

February 22, 2022

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VIA EMAIL

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RE: Roll Tide Properties Corp. / Deer Meadows Subdivision Appeal 21-061 AP
(Appeal of File No. 21-014 SUB/TREE)

Dear Mayor Pulliam and Councilors:

This firm represents Roll Tide Properties Corp., the Applicant in the above-referenced file. This letter sets forth the Applicant's response to the Council Staff Report for the February 22, 2021 Council hearing, which recommends denial of the Applicant's appeal and by extension, denial of the Applicant's subdivision application. The Applicant's specific objections are set forth below. For the reasons below, the Council should grant the Applicant's appeal and reverse the Planning Commission's decision.

Please note that appended to this letter is a revised subdivision concept which demonstrates how all clear and objective criteria are satisfied, including a revision to ensure that all lots have at least 20 feet of frontage to a public right-of-way. **Exhibit 1**. ORS 197.522(3) provides as follows:

“If an application is inconsistent with the comprehensive plan and applicable land use regulations, the local government, prior to making a final decision on the application, shall allow the applicant to offer an amendment or to propose conditions of approval that would make the application consistent with the plan and applicable regulations.”

As the revisions shown in **Exhibit 1** resolve any inconsistencies with applicable clear and objective standards and criteria, the Applicant requests that Council impose a condition of approval requiring the final subdivision plat to be consistent with **Exhibit 1** to this letter.

1. The Application is a needed housing application and the City must treat it as such.

A. The City may apply only clear and objective standards, conditions, and procedures to the Application.

The Applicant has submitted a proposal for a subdivision located at 40808 and 41010 Highway 26 in Sandy, Oregon, in an area zoned for residential use. ORS 197.307(4) provides that local governments may adopt and apply only clear and objective standards, conditions, and procedures regulating the development of housing, including needed housing, and precludes governments from unreasonably increasing the cost of housing or causing unreasonable delay. ORS 227.173(2) provides that “when an ordinance establishing approval standards is required under ORS 197.307 to provide only clear and objective standards, the standards must be clear and objective on the face of the ordinance.”

Land use regulations are not clear and objective if they impose “subjective, value-laden analyses that are designed to balance or mitigate impacts of the development on (1) the property to be developed or (2) the adjoining properties or community.” *Rogue Valley Assoc. of Realtors v. City of Ashland*, 35 Or LUBA 139, 158 (1998), *aff’d*, 158 Or App 1, 970 P2d 685, *rev den*, 328 Or 594 (1999). And, regardless of whether a given regulation is “designed to balance or mitigate impacts,” it must also be *both* clear *and* objective. *Id.* at 155–56 (“Dictionary definitions of ‘clear’ and ‘objective’ suggest that the kinds of standards frequently found in land use regulations lack the certainty of application required to qualify as ‘clear’ or ‘objective.’”). More fundamentally, standards that are susceptible to multiple interpretations are not clear and objective. *Parkview Terrace Development, LLC v. City of Grants Pass*, 70 Or LUBA 37, 52–53 (2014); *see also Walter v. City of Eugene*, 73 Or LUBA 356, 360–64 (2016) (citing a standard’s “multiple possible interpretations” as a basis to find it not clear and objective).

ORS 197.522(2) and ORS 197.522(4) require local governments to approve needed housing applications that are consistent with, or can be made consistent with through reasonable conditions of approval, the comprehensive plan and applicable land use regulations, and to deny applications that are not. Relatedly, ORS 197.522(3),¹ allows an applicant to amend its application or to propose reasonable conditions to make its application consistent with the comprehensive plan and applicable land use regulations. What this means is that, if the Applicant proposes a condition of approval that would satisfy a given approval criterion that the Application does not otherwise meet, the Council must impose the proposed condition of approval in lieu of denying the Application.

Many of the reasons set forth in the Staff Report that form the basis of Staff’s recommendation of denial do not stand up to Oregon’s needed housing statutes. Many standards in the Sandy Development Code (“SDC”) are not clear and objective on their face or even when interpreted,

¹ “If an application is inconsistent with the comprehensive plan and applicable land use regulations, the local government, prior to making a final decision on the application, shall allow the applicant to offer an amendment or to propose conditions of approval that would make the application consistent with the plan and applicable regulations.”

and as such, cannot be applied to the Application under Oregon's needed housing rules; examples of these standards are highlighted in the Applicant's September 24, 2021 letter to the Hearings Officer. Further, the City does not offer a clear and objective approval process for subdivisions under ORS 197.307(6). And, the Council cannot deny an application that is consistent with the comprehensive plan and applicable land use applications and/or that can be made consistent by the imposition of reasonable conditions of approval. ORS 197.522(2)-(4). Finally, under ORS 197.522(3), the Council must allow the Applicant to amend the Application or to propose reasonable conditions that will cause the Application to meet all relevant approval criteria.

B. Staff cannot require dedication of parkland because the Development Code's procedures for such requirement are not clear and objective.

Contrary to Staff's assertions, the regulatory scheme created for park dedication is not clear and objective, and therefore is not applicable under ORS 197.307(4). SDC 17.86.10 includes a requirement that all residential development dedicate a certain amount of parkland based on the formula in SDC 17.86.10.B. Alternatively, an applicant may pay a fee-in-lieu for required parkland under SDC 17.86.40. While Staff contends that the formula for parkland dedication is clear and objective, that is not all that ORS 197.307(4) requires. It also requires that local governments "[...] apply only clear and objective [...] procedures regulating the development of housing," and that the "standards, conditions and procedures" "may not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay." (Emphasis added.)

The SDC is without any clear and objective guideposts as to whether a developer must provide a fee-in-lieu payment or parkland dedication, and neither decision can be made without the inherent consideration of the other option because SDC Chapter 17.86 provides for both. Thus, the decision maker must exercise discretion in deciding to require one or the other, and it is the required exercise of discretion that makes the parkland dedication requirement inapplicable under ORS 197.307(4). Consequently, Staff is unable to explain how its recommendation that parkland be dedicated next to Deer Pointe Park was based on a clear and objective procedure.

Relatedly, the parkland dedication requirement also violates ORS 197.307(4) because it certainly would have the effect of "discouraging needed housing through unreasonable cost and delay." This is due to Staff's and the Sandy Parks and Trails Advisory Board's (the "Board") attempt to apply the Parks Master Plan to a limited land use decision to which it is inapplicable as a matter of law.² As a practical matter, Staff and the Board's attempt to extract a park dedication in a specific area causes a number of problems. First, it represents substantial increased costs to the project, which will have the effect of increasing the costs of resulting housing. Second, Staff has not explained how a parkland dedication at the west end of the site could result in a lot arrangement that would satisfy SDC 17.86.20; the solution to that problem would require a complete re-design of the subdivision, further adding to additional costs and delay.

² As explained in more detail below, the Parks Master Plan is not incorporated into the City's land use regulations and is therefore inapplicable under ORS 197.195.

Finally, it is irrelevant that the proposed lots are not arranged as required by SDC 17.86.20 because there is no clear and objective method by which an applicant can predict whether park land dedication or a fee-in-lieu will be required.

2. The City may not require extension of Dubarko Road through the Subject Property nor require a dedication of parkland.

A. The Transportation System Plan and Parks Master Plan are not adequately incorporated into the land use regulations, in violation of ORS 197.195.

The Applicant has submitted an application for a subdivision, which is a limited land use decision as defined by ORS 197.015(12). Under ORS 197.195(1), cities are required to incorporate all comprehensive plan standards applicable to limited land use decisions into their land use regulations. This requirement extends to standards set forth in the transportation system plan (“TSP”), parks master plan, and other elements of a city’s comprehensive plan as well. *See Oster v. City of Silverton*, LUBA No. 2018-103, at pp. 9-10 (Or LUBA May 7, 2019). Whether such a standard has been properly incorporated turns on whether the land use regulations that are said to incorporate such standards “make clear what *specific policies or standards* in the TSP [or other identified plan] apply to a limited land use decision as approval criteria.” *Id.* at p. 12. “ORS 197.195(1) contemplates more than a broad injunction to comply with unspecified portions of the comprehensive plan [or other identified plan].” *Paterson v. City of Bend*, LUBA No. 2004-155, at p. 6 (Or. LUBA 2005). Rather, “[i]n order to ‘incorporate’ a comprehensive plan [or other plan] standard into a local government’s land use regulations within the meaning of ORS 197.195(1), the local government must *at least* amend its land use regulations to make clear what specific policies or other provisions of the comprehensive plan [or other plan] apply to a limited land use decision as approval criteria.” *Id.* at pp. 6-7.

The City of Sandy’s approval criteria governing review of a tentative plat for a subdivision fails to properly incorporate the Sandy Comprehensive Plan or TSP. Specifically, SDC 17.100.60(E)(3) requires a showing that the “proposed street pattern is connected and consistent with the Comprehensive Plan or official street plan for the City of Sandy.” This is not sufficient to meet the incorporation requirements of ORS 197.195(1) because it merely refers generally to the Comprehensive Plan and the City’s official street plan. *See Oster* at p. 12. It does not “make clear what specific policies, action items, or performance standards contained in the TSP apply as approval criteria for a limited land use decision.” *Id.*

Staff also recommends denial because the Application does not propose to dedicate parkland adjacent to Deer Point Park, as that park is designated on the 1997 Parks Master Plan. Consequently, according to Staff, the Application violates SDC 17.86.10 and/or .40. Staff’s conclusions are incorrect.

Staff’s recommendation derives from and principally relies on the City’s Parks Master Plan. The Parks Master Plan is not applicable to the Application because, as explained above, the

Application is a limited land use decision. Limited land use decisions are not subject to comprehensive plans or their elements unless such provisions are expressly incorporated into a city's land use regulations. ORS 197.195(1). The Parks Master Plan is not incorporated into the Sandy Development Code, the City's land use regulations; nor does Staff's recommendation assert that it is. Therefore, the Parks Master Plan may not be a basis for requiring dedication of parkland adjacent to Deer Point Park.

Indeed, all references to the City's TSP, Parks Master Plan, street plans, and comprehensive plan found in Chapter 17.84 and Chapter 17.100 of the Sandy Development Code are improperly incorporated because none of them specify which policies and standards actually apply. Thus, these requirements cannot be applied to the Application.

B. In order to require an extension of Dubarko Road and dedication of parkland, the City must demonstrate that those requirements have an essential nexus and are roughly proportional to the project's impacts on those facilities.

The Staff Report suggests that the Applicant should be required to extend Dubarko Road to Highway 26 and to dedicate certain land as parkland to expand Deer Pointe Park. Such dedications are subject to the Takings Clause of the Fifth Amendment of the U.S. Constitution.

Requiring a landowner to convey its private property rights in exchange for development approval is a takings (unconstitutional condition) unless there is an "essential nexus" between the condition and the government interest. *Nollan v. California Coastal Com.*, 483 U.S. 825, 836-37 (1987). Additionally, to withstand a legal challenge, the condition must be "roughly proportional" to the expected impacts caused by the proposed development. *Dolan v. City of Tigard*, 512 U.S. 374, 391-395 (1994). The *Nollan* and *Dolan* takings analysis must be done on a case-by-case basis, and the City carries the burden of demonstrating in the first instance that any exaction has a nexus to and is roughly proportional to the nature and degree of the projected impacts of the project. The City is required to make an "individualized determination" and "some effort to quantify" evidence in the findings to support a conclusion of rough proportionality. *Dolan*, 512 U.S. at 391. The *Nollan/Dolan* analysis applies to requirements to pay money or make public improvements in addition to requirements to dedicate property. *Koontz v. St. Johns River Water Management District*, 570 U.S. 595 (2013).

There is no demonstration in the record that the requirements for the Dubarko Road extension and parkland dedication have a nexus to any governmental interest other than the City's general policies showing the street extension and parkland dedications. However, such policies do not constitute the required nexus; rather, a local government must show that "the proposed project's impacts, either alone or in combination with other construction, are ones that 'substantially impede' the interest identified by the government." *Hill v. City of Portland*, 293 Or App 283, 290-291 (2018).

Despite *Hill's* requirement that the required dedications be tied to an actual potential impact from the proposed development, the Staff Report points to no evidence that the proposed development will lead to a capacity problem in the City's transportation system or parks system.

Staff has made no attempt to identify the essential nexus between the impact of the Project on the City's park system and the dedication requirement, and no attempt to explain how the requirement is roughly proportional to the project's impacts. Relying on a broadly-applicable dedication formula is insufficient because such a determination must be individualized. *Dolan*, 512 U.S. at 391. What is more, simply imposing the same level of exaction on all housing projects does not prove there actually is a nexus between that housing as the parks dedication requirement itself. *Hill*, 293 Or. App. at 290-291.

Finally, there is nothing in the record or the Staff Report even approaching a showing that the Dubarko Road extension and parkland dedication are "roughly proportional" to the impacts of the proposed subdivision.

In sum, the sole questions in the constitutional analysis in this case are as follows. First, do the road extension and parkland dedication have an "essential nexus" to the proposed development? Second, if there is a nexus, are the requirements to extend Dubarko Road and to dedicate parkland "roughly proportional" to the impacts of the proposed development? The City has the burden of proof to answer these two questions, but has utterly failed to do so.

C. SDC 17.100.100.G.2 prohibits the City from require an extension of Dubarko Road through the site.

SDC 17.100.100 governs street requirements with subdivisions. SDC 17.100.100.G establishes exemptions from otherwise-applicable street requirements. Subsection G.2 provides:

"Standards for street connections do not apply to freeways and other highways with full access control."

As explained in ODOT's September 1, 2021 letter (which is listed as Exhibit N to the Staff Report), Highway 26 is access controlled. Therefore, the City unambiguously lacks the authority to require a connection of Dubarko Road to Highway 26.

D. OAR 660-012-0045 does not apply to the proposed development.

Staff and the Planning Commission cites to OAR 660-012-0045 as a basis for denial. This is improper for at least two reasons. For one, this administrative rule is not an approval criterion and as such cannot be the basis for denial of the Application. Moreover, it establishes obligations for a local government's plan and land use regulations; it does not apply directly to review of subdivision application. Even if it did, it establishes obligations that the *City* must meet, not the Applicant. As such, it cannot be used as a basis to deny the Application.

3. Planning Staff's recommendation for denial is inconsistent with applicable law.

The Applicant addresses each of the twelve bases for Staff's recommendation for denial, below.

1) The subdivision proposal does not meet subdivision Criteria 17.100.60 (E)(1), (2), (3), (4), (5), and (6).

RESPONSE: Staff's conclusion is incorrect for the following reasons.

- *17.100.60.E.1. "The proposed subdivision is consistent with the density, setback and dimensional standards of the base zoning district, unless modified by a Planned Development approval."*
 - This criterion is not clear and objective as required by ORS 197.307(4) because the phrase "consistent with" is not clear and objective.
 - The Application satisfies the density requirements in the applicable zones.
 - Staff's only basis for finding that setback standards are not met is due to the Applicant's plan not to extend Dubarko Road. Staff's position does not make sense; one cannot plausibly argue that a plan does not meet setback requirements adjacent to a new road that is not proposed.
 - Chapter 82's requirement that homes "face a transit street" is not applicable because, as noted above, the City's Transportation System Plan and Pedestrian Mater Plans are not incorporated into the City's Land Use Regulations. ORS 197.195.
 - Pursuant to ORS 197.522(3), if the transit street orientation requirement in SDC 17.82.20.A did apply, it could be met with the following condition:

"All residential structures on lots abutting Highway 26, Dubarko Road, and Street B shall have their primary entrances oriented to Highway 26, Dubarko Road, or Street B. If a lot abuts two or more of these streets the residential structure shall be oriented to the highest classification of street."
- This condition was apparently proposed in paragraph 42 of the Staff Report. Under ORS 197.522(3), the Council is required to impose this condition in lieu of denial because it would ensure satisfaction the frontage orientation requirement.
- Staff does not argue that any lots do not meet dimensional standards, except with regard to minimum street frontage. This has been corrected as shown on **Exhibit 1**, and is discussed below.

- 17.100.60.E.2. *“The proposed subdivision is consistent with the design standards set forth in this chapter.”*
 - As an initial matter, 17.100.E.2 cannot apply to the application because the phrase “consistent with” is not clear and objective as required by ORS 197.307(4) and similarly, E.2 does not identify which “design standards” apply.
 - Staff’s basis in paragraph 26 of the Staff Report for concluding that subsection E.2 is not met relies upon the following arguments:
 - That the project does not provide a Dubarko Road connection to Highway 26;
 - That the project does not meet the “Street Connectivity Principle”;
 - That the project “does not provide safe and convenient options for cars, bikes, and pedestrians”;
 - That the project “does not create a logical, recognizable pattern of circulation” and “does not provide a future street plan that promotes a logical, connected pattern of streets.”
 - That the project “does not spread traffic over many streets so that key streets such as Langensand Road and Highway 211 are not overburdened”;
 - That the project does not “provide connectivity to other streets within the development and to existing and planned streets outside the development”; and
 - That the applicant did not submit information on block lengths.
 - Staff is incorrect in the above findings for the following reasons:
 - As explained above, the City cannot require an extension of Dubarko Road to Highway 26 because such a requirement is not incorporated into the City’s land use regulations. Moreover, SDC 17.100.100.G.2 provides that “standards for street connections do not apply to freeways and other highways with full access control.” Highway 26 is access controlled by ODOT.

- The “Street Connectivity Principle”³ does not apply because it is not clear and objective as required by ORS 197.307(4).
- The Application already shows the pattern of existing and proposed streets as required by SDC 17.100.100.E. Regardless, subsection E is not clear and objective because it includes the requirement that the plan “promote a logical, connected pattern,” which is not clear and objective as required ORS 197.307(4); nor is the requirement that a plan show new street extensions to adjacent parcels “where development may practically occur.” If the Council concludes that a different future street plan is required, it can require that as a condition of approval pursuant to ORS 197.522(3).
- The requirement in SDC 17.100.100.F that “all streets, alleys and pedestrian walkways shall connect to other streets within the development and to existing and planned streets outside the development and to undeveloped properties that have no future street plan” is not applicable because it is not clear and objective, as required by ORS 197.307(4).
- The requirements that the project “create a logical, recognizable pattern of circulation,” “provide a future street plan that promotes a logical, connected pattern of streets,” and “spread traffic over many streets so that key streets such as Langensand Road and Highway 211 are not overburdened” are not clear and objective.
- The block length standards in SDC 17.100.120 are as follows:

“A. Blocks. Blocks shall have sufficient width to provide for two tiers of lots at appropriate depths. However, exceptions to the block width shall be allowed for blocks that are adjacent to arterial streets or natural features.

³ The “Street Connectivity Principle” is set forth in SDC 17.100.100.A as follows: “A. Street Connectivity Principle. The pattern of streets established through land divisions should be connected to: (a) provide safe and convenient options for cars, bikes and pedestrians; (b) create a logical, recognizable pattern of circulation; and (c) spread traffic over many streets so that key streets (particularly U.S. 26) are not overburdened.” This is not clear and objective because it does not define the following terms: “safe and convenient,” “a logical, recognizable pattern of circulation,” “spread traffic,” “many streets,” and “overburdened.” It is also not clear and objective because it does not explain *how* a “pattern of streets” should be “connected.”

B. Residential Blocks. Blocks fronting local streets shall not exceed 400 feet in length, unless topographic, natural resource, or other similar physical conditions justify longer blocks. [...]

These standards are not clear and objective because the terms “appropriate depths,” and the phrase “unless topographic, natural resource, or other similar physical conditions” are ambiguous.

- Regardless, block length information is available because the subdivision plan sheets are to scale. This is a submittal requirement and does not provide a basis for denial of the Application.
- 17.100.60.E.3. *“The proposed street pattern is connected and consistent with the Comprehensive Plan or official street plan for the City of Sandy.”*
 - As explained above, this criterion is not applicable because the City’s Comprehensive Plan and Transportation System Plan have not been incorporated into the City’s land use regulations as required by ORS 197.195.
 - As explained above, the City has not demonstrated the required essential nexus and rough proportionality required by *Nollan* and *Dolan*.
 - The Applicant is not required to extend Dubarko Road under SDC 17.100.100.G.2 because Highway 26 is access controlled by ODOT.
- 17.100.60.E.4. *“Traffic volumes shall not exceed average daily traffic (ADT) standards for local streets as detailed in Chapter 17.10, Definitions.”*
 - Mike Ard, the Applicant’s transportation engineer, provided an updates to the existing transportation impact study (TIS) dated September 27, 2021 which demonstrates that the Application satisfies this section.
- 17.100.60.E.5. *“Adequate public facilities are available or can be provided to serve the proposed subdivision.”*
 - This standard is not applicable under ORS 197.307(4) because the phrase “adequate public facilities” is ambiguous and subjective.
- 17.100.60.E.6. *“All proposed improvements meet City standards.”*
 - In paragraph 30, Staff identified three reasons why it believed the above criterion is not met. These are (1) the lack of an extension of Dubarko Road to Highway 26, (2) the lack of frontage improvements on Highway 26, and (3) the lack of dedicated parkland. As explained above, these are not legally permissible bases for denial.

- Regardless, the above criterion is not applicable under ORS 197.307(4) because the criterion does not identify which City standards are applicable, and does not explain what is sufficient to “meet” those standards.

2) The applicant’s statement indicating that “Both of the proposed cul-de-sacs have less than 50% of their circumference covered by driveway drops” is not sufficient as there were no dimensional specifications submitted by the applicant to support this statement.

RESPONSE: **Exhibit 2** provides driveway width information for the Fawn Street and Street A cul-de-sacs. This exhibit demonstrates that the sum of the driveway widths for each cul-de-sac is less than 50%. SDC 17.98.100.F is satisfied.

3) The applicant proposes two cul-de-sacs but does not propose a pedestrian connection to streets beyond the cul-de-sacs as required by Section 17.84.30.

RESPONSE: Staff’s conclusion is incorrect for the following reasons.

- SDC 17.84.30(B) is not clear and objective and therefore inapplicable under ORS 197.307(4), for the following reasons:
 - The phrase “safe and convenient pedestrian and bicyclist facilities that strive to minimize travel distance to the extent practicable shall” is ambiguous, subjective, and requires the use of discretion in its application.
 - The definition of “safe and convenient” in subsection (B)(1) does not make the phrase clear and objective because the definition itself relies on ambiguous and subjective terminology, including “reasonably free from hazards,” “interfere with or discourage travel for short trips,” “a direct route of travel between destination” and “meet the travel needs of pedestrians and bicyclists.” None of these phrases are capable of objective measurement.
- SDC 17.84.30 does not require pedestrian pathways to “streets beyond the cul-de-sacs.” Rather, it subjectively requires pedestrian and bicycle facilities “within and between new subdivisions, commercial developments, industrial areas, residential areas, public transit stops, school transit stops, and neighborhood activity centers such as schools and parks.” Staff’s conclusion is incorrect because “streets,” as a general matter, are not on this list.
- SDC 17.84.30(B)(2) does not expressly require pedestrian connections from cul-de-sacs; it only requires pedestrian connections to be a minimum of 15 feet wide where they are proposed.
- Even if this standard were clear and objective, the Council can find that it is met with the public pedestrian easements shown on **Exhibit 1**.

4) The Applicant proposes Lot 12 with less than the minimum 20 feet of street frontage as required by SDC 17.36.30(C).

RESPONSE: The Applicant has made a slight revision in the Application to ensure that this standard is met, as shown in **Exhibit 1**. Lot 12 now has 20.13 feet of street frontage; this standard is met. Pursuant to ORS 197.522(3), the Council should impose a condition of approval requiring at least 20 feet of street frontage as demonstrated on **Exhibit 1** to this letter.

5) The distance between the two nearest edges of the right-of-way between Dubarko Road (an arterial) and Street C (a local street) is less than the minimum 150 ft. dimension in Sections 17.84.50(E)(2) and 17.84.50(J)(3).

RESPONSE: This is not a permissible basis for denial because the 150-foot street spacing requirement does not apply to Street C. Subsection E.2 provides as follows:

“Local streets should typically intersect in ‘T’ configurations rather than four-way intersections to minimize conflicts and discourage through traffic. Adjacent ‘T’ intersections shall maintain a minimum of 150 feet between the nearest edges of the two rights-of-way.”

This standard does not apply here because it applies on its face only to “local streets.” However, Dubarko Street is a major arterial and C Street is designed as a “public access lane” according to the standards in SDC 17.100.160. Therefore, there is no “adjacent ‘T’ intersection” to any local street within the Project.

Subsection J.2 provides as follows:

“As far as practical, arterial streets and collector streets shall be extended in alignment with existing streets by continuation of the street centerline. When staggered street alignments resulting in ‘T’ intersections are unavoidable, they shall leave a minimum of 150 feet between the nearest edges of the two rights-of-way.”

This standard does not apply because there is no “staggered street alignment resulting in a ‘T’ intersection. First, there is no street intersection within 150 feet of the proposed termination of Dubarko Road; only a “public access lane.” Second, there are no proposed “staggered” intersections, as demonstrated in **Exhibit 3**.

6) The minimum 100 feet of tangent alignment required in Section 17.84.50(J)5(a) is not provided at the intersection of Street “B” (a collector) and Dubarko Road (an arterial) or at the intersection of Dubarko Road and Street “B”.

RESPONSE: This standard is not clear and objective because, by using the word “tangent,” it is not clear whether the standard applies only to curved intersections or to roughly straight intersections (as are proposed in the Application). Therefore, it is inapplicable under ORS 197.307(4).

If the Council does find that the above standard applies, pursuant to ORS 197.522(3) the Council should impose the following condition of approval:

“The intersection of Street B and Dubarko Road shall have a minimum of 100 feet of straight (tangent) alignment perpendicular to the intersection.”

It is feasible for the Applicant to satisfy this condition as demonstrated on **Exhibit 4**. Under ORS 197.522(3), the Council is required to impose this condition in lieu of denial because it would ensure satisfaction of SDC 17.84.950.J.5.a.

7) The applicant does not propose to extend Dubarko Road to intersect with Highway 26 consistent with the requirements of the Sandy Development Code or the 2011 Transportation System Plan.

RESPONSE: As explained in detail above, the City cannot require an extension of Dubarko Road to Highway 26 because such a requirement is not incorporated into the City's land use regulations. Moreover, SDC 17.100.100.G.2 provides that “standards for street connections do not apply to freeways and other highways with full access control.” Highway 26 is access controlled by ODOT. Finally, as explained above, the City has not met its burden of demonstrating essential nexus or rough proportionality for this requirement, as required by *Nollan* and *Dolan*.

8) The applicant does not include highway frontage improvements along Highway 26 consistent with the Sandy Development Code.

RESPONSE: Under *Hill v. City of Portland*, 293 Or App 283, 290 (2018), and *Brown v. City of Medford*, 251 Or App 42, 53 (2012), the City cannot, as a matter of constitutional law, require frontage improvements to a road or highway that is not proposed for access. As the City cannot require such frontage improvements, the above statement is not a permissible reason for denial.

Regardless, if the Council believes that this requirement can pass constitutional muster, pursuant to ORS 197.522(3) the Council should impose a condition of approval requiring frontage improvements along Highway 26 consistent with the requirements of the SDC.

9) The applicant's proposal does not clearly define if they propose to replace the 8-inch diameter water line and/or install an 18-inch water line in conformance with the Water Master Plan.

RESPONSE: Staff's conclusion is incorrect for the following reasons.

- SDC 17.100.230 is not applicable under ORS 197.307(4) because the requirements that it “shall be installed to provide adequate water pressure to serve present and future consumer demand” is not clear and objective.

- The requirements of the Water Master Plan are not incorporated into the City’s land use regulations as required by ORS 197.195; therefore, the Water Master Plan does not apply.
- Staff made no attempt to establish the essential nexus between the impacts of the proposed development—which does not include future multifamily dwellings—and the requirement for an 18-inch water main. Staff also makes no attempt to demonstrate how the costs of an 18-inch water main connected into the existing main in Highway 26 is roughly proportional to the impact of the proposed development on the City’s water system. Both showings are required for the requirement to pass constitutional muster as required by *Nollan* and *Dolan*.
- The above notwithstanding, **Exhibit 1** demonstrates how the Applicant can construct an 18” water line. Pursuant to ORS 197.522(3), the Applicant can satisfy this standard with the following condition of approval:

“The applicant shall install an 18-inch water line in Dubarko Rd. connected to the existing 18-inch water line at the west end of the site and the existing 12-inch line on Highway 26.”

While this would allow the Applicant to satisfy SDC 17.100.230, the Applicant reserves its right to challenge the constitutionality of the condition under ORS 197.796.

10) The applicant does not propose to extend the existing 12-inch water main in Highway 26 east from the required intersection of Dubarko Road and Highway 26 to the east boundary of the site consistent with the Sandy Development Code.

RESPONSE: This requirement is not a legally permissible basis for denial for the reasons explained under (8), above. Regardless, **Exhibit 1** demonstrates how the Applicant can construct the requested 12” water line. Pursuant to ORS 197.522(3), the Applicant can satisfy this standard with the following condition of approval:

“The applicant shall extend the existing 12-inch water main in Highway 26 east from the required intersection of Dubarko Road and Highway 26 to the east boundary of the site.”

While this would allow the Applicant to satisfy SDC 17.100.230, the Applicant reserves its right to challenge the constitutionality of the condition under ORS 197.796.

11) The proposed 10-foot-wide public storm drainage easements depicted between Lots 27 and 28 and at the rear of Lots 9-13 do not meet the minimum dimensional requirement for public facility easements in Section 17.84.90(A)(2).

Kelly O'Neill, Jr.
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RESPONSE: As demonstrated on **Exhibit 1**, the Applicant now proposes an increase in the 10-foot wide easement to 15 feet wide. Pursuant to ORS 197.522(3), the Applicant can satisfy this requirement by accepting the following condition of approval:

“Prior to final plat, the Applicant shall grant to the City a 15-foot wide public storm drainage easement between Lots 27 and 28 and at the rear of Lots 9-13.”

Under ORS 197.522(3), the Council is required to impose this condition in lieu of denial because it would ensure satisfaction of SDC 17.84.90(A)(2).

12) This subdivision proposal does not propose to dedicate 0.96 acres of parkland as required by Chapter 17.86. The additional .96 acres could expand Deer Pointe Park consistent with the Parks and Trails Master Plan that was adopted in 1997.

RESPONSE: As explained in detail above, the City cannot require dedication of 0.96 acres to add to Deer Pointe Park for the following reasons:

- The City’s Parks and Trail Master Plan is not incorporated into the City’s land use regulations as required by ORS 197.195, and is therefore inapplicable to the Application.
- The process by which the City can require parkland dedication as opposed to a fee-in-lieu is not clear and objective; therefore, the parkland dedication requirement cannot apply under ORS 197.307(4).
- Staff has made no attempt to demonstrate an essential nexus or rough proportionality of the parkland dedication requirement, as required by *Nollan* and *Dolan*.

Regardless, **Exhibit 5** demonstrates how the Applicant could provide the minimum required park area. Pursuant to ORS 197.522(3), if the Council nonetheless concludes that it is not barred from requiring the park dedication, it can impose a condition of approval requiring a park area as shown on Exhibit 5 of this letter.

4. Conclusion.

For the above reasons, the City Council should grant this Appeal and approve the Application because Staff and Planning Commission’s asserted reasons for denial are not permissible under applicable law.

Best regards,



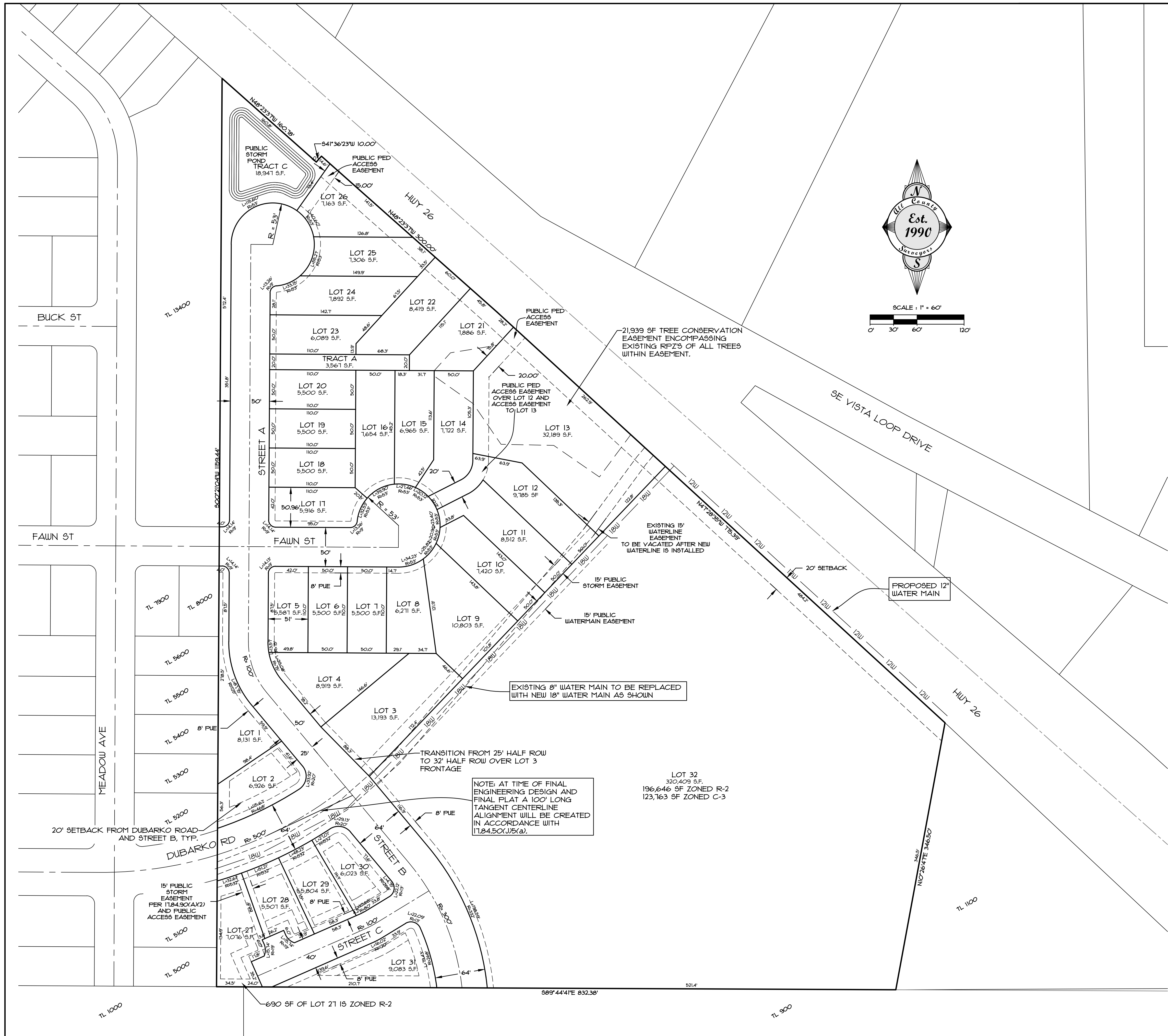
Garrett H. Stephenson

GST:jmhi
Enclosures

Kelly O'Neill, Jr.
February 22, 2022
Page 16

cc: David Doughman (*via email*) (*w/enclosures*)
Dave Vandehey (*via email*) (*w/enclosures*)
Ray Moore (*via email*) (*w/enclosures*)
Mike Ard (*via email*) (*w/enclosures*)
Tracy Brown (*via email*) (*w/enclosures*)
Tyler Henderson (*via email*) (*w/enclosures*)
Alex Reverman (*via email*) (*w/enclosures*)
Carey Sheldon (*via email*) (*w/enclosures*)

PDX\126769\255102\GST\33027063.1



CLIENT
 ROLL TIDE PROPERTIES CORPORATION
 PO BOX 103
 CORNELIUS, OR 97113

SURVEYOR/ENGINEER
 ALL COUNTY SURVEYORS & PLANNERS, INC.
 PO BOX 955
 SANDY, OR 97055

PLANNER
 TRACY BROWN PLANNING CONSULTANTS, LLC
 17075 FIR DR.
 SANDY, OR 97055

NOTES

- THIS IS NOT A BOUNDARY SURVEY. NO LIABILITY IS ASSUMED BY ALL COUNTY SURVEYORS AND PLANNERS FOR THE EXISTENCE OF ANY EASEMENTS, ENCUMBRANCES AND DISCREPANCIES IN BOUNDARY OR TITLE DEFECTS.
- LOT 32 TO BE DEVELOPED UNDER SEPARATE DESIGN REVIEW PROCESS AT FUTURE DATE.

BY:	REVISION:	SHEET
NO.	NO.	51
DATE:	DATE:	OF
		1
DESIGNED: CTH	CHECKED: RLMT	APPROVED: RLMT
DRAWN: CTH		
RENEWAL DATE: 12/31/2022		

SCALE: VERT. N/A, HORIZ. 1"=60'

DATE: 07/26/2018

FILE: 19-035-Planning-52.dwg

SECTION	RANGE	SE
18	29	5E

PROJECT: DEER MEADOWS SUBDIVISION

PRELIMINARY PLAT MAP (REVISED 2-18-22)

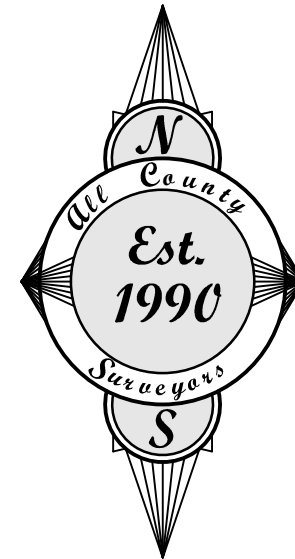
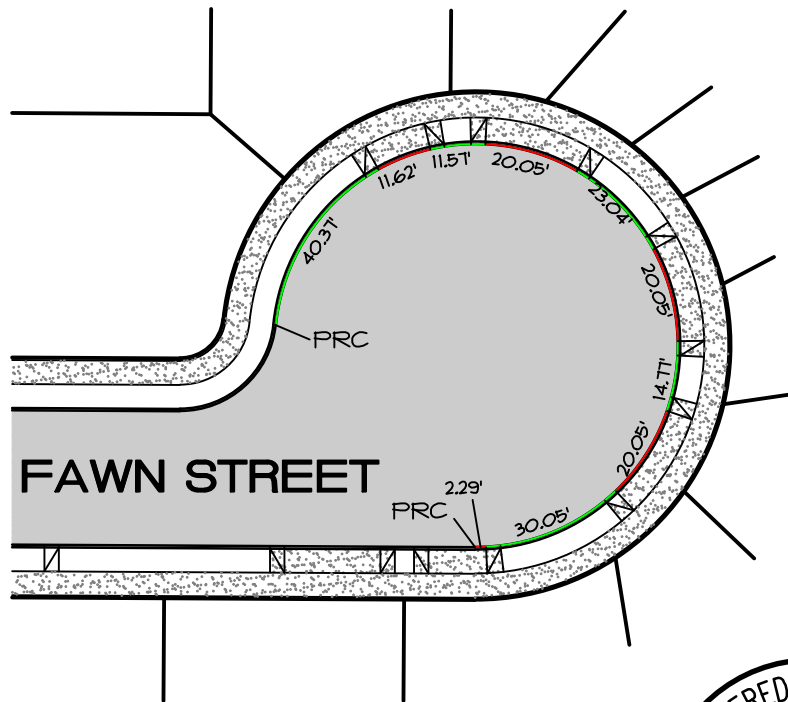
LOCATION: 40808 & 41010 HWY 26, SANDY, OR 97055

DATE OF PLOT: 2-18-22

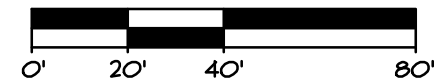
CLIENT: ROLL TIDE PROPERTIES CORPORATION
 PO BOX 103
 CORNELIUS, OR 97113

Surveyors & Planners, Inc.
 Surveying, Planning and
 Civil Engineering
 P.O. Box 955, Sandy, OR 97055
 Phone: (503) 668-4730
 Fax: (503) 668-4730

DEER MEADOWS CUL-DE-SAC EXHIBIT



SCALE : 1" = 40'



TOTAL CIRCUMFERENCE FROM PRC TO PRC = 193.85'
 TOTAL GAPS = 119.79' (61.80%)
 TOTAL DRIVEWAY LENGTH = 74.06' (38.20%)
 (38.20% IS LESS THAN 50%. MEETS CODE)

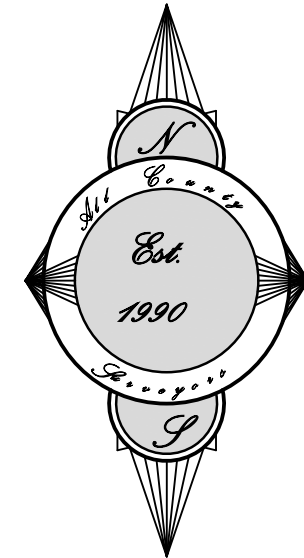


RENEWAL DATE: 12/31/2022

All County
Surveyors & Planners, Inc.
 Surveying, Planning and
 Civil Engineering
 P.O. Box 955 Sandy, OR 97055
 Phone: (503) 668-3151
 Fax: (503) 668-4730

FILE:19-035-PARK.dwg DATE OF PLOT 2-17-22

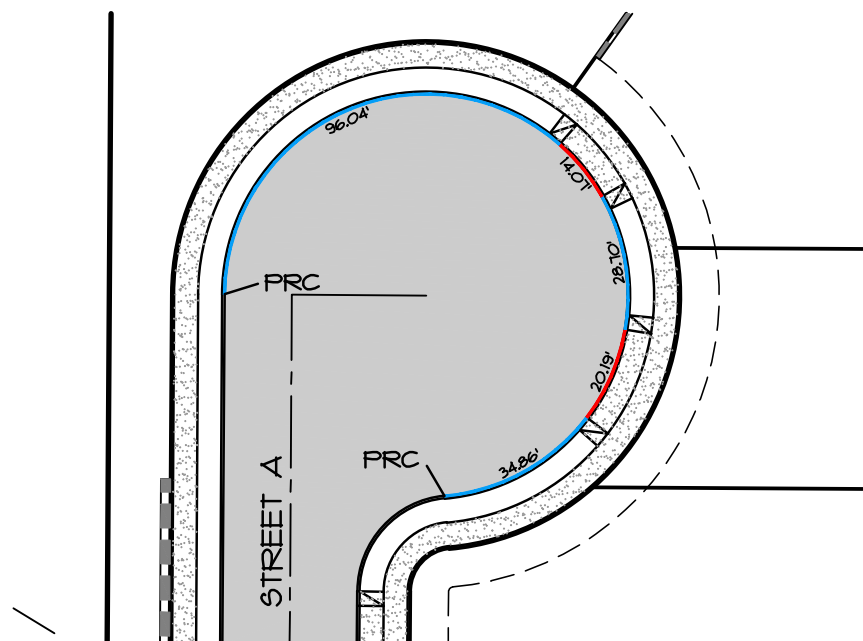
DEER MEADOW CUL-DE-SAC EXHIBIT



SCALE : 1" = 40'



STREET A CUL-DE-SAC



TOTAL CIRCUMFERENCE FROM PRC TO PRC = 193.86'
 TOTAL GAPS = 159.60' (82.3%)
 TOTAL DRIVEWAY LENGTH = 34.26' (17.7%)
 (17.7% IS LESS THAN 50%. MEETS CODE)



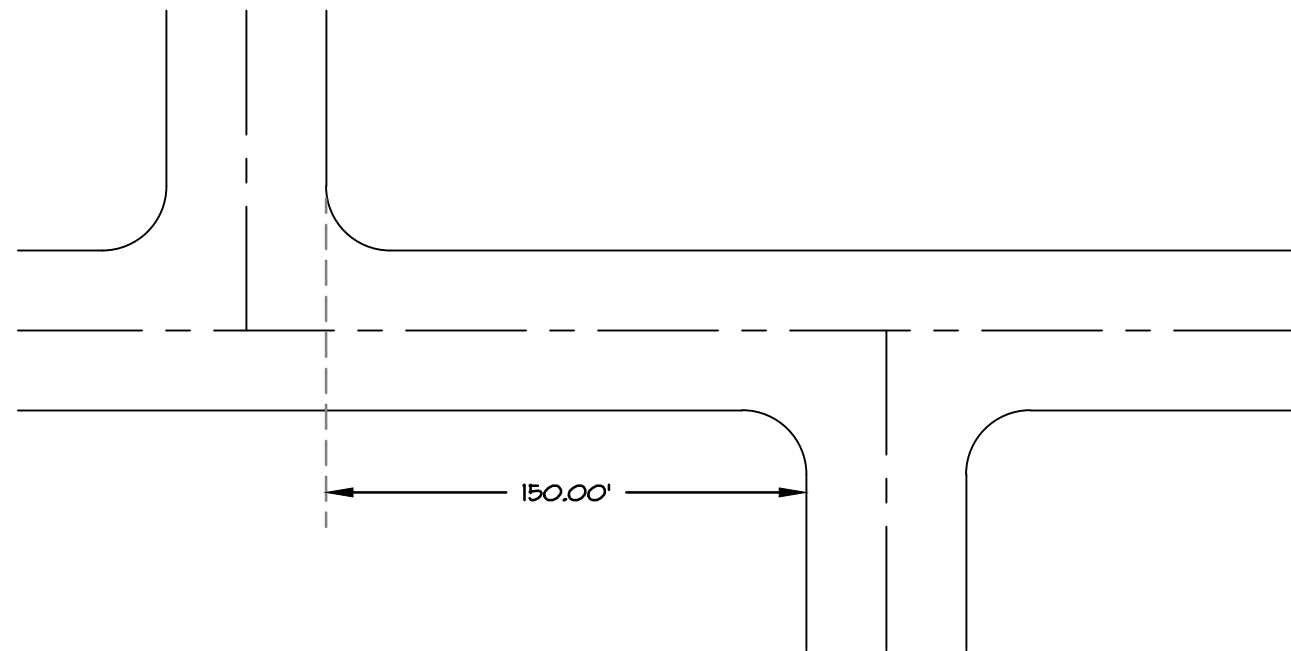
RENEWAL DATE: 12/31/2022

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 and Civil Engineering
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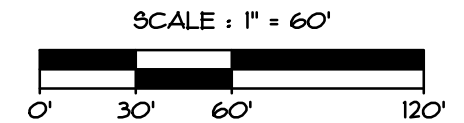
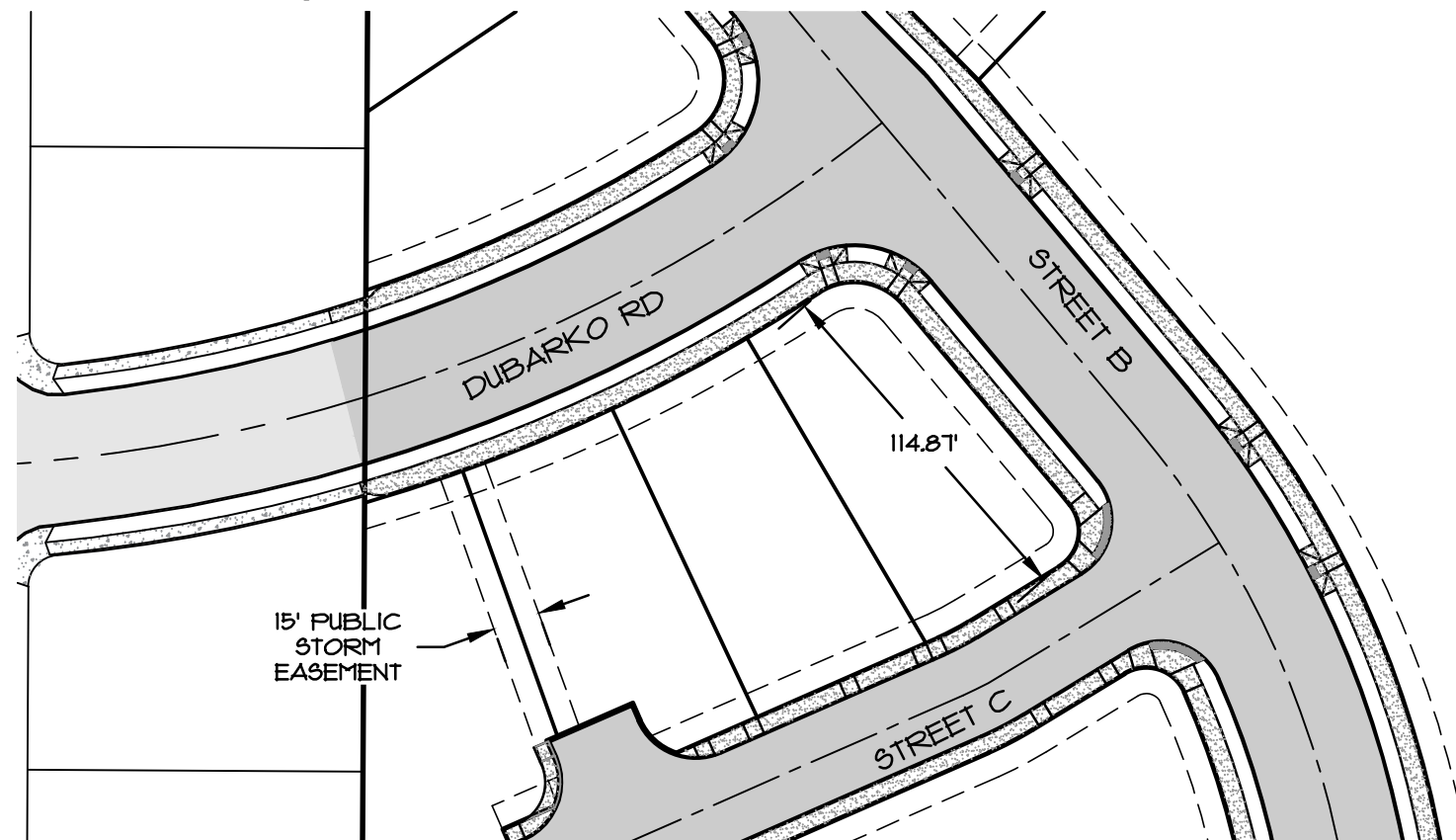
19-035-Planning-B.dwg
 DATE OF PLOT: 09/21/2021

DEER MEADOW T-INTERSECTION EXHIBIT

EXAMPLE OF STAGGERED T-INTERSECTION



PROPOSED T-INTERSECTION (NOT A STAGGERED T-INTERSECTION)

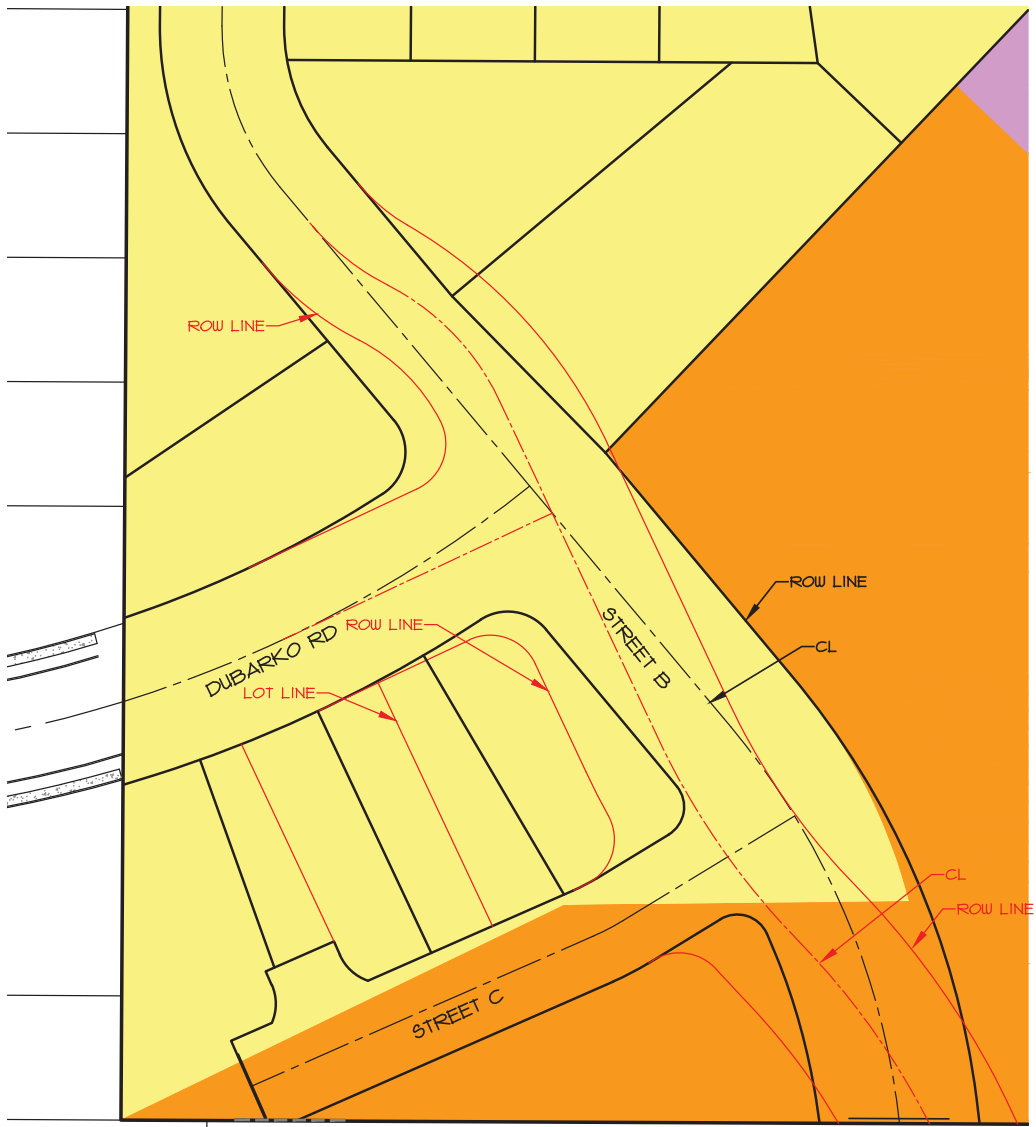


RENEWAL DATE: 12/31/2022

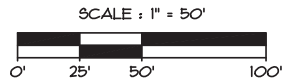
All County Surveyors & Planners, Inc.
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19-035-Planning-B.dwg
DATE OF PLOT: 09/21/2021

DUBARKO RD WITH 100' TANGENT EXHIBIT



NOTE: 100' TANGENTS CAN BE PROVIDED ON STREET B AND DUBARKO AS SHOWN. THE RESULTING ALIGNMENT WOULD MAKE LOT 32 LARGER, AND ELIMINATE ONE LOT FROM LOTS 21-30.



LEGEND

- R-1 ZONE
- R-2 ZONE
- C-3 ZONE



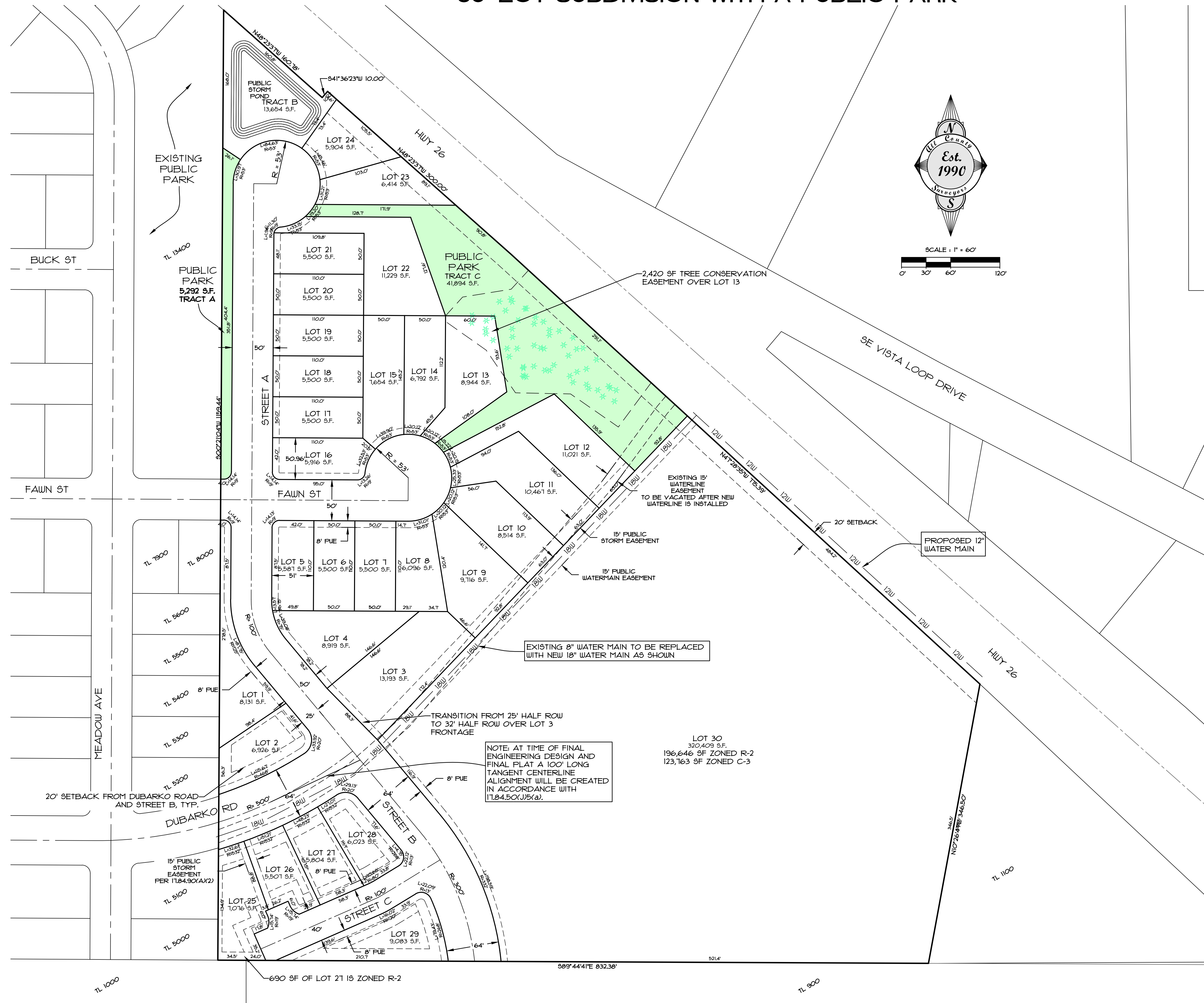
RENEWAL DATE: 12/31/2022

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19-035-Planning-B.dwg
 DATE OF PLOT: 09/24/2021

DEER MEADOWS

30-LOT SUBDIVISION WITH A PUBLIC PARK



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 ROLL TIDE PROPERTIES CORPORATION
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 SANDY, OR 97055

PLANNER
 TRACY BROWN PLANNING CONSULTANTS, LLC
 17015 FIR DR.
 SANDY, OR 97055

LEGEND

PARKLAND DEDICATION SHOWN AT 4/-1 ACRE. MINIMUM REQUIRED AT TIME OF FINAL PLAT TO BE 0.93 ACRES (40,511 SF). ADJUSTMENTS TO LOT LINES WILL BE MADE AT TIME OF FINAL PLAT TO PROVIDE 0.93 ACRES OR MORE.

NOTES

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- LOT 30 TO BE DEVELOPED UNDER SEPARATE DESIGN REVIEW PROCESS AT FUTURE DATE.

BY:	REVISION	SHEET
DATE	NO.	P1
DESIGNED:	CTH	OF
DRAWN:	CTH	1
CHECKED:	RLM	
APPROVED:	RLM	

SCALE	VERT. N/A	HORIZ. 1"=60'
DATE:	2-11-22	
FILE:	19-035-PARK.dwg	
SECTION	TWP.	RANGE
18	29	5E

DEER MEADOWS SUBDIVISION
 REVISED PLAT WITH
 PARKLAND DEDICATION

PROJECT LOCATION:
 40808 & 41010 HWY 26, SANDY, OR 97055

All County Surveyors & Planners, Inc.
 Surveying, Planning and
 Civil Engineering
 P.O. Box 955, Sandy, OR 97055
 Phone: (503) 668-4730
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CLIENT:
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