

**CITY OF BROOKINGS
SPECIAL COMMON COUNCIL MEETING
Brookings City Hall Council Chambers
898 Elk Drive, Brookings, Oregon
February 21, 1991 - 7:00 P.M.
MINUTES**

I. CALL TO ORDER

Mayor Hummel called the special meeting to order at 7:00 p.m.

II. ROLL CALL

Council Present: Mayor Fred Hummel, Councilors Nancy Brendlinger, Mary Jane Brimm, Larry Curry, Tom Davis

Staff Present: City Manager Dennis Cluff, City Attorney Mike Gillespie, Community Development Director Leo Lightle, Planning Director John Bischoff, Finance Director/Recorder Beverly Shields

Media Present: Bill Schlichting, Curry Coastal Pilot; Marge Barrett, KURY

III. PUBLIC HEARING - SEWER MORATORIUM

Mayor Hummel opened the public hearing.

Councilor Brendlinger declared a potential conflict of interest.

Jeff Holmes, 580 Fern St., speaking for his parents, Jack and Lorene Holmes at 17350 Holmes Road, submitted and read a letter into the record, which letter is attached and made a part of these minutes.

Joseph Powers, P.O. Box 7197, Brookings, read a statement into the record, which statement is attached and made a part of these minutes.

Woodi Davis, David Evans and Associates, representing South Coast Lumber Company, referenced a letter he had written to the City of Brookings which contained suggested priorities for allowed sewer hookups, which letter is attached and made a part of these minutes.

Larry Anderson, P.O. Box 1746, Brookings, asked Mr. Davis for clarification of a statement he made.

Mayor Hummel advised Mr. Anderson of the rules of the public hearing process.

Councilor Davis moved to overrule the chair and allow all persons to speak as they wish, which motion was seconded by Councilor Brimm.

The clerk called the roll with the following results:

Ayes: Councilors Brendlinger, Brimm, Curry,
Davis

Nays: Mayor Hummel

Motion carried; chair overruled; all persons will be allowed to speak as they wish during the public hearing on the sewer moratorium.

Larry Anderson, P.O. Box 1746, Brookings, reviewed the projects in which he stated he has cooperated with the city. Mr. Anderson suggested that staff and council form a committee to come up with a policy for distributing sewer hookups.

John Babin, Attorney at Law, representing Western Pacific Development Corporation, handed out a letter and a proposed modification to the proposed Ordinance No. 91-0-471. Mr. Babin presented a total of eight documents for the record, which documents are attached and made a part of these minutes.

Alex Forrester, Land Use Development Consultant, Design Professional Group, Grants Pass, representing Western Pacific Development Corporation, presented three documents for the record, which documents are attached and made a part of these minutes.

Tim Bossard, T.J. Bossard and Associates, offices at 303 N. "E" St., Grants Pass and Brookings, representing Western Pacific Development Corporation, spoke on the issue.

Manville Heisel, attorney for Harbor Sanitary District, stated that the Harbor Sanitary District board will meet next Tuesday at 11:00 a.m. to discuss the Intergovernmental Agreement, and he suggested some changes to the wording in the agreement.

City Attorney Mike Gillespie read the amended Intergovernmental Agreement to the public.

Councilor Davis moved to authorize the mayor and city recorder to sign the Intergovernmental Agreement, which motion was seconded by Councilor Curry. The clerk called the roll with the following results:

Ayes: Councilors Brendlinger, Brimm, Curry,
Davis, Mayor Hummel

Nays: None

Motion carried; mayor and city recorder authorized to sign the Intergovernmental Agreement between the City of Brookings and the Harbor Sanitary District.

Buzz Hansen, 97832 Titus Lane, spoke on behalf of the individuals who may have purchased lots and requested that they be given consideration. Mr. Hansen suggested that the I & I be taken care of to increase capacity and that Harbor Sanitary District build a plant, thereby freeing up 1,500 hookups.

John Zia, Vice President of the Curry County Housing Board, spoke on the issues.

Councilor Curry requested that staff provide Council with actual numbers of EDU's committed.

IV. RESOLUTION NO. 91-R-503 - A resolution authorizing condemnation of real property within the City of Brookings, Oregon.

Councilor Davis moved to adopt Resolution No. 91-R-503, which motion was seconded by Councilor Brimm. The clerk called the roll with the following results:

Ayes: Councilors Brendlinger, Brimm, Curry,
Davis, Mayor Hummel

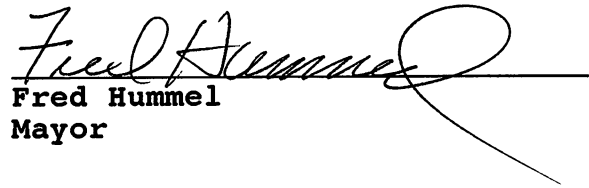
Nays: None

Motion carried; RESOLUTION NO. 91-R-503 - A resolution authorizing condemnation of real property within the City of Brookings, Oregon. - adopted.

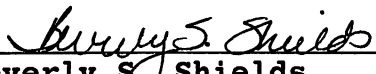
V. ADJOURNMENT

Councilor Davis moved for adjournment, which motion was seconded by Councilor Curry; **motion carried unanimously.**

Mayor Hummel adjourned the special meeting at 10:40 p.m.


Fred Hummel
Mayor

ATTEST:


Beverly S. Shields
City Recorder

Jack & Lorene Holmes
17350 Holmes Drive
Brookings, Ore 97415
February 21, 1991

City Council Members
Brookings, Oregon

Re: Dawson Tract Water & Sewer District

We understand the problem the City Council is dealing with tonight is a difficult situation.

We would like to explain how this shortage of hookups will effect the people in the Dawson Tract Water and Sewer District.

Our area annexed to Brookings for the sole purpose of getting city water and sewer service. The vote to annex and form the LID was carried by a narrow margin of 6.5 acres out of 140 acres. By our count, the LID was rejected by West Harris Heights and the Dawson Tract, but it carried because of a large majority in Driftwood Shores. The assessment is based on area, at a cost of about \$18,000 an acre. The largest tax lot in the LID is 10.6 acres, giving an assessment of roughly \$190,000 on an undeveloped piece of land.

In our talks with the city, we made it clear that we would not annex unless we got water and sewer service at the same time. This was the only way we could sell or develop our land to defray the high costs of the construction.

We repeatedly raised questions about the availability of water and sewer service. City officials assured us that they would be available. We were also assured that we would not have to begin repayment until we could "turn on the water and flush the toilet." Without these guarantees from the city, we would not have undertaken this project.

The City Planning Commission has also followed the policy of reserving sewage plant capacity for our LID. The city has always testified that they were holding in reserve enough hookups. Now we find that the city council is proposing to allocate only 80 or 90 hookups to our area, and we may never get any more.

In a study done for the City of Brookings by H.G.E. Inc in June of 1989, they listed the following information:

The LID consisted of 163 assessable lots and contained 57 homes. The population at that time was 417 people. H.G.E. predicted that the area would eventually grow to contain 496 homes and 1,270 people.

If you give us 90 sewer connections and hook up the houses that are already built, you will have 106 remaining lots with only 33 connections. If you allow any subdividing at all, and

give them out on a first-come-first-serve basis, these will quickly be taken by developers. The people with vacant lots may get no connections at all. If the city has to repossess these lots, they may have no commercial value.

Although the area is zoned for 6000 square foot lots, the average lot size with sewer service will be 1 1/2 acres. The average cost per sewer hookup will be 27,000 dollars.

When we annexed to the City of Brookings we entered into an agreement.

1. We would not have to pay for the system until we had full water and sewage service.
2. The City would reserve water and sewage capacity for both the present lots, and future development. By the figures in your own reports, that will be about 496 housing units.

Since it is obvious that you can no longer meet these obligations, we propose that you make one of the following choices:

Put an immediate stop to all construction on the project and dissolve our LID. Or:

Finish the construction, but carry the payments yourselves until the city can provide full service for 496 housing units. To provide any less than this number of hookups would be financially disastrous to the property owners in this district. If you choose this option, we would also expect the city to absorb all extra interest costs that this would entail.

We feel that stopping construction is the best solution for residents of the LID, and the taxpayers of the city. It seems better to give these sewer hookups to people who want them, instead of force them on people who don't want them.

You must be aware that we will have no choice but to sue, unless the City takes some action to correct the situation it has placed us in. It is the only way we have to recover from the crushing financial burden that will fall on us.

We feel that the City has been negligent in giving away sewer connections that were to be reserved for us, and that it is now constructing a sewer system on the Dawson Tract that for all practical purposes may never be functional.

Loraine Holmes
Jack Holmes

Mayor and Council

Upon advise of counsel I would like to make a short statement for the record. There are several important points pertinent to my subdivision CRESTWOOD PARK I would like to make for the record.

In 1989 it became clear I would develop the subdivision known as CRESTWOOD PARK I was approached by city officials in Brookings to participate in an LID on Ransom Avenue. They pointed out that others on Ransom had decided not to participate and if I did not, participation would be below the percentage needed and the LID could not be formed.

I agreed and in the summer of 1989 at a council meeting I stated,

"We are in agreement with the staff report. However some things suggested by the staff do not really benefit the CRESTWOOD PARK subdivision. Some may be logical, but they are costly. Even so, we have agreed to a high water line across the front of our subdivision on Ransom Avenue.

We have agreed to finish curb, gutter and street some 600 feet on Sunshine (Now Hassett) that is not part of CRESTWOOD PARK subdivision. There is one extremely important point, we are for the LID and it seems clear that the LID will be formed."

Since the summer of 1989 I have adjusted the completion of CRESTWOOD PARK to accomodate the LID. The subdivision could have been finished in the summer of 1990 which would have made the LID ineffective. I was going to build my own home in CRESTWOOD PARK but because it was taking so long to get the LID going I bought another lot to build my home, rather than complete CRESTWOOD PARK and destroy the LID.

In the past two years I have met with the city officials at least 15 times checking the progress of the LID, trying to coordinate the subdivision with it. These delays have been quite costly to me.

Now CRESTWOOD PARK subdivision is completed, it has ben finald by the city. I am not in the business of selling lots. I am building homes on my lots in CRESTWOOD PARK. I have house plans that have been submitted to and approved by the city before the moritorium went into effect. Money has been appropriated for 4 homes in the subdivision and some ground work has already been done for immediate construction. I am not asking for 18 or 19 sewer hook-ups. If I would be granted 4 hookups for immediate construction which is a small amount in relation to the 300 available, I believe that would last me till next year.

Respectfully, Joseph L. Powers

13 February 1991

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FEB 14 1991

SOLX0001

City of Brookings
898 Elk Drive
Brookings, Oregon 97415

CITY OF BROOKINGS

Attention:

Mr. Fred Hummel, Mayor
Mr. Dennis Cluff, City Manager
City of Brookings Council Members

RE: ALLOCATIONS FOR SEWER HOOKUPS

This letter is written on behalf of South Coast Lumber Company to inform the City of Brookings of our concerns on how the remaining sewer hookups within the Brookings/Harbor area are allocated. It is our understanding that the City Council will decide at the February 21, 1991 Council Meeting how the remaining sewer hookups will be allocated.

South Coast Lumber Company has invested over \$2,000,000 into projects within the City of Brookings that will be directly impacted by the current sewer moratorium and future sewer hookup allocations. South Coast Lumber Company is currently developing the **Brookings Town Center**, which, upon completion of Phase I, will amount to another \$4,000,000 invested within the City of Brookings.

Due to the amount of money invested in development projects within the City of Brookings, it is obvious that South Coast Lumber Company has a lot at stake when the priorities for sewer hookups are established. We feel that the priorities for these sewer hookups should be determined based upon what is "fair and equitable" for all the parties concerned. Therefore, we propose the following priorities for allocating the remaining sewer hookups.

1. (First Priority)
All existing paid sewer hookups that have been applied for and approved (e.g., all buildings and houses currently under construction that have applied and paid for sewer hookups).

DAVID EVANS AND ASSOCIATES, INC.
ENGINEERS, SURVEYORS, PLANNERS, LANDSCAPE ARCHITECTS, SCIENTISTS
OFFICES IN OREGON, WASHINGTON AND CALIFORNIA
2828 S.W. CORBETT AVENUE
PORTLAND, OREGON 97201-4830
(503) 223-6663 FAX (503) 223-2701

City of Brookings
13 February 1991
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2. (Second Priority)
Existing approved planned developments that are completed and that have sewer service laterals in place. We have researched the local market and determined that there are 122 existing lots within the Brookings/Harbor area that fall within this category. This represents an investment of approximately \$2,500,000 on the part of local developers in order to build the infrastructure needed to sell these lots. We feel that it would be impossible to market these properties without the assurance that sewer hookups would be available for the buyers (e.g., South Coast Lumber Company currently has 41 lots available in **CLARON GLEN** subdivision that represent a \$1,000,000 investment in infrastructure improvements).
3. (Third Priority)
All approved planned developments that are currently under construction, but are not yet completed (e.g., Brookings Town Center. This represents a current investment of more than \$1,000,000 with an additional \$4,000,000 required for the completion of Phase I).
4. (Fourth Priority)
All approved planned developments in which construction has not yet started (e.g., Phase II of **CLARON GLEN** subdivision).
5. (Fifth Priority)
All planned future development.

We feel that the above proposal represents a "fair and equitable" solution to the problem of how to allocate the remaining sewer hookups within the Brookings/Harbor area. Your review and comments are respectfully requested.

Very truly yours,

DAVID EVANS AND ASSOCIATES, INC.



Silas W. Davis, III, P.L.S.
Project Manager

SWD:klg

John BABIN

PROPOSED MODIFICATIONS TO ORDINANCE NO. 91-0-470

Section 2.C. Amend to read as follows:

C. No single development with sewage flow of more than six EDU's, except for developments approved prior to the enactment of this ordinance, shall be connected to the system. For purposes hereof, "developments approved" shall mean:

(i) A subdivision, partitionment or development of any number of lots which has been approved as a residential Planned Unit Development and for which preliminary and/or final plat approval has been granted by the City as to the entirety or any stage or phase thereof prior to the effective date of this ordinance, whether or not building permits or sewer connection applications have been applied for.;

(ii) A subdivision, partition or development with an expected sewage flow of more than six (6) EDU's, whether or not preliminary and/or final plat approval has been granted or is required under the Land Development Code, where the developer is obligated to bear the cost of installation of off-site improvements involving sewerage, water lines, drainage or paving to be publicly dedicated pursuant to Section 172 of the Code, in a total estimated amount of \$ _____ or more.

Section 2.E. Amend to read as follows:

E. Only applications for sewer connections made in conjunction with an application for a building permit and payment of systems development charges and all other applicable fees shall be approved. In the event of the approval of a qualified sewer connection, construction of the structure to be connected to the sanitary sewer system shall be substantially commenced within one (1) year of the issuance of the sewer connection approval and building permit, or if not substantially commenced, the sewer connection approval will be automatically revoked. For purposes hereof, "substantially commenced" shall mean having completed and successfully inspected by the City the complete foundation, including footings and stem walls, as the case may be, for every building structure to be emplaced on the property as shown on the plans and specifications therefor on file with the City.

Section 2.F. Add as new sub-section:

F. Applications for sewer connections which may not otherwise qualify for approval under this ordinance shall be allowed where:

(i) The application relates to the replacement of a structure on a property already connected to the sanitary sewer

system, with no increase in total EDU's for the subject property to result; or

(ii) The application relates to the relocation of a structure to another property and the sewer connection at the original property location will be removed from service and the said original property subject to the terms of this ordinance as if no sewer connection had ever been allowed there previously.

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Labin

THE COVE - PHASE IA COSTS

1-31-91

ITEM	ENGINEERS ESTIMATE	BID AMOUNT	COMPLETION DATE	STATUS	AMOUNT REMAINING
1. Off-Site Water (Pacific to Wharf)	\$ 71,075	\$ 69,641	Completed	Completed	-0-
2. Sanitary Sewer Relocation	\$ 24,480	\$ 26,474	Completed	Completed	-0-
3. Wharf Street					
a. Water & S.D.	\$ 68,010	\$ 58,931	May 15, 1991	In Progress	\$ 58,931
b. Street	\$ 69,000	-	May 15, 1991	Bidding	\$ 69,000
4. Sewage Pump Station <i>(subject to pump bids)</i>	\$ 30,000	-	May 15, 1991	Pending	\$ 30,000
5. Power & Communications	\$ 26,400	(T&M)	May 15, 1991	In Progress	\$ 26,400
6. Cove Rd. Cul-de-Sac	\$ 3,300	-	May 15, 1991	Pending	\$ 3,300
7. Public Parking - <i>Chetco Point</i>	\$ 11,000	-	N/A	Future	\$ 11,000
8. On-Site Improvements					
a. Street & Utilities	\$165,297	\$142,000	May 15, 1991	In Progress	\$142,000
b. Street Lights - <i>Rowland system</i>	\$ 3,000	-	May 15, 1991	Pending	\$ 3,000
c. RV Parking	\$ 14,700	-	May 15, 1991	Pending	\$ 14,700
TOTAL		<i>486,262</i>			\$358,331

Phone (503) 469-2163

CITY OF BROOKINGS

898 Elk Drive
Brookings, Oregon 97415

The Home of Winter Flowers



August 10, 1990

Western Pacific Development, Inc.
1320 N.W. Prospect St.
Grants Pass, OR 97526
Attn: Jerrold A. Boscoe

RE: Your request for approval of the preliminary plat for the
Cypress Cove Planned Unit Development


Dear Mr. Boscoe,

This is to inform you of the action taken at the meeting of the
Brookings Planning Commission on the above referenced matter.

At the Planning Commission meeting of August 7, 1990, the
Commission adopted the Final ORDER and Findings of Fact document
(enclosed) for the approval of the application for a Planned Unit
Development of 56 units on a parcel of land identified as
Assessor's Map No. 41-13-6DD, Tax Lot 3100, 3300, 3600 and
Assessor's Map No. 41-13- 7A, Tax Lot 400, subject to the
conditions listed in the final order.

Please be advised that decisions of the Planning Commission may be
appealed to the City Council within fifteen (15) days after the
decision of the Commission, pursuant to the Land Development Code,
Section 156. If there are any questions please feel free to
contract the Planning Offices.

Sincerely,


John C. Bischoff, Planning Director

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RECEIVED JUN 27 1990

CITY OF BROOKINGS PLANNING COMMISSION
STAFF AGENDA REPORT

SUBJECT: PUD Subdivision REPORT DATE: June 27, 1990
FILE NO: SUB-2-90 ITEM No: 8.2
HEARING DATE: July 3, 1990

GENERAL INFORMATION

APPLICANT: Western Pacific Development, Inc; Jerrold A. Boscoe, President. Owner Dan Agnew et al.

REPRESENTATIVE: Alex M. Forrester

REQUEST: Planned Unit Development; 56 units.

TOTAL LAND AREA: 30.69± acres.

LOCATION: South of Wharf Street between the southerly extension of Cove Road and the Waste Water Treatment Plant.

ASSESSOR'S NUMBER: Assessor's Map No. 41-13-6DD, Tax Lots 3100, 3300, 3600; Assessor's Map No. 41-13-7A Tax Lot 400.

ZONING INFORMATION

EXISTING: R-1-6 (Single Family Residential, 6000 sq. ft. minimum lot size) 7.29; R-2 (Two Family Residential) 23.40 acres.

PROPOSED: R-1-6 and R-2

SURROUNDING: East - R-1-6, R-2; North - M-2 (General Industrial), C-5 (General Commercial), R-2; West - R-2; South - Ocean.

LAND USE INFORMATION

EXISTING: Vacant

PROPOSED: Planned Unit Development - 56 Units.

SURROUNDING: South - Ocean; North - Mixture of residential, commercial and industrial; West - Waste Water Treatment Plant and vacant land; East - Residential

PUBLIC NOTICE: Hearing notice advertised in local newspaper and mailed to property owners within 250 feet of all contiguously owned property at the project site.

BACKGROUND INFORMATION

Property Description

The total property in the same ownership consists of 50.88± acres generally located south of Center Street on both sides of Wharf Street and along the ocean front between the city's waste water treatment plant (WWTP) on the west and the southerly extension of Cove Road on the east. The portion of the property to be developed is the 30.69 acre area located south of Wharf Street between the WWTP and the extension of Cove Road, and including Chetco Point (refer to Exhibit 1).

This area to be developed is presently vacant and forested with heavy underbrush and large cypress and other trees in the conifer family. The property slopes gently toward the ocean from Wharf St. and then drops abruptly to the shore line. There are at least two creeks or drainage courses which run through the property from north to south. The two major creeks run through the approximate center of the property and join together before continuing to the ocean. It is not known whether these creeks run all year nor whether they have a natural source or are drainage from property to the north or a combination of both. Most likely they are a combination since there is evidence of minor springs in several locations on the property. Another major drainage course flows along the approximate alinement of Cove Road on the easterly edge of the property. Chetco Point and the beach on both sides of the point are presently accessed by the public via a trail from a public parking area located on the WWTP property. The property north of Wharf St. and in the same ownership is vacant and is the site of the Agnew Park baseball fields. This area will be developed at a later date.

Development surrounding the site consists of rather large lot residential in the R-1-6 zone to the east on Tanbark Point and a mixture of residential, commercial and various industrial uses in the C-5 Zone in the area on both sides of Wharf St. and north of the project. The area to the west and north of the project site is zoned R-2 and vacant except for the waste water treatment plant which is zoned M-2. Further north and west is the site of the plywood mill and is zoned M-2. There is a .66 acre parcel of separately owned land that intrudes into the project site from Wharf Street. The project property surround the parcel on three sides (refer to Exhibit 2).

Wharf Street provides the primary access to the site and is also the only access to the waste water treatment plant at this time. Cove Road touches the easterly boundary of the site. The Assessor's Map indicates that Cove Rd. extends almost to the State determined vegetation line along the ocean bluff. The applicant has submitted evidence that the portion of Cove Rd. south of the Section 6 line was never dedicated to the public for road purposes.

City staff and the City Attorney is reviewing this issue at this time. This issue will not affect the proposed project as designed but will determine whether the applicant needs to request a vacation of that portion of Cove Road. Since all of the property adjacent to the west side of Cove Rd. belongs to the project and all of the property adjacent to the east side is accessed from Tanbark Road, this section of Cove Rd serves no real purpose. Physically Cove Rd. does not exist in this area except on paper and because of the large drainage ditch in its general alignment would not be easily built.

ANALYSIS

Comprehensive Plan and Land Use Development Code

The Comprehensive Plan designation for the project site was changed in March of 1987 from Industrial to Residential which will allow the proposed Planned Unit Development. The project site does not contain evidence of rare and endangered plant or animal life and is not designated as a wetlands or natural area by the Comprehensive Plan. A portion of the site once contained part of the Brookings Sawmill complex, however, there are no remains of the mill on the site at this time and it is not protected by the Comprehensive Plan.

The property is zoned R-2 (23.40 acres) and R-1-6 (7.29 acres) which were originally placed on the site with a zone change which was approved in April of 1984. If used to the fullest extent the zoning on the property would allow slightly more than 390 units on the 30.69 acre project site. Both the R-1-6 and R-2 zones allow Planned Unit Development pursuant to Section 116 Planned Unit Development of the Land Use Development Code. The purpose of Section 116 is to allow a greater flexibility in the design and diversification of projects than would normally be allowed by the other sections of the Land Development Code.

Project Design

The applicant is asking for a private community of 56 unit Planned Unit Development on the 30+ acre site. These units will be in the form of 28 single story duplex structures grouped in four clusters around private cul-de-sac streets entering from Wharf Street (see Exhibit 3). Each duplex building will contain one unit of approximately 1,850 sq. ft. and one unit of approximately 2,100 Sq. ft. which are designed to provide the appearance of a single family residence and to provide the homeowner the sense of privacy offered by a free-standing single residence. The homeowner will own their half of the duplex and a small outdoor area, in what will essentially be a condominium arrangement. Each of the cluster arrangements is designed to give every unit as much ocean view as possible.

Vehicular circulation within the project will be provided by four cul-de-sacs which enter off of Wharf St. and serve each of the housing clusters. Internal streets are designed with 24 feet of pavement, 35 foot radius cul-de-sacs without sidewalks or curbs in an effort to retain a more rural atmosphere. Drainage on these streets will be through the use of grass lined swales (as of this writing these swales have not been approved by the City Engineer) The northerly most cul-de-sac will be supplied access to Cove Road through a "crash gate" which will remain closed unless needed for emergency purposes.

Pedestrian circulation within the project will be provided through a network of foot paths linking the various housing clusters and the beach. Pathways will be provided on one side of the cul-de-sac streets to link the internal pathways with Wharf Street which will have sidewalks. A gazebo is planned as an ocean overlook for the use of project residents. All streets, pathways and other facilities within the project are intended for the private use of the project residents. The developer elected the use of the planned unit development provisions to allow the flexibility to create narrower roads and pathways rather than sidewalks and to create large areas of common open space. The larger existing trees will be saved wherever possible and lower brush will be removed to improve the ocean view, fire safety and to create a park like setting.

The project will be buffered from the WWTP by a berm adjacent to the easterly boundary of the plant. This berm will be constructed to provide complete visual isolation from the plant and will be planted with multi-storied trees and shrubs to create a pleasing effect. If at all possible the berm and its associated landscaping will be designed through the use of expert meteorologists or other experts to ensure maximum odor control. Final construction plans for the berm must be approved by the City Engineer.

Chetco Point and the area directly south of the WWTP will be granted as a public easement to the city to allow continued public use and access to the beaches on both sides of the point. A public parking area will be constructed to the north of the waste water treatment plant to provide parking and access to the point and the beaches. This parking area will replace the existing parking area behind the WWTP but the trail to the point will remain in its existing location.

The entire development will be fenced with "carded" gates at street and pathway access points on Wharf St. to provide a private setting. These gates will be equipped with radio control opening units for emergency vehicle use.

The applicant will establish a homeowners association which will be responsible for the maintenance of all common areas and facilities within the project including infrastructure as described below.

The proposed by laws for the homeowners association shall be approved by the City Attorney prior to the issuance of occupancy permits for any of the proposed units

Drainage facilities

Drainage for the project will be provided through a system of underground drain lines which collect water from the street side swales and other locations as necessary and direct flows to the ocean front at existing locations. Wharf street will collect water that would normally enter the project site from the north and direct it to appropriate discharge locations along beach. Drainage facilities offsite will be installed in accordance with the city's Comprehensive Storm Drainage Development Plan.

Offsite Street Improvements

Wharf Street, provides the primary access to the project site, will be improved with sidewalks, curb, gutter, and 18 feet of pavement plus 12 feet of transition pavement beyond the center line, in the area adjacent to the project frontage. Improvement to Wharf St. north of the project to Railroad Street will include 28 feet of pavement with blended driveways and storm drainage approved by the City Engineer. Access to the project from Wharf St. will be via private cul-de-sac streets which will be constructed as described above. The applicant has agreed to provide engineered drawings to the city for completed street improvements on Wharf St. for future use. When development of the area north of Wharf St. occurs the applicant will provide street access to Center St. which will create a circulation loop to serve development in the area.

Cove Road fronts the project in only one limited location. As mentioned above the applicant will provide a 35 foot radius cul-de-sac terminus for Cove Rd. which will be surfaced with gravel. A "break away" gate will provide emergency access from Cove Rd. to the project. The applicant will sign a Deferred Improvement Agreement, which will pass to the homeowners owners association, for the future improvements to Cove Rd. Once Cove Rd. is improved it is possible to allow access to the project at that point.

Water and sewer facilities

The applicant will install a 10 inch water line from Highway 101 at Pacific Avenue to the intersection of Railroad and Center Street and from that point an 8 inch line down to and in Wharf Street to the WWTP. The exact route for the 10 inch portion of the line will be determined prior to the construction stage and will be coordinated with the construction of the South Coast Lumber Company project to the east of Pacific Ave. Water lines within the project will be privately owned and maintained by the homeowners association. The exact terminus of the public water lines will be determined by the agreed upon location of water meters. The

location of fire hydrants with in the project and along Wharf St. will be determined by the City Fire Marshal. The city has sufficient capacity to serve water to the site.

Sewer service will be provided by existing sewer lines in Wharf Street. The applicant is requesting that he be allowed to relocate a 400 foot section of public sewer line that crosses the easterly portion of the property and connects Tanbark Rd. and Wharf St. The relocation is necessary to allow two duplex units to be place in the most desirable locations. The City Engineer must approve this relocation and if it is not approved the units will be relocated or eliminated. As with the internal water lines most of the onsite sewer lines and pump stations will be private and maintained by the homeowners association. There is sufficient capacity at the WWTP to supply sewer service to this project.

Traffic And Circulation

As mentioned earlier, Wharf St. will provide access to the project and all internal streets will access off of Wharf. It is expected that the project will generate 336 vehicle trips per day at completion. The improvement to Wharf St. will increase the carrying capacity to between 15,000 and 20,000 trips per day and will be more that sufficient to handle existing and project traffic. The main flow of traffic is expected to use Railroad St. in both direction to take advantage of the traffic lights on Center and Oak Street for access to Highway 101. The possible use of Railroad St. as a southbound couplet for the highway would most likely require a traffic light on Railroad at Wharf. Until such time as the couplet is completed, Railroad St. would be the primary access from the southeasterly area of town (including this project and possible future development) to the proposed shopping center project on the South Coast Lumber Co. property. At this time the city has a fairly good idea of how the remaining vacant area south of the highway is going to develop, and it is important that consideration be given to circulation patterns and needs.

Street lights will be installed within the project and along Wharf St. The location of these lights will be determined at the construction drawings stage and approved by city staff. Once installed the street lights, both within and outside of the project will be owned and maintained by the city.

Other Issues

Since the project site in designated in the General Plan as Residential and is zoned for residential uses, it is expected that this site would be developed in this manner. The fact that the proposed development does not take advantage of the full 392 possible units is a plus in terms of impacts on streets and the water and sewer systems. Part of this involves a trade off in the form of a density transfer to allow a portion of the unused density

to be utilized in the future development of the area north and west of Wharf Street. The density requested for transfer is 166 units and represents slightly less than half of the remaining density. The applicant has indicated that he is willing to place C, C and Rs on all of the parcels which would receive the transferred density, to insure that only 166 units could be transferred. This density transfer has not been approved by staff at this writing but should not affect the development of this project as far as the city is concerned. The applicant will either accept no density transfer or be granted the transfer and proceed according to his needs.

The issue of greatest concern is for the potential impacts of the waste water treatment plant which is adjacent to the project. If the project is completed and effective buffering cannot be achieved the city may find the future of the WWTP in jeopardy due to complaints for residents of the project. This concern has resulted in the use of experts, if possible, in the design of the berm which will act as a buffer and barrier between the project and WWTP. Another possibility would be to require a hold harmless clause in the deeds to each of the dwelling units within the project and in the homeowners association bylaws.

FINDINGS OF FACT

1. The applicant is proposing a Planned Unit Development with 56 residential units on a 30.69 acre parcel of land.
2. The project site is designated Residential by the city's Comprehensive Plan.
3. The Comprehensive Plan does not recognize any cultural, natural, historic, recreational, or open space resources on the subject property.
4. The subject property is zoned R-1-6 and R-2.
5. Both the R-1-6 and R-2 zones allow Planned Unit Developments pursuant to Section 116 of the city's Land Development Code.
6. Section 116 Planned Unit Development of the Land Development Code allows flexibility and diversity of design that is not necessarily allowed by other provisions of the Code.
7. The existing zoning property will allow approximately 392 dwelling units on the site.
8. The applicant will extend new water lines from Highway 101 to the project site.
9. Onsite water lines will be maintained by a homeowners association.

10. Sewer lines exist in Wharf Street at this time.
11. Onsite sewer lines and related facilities will be maintained by the homeowners association.
12. Staff has determined that the city has sufficient capacity to serve water and sewer to the site.
13. The applicant will make improvement to Wharf Street which will increase the capacity to approximately 15,000 vehicle trips per day.
14. The proposed project will generate approximately 336 vehicle trips per day on Wharf Street.
15. The proposed project will have an incremental traffic impact on Wharf Street, Railroad Street, Center Street, Oak Street and Highway 101.
16. The applicant will grant to the city a public easement on Chetco Point as access to the point and to the beach areas.
17. The project site is subject to occasional impacts from the adjacent waste water treatment plant.
18. The applicant will construct a landscaped berm to reduce the impact of odors from the adjacent waste water treatment plant.

CONCLUSIONS

1. The proposed project is consistent with the Comprehensive Plan and will not have a negative impact on natural, cultural or open space resources.
2. The proposed project is consistent with the existing zoning on the property and Section 116 Planned Unit Development of the Land Development Code allows the proposed design of the project.
3. The design features of the proposed project provide adequate emergency access and related facilities.
4. Existing and proposed new facilities will adequately provide water and sewer service to the site. The city has the capacity to provide water and sewer service to the site without negative impact to city facilities and capacities.
5. Existing and proposed street improvements will provide for the increased traffic generated by the project without significant impact.

6. Internal streets, water and sewer lines, and common areas will be maintained by a homeowners association.
7. The construction of a berm adjacent to the WWTP should provide adequate protection for project occupants from impacts of this facility. The hold harmless clause in the homeowners association bylaws will protect the city.

CONDITIONS OF APPROVAL

Conditions of Approval are attached to this report.

RECOMMENDATION

Staff recommends APPROVAL of SUB-2-90 PUD based on the findings and conclusions stated above and subject to the attached conditions.

At the Commissions direction staff will prepare a Final ORDER to be presented at the next regularly scheduled meeting.

Fulvin 5

BEFORE THE PLANNING COMMISSION
CITY OF BROOKINGS, COUNTY OF CURRY
STATE OF OREGON

In the matter of Planning Commission)
File No. SUB-2-90 PUD; preliminary)
plat approval for a planned unit)
development of 56 units submitted by)
Western Pacific Development, Inc; Alex)
Forrester, representative.)

Final ORDER
and Findings of
Fact

ORDER granting preliminary plat approval for a 56 unit planned unit development (Cypress Cove) on a 30.69± acre parcel generally located on the east and south side of Wharf Street between the southerly extension of Cove Road and the Waste Water Treatment Plant, (Assessor's Map No. 41-13-6DD, Tax Lot No. 3100, 3300, 3600; Assessor's Map No. 41-13-7A, Tax Lot No. 400) in the R-1-6 (Single Family Residential, 6,000 sq. ft. minimum lot size) and R-2 (Two Family Residential) Zones, as provided for in Section 116 and other applicable sections of the Land Development Code.

WHEREAS:

1. The Planning Commission has duly accepted the application filed in accordance with the Brookings Land Development Code pursuant to Section 116; and,

2. The Brookings Planning Commission has duly considered the above described application in a public hearing at specially scheduled public meeting held on July 17, 1990, and is a matter of record; and,

3. Recommendations were presented by the Planning Director in the form of a written Staff Agenda Report dated June 28, 1990 and by oral presentation, and evidence and testimony was presented by the applicant and the public at the public hearing for preliminary plat approval; and,

4. At the conclusion of said public hearing, after consideration and discussion of testimony and evidence presented in the public hearing, the Planning Commission, upon a motion duly seconded, accepted the Staff Agenda Report and accepted the proposed findings of fact.

THEREFORE, LET IT BE HEREBY ORDERED that the application for preliminary plat approval for a 58 unit planned unit development (Cypress Cove) on the subject parcel **STANDS APPROVED**, subject to the attached conditions of approval dated July 17, 1990, as amended by the Planning Commission.

LET IT FURTHER BE OF RECORD that the Planning Commission in approving the preliminary plat for the Cypress Cove Planned Unit Development hereinafter supported by the following findings of fact and conclusions:

FINDINGS OF FACT

1. The applicant is proposing a Planned Unit Development with 56 residential units on a 30.69 acre parcel of land.
2. The project site is designated Residential by the city's Comprehensive Plan.
3. The Comprehensive Plan does not recognize any cultural, natural, historic, recreational, or open space resources on the subject property.
4. The subject property is zoned R-1-6 and R-2.
5. Both the R-1-6 and R-2 zones allow Planned Unit Developments pursuant to Section 116 of the city's Land Development Code.
6. Section 116 Planned Unit Development of the Land Development Code allows flexibility and diversity of design that is not necessarily allowed by other provisions of the Code.
7. The existing zoning on the property will allow approximately 392 dwelling units on the site.
8. The applicant will extend new water lines from Highway 101 to the project site.
9. Onsite water lines will be maintained by a homeowners association.
10. Sewer lines exist in Wharf Street at this time.
11. Onsite sewer lines and related facilities will be maintained by the homeowners association.
12. Staff has determined that the city has sufficient capacity to serve water and sewer to the site.
13. The applicant will make improvement to Wharf Street which will increase the capacity to approximately 15,000 vehicle trips per day.
14. The proposed project will generate approximately 336 vehicle trips per day on Wharf Street.
15. The proposed project will have an incremental traffic impact on Wharf Street, Railroad Street, Center Street, Oak Street and Highway 101.

16. The applicant will grant to the city a public easement on Chetco Point as access to the point and to the beach areas.
17. The project site is subject to occasional impacts from the adjacent waste water treatment plant.
18. The applicant will construct a landscaped berm to reduce the impact of odors from the adjacent waste water treatment plant.
19. The applicant is requesting a 166 unit density transfer from Assessor's Map 41-13-6DD, Tax Lots 3100, 3300, 3600 and Assessor's Map 41-13-7A, Tax Lot 400 to Assessor's Map 41-13-6D, Tax Lots 300, 500, and 600.

CONCLUSIONS

1. The proposed project is consistent with the Comprehensive Plan and will not have a negative impact on natural, cultural or open space resources.
2. The proposed project is consistent with the existing zoning on the property and Section 116 Planned Unit Development of the Land Development Code allows the proposed design of the project.
3. The design features of the proposed project provide adequate emergency access and related facilities.
4. Existing and proposed new facilities will adequately provide water and sewer service to the site. The city has the capacity to provide water and sewer service to the site without negative impact to city facilities and capacities.
5. Existing and proposed street improvements will provide for the increased traffic generated by the project without significant impact.
6. Internal streets, water and sewer lines, and common areas will be maintained by a homeowners association.
7. The construction of a berm adjacent to the WWTP should provide adequate protection to project occupants from impacts of this facility. The required disclosure statement on the Public Report and the developer agreement will be sufficient to protect the city.
8. Since development on the subject property is well below the total allowable density, the requested density transfer is appropriate and will be allowed.

Including the document titled "CYPRESS COVE" A Planned Residential Community; Applicant's Findings of Compliance with Approval Criteria, dated June, 1990, which is attached and by this reference is incorporated herein and are made a part hereof.

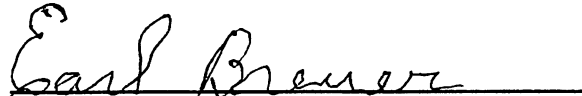
CONDITIONS OF APPROVAL

Conditions of approval dated July 17, 1990, as amended by the Planning Commission are attached and by this reference are incorporated herein and are made a part hereof.

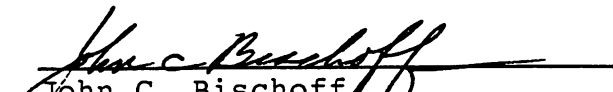
BASED UPON THE ABOVE, it is the finding of the Brookings Planning Commission that the proposed planned unit development complies with the standards and procedures for the development of land within the City of Brookings in providing the proper width and arrangement of streets; coordination of the proposed development with the overall plan; providing for necessary an essential utilities and other public facilities; avoiding undue congestion of population assuring adequate sanitation and water supply; providing for the protection, conservation and proper use of the land; and in general protection the public health , safety and welfare of the citizens of Brookings.

ACCEPTED and approved this 7th day of August, 1990.

CITY OF BROOKINGS PLANNING COMMISSION


Earl Brewer, Chairman

ATTEST:


John C. Bischoff
Planning Director

Baker *Q*

REGULAR MEETING
August 7, 1990
7:00 p.m.

1. CALL TO ORDER

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL

4. PLANNING COMMISSION CHAIRMAN ANNOUNCEMENTS

5. MINUTES FOR APPROVAL

5.1 Approval of the minutes of the regular meeting of the July 17, 1990 special meeting of the Planning Commission. (blue)

6. FINAL ORDERS

6.1 In the matter of Planning Commission File No. SUB-2-90 PUD, preliminary plat approval for a planned unit development of 56 units on a 30.69± acre parcel generally located on the east and south side of Wharf Street between the southerly extension of Cove Road and the Waste Water Treatment Plant in the R-1-6 and R-2 Zones; Western Pacific Development applicant; applicant's representative Alex Forrester. (green)

7. WRITTEN REQUESTS AND COMMUNICATIONS

7.1 M3-6-90: Consideration of a request for a minor partition on a 13,627 sq. ft. parcel to create two lots, located in the south east corner of Ransom Avenue and Third Street, in an R-1-6 Zone; Bob and Betty Carter applicants. (yellow)

7.2 M3-7-90: Consideration of a request for a minor partition on a 1.6 acre parcel to create three lots, located in the north west corner of Seventh Street and Hassett Street, in a R-1-6 Zone; Elizabeth P. Alexander, applicant. (tan)

7.3 M3-8-90: Consideration of a request for a minor partition to create two lots of 35,000 and 15,500 sq. ft., located on the east side of Del Norte Lane opposite the intersection of Maple Street, in an R-1-6 Zone; Lucien Loring, applicant. (salmon)

7.4 Adapp-2-90: Appeal of Administrative Decision of the Planning Director that a 1.01 acre parcel, located north of Easy Street approximately 275 feet east of Third Street in an R-1-6 Zone, cannot be divided based on the provisions of the Land Development Code; **Alice Pierson, applicant.** (ivory)

REGULAR MEETING
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7:00 p.m.

1. CALL TO ORDER

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3. ROLL CALL

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8. PUBLIC HEARINGS
9. ORAL REQUESTS AND COMMUNICATIONS
10. REPORT OF CITIZENS ADVISORY COMMITTEE
11. MESSAGES AND PAPERS FROM THE CITY MANAGER
12. MESSAGES AND PAPERS FROM THE MAYOR
13. PROPOSITIONS AND REMARKS FROM COMMISSION MEMBERS
14. REPORT OF PLANNING DIRECTOR
15. ADJOURNMENT

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Babin (P)

BABIN & KEUSINK

PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

P.O. BOX 1600

517 CHETCO AVE.

BROOKINGS, OREGON 97415-0600

JOHN C. BABIN*
CHRISTOPHER KEUSINK

JOHN COUTRAKON
(1975-1987)

*ALSO LICENSED IN CALIFORNIA

(503) 469-5331

February 21, 1991

Mayor & City Council
City of Brookings
898 Elk Drive
Brookings, Oregon 97415

RE: SEWER TREATMENT PLANT MORATORIUM

Dear Councilors:

This law firm is representing Western Pacific Development, Inc. which is the owner and developer of the "The Cove" Project which is located on Wharf Street in Brookings, Oregon. WPD is opposing a STP moratorium as it applies to their project and other projects which are similarly situated.

I. HISTORY OF PLANNING PROCESS

The Brookings Planning Commission approved WPD's application for a subdivision, conditional use permit, and planned unit development at their meeting of August 7, 1990. A copy of the staff report, final order and findings of fact and conditions of approval are supplied to you as exhibits.

Based on the approval by the Planning Commission WPD commenced construction on the development in the beginning of October, 1990. WPD also incurred substantial liability by way of a loan to finance the construction of this development.

As of the date of this letter WPD has obtained ten building permits for units in the first phase of development. All 56 units in the development are identically modeled duplex units. Therefore, a site plan approval has been made for the entire project. Building plans for all 56 units have been reviewed and approved. There appears to be no other conditions prior to WPD obtaining building permits and sewer connection approval for all 56 units other than paying the appropriate fees to the City of Brookings.

On February 5, 1991, the Brookings Planning Commission gave final plat approval to Phase I of this development. During the week of January 21, 1991, the developer met with the staff to review the terms of the development agreement which would require the developer to post cash or bond with the City to insure compliance

City of Brookings
RE: SEWER TREATMENT PLANT MORATORIUM
February 21, 1991
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with conditions of approval for the development as they relate to public facilities. As a result of that meeting it appears as though the developer will be posting bond or cash with the City in an amount between \$360-400,000. At that point the development agreement should be signed before March 1, of this year. At that point the final plat for Phase I will be signed by the appropriate parties and recorded.

II. OFF-SITE AND FACILITY IMPROVEMENTS

As you can see from the approval, extensive off-site improvements were required as a condition of the tentative plat approval. The engineers estimates for the costs of all off-site improvements as of January 31, 1991, is \$486,262.00. Some of these off-site improvements have already been completed.

The developer has relied upon the tentative plat approval and availability of sewer hook-ups for all approved units in the development in incurring the liability for the off-site improvements. Obviously such a large liability will have to be amortized over the full project. The developer in this project will not be able to recoup his liability and expenditures for off-site improvements until the final stages of this development. Therefore if sewer hook-ups are not available to the developer in the final stages of this development, the developer will not be able to pay back liability incurred in reliance on the tentative plat approval and its conditions.

One version of a proposed ordinance regarding the STP moratorium provides for an exception applicable to a local improvement district sewage system established prior to the effective date of the ordinance. The assumption supporting this exception is that the residents that are part of such an LID have relied upon sufficient capacity of the STP to provide for sewer hook-ups lots that are subject of the LID. The LID involves a substantial expenditure of monies on the part of the City, to be recouped, by way of assessments from the property owners. In a sense, the LID gives the property owners certain rights as to those sewer connections. The ordinance recognizes and adopts these rights.

WPD has also relied upon sufficient capacity of the STP to incur liability for substantial expenditure of monies for off-site improvements. These off-site improvements include, but are not limited to, improvements to the sewage collection and transmission system of the City.

City of Brookings
RE: SEWER TREATMENT PLANT MORATORIUM
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III. EXTENSIVE OFF-SITE IMPROVEMENTS

In recognition of the reliance of these developers who incur liability for substantial off-site and facility improvements, and the rights that they thereby obtain, an exemption should be provided in any proposed STP moratorium ordinance for developments with a certain level of liability for off-site and facility improvements. Such a provision would put the developers on the same and equal footing as participants in a local improvement district. Any other provision would seem to discriminate against developers with such liabilities for off-site improvements.

IV. PLANNED UNIT DEVELOPMENT

The Cove Project by WPD is different from many subdivisions that have been approved by the City before the consideration of an STP moratorium. The Cove Project was approved as a conditional use permit for a planned unit development pursuant to the City of Brookings Land Development Code. As a planned unit development the Planning Commission approval approved a planned development with specific residential dwelling units object to the homeowner's association.

Any STP moratorium ordinance adopted by the City should recognize this distinction. Lots that are approved subdivisions not as planned unit developments are subject to further review by the City's planning and engineering staff. This review can include a site plan review, development permits and building plans. Since planned unit developments, this development in particular have already been through this process and approved, it is different from other developments.

The failure of an ordinance to recognize this distinction could amount to negation of an approval by the Planning Commission and City Staff that has already been given as to the construction of the 56 units in this PUD.

V. CONSTRUCTION CONDITIONS

One of the proposed drafts for an ordinance on the STP moratorium includes the provision for a forfeiture if a structure to be connected to the sewer system is not 50% complete within one year of the issuance of the sewer connection approval. Such a provision may be dangerously ambiguous. If you were to ask five different developers or contractors when any particular building has been 50% completed you are likely to get five different answers. Even if

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RE: SEWER TREATMENT PLANT MORATORIUM
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one were able to determine when 50% completion occurred with some degree of certainty, construction schedules may be subject to factors beyond the control of the builder. These factors could include weather, supplies, or financing. Could such structures then be exempted if they were prevented from reaching the 50% completion stage for factors beyond their control. If a building is only 40% completed after one year of construction, is the City willing to impose a forfeiture on the expenditures involved in that 40% completed structure?

It is suggested that a provision should be included that is easier to police. Proposed language for such a section will be submitted to the City Council. It would seem that a provision allowing commencement of construction within a year of the sewer connection approval would be far easier to police and control and would not subject builders to substantial forfeitures if they could not reach the stated completion stage.

VI. TRANSFER OF EXISTING SEWER CONNECTION APPROVALS

Some improved developments have existing dwellings with approved sewer connection approvals in place. These existing connections should already be taken into consideration in determining the capacity of the STP as calculated by City Staff or Brown and Caldwell.

If a developer demolishes these dwellings and disconnects the sewer connections, he should be able to transfer allocation for the demolished dwelling to a new dwelling located on or around the same site. The proposed ordinances that have been considered up to this point do not take such a transfer of such existing rights into consideration. Suggested language covering such transferal of sewer connection rights will be submitted to the City Council.

VII. PRIORITY OF RESIDENTIAL HOUSING

State law sets out certain specific requirements regarding the enactment of land use related moratorium legislation by local governments. ORS 197.505-197.540. These statutes provide that residential housing shall have priority under such legislation. That provision should be made in any ordinance adopted by any local governments.

We urge the City Council to consider housing a priority item in any STP moratorium ordinance and to adopt provisions that incorporate such a priority.

City of Brookings
RE: SEWER TREATMENT PLANT MORATORIUM
February 21, 1991
Page 5

VIII. SUSPENSION OF LAND USE DETERMINATIONS

We have been informed that City Staff is no longer taking applications for subdivisions partitions or other similar types of land use actions within the City of Brookings. The proposed ordinance contains no such suspension on applications nor is there any other provision in the City Ordinance that we know of that allows such a suspension.

We would urge that no such suspension be enacted in an STP moratorium ordinance. An alternative would be to allow such applications and condition the approval of any final action by the Planning Commission, City Council or City Staff on a determination of adequate STP capacity.

IX. STP CAPACITY

The final order and findings of fact with regard to the Cove Project specifically found that the City has sufficient capacity to serve water and sewer to the site. The City appears to be in compliance with the stipulated final compliance order signed by both the City of Brookings and the Environmental Quality Commission in April, 1988. Therefore, it appears that any moratorium legislation on the part of the City of Brookings is grossly premature.

Very truly yours,



JOHN C. BABIN

JCB/dew
enclosure(s)

dew\c:\wp51\WESTPAC\CORPORATION\MORATORIUM.2L

2. Condition 1 of Schedule A of the Permit does not allow Respondent to exceed the following waste discharge limitations after the Permit issuance date:

Outfall Number 001

<u>Parameter</u>	<u>Average Effluent Concentrations</u>		<u>Monthly Average lb/day</u>	<u>Effluent Loadings</u>	
	<u>Monthly</u>	<u>Weekly</u>		<u>Weekly Average lb/day</u>	<u>Daily Maximum lbs</u>
BOD	30 mg/l	45 mg/l	250	375	500
TSS	30 mg/l	45 mg/l	250	375	500
FC per 100 ml	200	400			

Other Parameters (year-around)

Limitations

pH Shall be within the range 6.0 - 9.0

Average dry weather flow to the treatment facility. 1.0 MGD

3. During the time period the Permit has been in effect, Respondent has not been able to consistently meet the above effluent limitations due to design and operational limitations of the sewage treatment plant and due to the high flows into the sewage collection system following storm events.

4. Department and Respondent recognize that until new or modified facilities are constructed and put into full operation, Respondent will continue to violate the permit effluent limitations at times. In addition, Respondent will not be able to meet portions of the compliance conditions contained in Conditions 3 and 4 of Schedule C of the Permit which requires extension or relocation of the ocean outfall and new or upgraded disinfection facilities by July 1, 1988.

///

1 5. Respondent presently is capable of treating its effluent so as to
 2 meet the following effluent limitations, measured as specified in the
 3 Permit:

<u>Parameter</u>	<u>Average Effluent Concentrations</u>		<u>Monthly Average lb/day</u>	<u>Effluent Loadings*</u>	
	<u>Monthly</u>	<u>Weekly</u>		<u>Weekly Average lb/day</u>	<u>Daily Maximum lbs</u>
BOD	45 mg/l	60 mg/l	375	500	600
TSS	45 mg/l	60 mg/l	375	500	600
FC per 100 ml	200	400			
<u>Other Parameters (year-around)</u>			<u>Limitations</u>		
pH	Shall be within the range 6.0 - 9.0.				
Average dry weather flow to the treatment facility	1.0 MGD				

*Effluent loading limits do not apply when flow to the treatment facility exceeds 1.5 MGD.

6. The Department and Respondent recognize that the Environmental Quality Commission has the power to impose a civil penalty and to issue an abatement order for violations of conditions of the Permit. Therefore, pursuant to ORS 183.415(5), the Department and Respondent wish to settle those past violations referred to in Paragraph 3 and to limit and resolve the future violations referred to in Paragraph 4 in advance by this stipulated final order.

7. This stipulated final order is not intended to settle any violation of any interim effluent limitations set forth in Paragraph 5 above. Furthermore, this stipulated final order is not intended to limit, in any way, the Department's right to proceed against Respondent in any

1 forum for any past or future violation not expressly settled herein.

2 NOW THEREFORE, it is stipulated and agreed that:

3 A. The Environmental Quality Commission shall issue a final order:

4 (1) Requiring Respondent to comply with the following schedule:

5 (a) By October 1, 1988, arrange for financing of new or upgraded
6 sewage treatment and disposal facilities and notify the
7 Department in writing when such has been accomplished.

8 (b) Relocate or extend the existing ocean outfall, as follows:

9 (i) By October 1, 1988, submit draft engineering plans and
10 specifications to the Department.

11 (ii) By January 1, 1989, submit final engineering plans and
12 specifications to the Department.

13 (iii) By May 1, 1989, begin construction.

14 (iv) By September 1, 1989, complete construction and begin
15 operation.

16 (c) Construct and operate new or upgraded sewage treatment
17 facilities, as follows:

18 (i) By February 1, 1989, submit draft engineering plans and
19 specifications.

20 (ii) By June 1, 1989, submit final engineering plans and
21 specifications.

22 (iii) By March 1, 1990, begin construction.

23 (iv) By September 1, 1991, complete construction.

24 (v) By December 1, 1991, attain operational level and meet
25 all waste discharge limitations of the NPDES waste
26 discharge permit in effect at that time.

1 (2) Requiring Respondent to meet the interim effluent limitations set
2 forth in Paragraph 5 above until December 1, 1991.

3 (3) Requiring Respondent to comply with all the terms, schedules and
4 conditions of the Permit, except those modified by Paragraph A(2)
5 above and except for Conditions 3 and 4 of Schedule C of the
6 Permit, or of any other NPDES waste discharge permit issued to
7 Respondent while this stipulated final order is in effect.

8 (4) Requiring Respondent, should Respondent fail to comply with the
9 above schedule, to cease allowing new connections to Respondent's
10 sewage collection system upon written requirement of the
11 Department.

12 B. Regarding the violations set forth in Paragraph 3 and 4 above,
13 which are expressly settled herein without penalty, Respondent and
14 Department hereby waive any and all of their rights to any and all notices,
15 hearings, judicial review, and to service of a copy of the final order
16 herein. Department reserves the right to enforce this order through
17 appropriate administrative and judicial proceedings.

18 C. Regarding the schedule set forth in Paragraph A(1) above,
19 Respondent acknowledges that Respondent is responsible for complying with
20 that schedule regardless of the availability of any federal or state grant
21 monies.

22 D. Respondent acknowledges that it has actual notice of the contents
23 and requirements of this stipulated and final order and that failure to
24 fulfill any of the requirements hereof would constitute a violation of this
25 stipulated final order. Therefore, should Respondent commit any violation
26 of this stipulated order, Respondent hereby waives any rights it might have

1 to an ORS 468.125(1) advance notice prior to the assessment of civil
2 penalties. However, Respondent does not waive its rights to an ORS
3 468.135(1) notice of assessment of civil penalty.

4 RESPONDENT

5
6 _____
Date

_____)
(Name

_____)
(Title

8
9
10 DEPARTMENT OF ENVIRONMENTAL QUALITY

11
12 _____
Date

_____)
Fred Hansen
Director

13
14 FINAL ORDER

15 IT IS SO ORDERED:

16 ENVIRONMENTAL QUALITY COMMISSION

17
18 _____
Date

_____)
James E. Petersen, Chairman

19
20 _____
Date

_____)
Mary V. Bishop, Member

21
22 _____
Date

_____)
Wallace B. Brill, Member

23
24 _____
Date

_____)
Arno H. Denecke, Member

25
26 _____
Date

_____)
William P. Hutchison, Jr., Member

Alex Forrester & Associates
Consultants in Land Use and Development
303 N.E. 'E' Street Grants Pass, Oregon 97526
Tel (503) 479-4603 FAX (503) 476-8955

Memorandum

Date: February 21, 1991

To: John Babin and Fred Orcutt, Project Attorneys
From: Alex Forrester, Project Planner
RE: **Difference between Planned Unit Developments and Subdivision in the City of Brookings Development Review and Approval Process**

You have asked me to review the Ordinances of the City of Brookings relative to differences in the review and approval process for planned unit developments and subdivisions.

The most fundamental difference is that a planned unit development is an approval of a group of buildings, set in a certain relationship to one another, serviced in a certain way, built of certain materials to a certain design and with a specific design of open space, landscaping fencing etc..., while a subdivision is simply an approved collection of open lots.

For a planned unit development, it is the buildings themselves which are approved, and building permits for each are a simply administrative act following tentative plan approval. For a subdivision, it is presumed that there will be a separate review and approval process for the location of buildings on the created lots. The review of utility provision, and the standards for those provisions, to each form of development is the same.

The review of application and development requirements from the Brookings Development Code below illustrates this fundamental difference. Table 1 provides a short-hand review of these same issues.

1. **Preapplication Review.** A preapplication review is required for both the planned unit development and subdivision.
2. **Four Acre Minimum Size.** The only limit to a size of a subdivision is that there must be over 3 lots, and that the lots must each meet the minimum size of the subject zone.

For a planned unit development, however, because it is an approval of a group of buildings and their relationships to one another, to the site and to the neighborhood, minimum site size of four acres is requested in order to be considered (Section 116.030-A).

3. Conditional Use. A subdivision is not a conditional use, in fact is not treated as a use, but as a process for land division.

However, a planned unit development is treated as a use, and as such is a conditional use in the residential districts (R-1, Section 20.040-K; R-2, Section 24.040-J; R-3, Section 28.040-L; R-MH, Section 32.040-K).

4. Tentative Plan Submittal Requirements. A "preliminary plat" is submitted for review of a subdivision. The plat map requirements focus on boundary lines, technical indication of location, topographic contours, streets, neighborhood circulation plan, easements, natural features, and proposed deed restrictions, etc. The principal focus of the requirements is on the appropriate layout and service of a group of lots (see Section 176.060-C, 1-30, and Section D, neighborhood circulation plan).

Planned unit development requires a "conceptual, preliminary master plan..." which requires similar circulation, grading and drainage, and utility information, but whose primary focus is the "proposed use, location, dimensions, height, and type of construction of all buildings..." including "drawings and sketches demonstrating the design and character of the proposed uses and physical relationships of the uses to the surrounding area." (Section 116.040-B, 1-7).

Because this is an approval of a complete and finished development, the Planning Commission is entitled to ask for "such as other pertinent information... as may be considered necessary...". This is because the planned unit development is a consideration of a plan "for units", with the focus on the actual building units as the control factor.

5. Public Hearing by Planning Commission. Subdivisions (Section 76.060-F) and planned unit developments (Section 116.050) which are conditional uses require public hearings by the Planning Commission before approval.

6. Criteria for Approval. The subdivision approval criteria focus on streets and, the circulation plan of the project and the immediate area (Section 176.060-A, 1-8).

The planned unit development approval criteria focus is on compatibility with adjacent development, character of the adjoining area, adequacy of utilities and drainage facilities, and a specific plan and arrangement of buildings that assures benefits to the City justifying any necessary exceptions to the more typical subdivision process (Section 116.060, A-G).

Clearly, the planned unit development criteria revolve around the complete, finished development including the buildings, and not just lots or the potential for buildings.

7. Conditions Imposed by Planning Commission. The subdivision is a standard development approach, relying on lot development restrictions such as setbacks, bulk considerations, lot coverage and height limitations, etc. This means that "conditions of approval may be attached to the preliminary plat or map approved by the Planning Commission, but only as required to comply with the applicable provisions of this

code..." (Section 176.060-G, emphasis added).

However, for planned unit developments the Commission may attach any number of conditions to the master plan approval, relating to building setbacks, building heights, location and number of vehicular access points, establishing new streets or increasing the standards of proposed streets, parking spaces, signs, open space, area locations, additional fencing, screening and landscaping, etc. (Section 116.070-D, 1-10).

Obviously, the emphasis here is on a completed development, including buildings, thereby requiring a more complete review, and giving the Planning Commission more discretion in its actions.

8. Final Plat Map Requirement. The key element of the final plat map for a subdivision is showing the boundaries of each lot, streets, and easements. This is to be established by survey. In order to prepare a final plat, all of the required street and utility improvements must be installed and approved by the City (Section 176.070-D).

For a subdivision, preliminary maps are valid for a minimum of 12 months, with a 12 month extension period possible if granted by the Planning Commission.

The final plat map for the planned unit development must show building location (also by survey). Clearly buildings are the critical element of the planned unit development, whereas only the lots (a space for subsequent buildings) are the subject of a subdivision.

For approval of a planned unit development, there is a time limit given of a minimum of 12 months, or other period of time as the Planning Commission may stipulate. The development code clearly states that unless "construction of the buildings or structures involved in the development..." has been approved, the approval can lapse (Section 116-070-C).

9. Building Permit. To build a building on a lot in an approved and platted subdivision requires a site plan review (Section 80.030-A). Therefore, the approval of a building on a lot in a subdivision is an additional land use process, requiring review in order to determine whether or not the proposed building in fact meets the requirements of the development code.

As may be deduced by the discussion above, a building permit issued in an approved PUD requires only conformance with the previously approved tentative plan (Section 116.020). Therefore, the granting of a building permit, if the building location, plan and character conform with the approved planned unit development, is only a minor ministerial act.

Table 1
Development Review/Approval Process

<u>Item</u>	<u>Subdivision</u>	<u>Planned Unit Development</u>
1. Preapplication Review	yes	yes
2. 4 Acre minimum size	no	yes
3. Conditional Use	no	yes
4. Tentative Plan Submittal Requirements	Focus on streets, <u>lots</u>	Focus on location, dimensions, height, type construction of <u>buildings</u>
5. Public Hearing by Planning Commission	yes	yes
6. Criteria for Approval	Focus on streets, circulation plan	Focus on benefits to City, compatability with adjacent development
7. Conditions by Planning Commission	Only as "necessary to satisfy the intent of the land development code"	May set <u>additional conditions</u> regarding setbacks, building height, parking spaces, access, signs, open space fencing, landscaping
8. Final Plat Map Requirements	Shows location of boundaries of each <u>lot</u> (by survey); limited time construction of <u>lots</u>	Shows location of each <u>building</u> (by survey); limited time for construction of <u>buildings</u>
9. Building Permit	Requires preapplication conference; requires Site Plan Review to place building on lot	Requires only conformance with previously approved Tentative Plan, Administrative review

Alex Forrester

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February 21, 1991

John Babin
Project Attorneys
BABIN & KEUSINK, P.C.
517 Chetco Avenue
Post Office Box 1600
Brookings, Oregon 97415

RE: ECONOMIC IMPACT OF IMMEDIATE SANITARY SEWER MORATORIUM

Dear John:

You have asked me to review the potential economic impact upon the Brookings area economy that could stem from an immediate sanitary sewer moratorium in the Brookings-Harbor area. An extensive survey of the development community would show the number, type and investment potential for projects that have preliminary approvals, and are not yet under construction, projects under construction but that have not yet attached to the sanitary sewer lines, and projects that are in various stages of design and/or submittal review by the City of Brookings or Curry County for the Harbor area. Time has not permitted such a review, however a look at the structure of the Curry County economy would give an indication of the nature of the impact one might expect from an immediate sanitary sewer moratorium

Attached is a copy of the non-agricultural wage and salary employment for 14 different categories of non-agricultural employment, showing employment levels in 1988, 1989 and 1990. This table was provided by Ron Anderson of the Employment Division, Department of Human Resources, Medford Office. Immediately obvious are the change in the lumber and wood products employment, losing over 240 workers in a three year period, representing an average annual decrease of 10 percent per year in wood products employment. In fact, this loss was extremely severe to the economy of Curry County, including the Brookings-Harbor area. The number of workers lost during this period, is by itself larger than four out of the 14 employment categories. Certain other employment categories were able to take up the slack, construction increases of 10 percent,

services increase of 18.5 percent, financial and real estate services by 11 percent, and retail trade by 16 percent. These increases, following the pattern outlined so clearly in the Brookings-Harbor Comprehensive Plan is highly dependent upon the growth of tourism and the immigration of retired or semi-retired families and individuals. Retirement income operates like any factory wage, commonly sourcing from a previous exchange of goods or services outside the subject area, and resulting in a payment of a "retirement" wage inside the service area. Some studies have also found that "empty nester" and retired families often have a higher percentage of disposal income although having lower incomes overall on the average, and actually put more money directly into the local economy. Also, retired or semi-retired individuals have often sold properties or businesses in their previous place of residence, and bring these monies with them to place with local financial institutions for local area investment, resulting in a higher per capita investment and deposit ratio in these areas than is usual around the large urban centers. The above pattern has resulted in a gradual increase in trade, financial and service oriented employment.

The imposition of an immediate moratorium on all sanitary sewer hook-ups, as well as all land development applications, will have both immediate and long-term effects. Immediate effects include a catastrophic impact on local area suppliers, contractors, sub-contractors and crafts persons who are engaged in development projects underway, but whose ability to obtain a sanitary sewer connection may be in doubt. Highly competitive business, these businesses and individuals operate typically on a tight margin, must respond immediately to market conditions. Stoppage of a significant project could result in failure in any number of small businesses for whom that was the major project, and for whom other work had been passed up. Further, time is of the essence in many of these projects and funding nationally is increasingly difficult to obtain. The Pacific Northwest has been one of the few bright lights in the construction and development sector nationally. A sudden interruption of service, or an continued uncertainty about the potential for future service could result in the loss of construction and permanent financing by many worthy and potentially successful development projects, each representing significant employment over the next several years for the Brookings-Harbor area.

A middle-range impact is that after the immediate loss certain businesses and individuals will then voluntarily move from the area, including many highly qualified specialists and craftsman unable to maintain more than 30-60 day period without good prospects for being able to continue current contracts or for obtaining future work. This diminishes the skilled labor pool as well as jobbers, suppliers, and sub-contractors and has an

immediate ripple effect upon developments currently underway, causing delays, a loss of quality, and interruptions in the flow of materials to the job site. This is particularly true in the case of a relatively isolated area like the Brookings-Harbor area. This secondary effect causes the next round of job stoppages by developers either unable to continue with their financing, whose projects will no longer be profitable even if completed under these new conditions, or who are unsuccessful in obtaining further financing. This in turn will collapse another sector of the contractor, sub-contractor, supplier network, resulting in a sudden collapse of a significant sector of the economy. In fact, the 320 jobs in the construction sector represent approximately only 80 jobs more than that lost over the last several years by the wood products sector. I submit that this area cannot withstand another sudden and catastrophic loss of employment income. As you know, all of those dollars earned are spent locally for food, lodging, retail goods and services, and in turn those dollars are spent again, many of them locally, so that every dollar lost has a significant "multiplier effect" upon the local economy.

Also, like many timber products jobs, construction jobs represent highly skilled operators and crafts persons, and are good wage paying jobs. It would take many, many more lower level service and retail jobs to replace them. Therefore, whatever is done must be done extremely cautiously, should be done carefully done over an extended period of time, and preparations should be started immediately to correct whatever treatment plant deficiency exists that will effect the well being of this vital industry.

Now for review of the long-range impacts. A most critical factor in reducing or eliminating long-range impact is to set in motion the analysis, plans, and financing needed to go to the next round of treatment plant capacity development. We understand that some of the phase II conceptual design tasks have already been completed, and that approval of the Phase II construction elements is a part of the DEQ process of determining the operational capacity levels for Phase I improvements. This is an urgent and imperative task, and we should not be entirely distracted by the equally important task of preparing the allotment of the remaining plant capacity.

The second category of long-range impact is this; it is not well known that the development process is a time consuming process. It can often be from 3 to 5 years between the time an idea is germanated for a potential development, the preliminary investigations and securing of property initiated, conceptual plans drawn, preliminary review by the review agencies is accomplished, interim financing is obtained, final plans refined and construction documents completed, all permits and approvals obtained, bids let and construction gotten under way, long term financing secured, and

finally completion of development and sale of the residential units or the beginning of operation of commercial or industrial activities. This process creates increases in land values, which then results in equally significant increases in the local tax base. Tax base increases can either act to reduce the tax rate, to offset the impacts of cost inflation, or to provide needed but hitherto unaffordable services.

The lead time involved in gaining preliminary approval by all review agencies is seldom less than 6 to 15 months. Therefore, it is imperative that if you want to reduce the long-range impact of any kind of sanitary sewer moratorium, or any kind of phased release of sewer permits, that you allow a property owners, investors and business owners to continue to plan for expanded or new development, to apply to the various review and service agencies that operate under your direction, and to receive approval by these agencies, subject of course to future sanitary sewer capacity. This is not reinventing the wheel, as this situation has occurred many times in urban areas all over the United States. Clear, safe and unequivocal language can be crafted to permit the approval of future development to go forward now.

Continuing to accept applications will insure that, when new capacity is available, there will not be an additional one to two year delay while the preliminary phases of each proposal reviewed, but would provide projects already approved and ready to take "off the shelf". This will radically reduce the length of time that the contracting, trades and suppliers industry will be depressed.

To sum up the above, the following actions are required:

1. Find ways to immediately increase treatment plant "capacity" even if only a small amount. The impact of an immediate and complete sanitary sewer moratorium would be very grave, and should be taken only in the face of a clear and present danger.
2. Continue acting vigorously towards enlarging current capacity, and providing for significant future capacity.

3. Keep the permitting process open for at least the next year. Approve viable projects that meet all other criteria of the ordinance, subject only to the condition that sanitary sewer capacity is available. This step will allow future projects to come immediately "on-line" as soon as capacity issues are resolved, and will not artificially depress the construction segment of the economy.

Very truly yours,

ALEX M. FORRESTER III

/dew
enclosure(s)
cc: client

dew\c:\wp51\letters\Forrester.1L

COOS BAY/GOLD BEACH TRENDS

-7-

Mc *rester*Curry County
Nonagricultural Wage & Salary Employment
(By Place of Work)

	1988	1989*	1990*	Change From			
				1988-1989		1989-1990	
				#	%	#	%
Total	5330	5650	5700	320	6.0	50	0.9
Manufacturing	1270	1200	1030	-70	-5.5	-170	-14.2
Lumber & Wood Products	1080	930	740	-150	-13.9	-190	-20.4
Food Products	70	130	150	60	85.7	20	15.4
Other Manufacturing	120	140	140	20	16.7	0	0.0
Nonmanufacturing	4060	4450	4670	390	9.6	220	4.9
Construction & Mining	290	300	320	10	3.4	20	6.7
Trans, Comm, & Utilities	210	240	250	30	14.3	10	4.2
Trade	1340	1490	1510	150	11.2	20	1.3
Eating & Drinking Places	520	570	560	50	9.6	-10	-1.8
Other Trade	820	920	950	100	12.2	30	3.3
Finance, Ins, & Real Est	270	290	300	20	7.4	10	3.4
Services	810	890	960	80	9.9	70	7.9
Lodging Places	260	280	330	20	7.7	50	17.9
Other Services	550	610	630	60	10.9	20	3.3
Government	1140	1240	1330	100	8.8	90	7.3
Federal Government	250	290	320	40	16.0	30	10.3
State Government	120	120	130	0	0.0	10	8.3
Local Education	420	440	470	20	4.8	30	6.8
Other Local	350	390	410	40	11.4	20	5.1
Labor-Management Disputants	0	0	0	0	0.0	0	0.0

"Oregon Careers" is published annually to assist citizens of all ages who are making career plans and decisions. It includes employment outlook, wages, educational requirements, and sources of training for nearly 300 major occupations in the state. Other articles describe a variety of job search techniques and resources or programs that can assist Oregonians to prepare for their first or latest occupation.

Copies of "Oregon Careers" are routinely distributed to high schools, community colleges, Job Training Partnership offices, and Employment Division offices. Additional copies may be obtained by contacting Susan Bell, Research and Statistics Section, Employment Division, 875 Union Street NE, Salem, Oregon 97311. Telephone 378-6400 or toll free 1-800-237-3710 ext. 8-6400.

* REVISED ANNUAL AVERAGES

JANUARY 1991