City of West Linn
Planning & Development • 22500 Salamo Rd #1000 • West Linn, Oregon 97068
Telephone 503.656.4211 • Fax 503.656.4106 • westlinnoregon.gov

# DEVELOPMENT REVIEW APPLICATION

| For Office Use Only | | |
|---|---|---|
| STAFF CONTACT Darren Wyss | PROJECT NO(S). AP-16-01 | |
| NON-REFUNDABLE FEE(S) 400- | REFUNDABLE DEPOSIT(S) | TOTAL 400- |

**Type of Review** (Please check all that apply):

- ☐ Annexation (ANX)
- ☒ Appeal and Review (AP) *
- ☐ Conditional Use (CUP)
- ☐ Design Review (DR)
- ☐ Easement Vacation
- ☐ Extraterritorial Ext. of Utilities
- ☐ Final Plat or Plan (FP)
- ☐ Flood Management Area
- ☐ Hillside Protection & Erosion Control
- ☐ Historic Review
- ☐ Legislative Plan or Change
- ☐ Lot Line Adjustment (LLA) */**
- ☐ Minor Partition (MIP) (Preliminary Plat or Plan)
- ☐ Non-Conforming Lots, Uses & Structures
- ☐ Planned Unit Development (PUD)
- ☐ Pre-Application Conference (PA) */**
- ☐ Street Vacation
- ☐ Subdivision (SUB)
- ☐ Temporary Uses *
- ☐ Time Extension *
- ☐ Variance (VAR)
- ☐ Water Resource Area Protection/Single Lot (WAP)
- ☐ Water Resource Area Protection/Wetland (WAP)
- ☐ Willamette & Tualatin River Greenway (WRG)
- ☐ Zone Change

Home Occupation, Pre-Application, Sidewalk Use, Sign Review Permit, and Temporary Sign Permit applications require different or additional application forms, available on the City website or at City Hall.

**Site Location/Address:** 2351 Oxford St, Sunset School

Assessor's Map No.:
Tax Lot(s):
Total Land Area:

**Brief Description of Proposal:** Notice of Appeal of Planning Commission Approval

**Applicant Name:** (please print) Carrie Hansen SOSpark member
Address: 4760 Bittner St
City State Zip: West Linn, OR 97068
Phone: 503 964 1029
Email: carriehansen1@yahoo.com

**Owner Name** (required): (please print)
Address:
City State Zip:
Phone:
Email:

**Consultant Name:** (please print)
Address:
City State Zip:
Phone:
Email:

RECEIVED
APR 28 2016
PLANNING & BUILDING
CITY OF WEST LINN
INT. DSW TIME 4:40pm

1. All application fees are non-refundable (excluding deposit). **Any overruns to deposit will result in additional billing.**
2. The owner/applicant or their representative should be present at all public hearings.
3. A denial or approval may be reversed on appeal. No permit will be in effect until the appeal period has expired.
4. **Three (3) 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. If large sets of plans are required in application please submit only two sets.**

* No CD required / ** Only one hard-copy set needed

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. Acceptance of this application does not infer a complete submittal. All amendments to the Community Development Code and to other regulations adopted after the application is approved shall be enforced where applicable. Approved applications and subsequent development is not vested under the provisions in place at the time of the initial application.

Carrie Hansen — Applicant's signature
4/28/16 4:38pm — Date
Owner's signature ***(required)*** — Date

BEFORE THE PLANNING COMMISSION

FOR THE CITY OF WEST LINN, OREGON

| | |
|---|---|
| In the Matter of WEST LINN-WILSONVILLE SCHOOL DISTRICT 3JT's Application for Conditional Use, Design Review, Director's Exception, and Class II Variance Approval to allow construction of a new primary school and related facilities in the R-10 zone. | FILE NOS: CUP-15-03, DR-15-17, and VAR-15-01/02/03<br><br>**SAVE OUR SUNSET PARK'S NOTICE OF APPEAL OF PLANNING COMMISSION APPROVAL** |

## I. INTRODUCTION

The members of Save Our Sunset Park ("SOS Park") are not opposed to replacement of the Sunset Primary School. However, they believe the West Linn Planning Commission erred in approving the applicant's project, as proposed. SOS Park presented substantial evidence, through expert testimony, showing that the current design will result in multiple adverse impacts, including but not limited to potential flooding, threats to Douglas fir trees, and increased risk of landslides. Also, the current plan is to use the former Sunset Park property for parking and drainage facilities after the City promised West Linn voters that the land would be used to maximize recreational opportunities and save significant trees. These were the express terms and conditions of the sale of 1.6 acres of park land to the school district. A copy of Measure 3-358 is attached as Exhibit 1 to SOS Park's April 6, 2016 Supplemental Memorandum in Opposition. In addition, the current design requires variances for parking vehicles and bicycles, and the Applicant has not met the variance approval criteria.

SOS Park respectfully requests that the City Council reverse the Planning Commission approval. Not only does the approval violate the terms and conditions of the City's sale of 1.6 acres of Sunset Park to the school district, but the proposed development fails to meet the

mandatory approval criteria in the West Linn Community Development Code ("CDC") for this conditional use and fails to satisfy the CDC variance standards.

## II. STANDING

The Appellant, SOS Park, is comprised of a group of West Linn residents who live near Sunset Primary School and Sunset Park. The Appellant and its members appeared orally and in writing before the West Linn Planning Commission and provided their names and addresses. Therefore, SOS Park and its members have standing to appeal this decision.

## III. GROUNDS FOR REVERSAL OR MODIFICATION OF THE DECISION

The Planning Commission misapplied the following provisions of the West Linn Community Development Code:

A. CDC 60.070 (2)
B. CDC 60.070 (3)
C. CDC 60.070 (6); CDC 55.130 (B)
D. CDC 92.010 (E)
E. CDC 75.020 (B)

The burden of proof is on the Applicant to show compliance with each applicable approval criterion. Failure to meet a single mandatory standard requires denial. CDC 60.070 sets forth the primary approval criteria for conditional uses. CDC 92.010 (E) was specifically listed as an additional approval criterion for this application. CDC 75.020 (B) sets forth the requirements for Type II variances.

The grounds for denial were described in further detail in the following submittals which are attached hereto, and incorporated herein:

March 15, 2016: David Dodds' March 15, 2016 Submittal

March 16, 2016: Save Our Sunset Park's Memorandum in Opposition (including copy of Pacific Hydro-Geology, Inc.'s March 15, 2016 Analysis)

March 30, 2016: David Dodds' March 30, 2016 Submittal

April 4, 2016: David Dodds' April 4, 2016 Submittal (regarding new information pertaining to storm water drainage plans)

April 6, 2016: Save Our Sunset Park's Supplemental Memorandum in Opposition (including a copy of Measure 3-358 regarding sale of 1.6 acres of Sunset Park)

April 11, 2016: David Dodds' April 11, 2016 Submittal

**A. The Planning Commission misconstrued CDC 60.070 (2) which requires that the characteristics of the site be suitable for the proposed use considering size, shape, location, topography, and natural features.**

While the site may be generally appropriate for use as a primary school, the proposed location of the development on the site is not suitable because the new school building, parking lot, and storm water facility would be constructed where the current playground and a portion of the former Sunset Park are located. This plan will result in significant adverse impacts, onsite and offsite, as a result of redirecting the storm water which renders the site unsuitable for the proposed development.

SOS Park's expert hydro-geologist, Malia Kupillas, reviewed the proposed storm water management facilities. She concluded that the configuration of the new primary school and storm water infiltration pond will have the following impacts caused by concentrating the majority of the surface water into one area for infiltration with some water discharged during larger storm events:

1. The amount of water that flows down gradient will increase and impact 14 trees within the area north of the bird houses/property line and a minimum of 6 Douglas fir trees in the park, for a minimum of 20 trees. The Douglas fir trees will be more

susceptible to disease or blow down because the soils will be wetter around their roots. Douglas fir trees do not like wet roots.

2. The overflow from the storm water infiltration pond will change the hydrology of Sunset Creek. It will have more water flowing for a longer period of time which may increase erosion.

3. The back yards of the nearby homes, adjacent to the park on the east, will become wetter with potential flooding if the houses have basements and potentially trigger shallow landslides.

4. Existing shallow landslide areas will be more susceptible to landslides and existing landslides may be reactivated. The area to the east of what is now known as Sunset Park that is currently mapped by the Department of Geology and Mineral Industries as ***moderate risk*** for landslides could now change to ***high risk*** for landslides.

5. Other areas down-slope of where the water from the storm water infiltration pond flows on top of the bedrock may develop shallow landslides.

A copy of Pacific Hydro-Geology, Inc.'s March 15, 2016 Analysis is attached as Exhibit 1 to SOS Park's March 16, 2016 submittal, a copy of which is submitted herewith.

The layout of the onsite development (location) results in adverse impacts on existing trees (natural features) onsite and offsite. In addition, the slope of the property (topography), which dictates its drainage patterns, will increase the risk of flooding and landslides on surrounding properties. Accordingly, the site is unsuitable for the project, as proposed, considering location, topography, and natural features. The Planning Commission erred in finding that CDC 60.070 (2) is satisfied.

**B. The Planning Commission erred in finding compliance with CDC 60.070 (3) because the new facility, as proposed, is inconsistent with the overall needs of the community.**

While a new school may be consistent with the overall needs of this community, approval of ***this*** application will be adverse to the overall needs of the community because it will put mature Douglas fir trees at risk – onsite and offsite. Moreover, it will increase flooding and the potential for landslides. Furthermore, the conversion of the 1.6 acres of park land to non-recreational use (parking lot and drainage facility) is inconsistent with the overall need of the community to be able to rely on promises made by the City when City-owned park land is sold. See SOS Park's April 6, 2016 Supplemental Memorandum in Opposition, page 5, for further discussion of the ballot measure condition of sale. The Planning Commission misconstrued the requirements of CDC 60.070 (3) in finding that the project, as designed, is consistent with the overall needs of the community.

**C. The Planning Commission misconstrued the requirements of CDC Section 60.070 (6) which require satisfaction of the applicable provisions of chapter 55 as an applicable approval criterion and the applicant failed to demonstrate compliance with CDC 55.130 (B).**

CDC 55.130 (B) requires that a registered civil engineer prepare a plan and statement that is supported by factual data that clearly shows that there will be no adverse impacts from increased intensity of runoff offsite, or identify all offsite impacts and measures to mitigate those impacts. The plan and statement shall, at a minimum, determine the offsite impacts from a 10-year storm. This is a mandatory approval standard and neither the applicant nor staff address it as such. Notwithstanding the express requirement for factual data regarding adverse impacts and mitigation measures, the Planning Director advised the Planning Commission that this criterion is merely a "submittal requirement" and it is met as long as a civil engineer has prepared the plan.

Even if the applicant's plan and statement could be considered factual data, they are fatally flawed due to the extensive reliance on an inappropriate program. As explained in David Dodds' March 30, 2016, the applicant relied extensively on a Presumptive Approach Calculator ("PAC") program designed by the City of Portland to aid in the design of storm water drainage swales. However, the manager of Portland's storm water program confirmed that the PAC program was never intended to be used in the design of ponds such as the one proposed by the applicant.

The applicant appears to have submitted a new storm water plan between the first evidentiary hearing on March 16, 2016 and the continued hearing on April 6, 2016. The differences between the original plan (which relies heavily on Portland's PAC program) and the new plan (which deletes all reference to the PAC program) are described in David Dodds' April 4, 2016 submittal submitted herewith. Again, the Planning Director stated that the approval criterion merely requires that a civil engineer submit a plan. However, it is the position of SOS Park that any submitted plan must be supported by factual data to address adverse impacts.

In this case, SOS Park submitted substantial evidence (in the form of expert testimony) that there will be adverse impacts resulting from the proposed storm water facility. The applicant never addressed mitigation measures to address these identified impacts. Furthermore, it is unclear whether the substance of either of the applicant's plans was actually reviewed or considered by the Planning Commission.

CDC 55.130 (B) requires more than a mere *submittal.* The express language of the code provision requires that the plan be supported by factual data showing that there will be no adverse impact, or if there are adverse impacts what measures are available to mitigate those impacts. Again, SOS Park's expert hydro-geologist demonstrated that there will, indeed, be offsite impacts

resulting from the current proposal, including impacts to mature Douglas firs, flooding, and potential landslides. She also suggested methods of avoiding or mitigating those impacts. However, the Planning Commission failed to look beyond the fact of mere submittal of a plan and statement in finding that CDC 55.130 (B) is satisfied. There is substantial evidence in the record to support a finding that CDC 55.130 (B) is not met; and there is no evidence in the record showing that the Planning Commission even looked beyond the fact that a civil engineer had submitted a plan. Thus, the Planning Commission erred in finding that CDC 55.130 (B) was satisfied.

**D. The Planning Commission also misconstrued the requirements of CDC 92.010 (E) in finding that mere submittal of a civil engineer's plan and statement satisfies this approval criterion.**

CDC 92.010 (E) is substantially similar to CDC 55.130 (B) with respect to the need to address adverse impacts from increased intensity of runoff and mitigation measures. However, this standard requires consideration of increased runoff intensity from a 100-year storm event, rather than the 10-year storm event of CDC 55.130 (B). The civil engineer's plan and statement fails to address the adverse impacts and potential mitigation measures identified by SOS Park's hydro-geologist. The Planning Commission misconstrued CDC 92.010 (E) by finding this code provision was satisfied when there was no factual data showing an absence of adverse runoff impacts. Furthermore, there was no showing of how potential adverse runoff impacts can be mitigated.

**E. The Planning Commission misapplied 75.020 (B) in approving the requested variances for parking vehicles and bicycles.**

The Class II variance approval criteria require a finding that the proposed variance is "the minimum variance necessary to make reasonable use of the property." 75.020 (B) (1) (a). The

Planning Commission approved a variance to allow onsite parking (including handicapped parking) to be located 540 feet from the school entrance rather than 200 feet, as required by the CDC. The Planning Commission failed to consider whether this variance was necessary to make reasonable use of the property. As Mr. Dodds pointed out,

> the applicant can move the building to the west and either avoid requesting a variance altogether or greatly reduce the scope of variance for parking. There is no topographical difficulty with doing this. Nothing about the lot shape precludes it. It is merely the applicant's preference to avoid the bother and inconvenience of temporary relocation of the students. On that basis alone the level of variance isn't warranted, much less when weighed with all the other issues raised by the opponents. David Dodds' April 11, 2016 Submittal.

A copy of Mr. Dodds' April 11, 2016 full submittal is attached hereto.

The Planning Commission was also required to find that the need for the variance was not created by the applicant. CDC 75.020(B) (1) (c.) Here, the applicant's desire to build a new school in a particular location on the site does not constitute a physical constraint of the property such as size, shape or topography. The applicant has chosen a new westerly orientation, rather than the existing easterly orientation. This choice results in the "need" for a variance. Therefore, the need for the variance was, indeed, created by the applicant.

The variance which increases the distance between the school entrance and the parking area by over 2.5 times the distance allowed by the code will not meet the purpose of the 200-foot limit being modified. This is of particular concern with respect to handicapped parking because it increases the burden on handicapped individuals.

The Planning Commission approved two variances to increase the distance between the school entrance and the parking areas for vehicles and bicycles. The need for the variances was

self-imposed by opting for a westerly orientation and designing the site to accommodate this orientation. In addition, there was no evidence to show that either variance is the minimum adjustment necessary to make reasonable use of the property. Thus, the Planning Commission erred in approving both variances.

## IV. CONCLUSION

Based on the foregoing, SOS Park respectfully requests that the City Council reverse the Planning Commission's approval of this application, as proposed.

DATED this 28th day of April, 2016.

Respectfully submitted,

REEVES, KAHN, HENNESSY & ELKINS

Peggy Hennessy

Peggy Hennessy, OSB #872505
Attorney for Save Our Sunset Park
and its members

To: The West Linn Planning Commission March 15, 2016

Re: File No. CUP-15-03/DR-15-17/VAR-15-01/02/03

Proposed Sunset Primary School development application

Memoranda in opposition to proposed plan

Primary Author of Memoranda

David Dodds

18931 Old River Drive

West Linn, OR 97068

Additional signers found at end of Memorandum.

Commissioners:

The purpose of this memorandum is to state in detail the reasons why the signers oppose this specific proposal and consequently why this application should be denied. The reasons for denial will be tied directly to the relevant Community Development Code (CDC) approval and submittal requirements.

It is important to establish at the onset that the signers are not opposed to the construction of a primary school on the site, but merely to the characteristics and adverse impacts of this particular proposal. It is the sincere wish of the signers that when this proposal is denied or voluntarily withdrawn that the applicant will work directly with the neighbors and the Neighborhood Association to create a plan that can be enthusiastically supported. Furthermore, the signers believe that the dimensions of the site are more than adequate to accommodate a different school development plan that they could and would support.

In general terms there are two major objections to this application. The first is the orientation of the new building to the east and south of the site and the placement of the parking lot to the south of the new building. The second is the proposed construction of a very large water detention pond in the southern portion of the site. Objections to the pond are further divided into two issues, 1) being aesthetic i.e. that it would be a very big exposed eyesore along Bittner St. and require the removal of at least 9 significant Douglas Fir trees (see site diagram LU 2.01 ), 2) the very profound concern that the environmental and drainage impacts of such a detention facility have been insufficiently addressed or in many instances completely unaddressed by the applicant, the West Linn planning staff or the West Linn engineering staff.

The above concerns are directly related to the extreme unhappiness that a great many Sunset residents have at the prospect of seeing the 1.6 acres of the site that was formerly a part of Sunset Park and was sold to the School District in 2010 that is currently a much loved and heavily used play area transformed into part of a building, a parking lot and huge water detention pond. This unhappiness is exacerbated by the many representations over many years by the applicant that the 1.6 acres while part of the school would retain most of its park qualities. One need look no further than the explanatory statement of Ballot Measure 3-358 authorizing the Sale of the property which states in part "If approved, the terms and conditions related to the sale would include Sunset neighbors in the school planning process, and would maximize recreational opportunities while preserving significant trees at the site". Needless to say the opponents of this proposal can be forgiven for not finding a building, parking lot and storm-water detention pond a maximizing of recreational opportunities.

Before proceeding to the details an underlying assumption of this proposal needs to be addressed. That assumption is that the existing Sunset Primary School needs to remain in use while a new school is built beside it. We believe that this assumption is merely the applicants preference and should not be considered a given. In recent history there have been several instances where district students have been temporarily relocated to other facilities to accommodate new construction or remodeling. Neither the applicant nor planning staff have offered any analysis why this could not be done with this site. If this assumption is dispensed with then the new school could be oriented to the West either on or much closer to the existing school. Such a change in orientation would completely alleviate the need to remove any major fir trees along the eastern edge of the site (see applicants arborist report on page 3 and site plan map LU 2.01). A western orientation would also almost certainly erase the need for all of the requested variances (with the possible exception of the sign variance) and as a consequence be much more compliant with the intent and purpose of the CDC.

STORMWATER DETENTION POND:

We are extremely concerned that insufficient analysis has been done on the potential adverse impacts of the proposed pond either by the applicant, their consultants or city staff. In particular we are worried about potential significant trees loss in Sunset park down slope from the Pond, increased ground water in down slope areas bounded by the streets respectively of Long, Charman, Oak, Walden, Leonard, Riverview Ave and perhaps Oregon City Loop. Concerns in this regard include flooding or increase water damage to structures and soil instability. Structures in these areas, including the Sunset Fire Hall itself, have already suffered water infiltration damage in recent memory. Should the pond fail either due to a blockage of the overflow pipe or soil slippage due to soil saturation the result could be (with no exaggeration) truly catastrophic. There is also concern about the effect that flow from the overflow pipe would have on Sunset Creek particularly during extreme storm events. These concerns are unaddressed by either the applicant's consultant or City staff. Except for the development review engineer's initials "KQL"

on the front page of the staff report we could find no written analysis of the detention pond from the City engineering department.

Before detailing our objections to some of the assumptions and methods used to justify the detention pond, as well as providing the Commission with information not included in the applicant's report, we would like to comment on the nature of the report entitled "Preliminary Stormwater Drainage Report" (PSDR). Engineering reports that are meant to be used by decision makers and members of the public who are not engineers should be written in a narrative fashion that are relatively easy to follow where important assumptions and critical data is clearly explained. Merely referencing the name of a computer modeling program or various government reference manuals is inadequate. CDC 99.030C (2) states in part "The application shall be complete and shall contain the information requested on the form, shall address the appropriate submittal requirements and approval criteria in sufficient detail for review and action". This means sufficient for both the Planning commission and public to review.

We found this report poorly written and difficult to follow and as a consequence were forced to make a variety of assumptions in trying to interpret this report. For example on page 6 of the PSDR is the statement "The Pond will have a total volume of 9,230 cubic feet of storage above the water quality requirement". We assume that this means that the pond will hold something approximating 9,000 cf of water when full to the level of the over flow pipe. If that is the case, the pond will hold a little over 69,000 gallons (1cubic foot of water = 7.48 gallons). This is the equivalent of a swimming pool 20 feet wide, 45 feet long and 10 feet deep. It takes little imagination to picture what would happen if one were to suddenly empty such a pool down a hill. As an aside it should be mentioned that we were unable to corroborate this 9,230 cf figure from the PSDR data. Perhaps a Civil engineer could deduce this figure from the page with the heading "Presumptive Approach Calculator ver. 1.2", but such material should be presented in a format that is readily understandable to both Planning commissioner and members of the public.

Page 3 of the PSDR states "while the test results confirmed that 100% on-site infiltration is not possible, partial infiltration should be obtained by locating the facility in the vicinity of the better performing test pits". Since by applicant's consultant's own admission 100% on-site infiltration will not be possible it would have been helpful for a clear narrative explaining at what intensity or volume of rainfall would trigger discharge into the overflow pipe and hence directly into Sunset Creek (a series of graphs without narrative explanation is not particularly helpful). Nor could we find any discussion of what the hydrologic effects of a 10, 25 or 100 year storm would have on Sunset Creek.

It is important to emphasize that once the pond has reached capacity all of the water reaching the pond from the entire 2.94 acres of impervious area of school site will be fed into the overflow pipe. How this could not change the flow characteristics of Sunset Creek we do not understand. CDC 92.010E states in total "*Surface drainage and storm sewer system. A registered civil engineer shall prepare a plan and statement which shall be supported by factual data that*

*clearly shows that there will be no adverse impacts from increased intensity of runoff off site of a 100-year storm, or the plan and statement shall identify all off-site impacts and measures to mitigate those impacts commensurate to the particular land use application. Mitigation measures shall maintain pre-existing levels and meet build out volumes, and meet planning and engineering requirements."* We believe that the PSDR clearly fails to meet this standard particularly as regards the 100 year storm analysis. Failure to meet CDC 92010E alone is grounds for dismissal or at the very least referral back to applicant for further analysis.

In reference to the above-cited test pits, it is very valuable to note that Carlson Geotechnical who conducted the test pit study clearly states "Because stormwater infiltration facility locations have not been determined yet, the infiltration data presented in this report should be considered preliminary. We understand additional infiltration testing may be required once the civil engineer has a more refined knowledge of where stormwater infiltration facilities will be located" (page A4 appendix A, PSDR). Two questions arise from the above statement: why was more testing not done when the location of the pond was determined, and why should the applicant, city staff , planning commission, or public rely on this data in doing the due diligence to determine the safety and efficiency of this detention pond. This is especially important given the very wide variation in test pit results for a relatively small area. If some of the ground on which the pond would be located has particularly lower infiltration rates or reaches saturation more quickly than assumed, then discharge into the overflow pipe will occur much sooner during rain storms and require much less intense storms to trigger such discharge. This in quite relevant considering that of the 6 test pits 4 had poor to awful infiltration rates (page A-3 Appendix A, PSDR). Also unmentioned is the fact that according to maps contained in the City's own West Linn Surface Water Management Plan the soils at the site are identified as Cornelius variant silt loam and as hydric and hydric inclusion soil (page 3-5 and figures 3.7 and 3.8 Surface Water Management Plan) soils with moderate to low permeability.

A note of protest must be made that the Carlton report was not made available to the public until March 10, 2016 despite repeated requests well in advance of this date for all relevant material and in violation of city policy that the Staff report and all available documents be available 10 days prior to the first Commission hearing. It is also worth noting that these tests were conducted on June 18$^{th}$ and 22$^{nd}$ 2015 when May and June were particularly dry and hot, June 2015 breaking records for the Portland area for days above 80 (21days) degrees, days above 90 (9 days) degrees and dryness (sixth driest June on record) The last measurable rain fall in West Linn falling on June 3$^{rd}$ (see article from Stuart Tomilison, Oregonian July 1, 2015 and rain gauge data from USGS web site for Sylvania campus rain gauge).

Up to this point we have focused on the impacts to Sunset Creek. Of even greater concern is what effect the pond would have on the soil, trees, buildings and soil stability down slope from the pond. Assuming that the pond works as outlined in the PSDR the pond will be infiltrating thousands of gallons an hour into the ground water down slope (we were not able to determine exact figures given difficulty of interpreting poorly explained data from PSDR). This will

indisputably be a significant change and increase in volume to the hydrology of this area. However, the potential impacts to this change are completely unaddressed by the applicant or the PSDR with the exception to the bland assurance that "No downstream impacts are anticipated" (PSDR page 6). Essentially the runoff of almost 3 acres (2.94) will be concentrated into one detention pond and except when the overflow pipe is activated all that water is expected to infiltrate into the ground at this site and yet there is no analysis as to what the effect will be on down slope groundwater? How can this possibly satisfy the approval and submittal requirements of CDC 55.130B, C and CDC 92.010E? We maintain that it clearly doesn't. Even if the trees in Sunset Park were the only issue this would be a major concern. We estimate that a minimum of 25 significant firs in Sunset Park would be in the direct drainage path of this pond. If only half of those were killed due to root rot or blown over due to soil saturation during strong winds the character of the Park would be severely damaged.

Having covered at least somewhat the many environmental concerns associated with the detention pond, let's turn to its visual aesthetic effect. Most detention ponds are located in natural low areas often abutting stream ways or natural drainage areas. As a consequence whatever lack of visual appeal they have is mitigated by they're being often out of the way and at least somewhat out of sight. In contrast an open grassy play area on a gentle slope would be replaced by a huge (175 feet at its longest and 100 feet at its widest) drainage pond right out in the open facing Bittner Street. In addition, the pond would for safety reasons certainly need to be fenced (big pond, storm water surges, small children - doesn't really need elaboration). Combine these two elements and you have a visual blight of tremendous ugliness that will daily confront not just the residents of Bittner Street but everyone who travels along it. Not to mention the 9 significant and beautiful Douglas fir trees that would be removed in the pond's construction. We feel that this clearly runs counter to the intent of CDC60.070 which states that the plan has "*Adequate area for aesthetic design treatment to mitigate any possible adverse effect from the use on surrounding properties and* uses".

Both the environmental and aesthetic concerns can in our opinion be fully mitigated by adopting the suggestions found in the report of Malia Kupillas of Pacific Hydro-Geology, that the applicant redesign their project using a combination of permeable parking and green building design to obviate entirely the need for a detention pond.

VARIANCES:

To begin CDC 75.050E states *"Not more than two Class II variances may be approved for any one lot or parcel in a continuous 12-month period"*. The applicant is applying for three Class II variances (see staff report page 3and page 34 of applicant submittal), Class II variances to CDC sections 46.070, 46.150 and 52.300. This mandatory and unambiguous criterion is clearly not met. Either the applicant can reduce the number of variances requested by withdrawing and resubmitting the application or the Commission should deny the application.

CDC 75.020B (1) c is one of the approval criteria for Class II variances and states very clearly "*The need for the variance was not created by the applicant and/or owner requesting the variance*". We adamantly contend that all three variance requests are transparently the creation of the applicant. The applicant's decision to build the new school adjacent to the existing school rather than demolish the old school and construct the new school with a westerly rather than easterly orientation is the applicant's choice, not the result of physical constraints such as lot size, shape, topography. As to the sign, there is nothing in the applicant's submittal (pages 23-24 of applicants report) to explain what is driving the need for a sign that exceeds the relevant code standard by over 100% except applicant's desire for a large sign.

CDC 75.020B (1) a another approval criterion for Class II variances states in part " *The variance is the minimum variance necessary to make reasonable use of the property*". While the applicant does briefly discuss the variance requests (on page 32-34 of the applicant's submittal) there is only the barest discussion of how the applicant might either fully comply with the code standards or at the least request variances much closer to the standards (the difference between 200ft and 540ft is quite a difference) if alternative site designs were considered. In particular there is no discussion of site designs that did not presuppose retaining the existing school during construction of a new school as a foregone conclusion. We maintain that most if not all opposition (with of course the resolution of the drainage issues) to the application would disappear if the new school was moved to a western orientation. We also strongly suspect that such a site orientation could be designed without the need for any Class II variances.

CONDITIONAL USE PERMIT:

As was already alluded to in the introduction and the discussion of variances one driving factor in opposition to this particular application is the east and southward orientation of the project and the proposed transformation of a beloved amenity to the residents of Bittner Street and many other Sunset residents (and even other West Linn residents) into a visual blight that will significantly and permanently reduce their quality of life and their enjoyment of this area. In the three some months that the main author of this memorandum has visited this area I have been amazed at the almost ridiculous amount of use this 1.6 acres enjoys and the level of affection the residents of sunset have towards it.

Who better to know whether something is an important community amenity, a part of its collective identity and an import additive to its quality of life then the people who live by it? It is with that consideration in mind that we think the Commission should look at whether the application meets the requirements of CDC 60.070A (1) b *"adequate area for aesthetic design treatment to mitigate any possible adverse effect from the use on surrounding properties and uses"*. With a western orientation we believe that this criterion can be easily met. On the other hand the current proposal fails to meet it and fails badly. The applicant may believe this is an example of design excellence, we politely but emphatically disagree.

CONCLUSION:

Regarding the storm water detention pond, if only a small part of the concerns raised by this memorandum as well as those of Malia Kupillas, Peggy Hennessy and others come to fruition then this pond will be a major problem. If the more severe problems manifest themselves the consequences would be too unpleasant to want to contemplate. In either case remedies would range from the difficult and expensive to the ridiculously difficult and hideously expensive.

Appendix C of the PSDR is a document entitled Preliminary Operation and Maintenance Plan. On page 6 of that plan is the optimistic statement that "the preparer has worked closely with personnel to design a system that be easily maintained by maintenance staff". Unfortunately almost everything about the rest of this document belies that rosy assessment. Page 4-5 lists numerous maintenance requirements and a page entitled "Simplified O&M Specifications" listing even more maintenance requirements. On page 4 is the requirement that the facility has to be inspected within 48 hour of every rain event in which an inch of rain falls in 24 hours. In 2015 this happened on 8 separate occasions (USGS Sylvania Campus rain gauge, 3 of these were for .99, .96 and .96, others were 2.15, 1.59, 2.41, 2.02 and 1.76. Also on page 4 is this helpful warning: "All components of the system as described above must be inspected and maintained frequently or they will cease to function effectively".

We included the above paragraph because it highlights a central premise about this pond plan, that it seems to us to have been devised as a direct challenge to Murphy's Law. The applicant has to be right about this detention pond all the time, we only have to be right about it once. And CDC 55.130B, C and 92.010E lie on the side of protection from adverse off-site impacts

After a careful review of the concerns that have been raised and the various ways in which we believe that this application has failed to meet vitally important approval criteria, we urge the Planning Commission to deny this application; or the Planning Commission could allow the applicant to withdraw the proposal provided that there is a firm commitment from the applicant to work with the neighbors and Neighborhood Association to create a mutually acceptable plan.

Sincerely,

---

David Dodds

BEFORE THE PLANNING COMMISSION

FOR THE CITY OF WEST LINN, OREGON

| | |
|---|---|
| In the Matter of WEST LINN-WILSONVILLE SCHOOL DISTRICT 3JT's Application for Conditional Use, Design Review, Director's Exception, and Class II Variance Approval to allow construction of a new primary school and related facilities in the R-10 zone. | FILE NOS: CUP-15-03, DR-15-17, and VAR-15-01/02/03<br><br>SAVE OUR SUNSET PARK'S MEMORANDUM IN OPPOSITION |

## I. INTRODUCTION

This memorandum is filed on behalf of Save Our Sunset Park ("SOS Park"), which is comprised of a group of West Linn residents who live near Sunset Primary School and Sunset Park. The members of SOS Park are not opposed to replacement of the Sunset Primary School. However, they are opposed to the relocation of the school building to the area where the current playground and former portion of Sunset Park are located. If the new building was reconstructed in the footprint of the existing school, the adverse impacts, including potential flooding, threats to Douglas Fir trees, and increased risk of landslides could be minimized or avoided. In addition, there would be no need for the Director's Exceptions or all of the requested Class II Variances, which by definition, are inconsistent with the City's development code. Accordingly, SOS Park respectfully requests that this application, as proposed, be denied. Or, in the alternative, approval should be conditioned upon constructing the new school building on the approximate footprint of the existing building, elimination of the proposed storm water infiltration pond ("SWIP"), and reduction in the amount of impervious surfaces to address the offsite drainage issues, including adverse impacts on mature Douglas Fir trees, flooding, and potential landslides .

## II. PRELIMINARY MATTERS

### A. Postponement of Public Hearing

The March 16, 2016 public hearing should be postponed because the Carlson Report, which is part of the Staff Report, was not available to the public until March 11, 2016 – less than seven days before the hearing. Members of SOS Park have been monitoring the Sunset Primary School application. The partial Staff Report was available at least seven days prior to the initial evidentiary hearing; however, the available version was incomplete because it failed to include the Carlson Geotechnical infiltration testing results ("Carlson Report"). This information is important because SOS Park has significant concerns regarding offsite impacts of storm water drainage and had hired Milia Kupillas, an expert hydro-geologist with Pacific Hydro-Geology, Inc., to review the proposal and analyze the impacts.

On March 3, 2016, a member of SOS Park made a specific request for information regarding the location of the infiltration test pits, but was told by the City Planner that if it was not in the application, the City does not have it. A week later, on March 10, 2016, the same person made a second request for the Carlson Report and the same City Planner located the 6-page Carlson Report and arranged for an electronic version to be emailed to the SOS Park member on March 11, 2016 – five days before the public hearing. Prior to March 11, 2016, the Carlson Report was not available to the public.

The Carlson Report was listed as Appendix A to the Preliminary Stormwater Drainage Report (at page 174 of the Staff Report), but the reference was followed by a blank page. The Applicant submitted the Preliminary Stormwater Drainage Report as Exhibit F to the Sunset

Primary School application, and the Staff Report incorporated the application, as indicated in the table of contents.

ORS 197.763(4) (a) provides that

> [a]ll documents or evidence relied upon by the applicant shall be submitted to the local government and be made available to the public.

Due to the previous unavailability of the Carlson Report, SOS Park made a formal request for postponement of the hearing to allow sufficient time to address the Applicant's evidence. Assistant City Attorney Megan Thornton stated that the Carlson Report "was not submitted to the Planning Department as part of the application by the applicant; therefore, it was not relied upon by the applicant." However, it was clearly part of the application – the Carlson Report was Appendix A to Exhibit F of the Sunset Primary School Application.

Ms. Thornton also states "planning staff did not require the Carlson Report to deem the application complete, nor did staff rely on the Carlson Report to determine that the application met any of the approval criteria in the staff report." The information in the Carlson Report relates to offsite impacts of storm water which is relevant to compliance with CDC 55.130 (B) as well as 92.010 (E), both of which are mandatory approval criteria for this application.

ORS 197.763 (4) requires that all documents upon which the applicant relies be made available to the public, and that the staff report be available at least seven days prior to the public hearing. Not only is the Carlson Report relevant evidence relied upon by the applicant, but it was specifically made part of the Staff Report. The table of contents for the Staff Report includes, "[EXHIBIT] PC-3 APPLICANT'S SUBMITTAL . . . . . 61-225." The Carlson Report is referenced at page 174. Accordingly, the entire Staff Report, including the Carlson Report, should

have been – but was not - available seven days prior to the public hearing. Therefore, the initial evidentiary hearing should have been postponed to allow the parties sufficient time to review and analyze the omitted information.

It is not sufficient to allow a continuance after the initial public hearing has been opened because SOS Park has already been denied the opportunity to prepare adequately for the initial hearing. SOS Park has hired its own expert hydro-geologist, Malia Kupillas, to review and analyze the project, as proposed. The untimely disclosure of the Carlson Report has resulted in substantial prejudice to the members of SOS Park because the applicant's entire submittal (which was part of the Staff Report) was not available a full seven days prior to the hearing.

**B. Continuance**

If the Planning Commission proceeds with the public hearing on March 16, 2016, SOS Park requests a formal continuance of the hearing, as allowed by ORS 197.763 (4) (b) and 197.763 (6), to provide a reasonable opportunity to respond to new information, including but not limited to the Carlson Report regarding infiltration testing.

**C. Open Record**

In any event, at a minimum, if the Planning Commission chooses not to continue the hearing, then pursuant to ORS 197.763 (4) (b) and (6), SOS Park hereby requests that the record remain open for a period of at least fourteen (14) days to provide an adequate opportunity to respond to the information presented at the public hearing.

## III. ARGUMENT

### A. Purpose of Conditional Use Review

The purpose of conditional use review is to provide standards and procedures under which conditional uses may be permitted, enlarged, or altered if the site is appropriate and if other conditions can be met. CDC Section 60.010. Schools are allowed as conditional uses in the R-10 zone, but the site must be appropriate for the proposed design and adverse impacts on surrounding properties should be mitigated.

Here, the applicant proposes to alter the site in a manner that will adversely affect the surrounding residential and park properties, including impacts on Douglas Fir trees, increased flooding during storm events, potential landslides, and increased residential intrusion. These adverse impacts could be minimized or avoided by reconstructing the school buildings on the approximate footprint of the existing building, eliminating the storm water infiltration pond ("SWIP"), creating pervious parking areas, creating rain gardens around the new buildings and allowing storm water from impervious surfaces to be evenly distributed across the site.

### B. Approval Criteria

CDC 60.070 sets forth the primary approval criteria for conditional uses. The burden of proof is on the Applicant to show compliance with each applicable criterion and failure to meet a single mandatory approval standard requires denial.

1. **CDC Section 60.070 (1) (b) requires that the site size and dimensions provide adequate area for the needs of the school and aesthetic design treatment to mitigate any possible adverse effect on surrounding properties.**

Under the Applicant's proposed plan (locating a new building on the former playground and a portion of Sunset Park), the size and dimensions of the site are not adequate, as evidenced by the requested Director's Exception to reduce the setback requirement. In addition, the orientation of the proposed multi-story building will clearly intrude upon the privacy currently enjoyed by the residents of the single family homes located directly across a narrow street, with no buffer between the uses.

Construction of the new building in the approximate location of the old footprint would mitigate this significant intrusion on surrounding properties. The existing building is set back from the residential street and the existing single family homes. Moreover, it is buffered by open space and parking areas. Furthermore, construction of the new building on the old footprint will not require Director's Exceptions to the setback requirements, so it would be more consistent with the West Linn Community Development Code.

Because construction of the new school in the approximate location old footprint would mitigate some of the adverse impacts on surrounding uses while meeting the needs of the school, the Applicant's proposed location and current aesthetic design fail to meet the requirements of CDC 60.070 (1) (b).

**2. CDC Section 60.070 (2) requires that the characteristics of the site be suitable for the proposed use considering size, shape, location, topography, and natural features.**

The Applicant has failed to carry its burden to show compliance with CDC 60.070 (2). While the site may be generally appropriate for use as a primary school, the proposed location of the development on the site is not suitable because the new school building and storm water infiltration pond would be constructed where the current playground and a portion of Sunset Park

are located. This plan will result in significant adverse impacts, onsite and offsite, as a result of redirecting the storm water.

Based on review of the current Application, SOS Park's expert hydro-geologist, Malia Kupillas, concluded that the proposed configuration of the new primary school and SWIP will have the following impacts caused by concentrating all of the surface water into one small area for infiltration:

1. The amount of water that flows downgradient will increase and impact 14 trees within the area north of the bird houses/property line and a minimum of 6 Douglas Fir trees in the park, for a minimum of 20 trees. The Douglas fir trees will be more susceptible to disease or blow down, because the soils will be wetter around their roots. Douglas fir trees do not like wet roots.

2. The overflow from the SWIP will increase flooding and shorten the travel time for water to reach Sunset Creek during large storm events.

3. The back yards of the nearby homes, adjacent to the park on the east, will become wetter with potential flooding if the houses have basements and potentially trigger shallow landslides.

4. Existing shallow landslide areas will be more susceptible to reactivation.

5. Other areas down-slope of where the water from the SWIP flows on top of the bedrock may develop shallow landslides.

A copy of Pacific Hydro-Geology, Inc.'s March 15, 2016 Analysis is attached as Exhibit 1. The (location) of the onsite development results in adverse impacts on existing trees (natural features) and slope of the property (topography) which dictates its drainage patterns render the site unsuitable for the proposed plan. The Applicant plans to relocate the school building, create more impervious surfaces, and construct a SWIP which threatens the existing trees and creates a greater risk of floods and landslides. Therefore, CDC 60.070 (2) is not met.

**3. CDC Section 60.070 (3) requires a finding that approval will result in provision of a facility that is consistent with the overall needs of the community.**

While a new school may be consistent with the overall needs of this community, approval of this application, as proposed, will be adverse to the needs of the community because it will put mature Douglas Fir trees at risk – onsite and offsite. In addition, it will increase flooding and the potential for landslides.

If the new school building was built in the same approximate location as the old building, if a pervious parking area was installed, and if storm water was evenly distributed across the site, the new school building would be much more consistent with the overall needs of the community. SOS Park's expert hydro-geologist has recommended that impervious surfaces should be minimized by creating pervious parking areas. She also suggests that storm water from impervious surfaces should be evenly distributed across the site, rather than concentrated in an infiltration pond. Again, SOS Park is not opposed to construction of a new school. However, the members of SOS Park believe the project can be accomplished by reconstruction of the building in the same location, creation of pervious parking areas, and distribution of storm water across the entire site. Accordingly, the proposal does not satisfy the requirements of CDC 60.070 (3) because it is not consistent with the overall needs of the community.

**4. CDC 60.070 (6) requires satisfaction of the provisions of chapter 55 of the CDC as a conditional use approval criterion and the Applicant has failed to meet the requirements of CDC 55.130 (B).**

CDC 55.130 (B) requires that a registered civil engineer prepare a plan and statement that is supported by factual data that clearly shows that there will be no adverse impacts from increased intensity of runoff off site, or identify all off-site impacts and measures to mitigate those impacts.

The plan and statement shall, at a minimum, determine the off-site impacts from a 10-year storm. This is a mandatory approval standard and neither the Applicant nor Staff address it as such. Furthermore, as SOS Park's expert hydro-geologist has demonstrated, there will, indeed, be off-site impacts resulting from the current proposal, including impacts to mature Douglas Firs, flooding, and potential landslides. The hydro-geologist has also identified ways to avoid or mitigate those impacts, but none are proposed. The applicant has not submitted a plan or supported statement determining the off-site impacts from a 10-year storm. Because the Applicant has not demonstrated compliance with this mandatory approval criterion, the application, as proposed should be denied.

**5. The Application, as proposed, fails to meet the requirements of CDC 92.010 (E).**

CDC 92.010 lists the public improvements required for all developments and the Staff Report does include chapter 92, generally, as an applicable approval criterion for this application. 92.010 (E) requires that a registered civil engineer prepare a plan and statement which shall be supported by factual data clearly showing that there will be no adverse impacts from increased intensity of runoff off site of a 100-year storm, or the plan and statement shall identify all off-site impacts and measures to mitigate those impacts commensurate to the particular land use application. Mitigation measures shall maintain pre-existing levels and meet build out volumes, and meet planning and engineering requirements.

Staff has determined compliance with this standard based on the following finding:

> Staff Finding 136:
> The applicant has submitted a Preliminary Stormwater Report that complies with City of West Linn Public Works Standards. The applicant shall install improvements to meet the Standards per Condition of Approval 2, including the

> proposed stormwater facility and overflow pipe the length of Bittner Street to connect at the existing infrastructure at Long Street. Subject to the Conditions of Approval, this criterion is met.

Staff appears to find that this standard can be met by installation of the stormwater facility and overflow pipe. However, there is no evidence to support a finding that there will be no adverse offsite impacts. Because no adverse impacts have been identified, there are no measures to mitigate those impacts which have been identified by a civil engineer. Rather the engineer's report merely concludes that "no downstream impacts are anticipated." Staff Report at 162. This statement is not supported by substantial evidence. As discussed above, SOS Park's expert hydro-geologist has shown that there will be adverse downstream impacts, including impacts to mature Douglas Firs, flooding, and potential landslides. Moreover, she has identified measures which could mitigate those impacts by redesigning the project.

The Applicant cannot meet this standard without addressing the increased intensity of offsite runoff from a 100-year storm. Therefore, this standard is not met.

**6. CDC 75.050 (E) restricts the total number of Class II Variances to no more than two per year.**

CDC 75.050 (E) provides:

> Not more than two Class II variances may be approved for any one lot or parcel in a continuous 12-month period.

The Applicant has requested three Class II Variances at the same time. The City cannot approve more than two without violating CDC 75.050 (E). Therefore, the application, as proposed, should be denied.

## IV. PROPOSED CONDITIONS

SOS Park does not support approval of this conditional use application, as proposed; however, if approved, SOS Park respectfully requests the imposition of the following conditions as mitigation measures to address the adverse impacts identified above and supported by the attached hydro-geological analysis, including but not limited to threats to mature Douglas Fir trees, increased potential flooding, potential landslides, and negative impacts on surrounding residential properties.

1. Applicant shall construct the new school building in the approximate location of the footprint of the existing school building.
2. Applicant shall eliminate the Storm Water Infiltration Pond and allow the storm water to disburse through the entire site.
3. Applicant shall construct the parking area with permeable material.
4. Applicant shall install rain gardens around the new buildings.

## V. CONCLUSION

Because the entire Staff Report, including the Carlson Report, was not available seven days prior to the hearing, SOS Park respectfully requests that the hearing be postponed to allow additional time for the public to review and analyze the proposal. Alternatively, if the hearing does proceed, SOS Park requests a continuance pursuant to ORS 197.763 (6). Or, if both of these requests are denied, SOS Park requests that the record remain open for a minimum of fourteen (14) days.

Alternatively, because the proposed conditions are necessary to achieve compliance with mandatory approval criteria, SOS Park respectfully requests that approval of this project be specifically conditioned upon the following conditions:

1. Applicant shall construct the new school building in the approximate location of the footprint of the existing school building.
2. Applicant shall eliminate the Storm Water Infiltration Pond and allow the storm water to disburse through the entire site.
3. Applicant shall construct the parking area with permeable material.
4. Applicant shall install rain gardens around the new buildings.

DATED this 16th day of March, 2016.

Respectfully submitted,

REEVES, KAHN, HENNESSY & ELKINS

Peggy Hennessy

Peggy Hennessy, OSB #87205
Attorney for the Save Our Sunset Park

*Pacific Hydro-Geology Inc.*
18487 S. Valley Vista Rd.
Mulino, OR 97042
(503) 632-5016

March 15, 2016

City of West Linn Planning Commission
22500 Salamo Road #1000
West Linn, OR 97068

RE: File CUP-15-03/DR-15-17/VAR-15-01/02/03. New Sunset Primary School and impacts to Sunset Park and downgradient property.

To City of West Linn Planning Commissioners:

The school district is planning on building a new primary school where the current playground and a portion of Sunset Park are located. The existing school facility will then be torn down and additional parking built where the school is currently located. The majority, if not all, of the runoff from precipitation on the all impervious surfaces is to be directed to a storm water infiltration pond (SWIP) located on the existing playground at Sunset Park and north of the birdhouses. It should be noted that this proposed new development increases the amount of impervious surfaces because there will be more parking spaces. The SWIP will hold 9,230 cubic feet (69,040 gallons) of water with overflow to a new public storm main on Bittner Street that discharges into Sunset Creek. Infiltration may occur at rates ranging from 1.5 to 12 inches per hour based on the design infiltration rate and observed infiltration rates from 6 infiltration tests.

On March 3, 2016, Malia Kupillas from Pacific Hydro-Geology (PHG) visited the park and made observations that will be discussed under the section titled "Site Visit." Malia also made a video that will be presented by Noelle Bledy. Malia's qualifications are enclosed with this letter. Malia has also reviewed the Preliminary Storm Water Report, building plans, West Linn Storm Water Management Plan, and other relevant planning, geologic and soils reports. This report also presents data not found in those reports that needs to be considered as a part of the planning process.

PHG has concluded, based on the above information, that the proposed configuration of the new primary school and SWIP will have the following impacts caused by concentrating all of the surface water into one small area for infiltration:

- The amount of water that flows downgradient will increase and impact 14 trees within the area north of the bird houses/property line and a minimum of 6 Douglas fir trees in the park, for a minimum of 20 trees. The Douglas fir trees will be more susceptible to disease or blow down, because the soils will be wetter around their roots. Douglas fir trees do not like wet roots.
- The overflow from the SWIP will increase flooding and shorten the travel time for water to reach Sunset Creek during large storm events.
- The backyards of the nearby homes, adjacent to the park on the east, will become wetter with potential flooding if the houses have basements and potentially trigger shallow landslides.
- Existing shallow landslide areas will be more susceptible to reactivation. See Figures 1 and 2 and section titled "Shallow and Deep Landslide Potential" for additional discussion of landslides.
- Other areas downslope of where the water from the SWIP flows on top of the bedrock may develop shallow landslides.

**Site Visit:**

On March 3, 2016, Malia Kupillas from PHG visited the park and made the following observations:

First, the topography of the park forms a gentle swale from northwest to southeast. Photo 1 shows this swale and the steepness of the slope looking northwest towards the proposed SWIP pond. The majority of the water from the SWIP will follow the slope of the topography and flow to the east or southeast towards areas that have been mapped as intermediate risk for shallow landslides (See section titled "Shallow and Deep Landslide Potential" for additional discussion of landslides).

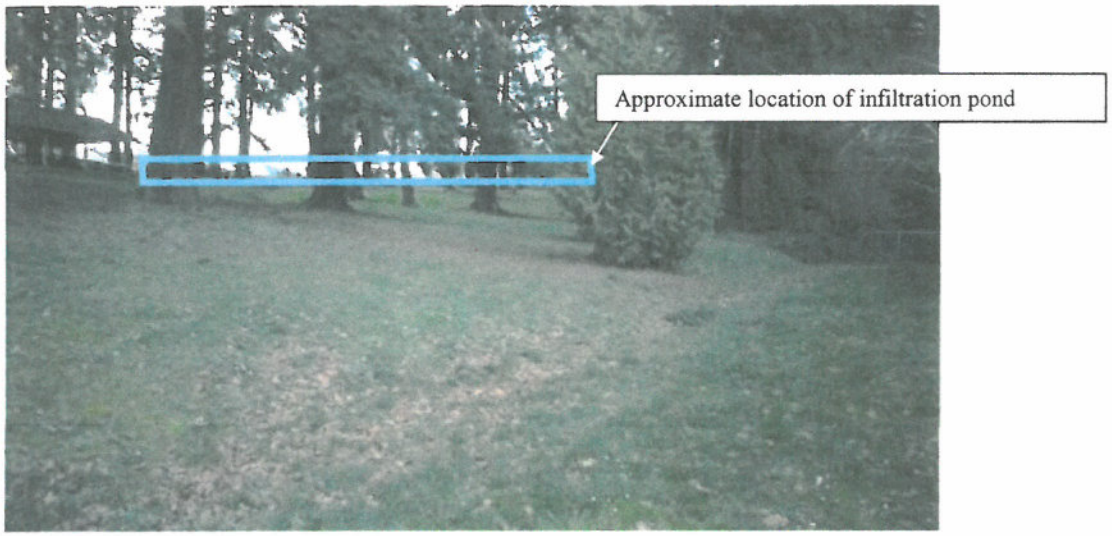
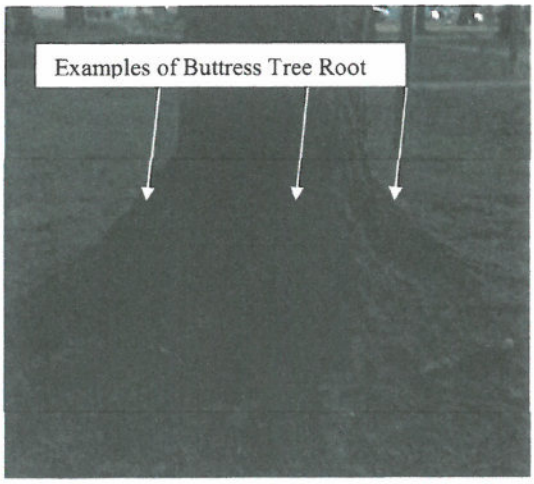



Photo 1: Looking northwest from near Long St. and the tennis/basketball courts.

Second, many of the Douglas fir trees in the park have buttressed tree roots, which indicate steep and/or wet slopes. Wet slopes are consistent with the hydric soils shown on Figure 3.8 of the West Linn Surface Water Management Plan, 2006. These buttressed tree roots can be seen in Photo 1 above and Photos 2 and 3 below.



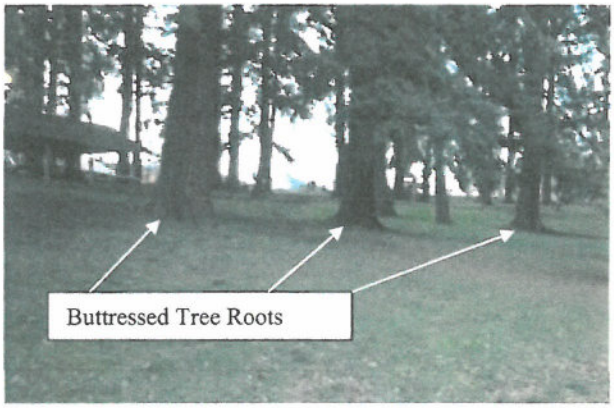




Photo 2 (left). Buttressed roots on Douglas fir (tree number 4446) in park.
Photo 3 (right). Three Douglas fir trees with buttressed roots.

Third, just the filling of the wading pool has changed the hydrology of the site and created areas with saturated soils days after rain. Infiltrating storm water from the pond will increase the amount of saturated of soils. Photo 4 shows areas of saturated soils below the filled wading pool. Photo 5 shows a close-up the saturated soils.


Photo 4. View looking south from the former wading pool towards the playground. The areas of saturated soils can be seen more easily in the playground area where storm water will try to infiltrate.


**Photo 5. View of saturated soils more visible in the playground area. The Douglas fir trees below the playground have buttressed roots.**

Fourth, the current plan (Storm Water Drainage Report, January 2016) is to pipe excess water from the pond directly to Sunset Creek at a time when surface water flow will be at its maximum. This will increase

the peak flow level and flooding of properties adjacent to Sunset Creek, which does not meet the West Linn Storm Water Plan Goals (2006) on Pages 2-5 and 2-6 of not influencing the hydrograph of the watershed and prevent new development from increasing the flood threat. In addition, moving all or the majority of the storm water runoff to an infiltration pond will also significantly alter the timing, volume and path the storm water will take to reach the Willamette River through the McLean watershed.

**Land Use Planning Codes:**

PHG has reviewed Community Development Code 92.010E, and Chapter 55.130B,C (design review) and found that the applicant has not fulfilled all the analyses required for offsite impacts.

**Shallow and Deep Landslide Potential:**

The Department of Geology and Mineral Industries (DOGAMI) has mapped this area using Lidar to evaluate landslide hazards and risks and published the information in 2013 as Open-File Report O-13-08 by Burns, Mickelson, Jones, Pickner, Hughes, and Skeeter. This report and corresponding plates are available from DOGAMI's website under publications. The primary school and park are both shown on Plates 45 and 46 of the report for shallow and deep landslides. The areas east of the park where the infiltrated water will flow are shown on Plates 51 and 52. Figure 1 shows an enlarged area of Plates 45 and 51 combined to provide a better picture of where the existing and/or moderate risk for shallow landslides have been mapped, and Figure 2 combines Plates 46 and 52 for the deep landslides. Both of these figures show there are areas nearby or adjacent to the park at intermediate risk for landslides with the current hydrology. Thus, this is an area where it is not good to concentrate storm water into a single area and increase the amount of impervious surface. This is an area where unstable slopes should be avoided and the existing hydrology should be maintained, which is consistent with the West Linn Storm Water Management Plan. Goal 7 should also apply here with areas adjoining the park that are subject to the natural disaster of landslides. Therefore, impervious surfaces should be minimized by creating pervious parking areas, and storm water from impervious surfaces should be evenly distributed across the site. We recommend that the applicant adopt other viable alternatives that would minimize the risks from adverse impacts to the park and adjacent residents. We suggest rain gardens around the buildings, combined with permeable parking, will eliminate the need for the SWIP and maintain current hydrology. These viable alternatives would be more consistent with meeting the requirements of the West Linn Storm Water Management Plan, Community Development Code 92.010E, and Chapter 55.130B,C (design review).

Sincerely,


Malia R. Kupillas, R.G., C.W.R.E.

Expiration Date 5/31/2016

Enclosures: Figure 1. Site Location Map and Shallow Landslide Risk
Figure 2. Site Location Map and Deep Landslide Risk
Statement of Qualifications

MALIA ROSNER KUPILLAS, R.G., C.W.R.E.
*Pacific Hydro-Geology Inc.*

**PROFESSIONAL REGISTRATIONS:**

Licensed Hydrogeologist, Washington (914) - 2002
Certified Water Rights Examiner, Oregon (60772WRE) - 1999
Registered Professional Geologist, Oregon (G1354) - 1993

**PROFESSIONAL COMMITTEES:**

Served six years on the State of Oregon's Ground Water Advisory Committee and was chair for two years
Oregon Water Resources Department Rules Advisory Committee for Well Construction
Oregon Geology Map Advisory Committee

**PROFESSIONAL HISTORY:**

Pacific Hydro-Geology Inc., President, 5/1994 to Present
ATEC Associates, Inc., Staff Scientist, 5/1994 to 2/1995
Landau Associates, Inc., Senior Staff Hydrogeologist, 8/1988 to 2/1994
Kansas Geological Survey, Groundwater Section, Research Assistant, 9/1986 to 6/1988
Ground Water Associates, Subcontractor, June 1986

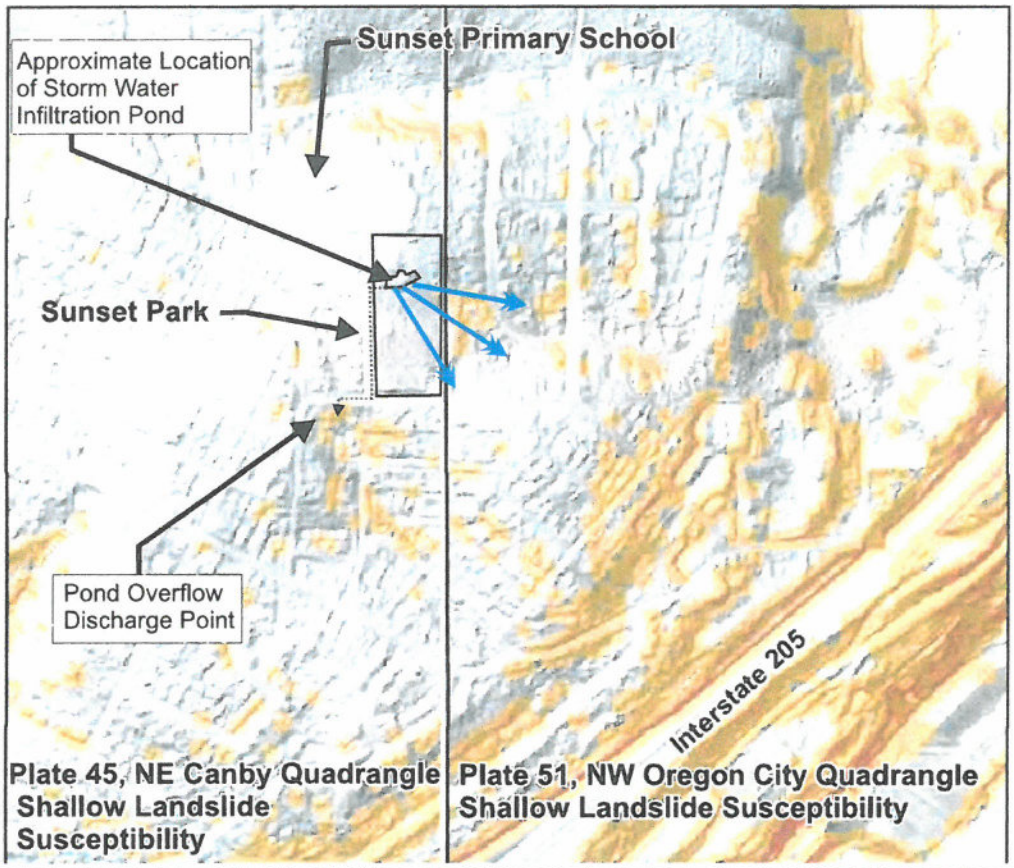
**ACADEMIC/TRAINING HISTORY:**

Certified Water Rights Examiner Workshop, Sponsored by the Oregon Water Resources Department - Fall, 2003 through 2016
Wetland Sedges, Grasses, and Rushes, Portland State University - 2000
Wetland Mitigation, Construction, and Installation, Portland State University - 2000
Native Plant Identification and Use, Oregon State Extension Service, Tree School - 1999
Rare Plant Identification and Habitat, Oregon State Extension Service, Tree School - 1999
How to Evaluate Wetland Functions for Wetland Planning Workshop, Society of Wetland Scientists - 1997
DEQ Certificate of Training for Wellhead Protection Plan - 1996
Basic Wetland Delineation Training Course, Portland State University - 1996
Managing Forest Riparian Areas, Field Exercise, Oregon State University Extension Service - 1996
Managing Your Woodlands, Oregon State University Extension Service - 1995
Protecting Stream Corridors Workshop - Oregon State University Extension Service - 1995
DEQ Soil Matrix Cleanup License, Oregon (14262) - 1994 to 1996
Behavior of Dissolved Organic Contaminants in Groundwater, University of Waterloo - 1992
OSHA Training
- OSHA 8-Hour Refresher Course - 2016
- OSHA 8-Hour Hazardous Waste Supervisor Training - 1990
- OSHA 40-Hour Hazardous Waste Training - 1988

M.S. in Geology (Hydrogeology), University of Kansas, Lawrence, Kansas - 1988
Thesis: Stratigraphy of the Quaternary Alluvium in the Great Bend Prairie, Kansas.
B.S. in Geology (minor in mathematics), Wichita State University, Wichita, Kansas - 1986

**PUBLISHED WORKS:**

*Geology near Blue Lake County Park, Eastern Multnomah County, Oregon.* Oregon Geology. 1993. Bet, J. N. and Rosner, M. L. (Describes and maps the subsurface stratigraphy in east Multnomah County).



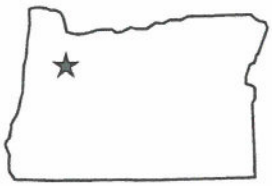

| Contributing Factors * | Final Hazard Zone | | |
|---|---|---|---|
| | High | Moderate | Low |
| 1 Factor of Safety (FOS) | less than 1.25 | 1.25 - 1.5 | greater than 1.5 |
| 2 Landslide Deposits & Head Scarps (Shallow) | included | — | — |
| 3 Buffers | 2H:1V (head scarps) | 2H:1V (FOS less than 1.5) | — |

Direction of surface and subsurface flow

N

Scale: Enlarged from a scale of 1:8,000 to 1:773

0 1 Mile



Source: Landslide Hazard and Risk Study of Northwestern Clackamas County, Oregon. State of Oregon Oregon Department of Geology and Mineral Industries, Open-File Report O-13_08, Plates 45 and 51.

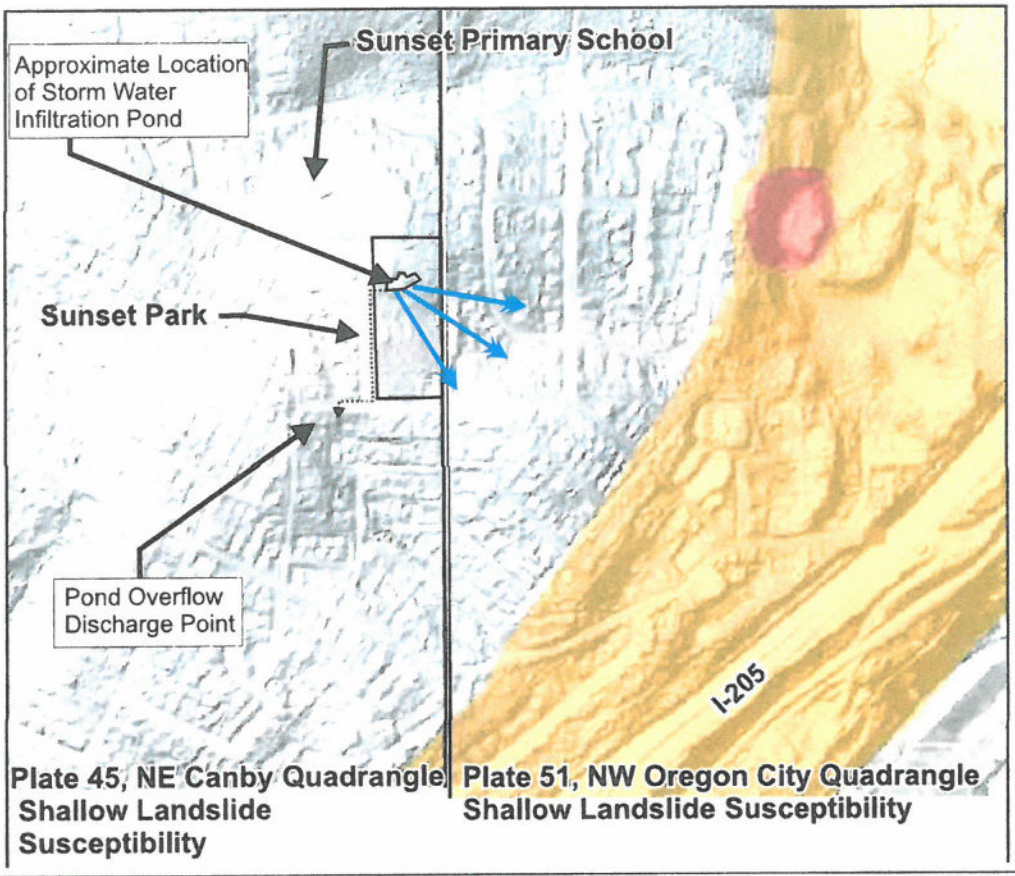
Figure 1. Site Location Map and Shallow Landslide Risk

Proposed Sunset Primary School Storm Water Infiltration Pond

Pacific Hydro-Geology Inc.

03/2016

SunsetParkFig1Topo.cdr



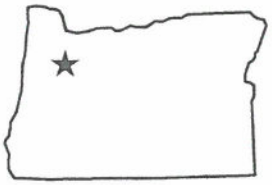

| Contributing Factors * | Final Hazard Zone | | |
|---|---|---|---|
| | High | Moderate | Low |
| 1 Factor of Safety (FOS) | less than 1.25 | 1.25 - 1.5 | greater than 1.5 |
| 2 Landslide Deposits & Head Scarps (Shallow) | included | — | — |
| 3 Buffers | 2H:1V (head scarps) | 2H:1V (FOS less than 1.5) | — |

Direction of surface and subsurface flow

N

Scale: Enlarged from a scale of 1:8,000 to 1:773

0 1 Mile



Source: Landslide Hazard and Risk Study of Northwestern Clackamas County, Oregon. State of Oregon Oregon Department of Geology and Mineral Industries, Open-File Report O-13_08, Plates 45 and 51.

Figure 1. Site Location Map and Deep Landslide Risk

Proposed Sunset Primary School Storm Water Infiltration Pond

Pacific Hydro-Geology Inc.

03/2016

SunsetParkFig1Topo.cdr

MALIA ROSNER KUPILLAS, R.G., C.W.R.E.
*Pacific Hydro-Geology Inc.*

**PROFESSIONAL REGISTRATIONS:**

Licensed Hydrogeologist, Washington (914) - 2002
Certified Water Rights Examiner, Oregon (60772WRE) - 1999
Registered Professional Geologist, Oregon (G1354) - 1993

**PROFESSIONAL COMMITTEES:**

Served six years on the State of Oregon's Ground Water Advisory Committee and was chair for two years
Oregon Water Resources Department Rules Advisory Committee for Well Construction
Oregon Geology Map Advisory Committee

**PROFESSIONAL HISTORY:**

Pacific Hydro-Geology Inc., President, 5/1994 to Present
ATEC Associates, Inc., Staff Scientist, 5/1994 to 2/1995
Landau Associates, Inc., Senior Staff Hydrogeologist, 8/1988 to 2/1994
Kansas Geological Survey, Groundwater Section, Research Assistant, 9/1986 to 6/1988
Ground Water Associates, Subcontractor, June 1986

**ACADEMIC/TRAINING HISTORY:**

*Certified Water Rights Examiner Workshop, Sponsored by the Oregon Water Resources Department* - Fall, 2003 through 2016
Wetland Sedges, Grasses, and Rushes, Portland State University - 2000
Wetland Mitigation, Construction, and Installation, Portland State University - 2000
Native Plant Identification and Use, Oregon State Extension Service, Tree School - 1999
Rare Plant Identification and Habitat, Oregon State Extension Service, Tree School - 1999
How to Evaluate Wetland Functions for Wetland Planning Workshop, Society of Wetland Scientists - 1997
DEQ Certificate of Training for Wellhead Protection Plan - 1996
Basic Wetland Delineation Training Course, Portland State University - 1996
Managing Forest Riparian Areas, Field Exercise, Oregon State University Extension Service - 1996
Managing Your Woodlands, Oregon State University Extension Service - 1995
Protecting Stream Corridors Workshop - Oregon State University Extension Service - 1995
DEQ Soil Matrix Cleanup License, Oregon (14262) - 1994 to 1996
Behavior of Dissolved Organic Contaminants in Groundwater, University of Waterloo - 1992
OSHA Training
- OSHA 8-Hour Refresher Course - 2016
- OSHA 8-Hour Hazardous Waste Supervisor Training - 1990
- OSHA 40-Hour Hazardous Waste Training - 1988

M.S. in Geology (Hydrogeology), University of Kansas, Lawrence, Kansas - 1988
Thesis: Stratigraphy of the Quaternary Alluvium in the Great Bend Prairie, Kansas.
B.S. in Geology (minor in mathematics), Wichita State University, Wichita, Kansas - 1986

**PUBLISHED WORKS:**

*Geology near Blue Lake County Park, Eastern Multnomah County, Oregon.* Oregon Geology. 1993. Bet, J. N. and Rosner, M. L. (Describes and maps the subsurface stratigraphy in east Multnomah County).

To: The West Linn Planning Commission March 30, 2016

Re: File No. CUP-15-03/DR-15-17/VAR-15-01/02/03

Proposed Sunset Primary School development application

Memorandum concerning Preliminary Stormwater Drainage Report

David Dodds

18931 Old River Drive

West Linn, OR 97068

Commissioners:

In an earlier memorandum I had addressed numerous concerns regarding the applicant's Preliminary Stormwater Drainage Report (PSDR). This memorandum contains entirely new information and is not a repetition of previously covered issues. In the prior memorandum I had stated that I found the PSDR poorly written and difficult to understand. In particular I had difficulty with understanding various assumptions found in the Presumptive Approach Calculator (PAC).

The Presumptive Approach Calculator (PAC) is a computer program designed by the City of Portland to aid in designing stormwater drainage swales. The PSDR cites the PAC on six separate occasions as justification for the design specifications found in the PSDR. To quote: ***"This is achieved by the Presumptive Approach Calculation (PAC)", "Water Quality will be calculated using the City of Portland Presumptive Approach Calculator(PAC)", " The calculations were executed with … City of Portland's PAC Calculator" , "The proposed pond has been designed using the City of Portland Presumptive Approach Calculator (See Appendix A)", "This rate is incorporated into the water quality PAC calculation", " This determination is supported by the PAC"*** (pages 3,4,5 and 6 of PSDR).

In light of the importance that the PAC has in the PSDR, and my difficulty in reconciling various numbers found in appendix A, I decided to investigate further. I contacted the City of Portland Bureau of Environmental Services where I was directed to Ms. Amber Clayton, who is the Program Manager for the Stormwater Management Manual. Ms. Clayton is directly responsible for oversight of the Presumptive Approach Calculator (PAC). I was not frankly expecting the conversation to take the direction that it did.

No sooner did I start describing the situation with the PSDR when Ms. Clayton stopped me and told me that the PAC is not intended to design or justify the design of ponds. She was very clear and unequivocal in her statement that the PAC is intended for designing swales not detention

ponds. She said that the City of Portland does not allow the PAC to be used for ponds in Portland. She said that ponds are much more complicated than swales and Portland requires that any proposed ponds in their jurisdiction must be fully and independently engineered. When I described the size and volume of the pond outlined in the PSDR, she stated that the PAC was definitely not intended for facilities of that size. She further stated that Portland explicitly does not intend or authorize that the PAC should be used to justify or design ponds in other jurisdictions either. Ms. Clayton's phone number is 503-823-4356. In addition, she stated that the PAC is not to be used in its current iteration for drainage areas over 1 acre (she did add that this requirement is under review and will probably be revised upwards). At the time the PSDR was produced, the 1 acre limitation would apply (drainage area in the PSDR is 2.98 acres, page 4).

This conversation occurred on March 23, 2016. Needless to say I was somewhat nonplused. I had suspected that the PSDR might have been using some questionable assumptions in preparing its calculations; I did not expect that it might be using the PAC in an entirely inappropriate way.

Given that the PAC is the foundation of the PSDR, ***"The proposed pond has been designed using the City of Portland Presumptive Approach Calculator"*** (page 5 of PSDR), if the PAC has been used in a fundamentally incorrect way then the PSDR is functionally useless. If the PSDR is unusable then the applicant cannot meet the approval criteria for stormwater detention found in CDC 55.130B or CDC 92.010E. If these criteria aren't met the application must be denied.

Should there be any doubt as to the content of this memorandum I urge members of the commission to contact Ms. Clayton directly. I found her to be very professional and extremely knowledgeable about stormwater facilities. Normally I would recommend City staff also follow up, except that I have not noticed any enthusiasm on their part for double checking any of the applicant's work. Thank you in advance for your due diligence on this vitally important issue.

Sincerely,

_____

David Dodds

P.S. I had originally intended to submit this earlier, but in light of the applicants March 28, 2016 submittals I decided instead to include it with other memoranda that were subsequently written.

To: The West Linn Planning Commission April 4, 2016

Re: File No. CUP-15-03/DR-15-17/VAR-15-01/02/03

Proposed Sunset Primary School development

Memorandum concerning Letter from Kpff Engineering dated March 28, 2016

* A note on referencing page numbers, the letter from Kpff Engineering dated March 28, 2016 is headed with the title "Site Stormwater Narrative" (hereafter SSN) was paginated by city staff as beginning on page 22 and concluding on page 32, I will use those as a reference rather than citing them as page 1-11. In addition Kpff also submitted 5 exhibits designated as D-1 thru D-5, these will be referenced by their exhibit number instead of their page. The original submittal from Kpff, dated January 2016, titled Preliminary Stormwater Drainage Report (hereafter PSDR) will be referenced by the original page numbers or by page title.

David Dodds

18931 Old River Drive

West Linn, OR 97068

Commissioners:

Over the years I have read through a great number of land use applications, but I have seldom if ever read something quite as strange as the letter from Kpff Engineering titled Site Stormwater Narrative (SSN) dated March 28, 2016. When one reads the SSN letter, it would be entirely understandable to believe that you are reading a letter explaining questions relating to a previously submitted stormwater plan. That impression would be completely reasonable provided that you hadn't read and studied the applicant's earlier Preliminary Stormwater Drainage Report (PSDR) and site plans. I literally felt as if I were having a Kafkaesque dream as I read the SSN. I do not believe that there is any way to reconcile these two documents. Later in this memorandum I will be pointing out the differences I find between the two submittals to bolster the argument that these are in fact two very different plans. This leads directly to one central question: is the SSN intended as a new stormwater drainage plan? Has the applicant abandoned the PSDR that was part of the applicant's January development application? If this is so then I object in the strongest possible terms to its acceptance in this current hearing.

There is of course an alternative interpretation that is acceptable to me if it is acceptable to the Commission. That interpretation would be that the SSN is not a new plan, but merely a letter that makes almost no sense as regards to the PSDR. This might seem something of a stretch, but it is

not the responsibility of either the Commission or the opponents to decode the applicant's or applicant's consultant's intent when their submittals are confusing or contradictory. In essence the Commission might collectively state that they have decided to proceed as if the SSN had never been written or submitted. This would cause a minor problem as regards to Planning Staff's letter of March 30, 2016 where in reference to CDC 92.010E (on page 3) it states ***"staff incorporates applicant findings as revised by Section E-1 in the applicant's supplemental submittal dated March 28, 2016"***. However, since opponents are arguing against numerous staff findings already, adding one more is hardly a difficulty.

Assuming that the SSN is deemed a new stormwater drainage plan, several points need to be made:

1) If the applicant wants to submit a new drainage plan, such a plan should be clearly and unmistakably identified as a new plan.

2) The applicant should at the very least briefly explain why they are submitting a new plan in favor of the old plan.

3) The Planning Commission should decide whether to allow a new plan in what was previously deemed a complete application. In my opinion they absolutely should not allow this. As an alternative I believe that the only other procedurally clean way that this could be accomplished would be if the applicant were allowed to voluntarily withdraw the application and resubmit it with a new storm drainage plan.

4) If the Commission does not allow the submittal of a new plan then the application should be judged on the merits or failings of the original PSDR plan.

5) If the Commission accepts the submission of a new plan then the new plan must be in compliance with all the relevant submittal and approval criteria including, but not exclusive of, CDC 55.120F(1), 55.130B, 92.010E and 99.070A.

6) In reference to point 5, if the SSN is accepted as a new plan then a determination would need to be made as to whether the SSN as submitted on March 28, 2016 is deemed the complete plan for purposes of complying with all relevant submittal and approval criteria. To avoid having to deal with an endless moving target, a clear determination needs to be made as to when exactly the new plan is indeed complete.

7) City Staff must acknowledge that the new plan is indeed new and make new findings as to compliance with the relevant CDC submittal and approval criteria.

8) If a new plan is accepted then the 120-day clock should be amended to reflect that the application was not in fact complete until a date no earlier than March 28, 2016.

9) In light of the very serious concerns raised about the PSDR (including a separate memorandum dated March 30, 2016 relating to the use of the Presumptive Approach Calculator PAC), I formally request that if the SSN is admitted as a new stormwater detention plan that pursuant to CDC 99.170E(2) the written record be left open at least 30 days to thoroughly review the engineering assumption in the SSN letter.

**Differences between the PSDR and SSN:**

Compare the site plans from applicant's original submittal on LU1.00, LU1.02, LU1.03, LU1.04 and LU1.05 to that found on exhibits D-2 and D-3 or even on the artist's rendering on SSN page 25 (figure 1). Clearly the size and shape of the detention facilities between these sets of drawings is distinctly different. Closer inspection of the drawings also reveals other differences, such as the retaining wall found in the LU1.02 that is obviously not the same as depicted in the figure 1 rendering (page 25). Obviously the square footages of the opposing designs would be radically different and one must assume the volume as well.

Even more important than differences between size and shape are I believe a fundamental difference in methodology between the PSDR and the SSN. The PSDR it seems clear is based on dealing with stormwater runoff by on-site infiltration, to quote "***To check for the feasibility of on-site infiltration the geotechnical engineer was directed to perform on-site infiltration tests for the site. While the test results confirmed that 100% on-infiltration is not possible, partial infiltration should be obtained by locating the facility in the vicinity of the better performing test pits", "A single stormwater pond will be used for water quality and water quantity"*** , (pages 3 and 6 PSDR). In contrast the SSN states "***For temporarily detaining flows from heavy storms, this facility does NOT depend on infiltration"*** (page 27 SSN).

The facility in the PSDR is described as a pond, ***"Stormwater runoff is treated by use of a vegetated stormwater pond…The proposed pond has been designed using the City of Portland Presumptive Approach Calculator"*** (page 5 PSDR). On the other hand the SSN describes its facility as a planter ***"the Sunset project is an infiltration planter"*** (page 26 SSN). This much is more than a semantic difference. In my researching into this issue I found that ponds and planters are not remotely considered similar facilities. Worth noting is Staff finding No. 21 which states in part ***"The applicant identifies all stormwater from off-street parking and loading areas to collected and conveyed to the treatment and detention pond"*** (page 21 original staff report).

Hopefully the above references make it clear why I contend that the PSDR and SSN cannot be construed to be dealing with the same stormwater plan.

**Conclusion:**

Some might argue that given the objections to PSDR that opponents should be pleased with any plan that seems to shrink the detention facility. Unfortunately I do not believe that the SSN actually contains enough detailed information (or possibly verifiably accurate information) to be

evaluated in its current form or to know whether the SSN would actually be an improvement. I decided not to take the considerably space and effort that a detailed analysis would take in this memorandum or additional memoranda until I knew what the Planning Commission wanted to do with the SSN document.

I strongly urge the Planning Commission to disregard the SSN as being germane to a discussion of the PSDR. It is absolutely unacceptable, in my opinion, to allow any applicant of any land use application to be allowed to introduce a new plan under the guise of responding to an original plan. George Orwell would not be amused and neither am I.

Thanks to the Commission for their due diligence on this matter. I am sorry that it was necessary to force the Commission to trudge through 4 pages on this subject, but on the plus side at least it wasn't 900 pages.

Sincerely,

_____

David Dodds

BEFORE THE PLANNING COMMISSION

FOR THE CITY OF WEST LINN, OREGON

| | | |
|---|---|---|
| In the Matter of WEST LINN-WILSONVILLE SCHOOL DISTRICT 3JT's Application for Conditional Use, Design Review, Director's Exception, and Class II Variance Approval to allow construction of a new primary school and related facilities in the R-10 zone. | ) ) ) ) ) ) | FILE NOS: CUP-15-03, DR-15-17, and VAR-15-01/02/03<br><br>SAVE OUR SUNSET PARK'S SUPPLEMENTAL MEMORANDUM IN OPPOSITION |

## I. INTRODUCTION

This supplemental memorandum is filed on behalf of Save Our Sunset Park ("SOS Park") to address additional procedural and substantive issues. Again, we want to stress that SOS Park is not opposed to replacement of the Sunset Primary School, *per se*. However, members of SOS Park are extremely disappointed in the manner in which the project design has been handled. When the West Linn citizens voted in favor of selling park land to the school district, they were promised that the terms of the sale would "maximize recreational opportunities while preserving significant trees at the site." A copy of the City of West Linn Ballot Measure 3-358 is attached as Exhibit 1. The initial drawings were consistent with this representation, showing that the 1.6 acres of park land would be open recreational space; however, the current design includes parking lots and storm water facilities on the former park property – not open recreational space.

In addition to the failure to preserve the 1.6 acres of park land for recreational purposes, it appears that the applicant has described a brand new drainage plan for this project in its supplemental submittal. However, the plan is not identified as a "new plan" and there is no detailed analysis of how this alternate drainage plan meets the applicable provisions of the West Linn Community Development Code ("CDC"). Accordingly, the applicant has not met its burden to show compliance with each mandatory approval criterion.

## II. PRELIMINARY MATTERS

### A. Continued Hearing.

SOS Park requests that all persons attending the April 6, 2016 hearing be allowed to participate orally and in writing. SOS Park requested a continuance of the March 16, 2016 hearing and the Planning Commission continued the public hearing until April 6, 2016, but stated that people who testified at the March 16, 2016 hearing would not be allowed to testify on April 6, 2016. However, the West Linn Community Development Code ("CDC") requires that the Planning Commission allow all people to participate where there is new evidence. CDC 99.170 (E) (1) provides, in relevant part, that:

> [a]n opportunity shall be provided **at the continued hearing** for persons to present and rebut new evidence, arguments or testimony.

The applicant has submitted extensive new information (over 900 pages) since the March 16, 2016 hearing. Accordingly, all persons should be allowed to present and rebut the new evidence, arguments or testimony at the April 6, 2016 hearing.

**B. Open Record.**

In addition to presentation and rebuttal of the new information at the April 6, 2016 hearing, SOS Park requests that the record remain open for at least seven days to submit additional written evidence, arguments, or testimony for the purpose of responding to the new written evidence.

CDC 99.170 (E) (1) further provides, in relevant part, that:

> [i]f new written evidence is submitted at the continued hearing, any person may request prior to the conclusion of the continued hearing that the record be left open for at least seven days to submit additional written evidence, arguments, or testimony for the purpose of responding to the new written evidence.

Based upon the volume of new written evidence submitted since the first evidentiary hearing (over 900 pages), SOS Park requests that the record remain open for a minimum of twenty-one (21) days to allow sufficient time to analyze and respond to the new information.

## III. ARGUMENT

**A. The applicant has not carried its burden to show that either drainage plan meets the applicable approval criteria.**

On March 16, 2016, the applicant presented its proposal for a new elementary school, which included a massive Storm Water Infiltration Pond. The members of SOS Park addressed multiple concerns regarding adverse impacts of the proposed infiltration pond. Based upon the applicant's supplemental submittal, it appears that the infiltration pond may no longer be part of the project. However, the storm water drainage plan described in the applicant's March 28, 2016 supplemental submittal has not been identified as a "new" plan, and the applicant has not demonstrated its compliance with the mandatory approval criteria, including CDC 55.120 (F) (1) (site plan setbacks), 55.130 (B) (grading plan), 92.010 (E) (drainage plan submittal requirements).

Neither the applicant nor the staff report addresses the different storm water drainage plans in a meaningful manner. For example, in finding "compliance" with CDC section 55 regarding design review, Staff merely "incorporates the applicant findings as revised by Section E-1 in the applicant's supplemental submittal dated March 28, 2016." March 30, 2016 Staff Report at 2. However, Section E-1 provides a Site Stormwater Narrative ("SSN") which seems to describe a completely new storm water drainage plan and fails to identify it as such. Moreover, the applicant has failed to demonstrate that the "new plan" complies with the applicable approval standards.

The applicant cannot have it both ways. There is either a new drainage plan or there is not. (Please see David Dodds' discussion of significant differences between the infiltration pond on the plan presented at the March 16, 2016 hearing and the drainage plan described in the kpff March 28, 2016 narrative "SSN"). If there is a new plan, it must be clearly identified and subject to standard review for completion and compliance with the CDC. Staff must make specific findings regarding the new plan's compliance with the applicable approval standards. If there is not a new plan, the existing infiltration pond must be reviewed on its own merits and the new submittal should not be considered.

In its March 16, 2016 memorandum, SOS Park addressed the failure of the infiltration pond to meet the requirements of the CDC. With respect to the new plan, there are no specific findings, supported by substantial evidence, to show how the approval standards are satisfied. In any event, neither plan meets the applicable approval criteria. Therefore, the applicant has not met its burden and the application should be denied.

**B. Applicant has failed to satisfy CDC 60.070 (A) (3) because the current design is inconsistent with the promises made when the park land was sold to the school district.**

60.070 (A) (3) requires a finding that "the granting of the proposal will provide for a facility that is consistent with the overall needs of the community." The applicant continues to rely on voter approval to show that the overall needs of the community are met, stating:

> The needs of the community are best expressed by its approval of the bond measure to finance these improvements.

However, use of the 1.6 acres of land formerly known as Sunset Park for a parking lot and storm water facilities does not meet the needs of the community. The citizens did approve the bond measure to fund the new school, but they also voted to sell 1.6 acres of park land to the school district **on the express condition** that the 1.6 acres would be used to **"maximize recreational opportunities while preserving significant trees."** See Exhibit 1. The West Linn community needs to be able to trust local government. Sunset Park has a long history of being preserved for park and recreational purposes. SOS Park members relied on the City's promise when they voted to support the sale of this specific 1.6 acres of park land to the school district to be used for recreational opportunities and tree preservation.

The history of Sunset Park (including 1.6 acres sold to the school district) supports the significance of preserving the subject property in its park-like state. When Crown Zellerbach conveyed land for Sunset Park to the City of West Linn back in 1951, the conveyance was subject to a reversionary interest stating that title would revert to the timber company if the land was not used solely for park and recreational purposes. That reversionary interest no longer exists, either because it was extinguished by statute (ORS 105.770) or because Crown Zellerbach's successors

in interest have now quit-claimed any such interest to the applicant; however, the 1.6 acres at issue here has always been intended, and promised, for park and recreation purposes.

On March 16, 2016, the City attorney advised the Planning Commission that Measure 3-358 is not an approval criterion for this application. However, in looking to the "overall needs of the community," the public has a right to rely on the explanatory statement of ballot measure designed to induce them to approve the sale of a public park. As proposed, this design plan does not maximize recreational opportunities while preserving significant trees at the site. The applicant cannot rely on a vote of the people to satisfy the approval criterion which requires "consistency with the overall needs of the community," and ignore a more specific vote of the people for the ***conditional sale*** of the subject 1.6-acre parcel which demonstrates "inconsistency with the overall needs of the people."

The voter approvals of funding the school project while preserving trees and maximizing recreational opportunities on the 1.6 acres of former park land are not mutually exclusive. As demonstrated by the initial drawings, the applicant could accomplish this promised preservation while proceeding with its project. However, the current plan to locate a parking lot and storm drainage system on the 1.6 acres of former park land is totally inconsistent with the City's representations at the time of the vote which allowed the sale. Accordingly, the applicant has failed to carry its burden to show compliance with 60.070 (A) (3) because the facility, as currently proposed, is inconsistent with the overall needs of the community.

## IV. CONCLUSION

Based upon the procedural requirements of CDC 99.170 (E) (1), SOS Park respectfully requests that all persons be allowed to present and rebut new evidence, argument and testimony at the hearing. In addition, SOS Park requests that the record remain open for at least seven (7) days, preferable twenty-one (21) days to respond to new evidence.

If the Planning Commission reaches the merits of this case, based upon the substantive approval criteria, SOS Park respectfully requests that the application, as presented, be denied.

DATED this 6th day of April, 2016.

Respectfully submitted,

REEVES, KAHN, HENNESSY & ELKINS

Peggy Hennessy

Peggy Hennessy, OSB #872505
Attorney for the Save Our Sunset Park

City of West Linn

# Measure 3-358

## Ballot Title

**SALE OF PORTION OF CITY PARK LAND TO SCHOOL DISTRICT**

**QUESTION:** Shall the City sell 1.6 acres of Sunset Park to the West Linn/Wilsonville School District for $483,000?

**SUMMARY:** This measure, if approved, would allow the sale of 1.6 acres of Sunset Park to the West Linn/Wilsonville School District for the amount of $483,000. The School District has indicated that Sunset Primary School needs to be replaced soon and that it's the District's desire to maintain the school at its current location, provided that the School District's property at this location can be expanded. The City-owned Sunset Park property is adjacent to Sunset Primary School. Agreeing to sell a portion of Sunset Park to the School District would provide sufficient land to allow the District to keep Sunset Primary School at this location. The West Linn Charter requires that the sale of any park property be approved by a vote of the community. If this sale is approved by the voters, the City would commit to using the proceeds from the sale of this property for acquiring or developing parks for the use of the West Linn community.

## Explanatory Statement

Voter approval is required for the sale of 1.6 acres of Sunset Park to the West Linn/Wilsonville School District for $483,000 (Sunset Park is currently 5.1 acres).

The West Linn Charter Section 46 requires that the sale of any property owned by the City of West Linn and designated as a park be approved in advance by City voters. The West Linn City Council approved placing this measure on the May 18, 2010 ballot with a 5-0 vote.

This measure, if approved, would allow the sale of 1.6 acres of Sunset Park to the West Linn/Wilsonville School District. The School District has indicated that Sunset Primary School should be replaced soon. The School District would maintain Sunset Primary School at its current location, provided that the School District's property at this location could be expanded. The City-owned Sunset Park property is adjacent to Sunset Primary School. Agreeing to sell a portion of Sunset Park to the School District would provide sufficient land for the School District to keep Sunset Primary School at its current location.

The Sunset Neighborhood Association Neighborhood Plan includes a primary goal of keeping Sunset Primary School as an element of the Sunset neighborhood. If approved, the terms and conditions related to the sale would include Sunset neighbors in the school planning process, and would maximize recreational opportunities while preserving significant trees at the site. The City would use the property sale proceeds for acquiring or developing land for recreational use in West Linn.

In addition to this ballot measure, the West Linn City Council has also submitted for the May 18, 2010 election two related but separate ballot measures. One ballot measure would authorize the issuance of up to $10.8 million in general obligation bonds to fund the land acquisition and to construct, furnish and equip a new police and court facility at the Parker Road location. The other ballot measure would annex 7.5-acres of real property located at 3332 and 3151 Parker Road. Voter approval is required for each of the ballot measures.

If the three ballot measures are approved, the City would:

- Sell a portion of Sunset Park to the West Linn/Wilsonville School District so Sunset Primary School could be replaced at its current location;
- Purchase the Parker Road property being annexed; and
- Construct a new police and court facility on a portion of the annexed property.

Voters can learn more about this ballot measure online at http://westlinnoregon.gov.

*(This information furnished by Tina Lynch, City of West Linn.)*

**NO ARGUMENTS WERE FILED IN FAVOR OR IN OPPOSITION TO THIS MEASURE.**



Exhibit 1
Page 1 of 1

To: The West Linn Planning Commission April 11, 2016

Re: File No. CUP-15-03/DR-15-17/VAR-15-01/02/03

Proposed Sunset Primary School development application

Memorandum concerning CUP approval criteria and variance approval criteria as relates to new testimony by applicant found on pages 15, 16 and 337 of applicant's March 28, 2016 submittal. In particular applicant provides a table (table 1), financial information and staffing information not previously presented by applicant.

David Dodds

18931 Old River Drive

West Linn, OR 97068

Commissioners:

The applicant has been abundantly clear that locating a new school on the footprint of the old school would cause the applicant some problems. What the applicant has not done is demonstrate that building on the original footprint could not be done. Avoiding inconvenience and added expense to an applicant are not valid grounds for approving variances or conditional use permits. This is all the more true when considering that the opponents have presented in great detail and volume the tremendous problems they have with the current development plan.

The old school has lasted for sixty years; it is likely that a new school would last as long if not longer. Given the probable life expectancy of the new school, one year's inconvenience would be a very small price to pay to build a facility that the Sunset neighborhood could enthusiastically embrace. Contrast that outcome with approval of a plan that leaves the Sunset neighborhood angry and embittered for years if not decades to come.

Interestingly enough, the applicant actually touches on a perfectly workable solution when it discusses relocating all the students to Cedaroak Park with the use of portable class rooms (page 16). Cedaroak Park has ample open space and portables have been used there in the past. As regards the issue of overcrowding the applicant provides data that actually weakens their arguments. As can be seen with Trillium Creek on page 15 and the enrollment information on page 337, the district routinely operates schools at over their rated capacity. While that situation might not be ideal, it evidently is far from unusual.

In consideration of the temporary relocation problem, the applicant emphasizes the difficulties while simultaneously lightly discounting any concerns about having small children directly adjacent to a construction zone. The distinct impression is given that one would be a great burden while the other is almost trifling if not perhaps even frivolous. Unfortunately I believe that the true situation is almost exactly the opposite. If only the applicant would give up its inflexibility on this subject all of the issues of this application could be resolved.

When reviewing this application, particularly as it relates to variances and the CUP, I urge the Planning Commission to consider the whole site. For the purposes of both the applicant wants to act as if the western third of the property doesn't exist. CDC 75.020B(1)a states in clear and unequivocal language that ***"The variance is the minimum variance necessary to make reasonable use of the property"***. Clearly the applicant can move the building to the west and either avoid requesting a variance altogether or greatly reduce the scope of variance for parking. There is no topographical difficulty with doing this. Nothing about the lot shape precludes it. It is merely the applicant's preference to avoid the bother and inconvenience of temporary relocation of the students. On that basis alone the level of variance isn't warranted, much less when weighed with all the other issues raised by the opponents.

I urge the Planning Commission to deny the requested variances and as a consequence deny this application. When doing so the Commissioners could also take the opportunity to urge the applicant to strongly reconsider the issue of temporary relocation.

Sincerely,

_____

David Dodds