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November 22, 2023

**VIA EMAIL**

Amanda Guile-Hinman  
City Attorney  
City of Wilsonville  
7695 SW Wilsonville Rd  
Wilsonville, OR, 97070  
[guile@ci.wilsonville.or.us](mailto:guile@ci.wilsonville.or.us)

Re: DB22-0009; 26600 SW Parkway Avenue

Dear Ms. Guile-Hinman:

As you know, this office represents SKB-Parkworks, LLC (“SKB”), the owner of the Parkworks Industry Center (the “Property”) located at 26600 SW Parkway Avenue in the City of Wilsonville (the “City”). SKB is proposing development of a new 91,733 square foot manufacturing building within the Property near the southwest corner of the intersection of SW Parkway Avenue and Printer Parkway (the “Project”). As you are well aware, SKB and the City spent several months negotiating the terms and conditions of a proposed development agreement related to the Project’s off-site infrastructure contributions. Despite having what we believed to be an agreement in principle, the City abruptly terminated the development agreement discussions and provided little rationale for its decision beyond indicating that staff intends to propose conditions of approval mandating significant off-site improvements and dedications in the staff report for the Development Review Board Hearing now scheduled for December 11<sup>th</sup>. While we have yet to see the staff report or proposed conditions, we assume that the improvements required by the conditions will largely mirror those reflected in prior discussions to which we have already objected. If so, the conditions are dramatically disproportionate to the impact of the Project, and if required as a condition of the building permit for the Project, would constitute an unconstitutional exaction.

Property/Building Permit Background

The Property was originally developed from 1975 to 1981 to serve as a headquarters campus for Tektronics, and later Xerox, with 585,000 square feet of light industrial, R&D, office and call center uses. In 2015, when Xerox sold most of the campus to SKB, as a condition to Partition Plat No. 2015-083, the City required dedication of 27 feet along the SW Parkway Avenue and an additional 20 feet associated with frontage for Wiedemann Road. The total amount of land dedicated to the City for public right of way is over two acres. SKB received no compensation for these exactions. In 2018, the City required SKB



November 22, 2023

Page 2

to provide a public easement along Printer Parkway that covered another two acres of land. Again, SKB received no compensation for this easement.

### Constitutional Framework

The United States Supreme Court's decisions in *Nollan v. California Coastal Comm'n*, 483 US 825, 107 S Ct 3141 (1987), and *Dolan v. City of Tigard*, 512 US 374, 114 S Ct. 2309 (1994), provide important protections against the misuse of power by local governments through land use regulation. In those cases, the US Supreme Court held that local government may not condition the approval of a land use permit on the owner's relinquishment of a portion of its property (including the obligation to pay money) unless there is a "nexus" and "rough proportionality" between the government's demand and the effects of the proposed land use. *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 US 595, 599, 133 S Ct. 2586, 2591 (2013). Under the "rough proportionality" framework, permitting authorities may insist that applicants bear the full costs of their proposals, but at the same time, the framework prohibits the City from "engaging in out-and-out extortion that would thwart the constitution's right to just compensation." *Koontz*, 570 US at 606. Under this framework, the City may choose whether and how SKB is required to mitigate its impacts, "but [the City] may not leverage its legitimate interest in mitigation to pursue government ends that lack an essential nexus and rough proportionality to those impacts." *Id.*, see also, *Hill v. City of Portland*, 293 Or App 283, 284 (2018). While SKB remains willing to mitigate the impacts of the Project, the City's anticipated conditions lack both the "essential nexus" required by *Nollan* and the "rough proportionality" analysis demanded by *Dolan*.

### Rough Proportionality under Wilsonville Planning and Land Development Ordinance

The Planning and Land Development Ordinance ("PLDO") specifically incorporates the "rough proportionality" requirements of *Dolan*. PLDO 4.177(.01) provides, in relevant part:

"Development and related public facility improvements shall comply with the standards in this section, the Wilsonville Public Works Standards, and the Transportation System Plan, in rough proportion to the potential impacts of the development. (Emphasis added).

Thus, the PLDO recognizes that, while the City's governing documents (such as the transportation system plan) may identify certain streets as arterials or collectors and specify the improvements necessary to meet adopted street section standards, the City is constrained by its own code and may only impose conditions that are roughly proportional to the impacts of the Project. Moreover, it is the City's obligation to demonstrate, with findings supported by substantial evidence, that the conditions meet the rough proportionality analysis. *Dolan*, 512 US at 395-396. Despite requesting the City's analysis over a year ago, we have yet to see any analysis from the City or its consultants that satisfies the City's obligation. To date, the City has only provided conclusory figures which demonstrate that the anticipated conditions are largely inconsistent with PLDO 4.177(.01) and *Dolan*.

November 22, 2023

Page 3

The incorporation of the *Dolan* rough proportionality standard into the PLDO is important for two reasons. First, because the City may only condition approval based on the actual impacts of the Project, the City cannot deny the Project outright. Indeed, to avoid an unconstitutional condition under *Koontz*, the City is obligated to offer SKB “at least one alternative that would satisfy *Nollan* and *Dolan*[.]” *Koontz*, 570 US at 611. *See also, Southwest Hills Residential League v. City of Portland*, LUBA No. 2020-017 (2020)(slip op at 7-8) (LUBA affirming city decision to approve development that did not meet certain code standards where compliance with code standards would run afoul of *Dolan*.) Second, were the City to deny a proposal outright based on alleged insufficiency of transportation facilities, such a denial could be seen as part of a “pattern or practice” of stopping the issuance of development approvals under ORS 197.524 and could require the adoption of a public facilities strategy or moratorium.

### Project Impacts

Since acquiring the Xerox campus, SKB has converted all of the office and call center space (over 325,000 square feet of the overall campus) to manufacturing and R&D uses, actually reducing trip generation from historic levels. SKB now seeks to develop an additional 91,733 square feet of manufacturing space similar to the existing uses on the campus. Based on the City commissioned Parkway Woods Revision Transportation Impact Analysis conducted by DKS Associates (the “2023 TIA”), the Project is expected to generate only a minor impact to the nearby transportation network (15% - 20% of overall southbound left turn AM peak trips and less than 3% of overall Parkway Avenue demand) which amounts to a reduction from historic levels, as detailed below.

SKB engaged Kittelson & Associates (“Kittelson”) to review the 2023 TIA as well as an earlier Transportation Impact Analysis prepared by DKS dated September 2022. Kittelson provided a memo detailing its analysis of the 2022 TIA that accounted for the currently proposed Project size (a copy of which is attached). Kittelson noted that the trip distribution assumptions in the 2022 TIA require reevaluation. DKS agreed that the revised allocation assumptions were appropriate and revised the 2023 TIA accordingly. Based upon the revised assumptions, Kittelson and DKS are generally in agreement that anticipated AM peak hour trips from the Project are forecast to constitute just 15.3% of the overall demand at the SW Parkway Avenue/Printer Parkway southbound left-turn movement and 20% of the overall demand at the SW Parkway Avenue/Xerox Drive southbound left-turn movement.

The Kittelson analysis also calculates the Project associated percentage increase in the two-way traffic volumes during the weekday PM peak hour on SW Parkway Avenue and concludes that the Project is expected to increase weekday PM peak hour trips on SW Parkway Avenue north of Printer Parkway by just 2.5% and to increase PM peak hours trips on SW Parkway Avenue south of Xerox drive by just 2.7%.

Finally, Kittelson analyzed the trips generated from the overall site (including existing conditions, the proposed 91,733 square foot building, and Stage II development), as compared to trips generated by Xerox’s use at the time of sale to SKB. When Xerox occupied the Property, the Property generated 459 weekday PM peak hour trips. Comparing this to existing demand plus Project demand, the Property is

November 22, 2023

Page 4

anticipated to generate only 36% of that historic trip volume. If Stage II development in process is also included, the total expected trips amount to 55% of the historical trip volume from the site. Therefore, previously approved uses on the site generated almost *twice* the impact over existing conditions, the proposed Project, and Stage II trips, combined.

#### Scope of Exactions

The total cost for the improvements the City has indicated will be required for the Project, including a full street improvement of Parkway Avenue and undergrounding of existing overhead utility lines, is currently estimated at approximately \$4.8 million. That amount does not include the value of the dedication of Printer Parkway. As part of the City's development agreement discussions, the City proposed capping its obligation at \$1.2 million, making SKB responsible for all remaining costs. If the proposed conditions of approval align with the City's position in the development agreement discussions, we understand that the City will be requiring SKB to pay approximately \$3.6 million for roadway, frontage, and other public works in addition to the dedication of Printer Parkway as a condition for developing a 91,733 square foot building. That amounts to approximately \$39 per square foot which, again, does not consider the value of the dedication.

We have seen no indication that the City made or can make an adequate individualized determination that the full scope of public improvements are roughly proportional to the expected impacts of the Project. A June 20, 2023 Parkway Woods Industrial Development – Proportionate Share Evaluation for Transportation Improvements prepared for the City by DKS Associates is largely conclusory and based upon erroneous legal assumptions. It also fails to address all conditions that the City has indicated it will apply to the Project. In other words, the City has yet to come remotely close to meeting its burden to demonstrate how the full scope of work demanded meets the rough proportionality standards of *Dolan* or the City's own development code. More importantly, given the limited impacts of the development in comparison to the expansive scope of the requested work to date, the City simply cannot meet its burden unless the City reduces SKB's obligations through the conditions of approval.

SKB does not object to paying its proportionate share for right-of-way and transportation system improvements that bear the necessary connection to the Project. SKB demonstrated that commitment through its good faith development agreement discussions where it offered to accept responsibility to pay for improvements in excess of its true proportionate share in an attempt to work cooperatively with the City. However, based upon the City's final development agreement stance, the scope of the improvements that the City expects SKB to fund dramatically exceed constitutional limits. We urge the City to undertake the rigorous analysis required by PLDO 4.177(.01) and *Nollan/Dolan* and only propose conditions that are commensurate with that analysis, which we believe is far more limited than those proposed by the City in previous discussions. If the final conditions of approval proposed are not roughly proportional to the Project impacts, SKB intends to pursue all available appeal routes which could place the City at jeopardy of paying both monetary damages and attorney fees. We hope that those actions

November 22, 2023

Page 5

are not necessary and sincerely believe that it is in the best interests of both the City and SKB for the City to approve the pending application with conditions within the constitutional limits.

Sincerely,

RADLER WHITE PARKS & ALEXANDER LLP



Renee M. France

cc:

Miranda Bateschell, Wilsonville Planning Director  
Julie Fitzgerald, Wilsonville Mayor  
Kristen Akervall, Council President

December 7, 2022

Project #: 27952

Mr. John Olivier  
ScanlanKemberBard  
222 SW Columbia Street, Suite 700  
Portland, OR 97201

RE: Parkway Woods TIA Review

Dear John:

Per your request, we reviewed the assumptions, methods, and findings included in the May 2022 *Parkway Woods Transportation Impact Analysis* report. In addition, based on a methodology presented herein, we have provided additional calculations to help understand the proportional transportation impacts of the Parkway Woods project. This letter provides an overview of our findings.

## **MAY 2022 PARKWAY WOODS TRANSPORTATION IMPACT ANALYSIS REVIEW**

The City of Wilsonville (City) commissioned DKS Associates to perform a transportation impact study on behalf of the proposed Parkway Woods Flex Industrial development. This study evaluated the transportation impacts of the proposed flex industrial development to be located on the southeast quadrant of the SW Parkway Avenue/Printer Parkway intersection.

Our review of the study found that the technical analysis was prepared according to industry practice/standards and is consistent with studies performed for other development projects in the project vicinity. However, we would recommend that further review of the assumed trip assignment and the left-turn lane assessment provided in the study be requested of the City. Each of these topics is outlined in the sections below.

### **TRIP ASSIGNMENT**

As noted on Page 10 and Figure 3 of the transportation impact analysis, the estimated site-generated traffic was distributed onto the local and regional transportation network based on output from the Wilsonville Travel Demand Model. The trip assignment routed all site-generated trips along the SW Parkway Avenue corridor. Given that the site has access to the SW Canyon Creek Road corridor via Printer Parkway and Xerox Drive, it is likely that the 20% of east-oriented site-generated traffic would instead use SW Canyon Creek Road<sup>1</sup>.

If the Printer Parkway and Xerox Drive connections to the SW Canyon Creek Road corridor were accounted for in the overall trip assignment, it could result in lower demand from the projected Parkway Woods Flex Industrial development and assumed Stage II in-process traffic along the SW Parkway Avenue corridor. This in turn could potentially change the results of the southbound left-turn lane analysis at the SW

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<sup>1</sup> It appears that the Wilsonville Travel Demand Model does not include or recognize Printer Parkway and Xerox Drive as viable connections to/from the SW Canyon Creek Road corridor; typically travel demand models only include collector and arterial streets so the use of local streets or private connections would not be accounted for in the assignment.

Parkway Avenue/Printer Parkway and SW Parkway Avenue/Xerox Drive intersections. Additional discussion on this topic is provided in the following section.

## SW PARKWAY AVENUE SOUTHBOUND LEFT-TURN LANE PROPORTIONALITY ANALYSIS

The May 2022 *Parkway Woods Transportation Impact Analysis* report assessed the criteria for southbound left-turn lanes at the SW Parkway Avenue/Printer Parkway and SW Parkway Avenue/Xerox Drive intersections. From this analysis, it was determined that the volume-based left-turn criteria would be met with the inclusion of forecast trips from the proposed Parkway Woods Flex Industrial development during the weekday AM peak hour at both Printer Parkway and Xerox Drive. However, the left-turn lane assessment did not identify whether the left-turn lanes were warranted by only the incremental increase of the Parkway Woods site-generated trips or if the need for the left-turn lanes is related to existing demand or the Stage II in-process demand.

To better understand the proportionality of the future left-turn demand, Table 1 shows the breakdown of Existing, Stage II, and development-related demand on the SW Parkway Avenue southbound left-turn movement using the data included in the transportation impact analysis.

**Table 1 – SW Parkway Avenue SB Left-Turn Demand Volume Breakdown, Weekday AM Peak Hour**

Intersection	Existing SB Left-turn Demand	Stage II In-Process SB Left-Turn Demand	Projected Parkway Woods Flex Industrial Development SB Left-Turn Demand	% of Total SB Left-Turn Demand Attributed to Proposed Parkway Woods Flex Industrial Development
<i>Based on volumes extracted directly from the May 2022 Parkway Woods Transportation Impact Analysis report</i>				
SW Parkway Avenue/Printer Parkway	47	29	16	17.4%
SW Parkway Avenue/Xerox Drive	15	17	9	22%
<i>Accounting for an assumed 20% reduction in forecast demand away from the SW Parkway Avenue corridor</i>				
SW Parkway Avenue/Printer Parkway	47	23	13	15.7%
SW Parkway Avenue/Xerox Drive	15	14	7	19.4%

Taking into account the existing measured demand and Stage II in-process development demand, the Parkway Woods Flex Industrial Development is forecast to constitute 17.4% of the overall demand at the SW Parkway Avenue/Printer Parkway southbound left-turn movement and 22% of the overall demand at the SW Parkway Avenue/Xerox Drive southbound left-turn movement. If some site-generated trips were to use the SW Canyon Creek corridor as well, the Parkway Woods Flex Industrial Development is forecast to constitute 15.7% of the overall demand at the SW Parkway Avenue/Printer Parkway southbound left-turn movement and 19.4% of the overall demand at the SW Parkway Avenue/Xerox Drive southbound left-turn movement.

Based on this analysis, it is reasonable to request that the southbound left-turn lane assessment at both locations be re-evaluated as follows:

1. Reassess the need for a southbound left-turn lane taking into consideration the additional connectivity provided by the site's access to the SW Canyon Creek Road corridor to the east.
2. Assess the need for a southbound left-turn lane using just the existing measured demand and the forecast impacts associated with the Stage II in-process developments.
3. Compare the results of the additional southbound left-turn lane assessment with the Parkway Woods Flex Industrial development assessment and consider the proportional impacts.

## SW PARKWAY AVENUE PROPORTIONALITY ANALYSIS

At your request, we have calculated the percentage increase in the two-way traffic volumes during the weekday PM peak hour on SW Parkway Avenue associated with the proposed Parkway Woods Flex Industrial Development. Table 2 identifies the incremental increase in total traffic volumes along the street under two scenarios – the existing trip assignment in the report and the use of the SW Canyon Creek Road for additional ingress/egress to the site.

**Table 2 – Parkway Woods Flex Industrial Development Impact on SW Parkway Avenue During the Weekday PM Peak Hour**

Time Period	Existing + Stage II In-Process Demand on SW Parkway Avenue	Projected Parkway Woods Flex Industrial Development Demand to SW Parkway Avenue	% Increase to SW Parkway Avenue Demand Attributed to the Parkway Woods Flex Industrial Development
<b>Based on volumes extracted directly from the May 2022 Parkway Woods Transportation Impact Analysis report</b>			
SW Parkway Avenue north of Printer Parkway	961	30	3.0%
SW Parkway Avenue South of Xerox Drive	918	31	3.3%
<b>Accounting for an assumed 20% reduction in forecast demand away from the SW Parkway Avenue corridor</b>			
SW Parkway Avenue north of Printer Parkway	950	24	2.5%
SW Parkway Avenue South of Xerox Drive	907	25	2.7%

## PRIOR TRAFFIC VOLUMES ASSOCIATED WITH THE XEROX CAMPUS

At your request, we have also estimated the potential trip generation of the prior use of the campus by Xerox when it was fully operational. These estimates are summarized in Table 3 based on the Research and Development Center land use category in the 11<sup>th</sup> Edition of the ITE *Trip Generation Manual*.



**Table 3 - Trip Generation Estimates for Historical Xerox Campus**

Prior Use Description	Land Use	ITE Code	Size	Daily	Weekday PM Peak Hour		
					Total	In	Out
Xerox Campus	Research & Development Center	760	585,848	5,930	574	92	482
<b>Total Site Generated Trips</b>				<b>5,930</b>	<b>574</b>	<b>92</b>	<b>482</b>
<b>Total Site Generated Trips Using the SW Parkway Avenue Corridor<sup>1</sup></b>				<b>4,744</b>	<b>459</b>	<b>74</b>	<b>385</b>

<sup>1</sup> Represents approximately 80% of all site-generated traffic

Table 4 summarizes how the existing and projected travel demand compares to the estimated volumes from the prior use of the campus along the SW Parkway Avenue corridor. While theoretical, these calculations show that the Existing + Project + Stage II in process developments represent less than 60% of the previous volumes that could have occurred when the former Xerox Campus was in full operation.

**Table 4 – Comparison to Historical Demand from the Former Xerox Campus**

	Total Weekday PM Peak Hour Demand Accessing Printer Parkway and Xerox Drive via SW Parkway Avenue as documented in the TIA	Ratio of Two-Way Traffic in TIA versus that associated with the Estimated Xerox Volumes
Existing PM Peak	117	117/459 = 25%
Existing + Project	166	166/459 = 36%
Existing + Project + Stage II	254	254/459 = 55%

Please let us know if you need anything else as part of your discussions with the City.

Sincerely,  
**KITTELSON & ASSOCIATES, INC.**



Matt Hughart, AICP  
 Principal Planner



Julia Kuhn, P.E.  
 Senior Principal Engineer