# Table of Contents (AP-10-01)
# 1215 Ninth Street Appeal of Planning Directors Decision of Denial for a Water Resources Area Permit

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**AGENDA BILL 2010-06-14(7)**

**Subject:** *Public hearing* - to consider the appeal filed by Troy and Gina Bundy of the Planning Director's denial of a Water Resource Area (WRA) permit.

**For Council**: June 14, 2010 **Land Use Case Number**: AP-10-01

**Public Hearing**: Yes

**City Manager's Initials: ____**

**Attachments:**

1. Staff Memo to City Manager
2. Written submittal by appellant's attorney, Michael Robinson
3. Complete Record

**Initiated by:**

- Troy and Gina Bundy (1215 Ninth Street, West Linn)

**Budget Impact:**

- None

**Sustainability Considerations:**

- Restoring the wetlands and drainageway will re-establish their value as a storm detention, storm treatment, flood control and habitat area.

**Policy Questions for Council Consideration:**

- Does the application comply with the criteria in the Community Development Code?

**Summary:**

- Troy and Gina Bundy applied for a building permit to construct a swimming pool but then installed it without an approved permit in hand. Staff visited the site and determined that the appellant had installed a pool, patio and a non-native landscaped area after filling a wetland and drainageway(s). The appellant then applied for a Water Resource Area (WRA) permit (WAP-09-03). The Planning Director found that the approval criteria had not been met and denied the application. It was also determined that the terms of the Open Space Conservation Easement, which had been conveyed by the original developer to the City of West Linn, the WRA transition and setbacks and the Riparian Corridor had been violated. Troy and Gina Bundy are now appealing the Planning Director's decision. Attorney Michael Robinson has submitted findings on behalf of the Bundys to support approval of their permit. The case is de novo. The approval criteria of Community Development Code Chapter 32 apply.

**Recommended Action:**

- Conduct a pubic hearing

**Council Action Taken:**

- Approved
- Denied
- Continued

# Memorandum

Date: June 14, 2010

To: Chris Jordan, City Manager

From: Peter Spir, Associate Planner

Subject: City Council hearing to consider Troy and Gina Bundy's appeal of the Planning Director's decision (WAP-09-03) to deny their application for a Water Resource Area (WRA) Protection permit to construct a swimming pool, patio area, fill wetlands, and other associated work in an area protected by WRA regulations and a conservation easement.

File: AP-10-01

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**Background**

Mr. and Mrs. Bundy's lot at 1215 Ninth Street is located on a narrow strip of land bounded on two sides by wetlands. The wetlands at the rear of their property and on the adjacent PGE property were identified in the City's 2005 Local Wetlands Inventory (LWI) as wetland WI-02.

Over the course of at least the past two years, Mr. and Mrs. Bundy performed the following work in a WRA transition area and setback, Riparian Corridor and the City's Open Space Conservation Easement located at the rear of their house:

1. constructed a swimming pool without an approved building permit;
2. constructed a patio area around the pool;
3. graded the rear yard and Portland General Electric (PGE) property to the north;
4. removed native vegetation in the rear yard and on PGE property;
5. filled and graded the wetlands in the rear yard and on PGE property;
6. re-aligned and graded a natural drainageway on their rear property line into a 9-15-inch deep gravel and rock filled channel to capture storm water including run-off from the filled area on PGE property;
7. installed (non-native) rolled grass sod and non-native trees and plants in their rear yard and on PGE property;
8. installed bark mulch and tiki lights in their rear yard and on PGE property; and
9. installed two footbridges across the gravel and rock channel from their property to the PGE property

In addition, they constructed a brick wall in the Open Space Conservation Easement, WRA transition area and riparian area at the front of the house.

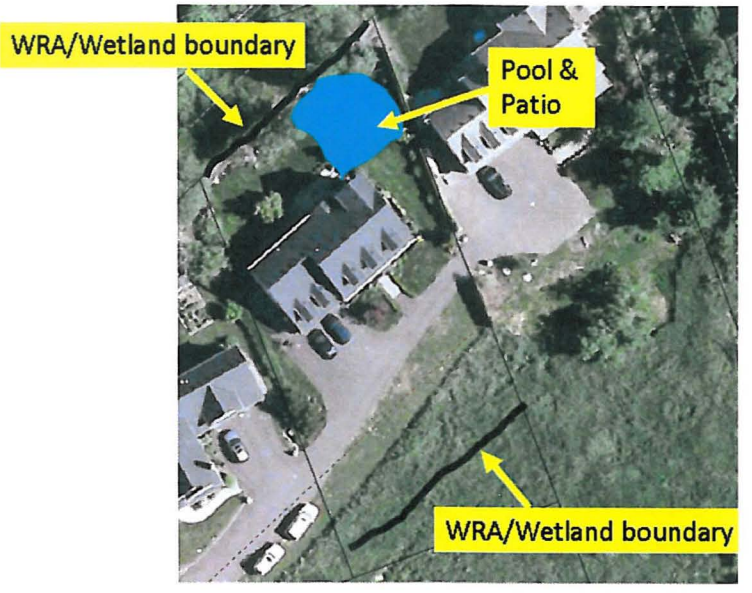
These activities took place in areas protected by the following:

- An Open Space Conservation Easement conveyed to the City of West Linn and recorded in 2001. This easement was in place prior to any home construction at this site and prior to Mr. and Mrs. Bundy purchasing the property. The terms of the easement are clear and detailed. The easement prohibits, among other things, site disturbance, removal of native vegetation, fill, grading, alteration of natural water courses and development within the easement boundaries. The subject pool, patio, and landscaping are within this easement area (shown in pink below left).

- A WRA transition area (shown in yellow above right) of 50 feet in width plus a building setback of 15 feet measured from the edge of the original wetlands, for a total setback of 65 feet. The applicant's entire rear yard is in this WRA transition and setback zone;

- A Riparian Corridor identified as part of the City's Goal 5 inventory completed in 2005. The Riparian Corridor extends 100 feet from the edge of the original wetlands. There is an additional 15-foot building setback for a total of 115 feet of protected area. All of the applicant's property is within the Riparian Corridor overlay (shown at left below in bright green). Both the Riparian Corridor and the WRA are regulated by Community Development Code (CDC) Chapter 32; and

- The wetland is under the jurisdiction of the Oregon Department of State Lands (DSL) and United States Army Corps of Engineers (USACE) (wetland delineated in 2000 wetland study shown below right with black lines).




On November 11, 2009, Mr. and Ms Bundy applied for a WRA permit after the work listed above had been completed, with the exception of item 9 which was installed later.

On February 19, 2010 the Planning Director denied the application for a WRA permit.

On March 5, 2010, Mr. and Ms Bundy, represented by Attorney Michael Robinson, appealed the Planning Director's denial of their WRA Protection Permit application.

**Discussion**

Michael Robinson submitted a letter to Mayor Kovash dated May 21, 2010. In that letter he makes a case as to how and why his clients meet the approval criteria for a WRA Protection Permit. The following is staff's response to Michael Robinson's findings. It serves as a supplement to the staff findings provided in the initial Planning Director decision. (Applicable Community Development Code (CDC) provisions are shown in blue.)

CDC 32.050(B): *Proposed developments shall be so designed as to maintain the existing natural drainageways and utilize them as the primary method of stormwater conveyance through the project site unless the most recently adopted West Linn Surface Water Management Plan calls for alternate configurations (culverts, piping, etc.). Proposed development shall, particularly in the case of subdivisions, facilitate reasonable access to the drainageway for maintenance purposes.*

On page 4, paragraph 4 of the letter to Mayor Kovash and City Council in response to this criterion, Attorney Mike Robinson captures the essence of the Bundy defense when he states:

*" the simple fact is that there is no existing natural drainageway on the Bundy property which is listed on the City's Surface Water Management Plan nor is there one on the PGE property, but even if it was not there, the Bundys did not alter it. The City Council can find this criterion is satisfied."*

Wetland at rear of neighbor's lot

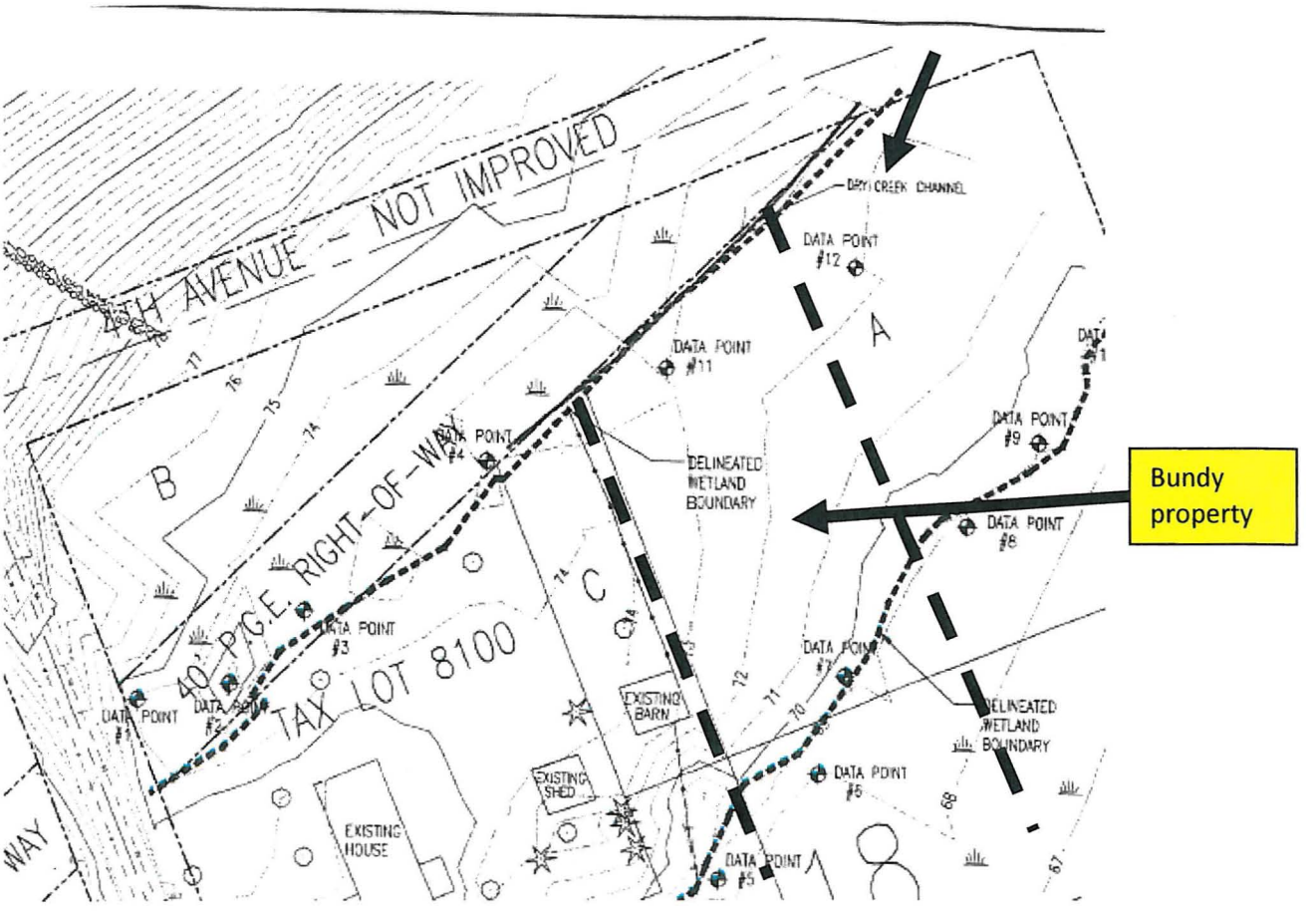
Filled, graded and turfed former wetland/drainageway at rear of Bundy property

Staff finds a different set of facts. There were wetlands on the Bundy property. Then they were filled in. There were wetlands on the PGE property. Then they were filled in. There was a natural drainageway on the PGE property that sustained the wetland; it was lined with gravel/rock and re-aligned along the Bundy's property line.

Michael Robinson, on page 1 of the May 21, 2010 letter to Mayor Kovash and City Council, states that *"The Bundys made improvements to PGE property with PGE permission."* That statement is refuted in a June 2, 2010 e-mail from Tina Tippin, PGE Real Estate Services. She states, *"PGE has not granted the Bundy's any right to access the PGE property interest, or to remove any trees, re-grade or landscape PGE's property in any fashion and our records do not reflect any request by the Bundy's to do so. Were such a request made and granted it would be conditioned upon strict compliance with all applicable laws and property rights."*

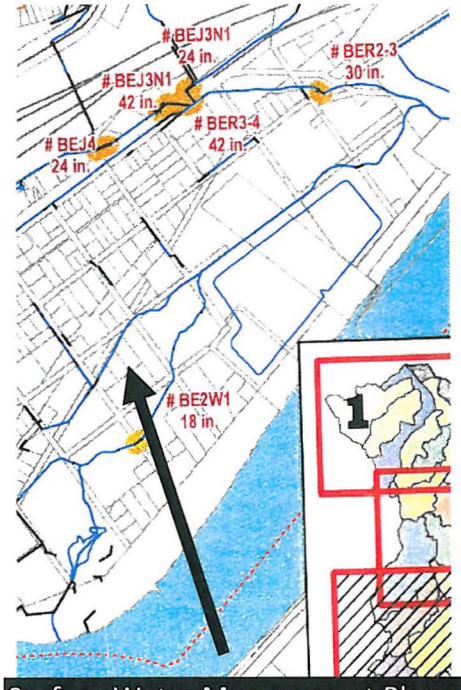
Evidence of a drainageway is first noted in the August 2000 Wetland Delineation by AKS Engineering, which was part of a wetland permit (MISC-00-01). The site analysis and test pits were undertaken in the typically dry non-rainy month of August but still discovered the following hydrologic features along the PGE corridor from Ninth Street:

- Test pit I "there *was no visible hydrology other the appearance of a drainage pattern*."
- Test pit 2 *"Vegetation and soil characteristics confirm presence of a wetland. Evidence of inundation and soil saturation were not observed due to lack of precipitation (dry conditions)*."
- Test pit 3 *"Soil characteristics indicate significant saturation during a major part of the growing season."*
- Test pit 4 *"a dry creek channel emerged from the vegetation NE of this test pit".*




AKS Engineering Wetland Delineation (Note "dry creek channel" along PGE-Bundy property line)

Matt Johnson of AKS Engineering concluded by stating "At *the time of inspection, some of the areas were absent of hydrology. However, soil characteristics indicate saturation and/or inundation during the significant portion of the growing season.*" Therefore, the majority of the tested areas showed evidence of seasonal drainageways which would have transported storm water through the wetland vegetation in a braided non-channelized pattern.



Surface Water Management Plan

The City's Surface Water Management Plan shows a drainageway along the PGE-Bundy property line. The scale of the map is inadequate to define drainageways with great detail. Site visits are required. Staff visits to the site with Anita Huffman of the Department of State Lands (DSL) in 2009 and 2010 clearly indicated that the PGE corridor and the north edge of the Bundy property constituted a natural drainageway that meandered through the wetland grasses and vegetation. This agrees with the AKS analysis.

In 2008 and 2009, fill was placed on the drainageway and wetland corridor at the north edge of the Bundy property and on the adjacent PGE property.

Staff finds that stormwater and runoff originating near Ninth Street was diverted to the north of the fill area while stormwater on the southern portion of the wetland, which had been contained in a natural drainageway was directed into a gravel trench created by the Bundys along their rear property line. Although this trench generally follows the natural drainageway, it has been straightened and graveled. The vegetation was removed and a pipe system was introduced to collect stormwater from this trench and direct it south across the Bundy property to the wetlands on the south side of the house and entry driveway.
Further evidence of site modifications such as tree removal and possible fill are seen in the City's GIS aerial photographs. Aerial photos (below) from 2007 show no fill or grading. Aerial photos from 2008 show fill or grading.

2007 photo. No apparent grading seen

2008 photo. Grading/removal of vegetation visible

The record includes a letter from Mr. and Mrs. Evans, the Bundy's next door neighbors, who state that the Bundys, contrary to their statements, dumped fill on the PGE property in 2009. Staff visited the site and noted a distinctly higher grade for the lawn areas compared to the adjacent wetlands, indicating that fill had been dumped.

Contrary to the Bundy's allegation that the gravel trench along their north property line was there before they moved there in 2003, neighbor Bill Evans states that the gravel trench "*…was installed in 2008. We moved into our house in 2006 and it wasn't there for approx the first 2 years. Also, it was there maybe 1 year prior to the pool installation (Aug 2009) so 2008 seems right".*

Mr. Evans went on to explain*, "At the time of the gravel trench install, there was a drain/ piping installed (which was actually installed a few feet onto our property but that's another issue). The piping runs under the gravel trench and then to the front of the property and empties into the greenspace in front of our properties. Now there is an additional electric sump pump under the pool which connects to this same drain line."*

The evidence is clear:

- Natural drainageways existed per review by wetland specialists, the Surface Water Management Plan, DSL, staff and testimony from the neighbors
- The Bundys filled them in
- The Bundys significantly modified a natural drainageway along the rear property line by digging and straightening it out, removing native vegetation along its course, lining it with gravel and then installing a pipe system to further re-direct the drainageway's water flow.

Staff finds that the applicant fails to meet this criterion.

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*32.050(C). Development shall be conducted in a manner that will minimize adverse impact on water resource areas. Alternatives which avoid all adverse environmental impacts associated with the proposed action shall be considered first. For unavoidable adverse environmental impacts, alternatives that reduce or minimize these impacts shall be selected. If any portion of the water quality resource area is proposed to be permanently disturbed, the applicant shall prepare a mitigation plan as specified in CDC 32.070 designed to restore disturbed areas, either existing prior to development or disturbed as a result of the development project, to a healthy natural state.*

Water Resource Areas are defined in CDC Chapter 2 as: "*Any area that consists of a* ***wetland identified in the West Linn Local Wetlands Inventory*** *and the required transition and setback area around the wetland pursuant to CDC Chapter 32, or any major or minor open channel drainageway identified by the most recently adopted West Linn Surface Water Management Plan and the required transition and setback area around the major or minor open channel pursuant to CDC Chapter 32…and the required transition and setback area for the riparian corridor pursuant to CDC Chapter 32."*

The West Linn Local Wetlands Inventory (LWI), dated 2005, indicates that wetland WI-02 extended along and within the north edge of the Bundy property.
A wetland delineation dated August 2000 by AKS Engineering identified the wetland on the PGE property and on approximately the northern five feet of the Bundy property. The WRA transition area and building setback extend across all of the Bundy's rear yard and into the front yard.

In the course of a 2010 site visit by Oregon Department of State Lands (DSL) staff, United States Army Corps of Engineers (USACE) staff, and a private wetland consultant, test holes were dug on the north portion of the Bundy property and wetland indicator soils were noted.

Staff finds that constructing a pool, patio and decorative rock/fountain display, which cover the majority of the rear yard, redirecting storm water, filling wetlands and drainageways etc. does not constitute the minimum impact as required by this approval criterion. Indeed, compared to development on adjacent parcels, the Bundys have developed their yard the most intensively. Leaving the rear yard as it was when they moved in would have minimized impacts. The criterion is not met.

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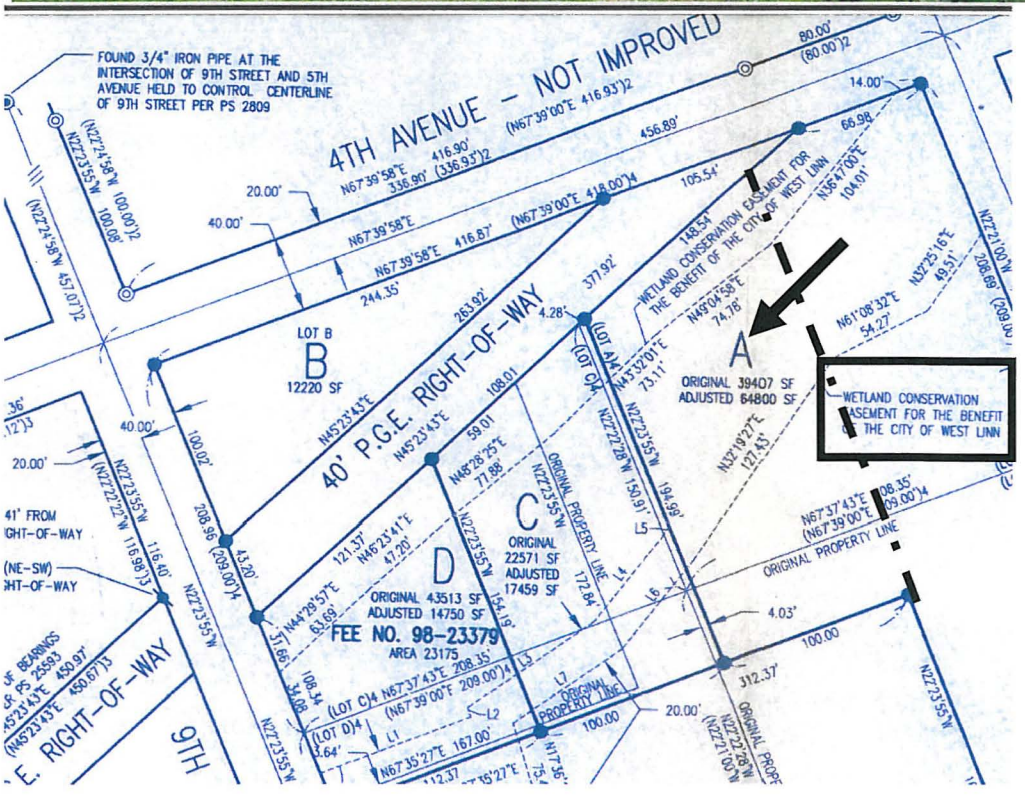
*32.050(D) Water resource areas shall be protected from development or encroachment by dedicating the land title deed to the City for public open space purposes if either: 1) a finding can be made that the dedication is roughly proportional to the impact of the development; or, 2) the applicant chooses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

Michael Robinson states that the provision above is not applicable to this case. Staff takes a different view. The provision above is designed to protect the resource through dedication or easements with the expectation that the wetland and drainageways will be respected. A conservation easement was in place prior to the Bundy's purchase of the property; the applicants failed to abide by its terms. Even after the applicants were fully advised of multiple CDC and conservation easement violations and after they met with staff in 2009 and expressed contrition, they subsequently installed two bridges across the trench at the rear property line in 2010 (see the photo of the bridges on page 13).

The Open Space Conservation Easement applies to the majority of the Bundy's rear and front yard. It extends between 33 and 38 feet from the north property line south across the rear yard towards the house. The pool, the patio, the rockery, water feature next to the patio, the bridges across the trench, the trench, the non-native vegetation on the Bundy property all fall completely or partially in the easement; they are prohibited by the terms of the easement without written approval by the West Linn City Council.

The Open Space Conservation Easement extends into the front yard too. The brick wall on the south side of the driveway (shown below) falls into the easement area and is also prohibited.




Bundy property is the area indicated by the arrow.
Note Wetland Conservation Easement boundaries.

On page 7 of his letter to Mayor Kovash, dated May 21, 2010, under "C. Issue Three", Michael Robinson states that staff incorrectly identified the PGE property as being within the Open Space Conservation Easement. That is correct. The PGE land is however protected by WRA and Riparian corridor regulations of CDC Chapter 32. The wetland is also subject to DSL and USACE permitting and enforcement.

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32.050(F). *Roads, driveways, utilities, or passive use recreation facilities may be built in and across water resource areas when no other practical alternative exists. Construction shall minimize impacts. Construction to the minimum dimensional standards for roads is required. Full mitigation and revegetation is required, with the applicant to submit a mitigation plan pursuant to CDC Section 32.070 and a revegetation plan pursuant to CDC Section 32.080. The maximum disturbance width for utility corridors is as follows:*

*a. For utility facility connections to utility facilities, no greater than 10 feet wide.*

*b. For upgrade of existing utility facilities, no greater than 15 feet wide.*

*c. For new underground utility facilities, no greater than 25 feet wide, and disturbance of no more than 200 linear feet of Water Quality Resource Area, or 20% of the total linear feet of Water Quality Resource Area, whichever is greater.*

The provision above was written to accommodate needed public facilities in WRA when there is no practical alternative. For example, to traverse a WRA with a necessary road or water transmission pipeline with a minimum of disturbance. The legislative intent was that "Passive recreation facilities" should be limited to narrow trails in parks traversing drainageways as contemplated in the Parks and Natural Area Design Review definition for " passive-oriented parks" (CDC 56.015). It does not seem reasonable to consider a private 30 X 15 foot pool, patio, rockery and water fountain as a passive recreation facility in this context. Therefore staff finds that the criterion is not met.

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32.050(H) *Paved trails, walkways, or bike paths shall be located at least 15 feet from the edge of a protected water feature except for approved crossings. All trails, walkways, and bike paths shall be constructed so as to minimize disturbance to existing native vegetation. All trails, walkways, and bike paths shall be constructed with a permeable material and utilize Low Impact Development (LID) construction practices.*

This criterion prohibits paved trails and walkways within 15 feet of the wetland (protected water feature), presumably to keep hardscapes and trafficked areas away from wetlands. This setback allow for some infiltration and treatment of potentially contaminated stormwater runoff before it enters the drainageway. The wetland delineation conducted in August 2000 put the wetland boundary approximately five feet onto the Bundy's north property line. The LWI adopted in 2005 also shows the wetland and transition area on the northern edge of the Bundy property. The concrete patio around the pool, which is a de facto paved walkway, is

approximately one-foot from the wetland, well within the 15-foot restricted area. Therefore this criterion is not met.

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32.050(I) *Sound engineering principles regarding downstream impacts, soil stabilization, erosion control, and adequacy of improvements to accommodate the intended drainage through the drainage basin shall be used. Storm drainage shall not be diverted from its natural watercourse. Inter-basin transfers of storm drainage shall not be permitted.*

The applicant's attorney did not address this criterion. The Surface Water Master Plan identifies the drainageway that traverses the PGE property and northern edge of the Bundy property. The drainageway follows a meandering braided pattern extending through the wetlands. The drainageway was blocked by the fill at the rear of Bundy property. Much of the water has since been diverted into the gravel trench that straddles the rear property line. This diversion of storm drainage from its natural course violates the approval criterion.

As previously noted, the record includes a letter and photographs from the neighbors, Mr. and Mrs. Evans, who state that the gravel trench, piping and drainage that was installed in 2008 has resulted in unintended problems and flooding (see photo below ). The problems are detailed in Mr. Evans' letter dated April 29, 2010. The City's stormwater management program relies heavily on detention and treatment. Wetlands store and infiltrate some stormwater and the wetland's vegetation reduces the velocity of the stream flow and traps and treats suspended loads (e.g., eroded soils, oils and other material) that otherwise could flow into the Willamette River. By channelizing the drainageway, the Bundys have eliminated the detention and treatment benefits and consequently transferred the impacts downstream. Downstream impacts include changing the temperature regime of the drainageway by removing tree or vegetative canopy. Direct sunlight changes the ability of the water to sustain existing organisms, amphibians and fish in the water. Installing a lawn on both sides of the trench which used to function as a natural drainageway, means that there is an increased probability that the Bundys will use lawn fertilizer and chemical treatments which are high in phosphates which lead to pollution, eutrophication and oxygen depletion of the stream with an attendant impact of aquatic life.

Based on their actions, Staff has seen no evidence that the applicant practiced sound engineering principles regarding downstream impacts, soil stabilization, erosion control, providing adequate drainage or proper permitting. Therefore, the criterion is not met.

Gravel/rock lined trench, which replaced a natural drainageway that followed this general path, removed the values and benefits of a natural drainageway and vegetative canopy. The Bundy property is on right side of trench.

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

Despite the fact that the applicant applied for a building permit, Michael Robinson states that the 30 X 15 foot concrete and steel reinforced swimming pool is not a "*structure*" and therefore can legitimately go in the *Structural Setback Area*. He bases that on his interpretation that a swimming pool does not meet the definition of a structure per the CDC Chapter 2 Definitions: ***Structure***. *Something constructed or built and having a fixed base on, or fixed connection to, the ground or another structure, and platforms, walks, and driveways more than 30 inches above grade and not over any basement or story below.*

Michael Robinson states that since the pool is not over 30 inches high it is not a structure.

Staff finds that the CDC definition can be interpreted to define two separate types of structures given the use of the conjunction: "and". *"Something constructed or built and having a fixed base on, or fixed connection to, the ground or another structure" "and"* structures defined as *" platforms, walks, and driveways more than 30 inches above grade and not over any basement or story below."*

An in ground concrete pool constitutes a structure as it is constructed and has a fixed base on the ground. If this interpretation is compelling, then the pool and associated development are within the structural setback and the criterion is not met. (As a sidebar, the Oregon Residential Specialty Code R202 Definitions (building code) states that a structure is: "*That which is built or constructed.*")

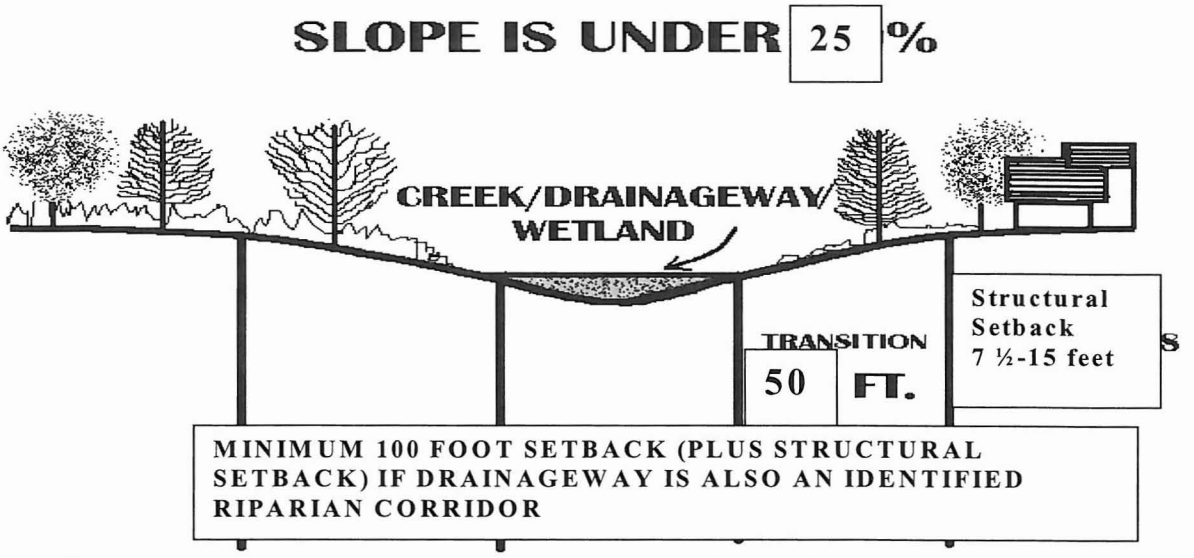
Pool, patio, water feature at rear of Bundy house.

The appellant's attorney did not speak to approval criterion 32.050(E) which calls for a WRA 50-foot transition area measured from the edge of the wetland. Since the wetland extended generally along the rear five feet of the Bundy's property line the transition area extends to the house. No improvements (including at or below grade improvements), site modifications, grading, or landscaping are permitted in the transition area unless it is approved by the decision making authority under the hardship provisions or in cases where no practical alternative exists for improvements (CDC 32.050(F)). The pool, patio, water feature, fill, gravel trench and landscaping are all in the transition area and are in violation of this criterion

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

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

| *Protected Water Feature Type (see CDC Chapter 2 Definitions)* | *Slope Adjacent to Protected Water Feature* | *Starting Point for Measurements from Water Feature* | *Width of Setback and Transition Area on each side of the water feature* |
|---|---|---|---|
| *Wetland, Major Drainageway, Minor Drainageway* | *0% - 25%* | • *Edge of bankful flow or 2-year storm level;*<br>• *Delineated edge of wetland* | *50 feet plus structural setback.* |




Regardless of the interpretation related to structural setbacks, the pool and associated improvements are within the 50- foot wide WRA transition zone, the riparian corridor and the open space conservation easement.

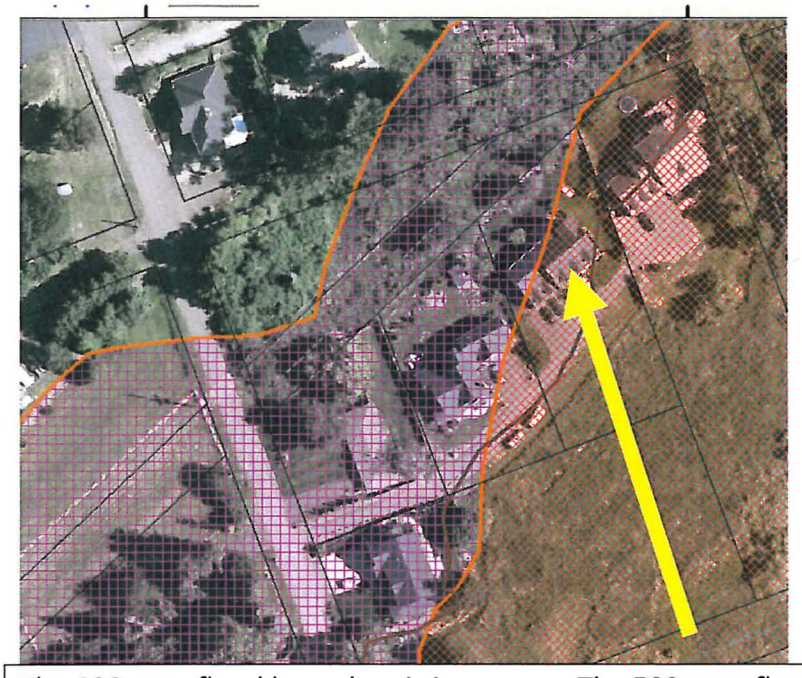
**Other**

Wetland functions. On page 6, paragraph 2 of his May 21, 2010 letter to Mayor Kovash and City Council, Michael Robinson rebuts staff findings that wetland function were displaced at the site by declaring that the City shows no evidence that the Bundy's property supported wetland functions. To the contrary, the record includes the August 2000 wetland delineation by a wetland specialist for AKS Engineering which shows wetland on the northern portion of the Bundy property. The City's Wetland Inventory identified wetland WI-02 as being partially on tax lot 8201 of Assessor's Map 31E2AB which is the Bundy property. Finally, in the course of a May 2010 site visit, USACE staff, DSL staff and the applicant's wetland specialist dug test holes and discovered wetland soil types in the Bundy's backyard.

Again a lot of the difficulty of identifying the wetland boundary is because, over a period of years, the Bundys filled in most of the wetland delineated in 2000. It is staff's understanding that DSL is pursuing separate enforcement with the Bundys and is expected to require a forensic wetland inventory to determine where the wetlands were before the extensive landscaping, grading, and pool construction took place.

On page 6, paragraph 4 of the May 21, 2010 letter to Mayor Kovash, Michael Robinson downplays the value of wetland WI-02: it is not as significant as others. Regardless, it is a regulated wetland warranting protection.

Michael Robinson also states that there is no evidence of flood storage capacity. City GIS mapping shows that 80% of the property is in the 100-year floodplain and the remainder of the Bundy property plus the abutting PGE property is in the 500-year flood plain.



The 100-year flood boundary is in orange. The 500-year flood boundary is in purple. Thus the entire Bundy property is a flood storage area.

Wetlands, as naturally vegetated depressions in the landscape, dissipate and detain floodwaters. A flat, compacted, grassed lawn with a high runoff co-efficient is a poor substitute.

Hardship. On page 8 of the May 21, 2010 letter, Michael Robinson discusses CDC 32.090, which addresses hardship cases. The hardship provisions allow the development of lots that, because of the WRA restrictions, would otherwise be deprived of all economically viable use of the land. If that hardship is proven then the code allows up to 5,000 square feet of the site to be disturbed (including any grading and excavation). Michael Robinson correctly notes that the Bundys have already exceeded the 5,000 square feet of developed space so even if the appellant was able to successfully argue that a hardship provision was deserving, the fact that the maximum disturbed area has already been exceeded means that pursuing a hardship is not an option. It was also noted in the Planning Director's report that the $640,370 valuation of the house, per County Assessor records, demonstrates that the site has already achieved economic viability.

Variance. On page 8 of his letter, Michael Robinson discusses whether or not a variance under CDC Chapter 75 is appropriate. He asks for a threshold determination from the City Council as to whether the applicant can or should pursue a variance. Staff finds that a threshold determination seems highly irregular, but beyond that concern, the applicants would be hard

pressed to meet any of the approval criteria under CDC Chapter 75; in particular: "*The exceptional and extraordinary circumstance does not arise from the violation of this ordinance.*"

**Related Permits and Actions**

Oregon Department of State Lands (DSL). The DSL Resource Coordinator for Clackamas County, Anita Huffman, has been working with staff to identify the scope of the violation and suggest remedies. DSL protects waterways and wetlands through administration of Oregon's Removal-Fill Law, enacted in 1967. This law requires most activities that affect more than 50 cubic yards of material in streams, lakes, estuaries and wetlands to have a permit from DSL. The activities at this site require such a permit.

In a May 14, 2010 e-mail to the City, Anita Huffman explained the DSL's most current position:

*DSL is going to require a wetland delineation to determine the extent of the wetland fill and alteration. As for the PGE property area, we are going to require restoration to that portion. The drainage 'swale' is ok to be vegetated, and depending on the wetland delineation, it's likely we'll also require removal of the drain.*

*As far as the pool/decking is concerned, we're going to defer to the City's ruling on the Conservation Easement. If the City order is for removal, we'll require restoration of that area, otherwise we're open to mitigation, be it by purchase of credits or by off site mitigation. I believe the Bundy's and their consultant would like to see the landscaping in the PGE area remain, and they pay for mitigation credits for that area, but that is not an option DSL is willing to consider.*

Subsequently, Staff received a copy of the Enforcement Order from DSL to the Bundys, dated May 26, 2010, that states that DSL will be imposing a civil penalty of $3,000 plus requiring site restoration for the PGE property and the northern portion of the Bundy property with an option of either (a) removing the pool and patio area and restoring the site or (b) purchasing mitigation credits for the pool area and leaving pool and patio in place. The Enforcement Order is appealable by the Bundys and not yet in force.

United States Army Corps of Engineers (USACE). The Portland District Regulatory Program requires permits for proposed activities in "Waters of the United States" (including wetlands) throughout the State of Oregon under the authorities of Section 404 of the Clean Water Act, Section 10 of the Rivers and Harbors Act, and the Marine Protection, Research and Sanctuaries Act. The activities at this site require a federal permit typically known as a "Joint Permit".

Kristen Hafer of the USACE staff has visited the site and will work with DSL in the review of a Joint Permit application. First they want to see what the City will do in terms of enforcement and then either defer to the City's enforcement; or, if the City declines to pursue enforcement, then they will pursue enforcement with DSL.

Portland General Electric (PGE). Mike Livingstone of PGE contacted staff by telephone on May 27, 2010 to state that PGE has not granted Mr. and Mrs. Bundy any authority to fill, grade or modify the drainageways and wetlands on PGE property. An e-mail from Tina Tippin of PGE dated June 2, 2010, that is part of the record, confirms this position with the statement: *"PGE has not granted the Bundy's any right to access the PGE property interest, or to remove any trees, re-grade or landscape PGE's property in any fashion."*

Enforcement against Adjacent Properties. Both properties on either side of the Bundy's are in violation of CDC Chapter 32 and the terms of the Open Space Conservation Easement. Staff intends to pursue these cases after the Bundy case is resolved.

**Options**

1. Uphold the Planning Director's decision.

2. Overturn the Planning Director's decision and approve the WRA permit. Direct staff to prepare written findings to support this decision.

**Recommendation**

Staff recommends Option 1. As with any land use application, the approval criterion must be addressed. The burden of proof is on the applicant, or in this case, the appellant, to demonstrate 100% compliance with that criterion. The appellant has not met that test. Approval criteria 32.050(B) (C) (D) (E) (F) (H) (I) (L) are not met as shown in the findings above. Further flaws with the application are also reported in the original Planning Director's decision.

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## Spir, Peter

**From:** Tina Tippin [Tina.Tippin@pgn.com]
**Sent:** Wednesday, June 02, 2010 7:18 AM
**To:** Spir, Peter
**Cc:** Mike Livingston; Tina Tippin
**Subject:** RE: Bundy wetland/drainageway fill on PGE property

Hello Mr. Sir,

This is in response to the City's inquiry regarding the disturbance of a portion of PGE property located at Section 02, Township 3S, Range 1E, Tax Lot 02200, specifically the property located at the back of 1215 Ninth Street, West Linn, OR 97068.

When we were made aware of this issue by the City we reviewed our records. Our records show, that in the spring of 2008 PGE did receive a call Mr. Troy Bundy regarding a tree limb that had fallen onto his property. PGE personnel went out and examined the tree in question and determined the tree was on PGE property and it appeared to be in danger of uprooting and falling across a drainage ditch in Mr. Bundy's backyard. PGE contacted one of its landscape contractors to remove the tree limb from the Bundy property and prune the tree so it would not interfere with the drainage ditch. Our records indicate that the contractor work was completed on May 29, 2008.

PGE has not granted the Bundy's any right to access the PGE property interest, or to remove any trees, re-grade or landscape PGE's property in any fashion and our records do not reflect any request by the Bundy's to do so. Were such a request made and granted it would be conditioned upon strict compliance with all applicable laws and property rights.

Please do not hesitate to contact me should you have any questions.

**Tina Tippin**

PGE
Portland General Electric

Real Property Services
Property Agent
P: 503.464.7672
F: 503.464.2863

Oregon
Theodore R. Kulongoski, Governor



Department of State Lands
775 Summer Street NE, Suite 100
Salem, OR 97301-1279
(503) 986-5200
FAX (503) 378-4844
www.oregonstatelands.us.

**CERTIFIED MAIL**

May 26, 2010



AMH600/7014
TROY AND GINA BUNDY
1215 9TH STREET
WEST LINN OR 97068

RE: Proposed Enforcement Order for Corrective Action and Civil Penalty,
DSL Enforcement File No. 7014-ENF

Dear Mr. and Mrs. Bundy:

Under the Oregon Removal-Fill Law (ORS 196.800—196.990), removal, filling, or alteration of 50 cubic yards or more of material within the bed or banks of waters of this state or any amount of material within Essential Habitat Streams or State Scenic Waterways requires a permit from the Department of State Lands. Waters of this state include the Pacific Ocean, rivers, lakes, most ponds, and wetlands and other water bodies.

The work you conducted in wetlands was subject to the Oregon Removal-Fill Law. The enclosed Proposed Order serves as Notice that the Department plans to assess a civil penalty and require corrective action for the unauthorized work.

Please read the Proposed Order carefully. Section X sets out your right to request a contested case hearing within 20 days of the date of service of this notice. Your request for a hearing must be in writing and in response to the specific findings in the enclosed Proposed Order. If we do not receive your written answer and request for hearing within the 20-day period, we will issue a Final Order for Corrective Action and Civil Penalty.

Sincerely,

Lori Warner-Dickason
Northern Region Manager
Wetlands and Waterways Conservation Division
Oregon Department of State Lands

Enclosure

cc: Todd Alsbury, Oregon Dept. of Fish and Wildlife
Kristin Hafer, Corps of Engineers, Portland District
Peter Spir, City of West Linn Planning Dept.
Mike Livingston, PGE 1 World Trade Center, 0401, 121 SW Salmon, Portland, OR, 97204

BEFORE THE DIRECTOR OF THE DEPARTMENT OF STATE LANDS
OF THE STATE OF OREGON

| | | |
|---|---|---|
| In the Matter of the Alleged Violation of ORS 196.810 By Troy and Gina Bundy Enforcement File No. 7014-ENF | ) ) ) ) ) | PROPOSED ORDER FOR CORRECTIVE ACTION AND CIVIL PENALTY |

## I. BACKGROUND

The Oregon Department of State Lands is sending you this Notice pursuant to the Oregon Removal-Fill Law, Oregon Revised Statutes (ORS) 196.800 through 196.990 and the Department's removal fill rules (Oregon Administrative Rules, OAR Chapter 141, Division 85). Relevant portions of these laws are quoted on the following pages, or you can find the laws on the Internet at www.oregon.gov.

The Removal-Fill Law requires a permit from the Department before removing (including alteration) or filling of material within "waters of this state". When such removal or filling occurs without a permit or in a manner contrary to the conditions of a permit, the Director has legal authority to issue an enforcement order. The policy behind the Removal-Fill Law is to promote the protection, conservation and best use of Oregon's water resources, for the benefit of all Oregonians.

Based upon the following facts and the Department's file on this case, the Department makes conclusions of law and proposes to issue an enforcement order against you for illegal removal and/or fill within waters of this state. This Notice explains the Department's allegations against you and how you may respond to them.

## II. FINDINGS OF FACT

These are the facts of the situation as understood by the Department:

1. A wetland exists at the site described as follows: Township 03S, Range 01E, Section 02,Tax Lots 8201 and 2200 in Clackamas County, Oregon.
2. Attachment A shows the approximate location of the wetland.
3. Between July 1, 2009 and January 26, 2010, you (or a person or persons acting at your direction) removed and/or filled more than 50 cubic yards of material within this wetland without a permit or other authorization from the Department. This involved removal and/or fill within the wetland on at least one day.
4. You were not aware of the Removal-Fill Law.
5. You have responded to communications from the department, supplied information as requested by the Department, allowed access to the site and/or ceased the activity alleged to constitute a violation or threatened violation.

6. The damage to the natural resource value is significant and/or the resource is not expected to naturally self restore within one year.

## III. APPLICABLE LAW

This is a list of statutes and administrative rules that are relevant to the Notice of Violation:

1. A permit from the Director of the Department is required before removing or filling material in waters of the state. ORS 196.810
2. Fill means "the total of deposits by artificial means equal to or exceeding 50 cubic yards of material at one location in any waters of this state." ORS 196.800(3) However, in designated Essential Indigenous Anadromous Salmonid Habitat (ESH) areas (OAR 141-102) and in designated Scenic Waterways (OAR 141-100), "fill" means any deposits by artificial means.
3. Removal means "the taking of more than more than 50 cubic yards or the equivalent weight in tons of material in any waters of this state in any calendar year; or the movement by artificial means of an equivalent amount of material on or within the bed of such waters, including channel relocation." ORS 196.800(12). However, in designated Essential Indigenous Anadromous Salmonid Habitat (ESH) areas (OAR 141-102) and in designated Scenic Waterways (OAR 141-100) the 50-cubic-yard minimum threshold does not apply.
4. Material means "... rock, gravel, sand, silt and other inorganic substances removed from waters of this state and any materials, organic or inorganic, used to fill waters of this state." ORS 196.800(7)
5. "Any person who violates any provision of ORS 196.600 to 196.905 or any rule, order or permit adopted or issued under ORS 196.600 to 196.905 shall be subject to a civil penalty in an amount to be determined by the Director of State Lands of not more than $10,000 per day of violation." ORS 196.890
6. Violation means "removing material from or placing fill in any of the waters of this state without a permit (authorization) or in a manner contrary to the conditions set out in a permit issued under" the Removal-Fill Law or these rules. ORS 196.860(3)
7. Day of violation means the first day and each day thereafter on which there is a failure to comply with any provision of the Removal-Fill Law, applicable administrative rules (OAR 141-085), and any order adopted in accordance with these rules (OAR 141-085) or any authorization issued in accordance with these rules (OAR 141-085).
8. Waters of this state means natural waterways including all tidal and non-tidal bays, intermittent and perennial streams (i.e., streams), lakes, wetlands and other bodies of water in this state, navigable and non-navigable, including that portion of the Pacific Ocean which is in the boundaries of the state. "Waters of this state" does not include the ocean shore, as defined in ORS 196.800(14).
9. Wetlands means "those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions." ORS 196.800(16)

5. Water resource impact value (I) was determined to be 3 because the damage to the natural resource value is significant and/or the resource is not expected to naturally self-restore within one year.
6. The number of days of violation was determined to be one.
7. The calculated penalty is derived by the formula: one day(s) of violation times $B(PxCxI) = $3,000.00.

## VI. PROPOSED ASSESSMENT OF PENALTY

1. The Director intends to impose upon you a civil penalty of $3,000.00 for the violation alleged in Section II above.
2. Unless you request a hearing (see Section X below) in writing, and it is received by the Department within twenty days of receipt of this notice, the Department will issue a final order assessing the civil penalty. In that case you must then, within 20 days of issuance of the final order, submit a check or money order in the amount of $3,000.00 made payable to the "State of Oregon, Department of State Lands". The payment must be sent to:

   Department of State Lands
   PO Box 4395, Unit 18
   Portland, OR 97208-4395

## VII. PROPOSED ORDER FOR CORRECTIVE ACTION

The Department also proposes to order you to implement the following corrective actions to resolve the violation:

1. Submit a wetland delineation report to the Department for review and approval by July 15, 2010. Attachment A of this order contains information required to supplement the delineation. The wetland delineation report must meet the standards outlined in 141-090 and must identify wetlands/other waters that still exist on the site, the wetlands/waters that were present prior to the unauthorized activity, and the volume of fill and/or removal that has occurred in the wetlands/waters. Area to be investigated shall contain the following described area the northern half of tax lot 8201 (area located behind house) to the edge of property line, and the area within tax lot 2200 where removal and/or fill occurred, as shown on Exhibit A.

2. Submit a site restoration plan for review and approval by the Department by August 1, 2010. The site restoration plan must include the following:
   a. Removal of all the fill material and the drainage pipe from Area A, as shown on Exhibit B.
   b. Planting plan including woody vegetation at a density of 1600 plants per acre.
   c. Pursuant to the City of West Linn Planning Director Decision for WAP 09-03, either restore the area shown as Area B on Exhibit B, or purchase mitigation credits. If restoration of Area B is required, a plan to re-establish pre-existing contours and a planting plan is required.

3. Complete grading of restoration plan by September 30, 2010.

4. Planting must be completed no later than February 28, 2011.

Note: Plans must be approved by the Department prior to implementation.

## VIII. FAILURE TO PAY

Unless you pay the penalty within 20 days after a ***final*** order is served, the order shall constitute a judgment and may be recorded with the county clerk in any county of this state. The clerk shall record your name and the amount of the penalty in the County Clerk Lien Record. The penalty provided in the order so recorded becomes a lien upon the title to any interest in real property you may have in the county. Execution may be issued upon the order in the same manner as execution upon a judgment of a court of record. Once the final adjudication of any civil penalty has been calculated and noticed, the amount of the civil penalty will increase by the amount of the original civil penalty for every 20 calendar days that pass without the alleged violator remitting payment to the Department for the full amount of the civil penalty and the Department taking receipt of the payment. In no case must the amount of the civil penalty be increased by more than ten times the original civil penalty amount. If a civil penalty or any portion of the civil penalty is not paid, interest must accrue at the rate of nine percent per annum on the unpaid balance (pursuant to ORS 82.010).

## IX. OPPORTUNITY TO REMOVE OR REDUCE PENALTY

The Department may, upon your written request, decide to reduce the amount of the civil penalty or remove it altogether. Such a request must include the information described in OAR 141-085-0785, including evidence of financial hardship. The request must be received within twenty (20) calendar days from the date of personal service or mailing of this **proposed** notice of civil penalty as described in OAR 141-085-0785. Evidence provided as to your financial condition may be presented without prejudice to any claim by you that no violation has occurred or that you are not responsible for the violation. OAR 141-085-0785

## X. HEARING

You have the right, if you so request, to challenge this Proposed Order in a contested case hearing. A contested-case hearing is a trial-type proceeding before an Administrative Law Judge pursuant to ORS Chapter 183 and ORS 196.860(1)(e), in which you may choose to be represented by an attorney and subpoena and cross-examine witnesses. If you want to request a hearing, you must do so in writing to the Department, and your request must be received within twenty (20) days from the date of service of this notice. Your request for hearing must be accompanied by a written "Answer" that admits or denies each allegation of fact contained in this notice and

raises any affirmative claims or defenses you may have against these charges. Except for good cause shown:

1. If you don't deny a fact alleged in this Notice, it will be presumed admitted.
2. If you don't raise a claim or defense, it will be presumed that you waived that claim or defense.
3. If an issue isn't raised either in this Notice or in your answer, that issue cannot be addressed during the hearing.

If we receive your request for hearing and answer within the legal time period, we will refer the case to the Office of Administrative Hearings, which will then notify you of the date, time and place of the hearing. You will also receive a document providing information about hearing procedure and your rights.

## XI. FINAL ORDER

If you fail to file a timely answer or request for hearing, or if you fail to appear at a scheduled hearing, this Notice will automatically become an enforceable Final Order against you. The Department's file would serve as the record upon default.

## XII. FURTHER VIOLATIONS

If the violations set forth in Section II (above) continue, or if any similar violation occurs, the Department will seek an additional civil penalty against you (using another written notice). You would be given an opportunity to challenge that proposed civil penalty in a contested case hearing as well.

Issued this 26th day of May, 2010.

Lori Warner-Dickason
Northern Region Manager
Department of State Lands

## ATTACHMENT A

1. Delineation maps must show with different pattern/line work all existing wetlands/other waters boundaries (post alterations) **and** all pre-alteration wetland/other waters boundaries.

2. The areas and volumes of alteration must be calculated separately for each affected water or wetland on the delineation map. **Describe the types of alterations that occurred. Map and measure dimensions of ditches and similar alterations; measure or estimate depth of fill, depth of excavation, etc.**

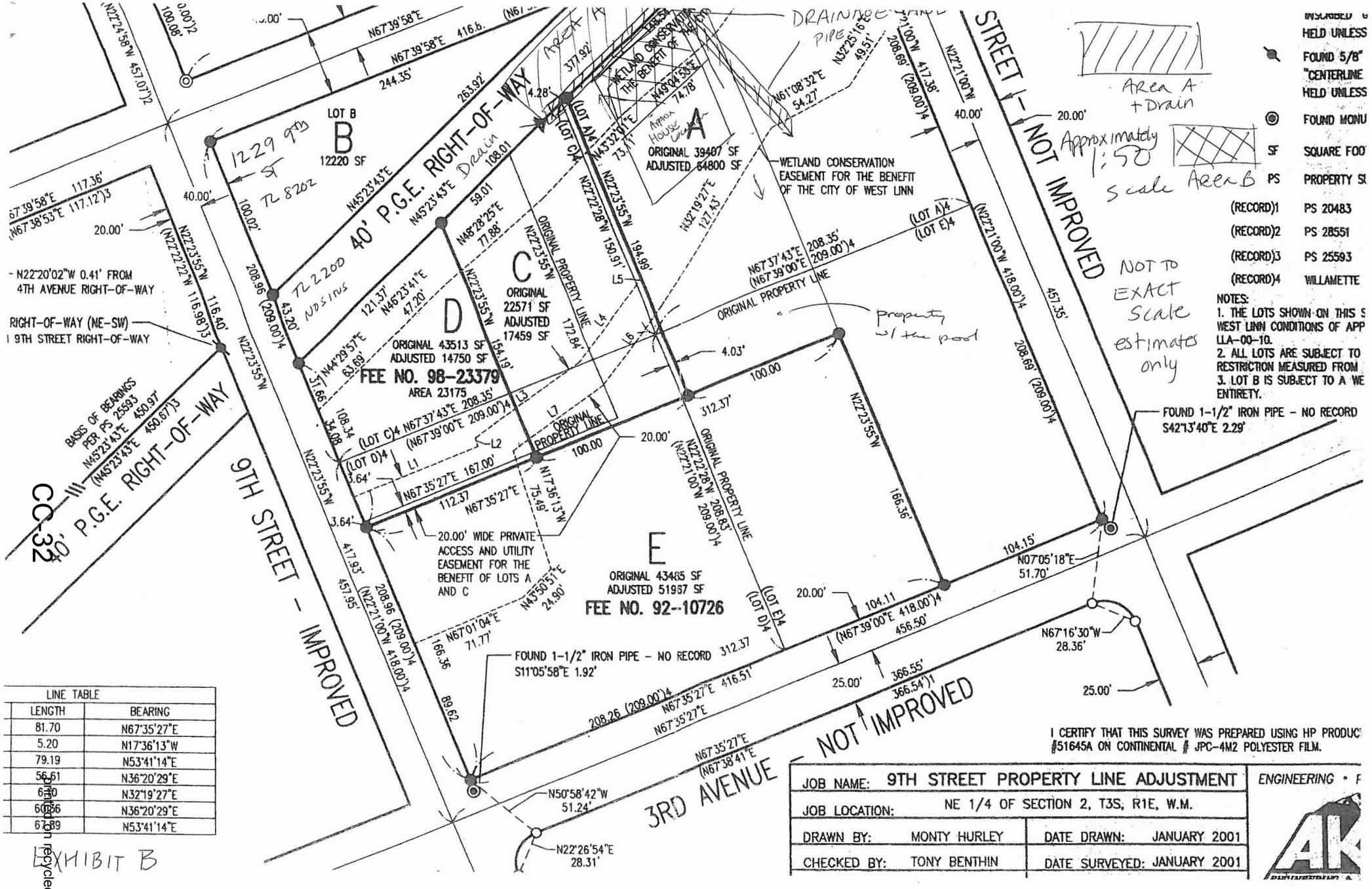
3. To determine the vegetation that previously occurred in the altered areas, use:
    a. adjacent vegetation if landscape & soil conditions are similar,
    b. aerial photos,
    c. any plant remnants including brush piles,
    d. recent re-growth in the altered areas,
    e. wetland delineation for adjacent parcel if any,
    f. LWI information if any,
    g. landowner and adjacent landowner information

4. To determine pre-alteration conditions and wetland/water boundaries, additional information needed will likely include the following:
    a. Multiple aerial photos (stereo pairs) covering at least 5 years prior to alleged violation to determine pre-disturbance conditions and also to interpret any changes to site over time (e.g., multiple episodes of filling).
    b. Topographic map(s) pre-alteration; site-specific rather than quad maps, if available
    c. Site plans for project, if any
    d. Any available pre-disturbance site photographs
    e. Additional resource maps, e.g. Metro Regional Government Maps
    f. Data from plots dug through and below the fill material to determine if wetlands existed prior to fill activity. If so, enough plots need to be evaluated to determine the wetland boundaries. Usually, the plots will reveal soils information only, but there may also be some buried vegetation that's still identifiable.
        i. Digging below the fill may require a backhoe to dig pit(s) and/or trenches.
        ii. When digging below fill, the depth of fill material must be recorded in the plot data. An original soil surface under mixed fill material and sometimes buried vegetation indicate the original soil surface.
        iii. Refer to the *1987 Corps of Engineers Delineation Manual* under Section F, Subsection 2 for additional guidance.

EXHIBIT A


printed on recycled paper

CC-31




| LINE TABLE | |
|---|---|
| LENGTH | BEARING |
| 81.70 | N67°35'27"E |
| 5.20 | N17°36'13"W |
| 79.19 | N53°41'14"E |
| 56.61 | N36°20'29"E |
| 67.89 | N32°19'27"E |
| 60.66 | N36°20'29"E |
| 67.89 | N53°41'14"E |

EXHIBIT B

I CERTIFY THAT THIS SURVEY WAS PREPARED USING HP PRODUC #51645A ON CONTINENTAL # JPC-4M2 POLYESTER FILM.

| | | | |
|---|---|---|---|
| JOB NAME: | 9TH STREET PROPERTY LINE ADJUSTMENT | | |
| JOB LOCATION: | NE 1/4 OF SECTION 2, T3S, R1E, W.M. | | |
| DRAWN BY: | MONTY HURLEY | DATE DRAWN: | JANUARY 2001 |
| CHECKED BY: | TONY BENTHIN | DATE SURVEYED: | JANUARY 2001 |

ENGINEERING • F

Perkins Coie

1120 N.W. Couch Street, Tenth Floor
Portland, OR 97209-4128
PHONE: 503.727.2000
FAX: 503.727.2222
www.perkinscoie.com

Michael C. Robinson
PHONE: (503) 727-2264
FAX: (503) 346-2264
EMAIL: MRobinson@perkinscoie.com

May 21, 2010

**VIA E-MAIL**

Mr. John Sonnen
Planning Director
City of West Linn
22500 Salamo Road, #100
West Linn, OR 97068

**Re: City of West Linn File No. AP-10-01 (WAP 09-03)**

Dear Mr. Sonnen:

This office represents the applicants, Troy and Gina Bundy. This letter constitutes the applicants' initial response in support of its appeal of the Planning Director's decision denying the Water Resource Area Protection ("WAP") permit. Would you please place this letter in the official Planning Department file and before the City Council at the initial evidentiary hearing on June 14, 2010? My clients and I intend to provide additional information to you the week of May 24, 2010, including affidavits, photographs and a report on the Bundy's progress in obtaining permits from the Oregon Department of State Lands and the U.S. Corps of Army Engineers.

Please feel free to call me if you have any questions.

Very truly yours,

Michael C. Robinson

MCR/cfr

Enclosure

cc: Mr. and Mrs. Troy Bundy (w/encl.) (via email)
Mr. Jason Clinch (w/encl.) (via email)
Mr. Peter Spir (w/encl.) (via email)

Perkins Coie

1120 N.W. Couch Street, Tenth Floor
Portland, OR 97209-4128
PHONE: 503.727.2000
FAX: 503.727.2222
www.perkinscoie.com

Michael C. Robinson
PHONE: (503) 727-2264
FAX: (503) 346-2264
EMAIL: MRobinson@perkinscoie.com

May 21, 2010

**VIA E-MAIL**

Mayor John Kovash
City of West Linn City Hall
22500 Salamo Road, #100
West Linn, OR 97068

**Re: City of West Linn File No. AP-10-01;
Appeal of Director's Decision in City of West Linn File No. WAP-09-03
to Allow Approval of a Water Resources Area Protection ("WAP") Permit**

Dear Mayor Kovash and Members of the City Council:

This office represents the applicants, Troy and Gina Bundy. This letter explains why the City Council should reverse the Planning Director and approve their application in order to allow them to use their back yard just as all families in West Linn are able to do.

The issue before the City Council is the impact on the wetlands located on the adjacent Portland General Electric ("PGE") property. There were no wetlands located in the Bundys' back yard where the permanent improvements have been made. The Bundys made improvements to the PGE property with permission of PGE. As described elsewhere in this letter, the Bundys will propose mitigation either on the PGE property, where the lawn was installed, or in a mitigation bank acceptable to the City. However, the improvements within the Bundys' back yard are not in a wetland area and should not be removed.

## 1. Summary of Arguments.

**A.** The Bundys proceeded with the pool and patio construction because they had a good faith belief that they had been authorized to do so by the former Mayor. They now recognize this was incorrect, and have sought to rectify their mistake by applying for this application, submitting an appeal of the denial of the application, and working with the City and state and federal wetland agencies to propose an acceptable mitigation plan while maintaining the improvements in their back yard for their family. The Bundys' improvements do not harm the public. There is no "flood storage capacity" that is diminished by the improvements. The

PGE property is not part of the West Linn wetland conservation easement recorded pursuant to Clackamas County Document No. 2001-044-110.

**B.** The Bundys are working with the United States Corps of Army Engineers ("Corps") and the Oregon Department of State Lands ("DSL") to obtain those agencies' approval for wetland disturbance and mitigation.

**C.** The City Council can find that West Linn Community Development Code ("CDC") 32.050.A is satisfied because the record contains the required water resource areas on the project site.

**D.** The improvements at issue in this appeal do not impair an existing natural drainageway. The only existing natural drainageway is a small drainageway on the north edge of the Bundy property which was improved prior to the Bundys' purchase of their property. The City Council can find that CDC 32.050.B is satisfied.

**E.** CDC 32.050.C requires that once an applicant determines that an unavoidable environmental impact will result from improvements, the applicant must consider alternatives to reduce or minimize those impacts. If any portion of a water quality resource area is proposed to be permanently disturbed, the applicant is required to prepare a mitigation plan as specified in CDC 32.070 to restore disturbed areas. In this case, the Bundys propose to restore the PGE property for the disturbance of the water quality resource area and the wetland conservation easement in their back yard as mitigation.

**F.** CDC 32.050.D and E are not relevant to this WAP application because these provisions concern the creation of a water resource area tract or easement and the extent of a water resource area.

**G.** CDC 32.050.F is satisfied. This section allows "passive use recreational facilities" to be built in a water resource area "when no other practical alternative exists." A swimming pool and patio are passive use recreational use facilities and this provision expressly allows their construction where, as in this case, no other practical alternative exists. As the riparian area map on staff report page 12 shows, virtually the ***entire*** Bundy property is covered by a riparian area, including their home. The only part of their property not encumbered is their driveway and a small area south of the driveway. Therefore, there is ***no*** other place where the Bundys could construct passive use recreational facilities for their family. The City should want to ensure that families have recreational opportunities which, notwithstanding their laudable nature, wetlands do not provide.

**H.** CDC 32.050.L is satisfied because the swimming pool and patio are not structures, so a structural setback is not affected. The Director's decision takes the position that the pool and the patio encroach within the conservation easement, the riparian corridor and the water resource transition and setback, so this criterion is not met. In fact, the definition of

"structure" in CDC Chapter 2 excludes improvements that are less than 30 inches above grade and not located over any basement or story below. (**Exhibit 1**.) The pool and the patio are not structures, so they are not subject to the structural setback.

**I.** CDC 32.090 does not apply. Because the applicant can demonstrate compliance with the relevant criteria for CDC Chapter 32 either through evidence before the City Council or pursuant to reasonable conditions of approval, a hardship release is unnecessary.

**J.** The Bundys request that the City Council impose three (3) conditions of approval:

- That a wetland mitigation plan satisfactory to City staff, the City Council, DSL and the Corps be submitted and approved. The purpose of the mitigation plan is to satisfy CDC 32.070.
- That a post-construction engineering plan and erosion control plan satisfactory to City staff and the City Council be submitted and approved.
- That a building permit for the swimming pool be submitted and approved.

**2. Discussion.**

**A. History of Application.**

The Bundys do not take issue with the general events described in the staff report at pages 1-6 but they want the City Council to understand that they constructed the pool and patio only after communicating with the former Mayor who led them to believe it was her decision to allow construction of the improvements. While the Bundys have professional occupations (Mr. Bundy is a lawyer and Mrs. Bundy is an emergency room nurse), neither has had occasion to be involved with administration of City regulations in the past and neither is well versed in this area. They reasonably believed that it was appropriate to ask the Mayor if she could approve the improvements or persuade the Planning Department to approve the permit if that was not within her authority. They spoke with the former Mayor in the summer of 2009 prior to constructing their improvements. As already noted, the Bundys now realize this belief was mistaken and subsequently filed the WAP application to seek land use approval for the improvements in November, 2009.

The City took an extraordinary amount of time to review the application for completeness after which the Planning Director denied the application. As the remainder of this letter describes, however, the Bundys' improvements fully comply with the relevant approval criteria in CDC Chapter 32, so approval of a "hardship" in CDC 32.090 is unnecessary. If a "hardship" is necessary, this letter proposes a path to obtain the hardship reduction in standards.

**B. CDC 32.050.A.-C. are satisfied.**

CDC 32.050.A requires that a WAP application identify water resource areas on the project site. The Bundys acknowledge that their application failed to provide this information but this information has been subsequently provided in the staff report. Thus, the City Council can find that because the staff has provided this information, this approval criterion has been satisfied.

CDC 32.050.B is satisfied. The only "natural drainageway" anywhere near the property is referred to on staff report page 7 which notes: "A channel has been dug along the north property line and filled with gravel as a means of conveyance for water. This constitutes a clear disturbance of the water resource." The Bundys did not dig the channel.

The staff report does not contain evidence that a drainageway identified in the City's Surface Water Management Plan is on the Bundy property or on the PGE property. The assertion that the 2007 photograph of the PGE site at page 8 of the staff report compared to the 2008 photograph is clear enough to show a channel is not supported by a comparison of the two photos. Moreover, neither of the two photos shown on page 8 of the staff report is captioned as showing a drainage area. The staff report does not refer to an "existing natural drainageway" which is what CDC 32.050.B applies to. However, the Bundys have stated that the gravel-filled channel was present when they purchased their property in April, 2003. Thus, the City Council can find that because no "existing natural drainageway" is present, nor does the staff report show that such drainageway is identified in the City's wetland, riparian and wildlife habitat inventory (identified as wetland WI-02 and shown on pages 43-46 of the staff report) this criterion is satisfied.

The simple fact is that there is no existing natural drainageway on the Bundy property which is listed on the City's Surface Water Management Plan nor is there one on the PGE property, but even if there was, the Bundys did not alter it. The City Council can find that this criterion is satisfied.

Finally, CDC 32.050.C requires that development be conducted in a manner that will minimize adverse impacts on water resource areas. The development in this case is the Bundys' swimming pool and patio. CDC 32.050.C requires that unavoidable adverse environmental impacts be mitigated. The Bundys propose a condition of approval requiring submittal of a mitigation plan as specified in CDC 32.070 to restore disturbed areas. The City Council may impose a condition of approval pursuant to ORS 227.175(4). It is clear that impacts to their back yard were unavoidable since the entire back yard is in a water resource area, as is the majority of the lot, leaving only the driveway outside of the area.

Additionally, the City Council should note the photograph on staff report page 8. Improvements in the water resource area that the City complains of are located not just on the Bundys' property but on the properties to the east and west of their lot. All of these properties

are within the "riparian area" as shown on staff report page 12. Thus, the City must find that it not only wants to prevent the Bundys from having a passive recreational area in their back yard but that the improvements on the lots to the east and the west must also be removed because they also represent improvements inside the "riparian area."

**C. CDC 32.050.D. is not relevant to this Application.**

The City Council can find that this is not a relevant approval criterion. This provision simply directs either the dedication of land or a grant of an easement and neither is relevant here. This criterion does not impose an approval standard on this application. The "intent" for this criterion is not relevant to the Director's decision. The City Council should find that this criterion is not relevant.

**D. CDC 32.050.E. is not relevant to this Application.**

CDC 32.050.E is not an approval criterion. This provision simply describes protected water resource areas.

**E. CDC 32.050.F. is satisfied.**

This section expressly allows "passive use recreational facilities" to be built in and across water resource areas where no other practical alternative exists. The City Council can find that this criterion is satisfied for two (2) reasons. First, the swimming pool and patio are "passive use recreational facilities." The CDC does not define this term, so the City Council may rely on common and ordinary definitions in interpreting this provision. A non-passive recreational facility is appropriately described as a baseball field or football field or something built for an organized activity. Passive use recreational facilities would include a pool and patio because they do not allow organized activities. ***See*** Collins English Dictionary (2003).

Second, the City Council must find that "no other practical alternative exists." Assuming the riparian area shown on the map at page 12 is correct, the City Council can find that the riparian area extends across most of the Bundys' lot. Thus, their entire front yard, back yard and home are covered by a riparian area and the Bundys had no other practical alternative to construct a passive use recreational facility.

Third, the City Council can find that the Bundys can comply with the requirement of this provision that requires "full mitigation and revegetation." The Bundys will agree to do so pursuant to the proposed conditions of approval listed above on page 3.

**F. CDC 32.050.G.-J. are satisfied.**

These sections apply to construction within the water resource area. The City Council can find that CDC 32.050.G is satisfied because the Bundys have installed a fence around the

swimming pool and patio and, as the staff report notes at page 13, "fencing is not necessary at this time since the site disturbance has already occurred." Additionally, the Bundys propose a condition of approval requiring the submittal of a post-construction engineering report and erosion control evaluation pursuant to CDC 32.050.A and G, and a condition of approval requiring that they implement any recommendations found in that engineering report, subject to City staff and City Council review and approval.

**G. CDC 32.050.K. is satisfied.**

The staff report conclusion at pages 13 and 14 is unsupported by substantial evidence. The staff does not have evidence to support their conclusion that the Bundys' back yard supported wetland functions. Moreover, there is no evidence that the Bundys' back yard supported "flood storage capacity." The Bundys are working with the DSL and the Corps to propose appropriate mitigation but not in their back yard.

Further, the criterion is not an impediment to allowing the Bundys' improvements since it applies to sites that are "unhealthy or disturbed or portions of the site that are disturbed or in the development process." This criterion simply requires that where existing vegetation is to be permanently removed or the original land contours disturbed, a mitigation plan meeting the requirements of CDC 32.070 (a revegetation plan under CDC 32.080 is not required) be submitted. The City Council can find that this criterion is not relevant to the construction of the improvements in the Bundys' back yard, but if it is, a condition of approval requiring a mitigation plan can satisfy this criterion.

Wetland WI-02 is the wetland located on the PGE property. The staff report at page 43 contains the "LSW criteria" for wetland WI-02. The only two (2) criteria which allowed the City to deem it "locally significant" are that it provides an intact hydrologic control function and is less than one-quarter (1/4) mile from a DEQ water quality limited water body. The LSW criteria ***not*** met were that the wetland did not provide a diverse wildlife habitat, did not provide an intact fish habitat, did not provide an intact water quality function, did not contain one or more rare plant community, was not inhabited by a threatened or endangered species and did not have a direct surface water connection to a stream segment mapped by the Oregon Department of Fish and Wildlife.

**H. CDC 32.050.L. is satisfied.**

The City Council can find that this section is satisfied because the swimming pool and patio are not subject to "constructural setbacks." A patio is no different from a deck and, in fact, is less obtrusive than a deck because it is at ground level. A swimming pool is certainly not subject to a structural setback. (***See*** definition of structure in **Exhibit 1**.)

**3. Response to issues identified in the Planning Department Staff Report.**

**A. Issue One:** The Applicant constructed a swimming pool without obtaining a building permit.

The Bundys propose, as a condition of approval, to apply for and obtain a building permit following approval of the land use application. Further, a licensed contractor built the swimming pool, so it should satisfy relevant standards.

**B. Issue Two:** The Bundys constructed a swimming pool and patio in the Water Resource Area without obtaining approval of a Water Resource Area permit.

The Bundys have since applied for a WAP permit and following the Director's denial, filed a timely appeal. The site does not contain a fire pit. If the City Council chooses to grant the appeal, the Bundys will have resolved this issue.

**C. Issue Three:** The swimming pool, patio area, fire pit and removal of native vegetation are within an open space Conservation Easement.

The staff report is incorrect to the extent it asserts that the open space Conservation Easement covers the PGE property; it does not. The issue of improvements within the Conservation Easement area is not relevant to the land use proceeding and should be dealt with, if the City Council chooses to approve this application, through a release of the easement terms by the Grantee, the City Council for West Linn.

**D. Issue Four:** The Bundys did not obtain a permit from the DSL.

The Bundys' wetland biologist, Jason Clinch, is working with both DSL and the Corps to obtain the necessary permits and believes that they will be obtained.

**4. Response to February 16, 2010 letter from Carrie Oakes.**

**A.** Ms. Oakes argues that CDC 32.025, "Permit Required", prohibits an after-the-fact application such as that made by the Bundys. CDC 32.025 does not prohibit an applicant from submitting a permit application to correct a violation of the CDC. The City Council should reject this argument.

**B.** Ms. Oakes argues that CDC 32.040.B (requirement for pre-application conference) has not been satisfied. Nevertheless, the City accepted the application for a WAP permit, deemed it complete and processed it. Under ORS 227.178(3), the city must make a final decision on the application once accepted and deemed complete. CDC 32.040.B is not an applicable approval criterion and is not a basis for denial of the application. *Caster v. City of Silverton*, ___ Or LUBA ___ (June 19, 2007, LUBA No. 2007-033).

Similarly, CDC 99.030.B.1 is not a basis for a denial. Neither CDC 32.040.B nor CDC 99.030.B.1 is described as a "jurisdictional" requirement and neither is listed as part of the approval criteria for a WAP permit in CDC Chapter 32. Furthermore, the CDC does not state that failure to satisfy these requirements is a basis for denial of an application that otherwise satisfies applicable approval criteria. Therefore, the City Council should reject this argument.

**5. Reduction in standards for hardship.**

CDC 32.090 allows reductions to the standards in CDC Chapter 32 so that the chapter does not "cause unreasonable hardship."

In the event the City Council determines that the forgoing substantive requirements are not satisfied, the Bundys respectfully request that the City Council approve a reduction in the standards of CDC Chapter 32 pursuant to CDC 32.090.A. This criterion applies to "lots located completely inside the Water Resource Area." The Bundys' lot was recorded prior to the effective date of CDC Chapter 32 in 2007. While the map at staff report page 12 shows that a small area of the Bundys' lot is not within a Water Resource Area, as a practical matter, the useable portion of the lot is located entirely within the Water Resource Area. The map at staff report page 12 shows that the Bundys' front yard (the area between the driveway's north edge and the front of the home) and the back yard are entirely located within the Water Resource Area.

The City Council can find that the proposed development does not increase danger to life and property due to flooding and erosion. The development at issue is the swimming pool and patio in the Bundys' back yard. Their back yard served no flood storage capacity function and the improvements have not increased erosion. However, the proposed conditions of approval at page 3 of this letter include a requirement that the Bundys submit a post-construction engineering and erosion control analysis to allow staff to make that determination.

This criterion also limits the area of disturbance to no more than 5,000 square feet. CDC 32.090.B provides that any further reduction in the standards of this chapter require approval of a variance pursuant to CDC Chapter 75. The area of disturbance includes more than 5,000 square feet of the Water Resource Area.

Therefore, the Bundys respectfully request that the City Council make a threshold determination. If the City Council believes that it is "plausible" (as described by the Oregon Court of Appeals in *Siporen v. City of Medford*) that CDC 32.090.A will allow consideration of the Bundys' request for reduction in standards for hardship, then the Bundys will agree to apply for a variance pursuant to CDC Chapter 75 in a separate proceeding. In that event, the Bundys respectfully request that the City Council place this matter on hold, the Bundys will grant an extension of the 120-day clock in ORS 227.178(3) for the maximum period (365 days from the date of completion) in order to allow them to apply for and receive approval for a variance and they will demonstrate satisfaction of the three (3) proposed conditions of approval shown on page 3 of this application. The Bundys are not waiving their right to argue that a reduction in

standards for hardship under CDC 32.090 is not required for the reasons described elsewhere in this letter.

**6. The wetland Conservation Easement is not before the City Council in this matter.**

The Bundys acknowledged that their property is subject to that open space Conservation Easement recorded in 2001 on the northern and southern areas of their lot (shown as Parcel 1 on the partition plat). Should the City Council indicate that it wishes to approve this WAP application with or without a variance, the Bundys will ask the City Council to waive the terms of the easement as it exists on the northern portion of their property to allow only the improvements associated with the WAP application. The other easement terms, conditions and limitations would remain in this area and no change would occur to the Conservation Easement on the portion of the Bundys' lot south of their driveway (the private access and utility easements shown on the partition plat).

While outside of this land use application process, there is no evidence in the record that the City complied with the requirements of ORS 271.715 to 271.795, "Conservation and Highway Scenic Preservation Easements." ORS 271.765(1) provides that the statutes apply to any interest created after October 15, 1983 that complied with ORS 271.715 to 271.795. ORS 271.735 sets forth the requirements for establishment of a Conservation Easement. The Bundys will work with staff to determine whether the establishment of the Conservation Easement met the requirements of ORS 271.715 to 271.795. If so, the Bundys will then seek the City Council's separate waiver of the prohibition within the Conservation Easement regarding their improvements in their back yard.

**7. Conclusion.**

The Bundys understand the importance of wetland preservation to the City. As noted at the beginning of this letter, however, the improvements in their back yard are not within wetlands. The changes to a wetland occurred solely upon the PGE property. The Bundys have offered to mitigate the impact to those wetlands, either by mitigation on the PGE property, or in another way acceptable to the City, DSL and the Corps. The Bundys wish to have a patio and a pool in their back yard for their young family and those improvements do not harm the City's ultimate goal of maintaining wetlands. On behalf of the Bundys, I respectfully request that the City

Council grant their appeal, reverse the Planning Director and approve the WAP application with appropriate conditions of approval as suggested in this letter.

Very truly yours,

Michael C. Robinson

MCR/cfr

cc: Mr. and Mrs. Troy Bundy (via email)
Mr. Jason Clinch (via email)
Mr. John Sonnen (via email)
Mr. Peter Spir (via email)
Ms. Cynthia Phillips (via email)

## Spir, Peter

**From:** Evans, Brian [BEvans@pccstructurals.com]
**Sent:** Tuesday, June 01, 2010 10:23 AM
**To:** Spir, Peter
**Subject:** [BULK] Bundy Drainage Channel
**Importance:** Low

Peter,

I received these text messages below from Troy Bundy this weekend. He is obviously upset with the information I provided to you regarding the installation of their drains / drainage channel (as well as my unwavering insistence that he fence the pool). Once you get past the childish insults and personal attacks, he does a reasonable job of documenting their "improvements" to the channel in question. He has been admittedly successful at draining all the surrounding wetlands and diverting the natural drainage to the front of the property.

Now that he has admitted that he installed the drains and gravel, the City just needs to determine how deep that drain pipe is buried and then determine if a natural drainageway of that depth could have existed without excavation. I would think a deep trench like that would have been visible in the pictures I sent you.

Please let me know if I can be of further assistance. I am now well motivated to help.

Take Care,

Brian

**From:** 5038806512@mms.att.net [mailto:5038806512@mms.att.net]
**Sent:** Tuesday, June 01, 2010 10:20 AM
**To:** Evans, Brian
**Subject:**

Dear Brian: we have been provided with your correspondence to the city and see that you are still full of shit. You contend that I dredged the water channel in 2008. Must I really pull the Craddocks into this you lying sack so that I can prove the channel was there before you even moved in? You are pathetic. Don't make this anymore of a war than you have already chosen to make it. Lying will get you nowhere but in a courtroom with me. And I aint half bad at what I do.

Troy, Thanks for your note. I didn't oppose the pool/patio portions of your project before but I think I changed my mind. I'll see you on the 14th. I'll even bring pictures from when we were building our shed in 2006 that clearly show no channel. You don't know when to quit .....

Brian. That channel has always been there and you know it. The only thing we ever did was put in drains and 3 inch granite to prevent further erosion from storm runoff. One drain went in when we bought the home. I guess ill bring our landscaper from 8 years ago so he will establish you are either blind or a liar. That has always been the waterway. I didn't dig anything there. I look forward to seeing you. You lied about your kids safety, you lied about how the fence discussions went down, and now

your lying about this. Go back to your 34 foot boat this summer, but you better fence it in so your kids and dogs don't fall off it. By the way, without our drains, your yard and crawlspace flood. But you wouldn't know that because I was maintaining that drain and waterway before you even knew your house existed. Water backs up into your yard, the water table rises, and our homes flood from underneath. The walkers are real thrilled with you as well because until I put in the second drain at the other end of the yard last summer, they were living in a swamp. Now, they have a dry yard and crawlspace, but you wouldn't know that either I guess. They will be there as well, as will the farwells because, again, until I put that drain in 8 years ago into the preexisting spillway that I didn't dig out, his horse pasture was a swamp as well. Actually, I know when that drain is clogged because I see toms pasture full of water on my way home. So I go unclog it and the next day its all better. So, you'll be a real hero for making that shit up

sent 5/25/10

Peter,

As you know, we currently have a portable storage building in the back of our property. The shed was constructed in Sept 2006 (just after we moved in). I can document the installation date with receipts from the contractor. Since the shed is under 200 sq feet, has no foundation, and is less than 10 ft tall, we were told at the time of installation that building permits were not required. The shed is not located within the wetland boundary. Also, the shed was pre-existing prior to the enactment of the expanded Reparian Corridor rules so those rules did not apply and the shed is specifically grandfathered to those rules today.

The shed is, however, encroaching on the recorded Conservation Easement. To remedy that, we plan to move the shed this Summer approx 10 ft towards the house (approximately over the existing garden) which will remove it from the Conservation Easement. The ground under the current shed location will be re-planted with approved plants from the Portland Plant list. This should eliminate all water resource violations on our property. I will send you a proposal with sketch by the end of June.

As a side note, the pictures below were taken when the shed was constructed in Sept 2006 . In the background you can see the condition of the neighboring property at that time prior to the installation of the drainage channel (approx 2008) and the leveling of the PGE land (2009).

Sincerely,

Brian Evans

Brian P. Evans
SSBO Controller
(503) 652-4631

Peter,

As you know, we currently have a portable storage building in the back of our property. The shed was constructed in Sept 2006 (just after we moved in). I can document the installation date with receipts from the contractor. Since the shed is under 200 sq feet, has no foundation, and is less than 10 ft tall, we were told at the time of installation that building permits were not required. The shed is not located within the wetland boundary. Also, the shed was pre-existing prior to the enactment of the expanded Reparian Corridor rules so those rules did not apply and the shed is specifically grandfathered to those rules today.

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As a side note, the pictures below were taken when the shed was constructed in Sept 2006 . In the background you can see the condition of the neighboring property at that time prior to the installation of the drainage channel (approx 2008) and the leveling of the PGE land (2009).

Sincerely,

Brian Evans

Brian P. Evans
SSBO Controller
(503) 652-4631



IMG_0407

## Spir, Peter

**From:** Brian Evans [brianpevans@me.com]
**Sent:** Monday, May 24, 2010 8:39 PM
**To:** Spir, Peter
**Subject:** Re: Bundy WAP-09-03

Peter,

I would say it was installed in 2008. We moved into our house in 2006 and it wasn't there for approx the first 2 years. Also, It was there maybe 1 year prior to the pool installation (Aug 2009) so 2008 seems right.

At the time of the gravel trench install, there was a drain / piping installed (which was actually installed a few feet onto our property but that's another issue). The piping runs under the gravel trench and then to the front of the property and empties into the greenspace in front of our properties. Now there is an additional electric sump pump under the pool which connects to this same drain line.

Hope that helps.

Brian

On May 24, 2010, at 1:35 PM, Spir, Peter wrote:

> Brian
>
> Do you have any recollection when the gravel trench at the rear property line of the Bundy property was installed?
> Thanks
>
> Peter
>
>
>
> Peter Spir
> mailto:pspir@westlinnoregon.gov
> Associate Planner
> 22500 Salamo Rd.
> West Linn, OR, 97068
> P: (503) 723-2539
> F: (503) 656-4106
> Web: http://westlinnoregon.gov
>
> West Linn Sustainability Please consider the impact on the environment before printing a paper copy of this email.
> Public Records Law Disclosure This e-mail is subject to the State Retention Schedule and may be made available to the public.
> -----Original Message-----
> From: Brian Evans [mailto:brianpevans@me.com]
> Sent: Wednesday, February 24, 2010 1:30 PM
> To: Spir, Peter
> Subject: Bundy WAP-09-03
>
> Peter,
>
> Please find attached to this email a letter regarding our fence that is constructed between the Bundy property and ours. I hope it explains our intentions for the fence and the reason it was constructed without water resource permits. I am currently out of the country but I wanted you to have this input while the City is formulating action plans following the denial of the Bundy's permit. I will have a signed copy of this letter delivered to your office when I am back in the U.S. on Monday.
>

> Please let me know if you need anything from me or if I can be helpful in any other way.
>
>
> Thank You
>
>
> Brian Evans
>
>
>
>

## Spir, Peter

**From:** HUFFMAN Anita [anita.huffman@state.or.us]
**Sent:** Monday, May 24, 2010 9:53 AM
**To:** Spir, Peter
**Subject:** RE: City of West Linn File No. AP-10-01 (WAP 09-03)

Peter,

Our Proposed Restoration Order requires the Bundy's to have a wetland delineation of the Bundy property from the rear of the house to the property line, as well as the property owned by PGE. The delineation must be concurred with by DSL staff, and at that time, it should establish the characteristics and boundary of the wetland areas.

Because I did not have the opportunity to walk the property prior to the impacts, I can't say if there were drainage channels on site. However, there are now artificial drains installed to channel water flow out to the wetlands to the south and on to the tax lot to the east of the Bundy's; this would indicate there is water flow that would normally flow through the lands on the north side.

Anita Huffman
Northern Region Resource Coordinator
Wetland & Waterway Conservation Division

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**From:** Spir, Peter [mailto:pspir@westlinnoregon.gov]
**Sent:** Monday, May 24, 2010 9:14 AM
**To:** HUFFMAN Anita
**Subject:** FW: City of West Linn File No. AP-10-01 (WAP 09-03)

Anita
One of the central arguments by the Bundy's attorney is that there is no wetland on the Bundy property and that no natural drainageway existed on the PGE site.
I would contend that the August 2000 delineation of wetlands (albeit unconfirmed) satisfies the wetland issue. Also the recent site visit with yourself, Kristen (USACE) and Jason identified wetland soils in test holes on the Bundy property. The fact that there were drainage channels/meanders through and around the wetlands seems clear to me. Any thoughts?
Peter

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

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

April 29, 2010

Peter / City Council,

This letter is in regard to the Water Resource Area Permit application (WAP-09-03) and appeal (AP-10-01) submitted by Troy Bundy for his property at 1215 9th street. My property is adjacent to the Bundy property at 1221 9th street.

In general, I have no specific objection to the Bundy's use and enjoyment of their property as long as their improvements do not endanger my family or unreasonably impact my property. The City does not need my help documenting the numerous water resource and building code violations in this case so I will leave those details to the City Planners to document.

Unfortunately, several of their "improvements" are causing safety concerns, drainage issues, access restrictions, and other issues on my property and I have to formally object to several of the landscape features. These concerns DO directly relate to the water issues at hand since the correction / mitigation of the issues below will require further damage to the water resource area in question. These objections are detailed below:

**Background**

The day the pool was excavated, I approached the Bundys and expressed concern about the fill / grading of the PGE land behind their property and inquired about their plans to enclose the pool. I was also surprised they were allowed to construct a pool in the conservation easement area. They told me they had applied for and received a "hardship variance" and they explained the application / approval process in detail. Troy also gave me a printed copy of chapter 32 with section 32.090 (reduction in standards for hardship) highlighted. At the time, I had no reason to question their permits. I did state, however, that a fence would need to be constructed to enclose the pool.

**Objection #1: Lack of Pool Enclosure**

From the time the pool was filled (without permits or inspections to my knowledge) in Aug 2009 until March 2010, there has been no enclosure whatsoever surrounding the pool (other than a motorized leaf cover). I had a 6' wooden fence constructed (at my

expense after the Bundys declined to participate financially) to partially enclose my yard and help protect my children, visiting children, and pets from the open attractive nuisance next door. The fence was constructed specifically to minimize impact in the water resource area while still providing safety and protection from liability.

Last month, the pool was hastily surrounded by a chicken wire fence. While this is better than nothing, it surely does not meet City construction code for a pool enclosure (Oregon Residential Specialty Code Section AG105).

As long as the pool is fully enclosed per the requirements set forth in City code, I have no other objection to the current pool / patio. If the pool is allowed to remain filled under any circumstances, a full enclosure WITH the required City inspections must be a condition of approval. Continued failure to enforce the building code and pool enclosure requirements will expose the City to massive liability should an accident occur.

**Objection #2: Fill / Grading performed on PGE property**

Despite their claims otherwise submitted with their original application, the Bundys DID use dirt excavated from the pool to fill wetlands behind their property. The day of the pool excavation, I confronted the Bundys regarding the grade change and expressed concern that the grade change could cause drainage issues on my property. They reassured me that they had installed additional underground drainage lines / pumps to handle the rainwater and I should not have drainage issues. While this may be the case, I doubt there has been a formal engineering analysis performed to ensure that the drainage is sized to handle storm conditions. These drains (one of which was installed on my property) also require constant manual maintenance.

During heavy / extended rains, the installed drainage system quickly becomes overwhelmed with storm water and the gravel trench completely fills with water (see recent photo below taken April 2010). Our attorney has recommended that we document these higher water levels in case legal action becomes necessary down the road if flooding causes property damage. The carrying capacity of the natural drainage system behind our properties has been diminished by the fill added and will likely result in higher water levels on my property during a true storm / flood situation. This land needs to be restored to the original grade and verified by City Engineers.


Water Draining Down Utility Access Hatch

The walls cannot serve as a part of the pool enclosure as they are only 18" tall in some areas and do not meet the code requirements for a pool enclosure. In addition, the pool enclosure requirements can easily be met through other less invasive means (with gates on the sides of the property) that do not cause adverse drainage issues.

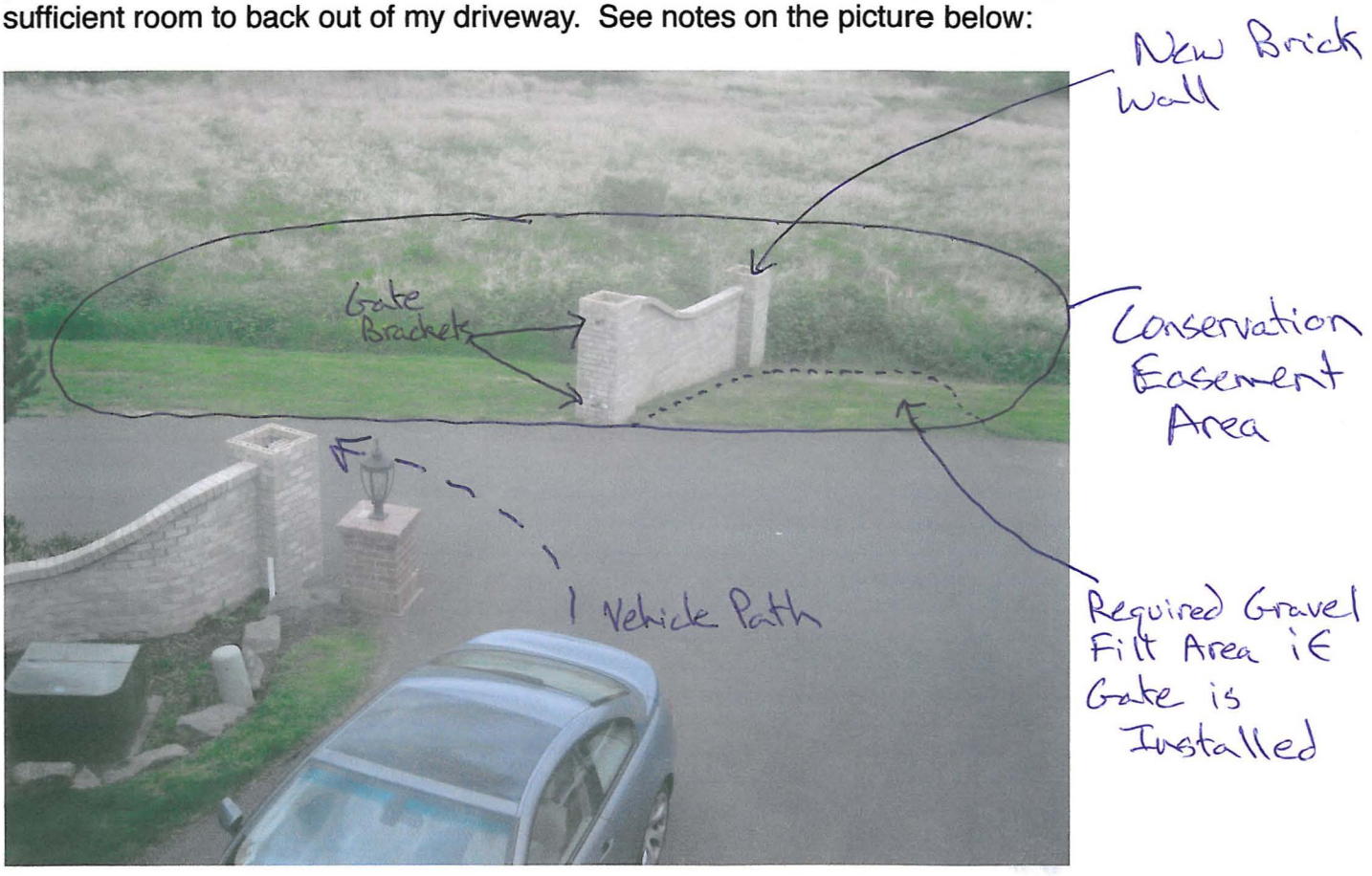
In addition to the drainage concerns, the walls also likely encroach on our property. We had our property professionally surveyed prior to the installation of our wooden fence. The fence was constructed, as the Bundys insisted, 8" inside of the property line to ensure that the concrete post foundations are entirely located on our property. Since the brick wall was constructed flush up to the fence with no space, simple geometry would indicate that the wall encroaches on our property as it approaches the fence. This could easily be verified with a follow-up survey if necessary.


These walls were constructed without permits, in a wetland area, on a recorded conservation easement, on a utility easement, encroaching on neighboring property, and serve no legitimate purpose. In fact, from a procedural standpoint, the City cannot issue land use or building permits for structures not fully contained on the Applicant's property. The brick walls should be removed immediately.

**Objection #5: Proposed Gate**

The brick walls were constructed with brackets to attach a gate across the common road. I have addressed our objections to this gate with the Bundys but since their application is entitled "swimming pool, fence, and gate" I am assuming they plan to proceed with the gate despite our objections. This gate would represent an unreasonable access restriction across an existing recorded access easement (Fee No. 2001-044109). In addition to violating the formal easement, the proposed gate would restrict emergency vehicle access as an ambulance would not have sufficient room to turn around in my existing driveway alone. The same is true for delivery and service vehicles for all 3 properties who share the road.

While these access objections may not seem related to the water resource issues at hand, these objections are relevant since a gate will require me to level / gravel a portion of the recorded conservation easement area across from my driveway to allow sufficient room to back out of my driveway. See notes on the picture below:



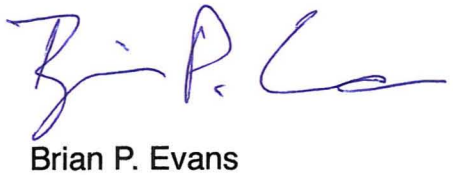

Again, the proposed gate would obstruct a recorded access easement, serves no legitimate purpose, and would directly cause further adverse impact to the water resource area due to the required fill area in the conservation easement across from my driveway. The permit for the proposed gate must be denied.

In summary, the unfortunate fact is that the Bundys have knowingly and willfully violated water resource permit requirements, ignored building permit requirements, filled wetlands, disrupted drainage, caused flooding with the diverted water, constructed brick walls in a conservation easement area, ignored requests to enclose the pool, and lied nearly every step of the way. Their current and planned modifications are adversely impacting neighboring properties and must be reversed. In addition to meeting the requirements of Chapter 32, any mitigation plan proposed by the Bundys with this appeal must ALSO satisfy all my concerns detailed herein.

Should the City find itself unable (or unwilling) to enforce CDC Chapter 32 and protect the area it has been entrusted to protect, you are encouraged to request the involvement of other agencies (Oregon DSL, Clackamas County WES, DEQ, etc) who are entrusted to protect these same resources in other areas of the state and could be impacted by any precedents set in this case. These agencies may be able to provide assistance / support in this matter.

I look forward to the City Council meeting and welcome any questions the Councilors may have regarding my concerns.

Respectfully



Brian P. Evans

## Spir, Peter

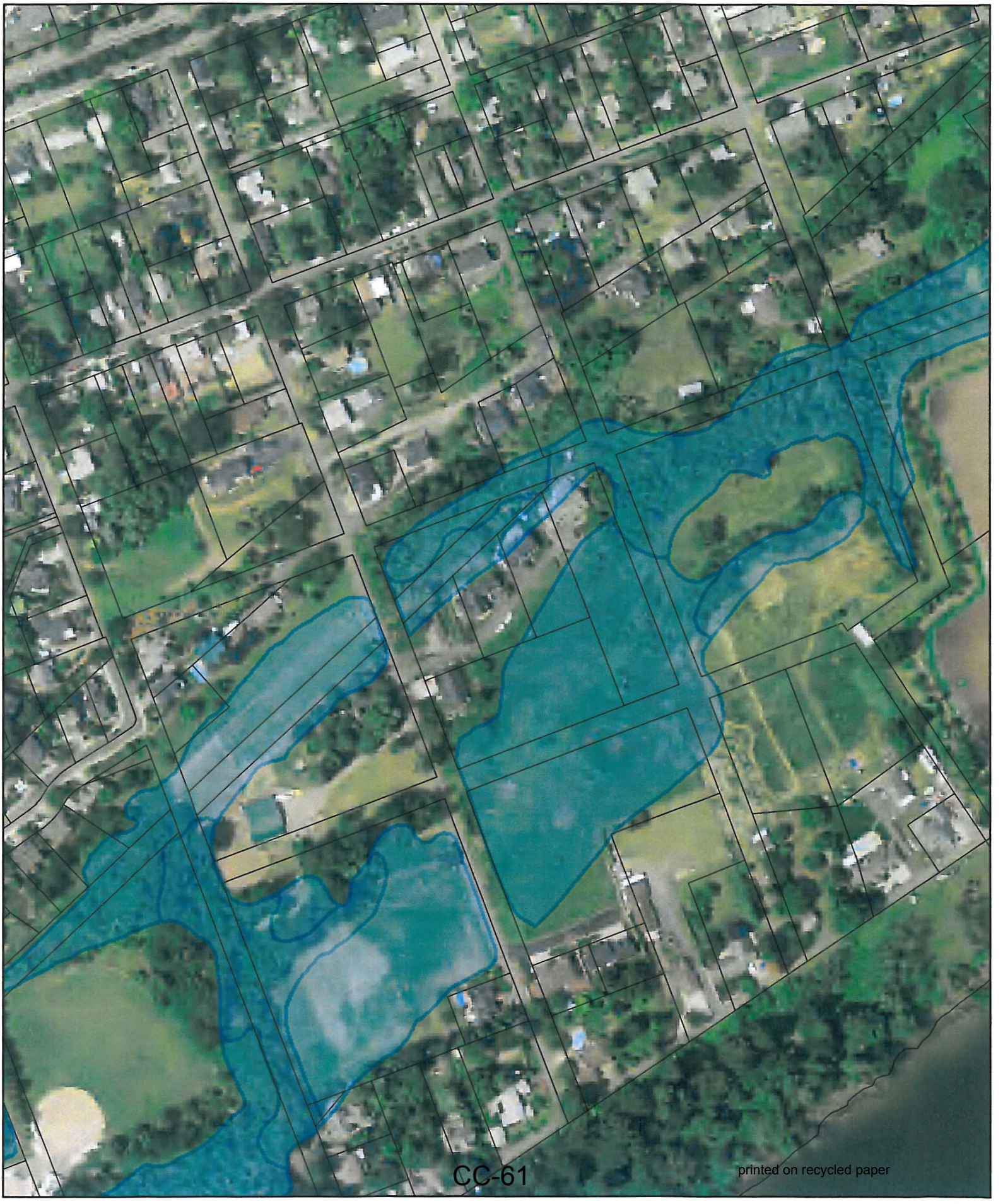
**From:** HUFFMAN Anita [anita.huffman@state.or.us]
**Sent:** Tuesday, April 27, 2010 2:01 PM
**To:** Jason Clinch
**Cc:** Hafer, Kristen A NWP; Spir, Peter
**Subject:** Bundy property

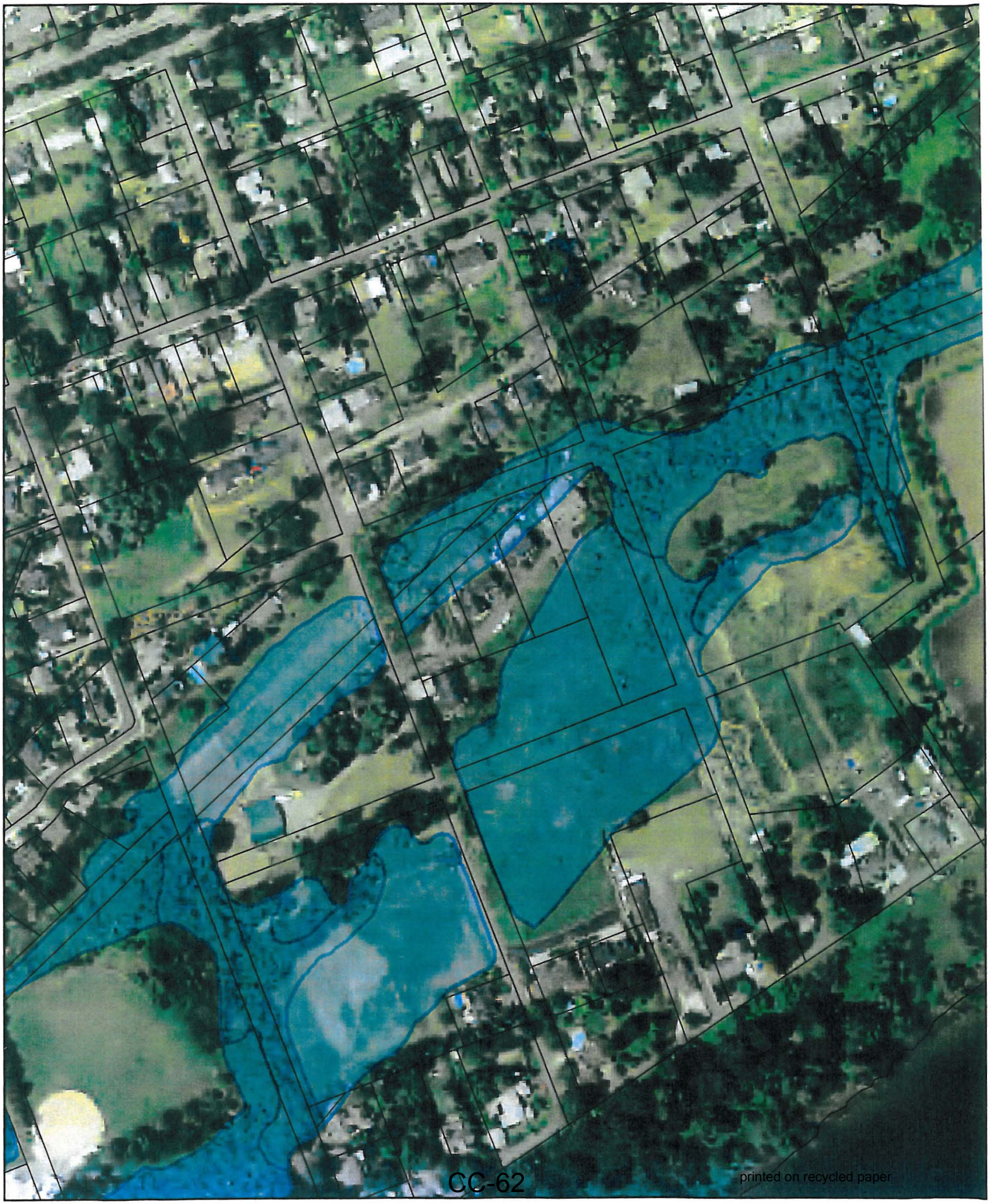
Hi Jason, I had our new GIS guy create this map for me. The blue area is the LWI for West Linn. Even doing a slight adjustment for the aerial photo, it's pretty clear the area goes onto the Bundy property a lot further than that shown in the drawing for the lot line adjustment. It's pretty consistent with the conservation easement of the City.

That also is consistent with the hydric soils information. Therefore, I'm of the opinion that the area of decking, if not the pool, is within the LWI. Do you know the setback distance from the north property line to the rear of the house?

I'm going to contact Mrs. Bundy to see if I can't make a site visit to get some measurements and a look again at the site. Would you be available to meet? I'm thinking sometime next week...Wed or Thurs.

Let me know your thoughts on this.





**To:** Spir, Peter
**Subject:** bundy case

Gina Bundy called and said that a wetland biologist is coming out on Tuesday at 4:00 (Jason Clinch with Terra science sp). She also said the temporary fencing is up around the pool .

John Sonnen, Planning Director
*Planning and Building, #1524*



Hi Peter. To the best of my knowledge, ODFW does not have jurisdiction on this as far as fishery resources goes. I can't speak for any wildlife issues they may have, since I work with them only on fisheries issues. It looks at this time as if it's just the regulatory agencies.

Anita Huffman
Northern Region Resource Coordinator
Wetland & Waterway Conservation Division

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**From:** Spir, Peter [mailto:pspir@westlinnoregon.gov]
**Sent:** Monday, April 26, 2010 8:55 AM
**To:** HUFFMAN Anita
**Subject:** RE: bundy case

Hi Anita,

On the subject of who has jurisdiction or interest in the Bundy's case as it stands now there is:

- DSL
- ACOE
- City of West Linn

Would ODFW have jurisdiction?
If so, what scope?
Thanks and have a great work week.

Peter

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

Hi Jason, I had our new GIS guy create this map for me. The blue area is the LWI for West Linn. Even doing a slight adjustment for the aerial photo, it's pretty clear the area goes onto the Bundy property a lot further than that shown in the drawing for the lot line adjustment. It's pretty consistent with the conservation easement of the City.

That also is consistent with the hydric soils information. Therefore, I'm of the opinion that the area of decking, if not the pool, is within the LWI. Do you know the setback distance from the north property line to the rear of the house?

I'm going to contact Mrs. Bundy to see if I can't make a site visit to get some measurements and a look again at the site. Would you be available to meet? I'm thinking sometime next week...Wed or Thurs.

Let me know your thoughts on this.

Peter, the invite was just general. I am hoping to meet with Jason so he can get an idea of what I'm going to need for resolution for this case. Kristin Hafer also wants to meet at the site. I've called Gina and left a message that I'd like to visit the site with some other folks (didn't name names) next Wednesday. When I hear from her, I'll let you know.

I'm drafting up the order this week. I've been trying to get this done, but now that our GIS guy has gotten me what I need, I can move forward. Should be out soon.

Anita Huffman
Northern Region Resource Coordinator
Wetland & Waterway Conservation Division

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**From:** Spir, Peter [mailto:pspir@westlinnoregon.gov]
**Sent:** Tuesday, April 27, 2010 2:29 PM
**To:** HUFFMAN Anita
**Subject:** RE: Bundy property

Anita

The distance to the house from the rear property line is about 47 feet per our GIS.
BTW was your invite for me too or just Jason I forgot that I was just CC'ed

Our City Attorney asked me to ask you if you/DSL had any draft consent orders prepared in this acse or any information that we can present to City Council that would represent an option in how to deal with this mess.
Thanks

Peter

I got a voice mail from Mike Robinson requesting a two-week delay for the Bundy appeal hearing (scheduled for May 17). He says he needs time to come up with information/plan to satisfy the state, federal and state regulator as well as the City. (By the way, the extended 120 day clock still ends on May 21). What do you want to do?

John Sonnen
jsonnen@westlinnoregon.gov
*Planning Director*
22500 Salamo Rd.
West Linn, OR, 97068
P: (503) 723-2524
F: (503) 656-4106
Web: westlinnoregon.gov

As an alternative to holding the City Council hearing of the Bundy appeal (AP-10-01) on May 17, 2010 and to allow Michael Robinson a reasonable amount
of time to submit written arguments, the following timeline is offered.
It will, of course, require an extension of the 120-day rule which is currently due to expire on May 21, 2010.

| | |
|---|---|
| May 21 | Deadline for Michael Robinson to review of record and submit written arguments |
| May 28 | Deadline for staff to write response to Michael Robinson's arguments |
| June 4 | Deadline for staff to assemble the record and mail report to City Council, Applicants, Michael Robinson et al |
| June 14 | Hold City Council hearing (AP-10-01) |
| June 21 or 28 | City Council convenes to approve final decision |
| June 29 or 30 | 120-day rule needs to be extended to this date |

**From:** Robinson, Michael C. (Perkins Coie) [mailto:MRobinson@PerkinsCoie.com]
**Sent:** Monday, May 03, 2010 1:02 PM
**To:** Sonnen, John
**Subject:** Re: Bundy

John, thank you. Its agreeable. Mike

-----Original Message-----
From: Sonnen, John <jsonnen@westlinnoregon.gov>
To: Robinson, Michael C. (Perkins Coie)
Sent: Mon May 03 10:13:45 2010
Subject: RE: Bundy

Hi Mike,

As an alternative to holding the City Council hearing of the Bundy appeal (AP-10-01) on May 17, 2010 and to allow a reasonable amount

of time to submit written arguments, the following timeline is offered.

It will, of course, require an extension of the 120-day rule which is currently due to expire on May 21, 2010.

May 21 Deadline for Michael Robinson to review of record and submit written arguments

June 4 Deadline for staff to assemble the record and mail report to City Council, Applicants, Michael Robinson et al

June 14 Hold City Council hearing (AP-10-01)

June 21 or 28 City Council convenes to approve final decision

June 29 or 30 120-day rule needs to be extended to this date

Please let me know ASAP if this is agreeable to you

John

John Sonnen
jsonnen@westlinnoregon.gov
Planning Director
22500 Salamo Rd.
West Linn, OR, 97068
P: (503) 723-2524
F: (503) 656-4106
Web: westlinnoregon.gov

**From:** Robinson, Michael C. (Perkins Coie) [mailto:MRobinson@PerkinsCoie.com]
**Sent:** Wednesday, May 05, 2010 9:36 AM
**To:** Sonnen, John; cindy.phillips@jordanschrader.com; Robinson, Michael C. (Perkins Coie)
**Subject:** Bundys

John, I agree with the proposed schedule but you'll need to pick a later date for. Council deliberation. The City Council hearing is the initial evidentiary hearing and the Council will be obligated to grant a continuance or open record period. Even if not requested, the applicant hasn't waived its right to final written argument. The applicant will extend the 120 day clock to accommodate these periods. I would suggest 3 weeks after the hearing on June 14, or July 14.

Also, I wanted to let you know that the Corps has written the Bundys to tell them that it won't be seeking enforcement.

Mike

The proposal to pay mitigation credits and leave the PGE property "as is" with their fill/non-native landscaping/grass turf/bark mulch in place is not appropriate. The quality and size of the wetland will be significantly diminished. If the Bundy's are allowed to keep the landscaping on the PGE area they can be expected to maintain, cut the grass, and fertilize that area to the extent that it will never be re-established as a wetland. Also, the elimination of this area as a natural drainage corridor and attempting to replace natural drainage functions by modifying the trench along the rear property line is not an acceptable option since the characteristics and value of the natural channel cannot be adequately replicated. We also have, in the record, a statement from the neighbors that this trench solution has resulted in more flooding of their property. The trench option provides very little detention in contrast to the re-establishment of the wetland and natural drainageway channels.

The idea of mitigation was originally discussed as one option that City Council might consider that would allow the swimming pool and patio areas to stay. Mitigation was never proposed as an option to allow the fill and landscaping to remain. Nor was it considered as an option to allow the trench to remain.
Peter

-----Original Message-----
From: Jason Clinch [mailto:jason@terrascience.com]
Sent: Friday, May 07, 2010 10:42 AM
To: Kristen Hafer; HUFFMAN Anita; Spir, Peter
Cc: Gina Bundy; Troy S. Bundy; Robinson, Michael C. (Perkins Coie)
Subject: Bundy Property, West Linn, OR (Corps no. NWP-2010-177, DSL no. N/A)

Kristen, Anita, & Peter,

I just want to thank you all for coming out to the Bundy's property the other day and meeting with us. It was greatly appreciated and we feel some definitive progress was made toward reaching a solution. My client is eager to work with both the Corps and DSL in providing compensatory wetland mitigation for the unauthorized impacts to jurisdictional wetlands/waters that occurred during construction of their pool, patio, and landscaping on their property and for impacts that occurred on the adjacent PGE-owned property for landscaping and drainage purposes.

At this time, I am working on trying to quantify the area of impact on the Bundy property so that Bundy's may pursue purchasing compensatory wetland mitigation credit through an appropriate mitigation bank (Mud Slough, most likely). Besides this credit purchase, the Bundy's have opted to restore the drainage swale along the back of the property by replanting and revegetating the entire length of the swale with appropriate native species. I am working with them on developing a

detailed planting plan that will also provide some water quality treatment function for any potential runoff from the adjacent lawn and patio.

With both the Corps' and DSL's permission (as well as PGE's), the Bundy's would like to request that they be allowed to pursue purchase of compensatory wetland mitigation credit for the impacts to wetlands/waters on the PGE property, as well. This seems like the easiest and most cost-effective solution that would ultimately have the least potential impact on the surrounding resource. To further disturb this area through removal of the sod and/or fill material could potentially be more damaging, especially in the short term. Additionally, complete restoration is not likely to be successful given the abundance of non-native species (namely reed canarygrass, blackberry, and English ivy) within the immediate vicinity that will likely encroach into the restored area. Because this area has not been filled sufficiently to eliminate all wetland characteristics (effectively filled), it still retains multiple wetland functions and would continue to qualify as a jurisdictional wetland much like many other manicured wetlands in the Willamette Valley.

At this time, if you think it is appropriate and/or necessary, the Bundy's are willing to submit a joint permit application that requests authorization of the previously mentioned impacts along with proposing the previously mentioned compensatory mitigation and restoration. Please let us know at your earliest convenience how you would like to proceed. Feel free to call or email me (info below).

Thanks again,

Jason

Jason Clinch
Wetland Biologist / Project Manager

--------Terra Science, Inc.--------
Soil, Water & Wetland Consultants
4710 S.W. Kelly Ave., Suite 100
Portland, OR 97239

Ph: 503-274-2100 Fax: 503-274-2101
Email: jason@terrascience.com

The proposal to pay mitigation credits and leave the PGE property "as is" with their fill/non-native landscaping/grass turf/bark mulch in place is not appropriate. The quality and size of the wetland will be significantly diminished. If the Bundy's are allowed to keep the landscaping on the PGE area they can be expected to maintain, cut the grass, and fertilize that area to the extent that it will never be re-established as a wetland. Also, the elimination of this area as a natural drainage corridor and attempting to replace natural drainage functions by modifying the trench along the rear property line is not

an acceptable option since the characteristics and value of the natural channel cannot be adequately replicated. We also have, in the record, a statement from the neighbors that this trench solution has resulted in more flooding of their property. The trench option provides very little detention in contrast to the re-establishment of the wetland and natural drainageway channels.

The idea of mitigation was originally discussed as one option that City Council might consider that would allow the swimming pool and patio areas to stay. Mitigation was never proposed as an option to allow the fill and landscaping to remain. Nor was it considered as an option to allow the trench to remain.
Peter

Anita
Thanks for explaining DSL's position. It should be helpful when we get to the hearing before City Council.
Peter

-----Original Message-----
From: HUFFMAN Anita [mailto:anita.huffman@state.or.us]
Sent: Wednesday, May 12, 2010 10:45 AM
To: Spir, Peter; Sonnen, John; Cindy Phillips
Cc: Rohret, Shaun
Subject: RE: Bundy Property, West Linn, OR (Corps no. NWP-2010-177, DSL no. N/A)

Peter, DSL is going to require a wetland delineation to determine the extent of the wetland fill and alteration. As for the PGE property area, we are going to require restoration to that portion. The drainage 'swale' is ok to be vegetated, and depending on the wetland delineation, it's likely we'll also require removal of the drain.

As far as the pool/decking is concerned, we're going to defer to the City's ruling on the Conservation Easement. If the City order is for removal, we'll require restoration of that area, otherwise we're open to mitigation, be it by purchase of credits or by off site mitigation.

I believe the Bundy's and their consultant would like to see the landscaping in the PGE area remain, and they pay for mitigation credits for that area, but that is not an option DSL is willing to consider. We would consider purchase of credits for the pool/deck area if it can stay.

Anita Huffman
Northern Region Resource Coordinator
Wetland & Waterway Conservation Division

-----Original Message-----
From: Spir, Peter [mailto:pspir@westlinnoregon.gov]
Sent: Tuesday, May 11, 2010 7:25 AM
To: Sonnen, John; Cindy Phillips; HUFFMAN Anita
Cc: Rohret, Shaun
Subject: FW: Bundy Property, West Linn, OR (Corps no. NWP-2010-177, DSL no. N/A)

The proposal to pay mitigation credits and leave the PGE property "as is" with their fill/non-native landscaping/grass turf/bark mulch in place is not appropriate. The quality and size of the wetland will be significantly diminished. If the Bundy's are allowed to keep the landscaping on the PGE area they can be expected to maintain, cut the grass, and fertilize that area to the extent that it will never be re-established as a wetland. Also, the elimination of this area as a natural drainage corridor and attempting to replace natural drainage functions by modifying the trench along the rear property line is not an acceptable option since the characteristics and value of the natural channel cannot be adequately replicated. We also have, in the record, a statement from the neighbors that this trench solution has resulted in more flooding of their property. The trench option provides very little detention in contrast to the re-establishment of the wetland and natural drainageway channels.

The idea of mitigation was originally discussed as one option that City Council might consider that would allow the swimming pool and patio areas to stay. Mitigation was never proposed as an option to allow the fill and landscaping to remain. Nor was it considered as an option to allow the trench to remain.
Peter

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

Anita
Using our GIS map I show 46 feet from rear of the house to the rear property line (measured at right angle to the property line).
This has a margin of error of +/- 2 feet (or so)
I did measure from the rear property line a distance of 35 feet to approximate the City's wetland conservation easement and that encompassed 2/3rds of the pool and patio area.
I do not have any other measurements, although, based on photos, it looks like the distance from the rear property line to the nearest patio surface is 3.5 feet. Since the patio area goes all the way to the house, the patio area would be 42.5 feet long (from house towards the rear property line)
Peter

---

**From:** HUFFMAN Anita [mailto:anita.huffman@state.or.us]
**Sent:** Wednesday, May 12, 2010 5:15 PM
**To:** Spir, Peter
**Subject:** Bundy

Peter, quick question...do you have the measurement from the back of the Bundy's house to their property line? And the depth of the pool decking from the house to the back of the property?

I am sure I got those measurements, but I can't find them.

I had drafted up the Enforcement Order, but got word that the template is changing, so I'll have to hold off to next week. You will be cc'd on it.

Also, I've now spoken with the appropriate person at PGE, Mike Livingston is the Property Services Manager. His phone number is 503-464-8127 if you need it. I'll also be cc-ing PGE on the order.

Anita M. Huffman
Resource Coordinator-Clackamas and Tillamook Counties
Wetlands and Waterway Conservation Division
Oregon State Lands
775 Summer St. NE
Salem, OR 97301
503-986-5250 FAX 503-378-4844
http://www.oregonstatelands.us

Fair enough, Peter. I'll think this one over and hopefully, we can meet later this week and work this out.
Mike

-----Original Message-----
From: Spir, Peter <pspir@westlinnoregon.gov>
To: Robinson, Michael C. (Perkins Coie)
CC: Sonnen, John <jsonnen@westlinnoregon.gov>; Cindy Phillips <Cindy.Phillips@jordanschrader.com>
Sent: Mon May 17 08:18:07 2010
Subject: RE: Bundy Property, West Linn, OR (Corps no. NWP-2010-177, DSL no. N/A)

Mike

I agree that the Bundy's will need a USACE/DSL joint permit at some point, but I think they would be "jumping the gun" to apply now. They are proposing to get a joint permit to allow compensatory mitigation for the loss of wetlands on PGE property as well as their own property. They propose no restoration of the wetlands on their property or on PGE property with the exception of improving and enhancing the trench/drainageway along the rear property line.
The point I was trying to make is that City Council may want to see full wetland restoration of the PGE and Bundy properties, so pursuing a joint permit at this time (before the hearing) may be considered premature.
Certainly DSL's position on the subject is clear:
Peter,

DSL is going to require a wetland delineation to determine the extent of the wetland fill and alteration. As for the PGE property area, we are going to require restoration to that portion. The drainage 'swale' is ok to be vegetated, and depending on the wetland delineation, it's likely we'll also require removal of the drain.

As far as the pool/decking is concerned, we're going to defer to the City's ruling on the Conservation Easement. If the City order is for removal, we'll require restoration of that area, otherwise we're open to mitigation, be it by purchase of credits or by off site mitigation.

I believe the Bundy's and their consultant would like to see the landscaping in the PGE area remain, and they pay for mitigation credits for that area, but that is not an option DSL is willing to consider. We would consider purchase of credits for the pool/deck area if it can stay.

Anita Huffman

Northern Region Resource Coordinator

Wetland & Waterway Conservation Division

Peter

PS: Are things still on track per the schedule below?

From: Robinson, Michael C. (Perkins Coie) [mailto:MRobinson@PerkinsCoie.com]
Sent: Monday, May 03, 2010 1:02 PM
To: Sonnen, John
Subject: Re: Bundy

John, thank you. Its agreeable. Mike

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



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

From: Sonnen, John <jsonnen@westlinnoregon.gov>
To: Robinson, Michael C. (Perkins Coie)
Sent: Mon May 03 10:13:45 2010

Subject: RE: Bundy

Hi Mike,

As an alternative to holding the City Council hearing of the Bundy appeal (AP-10-01) on May 17, 2010 and to allow a reasonable amount

of time to submit written arguments, the following timeline is offered.

It will, of course, require an extension of the 120-day rule which is currently due to expire on May 21, 2010.

| | |
|---|---|
| May 21 | Deadline for Michael Robinson to review of record and submit written arguments |
| June 4 | Deadline for staff to assemble the record and mail report to City Council, Applicants, Michael Robinson et al |
| June 14 | Hold City Council hearing (AP-10-01) |
| June 21 or 28 | City Council convenes to approve final decision |
| June 29 or 30 | 120-day rule needs to be extended to this date |

Please let me know ASAP if this is agreeable to you

John

John Sonnen
jsonnen@westlinnoregon.gov
Planning Director
22500 Salamo Rd.
West Linn, OR, 97068
P: (503) 723-2524
F: (503) 656-4106
Web: westlinnoregon.gov

---

From: Robinson, Michael C. (Perkins Coie) [mailto:MRobinson@PerkinsCoie.com]
Sent: Monday, May 17, 2010 7:40 AM
To: Spir, Peter; jason@terrascience.com; anita.huffman@state.or.us; Kristen.A.Hafer@usace.army.mil; Sonnen, John; cindy.phillips@jordanschrader.com; tsb@hhw.com; ginabundy@comcast.net; Robinson,

Michael C. (Perkins Coie)
Subject: Re: Bundy Property, West Linn, OR (Corps no. NWP-2010-177, DSL no. N/A)

Peter, we will submit everything before the hearing. If its not before the City Council, they won't be able to consider it. Also, I believe that mitigation to satisfy federal and state agencies is something that the Bundys will have to do anyway regardless of the outcome of the city action.

Thanks. Mike

-----Original Message-----
From: Spir, Peter <pspir@westlinnoregon.gov>
To: Jason Clinch <jason@terrascience.com>; HUFFMAN Anita <anita.huffman@state.or.us>; Kristen.A.Hafer@usace.army.mil <Kristen.A.Hafer@usace.army.mil>; Sonnen, John <jsonnen@westlinnoregon.gov>; Cindy Phillips <Cindy.Phillips@jordanschrader.com>; Robinson, Michael C. (Perkins Coie)
Sent: Thu May 13 14:04:54 2010
Subject: RE: Bundy Property, West Linn, OR (Corps no. NWP-2010-177, DSL no. N/A)

Jason

Certainly Mr.and Mrs. Bundy are free to submit mitigation plans and proposals at any time to USACE and DSL, but it may be more appropriate to wait until AFTER the City Council appeal hearing. It is expected that City Council will, in their decision, provide clear direction on the appropriate course of action. Specifically, whether or not mitigation will even be permitted for their property and PGE property.

Peter Spir
Associate Planner

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


-----Original Message-----
From: Jason Clinch [mailto:jason@terrascience.com]
Sent: Thursday, May 13, 2010 8:50 AM
To: Hafer, Kristen A NWP; HUFFMAN Anita; Spir, Peter
Cc: Gina Bundy; Troy S. Bundy; Robinson, Michael C. (Perkins Coie)
Subject: RE: Bundy Property, West Linn, OR (Corps no. NWP-2010-177, DSL no. N/A)

Kristen,

No worries. I believe that the Bundy's are going to start working on the application with some assistance from me as they need it. Thanks

again for your assistance and attention to this. It is greatly appreciated!

Jason

At 01:32 PM 5/12/2010, Hafer, Kristen A NWP wrote:
>Jason,
>
>I apologize for not replying to this email sooner. I agree that an
>after-the-fact application may be submitted to the Corps. The application
>should identify what work has already occurred and what efforts would be made
>to minimize the project effects and to mitigate for impacts to Waters of the
>U.S.
>
>If you have any questions please give me a call or send me an email.
>Thank you,
>
>Kristen Hafer
>Biologist, Project Manager
>U.S. Army Corps of Engineers
>(503) 808-4387
>
>I would appreciate your feedback on how I am performing my duties. Our
>automated Customer Service Survey is located
>at: http://per2.nwp.usace.army.mil/survey.html. Thank you for taking the time
>to visit the site and complete the survey.
>Have a great day!
>
>-----Original Message-----
>From: Jason Clinch [mailto:jason@terrascience.com]
>Sent: Friday, May 07, 2010 10:42 AM
>To: Hafer, Kristen A NWP; HUFFMAN Anita; Spir, Peter
>Cc: Gina Bundy; Troy S. Bundy; Robinson, Michael C. (Perkins Coie)
>Subject: Bundy Property, West Linn, OR (Corps no. NWP-2010-177, DSL no. N/A)
>
>Kristen, Anita, & Peter,
>
>I just want to thank you all for coming out to the Bundy's property the other
>day and meeting with us. It was greatly appreciated and we feel some
>definitive progress was made toward reaching a solution. My client is eager
>to work with both the Corps and DSL in providing compensatory wetland
>mitigation for the unauthorized impacts to jurisdictional wetlands/waters
>that occurred during construction of their pool, patio, and landscaping on
>their property and for impacts that occurred on the adjacent PGE-owned
>property for landscaping and drainage purposes.
>
>At this time, I am working on trying to quantify the area of impact on the
>Bundy property so that Bundy's may pursue purchasing compensatory wetland
>mitigation credit through an appropriate mitigation bank (Mud Slough, most
>likely). Besides this credit purchase, the Bundy's have opted to restore the
>drainage swale along the back of the property by replanting and revegetating
>the entire length of the swale with appropriate native species. I am working
>with them on developing a detailed planting plan that will also provide some
>water quality treatment function for any potential runoff from the adjacent
>lawn and patio.
>

>With both the Corps' and DSL's permission (as well as PGE's), the Bundy's
>would like to request that they be allowed to pursue purchase of compensatory
>wetland mitigation credit for the impacts to wetlands/waters on the PGE
>property, as well. This seems like the easiest and most cost-effective
>solution that would ultimately have the least potential impact on the
>surrounding resource. To further disturb this area through removal of the
>sod and/or fill material could potentially be more damaging, especially in
>the short term. Additionally, complete restoration is not likely to be
>successful given the abundance of non-native species (namely reed
>canarygrass, blackberry, and English ivy) within the immediate vicinity that
>will likely encroach into the restored area. Because this area has not been
>filled sufficiently to eliminate all wetland characteristics (effectively
>filled), it still retains multiple wetland functions and would continue to
>qualify as a jurisdictional wetland much like many other manicured wetlands
>in the Willamette Valley.
>
>At this time, if you think it is appropriate and/or necessary, the Bundy's
>are willing to submit a joint permit application that requests authorization
>of the previously mentioned impacts along with proposing the previously
>mentioned compensatory mitigation and restoration. Please let us know at
>your earliest convenience how you would like to proceed. Feel free to call
>or email me (info below).
>
>Thanks again,
>
>Jason
>
>
>Jason Clinch
>Wetland Biologist / Project Manager
>
>--------Terra Science, Inc.--------
>Soil, Water & Wetland Consultants
>4710 S.W. Kelly Ave., Suite 100
>Portland, OR 97239
>
>Ph: 503-274-2100 Fax: 503-274-2101
>Email: jason@terrascience.com

Jason Clinch
Wetland Biologist / Project Manager

--------Terra Science, Inc.--------
Soil, Water & Wetland Consultants
4710 S.W. Kelly Ave., Suite 100
Portland, OR 97239

Ph: 503-274-2100 Fax: 503-274-2101
Email: jason@terrascience.com

Jason,

I found the map that indicates the delineation notation, drawn by AKS Engineering. It was actually a part of a non-concurred delineation done in 2000 for what had been Tax Lot 8100 at that time, done for Handris Realty. That would be tax lot 8200 today. It was wet det 00-0550, but because it was not concurred with at that time, I can't qualify it as an actual wetland boundary.

Anita M. Huffman
Resource Coordinator-Clackamas and Tillamook Counties
Wetlands and Waterway Conservation Division
Oregon State Lands
775 Summer St. NE
Salem, OR 97301
503-986-5250 FAX 503-378-4844
http://www.oregonstatelands.us

Thanks Peter for having the delineation available.

As to the consent order, I actually have written up a Proposed Restoration Order...this affords the Bundy's the opportunity to file a contested case hearing. The order was signed yesterday and is likely out in the mail today. The order does have a clause in it that any wetland impacts inside the area of the pool/decking will be mitigated/restored consistent with the determination of the City of West Linn.

I believe you have all been copied on the order, if you don't receive a copy by Monday, please let me know. Thanks

Anita Huffman
Northern Region Resource Coordinator
Wetland & Waterway Conservation Division

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**From:** Spir, Peter [mailto:pspir@westlinnoregon.gov]
**Sent:** Wednesday, May 19, 2010 9:37 AM
**To:** Jason Clinch; HUFFMAN Anita
**Cc:** Hafer, Kristen A NWP
**Subject:** RE: Delineation notation on map

On the subject of consent orders I have recommended to the Bundy's attorney that the Bundys wait until AFTER the City Council hearing June 14 to see what the Council will require as a condition. For example, City Council may require that the pool be removed. That kind of decision would impact the terms of any consent orders through DSL etc
Peter

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



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**From:** Jason Clinch [mailto:jason@terrascience.com]
**Sent:** Wednesday, May 19, 2010 9:05 AM
**To:** HUFFMAN Anita
**Cc:** Hafer, Kristen A NWP; Spir, Peter
**Subject:** Re: Delineation notation on map

Hi Anita,

Thanks for the info. Do you know who conducted the determination? Also, can I get a copy of the report and maps for my files? Lastly, when can we expect the consent order?

Thanks

Jason

At 05:37 PM 5/17/2010, HUFFMAN Anita wrote:

Jason,

I found the map that indicates the delineation notation, drawn by AKS Engineering. It was actually a part of a non-concurred delineation done in 2000 for what had been Tax Lot 8100 at that time, done for Handris Realty. That would be tax lot 8200 today. It was wet det 00-0550, but because it was not concurred with at that time, I can't qualify it as an actual wetland boundary.

Anita M. Huffman
Resource Coordinator-Clackamas and Tillamook Counties
Wetlands and Waterway Conservation Division
Oregon State Lands
775 Summer St. NE
Salem, OR 97301
503-986-5250 FAX 503-378-4844
http://www.oregonstatelands.us

Jason Clinch
Wetland Biologist / Project Manager

--------Terra Science, Inc.--------
Soil, Water & Wetland Consultants
4710 S.W. Kelly Ave., Suite 100
Portland, OR 97239

# WETLAND DETERMINATION AND DELINEATION REPORT

**WEST LINN REPLAT**
1233 S.W. 9th Street
West Linn, Oregon 97068


Prepared by: AKS Engineering & Forestry
18961 S.W. 84th Avenue
Tualatin, Oregon 97062
503-692-5887

Prepared for: Handris Realty
2008 Willamette Falls Drive
West Linn, Oregon 97068
503-657-1094


CC-80

## TABLE OF CONTENTS

## INTRODUCTION

Mr. Mark Handris of Handris Realty contracted AKS Engineering & Forestry's services to determine and locate the absence/presence of wetlands on or near the subject property located at 1233 S.W. 9th Street. The site is located in West Linn, Oregon (Clackamas County, T.3S., R1E. NE ¼ Section 2, Tax Lot 8100) Figure 1. The property is located in a Residential (R) zoned area. Private property, public streets, unimproved right-of-ways and a Portland General Electric Power Line Right-of-Way form the boundaries around this site.

Two areas were the focus of analysis. One area lies along the northwest edge of the subject property where it borders the P.G.E. right-of-way. This recessed area proceeds from S.W. 9th Street in the northeast direction to beyond the east property line (unimproved 8th St). This area is most likely a drainage pathway for rainwater runoff during wetter portions of the year, being at the toe of a steep slope. This area is substantially vegetated with gentle contours.

The other area of focus lies to the south and east of tax lot 8100. Beginning near the southwest corner of tax lot 8200 and proceeding northeast to beyond the eastern property line (unimproved 8th St). This area is a low-lying pasture with vegetation limited to herbs, grasses, sedges, and rushes.

## WETLAND DEFINITION AND AUTHORITY

The United States Army Corps of Engineers (USACE) regulates the discharge of dredged or fill materials into waters and adjacent wetlands of the United States under the authority of Section 404 of the Clean Water Act (*Federal Register, 1986*). For purposes of the Section 404 permitting program, the USACE and other federal agencies define wetlands as follows (*Federal Register, 1986)*:

*Those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.*

In Oregon, The Division of State Lands (DSL) regulates removal/fill permitting in wetlands under ORS 196.800 to 196.990 and rules OAR 141-85-005 to OAR 141-85-090. DSL recognizes the same definition.

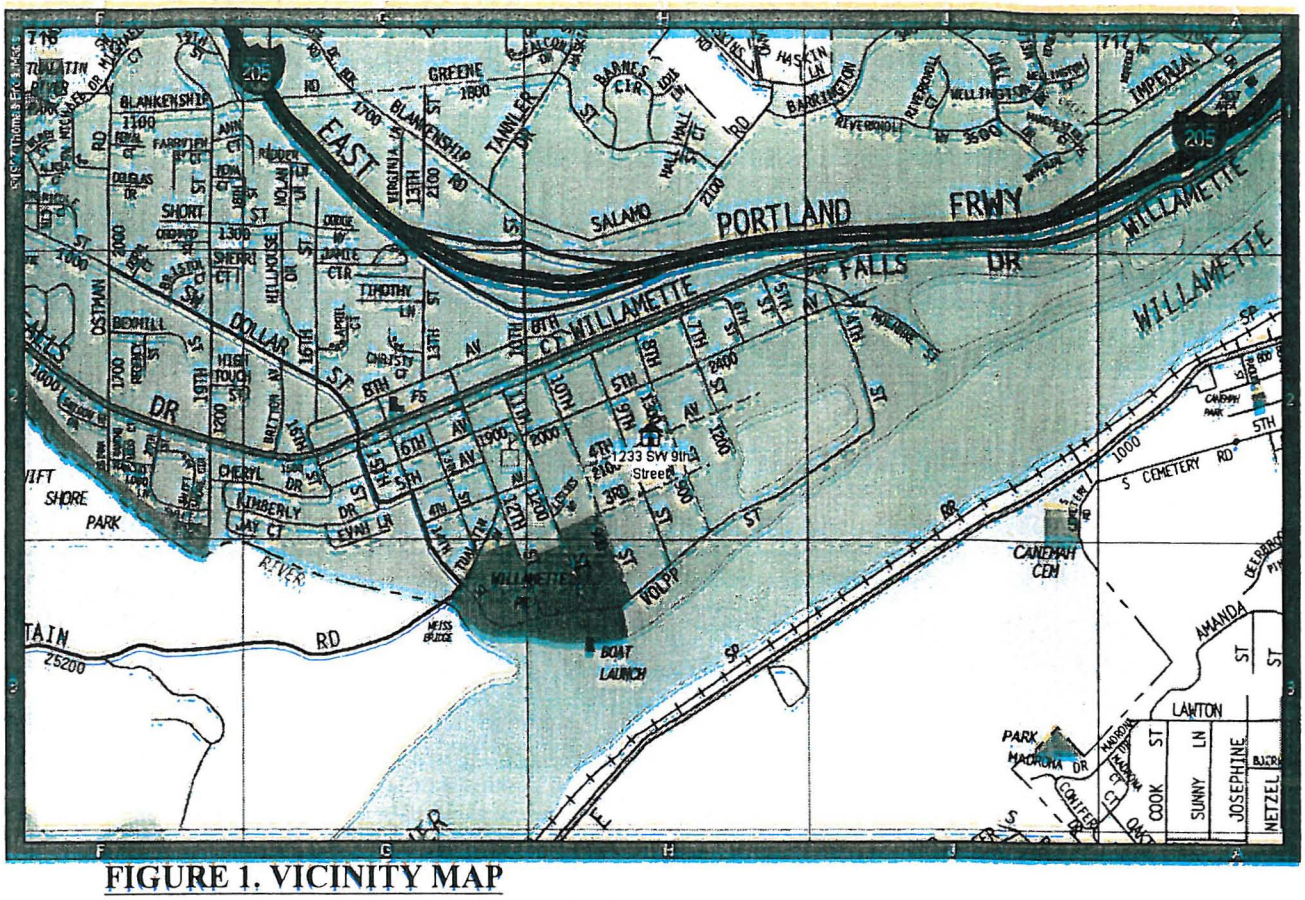



**FIGURE 1. VICINITY MAP**

2000 Thomas Bros. Maps
Page & Grid: 716, H2

## METHODS AND MATERIALS

In January 1987, the USACE published the *Corps of Engineers Wetland Delineation Manual* (1987 manual), which outlines the methods for determining the extent of jurisdictional wetlands (non-agricultural). It is required that three parameters be examined: vegetation, soils, and hydrology. According to the 1987 manual, independent evidence of hydrophytic vegetation, hydric soils, and wetland hydrology must be present in an area for it to be declared a wetland. An analysis of the property was performed by reviewing the site-specific literature, and conducting a field investigation based on the methods outlined in the USACE 1987 manual.

The Routine Onsite Determination Method (1987 manual) was used to establish the absence/presence of wetland areas on or near the site of 1233 S.W. 9th Street. Areas of interest were identified for sampling vegetation types and examining hydrological and soil characteristics. Data Points (DP) were established in order to accurately represent the various plant communities on the site. For each Data Point, data on hydrology, soil characteristics, and vegetation were collected. That data was recorded in the field and then transferred to USACE Data Forms (Appendix E).

## VEGETATION

Due to the fact that saturated soils lack pore spaces where oxygen and other gases can be present within soils, anaerobic conditions persist. Certain plants have adapted and often thrive under these conditions. They are most commonly referred to as hydrophytic vegetation. The U.S. Fish and Wildlife Service (USFWS) along with the National and Regional Interagency Review Panels publish regional lists of plant species' occurrences in particular habitats. Plant Species are given an *Indicator Status* that estimates the likelihood that it will be found in a wetland or upland habitat. Indicator Statuses are broken into varying categories based on the degree of probability in which it is to be most likely found. The categories are defined in Table 1. Plants that have a status of Obligate (OBL), Facultative Wet (FACW), or Facultative (FAC) are generally accepted as species that have adapted to anaerobic soil conditions.

**PLANT INDICATOR STATUS CATEGORIES**

| Indicator Category | Indicator Symbol | Definition |
|---|---|---|
| OBLIGATE WETLAND PLANTS | OBL | Plants that occur almost always (>99%) in wetlands under natural conditions, but which may also rarely (<1%) in non-wetlands |
| FACULTATIVE WETLAND PLANTS | FACW | Plants that occur usually ( >67%-99%) in wetlands, but also occur (<1%-33%) in non-wetlands |
| FACULTATIVE PLANTS | FAC | Plants with a similar likelihood (33%-67%) of occurring in both wetlands and non-wetlands |
| FACULTATIVE UPLAND PLANTS | FACU | Plants that occur sometimes (<1%-33%) in wetlands, but more often (>67%-99%) in non-wetlands |
| OBLIGATE UPLAND PLANTS | UPL | Plants that rarely occur (<1%) in wetlands, but occur most always (>99%) in non-wetlands under natural conditions |

Source: USFWS, National Wetlands Inventory, and the National Plant List Panel

**TABLE 1**

## SOILS

Saturated, flooded, or inundated soils that support anaerobic conditions are often referred to as hydric soils and are capable of supporting hydrophytic vegetation. During field inspections, soils are examined for prominent characteristics and hydric indicators. Soil Test Pits are dug so that soil properties at various depths may be investigated. Soil moisture content, the presence of mottles, and the soil value, hue, and chroma are identified and recorded. A tile spade and a soil auger are used to achieve acceptable

sampling depths. The MUNSELL SOIL COLOR CHART provides a guide for classifying the three attributes of color: value, hue, and chroma.

## HYDROLOGY

Wetland hydrology is the force in which wetland habitats are created. They are characterized as having permanent or periodic inundation, or soil saturation during a significant portion of the growing season. Ponding and soil saturation for more than 5% of the growing season is direct evidence of wetland hydrology. Bare soil, dried algae, watermarks, and drift lines are evidence of periodic inundation. When some of these common positive indicators are present, wetland hydrology is assumed.

## RESULTS

Data Point #1 is located 20 from the edge of pavement on SW 9th St. in the PGE Right-of-Way. In this area, reed canary grass dominates in thick mats. Also present is Douglas spirea and Scouler willow. The soil test pit in the soft, moist Wapato silty clay loam revealed a layer in the A horizon of 7.5 YR $^{2.5}/_{1}$. Then from 12-24 inches, the soil transitions to a Gley 1 $^{4}/_{N}$ with orange mottles (5YR $^{5}/_{8}$). No hydrology was observed at this time, however soil characteristics indicate that there is saturated and/or inundated soil for prolonged periods. This stop supports evidence of a wetland. (Figure 2)

Data Point #2 is located 37 feet to the east of DP #1. There too, reed canary grass dominates in thick mats. Himalayan blackberry, velvet grass, Pacific willow, and slough sedge were also in this area. This stop had 10YR $^{3}/_{1}$ soil to a depth of 18 inches and then transitioned to 5Y $^{4}/_{1}$ with 5Y $^{6}/_{4}$ mottles. No hydrology was observed at this stop but the reduced state of the soil indicates prolonged saturation and/or inundation. These findings are consistent with the presence of a wetland. (Figure 3)

Data Point #3 is located 45 feet to the northeast of DP #2. Reed canary grass dominates. Also present are Nootka rose and Douglas spirea. There, the soils have low chroma values and some mottling. At 12 inches of depth, the soil is 2.5 YR $^{3}/_{1}$; and at 30 inches of depth, it is a 5Y $^{4}/_{1}$ with 5% mottles. This stop is also absent of hydrology due to the dryer portion of the year. This stop supports evidence of a wetland.

Data Point #4 is located 90 feet to the northeast of DP #3. Reed canary grass again dominates with Himalayan blackberry. The soft, moist Wapato silty clay loam has a matrix color of 10YR $^{3}/_{1}$ at 12 inches of depth. At a depth of 30 inches, the color transitions to a Gley 1 $^{4}/_{10Y}$. Additionally, a small dry creek channel is observed beneath the vegetation. The channel has bare soil free from leaf litter and drift lines. This stop supports evidence of a wetland. (Figure 4)

Data Point #5 is located 20 feet east of the eastern property corner of Tax Lot 8100. Reed canary grass dominates. Also present are Himalayan blackberry and small-fruited

bulrush. The soft wet soil had a distinct sulfidic odor. The depth to free water within the test pit was 24 inches. These findings are consistent with the presence of a wetland.

Data Point #6 is located 60 feet to the northeast of DP #5. Here reed canary grass dominates with Himalayan blackberry. The depth to saturated soil was 18 inches. The soil's color was 10 YR $^{3}/_{1}$. At a depth of 18 inches some dark concretions were found. Most likely these are traces of manganese oxide. This stop supports existence of a wetland.

Data Point #7 is located 40 feet to the north of DP #6. This site is vegetated almost entirely by reed canary grass in thick mats and some Himalayan blackberry. The organic horizon of the soil, (depth 8 inches) was a silty loam 5YR $^{3}/_{3}$. At a depth of 18 inches, orange concretions (iron oxide) appeared in the 2.5 YR $^{4}/_{3}$. The soil transitioned to a sandy loam, Gley 1 $^{5}/_{5GY}$ at the depth of 30 inches. No hydrology was observed and the soil conditions are not conclusive for evidence of a wetland. The chroma values were greater than 2 with the presence of mottles. Not all of the criteria were met. This stop is an upland habitat. (Figure 5)

Data Point #8 is located 75 feet northeast of DP#7. This stop is vegetated with reed canary grass, small-fruited bulrush, Himalayan blackberry, and red alder. The moist, sandy loam soil stayed consistent through a depth of 18 inches, 10 YR $^{3}/_{1}$. At a depth of 30 inches, the soil transitioned to a 2.5 Y $^{4}/_{1}$ with some slight gleying. No hydrology was observed but the reduced state of the soil indicates prolonged saturation. This stop indicates the presence of a wetland.

Data Point #9 is located 43 feet northeast of DP #8. There, vegetation consisted of a visible transition of reed canary grass to Himalayan blackberry, and giant horsetail. The dry, sandy loam was extremely hard and difficult to penetrate. The soil was consistent to a depth of 18 inches with color of 10 YR $^{3}/_{3}$ and some tiny granules of iron oxide concretion (>2%). The ground surface under the blackberry vines was clean and absent of leaf litter. Not all criteria were met. This stop is an upland habitat.

Data Point #10 is located 47 feet northeast of DP #9. There, reed canary grass dominates. Also present were Himalayan blackberry, skunk cabbage, and giant horsetail. At a depth of 12 inches, just below the organic horizon, some gleying was present (2.5 Y $^{3}/_{1}$). At a depth of 24 inches, the saturated soil transitioned to a Gley 2 $^{3}/_{5BG}$ with some iron oxide concretions. Groundwater began to leach into the test pit at a depth of 18 inches. This stop supports evidence of a wetland. (Figure 6)

Data Point #11 is located 77 feet northeast of DP #4. Here the canopy cover is greater than 50% with red Alder and red currant. Also found was Himalayan blackberry. The soil was a dry, sandy loam with color 10YR $^{3}/_{2}$. This stop is an upland habitat.

Data Point #12 is located 80 feet northeast of DP #11. This stop is dominated by Himalayan blackberry. Also found were giant horsetail, reed canary grass, and a few

sparse tufts of soft rush. The dry, hard soil was consistent through a depth of 24 inches. The color was a 10 YR 3/2. This stop is an upland habitat. (Figure 7)

## CONCLUSIONS

On August 11, 2000, Matt Johnson (AKS) examined vegetation, soils, and hydrology on and near the property of 1233 S.W. 9th Street (Tax Lot 8100). It was determined that areas of wetland do exist along the northern boundary of this site as well as the and in the southeastern portion of Tax Lot 8200. At the time of the site inspection, some of these areas were absent of hydrology. However, soil characteristics indicate saturation and/or inundation during a significant portion of the growing season. The United States Army Corps of Engineers and the Oregon Division of State Lands are the final authority of concerning wetlands. This determination is subject to their confirmation.

Matt Johnson
AKS Engineering & Forestry

**Figure 2. Data Point #1**
Facing east

**Figure 3. Data Point #2**
Facing northeast

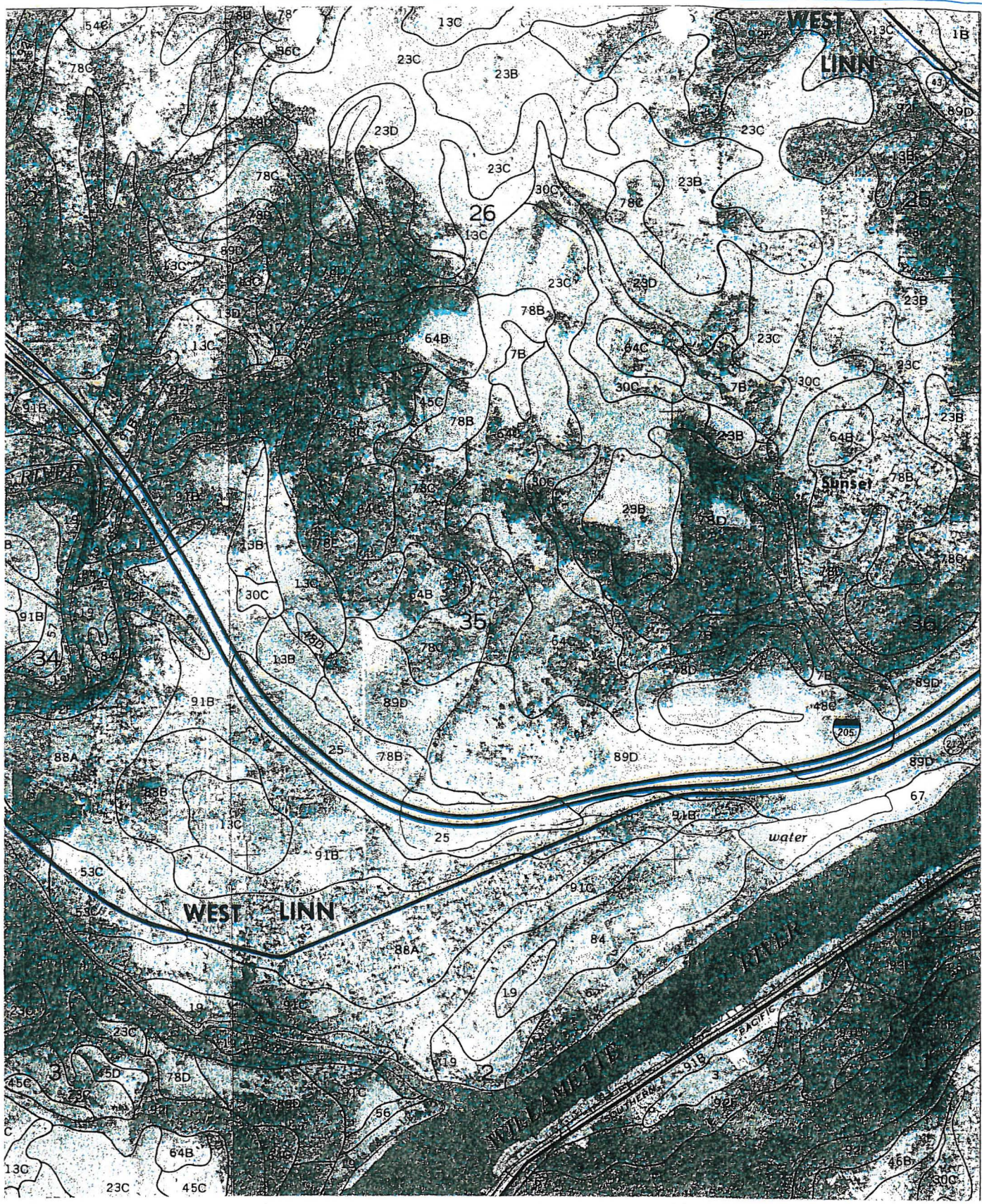
**Figure 4. Data Point #4**
Facing northeast

**Figure 5. Data Point #7**
Facing southeast

**Figure 6. Data Point #10**
Facing northeast

**Figure 7. Data Point #12**
Facing north

# APPENDIX




Appendix A

| AKS Engineering and Forestry | Soil Survey of Clackamas County | West Linn Replat |
|---|---|---|
| 18961 SW 84th Ave. | U.S. Department of Agriculture | 1233 SW 9th St |
| Tualatin, OR 97062 | Soil Conservation Service | West Linn, OR 97068 |
| 503-692-5887 | 1982 | |

# SOIL LEGEND

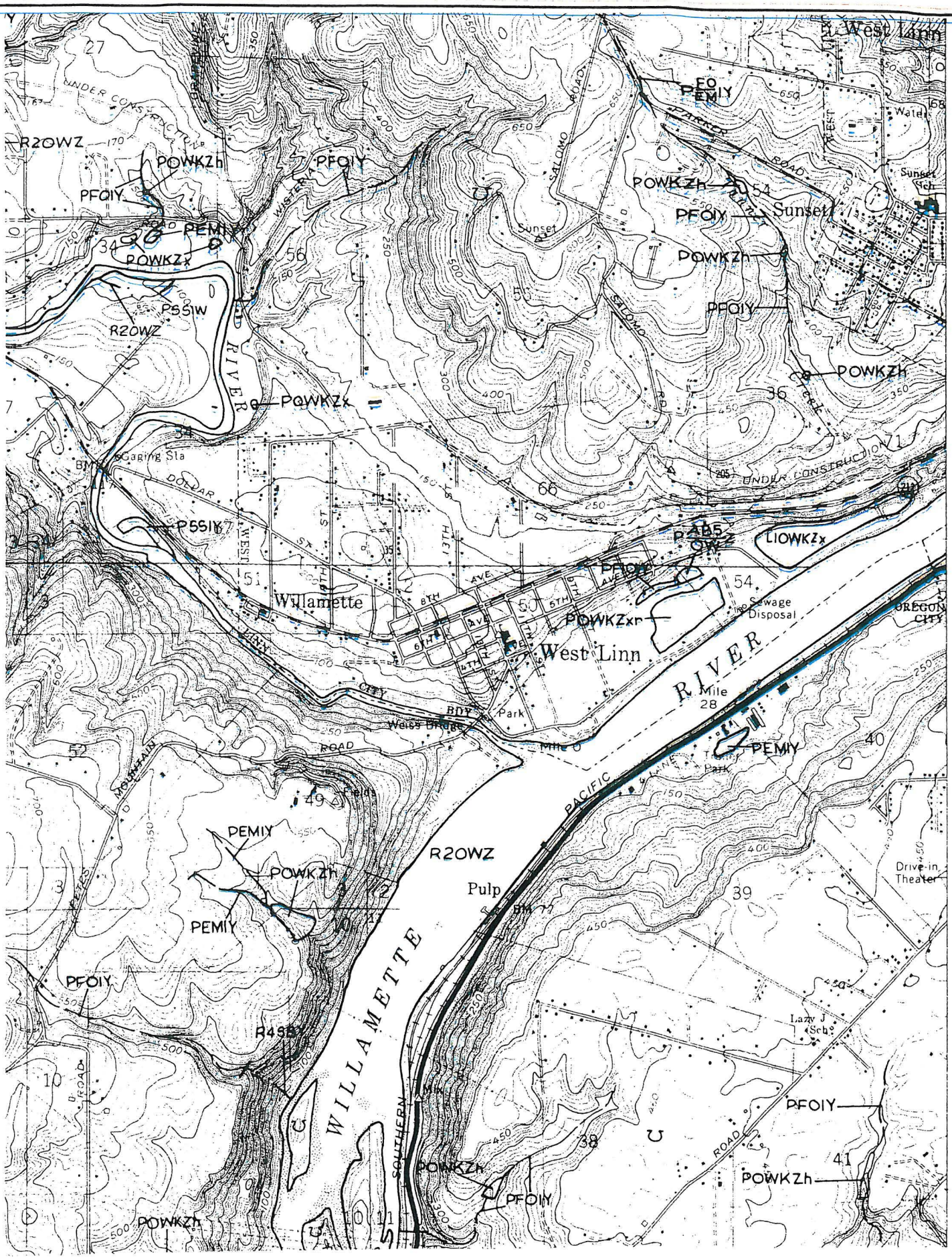
Arabic numerals in the symbols indicate a soil, miscellaneous area, or a phase of a soil, other than slope, that affects the use and management. The capital letters A, B, C, D, E, or F, following the numeral or numerals, indicates the slope class. Most of the symbols without a slope class are for nearly level soils but some are for miscellaneous areas with a fair to considerable range in slope.

| SYMBOL | NAME |
|---|---|
| 1A | Aloha silt loam, 0 to 3 percent slopes |
| 1B | Aloha silt loam, 3 to 6 percent slopes |
| 2B | Alspaugh clay loam, 2 to 8 percent slopes |
| 2C | Alspaugh clay loam, 8 to 15 percent slopes |
| 2D | Alspaugh clay loam, 15 to 30 percent slopes |
| 2E | Alspaugh clay loam, 30 to 50 percent slopes |
| 3 | Amity silt loam |
| 4E | Andic Cryaquepts, moderately steep |
| 4F | Andic Cryaquepts, steep |
| 5D | Aschoff cobbly loam, 5 to 30 percent slopes |
| 5E | Aschoff cobbly loam, 30 to 60 percent slopes |
| 6F | Aschoff-Brightwood complex, 60 to 90 percent slopes |
| 7B | Borges silty clay loam, 0 to 8 percent slopes |
| 8B | Bornstedt silt loam, 0 to 8 percent slopes |
| 8C | Bornstedt silt loam, 8 to 15 percent slopes |
| 8D | Bornstedt silt loam, 15 to 30 percent slopes |
| 9B | Bull Run silt loam, 3 to 8 percent slopes |
| 9D | Bull Run silt loam, 8 to 30 percent slopes |
| 9E | Bull Run silt loam, 30 to 60 percent slopes |
| 10C | Bull Run Variant silt loam, 0 to 12 percent slopes |
| 11 | Camas gravelly sandy loam |
| 12A | Canderly sandy loam, 0 to 3 percent slopes |
| 12B | Canderly sandy loam, 3 to 8 percent slopes |
| 13B | Cascade silt loam, 3 to 8 percent slopes |
| 13C | Cascade silt loam, 8 to 15 percent slopes |
| 13D | Cascade silt loam, 15 to 30 percent slopes |
| 13E | Cascade silt loam, 30 to 60 percent slopes |
| 14C | Cascade silt loam, stony substratum, 3 to 15 percent slopes |
| 14D | Cascade silt loam, stony substratum, 15 to 30 percent slopes |
| 14E | Cascade silt loam, stony substratum, 30 to 60 percent slopes |
| 15B | Cazadero silty clay loam, 0 to 7 percent slopes |
| 15C | Cazadero silty clay loam, 7 to 12 percent slopes |
| 15D | Cazadero silty clay loam, 12 to 20 percent slopes |
| 16 | Chehalis silt loam |
| 17 | Clackamas silt loam |
| 18 | Clackamas gravelly loam |
| 19 | Cloquato silt loam |
| 20 | Coburg silty clay loam |
| 21 | Concord silt loam |
| 22 | Conser silty clay loam |
| 23B | Cornelius silt loam, 3 to 8 percent slopes |
| 23C | Cornelius silt loam, 8 to 15 percent slopes |
| 23D | Cornelius silt loam, 15 to 30 percent slopes |
| 24B | Cottrell silty clay loam, 2 to 8 percent slopes |
| 24C | Cottrell silty clay loam, 8 to 15 percent slopes |
| 24D | Cottrell silty clay loam, 15 to 30 percent slopes |
| 25 | Cove silty clay loam |
| 26B | Crutch cobbly loamy coarse sand, 0 to 5 percent slopes |
| 27 | Crutch Variant loamy coarse sand, 0 to 3 percent slopes |
| 28 | Dabney loamy sand |
| 29 | Dayton silt loam |
| 30C | Delena silt loam, 3 to 12 percent slopes |
| 31F | Dystrochrepts, very steep |
| 32D | Fernwood very gravelly loam, 5 to 30 percent slopes |
| 32E | Fernwood very gravelly loam, 30 to 60 percent slopes |
| 33F | Fernwood-Rock outcrop complex, 50 to 90 percent slopes |
| 34D | Fernwood-Wilhoit complex, 5 to 30 percent slopes |
| 35D | Gapcot gravelly loam, 3 to 30 percent slopes |
| 35E | Gapcot gravelly loam, 30 to 60 percent slopes |
| 36B | Hardscrabble silt loam, 2 to 7 percent slopes |
| 36C | Hardscrabble silt loam, 7 to 20 percent slopes |
| 37B | Helvetia silt loam, 3 to 8 percent slopes |
| 37C | Helvetia silt loam, 8 to 15 percent slopes |
| 37D | Helvetia silt loam, 15 to 30 percent slopes |
| 38E | Highcamp very gravelly loam, 30 to 60 percent slopes |
| 39F | Highcamp-Rock outcrop complex, 50 to 90 percent slopes |
| 40D | Highcamp-Soosap complex, 5 to 30 percent slopes |
| 41 | Huberly silt loam |
| 42 | Humaquepts, ponded |
| 43D | Humaquepts, 2 to 20 percent slopes |
| 44B | Jimbo loam, cool, 0 to 5 percent slopes |
| 45B | Jory silty clay loam, 2 to 8 percent slopes |
| 45C | Jory silty clay loam, 8 to 15 percent slopes |
| 45D | Jory silty clay loam, 15 to 30 percent slopes |
| 45E | Jory silty clay loam, 30 to 60 percent slopes |
| 46B | Jory stony silt loam, 3 to 8 percent slopes |
| 46C | Jory stony silt loam, 8 to 15 percent slopes |
| 46D | Jory stony silt loam, 15 to 30 percent slopes |
| 47C | Kinney cobbly loam, 3 to 20 percent slopes |
| 47E | Kinney cobbly loam, 20 to 50 percent slopes |
| 48B | Kinton silt loam, 3 to 8 percent slopes |
| 48C | Kinton silt loam, 8 to 15 percent slopes |
| 48D | Kinton silt loam, 15 to 30 percent slopes |
| 49D | Kinzel-Divers complex, 5 to 30 percent slopes |
| 49E | Kinzel-Divers complex, 30 to 60 percent slopes |
| 49F | Kinzel-Divers complex, 60 to 90 percent slopes |
| 51E | Klickitat stony loam, 30 to 60 percent slopes |
| 52D | Klickitat-Kinney complex, 5 to 30 percent slopes |

| SYMBOL | NAME |
|---|---|
| 53A | Latourell loam, 0 to 3 percent slopes |
| 53B | Latourell loam, 3 to 8 percent slopes |
| 53C | Latourell loam, 8 to 15 percent slopes |
| 53D | Latourell loam, 15 to 30 percent slopes |
| 54B | Laurelwood silt loam, 3 to 8 percent slopes |
| 54C | Laurelwood silt loam, 8 to 15 percent slopes |
| 54D | Laurelwood silt loam, 15 to 30 percent slopes |
| 54E | Laurelwood silt loam, 30 to 60 percent slopes |
| 55 | Malabon silty clay loam |
| 56 | McBee silty clay loam |
| 57 | McBee Variant loam |
| 58C | McCully gravelly loam, 2 to 15 percent slopes |
| 58D | McCully gravelly loam, 15 to 30 percent slopes |
| 58E | McCully gravelly loam, 30 to 50 percent slopes |
| 59D | Memaloose loam, 5 to 30 percent slopes |
| 60B | Molalla cobbly loam, 2 to 8 percent slopes |
| 60C | Molalla cobbly loam, 8 to 15 percent slopes |
| 60D | Molalla cobbly loam, 15 to 30 percent slopes |
| 61A | Multnomah silt loam, 0 to 3 percent slopes |
| 62B | Multnomah cobbly silt loam, 0 to 7 percent slopes |
| 63B | Multorpor very cobbly loamy sand, 0 to 8 percent slopes |
| 64B | Nekia silty clay loam, 2 to 8 percent slopes |
| 64C | Nekia silty clay loam, 8 to 15 percent slopes |
| 64D | Nekia silty clay loam, 15 to 30 percent slopes |
| 65F | Newanna-Rock outcrop complex, 60 to 90 percent slopes |
| 66D | Newanna-Thader complex, 5 to 30 percent slopes |
| 66E | Newanna-Thader complex, 30 to 60 percent slopes |
| 67 | Newberg fine sandy loam |
| 68 | Newberg loam |
| 69 | Pits |
| 70B | Powell silt loam, 0 to 8 percent slopes |
| 70C | Powell silt loam, 8 to 15 percent slopes |
| 70D | Powell silt loam, 15 to 30 percent slopes |
| 71A | Quatama loam, 0 to 3 percent slopes |
| 71B | Quatama loam, 3 to 8 percent slopes |
| 71C | Quatama loam, 8 to 15 percent slopes |
| 72D | Ritner cobbly silty clay loam, 5 to 30 percent slopes |
| 72E | Ritner cobbly silty clay loam, 30 to 60 percent slopes |
| 73 | Riverwash |
| 74F | Rock outcrop-Cryochrepts complex, very steep |
| 75 | Rubble land |
| 76B | Salem silt loam, 0 to 7 percent slopes |
| 76C | Salem silt loam, 7 to 12 percent slopes |
| 77B | Salem gravelly silt loam, 0 to 7 percent slopes |
| 78B | Saum silt loam, 3 to 8 percent slopes |
| 78C | Saum silt loam, 8 to 15 percent slopes |
| 78D | Saum silt loam, 15 to 30 percent slopes |
| 78E | Saum silt loam, 30 to 60 percent slopes |
| 79B | Sawtell silt loam, 0 to 8 percent slopes |
| 79C | Sawtell silt loam, 8 to 15 percent slopes |
| 80B | Springwater loam, 2 to 8 percent slopes |
| 80C | Springwater loam, 8 to 15 percent slopes |
| 80D | Springwater loam, 15 to 30 percent slopes |
| 80E | Springwater loam, 30 to 60 percent slopes |
| 81D | Talapus-Lastance complex, 5 to 30 percent slopes |
| 81E | Talapus-Lastance complex, 30 to 60 percent slopes |
| 82 | Urban land |
| 83 | Wapato silt loam |
| 84 | Wapato silty clay loam |
| 85D | Wilhoit-Zygore gravelly loams, 5 to 30 percent slopes |
| 86A | Willamette silt loam, 0 to 3 percent slopes |
| 86B | Willamette silt loam, 3 to 8 percent slopes |
| 86C | Willamette silt loam, 8 to 15 percent slopes |
| 87A | Willamette silt loam, gravelly substratum, 0 to 3 percent slopes |
| 88A | Willamette silt loam, wet, 0 to 3 percent slopes |
| 88B | Willamette silt loam, wet, 3 to 7 percent slopes |
| 89D | Witzel very stony silt loam, 3 to 40 percent slopes |
| 90F | Witzel-Rock outcrop complex, 50 to 75 percent slopes |
| 91A | Woodburn silt loam, 0 to 3 percent slopes |
| 91B | Woodburn silt loam, 3 to 8 percent slopes |
| 91C | Woodburn silt loam, 8 to 15 percent slopes |
| 92F | Xerochrepts and Haploxerolls, very steep |
| 93E | Xerochrepts-Rock outcrop complex, moderately steep |
| 94D | Zygore gravelly loam, 5 to 30 percent slopes |
| 94E | Zygore gravelly loam, 30 to 60 percent slopes |
| 94F | Zygore gravelly loam, 60 to 90 percent slopes |
| 95E | Zygore-Wilhoit gravelly loams, 30 to 60 percent slopes |

Appendix B

| | | |
|---|---|---|
| **AKS Engineering and Forestry**<br>18961 SW 84th Ave.<br>Tualatin, OR 97062<br>503-692-5887 | **Soil Legend**<br>U.S. Department of Agriculture<br>Soil Conservation Service<br>1982 | **West Linn Replat**<br>1233 SW 9th St<br>West Linn, OR 97068 |




Appendix C

| AKS Engineering and Forestry | National Wetland Inventory | West Linn Replat |
|---|---|---|
| 18961 SW 84th Ave. | U.S. Department of Interior | 1233 SW 9th St |
| Tualatin, OR 97062 | US Fish & Wildlife Service | West Linn, OR 97068 |
| 503-692-5887 | 1994 | |

# DATA FORM
## ROUTINE WETLAND DETERMINATION
(1987 COE Wetlands Delineation Manual)

| | |
|---|---|
| Project/Site: West Linn Replat (9th St)<br>Applicant/Owner: Handris Realty<br>Investigator: Matt Johnson | Date: 8-11-00<br>County: Clackamas<br>State: OREGON |
| Do Normal Circumstances exist on the site? (Yes) No<br>Is the site significantly disturbed (Atypical Situation)? Yes (No)<br>Is the area a potential Problem Area? Yes (No)<br>(If needed, explain on reverse.) | Community ID: _____<br>Transect ID: _____<br>Plot ID: DATA POINT 1 |

## VEGETATION

| Dominant Plant Species | Stratum | Indicator |
|---|---|---|
| 1. Phalaris arundinacea | H | FACW |
| 2. Spiraea douglasii | S | FACW |
| 3. Salix scouleriana | T | FAC |
| 4. | | |
| 5. | | |
| 6. | | |
| 7. | | |
| 8. | | |

| Dominant Plant Species | Stratum | Indicator |
|---|---|---|
| 9. | | |
| 10. | | |
| 11. | | |
| 12. | | |
| 13. | | |
| 14. | | |
| 15. | | |
| 16. | | |

Percent of Dominant Species that are OBL, FACW or FAC (excluding FAC-): 100%

Remarks: This area was covered with thick mats of reed canary grass.

## HYDROLOGY

___ Recorded Data (Describe in Remarks):
- ___ Stream, Lake, or Tide Gauge
- ___ Aerial Photographs
- ___ Other

X No Recorded Data Available

Field Observations:

| | |
|---|---|
| Depth of Surface Water: | none (in.) |
| Depth to Free Water in Pit: | none (in.) |
| Depth to Saturated Soil: | none (in.) |

Wetland Hydrology Indicators:

Primary Indicators:
- ___ Inundated
- ___ Saturated in Upper 12 Inches
- ___ Water Marks
- ___ Drift Lines
- ___ Sediment Deposits
- X Drainage Patterns in Wetlands

Secondary Indicators (2 or more required):
- ___ Oxidized Root Channels in Upper 12 Inches
- ___ Water-Stained Leaves
- ___ Local Soil Survey Data
- ___ FAC-Neutral Test
- ___ Other (Explain in Remarks)

Remarks: There was no visible hydrology other than the appearance of a drainage pattern.

## SOILS

Map Unit Name (Series and Phase): Wapato

Drainage Class: _____

Field Observations Confirm Mapped Type? Yes No

Taxonomy (Subgroup): _____

Profile Description:

| Depth (inches) | Horizon | Matrix Color (Munsell Moist) | Mottle Colors (Munsell Moist) | Mottle Abundance/ Size/Contrast | Texture, Concretions, Structure, etc. |
|---|---|---|---|---|---|
| 10" | | 7.5 YR 2.5/1 | | none | silty loam |
| 12"-24" | | Gley1 4/N | 5YR 5/8 | 3% | very fine, silty |
| 30" | | Gley1 4/10Y | | none | silty. |

Hydric Soil Indicators:

- ___ Histosol
- X Histic Epipedon
- ___ Sulfidic Odor
- ___ Aquic Moisture Regime
- X Reducing Conditions
- X Gleyed or Low-Chroma Colors
- ___ Concretions
- ___ High Organic Content in Surface Layer in Sandy Soils
- ___ Organic Streaking in Sandy Soils
- ___ Listed on Local Hydric Soils List
- ___ Listed on National Hydric Soils List
- ___ Other (Explain in Remarks)

Remarks: Gleyed soils in the mineral horizons with some orangeish mottles.

## WETLAND DETERMINATION

| | | |
|---|---|---|
| Hydrophytic Vegetation Present? | (Yes) No (Circle) | (Circle) |
| Wetland Hydrology Present? | Yes (No) | Is this Sampling Point Within a Wetland? (Yes) No |
| Hydric Soils Present? | (Yes) No | |

Remarks: No hydrology was visible at the time of the site visit (8-11-00). There has been no measurable precipitation in more than 30 days.

Approved by HQUSACE 3/92

# DATA FORM
## ROUTINE WETLAND DETERMINATION
(1987 COE Wetlands Delineation Manual)

| | |
|---|---|
| Project/Site: West Linn Replat (9th St) | Date: 8-11-00 |
| Applicant/Owner: Handris Realty | County: Clackamas |
| Investigator: Matt Johnson | State: OR |
| Do Normal Circumstances exist on the site? (Yes) No | Community ID: |
| Is the site significantly disturbed (Atypical Situation)? Yes (No) | Transect ID: |
| Is the area a potential Problem Area? Yes (No) | Plot ID: Data Pt 2 |
| (If needed, explain on reverse.) | |

## VEGETATION

| Dominant Plant Species | Stratum | Indicator |
|---|---|---|
| 1. Rubus procerus | S | FACU |
| 2. Phalaris arundinacea | H | FACW |
| 3. Salix lucida | T | FACW |
| 4. Holcus lanatus | H | FAC |
| 5. Carex obnupta | H | OBL |
| 6. | | |
| 7. | | |
| 8. | | |

| Dominant Plant Species | Stratum | Indicator |
|---|---|---|
| 9. | | |
| 10. | | |
| 11. | | |
| 12. | | |
| 13. | | |
| 14. | | |
| 15. | | |
| 16. | | |

Percent of Dominant Species that are OBL, FACW or FAC (excluding FAC-). 80%

Remarks: This area is dominated with thick mats of reed canary grass.

## HYDROLOGY

___ Recorded Data (Describe in Remarks):
- ___ Stream, Lake, or Tide Gauge
- ___ Aerial Photographs
- ___ Other

X No Recorded Data Available

Field Observations:

Depth of Surface Water: none (in.)

Depth to Free Water in Pit: none (in.)

Depth to Saturated Soil: none (in.)

Wetland Hydrology Indicators:

Primary Indicators:
- ___ Inundated
- ___ Saturated in Upper 12 Inches
- ___ Water Marks
- ___ Drift Lines
- ___ Sediment Deposits
- X Drainage Patterns in Wetlands

Secondary Indicators (2 or more required):
- ___ Oxidized Root Channels in Upper 12 Inches
- ___ Water-Stained Leaves
- ___ Local Soil Survey Data
- ___ FAC-Neutral Test
- ___ Other (Explain in Remarks)

Remarks:

## SOILS

Map Unit Name (Series and Phase): Wapato

Drainage Class: _____

Field Observations Confirm Mapped Type? Yes No

Taxonomy (Subgroup): _____

Profile Description:

| Depth (inches) | Horizon | Matrix Color (Munsell Moist) | Mottle Colors (Munsell Moist) | Mottle Abundance/ Size/Contrast | Texture, Concretions, Structure, etc. |
|---|---|---|---|---|---|
| 12" | | 10YR 3/2 | | | clay, loam |
| 18" | | 10YR 3/1 | | | clay, loam |
| 24"-30" | | 5Y 4/1 | 5Y 6/4 | 3% | clay loam |

Hydric Soil Indicators:

- ___ Histosol
- X Histic Epipedon
- ___ Sulfidic Odor
- ___ Aquic Moisture Regime
- X Reducing Conditions
- X Gleyed or Low-Chroma Colors
- ___ Concretions
- ___ High Organic Content in Surface Layer in Sandy Soils
- ___ Organic Streaking in Sandy Soils
- ___ Listed on Local Hydric Soils List
- ___ Listed on National Hydric Soils List
- ___ Other (Explain in Remarks)

Remarks: The soil at this stop had mottles & low chroma values.

## WETLAND DETERMINATION

| | | |
|---|---|---|
| Hydrophytic Vegetation Present? | (Yes) No (Circle) | (Circle) |
| Wetland Hydrology Present? | Yes (No) | Is this Sampling Point Within a Wetland? (Yes) No |
| Hydric Soils Present? | (Yes) No | |

Remarks:

Vegetation and soil characteristics confirm presence of a wetland. Evidence of inundation and soil saturation were not observed due lack of precipitation (dry conditions).

Approved by HQUSACE 3/92

# DATA FORM
## ROUTINE WETLAND DETERMINATION
(1987 COE Wetlands Delineation Manual)

Project/Site: West Linn Replat (9th St)
Applicant/Owner: Hanoris Realty
Investigator: Matt Johnson

Date: 8-11-00
County: Clackamas
State: OR

Do Normal Circumstances exist on the site? (Yes) No
Is the site significantly disturbed (Atypical Situation)? Yes (No)
Is the area a potential Problem Area? Yes (No)
(If needed, explain on reverse.)

Community ID: _____
Transect ID: _____
Plot ID: Data Pt 3

## VEGETATION

| Dominant Plant Species | Stratum | Indicator |
|---|---|---|
| 1. Phalaris arundinacea | H | FACW |
| 2. Spiraea douglasii | S | FACW |
| 3. Rosa nutkana | S | FAC |
| 4. | | |
| 5. | | |
| 6. | | |
| 7. | | |
| 8. | | |

| Dominant Plant Species | Stratum | Indicator |
|---|---|---|
| 9. | | |
| 10. | | |
| 11. | | |
| 12. | | |
| 13. | | |
| 14. | | |
| 15. | | |
| 16. | | |

Percent of Dominant Species that are OBL, FACW or FAC (excluding FAC-). 100%

Remarks: Reed canary grass dominates this area.

## HYDROLOGY

___ Recorded Data (Describe in Remarks):
___ Stream, Lake, or Tide Gauge
___ Aerial Photographs
___ Other
X No Recorded Data Available

Field Observations:

Depth of Surface Water: none (in.)
Depth to Free Water in Pit: none (in.)
Depth to Saturated Soil: none (in.)

Wetland Hydrology Indicators:
Primary Indicators:
___ Inundated
___ Saturated in Upper 12 Inches
___ Water Marks
___ Drift Lines
___ Sediment Deposits
X Drainage Patterns in Wetlands
Secondary Indicators (2 or more required):
___ Oxidized Root Channels in Upper 12 Inches
___ Water-Stained Leaves
___ Local Soil Survey Data
___ FAC-Neutral Test
___ Other (Explain in Remarks)

Remarks:

## SOILS

Map Unit Name (Series and Phase): Wapato

Drainage Class: _____

Field Observations Confirm Mapped Type? Yes No

Taxonomy (Subgroup): _____

Profile Description:

| Depth (inches) | Horizon | Matrix Color (Munsell Moist) | Mottle Colors (Munsell Moist) | Mottle Abundance/ Size/Contrast | Texture, Concretions, Structure, etc. |
|---|---|---|---|---|---|
| 12" | | 2.5 YR 3/1 | | | |
| 30" | | 5Y 4/1 | 5Y 7/4 | 5% | clay, loam |
| | | | | | |
| | | | | | |

Hydric Soil Indicators:

- ___ Histosol
- X Histic Epipedon
- ___ Sulfidic Odor
- ___ Aquic Moisture Regime
- X Reducing Conditions
- X Gleyed or Low-Chroma Colors
- ___ Concretions
- ___ High Organic Content in Surface Layer in Sandy Soils
- ___ Organic Streaking in Sandy Soils
- ___ Listed on Local Hydric Soils List
- ___ Listed on National Hydric Soils List
- ___ Other (Explain in Remarks)

Remarks: The soil at this stop had mottles and low chroma values.

## WETLAND DETERMINATION

Hydrophytic Vegetation Present? (Yes) No (Circle)
Wetland Hydrology Present? Yes (No)
Hydric Soils Present? (Yes) No

(Circle)
Is this Sampling Point Within a Wetland? (Yes) No

Remarks:

Vegetative and soil criteria was met. No hydrology was observed but soil characteristics indicate significant saturation during a major portion of the growing season.

Approved by HQUSACE 3/92

DATA FORM
ROUTINE WETLAND DETERMINATION
(1987 COE Wetlands Delineation Manual)

Project/Site: West Linn Replat (9th St)
Applicant/Owner: HANDRIS REALTY
Investigator: MATT JOHNSON

Date: 8-11-00
County: Clackamas
State: OR

Do Normal Circumstances exist on the site? (Yes) No
Is the site significantly disturbed (Atypical Situation)? Yes (No)
Is the area a potential Problem Area? Yes (No)
(If needed, explain on reverse.)

Community ID: _____
Transect ID: _____
Plot ID: Data Pt 4

## VEGETATION

| Dominant Plant Species | Stratum | Indicator |
|---|---|---|
| 1. Phalaris arundinacea | H | FACW |
| 2. Rubus procerus | S | FACU |
| 3. | | |
| 4. | | |
| 5. | | |
| 6. | | |
| 7. | | |
| 8. | | |
| 9. | | |
| 10. | | |
| 11. | | |
| 12. | | |
| 13. | | |
| 14. | | |
| 15. | | |
| 16. | | |

Percent of Dominant Species that are OBL, FACW or FAC (excluding FAC-). 50%

Remarks: Still, thick mats of Reed canary grass dominate.

## HYDROLOGY

___ Recorded Data (Describe in Remarks):
___ Stream, Lake, or Tide Gauge
___ Aerial Photographs
___ Other
X No Recorded Data Available

Field Observations:

Depth of Surface Water: none (in.)
Depth to Free Water in Pit: none (in.)
Depth to Saturated Soil: none (in.)

Wetland Hydrology Indicators:
Primary Indicators:
___ Inundated
___ Saturated in Upper 12 Inches
___ Water Marks
___ Drift Lines
___ Sediment Deposits
X Drainage Patterns in Wetlands
Secondary Indicators (2 or more required):
___ Oxidized Root Channels in Upper 12 Inches
___ Water-Stained Leaves
___ Local Soil Survey Data
___ FAC-Neutral Test
___ Other (Explain in Remarks)

Remarks: A dry creek channel emerged from the vegetation NE from this test pit.

## SOILS

Map Unit Name (Series and Phase): Wapato

Drainage Class: _____

Field Observations

Confirm Mapped Type? Yes No

Taxonomy (Subgroup): _____

Profile Description:

| Depth (inches) | Horizon | Matrix Color (Munsell Moist) | Mottle Colors (Munsell Moist) | Mottle Abundance/ Size/Contrast | Texture, Concretions, Structure, etc. |
|---|---|---|---|---|---|
| 12" | | 10 YR 3/1 | | - | clay silty loam |
| 30" | | Gley 1 4/0r | | - | clay loam |

Hydric Soil Indicators:

- ___ Histosol
- X Histic Epipedon
- ___ Sulfidic Odor
- ___ Aquic Moisture Regime
- X Reducing Conditions
- X Gleyed or Low-Chroma Colors
- ___ Concretions
- ___ High Organic Content in Surface Layer in Sandy Soils
- ___ Organic Streaking in Sandy Soils
- ___ Listed on Local Hydric Soils List
- ___ Listed on National Hydric Soils List
- ___ Other (Explain in Remarks)

Remarks: The soil has a gleyed color and low chroma values.

## WETLAND DETERMINATION

| | | |
|---|---|---|
| Hydrophytic Vegetation Present? | (Yes) No (Circle) | (Circle) |
| Wetland Hydrology Present? | Yes (No) | Is this Sampling Point Within a Wetland? (Yes) No |
| Hydric Soils Present? | (Yes) No | |

Remarks: No surface hydrology was observed on 8-11-00. However, a dry creek channel supports evidence of a drainage pattern.

Approved by HQUSACE 3/92

# DATA FORM
## ROUTINE WETLAND DETERMINATION
(1987 COE Wetlands Delineation Manual)

Project/Site: West Linn Replat (9th St)
Applicant/Owner: Handris Realty
Investigator: Matt Johnson

Date: 8-11-00
County: Clackamas
State: OR

Do Normal Circumstances exist on the site? (Yes) No
Is the site significantly disturbed (Atypical Situation)? Yes (No)
Is the area a potential Problem Area? Yes (No)
(If needed, explain on reverse.)

Community ID:
Transect ID:
Plot ID: Data Pt 5

## VEGETATION

| Dominant Plant Species | Stratum | Indicator |
|---|---|---|
| 1. Phalaris arundinacea | H | FACW |
| 2. Rubus procerus | S | FACU |
| 3. Scirpus microcarpus | H | OBL |
| 4. | | |
| 5. | | |
| 6. | | |
| 7. | | |
| 8. | | |

| Dominant Plant Species | Stratum | Indicator |
|---|---|---|
| 9. | | |
| 10. | | |
| 11. | | |
| 12. | | |
| 13. | | |
| 14. | | |
| 15. | | |
| 16. | | |

Percent of Dominant Species that are OBL, FACW or FAC (excluding FAC-). 67%

Remarks:

## HYDROLOGY

___ Recorded Data (Describe in Remarks):
___ Stream, Lake, or Tide Gauge
___ Aerial Photographs
___ Other
X No Recorded Data Available

Field Observations:

Depth of Surface Water: none (in.)
Depth to Free Water in Pit: none (in.)
Depth to Saturated Soil: 24" (in.)

Wetland Hydrology Indicators:
Primary Indicators:
X Inundated
___ Saturated in Upper 12 Inches
___ Water Marks
___ Drift Lines
___ Sediment Deposits
___ Drainage Patterns in Wetlands
Secondary Indicators (2 or more required):
___ Oxidized Root Channels in Upper 12 Inches
___ Water-Stained Leaves
___ Local Soil Survey Data
___ FAC-Neutral Test
___ Other (Explain in Remarks)

Remarks: Standing water was observed just a few feet to the east.

## SOILS

Map Unit Name (Series and Phase): Wapato

Drainage Class: _____

Taxonomy (Subgroup): _____

Field Observations Confirm Mapped Type? Yes No

Profile Description:

| Depth (inches) | Horizon | Matrix Color (Munsell Moist) | Mottle Colors (Munsell Moist) | Mottle Abundance/ Size/Contrast | Texture, Concretions, Structure, etc. |
|---|---|---|---|---|---|
| 8" | | 10YR 3/1 | | - | silty loam |
| 18" | | Gley1 3/N | | - | clay loam |
| 30" | | Gley1 3/10Y | | - | clay loam |
| | | | | | |
| | | | | | |

Hydric Soil Indicators:

- ___ Histosol
- ___ Histic Epipedon
- X Sulfidic Odor
- ___ Aquic Moisture Regime
- X Reducing Conditions
- X Gleyed or Low-Chroma Colors
- ___ Concretions
- ___ High Organic Content in Surface Layer in Sandy Soils
- ___ Organic Streaking in Sandy Soils
- ___ Listed on Local Hydric Soils List
- ___ Listed on National Hydric Soils List
- ___ Other (Explain in Remarks)

Remarks: Strong Sulfidic ordor, and gleyed colors were obvious.

## WETLAND DETERMINATION

| | | |
|---|---|---|
| Hydrophytic Vegetation Present? | (Yes) No (Circle) | (Circle) |
| Wetland Hydrology Present? | (Yes) No | |
| Hydric Soils Present? | (Yes) No | Is this Sampling Point Within a Wetland? (Yes) No |

Remarks: All three criteria were met.

Approved by HQUSACE 3/92

DATA FORM
ROUTINE WETLAND DETERMINATION
(1987 COE Wetlands Delineation Manual)

Project/Site: West Linn Replat
Applicant/Owner: HANDRIS REALTY
Investigator: Matt Johnson

Date: 8-11-00
County: Clackamas
State: OR

Do Normal Circumstances exist on the site? (Yes) No
Is the site significantly disturbed (Atypical Situation)? Yes (No)
Is the area a potential Problem Area? Yes (No)
(If needed, explain on reverse.)

Community ID: _____
Transect ID: _____
Plot ID: Data Pt 6

## VEGETATION

| Dominant Plant Species | Stratum | Indicator |
|---|---|---|
| 1. Phalaris arundinacea | H | FACW |
| 2. Rubus procerus | S | FACU |
| 3. | | |
| 4. | | |
| 5. | | |
| 6. | | |
| 7. | | |
| 8. | | |

| Dominant Plant Species | Stratum | Indicator |
|---|---|---|
| 9. | | |
| 10. | | |
| 11. | | |
| 12. | | |
| 13. | | |
| 14. | | |
| 15. | | |
| 16. | | |

Percent of Dominant Species that are OBL, FACW or FAC (excluding FAC-). 50%

Remarks: This area was mostly dominated by reed canary grass.

## HYDROLOGY

___ Recorded Data (Describe in Remarks):
___ Stream, Lake, or Tide Gauge
___ Aerial Photographs
___ Other
X No Recorded Data Available

Field Observations:

Depth of Surface Water: none (in.)
Depth to Free Water in Pit: none (in.)
Depth to Saturated Soil: 18 (in.)

Wetland Hydrology Indicators:
Primary Indicators:
___ Inundated
___ Saturated in Upper 12 Inches
___ Water Marks
___ Drift Lines
___ Sediment Deposits
___ Drainage Patterns in Wetlands
Secondary Indicators (2 or more required):
___ Oxidized Root Channels in Upper 12 Inches
___ Water-Stained Leaves
___ Local Soil Survey Data
___ FAC-Neutral Test
___ Other (Explain in Remarks)

Remarks: No surface hydrology was observed on 8-11-00. Some surface water was seen in the vicinity.

## SOILS

Map Unit Name (Series and Phase): Wapato

Drainage Class: _____

Field Observations Confirm Mapped Type? Yes No

Taxonomy (Subgroup): _____

Profile Description:

| Depth (inches) | Horizon | Matrix Color (Munsell Moist) | Mottle Colors (Munsell Moist) | Mottle Abundance/ Size/Contrast | Texture, Concretions, Structure, etc. |
|---|---|---|---|---|---|
| 8" | | 10 YR 3/1 | | | silty loam |
| 18" | | 10YR 3/1 | blk concretions | > 2% | silty loam |
| 30" | | 10YR 4/1 | | | sandy loam |

Hydric Soil Indicators:

- ___ Histosol
- X Histic Epipedon
- ___ Sulfidic Odor
- ___ Aquic Moisture Regime
- X Reducing Conditions
- X Gleyed or Low-Chroma Colors
- X Concretions
- ___ High Organic Content in Surface Layer in Sandy Soils
- ___ Organic Streaking in Sandy Soils
- ___ Listed on Local Hydric Soils List
- ___ Listed on National Hydric Soils List
- ___ Other (Explain in Remarks)

Remarks: At the depth of 18", some dark, black concretions were found; Most likely manganese oxide. Grain size - very fine / Proportion = >2% A slight hint of gleying was also observed in the soil.

## WETLAND DETERMINATION

| | | |
|---|---|---|
| Hydrophytic Vegetation Present? | (Yes) No (Circle) | (Circle) |
| Wetland Hydrology Present? | Yes (No) | |
| Hydric Soils Present? | (Yes) No | Is this Sampling Point Within a Wetland? (Yes) No |

Remarks: There was no visible hydrology was observed on 8-11-00. Soil characteristics indicate that this area has prolonged inundation during the growing season.

Approved by HQUSACE 3/92

DATA FORM
ROUTINE WETLAND DETERMINATION
(1987 COE Wetlands Delineation Manual)

Project/Site: West Linn Replat (9th St)
Applicant/Owner: HANDRIS REALTY
Investigator: MATT JOHNSON

Date: 8-11-00
County: Clackamas
State: OR

Do Normal Circumstances exist on the site? (Yes) No
Is the site significantly disturbed (Atypical Situation)? Yes (No)
Is the area a potential Problem Area? Yes (No)
(If needed, explain on reverse.)

Community ID: _____
Transect ID: _____
Plot ID: Data Pt 7

## VEGETATION

| Dominant Plant Species | Stratum | Indicator |
|---|---|---|
| 1. Phalaris arundinacea | H | FACW |
| 2. Rubus procerus | S | FACU |
| 3. | | |
| 4. | | |
| 5. | | |
| 6. | | |
| 7. | | |
| 8. | | |

| Dominant Plant Species | Stratum | Indicator |
|---|---|---|
| 9. | | |
| 10. | | |
| 11. | | |
| 12. | | |
| 13. | | |
| 14. | | |
| 15. | | |
| 16. | | |

Percent of Dominant Species that are OBL, FACW or FAC (excluding FAC-): 50%

Remarks: This area is dominated by reed canary grass and Himalayan blackberry.

## HYDROLOGY

___ Recorded Data (Describe in Remarks):
___ Stream, Lake, or Tide Gauge
___ Aerial Photographs
___ Other
X No Recorded Data Available

Field Observations:

Depth of Surface Water: none (in.)
Depth to Free Water in Pit: none (in.)
Depth to Saturated Soil: none (in.)

Wetland Hydrology Indicators:
Primary Indicators:
___ Inundated
___ Saturated in Upper 12 Inches
___ Water Marks
___ Drift Lines
___ Sediment Deposits
___ Drainage Patterns in Wetlands
Secondary Indicators (2 or more required):
___ Oxidized Root Channels in Upper 12 Inches
___ Water-Stained Leaves
___ Local Soil Survey Data
___ FAC-Neutral Test
___ Other (Explain in Remarks)

Remarks: No hydrology observed on 8-11-00.

## SOILS

Map Unit Name (Series and Phase): Wapato

Drainage Class: _____

Field Observations

Confirm Mapped Type? Yes No

Taxonomy (Subgroup): _____

Profile Description:

| Depth (inches) | Horizon | Matrix Color (Munsell Moist) | Mottle Colors (Munsell Moist) | Mottle Abundance/ Size/Contrast | Texture, Concretions, Structure, etc. |
|---|---|---|---|---|---|
| 8" | | 5 YR 3/3 | | | silty loam |
| 18" | | 2.5 YR 4/3 | orange concretions | | silty loam |
| 30" | | Gley 1 5/5GY | | | sandy loam |

Hydric Soil Indicators:

- ___ Histosol
- ___ Histic Epipedon
- ___ Sulfidic Odor
- ___ Aquic Moisture Regime
- X Reducing Conditions
- X Gleyed or Low-Chroma Colors
- X Concretions
- ___ High Organic Content in Surface Layer in Sandy Soils
- ___ Organic Streaking in Sandy Soils
- ___ Listed on Local Hydric Soils List
- ___ Listed on National Hydric Soils List
- ___ Other (Explain in Remarks)

Remarks: Some gleying was present at a depth of 30" however, the upper regions had chroma values greater than 2. Orange particles we found at a depth of 18"; Likely iron oxide concretions.

## WETLAND DETERMINATION

| | | (Circle) |
|---|---|---|
| Hydrophytic Vegetation Present? | Yes (No) | |
| Wetland Hydrology Present? | Yes (No) | |
| Hydric Soils Present? | Yes (No) | |
| Is this Sampling Point Within a Wetland? | Yes (No) | |

Remarks: Not all the criteria was met, Soil conditions are not conclusive for evidence of a wetland. There was no hydrology present.

Approved by HQUSACE 3/92

# DATA FORM
## ROUTINE WETLAND DETERMINATION
(1987 COE Wetlands Delineation Manual)

Project/Site: West Linn Replat (9th St)
Applicant/Owner: HANDRIS REALTY
Investigator: MATT JOHNSON

Date: 8-11-00
County: Clackamas
State: OR

Do Normal Circumstances exist on the site? (Yes) No
Is the site significantly disturbed (Atypical Situation)? Yes (No)
Is the area a potential Problem Area? Yes (No)
(If needed, explain on reverse.)

Community ID: _____
Transect ID: _____
Plot ID: Data Pt 8

## VEGETATION

| Dominant Plant Species | Stratum | Indicator |
|---|---|---|
| 1. Phalaris arundinacea | H | FACW |
| 2. Rubus procerus | S | FACU |
| 3. Alnus rubra | T | FAC |
| 4. Scirpus microcarpus | H | OBL |
| 5. | | |
| 6. | | |
| 7. | | |
| 8. | | |

| Dominant Plant Species | Stratum | Indicator |
|---|---|---|
| 9. | | |
| 10. | | |
| 11. | | |
| 12. | | |
| 13. | | |
| 14. | | |
| 15. | | |
| 16. | | |

Percent of Dominant Species that are OBL, FACW or FAC (excluding FAC-). 75%

Remarks: This area is dominated by reed canary grass but also has a significant population of small fruited bulrush.

## HYDROLOGY

___ Recorded Data (Describe in Remarks):
___ Stream, Lake, or Tide Gauge
___ Aerial Photographs
___ Other
X No Recorded Data Available

Field Observations:
Depth of Surface Water: none (in.)
Depth to Free Water in Pit: none (in.)
Depth to Saturated Soil: none (in.)

Wetland Hydrology Indicators:
Primary Indicators:
___ Inundated
___ Saturated in Upper 12 Inches
___ Water Marks
___ Drift Lines
___ Sediment Deposits
X Drainage Patterns in Wetlands
Secondary Indicators (2 or more required):
___ Oxidized Root Channels in Upper 12 Inches
___ Water-Stained Leaves
___ Local Soil Survey Data
___ FAC-Neutral Test
___ Other (Explain in Remarks)

Remarks: No hydrology observed on 8-11-00.

## SOILS

Map Unit Name (Series and Phase): Wapato

Drainage Class: _____

Field Observations

Confirm Mapped Type? Yes No

Taxonomy (Subgroup): _____

Profile Description:

| Depth (inches) | Horizon | Matrix Color (Munsell Moist) | Mottle Colors (Munsell Moist) | Mottle Abundance/ Size/Contrast | Texture, Concretions, Structure, etc. |
|---|---|---|---|---|---|
| 12" | | 10YR 3/1 | | | sandy loam |
| 18" | | 10YR 3/1 | | | sandy loam |
| 30" | | 2.5 Y 4/1 | | | sandy loam |

Hydric Soil Indicators:

- ___ Histosol
- X Histic Epipedon
- ___ Sulfidic Odor
- ___ Aquic Moisture Regime
- X Reducing Conditions
- X Gleyed or Low-Chroma Colors
- ___ Concretions
- ___ High Organic Content in Surface Layer in Sandy Soils
- ___ Organic Streaking in Sandy Soils
- ___ Listed on Local Hydric Soils List
- ___ Listed on National Hydric Soils List
- ___ Other (Explain in Remarks)

Remarks: At the depth of 30", the soil displayed slight gleying. All chroma values were one (1).

## WETLAND DETERMINATION

| | | |
|---|---|---|
| Hydrophytic Vegetation Present? | (Yes) No (Circle) | (Circle) |
| Wetland Hydrology Present? | Yes (No) | |
| Hydric Soils Present? | (Yes) No | Is this Sampling Point Within a Wetland? (Yes) No |

Remarks: Vegetative and soil indicators point to existance of wetland. Absence of hydrology is most likely due to the dry conditions.

Approved by HQUSACE 3/92

DATA FORM
ROUTINE WETLAND DETERMINATION
(1987 COE Wetlands Delineation Manual)

Project/Site: West Linn Replat (9th St)
Applicant/Owner: HANDRIS REALTY
Investigator: MATT JOHNSON

Date: 8-11-00
County: Clackamas
State: OR

Do Normal Circumstances exist on the site? (Yes) No
Is the site significantly disturbed (Atypical Situation)? Yes (No)
Is the area a potential Problem Area? Yes (No)
(If needed, explain on reverse.)

Community ID: _____
Transect ID: _____
Plot ID: Data Pt 9

## VEGETATION

| Dominant Plant Species | Stratum | Indicator |
|---|---|---|
| 1. Rubus procerus | S | FACU |
| 2. Phalaris arundinacea | H | FACW |
| 3. Equisetum telmateia | H | FACW |
| 4. | | |
| 5. | | |
| 6. | | |
| 7. | | |
| 8. | | |

| Dominant Plant Species | Stratum | Indicator |
|---|---|---|
| 9. | | |
| 10. | | |
| 11. | | |
| 12. | | |
| 13. | | |
| 14. | | |
| 15. | | |
| 16. | | |

Percent of Dominant Species that are OBL, FACW or FAC (excluding FAC-). 67%

Remarks: This area has a distinct transitition from reed canary grass to thick vines of Himalayan blackberry.

## HYDROLOGY

___ Recorded Data (Describe in Remarks):
___ Stream, Lake, or Tide Gauge
___ Aerial Photographs
___ Other
X No Recorded Data Available

Field Observations:

Depth of Surface Water: none (in.)
Depth to Free Water in Pit: none (in.)
Depth to Saturated Soil: none (in.)

Wetland Hydrology Indicators:
Primary Indicators:
___ Inundated
___ Saturated in Upper 12 Inches
___ Water Marks
___ Drift Lines
___ Sediment Deposits
X Drainage Patterns in Wetlands
Secondary Indicators (2 or more required):
___ Oxidized Root Channels in Upper 12 Inches
___ Water-Stained Leaves
___ Local Soil Survey Data
___ FAC-Neutral Test
___ Other (Explain in Remarks)

Remarks: There appears to be a 4' dry channel absent of leaf litter.

## SOILS

Map Unit Name (Series and Phase): Wapato

Drainage Class: _____

Field Observations

Confirm Mapped Type? Yes No

Taxonomy (Subgroup): _____

Profile Description:

| Depth (inches) | Horizon | Matrix Color (Munsell Moist) | Mottle Colors (Munsell Moist) | Mottle Abundance/ Size/Contrast | Texture, Concretions, Structure, etc. |
|---|---|---|---|---|---|
| 12" | | 10YR 3/3 | orange concretions | > 2% | Sandy loam |
| 18" | | 10YR 3/3 | | | Sandy loam |
| | | | | | |
| | | | | | |

Hydric Soil Indicators:

- ___ Histosol
- ___ Histic Epipedon
- ___ Sulfidic Odor
- ___ Aquic Moisture Regime
- ___ Reducing Conditions
- ___ Gleyed or Low-Chroma Colors
- X Concretions
- ___ High Organic Content in Surface Layer in Sandy Soils
- ___ Organic Streaking in Sandy Soils
- ___ Listed on Local Hydric Soils List
- ___ Listed on National Hydric Soils List
- ___ Other (Explain in Remarks)

Remarks: The soil was extremely hard and difficult to penetrate. The soil was also very dry and dusty even at depth.

## WETLAND DETERMINATION

| | | (Circle) |
|---|---|---|
| Hydrophytic Vegetation Present? | Yes (No) | |
| Wetland Hydrology Present? | Yes (No) | |
| Hydric Soils Present? | Yes (No) | |
| Is this Sampling Point Within a Wetland? | Yes (No) | |

Remarks:

Not all of the criteria was met.

Approved by HQUSACE 3/92

# DATA FORM
## ROUTINE WETLAND DETERMINATION
(1987 COE Wetlands Delineation Manual)

Project/Site: West Linn Replat (9th St)
Applicant/Owner: HANDRIS REALTY
Investigator: MATT JOHNSON

Date: 8-11-00
County: Clackamas
State: OR

Do Normal Circumstances exist on the site? (Yes) No
Is the site significantly disturbed (Atypical Situation)? Yes (No)
Is the area a potential Problem Area? Yes (No)
(If needed, explain on reverse.)

Community ID: _____
Transect ID: _____
Plot ID: Data Pt 10

## VEGETATION

| Dominant Plant Species | Stratum | Indicator |
|---|---|---|
| 1. Phalaris arundinacea | H | FACW |
| 2. Rubus procerus | S | FACU |
| 3. Equisetum telmateia | H | FACW |
| 4. Lysichiton americanum | H | OBL |
| 5. | | |
| 6. | | |
| 7. | | |
| 8. | | |

| Dominant Plant Species | Stratum | Indicator |
|---|---|---|
| 9. | | |
| 10. | | |
| 11. | | |
| 12. | | |
| 13. | | |
| 14. | | |
| 15. | | |
| 16. | | |

Percent of Dominant Species that are OBL, FACW or FAC (excluding FAC-). 75%

Remarks: This area was dominated by reed canary grass.

## HYDROLOGY

___ Recorded Data (Describe in Remarks):
___ Stream, Lake, or Tide Gauge
___ Aerial Photographs
___ Other
X No Recorded Data Available

Field Observations:

Depth of Surface Water: none (in.)
Depth to Free Water in Pit: none (in.)
Depth to Saturated Soil: 18* (in.)

Wetland Hydrology Indicators:
Primary Indicators:
___ Inundated
___ Saturated in Upper 12 Inches
___ Water Marks
___ Drift Lines
___ Sediment Deposits
X Drainage Patterns in Wetlands
Secondary Indicators (2 or more required):
___ Oxidized Root Channels in Upper 12 Inches
___ Water-Stained Leaves
___ Local Soil Survey Data
___ FAC-Neutral Test
___ Other (Explain in Remarks)

Remarks: The ground surface was absent of leaf litter.

## SOILS

Map Unit Name (Series and Phase): Wapato

Drainage Class: _____

Field Observations Confirm Mapped Type? Yes No

Taxonomy (Subgroup): _____

Profile Description:

| Depth (inches) | Horizon | Matrix Color (Munsell Moist) | Mottle Colors (Munsell Moist) | Mottle Abundance/ Size/Contrast | Texture, Concretions, Structure, etc. |
|---|---|---|---|---|---|
| 12" | | 2.5 Y 3/1 | | | clay loam |
| 24" | | Gley 2 3/5BG | 5YR 4/6 Concretion color | 2% | orange concretions |

Hydric Soil Indicators:

- ___ Histosol
- X Histic Epipedon
- ___ Sulfidic Odor
- ___ Aquic Moisture Regime
- X Reducing Conditions
- X Gleyed or Low-Chroma Colors
- X Concretions
- ___ High Organic Content in Surface Layer in Sandy Soils
- ___ Organic Streaking in Sandy Soils
- ___ Listed on Local Hydric Soils List
- ___ Listed on National Hydric Soils List
- ___ Other (Explain in Remarks)

Remarks: This site had some gleyed soils and iron oxide concretions.

## WETLAND DETERMINATION

| | | |
|---|---|---|
| Hydrophytic Vegetation Present? | (Yes) No (Circle) | (Circle) |
| Wetland Hydrology Present? | Yes (No) | Is this Sampling Point Within a Wetland? (Yes) No |
| Hydric Soils Present? | (Yes) No | |

Remarks: There was no visible hydrology on the day of the site visit. The soil characteristics indicate prolonged inundation and saturation.

Approved by HQUSACE 3/92

# DATA FORM
## ROUTINE WETLAND DETERMINATION
(1987 COE Wetlands Delineation Manual)

Project/Site: West Linn Replat (9th St)
Applicant/Owner: HANDRIS REALTY
Investigator: MATT JOHNSON

Date: 8-11-00
County: Clackamas
State: OR

Do Normal Circumstances exist on the site? (Yes) No
Is the site significantly disturbed (Atypical Situation)? Yes (No)
Is the area a potential Problem Area? Yes (No)
(If needed, explain on reverse.)

Community ID: _____
Transect ID: _____
Plot ID: Data Pt 11

## VEGETATION

| Dominant Plant Species | Stratum | Indicator |
|---|---|---|
| 1. Alnus rubra | T | FAC |
| 2. Ribes sanguineum | S | UPL |
| 3. Rubus procerus | S | FACU |
| 4. | | |
| 5. | | |
| 6. | | |
| 7. | | |
| 8. | | |

| Dominant Plant Species | Stratum | Indicator |
|---|---|---|
| 9. | | |
| 10. | | |
| 11. | | |
| 12. | | |
| 13. | | |
| 14. | | |
| 15. | | |
| 16. | | |

Percent of Dominant Species that are OBL, FACW or FAC (excluding FAC-). 33%

Remarks: More than 50% of the canopy is greater than 20 feet.

## HYDROLOGY

___ Recorded Data (Describe in Remarks):
___ Stream, Lake, or Tide Gauge
___ Aerial Photographs
___ Other
X No Recorded Data Available

Field Observations:

Depth of Surface Water: none (in.)
Depth to Free Water in Pit: none (in.)
Depth to Saturated Soil: none (in.)

Wetland Hydrology Indicators:
Primary Indicators:
___ Inundated
___ Saturated in Upper 12 Inches
___ Water Marks
___ Drift Lines
___ Sediment Deposits
___ Drainage Patterns in Wetlands
Secondary Indicators (2 or more required):
___ Oxidized Root Channels in Upper 12 Inches
___ Water-Stained Leaves
___ Local Soil Survey Data
___ FAC-Neutral Test
___ Other (Explain in Remarks)

Remarks: No hydrology observed on 8-11-00.

## SOILS

Map Unit Name (Series and Phase): Wapato

Drainage Class: _____

Taxonomy (Subgroup): _____

Field Observations
Confirm Mapped Type? Yes No

Profile Description:

| Depth (inches) | Horizon | Matrix Color (Munsell Moist) | Mottle Colors (Munsell Moist) | Mottle Abundance/ Size/Contrast | Texture, Concretions, Structure, etc. |
|---|---|---|---|---|---|
| | | | | | |
| | | | | | |
| 12" | | 10YR 3/2 | | — | sandy loam |
| | | | | | |
| 24" | | 10YR 3/2 | | — | sandy loam |
| | | | | | |

Hydric Soil Indicators:

___ Histosol
___ Histic Epipedon
___ Sulfidic Odor
___ Aquic Moisture Regime
___ Reducing Conditions
___ Gleyed or Low-Chroma Colors
___ Concretions
___ High Organic Content in Surface Layer in Sandy Soils
___ Organic Streaking in Sandy Soils
___ Listed on Local Hydric Soils List
___ Listed on National Hydric Soils List
___ Other (Explain in Remarks)

Remarks: The soil was very dry and difficult to penetrate.

## WETLAND DETERMINATION

| | | |
|---|---|---|
| Hydrophytic Vegetation Present? | Yes (No) (Circle) | (Circle) |
| Wetland Hydrology Present? | Yes (No) | |
| Hydric Soils Present? | Yes (No) | Is this Sampling Point Within a Wetland? Yes (No) |

Remarks: None of the criteria were met.

Approved by HQUSACE 3/92

DATA FORM
ROUTINE WETLAND DETERMINATION
(1987 COE Wetlands Delineation Manual)

Project/Site: West Linn Replat (9th St)
Applicant/Owner: HANDRIS REALTY
Investigator: MATT JOHNSON

Date: 8-11-00
County: Clackamas
State: OR

Do Normal Circumstances exist on the site? (Yes) No
Is the site significantly disturbed (Atypical Situation)? Yes (No)
Is the area a potential Problem Area? Yes (No)
(If needed, explain on reverse.)

Community ID:
Transect ID:
Plot ID: Data Pt 12

## VEGETATION

| Dominant Plant Species | Stratum | Indicator |
|---|---|---|
| 1. Phalaris arundinacea | H | FACW |
| 2. Rubus procerus | S | FACU |
| 3. Equisetum telmateia | H | FACW |
| 4. Juncus effusus | H | FACW |
| 5. | | |
| 6. | | |
| 7. | | |
| 8. | | |

| Dominant Plant Species | Stratum | Indicator |
|---|---|---|
| 9. | | |
| 10. | | |
| 11. | | |
| 12. | | |
| 13. | | |
| 14. | | |
| 15. | | |
| 16. | | |

Percent of Dominant Species that are OBL, FACW or FAC (excluding FAC-). 75%

Remarks:

## HYDROLOGY

___ Recorded Data (Describe in Remarks):
___ Stream, Lake, or Tide Gauge
___ Aerial Photographs
___ Other
X No Recorded Data Available

Field Observations:

Depth of Surface Water: none (in.)
Depth to Free Water in Pit: none (in.)
Depth to Saturated Soil: none (in.)

Wetland Hydrology Indicators:
Primary Indicators:
___ Inundated
___ Saturated in Upper 12 Inches
___ Water Marks
___ Drift Lines
___ Sediment Deposits
___ Drainage Patterns in Wetlands
Secondary Indicators (2 or more required):
___ Oxidized Root Channels in Upper 12 Inches
___ Water-Stained Leaves
___ Local Soil Survey Data
___ FAC-Neutral Test
___ Other (Explain in Remarks)

Remarks: No hydrology found.

## SOILS

Map Unit Name (Series and Phase): Wapato

Drainage Class: _____

Field Observations Confirm Mapped Type? Yes No

Taxonomy (Subgroup): _____

Profile Description:

| Depth (inches) | Horizon | Matrix Color (Munsell Moist) | Mottle Colors (Munsell Moist) | Mottle Abundance/ Size/Contrast | Texture, Concretions, Structure, etc. |
|---|---|---|---|---|---|
| 12" | | 10YR 3/2 | | - | dry sandy loam |
| 24" | | 10YR 3/2 | | - | dry sandy loam |
| | | | | | |
| | | | | | |

Hydric Soil Indicators:

___ Histosol
___ Histic Epipedon
___ Sulfidic Odor
___ Aquic Moisture Regime
___ Reducing Conditions
___ Gleyed or Low-Chroma Colors
___ Concretions
___ High Organic Content in Surface Layer in Sandy Soils
___ Organic Streaking in Sandy Soils
___ Listed on Local Hydric Soils List
___ Listed on National Hydric Soils List
___ Other (Explain in Remarks)

Remarks:

## WETLAND DETERMINATION

Hydrophytic Vegetation Present? (Yes) No (Circle)
Wetland Hydrology Present? Yes (No)
Hydric Soils Present? Yes (No)

Is this Sampling Point Within a Wetland? Yes (No) (Circle)

Remarks:

Not all the criteria was met.

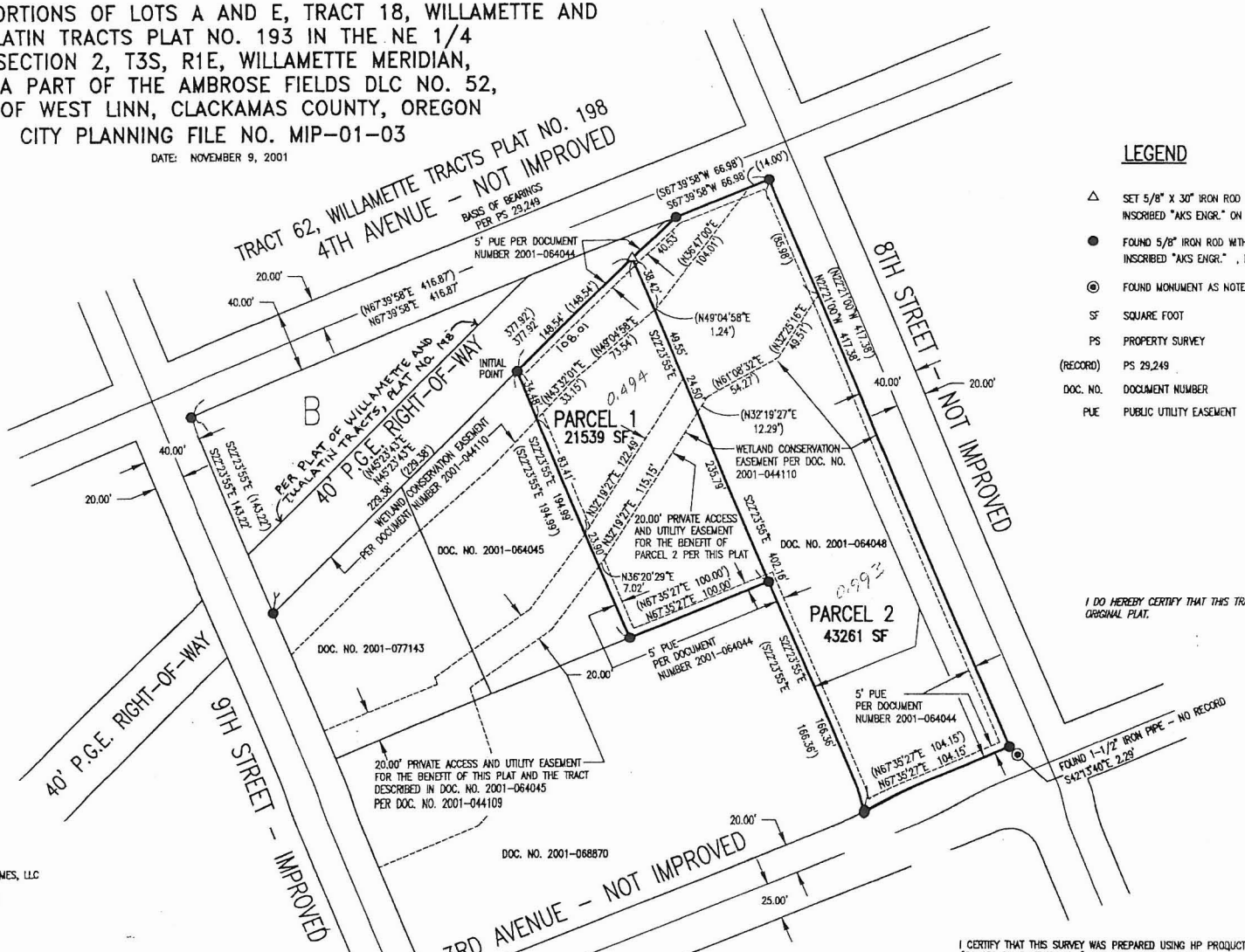
Approved by HQUSACE 3/92

PARTITION PLAT NO. 2001-120
PAGE 1 OF 2

# PARTITION PLAT

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

DATE: NOVEMBER 9, 2001




## LEGEND

| | |
|---|---|
| △ | SET 5/8" X 30" IRON ROD WITH YELLOW PLASTIC CAP INSCRIBED "AKS ENGR." ON NOVEMBER 9, 2001 |
| ● | FOUND 5/8" IRON ROD WITH YELLOW PLASTIC CAP INSCRIBED "AKS ENGR." , PER PS 29,249 |
| ◉ | FOUND MONUMENT AS NOTED |
| SF | SQUARE FOOT |
| PS | PROPERTY SURVEY |
| (RECORD) | PS 29,249 |
| DOC. NO. | DOCUMENT NUMBER |
| PUE | PUBLIC UTILITY EASEMENT |

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

REGISTERED PROFESSIONAL LAND SURVEYOR
OREGON
JULY 19, 1994
ANTHONY C. BENTHIN
2655
EXPIRES 12/31/01

SCALE 1" = 50 Feet

PREPARED FOR

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

I CERTIFY THAT THIS SURVEY WAS PREPARED USING HP PROQUCT #51645A ON CONTINENTAL # JPC-4M2 POLYESTER FILM.

| | | | |
|---|---|---|---|
| JOB NAME: | 9TH STREET MINOR PARTITION | | |
| JOB LOCATION: | NE 1/4 OF SECTION 2, T3S, R1E, W.M. | | |
| DRAWN BY: | DENNIS KEISTER | DATE DRAWN: | AUGUST 2, 2001 |
| CHECKED BY: | TONY BENTHIN | DATE SURVEYED: | NOVEMBER 9, 2001 |
| DESIGNED BY: | | REVISED: | |
| DRAWING NO.: | 744PLAT | SHEET 1 OF 2 | |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SHERWOOD, OR 97140
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FAX: (503) 925-8969
E-MAIL: aks@aks-eng.com


P.P. 2001-120 3E02AB 08201, 08204

FILE COPY

CC-122

# PARTITION PLAT

## A REPLAT OF PORTIONS OF LOTS A AND E, TRACT 18, WILLAMETTE AND TUALATIN TRACTS PLAT NO. 193 IN THE NE 1/4 OF SECTION 2, T3S, R1E, WILLAMETTE MERIDIAN, BEING A PART OF THE AMBROSE FIELDS DLC NO. 52, CITY OF WEST LINN, CLACKAMAS COUNTY, OREGON

CITY PLANNING FILE NO. MIP-01-03

DATE: NOVEMBER 9, 2001

### SURVEYOR'S CERTIFICATE

I, ANTHONY C. BENTHIN, PLS #2655, DO HEREBY CERTIFY THAT I HAVE ACCURATELY SURVEYED AND MARKED WITH PROPER MONUMENTS THE LANDS SHOWN ON THE ANNEXED MAP, LOCATED IN THE NORTHEAST ONE-QUARTER OF SECTION 2, TOWNSHIP 3 SOUTH, RANGE 1 EAST, WILLAMETTE MERIDIAN, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "AKS ENGR.", SAID POINT ALSO BEING THE MOST NORTHWESTERLY CORNER OF LOT B, TRACT 18, WILLAMETTE AND TUALATIN TRACTS, SAID POINT LOCATED AT THE INTERSECTION OF THE SOUTHERLY RIGHT-OF-WAY LINE OF 4TH AVENUE AND THE EASTERLY RIGHT-OF-WAY LINE OF 9TH STREET; THENCE ALONG THE EASTERLY RIGHT-OF-WAY LINE OF 9TH STREET S22°23'55"E 143.22 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "AKS ENGR."; THENCE ALONG THE SOUTHERLY RIGHT-OF-WAY LINE OF A 40.00 FOOT PORTLAND GENERAL ELECTRIC RIGHT-OF-WAY AND THE NORTHERLY PROPERTY LINES OF THE TRACTS DESCRIBED IN DOCUMENT NUMBERS 2001-077143 AND 2001-064045 N45°23'43"E 229.38 FEET TO THE INITIAL POINT, SAID POINT BEING MARKED WITH A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "AKS ENGR."; THENCE S22°23'55"E 194.99 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "AKS ENGR."; THENCE N67°35'27"E 100.00 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "AKS ENGR."; THENCE S22°23'55"E 166.36 FEET TO THE NORTHERLY RIGHT-OF-WAY LINE OF 3RD AVENUE, SAID POINT BEING A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "AKS ENGR."; THENCE ALONG THE NORTHERLY RIGHT-OF-WAY LINE OF 3RD AVENUE N67°35'27"E 104.15 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "AKS ENGR.", SAID POINT LOCATED AT THE INTERSECTION OF THE NORTHERLY RIGHT-OF-WAY LINE OF 3RD AVENUE AND THE WESTERLY RIGHT-OF-WAY LINE OF 8TH STREET; THENCE ALONG THE WESTERLY RIGHT-OF-WAY LINE OF 8TH STREET N22°21'00"W 417.38 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "AKS ENGR." SAID POINT LOCATED AT THE INTERSECTION OF THE WESTERLY RIGHT-OF-WAY LINE OF 8TH STREET AND THE SOUTHERLY RIGHT-OF-WAY LINE OF 4TH AVENUE; THENCE ALONG THE SOUTHERLY RIGHT-OF-WAY LINE OF 4TH AVENUE S67°39'58"W 66.98 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "AKS ENGR.", SAID POINT LOCATED AT THE INTERSECTION OF THE SOUTHERLY RIGHT-OF-WAY LINE OF 4TH AVENUE AND THE SOUTHERLY RIGHT-OF-WAY LINE OF THE 40.00 FOOT PORTLAND GENERAL ELECTRIC RIGHT-OF-WAY; THENCE S45°25'43"W 148.54 FEET TO THE INITIAL POINT. THE ABOVE DESCRIBED LANDS CONTAIN 64,800 SQUARE FEET, MORE OR LESS.

### NARRATIVE

1.487

THE PURPOSE OF THIS SURVEY WAS TO PARTITION AND MONUMENT THE TRACT DESCRIBED IN DOCUMENT NUMBER 2001-064048 PER THE PROPERTY LINE ADJUSTMENT SURVEY PS NO. 29,249, RECORDED WITH THE CLACKAMAS COUNTY SURVEYOR, CLACKAMAS COUNTY, OREGON, INTO TWO PARCELS. MY BASIS OF BEARINGS AND BOUNDARY RESOLUTION ARE FROM PS NO. 29,249.

### DECLARATION

KNOW ALL PEOPLE BY THESE PRESENTS THAT SHERIDAN CLASSIC HOMES, LLC IS THE OWNER OF THE LAND REPRESENTED ON THE ANNEXED MAP AND MORE PARTICULARLY DESCRIBED IN THE ACCOMPANYING SURVEYOR'S CERTIFICATE AND HAVE CAUSED THE SAME TO BE SURVEYED AND PARTITIONED INTO PARCELS WITH EASEMENTS AND DO HEREBY GRANT ALL EASEMENTS AS SHOWN OR STATED HEREON. THERE ARE RESTRICTIONS NOTED ELSEWHERE ON THIS PLAT. THIS PLAT CONFORMS TO THE PROVISIONS OF CHAPTER 92 OF THE OREGON REVISED STATUTES.

Thomas J. Sheridan
THOMAS J. SHERIDAN
MEMBER OF SHERIDAN CLASSIC HOMES, LLC

I CERTIFY THAT THIS SURVEY WAS PREPARED USING HP PRODUCT #51645A ON CONTINENTAL # JPC-4M2 POLYESTER FILM.

REGISTERED PROFESSIONAL LAND SURVEYOR
OREGON
JULY 19, 1994
ANTHONY C. BENTHIN
2655
EXPIRES 12/31/01

### ACKNOWLEDGMENT

STATE OF OREGON )
)SS
COUNTY OF WASHINGTON )

THIS IS TO CERTIFY THAT ON THIS 16 DAY OF NOVEMBER, 2001, BEFORE ME, A NOTARY PUBLIC IN THE STATE OF OREGON, APPEARED THOMAS J. SHERIDAN, WHO BEING DULY SWORN DID SAY THAT HE IS A MEMBER OF SHERIDAN CLASSIC HOMES, LLC, AN OREGON CORPORATION NAMED ON THE FOREGOING INSTRUMENT AND SAID INSTRUMENT WAS EXECUTED FREELY AND VOLUNTARILY ON BEHALF OF SAID PERSON.

Tanya M Knapp
NOTARY PUBLIC

MY COMMISSION EXPIRES: 5/10/04

### PLAT RESTRICTIONS

1. CITY RESTRICTIONS: SUBJECT TO CONDITIONS OF APPROVAL IN THE CITY OF WEST LINN, MIP-01-03.

STATE OF OREGON )
)SS
COUNTY OF CLACKAMAS )

I DO HEREBY CERTIFY THAT THIS PARTITION PLAT WAS RECEIVED FOR RECORD ON THIS 6th DAY OF December, 2001 AT 3:09 O'CLOCK P M.

John Kauffman
CLACKAMAS COUNTY CLERK

BY: Melissa Taylor
DEPUTY

~~CONSENT AFFIDAVIT~~

~~A SUBDIVISION CONSENT AFFIDAVIT FROM THOMAS J. BARTON, AN INDIVIDUAL, A TRUST DEED BENEFICIARY, HAS BEEN RECORDED AS DOCUMENT NO: _____, CLACKAMAS COUNTY DEED RECORDS~~

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

### APPROVALS

APPROVED THIS 27th DAY OF November, 2001.
BY: Dan Drentlaw
CITY OF WEST LINN PLANNING DEPARTMENT

APPROVED THIS 27th DAY OF November, 2001.
BY: Dennis J. Whip
CITY OF WEST LINN ENGINEER

APPROVED THIS 26 DAY OF NOVEMBER 2001
BY: Daven E. Coate, PLS
CITY OF WEST LINN SURVEYOR - DEMAS & ASSOCIATES

APPROVED THIS 29th DAY OF November 2001
Carl D. Klein, Deputy
CLACKAMAS COUNTY SURVEYOR

ALL TAXES, FEES, ASSESSMENTS AND OTHER CHARGES AS PROVIDED BY ORS 92.095 HAVE BEEN PAID

THROUGH (DATE) June 30, 2002

CERTIFIED December 6, 2001

Ray Erland
CLACKAMAS COUNTY ASSESSOR & TAX COLLECTOR

BY: Craig Turner
DEPUTY

BY: Jeanette Wyman
DEPUTY

OFFICIAL SEAL
TANYA M KNAPP
NOTARY PUBLIC - OREGON
COMMISSION NO. 334494
MY COMMISSION EXPIRES MAY 10, 2004

| | | | |
|---|---|---|---|
| JOB NAME: 9TH STREET MINOR PARTITION | | | |
| JOB LOCATION: NE 1/4 OF SECTION 2, T3S, R1E, W.M. | | | |
| DRAWN BY: DENNIS KEISTER | DATE DRAWN: AUGUST 2, 2001 | | |
| CHECKED BY: TONY BENTHIN | DATE SURVEYED: NOVEMBER 9, 2001 | | |
| DESIGNED BY: | REVISED: | | |
| DRAWING NO.: 744PLAT | | SHEET 2 OF 2 | |

ENGINEERING • PLANNING • SURVEYING • FORESTRY
LICENSED IN OR & WA
AKS ENGINEERING & FORESTRY
13910 S.W. GALBREATH DR.
SUITE 100
SHERWOOD, OR 97140
PHONE: (503) 925-8799
FAX: (503) 925-8969
E-MAIL: aks@aks-eng.com