

Erikson & Associates, PLLC  
Attorneys at Law

Exhibit 1  
Appeal 18-02 & SEPA 18-05

# 18-02  
Erikson

110 West 13<sup>th</sup> Street  
Vancouver, Washington 98660-2904

(360) 696-1012 • Facsimile (360) 737-0751

Mark A. Erikson  
Licensed in Oregon & Washington  
mark@eriksonlaw.com

April 11, 2018

**HAND DELIVER**

Appeal to the City of Camas SEPA Official  
Community Development Department  
616 NE Fourth Avenue  
Camas, WA 98607

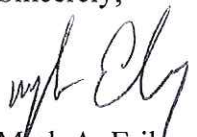
**Re: NOTICE OF APPEAL  
SEPA 18-05 Larkspur / Camas Meadows Drive Street Improvements**

I represent Jay Ponce, owner of 5955 NW Larkspur Street, Camas, Washington (APN 175964-000), one of the properties required for the above-referenced project. A City of Camas document entitled "Determination of Non-Significance" dated March 15, 2018, provides that "[t]he lead agency will not act on this proposal until the close of the 14-day comment period, which ends March 29, 2018."<sup>1</sup> Despite filing comment on March 28, 2018, we have received no notice of final decision in SEPA 18-05. The Washington Supreme Court has held that administrative decisions cannot become final while a SEPA component is still subject to review:

[N]eighbors should not have been forced to initiate judicial review of a decision when the SEPA component of that decision was not yet final in that it was still subject to further administrative review. [<sup>2</sup>]

Under the foregoing decision, the earliest date that SEPA 18-05 could have become final was March 29, 2018. Hence, the 14-day appeal period expires at close of business, April 12, 2018.<sup>3</sup> We hereby provide notice of appeal of SEPA 18-05 for the reasons stated in our comment letter dated March 28, 2018, a copy of which is annexed hereto as Exhibit 2.

Sincerely,

  
Mark A. Erikson  
Attorney at Law

MAE/ke  
PONJ0101.L02.wpd  
Enclosures

cc: Client

<sup>1</sup>Copy annexed hereto as Exhibit 1.

<sup>2</sup>*State v. Grays Harbor County*, 122 Wash.2d 244, 256, 857 P.2d 1039 (1993).

<sup>3</sup>CMC 16.13.060.





State Environmental Policy Act  
Determination of Non-Significance

**CASE NO:** SEPA18-05 Larkspur / Camas Meadows Drive Street Improvements

**APPLICANT:** City of Camas  
Jim Hodges  
616 NE 4<sup>th</sup> Avenue  
Camas, WA 98607

**REQUEST:** The applicant is proposing to widen an existing roadway to add full improvements that include curb, gutter, sidewalk, planter strips, and medians.

---

**LOCATION:** NW Larkspur, just north of NW Lake Road and connecting to Camas Meadows Drive (.25 miles long).

**LEGAL DESCRIPTION:** Section 28, Township 2 North, Range 3 East of Willamette Meridian.

**SEPA DETERMINATION:** Determination of Non-Significance (DNS)

**COMMENT DEADLINE:** **March 29, 2018, at 5:00 p.m.**

As lead agency under the State Environmental Policy Act (SEPA) Rules [Chapter 197-11, Washington Administrative Code (WAC)], the City of Camas must determine if there are possible significant adverse environmental impacts associated with this proposal. The options include the following:

- DS = Determination of Significance (The impacts cannot be mitigated through conditions of approval and, therefore, requiring the preparation of an Environmental Impact Statement (EIS).
- MDNS = Mitigated Determination of Non-Significance (The impacts can be addressed through conditions of approval), or;
- DNS = Determination of Non-Significance (The impacts can be addressed by applying the Camas Municipal Code).

**Determination:**

**Determination of Non-Significance (DNS).** The City of Camas, as lead agency for review of this proposal, has determined that this proposal does not have a probable significant adverse impact on the environment. An Environmental Impact Statement (EIS) is not required under RCW 43.21C.030(2)(e). This decision was made after review of a completed environmental checklist, and other information on file with the City of Camas.

**Date of Publication & Comment Period:**

Publication date of this DNS is **March 15, 2018**, and is issued under WAC 197-11-340. The lead agency will not act on this proposal until the close of the 14-day comment period, which ends on **March 29, 2018**. Comments may be sent by email to [communitydevelopment@cityofcamas.us](mailto:communitydevelopment@cityofcamas.us).

**SEPA Appeal Process:**

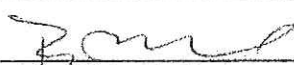
An appeal of any aspect of this decision, including the SEPA determination and any required mitigation, must be filed with the Community Development Department within fourteen (14) calendar days from the date of the decision notice. The letter of appeal should contain the following information.

1. The case number designated by the City of Camas and the name of the applicant; and,
2. The name and signature of each person or group (petitioners) and a statement showing that each petitioner is entitled to file an appeal as described under Title 16 of the Camas Municipal Code. If multiple parties file a single petition for review, the petition shall designate one party as the contact representative with the City Planner. All contact with the City Planner regarding the petition, including notice, shall be with this contact person.

The appeal request and appropriate fee must be submitted to the Community Development Department between 8:00 a.m., and 5:00 p.m., Monday through Friday, at the address listed below:

Appeal to the City of Camas SEPA Official  
Community Development Department  
616 NE Fourth Avenue  
Camas, Washington 98607

**Responsible Official:** Robert Maul (360) 817-1568

 Robert Maul, Planning Manager and Responsible Official	<u>March 15, 2018</u> Date of publication
--------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------



# SEPA Checklist

## Project Narrative

### Project Description and Benefits

The NW Larkspur Street Improvements project is located in the City of Camas, Washington. The proposed project will widen the existing road from the intersection of NW Lake Road towards the current northern terminus (dead end) of the road, providing connectivity to future private developments. The existing roadway is currently approximately 20 feet wide for the majority of the alignment, but widens to approximately 36 feet in the vicinity of NW Lake Road. The road has a curb and an 8-foot wide sidewalk on the east side and sidewalk on both sides near NW Lake Road.

The proposed street improvements include the following:

- Replacing the existing roadway.
- Widen the road to approximately 38 feet including center medians.
- Construct a traffic circle at the intersection with NE 61<sup>st</sup> Circle.
- Construct a turnaround at the north end of the project.
- Construct curb and gutter on the west side of the street along with new sidewalk and bike lane, and widened sidewalks on the east side of the street to 10 feet.
- Extend the existing stormwater system from the north to convey additional stormwater from the NW Larkspur Street Improvements.
- Install street lighting on the west side.
- Relocate signal pole on NW corner of Larkspur and Lake Road

Both the widened road and the stormwater system will connect to improvements being built with the Village at Camas Meadows and Parklands at Camas Meadows projects. The project will upgrade NW Larkspur Street to city arterial standards and match up with a new roadway to be constructed with new developments to the north. The upgraded roadway will include two travel lanes, a turn lane or median, with a new sidewalk on the west side (maintaining the existing sidewalk on the east side), bicycle lanes, planter strips, and street lighting. Stormwater, water and sewer utilities will be provided to each lot on the west side to allow for future development, and stormwater management will include water quality treatment and conveyance.

The improvements to NW Larkspur Street will increase the capacity of the street to accommodate the anticipated increase in traffic from new developments to the north. The improvements will increase traffic safety and provide for pedestrian and bicycle travel through the corridor.

### Potential Impacts

The widening of the NW Larkspur Street right of way is anticipated to require the acquisition of 40,280 square feet by the City from six different property owners. A strip of land approximately 10 feet in width will need to be acquired from adjacent property owners on the west side to increase the right-of-way to 70 feet throughout the project.

### Permits Required

In order to build this project, the following permits will be needed:

## SEPA Checklist Project Narrative

### State of Washington

- SEPA checklist
- Stormwater Pollution Prevention Plan (SWPPP)
- General Construction Stormwater Permit (DOE)

### City of Camas

- Critical Areas Review

### Project Funding

The project is being funded through a combination of local and state funds and the total construction cost will be approximately \$4,375,000. The City of Camas successfully applied for and has received Fuel Tax grant funding from the Washington State Transportation Improvement Board. The grant will be used to fund part of the roadway improvements to NW Larkspur Street and connect it to Camas Meadows Drive.

### Project Participants

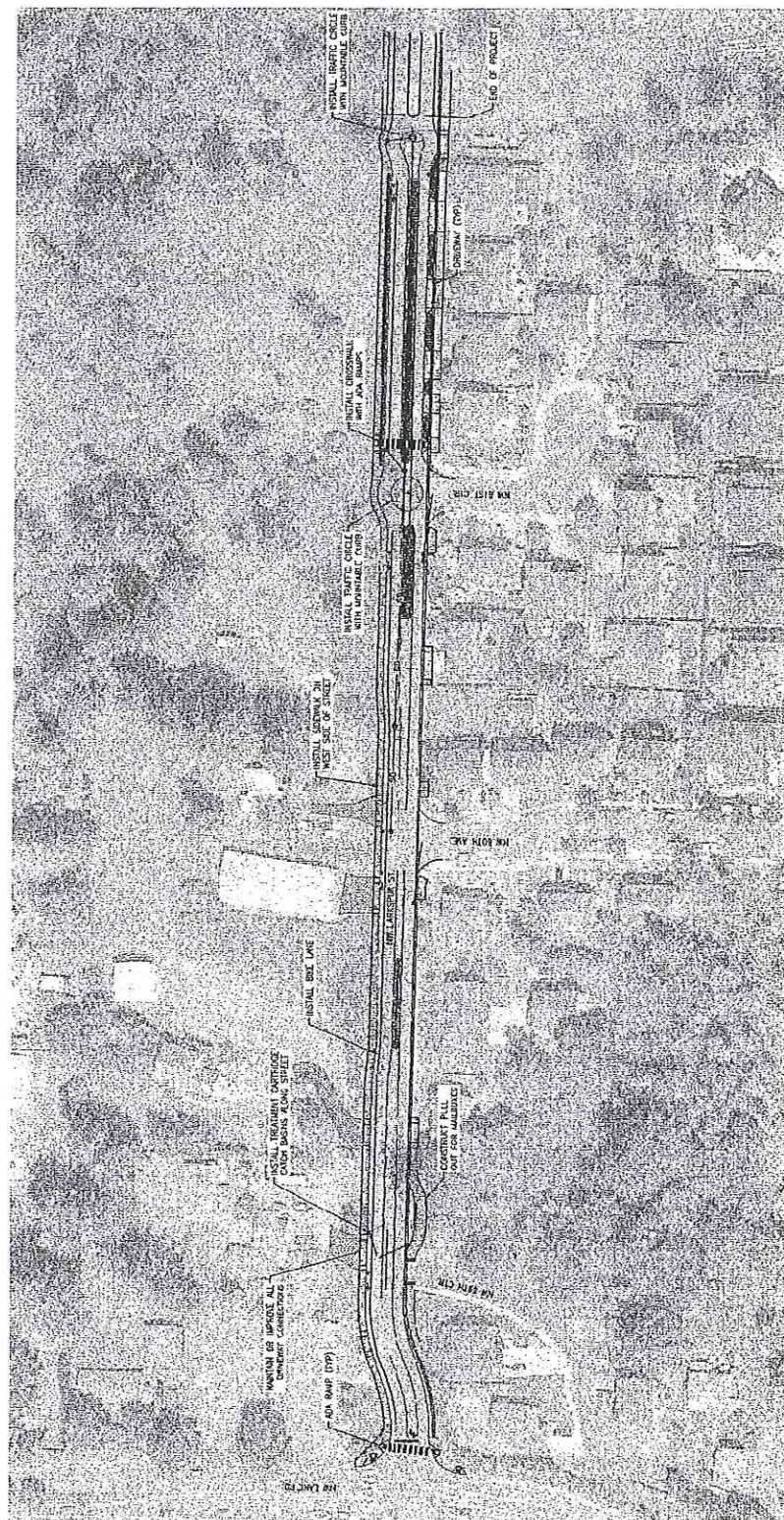
The City of Camas, represented by City Engineer James Carothers and Project Manager Jim Hodges, is overseeing the project. The City has selected Otak, Inc. and associated subconsultants to provide civil engineering services. The Project Manager for Otak is Allen Hendy, PE.

#### Contact Information:

James Carothers  
City of Camas  
616 NE 4<sup>th</sup> Avenue  
Camas, WA 98607  
360-817-1561  
communitydevelopment@cityofcamas.us

Allen Hendy  
Otak, Inc.  
700 Washington Street, Suite 300  
Vancouver, WA 98660  
360-906-6786  
allen.hendy@otak.com







110 West 13<sup>th</sup> Street  
Vancouver, Washington 98660-2904

(360) 696-1012 • Facsimile (360) 737-0751

Mark A. Erikson  
Licensed in Oregon & Washington  
mark@eriksonlaw.com

March 28, 2018

**E-MAIL & FIRST CLASS MAIL**

Robert Maul  
Camas Planning Manager  
616 NE 4th Avenue  
Camas, WA 98607  
E-mail: [communitydevelopment@cityofcamas.us](mailto:communitydevelopment@cityofcamas.us)

**Re: SEPA 18-05 Larkspur / Camas Meadows Drive Street Improvements**

I represent Jay Ponce, owner of 5955 NW Larkspur Street, Camas, Washington (APN 175964-000), one of the properties required for the above-referenced project.<sup>1</sup> The proposed Determination of Nonsignificance (DNS) should be denied, and a Determination of Significance should issue, due to probable significant adverse environmental impacts from the proposal. City documents describe "Potential Impacts" as follows:

The widening of NW Larkspur Street right of way is anticipated to require the acquisition of 40,280 square feet by the City from six different property owners. A strip of land 10 feet in width will be need to be acquired from adjacent property owners on the west side to increase the right-of-way to 70 feet throughout the project. [2]

The lead agency cannot issue a DNS unless the responsible official determines there will be "no probable significant adverse environmental impacts from the proposal."<sup>3</sup> The threshold determination must be "based upon information reasonably sufficient to evaluate the environmental impact of a proposal."<sup>4</sup>

---

<sup>1</sup>The proposal contemplates taking 3,113 square feet from the Ponce property, and a temporary construction easement of 9,939 square feet; the latter characterization is erroneous, as discussed below. See Exhibit 1 annexed hereto: *Larkspur Street Improvements*, Otak.

<sup>2</sup>SEPA Checklist Project Narrative at 1.

<sup>3</sup>WAC 197-11-340(1).

<sup>4</sup>WAC 197-11-335.

Information sufficient to evaluate environmental impacts is contained in a draft of Otak's plan for "Larkspur Street Improvements," a copy of which is annexed hereto as Exhibit 1. The plan includes a cross-section along the driveway center-line (lower left corner) showing existing grade and a significant excavation into the Ponce property, outside of "10 feet in width . . . to be acquired from adjacent property owners on the west side." As depicted, the excavation removes up to 8 feet of elevation, encroaching at least 36 feet unto the Ponce property. This cut will impact the following "elements of the environment" specified in governing regulations:<sup>5</sup> soils, topography, unique physical features, erosion, scenic resources, and aesthetics.<sup>6</sup>

The Otak analysis attempts to designate 9,939 square feet containing the excavation as a "temporary construction easement."<sup>7</sup> This designation is contrary to Washington statutes:

Every city . . . is hereby authorized and empowered to condemn land and property, . . . and to damage any land or other property . . . for the purpose of making changes in the grade of any street, avenue, alley or highway, or for the construction of slopes or retaining walls for **cuts and fills upon real property abutting on any street**, avenue, alley or highway . . . , and to condemn land and other property and damage the same for such and for any other public use after just compensation having been first made or paid into court for the owner in the manner prescribed by this chapter. [<sup>8</sup>]

Clearly, "cuts and fills upon real property abutting any street" constitute a permanent "take" requiring compensation, not a temporary construction easement. This statute has been enforced by the Washington Supreme Court to require compensation for fills on properties abutting road projects:

[A] long line of later cases clearly hold the state or its subdivisions to be responsible for an interference with the right, use, and enjoyment of private property be it 'taking' or 'damaging.' . . . Thus it is clear that 'it is a taking of private land to cover it to any considerable depth with earth. When a street is graded to its Full width above the lot level of the surrounding land and the embankment is allowed to slope on the adjacent property, the land so covered is taken in the constitutional sense.'<sup>9</sup> [9]

---

<sup>5</sup>WAC 197-11-740.

<sup>6</sup>WAC 197-11-444(1)(a)(ii), (iii), (iv), and (iv); WAC 197-11-444(1)(e)(v), and WAC 197-11-444(2)(b)(iv).

<sup>7</sup>*Temporary Construction Easement . . . , Exhibit "B"* page 3 of 3 (copy annexed hereto as Exhibit 2).

<sup>8</sup>RCW 8.12.030.

<sup>9</sup>*Cummins v. King County*, 72 Wash.2d 624, 628-29, 434 P.2d 588 (1967), emphasis added.



While the Court has lacked occasion to apply the statute to *cuts* on adjoining land, we have no doubt that the rule would be the same because compensation for cuts and fills is required under the same statutory provision. Just as fills required on abutting property constitute a compensable take, so do cuts on adjoining land which are required for a public road project.

Otak also prepared an alternative design using retaining walls and relocating the existing shop building, instead of the exorbitant cut and excavation discussed above. A copy of the retaining wall design is annexed hereto as Exhibit 3. This design includes relocation of the shop building on the north side of the Ponce property and redesigned access, necessitated by proposed project.<sup>10</sup> Otak abandoned this alternative in order to reduce project costs; however, after 9,939 square feet are reclassified as a compensable take, and access, views and aesthetic losses are included in value diminution to the Ponce property, it is likely that the retaining wall alternative will be seen as viable.

In any event, the proposed DNS must be denied due to probable significant adverse environmental impacts from the proposal.<sup>11</sup>

Sincerely,



Mark A. Erikson  
Attorney at Law

MAE/ke  
PONJ0101.L01.wpd

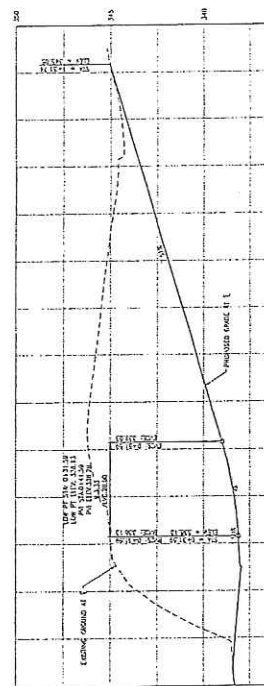
Enclosures

cc: Client

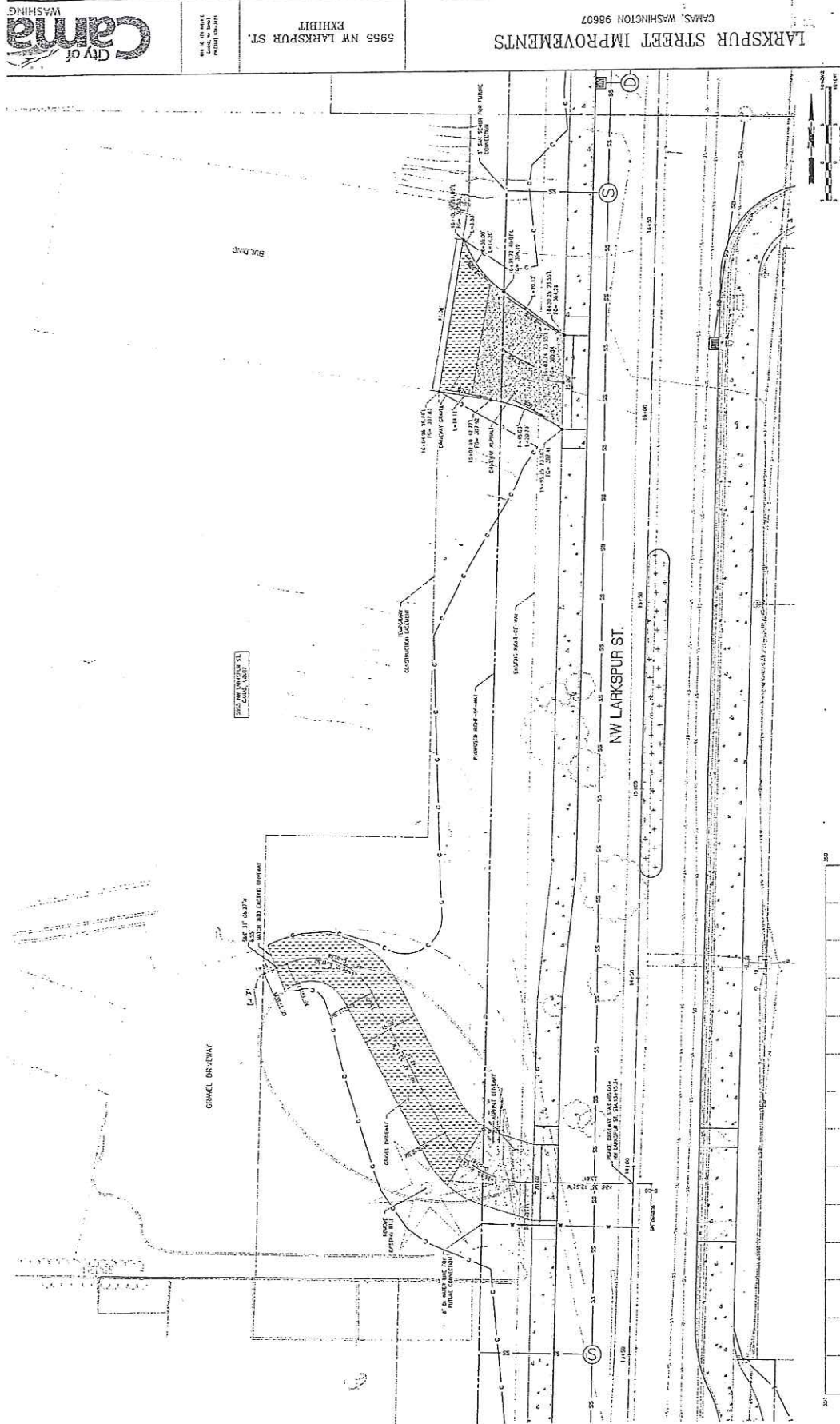
---

<sup>10</sup>Letter dated January 8, 2018, from Jacob Balderas, PE, SE, to Jay Ponce (copy annexed hereto as Exhibit 4),

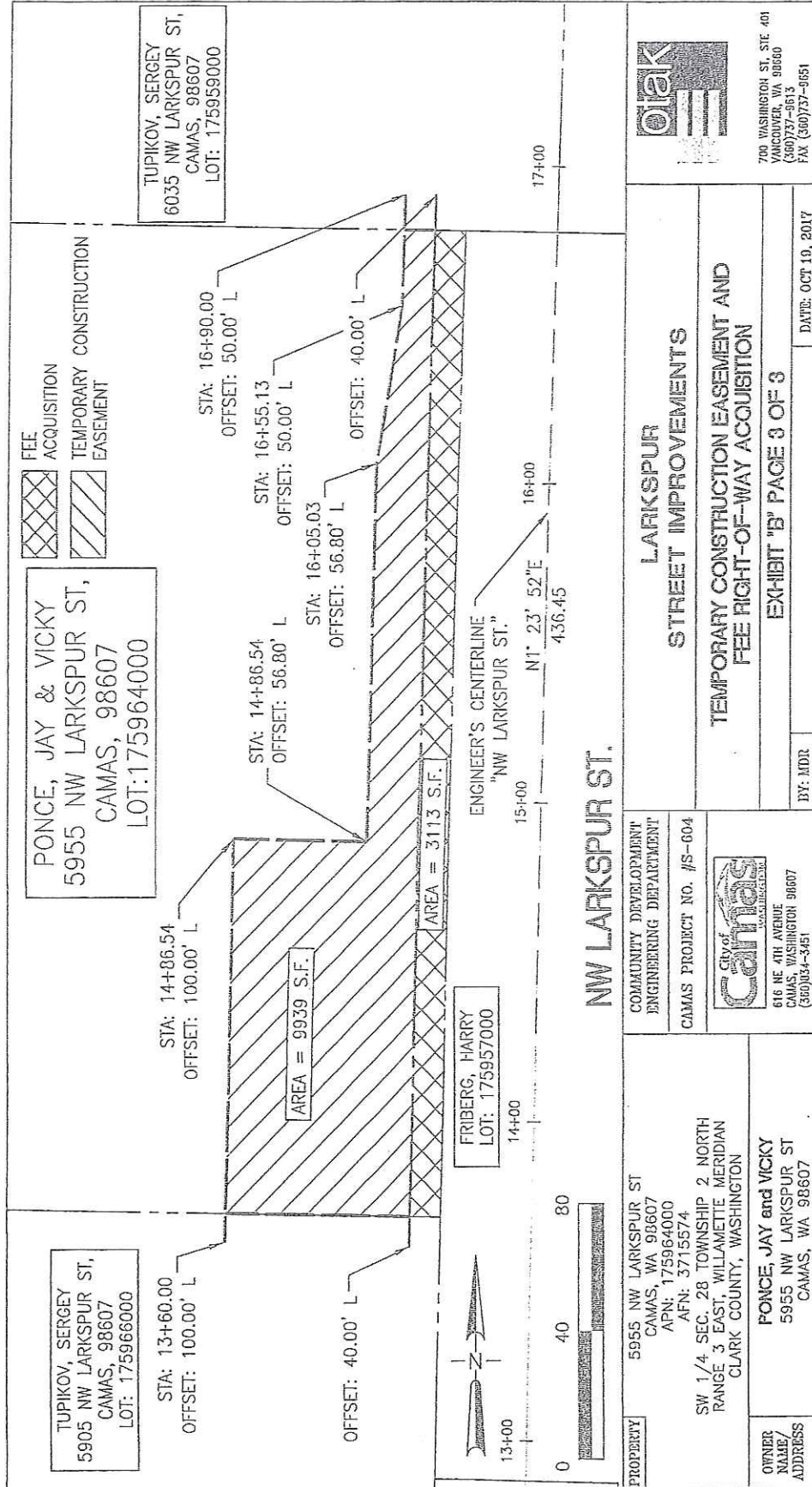
<sup>11</sup>WAC 17-11-340(1).



PROPERTY IMPACTS	
TEMPORARY CONSTRUCTION EASEMENT	9,900 SF.
RIGHT-OF-WAY TAKE	3,113 SF.

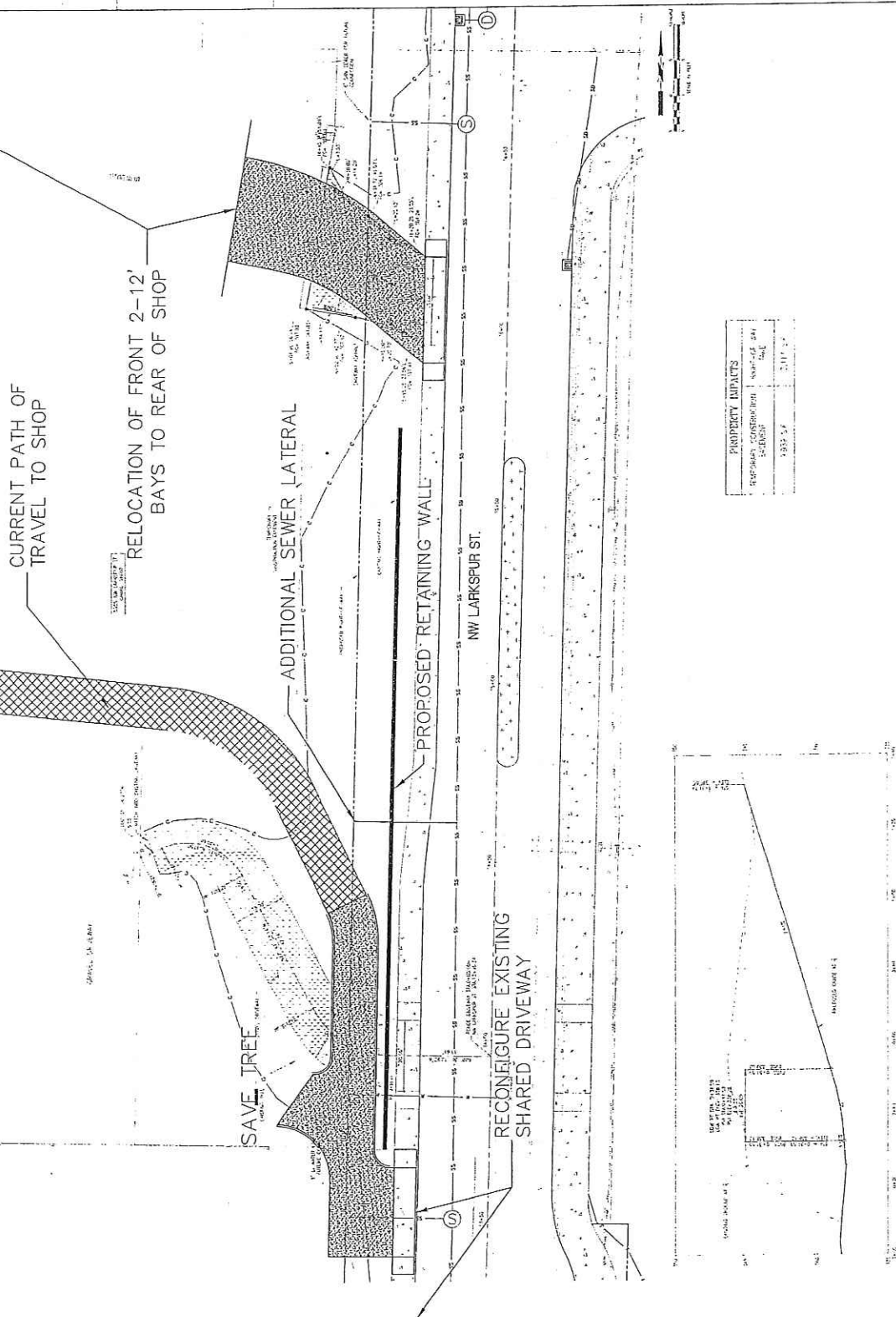






**EXHIBIT 2**

**EXHIBIT 2**



1997	1998
1999	2000
2001	2002
2003	2004
2005	2006
2007	2008
2009	2010
2011	2012
2013	2014
2015	2016
2017	2018
2019	2020
2021	2022
2023	2024
2025	2026
2027	2028
2029	2030
2031	2032
2033	2034
2035	2036
2037	2038
2039	2040
2041	2042
2043	2044
2045	2046
2047	2048
2049	2050
2051	2052
2053	2054
2055	2056
2057	2058
2059	2060
2061	2062
2063	2064
2065	2066
2067	2068
2069	2070
2071	2072
2073	2074
2075	2076
2077	2078
2079	2080
2081	2082
2083	2084
2085	2086
2087	2088
2089	2090
2091	2092
2093	2094
2095	2096
2097	2098
2099	2100
2101	2102
2103	2104
2105	2106
2107	2108
2109	2110
2111	2112
2113	2114
2115	2116
2117	2118
2119	2120
2121	2122
2123	2124
2125	2126
2127	2128
2129	2130
2131	2132
2133	2134
2135	2136
2137	2138
2139	2140
2141	2142
2143	2144
2145	2146
2147	2148
2149	2150
2151	2152
2153	2154
2155	2156
2157	2158
2159	2160
2161	2162
2163	2164
2165	2166
2167	2168
2169	2170
2171	2172
2173	2174
2175	2176
2177	2178
2179	2180
2181	2182
2183	2184
2185	2186
2187	2188
2189	2190
2191	2192
2193	2194
2195	2196
2197	2198
2199	



FULL SPECTRUM ENGINEERING, LLC  
JACOB BALDERAS P.E., S.E.  
STRUCTURAL & CIVIL ENGINEER

Date: January 8, 2018

Client: Jay Ponce  
5955 NW Larkspur St.  
Camas, WA 98607

Subject: Retaining walls (Project No. 17-104)

Mr. Ponce,

I have reviewed the preliminary geotechnical report prepared by Hart Crowser Dated December 1, 2017. Although there were no specific values given for the design of the proposed retaining walls, there is sufficient information to determine the feasibility of such designs. Please note that due to the soft soils on site, pin piles were recommended in the report to resist overturning forces with keyways to resist sliding forces. The design for such walls will require more effort and coordination between the civil, geotechnical and structural engineer.

I have also reviewed the Driveway Option 1 proposed by Steve Farnsworth. I am ready to coordinate the concrete retaining wall design effort based on the information presented thus far. In order to proceed, I would need the following:

- 1) Base of wall and retained soil profile for Driveway Option 1. This will set the retaining wall heights along the length of the wall.
- 2) Allowable pin pile capacities for the resistance of overturning forces as referenced in the geotechnical report.
- 3) Active and passive earth pressures for the wall design, including provisions for wall surcharge loading due to adjacent building structures and vehicular traffic on your property where it may occur.
- 4) Coefficient of friction values where pin piles may not be necessary for shorted wall heights as deemed appropriate by the geotechnical engineer upon inspection of the subgrade.
- 5) Seismic soil inertial forces and point of application along the height of the wall.

There may be other information that is needed, but I trust that the information will be published in the final geotechnical report when it becomes available. Once that information becomes available, I will provide you with a scope of services to begin the design.

I look forward to working on your project. Please let me know if you have any questions.

Best,

Jacob Balderas, PE, SE  
Structural Engineer

EXHIBIT 2  
Page 7 of 8

EXHIBIT 4  
Page 1 of 1

## Mark A. Erikson

---

**From:** Mark A. Erikson [mark@eriksonlaw.com]  
**Sent:** Wednesday, March 28, 2018 1:29 PM  
**To:** 'communitydevelopment@cityofcamas.us'  
**Cc:** 'Kris@eriksonlaw.com'; 'rmaul@cityofcamas.us'  
**Subject:** SEPA 18-05 Larkspur / Camas Meadows Drive Street Improvements  
**Attachments:** sharpcopiereriksonlaw@gmail.com\_20180328\_132918.pdf

CONFIDENTIALITY NOTICE: This transmittal and any accompanying documents may contain information belonging to the sender which is protected by the attorney-client privilege. This information is confidential.

RESTRICTED USE: You may not use the information in this transmittal in any way if you are not the intended recipient. Do not read any part of this transmittal if you are not the person to whom it was directed. Call us immediately to arrange for a return of the documents if you received this transmittal in error.

TAX ADVICE NOTICE: According to Internal Revenue Service Circular 230, we are required to advise you as follows: Any tax advice contained in this communication is not intended to be used for the purposes of: (i) avoiding tax related penalties, nor (ii) promoting, marketing, or recommending any transaction, plan, or arrangement. Taxpayers may rely upon professional advice to avoid tax related penalties only if contained in a comprehensive tax opinion that conforms to stringent requirements.

**Robert:**

Please see attached comment to the above-referenced SEPA application.

Mark A. Erikson  
Erikson & Associates, PLLC  
Attorneys at Law  
110 West 13th Street  
Vancouver, Washington 98660-2904  
Telephone (360) 696-1012  
Facsimile (360) 737-0751

EXHIBIT 2  
Page 8 Of 8