

AGENDA
PLANNING COMMISSION MEETING
Wednesday, April 7, 2021
7:00 P.M.
Maggie Osgood Library
70 N. Pioneer Street

This meeting will be held electronically through Zoom. Limited seating is available at the Library. Members of the public are encouraged to provide comment or testimony through the following:

- Joining by phone, tablet, or PC. For details, click on the event at www.ci.lowell.or.us.
- In writing, by using the drop box at Lowell City Hall, 107 East Third Street, Lowell, OR 97452
- By email to: jcaudle@ci.lowell.or.us

Special Meeting Agenda

1. Call to Order/Roll Call

Commissioners: Dragt ____ Kintzley ____ Wallace ____

2. Approval of Agenda

3. Approval of Minutes

a. March 3, 2021

4. Old Business

5. New Business

- a. Review and render a decision on a variance on Land Use Application #2021-03 to the front yard setback for Lots 45, 47, 49 and 51 of the Sunridge Second Addition Subdivision.
- b. Review and issue a recommendation to City Council on Land Use Application #2021-04 regarding a request to vacate a slope easement that is recorded on the plat of the Second Addition Sunridge subdivision.

6. Other Business

7. Adjourn

The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made at least 48 hours before the meeting to the City Clerk, Joyce Donnell, at 541-937-2157.

City of Lowell, Oregon
Minutes of the Planning Commission Meeting and Work Session
March 3, 2021

The meeting was called to order at 7:06 PM by Commissioner Chair Dragt.

Members Present: Lon Dragt, Mary Wallace, Suzanne Kintzley

Staff Present: CA Jeremy Caudle, City Planner Henry Hearley LCOG

Approval of Minutes: Commissioner Kintzley moved to approve the minutes from February 3, 2021, second by Commissioner Wallace. PASS 3:0

Old Business: None

New Business:

- **Review and consider approval of modification of conditions of approval for sidewalk construction, as well as Geotechnical Report for Crestview Estates, located at tax map number 19011100 and tax lot number 501 – Geotechnical Report for Crestview Estates presented by Ronald Derrick, Branch Engineering-Principal Geotechnical Engineer. Commissioner Kintzley moved to recommend approval of Geotechnical Report to City Council, second by Commissioner Wallace. PASS 3:0**

Daniel Fisher of McDougal Brothers presented a proposal for modification of #5 conditions of approval for sidewalk construction in Crestview Estates. **Commissioner Dragt moved to approve Modification of Approval #5, to allow sidewalks to be built at the time of homesite development for each lot, second by Commissioner Kintzley. PASS 3:0**

Other Business: None

Adjourn: 7:20 PM

Commissioner Kintzley left the meeting

The Work Session was called to order at 7:21 PM by Commissioner Chair Dragt.

Members Present: Lon Dragt, Mary Wallace

Member Absent: Suzanne Kintzley

Staff Present: CA Jeremy Caudle, City Planner Henry Hearley LCOG

Work Session Topic:

- **Feedback and direction on City of Lowell Development Code update project** - Jacob Callister Principal Planner with Lane Council of Governments presented item along with input from Laura Buhl -ODOT and Transportation and Growth Management.

Adjourn: 8:38 PM

Approved: _____
Lon Dragt - Chair

Date: _____

Attest: _____
Jeremy Caudle, City Recorder

Date: _____

**Staff Report
Variance
586, 598, 614, and 622 Sunridge Lane
LU 2021-03 (variance)
Staff Report Date: March 31, 2021**

1. **Proposal.** The Planning Commission is being asked to review and render a decision on a variance to the front yard setback for Lots 45, 47, 49 and 51 of the Sunridge Second Addition Subdivision. The applicant is asking for a reduction of 5-feet to the front yard setbacks. Normally, the front yard setback is 10-feet, the applicant is requesting to bring it down to 5-feet. The properties are zoned R-1 and are presently vacant but will likely be developed with homes in the near future. The applicant is Lookout Point LLC and Ms. Nelson is acting as the representative for Lookout Point LLC.
2. **Approval Criteria.** LDC, Section 9.252, paragraph (a), establishes the decision process required for variances. An application for a variance requires a quasi-judicial public hearing before the Planning Commission. Following public hearing and after evaluating the application against the decision criteria contained in LDC Section 9.252(b), the Planning Commission must adopt findings which approve, deny or conditionally approve the variance application and may attach any reasonable standards of development to attain compliance with the zoning district and the LDC.
3. **Staff review of applicable criteria for a variance**

LDC 9.525. (b) Decision Criteria. A variance may be granted in the event that all of the following circumstances exist:

(1) That there are circumstances or conditions affecting the property or use.

Discussion: The subject properties contain slopes of 20-25 percent, running straight downward from the street. The applicant states this is somewhat unusual for development in Lowell, and these are some of the steepest urbanized lots to be developed in the city. The roof heights are also subject to height limitations due to deed restrictions designed to protect the views of homes higher up on the hill.

Additionally, Sunridge Lane was not constructed in the usual fashion: it has 21-feet of pavement instead of the normal 28-feet. This is because of the steep slope development standards. The narrower 21-foot paved street is offset to the upside of the hill. Normally, a 28-foot-wide street, centered in the center with 50-feet of Right-of-Way (ROW) can accommodate the 10-foot setback, as this leaves 11-feet from the curb to the ROW and 21-feet from the curb to the house.

Because Sunridge Lane is only paved to a width of 21-feet and offset uphill, this leaves 19-feet from the curb to the downhill ROW and 24-feet from the curb to the house with the requested 5-foot setback. See Exhibit A of the applicant's application materials.

Recommended FINDING for approval: The subject properties have circumstances of conditions that affect their use in that Sunridge Lane is paved to a narrower width of 21-feet due to the hillside development standards and is not centered on the ROW, rather is offset on the uphill side of the ROW. Criterion met.

(2) That the variance is necessary for the proper design and/or function of the proposed development or land division.

Discussion: The 10-foot setback requirement would force dwellings to be sited farther down the slope. It is not desirable to do this because the house will be lowered and thus the driveway made steeper to access the dwelling or the dwelling will remain the same height and will protrude higher into the view shed of uphill dwellings and the retaining wall for the driveway will be higher and the downhill foundation walls for the dwelling and garage will be higher.

Additionally, the applicant cites current instances of homes that are located on the downside hill of Sunridge Lane, and three of the five current homes presently are located less than 10-feet from the front property line. This was done because of the same realties that exists on the subject properties, in which the variances are being requested for.

Recommended FINDING for approval: A front yard setback of 5-feet for the subject properties is required to avoid steep driveways and protecting the viewshed of uphill homes and the property function of the property and eventual dwellings, in relation to know development constraints. The requested variance is not unusual, as existing homes are built to a front yard setback of 5-feet for the same reasons as cited by the applicant. Criterion met.

(3) That the granting of the variance will not be detrimental to the public welfare or injurious to other property in the area in which the property is situated.

Recommended FINDING for approval: The subject properties are located in the Sunridge development. The proposed variances are not expected to have detrimental effects on these surrounding properties. The requested 5-foot front yard setback is presently seen on several homes on the same road as the subject properties.

(4) That the granting of the variance will not conflict with the purpose and intent of the district or zone, this Code, or other related ordinances of the City.

Discussion: The purpose of the Lowell Development Code (LDC), as stated in Section 9.102 is to “*establish standards and procedures for the orderly development of land within the City of Lowell in conformance with the Lowell Comprehensive Plan, to protect property rights, provide due process of law and promote the public health, safety and welfare of the citizens of Lowell.*”

By allowing a dwelling to be sited in harmony with the topography and in service to the aesthetic needs surrounding property owners, the proposed variances support the purpose of the LDC.

Recommended FINDING for approval: The proposed variance is not expected to cause detriment to the public welfare or injurious to other property owners. The requested 5-foot

front yard setback is presently seen on several homes on the same road as the subject properties. Criterion met.

4. Recommendation

Staff recommends the Planning Commission **APPROVE**, a variance to the 10-foot front yard setback to allow for a minimum 5-foot front yard setback for the properties located at: 586 Sunridge Lane (Tax Lot 4600; Sunridge Lot 45), 598 Sunridge Lane (Tax Lot 4700; Sunridge Lot 47), 614 Sunridge Lane (Tax Lot 4800; Sunridge Lot 49) and 622 Sunridge Lane (Tax Lot 4900; Sunridge Lot 51) as seen in the applicant's application.

5. Attachments

Attachment A: Applicant's application

Attachment B: Notice

By signing, the undersigned certifies that he/she has read and understood the submittal requirements outlined, and that he/she understands that incomplete applications may cause delay in processing the application. I (We), the undersigned, acknowledge that the information supplied in this application is complete and accurate to the best of my (our) knowledge. I (We) also acknowledge that if the total cost to the City to process this application exceeds 125% of the application fee, we will be required to reimburse the City for those additional costs in accordance with Ordinance 228.

PROPERTY OWNER

Name (print): Lookout Point LLC Phone: 541-520-3763

Address: 40160 E 1st Street

City/State/Zip: Lowell, OR 97452

Signature:  by Mia Nelson, Manager

APPLICANT, If Different

Name (print): _____ Phone: _____

Company/Organization: _____

Address: _____

City/State/Zip: _____

Signature: _____

E-mail (if applicable): _____

APPLICANTS REPRESENTATIVE, if applicable

Name (print): Mia Nelson Phone: 541-520-3763

Company/Organization: Lookout Point LLC

Address: 40160 E 1st Street

City/State/Zip: Lowell, OR 97452

E-mail (if applicable): mia@sunridge.net

For City Use. _____ Application Number _____

Date Submitted: _____ Received by: _____ Fee Receipt # _____

Date Application Complete: _____ Reviewed by: _____

Date of Hearing: _____ Date of Decision _____ Date of Notice of Decision _____

APPLICATION SITE PLAN REQUIREMENTS CHECKLIST
Lowell Land Development Code, Section 2.140

Applications for land divisions or land use requests that require a site plan shall submit the site plan on 8 1/2 x 11 inch or 11 x 17 inch black/white reproducible sheets for copying and distribution. Larger drawings may be required for presentation and City review. Drawings shall be drawn to scale. The scale to be used shall be in any multiple of 1 inch equals 10 feet (1" = 20', 1" = 30', 1" = 100', etc.) and may be increased or decreased as necessary to fit the sheet size. The Application and site plan shall show clearly and with full dimensioning the following information, as applicable, for all existing and proposed development. It is understood that some of the requested information may not apply to every application.

- The names of the owner(s) and applicant, if different.
- The property address or geographic location and the Assessor Map number and Tax Lot number.
- The date, scale and northpoint.
- A vicinity map showing properties within the notification area and roads. An Assessor Map, with all adjacent properties, is adequate.
- Lot dimensions.
- The location, size, height and uses for all existing and proposed buildings.
- Yards, open space and landscaping.
- Walls and fences: location, height and materials.
- Off-street parking: location, number of spaces, dimensions of parking area and internal circulation patterns.
- Access: pedestrian, vehicular, service, points of ingress and egress.
- Signs: location, size, height and means of illumination.
- Loading: location, dimension, number of spaces, internal circulation.
- Lighting: location and general nature, hooding devices.
- Street dedication and improvements.
- Special site features including existing and proposed grades and trees, and plantings to be preserved and removed.

n/a Water systems, drainage systems, sewage disposal systems and utilities.

n/a Drainage ways, water courses, flood plain and wetlands.

n/a The number of people that will occupy the site including family members, employees or customers.

n/a The number of generated trips per day from each mode of travel by type: employees, customers, shipping, receiving, etc.

n/a Time of operation, where appropriate. Including hours of operation, days of the week and number of work shifts.

n/a Specifications of the type and extent of emissions, potential hazards or nuisance characteristics generated by the proposed use. The applicant shall accurately specify the extent of emissions and nuisance characteristics relative to the proposed use. Misrepresentation or omission of required data shall be grounds for denial or termination of a Certificate of Occupancy.

Uses which possess nuisance characteristics or those potentially detrimental to the public health, safety and general welfare of the community including, but not limited to; noise, water quality, vibration, smoke, odor, fumes, dust, heat, glare or electromagnetic interference, may require additional safeguards or conditions of use as required by the Planning Commission or City Council.

All uses shall meet all applicable standards and regulations of the Oregon State Board of Health, the Oregon Department of Environmental Quality, and any other public agency having appropriate regulatory jurisdiction. City approval of a land use application shall be conditional upon evidence being submitted to the City indicating that the proposed activity has been approved by all appropriate regulatory agencies.

x Such other data as may be necessary to permit the deciding authority to make the required findings.

NOTE: Additional information may be required after further review in order to adequately address the required criteria of approval.

After recording return to,
& send tax statements to:
Lookout Point LLC
40160 East First Street
Lowell, OR 97452

Lane County Clerk
Lane County Deeds and Records

2014-047900



\$52.00

01470243201400479000020028

12/04/2014 02:18:56 PM

RPR-DEED Cnt=1 Stn=15 CASHIER 01
\$10.00 \$11.00 \$21.00 \$10.00

WARRANTY DEED


SHADE TREE, INC., an Oregon corporation, as Grantor, conveys and warrants to LOOKOUT POINT LLC, an Oregon limited liability company, Grantee, the real property described on the attached Exhibit A, and situated in the County of Lane, State of Oregon, free of encumbrances except, covenants, conditions, restrictions and easements of record.

The true and actual consideration for this conveyance is \$734,036.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009.

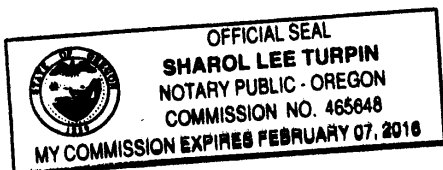
DATED this 2nd day of December, 2014.

STATE OF OREGON, County of Lane, ss.



Shade Tree, Inc. by Mia Nelson, President

On December 2, 2014, personally appeared the above named Mia Nelson, and did say that she is the President of Grantor Shade Tree, Inc. and that this instrument was signed on behalf of the corporation and by the authority of its board of directors, and acknowledged the foregoing instrument to be her voluntary act and deed. Before me:




Notary Public for Oregon
My Commission Expires: February 7, 2016

EXHIBIT A

Lots 41 through 57, inclusive, Sunridge Second Addition, recorded in Lane County, Oregon official records as reception number 2005-057003.

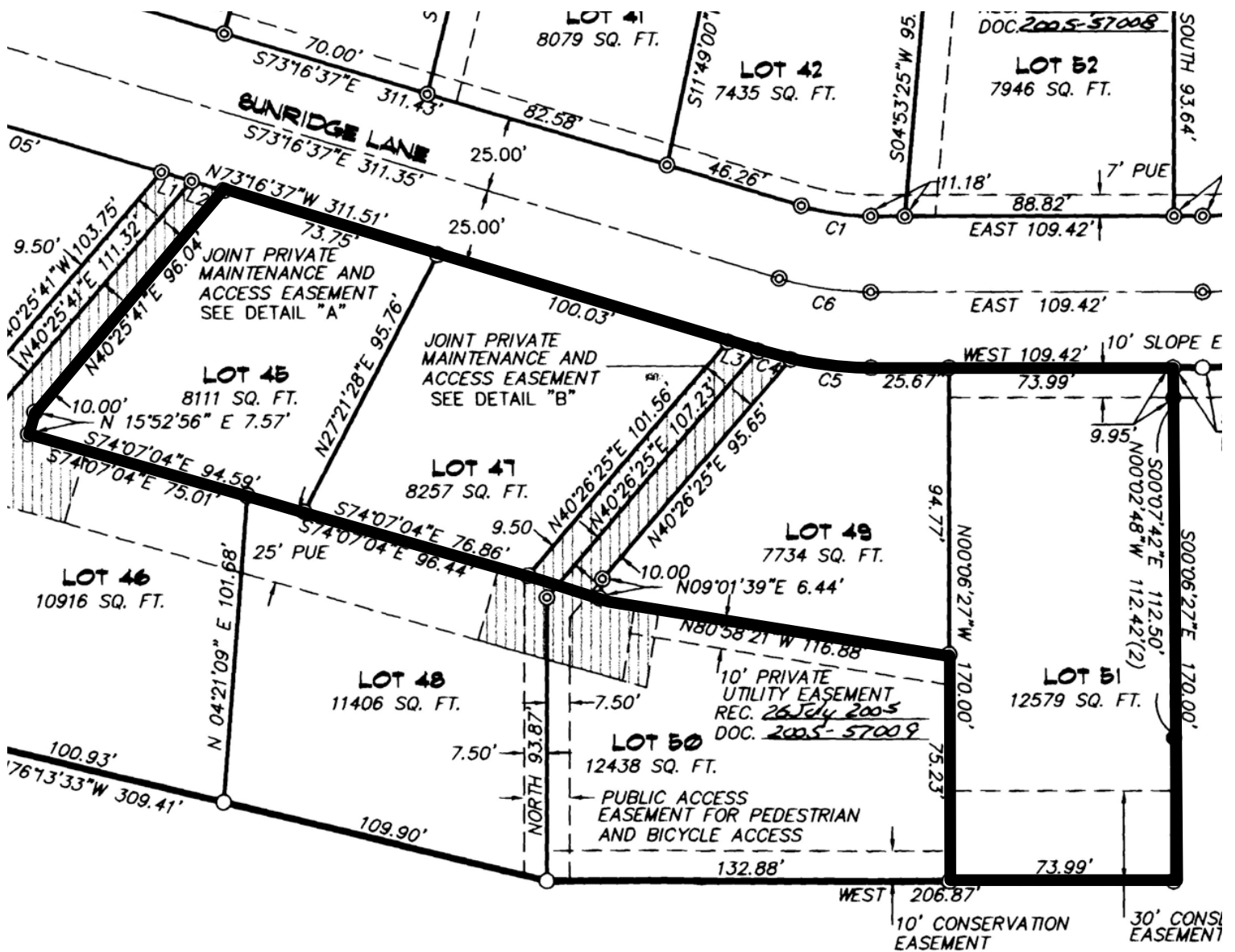
A parcel of land in Lane County, Oregon described as follows: Beginning at the northwest corner of Lot 17, Sunridge First Addition, recorded in Lane County, Oregon official records as reception number 2005-008200; thence South $17^{\circ}48'00''$ West 253.00 feet along the west line of said Sunridge First Addition to the southwest corner of Lot 19 thereof; thence, North $73^{\circ}16'37''$ West 21.66 feet along the northern right-of-way line of Wetleau Drive to a point marked by a reinforcing rod; thence, South $16^{\circ}43'23''$ West 154.73 feet to a reinforcing rod on the northerly line of the former Southern Pacific Railroad Company right of way as surveyed and monumented in that survey filed at the office of the Lane County Surveyor under No. 31330; thence 364.06 feet, more or less, along said northerly line as it follows the arc of a curve to the right having a radius of 5579.56 feet, to the southeast corner of Hern Subdivision, recorded in Lane County, Oregon official records as reception number 2003-082234; thence northerly along the east line of said Hern Subdivision 392.72 feet, more or less, to the northeast corner thereof; thence along the southerly line of those certain parcels surveyed in that survey filed at the Office of the Lane County Surveyor under No. 25662 South $73^{\circ}16'39''$ East 341.74 feet, more or less, to a 1/2 inch iron pipe; thence northerly 20.00 feet, more or less, to a reinforcing rod; thence South $73^{\circ}16'39''$ East 167.39 feet, more or less, to the point of beginning, and excepting therefrom the area lying within the right-of-way of Wetleau Drive.

SITE PLAN

FRONT SETBACK VARIANCE

Lookout Point LLC
 586, 598, 614 & 622 Sunridge Lane, Lowell OR
 19-01-14-13-4600, -4700, -4800, & -4900
 Lots 45, 47, 49 and 51

SCALE: 1" = 50'
 JANUARY 19, 2020



SETBACK VARIANCE

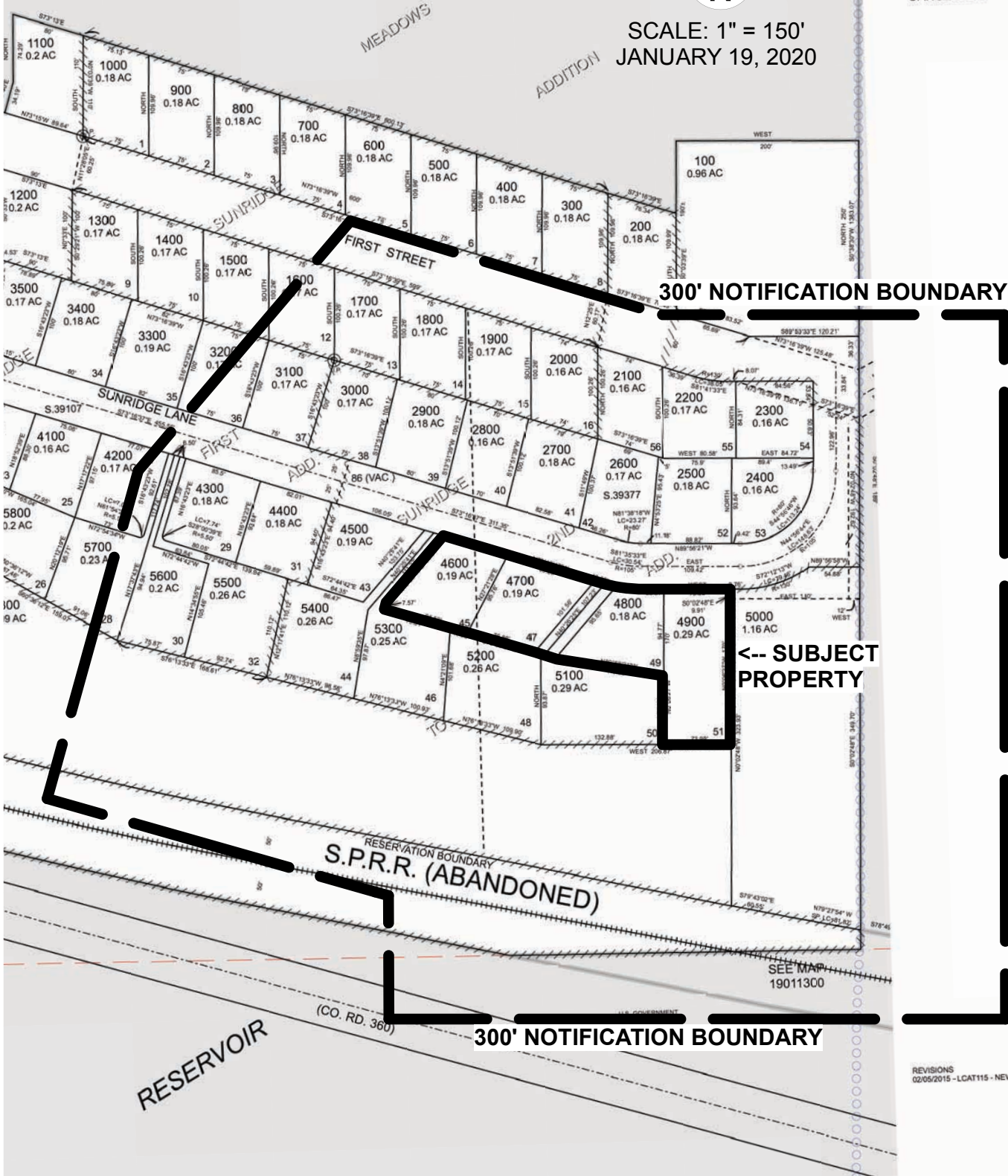
Lookout Point LLC

SEE MAP
19011100



CANCELLED

SCALE: 1" = 150'
JANUARY 19, 2020



REVISIONS
02/05/2015 - LCAT115 - NEW MAP, REMAP FROM 19-01-14-0

LOWELL
19011413

APPLICANT'S STATEMENT

Owner: Lookout Point LLC

Property: 586 Sunridge Lane (Lot 45 Sunridge, taxlot 4600)
598 Sunridge Lane (Lot 47 Sunridge, taxlot 4700)
614 Sunridge Lane (Lot 49 Sunridge, taxlot 4800)
622 Sunridge Lane (Lot 51 Sunridge, taxlot 4900)

Request: Variance to front setback

This is a request to vary Lowell Code Section 9.411(d)(6)(A)(1) to allow a 5-foot front setback in lieu of the required 10 feet.

Approval criteria are found in Section 9.252(b):

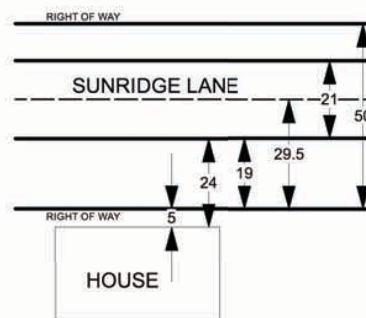
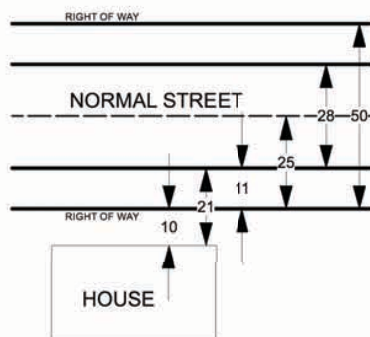
Section 9.252(b)(1): "That there are circumstances or conditions affecting the property or use."

The subject property has a 20-25% slope, running straight downward from the street (see Exhibit A). This is unusual for Lowell; in fact, these are some of the steepest urban-sized lots ever developed here. The roof height also is subject to height limitations due to deed restrictions designed to protect the views of homes higher up the hill.

In addition, Sunridge Lane was not constructed in the typical fashion. Because of the steep slope, the pavement is only 21' wide instead of the normal 28' wide. The narrower street was also offset to the uphill side of the right of way. This can be seen on the approved construction plans (see Exhibit B).

As shown by the below drawing, the normal street is 28' wide and centered in the 50' right of way. This leaves 11' from the curb to the right of way, and 21' from the curb to the house with the normal 10' setback.

However, Sunridge Lane is only 21' wide and is pushed to the north (uphill) side of the 50' right of way. This leaves 19' from the curb to the downhill right of way and 24' from the curb to the house **with the requested 5' setback**. This is still 3' **more** distance from the curb to the house than would normally be required.



Section 9.252(b)(2): “That the Variance is necessary for the proper design and/or function of the proposed development or land division.”

If these lots were forced to comply with the 10-foot setback standard, the homes would have to be slid 5 feet farther down the hill. However, it is not desirable to do this, because either 1) the house will be lowered and the driveway will be steeper; or 2) the house will remain the same height, will protrude higher into the view shed of uphill homes, the retaining wall for the driveway will be higher, and the downhill foundation walls for the house and garage will be higher.

In fact, three of the five homes on the downhill side of this same street (520, 540 and 552 Sunridge Lane) are located less than 10’ from the front property line and don’t meet Lowell’s front setback requirement. This was done due to the same realities that exist on the subject property.

Section 9.252(b)(2): “That the granting of the Variance will not be detrimental to the public welfare or injurious to other property in the area in which the property is situated.”

The subject property is part of the Sunridge development. The proposed variance will have no detrimental effect on these surrounding properties. In fact, the uphill properties will benefit since the proposed siting will help preserve the lake views. The downhill properties will enjoy greater separation between their homes and the uphill homes, and there will be lower fill banks and retaining walls for them to look at.

Section 9.252(b)(4): “That the granting of the Variance will not conflict with the purpose and intent of the district or zone, this Code, or other related ordinances of the City.”

The purpose of the Code is found in Section 9.102: “to establish standards and procedures for the orderly development of land within the City of Lowell in conformance with the Lowell Comprehensive Plan, to protect property rights, provide due process of law and promote the public health, safety and welfare of the citizens of Lowell.”

By allowing the home to be sited in harmony with the topography and in service to the aesthetic needs surrounding property owners, the proposed variance supports the purpose of the code.

EXHIBIT A

CONTOUR MAP

FRONT SETBACK VARIANCE

Lookout Point LLC

SCALE: 1" = 50'
JANUARY 19, 2020

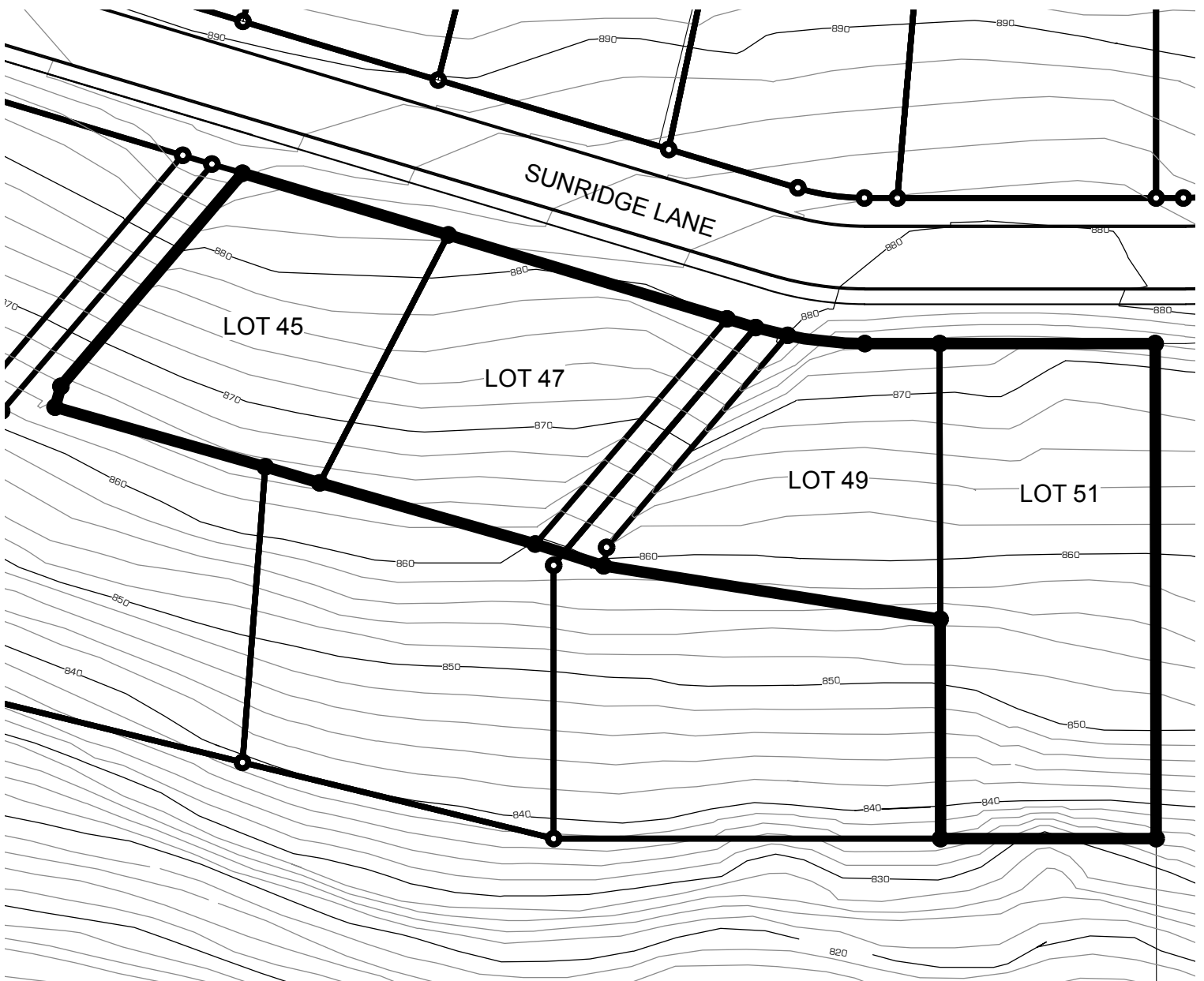
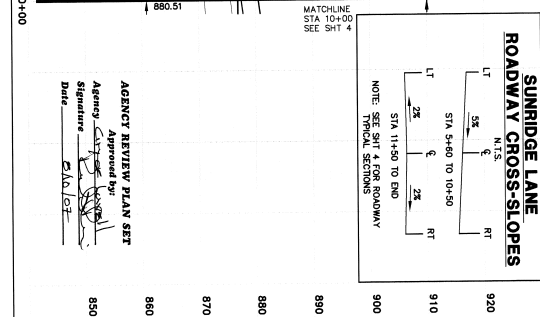
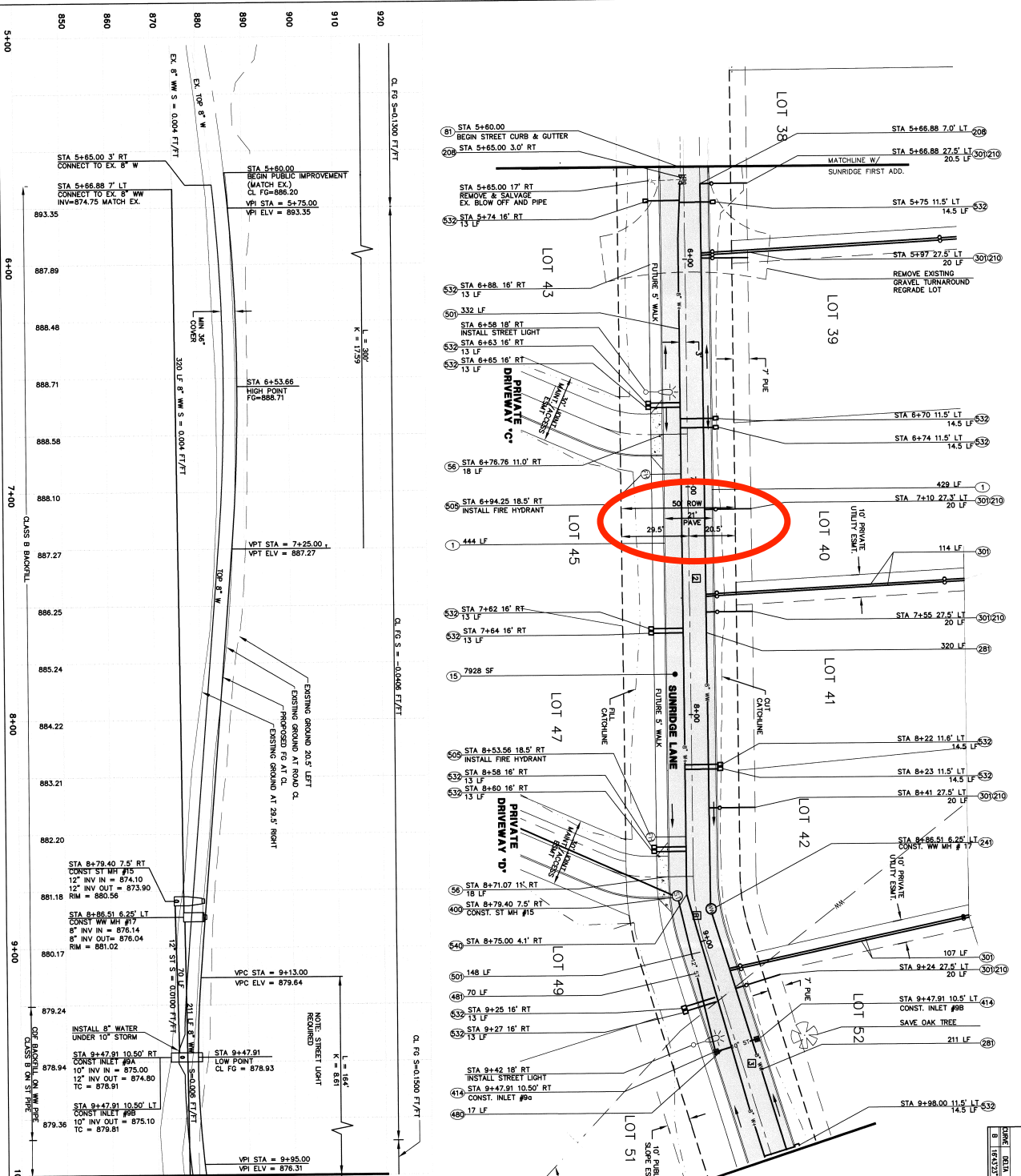


EXHIBIT B

Plot Date: 03-01-2007
 Project: S:\Projects\5099\03-0186-PHASE 2\03-0186-b-PHASE 2.dwg
 Reference: S:\Projects\5099\03-0186-PHASE 2\03-0186-b-PHASE 2.dwg
 Main File: S:\Projects\5099\03-0186-PHASE 2\03-0186-PHASE 2.dwg



CONSTRUCTION NOTES

- (1) CONSTRUCT CURB AND GUTTER
- (2) CONSTRUCT 1" AC ON 8" ROCK
- (3) CONSTRUCT SIDE CURB OUT FOR DRIVEWAY
- (4) SAWCUT EXISTING PAVEMENT
- (5) CONSTRUCT 1" AC ON 8" ROCK
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- (92) CONSTRUCT 1" AC ON 8" ROCK
- (93) CONSTRUCT 1" AC ON 8" ROCK
- (94) CONSTRUCT 1" AC ON 8" ROCK
- (95) CONSTRUCT 1" AC ON 8" ROCK
- (96) CONSTRUCT 1" AC ON 8" ROCK
- (97) CONSTRUCT 1" AC ON 8" ROCK
- (98) CONSTRUCT 1" AC ON 8" ROCK
- (99) CONSTRUCT 1" AC ON 8" ROCK
- (100) CONSTRUCT 1" AC ON 8" ROCK

CONSTRUCTION TABLE

NO.	DATE	BY	REVISION
1	03/01/07	DL	ISSUED FOR PERMIT
2	03/01/07	DL	ISSUED FOR PERMIT
3	03/01/07	DL	ISSUED FOR PERMIT

AGENCY REVIEW PLAN SET

Agency Approved by: _____

Date: _____

SUNRIDGE SUBDIVISION

SECOND ADDITION

PUBLIC IMPROVEMENT PLANS

SUNRIDGE LANE STA 6+00-10+00

LOWELL, OREGON

CONSTRUCTION TABLE

NO.	DATE	BY	REVISION
1	03/01/07	DL	ISSUED FOR PERMIT
2	03/01/07	DL	ISSUED FOR PERMIT
3	03/01/07	DL	ISSUED FOR PERMIT

Date: 07-10-2007

Job Number: 5099-04-0080

Design by: D. OLMSTEAD

Drawn by: E. LUCKHARDT

Checked by: D. OLMSTEAD

No. Description of Revisions Date Name

REVISIONS: 12/31/08

2535B Prairie Road
Eugene, Oregon 97402

(541) 688-8322
Fax (541) 688-8087

**CTIY of LOWELL
NOTICE OF PUBLIC
HEARING**

Mailing Date MARCH 15, 2021

Notice is hereby given for a Public Hearing by the Lowell Planning Commission for a **variance to front yard setback standards** as listed in Lowell Development Code (LDC) Section 9.528(c) for a single-family zoned residential lot on the properties located at 586, 598, 614, and 622 Sunridge Lane, Lowell, OR 97452.

Notice is also hereby given for a Public Hearing by the Lowell Planning Commission and City Council for a **vacation of a 10-foot-wide slope easement** located at 622 Sunridge Lane and on Map 19-01-14-13-4900.

The hearing for the **Variance** will be held on **April 7, 2021 at 7:00PM in front of Planning Commission.**

The hearing for the **Vacation** will be held on **April 7, 2021 at 7:00PM in front of Planning Commission and a second hearing in front of City Council on May 6, 2021 at 7:00PM.**

A vacation request requires a hearing in front of Planning Commission with a recommendation onto City Council for final review and action.

The City may allow a public space for those wishing to attend in person. That location is the Library at 70 N. Pioneer Street. A remote (online via Zoom) option will also be offered and is encouraged.

Variance:

Owner/Applicant: Lookout Point LLC
Property Location: 586, 598, 614, and 622 Sunridge Lane
Assessor Map: 19-01-14-13
Tax Lot: 4600, 4700, 4800, and 4900
Existing Area: 0.85 acres
Zoning: R-1 Single-Family Residential

Vacation:

Daniel Fischer
Property Location: 622 Sunridge Lane
Assessor Map: 19-01-14-13
Tax Lot: 04900
Existing Area: 0.29 acres
Zoning: R-1 Single-Family Residential

The Lowell Land Use Development Code specifies the applicable procedures and criteria for evaluation of the requested action. Applicable Code Sections include 9.252 Variances, 9.304 Notification and Section 9.306 Quasi-Judicial Public Hearings, and Section 9.255 Vacations. The specific criteria will be addressed in the Staff Report.

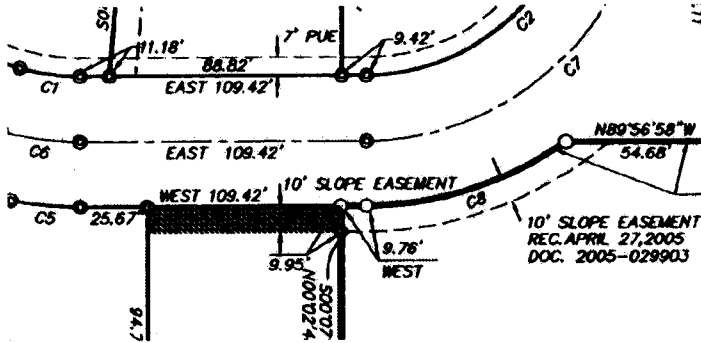
A copy of the Application, all documents and evidence relied upon by the Applicant and the Staff Report containing the applicable criteria will be available for inspection at the Lowell City Hall at least seven days prior to the public hearing meeting.

SITE PLAN

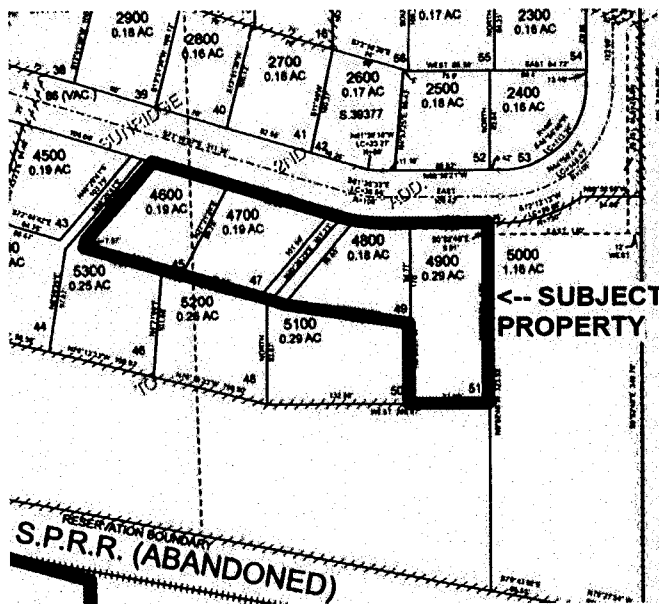
SLOPE EASEMENT VACATION

Lookout Point LLC
622 Sunridge Lane, Lowell OR
19-01-14-13-4900

SCALE: 1" = 40'
JANUARY 19, 2020



Vacation Site Map



Variance Site Map

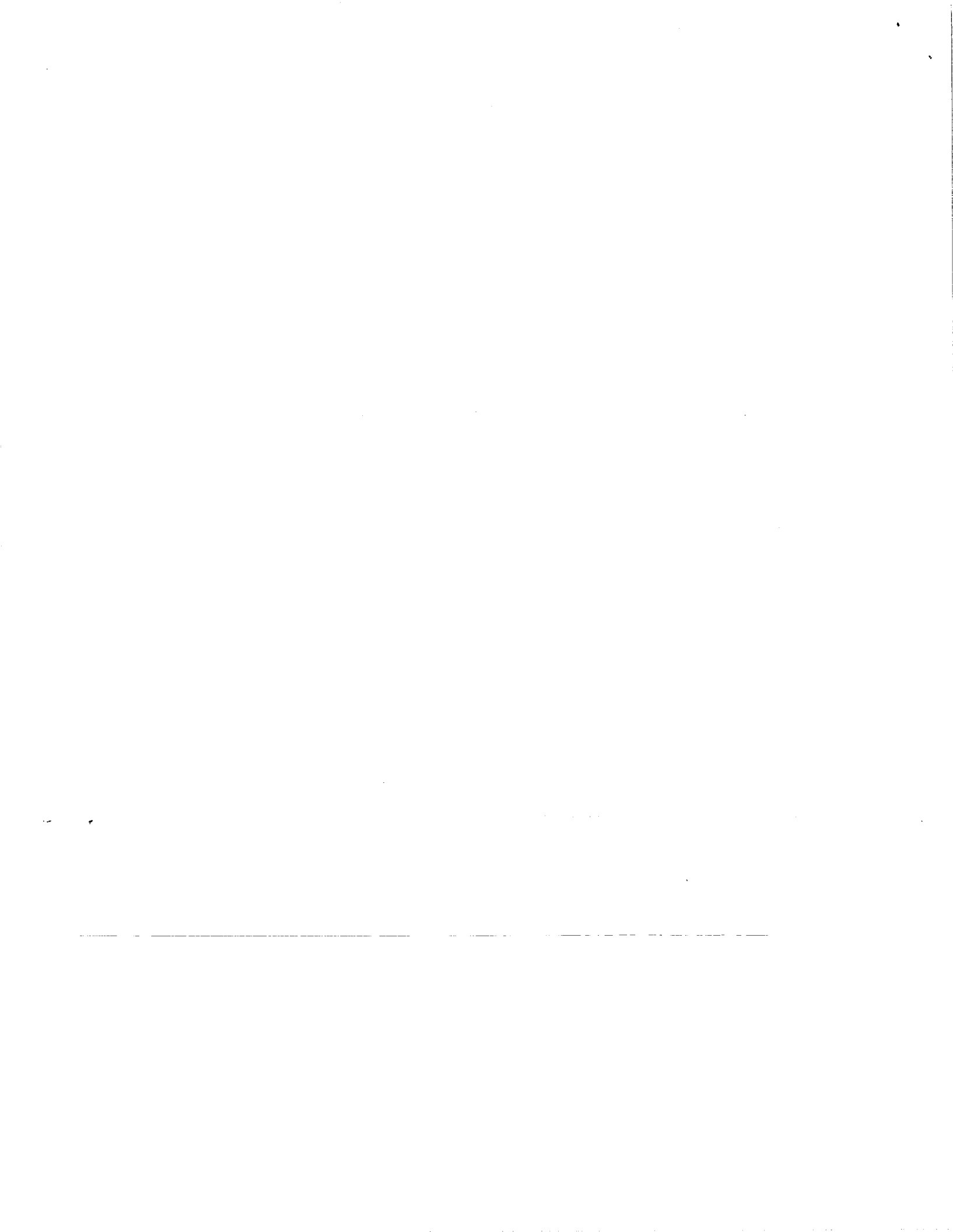
Failure of an issue to be raised in the Hearing or by letter, or failure to provide sufficient detail to afford the decision makers an opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals (LUBA) on that issue.

A variance and vacation request requires a Public Hearing. Oral testimony may be presented at the Hearing or written testimony may be delivered or mailed to the Lowell City Hall located at 107 East Third Street, Lowell, Oregon 97452 or emailed to Henry Hearley, City Planner, at hhearley@lcog.org or jcaudle@ci.lowell.or.us

To be included in the staff report, written testimony shall be received by the City no later than 4:00 pm on April 7, 2021.

For additional information please write to City Hall at the above address or call City Hall at (541) 937-2157 or fax to 541-937-2066.

Henry Hearley
541-682-3089
City Planner
Lane Council of Governments



Staff Report
Vacation
622 Sunridge Lane; 19-01-14-13 TL 4900
LU 2021-04 (vacation)
Staff Report Date: March 31, 2021

1. **Proposal.** The Planning Commission is being asked to review and issue a recommendation onto City Council a request to vacate a slope easement that is recorded on the plat of the Second Addition Sunridge subdivision. The slope easement to be vacated is the northly 10-foot of the westerly 58-feet of Lot 51 of the Second Addition Sunridge subdivision (see applicant's revised slope vacation map in **Attachment C**). The property is presently vacant and planned for future homesite development and is zoned R-1. The property is owned by Mr. Daniel Fischer and the application was submitted by Lookout Point LLC with Ms. Mia Nelson acting as the representative. The requested vacation does not involve City property or ROW. The slope easement in question is entirely located on private property.
2. **Approval Criteria.** Section 9.255 of the Lowell Development Code (LDC) establishes the criteria and process for a vacation. Subsection (c) outlines the decision criteria that must be found in order to grant a vacation. A vacation is a quasi-judicial decision by the City Council with a recommendation by the Planning Commission. City Council. Upon recommendation of the Planning Commission may approve, deny or approve with conditions.
3. **Staff review of applicable criteria for a vacation**

LDC 9.255. (c) Decision Criteria. A vacation request may be approved if the review body find that the applicant has shown that all of the following review criteria are met:

(1) The proposed vacation is consistent with the relevant Comprehensive Plan policies and with any official street plan, transportation plan or public facility plan.

Discussion: The subject slope easement is not contained within any Right-of-Way (ROW) or any city property. The Comprehensive Plan contains policies under Section 9.983 Development Constraints, that deals with topography and slope and the development constraints that are often faced when developing in Lowell. Development on slopes of 15 percent or greater is not prohibited, rather development should be carefully controlled, and street widths and locations must be carefully chosen to avoid large cuts and fills. The City does not have a detailed study of the developability of its unsuitable hillside areas. To address the presence of steep slopes and the developability of such areas, the City has adopted Hillside Development Standards to control development on areas that contain slopes of 15 percent or greater.

In general, a slope easement is provided to allow a city to, among other things, maintain the slope for the purposes of stabilizing the soil, and preventing erosion. Slope easements also are used to construct and maintain slopes and prevent structures from location in them.

Knowing this, staff reached out to the City Engineer for review and comment on the proposed vacation.

The City Engineer provided comment (see **Attachment B**), the concerns were around maintaining the stability of the slope and if the easement were to be abandoned, some mechanism placed on the property that would ensure the property owner maintains the slope so that it does not undermine the roadway. After this comment, the applicant submitted additional evidence (**Attachment C**) to the City Engineer showing photographs that the slope easement is considerably less hazardous to the roadway than other slope easements that exist nearby (including a nearby slope on 1st Street embankment that does not contain a slope easement) and the slope in question is rather gentle.

After reviewing this new evidence, the City Engineer's concerns have been addressed and supports the slope easement based on the actual slopes that exist in the area and because slopes in this case are "softened" during or after construction and slopes are flatter than required.

Lastly, to address any remaining concerns regarding construction activities on steep slopes, the subject property contains slopes in excess of 15 percent so the hillside development standards will apply when building permits are submitted. Further, the Covenants, Conditions and Restrictions (CC & Rs) for the Sunridge subdivision have regulations and standards with respect to cuts and fill, exposed slopes and development in areas that contain steep slopes. These standards are also enforced by the President of the Sunridge subdivision.

Staff will recommend a condition of approval for vacating the slope easement that all future development on the subject property be in compliance with the hillside development standards as contained in Section 9.630.

Condition of Approval #1: Development that is to occur on Tax Lot 4900 and located at 622 Sunridge Lane shall be in compliance with the hillside development standards as contained in Section 6.630 of the Lowell Development Code. Plans submitted for review for construction of a dwelling on the subject property shall be in conformance with the hillside development standards.

Recommended FINDING for approval: For the reasons outlined above, staff find the proposal is in compliance with relevant Comprehensive Plan policies, official street plans, transportation plan or public facility plans. Criterion met.

(2) The proposed vacation will not adversely impact adjacent areas or the land use plan of the City.

Recommended FINDING for approval: As discussed above, the concerns about slope stability have been addressed between the applicant and the City Engineer. Additionally, any development on the subject property will be subject to the hillside development standards. Staff find this criterion sufficiently addressed as contained in this staff report.

(3) The proposed vacation will not have a negative effect on access between public rights-of-way, existing or future properties, public facilities or utilities.

Recommended FINDING for approval: The proposed vacation does not involve any City rights-of-way but is located adjacent to a City street. As alluded to earlier in this staff report, the City Engineer initially did have concerns about maintaining the stability of the slope so that it did not undermine the street located above. As such, the applicant submitted additional evidence that the slope easement in question is rather gentle when compared to other slopes in the vicinity, some of which do not have slope easements. After communicating and reviewing the applicant's additional evidence (including site photos), the City Engineer has no further concerns regarding the proposed vacation and finds it can be approved. Staff also note, any development on the subject property will be subject to the hillside development standards, as the subject property contains slopes of 15 percent or greater. Criterion met.

(4) The proposed vacation will not have a negative effect on traffic circulation or emergency service protection.

Recommended FINDING for approval: The proposed vacation does not involve City rights-of-way, so effects on traffic circulation or emergency protection are not anticipated. The proposed vacation will not interfere with the ability of emergency services to reach the future dwelling to be placed on the subject property. Criterion met.

(5) The portion of the right-of-way that is to be vacated will be brought into compliance with Code requirements, such as landscaping, driveway access, and reconstruction of access for fire safety.

Recommended FINDING for approval: The proposed vacation does do not involve nor is located on City rights-of-way. After vacation, the area that is presently occupied with the slope easement will likely be developed, in some form, for homesite development. Any development that is to occur on the subject property, including the immediate area of the slope easement shall be in conformance with the standards for development for the City of Lowell. Criterion met.

(6) The proposed vacation will not have adverse impacts on economy of the area.

Recommended FINDING for approval: The proposed slope vacation is not expected to have an adverse impact on the economy of the area. Staff are not aware of any evidence or comments that would find staff to believe the proposed vacation would have an adverse impact on the economy of the area.

(7) The public interest, present and future, will be best served by approval of the proposed vacation.

Recommended FINDING for approval: As presented in this staff report, the slope easement, if vacated, does not pose a risk to the public interest whether in the present or future. As alluded to earlier, the slope easement is there to protect slope stability and protect against erosion, among other things. The City Engineer has reviewed the proposal and based on the additional evidence submitted by the applicant finds the slope easement can be vacated, if the City wishes

to grant approval. As cited earlier, the slope easement in question is fairly gentle and there exists in the immediate area greater slopes that do not presently have slope easement on them. Any development on the subject property will be subject to the hillside development standards, including cuts and fills. If the slope easement is to remain, this in theory would cause the probable future dwelling to be built further down the hill on increased slopes. Since the City gains no offsetting benefit by retaining the slope easement, the public interest is best served by the proposed vacation and the efficient use of the subject property. Staff finds the requested vacation can be approved, but City Council has the ability to make alternate findings such that the slope vacation is not in the public interest and therefore the request denied.

4. Conditions of Approval

Condition of Approval #1: Development that is to occur on Tax Lot 4900 and located at 622 Sunridge Lane shall be in compliance with the hillside development standards as contained in Section 6.630 of the Lowell Development Code. Plans submitted for review for construction of a dwelling on the subject property shall be in conformance with the hillside development standards.

Condition of Approval #2: Applicant shall submit approval of the slope easement to Lane County Deeds and Records for recordation and official recognition of the vacation of the slope easement on the Final Plat in which it was originally recorded on.

5. Recommendation

Staff recommends the Planning Commission issue a recommendation of **APPROVAL** onto City Council for the vacation of a slope easement located on Map and Tax Lot 19-01-14-13 TL 4900 (622 Sunridge Lane), subject to the conclusions, recommendations, findings and conditions as stated in this staff report.

City Council has the ability to make alternate findings and an alternate decision, based on their own findings and conclusions.

6. Attachments

Attachment A: Applicant's application

Attachment B: City Engineer Comments

Attachment C: Applicant Additional Evidence

Attachment D: Property Owner Letter

ATTACHMENT A

Land Use Permit Application

Site Plan Review, Conditional Use, Annexation, Lot Line Adjustment, Variance, Vacation, Partition, Map Amendment, Other, Subdivision, Text Amendment

Please complete the following application. If any pertinent required information or material is missing or incomplete, the application will not be considered complete for further processing.

List all Assessor's Map and Tax Lot numbers of the property included in the request.

Map# 19-01-14-13 Lot # 4900

Map# Lot #

Map# Lot #

Street Address (if applicable): 622 Sunridge Lane

Area of Request (square feet/acres): 740 sq ft

Existing Zoning: R-1

Existing Use of the Property: vacant future home sites

Proposed Use of the Property no change

Pre-application Conference Held: No x Yes If so, Date

Submittal Requirements:

- 1. Copy of deed showing ownership or purchase contract with property legal description.
2. Site Plan/Tentative Plan with, as a minimum, all required information.
3. Applicant's Statement: Explain the request in as much detail as possible.
4. Other submittals required by the City or provided by the applicant.
5. Filing Fee: Amount Due:

By signing, the undersigned certifies that he/she has read and understood the submittal requirements outlined, and that he/she understands that incomplete applications may cause delay in processing the application. I (We), the undersigned, acknowledge that the information supplied in this application is complete and accurate to the best of my (our) knowledge. I (We) also acknowledge that if the total cost to the City to process this application exceeds 125% of the application fee, we will be required to reimburse the City for those additional costs in accordance with Ordinance 228.

PROPERTY OWNER

Name (print): Lookout Point LLC Phone: 541-520-3763

Address: 40160 E 1st Street

City/State/Zip: Lowell, OR 97452

Signature:  by Mia Nelson, Manager

APPLICANT, If Different

Name (print): _____ Phone: _____

Company/Organization: _____

Address: _____

City/State/Zip: _____

Signature: _____

E-mail (if applicable): _____

APPLICANTS REPRESENTATIVE, if applicable

Name (print): Mia Nelson Phone: 541-520-3763

Company/Organization: Lookout Point LLC

Address: 40160 E 1st Street

City/State/Zip: Lowell, OR 97452

E-mail (if applicable): mia@sunridge.net

For City Use. _____ Application Number _____

Date Submitted: _____ Received by: _____ Fee Receipt # _____

Date Application Complete: _____ Reviewed by: _____

Date of Hearing: _____ Date of Decision _____ Date of Notice of Decision _____

APPLICATION SITE PLAN REQUIREMENTS CHECKLIST
Lowell Land Development Code, Section 2.140

Applications for land divisions or land use requests that require a site plan shall submit the site plan on 8 1/2 x 11 inch or 11 x 17 inch black/white reproducible sheets for copying and distribution. Larger drawings may be required for presentation and City review. Drawings shall be drawn to scale. The scale to be used shall be in any multiple of 1 inch equals 10 feet (1" = 20', 1" = 30', 1" = 100', etc.) and may be increased or decreased as necessary to fit the sheet size. The Application and site plan shall show clearly and with full dimensioning the following information, as applicable, for all existing and proposed development. It is understood that some of the requested information may not apply to every application.

- The names of the owner(s) and applicant, if different.
- The property address or geographic location and the Assessor Map number and Tax Lot number.
- The date, scale and northpoint.
- A vicinity map showing properties within the notification area and roads. An Assessor Map, with all adjacent properties, is adequate.
- Lot dimensions.
- The location, size, height and uses for all existing and proposed buildings.
- Yards, open space and landscaping.
- Walls and fences: location, height and materials.
- Off-street parking: location, number of spaces, dimensions of parking area and internal circulation patterns.
- Access: pedestrian, vehicular, service, points of ingress and egress.
- Signs: location, size, height and means of illumination.
- Loading: location, dimension, number of spaces, internal circulation.
- Lighting: location and general nature, hooding devices.
- Street dedication and improvements.
- Special site features including existing and proposed grades and trees, and plantings to be preserved and removed.

n/a Water systems, drainage systems, sewage disposal systems and utilities.

n/a Drainage ways, water courses, flood plain and wetlands.

n/a The number of people that will occupy the site including family members, employees or customers.

n/a The number of generated trips per day from each mode of travel by type: employees, customers, shipping, receiving, etc.

n/a Time of operation, where appropriate. Including hours of operation, days of the week and number of work shifts.

n/a Specifications of the type and extent of emissions, potential hazards or nuisance characteristics generated by the proposed use. The applicant shall accurately specify the extent of emissions and nuisance characteristics relative to the proposed use. Misrepresentation or omission of required data shall be grounds for denial or termination of a Certificate of Occupancy.

Uses which possess nuisance characteristics or those potentially detrimental to the public health, safety and general welfare of the community including, but not limited to; noise, water quality, vibration, smoke, odor, fumes, dust, heat, glare or electromagnetic interference, may require additional safeguards or conditions of use as required by the Planning Commission or City Council.

All uses shall meet all applicable standards and regulations of the Oregon State Board of Health, the Oregon Department of Environmental Quality, and any other public agency having appropriate regulatory jurisdiction. City approval of a land use application shall be conditional upon evidence being submitted to the City indicating that the proposed activity has been approved by all appropriate regulatory agencies.

x Such other data as may be necessary to permit the deciding authority to make the required findings.

NOTE: Additional information may be required after further review in order to adequately address the required criteria of approval.

After recording return to,
& send tax statements to:
Lookout Point LLC
40160 East First Street
Lowell, OR 97452

Lane County Clerk
Lane County Deeds and Records

2014-047900



\$52.00

01470243201400479000020028

12/04/2014 02:18:56 PM

RPR-DEED Cnt=1 Stn=15 CASHIER 01
\$10.00 \$11.00 \$21.00 \$10.00

WARRANTY DEED

SHADE TREE, INC., an Oregon corporation, as Grantor, conveys and warrants to LOOKOUT POINT LLC, an Oregon limited liability company, Grantee, the real property described on the attached Exhibit A, and situated in the County of Lane, State of Oregon, free of encumbrances except, covenants, conditions, restrictions and easements of record.

The true and actual consideration for this conveyance is \$734,036.

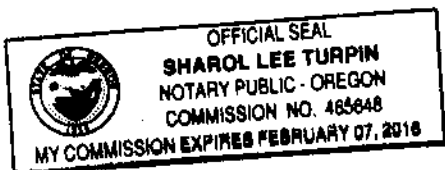
BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009.

DATED this 2nd day of December, 2014.

STATE OF OREGON, County of Lane, ss.

Shade Tree, Inc. by Mia Nelson, President

On December 2, 2014, personally appeared the above named Mia Nelson, and did say that she is the President of Grantor Shade Tree, Inc. and that this instrument was signed on behalf of the corporation and by the authority of its board of directors, and acknowledged the foregoing instrument to be her voluntary act and deed. Before me:



Notary Public for Oregon
My Commission Expires February 7, 2016

EXHIBIT A

Lots 41 through 57, inclusive, Sunridge Second Addition, recorded in Lane County, Oregon official records as reception number 2005-057003.

A parcel of land in Lane County, Oregon described as follows: Beginning at the northwest corner of Lot 17, Sunridge First Addition, recorded in Lane County, Oregon official records as reception number 2005-008200; thence South 17°48'00" West 253.00 feet along the west line of said Sunridge First Addition to the southwest corner of Lot 19 thereof; thence, North 73°16'37" West 21.66 feet along the northern right-of-way line of Wetleau Drive to a point marked by a reinforcing rod; thence, South 16°43'23" West 154.73 feet to a reinforcing rod on the northerly line of the former Southern Pacific Railroad Company right of way as surveyed and monumented in that survey filed at the office of the Lane County Surveyor under No. 31330; thence 364.06 feet, more or less, along said northerly line as it follows the arc of a curve to the right having a radius of 5579.56 feet, to the southeast corner of Hern Subdivision, recorded in Lane County, Oregon official records as reception number 2003-082234; thence northerly along the east line of said Hern Subdivision 392.72 feet, more or less, to the northeast corner thereof; thence along the southerly line of those certain parcels surveyed in that survey filed at the Office of the Lane County Surveyor under No. 25662 South 73°16'39" East 341.74 feet, more or less, to a 1/2 inch iron pipe; thence northerly 20.00 feet, more or less, to a reinforcing rod; thence South 73°16'39" East 167.39 feet, more or less, to the point of beginning, and excepting therefrom the area lying within the right-of-way of Wetleau Drive.

SLOPE EASEMENT VACATION

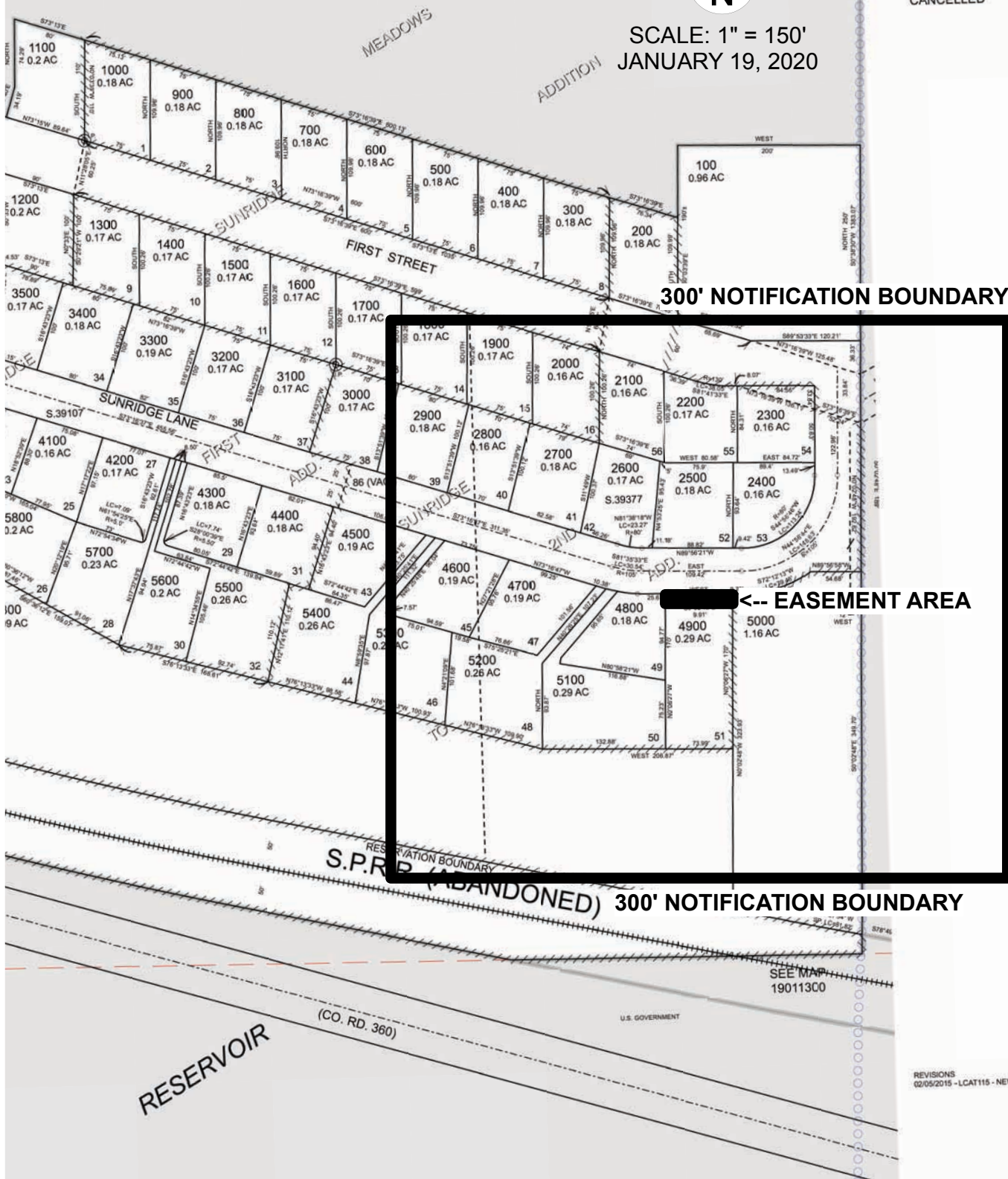
Lookout Point LLC

SEE MAP
19011100



CANCELLED

SCALE: 1" = 150'
JANUARY 19, 2020



300' NOTIFICATION BOUNDARY

<-- EASEMENT AREA

300' NOTIFICATION BOUNDARY

SEE MAP
19011300

REVISIONS
02/05/2015 - LCAT115 - NEW MAP, REMAP FROM 19-01-14-0

LOWELL
19011413

APPLICANT'S STATEMENT

Owner: Lookout Point LLC

Property: 622 Sunridge Lane (Lot 51 Sunridge, taxlot 4900)

Request: Vacate 10' x 74' slope easement

Applicant is the owner of 622 Sunridge Lane (Lot 51 Sunridge Second Addition), and seeks vacation of a slope easement affecting the northern 10' of the lot. The slope easement was recorded on April 27, 2005 (see Exhibit A), and is illustrated on the Site Map as well as the attached plat (see Exhibit B).

The slope easement was created due to an unusual situation. Normally, the city does not approve a final subdivision plat until all public improvements have been completed and accepted by the city. However, in this case, the city allowed the final plat of Sunridge Second Addition to be recorded on July 26, 2005, *before* any public improvements were constructed. Instead, the developer signed an agreement with the city, promising to build the improvements later; they were not completed until 2010.

Because the improvements were not yet built in 2005, the city required the slope easement to ensure that the road could still be built in the event Lot 51 was sold to another party prior to construction. The slope easement allowed the city to enter the property and construct a large fill embankment that was necessary. The approved city plans show this fill area (see Exhibit C).

It is commonplace in hillside areas that road fills must extend beyond the right of way. Slope easements are not normally required in these cases, because the city will not accept the final plat unless and until the road is completed. For example, the city is currently processing the Sunset Hills subdivision, which features an even larger fill embankment outside the right of way (see Exhibit D). The city is not requiring the Sunset Hills applicant to provide a slope easement.

Because Sunridge Lane is now constructed, this slope easement is no longer necessary. The Applicant asks the city to vacate the portion affecting Lot 51.¹

Sec. 9.255(c) Decision criteria. A vacation request may be approved if the review body finds that the applicant has shown that all of the following review criteria are met:

¹ Instead, the city could choose to vacate the *entire* slope easement, including the portion affecting taxlot 5000 (the property to the east). This would be appropriate, given that the slope easement no longer serves any purpose. However, the Applicant is not requesting that the entire easement be vacated.

(1)The proposed vacation is consistent with the relevant Comprehensive Plan policies and with any official street plan, transportation plan or public facility plan.

There are no relevant Comprehensive Plan policies or plans.

(2)The proposed vacation will not adversely impact adjacent areas or the land use plan of the City.

There are no expected impacts to adjacent areas or the land use plan.

(3)The proposed vacation will not have a negative effect on access between public rights-of-way, existing or future properties, public facilities or utilities.

There are no expected access effects. The slope easement has already served its purpose in the construction of Sunridge Lane and is no longer needed.

(4)The proposed Vacation will not have a negative effect on traffic circulation or emergency service protection.

There are no expected effects on traffic circulation or emergency services.

(5)The portion of the right-of-way that is to be vacated will be brought into compliance with Code requirements, such as landscaping, driveway access, and reconstruction of access for fire safety.

The vacation would not transfer title and therefore has no impact on who is responsible for code compliance.

(6)The proposed vacation will not have an adverse impact on economy of the area.

There are no expected impacts to the local economy.

(7)The public interest, present and future, will be best served by approval of the proposed vacation.

Unnecessary impediments to the practical use of land should be removed, to permit efficient use of the city's limited land base. If this easement is not vacated, that would compel the future home to be built farther down the hillside than is necessary. This would in turn cause increased cut/fill impacts, reduced livability for the future residents, and greater intrusion into the viewshed of uphill homes. Since the city gains no offsetting benefit by retaining the slope easement, the public interest is best served by the proposed vacation.

EXHIBIT A

CONSTRUCTION & SLOPE EASEMENT
APPROVED AND ACCEPTED
BY CITY OF LOWELL, OREGON

Division of Chief Deputy Clerk
Lane County Deeds and Records

2005-029903



\$26.00

RPR-ESMT Cnt=1 Str=6
\$5.00 \$10.00 \$11.00

04/27/2005 10:29:49 AM
CASHIER 07

Mayor CITY ADMINISTRATION Date 4/25/05

Date: April 25, 2005

SHADE TREE, INC., an Oregon corporation, as **GRANTOR**, does hereby create and convey to the **CITY OF LOWELL**, an Oregon municipal corporation, as **GRANTEE**, a perpetual, non-exclusive slope and construction easement over, across and under the real property described below as "Easement Area". The terms of this easement are as set forth herein.

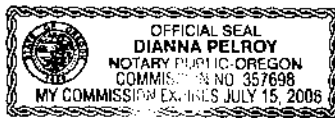
The Easement Area shall be the area described as follows: *Beginning at a point 936.32 feet east and 607.93 feet south of the initial point of the original Plat of Lowell, as recorded in Book 4, Page 37 of the Lane County Oregon Plat Records; thence, South 140.00 feet; thence, South 73°13'00" East 250.00 feet to an iron pipe; thence, South 0°02'00" West 62.68 feet to a point on the southerly right of way line of that certain public roadway commonly known as East First Street as conveyed to the City of Lowell by that certain deed recorded on Reel 1173R, Recorder's Reception No. 8152619, Lane County Oregon Deed Records; thence, along said southerly right of way line South 73°13'00" East 1050.17 feet to a 5/8 inch iron rod located on the west line of Lane County Partition Plat No. 95-P0685; thence, along said west line South 0°02'48" East 189.00 feet to a 5/8 inch iron rod set therein; thence, West 140.00 feet to a 5/8 inch iron rod set in said Survey No. 33607 and marking the TRUE POINT OF BEGINNING; thence, North 0°02'48" West 9.91 feet to a point; thence, South 89°56'21" East 9.76 feet to a point; thence, 80.76 feet along the arc of a curve to the left having a radius of 130.00 feet to a point which bears North 72°15'52" East 79.46 feet from the last described point; thence, South 89°53'19" East 16.11 feet to a point; thence, 94.62 feet along the arc of a curve to the right having a radius of 140.00 feet to a point which bears South 68°27'51" West 92.83 feet from the last described point; thence, West 15.20 feet to the true point of beginning all in the City of Lowell, Lane County, Oregon.*

Grantee shall have the right to construct, inspect, maintain and repair embankments within the Easement Area, specifically including, but not limited to, the right to grade, fill, topsoil, seed and maintain the Easement Area for purposes of stabilizing the soil, preventing erosion, improving the aesthetic aspects of the roadside and for doing anything necessary, useful or convenient for the enjoyment of the easement herein granted. Grantee shall also have the right to enter upon and to pass and repass over and along said easement and to deposit tools, implements and other materials thereon by said Grantee, its officers, agents, and employees and by any contractor, his agents, and employees engaged by said City, whenever and wherever necessary for the purposes set forth above. Grantee shall at all times be entitled to unobstructed access to the Easement Area. Buildings may not be erected within the Easement Area. Grantee shall not be liable for damage to fences, gates and landscaping within the Easement Area that is caused by or results from uses authorized by this easement. Grantor reserves, for itself, its heirs and assigns, at all times and without restriction, the right to use the Easement Area in a manner not inconsistent with the full use and enjoyment by the Grantee of the rights herein granted. The Grantor and Grantee shall cooperate during periods of joint use so that each party's use shall cause a minimum of interference to the other. This easement gives to the Grantee the right to maintain the Easement Area but shall not be deemed to require the Grantee to perform any maintenance activities. This easement is granted subject to all prior conditions, restrictions, easements and encumbrances of record, and shall run with the land and be binding on and inure to the benefit of any future parties, their heirs, successors and assigns.

STATE OF OREGON, County of Lane

Shade Tree, Inc. by Mia Nelson, President

On this 25th day of April, 2005, personally appeared the above named Mia Nelson, and did say that she is the President of Shade Tree, Inc. and that this instrument was signed on behalf of the corporation and by the authority of its board of directors, and acknowledged the foregoing instrument to be her voluntary act and deed. Before me:



Notary Public for Oregon
My Commission Expires: July 15, 2006

After Recording Return To: City of Lowell, P.O. 490, Lowell, OR 97452

EXHIBIT B (pg.1)

SUNRIDGE SECOND ADDITION

SE 1/4 SECTION 14, TOWNSHIP 19 SOUTH,
RANGE 1 WEST, WILLAMETTE MERIDIAN
LOWELL, LANE COUNTY, OREGON
MAY 31, 2005

Division of Chief Deputy Clark
Lane County Deeds and Records

2005-057003

LANE COUNTY SURVEYOR'S OFFICE

C.S. FILE NO. **39377**

FILING DATE: **20 July '05**



07/26/2005 10:42:53 AM
RPR-SUBD Cntal Slns4 CASHIER 02
\$5.00 \$220.00 \$10.00 \$11.00

RECORDED

DATE: **20 July 2005**
COUNTY CLERK

BY: *Marla Hochme*

0' 50' 100' 150'

SCALE: 1" = 50'

LEGEND

- SET 5/8" X 30" REINFORCING ROD WITH ORANGE PLASTIC CAP STAMPED "FN"
- 5/8" X 30" REINFORCING ROD WITH ORANGE PLASTIC CAP STAMPED "FN" TO BE POST MONUMENTED
- FOUND 5/8" REINFORCING ROD WITH ORANGE PLASTIC CAP STAMPED "FN" - SET IN SUNRIDGE FIRST ADDITION
- FOUND 5/8" IRON ROD WITH PLASTIC CAP MARKED "HANKINS LS 687" - UNLESS OTHERWISE NOTED

XX(1) RECORD DATA PER REFERENCE NO.

REFERENCES

- 1) RECORD INFORMATION PER SUNRIDGE, FILE 75 SLIDE 1091-HANKINS 1996
- 2) RECORD INFORMATION PER COUNTY SURVEY FILE NO. 33607-HANKINS 1996
- 3) RECORD INFORMATION PER SUNRIDGE FIRST ADDITION - DOC. 2005-008200 - NORNESS 2004
- 4) RECORD INFORMATION PER COUNTY SURVEY FILE NO. 32715-ROBERTS 1995

INITIAL POINT

5/8" X 30" REINFORCING ROD W/ "HANKINS" CAP MARKING THE S.E. CORNER OF LOT 12 SUNRIDGE AND THE N.E. CORNER LOT 37 SUNRIDGE FIRST ADDITION.

BASIS OF BEARINGS

SUNRIDGE FILE 75 SLIDE 091

CURVE TABLE

CURVE	RADIUS	ARC LENGTH	CHORD LENGTH	CHORD BEARING	DELTA ANGLE
C1	80.00'	23.33'	23.27'	N 81°36'18" W	16°43'24"
C2	80.00'	125.81'	113.24'	S 44°56'46" W	80°06'21"
C3	130.00'	38.19'	38.05'	N 81°41'33" W	16°49'48"
C4	130.00'	11.15'	11.15'	S 75°46'07" E	04°54'50"
C5	130.00'	26.72'	26.67'	S 84°06'46" E	11°46'29"
C6	105.00'	30.65'	30.54'	S 81°35'13" E	16°43'24"
C7	105.00'	165.13'	148.63'	N 44°56'44" E	80°06'12"
C8	130.00'	80.76'	79.46'	S 72°12'13" W	33°35'32"
C9	100.00'	29.37'	29.27'	S 81°41'53" E	16°49'48"

NOTE: STORMWATER PIPE EASEMENT EXISTS OFF-SITE THAT WAS ADDRESSED WITHIN THE CONDITIONS OF APPROVAL SAID EASEMENT WAS REC. 2005-02777 DOC. NO. 2005-02777

LAND ACQUISITION PLAT NO. 51-100-010 CSF 3443"

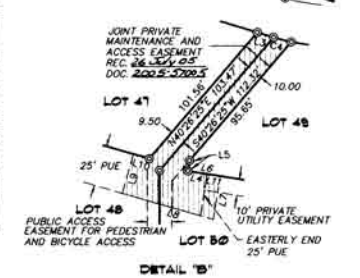
FD 5/8" IRON ROD WITH PLASTIC CAP MARKED "ROBERTS PLS 1038" (4)

LINE TABLE

LINE	BEARING	DISTANCE
L1	S 73°16'37" E	10.38'
L2	S 73°16'37" E	10.92'
L3	S 73°16'37" E	10.38'
L4	S 80°58'21" E	11.92'
L5	S 09°01'59" W	6.44'
L6	S 80°58'21" E	20.00'
L7	S 09°01'59" W	26.73'
L8	N 74°07'04" W	57.79'
L9	N 15°52'56" E	25.00'
L10	S 74°07'04" E	10.00'
L11	S 80°58'21" E	8.08'
L12	S 73°16'37" E	21.30'
L13	S 15°52'56" W	7.57'
L14	S 74°07'04" E	20.00'
L15	S 15°52'09" W	25.00'
L16	N 74°07'04" W	34.56'
L17	N 08°59'35" E	0.77'
L18	N 73°07'27" W	20.01'
L19	N 73°16'37" E	25.00'
L20	S 72°44'42" E	10.00'

ADJUSTED PROPERTY LINE BETWEEN SHADE TREE, INC. AND EDWIN AND DEBORAH MEELHUYSEN PER PROPERTY LINE ADJUSTMENT DEED RECORDED APRIL 27, 2005 DOCUMENT NO. 2005-029904

REGISTERED PROFESSIONAL LAND SURVEYOR
Paula Lee Norness
OREGON
NUMBER 51195
PAULA LEE NORNESS
RENEWAL DATE: DEC. 31, 2008



SHEET INDEX
SHEET 1 SUNRIDGE SECOND ADDITION
SHEET 2 SIGNATURES, APPROVALS, NARRATIVE

FORD-NESS-PASSBENDER, INC. DBA FORD & ASSOCIATES
LAND SURVEYING
CONSTRUCTION SUPERVISION • WATER RIGHTS EXAMINATIONS
P.O. Box 22735
1000 S. Berteless, Ste. 1 Eugene, OR 97402
www.fnc.net
JOB NO. 4124.00
DWG. NO. 4124-2NDADD.dwg
DRAWN BY: PLN/TDM

(541) 344-1852
Fax (541) 344-9923

EXHIBIT C

SUNRIDGE CONSTRUCTION PLANS
SHOWS ROAD FILL PLACED OUTSIDE OF RIGHT OF WAY

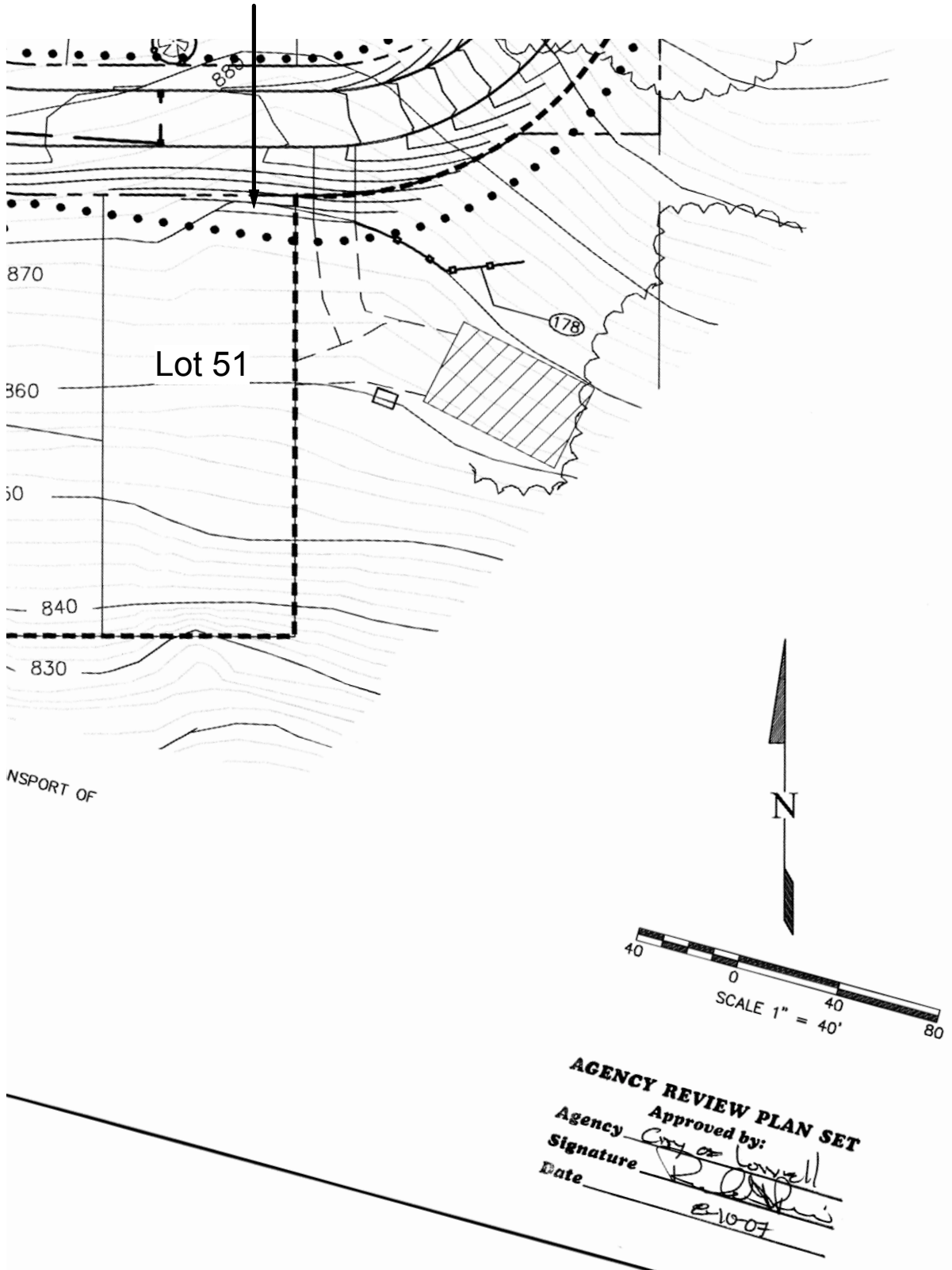
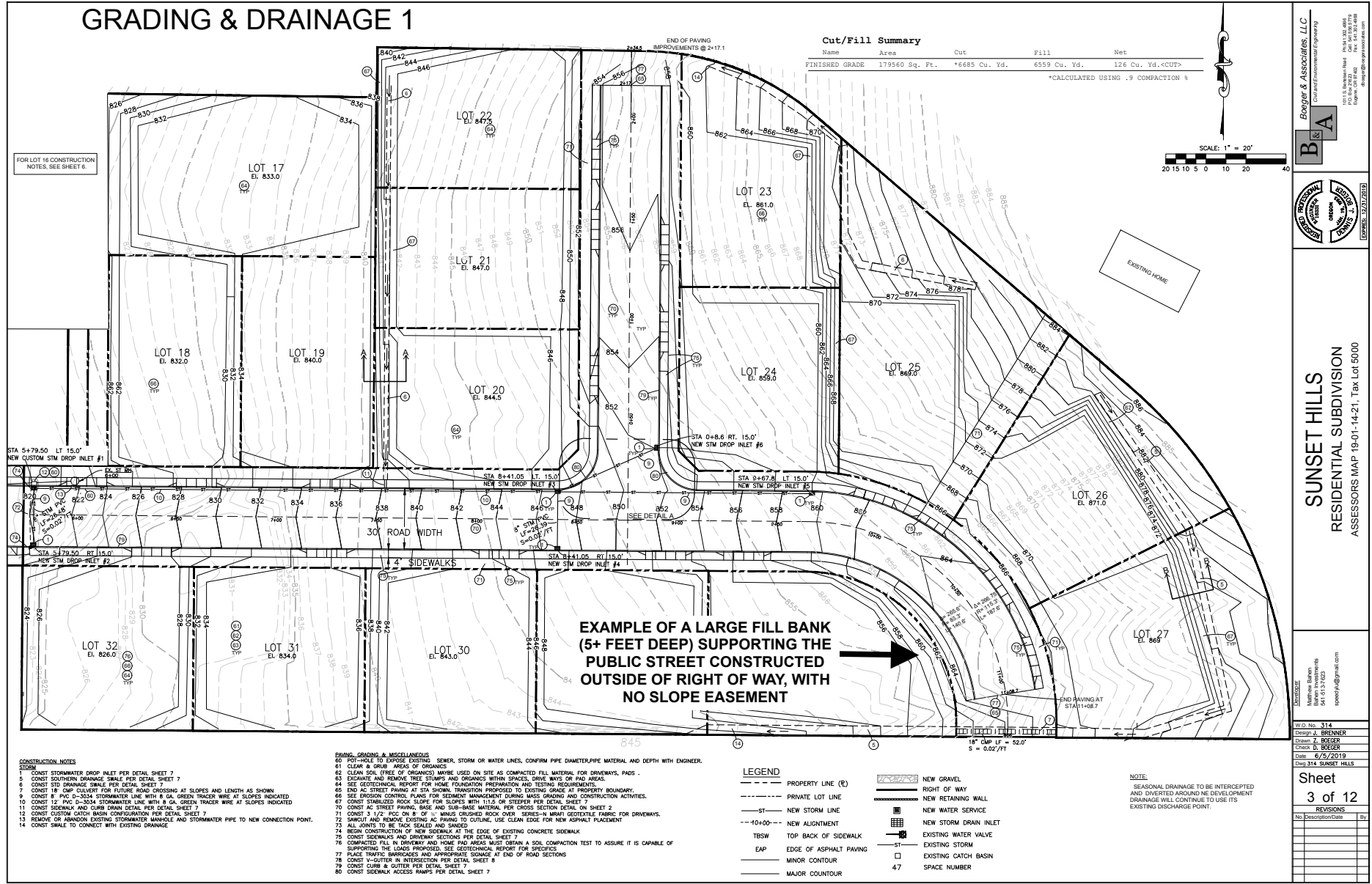


EXHIBIT D

SUNSET HILLS GRADING PLAN

GRADING & DRAINAGE 1



ATTACHMENT B

HEARLEY Henry O

From: Matt Wadlington <Mwadlington@civilwest.net>
Sent: February 8, 2021 8:29 AM
To: HEARLEY Henry O; Max Baker; Lon Dragt; BAUDER Jared W; STANKA Danielle E; ODOTR2PLANMGR@odot.state.or.us
Cc: CAUDLE Jeremy
Subject: RE: Requesting Referral Comment for Land Use Application

CAUTION: This email originated from outside the organization. DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Hi Henry,

Regarding the variance request to reduce the front yard setback, I have no issue with it.

Regarding the request to abandon the slope easement, I have the following concerns:

1. The slope easement is provided to allow the City to, among other things, maintain the slope “for the purposes of stabilizing the soil, preventing erosion, ...”.
2. Reference to the proposed subdivision grading is immaterial, as this has not been approved by the City.

I would recommend that if the easement is abandoned that it be replaced with something requiring that the property owner maintain the slope in a manner that will not cause erosion or negative impact to the roadway.

--

Matt Wadlington, PE, Principal
Willamette Valley Regional Manager
d 541.982.4373 | c 520.444.4220



Civil West Engineering Services, Inc.
213 Water Ave. NW, Suite 100, Albany, OR 97321
p 541.223.5130
www.civilwest.com

From: HEARLEY Henry O <HHEARLEY@Lcog.org>
Sent: Friday, February 5, 2021 1:49 PM
To: Matt Wadlington <Mwadlington@civilwest.net>; Max Baker <mbaker@ci.lowell.or.us>; Lon Dragt <dragt2300@gmail.com>; BAUDER Jared W <jared.bauder@lanecountyor.gov>; STANKA Danielle E <danielle.stanka@lanecountyor.gov>; ODOTR2PLANMGR@odot.state.or.us
Cc: CAUDLE Jeremy <JCaudle@ci.lowell.or.us>
Subject: Requesting Referral Comment for Land Use Application
Importance: High

All:

I'm requesting referral comment on two pending land use applications in Lowell, Oregon. One is for vacation of a slope easement and the other is for a modification to the front yard setbacks.

Matt, I'm interested if you have any thoughts on the proposed vacation of the slope easement. See the attached applications and narrative.

Please return any referral comments to me by February 11.

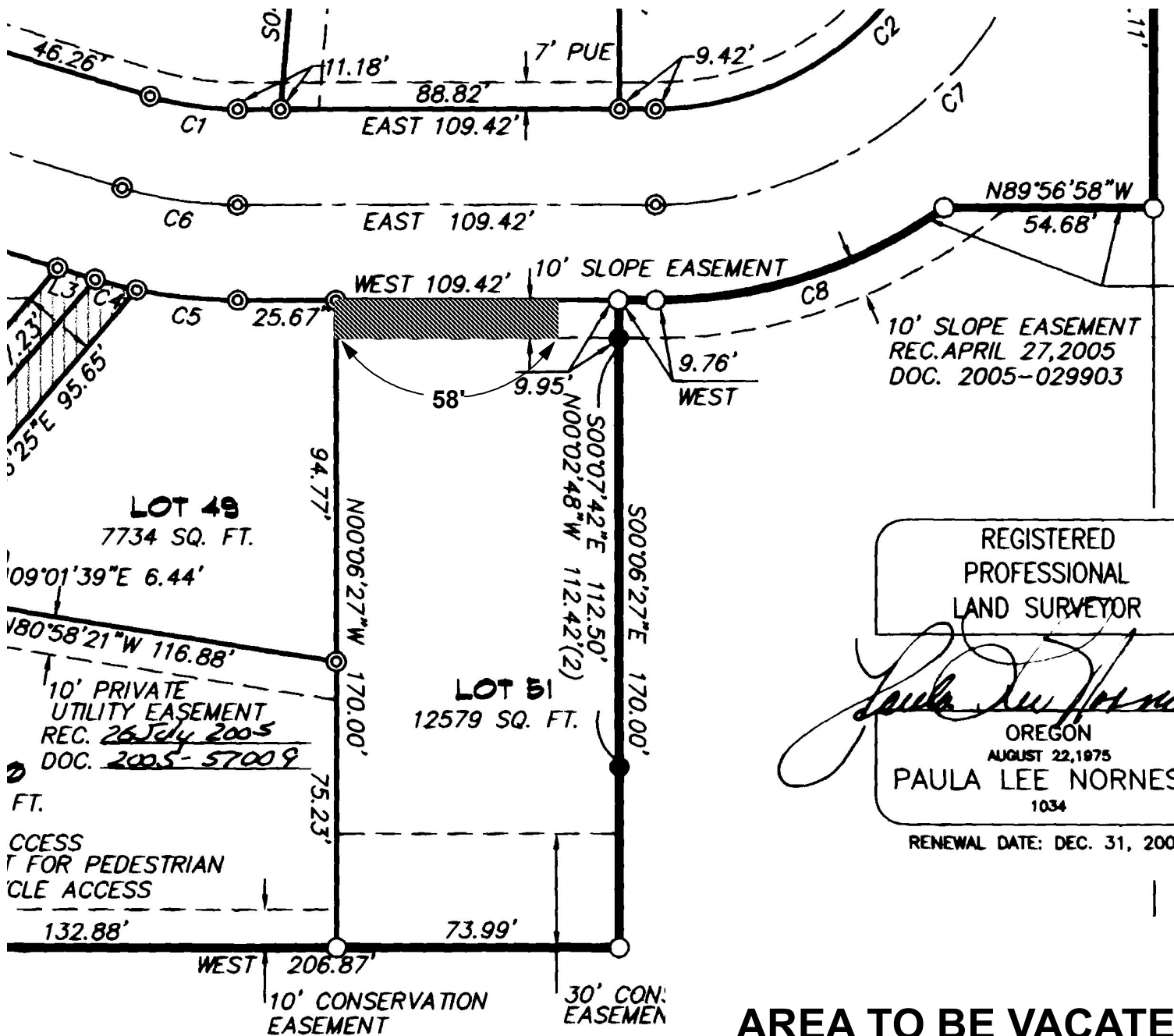
Henry

Henry O. Hearley
Associate Planner
Lane Council of Governments
hhearley@lcog.org
541-682-3089

REVISED SITE PLAN SLOPE EASEMENT VACATION

Lookout Point LLC
622 Sunridge Lane, Lowell OR
19-01-14-13-4900

SCALE: 1" = 40'
JANUARY 19, 2020



REGISTERED
PROFESSIONAL
LAND SURVEYOR

Paula Lee Norness

OREGON
AUGUST 22, 1975
PAULA LEE NORNESS
1034

RENEWAL DATE: DEC. 31, 2006

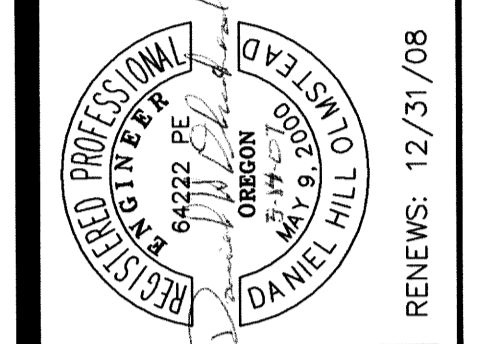
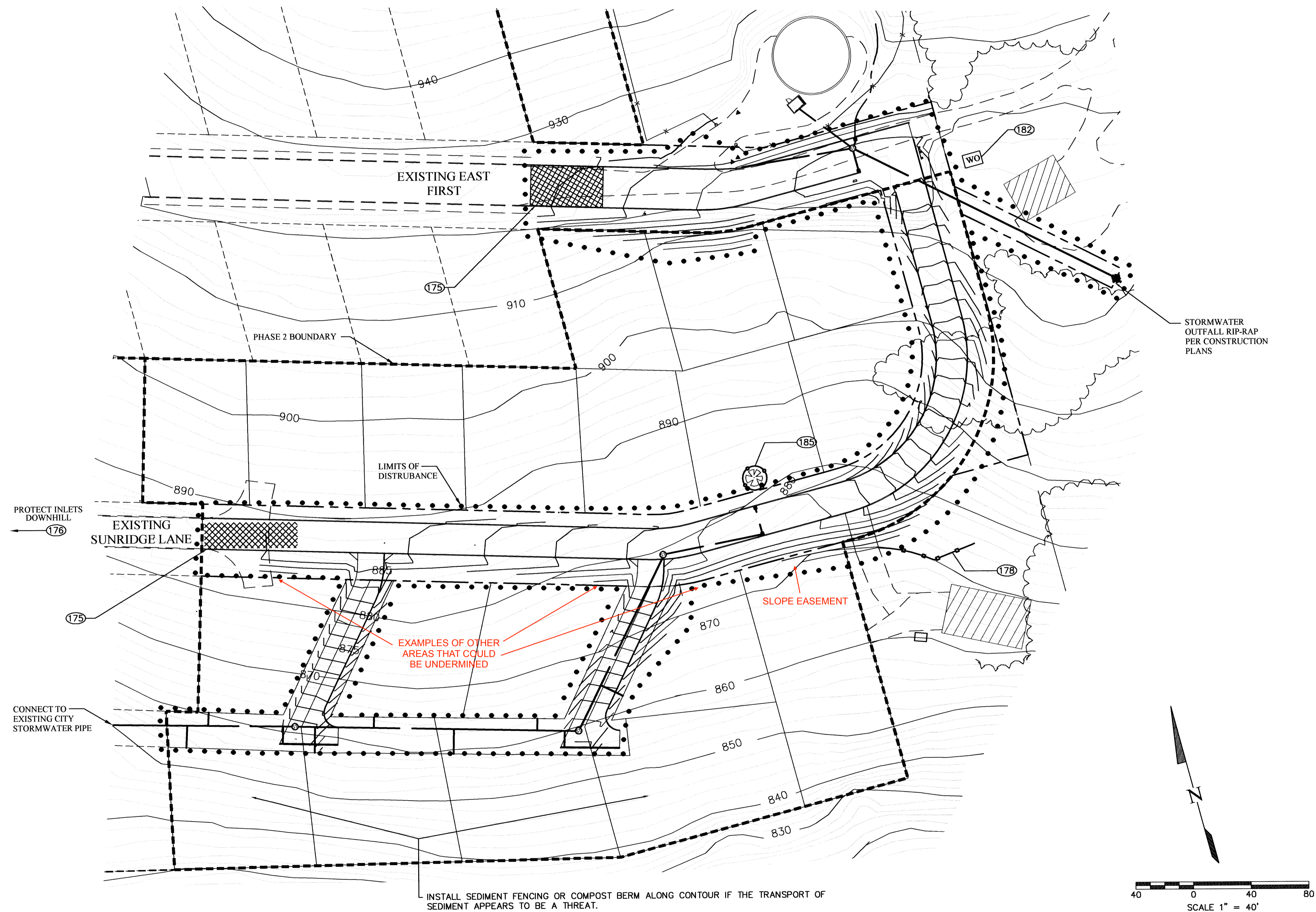
AREA TO BE VACATED
CROSS-HATCHED AREA
58' x 10' PORTION OF LOT 51

CONSTRUCTION NOTES

- 175 CONSTRUCT AGGREGATE CONSTRUCTION ENTRANCE PER OREGON STD DWG RD 1000
- 176 INSTALL DRAIN PROTECTION PER OREGON STD DWG. RD 1015
- 178 CONSTRUCT SEDIMENT FENCING PER OREGON STD DWG 1040
- 182 CONSTRUCT CONCRETE WASHOUT AREA PER DETAIL SHEET ESC-2
- 185 INSTALL ORNGE CONSTRUCTION FENCING

LEGEND

- NEW IMPERVIOUS SURFACE
- PHASE BOUNDARY
- LIMITS ON DISTURBANCE
- ORANGE CONSTRUCTION FENCING
- SILT FENCE OR STRAW BALE BARRIER
- PROPOSED FINISH GRADE CONTOUR
- EXISTING GROUND CONTOUR
- CONSTRUCTION ENTRANCE
- CONCRETE WASHOUT & FUEL, HAZARDOUS MATERIAL STORAGE
- AREA OF CUT
APPLY MULCH AND RE-SEED
- AREA OF FILL
APPLY MULCH AND RE-SEED
USE BLANKET IF NEEDED



SUNRIDGE SUBDIVISION
SECOND ADDITION
EROSION AND SEDIMENT CONTROL PLAN
SITE PLAN
LOWELL, OREGON

Date	No	Description of Revisions	Date	Name
05-11-2007				
Job Number	5095-04-0079			
Design by	E. LUCKHARDT			
Drawn by	K. JAYCOBS			
Checked by	D. OLMSTEAD			

AGENCY REVIEW PLAN SET
Approved by: _____
Agency: City of Lowell
Signature: _____
Date: 2-10-07

File Path: C:\Users\jckenneth\Documents\Projects\5095-04-0079\5095-04-0079.dwg
 Project Name: SUNRIDGE SUBDIVISION SECOND ADDITION
 Date: 05/11/2007 9:17:26 AM
 User: jckenneth

After Recording Return To:
Shade Tree, Inc.
40160 East First Street
Lowell, OR 97452



\$241.00

00718873200500570100440446

07/26/2005 10:42:53 AM

RPR-SUPP Cnt=1 Stn=4 CASHIER 02

\$220.00 \$10.00 \$11.00

**SUPPLEMENTARY DECLARATION OF COVENANTS,
CONDITIONS, RESTRICTIONS AND EQUITABLE SERVITUDES
FOR SUNRIDGE SECOND ADDITION**

WHEREAS, a "Declaration of Covenants, Conditions, Restrictions and Equitable Servitudes" was recorded by Shade Tree, Inc., an Oregon corporation (hereafter "Declarant") on April 10, 2001, reception number 2001-020572; and amended by a document recorded on January 31, 2005, reception number 2005-007739 (hereafter "Declaration"); and

WHEREAS, section 10.1 of said Declaration provides that the Declarant shall have the right to add additional real property to Sunridge Subdivision, so that it shall become subject to and restricted by the Declaration just as if such property and lots simultaneously had been made subject to this original Declaration; and

WHEREAS, said Declaration provides that an addition to Sunridge Subdivision shall be made by a supplementary declaration, containing such modifications of the provisions of this Declaration as may be necessary to reflect the different character, if any, of the addition to Sunridge Subdivision; and

WHEREAS, Declarant is subdividing additional real property into 20 lots, the City of Lowell granted tentative subdivision approval for that division on October 7, 2003, and the plat for said subdivision was recorded as *Sunridge Second Addition*, in the Lane County, Oregon Official Records, Document No. 2005-57003; and

WHEREAS, Declarant wishes to subject all the lots in Sunridge Second Addition to the Declaration, and has the unrestricted right to do so;

NOW, THEREFORE, the undersigned SHADE TREE, INC., as Declarant, by executing and recording this Supplementary Declaration, intends that all of Sunridge Second Addition be held, sold and conveyed subject to and restricted by that Declaration recorded on April 10, 2001, reception number 2001-020572; amended by a document recorded on January 31, 2005, reception number 2005-007739. A compilation of the original Declaration and the subsequent amendments is attached hereto as Exhibit A.

Provided, however, that the Declaration, as amended, shall be further modified by the following changes, which shall apply solely to the Sunridge Second Addition:

The third sentence of Section 3.1 shall be revised as follows: "For Sunridge Second Addition, within eighteen months (18 months) of the initial sale of any Lot by the Declarant, or within three (3) years of the date the first lot within Sunridge Second Addition is sold, whichever is later, the Owner of that Lot must secure a building permit for a new home meeting the requirements of this Declaration."

The Individual Lot Maps for Sunridge Second Addition shall be those attached to this Supplementary Declaration.

Section 2.6 shall be revised as follows: ***"2.6 'Elevation Limit' shall mean that certain number, expressed as a height above mean sea level, which is established for each Lot by the Individual Lot Maps, and which is used, in conjunction with the provisions of Section 5.2.1: Height Restriction, to establish the maximum permitted height of Improvements on that Lot. For Sunridge Second Addition, the Lot may have two or more Elevation Limits, each corresponding to a particular area of the Lot, as illustrated on the Individual Lot Map."***

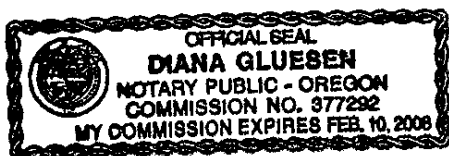
IN WITNESS WHEREOF, Declarant executes this Declaration on this 20th day of July, 2005.

SHADE TREE, INC., Declarant

By: 
Mia Nelson, President

STATE OF OREGON, County of Lane, ss.

On this 20th day of July, 2005, personally appeared before me Mia Nelson, President of Shade Tree, Inc., an Oregon corporation, and acknowledged to me that she executed the above instrument freely and voluntarily and by authority of the Board of Directors of the corporation. BEFORE ME:




Notary Public for Oregon
My Commission Expires: 2-10-2008

EXHIBIT A

DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EQUITABLE SERVITUDES FOR SUNRIDGE SUBDIVISION

JANUARY 2005 AMENDED VERSION

This document is a compilation of the original Declaration recorded April 10, 2001, reception number 2001-020572 and the amendments recorded January 31, 2005, reception number 2005-007739. Individual Lot Maps are not included; see the original documents.

The Supplementary Declaration for Sunridge Second Addition recorded in July 2005 made the following changes to this document:

The third sentence of Section 3.1 shall be revised as follows: "For Sunridge Second Addition, within eighteen months (18 months) of the initial sale of any Lot by the Declarant, or within three (3) years of the date the first lot within Sunridge Second Addition is sold, whichever is later, the Owner of that Lot must secure a building permit for a new home meeting the requirements of this Declaration."

Section 2.6 shall be revised as follows: "2.6 'Elevation Limit' shall mean that certain number, expressed as a height above mean sea level, which is established for each Lot by the Individual Lot Maps, and which is used, in conjunction with the provisions of Section 5.2.1: Height Restriction, to establish the maximum permitted height of Improvements on that Lot. For Sunridge Second Addition, the Lot may have two or more Elevation Limits, each corresponding to a particular area of the Lot, as illustrated on the Individual Lot Map."

DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EQUITABLE SERVITUDES FOR SUNRIDGE SUBDIVISION

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DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EQUITABLE SERVITUDES FOR SUNRIDGE SUBDIVISION

ARTICLE 1. PURPOSE AND DECLARATION

1.1 Sunridge Subdivision. Shade Tree, Inc., an Oregon corporation (hereafter "Declarant"), is the owner of certain real property, located in Lane County, Oregon, which is all that real property included within and described as the SUNRIDGE SUBDIVISION, as platted and recorded in the Lane County Oregon Plat Records on April 9, 2001, File Number 75, Slide Number 1091, Recording Number 2001-020173. Declarant has the unrestricted right to create, declare and impose the covenants, conditions, restrictions and equitable servitudes (hereafter "Restrictions") hereinafter described upon said Sunridge Subdivision.

1.2 Future Development Property. Shade Tree, Inc., together with its shareholders Mia Nelson, Roy Nelson and Richard Johnson, are the owners of other real property in the vicinity of Sunridge Subdivision, more particularly described on the attached Exhibit A (hereafter "Future Development Property"), which may be developed and sold in the future, and which could be adversely affected by unattractive and undesirable development within Sunridge Subdivision.

1.3 Purpose. Declarant desires to impose certain Restrictions on Sunridge Subdivision, prior to the sale thereof, for the purpose of preserving the value, attractiveness, livability and desirability of both Sunridge Subdivision and the Future Development Property.

1.4 Declaration. By executing and recording this document (hereafter "Declaration"), Declarant hereby declares that all of Sunridge Subdivision shall be from this day forward be held, sold and conveyed subject to and restricted by all the Restrictions contained in this Declaration.

1.5 Binding Effect. This Declaration shall run with Sunridge Subdivision, and shall bind all parties having any right, title or interest in any part thereof, and their heirs, successors and assigns. This Declaration shall inure to the benefit of, and be enforceable by, the record owner or owners, including the Declarant, of any portion of the Sunridge Subdivision and the Future Development Property, their legal representatives, heirs, successors or assigns. The effect of this Declaration upon the Future Development Property shall be solely to confer the above-described right of enforcement, and shall not bind, restrict or burden the Future Development Property in any way, under any circumstances.

1.6 Term and Amendments. This Declaration shall run with and be binding on Sunridge Subdivision until such time as an instrument signed by the record owners of property which, taken together, comprises at least two-thirds (2/3), as measured in acres (and not as measured in number of Lots or parcels), of the sum total area of the Future Development Property and Sunridge Subdivision has been recorded, agreeing to amend this Declaration in whole or in part, or to terminate this Declaration outright.

ARTICLE 2. DEFINITIONS

2.1 "Arborist" shall mean an individual who is trained in the art and science of planting, caring for and maintaining individual trees, and who is a member of the International Society of

Arboriculture (ISA), the National Arborist Association (NAA), the American Society of Consulting Arborists (ASCA), or other comparable organization.

2.2 "Architectural Review Committee" or "ARC" shall mean the group established by the Declarant for the purpose of determining the acceptability of proposed Improvements, in accordance with Article 7: Architectural Review.

2.3 "Declarant" shall mean Shade Tree, Inc., an Oregon corporation, and any person or entity that is assigned the rights to act and function as the Declarant, which assignment must be executed in writing and duly recorded in the Lane County Real Property Records.

2.4 "Declaration" shall mean this document, and any attachments and exhibits thereto.

2.5 "Development Period" shall mean a time period beginning when the initial plat of Sunridge Subdivision, or any addition thereto, is recorded in the Lane County Plat Records and ending on the day that is three (3) years after the last Lot in such plat is sold by the Declarant. The three-year period is necessary to allow Declarant to exert control over the construction of the residential structures upon the Lots. The initial phase of Sunridge Subdivision, and each subsequent phase, shall have its own unique Development Period. Provisions of this Declaration that refer to the Development Period shall be construed in light of the particular Development Period pertaining to the Lot or Lots in question.

2.6 "Elevation Limit" shall mean that certain number, expressed as a height above mean sea level, which is established for each Lot by the Individual Lot Maps, and which is used, in conjunction with the provisions of Section 5.2.1: Height Restriction, to establish the maximum permitted height of Improvements on that Lot. For Sunridge First Addition, the Lot may have two or more Elevation Limits, each corresponding to a particular area of the Lot, as illustrated on the Individual Lot Map.

2.7 "Future Development Property" shall mean that certain real property described in Section 1.2: Future Development Property.

2.8 "Improvement" shall mean any building, structure, wall, fence, excavation, embankment, earthwork, piping, or any other man-made object or alteration, except for Landscaping, which is proposed for, or existing on, any part of any Lot.

2.9 "Individual Lot Maps" shall mean the detailed maps attached to this Declaration, and to supplementary declarations, which contain information pertaining to certain Restrictions, such as the location of Protected Trees, Elevation Limits, and required drainage structures.

2.10 "Landscaping" shall mean an arrangement of ornamental plants, such as lawns, trees, shrubs and flowers, deliberately placed and maintained so as to produce a desirable and attractive effect, and so as to eliminate weeds and other undesirable plants. "Landscaping" does not mean simply leaving an area to be occupied by whatever plants happen to grow there naturally. Most low-growing plants now on the Lots are non-native grasses, forbs and noxious weeds. On many Lots, almost all naturally-occurring plants may need to be removed, and replaced with other species, in order for an area to be considered as Landscaping.

2.11 "Lot" shall mean those particular parcels of land created by and included in the plat maps of Sunridge Subdivision, as recorded in the Lane County Plat Records. To the greatest extent permitted by the City of Lowell, it shall also mean the portion of the street right-of-way between the Lot boundary and the sidewalk or curb of the adjacent street.

2.12 "Owner" shall mean a record owner, whether one or more persons or entities, of a fee simple interest in any Lot within Sunridge Subdivision, including contract purchasers, but excluding those having such interest merely as a security for performance of an obligation, also excluding contract sellers.

2.13 "Pesticide" shall mean any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any unwanted or undesirable animal, mold, fungi, or plant.

2.14 "Protected Tree" shall mean any tree either specifically identified on the Individual Lot Maps recorded as part of this Declaration, or designated by the Declarant and an Owner in accordance with Section 8.1.

2.15 "Restriction" shall mean any and all requirements, conditions, covenants, restrictions, equitable servitudes, regulations, and any other terms or provisions of this Declaration, which affect, burden, bind or limit the use of real property.

2.16 "Sunridge Subdivision" shall mean that certain real property described in the above Section 1.1: Sunridge Subdivision, and shall also include any subsequent additions thereto made pursuant to Article 10: Additions to Sunridge Subdivision.

2.17 "Synthetic" shall mean a substance that is formulated or manufactured by a chemical process or by a process that chemically changes a substance extracted from naturally occurring plant, animal, or mineral sources, except that such term shall not apply to substances created by naturally occurring biological processes.

2.18 "Temporary Exemption" shall mean a temporary relaxation of a Restriction affecting one or more Lots, granted pursuant to Section 8.3: Temporary Exemptions for Declarant and Section 8.4: Temporary Exemptions for Others.

2.19 "Variance" shall mean a permanent removal or modification of a Restriction affecting one or more Lots, granted pursuant to Section 8.1: Variances During the Development Period, and Section 8.2: Variances After the Development Period.

ARTICLE 3. GENERAL CONSTRUCTION RESTRICTIONS

3.1 Construction Timetables. Vacant Lots must be mowed and maintained prior to construction, to present a neat appearance and to reduce the risk of fire. Grass height shall be kept under eight inches (8") at all times. Within eighteen months (18 months) of the initial sale of any Lot by the Declarant, the Owner of that Lot must secure a building permit for a new home meeting the requirements of this Declaration. The exterior of any construction, addition or alteration must be completed within one (1) year of issuance of the building permit, so as to present a finished appearance when viewed from any angle. Landscaping between the street and the front wall most distant from the street must be completed within one (1) year of the initial occupancy of the dwelling, but not to exceed three (3) years from issuance of the building permit. Landscaping on the remainder of the Lot must be completed within two (2) years of the initial occupancy of the dwelling, but not to exceed four (4) years from issuance of the building permit.

3.2 Required Contractor's Registration. Construction of the residential structure and all underground utilities shall be done by a general contractor registered with the Oregon Construction Contractors Board. Provided, however, that the general contractor may allow subcontractors or the Owner to do some or all of the work, and the above requirements shall not apply to those parties, so long as the general contractor remains legally responsible and liable for their activities.

On all Lots other than the initial phase of Sunridge Subdivision (Lots 1-16) only those general contractors approved in writing by the Declarant may work on the Lots during the Development Period. The Owner must obtain such approval prior to beginning construction on a Lot. Declarant's approval of a given general contractor for one Lot shall not constitute approval for any other Lot; a separate approval must be obtained for each and every Lot. Declarant shall have the right, in its absolute and sole discretion, to deny approval to any general contractor, Declarant's approval of that contractor for an earlier project notwithstanding.

3.3 Protection of City Facilities. Every Owner is responsible for ensuring that persons working on behalf of said Owner within the City of Lowell's rights-of-way are informed of the need to locate and protect public facilities, including water, sanitary and storm sewer, electric, telephone and television lines, streets, curbs and sidewalks, and shall ensure that any damage such persons may cause is promptly repaired to the full satisfaction of the Declarant and the City of Lowell, at said Owner's sole expense.

3.4 Storage and Cleanup During Construction. During construction, the Owner shall ensure that the Lot and all adjacent streets and sidewalks are kept in a neat and clean condition, and shall not allow any dangerous conditions left unattended. Mud, dirt, gravel and other debris shall be promptly removed from streets and sidewalks. All materials, dump boxes, equipment, trailers and construction facilities shall be kept off the streets during construction, except during normal working hours, to allow efficient cleaning and maintenance.

3.5 Concrete Washout. During construction, the Owner shall ensure that concrete trucks use the washout area designated by the Declarant.

3.6 Underground Utilities. All utilities serving each Lot shall be maintained underground or in conduits attached to a building. No overhead utilities are permitted, except temporary electrical service during construction of the residential structure.

3.7 Erosion Control. Bare soil shall not be left exposed for more than ten (10) days from October 15 through June 15. Dirt stockpiles shall be covered with plastic or other waterproof material secured to the ground by stakes or weights. Exposed ground shall be mulched with at least two inches (2") of straw, hay, bark, sawdust, compost or other appropriate material. Runoff water must be controlled so that soil or other materials are not washed off the Lot, and so that damage to adjacent Lots and/or city facilities does not occur.

3.8 Falling Object Control. Owners are cautioned that rocks, logs and other debris encountered during construction activities could be dislodged and roll off the Lot, endangering persons and property below. Owners shall at all times be responsible for controlling the motion of all objects on the Lot. Owners shall ensure that protective measures, including, but not limited to, conscientious control of all materials during excavation, fences and berms to stop dislodged materials, and tethering of felled trees, shall be utilized whenever required to mitigate the hazards of falling objects. During construction, the Owner shall also ensure that all persons at work on the Lot are aware of the risk of falling objects and the need for protective measures, and shall be fully responsible for any failure on the part of said persons to control falling objects.

ARTICLE 4. ENVIRONMENTAL RESTRICTIONS

4.1 Minimum Dwelling Size. This Declaration does not require a minimum dwelling size, and the ARC may not require that a proposed dwelling be made larger as a condition of approval under Section 7: Architectural Review. Owners are encouraged to build the smallest residence that will suit their needs, and to spend the savings on improvements to quality. Large homes require more natural and human resources, money and time to build, maintain, heat, cool and clean. Large

homes also take up more ground area, reducing the outdoor quality of life for the residents, and increasing the area that is impervious to rainwater.

4.2 Natural Heating and Cooling Encouraged. Solar-friendly design of residences is encouraged. Heating costs may be substantially reduced when homes are designed to capture wintertime sun. Sunridge Subdivision has southern exposure and experiences fewer foggy days than the Eugene-Springfield area. Owners are encouraged to make use of these qualities. Air conditioners use large amounts of electricity and so are discouraged, but not prohibited. The prevailing southwesterly summertime winds can provide natural cooling for homes that are designed with the winds in mind.

4.3 Storm Drain Dumping. Dumping or discharge into the public storm drain system or any open waterway of oil, gasoline, fuel, grease, paint, antifreeze, soap, cleaners, or any other chemical is expressly prohibited. Owners are responsible and liable for the behavior of persons working on the Lot, such as upholstery cleaners and painters, and shall ensure that such persons dispose of all substances used or produced on the Lot in accordance with this section.

4.4 Clotheslines. Clotheslines are allowed and encouraged in order to conserve electricity. Clothesline use shall not be deemed a nuisance under this Declaration, so long as clotheslines are located in the rear half of the Lot, and so long as the laundry is promptly removed after it is dry, and the clothesline retracted into a case, wound on a spool or otherwise removed from view.

4.5 Outdoor Use of Certain Pesticides. Many common Synthetic home, lawn and garden Pesticides have been proven to cause cancer, birth defects, infertility, miscarriage, immune disorders and nerve and organ damage. Outdoor use of these Pesticides by an Owner could expose neighboring Owners and their families to toxic chemicals without their knowledge or consent, as the chemicals often drift several hundred feet, even when used according to directions on the label. These Pesticides could also leave the property in runoff water and enter Dexter Lake, the source of the City of Lowell's drinking water. Synthetic Pesticides cause significant environmental damage, and have been implicated in the decline of salmon runs and other aquatic species. Consequently, the outdoor use of Synthetic Pesticides is prohibited. In addition, Pesticides containing arsenic, cadmium, mercury, chromium or lead are prohibited, even if said Pesticides are not Synthetic. Notwithstanding the foregoing, the following Synthetic Pesticides are allowed:

4.5.1 Ethanol and isopropanol.

4.5.2 Calcium hypochlorite, chlorine dioxide and sodium hypochlorite.

4.5.3 Hydrogen peroxide.

4.5.4 Potassium bicarbonate.

4.5.5 Ammonium carbonate.

4.5.6 Boric acid.

4.5.7 Hydrated lime, elemental sulfur, lime sulfur, calcium polysulfide and sulfur dioxide.

4.5.8 Fixed copper, copper hydroxide, copper oxide, copper oxychloride and copper sulfate.

4.5.9 Sulfates, carbonates, oxides or silicates of zinc, copper, iron, manganese, molybdenum, selenium and cobalt.

4.5.10 Soap products.

4.5.11 Horticultural oils such as dormant, suffocating, and summer oils.

4.5.12 Sticky traps and pheromones.

4.5.13 Any substance approved for use in organic food production on the "National List", as that term is defined in 7 USC 6502(12), or its successor.

4.5.14 Glyphosate, or N-(phosphonomethyl)glycine, also known by the proprietary names "Roundup", "Rodeo" and "Accord".

4.6 Chemically Treated Wood in Perimeter Fences. Many common treated wood products contain heavy metals and other chemicals which are proven carcinogens, which can leach from the wood into the surrounding soil, and which can be ingested by children and pets. If one Owner uses wood treated with these chemicals for perimeter fencing, the adjoining Owners and their families will also be exposed to the chemicals. Acceptable substitutes for these toxic wood treatments exist, such as ammoniacal copper quaternary (ACQ), marketed as "Preserve" treated wood and manufactured by Chemical Specialties, Inc. Consequently, wood treated with any of the following chemicals may not be used within three (3) feet of any property line of any Lot:

4.6.1 Compounds containing lead, mercury, cadmium, chromium and/or arsenic, including, but not limited to: chromated copper arsenate (CCA), ammoniacal copper zinc arsenate (ACZA), chromated zinc chloride (CZC) and acid copper chromium (ACC).

4.6.2 Pentachlorophenol (Penta).

4.6.3 Creosote.

4.7 Full Cut-Off Lighting. Lighting which sends light upward into the sky and/or outwards onto neighboring properties can be an ineffective, wasteful manner of lighting, and a serious annoyance to the occupants of said properties. Consequently, all indoor and outdoor lighting fixtures rated at two (2) watts of power or more must prevent upward distribution of light into the sky, and also upward, horizontal and/or downward light trespass onto surrounding property. Lighting fixtures shall be directed and/or shielded so as to confine the light to the target area, and within the boundaries of the Lot. In addition, the lamp or bulb attached to the fixture must not be visible beyond the boundaries of the Lot. Outdoor lights with translucent or "frosted" sides that glow with light, mercury vapor lamps, searchlights, and continuously flashing lights are expressly prohibited. Provided, however, that temporary decorative holiday lighting which does not meet the foregoing requirements is allowed, so long as the lamps use ten (10) watts of power or less. Further provided, that prior to 11:30 p.m., lights not meeting the above standard may be used to illuminate outdoor activities in which one or more people are actually present outside the home.

4.8 Landscaping. Landscaping shall be established and continuously maintained on every part of every Lot, including the area that lies within the city right-of-way. All Landscaping must comply with the requirements of Section 5.2: Height Restriction. At all times, the Landscaping shall appear well groomed and deliberate, and shall be kept free of weeds and invasive plants.

4.8.1 Owners are not required to irrigate lawns, as grasses are naturally dormant during hot summer months. Outdoor watering, especially of lawns, is the predominant use of potable water in urban areas. There is a growing need, both locally and nationally, to find

ways to conserve potable water for more important purposes. Consequently, this Declaration shall not be construed to require irrigation-dependant Landscaping. Water conservation techniques that utilize principles such as limited use of lawn areas, drought tolerant and/or native plants, reduced pruning and mowing, and generous use of mulch are encouraged.

4.8.2 Bare soil shall not be left exposed for more than ten (10) days from October 15 through June 15. If permanent Landscaping has not been established by October 25, then the area shall be seeded with grass or other ground cover, and mulched with at least two inches (2") of straw, hay, bark, compost or other appropriate material.

4.8.3 While mulching is encouraged, mulch is not a substitute for required Landscaping. Mulch may be used only as a finishing treatment to planted areas, and may cover no more than 50% of any given one hundred square foot area. Mulch under the drip line of a tree or shrub shall not be counted as mulched area. Provided, however, that mulch may cover more than 50% of such an area during the first five (5) years after the area is planted, if the plantings are of a density and species type that can be reasonably expected to cover at least 50% of the area with foliage within five (5) years.

4.8.4 Use of invasive plant species invariably leads to their subsequent escape onto neighboring private property and public sites. Control measures are costly and often involve extensive herbicide use. Therefore, none of the following plants, nor any other plant identified in the future as highly or moderately invasive in the Southern Willamette Valley by the Native Plant Society of Oregon shall be planted or allowed to remain:

Arum italicum (arum)
Acer platanoides (Norway maple)
Aesculus hippocastanum (horse chestnut)
Ailanthus altissima (tree-of-heaven)
Alliaria petiolata (garlic mustard)
Anchusa azurea (anchusa, common bugloss)
Brachypodium sylvaticum (false-brome)
Buddleia davidii (butterfly bush)
Clematis vitalba (traveler's-joy)
Corylus avellana (European hazel, filbert)
Cotoneaster spp. (cotoneasters)
Crataegus monogyna (English hawthorn)
Cytisus scoparius (Scot's broom)
Daphne laureola (spurge laurel)
Digitalis purpurea (foxglove)
Genista monspessulana (broom)
Geranium lucidum, robertianum (shining crane's-bill, herb Robert, stinky Bob)
Glechoma hederacea (ground ivy, creeping Charlie)
Hedera helix (English ivy)
Hypericum perforatum (St. John's wort)
Ilex aquifolium (English holly)
Impatiens glandulifera (policeman's helmet)
Inula helenium (alant, elecampane)
Iris pseudacorus (yellow flag iris)
Juniperus virginiana (eastern redcedar)
Leucanthemum vulgare (oxeye daisy)
Lamium galeobdolon (yellow archangel)
Lathyrus latifolius (sweet, perennial or everlasting pea)
Ligustrum vulgare (common privet)

Linaria genistifolia, dalmatica, vulgaris (dalmation toadflax, butter and eggs)
Lotus corniculatus (birdsfoot trefoil)
Lunaria annua (honesty, money plant)
Lythrum salicaria (purple loosestrife)
Lysimachia nummularia (moneywort)
Mentha pulegium (pennyroyal)
Melissa officinalis (lemon balm)
Myosotis scorpioides (common forget-me-not)
Myriophyllum spp. (parrot's feather, Eurasian milfoil)
Paulownia tomentosa (empress tree)
Phalaris aquatica, arundinacea (Harding grass, reed canarygrass)
Polygonum cuspidatum, cuspidatum x sachalinense (Japanese knotweed)
Prunus laurocerasus (English laurel)
Prunus lusitanica (Portugal laurel)
Prunus avium (sweet cherry)
Prunus cerasifera, domestica, spinosa (Thundercloud plum, domestic cherry, sloe)
Pueraria lobata, montana var. *lobata* (kudzu)
Pyracantha spp. (firethorn)
Ranunculus ficaria (lesser celandine)
Ranunculus repens (creeping buttercup)
Robinia pseudoacacia (black locust)
Rorippa nasturtium-aquaticum (watercress)
Rosa eglanteria (sweet-briar)
Rosa multiflora (multiflowered rose)
Rubus armeniacus (Armenian blackberry, Himalaya blackberry)
Rubus laciniatus (evergreen blackberry)
Securigera (Coronilla) varia (crown vetch)
Solanum dulcamara (bittersweet nightshade)
Sorbus aucuparia (European mountain-ash)
Umbellularia californica (California bay laurel, myrtlewood)
Ulex europaeus (gorse)
Verbena bonariensis (Brazilian verbena)
Vinca major, minor (periwinkle, vinca)

4.9 Fire Protection Measures. To reduce the likelihood of wildfire, all Owners shall take the following steps:

4.9.1 Remove leaves, needles and other combustibles from roofs, gutters and underneath decks at least every spring.

4.9.2 From June 15 to October 31, ensure there are no piles of brush, tree trimmings, wood scraps or other combustibles anywhere on the Lot, except that such materials are allowed in compost piles if they have been shredded, chopped or otherwise broken up so that no piece is larger than three inches (3") in any dimension.

4.9.3 Keep all trees over twenty feet (20') in height trimmed of branches less than six feet (6') from the ground, because such branches can act as a ladder to carry fire into the crown of the tree.

4.9.4 Do not store combustible materials under decks.

4.10 Protected Trees. Certain trees are noted on the attached Individual Lot Maps as "Protected Trees". From time to time, the Declarant and an Owner may designate an additional Protected Tree, in accordance with Section 8.1. Protected Trees are specimen trees that have

been examined by an Arborist and found to be in good health. Protected Trees will enhance the value and desirability of the neighborhood. To increase the likelihood that these important trees will survive for years to come, the following measures are required:

4.10.1 Prior to equipment mobilization, excavation, grading, trenching, clearing or building of any sort on any Lot, fencing shall be placed around each Protected Tree at least five feet (5') outside of the drip line. During the Development Period, written approval of said fencing shall be obtained from the Declarant, and appropriate "Warning Notices" supplied by the Declarant shall be placed and maintained on the fencing advising that no oils, gas, chemicals, liquid waste, solid waste, concrete washout, construction machinery or construction materials shall be allowed within the drip line of the Protected Tree, for any length of time. Further, no one shall enter the fence perimeter except to monitor the health of the Protected Tree.

4.10.2 Grade changes, excavation, trenching, cutting, filling, or any other sort of disturbance to the soil within five feet (5') of the drip line of a Protected Tree is expressly prohibited. However, mulch may be placed under the Protected Tree, provided that the mulch layer does not exceed two inches (2") in depth.

4.10.3 During grading, excavation and trenching, if any roots of a Protected Tree over 1 inch (1") in diameter are encountered, they shall be cut off cleanly with a sharp handsaw or loppers.

4.10.4 Drainage shall not be conveyed to any area within the drip line of a Protected Tree, and finished grades shall slope away from the trunks to avoid concentrating water around the Protected Tree.

4.10.5 No irrigation, fertilization, or application of Pesticides or any other foreign substance shall ever be permitted within the drip line of a Protected Tree, except as may be prescribed in writing by an Arborist.

4.10.6 Except for removal of dead limbs and trimming of "ladder" branches as prescribed by Section 4.9.3, no Protected Tree may be limbed, trimmed or otherwise altered without written concurrence from an Arborist that such activities will not harm the Protected Tree.

4.10.7 If a Protected Tree becomes dangerously diseased or weakened, it may be removed, provided that the Owner first obtains a written opinion from an Arborist which states that the Protected Tree is so diseased and/or weakened that collapse of all or part of the Protected Tree is likely, and that there is no feasible alternative to removal (i.e. cabling the trunks, pruning, etc). If a Protected Tree dies, it shall be removed within three (3) months. Within one (1) year of the removal of a Protected Tree, it shall be replaced with a young tree of the same species, or alternatively quercus garryana (Oregon white oak) or pinus ponderosa (ponderosa pine), within five feet (5') of the location of the original Protected Tree; provided, however, that an alternate location is acceptable if a written concurrence is signed by all the record owners of any Lots or Future Development Property located so that the replacement tree, when fully mature, will be capable of intruding into the view of Dexter Lake from said Lots or Future Development Property. The replacement tree shall be considered a Protected Tree.

4.10.8 Declarant has caused some multiple-trunked Protected Trees to be cabled by an Arborist. Owners of cabled Protected Trees must keep the cables in good working order at all times, and shall not remove, alter or damage the cables, without written advice from an Arborist that said cables are no longer necessary.

4.11 Drainage. All Owners shall maintain in proper working order all drainage structures constructed on their Lots and shall ensure that the water from said drainage structures flows as prescribed on the Individual Lot Maps. Unless authorized by said Individual Lot Maps, discharge of concentrated water onto another Lot is expressly prohibited. In order to reduce the likelihood of drainage problems, the following drainage structures are required and shall be installed prior to or concurrently with construction of a residence on each Lot:

4.11.1 Cut-off drain. To capture surface sheet flows of rainwater, cut-off (curtain) drains shall be installed by the Owner in the locations shown on the Individual Lot Map for that particular Lot. Provided, however, that if no cut-off drain is shown on a given Individual Lot Map, then none is required. Said drains shall consist of: i) a trench a minimum of 12" wide and 12" deep; ii) a 3" perforated pipe laid at the bottom of the trench; and iii) one-half to three-quarter inch diameter round rock backfill for the trench which is mounded at least two inches higher than the surrounding undisturbed ground. No filter fabric shall be used. Alternatives that are equivalent to the above-described pipe and rock may be used if approved in writing by the Architectural Review Committee. The cut-off drain shall be discharged in the manner provided on the Individual Lot Map. In some cases, special foundation drains with round gravel backfill extending from the footing to the surface of the ground can be substituted for the required curtain drain; this will be indicated on the Individual Lot Map.

4.11.2 Foundation drain. A 3" perforated pipe, together with at least one foot of round gravel backfill, shall be placed so as to drain the ground directly under the footings of the structure. No filter fabric shall be used. Foundation drains shall be discharged to the location shown on the Individual Lot Map.

4.11.3 Roof, driveway and patio drains. All water falling on impervious surfaces shall be collected and piped to the location shown on the Individual Lot Map. Provided, however, that up to three hundred (300) square feet of impervious surface on any Lot may instead be allowed to drain to the adjacent ground surface.

4.11.4 Cutbank drains. An additional drain, constructed as for "cut-off drains" above, is required at the base of any cutbank which removes more than two feet of soil from the natural grade, as measured at the base of the cut. Cutbank drains shall be discharged to locations shown on the Individual Lot Maps.

4.11.5 Acceptance of concentrated runoff. If a location for concentrated storm water runoff discharge from an adjacent Lot is shown on the Individual Lot Map, the Owner of the Lot receiving the discharge shall accept the runoff and pipe it to the City storm water system, just as if the runoff was gathered from said receiving Owner's Lot. The Owner of each Lot remains responsible for maintaining all piping located thereon.

4.12 Grading. Cutbanks are unsightly, can cause chronic drainage problems, and create areas that are often difficult to revegetate. Fills are also unsightly, and can become saturated with water and become unstable. Consequently, permanent changes in grade are not allowed unless pre-approved by the Architectural Review Committee in accordance with Article 7. A "permanent change in grade" means an alteration of the natural grade that remains visible after the project is complete, but does not include excavations that are later filled with soil or structures, as for a foundation or basement. Cuts and fills shall conform to the following requirements:

4.12.1 The face of unretained cuts and fills must not exceed 50% slope, or two horizontal units for each vertical unit. All cuts and fills must be promptly re-vegetated or faced with natural stone to control erosion and reduce unsightliness.

4.12.2 If a retaining wall exceeds four feet (4') in height, it must be designed by a registered professional engineer.

4.12.3 Additional drainage structures must be installed as specified in Section 4.11.4: Cutbank Drains.

ARTICLE 5. GENERAL ARCHITECTURAL RESTRICTIONS

5.1 Type of Structures Allowed. No structure shall be erected, altered, placed or permitted to remain on any Lot, other than one detached, single family dwelling with a private attached garage for not less than two (2) and not more than four (4) vehicles, plus one (1) outbuilding not to exceed four hundred (400) square feet. Any structure erected on the Lot shall be constructed on site. No existing or used house or other similar structure shall be moved onto the Lot. Factory-built homes, mobile homes, modular homes, manufactured homes and prefabricated accessory buildings are expressly prohibited. Provided, however, structures may utilize roof trusses, stress skin panels, fence panels, wall panels and other similar building components.

5.2 Height Restriction

5.2.1 Height restriction for Improvements. An Elevation Limit is established for each Lot by a listing on the Individual Lot Map associated with that particular Lot. Elevation Limits are expressed as a height above mean sea level, and not as a height above the ground surface. No Owner shall allow any Improvement to exceed the Elevation Limit.

5.2.2 Height restriction for plants and Landscaping. Except for Protected Trees either specifically identified on the Individual Lot Maps recorded as part of this Declaration, or designated by the Declarant and an Owner in accordance with Section 8.1, no Owner shall allow any plant or Landscaping to exceed six feet (6') in height on the Lot, including the area that lies within the adjacent street right-of-way. Plants with mature heights of over six feet (6') may be planted or maintained, if the Owner maintains the plants at under six feet (6') in height at all times. Provided, however, that plants and Landscaping may exceed the six-foot height limit to the extent allowed by any variances granted under Section 8.1 Variances During the Development Period, or Section 8.2 Variances After the Development Period.

5.2.3 Improvements made after the Development Period, whether to replace a pre-existing Improvement or to add a new Improvement, may not have a greater adverse impact on views of Dexter Lake from the surrounding Lots than did the Improvements approved under Article 7: Architectural Review. Owners contemplating such Improvements are strongly advised to review their plans with the Owners of all surrounding Lots that could be affected by the planned Improvements, to ensure there will be no objections. For a replacement Improvement, retention of as many features of the original Improvement as possible, such as roof section design and heights, and overall size and location of Improvements on the lot, will help minimize potential adverse impacts on views. For new Improvements, careful consideration of the potential effects on neighboring Lots is strongly advised.

5.2.4 Variances. Notwithstanding the foregoing, certain Improvements and Landscaping may exceed the Elevation Limit if a written Variance for each such object is recorded pursuant to Sections 8.1: Variances During the Development Period or 8.2: Variances After the Development Period.

5.3 Siding. Siding materials shall be stucco, brick, stone, other comparable masonry, or wood siding which is either: 1) Siding composed of wooden boards in its natural state, not to include chipboard, particleboard, waferboard, pressboard, plywood or other composite wood product, provided that said wooden boards must be dimensionally stable and free of loose or open knot holes, and shall not have noticeable warp, twist, buckle or wane; or 2) Bevel, drop or lap siding which is a composite wood or cement based product but which closely resembles real wood siding, and which consists of separately-formed boards not more than ten inches (10") in width, and which are individually applied, provided said siding is applied in like fashion to real wood siding, including the use of staggered joints. Those products that are applied as sheets instead of as individual boards, even when intended to resemble real wood siding, are prohibited.

5.4 Fascia. Fascia shall be rot-resistant boards with a minimum nominal size of two inches (2") by eight inches (8").

5.5 Roofing. Roofing shall be Class A Fire Rated, and shall have a minimum life rating of twenty-five (25) years. Wood shakes are not allowed, due to wildfire hazard. Metal roofs must be of the standing edge type, with no exposed fasteners. All roofing must be non-reflective. Roofs shall have a minimum overhang of eighteen inches (18"). Ninety percent (90%) of the total roof area shall have a pitch of at least three inches (3") of vertical rise per twelve inches (12") of horizontal run.

5.6 Exterior Colors. During the Development Period, the ARC shall approve exterior colors as provided in Article 7: Architectural Review. After the Development Period, colors chosen for exterior use shall be similar to colors previously approved by the ARC for use on that Lot, or on other Lots, so as to preserve visual harmony within Sunridge Subdivision.

5.7 Vents, Chimneys and Flashings. Roof-top attic venting shall utilize inconspicuous ridge or hip vents; jack vents and similar roof-mounted vents are prohibited. Plumbing vents, flashings, gutters, chimney caps, and other similar parts shall be painted to match the roof material, unless they are copper or are already a color which matches the roof material. Exposed metal chimneys or flues shall not protrude more than two feet (2') above the roof surface.

5.8 Driveways and Sidewalks. Where required by the City of Lowell in Sunridge Subdivision's final approval, each Owner shall construct a five foot (5') wide concrete sidewalk along the entire street frontage of the Lot, prior to completion of the exterior of the residential structure. Said sidewalk must meet the approval of the City of Lowell, which will own and maintain the sidewalk. Each Owner shall construct and maintain at least two uncovered off-street parking spaces for the Lot, in addition to the required two-car garage. Spaces shall be at least eighteen feet (18') long, and may be part of the driveway. All driveways shall be concrete, brick, or masonry paver.

5.9 Fencing. All fencing must be of good craftsmanship and built straight both vertically and horizontally. Wood fences must have either naturally rot-resistant posts, or treated posts meeting the requirements of Section 4.6: Chemically Treated Wood in Perimeter Fences. Boards must be dimensionally stable and free of open knot holes, and shall not have noticeable warp, twist, buckle or wane. Chain link fences are prohibited, unless under four feet (4') in height and screened from view by vegetation of a density and type that will completely cover the fence within three (3) years after the fence is erected. Pallet fences, barbed wire and wire mesh fences are expressly prohibited. Hedges along property lines must be approved in writing by adjoining Owners prior to planting, and shall be maintained by both parties thereafter. Fences must either be natural wood color, dark tan, dark grey, brown or green. White, light tan, blue, red, yellow, orange, black and purple fences are expressly prohibited. Fencing may not exceed six feet (6') in height, except that in the front twenty feet (20') of the Lot, fencing may not exceed three feet (3') in height.

5.10 Antennae. All exterior-mounted antennae and any satellite dish exceeding eighteen inches (18") in diameter are prohibited, unless completely screened from view by vegetation, fencing or other appropriate enclosure.

5.11 Solar Panels. Solar panels must attach directly to the roof structure and must lie in the same plane as the roof at a pitch that is within five degrees (5°) of the roof's pitch.

5.12 Tanks and Mechanical. All tanks larger than five (5) gallons, and all other equipment and apparatus, such as air conditioners and heat pumps, must either be buried underground or be completely screened from view on all sides, including the top, by vegetation, fencing or other appropriate enclosure. Provided, however, that air conditioners and heat pumps need not be screened if the equipment is colored in natural tones such as dark tan, brown, green or dark gray. All noise producing equipment and apparatus must be set back at least twenty feet (20') from the property line, except that no setback is required along a property line abutting a public street or a panhandle driveway. Provided, however, that equipment with a manufacturer's sound rating of 70 decibels (7.0 bels) or less may be within two feet (2') of the property line; equipment with a manufacturer's sound rating of 71 or 72 decibels (7.1 or 7.2 bels) may be within five feet (5') of the property line; and equipment with a manufacturer's sound rating of 73 or 74 decibels (7.3 or 7.4 bels) may be within ten feet (10') of the property line. Lesser distances are allowed only if agreed to in writing by the adjacent Owner(s). Such agreements must be duly recorded in the Lane County Real Property Records. Proof of the manufacturer's sound rating must be provided upon request to adjacent Owners or to the Declarant. Central vacuums and noise-producing furnaces that exhaust outside the home must be muffled. Window-mounted air conditioners are not allowed.

5.13 Mailboxes and Newspaper Tubes. No mailboxes, drop boxes or newspaper tubes shall be erected or maintained on any Lot or within an adjacent street right-of-way, other than those originally provided by the Declarant.

5.14 Coverings for Cuts and Fills. Natural basalt stone shall be used for all retaining walls, coverings for cuts and fills, planter bed edging, terracing, and similar uses. Use of any other type of landscaping element, such as wood, plastic, concrete, brick or other masonry, is prohibited. Provided, however, that incidental decorative use of natural wood is allowed, such as an unusual piece of driftwood.

ARTICLE 6. GENERAL USE RESTRICTIONS

6.1 Allowed Uses. Lots shall be used primarily for residential purposes. No tent, shack, trailer, camper, recreational vehicle, or partly finished house may be used as a residence at any time. Provided, however, that visitors to a Lot may sleep in a camper or recreational vehicle parked on the Lot for up to seven (7) consecutive days, with a cumulative maximum of twenty one (21) days in any one year period. Home businesses are allowed provided that: i) the business is conducted entirely indoors; ii) the business is incidental to the residential use of the Lot; iii) workers and customers park entirely on the proprietor's Lot; iv) no more than two (2) worker and/or customer cars are visible from outside the Lot at any given time; v) no more than eight (8) customers visit the business during any twenty-four (24) hour period; and vi) the business complies with all applicable laws and regulations.

6.2 Maintenance. All Improvements must be maintained at all times in a good, workmanlike manner in substantially the same condition as when first constructed. No Improvement shall be permitted to fall into disrepair or to become unsightly. Refinishing of all buildings and fences must be done before there is noticeable fading, checking, blistering or loss of finish on any surface. Owners shall also maintain the portion of the street right-of-way that is between their Lot and the sidewalk edge, in the same manner as the Lot itself.

6.3 Storage and Parking. Storage or parking of any type of vehicle which is in a state of disrepair or is not in regular family use, trucks and similar equipment in excess of one ton rating, boats, snowmobiles, all-terrain vehicles (ATVs), jet-skis, trailers, recreational vehicles (RVs), motor homes or campers shall not be allowed on any Lot, nor on any public or private street adjacent to any Lot, except within a completely enclosed garage, or other area which is completely screened from view by vegetation or fencing. Provided, however, that from time to time such equipment may be parked outside of a garage or screened area on a temporary basis for periods not to exceed seven (7) consecutive days, with a cumulative maximum of twenty one (21) days in any one year period. Parking of allowed vehicles shall occur primarily upon the Lots, with street parking allowed only when additional parking is required due to special circumstances, such as the arrival of guests. Storage of any kind of household item, goods, merchandise, fuel, firewood, bicycles, tools, materials, machinery or supplies must be within areas that are completely screened from view by vegetation, fencing or other appropriate enclosure. Garbage and debris must be kept in sanitary containers in an enclosed area and taken from the Lot to a lawful garbage dump site at least every other week. Provided, however, that organic materials may be naturally composted on the Lot if the composting area is screened from view by fencing, vegetation or other enclosure.

6.4 Repair of Vehicles and Equipment. Repair, rebuilding and overhaul of vehicles and equipment must take place inside a completely enclosed garage.

6.5 Rental. Lots may be rented by the Owner, provided that the Owner ensures that the tenants comply fully with each and every relevant Restriction, in the same manner as if said tenants were the record owners of the Lot.

6.6 Derogation of Laws. All Owners and occupants of all Lots, and any guests, shall comply with all applicable city, county, state and federal laws and regulations. In case of conflict with said laws and regulations, and this Declaration, the more restrictive of the two shall control. Provided, however that this Declaration shall not be construed to require violation of any applicable law or regulation.

6.7 Burning. Outdoor burning of yard, household or other waste is prohibited. Provided, however, that small, controlled fires of wood or charcoal are allowed, for recreational purposes only.

6.8 Signs. No signs shall be allowed on any Lot, or on a public right-of-way adjacent to any Lot, other than as follows: i) temporary signs under three (3) square feet advertising the Lot for sale or for rent; ii) political signs during election campaigns, provided said signs are promptly removed upon completion of the campaign; iii) home business signs under two (2) square feet and attached to the home; iv) discreet security signs or notifications regarding home security systems; and v) signs required by law. Signs must be freestanding or attached to a building, and may not be attached to a tree.

6.9 Animals. No horses, cattle, goats, swine or other such livestock may be raised, bred or kept on the Lot. A maximum of two dogs, plus an aggregate of five cats, rabbits, chickens and/or other similar animals, may be kept on each Lot, so long as they are not raised, bred or kept for commercial purposes. Dog runs or other outdoor animal enclosures must be at least two thousand (2000) square feet, and located in the rear two-thirds (2/3) of the Lot. All animal waste must be removed at least twice a week, and proper sanitation shall be maintained at all times. Pets, including cats, shall not be allowed off the Owner's Lot unless leashed or enclosed. Owners shall immediately remove any waste left by pets on other Lots, public rights-of-way or parks.

6.10 Nuisance. No noxious, unsightly or offensive condition, or anything that may be or become an annoyance or nuisance to owners and/or occupants of any part of Sunridge Subdivision, or the Future Development Property, shall be permitted. Nuisances include, but are not limited to, disruptive noise during nighttime hours, barking dogs, offensive smells or loud music.

ARTICLE 7. ARCHITECTURAL REVIEW

7.1 Architectural Review Committee (ARC). During the Development Period, there shall be an Architectural Review Committee (ARC) comprised of one (1), three (3) or five (5) individuals chosen by the Declarant. Any or all of the ARC members may be removed and replaced by the Declarant at any time, with or without cause.

7.2 Architectural Review Required. During the Development Period, no Improvement shall be commenced, erected, altered or maintained upon any Lot unless and until the Improvement is approved in writing by the ARC as described in this Article 7. Provided, however, that walls, excavations and earthwork less than twenty four inches (24") in height or depth, fences, patios and decks are considered minor and shall not require prior ARC approval. Plans for Improvements requiring a building permit may not be submitted to the City of Lowell, or any other permitting agency, until such plans have been first been approved by the ARC. Only plans bearing the ARCs approval may be submitted for building permit review, and only ARC-approved plans may be present on the jobsite as the working plans.

7.3 Scope of Review. This Declaration contains provisions that dictate objective qualities of proposed Improvements. However, in order to preserve the value, attractiveness, livability and desirability of the Sunridge Subdivision and the Future Development Property, certain subjective qualities must also be controlled, such as exterior colors, window and deck placement, roof design, proportions and bulk, quality and use of materials, changes in the natural grade of the land, and the overall harmony of the general design, type, style, size and location of proposed Improvements with the topography of Sunridge Subdivision and the Future Development Property, and with other contemplated or existing Improvements. However, descriptions of desirable subjective qualities are difficult to reduce to writing without unreasonably limiting the creativity of individual builders. Therefore, the ARC shall review the subjective aspects of proposed Improvements, as generally described above, and shall use its judgment to determine whether or not said Improvements will make a positive contribution towards the value, attractiveness, livability and desirability of the Sunridge Subdivision and the Future Development Property, without detracting from same. The ARC may, in its sole and absolute discretion, withhold or condition its approval of any proposed Improvement if it finds the Improvement does not meet the foregoing standard. The ARC may maintain a portfolio containing examples of subjective qualities the ARC deems desirable, and use it as a guide when making decisions. At its discretion, the ARC may also choose to review proposed Improvements for compliance with some or all of the other provisions of this Declaration, and may withhold approval upon a finding of noncompliance. However, such a review by the ARC shall not relieve the Owner of the responsibility to ensure that all Improvements are constructed and maintained in compliance with the entirety of this Declaration. Variances and Temporary Exemptions may be granted only as provided in the following Article 8: Variances and Temporary Exemptions, and may not be granted by the ARC.

7.4 Application. To receive approval for a proposed Improvement, the Owner shall submit to the ARC an application specifying the approval requested, two (2) sets of plans showing the nature, kind, shape, size, height, materials, color, texture and location of the proposed Improvements, and any other material reasonably required or desired by the ARC to make an informed decision. The ARC may adopt detailed procedures and requirements for such applications, and may impose a reasonable fee, not to exceed five hundred dollars (\$500), to cover the cost of processing the application. If the ARC finds that the application as submitted is not detailed enough to allow a decision to be made, the ARC shall so notify the Owner in writing within seven (7) days of its receipt of the incomplete application. The notice shall include a list of the additional details that are required. The application shall be deemed complete when the Owner

submits all said additional details to the ARC. If no such notice is made to the Owner within said seven (7) day period, the application shall be deemed complete as originally submitted.

7.5 ARC Decision. The ARC shall make written approval or denial of the proposed Improvements within fourteen (14) days of the date the application was deemed complete under the above Section 7.4. If the ARC finds reason to object to the proposed Improvements, it shall provide the Owner with a written denial identifying the concerns and objections thereto. If the ARC fails to respond in writing within said fourteen (14) day period, ARC approval of said Improvements shall not be required, and compliance with this Article 7 shall be presumed. Provided, however, that said Improvements must still comply with all other provisions of this Declaration, excepting only this Article 7.

7.6 Majority Action. A majority of ARC members shall have the power to act on behalf of the ARC, without the necessity of a meeting and without consulting or notifying the remaining ARC members. The ARC may render its decision only by written instrument setting forth the action taken by the members consenting thereto.

7.7 Post-Development Period Improvements. After the Development Period, the ARC shall be automatically dissolved, and ARC approval shall no longer be required prior to construction of Improvements. Improvements must still comply with all other provisions of this Declaration, excepting only this Article 7. However, Improvements approved by the ARC, but not completed prior to the ARC's dissolution, must be completed in compliance with the ARC's approval.

7.8 Conditional Approvals and Inspections. The ARC may approve an application subject to certain conditions specified in the approval letter. The ARC may also require that compliance with certain provisions of the approval, or with other provisions of this Declaration, be demonstrated by passing an inspection prior to covering or completing the Improvement. Examples of Improvements that may need to be inspected include, but are not limited to, foundation drains, cut-bank drains, and forming for concrete driveways prior to pouring. The ARC may designate one or more ARC members to perform inspections. Improvements subject to an ARC inspection requirement may not proceed without written ARC approval.

ARTICLE 8. VARIANCES AND TEMPORARY EXEMPTIONS

8.1 Variences During the Development Period. During the Development Period, the Declarant shall have the right, in its absolute and sole discretion, to permanently waive any or all of the Restrictions found in the following sections: 3.1: Construction Timetables, 3.2: Required Contractor's Registration, 4.10: Protected Trees, 4.11: Drainage, 4.12: Grading, all of Article 5: General Architectural Restrictions, and Section 6.3: Storage and Parking. Declarant may choose to make such Variences for one Lot only, for some Lots and not for others, or for all Lots. Variences shall be in writing, shall specify exactly which Restrictions are modified or waived, shall specify which Lot or Lots are affected by the Variance, shall be signed by the Declarant, and shall be duly recorded in the Lane County Real Property Records. In exchange for receiving a Variance on a Lot, an Owner may agree to accept certain new Restrictions; for example, a Variance allowing a certain tree to exceed the Elevation Limit may also designate that tree as a Protected Tree. In such cases, said Owner shall also sign the Variance.

8.2 Variences After the Development Period. After the Development Period, no Variences may be granted except for Section 5.2: Height Restriction. Such a Variance must be signed by all the record owners of any Lots or Future Development Property located so that the object in question is capable of intruding into the view of Dexter Lake from said Lots or Future Development Property. The Variance may specify an alternate Elevation Limit for the object or

objects covered by the Variance. The Variance shall be duly recorded in the Lane County Real Property Records.

8.3 Temporary Exemptions for Declarant. During the Development Period, the Declarant, and all Lots owned by the Declarant, shall be temporarily exempted from Section 4.7: Dark Sky Lighting and all of Article 6: General Use Restrictions, provided that nothing shall be done which will result in a violation of any part of this Declaration after the Development Period.

8.4 Temporary Exemptions for Others. For one (1) year following the issuance of building permit for a residential structure on any Lot, that Lot shall be temporarily exempted from the following Restrictions to the extent necessary to permit the efficient, economical and convenient completion of said Improvements, provided that during the course of such construction nothing shall be done which will result in a violation of any part of this Declaration upon completion of construction: Section 4.7: Dark Sky Lighting, Section 6.1: Allowed Uses, Section 6.2: Maintenance, Section 6.3: Storage and Parking, Section 6.4: Repair of Vehicles and Equipment, Section 6.8: Signs, and Section 6.10: Nuisance.

8.5 No Waiver. Variances and Temporary Exemptions shall not be construed as constituting any waiver of any provision in the future or as to any property not specifically described in or by the Variance or Temporary Exemption. No Variance or Temporary Exemption allowed shall in any way restrict the ability of a party hereto to enforce violations of this Declaration against Lots or Owners that do not have specific written Variances or Temporary Exemptions.

ARTICLE 9. ENFORCEMENT

9.1 Who May Enforce. This Declaration shall inure to the benefit of, and be enforceable by, the record owner or owners of any portion of the Sunridge Subdivision and/or the Future Development Property, and the legal representatives, heirs, successors or assigns of owners of interests in any such land. Provided, however, that because Section 4.11: Drainage and Section 5.8: Driveways and Sidewalks contain requirements which are conditions of Sunridge's development approval, these two sections may also be enforced by the City of Lowell. Sunridge Subdivision shall include the Sunridge Subdivision as initially created and as it may have been subsequently enlarged by any additions pursuant to Article 10. A failure, either by said owners, or their legal representatives, heirs, successors or assigns, or by the City of Lowell, to enforce any or all provisions of this Declaration in one or more instances shall in no event be deemed a waiver of the right to enforce such provision(s) thereafter. The Restrictions established by this Declaration are intended to be real and not personal.

9.2 Manner of Enforcement. Enforcement of this Declaration shall be accomplished by use of the procedures described herein. A party seeking to enforce any provision of this Declaration shall first make written demand for the discontinuance of the alleged violation. Such written demand shall be made to the Owner in question, and shall contain the name and address of the enforcing party, and a description of the alleged violation. The demand may also contain a statement as to what actions, if any, said Owner could take that would settle the matter.

9.3 Arbitration. The parties are encouraged to try to resolve disagreements among themselves, before resorting to arbitration. However, thirty (30) days after written demand is made in accordance with the above Section 9.2, arbitration proceedings may be initiated by an owner of Sunridge Subdivision property or Future Development Property. Arbitration shall take place in Eugene, Oregon. The matter shall then be resolved by a single arbitrator in accordance with ORS 36.300-365, or its successor. The arbitrator's decision shall be binding and conclusive, if not appealed, and any party to an award rendered shall be entitled to have judgement entered thereon. Notwithstanding the foregoing, the arbitrator's award may be appealed to the circuit court. The

arbitrator may award injunctive relief (as to present and future violations) and/or monetary damages (for past violations).

9.4 Correction of Violation (Present and Prospective Relief). If the arbitrator finds that a violation of this Declaration occurred, has not yet been corrected, and is the type of violation that can reasonably be corrected, the arbitrator shall order the losing party to take action sufficient to remedy the violation, which may include ordering remedial steps and/or an order enjoining future violations.

9.5 Liquidated Damages (Relief for Past Harm). If the arbitrator finds that a violation of this Declaration occurred, the arbitrator shall, at a minimum, award to the enforcing party or parties liquidated damages as follows:

9.5.1 For a violation of Section 3.5: Concrete Washout or Section 6.7: Burning, liquidated damages shall be five hundred dollars (\$500) per occurrence.

9.5.2 For a violation of Section 4.5: Outdoor Use of Certain Pesticides or Section 4.3: Storm Drain Dumping, liquidated damages shall be one thousand dollars (\$1,000) per occurrence.

9.5.3 For a violation of Section 4.10: Protected Trees, if the violation(s) result in the death of a Protected Tree, liquidated damages shall be five thousand dollars (\$5,000) per Protected Tree.

9.5.4 For a violation of Section 6.6: Derogation of Laws, no liquidated damages are required.

9.5.5 For a violation of any other Restriction, liquidated damages shall be two hundred dollars (\$200), plus an additional one hundred dollars (\$100) for each day that passes from the time the written demand was first delivered to the Owner in question, to the time the violation has been fully corrected.

9.6 Attorneys Fees and Other Costs. If arbitration proceedings are initiated as provided herein, the prevailing party shall be entitled to have and recover from the losing party all costs, fees and expenses, including reasonable attorney fees, incurred in the arbitration proceedings, in any court action associated with the arbitration proceedings, and in any subsequent appeal. Should members of the Architectural Review Committee be made parties to a dispute under this Declaration, such member(s) shall be entitled to an award of all costs, fees and expenses, including reasonable attorneys fees, should the decision or position of the Architectural Review Committee be substantially sustained by the arbitrator proceeding and in any subsequent appeal.

9.7 No Limitation of Arbitrator's Powers. Nothing in this Article 9 shall limit the arbitrator's right and ability to require additional remedial actions, or to award additional sums as damages, beyond those specifically required herein.

ARTICLE 10. ADDITIONS TO SUNRIDGE SUBDIVISION

10.1 Additions to Sunridge Subdivision. Declarant shall have the right, in its absolute and sole discretion, to add additional real property to Sunridge Subdivision, so that it shall become subject to and restricted by this Declaration. An addition to Sunridge Subdivision shall be made by a supplementary declaration, containing such modifications of the provisions of this Declaration as may be necessary to reflect the different character, if any, of the addition to Sunridge Subdivision. Provided, however, that any such modifications shall apply only to the property being added to

Sunridge Subdivision by said supplementary declaration. A supplementary declaration shall be signed by the Declarant and by all the record owners of the additional property, and duly recorded in the Lane County Real Property Records. Property lawfully divided and expressly made subject to this Declaration (with any appropriate modifications) as described above shall thereafter be deemed to be part of Sunridge Subdivision for purposes of the applicability and functioning of this Declaration as if all such properties and lots simultaneously had been made subject to this Declaration. Should a portion of the Future Development Property be added to the Sunridge Subdivision, the remaining portions of the Future Development Property shall continue to have the rights, including without limitation the enforcement rights, as are allocated to the Future Development Property above.

ARTICLE 11. MISCELLANEOUS PROVISIONS

11.1 Notification. Any notice permitted or required under this Declaration shall be in writing and shall be made either in person or by certified United States mail, return receipt requested. Notices shall be mailed to record owners of Lots and Future Development Property at the addresses shown in the Lane County Assessment and Taxation Records. Notice to the Declarant shall be made to: Shade Tree, Inc., 40160 East First Street, Lowell, OR 97452. In the event the notice is properly mailed to the correct address, but the addressee does not accept delivery, it shall nevertheless be deemed delivered on the date the United States Post Office returns the notice to the sender as undeliverable.

11.2 Limitation of Liability. Neither the Declarant nor any member of the ARC shall be liable for damages to any party regarding a request for general contractor approval under Section 3.2: Approval of General Contractor, a request for ARC approval of Improvement plans under Article 7: Architectural Review, or a request for Declarant's approval of a Variance under Section 8.1: Variances During the Development Period, by reason of the Declarant's or the ARC's approval or disapproval of said requests, failure to act on said requests, or any other action or failure to act regarding said requests.

11.3 Severability. Invalidation of any provision of this Declaration shall in no way affect any of the other provisions, which shall remain in full force and effect.

11.4 No Change of Circumstance. It is expressly contemplated that the Future Development Property and/or other nearby property may be divided and developed for residential purposes and also that other urban development of the vicinity may occur; such division and/or development is expressly contemplated by this Declaration and would not constitute any change in the character of Sunridge Subdivision, the Future Development Property or the surrounding neighborhood, nor any change of circumstance.

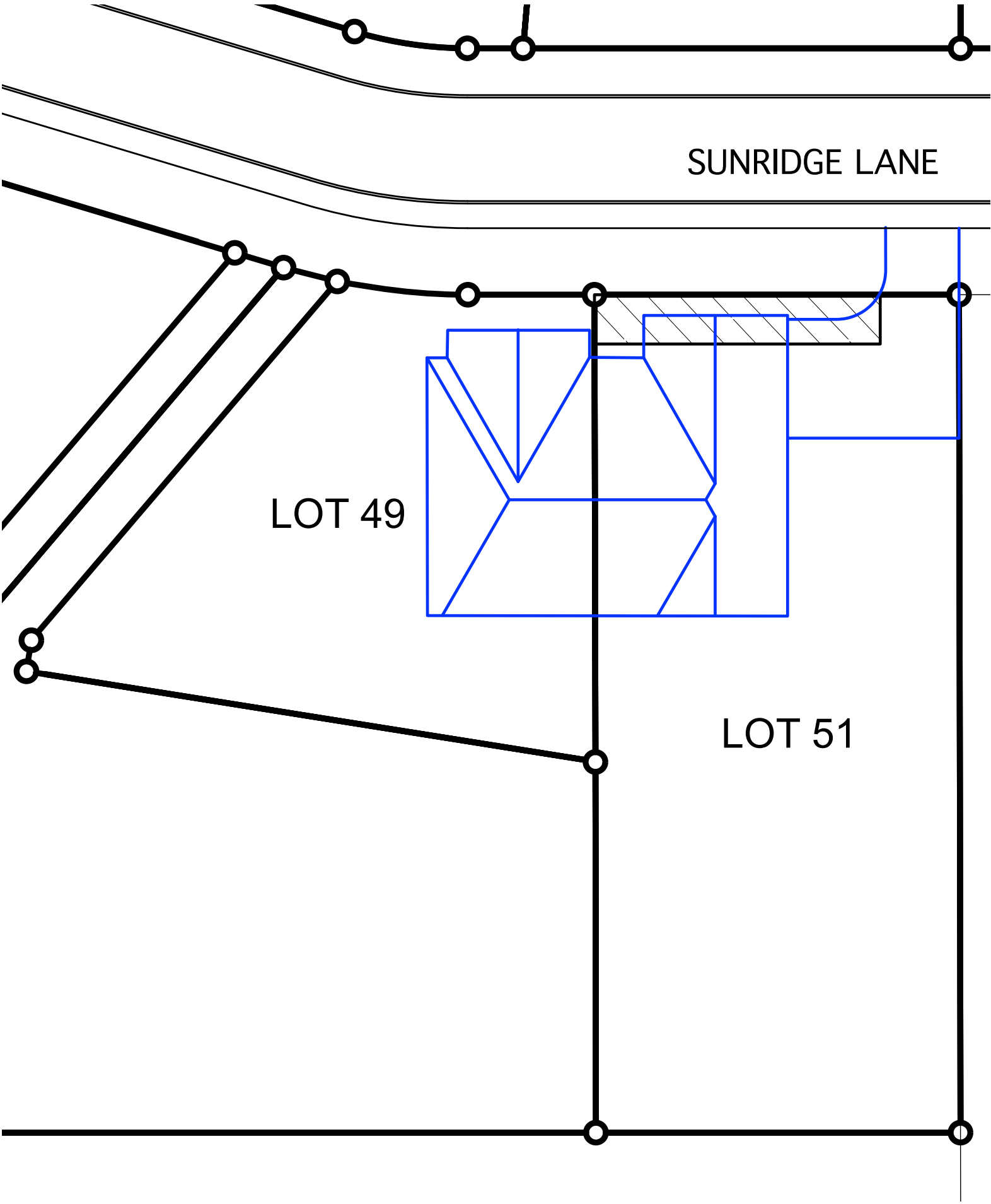
11.5 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate their purpose of preserving the value, attractiveness, livability and desirability of the Sunridge Subdivision and the Future Development Property. The captions and titles in this Declaration are inserted only as a matter of convenience and for reference, and in no way describe, define, or limit the intent of this Declaration, and are not to be used in interpreting this Declaration.

11.6 Exhibits. All exhibits and attachments to this Declaration are incorporated herein.

SUNRIDGE LANE

LOT 49

LOT 51



**SUNRIDGE
R-O-W**

**SLOPE
EASEMENT**

**SUNRIDGE
LOT 51**

**SUNRIDGE
LOT 49**



FIRST STREET

**SUNRIDGE
LOT 55**

R-O-W

HEARLEY Henry O

From: Mia Nelson <mia@sunridge.net>
Sent: February 12, 2021 10:28 AM
To: HEARLEY Henry O
Cc: CAUDLE Jeremy; Matt Wadlington; Max Baker
Subject: Re: Referral Comment from City Engineer on Vacation Request
Attachments: CCRs.pdf

CAUTION: This email originated from outside the organization. DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Thank you Matt, for reviewing this - I have a couple questions on your comments.

First, you said "Reference to the proposed subdivision grading is immaterial, as this has not been approved by the City." The subdivision was finished over 10 years ago so I don't understand what's "not been approved by the City" or which "reference to the proposed subdivision grading" you're talking about. I'm trying to parse what this comment means so I can address the concern.

Second, you said "I would recommend that if the easement is abandoned that it be replaced with something requiring that the property owner maintain the slope in a manner that will not cause erosion or negative impact to the roadway." I think Lowell's code and the CC&Rs recorded with the plat cover this already, and would like to know if you agree.

Undermining the road is a concern on all steep hillsides and streets, regardless of whether the landforms are natural or manmade. There are numerous places in the subdivision where cuts and fills were made outside of the right-of-way during road construction, and no slope easement was requested by the city. There are also places where the natural slope on the downhill side is just as steep as a cutbank and the risks are equal, if the property owner decided to do some reckless digging. This is a normal situation on hills.

I agree with the need to prevent future owners from damaging the slope, but it's not necessary to retain a slope easement in order to accomplish this. That's because this is already handled in a global way by Lowell's Hillside Development Standards - these apply to the subject property since it's over 15% slope. Cuts and fills steeper than 2:1 aren't allowed without engineering, and dirt work has to include erosion control and revegetation. Here is the relevant section:

LDC 9.632 (e) Cut and Fill Standards.

- (1) All cut and fill slopes generally must not exceed a two (horizontal) to one (vertical) ratio. Slopes which are steeper (i.e. 1:1/2 or 1:1) may be conditionally approved by the City upon certification, by a qualified engineer that the slope will remain stable under foreseeable conditions. The certification must delineate any specific stabilization measures deemed necessary by the engineer.*
- (2) Cuts and fills shall be designed to avoid movement or episodic erosion during heavy rains or earthquakes, mechanical overloading of underlying soils and undercutting of adjacent areas. Fills shall be benched as required to provide a proper bond with the existing terrain.*
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Thank you!

Mia

Mia Nelson
40160 East 1st Street
Lowell, OR 97452
(541) 520-3763 cell

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<City_Engineer_Slope_easement_Comment.pdf>

HEARLEY Henry O

From: Mia Nelson <mia@sunridge.net>
Sent: February 12, 2021 11:56 AM
To: Matt Wadlington
Cc: HEARLEY Henry O; CAUDLE Jeremy; Max Baker
Subject: Re: Referral Comment from City Engineer on Vacation Request
Attachments: Plans.pdf

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Ah ok, thank you, I did not connect the comment to Sunset Hills. I guess i assumed you wouldn't require one there, since it wasn't required on Phases 1 and 2 of Sunridge either - the only reason it came up for us in Phase 3 is because we got a special permission to have it platted before the road was built. I just have never seen the city treat a man made slope differently from a natural one, once constructed.

I attached the CC&Rs to my last email

Re the landscape wall concern - my point was it's equally a concern in the other places on the subdivision where the natural slope is such that reckless digging would expose the street to damage in exactly the same way. For example see the attached plans from Phase 3, I show three other places where a property-line excavation would undercut the street. So if the city has a concern about undermining, it shouldn't be aimed only at this one property, since the situation is the same anywhere you have a steep hill. If you don't think the current code is adequate, then just add language now (the city is doing a code amendment process right now) that takes care of it in a global manner. It would be good to have this for ALL streets, not even just the steep ones.

For example, here's Oregon City's code:

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If that's not something you want to pursue, and we just stay focused on this one property, I'll try to figure out how to do what you suggest

Mia

On Feb 12, 2021, at 11:31 AM, Matt Wadlington <Mwadlington@civilwest.net> wrote:

Good morning Mia,

I was referring to your Exhibit D attached to the application. I seemed like you were making the case that the City had set a precedence by not requiring a slope easement on the Sunset Hills subdivision, but the fact is that we haven't approved that yet, and I can't say that we won't require an easement.

Can you send me the CCRs for the subdivision? Or the portion of it which you think would be applicable to this issue?

My concern is that the owner builds a "landscape" retaining wall and if it starts to fail, how does the City enforce corrective action? My only concern related to relying on the HD code, is that it's only applicable/enforceable if the owner is submitting an application for some permit, which they probably won't do to build a landscape wall. I would be willing to recommend removing the easement if there could be some covenant (not sure if that's the right term) put on the property that said that any grading on the property had to meet the requirements of the City's Hillside Development Code, even if the grading is not otherwise permitted. Is that an easy thing to do?

-Matt

--

Matt Wadlington, PE, Principal
Willamette Valley Regional Manager
d 541.982.4373 | c 520.444.4220
<image003.png>
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Subject: Re: Referral Comment from City Engineer on Vacation Request

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Second, you said "I would recommend that if the easement is abandoned that it be replaced with something requiring that the property owner maintain the slope in a manner that will not cause erosion or negative impact to the roadway." I think Lowell's code and the CC&Rs recorded with the plat cover this already, and would like to know if you agree.

Undermining the road is a concern on all steep hillsides and streets, regardless of whether the landforms are natural or manmade. There are numerous places in the subdivision where cuts and fills were made outside of the right-of-way during road construction, and no slope easement was requested by the city. There are also places where the natural slope on the downhill side is just as steep as a cutbank and the risks are equal, if the property owner decided to do some reckless digging. This is a normal situation on hills.

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<City_Engineer_Slope_easement_Comment.pdf>

HEARLEY Henry O

From: Mia Nelson <mia@sunridge.net>
Sent: February 25, 2021 8:42 AM
To: HEARLEY Henry O
Cc: CAUDLE Jeremy; Matt Wadlington; Max Baker; DARNIELLE Gary L; TAYLOR Paula
Subject: Re: Referral Comment from City Engineer on Vacation Request
Attachments: Slope examples.pdf; Lot 49-51 plan.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

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Thank you Henry.

I think there's a solution to this concern:

First, I'd like to submit evidence of the actual conditions on the ground, which demonstrate that this situation presents considerably less hazard to the roadway than others that already exist. Please see the attached photos of the slope easement area and a nearby example - just up the hill on 1st Street, below the water tower. As you can see, the slope within the Lot 51 slope easement is actually quite mild and is much less steep than the 1st Street embankment, which does not have a slope easement. There are many other similar examples on Sunridge and 1st. If there's any doubt as to the accuracy of these photos, I urge you to make an in-person visit to the site and see for yourself. I think you'll agree this is a non-issue.

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If, after reviewing the evidence of the on-the-ground conditions, there's still concern about future undermining, how about a condition of approval as a solution that requires Dan's home and driveway plans to maintain adequate support of the roadway?

Also - because I sold the property, should I have Dan submit a letter to you, concurring with the vacation and variance applications? He's been in loop on these from the beginning, since I applied for them as a condition of our sale.

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Sent: February 25, 2021 12:19 PM
To: Mia Nelson; HEARLEY Henry O
Cc: CAUDLE Jeremy; Max Baker; DARNIELLE Gary L; TAYLOR Paula
Subject: RE: Referral Comment from City Engineer on Vacation Request

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All,

I will support the vacation of the slope easement based on the actual slopes in the area. Many times slope easements are required during design and platting phases based on absolute slopes (i.e. 2:1 or 3:1 slopes), but slopes are often "softened" during or after construction. Because the slopes in this case are flatter than that absolutely required by the City, I'm comfortable with this vacation.

-Matt

--

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Bare soil shall not be left exposed for more than ten (10) days from October 15 through June 15. If permanent Landscaping has not been established by October 25, then the area shall be seeded with grass or other ground cover, and mulched with at least two inches (2") of straw, hay, bark, compost or other appropriate material.

4.12

Grading. Cutbanks are unsightly, can cause chronic drainage problems, and create areas that are often difficult to revegetate. Fills are also unsightly, and can become saturated with water and become unstable. Consequently, permanent changes in grade are not allowed unless pre-approved by the Architectural Review Committee in accordance with Article 7. A "permanent change in grade" means an alteration of the natural grade that remains visible after the project is complete, but does not include excavations that are later filled with soil or structures, as for a foundation or basement. Cuts and fills shall conform to the following requirements:

4.12.1

The face of unretained cuts and fills must not exceed 50% slope, or two horizontal units for each vertical unit. All cuts and fills must be promptly re-vegetated or faced with natural stone to control erosion and reduce unsightliness.

4.12.2

If a retaining wall exceeds four feet (4') in height, it must be designed by a registered professional engineer.

4.12.3

Additional drainage structures must be installed as specified in Section 4.11.4: Cutbank Drains.

Could you please let me know if, in light of the above, do you still think "something requiring that the property owner maintain the slope in a manner that will not cause erosion or negative impact to the roadway" is necessary? If so then what type of agreement would you recommend? I'm happy to do whatever, if you still think it's needed.

Thank you!

Mia

Mia Nelson
40160 East 1st Street
Lowell, OR 97452
(541) 520-3763 cell

On Feb 8, 2021, at 11:07 AM, HEARLEY Henry O <HHEARLEY@Lcog.org> wrote:

Hi Mia:

The City has circulated your land use proposals to affected agencies. Lane County has no comment, but I'm sharing a comment received from the City Engineer regarding the proposed slope vacation. As the applicant you may choose to respond.

You can expect a completeness determination on your applications by the end of this week.

Henry

Henry O. Hearley
Associate Planner
Lane Council of Governments
hhearley@lcog.org
541-682-3089

<City_Engineer_Slope_easement_Comment.pdf>

ATTACHMENT D

HEARLEY Henry O

From: Dan Fischer <attacklife64@gmail.com>
Sent: March 30, 2021 3:01 PM
To: HEARLEY Henry O
Subject: Sunridge Setbacks Variance

Follow Up Flag: Follow up
Flag Status: Flagged

CAUTION: This email originated from outside the organization. DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

To: City of Lowell, City Planner, Henry Hearley

From: Dan & Lisa Fischer (Sunridge Property Owners)

Mia Nelson has put in applications for the vacation and variance. My designer has made it clear that to build my house properly these are needed to go through and be approved by the city of Lowell.

I understand that there are several houses in Sunridge that have set a precedent for what is being asked.

I thank you for your full consideration.

Dan & Lisa Fischer