

**MEMORANDUM**  
**For Meeting of February 24, 2009**

TO: Mayor and Councilmembers  
THROUGH: Steve Worthington, City Manager  
FROM: Russ Blount, Public Works Director

SUBJECT: **Resolution No. 1288** – Authorizing the City Manager to execute a Possession and Use Agreement with Young B. Jo and Yang N. Jo, for possession and use of a portion of Tax Parcel No. 0420174035, for right-of-way.

**REPORT IN BRIEF:** Resolution 1288 authorizing the City Manager to execute an agreement with Young B. Jo and Yang N. Jo for possession and use of a portion of Tax Parcel No. 0420174035, for right-of-way necessary for the reconstruction of Valley Avenue East, as part of the 70<sup>th</sup> Avenue East and Valley Avenue East Road Improvement Project.

**BACKGROUND:** The City needs to acquire a portion of Tax Parcel No. 0420174035 from Young B. Jo and Yang N. Jo, for right of way for the 70<sup>th</sup> Avenue East and Valley Avenue East road Improvement Project.

**ATTACHMENT:** Resolution No. 1288, legal description and map.

**DISCUSSION:** The City needs to acquire a 387 s.f. strip of the property located at 8124 Valley Avenue East, tax parcel no. 0420174035, for right of way for the 70<sup>th</sup> and Valley Road Improvement Project. The property is owned by Young B. Jo and Yang N. Jo, the property is currently in mixed use as the Firwood Grocery and single family residence. The acquisition will result in the loss of most of the grocery parking. As a result, the City's appraiser appraised the partial acquisition at \$95,200, including \$12.00/s.f for the land and \$89,500 in damages to the remaining property due to loss of parking for the grocery store. The appraiser also concluded that the remainder of the property would be an "uneconomic remnant," which requires the City to offer to purchase the entire property, but does not require the owner to agree to sell the property. The appraiser appraised the entire property at \$295,000.

Although the parties have not reached an agreement as to just compensation, the owners have agreed to grant the City possession and use of the strip upon the City's payment of the \$95,200 offer, so as not to delay the project. Such sum will be credited to the total just compensation as determined by the parties if agreement is reached, or by the court in an eminent domain action, if agreement is not reached. The agreement, as provided by law, also requires the City to pay interest at the statutory rate of 12% on the difference between the amount determined to be just compensation, and the amount paid under the agreement, from the date of possession, and to keep their offer to purchase the entire property open.

**FISCAL IMPACT:** \$95,200.00, plus recording fees, for strip. If the owner elects to sell the entire property, the ultimate impact will be \$295,000, plus recording fees.

***ALTERNATIVE COURSES OF ACTION:***

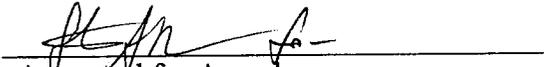
1. Approve Resolution 1288.
2. Amend Resolution 1288 and then approve Resolution 1288.
3. Decline to approve Resolution 1288.

***RECOMMENDATIONS:*** Approve Resolution 1288 as drafted.

***SUGGESTED MOTION:*** Move to approve Resolution 1288.



Russ Blount  
Public Works Director



Approved for Agenda:  
Steve Worthington, City Manager

RESOLUTION NO. 1288

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FIFE, PIERCE COUNTY, WASHINGTON AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH YOUNG B. JO AND YANG N. JO FOR THE POSSESSION AND USE BY THE CITY OF FIFE OF A PORTION OF TAX PARCEL NO. 0420174035

WHEREAS, the City wishes to acquire a portion of the property located at 8124 Valley Avenue East, tax parcel no. 0420174035, for right of way for the 70<sup>th</sup> and Valley Road Improvement Project; and

WHEREAS, the City has made a firm and continuing offer to pay the owner the amount of \$95,200 to purchase the right of way and to compensate the owner for any damages to the remainder of the property resulting from the project; and

WHEREAS, because the acquisition of a portion of the property will leave an uneconomic remnant, the City has also made a firm and continuing offer to pay the owner the amount of \$295,000 for the entire property; and

WHEREAS, in order to avoid delaying the project schedule and to allow the owner additional time to evaluate the City's offers, the parties have negotiated the Possession and Use Agreement attached hereto as Exhibit A; and

WHEREAS, the Council has reviewed the Agreement and finds that it is in the best interests of the City and its citizens to approve the Agreement; now, therefore

BE IT RESOLVED that the City Council approves the Possession and Use Agreement with Young B. Jo and Yang N. Jo attached hereto as Exhibit A and authorizes the City Manager to execute the Agreement on behalf of the City and to pay the amounts necessary and take such other further acts as necessary to effectuate the agreement.

ADOPTED by the City Council at an open public meeting held on the 24th day of February, 2009.

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Barry D. Johnson, Mayor

Attest:

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Steve Marcotte, City Clerk

**After Recording Please Return To:**

City of Fife  
Public Works Department  
5411 23rd St E  
Fife, WA 98424

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**POSSESSION AND USE AGREEMENT**

**Grantor: YOUNG B. and YANG N. JO**

**Grantee: CITY OF FIFE, a municipal corporation**

**Abbreviated Legal Description: Ptn. of NW Quarter of SW Quarter Section 17, Township 20 N Range 4 E of the W.M. City of Fife Pierce County WA**

**Tax Parcel No.: 042017-4035**

THIS POSSESSION AND USE AGREEMENT ("AGREEMENT"), is dated, for reference purposes only, the 12<sup>th</sup> day of Feb, 2009, and is made and entered into by and between Young B. and Yang N. Jo, husband and wife, ("Owner") and the City of Fife, a Washington municipal corporation ("the City").

**RECITALS**

A. The City seeks to acquire a portion of that certain property owned by Owner, which property is commonly known as 8124 Valley Avenue East, Fife, Washington (the "Property") for the construction of the 70<sup>th</sup> Avenue East and Valley Avenue East Road Improvement Project (the "Project"). Specifically, the portion of the Property that the City requires for the Project is legally described in the attached Exhibit A (the "ROW Property").

B. The City has made a firm and continuing offer to pay the Owner the amount of NINETY-FIVE THOUSAND TWO HUNDRED AND NO/100 DOLLARS (\$95,200.00) to purchase the ROW Property and to compensate the Owner for any damage to the remainder of the Property resulting from the Project.

C. In order to allow the City to take possession and use of the ROW Property through the exercise of the City's power of eminent domain so that the City can stay on schedule for the Project and also to provide the Owner with additional time to evaluate the City's offer and resolve any questions they may have concerning just compensation, the parties have agreed to enter into this Agreement.

NOW, THEREFORE, in consideration for the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Owner hereby grants to the City the right to possess and use the ROW Property on the following terms and conditions:

1. Possession and Use Payment. As consideration for the grant of possession and use of the ROW Property, the City shall issue a warrant payable to the Owner in the amount of Ninety-Five Thousand Two Hundred and No/100 Dollars (\$95,200.00) (the "Possession and Use Payment"). The City has agreed to and will take possession and use (and ultimately title to) the ROW Property subject to the three Deeds of Trust noted as items # 3, 4 & 5 on the A.L.T.A. Commitment number 4336523, dated August 10, 2007 from Chicago Title Insurance Company. The City shall pay the Possession and Use Payment directly to the Owner within forty-five (45) days after the date this Agreement is last signed below. Provided, however, that if the City delays signing this Agreement more than 30 days after delivers the signed agreement to the City or their authorized representatives, Owner's signature shall have no force or effect as Owner's consent to the terms of this Agreement shall be automatically rescinded effective as of the 31<sup>st</sup> day after delivery unless the City has also by that time signed this Agreement. The Possession and Use Payment shall be credited against the total just compensation to be paid for the ROW Property as determined by the parties through negotiation at closing or, if the parties cannot reach agreement and a condemnation action is filed, in connection with entry of a decree of appropriation. The date of payment of the Possession and Use Payment to the Owner shall be known as the "Possession and Use Date." The City shall pay the Owner interest, at the statutory rate, from the Possession and Use Date until the date of payment of any additional compensation, on the difference between the Possession and Use Payment and the total amount of just compensation to be paid for the ROW Property.

2. Right of Possession and Use. For and in consideration of the payment of the Possession and Use Payment, Owner hereby grants the City the possession and use of the ROW Property for the purpose of allowing the City, its officers, officials, agents and contractors to construct the Project.

3. Public Necessity. The ROW Property is necessary for the public use of the City. If the parties cannot agree as to the amount of just compensation due the Owner and the City initiates a condemnation action, the Owner will not object to the City's entry of an Order Adjudicating Public Use and Necessity as provided in RCW 8.12.090.

4. Term. The term of this Agreement shall run from the date of mutual execution of this Agreement through to the date that title to the ROW Property transfers to the City whether by deed or decree.

5. Uneconomic Remnant. The parties acknowledge that this Possession and Use Agreement addresses only the ROW Property, which is needed for the Project. The parties

further acknowledge that the remainder of the Property is considered to be an "uneconomic remainder." And the parties acknowledge that the City's offer to the Owner to acquire the ROW Property included an offer to purchase the uneconomic remainder, provided, however, that the City's offer to acquire the uneconomic remainder of the Property is conditioned on the Owner being able to convey title to the City of the uneconomic remainder, free and clear of the three Deeds of Trust noted as items # 3, 4 & 5 on the A.L.T.A. Commitment number 4336523, dated August 10, 2007 issued by Chicago Title Insurance Company. The parties agree that, if the Owner clears these exceptions from title, the City will acquire the uneconomic remainder from the Owner. Should the City acquire the uneconomic remainder from the Owner, whether by deed or decree, interest, as provided for in paragraph 1, above, will not accrue on the value of the uneconomic remainder unless or until the City first takes possession and use of the uneconomic remainder.

6. Condemnation Action. The parties agree to make a good faith effort to diligently negotiate a purchase price for the ROW Property. If the City and Owner cannot agree on a price for the ROW Property within six months of the date of this Agreement the City may institute condemnation proceedings; provided that the City reserves the right to institute condemnation proceedings at any time upon impasse or request by the Owner.

Nothing in this Agreement shall be deemed to waive any right either party may have to a subsequent adjudication of compensation pursuant to state law. Neither this agreement, nor the basis therefore, shall be construed as an admission of fair market value or just compensation by any of the parties to this Agreement.

7. Fees. For purposes of applying RCW 8.25.070 regarding attorneys' and experts' fees, execution of this Agreement by the Owner shall be deemed to be the Owner's stipulation to an order of immediate possession and use within the later of 15 days after entry of the order adjudicating public use and necessity or 30 days after receipt of the City's written request for immediate possession and use. If condemnation proceedings are initiated, any payment of costs and fees shall be governed by RCW 8.25.070 and RCW 8.25.075; however such costs and fees, if allowed, shall be calculated from the date this Agreement is last signed below.

8. Attorney Fees. In the event any of the parties to this Agreement default on the performance of any terms of this Agreement or any party places the enforcement of this Agreement in the hands of an attorney, or files a lawsuit, the substantially prevailing party shall be entitled to an award of its attorneys' fees, costs and expenses. The venue for any dispute related to this Agreement shall be Pierce County, Washington.

9. Date of Valuation. The date of valuation for the determination of just compensation for the ROW Property shall be the Possession and Use Date, which is the date the Possession and Use Payment is paid to the Owner.

10. **Minimized Disruption / Reasonable Access.** The City, its authorized agents, and/or its contractors will make reasonable efforts to maintain access, minimize disruption and inconvenience to the remainder of the Property and uses made thereof. The City and/or its contractors shall at all times maintain reasonable access to the remainder of the Property.

11. **Hold Harmless/Indemnity.** This Agreement is solely for the benefit of the parties hereto and gives no right to any other party. No joint venture or partnership is formed as a result of this Agreement. Each party hereto agrees to be responsible and assumes liability for its own negligent acts or omissions, and those of its officers, agents, or employees to the fullest extent permitted by law, and agrees to save, indemnify, defend, and hold the other party harmless from any such liability including reasonable attorney fees. In the case of negligence of both parties, any damages allowed shall be levied in proportion to the percentage of negligence attributable to each party.

The City hereby agrees to indemnify, hold harmless and defend the Owner from any and all claims, liability, damages, costs, expenses and judgments arising from the intentional misconduct of the City and/or its officers, employees, agents, contractors, subcontractors, permittees or invitees in the exercise of their rights under this Agreement.

Effective as of the Date of the Possession and Use Date, the Owner, its officers, directors, employees, agents and representatives shall not be liable for any injury (including death) to any persons or damage to any property regardless of how such injury or damage be caused, sustained or alleged to have been sustained by the City, or by others, including all persons directly or indirectly employed by the City, or any agents, contractors, subcontractors, permittees, or invitees of the City, as a result of any condition in, on or under the ROW Property, or occurrence (including failure or interruption of utility service) whatsoever related in any way to the City's possession and use of the ROW Property, except to the extent proximately caused by the Owner, its officers, directors, employees, agents or representatives.

The indemnity provisions of this section shall survive the expiration or earlier termination of this Agreement.

12. **Surrender of Possession.** The Owner hereby waives the requirement of written notice to move, as provided by RCW 8.26.180, and will surrender possession of the ROW Property to the City not later than 10 days after the Possession and Use Date. Owner's occupancy of the ROW Property during the 10 days following the Possession and Use Date shall be without obligation to pay rent.

13. **Default.** Failure of a Party to declare any breach or default immediately upon the occurrence thereof, or delay in taking any action in connection with, shall not waive such breach or default.

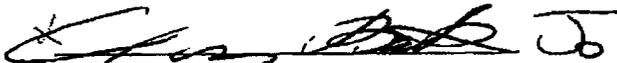
14. Assignment. This Agreement and the rights, duties and obligations given hereunder may not be assigned, transferred or otherwise conveyed by the City.
15. Merger. This Agreement contains all of the agreements of the Parties with respect to any matter covered or mentioned in this Agreement.
16. Recording. This Agreement (or a memorandum of the same) may be recorded against the ROW Property.
17. Amendment. This Agreement may not be amended or modified except by written agreement signed by the Owner and the City.
18. Invalid Provision. Any provision of this Agreement which is declared invalid or illegal shall in no way affect or invalidate any other provision.
19. Authorized Signer. Each party represents that the individuals executing this Agreement are duly authorized to execute this Agreement.
20. Time of the Essence. Time is of the essence of this Agreement and each and all of its provisions in which performance is a factor.
21. Binding Effect. This agreement is intended to protect the value of the ROW Property, as well as the public health, safety, and welfare of the City, and the benefits and burdens inuring to the ROW Property, and to the City, from this Agreement shall run with the land and shall be binding upon Owner and its heirs, successors, and assigns, and upon the City.
22. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall be deemed one and the same instrument.
23. Right to Legal Counsel. The Owner acknowledges that they have the right to consult legal counsel and have received no legal advice from the City Attorney, the City or anyone acting on behalf of the City.

(Signatures on next page)

CITY OF FIFE

OWNER(s)

By: \_\_\_\_\_  
Steve Worthington, City Manager

  
Young B. Jo

ATTEST:

\_\_\_\_\_  
Steve Marcotte, City Clerk

  
Yang N. Jo

APPROVED AS TO FORM:

\_\_\_\_\_  
Loren D. Combs, City Attorney

STATE OF WASHINGTON ) ss.

County of Pierce )

I certify that I know or have satisfactory evidence that YANG BJO and YANG N. JO are the person(s) who appeared before me, and said person(s) acknowledged that they signed this instrument, and acknowledged it to be their free and voluntary act for the uses and purposes mentioned in the instrument.

DATED: 12/2/09



Beverly Koski  
NOTARY PUBLIC  
Print Name: Beverly Koski  
My appointment expires: 1/4/10

STATE OF WASHINGTON ) ss.

County of Pierce )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ and \_\_\_\_\_ (is/are) the person(s) who appeared before me, and said person(s) acknowledged that (he/she/they) signed this instrument, on oath stated that (he is/she is /they are) authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of the City of Fife to be the free and voluntary act of such party for the uses and purposes mentioned in this instrument.

DATED: \_\_\_\_\_

\_\_\_\_\_  
Name (typed or printed): \_\_\_\_\_  
NOTARY PUBLIC in and for the State of Washington  
Residing at \_\_\_\_\_  
My appointment expires: \_\_\_\_\_

EXHIBIT 'A'  
RIGHT-OF-WAY ACQUISITION  
PIERCE COUNTY TAX PARCEL NUMBER 0420174035

THAT PORTION OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 17, TOWNSHIP 20 NORTH, RANGE 4 EAST OF THE W.M., CITY OF FIFE, PIERCE COUNTY WASHINGTON, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 17;  
THENCE SOUTH 00°29'53" WEST ALONG THE EAST LINE OF SAID NORTHWEST QUARTER 144.84 FEET;  
THENCE NORTH 89°30'07" WEST 25.00 FEET TO THE INTERSECTION OF THE WESTERLY RIGHT-OF-WAY MARGIN OF FREEMAN COUNTY ROAD WITH THE SOUTHWESTERLY RIGHT-OF-WAY MARGIN OF VALLEY AVENUE EAST AND THE POINT OF BEGINNING;  
THENCE NORTH 61°00'59" WEST ALONG SAID SOUTHWESTERLY MARGIN 62.00 FEET;  
THENCE SOUTH 28°59'01" WEST AT A RIGHT ANGLE TO SAID SOUTHWESTERLY MARGIN 5.04 FEET;  
THENCE SOUTH 59°50'17" EAST 53.13 FEET;  
THENCE SOUTH 44°44'27" EAST 15.11 FEET TO SAID WESTERLY MARGIN;  
THENCE NORTH 00°29'53" EAST ALONG SAID WESTERLY MARGIN 11.79 FEET TO THE POINT OF BEGINNING.

CONTAINING 387 SQUARE FEET OR 0 .01 ACRES MORE OR LESS

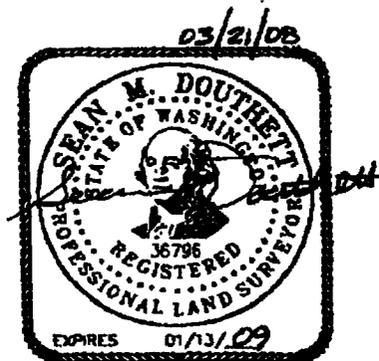
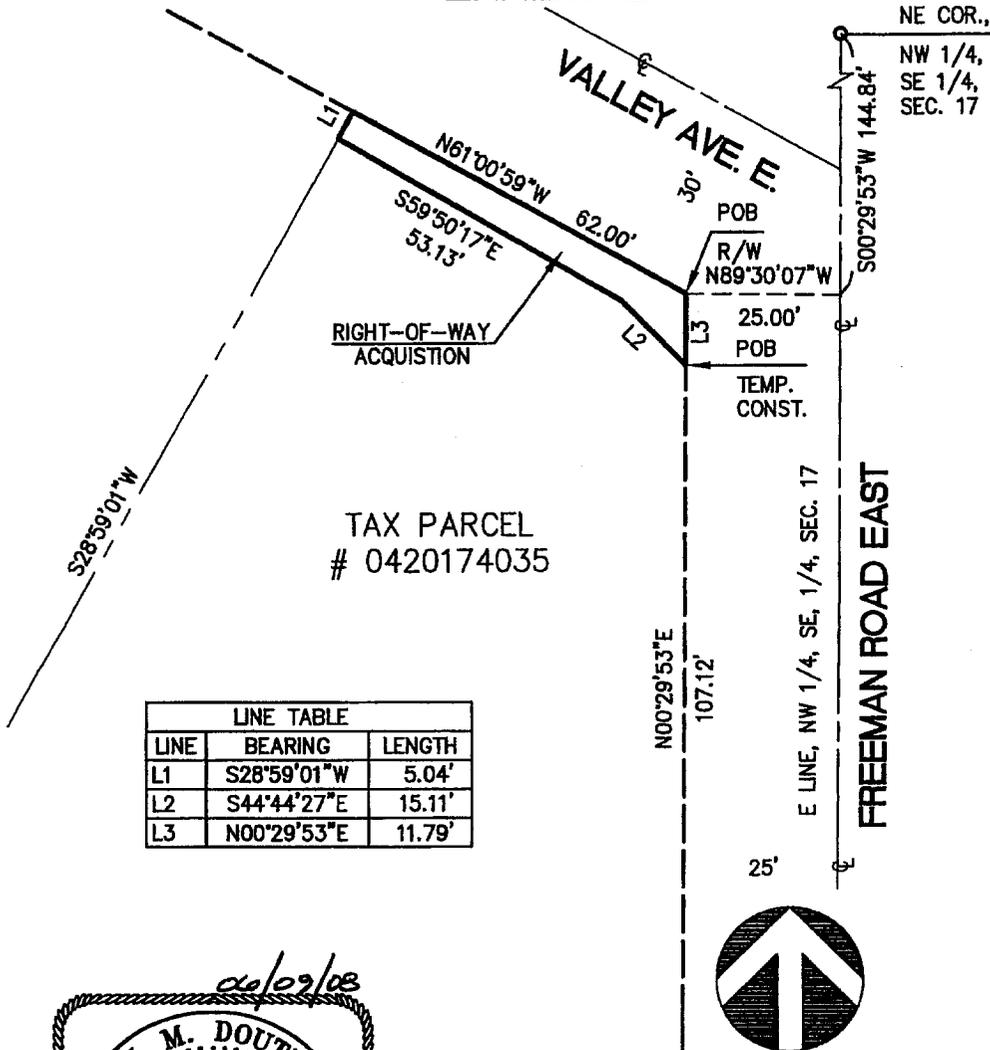
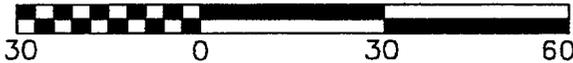


EXHIBIT 'B'



LINE TABLE		
LINE	BEARING	LENGTH
L1	S28°59'01\"W	5.04'
L2	S44°44'27\"E	15.11'
L3	N00°29'53\"E	11.79'

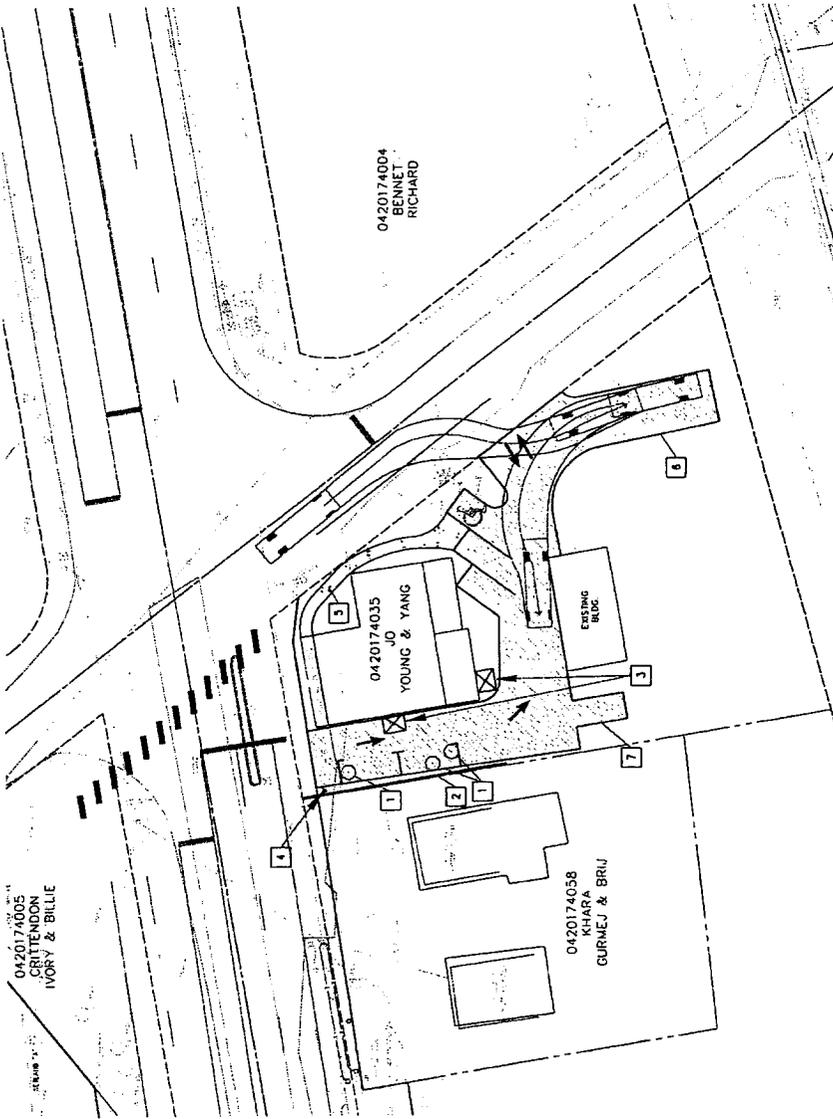
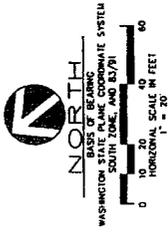
TAX PARCEL  
# 0420174035



**DAVID EVANS  
AND ASSOCIATES INC.**  
3700 Pacific Hwy. East, Suite 311  
Tacoma Washington 98424  
Phone: 253.922.9780

PROJECT	<b>RIGHT-OF-WAY ACQUISITION EXHIBIT FOR:</b>						HEET
TITLE	<b>YANG AND YOUNG JO</b>						<b>1</b>
	<b>PIERCE COUNTY TAX PARCEL NO. 0420174035</b>						OF
DWG. REF.	PROJECT	SCALE	DRAWN BY	DESIGN BY	APPROVED BY	AMENDMENT NO.	DATE
FIFE0062		1"=30'	DJWI	---	SMD	0.0	06-06-08

SEC. 17, T. 20N., R. 4E. W.M.



- 1 TREES TO BE REMOVED
- 2 REMAINING WALL WITH FENCE
- 3 EXISTING REPRODUCTION COMPLIMENT TO BE RELOCATED.
- 4 "NO DELIVERY AND "NO TRUCKS" SIGNS
- 5 CONCRETE SIDEWALK PER ADA REQUIREMENTS.
- 6 DELIVERY TRUCK TURNAROUND
- 7 EMPLOYEE PARKING

DATE	DESCRIPTION	BY
February 16, 2009	JO ACCESS EXHIBIT (DRAFT)	DAVID EVANS

PROJECT ENGINEER: D. ANDERSON  
 DESIGNED BY: G. NELSON  
 DRAWN BY: J. KIRKMAN  
 CHECKED BY: S. ROUSSETT  
 DATE PLOTTED: February 16, 2009  
 FILE: JO ACCESS EXHIBIT (DRAFT)

PRELIMINARY  
 CONTENT  
 SUBJECT TO  
 CHANGE



City of Fife  
 Department of Public Works  
 5411-23rd Street East  
 Fife, Washington 98424

PLANS PREPARED BY  
**DAVID EVANS AND ASSOCIATES INC.**  
 3700 Pacific Hwy, East Side Bldg 211  
 Tacoma, WA 98404  
 Phone: 252.0222700

70TH AVENUE EAST/VALLEY AVENUE EAST  
 CORRIDOR PROJECT  
 STA 56+50 - STA 60+00  
 JO ACCESS EXHIBIT (DRAFT)

