 9, 2009

Troy Bundy mailed a letter to Peter Spir, received on November 10, 2009, explaining circumstances at the site. Although he did not contest the basic facts, he stated that the dirt excavated from the pool was not dumped in the wetlands and that it had been transported away from the site. (Regardless of the source of the dirt, grading and filling occurred in the wetland based on the fact that the landscaped area is elevated 1-1.5 feet above the average wetland grade. Aerial photos of the site in 2007 showed that the PGE land behind the applicant's lot was covered with native vegetation. An aerial photograph from 2008 showed only bare dirt on a large portion of the PGE property adjacent to 1215 Ninth Street. The current fill/landscaped area is much larger still.)

November 11, 2009

Troy and Gina Bundy applied for Water Resource Area permit to allow the swimming pool. The Bundy's did not apply for a required pre-application conference.

January 26, 2009

Senior Planner Chris Kerr, Anita Huffman of Department of State Lands (DSL), Peter Spir and Shaun Rohret visited the site at 1215 Ninth Street again. Mrs. Bundy was in attendance. Anita Huffman explained that DSL regulations prohibit removal/fill of wetlands. She stated that she would take action in the coming week(s) which could include a requirement for full site restoration to wetland status plus penalties.

January 27, 2010

The application for a Water Resource Area permit was deemed complete since the 30-day completeness review period had expired. The City has 150 days (30+120) to exhaust all local review and appeals. That period lapses on April 9, 2010.

January 27, 2010

Public notice was mailed to all property owners within 500-foot radius of site, DSL, US Army Corps of Engineers and all neighborhood associations.

January 28, 2010

Staff posted a public notice sign at the entrance driveway to 1215 Ninth Street.

ISSUES:

ISSUE 1:

The applicant constructed a swimming pool without obtaining a building permit.

The applicant applied for a building permit (09-454) but built the swimming pool, patio area, and fire pit prior to issuance of a permit. The applicant does not have an approved building permit. No building inspections were conducted by the City of West Linn Building Inspectors. This is in violation of Chapter 8 of the West Linn Municipal Code which requires an approved building permit prior to any construction.

ISSUE 2:

The applicant constructed a swimming pool in a Water Resource Area without applying for and receiving approval of a Water Resource Area permit.

Community Development Code (CDC) Chapter 32 states:

32.025 PERMIT REQUIRED

No person shall be permitted to fill, strip, install pipe, undertake construction, or in any way alter an existing water resource area without first obtaining a permit to do so from the decision making authority, paying the requisite fee, and otherwise complying with all applicable provisions of this ordinance.

32.030 *PROHIBITED USES*

Prohibited uses in water resource areas include the following:

- A. *Any new lawn area or garden area consisting primarily of non-native vegetation.*

ISSUE 3:

The swimming pool, patio area, fire pit, removal of native vegetation, grading, and planting non-native vegetation occurred within an Open Space Conservation Easement (see Attachment PD-5). The terms of the easement conveyed to the City of West Linn provide explicit and clear restrictions on the use and development of the areas subject to the easement. The easement language states that without prior and express written consent from the Grantee (City of West Linn), there shall be no:

A. Construction of buildings...fences....

B. Filling, excavating...no removal of topsoil...nor any ...change in the topography of the land....

C. Removal, destruction or cutting of trees or plants (except removal of Himalayan blackberry, poison oak, English Ivy), planting of non-native trees or plants including lawn....or disturbances or change of the natural habitat in any manner.

D. ...no changing of the topography through the placing of soil or other substance or material such as land fill....

E. Manipulation or alteration of natural water courses...marshes or uses detrimental to water purity, drainage, flood control, water conservation, erosion control, soil conservation, fish and wildlife habitat preservation.

Most of the provisions of this easement have been violated by constructing the swimming pool, patio, and fire pit; filling the wetland area, removing native plant material and associated habitat; constructing a new water course; and installing lawn and modifying topography to the extent that drainage is altered and the flood storage capacity of the area is diminished.

ISSUE 4:

The failure of the property owner(s) to obtain Department of State Lands (DSL) permits prior to development. As previously noted a DSL field representative visited the site and will be pursuing parallel enforcement of DSL regulations.

ISSUE 5:

The applicant provided a letter dated November 16, 2009 contending that the vegetation in and around the wetlands constitute a fire hazard and that removing trees and native vegetation was an appropriate response to fire codes cited in the letter (see Attachment PD-8). Staff finds no criterion in CDC Chapter 32 relating to fire hazards and the appropriateness of removing wetlands to address that potential hazard. Therefore, this argument is not germane.

ISSUE 6:

The applicant states that no fill was used in the wetlands.

An Anderson Poolworks billing statement itemizing the trucking of excavated dirt from the swimming pool site was provided by the applicant as evidence (see Attachment PD-8). The statement notes that 178 cubic yards of excavation spoils were removed from the site. However the statement also notes that 22 cubic yards of gravel was delivered to the site. That translates into two dump truck loads of fill. The applicant states that no fill was dumped on site as evidence by the remaining uncovered tree trunks in the wetland. Staff, including three engineers, visited the site and noted that the lawn area on the PGE property, which displaced the wetland, was about 1 to 1 1/2 feet above the elevation of the grade of the adjacent wetlands. In the professional opinion of engineers, fill had been used in the area.

The applicant stated in a letter dated November 9, 2009 that after heavy equipment had parked (on the wetlands/PGE property) during pool construction, the "area was pretty much leveled out as a result of the (heavy truck) traffic. Rather than letting it (native vegetation) grow back in, we did turn, rake and plant it."

PUBLIC COMMENTS

Lynn Fox	e-mailed inquiring about the permit
Karie Oakes	e-mailed primarily about the notice posted for the permit; urged the department not to accept the application, but if it is, to deny the request.
Gary Hitesman	e-mailed in favor of denial of the permit
Roberta Lapeyre	telephoned about status of the permit

(The e-mails are attached as correspondence)

Staff Findings

32.050 APPROVAL CRITERIA

No application for development on property containing a water resource area shall be approved unless the decision-making authority finds that the following standards have been satisfied, or can be satisfied by conditions of approval.

- A. Proposed development submittals shall identify all water resource areas on the project site. The most currently adopted Surface Water Management Plan shall be used as the basis for determining existence of drainageways. The exact location of drainageways identified in the Surface Water Management Plan, and drainageway classification (e.g., open channel vs. enclosed storm drains), may have to be verified in the field by the City Engineer. The Local Wetlands Inventory shall be used as the basis for determining existence of wetlands. The exact location of wetlands identified in the Local Wetlands Inventory on the subject property shall be verified in wetlands delineation analysis prepared for the applicant by a certified wetlands specialist. The Riparian Corridor inventory shall be used as the basis for determining existence of riparian corridors.

FINDING NO. 1

The applicant did not provide maps delineating drainage ways, riparian corridors and wetlands as required above. Therefore, the applicant did not satisfy this criterion.

Staff notes that the drainageway/wetlands are identified in the Surface Water Management Plan and as a wetland in the Wetland, Riparian and Wildlife Habitat Inventory (identified as wetland WI-02). There is a 100-foot wide riparian corridor on both sides of this wetland.

- B. Proposed developments shall be so designed as to maintain the existing natural drainageways and utilize them as the primary method of storm water conveyance through the project site unless the most recently adopted West Linn Surface Water Management Plan calls for alternate configurations (culverts, piping, etc.). Proposed development shall, particularly in the case of subdivisions, facilitate reasonable access to the drainageway for maintenance purposes.
- C. Development shall be conducted in a manner that will minimize adverse impact on water resource areas. Alternatives which avoid all adverse environmental impacts associated with the proposed action shall be considered first. For unavoidable adverse environmental impacts, alternatives that reduce or minimize these impacts shall be selected. If any portion of the water quality resource area is proposed to be permanently disturbed, the applicant shall prepare a mitigation plan as specified in CDC 32.070 designed to restore disturbed areas, either existing prior to development or disturbed as a result of the development project, to a healthy natural state.

FINDING NO. 2:

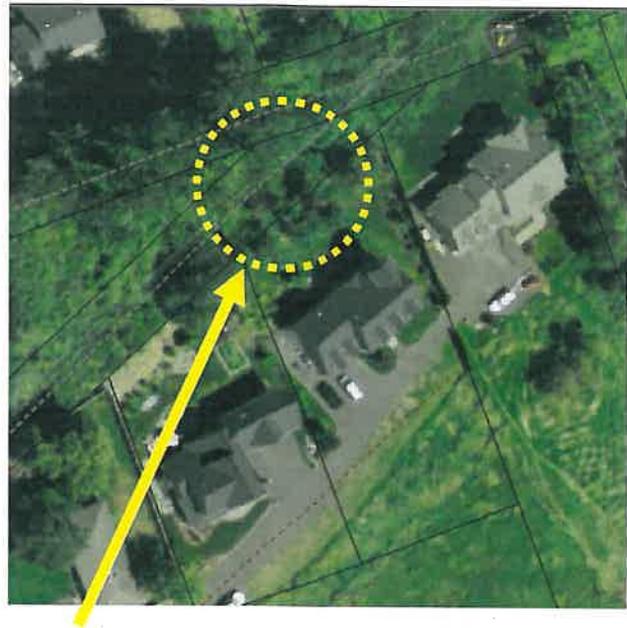
The 2007 aerial photo of the site below shows that at that time, the PGE property to the north of the applicant's lot was covered with native trees and other vegetation. The natural drainage way and wetland system were severely damaged, reconfigured and stripped of the native vegetation. Wetlands form at low points that collect water. City Engineering and Planning staff visited the site twice and found that the elevation of the lawn area that displaced the wetland was higher by 1-1.5 feet than the adjacent undisturbed wetland area. Staff also noted a distinct downhill slope from the landscaped wetland area to the north property line of 1215 Ninth Street. The elevation of the altered wetland relative to its surroundings indicates that fill had been used. As previously noted, the applicant said that no fill or material was dumped in this area. The applicant submitted an Anderson Poolworks statement dated 8/31/09 listing the removal of 178 cubic yards of pool excavation spoils to Anderson Poolworks. It also listed the delivery of 22 cubic yards of gravel which is two dump truck loads.

The natural drainage way and wetland that existed in this area has been filled/covered over and the water flow has been redirected by the applicant. A channel has been dug along the north property line and filled with gravel as a means of conveyance for water. This constitutes a clear disturbance of the water resource. No mitigation plan has been offered. Therefore, the criterion has not been met.

2008 photo



2007 photo



Trees and wetland/ native vegetation shown in this 2007 aerial photo have since been removed

- D. Water resource areas shall be protected from development or encroachment by dedicating the land title deed to the City for public open space purposes if either: 1) a finding can be made that the dedication is roughly proportional to the impact of the development; or, 2) the applicant chooses to dedicate these areas. Otherwise, these areas shall be preserved through a protective easement. Protective or conservation easements are not preferred because water resource areas protected by easements have shown to be harder to manage and, thus, more susceptible to disturbance and damage. Required 15-foot wide structural setback areas do not require preservation by easement or dedication.

FINDING NO. 3:

There already is a recorded easement in place that prohibits any construction, grading or development without approval from the City of West Linn. These provisions have been ignored and thus the intent of this criterion has not been met.

- E. The protected water resource area shall include the drainage channel, creek, wetlands, and the required setback and transition area. The setback and transition area shall be determined using the following table:

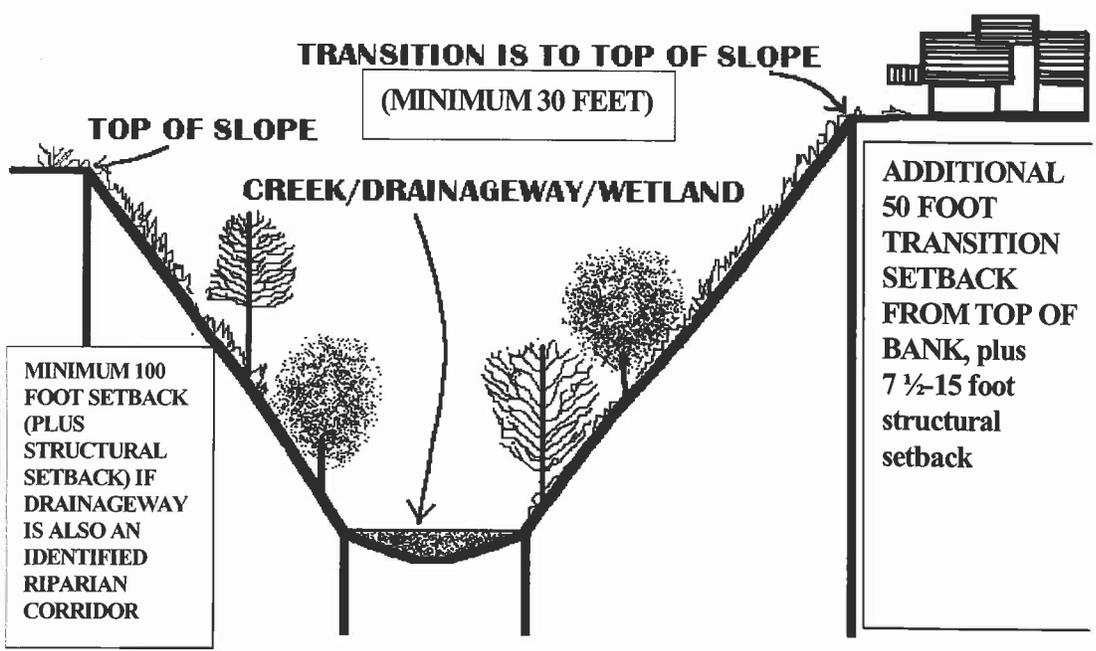
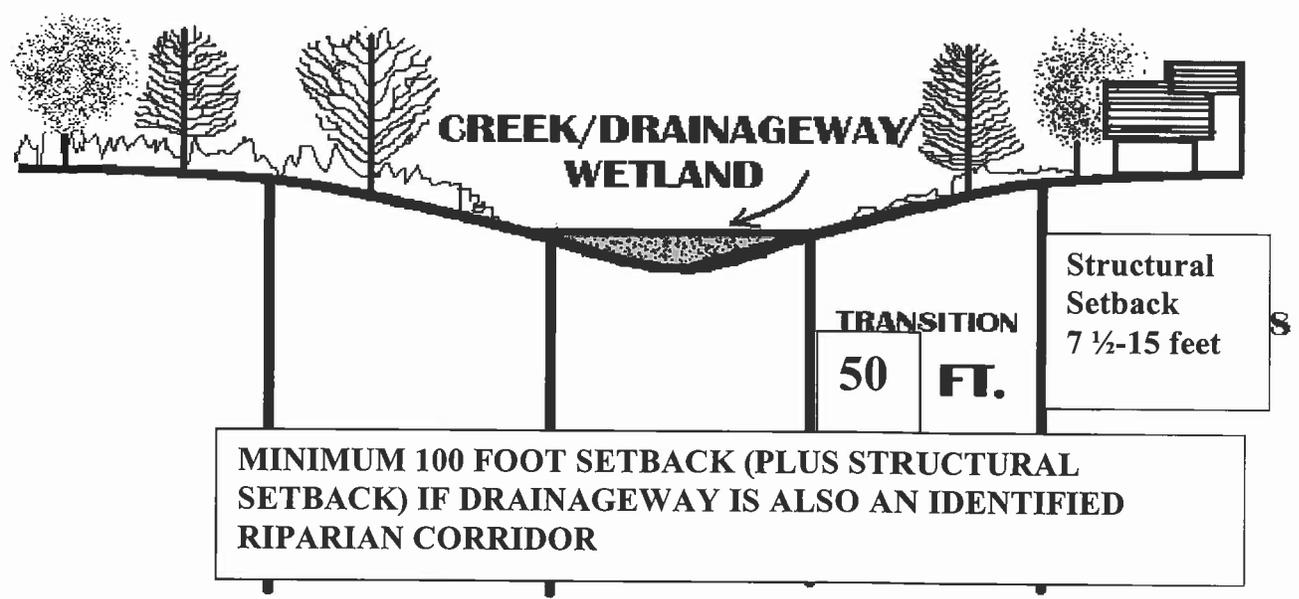
Table 32-1. Required Widths of Setback and Transition Area.

Protected Water Feature Type (see CDC Chapter 2 Definitions)	Slope Adjacent to Protected Water Feature	Starting Point for Measurements from Water Feature	Width of Setback and Transition Area on each side of the water feature
Wetland, Major Drainageway, Minor Drainageway	0% - 25%	<ul style="list-style-type: none"> Edge of bankful flow or 2-year storm level; Delineated edge of wetland 	50 feet plus structural setback.
Wetland, Major Drainageway, Minor Drainageway	$\geq 25\%$ to a distinct top of ravine ¹	<ul style="list-style-type: none"> Edge of bankful flow or 2-year storm level; Delineated edge of wetland 	Distance from starting point of measurement to top of ravine ¹ (30 foot minimum), plus an additional 50-foot setback, plus structural setback.
Wetland, Major Drainageway, Minor Drainageway	$\geq 25\%$ for more than 30 feet, and no distinct top of ravine for at least 150 feet	<ul style="list-style-type: none"> Edge of bankful flow or 2-year storm level; Delineated edge of wetland 	200 feet, plus structural setback
Riparian Corridor	any	<ul style="list-style-type: none"> Edge of bankful flow or 2-year storm level 	100 feet or the setback required under major and minor drainageway provisions, whichever is greater., plus structural setback
Formerly Closed Drainage Channel Reopened (see 32.050(N))	n/a	<ul style="list-style-type: none"> Edge of bankful flow or 2-year storm level 	Variable: See CDC 32,050(N)

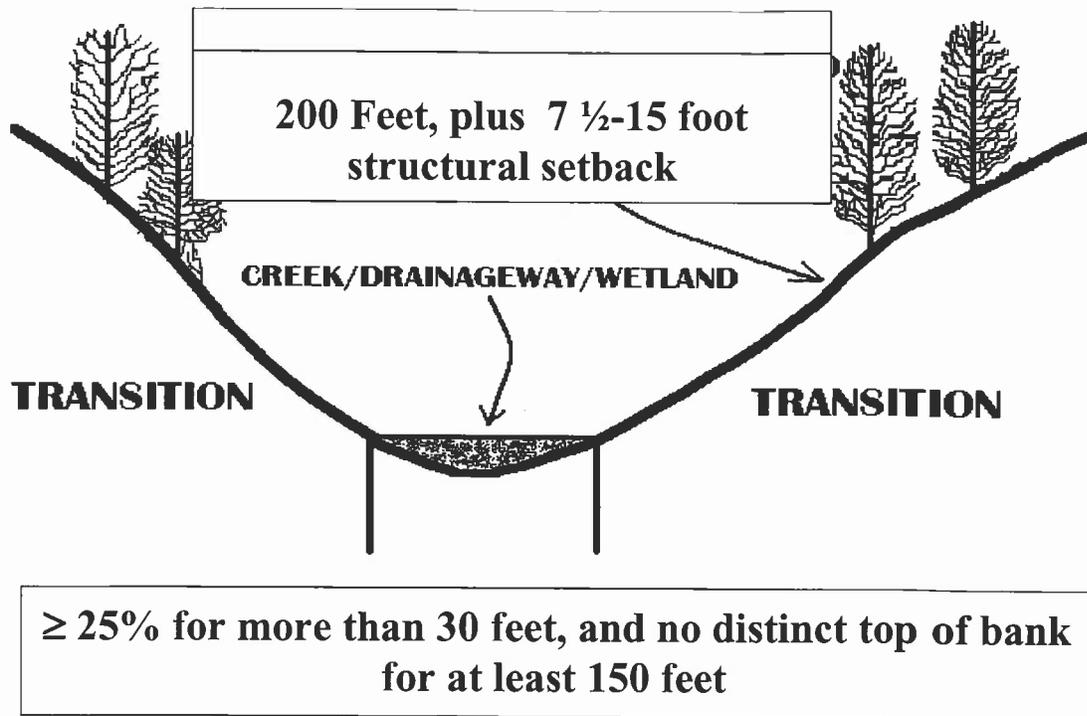
¹Where the protected water feature is confined by a ravine or gully, the top of ravine is the location where the slope breaks at least 15% and the slope beyond the break remains less than 25% for at least 50 feet.

At least three slope measurements along the water feature, at no more than 100-foot increments, shall be made for each property for which development is proposed. Depending upon the width of the property, the width of the protected corridor will vary.

SLOPE IS UNDER 25 %



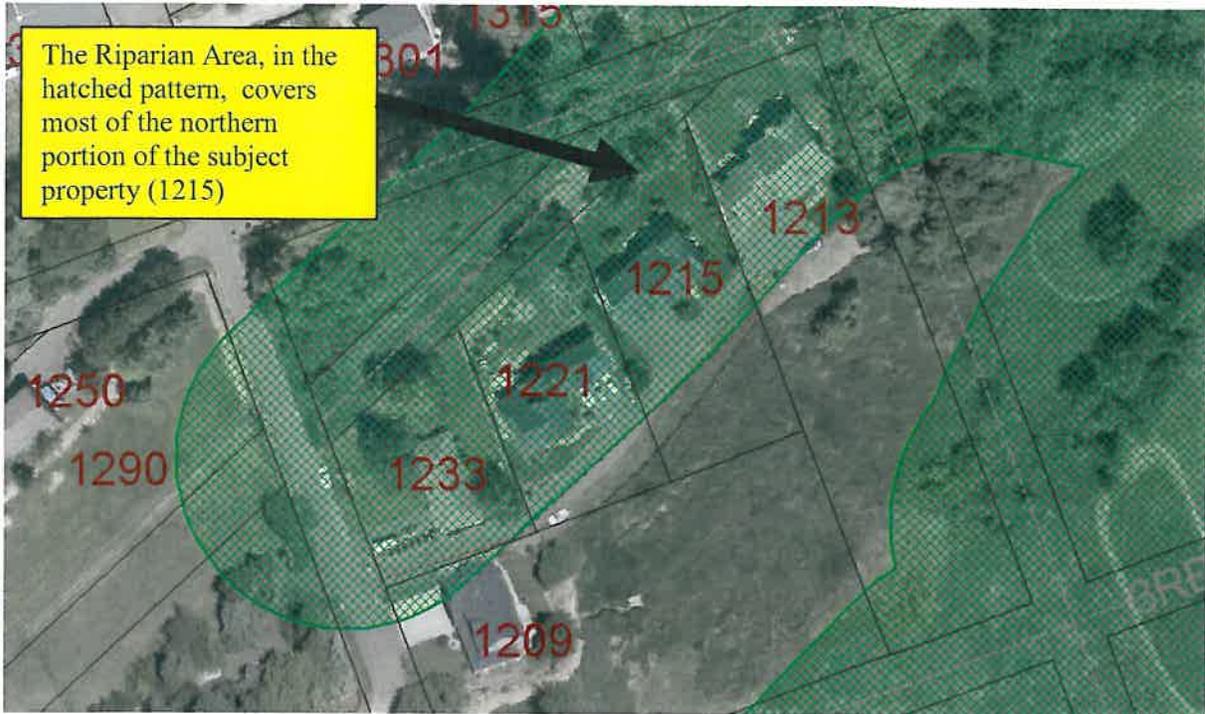
WELL DEFINED RAVINE. SLOPES OVER 25%. DISTINCT EDGE



FINDING NO.4:

Staff finds that the water resource area or drainageway has a slope of under 25% and therefore all structures must be 65 feet from the edge of the wetland. Staff finds that the pool, patio, fire pit, and a fence are located within 65 feet of the wetland edge. The wetland edge is determined by extending the existing edge in the undisturbed portion west of 1215 Ninth Street. Therefore the criterion is not met.

Staff also finds that the Riparian corridor extends 100 feet from the edge of the wetlands, which extends across the applicant's rear yard right up to the rear elevation of the house. The Riparian Area section of CDC Chapter 32 was adopted in February 2007. Structures in place prior to that date are grandfathered in as existing non-conforming structures. The recent pool and associated construction in that riparian area fail to meet the criterion.



- F. Roads, driveways, utilities, or passive use recreation facilities may be built in and across water resource areas when no other practical alternative exists. Construction shall minimize impacts. Construction to the minimum dimensional standards for roads is required. Full mitigation and revegetation is required, with the applicant to submit a mitigation plan pursuant to CDC Section 32.070 and a revegetation plan pursuant to CDC Section 32.080. The maximum disturbance width for utility corridors is as follows:
- a. For utility facility connections to utility facilities, no greater than 10 feet wide.
 - b. For upgrade of existing utility facilities, no greater than 15 feet wide.
 - c. For new underground utility facilities, no greater than 25 feet wide, and disturbance of no more than 200 linear feet of Water Quality Resource Area, or 20% of the total linear feet of Water Quality Resource Area, whichever is greater.

FINDING NO. 5:

No driveways, utilities or passive recreation facilities are proposed therefore this criterion does not apply.

- G. Prior to construction, the water resource area shall be protected with an anchored chain link fence (or approved equivalent) at its perimeter and shall remain undisturbed except as specifically allowed by an approved water resource area permit. Such fencing shall be maintained until construction is complete. The water resource

area shall be identified with City-approved permanent markers at all boundary direction changes and at 30- to 50-foot intervals that clearly delineate the extent of the protected area.

FINDING NO. 6:

Fencing is not necessary at this time since the site disturbance has already occurred.

- I. Sound engineering principles regarding downstream impacts, soil stabilization, erosion control, and adequacy of improvements to accommodate the intended drainage through the drainage basin shall be used. Storm drainage shall not be diverted from its natural watercourse. Inter-basin transfers of storm drainage shall not be permitted.
- J. Appropriate erosion control measures based on CDC Chapter 31 requirements shall be established throughout all phases of construction.

FINDING NO. 7:

There is no evidence presented that any of the grading and de-vegetation undertaken by the applicant relied upon accepted engineering principles regarding downstream impacts. Storm drainage clearly has been diverted from its natural course as noted by the construction of a gravel drainage channel along the north property line of 1215 and 1221 Ninth Street. Therefore the criterion is not met. (Erosion control measures will be required during water resource area /wetland restoration but at this time that portion of the criterion is not applicable).

- K. Vegetative improvements to areas within the water resource area may be required if the site is found to be in an unhealthy or disturbed state, or if portions of the site within the water resource area are disturbed during the development process. "Unhealthy or disturbed" includes those sites that have a combination of native trees, shrubs, and groundcover on less than 80% of the water resource area and less than 50% tree canopy coverage in the water resource area. "Vegetative improvements"-will be documented by submitting a revegetation plan meeting CDC Section 32.080 criteria that will result in the water resource area having a combination of native trees, shrubs, and groundcover on more than 80% of its area, and more than 50% tree canopy coverage in its area. Where any existing vegetation is proposed to be permanently removed, or the original land contours disturbed, a mitigation plan meeting CDC Section 32.070 criteria shall also be submitted. Interim erosion control measures such as mulching shall be used to avoid erosion on bare areas. Upon approval of the mitigation plan, the applicant is responsible for implementing the plan during the next available planting season.

FINDING NO. 8:

The site contained vegetation that supported wetland functions, such as cleansing of stormwater and wildlife habitat. This vegetation was removed and replaced primarily with turf, the pool, patio and associated development. In addition, the water absorption and flood storage capacity of the

area were diminished. Restoration will be required to restore these wetland functions. According to the DSL representative, the site is definitely recoverable. Prior to the restoration, a full mitigation plan will have to be prepared by a wetland specialist. No mitigation or revegetation plans per CDC 32.070 and 32.080 have been submitted by the applicant. Therefore the criterion is not met.

- L. Structural Setback area: where a structural setback area is specifically required, development projects shall keep all foundation walls and footings at least 15 feet from the edge of the water resource area transition and setback area if this area is located in the front or rear yard of the lot, and 7 ½ feet from the edge of the water resource area transition and setback area if this area is located in the side yard of the lot. Structural elements may not be built on or cantilever over the setback area. Roof overhangs of up to three feet are permitted in the setback. Decks are permitted within the structural setback area.

FINDING NO.9:

The applicant's structures and hardscapes (e.g., pool, patio, fire pit, etc) all encroach within the conservation easement, the 100-foot wide riparian corridor and the 65-foot wide water resource transition and setback as measured from the wetland edge. Therefore, the criterion is not met.

- M. Stormwater Treatment Facilities may only encroach a maximum of 25 feet into the outside boundary of the water resource area; and the area of encroachment must be replaced by adding an equal area to the water quality resource area on the subject property. Facilities that infiltrate storm water onsite, including the associated piping, may be placed at any point within the water resource area outside of the actual drainage course so long as the forest canopy and the areas within ten feet of the drip lines of significant trees are not disturbed. Only native vegetation may be planted in these facilities.

FINDING NO. 10:

Gravel and bark surfaced drainage facilities were installed to accommodate water that would have flowed in the natural drainage way and wetland where it would have been cleansed. This criterion does not apply.

32.090 REDUCTION IN STANDARDS FOR HARDSHIP

The purpose of CDC Section 32.090 is to ensure that compliance with CDC Chapter 32 does not cause unreasonable hardship. To avoid such instances, the requirements of CDC Chapter 32 may be reduced. Reductions are also allowed when strict application of CDC Chapter 32 would deprive an owner of all economically viable use of land. The decision making authority may impose such conditions as are deemed necessary to limit any adverse impacts that may result from granting relief.

- A. Lots located completely inside the water resource area. Development may occur on lots located completely within the water resource area that are recorded with the County Assessor's Office on or before the effective date of this ordinance. Development shall disturb the minimum necessary area to allow the proposed use or activity, and in any situation no more than 5,000 square feet of the water resource area, including access roads and driveways, subject to the erosion and sediment control standards in CDC Chapter 31, and subject to a finding that the proposed development does not increase danger to life and property due to flooding and erosion.
- B. Lots located partially inside the water resource area. A reduction to avoid the loss of all economically viable use of a vacant lot recorded with the County Assessor's Office on or before the effective date of this ordinance that is partially inside the water resource area is permitted. Development on such lots shall not disturb more than 5,000 square feet of the water resource area, including access roads and driveways, subject to the erosion and sediment control standards of CDC Chapter 31. Applicants must demonstrate the following:
 - 1. Without the proposed reduction, the applicant would be denied economically viable use of the subject property. To meet this criterion, the applicant must show that no other application could result in permission for an economically viable use of the subject property. Evidence to meet this criterion shall include a list of uses allowed on the subject property.
 - 2. The proposed intrusion is the minimum necessary to allow economically viable use of the subject property.
 - 3. The proposed reduction will comply with CDC Chapter 31, Erosion Control;
- C. If a reduction in standards is granted pursuant to criteria of CDC 32.090(B), the reduction shall be subject to the following conditions:
 - 1. The minimum width of the water resource area's transition and setback area shall be 15 feet on each side of a wetland or drainage course.
 - 2. As mitigation for the permanent disturbance of any portion of the normally required water resource area, an equal area on the property which would not normally be within the water resource area shall be revegetated to meet the standards of CDC 32.050(K). If there does not exist enough site area to meet this requirement, the applicant shall revegetate the entire area of the property that would not normally be within the water resource area, adjacent to the actual water resource area, and is not proposed for permanent disturbance to meet the standards of CDC 32.050(K)
- D. Any further reduction of the standards of this chapter shall require approval of a Variance pursuant to CDC Chapter 75.

FINDING NO. 15:

The applicant asked in the last paragraph of their October 21, 2009 submittal for consideration under the hardship provisions above. Those provisions are intended to make reasonable, modest accommodation for development of a property where the owner otherwise would be deprived of all economically viable use of land. For example, it allows for construction of a house on a legal lot of record that would otherwise be rendered unbuildable due to the setbacks and transition areas. Up to 5,000 square feet of disturbed area is allowed to accommodate a house, utilities, all hardscapes (e.g., , driveways and walkways) and all grading. In a recent 2009 case, the Holiday Inn Express proposed for Willamette Falls Drive was denied a hardship when City Council found that a smaller, completely different use of the property, such as an espresso stand, could be regarded as an economically viable alternative to a hotel. The driveways, front sidewalk and the house footprint at 1215 Ninth Street total approximately 7,175 square feet. The house at 1215 Ninth Street has been assessed by Clackamas County at 509,830 dollars.

Staff finds that there is no evidence in the record demonstrating that the applicant would be deprived of all economically viable use of the land if construction of a swimming pool or associated facilities: patio, fire pit, lawn, etc within the water resource area/transition area was denied. There is already is significant economic development at this site. Denial of the hardship request is also appropriate since the existing disturbed areas exceed the 5,000 square foot disturbed area allowed by the hardship provision. Therefore, staff finds that this hardship criterion is not met.

Decision

Based upon the above staff findings, this application is hereby denied.

I declare to have no interest in the outcome of this decision due to some past or present involvement with the applicant, the subject property, or surrounding properties, and therefore, can render an impartial decision. The provisions of the CDC Chapter 99 have been met.



JOHN SONNEN, Planning Director

2/19/2010

DATE

Appeals to this decision must be filed with the West Linn Planning Department within 14 days of mailing date. Cost is \$400. The appeal must be filed by an individual who has established standing by submitting written comments prior to February 17, 2010.

Mailed this 19 day of February, 2010.
Therefore, the 14-day appeal period ends at 5 p.m., on March 5, 2010.

EXHIBITS

PD-1	Completeness letter.....	17
PD-2	Staff photographs of site.....	18-31
PD-3	CDC Chapter 106.....	32-33
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CITY OF
West Linn

Sent

January 27, 2010

Troy and Gina Bundy
1215 Ninth Street
West Linn, OR 97068

Re: WAP-09-03

Dear Mr. and Mrs. Bundy,

Your land use application submittal received November 11, 2009 is deemed complete by default. The City is obliged to exhaust all local review by April 9, 2010. The Planning Director's decision date is expected to be February 17, 2010.

Please call me at 503-723-2539 if you have any planning related questions or, for faster response, e-mail me at pspir@westlinnoregon.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'Peter Spir', with a long horizontal flourish extending to the right.

Peter Spir
Associate Planner

Devrev-completeness-complete-WAP-09-03

LOOKING FROM NORTH EDGE OF
DISTURBED PUE PROPERTY TOWARDS 1215 NINTH ST



PROPERTY
LINE
WHERE
PEOPLE
ARE
STANDING



PGE
LAND



PGE LAND



Tool
shed @
1221
NINTH
ST



REAR PROPERTY LINE



1215 NINTH ST
PATIO

PROPERTY MARKER
GRAVEL DRAINAGE DITCH
21

PGE PROPERTY
(FORMER WETLAND)

PUE PROPERTY



1215 NINTH ST.

22



LOOKING TOWARDS FORMER
WETLANDS
23



AT REAR OF 1221 NINTH ST.

GRAVEL DITCH FOR
DRAINAGE



REAR PROPERTY MARKER
25

UNDISTURBED PORTION OF
WETLAND STILL FUNCTIONING
AND WATERBOUND .





AT REAR OF 1221 NINTH ST
27





WATER
OUTFALL

ENGINEERS EXAMINING DRAINAGE SOURCE
AT NINTH ST.



MSN-BING PHOTO 2009
SHOWING NATIVE VEGETATION / TREES
@ REAR OF BOTH LOTS



1221
NINTH ST.

1215
NINTH ST.

Chapter 106:

106.050 ABATEMENT OF VIOLATIONS**A. Definitions:**

1. Intentional means acting with a conscious objective to cause the result achieved or to engage in the conduct.
2. Knowing means acting with an awareness of the action committed.

B. All violations of this Code, any development contrary to a permit approval, and any failure to comply with approval conditions arising out of this Code, are Class A civil infractions and shall be enforced pursuant to Sections 1.205 to 1.260 of the West Linn Municipal Code:

1. **Knowing or intentional violation: The maximum forfeiture for a knowing or intentional violation shall be \$1,000.**
2. Other violations: The maximum forfeiture for all violations other than knowing or intentional violations shall be the standard forfeiture for Class A violations set out in West Linn Municipal Code Section 1.255.
3. Increased maximum penalty for subsequent violations: The maximum forfeiture otherwise applicable shall be increased by 50 percent over the previous violation if a judgment of violation of this Code has been issued against the violator within five years prior to the violation.

C. The commission, continuance, or maintenance of a violation on more than one day shall constitute a separate infraction for each and every day during any portion of which the violation is committed, continued, or maintained.**D. All violations of this Code, any development contrary to a permit approval, and any failure to comply with approval conditions imposed under this Code are public nuisances and may be abated**

pursuant to Sections 5.400 to 5.530 of the West Linn Municipal Code.

- E. The City's remedies are cumulative. The City may enforce any violations under the civil infraction procedure, under the nuisance procedure, or under both procedures, either simultaneously or concurrently. The City's remedies listed in this section are in addition to any other remedy or claim the City may have against the violator.*

*CITY OF WEST LINN
PLANNING DIRECTOR DECISION*

FILE NO. WAP-09-03

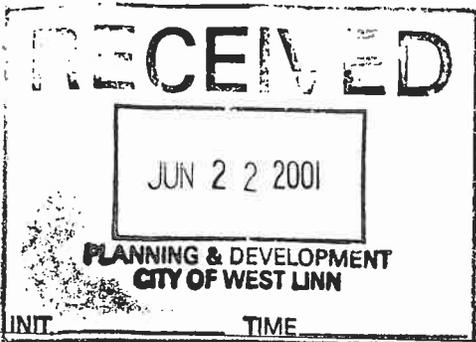
The West Linn Planning Director is considering the request of Troy and Gina Bundy of 1215 Ninth Street for a Water Resources Area (WRA) permit. The applicant has requested the permit to allow a swimming pool that is located in the transition area and structural setback area of a designated and inventoried wetland which is part of a WRA. The pool and associated patio improvements are also in a recorded open space conservation easement that was conveyed to the City of West Linn. The WRA permit decision will be based on Chapter 32 of the Community Development Code (CDC). The approval criteria from the Community Development Code (Zoning Code) are available for review at City Hall, at the City Library, and on the Planning Department's page of the City's website under Documents/CDC.

You have been notified because County records show you own property within 500 feet of the site located at Tax Lot 8201, Clackamas County Assessor's Map 31E2AB.

All relevant materials in the above noted file are available for inspection at no cost, or copies may be obtained for a minimal charge per page. Although there is no public hearing, your comments and ideas can definitely influence the final decision of the Planning Director. Planning staff looks forward to discussing the application with you. **The final decision is expected to be made on, and no earlier than, February 17, 2010**, so please get in touch with us prior to this date. For further information, please contact Peter Spir, Associate Planner, at City Hall, 22500 Salamo Rd., West Linn, OR 97068, telephone (503) 723-2539, or e-mail to pspir@westlinnoregon.gov

Any appeals to this decision must be filed within 14 days of the final decision date with the Planning Department. Failure to raise an issue in person or by letter, or failure to provide sufficient specificity to afford the decision-maker an opportunity to respond to the issue, precludes the raising of the issue at a subsequent time on appeal or before the Land Use Board of Appeals.

7/7
35
10
11



RECORDED IN CLACKAMAS COUNTY
JOHN KAUFFMAN, COUNTY CLERK

2001-044110



\$56.00

D-E Cnt=1 Stn=3 BEVERLY
\$35.00 \$11.00 \$10.00

06/12/2001 10:31:11 AM

PD-5

After recording return to: The City Of West Linn, 22500 Salamo Rd #1000, West Linn OR 97068

OPEN SPACE CONSERVATION EASEMENT

KNOW ALL MEN BY THESE PRESENTS THAT Mark Handris of the County of Clackamas, State of Oregon, for valuable non-monetary consideration received, does hereby grant and convey unto the City of West Linn, a municipal corporation organized and existing under the laws of the State of Oregon, an easement on, over, across, and under the following described real property situated in the County of Clackamas, State of Oregon, to-wit:

PERMANENT EASEMENT DESCRIPTION

See Exhibit "A"

This instrument filed for record by Fidelity National Title as an accommodation only. It has not been examined as to its execution or as to its effect upon the title.

807327

EASEMENT PURPOSE

This easement is granted for the purpose of establishing an area of open space and conservation in perpetuity on, over, across, and under said described property, together with the following rights:

1. The right to retain and protect said property in its natural condition for the purpose of providing a scenic and aesthetic appearance; protecting natural processes; providing recreational uses; and maintaining natural vegetation.
2. The right to enter said property at all reasonable times for the purpose of inspecting said property to determine if the Grantor, or his heirs or assigns, is complying with the covenants and purposes of this grant; and further to observe and study nature and to

make scientific and educational observations and studies in such a manner as will not disturb the quiet enjoyment of said property by the Grantor, his heirs and assigns.

///

///

///

EASEMENT TERMS, CONDITIONS, AND LIMITATIONS

The terms, conditions, and limitations of the aforesaid grant are as follows:

1. Any development and/or activities which are in keeping with the above stated easement may be approved by the Grantee.
2. Without prior express written consent from the Grantee, on said property there shall be no:
 - a. Construction or placing of buildings, camping accommodations, mobilehomes, fences, signs, billboards, or other advertising material, installation or extension of utility facilities, or other structures;
 - b. Filling, excavating, dredging, mining or drilling; no removal of topsoil, sand, gravel, rock, minerals, or other materials; nor any building of roads or change in the topography of the land in any manner excepting the maintenance of trails;
 - c. Removal, destruction or cutting of trees or plants (except removal of Himalayan blackberry, poison oak, English ivy), planting of non-native trees or plants including lawn, spraying with biocides, grazing of domestic animals, or disturbances or change of the natural habitat in any manner;
 - d. Dumping of ashes, trash, garbage, bark dust, lawn clippings or other unsightly or offensive materials; no changing of the topography through the placing of soil or other substance or material such as land fill or dredging spoils; and no use of the area for any sewage disposal field;
 - e. Manipulation or alteration of natural water courses, lake shores, marshes or other water bodies or activities, or uses detrimental to water purity, drainage, flood control, water conservation, erosion control, soil conservation, fish and wildlife or habitat preservation;
 - f. Operation of motorcycles, all-terrain vehicles, or any other types of motorized vehicles.
3. The grants, covenants and stipulations herein shall extend to and be binding upon the respective heirs, executors, administrators, successors, and assigns of the Grantor.
4. Grantor covenants to and with Grantee that he will not in any manner interfere with, or restrict, except as herein stated, Grantee's use of said easement.
5. This easement is granted with the understanding that any work done by the City of West Linn pursuant hereto will be so done as to leave the premises herein described in a

condition reasonably similar to the previous state thereof when any work is finished thereon.

- 6. Except as expressly limited herein, the Grantor reserves for himself, his heirs and assigns, all rights as owner of said property, including the right to use the property for all purposes not inconsistent with this grant.

TO HAVE AND TO HOLD THE HEREIN described easement unto the City of West Linn, its successors and assigns, forever. Done by order of the grantor on 5 JUNE, 2000.



APR. 11, 2005

344836

[Handwritten Signature]

Signature

MARK HANDRIS

Printed Name

State of Oregon)
County of CLACKAMAS) ss

The foregoing instrument was acknowledged before me on this 5 day of JUNE, 2000 by MARK HANDRIS, grantor.

[Handwritten Signature]
Notary Public for Oregon
My commission expires: 11 April 2005

The foregoing instrument is hereby approved by the City of West Linn, Oregon, and the property described therein is accepted for easement.

[Handwritten Signature]
Dan Drentlaw
City of West Linn Planning Director

State of Oregon)
County of Clackamas) ss

The foregoing instrument was acknowledged before me this 8th day of June, 2000, by Dan Drentlaw, Planning Director for the City of West Linn, a municipal corporation, on behalf of the corporation.

Susan M. Anderson
Notary Public for Oregon
My commission expires: 3/30/2004



ENGINEERING PLANNING

13910 S.W. Galbreath Dr., Suite 100
SHERWOOD, OR 97140



SURVEYING

FORESTRY

TELEPHONE (503) 925-8799

FAX (503) 925-8969

E-MAIL: aks@aks-eng.com

EXHIBIT A

A Wetland Conservation Easement shown on the property line adjustment survey dated January 2001, recorded with the Clackamas County Surveyor's Office, located in the southern portion of Tract 18, Willamette and Tualatin Tracts in the NE ¼ of Section 2, Township 3S, Range 1E, Willamette Meridian, being a part of the Ambrose Fields DLC No. 52, City of West Linn, Clackamas County, Oregon, more particularly described as follows:

Beginning at the Southern corner of Tract 4 of the above referenced property line adjustment survey, said point being a 5/8" iron rod with a yellow plastic cap marked "AKS ENGR.", located at the intersection of the northerly right-of-way line of 3rd Avenue and the easterly right-of-way line of 9th Street; thence along the easterly right-of-way line of 9th Street N22°23'55"W 89.62 feet to a point on said right-of-way line; thence N67°01'04"E 71.77 feet to a point; thence N43°50'51"E 24.90 feet to a point; thence N17°36'13"W 75.49 feet to a point; thence N53°41'14"E 67.89 feet to a point; thence N36°20'29"E 60.36 feet to a point; thence N32°19'27"E 127.43 feet to a point; thence N61°08'32"E 54.27 feet to a point; thence N32°25'16"E 49.51 feet to a point located on the westerly right-of-way line of 8th Street; thence S22°21'00"E 331.40 feet along the westerly right-of-way line of 8th Street to a point located at the intersection of the westerly right-of-way line of 8th Street and the northerly right-of-way line of 3rd Avenue said point also being a 5/8" iron rod with a yellow plastic cap marked "AKS ENGR."; thence S67°35'27"W 416.52 feet along the northerly right-of-way line of 3rd Avenue to the true point of beginning.

The above described easement contains 88323 square feet, more or less. The basis of bearings for this description is per PS 25593, Clackamas County, Oregon.

4

ENGINEERING PLANNING

13910 S.W. Galbreath Dr., Suite 100
SHERWOOD, OR 97140



SURVEYING FORESTRY

TELEPHONE (503) 925-8799
FAX (503) 925-8969
E-MAIL: aks@aks-eng.com

EXHIBIT A

A Wetland Conservation Easement shown on the property line adjustment survey dated January 2001, recorded with the Clackamas County Surveyor's Office, located on Tracts 1, 2, and 3 of Tract 18, Willamette and Tualatin Tracts in the NE ¼ of Section 2, Township 3S, Range 1E, Willamette Meridian, being a part of the Ambrose Fields DLC No. 52, City of West Linn, Clackamas County, Oregon, more particularly described as follows:

Beginning at the initial point, said point being the most northwesterly corner of Lot B of the above referenced property line adjustment survey, said point being a 5/8" iron rod with a yellow plastic cap marked "AKS ENGR.", located at the intersection of the southerly right-of-way line of 4th Avenue and the easterly right-of-way line of 9th Street; thence along the easterly right-of-way line of 9th Street S22°23'55"E 143.22 feet to a 5/8" iron rod with a yellow plastic cap marked "AKS ENGR.", said point also being the true point of beginning; thence N45°23'43"E 377.92 feet along the northern boundaries of Tracts 1, 2, and 3 to a 5/8" iron rod with a yellow plastic cap marked "AKS ENGR.", said point located on the southern right-of-way line of 4th Avenue; thence N67°39'58"E 52.98 feet to a point located on the southern right-of-way line of 4th Avenue; thence S36°47'00"W 104.01 feet to a point; thence S49°04'58"W 74.78 feet to a point; thence S43°32'01"W 73.11 feet to a point; thence S48°28'25"W 77.88 feet to a point; thence S46°23'41"W 47.20 feet to a point; thence S44°29'57"W 63.69 feet to a point located on the easterly right-of-way line of 9th Street; thence N22°23'55"W 31.66 feet along the easterly right-of-way line of 9th Street to the true point of beginning.

The above described easement contains 12616 square feet, more or less. The basis of bearings for this description is per PS 25593, Clackamas County, Oregon.

⑦

41

PP 2001-120 31E02AB 08201,08204

FILE COPY

PARTITION PLAT NO. 2001-120
PAGE 1 OF 2

PARTITION PLAT

A REPLAT OF PORTIONS OF LOTS A AND E, TRACT 18, WILLAMETTE AND TUALATIN TRACTS PLAT NO. 193 IN THE NE 1/4 OF SECTION 2, T3S, R1E, WILLAMETTE MERIDIAN, BEING A PART OF THE AMBROSE FIELDS DLC NO. 52, CITY OF WEST LINN, CLACKAMAS COUNTY, OREGON
CITY PLANNING FILE NO. MIP-01-03
DATE: NOVEMBER 9, 2001

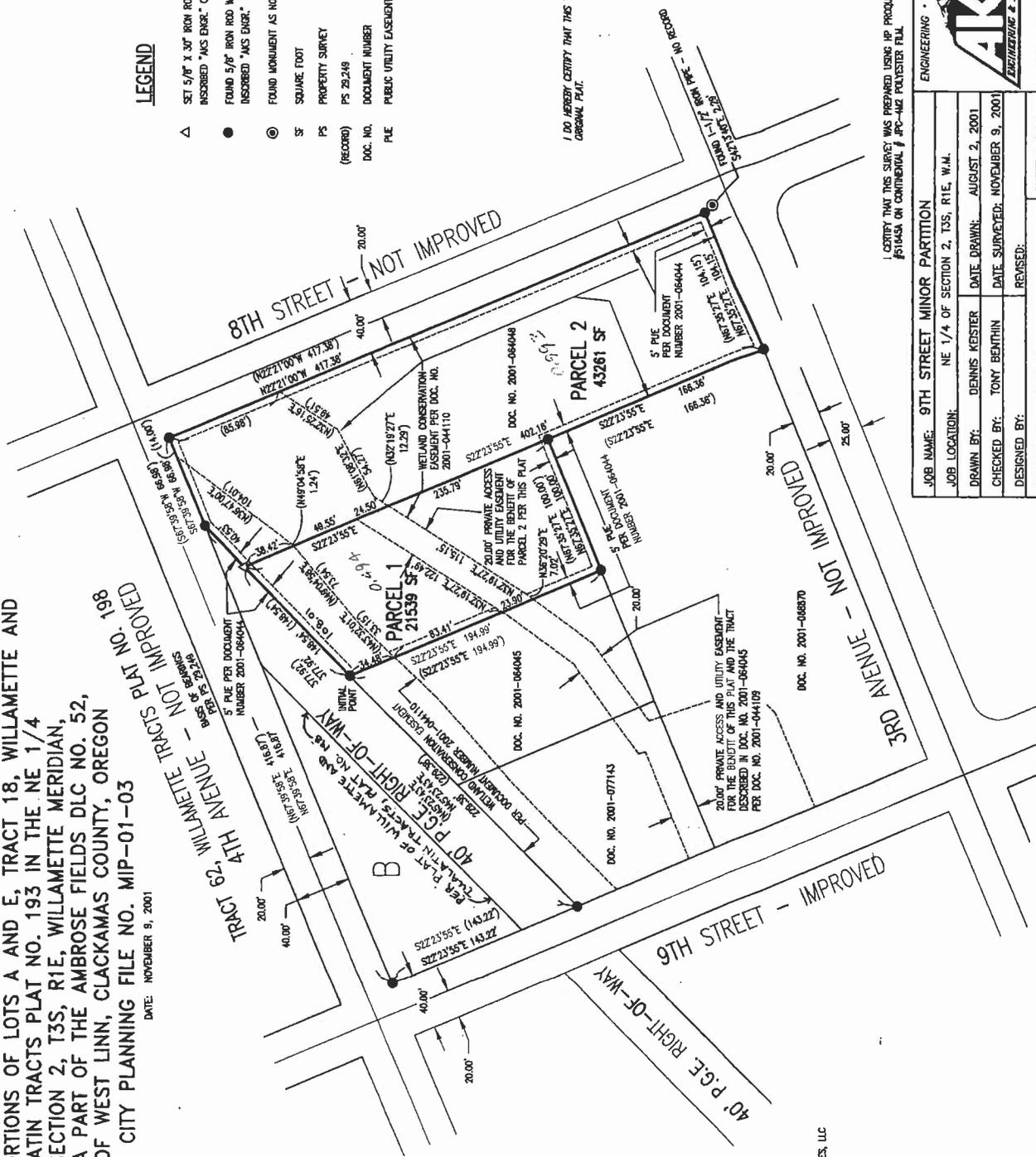
DATE: NOVEMBER 9, 2001

LEGEND

- ▲ SET 5/8" X 3/4" IRON ROD WITH YELLOW PLASTIC CAP INSCRIBED "AKS ENGR." ON NOVEMBER 9, 2001
- FOUND 5/8" IRON ROD WITH YELLOW PLASTIC CAP INSCRIBED "AKS ENGR." PER PS 29,249
- ◎ FOUND MONUMENT AS NOTED
- SF SQUARE FOOT
- PS PROPERTY SURVEY
- (RECORDED) PS 29,249
- DOC. NO. DOCUMENT NUMBER
- P.U.E. PUBLIC UTILITY EASEMENT

I DO HEREBY CERTIFY THAT THIS TRACING IS A TRUE AND EXACT COPY OF THE ORIGINAL PLAT.

REGISTERED PROFESSIONAL LAND SURVEYOR
ANTHONY C. BENTIN
7655
EXPIRES 12/31/01



PREPARED FOR
SHERIDAN CLASSIC HOMES, LLC
P.O. BOX 1268
SHERWOOD, OR 97140

AKS ENGINEERING • PLANNING • SURVEYING • FORESTRY LICENSED IN OR. & WA. 13910 S.W. GALBREATH DR. SUITE 100 SHERWOOD, OR 97140 PHONE: (503) 925-8799 FAX: (503) 925-8989 E-MAIL: aks@aks-eng.com	
JOB NAME: 9TH STREET MINOR PARTITION JOB LOCATION: NE 1/4 OF SECTION 2, T3S, R1E, W.M.	
DRAWN BY: DENNIS KESTER	DATE DRAWN: AUGUST 2, 2001
CHECKED BY: TONY BENTIN	DATE SURVEYED: NOVEMBER 9, 2001
DESIGNED BY:	REVISED:
DRAWING NO.: 744PLAT	SHEET 1 OF 2

I CERTIFY THAT THIS SURVEY WAS PREPARED USING HP PRODUCT #519434 ON CONTINENTAL # JPC-142 POLYESTER FILM

West Linn Goal 5 Inventory

Wetland Assessment Summary Sheet



GENERAL INFORMATION

Wetland Code: WI-02 Field date: 4/4/02
 Wetland Class: PFO, PEM Investigators: TB, LW, AK
 Method: on-site off-site Observation point: 9th Street

FUNCTION AND CONDITION ASSESSMENT ANSWERS

OFWAM Question	Wildlife Habitat	Fish Habitat	Water Quality	Hydrologic Control	Sensitivity to Impact	Enhancement Potential	Education	Recreation	Aesthetic Quality
1	a	a	b	a	a	a	b	b	c
2	a	a	a	a	b	c	b	a	b
3	a	c	a	a	c	n/a	b	c	c
4	c	a	a	b	a	a	a	b	a
5	a	c	a	a	a	a	b	b	b
6	a	b	c	c	a	b	b	b	b
7	a			a					
8	c								
9	a								
Descriptor	some	degraded	degraded	intact	potential	high	potential	potential	not pleasing

LOCALLY SIGNIFICANT WETLAND (LSW) DETERMINATION

Exclusions. Wetland is not locally significant if one of the following conditions applies:	Yes	No
1. Wetland is artificially created entirely from upland AND is either: a) created for the purpose of controlling, storing, or maintaining stormwater; b) used for active surface mining or active log ponds; c) a ditch without free and open connection to natural waters of the state and no food or game fish; d) less than one acre in size and created unintentionally from irrigation or construction; or e) created for the purpose of wastewater treatment, cranberry production, farm or stock watering, settling of sediment, cooling industrial water, or as a golf course hazard.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2. Wetland or portion thereof is contaminated by hazardous substances, materials or wastes per 141-086.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
LSW Criteria. Wetland is locally significant if it meets one or more of the following criteria:		
1. Wetland provides "diverse" wildlife habitat.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2. Wetland provides "intact" fish habitat.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3. Wetland provides "intact" water quality function.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
4. Wetland provides "intact" hydrologic control function.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
5. Wetland is less than 1/4 mile from a DEQ water quality limited water body (303 (d) list) and the wetland's water quality function is described as "intact" or "impacted or degraded."	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6. Wetland contains one or more rare plant communities.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
7. Wetland is inhabited by any species listed federally as threatened or endangered, or state listed as sensitive, threatened or endangered.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
8. Wetland has a direct surface water connection to a stream segment mapped by ODFW as habitat for indigenous anadromous salmonids, and has "intact" or "impacted or degraded" fish habitat function.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Optional LSW Criteria. Wetland is locally significant if it meets one or more of the following criteria:		
1. Wetland represents a locally unique native plant community AND provides: a) "diverse habitat" or "habitat for some wildlife species"; b) "intact" or "impacted or degraded" fish habitat; c) "intact" or "impacted or degraded" water quality; or d) "intact" or "impacted or degraded" hydrologic control.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2. Wetland is publicly owned and has "educational uses" and such use is documented for that site.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Determination. Wetland is locally significant	<input checked="" type="checkbox"/>	<input type="checkbox"/>

WEST LINN LOCAL WETLAND INVENTORY

Wetland: 9th Ave East Code: W1-02
 Location (add/tax lot): _____ Plot #s (or off-site) #1
 Cowardin/HGM class: PEW, PFO/DO or SV Field date: 4-4-02
 Recent Weather: Sunny Investigators: TB, LW, AK
 Summary (topo, land use, basis) _____

Has the soil, vegetation or hydrology been significantly disturbed? No?

Trees		% Cover	Dom.	Herbs		% Cover	Dom.
Species / status				Species / status			
<u>FRLA FACW</u>		<u>70</u>	<input checked="" type="checkbox"/>	<u>Poa. spp. FAC-FACW</u>		<u>65</u>	<input checked="" type="checkbox"/>
				<u>Scirpus microcarpus</u>		<u>20</u>	<input checked="" type="checkbox"/>
				<u>Juncus effusus</u>		<u>FACW</u>	<u>1</u>
				<u>Ranunculus</u>		<u>20</u>	<input checked="" type="checkbox"/>
				<u>Veronica amat.</u>		<u>OBL</u>	<u>2</u>
Sapling / Shrub		% Cover	Dom.				
Species / status							
<u>Spiraea douglasii</u>		<u>FACW</u>	<u>30</u>				
<u>Salix sp.</u>		<u>FACW-OBL</u>	<u>25</u>				

Other species: (OBL) (OBL) C.A.C. Cal. triche in standing water

Percent of species that are OBL, FACW, FAC: 83 or 100% Depending on status of unknown Ranunculus
 Criteria met? yes

Map Unit Name: Wapato silty clay loam Drainage class: poorly drained
 Taxonomy: Fluvisollic Haplaquolls On hydric soils list? yes

Depth	Horizon	Color	Redox Concentrations*	Redox Depletions*	Texture	Structure
<u>0-14</u>		<u>10YR 2/1</u>	<u>few fin. iron, from 7.5</u>	<u>4/6</u>	<u>clay</u>	<u>AB</u>
<u>14-18</u>		<u>"</u>	<u>common, med. iron</u>	<u>"</u>	<u>"</u>	<u>"</u>

Hydric Soil Indicators

- | | |
|--------------------------------------------------------------------|-------------------------------------------------------------------|
| <input type="checkbox"/> Histosol | <input type="checkbox"/> Concretions / Nodules (w/in 3"; > 2 mm) |
| <input type="checkbox"/> Histic Epipedon | <input type="checkbox"/> High organics near surface (sandy soils) |
| <input checked="" type="checkbox"/> Sulfidic Odor | <input type="checkbox"/> Organic pan (in sandy soils) |
| <input type="checkbox"/> Reducing Conditions (tests positive) | <input type="checkbox"/> Hydric soils list and profile matches |
| <input type="checkbox"/> Gleyed | <input type="checkbox"/> Other |
| <input checked="" type="checkbox"/> Redox. features w/in 10 inches | |

Criteria met? yes * abundance / size / contrast / color / location (matrix or pores)

Recorded data available _____ Aerial Photographs _____ Stream gauge _____
 No recorded data available _____ Other _____

Depth of Inundation: at surface Depth to saturation: surface Depth to free water: _____

Hydrologic source: groundwater, incl. seeps

- | Primary indicators | Secondary Hydrology Indicators (2 or more) |
|------------------------------------------------------------------|------------------------------------------------------------------------|
| <input checked="" type="checkbox"/> Inundated | <input checked="" type="checkbox"/> Oxidized root channels (upper 12") |
| <input checked="" type="checkbox"/> Saturated in upper 12 inches | <input type="checkbox"/> Water-stained leaves |
| <input type="checkbox"/> Water Marks | <input type="checkbox"/> Local Soil Survey Data |
| <input type="checkbox"/> Drift Lines | <input type="checkbox"/> FAC-Neutral Test |
| <input type="checkbox"/> Sediment Deposits | <input type="checkbox"/> Drainage patterns |
| Criteria met? <u>yes</u> | Other: _____ |

Wetland? yes Functional summary: _____
 Significant? yes

West Linn Goal 5 Inventory

Wetland Characterization Sheet



GENERAL INFORMATION

Wetland: Willamette-9th St. East Code: WI-02 Field dates: 4/4/02

Plot #s: DP-1, DP-2 Size: 15.55 acres Method: on-site off-site

Cowardin Class: PEM, PFO HGM Class: RFT Investigators: TB, LW, AK

Basin: Willamette River Sub-basin: Willamette River

LOCATION

Location/address: North of Volpp Street, between 4th and 9th Streets

Legal description: Lots 100, 200; T3S, R1E, Section 01 (Atlas #5432-33, 5532-33)
 Lots 100, 200, 800, 1000, 1201, 1302, 2200, 6900, 6902, 7700, 7800, 8100, 8200, 8201, 8202, 8203; T3S, R1E, Section 02
 Lot 200; T2S, R1E, Section 35 (Atlas #5432-33, 5532-33)
 Lot 200; T2S, R1E, Section 36 (Atlas #5432-33, 5532-33)

WETLAND CHARACTERISTICS

Description (incl. topo. position, land use, basis): Wetland WI-02 is the largest wetland in the city, and is east of 9th Street, north of a grazed pasture, and south of new housing development. The wetland has a mixture of emergent and forested communities and small shrub thickets. Wetland hydrology is provided by stormwater runoff, subsurface discharge and surface flow from Wetland WI-01. Water from WI-02 empties into a culvert under 4th Street, before entering Wetland WI-03. Wetland boundaries are generally at sharp topographic breaks, but others on more gradual slopes (e.g., pastures) are marked by the shift from wetland to upland vegetation. Uplands at the sample site (grazed land) were dominated by pasture grasses including tall fescue, timothy, and Colonial bentgrass. Himalayan blackberry was present on the edges of the field.

Soils: Wapato Silty Clay Loam

Hydrologic Source: precipitation, groundwater, surface flow

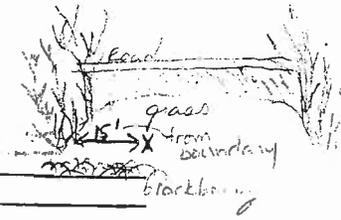
Dominant Vegetation:

Trees	Shrubs	Vines	Herbs
Oregon ash	Pacific willow willow sp.		bluegrass spp. buttercup small-fruit bulrush

Wetland Functions: intact hydrologic control; high enhancement potential; low aesthetic value; other functions moderate

Significant? Yes No Remarks: intact hydrologic control; within 1/4 mile of WQ limited stream

Potential Restoration Opportunities: Recent flooding may be helping to manage exotic grasses, although reed canarygrass remains common. Cows have some access to the stream channel and this has caused erosion; efforts to reduce or eliminate stream crossings may improve wetland functions.



WEST LINN LOCAL WETLAND INVENTORY

Wetland: 9th Ave. East Code: W1-02
 Location (add/tax lot): S. of #3 Plot #s (or off-site): #2
 Cowardin/HGM class: + Field date: 4-7-02
 Recent Weather: Sunny Investigators: TR, LW, A Kearney
 Summary (topo, land use, basis): _____

Has the soil, vegetation or hydrology been significantly disturbed? NO

Vegetation					
Trees	% Cover	ϕ	Herbs	% Cover	95
Species / status	% Cover	Dom.	Species / status	% Cover	Dom.
			FEAR FAC-	40	✓
			Pileum protense FACU	30	✓
			Agrostis tenuis FAC	25	✓
			Pasture grasses		
Sapling / Shrub	% Cover	5			
Blackberry	5				

Other species: Ash on the wetland edge

Percent of species that are OBL, FACW, FAC: 33
 Criteria met? no

Map Unit Name: Wapato silty clay loam Drainage class: poorly drained
 Taxonomy: Fluvaquentic Aquagolls On hydric soils list? yes

Depth	Horizon	Color	Redox Concentrations*	Redox Depletions*	Texture	Structure
0-4	10YR3/2				clay	angular blocky
4-12	10YR3/2		F, m D (10YR3/10) / 2.5Y4/4) M		clay	angular blocky
12-4	10YR3/2		C, m D (about 5) / 2.5Y4/6) M		clay	angular blocky

Hydric Soil Indicators

<input type="checkbox"/> Histosol	<input type="checkbox"/> Concretions / Nodules (w/in 3"; > 2 mm)
<input type="checkbox"/> Histic Epipedon	<input type="checkbox"/> High organics near surface (sandy soils)
<input type="checkbox"/> Sulfidic Odor	<input type="checkbox"/> Organic pan (in sandy soils)
<input type="checkbox"/> Reducing Conditions (tests positive)	<input type="checkbox"/> Hydric soils list and profile matches
<input type="checkbox"/> Gleyed	<input type="checkbox"/> Other
<input checked="" type="checkbox"/> Redox. features w/in 10 inches	

Criteria met? yes * abundance / size / contrast / color / location (matrix or pores)

Hydrology

Recorded data available Aerial Photographs Stream gauge
 No recorded data available Other

Depth of Inundation: _____ Depth to saturation: _____ Depth to free water: _____
 Hydrologic source: _____

Primary indicators	Secondary Hydrology Indicators (2 or more)
<input type="checkbox"/> Inundated	<input checked="" type="checkbox"/> 6" Oxidized root channels (upper 12")
<input type="checkbox"/> Saturated in upper 12 inches	<input type="checkbox"/> Water-stained leaves
<input type="checkbox"/> Water Marks	<input type="checkbox"/> Local Soil Survey Data
<input type="checkbox"/> Drift Lines	<input type="checkbox"/> FAC-Neutral Test
<input type="checkbox"/> Sediment Deposits	<input type="checkbox"/> Drainage patterns
Criteria met? <u>no</u>	Other: _____

Wetland? no Functional summary: This is transitional area between wet + up.
 Significant? _____

abrupt topographic break between wet + up. **46**

Correspondence and E-mails

Karie Oakes
1125 Marylhurst DR
West Linn, OR 97068

Mr. John Sonnen, Planning Director
City of West Linn
22500 Salamo RD
West Linn, OR 97068

February 16, 2010

Re: WAP-09-03, Water Area Resources Permit for a swimming pool, fence and gate in the backyard of residence at 1215 9th ST.

Dear Mr. Sonnen:

The City erred in accepting the application for a WAP from Mr. Troy Bundy. The permit is required before any alteration of the water resource area is allowed pursuant to **CDC 32.025**. Mr. Bundy makes application after having installed a pool, fence, gate and landscaping. This is clearly a violation of the conservation easement protections and should be a matter of enforcement, not a matter of planning.

32.025 PERMIT REQUIRED

No person shall be permitted to fill, strip, install pipe, undertake construction, or in any way alter an existing water resource area without first obtaining a permit to do so from the decision making authority, paying the requisite fee, and otherwise complying with all applicable provisions of this ordinance.

Furthermore, the City erred in accepting the application because a pre-application conference is required before the filing of the application pursuant to **CDC 32.040.B**. The applicant's submittal does not include any evidence of a pre-application conference.

32.040 THE APPLICATION

B. A pre-application conference shall be a prerequisite to the filing of the application.

Moreover, the City erred in the proper procedure for making a quasi-judicial decision pursuant to Chapter 99. **CDC 99.030.B.1.** requires a pre-application conference.

99.030 THE APPLICATION PROCESS: WHO MAY APPLY, THE PRE-APPLICATION CONFERENCE, THE REQUIREMENTS, REFUSAL OF THE APPLICATION, FEES

B. Pre-application conference required

- 1. The applicant shall be required to meet with the Planning Director, or designee of the Director, or any other governmental agency representative deemed appropriate by the Director, for a pre-application conference, unless the requirement for a pre-application conference is specifically waived by another section of this code. (ORD. 1568)**

Mr. Bundy violated the conditions of the title to his property and blatantly defied the City's denial to build a pool, fence and gate when he proceeded to develop in the WRA. By accepting this application the City risks condoning Mr. Bundy's actions and appears to support Mr. Bundy's intent to obtain a WAP post-humoursly to remedy his gross destruction of water resource land.

The language throughout Chapters 32 and 99 talks of proposals and plans. Specifically, **CDC 32.020.C.** states, "The provisions of this chapter shall apply to development proposals that have water resource areas within their project boundary."

Therefore, because this is truly a matter of code enforcement and not a proposal for development, the City should correct it's procedural error and reject Mr. Bundy's WAP application.

Ultimately, the Planning Director erred in accepting this application, because it does not comply with the requirement of a pre-application conference pursuant with **CDC 99.030.B.1.**

99.040 DUTIES OF THE DIRECTOR

- A. *The Director shall:*
2. *Accept all development applications that comply with the provisions of Section 99.030 of this chapter;*

If the City finds that it has not erred in procedure, then the City should find that the application is incomplete and does not meet the approval criteria pursuant to CDC 32.040. B-H and CDC 32.050 A-P.

Mr. Bundy's submittal is grossly insufficient and does not provide documentation and evidence to support a water resource area permit. The application must be denied.

Respectfully submitted,

Karie Oakes

Sonnen, John

From: GARY [hitesman@comcast.net]
Sent: Tuesday, February 16, 2010 9:09 AM
To: Spir, Peter
Cc: karieokee; Jordan, Chris; City Council; Sonnen, John
Subject: Re: WAP-09-03, 1215 9th ST

Peter,

I think had you been involved with some of these other applications dealing with chapter 32, a better city solution might have been rendered.

And I do not disagree with your desire. But woulda, shoulda, coulda must not be allowed to prevail. This application is more about failed policy than it is an individuals' actions.

'Sweeping things under the rug' or 'remaining hush on some things' is also poor policy.

I am participating in this application because I would like to think there might be a better way to deal with Water Resource Areas than what is currently codified and enforced. As it has been proven time and time again, councilors, commissioners, applicants, Advocates, developers, and some of your own managers have trouble interpreting, applying, and enforcing this code. Especially with enforcement, which has led to a scattered record of costly mistakes and missed opportunities.

There are too many homes and homeowner associations that have built on top of, in, and too close to streams for water resource areas to remain protected as defined by the State of Oregon. As is the case with this application, there is a blatant disregard and ignorance of the Code. The end result is that with no effective code, the City is open to these types of transgressions.

Most of all, I do not agree with allowing well positioned developers to get away with one standard while the rest of us get dragged through the ringer.

I think it is a waste of money to have to go to Circuit Court if the City is to persue enforcement for Chapter 32. (I think it is better to find out at Planning that Chapter 32 does not work as applied than finding it out after going to Circuit Court. YOU may lose if you go to Circuit Court because applications have been so sloppy.) Better the Commission decide what the course of action should be. If the City has done it's homework, and you are fair about it, then the City can better enforce the remediation.

Besides, when the applicant does not withdraw his application, then the process for that application must be enforced, regardless of how staff would desire it to dealt with.

To start with, Is Ms. Oakes claim regarding a pre-app correct? Regardless of her claim, per instructions on the notification forwarded to me by my NA, I will request the decision be appealed based on misapplication of Chapters 99 and 32.

My one caveat would be that we find a way to remove the applicant's name so that we might be able to have an objective discussion without causing any grief to the individual family. If the Applicant and City are amendable to the idea, I propose removing the family name and referring to them as "applicant". And since this is a citywide issue that has not been properly administrated, I also suggest we move forward without referring to the address. Because this is not an isolated case; better to rectify the

status quo as a whole.

Once having set the proper precedent, then those who are out of compliance might be granted a window to rectify damage they have caused to the water resource areas. The City saves time and money in Circuit Court and in dragging in the DSL. Secondly, since the City has proven ineffective in protecting areas where they have allowed private interests to become THE stakeholder, that the City develop a new process that keeps these WRA's in the public's hands of stewardship. And in the end, the City can actually save face and act like the civic institution it should be.

Gary

----- Original Message -----

From: "Peter Spir" <pspir@westlinnoregon.gov>

To: "GARY" <hitesman@comcast.net>

Sent: Tuesday, February 16, 2010 7:14:03 AM GMT -08:00 US/Canada Pacific

Subject: RE: WAP-09-03, 1215 9th ST

Gary

As the planner responsible for WAP-09-03 on Ninth St., I will apply the CDC as it is written.

My desire is that the applicant withdraw the WAP permit (which will be denied) and agree to a consent order per CDC Chapter 106 to re-establish the wetlands and pay all penalties appropriate for their actions. I can safely say there is no sympathy for the "build first then ask for permission later" approach.

If they are unwilling then I want to take it to Circuit Court. This is a view shared by John Sonnen.

I plan to meet w/ DSL again in about two weeks to coordinate our enforcement.

I can't comment on the other cases since I was not involved in them.

Peter

 Peter Spir
pspir@westlinnoregon.gov
Associate Planner
22500 Salamo Rd.
West Linn, OR, 97068
P: (503) 723-2539
F: (503) 656-4106
Web: westlinnoregon.gov

West Linn Sustainability Please consider the impact on the environment before printing a paper copy of this email.

Public Records Law Disclosure This e-mail is subject to the State Retention Schedule and may be made available to the public.

From: GARY [mailto:hitesman@comcast.net]

Sent: Monday, February 15, 2010 11:03 AM

To: kariooke@aol.com; Spir, Peter

Cc: Kevin Bryck

Subject: Re: WAP-09-03, 1215 9th ST

Peter, in order to take the high road, how would I best present past precedent and other council decisions that contradict an anticipated denial?

I see a tough road ahead in enforcing, what under most circumstances, should be clear and concise code.

I cite the Cedaroak application, Ole's creek walls, and the Rosemont Road subdivision that ignored DSL memos.

Gary

Sent: Tue, Feb 2, 2010 7:21 am
Subject: RE: WAP-09-03, 1215 9th ST

Karie:
Thank you for the letter.
The facts are rather simple, albeit depressing, in this case.

The property owner installed a pool **without any approved permits** and without any inspections by the City of West Linn.
The property owner then applied for a Water Resource Area permit without any pre-application conference.

City staff visited the site and found that the pool, patio area and firepit had been built in a wetland conservation easement area.
The property owner had also graded and cleared a large wetland area behind his house and installed a lawn in its place.
The watercourse was then re-directed into a gravel trench.
You are welcome to look at the files collection of photos of the disturbed area.

We are obliged to process the property owner's WAP application.
A Planning Director decision of denial is anticipated.

The Department of State Lands (DSL) also visited the site with staff and is expected to require site restoration plus possible financial penalties for on or off site mitigation of the pool area.
The City will be pursuing a consent order per CDC Chapter 106.
The consent order would require full wetland restoration and other penalties as appropriate.
The adjacent property owners are also expected to have similar requirements imposed on them by the City and DSL.

I have forwarded your email to Teresa.
Peter

Peter Spir
pspir@westlinnoregon.gov
Associate Planner
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West Linn, OR, 97068
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F: (503) 656-4106
Web: westlinnoregon.gov

West Linn Sustainability Please consider the impact on the environment before printing a paper copy of this email.

Public Records Law Disclosure This e-mail is subject to the State Retention Schedule and may be made available to the public.

From: karieokee@aol.com [<mailto:karieokee@aol.com>]
Sent: Tuesday, February 02, 2010 12:00 AM
To: Spir, Peter
Subject: WAP-09-03, 1215 9th ST

Mr. Spir:

I am interested in learning more about the water resource area permit application, WAP-09-03, for 1215 9th ST. The information posted as the applicants submittal on the City web site is insufficient to understanding it; comprising a letter dated October 21, 2009 from Mr. Troy Bundy of Hoffman, Hart, Wagner, Attorneys at Law and Exhibit A from Anderson Poolworks, depicting a proposed pool and fence.

Mr. Bundy requests a pool permit, but states that the pool is in existence and has passed all inspections as required by the local and city governments. Please post the verifying documentation and explain how it is that Mr. Bundy is applying for a WAP following building the pool and fence?

The web site does not have the public notice posted, although it is posted that the public notice is complete. A West Linn resident gave me a copy of the notice from which I learned that Mr. Bundy is the applicant. Please also post the application and the letter of completeness on the web site.

Please also post the summary of the pre-application meeting on the web site. I routinely receive email notifications from Teresa Zak of all pre-apps and I must have overlooked this one.

Finally, please also post a map of the property on the web site.

I am very disappointed that all this information is not posted on the web site, as is customary in an application. As always, my interest lies in seeing the City communicate effectively with citizens in an effort to encourage public participation.

The notice states that the Planning Director will make his decision on February 17, so your prompt reply is appreciated.

Thank you,

Karie Oakes

Roberta Lapeyre of 2315 5th Street
telephoned on 1-28-10
complaining about noisy pool construction

Spir, Peter

From: Hidden Springs Neighborhood Assoc. [WLHSNA@msn.com]
Sent: Monday, February 01, 2010 9:58 AM
To: Spir, Peter; Sonnen, John
Cc: Cummings, Teri
Subject: AP 09-03 Planning Director Decision

Mr. Spir,

Please tell me when and where the file regarding the above referenced Planning Director Decision can be reviewed.

The Neighborhood Association is in receipt of an email that resident Gary Hitesman sent you regarding the above referenced request for a Planning Director decision. Please tell me if Mr. Hiteman's email has been included in the public record in its entirety and where it is available for public review.

Cordially,

Lynn Fox, President
Hidden Springs NA

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Oregon

Theodore R. Kulongoski, Governor

RECEIVED

FEB - 9 2010

PAGE..... OF.....

Department of State Lands

775 Summer Street NE, Suite 100

Salem, OR 97301-1279

(503) 986-5200

FAX (503) 378-4844

www.oregonstatelands.us.

CERTIFIED MAIL

February 4, 2010

AMH600/7014

TROY AND GINA BUNDY

1215 9TH ST

WEST LINN OR 97068

State Land Board

Theodore R. Kulongoski
Governor

Kate Brown
Secretary of State

Re: Notice of Violation; DSL Enforcement File 7014-ENF

Ben Westlund
State Treasurer

Dear Mr. and Mrs. Bundy:

Thank you for meeting with me on January 26, 2009 to discuss the above referenced case file. As discussed, under the Oregon Removal-Fill Law (ORS 196.800 - 196.990), removal, filling, or alteration of 50 cubic yards or more of material within the bed or banks of the waters of this state, or any amount within waters designated Essential Salmonid Habitat or State Scenic Waterway, requires a permit from the Department of State Lands. Waters of the state include the Pacific Ocean, rivers, lakes, most ponds and wetlands, and other natural water bodies.

Based upon the meeting and assessment of the site, more than 50 cubic yards of material has recently been removed and filled within a wetland on your property (Township 03S, Range 01E, Section 02AB, Tax Lot 8201), and property of Timothy and Wendi Butler (T03S, R01E, Sec 02AB, Tax Lot 2200) located in Clackamas County. As was discussed, the above referenced activity is subject to our jurisdiction and constitutes a violation of Oregon's Removal-Fill Law.

For your information, we are enclosing a copy of our brochure, Oregon's Removal-Fill Permit Program. A copy of the Removal-Fill Law and/or the relevant administrative rules will be provided upon your request.

We look forward to your cooperation in working to bring the project into compliance with the Removal-Fill Law. Please contact me at 503-986-5250 within ten days of receiving this notice to discuss resolution of this matter.

Sincerely,

Anita Huffman

Resource Coordinator

Wetlands and Waterways Conservation Division

Oregon Department of State Lands

Enclosure

cc: Todd Alsbury, Oregon Dept. of Fish and Wildlife
Kristin Hafer, Corps of Engineers, Portland District
Peter Spir, City of West Linn Planning Dept.
Timothy and Wendi Butler, 2241 Willamette Falls Dr, West Linn, OR 97068



Spir, Peter

From: GARY [hitesman@comcast.net]
Sent: Tuesday, February 02, 2010 10:54 AM
To: Spir, Peter; Sonnen, John
Cc: Hidden Springs Neighborhood
Subject: Re: WAP-09-03

I forgot one primary precedent that may have significance with this application in process, enforcement, precedent, and accountability.

The Palomino Loop Trail.

My Regards, Gary

----- Original Message -----

From: "GARY" <hitesman@comcast.net>
To: "Peter Spir" <pspir@westlinnoregon.gov>, jsonnen@westlinnoregon.gov
Cc: "Hidden Springs Neighborhood" <WLHSNA@msn.com>, "tcummings" <tcummings@westlinnoregon.gov>, "patti galle" <mail@pattigalle.com>
Sent: Tuesday, February 2, 2010 10:17:58 AM GMT -08:00 US/Canada Pacific
Subject: Re: WAP-09-03

Peter,

Thank you for the quick update and clarifying the situation.

If the solution is made public, a posting on the City website would be both instructive and educational for me. I am forwarding this to my NA to close the loop I created with my email. I hope your department is supported fully on a decision of denial. I too am inclined to read the applicants actions as a gross violation into the easement.

However, given the past digressions of improper planning decisions, council decision making, and poor policy decisions, it may be the applicant that has a better perspective on this. And if the application had been crafted with a tad more insight, I can see how their actions could be justified. Also, I might actually be more supportive of their actions and would likely speak on their behalf, if it ever came to that.

My interest stems from my involvement with the 3955 Cedaroak application, which was equally lacking but had been better crafted, or perhaps better lobbied, reasons that twisted the intent of CDC 32.090. In the Cedaroak application, the applicant had reconfigured the stream and grades before being compelled to stop due to a lawsuit. In this case, the applicant was fully supported by City Staff and perpetrated with continued bungling for a period of about 17 months, more or less.

It appears, in this case, that the City may not support this application or applicant, but is still equally unaware of precedent, process, policy, enforcement, and accountability.

I hope the Nixon application does not end up as problematic as the Cedaroak one. My fear is that it

most likely will.

Please consider these 4 observations;

- 1) This now makes 7 applications in that the last 2 years where CDC 32 has been used to skirt environmental protections and public safety. How much longer will this waste of staff time and waste of council's time last? Rhetorical question, given the sustainable planning practices our council lacks.
- 2) I will suggest the Planning Director be better empowered to do his job by removing the authority the City Manager currently has over the Director. Please change the council rules so that a Planning Director may practice and enforce a community code without being pressured by possible lobbying and developer interests. Council should appoint an independent Planning Commission with authority to review Director and City Manager decisions.
- 3) Also, how is Ole Olson's wall holding up? Although apparently out of compliance, his structure built IN THE CREEK was approved by City engineers and never was properly submitted for a permit. What type of precedent was established here and what would be the correlation to this pool installation/now application? I am almost certain this will be brought up if the Director's decision is appealed to the council. And Ole apparently knows where all the skeletons are; if he can ever be made to remain calm. My guess is the City Engineer may be exposed in this instance, as well as the Council.
- 4) I say all 'this' only to be as constructive as I might. There are bad precedents that will affect future planning decisions; more than there are good ones. Our Director would best be served by being brought up to speed with so many of these past shady building practices and informed as to how bad our codes and enforcement acts are. Proper decisions today are only as enforceable as poor planning in the past will let it be. As an example, does the Director know that a condition of approval for the Church on Rosemont entailed him enforcing parking at that facility? Is he aware his predecessor all but promised to replace the BLACK CHAIN LINK FENCE around the retention pond built at Salamo/Santa Anita and Rosemont? Or that Councilor Burgess said there were plans to improve that section of Santa Anita? I haven't heard anything more after he said it in chambers last year. I could go on ad nauseum, which everyone knows, I am apt to do.

Gary

----- Original Message -----

From: "Peter Spir" <pspir@westlinnoregon.gov>

To: "GARY" <hitesman@comcast.net>

Sent: Monday, February 1, 2010 9:41:38 AM GMT -08:00 US/Canada Pacific

Subject: RE: WAP-09-03

Gary

The issue at this address is that the property owner installed a pool **without a building or land use permit of any kind** in an area protected by an easement which does not allow any changes/site disturbance without City approval. Their actions included removal of wetland vegetation, filling/grading of the wetlands on and adjacent to their property, the installation of turf/non-natives in the wetland area and the redirection of wetland water courses into a one-foot deep gravel drainage system. This triggers Department of State Lands (DSL) and West Linn enforcement.

After we notified the property owner of multiple wetland and easement violations, the applicant applied for a permit (WAP-09-03) on their own counsel. Although we would prefer other means of addressing the situation (see below), we are obliged to process the permit request.

The decision on that permit will be rendered by the Planning Director per CDC Chapter 99. A decision of denial is

planned. An appeal by the applicant to City Council could follow but the facts would not have changed. The applicant does not meet any of the criteria for approval and is in clear violation of the easement.

Staff is hoping that the applicant will agree to the City's preferred approach which is a Consent Order per CDC 106.045. If the applicant is unwilling to participate in the Consent Order, the plan would be to take the case to Circuit Court. Both the Consent Order and Circuit Court are seen as the most effective ways to enforce, protect, restore and rehabilitate disturbed natural resources and easement violations.

DSL is expected to advise us this week of their restoration requirements and the possible actions/penalties that they will pursue.

Adjacent properties are expected to be drawn into similar enforcement.

Peter

Peter Spir
pspir@westlinnoregon.gov
Associate Planner
22500 Salamo Rd.
West Linn, OR, 97068
P: (503) 723-2539
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Web: westlinnoregon.gov

West Linn Sustainability Please consider the impact on the environment before printing a paper copy of this email.

Public Records Law Disclosure This e-mail is subject to the State Retention Schedule and may be made available to the public.

From: GARY [mailto:hitesman@comcast.net]
Sent: Sunday, January 31, 2010 10:10 PM
To: Spir, Peter; Sonnen, John; WLHSNA@msn.com
Cc: Cummings, Teri
Subject: WAP-09-03

Mr. Peter Spir and Planning Director Mr. John Sonnen,

Another application has been submitted requesting a variance of Chapter 32 due to a hardship claim.

I believe the reasons stated in the posted letter are insufficient to grant the hardship claim. However, I do think that with proper administration of this application and proper Conditions of Approval that are researched and clarified, an economic hardship claim might be justifiable. And with the intent to make the property more saleable, just how much of a concession and hardship should the City accept? My main concerns go to validating the process, assuring that appropriate environmental criteria are enforced, and that this does not become a precedent for added 'erosion' to an already beleaguered and poorly crafted code. With watersheds being diminished at such alarming rates within West Linn, I simply request that as stewards of the land 'we' residents act responsibly. And when we do not; that the City work with us in a responsible and civic minded way.

And in this case, where it appears that the applicant may have shot themselves in the foot, under what authority is the City allowed to look the other way? And under what obligation is City Staff compelled to enforce the code that could detrimentally affect the aspirations and

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2/2/2010

welfare of just one family? And in that determent, how can a violation of the code be enforced without violating property rights? Since this application was brought to my attention by my neighborhood association, I assume that the claim for hardship may set dangerous precedent for forthcoming improvements on the "Erickson Property". Thus, my concern about enforcement, precedent, and procedure.

In terms of what has been posted, I cannot see where or what the City response is. If the Planning Director is the sole determinate, I seek clarification in the CDC of the process for making decisions and who has the ultimate authority. I also seek a clarification of CDC 32 with the current Council Rules and the existing authority for approval. AP-08-04 followed a similar path and was one of those boondoggles that ended up costing the City around \$70,000 and leaving the local neighborhood stupefied. We saved the creek but ended up vilifying the environment and condoning furthered public advocacy.

In the case of AP-08-04, an appeal was made to then Mayor King and Councilor Eberle, who both called it up for reconsideration. At the time, the former Planning Director Bryan Brown oversaw Tom Soppe and the approval caused quite an uproar after sailing through the Planning Commission. The work was criticized as sloppy and the Robinwood Neighborhood Association, in a rare case of unity, peppered the City with queries and found the Directors decision to be without precedent, or validity. The solution was revised and incorporated the solution of a Portland "skinny house". In fact, the solution was in effect a "spite house". Nine months later, the issue was settled behind closed doors and no one left the wiser.

Before I get into this, what is the process for deliberation and transparent communication regarding this matter? Since this decision does not appear to be a public one, does this letter have any applicability to making a City decision? And if the application is denied, will I be compensated for doing your job or be railroaded out of town for sticking my nose in somebody elses outhouse?(I refer to OIL! by Upton Sinclair.) If submitting this letter, will this letter become public, or kept confidential? Or will it be paraphrased? As was the case with WAP-08-04, I never knew for certain what the City intended to do with contrarian observations. What is the City policy this time? Is it still 'kill the messenger'? Since I am assuming that my submittal automatically becomes a matter of public record, and my concern is over policy and enforcement of policy, why is this application not going before the commission?

It should because the proper administration and definition of intent is directly at stake here.

As I stated above, the letter that makes up the application goes wanting. The application bears the letterhead of Hoffman, Hart, and Wagner, but is signed by the individuals that comprise of the family filing the application, including the children. Just in terms of propriety, who is the City going to be addressing? Attorneys-at-Law or a 9 and 4 year old? Is our code supposed to be kind to children as well as attorneys-at-law? Perhaps it would have been better form to have separate letters; one from an attorney and one from a family. As it is submitted, I am led to believe that the children help craft the 11 points. To clear up any confusion, why are attorneys-at-law allowing letters to be signed by their clients and clients children? What is the intent of that? I think it would appear 'cold' to deny the children their pool over silly concerns about fish! My initial response is one of confusion. Such tactics, if that is what is presented, appear childish. Applications and their decisions should be objective and without prejudice.

I will herein assume I am talking to attorneys-at-law, City staff, and barring objections from Commissioners or the Director, the Planning Commission.

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To start, all the points should reference the part of code they are claiming hardship against. This reads more like an aspiration letter or personal plea for leniency. I request the attorneys-at-law might consider helping the City and Commission by tying this back to the code. This applies to points 2 through 7 and 9 through 11.

My observations are;

- 1) There is a claim of no fish in the area. The drawing is insufficient to make that distinction and the definition of what constitutes "area" is unclear. Most storm drains lead to the river, where fish DO dwell. Residents have painted signs reminding us of what we do in our driveway ends up in our streams and rivers. Pollution and water quality can be an issue in this setting, unless the pool is untreated with chemicals. I assume chlorine et al is present in this circumstance. Therefore, this statement is not supported without quantifying the chemicals used in the pool and the soil characteristics that would prevent chemicals from going to the river in a flood or under normal upkeep.
- 2) I think the pool constitutes new development. A pool is a different use, structure, and environment from the pre-existing backyard. A plan showing the existing water resource area, slope, hardscape, hydrology calculations, the extent of the approved grasses and native plants should be submitted, as these things are normally required in meeting CDC 32.
- 3) I am confused. Who installed the pool and under what permit? I thought the pool was preexisting but now understand that an unknown amount of previous pavement, sod, and native plants used to be where the pool is now. How could a pool be built in a watershed area without going through the necessary review? This appears to be like shooting first and asking questions later. Is the City obligated to look the other way because codes were not followed? This is one slippery slope, Peter and John! Please clarify the timing of the installation and the request for a variance. If this application is indeed after the fact, and approved, then why do we have a Planning Department at all? Please clarify and let me know that this is not an-after-the-fact-fix-it solution. If it is, this will be very interesting to track. This appears to be an appeal for non enforcement. If this is a case of self imposed hardship and it is granted an approval, where will the City draw the line next?

This decision of this application will have precedent affecting the Palomino Loop Trail and its final configuration and restitution.

3 continued) It is stated that flood control was inadequate? Why? When were the three drains installed? How can we grandfather in a drain that was placed at the bottom of a pool!? What would be the affect to the slope and water resource area when that pool is drained? HELLO!! The whole point of managing a water resource area is too control dramatically rising amounts of water. It appears that puddling and flooding of homes has been adverted by adding a point source of water right into the water resource area. I think engineering is required to assure the City that the watershed remains protected and viable.

3 continued) How does a temporary pump not further denigrate the existing watershed? This appears to be adding insult to injury and is a poor example to support hardship. The installation of a pump appears to bring the pool further out of compliance.

4.) The applicant has only moved the puddling and mosquito habitat downstream. They may have improved the subject property at the cost of property downstream. Because there are no

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drawings or quantitative analysis of the situation, I do not see the relevance of this point. Mosquitoes are a part of Oregon, especially when you artificially inundate an area with more water. I think the affects of what happens off the subject property need to be calculated and shown how the impact will be mitigated.

5.) Because the anticipated runoff and solution is not quantified, the true affect to wildlife is unknown. Certainly with fewer mosquitoes, I imagine the bat population will decrease. And the feeding of water fowl by children? Will that be a Condition of Approval? What defines better access? The introduction of a body of water typically has impacts to animal travel patterns. It is not clear, in reading or looking at the plan, that this point has any validity whatsoever.

6.) Dead and dying vegetation are what constitute a healthy ecosystem. What pollutants were removed? Why were pollutants in a water resource area to begin with? Was this a pre-existing condition? In some cases, a "great deal of clean up" can cause disruption of an ecosystem more than it helps an ecosystem to thrive. This point too is without validation.

7.) Strict application of Chapter 32 may have helped with the sale of property. Is this a case of a family ignoring code and creating enjoyment for themselves at an unspecified cost to the environment? Is the pool now a liability because they are attempting to sell? Is the intent of the hardship claim to "grease the skids" for selling the property? Regardless, Real Estate is depressed and a great deal of depreciation has affected us all. I fail to see the linkages between the pool and basement pooling. Does water now exit underfloor areas and go directly into the pool? I think an engineering drawing showing locations of drains and the supporting hydrology reports are needed to claim hardship. Moldy basements are a fact of life when you build inside water conservation zones. This is hardly a hardship and the claim appears to be unjustified.

8.) Bluntly speaking, I will be dumbfounded if these arguments go unchallenged or are NOT properly refuted. The value of the pool seems to be in question. A pool is not a necessity for habitation in a sensitive water area and the value of the pool needs validation. Again, sales could have failed for many unstated reasons and the value of the pool may be overstated. There may also be events beyond anybody's control that have affected the value of this property they want to sell. Is this really a hardship or is this really about someone getting caught?

9.) There is no case for zero danger. If anything, engineering drawings should be produced to substantiate the claim made by the attorneys-at-law. Unless the attorneys-at-law can provide proof that they have done the engineering and can without uncertainty provide proof that there is absolutely zero danger to life or property, this point is unsupportable. The applicant has insurance, don't they? So there is no way there is absolute zero danger. Maybe remote. If the City accepts this argument as presented without comment, then the CDC should be revised to provide criteria of what 'zero danger' means, within Chapter 2- Definitions.

10.) Natural and native in West Linn is different from natural and native in Central Oregon. The natural sandstone creates added runoff as opposed to the natural soils it is covering. Runoff needs to be calculated and retained; not diverted directly off the subject property. Besides, native to West Linn is basalt. Sandstone is a design preference and its introduction does not improve the water resource area.

11.) The power cover is a great safety feature but possibly adds to the runoff. In regards to Chapter 32, I do not see how the cover substantiates a claim of hardship.

If a 'professional' response is provided and actual reasons for a hardship are presented, then I might see validation in a claim of economic hardship. But then the City is liable for lack enforcement and supporting possible endangerment of existing watersheds under faulty hardship claims.

Why was a retention pond not built to contain the puddling and storm event runoff? It appears that any hardship claim could be resolved by adding a retention pond. Pure and simple. Then a claim of economic hardship might be considered.

I hope it is the intent of the City to work with the applicant and help them to reach their goals. Simply allowing them to claim a hardship, at this juncture, appears unsubstantiated and could be subject to appeal, should someone else decide. I will not, in deference to the property owners and their situation. I truly feel sorry for this situation. But who is ultimately responsible and who is to be held accountable for the intrusion into the water resource area? To not assign responsibility and accountability to this request would be a complete repudiation of CDC 32. Acceptance of this hardship claim will also open the door to more frequent claims and larger destruction of our watersheds, streams, and rivers.

Spir, Peter

From: Zak, Teresa
Sent: Tuesday, February 02, 2010 8:03 AM
To: kariooke@aol.com
Cc: Sonnen, John; Spir, Peter
Subject: FW: WAP-09-03, 1215 9th ST

Good Morning Karie,

I posted the notice to the project page on the 24th of January. Please note I re-posted the public notice today along with a copy of the pool area map we mailed. The map section of the project page is posted upon notification from our GIS department when they have made it available. The application was posted on the web site.

Have a wonderful day,
Teresa Zak

 Teresa Zak
tzak@westlinnoregon.gov
Administrative Assistant, Planning
22500 Salamo Rd.
West Linn, Oregon, 97068
P: (503) 723-2533
F: (503) 656-4106
Web: westlinnoregon.gov

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Teresa Zak, Administrative Assistant
Planning and Building, #1533

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Public Records Law Disclosure This e-mail is subject to the State Retention Schedule and may be made available to the public.

From: Spir, Peter
Sent: Tuesday, February 02, 2010 6:40 AM
To: Zak, Teresa
Subject: FW: WAP-09-03, 1215 9th ST

Peter Spir, Associate Planner
Planning and Building, #1539

EXHIBIT PC-8

APPLICANT'S SUBMITTAL

APPLICANT: TROY AND GINA BUNDY, 1215 NINTH STREET

FILE NO.: WAP-09-03

REQUEST: WATER RESOURCE AREA PROTECTION PERMIT (WAP) TO ALLOW STRUCTURES, LANDSCAPING AND DEVELOPMENT IN A WATER RESOURCE AREA TRANSITION AND SETBACK, A RIPARIAN CORRIDOR AND AN OPEN SPACE EASEMENT AT 1215 NINTH STREET. ALSO TO ALLOW FILL, LOSS OF WETLANDS, LOSS OF NATIVE PLANT MATERIALS AND FILL OF DRAINAGE CHANNEL.

19-09-03



City of West Linn

DEVELOPMENT REVIEW APPLICATION

RECEIVED
PLANNING & BUILDING
CITY OF WEST LINN
TIME

TYPE OF REVIEW (Please check all boxes that apply):

- Annexation
- Appeal and Review *
- Conditional Use
- Design Review
- Easement Vacation
- Extraterritorial Ext. of Utilities
- Final Plat or Plan
- Flood Plain Construction
- Hillside Protection and Erosion Control
- Historic District Review
- Legislative Plan or Change
- Lot Line Adjustment * / **
- Minor Partition (Preliminary Plat or Plan)

- Non-Conforming Lots, Uses & Structures
- One-Year Extension *
- Planned Unit Development
- Pre-Application Meeting *
- Quasi-Judicial Plan or Zone Change
- Street Vacation
- Subdivision
- Temporary Uses *
- Tualatin River Greenway
- Variance
- Water Resource Area Protection/Wetland
- Willamette River Greenway
- Other/Misc

Home Occupation / Pre-Application / Sidewalk Use Application * / Permanent Sign Review * / Temporary Sign Application require individual application forms available in the forms and application section of the City Website or at City Hall.

TOTAL FEES/DEPOSIT 1850

* No CD required/** Only one copy needed

Troy: Gina Bundy 1215 9th ST West Linn 97068

OWNER'S	ADDRESS	CITY	ZIP	PHONE(res. & bus.)
<u>same</u>				<u>503 723 0855</u>

APPLICANT'S	ADDRESS	CITY	ZIP	PHONE(res. & bus.)
<u>same</u>				

CONSULTANT	ADDRESS	CITY	ZIP	PHONE

SITE LOCATION 1215 9th ST West Linn

Assessor's Map No.: 31 E02AB Tax Lot(s): 8201 Total Land Area: 21,539 sqft

1. All application fees are non-refundable (excluding deposit).
2. The owner/applicant or their representative should be present at all public hearings.
3. A denial or grant may be reversed on appeal. No permit will be in effect until the appeal period has expired.

4. **Four (4) complete hard-copy sets (single sided) of application materials must be submitted with this application. One (1) complete set of digital application materials must also be submitted on CD in PDF format.**

The undersigned property owner(s) hereby authorizes the filing of this application, and authorizes on site review by authorized staff. I hereby agree to comply with all code requirements applicable to my application.

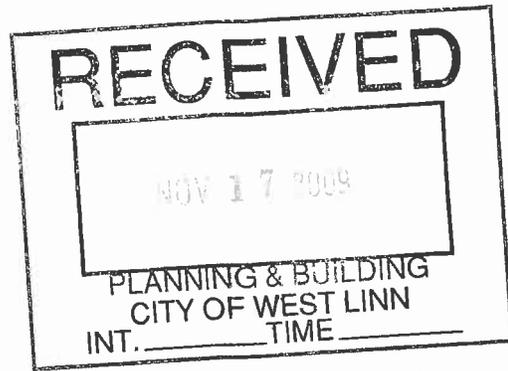
SIGNATURE OF PROPERTY OWNER(S)
 x Gina Bundy Date 22 Oct 09
 SIGNATURE OF APPLICANT(S)
 x same Date _____

BY SIGNING THIS APPLICATION, THE CITY IS AUTHORIZED REASONABLE ACCESS TO THE PROPERTY. ACCEPTANCE OF THIS APPLICATION DOES NOT INFER A COMPLETE SUBMITTAL. COMPLETENESS WILL BE DETERMINED WITHIN 30 DAYS OF SUBMITTAL.

PLANNING AND BUILDING; 22500 SALAMO RD #1000; WEST LINN, OR 97068; PHONE: 656-4211 FAX: 656-4106

November 16, 2009

Attn: Peter Spir
City Hall, City of West Linn
22500 Salamo Rd.
West Linn, OR 97068



Re: 1215 9th Street

Dear Mr. Spir:

Following up on my last letter, I thought I might set out the law, as I have now read it, and as I believe it pertains to the lot behind my property at 1215 9th Street. The issues appear fairly straight-forward, and I do not want to take up a great deal of your time. However, the information on the subject is voluminous. From a legal standpoint, I find it fascinating because there initially appeared to be a conflict of laws. That is, at what point must these self-imposed, well-intentioned environmental regulations yield in the face of public safety concerns? The answer is in the body of Section 32, itself.

First, my simple internet search yielded a tremendous amount of information about the danger of power lines and standing brush. I am attaching just a few of these articles. I would just mention a 2007 LA Times article confirming that among 10 of the major Southern California fire outbreaks that year, five of them were caused by downed power lines. This included the fire that damaged 200,000 acres, destroyed 1,041 homes, and killed 2 people.

It is noteworthy that the Federal Energy Regulatory Commission convened in 2003-04 to deal specifically with Utility Vegetation Management Practices. Among the purposes of those conferences was an interest in preventing deadly fires:

“While not as visible to the public as tree-related outages, tree and power line conflicts have also caused significant wildland fires in both the US and Canada ... Arcing distances vary based upon such factors as voltage and ambient conditions. If arcing does occur between a branch and high voltage line, there is the possibility that the branch could ignite and fall to the ground. If flammable material is present on the ground, it could cause a fire.”

The Federal Commission concluded that vegetation management around poles and in what are know as “Wire Zones” and “Border Zones” are imperative. (See attached Exhibit). This involves the creation of “Fuel Reduction Zones.” “Fuels,” in our situation, are composed of two types: (1) Ground Fuel and (2) Ladder Fuel. Ground fuel is obviously the dry grasses and shrubs growing on the ground. Ladder fuel is the tall, dry weeds and shrubs that grow up the poles and surrounding trees. (I can provide several photos of these fuels growing wild in the areas bordering this zone, still.) In either case, the ground cover in these zones is preferably composed either of “asphalt, bare soil, concrete, green grass, mulches, or rock.” Grasses should be maintained at a height of “less than four inches.”

Now, the easy part. CDC Chapter 32.020(D)(2) provides the exception in this case when it states: “The following actions are **excepted** from the provisions of this Chapter ... The routine maintenance of any existing water resource area such as removing *dead or dying vegetation* that constitutes a hazard to life or property, pollutants, trash, eroded material, etc.”

Further, Section 32.030 specifically allows for the activities we engaged in when it provides that trimming and removal of vegetation from the transition and setback area is **allowed** “if the vegetation constitutes a hazard to life or property.”

The Oregon Fire Code applies to the area in question. The Code governs the maintenance of all premises for precautions against fire and the spread of fire. Section 301.1. Pursuant to Section 304.1.1.; “Accumulations of hay, straw, weeds or other combustible or flammable material shall not be permitted to remain in or on any vacant lot or open space.” There are no exceptions.

Section 304.1.2 of the Code states, without exception; “Weeds, grass, or other growth capable of being ignited and endangering property shall be cut down and removed by the owner or occupant of property.”

It is noteworthy that both sections use the legal term of art, “shall.” Not “may” or “can.” The use of the word “shall” *requires* that the clearing activity be undertaken. This is of critical importance here.

To conclude, there can be no doubt that the area in question constituted a *de facto* fire hazard for my family and the families and homes in the surrounding area. Allowing these dry grasses to pile up year after year, in our case, on top of a heap of camouflaged construction debris, is not in keeping with public safety or the law in this State. These high voltage lines fall or arc, year after year, into the tinderbox that was once our back yard. The nearest hydrants, I am told by TVFR, are over 1000 feet away from our home (corners of 9th and Volpp and 9th and Willamette Falls Drive). [This matter, by the way, is even further complicated by the fact that wildfires in an unmaintained vegetation area caused by a live fallen or damaged power line cannot be addressed immediately by TVFR.]

The area was in violation of the Oregon Fire Code, The National Electric Safety Code, The National Fire Protection Association guidelines, and the guidelines spelled out by the Federal Energy Regulatory Commission and applicable to Utility Vegetation Management. The area behind our home is now safe. In this particular case, there is an exception to the activity that occurred on that property, and this exception is clearly delineated in CDC Chapter 32 as outlined above.

We, respectfully, request that you impose no sanctions or other requirements against us, and we will voluntarily replace any bushes that are not on the Portland Plant List with acceptable replacements, which include: Douglas’s Spiraea; Few-flowered Shooting Star; Fireweed; Orange Balsam; White Bog Orchid; and Yellow Monkey-flower. We will also visit the Oregon Native Plant store for other suitable alternatives that are also on the list and appropriately designated when the planting season is upon us.

Again, please call if you have any questions. Thank you for your courtesies.

Sincerely,



Troy S. Bundy

1215 9th Street
West Linn, OR 97068
(503) 222-4499 during the day

latimes.com

Downed power lines: a fiery culprit only money can stop

They are responsible for some of the region's worst blazes. Utilities can make repairs, but the costs are steep.

By Joe Mozingo

Los Angeles Times Staff Writer

November 4, 2007

Power lines are the suspected culprit behind at least five of the 12 major fires that burned in Southern California last week, including the Witch fire, which burned nearly 200,000 acres, destroyed 1,041 homes and killed two people.

Although acts of arson generate public outrage and police action, power lines pose a thorny problem with no easy solution: Should utilities do more to prevent failures, particularly in wild-land areas prone to high wind? And are ratepayers willing to pay the bill?

"The utilities and the public sector need to come to the mountain and realize there is an issue here that needs to be addressed," said Los Angeles County Supervisor Zev Yaroslavsky. "It's almost like a taboo subject."

High-voltage lines can start fires when they cross, touch tree branches or hit the ground, causing the electrical current to arc in explosions of sparks.

When Yaroslavsky visited the scene of the Canyon fire in Malibu, it struck him how often he had heard of downed power lines sparking fires in the Santa Monica Mountains during heavy winds. He sponsored a motion, which supervisors approved Tuesday, to have county staff work with Southern California Edison to research ways to lower the risk of power line ignitions in fire-prone areas.

"This is an issue that has gone un-addressed for decades," he said.

State regulators require utilities to clear brush and meet pole strength standards to help prevent downed power lines. But they say the only sure-fire way to remove the fire threat is to replace overhead lines with underground ones.

Both Southern California Edison and San Diego Gas & Electric say that would cost a minimum of \$1 million a mile. And in remote, rocky areas, the cost soars from that baseline.

Edison alone has more than 70,000 miles of overhead lines in its 50,000-square-mile service area, which covers all or parts of 11 counties in Southern and Central California.

Some money is set aside by regulators to bury lines, but the funds fall far short of the need.

Edison is expected to collect \$3.5 million throughout Los Angeles County in 2007 for placing overhead lines

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underground, according to spokesman Steven Conroy. "It's up to the county, working with Edison, to identify the projects," he said.

Utilities around the country are putting new power lines underground and replacing some overhead lines with subterranean ones.

But most of the buried lines are in residential areas where people didn't want them marring their views, not in the wind-prone backcountry where a few sparks from a power line can turn brush into a raging monster.

Old overhead power lines still crisscross the grasslands and chaparral canyons of San Diego County's Laguna Mountains, site of three of the six largest fires in California history: the Witch fire last month, the Cedar fire of 2003 and the Laguna fire in 1970.

Power lines were the cause in the Laguna fire. And there have been other near disasters.

Just a mile from where the Witch fire started, power lines fell in Santa Ana winds last November, sparking a fire that could have been devastating had firefighters not put it down so quickly.

Dave Geier, vice president of electrical transmission at SDG&E, said last month's fires may change the equation of how authorities decide where to bury power lines.

"The question is: How can we do a better job in prioritizing some of these backcountry circuits in terms of undergrounding?" he said. "To this point, it's been standard utility practice to have these lines in rural areas overhead."

Southern California Edison has clashed with fire authorities in the past. In 1997, state officials investigating the 13,000-acre Calabasas-Malibu fire raided Edison's headquarters in Rosemead.

The California Department of Forestry and Fire Prevention said at the time that the utility had repeatedly hindered investigations by withholding information or by removing evidence from the scenes of major fires. Edison denied the allegation.

Prosecutors ultimately concluded that Edison failed to trim trees around power lines that sparked the fire but that its negligence was not criminal.

The issue of power line fire safety has largely faded from public view since then. Part of the reason is that this type of fire is relatively rare.

Yet when power line fires occur, it's often during high winds. And those fires can be particularly destructive.

In the Santa Monica Mountains, power lines sparked 8% of the fires since 1981, according to a University of Wisconsin study on fire ignition. But those fires were responsible for 24% of the total acres burned.

"They are rare events but extremely destructive when they occur," said Joe Mitchell, a Ramona resident and scientist who has done extensive research on power line fires. Mitchell is working with the Sierra Club to oppose a major SDG&E transmission project, called the Sunrise Powerlink, that would cross the Laguna Mountains.

Of the 20 largest wildfires in California history, power lines were suspected or blamed for four, accounting for about 21% of the charred acreage, according to forestry department statistics.

It appears that power lines played an even larger role in last month's devastation than they have historically. The fires linked to possible power line failures -- the Witch fire, the Canyon fire, the Rice fire near Fallbrook, the Ranch fire near Castaic and the Grass Valley fire in the San Bernardino Mountains -- collectively charred more than 271,000 acres and some 1,500 homes.

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The California Public Utilities Commission is investigating each of the fires and will determine what, if anything, could have been done to avoid the failures, said Richard Clark, director of the utility's consumer protection and safety division.

"All of this will be looked at," he said.

Raffy Stepanian, program manager for utility safety at the California Public Utility Commission, said utilities can make overhead lines safer with concrete or metal poles, guy wires that anchor the poles to the ground and newer hardware.

Edison spokesman Conroy said the utility is looking closely at the failures of last month to see "what improvements can be made."

"The system performed pretty well given we got reports of winds in excess of 100 miles per hour," he said. "We have people who worked for the company for 25 years, and they haven't seen winds this strong."

As for putting the lines underground, ratepayers will ultimately have to decide if they're willing to pay. "The utilities will underground any line if someone wants to pay for it," Clark said.

joe.mozingo@latimes.com

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Downed power lines linked to California fires

13:16, November 05, 2007

A preliminary investigation has linked some of the recent California wildfires with downed power lines, the authorities said Sunday.

Among the more than 10 fire outbreaks that ravaged Southern California last week, at least five were caused by downed power lines, including a major blaze, which burned nearly 200,000 acres (81,000 hectares), destroyed 1,041 homes and killed two people.

Although investigators did not rule out arson as the cause of at least two fires, power lines pose a thorny problem with no easy solution, Los Angeles Fire Department officials said.

"The utilities and the public sector need to come to the mountain and realize there is an issue here that needs to be addressed," said Los Angeles County Supervisor Zev Yaroslavsky. "It's almost like a taboo subject."

High-voltage lines can start fires when they touch tree branches or hit the ground, causing the electrical current to arc setting off explosions of sparks.

Yaroslavsky sponsored a motion, which supervisors approved Tuesday, to have county staff work with Southern California electricity utilities to research ways to lower the risk of power line ignitions in fire-prone areas.

"This is an issue that has gone un-addressed for decades," he said.

State regulators require utilities to clear brush and meet pole strength standards to help prevent downed power lines. But they say the only sure-fire way to remove the threat is to replace overhead lines with underground ones.

Southern California electricity company Edison is expected to collect 3.5 million

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U.S. dollars throughout Los Angeles County in 2007 for placing overhead lines underground, according to Edison spokesman Steven Conroy.

"It's up to the county, working with Edison, to identify the projects," he said.

Both Edison and San Diego Gas & Electric say placing lines underground would cost a minimum of 1 million dollars a mile (1.6 kilometer). And in remote, rocky areas, the cost soars from that baseline.

Old overhead power lines still crisscross the grasslands and chaparral canyons of San Diego County's Laguna Mountains, the site of three of the six largest fires in California's history: the Witch fire last month, the Cedar fire of 2003 and the Laguna fire in 1970.

The Los Angeles Times reported Sunday that Los Angeles County supervisors have asked Edison to study the issue of power pole collapses in mountains and canyons which are blamed for just 8 percent of fires since 1981.

But those failures, a university study found, accounted for 24 percent of the total acres burned, apparently because the pole failures occur during wind storms.

Source: Xinhua

Photo Gallery

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Washington Township Fire Department

Official News



Downed High Voltage Power Lines Cause Fire

Washington Township--On Sunday September 11, 2005, the Washington Township Fire Department responded to a fire on Main Street in the Windsor section of Washington Township. Firefighters were originally dispatched to investigate a report of a live power line down in the road. When the first engine from the Washington Township Fire Department arrived they found that the live power line had ignited a car fire that was spreading to another nearby vehicle.

A full first-alarm structural assignment was requested due to the proximity of the vehicles on fire to an occupied home. For obvious safety reasons, firefighters were forced to wait until the utility company arrived and disconnected power from the live wires prior to attacking the fire. Once power was shut off, the fire was quickly extinguished. While both cars were a total loss, the home was saved and suffered only cosmetic damage from the radiant heat of the burning cars.

Washington Township Fire Department was assisted at the scene by firefighters from Hamilton Township. There were no injuries reported to firefighters or residents.

Published in the Messenger Press on 09/15/2005

Likely culprit in Windsor fire — squirrel

By: Lauren Burgoon, Staff Writer

Fire Chief says a squirrel who ate through active electric wires probably caused Windsor fire.

WASHINGTON — A Windsor village family stood by helplessly Sunday morning as a fire, likely started by a hungry squirrel who ate through overhead power lines, engulfed two of their cars and threatened their home.

The Sunday morning blaze at Robert and Laura Knight's home was unusual, both because of the culprit and because the Fire Department could not safely douse the flames for nearly two hours until the power was shut off.

The fire started at 6:48 a.m. on North Main Street when two heavy-duty, active electric wires crashed to the ground.

75

Fire Chief Kevin Brink said a squirrel probably chewed through one power line, which sliced a second wire on its way down. Firefighters responded to the home and found the wires, each carrying 7,000 volts of electricity, arcing.

"You can't go near arcing wires because they energize everything they touch. (For example) if there was a metal pipe below ground that became energized, someone could be electrocuted standing 20 feet away. We couldn't spray water because the electricity travels through the water and the firefighters would be electrocuted." Chief Brink said. "We couldn't do anything until the power company cut the electricity."

That did not happen until 8:25 a.m. — almost two hours later. In the meantime, the wires ignited a bush. Fire crews tried to spray fire-dousing chemicals from afar, but the attempt didn't work. The fire then spread to two cars in the Knights' driveway, creating an extremely hot fire that threatened their home and a nearby propane tank.

"We could see heat waves radiating from the cars and melting the house's siding," Chief Brink said. "Luckily the power lines went dead just then and it didn't take much longer" to extinguish the fire.

After being unable to safely extinguish the fire for almost two hours, the crews, including companies from East Windsor, Hightstown and Groveville, put out the flames in under 10 minutes.

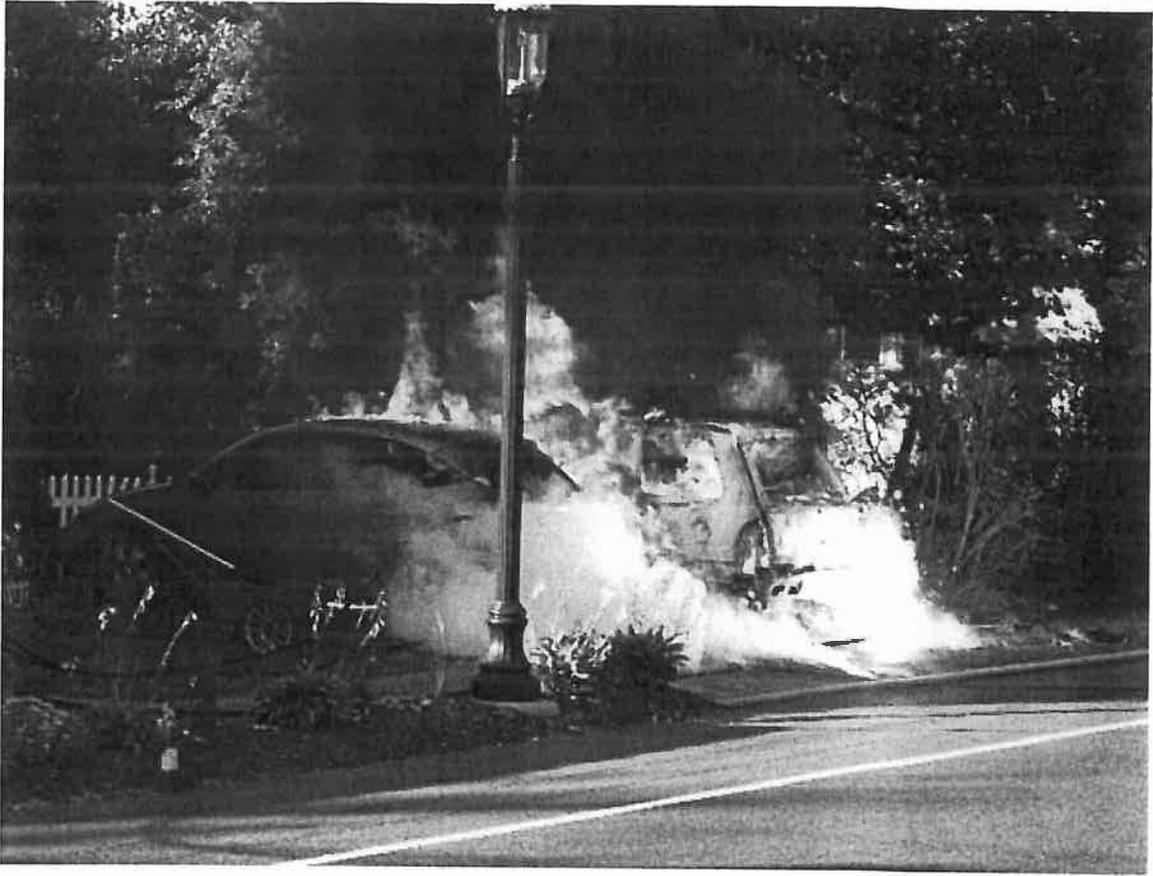
The Knights and their pets are fine, Mr. Knight said Tuesday. The home did not sustain structural damage, though siding, windows and possibly the roof will need to be replaced, as well as the two cars.

Still, the family is keeping a sense of humor about the situation. They dubbed the offending squirrel "Sparky." Unfortunately, Sparky wasn't as lucky as the family — it was found dead under the power lines.

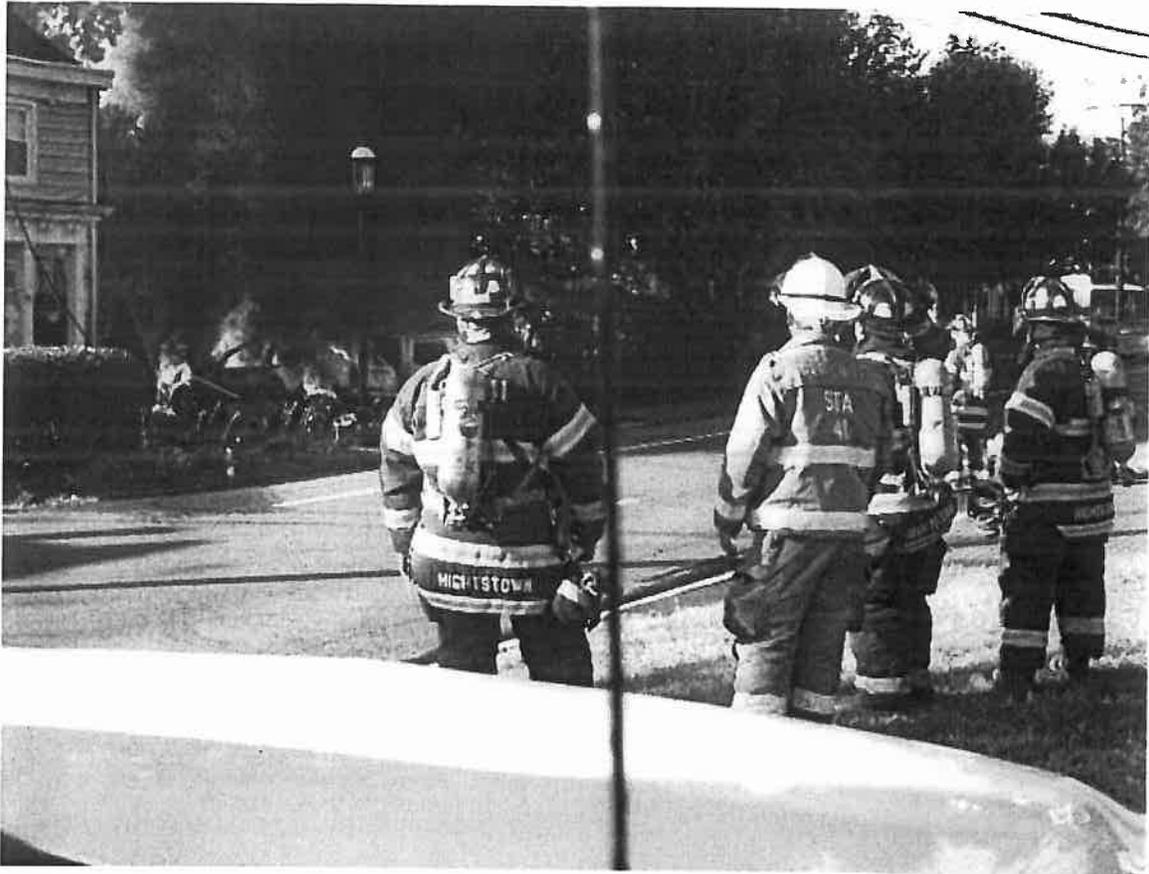
Photos from East Windsor Fire Company # 1



76



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Photos from Groveville Fire Company



79



NIOSH
Fire Fighter Fatality Investigation
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Death in the line of duty...

A summary of a NIOSH fire fighter fatality investigation

February 16, 2000

Volunteer Fire Fighter Electrocuted While Fighting a Grass Fire - California

SUMMARY

On June 23, 1999, a 20-year-old male volunteer fire fighter (the victim) was electrocuted while fighting a grass fire. The fire department was dispatched to the grass fire at 1657 hours and while en route, was notified by Central Dispatch of a possible downed power line. The initial call indicated that a branch from a large oak tree had fallen onto an overhead power line, knocking the line to the ground and igniting the surrounding grass. The first responding unit, Attack Truck 150, confirmed a downed power line. The Chief arrived on scene and parked his vehicle near the downed power line to warn all fire fighters of its location. The victim arrived in his privately owned vehicle, immediately went to the location of Engine 252, and helped the Deputy Chief and a fire fighter/paramedic extinguish the fire on the east flank. The Deputy Chief then pulled the engine into the burned-out area to hit hot spots and start mop-up operations. Once Engine 252 was repositioned, the victim asked the Deputy Chief if he could extinguish a smoldering pile of brush near a structure. The victim then walked approximately 50 feet from the engine toward the smoldering pile of brush, extinguished it, and walked toward another smoldering pile of brush near the downed power line and adjacent to the roadway. As the victim pulled a charged 1-inch line over the uneven terrain (Figure 1), he apparently tripped and fell, contacting the downed power line. He fell to the ground face first, landing on the 6,700-volt, single-phase power line. Another fire fighter retrieved a nonconductive tool from the engine and pulled the power line from beneath the victim. Two fire fighters moved the victim to the road and started Cardiopulmonary Resuscitation (CPR) until the ambulance arrived and took the victim to a local hospital where he was pronounced dead. NIOSH investigators concluded that, to help minimize the risk of similar occurrences, fire departments should:

- ensure that fire fighters stay away from downed power lines at a distance equal to at least one span between poles until the line is de-energized
- ensure protective shields, barriers, or alerting techniques are used to protect fire fighters from contacting energized electrical conductors. Alerting techniques should include safety signs and tags, barricades, or if no other means are available, an attendant stationed to warn and protect fire fighters
- ensure fire fighters are aware of the hazards when working around energized parts or equipment

INTRODUCTION

On June 23, 1999, a 20-year-old male volunteer fire fighter was electrocuted while fighting a grass fire. The victim was attempting to extinguish a smoldering pile of brush when he came in contact with a downed power line. On June 29, 1999, the U.S. Fire Administration notified the National Institute for Occupational Safety and Health (NIOSH) of the incident. On July 29, 1999, a Safety and Occupational Health Specialist and the Team Leader from the NIOSH Fire Fighter Fatality Investigation and Prevention Program investigated the incident. Interviews were conducted with the Chief, Deputy Chief, other members of the fire department who responded to the incident, and one witness. The incident site was visited and the fire scene photographed. Copies of witnesses' statements, training records, standard

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operating procedures (SOPs), and the death certificate were obtained, as well as a map of the fire scene. The combination fire department (paid and volunteer fire fighters) involved in the incident serves a population of 10,000 in a geographic area of 42.5 square miles and is comprised of 7 paid and 18 volunteer fire fighters. The victim was wearing full wildland turnout gear at the time of the incident. The site of the incident was a plowed, grassy field with walnut trees interspersed. Approximately 2 acres were burned. The State requires all career fire fighters to complete training equivalent to National Fire Protection Association (NFPA) Level I. Volunteer fire fighters are provided training once a week for a period of 3 years through the department's 8-hour volunteer academy. The victim had 9 months of fire fighting experience.

INVESTIGATION

On June 23, 1999, at 1657 hours, Central Dispatch was notified of a grass fire. A branch from a large oak tree had fallen onto and broken a 6,700-volt single-phase overhead power line. The power line fell to the ground and started a grass fire. Central Dispatch notified the fire department at 1658 hours of the grass fire with a possible downed overhead power line. At 1702 hours Attack Truck 150 (a pickup truck with a 200-gallon water tank) responded with one fire fighter and was first on the scene. The Chief arrived in his unit at 1704 hours and assumed command. Engine 252 arrived at 1705 hours with the Deputy Chief (driver) and one fire fighter/paramedic (Fire Fighter #1). The victim arrived by his privately owned vehicle at approximately the same time that Engine 252 took position on the east flank of the fire. Engine 250 arrived on scene at 1710 hours, with a fire fighter (driver) and a volunteer fire fighter/paramedic (Fire Fighter #2), and took position on the west flank.

The fire fighter from Attack Truck 150 radioed Central Dispatch with a size-up of a grass fire with a slow rate of spread and light fuel, and he confirmed a downed power line. Central Dispatch advised all responding units that a power line was down and to use caution. The Chief parked his unit approximately 25 feet from the downed power line so that arriving units would stay clear of it (Figure 1). At 1705 hours the Chief radioed Central Dispatch to contact the local power company and requested a representative be sent to the site to de-energize the power. *Note: The power company technician working that day was at another job approximately 45 minutes from the fire scene.* As Engine 252 was positioning on the east flank, the Chief advised the Deputy Chief and Fire Fighter #1 of the location of the downed power line. Meanwhile, the victim was assisting Fire Fighter #1 in pulling a 1 ½-inch line while the Deputy Chief ran the pump. The three fire fighters started their attack in front of the engine, and within minutes the fire on the east flank was under control. Upon arrival of Engine 250, the Chief advised the driver to turn into the field and attack the west flank (Figure 2). The Chief also advised both fire fighters on Engine 250 of the location of the downed power line. They observed the power line while driving toward the west flank. The driver of Engine 250 pulled a 1-inch hand line off the engine while Fire Fighter #2 hit the flames on the west flank. Within minutes of arriving on the scene, the fires on both flanks were extinguished. The Deputy Chief told Fire Fighter #1 to disconnect, stretch, and drain the 1 ½-inch line. The Deputy Chief then pulled Engine 252 into the burned area to hit hot spots and conduct mop-up operations. Once the engine was repositioned, the victim asked the Deputy Chief if he could extinguish a smoldering pile of brush near a structure. The Deputy Chief told the victim to go ahead. The victim then pulled a 1-inch hand line off the engine and walked approximately 50 feet from the engine to extinguish the smoldering pile of brush. Fire Fighter #1 walked around the engine to grab a McLeod tool (a type of hoe used to overturn dirt) and a 5-gallon water pack. At the same time both fire fighters from Engine 250 dragged their hose line approximately 100 feet across the field to extinguish another pile of smoldering brush (Figure 2). The victim extinguished the smoldering pile of brush then walked toward another pile of brush near the downed power line. As the victim walked with a charged line toward the second pile of brush, he crossed in front of the nozzle man from Engine 250, who proceeded to hit the smoldering brush. Shortly after passing the nozzle man, it is believed that the victim tripped over the rough, plowed field and fell face first, landing directly on the 6,700-volt downed power line. Several witness (bystanders and fire fighters) standing near the victim called out "Fireman down!" *Note: While the victim was walking toward the downed power line, the Chief, other fire fighters on the fireground, and several bystanders, who were all within approximately 100 feet of the victim, thought the victim was aware that he was getting close to the line. When he kept moving toward it, they yelled to him that he was near the power line; however, he had already come in contact with it.* At 1717 hours the Chief radioed Central Dispatch for the power company's estimated time of arrival and requested an ambulance for a man down. Fire Fighter #1 called to the Deputy Chief, who was behind the engine controlling the water pressure, to turn off the water. He then ran to get the

McLeod tool he had retrieved earlier and used the nonconductive tool to pull the downed power line from under the victim. Two fire fighters rolled the victim over and observed that he had black soot on his face and blood coming from his nose. The victim had no pulse, and he was not breathing. They moved him onto the road and started Cardiopulmonary Resuscitation (CPR) until 1724 hours, when the ambulance arrived. The victim was transported to a local hospital where he was later pronounced dead.

CAUSE OF DEATH

The death certificate listed the cause of death as sudden death from electrocution.

RECOMMENDATIONS/DISCUSSION

Recommendation #1: Fire departments should ensure that fire fighters stay away from downed power lines at a distance equal to at least one span between poles until the line is de-energized.^{1,2}

Discussion: *Fundamentals of Wildland Fire Fighting* states that when downed power lines come in contact with the ground, current flows outward in all directions from the point of contact (ground gradient). The energized area can extend several feet from the point of contact. Therefore, fire fighters could be electrocuted by walking into this area. To avoid this hazard, fire fighters should keep ample distance away from the downed power line (equal to one span between poles) until the power is de-energized. If, upon arrival, the fire has not burned past the distance equal to one span between poles, fire departments should delay their attack until the fire has burned past this recommended span. By keeping a safe distance away from downed power lines, fire fighters can reduce the chance of being injured or killed through contact with an energized power line.

Recommendation #2: Fire departments should ensure protective shields, barriers, or alerting techniques are used to protect fire fighters from contacting energized electrical conductors. Alerting techniques should include safety signs and tags, barricades, or if no other means are available, an attendant stationed to warn and protect fire fighters.³

Discussion: Alerting techniques and barriers visually provide fire fighters with a more accurate location of an electrical hazard. Although the Chief's vehicle was positioned approximately 25 feet from the downed power line, no other warning devices were used to alert fire fighters/bystanders of the line's location. Many people on the fireground, including the Chief and other fire fighters, stated they thought the victim was aware of the location of the downed line. When the victim was in the area of the power line, several people yelled to him but by that time he had already come in contact with the line.

Recommendation #3: Fire departments should ensure fire fighters are aware of the hazards when working around energized parts or equipment.⁴

Discussion: Training should be provided and include safe work practices for employees to avoid the risk of being injured or killed while working in areas with energized parts. The victim was a volunteer fire fighter and was not covered by OSHA regulation. However, fire departments could use OSHA safety standard 29 CFR 1910.332 (b) as a source of information and provide training to fire fighters who face the risk of electrical shock. The local power and gas company had provided training to the fire department. The utility company's training, offered free upon request to all departments, included information about electrical and gas safety, hazards of a downed power line, effects of arcing, etc. The last training conducted by the utility company was offered in 1998, before the victim was a member of the

department.

REFERENCES

1. International Fire Service Training Association [1998]. Essentials of fire fighting. 3rd ed. Stillwater, OK: Oklahoma State University, Fire Protection Publications.
2. International Fire Service Training Association [1998]. Fundamentals of wildland fire fighting. 3rd ed. Stillwater, OK: Oklahoma State University, Fire Protection Publications.
3. 29 Code of Federal Regulations 1910.335(b), Safeguards for personnel protection. Electrical Safety-Related Work Practices.
4. 29 Code of Federal Regulations 1910.332 (b), Training. Electrical Safety-Related Work Practices.

INVESTIGATOR INFORMATION

This investigation was conducted by Kimberly Cortez, Safety and Occupational Health Specialist, and Richard Braddee, Project Officer/Team Leader, NIOSH, Surveillance and Field Investigations Branch, Division of Safety Research.

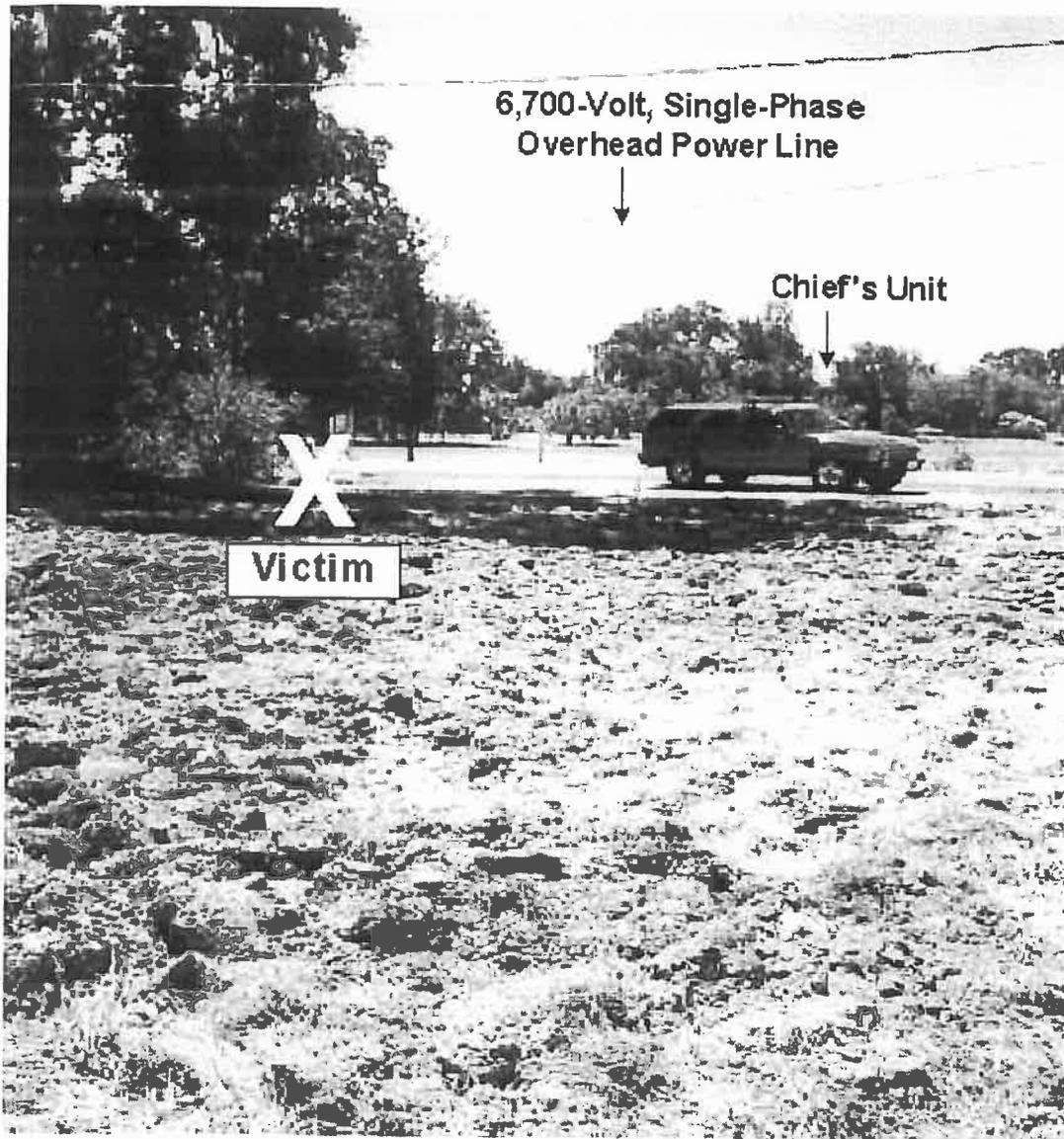


Figure 1. Photo of Incident Site

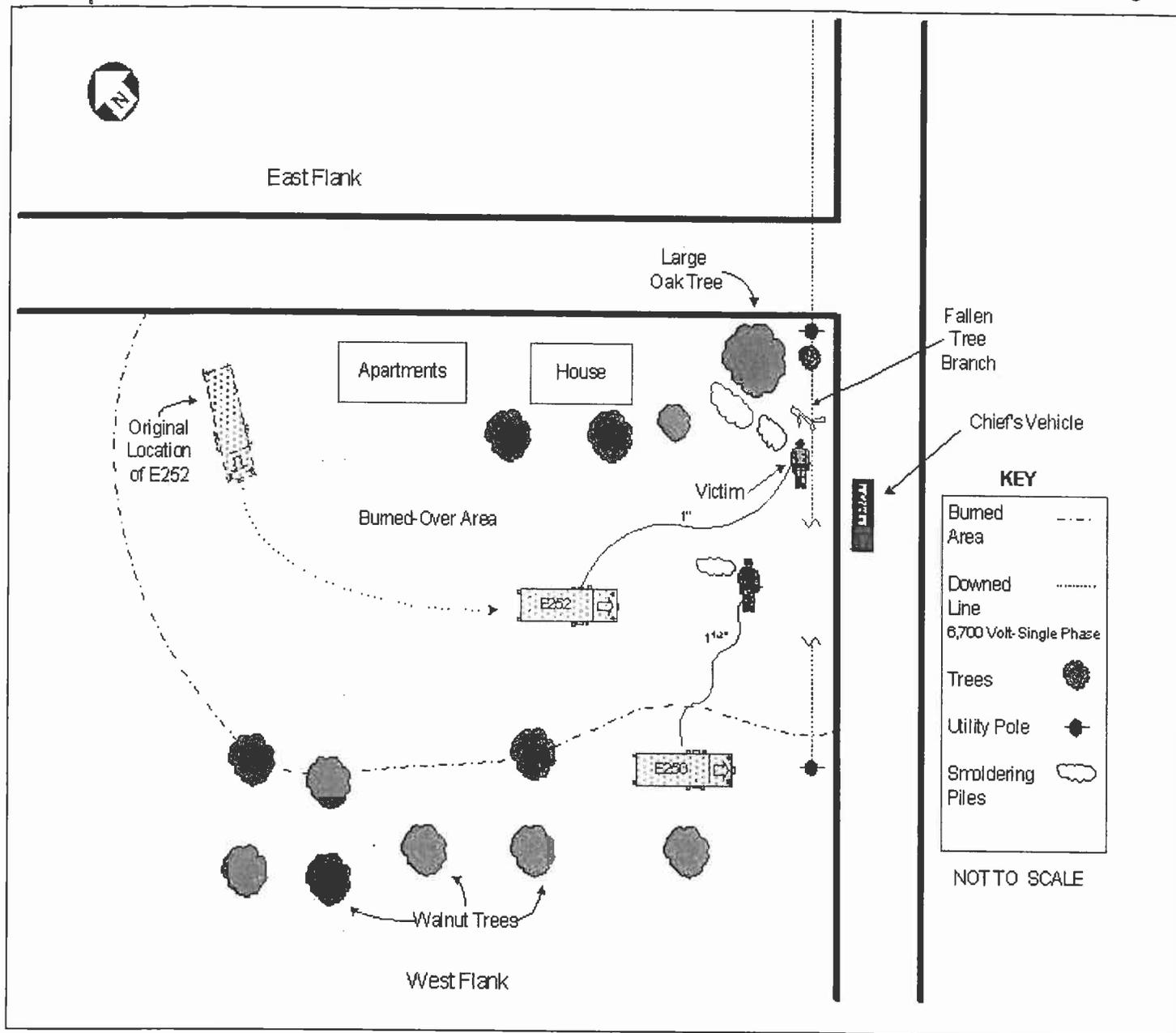


Figure 2. Fire Incident Site (Aerial View)



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Originally Published: 11/8/2007 7:06:00 AM

Downed power lines are a fiery culprit in California

High-voltage lines can touch off fires when they cross, touch branches or hit the ground, causing the electrical current to arc in an explosions of sparks.

Los Angeles Times

| More

Power lines are the suspected culprit behind at least five of the 12 major fires that burned in southern California last week, including the Witch fire, which burned nearly 200,000 acres, destroyed 1,041 homes and killed two people.

Although acts of arson generate public outrage and police action, power lines pose a problem with no easy solution: Should utilities do more to prevent failures, particularly in wild land areas prone to high wind? And are ratepayers willing to foot the bill?

"The utilities and the public sector need to come to the mountain and realize there is an issue here that needs to be addressed," Los Angeles County Supervisor Zev Yaroslavsky said. "It's almost like a taboo subject." High-voltage lines can start fires when they cross, touch tree branches or hit the ground, causing the electrical current to arc in explosions of sparks.

When Yaroslavsky visited the scene of the Canyon fire in Malibu, it struck him how often he had heard of downed power lines sparking fires in the Santa Monica Mountains during heavy winds. He sponsored a motion, which supervisors approved last week, to have county staff work with Southern California Edison to research ways to lower the risk of power-line ignitions in fire-prone areas.

"This is an issue that has gone un-addressed for decades," Yaroslavsky said.

Prohibitive costs

State regulators require utilities to clear brush and meet pole strength standards to help prevent downed power lines.

But they say the only certain way to remove the fire threat is to replace overhead lines with underground ones. Southern California Edison and San Diego Gas & Electric say that would cost a minimum of \$1 million a mile. And in remote, rocky areas, the cost soars from that baseline.

Edison alone has more than 70,000 miles of overhead lines in its 50,000-square-mile service area, which covers all or parts of 11 counties in southern and central California.

Some money is set aside by regulators to bury lines, but the funds fall far short of the need.

Edison is expected to collect \$3.5 million throughout Los Angeles County in 2007 for placing overhead lines underground, spokesman Steven Conroy said.

"It's up to the county, working with Edison, to identify the projects," he said.

Utilities around the country are putting new power lines underground and replacing some overhead lines with subterranean ones.

But most of the buried lines are in residential areas where people didn't want them marring their views, not in the wind-prone backcountry where a few sparks from a power line can turn brush into a raging monster.

Overhead power lines still crisscross the grasslands and chaparral canyons of San Diego County's Laguna Mountains, site of three of the largest fires in California history: the Witch Fire last month, the Cedar Fire of 2003 and the Laguna Fire in 1970.

Near-disasters

Power lines were the cause in the Laguna fire. And there have been other near disasters.

A mile from where the Witch fire started, power lines fell in Santa Ana winds last November, sparking a fire that could have been devastating had firefighters not put it out quickly.

Dave Geier, vice president of electrical transmission at SDG&E, said that last month's fires might change the equation of how authorities decide where to bury power lines.

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"The question is: How can we do a better job in prioritizing some of these backcountry circuits in terms of undergrounding?" he said. "To this point, it's been standard utility practice to have these lines in rural areas overhead."

Southern California Edison has clashed with fire authorities in the past. In 1997, state officials investigating the 13,000-acre Calabasas-Malibu Fire raided Edison's headquarters in Rosemead.

The California Department of Forestry & Fire Prevention said at the time that the utility repeatedly had hindered investigations by withholding information or by removing evidence from the scenes of major fires. Edison denied the allegation.

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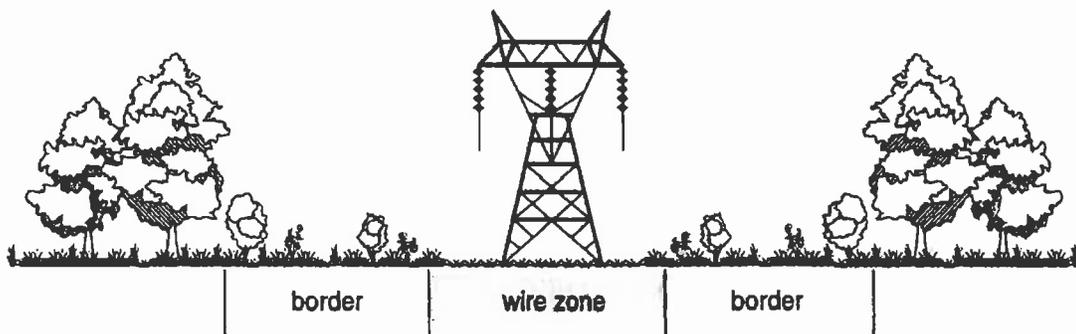
UTILITY VEGETATION MANAGEMENT FINAL REPORT

Ideal ROW Maintenance – Industry Consensus

There is industry consensus as to how a transmission ROW should be established and maintained. From an electric reliability standpoint, it simply requires managing vegetation so that it cannot grow into, or fall onto the energized facilities. It requires creating a predictable and low-growing environment of vegetation under and adjacent to the ROW. The following graphic illustrates this simple concept.

Bramble and Byrnes Wire Zone – Border Zone

(From Yahner, Bramble and Byrnes, 2000)



As the graphic describes, this concept is typically referred to as the Wire Zone - Border Zone model, and it has, based on years of research¹³, been proven to be effective in reducing and/or eliminating outages related to vegetation on transmission ROWs. In addition, this research has proven that the Wire Zone - Border Zone model generates a great many more benefits than just reducing outages. These benefits include reduced long-term maintenance costs, improved habitat for wildlife, biodiversity, and wildland fire mitigation.

While we recommend that this model be used wherever possible, there are locations where this may not be practical. There are locations where transmission lines are not located on clearly defined and documented ROWs. These lines may also be located in more urban areas where the Wire Zone - Border Zone model may not be appropriate due to existing landscaping or property lines. With that said, we do believe that this model should be utilized whenever new lines are built, and wherever existing lines will allow. This model could and should be applied to the vast majority of transmission lines.

Reclaiming ROWs

The steps to effectively managing a transmission ROW from a UVM perspective are:

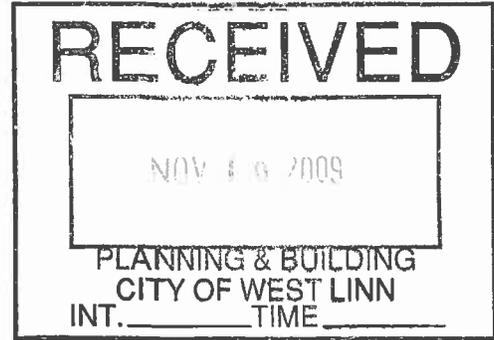
1. Design the line and obtain necessary easements and permits.
2. Build the line and establish the Wire Zone - Border Zone vegetation model utilizing appropriate Integrated Vegetation Management (IVM) techniques¹⁴.

¹³ Example: Bramble, W.C., W.R. Byrnes, R.J. Hutnick and S.A. Liscinsky. 1991. *Prediction of cover type of rights-of-way after maintenance treatments*. Journal of Arboriculture. 17:38-43.

¹⁴ IVM is generally defined as the practice of promoting desirable, stable, low-growing plant communities that will resist invasion by tall growing tree species through the use of appropriate and environmentally sound control methods. These methods can include a combination of chemical, biological, cultural, and/or mechanical treatments.

November 9, 2009

Attn: Peter Spir
City Hall, City of West Linn
22500 Salamo Rd.
West Linn, OR 97068



Re: 1215 9th Street

Dear Mr. Spir:

Regarding the property at 1215 9th Street, I was informed that you performed a site check and raised concerns about a section of property located behind my lot. Without going into the entire history behind that piece of property, we wanted you to be aware of several details, which I think are important to any analysis you are currently engaged in.

1. Respectfully, we did not dump any "fill" onto that lot. I am attaching our "PAID" invoice for your review in this respect. Additionally, the lack of fill is apparent, based upon the location of the trees back there. They are not buried, and the base of the trunks are at ground level.

2. I began clearing debris from that lot a few years after we purchased the property, in 2002. It is my belief that this portion of the land back there was used as a construction debris dump site by Sheridan Homes while the three properties were being constructed in 2000-2001. The debris removed over the years, and more recently, included McDonald's cups, broken bottles, rusty nails, a significant amount of wood scrap (2x4s, 2x6, particle board, sheet rock, roofing, cardboard, metal bands used to secure rebar/PVC etc), water bottles, a broken file, one rusted gas can, barbed wire, a rotten wheelbarrow tire, broken tile, the rotten end of a broom (maybe it was a wheelbarrow handle), concrete chunks, plaster chunks, a large section of hardened grout, strands of wire, 2-3 empty paint cans, empty caulk tubes, and some large metal parts of some kind that come from a machine that I cannot identify. These materials were scattered and piled about the area, and were camouflaged by the tall seasonal grass. They were a hazard for my sons, myself, PGE employees, and the West Linn Police [who had to enter that area on 2 occasions to search for car thieves; it provides a nice place for criminals to hide from the police]. Any fill contained on that property was not from us or our pool. There were two standing piles of debris, when we bought the home, which may have been from Sheridan Homes.

3. It was always our understanding that PGE owned that strip of land. This was consistent with our plot map of the area. My wife confirmed this fact again with the County Surveyor's Office today, 11/9/09. It is very unusual, but absolutely true. That land is owned by PGE as a non-taxable utility lot.

We called PGE one day about the land after a tall, water-soaked willow tree crashed over onto our property and damaged our water feature during a recent ice storm. The PGE landscape manager called us back and told us we could remove the tree from our back yard, if we wished, but it would take him about 2 weeks to get a crew out there. I gathered that he missed my point

(ie, I thought PGE should pay), but asked him if they would clear out all the debris back there. He again declined, mentioning that, as long as it did not interfere with the power cables or my property, they would “look at it,” but I shouldn’t hold my breath. He had no objection to us clearing the area, as long as we did not remove any of the trees. We have not removed any trees.

4. In order to clear the area of hazards, we had to see them. So, we did cut the grass down and some of the heavy equipment working on the pool did park on a portion of that land. Once that work was done, the area was pretty much leveled out as a result of the traffic. Rather than letting it grow back in, we did turn, rake and plant it. However, we did not change the grade and we did not fill it in. The planting was done around the natural contour of the previously debris-covered, grass area.

Other than my sons’ safety, our biggest concern about that tall grass is the fact that those power cables do cast significant blue arcs during the wind storms that whip through there. That section of the cable has been responsible for several of our Willamette blackouts over the years. I am sure you can confirm this with PGE. In fact, I know that PGE, in conjunction with the city arborist, went in there last year and removed some of the more worrisome tree limbs from the tall trees surrounding that property, for just that reason. Tall, dry grass and a PGE easement does not make a great deal of sense to me, as it is a fire hazard. [There have been two fires on that property, we were able to put them out, but my wife did call the fire department for one of them.] It is a fire hazard, by the way, without any nearby source of water, other than the Willamette River and our pool. We looked for a nearby hydrant for safety reasons, and could not find one anywhere around.

In any event, rather than have the City make a number of assumptions, we simply wanted you to be aware of all our concerns and the actual facts leading up to the landscape on the property behind our home. There was ample reason for us to expend significant efforts, time and monetary expense in cleaning up that area and making it safe, while providing a clear, debris-free access to those who might need to it in the future.

We are willing to cooperate with you in any reasonably way. However, we are hopeful you will take the above facts into consideration while making your decisions.

Thank you for your courtesies. Please contact me, if you have further questions or concerns.

Sincerely,

Troy S. Bundy
1215 9th Street
West Linn, OR 97068
tsb@hgw.com

Cell: 503-703-2052
Work: 503-222-4499

Anderson Poolworks

24008 SW Morgan Lane
 Sherwood, OR 97140-8400

Invoice

DATE	INVOICE
8/31/2009	12-4263

BILL TO
Gina & Troy Bundy 1215 9th Street West Linn, OR 97068

PAID

PROJECT	TERMS
	Due on receipt

DESCRIPTION	AMOUNT
Progress billing, (30% per contract based on current contract amount of \$35,586.00).	10,675.80
Added water feature to pool.	1,064.75
178 cubic yards pool excavation spoils export from site to Anderson Poolworks yard.	
22 cubic yards crushed gravel import.	

Thank you for your business.	Total	\$11,740.55
	Payments/Credits	\$-11,740.55
	Balance Due	\$0.00

Troy S. Bundy

tsb@hhw.com
Admitted in Oregon and Washington

Twentieth Floor
1000 S.W. Broadway
Portland, Oregon 97205
Telephone (503) 222-4499
Fax (503) 222-2301

October 21, 2009

City Planner
West Linn, Oregon

Re: Property located at 1215 9th Street
Request for Residential Pool Permit

Dear City Planner/To whom it may concern:

This letter is sent in conjunction with the application for a residential private swimming pool located at 1215 9th Street, West Linn, Oregon. Appropriate plans and other documentation have been separately submitted under separate cover.

The pool is currently in existence and has passed all inspections, including concrete, Clackamas County electrical, and all other necessary inspections as required by the local and city government. This documentation will be made available to the City.

Currently, the City is considering whether this pool affects a Water Resource Protection Area under CDC Chapter 32. I will address each point directly in establishing that either (1) the Chapter does not apply in this circumstance or (2) if it does, a hardship permit should be granted.

1. The purpose and intent of the Chapter is to protect water quality, prevent flooding, and protect fish and wildlife. CDC 32.010. There are no fish in the area. In fact, there is no running or standing water in the area. Pollution and water quality are not an issue in this setting.
2. The area is not a "new" area of development. It was our pre-existing back yard, composed of concrete, sod and native plants. This area had been previously developed since 2002. The sod was removed, and the area was re-planted with native plants. In the spring, native grasses from the Metro list will be supplemented when weather is more appropriate.
3. In installing the pool, we have taken several measures to deal with flood control, which had previously been inadequate. We have installed 3 drains. One is located in the bottom of the pool. The other two are on the rear and sides of the pool perimeter. There is also now a monitoring station, allowing for temporary pump insertion if necessary when water levels rise dramatically. Additionally, an access point for any excess

rainwater has been created and troughed, allowing for better inflow and outflow of any rainwater runoff occurring in the rear of the property. Finally, the pre-existing runoff channel has been fortified and expanded with 3" commercial grade rock/granite, preventing water seepage and allowing for more adequate drainage. The combined effect of all these new features will result in better water outflow for all surrounding homes and property, as well as diminished water seepage and "puddling" of rainwater.

4. Puddling, in the past, has created a health and safety issue for the surrounding families in the area due to the large mosquito population and other parasites that develop in the stagnant, standing water. Our modifications have virtually eliminated this puddling effect around the subject property.
5. The surrounding wildlife now has better access to the property due to the landscaping changes made around the pool. This wildlife has included birds of prey and other birds. There are not now, nor have there ever been water fowl on the property, except for the two ducks who continue to return for a temporary, 2 month visit every spring. I am sure they will return because our children feed them everyday.
6. This project has involved a great deal of clean-up of the surrounding area. This has included the removal of dead/dying vegetation and pollutants that constituted a hazard to surrounding families and their children.
7. Strict application of the Chapter 32 would cause an unreasonable hardship on us as property owners. We attempted to sell this property on 3 occasions within the last 2 years. Our efforts at obtaining a sale failed. The restrictions, if imposed strictly would essentially deprive us of improving any portion of the property for any purpose as we are currently surrounded by wetlands in the front and back of the home. By staying in the home and improving it ourselves we have significantly increased the value and resale potential of the property. Moreover, the pressure drain located at the bottom of the pool has eliminated the pooling water in our crawl space, which had been a frequent source of problems including, of course, a seasonally flooded crawlspace despite the addition of a new sump, frog and insect breeding grounds, risk of toxic molds and fungus/dryrot, radon, as well as foundation settling causing cracks throughout the drywall in the home to say nothing about cracks in the door and window sills. We have a dry crawlspace for the first time in history. This is, beyond a doubt, directly related to the pool.
8. Bluntly, the value of this pool far outweighs the value of the non-native sod we removed in our back yard. The remaining area surrounding the pool will be re-vegetated consistent with 32.050. The footprint within the water resource area is significantly less than 5,000 square feet.
9. The project presents absolutely zero danger to life or property due to flooding and erosion. In fact, it goes to great leaps in preventing such danger as discussed above.

October 21, 2009

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10. The pool is environmentally sound and fully up to code. Our concrete patio was removed in favor of natural sandstone found in Central Oregon, lending to the aesthetic "natural and native" appearance of this pool.

11. Finally, we have installed a power cover at significant cost to us as an added safety precaution.

For these reasons, we ask the City Planner to approve our permit, either declining to apply Section 32 altogether, or by granting us the Hardship Status as delineated in the code. Thank you for your assistance.

Respectfully,

A handwritten signature in black ink, appearing to read 'Troy S. Bundy', with a long horizontal line extending to the right.

Troy S. Bundy

A handwritten signature in black ink, appearing to read 'Gina Bundy'.

Gina Bundy

A handwritten signature in black ink, appearing to read 'Logan'.

Logan Bundy (Age 9)

A handwritten signature in black ink, appearing to read 'Cole'.

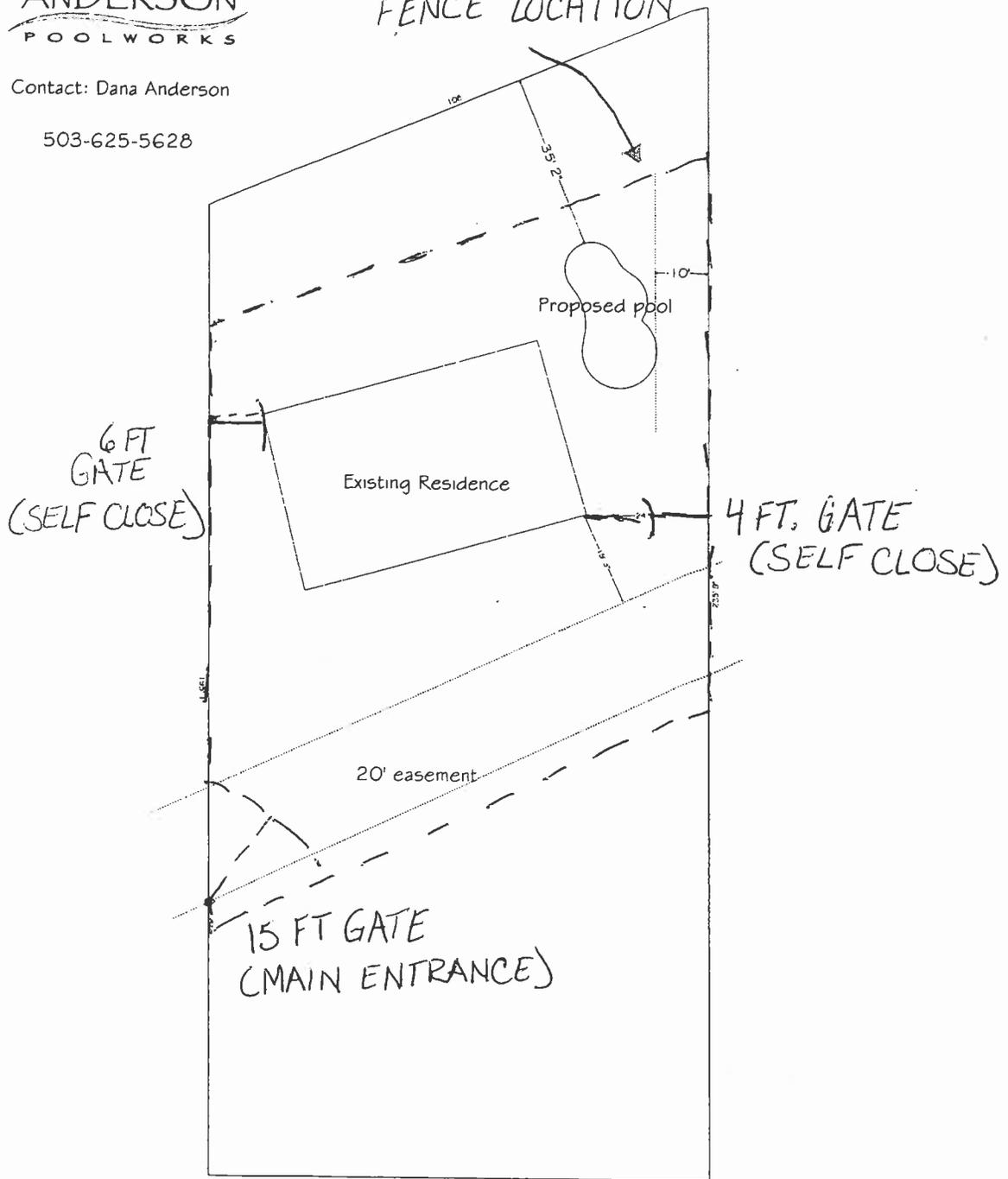
Cole Bundy (Age 4)

ANDERSON
POOLWORKS

Contact: Dana Anderson

503-625-5628

EXHIBIT "A" FENCE LOCATION



Bundy Residence

1215 9th St. West Linn

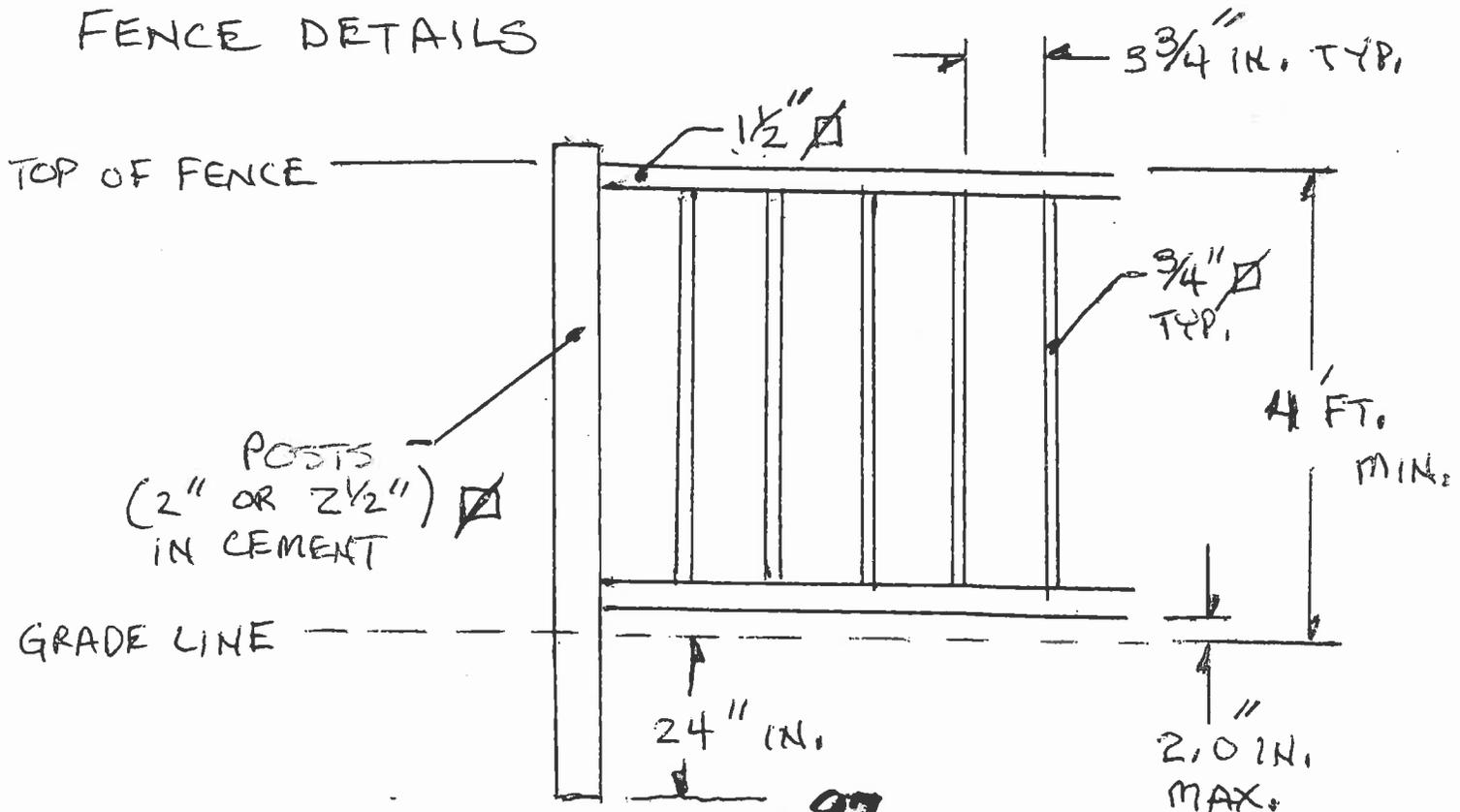
Parcel number 8201



North

BUNDY HOME 1215 9th ST.
FENCE TO OBSTRUCT ACCESS TO POOL.
CONSTRUCTION SHALL CONFORM TO 2008
OREGON RESIDENTIAL SPECIALTY CODE
APPENDIX G

SEE EXHIBIT "A" FOR FENCE LOCATION
ALL STEEL & PAINTED
FENCE DETAILS





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