

# Development Services

## From Concept to Construction

Phone: 503-823-7300 Email: [bds@portlandoregon.gov](mailto:bds@portlandoregon.gov) 1900 SW 4th Ave, Portland, OR 97201

More Contact Info (<http://www.portlandoregon.gov/bds/article/519984>)



### APPEAL SUMMARY

**Status:** Decision Rendered

<b>Appeal ID:</b> 20506	<b>Project Address:</b> 9945, 10400, and 12005 N Burgard Way
<b>Hearing Date:</b> 6/12/19	<b>Appellant Name:</b> Li Alligood, AICP
<b>Case No.:</b> B-011	<b>Appellant Phone:</b> 503415.2384
<b>Appeal Type:</b> Building	<b>Plans Examiner/Inspector:</b> Jason Butler-Brown
<b>Project Type:</b> lur	<b>Stories:</b> NA <b>Occupancy:</b> NA <b>Construction Type:</b> NA
<b>Building/Business Name:</b>	<b>Fire Sprinklers:</b> Yes - Unknown if there are sprinklers.
<b>Appeal Involves:</b> other: Partition Plat/Private Street	<b>LUR or Permit Application No.:</b>
<b>Plan Submitted Option:</b> pdf [File 1] [File 2]	<b>Proposed use:</b> NA

### APPEAL INFORMATION SHEET

#### Appeal item 1

**Code Section** Permanent Rule for Private Street Rights-of-ways

**Requires** According to Permanent Rule for Private Street Rights-of-ways, the following elements are to be included within a private street tract:

- Paved width of between 26' – 33' (per Figure 3)
- Curbs (per section III.E.2.j)
- Turnaround (per section III.F)
- On-street parking (per section III.G)
- Sidewalks (per section III.H)
- Street trees (per section III.I)
- Stormwater facilities (per Section III.J)

**Proposed Design** The purpose of this project is to create two legal lots of record from three existing developed industrial parcels:

TLID 2N1W35C -00300 / Property ID R325512; 13.79-ac

TLID 2N1W35B -02100 / Property ID R325531; 0.36-ac

TLID 2N1W35B -02000 / Property ID R325511; 9.82-ac

The lots are zoned IHik and are located east of the Willamette River and west of N Lombard Street. The existing parcels are partially developed (industrial use). The parcels were created by deed in 2007 and the City has stated that a partition plat application is required to formalize the parcels. A partition plat application is being prepared for submittal to the City.

No development is proposed on the sites. As noted above, the purpose of the partition application is to create two legal tax lots from these three parcels. The applicant requests that the existing private street improvements be allowed to remain in place until future development of the lots.

An existing private street provides access to the parcels. The existing access beginning at N. Burgard and moving west is described below.

- 2004-209519 "Private Roadway for Time Oil Road" The existing parcels are accessed from the public right of way in N Burgard Way via N Time Oil Road
- 2005-020070 "Smurfit Access Easement" The access easement varies in width from 40' to 60' and runs from Time Oil Road to serve 2N1W35B TL 2000 AND TL 2100, and 2N1W35C TL 300TL
- 2005-083424 Time Oil Road Easement
- 2006-078140 "Western Roadway Easement"
- Existing railroad and utility easements overlap the roadway easement.

The following is a description of the existing private access within the 60' roadway easement:

§ Paved width: Within the 60' roadway easement, the paved surface is approximately 38' wide. The pavement extends north of the roadway easement to the existing fencing and building. East of existing TL 2000, the paved width varies from approximately 38' wide to a minimum of 23.8'.

§ Curbs: The majority of the private roadway does not include curbs. However, there are a few sections that do include curbs to define areas of vehicle parking for existing buildings.

§ Turnaround: The 60' width of the roadway easement does not provide enough area for a hammerhead or cul-de-sac. However, there is space on TL 300 for vehicles to turn around.

§ On-street parking: There is no on-street parking with in the roadway or access easements. There is vehicle parking provided on-site for the existing industrial buildings.

§ Sidewalks: There are no existing sidewalks within the roadway easement. Due to the industrial nature of the site and the lack of frequent transit access, pedestrian use is expected to be limited.

§ Street Trees: There are no street trees within the roadway or access easements. The easternmost segment the private road (N Time Oil Road) is lined with vegetation.

§ Stormwater Facilities: Runoff currently flows to unimproved roadside swales and infiltrates into the ground.

The attached document provides an overview of the existing and required road elements.

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**Reason for alternative** Access by a private street is permitted in this location. N Burgard Way was established within Tract A of the Burgard Industrial Park in 1994 (LUR 93-00605 SU) and constructed per the street standards at the time. Though it is nonconforming to current City requirements for private street improvements, it continues to function as intended.

The applicant proposes a two-lot partition to create two lots of record from the three existing tax lots. No development is proposed at the time of the partition. The applicant attended an Early Assistance meeting with the City of Portland (EA 18-281638) and the City has indicated that a building appeal would be supportable if the lots were configured in a flag lot configuration. That is the proposed configuration.

There is no planned construction for this site. The applicant is going through the land use process to create two legal parcels from three existing tax lots. With the proposed land use application, there will be no change in usage of the existing parcels for which the private access provides access and frontage, and no additional traffic will be generated. The existing parcels are located at the end of the private access (N. Burgard Way). The 60' roadway easement located on existing parcels 2 and 3 only serves the three existing parcels within the land use application (existing TL 2000, 2100, and 300), and TL 100 to the south.

The existing private access is integrated with the site design of the industrial developments adjacent to the easement. The pavement width meets the standards for the permanent private right-of-way, however, some of the other elements are lacking (curbs, parking, sidewalks, and street trees). The absence of items such as curbs, sidewalk, and on-street parking allow the private road to provide access to the adjacent parcels while still maintaining functionality and circulation within the existing industrial development. Each site provides parking for their business outside of the roadway easement. In addition, some segments of the existing access have shoulders that provide space for on-street parking. Pedestrian traffic is minimal due to the industrial nature of the area. Stormwater was approved at the time the existing roads were constructed. The proposed partition plat does not propose the addition of imperious surface, and therefore should not trigger stormwater improvements. At the time of future development, improvements to the private road may be appropriate. However, the current partition does not impact the existing street or the businesses that use it.

The existing pavement widths exceed the criteria for the width of a fire access. Although an easement is not provided for a fire access turnaround, there are paved areas on-site that can be used for a turnaround. A fire turnaround easement is being established on TL 300 as part of the partition plat application being prepared for submittal to BDS.

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## APPEAL DECISION

### **Creation of two legal lots of record: Granted provided:**

- 1. The proposed lot configuration must include a flag lot as depicted in the provided site plan and proposed in 19-178964-LU Land Division Review.**
- 2. The private street must be improved to conform with current private street standards provided in the Administrative Rules for Private Rights of Ways if lot divisions are proposed in the future.**

**Appellant may contact Ian LaVielle (503-823-7953) with questions.**

The Administrative Appeal Board finds with the conditions noted, that the information submitted by the appellant demonstrates that the approved modifications or alternate methods are consistent with the intent of the code; do not lessen health, safety, accessibility, life, fire safety or structural requirements; and that special conditions unique to this project make strict application of those code sections impractical.

Pursuant to City Code Chapter 24.10, you may appeal this decision to the Building Code Board of Appeal within 180 calendar days of the date this decision is published. For information on the appeals process and costs, including forms, appeal fee, payment methods and fee waivers, go to [www.portlandoregon.gov/bds/appealsinfo](http://www.portlandoregon.gov/bds/appealsinfo), call (503) 823-7300 or come in to the Development Services Center.



APPEALS  
City of Portland  
Bureau of Development Services  
1900 SW 4<sup>th</sup> Ave., Suite 5000 (5<sup>th</sup> floor)  
Portland, Oregon 97201  
(503) 823-7335

## Building Code Appeal Form (Project Information Sheet)

# BLD

### To Appellant:

These forms must be filled out completely. If you need assistance, consult with the Plans Examiner or Inspector assigned to your project or with a Plans Examiner in the Development Services Center. Details of each appealed item must be included, and drawings must be submitted that clearly indicate the area and the conditions of each appealed item. Supplemental information such as photos, test data, etc., can be helpful if they are pertinent to the appealed item. Each appealed item requires a separate Appeal Information Sheet. As many items as desired may be submitted with one Project Information Sheet.

The fee, relevant drawings (**exclusive of any plans submitted for permit processing**) and any supplemental information must be submitted with these forms. Checks are to be made payable to "Treasurer, City of Portland". Fees are listed below:

**\$227 for one and two family dwellings**  
**Plus \$113 each for each appeal item over four**

**\$454 for all other conditions (four appeal items or less)**  
**Plus \$113 each for each appeal item over four**

**Mail or hand-delivered appeals must be received by 5:00 PM on Friday. Electronic appeals must be received by 9:00 AM on Monday.** (The fee, drawings and supplemental information for electronic appeals may be delivered separately by 9:00 AM on Monday.) In most cases, appeals submitted by these deadlines will be considered the following Wednesday. However, an appeal may be deferred to a later date depending on the number of appeals scheduled, the complexity of the appeal, or other unforeseen factors. Appeal decisions are mailed and are also usually available the following day at [http://www.portlandonline.com/bds/index.cfm?c=34196#cid\\_105495](http://www.portlandonline.com/bds/index.cfm?c=34196#cid_105495), or by calling the Appeal Board Support Staff at (503) 823-7335.

### Project Information (questions in **BOLD** cannot be left blank):

#### This appeal involves (check at least one below)

- |  |  |
|--|--|
| <input type="checkbox"/> Erection of a new structure         | <input type="checkbox"/> Change of Occupancy: from _____ to _____                    |
| <input type="checkbox"/> Alteration of an existing structure | <input checked="" type="checkbox"/> Other (specify): <u>Private Street standards</u> |
| <input type="checkbox"/> Addition to an existing structure   | <input type="checkbox"/> Reconsideration of Appeal ID # _____                        |

**Proposed Use of Structure** (e.g., single-family dwelling, office, etc.) NA – no structure proposed

**Project Street Address** 9945, 10400, and 12005 N Burgard Way

**Owner Name** Richard Coffin **Company** MMGL Corp.

**Address** 34407 Dupont Ave Suite 6 **City** Frankford **State** DE **Zip** 19945

**Phone** \_\_\_\_\_ **Email** \_\_\_\_\_

#### Related Permit Application #, LUR Case #, or if none, check Preliminary

Permit # \_\_\_\_\_ LUR Case # \_\_\_\_\_ ☒ Preliminary

**Number of stories** NA **Occupancy Group** NA **Construction Type** NA

**Fire Sprinklers** ☐ No ☐ Yes > Location: NA

**Plans Examiner/Inspector assigned to project** NA

I am the property owner, or the property owner's agent. In accordance with City Code Section 24.10.075, I am authorized to submit an appeal for an alternative material, design or method of construction or equipment or a modification to the strict interpretation of the Building Code as adopted by the City of Portland as outlined in the attached information. I hereby acknowledge that the City is not liable for any damages that result from or relate to any formal decision rendered by the City with respect to this appeal.

**Appellant Name** Li Alligood, AICP **Company** Otak, Inc.

**Address** 808 SW Third Ave, Suite 300 **City** Portland **State** OR **Zip** 97204

**Phone** 503.415.2384 **Email** li.alligood@otak.com

**Appellant signature** \_\_\_\_\_ **Date** 6/7/2019

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07/10/15



APPEALS  
City of Portland  
Bureau of Development Services  
1900 SW 4<sup>th</sup> Ave., Suite 5000 (5<sup>th</sup> floor)  
Portland, Oregon 97201  
(503) 823-7335

## Building Code Appeal Form (Appeal Information Sheet)

# BLD

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### **To Appellant:**

Each item you are appealing requires a separate Appeal Information Sheet to be filled out. All requested information is to be filled out completely with as much detail as possible. **Failure to do so may cause your appeal to be held over until adequate information is received.** For help in filling out these forms, consult with the Plans Examiner assigned to your project or with a Plans Examiner in the Development Services Center.

Any alternative method or modification of a Building Code requirement requires an appeal. A reasonable degree of equivalent health, accessibility, structural capacity, energy conservation, life safety or fire protection **must** be demonstrated before an appeal may be considered.

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**Code Section being appealed:** Permanent Rule for Private Street Rights-of-way

### **Regulation Requirement:**

According to Permanent Rule for Private Street Rights-of-ways, the following elements are to be included within the private street tract:

- Paved width of between 26' – 33' (per Figure 3)
- Curbs (per section III.E.2.j)
- Turnaround (per section III.F)
- On-street parking (per section III.G)
- Sidewalks (per section III.H)
- Street trees (per section III.I)
- Stormwater facilities (per Section III.J)

**Proposed Design:** (Describe the alternate methods or materials of construction to be used or that exist. Be as specific as possible)

The purpose of this project is to create two legal lots of record from three existing developed industrial parcels:

1. TLID 2N1W35C -00300 / Property ID R325512; 13.79-ac
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The lots are zoned IHik and are located east of the Willamette River and west of N Lombard Street. The existing parcels are partially developed (industrial use). The parcels were created by deed in 2007 and the City has stated that a partition plat application is required to formalize the parcels. A partition plat application is being prepared for submittal to the City.

No development is proposed on the sites. As noted above, the purpose of the partition application is to create two legal tax lots from these three parcels. The applicant requests that the existing private street improvements be allowed to remain in place until future development of the lots.

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- Paved width: Within the 60' roadway easement, the paved surface is approximately 38' wide. The pavement extends north of the roadway easement to the existing fencing and building. East of existing TL 2000, the paved width varies from approximately 38' wide to a minimum of 23.8'.
- Curbs: The majority of the private roadway does not include curbs. However, there are a few sections that do include curbs to define areas of vehicle parking for existing buildings.
- Turnaround: The 60' width of the roadway easement does not provide enough area for a hammerhead or cul-de-sac. However, there is space on TL 300 for vehicles to turn around.
- On-street parking: There is no on-street parking within the roadway or access easements. There is vehicle parking provided on-site for the existing industrial buildings.
- Sidewalks: There are no existing sidewalks within the roadway easement. Due to the industrial nature of the site and the lack of frequent transit access, pedestrian use is expected to be limited.
- Street Trees: There are no street trees within the roadway or access easements. The easternmost segment the private road (N Time Oil Road) is lined with vegetation.
- Stormwater Facilities: Runoff currently flows to unimproved roadside swales and infiltrates into the ground.

The following table summarizes the above information:

Private Road Element	Requirement	Existing
Paved Width	26'-33'	Max. 38', Min. 23.8' (short segment)
Curbs	Required both sides	Not provided except to define adjacent business parking areas.
Turnaround	Required	Paved area provided for turnaround, an easement for the turnaround will be established with the proposed partition plat
On-Street Parking	Required on one side of street	Shoulders provide space for parking along a portion of the roadway. Off-street parking provided at businesses.
Sidewalks	Required on one side of street	No existing sidewalks. Pedestrian use is expected to be limited.
Street Trees	Required	Natural vegetation provided along a portion of the roadway.
Stormwater Facilities	Required	Unimproved roadside swales and infiltration.

**Reason for Alternate:** (Describe why the alternate is required and how it will provide equivalent health, accessibility, structural capacity, energy conservation, life safety or fire protection to what the code requires).

Access by a private street is permitted in this location. N Burgard Way was established within Tract A of the Burgard Industrial Park in 1994 (LUR 93-00605 SU) and constructed per the street standards at the time. Though it is nonconforming to current City requirements for private street improvements, it continues to function as intended.

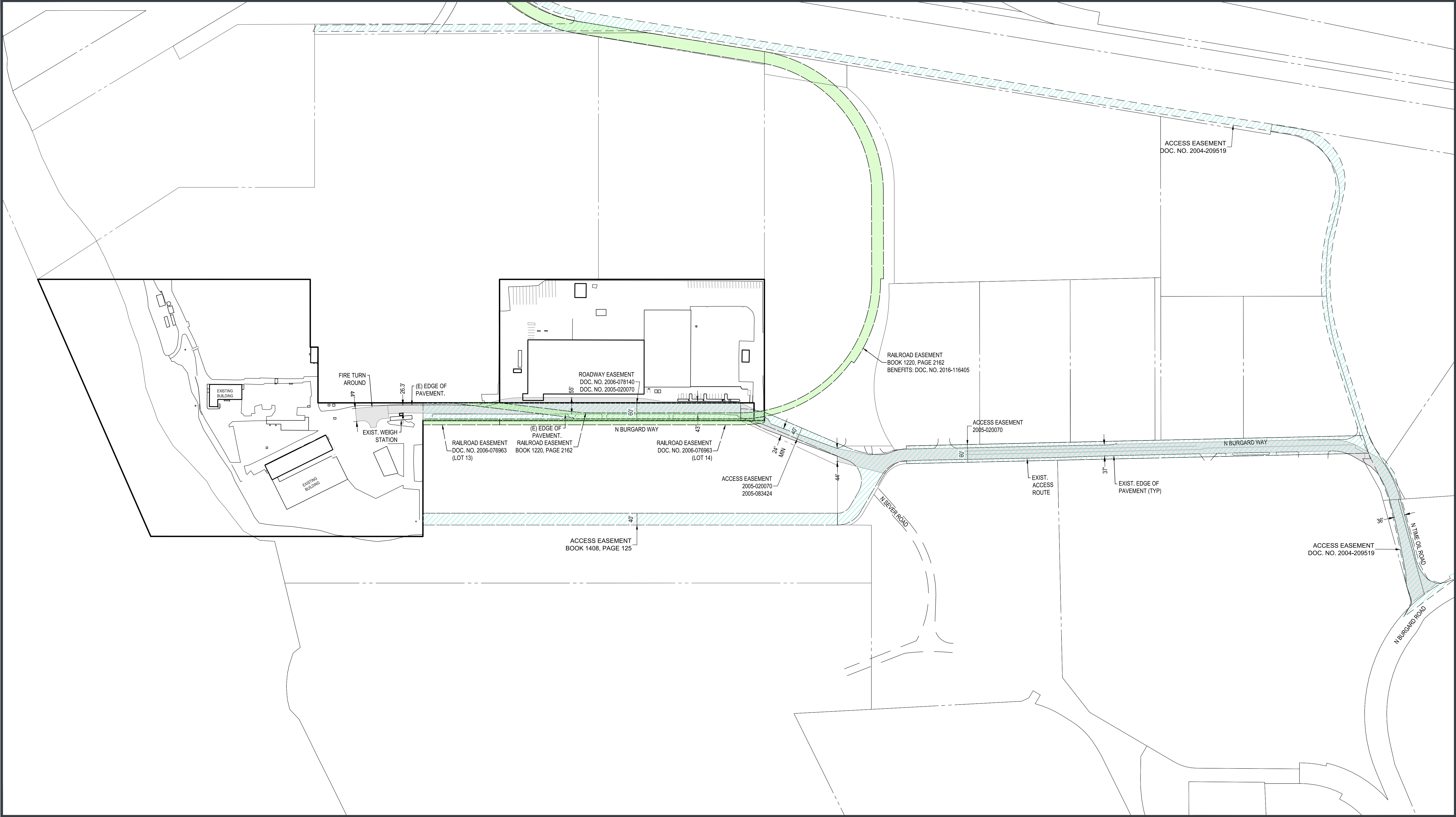
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**LEGEND:**

- EXIST. ACCESS EASEMENT
- EXIST. ACCESS ROUTE
- EXIST. RAIL EASEMENT

