

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

In the Matter of the Proposed Vacation of a)
Portion of Elder Street Situated in the)
Hillcrest Subdivision, Part I, near)
Scappoose, Oregon)
)
[Columbia Hills/Gravestock/Hunt/)
Simmons and Nelson Petition])

ORDER NO. 76-00
(Finalizing Vacation Proceedings)

WHEREAS, pursuant to ORS 368.341(1)(b) the Board of County Commissioners (the Board) for Columbia County, Oregon adopted Order No. 22-2000 initiating proceedings to vacate a portion of Elder Street in the Hillcrest Subdivision, Part I, near Scappoose, Oregon, pursuant to a petition filed with the Board by Columbia Hills Development Company, Donald Gravestock, William and Lesley Hunt, Terri Simons and Monika Nelson (née Zimmerman); and

WHEREAS, the county road official filed a report with the Board dated April 5, 2000, a copy of which is attached hereto, labeled Exhibit A and incorporated herein by this reference, which recommended that the request for vacation of this portion of Elder Street be denied pending receipt of an aggregated lot consolidation plan from the petitioners to ensure that the vacation of Elder Street, as requested, would not result in the land-locking of any parcel of land; and

WHEREAS, the county road official further advised that he would **not** recommend that the portion of Elder Street lying between Lot 32, Block 16 and Lot 2, Block 17 be vacated because that portion of Elder Street is currently being used for access to at least one of the two lots; and

WHEREAS, petitioners Columbia Hills Development Company, Donald Gravestock, William and Lesley Hunt, and Monika Nelson submitted Irrevocably Bound Parcel Creation Covenants, copies which are attached hereto, labeled Exhibit B and incorporated herein by this reference, to ensure that future reconfigured parcels or lots would not be land-locked; and

WHEREAS, the county road official filed a report with the Board dated May 17, 2000, a copy of which is attached, labeled Exhibit C and incorporated herein by this reference, again recommending that this request for vacation be denied, in part because the Irrevocably Bound Parcel Creation Covenants had been signed by J. Richard Recht, as attorney-in-fact for all petitioners with the exception of Terri Simons, but that the Power of Attorney relied upon had expired; and

WHEREAS, by letter dated June 22, 2000, a copy of which is attached, labeled Exhibit D and incorporated herein by this reference, Terri Simons and J. Richard Recht, attorney-in fact for the remaining petitioners, submitted an updated Power of Attorney which established the right of Mr. Recht to act as attorney-in-fact for the remaining petitioners in this matter, and further amended their petition for vacation by agreeing to withdraw the request for vacation of Elder Street laying between Lot 32, Block 16 and Lot 2, Block 17; and

WHEREAS, the property proposed for vacation, as amended, is generally described as follows:

Beginning at the Southwest corner of Block 17, Hillcrest Subdivision, Part 1, as per plat on file and of record in the clerk's office of Columbia County, Oregon; thence Northeast along the Northwest line of said Block 17 and the Southeast line of Elder Street a distance of 558.77 feet to the Northeasterly corner of Lot 3, Block 17; thence Northwest a distance of 60 feet to the Southeast corner of Lot 31, Block 16 of said Hillcrest; thence Southwest along the Southeast line of said Block 16 and Northwest line of said Elder Street a distance of 640.86 feet to the Southeast corner of said Block 16 (in Lot 23); thence East a distance of 86.34 feet to the point of beginning; and

WHEREAS, a map of the area proposed to be vacated is attached hereto, labeled Exhibit E and incorporated herein by this reference; and

WHEREAS, ORS 368.351 requires that the Board make a determination on the vacation of property after having a hearing if it receives a written report from the county road official indicating that the vacation is not in the public interest. As the county road official determined that it would *not* be in the public interest to vacate Elder Street absent resolution of the various concerns outlined above, the Board was required to hold a hearing pursuant to ORS 368.346; and,

WHEREAS, pursuant to ORS 368.346, a public hearing was held on June 28, 2000, at 10:00 a.m. in the Commissioners' Meeting Room, Room 308 of the Columbia County Courthouse, St. Helens, Oregon, to determine if the proposed vacation was in the interest of the public; and

WHEREAS, pursuant to ORS 368.401 to 368.426, notice of the hearing was provided by posting and publication and by service on each person with a recorded interest in the proceeding; and

WHEREAS, at said public hearing the Board heard testimony in favor of and in opposition to the proposed vacation, closed the hearing, directed Columbia County staff to further consider the proposals of the petitioners set forth in Exhibit D and report back to the Board at the time set for deliberations; and

WHEREAS, on July 12, 2000, during its deliberations on the proposed vacation, the Board heard the recommendations of staff that the petition for vacation, as amended, be approved with conditions; and

WHEREAS, the Board finds that the petition meets the requirements of ORS 368.341 and contains the acknowledged signatures and owners' approval as required by ORS 368.351(2);

NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

1. Vacation of that portion of Elder Street lying within the Hillcrest Subdivision, Part I, near Scappoose, Oregon, as more particularly described above and as shown in Exhibit E, is in the public interest.

2. The Irrevocably Bound Parcel Creation Covenants attached hereto as Exhibit B are hereby deemed insufficient to ensure that an aggregated lot consolidation plan will not result in land-locking any parcel of land.

3. The public right-of-way described above, and as depicted in Exhibit E, shall be vacated upon satisfactory completion of the following conditions:

a. Irrevocably Bound Parcel Creation Covenants, identical to those referenced above with the exception of the following additions to paragraph 3 thereof, shall be submitted to the Office of Columbia County Counsel:

“3. Notwithstanding the above, one or more lots may be sold, and thus separated from the parcel, if and only if both (1) the remaining lot or lots subject to this covenant retain 50 feet of **useable and/or feasible** frontage on a public right-of-way **in compliance with Columbia County road standards** and (2) the lot or lots being sold either have 50 feet of **useable and/or feasible** frontage on a public right of way **in compliance with Columbia County road standards** or are bound together in an irrevocable covenant similar to this covenant with another group which has such frontage.”

b. Said Covenants shall be submitted to Columbia County Counsel along with payment of recording fees to the Columbia County Clerk’s in the amount of \$26 for the first page and \$5 for each additional page for each Covenant to be recorded;

c. Upon approval of County Counsel, the Covenants shall be recorded with the County Clerk.

4. The Board declares that upon signing and recording said Irrevocably Bound Parcel Creation Covenants, as amended, petitioners have met the standards needed for approval of a road vacation. However, by signing and recording said Covenants, such petitioners have not met development requirements for the property under the Columbia County Zoning Ordinance or other applicable law. All subject lots of parcels, as they currently exist or as they may be reconfigured in the future, must meet all applicable zoning standards prior to development, and any reconfiguration shall be done so as to ensure that each reconfigured lot or parcel retains at least 50 feet of feasible and useable frontage on a public right-of-way in compliance with Columbia County road standards.

5. The Board specifically declares that the approval of this petition for vacation in no way implies or represents that lots or parcels, as they are currently configured or as they may be reconfigured in the future, are buildable parcels or lots under the Columbia County Zoning Ordinance. Development of each current parcel or lot or future reconfigured parcel or lot remains subject to a minimum area size requirements, access requirements, service requirements, and all other applicable zoning requirements and standards.

6. This vacation is being made with a specific reservation of any existing right-of-way for utility easements.

7. Pursuant to Order No. 96-93, the following costs are due from this vacation and shall be deducted from the \$500.00 deposit paid by the petitioners:

<u>SERVICE</u>	<u>FEE</u>	<u>SUBTOTAL</u>
Filing Petition by the Clerk	\$ 28.50	\$ 28.50
Review for Correct Property Description by County Surveyor [if required]	\$ 30.00 [per parcel]	\$ 00.00
Review by other County Departments	\$175.00 [per single street or alley (or portion thereof)]	\$175.00
	\$ 50.00 [each additional street or alley]	\$ 00.00
Hearing (if required)	\$100.00	\$100.00
Recording Final Order by the Clerk	\$ 26 .00 [first page] 5.00 [each additional page x 4]	\$ 26.00 20.00
Two Certified Copies By the Clerk [one to Assessor, one to Surveyor]	\$ 3.75 [per copy x 2] \$.25 [per page x 12 pp.]	\$ 7.50 2.50
Posting the Approved Road Vacation by County Surveyor	\$ 45.00 [per parcel]	\$45.00
	TOTAL	\$404.50

8. The Clerk has already deducted the \$28.50 filing fee from the \$500.00 deposit, leaving a balance of \$471.50 in the trust account. The Clerk is hereby authorized to disburse the remainder of the deposit as follows:

To County Clerk	:	\$ 56.00
To County Treasurer	:	\$ 320.00
To: Koski Corporation	:	\$ 95.50
31750 Callahan Road		
Scappoose, OR 97056		

9. This order shall be recorded with the County Clerk, a copy inserted in the appropriate

road jacket, and certified copies of it shall be filed with the County Surveyor and the County Assessor.

DATED this 19th day of July, 2000.

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

APPROVED AS TO FORM:

By: Janeal Tyson
Office of County Counsel

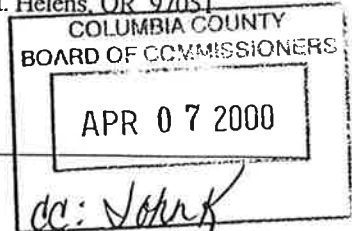
By: Jack R. Peterson
Chair
By: Jeta M. Bernhard
Commissioner
By: [Signature]
Commissioner



Columbia County Road Department

P.O. Box 366, 1004 Oregon Street, St. Helens, OR 97051

COLUMBIA COUNTY



MEMO
R A N D O M

APR 18 2000

COUNTY COUNSEL

to: Board of Commissioners
from: Dave Hill *[Signature]*
subject: Proposed Vacation, Elder Street, Hillcrest Subdivision
date: April 5, 2000

Recommendation: Deny the vacation of Elder Street until such time that the Land Development Services Department approves of the plan for "irrevocable bound parcels".

Columbia Hills Development Company, and others, have petitioned the Board of Commissioners to vacate a section of Elder Street in the Hillcrest Subdivision from its intersection with Fir Street to the far corner of lots 32, block 16 and lot 2, block 17, as I have shown on the attached maps.

The area to be vacated is forested and undeveloped on steep side slopes. Because of the steep topography, it is not feasible to construct a public road to current standards within the right-of-way.

The County requires 50 feet of useable frontage on a public road right-of-way and therefore, even though there may be 100% consent of adjacent property owners to this road vacation, there are many individual lots within this subdivision that could be individually sold and if so, they might not have public road frontage and therefore, no legal access to the property.

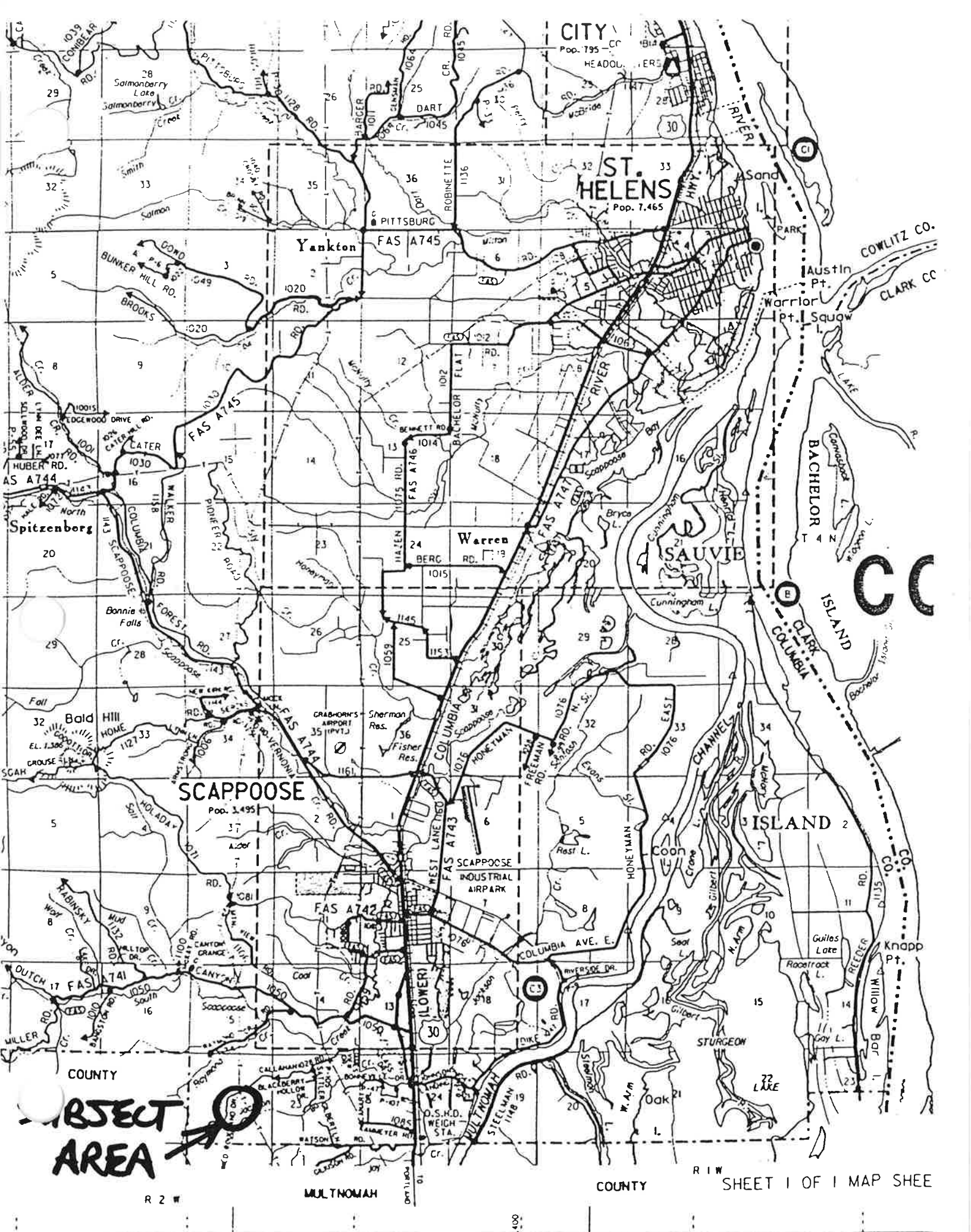
The petitioners propose to establish "irrevocably bound parcel creation covenants" for the bound parcels insuring that each lot maintain 50 feet of frontage on a public road. The Land Development Services Department would approve of this covenant for the parcels, however before doing so they need to see which parcels were being bound together and where the frontage is for each of the "bound" properties.

I would also like to include that we require the frontage to be "useable" to be able to reasonably access the properties per the road access standards.

The petitioners also request the vacated property to be vested in a specified manner, however if this road was vacated I would suggest that it be split down centerline with half going to each adjacent property.

Therefore, in order to assure legal access to all parcels in the future, I recommend denial of this request until such time that the Land Development Services Department approves of the "irrevocable bound parcel" agreement and plan to show how each of the lots are aggregated.

cc: Cynthia Zemaitis, County Counsel
Matt Laird, LDS



OBJECT AREA

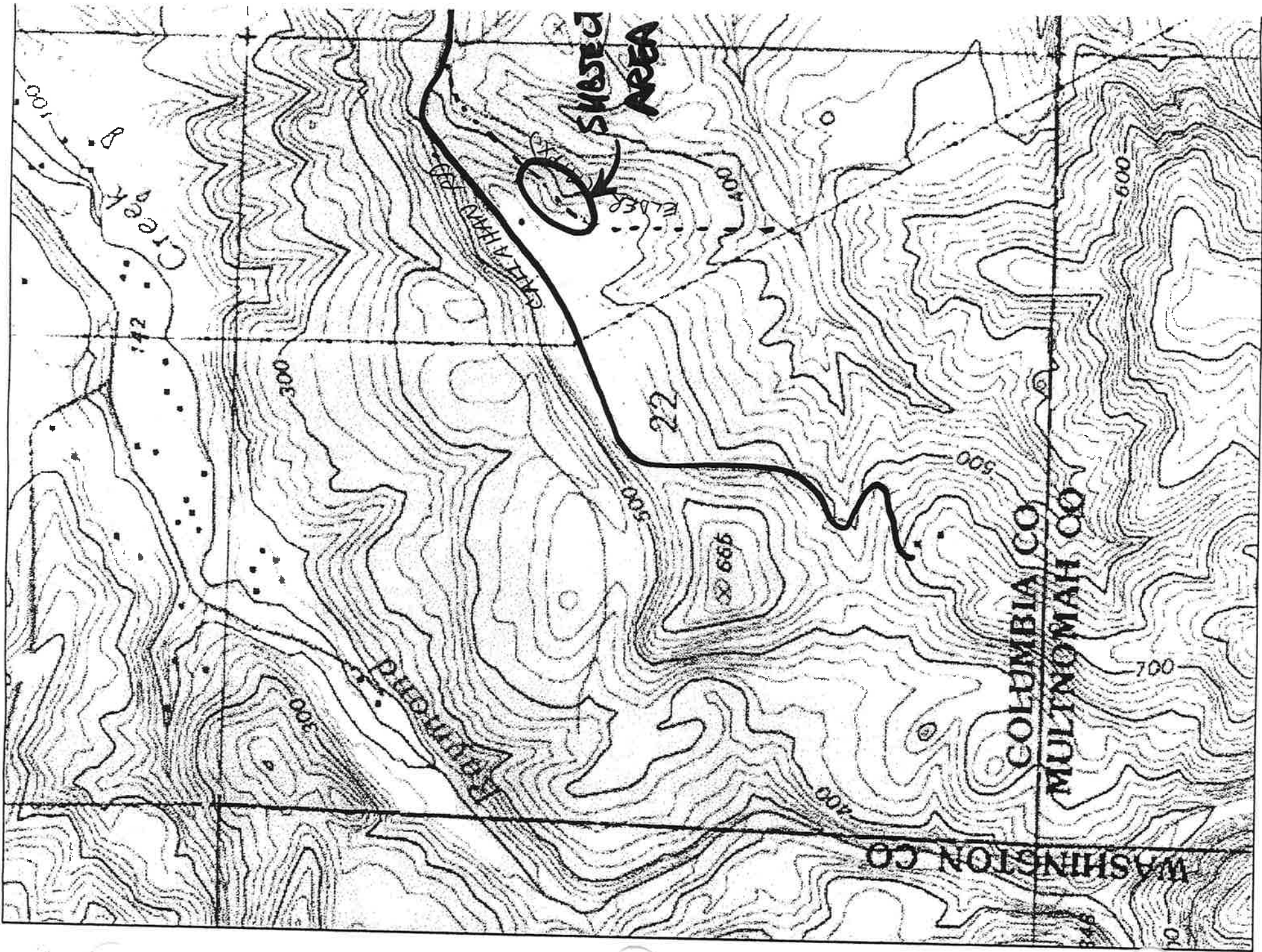
R 2 W

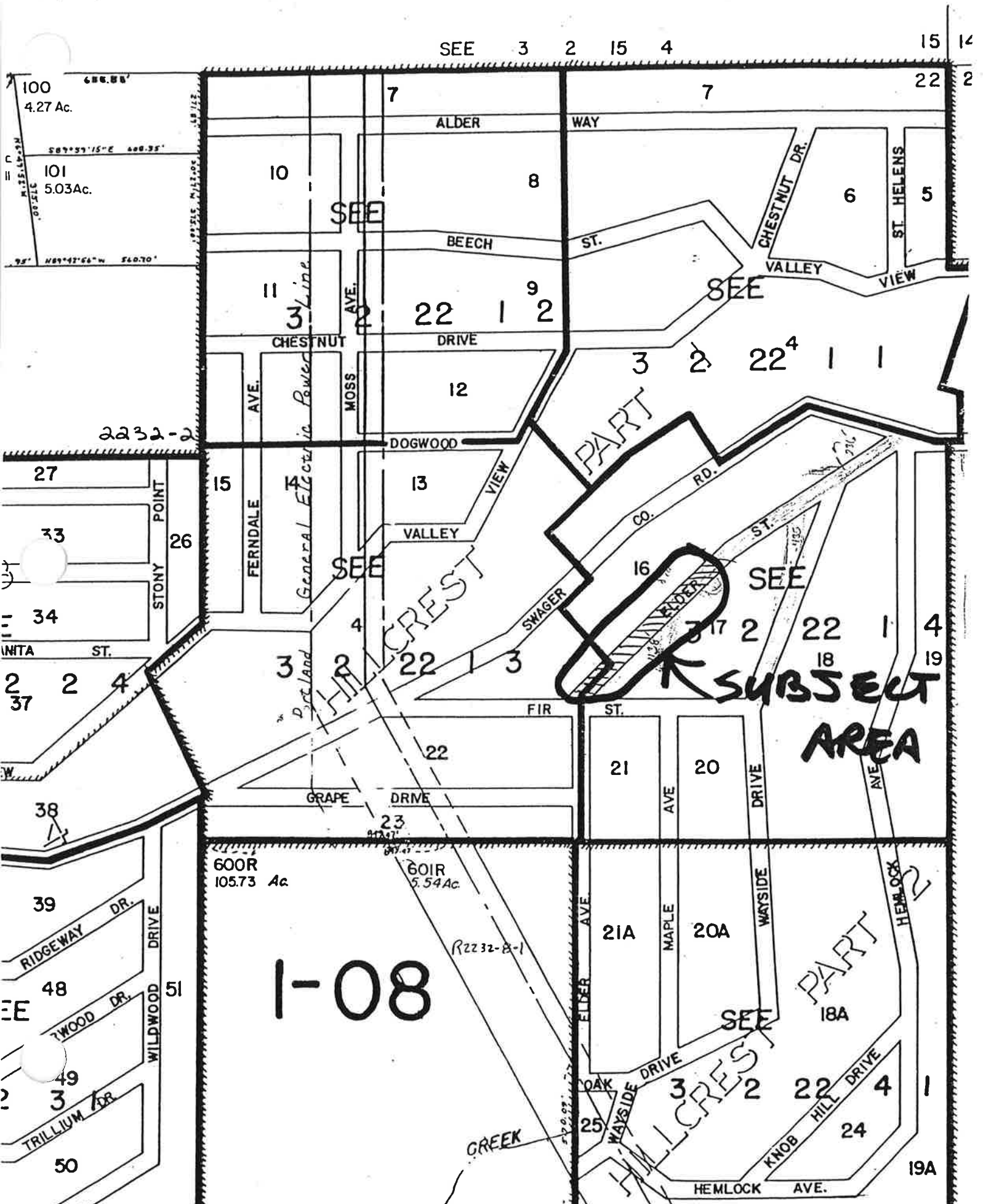
MULTNOMAH COUNTY

COUNTY

SHEET 1 OF 1 MAP SHEET

1:400





SEE 3 2 15 4

15 14

100
4.27 Ac.

101
5.03 Ac.

600R
105.73 Ac

601R
5.54 Ac

1-08

7

22 2

10

8

6

5

11

22

9

SEE

CHESTNUT DRIVE

12

3

2

22⁴

1

2232-2

27

15

13

PART

VALLEY VIEW

16

SEE

33

34

SEE

3

4

22

3

17

2

22

18

4

19

SUBJECT AREA

37

38

22

21

20

600R
105.73 Ac

601R
5.54 Ac

R2232-2-1

39

48

49

50

RIDGEWAY DR.

TWOWOOD DR.

TRILLIUM DR.

WILDWOOD DRIVE

51

ELDER AVE.

MAPLE AVE.

WAYSIDE DRIVE

HEMLOCK AVE.

GREEK

OAK DRIVE

25

WAYSIDE DRIVE

3

SEE

22

24

KNOB HILL DRIVE

4

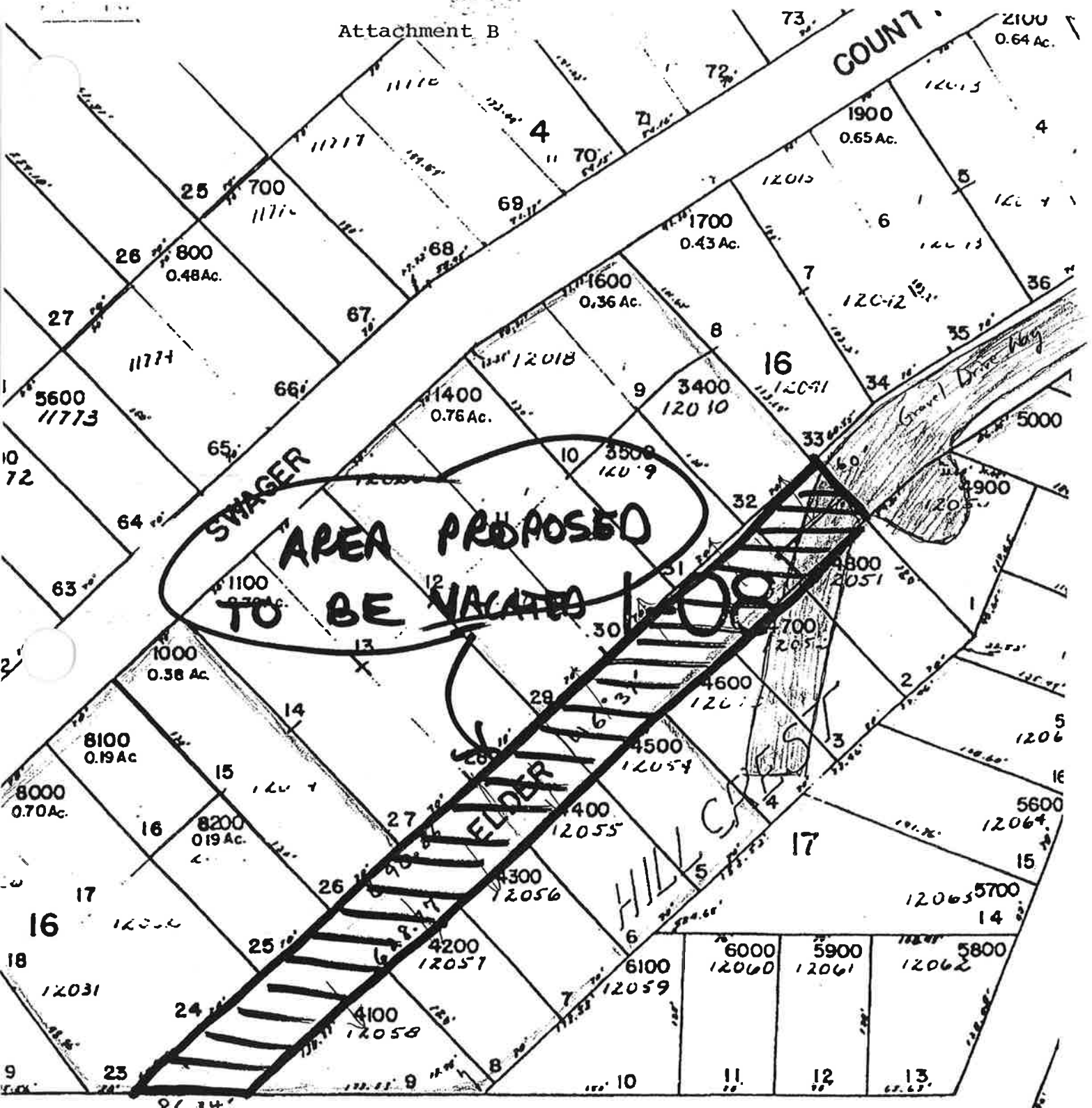
19A

PART

18A

HEMLOCK AVE.

COUNTY



**AREA PROPOSED
TO BE VACATED**

SWAGER

ELDER

HILLY CREEK

FIR ST.

Gravel Drive Way

600 169	8500 12148
2	1
6600 169	10700 12170

6200 12136	7300 12147
1	12
6300 12137	7200 12146
2	11
6400	7100

7400 12124	8500 12135
1	12
7500 12125	8400 12134
2	11
7600	8300

AVE

WAYSIDE

IRREVOCABLY BOUND PARCEL CREATION COVENANT

_____, is/are the owners of Lots _____, Block _____; in the Hillcrest Subdivision, Part 1, Columbia County, He/she/they hereby irrevocably binds the lots together.

1. Said lots are hereby bound together and, except as stated below, are hereinafter to be treated as bound together in a parcel;

2. No owner, its heirs, successors or assigns shall, except as stated below, sell or otherwise hypothecate title of any lot separately from the remaining lots, though lot line adjustments, replats or the sale/trade of lots are permitted, but only as approved in writing by Columbia County;

3. Notwithstanding the above, one or more lots may be sold if and only if both (1) the remaining lots subject to this covenant retain 50 feet of frontage on a public right-of-way and (2) the lot being sold either has 50 feet of frontage on a public right-of-way or is bound together in a revocable covenant similar to this covenant with another group which has such frontage.

useable
~~the estate~~

that can reasonably be used to access the property per Columbia County access standards

useable

4. This covenant runs with the land for the benefit of Columbia County. This covenant can be waived or modified only by recording of written instruments certifying approval of the Director of the Department of Land Services or the Board of Commissioners of Columbia County.

5. This covenant shall not become effective unless and until Columbia County approves the vacation of Elder Street as petitioned by the adjacent property owners.

6. This covenant is solely for the purpose of insuring that no property ownership will be left without frontage on a public right-of-way.

useable

Dated this _____ day of _____, 2000

7. The term *useable frontage* is to mean frontage on a public road that can reasonably be used to access the property per the Columbia County access standards.

STATE OF OREGON
County of _____

ACKNOWLEDGMENT

Before me this _____ day of _____, 2000, _____ personally known to me, appeared before me and acknowledged the foregoing instrument.

Notary Public for _____
My commission expires _____

EXHIBIT B

IRREVOCABLY BOUND PARCEL CREATION COVENANT

Columbia Hills Development Company is the owner of Lots 9, 10, 31 and 32, Block 16, in the Hillcrest Subdivision, Part 1, Columbia County. It hereby irrevocably binds the lots together as defined herein.

1. Said lots are hereby bound together and, except as stated below, are hereinafter to be treated as bound together in a parcel;

2. No owner, its heirs, successors or assigns shall, except as stated below, sell or otherwise hypothecate title of any lot separately from the remaining lots, though lot line adjustments are permitted, but only as approved by Columbia County;

3. Notwithstanding the above, one or more lots may be sold, and thus separated from the parcel, if and only if both (1) the remaining lot or lots subject to this covenant retain 50 feet of frontage on a public right-of-way and (2) the lot or lots being sold either have 50 feet of frontage on a public right-of-way or are bound together in a irrevocable covenant similar to this covenant with another group which has such frontage.

4. This covenant runs with the land for the benefit of Columbia County. This covenant can be waived or modified only by recording a written instrument certifying approval of the Director of the Department of Land Services or the Board of Commissioners of Columbia County. Such approval or recording is not required for sales that meet the conditions of Provision 3 above nor for modifications which remove that provision.

5. This covenant shall not become effective unless and until Columbia County approves the vacation of Elder Street as petitioned by the adjacent property owners.

6. This covenant is solely for the purpose of insuring that no property ownership will be left without frontage on a public right-of-way due to the vacation of Elder Street.

Dated this 17th day of April, 2000

J. Richard Recht
J. Richard Recht, President
Columbia Hills Development Company

ACKNOWLEDGMENT

STATE OF CALIFORNIA
County of San Mateo

Before me this 17th day of April, 2000, *J. Richard Recht* personally known to me, appeared before me and acknowledged the foregoing instrument.



M. Winata Lo
Notary Public for *J. Richard Recht*
My commission expires *April 11, 2002*

IRREVOCABLY BOUND PARCEL CREATION COVENANT

William and Lesley Hunt are the owners of Lots 11, 12, 29 and 30, Block 16, in the Hillcrest Subdivision, Part 1, Columbia County. They hereby irrevocably bind the lots together as defined herein.

1. Said lots are hereby bound together and, except as stated below, are hereinafter to be treated as bound together in a parcel;

2. No owner, its heirs, successors or assigns shall, except as stated below, sell or otherwise hypothecate title of any lot separately from the remaining lots, though lot line adjustments are permitted, but only as approved by Columbia County;

3. Notwithstanding the above, one or more lots may be sold, and thus separated from the parcel, if and only if both (1) the remaining lot or lots subject to this covenant retain 50 feet of frontage on a public right-of-way and (2) the lot or lots being sold either have 50 feet of frontage on a public right-of-way or are bound together in a irrevocable covenant similar to this covenant with another group which has such frontage.

4. This covenant runs with the land for the benefit of Columbia County. This covenant can be waived or modified only by recording a written instrument certifying approval of the Director of the Department of Land Services or the Board of Commissioners of Columbia County. Such approval or recording is not required for sales that meet the conditions of Provision 3 above nor for modifications which remove that provision.

5. This covenant shall not become effective unless and until Columbia County approves the vacation of Elder Street as petitioned by the adjacent property owners.

6. This covenant is solely for the purpose of insuring that no property ownership will be left without frontage on a public right-of-way due to the vacation of Elder Street.

Dated this 17th day of April, 2000

William Hunt
William Hunt
by J. Richard Recht, President
Columbia Hills Development Co.
Attorney-in-Fact

Lesley Hunt
Lesley Hunt
by J. Richard Recht, President
Columbia Hills Development Co.
Attorney-in-Fact

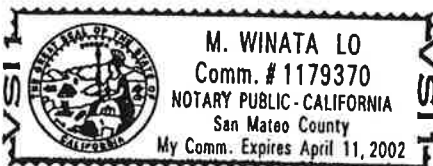
ACKNOWLEDGMENT

STATE OF CALIFORNIA
County of San Mateo

Before me this 17th day of April, 2000, J. Richard Recht, personally known to me, appeared before me and acknowledged the foregoing instrument.

Marta Ro

Notary Public for J. Richard Recht
My commission expires April 11, 2002



IRREVOCABLY BOUND PARCEL CREATION COVENANT

Donald Gravestock is the owner of Lots 15, 16, 25 and 26, Block 16, in the Hillcrest Subdivision, Part 1, Columbia County. He hereby irrevocably binds the lots together as defined herein.

1. Said lots are hereby bound together and, except as stated below, are hereinafter to be treated as bound together in a parcel;

2. No owner, its heirs, successors or assigns shall, except as stated below, sell or otherwise hypothecate title of any lot separately from the remaining lots, though lot line adjustments are permitted, but only as approved by Columbia County;

3. Notwithstanding the above, one or more lots may be sold, and thus separated from the parcel, if and only if both (1) the remaining lot or lots subject to this covenant retain 50 feet of frontage on a public right-of-way and (2) the lot or lots being sold either have 50 feet of frontage on a public right-of-way or are bound together in a irrevocable covenant similar to this covenant with another group which has such frontage.

4. This covenant runs with the land for the benefit of Columbia County. This covenant can be waived or modified only by recording a written instrument certifying approval of the Director of the Department of Land Services or the Board of Commissioners of Columbia County. Such approval or recording is not required for sales that meet the conditions of Provision 3 above nor for modifications which remove that provision.

5. This covenant shall not become effective unless and until Columbia County approves the vacation of Elder Street as petitioned by the adjacent property owners.

6. This covenant is solely for the purpose of insuring that no property ownership will be left without frontage on a public right-of-way due to the vacation of Elder Street.

Dated this 17th day of April, 2000

Donald Gravestock

Donald Gravestock
by J. Richard Recht, President
Columbia Hills Development Co.
Attorney-in-Fact

ACKNOWLEDGMENT

STATE OF CALIFORNIA
County of San Mateo

Before me this 17th day of April, 2000, J. Richard Recht personally known to me, appeared before me and acknowledged the foregoing instrument.



Maura Ho
Notary Public for J. Richard Recht
My commission expires April 11, 2002

IRREVOCABLY BOUND PARCEL CREATION COVENANT

William and Lesley Hunt are the owners of Lots 17, 18, 23 and 24, Block 16, in the Hillcrest Subdivision, Part 1, Columbia County. They hereby irrevocably bind the lots together as defined herein.

1. Said lots are hereby bound together and, except as stated below, are hereinafter to be treated as bound together in a parcel;

2. No owner, its heirs, successors or assigns shall, except as stated below, sell or otherwise hypothecate title of any lot separately from the remaining lots, though lot line adjustments are permitted, but only as approved by Columbia County;

3. Notwithstanding the above, one or more lots may be sold, and thus separated from the parcel, if and only if both (1) the remaining lot or lots subject to this covenant retain 50 feet of frontage on a public right-of-way and (2) the lot or lots being sold either have 50 feet of frontage on a public right-of-way or are bound together in a irrevocable covenant similar to this covenant with another group which has such frontage.

4. This covenant runs with the land for the benefit of Columbia County. This covenant can be waived or modified only by recording a written instrument certifying approval of the Director of the Department of Land Services or the Board of Commissioners of Columbia County. Such approval or recording is not required for sales that meet the conditions of Provision 3 above nor for modifications which remove that provision.

5. This covenant shall not become effective unless and until Columbia County approves the vacation of Elder Street as petitioned by the adjacent property owners.

6. This covenant is solely for the purpose of insuring that no property ownership will be left without frontage on a public right-of-way due to the vacation of Elder Street.

Dated this 17th day of April, 2000

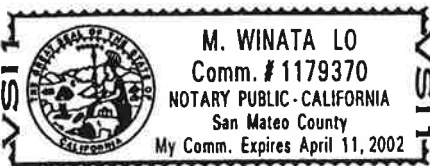
William Hunt
William Hunt
by J. Richard Recht, President
Columbia Hills Development Co.
Attorney-in-Fact

Lesley Hunt
Lesley Hunt
by J. Richard Recht, President
Columbia Hills Development Co.
Attorney-in-Fact

ACKNOWLEDGMENT

STATE OF CALIFORNIA
County of San Mateo

Before me this 17th day of April, 2000, J. Richard Recht personally known to me, appeared before me and acknowledged the foregoing instrument.



M. Winata Lo
Notary Public for J. Richard Recht
My commission expires April 11, 2002

IRREVOCABLY BOUND PARCEL CREATION COVENANT

Monika Nelson (nee Zimmermann) is the owner of Lots 5 through 9, Block 17, in the Hillcrest Subdivision, Part 1, Columbia County. She hereby irrevocably binds the lots together as defined herein.

- 1. Said lots are hereby bound together and, except as stated below, are hereinafter to be treated as bound together in a parcel;
- 2. No owner, its heirs, successors or assigns shall, except as stated below, sell or otherwise hypothecate title of any lot separately from the remaining lots, though lot line adjustments are permitted, but only as approved by Columbia County;
- 3. Notwithstanding the above, one or more lots may be sold, and thus separated from the parcel, if and only if both (1) the remaining lot or lots subject to this covenant retain 50 feet of frontage on a public right-of-way and (2) the lot or lots being sold either have 50 feet of frontage on a public right-of-way or are bound together in a irrevocable covenant similar to this covenant with another group which has such frontage.
- 4. This covenant runs with the land for the benefit of Columbia County. This covenant can be waived or modified only by recording a written instrument certifying approval of the Director of the Department of Land Services or the Board of Commissioners of Columbia County. Such approval or recording is not required for sales that meet the conditions of Provision 3 above nor for modifications which remove that provision.
- 5. This covenant shall not become effective unless and until Columbia County approves the vacation of Elder Street as petitioned by the adjacent property owners.
- 6. This covenant is solely for the purpose of insuring that no property ownership will be left without frontage on a public right-of-way due to the vacation of Elder Street.

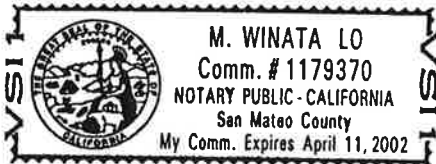
Dated this 17th day of April, 2000

Monika Nelson
Monika Nelson
by J. Richard Recht, President
Columbia Hills Development Co.
Attorney-in-Fact

ACKNOWLEDGMENT

STATE OF CALIFORNIA
County of San Mateo

Before me this 17th day of April, 2000, J. Richard Recht personally known to me, appeared before me and acknowledged the foregoing instrument.



M. Winata Lo
Notary Public for J. Richard Recht
My commission expires April 11, 2002

IRREVOCABLY BOUND PARCEL CREATION COVENANT

Donald Gravestock is the owner of Lots 2 through 4, 15 and 16, Block 17, in the Hillcrest Subdivision, Part 1, Columbia County. He hereby irrevocably binds the lots together as defined herein.

1. Said lots are hereby bound together and, except as stated below, are hereinafter to be treated as bound together in a parcel;

2. No owner, its heirs, successors or assigns shall, except as stated below, sell or otherwise hypothecate title of any lot separately from the remaining lots, though lot line adjustments are permitted, but only as approved by Columbia County;

3. Notwithstanding the above, one or more lots may be sold, and thus separated from the parcel, if and only if both (1) the remaining lot or lots subject to this covenant retain 50 feet of frontage on a public right-of-way and (2) the lot or lots being sold either have 50 feet of frontage on a public right-of-way or are bound together in a irrevocable covenant similar to this covenant with another group which has such frontage.

4. This covenant runs with the land for the benefit of Columbia County. This covenant can be waived or modified only by recording a written instrument certifying approval of the Director of the Department of Land Services or the Board of Commissioners of Columbia County. Such approval or recording is not required for sales that meet the conditions of Provision 3 above nor for modifications which remove that provision.

5. This covenant shall not become effective unless and until Columbia County approves the vacation of Elder Street as petitioned by the adjacent property owners.

6. This covenant is solely for the purpose of insuring that no property ownership will be left without frontage on a public right-of-way due to the vacation of Elder Street.

Dated this 17th day of April, 2000

Donald Gravestock

Donald Gravestock
by J. Richard Recht, President
Columbia Hills Development Co.
Attorney-in-Fact

ACKNOWLEDGMENT

STATE OF CALIFORNIA

County of San Mateo

Before me this 17th day of April, 2000, J. Richard Recht personally known to me, appeared before me and acknowledged the foregoing instrument.

Marta B.

Notary Public for J. Richard Recht
My commission expires April 11, 2002



EXHIBIT C



Columbia County Road Department
P.O. Box 366, 1004 Oregon Street, St. Helens, OR 97051

Director of Public Works

Phone (503) 397-5090
Fax 397-7215

TO: Columbia County Board of Commissioners

FROM: Dave Hill

A handwritten signature in black ink, appearing to be 'DH' with a horizontal line extending to the right.

DATE: May 17, 00

REF: Proposed Vacation, Elder Street, Hillcrest Subdivision

RECOMMENDATION: Deny Vacation of Elder Street.

DISCUSSION:

Columbia Hills Development Company has petitioned the Board of County Commissioners to vacate a portion of Elder Street in the Hillcrest Subdivision. A copy of the petition and a map of the area is attached.

The intent of the property owners through this vacation is to be able to join enough lots together and to acquire enough property to meet the minimum acreage requirements to place a residence on the properties. The properties, with the exception of the Simons properties, is vacant, and is forested or partially cleared. The right-of-way to be vacated, is mostly on a forested side slope (ranging from 40% to 100% slope).

I agree with the petitioners that the street has never been used, and is unsuitable for access to the abutting lots, as a public road, because of steep terrain. However, as some of the tax lots are otherwise landlocked, even though a public road cannot be constructed to access them, Elder Street does provide a public right-of-way that allows owners access by foot, horse, or other means.

Land Development Services and the Road Department prefer to see up front how the vacation of a public right-of-way will not landlock parcels. Land Development Services has stated that they cannot support the road vacation unless the lots are consolidated in a manner that will insure that no parcels will lose public road frontage. The petitioners have proposed an irrevocable bound parcel agreement that combines the parcels which somewhat satisfies this concern however the bound parcels do not meet the minimum lot sizes necessary to obtain a building permit. The development company is currently trying to sell a parcel of property in the area which would violate the bound parcel agreement. I also have some other concerns as follows:

1. The power of attorney used to sign the "Irrevocably Bound Parcel Creation Covenant" expired, therefore the agreements are probably not valid. Without the Bound Parcel Agreement there is a definite possibility that individual parcels could be sold and would be

landlocked if the road vacation was approved. ORS Statutes require that we cannot landlock a parcel without the owner's consent. We apparently have the consent through the petition and the "power of attorney" since the petition was signed prior to the expiration of the power of attorney, however it is still not a good practice to allow the potential to landlock parcels of property. Therefore, it is very important to have "legal" bound parcel agreements in this situation.

2. As mentioned above, the proposed "Irrevocably Bound Creation Covenant", does not match with the current proposed sale of properties, which violates the bound parcel agreement by splitting parcels.
3. I would like to see the access location for the bound parcels to determine if the access is feasible. Just because the parcel has access to a public right-of-way, does not mean that it is feasible or practical to construct an access to the property. This is to protect current and future owners of these properties.
4. The proposed bound parcels do not meet the buildable lot size requirement of 2.3 acres, and therefore because it will be necessary to reconfigure the lots to make a buildable lot, it is unknown how these lots will be configured and accessed in the future.

If the road was to be vacated, the petitioners have requested the property to be vested with certain parcels. As we have discussed before, I believe it would be best for the County not to designate where the property would be vested but rather allow it to be split down the centerline and then the adjacent property owners can then dedicate the property on their own. (This would be only if the Board of Commissioners authorized the road vacation.)

CONCLUSION: Specifically because the power of attorney had expired for the "Irrevocable Bound Parcel Creation Covenants" and because of the other uncertainties associated with this road vacation request, I do not believe it is in the public interest to vacate this road and recommend denial of this petition.

David Hill
Public Works Director

EXHIBIT D

COLUMBIA COUNTY

JUN 26 2000

COUNTY COUNSEL

June 22, 2000

Ms. Cynthia Zemaitis
Office of County Counsel
318 Courthouse Street
St. Helens, OR 97051

Dear Ms. Zemaitis:

Thank you for your letter of June 1, 2000 regarding the petitioned vacation of Elder Street and the inclusion of Dave Hill's letter recommending denial of the petition. The following are some clarifications and information that we request be considered by the Board at its hearing.

Portion of street to be vacated

Your letter notes that Mr. Hill has "indicated his preference is not to vacate the portion of Elder between Lot 32, Block 16 and Lot 2, Block 17. While we feel that a "private driveway" maintained by a single homeowner is more appropriate on an easement than a public right-of-way, given the implication that the petition will be denied without this change, the petitioners hereby amend the petition to reduce the portion of Elder vacated by this portion. If the Board does approve our petition, we expect that approval would be contingent upon our submitting any additional document required by the County concerning this change.

Powers-of-Attorney

Mr. Hill notes that the powers-of-attorney of which he is aware have expired. He and the Board should be aware that new powers were signed, prior to the expiration of the old ones, and recorded with the County Clerk in March of this year. (Copies are enclosed.) Please let us know if this does not resolve Mr. Hill's points related to the legitimacy of any papers submitted by the petitioners.

Lots left landlocked

It seems clear to the petitioners that no lot could be left landlocked, i.e. without access from a public right-of-way. This is guaranteed by the covenants binding lots together. If the County believes a lot could be left landlocked despite these covenants, we ask that we be informed how this could happen.

In connection with these covenants, Mr. Hill twice states that the coordinator for the cooperating owners is endeavoring to sell a parcel that "violates" the bound parcel agreement. The covenants, per the County's request, bind each lot formerly on the road to be vacated with lots with frontage on a public right-of-way. There is a tentative agreement with a purchaser that would result in further aggregation of lots to achieve the minimum 2.3 acre parcel required by the County's zoning. . We believe the proposed sale would not "violate" the parcel agreements and, if after consideration Mr. Hill still believes this would "violate" the agreements, we would like to know specifically what Mr. Hill means by his statement.

Parcel area and feasible access

Finally, and most critically, Mr. Hill is concerned that the parcel aggregations submitted by petitioners are not 2.3 acres in area and it has not been determined that each aggregation has feasible access. These are the specific conditions required in conjunction with application for a building permit and its accompanying access permit. However, petitioners are not applying for an access permit or a building permit. We are not proposing, nor is the County approving, home or driveway locations. This is only a petition for vacation of an unusable right-of-way, which is necessary if homesites per current zoning are to be ten times as large as in the approved plat.

The petitioners have reasons for not irrevocably binding lots together in fixed configurations unnecessarily. One reason is that if the County chose to revise the zoning, changing the minimize size of parcel, the result of having irrevocably bound lots could be disastrous.

This is no idle concern, given the changes made by the County in the last five years. From 1984 to 1994 the County would have issued a permit for a parcel of one acre. In 1996 the County made an interpretation that 2.3 acres, including adjacent road right-of-way was the minimum parcel area. In 1998 this was changed to 2.3 acres not including adjacent road right-of-way. For example, five parcels of 2.3 acres with road area included would have been reduced to two homesites for which the County would issue a building permit after the change eliminated the inclusion of road area.

Other factors also suggest that the petitioners should not forego flexibility in how they meet the zoning regulations, whatever the minimum parcel size. Most immediately, there is a possibility that Mr. and Mrs. Birtchet, the proposed purchasers of a parcel which requires the vacation of Elder Road, given the six month delay will not proceed. More generally, the cooperating owners have always called attention to the fact that they do not own all the lots. Many homesite layouts formerly infeasible when there were more non-cooperating owners have become appropriate as additional lots were purchased. Some of the lots still owned by non-cooperating owners will eventually be purchased; the owners of others will not sell. The layouts of developable parcels will be affected by which lots become available and which do not. Future County decisions regarding acceptable access points, acceptable home locations and septic approvals will also affect parcel layouts. Irrevocably binding lots into fixed 3.2 acres parcels prematurely is not in the petitioner's interest; it is also not in the public interest.

Summarizing petitioners' perspective on this issue, zoning, knowledge of development constraints and land ownerships can and will change. An irrevocable recorded covenant cannot change and therefore should not be made until the other factors are as fully resolved as possible.

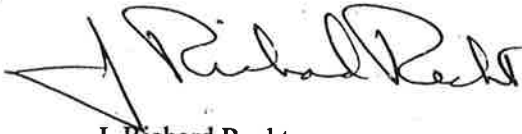
Is vacation in the public interest?

The Board will be judging whether the vacation is in the public interest. The petitioners believe the vacation is in the public interest because, as Mr. Hill has determined, the right-of-way cannot be used as a road and homesite areas per current zoning do not fit without the vacation. The only potential negative consequence, lack of access, is mitigated by the County's requirement that lots losing access be bound to lots with access. The other concerns mentioned by Mr. Hill, the land area of the lots bound together and the feasibility of access to them, are not caused by the vacation; they are an existing situation, the continued consequence of the original plat. In fact, binding the lots adjacent to the vacated right-of-way to others will guarantee them continued access to developed or developable roads, thus improving the situation from the perspective of the public interest.

Beginning in 1978 the County encouraged the vacation of unnecessary/infeasible rights-of-way in the Hillcrest Subdivision. Petitioners' request is consistent with this process and a necessary step towards, though not the completion of, aggregation of small lots into larger homesites. We therefore respectfully request that the County impose as a condition of vacation only requirements that mitigate the effects of the vacation action, e.g. the recorded bound parcel agreements preventing landlocked parcels.

If, after consideration of the above information, the Board concludes that the vacation is not in the public interest, we request that it be explicit in its findings as to the negative consequences that would be caused by the vacation, as these are likely to apply to most road vacations in the Hillcrest Subdivision.

Sincerely,



J. Richard Recht
for Donald Gravestock,
William and Lesley Hunt,
Monika Nelson,
Columbia Hills Development Co.
and himself



Terri Simons



IRREVOCABLE POWER OF ATTORNEY
AND PROXY

The undersigned, Hillcrest Investments, Ltd., an Oregon limited partnership, Scappoose Venture (formerly Scappoose Partners, Ltd. and Scappoose Partners), J. Richard Recht, Karen S. Recht, Donald Gravestock, Chris Nelson, William Hunt, Lesley Hunt, Monika Z. Nelson (formerly Monika Zimmermann), and Emily Nelson, all holders of interests in Real Property in Columbia County, Oregon known in the area as The Hillcrest Subdivision, Parts 1, 2, 3 and 4, (subsequently called "Hillcrest" or), (a) in consideration of our mutual agreement to act in concert to preserve and enhance the value of the Hillcrest properties and recognizing that without concerted action, such preservation may not be possible, (b) recognizing, further, that Columbia Hills Development Company, an Oregon corporation, also holds ownership interests in Hillcrest, (c) having entered into a business relationship with Columbia Hills Development Company whereby that firm has invested efforts and funds to bring about development in Hillcrest, and (d) having earlier appointed Columbia Hills Development Company to act as our attorney-in-fact and agent in an instrument filed as 94-05386 in the records of Columbia County, an appointment that will soon expire, hereby agree with each other to and do irrevocably appoint Columbia Hills Development Company to act as our attorney-in-fact and agent (subsequently called "Agent") in each of our names to manage, conduct, encumber and otherwise deal with all and any part of each of our interests now held and/or hereafter acquired in that certain Real Property in Columbia County, Oregon known as Hillcrest (subsequently called the Real Property) and to conduct any business of ours connected therewith, as our Agent may deem best as fully as we could or might do if personally present, including, without limiting the generality of the foregoing, all of the following:

1. To enter into any declaration establishing, amending or replacing covenants, conditions and restrictions or supplemental covenants, conditions and restrictions against the Real Property; to grant and accept easements in connection with the Real Property; to enter into or establish and participate in any property or homeowners association in connection with the Real Property and any other property my Agent deems appropriate to include therewith; to bind portions of the Real Property together by irrevocable mutual grants or covenants; to make any amendments to any declaration; to create, agree to eliminate, modify, exercise

and amend any special declarant rights; and otherwise to deal with the said Real Property as though it were its own property.

2. To execute, sign, seal, acknowledge and endorse such declarations, easements, agreements, assignments, conveyances and other instruments necessary or desirable to effect the placement or replacement of covenants, conditions and restrictions on the Real Property or any portion thereof and to transfer any interest we may have in any common property now or hereafter defined in any declaration to any association of property owners or the public.

3. To record and file any instruments necessary or desirable to effect the placement or replacement of any covenants, conditions or restrictions on the Real Property or the transfer of any common property now or hereafter designated to any association of property owners or the public.

4. To vote each of our interests in any association in which all or any of us become members by virtue of owning any of the Real Property. This right shall be deemed a proxy from each of us and shall be irrevocable for the duration of this Irrevocable Power of Attorney and Proxy.

5. To obtain or renew insurance policies or insurance contracts of any kind and to pay the premiums therefor.

6. To execute any petition for and agree to the creation of a road, water, sewage, lighting or other utility or improvement district, to petition for the improvement of any road or other utility, to agree to any assessments on such terms and under such conditions as our Agent may deem appropriate, to approve creation of any district or the making of any improvement, and otherwise to act as though the Real Property were owned by our Agent.

7. To do any act and execute in our name all instruments deemed necessary to carry out and perform all of the powers granted herein and to delegate any or all of the foregoing powers to any person or persons whom our Agent shall select.

8. To grant, bargain, sell, convey and exchange on such terms as to our Agent shall deem appropriate all or any portion of the Real Property now owned and/or hereafter acquired by us or any one of us.

This Irrevocable Power of Attorney and Proxy shall terminate at midnight on the 31st day of December, 2019.

The authorized signature of our Agent, Columbia Hills Development Company, for the purpose of this Power of Attorney, is set forth below:

COLUMBIA HILLS DEVELOPMENT COMPANY,
an Oregon corporation

By: 
J. Richard Recht, President

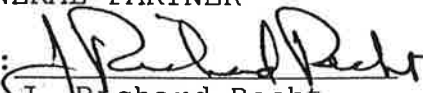
We hereby give and grant unto our said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully to all intents and purposes as we or each of us might or could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that said attorney or said attorney's substitute or substitutes shall lawfully do or cause to be done by virtue of these presents.

In construing this instrument and where the context so requires, the singular includes the plural. All or any of the signature and notary pages of this document may be executed in multiple copies. Such signature and notary pages shall be recorded with the one original of the document with the same effect as if each person signed and had such signature duly acknowledged on the original.

IN WITNESS WHEREOF, we have hereunto set our hands this 22nd day of March, ~~1999~~ 2000.

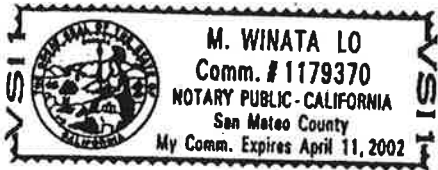
HILLCREST INVESTMENTS, LTD.,
an Oregon limited partnership

BY: COLUMBIA HILLS DEVELOPMENT
COMPANY
an Oregon corporation
GENERAL PARTNER

By: 
J. Richard Recht
President

STATE OF California)
) ss.
County of San Mateo)

The foregoing instrument was acknowledged before me this 22nd day of March ²⁰⁰⁰~~1999~~, by J. RICHARD RECHT, the President of COLUMBIA HILLS DEVELOPMENT COMPANY, an Oregon corporation, the General Partner of HILLCREST INVESTMENTS, LTD., an Oregon limited partnership.



M. Winata Lo
Notary Public for California,
County of San Mateo
My Commission Expires: April 11, 2002

J. Richard Recht
J. Richard Recht

STATE OF California)
) ss.
County of San Mateo)

Personally appeared the above-named J. RICHARD RECHT and acknowledged the foregoing instrument to be his voluntary act and deed this 22nd day of March ~~1999~~. 2000



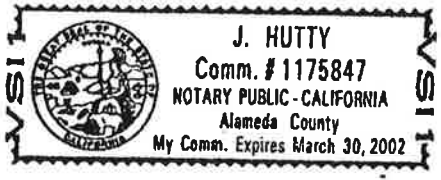
M. Winata Lo
Notary Public for California,
County of San Mateo
My Commission Expires: April 11, 2002

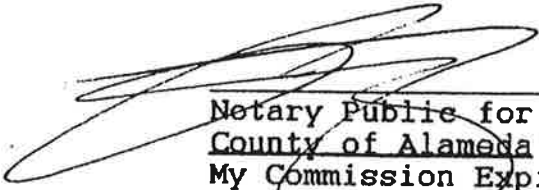


Donald Gravestock

STATE OF California)
) ss.
County of Alameda)

Personally appeared the above-named DONALD GRAVESTOCK and acknowledged the foregoing instrument to be his voluntary act and deed this 23rd day of Dec. 1999.





Notary Public for California,
County of Alameda
My Commission Expires: 3-30-02

William Hunt
William Hunt

STATE OF California)
) ss.
County of Contra Costa)

Personally appeared the above-named WILLIAM HUNT and acknowledged the foregoing instrument to be his voluntary act and deed this 24 day of Dec 1999.



Brad G. Magleby
Notary Public for California
County of Contra Costa
My Commission Expires: Nov. 15, 2003

Lesley Hunt
Lesley Hunt

STATE OF California)
) ss.
County of Contra Costa)

Personally appeared the above-named LESLEY HUNT and acknowledged the foregoing instrument to be her voluntary act and deed this 24 day of Dec 1999.



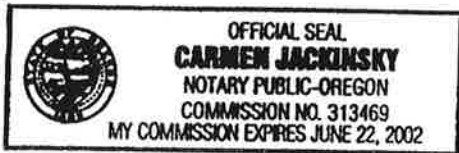
Brad G. Magleby
Notary Public for California
County of Contra Costa
My Commission Expires: Nov. 15, 2003

Chris Nelson

Chris Nelson, both individually,
and dba Scappoose Venture
formerly dba Scappoose Partners,
Ltd. and Scappoose Partners *Also
known as Arthur C. Nelson

STATE OF Oregon ~~Georgia~~)
County of Washington ss.

Personally appeared the above-named CHRIS NELSON
a/k/a Arthur C. Nelson (both individually and dba Scappoose
Venture, formerly dba Scappoose Partners, Ltd. and Scappoose
Partners) and acknowledged the foregoing instrument to be his
voluntary act and deed this 6th day of December, 1999.



Carmen Jackinsky
Notary Public for OREGON
My Commission Expires: 6/22/02

Monika Z. Nelson
(formerly Monika Zimmermann)

STATE OF Georgia)
County of _____) ss.

Personally appeared the above-named Monika Z.
Nelson (formerly Monika Zimmermann) and acknowledged the
foregoing instrument to be her voluntary act and deed this
_____ day of _____ 1999.

Notary Public for _____
My Commission Expires: _____

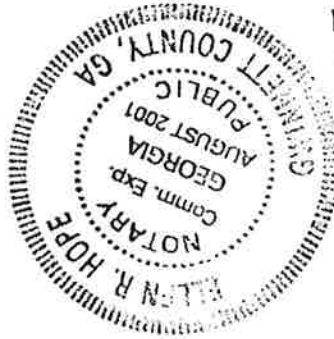
C. Emily Nelson
Emily Nelson

STATE OF Georgia)
County of DeKalb) ss.

Personally appeared the above-named EMILY NELSON and acknowledged the foregoing instrument to be his voluntary act and deed this 3 day of January 1999.

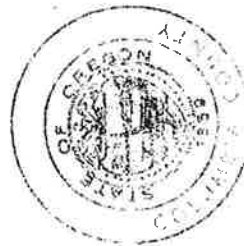
Ellen R. Hope
Notary Public for _____
My Commission Expires: _____

Notary Public, Gwinnett County, Georgia
My Commission Expires August 6, 2001.



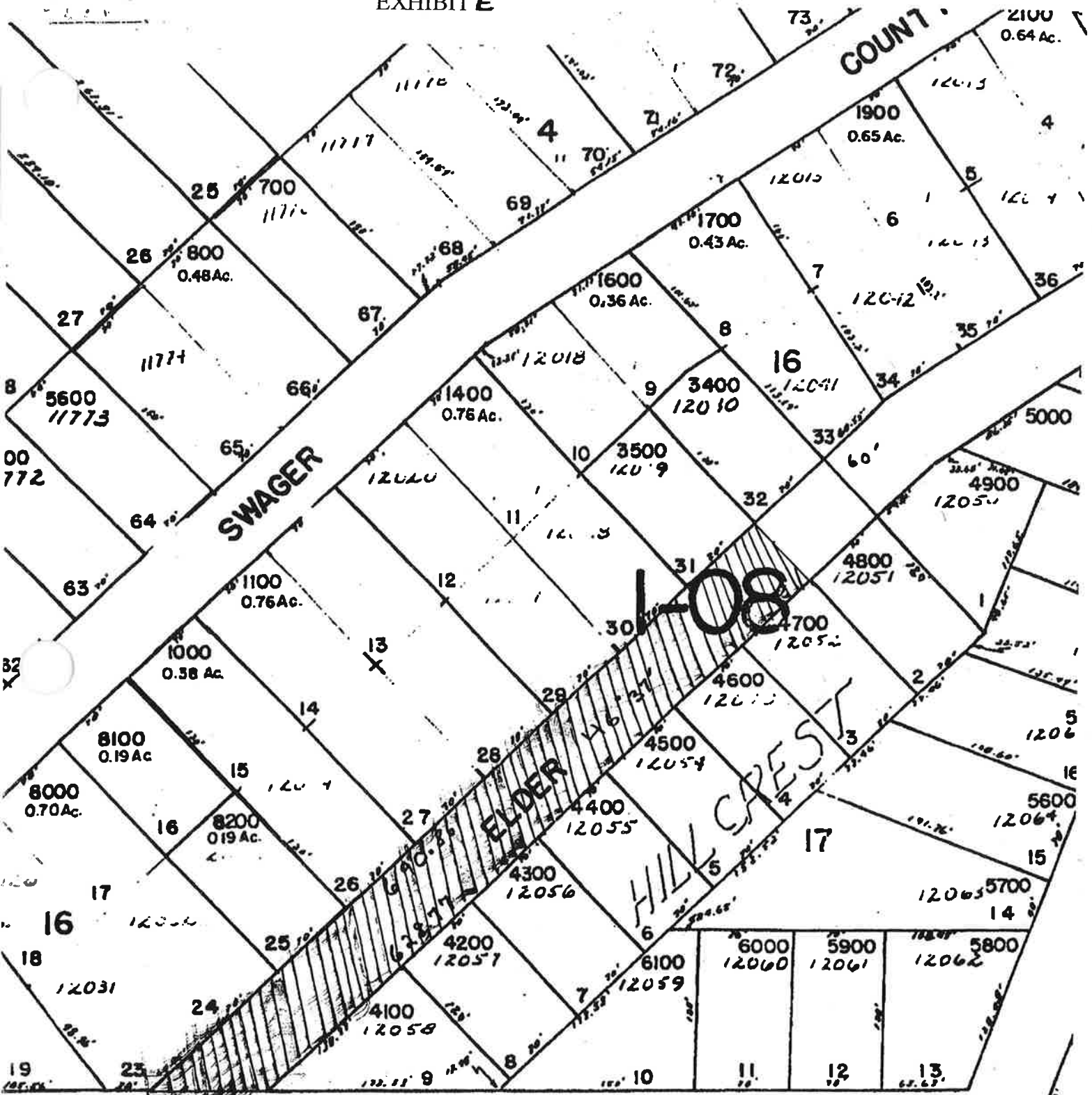
I hereby certify that the within instrument was received for record and recorded in the County of Columbia, State of Oregon.

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ELIZABETH HUSER, County Clerk
By: G. Long Deputy
Receipt # 22183 of Pages 10
FEES \$ 11.00

EXHIBIT E



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10600 12169	10700 12170

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AVE

WAYSIDE