

**RESOLUTION NO. 1858**

**A RESOLUTION AUTHORIZING PM PEAK HOUR VESTING AGREEMENT PURSUANT TO ORDINANCE NO. 561, TO BE EXECUTED BY THE CITY MANAGER, WITH GO DUCKS, LLC, FOR HONDA AUTOMOBILE DEALERSHIP DEVELOPMENT AND A CONTINUANCE TO FEBRUARY 19, 2004 FOR FURTHER REVIEW THE COSTA PACIFIC COMMUNITIES PM PEAK HOUR VESTING AGREEMENT FOR THE VILLEBOIS VILLAGE URBAN MIXED-USE RESIDENTIAL DEVELOPMENT.**

WHEREAS, Ordinance No. 561 provides for PM Peak Hour vehicle trip vesting for developments with Master Plan or Stage 1 approvals after June 2, 2003, through a vesting agreement satisfactory to the City which provides for payment or financing of a Supplemental Street System Development Charge of \$3,000 per trip; and

WHEREAS, there are 483 PM Peak Hour Vehicle Trips left of the 702 PM Peak Hour Vehicle Trips under the City's concurrency policy as provided for by a capital improvement project which has been planned, funded and scheduled to commence for the Wilsonville road/I-5 Interchange this spring, 2004; and

WHEREAS, the Honda development and the Villebois development have received Stage 1 approval (December 8, 2003) and Master Plan approval (August 19, 2003) after June 2, 2003, respectively; and

WHEREAS, on January 20, 2004, at 11:30 a.m., GO Ducks, LLC, the owner of the property and developer of the Honda dealership, delivered by mail sent January 16, 2004, to the office of the City Attorney an executed vesting agreement, which was approved as to form by the City Attorney, and on January 23, 2004, delivered to the office of the City Attorney a check payable to the City of Wilsonville for \$219,000 for the 73 PM Peak Hour Trips through the Wilsonville Road/I-5 Interchange intersections calculated to be generated by the development under its approval at \$3,000 per trip as and for their Supplemental Street Systems Development Charges; and

WHEREAS, Costa Pacific Communities delivered at approximately 10:00 a.m., January 20, 2004, a vesting agreement for 483 trips executed on behalf of Costa Pacific as the Master Planner and a developer of the Villebois Village and for the benefit of property owners within the Villebois Village area, which proposed options of payment or financing, but which

contained amendments and changes to an earlier City proposed draft which was not acceptable to City staff, and thereafter further changes were made including identifying the properties and ownerships involved through adding an Exhibit A, and then a redrafted vesting agreement was executed on behalf of Costa Pacific Communities for the benefit of property owners within the Village area identified in Exhibit A to the agreement and approved as to form by the City Attorney at approximately 1:00 p.m., January 20, 2004; and

WHEREAS, the agreement for the Villebois development provides for either 483 or 410 trips depending if the Honda vesting agreement was deemed satisfactory to the City and first in time; and

WHEREAS, the City Council had previously directed that a vesting agreement with any option for financing, including a Local Improvement District, would need City Council approval and an agreement for payment that met Ordinance No. 561 could be administration approved.

NOW, THEREFORE, THE CITY OF WILSONVILLE RESOLVES AS FOLLOWS:

1. The City Council finds the "Agreement for Vesting of Peak PM Hour Traffic Trips" with Go Ducks, LLC, for 73 PM Peak Hour Trips through the Wilsonville Road/I-5 Interchange intersections, a copy of which is marked "Exhibit A", attached hereto as if fully set forth herein, meets the requirements of Ordinance No. 561, provides for payment which could be and was duly and administratively approved, is satisfactory, and there has been tendered to the city on January 23, 2004 a check for \$219,000; and that it is first in time before the Villebois Village trip vesting agreement. The City Manager was and is authorized to execute the "Agreement for Vesting of Peak PM Hour Traffic Trips" with Go Ducks, LLC;

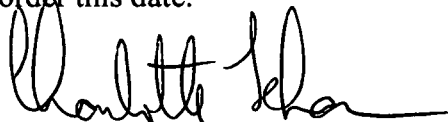
2. In making the above findings, determinations and conclusions, the City Council further finds that while attempting to provide a means for a multi-phased, long-term (10-year) development such as Villebois Village to be assured of street capacity adequate for the build out of later phases in Ordinance No. 561, the City Council also provided an opportunity for smaller, discrete developments to obtain trip vesting. Award to either development is in keeping with the City's intent in adopting the ordinance. The City Council is not unmindful that full build out for Villebois Village is estimated to create 569 trips through the Wilsonville Road Interchange intersections with the 2006 planned construction of Boeckman Road, but given the Villebois trip vesting agreement provides for 72% of the trips, which supports a building horizon of five to

seven years, further planned street and Wilsonville Road/I-5 Interchange improvements, the planned commuter rail transportation alternative, and traffic management program alternatives, the City Council also finds that the probability is that capacity will be available for completion of the final phases.

3. Provided further, however, a determination as to whether the option for LID financing in the Vesting Agreement with Costa Pacific Communities is satisfactory shall be continued to February 19, 2004 for further review.

4. This resolution shall become effective upon the date of adoption.

ADOPTED by the Wilsonville City Council at a regular meeting thereof this 2nd day of February, 2004, and filed with the Wilsonville City Recorder this date.

  
CHARLOTTE LEHAN, MAYOR

ATTEST:

  
Sandra C. King, CMC, City Recorder

SUMMARY OF VOTES:

Mayor Lehan	Yes
Councilor Kirk	Yes
Councilor Holt	Yes
Councilor Scott-Tabb	Yes
Councilor Knapp	Yes

Attachment: Exhibit A – Agreement for vesting of Peak PM hour traffic trips with GO Ducks LLC

AGREEMENT FOR VESTING OF  
PEAK PM HOUR TRAFFIC TRIPS

THIS AGREEMENT (Agreement) is entered into this 2<sup>nd</sup> day of ~~January~~<sup>February</sup>, 2004, by and between the City of Wilsonville (City), a municipal corporation in the State of Oregon, and Go Ducks, LLC (Developer), an Oregon limited liability company, its successors, and assigns.

RECITALS

- A. The City has budgeted \$3,500,000 to complete the first phases of the I-5/Wilsonville Road Interchange improvements. These improvements will create an opportunity for additional development in the City to occur by increasing the number of Peak PM Trips through the I-5/Wilsonville Road Interchange (Trips). Trips will be allocated to each new development through a process called "vesting," until all of the new Trips have been allocated.
- B. Under Ordinance 561, adopted by the City Council on December 15, 2003, Trips may be vested when Master Plan or Stage I Plan approvals are given after June 2, 2003 and a vesting agreement satisfactory to the City is executed by the City and a developer.
- C. Developer received final Stage I Preliminary Plan approval of the development of an automotive sales and service facility for a Honda dealership (the Development) from the City Development Review Board Panel A (Resolution No. 03DB27) on December 8, 2003.
- D. The Development is to be located on a 4.6-acre site (Property) at the northeast corner of the intersection of Parkway Avenue and Memorial Drive on Tax Lots 300 and 400, Section 23A, T3S-R1W, Clackamas County, Oregon. It is expected to generate 73 Trips.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Developer agree as follows:

- 1. Payment of Supplemental Street SDCs. Developer agrees to pay Supplemental Street SDCs in an amount calculated proportionately to compensate the

City for its \$3.5 million investment in the I-5/Wilsonville Road Interchange improvements. Under an SDC methodology to be adopted, the amount per Trip may be reduced or increased from the amount the City is presently justified to charge by its existing SDC methodology. The new amount is presently estimated at \$3,000 per Trip. The estimated fee of \$3,000 per Trip shall be collected by the City from Developer within 30 days of this Agreement, and shall be applied to the amount adopted. Any shortage between the estimated \$3,000 per Trip paid and the adopted fee shall be paid within 30 days by Developer upon demand by the City, and any excess between the estimated \$3,000 fee and the adopted fee shall be refunded to Developer by the City, without interest, within 30 days of the date the excess is calculated.

2. Developer's Proposed Schedule or Phasing Plan. Developer's proposed Schedule or Phasing Plan is as follows:

April 1, 2004:	Commence construction
January 31, 2005:	Complete construction and open

3. Developer's Final Plan. Developer's final plan shall conform in all major respects with the Stage I Preliminary Plan approval received on December 8, 2003 and shall satisfy the requirements of Wilsonville Code (WC) § 4.140.

4. Number of Trips Vested. The execution of this Agreement by the City and Developer shall act to vest the 73 Trips in Developer.

5. Downward Adjustment of Vested Trips and Refund of Surplus SDCs. Should the City determine that the number of Trips generated by the Development will be fewer than the 73 Trips presently anticipated, the City shall refund to Developer, within 30 days of the date the determination is made, without interest, the amount of Supplemental Street SDCs attributable to the unneeded, paid-for Trips.

6. Upward Adjustment of Vested Trips. Should the City determine that the number of Trips generated by the Development will exceed the 73 Trips presently anticipated, the City shall allow vesting of additional Trips as needed, if such Trips are available. If additional Trips are not available, Developer may modify the development application to obtain necessary approvals or Developer may terminate this Agreement, and the City shall reimburse Developer, as provided in paragraph 8.

7. Termination of Agreement. This Agreement shall terminate if the City Community Development Director, with the concurrence of the City Council, determines that the vested right to use the Trips is lost or terminated for one or more of the following

reasons:

- a. Developer fails to pay timely the Supplemental Street SDCSs attributable to the 73 vested Trips, or upward adjustment thereto, after being informed by City of any amounts due.
- b. Developer fails to obtain timely Final Approval (Stage Two) for the Development under WC § 4.140(.09).
- c. Developer's final Stage I Preliminary Plan approval expires.
- d. Developer's Stage II Site Development approval expires.

8. Vesting to Run with Property. Vesting of Trips shall remain valid and shall run with the Property, unless an approval that is necessary for vesting to occur is terminated or expires, or this Agreement is terminated.

9. Reimbursement Upon Termination. Should this Agreement be terminated for any reason, the City shall repay, within 30 days and without interest, all amounts paid by Developer for Trip vesting fees, including any paid Supplemental Street SDCs. If the vesting under this Agreement is lost or terminated, the Trips allocated by this Agreement shall be made available to other development upon City repayment, without interest, of any Trip vesting fees paid by Developer

10. Dispute Resolution. Controversies among the parties to this agreement shall be resolved, to the extent possible (e.g., a controversy within the jurisdiction of the Land Use Board of Appeals is not involved), by informal meetings and discussions in good faith between them. If a dispute cannot be resolved in that manner within five (5) business days of the first such meeting, any party may elect to exercise its right to require mediation of the dispute.

During mediation, the parties agree to negotiate in good faith as to the matter submitted to mediation. In such event, the party requesting mediation shall appoint a recognized mediator. No mediator shall be an employee, officer, board member, consultant, supplier or customer, or otherwise be affiliated with any of the parties. The mediator shall be reasonably qualified to act as a mediator with respect to construction contracts. Each party shall share equally in the out-of-pocket costs for mediation; provided that the mediator shall be empowered to require one party to pay more than its pro rata share of the expenses if the mediator determines that such party is not negotiating in good faith in the mediation process. In no instance, however, shall

any party be required to pay attorneys' fees incurred in the mediation by the other party. The location of the mediation and specific procedures relating to the mediation shall be determined by the mediator, and each party agrees to comply with all decisions, directions, instructions and procedures made or established in good faith by the mediator.

If the parties are unable to resolve a controversy using mediation within fifteen (15) days after commencement thereof, the dispute shall be settled by binding arbitration, and a corresponding judgment may be entered in a court of competent jurisdiction. Arbitration of any dispute may be initiated by any party sending a written demand for arbitration to the other party. This demand will specify the matter in dispute and request the appointment of an arbitrator. The mailing of the demand to the parties at the address set forth herein will be deemed personal service and accepted by the parties for any arbitration or proceeding with respect to this Agreement. The arbitrator will be selected from a list provided by the arbitration service selected by the party initiating arbitration. The arbitration hearing will be conducted in accordance with the procedural rules set forth in the arbitration rules of the arbitration service selected. The sites of the arbitration will be in the Portland-Metropolitan Area or such other place as the parties agree. The arbitrator shall not be empowered to award punitive or exemplary damages to any party. The decision of the arbitrator shall be binding on the parties and may be enforced by any court of competent jurisdiction.

11. Notices. All notices under this Agreement shall be in writing and delivered in person, by facsimile, or by first-class mail to the following:

If to Go Ducks, LLC :  
John B. Dimmer  
Managing Member  
1019 Pacific Ave., Suite 916  
Tacoma, WA 98402

If to City:  
Michael E. Kohlhoff, City Attorney  
City of Wilsonville  
30000 SW Town Center Loop E  
Wilsonville, OR 97070

Copy to:  
Peter Livingston  
Schwabe, Williamson & Wyatt  
1211 SW Fifth Ave., Suite 1600-1900  
Portland, OR 97204

12. The parties agree that this Agreement shall run with the land and shall be binding upon and inure to the benefit of all heirs, successors and assigns.

GO DUCKS, LLC

By: [Signature]  
Its: Managing Member

CITY OF WILSONVILLE

By: [Signature]  
Its: City Manager

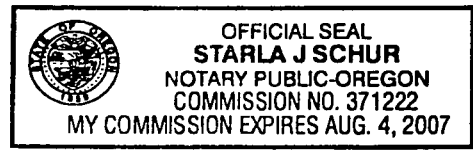
Approved as to Form:

By: [Signature]  
Michael E. Kohloff  
Wilsonville City Attorney

STATE OF OREGON            )  
  ) ss.  
County of                    )

This instrument was acknowledged before me this 4th day of February 2004, by Arlene Loble, on behalf of the City of Wilsonville,

[Signature]  
NOTARY PUBLIC FOR OREGON  
My Commission Expires: Aug 4, 2007





STATE OF WASHINGTON )  
 ) ss.  
County of PIERCE )

This instrument was acknowledged before me this 14<sup>th</sup> day of January,  
2004, by John B. Demery on behalf of Go Ducks, LLC.

*Bette J. Arndt*

NOTARY PUBLIC FOR WASHINGTON  
My Commission Expires:

