

Oregon Water Resources Department  
Water Rights Division

Water Rights Application  
Number G-16373

*Hearing and Appeal Rights*

Under the provisions of ORS 537.170 and ORS 537.622, the applicant may request a contested case hearing by submitting the information required for a protest under ORS 537.153(6) or ORS 537.621(7) to the Department within 14 days after the date of mailing of this order as shown below. If a contested case hearing is requested, the Department must schedule one. In the contested case hearing, however, only those issues based on the above modifications to the proposed final order may be addressed.

ORS 536.075 allows for additional appeal rights for other than contested case. This is a final order in other than contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60 day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080 you may either petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

This statement of judicial review rights does not create a right to judicial review of this order, if judicial review is otherwise precluded by law or by a Settlement Agreement. Where no changes have been made to a Proposed Final Order on a water right application and no protests have been filed during the protest period, the final order is not subject to judicial review.

**FINAL ORDER INCORPORATING SETTLEMENT AGREEMENT**

**Application History**


On January 24, 2005, Carl Malone submitted an application to the Department on behalf of Wood Village. The application was assigned number G-16373. On March 22, 2005, OWRD issued a Proposed Final Order for application G-16373, recommending approval of the application with conditions. On May 3, 2005, Fairview filed a Protest against the PFO on application G-16373.

Settlement negotiations between the parties resulted in a Settlement Agreement. As of July 24, 2006, OWRD, City of Fairview, and City of Wood Village have all signed the Settlement Agreement. The Settlement Agreement is incorporated into this Final Order and is attached hereto.

The proposed use will not impair or be detrimental to the public interest.

**Order**

Application G-16373 therefore is approved and Permit G-16068 is issued as provided in the Settlement Agreement.

  
\_\_\_\_\_  
Dwight French  
Administrator of Water Rights  
and Adjudications

*for*  
Phillip C. Ward, Director  
Oregon Water Resources Department

  
\_\_\_\_\_  
Date

**BEFORE THE OREGON WATER RESOURCES DEPARTMENT**

In the Matter of Water Right Application G-16373 )	
in the name of the City of Wood Village, )	<b>SETTLEMENT</b>
<i>Applicant,</i> )	<b>AGREEMENT</b>
) )	
City of Fairview, )	
<i>Protestant</i> )	
_____) )	

The Oregon Water Resources Department (“OWRD”), the City of Wood Village (“Wood Village”), the City of Fairview (“Fairview”), referred to collectively as “the Parties” and each individually a “Party,” do hereby stipulate and agree in this “Settlement Agreement” as follows:

**Stipulations**

- I. On January 24, 2005, Carl Malone submitted an application to the Department on behalf of Wood Village. The application was assigned number G-16373.
- II. On March 22, 2005, OWRD issued a Proposed Final Order (PFO) for application G-16373, recommending approval of the application with conditions.
- III. On May 3, 2005, Fairview filed a Protest against the PFO on application G-16373.
- IV. The Parties agree that all issues raised in Protestant’s protest to the PFO on application G-16373 are resolved solely on the following terms.

**Terms of Agreement**

- 1. In signing this Settlement Agreement, Fairview withdraws its protest to the PFO for application G-16373 with prejudice.
- 2. Regarding water right Application G-16373, Wood Village and Fairview hereby expressly waive all right and opportunity to file a protest or request for contested case hearing, request for reconsideration, exceptions, or to seek judicial review of the Final Order or Permit, in addition to waiving all right and opportunity to challenge this Settlement Agreement.
- 3. After Wood Village and Fairview sign this Settlement Agreement, they will promptly mail the signed original back to Oregon Water Resources Department, ATTN: Mike Reynolds, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.
- 4. Within 30 days after OWRD receives the original Settlement Agreement(s) signed by Wood Village and Fairview, OWRD will issue a Final Order and Permit that are consistent with the Draft Final Order and Draft Permit that are attached to and

incorporated into this Settlement Agreement. The Final Order will incorporate this Settlement Agreement by reference and as an attachment.

5. For purposes of this Settlement Agreement, the phrase "Fairview Wells" means any wells developed in the Sand and Gravel Aquifer (SGA) and located within the Fairview city boundary as it existed on the date this Settlement Agreement was signed by all parties, for which Fairview has water rights that have senior priority dates relative to Wood Village's Well #4.

The decline interference condition in any permit issued by OWRD for Wood Village's Well #4 (Application G-16373, Permit G-16068) shall be set at 25 feet. However, Permit G-16068 will specify that, with respect to Fairview's senior groundwater rights, Wood Village's decline interference level is 10 feet below the calculated average summer pumping water level (hereinafter referred to as the "Pumping Level") at Fairview Wells, as determined pursuant to this Settlement Agreement.

For purposes of this Settlement Agreement, the phrase "Observed Summer Pumping Level" means the summer pumping water level observed at any Fairview Well at a particular point in time.

6. The Parties acknowledge that Wood Village's curtailment obligations under this Settlement Agreement are only initiated upon a request by Fairview for formal water right regulation by OWRD against Wood Village's Well #4 (Application G-16373, Permit G-16068) based on an alleged violation of the 10 foot decline interference condition contained in Permit G-16068. Requests for formal regulation shall be processed by OWRD under its usual procedures. In the event that Fairview wishes to make such a request for formal regulation by OWRD, the following actions will be taken:

- A. Notice of Fairview's Request for Formal Regulation by OWRD Against Wood Village Well #4 (Application G-16373, Permit G-16068). Fairview will contemporaneously provide written notice of the request for regulation against Wood Village's Well #4 (Application G-16373, Permit G-16068) to (1) OWRD's District 20 Watermaster, (2) the Public Works Director of Wood Village, (3) the City Manager of Wood Village, and (4) the Mayor of Wood Village.

The written notice shall include the basis for Fairview's request for formal regulation by OWRD, including an analysis of water level data showing that Fairview Wells have experienced Observed Summer Pumping Levels that are equal to or greater than 10 feet below the Pumping Levels, not directly attributable to hydraulic interference by other aquifer users such as the City of Portland. The written notice shall also include an analysis by Fairview of the Observed Summer Pumping Level data in light of the following equation, which is intended to correct Observed Summer Pumping Level data for variations in pumping rates in the particular Fairview Well or Wells where Summer Pumping Levels are observed to be 10 feet or more lower than the Pumping Levels:

$$\overline{PL}_{corrected} = \overline{PL}_{48} - \left( \frac{\overline{Q}_{48} - \overline{Q}_{3yr}}{\overline{SC}_{48}} \right)$$

$\overline{PL}_{corrected}$  = Observed Summer Pumping level in Fairview Well corrected for discharge rate variability during period of time that uncorrected Observed Summer Pumping Level is 10 feet lower than Pumping Level

$\overline{PL}_{48}$  = Average Observed Summer Pumping Level in Fairview Well for period of time exceeding 48 hours that uncorrected Observed Summer Pumping Level is 10 feet lower than Pumping Level

$\overline{Q}_{48}$  = Average pumping rate in Fairview Well during period of time exceeding 48 hours that uncorrected Observed Summer Pumping Level is 10 feet lower than Pumping Level

$\overline{Q}_{3yr}$  = Three-year average of pumping rate in Fairview Well for the summer month that uncorrected Observed Summer Pumping Level is 10 feet lower than Pumping Level

$\overline{SC}_{48}$  = Average specific capacity for period of time exceeding 48 hours that uncorrected Observed Summer Pumping Level is 10 feet lower than Pumping Level. Average specific capacity is computed by dividing average pumping rate by average water level drawdown during this period. The average water level drawdown is measured relative to the annual static water level measured in the well in March of each year.

Fairview and Wood Village acknowledge that it is possible for interference from pumping by City of Portland, Rockwood, and other SGA aquifer users to also affect Fairview wells.

Prior to submitting a formal request for regulation by OWRD against Wood Village Well #4, and prior to any curtailment obligation by Wood Village described in Section 6B, below, Fairview agrees to assess whether pumping at City of Portland, Rockwood, or other SGA aquifer wells is causing Observed Summer Pumping Levels to fall below the Pumping Levels in Fairview Wells, and to review Observed Summer Pumping Level data after correcting for discharge variations using the equation listed above. Fairview will not submit a request for formal regulation by OWRD against Wood Village Well #4 based on Observed Summer Pumping Level data that has not been corrected using the equation listed above.

- B. Curtailment by Wood Village. Within five calendar days of Wood Village's receipt of Fairview's written notice described in section 6A, above, Wood Village shall begin implementation of specific curtailment measures, based on the interference "triggers" identified below. Wood Village may decide to implement any of these curtailment measures in the absence of any request by Fairview for regulation of Wood Village's Well #4.

Wood Village must report to Fairview and OWRD what specific curtailment measures have been implemented within two business days of initiating the curtailment measure.

The “triggers” for each stage of Wood Village’s curtailment under this Settlement Agreement are based on the amount of interference in excess of the computed Pumping Levels at any of the Fairview Wells caused by pumping at Wood Village Well #4. The methodology for determining the Pumping Levels is described in Section 11 of this Settlement Agreement.

If and when Fairview asserts that Wood Village must implement Level 1, Level 2, Level 3, or Level 4 curtailment measures pursuant to this Settlement Agreement, Fairview shall contemporaneously provide Wood Village’s (1) Public Works Director, (2) City Manager, and (3) Mayor, with the basis for Fairview’s assertion, including an analysis of applicable Observed Summer Pumping Level data, and an analysis of such data in light of the equation in Term 6A of this Settlement Agreement.

The triggers and corresponding action for each stage of curtailment are described below:

**Level 1 – Advisory – 10 feet of interference**

- This stage of alert is triggered if the Observed Summer Pumping Level in any of the Fairview Wells has declined by 10 or more feet below the Pumping Level for 48 consecutive hours, considering all pumping level data at the end of each pumping cycle for the specific well(s) during that time period, and in light of the equation in Term 6A of this Settlement Agreement. Wood Village may terminate Level 1 curtailment measures if the Observed Summer Pumping Level in all Fairview Wells has recovered to above 10 feet below the applicable Pumping Levels for 48 consecutive hours, considering all pumping level data at the end of each pumping cycle for the specific well(s) during that time period.
- Inform the public about potential problem
- Request voluntary conservation

**Level 2 – Curtailment Alert – 15 feet of interference**

- This stage of alert is triggered if the Observed Summer Pumping Level in any of the Fairview Wells has declined by 15 or more feet below the Pumping Level for 48 consecutive hours, considering all pumping level data at the end of each pumping cycle for the specific well(s)

during that time period, and in light of the equation in Term 6A of this Settlement Agreement. Wood Village may terminate Level 2 curtailment measures if the Observed Summer Pumping Level in all Fairview Wells has recovered to above 15 feet below the applicable Pumping Levels for 48 consecutive hours, considering all pumping level data at the end of each pumping cycle for the specific well(s) during that time period.

- Issue water shortage alert
- Set conservation goals and prepare for decreasing supply
- Inform the public about potential problem
- Request voluntary curtailment of water usage
- Reduce pumping at Well #4

### **Level 3 – Water Shortage Alert – 20 feet of interference**

- This stage of alert is triggered if the Observed Summer Pumping Level in any of the Fairview Wells has declined by 20 or more feet below the Pumping Level for 48 consecutive hours, considering all pumping level data at the end of each pumping cycle for the specific well(s) during that time period, and in light of the equation in Term 6A of this Settlement Agreement. Wood Village may terminate Level 3 curtailment measures if the Observed Summer Pumping Level in all Fairview Wells has recovered to above 20 feet below the applicable Pumping Levels for 48 consecutive hours, considering all pumping level data at the end of each pumping cycle for those well(s) during that time period.
- Issue water shortage alert
- Set more stringent conservation goals
- Restrict non-essential water uses to odd/even schedule
- Request voluntary curtailment of all water use
- Inform the public about the problem
- Monitor compliance with the restrictions and enforce when necessary
- At this time the City will alternate run times with City wells in the TSA aquifer to limit pumping from the SGA aquifer

- Reduce pumping at Well #4.

#### **Level 4 – Emergency Alert – 25 feet of interference**

- This stage of alert is triggered if the Observed Summer Pumping Level in any of the Fairview Wells has declined by 25 feet below the Pumping Level for 48 consecutive hours, considering all pumping level data at the end of each pumping cycle for the specific well(s) during that time period, and in light of the equation in Term 6A of this Settlement Agreement. Wood Village may terminate Level 4 curtailment measures if the Observed Summer Pumping Level in all Fairview Wells has recovered to above 25 feet below the applicable Pumping Levels for 48 consecutive hours, considering all pumping level data at the end of each pumping cycle for those well(s) during that time period.
- Issue water shortage emergency declaration
- Set more stringent conservation goals
- Ban all Class 3\* and restrict all Class 2\* water uses
- Inform the public
- Monitor all drought related activities, especially compliance with the bans.
- Enforce as necessary
- Stop pumping at Wood Village Well #4.

#### **\*Definitions of Classes of Water Uses**

##### Class 1 (Essential Uses):

- Water necessary to sustain human life and pets, and to maintain minimum standards of hygiene and sanitation
- Patient care and rehabilitation
- Water hauling sales for domestic use where not reasonably available elsewhere
- Firefighting



- Health and public protection purposes as approved by health officials and municipal governing body

Class 2 (Socially or Economically Important Uses of Water):

- Personal, in-house water use including kitchen, bathroom and laundry
- Water hauling sales for domestic use where not reasonably available elsewhere
- Commercial car and truck washes
- Laundromats
- Restaurants, clubs and eating places
- Schools, churches, motels/hotels and similar establishments
- Minimal watering of vegetable gardens
- Minimal watering of trees where necessary for their survival
- Agricultural irrigation of the production of food and fiber or the maintenance of livestock
- Watering by public gardens of community significance where necessary to preserve specimens
- Watering by commercial nurseries where necessary to maintain stock
- Watering where necessary to establish or maintain revegetation or landscape plantings required pursuant to law or regulation
- Watering of woody plants where necessary to preserve them
- Minimal watering of golf course greens
- Operation of municipal swimming pools and residential pools that serve more than 25 dwelling units
- Air conditioning refilling for startup at the beginning of the cooling season
- Makeup of water during the cooling season

- Refilling of air conditioners specifically approved by health officials and the municipal governing body, where the system has been drained for health protection or repair services

Class 3 (Non-Essential Uses):

- Use of fire hydrants other than Class 1 and 2 uses, including use of sprinkler caps, testing fire apparatus, and fire department drills
- Flushing of sewers and hydrants, except as needed to ensure public health and safety as approved by health officials and the municipal governing body
- Serving water in restaurants, clubs or eating places, except by customer request
- Failure to repair a controllable leak
- Increasing water levels in scenic and recreational ponds and lakes, except as necessary to support fish and wildlife
- Filling fountains, reflecting pools and artificial waterfalls
- Watering of annual or non-woody plants, lawns, parks, golf course fairways, playing fields and other recreational areas
- Washing down buildings or structures for purposes other than immediate fire protection
- Flushing gutters or permitting water to run or accumulate in any gutter or street
- Expanding nursery facilities, placing new irrigated agricultural land in production, or planting of landscaping except when required by a site design review process
- Use of water for dirt control or compaction
- Washing sidewalks, walkways, driveways, parking lots, tennis courts, or other hard-surface areas
- Recreational uses other than those specified as Class 2
- Non-commercial washing of motor and other vehicles

- Refilling air conditioning cooling towers after draining

Wood Village may terminate these curtailment measures after OWRD takes regulatory action, if any, in response to Fairview's written request for regulation of Wood Village's Well #4.

Wood Village and Fairview understand that OWRD's regulatory action in response to a request for regulation by Fairview against Wood Village's Well #4 (Application G-16373, Permit G-16068), if any, may include curtailment, rotation, reduction or cessation of pumping, or other actions, some of which may be similar to the curtailment measures described in this Settlement Agreement.

If OWRD determines that regulatory action is not warranted, or that Fairview is not entitled to water right regulation against Wood Village's Well #4 under applicable law, then Wood Village may terminate the foregoing curtailment measures after such determination by OWRD.

7. Data Sharing. Fairview and Wood Village agree to monitor flow rates, pumping cycle durations and timing, and water levels through each Cities' SCADA systems, of all Fairview Wells and Wood Village Well No. 4 which are all in the SGA aquifer. On a monthly basis, each City shall provide the other readouts from their respective SCADA system detailing this monitoring data.
8. Agreement to Discuss Future Water Right Applications. Wood Village and Fairview agree to participate in at least two in-person meetings to discuss any proposed new water right application(s), permit amendments, or transfers at least 30 days prior to submitting such application(s) to OWRD for review.
9. Annual Meeting to Discuss Water Development. In addition to meeting to discuss specific water right applications, permit amendments, and transfers, prior to submittal to OWRD for review, Wood Village and Fairview agree to participate in at least one in-person meeting each year to discuss each City's general water development needs, plans, and proposals.
10. Dispute Resolution. Any disputes between Wood Village and Fairview arising from performance or non-performance of obligations contained in this Settlement Agreement shall be resolved as follows:

Step One      Meet informally to discuss the dispute and work to find a mutually agreeable resolution.

Step Two      Within 14 days of termination of Step One, above, by either Wood Village or Fairview, a mediator shall be selected by agreement between Wood Village and Fairview and those cities shall pursue a mediated resolution of the dispute. Wood Village and Fairview agree that each city will be

responsible for 50% of the cost of mediation services, up to a maximum cost of \$10,000, adjusted for inflation in 2006 dollars, to each city.

If the dispute pertains to the sufficiency of evidence regarding the amount of groundwater interference allegedly caused by Wood Village Well #4 at any Fairview Well mentioned in this Settlement Agreement, or to alleged non-compliance by Wood Village regarding curtailment under this Settlement Agreement, any mediation shall be concluded within 14 business days after a mediator has been selected and retained by Wood Village and Fairview.

**Step Three** Within 14 days after the conclusion of any unsuccessful mediation under Step Two, above, Wood Village and Fairview may pursue any other legal action or remedies.

This Term 10 does not apply to Terms 1, 2, 3, and 4, on pages one and two, and Terms 13, 14, and 15, on page eleven of this Settlement Agreement. Furthermore, this Term 10 does not apply to OWRD. Except as provided in Terms 1 and 2 on page one of this Settlement Agreement, Wood Village and Fairview retain any and all rights to challenge water right regulatory decisions by OWRD.

11. Establishment of Pumping Levels. The Parties agree that the Initial Pumping Levels will be based on electronic data from Fairview Well #5 only. The initial Pumping Levels in Fairview's Well #5 (see Attachment 1) were determined on the basis of data for the months of June through September in years 2005, 2004 and 2003, in accordance with the methodology contained in this Term 11.

Subsequent Pumping Levels shall be calculated by Fairview in accordance with the methodology contained in this Term 11 on or before January 31 of each year, with review and comment by Wood Village during the month of February of each year, and the Pumping Levels shall become final on April 28 of each year.

The Parties agree that subsequent Pumping Levels may be calculated for Fairview Wells in addition to Fairview Well #5 at such time as Fairview has three years of electronic measurement data from such wells, or as agreed by Fairview and Wood Village.

Except as provided above, the Pumping Levels shall consist of a rolling three-year average for each month (June through September) for each Fairview Well. The data which shall be considered in determining the Pumping Level for each well is limited to the ground water level at each Fairview Well at the end of each pumping cycle (each time the well is turned off).

For example, Fairview's Well #5 would have a three-year Pumping Level for the month of June, and separate three-year Pumping Levels for the same well in July, August, and September. In any given year, each month's Pumping Level for each well is recalculated based on data from the three preceding years.

Wood Village and Fairview acknowledge that it is appropriate to recalculate the Pumping Levels periodically because ground water levels are affected by City of Portland pumping events, new SGA wells, and other regional pumping activities.

Pumping Levels shall be redetermined on a rolling three-year basis to take into consideration regional water level declines that are not attributable to Wood Village pumping. For example, in future year X, the applicable Pumping Levels for each Fairview Well will be based on data from the three years prior to year X.

12. Regional Monitoring Program. Wood Village and Fairview agree to use best reasonable efforts, within available economic and personnel resources, to pursue establishment of a regional aquifer management group that would establish a groundwater monitoring program to monitor and analyze aquifer conditions and identify the likely cause of underperforming wells and determine appropriate responses. If the regional groundwater monitoring program is created, Wood Village and Fairview agree to advocate that the cost of the program be borne ratably by the participating providers, based on population. Wood Village and Fairview may agree to participate in another program that fulfills the intent of this provision.
13. Each Party to this Settlement Agreement represents, warrants, and agrees that the person who executes this Agreement on its behalf has the full right and authority to enter into this Agreement on behalf of that Party and bind that Party to the terms of this Settlement Agreement.
14. Each Party to this Settlement Agreement certifies that they have had a reasonable opportunity to review the Settlement Agreement, and that they have signed this Settlement Agreement of their own free will and accord. Each Party to this Settlement Agreement also certifies that they have read the entire Settlement Agreement, Draft Final Order, and Draft Permit, and understand and fully agree with the contents thereof.
15. This Settlement Agreement may be signed in counterparts, each of which will be deemed an original, and all of which together shall constitute one and the same Settlement Agreement.
16. The Parties may amend or terminate the Settlement Agreement only by mutual agreement of all Parties.

**SIGNATURE PAGE**

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Dwight French, Administrator,  
Water Rights and Adjudications Division

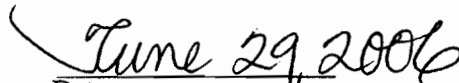
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Date

for

Phillip C. Ward, Director  
Oregon Water Resources Department 725  
Summer St. NE, Suite A  
Salem, OR 97301



\_\_\_\_\_  
Wood Village, Applicant  
David M. Fuller, Mayor



\_\_\_\_\_  
Date

\_\_\_\_\_  
Fairview, Protestant

\_\_\_\_\_  
Date

SIGNATURE PAGE

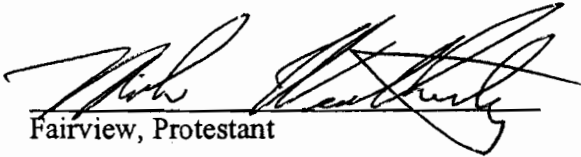


Dwight Freach, Administrator,  
Water Rights and Adjudications Division  
for  
Phillip C. Ward, Director  
Oregon Water Resources Department  
725 Summer St. NE, Suite A  
Salem, OR 97301

June 23, 2006  
Date

\_\_\_\_\_  
Wood Village, Applicant

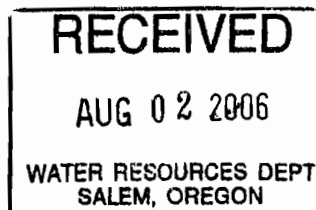
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Date



Fairview, Protestant

MIKE WENTZ, MAYOR

7-24-06  
Date



## **Attachment 1**

Procedure for computing pumping levels and Well 5 pumping levels by month

Graph of observed pumping levels in Well 5

Sketch and equation for correcting variations in pumping rate



## ATTACHMENT 1

### **Procedure for computing "Pumping Levels" in City of Fairview production wells during the summer production period**

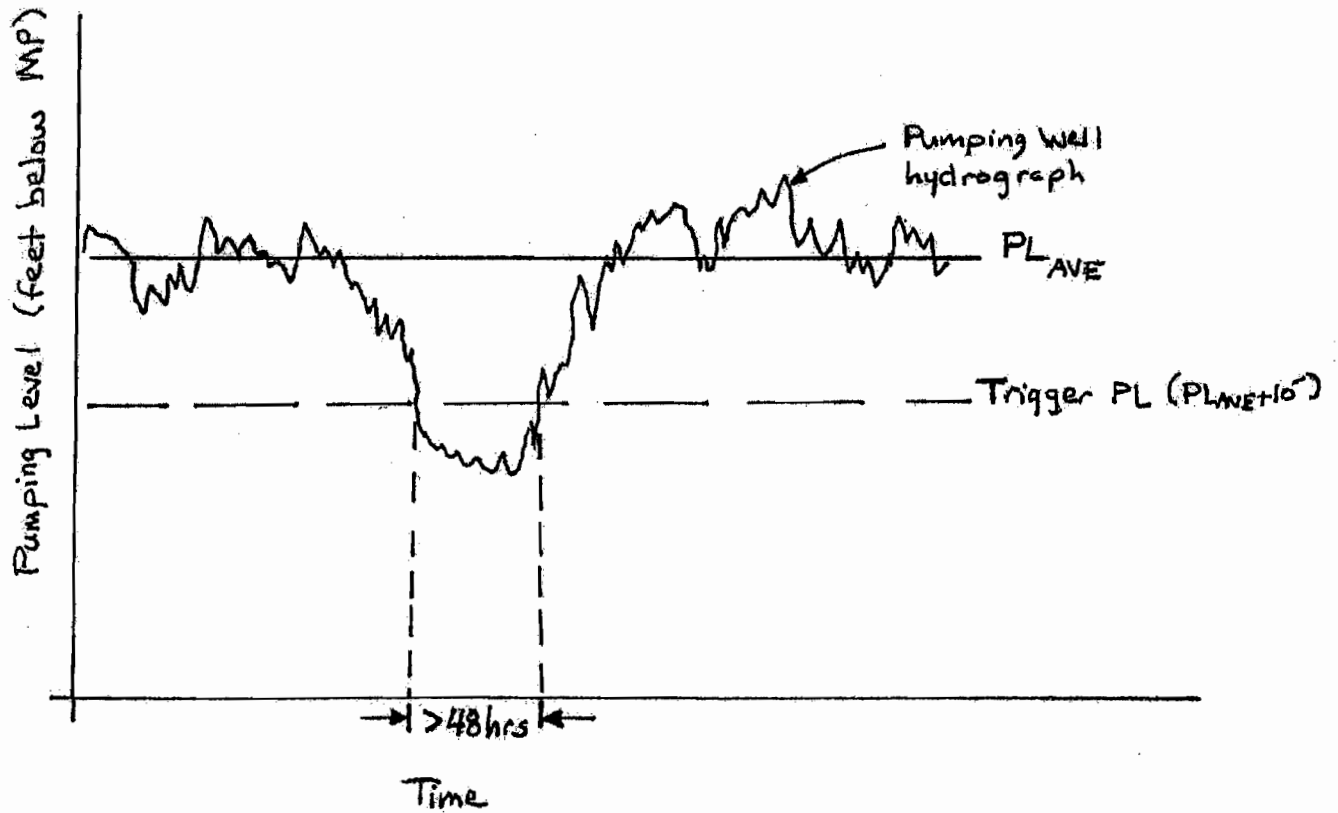
*Assumption: Production wells are instrumented with transducers for automated collection of water levels (City of Fairview SCADA system). Only wells with at least 3 years of automated data collection will be included.*

1. For each production well, the water level at the end of a pumping cycle was identified (i.e., the water level in the well just prior to pump shutdown).
2. The end-of-pumping-cycle water levels were averaged over each of the four months in the summer production period (June, July, August, and September) to develop an average pumping water level for each month for each of the past three years.
3. The three-year rolling average was calculated by averaging the average pumping level for each month over the past three year period. The computed 3-year rolling average summer pumping level for Well 5 is presented below.

**Average Summertime Pumping Levels During 2003-2005**  
City of Fairview

Well	Month	Average Pumping Levels			3-Year Average
		2003	2004	2005	
5	Jun	215	204	204	208
	Jul	212	207	206	208
	Aug	214	208	208	210
	Sep	209	203	203	205

## Pumping Level



Correction for pumping rate variations

$$\overline{PL}_{48} = \frac{(\overline{Q}_{48} - \overline{Q}_{3yr})}{SC_{48}}$$

where

$\overline{PL}_{48}$  = Average Pumping level for 48 hour + period

$\overline{Q}_{48}$  = Average pumping rate over pumping period

$\overline{Q}_{3yr}$  = Rolling 3 year average pumping rate for month

$SC_{48}$  = Specific Capacity for pumping period

- Water level at the end of a pumping cycle
- - - June Rolling Average Z08
- - - July Rolling Average Z08
- - - August Rolling Average Z10
- - - September Rolling Average Z05

### Well 5 Pumping Water Levels City of Fairview

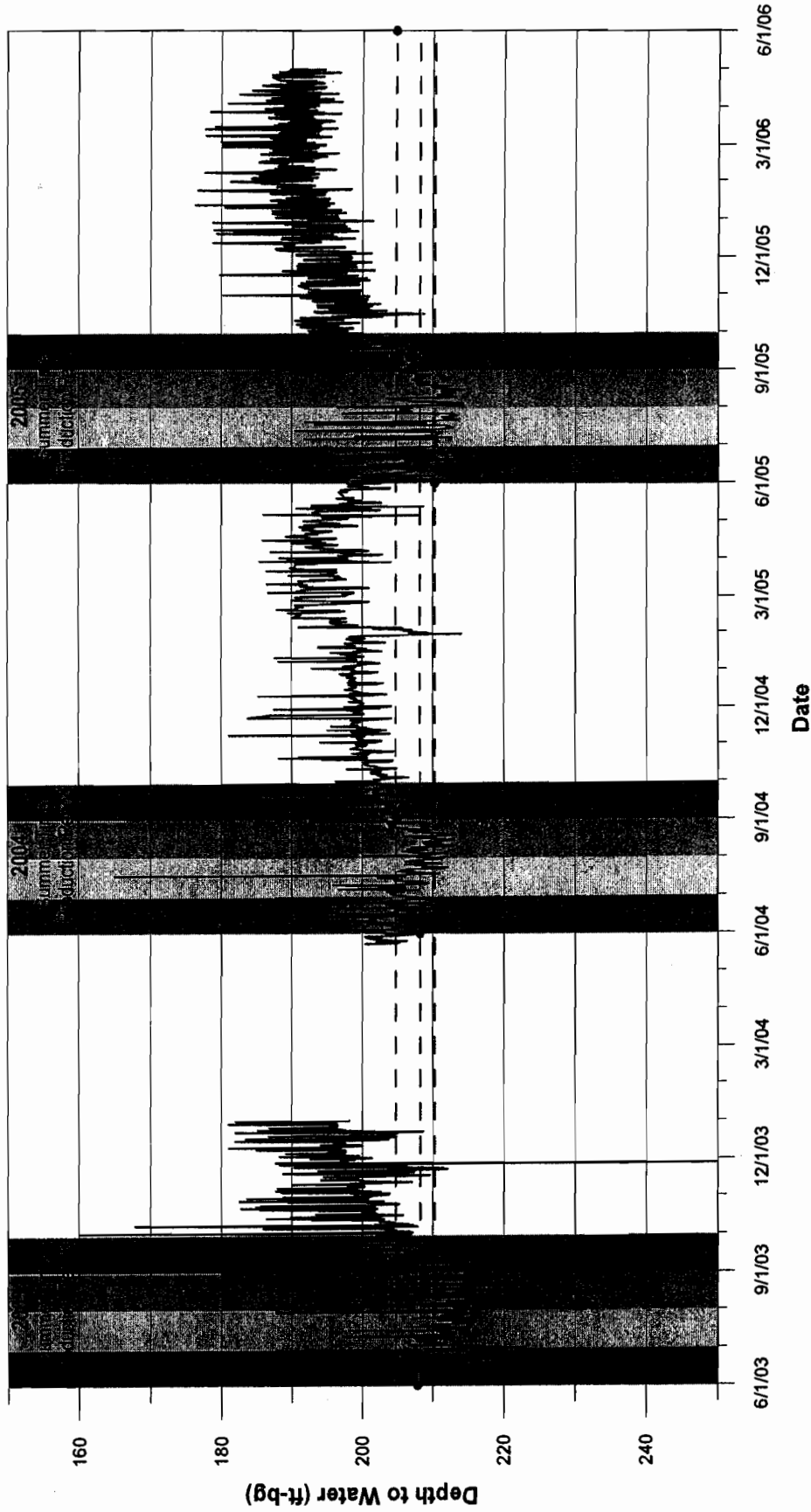


Figure 2

P:1117 - Fairview007 Wood Village InterferenceWell 5 Summertime PWL.grf



Groundwater Solutions Inc.

## ATTACHMENT 2

Oregon Water Resources Department  
Water Rights Division

Water Rights Application  
Number G-16373

**DRAFT - DRAFT - DRAFT**

### *Hearing and Appeal Rights*

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## **FINAL ORDER INCORPORATING SETTLEMENT AGREEMENT**

### **Application History**

On January 24, 2005, Carl Malone submitted an application to the Department on behalf of Wood Village. The application was assigned number G-16373. On March 22, 2005, OWRD issued a Proposed Final Order for application G-16373, recommending approval of the application with conditions. On May 3, 2005, Fairview filed a Protest against the PFO on application G-16373.

Settlement negotiations between the parties resulted in a Settlement Agreement. As of [REDACTED], [REDACTED], OWRD, City of Fairview, and City of Wood Village have all signed the Settlement Agreement. The Settlement Agreement is incorporated into this Final Order and is attached hereto.

The proposed use will not impair or be detrimental to the public interest.

**ATTACHMENT 2**

**Order**

Application G-16373 therefore is approved and Permit G-16068 is issued as provided in the Settlement Agreement.

**DRAFT - DRAFT - DO NOT SIGN**

**DRAFT - DRAFT - DRAFT**

---

Dwight French  
Administrator of Water Rights  
and Adjudications  
*for*  
Phillip C. Ward, Director  
Oregon Water Resources Department

---

Date

ATTACHMENT 3

DRAFT

~~\_\_\_\_\_~~  
STATE OF OREGON

DRAFT

COUNTY OF MULTNOMAH

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS ~~DRAFT~~ PERMIT IS HEREBY ISSUED TO:

CITY OF WOOD VILLAGE  
2055 NE 238TH DR  
WOOD VILLAGE, OR 97060-1095

503-667-6211

The specific limits and conditions of the use are listed below.

APPLICATION FILE NUMBER: G-16373

SOURCE OF WATER: WELL 4 IN ARATA CREEK BASIN

PURPOSE OR USE: MUNICIPAL USES

MAXIMUM RATE: 1.87 CUBIC FEET PER SECOND

PERIOD OF USE: YEAR ROUND

DATE OF PRIORITY: JANUARY 24, 2005

WELL LOCATION: NE  $\frac{1}{4}$  NE  $\frac{1}{4}$ , SECTION 34, T1N, R3E, W.M.; 700 FEET SOUTH & 1150 FEET WEST FROM NE CORNER, SECTION 34

THE PLACE OF USE IS LOCATED AS FOLLOWS:

WITHIN THE SERVICE BOUNDARIES OF CITY OF WOOD VILLAGE

Measurement, recording and reporting conditions:

- A. Before water use may begin under this permit, the permittee shall install a meter or other suitable measuring device as approved by the Director. The permittee shall maintain the meter or measuring device in good working order, shall keep a complete record of the amount of water used each month and shall submit a report which includes the recorded water use measurements to the Department annually or more frequently as may be required by the Director. Further, the Director may require the permittee to report general water use information, including the place and nature of use of water under the permit.

Application G-16373    Water Resources Department    ~~DRAFT~~ PERMIT G-16068

- B. The permittee shall allow the watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the watermaster shall request access upon reasonable notice.

The well(s) shall produce groundwater only from the Sand and Gravel groundwater reservoir between approximately 440 and 1130 feet below land surface.

Within three years of permit issuance, the permittee shall submit a Water Management and Conservation Plan consistent with OAR Chapter 690, Division 86. The Director may approve an extension of this time line to complete the required Water Management and Conservation Plan. The time line for submittal of a plan under this permit does not alter the time lines for submittal of a plan under any other order of the Department.

To monitor the effect of water use from the well(s) authorized under this permit, the Department requires the water user to make and report annual static water level measurements. The static water level shall be measured in the month of March. Reports shall be submitted to the Department within 30 days of measurement.

Measurements must be made according to the following schedule:

**Before Use of Water Takes Place**

**Initial and Annual Measurements**

The Department requires the permittee to submit an initial water level measurement in the month specified above once well construction is complete and annually thereafter until use of water begins; and

**After Use of Water has Begun**

**Reference Water Level Determination**

Following the first year of water use, the user shall submit one static water level measurement in the month specified above which will establish the reference level against which future annual measurements will be compared. The water user is not required to measure additional water levels after the reference level has been determined unless required by the Director. The additional measurements may be required in a different month. If the measurement requirement is stopped, the Director may restart it at any time.

All measurements shall be made by a certified water rights examiner, registered professional geologist, registered professional engineer, licensed well constructor or pump installer licensed by the Construction Contractors Board and be submitted to the Department on forms provided by the Department. The Department requires the individual performing the

measurement to:

- (A) Identify each well with its associated measurement; and
- (B) Measure and report water levels to the nearest tenth of a foot as depth-to-water below ground surface; and
- (C) Specify the method used to obtain each well measurement; and
- (D) Certify the accuracy of all measurements and calculations submitted to the Department.

The water user shall discontinue use of, or reduce the rate or volume of withdrawal from, the well(s) if any of the following events occur:

- (A) Annual water level measurements reveal an average water level decline of three or more feet per year for five consecutive years; or
- (B) Annual water level measurements reveal water level decline of 15 or more feet in fewer than five consecutive years; or
- (C) Annual water level measurements reveal water level decline of 25 or more feet; or
- (D) Hydraulic interference leading to a decline of 25 or more feet in any neighboring well with senior priority; or
- (E) Hydraulic interference leading to a decline of 10 or more feet below the "Pumping Level" of any "Fairview Well" with senior priority as defined and determined under the ~~Settlement Agreement~~ Settlement Agreement between OWRD, City of Wood Village, and City of Fairview, as long as such Settlement Agreement is in effect, or as it may be amended.

The period of non or restricted use shall continue until the water level rises above the decline level which triggered the action or until the Department determines, based on the permittee's and/or the Department's data and analysis, that no action is necessary because the aquifer in question can sustain the observed declines without adversely impacting the resource or senior water rights. The water user shall in no instance allow excessive decline, as defined in Commission rules, to occur within the aquifer as a result of use under this permit. If more than one well is involved, the water user may submit an alternative measurement and reporting plan for review and approval by the Department.

#### STANDARD CONDITIONS

If the number, location, source, or construction of any well deviates from that proposed in the permit application or required by permit conditions, this permit may not be valid.

If substantial interference with a senior water right occurs due to withdrawal of water from any well listed on this permit, then use of water from the well(s) shall be discontinued or reduced and/or the



schedule of withdrawal shall be regulated until or unless the Department approves or implements an alternative administrative action to mitigate the interference. The Department encourages junior and senior appropriators to jointly develop plans to mitigate interferences.

The wells shall be constructed in accordance with the General Standards for the Construction and Maintenance of Water Wells in Oregon. The works shall be equipped with a usable access port, and may also include an air line and pressure gauge adequate to determine water level elevation in the well at all times.

Where two or more water users agree among themselves as to the manner of rotation in the use of water and such agreement is placed in writing and filed by such water users with the watermaster, and such rotation system does not infringe upon such prior rights of any water user not a party to such rotation plan, the watermaster shall distribute the water according to such agreement.

Prior to receiving a certificate of water right, the permit holder shall submit the results of a pump test meeting the department's standards, to the Water Resources Department. The Director may require water level or pump test results every ten years thereafter.

Failure to comply with any of the provisions of this permit may result in action including, but not limited to, restrictions on the use, civil penalties, or cancellation of the permit.

This permit is for the beneficial use of water without waste. The water user is advised that new regulations may require the use of best practical technologies or conservation practices to achieve this end.

By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan.

The use of water shall be limited when it interferes with any prior surface or ground water rights.

The permit holder shall commence and complete the construction of any proposed works within twenty years from the date of permit issuance. The Department may order and allow an extension of time to complete construction or to perfect a water right beyond twenty years from the date of permit issuance.

Within one year after complete application of water to the proposed use, the permittee shall submit a claim of beneficial use, which includes a map and report, prepared by a Certified Water Rights Examiner (CWRE).

Issued [REDACTED], 2006

[REDACTED]

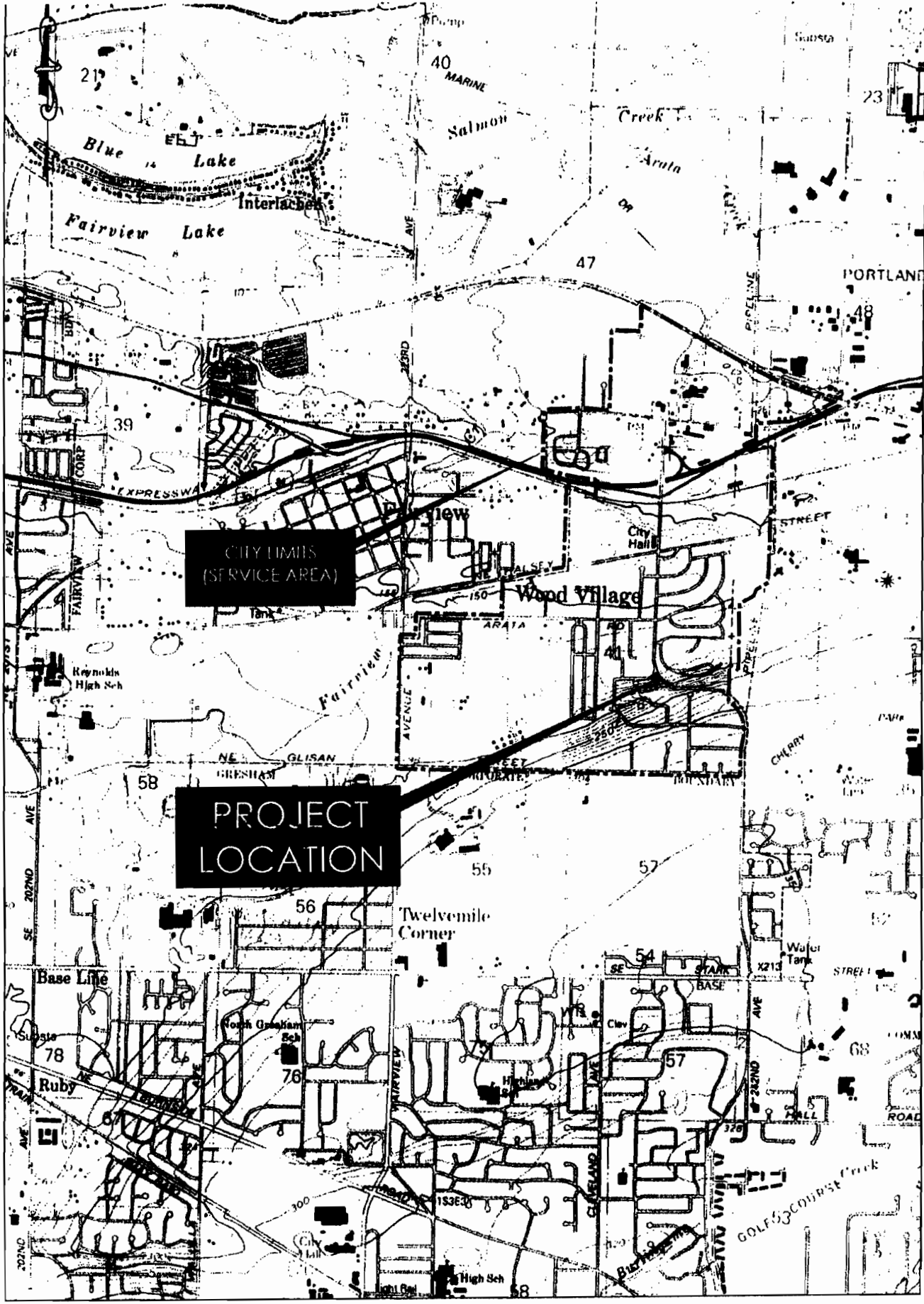
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Phillip C. Ward, Director  
Water Resources Department

Application G-16373 Water Resources Department  
Basin 2 Volume 26 COLUMBIA R & MISC WWM  
jme WEEK 504

PERMIT DRAFT  
20

app# G-16373



PROJECT NO. 1
211 277 24 Avenue, Suite 100 Medford, Ore 97504 (503) 288-2202
KELLER ENGINEERS
PROJECT NO. 1030
<b>City of Wood Village, Or</b>
NEW WELL SITE VICINITY MAP
FIGURE NO. 1

Scale: 1"=150'

MULTNOMAH COUNTY, OREGON



Existing Well #1

Proposed Well #4

TAX LOT ID: 600

16TH SECTION LINE

NW 1/4 NE 1/4 SEC. 34  
T.1N. R.3E. W.M.

NE 1/4 NE 1/4 SEC. 34  
T.1N. R.3E. W.M.

RECEIVED

LEGEND

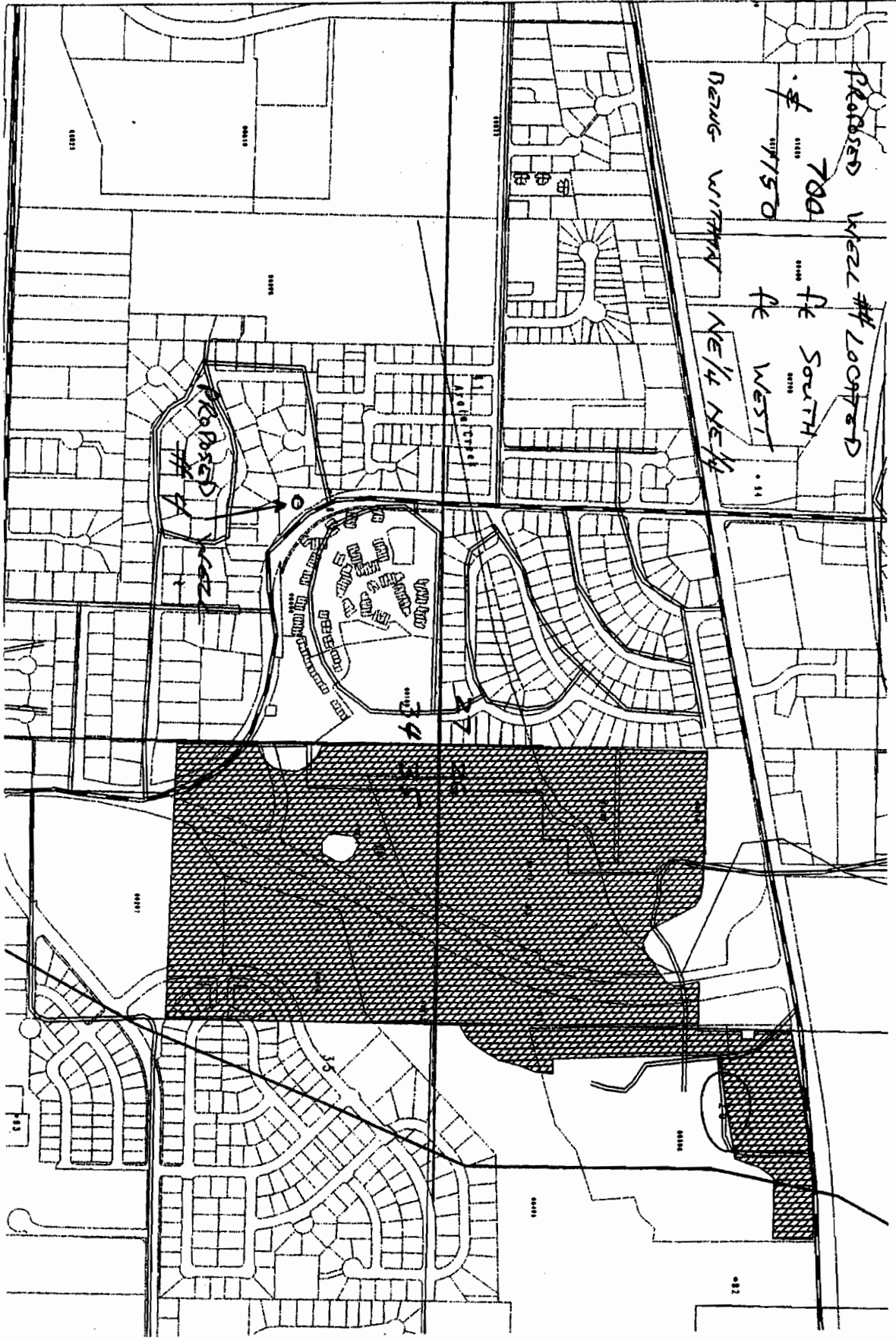
- Existing Water
- Existing Sewer
- Existing Stormwater
- x- Existing Fence
- Proposed Water

PROJECT NO. 1030654  
 FILENAME  
 121 207 246 Avenue, Suite 4  
 Multnomah, Oregon 97148  
 (503) 266-3992  
**KELLER ASSOCIATES**  
 City of  
**Wood Village, Or**  
 NEW WELL SITE  
 LOCATION MAP  
 FIGURE NO.  
**2**

11-10-10

# RIGHTS IN TOWNSHIP 1 N 3 E Section (s) 34

SCALE APPROX  
1" = 500 FEET



# Mailing List for FO and Permit Copies

Application #G-16373

FO Date July 2006

**Original mailed to applicant:**

CITY OF WOOD VILLAGE  
ATTN: SHEILA RITZ  
2055 NE 238TH DR  
WOOD VILLAGE, OR 97060-1095

<b>Copies Mailed</b>
By: _____ (SUPPORT STAFF)
on: _____ (DATE)

Copies sent to:

1. WRD - File # G-16373
2. Water Availability: Ken Stahr
3. WRD Data Center

PFO and Map Copies sent to:

3. WRD - Watermaster # 20
4. Regional Manager: NWR

Copies sent to Other Interested Persons (CWRE, Agent, Well Driller, Commenter, etc.)

Mayor Mike Weatherby, City of Fairview, 1300 NE Village St., Fairview, OR 97024

John H. Hammond, Jr., 1750 SW Harbor Way, Suite 380, Portland, OR 97201-5164

Bob Cochran, City of Fairview, 1300 NE Village St., Fairview, OR 97024

Jan Wellman, City of Fairview, 1300 NE Village St., Fairview, OR 97024

Jeff Barry, Groundwater Solutions, 55 SW Yamhill, Suite 400, Portland, OR 97204

Walt Burt, Groundwater Solutions, 55 SW Yamhill, Suite 400, Portland, OR 97204

Mayor David Fuller, 2055 NE 238<sup>th</sup> Dr., Wood Village, OR 97060-1095

Rick Glick, Davis Wright Tremaine LLP, 1300 SW Fifth Avenue, Suite 2300, Portland, Oregon 97201

Bill Carley, 2055 NE 238<sup>th</sup> Dr., Wood Village, OR 97060-1095

Michael Krautkramer, Robinson Noble, 3011 South Huson St., Suite A, Tacoma, WA 98409

"\$10 LETTER" sent to Interested Persons who have not protested or paid for copies

CASEWORKER : jme