



# Agenda

City of Brookings  
Common Council Meeting  
Brookings City Hall Council Chambers  
898 Elk Drive, Brookings Oregon  
October 13, 2003 7:00 p.m.

VAULT COPY

- I. Call to Order
- II. Pledge of Allegiance
- III. Roll Call
- IV. Public Hearing
  - A. An appeal of the Planning Commission's denial for a variance, File No. VAR-1A-03, to encroach 5 feet into the required 10 foot side yard setback; located at 251 Marine Drive; Assessor's Map 40-13-32 CD, Tax Lot 1702; SR-20 (Suburban Residential) zone; Peter Castellini, appellant; File No. APP-3-03. The criteria used to decide this case is found in Section 136 of the Land Development Code. [page 7]
  - B. An appeal of the Planning Commission's denial of a request for a minor change in the Conditions of Approval, File No. SUB-6-02/MC-1-03, for Chetco Point Terrace Subdivision, to allow a minor change to the configuration of an existing berm; located on Wharf Street and the Wastewater Treatment Plant; Assessor's Map 41-13-07 A, Tax Lot 409; R-2 (Two-family Residential) zone; Noah Bruce, appellant; File No. APP- 4-03. The criteria used to decide this case is found in Section 176 of the Land Development Code. [page 21]
  - C. In the matter of an ordinance amending Section 92, Off-Street Parking and Loading Regulations of the Land Development Code to update ADA parking space requirements, Ordinance No. 03-O-446.QQ. [page 197, Ordinance page 231]
- V. Oral Requests and Communications from the Audience
  - A. Committee and Liaison reports
    - 1. Chamber of Commerce
    - 2. Council Liaisons
  - B. Unscheduled

## VI. Staff Reports

- A. Community Development Department
  - 1. Acceptance of Right-of-Way Deed on Meadow Lane [page 199]
- B. City Manager
  - 1. Voting delegate for LOC Conference [page 203]
  - 2. Port of Brookings Harbor police levy [page 205]
  - 3. Other

## VII. Consent Calendar

- A. Approval of Council Meeting Minutes
    - 1. Minutes of September 22, 2003, regular Council meeting [page 207]
    - 2. Minutes of September 29, 2003, special Council meeting [page 213]
  - B. Acceptance of Planning Commission Minutes
    - 1. Minutes of September 2, 2003, regular Commission meeting [page 217]
  - C. Approval of Vouchers for month of September, 2003 (\$126,569.87) [page 221]
  - D. Liquor License request from Patrick and Teresita Wong, Northwest Technical Internet Café [page 227]
- [End Consent Calendar]

## VIII. Ordinances/Resolutions/Final Orders

- A. Ordinances
  - 1. Ordinance No. 03-O-446.QQ—In the matter of an Ordinance amending Section 92, Off-Street Parking and Loading Requirements of the Land Development Code updating ADA parking space requirements [page 231]
  - 2. Ordinance No. 03-O-349.E—In the matter of an Ordinance amending Ordinance No. 81-O-349 titled, An Ordinance adopting the 1996 Oregon Structural Specialty Code, including the appendices and Chapter 33, provided, however that ORS 455.320 shall not be applicable; the 1996 Oregon Mechanical Specialty Code; the 1996 Oregon Plumbing Specialty Code; the 1996 Oregon 1 and 2 Family Dwelling Specialty Code; the 1996 Uniform Fire Code; the 1996 Uniform Code for the Abatement of Dangerous Buildings; the 1996 Manufactured Dwelling Standards; and the 1996 Parks and Camps Rules, to adopt the code in effect on the effective date of the ordinance and any subsequent modifications to it [page 233]
- B. Resolutions
  - 1. Resolution No. 03-R-722.A—In the matter of a Resolution establishing traffic controls (parking limitations) along Spruce Street at Assessor's Map No. 41-13-6 DA TL 6200 and 6201, also known as 635 and 625 Spruce Street [page 237]

IX. Remarks from Mayor and Councilors

A. Council

B. Mayor

X. Adjournment

City of Brookings  
Events Calendar

# October 2003

October 2003							November 2003						
S	M	T	W	T	F	S	S	M	T	W	T	F	S
5	6	7	1	2	3	4	2	3	4	5	6	7	1
12	13	14	15	16	17	18	9	10	11	12	13	14	8
19	20	21	22	23	24	25	16	17	18	19	20	21	22
26	27	28	29	30	31		23	24	25	26	27	28	29
							30						

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
			October 1 CC-Police class on Emergency Medical Dispatch-John Bishop 12:00pm Comnity Agencies mtg (Chetco Sr.Center) 1:30pm FH-SafetyComMtg/ Kathy Dunn 7:00pm FH-PoliceReserves	2 8:15am FH-CmtyDevDpt Staff mtg/LLightle 10:00am CC- Site Plan Com Mtg/LauraLee Gray 7:00pm CC- Sheriff's Search & Rescue mtg-Steve Carptner-Laurie Calef-469-0275	3	4
5	6 9:30am CC- VIPS/Volunteers in Police Service/BPalicki 7:00pm FH-FireTng/ChShrp (Fire Hall)	7 9:30am KURY Radio Community Focus Talk Show w/City Staff/Council (KURY 95.3) 7:00pm CC-Planning Commssn	8	9 8:15am CC-CmtyDevDpt Staff mtg/LLightle 10:00am CC- Site Plan Com Mtg/LauraLee Gray 7:00pm CC-Downtown Development committee mtg-7 to 10 pm	10	11
12	13 7:00pm FH-FireTng/ChShrp (Fire Hall) 7:00pm CC-Council Mtg	14 9:30am KURY Radio Community Focus Talk Show w/City Staff/Council (KURY 95.3)	15	16 8:15am CC-CmtyDevDpt Staff mtg/LLightle 10:00am CC- Site Plan Com Mtg/LauraLee Gray 2:00pm CC-CEP (Citizens for Emergency Preparedness): MArell-469-5731, JRupert-469-78783	17	18
19	20 9:00am CC-Municipal Court/ JdgHarper 9:30am CC-VIPS/Volunteers in Police Service-BPalicki 6:00pm CC-American Red Cross Mtg/Karen Degenals 7:00pm FH-FireTng/ChShrp (Fire Hall)	21 9:30am KURY Radio Community Focus Talk Show w/City Staff/Council (KURY 95.3)	22 9:00am CC-ODOT Highway 101 Study-Jason Franklin-Paramatrix-503-96	23 8:15am CC-CmtyDevDpt Staff mtg/LLightle 10:00am CC-PD-Barbara Palicki 10:00am Leroy's Office- Site Plan Com Mtg/LauraLee Gray 7:00pm CC-Parks & Rec Comm/ LBlodgett	24 10:30am CC-Staff meeting	25
26	27 7:00pm FH-FireTng/ChShrp (Fire Hall) 7:00pm CC-Council Mtg	28 9:30am KURY Radio Community Focus Talk Show w/City Staff/Council (KURY 95.3)	29 CC- Election Ballot Drop site	30 8:15am CC-CmtyDevDpt Staff mtg/LLightle 10:00am CC- Site Plan Com Mtg/LauraLee Gray	31	



City of Brookings  
Events Calendar

# November 2003

November 2003						
S	M	T	W	T	F	S
2	3	4	5	6	7	1
9	10	11	12	13	14	8
16	17	18	19	20	21	15
23	24	25	26	27	28	22
30						29

December 2003						
S	M	T	W	T	F	S
7	1	2	3	4	5	6
14	8	9	10	11	12	13
21	15	16	17	18	19	20
28	22	23	24	25	26	27
	29	30	31			

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
						November 1 CC- Election Ballot Drop site
2	9:00am CC- Election Ballot drop site 9:30am CC- VIPS/Volunteers in Police Service/BPalicki 7:00pm FH-FireTng/ChShrp (Fire Hall)	7:00am CC- Election Ballot Drop site 9:30am KURY Radio Community Focus Talk Show w/City Staff/Council (KURY 95.3) 7:00pm CC-Planning Commssn	12:00pm Comnity Agencies mtg (Chetco Sr.Center) 1:30pm CC-SafetyComMtg/ HThmpson 7:00pm FH-PoliceReserves	8:15am CC-CmtyDevDpt Staff mtg/LLightle 9:00am CC-Crm Stoppers 10:00am CC- Site Plan Com Mtg/LauraLee Gray 7:00pm CC- Sheriff's Search & Rescue mtg-Steve Car		8
9	7:00pm FH-FireTng/ChShrp (Fire Hall) 7:00pm CC-Council Mtg	8:00am City Hall CLOSED - Veterans Day Holiday 9:30am KURY Radio Community Focus Talk Show w/City Staff/Council (KURY 95.3)		8:15am CC-CmtyDevDpt Staff mtg/LLightle 10:00am CC- Site Plan Com Mtg/LauraLee Gray 7:00pm CC-Downtown Development committee mtg-7 to 10 pm		15
16	9:00am CC-Municipal Court/ JdgHarper 9:30am CC-VIPS/Volunteers in Police Service-BPalicki 6:00pm CC-American Red Cross Mtg/Karen Degenals 7:00pm FH-FireTng/ChShrp (Fire Hall)	9:30am KURY Radio Community Focus Talk Show w/City Staff/Council (KURY 95.3)	6:30pm CC-Seatbelt Class-Det. Palicki	8:15am CC-CmtyDevDpt Staff mtg/LLightle 10:00am CC- Site Plan Com Mtg/LauraLee Gray		22
23	7:00pm FH-FireTng/ChShrp (Fire Hall) 7:00pm CC-Council Mtg	9:30am KURY Radio Community Focus Talk Show w/City Staff/Council (KURY 95.3)		8:00am City Hall CLOSED - Thanksgiving Holiday 8:15am CC-CmtyDevDpt Staff mtg/LLightle 10:00am CC- Site Plan Com Mtg/LauraLee Gray 7:00pm CC-Parks & Rec Comm/	8:00am City Hall CLOSED - Holiday	29
30						

CC-Council Chambers  
FH-Fire Hall

PLANNING DEPARTMENT



**TO:** Mayor and City Council  
**FROM:** John Bischoff, Planning Director  
**THROUGH:** Leroy Blodgett, City Manager  
**DATE:** September 30, 2003

**Issue:** An appeal of a Planning Commission denial of a variance.

**Background:** At the August 5, 2003 meeting the Planning Commission denied a request for a side yard setback to allow a house to be placed within five feet of the side yard in lieu of the required 10 feet. The basis for the variance was that the lot was 8,276± sq. ft. triangular shape lot created when the area was zoned R-1-6 requiring a minimum 6,000 sq. ft. lot and a 5 ft. side yard setback and is now zoned SR-20, which requires, a 20,000 sq. ft. lot and a 10 ft. side yard setback. The property is also constrained by a steep bluff that drops from the buildable area to Marine drive and the fact that Coos/Curry Electric underground cable runs along two sides of the lot above the bluff and a transformer box is located in the corner where the cables meet. See Exhibit 2. A copy of the Planning Commission Staff report is attached.

**Recommendation:** The Planning Commission, in a 3 to 3 vote, effectively denied the variance.

**CITY OF BROOKINGS PLANNING COMMISSION**  
**STAFF AGENDA REPORT**

SUBJECT: Variance  
FILE NO: VAR-1-03  
HEARING DATE: August 5, 2003

REPORT DATE: July 14, 2003  
ITEM NO: 8.1

---

**GENERAL INFORMATION**

APPLICANT: Peter and Patricia Castellini.

REPRESENTATIVE: None.

REQUEST: A variance to allow a side yard setback of 5 feet instead of the required 10 feet.

TOTAL LAND AREA: 0.19 ac.

LOCATION: On the west side of Marine Dr. approximately 1430 feet east of Old County Rd.  
251 Marine Dr.

ASSESSOR'S NUMBER: 40-13-32CD, Tax Lot 1702.

**ZONING / COMPREHENSIVE PLAN INFORMATION**

EXISTING: S-R-20 (Suburban Residential, 20,000 sq. ft. minimum lot size).

PROPOSED: Same.

SURROUNDING: S-R-20.

COMP. PLAN: Residential.

**LAND USE INFORMATION**

EXISTING: Vacant.

PROPOSED: Single family home.

SURROUNDING: Single family homes.

PUBLIC NOTICE: Mailed to all property owners within 250 feet of subject property and published in local newspaper.

## **BACKGROUND INFORMATION**

The subject property is a vacant, triangular shaped, 0.19-acre (8,276.40 sq. ft.±) parcel of land located on the west side of Marine Dr. approximately 1,450 feet east of Old County Rd. The property has 111.36 feet of frontage on Marie Dr., a north boundary of 151.50 feet and a southerly boundary of 166.21 feet. Access to the property is via a common driveway from Marine Dr. that runs along the southerly side of the south boundary of the subject property. A 15-foot wide, city owned, easement runs thru the subject property parallel to and adjacent to the westerly side of Marin Dr.

Topographically, the property rises steeply from Marine Dr. and along the lower portion of the common driveway then flattens out through the majority of the site with a small rise at the westerly end of the property. At the northerly boundary the top of the bank is approximately 15 feet into the lot from the easterly boundary (Marine Dr.). The top of the bank is approximately 50 feet into the property when measured from the southeast corner and along the common driveway the bank meets the grade of the driveway approximately 100 feet from the southeast corner (see Exhibit 2). At the time of the original partition (File No. M3-3-94) the applicant for the partition submitted a slopes analysis showing that the average slopes across the subject lot to be less than 15%. The 15 foot wide easement mentioned above is completely within the slope along the road and does not intrude into the flat area of the lot. Coos/Curry power lines enter the property at the northerly boundary approximately 17 feet from the easterly property corner and extend along the top of the bank to a power transformer box located at the top of the bank 30 feet from the street frontage and 24 feet from the common driveway. From the transformer box the power line then continues through the property, exiting about 13 feet east of the northwest property corner.

The subject property is zoned S-R-20 (Suburban Residential, 20,000 sq. ft. minimum lot size) as is the entire surrounding area. At the time the subject lot was created the property was zoned R-1-6 (Single Family Residential, 6,000 sq. ft. minimum lot size) and because the lot had an average slope of less than 15% the minimum lot size was allowed. Marine Dr. is a paved travel way with no other improvements within a 50-foot wide right-of-way Water and sewer mains are located in Marine Dr.

## **PROPOSED VARIANCE**

The applicant is requesting a variance to allow a residence to be placed within 5 feet of the property line rather than the required 10-foot side yard setback. The basis for this variance is the triangular shape of the lot, and the Coos/Curry Electric transformer box and underground power lines, which due to their location on the property, restricts the buildable area of the property. The applicant wishes to build a 1,500 sq. ft. home on the subject property. The house would be single story except for the garage, which will be two stories with bedrooms on the second story. The total height of the garage would be about 21.5 feet.

## **ANALYSIS**

The Planning Commission must consider the following criteria when deciding on applications for a variance:

1. Exceptional or extraordinary conditions applying to the property that do not apply generally to other properties in the same zone or vicinity, which conditions are a result of lot size or

shape, topography or other circumstances over which the applicant has no control, and to which the applicant has not contributed.

2. The variance is necessary for the preservation of the property right of the applicant substantially the same as is possessed by owners of other property in the same zone or vicinity.
3. The authorization of the variance shall not be materially detrimental to the purpose of this code, be injurious to property in the same zone or vicinity in which the property is located or by otherwise detrimental to the objectives of any city development plan or policy.
4. The variance request is the minimum variance from the provisions and standards of this code, which will alleviate the hardship.

The following is staff's analysis of the proposed variance in relation to the criteria cited above.

Criterion 1, Exceptional Circumstance.

In this particular case there are three separate circumstances that are beyond the control of the applicant. The first circumstance is that when this lot was created the property was zoned R-1-6 (Single Family Residential, 6,000 sq. ft. minimum lot size) and because the average slope across the property was less than 15%, a smaller lot was allow. When zoned R-1-6 the side yard setbacks would be only 5 feet plus an additional 1/2 foot for each foot above 15 feet of building height. The current SR-20 Zone requires a 10-foot side yard setback. Placing the 10-foot side yard setback on this lot significantly reduces the buildable area. The second circumstance is the triangular shape of the lot, which at the narrow end greatly restricts the buildable area and the increase in the setback due to the zone change causes even greater restriction.

The third circumstance is the location of the Coos/Curry transformer box and underground power lines. Coos/Curry officials have stated that the building must be located at least 8 feet from the transformer box and from the underground power lines. To relocate the power lines would be at the applicant's cost and would, according to Coos/Curry, be very expansive. Thus the building area of the lot is further reduced. The existence of the banks along Marine Dr. and a portion of the common driveway also reduce the building area of the lot.

Without the presents of the electrical facilities on the property, the lot would be sufficient to place a home under the original R-1-6 Zone. Now, with the SR-20 Zone, all of these constraints combine to provide a sufficient circumstance that is beyond the applicant's control.

Criterion 2, Preservation of A Property Right.

The ability to build a reasonably sized house on the subject lot is the property right in question here. For the reasons stated above the lot is severely constrained.

Criterion 3, Affect On City Ordinances.

Because of the constraints affecting the buildable area of the subject lot, a variance can be granted to allow the construction of a reasonably sized house, without setting a precedence that would allow a variance on less constrained properties.

#### Criterion 4, Minimum Variance.

The requested 5-foot variance would allow the applicant to place the house in a location that would meet the requirement of being at least 8 feet from the electric transformer box and avoid the underground power lines. The property directly north of the subject property was partitioned last year using a flag lot configuration to provide access for one of the lots from Marine Dr. The access strip of this flag lot is adjacent to the north boundary of the subject property and creates a 15-foot wide buffer between the subject lot and the front lot of the partition. Thus granting the requested variance will not have a significant impact on the adjoining properties, as the minimum distance between houses will be at least 25 feet.

#### **FINDINGS**

1. The applicant is requesting a variance of 5 feet from the required 10-foot side yard setback along the northerly boundary of an 8,276.40 sq. ft. subject property.
2. The subject property is zoned S-R-20 (Suburban Residential, 20,000 sq. ft. minimum lot size) and is designated as Residential by the Comprehensive Plan.
3. When the subject parcel was created, the property was zoned R-1-6 (Single Family Residential, 6,000 sq. ft. minimum lot size).
4. The lot is triangular shaped with 111.36 feet of frontage on Marine Dr. and is provided access from a common driveway located along its southerly boundary.
5. Approximately 2,500 sq. ft. of the lot consists of steep slopes along the street frontage and the common driveway.
6. The S-R-20 Zone requires a 10-foot side yard setback. The original R-1-6 Zone required a 5-foot side yard setback plus 1/2 feet for each foot over 15 feet in building height.
7. An electrical transformer box is located 30 feet from the street property line and 24 feet from the common driveway. The electrical provider requires that the buildings be at least 8 feet from this box. The underground power line enters the property at the top of the slope about 16 feet from the street, extends to the transformer box and then leaves the box, exiting the northerly boundary about 13 feet inside the northwest corner.

#### **CONCLUSIONS**

1. The size and triangular shape of the property, the slopes along the street and common driveway frontages, the location of the electrical facilities on the property, and the fact that the current zoning requires a greater setback than the original R-1-6 Zone when the lot was created, are sufficient circumstance to allow the variance.
2. Granting a variance will allow the applicant to place a reasonable sized home on the subject property, thus preserving his property rights. The nature of the constraints on the property is such that granting the variance will not set a precedence or weaken the provisions of the Land Development Code. A variance to allow a 5-foot setback is the minimum variance that will alieve the hardship and will not have a significant impact on the surrounding properties.

## **RECOMMENDATION**

Staff recommends APPROVAL of Case File No. VAR-1-03, based on the findings and conclusions stated in the staff report and subject to the conditions of approval listed above.

Staff has prepared a Final ORDER to be considered at this meeting.

To Brookings City Council

Gentlemen:

I am appealing the denial decision made to my variance request of August 5, 2003 to the Planning Commission.

My request is for 5 feet of the 10 feet setback on the northerly boundary of Lot 1702, which is located at 251 Marine Dr.  
- Map 41-13-32CD.

#### BACKGROUND

The shape of the lot is triangular, .19 acre, (8276.4 sq. ft. +/-). Approximately 2500 sq. ft. (c. 30%) consists of sloping banks on the south and west sides, ranging from 2 ft. to 20 ft. wide, sloping from 20 to 60 degrees. The lot was partitioned October, 1995 as a R-1-6000 building site, with stipulated 20 ft. setback on Marine Dr. boundary and 5 ft. setback on the other two boundaries. In the latter part of 1995 the entire area (Book 40-13-32) was rezoned to S-R-20,000, imposing 10 foot side yard setbacks. This effected a further reduction of 1067 sq. ft. or 12.9% of the total lot. Had the S-R-20,000 zoning been in place before Lot 1702 was partitioned in 1995 it would not have been created. Nevertheless, the S-R-20,000 requirements are imposed on this lot which does not have the extensive perimeters of the undeveloped adjacent lots which range from 3.3 to 5.3 times larger.

#### REASONS FOR VARIANCE REQUEST

My original appeal for the variance was because several exceptional infringements greatly reduce the buildable area of my lot. They are primarily:

- 1) the shape and size of the lot
- 2) the 10 ft. setback on the northerly boundary
- 3) the transformer box and underground electric/utility lines paralleling the westerly and easterly boundaries located several feet into the property
- 4) the setbacks imposed by the utility companies in connection with their "locatable underground facilities" (Oregon Utilities Coordinating Council, Standards Manual, pg 11)

These combine to reduce the buildable area considerably, to a mere 2145 sq. ft. of the total 8276 sq. ft. of the lot. Placement of a building, as well as the shape of the building, is made very difficult because of the reduced size and the shape of the buildable area.



When I considered buying the property I noted in writing to the realtor a condition to my buying the property, that is: "I must be assured this is a buildable site, per city approval". In reply I was given a plot plan with a layout of a 1505 sq. ft. house and a 400 sq. ft. attached garage. Setbacks thereon were 15 ft. on the Marine Dr. side, 5 ft. on the easement access side and 5 ft on the northerly side. Presumably these were the R-1-6000 setbacks. Unknown to me at the time, these proved to be erroneous. The plot plan showed the electric transformer, which I believed was to service my property only inasmuch as the plot plan did not show any electrical lines traversing the property to the north westerly and north easterly directions to serve other adjacent lots. I took the presentation in good faith inasmuch as the plot plan was prepared by a reputable builder in town (Recently, in trying to determine when the lot was partitioned I discovered that the partitioner and the plot plan designer was the same person).

It was only after I bought the property I discovered that there were underground electrical lines traversing the property. Curry-Electric informed me to call the 'locators' to mark where the lines were buried. Also, I had the property surveyed for accuracy of boundaries and electric lines and other features. It then became apparent that the plot plan was grossly misleading - the footprint of the house extended beyond the zone required setbacks on the northerly and southerly boundaries as well as several feet over the southerly bluff. See Exhibit A

Initially we considered a 1500 sq. ft. house with the bedrooms above the garage, but we realized it would be detrimental to Mrs. Castellini because she is physically disadvantaged - she has a wheelchair and walker available to her needs. Daily stair climbing would be very difficult for her, if at all possible at times. Therefore, we now opt for a single level house that she can manage in keeping with her physical means.

The house, therefore, I would like to build is single level. It would have to be limited to about 1300 sq. ft. because of the constrictions mentioned above. The 5 ft. variance I request would allow me to better utilize the property. Without it I have virtually no room for vegetation aesthetics or flower beds around the house because of the proximity of the bluffs east and south. Also, the electric transformer is barely a disturbing seven feet from the front deck. The five feet variance would definitely improve the property as a buildable site, as well as give me enough room to have a garage long enough for my auto. Please see Exhibit B

The variance requested would not encroach, be injurious to, or counter-purpose property possessed by owners in the same zone or vicinity. None of the property owners within the 250 foot radius of my lot appeared before the Planning Commission hearing in opposition to my variance request. For my meeting before the City Council I went to the resident property owners on the 250 feet radius list for any pro/con as to the variance I request. No one objected except one who declined to sign my petition. She said 'go to the realtors who sold you the property, they misled you'. Please see Exhibit

The variance requested conceivably would not be materially detrimental to the variance code or the objective of any proposed city development plan or policy for the area.

The variance I'm asking for is the minimum variance required to alleviate the hardship inherent in this site due to size, shape, topography and underground utility lines and the 10 ft northerly side yard setback.

Granting me the variance would preserve my property right substantially the same as enjoyed by other property owners in the same vicinity.

Peter and Patricia Castellini

**Variance Request**

**This is a request for 5 feet of the 10 foot setback of the northerly boundary of tax lot #1702, Map 41-13-CD**

**Reason: Size of property and shape limitations. The shape is triangular ( $151.5 \times 111.36 \times 166.21 = 8435$  sq. ft.), approximately 2500 sq. ft. consists of a bank slope ranging from about 2' to 15' at a slope ranging from about 20 to 60 degrees as well as a portion of road easement on the property. Additionally, a transformer of under ground utilities is situated on the property and it and the lines encroach on the buildable area of the lot, limiting considerably the ground needed to construct a proposed modest size dwelling, as well as encroach on the space needed to build a 4' entrance deck on the southerly side of the dwelling (please see the Plot Plan accompanying this request.**

**The variance requested would not encroach, be injurious to, or counter-purpose property possessed by owners in the same zone or vicinity.**

**The variance requested conceivably would not be materially detrimental to the variance code or the objective of any proposed city development plan or polity.**

**The variance requested is the minimum variance required to alleviate the hardship inherent in this site due to size, shape, topography and underground utility lines thereon.**

**The granting of the requested 5' setback variance would allow the applicant to construct a single family personal residence of approximately 1500 sq. ft.**

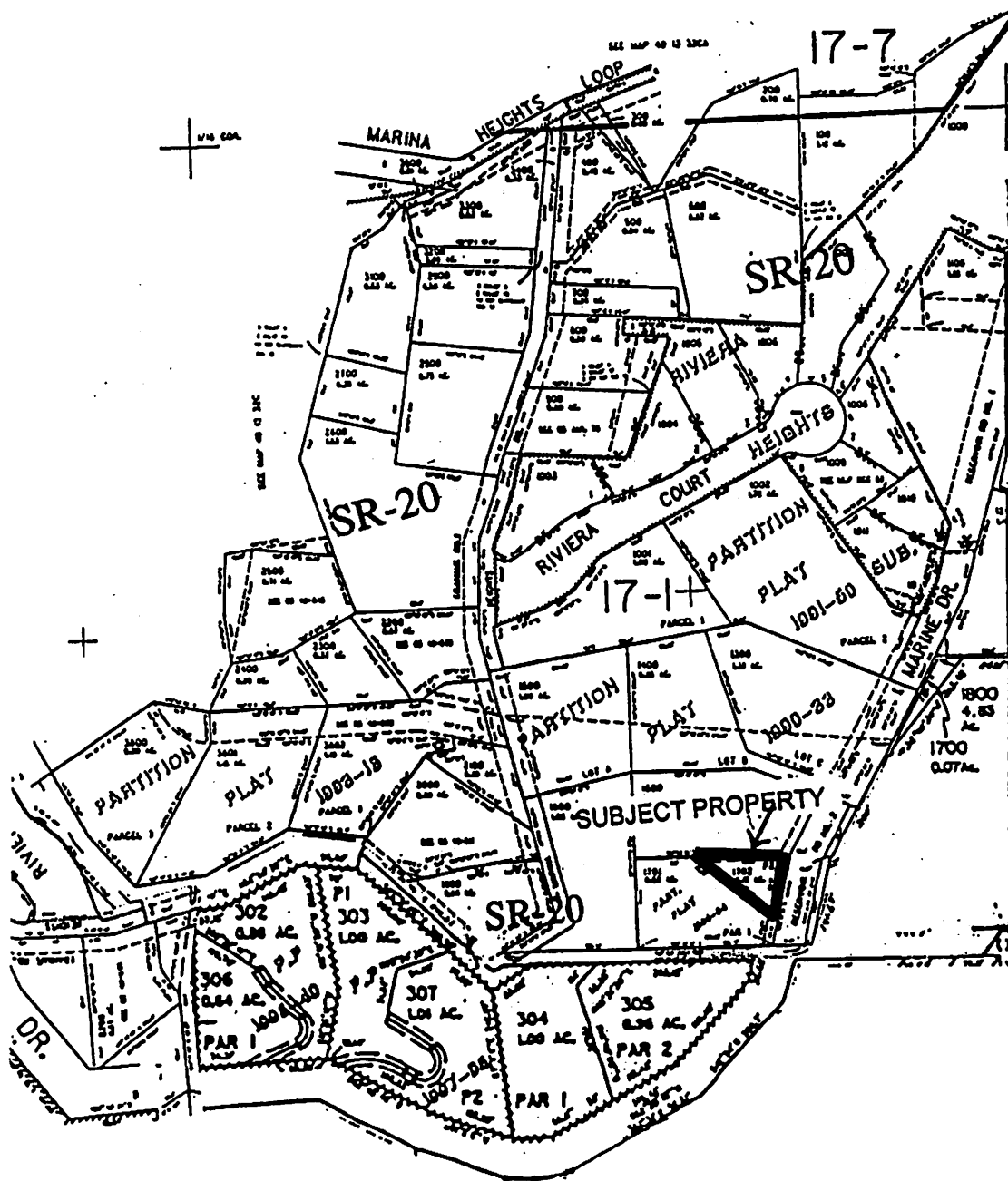
**Respectfully submitted by:**

**Peter and Patricia Castellini**

**June 5, 2003**

*Peter Castellini*

*Patricia Castellini*



Applicant: Peter Castellini

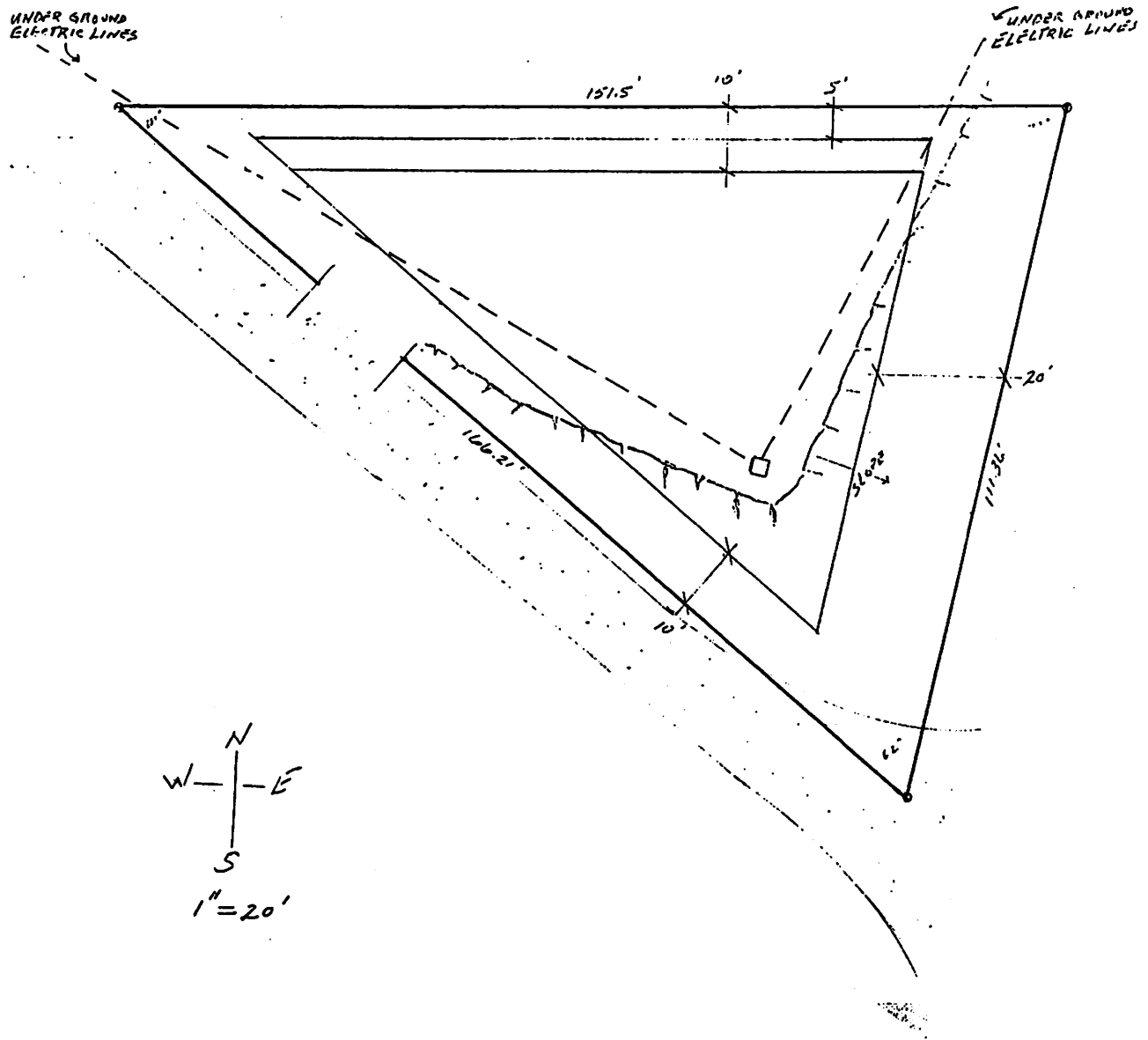
Assessor's No: 40-13-32 CD Tax Lot 1702

Size: .19 acre

Location: 251 Marine Drive

Zone: SR-20 (Suburban Residential, 20,000 sq.ft. minimum lot size)





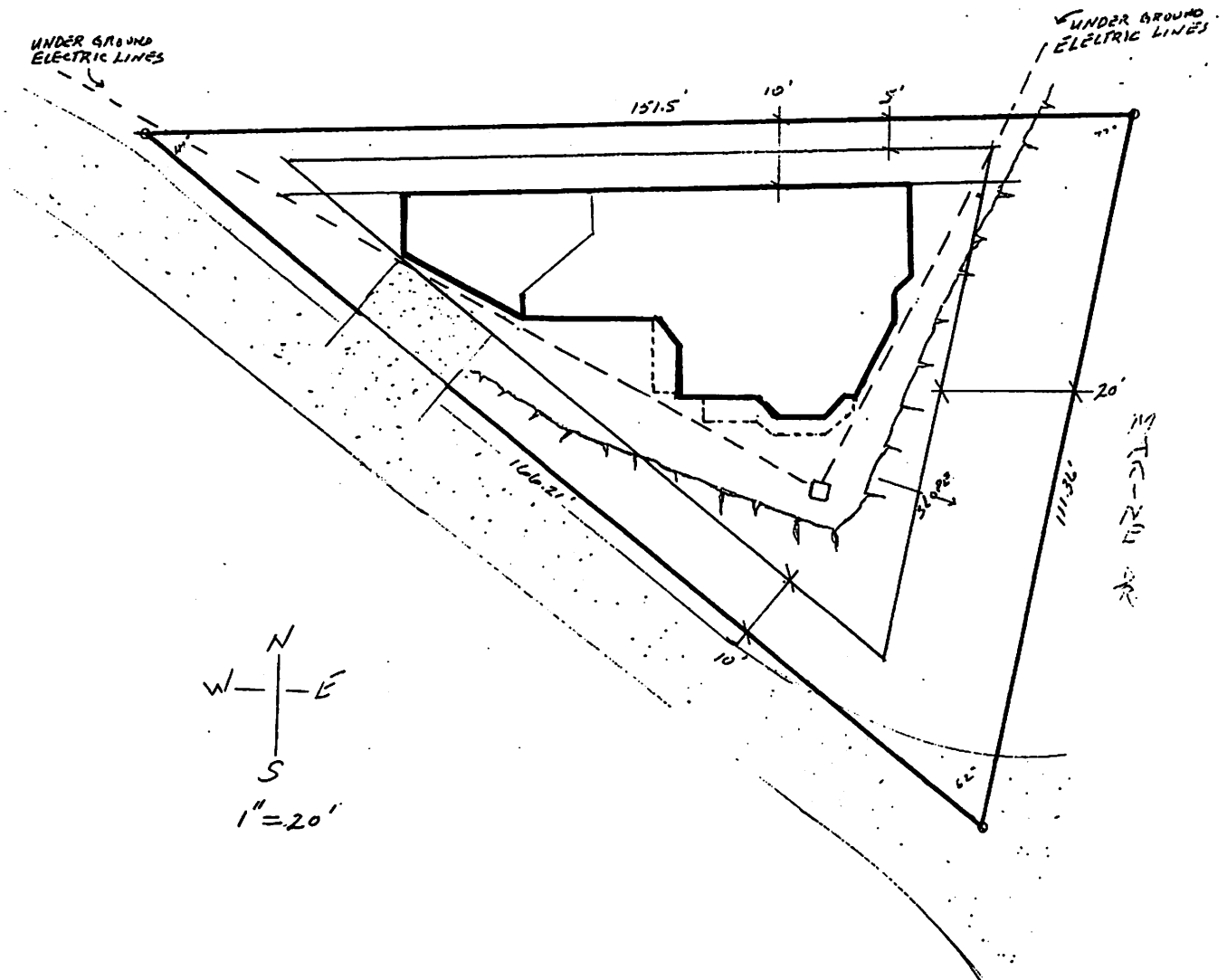
Applicant: Peter Castellini

Assessor's Map: 40-13-32CD, Tax Lot 1702

Size: 0.19 Acres

Location: 251 Marine Dr.

Zone: S-R-20 (Suburban Residential, 20,000 sq. ft. minimum Lot Size)



Applicant: Peter Castellini

Assessor's Map: 40-13-32CD, Tax Lot 1702

Size: 0.19 Acres

Location: 251 Marine Dr.

Zone: S-R-20 (Suburban Residential, 20,000 sq. ft. minimum Lot Size)

PLANNING DEPARTMENT



**TO:** Mayor and City Council  
**FROM:** John Bischoff, Planning Director  
**THROUGH:** Leroy Blodgett, City Manager  
**DATE:** September 30, 2003

**Issue:** An appeal of a Planning Commission denial of a minor change to the conditions of approval for a subdivision known as Chetco Pt. Terrace.

**Background:** The subject subdivision was approved at the September 3, 2002 Planning Commission hearing and subsequently final map approval was given in February of this year and recorded. The subdivision is located adjacent to the city's wastewater treatment plant and is separated from the plant by a berm that was constructed as a condition of approval for the "The Cove" project, which included the subject property when it was approved and built. Subsequently the area that had originally been phases 3 and 4 of the Cove, were not recorded and that portion of the property was sold. The berm was required as a measure to reduce the possibility of odors from the city's treatment plant from impacting the "The Cove" project and was built by the developer of the project. The subject subdivision was approved with a condition of approval that the homeowner's association bylaws contain "a clause that no development shall encroach into or onto the berm." Shortly after the subdivision was recorded and construction began on houses, the berm was breached at each end by the removal of substantial quantities of material. When staff discovered the encroachment a stop order was issued.

The applicant then applied for a minor change to remove the condition of approval prohibiting encroachment into or onto the berm. The Planning Commission heard the request at its September 2, 2003 meeting and denied the minor change.

A copy of the Planning Commission Staff report for the original subdivision, the conditions of approval and the staff report for the minor change is attached.

**Recommendation:** The Planning Commission denied the minor change.

**CITY OF BROOKINGS PLANNING COMMISSION**  
**STAFF AGENDA REPORT**

<b>SUBJECT:</b> Subdivision <b>FILE NO:</b> SUB-6-02/MC-1 <b>HEARING DATE:</b> September 2, 2003	<b>REPORT DATE:</b> August 19, 2003 <b>ITEM NO:</b> 8.1
--	--

---

**GENERAL INFORMATION**

**APPLICANT:** Bruce Brothers.

**REPRESENTATIVE:** None.

**REQUEST:** An amendment to the conditions of approval to allow encroachment to an existing berm along the westerly boundary of the subject site. Original approval was for a 16 lot subdivision.

**TOTAL LAND AREA:** 7.34 Acres (319,749 sq. ft.).

**LOCATION:** On the south side of Wharf St. between the "The Cove" and the city's wastewater treatment plan.

**ASSESSOR'S NUMBER:** 41-13-7A, Tax Lot 409.

**ZONING / COMPREHENSIVE PLAN INFORMATION**

**EXISTING:** R-2 (Two Family Residential).

**PROPOSED:** Same.

**SURROUNDING:** North and West—M-2 (General Manufacturing); East—R-2 (Two Family Residential); South—Pacific Ocean.

**COMP. PLAN:** Residential.

**LAND USE INFORMATION**

**EXISTING:** Vacant.

**PROPOSED:** Sixteen lot residential subdivision.

**SURROUNDING:** West—City's wastewater treatment plant; North—Lumber mill; East—Residential development; South Ocean.

**PUBLIC NOTICE:** Mailed to all property owners within 250 feet of subject property and published in local newspaper.



## **BACKGROUND INFORMATION**

The subject property is an irregular shaped 7.34 acre parcel of land located on the south side of Wharf St. between the city's wastewater treatment plant on the west and the "The Cove" project on the east. The property has 500.71 feet of frontage on Wharf St. and an easterly boundary that extends south for 324.77 feet then turns to the southwest for 370.84 feet to the vegetation line. The westerly boundary extends southerly from Wharf St. 523.44 feet to the vegetation line.

A large berm is located along the westerly boundary of the property, which was constructed to provide a visual and odor barrier between the original "The Cove" project and the wastewater treatment plant. At that time the subject property was owned by the developer who created the "The Cove" and the approved subdivision was over the entire property. The berm was a condition of approval of the subdivision and provided to help hold the city harmless from odors and visual impacts generated by the city's waste water treatment plan located adjacent to the westerly boundary of the property. Subsequently only the first two phases of the "The Cove" Subdivision was built out and Phases 3 and 4 were never recorded leaving the area between the berm and built out portion of the subdivision vacant. This area was then sold and ultimately became the property of the applicant.

The subject subdivision was approved on September 3, 2002 with a condition of approval that stated "The applicant shall establish and record a homeowners association that contains, among other provisions, the following: "A clause that no development shall encroach into or onto the berm." Although the condition had been applied, the berm was subsequently altered at each end when construction of houses was started.

## **PROPOSED MINOR CHANGE**

The applicant is requesting a change in the conditions of approval to allow the berm to be cut into at each end to allow the construction of houses at those locations..

## **ANALYSIS**

The berm was constructed as a condition of approval for the original "The Cove" Subdivision with the purpose of providing a visual and odor barrier between the project and the city's wastewater treatment plan. It is staff's opinion that any encroachment into the berm would be a violation of the conditions of approval and as such would leave the city open to complaints about odor from the treatment plant.

Staff advised the applicant that if the "The Cove" homeowners association would agree to allow the berm to be altered and provide the city with a recorded document that would continue to hold the city harmless due to odor from the treatment plant, then it, the staff, would not object to the alteration. As of the date of this report the applicant has not presented the city with evidence that the homeowners would agree to the altering the berm.

## **FINDINGS**

1. The applicant is requesting an amendment to the conditions of approval for the subject subdivision to allow the berm that exists between the subject property and the city's wastewater treatment plant to be altered at both ends to allow the construction of houses in those locations.

2. The berm in question was constructed as a condition of approval of the "The Cove" Subdivision, which was a separate approval from the subject subdivision.
3. At the time of approval of the "The Cove" Subdivision the property where the berm is located was a part of that subdivision but the phases over that area were never recorded and the property was subsequently sold.
4. The purpose of the berm was to provide a visual and odor barrier between the "The Cove" Subdivision and the city's wastewater treatment plan.

## CONCLUSIONS

1. The berm was constructed as a condition of approval for the original "The Cove" Subdivision with the purpose of providing a visual and odor barrier between the project and the city's wastewater treatment plan. It is staff's opinion that any encroachment into the berm would be a violation of the conditions of approval and as such would leave the city open to complaints about odor from the treatment plant.
2. Staff advised the applicant that if the "The Cove" homeowners association would agree to allow the berm to be altered and provide the city with a recorded document that would continue to hold the city harmless due to odor from the treatment plant, then it, the staff, would not object to the alteration. As of the date of this report the applicant has not presented the city with evidence that the homeowners would agree to the altering the berm.

## RECOMMENDATION

Staff recommends **DENIAL** of Case File No.SUB-6-02/MC-1, based on the findings and conclusions stated in the staff report.

Staff has prepared a Final ORDER to be considered at this meeting.

**CITY OF BROOKINGS PLANNING COMMISSION**  
**STAFF AGENDA REPORT**

<b>SUBJECT:</b> Subdivision <b>FILE NO:</b> SUB-6-02 <b>HEARING DATE:</b> September 3, 2002	<b>REPORT DATE:</b> August 27, 2002 <b>ITEM NO:</b> 8.3
---	--

**GENERAL INFORMATION**

**APPLICANT:** Bruce Brothers.

**REPRESENTATIVE:** None.

**REQUEST:** A subdivision to create 16 lots ranging in size from 7,937 to 31,536 sq. ft. net with an average size of 13,788 sq. ft. net, and the addition of a new private cul-de-sac street.

**TOTAL LAND AREA:** 7.34 Acres (319,749 sq. ft.)

**LOCATION:** On the south side of Wharf St. between the "The Cove" and the city's wastewater treatment plan.

**ASSESSOR'S NUMBER:** 41-13-7A, Tax Lot 409.

**ZONING / COMPREHENSIVE PLAN INFORMATION**

**EXISTING:** R-2 (Two Family Residential).

**PROPOSED:** Same.

**SURROUNDING:** North and West—M-2 (General Manufacturing); East—R-2 (Two Family Residential); South—Pacific Ocean.

**COMP. PLAN:** Residential.

**LAND USE INFORMATION**

**EXISTING:** Vacant.

**PROPOSED:** Sixteen lot residential subdivision.

**SURROUNDING:** West—City's wastewater treatment plant; North—Lumber mill; East—Residential development; South Ocean.

**PUBLIC NOTICE:** Mailed to all property owners within 250 feet of subject property and published in local newspaper.

## **BACKGROUND INFORMATION**

The subject property is an irregular shaped 7.34 acre parcel of land located on the south side of Wharf St. between the city's wastewater treatment plant on the west and the "The Cove" project on the east. The property has 500.71 feet of frontage on Wharf St. and an easterly boundary that extends south for 324.77 feet then turns to the southwest for 370.84 feet to the vegetation line. The westerly boundary extends southerly from Wharf St. 523.44 feet to the vegetation line.

The property is essentially flat with a slight downward slope from Wharf St. for about 250 feet then begins to drop at about 8% slope for another 100 feet where it drops steeply to the ocean. There is a small ravine beginning near Wharf St. about 200 feet west of the easterly boundary. This ravine opens up as the slope becomes steeper and forms a drainage over the bank to the ocean. A large berm is located along the westerly boundary of the property, which was constructed to provide a visual and odor barrier between the original "The Cove" project and the wastewater treatment plant. There is currently a walking path along the west side of the berm on the subject property that provides access to Chetco Point Park. The path is a temporary easement in favor of the city.

An sewer main enters the subject property from Wharf St. approximately 120 feet west of the easterly property boundary. The main terminates at a pumping station that pumps wastewater through another main westerly to the berm then south around the end of the berm to the treatment plant.

The property is zoned R-2 (Two Family Residential) and is vacant. The property to the east is also zoned R-2 and is the site of the "The Cove" duplex development. The area to the north and west are zoned M-2 (General Manufacturing) and are developed with a lumber mill and wastewater treatment plant respectively. Wharf St. is a paved travel way within a right-of-way that varies from 50 feet on the east to about 120 feet at the westerly property line of the subject property. The north side of Wharf is improved with curb, gutter and sidewalk. There are no street improvements adjacent to the frontage of the subject property, however, the sidewalk in front of "The Cove" project ends at the easterly boundary. A water and sewer main are located adjacent to the subject property.

## **PROPOSED SUBDIVISION**

The applicant is requesting a subdivision to divide the subject property into sixteen lots ranging in size from 7,937 to 31,536 sq. ft. net with an average size of 13,788 sq. ft. net. The figures are given in terms of "net" because Lots 3 thru 10 extend over the bank to the vegetation line and are not usable below the bank. All of the lots will front on the new cul-de-sac street and lots 1 and 12 thru 16 will also have frontage on Wharf St., however, these lots will not access only to the cul-de-sac street. Some of the lots appear to be a flag lot but technically are not because they have at least 20 feet of frontage on the new street. The proposed subdivision name is Chetco Point Subdivision.

The new cul-de-sac will be called Chetco Point Terrace and will be a private street built to city standards of 45 foot right-of-way and curbs gutters and sidewalk on both sides. A privacy gate will be installed at the entrance to the project. The cul-de-sac street will be divided with a planter strip in the first 151 feet to allow for the sewer main and pump station and associated easement. Wharf St. will be fully improved with curb, gutter and sidewalk along the frontage of

the subject property. The project will also have a storm drain easement centered on the property line between Lots 4 and 5 and a walking path over the bank to the ocean along the west boundary of Lot 8 and another walking path along the easterly boundaries of Lot 1 thru 6 for the same purpose.

## **ANALYSIS**

The planning commission has the authority to approve, approve with conditions or deny the requested subdivision, based upon the following criteria:

1. Conformance with the comprehensive plan, and applicable development standards of this code, and state and federal laws.
2. Development of any remainder of property under the same ownership, if any, can be accomplished in accordance with this code.
3. Adjoining property under separate ownership can either be developed or be provided access that will allow its development in accordance with this code.
4. Conditions necessary to satisfy the intent of the land development code and comprehensive plan can be satisfied prior to final approval.
5. The proposed street plan affords the most economic, safe, efficient and least environmentally damaging circulation of traffic possible under existing circumstances.
6. The proposed name of the subdivision shall be approved by the commission, provided the name does not use a word which is the same as, similar to or pronounced the same as a word in the name of any other subdivision in Curry County, except for the words "town", "city", "place", "court", "addition", or similar words unless the land platted is contiguous to and platted by the same applicant that platted the subdivision bearing that name, or unless the applicant files and records the consent of the party who platted the subdivision bearing that name and the block numbers continue those of the plat of the same name last filed.
7. The proposed name of a street in the subdivision shall be approved by the commission provided it is not the same as, similar to or pronounced the same as the name of an existing street in the same zip code area, unless the street is approved as a continuation of an existing street. A street name or number shall conform to the established pattern for the area.
8. Streets that are proposed to be held for private use shall be distinguished from the public streets on the subdivision plat, and reservations and restrictions relating to the private streets are established.

The following is staff's analysis of the proposed project in relation to the criteria listed above. Since the first criterion includes the other 7, it will be considered last.

### **Criterion 2, Remainder Lots.**

A remainder lot is defined as any lot created by a partition or subdivision that is twice or greater the size of the minimum lot allowed by the underlying zone in this case, 6,000 sq. ft. Nine of the proposed lots are remainder lots as defined. Three of these lots, Lots 10, 11 and

12, are constrained by the existence of the berm across them and also by the fact that they do not have sufficient frontage on the new street allow for further division. Lots 3, 8 and 9 also do not have sufficient frontage to allow for further division. Lots 4 thru 7 could possibly be divided further through the use of a flag lot. Although given the nature of the location and setting of this project

#### Criterion 3, Adjacent Properties.

All of the surrounding lots have frontage on a public or private street and can be accessed from that street. All of the adjoining residential streets are already developed. The proposed subdivision will not prevent any of the surrounding properties from being developed. Due to the realignment of Wharf St. and the recent up grade and expansion of the wastewater treatment plant, the only current access to Chetco point is thru the subject property via the temporary easement along the west boundary.

#### Criterion 4, Conditions of Approval.

The conditions of approval will contain a number of conditions. Some conditions are standard and some will be project specific. All of the conditions can be satisfied prior to the approval of the final plat map for recordation. Since the berm that is located along the west boundary of the subject site is there to protect the subject property visually and from odor from the wastewater treatment plant, a condition of approval will be applied that requires the landscaping on the berm to be kept in good condition and that the berm cannot be encroached upon by development. Another condition will require the C, C, & Rs to contain a hold harmless clause due to odor from the treatment plan.

#### Criterion 5, Street Plan.

The proposed street plan provides the most efficient, environmentally feasible alignment. The street provide for the sewer main easement both entering the subject property and for a 293 foot portion of the main from the pump to the treatment plant. The proposed alignment also preserves the area within the Wharf St. right-of-way adjacent to the treatment plant, which will be used as parking for Chetco Point Park. The proposed cul-de-sac street is 447 feet long, which is slightly more than the 400-foot standard. However, Section 172, Public Facilities Improvements And Criteria, of the Land Development Code does allow for a longer street under unusual circumstances. In this case the longer cul-de-sac street was used to shorten the goosenecks of the lots along the west side of the property and a looped street would have wiped out the portion of the Wharf St. right-of-way that the city wants to use as parking for Chetco Park Pt. Staff is recommending that the proposed cul-de-sac street is desirable over the alternatives.

#### Criterion 6, Subdivision Name.

A check with the county has determined that there are no other subdivisions with the same or similar name as Chetco Point Subdivision.

#### Criterion 7, Street Name.

There are no other streets with the same or similar name as Chetco Point Terrace.

#### Criterion 8, Private Streets.

Since the new cul-de-sac street will be a private street, a condition of approval will require that it be stated as such on the final plat map and that a reciprocal access and maintenance be recoded with the C, C & Rs.

#### **Criterion 1, Comprehensive Plan.**

The proposed subdivision meets the requirements of the criteria discussed above and is consistent with the provisions of the Comprehensive Plan, particularly Goal 10, Housing, that contains a policy that the city will not place undue restrictions on the development of land within the city and with the overall goal of using land within the city efficiently. Lots 3 thru 10, which are located along the ocean bluff are subject to the provisions of Section 100, Hazardous Building Site Protection/Hillside Development Standards, and a condition of approval will be applied to that effect.

#### **FINDINGS**

1. The applicant has requested a subdivision to divide a 7.34 acre parcel of land into 16 lots ranging in size from 7,937 to 31,536 sq. ft. net with an average size of 13,788 sq. ft. net, and with the addition of a new private cul-de-sac street.
2. The subject property is zoned R-2 (Two Family Residential) and is designated as Residential by the Comprehensive Plan.
3. The subject property is located adjacent to the east side of the city's wastewater treatment plant. An earthen berm is located along the west boundary of the subject property to visually screen the treatment plant and to help reduce odor from the plant.
4. Lots 4 thru 12 of the proposed partition are defined as remainder lots.
5. All of the lots surrounding the subject property have frontage on a public or private street.
6. A sewer main and pump station along with the associated easements enter the property from Wharf, St. and extend to the wastewater treatment plant.
7. Wharf St. is a paved travel way within a right-of-way that begins at 50 feet of width at the east boundary of the subject property and widens to about 120 at the west boundary adjacent to the treatment plant. There is no curb, gutter or sidewalk adjacent to the frontage of the subject property.
8. The County Planning Department has confirmed that there are no other subdivisions with the same or similar name as Chetco Point Subdivision.
9. The 911 Dispatch Center has confirmed that the proposed street name Chetco Point Terrace will not be a confusion factor with another street.
10. Water and sewer mains are located adjacent to the subject property.
11. The proposed cul-de-sac street is 447 feet long.
12. Section 172, Public Facilities Improvements And Criteria, of the Land Development Code, states that the maximum length of a cul-de-sac street will be 400 feet, however, it does allow for a longer street if unusual circumstances exist.

## CONCLUSIONS

1. Although Lots 4 thru 12 are defined as remainder lots, Lots 8 thru 12 do not have sufficient frontage to allow for further division. Lots 4 thru 7 could technically be divided thru the use of a flag lot. The conditions of approval will require a note on the map stating that Lots 4 thru 7 cannot be divided further.
2. All of the surrounding lots have frontage on a public or private street and can be accessed and developed from that street. The proposed subdivision will not prevent any of the surrounding lots from being accessed fro development.
3. The street plan provides the safest, most environmentally feasible street alignment. Although the cul-de-sac street is 47 feet longer than the desired maximum, the code does allow for longer streets under unusual circumstance. The proposed street places the sewer main from Wharf St., the pump station and much of the main from the pump station within street right-of-way. The additional length reduces the gooseneck effect of Lots 9 thru 12 and if the street were looped back to Wharf, the area for Chetco Point Park public parking would be considerable reduced.
4. Staff has verified with the County Planning Department that the subdivision name is not the same as or similar to that of any other subdivision in the county. The 911 dispatch center has confirmed that the proposed name of the new street, Chetco Point Terrace, will not cause confusion with other street names.
5. All of the conditions applied to the approval of the subject subdivision can be satisfied prior to the approval of the final plat map.
6. The proposed subdivision meets the requirements of the criteria discussed above and is consistent with the provisions of the Comprehensive Plan, particularly Goal 10, Housing, that contains a policy that the city will not place undue restrictions on the development of land within the city and with the overall goal of using land within the city efficiently. Lots 3 thru 10, which are located along the ocean bluff are subject to the provisions of Section 100, Hazardous Building Site Protection/Hillside Development Standards, and a condition of approval will be applied to that effect.

## CONDITIONS OF APPROVAL

The conditions of approval are attached to and hereby made a part of this report.

## RECOMMENDATION

Staff recommends **APPROVAL** of Case File No.SUB-6-02, based on the findings and conclusions stated in the staff report and subject to the conditions of approval listed above.

Staff has prepared a Final ORDER to be considered at this meeting.



**CONDITIONS OF APPROVAL**  
**SUB-6-02**  
**Chetco Point Subdivision**  
**September 3, 2002**

**General Conditions**

1. The final plat shall be in substantial conformance with the submitted preliminary plat as amended herein and as approved by the Planning Commission.
2. Approval of this preliminary plat will expire one (1) year from approval unless the final plat is approved and recorded or unless an extension of time is requested and approved. The extension of time may be granted by the Planning Commission with good cause and will not exceed one (1) year. The recordation of the final plat can be phased to match construction phases of the project within the one-year period. Should the applicant wish to proceed with the subdivision following expiration of the one (1) year extension, the preliminary plat process must be re-initiated and resubmitted to the Planning Commission for review and approval.
3. The size and shape of all lots shall conform substantially with the approved preliminary plat. Substantial changes to the approved preliminary plat require re-approval by the Planning Commission.
4. All lots shall conform to the provisions of the R-2 (Two Family Residential), and to all other applicable provisions of the Land Development Code.
5. Improvement work, including grading and fill, shall not be commenced until the City Engineer has reviewed and approved construction plans for adequacy.
6. All costs of plans checks and inspections by the City Engineer shall be paid by the applicant to the city.
7. Information on the construction plans shall be pursuant to the City of Brookings Standard Specifications document dated August 1988.
8. No houses shall be constructed on the subject property until all improvement work has been completed.
9. The applicant shall establish and record a homeowners association that contains the following provisions:
  - Provisions for the continued maintenance of the landscaping on the berm.
  - Provisions for the continued maintenance of Chetco Point Terrace.
  - A clause that no development shall encroach into or onto the berm.
  - A hold harmless holding the city harmless due to odor or noise due to the normal operation of the adjoining wastewater treatment plan.
  - A hold harmless clause holding Pacific Wood Laminates harmless from noise and odor due to normal operation of the plywood mill
  - Provisions the prevent Lots 4 thru 7 from being divided further.

- Provisions stating that Lots 3 thru 10 are subject to the provisions of Section 100, Hazardous Building Site Protection/Hillside Development Standards, of the city's Land Development Code and that no construction will take place until the provisions have been met.
  - Provisions prohibiting Lots 1 and 12 thru 16 as shown on the approved preliminary plat map, from taking access from Wharf St.
10. The applicant shall grant to the city a permanent easement 15 feet in width along the westerly boundary of the subject property from Wharf St. to the property line between Chetco Point Park and the subject property. The city and applicant may explore the possibility of increasing the easement to the top of the berm with a fence along the top of the berm.

#### Street Conditions

11. The applicant shall construct curb, gutter, sidewalk and pavement as necessary along the Wharf St. frontage of the subject property. The location and alignment of the sidewalk, curb and gutter will be as shown on the approved preliminary plat map.
12. The applicant shall construct the new cul-de-sac street to city standards, with curb, gutter and sidewalk on both sides. The entrance gate shall be position no less than 25 feet from the curb line of Wharf St.
13. All street improvements shall include any required underground storm drain facilities.
14. All street improvements must be approved by the City Engineer prior to construction.

#### Sanitary Sewer And Storm Drain Conditions

15. The applicant shall extend sewer service mains into the new cul-de-sac street. Service laterals shall be extended to each lot within the subdivision.
16. Prior to construction of the cul-de-sac street, the applicant shall coordinate with the City Public Works and Wastewater Treatment Departments to ensure sufficient work area around the existing pump station.
17. Sanitary sewer installation shall comply with the standards of the State of Oregon Department of Environmental Quality and the provisions of Brookings City Ordinance No. 430, and Standard Specifications Document, dated August, 1988.
18. The location of all sewer laterals shall be appropriately marked on the curb in a permanent manner.
19. The applicant shall provide an engineered storm drain plan prior to any construction
20. The drainage shown between Lots 4 and 5 of the approved preliminary plat map shall be engineered and designed in such a manner that the storm drain shall not change the drainage pattern or increase runoff across the adjoining property. (Amended by Commission, 9-3-02)

21. All storm drains shall be installed pursuant to the provisions of the Standard Specifications document.
22. All sanitary sewer and storm sewer mains that are located outside of a street right-of-way shall be provided with an access easement as required by the City Engineer.
23. All sanitary and storm sewers plans shall be approved by the City Engineer prior to construction.

#### Water System Conditions

24. The applicant shall install a water main within the cul-de-sac street right-of-way.
25. All lots within the subdivision shall be served by the city domestic water supply system.
26. The applicant shall provide an easement in favor of the city over the water and sewer mains within the cul-de-sac street right-of-way.
27. All water lines shall be installed pursuant to the provisions set forth in the OAR Chapter 33, Sections 42-200 through 42-243, by the Oregon State Health Division and the City of Brookings Standard Specifications Document.
28. Water meters shall be clustered at common lot lines to the extent possible.
29. All water system plans shall be approved by the City Engineer prior to construction.
30. Prior to any construction of the water service system, the applicant install shall a fire hydrant at a location to be determined by the Fire Chief.

#### Utilities

31. All utility lines, including but not limited to, electric, communication, street lighting, and cable television shall be placed underground throughout the subdivision. This includes undergrounding of services from existing overhead utilities.
32. All utility easements shall be clearly defined as to their scope, purpose and term, preferably to be included within the restrictive covenants which are to be recorded with the subdivision plat. The abbreviation "PUE" must be clearly defined and spelled out.
33. All proposed easements shall be clearly shown in dashed lines on the plat including the size and locations as required by the affected utilities, public agencies and service companies.
34. A continuous five (5) foot "PUE" adjacent to the right-of-way on Wharf St. and Chetco Point Terrace shall be provided to be utilized for water related equipment (meters, valves, etc. and other utilities (electrical pedestals, street lights, telephone and other facilities).
35. The applicant shall be responsible to coordinate final acceptance of all proposed "PUE's" with the affected utilities, public agencies and service companies prior to final plat approval.

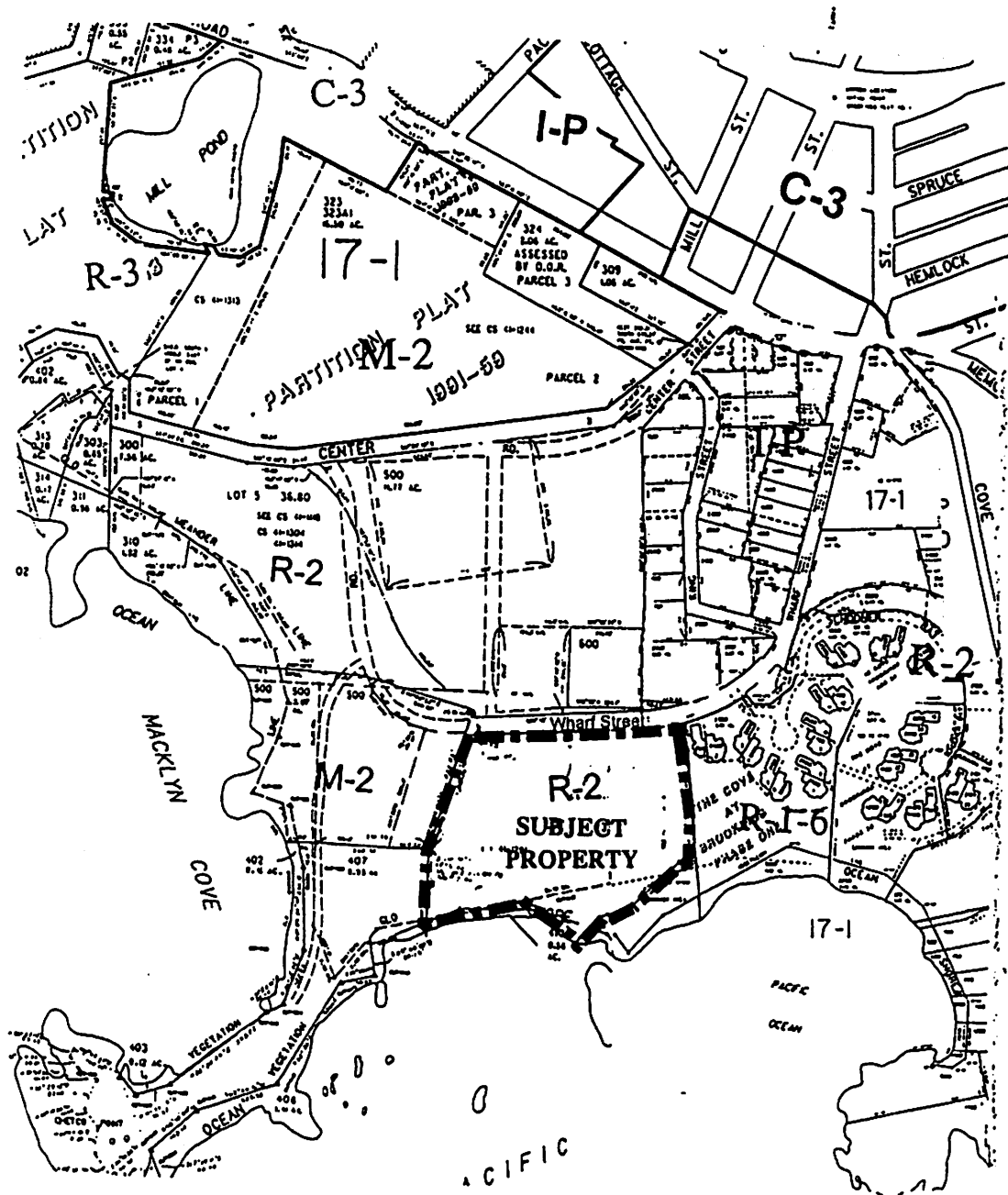
36. The applicant shall coordinate the placement of mailboxes with the U. S. Postal Service.

#### Restrictive Covenants

37. In order for retaining walls, fences, etc, to be constructed within the remaining public right-of-way in back of and abutting the sidewalks the applicant shall incorporate in the covenants a "hold harmless" clause absolving the city and/or utilities of any liability or responsibility for the replacement of such appurtenances within the right-of-way should it be necessary to remove same to make repairs to existing facilities or install new facilities therein.

#### Bond And Agreement

38. Prior to the Planning Commission certification of the final plat, the applicant shall install the required improvements.
39. The applicant shall file, to assure his full and faithful performance thereof, one of the following: 1) surety bond executed by a surety company authorized to transact business in the State of Oregon, 2) cash, or 3) an irrevocable standby letter of credit from a bank of savings and loan association. The assurance of full and faithful performance shall be for a sum approved by the City Manager sufficient to cover the cost of the improvements, engineering, and repair of existing streets and other public improvements damaged in the development of the subdivision, and must be approved by the City Attorney as to form and content. The performance bond shall guarantee the improvements to be free of defects for one (1) year after written acceptance by the City Manager.



Applicant: Bruce Bros. Inc.

Assessor's No: 41-13-07 AA Tax Lot 409

Size: 7.3 acres

Location: Wharf Street – Chetco Point Terrace

Zone: R-2 (Two-family Residential)



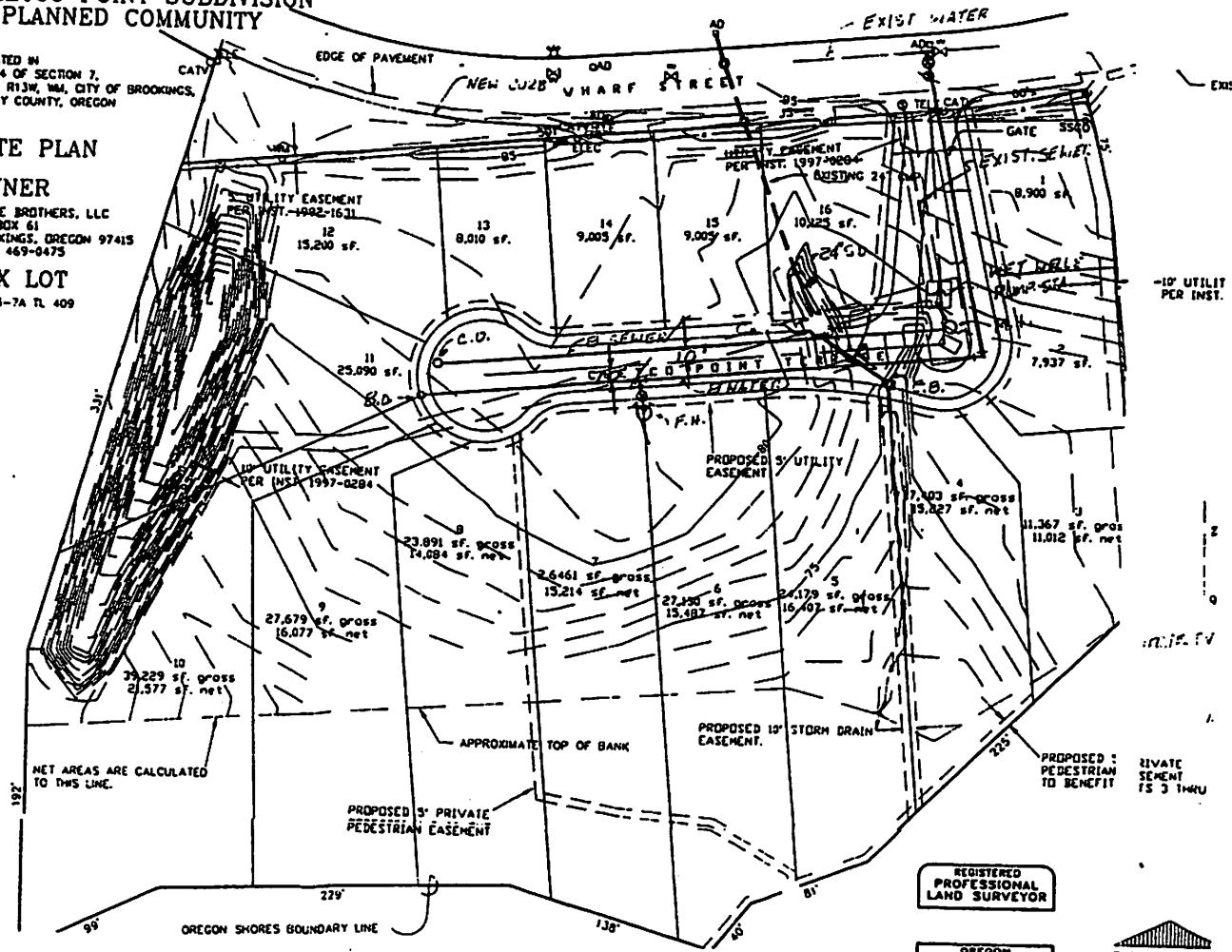
LOCATED IN  
NE1/4 OF SECTION 7. CA  
T41S, R13W, WM, CITY OF BROOKINGS,  
CURRY COUNTY, OREGON

**OWNER**

BRUCE BROTHERS, LLC  
P.O. BOX 61  
BROOKINGS, OREGON 97415  
(541) 469-0475

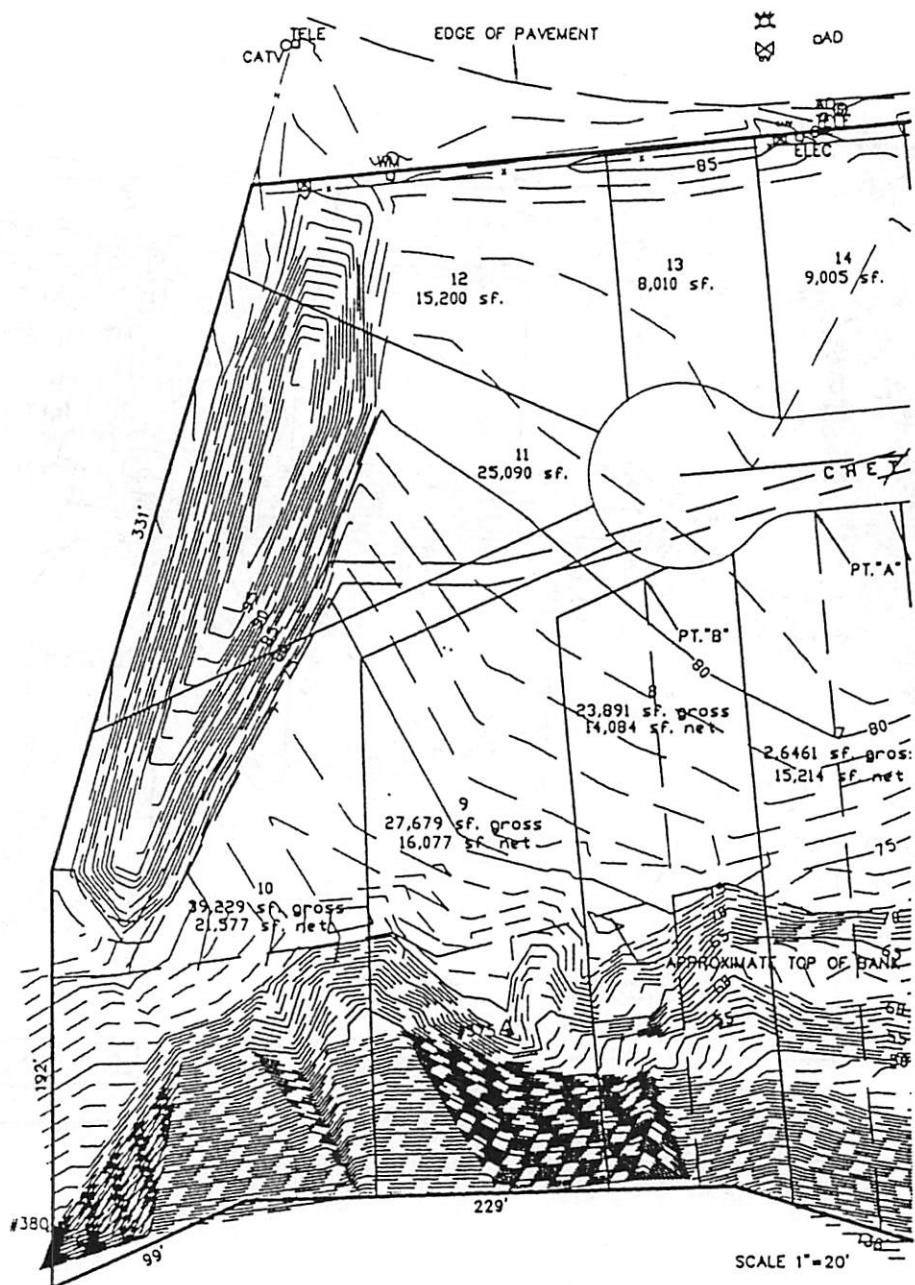
## TAX LOT

61-13-7A p. 409



**Zone:** R-2 (Two-family Residential)





Applicant: Bruce Bros. Inc.

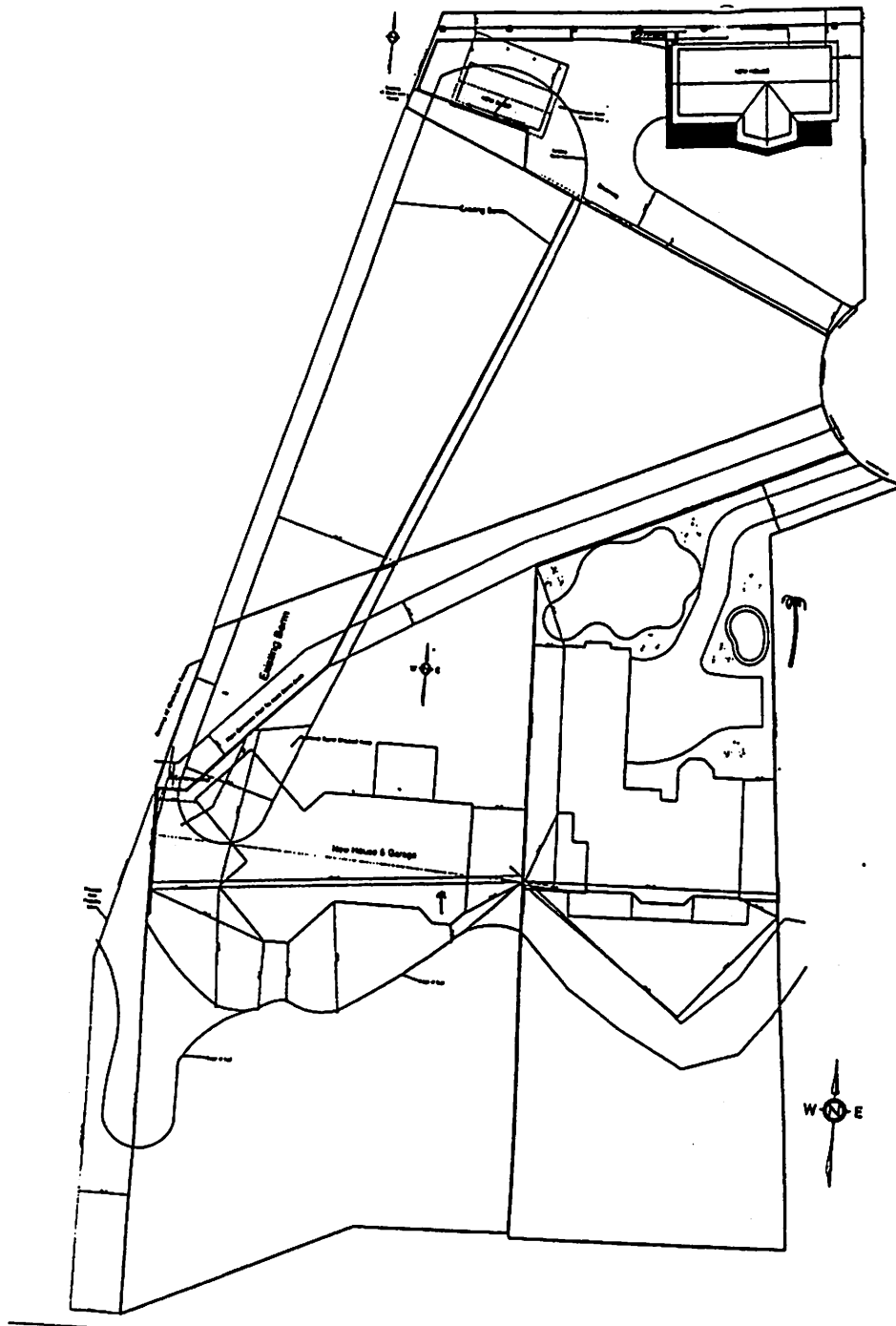
Assessor's No: 41-13-07 AA Tax Lot 409

Size: 7.3 acres

Location: Wharf Street – Chetco Point Terrace

Zone: R-2 (Two-family Residential)





Applicant: Bruce Bros. Inc.

Assessor's No: 41-13-07 AA Tax Lot 409

Size: 7.3 acres

Location: Wharf Street – Chetco Point Terrace

Zone: R-2 (Two-family Residential)





**APPLICANT'S EXHIBIT LIST**  
**FILE NO. SUB-6-02/MC-1**

**received**  
9-7-03  
LKB

<u>Exhibit.</u>	<u>Description</u>
A.	City of Brookings, Conditions of Approval for the Cove, Pg. 7, SUB-2-90 PUD (submitted 9/2/03).
B.	Letter, Noah Bruce, Bruce Brothers, Inc., to The Cove Board of Directors dated January 15, 2003 (submitted 9/2/03).
C.	Diagram, Chetco Point Terrace subdivision, Brookings wastewater treatment plant, showing direction of prevailing wind from the sludge holder (submitted 9/2/03).
D.	Wind evaluation - The Cove project berm design (submitted 9/2/03).
E.	Overlay, Part 1, Cypress Cove/The Cove preliminary plat design (submitted 9/2/03).
F.	Overlay, Part 1, Cypress Cove/The Cove preliminary plat design (submitted 9/2/03).
G.	Proposed Modifications to Existing Berm, T. J. Bossard, Inc., 9/26/03.
H.	Graphic - Chetco Point Terrace with berm, proposed changes, and WWTP.
I.	Wastewater treatment plant improvement update, January 2001.
J.	Oregon Secretary of State, Corporation Division, business entity date; Western Pacific Development, 9/25/03.
K.	Letter to Jerrold Boscoe, with mailing information, September 26, 2003.
L.	Letter, 9/8/03, John Babin to John Bischoff.
M.	Calculation of Material Removal - berm - to be submitted.
N.	CC&R's - The Cove.

**EXHIBIT G**

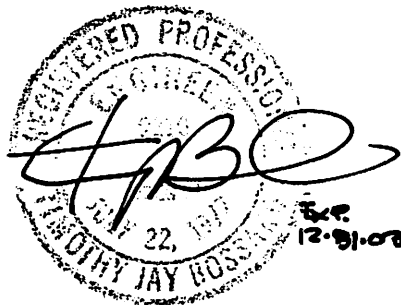
**PROPOSED MODIFICATIONS TO  
EXISTING BERM AT  
THE COVE, BROOKINGS, OREGON**

**For:**

**BRUCE BROTHERS, INC.  
P. O. Box 61  
Brookings, Oregon 97415  
Project # P03-012**

**by**

**T.J. BOSSARD, INC.  
133 NW "D" Street  
Grants Pass, Oregon 97526**



**September 26, 2003**

## **I. Introduction:**

In approximately 1992, the existing berm on the original Agnew property, hereinafter referred to as the subject property, was designed by our office as a part of the overall design of The Cove Subdivision, Brookings, Oregon (Phases I through IV). This design and construction process took place over a period of approximately three years and included initial inventory of existing conditions on the property, pre-application conference with the City of Brookings, tentative plan submittal and approval through the City of Brookings, and construction drawings and specifications for the installation of improvements on the subject site. Also during that process several changes and modifications to the original design took place prior to actual construction drawings. One of these changes was the design of the berm between the development and the original Treatment Plant. The berm design was as a condition of the original tentative plan final approval. The eventual design and approval through the City of the berm was as a result of research regarding the extent of Treatment Plant odors as generated by the treatment plant at that time, the climatological conditions prevalent to this area of the City, research with agronomists to determine the most appropriate type and density of vegetation for aromatic enhancement, and research with meteorologists to determine the appropriate configuration and geometric specifications for the berm. The berm design as was submitted for City approval is shown in the Appendix to this Report (page A-1).

As a part of a recent approval for modification of the original design by the Bruce Brothers, a portion of Condition 9 (see Appendix, page A-2) states that no development shall encroach into or onto the berm. The Bruce Brothers are proposing to build homesites that require minor grading to both ends of the berm. This Report will address the impact of the improvements on the overall performance of the berm as designed.

## **II. Original Design of the Berm.**

In the early 1990s, as a part of the original considerations for layout of housing, the Treatment Plant as it then existed emitted noticeable odors during certain times of operation and limited times of the year. Therefore, consideration was given to mitigating these odors with reference to residential development. The concept of the berm was determined desirable to provide a separation from the adjacent phases of the residential project both visually and attempt to control the emission of odors directly to the residential development on the subject property. In order to design the berm, meteorologists and wildlife biologists were employed along with our engineering staff to design both the configuration (i.e., height, width, and length) and the planting and landscape of the berm to most efficiently mitigate potential odors from the berm relative to prevailing winds and weather. Based upon input from these professionals (see Appendix, page A-4 through A-6), our office designed the geometry as shown in the Appendix, page A-1. Upon completion of the design and approval by the City, the berm was installed by the developer. No landscaping plant types were specified through our office but irrigation and planting did take place as a part of the original construction.

It is our recollection that the final planting and landscaping of the berm was to take place during development of The Cove project, Phases III and IV. Because Phases III and IV were never developed, it is our understanding that the final landscaping was not accomplished.

### **III. Proposed Modifications to the Berm.**

On the enclosed Site Plan, we have shown an overlay of the as-built conditions of the original berm, the proposed improvements by Bruce Brothers, and the relative orientation to the elements of the present Treatment Plant. The Bruce Brothers have cut a section of the south end of the berm as shown on the drawings (shaded) varying from 0 to 13 feet in height. It is our understanding that the City of Brookings has also made modifications to the west side of the berm, the extent of which is approximately shown on the Site Plan. This was apparently to accommodate the conditions of the September 3, 2002 approval to provide a walkway from Wharf Street to the vegetation line (Condition 10, see Appendix, page A-3).

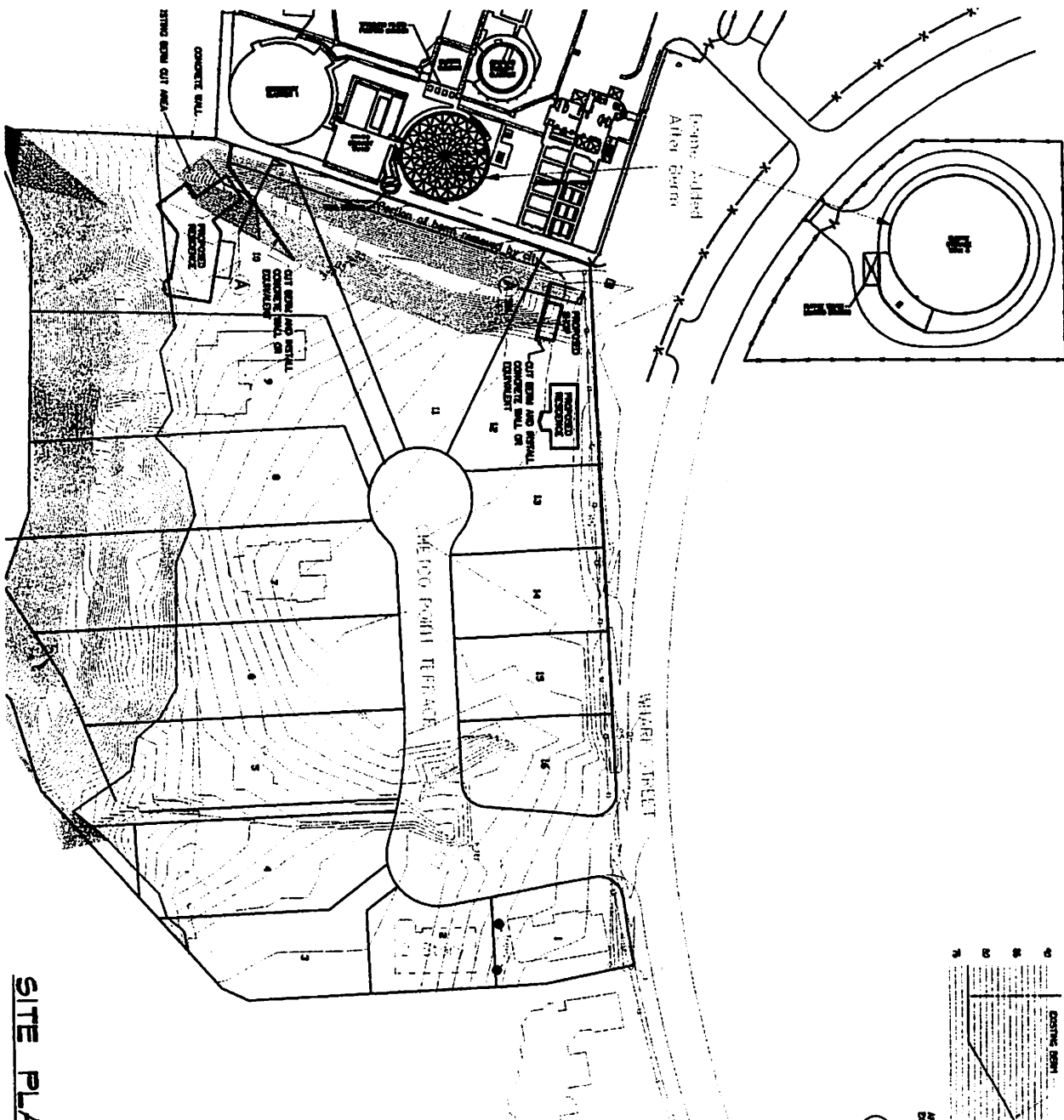
It should be noted that after initial construction of the berm, the Treatment Plant has undergone several improvements to the overall plant, one of which was to install a dome cover over the trickling filter tank where most of the odor originates from the creation of hydrogen sulfide in the treatment process. This cover should contain these odors and prevent their propagation to adjacent properties. The sludge storage tank, installed on the north side of Wharf Street after the berm was built, may emit significant odors, particularly during transfer of sludge to trucks, and will not be protected by the present berm.

The Bruce Brothers propose to install a retaining wall as shown on the site plan and backfill behind it to the original height of the berm on both the north and the south end of the berm. These walls, when properly designed, will structurally accommodate the weight of the berm and any surcharges imposed by pedestrian or vehicular traffic behind the wall. These walls will be designed by a licensed engineer and submitted to the City for approval.

A conceptual cross-section taken at the highest point of the retaining wall is shown on the Site Plan. The flow pattern of wind currents are demonstrated on this map and show that the absence of fill material does not affect the deflection of wind or odors differently with or without the removal of the proposed fill. The air from the Treatment Plant is mixed with fresh air at a higher elevation and minimizes odors to the adjacent properties.

The combination of the following improvements since the original berm design will insure performance of the berm to include the Bruce Brothers' modifications:

1. Improvements to the Treatment Plant as inventoried and identified in the Appendix, pages A-7 through A-9.

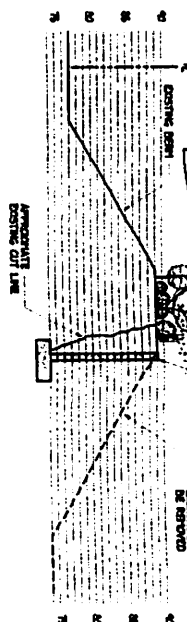


# **SITE PLAN**

- SOURCE OF DRAWING DATA**
1. CHETCO POINT SUBDIVISION PROPERTY LINES, R.O.M., BUILDING LOCATIONS AND SEWER TREATMENT PLANT MADE FILE SUPPLIED BY DON RISK, CONSTRUCTION
  2. EXISTING TOPOGRAPHY AND BOUNDARY DATA SUPPLIED BY STOUTZEN ENGINEERING AND FORESTRY

Prevailing Wind W/N.W. in (Summer)  
 Greater than 3 mph (7%) of time July  
 Less than 3 mph (52%) of time July  
 Prevailing Wind W/N.W. in (Winter)  
 Greater than 3 mph (35%) of time January  
 Less than 3 mph (65%) of time January

## **SECTION AT BERM**



**BRUCE BROTHERS**  
 PROPOSED IMPROVEMENTS TO BERM

BRUCE BROTHERS  
 BROOKINGS, OREGON



**T.J. BOSSARD, INC.**  
 Civil & Structural Engineering  
 133 N.W. "D" Street  
 Grants Pass, OR. 97526  
 TEL : (541) 479-5774  
 FAX : (541) 471-8084



2. The minimal effect of the wind currents as identified by meteorologists, Appendix, pages A-4 through A-6.
3. Final enhancement of the berm with indigenous trees and plants such as rhododendrons and conifer trees.

In our opinion, the above will mitigate the original concerns of the Planning Commission in the original approval and subsequent concerns of the Planning Commission in the approval of the modifications to tentative plat of September 3, 2002.

#### **IV. Summary and Conclusions.**

The study of wind flow and currents is quantifiable and can be accurately determined. However the behavior of odors within those wind currents is not easily defined. The solution described in this Report utilizes scientific methods to deflect the wind currents. These wind currents do occur at limited times of the year in small quantities, in an upward direction. The solution described also filters those wind currents through aromatic planting and landscaping in order to both disguise and neutralize the limited (since the upgrading of the plant over the last ten years) treatment plant odors. We therefore conclude, as we did in our February 4 , 2003 letter (see Appendix, page A-10), that the proposed improvements will provide an equivalent performance of the berm to the original construction in deflecting and treating the wind and odors originating from the Treatment Plant.

This Certification is based, to the best of our knowledge, upon accurate data as presented on the Site Plan and the analysis has been performed correctly and in accordance with sound engineering practices. No liability either expressed or implied is assumed by this Report for on-site or adjacent property conditions not specifically addressed in this Report, or for conditions presently existing or which may arise in the future that are not directly observable or determinable at the time of preparation of this analysis and design.

## **APPENDIX**

### **Contents:**

1. Original Berm Design
2. Bruce Brothers Conditions of Approval (#9 and #10)
3. Consultants to Original Design
4. Recent Sewer Treatment Plan Improvements
5. February 4, 2003 letter from T.J. Bossard to Bruce Brothers



A-1 original  
Berm Design

## **CONDITIONS OF APPROVAL**

**SUB-6-02**

**Chetco Point Subdivision**

**September 3, 2002**

### **General Conditions**

1. The final plat shall be in substantial conformance with the submitted preliminary plat as amended herein and as approved by the Planning Commission.
2. Approval of this preliminary plat will expire one (1) year from approval unless the final plat is approved and recorded or unless an extension of time is requested and approved. The extension of time may be granted by the Planning Commission with good cause and will not exceed one (1) year. The recordation of the final plat can be phased to match construction phases of the project within the one-year period. Should the applicant wish to proceed with the subdivision following expiration of the one (1) year extension, the preliminary plat process must be re-initiated and resubmitted to the Planning Commission for review and approval.
3. The size and shape of all lots shall conform substantially with the approved preliminary plat. Substantial changes to the approved preliminary plat require re-approval by the Planning Commission.
4. All lots shall conform to the provisions of the R-2 (Two Family Residential), and to all other applicable provisions of the Land Development Code.
5. Improvement work, including grading and fill, shall not be commenced until the City Engineer has reviewed and approved construction plans for adequacy.
6. All costs of plans checks and inspections by the City Engineer shall be paid by the applicant to the city.
7. Information on the construction plans shall be pursuant to the City of Brookings Standard Specifications document dated August 1988.
8. No houses shall be constructed on the subject property until all improvement work has been completed.
9. The applicant shall establish and record a homeowners association that contains the following provisions:
  - Provisions for the continued maintenance of the landscaping on the berm.
  - Provisions for the continued maintenance of Chetco Point Terrace.
  - A clause that no development shall encroach into or onto the berm.
  - A hold harmless holding the city harmless due to odor or noise due to the normal operation of the adjoining wastewater treatment plan.
  - A hold harmless clause holding Pacific Wood Laminates harmless from noise and odor due to normal operation of the plywood mill
  - Provisions the prevent Lots 4 thru 7 from being divided further.

- Provisions stating that Lots 3 thru 10 are subject to the provisions of Section 100, Hazardous Building Site Protection/Hillside Development Standards, of the city's Land Development Code and that no construction will take place until the provisions have been met.
- Provisions prohibiting Lots 1 and 12 thru 16 as shown on the approved preliminary plat map, from taking access from Wharf St.



10. The applicant shall grant to the city a permanent easement 15 feet in width along the westerly boundary of the subject property from Wharf St. to the property line between Chetco Point Park and the subject property. The city and applicant may explore the possibility of increasing the easement to the top of the berm with a fence along the top of the berm.

#### Street Conditions

11. The applicant shall construct curb, gutter, sidewalk and pavement as necessary along the Wharf St. frontage of the subject property. The location and alignment of the sidewalk, curb and gutter will be as shown on the approved preliminary plat map.
12. The applicant shall construct the new cul-de-sac street to city standards, with curb, gutter and sidewalk on both sides. The entrance gate shall be position no less than 25 feet from the curb line of Wharf St.
13. All street improvements shall include any required underground storm drain facilities.
14. All street improvements must be approved by the City Engineer prior to construction.

#### Sanitary Sewer And Storm Drain Conditions

15. The applicant shall extend sewer service mains into the new cul-de-sac street. Service laterals shall be extended to each lot within the subdivision.
16. Prior to construction of the cul-de-sac street, the applicant shall coordinate with the City Public Works and Wastewater Treatment Departments to ensure sufficient work area around the existing pump station.
17. Sanitary sewer installation shall comply with the standards of the State of Oregon Department of Environmental Quality and the provisions of Brookings City Ordinance No. 430, and Standard Specifications Document, dated August, 1988.
18. The location of all sewer laterals shall be appropriately marked on the curb in a permanent manner.
19. The applicant shall provide an engineered storm drain plan prior to any construction
20. The drainage shown between Lots 4 and 5 of the approved preliminary plat map shall be engineered and designed in such a manner that the storm drain shall not change the drainage pattern or increase runoff across the adjoining property. (Amended by Commission, 9-3-02)

## **WIND EVALUATION THE COVE PROJECT BERM DESIGN**

### **SITUATION**

A residential area, The Cove, is planned adjacent to the Brookings Waste Water Treatment Plant (WWTP). The WWTP is located to the west and northwest of The Cove project and at approximately the same elevation. An earth berm is being constructed along the property line common to The Cove and the WWTP.

### **CONCERN**

Odors from the WWTP could be transported by wind and be detectable in The Cove residential area.

### **TASK**

Analyze potential air movement and weather conditions that could affect the area of concern.

### **FACTS**

Historical wind data for the Brookings area provided by the National Weather Service, indicate the following:

For January (representative of winter conditions) winds of greater than 3 mph from a west-northwest direction could be expected to occur approximately 3% of the time. Winds of variable direction of 3 mph or less occur 18% of the time.

For July (representative of summer conditions) winds of greater than 3 mph from a west-northwest direction could be expected to occur approximately 7% of the time. Winds of variable direction of 3 mph or less occur 52% of the time.

### **THEORY**

The time of day and topography would have an impact on the total effect of air movement. The category of variable direction winds of 3 mph or less could be affected as theorized below.

Winter conditions - During the longer night time hours, when winds are generally lightest, the lower layers of air near the earth surface cool more rapidly than the nearby ocean surface. The cooler, heavier air from the land, would tend to drain down-slope and be drawn toward the ocean, away from The Cove, by convection. The earth berm along the property line would act somewhat like a dam. This would reduce the chances of variable winds affecting The Cove.

Summer conditions - Variable wind direction with speeds of 3 mph or less would be affected by heating of the earth's surface during the longer daylight hours. The heating would cause the air to become turbulent and rise.

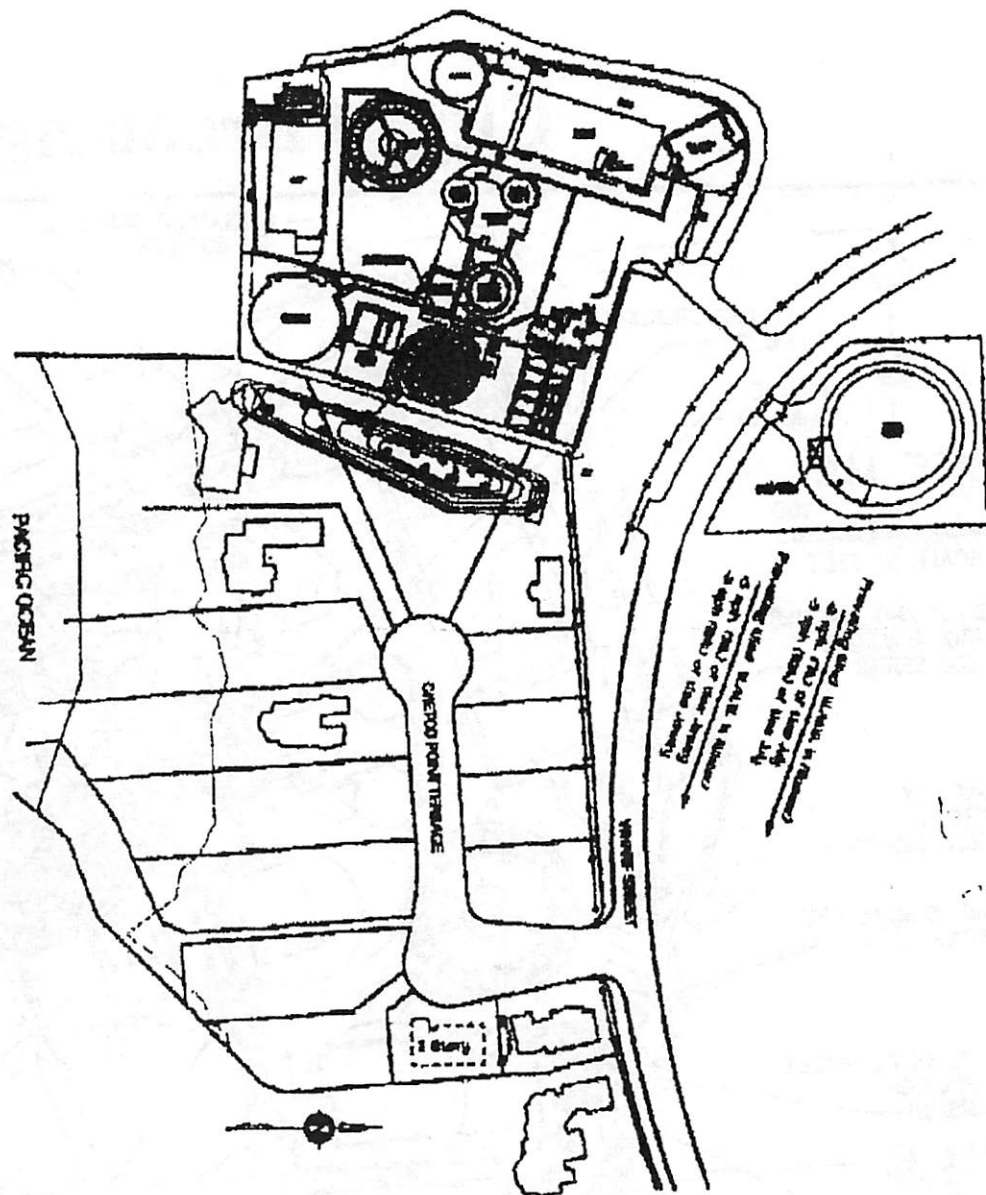
Turbulence caused by higher average wind speeds from the west-northwest would aid in mixing the air.

Both of these conditions would tend to disperse odors into the atmosphere, thereby mitigating the effect on adjacent areas.

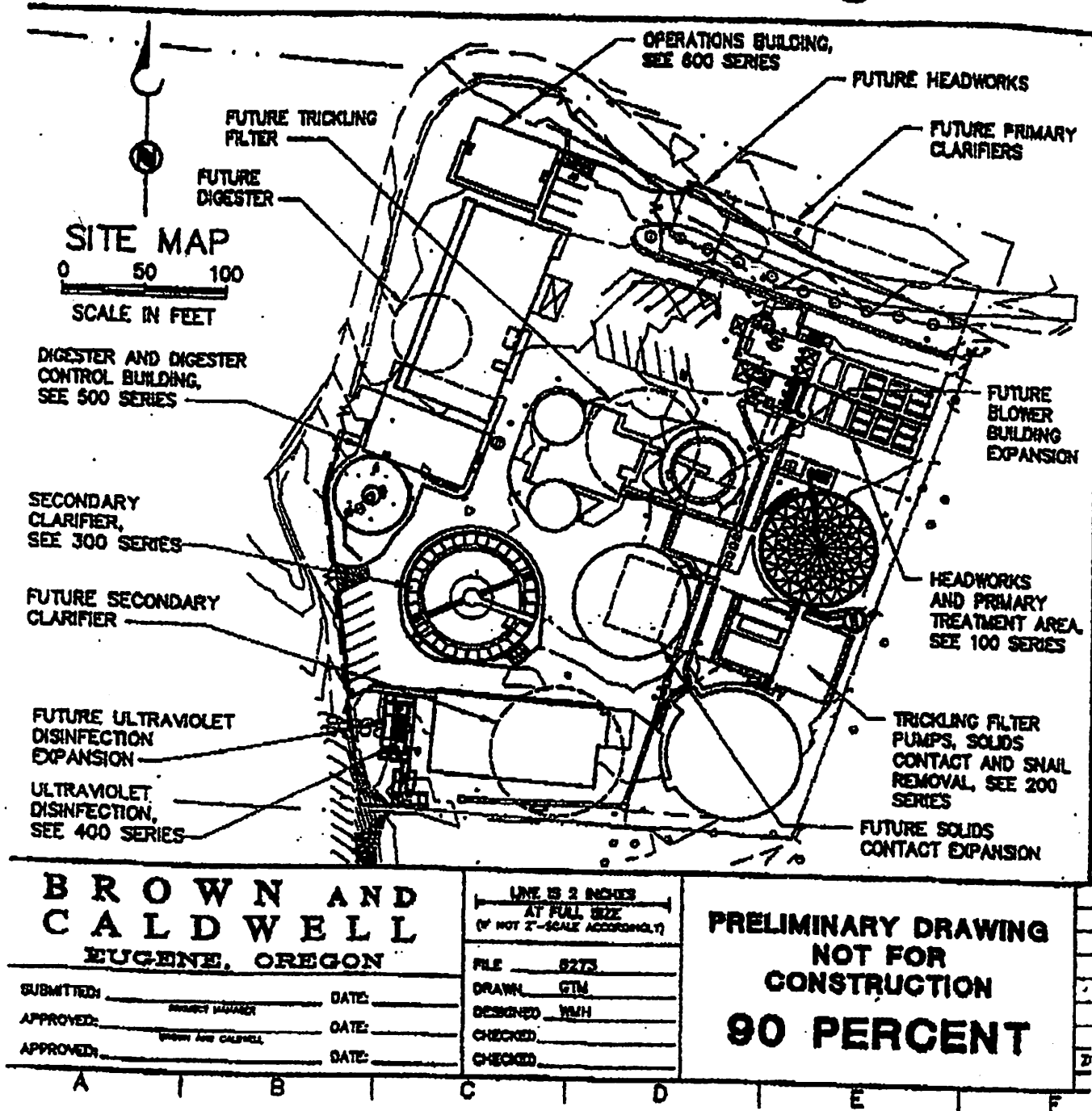
Don Munson

A handwritten signature in cursive script that reads "Don Munson".

National Weather Service Observer,  
Brookings Area



# City of Brookings



## Wastewater Treatment Plant Improvements



# Wastewater Treatment Plant Improvement Update

November 1, 2000

**"All major structures are in place."**

Chief Treatment Plant Operator Joe Ingwersen,  
October 25, 2000



As of October 25, 2000, all major structures of the Brookings Wastewater Treatment Improvements Project were in place. Wildish Building Co., the prime contractor, continues finishing work having curbs, gutters and paving done in front of the plant. The new grit classifier is being plumbed along with the snail removal system located between the trickling filter and the aeration basins. Technicians from Walker, Varic & Western Burner Companies have been on location starting the new primary digester gas systems.

Brookings Wastewater Treatment Plant as viewed from air, Summer, 2000. Major improvements to plant are shown: 1) new sludge storage tank; 2) new trickling filter dome; 3) site of new secondary clarifier; 4) new ultraviolet disinfection system building; 5) extension of Wharf Street done in conjunction with improvements.

## Plant operational since 1950s

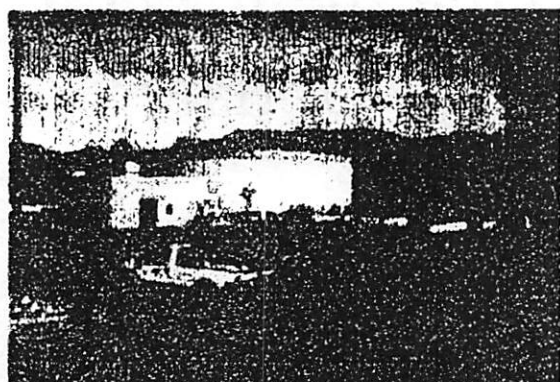
The City of Brookings has operated a wastewater treatment plant at Chetco Point since the early 1950s. Although the original plant provided only primary treatment prior to ocean discharge the plant has been expanded since then into a secondary treatment regional facility. In 1991 a major plant upgrade was completed which included a new secondary treatment process. Coupled with the existing process units the upgrade provided the capability to handle peak flows and provide backup in case of equipment failure. Also included was a new ocean outfall.

## Upgrade authorized in 1997

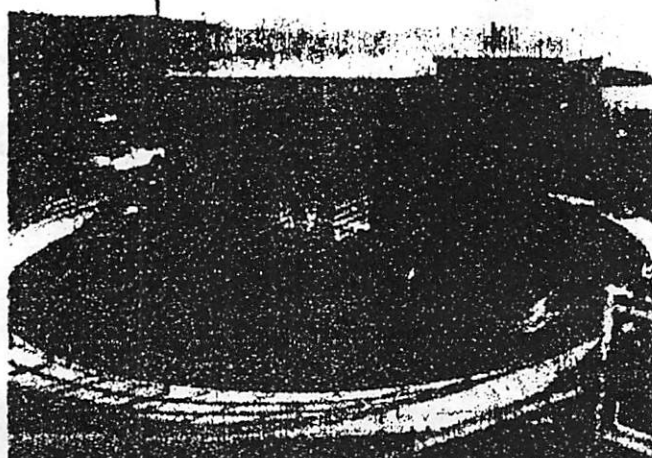
In 1997 Brookings voters authorized a \$13.1 million project to address solids treatment, disinfection, upgrading the liquid stream treatment, odor control, operations building, pump station work and inflow and infiltration rehabilitation (collection system repairs). Stage Two of the Brookings Wastewater Treatment Plant Expansion was bid February 11, 1999. Wildish Construction won the bid and the notice to proceed was issued on April 28, 1999. The plant upgrade will be complete and operational by April 30, 2001.



*Improvements begun in April 1999  
were completed December 2000.*



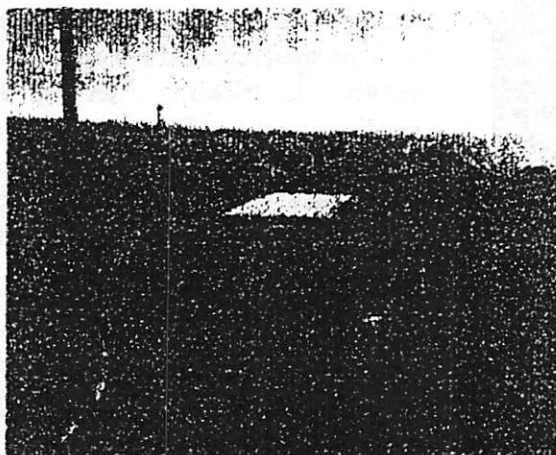
New asphalt where old rock trickling filter was removed. Odor control dome is evident on trickling filter.



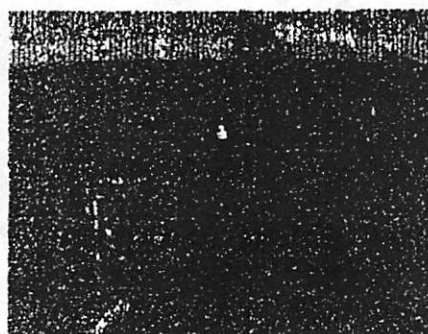
New secondary clarifier #2 and Public Works shop building are located at rear of yard.

## *The Treatment Plant's New Look*

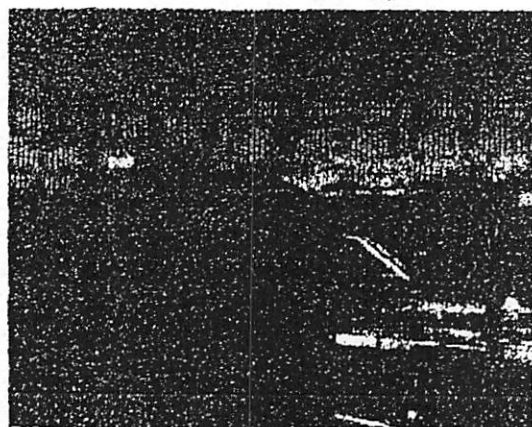
*pictures taken January 15, 2001*



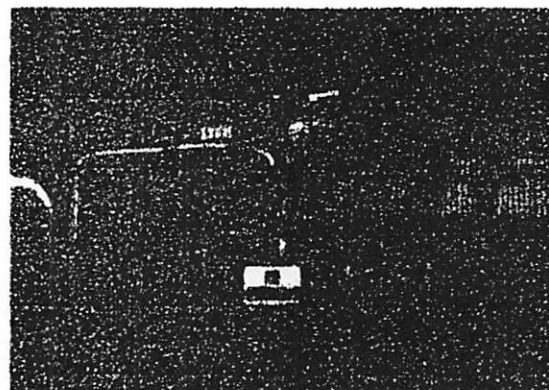
New ultraviolet building is located to the right of the Public Works shop.



Located between the trickling filter and aeration basins is a new snail removal system.



The new secondary clarifier #2 sits in the foreground. Behind is the new primary digester and digester control building.



Veric gas regulators and methane gas digester mixing system sit atop new primary digester.

*Bond measure passed by Brookings voters in September 1997 allowed funding of Treatment Plant improvements.*



**T. J. BOSSARD, INC.**  
**CIVIL & STRUCTURAL ENGINEERING**

February 4, 2003

Bruce Bros., Inc.  
Mr. Noah Bruce  
P. O. Box 61  
Brookings, Oregon 97415

**Subject: Modification of earthen berm at the City of Brookings, Waste Water Treatment Plant.**

Dear Mr. Bruce,

With reference to our conversation regarding the Subject Berm, I have reviewed the sketches which describe the structures which you propose to install on Lot 10 and 12 adjacent to the berm.

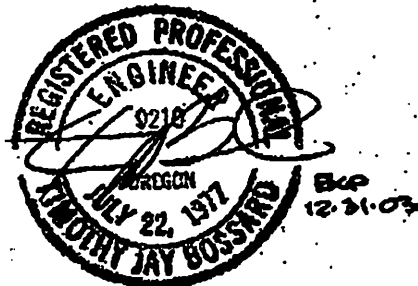
Based upon a review of our original design and location of the berm, its our opinion that your proposed structures can be constructed by using retaining structures and regrading portions of the berm. This work, after our final design and approval of the City Engineer will provide equivalent performance of the berm in providing site screening and wind deflection.

We will be available to provide final-engineering construction drawing for your proposed improvements upon approval of the City Council of the concept sketches, which you have provided us.

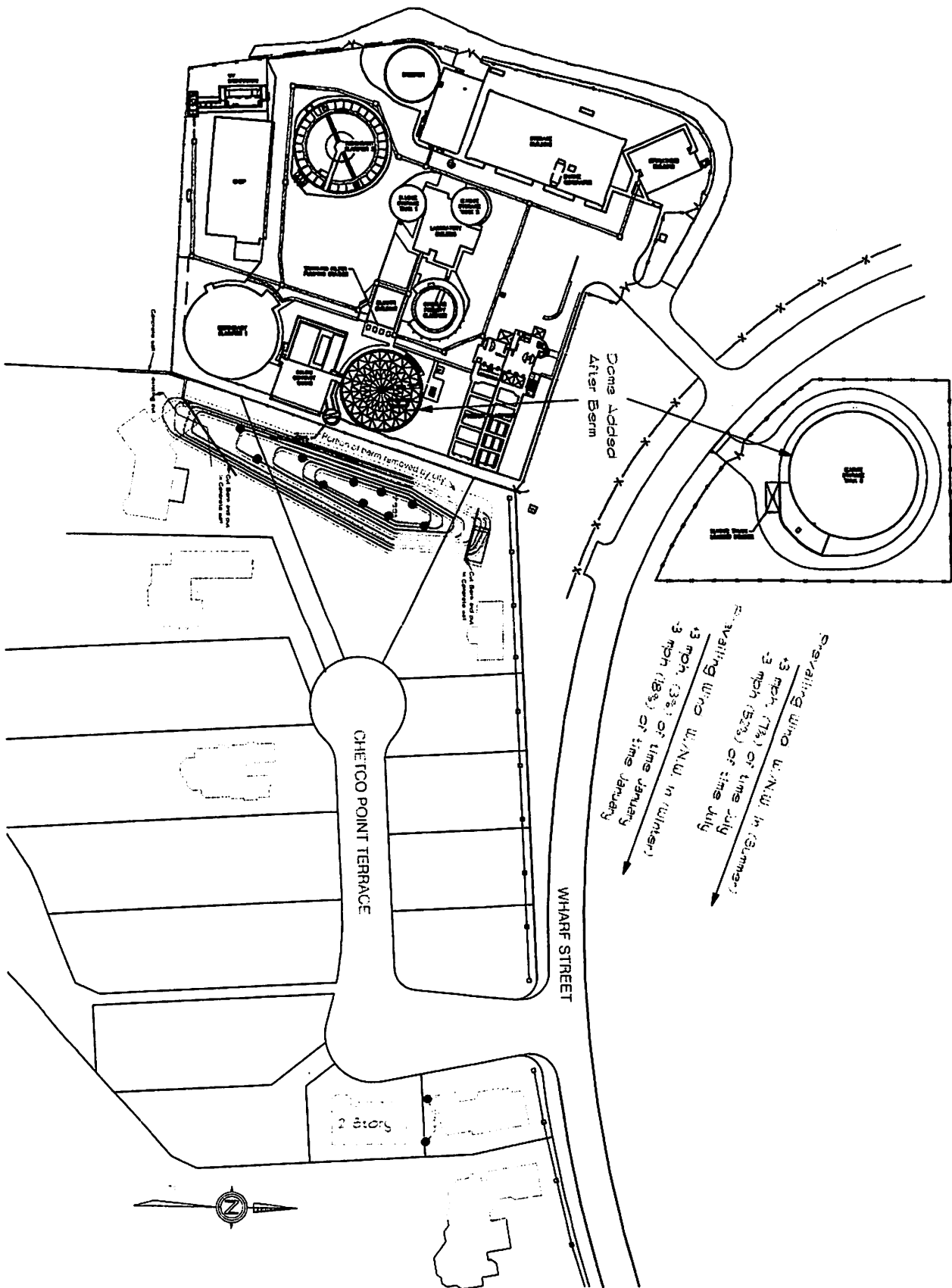
If you have any questions or comments do not hesitate to call.

Sincerely,

T.J. Bossard, P.E.  
President



**EXHIBIT H**

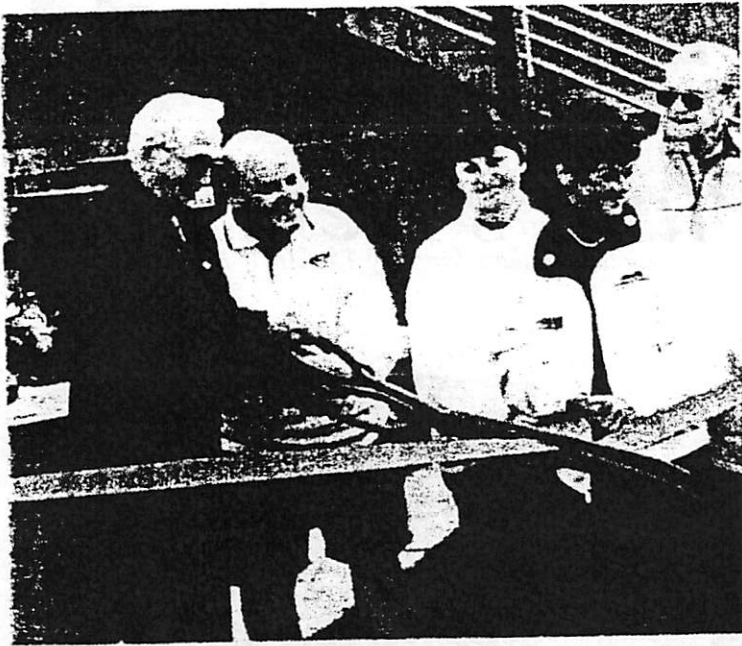




# Wastewater Treatment Plant Improvement Update

January 2001

## *Ribbon cutting ceremony signals completion of \$10.1 million upgrade*



Brookings Mayor Bob Hagbom and former City Manager Tom Weldon snip the ribbon signifying the completion of the Brookings Wastewater Treatment Plant Upgrade project.

Ron Walz, Brown and Caldwell Project Engineer, said the ribbon-cutting ceremony "marks a milestone in the history of the community's support of environmental quality. What I admire about Brookings is . . . **this community has completed what they said they were going to do.**" Curry Coastal Pilot's editorial of January 13 stated ". . . it is a **community accomplishment . . . they invested in the future, and that is something of which we can be proud.**"

Construction of the newly completed improvements began in April 1999 and was completed in December, 2000. With the completion of the upgrades the treatment plant is estimated to have sufficient capacity for a population base of up to 16,400 people which is projected to serve the Brookings Harbor area through the year 2015.

Representatives from the Oregon Department of Environmental Quality, project engineering firm Brown and Caldwell, prime contractor Wildish Building Company, Curry County Commissioners, and the City of Brookings watched as Mayor Bob Hagbom and former City Manager Tom Weldon cut a ribbon signifying the completion of the \$10.1 million upgrade to the Brookings Wastewater Treatment Plant.

Former Mayor Nancy Brendlinger, who worked heart and soul on passing a bond measure for financing the improvements was unable to attend but sent word that she was there "in spirit."

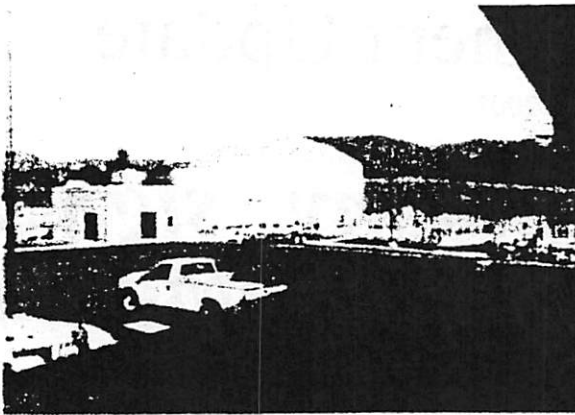
Special notice was given to contributions by city staff members Community Development Director Leo Lightle, Chief Plants Operator Joe Ingwersen, Public Works Supervisor Dennis Barlow and Public Works Inspector John Cowan.



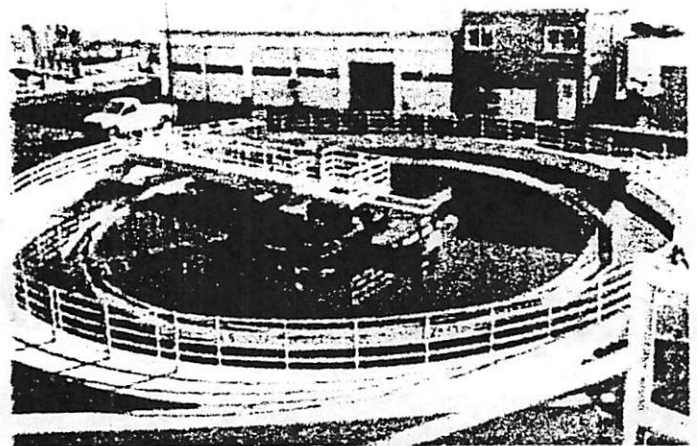
Councilor Frances Johns cuts cake in newly completed lunchroom at the Wastewater Treatment Plant. Following the ribbon cutting the crowd enjoyed cake and coffee.



*Improvements begun in April 1999  
were completed December 2000.*



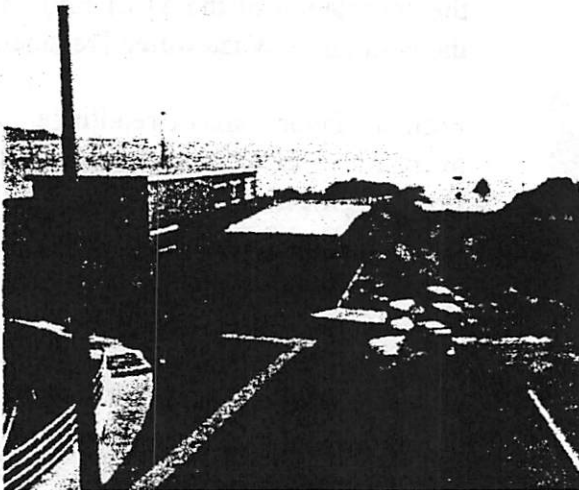
New asphalt where old rock trickling filter was removed. Odor control dome is evident on trickling filter.



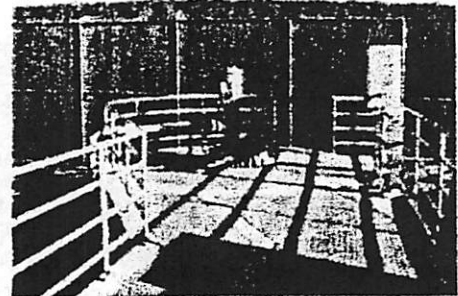
New secondary clarifier #2 and Public Works shop building are located at rear of yard.

## *The Treatment Plant's New Look*

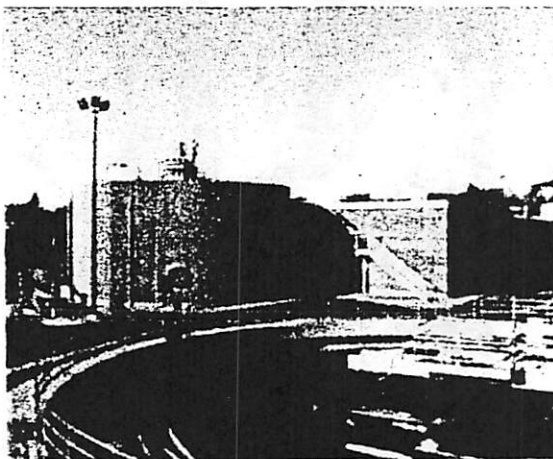
*pictures taken January 15, 2001*



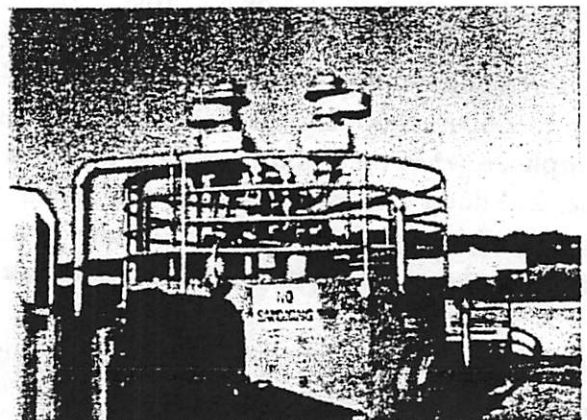
New ultraviolet building is located to the right of the Public Works shop.



Located between the trickling filter and aeration basins is a new snail removal system.



The new secondary clarifier #2 sits in the foreground. Behind is the new primary digester and digester control building.



Veric gas regulators and methane gas digester mixing system sit atop new primary digester.

*Bond measure passed by Brookings voters in September 1997 allowed funding of Treatment Plant improvements.*

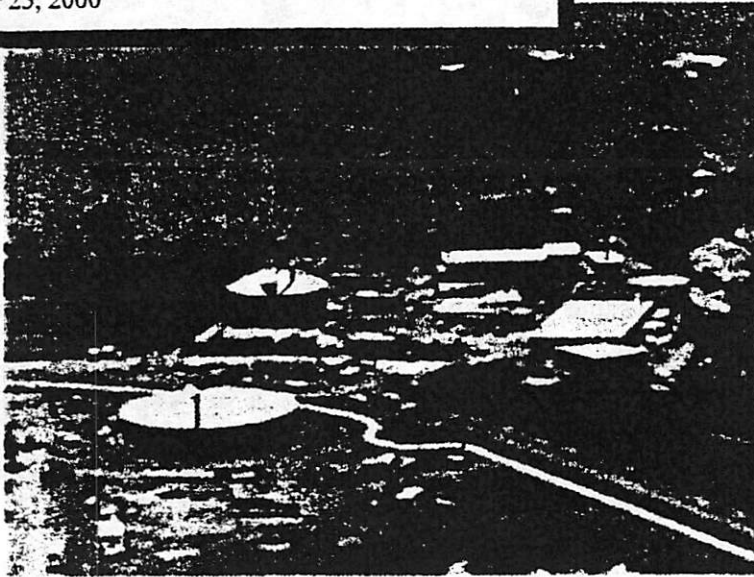


# Wastewater Treatment Plant Improvement Update

November 1, 2000

**"All major structures are in place,"**

Chief Treatment Plant Operator Joe Ingwerson,  
October 25, 2000



As of October 25, 2000, all major structures of the Brookings Wastewater Treatment Improvements Project were in place. Wildish Building Co., the prime contractor, continues finishing work having curbs, gutters and paving done in front of the plant. The new grit classifier is being plumbed along with the snail removal system located between the trickling filter and the aeration basins. Technicians from Walker, Varic & Western Burner Companies have been on location starting the new primary digester gas systems.

Brookings Wastewater Treatment Plant as viewed from air, Summer, 2000. Major improvements to plant are shown: 1) new sludge storage tank; 2) new trickling filter dome; 3) site of new secondary clarifier; 4) new ultraviolet disinfection system building; 5) extension of Wharf Street done in conjunction with improvements.

## Plant operational since 1950s

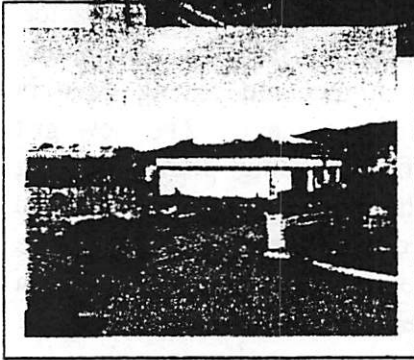
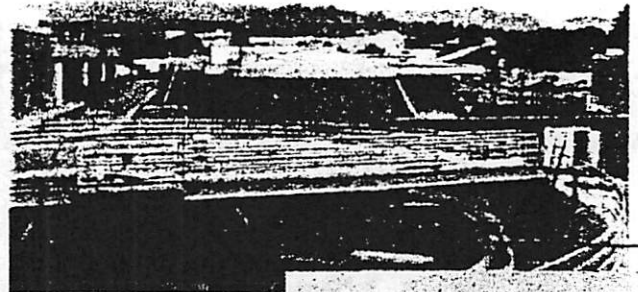
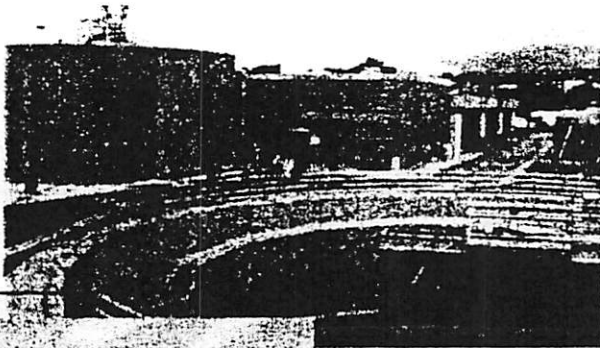
The City of Brookings has operated a wastewater treatment plant at Chetco Point since the early 1950s. Although the original plant provided only primary treatment prior to ocean discharge the plant has been expanded since then into a secondary treatment regional facility. In 1991 a major plant upgrade was completed which included a new secondary treatment process. Coupled with the existing process units the upgrade provided the capability to handle peak flows and provide backup in case of equipment failure. Also included was a new ocean outfall.

## Upgrade authorized in 1997

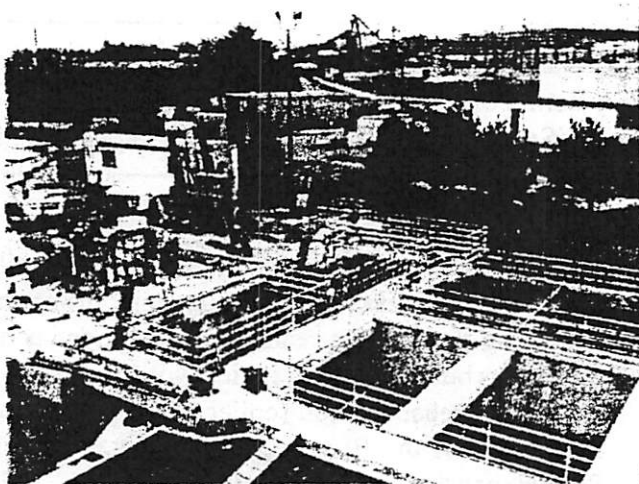
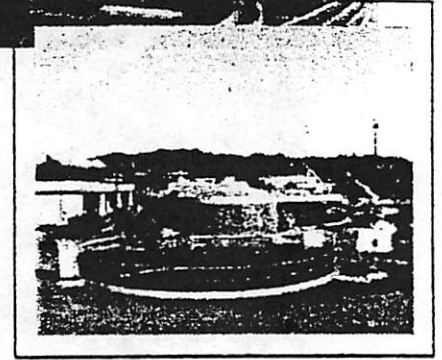
In 1997 Brookings voters authorized a \$13.1 million project to address solids treatment, disinfection, upgrading the liquid stream treatment, odor control, operations building, pump station work and inflow and infiltration rehabilitation (collection system repairs). Stage Two of the Brookings Wastewater Treatment Plant Expansion was bid February 11, 1999. Wildish Construction won the bid and the notice to proceed was issued on April 28, 1999. The plant upgrade will be complete and operational by April 30, 2001.

# Before and After\*

## at the Wastewater Treatment Plant

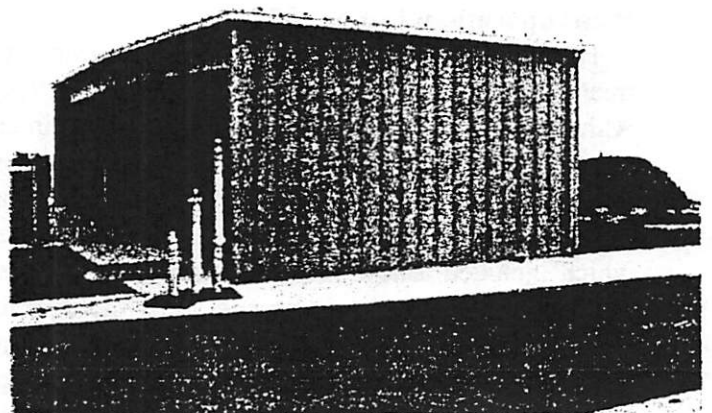


Taken from the same locations, larger pictures show changes since February, 2000. Completed primary digester and digester control building are in picture on left. New secondary clarifier replaces the old chlorine contact basin.



Construction continues on new primary clarifier near north edge of plant. New sludge storage tank can be seen at upper right.

As of October 25, construction was approximately 96% complete.



Completed new ultraviolet disinfection system building is located near southwestern edge of plant.

\*pictures taken 10/26/2000

Prepared by the Community Development Department of the City of Brookings  
If you have any questions please call (541) 469-2163, ext. 203



# Wastewater Treatment Plant Improvement Update

February 1, 2000

## Plant operational since 1950s

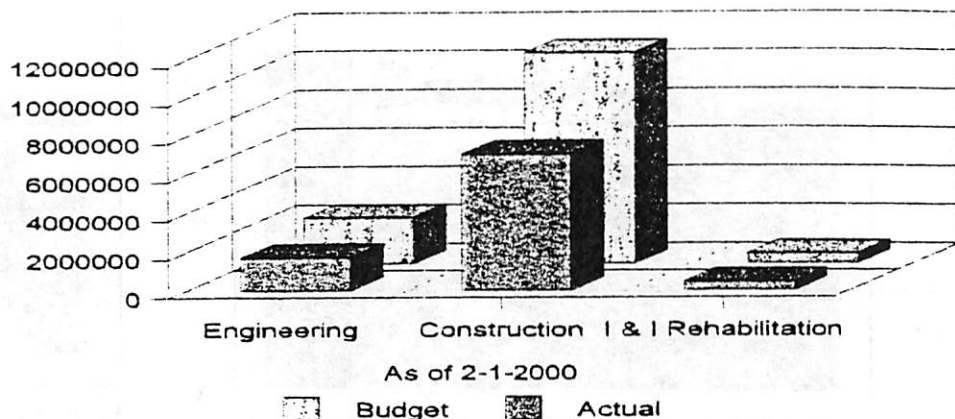
The City of Brookings has operated a wastewater treatment plant at Chetco Point since the early 1950s. Although the original plant provided only primary treatment prior to ocean discharge the plant has been expanded since then into a secondary treatment regional facility. In 1991 a major plant upgrade was completed which included a new secondary treatment process. Coupled with the existing process units the upgrade provided the capability to handle peak flows and provide backup in case of equipment failure. Also included was a new ocean outfall.

## Upgrade authorized in 1997

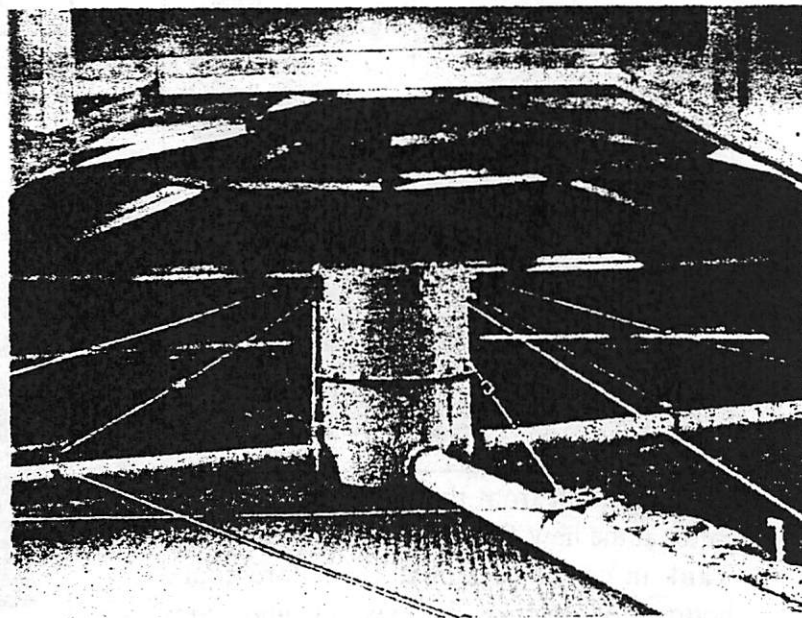
In 1997 Brookings voters authorized a \$13.1 million project to address solids treatment, disinfection, upgrading the liquid stream treatment, odor control, operations building, pump station work and inflow and infiltration rehabilitation (collection system repairs). Stage Two of the Brookings Wastewater Treatment Plant Expansion was bid February 11, 1999. Wildish Construction won the bid and the notice to proceed was issued on April 28, 1999. The plant upgrade will be complete and operational by April 30, 2001.

## Upgrade 65% complete now

At the present time the construction project is 65% completed. Almost all equipment for this upgrade (with the exception of some electrical switchgear) has been delivered and is on site. The work is progressing well. Overall the project is ahead of schedule as agreed to in the Mutual Agreement and Orders that the city has with the Department of Environmental Quality.

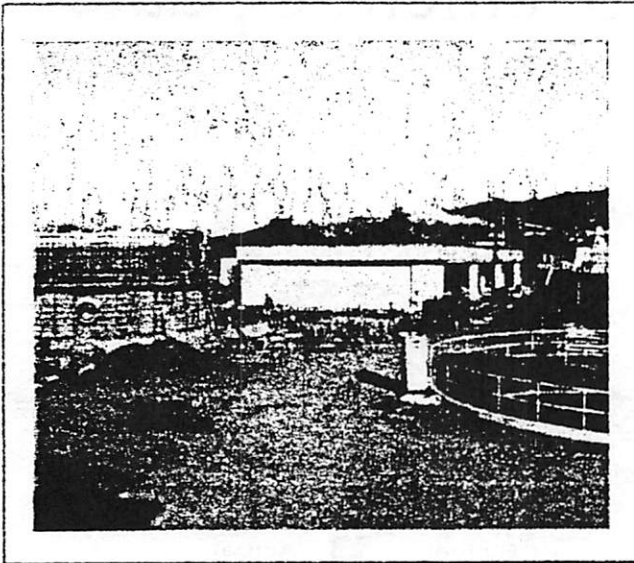


**Overall, project is ahead of schedule!**

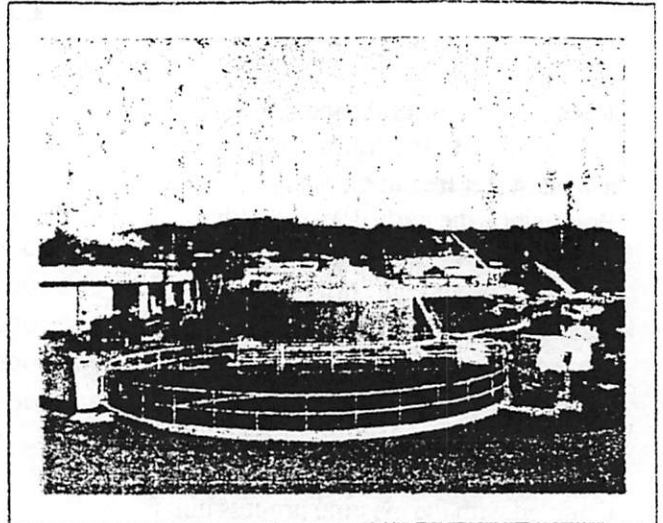


Standing inside entryway looking at New Trickling Filter Dome & Grating. Center of picture shows Trickling Filter Tower and Distributer Arms.

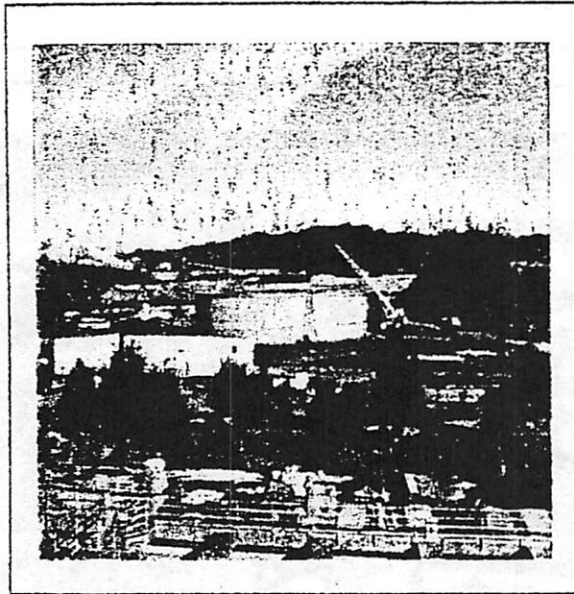
# A pictorial\* tour of the improvements at the Brookings Wastewater Treatment Plant...



**New Primary Digester**, looking north from Public Works Building. Existing Sludge Drying Building in background. **New Digester Control Building** will be built in front of this building.



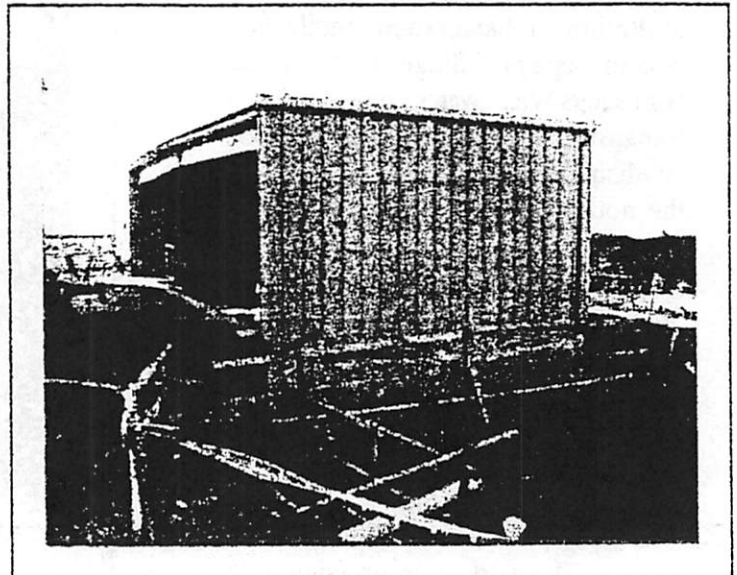
**Chlorine Contact Basin** in foreground. **Sludge Drying Bed** in background on left. Chlorine Contact Basin will be removed and a **New Secondary Clarifier** will be built in its place.



Looking north from the top of the Trickling Filter at the new **Two Million Gallon Sludge Tank** in center background. In foreground bottom of picture is existing and **New Primary Clarifier**.

\*pictures taken 1/28/2000 (Yes, it was sunny!)

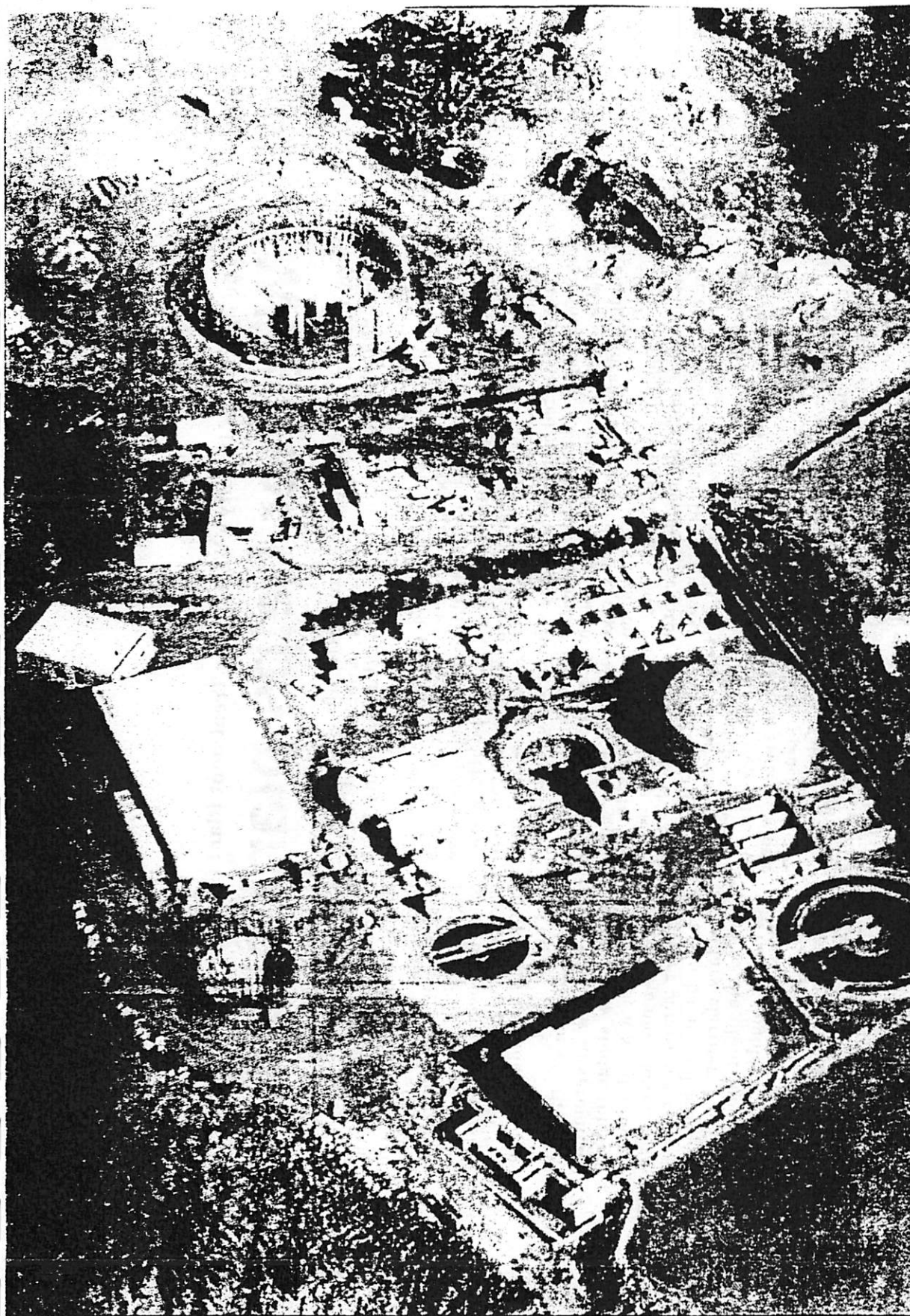
**As of February 1, construction was approximately 65% complete.**



Looking south, Public Works building is on left (out of picture). **New Ultraviolet Disinfection System** in center.



Wednesday, Nov. 3, 1999, Brookings, Oregon



Aerial photo by Rick Hiser of Calla Photography

The upgrade of the city's Wastewater Treatment Plant is proceeding smoothly.

# Weather helps plant project

By CHUCK HAYWARD  
Pilot Staff Writer

Wildish Building Co. crews were taking advantage of the sunny weather Monday and Tuesday as they moved ahead on several fronts at the Brookings Wastewater Treatment Plant near Chetco Point.

Crews started pouring the 28-foot high, 18-inch thick walls of the 2 million gallon sludge storage tank with odor control.

A total of 1,750 yards of concrete will eventually be used in the huge, covered tank, which will be used to expand storage during rainy seasons when it may not be possible for trucks to haul away and dispose of the treated sludge.

Wildish is contractor for the \$10.1 million upgrade of the Brookings sewer facilities.

The upgrade will double the capacity for dry weather treatment of sewer effluent, in-

crease the life of the facility and is expected to fill the needs of the community to at least 2016.

Work is almost complete on the small, square operations building on the left, just above the existing public works garage. Plant operators will move into this building during the winter while the lab is remodeled and expanded.

Just below the public works garage will be the new 360,000 gallon primary digester. The four pillars poking up in the center will support the concrete roof of the structure.

At the bottom of the site, next to the public works offices, will be the new ultraviolet disinfection system, which will virtually replace the current chlorine system.

The chlorine control tank directly in front of the public works offices will be taken out and replaced with a new secondary clarifier like the one at

the lower right hand corner of the site.

A dramatic addition to the Brookings skyline is the aluminum geodesic cover for the trickling filter building at the right side of the site. The \$100,000 cover constructed by TEMCOR of Carson City, Calif., will provide odor control at the plant.

Other additions to the plant include a new anaerobic digester, a new sludge thickening system, a snail removal system, two new, larger, trickling filter pumps, a secondary aeration basin and a second secondary clarifier. Modifications to the plant laboratory will nearly double its size.

Work on the sewer upgrade started April 5 with crews working four 10-hour days per week.

The upgrade is expected be completed, tested and in operation by April 2001.

# Wastewater Treatment Plant Improvement Update

September 29, 1999

## A look at the past...

Since the early 1950s the City of Brookings has operated a wastewater treatment plant at Chetco Point. The early plant provided only primary treatment to remove readily settleable solids prior to ocean discharge. Since that time the plant has been expanded into a secondary treatment regional facility.

The most recent major treatment plant upgrade was completed in the summer of 1991. The expansion included an entire new secondary treatment process and incorporated existing process units for peak flows and redundancy. Also included in this expansion was a new ocean outfall.

## Planning for the future...

The second stage of the wastewater treatment plant expansion was authorized by Brookings voters in 1997. The \$13.1 million project addresses the solids treatment, disinfection, upgrading the liquid stream treatment, odor control, operations building, pump station work, and inflow and infiltration work.

This project will fix existing problems as well as allow for growth, both residential and business. New growth will substantially help fund the project and allow for a continued healthy local economy.

## Where we are now...

The project was bid on February 11, 1999. Wildish Construction won the bid, with notice to proceed on April 28, 1999 and they will complete construction and have the plant operational by April 30, 2001.

At the present time, the construction project is 40% completed. The project is ahead in some areas and a little behind on others, but overall the project is ahead of schedule as agreed to in the Mutual Agreement and Stipulation Order that the city has with the Department of Environmental Quality.



The Clean Water State Revolving Fund (CWSRF) provided a loan for the project. Wildish Building Company is the general contractor.

## State Agencies aid project...

### Clean Water State Revolving Fund (CWSRF)

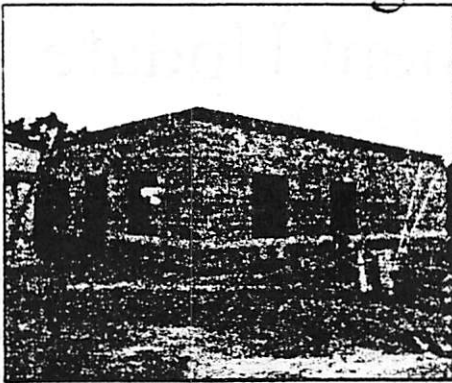
The Clean Water State Revolving Fund (CWSRF) provided a loan for the project. The CWSRF provides an interest rate of about half the market rate and eliminates the need for the city putting together a bond sale. Selling bonds is costly and requires substantial bond attorney expense as well as other expenses whether the sale of the bonds is for a small or large amount. The CWSRF loan reduces the total cost and makes the passing of an election to fund these improvements more acceptable.

### Department of Environmental Quality (DEQ)

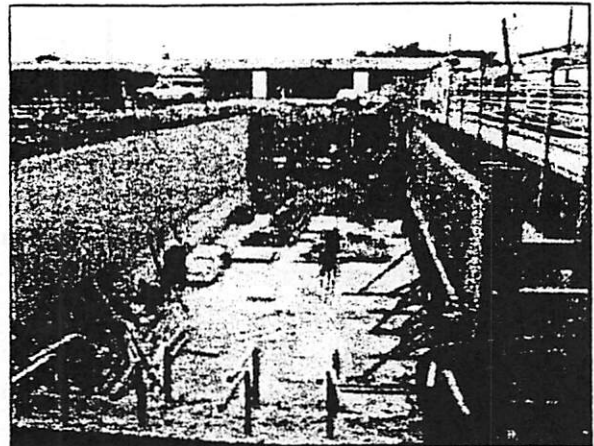
The Oregon Department of Environmental Quality provided staff attendance at critical city workshops to answer regulatory and funding issues. DEQ staff helped explain to the community the need to meet clean water standards and the possible consequences of not meeting those standards. DEQ played a major role in getting information to the voters.



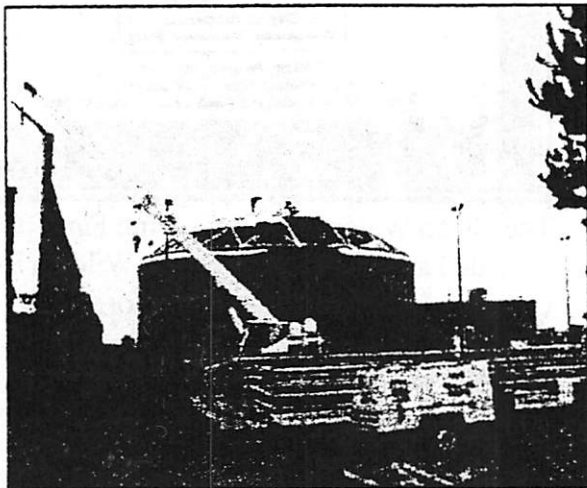
# A pictorial\* tour of the improvements at the Brookings Wastewater Treatment Plant...



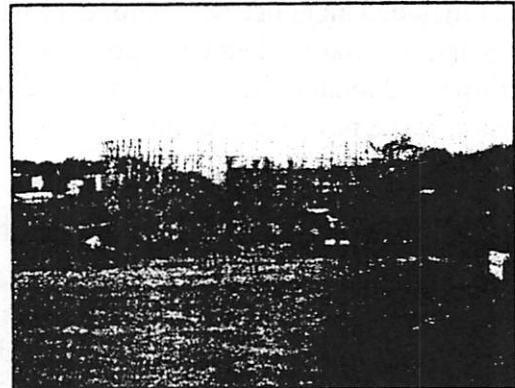
New operations building will be main control center



Second primary clarifier (settling basin) under construction



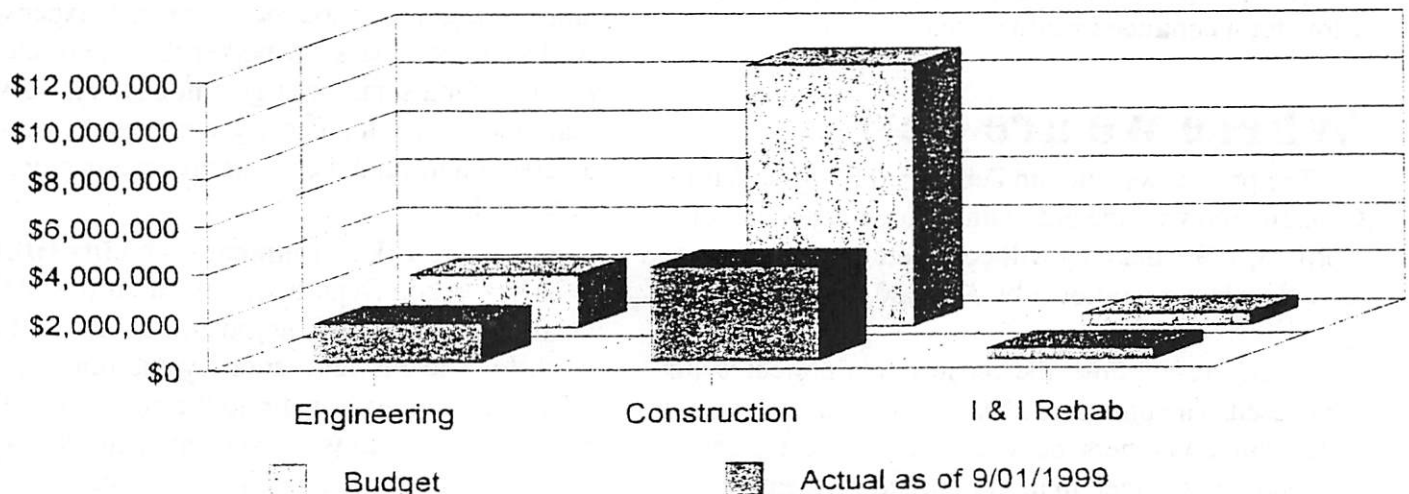
Addition of dome to trickling filter is for odor control



2 million gallon sludge storage tank is being construction on the north side of Wharf Street

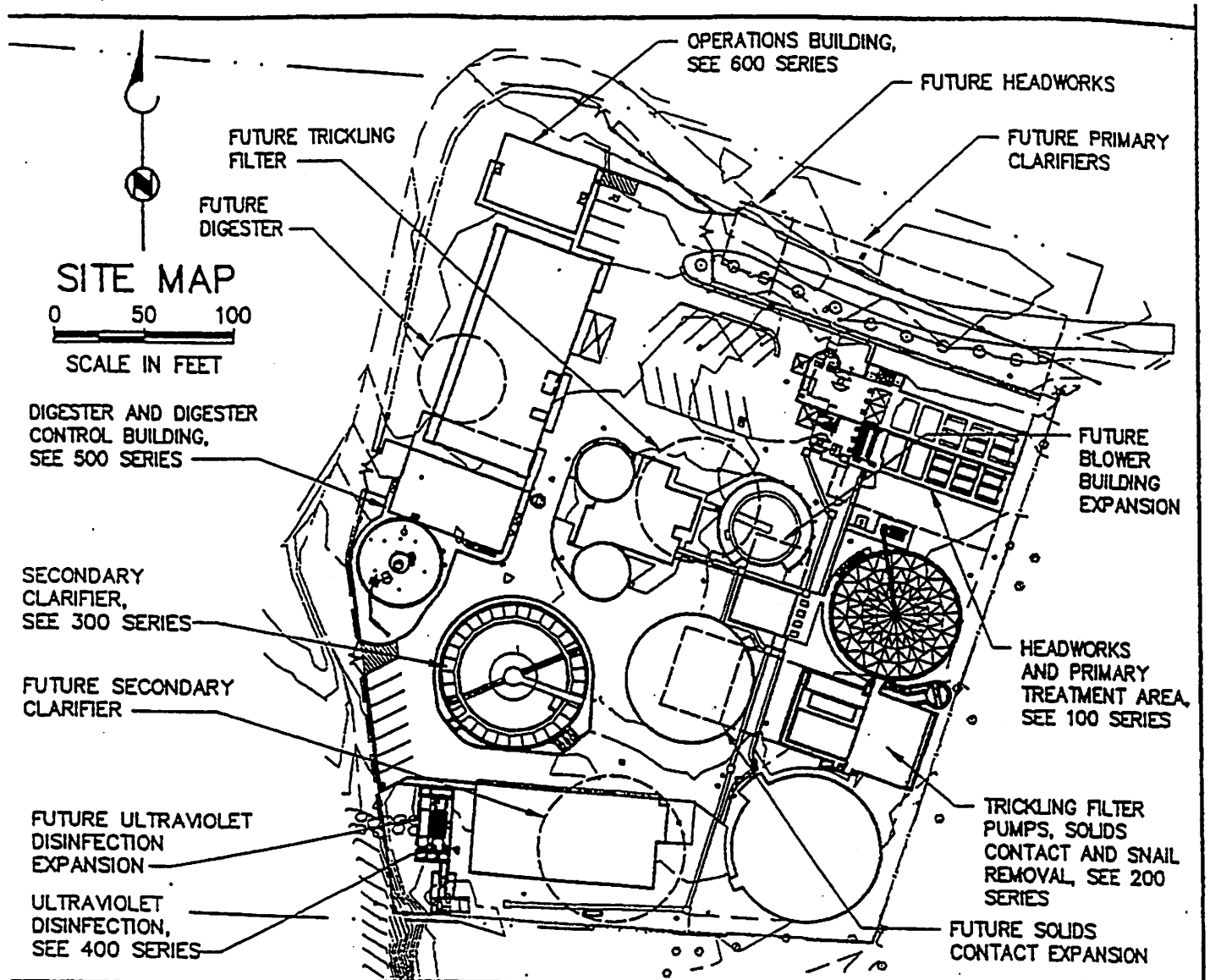
\*pictures taken 9/21/1999

## Wastewater System Improvements



Prepared by the Community Development Department of the City of Brookings  
If you have any questions please call (541) 469-2163, ext. 203

# City of Brookings



**BROWN AND  
CALDWELL**  
EUGENE, OREGON

SUBMITTED: \_\_\_\_\_ DATE: \_\_\_\_\_  
APPROVED: \_\_\_\_\_ DATE: \_\_\_\_\_  
APPROVED: \_\_\_\_\_ DATE: \_\_\_\_\_

LINE IS 2 INCHES  
AT FULL SIZE  
(IF NOT 2" SCALE ACCORDINGLY)

FILE 6273  
DRAWN GTM  
DESIGNED WMH  
CHECKED \_\_\_\_\_  
CHECKED \_\_\_\_\_

**PRELIMINARY DRAWING  
NOT FOR  
CONSTRUCTION  
90 PERCENT**

A

B

C

D

E

F

## Wastewater Treatment Plant Improvements

TO: Mayor, City Council

FROM: Leo Lightle, *LL*  
Community Development Director

THROUGH: Tom Weldon, City Manager *TW*

DATE: April 17, 1998

City of Brookings

## Memorandum



ISSUE: Amendment to Brown and Caldwell Engineering Services Contract, Amendment 2, Brookings WWTP and I/I Reduction

RECOMMENDATION: The City Council authorize the City Manger to sign Amendment 2 of the existing Brown and Caldwell contract.

BACKGROUND: We are submitting Amendment 2 of our contract with the firm of Brown and Caldwell for your consideration and execution. This amendment will incorporate the following elements into the project:

- preliminary design revisions to the Brookings WWTP Improvements Project, and
- design, bid and office engineering services for the Inflow and Infiltration Reduction Program.

During the preliminary design phase of the Brookings WWTP Improvements project it was decided to add trickling filter odor control, snail removal and a new Operation Building. These project elements were added to enhance plant performance, add biological treatment for minimal cost, address deficiencies in staff facilities, and reflect future site layout considerations. Trickling filter odor control and snail removal will be designed and bid as additional bid items to provide the city with the flexibility to select project features that maximizes available funds. As a result of adding a new Operations Building and revising the site layout, it was decided to eliminate demolition of the existing shop, sludge thickening odor control, and expansion of the existing Control Building.

The estimated engineering cost to implement the additional project elements is \$289,747. The estimated cost savings related to project elements that are to be deleted is \$103,315. The net additional engineering cost of the proposed revisions is \$186,432.

The Brookings Infiltration and Inflow (I/I) Study Brown and Caldwell submitted earlier this year recommended inflow and infiltration projects that



could be addressed to reduce flows to the treatment plant. We asked Brown and Caldwell to provide design, bid and office engineering during construction for two of the projects identified. One of the projects will be an inflow reduction project that will eliminate major sources of inflow identified during the study. A second project will replace the Arnold Lane gravity collection main with a larger pipe that will be sufficient to convey future growth within the collection basin. Each of these projects is targeted to begin construction this summer. The estimated engineering cost for the I/I services requested is \$81,650.

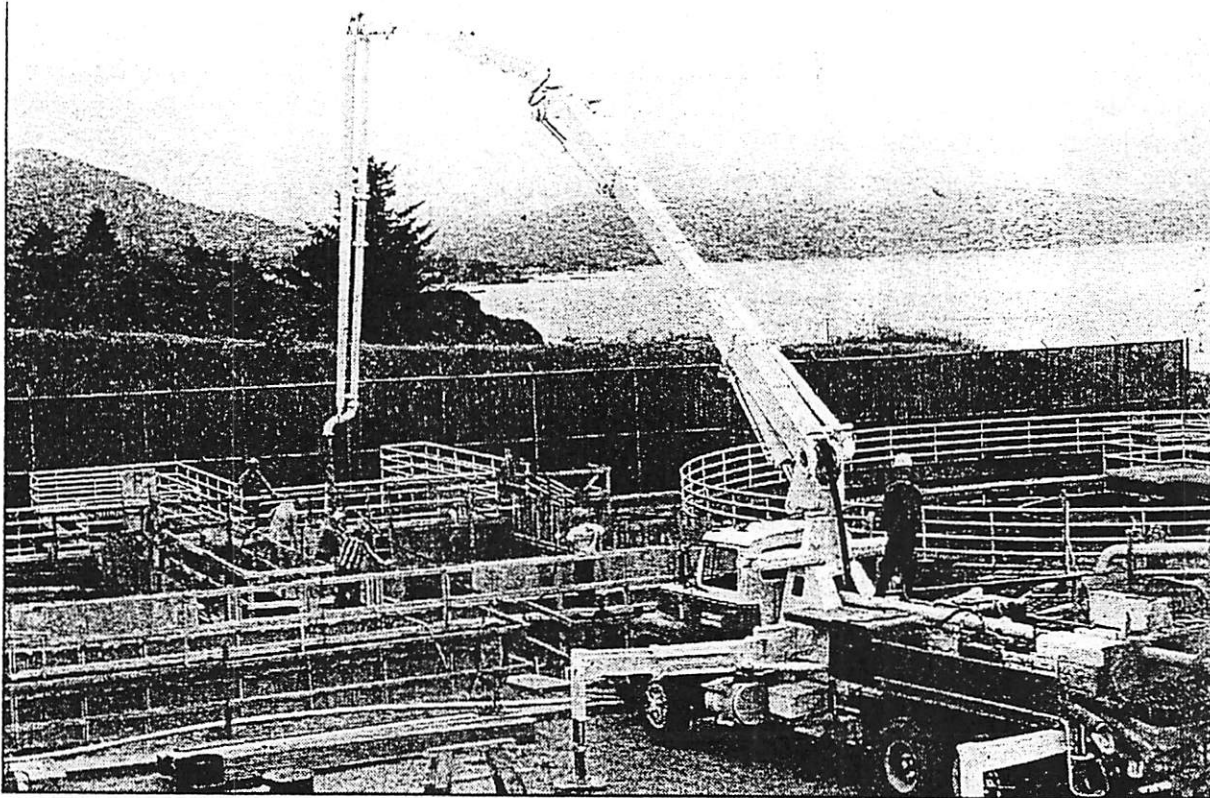
Attached are:

1. One copy of Amendment 2. Please have both copies signed, keep one original and return one original to Brown and Caldwell.
2. Estimated engineering effort and direct cost used as the basis for developing the proposed fee for the treatment plant revisions and I/I reduction projects.

Treatment plant expansion and collection system rehabilitation will provide necessary facilities for a growing community and will assure continued quality of life.

If you have any questions or comments, please feel free to contact me anytime at 469-2163, ext. 236.

EOM



The Pilot/Chuck Hayward

Lee Bond of Pacific Rim Construction & Pumping of Brookings maneuvers the boom of his pump truck into place to pour concrete for new solids contact tank.

## Sewer plant work going well

William F. Tow, project superintendent for the \$10 million upgrade of the Brookings Wastewater Treatment Plant, says work is progressing "really well."

"The weather has been good to us so far," he said. "You try to get ahead of schedule when the weather's good so you're in good shape when bad weather arrives."

Tow was the superintendent for Wildish Building Company when it did the first upgrade of the sewer plant in 1988.

Brookings Community Development Director Leo Lightle said he was pleased that Wildish won the bid this time.

"They're familiar with the wastewater treatment plant and our specific needs," Lightle said. "I think they'll do an excellent job for us."

Tow said he's pleased to be back at the Brookings sewer plant as well.

"It's a very well operated facility," the veteran sewer plant builder said.

"I've been in almost every sewer plant in southern Ore-

gon, and Brookings is willing to spend the money for upkeep and proper maintenance on the plant," Tow said.

Lewis Gray, inspector for Brown & Caldwell, system designers, agrees with Tow on the plant and the city's willingness to perform maintenance.

"It's a very clean plant and well taken care of," he said.

Workers on the sewer plant upgrade have been working four 10-hour days a week since construction started the second week of April.

**EXHIBIT J**

## OREGON SECRETARY OF STATE

## ► Corporation Division

HOME  
SEARCH

CONTACT US

business referral center

**business name search**

oregon business guide

information referral list

business registry/renewal

forms/fees

notary public

uniform commercial code

uniform commercial code search

special services

## Business Name Search

New Search Printer Friendly

## Business Entity Data

Registry Nbr	Entity Type	Entity Status	Jurisdiction	Registry Date	Duration Date	Renewal Date
175321-85	DBC	INA	OREGON	10-12-1989		10-12-1997
Entity Name	WESTERN PACIFIC DEVELOPMENT, INC.					
Foreign Name						

New Search Printer Friendly

## Associated Names

Type	PPB	PRINCIPAL PLACE OF BUSINESS				
Addr 1	1616 MARCY LOOP RD					
Addr 2						
CSZ	GRANTS PASS	OR	97527		Country	UNITED STATES OF AMERICA

Type	AGT	REGISTERED AGENT		Start Date	10-12-1989	Resign Date	
Name	JERROLD	A	BOSCOE				
Addr 1	1616 MARCY LOOP RD						
Addr 2							
CSZ	GRANTS PASS	OR	97527		Country	UNITED STATES OF AMERICA	

Type	MAL	MAILING ADDRESS				
Addr 1	1120 A AVENUE SOUTH					
Addr 2						
CSZ	EDMONDS	WA	98020		Country	UNITED STATES OF AMERICA

Type	PRE	PRESIDENT				
Name	JERROLD	A	BOSCOE			
Addr 1	6645 SW NYBERG RD #45					
Addr 2						
CSZ	TUALATIN	OR	97062		Country	UNITED STATES OF AMERICA

Type	SEC	SECRETARY			
Name	CYNTHIA	M	BOSCOE		
Addr 1	6645 SW NYBERG RD #45				
Addr 2					
CSZ	TUALATIN	OR	97062	Country	UNITED STATES OF AMERICA

New Search   Printer Friendly

## Name History

Business Entity Name	Name Type	Name Status	Start Date	End Date
WESTERN PACIFIC DEVELOPMENT, INC.	EN	CUR	10-12-1989	

New Search   Printer Friendly

## Summary History

Image Date	Action	Transaction Date	Effective Date	Status	Name/Agent Change	Dissolved By
12-12-1997	INVOL DISSOLUTION	12-04-1997		SYS		
10-17-1997	NOTICE	10-20-1997		SYS		
11-25-1996	STRAIGHT RENEWAL	11-25-1996		FI		
10-18-1996	NOTICE	10-21-1996		SYS		
01-03-1996	AMENDED RENEWAL	01-03-1996		FI		
10-20-1995	NOTICE	10-23-1995		SYS		
10-07-1994	AMENDED RENEWAL	10-06-1994		FI		
12-10-1993	AMENDED RENEWAL	12-02-1993		FI		
10-22-1993	NOTICE	10-26-1993		SYS		
09-15-1992	AMENDED RENEWAL	09-11-1992		FI		
09-13-1991	AMENDED RENEWAL	09-12-1991		FI		
11-06-1990	AMENDED RENEWAL	11-06-1990		FI		
10-12-1989	NEW FILING	10-12-1989		FI		

**EXHIBIT K**

BABIN & KEUSINK

PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

P.O. BOX 1600 • 517 CHETCO AVE  
BROOKINGS, OREGON 97415-0600

(541) 469-5331 • FAX (541) 469-9865

JOHN C. BABIN\*  
E-MAIL: john@babin-keusink.com  
\*ALSO LICENSED IN CALIFORNIA

CHRISTOPHER KEUSINK  
E-MAIL: chris@babin-keusink.com

September 26, 2003

Jerrold A. Bosco  
1616 Marcy Loop Road  
Grants Pass, OR 97527

Jerrold A. Bosco  
1120 A Avenue South  
Edmonds, WA 98020

Jerrold A. Bosco  
6645 SW Nyberg Rd. #45  
Tualatin, OR 97062

Re: Western Pacific Development, Inc.

Dear Jed:

I hope this letter finds you well.

I would appreciate it if you could contact me immediately to confirm that Western Pacific Development has been dissolved as a corporation and is defunct at this time. This information is needed on behalf of a local developer.

I hope to hear from you soon.

Sincerely,



John C. Babin

JCB:lt  
cc: Client

FIRST-CLASS MAIL AND  
CERTIFIED MAIL - RETURN RECEIPT REQUESTED

BABIN & KEUSINK, P.C.  
ATTORNEYS AT LAW  
P.O. BOX 1600  
BROOKINGS, OR 97415-0600



Postage  
\$4.370  
October 4, 2003  
Dated From 9/24/03

US POSTAGE  
80

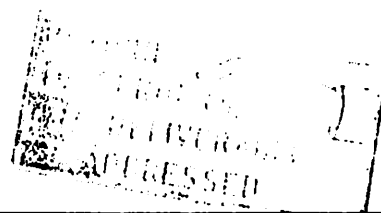
NDAA #14

Jerrold A. Bosco  
1120 A Avenue South  
Edmonds, WA 98020

RECEIVED

OCT X 6 2003

RECEIVED

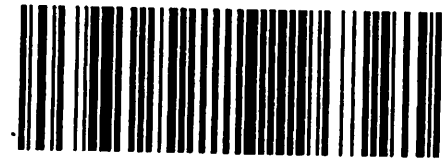


9741506034

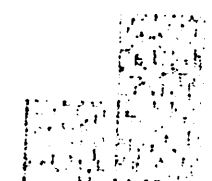


BABIN & KEUSINK, P.C.  
ATTORNEYS AT LAW  
P.O. BOX 1600  
BROOKINGS, OR 97415-0600

CERTIFIED MAIL



7099 3220 0002 9123 6535



Postage  
\$4.420  
October 4, 2003  
Dated From 9/24/03

US POSTAGE

RECEIVED

OCT X 6 2003

RECEIVED

NDAA #14

Jerrold A. Bosco  
1120 A Avenue South  
Edmonds, WA 98020

NAME  
1st Notice OCT 04 2003  
2nd Notice  
Return OCT 19 2003





BABIN & KEUSINK, P.C.

ATTORNEYS AT LAW

P.O. BOX 1600

BROOKINGS, OR 97415-0600

CERTIFIED MAIL



7099 3220 0002 9123 6542

09/30/03 DCR 71 PADC PORTLAND OR 97208

14 420



09/30/03  
100  
06 00 00

NOT DELIVERABLE  
AS ADDRESSED  
UNABLE TO FORWARD

Jerrold A. Bosco  
6645 SW Nyberg Rd. #45  
Tualatin, OR 97062

NAME  
1st Notice OCT 01 2003  
2nd Notice  
Return OCT 16 2003

**U.S. Postal Service**  
**CERTIFIED MAIL RECEIPT**  
(Domestic Mail Only; No Insurance Coverage Provided)

Article Sent To:

Jerrold A. Bosco

Postage \$

Certified Fee

Return Receipt Fee  
(Endorsement Required)

Restricted Delivery Fee  
(Endorsement Required)

Total Postage & Fees \$

Postmark  
Here

Name (Please Print Clearly) (To be completed by mailer)

Jerrold A. Bosco

Street, Apt. No., or PO Box No.

1616 Marcy Loop Rd.

City, State, ZIP+4

Grants Pass, OR 97527

PS Form 3800, July 1999

See Reverse for Instructions

**U.S. Postal Service**  
**CERTIFIED MAIL RECEIPT**  
(Domestic Mail Only; No Insurance Coverage Provided)

Article Sent To:

Jerrold A. Bosco

Postage \$

Certified Fee

Return Receipt Fee  
(Endorsement Required)

Restricted Delivery Fee  
(Endorsement Required)

Total Postage & Fees \$

Postmark  
Here

Name (Please Print Clearly) (To be completed by mailer)

Jerrold A. Bosco

Street, Apt. No., or PO Box No.

6645 SW Nyberg Rd. #45

City, State, ZIP+4

Tualatin, OR 97062

PS Form 3800, July 1999

See Reverse for Instructions

**U.S. Postal Service**  
**CERTIFIED MAIL RECEIPT**  
(Domestic Mail Only; No Insurance Coverage Provided)

Article Sent To:

Jerrold A. Bosco

Postage \$

Certified Fee

Return Receipt Fee  
(Endorsement Required)

Restricted Delivery Fee  
(Endorsement Required)

Total Postage & Fees \$

Postmark  
Here

Name (Please Print Clearly) (To be completed by mailer)

Jerrold A. Bosco

Street, Apt. No., or PO Box No.

1120 A Avenue South

City, State, ZIP+4

Edmonds, WA 98020

PS Form 3800, July 1999

**EXHIBIT L**

BABIN & KEUSINK

PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

JOHN C. BABIN\*  
E-MAIL: john@babin-keusink.com

\*ALSO LICENSED IN CALIFORNIA

P.O. BOX 1600 • 517 CHETCO AVE  
BROOKINGS, OREGON 97415-0600

CHRISTOPHER KEUSINK  
E-MAIL: chris@babin-keusink.com

(541) 469-5331 • FAX (541) 469-9865

September 8, 2003

John C. Bischoff  
Planning Director  
City of Brookings  
898 Elk Dr.  
Brookings, OR 97415

Re: Chetco Point Terrace Subdivision  
SUB-6-03/MC-1-03

Dear Mr. Bischoff:

We were both present during the hearing on the Bruce Brothers application before the Brookings Planning Commission on the evening of September 2. At that time, Jim Rich, President of the Chetco Point Homeowners Association testified as to numerous items. There are two specific items which I wish to confirm with your office:

1. Visual Shielding is Not an Issue

Mr. Rich specifically testified on behalf of the homeowners at Chetco Point that visual shielding of the sewer treatment plant is not an issue to the homeowners on the Bruce Brothers application for a minor change to their subdivision conditions. He supported this contention by explaining that, with the construction of new houses in the Chetco Point Terrace subdivision, landscaping around the houses and other shielding, protection from the visual sighting of the sewer treatment plant for the Chetco Point homeowners does not need to be considered.

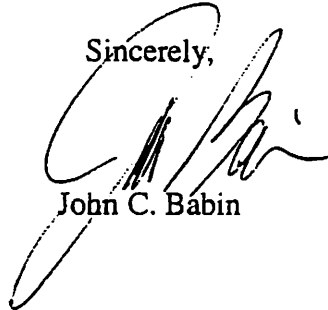
2. Current Berm is Working

Mr. Rich further repeatedly testified that the current berm was working and that there was no need to change the berm. He supported this contention by stating that, through his discussions with the homeowners, they were not bothered with any odor and, presumably based on these observations, he concluded that "the berm was working."

John C. Bischoff  
September 8, 2003  
Page Two

Please confirm that the City also adopts these positions. By confirming these positions, it will help to narrow the issues on the appeal of the denial to the City Council.

Sincerely,

A handwritten signature in black ink, appearing to read "John C. Babin", is written over the typed name. The signature is stylized with a large, sweeping initial "J" and a long, horizontal stroke extending to the right.

John C. Babin

JCB:lt  
Enclosures  
cc: Client

**EXHIBIT M (to be submitted)**

**EXHIBIT N**

Return to:  
CURRY COUNTY TITLE, INC.  
P.O. Box 672-Gold Beach, OR 97444

*cot 92335*

**AMENDED AND RESTATED DECLARATION OF COVENANTS,  
CONDITIONS, AND RESTRICTIONS ESTABLISHING  
THE COVE AT BROOKINGS, A PLANNED COMMUNITY**

**TABLE OF CONTENTS**  
**DECLARATION PERTAINING TO**  
**THE COVE AT BROOKINGS**

**ARTICLE I**  
**DEFINITIONS**

Section 1.	"Act" . . . . .	1
Section 2.	"Articles of Incorporation" . . . . .	2
Section 3.	"Association" . . . . .	2
Section 4.	"Board" . . . . .	2
Section 5.	"Bylaws" . . . . .	2
Section 6.	"Common expenses" . . . . .	2
Section 7.	"Common Property" . . . . .	2
Section 8.	"Declarant" . . . . .	2
Section 9.	"Declaration" . . . . .	2
Section 10.	"Living Unit" . . . . .	2
Section 11.	"Lot" . . . . .	2
Section 12.	"Mortgage" . . . . .	2
Section 13.	"Mortgagee" . . . . .	2
Section 14.	"Occupant" . . . . .	2
Section 15.	"Owner" . . . . .	3
Section 16.	"Planned Community" . . . . .	3
Section 17.	"Plat" . . . . .	3
Section 18.	"Rules" and "Regulations" . . . . .	3
Section 19.	"Turnover meeting" . . . . .	3

**ARTICLE II**

<b><u>NAME AND LOCATION</u></b> . . . . .	3
---	---

**ARTICLE III**  
**ASSOCIATION**

Section 1.	<u>Organization: Adoption of Bylaws.</u> . . . . .	3
Section 2.	<u>Board of Directors.</u> . . . . .	3
Section 3.	<u>Power and Duties of the Association.</u> . . . . .	4



ARTICLE IV  
MEMBERSHIP AND VOTING RIGHTS

Section 1.	<u>Members.</u>	4
Section 2.	<u>Voting Rights.</u>	4
Section 3.	<u>Turnover Meeting.</u>	4

ARTICLE V  
GENERAL DEVELOPMENT PLAN

Section 1.	<u>Phased Development.</u>	5
Section 2.	<u>Number of Lots.</u>	5
Section 3.	<u>Allocation of Votes and Common Expenses.</u>	5
Section 4.	<u>Common Property.</u>	6
Section 5.	<u>Declarant's Rights Following Turnover Meeting.</u>	6

ARTICLE VI  
COMMON PROPERTY

Section 1.	<u>Common Property Tracts.</u>	6
Section 2.	<u>Conveyance To The Association.</u>	6
Section 3.	<u>Mortgage or Conveyance of Common Property.</u>	7
Section 4.	<u>Condemnation of Common Property.</u>	7
Section 5.	<u>Use of Common Property.</u>	7

ARTICLE VII  
ARCHITECTURAL CONTROL

Section 1.	<u>Architectural Committee.</u>	8
Section 2.	<u>Committee Approval Required.</u>	8
Section 3.	<u>Application to the Committee.</u>	8
Section 4.	<u>Rules and Regulations.</u>	9
Section 5.	<u>Method and Address for Submitting Applications.</u>	9
Section 6.	<u>Failure to Approve or Disapprove Plans and Specifications.</u>	9
Section 7.	<u>No Liability.</u>	9
Section 8.	<u>Notice of Noncompliance or Noncompletion.</u>	10
Section 9.	<u>Variances.</u>	10
Section 10.	<u>Inspection.</u>	10
Section 11.	<u>Declarant's Exemption.</u>	10

ARTICLE VIII  
USE RESTRICTIONS

Section 1.	<u>Limitations Upon All Use Restrictions.</u>	10
Section 2.	<u>Intended Use.</u>	10
Section 3.	<u>Commercial Use.</u>	10
Section 4.	<u>Signs.</u>	11
Section 5.	<u>Offensive Activity.</u>	11
Section 6.	<u>Temporary Structure.</u>	11
Section 7.	<u>Parking.</u>	11
Section 8.	<u>Garages.</u>	11
Section 9.	<u>External Fixtures.</u>	12
Section 10.	<u>Window Covers.</u>	12
Section 11.	<u>Electronic Transmission Equipment.</u>	12
Section 12.	<u>External Laundering.</u>	12
Section 13.	<u>Unightly Items.</u>	12
Section 14.	<u>Animals.</u>	12
Section 15.	<u>Drainage.</u>	12
Section 16.	<u>Obstruction of Private Streets.</u>	13
Section 17.	<u>Fences; Walls; Patio Covers.</u>	13
Section 19.	<u>Leases.</u>	13
Section 20.	<u>Party Walls.</u>	13
Section 21.	<u>Subdivision and Combination of Lots.</u>	14
Section 22.	<u>Additional Rules Adopted by Board of Directors.</u>	15
Section 23.	<u>Fines; Hearings.</u>	15

ARTICLE IX  
RIGHTS AND EASEMENTS

Section 1.	<u>Declarant's Rights and Easements.</u>	16
Section 2.	<u>Utility Easements.</u>	17
Section 3.	<u>City Easements.</u>	17
Section 4.	<u>Members Easement of Enjoyment.</u>	18
Section 5.	<u>Easements for Encroachments.</u>	19
Section 6.	<u>Exclusive Easements of Owners Affecting Portions of Common Property.</u>	19

ARTICLE X  
REPAIR AND MAINTENANCE

Section 1.	<u>Maintenance and Repair by Association.</u>	21
Section 2.	<u>Repair and Maintenance by Owner.</u>	22
Section 3.	<u>Standards of Maintenance.</u>	22
Section 4.	<u>Maintenance of Interior of Living Units.</u>	22

Section 5.	<u>Maintenance of Public Utilities.</u>	22
Section 6.	<u>Maintenance of Party Walls.</u>	22
Section 7.	<u>Individual Assessment.</u>	23

## ARTICLE XI COVENANTS FOR ASSESSMENTS

Section 1.	<u>Creation of the Lien and Personal Obligation of Assessments.</u>	23
Section 2.	<u>Purpose of Regular Assessments.</u>	23
Section 3.	<u>Reserve Accounts for Major Repair and Replacement of Improvements on Common Property.</u>	24
Section 4.	<u>Reserves for Major Repairs and Replacement of Exterior of Structures on Lots.</u>	25
Section 5.	<u>Budget for Regular Assessment.</u>	25
Section 6.	<u>Regular Assessments.</u>	25
Section 7.	<u>Deferral of Commencement of Regular Assessments.</u>	26
Section 8.	<u>Assessments for Capital Improvements.</u>	26
Section 9.	<u>Individual Assessments.</u>	26
Section 10.	<u>Reconstruction Assessments.</u>	26
Section 11.	<u>Capitalization Assessments.</u>	26
Section 12.	<u>Declarant's Capitalization.</u>	27
Section 13.	<u>Common Expense Benefitting Few Than All; No Offsets.</u>	27
Section 14.	<u>Subordination of the Lien to Real estate Taxes and Mortgages; Transfer of Lot.</u>	27

## ARTICLE XII COLLECTION OF ASSESSMENT; ENFORCEMENT

Section 1.	<u>Compliance With Declaration, Bylaws, Rules and Regulations.</u>	28
Section 2.	<u>Authority to Enforce and Collect.</u>	28
Section 3.	<u>Abatement and Enjoining of Violations.</u>	28
Section 4.	<u>Interest; Late Charges; Fines.</u>	28
Section 5.	<u>Acceleration of Assessment.</u>	28
Section 6.	<u>Attachment, Notice, Recordation, Duration, and Foreclosure of Lien; Appointment of Receiver; Power to Bid at Foreclosure Sale.</u>	29
Section 7.	<u>Action to Obtain and Recover a Money Judgment.</u>	29
Section 8.	<u>Collection Costs; Attorneys' Fees.</u>	29

## ARTICLE XIII DAMAGE AND DESTRUCTION

Section 1.	<u>Destruction of Common Property.</u>	29
Section 2.	<u>Destruction of Lot Improvements.</u>	30

Section 3.	<u>Separate Account.</u>	31
Section 4.	<u>Priority.</u>	32

#### ARTICLE XIV RIGHTS OF LENDERS

Section 1.	<u>Filing Notices; Notices and Approvals.</u>	32
Section 2.	<u>Priority of Mortgage Lien.</u>	32
Section 3.	<u>Curing Defaults.</u>	33
Section 4.	<u>Resale.</u>	33
Section 5.	<u>Seventy-Five Percent (75 %) Vote of Eligible First Mortgagees.</u>	33
Section 6.	<u>Mortgagees, Servicing Contractors, Insurers, and Guarantors Furnishing and Receiving Information.</u>	34
Section 7.	<u>Notice of Destruction or Taking.</u>	34
Section 8.	<u>Payment of Taxes or Premiums by First Mortgagee.</u>	34

#### ARTICLE XV GENERAL PROVISIONS

Section 1.	<u>Indemnification of Directors, Officers, Employees and Agents.</u>	35
Section 2.	<u>No Waiver.</u>	35
Section 3.	<u>Severability.</u>	35
Section 4.	<u>Singular Includes Plural; Construction; Effect of Headings.</u>	35
Section 5.	<u>Notices.</u>	36
Section 6.	<u>Effect of Declaration.</u>	36
Section 7.	<u>Conflict; Priority.</u>	36
Section 8.	<u>Original Declaration.</u>	36

#### ARTICLE XVI AMENDMENTS TO DECLARATION

Section 1.	<u>Amendment by Members.</u>	36
Section 2.	<u>Declarant's Right to Amend.</u>	36
Section 3.	<u>Recordation of Amendments.</u>	37

**AMENDED AND RESTATED DECLARATION OF COVENANTS,  
CONDITIONS, AND RESTRICTIONS ESTABLISHING  
THE COVE AT BROOKINGS, A PLANNED COMMUNITY**

This Amended and Restated Declaration (hereinafter "Declaration"), having been approved by the affirmative vote of not less than seventy-five percent of the total voting power of the Association, shall be effective upon its recording in Curry County, Oregon, and shall entirely supersede the Declaration of Covenants, Conditions and Restrictions Establishing The Cove at Brookings, a Planned Community, that was recorded in Curry County Records on April 1, 1991, as Instrument #91 01586.

Declarant is the owner of certain real property in the City of Brookings, Curry County, Oregon, which is more particularly described on Exhibit A attached hereto and incorporated herein by this reference.

Declarant proposes to create a subdivision of lots and homes (hereinafter "Planned Community") to be known as The Cove at Brookings, composed of the real property described on Exhibit A, and other contiguous real property which may be annexed to the Planned Community by supplemental declarations recorded by Declarant for that purpose.

It is deemed desirable for the preservation of the value and desirability of the real property in the Planned Community to subject the real property in the Planned Community to the following covenants, conditions, restrictions and easements, including liens for assessments, and to create a non-profit corporation to which will be transferred the common property of the Planned Community and to which will be delegated the power and authority to maintain and administer the common property and enforce the covenants and restrictions and promote the health, safety, and welfare of the Planned Community.

Now, therefore, it is hereby declared that the real property described in Exhibit A and each other parcel of real property, as and when it is separately platted and declared to be a part of the Planned Community, shall be sold, conveyed, owned and occupied subject to the provisions of this Declaration. Each person or entity, upon acceptance of a deed or land sale contract to purchase a lot in the Planned Community, covenants and agrees to comply with the provisions of this Declaration.

**ARTICLE I  
DEFINITIONS**

Section 1. "Act" means the Oregon Planned Community Act.

1 - DECLARATION OF THE COVE AT BROOKINGS

Section 2. "Articles of Incorporation" means the articles of incorporation for the non-profit corporation of The Cove at Brookings Homeowners Association filed with the Oregon Corporation Commissioner, as amended from time to time.

Section 3. "Association" means The Cove at Brookings Homeowners Association, a non-profit corporation, and its successors and assigns.

Section 4. "Board" means the board of directors of the Association.

Section 5. "Bylaws" means the Amended and Restated Bylaws of the Association, as amended from time to time.

Section 6. "Common expenses" means expenditures made by or financial liabilities incurred by the Association and includes any allocations to reserve accounts under Article XI.

Section 7. "Common Property" means any real property or interest in real property or any personal property which is owned or leased by the Association.

Section 8. "Declarant" means Western Pacific Development, Inc., an Oregon Corporation, until July 24, 1992; after said date, "Declarant" means The Chetco Corporation, an Oregon corporation, and any successor or assignee thereof defined as declarant in the Act.

Section 9. "Declaration" means this Amended and Restated Declaration and any amendments and supplements thereto.

Section 10. "Living Unit" means a building or a portion of a building located upon a Lot and intended for separate occupancy and ownership; it does not include a building or portion of a building on Common Property.

Section 11. "Lot" means a unit of land in the Planned Community which is platted for the purpose of constructing thereon one living unit.

Section 12. "Mortgage" means a mortgage or a deed of trust pertaining to a Lot.

Section 13. "Mortgagee" means a mortgagee or a beneficiary of a deed of trust; "First Mortgagee" means a Mortgagee whose mortgage has priority over any other mortgages encumbering a specified Lot; and "Mortgagor" means a mortgagor or a grantor of a deed of trust.

Section 14. "Occupant" means the occupant of a living unit.

## 2 - DECLARATION OF THE COVE AT BROOKINGS

Section 15. "Owner" means the record owner of a fee interest or undivided fee interest in any Lot or a purchaser under a land sale contract for any Lot which is part of the Planned Community, but does not include a person or entity who holds an interest in the Lot merely as security for the performance of an obligation.

Section 16. "Planned Community" means the real property described in Exhibit A and each additional parcel of real property on which Declarant records a plat and supplemental declaration which declares all or portions thereof to be part of the Planned Community, including tracts of Common Property.

Section 17. "Plat" means the final map, diagram, drawing, replat or other writing containing the descriptions, locations and other information on Common Property and/or Lots in a subdivision of all or a portion of the real property in the Planned Community.

Section 18. "Rules" and "Regulations" means rules and regulations adopted as rules and regulations of the Association.

Section 19. "Turnover meeting" means the meeting described in Article III, Section 7, of the Bylaws.

## ARTICLE II NAME AND LOCATION

The name by which the Planned Community is to be identified is "The Cove at Brookings". All portions of the Planned Community are located in the City of Brookings, Curry County, Oregon.

## ARTICLE III ASSOCIATION

Section 1. Organization; Adoption of Bylaws. Upon the execution and recording of the original declaration, Articles of Incorporation were filed and the Association was organized to serve as a means through which the Owners may manage and maintain the Planned Community. The original declarant simultaneously adopted bylaws for the Association, which bylaws have been amended and restated as the Bylaws.

Section 2. Board of Directors. The affairs of the Association shall be governed by a Board of Directors as provided in the Bylaws. The Declarant shall have the right to appoint, remove, and replace the directors of the Board until the turnover meeting.

### 3 - DECLARATION OF THE COVE AT BROOKINGS

Section 3. Power and Duties of the Association. The Association shall have such powers and duties as may be granted or delegated to it by law, the Articles, this Declaration, Bylaws, or the Act.

Section 4. Common Profits. Common profits of the Association shall be allocated among Owners on the basis of the equal right of each Lot to the use and benefit of the Common Property; provided, that such profits shall not be actually distributed among the Owners, but shall be used by the Association to pay common expenses of the Association.

#### ARTICLE IV MEMBERSHIP AND VOTING RIGHTS

Section 1. Members. Every person or entity who is a record owner of a fee interest or undivided fee interest in any Lot or a purchaser under a land sale contract shall be a mandatory member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership in the Association shall be appurtenant to, and may not be separated from, ownership of any Lot. Transfer of ownership of a Lot automatically transfers membership in the Association.

Section 2. Voting Rights. The Association shall have two classes of voting members:

(a) Class A. Class A members shall be all Owners with the exception of Declarant; Class A members shall be entitled to one vote for each Lot owned. When more than one person owns an interest in a Lot, all such persons shall be members and shall exercise their vote for said Lot as they determine; provided, in no event shall more than one vote be cast with respect to any Lot.

(b) Class B. The Class B member shall be the Declarant. The Class B member shall be entitled to three (3) votes for each Lot owned. Class B membership respecting any particular Lot shall cease and be converted into Class A membership upon the sale of any such Lot by Declarant to another Owner. Except in the case of conversion upon sale, the Class B membership shall continue following the turnover meeting.

Section 3. Turnover Meeting. Not later than one hundred twenty (120) days of the date on which Declarant has conveyed Lots representing seventy five percent (75%) of the votes in the Association, Declarant shall call the turnover meeting as provided in the Bylaws for the purpose of turning over administrative responsibility for the Planned Community to the Association. As used in this Section, the term "Lot" shall mean the Lots existing after all potential phases of development of Lots have been platted and annexed to the Planned



Community as described in this Declaration. The Declarant may, at its option, call the turnover meeting prior to the time specified herein.

ARTICLE V  
GENERAL DEVELOPMENT PLAN

Section 1. Phased Development. Declarant proposes to develop and plat the Planned Community in several phases. As each phase is developed, Declarant will record a plat of the phase, which plat will identify the number of Lots included in that phase and the tracts which are or will be subsequently conveyed to the Association as Common Property, and will record a supplemental declaration which declares all or a portion of the property depicted on the plat to be part of the Planned Community.

Section 2. Number of Lots. Phase I of the Planned Community was created by recordation of the original declaration and plat on April 1, 1991. Phase I consists of the real property described on Exhibit A attached hereto on which have been platted twelve (12) Lots. Declarant proposes to create and annex three additional phases containing forty-two (42) additional Lots, for a total of fifty-four (54) Lots in the Planned Community when the phased development has been completed. However, the actual number of additional Lots (or phases) may be fewer or greater; there is no limitation on the number of Lots or phases which Declarant may create and annex to the Planned Community. Lots may or may not be improved with living units at the time of annexation.

Section 3. Allocation of Votes and Common Expenses. As and when additional Lots are created and annexed to the Planned Community, the Owners of the Lots shall automatically become members of the Association and shall be entitled to vote, as the Class B member or as Class A members pursuant to Article IV of this Declaration, as of the date of recordation of the plat and supplemental declaration. In this method of allocation of votes, the total number of votes in the Association will increase as additional Lots are created and annexed.

As and when additional Lots are created and annexed to the Planned Community, the Owners of the additional Lots shall be subject to assessments of the Association, as provided in Article XI of this Declaration; however, Declarant may elect to defer commencement of regular assessments (except for the portion of such assessments assessed for insurance and reserve accounts) on all Lots in any phase as provided in Section 7, Article XI, so long as Declarant pays all other common expenses attributable to such phase until regular assessments are commenced for Lots in that phase. When regular assessments are commenced for Lots in a phase, the Owners of those Lots shall be obligated to pay a prorated portion (prorated on the basis of the Association's fiscal year) of the then existing regular assessments payable by Owners of existing Lots. In this method of allocation, the annexation of additional Lots should not, by itself, cause existing Owners to pay a higher regular assessment. Notwithstanding, if annexation includes Common Property (such as a recreational facility) that is disproportionately more

expensive to insure and maintain than existing Common Property, the increased common expenses ultimately will result in higher regular assessments for all Lots.

Section 4. Common Property. As each phase of the Planned Community is created and annexed, the plat will depict, and the supplemental declarations will describe, the tracts which are or will be transferred to the Association as Common Property. In Phase I, all portions of the real property described on Exhibit A, except the Lots, constitutes Common Property and includes, without limitation, the landscaping, paved streets, parking areas, pathways, driveways and entranceways, putting green(s), and gazebo. Declarant proposes to create and annex tracts of Common Property with each additional phase to be used as landscaped areas, streets, parking areas, pathways, driveways and entranceways. However, Declarant reserves the right to annex Common Property with improvements thereon for such other uses as Declarant, in its discretion, deems appropriate; such improvements may include one or more swimming pools, tennis courts, croquet courts, putting greens, recreational buildings, quarters for a manager/caretaker, or other facilities. There is no limitation on Declarant's right to annex Common Property and there is no obligation imposed on Declarant to annex any Common Property. Declarant has not agreed to build any improvements, nor does Declarant choose to limit its right to add improvements not described in this Declaration.

Section 5. Declarant's Rights Following Turnover Meeting. If Declarant has not completed development of Lots or Common Property at the time of the turnover meeting, Declarant shall continue to hold the special declarant rights under this Declaration until development of all Lots and Common Property which Declarant may create and annex has been completed.

## ARTICLE VI COMMON PROPERTY

Section 1. Common Property Tracts. As each phase of the Planned Community is platted, the plat shall depict the tracts which are or will be transferred to the Association as Common Property. Such tracts may contain landscaping, ponds, paved streets, parking areas, pathways, driveways and entrances, and/or facilities or improvements for the use, or benefit, in common, of the members of the Association. Declarant is under no obligation to improve said tracts with any particular facilities or structures, but reserves the right to improve a tract or tracts with swimming pools, tennis courts, croquet courts, putting greens, recreational buildings, or other facilities, at its own expense, prior to conveying the same to the Association.

Section 2. Conveyance To The Association. No later than the turnover meeting, Declarant shall convey the Common Property to the Association; if Declarant subsequently creates and annexes additional phases that contain Common Property, Declarant shall convey said tracts to the Association at the time of annexation. Any tract so conveyed shall be free of debt encumbrance at the time of conveyance.

## 6 - DECLARATION OF THE COVE AT BROOKINGS

Section 3. Mortgage or Conveyance of Common Property. After conveyance to the Association, the Common Property cannot be mortgaged or conveyed or subjected to a security interest without the affirmative vote of at least eighty percent (80%) of each class of members voting in person or by proxy at a meeting duly called for this purpose; provided, further, that the Board shall not sell real or personal property items of Common Property in any fiscal year with a fair market value which in the aggregate exceeds five percent (5%) of the regular assessment for that fiscal year without first obtaining the following additional approvals: (i) as long as there is a Class B membership, approval of a majority of the total voting power held by the Class A members and approval of a majority of the total voting power held by the Class B member; and (ii) if there is no Class B member, approval of a majority of the total voting power of the Association residing in members other than Declarant. This Section shall not apply to the granting of easements, leases, licenses and concessions over the Common Property or to the granting of easements for public utilities, telecommunications utilities or for other public purposes consistent with the intended use of the Common Property, or to the dedication of streets and utilities to public authority.

The Association shall treat proceeds of any sale under this Section as an asset of the Association. A sale, transfer, or encumbrance of the Common Property or any portion thereof may provide that the Common Property be released from any restriction imposed on the Common Property by this Declaration; however, no sale, transfer, or encumbrance may deprive any Lot of its right of access or support or eliminate an Owner's exclusive easement pursuant to Article XI, without the consent of the Owner of the Lot.

Section 4. Condemnation of Common Property. After conveyance to the Association, the Board shall have the sole authority to negotiate with any public or private body or person having the power of eminent domain and to sue or defend in any litigation involving such bodies or persons with respect to the Common Property or any portion thereof which is the subject of any condemnation or eminent domain proceeding. Any awards received for the condemnation shall be paid to and be treated as an asset of the Association. In the event of a taking of less than all of the Common Property, the same rules as to restoration and replacement of the Common Property shall apply as in the case of the destruction of the improvements thereof. In the event of a total taking of the Common Property, the Board shall deposit the funds in the general funds of the Association.

Section 5. Use of Common Property. The Board shall regulate use of the Common Property and may, from time to time, adopt, modify, or revoke rules and regulations governing conduct, operation, and use as provided in Article VIII, Section 22; provided, however, that the Board shall not adopt any rule or regulation that prevents an Owner from using the portions of the Common Property to which the Owner has an exclusive easement pursuant to Article IX. Nothing shall be stored on the Common Property without the prior consent of the Board. The Board may, from time to time, designate portions of the Common Property for recreational uses such as croquet, badminton, etc.

## 7 - DECLARATION OF THE COVE AT BROOKINGS

ARTICLE VII  
ARCHITECTURAL CONTROL

Section 1. Architectural Committee. The Architectural Committee ("Committee") shall consist of three members. Until the turnover meeting, Declarant shall have the exclusive right to appoint, remove, and replace the members of the Committee; such members need not be members of the Association or possess any particular qualifications. After the turnover meeting, the Board shall have the exclusive right to appoint, remove, and replace the members of the Committee; however, such members must be either members of the Association or authorized in writing by Declarant.

A decision by the majority of the Committee shall be a decision of the Committee. The Committee may delegate any of its rights or responsibilities under this Article to one or more duly authorized architects who shall have authority to act on behalf of the Committee in all matters delegated.

Section 2. Committee Approval Required. No building, fence, wall, patio, deck, pool, spa, heat pump, antennae, awning, screen, trellis, or other structure, improvement, or fixture shall be commenced, installed, or erected on any Lot, nor shall any exterior addition to, or change or alteration in, be commenced or made to existing structures, improvements, or fixtures, or to the exterior appearance of any structures, improvements, or fixtures on a Lot, nor shall any clearing, grading, or landscaping of any portion of a Lot be commenced, until an application for the proposed item or work has been submitted to and approved in writing by the Committee. All items or work approved or deemed approved by the Committee shall be diligently constructed and completed by the Owner in accordance with the approved plans and specifications. Notwithstanding this Section 2, an Owner need not obtain approval of the Committee to remodel or paint the interior of his living unit, so long as such remodeling or painting does not affect the exterior appearance of the living unit.

Section 3. Application to the Committee. In seeking approval from the Committee, an Owner shall submit a written application describing the proposed structure, improvement, fixture, alteration, or landscaping, together with plans and specifications, if applicable, showing the dimensions, materials, and location of same. The Committee may request additional information, including a certification from a licensed surveyor that the proposed item does not encroach on any portion of another Lot or Common Property. The Committee shall review and consider the application on the basis of the proposed item's conformity to the purpose, general plan, and intent of this Declaration and Bylaws respecting the nature of the Planned Community and its amenities, and the proposed item's conformity to rules and regulations, if any, adopted pursuant to Section 4 of this Article. Notwithstanding that the proposed item is in general conformity, the Committee shall have the right, in its sole discretion, to disapprove any alteration of or addition to any portion of the Lot or living unit as to which the Association is responsible for maintenance and repair.

Section 4. Rules and Regulations. The Committee, with the concurrence of the Board, may from time to time adopt written rules and regulations of general application governing its procedures, including provisions for the form and content of applications, required content and number of copies of plans and specifications, and form of approval or disapproval. The Committee, with the concurrence of the Board, may from time to time adopt written rules and regulations which provide additional design criteria, architectural standards, requirements for construction or landscaping, and/or reasonable fees and charges which may be assessed for the submission of applications and for the costs incurred by the Committee in reviewing and considering applications. Such rules and regulations, when adopted, shall be promptly delivered to all Owners and shall be binding on all Owners and occupants of all Lots.

Section 5. Method and Address for Submitting Applications. All applications, requests, plans, specifications, and other materials shall be sent to the Committee by certified mail, return receipt requested, to the address set forth below or to such other address as may from time to time be designated by the Board:

Architectural Committee of the Cove at Brookings  
c/o The Chetco Corporation  
3601 NW Yeon  
Portland, Oregon 97210

Section 6. Failure to Approve or Disapprove Plans and Specifications. In the event the Committee fails either to approve or disapprove an application within thirty (30) days after the Committee has received all of the information and materials that are required or requested to be submitted to the Committee, it shall be conclusively presumed that the Committee has approved such application; provided, however, that the foregoing presumption of approval shall not be applicable to any application respecting any portion of a Lot or living unit for which the Association has the responsibility of maintenance and repair.

Section 7. No Liability. Neither Declarant, the Association, the Board, the Committee nor the members or designated representatives thereof shall be liable in damages or otherwise to anyone submitting plans and specifications to them for approval, or to any Owner by reason of mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any application, plans and specifications or for any defect in any improvements constructed from such plans and specifications or for any noncompliance with building codes or applicable governmental ordinances and regulations. Such plans and specifications are not approved for engineering design or for compliance with applicable codes and laws. Every person who submits an application to the Committee for approval agrees, by submitting it, and every Owner agrees, that he will not bring any action or suit against Declarant, the Association, the Board, the Committee or any of the members or designated representatives thereof to recover any damages.

## 9 - DECLARATION OF THE COVE AT BROOKINGS

Section 8. Notice of Noncompliance or Noncompletion. Following the expiration of one (1) year from the date of the taking of any action which might not otherwise be in compliance with this Article, said improvements or such action shall, in favor of purchasers and encumbrancers in good faith and for value, be deemed to be in compliance with all provisions of this Article unless actual notice of such noncompliance or noncompletion, executed by the Committee or its designated representatives, shall appear of record in the office of the clerk of Curry County, or unless legal proceedings shall have been instituted to enforce compliance or completion.

Section 9. Variances. Where circumstances such as topography, location, property lines or other matters require, the Committee may, in its discretion, allow reasonable variances as to any of the covenants, conditions or restrictions contained in this Declaration, or the rules and regulations adopted pursuant hereto, under the jurisdiction of such Committee on such terms and conditions as it may require; provided, however, that all such variances shall be in keeping with the general plan for the improvement of the Planned Community.

Section 10. Inspection. Any member or agent of the Committee may from time to time at any reasonable hour and upon reasonable notice enter and inspect any property subject to the jurisdiction of the Committee as to its improvement or maintenance in compliance with the provisions hereof, and no person gaining entry pursuant hereto shall be deemed guilty of trespass by reason thereof.

Section 11. Declarant's Exemption. Declarant shall not be subject to the provisions of this Article to the extent deemed necessary by Declarant to engage in all forms of sales, construction and rental activities within the Planned Community, including any property which is subject to annexation pursuant to Article V of this Declaration.

## ARTICLE VIII USE RESTRICTIONS

Section 1. Limitations Upon All Use Restrictions. Each and all of the provisions of this Article shall be subject to the rights of, and shall in no way limit the rights of, Declarant as set forth in other provisions of this Declaration. This Section may not be modified or eliminated without the prior written approval of Declarant.

Section 2. Intended Use. Each Lot within the Planned Community is intended to be used for residential purposes only.

Section 3. Commercial Use. Unless otherwise approved by the Board, no portion of the Planned Community, including Lots, shall be used in any way, directly or indirectly, for any business, commercial, "Bed and Breakfast", or other paid rooming and/or boarding, manufacturing, mercantile, storing, vending, or any nonresidential purposes.

However, nothing herein shall prevent or prohibit (a) an Owner from leasing his Lot provided such leasing complies with the Article VIII, Section 19, or (b) an Owner from maintaining his or her personal professional library, keeping his personal business or professional accounts and records, handling his personal or professional business calls, or occasionally conferring with business or professional associates, clients or customers, upon his Lot.

Section 4. Signs. No sign of any kind shall be displayed to the public view on or from any portion of the Planned Community without the approval of the Board. Notwithstanding the foregoing, one sign of reasonable dimensions advertising a Lot for sale or for rent may be placed within the Planned Community, at a location which the Board has approved, by the Owner thereof or his agent.

Section 5. Offensive Activity. No noxious or offensive activity shall be carried on or upon the Planned Community, nor shall anything be done thereon which might be or become an annoyance or nuisance to occupants, which shall interfere with the rights of quiet enjoyment of occupants, or which shall increase the rate of insurance or risk the cancellation thereof. No Owner or occupant shall engage in activity within the Planned Community which is in violation of any law, ordinance, statute, rule or regulation of any local, county, state or federal body.

Section 6. Temporary Structure. No temporary structure or building shall be placed upon the Planned Community or used therein unless the same and its proposed use are approved by the Architectural Committee.

Section 7. Parking. Unless otherwise permitted by the Board, no motor vehicle (including a motorcycle), trailer, camper, boat, or similar item, and no bicycle, shall be permitted to remain on the Planned Community unless parked or placed within a garage (in such a manner so that the door is able to close and is closed) or in a designated open parking space of the Planned Community; provided, however, temporary parking of motor vehicles shall be permitted. For purposes hereof, "temporary parking" shall mean parking of vehicles belonging to invitees of Owners and occupants, parking of delivery trucks, service vehicles and other commercial vehicles being used in the furnishing of goods and services to the Association or to the Owners and occupants, and parking of vehicles belonging to and being used by Owners, occupants and invitees for loading and unloading purposes.

Section 8. Garages. Garages shall be used only for parking purposes in accordance with this Article and for storage purposes; provided, however, that nothing shall be stored within a garage which would prevent the parking therein of the number of passenger vehicles such garage was designed to contain. No garage shall be converted into a workshop, additional domestic room, or other use. No garage door shall be permitted to remain open except for purposes of entering or exiting said garage, or for the cleaning or maintenance thereof. No repairs shall be performed within any garage other than emergency repairs.

## 11 - DECLARATION OF THE COVE AT BROOKINGS

Section 9. External Fixtures. No external items such as, but not limited to, television and radio poles and antennae, flag poles, clotheslines, wiring, insulation, air-conditioning equipment, water softening equipment, fences, awnings, ornamental screens, screen doors, porch or patio or balcony enclosures, sunshades, walls, landscaping and planting, other than those provided in connection with the original construction of the Planned Community, and any replacements thereof, and other than those approved by the Architectural Committee and any replacements thereof, shall be constructed, erected or maintained on or within the Planned Community, including any structures thereof.

Section 10. Window Covers. Only curtains, drapes and shades may be installed as window covers. No window shall be covered by paint, foil, sheets or similar items. The Board or Architectural Committee may adopt rules regulating the type, color, and design of window covers.

Section 11. Electronic Transmission Equipment. No electronic transmitting equipment other than transmitting equipment and devices approved by the Board shall be installed, maintained or used within the Planned Community.

Section 12. External Laundering. Unless otherwise permitted by the Board, external laundering and drying of clothing or other items is prohibited.

Section 13. Unsightly Items. All weeds, rubbish, debris, or unsightly materials or objects of any kind shall be regularly removed from Lots by the Owners and shall not be allowed to accumulate therein or thereon. Refuse containers and woodpiles, and machinery and equipment not a part of living units, shall be prohibited upon any Lot unless obscured from view of adjoining Lots and Common Property. Trash and garbage not disposed of by equipment contained within Lots shall be placed in containers by Owners and occupants for removal from the Planned Community in accordance with rules and regulations adopted by the Board.

Section 14. Animals. No animals, livestock, or poultry of any kind shall be raised, bred or kept upon the Planned Community, except that dogs, cats, or other household pets may be kept within a Lot provided they are not raised, bred, kept, or maintained for any commercial purpose or in numbers deemed unreasonable by the Board. Notwithstanding the foregoing, no animal or fowl may be kept within a Lot, which, in the good faith judgment of the Board or a committee selected by the Board for this purpose, results in annoyance or is obnoxious to Owners or occupants. All animals permitted to be kept hereby shall be kept on a leash when on any portion of the Planned Community except within a Lot.

Section 15. Drainage. All drainage of water from any Lot shall drain or flow as set forth below:

(a) Any such water may drain or flow into adjacent streets or alleys and shall not be allowed to drain or flow upon, across, or under adjoining Lots and Common Property



unless such drainage is part of the original construction of the Planned Community and any replacement or reconstruction thereof; and

(b) All slopes, terraces, and decks of Lots, if any, shall be maintained so as to prevent any erosion or seepage resulting from drainage therefrom upon adjacent streets or adjoining property.

Section 16. Obstruction of Private Streets. No Owner or occupant of the Planned Community, his guests, or invitees, shall obstruct, block, or otherwise hinder travel along any private street or driveway of the Planned Community.

Section 17. Fences; Walls; Patio Covers. No fencing, walls, or patio covers shall be constructed or installed within the Planned Community unless approved by the Architectural Committee, except for walls and fencing, and patio covers, if any, constructed or installed in connection with initial construction of the Planned Community, and any replacement of such walls, fencing, or patio covers.

Section 18. Landscaping and Vegetation. All landscaping and vegetation of any description within the Common Property shall be maintained by the Association. No Owner shall plant, remove, trim, prune, or otherwise alter any vegetation upon the Common Property without the express and prior permission of the Association.

Section 19. Leases. Any agreement for the lease or rental of any Lot (hereinafter referred to as a "lease") shall be in writing and shall provide that the terms of such lease shall be subject in all respects to the provisions of this Declaration, the Articles, Bylaws, and rules and regulations, and that any failure by the lessee to comply with the terms of the foregoing documents shall be a default under the lease. No Owner may lease less than the entirety of his Lot, and no lease shall be for any period of time less than thirty (30) days. Any Owner who shall lease his Lot shall be responsible for assuring compliance by such Owner's lessee with this Declaration, the Articles, Bylaws, and rules and regulations. Failure of any Owner-Lessor to take legal action, including institution of proceedings, against his lessee who is in violation of the aforesaid documents, within ten (10) days following receipt of written demand to do so issued by the Board, shall entitle the Association, through the Board, to undertake any and all such action on behalf of such Owner against the lessee. Any and all expenses incurred by the Association, including attorney fees, disbursements and costs, shall be repaid to it by such Owner. Failure of such Owner to make such repayment within ten (10) days after receipt of an itemized demand therefor shall entitle the Board to levy and collect such expenses as an individual assessment.

Section 20. Party Walls. Owners who share a party wall shall equally have the right to use such wall, and each shall have the exclusive right to use the interior surface thereof on the side of his Lot. However, such right to use the interior surface shall not be deemed to include the right to diminish the fire-safety rating of the wall, if applicable construction or life

and safety building codes require (or prohibit) the maintenance of specific finish materials upon said wall. Neither Owner shall use or permit to be used any portion of the wall so as to interfere with the use and enjoyment of the other Owner. The party wall shall be considered to adjoin and abut against the Lot property line from the bottom of the foundation over the full length and height thereof. In the event that any portion of such party wall, except the interior surface thereof, is damaged or injured from any cause, other than the act or negligence of either Owner or Owner's invitee(s), it shall be repaired or rebuilt at the joint expense of such adjoining Owners to the extent that the cost of repair or restoration is not paid by insurance maintained by the Association. If damaged or injured through the act or negligence of one of the Owners or his invitees, it shall be repaired or rebuilt at the cost of such Owner to the extent such cost is not paid by insurance maintained by the Association. The other Owner and the Association shall have an action at law for the cost of replacement or repair not paid by such insurance, together with any and all costs, disbursements and attorney fees incurred in connection therewith. In the event of an action by the Association, such amounts may be levied and collected as an individual assessment. Any repair or rebuilding of the party wall hereunder shall be in compliance with applicable construction, life and safety, or dwelling codes which set forth standards for the construction of such party walls or like shared walls within two-family residential dwelling structures.

For purposes hereof, the term "party wall" shall mean a common or shared wall or structural element of a building housing two (2) living units, between adjoining living units. All lath, wallboard, plaster board, plaster, paneling, tiles, wallpaper, paint, and any other materials constituting any part of the finished surfaces thereof shall be a part of the living unit, and all other portions of the common or shared wall or structural element shall be part of the "party wall."

**Section 21. Subdivision and Combination of Lots.**

(a) No subdivision or partitionment of any Lot into two (2) or more smaller Lots or parcels shall be permissible.

(b) Two (2) or more adjacent unimproved Lots may be combined into a single Lot, with the Owner thereof having all the rights, privileges and obligations appertaining to the ownership of a single Lot, upon which shall be located a single living unit, provided that the design and construction of said living unit conforms to the design and construction of the other living units within the Planned Community and is approved by the Architectural Committee, and provided further, the combined Lot shall be subject to assessments by the Association as if it remained two (2) separate Lots.

(c) Two (2) adjacent Lots owned by individual Owners, upon which are located existing living units sharing a party wall may be combined into a single Lot, provided that:

**14 - DECLARATION OF THE COVE AT BROOKINGS**

(i) the party or shared wall separating such living units is removed and the resulting structure is used exclusively as a single living unit and conforms to the design and appearance of other living units in the Planned Community;

(ii) the Architectural Committee has previously approved the plans and specifications for all construction and remodeling work associated with the combination of living units, upon application properly made to said Committee in accordance with Committee rules and regulations. The Architectural Committee may apply such requirements as it deems advisable to such application, to include but not necessarily be limited to a requirement that the plans and specifications be approved and stamped by a registered professional structural engineer, and that the applicant indemnify and hold harmless the Committee and the Association from and against any damages, losses or expenses associated with the reconstruction and remodeling; and

(iii) the Owner or Owners of the combined Lot agree by a writing satisfactory to the Board that the combined Lot shall thereafter be subject to assessments by the Association as if it were two (2) Lots. Such writing shall include, but need not be limited to, an instrument recordable with the recording clerk of the County of Curry, Oregon, setting forth the obligation provided for hereunder.

(d) Notwithstanding the provisions of subsections (b) and (c) immediately above, any proposed combination of Lots which, to be accomplished, requires the approval of any governmental authority having jurisdiction, shall be subject to such approval, and provided further, any such proposed combination of Lots which, to be accomplished, requires the amendment of the Plat, shall require, in addition to all other requirements, the affirmative approval, by vote or agreement, of the Owners representing seventy-five percent (75 %) of the total votes in the Planned Community.

Section 22. Additional Rules Adopted by Board of Directors. The Board from time to time may adopt, modify, or revoke such other reasonable rules and regulations further defining or clarifying the use restrictions in this Article and/or governing the conduct of persons and the operation and use of the Lots and Common Property as it may deem necessary or appropriate in order to assure the peaceful and orderly use and enjoyment of the Planned Community. A copy of the rules and regulations, upon adoption, and a copy of each amendment, modification, or revocation thereof, shall be delivered promptly to each Owner and shall be binding upon all Owners and occupants of all Lots. Notwithstanding anything else in this Declaration which may appear to the contrary, however, the Association shall not be permitted to suspend the right of an Owner to use such portions of the Common Property which are subject to that Owner's exclusive easement pursuant to Article IX.

Section 23. Fines; Hearings. The Board shall have the right and authority to set penalties or fines for the violation of any of the rules, regulations, or restrictions on the use of property or respecting the conduct of persons within the Planned Community, which fines

## 15 - DECLARATION OF THE COVE AT BROOKINGS

may be assessed and collected as an individual assessment against an offending Owner and his Lot. Provided, no such penalty or fine may be assessed or collected without first providing the Owner adequate notice of the offense or violation charged and an opportunity for such Owner to be heard in defense thereof. The Board may adopt a schedule of fines and penalties and procedures for the providing notice and opportunity to be heard as part of the rules of the Association. Upon adoption, a copy of the schedule of fines and penalties, and procedures for notice and opportunity to be heard, shall be promptly delivered to each Owner, and shall be binding upon all Owners and occupants of all Lots.

## ARTICLE IX RIGHTS AND EASEMENTS

Section 1. Declarant's Rights and Easements. Notwithstanding any provision in this Declaration to the contrary, Declarant shall have the following special rights and easements until all phases of the Planned Community have been platted and submitted by Declarant and until the following two events have occurred: (a) All Lots owned by Declarant in all phases have been sold and conveyed; and (b) All Common Property depicted on all phases has been conveyed by Declarant to the Association. Declarant may transfer the special rights and easements to other developers of living units in the Planned Community.

(a) Construction and Sales; Sales Offices and Models. Declarant and its agents shall have the right to engage in all forms of construction and sales activities within the Planned Community, including the right to maintain a sales office and model unit in one or more of the Lots or living units which the Declarant owns. The Declarant and its agents shall have the right to use and occupy the sales offices and models during any day of the week.

(b) "For Sale" Signs. The Declarant and its agents may maintain "For Sale", "For Rent", or "For Exchange" signs at any locations in the Planned Community.

(c) Temporary Structures or Trailers. Declarant and its agents shall have the right to place and use temporary structures, trailers, or fences on Declarant's Lots or on the Common Property to assist Declarant in its construction or sales activities.

(d) Declarant's Easement. The Declarant hereby reserves an easement over the Common Property for all reasonable purposes related to the improvement or maintenance of any Common Property and the construction of living units on any and all Lots owned by Declarant. Declarant further reserves an easement over the Lots as reasonably needed to complete Declarant's obligation with regard to Common Property.

(e) Construction by Declarant. Nothing in this Declaration shall limit the right of Declarant and its successors in interest to alter the Common Property or Lots, or to construct such additional improvements as Declarant deems advisable prior to completion and

sale of the entire Planned Community, including any property subject to annexation by Declarant. Such right shall include, but not be limited to, erecting, constructing and maintaining in the Planned Community such structures and displays as may be necessary for the conduct of its business of completing construction and disposing of the same by sale, lease or otherwise. This Declaration shall not limit the right of Declarant at time to establish on the Planned Community additional licenses, reservations and rights-of-way to itself, to utility companies, or to others as may from time to time be reasonably necessary for the development and disposal of real property in the Planned Community. Prospective purchasers and Declarant shall have the right to use the Common Property for access to all of Declarant's offices and sales facilities, and Declarant reserves the right to alter its construction plans and designs as it deems appropriate. Declarant shall exercise its rights contained in this subsection in such a way as not to unreasonably interfere with the rights of members to use and enjoy the Common Property and the rights of Owners and occupants to use, enjoy and occupy their respective Lots and exclusive easements to portions of the Common Property associated therewith.

(f) Enforcement: Attorney Fees. Declarant shall have the right to enforce any of the provisions of this Declaration, including the provisions of this Section 1, against the Association, any Owner, or any other person. In the event Declarant takes legal action to enforce or interpret the provisions of this Declaration, the prevailing party in such action shall be entitled to recover its reasonable attorney's fees, as set by the court or courts at trial, on appeal, or on petition for review.

Section 2. Utility Easements. There is hereby created a blanket easement upon, across, over, through and under the Lots and Common Property for ingress, egress, installation, replacement, repair and maintenance of all utility and service lines and systems including, but not limited to water, sewers, gas, telephones, electricity, television cable, or communication lines and systems. By virtue of this easement, it shall be expressly permissible for the Declarant or the providing utility or service company to install and maintain facilities and equipment on the Lots and Common Property, to excavate for such purposes and to affix and maintain wires, circuits and conduits, providing that disturbed areas are promptly restored substantially to their prior condition when the work has been completed. Notwithstanding the foregoing, and except as to the individual service connections serving a Lot, no sewers, electrical lines, water lines or other utility service lines or facilities for such utilities may be installed or relocated on said Lots and Common Property except as programmed and approved by the Declarant, until the events described in Section 1 of this Article have occurred, or by the Board thereafter. This easement shall in no way affect any other recorded easements on the Lots and Common Property. With respect to individual service connections serving a Lot, the Owner of the Lot shall have the right, for himself or his utility provider, to maintain, repair, or replace the connection lines to his Lot, providing that the disturbed areas are promptly restored substantially to their prior condition when the work has been completed.

Section 3. City Easements.

(a) The City of Brookings, Oregon, is hereby granted the right of access to the publicly-dedicated sanitary sewer system located on the Planned Community, for the purposes of operation, repair and maintenance of said system and its component parts, to include the right to remove or disrupt, as may be reasonably necessary, such landscaping and structures as may lie above the said system as defined by the right-of-way therefor disclosed on the plat and as-built plans; provided, however, that nothing herein shall be construed to authorize or permit the planting of trees, shrubs, or other vegetation, by Owners or the Association, upon any area within the defined right-of-way of the publicly-dedicated sanitary sewer system, which planting is prohibited. The City, and its agents, servants and employees, are hereby held harmless as to any claims, damages, losses or expenses which may arise out of the exercise of the rights granted to it under this subsection and which is not caused by the wilful or negligent act or omission to act of the City or any of its agents, servants or employees.

(b) The City of Brookings, Oregon, is hereby granted the right of ingress and egress with respect to rights-of-way of streets and roadways within the Planned Community in order to emplace, operate, maintain, repair and replace such facilities. The City is hereby held harmless against any claim or claims for losses or damages resulting from exercise of the rights granted by this subsection, to include but not be limited to losses or damages resulting from the disruption, dislocation or destruction of trees, shrubs or other vegetation located on such rights-of-way, where such disruption, dislocation or destruction is not caused by the wilful or negligent act or omission to act of the City, or the agents, servants or employees of same.

(c) Ingress and egress over, upon and across the private streets and ways of the Planned Community is hereby granted to all governmental, utility, emergency and commercial vehicles and personnel for the reasonable conduct of regular or emergency business within the Planned Community. Such permission shall include, but not necessarily be limited to, access for fire, police, medical, code enforcement, utility maintenance (including sewer, electric, telephone and cable television), mail, parcel post and merchandise-delivery services.

Section 4. Members Easement of Enjoyment. Subject to the provisions of this Declaration, Bylaws, and rules and regulations of the Association, and except as to areas subject to exclusive easements described in Section 6 of this Article, every Owner shall have a right and easement of enjoyment in the Common Property, and an easement of access through the Common Property as reasonably necessary for access to the Owner's Lot, which easements shall be appurtenant to and shall pass with the title to every Lot. The Owners' easements created hereby shall be subject to the following rights of the Association:

(a) The right of the Association to establish rules and to charge reasonable assessments and fees for capital expenditures on the Common Property and the maintenance and upkeep of the Common Property and payment of all Association expenses.

(b) The right of the Association to suspend the right of an Owner to use recreational facilities, if any, on the Common Property for any period during which any

assessment against his Lot remains unpaid for more than 30 days; the right of the Association to suspend the right of an Owner to use recreational facilities on the Common Property for a period not to exceed 60 days for any other infraction of the Declaration, Bylaws, or rules and regulations.

(c) The right of the Association to dedicate streets or utilities, or to transfer all or any other portion of the Common Property subject to the provisions of Article VI, Section 3, of this Declaration; to establish, in cooperation with any governmental entity, a special tax assessment district for the performance of all or a portion of the maintenance and other functions now within the responsibility of the Association; and the right to grant permits, licenses, and easements through or over the Common Property.

(d) Any Owner may delegate his right of enjoyment in the Common Property to the members of his family and to his guests, as well as to any lessee of his Lot; however, the Board may from time to time adopt rules to limit the number of guests and/or to limit the use of recreational facilities by Owners or others who are not in possession of a living unit.

(e) No Owner may exempt himself or his Lot from liability for the Association's assessments by waiver of the use and enjoyment of the Common Property or by abandonment of his Lot.

Section 5. Easements for Encroachments. If an encroachment results from construction, reconstruction, repair, shifting, settlement or movement of any portion of the Planned Community, an easement for the encroachment exists to the extent that any Lot, living unit, or Common Property encroaches on any other Lot, living unit, or Common Property. An easement continues for maintaining the encroachment so long as the encroachment exists. Nothing in this Section relieves an Owner of liability in case of the Owner's wilful misconduct or relieves Declarant or any other person of liability for failure to adhere to the plats of the Planned Community.

Section 6. Exclusive Easements of Owners Affecting Portions of Common Property. Notwithstanding any other provisions of this Declaration to the contrary, each Owner shall have the following easements of use and enjoyment over and upon certain portions of the Common Property, which easements shall be exclusively for the private benefit of said Owner, shall be appurtenant to and pass with title to the Lot, and shall be subject to the conditions set forth herein:

(a) Patio and Steppingstone Easement. Each Owner shall have an exclusive easement over, upon and across the patio abutting and adjacent to such Owner's living unit, and a like easement over, upon and across the steppingstones leading to said patio. For purposes hereof, "patio" shall mean that area of exposed aggregate pavement or other material constructed immediately adjacent to and abutting a living unit, which is designed to serve as an exterior residential amenity benefitting the occupants of a living unit and their guests and invitees.

"Steppingstone" shall mean the pathway constructed of individual exposed aggregate tiles or other material which provides a pathway to and from the patio adjacent to the living unit.

(b) Garage Apron Easement. Each Owner shall have an exclusive easement over, upon and across the garage apron abutting and adjacent to such Owner's living unit. For purposes hereof, "garage apron" shall mean that portion of pavement adjacent to the garage attached to a living unit, which is equal to the width of the garage door and which extends a distance of eighteen (18) feet outward from the exterior face of such garage door.

(c) Entryway Easement. Each Owner shall have an exclusive easement over, upon and across the entryway abutting and adjacent to such Owner's living unit. For purposes hereof, "entryway" shall mean that portion of pavement lying between the garage apron and the front doorway of a living unit, designed for foot traffic to and from the main entry of such living unit.

(d) Mutual Driveway Easement. The Owners of adjoining and attached living units shall together have and cooperatively share an exclusive easement over, upon, and across the driveway abutting and adjacent to the Owners' living units. For purposes hereof, "driveway" shall mean that portion of pavement lying between the front elevation of attached living units and that portion of the adjacent street or roadway utilized for vehicular travel.

(e) Restriction on Owner Rights. Nothing in this Section shall be deemed or construed to permit or authorize or grant to any Owner the right to: (i) alter, modify, expand or enlarge any patio, steppingstone, entryway, garage apron, or driveway; (ii) build, construct or otherwise cause to be emplaced anywhere on the Common Property any structure or improvement; (iii) fence, cordon off, or otherwise delineate any portion of the Common Property for the exclusive use of himself or any other Owner; (iv) prohibit or impede Declarant, the Association, or any entity, from exercising any rights or performing any obligations provided for in this Declaration, the Bylaws, Articles, rules and regulations, the Act, or pursuant to law or the provisions of any grant of interest in and to the Common Property; and (v) use the portions of the Common Property set forth herein for the exclusive use and enjoyment of such Owner in any manner inconsistent with any of the provisions of this Declaration, the Bylaws, Articles, or rules and regulations, governing the use of Lots or the conduct of persons in the Planned Community.

(f) Association Rights and Responsibilities. Those portions of the Common Property set aside under this Section for the exclusive use and enjoyment of Owners shall be maintained by the Association in the same manner as other Common Property, and the cost and expense thereof shall be a common expense of the Association; provided, that in the event that any repair or maintenance is necessitated by damage caused by the Owner of the affected Lot, or the tenants, guests or invitees of such Owner, the cost and expense of such repair or maintenance shall be assessed against such Owner and Lot as an individual assessment. In



carrying out its obligations hereunder the Association shall have the right of access over all portions of the Common Property, notwithstanding the exclusive easements set forth herein.

## ARTICLE X REPAIR AND MAINTENANCE

Section 1. Maintenance and Repair by Association. Except as may otherwise be provided in Article XIII, the Association, as a common expense, shall accomplish the following upon the Planned Community in such manner and at such times as the Board shall prescribe:

(a) Maintain, paint, repair, restore, replace, and make necessary improvements to, sweep, clean, irrigate, landscape, plant, replant, seed, fertilize, trim, mow, and keep free of brush and debris, as may be applicable, all portion of the Common Property, including but not limited to all open areas, landscaped and planted areas, private streets, driveways, drive aisles, walkways, trash areas, parking areas and spaces, walkways, all recreational facilities and amenities, if any, fences, walls and lighting fixtures (including those for private streets of the Common Property which may not be maintained by any other entity), so that the same are at all times in a safe, operable, clean, reasonable condition and good state of repair, as applicable.

(b) Irrigate, landscape, plant, replant, seed, fertilize, trim, mow, and keep free of brush and debris, all open areas adjacent to the Planned Community to the extent required to do so by governmental ordinance or regulation.

(c) Maintain, paint, repair, restore, replace, and make necessary improvements to all structures on the Common Property, if any, so that such structures are kept in a neat, clean, and aesthetically pleasing condition.

(d) Irrigate, landscape, plant, replant, seed, fertilize, trim, mow, and keep free of brush and debris all yard areas of Lots owned or possessed by the Association, and maintain, paint, repair, restore, replace, and make necessary improvements to any fences and building structures located on such Lots.

(e) Maintain all other areas, facilities, equipment, services, or amenities of whatsoever nature as may be added to the Common Property, or as may be from time to time requested by the vote or written consent of two-thirds (2/3) of the total voting power of the Association.

(f) Maintain, paint, repair, restore, replace, and make necessary improvements to (i) the exterior portions of all living units, to include roofs, rain gutters, and downspouts, fascia, trim, siding, and decorative elements, and (ii) the portions of the Common Property subject to the exclusive easements of Owners as set forth in Article IX.

Section 2. Repair and Maintenance by Owner. Except as may otherwise be provided in Article XIII and in Section 1 of this Article, every Owner shall at his sole cost and expense:

(a) Maintain, repair, replace, and restore, all portions of his Lot (except those portions subject to maintenance, repair, and restoration by the Association in accordance with applicable provisions of this Declaration) including, without limitation, (i) its improvements; and (ii) portions thereof subject to easements held by governmental authorities or utility companies to the extent such authorities or companies fail to maintain, repair, replace, and restore the same, so that the same are at all times in a clean, sanitary, attractive and reasonable condition and good state of repair.

(b) Without limiting subsection (a), directly above, repair and replace all window glass of building structures on his Lot, and Owners shall be responsible for the interior and exterior cleaning of such windows.

(c) Without limiting subsection (a) above, maintain, replace, repair, and restore any air-conditioning, heating, and water heating equipment which serve the building structure on his Lot; and

(d) Without limiting subsection (a), above, maintain in an open and unobstructed condition all sewer and drainage pipes and lines within the boundaries of and serving his Lot and its improvements.

Section 3. Standards of Maintenance. Maintenance by Owners shall be accomplished in a good and workmanlike manner, and, as the case may be, in accordance with such standards as may be adopted by the Association.

Section 4. Maintenance of Interior of Living Units. Except as provided in Article XIII, each Owner shall reasonably maintain the interior of his living unit and any other structure on his Lot, including all fixtures, flues, electrical, heating, cooling, and plumbing systems within any such structure.

Section 5. Maintenance of Public Utilities. Nothing contained in this Article shall require or obligate the Association to maintain, replace, or restore facilities in public utilities which are located within easements over, upon or across the Common Property. However, the Board shall take such steps as are necessary or convenient to ensure that such facilities are properly maintained, replaced, or restored by such public utilities.

Section 6. Maintenance of Party Walls. Any provision of this Article to the contrary notwithstanding, party walls shall be maintained in accordance with the provisions of Article VIII, Section 20.

Section 7. Individual Assessment. Notwithstanding any other provision in this Article, if the need for the maintenance, repair, or replacement under Section 1 is due to the negligence or act or omission of an Owner or such Owner's occupants, invitees, or pets, the Board may assess an individual assessment against the Owner and his Lot for the cost of the maintenance, repair or replacement, except for that portion, if any, that is covered by insurance carried by the Association. Further, if an Owner fails to comply with his obligations in this Article, the Board may, after giving the Owner at least thirty (30) days prior written notice, cause the obligations to be performed and assess the actual cost thereof as an individual assessment against the Owner and his Lot.

## ARTICLE XI COVENANTS FOR ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of a Lot covenants and agrees to pay the Association (1) regular assessments (including reserve assessments), (2) capital improvement assessments, (3) individual assessments, (4) reconstruction assessments, and (5) capitalization assessments, to be established and collected as hereinafter provided.

All such assessments, together with interest thereon and together with attorney fees and costs of collection thereof as hereinafter provided, shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest thereon, attorneys fees and costs of collection thereof, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due as well as a lien on his Lot. The personal obligation for delinquent assessments shall not pass to an Owner's successors in title unless expressly assumed by them, but the lien of the assessment shall run with the Lot, except as otherwise provided herein.

Section 2. Purpose of Regular Assessments. The regular assessments levied by the Association shall be used exclusively to promote the health, safety, and welfare of the Owners and occupants, and to pay the common expenses of the Association. Common expenses shall include:

(a) Maintenance, management, operation, repair and replacement of the Common Property, to include private streets, pathways and water distribution lines and components thereof, and any other areas of the Planned Community which are maintained by the Association, and maintenance of areas within any public right-of-way in the vicinity of the Planned Community now or hereafter acquired by any governmental agency to be maintained by the Association.

(b) Unpaid regular, reconstruction, and capital improvement assessments.

(c) Costs of management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys, and employees.

(d) Utilities, trash pickup and disposal, gardening, cable television antenna service, if available, and other services benefitting the Owners and their Lots to the extent such services are paid for the Association.

(e) Fire, casualty, liability, workers' compensation and any other insurance obtained by the Association, and costs of bonding members of the Board, any professional managing agent or any other person handling funds of the Association.

(f) Allocations for the purpose of establishing reasonable reserves against future common expenses, as deemed appropriate by the Board.

(g) Taxes paid by the Association.

(h) Amounts paid by the Association for the discharge of any lien or encumbrance levied against the Common Property or portions thereof.

(i) Expenses incurred by the Architectural Committee or other committees of the Association.

(j) Expenses, charges or fees incurred in connection with the performance of a "deferred improvement agreement" with the City of Brookings respecting Cove Road, or such other "deferred improvement agreements" entered into with said City, if any.

(k) Any other item or items designated by the Association as common expense or incurred by the Association for any reason whatsoever in connection with the Common Property, this Declaration, the Articles, the Bylaws, or rules and regulations, or in furtherance of the purpose of the Association or in the discharge of any other obligations imposed upon the Association by this Declaration.

(l) Any deficit in common expenses for any prior fiscal year of the Association.

Section 3. Reserve Accounts for Major Repair and Replacement of Improvements on Common Property. The Association shall maintain a reserve account or accounts for repair or replacement of all items, if any, of Common Property which will normally require replacement, in whole or in part, in more than three and less than thirty years, taking into account the estimated remaining life of such items and the replacement cost thereof. The items may be identified in the reserve account as those which are insurable by a common carrier of all purpose risk insurance.

The reserve account will be funded out of the regular assessments each year. The reserve assessment shall begin accruing on all Lots from the date that the first Lot is conveyed to a person other than Declarant; however, Declarant may defer payment of the accrued reserve assessment on unsold Lots until such Lots are conveyed. The Board shall adjust the amount of the reserve assessment at regular intervals to reflect changes in current replacement costs over time.

The reserve account may be used only for replacement of Common Property and is to be kept separate from other assessments. The Board may invest the funds prudently. After the turnover meeting, the Board may borrow funds from the reserve account to meet high seasonal demands on the regular operating funds or to meet other temporary expenses. Funds borrowed must be repaid later from special assessments or regular assessments. Following the second year after the turnover meeting, the reserve account may be increased or reduced, or future assessments to the reserve account may be eliminated, if Owners representing seventy-five percent (75%) of the votes in the Association affirmatively vote for such action.

Section 4. Reserves for Major Repairs and Replacement of Exterior of Structures on Lots. The Board may (but shall not be obligated to) establish a separate reserve account or accounts for all or a portion of the anticipated cost of major repairs or replacement of the exteriors of structures on the Lots. The reserve account(s) may be funded out of the regular assessments against all Owners or may be funded out of regular assessments on the Lots that will be benefitted by the particular reserve account. For example, the Board may establish a separate reserve account for repairs or replacement of roofs on specific living units, and fund such reserve account out of assessments on the Owners and Lots who will benefit from such account. If a reserve account is established for a specific purpose and/or for specific Lots, the funds can only be used for such purpose and/or Lots.

Section 5. Budget for Regular Assessment. The Board shall annually adopt a budget for the annual regular assessments and, within thirty (30) days thereafter, shall provide a summary of the budget to all Owners. If, within fourteen (14) days thereafter, the Board is petitioned by Owners representing twenty percent (20%) of all votes in the Association, the Board shall call a meeting of the Owners to consider rejection of the budget. The date of the meeting shall be not less than fourteen (14) or more than thirty (30) days after the summary is provided to the Owners. At the meeting, whether or not a quorum is present, the budget shall be adopted unless Owners representing more than fifty percent (50%) of all votes in the Association reject the budget. If the proposed budget is rejected, the last budget shall continue in effect until the Owners approve a subsequent budget.

Section 6. Regular Assessments. The Board shall fix the regular assessments each year following adoption or rejection of the budget as provided in Section 5. Written notice of the assessment shall be sent to the Owners of all Lots. In the event the proposed budget is rejected pursuant to Section 5, or in the event the Board fails to fix the amount of the new regular assessments or give notice thereof as provided herein, the regular assessments fixed for

the preceding year shall continue until new assessments are fixed and notice given. The regular assessments may be made payable on a monthly, quarterly, or annual basis, as determined by the Board.

Section 7. Deferral of Commencement of Regular Assessments. Declarant may, in its discretion, defer commencement of the regular assessments (except the portion thereof to cover cost of insurance and funding the reserve account described in Section 3) on all Lots in any phase so long as Declarant pays all other common expenses of the Association attributable to such phase until full regular assessments of Lots in that phase are commenced.

Section 8. Assessments for Capital Improvements. In addition to other assessments, the Board may levy in any fiscal year a capital improvement assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction (other than a reconstruction due to destruction) of a described capital improvement upon the Common Property to the extent the same is not covered by the reserve account described in Section 3 of this Article or the reconstruction assessment described in Section 1 of Article XIII. However, the Board shall not impose capital improvement assessments in any fiscal year which in the aggregate exceed ten percent (10%) of the regular assessments (less the amounts collected for reserves described in Sections 3 and 4) for that year without first obtaining the following approval: (i) as long as there is a Class B membership, approval of a majority of the total voting power held by the Class A members and approval of a majority of the total voting power held by the Class B member; and (ii) if there is no Class B member, approval of a majority of the total voting power of the Association and approval of a majority of a majority of the total voting power of the Association residing in members other than Declarant. All amounts collected as capital improvement assessments may only be used for capital improvements and shall be deposited by the Board in a separate bank account. Said funds shall be deemed a contribution to the capital of the Association by the members.

Section 9. Individual Assessments. In addition to other individual assessments set forth in this Declaration, the Board may assess an Owner and his Lot individually for common expenses incurred through such Owner's fault or direction or failure to perform the obligations imposed on Owners by this Declaration, the Bylaws, or rules and regulations. Further, an Owner and his Lot shall be assessed individually for fines, interest, charges and expenses (including attorney fees) incurred by the Association in the process of collection of assessments or enforcement of this Declaration, the Bylaws, or rules and regulations. Individual assessments shall be due and payable on demand.

Section 10. Reconstruction Assessments. The Board shall have the right to levy reconstruction assessments as described in Article XIII.

Section 11. Capitalization Assessments. Upon acquisition of title to a Lot, the new Owner shall contribute to the capital of the Association an amount equal to one-sixth (1/6) of the amount of the then annual regular assessment for that Lot. This amount shall be deposited

by the buyer into the purchase and sale escrow and disbursed therefrom to the Association, or, if Declarant has contributed said amount to the Association for and on behalf of such buyer, to Declarant; provided, at no time shall Declarant be obligated to contribute to such initial capitalization of the Association. Amounts paid as a capitalization assessment pursuant to this Section shall not be considered as advance payment of regular or any other assessments of the Association and are in addition to and not in lieu of the regular and other assessments of the Association.

Section 12. Declarant's Capitalization. Within ninety (90) days of the date that Declarant conveys the initial Common Property to the Association, Declarant shall pay to the Association the sum of fifteen thousand dollars (\$15,000) as a capital contribution and not in lieu of assessments payable by the Declarant to the Association. Declarant, in its sole discretion, may (i) pay the capital contribution into one of the reserve accounts described in Sections 3 and 4 of this Article, (ii) establish a separate reserve account into which to pay the capital contribution and designate any beneficial purpose of such account, including without limitation, for constructing a new facility on the Common Property, or (iii) pay the capital contribution to the Association to be used for whatever beneficial purpose or purposes that the Board, in its sole discretion, determines. Declarant, in its sole discretion, may divide that capital contribution among the alternatives outlined above.

Section 13. Common Expense Benefitting Few Than All; No Offsets. Any common expense or any part of a common expense benefitting fewer than all of the Lots may be assessed exclusively against the Owners and the Lots benefitted. All assessments shall be payable in the amount specified by the Association, and no Owner shall have a right of offset against such amount for any reason.

Section 14. Subordination of the Lien to Real Estate Taxes and Mortgages; Transfer of Lot. The lien of the assessments provided for herein shall be subordinate to a lien for real estate taxes and other governmental assessments or charges and to the lien of any First Mortgage of record. Sale or transfer of any Lot shall not affect the assessment lien. However, if a First Mortgagee acquires a Lot by foreclosure or deed in lieu of foreclosure, the First Mortgagee and any subsequent purchaser from such mortgagee shall not be liable for any of the assessments on the Lot which became due before the First Mortgagee or purchaser at the foreclosure sale acquired title.

Junior lienholders or purchasers under them who acquire title to a Lot as a result of foreclosure of such junior lien shall take title subject to the lien of any unpaid assessments.

Except as provided above, in a voluntary conveyance of a Lot the grantee shall take title subject to the lien of any unpaid assessments.

**ARTICLE XII**  
**COLLECTION OF ASSESSMENT; ENFORCEMENT**

Section 1. Compliance With Declaration, Bylaws, Rules and Regulations. Each Owner and occupant shall comply with this Declaration, Bylaws, and rules and regulations.

Section 2. Authority to Enforce and Collect. The Board shall take prompt action against any violator to enforce the provisions of this Declaration, Bylaws, rules and regulations, including prompt action to collect any unpaid assessment. However, nothing herein prohibits the Board from making compromises on overdue assessments if the compromise benefits the Association. In taking action, the Board may exercise one or more of the remedies, separately or concurrently, specified in the Declaration or Bylaws, as well as any other remedies which may be available at law.

In addition, any aggrieved Owner may bring an action to recover damages or to enjoin, abate, or remedy any noncompliance or breach by appropriate legal proceedings; provided, however, that with respect to architectural control, the Architectural Committee and/or the Board shall have the exclusive right to the enforcement thereof, and with respect to assessment liens or any other liens or charges, the Board shall have the exclusive right to the enforcement thereof.

Section 3. Abatement and Enjoining of Violations. In the event of a violation of provisions of the Declaration, Bylaws, or any rules or regulations adopted pursuant thereto, the Board shall have the right to:

(a) Enter the Lot in which or as to which such violation exists and to summarily abate and remove, at the expense of the Owner, any thing or condition that may exist therein contrary to the intent and meaning of said provisions, and the Board shall not thereby be deemed in any manner of trespass; or

(b) Enjoin, abate, or remedy such thing or condition, including removal or alteration of construction by appropriate legal proceedings.

Section 4. Interest; Late Charges; Fines. Any assessment or installment thereof not paid when due shall be subject to a delinquency charge of ten dollars (\$10.00). In addition, interest shall accrue on any assessment or installment thereof not paid when due at the rate of 12 percent per annum until paid. The Board may, if it deems appropriate, and after giving notice and an opportunity to be heard, levy reasonable fines for violations of the Declaration, Bylaws, and rules and regulations.

Section 5. Acceleration of Assessment. In the event that an Owner fails to pay an installment of an assessment when it is due, the Board may, after ten days' written



notice, declare the defaulting Owner's entire balance of the assessment due immediately, and interest thereafter shall accrue on the entire assessment at 12 percent per annum until paid.

Section 6. Attachment, Notice, Recordation, Duration, and Foreclosure of Lien; Appointment of Receiver; Power to Bid at Foreclosure Sale. The Board shall follow the provisions regarding the attachment, notice, recordation and duration of liens established on real property under ORS 87.352 to 87.382 and provisions regarding the foreclosure of liens under ORS Chapter 88; except that notwithstanding ORS 87.376, a lien for an unpaid assessment shall continue in force and the suit to foreclose need not be commenced for a period of three years from the date the particular unpaid assessment became due. If an assessment is payable in installments, the full amount of the assessment is a lien from the date the first installment of the assessment becomes due. The Board, acting on behalf of the Association, shall have the power to bid on the Lot at the foreclosure sale, and to acquire and hold, lease, mortgage and convey the same, on behalf of the Association.

Section 7. Action to Obtain and Recover a Money Judgment. The Board may bring an action to obtain a money judgment against an occupant or Owner for damages for the occupant's or Owner's breach or noncompliance with the provisions of the Declaration, Bylaws, or rules and regulations adopted pursuant thereto. The Board may bring an action to obtain a money judgment for unpaid assessments against the Owner personally obligated to pay the same; the action to recover a money judgment for unpaid assessments may be maintained without foreclosing or waiving the lien securing the same.

Section 8. Collection Costs; Attorneys' Fees. Owners who fail to pay assessments when due shall be obligated to pay reasonable fees and costs including, but not limited to, attorneys' fees incurred in connection with the Board's efforts to collect the delinquent or unpaid assessments, whether or not suit or action is commenced. In the event the Board commences suit or action for the collection of any amounts due or to seek damages or enforcement of any provision of the Declaration, Bylaws, or rules and regulations, the Owners/defendants, jointly and severally, will be liable for the costs of such suit or action, including reasonable attorneys' fees to be fixed by the court or courts, both at trial and on appeal, in addition to all other sums or obligations.

### ARTICLE XIII DAMAGE AND DESTRUCTION

#### Section 1. Destruction of Common Property.

(a) In the event of a partial or total destruction of improvements of the Common Property, it shall be the duty of the Association to restore and repair same to their former condition as promptly as possible. The proceeds of any insurance for such improvements shall be used for such purpose. If the amount available from the proceeds of such insurance is

at least eighty-five percent (85 %) of the estimated cost of restoration and repair, or if the cost not covered by insurance proceeds is less than the sum of One Hundred Dollars (\$100.00) per Lot for each Lot, a uniform reconstruction assessment shall be levied by the Association to provide the necessary funds for such reconstruction, over and above the amount of any insurance proceeds available for such purpose. If the amount available from the proceeds of such insurance is less than eighty-five percent (85 %) of the estimated cost of restoration and repair and the estimated costs not covered by insurance is greater than the sum of One Hundred Dollars (\$100.00) per Lot, the uniform reconstruction assessment shall nevertheless be levied and the improvements shall nevertheless be restored and repaired unless (i) a majority of the total voting power of the Association determines in writing that such restoration and repair shall not take place or gives its affirmative vote to such effect at a meeting duly called therefor, and (ii) at least seventy-five percent (75 %) of all First Mortgages, based on one (1) vote for each First Mortgage held, determines in writing that such restoration and repair shall not take place. Notwithstanding the foregoing, repairs to any Common Property set aside for the exclusive use of Owners shall in all cases be made.

(b) In the event the Common Property is not to be restored and repaired, the Common Property shall be cleared and landscaped for community park use and the cost thereof shall be paid for with the insurance proceeds, and any deficiency shall be raised by a uniform reconstruction assessment. In the event any excess insurance proceeds remain, the Board in its sole discretion, may retain such sum in the general funds of the Association or distribute *pro rata* all or a portion thereof to the Owners, subject to the prior rights of Mortgagees. The rights of an Owner and the Mortgagee of his Lot as to such *pro rata* distribution shall be governed by the provisions of the Mortgage encumbering such Lot.

## Section 2. Destruction of Lot Improvements.

(a) In the event of a partial or total destruction of any improvements upon any Lot or Lots, and if the Association is then carrying insurance covering Lot improvements, it shall be the duty of the Association to restore and repair the same to their former condition as promptly as possible. The proceeds of any insurance maintained pursuant hereto covering such improvements shall be used for such purpose. If the amount available from the proceeds of such insurance is at least eighty-five percent (85 %) of the estimated cost of restoration and repair, or if the cost not covered by insurance proceeds is less than the sum of One Hundred Dollars (\$100.00) per Lot with damaged improvements (herein, an "affected Lot"), a reconstruction assessment, with each Owner of an affected Lot contributing a proportionate amount thereof calculated as set forth below, shall be levied by the Association to provide the necessary funds for such reconstruction, over and above the amount of any insurance proceeds available for such purpose. If the amount available from the proceeds of such insurance is less than eighty-five percent (85 %) of the estimated cost of restoration and repair and said estimated cost not covered by insurance proceeds is greater than the sum of One Hundred Dollars (\$100.00) per affected Lot, the reconstruction assessment shall nevertheless be levied and improvements shall nevertheless be restored and repaired unless (i) a majority of the Owners of affected Lots agree

in writing that such restoration and repair shall not take place or give their affirmative vote at a meeting duly called therefor, and (ii) First Mortgagees holding First Mortgages encumbering all the affected Lots agree in writing that such restoration shall not take place. Notwithstanding the foregoing, if the damage is limited to those portions of any living unit which the Association is required to maintain and repair, the necessary repairs shall be made.

(b) In the event the destroyed Lot improvements are not to be restored and repaired, the affected Lots shall be cleared and leveled and the cost thereof shall be paid for with the insurance proceeds, and any deficiency shall be raised by a reconstruction assessment, with each Owner of an affected Lot contributing a proportion thereof calculated as set forth below. In the event any excess insurance proceeds remain, the Board shall distribute the same to the Owners of the affected Lots and their respective Mortgagees as their respective interests may appear, such proceeds to be divided among the respective affected Lots in proportion to the respective decrease in value of the improvements on each Lot determined by appraisals by MAI (or equivalent) appraisers obtained by the Board, made as of a time immediately prior to and as of a time immediately after the occurrence of such destruction and paid for out of, or charged against, such remaining insurance proceeds. The rights of an Owner and the Mortgagee of his Lot as to such distribution shall be governed by the provisions of the Mortgage encumbering such Lot.

(c) Any reconstruction assessment levied against an Owner of an affected Lot pursuant to this Section shall be based upon the ratio of the interior dwelling area square footage of the partially or totally destroyed residential structure on his Lot to the total interior dwelling area square footage of all partially or totally destroyed residential structures on all affected Lots. The good faith determination by the Board as to the proportionate amount of a reconstruction assessment to be levied against each of the Owners of the affected Lots shall be binding upon the Owners thereof and their respective Mortgagees.

(d) In the event of a partial or total destruction of any improvements upon any Lot or Lots, and if the Association is not carrying insurance covering Lot improvements, each Owner shall either promptly (i) cause the improvements of his Lot to be fully reconstructed or (ii) cause his Lot to be cleared and leveled. If the foregoing is not accomplished within two hundred ten (210) days after the occurrence of such destruction, the Board may cause such Lot improvements either to be reconstructed or cleared and leveled as the Board shall, in its sole discretion, determine, and the cost thereof shall be an individual assessment against the Owner and the affected Lot which may be collected by the Board either before or after such reconstruction or such clearing and leveling has been accomplished.

Section 3. Separate Account. All amounts collected as reconstruction assessments pursuant to this Article shall be used only for the purposes set forth in this Article and shall be deposited by the Board in a separate bank account to be held in trust for such purposes. Such funds shall not be commingled with any other Association funds, and shall be deemed a contribution to the capital of the Association by the members.

### 31 - DECLARATION OF THE COVE AT BROOKINGS

Section 4. Priority. Nothing contained in this Article shall entitle an Owner to priority over any Mortgagee under a Mortgage encumbering his Lot as to any portion of insurance proceeds allocated to such Lot.

#### ARTICLE XIV RIGHTS OF LENDERS

Section 1. Filing Notices; Notices and Approvals. A Mortgagee or its mortgage servicing contractor, or any insurer or guarantor of a mortgage, shall not be entitled to receive any notice which this Declaration requires the Association to deliver to Mortgagees, servicing contractors, insurers or guarantors unless and until such Mortgagee or its mortgage servicing contractor, or the insurer or guarantor of such Mortgage, has delivered to the Board a written notice stating that such Mortgagee is the holder of a mortgage encumbering a Lot within the Planned Community and further stating (a) the legal description of such Lot or its address, and (b) the name and address of the Mortgagee, mortgage servicing contractor, insurer and guarantor of such mortgage making such request. Such notice shall also state whether such Mortgagee is a First Mortgagee. Notwithstanding the foregoing, if any right of a Mortgagee under this Declaration or its mortgage servicing contractor, or its insurer or guarantor, is conditioned on a specific written request to the Association, in addition to having delivered the notice provided in this Section a Mortgagee or its mortgage servicing contract, or its insurer or guarantor, must also make such request, either in a separate writing delivered to the Association or in the notice provided above in this Section in order to be entitled to such right. For purposes of this Article, an "eligible First Mortgagee" is a First Mortgagee or servicing contractor who has duly provided both the initial notification of mortgage upon a certain property and specific written request establishing entitlement to any right provided for hereunder first requiring such written request. Except as provided in this Section, a Mortgagee's rights pursuant to this Declaration, including, without limitation, the priority of the lien of mortgages over the lien of assessments levied by the Association hereunder, shall not be affected by the failure to deliver a notice or request to the Board. Any notice or request delivered to the Board by a Mortgagee or its mortgage servicing contractor, or its insurer or guarantor, shall remain effective without any further action by such Mortgagee or its Mortgage servicing contractor, or its insurer or guarantor, for so long as the facts set forth in such notice or request remain unchanged.

Section 2. Priority of Mortgage Lien. Except as to nonpayment of assessments which shall be governed by Article XI, Section 14, no breach of any of the covenants, conditions, restrictions, or easements herein contained shall affect, impair, defeat or render invalid the lien or charge of any mortgage made in good faith and for value encumbering any Lot, but all of said covenants, conditions, restrictions and easements shall be binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale, or otherwise, with respect to a Lot.

Section 3. Curing Defaults. A Mortgagee who acquires title by judicial foreclosure or trustee's sale, or the immediate transferee of such Mortgagee, shall not be obligated to cure any breach of the provisions of this Declaration which is noncurable or of a type which is not practical or feasible to cure. The determination of the Board made in good faith as to whether a breach is noncurable or not practical or feasible to cure shall be final and binding on all Mortgagees.

Section 4. Resale. It is intended that the Mortgagee under a Mortgage securing a loan to facilitate the resale of any Lot after judicial foreclosure or trustee's sale is a Mortgagee under a Mortgage securing a loan made in good faith and for value and is entitled to all of the rights and protections afforded to other Mortgagees.

Section 5. Seventy-Five Percent (75%) Vote of Eligible First Mortgagees. Except upon the prior written approval of at least seventy-five percent (75%) of eligible first mortgagees, based on one (1) vote for each First Mortgage held, neither the Association nor the members shall be entitled by action or inaction to do any of the following:

(a) Abandon, terminate, change, or waive by any act or omission the planned community legal status of the Planned Community or any part thereof, or the architectural control of the Planned Community or any part thereof, the enforcement thereof, or the obligations to repair and maintain the Common Property, all as set forth in this Declaration;

(b) Materially amend any provisions of this Declaration, the Articles or the Bylaws which establish, provide for, govern or regulate any of the following:

- (1) Voting rights;
- (2) Assessments, assessment liens, or the priority of such liens;
- (3) Reserves, including those for maintenance, repair and replacement of the Common Property;
- (4) Repair and maintenance;
- (5) Convertibility of Lots into Common Property, or convertibility of Common Property into Lots;
- (6) Annexation;
- (7) Insurance or fidelity bond requirements;
- (8) Leasing of Lots;

(9) Imposition of any restriction on the right of an Owner to sell, transfer, or otherwise convey his Lot;

(10) Restoration of the Planned Community or any portion thereof after a hazard damage or partial condemnation; and

(11) Any provisions which are for the express benefit of Mortgagees, mortgage servicing contractors, or insurers or guarantors of mortgages.

Section 6. Mortgagees, Servicing Contractors, Insurers, and Guarantors Furnishing and Receiving Information. Mortgagees and their mortgage servicing contractors, and insurers and guarantors of mortgages, are hereby authorized to furnish information to the Board concerning the status of any mortgage. The Board shall have the right to notify any Mortgagee or its insurer, servicing contractor, and insurer and guarantor of an Owner's default in the performance of the obligations imposed by this Declaration, the Articles, Bylaws, or rules and regulations.

Section 7. Notice of Destruction or Taking. In the event any Lot, Common Property, and any improvements thereto or any portion thereof is damaged or is made the subject of any condemnation proceedings or is otherwise sought to be acquired by a condemning authority, the Board shall promptly notify any eligible First Mortgagee and its mortgage servicing contractor and any insurer or guarantor of such First Mortgage affected by such destruction, taking, or threatened taking. As used herein, "damage" or "taking" shall mean damage to or taking of the Common Property exceeding Ten Thousand Dollars (\$10,000.00) or damage to or taking of a Lot exceeding One Thousand Dollars (\$1,000.00).

Section 8. Payment of Taxes or Premiums by First Mortgagee. First Mortgagees may, jointly or singly, (a) pay taxes or other charges which are in default and which may or have become a charge against the Common Property (unless such taxes or charges are separately assessed against the Owners, in which case the rights of the First Mortgagees shall be governed by the provisions of their respective mortgages) and (b) pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for the Association, and First Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association. If requested in writing by a First Mortgagee, the Association shall evidence its obligations under this Section in a written agreement in favor of such First Mortgagee. Absent such request, the obligations under this Section shall be deemed an agreement between the Association and such First Mortgagee.

## ARTICLE XV GENERAL PROVISIONS

Section 1. Indemnification of Directors, Officers, Employees and Agents. To the extent permitted by law, the Association shall indemnify any director, officer, employee or agent who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by the Association) by reason of the fact that he is or was a director, officer, employee or agent of the Association or is or was serving at the request of the Association as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by said person in connection with such suit, action or proceeding if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interest of the Association, and, with respect to any criminal action or proceedings, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or with a plea of nolo contendere or its equivalent, shall not of itself create a presumption that a person did not act in good faith and in a manner which he reasonably believed to be in, or not opposed to, the best interest of the Association, and, with respect to any criminal action or proceedings, had reasonable cause to believe his conduct was unlawful. Payment under this clause may be made during the pendency of such claim, action, suit or proceeding as and when incurred, subject only to the right of the Association to recover payment, should it be proven at a later time that said person had no right to such payments. All persons who are ultimately held liable for their actions on behalf of the Association as a director, officer, employee or agent shall have a right to contribution over and against all other directors, officers, employees or agents and members of the Association who participated with or benefitted from the acts which created said liability.

Section 2. No Waiver. Failure by the Association, Declarant, or by any Owner to enforce any covenant or restriction herein contained, or contained in the Articles, Bylaws, or rules and regulations, in any certain instance or on any particular occasion shall not be deemed a waiver of such right of enforcement thereafter as to the same or any other covenant, condition, restriction, easement, or provision.

Section 3. Severability. Invalidation of any one or a portion of this provisions set forth in this Declaration, or the Articles, Bylaws, or rules and regulations, by judgement or order of a court, shall not affect the other provisions hereof and the same shall remain in full force and effect.

Section 4. Singular Includes Plural; Construction; Effect of Headings. Whenever the context of this Declaration so requires, the singular shall include the plural, the plural shall include the singular, and use of the masculine form shall include the feminine and neuter, and *vice versa*. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a planned residential community under the Act, and for the maintenance of the Planned Community, including the Common Property. Article and section headings herein have been included for convenience

only, and shall not be considered in resolving matters of construction, interpretation, or application.

Section 5. Notices. Any notice to be given to an Owner pursuant to this Declaration shall be given in the manner set forth in the Bylaws.

Section 6. Effect of Declaration. This Declaration is made for the purposes set forth in the recitals hereto, and Declarant makes no warranties or representation, express or implied, as to the binding effect or enforceability of all or any portion of this Declaration, Articles, Bylaws, or rules and regulations, or as to the compliance of any of these provisions with public laws, ordinances, regulations and the like applicable thereto. Declarant shall have no liability whatever if any of the said provisions is judged to be unenforceable in whole or part, or under any certain circumstances.

Section 7. Conflict: Priority. In the event of any conflict between the Bylaws and the Articles, the Articles shall control. In the event of any conflict between the Articles or Bylaws and this Declaration, this Declaration shall control. In the event of any conflict between this Declaration and the Act, the Act shall control.

Section 8. Original Declaration. The provisions of the original declaration recorded on April 1, 1991 (including such provisions which are omitted in this Declaration) shall not be used to interpret this Declaration.

## ARTICLE XVI AMENDMENTS TO DECLARATION

Section 1. Amendment by Members. The Declaration may be amended only by affirmative vote or agreement of the Owners representing seventy-five percent (75 %) or more of the total votes in the Association and, to the extent required by Article XIV, the affirmative vote or agreement of the pertinent percentage of eligible First Mortgagees. In no event shall any amendment under this Section create, limit or diminish any special declarant rights without the Declarant's consent.

Section 2. Declarant's Right to Amend. Notwithstanding the provisions of Section 1, until the turnover meeting has occurred the Declarant may amend the Declaration in order to comply with requirements of the Federal Housing Administration, the Veterans Administration, the Farmers Home Administration of the United States, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Mortgage Loan Corporation, any department, bureau, board, commission or agency of the United States or the State of Oregon or any corporation wholly-owned, directly or indirectly, by the United States or the State of Oregon which insures, guarantees or provides financing for a planned community or lots in a planned community.



Section 3. Recordation of Amendments. Amendments to the Declaration shall be executed and certified by any officer of the Association designated for that purpose or, in the absence of designation, by the President of the Association, and recorded in the deed records of Curry County.

IN WITNESS WHEREOF, this Amended and Restated Declaration is executed this 12/10 day of 1992, by the President and Secretary of the Association who hereby certify that this Amended and Restated Declaration was approved by the affirmative vote of not less than seventy-five percent (75 %) of the total voting power of the Association.

THE COVE AT BROOKINGS HOMEOWNERS ASSOCIATION

By: RLH Lyle  
Title: President

By: John A Wood  
Title: Treasurer

only, and shall not be considered in resolving matters of construction, interpretation, or application.

Section 5. Notices. Any notice to be given to an Owner pursuant to this Declaration shall be given in the manner set forth in the Bylaws.

Section 6. Effect of Declaration. This Declaration is made for the purposes set forth in the recitals hereto, and Declarant makes no warranties or representation, express or implied, as to the binding effect or enforceability of all or any portion of this Declaration, Articles, Bylaws, or rules and regulations, or as to the compliance of any of these provisions with public laws, ordinances, regulations and the like applicable thereto. Declarant shall have no liability whatever if any of the said provisions is judged to be unenforceable in whole or part, or under any certain circumstances.

Section 7. Conflict; Priority. In the event of any conflict between the Bylaws and the Articles, the Articles shall control. In the event of any conflict between the Articles or Bylaws and this Declaration, this Declaration shall control. In the event of any conflict between this Declaration and the Act, the Act shall control.

Section 8. Original Declaration. The provisions of the original declaration recorded on April 1, 1991 (including such provisions which are omitted in this Declaration) shall not be used to interpret this Declaration.

## ARTICLE XVI AMENDMENTS TO DECLARATION

Section 1. Amendment by Members. The Declaration may be amended only by affirmative vote or agreement of the Owners representing seventy-five percent (75 %) or more of the total votes in the Association and, to the extent required by Article XIV, the affirmative vote or agreement of the pertinent percentage of eligible First Mortgagees. In no event shall any amendment under this Section create, limit or diminish any special declarant rights without the Declarant's consent.

Section 2. Declarant's Right to Amend. Notwithstanding the provisions of Section 1, until the turnover meeting has occurred the Declarant may amend the Declaration in order to comply with requirements of the Federal Housing Administration, the Veterans Administration, the Farmers Home Administration of the United States, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Mortgage Loan Corporation, any department, bureau, board, commission or agency of the United States or the State of Oregon or any corporation wholly-owned, directly or indirectly, by the United States or the State of Oregon which insures, guarantees or provides financing for a planned community or lots in a planned community.

only, and shall not be considered in resolving matters of construction, interpretation, or application.

Section 5. Notices. Any notice to be given to an Owner pursuant to this Declaration shall be given in the manner set forth in the Bylaws.

Section 6. Effect of Declaration. This Declaration is made for the purposes set forth in the recitals hereto, and Declarant makes no warranties or representation, express or implied, as to the binding effect or enforceability of all or any portion of this Declaration, Articles, Bylaws, or rules and regulations, or as to the compliance of any of these provisions with public laws, ordinances, regulations and the like applicable thereto. Declarant shall have no liability whatever if any of the said provisions is judged to be unenforceable in whole or part, or under any certain circumstances.

Section 7. Conflict: Priority. In the event of any conflict between the Bylaws and the Articles, the Articles shall control. In the event of any conflict between the Articles or Bylaws and this Declaration, this Declaration shall control. In the event of any conflict between this Declaration and the Act, the Act shall control.

Section 8. Original Declaration. The provisions of the original declaration recorded on April 1, 1991 (including such provisions which are omitted in this Declaration) shall not be used to interpret this Declaration.

## ARTICLE XVI AMENDMENTS TO DECLARATION

Section 1. Amendment by Members. The Declaration may be amended only by affirmative vote or agreement of the Owners representing seventy-five percent (75 %) or more of the total votes in the Association and, to the extent required by Article XIV, the affirmative vote or agreement of the pertinent percentage of eligible First Mortgagees. In no event shall any amendment under this Section create, limit or diminish any special declarant rights without the Declarant's consent.

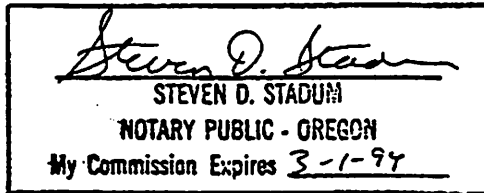
Section 2. Declarant's Right to Amend. Notwithstanding the provisions of Section 1, until the turnover meeting has occurred the Declarant may amend the Declaration in order to comply with requirements of the Federal Housing Administration, the Veterans Administration, the Farmers Home Administration of the United States, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Mortgage Loan Corporation, any department, bureau, board, commission or agency of the United States or the State of Oregon or any corporation wholly-owned, directly or indirectly, by the United States or the State of Oregon which insures, guarantees or provides financing for a planned community or lots in a planned community.

STATE OF OREGON           )  
                                  ) ss.  
County of Curry        )

On the 10th day of December, 1992, before me  
appeared Richard H. Lytle to me personally known, who being duly  
sworn did say that he is the President, and that the said instrument was signed in behalf of  
said Corporation by authority of its Board of Directors, and acknowledge said instrument to  
be the free act and deed of said Corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my  
official seal the day and year last above written.

Steven D. Stadum  
Notary Public for Oregon  
My Commission expires: 3-1-94



STATE OF OREGON           )  
  ) ss.  
County of Mult           )

On the 14th day of December, 1992, before me  
appeared Louis A Wood to me personally known, who being duly  
sworn did say that he is the Secretary, and that the said instrument was signed in behalf of  
said Corporation by authority of its Board of Directors, and acknowledge said instrument to  
be the free act and deed of said Corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my  
official seal the day and year last above written.

Karen Mitchell  
Notary Public for Oregon  
My Commission expires: 11-20-93



said western endpoint; THENCE North 05 degrees 27 minutes 20 seconds West a distance of 400.57 feet; THENCE North 14 degrees 51 minutes 50 seconds West a distance of 75.00 feet to a point on a non-tangent curve concave to the North having a radius of 525.00 feet, and to which point a radial line bears South 14 degrees 51 minutes 50 seconds East; THENCE northeasterly 193.41 feet along said curve through a central angle of 21 degrees 39 minutes 14 seconds, having chord bearing of North 64 degrees 18 minutes 34 seconds East and chord length 197.23 feet; THENCE on a non-tangent line South 39 degrees 48 minutes 37 seconds East a distance of 32.95 feet to a point on the northerly line of said tract recorded in Book of Records 93 at Pages 310 & 311 thereof, Curry County Records; THENCE North 89 degrees 54 minutes 42 seconds East along said line a distance of 45.03 feet; THENCE North 50 degrees 11 minutes 23 seconds East a distance of 27.72 feet to a point on the former easterly right-of-way line of Wharf Street, vacated by instrument recorded in Book of Records 127 at Page 136 thereof, Curry County Records; THENCE North 50 degrees 11 minutes 23 seconds East a distance of 48.98 feet; THENCE North 16 degrees 07 minutes 28 seconds East a distance of 36.00 feet to a point on the northerly line of that certain tract of land conveyed to Dan J. Agnew by instrument recorded in Book of Records 93 at Pages 310 & 311 thereof, Curry County Records, monumented by a 5/8" rebar with 2" aluminum cap stamped "MAAKE-STAD RPLS 2429", from which a point monumented by a 1" iron pipe with 3" brass cap set in concrete stamped "AP10 1975" per Curry County Survey #41-575 bears South 89 degrees 58 minutes 39 seconds West a distance of 20.82 feet; THENCE North 89 degrees 58 minutes 39 seconds East along said line a distance of 133.54 feet to the POINT OF BEGINNING.

SUBJECT TO ALL EASEMENTS, RESTRICTIONS, AND RESERVATIONS OF RECORD.

Said Portion contains 4.62 acres, more or less.

1992 INSTRUMENT

92 10139

STATE OF OREGON  
COUNTY OF CURRY

I ELAINE JOY, COUNTY CLERK, CERTIFY  
THAT THE WITHIN DOCUMENT WAS  
RECEIVED AND DULY RECORDED IN THE  
OFFICIAL RECORDS OF CURRY COUNTY AT

11:04 ON 12-17-92

BY: SA DEPUTY

FEE \$ 240.00

# PAGES: 48



ARCHITECTS  
ENGINEERS  
SURVEYORS  
PLANNERS

375 PARK AVE  
COOS BAY,  
OREGON  
97420

541.269.1166  
FAX 541.269.1833

Richard D. Nored, P.E.  
Joseph A. Slack, A.I.A.  
Von C. Miller, A.I.A. RCI  
Russ Dodge, PLS  
Stephen R. Cox

August 23, 2003

City of Brookings  
898 Elk Drive  
Brookings, OR 97415

Attn: Leo Lightle  
Community Development Director

Re: The Cove  
Project # 01.30

Dear Leo:

I have taken the time to research what plans we have on both Cypress Cove and "The Cove" in relation to the dike adjacent to the Wastewater Plant. Our files are extensive, and I am sending you the originals for your files, rather than reproduce the various plans. If you need copies, I can make whatever makes sense, but have elected to send you the original submittals to save cost.

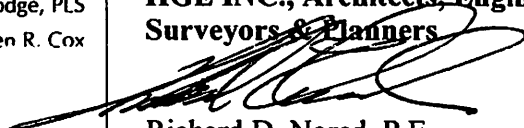
The plans we have on the dike were prepared by Reily Smith, and they appear to show the extent of what was planned. To my knowledge, these were the only plans that were provided to us on the dike.

If you are unable to locate the original as-builts, let me know and we can make a more thorough search, but this is the information I have found.

Please contact me if you need further assistance in this matter. We appreciate the opportunity to be of service to the City of Brookings.

Very truly yours,

**HGE INC., Architects, Engineers,  
Surveyors & Planners**

  
Richard D. Nored, P.E.  
President

c. LeRoy Blodgett, City Manager  
John Bischoff, Planning Director  
John Cowan, Public Works Director

# CITY OF BROOKINGS



Bruce Bros LLC  
P.O. Box 61  
Brookings Oregon

Hand Delivered to Noah Bruce May 21, 2003

Subject: Violation of the Conditions of Approval for the Chetco point Subdivision.  
Stop all work until repairs and corrections are made.

Dear Bruce Bros LLC,

Specific violation of the Conditions of Approval for the Chetco point Subdivision.

Item 9 bullet 3 states ..... "no development shall encroach into or onto the berm."

The berm has been significantly encroached into at each end of the berm .

Item 9 bullet 7 states ...." Lots 3 thru 10 are subject to provisions of section 100, Hazardous Building Site protection/ Hillside Development Standards' ..." and no construction will take place until the provisions have been met( of section 100).

Lot 10 has had excavation work on it which includes but is not limited to encroachment into the the berm and into the steep downhill slope without the provisions of the above referenced section 100.

Therefore you must cease all work until you have repaired the damage to the berm and complied with the other conditions of approval. Failure to do so will result in legal action by the City of Brookings

You have been sent a full copy of the conditions of approval September 4, 2002. The item of no encroachment allowed into the berm was also discussed at the subdivision Committee meeting.

Sincerely

Leo Lightle  
Community Development Director

cc: Leroy Blodgett, City Manager  
John Bischoff, City Planner  
LauraLee Gray, City Building Official  
John Trew City Attorney





T. J. BOSSARD, INC.  
CIVIL & STRUCTURAL ENGINEERING

Received  
2-4-03 at  
Final Map approval

February 4, 2003

Bruce Bros., Inc.  
Mr. Noah Bruce  
P. O. Box 61  
Brooking, Oregon 97415

Subject: Modification of earthen berm at the City of Brooking, Waste Water Treatment Plant.

Dear Mr. Bruce,

With reference to our conversation regarding the Subject Berm, I have reviewed the sketches which describe the structures which you propose to install on Lot 10 and 12 adjacent to the berm.

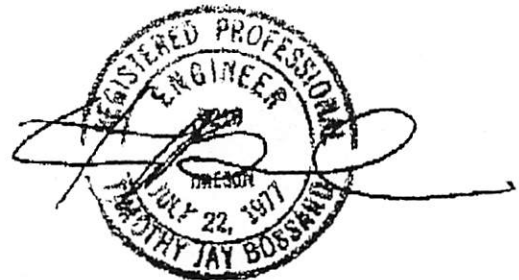
Based upon a review of our original design and location of the berm, its our opinion that your proposed structures can be constructed by using retaining structures and regrading portions of the berm. This work, after our final design and approval of the City Engineer will provide equivalent performance of the berm in providing site screening and wind deflection.

We will be available to provide final-engineering construction drawing for your proposed improvements upon approval of the City Council of the concept sketches, which you have provided us.

If you have any questions or comments do not hesitate to call.

Sincerely,

T.J. Bossard, P.E.  
President



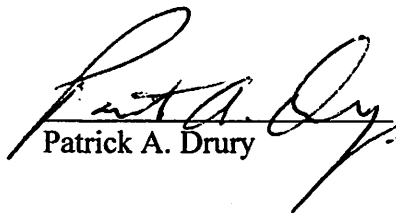
August 14, 2003

RECEIVED  
AUG 22 2003

To: Bruce Brothers, LLC  
Re: Berm Alterations

CITY OF BROOKINGS  
COMMUNITY DEVELOPMENT

1. The central portion of the berm was designed to mitigate view of the old sewer plant, from a view and sight line in phase 3 and 4 of The Cove. Not designed to shield Phases I and II of The Cove.
2. The cutting and retaining of the "to be" areas of the berm for parking and building corners was also an accepted practice in the design and project layout of Phase III and IV of The Cove .
3. The ends of the berm were also subject to altering or retention. I recall one drawing that created a retention and gate opening for the walking trail from The Cove Gazebo to Chetco Point.

  
Patrick A. Drury

Buck Glazebrook  
B&B Excavation  
Brookings, OR 97415

August 14, 2003

RECEIVED  
AUG 22 2003

John C. Bischoff  
Planning Director  
City of Brookings  
898 Elk Dr.  
Brookings, OR 97415

CITY OF BROOKINGS  
COMMUNITY DEVELOPMENT

Re: SUB-6-03/MC-1-03

Dear Mr. Bischoff:

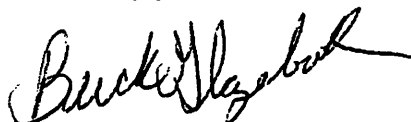
I am one of the principals associated with B&B Excavation. I was a subcontractor to the developer of The Cove in the early 1990s. I was involved in the excavation and earth movement for the construction of the berm located on Phase IV of The Cove, right next to the Brookings sewer treatment plant.

I can confirm that the berm was originally constructed wider and longer than its intended final design. The reason for the wider and longer design was to accommodate the equipment that was needed to construct the berm. To accommodate the equipment, the berm had to be at least twelve feet wide on top to prevent our equipment from tipping over or falling off the berm.

The berm was originally built longer than its final intended length to accommodate the angle that was required to build the berm to a certain height. The height of the berm was determined by the developer and the contractor to shield the visual effects of the sewer treatment plant from homes being constructed in the immediate vicinity.

Please let me know if I can provide you with any further information concerning this matter.

Sincerely yours,

  
Buck Glazebrook

**BABIN & KEUSINK**

PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

P.O. BOX 1600 • 517 CHETCO AVE  
BROOKINGS, OREGON 97415-0600

(541) 469-5331 • FAX (541) 469-9865

**JOHN C. BABIN\***

E-MAIL: john@babin-keusink.com

\*ALSO LICENSED IN CALIFORNIA

**CHRISTOPHER KEUSINK**

E-MAIL: chris@babin-keusink.com

August 12, 2003

**RECEIVED**  
AUG 16 2003

**CITY OF BROOKINGS  
COMMUNITY DEVELOPMENT**

John C. Bischoff  
Planning Director  
City of Brookings  
898 Elk Dr.  
Brookings, OR 97415

Re: SUB-6-03/MC-1-03

Dear Mr. Bischoff:

Thank you for agreeing to meet with Noah Bruce, of Bruce Brothers, and myself regarding the above application. Our meeting, which included Leo Lightle, City Engineer, and Leroy Blodgett, City Manager, was most helpful to clarify the issues regarding the current application for a minor change.

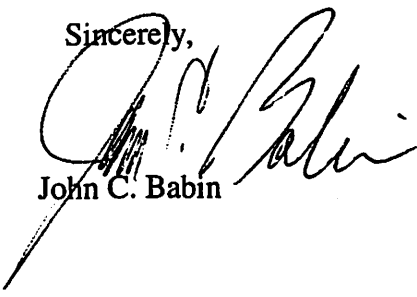
I understand the City's major concern regarding this application is any effect the change would have on a "hold harmless agreement" with the homeowners association of Phases I and II of The Cove. This issue was thoroughly discussed at our meeting. However, after the meeting, I had a chance to review the conditions of approval for The Cove planned unit development, which were provided by your office. I can understand why the City staff believed that one of the conditions of approval was a requirement that The Cove include a provision in the homeowners' CC&Rs containing a hold harmless clause protecting the City from liability for impacts generated by the City's waste water treatment plant. This provision was discussed at the time of The Cove hearings and was included in the original conditions of approval.

However, the condition cited that the clause was to be approved by the City Attorney prior to issuance of the occupancy permit for each phase of the project. The copy of the conditions of approval you gave to me show that the Planning Commission determined, for some legal reason, not to include that specific condition in the other conditions of approval. Instead, pursuant to the City Attorney's recommendation, a new condition was included that the applicant should submit a disclosure statement signed by each buyer indicating the buyer was aware of the proximity of the waste water treatment plant.

John C. Bischoff  
August 12, 2003  
Page Two

Also, a new condition was added that the developer should enter into a separate agreement with the City of Brookings to indemnify and hold the City harmless from claims of residents of the development against the City due to the normal activity of the waste water treatment plant. The developer of this project was Western Pacific Development, Inc. Western Pacific Development was an Oregon corporation. That corporation was dissolved administratively by the Secretary of State of Oregon for inactivity and failure to pay dues in 1997. With the administrative dissolution of Western Pacific Development, there ceases to be any entity against which the indemnity agreement could be enforced.

Sincerely,

  
John C. Babin

JCB:lt  
cc: Client

50. The applicant shall be responsible to coordinate final acceptance of all proposed "PUE's" with the affected utilities, public agencies and service companies prior to final plat approval.
51. The applicant shall coordinate the placement of mailboxes with the U. S. Postal Service. ~~Mailboxes shall be located so that there will be at least five (5) feet of clear space for the sidewalk.~~ (Deleted by Planning Commission)

#### Restrictive Covenants

52. In order for retaining walls, fences, etc, to be constructed within the remaining public right-of-way in back of and abutting the sidewalks the applicant shall incorporate in the covenants a "hold harmless" clause absolving the city and/or utilities of any liability or responsibility for the replacement of such appurtenances within the right-of-way should it be necessary to remove same to make repairs to existing facilities or install new facilities therein.

53. ~~The C, C, and Rs for all units within the project and the homeowners association bylaws, shall contain a hold harmless clause protecting the city from liability for impacts generated by the city's waste water treatment plant. These clauses shall be approved by the city attorney prior to the issuance of occupancy permits for each phase of the project.~~

~~The developer shall insure that the public report of the Oregon Department of Real Estate shall include the fact that the Waste Water Treatment Plant of the City of Brookings is located on the west boundary of the project site.~~ (Deleted by the Planning Commission Sept. 4, 1990)

The applicant shall submit a disclosure statement, signed by each buyer, indicating that the buyer is aware of the proximity of the waste water treatment plant. (New wording added by the Planning Commission Sept. 4, 1990)

The developer shall further enter into a separate agreement with the City of Brookings to indemnify and hold the City harmless from the claims of residents of the development against the City due to the normal activity of the Waste Water Treatment Plant, not including accidents, negligence or failure to operate the Waste Water treatment Plant in accordance with state and/or federal laws and regulations. (New wording added by the Planning Commission August 7, 1990)

EXH B

**BRUCE BROTHERS INC.  
P. O. BOX 61  
BROOKINGS, OR 97415  
(541)469-0475 \*\* (541)661-1544**

January 15, 2003

The Cove  
Board of Directors  
P. O. Box 4132  
Brookings, OR 97415

Re: Chetco Point Terrace

Dear Board of Directors:

The City of Brookings has made a condition of approval for Bruce Brothers Inc. to have a clause that no development shall encroach into or onto the berm. In order to make use of lots 10 & 12 of Chetco Point Terrace, Bruce Brothers Inc. needs to be able to remove approximately 30' of the berm on lot 10 and approximately 20' of the berm on lot 12. The berm as you and Bruce Brothers Inc. knows was not engineered to remove the smell that may be created from the water treatment plant. Which brings one question to mind, has Phase I, II, and III ever smelt any odor from the water treatment plant before or after the berm was constructed? The purpose of this berm was to camouflage the water treatment plant visually. We intended to improve on that aspect of the berm by planting trees and shrubbery and keeping it maintained. Also on the portions that we intended to remove we would replace with structures that would be taller and do a better job of camouflaging the berm. All the homes that border your project will also visually block about 90% of the berm, from you homes. Especially since all of your homes were designed to view towards the ocean and not the berm. The berm however was engineered to be no greater than a 2 to 1 slope, which is code for slope cuts in the City of Brookings, but no for wind carry the smell away.

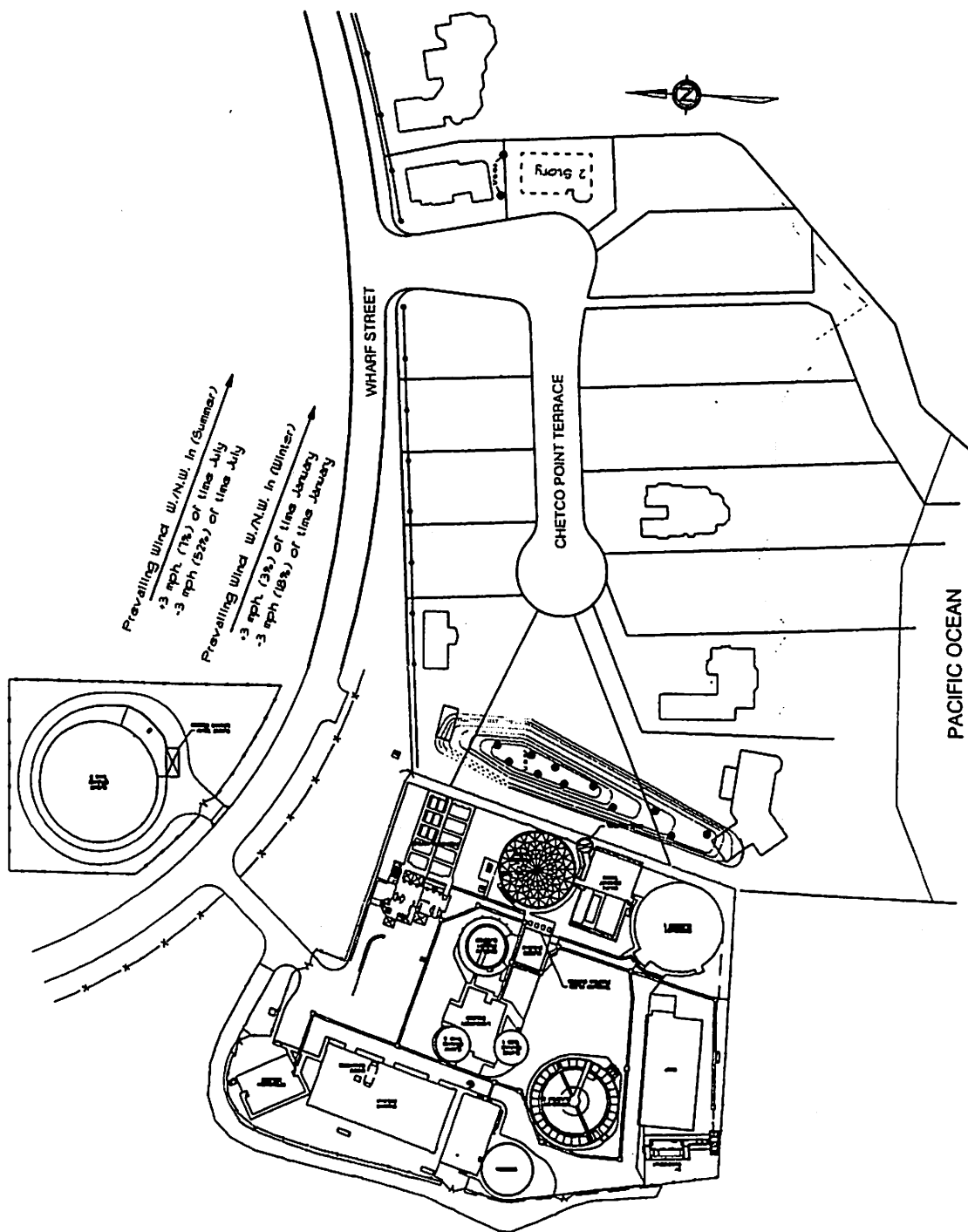
Bruce Brothers Inc. has managed to save your gazebo, water feature and walking paths this year by picking up the water that the City of Brookings has dumped on what was to be Phase II of The Cove and piped it all the way to the ocean. Bruce Brothers Inc. has been burdened with the unforeseen cost.

We asked a moment of your time to respond to this letter by approving our encroachment into the berm and that no liability of this encroachment be placed on the City of Brookings or Bruce Brothers Inc. The main inconvenience is that the City requests all the owners to sign. I apologize for the inconvenience of this letter and look forward to your approval.

Respectfully,



Noah D. Bruce  
President





## WIND EVALUATION THE COVE PROJECT BERM DESIGN

### SITUATION

A residential area, The Cove, is planned adjacent to the Brookings Waste Water Treatment Plant (WWTP). The WWTP is located to the west and northwest of The Cove project and at approximately the same elevation. An earth berm is being constructed along the property line common to The Cove and the WWTP.

### CONCERN

Odors from the WWTP could be transported by wind and be detectable in The Cove residential area.

### TASK

Analyze potential air movement and weather conditions that could affect the area of concern.

### FACTS

Historical wind data for the Brookings area provided by the National Weather Service, indicate the following:

For January (representative of winter conditions) winds of greater than 3 mph from a west-northwest direction could be expected to occur approximately 3% of the time. Winds of variable direction of 3 mph or less occur 18% of the time.

For July (representative of summer conditions) winds of greater than 3 mph from a west-northwest direction could be expected to occur approximately 7% of the time. Winds of variable direction of 3 mph or less occur 52% of the time.

### THEORY

The time of day and topography would have an impact on the total effect of air movement. The category of variable direction winds of 3 mph or less could be affected as theorized below.

Winter conditions - During the longer night time hours, when winds are generally lightest, the lower layers of air near the earth surface cool more rapidly than the nearby ocean surface. The cooler, heavier air from the land, would tend to drain down-slope and be drawn toward the ocean, away from The Cove, by convection. The earth berm along the property line would act somewhat like a dam. This would reduce the chances of variable winds affecting The Cove.

Summer conditions - Variable wind direction with speeds of 3 mph or less would be affected by heating of the earth's surface during the longer daylight hours. The heating would cause the air to become turbulent and rise.

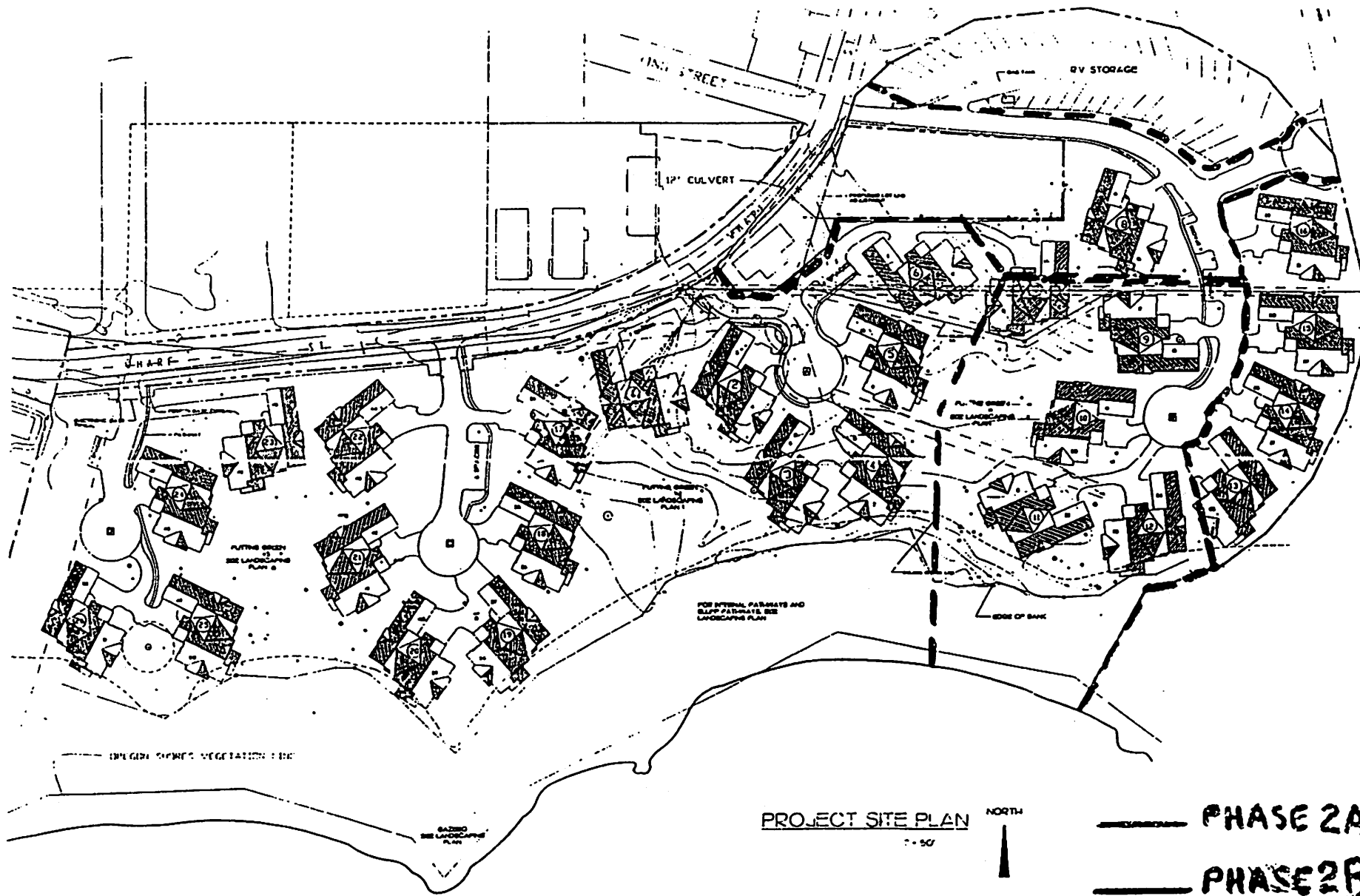
Turbulence caused by higher average wind speeds from the west-northwest would aid in mixing the air.

Both of these conditions would tend to disperse odors into the atmosphere, thereby mitigating the effect on adjacent areas.

Don Munson

A handwritten signature in cursive script, appearing to read "Don Munson".

National Weather Service Observer,  
Brookings Area



<b>CYPRESS COVE</b> A PLANNED RESIDENTIAL COMMUNITY		<b>DESIGN PROFESSIONAL GROUP</b> t. j. bossard engineer a. m. forrester planner k. j. anelling designer 301 NE E STREET, GRANTS, OREGON 97130 (503) 479-4603	
WESTERN PACIFIC DEVELOPMENT 135 W W PARKWAY DR. 97130		ERNOLD BOSCOE, PRES. 411 OGDON ST.	
DATE: 1-26-80 SCALE:			

EXH B

**BRUCE BROTHERS INC.  
P. O. BOX 61  
BROOKINGS, OR 97415  
(541)469-0475 \*\* (541)661-1544**

January 15, 2003

The Cove  
Board of Directors  
P. O. Box 4132  
Brookings, OR 97415

Re: Chetco Point Terrace

Dear Board of Directors:

The City of Brookings has made a condition of approval for Bruce Brothers Inc. to have a clause that no development shall encroach into or onto the berm. In order to make use of lots 10 & 12 of Chetco Point Terrace, Bruce Brothers Inc. needs to be able to remove approximately 30' of the berm on lot 10 and approximately 20' of the berm on lot 12. The berm as you and Bruce Brothers Inc. knows was not engineered to remove the smell that may be created from the water treatment plant. Which brings one question to mind, has Phase I, II, and III ever smelt any odor from the water treatment plant before or after the berm was constructed? The purpose of this berm was to camouflage the water treatment plant visually. We intended to improve on that aspect of the berm by planting trees and shrubbery and keeping it maintained. Also on the portions that we intended to remove we would replace with structures that would be taller and do a better job of camouflaging the berm. All the homes that border your project will also visually block about 90% of the berm, from you homes. Especially since all of your homes were designed to view towards the ocean and not the berm. The berm however was engineered to be no greater than a 2 to 1 slope, which is code for slope cuts in the City of Brookings, but no for wind carry the smell away.

Bruce Brothers Inc. has managed to save your gazebo, water feature and walking paths this year by picking up the water that the City of Brookings has dumped on what was to be Phase II of The Cove and piped it all the way to the ocean. Bruce Brothers Inc. has been burdened with the unforeseen cost.

We asked a moment of your time to respond to this letter by approving our encroachment into the berm and that no liability of this encroachment be placed on the City of Brookings or Bruce Brothers Inc. The main inconvenience is that the City requests all the owners to sign. I apologize for the inconvenience of this letter and look forward to your approval.

Respectfully,



Noah D. Bruce  
President

## THE COVE AT BROOKINGS HOMEOWNERS ASSOCIATION, INC.

## EXHIBIT LIST

EXHIBIT	DATE	DESCRIPTION
A	05-16-90	Memorandum from A. Forrester, consultant to original developer, to City re: STP (Sewer Treatment Plant) berm design
B	06-28-90	City of Brookings Planning Commission Staff Agenda Report re: berm design
C	08-07-90	Final Order and Findings of Fact with attached Conditions of Approval for original development of the Cove
D	09-07-90	Letter from John Babin, attorney for original developer, to J. Boscoe, Western Pacific Development (original developer)
E	01-25-91	Letter from John Babin, attorney for original developer, to M. Gillespie, City Attorney re: holding City harmless from claims respecting regular operation of WWTP (waste water treatment plant)
F	01-25-91	Draft Indemnity Agreement prepared by John Babin, attorney for original developer, enclosed with original of Ex E.
G	01-25-91	Draft Real Estate Transfer Disclosure Statement prepared by John Babin, attorney for original developer, enclosed with original of Ex E.
H	02-25-91	Letter from M. Gillespie, City Attorney, to John Babin, attorney for original developer re: form of Indemnity Agreement and Real Estate Transfer Disclosure Statement
I	No date	Wind Evaluation - The Cove Project Berm Design by Don Munson, National Weather Service Observer, Brookings Area
J	08-29-91	Letter from HGE, Inc., Engineers & Planners to City of Brookings re: engineering design of berm
K	09-03-02	Conditions of Approval for Chetco Point Subdivision
L	No date	Petition by 26 out of 28 homeowners at the Cove opposing changes to berm

Submitted  
9-20-03  
3 pages

ALEX M. FORRESTER III  
CONSULTANT IN LAND USE AND DEVELOPMENT  
303 NE "E" Street  
Grants Pass, OR 97526  
(503) 479-4603

M E M O R A N D U M

TO: Leo Lightle, John Bischoff

Date: May 16, 1990

FR: Alex Forrester *AF*

RE: STP Site reconnaissance/Cypress Cove SPR meeting

Background

On Thursday, May 10, Jed Boscoe, Western Pacific Development, Alex Forrester, Tim Bossard, and Russell Ralls met with Leo Lightle, John Bischoff and representatives of Brown and Caldwell (STP Engineers), Reidel International (outfall contractors) and Wildish (Sewer Treatment Plant Contractors) to review construction to date. On Tuesday, May 15, Tim Bossard and Alex Forrester attended a Site Plan Review meeting on the "Cypress Cove" project, with Leo Lightle, John Bischoff, Marshall Ferg, Joe Mudd and Roger . After power, telephone and water line discussions, Alex, Tim, John and Leo remained. We then reviewed a range of issues on the STP construction and Cypress Cove submission. After that discussion and subsequent discussions with John Babin, project attorney, and Jed Boscoe, Western Pacific Development (WPD) president and project developer, we are understood and agreed on the following points, taken as a whole:

1. **STP Buffering.** STP buffering will be by a high mound/wall/vegetation combination at the east edge of the new plant. Buffer width to be 75' to 100', including Phase ID access road. Our submittal to be redrawn to show mound in plan, and concept sketch in section. Construction design to be by WPD, and to be completed this fall/winter; design to be done by Landscape Architect and other design professionals, and to carefully consider wind patterns, berm and wall heights, plant material spacing and species. City review and approval required. Construction by WPD as soon as possible upon STP plant completion, estimated to be August/September 1991.
2. **STP/Wildish Construction Easement.** Since a planted mound is to be the mode of buffering, cutting of trees by Wildish contrary to the construction easement is no longer an issue, and upon approval of concept berm design by the City, the City will be relieved of any liability in writing by WPD, and trees saved to date but to be covered by the berm may then be removed by Wildish if desired. All fill soil in excess of what is needed for STP backfilling would be appreciated placed in the berm area.

3. **STP/Riedel Int. Construction Easement.** Temporary causeway to be removed by Riedel and beach restored by Riedel per Fish & Wildlife/State Parks/City requirements. "Switchback road" to causeway to be removed, and large rocks placed at toe of slope of former "Switchback road" only, but not elsewhere on the beach, except as required by State Permit to City. Roadway to Chetco Point Beach restored to original grade, per photos and City requirement. Area above new outfall line on bluff, and scarified bluff surface, to be restored to vegetation per City requirements. Pedestrian trails to Chetco Point to be restored by Riedel per City requirements. Riedel to file restoration plan with City, WPD to have opportunity for review and comment to City. Common goal of City and WPD is to have area back to pre-construction appearance within one year. Large rocks to be arranged at top of Chetco Point Beach access road to permit pedestrian access only, and to prohibit any vehicle/motorcycle access down to beach. Up to 6 truck loads (23 yards each) of large rock may be dumped on WPD project site for use as landscape rock, on a location designated by WPD.
4. **Chetco Point/Beach Access.** WPD to provide concept design for parking area to north of STP for Chetco Point pedestrian access parking. WPD to construct interim parking area as part of Phase I providing a minimum of 10 parking spaces, on gravel, in a configuration to allow continued use of the ball fields until commencement of Phase II construction. Final design of parking area as part of Phase II Submittal. Major public beach access to Macklyn Cove at the same area will be committed to in Phase I Master Plan drawing and note, such access to be developed in Phase II. Submittal for Cypress Cove to be amended to reflect the above. Cove Road may not be dedicated below Section 6 line, has not been improved or used to date in this area and therefore is not subject to adverse possession, and is not an appropriate beach access due to site slopes, height above beach, and potential liability problems. WPD to thoroughly research dedication question, and make appropriate proposal to City regarding vacation of ROW or adjustment of lot line below Section 6 line. All agree that adjustment should be dealt with as part of Master Plan approval by the Planning Commission, but recognize issue may have to go to City Council separately. Right of way between culdesac and properties above Section 6 line to be left to serve all properties above Section 6 line, development of culdesac per City development conditions. WPD to commit to improve pedestrian beach access approved as part of Tanbark Subdivision, if desired by City, as the most appropriate public beach access at this point, up to \$10,000. Bluff top public trail not deemed appropriate for Cypress Cove development concept.
5. **Sanitary Sewer Line Adjustment.** A 400' section of sanitary sewer needs a minor realignment to accomodate the project design submittal. The project engineer, Tim Bossard, will

submit Sanitary Sewer design conceptual drawings and calculations to the City Engineer (Nored) and Community Development Director (Lightle) next week for review.

6. Communications. Lightle to review/comment on this memo, and present revised memo to City Manager prior to beginning one week absence Friday, May 18, 1990. Design team, Bischof and Lightle will meet with City Manager early in the week of May 28, upon Lytle's return. WPD and City to continue application review timeline, aiming for July Planning Commission review. John Bischof to continue communication with Alex Forrester, as before. Subsequent meetings, reviews and agreements to be summarized in writing to eliminate misunderstandings.

The above completes the resolution of all issues raised at Site Plan Review.

Reviewed and Approved  
Western Pacific Development, Inc.

By: Jerrold A. Boscoe President 5-18-90

Reviewed and Approved  
City of Brookings, Oregon

By: John C. Bischoff Planning Director



**CITY OF BROOKINGS PLANNING COMMISSION**  
**STAFF AGENDA REPORT**

SUBJECT: PUD Subdivision      REPORT DATE: June 28, 1990  
FILE NO: SUB-2-90      ITEM No: 8.2  
HEARING DATE: July 17, 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 surrounds this 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 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 Planned Unit Development of 56 units on the 30+ acre site. These units will be in the form of 28 single story duplex structures grouped in clusters around four 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 bylaws 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, which 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 within 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 placed 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 than sufficient to handle existing and project traffic. The main flow of traffic is expected to use Railroad St. in both directions 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 is 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 from 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 Planed 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 Commission's direction staff will prepare a Final ORDER to be presented at the next regularly scheduled meeting.

Submitted  
9-2-03  
4 pages

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

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

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.

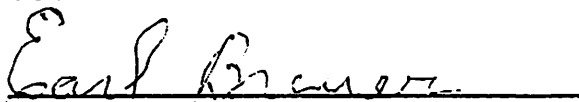
## CONDITIONS OF APPROVAL

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

*Submitted  
9-2-03.  
8 pages*

## CONDITIONS OF APPROVAL

SUB-2-90 PUD

As approved by the Planning Commission August 7, 1990  
Amended by the Planning Commission September 4, 1990

### General Conditions

1. The final plat shall be in substantial conformance with the submitted preliminary plat as amended herein and as approved by the Planning Commission.
2. Approval of this preliminary plat will expire five years from approval unless the final plat is approved and recorded or unless an extension of time is requested. The extension of time, will be granted by the Planning Commission and will not exceed one (1) year. The recordation of the final plat can be phased to match construction phases of the project within the five year period. Should the applicant wish to proceed with the subdivision following expiration of the one (1) year extension, the preliminary plat process must be re-initiated and resubmitted to the Planning Commission for review and approval.
3. The size and shape of all footprint lots shall conform substantially with the approved preliminary plat. Substantial changes to the approved preliminary plat require re-approval by the Planning Commission.
4. All footprint lots shall conform to the provisions of the R-1-6, R-2 Zones, Section 116 and to all other applicable provisions of the Land Development Code.
5. Prior to and as a condition of final plat approval, improvement work shall not be commenced until construction plans have been reviewed for adequacy by the City Engineer and approved by the City Council.
- 6.. All costs of plans checks and inspections by the City Engineer shall be paid by the applicant to the city.
7. Information on the construction plans shall be pursuant to the City of Brookings Standard Specifications document dated August, 1988.

### Design Conditions

8. A homeowners association shall be established and accepted by the city prior to the completion of the first phase of construction and the sale of any houses in that phase. Bylaws for the homeowners association shall be approved by the City Attorney.

9. The homeowner association shall be responsible for the upkeep and maintenance of all common areas, landscaping, fencing, electronic gates, berming, recreational facilities, R V parking area, and all private streets, water lines, sewer lines and drainage facilities.
10. Landscaping plans must be approved by the city staff prior to installation. Areas to be landscaped with other than native or drought resistant plants must be provided with an irrigation system with automatic timing systems approved by the City staff.
11. Gates to the interior streets shall be equipped with radio control units for emergency vehicle access. Control units shall be provided to the City of Brookings Fire Department and other agencies as required. Radio frequencies to be established with the approval of the City Fire Marshal.
12. The applicant shall construct a public parking area with gravel, landscaping and access to Chetco Point and the beach north of the point, in a location to the north of the waste water treatment plant. Design for this facility and the phasing for improvements to the facility must be accepted by the city staff prior to construction. Final construction of this parking area, including pavement, shall be completed at such time that the property north of Wharf St. is developed. Provisions to insure the completion of this parking area shall be provided by the applicant and approved by the city staff prior to the issuance of an occupancy permit for Phase 1-A.
13. After the completion of the city's waste water treatment plant expansion and prior to the completion of phase ~~I-B or I-C~~ I-C or I-D (which ever phase is earliest), the applicant shall construct a berm adjacent to the City's waste water treatment plant to provide visual and odor buffering form the subdivision. The berm shall be of sufficient height to visually screen the treatment plant from residences, streets and pathways within the project and planted with landscaping material approved by the city staff. Specific construction standards for the berm will be coordinated with a wind study undertaken by a qualified meteorologist or other qualified expert and shall be approved by the City Engineer. The applicant shall file a bond or other instrument, for the construction of the berm, in the same manner set forth in Condition No. 55 below. (Changes and additions added by the Planning Commission on September 4, 1990.)
14. The applicant shall grant to the City of Brookings a public easement to Chetco Point. Easement document must be approved by the City Attorney.

15. Pedestrian pathways shall be constructed throughout the project and on one side of the cul-ed-sac streets. Construction of the pathways shall be approved by the City Engineer. The homeowners association shall be responsible for the maintenance of all pathways within the project.
16. The R V parking area shall be established in a location generally convenient to the residents of the project, with fencing and either a gravel or asphaltic access and parking surface prior to the completion of phase I-A. The size of this facility and corresponding improvements may be phased to accommodate the phasing of construction within the project. These improvements and phasing shall be approved by city staff prior to construction.
17. It is understood that the original locatio of the R V parking facility may be moved during development of the area north of Wharf St. Provisions to ensure that the R V parking facility is convenient to and will remain for the use of the residents of the project, will be provided by the applicant and approved by city staff prior to issuance of occupancy permits for Phase I-A.

#### Street Conditions

18. The applicant shall dedicate, upon the final plat map, fifty (50) feet of right-of-way along Wharf Street from the existing right-of-way to the Waste Water Treatment Plant.
19. Half-street improvements, including curb, gutter, sidewalk, and 18 feet of pavement plus sufficient transitional pavement to provide 12 feet of travel way beyond the centerline, shall be constructed on that portion of Wharf Street adjacent to the project boundary. The remaining section of Wharf Street from the project boundary northerly to Railroad Avenue shall be improved with 28 feet of pavement, blended driveways and proper drainage facilities, as approved by the City Engineer.
- 20.- Construction of Wharf St. in the area adjacent to the project boundary, may occur in phases corresponding with the phased construction of the project provided that street construction includes the entire frontage of the current phase. If the first phase is not at the northerly most portion of the project site, improvements to Wharf St. pursuant to Condition 19, will be extended to that phase as a construction requirement.
21. The applicant shall supply engineered construction drawings for full street improvements including sidewalks and drainage for the section of Wharf Street from the project boundary to Railroad Avenue, for future use.



22. Cove Road shall be terminated with a 35 foot radius cul-de-sac at the connection of the right-of-way to the now existing Tax Lot 3600. This cul-de-sac shall be improved with a gravel surface and an emergency breakaway gate. These improvements to Cove Road will be completed with Phase I-A of the project.
23. The applicant shall sign a Deferred Improvement Agreement for future improvement to Cove Road. The C, C and Rs for the deed to the homeowners association will also contain provisions for participation in improvements to Cove Road. The applicant has the option of completing these improvements with the construction of Phase I-B in leu of the Deferred Improvement Agreement. Improvements completed with Phase I-b shall be approved by the City Engineer.
24. The applicant shall provide full-street improvements on all interior cul-de-sacs. Improvements will include ~~curb, gutters~~ engineered drainage swales and 24 feet of pavement from edge to edge. Cul-de-sacs will have a 35 foot radius from curb face to center point. Engineered drainage swales for internal streets must be approved by the City Engineer prior to construction. (Amended by Planning Commission 8-7-90)
25. All street improvements will include any required underground storm drain facilities.
26. Sidewalks shall include handicapped access ramps installed at each intersection pursuant to the building code standards and specifications, and Section 172.020 Q of the Land Development Code.
27. A stop sign shall be provided at the intersection of each interior cul-de-sac and Wharf Street.
28. Street lights will be provided as required by Section 172.050 of the Land Development Code. Following installation of the street lights and acceptance by the city, the city will own, operate and maintain the lighting system. Cost for electrical energy for street lighting will be paid by the city.
29. All street improvements must be approved by the City Engineer prior to construction.
30. Provision for maintenance of all private streets by the homeowners association shall be included in the association bylaws.

### Sanitary Sewer And Storm Drain Conditions

31. Sanitary sewer installation shall comply with the standards of the State of Oregon Department of Environmental Quality and the provisions of Brookings City Ordinance No. 430, and Standard Specifications Document, dated August, 1988. Sanitary sewer facilities connecting with existing sewer systems shall be installed to serve each lot.
32. All storm drains shall be installed pursuant to the provisions of the Standard Specifications document. Storm drains in Wharf Street adjacent to the project may be phased with construction of Wharf St. as per Condition 20.
33. The location of all sewer laterals shall be appropriately marked on the top of the curb.
34. All sanitary and storm sewers plans shall be approved by the City Engineer prior to construction.
35. All private sewer systems and related facilities shall be maintained by the homeowners association and provisions for maintenance shall be included in the association bylaws.
36. Rerouting of the existing 18 inch sewer line located in the easterly portion of the site shall occur only with the approval of the City Engineer and to his specifications. If the sewer line cannot be rerouted, the repositioning of the affected footprint lots may occur as substantial conformance with the approved preliminary plat with the Planning Directors approval.
37. Necessary easement for the repair of this and any other public sewer line within the project will be provided in the C, C and Rs of all applicable deeds. The Homeowners association bylaws shall provide that no trees, shrubs and/or fences shall be placed in or across any sewer line easement.

### Water System Conditions

38. All off site water lines shall be installed as a part of Phase I-A of the project.
39. A ten (10) inch water main shall be installed in Pacific Avenue from Highway 101, via an approved route, to Center Street. From Center Street, via an approved route, an eight (8) inch main will be installed in Wharf Street to the Waste Water Treatment Plant. Installation of the water line in Wharf St. may be phased with the street improvements as per Condition 20 above.

40. Water lines to interior private streets shall be eight (8) inch mains to fire hydrants and placed within a dedicated public utility easement. All other lines shall be private lines and provisions for maintenance shall be included in the homeowners association bylaws. Actual location of the terminus of public lines and easements will be determined and approved by the City Engineer and staff.
41. All water lines shall be installed pursuant to the provisions set forth in the ORA Chapter 33, Sections 42-200 through 42-243, by the Oregon State Health Division and the City of Brookings Standard Specifications Document.
42. All lots within the subdivision shall be served by the city domestic water supply system.
43. Water meters shall be located at the terminus of the public water lines as per Condition 40 above.
44. Fire hydrants locations shall be specified by the City Fire Marshal and will be installed pursuant to the Standard Specifications document.
45. All water system plans shall be approved by the City Engineer prior to construction.

#### Utilities

46. All utility lines, including but not limited to, electric, communication, street lighting, and cable television shall be placed underground throughout the subdivision. This includes undergrounding of services from existing overhead utilities.
47. All utility easements shall be clearly defined as to their scope, purpose and term, preferably to be included within the restrictive covenants which are to be recorded with the subdivision plat. The abbreviation "PUE" must be clearly defined and spelled out.
48. All proposed easements shall be clearly shown in dashed lines on the plat including the size and locations as required by the affected utilities, public agencies and service companies.
49. A continuous five (5) foot "PUE" adjacent to the right-of-way on Wharf Street and each side of all interior streets shall be provided to be utilized for water related equipment (meters, valves, etc. and other utilities (electrical pedestals, street lights, telephone and other facilities).

50. The applicant shall be responsible to coordinate final acceptance of all proposed "PUE's" with the affected utilities, public agencies and service companies prior to final plat approval.
51. The applicant shall coordinate the placement of mailboxes with the U. S. Postal Service. ~~Mailboxes shall be located so that there will be at least five (5) feet of clear space for the sidewalk.~~ (Deleted by Planning Commission)

#### Restrictive Covenants

52. In order for retaining walls, fences, etc, to be constructed within the remaining public right-of-way in back of and abutting the sidewalks the applicant shall incorporate in the covenants a "hold harmless" clause absolving the city and/or utilities of any liability or responsibility for the replacement of such appurtenances within the right-of-way should it be necessary to remove same to make repairs to existing facilities or install new facilities therein.
53. ~~The C, C, and Rs for all units within the project and the homeowners association bylaws, shall contain a hold harmless clause protecting the city from liability for impacts generated by the city's waste water treatment plant. These clauses shall be approved by the city attorney prior to the issuance of occupancy permits for each phase of the project.~~

~~The developer shall insure that the public report of the Oregon Department of Real Estate shall include the fact that the Waste Water Treatment Plant of the City of Brookings is located on the west boundary of the project site.~~ (Deleted by the Planning Commission Sept. 4, 1990)

The applicant shall submit a disclosure statement, signed by each buyer, indicating that the buyer is aware of the proximity of the waste water treatment plant. (New wording added by the Planning Commission Sept. 4, 1990)

The developer shall further enter into a separate agreement with the City of Brookings to indemnify and hold the City harmless from the claims of residents of the development against the City due to the normal activity of the Waste Water Treatment Plant, not including accidents, negligence or failure to operate the Waste Water treatment Plant in accordance with state and/or federal laws and regulations.  
(New wording added by the Planning Commission August 7, 1990)

### Bond And Agreement

54. Prior to the Planning Commission certification of the final plat, the applicant shall either install the required improvements or shall execute and file with the city an agreement between himself and the City of Brookings specifying the period within which he or his agent or a contractor shall complete all the improvement work required by, or pursuant to, the Land Development Code; and providing that he should fail to complete the work within the period the city may complete the same and recover the full cost and expense thereof from the applicant.
55. The applicant shall file with the agreement, to assure his full and faithful performance thereof, one of the following: 1) surety bond executed by a surety company authorized to transact business in the State of Oregon, 2) cash, or 3) an irrevocable standby letter of credit from a bank of savings and loan association. the assurance of full and faithful performance shall be for a sum approved by the City Manager sufficient to cover the cost of the improvements, engineering, and repair of existing streets and other public improvements damaged in the development of the subdivision, and must be approved by the City Attorney as to form and content. The performance bond shall guarantee the improvements to be free of defects for one (1) year after written acceptance by the City Manager.

Submitted  
9-2-03.  
2 pages

BABIN & KEUSINK  
PROFESSIONAL CORPORATION  
ATTORNEYS AT LAW  
P.O. BOX 1600  
517 CHETCO AVE.  
BROOKINGS, OREGON 97415-0600  
(503) 469-5331

JOHN C. BABIN\*  
CHRISTOPHER KEUSINK

JOHN COUTRAKON  
(1975-1987)

\*ALSO LICENSED IN CALIFORNIA

September 7, 1990

Mr. Jerrold Boscoe  
Western Pacific Development  
P. O. Box 1529  
Grants Pass, OR 97520

RE: Confirmation of Request to include certain provisions  
in Cypress Cove documents.

Dear Mr. Boscoe:

This is to confirm to you our understanding that we have been directed by you to draft certain provisions and language for inclusion in the Cypress Cove project CC & R's, By-Laws, plat, and documents of title of project units, for the purpose of providing legal and appropriate notice to prospective unit purchasers and Association members, generally, and to any interested persons, otherwise, of the contents thereof.

The general content of the provisions we will draft for the aforementioned documents is as follows:

1. Granting to the City of Brookings, Oregon, rights of access to the publicly-dedicated sanitary sewer system located on project property for the purposes of operation, repair and maintenance of the system and its component parts, to include the right to remove or disrupt, as may be reasonably necessary, such landscaping and structures as may lie above the sanitary sewer system as defined by the right-of-way therefore disclosed on the project plat and the as-built plans of the completed lines.

2. Indemnifying and holding harmless the City of Brookings and its agents, servants and employees from and against any claims, damages, losses or expenses arising out of the operation, repair and maintenance of the sanitary sewer system as described in Paragraph 1, above, and which is not caused by the willful or negligent acts or omissions to act of the City or its agents, servants or employees.

3. Providing for the establishment of a Fifteen Thousand Dollar (\$15,000.00) fund, with interest accruing thereon, if any, to benefit said fund, to be administered by the Cypress Cove Association of unit owners, for the express purpose of repairing or replacing such project landscaping or structures as may be disrupted, damaged or destroyed in connection with the City of Brookings' utilization of its rights of operation, repair and

Cove Exhibit D

September 7, 1990  
Mr. Jerrold Boscoe  
Page 2

maintenance as set forth in Paragraph 1 hereof.

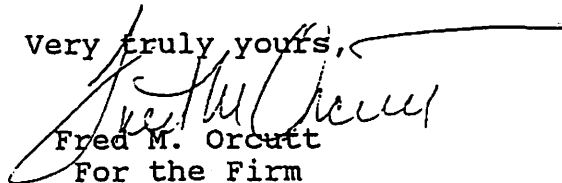
4. Permitting ingress and egress over, upon and across the private streets and ways of the Cypress Cove project, to the City of Brookings, for the purposes of exercising its rights of operation, repair and maintenance as set forth in Paragraph 1 hereof.

5. Permitting ingress and egress over, upon and across the private streets and ways of the Cypress Cove project, to all governmental, utility and emergency vehicles and personnel for the conduct of regular or emergency business within project boundaries. Such permission shall include, but not necessarily be limited to, access for fire, police, ambulance, code enforcement, utility maintenance (including sewer, electric and telephone), and mail services.

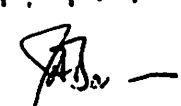
We anticipate that a draft of the various provisions described above can be provided for your review shortly.

If you have any questions, please do not hesitate to contact us at your convenience.

Very truly yours,

  
Fred M. Orcutt  
For the Firm

FO/djl

Approved: 9-1-90  


BABIN & KEUSINK  
PROFESSIONAL CORPORATION  
ATTORNEYS AT LAW

P.O. BOX 1600  
517 CHETCO AVE.

BROOKINGS, OREGON 97415-0600

(503) 469-5331

January 25, 1991

JOHN C. BABIN\*  
CHRISTOPHER KEUSINK

\*ALSO LICENSED IN CALIFORNIA

*Submitted*  
**COPY** 9-2-03  
*1 page*

JOHN COUTRAKON  
(1975-1987)

Mr. Michael J. Gillespie  
Slack, Stone & Gillespie  
Post Office Box 158  
Coquille, OR 97423

Re: City of Brookings - The Cove at Brookings Project

Dear Mr. Gillespie:

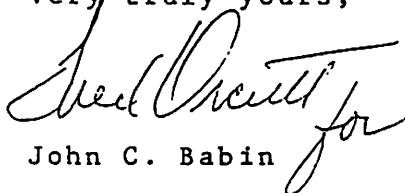
Enclosed please find copies of (i) Real Estate Transfer Disclosure Statement and (ii) form of City-developer indemnity agreement for your review.

These forms have been prepared by us in connection with requirements of the City regarding issues related to the proximity of the Waste Water Treatment Plant to the Project.

As you will see, the disclosure form contains an acknowledgment of the adjacency of the WWTP at Section II, subsection C. The Indemnity Agreement provides the City will be held harmless from claims of residents respecting the regular operation of the WWTP. We believe each document satisfies the conditions of approval emplaced upon us during the preliminary plat approval process. We will also forward to you, shortly, copies of the Declaration of Covenants, Conditions and Restrictions for the Project, and the bylaws of the homeowners' association, which contain consistent provisions drafted to satisfy the aforesaid City conditions of approval.

We are hoping to have all in order for the expeditious final approval of the Project plat in early February. Your timely review and comments are appreciated.

Very truly yours,

  
John C. Babin

cc: Jerrold Boscoe, WPD  
enclosures as stated

Cove Exhibit E



INDEMNITY AGREEMENT

This agreement, by and between Western Pacific Development, Inc., an Oregon corporation (hereinafter "Western"), and the City of Brookings, a political subdivision and municipality under the laws of the State of Oregon located within the County of Curry (hereinafter "City"), effective the \_\_\_\_ day of \_\_\_\_\_, 199\_\_;

**WITNESSETH:**

WHEREAS, Western has applied for approval for a multi-unit planned unit development (hereinafter, the "Development") on a 30.69 +/- acre parcel generally located in the City of Brookings, Oregon, on the east and south side of Wharf Street between the southerly extension of Cove Road and the City's 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 - 6000 sq. foot 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 of the City; and

WHEREAS, the Planning Commission of the City, as to Planning Commission File No. SUB-2-90 PUD, following notice and hearing as by law required, issued a Final Order and Findings of Fact on the 7th day of August, 1990, granting preliminary plat approval for the Development, subject to certain conditions of approval dated July 17, 1990, as amended by the said Planning Commission and attached to the Final Order; and

WHEREAS, the aforesaid Final Order and Findings of Fact and conditions of approval, as amended, indicate the site of the Development is subject to occasional impacts from the Waste Water

Treatment Plant of the City which adjoins the western boundary of the Development and require Western to enter into a separate agreement with the City to indemnify said City from and against certain claims which may arise out of the normal operation of the Waste Water Treatment Plant by the City; and

WHEREAS, Western is agreeable to such condition of approval upon the terms hereinafter set forth, and City is agreeable to the said terms hereinafter set forth in satisfaction of said condition,

IT IS THEREFORE AGREED BY THE PARTIES:

1. Western shall and does hereby indemnify and hold harmless the City from any and all claims of residents of the Development against the City due to the normal activity of the Waste Water Treatment Plant of the City adjoining the western boundary of the Development, which indemnity shall not and does not include any claims against the City for losses, damages, or expenses which arise or may arise out of any accidents or negligence in connection with the operation of the said Waste Water Treatment Plant by the City, or which arise or may arise out of the failure to operate said Waste Water Treatment Plant by the City in compliance with applicable state and/or federal laws and regulations.

2. The City shall and does hereby accept this agreement of indemnity in full and complete satisfaction of that portion of condition of approval No. 53, dated July 17, 1990, and thereafter amended, which applies to the requirement that Western provide indemnity to the City from and against any claims of residents of the Development relating to the normal operation of the Waste Water Treatment Plant of the City.

//

//

//

WESTERN PACIFIC DEVELOPMENT, INC.,  
(WESTERN):

ATTEST:

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

CITY OF BROOKINGS, OREGON,  
(CITY):

ATTEST:

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Submitted  
9-2-03  
DRAFT 4/ pages

1-25-91 F.O.

REAL ESTATE TRANSFER DISCLOSURE STATEMENT

THIS DISCLOSURE STATEMENT CONCERNS PROPERTY SITUATED IN THE CITY OF BROOKINGS, COUNTY OF CURRY, STATE OF OREGON, DESCRIBED AS \_\_\_\_\_, IN THE COVE AT BROOKINGS, A PLANNED COMMUNITY UNDER THE OREGON PLANNED COMMUNITY ACT. THIS STATEMENT IS A DISCLOSURE OF THE CONDITION OF THE ABOVE DESCRIBED PROPERTY AS OF \_\_\_\_\_, 19\_\_\_\_. IT IS NOT A WARRANTY OF ANY KIND BY THE SELLER(S) OR ANY AGENT(S) REPRESENTING ANY PRINCIPAL(S) IN THIS TRANSACTION, AND IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR WARRANTIES THE PRINCIPAL(S) MAY WISH TO OBTAIN.

I.  
SELLER'S INFORMATION

The Seller discloses the following information with the knowledge that even though this is not a warranty, prospective Buyers may rely on this information in deciding whether and on what terms to purchase the subject property. Seller hereby authorizes any agent(s) representing any principal(s) in this transaction to provide a copy of this statement to any person or entity in connection with any actual or anticipated sale of the property.

THE FOLLOWING ARE REPRESENTATIONS MADE BY THE SELLER(S) AND ARE NOT THE REPRESENTATIONS OF THE AGENT(S), IF ANY. THIS INFORMATION IS A DISCLOSURE AND IS NOT INTENDED TO BE PART OF ANY CONTRACT BETWEEN THE BUYER AND SELLER.

Seller is not occupying the property subject of this statement.

A. The subject property has the items checked below (read across):

___ Range	___ Oven	___ Microwave
___ Dishwasher	___ Trash Compactor	___ Garbage Disposal
___ Washer/Dryer Hookups	___ Window Screens	___ Rain Gutters
___ Burglar Alarms	___ Smoke Detector(s)	___ Fire Alarm
___ T.V. Antenna	___ Satellite Dish	___ Intercom
___ Central Heating	___ Central Air Conditioning	___ Evaporator
___ Wall/Window A/C	___ Sprinklers	___ Public Sewer System
___ Septic Tank	___ Sump Pump	___ Water Softener
___ Patio/Decking	___ Built-in BBQ	___ Gazebo
___ Sauna	___ Pool/___ Spa	___ Hot Tub
___ Security Gate(s)	___ Garage Door Opener(s)	___ Remotes (#___)

Garage: \_\_\_ Attached \_\_\_ Not Attached \_\_\_ Carport  
Pool/Spa Heater: \_\_\_ Gas \_\_\_ Solar \_\_\_ Electric  
Water Heater: \_\_\_ Gas \_\_\_ Solar \_\_\_ Electric  
Water Supply: \_\_\_ City \_\_\_ Well \_\_\_ Private Utility \_\_\_ Other

Page 1 - Transfer Disclosure (Receipt Acknowledged: \_\_\_\_\_)

Gas Supply: \_\_\_\_\_ Utility \_\_\_\_\_ Other \_\_\_\_\_  
Exhaust fan(s) in \_\_\_\_\_; 220-Volt wiring in \_\_\_\_\_  
Fireplace(s) in \_\_\_\_\_ Gas Starter \_\_\_\_\_  
Roof(s): Type: \_\_\_\_\_ Age: \_\_\_\_\_ (approx.)  
Other: \_\_\_\_\_

Are there, to the best of your (Seller's) knowledge, any of the above that are not in operating condition? \_\_\_\_ Yes \_\_\_\_ No. If yes, then describe: \_\_\_\_\_

B. Are you (Seller) aware of any significant defects/malfunctions in any of the following? \_\_\_\_ Yes \_\_\_\_ No If yes, check appropriate space(s) below.

\_\_\_\_ Interior Walls \_\_\_\_ Ceilings \_\_\_\_ Floors \_\_\_\_ Exterior Walls  
\_\_\_\_ Insulation \_\_\_\_ Roof(s) \_\_\_\_ Windows \_\_\_\_ Doors \_\_\_\_ Foundation  
\_\_\_\_ Slab(s) \_\_\_\_ Driveway(s) \_\_\_\_ Sidewalks \_\_\_\_ Walls/Fences  
\_\_\_\_ Electrical Systems \_\_\_\_ Plumbing/Sewer/Septics  
\_\_\_\_ Other structural components

Describe: \_\_\_\_\_

C. Are you (Seller) aware of any of the following:

1. Features of the property shared in common with adjoining landowners, such as walls, fences and driveways whose use or responsibility for maintenance may have an affect on the subject property? X Yes \_\_\_\_ No

2. Any encroachments, easements or similar matters that may affect your interest in the subject property? X Yes \_\_\_\_ No

3. Room additions, structural modifications, or other alterations or repairs made without necessary permits? \_\_\_\_ Yes X No

4. Room additions, structural modifications or other alterations or repairs not in compliance with building codes? \_\_\_\_ Yes X No

5. Landfill (compacted or otherwise) on the property or any portion

Page 2 - Transfer Disclosure (Receipt Acknowledged: \_\_\_\_\_)

thereof? ☒ Yes ☐ No

6. Any settling from any cause, or slippage, sliding, or other soil problems? ☐ Yes ☒ No

7. Flooding, drainage or grading problems? ☐ Yes ☒ No

8. Major damage to property or any of the structures from fire, earthquake, floods or landslides? ☐ Yes ☒ No

9. Any zoning violations, non-conforming uses, violations of "setback" requirements? ☐ Yes ☒ No

10. Neighborhood noise problems or other nuisances? ☐ Yes ☒ No

11. CC&R's or other deed restrictions or obligations? ☒ Yes ☐ No

12. Homeowners Association which has any authority over the subject property? ☒ Yes ☐ No

13. Any "common area" (owned by Homeowners' Association)? ☒ Yes ☐ No

14. Does the development within which the subject property is situated adjoin any public utility? ☒ Yes ☐ No

15. Any notices of abatement or citations against property? ☐ Yes ☒ No

16. Any lawsuits against the Seller affecting or threatening this real property? ☐ Yes ☒ No

If the answer to any of these is yes, explain: The Cove at Brookings features management of all common property by an incorporated homeowners' association. The common property includes all streets, pathways, common facilities and open areas outside the boundaries of each individual residential living unit. Some common property which the association will maintain, however, is set aside for the exclusive use of each unit owner. Such exclusive-use common property includes portions of driveways for each building, and entryways, patios, and stepping-stone walks adjacent to each individual unit. As a further benefit of ownership in The Cove, the exterior surfaces of each individual residence, including the roof, walls and trim, will be maintained by the association. In order to carry out its responsibility of maintaining the elegance of The Cove, and to protect the investment of our buyers in this community, the association has certain specific rights and responsibilities relating to access to both common and exclusive areas for purposes of maintenance, emergency assistance and enforcement of community rules and regulations applicable to all properties. A complete description of the general and exclusive-use areas of The Cove and the powers and duties of the association

Page 3 - Transfer Disclosure (Receipt Acknowledged: \_\_\_\_\_)

and unit owners is contained in the Declaration of Covenants, Conditions and Restrictions of The Cove and the Bylaws of The Cove At Brookings Homeowners' Association, Inc. Not within The Cove, but adjacent on its western side, is situated the City of Brookings' Waste Water Treatment Plant, which has been extensively modernized in accordance with the latest standards of the United States Environmental Protection Agency. The City and the creator of The Cove have cooperated in designing a specially-engineered and attractively-landscaped berm to visually and functionally separate this public utility from The Cove.

II.

AGENT'S INSPECTION DISCLOSURE

(To be completed only if the Seller is represented by an agent in the transaction.)

THE UNDERSIGNED, BASED ON THE ABOVE INQUIRY OF THE SELLER(S) AS TO THE CONDITION OF THE PROPERTY AND BASED ON A REASONABLY COMPETENT AND DILIGENT VISUAL INSPECTION OF THE ACCESSIBLE AREAS OF THE PROPERTY IN CONJUNCTION WITH THAT INQUIRY, STATES THE FOLLOWING:

Agent (Broker representing Seller):

By: \_\_\_\_\_ Date: \_\_\_\_\_

III.

AGENT'S INSPECTION DISCLOSURE

(To be completed only if the agent who has obtained the offer is other than the agent above.)

THE UNDERSIGNED, BASED ON A REASONABLY COMPETENT AND DILIGENT VISUAL INSPECTION OF THE ACCESSIBLE AREAS OF THE PROPERTY, STATES THE FOLLOWING:

Agent (Broker obtaining the offer):

\_\_\_\_\_, By \_\_\_\_\_

Date: \_\_\_\_\_

BUYER(S) AND SELLER(S) MAY WISH TO OBTAIN PROFESSIONAL ADVICE AND/OR INSPECTIONS OF THE PROPERTY AND TO PROVIDE FOR APPROPRIATE PROVISIONS IN A CONTRACT BETWEEN BUYER AND SELLER(S) WITH RESPECT TO ANY ADVICE/INSPECTIONS/DEFECTS.

Page 4 - Transfer Disclosure (Receipt Acknowledged: \_\_\_\_\_)

I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS STATEMENT.

Seller \_\_\_\_\_ Date: \_\_\_\_\_

Buyer \_\_\_\_\_ Date: \_\_\_\_\_

Buyer \_\_\_\_\_ Date: \_\_\_\_\_

Broker representing Seller:

\_\_\_\_\_ Date: \_\_\_\_\_

Broker obtaining offer:

\_\_\_\_\_ Date: \_\_\_\_\_

wp50\fmo\disclo.frm



Submitted  
9-2-03  
2 pages

## SLACK, STONE AND GILLESPIE

HARRY A. SLACK, JR.  
MARTIN E. STONE  
MICHAEL J. GILLESPIE

ATTORNEYS AT LAW  
222 E. 2ND STREET  
P.O. BOX 158  
COQUILLE, OREGON 97423-0158

(503) 396-3171  
FAX (503) 396-5723

ESTABLISHED BY  
A. J. SHERWOOD  
IN 1888

HARRY A. SLACK, SR.  
(1900-1988)

February 25, 1991

John C. Babin  
Attorney at Law  
P.O. Box 1600  
Brookings, OR 97415-0600

Re: City of Brookings/The Cove at Brookings Project

Dear John:

This is a follow-up to your letter of January 25, 1991. On February 22 I did at long last have the opportunity to review this matter in depth with John Bischoff, Planning Director for the City of Brookings. I want to take this opportunity to respond to the contents of the documents which were sent to me.

Please be advised that, on behalf of the City of Brookings, both John Bischoff and myself are satisfied with the form of the City-Developer Indemnity Agreement which accompanied your letter of January 25, 1991.

In connection with the Real Estate Transfer Disclosure Statement which accompanied your letter of January 25, the form of the document is acceptable by both John Bischoff and myself with one requested change. At the top of page 4 of that document, the last sentence of the paragraph immediately above Section II reads as written "The City and the creator of The Cove have cooperated in designing a specially-engineered and attractively-landscaped berm to visually and functionally separate this public utility from The Cove." The City would request that the sentence quoted above be changed to read "In accordance with standards established by the City, the creator of The Cove has designed a specially-engineered and attractively-landscaped berm to visually and functionally separate this public utility from The Cove."

With the change requested above, the City finds the document to be satisfactory.

As mentioned in your letter of January 25, I have also received a copy of the covenants, conditions and restrictions for the project as well as Bylaws of the Home Owner's Association. Your letter of January 25 states those documents contain

February 25, 1991, Page 2

provisions consistent with the forms mentioned above. The consistency the City is looking for is with the language quoted above from the disclosure statement.

In my cursory review of those lengthy documents, I couldn't find similar language. I turned those documents over to John Bischoff with a request that he review them at his earliest convenience for purposes of locating that language. He should be responding shortly in connection with that matter.

Hopefully this matter will be coming to a satisfactory resolution and close in the immediate future. If you have further questions or inquiries, don't hesitate to contact me.

Very truly yours,

MICHAEL J. GILLESPIE

MJG:lw

cc: John Bischoff, Planning Director, City of Brookings ✓

Submitted  
4-2-03  
2 pages

## WIND EVALUATION THE COVE PROJECT BERM DESIGN

### SITUATION

A residential area, The Cove, is planned adjacent to the Brookings Waste Water Treatment Plant (WWTP). The WWTP is located to the west and northwest of The Cove project and at approximately the same elevation. An earth berm is being constructed along the property line common to The Cove and the WWTP.

### CONCERN

Odors from the WWTP could be transported by wind and be detectable in The Cove residential area.

### TASK

Analyze potential air movement and weather conditions that could affect the area of concern.

### FACTS

Historical wind data for the Brookings area provided by the National Weather Service, indicate the following:

For January (representative of winter conditions) winds of greater than 3 mph from a west-northwest direction could be expected to occur approximately 3% of the time. Winds of variable direction of 3 mph or less occur 18% of the time.

For July (representative of summer conditions) winds of greater than 3 mph from a west-northwest direction could be expected to occur approximately 7% of the time. Winds of variable direction of 3 mph or less occur 52% of the time.

### THEORY

The time of day and topography would have an impact on the total effect of air movement. The category of variable direction winds of 3 mph or less could be affected as theorized below.

Winter conditions - During the longer night time hours, when winds are generally lightest, the lower layers of air near the earth surface cool more rapidly than the nearby ocean surface. The cooler, heavier air from the land, would tend to drain down-slope and be drawn toward the ocean, away from The Cove, by convection. The earth berm along the property line would act somewhat like a dam. This would reduce the chances of variable winds affecting The Cove.

Summer conditions - Variable wind direction with speeds of 3 mph or less would be affected by heating of the earth's surface during the longer daylight hours. The heating would cause the air to become turbulent and rise.

Turbulence caused by higher average wind speeds from the west-northwest would aid in mixing the air.

Both of these conditions would tend to disperse odors into the atmosphere, thereby mitigating the effect on adjacent areas.

Don Munson

A handwritten signature in cursive script, appearing to read "Don Munson".

National Weather Service Observer,  
Brookings Area

HGE INC./ENGINEERS & PLANNERS  
375 PARK AVENUE / COOS BAY, OREGON 97420  
(503) 269-1166 / FAX (503) 269-1833

August 29, 1991

City of Brookings  
898 Elk Drive  
Brookings, Oregon 97415

Attn: Leo Lightle  
Community Development Director

Re: "The Cove" - Brookings, Oregon  
Project #3883

Dear Leo:

In a review of preliminary plans for the proposed waste water treatment plant (WWTP) berm, we have concerns in three areas. Our concerns are addressed as follows:

- 1) The structural for the proposed concrete block retaining wall does not appear adequate for the intended purpose. We would appreciate structural calculations that substantiate the proposed design, and that shows compliance with UBC requirements.
- 2) The proposed berm will cover a large area, which will be subject to erosion during rainfall periods. Compaction of the berm, and testing to assure quality compactive efforts, will be a major factor. No details or specifications have been provided for compactive efforts and testing procedures.
- 3) Embankment slopes at a 1-1/2 slope have been difficult to achieve and maintain in the wet environment of Brookings's winter periods. The proposed berm suggests a 1-1/2 slope on each side of the proposed berm. A first class quality control program may be able to achieve compactive efforts that will allow construction of the steeper slopes, but this will need to be seriously addressed in the construction specifications, and by thorough inspection during construction. Standard specifications would indicate a 2 to 1 slope for the berm, and this could be much easier to maintain in the Brookings environment.

We will appreciate plan modifications and detailed specifications which show how compliance with the itemized concerns will be achieved.

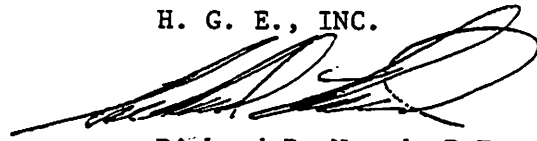
Cove Exhibit J

Letter to City of Brookings  
August 29, 1991  
Page 2

Please contact me if we can offer further assistance in any regard.  
We appreciate the opportunity to be of continuing assistance to the  
City of Brookings.

Very truly yours,

H. G. E., INC.

A handwritten signature in black ink, appearing to read 'Richard D. Nored', with a large, sweeping flourish extending to the left.

Richard D. Nored, P.E.  
Vice President

RDN:is

cc: Dennis Cluff, City Manager  
John Bischoff, Planning Director ✓

*Submitted  
9-2-03  
4 pages*

**CONDITIONS OF APPROVAL  
SUB-6-02  
Chetco Point Subdivision  
September 3, 2002**

General Conditions

1. The final plat shall be in substantial conformance with the submitted preliminary plat as amended herein and as approved by the Planning Commission.
2. Approval of this preliminary plat will expire one (1) year from approval unless the final plat is approved and recorded or unless an extension of time is requested and approved. The extension of time may be granted by the Planning Commission with good cause and will not exceed one (1) year. The recordation of the final plat can be phased to match construction phases of the project within the one-year period. Should the applicant wish to proceed with the subdivision following expiration of the one (1) year extension, the preliminary plat process must be re-initiated and resubmitted to the Planning Commission for review and approval.
3. The size and shape of all lots shall conform substantially with the approved preliminary plat. Substantial changes to the approved preliminary plat require re-approval by the Planning Commission.
4. All lots shall conform to the provisions of the R-2 (Two Family Residential), and to all other applicable provisions of the Land Development Code.
5. Improvement work, including grading and fill, shall not be commenced until the City Engineer has reviewed and approved construction plans for adequacy.
6. All costs of plans checks and inspections by the City Engineer shall be paid by the applicant to the city.
7. Information on the construction plans shall be pursuant to the City of Brookings Standard Specifications document dated August 1988.
8. No houses shall be constructed on the subject property until all improvement work has been completed.
9. The applicant shall establish and record a homeowners association that contains the following provisions:
  - Provisions for the continued maintenance of the landscaping on the berm.
  - Provisions for the continued maintenance of Chetco Point Terrace.
  - A clause that no development shall encroach into or onto the berm.
  - A hold harmless holding the city harmless due to odor or noise due to the normal operation of the adjoining wastewater treatment plan.
  - A hold harmless clause holding Pacific Wood Laminates harmless from noise and odor due to normal operation of the plywood mill
  - Provisions the prevent Lots 4 thru 7 from being divided further.

- Provisions stating that Lots 3 thru 10 are subject to the provisions of Section 100, Hazardous Building Site Protection/Hillside Development Standards, of the city's Land Development Code and that no construction will take place until the provisions have been met.
  - Provisions prohibiting Lots 1 and 12 thru 16 as shown on the approved preliminary plat map, from taking access from Wharf St.
10. The applicant shall grant to the city a permanent easement 15 feet in width along the westerly boundary of the subject property from Wharf St. to the property line between Chetco Point Park and the subject property. The city and applicant may explore the possibility of increasing the easement to the top of the berm with a fence along the top of the berm.

#### Street Conditions

11. The applicant shall construct curb, gutter, sidewalk and pavement as necessary along the Wharf St. frontage of the subject property. The location and alignment of the sidewalk, curb and gutter will be as shown on the approved preliminary plat map.
12. The applicant shall construct the new cul-de-sac street to city standards, with curb, gutter and sidewalk on both sides. The entrance gate shall be position no less than 25 feet from the curb line of Wharf St.
13. All street improvements shall include any required underground storm drain facilities.
14. All street improvements must be approved by the City Engineer prior to construction.

#### Sanitary Sewer And Storm Drain Conditions

15. The applicant shall extend sewer service mains into the new cul-de-sac street. Service laterals shall be extended to each lot within the subdivision.
16. Prior to construction of the cul-de-sac street, the applicant shall coordinate with the City Public Works and Wastewater Treatment Departments to ensure sufficient work area around the existing pump station.
17. Sanitary sewer installation shall comply with the standards of the State of Oregon Department of Environmental Quality and the provisions of Brookings City Ordinance No. 430, and Standard Specifications Document, dated August, 1988.
18. The location of all sewer laterals shall be appropriately marked on the curb in a permanent manner.
19. The applicant shall provide an engineered storm drain plan prior to any construction
20. The drainage shown between Lots 4 and 5 of the approved preliminary plat map shall be engineered and designed in such a manner that the storm drain shall not change the drainage pattern or increase runoff across the adjoining property. (Amended by Commission, 9-3-02)



21. All storm drains shall be installed pursuant to the provisions of the Standard Specifications document.
22. All sanitary sewer and storm sewer mains that are located outside of a street right-of-way shall be provided with an access easement as required by the City Engineer.
23. All sanitary and storm sewers plans shall be approved by the City Engineer prior to construction.

#### Water System Conditions

24. The applicant shall install a water main within the cul-de-sac street right-of-way.
25. All lots within the subdivision shall be served by the city domestic water supply system.
26. The applicant shall provide an easement in favor of the city over the water and sewer mains within the cul-de-sac street right-of-way.
27. All water lines shall be installed pursuant to the provisions set forth in the OAR Chapter 33, Sections 42-200 through 42-243, by the Oregon State Health Division and the City of Brookings Standard Specifications Document.
28. Water meters shall be clustered at common lot lines to the extent possible.
29. All water system plans shall be approved by the City Engineer prior to construction.
30. Prior to any construction of the water service system, the applicant install shall a fire hydrant at a location to be determined by the Fire Chief.

#### Utilities

31. All utility lines, including but not limited to, electric, communication, street lighting, and cable television shall be placed underground throughout the subdivision. This includes undergrounding of services from existing overhead utilities.
32. All utility easements shall be clearly defined as to their scope, purpose and term, preferably to be included within the restrictive covenants which are to be recorded with the subdivision plat. The abbreviation "PUE" must be clearly defined and spelled out.
33. All proposed easements shall be clearly shown in dashed lines on the plat including the size and locations as required by the affected utilities, public agencies and service companies.
34. A continuous five (5) foot "PUE" adjacent to the right-of-way on Wharf St. and Chetco Point Terrace shall be provided to be utilized for water related equipment (meters, valves, etc. and other utilities (electrical pedestals, street lights, telephone and other facilities).
35. The applicant shall be responsible to coordinate final acceptance of all proposed "PUE's" with the affected utilities, public agencies and service companies prior to final plat approval.

EXH. A

36. The applicant shall coordinate the placement of mailboxes with the U. S. Postal Service.

Restrictive Covenants

37. In order for retaining walls, fences, etc, to be constructed within the remaining public right-of-way in back of and abutting the sidewalks the applicant shall incorporate in the covenants a "hold harmless" clause absolving the city and/or utilities of any liability or responsibility for the replacement of such appurtenances within the right-of-way should it be necessary to remove same to make repairs to existing facilities or install new facilities therein.

Bond And Agreement

38. Prior to the Planning Commission certification of the final plat, the applicant shall install the required improvements.

39. The applicant shall file, to assure his full and faithful performance thereof, one of the following: 1) surety bond executed by a surety company authorized to transact business in the State of Oregon, 2) cash, or 3) an irrevocable standby letter of credit from a bank of savings and loan association. The assurance of full and faithful performance shall be for a sum approved by the City Manager sufficient to cover the cost of the improvements, engineering, and repair of existing streets and other public improvements damaged in the development of the subdivision, and must be approved by the City Attorney as to form and content. The performance bond shall guarantee the improvements to be free of defects for one (1) year after written acceptance by the City Manager.

# PETITION

WE AS HOMEOWNERS AT THE COVE, A GATED RESIDENTIAL COMMUNITY ADJACENT TO THE CHETCO POINT TERRACE SUBDIVISION, ARE OPPOSED TO THE PROPOSED CHANGES TO THE CONDITIONS OF APPROVAL FOR THIS NEW SUBDIVISION WITH REGARD TO THE ALTERATION OF THE BERM SEPARATING OUR DEVELOPMENT AND THE WASTEWATER TREATMENT PLANT. THE BERM WAS ENGINEERED AND CONSTRUCTED BY WESTERN PACIFIC DEVELOPMENT CORP. AS REQUIRED BY THE CITY IN 1991 FOR THE PURPOSE OF DEFLECTING NOXIOUS ODORS FROM THE WASTEWATER TREATMENT PLANT AWAY FROM OUR SUBDIVISION, AND HAS SERVED THAT PURPOSE EFFECTIVELY SINCE ITS CONSTRUCTION. WE OPPOSE ANY ALTERATION OF THE BERM BY THE CURRENT DEVELOPERS OF SAID PROPERTY FOR FEAR THAT CHANGES IN ITS ORIGINAL DESIGN MAY ADVERSLY AFFECT ITS INTENDED PURPOSE OF DIVERTING OBJECTIONABLE ODORS AWAY FROM OUR DEVELOPMENT.

SIGNATURE:

NAME:

ADDRESS:

<i>Ann T. Ostrowski</i>	ANN T OSTROWSKI	<del>110</del> 110 Schooner Bay Drive
<i>Marlene Lyon</i>	MARLENE LYON	222 Schooner Bay Dr.
<i>Liliane Pernet</i>	LILIANE PERNET	229 Schooner Bay Dr.
<i>Janet Sisson</i>	JANET SISSON	227 Schooner Bay Dr.
<i>Don Kern</i>	DON KERN	102 Schooner Bay Dr.
<i>W.D. Moore</i>	W.D. MOORE	109 SCHOONER BAY DR
<i>T.J. Broderick</i>	T.J. BRODERICK	103 SCHOONER BAY DR.
<i>Cloe Ardigzone</i>	CLOE ARDIZZONE	226 SCHOONER BAY DR.
<i>Beverly Kelley</i>	BEVERLY KELLEY	112 Schooner Bay Dr.
<i>Robert C. Nicolls</i>	ROBERT C NICOLLS	106 SCHOONER BAY DR
<i>Donna Marcelino</i>	DONNA MARCELINO	208 SCHOONER BAY DR

Submitted  
9-2-03  
2 pages


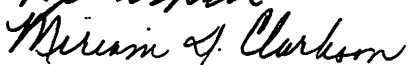


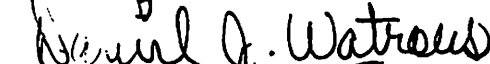



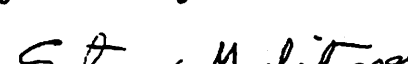



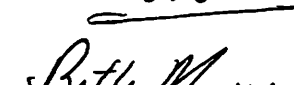
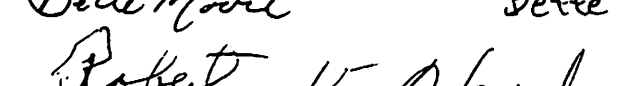

## PETITION

WE AS HOMEOWNERS AT THE COVE, A GATED RESIDENTIAL COMMUNITY ADJACENT TO THE CHETCO POINT TERRACE SUBDIVISION, ARE OPPOSED TO THE PROPOSED CHANGES TO THE CONDITIONS OF APPROVAL FOR THIS NEW SUBDIVISION WITH REGARD TO THE ALTERATION OF THE BERM SEPARATING OUR DEVELOPMENT AND THE WASTEWATER TREATMENT PLANT. THE BERM WAS ENGINEERED AND CONSTRUCTED BY WESTERN PACIFIC DEVELOPMENT CORP. AS REQUIRED BY THE CITY IN 1991 FOR THE PURPOSE OF DEFLECTING NOXIOUS ODORS FROM THE WASTEWATER TREATMENT PLANT AWAY FROM OUR SUBDIVISION, AND HAS SERVED THAT PURPOSE EFFECTIVELY SINCE ITS CONSTRUCTION. WE OPPOSE ANY ALTERATION OF THE BERM BY THE CURRENT DEVELOPERS OF SAID PROPERTY FOR FEAR THAT CHANGES IN ITS ORIGINAL DESIGN MAY ADVERSLY AFFECT ITS INTENDED PURPOSE OF DIVERTING OBJECTIONABLE ODORS AWAY FROM OUR DEVELOPMENT.

SIGNATURE:

NAME:

ADDRESS:

	R.J. Rich	107 Schooner Bay Dr.
	M.D. Clarkson	225 Schooner Bay Dr.
	Christine Volz	210 Schooner Bay
	Crystal Cole	104 Schooner Bay Dr.
	DANIEL J. WATROUS	108 SCHOONER BAY DR.
	Hilda DeGou	101 Schooner Bay Dr.
	John Gauer	202 Schooner Bay
	W.M. Carter	204 Schooner Bay Dr.
	STAN MILSTONE	206 SCHOONER BAY
	Lola Moore	216 Schooner Bay DRIVE
	Darlene Watter	223 Schooner Bay Dr.
	Frank VanLith	228 Schooner Bay Dr.
	Bette Moore	224 Schooner Bay Dr.
	Robert Hardy	218 Schooner Bay Dr.
	Lyndon C. Lyon	212 Schooner Bay Dr.

**TO:** Mayor and City Council  
**FROM:** John Bischoff, Planning Director  
**THROUGH:** Leroy Blodgett, City Manager  
**DATE:** September 3, 2003



**Issue:** The law regulating the ratio of handicapped parking spaces to regular parking spaces has been changed.

**Background:** Section 92, Off-Street Parking and Loading Regulations, of the Land Development Code, Sub-section 110, Handicapped Parking, is out of date due to the change in the law. The attached ordinance up dates both the ratio of ADA parking spaces to regular spaces and the required access isle beside ADA space.

**Recommendation:** The Planning Commission and staff recommend approval of Ordinance 03-O-446.QQ

**TO:** Mayor and City Council  
**FROM:** John Bischoff, Planning Director  
**THROUGH:** Leroy Blodgett, City Manager  
**DATE:** October 6, 2003



**Issue:** Deed for right-of-way on Meadow Lane.

**Background:** Attached is a deed for additional right-of-way resulting from a minor partition on Meadow Lane. The new right-of-way consists of a 5 foot wide strip of land along the frontage of a property divided earlier.

**Recommendation:** Acceptance of the deed for recordation.

BARGAIN AND SALE DEED (INDIVIDUAL) Mayor

Date

LARRY W. KAMMER, GEORGE B. WATWOOD, III and REBECCA S. WATWOOD, husband & wife convey(s)

to THE CITY OF BROOKINGS, A MUNICIPAL CORPORATION

all that real property situated in CURRY County, State of Oregon, described as:

All that portion of Instrument 2003-1655 Official Records Curry County, Oregon,  
lying North of the following described line:

Commencing at a 1 1/2" iron pipe marking the Northeast corner of the Southeast  
Quarter of the Southeast Quarter of Section 31, Township 40 South, Range 13  
West, Willamette Meridian, City of Brookings, Curry County, Oregon;  
thence North 89°46'00" West 76.40 feet;  
thence South 00°27'00" West 175.00 feet to a 5/8" rebar with plastic cap  
stamped "Stuntzner Eng,";  
thence North 89°46'00" West 112.00 feet to a 5/8" rebar with plastic cap stamped  
"Stuntzner Eng,".

The true and actual consideration for this transfer is \$ 0.00 .\*

\*\*

Dated this 29th day of September, 2003

REBECCA S. WATWOOD

LARRY W. KAMMER

GEORGE B. WATWOOD, III

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY  
DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE  
LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR AC-  
CEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE  
TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE  
CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROV-  
ED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST  
FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930.

STATE OF OREGON, County of CURRY

2003 personally appeared the above-named

LARRY W. KAMMER, GEORGE B. WATWOOD, III and REBECCA S. WATWOOD  
and acknowledged the foregoing

instrument to be THEIR voluntary act and deed.

Before me:



Laurie Flynn

Notary Public for Oregon

My commission expires: 9/18/05

\* The dollar amount should include cash plus all encumbrances existing against the property to which the  
property remains subject or which the purchaser agrees to pay or assume.

\*\* If consideration includes other property, or value, add the following: "However, the actual consideration  
consists of or includes other property or value given or promised which is part of the/the whole consideration."  
(Indicate which)

BARGAIN AND SALE DEED  
(INDIVIDUAL)

LARRY W. KAMMER

GEORGE B. & REBECCA S.

WATWOOD TO

CITY OF BROOKINGS

After Recording Return to:  
CURRY COUNTY TITLE  
P.O. BOX 672  
GOLD BEACH, OR. 97444

STATE OF OREGON, )  
County of ) ss.

I certify that the within instrument was received for record

on the day of , 19\_\_

at o'clock M. and recorded in book

on page Record of Deeds of said County.

Witness my hand and seal of County affixed.

Title

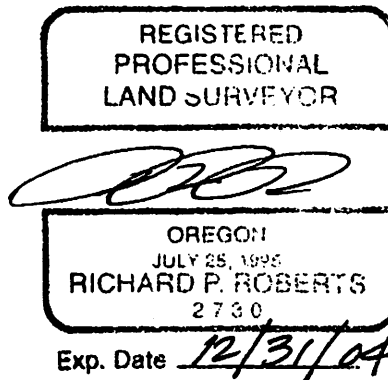
By Deputy

*Right of way Dedication*  
*From: George & Rebecca Watwood &*  
*Larry Kammer*  
*To: The City of Brookings*

### EXHIBIT A

All that portion of Instrument 2003-1655 Official Records Curry County, Oregon,  
lying North of the following described line:

Commencing at a 1 ½" iron pipe marking the Northeast corner of the Southeast  
Quarter of the Southeast Quarter of Section 31, Township 40 South, Range 13  
West, Willamette Meridian, City of Brookings, Curry County, Oregon;  
thence North 89°46'00" West 76.40 feet;  
thence South 00°27'00" West 175.00 feet to a 5/8" rebar with plastic cap  
stamped "Stuntzner Eng,";  
thence North 89°46'00" West 112.00 feet to a 5/8" rebar with plastic cap stamped  
"Stuntzner Eng,".





# ***CITY OF BROOKINGS***



---

## **STAFF REPORT**

Date: October 9, 2003  
To: Mayor Hagbom & City Councilors  
From: Leroy Blodgett, City Manager  
Subject: LOC Voting Delegate

## **BACKGROUND**

The League of Oregon Cities (LOC) holds its Annual Business Meeting every year on the last day (Sunday) of the annual conference. At the meeting, delegates will vote on resolutions recommended by the Resolutions Committee, new members for the Board and possibly other related issues. Anyone can attend and comment on issues, but to insure that each City is given only one vote City Council must appoint a "voting delegate" and an alternate delegate.

## **STAFF RECOMMENDATION**

Appoint Mayor Hagbom as voting delegate and Council President Dentino as alternate voting delegate for the 2003 LOC Annual Business Meeting.

*League of Oregon Cities*  
**78<sup>th</sup> ANNUAL CONFERENCE and BUSINESS MEETING**  
November 13 - 16, 2003 — Hilton Eugene & Conference Center

**Designation of Voting Delegate  
at Annual Business Meeting**

The annual business meeting will be held Sunday, November 16, at 8:30 a.m. Each city is entitled to cast one vote at the business meeting; however, all city officials are encouraged to attend.

Use this form to indicate those persons who will represent your city as a voting delegate and alternate delegate. The voting delegate or alternate should pick up a voting card at the Conference Registration Desk on Sunday morning prior to entering the business meeting. **NOTE: Delegates may not vote without a voting card, and voting cards will be issued only to a person indicated on this form. Voting by proxy will not be permitted.**

**FOR THE CITY OF** \_\_\_\_\_

**VOTING DELEGATE**

Name \_\_\_\_\_

Title \_\_\_\_\_

**ALTERNATE**

Name \_\_\_\_\_

Title \_\_\_\_\_

Submitted by \_\_\_\_\_  
(Signature)

**Return by October 24 to:**  
**League of Oregon Cities**  
**P.O. Box 928**  
**Salem, OR 97308**

Name \_\_\_\_\_

Title \_\_\_\_\_

Telephone Number \_\_\_\_\_

# CITY OF BROOKINGS



## STAFF REPORT

Date: October 8, 2003  
To: Mayor Hagbom & City Council  
From: Leroy Blodgett, City Manager  
Subject: Port District Police Levy

## BACKGROUND

The Port of Brookings Harbor has placed a question regarding a police levy on the November, 2003 ballot. We have been asked by some citizens and the Pilot newspaper for the City's position on this issue. To date we have not taken a position one way or the other. However, City Council may chose to take a position if you like.

The wording on the ballot will be as follows:

### **QUESTION:**

*Shall the Port impose a \$.28 per \$1,000 of assessed value for five years for enhanced patrol services beginning FY 2004? This measure may cause property taxes to increase more than (3) percent.*

### **SUMMARY:**

*This measure may be passed only at an election with at least 50-percent voter turnout. Because of current budget limitations, the Curry County Sheriff provides staffing for only two patrol deputies to cover all shifts within the territory of the Port of Brookings Harbor. This measure would fund positions for four additional Curry County Sheriff deputies, who would provide 24-hour patrol services throughout the district. The proposed local option tax is \$.28 per \$1,000 of assessed value. The rate cannot be increased during the fire-year term of the local option tax. For a property assessed at \$100,000, the total tax imposed would be \$28 per year. The estimated total amount of money to be raised by the proposed tax is \$1,501,040. "The estimated tax cost for this measure is an ESTIMATE ONLY based on the best information available from the county assessor at the time."*

If the levy is approved, all property owners within the district will be assessed the 28 cents, including those within the city limits. The northern boundary of the district is approximately at Pistol River and extends south to the California state line.

This is a difficult issue for the City Council. While having more patrol in the area is always a benefit to the citizens, there is no direct benefit to the City of Brookings. The City has a well

staffed and efficient police department to provide patrol services for the residents and businesses within the city limits.

It should be kept in mind that the levy was not conceived or proposed by the City; it does not provide any revenue for the City and it does not increase the staff of the city police department. Therefore, not taking any position on the issue may be the most appropriate action. On the other hand, there is nothing inappropriate for City Council to let the citizens know its position.

Staff is not making any recommendation on the issue, however, below are some options you may want to consider.

1. Do not take any position on the levy and let the voters decide without your input.
2. Support the issue as it provides additional patrol for the neighboring areas of the City which may indirectly benefit city residents.
3. Support the concept of having additional patrol for the Harbor area, but do not support the levy as proposed because city property owners will be required to pay a share of the tax for the additional patrol plus pay 100% of the cost for city police.

**CITY OF BROOKINGS  
COMMON COUNCIL MEETING MINUTES  
City Hall Council Chambers  
898 Elk Drive, Brookings, OR 97415  
September 22, 2003 7:00 pm.**

**I. Call to Order**

Mayor Bob Hagbom called the meeting to order at 7:00 p.m.

**II. Pledge of Allegiance**

Led by Police Chief Wallace.

**III. Roll Call**

Council Present: Mayor Bob Hagbom, Council President Rick Dentino, Councilors Larry Curry, and Craig Mickelson, a quorum present.

Council Absent: Councilor Frances Johns Kern

Staff Present:

City Manager Leroy Blodgett,

Police Chief Chris Wallace,

Fire Chief William Sharp,

Finance Director Paul Hughes,

And Community Development Secretary Mahon

Media Present: Curry Coastal Pilot Reporter David Courtland

Other:

Chamber of Commerce Executive Director Les Cohen,

And approximately 10 other citizens

**IV. Ceremonies/Appointments/Announcements**

**A. Proclamations**

1. *Domestic Violence Awareness Month October*

Alice Maybee from the Oasis House Shelter accepted the proclamation from Mayor Hagbom thanking the City for continuing to recognize and support them. She emphasized the necessity to continue to educate the public on the impact of domestic violence.

2. *Disability Employment Awareness Month October*

Dayle Niemie accepted a proclamation from Mayor Hagbom. Mr. Niemie discussed several programs he has been involved with: federally funded new program Ticket to Work , helped forty (40) participants with jobs; program for youngsters

disabled as a result of car accidents; statewide system for home care for seniors; several trips to Salem to support advocacy work programs, and sponsoring a car show.

3. *Fire Prevention Week October 5-11*

Fire Chief Sharp accepted the proclamation from Mayor Hagbom. He emphasized the importance of checking fire alarms.

4. *Community Pride Clean-up Campaign*

Carla and Pete Smart accepted the proclamation stating the clean-up program has been successful for a number of years, since its inception there has been positive recognition from the public.

**V. Oral Requests and Communications from the Audience**

**A. Committee and Liaison reports**

1. *Chamber of Commerce*

Chamber Executive Les Cohen addressed the Council commenting on the annual clean-up as a major community clean-up event; the office receives calls from folks as far away as 100 miles asking when Garage Sale Saturday is scheduled. An ambassadors convention was attended last week-end as an opportunity for training on new and better ways to promote the Brookings-Harbor businesses. The Chamber's website is being updated to better assist visitors and people relocating to the area. He emphasized the importance of encouraging businesses to participate in the Highway 101 transportation meetings.

2. *Council Liaisons*

Councilor Mickelson participated in the Big Hook Golf Tournament at Salmon Run with 25 participants.

Councilor Dentino mentioned celebrating the Mayor's 80<sup>th</sup> birthday on the September 13. His recent activities were: worked the last concert on Sunday for the American Music Festival, and attended a meeting of the Coos/Curry Detachment of the Marine Corps League held at the Tea Room in Brookings. On Wednesday (9-24-03) of this week he will attend a South Coast Telecommunications Task Force meeting in Coos Bay.

**B. *Unscheduled***  
*None.*

## VI Staff Reports

### A. *Fire Department*

#### 1. *Awarding of bid for radio equipment*

Fire Chief Sharp recapped steps taken to get radio equipment for the Fire Department. The City was awarded a federal grant for \$20,000; with the stipulation the City add 10% to the total cost. Three bids were received, with the lowest \$11,823.95.

**Councilor Dentino moved, a second followed, and Council voted unanimously to approve \$11,823.95 for radio equipment purchased from Day Wireless Systems.**

Fire Chief Sharp stated the fire danger is extremely dangerous because of dry conditions. Two fires were extinguished recently, both left unattended. During Fire Prevention Week, fire department personnel will visit the schools for fire prevention education. He concluded by encouraging everyone to check their fire alarms, make sure they work; fire alarms save lives.

### B. *City Manager*

#### 1. *Farmers Market*

City Manager Blodgett discussed the circumstances of the Downtown Development Committee's recommendation to discontinue the farmer's market. The City Council had earlier approved using the downtown parking lot for farmer's market vendors. A review of the event proved the market to be unsuccessful; there were not enough vendors to make it advantageous to the downtown businesses.

**Councilor Mickelson moved, a second followed, and City Council voted unanimously for closure of the Farmer's Market on October 1, 2003.**

#### 2. *Shapiro Contract Settlement*

City Manager Blodgett referred to the Staff Report of the Shapiro Contract for an ESEE (Economic, Social, Environment, and Energy) analysis. The initial contract price was \$39,160 but it became apparent Shapiro was unable to provide the required report for DLCD, and the City decided to terminate the contract. Through negotiations with our City Engineer, City Planner, the City Manager, and our City Attorney, a settlement of \$17,500 was determined.

**Councilor Dentino moved, a second followed, and Council voted unanimously to approve payment of \$17,500 to Shapiro & Associates.**

3. *Law Enforcement Information System*

Police Lt. John Bishop discussed the new law enforcement system, referencing his staff report of August 11<sup>th</sup>. Due to the projected increased cost of the current system, Lt. Bishop researched other record management systems. With new software, connection upgrades, and interfacing with Curry County and City of Gold Beach, the City would have a more accurate system. The anticipated cost of \$54,852.00 would be paid from the 911 Fund, or off set by a grant. Due to the time frame of being disconnected from the current system by the end of 2003, and the time to install the new system, Lt. Bishop stressed the urgency to take action by the end of September, despite not knowing if a grant was approved.

**Councilor Dentino moved, it was seconded, and the Council voted unanimously to award \$54,852 for the purchase of new law enforcement information system.**

**VII. Consent Calendar**

A. *Approval of Council Meeting Minutes*

1. Minutes of September 8, 2003, regular Council meeting  
(End Consent Calendar)

**Councilor Michelson moved, it was seconded, and the Council voted unanimously to approve the consent calendar.**

**VIII. Ordinances/Resolutions/Final Orders**

A. Resolutions

1. Ordinance 03-R-724 A Resolution authorizing the Issuance, Negotiated Sale and Delivery of General Obligation Refunding Bonds, Series 2003, Designating an Authorized Representative and Delegating the Approval and Distribution of the Preliminary and Final Official Statements; Authorizing Execution of a Bond Purchase Agreement; and Related Matters

Finance Director Hughes reviewed Ordinance 03-R-724, the status of the current bond, the different avenues researched to refinance the bond with a lower interest, and the final recommendation of Seattle Northwest, which would lower payments and save the City approximately \$500,000 in interest.



**Councilor Mickelson moved, a second followed and the Council voted unanimously to approve Resolution 03-R-724, a Resolution authorizing the Issuance, Negotiated Sale and Delivery of General Obligation Refunding Bonds, Series 2003, Designating an Authorized Representative and Delegating the Approval and Distribution of the Preliminary and Final Official Statements; Authorizing Execution of a Bond Purchase Agreement; and Related Matters**

**IX. Remarks from Mayor and Councilors**

**A. City Manager**

City Manager Blodgett thanked staff for their diligent work and saving the City money.

He brought the Council's attention to the Building Department report in the packet. He explained building activity for last year was \$5.5 million; this year (with 3 months remaining) is \$11.5 million. Activity is expected to continue which could double next year.

Expressed appreciation for filling the Economic Development position.

**B. Mayor**  
None.

**XIII. Adjournment**

**Councilor Curry moved, it was seconded and by unanimous approval the Council adjourned at 7:56 p.m.**

Respectfully submitted:

Bob Hagbom  
Mayor

ATTEST by City Recorder this \_\_\_\_ day of \_\_\_\_\_, 2003.

\_\_\_\_\_  
Paul Hughes  
Finance Director/City Recorder

**CITY OF BROOKINGS**  
**SPECIAL COMMON COUNCIL MEETING MINUTES**  
**City Hall Council Chambers**  
**898 Elk Drive, Brookings, OR 97415**  
**September 29, 2003**  
**7:00 p.m.**

**I. Call to Order**

Mayor Bob Hagbom called the meeting to order at 7:03 p.m.

**II. Pledge of Allegiance**

Led by Luci LaBonte

**III. Roll Call**

Council Present: Mayor Bob Hagbom, Council President Rick Dentino,  
Councilors Larry Curry and Craig Mickelson, a quorum present.

Council Absent: Frances Johns Kern

Staff Present:

City Manager Leroy Blodgett, Finance Director Paul Hughes, and Economic and  
Urban Development Director Ed Wait

Media Present: Curry Coastal Pilot Reporter David Courtland

Other:

Curry County Commissioners Lucie LaBonte and Ralph Brown  
And approximately 25 other citizens

**IV. Ceremonies/Appointments/Announcements**

None

**V. Oral Requests and Communications from the Audience**

None

**VI Staff Reports**

*A. Police Department*

*1. Purchase of Vehicles*

City Manager Blodgett said the Police Department has budgeted \$40,000 for new police vehicles to replace its aging fleet. Staff recommended entering into an agreement with Chetco Federal Credit Union over four years to purchase five vehicles. Blodgett stated the City did not go through the traditional bid process as these vehicles would be purchased from Auto Additions, Inc. which is approved through the State bidding process.

**Councilor Dentino moved, a second followed, and the Council voted unanimously to enter into a loan agreement with Chetco Federal Credit Union to purchase five police vehicles from Auto Additions, Inc. in the amount of \$153,437.95.**

**B. City Manager**

**1. Improved Health Care Presentation**

Mayor Hagbom said findings show that the Brookings Harbor area has the largest population in Oregon without a hospital so acute medical needs are not being met in the area. He and City Manager Blodgett traveled to Washington DC and met with Oregon's legislators to discuss health care in the area. They received favorable responses from the legislators. Working with the Office of Rural Health a utilization study was done to help determine if a hospital was warranted in the area and based on the information submitted the Office of Rural Health established a hospital is warranted. Questions such as how to pay for it, where it would be located, or who would build or run it are unanswered. City Manager Blodgett with the aid of Economic and Rural Development Director Wait, Finance Director Hughes and Mayor Hagbom then gave a Power Point presentation outlining the need for and options of securing a hospital for the area. He said the next step would be preparing a Statement of Need where all the unanswered questions will be addressed. Comments were taken and questions from the public were answered. Blodgett stated the public will be continually informed on this subject through the media.

No action was taken on this matter.

**2. Other**

**VII. Consent Calendar**

None

**VIII. Ordinances/Resolutions/Final Orders**

None

**IX. Remarks from Mayor and Councilors**

**A. Council-none**

**B. Mayor-none**

**XIII. Adjournment**

With no further business before it the Council the meeting adjourned at 8:10 p.m.

Respectfully submitted:

Bob Hagbom  
Mayor

ATTEST by City Recorder this \_\_\_\_ day of \_\_\_\_\_, 2003.

---

Paul Hughes  
Finance Director/City Recorder

**MINUTES**  
**BROOKINGS PLANNING COMMISSION**  
**REGULAR MEETING**  
**September 2, 2003**

Chair Randy Gorman called the regular meeting of the Brookings Planning Commission to order at 7:00 p.m. in the Council Chambers at Brookings City Hall on the above date with the following Commission members and staff in attendance.

*Commissioners Present:*

Jim Collis	Bob Gilmore
Ted Freeman	Randy Gorman
Bruce Nishioka	Bill Smith
Russ Fritz	

*Staff Present:*

Leo Lightle, Community Development Director  
John Bischoff, Planning Director  
Cathie Mahon, Secretary

**CHAIRPERSON ANNOUNCEMENTS**

Chair Gorman welcomed Bob Gilmore to the Planning Commission. He also announced this would be the last meeting for Russ Fritz.

**MINUTES**

By a 6-0-1 vote, the Planning Commission (motion: Commissioner Freeman; Commissioner Gilmore abstained due to absence from the meeting) approved the minutes of the August 5, 2003.

By a 5-0-2 vote, the Planning Commission (motion: Commissioner Gilmore; Commissioners Smith and Fritz abstained due to absence) approved the minutes for the special work-study on August 12, 2003.

**THE PLANNING COMMISSION TOOK THE FOLLOWING ACTION ON FINAL ORDERS**

By a 7-0 vote (motion: Commissioner Gilmore) the Planning Commission approved the denial for File No. **VAR-1A-03**, an application for a variance to encroach 5 feet into the 10 foot required side yard setback, located at 251 Marine Drive; Assessor's Map 40-13-32 CD, Tax Lot 1702; SR (Suburban Residential) zone district; Peter Castellini, applicant.

**THE PLANNING COMMISSION TOOK THE FOLLOWING ACTION ON WRITTEN REQUESTS AND COMMUNICATIONS**

1. By a 7-0 vote (motion: Commissioner Gilmore) the Planning Commission approved the final map for File No. **SUB-3-02**, a subdivision to divide a 1.18 acre parcel of land into 6 lots, located at First Street and Ransom Avenue; Assessor's Map 41-13-06 BB, Tax Lot 1300; R-2 (Two-family Residential) zone; Larry Garcia, applicant.

2. By a 7-0 vote (motion: Commissioner Freeman) the Planning Commission approved the request to allow a DIA (Deferred Improvement Agreement) in lieu of curb, gutter, and sidewalk; Assessor's Map 41-13-05, Tax Lots 7500,7501,7800 and 7801; located at 437 Chetco Avenue; the Beaver State Motel; KiranRai and Nilesch Amin, applicants; Zia & Associates, representative.
3. By a 7-0 vote (motion: Commissioner Gilmore) the Planning Commission approved the final map for File No. SUB-5-03, a subdivision to divide a 1.57 acre parcel of land into 6 lots; located on the east side of Parkview Drive; Assessor's Map 40-13-31 CB, Tax lot 1200; R-1-6 (Single-family Residential, 6,000 sq. ft. minimum lot size) zone; William Welch, property owner; Zia & Associates, representative.

### **THE PLANNING COMMISSION TOOK THE FOLLOWING ACTION IN THE PUBLIC HEARINGS**

1. By a 6-0 vote (motion: Commissioner Smith) the Planning Commission denied File No. SUB-6-02/MC-1, a request for a minor change to the configuration of an existing berm; located at the Chetco Point Terrace Subdivision on Wharf Street and the Wastewater Treatment Plant; Assessor's Map 41-13-07 A, Tax Lot 409; R-2 (Two-family Residential) zone; Noah Bruce, applicant; John Babin, representative.

Commission Nishioka recused himself due to potential conflict of interest. All Commissioners present declared ex parte due to a site visit. There was no challenge from the audience as to the jurisdiction of the Commission to hear this request.

The action was taken following questions and comments regarding the request from the following:

John Babin, representative for Bruce Brothers	P. O. Box 61	Brookings, OR 97415
Noah Bruce	P. O. Box 61	Brookings, OR 97415
Joshua Bruce	P. O. Box 61	Brookings, OR 97415
Joan Coito	831 Chetco Point Terrace	Brookings, OR 97415
Daryn Farmer	P. O. Box 969	Brookings, OR 97415
Mrs. Ostrander	843 Chetco Point Terrace	Brookings, OR 97415
Gary Georgeff, representative for The Cove Homeowners Association	P. O. Box 847	Brookings, OR 97415
Jim Rich,	107 Schooner Bay Drive	Brookings, OR 97415
Yvonne Dunn	P. O. Box 7500	Brookings, OR 97415
Leo Lightle, Director of Community Development, City of Brookings		

Entered into the record from Mr. Babin and Mr. Noah Bruce were 5 exhibits:

1. Conditions of Approval-File No. SUB-2-90 PUD; 56 unit development
2. Bruce Brothers letter to Cove Board of Directors-January 15, 2003
3. Map of Chetco Point subdivision and The Cove
4. Wind Evaluation-The Cove Project Berm Design-Don Munson
5. Overlay exhibit with Chetco Point Subdivision and The Cove housing unit

Entered into the record from Mr. Gary Georgeff, representative for Cove Homeowners:

1. Memo from A. Forester to City-berm design-5-90
2. Planning Commission Staff Agenda-SUB-2-90-PUD; hearing July 17, 1990
3. Planning Commission Final Order and Findings of Fact and conditions for SUB-2-90-plan development
4. Letter from Mr. Babin to Mr. Jerrold Boscoe-September 1990
5. Letter from Mr. Babin to Mr. Gillespie-real estate disclosure statement-1991
6. Indemnity Agreement-1990
7. Real Estate Transfer Disclosure Statement
8. Letter from Mr. Gillespie, City attorney, to Mr. Babin ref. Real Estate Transfer Disclosure Statement
9. Wind Evaluation-Don Munson, National Weather Service Observer
10. HGE engineering letter-re: engineering design of berm -August 29, 1991
11. Conditions of Approval-Planning Commission meeting September 3, 2002.
12. Petition-26 signatures from the Homeowners of Cove

The applicant waived their right to seven (7) days in which to submit written argument.

A recess was declared at 10:08 p.m. The meeting reconvened at 10:17 p.m. with Commissioner Nishioka returning to the meeting.

2. By a 6-0-1 vote (motion: Commissioner Smith; Commissioners Collis, Freeman, Fritz, Gilmore, Gorman, and Smith voted to deny; Commissioner Nishioka abstaining due to personal bias) the Planning Commission denied the Final ORDER for File No. SUB-6-02/MC-1.
3. By a 7-0 vote (motion: Commissioner Gilmore) the Planning Commission approved File No. CUP-10-03, a request for a conditional use to operate a Bed & Breakfast, located at 1100 Coral Court; Assessor's Map 41-13-06 BA, Tax Lot 2220; R-1-6 (Single-family Residential) zone; Richard Vartanian, property owner; Lea Ray, applicant.

Four commissioners (Commissioners; Collis, Gilmore, Gorman and Smith) declared a site visit ex parte. There was no challenge from the audience as to the jurisdiction of the Commission to hear this request.

The action was taken following questions and comments regarding the request from the following:

Lea Ray, applicant	1100 Coral Court	Brookings, OR 97415
Mrs. Coral Rensch	1104 Coral Court	Brookings, OR 97415

Entered into the record was a letter in opposition:

Mrs. Sherrill Mickelson	738 Third Street	Brookings, OR 97415
-------------------------	------------------	---------------------

The applicant waived her right to seven (7) additional days in which to submit written argument.

4. By a 7-0 vote (Motion: Commissioner Gilmore) the Planning Commission approved the Final ORDER and Findings of Fact for File No. CUP-10-03.
5. By a 7-0 decision (Motion: Commissioner Freeman) the Planning Commission voted to send a recommendation to City Council, File No. LDC-4-03, an amendment to Section 92 of the Land Development Code, *Off-Street Parking and Loading Regulations*, to bring the ADA (American with Disabilities Act) parking requirements into compliance with the new state law.

#### **THE PLANNING COMMISSION TOOK THE FOLLOWING ACTION ON COUNTY REFERRALS**

1. By a 7-0 vote (Motion: Commissioner Freeman) the Planning Commission will send a favorable recommendation to Curry County; File No. CR-AD-0334, a request for a conditional use permit to operate a mini-storage facility; located .5 miles south of Benham Lane, on the west side of Highway 101; R-C (Rural Commercial) zone; Rocky and Jeanette McVay, applicants.

#### **UNSCHEDULED PUBLIC APPEARANCES**

None.

#### **PROPOSITIONS AND COMMISSIONERS COMMENTS:**

Chair Gorman:

- Asked Planning Director Bischoff to convey to Public Works the problem pot holes on Parkview, a resulting from construction on the road.
- He asked Planning Director Bischoff to discuss the "*hold harmless*" phrase mentioning during the first case of the meeting, File No. SUB-6-02/MC-1.
- On behalf of the Commission, he thanked Russ Fritz for his service on the Commission and wished him well in his move to Arizona.

#### **REPORT OF THE PLANNING DIRECTOR**

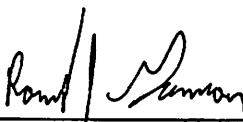
- Planning Director Bischoff reminded the Commission regarding the joint work session with City Council on September 8, 2003, starting at 6:00 p.m. He explained the work session is being held to discuss the ODOT (Oregon Department of Transportation) Access Management Plan (AMP).

#### **ADJOURNMENT**

With no further business before the Planning Commission, the meeting adjourned at 11:11 p.m.

Respectfully submitted,

**BROOKINGS PLANNING COMMISSION**

  
\_\_\_\_\_  
Randy J. Gorman, Chair



Per	Date	Check No	Vendor No	Payee	Check GL Acct	Amount
09/03	09/04/2003	47179	1647	All Star Fire Equipment	10-00-2005	120.00
09/03	09/04/2003	47180	993	ATCO International	10-00-2005	175.00
09/03	09/04/2003	47181	174	Barbara Palicki	10-00-2005	143.97
09/03	09/04/2003	47182	146	Bay West Supply, Inc	10-00-2005	177.92
09/03	09/04/2003	47183	138	Becco, Inc	10-00-2005	57.90
09/03	09/04/2003	47184	148	B-H Chamber of Commerce	10-00-2005	6,283.82
09/03	09/04/2003	47185	110	Brookings Auto Parts	10-00-2005	15.55
09/03	09/04/2003	47186	2421	Brookings Harbor Booster Club	10-00-2005	1,003.44
09/03	09/04/2003	47187	988	Brookings Harbor Ford	10-00-2005	99.00
09/03	09/04/2003	47188	313	Brookings Vol Firefighters	10-00-2005	2,083.33
09/03	09/04/2003	47189	2364	C&S Fire-Safe Services	10-00-2005	1,146.80
09/03	09/04/2003	47190	159	CAL/OR Insurance Specialist	10-00-2005	750.00
09/03	09/04/2003	47191	2215	Chetco Medical Center	10-00-2005	75.00
09/03	09/04/2003	47192	1745	Coastal Paper & Supply, Inc	10-00-2005	354.30
09/03	09/04/2003	47193	173	Curry Equipment Company	10-00-2005	50.00
09/03	09/04/2003	47194	2058	Curry General Hospital	10-00-2005	115.00
09/03	09/04/2003	47195	2413	Dave & Jude Hodge	10-00-2005	37.98
09/03	09/04/2003	47196	2423	Dean's Fine Home Inspections	10-00-2005	75.00
09/03	09/04/2003	47197	185	Del Cur Supply	10-00-2005	68.70
09/03	09/04/2003	47198	101	Deluxe Business Forms	10-00-2005	256.88
09/03	09/04/2003	47199	316	Donald & Roberta Chandler	10-00-2005	548.00
09/03	09/04/2003	47200	153	Ferrellgas	10-00-2005	2,443.21
09/03	09/04/2003	47201	298	Freeman Rock, Inc	10-00-2005	357.64
09/03	09/04/2003	47202	2109	Granite Construction Co.	10-00-2005	459.44
09/03	09/04/2003	47203	1082	Hilary Thompson	10-00-2005	25.34
09/03	09/04/2003	47204	116	Hill-Donnelly/City Publishing	10-00-2005	71.99
09/03	09/04/2003	47205	1699	Imagistics	10-00-2005	97.57
09/03	09/04/2003	47206	2417	Ken Fitzgerald	10-00-2005	73.89
09/03	09/04/2003	47207		Information Only Check	10-00-2005	.00 V
09/03	09/04/2003	47208		Information Only Check	10-00-2005	.00 V
09/03	09/04/2003	47209		Information Only Check	10-00-2005	.00 V
09/03	09/04/2003	47210		Information Only Check	10-00-2005	.00 V
09/03	09/04/2003	47211		Information Only Check	10-00-2005	.00 V
09/03	09/04/2003	47212		Information Only Check	10-00-2005	.00 V
09/03	09/04/2003	47213		Information Only Check	10-00-2005	.00 V
09/03	09/04/2003	47214	162	Kerr Hardware	10-00-2005	1,028.71
09/03	09/04/2003	47215	2396	M&M Repair And Welding	10-00-2005	979.39
09/03	09/04/2003	47216	2409	Mallory Co.	10-00-2005	133.67
09/03	09/04/2003	47217	102	MicroWarehouse	10-00-2005	52.34
09/03	09/04/2003	47218	155	Mory's	10-00-2005	68.75
09/03	09/04/2003	47219	424	Munnel & Sherrill	10-00-2005	185.85
09/03	09/04/2003	47220	2051	National Waterworks, Inc	10-00-2005	544.62
09/03	09/04/2003	47221	2283	NW Technical Internet Service	10-00-2005	21.95
09/03	09/04/2003	47222	1394	Pam Callaway	10-00-2005	1,068.42
09/03	09/04/2003	47223	859	Paul Conway Shields	10-00-2005	187.00
09/03	09/04/2003	47224	322	Postmaster	10-00-2005	586.00
09/03	09/04/2003	47225	2419	PPPM/Simon	10-00-2005	24.77
09/03	09/04/2003	47226	2418	Randy Merrick	10-00-2005	48.46
09/03	09/04/2003	47227	199	Richard Harper	10-00-2005	300.00
09/03	09/04/2003	47228	2420	Rick & Carla Jackson	10-00-2005	18.42
09/03	09/04/2003	47229	821	Toshiba America Info Systems	10-00-2005	310.00
09/03	09/04/2003	47230	990	United Parcel Service	10-00-2005	26.30
09/03	09/04/2003	47231	2424	Van Hulzen Construction	10-00-2005	3,500.00
09/03	09/04/2003	47232	631	Windjammer	10-00-2005	542.43
09/03	09/04/2003	47233	686	Worton Auto Body	10-00-2005	90.00
09/03	09/04/2003	47234	269	WW Grainger	10-00-2005	72.00
09/03	09/04/2003	47235	253	Xerox Corporation	10-00-2005	70.73

M = Manual Check, V = Void Check

Per	Date	Check No	Vendor No	Payee	Check GL Acct	Amount
09/03	09/09/2003	47236	1881	AFLAC	10-00-2005	337.28
09/03	09/09/2003	47237	910	OR Department of Justice	10-00-2005	115.38
09/03	09/09/2003	47238	1132	OR Department of Justice	10-00-2005	391.62
09/03	09/09/2003	47239	1742	OR Department of Justice	10-00-2005	119.40
09/03	09/09/2003	47240	375	OR Department of Revenue	10-00-2005	155.94
09/03	09/09/2003	47241	2366	Oregon Department of Justice	10-00-2005	203.08
09/03	09/09/2003	47242	205	PERS Retirement	10-00-2005	10,501.54
09/03	09/09/2003	47243	145	EBS Trust	10-00-2005	57.00
09/03	09/15/2003	47244	993	ATCO International	10-00-2005	285.00
09/03	09/15/2003	47245	2427	B.C. & Company	10-00-2005	162.00
09/03	09/15/2003	47246	2434	Ben Arndt	10-00-2005	3.59
09/03	09/15/2003	47247	200	Bob Hagbom	10-00-2005	739.42
09/03	09/15/2003	47248	147	Brookings Glass Inc	10-00-2005	208.00
09/03	09/15/2003	47249	1480	Bruce Brothers	10-00-2005	45.00
09/03	09/15/2003	47250	2428	CCYC-Wildrivers	10-00-2005	250.00
09/03	09/15/2003	47251	822	Coast Auto Center	10-00-2005	23.45
09/03	09/15/2003	47252	183	Colvin Oil Company	10-00-2005	1,585.75
09/03	09/15/2003	47253	151	Curry Coastal Pilot	10-00-2005	359.20
09/03	09/15/2003	47254	195	Curry Transfer & Recycling	10-00-2005	548.62
09/03	09/15/2003	47255	259	Da-Tone Rock Products	10-00-2005	512.32
09/03	09/15/2003	47256	284	Day-Wireless Systems	10-00-2005	248.98
09/03	09/15/2003	47257	185	Del Cur Supply	10-00-2005	316.45
09/03	09/15/2003	47258	2438	Elisha Exton	10-00-2005	52.29
09/03	09/15/2003	47259	105	First Impressions	10-00-2005	443.00
09/03	09/15/2003	47260	113	Fred Meyer Stores-Customer Chg	10-00-2005	1,106.50
09/03	09/15/2003	47261	2436	Hermann Bloemsma III	10-00-2005	1.54
09/03	09/15/2003	47262	307	Industrial Steel & Supply Inc	10-00-2005	101.65
09/03	09/15/2003	47263	2425	Jason Womack	10-00-2005	175.00
09/03	09/15/2003	47264	2299	KLB Global Enterprises	10-00-2005	225.00
09/03	09/15/2003	47265	2435	Laura McGill	10-00-2005	4.94
09/03	09/15/2003	47266	155	Mory's	10-00-2005	10.18
09/03	09/15/2003	47267	2430	Mrs. Lofton	10-00-2005	10.00
09/03	09/15/2003	47268	1491	Mt Hood Chemical	10-00-2005	1,698.40
09/03	09/15/2003	47269	2025	Nurnberg Scientific	10-00-2005	159.00
09/03	09/15/2003	47270	573	OBOA	10-00-2005	115.00
09/03	09/15/2003	47271	853	Office Depot	10-00-2005	189.99
09/03	09/15/2003	47272	804	OR Dept of Admin Services	10-00-2005	8,020.00
09/03	09/15/2003	47273	177	Oregon Medical Laboratories	10-00-2005	22.00
09/03	09/15/2003	47274	584	Oregon Municipal Judges Assn	10-00-2005	120.00
09/03	09/15/2003	47275	427	Oregon Pacific Company	10-00-2005	390.00
09/03	09/15/2003	47276	252	Paramount Pest Control	10-00-2005	35.00
09/03	09/15/2003	47277	2431	Pat Snyder	10-00-2005	25.00
09/03	09/15/2003	47278	2405	Peggy Elloitt	10-00-2005	28.99
09/03	09/15/2003	47279	293	Petty Cash	10-00-2005	220.79
09/03	09/15/2003	47280	1193	PRN Data Services, Inc	10-00-2005	2,500.00
09/03	09/15/2003	47281	207	Quill Corporation	10-00-2005	51.14
09/03	09/15/2003	47282	180	Ray's Food Place	10-00-2005	72.86
09/03	09/15/2003	47283	739	Recreonics, Inc	10-00-2005	69.58
09/03	09/15/2003	47284	2433	Red Lion Inn, Salem	10-00-2005	179.85
09/03	09/15/2003	47285	2437	Ruth K. Jacobson	10-00-2005	7.18
09/03	09/15/2003	47286	2426	SOC-ICC c/o Chris Reising	10-00-2005	10.00
09/03	09/15/2003	47287	156	That Special Touch Florist	10-00-2005	40.00
09/03	09/15/2003	47288	2238	The Hunting Shack	10-00-2005	320.34
09/03	09/15/2003	47289	142	Tidewater Contractors Inc	10-00-2005	217.45
09/03	09/15/2003	47290	2439	Toni Mefford	10-00-2005	33.00
09/03	09/15/2003	47291	179	Trew, Cyphers & Meynink	10-00-2005	1,406.00
09/03	09/15/2003	47292	161	United Communications Inc	10-00-2005	434.86

Per	Date	Check No	Vendor No	Payee	Check GL Acct	Amount
09/03	09/15/2003	47293	136	United Pipe & Supply Co Inc	10-00-2005	1,726.81
09/03	09/15/2003	47294	991	Verizon Northwest	10-00-2005	1,533.96
09/03	09/15/2003	47295	157	Viking Office Products	10-00-2005	667.43
09/03	09/15/2003	47296	861	Village Express Mail Center	10-00-2005	14.78
09/03	09/15/2003	47297	1140	WearGuard	10-00-2005	522.94
09/03	09/15/2003	47298	670	Western Equipment Distributors	10-00-2005	255.10
09/03	09/15/2003	47299	2399	White Cap	10-00-2005	108.10
09/03	09/15/2003	47300	686	Worlton Auto Body	10-00-2005	832.57
09/03	09/15/2003	47301	269	WW Grainger	10-00-2005	285.00
09/03	09/19/2003	47302	1974	ACTS Oregon	10-00-2005	95.00
09/03	09/19/2003	47303	2455	Albert & Sara Wilson	10-00-2005	55.86
09/03	09/19/2003	47304	150	Any Time Coffee Service	10-00-2005	21.75
09/03	09/19/2003	47305	2370	Azalea Park Foundation	10-00-2005	946.25
09/03	09/19/2003	47306	1169	Brookings Electronic Service	10-00-2005	8,702.97
09/03	09/19/2003	47307	2454	Brookings Harbor Youth Assoc	10-00-2005	40.31
09/03	09/19/2003	47308	2440	CAS Construction	10-00-2005	113.52
09/03	09/19/2003	47309	1373	Cascade Fire Equipment	10-00-2005	15.46
09/03	09/19/2003	47310	822	Coast Auto Center	10-00-2005	52.79
09/03	09/19/2003	47311	2452	Concetta & Giovanni	10-00-2005	10.92
09/03	09/19/2003	47312	2445	Contract Environmental	10-00-2005	350.00
09/03	09/19/2003	47313	182	Coos-Curry Electric	10-00-2005	5,826.55
09/03	09/19/2003	47314		Information Only Check	10-00-2005	.00 V
09/03	09/19/2003	47315	166	Dan's Auto & Marine Electric	10-00-2005	153.21
09/03	09/19/2003	47316	2444	Dave L Thoreson	10-00-2005	2,500.00
09/03	09/19/2003	47317	185	Del Cur Supply	10-00-2005	429.39
09/03	09/19/2003	47318	2441	Denise Bottoms	10-00-2005	50.00
09/03	09/19/2003	47319	498	Dictaphone Corp	10-00-2005	1,209.75
09/03	09/19/2003	47320	2286	Don Tilton	10-00-2005	77.00
09/03	09/19/2003	47321	2451	Elmo Williams	10-00-2005	29.85
09/03	09/19/2003	47322	749	Emerald Pool & Patio	10-00-2005	3.58
09/03	09/19/2003	47323	2432	Enduroscope Inc	10-00-2005	125.00
09/03	09/19/2003	47324	2327	Erika Westbrook	10-00-2005	510.00
09/03	09/19/2003	47325	499	Fastenal Company	10-00-2005	147.06
09/03	09/19/2003	47326	1095	Frank Cembellin	10-00-2005	20.61
09/03	09/19/2003	47327	289	Gail Hedding	10-00-2005	25.40
09/03	09/19/2003	47328	198	Grants Pass Water Lab	10-00-2005	152.00
09/03	09/19/2003	47329	2453	Herbert & Carol Arlandson	10-00-2005	30.58
09/03	09/19/2003	47330	526	Joe Ingwerson	10-00-2005	44.00
09/03	09/19/2003	47331	162	Kerr Hardware	10-00-2005	765.85
09/03	09/19/2003	47332	262	Kim Hunnicutt Court Reporting	10-00-2005	12.00
09/03	09/19/2003	47333	121	Lane County RIS	10-00-2005	880.00
09/03	09/19/2003	47334	328	Les Schwab Tire Company	10-00-2005	857.88
09/03	09/19/2003	47335	525	Mark Haglund	10-00-2005	44.00
09/03	09/19/2003	47336	2442	Monte Moncrief	10-00-2005	15.00
09/03	09/19/2003	47337	279	One Call Concepts, Inc	10-00-2005	40.50
09/03	09/19/2003	47338	2446	Red Lion Inn - Coos Bay	10-00-2005	77.04
09/03	09/19/2003	47339	169	Roto Rooter	10-00-2005	418.35
09/03	09/19/2003	47340	2448	Russ & Marian Fritz	10-00-2005	26.87
09/03	09/19/2003	47341	2254	Sunny Wheatley	10-00-2005	164.00
09/03	09/19/2003	47342	2449	Tom Davis	10-00-2005	28.56
09/03	09/19/2003	47343	2450	Tom Smalley	10-00-2005	17.93
09/03	09/19/2003	47344	273	Traffic Safety Supply Co, Inc	10-00-2005	665.72
09/03	09/19/2003	47345	136	United Pipe & Supply Co Inc	10-00-2005	129.47
09/03	09/23/2003	47346	2469	Internal Revenue Service	10-00-2005	894.88
09/03	09/23/2003	47347	910	OR Department of Justice	10-00-2005	115.38
09/03	09/23/2003	47348	1132	OR Department of Justice	10-00-2005	391.62
09/03	09/23/2003	47349	1742	OR Department of Justice	10-00-2005	119.40

M = Manual Check, V = Void Check

Per	Date	Check No	Vendor No	Payee	Check GL Acct	Amount
09/03	09/23/2003	47350	2366	Oregon Department of Justice	10-00-2005	203.08
09/03	09/23/2003	47351	205	PERS Retirement	10-00-2005	10,364.26
09/03	09/23/2003	47352	214	Regence Life & Health Ins	10-00-2005	206.70
09/03	09/26/2003	47353	2476	3PM/Heidger	10-00-2005	1.46
09/03	09/26/2003	47354	1843	Action Industrial Systems	10-00-2005	130.00
09/03	09/26/2003	47355	724	Advanced Graphix Inc	10-00-2005	95.82
09/03	09/26/2003	47356	167	American Sigma	10-00-2005	286.75
09/03	09/26/2003	47357	146	Bay West Supply, Inc	10-00-2005	69.12
09/03	09/26/2003	47358	1458	Bob Schaefer	10-00-2005	60.00
09/03	09/26/2003	47359	2364	C&S Fire-Safe Services	10-00-2005	70.50
09/03	09/26/2003	47360	1991	Cal-Ore Life Flight	10-00-2005	425.00
09/03	09/26/2003	47361	178	Chetco Pharmacy & Gift	10-00-2005	30.64
09/03	09/26/2003	47362	2460	Christina Gottfried	10-00-2005	126.00
09/03	09/26/2003	47363	2468	Cliff Weeks	10-00-2005	40.26
09/03	09/26/2003	47364	820	CMI Business Systems	10-00-2005	120.06
09/03	09/26/2003	47365	183	Colvin Oil Company	10-00-2005	1,743.01
09/03	09/26/2003	47366	888	CRS	10-00-2005	925.00
09/03	09/26/2003	47367	389	Cummins Northwest	10-00-2005	209.37
09/03	09/26/2003	47368	195	Curry Transfer & Recycling	10-00-2005	482.30
09/03	09/26/2003	47369	2459	Curt Rose	10-00-2005	15.00
09/03	09/26/2003	47370	284	Day-Wireless Systems	10-00-2005	140.90
09/03	09/26/2003	47371	2463	Diana K Gothard	10-00-2005	9.35
09/03	09/26/2003	47372	484	DMV	10-00-2005	6.50
09/03	09/26/2003	47373	2117	Edge Wireless	10-00-2005	71.45
09/03	09/26/2003	47374	153	Ferrellgas	10-00-2005	137.63
09/03	09/26/2003	47375	2414	Gear 911 Specialties	10-00-2005	170.75
09/03	09/26/2003	47376	2465	George Ardizzone	10-00-2005	17.34
09/03	09/26/2003	47377	2466	Greg Martin	10-00-2005	40.36
09/03	09/26/2003	47378	131	HGE, Inc	10-00-2005	2,256.41
09/03	09/26/2003	47379	438	John Bishop	10-00-2005	150.00
09/03	09/26/2003	47380	2462	John L Kidd	10-00-2005	11.34
09/03	09/26/2003	47381	2475	Kameron Fair	10-00-2005	23.82
09/03	09/26/2003	47382	386	Lab Safety Supply Inc	10-00-2005	41.45
09/03	09/26/2003	47383	271	Larry Curry	10-00-2005	38.88
09/03	09/26/2003	47384	2382	Law Enforcement Targets	10-00-2005	29.57
09/03	09/26/2003	47385	1015	Leroy Blodgett	10-00-2005	69.78
09/03	09/26/2003	47386	328	Les Schwab Tire Company	10-00-2005	517.65
09/03	09/26/2003	47387	299	Lorings Sporting Goods	10-00-2005	111.60
09/03	09/26/2003	47388	2457	Manchester Electronics	10-00-2005	75.00
09/03	09/26/2003	47389	2464	Marshall & Lena Campbell	10-00-2005	11.94
09/03	09/26/2003	47390		Information Only Check	10-00-2005	.00 V
09/03	09/26/2003	47391	2122	Mastercard	10-00-2005	1,879.10
09/03	09/26/2003	47392	155	Mory's	10-00-2005	126.95
09/03	09/26/2003	47393	424	Munnel & Sherrill	10-00-2005	202.23
09/03	09/26/2003	47394	1410	Name It Golf, Inc	10-00-2005	370.80
09/03	09/26/2003	47395	334	North Coast Electric	10-00-2005	112.51
09/03	09/26/2003	47396	427	Oregon Pacific Company	10-00-2005	636.00
09/03	09/26/2003	47397	2461	Oregon State Treasury	10-00-2005	80.00
09/03	09/26/2003	47398	1359	Pacific Coast Audio	10-00-2005	42.00
09/03	09/26/2003	47399	2268	Pioneer Products	10-00-2005	696.68
09/03	09/26/2003	47400	187	Quality Fast Lube & Oil	10-00-2005	58.00
09/03	09/26/2003	47401	2298	Quality Fence Co	10-00-2005	363.00
09/03	09/26/2003	47402	199	Richard Harper	10-00-2005	76.00
09/03	09/26/2003	47403	1218	Rick Dentino	10-00-2005	74.00
09/03	09/26/2003	47404	2437	Ruth K. Jacobson	10-00-2005	52.82
09/03	09/26/2003	47405	2458	Steve Stevenson	10-00-2005	60.00
09/03	09/26/2003	47406	2473	Technical Support Solutions, I	10-00-2005	492.00

M = Manual Check, V = Void Check

Per	Date	Check No	Vendor No	Payee	Check GL Acct	Amount
09/03	09/26/2003	47407	665	The Riverhouse	10-00-2005	170.04
09/03	09/26/2003	47408	2470	Tom Reed	10-00-2005	15.00
09/03	09/26/2003	47409	821	Toshiba America Info Systems	10-00-2005	310.00
09/03	09/26/2003	47410	2471	Truckstel Northwest	10-00-2005	1,959.00
09/03	09/26/2003	47411	1374	United Horticulture Supply	10-00-2005	431.50
09/03	09/26/2003	47412	136	United Pipe & Supply Co Inc	10-00-2005	1,954.69
09/03	09/26/2003	47413	991	Verizon Northwest	10-00-2005	175.42
09/03	09/26/2003	47414	686	Worlton Auto Body	10-00-2005	600.22
09/03	09/26/2003	47415	269	WW Grainger	10-00-2005	53.88
Totals:						<u>126,569.87</u>

Dated: \_\_\_\_\_

Mayor: \_\_\_\_\_

City Council: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

City Recorder: \_\_\_\_\_

# CITY OF BROOKINGS POLICE DEPARTMENT

Chris Wallace, Chief of Police



**To:** Brookings City Council  
**From:** Chief Chris Wallace 27813/201  
**Date:** October 7, 2003  
**Re:** Liquor License application for Internet Café

I have received and reviewed attached Liquor License application for the Internet Café. It is my recommendation the Brookings City Council approve requested application as no disqualifying information was obtained.

*Chris Wallace*  
Chief Chris Wallace  
Brookings Police Department



898 ELK DRIVE  
Brookings, Or. 97415  
[www.brookings.or.us](http://www.brookings.or.us)

Phone: (541) 469-3118  
Fax: (541) 412-0253

America's  
**Wild Rivers**  
Coast.

# OREGON LIQUOR CONTROL COMMISSION LIQUOR LICENSE APPLICATION



Application is being made for:

## LICENSE TYPES

- ☐ Full On-Premises Sales (\$402.60/yr)
- ☐ Commercial Establishment
  - ☐ Caterer
  - ☐ Passenger Carrier
  - ☐ Other Public Location
  - ☐ Private Club

- ☒ Limited On-Premises Sales (\$202.60/yr)
- ☐ Off-Premises Sales (\$100/yr)
- ☐ Brewery Public House (\$252.60)
- ☐ Winery (\$250/yr)
- ☐ Other: \_\_\_\_\_

Applying as:

- ☐ Individuals    ☐ Limited Partnership    ☒ Corporation    ☐ Limited Liability Company

## ACTIONS

- ☐ Change Ownership
- ☒ New Outlet
- ☐ Greater Privilege
- ☐ Additional Privilege
- ☐ Other \_\_\_\_\_

FOR CITY AND COUNTY USE ONLY  
The city council or county commission:

(name of city or county)

recommends that this license be:

Granted ☐ Denied ☐

By: \_\_\_\_\_  
(signature) (date)

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## OLCC USE ONLY

Application Rec'd by: \_\_\_\_\_

Date: \_\_\_\_\_

90-day authority: ☐ Yes ☐ No

Please Print or Type

1. Applicant(s): [See SECTION 1 of the Guide]

① PATRICK WONG ③ \_\_\_\_\_

② TERESITA WONG ④ \_\_\_\_\_

2. Trade Name (dba): NORTHWEST TECHNICAL INTERNET CAFE (AKA) CAFE 'KITANISHI

3. Business Location: 632 HEMLOCK STREET, BROOKINGS CURRY OREGON 97415  
(number, street, rural route) (city) (county) (state) (ZIP code)

4. Business Mailing Address: P.O. Box 6129 BROOKINGS OR 97415  
(PO box, number, street, rural route) (city) (state) (ZIP code)

5. Business Numbers: 541-469-7864 541-469-1847  
(phone) (fax)

6. Is the business at this location currently licensed by OLCC? ☐ Yes ☒ No

7. If yes to whom: \_\_\_\_\_ Type of License: \_\_\_\_\_

8. Former Business Name: \_\_\_\_\_

9. Will you have a manager? ☐ Yes ☒ No Name: \_\_\_\_\_  
(manager must fill out an individual history form)

10. What is the local governing body where your business is located? BROOKINGS  
(name of city or county)

11. Contact person for this application: TERESITA WONG 541-469-6644  
(name) (phone number(s))  
16920 OLD COUNTY RD., BROOKINGS, OR 541-469-6655 tessiern@nwtec.com  
(address) (fax number) (e-mail address)

I understand that if my answers are not true and complete, the OLCC may deny my license application.

Applicant(s) Signature(s) and Date:

① Teresa Wong Date 09/25/03 ③ \_\_\_\_\_ Date \_\_\_\_\_

② Teresa Wong Date 9/25/03 ④ \_\_\_\_\_ Date \_\_\_\_\_

OREGON LIQUOR CONTROL COMMISSION  
CORPORATION QUESTIONNAIRE



ATTACH COPIES OF FILED ARTICLES OF INCORPORATION, MINUTES OF DESIGNATING OFFICERS AND DIRECTORS, AND STOCK SUBSCRIPTION AGREEMENT.

Please Print or Type

Corporation Name: NORTHWEST TECHNICAL INC. Year Incorporated: 2001

Trade Name (dba): INTERNET CAFE & SUSHI BAR (AKA) CAFE' KITANISHI

Business Location Address: 632 HEMLOCK ST

City: BROOKINGS, OR ZIP Code: 97415

List Corporate Officers:

PATRICK WONG

(name)

TERESITA WONG

PRESIDENT / TREASURER

(title)

VICE PRESIDENT / SECRETARY

List Board of Directors:

N/A PATRICK WONG

(name)

TERESITA D. WONG

List Stockholders: (Note: If any stockholder is another legal entity, that entity may also need to complete another Corporation Questionnaire. See Liquor License Application Guide for more information.)

Stockholders:

Number of  
Shares Held:

N/A PATRICK WONG

50%

TERESITA D. WONG

50%

Number of Stock Shares:

Issued: \_\_\_\_\_

Unissued: \_\_\_\_\_

Total Shares Authorized  
to Issue: \_\_\_\_\_

Server Education Designee: TERESITA WONG

DOB: 072854

(See Liquor License Application Guide for more information)

I understand that if my answers are not true and complete, the OLCC may deny my license application.

Officer's Signature: Patrick Wong VP

(name)

(title)

Date: 042503



# OREGON LIQUOR CONTROL COMMISSION BUSINESS INFORMATION



Please Print or Type

Applicant Name: PATRICK & TERESITA WONG Phone: 465-7864 (541)

Trade Name (dba): NORTHWEST TECHNICAL INTERNET CAFE AKA CAFE' KITANISHI

Business Location Address: 632 HEMLOCK STREET

City: BROOKINGS, OR ZIP Code: 97415

## DAYS AND HOURS OF OPERATION

### Business Hours:

Sunday 7:00 A to 10 PM  
Monday 7:00 A to 10 PM  
Tuesday 7:00 A to 10 PM  
Wednesday 7:00 A to 10 PM  
Thursday 7:00 A to 10 PM  
Friday 7:00 A to 10 PM  
Saturday 7:00 A to 10 PM

### Outdoor Area Hours:

Sunday \_\_\_\_\_ to \_\_\_\_\_  
Monday \_\_\_\_\_ to \_\_\_\_\_  
Tuesday \_\_\_\_\_ to \_\_\_\_\_  
Wednesday \_\_\_\_\_ to \_\_\_\_\_  
Thursday \_\_\_\_\_ to \_\_\_\_\_  
Friday \_\_\_\_\_ to \_\_\_\_\_  
Saturday \_\_\_\_\_ to \_\_\_\_\_

Seasonal Variations: ☐ Yes ☒ No If yes, explain: \_\_\_\_\_

## ENTERTAINMENT

Check all that apply:

- |  |   |
|--|---|
| <input type="checkbox"/> Live Music                | <input type="checkbox"/> Karaoke                                      |
| <input checked="" type="checkbox"/> Recorded Music | <input type="checkbox"/> Coin-operated Games                          |
| <input type="checkbox"/> DJ Music                  | <input type="checkbox"/> Video Lottery Machines                       |
| <input type="checkbox"/> Dancing                   | <input type="checkbox"/> Social Gaming                                |
| <input type="checkbox"/> Nude Entertainers         | <input type="checkbox"/> Pool Tables                                  |
|  | <input checked="" type="checkbox"/> Other: <u>GUITAR/PIANO PLAYER</u> |

## DAYS & HOURS OF LIVE OR DJ MUSIC

Sunday \_\_\_\_\_ to \_\_\_\_\_  
Monday \_\_\_\_\_ to \_\_\_\_\_  
Tuesday \_\_\_\_\_ to \_\_\_\_\_  
Wednesday \_\_\_\_\_ to \_\_\_\_\_  
Thursday \_\_\_\_\_ to \_\_\_\_\_  
Friday \_\_\_\_\_ to \_\_\_\_\_  
Saturday \_\_\_\_\_ to \_\_\_\_\_

OCCASIONAL 1-2 EVENING/MO.  
5-10 PM

## SEATING COUNT

Restaurant: 22 Outdoor: \_\_\_\_\_  
Lounge: \_\_\_\_\_ Other (explain): \_\_\_\_\_  
Banquet: \_\_\_\_\_ Total Seating: 22

### OLCC USE ONLY

Investigator Verified Seating: \_\_\_\_\_ (Y) \_\_\_\_\_ (N)

Investigator Initials: \_\_\_\_\_

Date: \_\_\_\_\_

I understand if my answers are not true and complete, the OLCC may deny my license application.

Applicant Signature: Teresita Wong Date: 092503

**IN AND FOR THE CITY OF BROOKINGS  
STATE OF OREGON**

In the Matter of an Ordinance Amending       )  
Ordinance 89-0-446, An Ordinance       )  
Creating the Land Development Code to       )       **Ordinance 03-O-446.QQ**  
amend Section 92, Off-Street Parking and       )  
Loading Regulations, updating ADA       )  
parking space requirements.       )

**Sections:**

- Section 1. Ordinance identified.
- Section 2. Amendment to Section 92.

The City of Brookings ordains as follows:

Section 1. Ordinance Identified. This ordinance amends Ordinance No. 89-0-446, enacted April 10, 1989 entitled, the Land Development Code.

Section 2. Amendment to Section 92. Ordinance No. 89-O-446, Section 92.110 is hereby added to read as follows:

**92.110 Handicapped parking.**

**A. Handicapped parking shall be provided at the following rate:**

Total Parking In Lot	Minimum Required ADA Spaces
1 to 25	1
26 to 50	2
51 to 75	3
76 to 100	4
101 to 150	5
151 to 200	6
201 to 300	7
301 to 400	8
401 to 500	9
501 to 1,000	2 percent of total
1000 and above	20 plus 1 for each 100 over 1000

**B. Parking spaces.** Handicapped parking spaces shall be a minimum of nine (9) feet in width and shall have an adjacent access aisle of six (6) feet in width. A minimum of one and a ratio of one "Van" space for each eight required accessible spaces shall be provided. A "Van" space shall be a minimum of nine (9) feet wide with an adjacent access isle of eight (8) feet. Parking access aisles shall be a part of the accessible route to the building or facility entrance. Two (2) parking spaces for handicapped may share a common access aisle.

First reading: \_\_\_\_\_

Second reading: \_\_\_\_\_

Passage: \_\_\_\_\_

Effective date \_\_\_\_\_

Signed by me in authentication of its passage this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

\_\_\_\_\_  
Bob Hagbom  
Mayor

ATTEST:

\_\_\_\_\_  
Paul Hughes, Finance Director/Recorder

City of Brookings Building Department  
898 Elk Drive  
Brookings, OR 97415  
(541) 469-2163, ext. 206 Fax: 469-3650  
[lauralee@brookings.or.us](mailto:lauralee@brookings.or.us)  
[www.brookings.or.us](http://www.brookings.or.us)



# Memo

**To:** Mayor, City Council  
**From:** LauraLee Gray, Building Official  
**Date:** October 6, 2003  
**Re:** Proposed Ordinance No. 03-O-349.E

---

The above referenced Ordinance (copy attached) is being proposed to alleviate the problem of new building code adoption not being addressed by our current Ordinance. As currently written, our Ordinance refers to specific code years being adopted, for instance we are now referring to the 1996 editions as being adopted for use. Codes change every 3 years so rather than having to amend the ordinance every three years, or not be up to date, I am proposing this Ordinance that does not specify a code year.

**Recommendation:** The City Council adopt Ordinance No. 03-O-349.E to comply with Oregon building codes as presently enacted and subsequently modified by the State of Oregon.

IN AND FOR THE CITY OF BROOKINGS  
STATE OF OREGON

In the matter of an Ordinance of the City of  
Brookings amending Ordinance No. 81-O-349  
titled, An Ordinance adopting the 1996 Oregon  
Structural Specialty Code, including the  
appendices and Chapter 33, provided, however  
that ORS 455.320 shall not be applicable; the  
1996 Oregon Mechanical Specialty Code; the  
1996 Oregon Plumbing Specialty Code; the 1996  
Oregon 1 and 2 Family Dwelling Specialty  
Code; the 1996 Uniform Fire Code; the 1996  
Uniform Code for the Abatement of Dangerous  
Buildings; the 1996 Manufactured Dwelling  
Standards; and the 1996 Parks and Camps rules.

ORDINANCE NO. 03-O-349.E

**Sections:**

**Section 1.                   Amendment to Title.**  
**Section 2.                   Amendment to Section 1.**

The City of Brookings ordains as follows:

**Section 1.**                   **Amendment to Title.** The title of Ordinance No. 81-O-349 is hereby amended to read as follows:

An Ordinance enacting the Structural Specialty Code including the appendices, provided, however that ORS 455.320 shall not be applicable; Mechanical Specialty Code; Plumbing Specialty Code; 1 and 2 Family Dwelling Specialty Code; Uniform Fire Code; Manufactured Dwelling and Parks Specialty Code and the Uniform Code for the Abatement of Dangerous Buildings, as presently enacted and as subsequently modified by the State of Oregon.

**Section 2.**                   **Amendment to Section 1.** Ordinance No. 81-O-349, Section 1 is hereby amended to read as follows:

**Section 1.**                   **Adoption of codes.** From the effective date of this ordinance, the construction, alteration, repair, demolition, moving, use or occupancy of a structure within the jurisdiction of the city of Brookings shall comply with the standards and requirements of the following codes, as presently

enacted and subsequently modified by the State of Oregon each of which are hereby enacted by this reference into the ordinances of the city of Brookings:

A. State of Oregon Structural Specialty Code, including the appendices and Chapter 33, provided however that ORS 455.320 shall not be applicable.

B. State of Oregon Mechanical Specialty Code

C. State of Oregon Plumbing Specialty Code

D. State of Oregon 1 and 2 Family Dwelling Specialty Code

E. State of Oregon Uniform Fire Code

F. Uniform Code for the Abatement of Dangerous Buildings

G. State of Oregon Manufactured Dwelling and Park Specialty Code

**This Ordinance adopted by the Common Council and approved by the Mayor this \_\_\_\_\_ day of \_\_\_\_\_, 2003.**

First Reading: \_\_\_\_\_

Second Reading: \_\_\_\_\_

Passage: \_\_\_\_\_

Effective Date: \_\_\_\_\_

Signed by me in authentication of its passage this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

\_\_\_\_\_  
Bob Hagbom  
MAYOR

ATTEST:

\_\_\_\_\_  
Paul Hughes  
City Finance Director/Recorder

City of Brookings Ordinance 03-O-349.E

M:\Council\Ordinances\ORDNANC3\02-O-349.E.doc

# CITY OF BROOKINGS



---

## **STAFF REPORT**

Date: October 9, 2003  
To: Mayor Hagbom & City Councilors  
From: Leroy Blodgett, City Manager  
Subject: Spruce Street Parking Limits

## **BACKGROUND**

Rick Bishop (Bernie Bishop Mazda) has requested a 4-hour parking limit on Spruce Street adjacent to his property. His property is about ½ block of Spruce Street starting a Wharf Street going south toward Fern Street. His request is for 4-hour parking limit, 24-hours a day, 7-days a week. The parking limits on Chetco Avenue are 8 AM – 5 PM, 7-days a week. To keep consistent with the other parking limits staff has prepared a resolution with the 4-hour limit for the same times and days as on Chetco.

## **STAFF RECOMMENDATION**

Approve Resolution 03-R-722.A, limiting parking on the section of Spruce Street adjacent to Bishop's property to 4-hours, 8 AM – 5 PM, 7-days a week.

IN AND FOR THE CITY OF BROOKINGS  
STATE OF OREGON

**In the Matter of a Resolution )**  
**establishing traffic controls (parking )**  
**limitations) along Spruce Street at ) Resolution No. 03-R-722.A**  
**Assessor's Map No. 41-13-6 DA TL )**  
**6201, also known as 625 Spruce Street )**

WHEREAS, Ordinance No. 157 Section 3.(b) empowers the City Council with the authority to establish the time limit for legal parking in limited parking areas, and;

WHEREAS, the City Council has been requested to place four-hour parking limits on that section of Spruce Street fronting on Assessor's Map No. 41-13-6 DA TL 6200 and 6201, also known as 635 and 625 Spruce Street;

NOW, THEREFORE BE IT RESOLVED by the Mayor and City Council of the City of Brookings, Curry County, Oregon, pursuant to the authority granted it under the provisions of Ordinance No. 157 of the City of Brookings, Section 3 thereof, that the following traffic control is hereby established:

The time limit for legal parking in the following described curbside parking area, between the hours of 8:00 a.m. and 5:00 p.m., seven days a week, is hereby established as four (4) hours: Assessor's Map No. 41-13- 6 DA TL 6200 and 6201, otherwise known as 635 and 625 Spruce Street.

The Public Works Department is hereby directed to install appropriate signs and markings to indicate the limited parking area described above. These traffic controls shall become immediately effective upon the installation of such signs and markings.

DATED and signed this \_\_\_\_\_ day of October, 2003.

\_\_\_\_\_  
Bob Hagbom  
MAYOR

ATTEST:

\_\_\_\_\_  
Paul Hughes  
City Finance Director/Recorder