

EXCLUSIVE NEGOTIATING AGREEMENT

THIS EXCLUSIVE NEGOTIATING AGREEMENT (the “**Agreement**”) is made and entered into as of the last date of signature indicated below (the “**Effective Date**”) by and among the CITY OF HELENS, an Oregon municipal corporation (“**City**”), and ATKINS DAME INC., an Oregon corporation (“**AD**”).

RECITALS

A. City owns a 23.16-acre property (“**Property**”) located on Millard Road within the City of St. Helens that City, as a developer, has, or is planning to, develop for the economic advantage of the City and its citizens. The Property is legally described on the attached Exhibit A.

B. The Property is zoned MU – Mixed Use.

C. The site was previously owned by the St. Helens School District and used for wetland mitigation for school projects. The City annexed the property in 2009, and at the time of annexation, the City owned the northern two-thirds of the property and the Columbia Health District owned the remaining one-third to the south. In November 2010, the Columbia Health District was dissolved, and the City now owns the entire property. The Property has been appraised by the City to establish the necessary pricing for sales.

D. In April 2021 the City published a Request for Proposals (“**RFP**”) to solicit qualified developer to purchase the Property.

E. Two proposals were received. City Council provided direction for the City to pursue negotiations with AD for a residential development on the site.

F. This Agreement confirms the basis upon which the City and AD (the “**Parties**” and each a “**Party**”) are prepared to negotiate the terms of a Purchase and Sale Agreement (“**PSA**”) and related documents for the purchase and development by AD of the Property.

The terms of this Agreement are as follows:

TERMS

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Good Faith Exclusive Negotiations. The City and AD agree and covenant to negotiate the terms of the PSA in good faith. The City acknowledges that AD expended substantial time and expense, and will continue to expend time and expense, in preparing a more detailed proposal, conducting its due diligence, and refining its development proposal for the Property. During the Term (as defined below), the City agrees AD shall have the exclusive right to conduct due diligence and to negotiate with City for the rights to develop the Property, and the City will not accept, solicit, pursue or entertain any other offers or other indications of interest with respect to the Property for any development, sale or other transaction. Any decision to enter into a PSA will be in the sole and absolute discretion of each of the Parties.

2. Duration.

2.1. The term of this Agreement (as it may be extended pursuant to Section 2.2, the “**Term**”) shall end on the earliest of: (a) sixty (60) days after the Effective Date; (b) the date upon which AD notifies City that its due diligence investigation has resulted in a conclusion by AD that development of the Property is not financially feasible for AD to undertake; (c) the date the Parties agree in writing to a mutual termination of this Agreement; (d) the date of the full execution and delivery of the PSA; or (e) the date any Party provides written notice of termination, if the Party receiving notice has made a material misrepresentation in the course of negotiating this Agreement, otherwise fails to act in good faith, or becomes insolvent.

2.2. So long as the Parties continue to negotiate the terms of the PSA in good faith, AD may, by written notice to City at least ten (10) days before the end of the then-current Term, extend the time period under clause (a) of Section 2.1 for three 15 day renewal periods (each, an “**Option**”). If AD fails to deliver notice of its exercise of an Option at least ten (10) days before the end of the Term (as it may have been extended), the remaining Option(s) shall be deemed to be waived and of no further force or effect.

2.3. This Agreement shall automatically terminate upon the end of the Term and neither Party shall have any further rights or obligations under this Agreement, other than under those sections that expressly survive termination of this Agreement. If the Term ends because of the execution and delivery of the PSA under clause (d) of Section 2.1, the PSA shall thereafter control the rights of the Parties with respect to the Property.

3. Items to be Addressed in Negotiations. The Parties anticipate that a number of issues will require further negotiation prior to the execution and delivery of the PSA, including, but not limited to, the following:

- Purchase price.
- Development schedule and phasing.
- Phasing of land transfer.
- Due diligence.
- Land use applications.

4. Due Diligence. AD shall work diligently and in good faith to conduct its own due diligence and inspections of Property, including such physical, legal, and engineering inspections, tests and investigations as it may deem necessary or desirable to determine the feasibility of developing the Property and to process any and all Land Use Applications. Such studies and investigations may include, without limitation, environmental, geotechnical, traffic, market, project feasibility and related matters. AD agrees to indemnify, defend and hold City harmless from and against any claim or lien arising out of AD’s (or its agents’, contractors’ or consultants’) due diligence activities under this Section 4. The foregoing sentence will survive termination of this Agreement. The scope of work and cost for AD-directed due diligence will be the sole responsibility of AD.

5. Access. City shall provide AD access to the Property for the sole purpose of conducting due diligence as more specifically set forth in the form of Permit of Entry attached

hereto as Exhibit E (the “**Permit of Entry**”). AD shall promptly repair or restore any damage caused by the entry of AD or its agents upon or under the Property.

6. **Indemnity and Insurance.** AD shall indemnify, defend and hold the City, including its appointed and elected officials, officers, employees and agents, harmless from and against any and all liability or alleged liability, all suits, legal proceedings, claims, damages, losses and expenses, including but not limited to attorneys' fees, for injuries to persons or damage to property caused by or resulting from the acts, omissions, or neglect of AD or its agents, representatives or consultants on or about the Property; provided however, that nothing herein shall be construed to require indemnification of the City for liability attributable to the City's sole negligence or willful misconduct and; provided, further, in no event shall the foregoing indemnity obligation apply to the discovery of any pre-existing conditions in, on or under the Property. During the Term, AD shall maintain insurance with respect to its activities on or about the Property, naming the City as additional insured, in amounts as follows: (a) commercial general liability insurance with a combined single limit of not less than \$1,000,000 per occurrence and with at least \$2,000,000 aggregate; (b) automobile liability insurance with combined single limit of not less than \$1,000,000 per occurrence; (c) employers liability insurance with a limit of not less than \$1,000,000; and (d) in addition to the primary limits specified in (a) and (b) above, excess liability insurance with a limit of not less than \$2,000,000 for each occurrence and in the aggregate. The indemnity required under this Section 6 shall survive termination of this Agreement.

7. **No Assignment.** Neither Party shall assign or transfer its interest in this Agreement or the Property prior to the end of the Term, except that AD may assign its right under this Agreement to a newly-formed entity established to develop the Property, provided that AD or the principals of AD have direct or indirect ownership interests in and/or contractual rights to manage or control such limited liability company. AD may designate the newly-formed entity to enter into the PSA in substitution for AD.

8. **Brokers.** Each Party represents and warrants that no broker, finder or other representative is acting on its behalf in connection with this Agreement. Each Party agrees to indemnify, defend and hold the other harmless from any claim or liability for any fee, commission or other compensation with respect to this Agreement, the PSA or other transactions contemplated hereby, asserted by any other broker, finder or other representative claiming through the indemnifying party. This Section 8 will survive termination of this Agreement.

9. **Confidentiality.**

9.1. **Confidentiality.** The Parties acknowledge that City is subject to Oregon Public Records Law, which generally provides that written documents retained by City are subject to disclosure upon the request of any third party except for specific limited exceptions provided for therein. AD shall designate as “Confidential” any information which AD provides to City that AD desires to keep confidential. If a request for disclosure of any information designated as “Confidential” by AD is made under such act, City shall notify AD in writing and AD shall have such opportunity to object to the release of such information to the extent authorized by such act. If City designates any materials to be disclosed to the Developer as “Confidential”, then AD agrees as a condition of disclosure to take measures to maintain the confidential integrity at least equal

to the measures taken to protect AD's own confidential material, and further to provide notice to City prior to planned disclosure of such confidential information to any third party not bound by this Agreement.

9.2. As used in this Agreement, "**Confidential Information**" means: all documents, analysis, work product and written or electronic communications marked as "Confidential" and not generally known to the public and made in connection with: (a) AD's due diligence of the Property; (b) this Agreement; (c) the terms of this Agreement, the MOUs or the PSA financial materials regarding a Party or a Party's development plans, including, but not limited to, pro forma information; and (d) any and all proprietary information of the City, including, without limitation, any information concerning the Property and related plans. Confidential Information includes communications made before the date this Agreement was fully executed.

9.3. Neither Party shall use any Confidential Information for any purpose except to evaluate, discuss, and further the purpose of the negotiation of the PSA. The Parties shall not disclose any Confidential Information to any third party other than its employees, managers, members, agents, representatives, advisors, consultants, contractors, affiliates, potential or actual lenders and equity investors, and attorneys (as to each Party, its "**Representatives**") as may be necessary to evaluate the Property and negotiation of the PSA.

9.4. The restrictions on the use of Confidential Information under this Section 13 shall not apply to the extent any such information is publicly available (without a Party having disclosed it), has been disclosed by AD or is required to be disclosed by law, including, but not limited to, under Oregon Public Record laws.

9.5. This Section 9 will survive termination of this Agreement.

10. Governing Law. This Agreement shall be governed by the laws of the state of Oregon. This Section 10 will survive termination of this Agreement.

11. Time is of the Essence. Time is of the essence in this Agreement.

12. Amendments. This Agreement may be amended only by written agreement of the Parties.

13. Notices. All notices under this Agreement must be in writing and sent by one of the following means with all applicable delivery and postage charges prepaid: (a) registered or certified U.S. mail, postage prepaid, return receipt requested; (b) personal delivery; (c) nationally recognized overnight courier service (e.g. Federal Express); or (d) if simultaneously delivered by another means allowed hereunder, e-mail, with receipt of confirmation that such transmission has been received. Notices shall be addressed as follows:

To the City:	City Administrator City of St. Helens 265 Strand Street St. Helens, OR 97051 jwalsh@sthelensoregon.gov
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And a copy to: Radler White Parks & Alexander LLP
Attn: Dina Alexander
111 SW Columbia, Suite 1100
Portland, OR 97201
dalexander@radlerwhite.com

To AD: Atkins Dame Inc.
Attn: Dike Dame and Jim Atkins
1255 NW 9th Avenue, Suite 119
Portland, Oregon 97209
Email: dike@atkinsdame.com
Email: jim@atkinsdame.com

All notices shall be deemed effective upon the earlier of actual delivery or refusal to accept delivery thereof. Any Party may from time to time change its address for purposes of this Section by notice in writing to the other Parties. Notices may be given by counsel to a Party.

14. Attorneys Fees. If a suit, action or other proceeding of any nature whatsoever (including any proceeding under the U.S. Bankruptcy Code) is instituted in connection with any controversy arising out of this Agreement or to interpret or enforce any rights hereunder, the prevailing or non-defaulting Party shall be entitled to recover its attorneys', paralegals', accountants', and other experts' fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, as determined by the court at trial or on any appeal or review, in addition to all other amounts provided by the law.

15. Binding Effect. During the Term and any extensions thereof, the Parties shall negotiate in good faith to complete and execute the definitive PSA upon terms and conditions consistent with this Agreement. No sale agreement or other right, obligation or estate in land shall be created, except by delivery of the definitive PSA and all other related and necessary instruments (a) duly authorized by the City, (b) duly authorized by all necessary AD corporate action and (c) duly executed by authorized representatives of the Parties. If this Agreement is terminated per Section 2, the Agreement shall be of no further force or effect, except sections which state that they survive termination of this Agreement. If, during the course of negotiations, it becomes clear that the Parties will not reach an agreement, AD shall not unreasonably withhold consent to a City-requested early termination of this Agreement.

16. Distinction from Regulatory Authority of City. AD understands and agrees that this Agreement does not and shall not be construed to indicate or imply that City, acting as a regulatory or permitting authority, has hereby granted or is obligated to grant any approval or permit required by law for the development of the Property.

17. Miscellaneous. This Agreement constitutes the entire agreement and understanding between the parties with respect to the subject matter hereof. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and when taken together shall constitute one and the same instrument. The parties may execute facsimile or email copies of this Agreement, and delivery of such execution copies by facsimile or email shall be deemed to be delivery of an original signature and shall be binding on the parties hereto.

If any provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal, or unenforceable, then (i) such provision shall be enforceable to the fullest extent permitted by applicable law, and (ii) the validity and enforceability of the other provisions of this Agreement shall not be affected and all such provisions shall remain in full force and effect.

[Remainder of page intentionally left blank; signatures follow]

ATKINS DAME INC., an Oregon corporation

CITY OF ST. HELENS, an Oregon municipal corporation

By: _____
Jim Atkins, President

By: _____
John Walsh, City Administrator

Date: _____

Date: _____

By: _____
Dike Dame, Secretary

Date: _____

EXHIBIT A

Legal Description of the Property

[attached]

PARCEL 1:

A portion of the John McNulty Donation Land Claim No. 50, located in the Northwest one-quarter and in the Southwest one-quarter of Section 8, Township 4 North, Range 1 West, Willamette Meridian, Columbia County, Oregon and being more particularly described as follows:

BEGINNING at the Northeast corner of Lot 23 of "Firlok Park", being a 1 inch iron pipe on the Southerly right-of-way line of Maple Street (25.00 feet from centerline);

Thence along said Southerly right-of-way line North 88° 06' 31" East 149.48 feet to a point, from which a 1-1/2 inch iron pipe bears South 09° 22' 10" East 1.21 feet;

Thence along the West line of Deed Book 148, Page 96, South 09° 22' 10" East 110.07 feet to a 1/2 inch iron pipe;

Thence South 46° 07' 00" East 25.20 feet to the True Point of Beginning, being a point in the center of McNulty Creek;

Thence along the center of said creek along the following courses:

North 11° 15' 12" West 7.92 feet;

North 65° 31' 40" East 27.61 feet;

North 81° 05' 05" East 67.62 feet;

South 80° 37' 07" East 53.35 feet to a point at the Northeasterly corner of Deed Book 148 Page 94 from which a 5/8 inch iron rod with a yellow plastic cap inscribed "AKS ENGR." bears South 01° 33' 00" East 20.00 feet;

Thence along the East line of said Deed South 01° 33' 00" East 1325.99 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "AKS ENGR.";

Thence leaving the East line of said Book 148 Page 94, North 88° 14' 26" West 525.20 feet to a 5/8 inch iron rod with a yellow plastic cap inscribed "AKS ENGR." on the West line of Deed Book 144 Page 313;

Thence along the West lines of Deed Book 144 Page 313 and Deed Book 148 Page 94 North 01° 33' 54" West 1140.17 feet to the Northwest corner of said Book 148 Page 94 in the center of McNulty Creek from which a 1-1/4 inch iron pipe bears South 01° 33' 54" East 25.51 feet;

Thence along the center of said creek along the following courses:

North 50° 28' 53" East 8.02 feet;

North 47° 54' 33" East 48.94 feet;

North 87° 31' 46" East 21.97 feet;

South 63° 43' 59" East 65.54 feet;

South 63° 00' 37" East 77.40 feet;

North 84° 24' 47" East 18.46 feet;

North 47° 46' 13" East 19.45 feet;

North 20° 31' 40" East 40.00 feet;

North 01° 04' 03" East 31.63 feet;

North 04° 56' 04" West 57.16 feet;

North 39° 16' 26" East 22.95 feet;

South 49° 32' 37" East 71.27 feet;

South 33° 42' 29" East 53.78 feet;

South 32° 41' 05" West 48.75 feet;

South 00° 34' 52" West 36.92 feet;

South 41° 23' 09" East 29.70 feet;

South 86° 07' 56" East 36.35 feet;

North 32° 14' 55" East 54.25 feet;

North 11° 45' 05" East 85.04 feet;

North 36° 20' 57" West 36.20 feet;

North 11° 15' 12" West 51.62 feet to the TRUE POINT OF BEGINNING.

PARCEL 2:

A tract of land situate in Section 8, Township 4 North, Range 1 West of the Willamette Meridian, Columbia County, Oregon, more particularly described as the follows:

BEGINNING at a point which is North 88° 54' East, 168.0 feet and North 60° 54 ½' East 72.56 feet and North 32° 55' East, 9.36 feet from the Northeast corner of Tract 23, Firlok Park, Columbia County, Oregon;

Said point being on the Southerly side of a 50.0 foot road;

Thence South 32° 55' West, a distance of 9.86 feet;

Thence along, a 77.3 foot radius curve to the right (long chord bears South 60° 54 ½' West 72.56 feet) to the Northwest corner of Tract 25, Firlok Park;

Thence South 88° 54' West, a distance of 18.0 feet;

Thence South 08°21' East, a distance of 110.0 feet;

Thence South 46° 07' East, a distance of 29.51 feet to the center of McNulty Creek;

thence down the center of said McNulty Creek as follows:

North 79° 32' East, 83.10 feet;

South 88° 09' East, 83.60 feet;

South 53° 08' East, 35.00 feet;

North 13° 36' East, 38.30 feet;

North 33° 23' West, 60.70 feet;

North 50° 54' West, 72.20 feet;

North 19° 47' West, 68.50 feet;

Thence West 39 feet to the POINT OF BEGINNING.

EXHIBIT B

**CITY OF ST. HELENS SITE
REQUEST FOR PROPOSALS**

(attach copy)

EXHIBIT B

Request for Proposals: 23-acre Development Opportunity in St. Helens on Millard Road

April 2021

City of St. Helens

Due date and time: June 11, 2021, 3:00 pm PDT

Responses to this Request for Qualifications shall be submitted electronically to
Jenny Dimsho, Associate Planner, jdimsho@ci.st-helens.or.us

<https://www.sthelensoregon.gov/rfps>



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Summary

The City of St. Helens is excited to partner with a private developer to construct market-driven housing or other mixed-use development on a 23-acre City-owned property on Millard Road near U.S. Highway 30. Through development and sale of the site, the City seeks to (1) increase the City's housing inventory and (2) achieve public benefit, like maintaining pedestrian connectivity through the site and offering small open space amenities. The City is interested in soliciting proposals which include housing types that meet current market demand.

St. Helens is a community of about 14,000 people located 30 miles north of Portland along U.S. Highway 30. Over the past decade, the City's economy has transitioned from a primarily timber-driven economy into a more diversified economy. St. Helens offers a small-town lifestyle within a relatively short commute to Portland-area employers and a lower cost of living. As housing costs in the Portland area increase, the City has seen an inflow of new residents that are seeking the quality of life in St. Helens and lower-cost housing.

1. Development Context

Site Context

Located about 30 miles north of Portland (35-minute drive), the Millard Road property in St. Helens comprises just over 23 acres of land and is located between Maple Street to the north and Millard Road to the south.

The site is mainly level except in the north quarter, which is heavily wooded around McNulty Creek. The area south of the wooded portion is generally open field with scattered trees, except around some wetlands where tree density increases (see Exhibit 5 in the Appendix). The site is surrounded largely by City and County residential-zoned land, all within the Urban Growth Boundary (See zoning map in Exhibit 7 in the Appendix). The Ross Road property to the northwest of the site has been set aside to become a community park.

The site was previously owned by the St. Helens School District and used for wetland mitigation for school projects. The City annexed the property in 2009, and at the time of annexation, the City owned the northern two-thirds of the property and the Columbia Health District owned the remaining one-third to the south. In November 2010, the Columbia Health District was dissolved, and the City now owns the entire property.

Oregon Department of Transportation (ODOT) has invested \$7.5 million in a new traffic signal at Millard Road and US 30, approximately 1,700 feet from the site. It is anticipated to be completed by October 2021. A 50-foot utility easement to Chase Road on the following map is identified. A secondary access point may also be vested in this location with development.

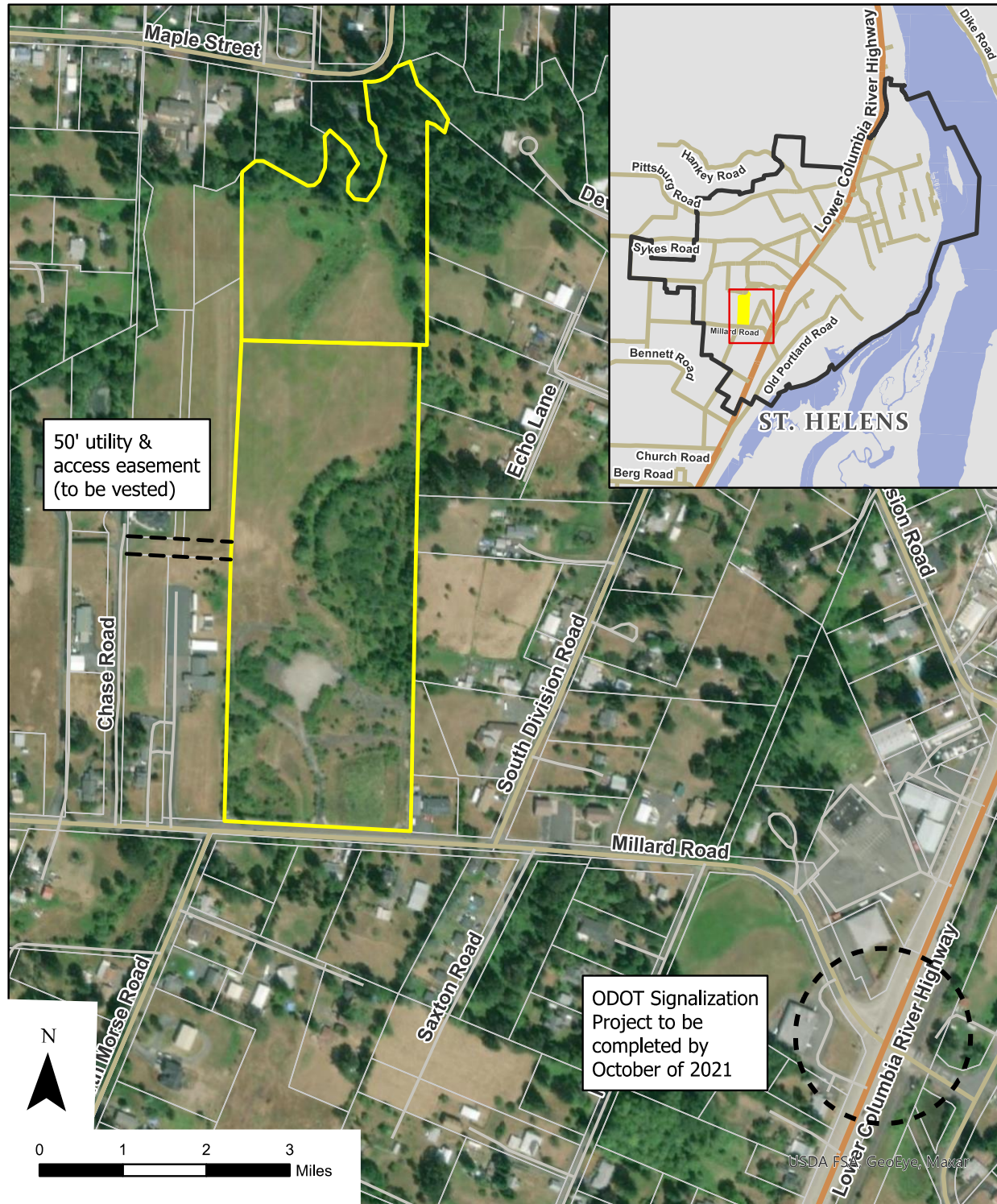


Millard Road site: Heading north to McNulty Creek, near tree line



Millard Road site: Taken from Maple Street looking south into McNulty Creek area

Exhibit 1. Millard Road Property in St. Helens



Sources: esri, Open Street Map, Columbia County GIS, OR Division of State Lands

St. Helens Economy and Public Investments

Industrial Development

St. Helens and nearby Scappoose are seeing substantial industrial development that are bringing new jobs and residents to the area.

In Scappoose, the **Oregon Manufacturing Innovation Center (OMIC)** offers high tech training to companies throughout the Portland region. Modeled on an industrial redevelopment project in Sheffield, England, area leaders are spearheading a public-private collaborative research and development outpost for Boeing, Oregon State University, Portland State University, and Oregon Tech. The project features workforce training facilities in OMIC's Training Center, operated by Portland Community College, with the goal of placing graduates in to high-wage, high-demand jobs. In addition, **Cascade Tissue, Inc.** announced a new 600,000 square foot plant in Scappoose that will employ 80 workers. The site will use wood material from the existing tissue plant in St. Helens. In 2020, the City of St. Helens completed a parcelization and funding plan for the 204-acre **St. Helens Industrial Business Park**, the largest remaining parcel of industrial employment lands within St. Helens city limits. Today, Cascade Tissue operates two paper machines employing 100 people on 25 to 30 acres of the property. The Port of Columbia County is assisting the City in marketing this industrial property for new users.

The City and partnering Columbia County Economic Development Team receive regular inquiries from potential investors citing a relocation interest outside of Portland for their commercial and industrial space needs.

Commercial & Institutional Development

On US 30, a new Legacy Health Clinic recently opened its doors in 2020, and a new Grocery Outlet is under construction with completion anticipated in Summer 2021. The St. Helens Middle School was just completely re-built, and the St. Helens High School is in the design process for a major re-model which has already been funded. The St. Helens Police Station is being re-designed, and the City is working on acquiring funding for a completely new Public Safety Facility in a new location.

Quality of Life

Riverfront District: The site is located about 3.5 miles from the nationally registered historic downtown, which has seen several adaptive reuse redevelopment projects, indicating growing interest and investment in the area. The City is actively working to revitalize the riverfront, and over \$830,000 in grants to construct the first phase of its Riverwalk Project by 2023. In addition, the City is leveraging over \$12 million from its Urban Renewal Agency to construct streets and utilities on the site in order to catalyze mixed-use development on the 24-acre parcel, adjacent to downtown. The City purchased this site after the Boise veneer plant closed in 2009 due to years of declining profitability, with the intention of positioning a portion of the area for new mixed-use development. The result is a vision of the

area as a vibrant, mixed-use waterfront neighborhood that takes advantage of the striking natural setting to provide new development and public access to the Columbia River.



Riverfront District Rendering, courtesy of the City of St. Helens

Local Events: The area hosts a series of popular events throughout the year, including the annual *Spirit of Halloweentown* festival that commemorates the 1998 Disney movie filmed in the community. The month-long event attracts over 10,000 Halloween enthusiasts traveling from around the globe to visit the nostalgic film site. Hotels are booked through weekends in October because many of these visitors come from out of state for the multi-day events.

Water Proximity: Proximity to water in a region where there is high demand for renting, mooring, and docking watercraft presents an opportunity to draw new residents from around the region and beyond. An existing public marina already draws boaters and fishing enthusiasts to St. Helens from around the region and the State. The Columbia River Yachting Association, based in Portland, has over 2,500 members and St. Helens is a popular cruise destination.

Parks & Recreation: The City has an extensive parks system with over 135 acres of parks which include well-maintained sport fields, river access, playgrounds, picnic shelters, and nature trails. The City has made significant investments in growing its Recreation Department in recent years, resulting in countless low-cost recreation programs for the residents of St. Helens.



Annual Halloweentown Celebration on the plaza (2014)



Historic Columbia Theater, renovated in 2012



The Muckle Building, converted into a mixed-use apartment building in 2016 and achieving some of the highest rents in the City.



13 Nights on the River market and concert series (2016) in Columbia View Park, the location of the Riverwalk Phase I project and a new stage/amphitheater

2. Development Considerations

Public Access, Transportation, and Open Space

Trail connectivity is one of the key City goals for this project. The Parks and Trails Master Plan (2015) suggested the development of a multi-use trail through the property that would provide pedestrian access from Maple Street to Millard Road. The existing wooden footbridge (pictured to the right) and small footpath that crosses McNulty Creek provide an ideal opportunity to construct a pedestrian path through the site and meet the goals for public access.¹



Hand-built pedestrian bridge across McNulty Creek on the northern end of the property.

The Transportation Systems Plan (2011) calls for a 60' wide collector street through the site from Millard Road to Maple Street. Any development will need to include public right-of-way dedication through the site to Maple Street. Access to Chase Road is also anticipated to improve connectivity and fire access (See Exhibit 1).

Zoning and Permitted Uses

In 2020, the City changed the zoning and comprehensive plan designations of the Millard Road Property, reflecting City priorities to solicit market-driven development on the property. The new Comprehensive Plan designation of General Commercial (GC) and the new zoning designation of Mixed Use (MU) are for the entire property and allow a flexible mix of uses. These uses include a variety of residential such as single family detached (SFD) and attached (SFA), duplexes, and multi-dwelling units with or without ground floor commercial, as well as commercial and civic uses including, but not limited to, dining establishments, small retail stores, and offices. Some specifics of the zoning code are included below. More details, including density calculations and landscaping requirements, can be found in the Community Development Code.² Due to HB 2001, the City is in the process of amending our housing codes to comply with state mandates. These code changes will be implemented by June 2021. The summary below reflects the proposed changes.

- **The maximum building height on the property is 45 feet**, unless it is purely residential, then it is 35 feet.

¹"Parks & Trails Master Plan." City of St. Helens. 2015.

<https://www.sthelensoregon.gov/sites/default/files/fileattachments/planning/page/268/parks-trails-master-plan-attachment-a.pdf>

² <https://www.codepublishing.com/OR/StHelens/#!/StHelens17/StHelens17.html>

- **SFD, SFA, and duplexes must comply with General Residential (R-5) zone standards.** Minimum lot size requirements are 5,000 sq/ft for SFD, 5,000 sq/ft for duplexes, and 2,500 sq/ft for SFAs.
- **Multi-dwelling units must comply with Apartment Residential (AR) zone standards.** Minimum lot size requirements are 1,500 sq/ft for each multi-dwelling unit over the base of 4,000 square feet for the first two units (with no maximum).
- **Maximum lot coverage:**
 - Nonresidential: 90%
 - SFD: 40%
 - SFA and multi-dwelling units: 50%

Planned Development in the City of St. Helens

A Planned Development may be a consideration for the Millard Road property. The Planned Development flexibilities are particularly advantageous for residential development. For example, the normal minimum size and dimension standards that apply to lots are exempt. There is also relief from other standards such as building height and yard (setback) requirements. A Planned Development can also help with wetland and riparian area buffer regulations.

A Planned Development requires two key things: 1) an overlay zone adopted for the property and 2) a development plan. The overlay zone can be done in advance or in conjunction with a development plan. It is possible that the City can adopt an overlay zone in advance of other matters.

Please see Chapter 17.148 of the St. Helens Municipal Code for further details.

Environmental Considerations

Wetlands

The site contains several wetlands and a riparian corridor, some of which are mitigation areas. Sensitive land constrains approximate 7.53 acres leaving net developable acres of about 15.63 acres. The appendix includes a map of the sensitive lands and their significance to the city, an estimate of sensitive land constraints and net developable acres (Exhibit 5), and a summary of potential upland protection zone reductions which only apply to riparian areas and wetlands that are significant to the city (Exhibit 8).

Infrastructure Needs

Water

City water will need to be extended to the property from the nearest water main (see Exhibit 7), which is located in the Maple Street right-of-way to the north of the property. The City is open to cost-sharing for this improvement, subject to evaluation of specific development proposals.

Stormwater

The Columbia County stormwater infrastructure in the Millard Road right-of-way may be able to support additional stormwater conveyance. However, the property will need on-site detention of stormwater as well. Further stormwater analysis will be needed, but the City anticipates that the existing wetlands and McNulty Creek may be suitable for some of the on-site stormwater detention.

Sanitary Sewer

An 8-inch sanitary sewer mainline extends onto the property from Millard Road and terminates along the west property line, approximately 750 feet north of the southwest property corner. It is approximately 8 feet deep. An as-built of the sanitary sewer line extension is included in the Appendix (Exhibit 10).

Road

The Transportation Systems Plan (2011) requires a 60' wide collector street from Millard Road to Maple Street. The developer may not be responsible for constructing the entire length of the road, but right-of-way dedication will be required for any portion that is not developed with this development. Trail connection is required through the site as well. The City is open to cost-sharing agreements for these public improvements, subject to specific development evaluation.



Frontage improvements on the site along Millard Road.

3. Market Dynamics

- **St. Helens is expected to grow faster than the county and state.** Between 2020 and 2040, the city's population will increase by nearly 4,000 new residents (an average annual growth rate of 1.2%). This growth rate is slightly higher than the state's expected annual growth rate of about 1% over the same period.³
- **St. Helens rental market is well positioned to compete with Portland. Residential** rents grew by nearly 21% between 2016 and 2020 for 2-bedroom apartments. Rents are generally tracking with the Portland market but at a lower value with the average 2-bedroom rent around \$1100 for St. Helens and \$1400 for the Portland MSA. Vacancy rates have also remained lower in St. Helens (4.9%) compared to Portland MSA (6.4%). The St. Helens Place Apartments, a large development completed in 2020, added 204 luxury rental units to the market. The building is almost fully leased (only 5 units available as of mid-March 2021) and asking rents for each dwelling are considerably higher than is usual for St. Helens. Two-bedroom units are listed between \$1,400-\$1,525 which is \$300-\$400 above average for the area. While the property is offering rent concessions (2 weeks free), this is lower than many projects in Portland, indicating a growing interest in St. Helens and a willingness to pay prices akin to those found in Portland.
- **St. Helens is attractive to first time homebuyers and middle-income households.** Housing prices in St. Helens have been increasing at a faster rate than the Portland MSA rising 136% between 2012 and 2020, from \$140,000 to nearly \$330,000. Comparatively, prices in the Portland MSA have risen 90% from \$228,608 to \$434,829 over the same time period. Sales volumes have also remained fairly steady from 2015-2020. Coupled with the substantial investments in the St. Helens Middle School (completely new) and High School (to be remodeled in the next 2 years), St. Helens will continue to be a desirable place for first time homebuyers and middle-income households as new home sales prices remain lower than the Portland region.
- **Office and retail asking rents remain significantly lower than the Portland MSA.** Retail asking rents are around \$8.50 per sq/ft compared to Portland's nearly \$20.00 per sq/ft. Office asking rents are slightly higher at \$15.00 per sq/ft compared to Portland's \$25.00 per sq/ft. Commercial would likely be a supportive part of residential development but not the main use of the Millard Road site.
- **The Millard Road property would be an ideal location for residential development.** St. Helens proximity to Portland and other job centers, combined with its relatively lower rent and home prices, make it a desirable location for renters and buyers alike. Commercial would likely be a supportive part of residential development that could include multi-family development. ODOT improvements to the US 30/Millard Road

³ PSU Population Forecasts

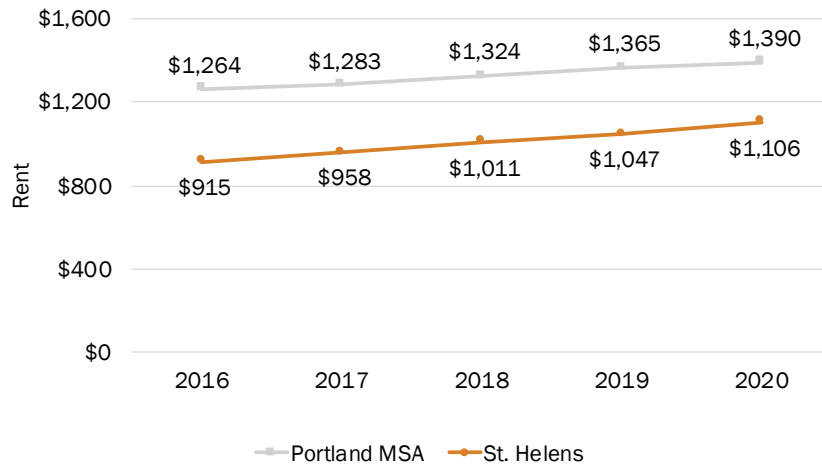
intersection will reduce potential traffic impact analysis fees/improvements that would normally otherwise be triggered from a development of this size and scale.

Residential Rents for 2-bedroom apartments increased 21% between 2016 and 2020 in St. Helens

Rents are generally tracking with the Portland market but at a lower value.

Exhibit 2. Average Rent for 2 Bedroom Units, St. Helens and Portland MSA, 2016-2020

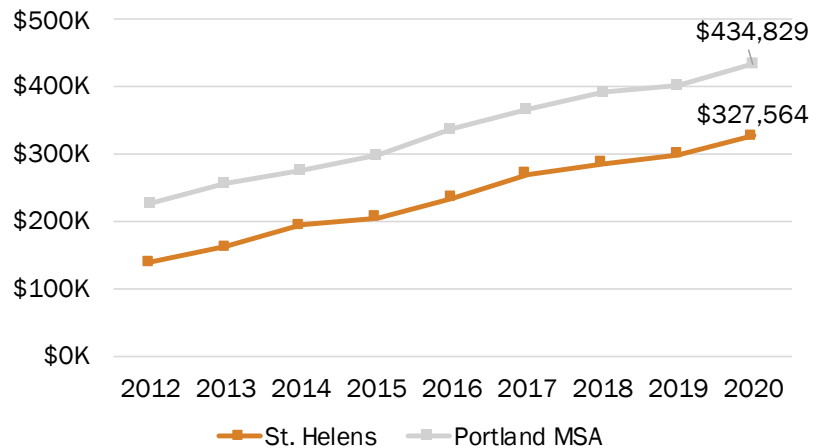
Source: Costar



Housing prices in St. Helens rose nearly 136% between 2012 and 2020 but are still lower than Portland.

Exhibit 3. Home Sales Prices, St. Helens and Portland MSA, 2012-2020

Source: Redfin



4. Submission and Evaluation

The City seeks to select the team with the most creative and compelling vision for meeting the public goals for the site and the most transparent appraisal of feasibility and team capacity for implementing that development. Evaluation of RFP responses will be based upon the following criteria:

1. Vision for the site accomplishes public objectives.
2. Proposed development is feasible.
3. Success in previous public-private partnerships.
4. Quality of representative projects.
5. Qualifications of project team and key project managers.
6. Proposed development meets the general provisions of the City's Development Code.

Written responses should be succinct. There is no formal page limit on the length of a response, but the City suggests that responses not exceed 20 pages, excluding appendices. Resumes, cut sheets, and other marketing materials may be included in an appendix. Content should be organized as shown in Exhibit 4.

Exhibit 4. Submittal Requirements and Selection Criteria

Proposal Section	Submittal Requirements	Suggested Page Limit	Total Points
Cover Letter	Define lead entity and team members; highlight key components of the team's vision for the site. Identify and describe the developer, including developer's name, corporation name (if applicable) or business name, addresses, telephone numbers, e-mail addresses, and the name of the primary project contact.	2 pages	0
Preliminary Vision for Site	<p>Describe why you believe this development program is the best solution for the site and furthers the City's goals. Describe your proposed preliminary development program. Include:</p> <ul style="list-style-type: none">• A preliminary site plan identifying the location of residential units/lots, and/or commercial lots/units• If multi-family or mixed-use buildings are proposed, provide details about the uses and square footage on each floor. Include number of parking spaces.• Access in the form of right-of-way, roads, and trails• Areas for public open spaces improvements• Areas of sensitive lands (wetlands, riparian areas, and their associated upland protection zones) <p>Identify what you see as key development challenges and opportunities.</p> <p>Identify probable development phasing.</p>	10 pages	50
Financial Feasibility of Site Vision	<p>Provide your preliminary financial analysis regarding sources and uses for achieving your proposed development program, minimizing public investment to the degree practical.</p> <p>If your team or any member of your team will function as a fee developer, please provide your current thinking about the proposed fee. If any information that is provided in this section is proprietary, please clearly label it as such so that it may be kept confidential. Confidential materials will be returned.</p>	As needed	20
Financial Capacity of Team	<p>Describe and provide evidence of the team's financial capacity to complete the proposed development. This could include audited year-end financial statements from all relevant team members, financial statements from successfully completed past projects, or letters of interest from investment partners, which can be attached in an appendix.</p> <p>If any information that is provided in this section is proprietary, please clearly label it as such so that it may be kept confidential. Confidential materials will be returned.</p>	2 pages	10

Submittal Requirements and Selection Criteria, Continued

Proposal Section	Submittal Requirements	Suggested Page Limit	Total Points
Development Team Experience	Provide evidence of the team's qualifications to implement the proposed development program, including experience refining this program in collaboration with a public entity. Provide an organizational chart for your team that identifies: <ul style="list-style-type: none"> • The individual who would be authorized to negotiate on behalf of the team • The individual who would be responsible for coordinating all team activities during due diligence, including site planning activities • Minority, women and emerging small business representatives on team • Experience with LEED certified or other sustainable development • Experience with public private partnerships 	4 pages	20
References	Contact information for two references on similar projects completed in the last 8 years. References will be contacted, and responses scored for all respondents.	1 page	0
Supporting Materials	Appendices can include supporting material to supplement responses to the questions above. There are no requirements for contents of appendices and the contents are not scored separately: <ul style="list-style-type: none"> • Resumes for key personnel • Non-binding letters of support from financial partners • Images of similar completed projects • Testimonials from partners or stakeholders 	No limit	0

Interested developers must submit an electronic copy of the response to the RFP by email to jdimsho@ci.st-helens.or.us. It is suggested to limit the responses to no more than 20 pages, excluding supplementary material. The City will become owner of all submitted materials and will not pay any costs related to any responses to the RFP.

Evaluation Schedule, Process, and Award

April 22, 2021: Request for Proposals released.

Anytime: Site Tours. The site is publicly accessible and available for self-guided tours at any time.

May 21, 2021: Deadline for Questions.

May 28, 2021: Deadline for City to Issue Addenda (This will include a summarized list of Questions/Answers).

June 11, 2021: Responses due at 3pm PST by email.

June 2021: Interviews (as needed). Selected developer(s) will be invited to give a presentation on all aspects of the proposal, including design concepts, development cost, financial capacity/lender commitments, terms of site acquisition, and

implementation schedule to the review committee. This may be in person or on a digital platform, like ZOOM.

July 2021: Selection announced.

General Provisions and Conditions

The City reserves the right to:

- Modify the timeline and to issue addenda to this document
- Reject any and all responses.
- Negotiate with more than one development partner.
- Waive minor irregularities in a response.
- Cancel, revise, or extend this solicitation.
- Request additional information on any response beyond that required by this RFP.
- Modify the selection process set forth in this RFP upon written notification to all respondents who have not been rejected at the time of modification.
- Make the final decision on whether to move forward with a development team or not.

Contact information

Jenny Dimsho, AICP
Associate Planner
City of St. Helens
(503) 366-8207
jdimsho@ci.st-helens.or.us

Appendix

Exhibit 5. Millard Road Property – Sensitive Lands

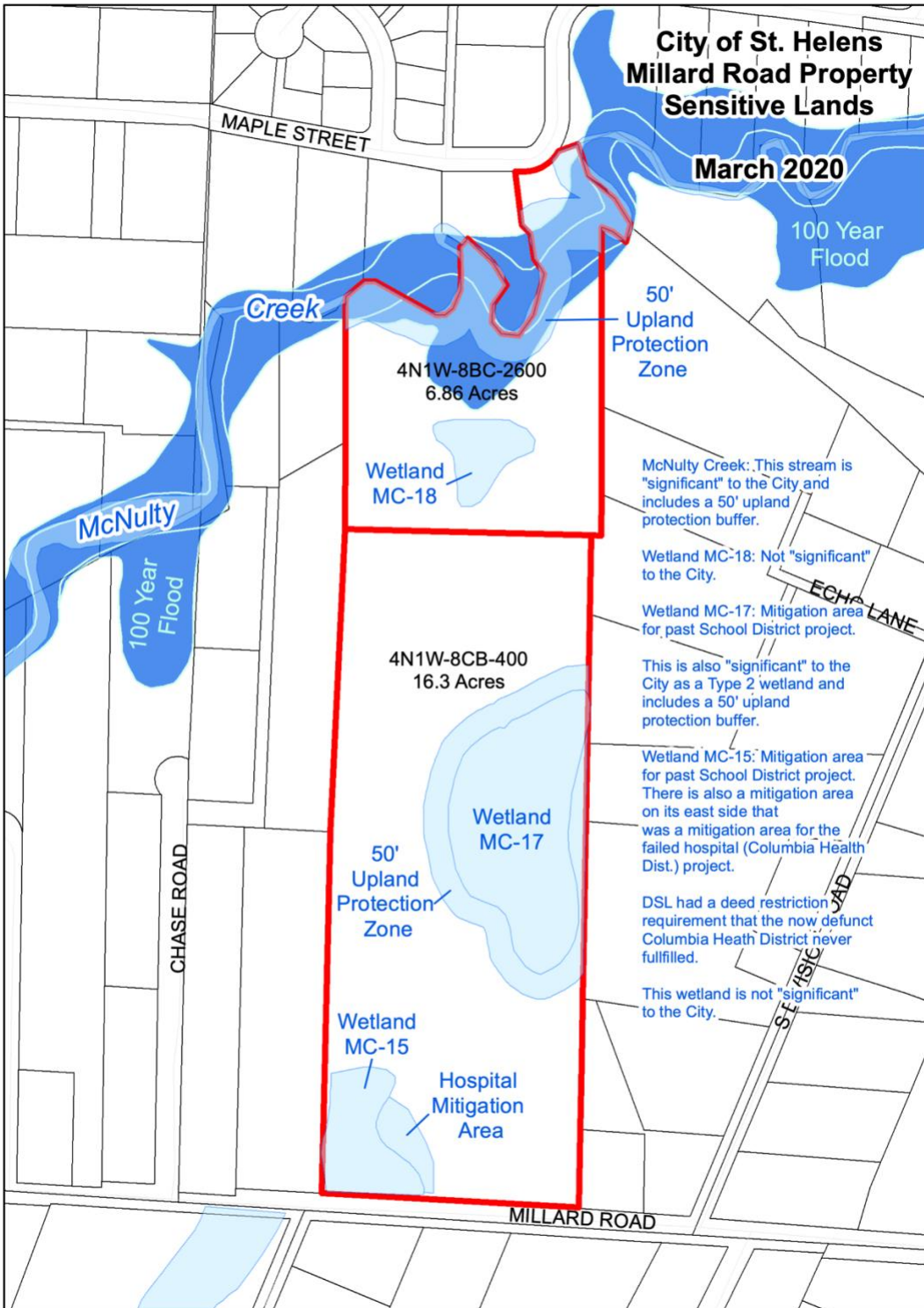


Exhibit 6. Millard Road Property Sensitive Lands – Estimated Net Developable Area (March 2020)

Total gross size: Approximately 23.16 acres

* * *

Sensitive Lands Constraints:

McNulty Creek floodplain (100 yr) and 50' upland protection zone (City required)

Approximate area: 97,000 s.f. or 2.23 acres

Basis: DFIRM and City Staff estimate (GIS – not field verified/surveyed)

Wetland MC-18

Approximate area: 0.54 acres

Basis: DSL WD# 06-0677

Wetland MC-17

Approximate area: 2.55 acres

Basis: DSL WD# 06-0677

Wetland MC-17's 50' upland protection zone (city required)

Approximate area: 60,000 s.f. or 1.38 acres

Basis: City Staff estimate (GIS– not field verified/surveyed)

Wetland MC-15

Approximate area: 0.66 acres

Basis: DSL WD# 06-0677

Wetland MC-15 addition (hospital mitigation area)

Approximate area: 7,341 s.f. or 0.17 acres

Basis: Hospital project plans

Total estimated approximate sensitive land constraints: 7.53 acres

* * *

Net acres, excluding estimated sensitive land constraints: 15.63 acres

Exhibit 7. Millard Road Property – Infrastructure Provision and Property Context

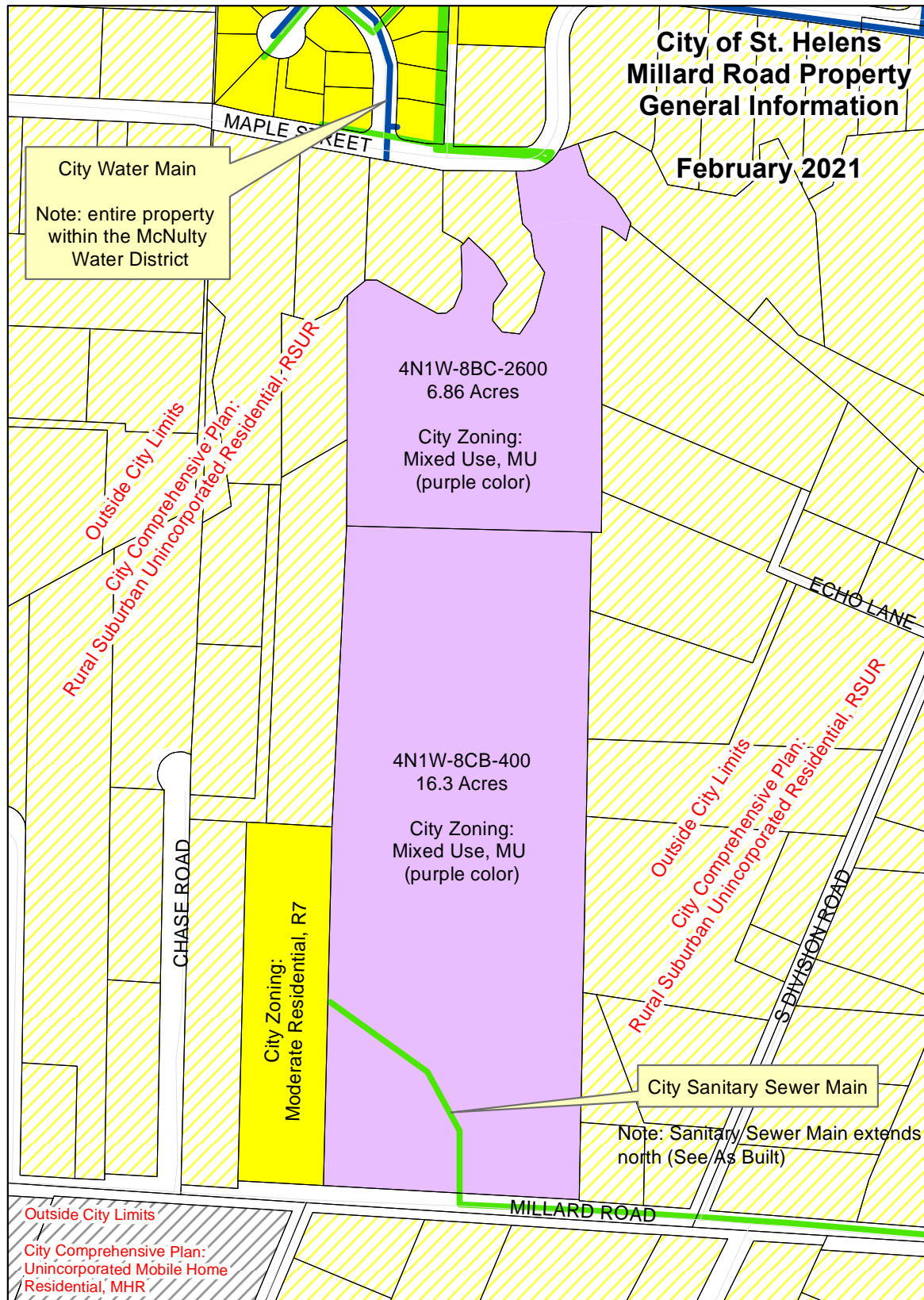


Exhibit 8. Wetland and Riparian Area Upland Protection Zone Reduction Options

Wetlands and riparian areas that are significant to the city include an upland protection zone subject to protection like the wetland or riparian areas themselves.

The Millard Road property includes a significant riparia area associated with McNulty Creek, which includes a 50' upland protection zone. There is also floodplain area associated with the creek, which is a separate matter, but also impacts potential development.

The site also has three known wetlands. Only the largest of the three, MC-17, is significant to the city. This wetland includes a 50' upland protection zone.

An upland protection zone may be reduced under the following circumstances:

1. If the property is developed without subdividing or a development agreement

- ☐ Up to 50% reduction to the 50' protection zone width possible
- ☐ The protection zone must be determined to be an obstacle that precludes reasonable use of the property.
- ☐ The development proposal must demonstrate that it is designed as much as possible to minimize protection zone impact.
- ☐ A dimensional standard (e.g., a yard or height requirement) may be adjusted up to 50% if the design of the development minimizing intrusion into the protection zone is to the adjustment (as opposed to being unrelated).
- ☐ 1:1 restoration and enhancement is required elsewhere within the protection zone to compensate for the reduced protection zone width.

2. If the property is developed without subdividing but with a development agreement

- ☐ If the 50% protection zone reduction noted above is insufficient for a development's needs or found to be not applicable to the circumstances, a development agreement is another option.
- ☐ The development agreement allows protection zone averaging such that it may vary in width, provided the overall average width is 50 feet.
- ☐ There are protection zone enhancement and minimum impact considerations.

3. If the property is subdivided

- ☐ Normally, significant wetlands, significant riparian corridors and protection zones are required to be in preservation tracts and not part of lots, or new streets or other infrastructure.
- ☐ If the subdivision is part of a planned development with a development agreement, the protection zone area may be part of individual lots. The protection zone may also vary in width, provided the overall average width is 50 feet.
- ☐ There are protection zone enhancement and minimum impact considerations.

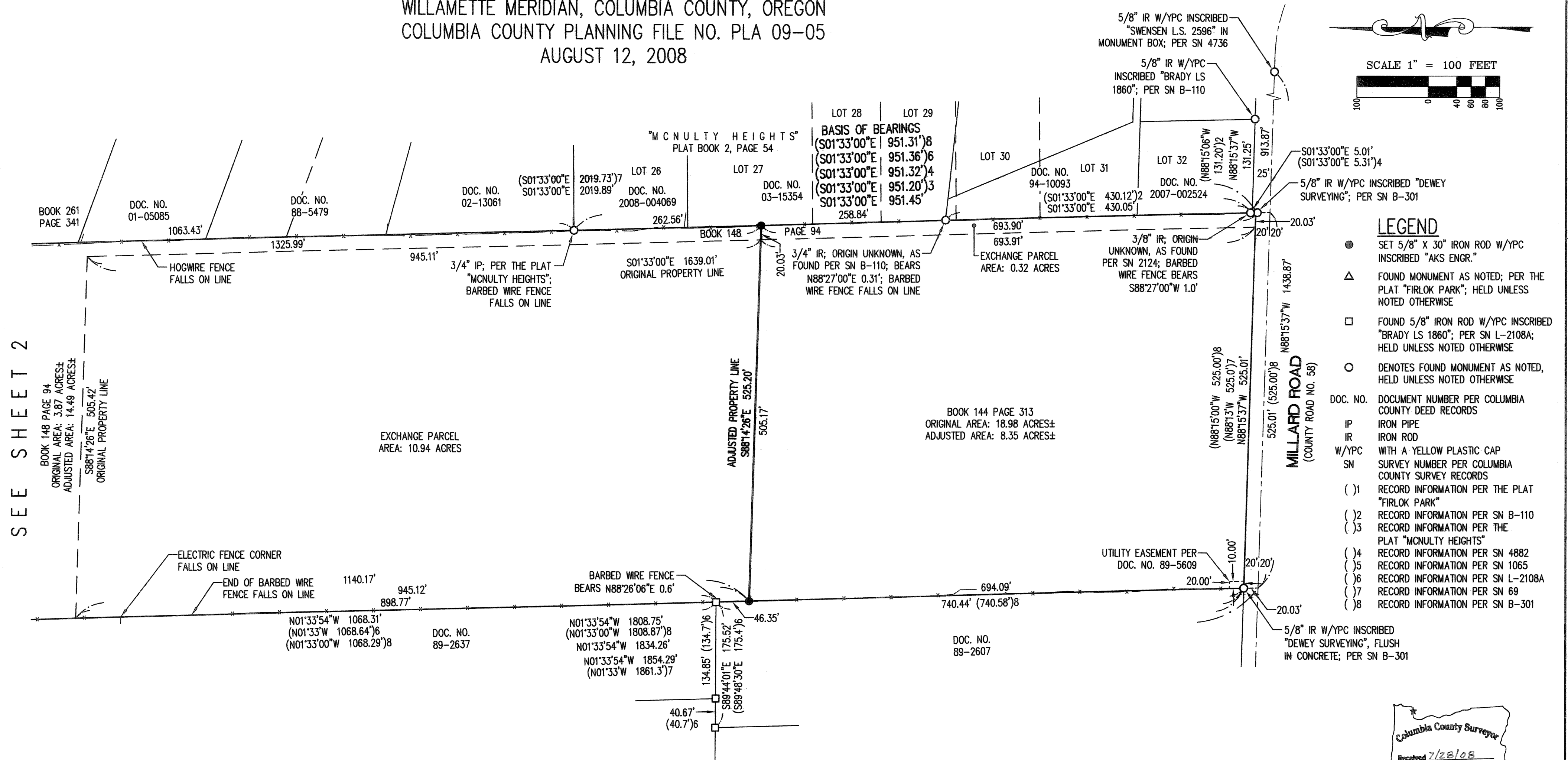
PREPARED FOR

COLUMBIA HEALTH DISTRICT
P.O. BOX 995
ST. HELENS, OR 97051

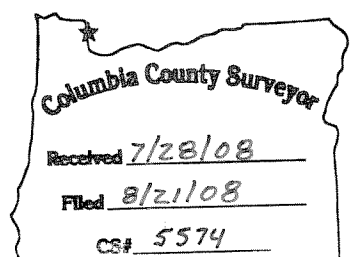
RECORD OF SURVEY

PROPERTY LINE ADJUSTMENT

LOCATED IN THE NORTHWEST 1/4 AND SOUTHWEST 1/4
OF SECTION 8, TOWNSHIP 4 NORTH, RANGE 1 WEST,
WILLAMETTE MERIDIAN, COLUMBIA COUNTY, OREGON
COLUMBIA COUNTY PLANNING FILE NO. PLA 09-05
AUGUST 12, 2008



SEE SHEET 2



8-20-08
REGISTERED
PROFESSIONAL
LAND SURVEYOR

Nick White
OREGON
JANUARY 9, 2007
NICK WHITE
70652LS
RENEWAL DATE: 6/30/10

JOB NAME: MILLARD PLA
JOB NUMBER: 2110
DRAWN BY: JOH
CHECKED BY: NSW
DRAWING NO.: 2110ROS

ENGINEERING • PLANNING • LANDSCAPE ARCHITECTURE
FORESTRY • SURVEYING



LICENSED IN OR & WA
13910 SW GALBREATH
DRIVE, SUITE 100
SHERWOOD, OR 97140
PHONE: (503) 925-8799
FAX: (503) 925-8969

OFFICES LOCATED IN REDMOND, OR & VANCOUVER, WA

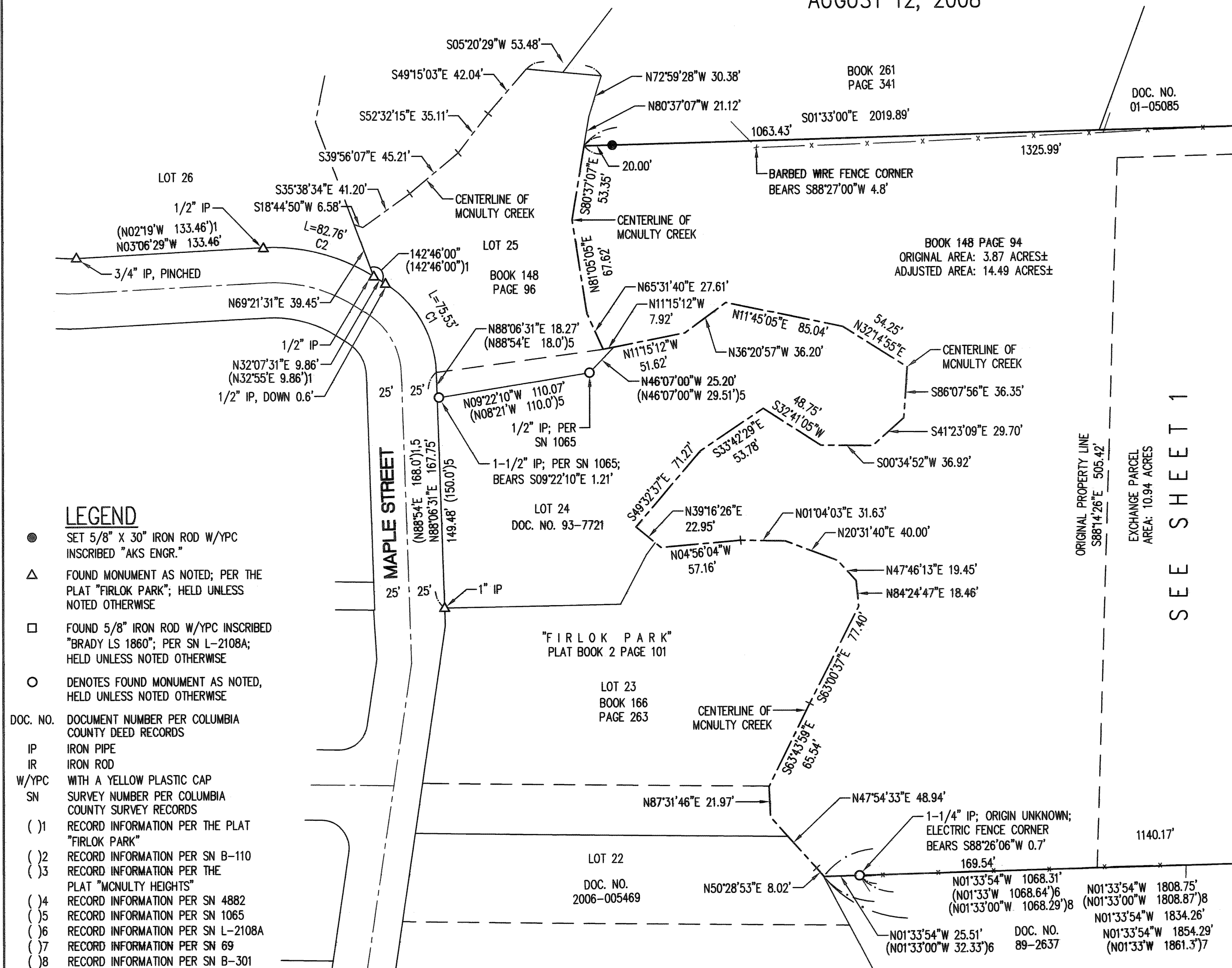
PREPARED FOR
COLUMBIA HEALTH DISTRICT
P.O. BOX 995
ST. HELENS, OR 97051

RECORD OF SURVEY

PROPERTY LINE ADJUSTMENT

LOCATED IN THE NORTHWEST 1/4 AND SOUTHWEST 1/4
OF SECTION 8, TOWNSHIP 4 NORTH, RANGE 1 WEST,
WILLAMETTE MERIDIAN, COLUMBIA COUNTY, OREGON
COLUMBIA COUNTY PLANNING FILE NO. PLA 09-05
AUGUST 12, 2008

SCALE 1" = 60 FEET



NARRATIVE

THE PURPOSE OF THIS SURVEY WAS TO ESTABLISH THE BOUNDARY OF BOOK 144 PAGE 313 AND BOOK 148 PAGE 94 COLUMBIA COUNTY DEED RECORDS AND TO ADJUST THE LINE COMMON BETWEEN SAID PROPERTIES AS SHOWN. THE BASIS OF BEARINGS IS THE WEST LINE OF THE PLAT "MCNULTY HEIGHTS", AS SHOWN.

THE CENTERLINE OF MILLARD ROAD WAS ESTABLISHED BY HOLDING A FOUND MONUMENT PER SURVEY NUMBER 4736, A 25.00 FOOT SOUTHERLY OFFSET FROM A FOUND MONUMENT PER SURVEY NUMBER B-110, A 25.00 FOOT SOUTHERLY OFFSET FROM A FOUND MONUMENT OF UNKNOWN ORIGIN, AND A 20.00 FOOT SOUTHERLY OFFSET FROM FOUND MONUMENTS PER SURVEY NUMBER B-301.

THE NORTH RIGHT-OF-WAY LINE OF MILLARD ROAD WAS ESTABLISHED BY HOLDING A 20.00 FOOT NORTHERLY OFFSET FROM CENTERLINE. NOTES FOR COUNTY ROAD 58 CALL FOR A 40.00 FOOT RIGHT-OF-WAY WIDTH, 20.00 FEET WAS HELD FOR HALF-WIDTH.

THE EAST LINE OF BOOK 148 PAGE 94 WAS ESTABLISHED BY HOLDING A FOUND MONUMENT PER SURVEY NUMBER B-301, A FOUND MONUMENT PER THE PLAT "MCNULTY HEIGHTS" AND TWO FOUND MONUMENTS OF UNKNOWN ORIGIN. THE "MAP SHOWING SURVEY OF TRACT OF LAND IN THE JOHN MCNULTY D.L.C. AND INCLUDING A SMALL PARCEL IN THE N.W. CORNER OF THE POSEY WILLIAMS D.L.C." DATED FEBRUARY 1917 APPEARS TO BE THE FIRST SURVEY OF RECORD TO MONUMENT SAID EAST LINE. THE PLAT "MCNULTY HEIGHTS AND SUBSEQUENT RESURVEYS OF SAID EAST LINE APPEAR TO USE PROPER PROCEDURE TO ESTABLISH SAID EAST LINE BY HOLDING EXISTING MONUMENTATION.

THE WEST LINES OF BOOK 144 PAGE 313 AND BOOK 148 PAGE 94 WERE ESTABLISHED BY HOLDING A FOUND MONUMENT PER SURVEY NUMBER B-301, A FOUND MONUMENT PER SURVEY NUMBER 2108 AND A FOUND MONUMENT OF UNKNOWN ORIGIN. THE "MAP SHOWING SURVEY OF TRACT OF LAND IN THE JOHN MCNULTY D.L.C. AND INCLUDING A SMALL PARCEL IN THE N.W. CORNER OF THE POSEY WILLIAMS D.L.C." DATED FEBRUARY 1917 APPEARS TO BE THE FIRST SURVEY OF RECORD TO MONUMENT SAID WEST LINE. SUBSEQUENT RESURVEYS OF SAID WEST LINE APPEAR TO USE PROPER PROCEDURE TO ESTABLISH SAID WEST LINE BY HOLDING EXISTING MONUMENTATION. SURVEY NUMBER 2108 APPEARS TO BE BASED UPON SAID MAP.

THE NORTH LINE OF BOOK 148 PAGE 94 WAS ESTABLISHED BY HOLDING THE CENTERLINE OF MCNULTY CREEK PER SAID BOOK 148 PAGE 94.

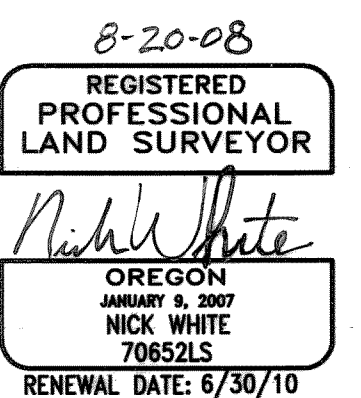
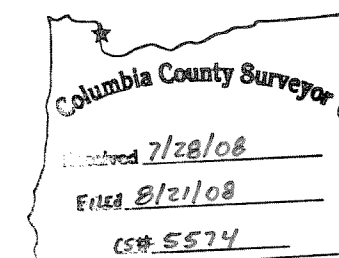
SEE SHEET 1

LEGEND

- SET 5/8" X 30" IRON ROD W/IPC INSCRIBED "AKS ENGR."
- △ FOUND MONUMENT AS NOTED; PER THE PLAT "FIRLOK PARK"; HELD UNLESS NOTED OTHERWISE
- FOUND 5/8" IRON ROD W/IPC INSCRIBED "BRADY LS 1860"; PER SN L-2108A; HELD UNLESS NOTED OTHERWISE
- DENOTES FOUND MONUMENT AS NOTED, HELD UNLESS NOTED OTHERWISE
- DOC. NO. DOCUMENT NUMBER PER COLUMBIA COUNTY DEED RECORDS
- IP IRON PIPE
- IR IRON ROD
- W/IPC WITH A YELLOW PLASTIC CAP
- SN SURVEY NUMBER PER COLUMBIA COUNTY SURVEY RECORDS
- (1) RECORD INFORMATION PER THE PLAT "FIRLOK PARK"
- (2) RECORD INFORMATION PER SN B-110
- (3) RECORD INFORMATION PER THE PLAT "MCNULTY HEIGHTS"
- (4) RECORD INFORMATION PER SN 4882
- (5) RECORD INFORMATION PER SN 1065
- (6) RECORD INFORMATION PER SN L-2108A
- (7) RECORD INFORMATION PER SN 69
- (8) RECORD INFORMATION PER SN B-301

CURVE TABLE

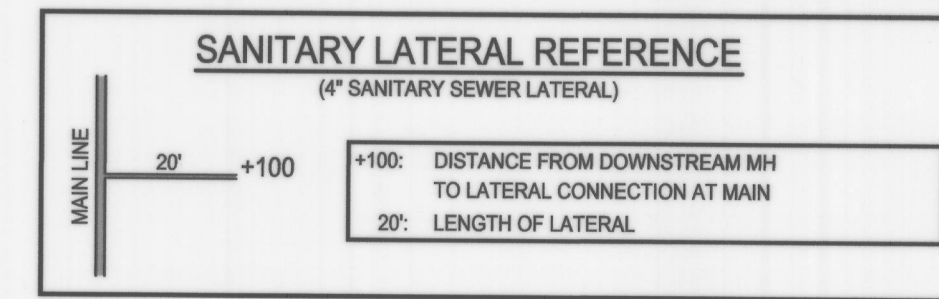
CURVE	RADIUS	DELTA	LENGTH	CHORD
C1	77.30' (77.30')1	55°59'00" (55°59'00")1	75.53'	N60°07'01"E 72.56' (N60°54'30"E 72.56")1
C2	134.59' (134.59')1	35°14'00" (35°14'00")1	82.76'	N14°30'31"E 81.47' (N15°18'E 81.47')1



JOB NAME:	MILLARD PLA	ENGINEERING • PLANNING • LANDSCAPE ARCHITECTURE FORESTRY • SURVEYING
JOB NUMBER:	2110	LICENSED IN OR & WA
DRAWN BY:	JOH	13910 SW GALBREATH DRIVE, SUITE 100 SHERWOOD, OR 97140
CHECKED BY:	NSW	PHONE: (503) 925-8799 FAX: (503) 925-8969
DRAWING NO.:	2110ROS	OFFICES LOCATED IN REDMOND, OR & VANCOUVER, WA

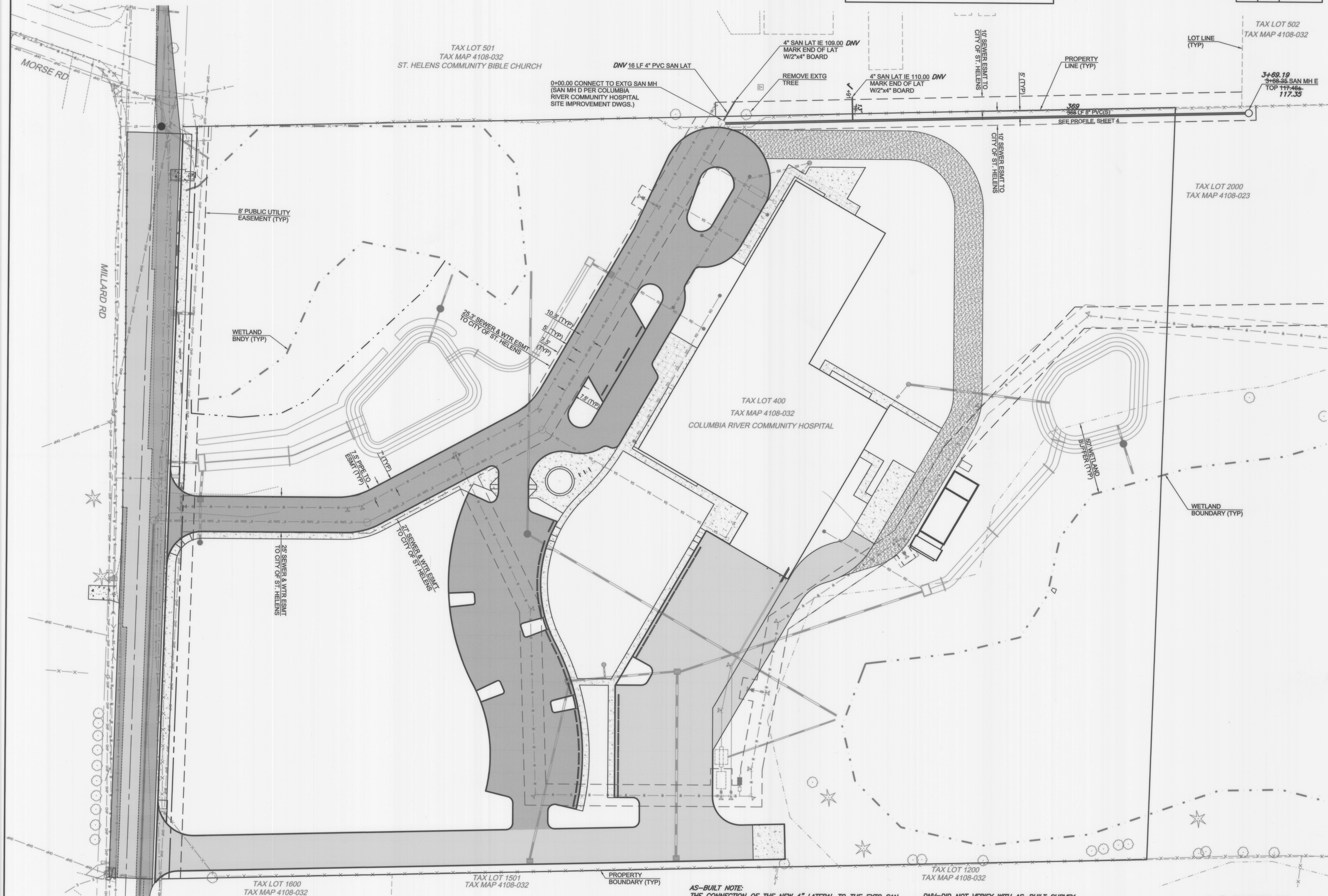
Notes:
1. Pipe construction areas outside the bounds of site grading and paving areas shall be stabilized as quickly as possible after construction by application of seeding and a minimum 1" layer of straw or mulch or by permanent landscaping.

EXHIBIT 10 - AS-BUILT CITY SEWER



Scale 1" = 30'

30 15 0 30



AS-BUILT NOTE:
THE CONNECTION OF THE NEW 4" LATERAL TO THE EXTG SAN
SEWER MH WAS VERIFIED, BUT LENGTH AND INVERT FOR THE
LATERAL COULD NOT BE VERIFIED AT THE TIME OF SURVEY.

DNV= DID NOT VERIFY WITH AS-BUILT SURVEY
✓= AS-BUILT SURVEYED LENGTH, SLOPE, OR ELEVATION
MATCHES DESIGN VALUE.

AS BUILT

Sanitary Sewer Plan For:

St. Helens Bible Church Sewer Line Extension

A Site in the City of St. Helens, Columbia County, Oregon

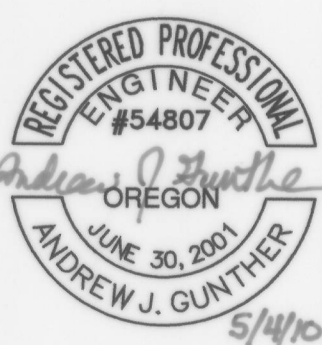
Consulting Engineers & Planners

1014 Franklin Street, Atrium Suite, Vancouver, WA 98660

PH (360) 944-6519

PLS

ENGINEERING



Project No. 2158

SCALE: H: 1" = 30'
V: N/A

DESIGNED BY: AJG

DRAFTED BY: AJG

REVIEWED BY: AJG

C3

EXHIBIT C

Form of Revocable Permit of Entry

[attached]

THIS REVOCABLE PERMIT OF ENTRY ("Permit") is hereby granted by the CITY OF HELENS, an Oregon municipal corporation ("**City**"), to ATKINS DAME INC., an Oregon corporation ("**Permittee**") for the temporary use of City-owned real property located on Millard Road in St. Helens, Oregon for the purpose of conducting pre-acquisition due diligence activities contemplated by that certain Exclusive Negotiating Agreement between Permittee and the City (the "**ENA**") subject to the following terms and conditions:

1. Location, Activities and Maintenance of Property

- 1.1 Permittee is hereby granted a temporary license to enter upon and use that certain real property located along Millard Road (the "**Property**") as generally shown on the property map attached hereto as Exhibit A.
- 1.2 Permittee and Permittee's contractors, subcontractors, and consultants may access the Property on an intermittent basis only for the purpose of performing pre-acquisition due diligence activities and for no other purpose. If Permittee performs invasive or subsurface investigations, Permittee shall be responsible for removal of any debris and any and all repairs required to restore and maintain the structural integrity of the Property and environmental mitigation of any disturbed materials requiring mitigation solely as a result of such invasive investigations.
- 1.3 Permittee shall maintain and keep the Property in a clean and orderly condition at all times to the extent resulting from the activities of Permittee and Permittee's contractors, subcontractors, and consultants including removal of all Permittee caused litter, scrap, rock, or debris of any kind at the end of the Permit period. Permittee shall maintain and shall repair any damage to existing improvements, including landscaping and sidewalks, resulting from its use of the Property. The Property shall not be deemed secure and Permittee's obligations under this Permit will not be fully discharged until the Property is inspected and reasonably approved by the City.
- 1.4 To the extent caused by Permittee or Permittee's contractors, subcontractors, and consultants, Permittee shall, upon completion of its activities restore the Property to the same or better condition as that existing immediately prior to its entry upon the Property or to such other condition as the City may reasonably require. If restoration is impossible or in lieu of restoration, at the City's discretion, Permittee shall compensate City for any physical damage to the Property in the amount the City may reasonably determine.
- 1.5 Permittee's use of and entry upon the Property shall be without expense of any kind (direct or indirect) whatsoever to City. Permittee shall be solely responsible for all maintenance and operating costs that may result from the use of the Property by Permittee or Permittee's contractors, subcontractors, and consultants. Should the City incur costs as a result of Permittee's temporary use of the Property, Permittee shall reimburse the City promptly upon the presentation of billing and reasonable documentation of such expense.
- 1.6 The City, its agents, employees and representatives may at any reasonable time, enter into or upon the Property for the purposes of examining the condition thereof, or for any other lawful purpose.

2. Insurance and Indemnification

- 2.1 Permittee shall obtain, maintain, and keep during the Term (as hereinafter defined) insurance, naming the City as additional insured, in amounts as follows: (a) commercial general liability insurance with a combined single limit of not less than \$1,000,000 per occurrence and with at least \$2,000,000 aggregate; (b) automobile liability insurance with combined single limit of not less than \$1,000,000 per occurrence; (c) employers liability insurance with a limit of not less than \$1,000,000; and (d) in addition to the primary limits specified in (a) and (b) above, excess liability insurance with a limit of not less than \$2,000,000 for each occurrence and in the aggregate. The Permittee's insurance shall be primary insurance and any insurance or self-insurance maintained by the City shall not contribute to it.
- 2.2 Permittee shall prior to its entry on or use of the Property provide to the City a Certificate of Insurance evidencing the insurance required in Section 2.1 of this Permit and containing an endorsement specifically naming the City and its officers, agents and employees as additional insureds. The certificate shall provide that coverage afforded and shall not be canceled or amended without prior written notice to the City.
- 2.3 Permittee shall indemnify, defend, and hold the City, including its appointed and elected officials, officers, agents and employees harmless from and against any and all liability or alleged liability, all suits, legal proceedings, claims, damages, losses and expenses, including but not limited to attorneys' fees, for injuries to persons or damage to property caused by or resulting from the acts, omissions, or neglect of Permittee or its agents, representatives or consultants on or about the Property; provided however, that nothing herein shall be construed to require indemnification of the City for liability attributable to the City's sole negligence or willful misconduct and; provided, further, in no event shall the foregoing indemnity obligation apply to the discovery of any pre-existing conditions in, on or under the Property.
- 2.4 Permittee shall assume all liability related to injury, death or disease to invitees, licensees, or trespassers, as a result of Permittee's direct use of the Property, whether resulting from latent or patent Property defects.
- 2.5 Permittee is solely responsible for any theft, damage or destruction to any materials, equipment or any other property of Permittee, or anyone acting on behalf of Permittee in connection with or incidental to this Permit.

3. Restrictions on Use and Hazardous Substances

- 3.1 Permittee shall in its use and entry upon the Property, observe all rules, regulations, and laws now in effect by any municipality, county, state or federal authority having jurisdiction over the Property, as they relate to the use of the Property. Permittee is solely responsible for obtaining any permits or approvals from other agencies or licensing bodies as may be necessary for Permittee's authorized entry upon and use of the Property. Furthermore, Permittee agrees to indemnify City as provided above for any damages caused by the violation thereof of any permits or approvals that may so be required.

- 3.2 Use of explosives or highly flammable material is not permitted without prior written authorization from City, which may be withheld in the City's sole and absolute discretion.
- 3.3 Permittee shall not allow any lien of any kind, type or description to be placed or imposed upon the Property or upon any improvements on the Property (if any).
- 3.4 Permittee shall not cause or permit to occur by parties working for or at the direction of Permittee, the use, generation, release, manufacture, handling, processing, storage, disposal or improper use of any Hazardous Substance, pollutant, or contaminant, on, under, or about the Property or the transportation to or from the Property of any Hazardous Substance. "**Hazardous Substances**" are substances regulated under any environmental law or regulation now or hereafter enacted by any governmental federal, state or local authority. Furthermore, Permittee agrees to indemnify City as provided above for any damages caused by the violation thereof of any permits or approvals that may otherwise be required.

4. Processing Fee, Use Fee, and Term

- 4.1 Permittee shall not be required to pay City any permit processing fee, use fee, or security deposit for this Permit.
- 4.2 This Permit will commence on the date of the last signature below and will automatically terminate and be of no further force or effect at the end of the Term of the ENA, as defined in the ENA (the "**Term**").
- 4.3 Permittee's rights under this Permit shall be personal to Permittee, and may not transferable or assignable to any other party or entity unless otherwise approved in writing by City.

[Remainder of page intentionally left blank; signatures follow]

ALL TERMS AND CONDITIONS OF THIS PERMIT ARE HEREBY ACCEPTED:

PERMITTEE:

ATKINS DAME, INC., an Oregon corporation

By: _____
Jim Atkins, President

Date: _____

By: _____
Dike Dame, Secretary

Date: _____

CITY:

CITY OF ST. HELENS, an Oregon municipal corporation

By: _____
John Walsh, City Administrator

Date: _____

ATTACHMENT
Exhibit A Property Map



