

Submittals of evidence and arguments
received from
July 19, 2010 to July 26, 2010

Dear Peter,

Please place this letter before the City Council and in the official Planning Department file for this application.

Mike

<<kovash ltr.PDF>> <<Exhibit 1.pdf>> <<Exhibit 2.pdf>>

Michael C. Robinson | Perkins Coie LLP

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sent by Corinne F. Ryan | Perkins Coie LLP

LEGAL SECRETARY TO:

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7/27/2010



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July 26, 2010

VIA E-MAIL

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

Re: City of West Linn File No. AP-10-01; First Open Record Submittal by Troy and Gina Bundy

Dear Mayor Kovash and Members of the City Council:

This office represents Troy and Gina Bundy (the "Applicants"). This letter constitutes the Bundy's submittal prior to the close of the first open record period on Monday, July 26, 2010 at 5:00 p.m.

1. Status.

At the request of the Applicants, the City held the written record open as follows:

- Until July 26, 2010 at 5:00 p.m. for all parties to submit argument and evidence.
- Until August 3, 2010 at 5:00 p.m. for all parties to rebut first open record period submittals with argument and evidence.
- Until August 10, 2010 at 5:00 p.m. for Applicants to submit final written argument only.

2. Documents submitted on behalf of the Bundy's at the July 19, 2010 public hearing.

The Applicants submitted a two (2) page letter dated July 19, 2010 and containing five (5) exhibits. This document was physically before the City Council and not rejected.

73108-0001/LEGAL18814217.1

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Perkins Coie LLP and Affiliates ·

3. Additional documents submitted on behalf of the Bundys.

This letter contains the following additional documents (**Exhibit 1**):

- An affidavit from Alberto Rojas dated June 4, 2010.
- An affidavit from Franco Zorich dated June 10, 2010.
- Two one (1) page letters from Melissa Otis.
- A one (1) page letter from Ben and Abby Alsdorf.
- A one (1) page letter from Ann Miller.
- A one (1) page letter from Al and Darlene Sargent.
- A one (1) page letter from Chad Knutson.
- A two (2) page email from Gary Hitesman.
- A one (1) page letter from Craig Mason.
- A one (1) page letter from Brandon Blondheim.
- An affidavit from David Zimmerman.
- A one (1) page letter from Thomas Farwell.
- A two (2) page letter from Gerald and Sharon Paulsen.
- A West Linn "Tidings" July 22, 2010 two (2) page article with attached reader comments.

4. Response to substantive issues.

A. The pool and patio do not affect resources or drainage.

A principal issue before the West Linn City Council (the "City Council") is how to, after the fact, satisfy West Linn Community Development Code ("CDC") Chapter 32's relevant approval criteria and the 2001 conservation easement.

First, several members of the City Council stated that CDC Chapter 32 applies and that resolving this issue "after the fact" is "somewhat difficult." The Applicants do not and have never said that

CDC Chapter 32 does not apply; to the contrary, the Applicants acknowledge that notwithstanding their valid reasons for not obtaining a land use approval for the swimming pool and patio prior to their construction. The substantial evidence in the whole record demonstrates that the Bundys had a good faith belief that they were entitled to construct the pool and Mr. Bundy's affidavit states that they obtained Clackamas County electrical permit approval, had the concrete for the pool and deck professionally inspected and had Northwest Natural Gas inspect natural gas line work (Affidavit, paragraph 14). The Bundys understand CDC Chapter 32 applies to the pool and patio. Additionally, the Applicants have not suggested that the improvements are "grandfathered" under CDC Chapter 32 except to the extent their house and other improvements not at issue here were constructed prior to the 2005 adoption of the relevant provisions of CDC Chapter 32.

Further, the Applicants are not arguing that the City is estopped from enforcing CDC Chapter 32 or that the sought improvements are somehow "grandfathered." Instead, the principal argument is this: **The resource that the transition and buffer requirements in CDC Chapter 32 seek to protect is not located in the Bundy backyard. At most, it is located within the drainage ditch, which the Planning Director has now acknowledged was established prior to the Bundy's purchase of this parcel, and on property owned by Portland General Electric ("PGE").** The point of acknowledging this is that the purpose of CDC Chapter 32 is to protect resources and it does so, in part, with transition requirements. While acknowledging that the improvements sought to be approved are within those transition areas, the resource protected by the transition regulations is **not**.

Slide 5 in the July 19, 2010 staff report shows that the Bundys' property does not include either wetlands delineated in 2000 by AKS or Goal 5 protected wetlands. In fact, the Director's decision subject to this appeal at page 1 (City Council packet, page 70) under "Specific Proposals" states: "Wetlands designated on the City of West Linn's adopted West Linn Wetland, Riparian and Wildlife Inventory, 2003 (WI-02) lie to the north of the Applicants' rear property line. The wetlands are located on property owned by Portland General Electric ("PGE")." **(Exhibit 2.)**

The improvements that the Bundys seek to preserve are not on the wetlands. The Bundys have acknowledged that they placed sod in the PGE wetlands but pursuant to the "Revised Consent Agreement" entered into between the Bundys and the Oregon Department of State Lands ("DSL") dated July 16, 2010 and submitted to the Planning Department via email letter dated July 16, 2010, the Bundys are obligated to submit a site restoration plan for review and approval by DSL for the PGE wetlands and such planting approved by DSL must be completed by December 31, 2010. Thus, the *only* wetlands affected by the Applicants' activities are required to be restored and mitigated prior to the end of this year.

Slide 6 of the July 19, 2010 staff report leaves the mistaken impression that wetlands are located in the Bundy's backyard where the pool and other improvements are located; this is incorrect because, as already noted, the Goal 5 wetland inventory does not include this area. Moreover, slides 9 and 10 show the extent of the riparian buffer and setback. This is an extraordinary case where the entire portion of the Bundy's property is either covered by delineated and protected wetlands or by riparian areas intended to protect those wetlands. Thus, unlike virtually any other property in the City of West Linn (probably with the exception of the Bundys' neighborhood, the City has imposed such a stringent set of regulations over the Bundys that they have very little opportunity to use their outdoor space and as they have attempted to do.

It is for these reasons that the focus of this application should be on whether a resource was impacted and whether that resource can be mitigated. The answer to both of those questions is "yes" but it does not include a resource within the area now occupied by the pool and patio.

Additionally, CDC Chapter 32 applies to only water resource areas. CDC Chapter 32 does not define Water Resource Area as including a conservation easement prior to CDC Chapter 32's effective date because a water resource area consists only of a wetland and the required transition and setback area pursuant to CDC Chapter 32. The wetland conservation easement purportedly created under ORS Chapter 271 is not required by or created by Chapter 32.

CDC 32.050.D *would* apply if the conservation easement had been established pursuant to CDC Chapter 32. However, this provision became effective *after* the establishment of the conservation easement in 2001. Therefore, the conservation easement located on the Bundys' property is not a conservation easement established pursuant to CDC 32.050.D.

As the City Council considers this application, it must keep the purpose and intent of Chapter 32 in mind. CDC 32.010, "Purpose and Intent," has five (5) principal goals:

- To improve and protect water quality and functions and values of water resource areas that consist of protected water features and associated vegetated corridors. **This is the point the Applicants have made: None of the protected water features and vegetated corridors are affected by the pool and patio.** Further, the letter dated July 26, 2010 from wetland biologist Jason Clinch persuasively demonstrates that none of these values are impacted by the pool and patio.
- Control and prevent flooding and erosion. The Bundys do not agree that anything they have done behind their property has created flooding or erosion. However, assuming that were the case, they have agreed to apply for an after the fact building permits and erosion plans as required by CDC Chapter 32.

- Protect and improve various functions. The evidence before the City Council is that none of these functions have been damaged by the Bundys. It is clear that the upstream and downstream wetlands continue to function. Further, Mr. Clinch's letter supports this conclusion. Additionally, the Bundys will restore the PGE property wetland.
- Provide mitigation for the replacement of water quality and ecological functions. The Bundys have agreed to do this both DSL through the revised consent order and will agree to do so through the relevant provisions of CDC Chapter 32.
- Control and prevent water pollution. There is no allegation that this has occurred.

B. The Oregon Department of State Lands ("DSL") and the United States Army Corps of Engineers ("USACE") are not pursuing enforcement in this matter.

It is clear that the two (2) agencies most knowledgeable about wetland resources have chosen to work with the Bundys and not pursue additional enforcement. First, as noted above, DSL has entered into a revised consent order with the Bundys requiring restoration of the wetlands north of the Bundy property and along the drainage on the east side of the Bundy property adjacent to their neighbor. The revised consent order does *not* require any restoration of the area where the Bundy's pool and patio is located. The USACE will work with the Bundys to receive an "after the fact" permit consistent with DSL's determination. Neither of these resource agencies has chosen to require the Bundys to remove the pool and patio because there are *no* delineated or regulated wetlands located in the Bundy's backyard.

CDC 32.060.A expressly provides: "the presence of wetlands shown on site plans shall be based on wetlands delineations conducted following methods accepted by the U.S. Army Corps of Engineers and the Oregon Division of State Lands." In this case, both resource agencies have determined that they do not intend to regulate the area of the patio and swimming pool because of wetland locations.

C. Portland General Electric is not pursuing any action against the Bundys.

Substantial evidence in the whole record demonstrates that the Bundys had a good faith belief that they had PGE's permission to make changes to the PGE property. The Bundys made those changes principally out of concern for the safety of their property and their neighbors' property. Notwithstanding the evidence contained in the staff report, the Bundys, in fact, believed they had the consent and permission of PGE to enter PGE's property and perform the work that was performed. Further, notwithstanding the information contained in the staff report, there is no evidence that PGE has sought or is seeking to require the Bundys to remove the work they performed on the property. In fact, the Bundys must receive PGE permission to restore the

wetlands pursuant to the revised consent order. This portion of the Revised Consent Agreement alone demonstrates that the work will be done with the permission of PGE. Most importantly, however, whether the Bundys had permission of PGE or not to do the work is not relevant to a decision on the Bundy's Chapter 32 application.

The Applicants agree with Councilor Burgess who stated that the issue before PGE is not before the City Council who appears to take the position that a real property issue with PGE is not part of the application before the City Council under CDC Chapter 32.

D. The swimming pool and patio are not structures under relevant CDC provisions.

CDC 32.050.F requires that "construction allows 'roads, driveways, utilities or passive use recreation facilities' may be built in and across water resource areas where no other practical alternative exists. Construction shall minimize impacts. Construction of the minimal dimensional standards for roads is required."

This section authorizes passive use recreational facilities to be built in and across water resource areas without respect to a setback. This section expressly requires construction at minimum dimensional standards for roads but does not require such adherence to minimum dimensional standards for other improvements. This section, in turn, relates to CDC 32.050.L, entitled "Structural Setback Area," which requires in relevant part that "where a structural setback is **SPECIFICALLY REQUIRED**, development projects shall keep all foundation walls and footings at least fifteen (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 3/4 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.... Decks are permitted within the structural setback area." (Emphasis added.)

These two (2) sections taken together provide that no structural setback is required for a passive recreational facility, such as a swimming pool and deck, and the deck is specifically permitted within the structural setback area (decks are an accessory use as defined in CDC Chapter 2 and regulated in CDC Chapter 34) and the swimming pool may be within the rear yard setback for the principal structure.

CDC Chapter 32 defines "structure" in a way that exempts swimming pools. While the first clause of the definition could include a swimming pool (although the Applicants believe it does not), the second clause includes just those "platforms, walks, and driveways more than thirty (30) inches above grade..." Further, CDC 34.040, "Setback Provisions for Noise Producing Accessory Structures and Uses" expressly provides: "Noise producing accessory uses and structures such as heat pumps, swimming pool motors or pumps shall meet the setback requirements of the zone." CDC 34.060 is entitled, "Setback Provisions for Accessory Structures

(Non-Dwelling)," and provides that accessory structures need not meet the dimensional requirements for the principal use provided certain requirements are met. Neither the swimming pool nor the patio, taken separately from one another because each is a separate accessory use, is required to meet the principal use setback because are accessory uses that are not regulated whose setbacks are not regulated under Chapter 34. Further, CDC 34.040's provision regarding setback provisions for noise producing accessory uses does not list other accessory uses meaning that CDC Chapter 34 does not regulate setbacks for non-listed used.

As a practical matter, if the City Council determines that the patio (which is less intrusive than a deck, which is clearly not regulated as to setbacks) is subject to the structural setback regulations, then the City must regulate all such decks and swimming pools in the City of West Linn. In fact, the staff memorandum at City Council packet page CC-21 under "Enforcement Against Adjacent Properties" states: "Both properties on either side of the Bundys 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." Does the City want to be in a position where it is enforcing setbacks against families' pools, decks and patios which it must do in order to avoid singling out the Bundys for enforcement? The answer should be "no."

Finally, the Uniform Building Code is irrelevant to this issue. Whether the swimming pool and patio are subject to structural setbacks is a question for the CDC to answer. Uniform Building Code requirements are not referenced in the CDC with respect to this issue.

E. The Applicants have not asked in this appeal that the City Council apply CDC 32.090.B to this application; instead, CDC 32.090.A applies.

CDC 32.090 is entitled "Reduction in Standards for Hardship." Its very purpose is to assure that Chapter 32 does not cause "unreasonable hardship." Can there be any doubt that a combination of regulations covering the *entire* Bundy property causes unreasonable hardship? To avoid such instances, CDC 32.090.A *or* .B are available to an applicant. The Bundys originally applied under CDC 32.090.B but the appeal takes the position that CDC 32.090.A is the relevant hardship standard.

CDC 32.090.A applies where lots or parcels created after the effective date of CDC Chapter 32 are located completely within the water resource area. There is no doubt that the Bundy's parcel is located entirely within a water resource area. CDC 32.090.B only applies to lots or parcels located "partially" inside a water resource area and, therefore, does not apply in this instance. Because CDC 32.090.B does not apply, evidence as to the economic viability of the Bundy property is irrelevant because that issue applies only to CDC 32.090.B.

CDC 32.090.A applies to allow development to disturb the "minimum necessary area consisting of no more than 5,000 square feet of the water resource area subject to a finding that the

proposed development does not increase danger to life and property due to flooding and erosion." The City Council should apply this section as follows. First, the improvements constructed prior to the effective date of CDC Chapter 32 should not be counted towards the 5,000 square feet. Only those improvements constructed afterward should apply. Because the swimming pool and patio cover less than 5,000 square feet, the City Council can find that this hardship standard is met, provided that the other relevant approval criteria are satisfied and provided that the swimming pool and patio, the subject of the hardship, do not increase danger to life and property due to flooding and erosion. The City Council can easily make this finding because the pool and patio are not within a wetland or drainage channel. Other improvements in those areas will be removed and mitigated by the Bundys.

In the alternative, if the City Council does not agree that the square footage constructed prior to the effective date of CDC Chapter 32 should be excluded, then the improvements including the pool and patio exceed 5,000 square feet. The City Council can find, however, that allowing a deck and patio is consistent with the normal accessory uses for a single-family dwelling and their construction do not exceed the minimum necessary area to allow the proposed use and activity. Therefore, to the extent that more than 5,000 square feet is necessary for the hardship, the Bundys must apply for a variance pursuant to CDC Chapter 75, as allowed by CDC 32.090.D. The City Council should not prejudge whether it is possible to meet the standards required for a variance pursuant to CDC Chapter 75. It is an option, however, expressly allowed by CDC Chapter 32.

The Bundys must also apply for "after the fact" building permits, mitigation plans and erosion control plans as required by CDC Chapter 32. There is a simple method to require this. First, the City Council could impose a specific condition of approval. CDC 32.050 entitled, "Approval Criteria," expressly provides that no application for development on property containing a water resource area shall be approved unless the decision-making authority finds that the following standards have been satisfied, *or can be satisfied by conditions of approval.*" (Emphasis added.) The record contains substantial evidence that it is feasible, as demonstrated by the revised consent order with DSL, to satisfy relevant conditions through a condition of approval requiring after the fact permits. These include a mitigation plan required by CDC 32.070, a revegetation plan required by CDC 32.080 and a site plan required by CDC 32.060.

F. The conditions of approval from the 2001 partition plat are not relevant to this decision.

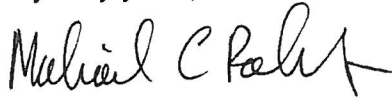
The CDC Chapter 32 application submitted by the Bundys does not contain a requirement that prior partition plat or lot line adjustment are relevant to the CDC Chapter 32 approval criteria. For these reasons, the resolution of this appeal does not depend on conditions of approval from past land use decisions.

Mayor John Kovash
July 26, 2010
Page 9

5. Conclusion.

For the reasons contained herein, the Applicants respectfully request that the City Council grant the appeal, reverse the Planning Director's decision and approve the CDC Chapter 32 application with reasonable conditions of approval.

Very truly yours,



Michael C. Robinson

MCR/cfr

Enclosures

cc: Mr. and Mrs. Troy Bundy (w/enclose.) (via email)
Mr. Timothy V. Ramis (w/enclose.) (via email)
Mr. John Sonnen (w/enclose.) (via email)
Mr. Peter Spir (w/enclose.) (via email)
Mr. Jason Clinch (w/enclose.) (via email)

I, Alberto Rojas, on my oath do hereby declare the following to be the truth:

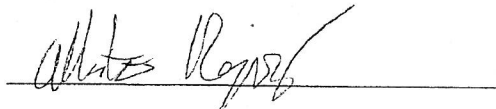
I have been doing the Bundy's landscaping since 2006. I am now the owner of the company called Ricky's Landscaping. As part of my responsibilities, I mow and tend to all of the landscaping over the entire property. I am personally familiar with the yard, the PGE land, and the water issues on the property.

There has always been a drainage channel at the rear of the property. It is seasonally wet and provides storm water runoff and drainage. When I started working there, the drain in the rear of the property was present. In 2008, I purchased 3 inch granite to reinforce the channel because of significant weed control and erosion issues. I removed some of the old river rock that have been installed by an earlier contractor, so I could replace it with the granite. This helped with directing the flow of water through the channel and also matched the granite installed in the adjoining neighbor's yard. It also eliminated the serious mud problems they were having because of the pools of standing water, that grow green and brown algae and is full of mosquito larva.

The area to the rear of the property, that everyone is calling the PGE land, was always a higher elevation than the Bundy's yard. It was overgrown with blackberry bushes and weeds, which are non native. I would occasionally clear them out as they grew over the drainage ditch. I did not see any native plants there throughout this time. I also saw that the ground was uneven back there and there appeared to be two piles of materials dumped on the right side of the land that included fill and other materials. It had been that way ever since I could remember.

I HEREBY DECLARE THAT THE ABOVE STATEMENT IS TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF, AND THAT I UNDERSTAND IT IS MADE FOR USE AS EVIDENCE IN COURT AND IS SUBJECT TO PENALTY FOR PERJURY.

DATED this 4 day of June, 2010.



Alberto Rojas

June 10, 2010

I, Franco Zorich on my oath do hereby state:

I live directly behind the Bundy home and above the PGE property. My address is 1301 9th Street. I've lived here for 20 years and am very familiar with that property, since I have a direct overhead view of both.

I support their right to have the pool and patio for their family. It is doing no harm, and they have been taking steps to keep it safe.

As far as the PGE property goes, that area was always higher than the Bundys' back yard. I can confirm that there was always debris back there, construction, fill and otherwise. It was uneven ground that grew tall weeds that die off, turn yellow, and create kindling. I am aware of downed lines causing wildfires as well, and regularly see sparks and arcing during storms. Power outages are common. PGE actually came through a year ago and removed some of the more worrisome tree branches in back of my home (on the PGE property) because of it.

If you ask me, what they did back there was a big improvement over the junk and weed pile it was previously.

Sincerely,

Frank Zorich

A handwritten signature in black ink, appearing to read "Frank Zorich", with a large, stylized flourish at the end.

Dear City Council and Mr. Spir:

I am writing to support the Bundy family pool, patio and their right to have a back yard for their family. I am an interested West Linn resident.

Melissa O'S

Name: Melissa O'S

Address: 1375 9th St
West Linn, OK 97068

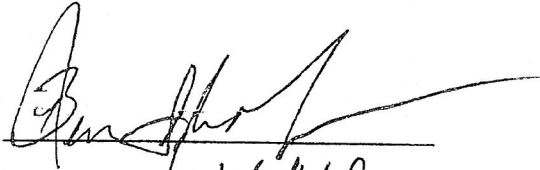
I have a pool too. I hope you don't have to rip it out & that my letter will help you!

Good luck,

Melissa O'S

Dear City Council and Mr. Spir:

I am writing to support the Bundy family pool, patio and their right to have a back yard for their family. I am an interested West Linn resident. Put an end to City bullying.



Name: BEN & ABBY ABOOD

Address: 1564 9TH ST
WEST LINN, OR 97068

Dear City Council and Mr. Spir:

I am writing to support the Bundy family pool, patio and their right to have a back yard for their family. I am an interested West Linn resident. Put an end to City bullying.

Ann Miller

Name: Ann Miller

Address: 1009 9th Street
West Linn, OR 97068

To whom it may concern:

I will not be able to attend the meeting on June 14th, However, I would like to voice my opinion.

Why would you want the Bundys to rip out their beautiful back-yard setting? It has only added value to the surrounding area, especially during this economic hardship!

I would think that you (city hall) would appreciate what the Bundys have done to their property to upgrade the area surrounding our sewage plant which (as you know) is a short distance away.

I do not know the Bundys personally, however, I believe that this is a big injustice to them.

Thank you,

Shel Otis
(503) 341-5033 cell

Melissa Otis
1375 9th St.

West Linn, OR 97068

Dear City Council and Mr. Spir:

I am writing to support the Bundy family pool, patio and their right to have a back yard for their family. I am an interested West Linn resident. Put an end to City bullying.

All Sargent MD Ph.D
Name: Darlene Sargent

Address: 1325 9th St - West Linn, Or 97068

The improvements to the Bundy Property
has improved the value of our
~~area~~ neighborhood.

Dear City Council and Mr. Spir:

I am writing to support the Bundy family pool, patio and their right to have a back yard for their family. I am an interested West Linn resident. Put an end to City bullying.

Chad Knutson

Name: Chad Knutson

Address: 1233 9th St
West Linn, OR. 97068

Robinson, Michael C. (Perkins Coie)

From: Troy S. Bundy [TSB@hhw.com]
Sent: Monday, June 14, 2010 11:26 AM
To: Robinson, Michael C. (Perkins Coie)
Subject: FW: AP-10-01: Appeal to CC to allow pool in WRA

From: GARY [mailto:hitesman@comcast.net]
Sent: Friday, June 11, 2010 12:16 PM
To: 'Sargent, Brandy'; kariooke@aol.com; davidjones@equitygroup.com; bevburke@comcast.net; richcurvy@yahoo.com; mgokey@hotmail.com; tomneff@comcast.net; knowmatt@gmail.com; frankwesson@earthlink.net; jimk@systemconsulting.com; brian.eastman@comcast.net; treece@gsp.org; RMorr46505@aol.com
Cc: Troy S. Bundy
Subject: RE: AP-10-01: Appeal to CC to allow pool in WRA

To those who have a concern or interest,

Although development in the wetlands is an unfortunate circumstance, I see this appeal as following many ill advised precedents that have been allowed by City Staff and apparently ignored by Director Sonnen. My concern is the apparent double standard that individual families are subjected to while other interests, in some cases, are allowed to willfully ignore code requirements with no 'proper' oversight from City staff.

I was listed as being the only one to oppose this development which was an over simplification of my series of emails sent to Director Sonnen and Peter Spir. I will urge the Council to mediate and come up with fair and reasonable conditions of approval that benefit the applicant, residents, and city officials. In the least, I will be there to clarify my position as neutral, or possibly, argue for approval of an appeal. If anyone may know what type of remediation would be most appropriate, I would benefit from learning about it and including it in my statement. I have been informed of previous remediation efforts, which appeared sufficient, but were apparently dismissed by Planning staff.

Sorry for any intrusion/inconvenience I may have caused. Cheers, Gary Hitesman

From: Sargent, Brandy [mailto:BASARGENT@stoel.com]
Sent: Friday, June 11, 2010 10:06 AM
To: kariooke@aol.com; davidjones@equitygroup.com; bevburke@comcast.net; richcurvy@yahoo.com; hitesman@comcast.net; mgokey@hotmail.com; tomneff@comcast.net; knowmatt@gmail.com; frankwesson@earthlink.net; jimk@systemconsulting.com; brian.eastman@comcast.net; treece@gsp.org; RMorr46505@aol.com
Subject: RE: AP-10-01: Appeal to CC to allow pool in WRA

Karie, is the suggestion that they get fined \$3,000 but get to keep the pool, or that they get fined \$3,000 and still have to remediate? If the former, I'll lose some sleep and go over there to pitch the worst fit.

From: karieokee@aol.com [mailto:karieokee@aol.com]

Sent: Friday, June 11, 2010 9:58 AM

To: davidjones@equitygroup.com; Sargent, Brandy; bevburke@comcast.net; richcurvy@yahoo.com; hitesman@comcast.net; mgokey@hotmail.com; tomneff@comcast.net; knowmatt@gmail.com; frankwesson@earthlink.net; jimk@systemconsulting.com; brian.eastman@comcast.net; treece@gsp.org; RMorr46505@aol.com

Subject: AP-10-01: Appeal to CC to allow pool in WRA

Hi Everyone,

This is an update on the Bundy's appeal to allow a pool and landscaping in a City owned Conservation Easement. The Council hearing is Monday, June 14, and once again, it is the last item on a lengthy agenda, like so often occurs. I don't feel like I can ask anyone to stay that late to testify. If inclined, send emails to pspir@westlinnoregon.gov. The hearing is de novo, so you don't have to have standing.

Here is a link to just a third of the file. The rest of the file is available on the web site. I recommend the following pages for an overview. Not recommended for bedtime reading ;-)

http://westlinnoregon.gov/sites/default/files/projects/BUNDY%20BUNDY%20BUNDY_0.pdf

On computer pages 4-24 (pgs. CC-1-21) Planner Peter Spir's staff report of findings and response to Robinson's arguments. Pictures show the violations. He recommends upholding the Planning Director's original decision denying the application.

Computer pages 24-32, Oregon Dept. of State Lands Letter of Proposed Enforcement, the agency responsible for wetland protections.
The fine for the violation is only \$3000 dollars.

Computer pages 39-48 Attorney Michael Robinson's letter summarizing his arguments.

Best to you,

Karie

No virus found in this incoming message.

Checked by AVG - www.avg.com

Version: 8.5.437 / Virus Database: 271.1.1/2923 - Release Date: 06/11/10 06:35:00

7/26/2010

Dear City Council and Mr. Spir:

I am writing to support the Bundy family pool, patio and their right to have a back yard for their family. I am an interested West Linn resident. Put an end to City bullying.

Craig Mason

Name: Craig Mason

Address: 1332 8th St
West Linn OR 97068

Dear City Council and Mr. Spir:

I am writing to support the Bundy family pool, patio and their right to have a back yard for their family. I am an interested West Linn resident. Put an end to City bullying.



Name: BRANDON BLONDHEIM

Address: 1025 9th St
West Linn OR 97068

I, David Zimmerman, on my oath do swear the following is true and accurate:

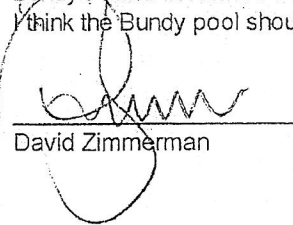
I own and operate Terra-Sol Landscaping. I met with the Bundys on their property in 2003. I installed some of the landscaping for their new home at that time and also consulted with them about the drainage issues in the back yard.

I analyzed the source of water, and saw that the majority of it came from under 9th street and passed over a seasonal spillway along the back of the property. For that reason, I suggested they install a shallow surface drain in the far corner to help alleviate some of the erosion and puddling that was occurring along the channel. We also utilized additional river rock at that time to help improve flow and prevent the further erosion of the channel.

I have been told they are being questioned about whether the spillway was there. I can confirm that the spillway was indeed there back in 2003. I knew it would require further maintenance and reinforcement over the years, but it was certainly there and they did not excavate it.

Additionally, the land behind the home was always at a higher elevation. It was never flush with the Bundy's lawn. It formed a significant bank along the natural spillway.

I think the Bundy pool should stay and the City should leave this family in peace.




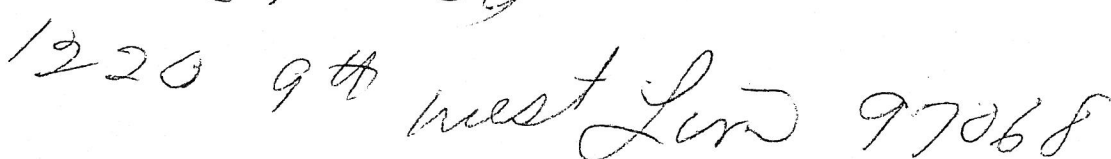
David Zimmerman

Dear City Council and Mr. Spir:

I am writing to support the Bundy family pool, patio and their right to have a back yard for their family. I am an interested West Linn resident. Put an end to City bullying.

Name: 

Address: 

Dear City Council and Mr. Spir:

We are writing in reference to the situation regarding the Bundy family and the notices that we have received from West Linn regarding their pool, patio and back yard.

We have owned our property at 1250 9th street since 1993. At that time it was empty land, with the exception of a barn on our property. Many houses have gone in since that time, and this includes the property that has been developed where the Bundy family lives.

The houses that were built on either side of the Bundy family, and including their residence, were all built with permits and passed inspections by West Linn. The Bundy family bought this property and were assured that everything concerning the construction, property lines, and inspections were properly done by West Linn.

All that being said, as neighbors, residents of West Linn, and West Linn property owners, we find that it is very difficult to know about the difficult situation that this family has been placed in.

We have personally viewed the beautiful landscaping and home that this family has developed. It is indeed an asset to the neighborhood. We fail to understand why West Linn would choose to make such hardships on this family. If there is any fault, West Linn should examine their own handling of this property. The inspections and permits were issued by West Linn, and used by Mr. Mark Handris in his construction of not only this house, but the houses on either side of this family.

West Linn needs to examine their dealinsg with the construction of these houses, and place the blame where it belongs. Not on the property owners, but on West Linn, and the inspectors that dealt with the builder.

West Linn has even gone so far as to state that the property owners have changed a drainage ditch that runs across the back of their property. All of us property owners that are close to this property are well aware of this drainage ditch that has always been there, in the precise spot that it still is.

We definitely think that the city needs to address other important issues regarding wetlands. We personally witnessed about 30 dump truck loads of dirt being removed from 1263 10th Street during construction of that house, and dumped in a wet land area that they wanted to fill in for a park. Maybe West Linn should start with that issue. Check out the park by the Tualatin river. That dirt came off our property and was used to fill in that property for a park. It just seems that if it is something that West Linn wants to do, there are great exceptions made in the rulings.

Our tax dollars should be used in a better manner, than to single out home owners and make financial hardships for a family. West Linn should examine their own use of our tax dollars.

Gerry & Sharon Paulsen

Gerald and Sharon Paulsen

1250 9th street

West Linn, Oregon 97068

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Is the pool party over for family who developed yard near protected area?

BY KARA HANSEN

The West Linn Tidings, Jul 22, 2010 (9 Reader comments)

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Changes the Bundys made within that area — which required vegetation removal and modified a drainageway — may have reduced the wetland's natural ability to detain and filter stormwater and destroyed wildlife habitat, said West Linn associate planner Peter Spir.

But Gina Bundy said the restrictions aren't fair when compared to yards elsewhere on the block.

"Our neighbors up and down the street all have yards," she said. "That's what we wanted."

Under an agreement with the Department of State Lands, Troy Bundy said the couple plans to pay a \$3,000 fine, to purchase mitigation credits to compensate for damage to natural wetland functions, and to restore a wetland they landscaped on Portland General Electric property behind their yard.

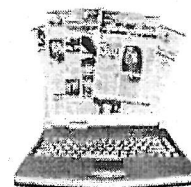
But Troy Bundy doesn't want to rip out the new features within his property lines.

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"We have invested \$100,000 of our savings to improve our home, the quality of our lives and our children's lives," he said, noting that the family hired West Linn builders "at a time when people really needed work."

"Our entire half-acre portion of the property is overtaken by government regulation," he said. "Not only are they after our pool, they're after our sod, our sprinkler system, our lawn."

Testifying in support of the Bundys, resident Tim Phillips also spoke in favor of private property

<< Prev. Page 1 | 2

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Reader comments

Re: Is the pool party over for family who developed yard near protected area?

They bought a property "sandwiched in between two wetland zones". Not a bad buy if you like some privacy eh? Are we now expected to believe that they didn't know this when they bought the property?

So, what contractor(s) would do this kind of work without seeing a permit? And what person with half a brain would undertake a project of this magnitude without a permit in place? And what does it say about this person that their excuses include an alleged and informal say-so by an elected official based on the idea that the regulations aren't being "fair" because, after all, their neighbors have yards...

I think we all can see what's going on here. They tried an end run around the law and they got caught. I hope the city council stands up to this sorry attempt at extortion. Here's an idea - let them keep the improvements but put a lien on the property for the full cost of returning it to the original condition when it's sold. Plus, of course, an immediate service fee for all the administrative and legal costs associated with this whole sorry mess.

"Bart" (email verified)

Thu, Jul 22, 2010 at 12:37 PM

Re: Is the pool party over for family who developed yard near protected area?

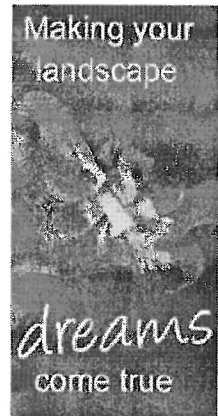
It's unfortunate that they tried to usurp the law and do it on their own. They state that they have spent over \$100k to improve their home, etc. BUT they did break the law. I am going to guess they went ahead on their own, knowing there was a denial out there. That's a lot of money to spend without permits and esp the fact that a contractor did it without permits. It would appear they now will have to face the consequences.No sympathy here....

"realist 2010" (email verified)

Thu, Jul 22, 2010 at 06:01 PM

Re: Is the pool party over for family who developed yard near protected area?

Maybe the Government should buy all wetland property since laws make it impossible for homeowners to benefit from its ownership.



""
(email verified)

Thu, Jul 22, 2010 at 07:15 PM

Re: Is the pool party over for family who developed yard near protected area?

Reminds me of the couple that built the house on the Washington side of the gorge that wasn't supposed to have been given a building permit and all the complaining they did. Everyone is aware there a laws about building anything in the gorge.

"East County"
(email verified)

Fri, Jul 23, 2010 at 02:09 AM

Re: Is the pool party over for family who developed yard near protected area?

"Changes the Bundys made within that area — which required vegetation removal and modified a drainageway — may have reduced the wetland's natural ability to detain and filter stormwater and destroyed wildlife habitat, said West Linn associate planner Peter Spir."

Well suppose it didn't? Suppose that is pure BS.

If the city is going to force the people to tear out their pool shouldn't they have more than a "may have" reason?

And there's this:

"the family said they thought they had the go-ahead after former mayor Patti Galle allegedly told them so — council members must ignore that fact in reviewing the application."

It's more likely that there is absolutely zero adverse effect on the adjacent wetland/habitat from this pool and landscaping.

"Howard"
(email verified)

Fri, Jul 23, 2010 at 09:36 AM

Re: Is the pool party over for family who developed yard near protected area?

I have zero sympathy for these people. They knew they would never get this project approved if they applied for the permits before the project started so they went with Plan B..."ask forgiveness."

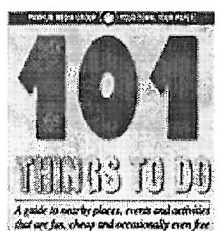
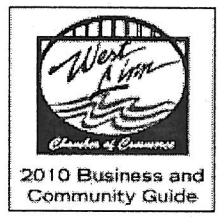
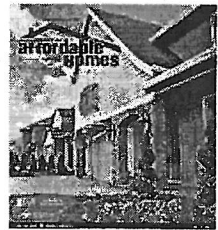
The West Linn City Council better uphold its original ruling and deny this request for an "after-the-fact" permit. This ruling will set precedent for people in the future who try to circumvent established processes.

"Bethany"
(email verified)

Fri, Jul 23, 2010 at 07:24 PM

Re: Is the pool party over for family who developed yard near protected area?

The pool and the additional landscaping is very beautiful and is surrounded by wildlife and plenty of vegetation. There has been NO adverse effect to the area. The Bundy's thought they had approval to proceed. I am curious to know who all the do-gooders are that are judging the effect of the change without any knowledge whatsoever of the true situation. I would suggest they go see for themselves whether there has been an adverse effect. Mr Bundy has done the right thing by going to the Department of State Lands and satisfying them with the changes he has made. Why is the city counsel acting like they are the judge and the authority for wetlands. Sounds like pure politics and



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power mongering. I think some egos have definetly gotten out of control. Again, Mr Bundy thought he had a handshake and has bent over backwards to make things right. All the people judging need to go look for themselves instead of shooting from the hip. Here is a thought. Since the wetlands bounderies were published after the Bundy's purchased their house, why would they not be grandfathered to allow the minor changes to take place. It appears that the state has used some common sense. Why can't the city council do likewise?

"Jerry Anderson"
(email verified)

Sat, Jul 24, 2010 at 01:13 PM

Re: Is the pool party over for family who developed yard near protected area?

Those of you being so instantly judgmental should give these people the benefit of the doubt. We don't know the whole story here, and anyone who has had to deal with city bureaucracy and especially environmental regulations knows how murky and ever-changing they can be. It's not in the homeowners' interest to destroy the local ecology, they likely moved to the more rural area specifically to appreciate it.

"B. Salmon"
(email verified)



Sat, Jul 24, 2010 at 02:46 PM

Re: Is the pool party over for family who developed yard near protected area?

No permit, no right to build. Fine, fine, fine them and the contractor and pull his license. Make them restore the wetlands they butchered and more besides as a reminder to all that you can not profit by bending or breaking the law.

"just sayin 2"
(email verified)

Sun, Jul 25, 2010 at 10:04 PM

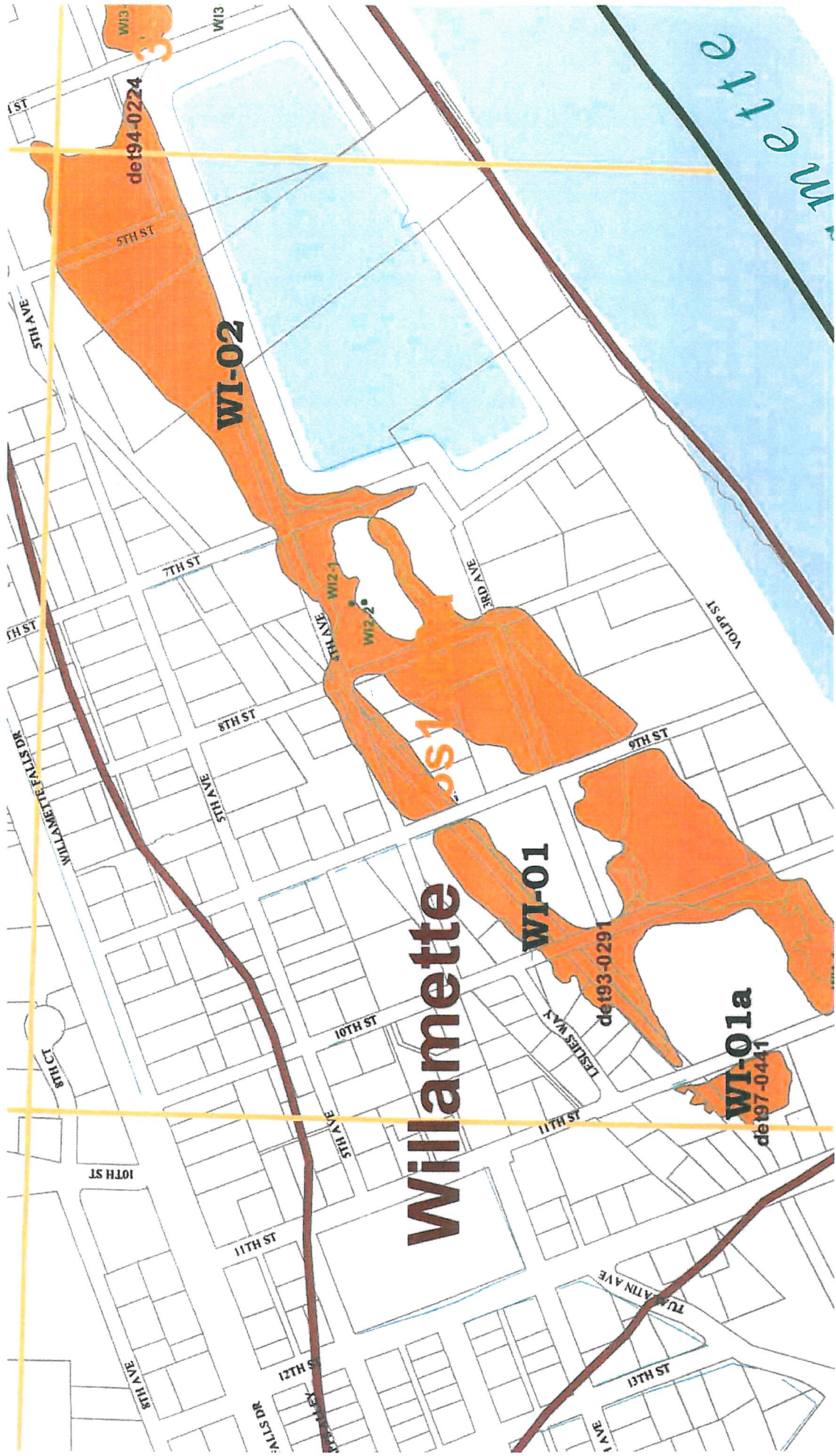
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Spir, Peter

From: Troy S. Bundy [TSB@hhw.com]
Sent: Monday, July 26, 2010 12:26 PM
To: Spir, Peter
Cc: Robinson, Michael C. (Perkins Coie); ginabundy@comcast.net
Subject: Additional Submittal in response to City Hearing Photo

Dear Mr. Spir:

What follows is a string of emails documenting the issue Mr. Evans and I had with our easement and his fence in 2009. Please include this as part of our submission to City Council. These are specifically relevant to the extent that you relied upon a photo taken by Mr. Evans of the spillway being flooded, which you attributed to the modification of the wetlands. This is not true, as I go into detail back in 2009 explaining how water runoff travelled through the existing channel. The amount of water has not changed. During heavy storms, we do get significant runoff, but it clears within 24-48 hours. Specifically, I state:

"I understand that your contractor has placed the end-post up against the gravel, rather than two feet from the gravel spillway as discussed. But, as long as we can both access the drain box, I think it may be okay. You will likely still experience water back up onto your property during heavy rain or snow melt. That is your call."

And

"Moreover, that section of the property floods every winter; thus, prohibiting/limiting what can and cannot survive over there. Hopefully, you can understand my point of view as well. If not, I would still be happy to work with the fence guy to help him understand the path of the water, how high it rises, etc. We will need to ensure that the spillway is not obstructed by any posts, clearance issues, etc."

Mr. Spir, I would also highlight for City Council that the direction of travel indicated in the photo identifies water accumulation in the SE corner of my property, next to the Evans' property and travelling over toward the Walker property. Hence, those photos depict water coming from the uncleared Evans' property. So, from that perspective, the photo proves the opposite of what you suggest. During heavy rains, the channel serves its purpose in directing the water toward the wetland located in the front of our property, as it has always done and prior to my purchase. 99.99% of the time, it is exactly how you observed it to be, or drier. In short, you've been had. Mr. Evans took a photo of the area at a time when water flow is unusually high. I actually remember that downpour earlier this year. It cleared that day and I would say we experience that situation 1-2 times per year, every year. In his defense, Mr. Evans may not have realized this because we had always maintained that property under the scope of our easement and the area was not visible by Mr. Evans until he removed the trees and vegetation engulfing his shed late last year in that corner of his yard.

Thank you,
Troy Bundy

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

From: Evans, Brian [mailto:BEvans@pccstructurals.com]
Sent: Monday, October 26, 2009 10:55 AM
To: Troy S. Bundy
Subject: RE: Fence

Troy,

Thanks for the email. I agree with your comments about getting this behind us. . . .

One question:

Your email below references your "enclosure" a couple of times. You have said on several occasions previously that you were not required to enclose the pool due to the automatic

cover. Now it sounds like you are planning an enclosure of some type (which is welcome news). Can you tell me what you have planned there? Will it go right around the pool on the patio or enclose the whole yard? Do you plan to rely on our fence as a part of the enclosure?

Thanks again

Brian

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

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

From: Troy Bundy [mailto:TSB@hhw.com]
Sent: Thursday, October 22, 2009 12:17 PM
To: Evans, Brian
Subject: RE: Fence

Brian,

As we discussed, we have no problem with your fence, as long as it is constructed as discussed and agreed. I understand that your contractor has placed the end-post up against the gravel, rather than two feet from the gravel spillway as discussed. But, as long as we can both access the drain box, I think it may be okay. You will likely still experience water back up onto your property during heavy rain or snow melt. That is your call. Our pool will remain covered until the spring and for 15-60 minute periods for monitoring/cleaning. Our final load of patio stone will be arriving shortly and we will be done with install as quickly as possible. Once that is done, we can proceed with our enclosure. Lets just get this all behind us and move on as neighbors. If you have problems with us in the future, just knock and let us know that you have a concern. We will do the same.

>>> "Evans, Brian" <BEvans@pccstructurals.com> 10/16/2009 2:55 PM >>>
Troy,

I just wanted to let you know that the fence guys will be starting on Tues. I'll need to move / remove a couple of those grasses over there. Let me know if you have any need for them.

Thanks

Brian

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

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

From: Troy Bundy [mailto:TSB@hhw.com]
Sent: Friday, October 02, 2009 6:01 PM

To: Evans, Brian
Subject: RE: Fence

No problem. We can talk later. Its easier to do things in person because mis-communications can occur too easily in texts/emails. I think I understand your point of view. However, I am curious what would be in it for me if I were to pay for everything (fence, AKS, landscape removal, etc), yet have you construct a fence on the marked property line? What benefit would my family derive from that? I cant think of any. Also, maybe the issue lies in your understanding in the amount of land we are talking about. Its is not thousands. I think it amounts to just over 300 square feet. 14 x 45 divided by 2 (since its a triangle) is 315, not thousands. If it were thousands, I would clearly understand your point of view. Moreover, that section of the property floods every winter; thus, prohibiting/limiting what can and cannot survive over there. Hopefully, you can understand my point of view as well. If not, I would still be happy to work with the fence guy to help him understand the path of the water, how high it rises, etc. We will need to ensure that the spillway is not obstructed by any posts, clearance issues, etc.

>>> "Evans, Brian" <BEvans@pccstructurals.com> 10/2/2009 4:41 PM >>>
Troy,

I guess we've had a miscommunication. You and I both agreed on several occasions that the best thing to do would be to rotate/swivel the property lines for the benefit of both of us. We came up with what I thought was an agreeable swap but then you had issues with your bank. I then offered to do the same swap in a formalized dual-lease scenario where we each lease the others property until the lot lines could be formally adjusted (presumably in one year when your bank issue would be resolved). You stated that Gina would not agree to this and to just "put the fence wherever you want". I thought that your continued offer to pay for that section of the fence was due to the fact that you are required by city code to enclose your pool.

From a practical standpoint, unless we can come up with an acceptable agreement regarding the land to the side/front of my property, I can't put the fence anywhere other than on the existing property line. I think I've been clear on that. While I am willing to exchange, I'm not willing to give up a few thousand square feet of land for free (or for \$800 worth of fence). I would be essentially fencing myself off from part of my property and giving up any practical use of it forever.

I know this is not an ideal situation and I think I've been reasonable as we try to work through it. However, I don't think protecting my property rights or asking for just compensation to be "silly". It sounds below like you are willing to let us "use, plant, or level" the land to the side/front of our house. If that's the case, we need to formalize that agreement in a documented / permanent manner so I can move forward with my proposed parking pad on the side of the house. Otherwise, we just need to build the fence on the existing property line and put this issue behind us. I won't plan on parking on the side of my house which I haven't done for 3 years anyway.

We can discuss further if you wish on Sunday (I'm out fishing tomorrow), but unless we can reach an agreement my only option is to put the fence on the official property line. I will plan on covering the cost given your opposition below.

Talk to you later

Brian

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

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

From: Troy Bundy [mailto:TSB@hhw.com]
Sent: Friday, October 02, 2009 3:25 PM
To: Evans, Brian
Subject: Re: Fence

Thanks for the info. The fence looks nice. But, I guess my message was that we would cover that section of the fence of your choice and remove the dead tree for you in exchange for continued use of the land we cleared, irrigated, planted, drained, and maintained since 2002 per agreement with the Craddocks. But if you would like to put up a fence along the pink string back there, we would respectfully decline on pitching in on costs. I'll not raise a legal stink about my common law and equity rights of use because we're going to be neighbors for quite some time, but let's not be silly. My offer still stands. We will pay for that section of the fence; allow you ingress and egress to your property from our car port; allow you to use, plant or level the section of property we own in front of your house; will continue maintaining the drain box we placed in reliance on Bob's agreement with us; and we'll even remove the dead tree for you. That's the best I can do. In exchange you agree to let us continue using the property just as we've been doing for the last 7 years, or lease it from you with the understanding that it's yours and we have no rights of adverse possession. We will cooperate in the transition either way for the sake of neighborhood harmony. Just let us know which direction you care to take. Troy Bundy sent from his Blackberry -----Original Message-----

From: "Evans, Brian" <BEvans@pccstructurals.com>
To: Troy Bundy <TSB@hhw.com>

Sent: 10/2/2009 2:42:04 PM
Subject: Fence

Troy,

Here is the quote for the fence. This is the best quote of the ones we received. As I mentioned on my voicemail, there is more fencing, gates, etc on here than just what borders your property and we obviously don't expect you to cover any of that. Item 8 (\$867) is the section that borders your property.

They gave us several quotes for different gate / arbor designs. We will be putting gates on both sides of our house to keep the dogs in the backyard and will probably do some sort of decorative trellis on each. We have spent some time driving around and taking pictures of gates / arbors that we liked and I have attached a couple of pictures of what we are thinking for our gates. You could have Austin's quote you a wood gate or you can obviously stick with the iron gate you were originally thinking. Austin's would probably cut you a deal if you have the gate built at the same time as the rest of the fencing.

We can discuss timing but they are about 2 weeks out on their installation schedule so maybe sometime during the week of Oct 19. In the meantime, I will be working to clear a path for the fence, cut down the dead tree (and the scraggly one next to it), etc. I will also need to find that property monument. I found it before so it must be there somewhere. Maybe it got buried or disturbed with all of the equipment you had back there or maybe I just need new batteries in the metal detector. Worst case we'll just have to have AKS come out and find / replace it. Anyway, let me know if you need more time than that to complete your project back there.

In your text message, you were asking about the location of the fence relative to the drain box. I'll have to take a look back there and see what you are talking about. If you know where your irrigation / drain lines run we need to make sure Austin's knows about them so they can try to avoid them while digging post holes.

Talk to you later.

Brian

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

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Spir, Peter

From: Troy S. Bundy [TSB@hbw.com]
Sent: Monday, July 26, 2010 12:23 PM
To: Spir, Peter; Robinson, Michael C. (Perkins Coie)
Cc: Sonnen, John
Subject: Part of submittal to City Council

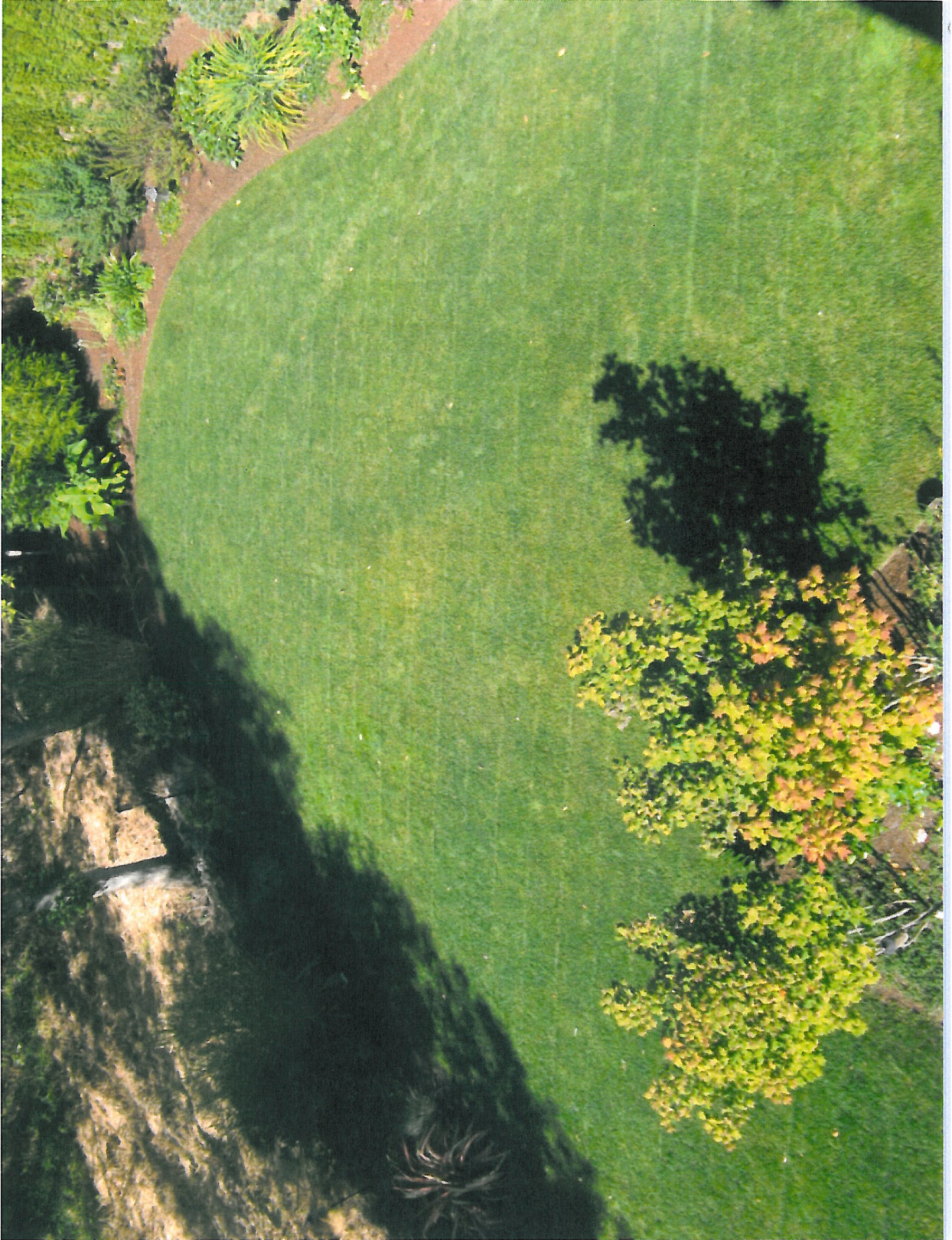
Dear Mr. Spir:

Please include this as part of our submittal to City Council. Visible in the photo is the dead reed canary grass on the PGE lot, which is reflected in your 2008 aerial. This refutes the argument that we "dumped fill" in 2008. Also visible is the tree that was uprooting and falling over our fountain, which necessitated my call to PGE in the first place. The tree ultimately fell over, as did others, as it is in the cottonwood tree's nature to absorb too much water, lean, and topple over during storms or excessively wet winters. They all had heart rot, which is still present in the remaining trees. The PGE email referred to this tree as a "branch," probably because it was connected to a clump, but it did uproot as a tree does. This dead grass is also visible on portions of the adjoining lots. It is not fill.

Thank you,

Troy S. Bundy





Spir, Peter

From: Troy S. Bundy [TSB@hhw.com]
Sent: Monday, July 26, 2010 10:56 AM
To: Spir, Peter
Cc: Robinson, Michael C. (Perkins Coie)
Subject: Bundy/Evans Easement for the benefit of Bundy Property

Dear Mr. Spir:

Please include this document as only a part of our submission to City Council. This easement is relevant in confirming the private easement we possess on the Evans' property in dispute of the insinuation that we trespassed on the Evans property to install landscaping or a drain. The easement was entered into between myself and the Craddocks in 2003 at the time of purchase of our home. Mr. Evans refused to acknowledge the easement because it was purportedly not disclosed to him prior to the purchase of his home from the Craddocks in 2007. In attempting to "keep the peace," we elected not to sue for enforcement in Circuit Court and to simply comply with their demand that we remove our landscaping from that area so they could build their fence.

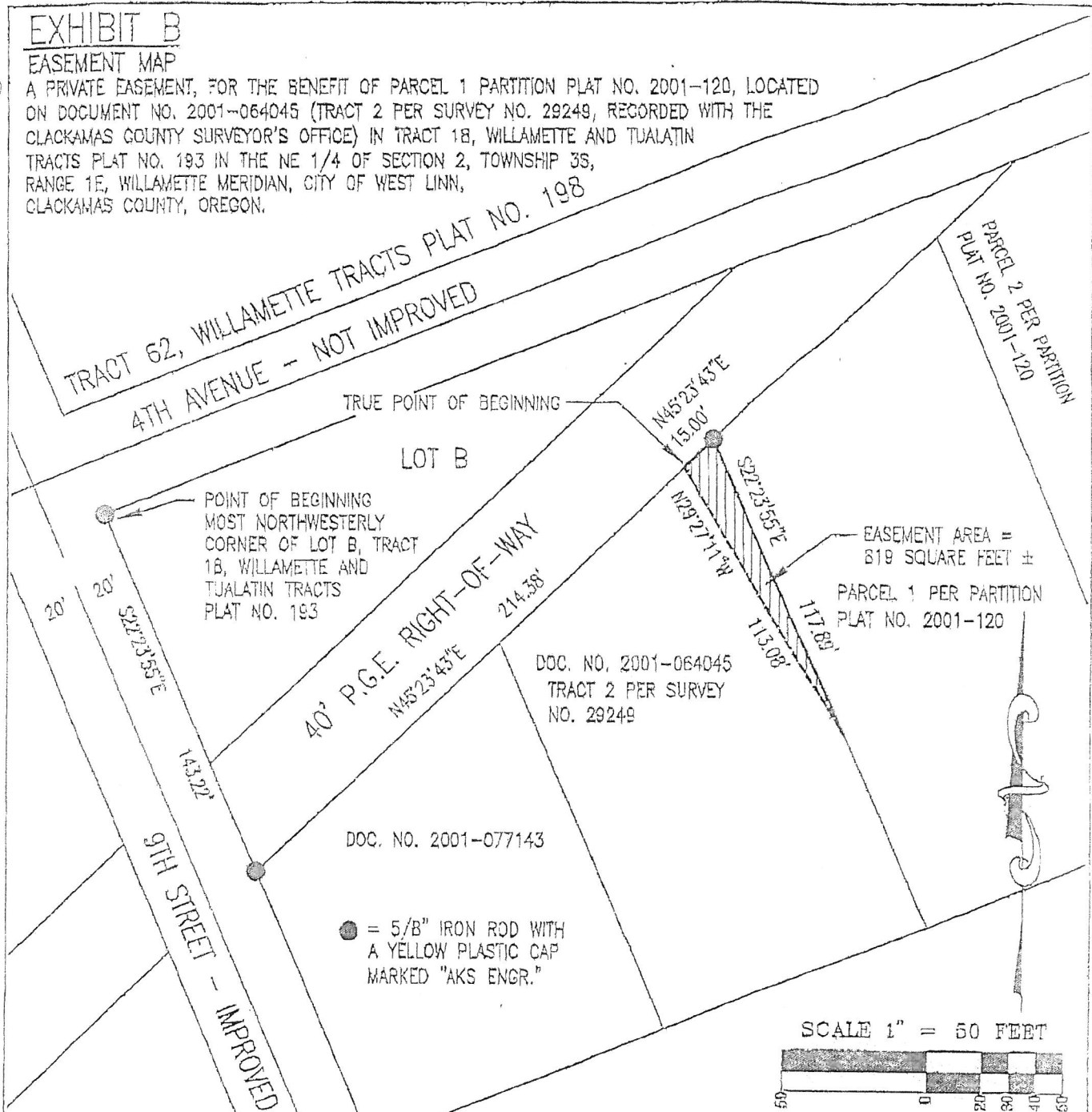
Thank you,

Troy Bundy

EXHIBIT B

EASEMENT MAP

A PRIVATE EASEMENT, FOR THE BENEFIT OF PARCEL 1 PARTITION PLAT NO. 2001-120, LOCATED ON DOCUMENT NO. 2001-064045 (TRACT 2 PER SURVEY NO. 29249, RECORDED WITH THE CLACKAMAS COUNTY SURVEYOR'S OFFICE) IN TRACT 18, WILLAMETTE AND TUALATIN TRACTS PLAT NO. 193 IN THE NE 1/4 OF SECTION 2, TOWNSHIP 3S, RANGE 1E, WILLAMETTE MERIDIAN, CITY OF WEST LINN, CLACKAMAS COUNTY, OREGON.



DOC. NO. 2001-064045
TRACT 2 PER SURVEY
NO. 29249

DOC. NO. 2001-077143

BASIS OF BEARINGS FOR THIS MAP IS PER SN 29249.

PREPARED FOR: SHERIDAN CLASSIC HOMES	JOB NAME:	9TH STREET
	JOB NUMBER:	970
	DRAWING NUMBER:	EASEMENTMAP1
	DRAWN BY:	MBH
	CHECKED BY:	CHS

ENGINEERING • PLANNING • SURVEYING • FORESTRY

LICENSED IN OR & WA

13910 SW GALBREATH DR.,
SUITE 100
SHERWOOD, OR 97140
PHONE: (503) 925-8788
FAX: (503) 925-8968
E-MAIL: aks@aks-eng.com

ENGINEERING PLANNING

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



SURVEYING FORESTRY

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

EXHIBIT A

EASEMENT DESCRIPTION

A Private Easement, for the benefit of Parcel 2 Partition Plat No. 2001-120, located on Parcel 1 Partition Plat No. 2001-120 in Tract 18, Willamette and Tualatin Tracts in the NE ¼ of Section 2, Township 3 South, Range 1 East, Willamette Meridian, City of West Linn, Clackamas County, Oregon. The Private Easement is more particularly described as follows:

Beginning at a 5/8" iron rod with a yellow plastic cap marked "AKS ENGR.", said point being the most northwesterly corner of Lot B, Tract 18, Willamette and Tualatin Tracts, located at the intersection of the southerly right-of-way line of 4th Avenue and the easterly right-of-way line of 9th Street; thence along the easterly right-of-way line of 9th Street, S22°23'55"E 143.22 feet to a 5/8" iron rod with a yellow plastic cap marked "AKS ENGR.", said point being on the southerly PGE right-of-way line; thence along the southerly PGE right-of-way line, N45°23'43"E 315.39 feet to the TRUE POINT OF BEGINNING; thence continuing along the southerly PGE right-of-way line, N45°23'43"E 22.00 feet to a 5/8" iron rod with a yellow plastic cap marked "AKS ENGR." located at the northeast corner of Parcel 1 Partition Plat No. 2001-120; thence along the eastern line of Parcel 1, S22°23'55"E 87.97 feet to a point; thence leaving the eastern line of Parcel 1, N36°44'33"W 82.22 feet to the TRUE POINT OF BEGINNING.

The described easement above contains 896 square feet, more or less.

The basis of bearings for this description is per Survey Number 29249, recorded with the Clackamas County Surveyor's Office.

2

Spir, Peter

From: Robinson, Michael C. (Perkins Coie) [MRobinson@perkinscoie.com]
Sent: Monday, July 26, 2010 10:14 AM
To: Spir, Peter; Sonnen, John; tsb@hhw.com; ginabundy@comcast.net; Robinson, Michael C. (Perkins Coie)
Subject: Fw:

Good morning, Peter and John. These are photos from Mr. and Mrs. Bundy. This is part of our initial submittal. Would you please place them in the official Planning Department file and before the City Council prior to deliberation?

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

From: Troy S. Bundy <TSB@hhw.com>
To: Robinson, Michael C. (Perkins Coie)
Sent: Mon Jul 26 09:34:58 2010
Subject: FW:

T <<yard pics.doc>> these photos are great and show what is really on the conservation easement. I measured it out and it only comprises 982 square feet.

From: Gina Bundy [mailto:ginabundy@comcast.net]
Sent: Sunday, July 25, 2010 10:00 PM
To: Troy S. Bundy
Subject:

Yard pictures you asked for.

IRS CIRCULAR 230 DISCLOSURE: To ensure compliance with Treasury Department and IRS regulations, we inform you that, unless expressly indicated otherwise, any federal tax advice contained in this communication (including any attachments) is not intended or written by Perkins Coie LLP to be used, and cannot be used by the taxpayer, for the purpose of (i) avoiding penalties that may be imposed on the taxpayer under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein (or any attachments).

NOTICE: This communication may contain privileged or other confidential information. If you have received it in error, please advise the sender by reply email and immediately delete the message and any attachments without copying or disclosing the contents. Thank you.





Spir, Peter

From: Troy S. Bundy [TSB@hbw.com]
Sent: Monday, July 26, 2010 12:49 PM
To: Spir, Peter; Robinson, Michael C. (Perkins Coie)
Subject: FW: prepurchase home pic

Dear Mr. Spir:

Attached are pre-purchase photos of our home showing landscaping as it existed. As you can see, it extended up to its current location. Please include these as part of our submission to City Council. Thank you.

Troy Bundy

7/26/2010



← Established neighbors yard with garden box

← Established yard Pre-purchase home Feb 2003



↑ Property marker. Landscape set back Pre-purchase home Feb 2003



↑ Tree still in yard, now much lower to grass level
Pre-purchase home Feb 2003



Established neighbors yard
April 2003

Spir, Peter

From: Troy S. Bundy [TSB@hww.com]
Sent: Monday, July 26, 2010 2:21 PM
To: Spir, Peter; Sonnen, John
Cc: Robinson, Michael C. (Perkins Coie); ginabundy@comcast.net
Subject: FW: Scanned document from sharescanop@hww.com

Mr. Spir:

Attached is part of our submission to City Council explaining some of the earlier exhibits. Please include this as part of the official record to go before City Council prior to deliberations. Thank you.

Troy Bundy

PART OF APPLICANTS' SUPPLEMENTAL SUBMISSION AND REBUTTAL

Dear City Council:

First, the City Council voiced some concern about creating precedent in granting our permit. Precedent is a legal term of art that exists when a given situation and set of facts is capable of being repeated. The fact is, this situation is not capable of repetition. In order for this to occur, the following facts must be demonstrated:

- A home must be completely engulfed by a wetland and city ordinance.
- The home must have been built in reliance upon a wetland delineation that was never accepted by the DSL or the USACE. The Assistant City Planner in charge must have failed to verify or coordinate efforts with the building of said home with appropriate state and federal agencies or required proof from the builder of same, and a home was built where none should have been allowed in the first place.
- A pool permit must be sought by an owner, the City Permit Coordinator must review applicants' submissions, modify them, and direct the applicants to persuade the Mayor to seek non-enforcement.
- The City Mayor must respond to the applicant's inquiry, visit their home, and grant reprieve from the ordinance while instructing the applicant to build the pool, notifying them that she will deal with questions anyone should have. The Planning Department is not to be further involved. In reliance on those assurances, the contractor and applicant must proceed with pool construction.
- After then applying for a hardship at the request of the City Permit Coordinator, the Assistant City Planner must deny a hardship application based in large part on a misunderstanding of the true facts.
- The applicant must be given authority by the DSL and the USACE to install the pool, enter into a consent agreement for restoration, civil penalty and wetland credits to go towards a restorable piece of property.

These facts are incapable of setting precedent.

That said, what follows is a point by point discussion and rebuttal to allegations made by Assistant City Planner Peter Spir, together with direct evidence refuting certain statements made by him throughout the process and before this Council:

- Because Mr. Spir orally "corrected" the record about the following statements, not much more need be said. However, what is relevant is that he misrepresented statements made by the Federal Government and its agents, to wit:
 - ◆ Mr. Spir represented to the City Manager that the US Army Corps of Engineers would be pursuing enforcement against the Bundys. As he admitted at the hearing, this was false, and he had been previously provided with the USACE's position statement prior to making this false statement.
 - ◆ Mr. Spir represented that the US Army Corps of Engineers had determined CDC 32 had been violated. As he admitted, this was false.
 - ◆ Mr. Spir represented that the US Army Corps of Engineers had determined there was a "substantial impact" to the wetland by the pool improvements. This was false, as the only trained biologists who examined the site determined the pool and patio caused no substantial impact and the wetland was still functional. The wetland biologists also determined that the alleged native vegetation that was removed from the PGE side was a noxious weed called Reed Canary Grass. The presence of this species of plant on other portions of the property made the value of the resource as a functioning, healthy wetland low. Additionally, because of its presence, the likelihood of wetland survival was unlikely.

- Mr. Spir accused us of digging a trench in the rear of our property. As he admitted in the hearing, this was also false.

- Mr. Spir insists that the aerial photo from 2008 depicts "dumping" or "fill." As the attached photo from that time frame proves, the area referenced depicts dead reed canary grass, not fill. It is noteworthy that this same brownish area is seen on the adjoining properties as well, in their front yards. When Reed Canary Grass dies, it turns yellowish brown, as depicted in all photos, including Mr. Spir's.

- Mr. Spir claims we had no authority from PGE to remove the debris from their property. In support of that statement he provided half of a quote from a PGE email which concludes that they have no record of giving that authority. However, on November 9, 2009, my letter on p 90 of the City Planner's Final Decision states as follows:
 - "We called PGE one day about the land after a tall, water-soaked willow tree crashed over onto our property and damaged our water feature during a recent ice storm. The PGE landscape manager called us back and told us we could remove the tree from our back yard, if we wished, but it would take him about 2 weeks to get a crew out there. I gathered that he missed my point (ie I thought PGE should pay), but asked him if they would clear out all the debris back there. He again declined, mentioning that, as long as it did not interfere with the power cables or my property, they would look at it, but I shouldn't hold my breath. He had no objection to us clearing the area, as long as we did not remove any of the trees."..... In response to Mr. Spir's solicited inquiry, PGE responded as follows: "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.” This section of the email above was omitted by Mr. Spir in addressing City Council and the City Manager.

- Mr. Spir claims we "installed bridges" on the wetland. Attached you will see that this was a mischaracterization on Mr. Spir's Part. This was personally demonstrated to Mr. Spir when he was on site. The bridges are not installed into anything and help keep our children out of the mud when they go out to play. They are movable pieces of furniture, not structures.
- Attached are also John Nomie's email exchanges referenced in Gina Bundy's affidavit substantiating the scope of those interactions and the fact that he was reviewing our submittals before presentation to Peter Spir and the Mayor. It should be known that it was Mr. Nomie who directed us to the Mayor and reviewed that plea before we sent it to Patti Galle.
- Attached are email exchanges between ourselves and Patti Galle substantiating the scope of her involvement in this matter.
- Attached are pre-purchase photos showing the back yard was installed and existant prior to purchase. The photos depict the back yard landscaped up to the point of its current location. We did not remove native plants from our back yard. It was pre-landscaped at the time of purchase. The allegation that we removed native plants to install the pool is false.
- In Mr. Spir's report to the City Manager, he highlights portions of the 2000 wetland delineation, specifically test pits 1-4 on page CC-7 of his 6/14/10 memo. Yet, he fails to mention that pits 1-4 fall well-outside our property. Instead, the one pit that actually was taken exactly where the pool is situated states as follows: Test Pit 11: "No hydrology observed on 8-11-00. No surface water, No free water, No saturated soil found. The soil was very dry and difficult to penetrate. Wetland Determination: NONE OF THE CRITERIA WERE MET." Pages CC-7, CC-118-119.

- Attached is the easement that was drawn up over the Evans' property at the time we purchased our home in 2003. Mr. Spir insinuated that we had unlawfully encroached upon the Evans' land in his letter to the City Manager. As you can see, this is not the case.

Thank you for this Council's due consideration.

Respectfully submitted,


Troy S. Bundy

7/26/10

Troy S. Bundy

From: mail@pattigalle.com
Sent: Tuesday, May 25, 2010 6:33 PM
To: mrobinson@perkinscoie.com
Cc: Troy S. Bundy; lynn fox
Subject: Bundy's

Hi Mike,

The issue of the Bundy property is of concern to me as a former council member and citizen in that the city has unfairly and unequally targeted the Bundy's encroachment while numbers of others known to the city, go unquestioned.

One only has to walk the Palomino Trail and see the number of encroachments onto to city owned property in the form of decks, houses, gardens, sheds and other types of accommodations. These lands are owned by the citizens. Why is OK for residents to encroach and take ownership of tax paying citizens land and it is not OK for the Bundy's to encroach?

The city has set up a system of belief by residents that they will not be held accountable for encroachments as they have failed to address them. Residents in general see no issue with building into resource areas or city property.

How can the city of West Linn require the Bundy's to "pay" for their actions when many others are not held accountable?

Doesn't the city have an obligation to enforce code equitably? How can they **legally** target one home owner?

As your letter to Kovash states, the Mayor cannot approve or disapprove land use issues, however, it was always of great concern to me to see that indiscriminate enforcement has been taking place for many years. This is not responsible municipal government.

You should speak with Lynn Fox (503-655-6347), who can give you an accurate account of the encroachments on the Palomino Trail. Also, Carried Pellet (503-650-7981) who can give you an account of conversations between the city and the residents on the Palomino Trail and the encroachments.

Additionally, Kevin Bryck, (503-675-7301) who can give you an accounting of

encroachments in Robinwood. All of these people can refer you to others who have listed and reported these properties to the city to no avail.

Roberta Schwarz recently submitted a very extensive and obviously expensive stairway built by a resident into the city owned Savanna Oaks property. I believe the city has contacted this resident but this is a case of how residents have little expectation that they will be held accountable for their actions. You may want to review this matter. Her number is 503-723-5015

Gary Hitesman is another source for information of how the city has dealt with these issues in the most inequitable manner. The last number I have for him is 503-974-9894.

Finally, Councilor Teri Cummings has been dealing with a land use issue mishandled by the city behind her property for years. Speaking with her will give you insight on this matter.

It only seems appropriate that the necessary permits be issued and the fees waived. Instead of harassing the Bundy's they should be instituting an equitable plan to deal with the issue of encroachments.

Also, I would think a judge would find that a local city government cannot randomly decide who will be accountable for encroaching on any type of land not owned by the offender. This in light of the number of residents who have encroached.

Patti Galle

The average man will bristle if you say his father was dishonest, but he will brag a little if he discovers that his great-grandfather was a pirate. ~Bern Williams



Troy S. Bundy

From: Gina Bundy [ginabundy@comcast.net]
Sent: Monday, July 26, 2010 1:30 PM
To: Troy S. Bundy
Subject: FW: Thank you

From: Gina Bundy [mailto:ginabundy@comcast.net]
Sent: Tuesday, July 14, 2009 10:21 AM
To: 'jnomie@westlinnoregon.gov'
Subject: Thank you

John,

Good Morning.. errrr ;-) Thank you for the call and the link regarding the code. I am preparing a letter to the Mayor as we speak; in hopes of expediting a potential lengthy process. I will review both Chapter 32 and Measure 43 to see what, if any can be used as an appeal process. After we spoke, I alerted Dana Anderson to the problem. I am optimistic, but unsure if we will be able to proceed this summer given the timeline at stake.

This is so frustrating mainly because of the impact this all has on the circle of funds.. economy recession.. spend money to start the flow.... another hurdle.. right???

I really do appreciate all the help and advice you are able to offer.

Hoping to FAST, POSITIVE result :-)
Gina

Troy S. Bundy

From: Gina Bundy [ginabundy@comcast.net]
Sent: Monday, July 26, 2010 1:30 PM
To: Troy S. Bundy
Subject: FW: How does this sound?

From: Gina Bundy [mailto:ginabundy@comcast.net]
Sent: Tuesday, July 14, 2009 11:38 AM
To: 'jnomie@westlinnoregon.gov'
Subject: How does this sound?

Dear Mayor Galle:

My family and I have been West Linn residents for the last 7 years. My wife, Gina, is an emergency room nurse, and I am a partner at my law firm, in Portland. Our sons are Logan (8) and Cole (4). We live at the bottom of 9th Street, in Willamette. Our home is situated at the bottom of a tall hill and is bordered in the front and back by wetlands, which we have been maintaining. The rear wetland is actually a PGE easement; power lines are suspended by several towers situated throughout the easement and running the length of our back yard. (photos attached). Maintenance of the area has included our efforts at clearing blackberry brambles, fallen trees, and other debris. West Linn P.D. and the power company has thanked us for our efforts on more than one occasion. Power lines are affected fairly often as tree limbs fall throughout the winter. Our only neighbors are to the right and left of our home: The Walkers and The Evans. Between the six of us, we have seven children sharing the area.

The short story is that we were told you are the only person who can assist us with our current dilemma. After saving for many years, we finally put away enough money to improve our back yard. Part of our plan included the construction of a small swimming pool. The pool was to sit adjacent to our home, near our back patio and well-within our back yard. (plans attached). We have worked with John Nomie, in city planning, for over a year now. Our initial \$10,000 deposit was paid, and the final step before construction of our improvement was our permit.

We learned today that our permit application was denied. Mr. Nomie informed us that, last year, the "wetland set-back" was expanded to include our back yard under the Water Resource Protection Act. Unlike most other West Linn residents, without an exception permit from you, we cannot modify our own back yard. So, on behalf of the three families that have been looking forward to the pool, we are respectfully requesting an exception permit that would allow us to construct our pool, which would rest in our own back yard and be completely up to code. Moreover, our plan is to continue incorporating native plants and grasses into the design, in keeping with the surrounding area.

The spirit of the act is unaffected by our construction. Actually, there is no water in the area; there is no stream or river. So, placing a pool into our back lawn does not affect water quality or erosion, which is what the act seems to address. Since it is already in our back yard, we are also not affecting native grasses, plants, or wildlife in any way whatsoever. We are not digging in the wetland and we are not intending to create a giant, rectangular monstrosity in the middle of our own little paradise. We simply want to create an aesthetically-pleasing and useful environment for ourselves, our neighbors and our children in our own lawn. Quite frankly, our neighbors closer to the river (in front of our home) have adapted their wetland for use as grazing pasture for livestock and even a motocross track. We have always respected and maintained our section of wetland with great care, and the granting of our permit will not in any way cause harm to our environment.

Please give us a moment of your time to discuss this further in person, if necessary, or call/write with any question you might have.

Thank you,

Troy, Gina, Logan, and Cole Bundy
1215 9th Street
West Linn, OR 97205
Home: (503) 723-0855
Troy's Cell: (503) 703-2052
Gina's Cell: (503) 816-5032

tsb@hhw.com
ginabundy@comcast.net

Troy S. Bundy

From: Gina Bundy [ginabundy@comcast.net]
Sent: Monday, July 26, 2010 1:24 PM
To: Troy S. Bundy
Subject: FW: Emailing: 032-water-resource-area-protection

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

From: Nomie, John [mailto:JNomie@westlinnoregon.gov]
Sent: Tuesday, July 14, 2009 9:32 AM
To: ginabundy@comcast.net
Subject: Emailing: 032-water-resource-area-protection

<<032-water-resource-area-protection.url>>
Gina, here's a link to the code chapter on wetlands.
You might want to take a look, you might find something that I could'nt.
Or something that is useful when talking to the mayor.

John Nomie

The message is ready to be sent with the following file or link attachments:

Shortcut to:
<http://westlinnoregon.gov/planning/032-water-resource-area-protection>

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.

Troy S. Bundy

From: Gina Bundy [ginabundy@comcast.net]
Sent: Monday, July 26, 2010 1:24 PM
To: Troy S. Bundy
Subject: FW: Bundy Project

From: Nomie, John [mailto:JNomie@westlinnoregon.gov]
Sent: Monday, July 13, 2009 4:13 PM
To: Gina Bundy
Subject: RE: Bundy Project

Seriously, it's always a pleasure to see you or hear from you.

As a young man I was always known as the "WHY?" man.
So I see nothing wrong with asking questions and I'm always happy to talk to you and answer your questions.

I will call if I have any questions or as soon as your permit is ready.

John Nomie
Permit Coordinator
City of West Linn
Building Division
OPTA President

From: Gina Bundy [mailto:ginabundy@comcast.net]
Sent: Monday, July 13, 2009 3:26 PM
To: Nomie, John
Subject: Bundy Project

John-

Hello,

Happy Monday :-) I hope you had a great weekend. Thank you for calling me back to discuss the pending pool permit. I am sorry that I ask alot of questions, I am the type of person that always wants to understand how things work and what I can do to help. Not the typical, "They just go into the building and magically come out with a signed permit." Dana has told our first meeting to many people; I had all the possible brochures for pool options and equipment, I had already spoken with you a few times and I knew the budget the pool could not exceed. :-) See why I brought coffee to our meeting.. now aren't you glad I wasn't there.

I have attached the pool proposal for your review. I hope this is the right document you need, if not please do not hesitate to call or ask.

Thank you for all you help and understanding with this project.

Warmly,
Gina Bundy
503-723-0855


Public Records Law Disclosure

Troy S. Bundy

From: Gina Bundy [ginabundy@comcast.net]
Sent: Monday, July 26, 2010 1:24 PM
To: Troy S. Bundy
Subject: FW: Measure 32 letter

From: Nomie, John [mailto:jnomie@westlinnoregon.gov]
Sent: Thursday, October 22, 2009 11:53 AM
To: ginabundy@comcast.net
Subject: RE: Measure 32 letter

That sounds great and seems to hit all the points.

 John Nomie
jnomie@westlinnoregon.gov
Permit Coordinator, Building
22500 Salamo Rd.
West Linn, OR, 97068
P: (503) 656-4211
F: (503) 656-4106
Web: westlinnoregon.gov

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

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

From: ginabundy@comcast.net [mailto:ginabundy@comcast.net]
Sent: Thursday, October 22, 2009 11:37 AM
To: Nomie, John
Subject: Measure 32 letter

John-

Thank you!

G

Troy S. Bundy

From: Gina Bundy [ginabundy@comcast.net]
Sent: Monday, July 26, 2010 1:25 PM
To: Troy S. Bundy
Subject: FW: How does this sound?

From: Nomie, John [mailto:JNomie@westlinnoregon.gov]
Sent: Tuesday, July 14, 2009 1:09 PM
To: Gina Bundy
Subject: RE: How does this sound?

I made a few corrections.

The Mayor can't grant an exemption to the code.

She can however, ask for Planning to read the code in your favor.

Or just cause a stink about it until they agree to allow the permit to move forward.

At least that's how it seems sometimes.

John Nomie
Permit Coordinator
City of West Linn
Building Division
OPTA President

From: Gina Bundy [mailto:ginabundy@comcast.net]
Sent: Tuesday, July 14, 2009 11:38 AM
To: Nomie, John
Subject: How does this sound?

Dear Mayor Galle:

My family and I have been West Linn residents for the last 7 years. My wife, Gina, is an emergency room nurse, and I am a partner at my law firm, in Portland. Our sons are Logan (8) and Cole (4). We live at the bottom of 9th Street, in Willamette. Our home is situated at the bottom of a tall hill and is bordered in the front and back by wetlands, which we have been maintaining. The rear wetland is actually a PGE easement; power lines are suspended by several towers situated throughout the easement and running the length of our back yard. (photos attached). Maintenance of the area has included our efforts at clearing blackberry brambles, fallen trees, and other debris. West Linn P.D. and the power company has thanked us for our efforts on more than one occasion. Power lines are affected fairly often as tree limbs fall throughout the winter. Our only neighbors are to the right and left of our home: The Walkers and The Evans. Between the six of us, we have seven children sharing the area.

The short story is that we need your help. After saving for many years, we finally put away enough money to improve our back yard. Part of our plan included the construction of a small swimming pool. The pool was to sit adjacent to our home, near our back patio and well-within our back yard. (plans attached). We have worked with John Nomie, in city

planning, for over a year now. Our initial \$10,000 deposit was paid, and the final step before construction of our improvement was our permit.

We learned today that our permit application was denied. Mr. Nomie informed us that, last year, the "wetland set-back" was expanded to include our back yard under the Water Resource Protection Act. Unlike most other West Linn residents we cannot modify our own back yard. So, on behalf of the three families that have been looking forward to the pool, we are respectfully requesting to be allowed to construct our pool, which would rest in our own back yard and be completely up to code. Moreover, our plan is to continue incorporating native plants and grasses into the design, in keeping with the surrounding area.

The spirit of the act is unaffected by our construction. Actually, there is no water in the area; there is no stream or river. So, placing a pool into our back lawn does not affect water quality or erosion, which is what the act seems to address. Since it is already in our back yard, we are also not affecting native grasses, plants, or wildlife in any way whatsoever. We are not digging in the wetland and we are not intending to create a giant, rectangular monstrosity in the middle of our own little paradise. We simply want to create an aesthetically-pleasing and useful environment for ourselves, our neighbors and our children in our own lawn. Quite frankly, our neighbors closer to the river (in front of our home) have adapted their wetland for use as grazing pasture for livestock and even a motocross track. We have always respected and maintained our section of wetland with great care, and the granting of our permit will not in any way cause harm to our environment.

Please give us a moment of your time to discuss this further in person, if necessary, or call/write with any question you might have.

Thank you,

Troy, Gina, Logan, and Cole Bundy
1215 9th Street
West Linn, OR 97205
Home: (503) 723-0855
Troy's Cell: (503) 703-2052
Gina's Cell: (503) 816-5032

tsb@hwh.com
ginabundy@comcast.net

Public Records Law Disclosure

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Troy S. Bundy

From: Gina Bundy [ginabundy@comcast.net]
Sent: Monday, July 26, 2010 1:26 PM
To: Troy S. Bundy
Subject: FW: Bundy Project
Attachments: Bundy.pdf

From: Gina Bundy [mailto:ginabundy@comcast.net]
Sent: Monday, July 13, 2009 3:26 PM
To: 'jnomie@westlinnoregon.gov'
Subject: Bundy Project

John-

Hello,

Happy Monday :-) I hope you had a great weekend. Thank you for calling me back to discuss the pending pool permit. I am sorry that I ask alot of questions, I am the type of person that always wants to understand how things work and what I can do to help. Not the typical, "They just go into the building and magically come out with a signed permit." Dana has told our first meeting to many people; I had all the possible brochures for pool options and equipment, I had already spoken with you a few times and I knew the budget the pool could not exceed. :-) See why I brought coffee to our meeting.. now aren't you glad I wasn't there.

I have attached the pool proposal for your review. I hope this is the right document you need, if not please do not hesitate to call or ask.

Thank you for all you help and understanding with this project.

Warmly,
Gina Bundy
503-723-0855

Spir, Peter

From: Troy S. Bundy [TSB@hbw.com]
Sent: Monday, July 26, 2010 2:39 PM
To: Spir, Peter; Sonnen, John; Robinson, Michael C. (Perkins Coie)
Cc: Gina Bundy
Subject: Independent Wetland Consultant Report

Dear Mr. Spir:

Attached please find our wetland consultant's report for inclusion in the official record as part of our final written evidentiary submissions to City Council. Thank you.

Troy Bundy

7/26/2010

June 7, 2010

Troy and Gina Bundy
1215 9th Street
West Linn, OR 97068

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

Dear Mr. and Mrs. Bundy,

On your behalf, I have reviewed the aforementioned letter from the Oregon Department of State Lands (DSL) dated May 26, 2010 and have visited your property on several occasions. The paragraphs below outline my findings as they pertain to the unpermitted removal of material and placement of fill in wetlands on your property and the adjacent PGE Right-Of-Way immediately behind (north of) your property (Tax Lot 8201 and 2200 on Clackamas County Assessor's maps 31E2AB and 31E2, Attachment A).

Site visits have revealed that a swimming pool, patio, and landscaping features have been constructed within wetlands in the back (north) part of your property, a drainage ditch was improved along the north property line, and landscaping was conducted within the PGE Right-Of-Way. Within the landscaped areas and the drainage ditch, standing water was present along with saturated soil conditions in the upper part of the soil profile. Emergent wetland vegetation (horsetail, reed canarygrass) was re-establishing in the mulched borders of the landscaped areas and within the lawn. Several soil samples taken near the patio and in the PGE Right-Of-Way indicated varying depths of fill (2 to 6 inches) over the native soil. The fill material in the landscaped areas was composed of sod or mulch over imported (non-native) soil. The majority of the fill (in terms of volume) in the landscaped area on the PGE Right-Of-Way appeared to be composed of the imported soil. Within the drainage ditch, 1 to 3 inches of coarse (3+ in.) crushed rock had been placed in the bottom of the ditch.

The surrounding undisturbed site conditions consisted of slightly hummocky terrain with various pockets of standing water and saturated soil conditions in the upper part of the soil profile. Undisturbed wetland areas were dominated by non-native and invasive herbaceous vegetation (reed canarygrass, blackberry, English Ivy) under a canopy of native and non-native woody species (willow, cottonwood, escaped ornamentals). No natural drainage or stream was observed within the immediate vicinity of the property although one is indicated on the LWI map for the area (Attachment B). Soils are mapped as Wapato silty clay loam (hydric) and Cloquato (non-hydric) (Attachment C). Soil profiles appear to more closely align with the Wapato series.

While the overall Findings of Fact (Section II of the DSL letter) cannot be disputed, more specific information and interpretation can be provided.

6. 'The damage to the natural resource value is significant and/or the resource is not expected to naturally self restore within one year'. While this statement is true for the

portion of the property that includes the swimming pool and patio, I am not convinced that it correctly reflects the conditions for the remainder of the property including the landscaped areas and drainage ditch. These areas, while altered, remain wetland if utilizing the recognized delineation methodology as described in the U.S. Army Corps of Engineers (Corps) Wetland Delineation Manual ('87 Manual) and the Interim Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Western Mountains, Valleys, and Coast Region. That is, these areas have not been effectively filled or altered in such a way so as to eliminate wetland conditions. The landscaped areas and drainage ditch, while partially filled and/or excavated, continue to exhibit wetland hydrology indicators (surface water and or saturation near the surface), exhibit hydric soil indicators (depleted matrix and/or redox dark surface), and would likely possess hydrophytic vegetation dominance should these areas be left fallow and unmanaged as evidenced by the presence of hydrophytic vegetation already growing throughout these areas (horsetail, reed canarygrass). In the absence of the managed plant community (sod and mulch), the area would reflect the unmanaged vegetative conditions present on the surrounding PGE Right-Of-Way.

Furthermore, their overall functional contribution and value in the greater landscape is pretty minimal considering they are part of a vastly larger wetland complex (Attachment B) that occupies this part of the landscape in West Linn. That is, the larger wetland complex is of sufficient size to buffer any perceived or measureable losses to wetland functions caused by the aforementioned impacts.

Regarding the Proposed Order for Corrective Action (Section VII of the DSL letter), some of the items listed seem overly punitive and unnecessary in resolving the alleged violation. These are outlined below:

1. The requirement that a wetland delineation be conducted on the property and a report be generated is unnecessary. It has already been acknowledged during a recent site visit by DSL, the Corps, and Terra Science, Inc. (TSI, Jason Clinch) that areas impacted by the swimming pool, patio, landscaped areas, and drainage ditch qualified (and still qualify where not effectively filled, see above) as jurisdictional wetland prior to impacts. Some specific removal and fill volumes for the swimming pool and patio area have been provided by the contractor that did the work (Attachment D) while the areas of impact and remaining volumes were roughly calculated during the recent site visits by TSI (Attachment E). The table below summarizes the approximate impact areas and associated volumes:

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Feature	Area (acres/sq. ft.)	Removal Volume (Cubic Yards)	Fill Volume (Cubic Yards)
Pool/Patio/Landscaping on Tax Lot 8201 (Bundy Property)	0.03-ac./1,300 sq. ft.	178 CY*	22 CY*
Drainage Ditch along Property Line	0.02-ac./870 sq. ft.	±32 CY	<8 CY
Landscaping on Tax Lot 2200 (PGE Right-Of-Way)	0.10-ac./4,350 sq. ft.	N/A	±47 CY
Total Impacts:	0.15-ac./6,520 sq. ft.	±210 CY	<77 CY

*From swimming pool contractor (Appendix D).

2. Generation and submittal of a site restoration plan to DSL for review is costly. Rather than spending money on the generation of a site restoration plan along with the potential for revisions from DSL, that money would be better spent through purchase of wetland mitigation credit at an approved wetland mitigation bank, in-lieu fee payment, or contributing to another site-specific restoration project, agency, or non-profit capable of successfully managing long-term restoration projects.
- 2a. Removal of the drainage pipe along the property line is both unnecessary and costly and potentially damaging to the house and health of the inhabitants. The area drains and drainage pipe were placed in the existing ditch in 2003 during construction of the home as a measure to prevent surface water from entering the crawl space under the home where it could compromise the foundation and grow mold during wet conditions. It is unknown as to when the ditch was improved (pre-2003). The drainage ditch, area drains, and pipe were placed along the property line so that they would catch surface runoff from the lawn behind the house and not direct it toward the foundation. As mentioned above, these areas along with the landscaped area on the PGE Right-Of-Way continue to qualify as wetland and function much as they always have. That is the ditch and drainage only intercept a small amount of surface runoff and have no significant draining effect on the surrounding wetland areas. These areas continue to exhibit saturation soil conditions at or near the surface and have small areas of standing water. The naturally occurring vegetation (horsetail, reed canarygrass) is beginning to grow throughout these areas and does not appear to have been affected by the presence of the drain.

Removal of the fill material and sod within the PGE Right-Of-Way and restoring this area to its natural condition would be costly, non-productive, and require intensive maintenance/management in order to prevent encroachment by the surrounding non-native and invasive species such as reed canarygrass, blackberry, and English ivy. Unless the entire right-of-way and surrounding natural areas on adjacent properties are restored and all of the non-native vegetation removed, restoration of this area will very likely fail in the long run. Rather than spending money on a risky attempt at onsite

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Soil, Water & Wetland Consultants

restoration, it would be better spent through purchase of wetland mitigation credit at an approved wetland mitigation bank, in-lieu fee payment, or contributing to another site-specific restoration project, agency, or non-profit capable of successfully managing long-term restoration projects.

- 2b. Should restoration ultimately be required for the impacted areas, the planting density proposed (1600 plants/acre) is extremely high and not reflective of the natural conditions observed within the undisturbed areas within the vicinity of the property. Not only would competition between plantings result in a potentially high rate of die-off, to spend significant money on costly nursery stock and the associated labor required for installation, knowing that some of it will very likely not survive, appears to be a waste of funds that would be better used toward a specific project, in-lieu payment, or mitigation bank purchase with a better chance of success elsewhere.

In summary, it appears that the wetlands on the properties identified have been impacted through construction of the swimming pool, patio, landscaping, and improvement of a drainage ditch. While the impacts themselves are indisputable, the level or significance of the impact to the surrounding natural resource appears to be fairly minimal. The majority of the impacted area continues to exhibit wetland characteristics and maintains most of the functions present in the surrounding undisturbed wetlands. Furthermore, much of costs that would be associated with conducting a wetland delineation and compiling a site restoration plan along with the costs associated with implementing the site restoration plan would be better utilized toward the purchase of wetland mitigation credit, in-lieu fee payment, or contributing to another site-specific restoration project, agency, or non-profit capable of successfully managing long-term restoration projects.

Cordially yours,

TERRA SCIENCE, INC.

Jason Clinch
Wetland Biologist

Enclosures

cc: Mike Robinson, Perkins Coie LLP
Steve Pfeiffer, Perkins Coie LLP

ATTACHMENT A

Tax Lot Maps

3 IE 2AB
WEST LINN

D.L.C
MARSHALL PERRIN NO. 50
AMBROSE FIELDS NO. 52

NW 1/4 NE 1/4 SEC 2 T.3S. R.1E. W.M.
CLACKAMAS COUNTY

1" = 100'

This map was prepared for
assessment purpose only.

CANCELLED T.L.S
7100
7600
7800
7900
7700
5501
5501
5501
5300



SEE MAP 3 IE 2A

SEE MAP 3 IE 2AA

SEE MAP 3 IE 2AB

SEE MAP 3 IE 2AC

SEE MAP 3 IE 2AD

SEE MAP 3 IE 2AE

SEE MAP 3 IE 2AF

SEE MAP 3 IE 2AG

SEE MAP 3 IE 2AH

SEE MAP 3 IE 2AI

SEE MAP 3 IE 2AJ

SEE MAP 3 IE 2AK

SEE MAP 3 IE 2AL

SEE MAP 3 IE 2AM

SEE MAP 3 IE 2AN

SEE MAP 3 IE 2AO

SEE MAP 3 IE 2AP

SEE MAP 3 IE 2AQ

SEE MAP 3 IE 2AR

SEE MAP 3 IE 2AS

SEE MAP 3 IE 2AT

SEE MAP 3 IE 2AU

SEE MAP 3 IE 2AV

SEE MAP 3 IE 2AW

SEE MAP 3 IE 2AX

SEE MAP 3 IE 2AY

SEE MAP 3 IE 2AZ

SEE MAP 3 IE 2BA

SEE MAP 3 IE 2BB

SEE MAP 3 IE 2BC

SEE MAP 3 IE 2BD

SEE MAP 3 IE 2BE

SEE MAP 3 IE 2BF

SEE MAP 3 IE 2BG

SEE MAP 3 IE 2BH

SEE MAP 3 IE 2BI

SEE MAP 3 IE 2BJ

SEE MAP 3 IE 2BK

SEE MAP 3 IE 2BL

SEE MAP 3 IE 2BM

SEE MAP 3 IE 2BN

SEE MAP 3 IE 2BO

SEE MAP 3 IE 2BP

SEE MAP 3 IE 2BQ

SEE MAP 3 IE 2BR

SEE MAP 3 IE 2BS

SEE MAP 3 IE 2BT

SEE MAP 3 IE 2BU

SEE MAP 3 IE 2BV

SEE MAP 3 IE 2BW

SEE MAP 3 IE 2BX

SEE MAP 3 IE 2BY

SEE MAP 3 IE 2BZ

SEE MAP 3 IE 2CA

SEE MAP 3 IE 2CB

SEE MAP 3 IE 2CC

SEE MAP 3 IE 2CD

SEE MAP 3 IE 2CE

SEE MAP 3 IE 2CF

SEE MAP 3 IE 2CG

SEE MAP 3 IE 2CH

SEE MAP 3 IE 2CI

SEE MAP 3 IE 2CJ

SEE MAP 3 IE 2CK

SEE MAP 3 IE 2CL

SEE MAP 3 IE 2CM

SEE MAP 3 IE 2CN

SEE MAP 3 IE 2CO

SEE MAP 3 IE 2CP

SEE MAP 3 IE 2CQ

SEE MAP 3 IE 2CR

SEE MAP 3 IE 2CS

SEE MAP 3 IE 2CT

SEE MAP 3 IE 2CU

SEE MAP 3 IE 2CV

SEE MAP 3 IE 2CW

SEE MAP 3 IE 2CX

SEE MAP 3 IE 2CY

SEE MAP 3 IE 2CZ

SEE MAP 3 IE 2DA

SEE MAP 3 IE 2DB

SEE MAP 3 IE 2DC

SEE MAP 3 IE 2DD

SEE MAP 3 IE 2DE

SEE MAP 3 IE 2DF

SEE MAP 3 IE 2DG

SEE MAP 3 IE 2DH

SEE MAP 3 IE 2DI

SEE MAP 3 IE 2DJ

SEE MAP 3 IE 2DK

SEE MAP 3 IE 2DL

SEE MAP 3 IE 2DM

SEE MAP 3 IE 2DN

SEE MAP 3 IE 2DO

SEE MAP 3 IE 2DP

SEE MAP 3 IE 2DQ

SEE MAP 3 IE 2DR

SEE MAP 3 IE 2DS

SEE MAP 3 IE 2DT

SEE MAP 3 IE 2DU

SEE MAP 3 IE 2DV

SEE MAP 3 IE 2DW

SEE MAP 3 IE 2DX

SEE MAP 3 IE 2DY

SEE MAP 3 IE 2DZ

SEE MAP 3 IE 2EA

SEE MAP 3 IE 2EB

<

ATTACHMENT B
LWI Map, West Linn, OR

























ATTACHMENT C















Soil Map - Clackamas County Area, OR

Soil Map—Clackamas County Area, Oregon



MAP LEGEND

-  Area of Interest (AOI)
-  Soils
-  Soil Map Units
- Special Point Features**
 -  Blowout
 -  Borrow Pit
 -  Clay Spot
 -  Closed Depression
 -  Gravel Pit
 -  Gravelly Spot
 -  Landfill
 -  Lava Flow
 -  Marsh or swamp
 -  Mine or Quarry
 -  Miscellaneous Water
 -  Perennial Water
 -  Rock Outcrop
 -  Saline Spot
 -  Sandy Spot
 -  Severely Eroded Spot
 -  Sinkhole
 -  Slide or Slip
 -  Sodic Spot
 -  Spoil Area
 -  Stony Spot

-  Very Stony Spot
-  Wet Spot
-  Other
- Special Line Features**
 -  Gully
 -  Short Steep Slope
 -  Other
- Political Features**
 -  Cities
- Water Features**
 -  Oceans
 -  Streams and Canals
- Transportation**
 -  Rails
 -  Interstate Highways
 -  US Routes
 -  Major Roads
 -  Local Roads

MAP INFORMATION

Map Scale: 1:2,980 if printed on A size (8.5" x 11") sheet.
 The soil surveys that comprise your AOI were mapped at 1:20,000.
 Please rely on the bar scale on each map sheet for accurate map measurements.
 Source of Map: Natural Resources Conservation Service
 Web Soil Survey URL: <http://websoilsurvey.nrcs.usda.gov>
 Coordinate System: UTM Zone 10N NAD83
 This product is generated from the USDA-NRCS certified data as of the version date(s) listed below.
 Soil Survey Area: Clackamas County Area, Oregon
 Survey Area Data: Version 6, Feb 9, 2010
 Date(s) aerial images were photographed: 8/3/2005
 The orthophoto or other base map on which the soil lines were compiled and digitized probably differs from the background imagery displayed on these maps. As a result, some minor shifting of map unit boundaries may be evident.

Map Unit Legend

Clackamas County Area, Oregon (OR610)			
Map Unit Symbol	Map Unit Name	Acres in AOI	Percent of AOI
19	Cloquato silt loam	4.3	10.4%
67	Newberg fine sandy loam	6.5	15.7%
84	Wapato silty clay loam	24.7	60.1%
88A	Willamette silt loam, wet, 0 to 3 percent slopes	0.7	1.7%
91C	Woodburn silt loam, 8 to 15 percent slopes	5.0	12.2%
Totals for Area of Interest		41.2	100.0%

ATTACHMENT D

Receipts for Pool, Patio, and Landscaping

Anderson Poolworks

24008 SW Morgan Lane
 Sherwood, OR 97140-8400

Invoice

DATE	INVOICE
8/31/2009	12-4263

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

PAID

PROJECT	TERMS
	Due on receipt

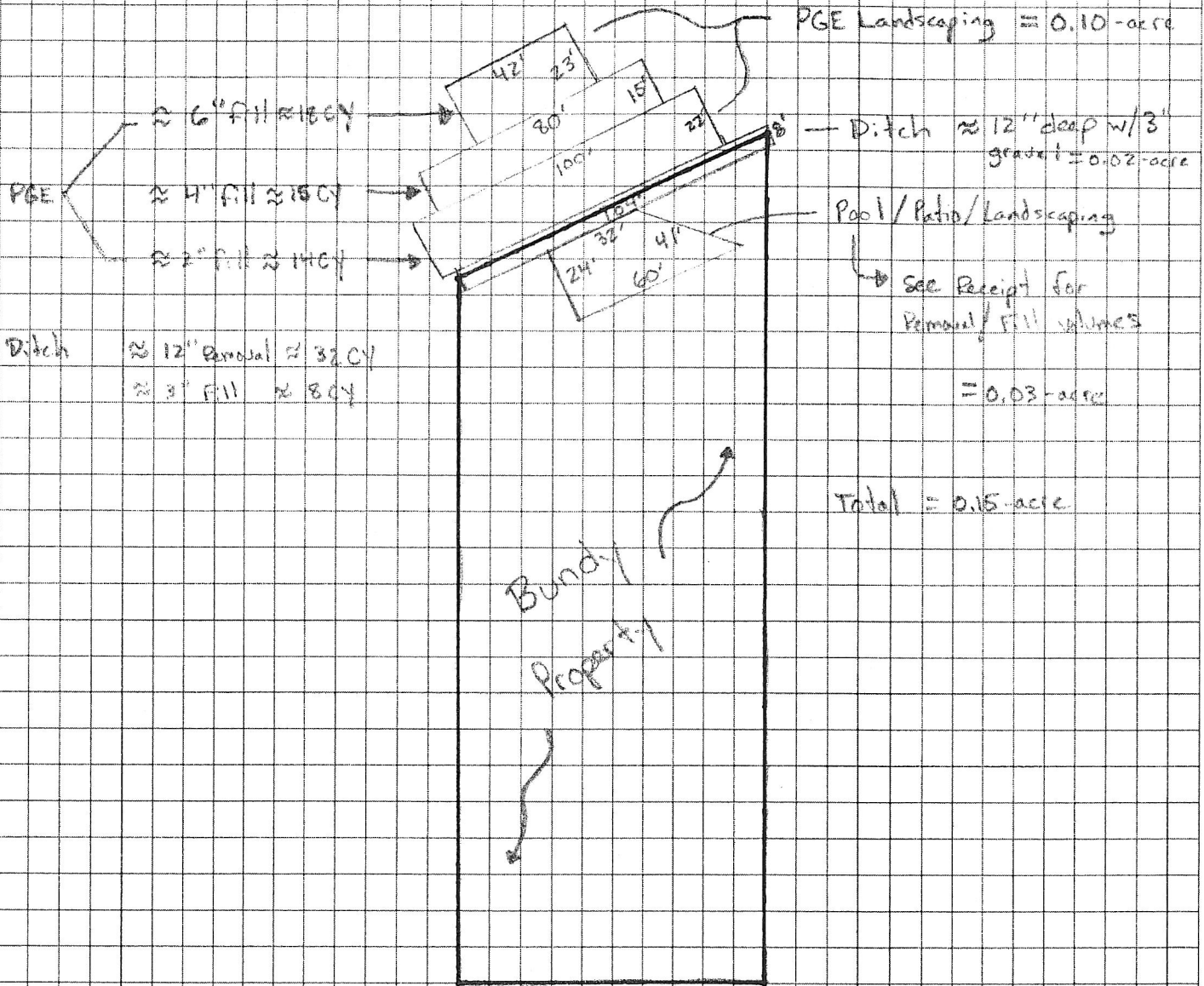
DESCRIPTION	AMOUNT
Progress billing, (30% per contract based on current contract amount of \$35,586.00).	10,675.80
Added water feature to pool.	1,064.75
178 cubic yards pool excavation spoils export from site to Anderson Poolworks yard.	
22 cubic yards crushed gravel import.	
Thank you for your business.	

Total	\$11,740.55
Payments/Credits	\$-11,740.55
Balance Due	\$0.00

ATTACHMENT E

Wetland Area of Impact and Volume Calculations

Field Notes / Calculations



* Not to Scale



The National Society of Consulting Soil Scientists, Inc.

www.nscss.org

800 535-7148 tel

208-263-7013 fax

Spir, Peter

From: Troy S. Bundy [TSB@hhw.com]
Sent: Monday, July 26, 2010 3:19 PM
To: Spir, Peter
Cc: Robinson, Michael C. (Perkins Coie)
Subject: FW: Please Review. Your assistance is needed.

Mr. Spir:

This email was omitted in error from my signed supplemental submission. Please attach it to my supplemental rebuttal in the official record. The key date is 2/2/10.

Thank you,
Troy S. Bundy

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

From: Galle, Patti [mailto:pgalle@westlinnoregon.gov]
Sent: Tuesday, February 02, 2010 1:07 AM
To: Troy S. Bundy
Subject: RE: Please Review. Your assistance is needed.

Troy,

Can you call me as soon as possible? Early morning is great. I have a meeting starting 10am and won't be available until noon. If you call between noon and 1pm call the cell phone 503-309-2405, also, after 2:30pm. Otherwise, call the home phone 503-636-0714 in the morning.

Patti

From: Troy Bundy [TSB@hhw.com]
Sent: Tuesday, July 14, 2009 2:51 PM
To: Galle, Patti
Subject: Please Review. Your assistance is needed.

Dear Mayor Galle:

My family and I have been West Linn residents for the last 7 years. My wife, Gina, is an emergency room nurse, and I am a partner at my law firm, in Portland. Our sons are Logan (8) and Cole (4). We live at the bottom of 9th Street, in Willamette. Our home is situated at the bottom of a hill and is bordered in the front and back by wetlands, which we have been maintaining. The rear wetland is actually a PGE easement; power lines are suspended by several towers situated throughout the easement and running the length of our back yard. (photos attached). Maintenance of the area has included our efforts at clearing blackberry brambles, fallen trees, and other debris. West Linn P.D. and the power company has thanked us for our efforts on more than one occasion. Power lines are affected fairly often as tree limbs fall throughout the winter. Our only neighbors are to the right and left of our home: The Walkers and The Evans. Between the six of us, we have seven children sharing the area.

The short story is that we need your help. After saving for many years, we finally put away enough money to improve our back yard. Part of our plan included the construction of a small swimming pool. The pool was to sit adjacent to our home, near our back patio and well-within our back yard. We have worked with John Nomie, in city planning, for over a year now. Our initial \$10,000 construction deposit was paid, and the final step before construction of our improvement was our permit.

We learned today that our permit application was denied. Mr. Nomie informed us that, last year, the "wetland set-back" was expanded to include our back yard under the Water Resource Protection Act. Unlike most other West Linn residents, we cannot modify our own back yard. So, on behalf of the three families that have been looking forward to the pool, we are respectfully requesting to be allowed to construct our pool, which would rest in our own back yard and be completely up to code. Moreover, our plan is to continue

incorporating native plants and grasses into the landscape design, in keeping with the surrounding area.

Bluntly, the spirit of the Act is unaffected by our construction. Actually, there is no water in the area; there are no streams, creeks or rivers. Further, there are no standing bodies of water at all. The area is essentially a dry, narrow, wooded area that power lines traverse. Placing a pool into our back lawn will not affect water quality, flooding or erosion, which is what the Act specifically addresses. Since it is already in our back yard, we are also not affecting native grasses, plants, or wildlife in any way whatsoever, other than to promote them. We are not digging in the wetland and we are not intending to create a giant, rectangular monstrosity in the middle of our own little paradise. We simply want to create an aesthetically-pleasing and useful environment for ourselves, our neighbors and our children in our own lawn. Our incorporation of additional native fauna will actually promote the purposes of the act, rather than conflict with it. Quite frankly, our neighbors closer to the river (in front of our home) have adapted their wetland for use as grazing pasture for livestock and even a motocross track. We have always respected and maintained our section of wetland with great care, and the granting of our permit will not in any way cause harm to our environment. In fact, one of the primary reasons we purchased the home was because of its location and surrounding beauty. We would not do something that would detract from its beauty.

Please give us a moment of your time to discuss this further in person, if necessary, or call/write with any question you might have. We have attached several photos that might assist you: The "Corner View" depicts the general area for the proposed pool and stone patio. "Top Floor Neighbor" depicts the view from the top floor of our home and you can make out our neighbors' play structure and trampoline in their back yard. "Top Side View" is probably the best photo that shows the proposed pool area adjacent to the boulders (the pool was to be lagoon-shaped). And "Top Floor" shows the woods with power lines behind our home.

Thank you,

Troy, Gina, Logan, and Cole Bundy
1215 9th Street
West Linn, OR 97205

Home: (503) 723-0855
Troy's Cell: (503) 703-2052
Gina's Cell: (503) 816-5032

tsb@hhw.com

ginabundy@comcast.net

July 23, 2010

Michael C. Robinson
Perkins Coie
1120 N.W. Couch Street, Tenth Floor
Portland, OR 97209-4128

RE: Mr. Peter Spir's Staff Report Presentation to the City Council of West Linn.

Dear Mr. Robinson,

On the Bundy's behalf, I have reviewed Mr. Spir's staff report presentation to the West Linn City Council and find it quite reprehensible that much of the information presented is inaccurate and not representative of the facts and technical findings in regards to wetlands, waterways, and their functions and values. I am unsure of Mr. Spir's experience in delineating wetlands and assessing or evaluating wetland functions and values but I know from personal experience that it requires quite a bit of technical training and years of experience in the field (that is conducting wetland delineations and functional assessments) to be able to conduct such work fairly and accurately. As such, I have summarized and discussed some of these inaccuracies of the staff report presentation in the following paragraphs:

2001 Aerial Photo. Wetland and Natural Drainageways, Page 5

Page 5 of Mr. Spir's presentation depicts a 2001 aerial photo with wetlands (yellow dashed line) and nature drainageways (light blue solid line) superimposed. The caption mentions that AKS identified the principal drainageway in their 2000 wetland report. However, the delineation map shows no such drainageway and only the wetland boundary. The origination of the meandering blue line depicting the drainageway is uncertain but it did not come from the AKS report as Mr. Spir indicates.

Wetland Boundary and Local Wetland Inventory, Page 6

Page 6 of Mr. Spir's presentation depicts a more recent aerial (date unknown) with the AKS wetland boundary and the LWI extents superimposed. First and foremost, it is apparent that the City of West Linn and Mr. Spir put a lot of faith in the abilities of AKS Engineering & Forestry to accurately delineate the wetland boundary for this property back in 2000 even though DSL rejected the report due to a litany of inaccuracies, improper use of the delineation methodology, improper data collection, and improper interpretation of the data collected. It is hard to come to the conclusion that AKS were experts based on the comments provided by DSL in their review of the report. The fact that the City accepted the wetland delineation report and identified wetland boundary without requiring concurrence from DSL is remarkable since it is highly unlikely anyone on the City's staff at the time had sufficient wetland expertise to make that determination on their own. However, the City did accept the report (and boundary) and directed AKS and/or Mr. Handris to plat the conservation easement on the basis of that boundary (see page 11 of staff report presentation).

Even though the report and boundary were and are clearly inaccurate (when compared to contemporary conditions), identification of the wetland boundary and conservation easement on a plat map would indicate to most people who view it that wetland only occupies a very small portion of the backyard along the north property line. The house, the pool, and the majority of the backyard are not in wetland according to the plat map (see page 11 of staff report presentation).

Contemporary conditions clearly indicate a greater portion of the property would likely qualify as wetland under current wetland delineation methodology but it is hard to say what the effect construction of the homes in 2002 may have had on the original extent of the wetlands. Construction of new buildings sometimes requires scalping (excavating) down to subsoil for building and foundation stability. This action could thus make it appear wetter than it was historically because any shallow water table present would now be nearer to the surface. The Google Earth image dated April 30, 2002 (Attachment A) appears to confirm that vegetation clearing and/or scalping occurred prior to home construction. Ironically, the Google Earth image somewhat contradicts the results of the Local Wetland Inventory (LWI, Attachment B) that Mr. Spir also references in his presentation (see page 6 of staff report presentation). The LWI shows more wetland on the Bundy property than was indicated in the AKS report even though data for the wetland identified as WI-02 was collected on April 4, 2002 while construction of the homes was going on (as indicated by the April 30, 2002 photo, Attachment A).

It should be noted that DSL specifies that LWI's are for use as planning tools only and not to be used as a substitute for detailed delineation of wetland boundaries (i.e., the AKS report) and determining extent of wetland impacts from ground-altering site work. On this basis, it would seem apparent that the LWI is moot and should not be relied upon or used for determining the extent of potential impacts or that it trump an accepted delineation (accurate or not). It appears that some of the information in the slides presented by Mr. Spir (specifically, page 6 of the staff report presentation) appears to misrepresent the extent of wetlands on the property and subsequently the impacts alleged to occur.

Wetland Boundary and Water Resource Area (WRA) Transition and Setback, Page 8

Page 8 depicts a more recent aerial photo (date unknown) with the AKS wetland boundary (black dashed line), the WRA transition and setback area (orange hatch), and a very different alignment of the drainageway (light blue solid line) superimposed. The origination of this drainageway line is still unknown and the depicted alignment does not reflect that which is in the field. Clearly, the drainageway occurs along the Bundy's property line and not setback into the PGE property as indicated on this slide presented by Mr. Spir.

Wetland Conservation Easement, Pages 11 and 12

Page 11 depicts the platted wetland conservation easement (orange line) that was recorded in 2001 and originated as a setback from the wetland boundary determined by AKS in 2000. Page 12 depicts the same easement on a recent aerial photo (date unknown). By recording this easement, it appears that the City has acknowledged and accepted the wetland boundary determined by AKS and thus should acknowledge that the pool, patio, and most of the landscaping do not occur within wetlands as mentioned on page 2 of Mr. Spir's staff report.

Conservation Easement Language, Page 13

Mr. Spir points out the language of the conservation easement and specific activities that are prohibited. Several of these items are inaccurate or moot. Specifically:

Construction of buildings, fences....

No buildings or permanent fences have been constructed at the back of the Bundy property or on the PGE property. It is my understanding that the fence that was erected around the pool area was at the direction of the City due to concerns by the neighbor to the west (Mr. Evans) and that the fence along the property line with the Evans' was built by the Evans.

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

While the Bundy's acknowledge the removal of several dead trees from the PGE property that had fallen and damaged their property (with the consent from PGE), they did not remove any live trees. They removed non-native Himalayan blackberry and English ivy along with non-native (and highly invasive) reed canarygrass that had formed dense mats on the PGE property and in the ditch (and which smothers native vegetation and when dead and dry poses a severe fire hazard). It should be noted that reed canarygrass (in addition to blackberry and ivy) is listed by the State of Oregon as an invasive species and is recommended for eradication by Oregon Department of Agriculture where it occurs. The Bundy's also acknowledge installation of sod and planting of several non-native shrubs, forbs, and decorative grasses on their property and the PGE property. However, they have expressed agreement to replace the plantings with natives suitable to the wet environment. DSL acknowledged that placement of the sod will actually help plantings survive by thwarting the invasive reed canarygrass and allowing plantings to not get smothered. Lastly, to consider the PGE property or the Bundy's backyard as 'natural habitat' is a bit of a stretch considering the backyard was already lawn and the majority of the PGE property was dominated by non-native and invasive species such as Himalayan blackberry, English ivy, and reed canarygrass. Removal of these species should not incur punitive action.

Changing of the topography through the placing of soil or other material such as land fill...

When the Bundy's acquired the property, there were several piles of dirt, fill, construction debris, and trash in their backyard and on the PGE property. The Bundy's removed the majority of this debris. They acknowledge flattening and tilling the remaining material and placing sod and mulch over it to prevent erosion. Removing a garbage dump and hazardous material should not incur punitive action.

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

Several slides presented by Mr. Spir (pages 19, 29, 30, 31, 40) indicate that the activities that allegedly occurred had some severe detrimental effect on the wetland functions of storm water treatment, storm water detention, erosion control, and fish and wildlife habitat. Mr. Spir even suggests that these functions have been eliminated by virtue that the wetlands have been eliminated. Considering that during the field visit with Mr. Spir, Ms. Anita Huffman (DSL - Clackamas County Permit Coordinator), Ms. Kristin Hafer (Corps - Biologist/Permit Coordinator), and myself on May 5, 2010, all parties involved (with the possible exception of Mr. Spir) agreed that the wetlands continue to persist on the PGE property and the Bundy property as evidenced by the presence of standing water and/or saturated soil conditions at the surface throughout the area and through the presence of wetland vegetation (reed canarygrass and horsetail) emerging through the sod and mulched areas. As a matter of fact, further discussion between me, DSL, and the Corps indicated that removal of the non-native reed canarygrass, blackberry, and English ivy (all Oregon listed invasive species) from the PGE property may have actually improved the habitat for wildlife. Furthermore, the effect of the drainage pipe appears to be negligible to the functions of storm water treatment and detention since the area continues to detain water thus allowing sedimentation. The area affected is sufficiently small when compared to the greater extent of the adjacent wetlands that any detrimental effect would be immeasurable. No erosion was observed on the property. If the drainage was indeed excavated, the functions for storm water detention and treatment would actually increase due to increased length (time) of residency of said water. As for diversion of water from the downstream wetlands, the wetlands on the Bundy property are part of the very same wetland where the drain discharges. As such, no downstream draining of wetlands is occurring. Lastly, there is no indication of fish habitat on the property nor does it appear to be connected to or provide any fish habitat per the LWI data sheets for the wetland (Attachment B).

Regardless, even though the wetlands on the Bundy's property have been slightly altered but not been effectively filled (that is, eliminated by virtue of filling), the Bundy's have agreed to revegetate the areas on the PGE property that have been landscaped and also revegetate the drainage ditch. Such revegetation efforts would improve wetland functions of wildlife habitat, stormwater detention and treatment, and provide support of the characteristic vegetation of these type wetlands.

Photo of Drainageway Along Bundy's North Property Line and PGE Property, Page 17

The caption of this photo incorrectly states that the mulch and rock inhibit the growth of vegetation along the drainageway. Observations made during several site visits indicated horsetail and reed canarygrass where indeed growing up and through said material.

Photo of Flooded Drainageway, Page 19

The caption of this photo incorrectly states that the installed drainage pipe diminishes water levels that sustain downstream wetlands and that storm water flow is accelerated due to loss of in-channel vegetation, straight trench design, and loss of adjacent wetlands which detained and treated water. Clearly, as mentioned previously and as the photo depicts, the effectiveness of the drain pipe is negligible since stormwater is obviously not draining from the site.

Furthermore, the drain pipe discharges into wetlands that are continuous with the wetlands on the PGE and Bundy property (see LWI map, Attachment B) and thus hydrology is not severed or diminished to downstream wetlands. Storm water flow is negligible considering the flatness or lack of grade to the site. Also, the drainage or 'trench' was not designed by the Bundy's. Lastly, as mentioned previously, the adjacent wetlands were not lost and continue to function much as before in detaining and treating water.

Of further note, the inset caption mentions insinuates that the Bundy's replaced the natural drainageway and removed the values and benefits of a natural drainageway and vegetative canopy. Of the contrary, page 31 of the report states that the former owner straightened and improved the drainage and not the Bundy's. The Bundy's simply added the drain pipe, rock, and mulch.

Photo of Development Activity, Page 22

This caption of the photo states that there is cleared, graded, and filled wetland. For clarification and as acknowledged by representatives from DSL, the Corps, and myself, the wetland has not been effectively filled (eliminated) and continues to maintain the majority of its functions. As indicated in the photo, the amount of fill is minimal as evidenced by the root crown of the tree being exposed and not under the surface of the alleged fill. This was the case for all the observed trees and shrubs on the PGE property. Furthermore, grading activities involved mostly removal of construction debris, fill, and garbage with minimal flattening and tilling occurring to provide placement of the sod.

2008 Aerial Photo Showing Grading at Rear of Property and on PGE Land, Page 24

Interpretation of this photo by Mr. Spir is incorrect. The alleged grading indicated on the PGE property is nothing other than typical vegetation mowing. The area appears to be dead reed canarygrass and not bare dirt (see Attachment A for the contrast of what grading looks like).

Planning Director Findings, Page 25

As mentioned previously, Mr. Spir appears to be overstating the facts without providing the details or an adequate (and truthful) explanation as to what has happened. Specifically:

-Graded their rear yard and wetlands (WRA) on PGE property to the north.

As mentioned previously, much of the grading in the Bundy's backyard occurred prior to or during construction of the home before the Bundy's owned it. Grading activities on the PGE property involved mostly removal of construction debris, fill, and garbage with minimal flattening and tilling occurring to provide placement of the sod.

- Removed native vegetation in the rear yard and on PGE property (WRA).

Removal of vegetation in the backyard occurred concurrently with the grading in the backyard which was done prior to or during construction of the home before the Bundy's owned it.

Furthermore, the majority of vegetation removed was non-native and invasive species such as Himalayan blackberry, English ivy, and reed canarygrass. None of this is native nor should it be represented as a natural community.

- Modified drainageway at their rear property line. The natural drainageway was replaced by a trench 2001-2003. Appellant subsequently lined the trench with rock or gravel to create a 9-15 inch deep channel.

As mentioned previously, the Bundy's did not modify the trench from its original alignment. A former property owner did. The effect any such modification is negligible in terms of its overall effect on wetland functions such as storm water detention, storm water treatment, erosion control, flood control, dewatering of wetland, loss of wildlife habitat.

- Installed piping to direct water from trench to wetlands to the south of house.

Again, the effect on wetland hydrology and function is negligible. As shown in the photo on page 19 of the staff report, the drain pipe appears almost non-functional. Downstream wetlands are not being dewatered since the pipe discharges to the downstream wetlands.

- Installed non-native grass, trees, plants and bark mulch in their rear yard and on PGE property.

As recognized by wetland specialists from DSL, the Corps, and myself, replacing a mostly non-native (and invasive) vegetative community with another non-native (but not invasive) community was potentially beneficial to wildlife functions. Regardless, the Bundy's have chosen to replace the non-native vegetation planted on the PGE property and along the drainage with a suite of native vegetation that will provide additional wildlife habitat and wetland functions.

Acknowledgement of Wetland and Fill Material, Page 28

Again, Mr. Spir selectively quotes previous correspondence with DSL and the Corps without putting any of the material in context. The statement regarding "...50 cubic yards of material within waters of the state..." is mostly in regards to the swimming pool and patio being located in wetland. As mentioned previously, DSL rejected the wetland report by AKS and contends that much more of the property is likely to qualify as wetland than what the City identified when they accepted the faulty and incorrect AKS report in platting the conservation easement. For DSL and Corps purposes, the extent (that is boundary) has not been determined and is not needed for the purposes of DSL's consent order.

The Corps quote specifically states that "*The site visit revealed that a pool, patio, and landscaping MAY (emphasis mine) have been placed within wetlands in the backyard of your residence...*" In no way should that acknowledge that the activities actually occurred in wetlands. The Corps has acknowledged that they would not pursue an enforcement action because, regardless of wetland presence or not, the activities conducted are something they would typically permit and the potential wetland impact acreage is sufficiently small so as to not require mitigation.

Selected Staff Findings, Pages 29-31

At least some of the staff findings by Mr. Spir do not reflect accurately what exists onsite. Many of the findings appear to be naïve opinion and not based on a clear understanding of wetland or waterway functions and interpretation of field observations. Specifically:

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.

Staff found that natural drainageways existed on PGE property and along the common PGE-Bundy property line based on AKS wetland study, the Surface Water Management Plan, plus DSL and staff site visits which identified a broader pattern of natural drainage on the adjacent upstream/undisturbed property.

According to an e-mail dated June 8, 2010 from neighbor Jay Walker; "The water accumulation problem was mitigated April 2008 by repair of the drainage in the back yard. We re-graded the small ditch and put in 3-inch basalt to stop erosion. The Bundy's also cleared their "ditch" at that time and put in the same basalt rock."

By modifying the trench along the rear property line and removing native vegetation the appellants destroyed many of the functions of the natural drainageway (storm water treatment, detention, and habitat area). Pipes directing storm water to the south of the property diminish downstream water flows which will impact the wetlands northeast of the Bundy property.

The applicant fails to meet criterion of maintaining existing natural drainageways.

Considering the Bundy's did not design or modify the existing natural drainage alignment to its current alignment (the previous owners did) and the drainage between the Bundy property and PGE property continues to be the primary method of storm water conveyance, this seems somewhat of a moot point. Regardless, of the original alignment prior to any modifications by any property owner, the drainage still operates much the same. Any modifications that have taken place have been token and have had an immeasurable effect on functions such as storm water treatment, detention, and habitat. Installation of drain pipes has had no effect on downstream wetland resources nor does it appear to be dewatering the immediate vicinity significantly. Removal of non-native and invasive vegetation is generally considered a functional lift to wildlife habitat. Regardless, the Bundy's have proposed to revegetate the drainage with an abundance of native species in hopes of thwarting the surrounding non-natives and invasives from taking over.

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.

Staff finds that the house was correctly built outside of the conservation easement and existing wetland setbacks to avoid or minimize adverse impacts.

In contrast, the modifications and development, such as constructing a pool, patio, extensive grading, redirecting storm water, filling wetlands, removing trees, elimination of habitat areas etc. resulted in significant adverse environmental impacts. There was no apparent attempt to minimize the adverse impacts. Loss of on-site wetlands was 100%. A significant portion of the wetlands on PGE property was eliminated.

The criterion is not met.

These staff findings are simply incorrect. There is was no significant adverse impact. As stated previously, the subject property still qualifies as wetland and functions much the same as it did before. Most of the extensive grading was conducted during home construction and prior to the Bundy's ownership. Much of the grading on the PGE property was for removal of existing construction debris, fill, and trash. This area also remains wetland as evidenced by the presence of saturated soil conditions and or standing water during early to mid- spring. Replacement of mostly invasive species with sod and ornamental and (in the near future) natives will provide significant functional lift for wildlife habitat. The volume of storm water redirected via the drain pipes is insignificant and has no effect on the surrounding wetlands nor downstream wetlands. Lastly, the majority of activities regarding the pool, patio, and associated landscaping on the Bundy property occur outside of wetlands as accepted by the City of West Linn.

32.050(1) 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.

The staff finds that the storm drainage was diverted from its natural watercourse as depicted on the 2000 AKS delineation. The natural drainageway was believed to have been straightened by a prior owner or builder/developer (per letter from Mr. and Mrs. Paulsen page 5 paragraph 7 of late submittals) but the appellant fortified it with gravel and rock. The installation of pipes by the appellant has diverted stormwater flow. This in turn has modified and diminished the water amounts in this drainage basin and in downstream wetland areas.

By channelizing the drainageway and removal of in channel vegetation, the positive storm water detention and treatment benefits have been eliminated.

The record shows no evidence that the applicant practiced sound engineering principles regarding downstream impacts, soil stabilization, erosion control, providing adequate drainage and proper permitting. In a June 3, 2010 e-mail, Mr. Bundy states to Mr. Evans: "I've never disputed putting in drains or laying gravel anyway". (page 54 of the recent submittals packet)

Therefore the criterion is not met.

First, AKS never mapped the drainageway in their delineation report. The origination of its alignment as depicted in the staff report in unknown. Second, you will finally see that Mr. Spir acknowledges that the Bundy's did not change the alignment of the drainage as he has so often described up until now in his report. The Bundy's acknowledge installing the drain pipes but the water amounts have no way been significantly modified or diminished to the drainage

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Soil, Water & Wetland Consultants

basin or downstream wetlands. In fact, drain outfall is within the same wetland and drainage basin. As depicted in a photo from the report (page 19 of the staff findings report), storm water detention and treatment has clearly NOT been eliminated. The effect of the drain pipe is negligible. Further observations by DSL and Corps staff and myself clearly indicate the area in question continues to maintain its wetland characteristics and functions. The last part of this statement is rather confusing in that the applicant must provide "adequate drainage". It seems Mr. Spir wants adequate drainage yet maintain storm water detention. I would ask which is it? Regardless, there was no evidence of erosion problems onsite.

Mr. Robinson, I hope my review of the staff report presentation and findings are helpful. It appears a lot of the information presented was inaccurate and/or misrepresented. Clearly, much of it was taken out of context and it does not give the entire picture of what has occurred or what has been said. I find it quite ironic that so much latitude has been given to a non-wetland professional in determining the technical aspects of wetland delineation and functional attributes. Please let me know if I can be of further assistance.

Cordially yours,

TERRA SCIENCE, INC.

**Jason
Clinch**

Digitally signed by Jason Clinch
DN: cn=Jason Clinch, o=Terra
Science, Inc., ou=Project Manager,
email=jason@terrascience.com,
c=US
Date: 2010.07.26 15:58:56 -0700

Jason Clinch
Wetland Biologist

Enclosures

cc: Troy Bundy

ATTACHMENT A

April 30, 2002 Aerial Photo
(Google Earth)



Apr 30, 2002

000000

220 ft

© 2013 Google
Map data © U.S. Geological Survey

© 2009 Google

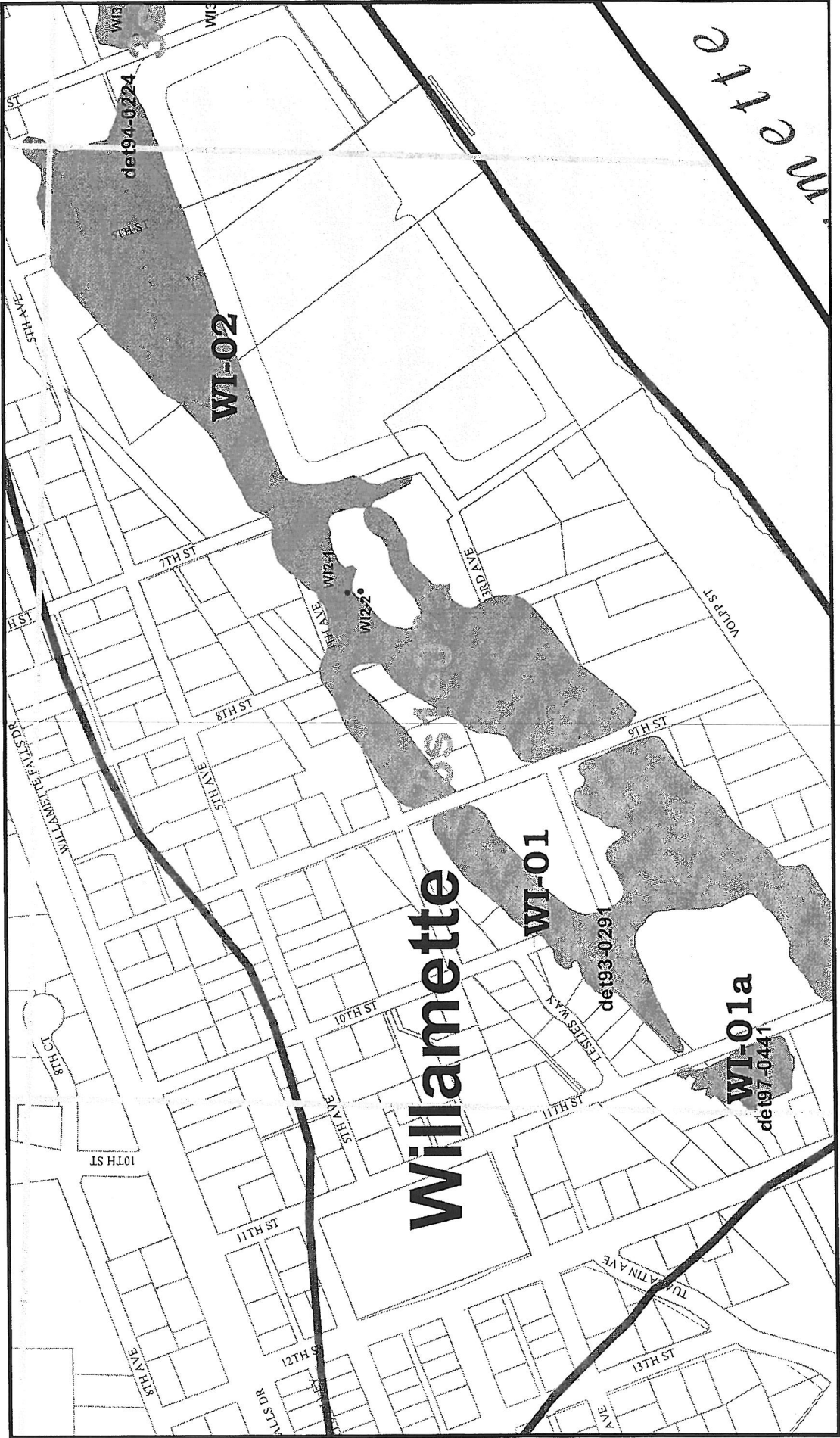
Imagery Date: Apr 30, 2002

lat: 45.343302° lon: -122.846775° elev: 0 ft

Eye alt: 781 ft

ATTACHMENT B

Local Wetland Inventory Map & Data Sheets
(West Linn, Oregon)



West Linn Goal 5 Inventory

Wetland Assessment Summary Sheet



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

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

Exclusions. Wetland is not locally significant if one of the following conditions applies:

	Yes	No
1. Wetland is artificially created entirely from upland AND is either: a) created for the purpose of controlling, storing, or maintaining stormwater; b) used for active surface mining or active log ponds; c) a ditch without free and open connection to natural waters of the state and no food or game fish; d) less than one acre in size and created unintentionally from irrigation or construction; or e) created for the purpose of wastewater treatment, cranberry production, farm or stock watering, settling of sediment, cooling industrial water, or as a golf course hazard.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2. Wetland or portion thereof is contaminated by hazardous substances, materials or wastes per 141-086.	<input type="checkbox"/>	<input checked="" type="checkbox"/>

LSW Criteria. Wetland is locally significant if it meets one or more of the following criteria:

	Yes	No
1. Wetland provides "diverse" wildlife habitat.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2. Wetland provides "intact" fish habitat.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3. Wetland provides "intact" water quality function.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
4. Wetland provides "intact" hydrologic control function.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
5. Wetland is less than 1/4 mile from a DEQ water-quality limited water body (303 (d) list) and the wetland's water quality function is described as "intact" or "impacted or degraded."	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6. Wetland contains one or more rare plant communities.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
7. Wetland is inhabited by any species listed federally as threatened or endangered, or state listed as sensitive, threatened or endangered.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
8. Wetland has a direct surface water connection to a stream segment mapped by ODFW as habitat for indigenous anadromous salmonids, and has "intact" or "impacted or degraded" fish habitat function.	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Optional LSW Criteria. Wetland is locally significant if it meets one or more of the following criteria:

	Yes	No
1. Wetland represents a locally unique native plant community AND provides: a) "diverse habitat" or "habitat for some wildlife species"; b) "intact" or "impacted or degraded" fish habitat; c) "intact" or "impacted or degraded" water quality; or d) "intact" or "impacted or degraded" hydrologic control.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2. Wetland is publicly owned and has "educational uses" and such use is documented for that site.	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Wetland is locally significant.

WEST LINN LOCAL WETLAND INVENTORY

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

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

Trees	% Cover	Dom.	Herbs	% Cover	Dom.
<u>FRLA FACW</u>	<u>70</u>	<input checked="" type="checkbox"/>	<u>Poa. sp. FAC-FACW</u>	<u>65</u>	<input checked="" type="checkbox"/>
			<u>Scirpus microcarpus</u>	<u>20</u>	<input checked="" type="checkbox"/>
			<u>Ranunc. sp. FACW</u>	<u>1</u>	<input checked="" type="checkbox"/>
			<u>Ranunculus</u>	<u>20</u>	<input checked="" type="checkbox"/>
			<u>Veronica. am. OBL</u>	<u>2</u>	<input checked="" type="checkbox"/>
Sapling / Shrub	% Cover	Dom.			
<u>Sparg. Douglasii FACW</u>	<u>30</u>	<input checked="" type="checkbox"/>			
<u>Saxif. sp. FACW-OBL</u>	<u>25</u>	<input checked="" type="checkbox"/>			

Other species: (OBL) (OBL) (OBL) (OBL) (OBL)
CAE: cat make in standing water

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

Map Unit Name: Wetlands silty clay loam Drainage class: partly drained
 Taxonomy: Fluvisollic Haplaquolls On hydric soils list? YES

Depth	Horizon	Color	Redox Concentrations*	Redox Depletions*	Texture	Structure
<u>0-14</u>		<u>10YR 2/1</u>	<u>tan fine, from 7.5 YR 4/6</u>		<u>clay</u>	<u>AB</u>
<u>14-18</u>		<u>"</u>	<u>Common, med. plom</u>	<u>"</u>	<u>"</u>	<u>"</u>

Hydric Soil Indicators

- Histosol
- Histic Epipedon
- Sulfidic Odor
- Reducing Conditions (tests positive)
- Gleyed
- Redox. features w/in 10 inches
- Criteria met? YES
- Concretions / Nodules (w/in 3"; > 2 mm)
- High organics near surface (sandy soils)
- Organic pan (in sandy soils)
- Hydric soils list and profile matches
- Other

* abundance / size / contrast / color / location (matrix or pores)

- Recorded data available
- Aerial Photographs
- Stream gauge
- No recorded data available
- Other
- Depth of Inundation: at surface Depth to saturation: surface Depth to free water: _____
- Hydrologic source: groundwater, soil seeps
- Primary indicators
- Inundated
- Saturated in upper 12 inches
- Water Marks
- Drift Lines
- Sediment Deposits
- Criteria met? YES
- Secondary Hydrology Indicators (2 or more)
- Oxidized root channels (upper 12")
- Water-stained leaves
- Local Soil Survey Data
- FAC-Neutral Test
- Drainage patterns
- Other:

Wetland? YES Functional summary: _____
 Significant? _____

West Linn Goal 5 Inventory
Wetland Characterization Sheet



GENERAL INFORMATION

Wetland: Willamette-9 th St. East	Code: WI-02	Field dates: 4/4/02
Plot #s: DP-1, DP-2	Size: 15.55 acres	Method: <input checked="" type="checkbox"/> on-site <input type="checkbox"/> off-site
Cowardin Class: PEM, PFO	HGM Class: RFT	Investigators: TB, LW, AK
Basin: Willamette River	Sub-basin: Willamette River	

LOCATION

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

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

WETLAND CHARACTERISTICS

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

Soils: Wapato Silty Clay Loam

Hydrologic Source: precipitation, groundwater, surface flow

Dominant Vegetation:

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

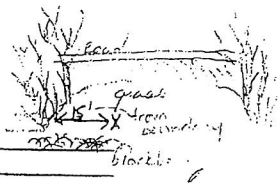
Wetland Functions: intact hydrologic control; high enhancement potential; low aesthetic value; other functions moderate

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

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

1031 done

WEST LINN LOCAL WETLAND INVENTORY



Wetland: 9th Ave. East Code: W1-02
Location (add/tax lot): S Plot #s (or off-site): #2
Cowardin/HGM class: F1 Field date: 4-4-02
Recent Weather: Sunny Investigators: TR, LW, AKeatney
Summary (topo, land use, basis):

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

Table with columns: Trees, % Cover, Herbs, % Cover, Species / status, % Cover, Dom. Includes entries for FERR FAC- (40%), Pteris caudata FACU (30%), and Agrostis tenuis FAC (25%).

Other species: Ash on the wetland edge

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

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

Table with columns: Depth, Horizon, Color, Redox Concentrations*, Redox Depletions*, Texture, Structure. Includes data for depths 0-4, 4-12, and 12-4.

Hydric Soil Indicators
Histosol
Histic Epipedon
Sulfidic Odor
Reducing Conditions (tests positive)
Gleyed
Redox. features w/in 10 inches
Criteria met? YES
* abundance / size / contrast / color / location (matrix or pores)

Recorded data available
No recorded data available
Aerial Photographs
Stream gauge
Other
Depth of Inundation:
Hydrologic source:
Depth to saturation:
Depth to free water:

Primary indicators
Inundated
Saturated in upper 12 inches
Water Marks
Drift Lines
Sediment Deposits
Criteria met? NO
Secondary Hydrology Indicators (2 or more)
6" Oxidized root channels (upper 12")
Water-stained leaves
Local Soil Survey Data
FAC-Neutral Test
Drainage patterns
Other:

Welland? NO Functional summary: The W transition area between wet + up.
Significant?

abrupt topographic break between wet + up. 46

Spir, Peter

From: Robinson, Michael C. (Perkins Coie) [MRobinson@perkinscoie.com]
Sent: Tuesday, July 27, 2010 10:56 AM
To: Spir, Peter
Subject: Bundy Application

Peter, thanks for your time earlier this morning. I am confirming that you will send me copies of what you received before the close of yesterday's open record period. I will add that phone messages aren't written submittals and can't be included in the record under the City Council's motion leaving the written record open. A party has to send something in writing, not make a telephone call.

Thanks. Mike

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Spir, Peter

From: oregonhickmans@comcast.net
Sent: Monday, July 26, 2010 4:12 PM
To: Spir, Peter
Cc: Oregon Hickmans
Subject: Public Comment Re: modified wetlands off 9th street by Bundys

Dear Mr. Spir, The Bundys should be required to remove all "improvements" they made to both protected wetlands and to publicly owned right-of-ways. The only property "improved" was their own, to benefit themselves. The laws are there to protect the public, and the Bundys should not be allowed to come out ahead in any way, shape or form from their violation of laws. The Bundys should be ordered to restore the land to its natural condition, including removing the pool, the bridge, etc.

The quotes in the West Linn Tidings from the Bundys don't indicate any lack of knowledge on their part when they broke the law and show an intention to break the law. If anything, the Bundys seem to feel it is their right to break the law because they think it's unfair. Is there a criminal investigation? Has the Oregon State Police and Division of State Lands been contacted about this incident? It's absurd to think there's been a governmental taking of any kind, when they've been allowed to develop the property for its intended purpose. Thank you for your attention.

Jane Hickman
22030 Shannon Place
West Linn OR 97068
(503) 656-2083

Spir, Peter

From: Bethany McClain [bethanylynnblue@gmail.com]

Sent: Monday, July 26, 2010 9:41 AM

To: Spir, Peter

Subject: Bundy family yard

Dear Mr. Spir:

I was visiting grandparents this past week when I came across the Thursday, July 22 article in the *West Linn Tidings* regarding the Bundy family and the conflict with their yard. Though I am not a citizen of your city, I was still appalled to read about this conflict between the city and the Bundy family. The city should not be able to regulate what this family does to their yard, because it is the family's private property. In John Locke's *Two Treatise on Government*, he said "every Man has a Property in his own Person. This no Body has any Right to but himself. The Labour of his Body, and the Work of his Hands, we may say, are properly his. The great and chief end therefore, of Mens uniting into Commonwealths, and putting themselves under Government, is the Preservation of their Property."

Private property is *essential* to liberty, and by the city regulating what the Bundys can and cannot do to their own yard is encroaching on this sacred right and liberty. I think the Bundys should be able to keep their yard the way it is.

Sincerely,

Bethany M.

Spir, Peter

From: jonstowell@aol.com
Sent: Friday, July 23, 2010 9:10 AM
To: Spir, Peter
Subject: City Council / Bundy's Pool

Dear City Council,

In case you haven't notice this city is so tired of the inefficiency with witch our Mayor and city council continue to operate. Now we have one more example of wasting time and tax payer money when you have an opportunity to let, once again, common sense prevail. This family has spent a tremendous amount of money in good faith to improve a wonderful piece of land only to have this idiotic debate play out in the media. For your sake and for the majority of West Linn tax payers who want efficient, considerate, and trustworthy city leaders, DO THE RIGHT THING and allow this family to keep the pool.

Going forward, we the tax payers would like to see our elected officials stop the BS, take care of the real issues at hand and do whats best for ALL of West Linn. Let's stop this minority clog that seems to foul up our system every time someone complains.

Jon Stowell
2353 Appaloosa Way