

AGENDA

City of Brookings

SPECIAL CITY COUNCIL MEETING

Brookings City Hall Council Chambers

898 Elk Drive, Brookings Oregon

Wednesday July 16, 2008 7:00pm

I. Call to Order

II. Pledge of Allegiance

III. Roll Call

IV. Resolution

Resolution 08-R-903, a resolution designating the City Manager as the authorized representative for the City of Brookings in its application to the Oregon Department of Transportation Bicycle and Pedestrian Program for funding of the Downtown Brookings Sidewalk and Infill Project. *City Manager [pg. 3]*

V. Public Hearing

In the matter of File No. APP-1-08, an appeal of the Planning Commission's denial for the request of an extension of time for 2 years for an approved Master Plan of Development, known as Lone Ranch Master Plan, a 553 acre parcel located on the easterly side of Highway 101 and north of Carpenterville Road; Assessor's Map 40-14 & Index; Tax lots 2400, 2401, and a portion of 2402; U.S. Borax, Applicant and Appellant; Burton Weast, Representative; File MPD-1-04 Extension. The criteria to decide this matter is found in Chapter 17.70.120, Effective Period of Master Plan of Development (MPoD) Approval, and Chapter 17.152, Appeal to the City Council, of the Brookings Municipal Code. *Planning Director Morris [Advance Packets #1 & #2]*


VI. Adjournment

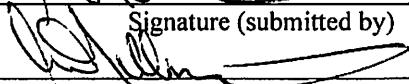
All public meetings are held in accessible locations. Auxiliary aids will be provided upon request with advance notification. Please contact 469-1102 if you have any questions regarding this notice.

CITY OF BROOKINGS
COUNCIL AGENDA REPORT

Meeting Date: July 16, 2008

Originating Dept: City Manager



Signature (submitted by)


City Manager Approval

Subject: Resolution Authorizing Grant Application for Bicycle and Pedestrian Funds

Recommended Motion: Motion to adopt Resolution 08-R-903, authorizing the City Manager to apply for grant funding under the ODOT Bicycle and Pedestrian Program.

Financial Impact: Potential grant funding of \$500,000.

Background/Discussion:

The City, through its Urban Renewal Agency, plans to undertake a project in the downtown area which would include the installation of curb and sidewalk at various locations. The Oregon Department of Transportation has an annual grant program for pedestrian and bicycle facilities. Grants of up to \$500,000 are available. The program is competitive. Funds can be used for infill of sidewalks where there are none.

The grant application, which is due July 25, is under construction. The application will propose using \$500,000 in grant funds to supplement the \$3.1 million in tax increment bond funds that the City will be using to undertake street and sidewalk improvements in the downtown area. The "overmatch" of 6-1 should make this application competitive.

Attachment(s): Resolution 08-R-903

**IN AND FOR THE CITY OF BROOKINGS
STATE OF OREGON**

**In the Matter of a Resolution designating
the City Manager as the Authorized
Representative for the City of Brookings
in its application to the Oregon
Department of Transportation Bicycle
and Pedestrian Program for funding of
the Downtown Brookings Sidewalk and
Infill Project.**

Resolution 08-R-903

WHEREAS, the City of Brookings adopted a Downtown Plan in 2002 which called for the installation of pedestrian facilities; and

WHEREAS, the City of Brookings through its Urban Renewal Agency, has sold bonds in the amount of \$3.4 million for curb, gutter, sidewalk and street improvements in downtown Brookings; and

WHEREAS, the grants funds requested in the City's application will be used to construct pedestrian facility infill in conjunction with the Urban Renewal Project that is consistent with Oregon Department of Transportation Program guidelines for the use of said funds;

NOW, THEREFORE BE IT RESOLVED, by the City Council of the City of Brookings, Curry County, Oregon, that City Manager is hereby designated as the Authorized Representative for the City of Brookings in its application to the Oregon Department of Transportation for funding of the Downtown Brookings Sidewalk Infill Project under the Oregon Bicycle and Pedestrian Program.

Adopted by Council and effective on the _____ of _____, 2008.

Dated and signed this _____ day of _____, 2008.

Attest:

Mayor Larry Anderson

City Recorder Joyce Heffington

Advance Packet

Dated: 6-30-08

for

Wednesday, July 16, 2008, Special Council Meeting

Included in this packet is documentation to support the following Agenda Item:

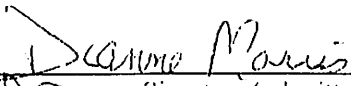
III. Public Hearing:

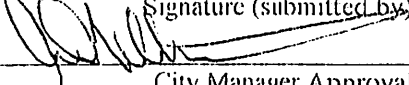
In the matter of File No. APP-1-08, an appeal of the Planning Commission's denial for the request of an extension of time for 2 years for an approved Master Plan of Development, known as Lone Ranch Master Plan, a 553 acre parcel located on the easterly side of Highway 101 and north of Carpenterville Road; Assessor's Map 40-14 & Index; Tax lots 2400, 2401, and a portion of 2402; U.S. Borax, Applicant and Appellant; Burton Weast, Representative; File MPD-1-04 Extension. The criteria to decide this matter is found in Chapter 17.70.120, Effective Period of Master Plan of Development (MPoD) Approval, and Chapter 17.152, Appeal to the City Council, of the Brookings Municipal Code.

CITY OF BROOKINGS
COUNCIL AGENDA REPORT

Meeting Date: July 16, 2008

Originating Dept: Planning



Signature (submitted by)


City Manager Approval

Subject: A request for an extension of time for two years to an approved Master Plan of Development (MPoD), known as Lone Ranch Master Plan. The Master Plan approved 1,000 dwelling units of various types, a commercial area, a college site, with new streets, walking trails, and natural areas. The Planning Commission conducted a hearing on this matter and denied MPD-1-04, Extension Request, at their June 3, 2008 meeting. The Applicants, U.S. Borax, Inc., have appealed this decision in File APP-1-08.

Recommended Motion: Overturn the Planning Commission decision to deny the request for extension of time for MPD-1-04, Lone Ranch Master Plan, thereby APPROVING the requested extension. This extension of time shall run from the date the MPoD is due to expire on October 25, 2008 for two years until October 25, 2010. The original conditions of approval will remain in force.

Financial Impact: None.

Background/Discussion: A Master Plan of Development (MPoD) is the conceptual design for a large project approved by the Planning Commission and City Council. Detailed Development Plans (DDP) are the specific details for a phase of the Master Plan. A DDP must receive approval from the Planning Commission before construction can begin on any phase of the MPoD.

The Applicant is requesting a two year extension of time to submit and receive approval of a DDP for the first phase of construction of the Lone Ranch Master Plan. On October 25, 2004 the City Council approved the Lone Ranch Master Plan. It was subsequently appealed and finally remanded to the City Council for final action and approval on August 22, 2005. The Final Order/ Conditions of Approval gave the Applicants 4 years to submit and receive approval of a DDP for the first phase. Historically the 4 year approval period begins from the date of the final action after any appeals have been exhausted. A recent court decision, however, ruled the approval period begins from the date of the final action by the City before any appeals beyond their jurisdiction, unless the City's Code clearly specifies the approval period to begin after all appeals have been exhausted. This means the Applicant now has only 4 months rather than 14 months to apply and receive approval of the first DDP. Southwest Oregon Community College (SWOCC) has met with City Staff several times as they prepare their application for the site in the Lone Ranch Master Plan area that Borax has agreed to donate for the college campus. It is unlikely that the college or any Applicant for a DDP could move through the process in only 4 months.

BMC 17.70.120 authorizes the Planning Commission to grant a 2 year extension of time when "...conditions have not changed..." The complete text of BMC 17.70.120, Effective Period of Master Plan of Development (MPoD) Approval states, "If the applicant has not submitted a DDP for the planned development or the first phase within four years from the date of approval, the MPoD shall expire. Where the Planning Commission finds that conditions have not changed, the Commission may, at its discretion, extend the period for two additional years per extension, subject to applicable hearing and notice requirements. If after the approval of the first DDP, construction has not been started or at any time construction has lapsed for a period of three years the MPoD will expire." This is the criteria to be used in deciding to approve or deny the requested extension of time.

The Applicant's findings state no circumstances have changed that were fundamental to the findings which are the basis for approval of the Master Plan of Development. The Applicant's findings are found in Exhibit A, Planning Commission Packet, pages 5 & 6.

The Planning Commission, at their June 3, 2008 hearing on this matter, received written comments and testimony that suggested "conditions" had changed. At the conclusion of the hearing the Planning Commission voted to deny the extension request. The Applicants have appealed the decision and this hearing is "de novo" ("starting new"), meaning you consider all evidence applicable to the criteria either submitted previously or new materials submitted during this hearing process and deliberate to a decision.

Findings to address the criteria found in BMC 17.70.070, Review Criteria for a Master Plan of Development are listed below with Staff responses to demonstrate that "conditions" used to approve the Lone Ranch Master Plan have not changed.

17.70.070 Review Criteria.

A. The proposed MPoD is consistent with the purposes identified in BMC 17.70.010 and the intent of the MPD zone.

RESPONSE: The Lone Ranch Master Plan was found to be consistent with the above criteria when it was approved. No request for a change to the Plan is being made. This hearing only considers a request for a two year extension of the approval period for the original development plan.

B. The proposed phasing schedule, if any, is reasonable and does not exceed 10 years between commencement of development on the first and last phases unless otherwise authorized by the Planning Commission either at the time of approval of the MPoD or by a modification to the MPoD. If at the end of 10 years the project is not built out, the Planning Commission shall review the MPoD and shall have the ability to require changes to or rescind the plan based on existing conditions.

RESPONSE: There is no request to change the proposed phasing approved in the original Plan. This hearing only considers a request for a two year extension of the approval period for the original development plan.

C. **The proposed MPoD will demonstrate that adequate utilities and infrastructure are available or can reasonably be made available at each phase. The proposed MPoD will further demonstrate that existing utility services and water supplies for adjacent properties will not be negatively affected at each phase.**

RESPONSE: Several written comments regarding this criterion have been received. Staff has responded to those individually later in this report.

D. **The proposed MPoD will demonstrate that the plan respects the physical characteristic of the site.**

RESPONSE: The Lone Ranch Master Plan was found to be consistent with the above criteria when it was approved. Conditions of Approval require consideration and protection of physical characteristics with each DDP submitted. No request for a change to the Plan is being made. This hearing only considers a request for a two year extension of the approval period for the original development plan.

E. **The applicant demonstrates that all deviations from the development standards are warranted.**

RESPONSE: The Lone Ranch Master Plan was found to be consistent with the above criteria when it was approved. No request for a change to the Plan is being made. This hearing only considers a request for a two year extension of the approval period for the original development plan.

F. **The circulation proposed MPoD will demonstrate that adequate transportation facilities are available and the plan promotes the most economic, safe, and efficient movement of traffic.**

RESPONSE: The Lone Ranch Master Plan was found to be consistent with the above criteria when it was approved. No request for a change to the Plan is being made. This hearing only considers a request for a two year extension of the approval period for the original development plan.

G. **The proposed MPoD meets the applicable requirements of the urban growth boundary joint management agreement.**

RESPONSE: The Lone Ranch Master Plan was found to be consistent with the above criteria when it was approved. No request for a change to the Plan is being made. This hearing only considers a request for a two year extension of the approval period for the original development plan.

The following are concerns that have been raised suggesting conditions that were considered in the approval of the Lone Ranch Master Plan have changed.

1. WATER

- Statement – The Lone Ranch Master Plan proposed to use on-site wells, not City water.

Response – In a letter dated Sept. 4, 2004 entered into the record by Tim Ramis, Attorney for Lone Ranch, he states the Applicant understands the water system will be part of the City's water system. (Letter found in Exhibit B, Page 9) This is more than a month before the City Council made their decision on Oct. 25, 2004 to approve Lone

Ranch and almost a year before all the appeals had run their course and the City Council approved the remanded application on August 22, 2005.

- Statement – The City may not have adequate water to serve Lone Ranch.
Response – Several documents were submitted that discussed concerns about the City’s water supply and system. During 2004 – 2006 there were numerous organizational and Staff changes in the Public Works Department. Varying opinions/ concerns were aired resulting in the City hiring their contract engineering firm to do a thorough review and update to the Water System Master Plan. This update considered water service to all City residents and the Urban Growth Area north of the Chetco River, including Lone Ranch Master Plan area. Given the improvements listed in this update, including increased storage capacity, which is also a component of the Lone Ranch Master Plan, it concludes the City does have the ability to serve these areas. This update was reviewed and approved by the City Council after several workshops and hearings in Nov. 2007.
- Statement – Changes to water rights law have jeopardized the City’s ability to secure their water rights.
Response – In a letter dated June 2, 2008 from Richard Allan, Attorney for Lone Ranch, he discusses water rights court decisions and specifically HB 3038 which was cited in the concerns and explains the HB actually allows more flexibility to municipalities dealing with water rights. (Letter found in Exhibit C-5, Pages 6-7)
- Statement – The “listing” of Coho is a recent development.
Response – Or. Department of Fish and Wildlife have confirmed the Coho has been listed since 1996. The closure of ocean salmon fishing this summer is not the result of concerns for the Chetco River but rather specific problems the Sacramento River system is having.
- Statement – Need assurance that Rainbow Rock Condominiums water source and water shed will be protected.
Response – A Condition of Approval requires each phase of development to evaluate impacts and demonstrate there will no negative impact to the water source or water shed. All original Conditions of Approval will remain in effect if this extension request is granted.

2. ELECTRIC LINES

- Statement – Coos-Curry Electric Co-op’s plans to remove their transmission lines will allow new development.
Response – There is no change in the development plans being submitted with this application requesting a two year extension of the approval period.

3. ARCHEOLOGICAL CONCERNS

- Statement – A cultural resources survey has not been done.
Response – Lone Ranch has submitted the survey. The State Historic Preservation Officer does not release these to the public. His letter dated Oct. 18, 2006 states when the details of the first Detailed Development Plan (DDP) are known he will

confer with the applicants. (Letter found in Exhibit C, Pages 4 & 5) Coordination with State and Federal agencies at the time each DDP is proposed is a Condition of Approval for the Lone Ranch Master Plan.

4. WESTERN LILIES/ WETLAND CONCERNS

- Statement – More consideration of these issues is needed.

Response – A letter was received after the Planning Commission hearing on June 3rd from US Dept. of the Interior discussing the need to coordinate with any applicant submitting a DDP. (Letter found in Exhibit F) Once detailed development plans are known it is then possible to determine appropriate care and protection of the lilies and wetlands. Again, coordination with State and Federal agencies at the time each DDP is proposed is a Condition of Approval for the Lone Ranch Master Plan.

5. INFRASTRUCTURE COST SHARING

- Statement – Lone Ranch has not paid its share.

Response – Lone Ranch has paid to extend water and sewer mains to the property except for one section the City paid for and another portion that still needs to be constructed. The Applicant has stated they understand the responsibility to pay for those portions and will do so. In addition there are existing water and sewer mains in the City that will need to be upgraded. The Applicant and the City are at work on an agreement designating proportionate amounts to be paid by Lone Ranch, other future developments in the northern UGA, and the City. Cost sharing to upgrade existing infrastructure is not a change.

STAFF CONCLUSION: None of the above stated concerns results in changes to the Conditions used in reviewing and approving the original Lone Ranch Master Plan.

Policy Considerations: None.

Attachment(s):

- Exhibit A – Planning Commission packet from hearing on June 3, 2008.
- Exhibit B – Written comments received prior to hearing on June 3, 2008.
- Exhibit C – Additional written comments received prior to hearing on June 3, 2008.
- Exhibit D – Written materials from Pete Chasar submitted at the June 3, 2008 hearing.
- Exhibit E – Written materials from Pat Sherman submitted at the June 3, 2008 hearing.
- Exhibit F – Letter from U.S. Dept. of the Interior dated May 30, 2008 received after the June 3, 2008 hearing regarding DDPs, lilies, and wetlands.

EXHIBIT A

CITY OF BROOKINGS PLANNING COMMISSION STAFF AGENDA REPORT

SUBJECT: Extension of Time/ Lone Ranch Master Plan REPORT DATE: May 20, 2008
FILE NO: MPD-1-04 ITEM NO: 7.2
HEARING DATE: June 3, 2008

GENERAL INFORMATION

PROPERTY OWNER: U.S. Borax, Inc.

REPRESENTATIVE: Burton Weast

REQUEST: A request for an extension of time for 2 years for an approved Master Plan of Development, known as Lone Ranch Master Plan. The Master Plan approved 1,000 dwelling units of various types, a commercial area, a college site, with new streets, walking trails, and natural areas.

TOTAL LAND AREA: 553 acres.

LOCATION: The subject property is located on the east side of Highway 101 starting approximately 0.8 miles north of Carpenterville Road and extending 1.8 miles north along the Highway.

ASSESSOR'S MAP NUMBER: Map 40-14 & Index; Tax lots 2400, 2401, and 2402

ZONING / COMPREHENSIVE PLAN INFORMATION

EXISTING: Master Plan of Development (MPD)

PROPOSED: Same.

SURROUNDING: West of Highway 101 – County Public Facilities (PF); North and East – County Forest Grazing (FG); South – County Residential (R-2) and FG.

COMP. PLAN: Master Plan of Development (MPD).

LAND USE INFORMATION

EXISTING: Vacant.

PROPOSED: Master Plan of Development.

SURROUNDING: West of Highway 101 – vacant parkland except for the Rainbow Rock

Condominiums; North and East – Vacant, CapeFerrelo area further north; South – Residential uses and a manufactured home park.

PUBLIC NOTICE: Mailed to all property owners within 250 feet of subject property, other interested parties, and published in the local newspaper.

BACKGROUND INFORMATION

The Applicant is requesting a two year extension of time to submit and receive approval of a Detailed Development Plan (DDP) for the first phase of construction of the Lone Ranch Master Plan. 17.70.120, Effective Period of Master Plan of Development Approval, Brookings Municipal Code (BMC) provides for a 2 year extension of time (**Attachment A**). The Applicant has requested an extension in a timely manner (**Attachment B**). The original conditions of approval will remain in force.

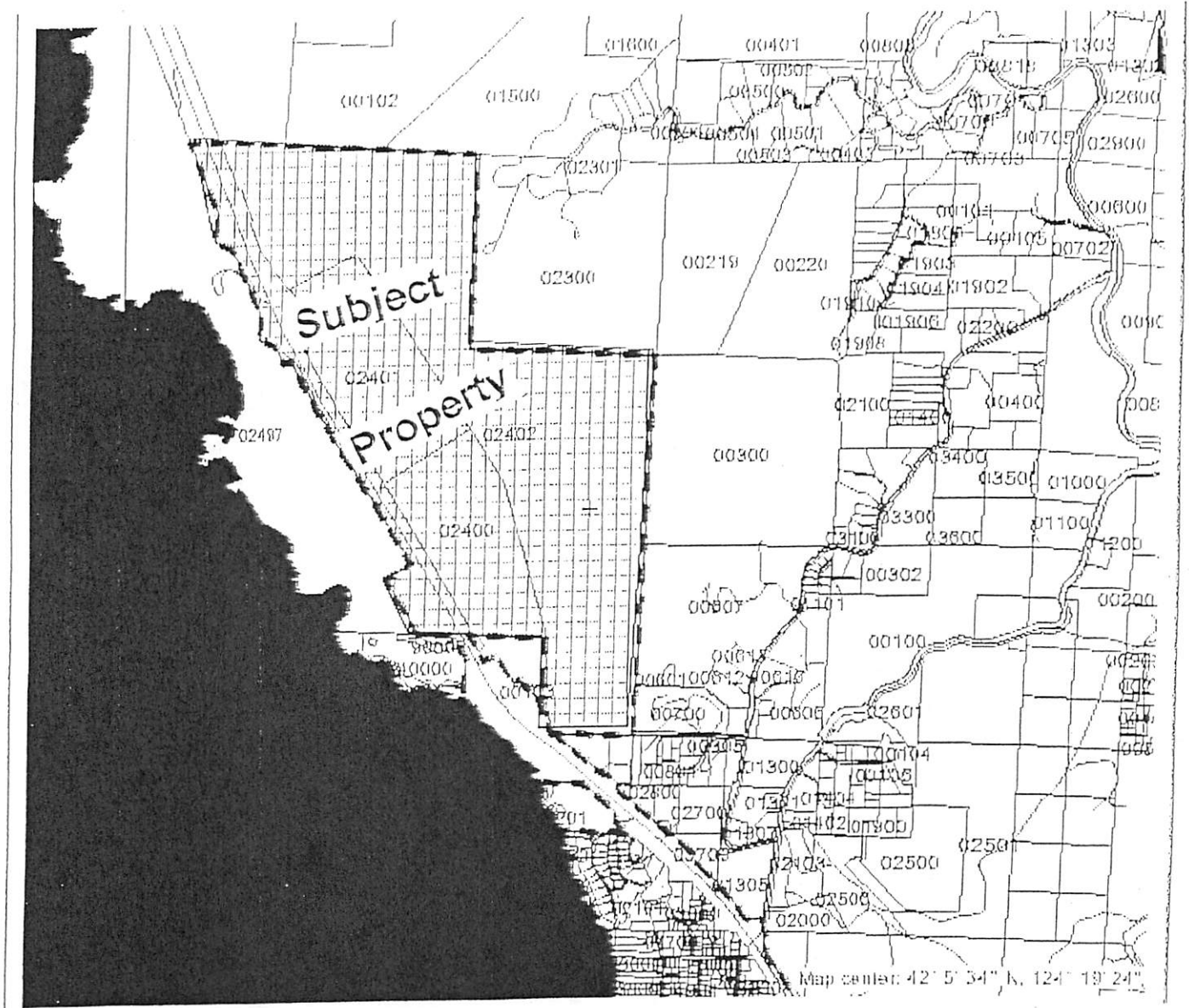
On October 25, 2004 the City Council approved the Lone Ranch Master Plan. It was subsequently appealed and finally remanded to the City Council for final action and approval on August 22, 2005. The Final Order/ Conditions of Approval gave the Applicants 4 years to submit and receive approval of a Detailed Development Plan for the first phase. Historically the 4 year approval period begins from the date of the final action after any appeals have been exhausted. A recent court decision, however, ruled the approval period begins from the date of the final action by the City before any appeals beyond their jurisdiction, unless the City's Code clearly specifies the approval period to begin after all appeals have been exhausted. This means the Applicant now has only 5 months rather than 17 months to apply and receive approval of the first DDP. Southwest Oregon Community College (SWOCC) has met with City Staff several times as they prepare their application for the site in the Lone Ranch Master Plan area that Borax has agreed to donate for the college campus. It is unlikely that the college or any Applicant for a DDP could move through the process in only 5 months.

The Applicant has constructed much of the needed water and sewer main extensions from the City's existing mains to the site along Highway 101. Additional infrastructure work is needed and several studies, required by the Final Order/ Conditions of Approval, need to be completed prior to making an application for a DDP.

17.70.120, BMC, authorizes the Planning Commission to grant a 2 year extension of time when "...conditions have not changed...." As the Applicant has explained in Attachment B no circumstances have changed that were fundamental to the findings which are the basis for approval of the Master Plan of Development.

RECOMMENDATION

Staff recommends APPROVAL of the 2 year extension of time for File No. MPD-1-04. This extension of time shall run from the date the MPD is due to expire on October 25, 2008 for 2 years until October 25, 2010. The original conditions of approval will remain in force.



Applicant:	U. S. Borax
Assessor's No:	40-14 & Index, Tax Lots 2400, 2402, and a portion of 2402
Size:	553 acres
Location:	East of Hwy. 101 and north of Carpenterville Road
Zone:	MPD-Master Plan Development

17.70.120 Effective period of master plan of development (MPoD) approval.

If the applicant has not submitted a DDP for the planned development or the first phase within four years from the date of approval, the MPoD shall expire. Where the planning commission finds that conditions have not changed, the commission may, at its discretion, extend the period for two additional years per extension, subject to applicable hearing and notice requirements. If after the approval of the first DDP, construction has not been started or at any time construction has lapsed for a period of three years, the MPoD will expire. [Ord. 03-O-446.PP.]

Burton Weast
Axxiom Resource, LLC
148 B Avenue, Suite 100, Lake Oswego, OR 97034
503.708.5222 Fax: 503.607.0686

April 29, 2008

Ms. Dianne Morris
Planning Director
City of Brookings
898 Elk Drive
Brookings, OR 97415

Dear Ms. Morris,

On behalf of U.S. Borax Inc. (Borax), I am requesting a two year extension for the approval of the Lone Ranch Master Plan of Development (MPoD), Case File MPD 1-04.

Borax received approval for the Master Plan of Development (MPoD) for Lone Ranch on October 25, 2004. The approval was appealed to the Land Use Board of Appeals (LUBA) and remanded back to the City. On August 22, 2005, the City Council approved the materials submitted in response to the issues of the remand.

The Court of Appeals recently ruled that the relevant date of approval is the actual date of approval, irrespective of any appeal to or remand from LUBA. *See Foland v. Jackson County*, 215 Or. App. 157, 168 P.3d 1238 (2007). Although Borax has been operating under the understanding that the approval would expire August 21, 2009, (four years from the date of the remand approval) under this interpretation the Lone Ranch MPoD would expire on October 24, 2008. Therefore, consistent with LUBA's interpretation, Borax requests a two year extension to the MPoD, consistent with the provisions of Brookings Development Code (BDC), Section 17.70.120. This would allow for approval of the Detailed Development Plan before October 23, 2010.

It has been expected that the first DDP to be filed would be the plan to accommodate the construction of the Southwestern Oregon Community College campus in Brookings. However, because the Detailed Development Plan has not been approved at this time, the extension is necessary. BDC Section 17.70.120 states that "*Where the planning commission finds that conditions have not changed, the commission may, at its discretion, extend the period for two additional years per extension, subject to applicable hearing and notice requirements.*"

Ms. Dianne Morris
April 29, 2008
Page Two

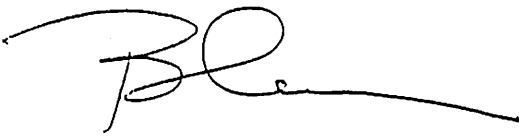
In addressing whether the Commission may find under Section 17.70.120 "...that conditions have not changed..." the question presented is whether there have been changes in circumstances that are so important and fundamental that they completely undermine the findings which are the basis for approval of the Master Plan of Development.

In fact, there have been no changes since the approval of the MPoD, that undermine the findings which are the basis for approval of the MPoD.

Please note that significant progress has been made over the past 2 1/2 years and that much of the work completed during this time is necessary in order to submit for the first DDP. In accordance with the appropriate hearing and notice requirements, Borax requests approval of the time extension, for a period of two years.

Enclosed, please find the application form signed by Borax and the fee of \$245.00. Please let us know the date of the Planning Commission public hearing on this matter. If you have any questions, please do not hesitate to call.

Very truly yours,



Burton Weast

cc: Dennis Boyle, U.S. Borax Inc.
Tim Ramis, Jordan Schrader Ramis, Attorneys at Law
Marty Stiven, Stiven Planning & Development Services, LLC

Attachments

SUPPLEMENTAL PACKET
for
PLANNING COMMISSION MTG.
June 3rd – File MPD-1-04

EXHIBIT B:	DATE:	FROM:	NUMBER OF PAGES:	DOCUMENTS:
B-1	May 29, 2008	Pat Sherman P. O. Box 1140 Brookings, OR 97415	54	5 page letter + 49 pages of documents
B-2	May 30, 2008 1:15 p.m.	Diana & Pete Chasar 935 Marina Heights Rd. Brookings, OR 97415	2	2 page letter
B-3	May 30, 2008 1:30 p.m.	Allan Haddox, Chairman of Rainbow Rock Condominium Assoc. Pacific Vista Condo Assoc. 17744 N. Hwy. 101 #100 Brookings, OR 97415	4	2 page letter + 2 documents

Pat Sherman
PO Box 1140
Brookings, OR 97415

May 28, 2008

RECEIVED
MAY 29 2008
CITY OF BROOKINGS

To: Brookings Planning Commission
898 Elk Drive
Brookings, OR 97415

Re: MPD-1-04 two year extension

Madam Chair and Commissioners,

BMC 17.70.120 gives you discretion to give extension to the Master Plan. But BMC states that before you can use your discretion, you must first make a finding that "conditions have not changed."

I am submitting this letter with the documents that support my statements.

Change #1- Source of water supply

In the original Master Plan the source of the water supply was wells on the property. The most recent plan is to use water from the City and not use the wells. This is a change in conditions.

From the time that Borax first submitted its Master Plan to the present day, the plan for the source of water for the development has evolved. When first presented, the plan was to rely on water from on-site wells and reservoirs. Now the plan seems to be to rely exclusively on water from the City. According to correspondence from Richard Nored, HGE Inc., the City's engineer, this change requires an amendment to the Master Plan.

The story of how we got from "all-wells" to "all-City" is convoluted. Using documents in the Borax file, I traced the evolution as best as I could. The documents, except for the cumbersome Master Plan, are attached. To make the story easier to follow, I have prepared a table.

Comments:

1. Based on new evidence, the change of the plan for source of water from "wells" to "City" happened without consulting the City's engineer, Richard Nored of HGE, Inc. The City engineer's October 31, 2006 e-mail contradicts testimony given during the MPoD hearing by the Planning Director concerning the adequacy of the City's water supply. The City engineer's comments also do not concur with testimony given by Otak, the applicant's engineer.
2. The testimony from the City's engineer that *was* included in the MPoD hearing is a letter dated July 6, 2004 which pre-dates the change in the plan for water.
3. The wells were always an integral part of the plan. That is why Condition of Approval #15, to allow for reverse flows, was included.
4. Now there is evidence that the wells aren't what they were thought to be.
5. It appears that water from the wells will not be available to augment the City's supply when the Chetco River has low flow or when the City is unable to treat an adequate volume of water. Originally, we were told that the wells would add to the City's water supply and help the City in low flow periods.
6. Goal 16 was never addressed in the original Master Plan application. Now that water will be withdrawn from the Chetco on a regular basis, Goal 16 needs to be evaluated.

Goal 16 Policy 10 states: Actions, which would potentially alter the estuarine ecosystem, shall be preceded by a clear presentation of the impacts of the proposed alterations. Such activities include dredging, fill, in-water structures, riprap, log storage, application of pesticides and herbicides, *water intake or withdrawal* and effluent discharge, flow land disposal of dredged material, and other activities which could affect the estuary's physical processes or biological resources.

WATER DOCUMENTS				
Date	Document	Author	Comment	Additional Comment
July 6, 2004 (NORED)	Letter to Leo Lightle, COB Community Development Director	Richard Nored, P.E. the City Engineer from HGE, Inc	Included in Master Plan Hearing File. This (early) document was referenced in the LUBA opinion, but it was outdated by then.	Recommends cost-sharing for infrastructure
September 21, 2004 (RAMIS1)	Letter	Tim Ramis, Attorney for Borax	Response to Comments in Public Hearing	Notes on-site water system for SWOCC. Notes on supplementing supply from City water system- (p.3) Notes on water from BOTH the City and the wells (p.4)
September 24, 2004 (RAMIS2)	Letter	Tim Ramis, Attorney for Borax	US Borax Response to comments	Applicant NOW proposing all City water system. Wells will be source of NEW water
October 25, 2004 (FOFOF)	Final Order Finding of Fact	City	#41.a. "proposed water system, which will be connected with the city system" #181 water right not needed until DDP	"Proposed water system" was the well based system
October 25, 2004 (COA)	Conditions of Approval	City	#15. requires reverse flows between project water system and city water system	Reverse flows implies two sources of water
July 7, 2005 (approx) (REMAND)	Final Opinion and Order	Land Use Board of Appeals (LUBA)	Use all City with No on-site wells	Relied on comments from applicant's engineer and City's Planning Director which are contradictory to comments of City Engineer in 10/31/2006 e-mail
April 30, 2006 (WILCOX)	e-mail	Don Wilcox, P.E. City Public Works Director	a. Wilcox thinks wells are source of water. b. Also recalls Watershed Council meeting	b. wells not likely to produce water
October 31, 2006 (NORED2)	e-mail	Richard Nored	Must read	Contradicts LUBA Final Order and Opinion Contradicts Planning Director testimony about adequacy of water supply

November 2, 2006 (NORED3)	letter	Richard Nored	Includes Specific Assumptions of Master Plan, project descriptions and cost information	
November, 2006 (PLAN2006)	Excerpts from "Water and Wastewater Facilities Plan to Serve Lone Ranch Development and Surrounding Areas", Revised	HGE Inc (City Engineer)	Comment on quality of wells. Current Plan to use all water from City. Discusses phasing.	

Change #2- Change of Oregon Law with respect to municipal water rights.

At the time the Master Plan was approved we all were assured that the City had adequate water rights on the Chetco. In particular the City has two permits at the Rainey site on the North Fork Chetco, one for 4cfs and one for 10cfs. In the LUBA appeal of the Master Plan, we learned that Water Watch had protested the City's water rights on the Chetco. This challenge was considered by LUBA in the appeal.

Since the LUBA remand was handed down, Oregon Law about municipal water rights has changed. Specifically, HB 3038, (see attachment) effective June 29, 2005 (after the LUBA appeal) adds additional constraints relating to municipal water right extensions. First, the law adds a time limit of 20 years, with exceptions, to the permit. Second, the first extension of the undeveloped portion of the permit *shall* be conditioned to maintain the persistence of listed fish species in the portions of waterways affected by water use under the permit.

This constraint has a direct bearing on the City's permit for 10cfs because that permit is not perfected, and there are two fish that are listed in Curry County waters. One is the federally threatened Coast Coho population. The other is the Pacific Lamprey which is listed as Vulnerable Sensitive on the Oregon list and Species of Concern on the Federal list. In the new state law the Department of Water Resources (DWR) is required to base its finding on existing data and upon the advice of the State Department of Fish and Wildlife (ODFW). This adds a new layer to the permit extension process and gives added weight to the issue of fish habitat and increased power to ODFW.

The City currently has an ordinance that limits withdrawal from the Chetco to 5.1cfs when stream flows fall below 80 cfs for three consecutive days. But since there is currently no formal fish protection agreement between the City and a state or federal agency, this issue is open for discussion whenever the City applies for an extension.

It is noteworthy that DWR holds an in-stream certificate, priority date 1980, (attached) for the reach of the Chetco below the North Fork to the tidewater for the purpose of supporting aquatic life. It is possible, perhaps probable, that upon application for renewal of the City's water right permit, ODFW may use the opportunity to assert the in-stream water right and require that withdrawal be restricted to 5.1cfs whenever stream flows fall below the volumes allowed in the DWR certificate. Those volumes are: from Oct 1 to Oct 15- 200cfs; from Oct 16 to Dec 31- 450cfs; from Jan 1 to May 31- 350cfs; from June 1 to June 15- 200cfs; from June 16 to June 30- 100cfs; from July 1 to Sept 30- 80cfs..

As an example of the potential impact this restriction would have, a table of daily flow data for October in the years from 2003 through 2007 is attached. In two of the five years (2003 and 2006) the daily mean discharge was below the DWR certificate level every single day. In 2004 it was below on 13 days, in 2005 it was below on 26 days, and in 2007 it was below on 12 days.

As a practical matter, this doesn't make any difference now because our water use doesn't approach 5.1cfs at the present time. But as we look to the future, and our daily demand increases, we can anticipate water restrictions occurring every year. According to the City of Brookings 2007 Water Master Plan, maximum daily demand projections are: 2009=3.89cfs; 2015=4.64cfs; 2022=5.71cfs; 2057=16.06cfs. Welcome to the water wars of the 21st century.

The City has hired a water rights specialist, Adam Sussman, and a water rights attorney, Martha O. Pagel. The City has enacted a Water Conservation Program. We have notified the golf course (see attachment) that the City will be unable to

provide water for them until the domestic water supply is secured. We have updated the Water Master Plan. All of these actions illustrate that the City is responding aggressively to its water right challenges.

The City is making progress, but much remains to be done to secure the City's water rights to the Chetco and, by law, there will be conditions added to any extension of the 10cfs water right.

Summary of Change #1 and 2

Change of source of water from wells on the property to the Chetco River is a fundamental change in the Master Plan that requires, according to the City's engineer, an amendment to the Master Plan. There is new evidence that the City's engineer was not consulted when the decision to change the source of water was made. There is new knowledge about the well water (or lack thereof). The change in state law concerning municipal water rights is another change of condition.

Combined, these changes in circumstances are so important and fundamental that they completely undermine the findings on which the plan for water is based. These fundamental changes preclude making a finding that "conditions have not changed." Therefore, the request for extension must be denied at this time. The applicant should submit an amendment to the Master Plan, and he could re-submit his request for an extension at the same time.

Sincerely,

Pat Sherman

A handwritten signature in cursive script that reads "Pat Sherman". The signature is written in dark ink and is positioned below the typed name.



July 6, 2004

EXHIBIT 2
38

ARCHITECTS
ENGINEERS
SURVEYORS
PLANNERS

City of Brookings
898 Elk Drive
Brookings, OR 97415

Attn: Leo Lightle
Community Development Director

Re: Master Plan of Development and
Technical Appendix
Lone Ranch Development
Project # 01.81

375 PARK AVE
COOS BAY
OREGON
97420

Dear Leo:

541.269.1166
FAX 541.269.1833
Cell 541.404.3791
lnored@hge1.com

We have reviewed detailed and well prepared documents constituting a Master Plan of Development for the Lone Ranch Development proposed by U.S. Borax. These documents provide a considerable planning effort which addresses anticipated environmental issues, planning requirements and preliminary engineering feasibility for the Lone Ranch property north of Carpenterville Road-near Brookings. All phases of the Master Plan have been addressed in detail, and the majority of the concerns have been considered from a preliminary engineering standpoint. Concerns which we believe should be considered by the City of Brookings include the following:

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

1. Proposed street widths should be a concern, although statewide trends are for reduced street widths in new development. We recommend that parking be limited to one side only for proposed street widths of 24' and 28' width.
2. Sewer and water pump stations should be constructed to standards adopted by the City of Brookings. Approvals should be obtained from the City before construction is permitted.
3. Planning by the City of Brookings has addressed a need for extending water and sewer service to the Rainbow Rock Condominium project. The Lone Ranch plan addresses the fact that the Rainbow Rock water supply is a surface water source obtained from the Lone Ranch property. Water quality and quantity for Rainbow Rock will be impacted by the proposed Lone Ranch development.
4. Geotechnical issues have been addressed in a thorough report, and the project development appears feasible. All construction shall be developed in accordance with geotechnical recommendations of the Lone Ranch Master Plan.
5. A transportation impact study is included in the technical appendix, and the recommendations appear sound for the projected growth. The City of Brookings should address the extent of transportation work to be provided by varying phases of the Lone Ranch development, and make this work an integral portion of approvals for development.
6. A thorough wetland assessment has been provided in the Master Plan of Development. The assessment identifies endangered species including the

NORED p.1.

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Western Lily. In general, concerns on this site appear similar to typical coastal environmental conditions. Proposed construction addresses needed work in wetland areas, and makes a point that no fill should occur within wetland boundaries. Impacts to wetland areas are very limited, and plans are to work around wetlands wherever possible. Recommendations for mitigation of site impacts are provided and appear reasonable.

7. Master Plan recommendations for off-site water improvements include expansion from Carpenterville Road. Total needs of the Brookings system to allow service for the Lone Ranch development include system expansion along Highway 101 to Easy Street, and on Easy Street to Seventh Street. Recommendations suggest cost sharing of needed expansion with the City of Brookings based on demand, and this seems to be a reasonable approach.

8. Master Plan recommendations for off-site wastewater improvements reference the *Water and Wastewater Facilities Plan to Serve Borax Development and Surrounding Areas*, as prepared by HGE Inc., November 2001. Recommendations once again suggest cost sharing of needed system improvements with the City of Brookings based on demand, and this seems to be a reasonable approach.

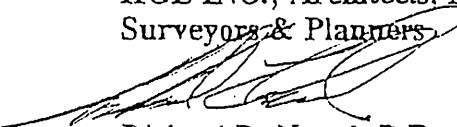
In general, Master Plan recommendations appear sound, and are provided in a manner that will benefit the development, the environment, and surrounding properties, and should not be a detriment to any public facilities. Coordination and cost sharing with the City of Brookings in developing off-site public infrastructure which benefits existing and future residents of the City appears to be fair and equitable for all parties.

If you have any questions or concerns, please contact me.

We appreciate the continuing opportunity to be of assistance 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 Supervisor
LauraLee Gray, Building Official



ARCHITECTS, ENGINEERS, SURVEYORS & PLANNERS
375 Park Avenue, Coos Bay, Oregon 97420

NORED p.2 535a

the development, the environment, and surrounding properties, and should not be a detriment to any public facilities."

Goal One raises concerns about using up all of the surplus capacity of the existing sewage treatment facility and attempts to limit the Borax property's allocation of the 2015 projected population to 1,924. The total projected population in the PFP completed in November 1999 for the areas north of the Chetco River was 5,528 and 2,802 for those areas south of the Chetco River which totals 8,330 within the urban growth boundary. The WWFP completed in November of 2001 for the Borax property and surrounding areas projected the population in 2015 to be 4,075. The additional population projected by year 2015 for flows from remaining areas north of the Chetco River and areas south of the Chetco River totaled 3,607 which results in a less total projected population of 7,682 in 2015. The current MPoD proposes less population projection (population equivalency of 2,500) for the Borax property. Therefore, development of the Borax properties as proposed by the Master Plan will not negatively affect the remaining areas of the urban growth boundary.

The use of an on-site sewer system would only be utilized as an interim measure for wastewater discharge from the community college, as is provided for in Section X. D. of the City of Brookings and Curry County Urban Areas Joint Management Agreement. The applicant expects to obtain sanitary sewer service from the City of Brookings and would agree to discontinue the on-site sewer system upon the applicant's ability to connect to the City's facilities in accordance with this agreement.

Goal One argues that the financing and replacement of the City's existing sewage collection system, which is necessary to provide service to the subject property, is feasible at each or any phase of the project has not been established. As mentioned above, recent wastewater treatment plant upgrades have been completed and HGE, Inc. considers the recommendations for cost sharing of needed system improvements with the City based on demand a reasonable approach.

Goal One believes the MPoD should include a master plan for a sanitary sewage system developed in coordination with and approved by the service provider as required by Plan Goal 14 Urbanization Policy 9(b). Section 70, Master Plan Development (MPD) District of Brookings Development Code does not require complete sanitary sewage system plans prior to the Detailed Development Plan Review. Both the City and HGE, Inc. believe that the PFP and WWFP cited above meet the intent and criteria for a master plan for these areas. Therefore, the sanitary sewer is or can be made available to serve the development.

Water

Goal One argues that we have not demonstrated that adequate water is available or can reasonably be made available since a water use application has not been filed. While the City or the applicant can file the water use application, it is premature to file a water use application until the MPoD is approved. In addition, the City is not as restricted in time as

RAMIS 1 p2

the MPoD applicant to initiate use of the water rights in a timely manner. Nor is it necessary to establish the water rights to demonstrate the adequacy of the water system because there are no restrictions on groundwater withdrawal on the site.

The use of an on-site water system would only be utilized as an interim measure for water requirements for the community college. The applicant expects to obtain water service from the City of Brookings and would agree to turn the on-site water system over to the City upon the applicant's ability to connect to the City's facilities.

Goal One has errors in their numbers for water rights to the Chetco River. The combined 20 cfs is really 12.9 million gallons per day rather than 12.9 gallons per day and the 14 cfs is really 9 million gallons per day.

Goal One states that according to the PFP, the treatment plant capacity is 2.2 mgd. The Water System Master Plan (WSMP) states that the treatment plant capacity is expected to be in the range of 2.3 to 2.6 mgd (p.2-4). The available treatment plant capacity can be supplemented with water sources located on the Lone Ranch, and when combined with proposed water storage capacity, there is adequate water supply to meet the demand for the proposed development. The maximum daily demand (MDD) identified by Goal One is not 10.5 mgd but 1.05 mgd. The proposed 500,000 gallons of storage initially, and 610,000 at a later date when demand warrants, provides for water storage plus fire flow storage plus equalization storage that totals 1.1 million gallons. These provisions meet those presented in the WSMP.

Goal One indicates that the applicant has not established that the financing and construction of the improvements to the water distribution system necessary to provide adequate service to the MPoD is feasible at each or any stage of the project. All of the proposed improvements identified in the WWFP will benefit the City and other properties. The applicant has suggested cost sharing of needed expansion with the City of Brookings based on demand and HGE, Inc., the City's Engineer, in their letter dated July 6, 2004, considered this a reasonable approach.

Goal One believes the MPoD should include a master plan for a water system developed in coordination with and approved by the service provider as required by Plan Goal 14 Urbanization Policy 9(b). Section 70, Master Plan Development (MPD) District of Brookings Development Code does not require complete water system plans prior to the Detailed Development Plan Review. Both the City and HGE, Inc. believe that the PFP, WWFP, and WSMP cited above demonstrate that an adequate water system for this site is available or can be made available at each phase.

Storm Drainage

Goal One represents that the project as presented does not comply with the PFP since the applicant does not propose to improve the existing culverts under US 101. The applicant does support the replacement of these culverts, especially when the culverts can be made

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fish friendly. However, it is reasonable to assume that we can design the stormwater system that will reasonably maintain the current hydrologic characteristics and not increase runoff discharged to the culverts.

Goal One suggests that findings of compliance with Goal 11 have not been proposed and cannot be made since the MPoD does not include a master plan for a municipal water (we will assume that Goal One mean stormwater) system as required by Plan Goal 14 Urbanization Policy 9(b). Section 70, Master Plan Development (MPD) District of Brookings Development Code does not require complete stormwater system plans prior to the Detailed Development Plan Review. Both the City and HGE, Inc. believe that the PFP cited above demonstrates that a stormwater management system for this site is available or can reasonably be made available at each phase.

Pete Chasar

Mr. Chasar's assertion is that public facilities and services are not being "planned and developed in a timely, orderly, efficient arrangement". Our response is provided under phasing above.

Mr. Chasar questions that the proposed water system will be adequate. At the time that the Master plan application was submitted to the City, evidence was provided that the two proposed wells could provide adequate water to serve the proposed development. Since then, the applicant and the City have worked together to commit to a water system that will rely on both the delivery of City water and the proposed wells. In fact, a condition of approval was added by the Brookings Planning Commission and agreed to by the applicant, that requires the two systems be integrated. Therefore, as acknowledged by the HGE, Inc. and the City, the proposed water system is adequate to accommodate the proposed development.

Yvonne Maitland (Citizens for Orderly Development)

Mrs. Maitland believes that without specific plans, a detailed hydrological analysis is impossible. Brookings Development Code does not require complete stormwater system plans or hydrological analysis prior to the Detailed Development Plan Review. Both the City and HGE, Inc. believe the PFP cited above properly identifies issues related to the hydrology of this area. Other properties in Brookings and elsewhere around the State that have similar characteristics have effectively dealt with these hydrological issues and that it is reasonable to assume that a stormwater system can be designed that will reasonably maintain these hydrologic characteristics. There are proven techniques and approaches that can be incorporated into design that will mimic the natural surface and subsurface flows. Options that can be used for spreading flows that are concentrated include anchored plates, concrete sump box, and notched curb spreader. It is also reasonable that these methods will provide reasonable protection of the lily habitat.

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EXHIBIT KK

RECEIVED

SEP 27 2004

CITY OF BROOKINGS
COMMUNITY DEVELOPMENT

U.S. BORAX'S RESPONSES TO COMMENTS

SEPTEMBER 24, 2004

General Comments

The application being considered by the Council is an application for approval of a Master Plan of Development. It is subject to the standards applicable to MPoDs, which are mostly set out in BDC 70.070. Consistency with applicable Comprehensive Plan provisions must also be considered. However, because the City's Comprehensive Plan and Development Code have been acknowledged to be in compliance with the statewide land use planning goals, the statewide goals are not directly applicable. ORS 197.175(2)(d).

The MPoD is only one step towards development approval and is not the final step. No development may take place until a Detailed Development Plan (DDP) for a particular phase of development is submitted and approved. BDC 70.020. The evaluation at this stage is therefore confined to the plan, which is a conceptual plan. Because further approvals of specific development plans are needed before development takes place, the review of the plan concept and is not a review of development.

The future DDP applications will include an updated statement regarding the timing, responsibilities and assurances for all public and private improvements. BDC 70.140B. The DDP applications must also address compatibility with adjacent land uses and consistency with the TSP. *Id.* These requirements assure that the DDP process will provide a meaningful review of development.

A set of proposed conditions of approval has been prepared. Some of those conditions of approval have been developed to assure compliance with applicable standards and criteria. Other conditions have been volunteered by the applicant, even though not required to assure compliance. The evaluation in the DDP approval process of consistency of the proposed development with the MPoD will evaluate consistency with the MPoD, as conditioned. No DDP will be approved if it is not consistent with the conditions of approval.

The standard for approval relating to public facilities is whether the "proposed MPoD will demonstrate that adequate utilities and infrastructure are available or can be reasonably be made available at each phase." BDC 70.070C (*emphasis added*). This requires only a determination that adequate utilities can reasonably be made available. It does not require specific plans, just a determination of feasibility. The DDP application for each phase will be required to provide more detailed information regarding the adequacy of utilities and infrastructure and engineered plans for any utilities or infrastructure to be provided with the development.

Some comments have been made that the proposed development standards (e.g. building height) are alternative development standards that replace existing development regulations. The

RAMIS 2

Water

Again, Goal One Coalition bases its arguments in part on a statewide land use planning goal, which does not apply to an MPoD approval. However, if Statewide Land Use Planning Goal 11 did apply, the MPoD complies with the Goal by planning for development of public facilities so that they are developed in time to provide service to each phase.

Goal One Coalition argues further that the Comprehensive Plan requires that all development must use the public water system. Although the MPoD as originally proposed did contain an option for a partially private water supply, the Applicant has stated that it is now proposing that the entire water system be part of the City water system. The City has provided information that the City's water system and water supply is adequate to provide service to Lone Ranch. The standard of using only the public water supply system has been met.

To the extent that new water sources are required, the new water sources are ground water sources in the Lone Ranch area. That area is not a restricted ground water area, so the water is available for use. The only requirement is to follow the state procedures for permit application and development and use of the water source.

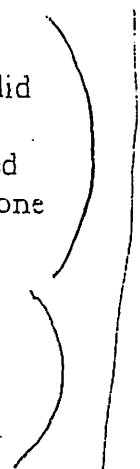
Goal One Coalition argues that the MPoD does not include a master plan for a municipal water system. Goal One Coalition misconstrues the policy. The policy requires a master plan that sets forth a plan for a water system. The MPoD does contain a plan for a water system. As amended by testimony, the plan is for a connection to the municipal water system and a system of mains to connect the entire plan area. The plan is appropriate to the Master Plan level, with more detailed plans to be developed for each DDP.

Goal One Coalition makes several specific arguments relating to the adequacy of the water system. However, the evidence supplied by the Applicant's consultants and by City staff, is sufficient to conclude that the system will be adequate for every phase. The material provided by Bob Vaught of Otak, submitted with these comments, further demonstrates that the water system is and will be adequate. Furthermore, as discussed above, the City's water system has been upgraded. The upgraded water system has capacity to serve the existing City and the level of development proposed in the MPoD, and the City has a water supply that is also adequate to do so.

Storm Drainage

Again, Goal One Coalition cites to a statewide planning goal, but those goals do not apply directly to this application. However, the MPoD is consistent with Goal 11 because it plans for timely and orderly development of the storm drainage system. The City's MPD regulations are acknowledged to be in compliance with the goals, and compliance with the City's standards therefore satisfies the goals. The City requires that adequate public facilities can reasonably be made available, and adequate public facilities can reasonably be made available. (See comments of Bob Vaught of Otak, submitted with these comments).

Water



Water

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hearing shall be provided in accordance with Section 84, Public Hearing Notice Procedures.

37. The City Planner has reviewed the application in accordance with Section 4. The Planning Commission hearing was duly noticed and has been held.

70.060 Staff Evaluation The City Planner shall prepare a report that evaluates whether the MPoD complies with the review criteria. The report shall also include a recommendation for approval or denial and, if needed, a list of conditions for the Planning Commission to consider if an approval is granted.

38. A staff report was prepared and City staff recommended approval with conditions.

70.070 Review Criteria The Planning Commission shall approve an application for MPoD upon finding that the following approval criteria be met:

A. The proposed MPoD is consistent with the purposes identified in Section 70.010 and the intent of the MPD zone;

39. As discussed above, the MPoD is consistent with the purposes of Section 70.010. The intent of the MPD is to provide for planned development to avoid inefficient and wasteful development. The MPoD is consistent with that intent by providing for efficient and environmentally sensitive development.

B. The proposed phasing schedule, if any, is reasonable and does not exceed 10 years between commencement of development on the first and last phases unless otherwise authorized by the Planning Commission either at the time of approval of the MPoD or by a modification to the MPoD. If at the end of 10 years the project is not built out, the Planning Commission shall review the MPoD and shall have the ability to require changes to or rescind the plan based on existing conditions

40. The Lone Ranch master plan utilizes a 15 year planning horizon. Because of the nature and extent of the Lone Ranch MPoD (15 neighborhoods, 1000 dwelling units), this is a reasonable phasing schedule. The nature and extent of the planned development justify authorization of a 15 year phasing schedule.

C. The proposed MPoD will demonstrate that adequate utilities and infrastructure are available or can reasonably be made available at each phase. The proposed MPoD will further demonstrate that existing utility services and water supplies for adjacent properties will not be negatively affected at each phase.

41. The materials submitted by applicant, including the technical appendix, demonstrate that adequate utilities can reasonably be made available at each phase of the development and that adjacent properties will not be negatively affected. The following discusses specific utilities and infrastructure:

here



- a. Water: Substantial evidence is supplied in the Lone Ranch Master Plan Utilities Report, and in subsequent testimony and submissions by the project engineer and city staff, that the proposed water system, which will be connected with the city system, will adequately serve the site and will not negatively affect adjacent properties. The testimony of the City's Planning Director and the letter from the City's engineering consultant constitute substantial evidence supporting that the water system and supply can reasonably be made available at each phase of the development.
- b. The Rainbow Rock Condominiums water system is the only other water system potentially affected by the Lone Ranch MPoD. That project will be able to connect to the City's water system at the time that it is extended to serve the Lone Ranch project and before any adverse impacts occur. The City system has adequate capacity to serve the condominiums. The water supply to each phase of the project, to the Rainbow Rock Condominiums and to the rest of the City will remain adequate.
- c. Sanitary Sewer: Lone Ranch will connect to the City's sanitary sewer system. The City's 1999 Public Facility Plan and the Lone Ranch Master Plan Utilities Report, as well as evidence provided by applicant's engineers and by City staff and the City's engineering consultant provide substantial evidence that there is adequate capacity to accommodate the proposed development.
- d. The site contains an easement south of Taylor Creek, which is used as a sanitary sewer drain field to accommodate the Rainbow Rock Mobile Home Park, located east of Lone Ranch. No impact on the drain field is anticipated from any development of Lone Ranch. However, per the terms of the easement, the mobile home park will connect to the public sanitary sewer system at the time it is made available and the drain field will be abandoned. Utility service will remain adequate.
- e. Storm Water Management: The Lone Ranch storm drain system will be designed to connect to the existing storm conveyances. The storm drain network, consisting of storm drains, catch basins and other stormwater management facilities will be designed as each neighborhood is developed. The Lone Ranch Master Plan Utilities Report, as well as testimony from applicant's engineers, City staff, and the City's engineering consultant provides substantial evidence that the proposed system is adequate to serve the proposed development. A condition of approval is being imposed requiring a hydrologic study for each DDP to ensure compliance.
- f. Public Safety: At the time that the Lone Ranch property was annexed into the City of Brookings, the City committed to providing adequate police and fire protection to the site as the Lone Ranch community was built. The City can reasonably make adequate police services available.

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42. Based on the Lone Ranch Master Plan Utilities Report, the City's Public Facilities Plan, the testimony and evidence provided, and approval of the annexation, public services are adequate or will be made to be adequate during the course of development of Lone Ranch. Assurance that the public facilities will actually be provided prior to development is provided by the DDP process and the conditions of approval.
- D. *The proposed MPoD will demonstrate that the plan respects the physical characteristics of the site.*
43. The development has been designed to minimize the impact on the existing wetlands and buffer areas and avoids impact to the existing lilies. More than 2/3 of the site has been left in open space in direct response to the slopes, existing vegetation and wetlands and existing access points. The MPoD provides for 15 separate neighborhoods as a means of respecting the physical characteristics of the site, rather than a single neighborhood that would ignore existing physical characteristics.
44. The plan itself is evidence that the plan respects the physical characteristics of the site.
- E. *The applicant demonstrates that all deviations from the development standards are warranted.*
45. The MPoD proposes both development standards and some deviations from otherwise applicable development standards. The Council finds that the proposed standards for the MPoD zone, including standards that deviate from otherwise applicable standards, are warranted.
46. The code does not contain minimum lot size, width, or height standards for the MPD zone. The standards are to be set by the MPoD. A deviation is a deviation from an otherwise applicable code standard. A standard established in the MPoD is not a deviation unless it is contrary to an otherwise applicable code standard. The following standards are not deviations.
- a. The applicant proposes a general minimum single family detached lot size of 6,000 square feet, with a maximum of 10% of the lots proposed in any detailed development plan to be a minimum of 5,000 square feet. This will allow flexibility in the siting of lots to minimize impact on wetlands and buffers. The need to provide adequate buffers to protect the environment is sufficient justification to allow a portion of the lots to be below the generally applicable minimum lot size proposed in the MPoD. The location of the development and the amount of open space ensures that this will not be a dense urban development but will maintain the values intended to be preserved by the minimum lot size requirement. The Council finds that the 6,000 square feet minimum lot size is appropriate and that allowing 10 percent of the lots to be less than 6,000 square feet, but greater than 5,000 square feet, provides an appropriate standard for lot sizes and appropriate density for the developable single family areas.

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- 174. USF&WS recommends additional surveys of western lilies. Additional surveys will be required before detailed development plans are approved, but additional surveys are not required at this point in the process, given that approval of the MPoD does not approve development. The Applicant has stated that the surveys will follow required protocols.
- 175. USF&WS recommended postponing a final decision until more information is known. However, this decision does not authorize development and the MPoD provides for flexibility that will allow actual development plans to be tailored to protect natural resources and important wildlife habitat. While there is a need for more information before detailed development plans are approved, there is no need to delay approval of the MPoD.
- 176. USF&WS recommends a hydrological analysis, but that is not possible at this time, given that the MPoD is only conceptual and does not provide specifics of development.
- 177. USF&WS recommends an expanded wetlands functional assessment. The wetlands functional assessment provided by applicant met all requirements of the agencies with authority over wetlands.
- 178. USF&WS recommends wider buffer widths. The buffer widths proposed are adequate and are consistent with the standards of the agencies with regulatory authority.
- 179. USF&WS recommends vegetation management techniques that promote western lily habitat. The City anticipates that responsible regulatory agencies will impose such conditions. The standards and criteria applicable to land use decisions, specifically those applicable to the MPoD, do not require such a condition.
- 180. The recommendations by USF&WS are not directed to any applicable land use standard or criterion, but are based on USF&WS's general interest in protected species. USF&WS will have the opportunity to review and comment on any wetlands alteration permit that is issued.

Comments by Pat Sherman

- 181. In a memorandum dated August 18, 2004, Pat Sherman stated that a water right must be obtained before a well may be used. This statement does not provide a reason to delay approval of the MPoD. Ms. Sherman suggested conditioning approval on obtaining a water right. That condition may be necessary at the time of detailed development plan approval, but is not necessary at this time, because the approval is only of the conceptual plan, not any development. Ms. Sherman's argument is not related to any applicable standards or criteria.

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Additional Comments Submitted At or After The Close of Oral Testimony

- 182. The Council allowed submission of additional written comments after the close of oral testimony. Various persons, mostly opponents of the MPoD, submitted

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3. All streets shall be constructed in the manner and standards set forth in the approved Master Plan for that street segment. Any deviation from that of the approved Master Plan beyond that allowed by Section 70 of the Land Development Code shall require an amendment to the Master Plan document.
9. Prior to any construction within the project area, the applicant shall submit four (4) copies of water system construction plans providing service to the construction site, for review and approval of the City Engineer and an application for a DDP for the water system construction for review and approval by the Planning Commission.
10. 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.
11. Prior to any construction within the project area, the applicant shall submit four (4) copies of sanitary sewer construction plans providing service to the construction site, for review and approval of the City Engineer and an application for a DDP for the sanitary sewer system construction for review and approval by the Planning Commission.
12. 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, ^{Land use} and Standard Specifications Document, dated August 1988. _{BMC}
13. All development shall comply with the state regulations regarding cultural resources, specifically, ORS 358.905 to 358.955, ORS 390.235 to 390.240 and ORS 97.740 to 97.760, to the extent applicable. _{13.10}
14. All street, water, sewer storm drainage and other utility construction to be carried out simultaneously may be included in one DDP for review and approval by the City Engineer and Planning Commission.
15. The project water system shall be developed to connect to the existing city system and allow reverse flows.
16. The applicant shall be prepared to provide a geological report related to the installation and construction of streets and utilities if required by the City Engineer.

Conditions for the Development of Commercial, College or Residential Phases.

17. Prior to the construction of any phase or partial phase of the project the applicant shall submit a DDP pursuant to Section 70 of the Land Development Code, for review and approval by the Planning Commission.
18. Each DDP shall be in significant conformance for that phase or partial phase of the area shown in the approved Master Plan. Any deviation beyond that allowed by Section 70 shall require an amendment to the Master Plan document.

COA

1 BEFORE THE LAND USE BOARD OF APPEALS
2 OF THE STATE OF OREGON

3
4 OREGON SHORES CONSERVATION
5 COALITION, CATHERINE WILEY,
6 and PETER CHASAR
7 *Petitioners,*

8
9 and

10
11 CITIZENS FOR ORDERLY DEVELOPMENT
12 and BILL SMITH,
13 *Intervenors-Petitioners,*

14
15 vs.

16
17 CITY OF BROOKINGS,
18 *Respondent,*

19
20 and

21
22 U.S. BORAX, INC.
23 *Intervenor-Respondent.*

24
25 LUBA No. 2004-192

26
27 FINAL OPINION
28 AND ORDER

29
30 Appeal from City of Brookings.

31
32 James D. Brown, Portland, filed the petition for review and argued on behalf of
33 petitioners and intervenors-petitioners. With him on the brief was Cascade Resources
34 Advocacy Group.

35
36 John B. Trew, Coquille, filed the response brief on behalf of respondent. With him on
37 the brief was Trew, Cyphers and Meynink.

38
39 Timothy V. Ramis and Gary Firestone, Portland, filed the response brief and argued on
40 behalf of intervenor-respondent. With them on the brief was Ramis Crew Corrigan and
41 Bachrach, LLP.

42
43 HOLSTUN, Board Chair; BASSHAM, Board Member; DAVIES, Board Member,
44 participated in the decision.
45

REMAND

1 The challenged decision approves an MPoD, it does not amend a functional plan, a
2 comprehensive plan or a land use regulation. The city contemporaneously adopted a separate
3 decision that approved a comprehensive plan amendment to adopt the approved MPoD as
4 part of the city's comprehensive plan. However, petitioners did not appeal that decision.
5 Although that plan amendment might obligate the city to apply the TPR if the amendment
6 would "significantly affect a transportation facility," within the meaning of OAR 660-012-
7 0060(1), that decision is not before us in this appeal.¹⁹ Petitioners have not demonstrated how
8 the only decision that is before us was required to apply the TPR.

9 **FOURTH ASSIGNMENT OF ERROR**

10 One of the approval criteria for MPoD approval is BLDC 70.070(C), which provides:

11 "The proposed MPoD will demonstrate that adequate utilities and
12 infrastructure are available or can reasonably be made available at each phase.
13 The proposed MPoD will further demonstrate that existing utility services and
14 water supplies for adjacent properties will not be negatively affected at each
15 phase."

16 Under the fourth assignment of error petitioners argue that the approved MPoD fails to make
17 the demonstration required by BLDC 70.070(C) for several necessary utility services.

18 **A. Water**

19 The MPoD lists three options for providing water to the property. Option 1 calls for a
20 private onsite system separate from the city's water system. Option 2 calls for extension of
21 the city water system to serve the site. Option 3 calls for a private onsite water system to
22 serve the initial phases of development with that system to become part of the city's water

"(d) Would reduce the performance standards of the facility below the minimum acceptable level identified in the TSP."

¹⁹ We review some of the city's TPR findings later in this decision, in considering petitioners' challenge under a city standard that requires assessment of transportation system impacts. Based on that review, the contemporaneous plan amendment that has not been appealed to us apparently either does not significantly affect transportation facilities or, where it does, the city appears to have adopted the kind of mitigation measures that are required by OAR 660-012-0060(1).

REMAND

1 system during later phases. The MPoD proposed option 3, with onsite wells providing the
2 initial water source. Under option 3, when the onsite water distribution system is connected
3 to the city's water system, those onsite wells would provide a backup groundwater source of
4 water for the city's system. As approved by the city in the decision challenged in this appeal,
5 the development's water system will be connected to the city's water system from the
6 beginning and there will be no on-site wells (option 2).

7 Petitioners first contend that the MPoD that was adopted as part of the city's
8 comprehensive plan is the original MPoD which proposes Option 3, whereas the MPoD
9 approved in this decision is predicated on option 2. Petitioners contend the challenged
10 decision should be remanded to resolve the inconsistency.

11 As we have already noted, petitioners did not appeal the city decision that amended
12 the city's comprehensive plan to include the MPoD. Therefore, even if it was error not to
13 require that the MPoD be amended to reflect the ultimate choice concerning the water system
14 before it was adopted as part of the comprehensive plan, that decision is not before us.²⁰

15 Petitioners next point to evidence that was submitted below that raises questions about
16 whether there is a sufficient source of water available to the city water system to supply the
17 proposed development and notes that the city's water right to remove water from the Chetco
18 River is currently under protest. Record 200-201, 304. Respondents cite, among other
19 things, a memorandum from Otak engineering and testimony that was submitted by the
20 planning director. Record 116-17; Respondents' Brief App-11. Otak and the planning
21 director both explain why they believe there is sufficient capacity to serve the subject property.

²⁰ Respondents also note that the only difference between option 2 and option 3 is the timing regarding the connection of the water system to the city system. Because it was always anticipated that the water system would connect to and become part of the city's water system, respondents contend it is unnecessary to amend the MPoD to reflect the later decision to connect to the city system from the beginning. With the understanding that the option to delay connection to the city water system that is authorized by the plan amendment is no longer available to Borax by virtue of the challenged decision that approves the MPoD, we agree with respondents that any error the city may have adopted in its plan amendment is harmless.

REMAND

1 from existing city water supplies and note that onsite wells could be developed to supplement
2 that water supply if necessary. Respondents contend that evidence is more than sufficient to
3 support the city's finding that there is adequate water available to serve the subject property.
4 We agree with respondents.

5 Petitioners also contend that the city's decision does not adequately explain how the
6 property can be developed without adversely affecting the water supply of the neighboring
7 Rainbow Condominiums and or how funding and cost sharing for the needed water system
8 improvements will be accomplished.

9 Respondents point out that the city found that Rainbow Rock Condominiums will be
10 able to connect to the city water system when it is extended, and that finding is unchallenged.
11 We agree that unchallenged finding is sufficient to dispose of any concerns about impacts on
12 Rainbow Rock Condominiums.

13 With regard to financing the water system, respondents note that the Lone Ranch
14 Technical Appendix includes the "Lone Ranch Master Plan Utilities Report" (Utilities
15 Report). See n 1. The Utilities Report explains that Borax will pay the costs of all onsite
16 improvements and will share in the costs of off-site improvements. Utilities Report 23. A
17 variety of other funding sources are discussed for the remaining funding required for off-site
18 improvements. Respondents contend, and we agree, the Utilities Report is sufficient to show
19 it is financially feasible to fund the needed water system improvement.

20 For the reasons explained above, we conclude that petitioners' arguments under the
21 fourth assignment of error concerning the proposed water system provide no basis for reversal
22 or remand.

23 **B. Sewer**

24 Petitioners cite testimony below that questions whether there is sufficient capacity in
25 the city's sewer system to serve the proposed development. Record 197-98. Petitioners
26 question whether needed facility expansions will be available when the anticipated phases of

REMAND

Pat Sherman

D-8

From: Donald Wilcox
Sent: Sunday, April 30, 2006 2:10 PM
To: Pat Sherman
Cc: Dale Shaddox
Subject: Lone Ranch Will Serve capability

Pat,

As per our discussion last Friday concerning the approved Lone Ranch Master Plan of Development in which on-site wells were proposed for the water supply, here are my recollections of the meetings we discussed:

On Tuesday, April 11, I met with John Bischoff and Burton Weist to discuss water and sewer service "Will Serve" capability from the City for the Lone Ranch development. I informed Burton of the following:

- It was my understanding that Lone Ranch would be self sufficient with water based on two domestic supply wells on the Lone ranch property and that a mutual aid connection was the only reason for a water line to connect Lone Ranch with the City's water system. Burton responded that Leroy Blodgett cancelled that plan and required Lone Ranch to be supplied with water from the City's water system. He added that the City was to apply for water rights for the wells if the well pump tests were acceptable to the City and DWR.
- The City has no capacity to serve water to Lone Ranch unless all of the improvements as identified in the HGE Engineering report were completed. In addition, the booster pumps and upsizing of our water lines from the WTP to our 1.5 MG reservoir and larger intake pumps and upsizing of our water line from our Intake to our WTP and WTP by-pass would be required before Lone Ranch build-out. I offered a copy of the HGE report but Burton said he already has the report and that all the cost estimates in that report are about 4 X too high. He did not comment on the projects being needed to serve Lone Ranch.
- The current water connection needs to be disconnected until disinfected and in service. Burton said he would take care of that.
- The City is not currently able to provide sewer collection service but does have treatment capacity. There is about one mile of missing sewer line to connect Lone Ranch with the City sewer but that line and several other large pipe projects would need to be completed as identified in the HGE Engineering report before we could have collection system capacity to serve Lone ranch.

Last December or January, Dale and I attended a Chetco Watershed Council meeting. Present at that meeting were two DWR employees. I believe they were Ivan Gall, RG and Jonathan La Marche. Larry Anderson was present also. We may be able to get minutes of that meeting, but my recollection is that the DWR staff was asked if they knew anything about wells on the Lone Ranch site to provide water for that development. DWR staff explained that to the best of their knowledge, there are no water rights or wells capable of municipal production in that area. In addition, they were almost certain that the geological make-up in that area would not likely produce much water because it is rock with small fissures which hold very little water, not porous media needed for an aquifer to occur.

Please let me know if you have any questions or require additional information.

Don

WILCOX



Donald Wilcox, PE
Public Works Director
City of Brookings, OR
Phone: 541.469.1151
Fax: 541.469.3650

WILCOX

Dale Shaddox

From: Richard Nored [rnored@hge1.com]
Sent: Tuesday, October 31, 2006 9:43 AM
To: Dale Shaddox; Bill Sharp, Chris Wallace; Dianne Snow; John Cowan; Paul Hughes
Cc: Pat Sherman, Dave Gordon
Subject: RE: Lone Ranch serious issues

I appreciate the issues raised by Mayor Sherman. The questions are well thought out and provide insight and understanding we don't often see from Councilors. I will attempt to provide a response in the order addressed, first with regard to the Final Order, and secondly for the two questions raised.

COA # 15. The project water system shall be developed to connect to the existing city system and allow reverse flows. The Lone Ranch Master Plan provides for total reservoir storage of 1.1 MG with a 500,000 gallon initial reservoir. Initial plans included on-site well capacity for average daily demands of Lone Ranch with fire demands to be provided from the City of Brookings. The wells and the initial reservoir were to be provided first phase. Mains within the Lone Ranch development were sized for 1500 gpm fire protection, and domestic usage was projected at a total of 583 gpm. An additional demand was projected for the Rainbow Rock condominium project at 42 gpm in the Lone Ranch Proposal (63.5 gpm in City Plan). The proposal by Lone Ranch will allow for reverse flows, so this condition should be satisfied.

COA # 21. All appropriate federal and state permits related to the direct impact of development on the waters of the State or U.S. shall be obtained prior to development. This should be achievable if the wells at Lone Ranch produce adequate quantities of water.

Questions for the Engineer.

1. Is the 12" main on Hwy 101 big enough to accommodate both fire flows and domestic demand? The line installed by Lone Ranch was a 16" main which should be adequate for fire flows, with the understanding that domestic demand would be provided by their wells. In addition, the majority of fire flows will be provided by reservoir storage and domestic demand is minimal in comparison to fire flows. I believe that what they have installed will provide adequate capacity with the installation of reservoir storage in Lone Ranch, irregardless of the capacity of the wells. In sizing for the 16" water main which has been installed, their design calculations assumed a well capacity of 140 gpm, which is substantially less than the original Master Plan, but this may just be for initial planning purposes. Outside of the installed waterlines, the remainder of the recommendations from the Water and Wastewater Facilities Plan to Serve Borax Development and Surrounding Areas will need to be installed. This includes a 16" waterline from Carpenterville Road to Easy Street, and replacement of the Easy Street waterline with a 12" waterline from Hwy 101 to Fern Ave. This should provide for onsite needs.

2. If they hookup to our water system, how much water storage, in addition to the previous calculations, must be added? Or do they need to downsize their project? Their proposal was always to provide reservoir storage for the projected development in Lone Ranch, initially with a 500,000 gallon storage reservoir, and ultimately with a total storage of 1,100,000 gallons. This should be adequate with their projected wells and with the proposed water supply from the City of Brookings. If the facilities are installed, there should be no need to downsize their project.

Comment: If Lone Ranch is unable to develop a well supply, or to provide water rights and permits for the wells, the plan will likely require an amendment. Projections of the Water System Master Plan 2000 anticipate water needs in excess of 5.1 cfs on a maximum daily basis, by 2025. Lone Ranch was not envisioned in the planning for the Water System Master Plan in 2000, since it was outside the UGB. This issue will ultimately need to be addressed, but the addition of Lone Ranch without a supplemental water supply will place an additional demand on the water system.

From: Dale Shaddox [mailto:dshaddox@brookings.or.us]

NORED 2

10/31/2006

Sent: Monday, October 23, 2006 9:18 AM
To: Bill Sharp; Chris Wallace; Dianne Snow; John Cowan; rnored@hge1.com; Paul Hughes
Cc: Pat Sherman; Dave Gordon
Subject: FW: Lone Ranch serious issues

I am forwarding these comments from the Mayor as food for thought and review for now. We need to have a meeting to review the various topics prior to our upcoming meeting with Borax reps on Nov. 3 (10AM). Probably a conference call to Dick with the rest of us in my office. How does the 31st (Tuesday morning after department head meeting) at 9:30 look to everyone?

The other topics to consider include:

- Offsite improvements; scope and estimates of cost
- Potential for City cost sharing, if any; including review of reimbursement agreements, and SDC fund balances and priority of projects.
- Rainbow Rock watershed issues
- On-site water supply issues.
- Archeological issues; see letter from State Archeologist
- Etc.

Thanks, and let me know of you availability for the conference call.

Dale Shaddox
City Manager
City of Brookings, OR
541-469-1101
dshaddox@brookings.or.us

-----Original Message-----

From: Dale Shaddox
Sent: Monday, October 23, 2006 8:06 AM
To: 'Pat Sherman'
Subject: RE: Lone Ranch serious issues

Hi Pat,

Thanks for the notes and thoughtful insight. I will discuss with staff and our engineer.

Dale Shaddox
City Manager
City of Brookings, OR
541-469-1101
dshaddox@brookings.or.us

-----Original Message-----

From: Pat Sherman [mailto:psherman99@verizon.net]
Sent: Sunday, October 22, 2006 6:23 PM
To: Dale Shaddox
Subject: Lone Ranch serious issues

Dale,

In reviewing the Final Order for the Lone Ranch MPoD there are two conditions of approval I would like to bring to your attention.

15. The project water system shall be developed to connect to the existing city system and allow reverse flows.

Comment. The project water system for the initial phases was based on their wells.

21. All appropriate federal and state permits related to the direct impact of development on the

NORED 2

waters of the State or U.S. shall be obtained prior to development.

Comment. Sounds like obtaining a water permit for the well will be problematic, at best. More likely not doable.

And CoA 2. The conditions stated herein are mandatory and must be completed. Failure to comply....etc.

So, basically, from the get-go their water system was based on the well, and there is no permit for the well, and not likely to be one. They will have to amend their plan, I think. Amending the plan would mean that they get all of their water from the City. At one time Don Wilcox calculated that if Lone Ranch was included in our water system, we would exceed on a fairly regular basis the 5.1 cfs we are restricted to in our dry periods.

So, I have two questions for our engineer.

1. Is the 12" main on Hwy 101 big enough to accommodate both fire flows and domestic demand? Do the other offsite pipes need to be re-sized?
2. If they hook up to our water system how much water storage, in addition to the previous calculations, must be added? Or do they need to downsize their project?

Pat

NOTED 2



November 2, 2006

MEMO FOR NOVEMBER 3, 2006 MEETING
CITY OF BROOKINGS AND BORAX REPRESENTATIVES

ARCHITECTS
ENGINEERS
SURVEYORS
PLANNERS

BACKGROUND

A Water and Wastewater Facilities Plan to serve the Lone Ranch Development was completed in November 2001 by HGE, with the intent of complementing the Master Plan Document developed by Borax.

Specific Assumptions of the Master Plan included the following:

375 PARK AVE
COOS BAY,
OREGON
97420

1. A water source from groundwater supplies would be developed for consumptive needs of the development. Needs were projected at 625 gpm, and groundwater sources would be developed in Phase I.
2. Fire protective needs would be provided through the Brookings Water System, interconnected with facilities developed within Lone Ranch.
3. Storage within Lone Ranch was proposed as 500,000 gallons for Phase I development, and additional capacity for subsequent development (to a total storage meeting development needs of 1,100,000 gallons) would be added as need arose in subsequent phases.
4. All of the recommended water system improvements in the Facilities Plan assumed that Lone Ranch would provide on-site water facilities that would not adversely impact the existing water system and water right needs for the City of Brookings.
5. Lone Ranch would obtain water rights for the developed groundwater supply, and would transfer these rights to the City of Brookings.

541.269.1166
FAX 541.269.1833
general@hge1.com

Water and Sewer Recommendations and Costs Needed to be Accomplished:

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

Remaining water needs, excluding work accomplished by Lone Ranch from Carpenterville Road North to Lone Ranch, and including construction cost, contingencies, engineering, construction management, legal and administrative costs are provided below. Costs are presented with original estimates, and increased by the ENR index to costs for October 22, 2006.

1)	16" Water Main - Easy Street to Glenwood Drive	
	5,000 lf @ \$ 114.08 =	\$ 570,400
2)	12" Water Main - Glenwood Drive to Carpenterville Rd.	
	3,000 lf @ \$ 107.33	\$ 321,990
3)	12" Water Main in Easy Street - Fern Avenue to Highway 101 - 5,600 lf @ \$ 107.33 =	\$ 601,050
4)	12" Boring under Highway 101 =	\$ 40,500
5)	Misc. Related Construction =	\$ 497,800
	Total Remaining Water Construction - 2001 Costs =	\$ 2,031,740

NORED 3

Inflation costs since 2001. ENR in 2001 = 6,395. ENR on
October 22, 2006 = 7,883. Inflation since original 2001 estimate
equals 24 %.

Total Remaining Water Construction - 2006 Costs = \$ 2,504,490

A schematic from the original Facilities Plan, labeled Figure 7.1, is attached for
reference purposes.

Remaining wastewater needs, excluding work accomplished by Lone Ranch from
Carpenterville Road North to Lone Ranch, and including construction cost,
contingencies, engineering, construction management, legal and administrative
costs, are provided below. Costs are presented with original estimates, and
increased by the ENR index to costs for October 22, 2006.

1)	12" Force Main - Carpenterville Rd. to Parkview Drive	
	5,600 lf @ \$ 56.70 =	\$ 317,520
2)	Wastewater Pump Station	\$ 405,000
3)	Force Main Appurtenances =	\$ 33,250
4)	Force Main Related Construction =	\$ 111,375
5)	24" Main - Moore Street to Parkview Drive = <i>crissey installed</i>	\$ 1,133,260
6)	27" and 36" Main - Moore Street to WWTP =	\$ 1,641,400
	Total Wastewater System Construction - 2001 Costs =	\$ 3,641,805

Inflation costs since 2001. ENR in 2001 = 6,395. ENR on
October 22, 2006 = 7,883. Inflation since original 2001 estimate
equals 24 %.

Total Wastewater System Construction - 2006 Costs = \$ 4,489,190

The City of Brookings installed recommended wastewater facilities from Crissey
Circle to Parkview Drive. Costs for installed facilities needs to be added to
remaining construction.

Reimbursement to City of Brookings = \$ 750,000

TOTAL REIMBURSEMENT AND CONSTRUCTION \$ 5,239,186
2006 COST FOR WASTEWATER

A schematic from the original Facilities Plan, labeled Figure 8.1, is attached for
reference purposes.

Construction Approach

The City of Brookings does not subsidize development, and has *no funds* for
needed infrastructure to serve Lone Ranch. Lone Ranch developers will need to
provide water and wastewater funding for recommended construction. Total
current estimates for recommended improvements remaining to be funded (From
Facilities Planning Recommendations) total \$ 7,743,676.

NOVED 3

THE CITY OF BROOKINGS WILL NOT HAVE ANY FUNDS AVAILABLE FOR CONSTRUCTION. The Lone Ranch developer will need to fund design and construction with reimbursement through either Systems Development Charges or a Reimbursement Agreement, which likely will be in similar form.

Memorandum of Understanding/Infrastructure Agreement

The process could begin with a "Memorandum of Understanding", potentially leading to an infrastructure agreement of some form.

Existing Systems Development Charges

The City of Brookings has a current overall Systems Development Charge of \$ 16.872 per EDU. This overall SDC will be updated in 2007 to reflect inflation and some costs which were not addressed in the current SDC, and will follow new Master Plans currently being developed. SDC charges will likely increase significantly.

\$ 3,000,000 of the current wastewater improvement fee was included for work planned and installed to serve Lone Ranch. A credit could be granted to the developers of Lone Ranch for each new EDU developed in the Lone Ranch project area.

No water improvement costs associated with Lone Ranch were included within the Water SDC, and no reimbursement from SDC funds would be available to Lone Ranch.

The current SDC is based on a 10 year planning period.

Potential Site Specific Reimbursement Agreement Fee

The City of Brookings could adopt a specific reimbursement SDC or reimbursement agreement for areas benefitted from infrastructure to be provided by the developers of Lone Ranch. Payback at the current time would be reimbursed per EDU for a 10 year time period. This SDC would be in addition to the existing Systems Development Charge for growth, and probably could be extended for the 20 year planning period. Reimbursement fees could be collected and returned to the developers from dollars collected from the benefitted area.

Preliminary growth projections are provided in the 2001 Water and Wastewater Facilities Plan to serve the Borax Development. Estimates could be refined to determine the reimbursement SDC for each area benefitted by planned infrastructure, to be installed by the developers of Lone Ranch.

Potential Reimbursement District

The City of Brookings could develop a reimbursement district procedure, and establish ordinances to allow for reimbursement from properties benefitting from infrastructure to be developed. However, this procedure would be very similar to a project specific reimbursement SDC, and we would recommend the SDC approach.

NORED 3

2.3.1 Water Resources

Water resources in the Urban Growth Area were discussed in the April 1988 City of Brookings Wastewater Facilities Plan¹.

The Oregon Human Services Division tested water samples from Oregon Driftwood Shores, Dawson Tract, and West Harris Heights for contamination, and the area was the subject of a health hazard annexation to the City of Brookings. This area is now served with water and wastewater infrastructure. Borax Company originally contemplated the development of wells to serve as the primary water source for their property, with mixing from the Brookings municipal supply to assure an adequate water supply for property development. The majority of existing wells and springs which have been tested vary from marginal to hazardous for drinking purposes. Lone Ranch is currently interested in water service from the City of Brookings, with the potential for transferring existing wells to the City for future potential water sources.

2.3.2 Earthquake

The City's Comprehensive Plan includes a description of the maximum probable earthquake in the area, effects of an earthquake of this intensity, and probability of it occurring.

The maximum probable earthquake in the area has an equivalent Richter Magnitude of 6.2. Damage could be slight in specially designed structures; considerable in ordinary substantial buildings; great in poorly built buildings. Earthquakes of this intensity probably have a very low frequency of occurrence in this area (less than once per hundred years). None have occurred in the settled history of Brookings.

2.3.3 Geological Hazards

The northeasterly portion of the study area may include earth flow and slump topography. Hazards include variable foundation strength and poor drainage. Development is possible locally but may reactivate or accelerate sliding in isolated areas.

Geological hazards also exist along much of the ocean front, although most of the area is suitable for development. Some areas may present some difficulties during excavation for utilities due to the semi and unconsolidated nature of the upper terrace sands and locally hard bedrock; however, they appear to be free of significant geological hazards which might adversely affect the proposed improvements.

Geological hazards were considered in development of this Facilities Plan and will be considered during final design. The geological hazards should have no effect on final design, and installed facilities should be located in areas free of geological hazards.

5.1 WATER AND WASTEWATER CHARACTERISTICS

This chapter will be utilized to establish unit design values for water and wastewater system individual needs from the study area. These unit design values, combined with population data presented in Chapter 2, will be utilized to project design flows and loadings for the ultimate needs of the service area.

5.2 UNIT DESIGN VALUES

5.2.1 Water

The proposed Lone Ranch development would be located within the Urban Growth Boundary, to the North of Ransom Creek, along Highway 101. This development originally contemplated groundwater for the primary source of water supply, but needed a water supply from the City of Brookings for a backup water source, and for fire protective purposes. Current plans are to provide all water from the City of Brookings. Growth in the remainder of the study area will require water to supply domestic needs of the Rainbow Rock Condominiums, Rainbow Rock Trailer Park, and several of the drainage basins North of Ransom Creek. In addition, water service along Highway 101 will include a continued need for water supply to the Dawson Tract, Oregon Driftwood Shores, and to the Harris Beach and Glenwood PUD's. An analysis is necessary to determine if the existing Brookings water distribution system has the capacity to provide for the water demands of the City of Brookings, including current service to Dawson Tract, ODS, Harris Beach and Glenwood PUD's, and to expansion of the service area to include water delivery to the Borax development, Rainbow Rock Condominiums, Rainbow Rock Trailer Park, and the described drainage basins North of Ransom Creek.

5.2.2 Water Distribution Piping

Brookings is currently estimated to have a population of 6,370 people. This population includes the described growth areas which currently receive water from the City of Brookings, but are affected by growth in the planned Lone Ranch development, and by connection of service areas which are currently not served by the City water system. In order to determine if the existing system of water distribution pipes in the City of Brookings is capable of supplying the current Maximum Water Demand (MDD) for both the City of Brookings and areas which are planned for service North to the Urban Growth Boundary, it is necessary to estimate the ultimate service population and anticipated MDD. Planning should also consider the capabilities of the existing water system piping for providing service for long-range planning needs. Because growth in the study area is significant in comparison to existing water system development in Brookings, consideration must necessarily involve the entire water system to determine system capabilities to provide service to planned development.

- Water is carried through single pipes which restrict the hydraulic capacity of the system.
- If a branched pipeline is out of service, customers are without water.
- Sediments tend to settle out in dead end lines, which leads to the need for line flushing and, due to decaying chlorine residual, increases the potential of bacterial contamination.

7.4 RECOMMENDED DISTRIBUTION IMPROVEMENTS

Recommended improvements are shown in *Figure 7.1 on page 7-5*, which includes a 16" waterline installed by Lone Ranch developers, from Carpenterville Road to the entrance for the Rainbow Rock Condominiums. Project descriptions and opinions of current probable cost are presented in this section, with opinions of probable cost provided in *Table 7.1*. *Figure 7.1* provides a layout of proposed improvements needed to serve the study area, with the cost projections provided in *Table 7.1* utilized as a comparison of project lengths and anticipated costs corresponding with the proposed installations on the project layout.

First phase improvements are associated with removing the most serious hydraulic deficiencies and providing the infrastructure needed for serving planned development areas. Generally, planned improvements will enhance overall distribution system performance.

In order to meet the expected water demand, a 12" water distribution pipe should be installed along Easy Street from the intersection of Fern Avenue West to the intersection of Oregon Coast Highway 101. A 16" water distribution pipe should be added along Oregon Coast Highway 101 from the intersection of Easy Street north to the entrance of the Rainbow Rock Condominiums, where Lone Ranch will connect on-site facilities for their planned development. Costs for all water improvements must necessarily be shared by the developers of Lone Ranch and other potential users North of Oregon Driftwood Shores, since all Brookings residents in this area, and currently served with municipal water, have adequate service.

Phasing of construction is possible, since capacity exists within the existing water system for SWOCC and potentially the planned first phase of development. Phasing may be critical because Brookings currently has no funding available for construction, and all proposed water construction will need to be financed by future users of the study area.

It is recommended that Brookings establish a separate Water System Systems Development Charge (SDC) for this area, with reimbursement SDC's from these charges returned to the developers to compensate them for financing utilized for construction. If phasing of development is permitted, collected SDC's could also be utilized for remaining construction, with a longer term plan for returning portions of a reimbursement SDC to the developers, for work which has been completed as off-site construction.

An opinion of probable cost for water system improvements to provide service to the study area is provided as *Table 7.1*.

PLAN 2006

AN ACT

HB 3038

Bevan Hoffman 6/29/05

Relating to municipal water right permit extensions; creating new provisions; amending ORS 537.230, 537.250, 537.409 and 537.630; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 537.230 is amended to read:

537.230. (1) Except for a holder of a permit for municipal use, the holder of a water right permit shall prosecute the construction of any proposed irrigation or other work [*shall be prosecuted*] with reasonable diligence and [*be completed*] complete the construction within a reasonable time, as fixed in the permit by the Water Resources Department, not to exceed five years from the date of approval.

(2) The holder of a permit for municipal use shall commence and complete the construction of any proposed works within 20 years from the date on which a permit for municipal use is issued under ORS 537.211. The construction must proceed with reasonable diligence and be completed within the time specified in the permit, not to exceed 20 years. However, the department may order and allow an extension of time to complete construction or to perfect a water right beyond the time specified in the permit under the following conditions:

(a) The holder shows good cause. In determining the extension, the department shall give due weight to the considerations described under ORS 539.010 (5) and to whether other governmental requirements relating to the project have significantly delayed completion of construction or perfection of the right;

(b) The extension of time is conditioned to provide that the holder may divert water beyond the maximum rate diverted for beneficial use before the extension only upon approval by the department of a water management and conservation plan; and

(c) For the first extension issued after the effective date of this 2005 Act for a permit for municipal use issued before November 2, 1998, the department finds that the undeveloped portion of the permit is conditioned to maintain, in the portions of waterways affected by water use under the permit, the persistence of fish species listed as sensitive, threatened or endangered under state or federal law. The department shall base its finding on existing data and upon the advice of the State Department of Fish and Wildlife. An existing fish protection agreement between the permit holder and a state or federal agency that includes conditions to maintain the persistence of any listed fish species in the affected portion of the waterway is conclusive for purposes of the finding.

~~[(2)]~~ (3) Except as provided in ORS 537.240 [*or*] and 537.248 and subsection (2) of this section, the Water Resources Department, for good cause shown, shall order and allow an extension of time, including an extension beyond the five-year limit established in subsection (1) of this section within which irrigation or other works shall be completed or the right perfected. In determining the extension, the department shall give due weight to the considerations described under ORS 539.010 (5) and to whether other governmental requirements relating to the project have significantly delayed completion of construction or perfection of the right.

~~[(3)]~~ (4) Except as provided in subsection [~~(4)~~] (5) of this section and ORS 537.409, upon completion of beneficial use as required under [*subsection (1) of*] this section, the permittee shall hire a water right examiner certified under ORS 537.798 to survey the appropriation. Within one year after application of water to a beneficial use or the beneficial use date allowed in the permit, the permittee shall submit a map of the survey as required by the Water Resources Department, which shall accompany the request for a water right certificate submitted to the department under ORS 537.250. If

HB 3038 5/25/2008

STATE OF OREGON
COUNTY OF CURRY
CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE ISSUED TO

STATE OF OREGON
WATER RESOURCES DEPARTMENT
SALEM, OREGON 97310

confirms the right to use the waters of CHETCO RIVER, a tributary of the PACIFIC OCEAN, in the SOUTH COAST BASIN to maintain an instream flow for the purpose of SUPPORTING AQUATIC LIFE.

The right is for flows to be maintained IN THE CHETCO RIVER BELOW THE NORTH FORK OF THE CHETCO RIVER AND MAINTAINED TO TIDEWATER.

The right is established under Oregon Revised Statutes 537.346.

The date of priority is APRIL 1, 1980.

The right is limited to not more than the amounts during the time periods listed below:

<u>Period</u>	<u>Flows (cubic feet per second)</u>
OCT 1 - OCT 15	200
OCT 16- DEC 31	450
JAN 1 - MAY 31	350
JUN 1 - JUN 15	200
JUN 16- JUN 30	100
JUL 1 - SEP 30	80

This instream water right shall not have priority over appropriations of water for domestic or livestock uses and irrigation of non-commercial gardens not exceeding one-half acre in area.

This instream water right is subject to 3 CUBIC FEET PER SECOND WHICH IS RESERVED FOR MUNICIPAL PURPOSES.

DWR CERT

DAILY MEAN DISCHARGE, CFS, USGS 14400000 CHETCO RIVER NEAR BROOKINGS									
DATE	Oct-03	DATE	Oct-04	DATE	Oct-05	DATE	Oct-06	DATE	Oct-07
1	83	1	89	1	150	1	79	1	184
2	83	2	88	2	175	2	81	2	139
3	83	3	88	3	191	3	81	3	104
4	82	4	87	4	264	4	84	4	105
5	82	5	86	5	219	5	87	5	134
6	82	6	86	6	188	6	90	6	126
7	85	7	87	7	176	7	85	7	105
8	89	8	118	8	170	8	81	8	95
9	91	9	478	9	168	9	78	9	98
10	91	10	300	10	165	10	76	10	803
11	90	11	211	11	163	11	75	11	783
12	97	12	171	12	161	12	74	12	367
13	97	13	148	13	160	13	74	13	234
14	92	14	135	14	163	14	74	14	178
15	89	15	126	15	349	15	84	15	167
16	93	16	119	16	422	16	137	16	262
17	94	17	516	17	282	17	153	17	1020
18	92	18	1620	18	232	18	124	18	2080
19	95	19	2870	19	234	19	100	19	18800
20	104	20	2260	20	286	20	91	20	7300
21	107	21	1060	21	262	21	87	21	4220
22	102	22	759	22	233	22	84	22	2840
23	100	23	1610	23	215	23	82	23	2100
24	99	24	1360	24	204	24	81	24	1640
25	94	25	986	25	207	25	79	25	1350
26	90	26	2580	26	310	26	79	26	1150
27	87	27	2030	27	286	27	79	27	1010
28	86	28	1380	28	590	28	79	28	897
29	84	29	1040	29	651	29	78	29	807
30	84	30	904	30	399	30	78	30	744
31	85	31	784	31	322	31	77	31	667

Source: <http://waterdata.usgs.gov/or/nwis/uv?14400000>

FLOW DATA



City of Brookings

898 Elk Drive, Brookings, OR 97415
(541) 469-1100 Fax (541) 469-3650
gmilliman@brookings.or.us

GARY MILLIMAN
City Manager

Ed Murdock
Salmon Run Golf Course
99040 South Bank Rd
Brookings, OR 97415

November 15, 2007

Dear Mr. Murdock,

This is a follow-up and status report concerning our discussion regarding water service to Salmon Run Golf Course.

The City of Brookings is in the process of obtaining the necessary certificates and permit extensions to secure the City's long term water rights on the Chetco River. This matter is being aggressively pursued by the City's legal and engineering consultants, and by the City's management staff.

Until these issues are resolved, the City is not in a position to consider making a commitment for water service to the golf course. Only in the event that we are able to secure adequate water rights to meet the City's long-term domestic water consumption needs can the City then consider providing water service to the golf course.

Respectfully,

Gary Milliman
City Manager

Cc: Mayor and City Council
Pete Pavich, Claveron Group
John Trew, City Attorney
Martha Pagel, Water Rights Attorney

America's
Wild Rivers
101 MILES OF NATURE'S BEST **Coast.**

GOLF

parcel; consisting of 1,000 dwelling units of various types, a 2.43 acre commercial site, and a 10-acre college campus, to be built in phases implemented in detailed development plans approved by the Planning Commission; located on the easterly side of Highway 101, approximately 4,500 feet (0.8 miles) north of Carpenterville Road and extending north to approximately the Cape Ferrelo overlook entrance; Assessor's Map 41-14 and Index, Tax Lots 2400, 2401, and a portion of 2402; U.S. Borax, applicant; Burton Weast, representative; and in the matter of Ordinance 04-O-565 amending the Comprehensive Plan to include the Lone Ranch Master Plan as a separate document of Goal 14

The public hearing reconvened at 7:13 p.m. Council President Dentino read procedures for this continuation into the record.

Planning Director Bischoff stated this was a continuation of a September 13, 2004, hearing that had been closed for public testimony. Additional written testimony was received in accordance with the request by Pete Chasar and US Department of the Interior, Fish and Wildlife Service to leave the record open for seven additional days for written testimony. Written response was submitted by the applicant. The applicant requested three additional conditions of approval in response to the testimony submitted.

City Attorney Trew said all written testimony was received in a timely manner and included in the packet for the councilors to study. Trew reminded the Council that tonight's decision needs to be based on evidence in the record, either written or oral.

Dentino read three additional conditions of approval into the record.

The applicant waived his right to seven additional days to submit additional testimony and asked that a decision be made on the matter at this meeting.

Council discussion ensued with questions and comments from the Council regarding the process of deliberation. Dentino said since he was acting mayor he would not be making any motions. He had questions about a water shortfall of 125,000 gallons from the Borax test wells to meet the project's needs. He researched this and found the City and State are in agreement that the City has provided adequate water for the entire build out of the Urban Growth Boundary. Borax's wells will contribute to the City's supply and are a bonus to what water is already available.

Councilor Anderson said he had questions for the applicant. Trew advised that asking questions of the applicant invites a response from all participants. He explained the opportunity to ask questions of the applicant

was while the public hearing was open to testimony and asking questions of staff would be a better procedure. Anderson responded that he felt the Council did not have the opportunity to ask questions of the applicant at the public hearing. Blodgett suggested that Councilors pose their questions to staff who will do their best to answer them. Anderson said he will direct questions to staff.

Anderson questioned the cost of utility extensions including off-site, on-site and enlargement of existing infrastructure. Blodgett responded that the cost to extend all utilities will be borne totally by the developer. There are provisions in our ordinances to have developers oversize lines for projected development and provisions for reimbursements to the developers as connections are made to the lines. There may be need for additional work from Arnold Lane to Mill Beach Road to enlarge lines that are undersized now. These projects would be paid for with SDCs. Blodgett said no on-site costs would be borne by the City.

Anderson questioned the maintenance for right-of-ways that use a drainage swale. Blodgett said as it is written the City would be obligated to maintain those areas but an additional condition could be added to require the developer or homeowners association to maintain those sections.

Anderson asked whether any fire protection facilities would be on-site. Bischoff said fire protection facilities were in the destination-resort plan but are not in the current plan for the area. All homes and commercial buildings including the college will have individual sprinkler systems. The sprinklers give our fire department the time to respond. Bischoff added that our fire staff feels comfortable with this arrangement.

Councilor Mickelson stated that he has studied this plan intensively, as Council liaison to the Planning Commission and now at the Council level. He felt there could be confusion between outright approval for development plans and the master plan. He said the concepts and standards in a master plan are not precedent-setting as each plan must stand on its own merit. Much expertise was brought by Borax and Western Advocates to a plan that allows for flexibility for development. He had read the opponents' information and highlighted areas of his concern. He found testimony was not always factual or taken out of context. He concluded that the Borax Master Plan of Development meets the standards and he looks forward to the development plans. He thinks this is a program we can live with and must watch very closely.

Dentino added that this is a master plan of general standards, important and not to be toyed with. Development plans must be approved before any dirt is turned. There was further discussion on the number of dwelling



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

April 22, 2004

City of Brookings
898 Elk Drive
Brookings, OR 97415

Attn: LeRoy Blodgett
City Manager

Re: Lone Ranch Development
Project # 01.81

Dear LeRoy:

We have met with OTAK reviewed preliminary cost estimates from the Lone Ranch Master Plan prepared by OTAK, and made modifications to our analysis of February 16, 2004 for needed water and sewer capacity to serve the Borax Development and Surrounding Areas, and the City of Brookings, utilizing a report from this office dated November 2001. In general, in the planning process, Lone Ranch has been reduced in sizing for total growth, which will reduce both the overall cost and share of the costs that should be borne by Lone Ranch, considering the potential for growth in other areas that must be considered by the City of Brookings in their long range planning process. In addition to sizing differences for proposed facilities in planning for the City and in the Lone Ranch Master Plan, we continue to believe that cost projections for off-site water and sewer facilities in the Lone Ranch Master Plan are low, and do not adequately consider the difficulty and expenses of working in the right-of-way for Highway 101. This will be emphasized even further with the fact that ODOT is improving Highway 101 in the very near future, and major portions of these planned improvements will be working along newly improved portions of the highway. Projected costs for Lone Ranch are necessarily prepared only to serve the Lone Ranch development, in comparison to the City plan to make provisions for future growth within the Brookings UGB, and there are cost savings with private construction in comparison to public construction. Construction for public works projects in Oregon must follow OAR requirements and compensate workers with State Prevailing Wages. Irregardless, we believe that the cost projections provided in the Lone Ranch Plan are not realistic in the Highway 101 corridor.

Our cost projections and work tasks vary from the 2001 Water and Wastewater Facilities Plan to reflect better data available from the Lone Ranch Master Plan, and more current growth projections for allowable growth in Lone Ranch. In consideration of the more current data, we provide the following cost projections and recommendations for needed development to provide Brookings municipal water and wastewater facilities to Lone Ranch and Surrounding Areas.

For cost sharing purposes, it is assumed that Lone Ranch would provide payment for off-site water and wastewater facilities extending to existing facilities in the City, in conjunction with the Lone Ranch Master Plan. Basically, Lone Ranch would provide for the costs of extending water mains from their development to Carpenterville Road, and for the extension of sewer facilities to a City Main where facilities enter the Dawson Tract development. Cost estimates from the 1991 Plan have been increased

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for inflation, utilizing the current ENR index of 6,862, an increase of 7.3% over 1991 values, for major portions of the work as presented. Total water and wastewater facilities costs for each phase, with recommended cost sharing, appear as follows:

Water

It is assumed that water distribution and storage exists to serve present residents of the City of Brookings. Capacity from the existing system is not available to extend services beyond the current service area. Proposed improvements to serve growth outside of the City, should be shared amongst the potential beneficiaries, with Brookings paying for the cost to provide service for growth areas North to the UGB and outside of the proposed Lone Ranch Development. Development costs for growth in surrounding areas can be reallocated as growth occurs. Lone Ranch should be expected to provide off-site costs to benefit their development. It is recommended that shared facilities terminate at Carpenterville Road, and that Lone Ranch pay all costs of extending from this point into their development.

Existing users that can connect to proposed water extensions will become ratepayers immediately, which will produce a revenue stream to pay a portion of debt service for repayment of capital costs. For purposes of simplicity, and utilizing growth figures now planned for Lone Ranch, costs should be shared approximately equally, or 50/50 for the planned costs of needed water system improvements, with the understanding that Brookings would not undertake this work without the Lone Ranch project. Based on this reasoning, Lone Ranch should provide for costs of the line North of Carpenterville Rd., \$ 795,570, plus a 50% share of remaining costs of water improvements estimated at \$ 1,928,670, or a total of \$ 1,759,905 of the Brookings water system expansion cost to serve this development.

Table 1-1 Recommended Distribution Improvements
Preliminary Opinion of Probable Cost for Water System Expansion to Serve Borax Development and Future Growth to U.G.B.

Description	Unit	Estimated Project Cost		
		Unit Cost	Quantity	Extension
12" Water Main	LF	\$85.30	17,500	\$1,492,750
Boring - 12" Main and Casing	LF	\$550.00	120	\$66,000
Rock Excavation	CY	\$100.00	1,200	\$120,000
Gravel Surface Replacement	CY	\$32.00	2,750	\$88,000
Asphalt Surface Replacement	TON	\$100.00	2,050	\$205,000
Seeding	SQ	\$10.00	3,000	\$30,000
Compaction Testing	EA	\$250.00	50	\$12,500
Construction Subtotal				\$2,014,250
Construction Contingencies				\$201,425
Engineering and Construction Observation				\$402,850
Legal and Administrative Easement Acquisition				\$100,715 \$5,000
TOTAL				\$2,724,240



4/22

Estimates from the 2001 Water and Wastewater Plan provided capacity for water improvements to the following service areas:

Table 1-2 Potential Development Outside Current Brookings Service Area

	Growth Outside Lone Ranch Estimated Equivalent Population	Current Planned Growth Inside Lone Ranch Estimated Equivalent Population
Rainbow Rock	430	
Rainbow Rock Trailer Park	128	
Lone Ranch	1,000 including hotel	2,560
Gas Station		5
SWOCC	1,100 students	121
Basin 4	1,725	
Basin 4a	51	
Basin 5	712	
TOTAL	3,046	2,686
Percentage of Growth in Planning Area	Assume 50%	Assume 50%

Wastewater

Wastewater system construction needs to serve Lone Ranch and Surrounding Areas is more complex than needs for water system improvements. Capacity in the wastewater system does not exist to service this area, and system expansion will be necessary to serve Lone Ranch, surrounding areas, and growth within the present Brookings system. Once again, we have assumed that all costs extending from Lone Ranch South to existing City of Brookings sewer facilities at the entrance to Dawson Tract will be provided by Lone Ranch, and that system needs from that point to Moore Street can be cost shared in a similar fashion, and with the same approach, as proposed for the water system. Projected costs that the City has authorized for replacement of the sewer system from Crissey Circle to Parkview Drive have not been considered in this analysis. Lone Ranch costs for this project portion total \$ 601,560.

Sewer extensions will also be needed downstream from Moore Street, and costs need to be shared differently than for the remainder of the project. Project costs North of Moore Street to the point where Lone Ranch will connect to the system total \$ 1,026,600, and should be shared 50% for Lone Ranch, or a total construction cost of \$ 513,300. Total costs for Lone Ranch North of Moore Street would be \$ 1,114,860.



4/22

Table 1-3 Recommended Collection System Improvements

Preliminary Opinion of Probable Cost for Proposed Gravity and Pressure Collection System to Serve Borax Development and Future Growth North to U.G.B.

Description	Unit	Estimated Project Cost		
		Unit Cost	Quantity	Extension
36" Sewer Main	LF	\$184.50	800	\$147,600
27" Sewer Main	LF	\$155.50	5,300	\$824,150
24" Sewer Main	LF	\$139.00	3,600	\$500,400
Manholes	EA	\$3,500.00	25	\$87,500
Boring (24" Main) and Casing	LF	\$965.00	100	\$96,500
Service Laterals	LF	\$50.00	1,000	\$50,000
Wastewater Pump Station	EA	\$300,000.00	1	\$300,000
12" Forcemain	LF	\$45.00	6,700	\$301,500
Forcemain Fittings	LS	5% OF FM \$	1	\$12,600
Air Release Valve and Manhole	EA	\$4,000.00	6	\$24,000
Rock Excavation	CY	\$100.00	1,500	\$150,000
Gravel Surface Replacement	CY	\$32.00	1,600	\$51,200
Asphalt Surface Replacement	TON	\$100.00	1,200	\$120,000
Seeding	SQ	\$10.00	2,000	\$20,000
Compaction Testing	EA	\$250.00	30	\$7,500
Construction Subtotal				\$2,692,950
Construction Contingencies				\$269,295
Engineering and Construction Observation				\$538,590
Legal and Administrative				\$134,645
Easement Acquisition	AC	\$500.00	6	\$3,000
TOTAL				\$3,638,480

In addition to construction costs North of Main Street, the cost of line replacements South of Moore Street should be shared by the entire Brookings community, and by Lone Ranch and Surrounding Areas. Current population estimates for Brookings, Lone Ranch and Surrounding Areas is estimated at 12,086 residents. The analysis for potential development inside Lone Ranch anticipates a population equivalent of 2,686 residents. Usage should be shared on a proportionate basis for this section, or $2,686/12,086 = 23\%$ of the cost should be paid as off-site improvements for the Lone Ranch Development, a total of \$ 339,890.

Our analysis proposes off-site water and wastewater costs for Lone Ranch as follows:

4/22



Lone Ranch Share of Developed Facilities

Water	\$ 1,795,905
Wastewater Improvements North of Moore Street	\$ 1,114,860
Wastewater Improvements South of Moore Street	\$ 339,890
Total Lone Ranch Share of Off-Site Capital Improvements	\$ 3,250,655
Water	\$ 964,335
Wastewater Improvements North of Moore Street	\$ 513,300
Wastewater Improvements South of Moore Street	\$ 1,137,895
Total Brookings Share of Off-Site Improvements	\$ 2,615,530

Our analysis has attempted to consider this project in an identical manner to every other development which has occurred in the City of Brookings, for off site improvements. However, since growth is occurring both inside and outside of the City, costs should be shared by the City both for costs to serve new development outside the City, and for improvements that benefit existing residents of the City. Some facility needs are known to exist for growth within the current Brookings service area, and this plan make provisions for cost sharing between the Lone Ranch development and residents of the City to share in the cost of needed water and wastewater infrastructure improvements.

Please contact me if we can provide further information in this regard. We appreciate the opportunity to be of continuing assistance to the City of Brookings.

Very truly yours,

HGE INC., Architects, Engineers,
Surveyors & Planners

Richard D. Nored, P.E.
President

- c. Ed Wait, Economic Development Coordinator
Leo Lightle, Community Development Director

4/22



ARCHITECTS, ENGINEERS, SURVEYORS & PLANNERS
375 Park Avenue, Coos Bay, Oregon 97420



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June 6, 2006

City of Brookings
898 Elk Drive
Brookings, OR 97415

Attn: Don Wilcox, P.E.
Public Works Director

Re: Lone Ranch Development
Brookings Infrastructure Cost to Serve this Development
Project # 01.81

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Richard D. Noredt, P.E.
Joseph A. Slack, A.I.A.
Russ Dodge, PLS
Stephen R. Cox

Dear Don:

A Water and Wastewater Facilities Plan to serve the Lone Ranch Development was completed in November 2001 by HGE, and projected costs of both the water and wastewater infrastructure necessary to expand Brookings service to the planned development North of the City. The plan was prepared in detail, and the original cost of necessary system improvements and expansion appears as follows, to accomplish Facilities Plan recommendations:

Water (Includes construction, contingencies, engineering, construction management, legal and administrative costs.)

- | | | |
|----|--|------------|
| 1) | 16" Water Main - Easy Street to Glenwood Drive
5,000 lf @ \$ 114.08 = | \$ 570,400 |
| 2) | 12" Water Main - Glenwood Drive to Carpenterville Rd.
3,000 lf @ \$ 107.33 | \$ 321,990 |
| 3) | 12" Water Main in Easy Street - Fern Avenue to
Highway 101 - 5,600 lf @ \$ 107.33 = | \$ 601,050 |
| 4) | 12" Boring under Highway 101 = | \$ 40,500 |
| 5) | Misc. Related Construction = | \$ 497,800 |

Total Remaining Water Construction - 2001 Costs = \$ 2,031,740

Inflation costs since 2001. ENR in 2001 = 6,395. ENR on May 22, 2006 = 7,691. Inflation since original 2001 estimate equals 20.3%.

Total Remaining Water Construction - 2006 Costs = \$ 2,444,184

In correspondence to City Manager LeRoy Blodgett, dated April 22, 2004, attached hereto, HGE recommended that the Lone Ranch Development should pay 50% of remaining water improvements, for a current value of: \$ 1,222,092

Brookings should also share in the cost by 50% for a current value of: \$ 1,222,092

6/6

A schematic from the original Facilities Plan, labeled Figure 1.1, is attached for reference purposes.

Consideration was given to a need for reservoir storage to serve Lone Ranch. In review of the Master Plan for Lone Ranch, it is proposed to construct a 500,000 gallon base level water storage reservoir in Phase I of construction. This should remain a requirement for approval of Phase I improvement plans.

Wastewater (Includes construction, contingencies, engineering, construction management, legal and administrative costs.)

The original Facilities Plan considered all wastewater costs from the Brookings wastewater treatment plant to the Lone Ranch development. Lone Ranch has negotiated to extend wastewater service from their property to Carpenterville Rd. in the City. In the April 22, 2004 referenced letter, HGE recommended that Lone Ranch provide 50% of the wastewater installation from Carpenterville Rd. to Moore St., and 23% of the recommended wastewater improvements from Moore St. to the wastewater treatment plant. Original costs appear as follows for work necessary to accomplish Facilities Plan recommendations:

1)	12" Force Main - Carpenterville Rd. to Parkview Drive 5,600 lf @ \$ 56.70 =	\$ 317,520
2)	Wastewater Pump Station	\$ 405,000
3)	Force Main Appurtenances =	\$ 33,250
4)	Force Main Related Construction =	\$ 111,375
5)	24" Main - Moore Street to Parkview Drive =	\$ 1,133,260
6)	27" and 36" Main - Moore Street to WWTP =	\$ 1,641,400

Total Wastewater System Construction - 2001 Costs = \$ 3,641,805

Inflation costs since 2001. ENR in 2001 = 6,395. ENR on May 22, 2006 = 7,691. Inflation since original 2001 estimate equals 20.3%.

Total Wastewater System Construction - 2006 Costs = \$ 4,381,091

Based on the April 22 correspondence, Lone Ranch should pay 50% of items (1-5) for a current value of: \$ 1,203,244

Based on the April 22 correspondence, Lone Ranch should pay 23% of item (6) for a current value of: \$ 454,159

Total Needed Lone Ranch Wastewater Contribution = \$ 1,657,403

b/l

The City of Brookings should then be responsible for the following:

50% of items (1-5) for a current value of:	\$ 1,203,244
77% of item (6) for a current value of:	\$ 1,520,445
<i>Needed Brookings Wastewater Contribution =</i>	<i>\$ 2,723,689</i>

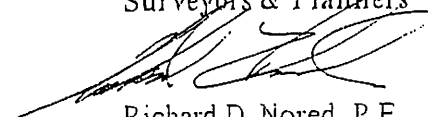
Our original analysis attempted to consider the Lone Ranch project in an identical manner to every other development which has occurred in the City of Brookings, for needed off-site improvements. Since growth is occurring both inside and outside the City, and for improvements that benefit existing residents of the City, off-site improvement costs should be shared. There are also other developments that will desire water and wastewater infrastructure from the City of Brookings, and these should expect to pay for planned infrastructure on an identical basis to that proposed for Lone Ranch. Each of these future developments should be considered in a similar fashion to this analysis when they request service.

Proposed water and wastewater pumping and treatment improvements, and other major improvements to each infrastructure were also considered. The recently adopted Systems Development Charge Study incorporates needed improvements addressed in Master Planning Documents for the city.

Please contact me if we can provide further information in this regard. We appreciate the continuing opportunity to be of assistance to the City of Brookings.

Very truly yours,

HGE INC., Architects, Engineers,
Surveyors & Planners



Richard D. Nored, P.E.
President

6/6



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ENGINEERS
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Richard D. Nored, P.E.
Joseph A. Slach, A.L.A.
Russ Dodge, P.S.
Stephen F. Coe

September 27, 2007

City of Brookings
898 Elk Drive
Brookings, OR 97415

Attn: John Cowan
Public Works Director

Re: Lone Ranch Development
Infrastructure Financing Agreement
Project No. 01.81

Dear John:

We have made a cursory review of the documents provided by Borax for the meeting next week, including references to correspondence from this office, dated April 22, 2004 and June 6, 2006. Our review has included an analysis of the previous HGE correspondence, and it is obvious that Borax representatives are not correctly interpreting recommendations from the two letters. Staff needs to be aware of what the letters said, with the clear understanding that the City Council did not take action regarding the staff recommendations. The recommended cost allocations are provided as follows, which clearly differ substantially from current Borax proposals.

WATER

Borax would provide all costs of water installation North of Carpenterville Rd. Borax and the City of Brookings would share recommended improvement costs South of Carpenterville Rd. on a 50-50 basis.

SEWER

Borax would provide all costs of sewer installation North of Dawson Rd. Borax and the City of Brookings would share recommended improvement costs from Dawson Rd. to Moore Street on a 50-50 basis. This work includes costs previously incurred by the City of Brookings from Crissey Crl. to Parkview Dr. Borax and the City of Brookings would share recommended improvement costs from Moore St. to the WWTP on 77% City, 23% Borax basis.

If we can offer further guidance in this regard, please give me a call. We appreciate the opportunity to be of assistance to the City of Brookings.

Very truly yours,

HGE INC., Architects, Engineers,
Surveyors & Planners

Richard D. Nored, P.E.
President

9/27



MEMORANDUM

Office of the City Manager

GARY MILLIMAN

City Manager

TO: Mayor and Council

DATE: January 3, 2008

SUBJECT: Grant/Loan Applications

Attached are the narrative portions of two grant/loan applications. We have been invited to discuss these projects at a "one stop meeting" with the U.S. Department of Agriculture, Oregon Economic and Community Development Department and other agency representatives. This meeting was originally scheduled for January 8 in Salem. However, I received an additional information request today, and we are unable to meet the response deadline to make the January meeting. We have now been rescheduled for February 12. We also plan to have new sewer rate study data by that date.

I am just providing this as informational at this time.

MEMO

CITY OF BROOKINGS COMMUNITY COLLEGE SEWER CONNECTION

\$4,926,280

BACKGROUND

The City approved the Lone Ranch Master Plan in ²⁰⁰⁴~~2006~~. The Lone Ranch Development will include construction of 1,000 new housing units and a small commercial development on 553 acres of land within the City. One of the provisions of the Master Plan is a developer gift of 10 acres of land within the development to Southwestern Oregon Community College (SWOCC) for use as a new satellite campus.

SWOCC, based in Coos Bay, has operated a small education center in Brookings for 12 years. Current facilities...three classrooms and a small office...are inadequate. The State has approved a \$2.3 million grant and SWOCC has allocated a \$2.3 million match for a total construction budget of \$4.6 million for the first phase of a new campus on the Lone Ranch site. The college project would consist of 20,000 square feet of classroom, administration and support space and 300 parking spaces. The new facilities would enable the college to offer more extensive programs leading to careers in nursing in partnership with Sutter Coast Hospital. The college would also offer customized hospitality and tourism related education, and general education with a goal of enabling Curry County residents to obtain an Associate degree while living at home. Annual enrollment is expected to rise from 500 to at least 1,000 as a result of the project.

The College has developed preliminary plans for their project and has sufficient funds to proceed with an initial phase of classroom and administrative support facilities on the site. However, the College cannot proceed until certain sewer collection facilities are extended or upgraded to serve the southernmost portion of the future Lone Ranch development, which is where the College site is located.

This sewer project would also facilitate the development of the initial phase...approximately 150 units...of the Lone Ranch housing project and a 3.5-acre retail commercial center. Due to current economic conditions, the Lone Ranch Development is not prepared to proceed at this time. It is anticipated that, once development commences, the housing units will be

MEMO

constructed over an 8-10 year period. The developer is in discussion with a local hospital concerning the development of an emergency clinic adjacent to the college.

The City and the developer have already expended over \$1.0 million in extending water system infrastructure to serve the site.

PROJECT DESCRIPTION

The sewer project would consist of replacing 1,790 lineal feet of undersized sewer main in central Brookings, construction of a sewer lift station and approximately 3,900 lineal feet of new sewer main between Parkview Drive and Carpenterville Road along Highway 101.

RELATIONSHIP TO ECONOMIC/COMMUNITY DEVELOPMENT

Community colleges play an important role in the economic health of their communities by ensuring that workers have the skills that local and prospective employers need to remain competitive. By offering programs on a contractual basis for employers, community colleges are becoming the primary providers of workforce training. The existence of quality and flexible community college programs are an essential element of a community economic development program and is, increasingly, a significant decision criterion for businesses considering new investment in a community.

Community colleges offer an affordable alternative for higher education. Earning power is enhanced by advanced education, and the economic well-being of the community can be raised through the availability of locally-based education opportunities. More local students will be encouraged to continue their education by the existence of a quality local facility.

FUNDING NEEDED

The construction estimate for building the project is \$4,926,280. Of this amount, \$2,810,927 is recoverable from the Lone Ranch developer. Thus, the City is seeking grant funding in the amount of \$2,115,353 and loan funding in the amount of \$2,810,927. The developer portion would be secured through the formation of a local improvement district.

ask for loan for City's portion We need a discussion
Question: Could the City obtain grant funding for the entire project cost if the Lone Ranch developer agreed to enter into an affordability covenant for a portion of the housing units?

need Data for this

MEMO



ARCHITECTS
ENGINEERS
SURVEYORS
PLANNERS

February 16, 2004

~~A-10~~ A-8

City of Brookings
898 Elk Drive
Brookings, OR 97415

Attn: Ed Wait
Economic Development Coordinator

Re: Lone Ranch Development
Project # 01.81

375 PARK AVE
COOS BAY
OREGON
97420

541.269.1166
FAX 541.269.1833
CELL 541.953.3958
mored@hge1.com

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

Dear Ed:

We have analyzed preliminary cost estimates from the Lone Ranch Master Plan prepared by OTAK, and made comparisons with the Water and Wastewater Facilities Plan to serve the Borax Development and Surrounding Areas, City of Brookings, prepared by HGE and dated November 2001. In general, the two plans propose similar service to Lone Ranch, with the City of Brookings plan considering not only Lone Ranch, but other areas of existing and proposed development that must necessarily be considered in planning for long range growth of the City of Brookings. In addition to sizing differences for proposed facilities in the two plans, we also believe that cost projections for off-site water and sewer facilities in the Lone Ranch Master Plan are low, and do not adequately consider the difficulty and expenses of working in the right-of-way for Highway 101. This will be emphasized even further with the fact that ODOT is improving Highway 101 in the very near future, and major portions of these planned improvements will be working along newly improved portions of the highway. Projected costs for Lone Ranch are necessarily prepared only to serve the Lone Ranch development, in comparison to the City plan to make provisions for future growth within the Brookings UGB, and there are cost savings with private construction in comparison to public construction. Construction for public works projects in Oregon must follow OAR requirements and compensate workers with State Prevailing Wages. Irregardless, we believe that the cost projections provided in the Lone Ranch Plan are not realistic in the Highway 101 corridor.

Our cost projections and work tasks vary from the 2001 Water and Wastewater Facilities Plan to reflect better data available from the Lone Ranch Master Plan. In consideration of the more current data, we provide the following cost projections and recommendations for needed development to provide Brookings municipal water and wastewater facilities to Lone Ranch and Surrounding Areas.

For cost sharing purposes, it is assumed that shared off-site water and wastewater facilities will end at the entrance to the Rainbow Rock Condominiums, and that the wastewater pump station to serve the Rainbow Rock Condominium development, and Lone Ranch, will be a portion of the shared facility costs. Cost estimates from the 1991 Plan have been increased for inflation, utilizing the current ENR index of 6,862, an increase of 7.3% over 1991 values, for major portions of the work as presented. Total water and wastewater facilities costs for each phase, with recommended cost sharing, appear as follows:

2/16/04

Water

It is assumed that water distribution and storage exists to serve present residents of the City of Brookings. Capacity from the existing system is not available to extend services beyond the current service area. Proposed improvements to serve growth outside of the present water service areas should be shared amongst the potential beneficiaries, with Brookings paying for the cost to provide service for growth areas North to the UGB and outside of the proposed Lone Ranch Development. Development costs for growth in surrounding areas can be reallocated as growth occurs. Lone Ranch should be expected to provide off-site costs to benefit their development. It is recommended that shared facilities terminate at the entrance to the Rainbow Rock Condominium project, and that Lone Ranch pay all costs of extending from this point into their development.

Existing users that can connect to proposed water extensions will become ratepayers immediately, which will produce a revenue stream to pay a portion of debt service for repayment of capital costs. Based on this reasoning, Lone Ranch should provide for 55% of the project cost of \$ 2,772,835, or \$ 1,525,060 of the Brookings water system expansion cost to serve this development.

Table 1-1 Recommended Distribution Improvements
Preliminary Opinion of Probable Cost for Water System Expansion to Serve Borax Development and Future Growth to U.G.B.

Description	Unit	Estimated Project Cost		
		Unit Cost	Quantity	Extension
12" Water Main	LF	\$85.30	12,500	\$1,066,250
16" Water Main	LF	\$90.70	5,000	\$453,500
Boring - 12" Main and Casing	LF	\$550.00	60	\$33,000
Boring - 16" Main and Casing	LF	\$700.00	60	\$42,000
Rock Excavation	CY	\$100.00	1,200	\$120,000
Gravel Surface Replacement	CY	\$32.00	2,750	\$88,000
Asphalt Surface Replacement	TON	\$100.00	2,050	\$205,000
Seeding	SQ	\$10.00	3,000	\$30,000
Compaction Testing	EA	\$250.00	50	\$12,500
Construction Subtotal				\$2,050,250
Construction Contingencies				\$205,025
Engineering and Construction Observation				\$410,050
Legal and Administrative Easement Acquisition				\$102,510
				\$5,000
TOTAL				\$2,772,835

2/16/04

Estimates from the 2001 Water and Wastewater Plan provided capacity for water improvements to the following service areas:

Table 1-2 Potential Development Outside Current Brookings Service Area

	Growth Outside Lone Ranch Estimated Equivalent Population	Growth inside Lone Ranch Estimated Equivalent Population
Rainbow Rock	430	
Rainbow Rock Trailer Park	128	
Lone Ranch		3,072
Gas Station		5
Hotel		68
SWOCC		607
Basin 4	1,725	
Basin 4a	51	
Basin 5	712	
TOTAL	3,046	3,752
Percentage of Growth in Planning Area	45%	55%

Wastewater

Wastewater system construction needs to serve Lone Ranch and Surrounding Areas is more complex than needs for water system improvements. Capacity in the wastewater system does not exist to service this area, and system expansion will be necessary to serve Lone Ranch, surrounding areas, and growth within the present Brookings system. System needs North of Moore Street can be cost shared in an identical fashion, and with the same approach, as proposed for the water system. Overall system expansion costs are shown in Table 1-3.

2/16/04

Table 1-3 Recommended Collection System Improvements
Preliminary Opinion of Probable Cost for Proposed Gravity and Pressure Collection System to Serve Borax Development and Future Growth North to U.C.B.

Description	Unit	Estimated Project Cost		
		Unit Cost	Quantity	Extension
36" Sewer Main	LF	\$184.50	800	\$147,600
27" Sewer Main	LF	\$155.50	5,300	\$824,150
24" Sewer Main	LF	\$139.00	3,600	\$500,400
Manholes	EA	\$3,500.00	25	\$87,500
Boring (24" Main) and Casing	LF	\$965.00	100	\$96,500
Service Laterals	LF	\$50.00	1,000	\$50,000
Wastewater Pump Station	EA	\$300,000.00	1	\$300,000
12" Forcemain	LF	\$45.00	6,700	\$301,500
Forcemain Fittings	LS	5% OF FM \$	1	\$12,600
Air Release Valve and Manhole	EA	\$4,000.00	6	\$24,000
Rock Excavation	CY	\$100.00	1,500	\$150,000
Gravel Surface Replacement	CY	\$32.00	1,600	\$51,200
Asphalt Surface Replacement	TON	\$100.00	1,200	\$120,000
Seeding	SQ	\$10.00	2,000	\$20,000
Compaction Testing	EA	\$250.00	30	\$7,500
Construction Subtotal				\$2,692,950
Construction Contingencies				\$269,295
Engineering and Construction Observation				\$538,590
Legal and Administrative Easement Acquisition	AC	\$500.00	6	\$134,645
				\$3,000
TOTAL				\$3,638,480

The 27" and 36" sewer mains, 13 manholes, 700 cubic yards of gravel surfacing, 550 tons of asphalt, and 15 compaction tests will be needed downstream from Moore Street, and costs need to be shared differently than for the remainder of the project. Project costs North of Moore Street total \$ 2,160,700, and should be shared 55% for Lone Ranch, or a total construction cost of \$ 1,188,385.

In addition to construction costs North of Main Street, the cost of line replacements South of Moore Street should be shared by the entire Brookings community, and by Lone Ranch and Surrounding Areas. Current population estimates for Brookings, Lone Ranch and Surrounding Areas is estimated at 13,152 residents. The analysis for potential development inside Lone Ranch anticipates a population equivalent of 3,752 residents. Usage should be shared on a proportionate basis for this section, or $3,752/13,152 = 28.5\%$ of the cost should be paid as off-site improvements for the Lone Ranch Development, a total of \$ 421,165.

2/16/04

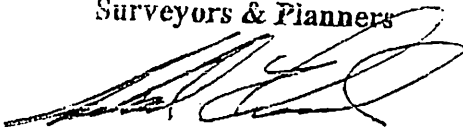
Our analysis proposes off-site water and wastewater costs for Lone Ranch as follows:

Lone Ranch Share of Developed Facilities	
Water	\$ 1,525,060
Wastewater Improvements North of Moore Street	\$ 1,188,385
Wastewater Improvements South of Moore Street	\$ 421,165
Total Lone Ranch Share of Off-Site Capital Improvements	\$ 3,134,610
Total Brookings Share of Off-Site Improvements	\$ 3,276,705

Please contact me if we can provide further information in this regard. We appreciate the opportunity to be of continuing assistance 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
Leo Lightle, Community Development Director

RDN:sc

2/16/04

May 30, 2008

Brookings Planning Commission
CITY OF BROOKINGS
898 Elk Drive
Brookings, OR 97415

RECEIVED
MAY 30 2008
CITY OF BROOKINGS

Dear Madame Chair & Commissioners:

Regarding extension of MPD-I-04, I would like you to consider the following:

Since this Master Plan was approved nearly four years ago, there have been significant changes in conditions, changes that do not justify an extension according to BMC 17.70.120.

First, throughout the Findings document, Borax MPoD, October 25, 2004, reference is made to "A 100' wide transmission line corridor"—the corridor used by Coos-Curry Electric, our local utility.

In several places in the findings, it is also stated:

"67% of the site is dedicated to open space, either as stream corridors, wetlands, the transmission line corridor or buffer areas." In other words, the transmission line corridor was four years ago counted as "open space."

But since 2004, Coos-Curry Electric has made a commitment to remove that transmission line from the Borax property. That not only means a reduction in the amount of open space in the Findings, but also a profound change in the physical character of the property that ultimately impacts the master plan.

Another significant change since 2004 in the MPoD relates to public services and utilities. In the Findings, it states:

"The water supply to each phase of the project, to the Rainbow Rock Condominiums and to the rest of the City will remain adequate.

The Findings further state:

"Any water withdrawals from the Chetco River will be within that allowed to the City, consistent with protection of the estuary. There is no negative impact on the estuary or its wetlands and the development is consistent with Goal 16."

But since 2004, new issues have emerged regarding the Brookings water supply. The first stems from a protest of Brookings' Chetco River rights made by Water Watch. This means that the city's secure water rights are currently only 5.1 cfs, an amount that the city's engineering consultant stated in 2006 is far less than adequate to meet the needs of the Borax property and the rest of the city.

This information from the engineers that the future water supply would not be adequate was not considered by LUBA in 2004. Today it represents another element of change that should result in denial of this extension.

(more)

Further complicating these serious water rights issues is the current regional ban on salmon fishing, another new condition which makes future expansion of Brookings' water rights even more unlikely.

In the 2004 Findings, it is also stated:

"The developer will provide all on-site infrastructure needs consistent with City standards (as modified by the approval) and participate in the off-site public facilities to ensure the orderly provision of public facilities and services necessary to the property."

The word "participate" meant that Borax would share in the cost of extending sewer and water lines to its property. But, in extending sewer lines, the U.S. Borax record of cost-sharing has fallen far short of its earlier agreement. This is a change that has already cost Brookings taxpayers about \$700,000, costs that the Findings said would have—and should have—been paid by the property owner.

In summary, it is obvious that conditions have indeed changed since this MPoD was approved nearly four years ago. The request for an extension should be denied until the issues arising from all new conditions can be addressed and corrected.

Sincerely,

A handwritten signature in cursive script, appearing to read "Pete Chasar".

Pete Chasar

Allan F. Haddox, Chairman
Rainbow Rock Condominium Homeowner's Association
Pacific Vista Condominium Association
17744 N. Hwy 101 #100
Brookings, OR 97415

May 30, 2008

Dianne Morris, Planning Director
City of Brookings
898 Elk Drive
Brookings, OR 97415

RECEIVED
MAY 30 2008 1:30 P.M.
CITY OF BROOKINGS

Re:
Lone Ranch
MPoD 1-04

Dear Ms Morris;

I appreciate receiving the notice of the June 3, 2008, Public Hearing regarding the time extension in the matter of File No. MPD-1-04, known as Lone Ranch Development.

When the Planning Commission considers the request for a two-year extension to the MPoD, it has two options: at its discretion it may either extend the MPoD for two additional years without changes, or it may deny the request without cause.

Rainbow Rock Condominium Homeowner's Association and the City of Brookings have enjoyed a good neighbor relationship for the past 24 years. It is my hope that if any of the conditions of approval are reconsidered, the Commission will continue to enforce the protection of our water quality.

Rainbow Rock's primary concern has always been the protection of our water supply. The Oregon Department of Environmental Quality established the Rainbow Rock Condominium Drinking Water Source Area by the formation of Public Water System No. 4101361. We ask that the City of Brookings continue the protection PWS #4101361.

In a May 21, 2003 DEQ Source Water Assessment Results report, the managed forest land was identified as Higher Risk Level from contaminated sources. The mining or gravel pit operation was identified as Moderate Risk Level. A copy of the report has been included for your information.

The identified potential impacts were listed as follows:

1. Cutting and yarding of trees may contribute to increased erosion, resulting in turbidity and chemical changes in drinking water supply.
2. Over-application or improper handling of pesticides or fertilizers may impact drinking water source.
3. Spills, leaks, or improper handling of chemical. Risk reduced to Moderate because any wastes generated in mining operation appears to only be from heavy equipment may impact the drinking water supply.

Because construction of a geo-technical investigation access road built by Borax within the project site in 2004 deposited a large amount of silt into our inlet pond, Rainbow Rock found it

necessary to acquire equipment to monitor the turbidity and amount of suspended solids in our incoming water. Run-off from the watershed area into our water source pond will be compared with the water quality history these monitors provide.

As a condition of the Master Plan, Rainbow Rock presently has review status for any development plans to evaluate the impact of the grading and drainage on our water treatment plant and water quality. We look forward to working with the City of Brookings on the review process for any plans that are submitted.

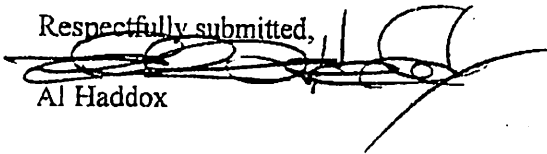
Should the Planning Commission decide to re-evaluate elements of the project, some issues that we hope will have additional discussion are as follows:

1. Highway 101 traffic impacts from Lone Ranch to Easy Street.
2. Lack of Park Sites to accommodate the projected population from the 1000 Lots.
3. Street Widths and the ability of the areas being serviced during police and fire emergencies.

For more than twenty years, the residents of Rainbow Rock Condominiums have enjoyed the beautiful, natural environment in and around Brookings. We want to protect and continue this wonderful lifestyle, and look forward to continue being a part of the Greater Brookings community.

I appreciate this opportunity to submit my comments for your consideration.

Respectfully submitted,


Al Haddox

SOURCE WATER ASSESSMENT SUMMARY BROCHURE

RAINBOW ROCK CONDOMINIUMS PWS # 4101361

WHAT IS A SOURCE WATER ASSESSMENT?

The Source Water Assessment was recently completed by the Department of Environmental Quality (DEQ) and the Oregon Department of Human Services (DHS) to identify the surface areas (and/or subsurface areas) that supply water to Rainbow Rock Condominiums' public water system intake and to inventory the potential contaminant sources that may impact the water supply.

WHY WAS IT COMPLETED?

The Source Water Assessment was completed to provide information so that Rainbow Rock Condominiums' public water system staff/operator, consumers, and community citizens can begin developing strategies to protect the source of their drinking water, and to minimize future public expenditures for drinking water treatment. The assessment was prepared under the requirements and guidelines of the Federal Safe Drinking Water Act (SDWA).

WHAT AREAS ARE INCLUDED IN RAINBOW ROCK CONDOMINIUMS' DRINKING WATER PROTECTION AREA?

The drinking water for Rainbow Rock Condominiums is supplied by an intake on an unnamed creek. This public water system serves approximately 80 citizens. The intake is located in the Whaleshead Creek Watershed in the Chetco Subbasin of the Southern Oregon Coastal Basin. The geographic area providing water to Rainbow Rock Condominiums' intake (the drinking water protection area) extends upstream approximately one mile in a northerly direction and encompasses a total area of 0.24 square miles. The boundaries of the Drinking Water Protection Area are illustrated on the figure attached to this summary.

WHAT ARE THE POTENTIAL SOURCES OF CONTAMINATION TO RAINBOW ROCK CONDOMINIUMS' PUBLIC DRINKING WATER SUPPLY?

The primary intent of this inventory was to identify and locate significant potential sources of contaminants of concern. The delineated drinking water protection area is primarily dominated by forest management land use. The potential contaminant sources that may effect the watershed include managed forest lands, a transportation corridor and a borrow pit. This provides a quick look at the existing potential sources of contamination that could, if improperly managed or released, impact the water quality in the watershed.

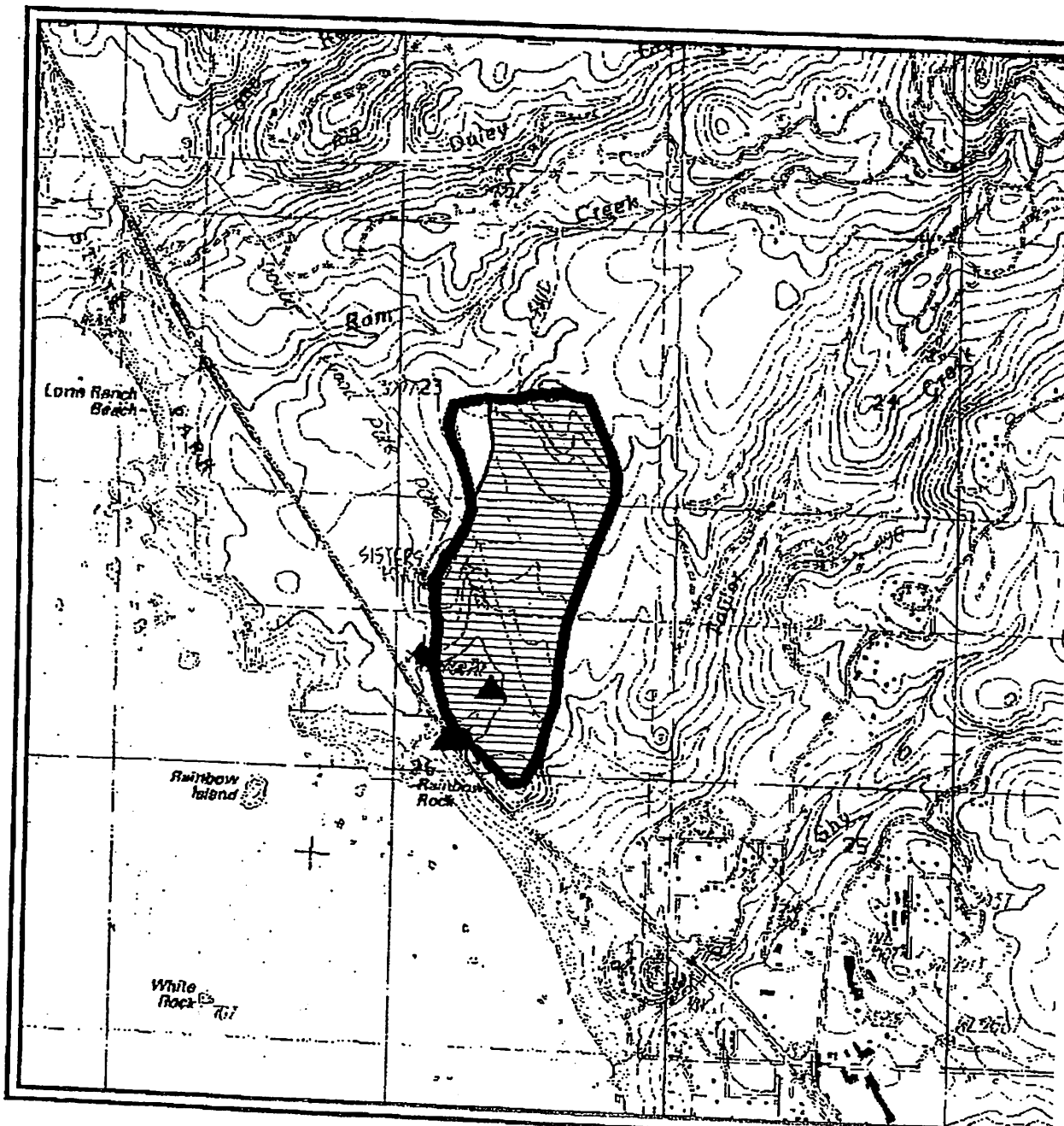
WHAT ARE THE RISKS FOR OUR SYSTEM?

One potential contaminant source, the managed forest lands, was identified within the drinking water protection area. The forestlands are located in "sensitive areas", and pose a relatively higher risk to the drinking water. The sensitive areas within the Rainbow Rock Condominiums drinking water protection area include areas with high soil permeability, high soil erosion potential, high runoff potential and areas within 1000' from the river/streams. The sensitive areas are those where the potential contamination sources, if present, have a greater potential to impact the water supply. In addition, two potential contaminant sources were identified just outside of the drinking water protection area. These potential sources are included in this inventory because they pose a moderate to high degree of potential contamination risk to the drinking water supply... The information in this assessment provides a basis for prioritizing areas in and around our community that are most vulnerable to potential impacts and can be used by the Rainbow Rock Condominiums community to develop a voluntary Drinking Water Protection Plan.

NEED MORE INFORMATION?






Rainbow Rock Condominiums' Source Water Assessment Report provides additional details on the methodology and results of this assessment. The full report is available for review at:

Contact the Rainbow Rock Condominiums' staff if you would like additional information on Source Water Assessment results.



Source Water Assessment Results

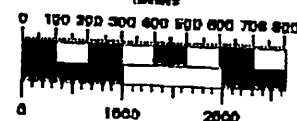
Rainbow Rock Condominiums' Drinking Water Protection Area with Sensitive Areas and Potential Contamination Sources
PWS 4101361

-  Drinking Water Protection Area
-  Drinking Water Intake - Surface Water
-  Sensitive Areas
-  Area Feature (see Note 2)
-  Point Feature (see Note 2)

Notes on Potential Contaminant Sources

Note 1: Sites and areas noted in this figure are potential sources of contamination to the drinking water identified by Oregon drinking water protection staff. Environmental contamination is not likely to occur when contaminants are used and managed properly.

Note 2: Feature identification markers correspond to the potential contaminant source numbers in the SWA Report. The area features represent the approximate area where the land use or activity occurs and is marked at the point closest to the intake. The point features represent the approximate point where the land use or activity occurs.



Printed April, 2003
 Oregon Department of Environmental Quality GIS

SUPPLEMENTAL PACKET
for
PLANNING COMMISSION MTG.
June 3rd – File MPD-1-04

EXHIBIT C:	DATE:	FROM:	NUMBER OF PAGES:	DOCUMENTS:
C-1	June 2, 2008	Catherine Wiley 96370 Duley Creek Rd. Brookings, OR 97415	17	3 page letter + 14 page attachments
C-2	June 2, 2008	James Brown, Attorney CRAG Law Center 917 SW Oak St. Ste.417 Portland, OR 97205	22	6 page letter + 15 page attachments
C-3	June 2, 2008	Jason Wood SOCC 420 Alder Street Brookings, OR 97415	1	1-page e:mail to D. Morris, Planning Director
C-4	June 2, 2008	Dianne Morris, Brookings Planning Director	2 pages: 2 pages 4 pages	FINAL ORDER for MPD-1-04-Extension and FINAL ORDER and Conditions of Approval from MPD/Remand August 2005
C-5	June 3, 2008	Genc O. Emre, Project Mgr. of OTAK 17355 SW Boones Ferry Rd Lake Oswego, OR 97035-5217	27 pages	5 page letter + Memo and attachments from Ball Janik, Attorney
C-6	June 3, 2008	Kalmiopsis Audubon Society Ann Vileisis, president P. O. Box 1265 Port Orford, OR 97465	2 pages	2 page letter

Catherine Wiley
96370 Duley Creek Road
Brookings, OR 97415
Phone/FAX 469-1962

RECEIVED
JUN 2 2008
CITY OF BROOKINGS

May 31, 2008

To: Brookings Planning Commission
898 Elk Drive, Brookings, OR 97415
Re: Application for Extension of the Borax/Rio Tinto Master Plan of Development

Madam Chair and Commissioners:

BDC 70.120 stipulates provisions for the expiration, or potential two year extension, of a master plan of development (MPoD). It is clear the criterion for extension is that the Planning Commission finds that "...conditions have not changed...".

Mr. Weast's request (dated 4/29/08) for a two year extension on behalf of Borax appears to attempt to redefine, modify or impose his own interpretation of the term "change". Accurately defined, or stated, "change" is to "make or become different". Synonyms include: "vary", "alter", and "modify". The public needs to trust that the Planning Commission will apply the existing definition. Those of us providing documentation of changes related to the conditions of the Borax MPoD view them to be significant and of critical concern to the citizens of Brookings and its surrounding communities.

1. Non-compliance with Agreements and Requirements of Goal 5

Correspondence from Dennis Griffin, PhD, RPA, State Archaeologist (dated 10/16/2006) documents a change in agreements made with Borax regarding the protection of "significant cultural sites" on the property. Dr. Griffin references Borax's non-response to their mutually agreed upon discussion with the State Office of Historic Preservation proposed for 2005. (Attachment A)
Further, the City of Brookings has never conducted an inventory of the annexed Borax property, as required for the Comprehensive Plan. This inventory could significantly change development plans.

2. Water and DEQ Requirements

Al Haddox, Chairman of the Rainbow Rock Service Association, in his letter to (former) Dean Goergen, dated 3/8/07, states, "...with construction of preliminary roads for geotechnical investigation, substantial contamination of our water supply has already occurred." Further, that, "In October of 2004, Rainbow Rock proposed to dedicate all lands, water treatment and pumping facilities, 75,000 gallon water tank and site and water rights to the City of Brookings in exchange for annexation and connection to the city system. With the current city fee structure, connection fees far exceed any benefit to Rainbow Rock. It is in our best interest to maintain our existing operating system, but we cannot permit it to be destroyed." (Attachment B -1)
DEQ has designated the Rainbow Rock Condominiums' Source Water as PWS# 4101361. Their Drinking Water Protection Area is accompanied by a map and list

of potential contaminant sources. (Attachments B-2, a,b,c). This geographic area has not been addressed, nor delineated on maps of the Borax MPoD.
(Attachment B-2, d)

The change in Rainbow Rock's decision to maintain their designated source water and the fact that their Water Protection Area has not been included on the MPoD maps are significant changes.

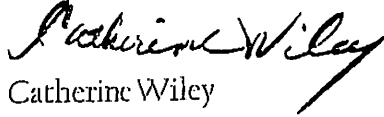
DEQ Natural Resource Specialist, Ruben Kretzschmar has written a letter to Gene Emre, OTAK Project No. 13540-Lone Ranch Property/US Borax, dated 1/16/07, citing warnings and permit violations. The activities cited for non-compliance include their installation of water mains, sanitary sewer and power conduits along the Highway 101 right of way. The DEQ requirements include completion of applications/forms for compliance with: storm water regulations for construction activities; land use compatibility; erosion and sediment control, etc. In order to correct OTAK's violation, the completed applications/forms were to be submitted by 2/1/2007. (Attachment B-2, c) There were no records of the applications or forms in the City's file, per email correspondence with the City's Public Works Director and Planning Director. Clearly, noncompliance with and/or violations of State Permitting requirements constitute significant changes in any agreement with the City, particularly when the City is to, ultimately, "take over" these components of infrastructure.

3. Coos-Curry Electric Co-op (CCEC) and the MPoD Land Use Designation
In review of documents from the Borax/UGB annexation and MPoD approvals, there is no reference to infrastructure for electricity, nor verified availability of electrical supply and proportionate costs. In fact, during verbal testimony, Borax representatives touted the "generosity" of Borax in granting the right of way for CCEC's transmission lines.
This right of way constitutes over 2.32 miles in length, and 100 feet in width; or, a total of 1,225,150 square feet. This is more than enough land for over 204 urban lots. In the MPoD, this area is designated as "Open Space", based on the presence of the wires, and in certain areas, the presence of the endangered Western Lily. Subsequent to the MPoD approval, it has been discovered that the CCEC and Borax signed a contractual lease agreement on 1/10/1977. Excerpts from this contract state the term of the lease to be ninety-nine (99) years, and the "...LESSEE" (CCEC) agrees to construct, operate and maintain electrical distribution lines to any and all buildings that may hereinafter be constructed by "LESSOR" (Borax) its successors and assigns, during the period of this lease, on any of the property now owned by "LESSOR"...." (Attachment C-1)
This contract obviously constitutes an untenable and unacceptable financial burden for the owner-members of the CCEC. This contractual lease agreement would constitute a multi-million dollar "change" for all the owner-members of CCEC throughout Coos & Curry Counties.
However, Roger Meader, CCEC CEO, has stated it is the intent of CCEC to "retire" these lines from the Borax/Rio Tinto property. This decision is based on the need to rebuild the existing transmission line because of aging materials which are all close to failing, or have already failed. Per Mr. Meader, "Plans for the

Rio Tinto property continue to evolve and change almost on a monthly basis.”
(Attachment C-2)
This would make the lease agreement null and void and thereby constitute an enormous change for any development plans.

It is requested that the Planning Commission deny this request for extension of the Borax MPoD, based on these significant and documented changes. Thank you.

Sincerely,


Catherine Wiley



Oregon

Theodore R. Kulongoski, Governor

Parks and Recreation Department
State Historic Preservation Office
725 Summer St. NE, Suite C
Salem, OR 97301-1271
(503) 986-0707
FAX (503) 986-0793
www.hcd.state.or.us

18 October 2006

City of Brookings
City Council
898 Elk Drive
Brookings OR 97415

Re: Proposed sale of Lone Ranch (U.S. Borax) property

Dear City Council:

Our office recently received an article (October 4, 2006:1) from the Curry Coastal Pilot regarding the proposed sale of the Lone Ranch property by U.S. Borax to Desert Sun Development of Bend. In the headlines of the article I read that the company Vice-President has stated that "We'll be logging trees and crushing rock immediately as soon as the cash changes hands." Having had previous discussions with U.S. Borax and your city regarding this project in 2004 I wanted to write your office to be sure that cultural issues regarding the Lone Ranch property are forwarded to any new land owner so that future development activities will not adversely affect any significant cultural resources.

The last discussion regarding the Master Plan for the Lone Ranch development that our office was aware of did not involve any site-specific planning areas that would be in conflict with any cultural resources that exist on the property. Flexibility in design and sufficient land in which to allow modification of later structural placement in cases of future conflicts appeared to have been foreseen and built into the existing ordinance and plan. Potential conflicts with cultural resources located within the Lone Ranch property, and steps needed to avoid or mitigate any adverse effects that may occur during future stages of development were, however, unable to be highlighted until US Borax drafted a detailed development plan for review. The next stage in their development plan called for such a discussion, which was proposed for 2005. No word has reached our office concerning such a proposal since our 2004 meeting and we want to be sure that any future owner of the property is aware of the cultural concerns that have been mentioned in the previously cultural resource survey report and by several western Oregon Tribes. Any future owner of the Lone Ranch property needs to be aware that all known sites need to be evaluated and either avoided or mitigated prior to ground disturbing activities occurring in these areas. The headlines of the recent article suggested that Desert Sun Development may not be aware of any potential conflicts to development of all Lone Ranch lands and we want to be sure that this issue is brought to their attention early on so that disagreements with tribal and local groups do not later derail the project.

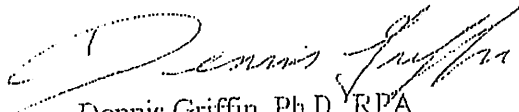
We look forward to hearing from US Borax or the new land owner regarding any future development of the property and will work with them to insure that all significant cultural sites are protected. If you have any questions regarding the above comments or would

Attachment A
(82)

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COUNCIL (orig)
PLANNING
TIM RANIS - BORAX
DESEER SAND
OCT 20 2006
MRAF

like additional information from our office, please feel free to contact me at your convenience.

Sincerely,



Dennis Griffin, Ph.D., RPA
State Archaeologist
(503) 986-0674
dennis.griffin@state.or.us

cc. Roper Roper, SHPO

Al Haddox
17744 N. Hwy 101, #100
Brookings, OR 97415

March 8, 2007

Dean Peggy Goergen
Southwest Oregon Community College
420 Alder Street
Brookings, OR 97415
Via e-mail: pgoergen@socc.edu

Dear Dean Goergen,

Curry Coastal Pilot printed an article "College inks deal for new Brookings campus" indicating SOCC is actively pursuing the development of the new campus for Southwestern Oregon on the Lone Ranch Development property. Last year, documentation was delivered to you by Rainbow Rock Condominiums that the Oregon Department of Environmental Quality had designated this area a Drinking Water Protection Area, PWS 4101361.

Rainbow Rock Condominiums has successfully operated its water system for over 20-years. The proposed site of the 10-acre parcel is located in a designated sensitive area posing a higher risk to the drinking water. It is reasonable to assume that any development within the designated site will contaminate the Rainbow Rock Condominium water supply. The Drinking Water Protection Area, PWS 47101361 has been identified in the Source Water Assessment, prepared by ODEQ, as high soil permeability, high soil erosion potential, high runoff potential, and within 1000-feet from streams.

Already, with the construction of preliminary roads for geotechnical investigation, substantial contamination of our water supply has already occurred. These occurrences have been reported to the Oregon DHS & DEQ. They have sent letters of violation to the property owners. The state agencies are aware of the sensitivity of the area and the impact disturbances will have on the designated Drinking Water Protection Area.

In October of 2004, Rainbow Rock proposed to dedicate all lands, water treatment and pumping facilities, 75,000 gallon water tank and site, and water rights to the City of Brookings in exchange for annexation and connection to the city system. With the current city fee structure, connection fees far exceed any benefit to Rainbow Rock. It is in our best interest to maintain our existing operating system, but we cannot permit it to be destroyed.

As I indicated last year in our telephone conversation, Rainbow Rock supports a new SOCC campus in Southwest Oregon. Having the campus located across the highway would add to local traffic, but would also add the convenience of educational programs close to the units. Rainbow Rock does not want to be seen as an obstruction to this new facility, but our existing water facility is vital to our existence. It must be protected.

The Lone Ranch Site could require SOCC to provide extensive mitigation measures to protect our water system, and the liability for any future contamination would be placed on SOCC. My request is that SOCC investigate other sites that can equally serve the community without destroying our water system or exposing SOCC to needless liability. Other sites would have less impact on designated sensitive areas, and would not impact an existing public water system.

Representatives of Rainbow Rock will be glad to meet with you to resolve this conflict.

Respectfully submitted,


Al Haddox
Chairman,
Rainbow Rock Service Association

Cc: Pat Sherman, Mayor, City of Brookings, Fax: 541-469-3650
Christy Sewell, Oregon DEQ, sewell.christy@deq.state.or.us
Scott Curry, Oregon DHS, Scott.G.Curry@state.or.us
Mike Meszaros, Curry Health Dept., meszarosm@co.curry.or.us
Tom Hubka, Curry Coastal Pilot, thubka@currypilot.com
Jim Stigamire, Chairman, PVCA, jstigamire14@gmail.com

Attachment B-1

SOURCE WATER ASSESSMENT SUMMARY BROCHURE

RAINBOW ROCK CONDOMINIUMS PWS # 4101361

WHAT IS A SOURCE WATER ASSESSMENT?

The Source Water Assessment was recently completed by the Department of Environmental Quality (DEQ) and the Oregon Department of Human Services (DHS) to identify the surface areas (and/or subsurface areas) that supply water to Rainbow Rock Condominiums' public water system intake and to inventory the potential contaminant sources that may impact the water supply.

WHY WAS IT COMPLETED?

The Source Water Assessment was completed to provide information so that Rainbow Rock Condominiums' public water system staff/operator, consumers, and community citizens can begin developing strategies to protect the source of their drinking water, and to minimize future public expenditures for drinking water treatment. The assessment was prepared under the requirements and guidelines of the Federal Safe Drinking Water Act (SDWA).

WHAT AREAS ARE INCLUDED IN RAINBOW ROCK CONDOMINIUMS' DRINKING WATER PROTECTION AREA?

The drinking water for Rainbow Rock Condominiums is supplied by an intake on an unnamed creek. This public water system serves approximately 80 citizens. The intake is located in the Whaleshead Creek Watershed in the Chetco Subbasin of the Southern Oregon Coastal Basin. The geographic area providing water to Rainbow Rock Condominiums' intake (the drinking water protection area) extends upstream approximately one mile in a northerly direction and encompasses a total area of 0.24 square miles. The boundaries of the Drinking Water Protection Area are illustrated on the figure attached to this summary.

WHAT ARE THE POTENTIAL SOURCES OF CONTAMINATION TO RAINBOW ROCK CONDOMINIUMS' PUBLIC DRINKING WATER SUPPLY?

The primary intent of this inventory was to identify and locate significant potential sources of contaminants of concern. The delineated drinking water protection area is primarily dominated by forest management land use. The potential contaminant sources that may effect the watershed include managed forest lands, a transportation corridor and a borrow pit. This provides a quick look at the existing potential sources of contamination that could, if improperly managed or released, impact the water quality in the watershed.

WHAT ARE THE RISKS FOR OUR SYSTEM?

One potential contaminant source, the managed forest lands, was identified within the drinking water protection area. The forestlands are located in "sensitive areas", and pose a relatively higher risk to the drinking water. The sensitive areas within the Rainbow Rock Condominiums drinking water protection area include areas with high soil permeability, high soil erosion potential, high runoff potential and areas within 1000' from the river/streams. The sensitive areas are those where the potential contamination sources, if present, have a greater potential to impact the water supply. In addition, two potential contaminant sources were identified just outside of the drinking water protection area. These potential sources are included in this inventory because they pose a moderate to high degree of potential contamination risk to the drinking water supply... The information in this assessment provides a basis for prioritizing areas in and around our community that are most vulnerable to potential impacts and can be used by the Rainbow Rock Condominiums community to develop a voluntary Drinking Water Protection Plan.

NEED MORE INFORMATION?






Rainbow Rock Condominiums' Source Water Assessment Report provides additional details on the methodology and results of this assessment. The full report is available for review at:

Contact the Rainbow Rock Condominiums' staff if you would like additional information on Source Water Assessment results.

Attachment B-2, a

Source Water Assessment Results

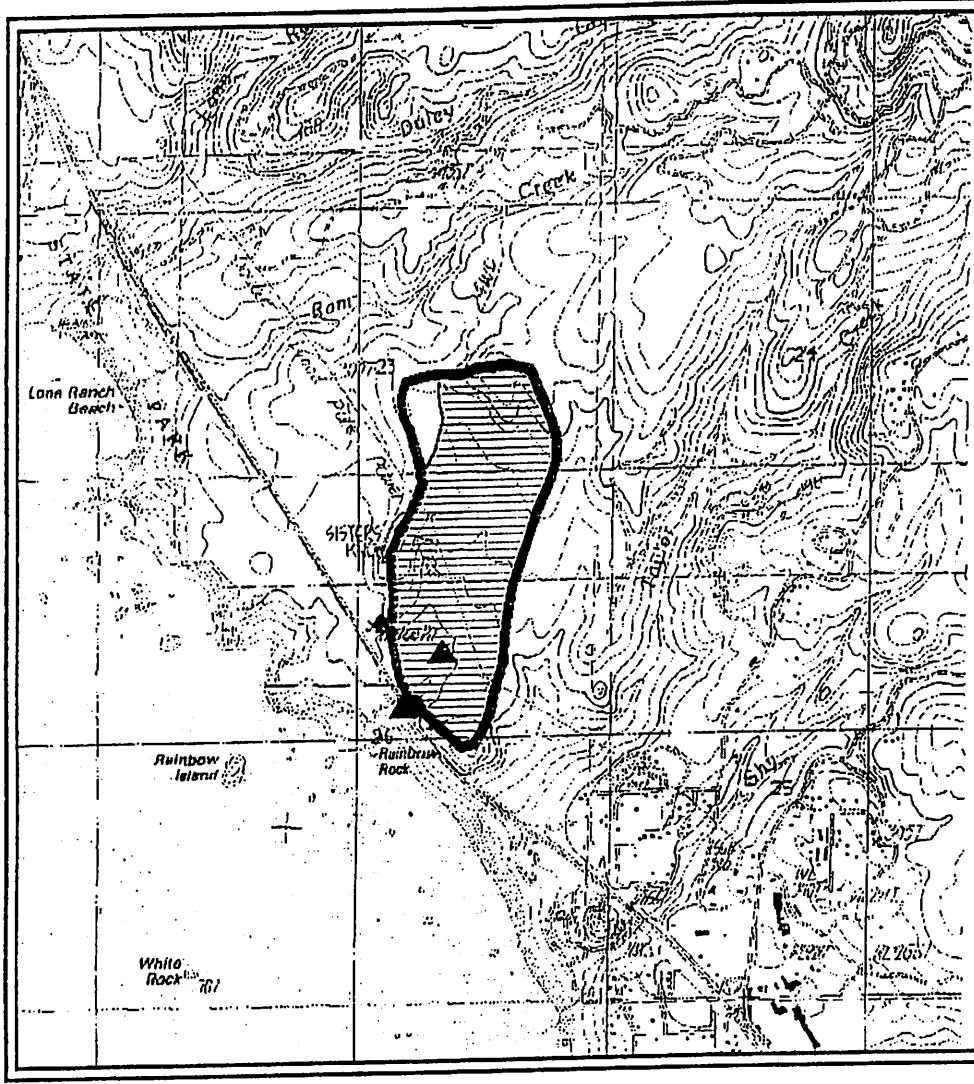
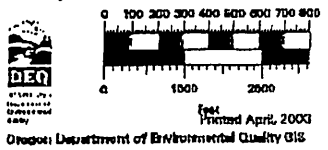
Rainbow Rock Condominiums' Drinking Water Protection Area with Sensitive Areas and Potential Contamination Sources
PWS 4101361

-  Drinking Water Protection Area
-  Drinking Water Intake - Surface Water
-  Sensitive Areas
-  Area Feature (see Note 2)
-  Point Feature (see Note 2)

Notes on Potential Contaminant Sources

Note 1: Sites and areas noted in this Figure are potential sources of contamination to the drinking water identified by Oregon drinking water protection staff. Environmental contamination is not likely to occur when contaminants are used and managed properly.

Note 2: Feature identification markers correspond to the potential contaminant source numbers in the SWA Report. The area features represent the approximate area where the land use or activity occurs and is marked at the point closest to the intake. The point features represent the approximate point where the land use or activity occurs.



Attachment B-2, b

TABLE 2. INVENTORY RESULTS - LIST OF POTENTIAL CONTAMINANT SOURCES

PWS# 4101361 RAINBOW ROCK CONDOMINIUMS

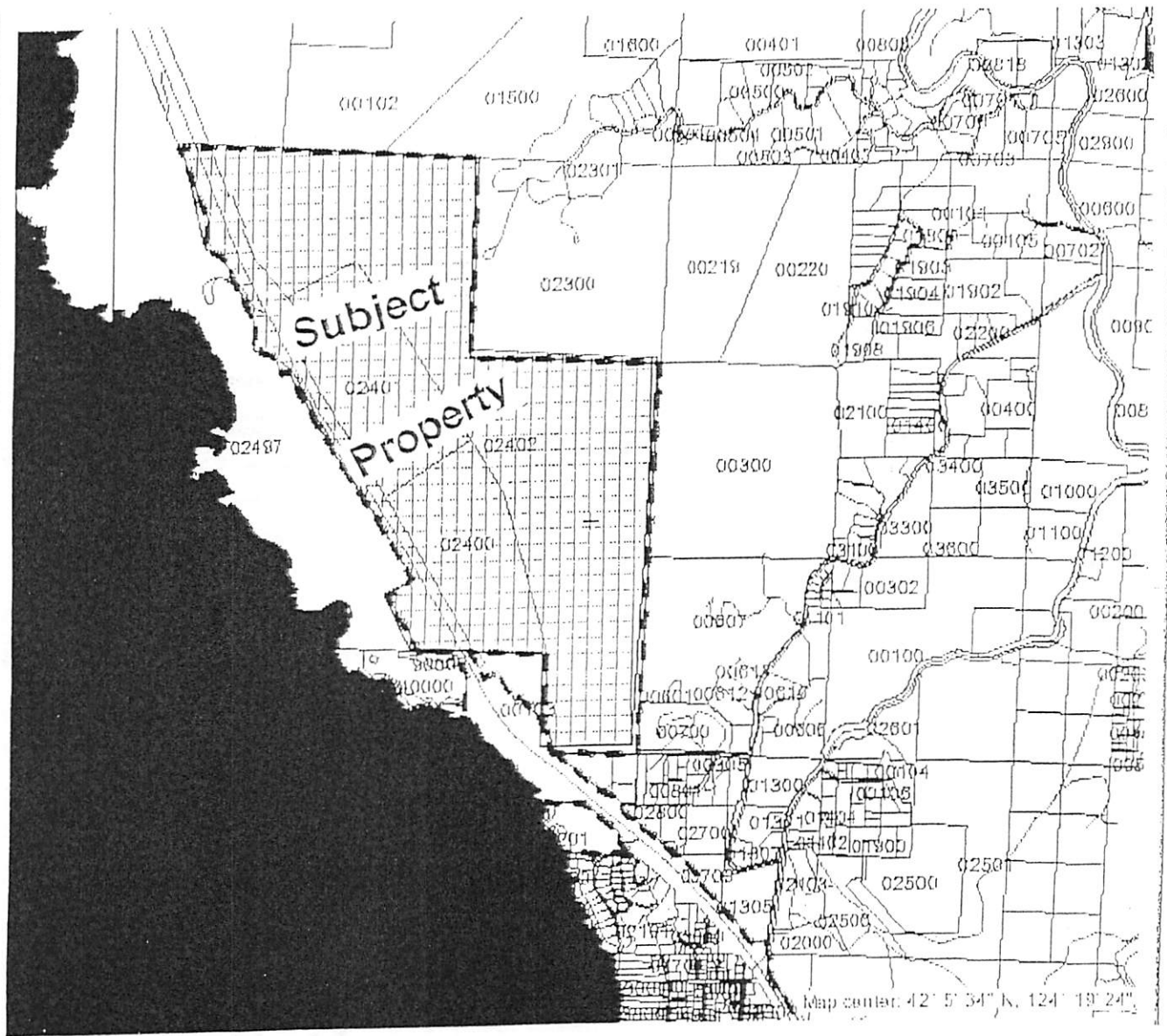
Reference No. (See Figure)	Potential Contaminant Source Type	Name	Approximate Location	City	Method for Listing	Proximity to Sensitive Areas	Relative Risk Level (1)	Potential Impacts	Comments
1	Transportation - Freeways/State Highways/Other Heavy Use Roads	Highway 101	Runs Northwest/Southeast on the Southwest Boundary	Brookings	Field-Observation	Outside sensitive areas.	Higher	Vehicle use increases the risk for leaks or spills of fuel & other haz. materials. Road building, maintenance & use can increase erosion/slope failure causing turbidity. Over-application or improper handling of pesticides/fertilizers may impact water.	Windshield survey can PWS did not participate
2	Managed Forest Lands - Status Unknown	Managed Forest Lands	Throughout DWPA	Brookings	Field-Observation	Within sensitive area.	Higher	Cutting and yarding of trees may contribute to increased erosion, resulting in turbidity and chemical changes in drinking water supply. Over-application or improper handling of pesticides or fertilizers may impact drinking water source.	
3	Mines/Gravel Pits	Borrow Pit	Northwest of Intake	Brookings	Field-Observation	Outside sensitive areas.	Moderate	Spills, leaks, or improper handling of chemicals and wastes generated in mining operations or from heavy equipment may impact the drinking water supply.	Risk reduced to Moderate the operation appears to be a borrow pit.

Note Sites and areas identified in this Table are only potential sources of contamination to the drinking water. Environmental contamination is not likely to occur when contaminants are used and

(1) Where multiple potential contaminant sources exist at a site, the highest level of risk is
 (2) See Table 3 for database listings (2)

5/21/2003

Attachment B-2, c



Applicant: U. S. Borax

Assessor's No: 40-14 & Index, Tax Lots 2400, 2402, and a portion of 2402

Size: 553 acres

Location: East of Hwy. 101 and north of Carpenterville Road

Zone: MPD-Master Plan Development



Oregon

Theodore Kulongoski, Governor

Department of Environmental Quality
Western Region Coos Bay Office
381 N Second Street
Coos Bay, OR 97420
(541) 269-2721
FAX (541) 269-7984

January 16, 2007

Gene O. Emre, Principal
Otak
17355 SW Boones Ferry Road
Lake Oswego, Oregon 97035-5217

RE: WQ- Curry County
Lone Ranch Property/US Borax - Otak Project No. 13540
WL-WQ-WR/CB-2006-077

Dear Mr. Emre:

Thank you for your response of December 7, 2006, to my Warning Letter of November 13, 2006, concerning the activities at the US Borax property north of the City of Brookings, Oregon.

In your response, you pointed out that the impact during this last portion of the project was less than three-quarters of an acre, which is less than the one-acre threshold requiring a NPDES 1200-C permit. Thank you for this information and attached pictures. However, you also pointed out that in 2005, your contractor installed water mains, sanitary sewer, and power conduits along the right-of-way of Highway 101 as part of the development for this property.

The requirement for obtaining the NPDES 1200-C permit also includes activities that disturb less than one acre that are part of a common plan of development or sale if the larger common plan of development or sale will ultimately disturb one acre or more and may discharge to surface waters or conveyance systems leading to surface waters of the state. Oregon Administrative Rules (OAR) 340-045-0015 and 0033(5) requires all owners or operators responsible for these sources to register under this permit or obtain an individual permit.

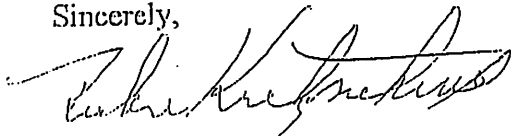
Since these two projects are part of the larger development activities for this property and it now appears that more than one acre has been disturbed, I am again requesting that you submit a completed NPDES 1200-C application and fee to DEQ. I have enclosed an application for your convenience. The NPDES 1200-C application or NPDES Storm Water Regulations for Construction Activities November 2002 includes the 1200-C Permit Application Form; Land Use Compatibility Statement Form; Erosion and Sediment Control Plan Worksheet; and Notice of Termination Form.

Attachment B-2, e



I am requesting that the completed application be submitted to DEQ by February 1, 2007, in order to correct this violation. If you need assistance in completing this application, please contact me at 541-269-2721, ext 23.

Sincerely,



Ruben Kretzschmar
Natural Resource Specialist

Cc: John Blanchard, WQ- Medford
Curry County Planning Department
City of Brookings Planning Department
Timothy V. Ramis of Ramis Crew Corrigan, LLP, Attorneys at Law

Attachment B-5

THIS LEASE is made this 28th day of January, 1977, by and between UNITED STATES BORAX & CHEMICAL CORPORATION, a Nevada corporation, successor in interest to BORAX CONSOLIDATED LIMITED, hereinafter referred to as "LESSOR", and GOOS-CURRY ELECTRIC COOPERATIVE, INC., a cooperative corporation of the State of Oregon, hereinafter referred to as "LESSEE".

DESCRIPTION OF LANDS LEASED:

CONFIDENTIAL

"LESSOR" leases to "LESSEE" the following described premises situated in Curry County, State of Oregon:

A strip of land 100 feet in width having as its centerline the following course: Beginning at a point 572 feet North of the East Quarter (E1/4) corner of Section 26, Township 40 South of Range 14 West of the Willamette Meridian, Curry County, Oregon; thence North 60° 47' West 1,640 feet more or less to a point that lies 1,371.7 feet North and 1,459.7 feet West of the East Quarter (E1/4) corner of Section 26, said Township and Range; thence North 21° 57' West 2,066 feet; thence North 39° 0' West 5,489 feet; thence North 1° 44' East 102 feet to a point that is 50 feet East of the Northwest Corner of Section 23, said Township and Range; thence continuing North 1° 44' East 2,762.5 feet to a point that is 50 feet East of the West one Quarter Corner of Section 14, said Township and Range, and terminating at said point.

PURPOSE OF LEASE:

The premises herein leased are for "LESSEE'S" construction, reconstruction, maintenance and operation of electrical power lines and supports for said power line. "LESSEE" shall have the right to cut trees and brush on said strip consistent with safe operation of said electrical power line systems; also, to cut down or remove dead or weak or dangerous trees next to said strip that are tall enough to strike said system in falling; during the period of this lease no habitations shall be constructed by "LESSOR" upon said strip for safety reasons.

TERM OF LEASE:

The term of this lease shall be a period of ninety-nine (99) years from the date hereof.

ACCESS AND EGRESS ROADS:

"LESSEE" shall have the right to use existing access and egress roads on "LESSOR'S" lands to said strip for the purposes mentioned hereinabove.

~~_____~~

In consideration of the lease rights herein granted by "LESSOR", "LESSEE" agrees to construct, operate and maintain electrical distribution lines to any and all buildings that may hereinafter be constructed by "LESSOR", its successors and assigns, during the period of this lease, on any of the property now owned by "LESSOR" in Sections 14, 23, and 26 of Township 40 South of Range 14 West of the Willamette Meridian, Curry County, Oregon.

PRESERVATION OF PROPERTY:

"LESSEE" will follow the Oregon Forest Practices Act in the use of the strip leased, and access and egress roads, and shall cooperate with "LESSOR" on gate locks and preservation of "LESSOR'S" lands.

LIABILITY:

"LESSEE" agrees to indemnify "LESSOR" and hold "LESSOR" harmless from all claims, actions, judgments, penalties, damages, and the costs of defending against the same, arising out of or resulting from the exercise by "LESSEE" of any of its rights, powers or privileges granted herein or the omission to perform any of the obligations imposed upon it herein.

Lease - Page 2

10092

Attachment C-1

ABANDONMENT BY "LESSEE":

In the event that the premises herein leased are not used by "LESSEE", its successors and assigns for a continuous period of one (1) year for the purposes hereinabove set forth, then and in such event, this lease and all rights of "LESSEE" hereunder shall immediately revert to "LESSOR", its successors and assigns.

ATTORNEY'S FEES:

In the event suit or action be brought by either of the parties hereto, their successors or assigns, the prevailing party in such suit or action shall be entitled to an attorney's fee such as the Court adjudges reasonable in such litigation, or upon any appeal thereof to an appellate Court or Courts.

SUCCESSORS AND ASSIGNS:

This agreement shall be binding upon the parties hereto, their successors and assigns.

IN WITNESS WHEREOF, "LESSOR" has, pursuant to authority granted in its By-Laws or pursuant to resolution of its Board of Directors, caused these presents to be signed by its Vice President and Secretary, and its seal affixed thereto.

UNITED STATES BORAX &
CHEMICAL CORPORATION

By H. H. Hinkle
VICE PRESIDENT.

By W. C. Chapman
SECRETARY



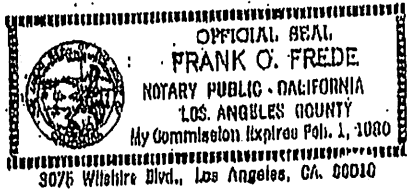
Attachment C-1

STATE OF CALIFORNIA, County of LOS ANGELES ss.

On this 10th day of January, 1977, Personally appeared H. STEINBERG and W. A. KLEINMAN

who, being duly sworn, each for himself and not one for the other, did say that the former is the President and that the latter is the Secretary of UNITED STATES BORAX & CHEMICAL CORPORATION, a corporation, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation pursuant to authority granted in its by-laws or pursuant to resolution of its board of directors.

BEFORE ME:



Frank O. Frede
NOTARY PUBLIC FOR
My Commission Expires: FEB 1, 1980

COOS-CURRY ELECTRIC COOPERATIVE, INC.



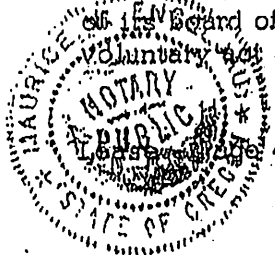
By Jack Dean
PRESIDENT

By Charles R. Knox
SECRETARY

STATE OF OREGON,)
County of Curry) ss.

On this 28th day of January, 1977, personally appeared Jack Dean and Charles R. Knox

who, being duly sworn, each for himself and not one for the other, did say that the former is the President and that the latter is the Secretary of COOS-CURRY ELECTRIC COOPERATIVE, INC., a cooperative corporation, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of directors; and each of them acknowledged said instrument to be its voluntary act and deed.



BEFORE ME:

Maurice V. Engelgau
NOTARY PUBLIC FOR OREGON
My Commission Expires: 8/28/80

10092

INDEXED IN DEEDS
State of Oregon
County of Curry ss.

RETURN TO:
Maurice V. Engelgau

Attachment C-1
4 of 4

RE: Follow-up request

From: **Roger Meader** (Rmeader@cooscurryelectric.com)
Sent: Wed 5/28/08 8:27 AM
To: Catherine Wiley (cwileywoods@hotmail.com)

Catherine

Currently we have no exact timeline for the retirement of power lines from the Rio Tinto property – once the new transmission line is completed we will then retire lines on the Rio Tinto property or we may convert the transmission line to distribution lines.

We have been working off and on with Rio Tinto folks concerning their property development. They are no different than any other developments throughout Coos-Curry Electric Cooperative's service area including lot by lot development. The development like all developments that I have seen will take 20 to 30 years for full build out unless something dramatic were to occur and with the economy and housing market where it's at I suspect this development will be no different than those in the past. Plans for the Rio Tinto property continue to evolve and change almost on a monthly basis.

Harbor Hills is in that same category of build out time frame in my opinion.

Coos-Curry Electric Cooperative has experienced various growth rates over different 10 year periods in the last 20 years ranging from 1% to 4%. Many issues in the future could affect this growth to be anywhere from no growth to higher than 4%.

Coos-Curry Electric Cooperative is currently doing a long range construction work plan (20 to 40 year period) for future construction of our distribution facilities. We do know that the existing transmission line must be rebuilt no matter what due to aging materials – poles, wire, hardware, etc. are all close to failing or have already experienced some failures. We have no exact cost estimates for either Harbor Hills or Rio Tinto at this time, without exact plans nothing more than ball park estimates.

You must have some underlying concerns – please share.

I have to go to Reedsport for most of the day but will be back in the Coquille office this afternoon.

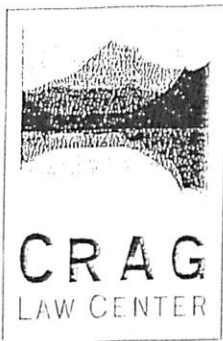
Roger Meader

Attachment C-2

<http://bl121w.bl121.mail.live.com/mail/PrintShell.aspx?type=message&cpids=6d1f6e6d-...> 5/31/2008

James D. Brown
Staff Attorney
jd@crag.org

RECEIVED
JUN 2 11:30 a.m.
2008
CITY OF BROOKINGS



Crag
LAW CENTER

917 SW Oak St.
Suite 417
Portland, OR
97205

TEL:
503.525.2724

FAX:
503.296.5454

www.crag.org

May 30, 2008

Via Express U.S. Mail and
Copy by Hand Delivery at June 3, 2008 Hearing

Brookings Planning Commission
Brookings City Hall
898 Elk Drive
Brookings, Oregon 97415

**Re: Application for Extension of Time for Lone Ranch Master Plan of
Development (File No. MPD-1-04)**

Planning Commissioners,

On behalf of the Oregon Shores Conservation Coalition, its members in Curry City and Catherine Wiley and Peter Chasar as individuals (collectively "Oregon Shores"), our office submits the following comments regarding the application of U.S. Borax Inc. ("Borax") for a two year extension of time to undertake development pursuant to the Lone Ranch Master Plan of Development ("MPoD"). Please include these comments in the record for this proceeding and provide our office with notice of further developments with the application.

Background

BDC 70.120 sets forth provisions for the expiration and potential extension of a master plan of development, and states in full:

Effective Period of Master Plan of Development (MPoD) Approval

If the applicant has not submitted a DDP for the Planned Development or the first phase within four years from the date of approval, the MPoD shall expire. Where the Planning Commission finds that *conditions have not changed*, the Commission may, at its discretion, extend the period for two additional years per extension, subject to applicable hearing and notice requirements. If after the approval of the first DDP, construction has not been started or at any time construction has lapsed for a period of three (3) years, the MPoD will expire.

BDC 70.120 (emphasis added). The date of approval for the Lone Ranch MPoD is October 25, 2004, and an extension of time would run from that date. See *Foland v. Jackson City*, 215 Or. App. 157, 168 P.3d 1238 (2007) (finding relevant date for extension of time runs from date of approval as opposed

to date of resolution of remand when local code has no specific language to contrary).

Accordingly, BDC 70.120 requires that in order to grant an extension of time for the MPoD, the Planning Commission must find that conditions have not changed. Borax, as the applicant, bears the burden of demonstrating compliance with this provision of law. Borax urges for an interpretation of this provision to be limited to "changes in circumstances that are so important and fundamental that they completely undermine the findings which are the basis for approval of the Master Plan of Development." This interpretation is a departure from the plain language of the provision, which simply refers to any change in condition and does not require the more stringent, limited analysis that Borax urges. As explained below, even under more stringent analysis urged by Borax, there have been a number of changes in conditions from the facts identified by the City in support of its approval of the Lone Ranch MPoD that preclude approval of the requested extension of time. To the contrary, the significant changes in conditions require Borax to revise the Lone Ranch MPoD in order set forth a proposal for development that is consistent with existing conditions.

Change in Conditions Require Denial of the Requested Extension of Time

There are several changes in conditions that are relevant to the Lone Ranch MPoD. Specifically, the changes alter basic factual conditions that were relied on by the City when it approved the MPoD. Because conditions have changed, the City cannot approve the requested extension of time.

(1) First Change in Condition: Availability of Water Services

City Findings in Support of MPoD Approval:

According to the terms of the Brookings Comprehensive Plan, the City must provide water services for development at the Lone Ranch site. Specifically, Comprehensive Plan Goal 14 sets forth an Urbanization Policy that requires all new development to obtain water and sanitary sewer services from the City of Brookings. In recognition of this requirement, Borax amended the MPoD through written testimony submitted during the final days of the approval process before the City Council. Specifically, written testimony from Borax stated: "Although the MPoD as originally proposed did contain an option for a partially private water supply, the Applicant has stated that it is now proposing that the entire water system be part of the City water system." Record for LUBA Appeal No. 2004-192 ("Rec.") at 69. The language of the MPoD itself was never amended to reflect this last minute change in the plans for the delivery of water services.

LUBA acknowledged that the plan for water services was modified through the written testimony of Borax before the City Council and determined that there was adequate evidence provided in the record to support the City's conclusion that there is a sufficient source of water for the development. *Oregon Shores v. City of Brookings*, 49 Or LUBA 273, 291 (2005). LUBA relied on a memorandum from Otak engineering and testimony that was provided by the planning director as evidence in support of this conclusion and found: "Otak and the planning director both explain why they believe there is sufficient capacity to serve the subject property

from existing city water supplies and note that onsite wells could be developed to supplement that water supply if necessary.” *Id.* The memorandum from Otak cited by LUBA states that the use of an onsite wells would only be used as an interim measure for the community college. Rec. 117. The testimony of the planning director stated that the onsite wells would provide a supplement but provided no details in support.

LUBA’s conclusion is confusing to a degree because the last minute modification from Borax states that in order to comply with the requirements of the Comp Plan, “the Applicant has stated that it is now proposing that the entire water system be part of the City water system.” This statement makes no provision for the supply of water from onsite wells. Nonetheless, LUBA concludes that there will be adequate water in part because the City’s supply will be supplemented by onsite wells. Accordingly, there is a degree of uncertainty regarding the final plan for the provision of water services for the Lone Ranch MPoD, which was not settled by either the City or LUBA. To the degree that onsite wells will not or cannot be used to supplement City water services, the final plan for water services has changed and the plan must be amended. Regardless, as explained below, changes in conditions regarding water services precludes approval of the extension request.

Change in Conditions Since Approval:

Since the approval of the MPoD, as amended, new information has come to light that evidences a change in the conditions that formed the basis for the City’s findings in support of its conclusion that the system of water delivery as proposed by the MPoD will be adequate. This new information demonstrates both that (a) the City does not have adequate capacity to supply water for the level of development proposed in the MPoD, and (b) even if envisioned as part of the plan, proposed onsite wells would be inadequate to supplement water supply from the City.

(a) City Lacks Capacity to Supply Water for Lone Ranch MPoD

There is evidence that the City lacks adequate capacity to serve the scope of development proposed in the MPoD. This evidence has come to light after the approval of the MPoD. A thorough analysis of the capacity of the City’s water system to serve as the sole source for the Lone Ranch development was not undertaken because of the last minute change in plans. Accordingly, it is not surprising that additional information bears on this issue and demonstrates a change in conditions from those that formed the basis for approval of the MPoD.

First, the City’s engineers have recognized that the City’s water system has inadequate capacity to be the sole source of water for the Lone Ranch development. *See* Email from Richard Norad, HGE, to various recipients, dated October 31, 2006 (Attachment A) (stating “If Lone Ranch is unable to develop a well supply, or to provide water rights and permits for the wells, the plan will likely require an amendment”). The City’s current master plan for providing water services does not include the provision of water to support the Lone Ranch development proposed in the MPoD. *See* Attachment A. The statements of the City’s engineers directly contradict the testimony from the City’s Planning Director in support of the approval of the MPoD, which was the primary finding relied on by LUBA. As of September 2007, the City’s Public Works Director informed the City Manager that City water services are limited and

inadequate to supply sufficient water to even prepare infrastructure leading to the Lone Ranch site for connection to the City's system. *See* Memo from John Cowan to Gary Milliman, dated September 12, 2007 (Attachment B) (stating concern regarding adequate flow within City system to flush waterline in preparation for connection to City system).

Second, the City has failed to secure water rights to provide expanded services. In 2005, the State legislature modified the law on extensions of water rights with the adoption of HB 3038, which included the establishment of a fisheries standard for the first extension issued after 2005 for certain permits including those held by Brookings. The City's requests for water rights are under protest and will need to address this change in the law that will impact and limit available water for the City. Meeting the fisheries standard involves getting advice from ODFW on whether or how the permit could be developed in a way that maintains the persistence of listed fish (including federal and state listed threatened and endangered species) - a process which has not begun for the Chetco. The City has recognized that there is a serious issue regarding the availability of water and has informed other applicants for City water services that the City's system is currently inadequate to serve expanded uses until water rights are secured. *See* Letter from Gary Milliman to Ed Murdock, dated November 15, 2007 (Attachment C) (rejecting request for extension of City water services to provide water for proposed golf course development).

(b) Onsite Wells Are Inadequate Supplement for Likely City Shortfalls.

What role, if any, onsite wells are intended to play in the supply of water for MPoD is uncertain from the findings adopted in support of MPoD. This ambiguity alone should be a cause for concern in light of the information regarding water services set forth above. Even if onsite wells are included in the present plan as a supplement, there is evidence that the onsite wells are inadequate for this purpose. Acting Mayor Dentino who presided at the City Council meeting where the MPoD was approved recognized that the onsite wells have demonstrated shortfalls. Rec. 11. Further, the City's Public Works Director has indicated that it is his understanding that the onsite wells are not likely to produce adequate water. *See* Email from Donald Wilcox to Pat Sherman and Dale Shaddox, dated April 30, 2006 (Attachment D).

In sum, evidence provided in this letter demonstrates a change in conditions regarding the availability of water services as envisioned in the MPoD. The evidence necessitates a revision of the plan to address the change in conditions and an extension of the current plan is not warranted.

(2) Second Change in Condition: Cost Sharing for Infrastructure

The Staff Report for the present extension application states that "[t]he Applicant has constructed much of the needed water and sewer main extensions from the City's existing mains to the site along Highway 101." This statement fails to acknowledge the critical issues regarding water services mentioned above, but always omits the critical new information regarding cost sharing for the infrastructure improvements. The MPoD and findings in support represent that Borax would shoulder a significant portion of the costs required for infrastructure improvements to serve the Lone Ranch site. Contrary to the findings in support of the MPoD, the primary costs have been born by the public and this change in conditions necessitates the denial of the

extension request in order that decision-makers can accurately assess the financial burden that the public will bear to support the Lone Ranch development.

City Findings in Support of MPoD Approval:

With regard to financing infrastructure improvements, the "Lone Ranch Master Plan Utilities Report" (Utilities Report) adopted in support of the MPoD explains that Borax will share in the costs of off-site improvements. Utilities Report 23. Specifically, the Utilities Report states "[t]he cost of offsite improvements will be split between the City of Brookings and the developer, based on proportionate benefits to each other." *Id.* The same statement regarding cost sharing was echoed in findings in support of the MPoD approval. Rec. 54. The Utilities Report references the HGE Report prepared in November 2001, which provides estimates for offsite improvements necessary to facilities development at the Lone Ranch site. Communications between HGE and Borax describe the cost-sharing arraignment that provided the expectation of cost sharing as it was understood by the City during the MPoD approval process. *See* Letter from Richard Nored to Leroy Blodgett, dated April 22, 2004 (Attachment E).

Change in Conditions Since Approval:

Since the adoption of the MPoD, evidence makes clear that there has been a dramatic departure from the understanding regarding cost sharing that formed the basis for the findings adopted in support of the MPoD. In May 2006, then Mayor Pat Sherman provided a public disclosure that communicated Borax provided *no* share of the costs for infrastructure improvements that served to extent sewer lines between Crissey Circle to Parkview Drive. Peter Rice, *Mayor: Borax Did Not Pay Its Share of Sewer Project*, Curry Coastal Pilot (Attachment F) (May 20, 2006). In September 2007, HGE communicated to the Department of Public Works that Borax has continued to negotiate to provide a diminished share of costs. *See* Letter from Richard Nored to John Cowan, dated September 27, 2007 (Attachment G) (2007 letter from HGE)

Accordingly, evidence since the adoption of the MPoD demonstrates a change in condition regarding cost sharing for infrastructure improvements. Borax has not provided funds to pay for its proportional benefit of infrastructure improvements and this represents a change in condition that necessitates the denial of the extension request.

(3) Third Change in Condition: Adverse Impacts to Rainbow Rock Condominiums.

City Findings in Support of MPoD Approval:

BDC 70.070(C) requires: "The MPoD will further demonstrate that existing utility services and water supplies for adjacent properties will not be negatively affected at each phase." In support of finding compliance with this provision of law, the findings in support fo the approval of the MPoD identify the Rainbow Rock Condominiums as the only adjacent property with a water system that would be potentially affected by the Lone Ranch MPoD. Rec. 33. The findings state that Rainbow Rock will be able to connect to the City's water system at the time that extension of the City's services are complete and before any adverse impacts occur. *Id.*

Change in Conditions Since Approval:

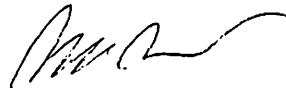
Since the adoption of the MPoD, the Rainbow Rock water source that flows from the Lone Ranch site has been federally designated as a drinking water source. *See* Letter from Al Haddox, Chariman of Rainbow Rock Service Association, to Peggy Goergen, Dean of Southwest Oregon Community College, dated March 8, 2007 (Attachment H). Representatives from Rainbow Rock already report adverse impacts from the limited ground clearing and development that is already occurring on the Lone Ranch site. *See* Attachment H. In response to the already demonstrated adverse impacts that the findings stated would not occur, Rainbow Rock has requested that the MPoD be revisited and modified accordingly. Attachment H.

The demonstrated impacts to a newly designed drinking water supply represent a change in conditions that further preclude the extension of the Lone Ranch MPoD.

Conclusion

In conclusion, Oregon Shores respectfully requests the Planning Commission deny the application for extension of the Lone Ranch MPoD. Changes in conditions regarding the provision of water services, cost sharing for infrastructure improvements and impacts to the Rainbow Rock Condominiums necessitates a revision of the plan.

Sincerely,



James D. Brown
On Behalf of the Oregon Shores Conservation
Coalition, Catherine Wiley and Peter Chasar

Dale Shaddox

From: Richard Nored [rnored@hge1.com]
Sent: Tuesday, October 31, 2006 9:43 AM
To: Dale Shaddox; Bill Sharp; Chris Wallace; Dianne Snow; John Cowan; Paul Hughes
Cc: Pat Sherman; Dave Gordon
Subject: RE: Lone Ranch serious issues

I appreciate the issues raised by Mayor Sherman. The questions are well thought out and provide insight and understanding we don't often see from Councilors. I will attempt to provide a response in the order addressed, first with regard to the Final Order, and secondly for the two questions raised.

COA # 15. The project water system shall be developed to connect to the existing city system and allow reverse flows. The Lone Ranch Master Plan provides for total reservoir storage of 1.1 MG, with a 500,000 gallon initial reservoir. Initial plans included on-site well capacity for average daily demands of Lone Ranch, with fire demands to be provided from the City of Brookings. The wells and the initial reservoir were to be provided first phase. Mains within the Lone Ranch development were sized for 1500 gpm fire protection, and domestic usage was projected at a total of 583 gpm. An additional demand was projected for the Rainbow Rock condominium project at 42 gpm in the Lone Ranch Proposal (63.5 gpm in City Plan). The proposal by Lone Ranch will allow for reverse flows, so this condition should be satisfied.

COA # 21. All appropriate federal and state permits related to the direct impact of development on the waters of the State or U.S. shall be obtained prior to development. This should be achievable if the wells at Lone Ranch produce adequate quantities of water.

Questions for the Engineer.

1. Is the 12" main on Hwy 101 big enough to accommodate both fire flows and domestic demand? The line installed by Lone Ranch was a 16" main, which should be adequate for fire flows, with the understanding that domestic demand would be provided by their wells. In addition, the majority of fire flows will be provided by reservoir storage, and domestic demand is minimal in comparison to fire flows. I believe that what they have installed will provide adequate capacity with the installation of reservoir storage in Lone Ranch, irregardless of the capacity of the wells. In sizing for the 16" water main which has been installed, their design calculations assumed a well capacity of 140 gpm, which is substantially less than the original Master Plan, but this may just be for initial planning purposes. Outside of the installed waterlines, the remainder of the recommendations from the Water and Wastewater Facilities Plan to Serve Borax Development and Surrounding Areas will need to be installed. This includes a 16" waterline from Carpenterville Road to Easy Street, and replacement of the Easy Street waterline with a 12" waterline from Hwy 101 to Fern Ave. This should provide for offsite needs.

2. If they hookup to our water system, how much water storage, in addition to the previous calculations, must be added? Or do they need to downsize their project? Their proposal was always to provide reservoir storage for the projected development in Lone Ranch, initially with a 500,000 gallon storage reservoir, and ultimately with a total storage of 1,100,000 gallons. This should be adequate with their projected wells and with the proposed water supply from the City of Brookings. If the facilities are installed, there should be no need to downsize their project.

Comment. If Lone Ranch is unable to develop a well supply, or to provide water rights and permits for the wells, the plan will likely require an amendment. Projections of the Water System Master Plan, 2000, anticipate water needs in excess of 5.1 cfs, on a maximum daily basis, by 2025. Lone Ranch was not envisioned in the planning for the Water System Master Plan in 2000, since it was outside the UGB. This issue will ultimately need to be addressed, but the addition of Lone Ranch without a supplemental water supply will place an additional demand on the water system.

From: Dale Shaddox [mailto:dshaddox@brookings.or.us]

Attachment A

10/31/2006

(103)

Sent: Monday, October 23, 2006 9:18 AM
To: Bill Sharp; Chris Wallace; Dianne Snow; John Cowan; rnored@hge1.com; Paul Hughes
Cc: Pat Sherman; Dave Gordon
Subject: FW: Lone Ranch serious issues

I am forwarding these comments from the Mayor as food for thought and review for now. We need to have a meeting to review the various topics prior to our upcoming meeting with Borax reps on Nov. 3 (10AM) Probably a conference call to Dick with the rest of us in my office. How does the 31st (Tuesday morning after department head meeting) at 9:30 look to everyone?

The other topics to consider include:

- Offsite improvements; scope and estimates of cost
- Potential for City cost sharing, if any; including review of reimbursement agreements, and SDC fund balances and priority of projects.
- Rainbow Rock watershed issues.
- On-site water supply issues.
- Archeological issues; see letter from State Archeologist
- Etc.

Thanks, and let me know of you availability for the conference call.

Dale Shaddox
City Manager
City of Brookings, OR
541-469-1101
dshaddox@brookings.or.us

-----Original Message-----

From: Dale Shaddox
Sent: Monday, October 23, 2006 8:06 AM
To: 'Pat Sherman'
Subject: RE: Lone Ranch serious issues

Hi Pat,
Thanks for the notes and thoughtful insight. I will discuss with staff and our engineer.

Dale Shaddox
City Manager
City of Brookings, OR
541-469-1101
dshaddox@brookings.or.us

-----Original Message-----

From: Pat Sherman [mailto:psherman99@verizon.net]
Sent: Sunday, October 22, 2006 6:23 PM
To: Dale Shaddox
Subject: Lone Ranch serious issues

Dale,

In reviewing the Final Order for the Lone Ranch MPoD there are two conditions of approval I would like to bring to your attention.

15. The project water system shall be developed to connect to the existing city system and allow reverse flows.

Comment. The project water system for the initial phases was based on their wells.

21. All appropriate federal and state permits related to the direct impact of development on the

waters of the State or U.S. shall be obtained prior to development.

Comment. Sounds like obtaining a water permit for the well will be problematic, at best. More likely not doable.

And CoA 2. The conditions stated herein are mandatory and must be completed. Failure to comply....etc.

So, basically, from the get-go their water system was based on the well, and there is no permit for the well, and not likely to be one. They will have to amend their plan, I think. Amending the plan would mean that they get all of their water from the City. At one time Don Wilcox calculated that if Lone Ranch was included in our water system, we would exceed on a fairly regular basis the 5.1 cfs we are restricted to in our dry periods.

So, I have two questions for our engineer.

1. Is the 12" main on Hwy 101 big enough to accommodate both fire flows and domestic demand?
Do the other offsite pipes need to be re-sized?
2. If they hook up to our water system how much water storage, in addition to the previous calculations, must be added? Or do they need to downsize their project?

Pat

Memo

City of Brookings - Public Works Department
898 Elk Drive
Brookings, OR 97415
(541) 469- Fax: 469-3650
www.brookings.or.us



To: Gary Milliman
From: John Cowan, Public Works Director
Date: September 12, 2007
Re: SWOCC/Borax Water Line

I have been contacted by Mike Crow of Crow/Clay Architects Planners of Coos Bay. Mike is asking for a letter from the city to Borax (RIO TINTO) to facilitate Borax turning over ownership of the 16" water line from Carpenterville Road to the Borax property. Crow/Clay are the architects of record for the SWOCC campus project. In order for this to happen the water line would have to be pressure tested, flushed, chlorinated, flushed, and tested for bac-t, and accurate as-built plans would need to be provided as would associated easements. Mike is asking that a letter be drafted to Borax to start this process and that he be copied. Mike had mentioned that he had been in touch with Burton Weast and that Burton had stated that Borax would love to turn over ownership of the waterline to the City of Brookings.

The only drawback in this process at this time that I see is that it takes approximately 200,000 gallons of water each time we flush this line. Currently the flow in CFS of the Chetco River is below 100, if we have hot weather there is a possibility that the water treatment plant would not be able to keep up with demand caused by the flushing of this line. I would hope that the testing and acceptance of this line would take place sometime after the fall rains start.

What is your take on this issue? Did you want me to take the lead on this or would you be interested in pursuing this issue.

*We should not proceed with testing until there is flow in the river
will above 100 CFS*

- [Signature] 9/12/07

Attachment B



City of Brookings

898 Elk Drive, Brookings, OR 97415

(541) 469-1100 Fax (541) 469-3650

gmilliman@brookings.or.us

GARY MILLIMAN

City Manager

Ed Murdock
Salmon Run Golf Course
99040 South Bank Rd
Brookings, OR 97415

November 15, 2007

Dear Mr. Murdock,

This is a follow-up and status report concerning our discussion regarding water service to Salmon Run Golf Course.

The City of Brookings is in the process of obtaining the necessary certificates and permit extensions to secure the City's long term water rights on the Chetco River. This matter is being aggressively pursued by the City's legal and engineering consultants, and by the City's management staff.

Until these issues are resolved, the City is not in a position to consider making a commitment for water service to the golf course. Only in the event that we are able to secure adequate water rights to meet the City's long-term domestic water consumption needs can the City then consider providing water service to the golf course.

Respectfully,

Gary Milliman
City Manager

Cc: Mayor and City Council
Pete Pavich, Claveron Group
John Trew, City Attorney
Martha Pagel, Water Rights Attorney

Attachment C

America's
Wild Rivers
100 MILES OF NATURE'S BEST Coast.

Pat Sherman

From: Donald Wilcox
Sent: Sunday, April 30, 2006 2:10 PM
To: Pat Sherman
Cc: Dale Shaddox
Subject: Lone Ranch Will Serve capability

Pat,

As per our discussion last Friday concerning the approved Lone Ranch Master Plan of Development in which on-site wells were proposed for the water supply, here are my recollections of the meetings we discussed:

On Tuesday, April 11, I met with John Bischoff and Burton Weist to discuss water and sewer service "Will Serve" capability from the City for the Lone Ranch development. I informed Burton of the following:

- It was my understanding that Lone Ranch would be self sufficient with water based on two domestic supply wells on the Lone ranch property and that a mutual aid connection was the only reason for a water line to connect Lone Ranch with the City's water system. Burton responded that Leroy Blodgett cancelled that plan and required Lone Ranch to be supplied with water from the City's water system. He added that the City was to apply for water rights for the wells if the well pump tests were acceptable to the City and DWR.
- The City has no capacity to serve water to Lone Ranch unless all of the improvements as identified in the HGE Engineering report were completed. In addition, the booster pumps and upsizing of our water lines from the WTP to our 1.5 MG reservoir and larger intake pumps and upsizing of our water line from our Intake to our WTP and WTP by-pass would be required before Lone Ranch build-out. I offered a copy of the HGE report but Burton said he already has the report and that all the cost estimates in that report are about 4 X too high. He did not comment on the projects being needed to serve Lone Ranch.
- The current water connection needs to be disconnected until disinfected and in service. Burton said he would take care of that.
- The City is not currently able to provide sewer collection service but does have treatment capacity. There is about one mile of missing sewer line to connect Lone Ranch with the City sewer but that line and several other large pipe projects would need to be completed as identified in the HGE Engineering report before we could have collection system capacity to serve Lone ranch.

Last December or January, Dale and I attended a Chetco Watershed Council meeting. Present at that meeting were two DWR employees. I believe they were Ivan Gall, RG and Jonathan La Marche. Larry Anderson was present also. We may be able to get minutes of that meeting, but my recollection is that the DWR staff was asked if they knew anything about wells on the Lone Ranch site to provide water for that development. DWR staff explained that to the best of their knowledge, there are no water rights or wells capable of municipal production in that area. In addition, they were almost certain that the geological make-up in that area would not likely produce much water because it is rock with small fissures which hold very little water, not porous media needed for an aquifer to occur.

Please let me know if you have any questions or require additional information.

Don



ARCHITECTS
ENGINEERS
SURVEYORS
PLANNERS

April 22, 2004

City of Brookings
898 Elk Drive
Brookings, OR 97415

Attn: LeRoy Blodgett
City Manager

Re: Lone Ranch Development
Project # 01.81

375 PARK AVE
COOS BAY
OREGON
97420

541.269.1166
FAX 541.269.1033
CELL 541.953.3958
rnored@hge1.com

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

Dear LeRoy:

We have met with OTAK reviewed preliminary cost estimates from the Lone Ranch Master Plan prepared by OTAK, and made modifications to our analysis of February 16, 2004 for needed water and sewer capacity to serve the Borax Development and Surrounding Areas, and the City of Brookings, utilizing a report from this office dated November 2001. In general, in the planning process, Lone Ranch has been reduced in sizing for total growth, which will reduce both the overall cost and share of the costs that should be borne by Lone Ranch, considering the potential for growth in other areas that must be considered by the City of Brookings in their long range planning process. In addition to sizing differences for proposed facilities in planning for the City and in the Lone Ranch Master Plan, we continue to believe that cost projections for off-site water and sewer facilities in the Lone Ranch Master Plan are low, and do not adequately consider the difficulty and expenses of working in the right-of-way for Highway 101. This will be emphasized even further with the fact that ODOT is improving Highway 101 in the very near future, and major portions of these planned improvements will be working along newly improved portions of the highway. Projected costs for Lone Ranch are necessarily prepared only to serve the Lone Ranch development, in comparison to the City plan to make provisions for future growth within the Brookings UGB, and there are cost savings with private construction in comparison to public construction. Construction for public works projects in Oregon must follow OAR requirements and compensate workers with State Prevailing Wages. Irregardless, we believe that the cost projections provided in the Lone Ranch Plan are not realistic in the Highway 101 corridor.

Our cost projections and work tasks vary from the 2001 Water and Wastewater Facilities Plan to reflect better data available from the Lone Ranch Master Plan, and more current growth projections for allowable growth in Lone Ranch. In consideration of the more current data, we provide the following cost projections and recommendations for needed development to provide Brookings municipal water and wastewater facilities to Lone Ranch and Surrounding Areas.

For cost sharing purposes, it is assumed that Lone Ranch would provide payment for off-site water and wastewater facilities extending to existing facilities in the City, in conjunction with the Lone Ranch Master Plan. Basically, Lone Ranch would provide for the costs of extending water mains from their development to Carpenterville Road, and for the extension of sewer facilities to a City Main where facilities enter the Dawson Tract development. Cost estimates from the 1991 Plan have been increased

A. Hochmuth

for inflation, utilizing the current ENR index of 6,862, an increase of 7.3% over 1991 values, for major portions of the work as presented. Total water and wastewater facilities costs for each phase, with recommended cost sharing, appear as follows:

Water

It is assumed that water distribution and storage exists to serve present residents of the City of Brookings. Capacity from the existing system is not available to extend services beyond the current service area. Proposed improvements to serve growth outside of the City, should be shared amongst the potential beneficiaries, with Brookings paying for the cost to provide service for growth areas North to the UGB and outside of the proposed Lone Ranch Development. Development costs for growth in surrounding areas can be reallocated as growth occurs. Lone Ranch should be expected to provide off-site costs to benefit their development. It is recommended that shared facilities terminate at Carpenterville Road, and that Lone Ranch pay all costs of extending from this point into their development.

Existing users that can connect to proposed water extensions will become ratepayers immediately, which will produce a revenue stream to pay a portion of debt service for repayment of capital costs. For purposes of simplicity, and utilizing growth figures now planned for Lone Ranch, costs should be shared approximately equally, or 50/50 for the planned costs of needed water system improvements, with the understanding that Brookings would not undertake this work without the Lone Ranch project. Based on this reasoning, Lone Ranch should provide for costs of the line North of Carpenterville Rd., \$ 795,570, plus a 50% share of remaining costs of water improvements estimated at \$ 1,928,670, or a total of \$ 1,759,905 of the Brookings water system expansion cost to serve this development.

Table 1-1 Recommended Distribution Improvements
 Preliminary Opinion of Probable Cost for Water System Expansion to Serve Boruz Development and Future Growth to U.G.B.

Description	Unit	Estimated Project Cost		
		Unit Cost	Quantity	Extension
12" Water Main	LF	\$85.30	17,500	\$1,492,750
Boring - 12" Main and Casing	LF	\$550.00	120	\$66,000
Rock Excavation	CY	\$100.00	1,200	\$120,000
Gravel Surface Replacement	CY	\$32.00	2,750	\$88,000
Asphalt Surface Replacement	TON	\$100.00	2,050	\$205,000
Seeding	SQ	\$10.00	3,000	\$30,000
Compaction Testing	EA	\$250.00	50	\$12,500
Construction Subtotal				\$2,014,250
Construction Contingencies				\$201,425
Engineering and Construction Observation				\$402,850
Legal and Administrative Easement Acquisition				\$100,715 \$5,000
TOTAL				\$2,724,240

Estimates from the 2001 Water and Wastewater Plan provided capacity for water improvements to the following service areas:

Table J-2 Potential Development Outside Current Brookings Service Area

	Growth Outside Lone Ranch Estimated Equivalent Population	Current Planned Growth Inside Lone Ranch Estimated Equivalent Population
Rainbow Rock	430	
Rainbow Rock Trailer Park	128	
Lone Ranch	1,000 including hotel	2,560
Gas Station		5
SWOCC	1,100 students	121
Basin 4	1,725	
Basin 4a	51	
Basin 5	712	
TOTAL	3,046	2,686
Percentage of Growth in Planning Area	Assume 50%	Assume 50%

Wastewater

Wastewater system construction needs to serve Lone Ranch and Surrounding Areas is more complex than needs for water system improvements. Capacity in the wastewater system does not exist to service this area, and system expansion will be necessary to serve Lone Ranch, surrounding areas, and growth within the present Brookings system. Once again, we have assumed that all costs extending from Lone Ranch South to existing City of Brookings sewer facilities at the entrance to Dawson Tract will be provided by Lone Ranch, and that system needs from that point to Moore Street can be cost shared in a similar fashion, and with the same approach, as proposed for the water system. Projected costs that the City has authorized for replacement of the sewer system from Crissey Circle to Parkview Drive have not been considered in this analysis. Lone Ranch costs for this project portion total \$ 601,560.

Sewer extensions will also be needed downstream from Moore Street, and costs need to be shared differently than for the remainder of the project. Project costs North of Moore Street to the point where Lone Ranch will connect to the system total \$ 1,026,600, and should be shared 50% for Lone Ranch, or a total construction cost of \$ 513,300. Total costs for Lone Ranch North of Moore Street would be \$ 1,114,860.



Table I-3 Recommended Collection System Improvements
 Preliminary Opinion of Probable Cost for Proposed Gravity and Pressure Collection System to Serve Borax
 Development and Future Growth North to U.G.II.

Description	Unit	Estimated Project Cost		
		Unit Cost	Quantity	Extension
36" Sewer Main	LF	\$104.50	800	\$147,600
27" Sewer Main	LF	\$155.50	5,300	\$824,150
24" Sewer Main	LF	\$139.00	3,600	\$500,400
Manholes	EA	\$3,500.00	25	\$87,500
Boring (24" Main) and Casing	LF	\$965.00	100	\$96,500
Service Laterals	LF	\$50.00	1,000	\$50,000
Wastewater Pump Station	EA	\$300,000.00	1	\$300,000
12" Forcemain	LF	\$45.00	6,700	\$301,500
Forcemain Fittings	LS	5% OF FM \$	1	\$12,600
Air Release Valve and Manhole	EA	\$4,000.00	6	\$24,000
Rock Excavation	CY	\$100.00	1,500	\$150,000
Gravel Surface Replacement	CY	\$32.00	1,600	\$51,200
Asphalt Surface Replacement	TON	\$100.00	1,200	\$120,000
Seeding	SQ	\$10.00	2,000	\$20,000
Compaction Testing	EA	\$250.00	30	\$7,500
Construction Subtotal				\$2,692,950
Construction Contingencies				\$269,295
Engineering and Construction Observation				\$538,590
Legal and Administrative Easement Acquisition	AC	\$500.00	6	\$134,645 \$3,000
TOTAL				\$3,630,480

In addition to construction costs North of Main Street, the cost of line replacements South of Moore Street should be shared by the entire Brookings community, and by Lone Ranch and Surrounding Areas. Current population estimates for Brookings, Lone Ranch and Surrounding Areas is estimated at 12,086 residents. The analysis for potential development inside Lone Ranch anticipates a population equivalent of 2,686 residents. Usage should be shared on a proportionate basis for this section, or $2,686/12,086 = 23\%$ of the cost should be paid as off-site improvements for the Lone Ranch Development, a total of \$ 339,890.

Our analysis proposes off-site water and wastewater costs for Lone Ranch as follows:

Lone Ranch Share of Developed Facilities

Water	\$ 1,795,905
Wastewater Improvements North of Moore Street	\$ 1,114,860
Wastewater Improvements South of Moore Street	\$ 339,890

Total Lone Ranch Share of Off-Site
Capital Improvements \$ 3,250,655

Water	\$ 964,335
Wastewater Improvements North of Moore Street	\$ 513,300
Wastewater Improvements South of Moore Street	\$ 1,137,895

Total Brookings Share of Off-Site
Improvements \$ 2,615,530

Our analysis has attempted to consider this project in an identical manner to every other development which has occurred in the City of Brookings, for off site improvements. However, since growth is occurring both inside and outside of the City, costs should be shared by the City both for costs to serve new development outside the City, and for improvements that benefit existing residents of the City. Some facility needs are known to exist for growth within the current Brookings service area, and this plan make provisions for cost sharing between the Lone Ranch development and residents of the City to share in the cost of needed water and wastewater infrastructure improvements.

Please contact me if we can provide further information in this regard. We appreciate the opportunity to be of continuing assistance to the City of Brookings.

Very truly yours,

HGE INC., Architects, Engineers,
Surveyors & Planners

Richard D. Nored, P.E.
President

c. Ed Wail, Economic Development Coordinator
Leo Lightle, Community Development Director



ARCHITECTS, ENGINEERS, SURVEYORS & PLANNERS
375 Park Avenue, Coos Bay, Oregon 97420



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MAYOR: BORAX DID NOT PAY ITS SHARE OF SEWER PROJECT

Published: May 20, 2006

By Peter Rice

Pilot staff writer

The city of Brookings paid hundreds of thousands of dollars in sewer pipe installation costs that it might have shared with a developer, according to a statement issued last week by Mayor Pat Sherman.

At issue is a project completed in 2005, upgrading a section of sewer line between Crissey Circle and Parkview Drive. The city paid the entire \$794,000 bill, according to Finance Director Paul Hughes, with \$74,000 coming from sewer replacement fees collected in \$2.50 increments on monthly bills, and the rest coming from general sewer revenues – the money paid by sewer rate payers.

But in a 2004 report to then City Manager Leroy Blodgett, the Coos Bay engineering firm HGE wrote that the cost of the project should be split 50/50 with the 1,000-home U.S. Borax Lone Ranch development.

Cities frequently hire engineers to calculate such cost splits, according to City Manager Dale Shaddox. Developers can be billed for any costs incurred when cities expand infrastructure capacity to accommodate the growth.

But cities also chip in.

For example, if a city needed to replace a leaky pipe anyway, and a developer needed a more expensive and bigger pipe, the city might hire an engineer to determine how to divide the bill. City staffers, Shaddox said, can then use the report to negotiate a formal cost-sharing agreement.

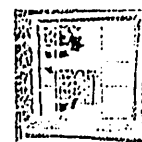
This time, that didn't happen.

"It's my understanding that there is no agreement," he said.

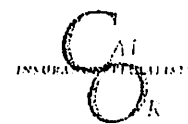
If there was, "I'd be happy to send them a bill," Hughes said.

Sherman said she made the announcement for the sake of transparency.

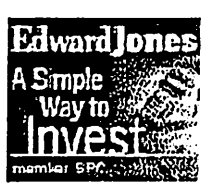
"I am reporting this information to you because the money came from you and you have a right to know how the city spent it," Sherman said. "The people in the community had been led



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to believe that Borax was funding its own projects," she added later.

"It would look to me like she's starting a campaign for reelection," said Bob Hagbom, who was mayor at the time the project received approval.

The city made the decision to pay for it all, he said, to get the project finished before the Oregon Department of Transportation (ODOT) resurfaced Chetco Avenue, work that is slated for completion next week.

"It was necessary infrastructure the city had to provide," Hagbom said.

Philosophical differences also come into play, he said.

"We were a pro-development council," Hagbom said. But now, "the interest in growth isn't near as keen as it was in the previous administration."

Blodgett told the Curry Coastal Pilot Wednesday that it would have been difficult to determine how to split the cost of the project between Lone Ranch, the city and other development activity on the northern end of town.

On Thursday, he issued a further statement on the matter, taking on Sherman for bringing up the completed project in the first place.

"I am not sure why Mayor Sherman has chosen the public forum to criticize previous decisions of city officials," wrote Blodgett, who resigned from the city last year and later joined the development company HW3. "While there was never any inappropriate use of city funds for this or any other project, I will not debate the issue through the media."

Sherman said Thursday that she had not sought out an explanation from Hagbom or Blodgett.

The city council awarded the contract for the project, and two other companion pipeline issues, at their Oct. 11, 2004 meeting.

Meanwhile, the city continues to work with Borax on other infrastructure-expanding projects. Shaddox said future costs would be borne by developers as much as possible.

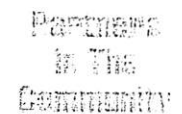
"We certainly don't want to find ourselves in a position of expanding the capacity of our systems and incurring costs that we don't need to incur," he said.

He and other city staffers are scheduled to brief the city council on all Lone Ranch-related projects at a June 12 meeting.

Shaddox also said he would try to recover some of the money the city spent on the Crissey Circle to Parkview Drive line.

"I expect that the developer recognize and agree that this is part of their obligation," Shaddox said.

"This is the first I've ever heard of it," said Burton Weast, a spokesperson for the Lone Ranch development, when reached by phone Friday. Not knowing the details, he said he couldn't comment much on the project, but did point to other major



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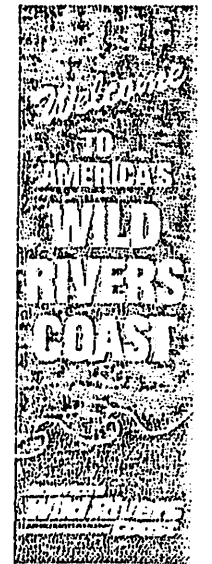
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infrastructure improvements that the developer had paid for entirely.

"We have obviously been a company that has not been asking for public subsidy," Weast said. "We have a history of paying our own way."

Reach Peter Rice at price@currypilot.com.





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Joseph A. Slack, A.I.A.
Russ Dodge, P.S.
Stephen E. Cox

September 25, 2007

City of Brookings
898 Elk Drive
Brookings, OR 97415

Attn: John Cowan
Public Works Director

Re: Lone Ranch Development
Infrastructure Financing Agreement
Project No. 01.81

Dear John:

We have made a cursory review of the documents provided by Borax for the meeting next week, including references to correspondence from this office, dated April 22, 2004 and June 6, 2006. Our review has included an analysis of the previous HGE correspondence, and it is obvious that Borax representatives are not correctly interpreting recommendations from the two letters. Staff needs to be aware of what the letters said, with the clear understanding that the City Council did not take action regarding the staff recommendations. The recommended cost allocations are provided as follows, which clearly differ substantially from current Borax proposals.

WATER

Borax would provide all costs of water installation North of Carpenterville Rd. Borax and the City of Brookings would share recommended improvement costs South of Carpenterville Rd. on a 50-50 basis.

SEWER

Borax would provide all costs of sewer installation North of Dawson Rd. Borax and the City of Brookings would share recommended improvement costs from Dawson Rd. to Moore Street on a 50-50 basis. This work includes costs previously incurred by the City of Brookings from Crissey Cr. to Parkview Dr. Borax and the City of Brookings would share recommended improvement costs from Moore St. to the WWTP on 77% City, 23% Borax basis.

If we can offer further guidance in this regard, please give me a call. We appreciate the opportunity to be of assistance to the City of Brookings.

Very truly yours,

HGE INC., Architects, Engineers,
Surveyors & Planners

Richard D. Nored, P.E.
President

Attachment 6

Al Haddox
17744 N. Hwy 101, #100
Brookings, OR 97415

March 8, 2007

Dean Peggy Goergen
Southwest Oregon Community College
420 Alder Street
Brookings, OR 97415
Via e-mail: pgoergen@socc.edu

Dear Dean Goergen,

Curry Coastal Pilot printed an article "College inks deal for new Brookings campus" indicating SOCC is actively pursuing the development of the new campus for Southwestern Oregon on the Lone Ranch Development property. Last year, documentation was delivered to you by Rainbow Rock Condominiums that the Oregon Department of Environmental Quality had designated this area a Drinking Water Protection Area, PWS 4101361.

Rainbow Rock Condominiums has successfully operated its water system for over 20-years. The proposed site of the 10-acre parcel is located in a designated sensitive area posing a higher risk to the drinking water. It is reasonable to assume that any development within the designated site will contaminate the Rainbow Rock Condominium water supply. The Drinking Water Protection Area, PWS 47101361 has been identified in the Source Water Assessment, prepared by ODEQ, as high soil permeability, high soil erosion potential, high runoff potential, and within 1000-feet from streams.

Already, with the construction of preliminary roads for geotechnical investigation, substantial contamination of our water supply has already occurred. These occurrences have been reported to the Oregon DHS & DEQ. They have sent letters of violation to the property owners. The state agencies are aware of the sensitivity of the area and the impact disturbances will have on the designated Drinking Water Protection Area.

In October of 2004, Rainbow Rock proposed to dedicate all lands, water treatment and pumping facilities, 75,000 gallon water tank and site, and water rights to the City of Brookings in exchange for annexation and connection to the city system. With the current city fee structure, connection fees far exceed any benefit to Rainbow Rock. It is in our best interest to maintain our existing operating system, but we cannot permit it to be destroyed.

As I indicated last year in our telephone conversation, Rainbow Rock supports a new SOCC campus in Southwest Oregon. Having the campus located across the highway would add to local traffic, but would also add the convenience of educational programs close to the units. Rainbow Rock does not want to be seen as an obstruction to this new facility, but our existing water facility is vital to our existence. It must be protected.

The Lone Ranch Site could require SOCC to provide extensive mitigation measures to protect our water system, and the liability for any future contamination would be placed on SOCC. My request is that SOCC investigate other sites that can equally serve the community without destroying our water system or exposing SOCC to needless liability. Other sites would have less impact on designated sensitive areas, and would not impact an existing public water system.

Representatives of Rainbow Rock will be glad to meet with you to resolve this conflict.

Respectfully submitted,


Al Haddox
Chairman,
Rainbow Rock Service Association

Cc: Pat Sherman, Mayor, City of Brookings, Fax: 541-469-3650
Christy Sewell, Oregon DEQ; sewell.christy@deq.state.or.us
Scott Curry, Oregon DHS, Scott.G.Curry@state.or.us
Mike Meszaros, Curry Health Dept., meszarosm@co.curry.or.us
Tom Hubka, Curry Coastal Pilot, thubka@currypilot.com
Jim Strigamire, Chairman, PVCA, jstigamire14@gmail.com

A Haddox 14

Dianne Morris

From: Wood, Jason [jwood@socc.edu]
Sent: Monday, June 02, 2008 11:04 AM
To: Dianne Morris
Subject: SOCC Support of the Extension
Importance: High

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Diane,

Please note that I will be unable to attend tomorrow's planning commission meeting as I was previously scheduled to be out of the state. I have particular interest in the agenda item related to the request to extend the Master Plan of the Borax site – of which Southwestern Oregon Community College is a part. Please share with the committee the strong support of the college for this initiative.

Additionally, I personally value this very well-planned project as I believe it will bring significant benefit to our local community. I am certainly available to answer any questions the planning commission may have. There should be several current college employees and possibly students in attendance to show support. Rather than have all of them make similar statements, we will most likely have one person, on behalf of the group, inform the committee of the importance of this project. The committee should also know that over the past several days I have had discussions with several dozen community members related to this project and there is strong local support for approval.

Thanks,

Jason

Jason S. Wood
Southwestern Oregon Community College
www.socc.edu
Dean, Curry County
(541) 469-5017
(541) 661-1507 (Cell)

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

Exhibit C-4

In the matter of Planning Commission File No. MPD-1-04 Extension; a request for an extension of Master Plan of Development approval for Lone Ranch Master Plan; U.S. Borax, Inc., Applicant.)))))	Final ORDER and Findings of Fact
--	-----------------------	--

ORDER approving a request for an extension of Master Plan of Development approval for Lone Ranch Master Plan, for a period of two (2) years from the date the Master Plan is due to expire on October 25, 2008, extending the approval date to October 25, 2010. The subject property is a 553 acre parcel of land located on the east side of Highway 101 starting approximately 0.8 miles north of Carpenterville Road and extending 1.8 miles north along the Highway; Assessor's Map 40-14 & Index, Tax Lots 2400, 2401, & 2402; zoned Master Plan of Development (MPD).

WHEREAS:

1. The Planning Commission duly accepted the application filed in accordance with 17.70.120, Effective Period of Master Plan of Development (MPD) Approval, Brookings Municipal Code (BMC) and pursuant to Chapter 17.84, Public Hearing Notice Procedures, BMC; and

2. Such application is required to show evidence that the following criteria have been met:

BMC 17.70.110:

“If the applicant has not submitted a Detailed Development Plan (DDP) for the planned development or the first phase within four years from the date of approval, the MPD shall expire. Where the Planning Commission finds that conditions have not changed, the Commission may, at its discretion, extend the period for two additional years per extension, subject to applicable hearing and notice requirements. If after the approval of the first DDP, construction has not been started or at any time construction has lapsed for a period of three years, the MPD will expire.”

3. The Brookings Planning Commission duly set this matter upon the agenda of a public meeting and considered the above described application with the public hearing a matter of record of the Planning Commission meeting of June 3, 2008; and
4. At the public meeting on said application, evidence and testimony was presented by the Applicant and recommendations were received from and presented by the Planning Director in the form of a Staff Agenda Report, dated May 20, 2008, and oral presentation of same; and
5. At the conclusion of the presentation of the Applicant, Planning Director and the public, after consideration and discussion the Brookings Planning Commission, upon a motion duly seconded, approved the request for an extension of the approval period and directed staff to prepare a Final ORDER with the findings set forth therein for the approval of said application.

THEREFORE, LET IT BE HEREBY ORDERED that the application requesting an extension of the approval period for the MPD on the subject parcel is approved. This approval is supported by the following findings and conclusions:

FINDINGS

- The Applicant is requesting an extension of the approval period for the Lone Ranch Master Plan. The Applicant's request and findings are found in the record as part of the Staff Report packet.
- The request was submitted prior to the expiration date of the original approval.
- The proposed plan for development remains the same.
- No conditions have changed that relate to the findings used to approve the Lone Ranch Master Plan.

CONCLUSIONS

- The application for the extension of the approval period was made in a timely manner.
- There has been no change to the original proposed plan for development and the Final Order, dated August 22, 2005, with the attached Conditions of Approval will apply (Attachment A).
- Conditions relating to the findings used to approve the Lone Ranch Master Plan have not changed.

LET IT FURTHER BE OF RECORD that the Planning Commission approved the requested extension of the approval period

Dated this 3rd day of June, 2008.

Hedda Markham, Chairperson

ATTEST:

Dianne Morris, Planning Director

Attachment A
COPY

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

In the matter of Planning Commission File No. MPD-1-04/Remand; a request for approval of the applicant's response to the issues remanded by the Land Use Board of Appeals for a Master Plan of Development; U.S. Borax, applicant.)))))	Final ORDER and Findings of Fact
--	-----------------------	--

ORDER approving the materials submitted in response to the issues remanded by the Land Use Board of Appeals (LUBA), in the appeal of the city's approval of a Master Plan of Development to establish 540 single family detached homes, 150 single family attached homes (townhouses), a 2.43 acre convenience commercial area, and a 10 acre college campus site on a 553 acre parcel of land located on the east side of Highway 101 approximately 0.80 miles north of Carpenterville Rd.; Assessor's Map 40-14 & Index, Tax Lot 2400, 2401, 2402; zoned MPD (Master Plan Development).

WHEREAS:

1. In its decision of an appeal of the city's approval of the Master Plan of Development the LUBA remanded two items for further review as follows:

- a. The issue of alternate standards for lot size, yard setbacks and building height.
- b. To amend Condition of Approval No. 28 to clarify and strengthen provisions to protect the wetlands and the Western Lily.

2. The applicant submitted to the city materials in response to the issues of this remand as follows:

- a. The letter stating that the applicant will eliminate any request for minimum lot size, lot width, setback or similar standards, but instead is requesting standards that are the same as the standards applied in other zones in the City for similar-type developments; and
- b. Also recommending amendment of Condition of Approval No. 28 to read:

"A hydrologic study shall be provided with each DDP, and any such study must be provided to federal and state agencies responsible for wetlands and endangered species protection. The City will review the hydrologic study to determine compliance with applicable standards relating to storm drainage and to determine any impact on wetlands designated for protection and on western lilies. At the time of DDP review, the City may require changes to the DDP that it determines are needed to protect wetlands and western lilies."

- c. A two page memo from DKS Associates dropping the request for compact parking, and alternate standards regarding right-of-way width (At the time of original approval the applicant did not realize the right-of-way standards in the Land Development Code were minimum, and thus could be wider. All rights-of-ways in the approved Master Plan are 2 feet wider than the minimum standard and therefore consistent with established City standards. The memo from DKS indicates that the applicant still wishes to retain the approved narrower improvements.
- d. A set of findings, marked Exhibit B, supporting the response contained in the materials described above.

3. The Brookings City Council duly considered the above described materials in a public hearing at a regularly scheduled public meetings held on August 22, 2005, and are a matter of record; and

4. At the conclusion of said public hearing, after consideration and discussion of testimony and evidence presented in the public hearing, the City Council, upon a motion duly seconded, approved the materials.

THEREFORE, LET IT BE HEREBY ORDERED that the materials submitted in response to the issues of the remand are approved. This approval is supported by the following findings and conclusions:

FINDINGS

The applicant has submitted the attached set of findings to support the requests described above, Exhibit B. Applicant's proposed findings are hereby adopted as findings. In addition the City Council adopts the following findings:

1. In response to the LUBA remand, the applicant has submitted a request to eliminate all approved alternate lot size, width and setbacks, and building height and to use the existing zoning standards for the type of use proposed.
2. The applicant is dropping the request for compact parking but requesting the right-of-way width and street improvement standards as originally approved by the City Council.
3. The applicant has submitted findings to address the remand issues.

CONCLUSIONS

The findings submitted by the applicant are adequate to support the decision as to the issues that were remanded.

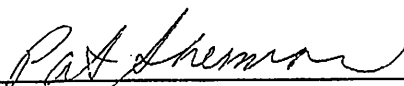
CONDITIONS OF APPROVAL

The original conditions of approval are retained as originally approved except that Condition No. 28 is amended as proposed by applicant.

The conditions of approval are attached to this document and are made apart thereof.

LET IT FURTHER BE OF RECORD that the City Council approved the materials submitted in response to the issues of the remand.

Dated this 22nd day of August, 2005.



Pat Sherman, Mayor

ATTEST:



John C. Bischoff, Planning Director

CONDITIONS OF APPROVAL
LONE RANCH MASTER PLAN
MPD-1-04/Remand
(As Amended by the City Council August 22, 2005)

General Conditions

1. Approval of this Master Plan will expire in 15 years or in four (4) years from approval, unless a Detailed Development Plan (DDP) pursuant to Section 70, Master Plan Development District, of the Land Development Code, is submitted and approved by the Planning Commission and construction of the DDP shall start within three years of approval. Each subsequent DDP must be filed within four (4) years of the completion of the previously approved DDP, or the Master plan will expire. If the conditions at the time warrant, the Planning Commission may extend the 15 year Master Plan permit or the four (4) year DDP permit period for an additional two-year period at the request of the applicant.
2. The conditions stated herein are mandatory and must be completed. Failure to comply with any condition will result in the review and possible revocation of your permit pursuant to Section 70, of the Land Development Code.
3. All subsequent applications for a DDP shall be in substantial conformance with the appropriate area of the approved Master Plan. Any deviation from the approved Master Plan beyond that allowed by Section 70 of the Land Development Code shall require an amendment to the approved Master Plan.
4. Prior to any construction or grading on the site, the applicant shall submit 4 copies of the construction plans to the city staff to be reviewed and approved by the City Engineer. With the exception of the removal of the rock and reclamation in the area of the existing quarry, (ODOT Quarry and college site) the applicant shall submit a DDP for review and approval of the Planning Commission prior to construction or grading for that phase of the construction.
5. Prior to any construction or grading on the site, the contractor will place, in a location visible from an existing public street, a sign containing the name of the contractor, a telephone number and address where the contractor can be reached.
6. The applicant shall consult with all applicable state and federal agencies to develop measures to protect the existing wetlands and the associated western lily.

Conditions Prior To Development of Any College, Commercial or Residential Phase.

To ensure that all infrastructure facilities are in place to support the first phase of development, the following conditions shall be met prior to or simultaneously with the approval of the first phase of construction for either commercial, college or residential development on the site.

7. Prior to any construction within the project area, the applicant shall submit four (4) copies of street construction plans providing access into the site, for review and approval of the City Engineer and an application for a DDP for the street construction for review and approval by the Planning Commission.

8. All streets shall be constructed in the manner and standards set forth in the approved Master Plan for that street segment. Any deviation from that of the approved Master Plan beyond that allowed by Section 70 of the Land Development Code shall require an amendment to the Master Plan document.
9. Prior to any construction within the project area, the applicant shall submit four (4) copies of water system construction plans providing service to the construction site, for review and approval of the City Engineer and an application for a DDP for the water system construction for review and approval by the Planning Commission.
10. 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.
11. Prior to any construction within the project area, the applicant shall submit four (4) copies of sanitary sewer construction plans providing service to the construction site, for review and approval of the City Engineer and an application for a DDP for the sanitary sewer system construction for review and approval by the Planning Commission.
12. 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.
13. All development shall comply with the state regulations regarding cultural resources, specifically, ORS 358.905 to 358.955, ORS 390.235 to 390.240 and ORS 97.740 to 97.760, to the extent applicable.
14. All street, water, sewer storm drainage and other utility construction to be carried out simultaneously may be included in one DDP for review and approval by the City Engineer and Planning Commission.
15. The project water system shall be developed to connect to the existing city system and allow reverse flows.
16. The applicant shall be prepared to provide a geological report related to the installation and construction of streets and utilities if required by the City Engineer.

Conditions for the Development of Commercial, College or Residential Phases.

17. Prior to the construction of any phase or partial phase of the project the applicant shall submit a DDP pursuant to Section 70 of the Land Development Code, for review and approval by the Planning Commission.
18. Each DDP shall be in significant conformance for that phase or partial phase of the area shown in the approved Master Plan. Any deviation beyond that allowed by Section 70 shall require an amendment to the Master Plan document.

19. Each phase of development shall be complete within itself for access, water service, sewer service, storm drainage, and all utilities, and all streets, services and utilities shall be extended to the furthest limit of the phase to ensure connection to the next phase.
20. Each DDP containing slopes greater than 15% shall include a geological report pursuant to Section 100, Hazardous Building Site/Hillside Development Standards, of the Land Development Code.
21. All appropriate federal and state permits related to the direct impact of development on the waters of the State or U.S. shall be obtained prior to development.
22. Prior to approval of the Detailed Development Plan (DDP), covenants, which are enforceable by the city, protecting Western Lilies shall be provided as part of each DDP, which includes known Western Lily habitat.
23. Prior to construction of any phase that may adversely affect the quality or quantity of water available through the existing Rainbow Rock Service Association (RRSA) surface water supply system, the applicant shall demonstrate how the water and water supply system will not be negatively affected. Each DDP shall evaluate the impact of development on the existing RRSA surface water system, unless RRSA has previously discontinued use of the system.
24. All required improvements to Highway 101 at the Lone Ranch access as identified in the Lone Ranch Transportation Impact Study, dated April 19, 2004 shall be required as part of the ODOT access permit for that entrance. The specific configuration of the improvements to Highway 101 at the southern access will be negotiated between the applicant and ODOT.
25. The applicant shall support any future effort to reestablish the ability for fish passage under Highway 101 for Lone Ranch Creek, Ram Creek and Taylor Creek. "Support" means that the applicant shall not oppose such efforts.
26. If any DDP will result in development that is projected to exceed the 1036 total master plan PM peak hour trips or the 839 net new PM peak hour trips as identified in the Lone Ranch Transportation Impact Study, taking into account traffic generated in previous phases, an additional transportation impact study will be required to be submitted with the DDP application and the DDP may be approved only if consistent with the Transportation System Plan.
27. To assure that the mobility standards are met at the intersection of Highway 101/Carpenterville Road, no DDP should be approved that would exceed the acceptable ODOT mobility standards for Highway 101/Carpenterville Road intersection until the City of Brookings TSP is amended to identify recommend improvements or a change to standards and the Lone Ranch development pays a proportionate share to these improvements. Analysis at Highway 101/Carpenterville Road should be conducted to determine the level of impact for each DDP until the City of Brookings TSP is amended to include the necessary improvements.
28. A hydrologic study shall be provided with each DDP, and any such study must be provided to federal and state agencies responsible for wetlands and endangered species protection. Each successive hydrologic study will cumulatively incorporate and consider the information

provided in the previously prepared hydrologic studies. The City will review the agency comments regarding the hydrologic study to determine compliance with applicable standards relating to storm drainage and to determine compliance with standards relating to the protection of wetlands and western lilies. At the time of DDP review, the City shall require changes to the DDP that it determines are needed to comply with applicable standards and to protect wetlands and western lilies.

29. The applicant shall establish Covenants, Conditions and Restrictions (CC&Rs) requiring the Homeowners' Association or Associations to maintain drainage swales located adjacent to streets that do not have curbs and gutters or other hard drainage systems. The CC&Rs shall provide that the city may enforce the maintenance of the swales, which includes the right to access all properties necessary to conduct the maintenance, either through legal action or by providing the maintenance and billing the Homeowners' Association or Associations. All such expenses, costs, and charges may be enforced by the city as liens against the real properties of individual members of the Homeowners' Association or Associations. The CC&Rs shall also contain a clause stating that any proposed change to this covenant must be approved by the city. The proposed CC&Rs as to the maintenance of the swales and the city's ability to enforce the CC&Rs, must be approved by the city prior to recordation.

30. The Master Plan document is hereby amended to include all changes made by the Errata Sheet dated June 4, 2004 and to indicate that the maximum building height for single family detached and single family attached homes is 30 feet and the maximum building height for multiple family and commercial buildings is 40 feet. The applicant shall provide the city with 4 copies of the amended Master Plan document.



- Exhibit C-5

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www.otak.com

RECEIVED
JUN 3 10 A.M.
2008 cm
CITY OF BROOKINGS

June 2, 2008

Brookings Planning Commission
898 Elk Drive
Brookings, OR 97415

Re: Lone Ranch Time Extension MPD-1-04—Otak Project No. 13540

Dear Commissioners:

We received a copy of the letter Mrs. Pat Sherman has submitted in opposition to the request for a two-year extension to the Lone Ranch Master Plan. As Otak, we reviewed the letter and disagree with Mrs. Sherman that the conditions have changed from the original intent from documents that were submitted and were a part of the Master Plan application and approval.

I. No Change in Water Source

We have attached pages 27-29 of our application for the Lone Ranch Master Plan which provides several alternatives to serve the site. The three options were put forth so all alternatives could be analyzed to provide water service to the project. One identified option was to connect to the City's system. It is, therefore, incorrect to claim that use of the City's system is a departure from the original plan. It is likewise incorrect to say that the original Master Plan bound the project to use wells as the water source. The Master Plan instead identified three alternatives, each of which was feasible as a water source.

The alternatives allowed flexibility to provide a better water system. The City's consultant, HGE, Inc., reviewed all of the technical information, and provided a letter dated July 6, 2004 to the Community Development Director stating, *In general, Master Plan recommendations appear sound, and are provided in a manner that will benefit the development, the environment, and surrounding properties, and should not be a detriment to any public facilities. Coordination and cost sharing with the City of Brookings in developing off-site public infrastructure which benefits existing and future residents of the City appears to be fair and equitable for all parties.*

We are also confused by Mrs. Sherman's comment, *Now there is evidence that the wells aren't what they were thought to be.* As Otak, we hired two independent consultants to evaluate the output of the wells

which was a part of our original Technical Report. The testing was in compliance with the State of Oregon requirements to determine their output. There is no new technical evidence that there is a change in the capacity of the wells from our current submittal.

Additionally, the City of Brookings has a Water System Master Plan Update and Adopted Water Conversation Management Plan that has been finalized in October of 2007. These reports include the Lone Ranch property in it, totaling 553 acres, as a part of the City of Brookings Water System.

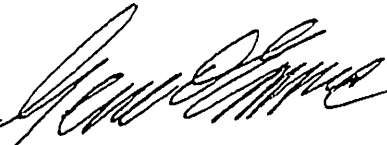
In our opinion, the project water system has not deviated from its original options and is in concurrence with our Technical Report to exchange water between the City and the Lone Ranch water system.

2. Effect of Change in Water Law

We have requested Richard Allan from Ball Janik, LLP address Mrs. Pat Sherman's arguments related to water rights. His memorandum, dated June 2, 2008, is attached and concludes that the adoption of HB 3038 does not undermine the City's findings in support of the extension approval of the Master Plan of Development for Lone Ranch.

Sincerely,

Otak, Incorporated



Genç O. Emre
Principal/Project Manager

GOE:sjs

Enclosure: Pages 27-29 of Lone Ranch Master Plan application
Ball Janik, LLP Memorandum, dated June 2, 2008

The street standards are modeled after the residential street standards developed by the Department of Land Conservation and Development in 2000. "The Neighborhood Street Design Guidelines" were developed as a planning guide to reducing street widths in Oregon. In the Lone Ranch community, the reduction of street widths is a good tool to minimize impacts to the vast number of wetland areas and their buffers. By limiting the development areas and reducing the street widths, the Lone Ranch project has impacted fewer than ½ acre of wetlands and less than 8 acres of buffer areas.

There are approximately 10,500 lineal feet of rural residential streets. This street standard provides a minimum right of way width of 52 feet with 28 feet of paved width. Paving is provided at designated pull outs. A gravel shoulder and a swale are provided along both sides to accommodate drainage needs. A 10 foot multi-use path will be provided outside of the right of way. (See Exhibit 7, Proposed Street Cross Sections).

The urban residential collector is the same pavement and right of way width. However, curbs are provided on both sides of the street. Planting strips are provided within the right of way on both sides and either a 5 foot sidewalk or a ten foot multi-use path is provided on one side. The proposed circulation plan proposes approximately 5,000 lineal feet of this street type.

The majority of street length in Lone Ranch is the local residential street type. It accounts for about 24,000 lineal feet throughout the site. It is narrower than the collector at 24 feet of minimum pavement width within a 46 foot minimum right of way width. Curbs are proposed on both sides of the street. Sidewalks are proposed except in instances where no lots front the street or where grades limit their placement.

In a few places, private alleys or streets are planned. These are provided where grades prohibit wider street widths or where wetlands and/or buffers would otherwise be impacted or where through streets are not planned. The private streets will be privately maintained. Alleys or private streets are designed with a minimum of 22 foot width within a private tract with a pavement width of 20 feet. No curbs or on street parking is provided.

Utilities

Water – Three options for providing water to Lone Ranch were studied. They include:

Option 1: Lone Ranch would develop a private on-site water source and system and maintain a separate system from the City;

Option 2: The City water system would be extended to the site and Lone Ranch would be connected to it.

Option 3: Lone Ranch would develop an on-site water system to serve the initial phases of development. When the City's water system is extended to the site,

EXHIBIT 7 – Proposed Street Cross Sections

Lone Ranch's on-site system would be connected, providing the City's system with a back-up ground water source. Otak, Inc. determined, in coordination with the City, that Option 3 is the preferred option. Therefore, the Utility Analysis and Plan is based on this third option. **Exhibit 8, Conceptual Water Plan** illustrates the fully developed water system for Lone Ranch. The water system has been designed to accommodate each phase of development as it occurs. Therefore, the combined private and public water system will be developed as follows:

The first well will be improved and a 500,000 gallon reservoir will be constructed along with the construction of the first neighborhood, which includes the college. The fire flow storage, maximum daily demand and equalization storage for approximately 250 homes is provided with the initial construction. In addition, surplus storage will be provided to Rainbow Rock condominiums until City lines are extended to the site. With the initial reservoir construction, a supply/distribution water line will be provided from the reservoir to Highway 101. No new neighborhoods will be developed beyond the capacity of the well or until the second storage facility is provided.

As the construction of various neighborhoods progresses, a distribution system will be constructed as shown in **Exhibit 8, Conceptual Water Plan**. The supply and distribution lines will create a loop within the residential collector streets throughout the site. Service lines into each neighborhood will branch off the distribution line. The service lines will be looped within neighborhoods as much as possible; however, the cul-de-sacs and dead end streets will likely not have looped service lines. Neighborhoods G and H will be served from a water line constructed within the Coos-Curry Cooperative transmission line easement. The waterline will be constructed under Ram Creek. As waterlines cross from a high pressure zone to a lower pressure zone, pressure reducing valves will be installed. Properties located at higher elevations than the storage reservoir may require booster pumps in order to provide the minimum health standard pressure of 20 psi.

A connection to the City waterline at Carpenterville Road will be constructed via Highway 101 to supplement the on-site water supply. To provide storage for the remaining neighborhoods, a second 610,000 gallon reservoir will be constructed.

The sizing of the second reservoir will be coordinated with the City's overall storage needs for the north end of Brookings. The size of the second reservoir could be constructed larger than the proposed 610,000 gallon reservoir, with the developer funding only the portion of the reservoir required for the storage needs of Lone Ranch.

The City of Brookings storage requirements for fire flow are based on a flow of 3,500 gpm over a duration of three hours, for a total of 630,000 gallons. The Lone Ranch Master Plan calls for sprinkler systems to be installed in all homes within the development. This reduces the need for the high fire flow demands and in turn the storage requirements. The water system will provide fire flow storage based on the 1997

BALL JANIK LLP

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MEMORANDUM

TO: Genc Emre
FROM: Richard H. Allan
DATE: June 2, 2008
CLIENT: U.S. Borax
RE: Response to Pat Sherman's Comments on HB 3038

You have asked for my response to the argument by Pat Sherman, in her May 28, 2008 letter to the Brookings Planning Commission, that there has been an adverse change in Oregon water law regarding extension of municipal water rights. Actually, the reverse is true.

Pat Sherman asserts that the adoption of HB 3038 by the 2005 Legislature constitutes a change in conditions. Specifically, Mrs. Sherman contends that HB 3038 added a time limit of 20 years to the permit.

Mrs. Sherman does not understand the context of HB 3038. That legislation responded to the decision of the Oregon Court of Appeals in *Waterwatch v. Oregon Water Resources Commission*, 193 Or App 87, 88 P3d 327 (2004). A copy of the Court of Appeals decision is attached. The decision of the Court of Appeals was issued on April 21, 2004, months prior to the City's initial approval of the Lone Ranch Master Plan of Development. The Court's decision held that a new municipal water right could be issued only if all construction of the water system would be completed within five years of the date of permit issuance. The Court of Appeals stated that permit extensions could only be granted if construction had already commenced, and the delay in completion related to unanticipated permitting requirements. In other words, at the time the Master Plan of Development for Lone Ranch received its initial approval in October 2004, Oregon law regarding extension of municipal water rights had recently been interpreted in a very restrictive manner.

HB 3038 was a legislative response to the Court of Appeals decision in *Waterwatch v. Oregon Water Resources Commission*. The legislation was supported by municipal groups, notably including the League of Oregon Cities. As compared with the decision of the Court of Appeals, HB 3038 clearly gives holders of municipal water rights more time to complete construction of water systems, and more flexibility to obtain extensions of

deadlines to construct water systems. Attached is a press release from the League of Oregon Cities explaining that HB 3038 was a huge improvement for cities. In other words, to the extent that a change in state water law can be a relevant change of conditions for purposes of granting an extension of the approval of the Master Plan of Development, the change reflected in HB 3038 appears to increase the likelihood that water will be available for development.

Mrs. Sherman also speculates that, in a proceeding "for renewal of the City's water right permit," ODFW may assert that the City's water rights must be exercised in manner that does not interfere with ODFW's instream water right. There are several problems with this argument. First, speculation about what hypothetically may happen if or when the City of Brookings seeks extensions of water rights cannot establish a change of conditions. The City's water rights have not changed since the Master Plan of Development for Lone Ranch was approved. They have not been invalidated. They have not been limited. Second, had the Legislature intended to subject all municipal water right extension requests to the limitations of certificated instream water rights, even if the instream right is *junior in priority* to the municipal right, it surely would have said so. Nothing in HB 3038 demonstrates intent by the Legislature to overturn more than 100 years of Oregon water law which has consistently been based on the simple premise, "first in time, first in right." Finally, Mrs. Sherman does not demonstrate that an extension of the City's water rights will be necessary to accommodate development at Lone Ranch; thus, it isn't clear to what extent HB 3038 will even apply.

In summary, the Legislature's adoption of HB 3038 does not undermine the City's findings in support of approval of the Master Plan of Development for Lone Ranch.

cc: Tim Ramis
Burton Weast
Marty Stiven



FOR IMMEDIATE RELEASE:
July 6, 2005

CONTACT:
Ken Strobeck
(503) 588-6550

Victory for Cities on Water Rights

SALEM - HB 3038, which secures municipal water rights, was signed June 29 by Governor Ted Kulongoski. On June 17, the House concurred with the Senate version of the bill on a 57-1 vote. This follows the Senate's earlier passage by a 26-1 margin.

"This is probably the most important legislation for the livability of Oregon cities this session," said League of Oregon Cities (LOC) President and Corvallis Mayor Helen Berg.

The bill was introduced by municipal water suppliers to rectify a recent court decision that threw municipal water rights into jeopardy. Although it received broad support in the House (53-4 vote), HB 3038 was stalled in the Senate due to environmental concerns raised by the advocacy group WaterWatch. After further negotiations, the parties reached consensus on amendments that provide security for municipal water rights while ensuring the Oregon Water Resources Department (WRD) will condition municipal water rights to protect sensitive, threatened and endangered species if the development of the water right will lead to the extinction of a species.

To clarify the legislative intent of the amendments, the bill's carrier, Senator Charlie Ringo (D-Beaverton), put on the record the definition of the amendment's resource (fish) protection provision as "a forecast of future population health, stated in terms of the probability of extinction." Rep. Bob Jenson (R-Pendleton), chairman of the House Water Committee, also put the definition on the record. This was important to municipal suppliers, who agreed to water permit conditions if exercising the permit would lead to the extinction of a listed species.

Along with the League, many municipalities and other governmental associations, the Senate received floor letters supporting the bill from WaterWatch, the American Electronics Association, the Oregon Building Industry Association, AFSCME, and Associated Oregon Industries.

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FILED: April 21, 2004

IN THE COURT OF APPEALS OF THE STATE OF OREGON

WATERWATCH OF OREGON, INC.,
an Oregon nonprofit corporation,

Petitioner,

v.

WATER RESOURCES COMMISSION,
a state agency;
WATER RESOURCES DEPARTMENT,
a state agency;
and COOS BAY NORTH BEND WATER BOARD,
an Oregon municipal corporation,

Respondents,

and

CITY OF LAKESIDE,
an Oregon municipal corporation;
TENMILE LAKEFRONT OWNERS ASSOCIATION;
and DEPARTMENT OF FISH AND WILDLIFE,
a state agency,

Other parties.

CC 13; A113693

Judicial Review from Water Resources Commission.

Argued and submitted April 14, 2003.

Brian J. Posewitz argued the cause and filed the briefs for petitioner. With him on the brief was Tonkon Torp LLP.

Philip Schradle, Special Counsel to the Attorney General, argued the cause for respondents Water Resources Commission and Water Resources Department. With him on the brief were Hardy Myers, Attorney General, and Mary H. Williams, Solicitor General.

James C. Coffey argued the cause for respondent Coos Bay North Bend Water Board. With him on the brief was Stebbins & Coffey.

Before Haselton, Presiding Judge, and Deits, Chief Judge, and Wollheim, Judge.

DEITS, C. J.

Reversed and remanded.

DEITS, C. J.

Petitioner, WaterWatch of Oregon, Inc., seeks review of a final order of the Oregon Water Resources Commission (commission), approving a water appropriation permit. ⁽¹⁾ WaterWatch challenged the permit application on several grounds, including that the applicant, the Coos Bay North Bend Water Board (CBNB), could not make beneficial use of the water within the five-year limit provided in ORS 537.230(1) (1997). ⁽²⁾ Ultimately, the commission rejected WaterWatch's challenges and approved the permit with conditions. On review, we reverse and remand.

In March 1990, CBNB applied to the Water Resources Department (department) for a permit to appropriate water from Tenmile Creek in Coos County. CBNB also prepared four alternative water demand forecasts, each projecting different growth and water needs through as late as 2050. Apparently, CBNB sought to appropriate water for a potential industrial user and for an existing industrial user that projected a greater need; however, the potential user ultimately decided not to locate its facility in Coos County and the existing user reduced its projected need.

In December 1997, the department issued a proposed final order, approving the requested appropriation permit with conditions. WaterWatch and others, including the City of Lakeside, filed protests, and the department held a contested case proceeding. Thereafter, the commission considered the matter and approved the permit. The commission found CBNB's third water demand forecast, which used a base demand derived from past experience plus a projected additional industrial demand, to be "reasonable." WaterWatch asserted that that forecast showed that CBNB would not need water beyond its present resources and planned capacity until approximately 2050. The commission, however, accepted the contrary position that, by 2050, the need will be 3 million gallons of water per day. A diversion of 4.6 cubic feet per second would supply that need, but the commission allowed an additional 18.6 cubic feet per second in order to accommodate a potential industrial user who might require as much as 12 million gallons of water per day. The commission issued its final order granting the permit and allowing CBNB to withdraw water at a maximum rate of 23.2 cubic feet per second. WaterWatch seeks our review of that order.

Before turning to the merits, we must address the jurisdictional issue of whether WaterWatch has standing to seek judicial review of the commission's order. We first determine whether WaterWatch has standing under the pertinent statutes. *See Utsey v. Coos County*, 176 Or App 524, 548-49, 32 P3d 933 (2001), *rev dismissed*, 335 Or 217 (2003). In making that determination, under the holding in *Local No. 290 v. Dept. of Environ. Quality*, 323 Or 559, 566, 919 P2d 1168 (1996), a case concerning only statutory standing, we are directed to the requirements of the specific statute that confers standing in a particular type of proceeding. We then must determine whether the constitutional requirements for standing have been satisfied. *Utsey*, 176 Or App at 548-49. In response to our inquiry, WaterWatch asserts that it has statutory and constitutional standing to seek review of the commission's order.

WaterWatch first argues, relying on ORS 183.480 and ORS 183.482, which are general review provisions of Oregon's Administrative Procedures Act (APA), that its party status before the commission gives it statutory standing to seek review of the commission's order in this court. Specifically, WaterWatch relies on ORS 183.480(1), which provides, in pertinent part, that "any person adversely affected or aggrieved by an order or any party to an agency proceeding is entitled to judicial review of a final order, whether such order is affirmative or negative in form." (Emphasis added.)

The problem with WaterWatch's reliance on those general APA provisions, however, is that Oregon's water law statutes include specific provisions governing judicial review in these circumstances. Those water law statutes contain different standing requirements from the general APA provision cited above. To the extent that the more general provisions of the APA and the specific water law statutes concerning judicial review are different, the water law statutes control. ORS 174.020(2).

The water law statute concerning judicial review is ORS 536.075(2), which provides that "[a]ny party affected by a final order in a contested case issued by the Water Resources Commission or the Water Resources Department may appeal the order to the Court of Appeals." The plain language of ORS 536.075(2) indicates that affected parties may seek review of a final order. Under the water law statutes, a party to a contested case before the department includes "any person who timely filed a protest." ORS 537.170(2)(b).⁽³⁾ "Any person may submit a protest against a proposed final order." ORS 537.153(6). An association such as WaterWatch is a person. ORS 174.100(5).⁽⁴⁾ Further, after a contested case hearing and the issuance of a final order under ORS 537.170, "any party may file exceptions to the order" with the commission. ORS 537.173. Here, the parties do not dispute that WaterWatch filed a timely protest against the proposed order and filed exceptions. Accordingly, WaterWatch was a party.

As noted above, the plain language of ORS 536.075(2) also provides that, in order to seek review of a final order, a party must be "affected" by the order. Notably, that statute does not require the party to be "adversely affected" or "aggrieved," common terms used to describe standing to seek review of administrative actions. Because the text of ORS 536.075(2) does not define the term "affected," we look to the context of ORS 536.075 to determine the legislature's intent. *PGE v. Bureau of Labor and Industries*, 317 Or 606, 610-11, 859 P2d 1143 (1993).

The above statutes as well as a number of related statutes are indicative of the nature of the interests that the legislature intended a party to have to be considered "affected" by an order of the commission. The approval process involves a public interest determination. *See, e.g.*, ORS 537.153 (describing the rebuttable presumption that a proposed use will not impair or be detrimental to the public interest); ORS 537.170 (providing that, if the presumption is rebutted, the director or commission shall determine whether the proposed use would impair or be detrimental to the public interest by considering the described factors). As discussed above, to assist in making that determination, the legislature has allowed any person to submit a protest to a proposed order and become a party to the contested case. ORS 537.153(6) requires, in part, that a protest must include, among other things:

"(b) A description of the protestant's interest in the proposed final order and, if the protestant claims to represent the public interest, a precise statement of the public interest represented;

"(c) A detailed description of how the action proposed in the proposed final order would impair or be detrimental to the protestant's interest[.]"

The above statutes demonstrate that the legislature intended three groups of persons to become parties to a contested case proceeding concerning a water permit: (1) the applicant; (2) a person who requests standing, which under the statutes means a person who supports the proposed final order; and (3) a person who protests the proposed final order. Those statutes also demonstrate that a protestant's interests may include the public interest. Accordingly, by specifically defining who is a party to a contested case proceeding concerning a water permit, the legislature has identified three groups of persons who are affected by the proposed final order in either positive or negative

ways. Even after the contested case proceeding, any *party* may file exceptions with the commission. Consequently, it is apparent that the legislature contemplated that a party to a contested case proceeding may be affected by the commission's order. ORS 536.075(2) ("Any party affected by a final order in a contested case issued by the [commission] * * * may appeal the order to the Court of Appeals.").

In this case, WaterWatch indicated in its protest that it was representing "the general public interest in the water resources of this state" as well as the interests of its members and itself. WaterWatch also described the specific interests that it represented and explained how the proposed final order would impair or be detrimental to those interests. Additionally, in its petition for judicial review, WaterWatch indicated that it would be adversely affected by the commission's order. See ORS 536.075(4).⁽⁵⁾ Specifically, in its response to our inquiry regarding its standing, WaterWatch indicated that it is adversely affected by the commission's order in the following way:

"WaterWatch has a particular interest in the instream flows of Tenmile Creek. WaterWatch has invested time, effort and money in creating instream water rights, including the instream water rights in Tenmile Creek.⁽⁶⁾ WaterWatch was instrumental in obtaining passage of legislation that allowed for instream water rights, spending its money in the process. WaterWatch also spent money advocating for instream water rights in Tenmile Creek. The instream water rights in Tenmile Creek therefore represent the fruits of a WaterWatch investment (of money as well as time and effort). A permit giving the Board a priority over those rights will diminish the return on * * * WaterWatch's investment, including the return on WaterWatch's investment of its funds."⁽⁷⁾

(Citations to affidavits omitted.)

Because WaterWatch had spent time, money, and effort to create an instream water right in Tenmile Creek, and because any instream right would be subject to CBNB's use of water in light of the fact that CBNB's permit would have an earlier priority date than any instream right, WaterWatch's investment in the creation of an instream right in Tenmile Creek would be diminished. For all of the above reasons, WaterWatch has demonstrated that it has standing pursuant to ORS 536.075(2) to seek review of the commission's order.

That conclusion, however, does not end our inquiry. In *Utsey*, we explained that, "regardless of what the legislature provides regarding the standing of litigants to obtain judicial relief, the courts *always* must determine that the constitutional requirements of justiciability are satisfied." 176 Or App at 548 (emphasis in original). In particular, we reasoned that (1) the party that invokes the jurisdiction of the court has the "obligation to establish the justiciability of its claim"; (2) to establish that the claim is justiciable, the party "must demonstrate that a decision in this case will have a practical effect on its rights"; and (3) "[t]he case law concerning the 'practical effects' requirement clearly states that an abstract interest in the proper application of the law is not sufficient." *Id.* at 549-50. Under that standard, WaterWatch must demonstrate that the commission's decision will have a practical effect on its rights.

In *Utsey*, the organization that sought standing, the League of Women Voters of Coos County,

"submitted a letter to the county in opposition to the Lillies' application. The letter did not identify what the League is, nor did it provide any explanation of the League's interest in the application. It simply stated that the League opposed the application on the ground that approval would be unlawful. When the Lillies appealed to LUBA, the

League moved to intervene. Once again, the League did not explain what it is or the nature of its interest in the application or how it would be affected by a decision on it one way or the other. The motion merely stated the fact of the League's appearance before the county. On appeal, the League provides no additional information concerning its composition, its interest in the application, or any practical effect that a decision would have on its rights. It simply cites ORS 197.850(1) and ORS 197.830 (2) and (7) and contends that the legislature's conferral of statutory standing on any person without regard to any practical interest in the outcome suffices to create a justiciable controversy."

176 Or App at 548-49. Unlike the League of Women Voters in *Utsey*, WaterWatch has identified specific effects on it as an organization as well as specific effects on individual members of WaterWatch.

As noted above, the president of WaterWatch's board of directors averred that WaterWatch was instrumental in the drafting and passage of the Oregon Instream Water Rights Act in 1987 and that it has invested significant time, effort, and money in establishing instream water rights throughout the state. Significantly, and more importantly in this case, WaterWatch has spent time, effort, and money in advocating for the creation of an instream water right in Tenmile Creek. As discussed above, WaterWatch asserts that the commission's order approving the permit in this case will harm WaterWatch by significantly diminishing its investment in the creation of an instream water right in Tenmile Creek. Specifically, WaterWatch explains that the permit that the commission approved in this case will have an earlier priority date than any instream right; thus, the instream right would be subject to CBNB's use of water.

For those reasons, WaterWatch has identified plausible, actual, concrete ramifications from the commission's approval of CBNB's permit. Of particular significance, WaterWatch has been involved in proceedings to support the establishment of an instream water right for Tenmile Creek, the specific waterway at issue in the permit approved in the commission's order. Those interests asserted by WaterWatch are not simply academic or abstract political or policy beliefs. We conclude that WaterWatch established, for purposes of constitutional justiciability requirements, that the issuance of the permit has sufficient practical effects on it as an organization.

In addition to demonstrating that the issuance of the permit will have a sufficient practical effect on WaterWatch as an organization to satisfy the constitutional justiciability requirements, WaterWatch has also demonstrated that the commission's approval of the permit would have practical effects on specific individual members of WaterWatch. We may consider the practical effects on specific individual members of an organization in our constitutional justiciability analysis. See *Friends of Jacksonville v. City of Jacksonville*, 189 Or App 283, 285 n 1, 76 P3d 121 (2003), *rev den*, 336 Or 422 (2004) (reasoning that a neighborhood association had standing to appear on behalf of its members where several members submitted affidavits indicating that they would be adversely affected by the land use decision).

In response to this court's inquiry, WaterWatch submitted the affidavits of two of its members alleging that they each have used Tenmile Creek for recreation and that the permit granted to CBNB threatens their continued use and enjoyment.⁽⁸⁾ Those members assert that their use and enjoyment of the waterway will be detrimentally affected by the issuance of the permit because the commission's approval of the permit allowing water to be diverted from Tenmile Creek would reduce the instream flow. The effect on individual members is yet another reason to conclude that WaterWatch has standing.⁽⁹⁾ Accordingly, for the reasons stated above, WaterWatch has

constitutional standing to seek review of the commission's order in this court. ⁽¹⁰⁾

We now turn to the merits of this judicial review. As noted above, in December 1997, the department evaluated CBNB's application for a water appropriation permit and concluded that the rebuttable presumption that the proposed use will not impair or be detrimental to the public interest had been established and that the presumption had not been overcome. *See* ORS 537.153 (2). ⁽¹¹⁾ Accordingly, the department issued a proposed final order approving the permit with conditions. WaterWatch and the City of Lakeside then filed protests, and a contested case proceeding was held. Thereafter, the commission evaluated whether the criteria in ORS 537.153 (2) had been satisfied. The commission summarized the issue presented to it in its order:

"To defeat the PFO[, the proposed final order], the record must show that one or more of the criteria in ORS 537.153(2), set out at OAR 690-310-0110(1), was not satisfied or that the proposed use would impair or be detrimental to the public interest in consideration of the specific elements of public interest identified in ORS 537.170 (8)." ⁽¹²⁾

The commission concluded that the criteria for establishing the presumption under ORS 537.153 (2) had been satisfied and that the protestants had failed to rebut that presumption. It held that the proposed use, as conditioned, would not impair or be detrimental to the public interest and that the permit should be issued. WaterWatch now seeks review of the commission's final order.

As pertinent to our review, the commission, in its order, applied ORS 537.230, which provides, in part:

"(1) Except as provided in ORS 537.240 [addressing appropriation subject to permits from the Federal Energy Regulatory Commission] or 537.248 [providing a 10-year limit on initiation of construction of diversion or storage works for municipalities under a reservoir permit] or under an application by a municipal corporation for municipal uses or purposes, actual construction work shall begin within one year from the date of approval of the application. The construction of any proposed irrigation or other work shall be prosecuted with reasonable diligence and be completed within a reasonable time, as fixed in the permit by the Water Resources Department, not to exceed five years from the date of approval.

"(2) Except as provided in ORS 537.240 or 537.248, the department, for good cause shown, shall order and allow an extension of time, including an extension beyond the five-year limit established in subsection (1) of this section within which irrigation or other works shall be completed or the right perfected. In determining the extension, the department shall give due weight to the considerations described under ORS 539.010(5) and to whether other governmental requirements relating to the project have significantly delayed completion of construction or perfection of the right."

The commission determined that ORS 537.230(1) applies to municipalities and that it plays a role in its decision to issue a permit. The commission concluded, however, that the five-year construction completion time period in subsection (1) did not bar the issuance of the permit. According to the commission, the key issue was whether CBNB was going to pursue development of the project with "reasonable diligence." The commission explained:

"We agree with [the department's] reading of the relevant statutes and rules and

conclude that the five year time period set out in ORS 537.230 may be extended as necessary, given due diligence in pursuit of the application of water under the permit. Even if the record shows that the municipality cannot complete its project within five years, that is not a bar to granting a permit. In this case, the appropriate question is whether the record shows that on receipt of a permit the applicant will initiate and pursue development of the project with reasonable diligence for a municipal water user. That is a question of fact to be decided on the record. * * *

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"At its August 3, 2000, meeting, CBNB passed a resolution that it will use due diligence in developing the permit at issue in this application. CBNB will begin by establishing a ga[u]ging station near where an intake structure might be located. The station will fine tune data and allow a better design of the intake facility. It will also provide information on alternatives for use of the water by showing how much treatment the water requires. Siting the ga[u]ge will require a period of calibration to make sure the ga[u]ge is functioning properly. CBNB will also engage in water quality sampling during the time the gauging station is operating.

"It will take one to two years to have the gauging station functioning properly and giving meaningful data. If a permit in this case issued on December 31, 2000, CBNB will begin activities under the permit in November of 2001. It is currently engaged in a water expansion project.

"It may take up to three years to tie the hydrology of Tenmile Creek to the water quality data CBNB will collect. The combination of those two data sets will tell CBNB whether it can use Tenmile Creek water in its raw state or whether it will have to construct a treatment facility. As hydrology data become more refined, CBNB will also have better information about where to site the waterworks for Tenmile Creek.

"Once CBNB has gathered sufficient data from the gauging station, it will apply to state and federal agencies for feedback on the various alternative uses for the water it has crafted. The next set of activities CBNB engages in will involve dealing with National Environmental Protection Act (NEPA) and legislative issues. Land acquisition issues may also arise as the project is proposed. Alternatives to Tenmile Creek may also require study as more data are developed.

"It could take five to ten years to conclude the NEPA process as a prelude to development of the water right. Fisheries issues will be part of the negotiations; wetlands issues may also arise. There will likely be discussions with the United States Forest Service (USFS) regarding Wild and Scenic River designation for Tenmile Creek.

"The next step for CBNB under the permit would be the design process. That depends on what alternative is permitted. It will take approximately two years from design to construction. If the project involves a pipeline, the process could be longer because of restrictions on construction during certain periods.

"As CBNB moves through each step of the process involving use of Tenmile Creek water, it will evaluate the demand for that water.

"In summary, in the next five years CBNB will budget money for the gauging station, get it calibrated, and gather two to three years' worth of data. There may be time within the five year period to begin the NEPA prescoping process, designed to find flaws in the proposed alternative and to develop state and federal agency issues. The prescoping process takes about a year, depending on the response from the agencies. Additional studies might be necessary at that point.

"Formal NEPA scoping can take five years before a final Environmental Impact Statement issues. From start to finish, the whole process to FEIS involves 10 to 11 years. Design will take a maximum of two years, and construction can take two to three years.

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"* * * Due diligence is not a fixed concept. It must vary with the circumstances of each application. In the present case, the application requires the generation of years' worth of data and negotiations with state and federal entities for approval to use the water. The process from siting a ga[u]ging station to finishing construction of a pipeline will run, assuming the best case, over ten years. Given the legal constraints on developing the Tenmile Creek water right, the applicant could not possibly apply water to beneficial use in a five year period. We find that CBNB's August 2000 resolution evinces an intent to develop its permit with due diligence under the circumstances. If CBNB does not proceed to develop its water right with the appropriate diligence under the circumstances, WRD may refuse to grant an extension for the water right."

(Emphasis added.)

We understand the gravamen of WaterWatch's first and second assignments of error to be that the commission erred in issuing the permit because CBNB does not intend to apply the water to a beneficial use in the time and manner required by the statutes. WaterWatch argues that it violates the public interest as a matter of law to grant a permit to an applicant that acknowledges at the outset that the construction of diversion works will not be completed, nor even begun, within the statutory five-year time period. It notes that Oregon's water allocation system is based on the doctrine of prior appropriation. *See Teel Irrigation Dist. v. Water Resources Dept.*, 323 Or 663, 666, 919 P2d 1172 (1996). Under that doctrine, a person acquires "an appropriative right on a 'first come, first served' basis by diverting water and applying it to a beneficial use." *Id.* at 667. WaterWatch points out that Oregon's water permit system adopted in 1909 continues Oregon's system of prior appropriation with priority dates tied to the date of receipt of the application for a permit. *See* ORS 537.150(2). It also asserts that, under Oregon's permitting system, permits may be granted only to those planning to make beneficial use of the water and that the ability to use the water must be more than speculative. *See* ORS 537.130; ORS 537.160; ORS 537.190.

WaterWatch further explains that the legislature has adopted specific requirements, including time requirements for how and when water must be applied to a beneficial use under the permitting scheme. In particular, WaterWatch relies on the portion of ORS 537.230(1) that provides, "The construction of any proposed irrigation or other work shall be prosecuted with reasonable diligence and be completed within a reasonable time, as fixed in the permit by the Water Resources Department, not to exceed five years from the date of approval." According to WaterWatch, even though the five-year construction completion requirement in ORS 537.230(1) applies to CBNB, all that CBNB intends to do is to collect flow and water quality information to

determine how, and *if*, it can use the water. WaterWatch asserts that this activity was designed merely to justify an extension of 50 years. According to WaterWatch, even if CBNB's demand projections come true, it will not use the water from Tenmile Creek until 2025 or later. Thus, as we understand WaterWatch's position, where CBNB intends to collect flow and water quality data and has no intention to begin or complete the construction of diversion works within the five-year period in ORS 537.230(1), the commission erred in determining that CBNB's data gathering activities constituted "reasonable diligence." For those reasons, WaterWatch contends that it would not be in the public interest under the statutes to issue this permit.

Respondents' general response to WaterWatch's argument is that "[t]he text, context and history of Oregon's water law statutes show that applications for municipal uses of water are afforded special consideration and that municipal water right applications can take into account all reasonable and usual municipal purposes that reasonably may be anticipated for future growth." Respondents argue that WaterWatch's argument is flawed because it fails to take into account the "[s]ignificant and substantial differences" between municipal and other water users. They assert that, because of those differences, "the five-year period initially established for developing and perfecting other water rights does not bar the application of * * * CBNB, even though CBNB will not fully develop its water right within the first five years." According to respondent, in view of the other statutes relating to municipal water users, the five-year timeline is only a guideline with respect to municipal water users.

The question that we must resolve is if, and how, the provisions of ORS 537.230 apply to municipalities. In determining the meaning of a statute, we look first to its text and context to ascertain the legislature's intent. *PGE*, 317 Or at 610-11. The context of a statute includes related statutes and the statutory framework. *Denton and Denton*, 326 Or 236, 241, 951 P2d 693 (1998).

We begin with a brief overview of Oregon's water law pertaining to the appropriation of water for a beneficial use as articulated by the Supreme Court in *Teel Irrigation Dist.*:

"Oregon's current scheme of ground and surface water allocation is rooted in the doctrine of prior appropriation for a beneficial use. Under this doctrine, a person may acquire an appropriative right on a 'first come, first served' basis by diverting water and applying it to a beneficial use. Generally, any person intending to acquire a right to appropriate surface water first must apply to the department for a permit to make the appropriation. The application for the permit must include the following information: (1) the source of the water supply; (2) the nature and amount of the proposed use; (3) the location and description of the proposed diversion; (4) the time within which the applicant proposes to begin construction; (5) the time required for completion of the construction; and (6) the time required for the complete application of the water to the proposed use. * * *

"Subject to various conditions that are not relevant in this case, the department must approve a proper application that contemplates the beneficial use of water, unless the proposed use conflicts with existing water rights. The permit allows the permittee to begin construction of the diversion project and the appropriation of water. Generally, the permittee must begin construction within one year of the approval of the application and must complete the construction within a reasonable time as determined by the department, not to exceed five years from the approval. For good cause shown, the department may allow extensions beyond the five-year limitation.

"The permit itself does not represent a perfected and vested water right. The water

right is perfected when the water actually is put fully to a beneficial use. Perfected water rights are appurtenant to the land, so that they travel with the land, unless the seller specifically withholds those rights on sale. A holder of a perfected water right may apply water to lands other than those to which the water right is appurtenant, by filing an alternate acreage petition with the department and obtaining its approval.

"Once the permittee has completed the construction and has begun applying the water to a beneficial use, a 'final proof survey' is prepared as 'proof' of a perfected water right. Although, historically, such surveys were prepared by the department, the 1987 legislature amended ORS 537.230 to require the permittee to hire a certified water right examiner to survey the appropriation. Once the department finds, based on the final proof survey, that the permittee has appropriated the water for a beneficial use in accordance with the law, the department issues a water right certificate to the user. The certificate shows the user's priority, dated to the time of the original application, the extent and purpose of the right, and a description of the land to which the water is appurtenant. The certificate represents a vested, perfected water right that continues so long as the water is applied to a beneficial use in accordance with the terms of the certificate, subject to loss by nonuse and other events."

323 Or at 666-68 (footnote and citations omitted). As the Supreme Court recognized in *Teel Irrigation Dist.*, the purpose of Oregon's water law is to ensure that water is actually appropriated for beneficial use in a timely manner. With that in mind, we turn to WaterWatch's arguments concerning the applicability of ORS 537.230 to municipalities.

We first conclude that the text of ORS 537.230(1), *see* ___ Or App at ___ (slip op at 15), demonstrates that the time requirements established in that statute apply to municipalities. The text of the statute exempts municipalities from the requirement in the statute that construction work *begin* in one year, but the requirements relating to prosecution and completion of the work apply to *any* diversion works and do not exclude municipalities. If the statute does not apply to municipalities, it would not have been necessary to articulate an exception for municipalities from the requirement that construction work begin within one year of the date of the approval of the application. Further, the legislature could easily have exempted municipal applicants from *all* of the time requirements of the statute. It is apparent that the commission believed that CBNB's application was subject to the requirements of ORS 537.230(1) because it included in the permit a condition that "[c]omplete application of the water to the use shall be made on or before October 1, 2005." Thus, we conclude that the five-year construction completion requirement applies to municipalities.

Further, the text of ORS 537.230(1) provides that "[t]he *construction* of any proposed irrigation or other work shall be prosecuted with reasonable diligence and be completed within a reasonable time, as fixed in the permit by the Water Resources Department, not to exceed five years from the date of approval." (Emphasis added.) "Construction" refers to "the act of putting parts together to form a complete integrated object." *Webster's Third New Int'l Dictionary* 489 (unabridged ed 1993). Here, based on the commission's findings, *construction* of diversion works will not be completed as required by the statute nor will any *construction* of those works even begin within the statutory time period or the time period included as a condition of the permit.

Finally, the text of ORS 537.230(1) provides that the applicant shall proceed toward completion of the construction with "reasonable diligence." It also specifically provides that the outside limits for the exercise of reasonable diligence and the completion of construction is five years. The commission determined that CBNB's intent to collect only water quality and flow data during the

five-year time period constituted reasonable diligence under the statute. That determination, however, is inconsistent with the terms of the statute that require reasonable diligence in the prosecution and completion of *construction* of diversion works and is error as a matter of law.

Respondents rely on a number of related statutes to support their position that municipal applicants are to be treated differently and that the five-year construction completion requirement of ORS 537.230(1) is only a guideline for municipal water applicants. Respondents first point to ORS 537.230(2), which provides:

"Except as provided in ORS 537.240 or 537.248, the department, for good cause shown, shall order and allow an extension of time, including an extension beyond the five-year limit established in subsection (1) of this section within which irrigation or other works shall be completed or the right perfected. In determining the extension, the department shall give due weight to the considerations described under ORS 539.010(5) and to whether other governmental requirements relating to the project *have significantly delayed completion of construction* or perfection of the right."

(Emphasis added.)

Respondents rely on subsection (2) for the proposition that the five-year construction completion requirement is only a guideline and that the acknowledged inability of a municipal applicant to meet the five-year deadline is irrelevant because it can obtain an extension for "good cause." However, the text of ORS 537.230(2) indicates that it applies, not at the time of issuance of a permit, but after the permit has been issued and delays occur. It requires the evaluation of whether other governmental requirements "*have significantly delayed completion of construction* or perfection of the right." (Emphasis added.) The legislature's use of the phrase "completion of construction" contemplates that construction has at least begun. Thus, ORS 537.230(2) allows a holder of a water appropriation permit to obtain an extension of the five-year construction completion deadline if construction has begun but circumstances develop after the issuance of the permit to justify the extension. In contrast, that statutory provision may not be used to justify the approval of the permit in circumstances where it is a certainty that construction of the diversion works will not begin before the expiration of the five-year time period imposed by both the statute and the time period imposed as a condition of the permit itself.⁽¹³⁾

Respondents also rely on ORS 537.260 to support their position. They argue that that statute makes clear that the legislature intended municipalities to be able to develop and partially perfect water rights incrementally. ORS 537.260(4) provides:

"A municipality may partially perfect not less than 25 percent of the water authorized by its permit without loss of priority or cancellation of the municipality's permit under this section. If a municipality defers perfection of its water right under this section, the department shall issue a certificate under ORS 537.250 only for the amount perfected. Upon perfection of the deferred amount, the municipality shall request a water right certificate for the remaining portion of the water applied for in the original permit application. As used in this section, 'municipality' includes a city, a port formed under ORS 777.005 to 777.725 and 777.915 to 777.953, a domestic water supply district formed under ORS chapter 264 or a water authority formed under ORS chapter 450."

Respondents are correct that that statute gives special treatment to municipalities and contemplates incremental development and partial perfection by municipal water users. Notably,

however, the exception given to municipalities is not unlimited. ORS 537.260(4) provides that a municipality may partially perfect its water right "without loss of priority or cancellation of the municipality's permit." However, the statute also requires that, to obtain that exception, the municipality must perfect "not less than 25 percent of the water authorized by its permit." More importantly, nothing in ORS 537.260(4) supports respondents' position that the text of ORS 537.230(1), imposing a five-year construction completion deadline, should be ignored or read to be only a guideline with respect to municipal applicants.

Respondents also assert that there is no question that the use of water for a municipal purpose is a beneficial use. To support their argument, respondents rely on ORS 536.300(1), which provides:

"The Water Resources Commission shall proceed as rapidly as possible to study: Existing water resources of this state; means and methods of conserving and augmenting such water resources; existing and contemplated needs and uses of water for domestic, municipal, irrigation, power development, industrial, mining, recreation, wildlife, and fish life uses and for pollution abatement, all of which are declared to be beneficial uses, and all other related subjects, including drainage, reclamation, flood plains and reservoir sites."

We understand respondents to argue that, because that statute provides that a beneficial use includes "existing and contemplated needs and uses of water for * * * municipal" purposes, it follows that municipalities should be allowed to obtain all water necessary for future municipal uses, regardless of other statutory requirements regarding water appropriation.

Again, however, respondents read more into the statute than its text provides. The words of the statute simply state that the enumerated uses are declared to be beneficial uses. Even though the statute addresses existing and contemplated needs and uses for municipal purposes, it does not distinguish municipal uses from other beneficial uses, nor does it eliminate other statutory requirements for water appropriation.

Respondents also assert that future needs must be considered when a municipality makes a water right application. They rely on ORS 540.610(4), which provides:

"The right of all cities and towns in this state to acquire rights to the use of the water of natural streams and lakes, not otherwise appropriated, and subject to existing rights, for all reasonable and usual municipal purposes, and for such future reasonable and usual municipal purposes as may reasonably be anticipated by reason of growth of population, or to secure sufficient water supply in cases of emergency, is expressly confirmed."

That general confirmation that a municipality may acquire rights to the use of water does not override the specific requirements of ORS 537.230(1). ORS 540.610(4) is part of a statute concerning the forfeiture of water rights following a period of five or more successive years of nonuse. ORS 540.610(2) allows an appropriator to rebut the presumption of forfeiture for a variety of reasons, including that a city's water right is "for all reasonable and usual municipal purposes," ORS 540.610(2)(a), or that a forfeiture would impair the rights of cities and towns to use the water, ORS 540.610(2)(b). Those two paragraphs indicate that the legislature does not favor the forfeiture of a water right implicating municipal purposes. The statute appears to contemplate a broad view of municipal uses.⁽¹⁴⁾ Nonetheless, the provisions concerning forfeiture of a water right do not affect the construction requirements of ORS 537.230(1) that apply to municipalities in *obtaining* a permit.

Finally, respondents argue that "[t]he ultimate determination on a water right application is whether the proposed use will impair or be detrimental to the public interest." They assert that, considering all of the above statutes and the legislature's intention that municipal users should be allowed to seek water rights for both present and future uses, it is evident that the legislature intended that the five-year construction completion deadline in ORS 537.230(1) be "a guideline and standard by which to judge due diligence in efforts made toward perfecting a water right," and that that statute should not be construed to preclude CBNB's permit application under the circumstances of this case.

As we have already explained, respondents point to general statutes concerning municipal water users and contend that those provisions make it apparent that, under those circumstances, it is in the public interest for CBNB to obtain this water. Respondents reason that, if the commission determines that it is in the public interest for CBNB to obtain this permit, it should be issued regardless of the terms of the specific statutes governing the issuance of water appropriation permits.

Respondents are correct that municipalities are given favorable treatment in many respects under the water appropriation statutes. Further, respondents offer numerous persuasive practical and policy reasons why it might make sense to allow a municipal user to obtain a water appropriation permit under these circumstances. Nonetheless, the text and context of the present statutes do not provide for the exception to the five-year construction completion requirement in ORS 537.230(1) that respondents seek. To exempt municipalities from that requirement, we would need to add language or omit language from the statute, which we are not allowed to do. ORS 174.010; *PGE*, 317 Or at 611. If the legislature intends that municipalities be given the special exemption sought by respondents, it may amend the statutes to provide it. There may be persuasive policy arguments that support exempting municipalities from some or all of the requirements for issuance of a water appropriation permit, but that is a decision for the legislature to make.

To summarize, the five-year construction completion requirement in ORS 537.230(1) applies to municipalities. Based on the commission's findings, during the statutory period, CBNB intends to collect only water quality and flow data and *construction* of diversion works will not begin. As a matter of law, those findings do not demonstrate that, on issuance of the permit, CBNB will exercise reasonable diligence in the *construction* of diversion works. Consequently, the commission erred as a matter of law by granting a permit where the requirements of ORS 537.230(1) will not be satisfied. To allow the issuance of a permit in those circumstances is inconsistent with the statutes and rules of the commission governing water appropriation as well as the doctrine of prior appropriation for beneficial use that Oregon water law is designed to further. For those reasons, the commission erred as a matter of law when it determined that the issuance of the permit was in the public interest under ORS 537.153(2).

WaterWatch's remaining assignments of error concern CBNB's estimated need for water and whether the commission's determinations are supported by substantial evidence. In light of our resolution of WaterWatch's first and second assignments of error, there is no need for us to address the remaining assignments.

Reversed and remanded.

1. Petitioner on review is WaterWatch of Oregon, Inc., and respondents on review are the Oregon Water Resources Commission, the Oregon Water Resources

Department, and the Coos Bay North Bend Water Board. The City of Lakeside was a protestant below, and the Tenmile Lakefront Owners Association and the Oregon Department of Fish and Wildlife were intervenors below. The City of Lakeside, the Tenmile Lakefront Owners Association, and the Oregon Department of Fish and Wildlife are not parties to this judicial review proceeding.

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2. ORS 537.230 (1997) was amended in 1999. Or Laws 1999, ch 453, § 1. That amendment applies to any application for a permit filed after October 23, 1999. Or Laws 1999, ch 453, § 3. Because the application was filed before that date, the 1999 amendments do not apply. In this opinion, references to ORS 537.230 are to the 1997 version.

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3. ORS 537.170(2) provides, in part:

"Notwithstanding the provisions of ORS 183.310 to 183.550 pertaining to contested case proceedings, the parties to any contested case hearing initiated under this section shall be limited to:

"(a) The applicant;

"(b) Any person who timely filed a protest; and

"(c) Any person who timely filed a request for standing under ORS 537.153(5) and who requests to intervene in the contested case hearing prior to the start of the proceeding."

With regard to a person requesting standing, we note that ORS 537.153(5) provides:

"Any person who supports a proposed final order may request standing for purposes of participating in any contested case proceeding on the proposed final order or for judicial review of a final order. A request for standing shall be in writing and shall be accompanied by the fee established under ORS 536.050(1)(n)."

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4. ORS 174.100(5) provides a general statutory definition for the word "person" unless the context requires that another definition applies or another specific definition applies.

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5. Although, as noted above, ORS 536.075(2) requires only that a party be "affected" by a final order of the commission, ORS 536.075(4), which describes the requirements of a petition for judicial review, provides that "[t]he petition shall state the facts showing how the petitioner is *adversely affected* by the order and the ground or grounds upon which the petitioner contends the order should be reversed or remanded." (Emphasis added.) Even if ORS 536.075(4) were to alter the standing requirement in ORS 536.075(2), for the reasons that we will discuss, we believe that WaterWatch has demonstrated that it was "adversely affected" by the commission's order.

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6. Instream water rights are described in OAR 690-077-0000, which provides, in part:

"(3) In 1987, the Legislature created a new type of water right called an instream water right. Instream water rights are established by certificate from the Water Resources Commission or by lease agreement, pursuant to ORS 537.332 to 537.360, to maintain and support public uses within natural streams and lakes. These public uses include, but are not limited to recreation, scenic attraction, aquatic and fish life, wildlife habitat and ecological values, pollution abatement and navigation. Instream water rights may also be established as a result of the allocation of conserved water under ORS 537.455 to 537.500 and 540.510 (OAR chapter 690, division 18).

* * * * *

"(5) Instream water rights differ from other water rights because control or diversion of the water is not required. Instream water rights are held in trust by the Water Resources Department but are regulated and enforced like all other water rights.

"(6) Instream water rights do not take away or impair any legally established right to the use of water having an earlier priority date than the instream right."

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7. In her affidavit, Nancy Duhnkrack, president of WaterWatch's board of directors, averred, in part:

"8. In 1987, WaterWatch was instrumental in the drafting and passage of the Oregon Instream Water Rights Act. This law allowed for the establishment of instream water rights to protect streamflows needed for fish, wildlife, water quality, recreational and aesthetic values of river segments throughout Oregon. Since passage of the Act, WaterWatch has been involved in proceedings to support the establishment of new instream water rights statewide, including instream water rights for Tenmile Creek. In other words, WaterWatch has invested significant time, effort and money in establishing instream water rights, including instream water rights for Tenmile

Creek.

"9.If the water appropriation permit at issue in this case is issued, the permit will harm WaterWatch because it will significantly diminish the return on WaterWatch's investment in creating the instream water rights for Tenmile Creek (including WaterWatch's investment in creating statutes that allow for instream water rights). The permit will do that because it will be issued with an earlier priority date than the instream water rights for Tenmile Creek (even though the instream water rights are being put to beneficial use now while the applicant in this case does not plan to make beneficial use of the permitted appropriation for at least 25 years). The permit at issue in this case will have an earlier priority date because the application for the permit was made a few months before the applications for the instream water rights were made. As a result, the instream water rights will be subject to (and not protected against) possible later use of the water by the applicant in this case. Because of that contingency, the instream water rights that WaterWatch has invested time, effort and money to help create will have a lower value than they would if they were not subject to later appropriation by the applicant in this case. WaterWatch's investment will therefore be injured by the requested appropriation permit."

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8. In his affidavit, Karl Anuta, a member and board member of WaterWatch, averred, in part:

"4.I have personally used and enjoyed the benefits of instream flows in Tenmile Creek. I have paddled Tenmile Creek, with my wife and my youngest daughter. I plan to return to Tenmile Creek in the future and hope to enjoy those benefits again.

"5.An appropriation permit that allows water to be diverted from Tenmile Creek would adversely affect my use and enjoyment of the instream flows of Tenmile Creek, by reducing flows that support fish, wildlife and recreation."

In his affidavit, Jim Thurber, a member of WaterWatch, averred, in part:

"2.I reside in Lakeside, Oregon. My house is approximately one mile from Tenmile Creek.

* * * * *

"4.I regularly use and enjoy the benefits of instream flows in Tenmile Creek. I fish and boat in Tenmile Creek. I enjoy the scenery provided by the instream flows of Tenmile Creek. I enjoy observing wildlife that exists because of instream flows in Tenmile Creek. I also enjoy simply knowing the instream flows exist and knowing that the fish and wildlife they support exist.

"5.I am familiar with the appropriation permit sought by the Coos Bay North Bend Water Board (the 'Board'). The appropriation permit

would adversely affect my use and enjoyment of Tenmile Creek. The permit would do that by allowing the Board to diminish instream flows in Tenmile Creek and thereby diminish my enjoyment of the benefits of instream flows."

Return to previous location.

9. Even though we consider the effect on individual members in our constitutional analysis and note that that is another reason to conclude that WaterWatch has standing, we do not consider the effect on individual members in determining whether WaterWatch has demonstrated that it has statutory standing. See *Local No. 290*, 323 Or 559.

Return to previous location.

10. In view of our conclusion that WaterWatch has standing under the standard articulated in *Utsey*, it is not necessary for us to address the arguments that *Utsey* was wrongly decided.

Return to previous location.

11. ORS 537.153(2) provides:

"In reviewing the application under subsection (1) of this section, the department shall presume that a proposed use will not impair or be detrimental to the public interest if the proposed use is allowed in the applicable basin program established pursuant to ORS 536.300 and 536.340 or given a preference under ORS 536.310(12), if water is available, if the proposed use will not injure other water rights and if the proposed use complies with rules of the Water Resources Commission. This shall be a rebuttable presumption and may be overcome by a preponderance of evidence that either:

"(a) One or more of the criteria for establishing the presumption are not satisfied; or

"(b) The proposed use will impair or be detrimental to the public interest as demonstrated in comments, in a protest under subsection (6) of this section or in a finding of the department that shows:

"(A) The specific public interest under ORS 537.170(8) that would be impaired or detrimentally affected; and

"(B) Specifically how the identified public interest would be impaired or detrimentally affected."

Return to previous location.

12. ORS 537.170(8) provides:

"If the presumption of public interest under ORS 537.153(2) is overcome, then before issuing a final order, the director or the commission, if applicable, shall make the final determination of whether the proposed use or the proposed use as modified in the proposed final order would impair or be detrimental to the public interest by considering:

"(a) Conserving the highest use of the water for all purposes, including irrigation, domestic use, municipal water supply, power development, public recreation, protection of commercial and game fishing and wildlife, fire protection, mining, industrial purposes, navigation, scenic attraction or any other beneficial use to which the water may be applied for which it may have a special value to the public.

"(b) The maximum economic development of the waters involved.

"(c) The control of the waters of this state for all beneficial purposes, including drainage, sanitation and flood control.

"(d) The amount of waters available for appropriation for beneficial use.

"(e) The prevention of wasteful, uneconomic, impracticable or unreasonable use of the waters involved.

"(f) All vested and inchoate rights to the waters of this state or to the use of the waters of this state, and the means necessary to protect such rights.

"(g) The state water resources policy formulated under ORS 536.295 to 536.350 and 537.505 to 537.534."

Return to previous location.

13. Although not cited by the parties in this case, we note that the department's rules that govern applications for extensions of time for municipal water right permit holders to complete construction pursuant to ORS 537.230 are consistent with our interpretation of the statute. "In order to approve an application for an extension of time for municipal and quasi-municipal water use permits [sic] holders to complete construction and/or apply water to full beneficial use pursuant to ORS 537.230 or 537.630, the Department shall find[,] among other things, that "[t]he applicant began *actual construction* on the project, as defined in [OAR] 690-315-0020(3)(d), within the time period, if any, required under the applicable statute[.]" OAR 690-315-0080(1)(b) (emphasis added). OAR 690-315-0020(3)(d) provides, in turn:

"Evidence of the actions taken to begin actual construction within the time period in the permit or previous extension:

"(A) 'Actual construction' means physical work performed towards completion of the water system, which demonstrates both the present good faith of the water right permit holder and the water right

permit holder's intention to complete the project with reasonable diligence;

"(B) 'Actual construction' does not include planning a diversion system, formulating a business plan, securing financing, letting contracts, purchasing but not installing equipment, or surveying."

Here, as we have explained, the commission's findings indicate that CBNB intends to collect only water quality and flow data during the five-year period provided in ORS 537.230(1).

Return to previous location.

14. OAR 690-300-0010(29) defines "municipal water use" as

"the delivery and use of water through the water service system of a municipal corporation for all water uses usual and ordinary to such systems. Examples of these water uses shall include but are not limited to domestic water use, irrigation of lawns and gardens, commercial water use, industrial water use, fire protection, irrigation and other water uses in park and recreation facilities, and street washing. Such uses shall not include generation of hydroelectric power."

Return to previous location.



RECEIVED

Kalmiopsis Audubon Society
P.O. Box 1265 Port Orford OR 97465

JUN 5 2008

CITY OF BROOKINGS

June 3, 2008

Brookings Planning Commission
898 Elk Drive
Brookings, OR 97415

Dear Brookings Planning Commission members:

I am writing on behalf of the Kalmiopsis Audubon Society. Our group has 175 members in Curry County who are concerned about habitat for fish, birds, and wildlife.

In the past we have commented on concerns about how the proposed Borax development would affect wetlands and water issues in south Curry County, and so we'd like to comment briefly on the matter before you now to extend the Borax Master Plan of Development.

Since this Master Plan was approved nearly four years ago, there have been several significant changes in conditions—especially with regards to water supply and the Chetco River. For this reason, we believe that an extension is not justified according to Brookings Municipal Code 17.70.120.

In 2004, the findings that lead to approval of the Master Plan of Development stated: "Any water withdrawals from the Chetco River will be within that allowed to the City, consistent with protection of the estuary. There is no negative impact on the estuary or its wetlands and the development is consistent with Goal 16."

However, since 2004, new issues have emerged regarding the Brookings water supply. Owing to a protest of Brookings' Chetco River rights made by Water Watch, the city's secure water rights are currently only 5.1 cfs --an amount that the city's engineering consultant stated in 2006 is far less than adequate to meet the needs of the Borax property and the rest of the city.

This information was NOT considered by LUBA in 2004.

We believe that the issue of water supply needs to be clarified in an updated water plan before any extension of the Master Plan of Development be granted.

The current regional ban on salmon fishing is another new condition which makes the future expansion of Brookings's water rights even more unlikely and makes it ever more crucial for water plans for the Borax development to be clarified.

For these reasons we urge you not to grant an extension.

Thank you for considering our comments.

Cordially,

Ann Vilcisis //AV

President

EXHIBIT D, & E

SUPPLEMENTAL PACKET
Received at Planning Commission Meeting
June 3rd – File MPD-1-04

EXHIBIT D:	FROM:	NUMBER OF PAGES:	DOCUMENTS:
	Diana & Pete Chasar 935 Marina Heights Rd. Brookings, OR 97415	4	1 pg: Curry news letter Page 5, June 2008 3 page document copy of Pilot article from May 20, 2006
EXHIBIT E:			
	Pat Sherman P. O. Box 1140 Brookings, OR 97415	7	1 page: "Cost Sharing for Lone Ranch" 1 map of public utilities 5-pg. Letter

State of the Cooperative

As we prepare for the 70th Annual Meeting of the Membership, we would like to pause and reflect on the events of the past year.

First, and most importantly, your electric cooperative is in excellent financial condition. As a result, we have been able to retire capital credits for 1971 and 1972 and we will retire capital credits for the years 1973 through 1976 later this year for approximately \$1.5 million.

In 2001, we retired capital credits for the years 1959 through 1970. More than 13,000 checks were returned and we began the process outlined in Oregon state statutes late last year to locate those members. In response to our advertisements, more than 3,000 people contacted us with information we could use to locate members having unclaimed capital credits. Our staff is working as quickly as possible to verify information and reissue checks.

The planning stages for the completion of the transmission line upgrade from the Thomas Creek area to Brookings/Harbor is progressing on schedule. While we will have some property easement issues to resolve, we may be able to begin construction later this year.

We are working diligently to secure a long-term power supply after the year 2011 when our contracts with the Bonneville Power Administration expire. The politics surrounding the climate change debate will undoubtedly impact electricity rates across the nation, including here in the Pacific Northwest. We will be actively engaged in the debate to make sure our long-term power supply remains reliable and affordable.

For this year, it appears the region will have a good snow pack, which bodes well for the hydropower system we rely upon. Knowing the region has outgrown the federally based hydropower system, we are exploring ways to add more renewable energy to our portfolio. We participated in the expansion of the Coffin Butte landfill gas facility near Corvallis and the wave energy pilot project off the coast of Reedsport through PNGC Power. Our green energy program was put in place last year and we rounded out our greater emphasis at protecting our environment through promoting the use of compact fluorescent bulbs and energy conservation.

Four hundred of you participated in a Member

Satisfactory Survey conducted on our behalf by the National Rural Electric Cooperative Association Market Research Services. The ratings you gave the cooperative and the employees that serve you every day were excellent. In fact, we were rated higher than cooperatives nationwide in some areas. You've asked us to do a better job with regard to concern for the environment and in being community partners, and we will strive to do so. We appreciate your honest feedback.

Finally, let us mention one more time the appreciation we have for our employees. They demonstrate to you and to us—every day—how talented, professional and dedicated they are. They were put to the test during December and January, and passed with flying colors once again. We are proud of our employees and the work they do. Apparently, you are too, because our ratings in the recent survey were higher after the December storms than they were for those of you surveyed before the storms hit.

These and other issues are discussed at length at our monthly Town Hall meetings. The electric utility industry is constantly changing and we expect to have a lot to discuss over the next few years. We are proud to have served you for the past 70 years and we look forward to providing the same level of excellent service in the future.

Grant Combs, President/Chairman

Daryl C. Robison, Vice-President/Vice Chairman

Peter C. Radabaugh, Secretary

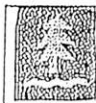
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MAYOR: BORAX DID NOT PAY ITS SHARE OF SEWER PROJECT

Published: May 20, 2006

By Peter Rice
Pilot staff writer

The city of Brookings paid hundreds of thousands of dollars in sewer pipe installation costs that it might have shared with a developer, according to a statement issued last week by Mayor Pat Sherman.

At issue is a project completed in 2005, upgrading a section of sewer line between Crissey Circle and Parkview Drive. The city paid the entire \$794,000 bill, according to Finance Director Paul Hughes, with \$74,000 coming from sewer replacement fees collected in \$2.50 increments on monthly bills, and the rest coming from general sewer revenues - the money paid by sewer rate payers.

But in a 2004 report to then City Manager Leroy Blodgett, the Coos Bay engineering firm HGE wrote that the cost of the project should be split 50/50 with the 1,000-home U.S. Borax Lone Ranch development.

Cities frequently hire engineers to calculate such cost splits, according to City Manager Dale Shaddox. Developers can be billed for any costs incurred when cities expand infrastructure capacity to accommodate the growth.

But cities also chip in.

For example, if a city needed to replace a leaky pipe anyway, and a developer needed a more expensive and bigger pipe, the city might hire an engineer to determine how to divide the bill. City staffers, Shaddox said, can then use the report to negotiate a formal cost-sharing agreement.

This time, that didn't happen.

"It's my understanding that there is no agreement," he said.

If there was, "I'd be happy to send them a bill," Hughes said.

Sherman said she made the announcement for the sake of transparency.

"I am reporting this information to you because the money came from you and you have a right to know how the city spent it," Sherman said. "The people in the community had been told

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to believe that Borax was funding its own projects," she added later.

"It would look to me like she's starting a campaign for reelection," said Bob Hagbom, who was mayor at the time the project received approval.

The city made the decision to pay for it all, he said, to get the project finished before the Oregon Department of Transportation (ODOT) resurfaced Chelco Avenue, work that is slated for completion next week.

"It was necessary infrastructure the city had to provide," Hagbom said.

Philosophical differences also come into play, he said.

"We were a pro-development council," Hagbom said. But now, "the interest in growth isn't near as keen as it was in the previous administration."

Blodgett told the Curry Coastal Pilot Wednesday that it would have been difficult to determine how to split the cost of the project between Lone Ranch, the city and other development activity on the northern end of town.

On Thursday, he issued a further statement on the matter, taking on Sherman for bringing up the completed project in the first place.

"I am not sure why Mayor Sherman has chosen the public forum to criticize previous decisions of city officials," wrote Blodgett, who resigned from the city last year and later joined the development company HW3. "While there was never any inappropriate use of city funds for this or any other project, I will not debate the issue through the media."

Sherman said Thursday that she had not sought out an explanation from Hagbom or Blodgett.

The city council awarded the contract for the project, and two other companion pipeline issues, at their Oct. 11, 2004 meeting.

Meanwhile, the city continues to work with Borax on other infrastructure-expanding projects. Shaddox said future costs would be borne by developers as much as possible.

"We certainly don't want to find ourselves in a position of expanding the capacity of our systems and incurring costs that we don't need to incur," he said.

He and other city staffers are scheduled to brief the city council on all Lone Ranch-related projects at a June 12 meeting.

Shaddox also said he would try to recover some of the money the city spent on the Crissey Circle to Parkview Drive line.

"I expect that the developer recognize and agree that this is part of their obligation," Shaddox said.

"This is the first I've ever heard of it," said Burton Weast, a spokesperson for the Lone Ranch development, when reached by phone Friday. Not knowing the details, he said he couldn't comment much on the project, but did point to other major



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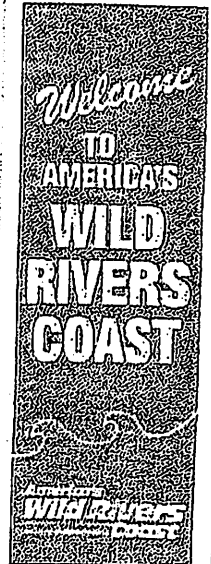
Resources

infrastructure improvements that the developer had paid for entirely.

"We have obviously been a company that has not been asking for public subsidy," Weast said. "We have a history of paying our own way."

~*~

Reach Peter Rice at price@currypilot.com.

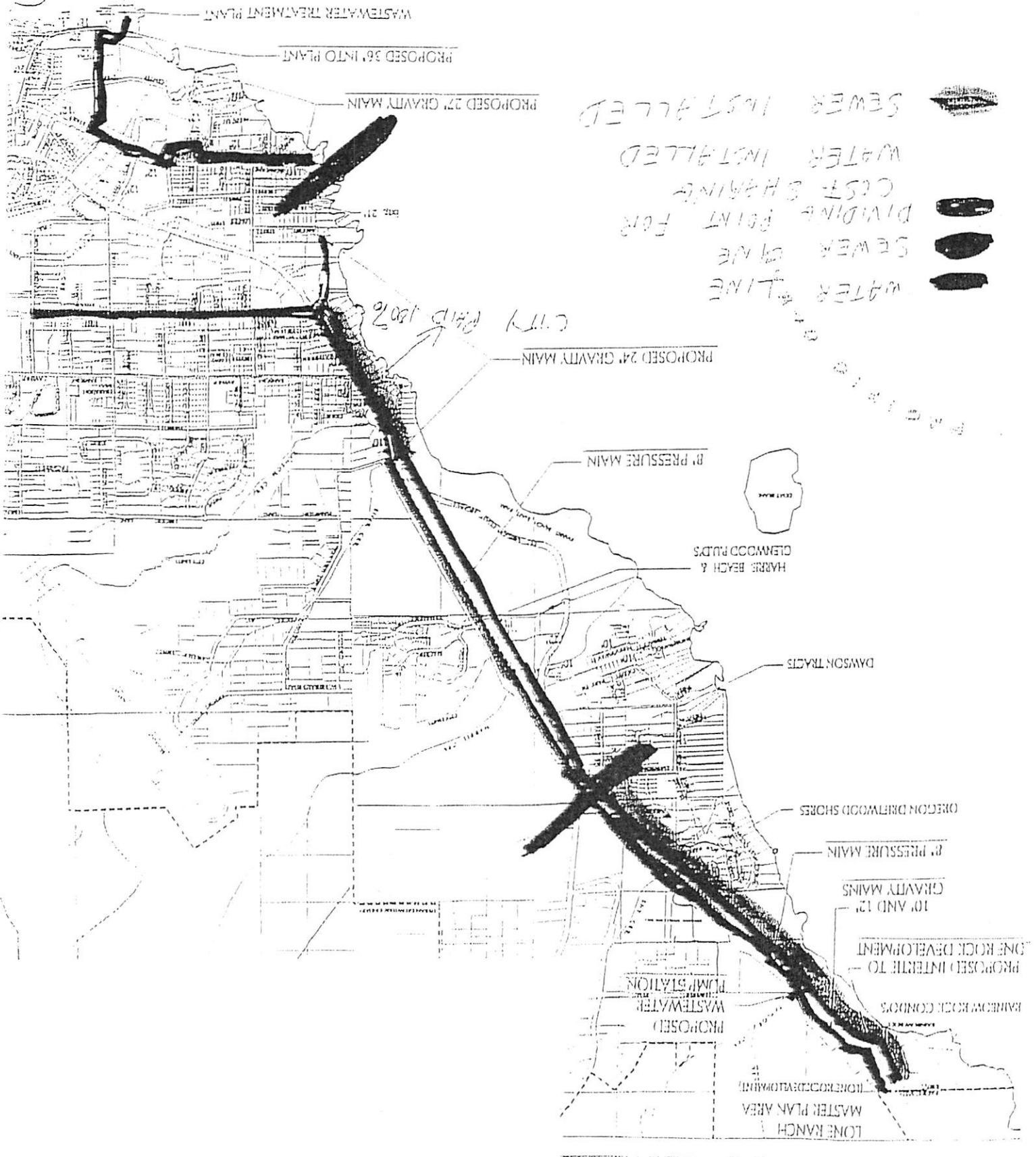


COST SHARING FOR LONE RANCH & SURROUNDING AREA

WATER		SEWER	
LONE RANCH	CITY	LONE RANCH	CITY
North of Cptville	0%	100%	0%
South of Cptville	50%	see below	50%
Cptville to Mill Beach		23%	77%
Mill Beach to WWTP		23%	77%

* * The segment - Parkway to Midway - was paid for 100% by City.

from HGE 4/22/04 & 6/06/06.



Pat Sherman
PO Box 1140
Brookings, OR 97415

June 3, 2008

To: Brookings Planning Commission
898 Elk Drive
Brookings, OR 97415

Re: MPD-1-04 two year extension

Madam Chair and Commissioners,

BMC 17.70.120 gives you discretion to give extension to the Master Plan. But BMC states that before you can use your discretion, you must first make a finding that "conditions have not changed."

I am submitting this letter with the documents that support my statements about three specific changes.

Change #1- Source of water supply

In the original Master Plan the source of the water supply was wells on the property. The most recent plan is to use water from the City and not use the wells. This is a change in conditions.

From the time that Borax first submitted its Master Plan to the present day, the plan for the source of water for the development has evolved. When first presented, the plan was to rely on water from on-site wells and reservoirs. Now the plan seems to be to rely exclusively on water from the City. According to correspondence from Richard Nored, HGE Inc., the City's engineer, this change requires an amendment to the Master Plan.

The story of how we got from "wells" to "all-City" is convoluted. Using documents in the Borax file, I traced the evolution as best as I could. The documents, except for the cumbersome Master Plan, are attached. To make the story easier to follow, I have prepared a table.

Comments:

1. Based on new evidence, the change of the plan for source of water from "wells" to "City" happened without consulting the City's engineer, Richard Nored of HGE, Inc. The City engineer's October 31, 2006 e-mail contradicts testimony given during the MPoD hearing by then Planning Director John Bischoff concerning the adequacy of the City's water supply.
2. The testimony from the City's engineer that *was* included in the MPoD hearing is a letter dated July 6, 2004 which pre-dates the change in the plan for water.
3. The wells were always an integral part of the plan. That is why Condition of Approval #15, to allow for reverse flows, was included.
4. But, now there is evidence that the wells aren't what they were thought to be.
5. It appears that water from the wells will not be available to augment the City's supply when the Chetco River has low flow or when the City is unable to treat an adequate volume of water. Originally, we were told that the wells would add to the City's water supply and help the City in low flow periods.
6. Goal 16 was never addressed in the original Master Plan application. Now that water will be withdrawn from the Chetco on a regular basis, Goal 16 needs to be evaluated.

Goal 16 Policy 10 states: Actions, which would potentially alter the estuarine ecosystem, shall be preceded by a clear presentation of the impacts of the proposed alterations. Such activities include dredging, fill, in-water structures, riprap, log storage, application of pesticides and herbicides, *water intake or withdrawal* and effluent discharge, flow land disposal of dredged material, and other activities which could affect the estuary's physical processes or biological resources.

WATER DOCUMENTS				
Date	Document	Author	Comment	Additional Comment
July 6, 2004 (NORED)	Letter to Leo Lightle, COB Community Development Director	Richard Nored, P.E. the City Engineer from HGE, Inc	Included in Master Plan Hearing File. This (early) document was referenced in the LUBA opinion, but it was outdated by then.	Recommends cost-sharing for infrastructure
September 21, 2004 (RAMIS1)	Letter	Tim Ramis, Attorney for Borax	Response to Comments in Public Hearing	Notes on-site water system for SWOCC. Notes on supplementing supply from City water system- (p.3) Notes on water from BOTH the City and the wells (p.4)
September 24, 2004 (RAMIS2)	Letter	Tim Ramis, Attorney for Borax	US Borax Response to comments	Applicant NOW proposing all City water system. Wells will be source of NEW water
October 25, 2004 (FOFOF)	Final Order Finding of Fact	City	#41.a. "proposed water system, which will be connected with the city system" #181 water right not needed until DDP	"Proposed water system" was the well based system
October 25, 2004 (COA)	Conditions of Approval	City	#15. requires reverse flows between project water system and city water system	Reverse flows implies two sources of water
July 7, 2005 (approx) (REMAND)	Final Opinion and Order	Land Use Board of Appeals (LUBA)	Use all City with No on-site wells	Relied on comments from applicant's engineer and City's Planning Director which are contradictory to comments of City Engineer in 10/31/2006 e-mail
April 30, 2006 (WILCOX)	e-mail	Don Wilcox, P.E. City Public Works Director	a. Wilcox thinks wells are source of water. b. Also recalls Watershed Council meeting	b. wells not likely to produce water
October 31, 2006 (NORED2)	c-mail	Richard Nored	Must read	Contradicts LUBA Final Order and Opinion Contradicts Planning Director testimony about adequacy of water supply

November 2, 2006 (NORED3)	letter	Richard Nored	Includes Specific Assumptions of Master Plan, project descriptions and cost information	
November, 2006 (PLAN2006)	Excerpts from "Water and Wastewater Facilities Plan to Serve Lone Ranch Development and Surrounding Areas", Revised	HGE Inc (City Engineer)	Comment on quality of wells. Current Plan to use all water from City. Discusses phasing.	

Change #2- Change of Oregon Law with respect to municipal water rights.

At the time the Master Plan was approved we all were assured that the City had adequate water rights on the Chetco. In particular the City has two permits at the Rainey site on the North Fork Chetco, one for 4cfs and one for 10cfs. In the LUBA appeal of the Master Plan, we learned that Water Watch had protested the City's water rights on the Chetco. This challenge was considered by LUBA in the appeal.

Since the LUBA remand was handed down, Oregon Law about municipal water rights has changed. Specifically, HB 3038, (see attachment) effective June 29, 2005 (after the LUBA appeal) adds additional constraints relating to municipal water right extensions. First, the law adds a time limit of 20 years, with exceptions, to the permit. Second, the first extension of the undeveloped portion of the permit *shall* be conditioned to maintain the persistence of listed fish species in the portions of waterways affected by water use under the permit.

This constraint has a direct bearing on the City's permit for 10cfs because that permit is not perfected, and there are two fish that are listed in Curry County waters. One is the federally threatened Coast Coho population. The other is the Pacific Lamprey which is listed as Vulnerable Sensitive on the Oregon list and Species of Concern on the Federal list. In the new state law the Department of Water Resources (DWR) is required to base its finding on existing data and upon the advice of the State Department of Fish and Wildlife (ODFW). This adds a new layer to the permit extension process and gives added weight to the issue of fish habitat and increased power to ODFW.

The City currently has an ordinance that limits withdrawal from the Chetco to 5.1cfs when stream flows fall below 80 cfs for three consecutive days. But since there is currently no formal fish protection agreement between the City and a state or federal agency, this issue is open for discussion whenever the City applies for an extension.

It is noteworthy that DWR holds an in-stream certificate, priority date 1980, (attached) for the reach of the Chetco below the North Fork to the tidewater for the purpose of supporting aquatic life. It is possible, perhaps probable, that upon application for renewal of the City's water right permit, ODFW may use the opportunity to assert the in-stream water right and require that withdrawal be restricted to 5.1cfs whenever stream flows fall below the volumes allowed in the DWR certificate. Those volumes are: from Oct 1 to Oct 15- 200cfs; from Oct 16 to Dec 31- 450cfs; from Jan 1 to May 31- 350cfs; from June 1 to June 15- 200cfs; from June 16 to June 30- 100cfs; from July 1 to Sept 30- 80cfs.

As an example of the potential impact this restriction could have, a table of daily flow data for October in the years from 2003 through 2007 is attached. In two of the five years (2003 and 2006) the daily mean discharge was below the DWR certificate level every single day. In 2004 it was below on 13 days, in 2005 it was below on 26 days, and in 2007 it was below on 12 days.

As a practical matter, this doesn't make any difference now because our water use doesn't approach 5.1cfs at the present time. But as we look to the future, and our daily demand increases, we can anticipate water restrictions occurring every year. According to the City of Brookings 2007 Water Master Plan, maximum daily demand projections are: 2009=3.89cfs; 2015=4.64cfs; 2022=5.71cfs; 2057=16.06cfs. Welcome to the water wars of the 21st century.

The City has hired a water rights specialist, Adam Sussman, and a water rights attorney, Martha O. Pagel. The City has enacted a Water Conservation Program. We have notified the golf course (see attachment) that the City will be unable to

provide water for them until the domestic water supply is secured. We have updated the Water Master Plan. All of these actions illustrate that the City is responding aggressively to its water right challenges.

The City is making progress, but much remains to be done to secure the City's water rights to the Chetco and, by law, there will be conditions added to maintain the persistence of listed fish species, to any extension of the 10cfs water right.

Summary of Change #1 and 2

No element in the Lone Ranch Master Plan is more basic than the plan for providing water. Change of source of water from wells on the property to the Chetco River is a fundamental change in the Master Plan that requires, according to the City's engineer, an amendment to the Master Plan. There is new evidence that the City's engineer was not consulted, and an analysis of the impact of the change was not done, when the decision to change the source of water was made. The engineer's e-mail of October 31, 2006 contradicts testimony given by the planning director in the MPOD hearing. There is new knowledge about the well water (or lack thereof). The change in state law concerning municipal water rights is another important change of condition.

Combined, these changes in circumstances are so important and fundamental that they completely undermine the findings on which the plan for water is based. These fundamental changes preclude making a finding that "conditions have not changed." Therefore, the request for extension must be denied at this time. The applicant should submit an amendment to the Master Plan, and he could re-submit his request for an extension at the same time.

Change #3- Infrastructure Cost-sharing

Cost sharing for off-site infrastructure is an integral part of the Master Plan. Since the Master Plan was approved in 2004, *new knowledge* about the offsite infrastructure that will be needed, and the cost of the infrastructure, has seen the light of day.

We now know that off-site infrastructure to serve Lone Ranch and the surrounding area includes about \$11 million dollars of pipes, etc. We also know that a considerable amount of the money is supposed to come from the City.

Much of the off-site infrastructure still needs to be installed. For the sewer collection system the needs are: pump station at Taylor Creek, sewer main from Carpenterville Rd to Parkview, sewer main from Crissey to Moore, sewer main from end of Rowland Lane to Mill Beach Pump Station, sewer main from the Mill Beach pump station to the WWTP. For the water distribution system the needs are: water main from Easy/Fern to Highway 101, water main from Easy/Hwy 101 to Carpenterville Rd. In addition to the improvements identified in the HGE engineering report there are additional projects that need to be completed before the City will be able to serve Lone Ranch. (see Don Wilcox e-mail)

This significant operational and financial information was available at the time the Master Plan was approved, but it was not presented for consideration to the Planning Commission, the City Council, or the public. In particular, at the City Council hearing for the Master Plan, Councilor Larry Anderson asked a pointed question about the needed off-site infrastructure and who would pay for it. We now know that the answer Mr. Anderson was given by then City Manager Mr. Blodgett was incomplete and erroneous. (minutes attached)

The answer to Mr. Anderson's question was incomplete in that the information about the needed offsite infrastructure, the cost of it, and the cost sharing percentage between Borax and the City was not discussed. In his answer Mr. Blodgett mentioned the need to enlarge (*sewer*) lines from Arnold Lane to Mill Beach Road, and he mentioned that the developer would pay all costs to extend lines (extended lines are the lines north of Carpenterville Rd), but he failed to mention all of the other needed infrastructure- both water and sewer- included in the April 22, 2004 letter from Richard Nored, P.E. HGE Inc. to the City Manager. (attached) (also see map)

The answer was erroneous because the City Manager said in part that the off-site infrastructure projects would be paid for with SDC funds. First, the fact is that revenue from SDCs is realized at the time a person applies for a building permit, and building permits are not issued until after the infrastructure has been installed and paid for. Second, only a portion of the needed projects is eligible for SDC funds. Third, the sewer SDC fund was, and is depleted.

We also now know that the city's ratepayers paid for 100% of the sewer project that runs from Parkview to Crissey Circle, in spite of the city engineer's report that stated 50% of the project cost was allocated to the Lone Ranch developer. (Richard Nored letter 4/22/04, and repeated 6/06/06, 11/02/06)

I am sad to say that there has been no money forthcoming from Borax to reimburse the ratepayers the more or less \$600,000 to \$750,000 owed to them for the Lone Ranch allocation of the Crissey/Parkview project. (Nored 11/2/06 letter)

In a September 27, 2007 letter to John Cowan, (attached) Richard Nored reiterates the information about cost sharing contained in the 4/22/04 and 6/6/06 letters. He sent the letter to Mr. Cowan in preparation for a meeting with Borax that was to occur in the following week, and after he had reviewed new documents submitted by Borax. The new Borax proposals differed substantially from the City's proposals. I have submitted a request for the Borax documents but have not received them yet.

I am also sad to report on something that happened in December, 2007 and January, 2008. I have attached a memo dated January 3, 2008 from City Manager Gary Milliman to the City Council (attached). In the memo Mr. Milliman informed the Council of an application he had submitted to Oregon Economic and Community Development Department (OECD) and the U.S. Department of Agriculture.

The application included a request for a loan of \$2,810,927 that was to pay for the *Lone Ranch share* of the needed sewer infrastructure. The loan was to be repaid with revenues from a proposed new local improvement district. This, by the way, would have been a local improvement district that apparently initially had only one property owner, Borax.

Prior to receiving the Jan 3 memo, I, as mayor, had no knowledge whatsoever that the City Manager had submitted this request. Seemingly he was acting on his own initiative. And I can't imagine that this request would have been made without the knowledge and agreement of Borax' representatives.

I think it's also important to note that this request was made even though there is no contract between the City and Borax that safeguards the City's interests.

After I received the memo, I asked City Attorney John Trew what would happen if the property owner decided to walk away from the property. If I remember correctly, he told me that the City would be responsible for the payments. The loan request was never approved.

Summary of Change #3

Since the master plan was approved we have learned a lot about the off-site infrastructure needs. We know that the City has no funds for needed infrastructure to serve Lone Ranch. (Nored 11/2/06 letter). The history shows that Borax has not borne its share of the costs. Unless this problem is resolved, I think the viability of the project is at risk.

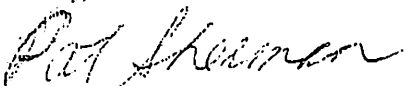
This new knowledge about the cost and cost-sharing for off-site infrastructure is a change in circumstances that exposes a critical weakness in the master plan.

I think this problem could be fixed with the addition of a condition that requires Borax or subsequent property owner(s) to consummate a development agreement or similar legal instrument with the City prior to approval of a Detailed Development Plan. The agreement could lay out a solution to this problem and should be approved by the City Council.

Further, until such an agreement is reached, I think there should be no action taken by the City that has to do with funding, taking ownership, or signing off on any of the infrastructure. First and foremost, the City needs a formal agreement to protect the interests of the City and the City's sewer and water customers.

But even with an agreement, no one knows where the money for the City's share of the cost will come from.

Sincerely,



Pat Sherman



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Roseburg Field Office
2900 NW Stewart Parkway
Roseburg, OR 97470
Phone: (541) 957-3474 FAX: (541) 957-3475



JUN 6 2008

CITY OF BROOKINGS

Reply To:
File Name: June 3rd Letter.doc
TS Number: 08-1339

Brookings City Planning Commission
Attn: Dianne Morris
City of Brookings
898 Elk Drive
Brookings, OR 97415

May 30, 2008

Subject: Public Hearing on the Master Plan of Development for the City of Brookings

Dear Ms. Morris,

The U.S. Fish and Wildlife Service (Service) has previously provided comments for the above referenced Master Plan of Development (MPD) for the proposed 553-acre development north of Brookings, Oregon in letters dated July 29, August 3, September 7, and September 20, 2004. Our comments expressed concerns that development plans may endanger the presence of western lily at the property. The City of Brookings (City) has scheduled a public hearing regarding a two-year extension of the MPD. It is our understanding that the development plan presented in the MPD is conceptual and that the actual development design will be refined during each of the Detailed Development Plans (DDP). We understand that DDP planning will be based on more intensive characterization of site constraints, including the potential for hydrological impacts on critical wetlands supporting the western lily. Our intent has been to inform the applicants and approving agencies of the importance of the western lily and the unique wetlands they occupy and to try to prevent future conflicts between the extent and configuration for the development as proposed in the MPD and the long term protection of these important resources.

We advise that if the planning commission approves a two-year extension of the MPD, the following issues, which we believe are necessary to adequately protect the significant natural resources on the property, be recognized in future development of the individual DDP's:

- Resource parameters included in the MPD:
 1. The current map of the western lily population on the property included in the March 2006 western lily survey report by Raedeke Associates, does not show the full extent of western lily on the site, as we determined during the July 2005 survey (Raedeke Associates, Inc. 2006). Therefore, further coordination with the Service is requested to ensure that the entire western lily population is considered in prospective planning of the project. In addition, species surveys are considered

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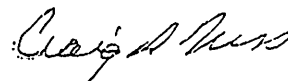


to be void after 5 years. Therefore, if development has not proceeded by July 2010 in any portion of the project, we recommend an updated survey for the lily to be completed.

2. Based on our partial inspection of the property in July 2005, the Service has concerns about the accuracy of some of the wetland delineations presented in the MPD. The Service is available to assist in field certification of wetland boundaries during certification by the Army Corps of Engineers and the Oregon Department of State Lands.
 3. As we have indicated in previous correspondence, the wetland buffers as presented in the MPD are insufficient in many areas to protect wetland functions of the resident western lily population. The width of wetland buffers should be designed based on the characteristics of the specific wetland to be protected, in order to prevent changes in hydrology, pedestrian impacts, introduction of invasive species, and other impacts. We described the inadequacy of the MPD buffers in more detail in our letter of September 7, 2004 (attached). The Service offers to assist in wetland buffer design during the DDP planning.
- We believe it is important for all interested parties to recognize that each of the above deficiencies in the conceptual MPD design and available information pertaining to the natural resources of the project area could affect the ability to meet the development goals stated in the MPD. Based on our partial inspection of the property in July 2005, it appears that the MPD overly estimates the development potential of the site, with regards to the stated objective (LUBA remand order) to "protect the wetlands and western lily".
 - We offer to continue to work and improve communication with the project proponents, the City of Brookings, other public agencies, and other appropriate entities, regarding the actual planning and design of the various phases of the proposed project.

Thank you for the opportunity to provide comments regarding the MPD. If you have further questions or require technical assistance please contact Dave Imper at 707-825-5112, Sam Friedman at 541-957-3478, or me at 541-957-3470.

Sincerely,



Craig A. Tuss
Field Supervisor

Attachment (1)

cc: Burton Weast, Western Advocates, West Linn, OR (e)
Teena Monical, Army Corps of Engineers, Eugene, OR (e)
Yvonne Vallette, Environmental Protection Agency, Portland, OR (e)
Bob Lobdell, Oregon Department of State Lands, Salem, OR (e)
Todd Confer, Oregon Department of Fish and Wildlife, Gold Beach, OR (e)
Robert Meinke, Oregon Department of Agriculture, Salem, OR (e)
Julie Haire, Oregon Department of Transportation, Roseburg, OR (e)
Ken Phippen, NOAA-Fisheries, Roseburg, OR (e)
Laura Todd, USFWS-Newport, Newport, OR (e)
David Imper, USFWS-Arcata, Arcata, CA (e)
Kate Norman, USFWS-OFWO, Portland, OR (e)
Office Files, USFWS-OFWO, Portland, OR (e)

References

Raedeke Associate, Inc. 2006. Western lily surveys. Unpublished report for the Lone Ranch
MPD, Brookings, Oregon. 30 pp + appendices.



United States Department of the Interior

FISH AND WILDLIFE SERVICE



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Reply To: 8330.04402(04)
TS: 04-3371

Filename: City of Brookings_Lily_info_letter.doc
Log #: 1-15-04-TA-0440
X-Ref: 03-1642

September 7, 2004

John Bischoff
Brookings Planning Director
Brookings Department of Public Services
898 Elk Drive
Brookings, Oregon 97415

Subject: Information regarding Master Plan of Development for the City of Brookings
(1-15-04-TA-0440)

Dear Mr. Bischoff:

The U.S. Fish and Wildlife Service (Service) previously provided comments for the above referenced Master Plan of Development (MPD) regarding the proposed 553-acre development north of Brookings, Oregon, in letters signed July 29, 2004 and August 3, 2004 (1-15-04-TA-0440). On August 13, 2004, Service representatives met with you and representatives of the project proponent to discuss aspects of the MPD. During that meeting and the subsequent site visit we offered, and all parties accepted, to provide additional information regarding western lily (lily) habitat needs, wetland function and protective measures for the wetlands and lily.

The issue of adequate buffer size is critical to determining the actual amount of land available for development on the Borax property, and thus the ability to meet the goals established in the MPD. We still have concerns regarding the "up to 1000 living units" goal of the MPD and caution the project proponents regarding setting expectations for this project which may go unfulfilled.

We also offer to continue to work with the project proponents, the City of Brookings and other appropriate entities, regarding the actual planning and design of the various phases of the proposed project.

Western Lily Ecology

The lily is found at the edges of sphagnum bogs and in forest or thicket openings along the margins of ephemeral ponds and small channels. It also grows in coastal prairie and scrub communities near the ocean where fog is common. The plant is often found growing in areas

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composed of poorly drained (usually underlain by an iron pan, or poorly permeable clay layer), slightly acidic, highly organic soils. Common associates include salal, western wax myrtle, western spiraea, huckleberry, shore pine, Sitka spruce, red alder, Port Orford cedar, willow, Pacific reed-grass, slough sedge, bunchberry, and western tofieldia. Populations are found at low elevations, from almost sea level to about 300 feet in elevation, and from ocean-facing bluffs to about 4 miles inland.

Low (less than 3 feet tall) vegetation is generally beneficial to the lily because it shelters juvenile plants from large mammal browsing, and provides heat cover in July and August. This protection is most critical in spring and early summer for seedlings. The lily tends to be shaded out when the vegetation is especially dense or taller than about 6.5 feet.

Threats to Western Lily

The primary threat to the lily is human modification or destruction of habitat. The lily is limited to habitat very near the coast that is currently undergoing intense development pressure. The species' bog and coastal prairie/scrub habitat occurs on level marine terraces that are desirable for coastal development because of the gentle topography and proximity to the ocean. Other primary threats to the lily include competitive exclusion during natural succession.

Secondary threats to the lily include human depredation, insect herbivory, grazing by deer, livestock, elk, and small mammals, fungal, viral, or bacterial infection; and loss of genetic variability in small populations.

Project Storm Drainage Design Concerns

The sediment pond or infiltration pond discharge method for storm runoff (as proposed in the MPD) is preferable to a small point discharge to a ditch, which would have significant detrimental impacts on the lily by completely altering normal runoff patterns (complete loss of soil moisture on either side of the ditch; increased inundation within the ditch). However, sediment ponds perform much like a point discharge method when compared to natural sheet flow and recharge patterns and will likely still significantly impact the lily. A discharge method that effectively mimics natural surface and subsurface flows into the wetlands is theoretically possible, but we believe such a method would be very difficult or impossible to engineer.

The best option for maintaining natural flow patterns is to avoid hard surfacing and other development that might alter the balance between surface sheet flow and percolation within the entire critical portion of the watershed (this includes area above (up-gradient) a wetland/lily site and below (down-gradient)).

Criteria for Designing Appropriate Buffer Size

Buffers need to be large enough to enable effective maintenance of lily habitat, evidenced by the difficulty in implementing habitat treatment at the Harris Beach Park lily site. Specific buffer distances require a specific site analysis, including a hydrological analysis that outlines the relative watershed directional inputs, and breakdown between surface and subsurface water inputs.

Because the lily is extremely sensitive to changes in soil moisture *almost any change in soil moisture regime* can cause loss of the plants. The relative directional hydrology inputs surrounding wetlands are critical in setting up wetland buffers. As an example, a buffer which avoids the ultimate loss of the lily and wetland integrity might be 50 feet on one or two sides, but extend somewhat more than 200 feet in another direction. At the same time the reconfigured water inputs must be examined as a result of the project, since too much water just as effectively eliminates the lily as not enough.

As an example of a poorly designed buffer, the Brookings marsh was surrounded by development on all sides within a period of about 5 years. Within 2 years, the lily was gone. The distance from the last surviving lilies to the edge of development was 50-100'. In this specific case, a buffer was not established (wetlands were filled around the perimeter). The majority of the wetland remaining (200 feet wide by 3-400 feet long) is now infested with various exotics, with only a small core area not yet smothered. Many species that only occurred here (and Harris State park) have declined in the past 10 years, and continue to decline. In this case, the hydrology was severely altered by ditching, invasion of non native plants (exotic plants were dumped over the fence), and people building trails for themselves and pets.

Without having any site specific data, a very large buffer relative to the existing wetland watershed (e.g., 90% of the watershed) is recommended assuming that a loss of 10 percent of the natural flow regime might be acceptable if it is balanced with proper vegetation management. Without site specific flow calculations, the long term effects of lawn fertilizers and pesticides in close proximity to lily sites are impossible to predict.

Buffers should be wide enough to prevent efficient introduction by exotic species from surrounding development. This is highly dependent on the quality and to some extent the distinctness of western lily habitat from the surrounding disturbed habitat.

In certain cases, a well maintained chain link fence or tall brick fence with a dense wall of vegetation could act as a barrier to prevent impacts from pedestrians and pets. If this is the case, a 50 foot buffer might be acceptable, assuming the hydrology is not impacted, and broadscale vegetation thinning, mowing, or removal by some means can be demonstrated.

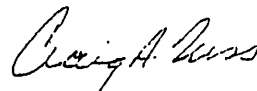
We also point out:

- The lily can occur in upland habitats as well as jurisdictional wetlands. Therefore, the space available for development indicated in the MPD may be inappropriate.
- In some cases, utility installation or other subsurface activities can affect normal subsurface flow patterns.
- Indirectly, nearby construction or soil compaction can enable invasive plants to enter lily habitat and out-compete the plant.

In summary, information necessary to determine the amount of land actually available for development, in light of the above discussion, is lacking and allocation of necessary buffers to protect wetland integrity and western lily habitat may limit the goals identified in the MPD.

Thank you for the opportunity to further comment on the MPD. If you have further questions or require technical assistance please contact Dave Imper at 707-825-5112 or Sam Friedman at 541-957-3478 or me at 541-957-3470.

Sincerely,



Craig A. Tuss
Field Supervisor

cc: Chris Wright, Raedeke Associates, WA (e)
Burton Weast, Western Advocates, West Linn, OR (e)
Teena Monical, Army Corps of Engineers, Eugene, OR (e)
Lisa Grudzinski, Army Corps of Engineers, Coos Bay, OR (e)
Bob Lobdell, Oregon Division of State Lands, Salem, OR (e)
Todd Confer, Oregon Department of Fish and Wildlife, Gold Beach, OR (e)
Robert Meinke, Oregon Department of Agriculture, Salem, OR (e)
John Raasch, Oregon Department of Transportation, Roseburg, OR (e)
Ken Phippen, NOAA-Fisheries, Roseburg, OR (e)
Fred Seavey, USFWS-Newport, Newport, OR (e)
David Imper, USFWS-Arcata, Arcata, CA (e)
Andy Robinson, USFWS-OFWO, Portland, OR (e)
Yvonne Vallette, Environmental Protection Agency, Portland, OR (e)
Office Files, USFWS-OFWO, Portland, OR (e)

References

- Kennedy, C., J. Wilkinson, and J. Balch. 2003. Conservation Thresholds for Land Use Planners. Environmental Law Institute, Washington, D.C.
- U.S. Fish and Wildlife Service. 1998. Recovery Plan for the Endangered Western lily (*Lilium occidentale*). Portland, Oregon. 82 pp.

Advance Packet # 2

Dated: 7-8-08

for

Wednesday, July 16, 2008, Special Council Meeting

Included in this packet are additional materials related to the following Agenda Item:

III. Public Hearing:

In the matter of File No. APP-1-08, an appeal of the Planning Commission's denial for the request of an extension of time for 2 years for an approved Master Plan of Development, known as Lone Ranch Master Plan, a 553 acre parcel located on the easterly side of Highway 101 and north of Carpenterville Road; Assessor's Map 40-14 & Index; Tax lots 2400, 2401, and a portion of 2402; U.S. Borax, Applicant and Appellant; Burton Weast, Representative; File MPD-1-04 Extension. The criteria to decide this matter is found in Chapter 17.70.120, Effective Period of Master Plan of Development (MPoD) Approval, and Chapter 17.152, Appeal to the City Council, of the Brookings Municipal Code.



City of Brookings

898 Elk Drive, Brookings, OR 97415
(541) 469-1138 Fax (541) 469-3650
dmorris@brookings.or.us

TO: City Council and Mayor

FROM: Dianne Morris, Planning Director

DATE: July 8, 2008

RE: App-1-08, Appeal of the Lone Ranch Master Plan Extension of Time Request. Hearing date scheduled for July 16, 2008.

The City Council Advance Packet on this matter was distributed on June 30, 2008 to allow additional time to review the material. Materials submitted to this file after that date are included in this packet.

John Trew will be present at this hearing to help with any procedural questions. One important issue to address at the outset of the hearing is a clear statement regarding the City Council's understanding of what the criteria is that will be used to approve or deny this request.

BMC 17.70.120, Effective Period of Master Plan of Development (MPoD) Approval states, "If the applicant has not submitted a DDP for the planned development or the first phase within four years from the date of approval, the MPoD shall expire. **Where the Planning Commission finds that conditions have not changed, the Commission may, at its discretion, extend the period for two additional years per extension, subject to applicable hearing and notice requirements.** If after the approval of the first DDP, construction has not been started or at any time construction has lapsed for a period of three years the MPoD will expire."

The word "conditions" as used in this criteria means the facts used in reviewing and approving the Lone Ranch Master Plan. This needs to be clearly stated at the outset of the hearing to focus discussion on the proper criteria to consider.



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General Hospital Health Network

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CITY OF BROOKINGS

July 7, 2008

Brookings City Council
898 Elk Drive
Brookings, OR 97415

Gentlemen;

Recently the Brookings City Planning Commission denied a request from U.S. Borax to extend the deadline for the Lone Ranch Master Plan of Development. The Brookings City Council has the ability to overrule the Planning Commission in this regard. On behalf of the Curry Health District I am requesting that the City Council do so.

Brookings has long sought better access to health services, both in terms of increased services and more convenient access to services. Such access has been exacerbated in recent years with the departure of a number of physicians from the area.

While not part of the Curry Health District, Brookings *is* in our service area and the Health District has directed us to expand the services we currently provide to the Brookings area. We have maintained a clinic in the area for many years and are currently the only provider accepting new Medicare patients. We are, however, constrained by the building we are in and intend to construct a new facility including a multi-specialty clinic, imaging center, surgery, emergency room (staffed 24/7), observation beds, class room/s and space for visiting specialists. Phase II of our expansion is focused on provision of inpatient care. We are recruiting doctors for Brookings and have an Adult Family Practice physician starting on July 14, a General Surgeon starting on August 18, and are interviewing Orthopedic Surgery, Internal Medicine, OB/GYN and Pediatric candidates with the intent to add at least one each of these providers over the next 24 months.

Accordingly we must acquire suitable space in Brookings to permit the construction of approximately 20,000 – 25,000 sq.ft. of clinic / hospital space. We have a letter of intent with U.S. Borax for land within the Lone Ranch development. We also have a fairly restrictive time line in that the lease on our current facility expires December 31, 2010. Phase I of our building program must be completed at that time. With a 24 month building schedule, we need to be in the ground in January of 2009. Any appreciable delay in the Lone Ranch development will make our Lone Ranch plans unfeasible and require a major re-vamp of the Health District's health plans.

I encourage the City Council to demonstrate visionary leadership in handling the Lone Ranch request and to think over the horizon to a time when a trip to the emergency department means a 10 – 12 minute drive and not a 30 – 40 minute drive. I will gladly answer all questions, and can be reached by phone at 541-247-3108 or via email at bmcmillan@curryhealth.org

Sincerely

/s/

William I. McMillan, MBA, FACHE
Chief Executive Officer

Cc; Larry Anderson
Dave Gordon
Dave Kitchen
Jake Pieper
Ron Hedenskog
Garry Milliman
Burton Weast
Wayne Krieger