

**PORT ORFORD PLANNING COMMISSION  
CITY COUNCIL CHAMBERS, PORT ORFORD CITY HALL  
REGULAR MEETING, PUBLIC HEARING and WORKSHOP  
Tuesday, March 14, 2017  
3:30 PM**

1. Call to Order
2. Approval of Minutes: February 14, 2017 regular meeting
3. Comments From the Public
4. Public Hearing
  - A. Continuation of Conditional Use Permit Application, CUP 16-02  
This application is for a Wastewater Pump Station located on a lot just north of the City's wastewater plant, and fronting on 12<sup>th</sup> Street. Pipeline is proposed to proceed from 12<sup>th</sup> Street to the proposed golf course on the Knapp Ranch property. Pipe is proposed to be installed underground utilizing what the applicant describes as the "Preferred Route." The purpose is to carry effluent to be utilized at the Golf Course.
  - B. Continuation of Conditional Use Permit Application, CUP 16-03  
This application is for a Wastewater pump Station located on a lot just north of the City's wastewater plant, and fronting on 12<sup>th</sup> Street. Pipeline is proposed to proceed from 12<sup>th</sup> Street to the proposed golf course on the Knapp Ranch property. Pipe is proposed to be installed underground utilizing what the applicant describes as the "Alternate Route." The purpose is to carry effluent to be utilized at the Golf Course.
5. Planning Matter(s):

Other Business

- A. Announcements and Communications:
  - Planning Commission Comments
  - Work on Marijuana Ordinance at future meeting
6. Public Considerations
9. Adjourn

**CITY OF PORT ORFORD PLANNING COMMISSION  
MINUTES OF MEETING**

**Tuesday February 14, 2016 6:00 PM  
Regular Meeting and Public Hearing and Workshop  
Port Orford City Hall, Gable Council Chambers  
555 W. 20<sup>th</sup> Street  
Port Orford, Oregon**

**Date Draft: February 22, 2017**

**Date Corrected:**

**Date Final:**

**1. Call to Order**

**Planning Chair McHugh called to order the regular meeting of the City of Port Orford Planning Commission at 6:00 PM.**

**Those members present were:**

**Comm. McHugh, Comm. Ames, Comm. Roorbach, Comm. LaRoche and Comm. Leslie**

**City staff present was:**

**City Planner Crystal Shoji, City Attorney Shayla Kudlac and Planning Assistant Patty Clark**

**2. Approval of Minutes of January 10, 2017**

**Comm. Ames stated that the minutes did not reflect the time change from 6 p.m. to 3:30 p.m. for the future planning meetings.**

**Comm. Roorbach made the motion to approve the minutes as amended and Comm. Ames seconded the motion. Vote was unanimous.**

**3. Approval of Minutes of January 23, 2017 Workshop**

**Comm. Roorbach made the motion to approve the minutes as written and Comm. Ames seconded the motion. Vote was unanimous.**

**4. Comments from the Public**

**None**

**5. Public Hearing(s)**

**Comm. McHugh stated that the hearing was in two parts. Part A is the Conditional Use Permit Application, CUP 16-02.**

**City Planner Shoji stated that we are having two Conditional Use Permit Applications before us that are very similar in nature. Shoji stated that the conditional use permits**

have a common element which is the pump station which is exactly the same in the two conditional use permit applications. Shoji stated that the differences in the applications are the routes.

Planner Shoji stated that on the conditional use permits we are talking about the zoning and what the zoning ordinance allows under those conditional use permits. We are not here whether the applicant can actually use the City's effluent, which will be the job of the City Council. She stated that even if we approve the CUPs the City Council chose not to approve something or change something that is their prerogative. Shoji stated that the planning commission does not control the use of the City Right of Ways, the City Council does.

City Planner Shoji proceeded with the following staff report.

## CITY OF PORT ORFORD Staff Report

TO: Kevin McHugh, Chair  
City of Port Orford Planning Commission

FROM: Crystal Shoji, AICP, City Planner

DATE: February 7, 2017

HEARING DATE: Planning Commission Hearing, February 14, 2017

### APPLICATION CONFIGURATION

This staff report addresses two separate Conditional Use Permit Applications. The two applications are: #CUP 16-02, "Preferred Route" and #CUP 16-03, "Alternative Route." The two separate applications each include a common proposal to develop pump station on a site adjacent to the City's wastewater treatment plant in the R-1, Residential zone. The pump station is requested to move effluent from the site through underground piping to the proposed Pacific Gales Golf Course at 92361 Knapp Road, Port Orford, OR 97465. The pump station proposal is the same for the two different applications (common component).

The criteria for the "common component" pump station is addressed in Section 1 of this report, which applies to both applications. The criteria and findings for the two the two different routes are addressed separately within the applications and this staff report, Sections II and III. A separate public hearing will be held for each of the applications to provide the public an opportunity to focus on the two pipeline route options.

Section I, Page 3, applies to both CUP # 16-02 and #CUP 16-03: See Attachments A, Band C. Criteria and staff findings for the proposed pump station, public notice for both conditional use permit applications, and excerpts from the ordinance that apply to the pump station and both pipeline routes are included within Section 1.

Section II, Page 11, CUP #16-02, applies to the "Preferred Route:" See Attachments A and C. Criteria and staff findings for the preferred route are addressed in this section of the staff report.

Section III, Page 18, CUP #16-03, applies to the "Alternate Route:" See Attachment Band C. Criteria and staff findings for the alternate route are addressed in this section

of the staff report.

Within this report excerpts from the City of Port Orford Municipal code are shown in *italic print/onto* Staff comments and findings are provided in regular font.

## APPLICANT AND OWNERSHIP

Property Owner, Proposed Pump Station Site  
William Rebhahn  
P.O. Box 89  
Port Orford, OR 97465

The pipeline is proposed to be in existing utility easements within City and ODOT Right-of-Way, with two separate routes.  
City of Port Orford  
P.O. Box 310  
Port Orford, OR 97465

Applicant's Representative:  
Chris Hood, Planner  
Stuntzner Engineering and Forestry  
P.O. Box 118  
Coos Bay, OR 97420  
Phone: 541-267-2872; [chood@stuntzner.com](mailto:chood@stuntzner.com)

Pacific Gales Golf Course Representative  
Troy Russell  
Elk River Property Development, LLC  
P.O. Box 790  
Port Orford, OR 97465  
Phone: 541-297-1078

Attorney  
Nick Klingensmith  
Oregon Land Use  
3754<sup>th</sup> Avenue  
Eugene, OR 97401  
Phone: 541-912-5280

## SECTION I

Addressing pump station, notice and other common elements, CUP #8 16-02 and 16-03

The proposal is to develop a pump station on a site adjacent to the City's wastewater treatment plant in the R-1, Residential zone. The pump station is requested as part of the proposal for the applicant to move effluent from the site to the underground piping that is proposed to carry the proposed effluent to the proposed Pacific Gales Golf Course. The pump station will be built to accommodate either of the applications that may be approved. Property owner notices, agency notices, and posted notices were the identical for each of the two applications.

## PUMP STATION SITE SUBJECT PROPERTY

The pump station is proposed to be located on property adjacent to and north of the City's

wastewater treatment plant, accessed from 12th Street, Port Orford, OR. Subject property's is identified on the Curry County Assessor's Map T33, Range 15, Section 05BD, Tax Lot #1011. The pump station portion of the application is identical for each of the two applications.

## SURROUNDING USES

Subject property is zoned Residential, 1-R with vacant lots to east and west, and 1-R with residential use to the north. The City's wastewater treatment facility is in the Public Facilities, 8-PF zone to the south.

## DECISION CRITERIA: CITY OF PORT ORFORD MUNICIPAL CODE

### *Municipal Code, Title 17 Zoning*

#### *Section 17.12.010, the Residential zone (1-R)*

*C. Conditional Uses Permitted. In a 1-R zone, the following uses and their accessory uses are permitted when authorized in accordance with Chapter 17.32:*

- 3. Public Use Facility or public utility, including but not limited to fire stations.*
- 5. Utility facility, including substation or pumping station or private generator.*

#### *Section 17.12.010*

*F. Setback Requirements. Except as provided in Sections 17.20.010 and 17.20.020 in 1-R zone yards shall be as follows:*

- 1) The front yard shall be a minimum of ten feet.*
- 2) The side yard shall be a minimum of five feet.*
- 3) The rear yard shall be a minimum of five feet.*

*G. Height of Buildings. Except as provided in Section 17.20.050 in a 1-R zone no building shall exceed thirty-five (35) feet in height.*

### Findings:

Subject property is within the Residential zone (1-R), which allows a pumping station subject to a conditional use permit under Chapter 17.12.010 (C) (5). The pumping station is permitted subject to a conditional use permit. Pipeline connections will emanate from the proposed pump station.

#### *Section 17.08.030 Authorization of similar uses.*

*The city council may permit in a particular zone a use not listed in this title, provided the use is of the same general type as the uses permitted there by this title. However, this section does not authorize the inclusion in a zone where it is not listed of a use specifically listed in another zone or which is of the same general type and is similar to a use specifically listed in another zone.*

Findings: Pipelines are being processed through the conditional use permit process under because the site for the pump station and all of the zones that the pipeline is proposed to pass through in either of the applications allow such uses under one of the following descriptions: "Public Use Facility or public utility, including but not limited to fire stations," "Public utilities and services," or "Utility facility, including substation or pumping station or private generator".

Findings for the pipeline and the zones that the pipeline is proposed to pass through will be addressed under Sections II and III in this report. The pipeline is a private utility use of the same general type as the public utility uses listed in Section 17.12.010, (C), (3), and all of the pass-through zones. All pass-through pipeline zones include specific wording that is addressed in the previous paragraph. For this reason the pipeline route is being processed as part of the conditional use permit for the pump station. The code makes reference to a "private generator" as a permitted use under Section 17.12.010, the Residential zone (1-R) (5), but it does not address other private utilities. All of the wording that has to do with public utilities, public utilities and services, utility facility, or pumping station and accessory uses are of the same general type as a private utility use. Zoning is not organized based upon ownership, but rather

upon use. The pipeline and pump station are permitted in the zones because they are of the same general type as uses specifically listed, and there is no other listing in the code to allow private pipelines to carry public waste.

The applicant has provided findings relating to building setbacks in Section 17.12.010 (F) for the pump station, and in response to (G). The applicants have stated that the pipelines will be underground where setbacks are not applicable. The applicants have provided the distance between the proposed pump station structure and the closest property line at 11.5 feet. The setbacks required by Section 17.12.010 (F), (1), (2), and (3) are 5 feet from the side and rear property lines, and 10 feet from the front; the proposed 11.5 feet setback for the pump station complies with all of the setbacks required by Section 17.12.010.

*17.32.010 Authorization to grant or deny conditional use. (sic)  
Uses designated in this title as conditional uses may be permitted, enlarged or altered in accordance with the requirements of Sections 17.20.020 through 17.20.060. In permitting conditional use, the council may impose conditions in addition to the provisions set for uses within each zone in order to protect the best interests of the surrounding property, the neighborhood or the city as a whole. These conditions may include, but are not limited to, increasing the lot size or setbacks, controlling the location or number of vehicular access points, increasing the street width, limiting the height of buildings to protect the light and air of adjacent properties, increasing the amount of off-street parking or loading, or other provisions necessary to minimize any conflict between the proposed conditional use and the use of adjacent properties. Change in use or contraction of site area, or alteration of structure or uses classified as conditional, existing prior to the effective date of the ordinance codified in this title shall conform to all regulations pertaining to conditional uses. (Ord. 278 § 6.010, 1977)*

*17.32.030 Public hearing on a conditional use.  
Before acting on a conditional use, it shall be considered by the planning commission at a public hearing. The planning commission or its designated agent shall give notice of the hearing by sending notices by mail not less than ten days prior to the day of the hearing to the property owners within two hundred (200) feet of the exterior boundaries of the property involved and by posting on the official bulletin board at the City Hall a notice not less than five days prior to the hearing. The names for this purpose shall be obtained from [sic] the records of the county [sic] assessor. Failure of a person specified in this section to receive the notice shall not invalidate any proceedings in connection with the application for a conditional use. The commission may continue a public hearing in order to obtain more information or to serve further notice to persons it decides are affected by the proposed conditional use. Agent shall notify the applicant for a conditional use of the action of the planning commission within five days after a decision has been rendered. (Ord. 278 § 6.030, 1977)*

Findings: Notice of the hearing was provided to property owners, agencies, at the City Hall, and at the Post Office on January 25, 2017 as required by Section 17.32.040. See Attachment D. Information about the hearing was also posted on the City's website on February 3, 2017. The applicants are seeking a conditional use permit for the pump station, and the Planning Commission is required to apply some conditions as set forth in Section 17.32, and authorized to provide additional conditions. The Port Orford City Council has authorized the Planning Commission to process conditional uses under Chapter 17.32.030, which states: *Before acting on a conditional use, it shall be considered by the planning commission at a public hearing.*

*17.04.100 Notice.  
B. Written Notice to Affected Property Owners and Interested Parties.  
1. When required to be given, written notice to affected property owners and interested parties shall include the following information:  
a. Date, time and place of hearing;  
b. The type of action being considered, including but not limited to, applications for conditional use permits, variances, or amendments to the zoning ordinance.'*

- c. A reasonably written description of the location of the subject property, which may include but is not limited to anyone of the following: a map, postal address, legal description, or tax map designation;
- d. The nature of the pending issue or proposed use;
- e. A list of the applicable criteria upon which a decision will be based,;
- f. A statement that written comments addressing the findings necessary for a decision may be submitted.
- g. A statement that failure to raise an issue during a hearing, in person or by letter, or failure to provide sufficient detail to afford the decision maker and opportunity to respond to the issue precludes appeal on that issue.
- h. A general explanation of the requirements for testimony and conduct of the hearing;
- i. A statement that the application materials are available for inspection or can be copied at a reasonable cost and staff reports may likewise be inspected seven days prior to the hearing;
- j. A name of an officer or employee of the city, along with phone number, from whom additional information can be obtained.

2. Written notice shall be mailed to all property owners within two hundred fifty (250) feet of the external boundaries of the legally described property in the application for all permits and variances.

3. Written notice of a public hearing on a zone use application shall be provided to the owner of an airport, defined by the Department of Transportation as a "public use airport, ) if the property subject to the zone use hearing is:

a. Within five thousand (5,000) feet of the side or end of a runway of an airport determined by the Department of Transportation to be a "visual airport, ) or .....

#### 4. Property Owners.

a. For the purposes of this subsection (B)(5), "property owner)) is defined as the person identified as the owner of record on the latest adopted tax rolls of Curry County.

b. Written notice shall be mailed to the property owners identified in subsection (B)(2) of this section. Failure of a property owner to receive written notice shall not invalidate any action taken by the planning commission or city council, if a good faith attempt was made to comply with the requirements of this article for notice. (Ord. 99-05 § 2, 1999)

#### 17.04.080 Interpretation

The provisions of this title shall be held to the minimum requirements fulfilling its objectives. Where the conditions imposed by a provision of this title are less restrictive than comparable conditions imposed by any other provision of this title or of any other city ordinance, resolution or regulation, the provisions which are more restrictive shall govern.

Findings: The applicants provided the listing of property owners to be notified from the current Curry County Assessor's records. Notice was provided to property owners within 250 feet, rather than the 200 feet required by Section 17.32.030. The notice area was increased due to discrepancies within Title 17 of the City of Port Orford. The City complied with all of the applicable requirements of Section 17.04.100 in providing notice for the applications addressed within this staff report. The City followed the more restrictive of the two differing requirements for notice in compliance with Section 17.04.080. Public notice was mailed to property owners on January 20, 2017. The list for notice includes both pipeline routes, and a single notice was utilized to minimize confusion. A copy of the public notice is included as Attachment E. A copy of the maps for the pipeline notice is included as Attachment F.

#### 17.32.040 Notification of public agencies.

For conditional uses within the MA, CD and SO zones, the following agencies shall be notified by mail, no less than ten days prior to the date of the public hearing:

A. State Agencies.

1. *Division of State Lands;*
  2. *Department of Fish and Wildlife.*
  3. *Department of Environmental Quality;*
  4. *Department of Forestry.*
- B. Federal Agencies.*
1. *Army Corps of Engineers;*
  2. *National Marine Fisheries Service;*
  3. *U.S. Fish and Wildlife Service;*
- C. Other Notification.*
1. *State Water Resources Department (uses including appropriation of water only);*
  2. *State department of geology and Mineral Industries (mining and mineral extraction only);*
  3. *State department of energy (generating and other energy facilities only);*
  4. *Department of Economic Development (docks, industrial, and port facilities, and marinas only). (Ord. 278 § 6.031, 1977)*

Findings: The City requested that the applicants provide a copy of names and addresses of agency personnel and addresses to comply with Section 17.32.040. A copy of the notice that was sent to the property owners was also provided to the agencies more than 10 days prior to this hearing on January 20, 2017. A listing of the agencies where notice was provided included in Attachment C.

*Section 17.32.050 Additional standards governing conditional uses*

*In addition to the standards of the zone in which the conditional use is located and the other standards in this title, conditional uses must meet the following standards:*

*A. Conditional Uses, Generally.*

1. *Setbacks. In a residential zone, yards shall be at least two-thirds the height of the principal structure. In any zone additional yard requirements may be imposed.*
2. *Limitation on Access to property and on Openings to Buildings. The city may limit or prohibit vehicle access from a conditional use to a residential street, and it may limit or prohibit building openings within fifty (50) feet of residential property in a residential zone if the openings will cause glare or excessive noise or will otherwise adversely affect adjacent residential property.*
3. *The city may require assurances to guarantee development in accordance with the standards established and conditions imposed in granting a conditional use.*

*D. Communications Transmitter, Receiver, Antenna or Tower, Utility Station, Substation, or Wind Generator.*

1. *In any residential zone, all equipment storage on the site shall be within an enclosed building.*
2. *The use shall be fenced and provided with landscaping.*
3. *The minimum lot size for a public utility facility may be waived on finding by the planning commission that the waiver will not result in noise or other detrimental effect to adjacent property.*
4. *As far as possible, transmission towers, poles, overhead wires, pumping stations, and similar gear shall be so located, designed and in-stalled as to minimize their conflict with scenic values.*

Findings: The applicant's findings provided in the application, and the discussion and recommendations within this section address Section 17.32.050 Additional standards governing conditional uses.

In regards to setbacks addressed in Section 17.32.050 (A) (1), the applicant proposes the booster pump building as the largest structure on subject property. The site plan is shown on Exhibit A of both applications, CUP #'s 16-02 and 16-03, and labeled as "Electric and Booster Pump Equipment Building." The applicant proposes that the booster pump structure will be the "principal structure" for measuring setbacks. The site plan shows the structure with an 11.5 foot setback from the west property line. The applicant has provided analysis identifying the two thirds standard that is addressed in Section 17.32.050 (A), (1) would permit a structure that is



over 17 feet in height. The application is not specific as to the height of the proposed structure, but the condition that the structure may not be over 17 feet in height is appropriate.

The applicant states that the overhead door that will be located on the north side of the building will be approximately 100 feet from the south boundary of 12th Street, and that existing vegetation on the northerly portion of the property will be maintained. The applicant's findings address limiting vehicle access and building openings within fifty (50 feet of residential property to prevent glare, excessive noise or other. It does not appear that there is anything in the use that will generate glare or excessive noise. Thus there appears to be no reason to limit openings on buildings to protect the neighborhood.

While the distance from 12th Street to the pump station appears to be adequate as proposed, it will be appropriate for the Planning Commission to require that existing or new vegetation/landscaping be included on the site to maintain a buffer from residential uses and protect residential values as required by the ordinance.

In regards to limitations on access addressed in Section 17.32.050 (A), (2), the applicant shows that the public access will be provided on a 12 foot residential driveway from 12th Street which is to the north of subject property. The location of the driveway as shown on the map may be adjusted slightly. The topography of subject property makes this the most feasible access. The applicant has, however, also shown access from the south across the City's existing gravel road at the treatment plant. There does not appear to be a reason to limit vehicle access. It is appropriate for the Planning Commission to request further information from the applicant to understand whether the driveway will be open to the public, or whether access will be limited to those who have authorization.

It is appropriate for the applicant to explain any agreement or easement that they expect to propose to the City Council or staff so that the Planning Commission understands how or where they need to require conditions. In addition, any approval of the application will be subject to a City access permit from 12th Street if it has not already been issued. The access is shown on Exhibit A, which has been revised to reflect concerns expressed in the City's completeness check of the applications.

In regards to Section 17.32.050 (D), which provides options for requirements specific to utility stations or substations there is a requirement that all equipment shall be in an enclosed building. The applicant states that they will comply with this requirement, and describes that the building will be similar to a detached residential garage constructed with "materials similar to those uses in standard residential construction," and painted in a "neutral color." It is appropriate for the Planning Commission to designate a specific color palate and materials. The applicant may wish to determine what is feasible if they are using a pre-constructed building prior to any decision from the Planning Commission related to colors and materials.

Fencing is required by the code. In addition, the code addresses options as to fencing and landscaping, lot size and conflicts with scenic values in residential zones: The applicant has stated that the "entire pump station will be fenced for security purposes and landscaped where necessary." The applicant does not explain what style or color of fencing is proposed. It is appropriate for the Planning Commission to require a specific style, height and color of fencing. The applicant has provided appropriate findings regarding minimum lot size and scenic values.

In supplemental information which is in response to the completeness check, the applicant states that lodge pole pine are proposed for the entire length of the new fence line, and that the height of the trees has not been determined. It is appropriate to request clarification as to the meaning of "the entire length of the new fence line," and to specify conditions as to the expectations for size at the time of planting, size at full grow-out, timing and care of any plantings on the site. Also, as addressed by the applicant, it is appropriate to require replacement of any trees that die. It is appropriate for the Planning Commission to be specific about landscaping.

The applicant has provided a finding that the lot size exceeds the minimum lot size established

for the applicable residential zone district; there is no reason for a waiver of the lot size.

## Summary of Compliance

With conditions the proposed pump station can comply with the criteria as described within the application. Findings are set forth within the application and this document.

## Pump Station Site Recommendations

The Planning Commission may grant the pump station portion of either of the applications, #'s CUP 2-16 and CUP 3-16 with conditions. The difference in the two applications is the routes of the pipeline. The Planning Commission will be expected to provide any findings and conditions that are appropriate for the pipeline portion of the CUP that is approved, or for both CUP's in the event that both are approved in addition to findings and conditions for the pump station. Staff findings may be adopted. Recommendations for the pipeline routes are provided in Sections II and III of this report.

1. It is up to the Planning Commission to determine any conditions of compliance to be applied as part of any approval of this Conditional Use Permit. The Planning Commission may accept, modify, or discard findings and options provided by the Planning Director in this report. The Planning Commission may determine that other conditions are needed, or approve the CUP with only those conditions that are required by the ordinance shown with asterisk markings (\*) following the specific recommendations.

2. The Planning Commission may continue the hearing by stating the date, time and place when the hearing will resume in compliance with the following:

ORS 197.763 (6):

*(a) Prior to the conclusion of the initial evidentiary hearing, any participant may request an opportunity to present additional evidence, arguments or testimony regarding the application. The local hearings authority shall grant such a request by continuing the public hearing pursuant to paragraph (b) of this subsection or leaving the record open for additional written evidence, arguments or testimony pursuant to paragraph (c) of this subsection.*

*(b) If the hearings authority grants a continuance, the hearing shall be continued to a date, time and place certain at least seven days from the date of the initial evidentiary hearing. An opportunity shall be provided at the continued hearing for persons to present and rebut new evidence, arguments or testimony. If new written evidence is submitted at the continued hearing, any person may request, prior to the conclusion of the continued hearing that the record be left open for at least seven days to submit additional written evidence, arguments, or testimony for the purpose of responding to the new written evidence.*

There are additional procedures in Oregon law that would apply at conclusion of any continued hearing.

3. The Planning Commission is authorized to deny the Conditional Use Permit application only with findings that approval of the use does not comply with specific criteria of the City Code, and cannot be made to comply by attaching conditions of approval. If it is determined that the proposed uses cannot be made to comply with the City Code through conditions, the Planning Commission must be specific in their findings to justify any denial.

4. Staff recommendations for consideration of conditions of approval are summarized as follows:

- a. Require that existing or new vegetation be maintained on the site as a buffer from residential uses and protect residential values and be specific as to what constitutes appropriate vegetation and maintenance. \* Consider specifying conditions regarding landscaping as to size of trees at the time of planting, the size expected at full growth, timing of planting, and care, or necessary replacement of any plantings on the site. Request clarification as to the area where the lodge pole pine will be planted.
- b. Require an agreement or easement that will be made for any access through the City's wastewater facility site. \* Inquire as to the expectations for public access, and condition the approval on limiting access if deemed appropriate.
- c. Require fencing. \* Consider conditions specifying the style (materials), height and color of fencing.
- d. Require that the pump station structure will not exceed 17 feet in height. \*
- e. Require compliance with erosion and storm water control requirements of the City of Port Orford. \*
- f. Require that the applicant obtain an access permit from 12th Street.\*
- g. Require that all equipment shall be kept in an enclosed building. \*
- h. Require that the applicant comply with all DEQ requirements for the pump station and with any requirements of City of Port Orford ordinances or the City Engineer related to construction or connections that are made to the City's Wastewater Treatment Plant, any disturbance of the existing site, or any pipeline that is laid in the City right-of-way. \*
- i. Consider designating a specific color palate and materials for the pump station.
- J. The applicant shall comply with all conditions set forth by the Planning. \*

## SECTION II

### Pipeline Route, CUP # 16-02

#### Preferred Route

As the applicant has set forth in the application, their preferred route begins at the proposed pump station, which is addressed within Section I of this report. From the pump station in the residential (I-R) zone, the underground pipeline to transmit the effluent to the proposed Pacific Gales Golf Course is proposed to pass through the following zones:

- Public facilities and park zone (8-PF)
- Residential zone (I-R)
- Residential zone (2-R)
- Commercial zone (4-C)
- Controlled development zone (6-CD)
- Industrial zone (5-1)

#### *Municipal Code, Title 17 Zoning*

##### *Section 17.12.070, Public facilities and park zone, (8-PF)*

*A. Purpose of Classification. The 8-PF zone is designed to identify and reserve publicly owned areas for the development of needed public facilities and service.*

*B. Uses Permitted Outright. In an 8-PF zone, the following uses and their accessory uses are permitted outright:*

- 3. Public utilities and services;*

Findings: The pipeline will pass through the Public facilities, 8-PF zone. Public utilities and services, and their accessory uses are permitted outright uses in the 8-PF Zone. The pipeline as a private utility use is of the same general type as the public utility use listed in Section 17.12.070,

(B), (3), and as such, it is permitted under Section 17.08.030 Authorization of similar uses. The text of Section 17.08.030 is included in Section I of this report.

The pipeline route is permitted as an outright use in the 8-PF zone and it is appropriate to require that construction of the pipeline route and all connections with the City's wastewater facility and site will be completed in compliance with Oregon's Standard Specifications for Construction (APW A-ODOT), and approved by the City Engineer and/or the Oregon Department of Transportation depending upon jurisdiction. In addition it is appropriate that the Planning Commission require a legal agreement for an easement to allow access and any necessary connections to the City wastewater site and system.

The applicant has described the assembly that will take place in the 8-PF zone, and the applicant's intent to have decisions within this zone be under the jurisdiction of the City of Port Orford with no financial burden to the City. The applicant states that the City has recently adopted a policy in its wastewater treatment plant facilities plan that authorizes this type of development. The applicant did not provide a copy of this amendment to the document that they reference. It is appropriate that the Planning Commission require that the applicant provide this document to be maintained within the record of this hearing and to provide the basis for any finding about the private activity at the site and facility of the City's wastewater treatment plant.

The proposed pipeline can originate in the 8-PF zone in that the applicant indicates that the City will accept ownership of the pipeline components that originate there. It is appropriate to condition the use on this assumption.

*Section 17.12.010 Residential zone (I-R)*

*A. Purpose of Classification. The I-R zone is designed to be applied to residential areas where dwellings are appropriate.*

*C. Conditional Uses Permitted. In a I-R zone, the following uses and their accessory uses are permitted when authorized in accordance with Chapter 17.32:*

- 3. Public Use Facility or public utility, including but not limited to fire stations.*
- 5. Utility facility, including substation or pumping station or private generator.*

Findings: The pipeline will pass through the residential zone (I-R), which allows a pump station subject to a conditional use permit under Chapter 17.12.010 (C) (5), and subject to Chapter 17.32. Pipelines emanating from the proposed pump station will be private utilities and accessory uses which are also being processed under this conditional use permit application. Pipeline construction will be underground, and for this reason, conditions set forth in Section 17.32.050, Additional standards governing conditional uses, do not apply.

The pipeline as a private utility use is of the same general type as the public utility use listed in Section 17.12.070, (B), (3), and as such, it is permitted under Section 17.08.030 Authorization of similar uses. The text of Section 17.08.030 is included in Section I of this report.

The applicants have stated that the proposal provides a clear benefit to the City because the City would no longer be reliant on a single ocean outfall system for treatment and disposal of wastewater.

The applicant states that a private easement has been obtained to run the pipe between the treatment plant and the pump station located on Tax Lot 1011. The applicant has provided a sample easement. It is appropriate that the City get a copy of this easement in its draft or final form to be maintained in the record for this application.

It is appropriate to require that construction of the pipeline route will be completed in compliance with Oregon's Standard Specifications for Construction (APWA-ODOT), and approved by the City Engineer and/or the Oregon Department of Transportation depending upon jurisdiction. Any road surface that is displaced will need to be resurfaced to City Standards.

The applicant states that a private easement will be available to run the pipe between the treatment plant and the pump station proposed to be located on located on Tax Lot 1011. The Planning Commission will need to condition any approval on the approval of the City, and the filing of such an easement with the County Assessor.

*17.12.020 Residential zone (2-R)*

*A. Purpose of Classification. The 2-R zone is designed to be applied to residential areas where higher density housing is appropriate.*

*C. Conditional Uses Permitted. In a 2-R zone, the following uses and their accessory uses are permitted when authorized in accordance with chapter 17.32:*

*4. Public use facility or public utility, including but not limited to fire stations;*

*6. Utility facility, including substation or pumping station or private generator;*

Findings: The pipeline will pass through the residential zone (2-R), which allows a pump station and public utility subject to a conditional use permit under Chapter 17.12.020 (C), (4) and Chapter 17.32. Pipelines carrying effluent are proposed as private utilities, which are being processed under this conditional use permit application. Pipeline construction will be underground, and for this reason conditions set forth in Section 17.32.050, Additional standards governing conditional uses, do not apply.

The pipeline as a private utility use is of the same general type as the public utility use and accessory uses listed in Section 17.12.070, (B), (3), and Section 17.12.020 and as such, it is permitted under Section 17.08.030 Authorization of similar uses. The text of Section 17.08.030 is included in Section I of this report.

It is appropriate to require that construction of the pipeline route will be completed in compliance with Oregon's Standard Specifications for Construction (APWA-ODOT), and approved by the City Engineer and/or the Oregon Department of Transportation depending upon jurisdiction. Any road surface that is displaced will need to be resurfaced to City Standards.

*17.12.030 Commercial zone (4-C)*

*A. Purpose of classification. The 4-C zone is designed to apply to areas where more complete commercial facilities are necessary for community convenience.*

*C. Conditional Uses Permitted. In a 4-C zone, the following uses and their accessory uses are permitted when authorized in accordance with Chapter 17.32:*

*3. Utility facility, including substation or pumping station or private generator;*

Findings: The pipeline will pass through the commercial zone (4-C), which allows a pump station and accessory uses subject to a conditional use permit under Chapter 17.12.030 (C) (3) and Chapter 17.32. Pipelines carrying effluent are proposed as private utility facilities, which are being processed under this conditional use permit application. Pipeline construction will be underground, and for this reason conditions set forth in Section 17.32.050, Additional standards governing conditional uses, do not apply.

It is appropriate to require that construction of the pipeline route will be completed in compliance with Oregon's Standard Specifications for Construction (APWA-ODOT), and approved by the City Engineer and/or the Oregon Department of Transportation depending upon jurisdiction. Any road surface that is displaced will need to be resurfaced to City Standards.

*17.12.050 Controlled development zone (6-CD)*

*A. Purpose of Classification. The purpose of the 6-CD zone is to recognize and protect natural resources, such as significant fish and wildlife habitats, ecological area, wetland and watershed and areas necessary to maintain or protect the quality of air, land and water resources. Future development is to be controlled in order to enhance these unique qualities.*

*C. Conditional Uses Permitted. In a 6-CD zone the following uses and their accessory uses are permitted when authorized in accordance with Chapter 17.32:*

*1. Public utility facilities;*

*17.32.050 Additional standards governing conditional uses*

*In addition to the standards of the zone in which the conditional use is located and the other standards of this title, conditional uses must meet the following standards:*

The applicant has provided findings to comply with the criteria of the 6-CD zone, which are incorporated as follows:

*G. Controlled Development Overlay Zone. The following criteria and conditions are applied to specific uses and activities in the controlled development overlay zone (6-CD).*

*1. A site investigation report shall be provided at the applicant's expense, containing the following information.*

*a. Location of the proposed use and the area affected;*

Findings: The applicant has included Exhibit "B" as the site investigation report for the portion of the proposal that crosses the controlled development zone.

*b. The types of beach, dune or natural hazard present at the specific site,'*

Findings: There are no beaches, dunes, or natural hazards in the right-of-way of Hwy 101, in which the applicant proposes to, locate the water pipeline.

*c. Existing vegetation and vegetation to be removed;*

Findings: Existing vegetation in this area consists of wetland plant varieties. The proposal would not remove any vegetation. The pipeline would be attached to the Highway 101 bridge and suspended above the wetland.

*d. A re-vegetation plan or other methods of erosion control;*

Findings: Because the proposal will not cause any vegetation to be removed or any soil disturbance, no re-vegetation plan or erosion control plan is required.

*e. Proposed grading or fill plan;*

Findings: The proposal requires no grading or fill. The pipeline will simply be suspended along the existing State Highway 101 bridge.

*f Areas subject to flooding, erosion, sand accretion, landslides, and other natural hazards;*

Findings: Mill Creek in this area is subject to seasonal flooding. However, the portion of pipeline that is proposed to be located in this area will be fastened to the Hwy 101 bridge, where it will not be impacted by flooding. Because the proposal will not result in any soil disturbance or vegetation removal, the remaining natural hazards listed by this standard are not relevant.

*g. Findings that adequate measures have been taken to protect the groundwater from drawdown which would lead to loss of stabilization vegetation, loss of water quality or intrusion of salt water into water supplies.*

Findings: The proposal will not involve any groundwater extraction. Therefore, no measures are necessary to protect against groundwater drawdown.

*2. The city will use the content of the applicant's report to impose conditions which will control erosion, protect against flooding, sand accretion, or other hazards, protect the surrounding area from adverse effects of development.*

Findings: The proposal will have no adverse effects on the surrounding area, so no conditions of approval will be necessary.

*3. Structures shall be permitted in the zone only under the following provisions:*

Findings: There is no definition for what constitutes a structure in the City Zoning Code. It is applicant's position that a pipe connected to an existing bridge is not a structure and therefore the provisions below do not apply. However, the applicant chooses to "err on the side of caution" and address the provisions below, with the belief that the findings will further substantiate the conclusion that the pipeline does not constitute a structure.

*a. Site-specific review by all affected agencies and by the planning commission to determine that:*

Findings: The standard states that there must be a site specific review by all "affected agencies." An agency is only affected when a resource is impacted to the extent that a review by the agency is required. Because the proposed pipeline will be suspended along the highway 101 Bridge, there will be no impact to the resource.

Agencies were provided notice of the application, and no comments have been received to date.

*i. Visual impact is minimized,*

Findings: The pipeline will be suspended along the bottom of the bridge and will not be visible to the general public.

*ii. Waterfront access is not impaired,*

Findings: The pipeline will be suspended across the resource along an existing bridge and no waterfront access will be impaired.

*iii. A negative impact on adjacent property is not created, and*

Findings: The pipeline will be suspended from the bottom on an existing bridge and there will be no impact to adjacent property properties.

*iv. A long-term recurring cost to the public is not incurred;*

Findings: The proposed pipeline will be installed and maintained at the sole expense of the applicant. There will be no initial or recurring cost to the public.

*b. The proposed structure will not negatively impact riparian vegetation that is important for water quality or fish and wildlife habitat.*

Findings: The pipeline will be suspended from an existing bridge and there will be no impact to riparian vegetation.

The pipeline complies with the criteria of the (6-CD) zone, and with the specific requirements of conditional uses in the (6-CD) zone set forth in Section 17.32.050 Additional standards governing conditional uses.

It is appropriate to require that construction of the pipeline route will be completed in compliance with Oregon's Standard Specifications for Construction (APWA-ODOT), and approved by the City Engineer and/or the Oregon Department of Transportation depending upon jurisdiction. Any road surface that is displaced will need to be resurfaced to City Standards.

It is appropriate to require the applicant to provide a copy of ODOT's authorization to place the

pipeline in the State Highway right-of-way to be maintained in the record with any approval of of this application.

*17.12.040 Industrial zone (5-1).*

*A. Purpose of Classification. The industrial zone is generally intended to provide for limited or light industrial uses. Conditional uses in this zone are designed for heavier industrial uses.*

*B. Uses Permitted Outright. In a 5-1 zone, the following uses and their accessory uses are permitted outright:*

*16. Utility facility, including substation or pumping station or private generator;*

Findings: The pipeline will pass through the industrial zone (5-1), which allows utility facilities and their accessory uses permitted outright.

It is appropriate to require that construction of the pipeline route will be completed in compliance with Oregon's Standard Specifications for Construction (APWA-ODOT), and approved by the City Engineer and/or the Oregon Department of Transportation depending upon jurisdiction. Any road surface that is displaced will need to be resurfaced to City Standards.

### Summary of Compliance

With conditions, Application # CUP 16-01 will comply with the requirements of all of the zones that it passes through within the City of Port Orford from its origination at the proposed pump station to its destination at the proposed Pacific Gales Golf Course. Criteria, facts and analysis that make up the findings have been included within Section II of this document. Information about the use and analysis from the applicant are included within the Attachments A and C.

### SECTION II, Preferred Route Recommendations

1. The Planning Commission may grant the Preferred Route pipeline # CUP 2-16 with conditions. It is up to the Planning Commission to determine any conditions of compliance to be applied as part of any approval of this Conditional Use Permit. The Planning Commission may accept, modify, or discard findings and options provided by the Planning Director in this report.

2. The Planning Commission may continue the hearing by stating the date, time and place when the hearing will resume in compliance with the following recognizing that there are additional procedures that would apply at the conclusion of any continued hearing.

*ORS 197.763 (6):*

*(a) Prior to the conclusion of the initial evidentiary hearing, any participant may request an opportunity to present additional evidence, arguments or testimony regarding the application. The local hearings authority shall grant such a request by continuing the public hearing pursuant to paragraph (b) of this subsection or leaving the record open for additional written evidence, arguments or testimony pursuant to paragraph (c) of this subsection.*

*(b) If the hearings authority grants a continuance, the hearing shall be continued to a date, time and place certain at least seven days from the date of the initial evidentiary hearing. An opportunity shall be provided at the continued hearing for persons to present and rebut new evidence, arguments or testimony. If new written evidence is submitted at the continued hearing, any person may request, prior to the conclusion of the continued hearing that the record be left open for at least seven days to submit additional written evidence, arguments, or testimony for the purpose of responding to the new written evidence.*

3. The Planning Commission is authorized to deny the Conditional Use Permit application only with findings that approval of the use does not comply with specific criteria of the City code, and cannot be made to comply by requiring conditions of approval. If it is determined that



the proposed uses cannot be made to comply with the City code through conditions, the Planning Commission must be specific in their findings to justify any denial.

4. Staff recommendations for consideration of conditions of approval are summarized as follows with those that are required followed by an asterisk (\*).

- a. Require that construction of the pipeline route will be completed in compliance with Oregon's Standard Specifications for Construction (APWA-ODOT), and approved by the City Engineer and/or the Oregon Department of Transportation depending upon jurisdiction in all zones. Any road surface that is displaced will need to be resurfaced to City Standards. \*
- b. Require the applicant to provide a copy of ODOT's authorization to place the pipeline in the State Highway right-of-way so that it can be maintained in the record with any approval of this application for future reference. \*
- c. Require that the applicant provide a copy of this amendment to the Wastewater Plan document that they reference in this report so that it can be maintained within the record of this hearing, and provide the basis for private activity at the site and facility of the City's wastewater treatment plant. \*
- d. Condition the existence of proposed pipeline that originates in the 8-PF zone on compliance with the City's requirements for acceptance of the pipeline, or other City Council requirements. \*
- e. Require that the applicant provide a copy of any easement that is granted by the City on the site of the wastewater plant to the City, and that the applicant provide proof of filing the easement. \*

### SECTION III

#### Pipeline Route, CUP # 16-03

##### Alternative Route

As the applicant has set forth in the application, the alternative route begins at the proposed pump station, which is addressed within Section I of this report. From the pump station in the residential (1-R) zone, the underground pipeline to transmit the effluent to the proposed Pacific Gales Golf Course is proposed to pass through the following zones:

- Public facilities and park zone (8-PF)
- Residential zone (1-R)
- Residential zone (2-R)
- Commercial zone (4-C)

##### *Municipal Code, Title 17 Zoning*

###### *Section 17.12.070, Public facilities and park zone, (8-PF)*

*A. Purpose of Classification. The 8-PF zone is designed to identify and reserve publicly owned areas for the development of needed public facilities and service.*

*B. Uses Permitted Outright. In an 8-PF zone, the following uses and their accessory uses are permitted outright:*

- 3. Public utilities and services;*

Findings: The pipeline will pass through the Public facilities, 8-PF zone. Public utilities and services, and their accessory uses are permitted outright uses in the 8-PF Zone. The pipeline as a private utility use is of the same general type as the public utility use listed in Section 17.12.070, (B), (3), and as such, it is permitted under Section 17.08.030 Authorization of similar uses. The text of Section 17.08.030 is included in Section I of this report.

The pipeline route is permitted as an outright use in the 8-PF zone and it is appropriate to require

that construction of the pipeline route and all connections with the City's wastewater facility and site will be completed in compliance with Oregon's Standard Specifications for Construction (APWA-ODOT), and approved by the City Engineer and/or the Oregon Department of Transportation depending upon jurisdiction. In addition it is appropriate that the Planning Commission require a legal agreement for an easement to allow access and any necessary connections to the City wastewater site and system.

The applicant has described the assembly that will take place in the 8-PF zone, and the applicant's intent to have decisions within this zone be under the jurisdiction of the City of Port Orford with no financial burden to the City. The applicant states that the City has recently adopted a policy in its wastewater treatment plant facilities plan that authorizes this type of development. The applicant did not provide a copy of this amendment to the document that they reference. It is appropriate that the Planning Commission require that the applicant provide this document to be maintained within the record of this hearing and to provide the basis for any finding about the private activity at the site and facility of the City's wastewater treatment plant. The proposed pipeline can originate in the 8-PF zone in that the applicant indicates that the City will accept ownership of the pipeline components that originate there. It is appropriate to condition the use on this assumption.

*Section 17.12.010 Residential zone (I-R)*

*A. Purpose of Classification. The I-R zone is designed to be applied to residential areas where dwellings are appropriate.*

*C. Conditional Uses Permitted. In a I-R zone, the following uses and their accessory uses are permitted when authorized in accordance with Chapter 17.32:*

- 3. Public Use Facility or public utility, including but not limited to fire stations.*
- 5. Utility facility, including substation or pumping station or private generator.*

Findings: The pipeline will pass through the residential zone (I-R), which allows a pump station subject to a conditional use permit under Chapter 17.12.010 (C) (5), and subject to Chapter 17.32. Pipelines emanating from the proposed pump station will be private utilities and accessory uses which are also being processed under this conditional use permit application. Pipeline construction will be underground, and for this reason, conditions set forth in Section 17.32.050, Additional standards governing conditional uses, do not apply.

The pipeline as a private utility use is of the same general type as the public utility use listed in Section 17.12.070, (B), (3), and as such, it is permitted under Section 17.08.030 Authorization of similar uses. The text of Section 17.08.030 is included in Section I of this report.

The applicants have stated that the proposal provides a clear benefit to the City because the City would no longer be reliant on a single ocean outfall system for treatment and disposal of wastewater.

The applicant states that a private easement has been obtained to run the pipe between the treatment plant and the pump station located on Tax Lot 1011. The applicant has provided a sample easement. It is appropriate that the City get a copy of this easement in its draft or final form to be maintained in the record for this application.

It is appropriate to require that construction of the pipeline route will be completed in compliance with Oregon's Standard Specifications for Construction (APWA-ODOT), and approved by the City Engineer and/or the Oregon Department of Transportation depending upon jurisdiction. Any road surface that is displaced will need to be resurfaced to City Standards.

The applicant states that a private easement will be available to run the pipe between the treatment plant and the pump station proposed to be located on located on Tax Lot 1011. The Planning Commission will need to condition any approval on the approval of the City, and the filing of such an easement.

*17.12.020 Residential zone (2-R)*

*A. Purpose of Classification. The 2-R zone is designed to be applied to residential areas where higher density hOl/sing is appropriate.*

*C. Conditional Uses Permitted. In a 2-R zone, the following uses and their accessory uses are permitted when authorized in accordance with chapter 17.32:*

- 4. Public use facility or public utility, including but not limited to fire stations;*
- 6. Utility facility, including substation or pumping station or private generator;*

Findings: The pipeline will pass through the residential zone (2-R), which allows a pump station and public utility subject to a conditional use permit under Chapter 17.12.020 (C) (4) and Chapter 17.32. Pipelines carrying effluent are proposed as private utilities, which are being processed under this conditional use permit application. Pipeline construction will be underground, and for this reason conditions set forth in Section 17.32.050, Additional standards governing conditional uses, do not apply.

The pipeline as a private utility use is of the same general type as the public utility use and accessory uses listed in Section 17.12.070, (B), (3), and Section 17.12.020 and as such, it is permitted under Section 17.08.030 Authorization of similar uses. The text of Section 17.08.030 is included in Section I of this report.

It is appropriate to require that construction of the pipeline route will be completed in compliance with Oregon's Standard Specifications for Construction (APW A -ODOT), and approved by the City Engineer and/or the Oregon Department of Transportation depending upon jurisdiction. Any road surface that is displaced will need to be resurfaced to City Standards.

*17.12.030 Commercial zone (4-C)*

*A. Purpose of classification. The 4-C zone is designed to apply to areas where more complete commercial facilities are necessary for community convenience.*

*C. Conditional Uses Permitted. In a 4-C zone, the following uses and their accessory uses are permitted when authorized in accordance with Chapter 17.32:*

- 3. Utility facility, including substation or pumping station or private generator;*

Findings: The pipeline will pass through the commercial zone (4-C), which allows a pump station and accessory uses subject to a conditional use permit under Chapter 17.12.030 (C) (3) and Chapter 17.32. Pipelines carrying effluent are proposed as private utility facilities, which are being processed under this conditional use permit application. Pipeline construction will be underground, and for this reason conditions set forth in Section 17.32.050, Additional standards governing conditional uses, do not apply.

It is appropriate to require that construction of the pipeline route will be completed in compliance with Oregon's Standard Specifications for Construction (APWA-ODOT), and approved by the City Engineer and/or the Oregon Department of Transportation depending upon jurisdiction. Any road surface that is displaced will need to be resurfaced to City Standards.

Summary of Compliance

With conditions, Application # CUP 16-03 complies with the requirements of all of the zones that it passes through within the City of Port Orford from its origination at the proposed pump station to its destination at the proposed Pacific Gales Golf Course. Criteria, facts and analysis that make up the findings have been included within Section II of this document. Information about the use and analysis from the applicant are included within the Attachments A and C.

Section III Alternate Route Recommendations

1 The Planning Commission may grant the Alternate Route pipeline # CUP 2-16 with conditions. It is up to the Planning Commission to determine any conditions of compliance

to be applied as part of any approval of this Conditional Use Permit. The Planning Commission may accept, modify, or discard options provided by the Planning Director in this report.

2. The Planning Commission may continue the hearing by stating the date, time and place when the hearing will resume in compliance with the following recognizing that there are additional procedures that would apply at the conclusion of any continued hearing.

*ORS 197. 763 (6):*

*(a) Prior to the conclusion of the initial evidentiary hearing, any participant may request an opportunity to present additional evidence, arguments or testimony regarding the application. The local hearings authority shall grant such a request by continuing the public hearing pursuant to paragraph (b) of this subsection or leaving the record open for additional written evidence, arguments or testimony pursuant to paragraph (c) of this subsection.*

*(b) If the hearings authority grants a continuance, the hearing shall be continued to a date, time and place certain at least seven days from the date of the initial evidentiary hearing. An opportunity shall be provided at the continued hearing for persons to present and rebut new evidence, arguments or testimony. If new written evidence is submitted at the continued hearing, any person may request, prior to the conclusion of the continued hearing that the record be left open for at least seven days to submit additional written evidence, arguments, or testimony for the purpose of responding to the new written evidence.*

3 The Planning Commission is authorized to deny the Conditional Use Permit application only with findings that approval of the use does not comply with specific criteria of the City code, and cannot be made to comply by requiring conditions of approval. If it is determined that the proposed uses cannot be made to comply with the City code through conditions, the Planning Commission must be specific in their findings.

4. Staff recommendations for consideration of conditions of approval are summarized as follows:

- a. Require that construction of the pipeline route will be completed in compliance with Oregon's Standard Specifications for Construction (APWA-ODOT), and approved by the City Engineer and/or the Oregon Department of Transportation depending upon jurisdiction in all zones. Any road surface that is displaced will need to be resurfaced to City Standards. \*
- b. Require the applicant to provide a copy of ODOT' s authorization to place the pipeline in the State Highway right-of-way so that it can be maintained in the record with any approval of this application for future reference. \*
- c. Require that the applicant provide a copy of this amendment to the Wastewater Plan document that they reference in this report so that it can be maintained within the record of this hearing, and provide the basis for private activity at the site and facility of the City's wastewater treatment plant. \*
- d. Condition the existence of proposed pipeline that originates in the 8-PF zone on compliance with the City's requirements for acceptance of the pipeline or other City Council requirements. \*
- e. Require that the applicant provide a copy of any easement that is granted by the City on the site of the wastewater plant to the City, and that the applicant provide proof of filing the easement. \*

Comm. McHugh stated that this was a conditional use hearing and is a quas-judicial hearing. McHugh stated that the planning commission will be given time to ask questions of City Planner Shoji. The applicant will then give his presentation. Once the applicant has

completed his presentation the planning commission will ask questions of the applicant. Once that is complete we will be open it to the public. First people to speak will be those who are in favor of. Then people who want to speak neutrally and then those against. There will be a three minute limit on each speaker.

This will be two separate hearings.

Chair McHugh asked each of the commissioners if they had any bias or financial gain from this project. Each commissioner answered that they did not. McHugh then asked if any of the commissioners had exparte

Communications on the hearing subject. Roorbach, LaRoche, Ames and Leslie stated no. McHugh stated that he did. He stated that he serves as a member of the Curry County Planning Commission and we heard the initial application for the CUP application on the Knapp Ranch to build a golf course. He stated that he was very aware of the entire program. He stated that none of this causes him to be bias.

Comm. McHugh stated that there was a good possibility that this hearing would be continued to another meeting. He stated that we have received a request from Shawn Malone who is the attorney representing the Oregon Coast Alliance asking that the record remain open for fourteen days. It is a possibility that the applicant will request a continuance. Comm. McHugh stated that the city must reach a conclusion on this application within 120 days. City Planner Shoji stated that the preferred route application was complete on January 17th and the alternative route application was complete on January 10th.

City Planner Shoji submitted to the record Exhibit A, the staff report. Shoji state that if the applicant has anything to submit that will be Exhibit B. Comm. McHugh stated that if anyone has any exhibits and anything that you have to show us stays with us and becomes part of the records.

Comm. McHugh called on the applicant's representative Chris Hood to speak.

Mr. Hood asked if there was any outside letters that were turned in on this application and if so have they been entered into the record. Shoji stated that they would be entered tonight. Mr. Hood asked if we were going to have any discussion in regards to those letters. Comm. McHugh stated that they would be entered as the last exhibit. Mr. Hood stated, so there is not going be any discussion for the general public about those letters? Comm. McHugh stated that one of them has already asked that the record be left open for 14 days for additional evidence and that no we will not discuss them tonight. We will discuss them after the 14 days.

Attorney Kudlac stated that the applicant has an opportunity to respond to those letters. The applicant gets the last word and they get 7 days to respond to any new record that is submitted. Shoji stated that she did give the applicant one letter that came in and they can respond to that in your speaking if you want. She stated that she would enter that into the record right now.

Chris Hood stated that he was with Stuntzner Engineers and Forestry in Coos Bay, Oregon at PO Box 118. I'm here tonight representing William Rebhahn and River Property Development. Chris Hood stated that before he gets stated I want to address and deal with a couple of issues that have been brought to our attention with regards to questions about this application process. The question was raised as to whether the City has actually permitted this type of use to occur. What I want to hand out here and enter into the record and what that

information entails is it is a request from Elk River Property Development and our attorney Nick Klingensmith is for the City to amend its wastewater facility plan to allow a secondary outfall that could potentially provide effluent from the wastewater treatment plant for other uses outside the City. In other wards a secondary outfall to one single outfall that currently pumps into the Pacific Ocean. The City took this under advisement and the City Council made a recommendation and adopted a resolution to allow for that amendment to the wastewater facility plan. Although the City has not weighed in on this particular issue, by approving the facility plan and amendment to that plan the council has generally adopted a policy that the City recycling waste rather than pumping it into the ocean was generally a pretty good idea. Planner Shoji stated that she was entering that as Exhibit B. Mr. Hood stated that another issue is the public facility zone and dedicating improvements to the City. We discussed in our application that what we were going to do was go in and do all improvements at the wastewater treatment plant that were required to get water from the treatment plant to an outside source where we would then pump it from a pump station through a pipeline out to Pacific Gales Golf Course. Originally we thought it would be required that we dedicate all of those improvements inside the Public Facility Zone District and inside that Wastewater Facility to the City because that outright allowed use inside that wastewater facility was public facility but as Crystal (planner) said earlier there is an ordinance provision in your ordinance that allows you to make a determination and if another use is very similar in use and character to an existing allowed use even though it's not allowed specifically in that zone district you can implement that use in if it's not allowed specifically in another zone district. Now that we know that it may be one of those situations that we don't have to dedicate to the city. We may be able to put in private improvements, have easements and maintain those improvements ourselves. This is not something we are here to determine tonight. This is something that will be determined between the City Council and the applicants if the City determines if they even want to allow someone to use the effluent outside the city. A third thing that I want to address is regarding the private pipeline as a conditional use. As you know, all through city right-of-ways there are all sorts of different types of public facilities and private facilities. Coos Curry Electric and your water and sewer lines. This is very similar to what we want to do. The reason that we determined this was a conditional use, I don't believe that anyone from this planning commission or prior ones has ever reviewed anything from Coos Curry Electric or from the Cable company or for that matter from the city as to whether or not they needed to go through a process to put a pipeline or power line in the street. That is normally something handled through a franchise agreement. We decided to put this in as conditional use for a couple of reasons. One reason is the ordinance is really vague on what constitutes a utility. What we determined is that we are going to be doing development through each one of these zoning districts and the streets have not been excluded from the zoning districts.

Mr. Hood stated that what their plan basically is to take from a secondary outfall from the city, take that wastewater effluent and deliver it to the subject property. On that subject property we are going to build a pump station. It will have two components to it. One being a deep well and that well will collect the water. It will be pumped into a secondary facility that will have tanks in it and those tanks will collect effluent and from that there will be a pump that pumps the effluent out to the golf course. If in fact it proves through our engineering analysis that we can do it, we will pump directly from the well and will not build a facility. What we will do is pump directly from the well. The facility will look much like a garage or out building. It will be fenced for security purposes and put trees around the outside. Mr. Hood stated that they mentioned lodge pole pines in the application and that is wrong. We go to put shore pines around it. Mr. Hood stated that the property is covered in native vegetation. He stated that their plan was to take the driveway down the east side of the property and turn into the center of the property where we will develop if we need to that

facility to house the pumps. We have letters from both the property owners on the east and the west of the property in which he stated that he has no problem with any issues. The property owner believed that there would be no financial or visual impact to his property. Mr. Hood stated that to the south was the wastewater treatment plant and 100 feet to the north is 12th Street. He stated that the building would be totally insulated and there would be no noise impact. He stated that what they are saying is that this conditional use which is based on compatibility is showing that this will be a compatible use in the neighborhood. Based on the neighbors statement and that it will be inside a structure as well as a fence and landscaping.

With regards to the routing of the pipeline, we have proposed two routes for this. The preferred route goes through Madrona and when it hits Highway 101 it heads immediately North. It goes across the bridge and then heads up. We also submitted a second application. The reason for the two applications is that we wanted to be assured that if there were any issues with us crossing this controlled development zone this route completely avoids it. Mr. Hood showed some pictures of some existing pump stations in the City of Port Orford and the condition that they were in.

In closing Mr. Hood stated that this pump station would be located on a private lot and directly adjacent to a City sanitary facility. Rather than pumping the recycled waste water into the ocean will actually be recycled and utilized. It would provide an alternative discharge for the City treatment facility. If there is ever a situation where the City has to do repairs on the ocean outfall they would have someplace to pump the effluent to. This will be of no cost to the City of Port Orford what so ever. The property that the pump station located is now totally vegetated and will have fencing and any required landscaping. The property owner on both sides has no objections what so ever. The pipe will be primarily buried throughout the City and that will have no impact. In regards to the pipe we are going to come in and do mostly horizontal boring. That involve digging a small hole and basically horizontally boring underground, putting the pipe in place, attaching to another hole at the other end and then covering the holes. There may be some areas that will require some trenching. This will be totally engineered by our engineers and reviewed by the Cities engineers. During the whole time of installation of that pipeline it will be pressure tested.

It was stated that all the exhibits would be entered into both permit applications.

It was stated that this is a two hearing process because there are two applications before you.

Chair McHugh stated that Mr. Hood just presented his testimony on Conditional Use Application 16-02, Preferred Route. He has reserved the right to speak again on Application 16-03. Mr. Hood added that the reason that we were doing two applications is because this application, the preferred route crosses over the conservation zone district. In the conservation zone district a public utility is allowed however this was not a public utility and so that was kind of where we were a little shy and why we wanted to do the second application. With that said what I want to allude to is what Crystal read earlier and that is we are basing our finding that this private facility is allowed based on the fact that it is very similar and like to other facilities including public facilities and it is not allowed in any other district. So therefore we comply with that requirement of the ordinance.

It was stated that the questions that we were going to be imposing on the applicant will be on application 16.02.

Comm. Ames stated that you are not a public utility by any definition of the ORS. You are a

private utility. You are pumping effluent which is not defined as a utility anywhere. Comm. Ames asked about the deep well. Mr. Hood stated that it really wasn't a deep well by a catch basin. She asked about the piping that was going to be used.

Mr. Hood asked to address Comm. Ames concerns. He stated that the city allows private facilities throughout the City to go in by franchise agreements in our public right-of-ways. That was the comparison I was making. With regards to whether or not this is a utility of some type, when the the effluent leaves the city pump station does it not go through a public utility to the Pacific Ocean. Would that not be a public utility?

Comm. Ames asked, so by current law are you a public utility? Mr. Hood stated no.

Comm. McHugh asked did you know that someone like Charter Cable is a privately owned public utility. It provides service to the general public. Mr. Hood answered no he did not. Comm. McHugh said that several times you compared yourself in your application you've compared yourself to public utility, private utility and you've interchanged that with a public facility and a private facility. Are you just using those interchangeably or do they mean something different. Mr. Hood stated that they do not have different meanings. Comm. McHugh stated that you said that the 6 inch line is rated to 150 psi and tested to 300 psi. Did you know that is a lower pressure rating than schedule 40 psv pipe. Mr. Hood stated that he is not an engineer and would have to have an engineer come in to debate with you.

Mr. Hood stated that we are only dealing here with this conditional use whether or not the proposed use is compatible with existing uses.

Comm. McHugh asked if anyone pulled a map of delineated wetlands going across the bridge on Hwy 101. The answer was no. Comm. McHugh asked if anyone did a soil analysis. The answer was no. Mr. Hood stated that all that stuff would have to be done in conjunction with any work we do in any right-of-way in the City of Port Orford. That is something that is above and beyond what we are here today to do which is to look at if the use is compatible with adjacent surroundings.

Comm. McHugh opened up the public comment section.

Karen Auburn, 725 King Street S, Port Orford. Auburn stated that she is a PhD with degrees in Microbiology and Virology and a long work history in these areas. As a scientist, putting our waste water on grass to be filtered makes sense. The grass on a golf course or other properties (like the city parks?) would act as a giant bios wale. Additionally, the waste water would not be harming the ocean. For those reasons I'm asking the planning commission to approve this request. This is something that would help preserve our precious environment.

Karen Jennings, 2 Hamlets. As a board member of Port Oxford Main Street I am submitting this letter from our president and our board. One of the goals of our main street organization is economic vitality. Therefore we ask for your support to use Port Orford treated wastewater on the proposed golf course and other properties. We believe it is an economic issue. We have an opportunity to avert an economic risk to Port Orford if our direct ocean outfall of treated effluent were to fail. A previous failure of our system that dumped treated effluent into the sand dunes failed due to storm damage. The result was significant loss to the city including a large debt to the city and a moratorium on building. We have an alternate way to deal with effluent. Because Karen Auburn is in the process of writing a Main Street Revitalization grant, we are keenly aware of our current economy. The grant requires information that relates to the economics of the City. The information required in this grant shows the proportion of the households at or below the federal poverty rate in Port Orford



where the designated downtown district is located. It stands at 36.1% for the Port Orford. Area median income in Port Orford where the designated downtown district is located is \$30,296. We ask that you please consider approving this opportunity to avert a possible economic disaster.

Ulli Lan, Lakeshore Dr., Langlois, OR. I am a member of Port Orford Rotary. Your waste water is being dumped into the Pacific Ocean and don't think that is anyone's intention. Them coming here and suggesting that there is a way to use it on the golf course is good. There are a lot of retirees moving here that could benefit from the golf course. I think that this is no brainer and you should consider this opportunity.

Randy Foster, 350 25th St. I am a lifetime resident of Port Orford. This place is dying and we need to take in and get some work going here. We are not reinventing the wheel here, they do this everywhere. They use effluent from the sewer plant to irrigate. It's a win situation. You have an alternative route to get rid of the effluent. As far as going across the wetlands, it's not touching the wetlands. It's going under the bridge. The bridge on Arizona Street has a raw sewer line attached to it, pressurized raw sewer line that goes right across the inlet of the lake. As far as the type of pipe they are using, everybody uses plastic pipe. Let's speed things up and get people to work.

Teresa Kolibaba, 611 Jackson St. I have a degree in horticulture and a degree in zoology and I was wondering why they were even going to be planting any trees at all around that substation on 12th Street. Just recently the City had some people cut some trees down because they were detrimental to the plumbing. They have plenty of native shrubby around. In the letter from Cascadia Geoservices, Inc., in one part in there it says ocean outfalls pose significant ecological risks related to infections of marine animals. It goes on to say that toxic wastes can over time accumulate in both marine vegetation and organisms and some organic chemicals are very stable and often persist in the environment for long periods and can accumulate these compounds. If there is that negative impact on marine organisms with all that buffer of a huge ocean washing all that stuff away what about the organisms that have no large volumes of water to buffer these toxic chemicals.

Chris Roney, 743 12th St. I feel that there are two things that were not addressed in the application. My first concern is noise coming from the pump station. The application says that the pump station will not generate noise. It says it is going to be enclosed and constructed of materials of standard residential construction. This is kind of vague. Most residential construction does not use materials that would sound proof a pump. My main concern is the application does not address operating hours. I've lived on Port Orford long enough to know that sound carries. I don't want to be kept awake at night listening to this noise. Also what I would like addressed is how the pipeline is going to be installed up 12th Street and Idaho. Application states that the pipeline will be placed underground for the use of horizontal boring and trenching on public right-of-ways. That is all it says on the issue. It doesn't address where on the street the trenching will be done. My concern is that this boring and trenching could damage tree roots. We have a lot of beautiful trees along the road and care needs to be taken when this kind of work is done so not to damage them. Trenching machines can cause extensive root damage.

Jim Rogers, 95187 Elk River Rd. My concerns for Port Orford are that if the golf course failed the city may be responsible for the pipeline.

Ric Bristow, Silver Butte Rd. What I see is the planning commission is asked to make two decisions. Not only on the planning inside the City but also regards to the Port Orford Urban

Growth Boundary management plans. The end of that pipeline is going to be the next step which is going to be the County. It ends in an area that is presently zoned environmental hazardous area. That is because of the Port Orford landfill. Any ground disturbance can be a conduit for contamination. There is indication that not only pipeline construction on that property but potential storage. Those two things have the potential of contaminating not only Port Orford's secondary water source but the ground water that all of us in the urban growth boundary use to the north and to the east. I do not think you should approve this the way it stands.

Comm. McHugh gave Mr. Hood the opportunity to do rebuttal.

Mr. Hood said that he was going to start with Teresa and the issue of contaminants. I'm going to let Troy Russell speak to that in just a second. I want you to understand that this is not really relevant to this application because this occurs off site. But because there is concern about it we will address it. This is something that is not occurring inside that City limits. With regard to Chris, she raises the issue that actually has merit and that is the fact that there is potential of a noise impact now to the neighborhood. One question that maybe asked right now is if there is much larger pumps right now the City site that are pumping effluent from the city property up over a hill into a gravity feed that goes out into the Pacific ocean. Are those pumps currently causing distress in the neighborhood? What I want to address is that we are going to have a much smaller pump contained inside a garage type of facility that is fully insulated. There is not going to be any considerable amount of noise coming from this facility. It's a hundred feet from the road itself, totally surrounded by vegetation. If you condition that there be no noise we will have to fix it. With regards to Jim Rogers, what happens to this if it goes bankrupt, this will be written up with the attorneys. The worst case scenario is that you have a secondary outfall. With a pump that wasn't built by the City. With Mr. Bristow, I don't know what the issue is. We are going to be putting a pipe perhaps through the landfill and we will be going through a county conditional use after this is over. So at that time we can address these issues. Putting a pipe underground a short depth has nothing to do with the ground water. It's not going to release anything and not going to absorb anything.

Mr. Hood stated that we had a request for a continuation here. Because this is the first evidentiary hearing it is absolutely a requirement that you grant that. There are two ways that this can be done. One is to grant a continuation to another time and date. The other option is that we make this a more efficient process as we discussed earlier and that is to allow a 7 day period for all parties to present more evidence. A 7 day period for the opportunity for rebuttal all that and a third 7 day period for us to do final arguments, no evidence submitted, just stating that we believe based on the evidence that we comply with the criteria and believe that it should be approved. What this does it does not get us into another hearing 30 days from now where people can come in a perhaps not even meaning to; submit new evidence that will allow someone else to request another continuation. What I would request and we would hope that you will do is go ahead and close that hearing at the end of this process but leave the record open for the 21 day period of the 7/7/7.

Attorney Kudlac stated that Mr. Hood is correct on this. There are two options, one is to continue the hearing, which means at another date and time people can come in and actually testify. The other option is for written evidence and arguments. Which is the 7/7/7. We have a request in the record from ORKA that the record be left open for 14 days. They are not asking that the hearing be continued but left open.

Mr. Russell stated that we are talking about cleaning up the disposal of the effluent in the

ocean. There are some compounds in it, certainly pharmaceuticals that have effects. The best management for disposal of effluent is applied to grass. We are proposing to pump it to a reservoir where it gets treated; it is already clean enough to dispose of in the ocean. We are required by DEQ to treat it again as it leaves our proposed pump station. So it gets treated by chlorine, goes into a reservoir where it sits and is exposed to ultraviolet radiation. Then it gets treated once more and sprayed out as irrigation.

Comm. McHugh stated that we have completed the applicant's presentation and have had public comments and applicant rebuttal.

Comm. Ames made the motion that the record be left open for 14 days. John Roorbach seconded the motion. After discussion the motion was withdrawn.

Comm. Roorbach made the motion to grant the applicant the 7/7/7 continuation and Comm. Leslie seconded the motion. All were in favor.

Comm. McHugh asked the commissioners if they wanted any more information on conditional use permit 16-02 from the applicant. Comm. Ames stated that the public brought up the question on how the pipe was going to be laid. The possible damage to the tree roots. How you are going to break the asphalt. Ames asked about the pressure issue with the switching on and off. Mr. Hood stated that there will not be a conflict of pressure going on and off. They will be equally controlled with a valve that says we are either sending the water this direction or we are sending it that direction. Comm. Ames asked if there was going to be any compensation to the city on the early determination of the city outfall pipe.

Comm. Leslie asks Mr. Hood if they would be responsible for the pipe going to the golf course through the duration of its years. Mr. Hood answered absolutely.

Comm. Ames asked if we have any assurance on a LLC as of who is going to be responsible. Mr. Hood stated that we are getting away from this conditional use permit usage. These are things that are going to be negotiated. It will be done at public forums at the council level.

Comm. McHugh asked for a motion to close the public hearing on Conditional Use Permit 16-02 also known as the preferred route.

Comm. LaRoche made the motion to close the public hearing on CUP 16-02 and Comm. Ames seconded the motion. All were in favor.

Planner Shoji stated that all the information that comes in on this 7/7/7 needs to be sent to Patty Clark at the City of Port Oxford.

After a short break Comm. McHugh opened the Conditional Use Permit 16-03, the alternative route. Comm. McHugh stated that we have already gone over the staff report on this application.

Comm. McHugh asked the commissioners if they had any questions for Crystal on this staff report.

Mr. Hood stated that he would like everything that was submitted with the first application to be submitted with this application. We want both applications to be submitted with both applications for possible appeal process. The one question that I do want to respond to is the question that came from Comm. Roorbach. You mentioned some issues about wetlands.

What I want to address is that during the development phase it is all going to be totally engineered. The route is going to be inspected and surveyed. Everything that exists along that route is going to be observed. If there are any wetland issues or impact we are required by law to address those things.

Mr. Hood stated that he really had nothing more to add.

Comm. Ames made a statement that was not picked up on the recording about the piping.

Comm. McHugh asked if the Knapp Ranch was at a height elevation then the Wastewater treatment plant. The answer was yes. Comm. McHugh asked if they were going to need booster pumps along the way. The answer was no.

Comm. Ames stated that on both of the applications you keep using the word irrigation. Once that word irrigation comes up with the word pipe then you don't need to worry about anything. It pretty much releases you from anything and it will be us that the residents come back and yell at us for allowing an irrigation pipe. Mr. Hood stated that if we in anyway implied that we are irrigating anything in the city of Port Orford then that is wrong. The only irrigation that will occur will be at Knapp Ranch.

Comm. McHugh asked for comment from the public.

Teresa Kolibaba, same as what I said before but I would like to add one thing. They were talking about chlorinating the effluent and that kills the bad chemicals. But what about the heavy metals, I don't think that chlorination does anything to them. The heavy metals accumulate in the thatch which eventually a golf course has to go through and dethatch and put that stuff somewhere. How are they going to take care of the buildup of this?

Chris Roney, the concerns I had before on the first hearing are the same for this one.

Jim Rogers, my concerns are the same that I had on the first hearing.

Ric Bristow, my comments are the same but I wanted to clarify that my concerns was not pollution from the outfall. The pollution that is possibly created with the construction that is going through the landfill.

I still contend that the urban growth management agreement is part of the criteria because that also gives the city planning department a chance to look at development. As you're being asked to look at two routes which leaves the city and goes into the urban growth boundary? That information should be available.

Mr. Hood stated that he wanted to bring us back to what this application is about. This is about impact to residential uses inside the city limits. That is what we need to focus on.

Comm. McHugh asked if the applicant has gone through all the permitting that would allow them to use effluent on that property. Mr. Hood said no.

Comm. Roorbach read into the record his statement.

Good evening. First I would like to extend to the representatives of Pacific Gales my appreciation for this generous offering to our City. I understand that we are under time constraints in reviewing your application, so I have made my current questions and observations about the ambiguities in your application as brief and as succinct as possible.

I have the following concerns with regard to Decision Criteria: City of Port Orford Municipal Code 17, Section 17.12.010 Residential, (A) the Purpose of Classification, C) the Conditional Uses Permit, and the subsequent Findings, on pg. 12.

1) My first area of concern in this section is the application's assertion of a completely underground pipeline and that "the Additional Standards governing conditional uses in Section 17.32.050 therefore do not apply." However this assertion is contradicted by the applicant numerous times in the application, for example in Section 17.32.050 findings 1-3, stating the Preferred Pacific Gales pipeline Route "would be attached to the Hwy. 101 bridge and suspended above the wetland." Additionally, the Pacific Gale's "Alternate Route" along Madrona and the Port Orford Loop Rd. crosses a significant wetland and wetland outfall to Garrison Lake, approx. 1/8th mile from Hwy. 101, near the south end of the Port Orford Loop Rd. Importantly this was not even mentioned in the application. The latter in turn would require an elevated section of pipeline in keeping with Section 17.12.050, a Controlled Development Zone, to "recognize and protect natural resources," including but not limited to, "wetland and watershed areas" and "water resources." These statements by the applicant clearly contradict the applicant's stated assertion of a completely underground pipeline, meaning that the terms of the pipeline application would be subject to the Additional Standards governing conditional uses in Section 17.32.050.

My second concern is in regards to Section 17.32.050, under Findings 3, pg. 15, wherein our staff reports that there is no definition of what constitutes "a structure" in the City Zoning Code. The applicant apparently uses this point to say that a pipeline and a pipeline attached to a bridge are not a structure and are not subject to various additional provisions of the City Zoning Code. I do not agree. I would argue that the pipeline is in itself a planned, purposed and specific structure and simply becomes a part of the structure of the Hwy. 101 bridge when suspended from it. In short, the lack of specificity about the general definition of the term structure in the City Zoning Code does not mean a structure is not a structure.

2a) I also have a concern about the north and south ends of the Hwy.101 bridge previously mentioned. These locations are almost constantly the site of homeless encampments posing a pipeline liability issue. This is not accounted for in the Pacific Gales application. I believe the pipeline would require an armor sleeve or that the areas would require a substantial heavy gage fenced area and heavy padlock to prevent possible entry to this area and vandalism to the pipeline structure, as well as ODOT approval. 2b) Furthermore, I do not see an ODOT statement about the condition of the bridge and whether it will need to be upgraded within the next five to ten years, which would temporarily interrupt service for Pacific Gales and the City.

3 It appears that for the purposes of this application, Pacific Gales and our staff report have defined this pipeline project as a "private utility," in Section 17.12.010, pg. 12. However I have learned that Pacific Gales will only provide the City with a one year warranty for the project, stating that there "will be no initial cost to the taxpayer," but at what point does the taxpayer financial obligation begin? Under Section III, Pipeline Route CUP #16-03, Findings, pg. 19, the taxpayer financial obligation would seem to begin when Pacific Gales turns over to the City the responsibility for the pipeline components originating at the City's water treatment plant. However it is unclear in the application whether this will include the entire pipeline within City limits or as it continues into the City's UGB. Therefore I am requesting clarification on the matter to find out if it includes the entire pipeline to the Knapp Ranch property. And if this is true, shouldn't we initially define the pipeline project as a "public/private utility?" The answer should be so stated in the application in order to be concise and for other legal purposes. Additionally, since the applicant broached the subject of "no initial taxpayer cost" in the application, I request some latitude in briefly discussing this. I would strongly note that any such transfer of the pipeline responsibility would shift the burden of costs and liability to the City, including, but not limited to, security, maintenance, damages, proper function, replacement parts, time, labor and equipment. Further, I find no

estimate of what this cost might be to the City, and I am ever mindful of the burdens that our small public works crew must already contend with; also the eventual costs the taxpayer will incur for our current problematic water infrastructure, including the replacement of aging pump and lift stations and the drinking water and sewer lines, but I am also mindful of the City's indebtedness for the repayment of the loans for our two sewer treatment plants.

4) The City's participation in the pipeline project may also establish an unintended land use precedent, as the pipeline is a cherry stemmed water infrastructure project extending into the UGB. In this regard we will need to consult with our land use attorney. Frankly, instead of adding to the City's burdens, I would rather have from Pacific Gales a binding and enduring statement guaranteeing in perpetuity, or even for 25, or 15 or 10 years, all costs in regard to the responsibility for this project. In any case, the City's costs and multiple other issues mentioned must be weighed in the balance.

5) I can only say that thus far this evening, at the outset of this review of the Pacific Gales application, I am surprised by what I see and what I do not see, about what has and has not been presented to the City Planning Commission for consideration. Based upon the application as it stands, being incomplete, poorly written and containing numerous unanswered questions, misstatements and staff requests, I would advise the applicant to request a continuance.

Comm. McHugh asked for a motion to close the Public Hearing on Conditional Use Permit application 16-03.

Comm. Leslie made a motion to close the hearing and Comm. Roorbach seconded the motion. The motion was withdrawn so the 7/7/7 could be approved.

Exhibits A - O where entered into the record. (see attached)

Comm. McHugh stated to Mr. Hood that we have some question about the people that made public comments here who left before the conclusion of this second hearing. Is it ok if we carry these on with 16-03.

Mr. Hood stated that they did not have a problem with this.

Comm. Leslie made the motion to continue on the 7/7/7 schedule and Comm. LaRoche seconded it. All were all in favor.

Comm. Leslie made the motion to close the public hearing and seconded by Comm. Roorbach. All were in favor.

Starting in March our meetings will start at 3:30 pm

Meeting was adjourned at 9:00

**LIST OF EXHIBITS**  
**Planning Commission Public Hearing February 14, 2017**  
**Applications: #CUP 16-02 and CUP 16-03**

**Continuance to March 24, 2017 per ORS 197.763 (6), (a) – (e)**

- Exhibit A:** Staff Report and Attachments A - F
- Exhibit B:** Letter from Applicant's Attorney Nick Klingensmith with Attachments dated May 10, 2016
- Exhibit C:** E-mail from ODOT Planner (John McDonald) dated Feb. 8, 2017
- Exhibit D:** Letter with questions from Daniel Fineman dated Jan. 24, 2017
- Exhibit E:** Panels with preferred and alternate routes presented by applicant at Hearing
- Exhibit F:** Letter with questions from Daniel Fineman dated Feb. 3, 2017
- Exhibit G:** Letter from Karen Auburn, PhD dated Feb. 13, 2017
- Exhibit H:** E-mail from John and Sally Johnston dated Feb. 13, 2017
- Exhibit I:** Letter from Port Orford Chamber of Commerce President Debra Greenlee dated Feb. 13, 2017
- Exhibit J:** Letter from William Rebhahn dated Feb. 10, 2017
- Exhibit K:** Letter from Cascadia Geoservices, Inc., Eric Oberbeck, dated Feb. 13, 2017
- Exhibit L:** Letter from Sean T. Malone, Attorney for ORCA, dated Feb. 14, 2017
- Exhibit M:** Three pictures of Port Orford pump stations presented by Applicant Planner Chris Hood at the Hearing
- Exhibit N:** Letter from Director Karen Auburn, Main Street Port Orford, dated Feb. 13, 2017
- Exhibit O:** Letter from Planning Commission member John Roorbach dated Feb. 14, 2017
- Exhibit P:** Letter from Christine Roney dated Feb. 21, 2017
- Exhibit Q:** Letter from Dana S. Gurnee dated Feb. 21, 2017
- Exhibit R:** Letter from Ric Bristow dated Feb. 19, 2017
- Exhibit S:** Letter from Ann Vileisis and Tim Palmer dated Feb. 21, 2017

- Exhibit T:** Letter from ORCA Attorney Sean T. Malone dated Feb. 21, 2017
- Exhibit U:** E-mail from Laurie Prouty dated Feb. 26, 2017
- Exhibit V:** Letter from Penny Suess dated Feb. 27, 2017
- Exhibit W:** Letter from Sara Lovendahl dated Feb. 27, 2017
- Exhibit X:** Letter and four attachments from Applicant's Attorney Mick Klingensmith dated Feb. 28, 2017
- Exhibit Y:** Letter from ORCA Attorney Sean T. Malone, dated Feb. 28, 2017
- Exhibit Z:** Letter from Applicant's Attorney dated March 7, 2017



LAW OFFICE OF BILL KLOOS, PC

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May 10, 2016

Port Orford City Council  
555 W. 20th St  
PO Box 310  
Port Orford, OR 97465Submitted via email to: Terrie Richards [trichards@portorford.org](mailto:trichards@portorford.org)  
and: Shala Kudlac [bandonlaw@gmail.com](mailto:bandonlaw@gmail.com)

Re: Proposed legislative amendment to Wastewater Facilities Plan

Dear City Councilors:

This letter is submitted on behalf of Elk River Property Development, LLC. ERPD has been involved in the proceedings of the city's subcommittee on wastewater effluent, and is advocating for a legislative decision that will make the city's treated effluent available for reuse.

As you consider the addition of a secondary point of discharge for the City of Port Orford's sewage treatment plant, we respectfully submit the attached proposal for an amendment to the Wastewater Facilities Plan. The city may find it preferable to simply add an appendix to the plan that will allow for the creation of the secondary point of diversion at the treatment plant, and allow for reuse of the treated effluent, rather than making changes to the text of the current Facilities Plan. As you are aware, the Facilities Plan currently only provides for the existing outfall into the ocean.

If the Facilities Plan is amended to allow for a secondary point of discharge, it will include the following benefits:

- It will benefit the city. If the city adopts a policy to make its treated water available for reuse, the city's treatment plant will no longer be reliant on its single existing point of discharge into the ocean. By establishing a secondary point of discharge, the city will have an "insurance policy" in case the existing point of discharge should ever fail.
- It will be environmentally sustainable. Reusing the treated wastewater will reduce demand on river water and groundwater. If there are any trace contaminants in the treated effluent (such as pharmaceutical residues) it will be more ecological to use the water for irrigation, and to allow those residues to degrade in the soil, compared to the current practice of discharging the effluent directly into the fragile marine ecosystem. For these reasons and others, the proposal has the support of the South Coast Watershed Council, as shown by the attached letter.
- It will support economic development. The treated wastewater will reduce competition for limited sources of water, leaving existing sources of water available for farming.

The amendment proposed here is only a policy decision that would add general authorization for a second point of discharge, so that treated effluent can be reused. Any request to use the treated effluent will still require an application to obtain authorization for the specific development proposal. This amendment does not impose any financial obligations on the city, and it will avoid the need to edit the existing Facilities Plan, easing administrative cost or burden on the City.

Thank you for considering the addition of this amendment to the Facilities Plan.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Nick Klingensmith". The signature is written in a cursive style with a large, stylized initial "N".

Nick Klingensmith

Port Orford Watershed Council  
P. O. Box 377 Port Orford, Oregon 97465

November 4, 2015

Mr. Troy Russell  
Pacific Gales

Via E-Mail

Dear Mr. Russell,

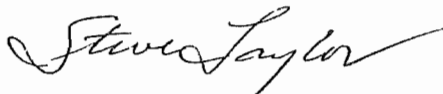
The Port Orford Watershed Council has carefully considered your organization's development of a golf course north of town on the site of the Knapp ranch, and we have no objection to this project. We feel that there is potential for significant economic benefit to our community and the surrounding area, and that the plans you have shared with the city and the county are reasonable and well thought out.

The plan to utilize treated sewage effluent for irrigation of the golf course seems to us to be a great idea, bearing in mind that the city cannot provide any financial assistance in furthering the project. As long as it is done without any cost to the city, we're in favor of it. We note that it's a shame this couldn't have happened earlier, before the offshore construction of expensive outfall infrastructure a few years ago.

We do look forward to working with you and your colleagues on environmental issues at Pacific Gales in the future. In particular, we are very interested in working on enhancements to the small stream draining the pond and entering the Elk River at the north end of the property; as we've discussed, it's a Coho stream, and has potential for significant improvement.

We wish you every success with the golf course.

Sincerely,



Steven R. Taylor, Chair  
Port Orford Watershed Council

541-332-0166

e-mail: [stevenrtaylor.portorford@gmail.com](mailto:stevenrtaylor.portorford@gmail.com)

cc's: Harry Hoogesteger, South Coast and Lower Rogue Watershed Coordinating Council  
City of Port Orford  
Curry County  
Port Orford *News*  
Port Orford *Beacon*

**Patty Clark**

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**From:** MCDONALD John [John.MCDONALD@odot.state.or.us]  
**Sent:** Wednesday, February 08, 2017 10:23 AM  
**To:** 'patty@portorford.org'  
**Cc:** WADDINGTON Jeff S  
**Subject:** PO CUP 16-02 and 16-03 Pump Station and Pipeline

Patty,

Regarding No. PO CUP 16-02 and 16-03, the proposed pump station and pipeline.

If the pipeline enters, crosses, or runs in state right of way, the applicant will be required to secure a permit, and submit all engineering plans to ODOT to ensure they meet state requirements for placement and cover.

Sincerely,

John McDonald  
Development Review Planner  
ODOT Southwestern Region  
541-957-3688

Patty Clark, Planning Assistant

City of Port Orford

P.O. Box 310

Port Orford, OR 97465

1-24-2017

Dear Ms. Clark:

I am Daniel Fineman. I own the property at 880 12<sup>th</sup> St., Port Orford, OR. My house is directly opposite the city's wastewater treatment facility. Therefore, I was quite interested in your notice of a hearing about new construction, Application No. PO CUP 16-02 and 16-03.

I have no wish to obstruct or inhibit this project in principle. However, I would like to understand completely the consequences of the proposed work and the impact it will have on my property, its value, and my water service. Unfortunately, I think neither the timing nor the level of detail this document supplies meet a reasonable person standard for adequate notification.

This means that I cannot say I find anything wrong with the three pages I was sent in themselves, but that this document was inadequate to determine if there are unacceptable consequences to this project. Further, as this document was not post marked until the 20<sup>th</sup> of January and did not arrive until the 23<sup>rd</sup>, I do not have adequate time before the hearing to investigate further.

Therefore, it would be reasonable that the scheduled hearing not be the last and that further opportunity for discussion and clarification would be made. I am attaching to this letter some of the questions I think are unanswered by the document. I hope these questions and their answers, where possible, may be read into the proceedings.

If you wish, you may email me at [apophasisx@yahoo.com](mailto:apophasisx@yahoo.com).

Thank You.

A handwritten signature in black ink that reads "Daniel" followed by a stylized flourish.

Daniel Fineman

Questions Concerning Application No. PO CUP 16-02 and 16-03

Daniel Fineman

1. A pump station is mentioned, but no description or location seems given. What is the size, nature, and location of this pump station? Will it be visible?
2. On page 2, a general description of the possible routes of the pipe is given but no exact description. Where exactly will these pipes be dug? Will they close roads? Will they inhibit property access? Will they disrupt water service? On what dates will this occur?
3. As is often observed, Port Orford water fees are very high. What will be the fiscal impact of this project on bills? If it raises or maintains cost, what are the benefits that would cause the city to undertake this effort? If the benefit of this project is all or mostly for Pacific Gales Golf Course, are they to bear the total cost. If not, why?
4. If this project is of cost to the city and so the customers, is it the highest priority for the city?
5. Is the golf course for which this project is being done, the only entity that could profit from such a water supply? How was their priority and the general need determined?
6. It says that copies of the related documents may be had at "reasonable cost." What is this cost? Can they be mailed or, better, emailed so that owners, like me, not currently in town may review them?

A handwritten signature in black ink, appearing to read "Daniel Fineman". The signature is written in a cursive style with a long horizontal stroke at the end.

Patty Clark

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**From:** Dan [apophasisx@yahoo.com]  
**Sent:** Friday, February 03, 2017 4:48 PM  
**To:** Patty Clark  
**Subject:** Re: CUP 16-02 and CUP 16-03

Dear Ms. Clark:

Thank you for these documents. As the hearing is upon us, I have reviewed them very quickly. They raise possible questions. These may reflect my ignorance or misunderstanding, but I cannot become more expert or informed in the time available. I will make my remarks and references to the "preferred route" document, CUP 16-2 and use that doc's pagination.

1. (P. 5 of the AP Form) Am I to assume Mr. Rebhahn is the sole owner of record?
2. (Pages from now on refer to the support doc attached to the AP Form: P. 4) it says "maintenance and repair" will be at the expense of Elk River. What in the event of the failure of the corporation? If the pipe breaks and causes damage to my property, will the future owners be liable? Will the pipe be indemnified as a public utility if -- as they propose -- they deed the first section to the city?
3. (P. 4) They say they have "a private easement"- has such been examined for legality and conformance to code? Will the Pump building on this lot restrict future building? How?
4. (P. 5) the sound pollution is identified as "minimal." That is too subjective and non-enforceable a standard: this must be stated as a decibel maximum, say 15 DB measured from the outside.
5. (P. 5) they suggest that this is a "benefit" to the city because it supplies a superfluous outlet for waste water while exposing the

city to potential liabilities and danger. This benefit argument would be more realistic if the city also could tap the line for the extant public needs near the route.

6. (P. 6) they suggest there will be additional traffic to maintain the facility. This is a peaceful and quiet area. Will this be minimal?

7. (P. 10) they claim they will attach the pipe to the bridge. Has this passed engineering muster as feasible and safe? Are there state and federal codes on such?

Thank you.

Dan Fineman  
880 12<sup>th</sup> St.

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**From:** Patty Clark <[patty@portorford.org](mailto:patty@portorford.org)>  
**To:** [apophasisx@yahoo.com](mailto:apophasisx@yahoo.com)  
**Sent:** Friday, February 3, 2017 2:50 PM  
**Subject:** CUP 16-02 and CUP 16-03

Attached are the two applications.

Patty



February 13, 2017

To: Planning Commissioners  
From: Karen Auburn, PhD

Re: Support of Effluent Permit

My background includes degrees in Microbiology and Virology plus a long work history in these areas. As a scientist, putting our waste water on grass to be filtered makes sense. The grass on the golf course or other properties (like the city parks?) would act as a giant bioswale. Additionally, the waste water would not be harming the ocean.

I hope the Planning Commission approves this request – something that would contribute to helping to preserve our precious environment.

# Exhibit H

February 13, 2017

To: City of Port Orford  
Attention: Kevin McHugh, Chairman, Planning Commission  
Terrie Richards, City Administrator

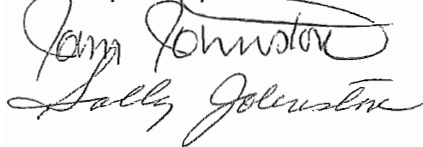
RE: 2/14/17 Public Hearing – Application No. PO CUP 16-02 and 16-03

We would like to voice our support for Elk River Property Development, aka Pacific Gales Golf Course , to be granted a conditional use permit for the “preferred route” to pipe the City of Port Orford’s recycled wastewater from the City of Port Orford’s wastewater treatment facility to Pacific Gales Golf Course.

We are not residents of Port Orford; however, we are concerned citizens of Curry County and it seems to us that the opportunity to find a home for the City of Port Orford’s treated wastewater other than the Pacific Ocean, is an opportunity which should not be missed. We assume the “preferred route” is the most cost-effective way and should therefore be the route approved.

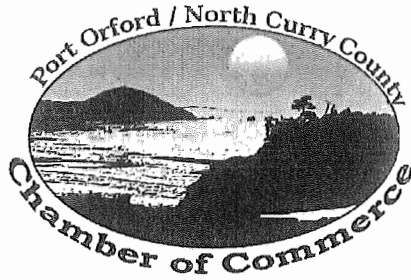
At some point the City of Port Orford’s system for recycled water discharge into the Pacific Ocean will likely fail, and the City of Port Orford should be working in concert with an entity which wants to receive the treated wastewater. This just seems to make both ecological and economical sense to both parties.

Thank you for your consideration.

The image shows two handwritten signatures in cursive. The top signature is 'John Johnston' and the bottom signature is 'Sally Johnston'. Both are written in dark ink.

John & Sally Johnston  
PO Box 1333  
Port Orford, OR 97465

Hand delivered to city hall 2/13/17



February 13, 2017

City of Port Orford  
Planning Commission  
555 W. 20<sup>th</sup> Street  
PO Box 310  
Port Orford, OR 97465

To Whom It May Concern;

The purpose of this letter is to endorse and support the Pacific Gale Golf Course. The Port Orford/N. Curry County Chamber of Commerce fully supports the Pacific Gale Golf Course and believe they will greatly benefit the community of Port Orford and the county of Curry.

Economic benefits to the community will affect all areas of commerce.

- Employment opportunities
- Increase tourism
- Increase commerce for our Galleries, lodgings, restaurants, retail shops, etc.
- Will receive our sewage effluent for environmentally responsible irrigation
- Expand the tax base

The Port Orford/N. Curry County Chamber of Commerce looks forward to working with the Pacific Gale Golf Course to bring a welcomed new endeavor to Port Orford and Curry County.

Respectfully;

Debra Greenlee  
President  
Port Orford/N. Curry County Chamber of Commerce

Exhibit J



February 10, 2017

City of Port Orford Planning Commission  
C/O City of Port Orford  
PO Box 310  
Port Orford, Oregon 97465

RE: ELK RIVER PROPERTY DEVELOPMENT, L.L.C. PUMP STATION  
LOCATED AT T.33, R.15, S.05BD, TAX LOT 1011

Dear Planning Commission

I am the owner of two properties (Tax Lots 1010 and 1008) that are directly adjacent to the property (Tax Lot 1011) that is subject to Conditional Uses, CUP #1602 and CUP #1603. My two properties border the subject property on both the East side and the West side.

Because the conditional use criteria essentially addressed compatibility with adjacent uses, I wish to inform the Planning Commission that I have reviewed the proposed development of the pump station and believe that there will be no discernable impact to either of my properties.

When consideration is given to the location of the pump house structure (100 feet from 12<sup>th</sup> street), the type of residential materials proposed for its construction, and the fact that the facility will be landscaped, I believe the visual character of the facility will be compatible with existing and future residential uses. Because the proposed pump house structure will also be fully insulated, there will be no impacts associated noise.

In conclusion, if I believed that there was any question as to whether the pump station would have a negative impact to the future residential development, or to the value of my two adjacent lots, I would not have sold the subject property to Elk River Property Development L.L.C. for the intended use.

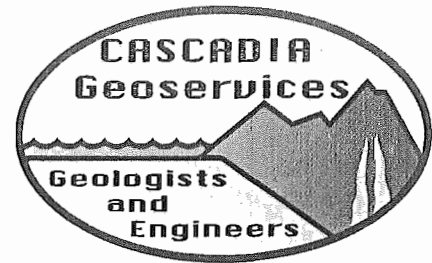
Thank you for your consideration.

Sincerely,

  
William Rebhahn

**CASCADIA GEOSERVICES, INC.**

190 6th Street  
PO Box 1026  
Port Orford, Oregon 97465  
D. 541-332-0433  
C. 541-655-0021  
Email: info@cascadiageoservices.com  
www:cascadiageoservices.com



February 13, 2017

Planning Commission Chairman McHugh  
City of Port Orford  
555 W. 20th St  
PO Box 310  
Port Orford, OR 97465

Re: CUP Application 16-02 and 16-03

Dear Chairman McHugh,

I am writing you in support of CUP 16-02 and 16-03 which will allow the applicants to construct a Wastewater Pump Station on a lot north of the City's wastewater plant and install a buried pipeline which will transfer treated wastewater from the pump station to the Pacific Gales Golf Course.

The plan to use the treated wastewater to irrigate the golf course is a great plan and makes good sense both from an environmental and ecological standpoint. As I am sure you know, the golf course will act as a large bioswale which will facilitate biodegradation and remediation of the treated wastewater. This is a far superior solution to purifying the city' wastewater than disposing of it into the ocean.

Ocean outfalls have been shown to create human exposure pathways to humans who experience direct contact through ingestion of fish or shellfish exposed to effluent. Ocean outfalls pose significant ecological risks related to infections of marine animals. Toxic wastes can over time accumulate in both marine vegetation and organisms. Some organic chemicals are very stable and often persist in the environment for long periods. Marine animals can accumulate these compounds even when there are very low concentrations of the compounds in the water around them. Similarly other toxic materials, in particular, trace metals, can accumulate in aquatic organisms.

Based on this and on anticipated future costs associated with upgrading the wastewater treatment site and outfall to current and future Oregon Department of Environmental Quality standards, I urge you to approve CUP Application 16-02 and 16-03 and allow the applicants to build the Wastewater Pump Station and to install the buried pipeline.

Sincerely,  
Cascadia Geoservices, Inc.

A handwritten signature in cursive script, appearing to read 'Eric Oberbeck'.

Eric Oberbeck, RG/CEG

## Sean T. Malone

### Attorney at Law

259 E. Fifth Ave.,  
Suite 200-G  
Eugene, OR 97401

Tel. (303) 859-0403  
Fax (650) 471-7366  
seanmalone8@hotmail.com

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February 14, 2017

Via Email

Kevin McHugh, Chair  
City of Port Orford Planning Commission  
PO Box 310  
Port Orford, OR 97465

Re: Application Nos. PO CUP 16-02 and 16-03

On behalf of Oregon Coast Alliance, please accept these comments on both applications nos. PO CUP 16-02 and 16-03. Please add me to the notice list for each application. For the following reasons, the applications must be denied. In addition, ORCA respectfully requests that the record be left open for 14 days.

The applicant has two separate applications for approval of a pump station and pipeline that would deliver recycled wastewater from the City of Port Orford's wastewater treatment facility to the proposed Pacific Gales Golf Course.

The two applications may result in inconsistent findings

When a local government incorporates findings from other decisions, the local government runs the risk of adopting inconsistent findings. *See Larmer Warehouse Company v. City of Salem*, 43 Or LUBA 53, 59-60 (2002); *Spiro v. Yamhill County*, 38 Or LUBA 133, 138-140 (2000). Here, because the applicant has proposed alternative applications, if both are approved, then the City runs the risk of adopting inconsistent findings. The local government must explain and resolve any discrepancies or inconsistencies in its findings.

The proposed use is not a "public utility"

The use here is not a public utility and also is not a similar type of use. A "public utility" is defined, in part, as:

“[a]ny corporation, company, individual, association of individuals, or its lessees, trustees or receivers, that owns, operates, manages or controls all or a part of any plant or equipment in this state for the production, transmission, delivery or furnishing of heat, light, water or power, directly or indirectly to or for the public, whether or not such plant or equipment or part thereof is wholly within any town or city.”

ORS 727.005. Here, the applicant proposes that “[p]ipelines carrying effluent are proposed as private utilities, ...” “Effluent” is not a listed use for a public utility. To the extent that the applicant alleges that its pipeline is a private utility due to its similarity to a public utility, there is no express or implied provision that allows for private or public utilities to transmit effluent. Furthermore, the applicant oscillates between characterizing itself as a private and public utility. The applicant cannot be one type of utility when it suits its position for a particular purpose and then yet another for type of utility for some other purpose. Simply put, the applicant must choose to characterize itself either as a private or a public utility; but in this instance neither choice will benefit the applicant, since “pipelines carrying effluent” is not a function of a utility under state law.

To the extent that the applicant further believes “[z]oning is not based upon ownership, but rather upon use,” this is misplaced. Zoning oftentimes distinguishes between public and private uses. If the applicant cannot locate a use in the code “to allow private pipelines to carry public waste,” then there is no such use permitted.

#### Approving the application may result in liability to the City

The applicant acknowledges that the pipeline will run through the 8-PF zone, which is designed to identify and reserve publicly owned areas “for the development of needed public facilities and service.” This is directed specifically at public utilities because it is public land. Because it is public land, the City is taking upon itself significant liability in the event of a pipe failure, and it does not appear that the applicant is proposing the requisite assurances to the City. As such, the applicant’s allegation that there will be “no financial burden to the City” is misplaced. Indeed, the staff report acknowledges that “[t]he proposed pipeline can originate in the 8-PF zone in that the applicant indicates that the City will accept ownership of the pipeline components that originate there.” The City has not explained how the applicant, in the event of its dissolution, will be responsible for continuing maintenance. A defunct company will not carry out its end of the bargain to assume costs into the future. Thus, the City will be required to take upon itself significant liability when it “accepts ownership of the

pipeline,” as well as the continued maintenance, repair, and replacement for the indefinite future.

The City should retain control over its effluent for public uses, not private uses

Regardless of whether the applicant refers to itself as a private or public utility, the ultimate purpose is to use City effluent for private purposes, not public ones. Instead of providing effluent for a private use, the City should retain the effluent for a public use. This would not only result in cost savings for the City, but would also avoid any potential for liability.

The applicant has not complied with the landscaping requirements

The applicant has not complied with the landscaping requirements in Port Orford code. 17.32.050(A)(2) requires that “[t]he use shall be fenced and provided with landscaping.” The applicant alleges that landscaping will occur only “where necessary.” The standard is more demanding than the applicant proposes. Therefore, this criterion has not been satisfied.

The record does not establish that the applicant has sought any approvals from ODOT

The applicant acknowledges that “[t]he pipeline will simply be suspended along the existing State Highway 101 bridge.” However, the applicant has not demonstrated that it has received or will acquire the necessary authorizations or permits from ODOT. Because the pipeline may affect state Highway 101, ODOT must be consulted.

The applicant has not provided sufficient information to determine whether additional conditions should be imposed

Without providing information on the remaining components of the pipeline, all of which will run through lands under County jurisdiction, the applicant has failed to provide sufficient information to determine whether additional conditions should be imposed. 17.32.010 provides that “the council may impose condition in addition to the provisions set for uses within each zone in order to protect the best interests of the surrounding property, the neighborhood or the city as a whole.” Conditions that would carry out this provision cannot be formulated until the City is aware of where the remaining portions of the pipeline will be located, and whether the uses are even permitted on the property where the effluent pipeline will end.



The County will require an exception to place urban facilities on rural land

The applicant has not demonstrated that the proposed use on County land and land subject to County jurisdiction is permissible here, and therefore, the proceedings before the City may be superfluous. The applicant has a heavy burden because it will be required to get exceptions to Goals 3, 11, and 14. *See Foland v. Jackson County*, 61 Or LUBA 264, 314 (2010), *aff'd* 239 Or App 60, 243 P3d 830 (2010) (explaining that an exception to Goals 3, 11, and 14 would be required to place public facilities with urban levels of use on farmland); *Foland v. Jackson County*, \_\_ Or LUBA \_\_ (LUBA No. 2013-082, January 30, 2014). Because it is not clear that the proposed use will even be permitted on the property (a ranch outside the Port Orford urban growth boundary) that intends to use the effluent, and that none of the other land use approvals that will be required have been requested or received, the City should deny the application.

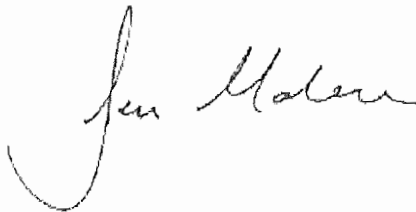
Request for the record to remain open for 14 days

ORCA respectfully requests that the record be left open for 14 days to allow for additional evidence and argument to be submitted into the record.

Conclusion

These applications are incomplete, cover only a portion of the proposed pipeline, will result in substantial liability to Port Orford, and do not take into account the many requirements for County land use hearings and permits, which processes the applicant has not even begun. In addition, the applicant illegitimately seeks to make itself a public or private utility, though the function it proposes does not fit under the definition of a utility. For the above reasons, ORCA respectfully requests that the City deny both applications.

Sincerely,

A handwritten signature in cursive script that reads "Sean T. Malone". The signature is written in black ink and is positioned below the word "Sincerely,".

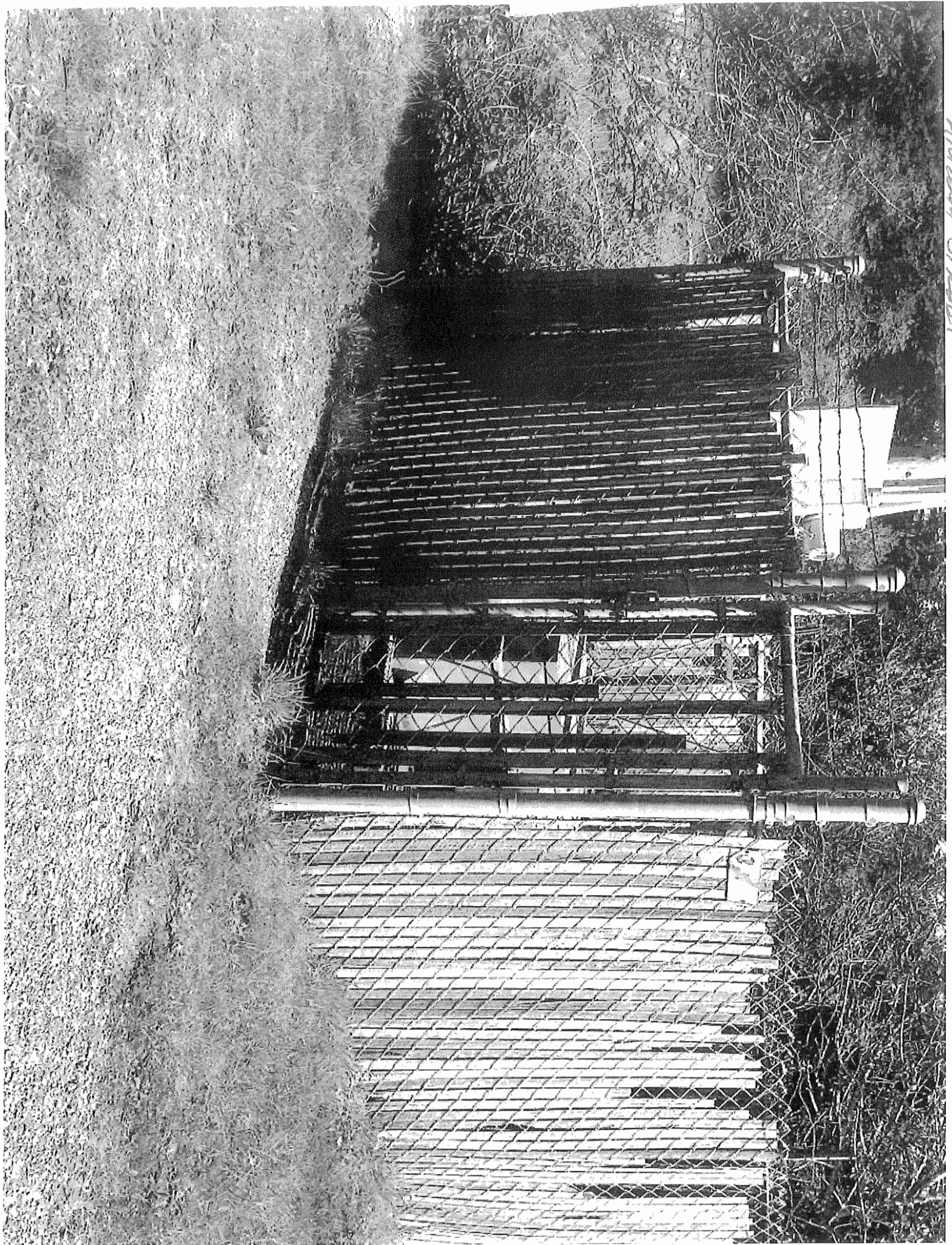
Sean T. Malone  
Attorney for ORCA

Cc: Client

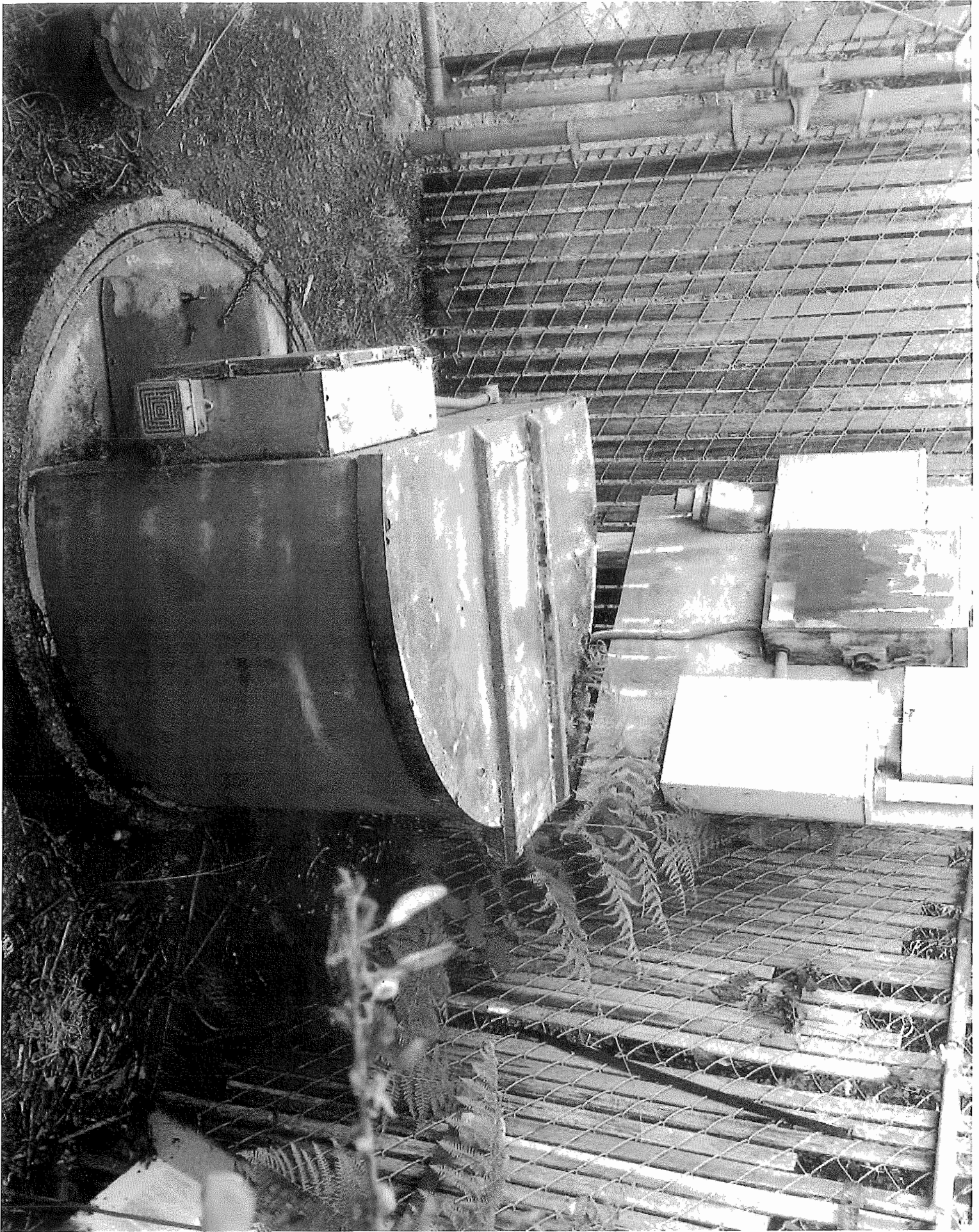
WYOMING STREET

Exhibit 8 M





7/11/57 071557



100-2000 STREET



February 13, 2017

Dear Planning Commission:

We ask for your support to use Port Orford's treated waste water on the proposed golf course and other properties. We believe this is an economic issue. One of the goals of our Main Street organization is economic vitality.

We have an opportunity to avert an economic risk to Port Orford if our direct ocean outfall of treated effluent were to fail. A precious failure of our system that dumped treated effluent into the sand dunes failed due storm damage. The result was significant loss to the city including a large debt to the city and a moratorium on building. We have an alternate way to deal with effluent.

Because I am in the process of writing a Main Street Revitalization grant, I am keenly aware of our current economy. The grant requires information that relates to the economics of the city. Information required in this grant:

1. Proportion of the households at or below federal poverty rate in the city, town or urban neighborhood where the designated downtown district is located.  
The federal poverty rate is **36.1%** for households in Port Orford
2. Area median income in the city, town or urban neighborhood where the designated downtown district is located.  
The average household income in Port Orford is **\$30,296**.

Please consider approving this opportunity to avert a possible economic disaster.

Sincerely,  
Karen Auburn  
Director, Port Orford Main Street Revitalization Association

My opening line was: “I am not a great public speaker but I am going to imagine you are all cats sitting on chairs to see if it helps.” Then it went seamlessly as follows:

Planning Commission Notes for February 14, 2017, the Pacific Gales Application for the Effluent Pipeline

Good evening. First I would like to extend to the representatives of Pacific Gales my appreciation for this generous offering to our City. I understand that we are under time constraints in reviewing your application, so I have made my current questions and observations about the ambiguities in your application as brief and as succinct as possible.

I have the following concerns with regard to Decision Criteria:

City of Port Orford Municipal Code 17, Section 17.12.010

Residential, (A) the *Purpose of Classification*, C) the *Conditional Uses Permit*, and the subsequent *Findings*, on pg. 12.

- 1) My first area of concern in this section is the application’s assertion of a completely underground pipeline and that “the *Additional Standards governing conditional uses* in Section 17.32.050 therefore do not apply.” However this assertion is contradicted by the applicant numerous times in the application, for example in Section 17.32.050 findings 1-3, stating the *Preferred Pacific Gales pipeline Route* “would be attached to the Hwy. 101 bridge and suspended above the

wetland.” Additionally, the *Pacific Gale’s “Alternate Route”* along Madrona and the Port Orford Loop Rd. crosses a significant wetland and wetland outfall to Garrison Lake, approx. 1/8<sup>th</sup> mile from Hwy. 101, near the south end of the Port Orford Loop Rd. Importantly this was not even mentioned in the application. The latter in turn would require an elevated section of pipeline in keeping with Section 17.12.050, a *Controlled Development Zone*, to “recognize and protect natural resources,” including but not limited to, “wetland and watershed areas” and “water resources.” These statements by the applicant clearly contradict the applicant’s stated assertion of a completely underground pipeline, meaning that the terms of the pipeline application *would be* subject to the *Additional Standards governing conditional uses* in Section 17.32.050.

My second concern is in regards to Section 17.32.050, under Findings 3, pg. 15, wherein our staff reports that there is no definition of what constitutes “a structure” in the City Zoning Code. The applicant apparently uses this point to say that a pipeline and a pipeline attached to a bridge are *not* a structure and are not subject to various additional provisions of the City Zoning Code. I do not agree. I would argue that the pipeline is in itself a planned, purposed and specific structure and simply becomes a part of the structure of the Hwy. 101 bridge when suspended from it. In short, the lack of specificity about the general definition of the term

structure in the City Zoning Code does not mean a structure is not a structure.

- 2a) I also have a concern about the north and south ends of the Hwy.101 bridge previously mentioned. These locations are almost constantly the site of homeless encampments posing a pipeline liability issue. This is not accounted for in the Pacific Gales application. I believe the pipeline would require an armor sleeve or that the areas would require a substantial heavy gage fenced area and heavy padlock to prevent possible entry to this area and vandalism to the pipeline structure, as well as ODOT approval.
- 2b) Furthermore, I do not see an ODOT statement about the condition of the bridge and whether it will need to be upgraded within the next five to ten years, which would temporarily interrupt service for Pacific Gales and the City.
- 3) It appears that for the purposes of this application, Pacific Gales and our staff report have defined this pipeline project as a "*private utility*," in Section 17.12.010, pg. 12. However I have learned that Pacific Gales will only provide the City with a one year warranty for the project, stating that there "will be no *initial* cost to the taxpayer," but at what point does the taxpayer financial obligation begin? Under Section III, Pipeline Route CUP #16-03, Findings, pg. 19, the taxpayer financial obligation would seem to begin when Pacific Gales turns over to the City the responsibility for the pipeline components originating at the City's water treatment



plant. However it is unclear in the application whether this will include the entire pipeline within City limits or as it continues into the City's UGB. Therefore I am requesting clarification on the matter to find out if it includes the entire pipeline to the Knapp Ranch property. And if this *is* true, shouldn't we initially define the pipeline project as a "public/private utility?" The answer should be so stated in the application in order to be concise and for other legal purposes. Additionally, since the applicant broached the subject of "no initial taxpayer cost" in the application, I request some latitude in briefly discussing this. I would strongly note that any such transfer of the pipeline responsibility would shift the burden of costs and liability to the City, including, but not limited to, security, maintenance, damages, proper function, replacement parts, time, labor and equipment. Further, I find no estimate of what this cost might be to the City, and I am ever mindful of the burdens that our small public works crew must already contend with; also the eventual costs the taxpayer will incur for our current problematic water infrastructure, including the replacement of aging pump and lift stations and the drinking water and sewer lines, but I am also mindful of the City's indebtedness for the repayment of the loans for our two sewer treatment plants.

- 4) The City's participation in the pipeline project may also establish an unintended land use precedent, as the pipeline is a cherry stemmed water infrastructure project extending into

the UGB. In this regard we will need to consult with our land use attorney. Frankly, instead of adding to the City's burdens, I would rather have from Pacific Gales a binding and enduring statement guaranteeing in perpetuity, or even for 25, or 15 or 10 years, all costs in regard to the responsibility for this project. In any case, the City's costs and multiple other issues mentioned must be weighed in the balance.

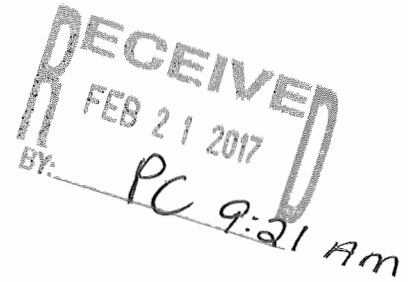
- 5) I can only say that thus far this evening, at the outset of this review of the Pacific Gales application, I am surprised by what I see and what I do not see, about what has and has not been presented to the City Planning Commission for consideration. Based upon the application as it stands, being incomplete, poorly written and containing numerous unanswered questions, misstatements and staff requests, I would advise the applicant to request a continuance.

John Roorbach, Planning Commissioner, City of Port Orford,  
2/14/17.

Exhibit P

February 20, 2017

To: Planning Commission  
City of Port Orford  
Patty Clark



Re: Conditional Use Permit Applications #CUP 16-02 and 16-03  
Elk River Property Development, LLC

Dear Commissioners,

I submit this letter in connection with Conditional Use Permit applications submitted in connection with the proposed Pump Station and Pipeline for the use of effluent on the Pacific Gales Golf Course.

I am a resident of Port Orford and after reading the submitted application packet I have several concerns that I feel were not addressed in the applications.

My first concern is noise emanating from the proposed Pump Station. The application states that the Booster Pump in the Pump Station will generate noise. It will be in an insulated structure constructed with materials similar to those used in standard residential construction. However, most residential construction does not use materials that would soundproof a Pump Station.

At the hearing, the applicant stated that there would be no other pump stations along the route from the proposed Pump Station on 12th Street to the golf course. The proposed pipeline is several miles long. I am not an engineer but it seems it would require a substantially large pump to move the water from the Pump Station through the City along the proposed route for the trip out to the golf course. But there is no information in the application of the size of the pump, the noise that it will generate, the insulation plans beyond standard residential materials, etc.

Also, there is nothing in the application about the operating hours of the Booster Pump. Sound carries at night in this town. I live down the street from where this Pump Station is planned and I do not want to be kept awake at night listening to pumping noises.

At the hearing, in response to the concern about noise, the applicant stated that the City's wastewater treatment plant currently pumps effluent into the ocean. However, the Pump Station will be located on 12th street at a higher elevation than the treatment plant. The acoustics will be different.

The Pump Station is to be located in a residential neighborhood. The potential for this Pump Station to substantially and unreasonably interfere with the residents' use and enjoyment of their property must be assessed.

Another thing that I feel is not addressed adequately in this application is how the pipeline is going to be installed up 12th street and up Idaho. The application states that the pipeline will be placed underground through the use of horizontal boring and trenching on the public right of way.

That is all it says on this issue. It does not address where on the street the trenching will be done. If it is close to our properties, my concern is that this boring and trenching could damage tree roots.

We have a lot of beautiful trees along the road and care needs be taken when this kind of work is carried out not to damage them. Trees are more vulnerable than many people realize and trenching and boring can cause extensive root damage which in turn affects the tree's stability and survival.

I would like to see the protection of our trees addressed. I'd like to know that someone is paying attention and monitoring this issue.

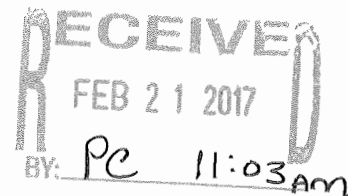
Finally, I am concerned about the potential costs and liabilities to the City that may then be passed on to the residents in the form of taxes or higher utility bills.

Very truly yours,

Christine Roney

Exhibit Q

Dana S. Gurnee  
P.O. Box 276  
Port Orford 97465  
(541) 253-1334 / danag17@saber.net



February 21, 2017

City of Port Orford Planning Department  
City of Port Orford Planning Director  
City of Port Orford Planning Commission  
P.O. Box 310  
Port Orford, OR 97465

Re: Applications for Conditional Use Permits 16-02 and 16-03  
(For an effluent pipeline to one or another city boundary)

Dear People:

I write you about the matter above. I attended the Planning Commission meeting on February 14, 2017; I reviewed the staff report on this application; and I have followed this matter for many months. Based on these experiences, I ask that the commission add every single condition to the proposed project that was suggested by the staff report. I believe that these are minimal conditions and well within the rights of the city and its citizens.

In addition to these staff conditions, I request the following.

1. A "courtesy notice" that the Port Orford Planning Commission expects to be involved at the initial stage of Curry County's consideration of an extension of this proposed pipeline to a proposed golf course in Curry County territory. Such involvement would be permitted, if not required, by the Joint Powers Management Agreement of 1978. There was considerable discussion of this at the February 14 meeting, but no mention that I recall of the recent "yoga-studio

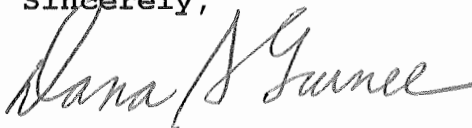
matter," in which the JPMA did in fact affect the final decision. As I recall, the Curry County Planning Commission itself notified Port Orford's Planning Commission of the latter's need to weigh in first. So the same thing could happen with an application to continue a pipeline from Port Orford's boundary.

2. In accordance with another citizen's concerns, some conditions on how horizontal boring will consider nearby trees, so that trees are less likely to topple from their roots being damaged by such boring, and that financial damages resulting from such tree impacts will be borne by the applicant.

3. In accordance with the city's dark-sky ordinances, conditions on night lighting so that the proposed pump station, on paper, well complies with those ordinances.

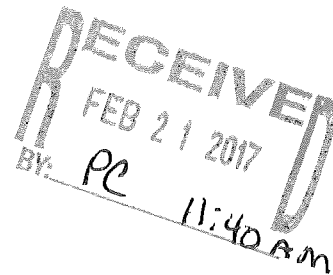
To conclude, I wish to thank you all for your hard work!

Sincerely,

A handwritten signature in cursive script that reads "Dana S. Gurnee". The signature is written in dark ink and is positioned below the word "Sincerely,".

Dana S. Gurnee

Exhibit R



February 19, 2017

Ric Bristow  
92500 Silver Butte Rd.  
Port Orford, Or. 97465

Port Orford Planning Commission:

RE: Application Nos. PO CUP 16-02 and 16-03

I have concerns about the decision criteria established for this hearing and lack of information regarding the pipeline and reservoir in the Urban Growth Boundary.

The Urban Growth Boundary Joint Management Agreement (10/10/78) is part of the criteria:

The Port Orford Comprehensive Plan, Goal #2 Land Use Planning, states: (1) Factual base for decisions. (2) The Comprehensive Plan is the basis for land use decisions and actions. (5.) Coordinate with Curry County regarding Public Facility extensions. And (6) Coordinate with Curry County on development within the UBG as set forth in Urban Growth Joint Management Agreement.

Goal #14 Urbanization (POCP) states: (5) Coordinate development with Curry County within the Urban Growth Boundary as set forth in the Urban Growth Boundary Joint Management Agreement.

Since the applicant has not provided any factual information for the proposed pipeline or reservoir in the UBG, the applicant is not compliant with Goal #2 or Goal #14 of the Port Orford Comprehensive Plan or the Urban Growth Boundary Joint Management Agreement.

In the wastewater discharge permit (101001) Schedule A (4) Groundwater: No activities may be conducted that could cause an adverse impact on existing or potential beneficial uses of ground water. All wastewater and process residuals are to be managed and disposed in a manner that will prevent a violation of the groundwater quality rules. (OAR 340-040) Groundwater Quality Protection

The proposed use is to build a 7 acre impervious impoundment with over flow, irrigating 90 acres of golf course, utilizing 30 million gallons per year of wastewater. This site is located west of the closed Port Orford Land Fill, on the northwest portion of the Garrison Lake Watershed and approximately 4000 feet north of Garrison Lake, the city of Port Orford's secondary water source.

In 1994, Curry County established Environmental Hazard Zoning Restrictions for the Landfill site and surrounding area and ordinance 94-16, after conducting an Endangerment Assessment of the Landfill Leachate on groundwater resources. The county is required to notify the Department of Environmental Quality and Oregon Water Resources Department of any proposed development within this area.

The assessment identified the leachate plume migrating in a south and southwestern direction in the ground water. The plume is presently monitored by the Department of Environmental Quality with samples from test wells.

Between the proposed wastewater reservoir and the western side of the Landfill is an unnamed ephemeral stream channel approximately 20 feet deep. This channel is the primary drainage for the Garrison Lake Subbasin A and serves to conduct surface water run off to the lake.

Any leakages or spills from the reservoir, piping or overflow would drain down the ephemeral stream channel directly to the lake.

The present usage of the groundwater is residential wells to the east and south of this site.

Ground disturbing activities, creation of large impervious areas and irrigation can alter hydrologic conditions and be a conduit for contamination.

Without presenting engineering or a hydrogeological assessment the applicant is not in compliance with the wastewater discharge permit or Port Orford Comprehensive Plan, Goal #6 Air Water and Land Resource Quality.

In conclusion: The applicant has not provided factual information to protect groundwater quality and both applications should be denied.

Sincerely,

A handwritten signature in black ink, appearing to read "Ric Bristow", written in a cursive style.

Ric Bristow



Exhibit 5

Feb. 21, 2017



To: Port Orford Planning Commission Members  
Re: Effluent pipeline proposal CUP 16-02/ CUP 16-03

Dear Port Orford Planning Commission members:

We are writing with concern about the two pending proposals for a pipeline that would carry sewage effluent from Port Orford north of our town toward the proposed Pacific Gales golf course, and we appreciate the opportunity to provide you with written comments since we were unable to attend your public hearing last week.

More specifically, the proposals before you are for only one-half of the pipeline, and so the city has no way to know about the remainder of the route or how the pipeline terminus will function beyond city limits. This raises important questions and concerns since, with approval of the pipeline, the planning commission will, in effect, be making the city liable for the consequences of this approval. Without a clear understanding of the remaining pipeline route and how its terminus will function, how can the Port Orford planning commission make a credible evaluation of this proposal?

**Piecemeal Planning Process, Port Orford Citizens deserve better**

We are concerned that the planning process for this one-half pipeline reflects a piecemeal approach to addressing a significant development to our city's north.

The developer intends to develop a high-end golf course and also high-end housing on properties proximate to the landfill and also likely adjacent to the Knapp Ranch. The full scale of this proposed development has grown over the past two years, and is still unknown. Yet we know it is now large enough to **warrant a broader and more holistic planning effort to look at the many matters, such as water supply, wastewater treatment, traffic, and utilities, that could have a significant effect on the area in the UGB north of our city.**

Because our City Council and County Board of Commissioners want to encourage economic development, we fear they have thus far neglected to require the developer to show a complete plan so that a thoughtful and holistic planning process could be possible. In addition, we are concerned that, in decisions to date, the potential liabilities to the city remain unclear. The city has chosen to give the developer the benefit of the doubt, and yet any professional developer should be willing to put forth a complete plan and clear vision in a legitimate public planning process for the benefit of the public interest.

Port Orford citizens deserve a credible and robust planning effort for a multi-faceted project that could have such a significant impact on our city.

**Port Orford citizens should incur no costs or liabilities of any kind from this project**

In the case of the pipeline proposals before you, there remains a lack of clarity about if and when taxpayers will assume responsibility and liability for the pump house and portions of the pipeline.

For example, the planning staff report indicates that the “The proposed pipeline can originate in the 8-PF zone in that the applicant indicates that the City will accept ownership of the pipeline components that originate there.” (*Staff Report, p. 12*)

The planning staff report suggests it is appropriate “to condition use on this assumption.” (p. 12)

However, it is notable that city ownership of the pumphouse and pipeline portion originating in zone 8-PF is NOT specified in the recent amendment to the City Wastewater Plan adopted in July 21, 2016 (Port Orford Ordinance 2016-03). Does that mean THIS particular city planning approval process is the official decision point for the city assuming ownership of the pump house? Note also that the planning staff report states: “the applicant indicates the city will accept ownership,” but does this reflect an actual legitimate public agreement, vetted and decided upon by the city council?

Moreover, the staff report states in its findings (p. 15) that “there will be no recurring cost to the public,” and yet it is unclear what will happen to the pipeline if the golf course does not succeed. Will the city incur liabilities in this event? If desired, will there be a way for the city to purchase or obtain control of the pipeline as a secondary outfall?

And though Ordinance 2016-03 apparently seeks to limit the city’s liability into the future, if the city does assume ownership of a portion of this pumphouse and pipeline, it will clearly incur costs and liabilities owing to needs for ongoing operation and maintenance.

In addition, there is no explanation of the future relationship of the pumphouse property owner to the city. There is no clarity about who will pay the pumping costs (electricity) –and about if or when taxpayers will assume ownership and responsibility for costs of operation and maintenance of the pump house.

If the city is to enter into an agreement with Pacific Gales, these details need to be carefully hammered out –and subject to public scrutiny. Obviously, it’s difficult to agree to small and different pieces without consideration of a full plan.

We strongly urge Port Orford planning commission members to take on the important role of asking critical questions to make sure the city ratepayers and taxpayers will not be on the hook for expenses and liabilities in the future, especially if the proposed golf course does not prosper as the proponents promise.

The officials and citizens of Port Orford deserve to have a clear understanding of the agreements that are being considered.

#### **Unclear Whether Pump House and Pipeline are Public Or Private or a mix**

If ownership of the pumphouse/ pipeline complex will be shared between public and private entities with different priorities, how and by whom will future decisions be made? This needs to be clarified to avoid future liabilities to the city.

#### **Considerations for preferred pipeline route to traverse Garrison Lake and associated wetlands**

A portion of one of the proposed pipelines will cross over Garrison Lake and its associated wetlands. The lake is officially a secondary drinking water source for the city, and it seems that the exposed portion of

the pipeline, especially as suspended above the lake and wetlands, should require special conditions to protect public health and environmental quality.

From our city's aging water infrastructure, we know that leaks will become a problem in the future.

It is not clear how leaks in the pipeline will be detected and whose responsibility it will be to detect and repair them? Might there be a condition for special sensors in this portion of pipe that is suspended over the lake? Or for extra heavy gauge pipeline materials? In addition, this pipeline should be required to meet modern earthquake standards. If these concerns for public health and environmental quality cannot be properly addressed, then the alternate route should be considered, though it may well be that the alternate route will also transect wetlands in the upper portion of the Garrison Lake watershed.

### RECOMMENDATIONS

To ensure that the plan to pipe effluent to Knapp Ranch is a clear benefit for our city, the Port Orford Planning Commission must:

- 1) Request and review complete pipeline plans, not the partial plans as are presented.
- 2) Make approval of the Port Orford portion of the pipeline contingent upon approval of the portion of the pipeline within the UGB—one cannot exist without the other.
- 3) Participate in the planning process with the county for the portion of the pipeline within the UGB
- 4) Request that the county require a more complete planning process for the developments ancillary to the proposed Pacific Gales golf course in the Port Orford UGB area
- 5) Adopt ALL conditions recommended by the planning staff report, including all those delineated as "appropriate"
- 6) Follow up on questions raised at the previous Planning Commission hearing
- 7) Add special conditions to address concern for Garrison Lake's waters, earthquake and tsunami hazards, and/or consider alternate route
- 8) Take time to make sure all pertinent questions are answered before approving either pipeline route.

We thank you for considering my concerns and for your public service as planning commission members to our very special community, Port Orford.

Sincerely,

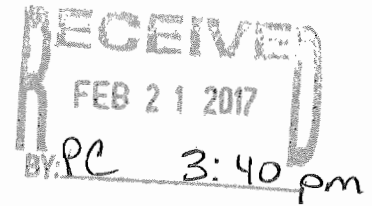


Ann Vileisis



Tim Palmer

608 Oregon St.  
Port Orford, OR 97465



**Sean T. Malone**  
**Attorney at Law**

259 E. Fifth Ave.,  
Suite 200-G  
Eugene, OR 97401

Tel. (303) 859-0403  
Fax (650) 471-7366  
seanmalone8@hotmail.com

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February 21, 2017

Via Email

Kevin McHugh, Chair  
City of Port Orford Planning Commission  
PO Box 310  
Port Orford, OR 97465

Re: ORCA Post-Hearing Comments, Application No. PO CUP 16-02 and 16-03

On behalf of Oregon Coast Alliance, please accept these supplemental comments on both application nos. PO CUP 16-02 and 16-03.

The applicant has two separate applications for approval of a pump station and pipeline that would deliver recycled wastewater from the City of Port Orford's wastewater treatment facility to the Pacific Gales Golf Course.

Piecemeal application process

The applicant is avoiding a comprehensive and cumulative view of the pipeline by submitting the applications in a piecemeal fashion. For example, the applicant has not even proposed a route for the pipeline with the County as of yet. Knowing where the pipeline will occur within the County is important to this application, as well as understanding the cumulative effect of the pipeline. As noted in prior testimony, it is unlikely that the County will approve the application because the applicant will be required to obtain a variety of exceptions, which is unlikely for a golf course. *See Foland v. Jackson County*, 61 Or LUBA 264, 314 (2010), *aff'd* 239 Or App 60, 243 P3d 830 (2010) (explaining that an exception to Goals 3, 11, and 14 would be required to place public facilities with urban levels of use on farmland); *Foland v. Jackson County*, \_\_\_ Or LUBA \_\_\_ (LUBA No. 2013-082, January 30, 2014). If the County portion is not approved and the City portion is approved, then the time and effort spent on this

application by the City will be for nothing, and the possibility that the applicant will have created some further financial liability for the City is likely.

#### The City risks making inconsistent findings

As noted previously, the applicant's alternative requests for approval will likely result in inconsistent findings. See *Larmer Warehouse Company v. City of Salem*, 43 Or LUBA 53, 59-60 (2002); *Spiro v. Yamhill County*, 38 Or LUBA 133, 138-140 (2000). As such, where inconsistencies between the two applications exist, the City must explain and resolve those findings.

#### The Planning Commission and ultimately the City Council can interpret "structure" to include the pipeline

The Planning Commission and, ultimately, the City Council can and should interpret the word "structure" to include a pipeline, and that interpretation will be upheld as long as it is plausible. See *Siporen v. City of Medford*, 349 Or 247, 266 (2010). In other words, the local government's interpretation will be afforded significant deference. *Id.* Because the pipeline is logically a structure and will be located in part in the 6-CD zone, this means that section 17.32.050(G) applies to this application. This will require the applicant to prepare a site investigation report at their own expense, which includes a grading or fill plan and erosion control methods, among other requirements. Most importantly, given the potential financial liability that the applicant is requesting the public assume for this application, the applicant has not demonstrated that it has satisfied 17.32.050(G)(3)(a)(iv), which allows a structure in the zone *only* if "a long-term recurring cost to the public is not incurred." The burden is on the applicant to meet this criterion.

#### The City of Port Orford is not immune from liability related to the pipeline

By assuming responsibility and ownership of the pipeline components, the applicant is essentially creating a future financial liability for the City. While the applicant alleges that there will be "no initial taxpayer cost," it remains to be seen how much financial liability the City and/or the taxpayers will assume in order to provide effluent to a golf course. The continuing costs can include ongoing maintenance, damage from vandalism, replacement, time, labor, and so forth.

Commissioner Roorbach raised an important issue, which is: how much will this cost the city over time? Again, this pipeline is intended to benefit a golf course, but the City will eventually be required to pay for and maintain the pipeline. The City should not

take upon itself the financial burden of the proposed golf course's irrigation system. Doing so would be unfair to the City's constituency, and be a long-term financial liability that the city will have created for its taxpayers. This is not prudent financial management on the part of city decision-makers.

If the effluent is a valued commodity that the City has control over, then the City should use that effluent to reduce the City's other financial liabilities instead of the proposed give-away to the golf course proposed for Knapp Ranch far outside city limits.

#### The applicant has failed to seek ODOT approval

The applicant acknowledges that "[t]he pipeline will simply be suspended along the existing State Highway 101 bridge." However, the applicant has not demonstrated that it has received or will acquire the necessary authorizations or permits from ODOT. In communication to the Planning Commission about these two applications, John McDonald of ODOT (February 8, 2016), stated, "If the pipeline enters, crosses or runs in state right of way, the applicant will be required to secure a permit, and submit all engineering plans to ODOT to ensure they meet state requirements for placement and cover." The applicant has not even begun this ODOT review process for any portion of the project, including the potential Highway 101 bridge crossing, and it is not clear that ODOT would authorize it.

#### The pipeline is not a public utility and the applicant cannot satisfy the applicable criteria

Transmission of "effluent" is not a listed use for a public utility, *see* ORS 727.005, and, therefore, the applicant cannot claim to satisfy criteria that apply to public utilities. The controlled development zone (6-CD) has no provision for allowing a private utility and it has been demonstrated in prior testimony that the pipeline is not a public utility. As such, the applicant has not satisfied, and cannot satisfy, section 17.12.050, which lists public utility facilities as a conditional use. As noted previously, the Planning Commission (and ultimately the City Council) may and should interpret its provisions to plausibly not recognize the pipeline as public utility, since it does not meet statutory criteria for a public utility.

#### Testimony from Ms. Auburn raises the issue of ex parte contacts and bias

Ms. Auburn has submitted several pieces of testimony in favor of the application. Ms. Auburn is apparently related to a member of City Council, and her advocacy for the application raises issues as to whether a potential decision-maker is biased in favor of approving the application. If Councilor Auburn is an eventual decision-maker, then all

ex parte contacts and potential biases must be disclosed, and raises the issue of whether Councilor Auborn should be recused from considering this application.

ORS 273.761 requires a 25-foot right of way on each side for the pipeline

The applicant has not demonstrated that it has satisfied the requirement under ORS 273.761 for a 25-foot right of way on each side of the pipeline. The applicant alleges that the pipeline is for irrigation, and, therefore, the applicant must satisfy the right-of-way requirements of ORS 273.761. The applicant may not simply ignore these requirements.

The City is not required to determine that the proposal is of a similar use, pursuant to 17.08.030

The applicant alleges that the pipeline is a private utility use, which is the same general type as the public utility uses listed in the code. However, there is no such public utility use for carrying effluent for irrigation or any other purpose, and the Planning Commission (and ultimately the City Council) can and should interpret 17.08.030 and 17.12.010 to find that an effluent pipeline is not “the same general type” of use as a public utility. This decision will be afforded significant deference if challenged.

The application omits key information

The applicant’s agent admitted that he is unaware of the type or durability of the pipe material. While the applicant need not design the pipeline before approval, the applicant must set forth some factual information to satisfy applicable standards. For example, 17.32.010 provides that “the council may impose conditions in addition to the provisions set for uses within each zone in order to protect the best interests of the surrounding property, the neighborhood or the city as a whole.” Conditions that would carry out this provision cannot be formulated until the City has some of the basic information necessary, including the durability of the pipeline.

The applicant has not yet acquired an approved Recycled Water Use Plan

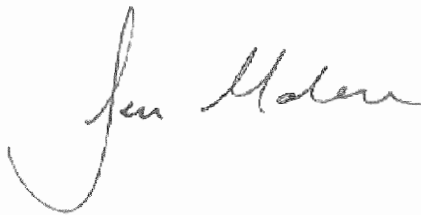
This application is premature because the applicant has not even received authorization for its proposed use, which is central to the pipeline. Again, much like the authorization that the applicant has not yet sought from the County, the applicant must also obtain an approved Recycled Water Use Plan from DEQ, and a Water Pollution Control Facilities (WPCF) permit, neither of which have been secured since the applicant’s September 2015 application. As conceded by the applicant’s agent at the hearing, the applicant has no permission to even place effluent on the subject property.

Cherry Stem Infrastructure

Commissioner Roorbach identified an issue related to “cherry stemmed water infrastructure project.” The issue is that the applicant is seeking to extend urban infrastructure outside of the City, which will require certain statewide goal exceptions be sought during application for the portion of the pipeline in County jurisdiction. *See Foland v. Jackson County*, 61 Or LUBA 264, 314 (2010), *aff'd* 239 Or App 60, 243 P3d 830 (2010) (explaining that an exception to Goals 3, 11, and 14 would be required to place public facilities with urban levels of use on farmland); *Foland v. Jackson County*, \_\_\_ Or LUBA \_\_\_ (LUBA No. 2013-082, January 30, 2014). An exception would be difficult to satisfy under any circumstances, but, for a golf course, it would most likely be impossible. *See* ORS 197.732 *et seq.* Furthermore, the cherry stem pipeline infrastructure through the UGB out onto farmland may well pave the way for an eventual cherry stem annexation attempt into Port Orford in the future. Port Orford can and should weigh the policy and financial liabilities of such a possibility.

For the above reasons, ORCA respectfully requests that the Port Orford Planning Commission recommend denial to City Council of both applications.

Sincerely,

A handwritten signature in cursive script that reads "Sean T. Malone". The signature is written in black ink and is positioned above the typed name and title.

Sean T. Malone  
Attorney for ORCA

Cc:  
Client



**Patty Clark**

---

**From:** laurie prouty [laurieprouty@gmail.com]  
**Sent:** Sunday, February 26, 2017 10:56 AM  
**To:** patty@portorford.org  
**Subject:** Pipeline



Dear Panning Commission,

My name is Laurie Prouty and I live at 1035 13th St. We also own property on the corner of 12th and Wyoming. We currently have a greenhouse and shop on that property. It is directly across from the proposed lot that the pump station is planning on being built. I was at the last meeting and I heard that there would be no external noise from the station. That would be wonderful but I would like a guarantee in a written statement that there will be no noise and have it written that if there is any noise, they will correct the situation. Until something is actually built and running, we do not know what the outcome will be.

I am also concerned about the effect of the watering of the effluent waste water into the ground water and eventually into the fresh water rivers. I am glad for it not to be going into the ocean but I am just wondering how the rivers can handle it versus the salt water ocean.

Thank you for your concern,  
Laurie Prouty  
1035 13 th  
Port Orford, OR 97465

Exhibit V.

RECEIVED  
FEB 28 2017  
BY: PC 1:15 AM

February 27, 2017

From: Penny Suess, P.O. Box 276, Port Orford, OR 97465

To: Kevin McHugh, Chair  
City of Port Orford Planning Commission, P.O. Box 310, Port Orford, OR 97465  
via e-mail

Re: Effluent pipeline proposals CUP 16-02 / CUP 16-03

After reviewing the proposals and attending the hearing on February 14, it is clear to me that this pipeline application leaves many, many questions unanswered. Both of the alternative routes are merely sketched out, and they fail to delineate any connection from the boundaries of the City of Port Orford to the proposed golf course. The applicant's planner, Mr. Hood of Stuntzner Engineering, stated at the hearing that they have not yet engineered the project, and therefore he could not supply crucial technical details. There were multiple requests for basic information, from the specifications of the pipe material, to drilling methods, to the relationship of buried and aboveground portions of the line. One wetland area was discussed by the applicant, but when Hood was asked if they had consulted a wetlands map (presumably to identify all that might be in the pipeline's path), he answered in the negative. Because of this lack of clarity, a long list of conditions is required to ensure that the blanks get filled in at some unknown later date. Yet they are asking for approval now.

I am particularly concerned about the application of effluent to the golf course, which requires at a minimum a Water Pollution Control Facility (WPCF) permit from the Department of Environmental Quality (DEQ) and a Recycled Water Use Plan. Mr. Hood said at the hearing that they have receive no permission to apply effluent. In their CUP for the proposed golf course, no mention is made of using effluent. From past discussions at P.O. City Council meetings, I know that the applicant is aware of the need for such permits.

Before DEQ can issue the WPCF, however, Port Orford must provide a Land Use Compatibility Statement (LUCS). A LUCS for the pipeline was submitted a year ago, but that statement concerned an entirely different route. A new LUCS must be submitted and approved.

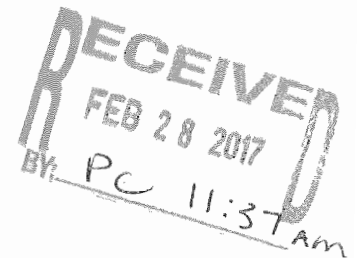
The Department of Land Conservation and Development has notified Curry County that a hearing must be held on alternatives to land application of wastewater, per ORS 215.246(3) and ORS 215.247. This has not been done. Nor has the applicant provided evidence that the Oregon Department of Water Resources has granted a water right for use of recycled water (OAR 340-055-0017(4)).

**Consequently, I believe that the abovementioned application should be withdrawn until Elk River Property Development can provide the Planning Commission with an adequate description of the totality of its pipeline project, including compatibility with zoning, and all necessary permits for transporting, storing, and land application of effluent.**



Exhibit W

City of Port Orford  
Planning Commission



February 27, 2017

Re: Pacific Gales proposed pipeline

Planning Commission Members:

Thank you for the opportunity to comment on the Conditional Use Permit (CUP) process regarding the Elk River Property Development's (ERPD) proposed effluent pipeline. I am a Port Orford city resident and own a home and lot on Hamlet Street. I have several concerns and questions regarding the proposal.

The CUP request states "horizontal drilling" or directional boring, will be employed except in "some locations." Have all of the above ground locations been identified?

The equipment used in horizontal drilling is extremely heavy, run on tracks, tending to damage the area below them and the roads in transit. The Department of Environmental Protection "recommends owners of surface rights seek legal advice and negotiate with drilling companies for location of access roads and drilling equipment and a reasonable price for damages." Has the Planning Commission taken these risks into account? What action will be taken if damage to streets and land occur?

Horizontal drilling uses water. How much water is required and what will be the source? Drilling fluid is often bentonite clay and water. However other chemicals may be added in the process. Regardless, drill cuttings and spent drilling fluids must be properly managed to prevent storm damage erosion and runoff from entering wetlands, stream or other waterbodies. Is there a plan to mitigate this risk?

I saw no mention of drilling pilot holes along the proposed path which is common practice. Will pilot holes be necessary and if so where?

Do we know how long the drilling will last? Is it weeks, months or years? It is my understanding, the drilling creates tremendous noise. This will adversely impact city residents who live in the area. Has the commission taken this into consideration? Is there a noise abatement process?

Has a geologic hazard assessment been conducted? Have tsunami and earthquake risks been evaluated and requirements met? What material is pipe made of?

What is the status of the bridge over Hwy 101? ODOT has not provided authorization for this segment of the proposal. It seems necessary to have this information prior to approving the CUP.

Mr. Roorbach's concerns regarding liability and costs once the pipeline is ceded to the City is extremely important. What happens if Pacific Gales declares bankruptcy or dissolves? Is the city left to shoulder the expenses associated with the pipeline? Ultimately the costs will be transferred to city ratepayers. Port Orford residents already pay high rates for sewer. As a city, we cannot afford this risk.

It is not clear to me why two CUP's. Why the request for approval of both permits. The request states only one line would be built. Would the approval of a second line subject the city future obligation and costs?

It seems unwise to approve a project when we do not have the entire picture. ERPD has not sought county approval nor have they provided us with a plan of the entire project. There are many issues associated with the proposal and a myriad of unanswered questions.

I ask that the Planning Commission not approve both of the Conditional Use Permits submitted on behalf of Elk River Property Development.

Respectfully,



Sara Lovendahl  
31 Hamlet St  
Port Orford, OR

Exhibit X

**LAW OFFICE OF BILL KLOOS, PC**

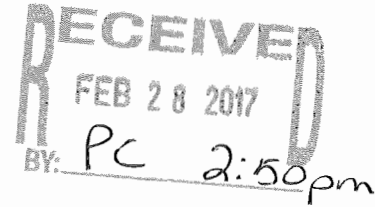
OREGON LAND USE LAW

375 W. 4TH AVE, SUITE 204  
EUGENE, OR 97401  
TEL: (541) 912-5280  
FAX: (541) 343-8702  
E-MAIL: NKLINGENSMITH@LANDUSEOREGON.COM

February 28, 2017

Port Orford Planning Commission  
555 W. 20th St  
PO Box 310  
Port Orford, OR 97465

Submitted via email to: Terrie Richards [trichards@portorford.org](mailto:trichards@portorford.org)  
Shala Kudlac [bandonlaw@gmail.com](mailto:bandonlaw@gmail.com)  
Patty Clark [patty@portorford.org](mailto:patty@portorford.org)



Re: CUP application for pump and pipe to deliver recycled wastewater  
Applicant's evidence for "rebuttal" period

Dear Members of the Planning Commission:

Please find attached the rebuttal evidence that the applicant is submitting in order to address some of the factual issues raised in the "open record" period. The new evidence consists of the following:

Written testimony from Troy Russell on the subject of pipeline design, construction, durability, pump sizing, and noise. This testimony is based on Mr. Russell's correspondence with commercial pump vendors and manufacturers, as well as his decades of experience in farming and golf course irrigation. This testimony responds to concerns raised by some of the letters submitted during the "open record" period. This letter includes reference materials on the subject of pipe material durability, water hammer, and pump motor noise.

The applicant's "final written argument" will contain comprehensive responses to all of the legal issues that have been raised in this proceeding. Thank you for considering these additional materials.

Sincerely,

A handwritten signature in black ink that reads "Nick Klingensmith". The signature is stylized and cursive.

Nick Klingensmith

cc: clients

Sean Malone

[seanmalone8@hotmail.com](mailto:seanmalone8@hotmail.com)

**Summary of specifications and operating characteristics of proposed pump and pipeline facilities**

This letter provides a summary description of the proposed pump and pipeline facility being considered by the Port Orford planning Commission in CUP #16-02. This evidence responds to questions submitted during the open record period that requested additional information about the design of the proposed facility, size, durability, and potential to generate noise.

**Assumptions:**

The Port Orford wastewater treatment facility (WWTF) produces an average of 100,000 gallons of treated wastewater per day, with an average constant flow rate of 69.4 gpm.

Treated wastewater will flow from the WWTF to a 6' diameter wet well, equipped with submersible pump.  
The submersible pump will pump treated wastewater uphill approximately 15' to the pump station.

The pump station, and storage tank(s), will be contained within an approximate 20' square, insulated building.  
Pump that will deliver 200 GPM  
Storage tank of approximately 10,000 gallons, placed inside 20' square building.

Approximately 13,243 lineal feet of 6" HDPE DR11 pipe (with purple stripe) will be installed along the route.  
The pipeline will have a backflow prevention device installed just after the pump station.  
Increase in elevation of 85 feet along the route.  
The pipe will have an open discharge to the reservoir.  
Pipeline pressure will only be enough to overcome elevation and friction loss.  
System will only be fully pressurized (approximately 85 psi) while the pump station is in operation.

**Calculations**

As shown in the site plan submitted with the original application, a small submersible pump in the wet well adjacent to the WWTF will move recycled wastewater to the storage tank. When the storage tank is filled, a second pump in the pump house will charge the pipeline and deliver water to the golf course. The 10,000 gallon tank will be filled by the submersible pump in 144 minutes. The booster pump would start and, while it is operating simultaneously with the submersible pump, will reduce the storage tank by an average amount of 130.6 GPM (200 – 69.4 GPM). The tank would be empty in 76.5 minutes and the pump would shut off until the tank filled again.

Pressure losses in system at a flow rate of 200 GPM.	
Loss due to elevation 85 feet or	36.6 PSI.
Loss due to friction loss in pipe (6" HDPE DR )	29 PSI.
Fittings and misc. pressure loss	<u>20 PSI.</u>
Total Loss.....	85.6 PSI

These calculations show the 200 GPM delivery rate, with a discharge pressure of 85.6 PSI, would require a pump with approximately 15 horsepower.

**Comments**

The HDPE DR11 pipe will be fused together, and it has an expected service life of 50-100years. (1)  
HDPE pipe has a fatigue life of 10,000,000 pump cycles, or in excess of 100 years. (1)  
A fusion joined pipeline may be thought of as a continuous pipeline without joints.

When installing 6" HDPE pipe, the horizontal borings may reach as long as 1000 lineal feet.  
The length of the horizontal borings is equivalent to the distance between street disturbances.  
The pipe will be placed at an average depth of approximately 3.5 feet, where it will be below the vast majority of tree roots. The Oregon State University extension service bulletin called "Tree Protection on Construction and Development Sites" states that "most of a tree's roots are within the top 18 inches of soil," and it recommends tunneling (or boring, as we are calling it here) as opposed to trenching. (2)  
More importantly, the pipe will be placed inside public rights-of-way, primarily under existing paved

surfaces, where tree roots are rarely found, given that paved surfaces prevent rainwater from percolating through the soil. Accordingly, the pipeline will have no impact on tree roots or overall tree health.

The pump will have motor controlled by Variable Frequency Drive (VFD).

A VFD allows the pump to ramp up to pressure, and back down gradually.

The combination of VFD, and open discharge pipe will virtually eliminate any 'water hammer'. (3)

The pump station has an unshielded Db rating of 72, at a distance of 3', inside the insulated building.

When housed inside an insulated "sound attenuated" building, the outside Db will drop to < 40 Db, when measured at a distance of ten feet from the wall of the building. (4) As distances increase from the point of noise generation, the noise is dissipated into ambient background noise. This is especially true when the point of noise generation is shielded by trees or topography.

The ambient noise at a similar sized City of PO booster station was recently measurement at 43 Db, outside. (5) That measurement includes the sound of the pump, as well as other background noises, including traffic, wind, etc.

#### **References (attached)**

- (1) Plastic Pipe Institute technical notification – 27, November 2009
- (2) Excerpt from Oregon State University extension service bulletin "Tree Protection on Construction and Development Sites - <http://ir.library.oregonstate.edu/xmlui/bitstream/handle/1957/13729/EM8994.pdf>
- (3) Pumps & Systems – Water Hammer (part two): Causes and Variables p 3
- (4) Watertronics letter regarding expected Db level of pump station
- (5) Image of recent sound meter test of PO pump station at Coast Guard Hill Rd.

**PPI TN-27: Frequently Asked Questions HDPE Pipe for Water Distribution and Transmission Applications**  
 Foreword This report was developed and published with the technical help and financial support of the members of the PPI (Plastics Pipe Institute, Inc.). The members have shown their interest in quality products by assisting independent standards-making and user organizations in the development of standards, and also by developing reports on an industry-wide basis to help engineers, code officials, specifying groups, and users. **The purpose of this technical note is to provide answers to commonly asked questions about use of HDPE (high density polyethylene) piping systems for water applications.** This report has been prepared by PPI as a service to the industry. The information in this report is offered in good faith and believed to be accurate at the time of its preparation, but is offered without any warranty, expressed or implied, including WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. Any reference to or testing of a particular proprietary product should not be construed as an endorsement by PPI, which does not endorse the proprietary products or processes of any manufacturer. The information in this report is offered for consideration by industry members in fulfilling their own compliance responsibilities. PPI assumes no responsibility for compliance with applicable laws and regulations. PPI intends to revise this report from time to time, in response to comments and suggestions from users of the report. Please send suggestions of improvements to PPI. Information on other publications can be obtained by contacting PPI directly or visiting the web site.

The Plastics Pipe Institute, Inc. <http://www.plasticpipe.org>

November 2009

PPI TN-27: Frequently Asked Questions

HDPE Pipe for Water Distribution and Transmission Applications

#### INDEX

**Page A. General 3 B. Engineering Properties & System Design 4 C. Joining 8 D. Installation 11 E. Maintenance & Repairs 12 F. Costs 14 G. Case Histories 14 H. Miscellaneous 14**

Q. 9 Why is a fusion joint better than a gasket joint? **A fusion joined pipeline may be thought of as a continuous pipeline without joints.** On the other hand, gasket joints are a potential source of leakage and lost water in many water systems. Leaks may occur if the gasket is improperly installed, if dirt or grit sticks to the gasket, if the gasket is not properly lubricated, if negative pressure (vacuum) occurs in the pipeline, if ground movement or sub-trench consolidation occurs, if significant thermal change occurs and if gaskets are blown out due to surge pressures. Fused joints are far superior to gasket joints for leak prevention.

Q. 13 Why is there a difference in pressure rating (PR) and working pressure rating (WPR) when comparing HDPE pipe and PVC pipe? The term pressure rating (PR) refers to the static pressure rating of the pipe, calculated from the hydrostatic design basis (HDB) with an appropriate design factor (DF) and is for a pipeline with no flow. However, all municipal water systems involve flowing water. For example, HDPE (PE4710) DR 17 pipe has a static pressure rating for water of 125 psig. The working pressure rating (WPR) is based on actual system requirements and is a dynamic pressure rating, that is, a pressure rating for pipe with flowing water. The WPR includes an allowance for water hammer surge pressures. At a daily recurring average flow surge velocity of 5 fps and at 80o F, the working pressure rating of HDPE (PE4710) DR 17 pipe is also 125 psig; similarly, the working pressure rating for PVC DR 18 is 120 psig per AWWA C900-07, Equation 4. As such, PE 4710 has a higher working pressure rating than PVC at these common conditions. A summary is shown below: Working Pressure Rating (WPR) for HDPE and PVC per answer to Q. 13 WPR for PVC DR 18 per C900-07 WPR for PE 4710 DR 17 per C901-08 120 psig 125 psig 5 Also, based on AWWA C900-07, Example B.2 modified with 5 fps recurring surge velocity, the estimated number of cycles to failure for the DR18 PVC pipe is less than 1 million cycles and the Fatigue Life is about 20 years which is less than half of the 50 year Design Life that was required in the example; in



addition, the assumed 55 cycles per day may not be adequate; assuming 1 surge cycle every 15 minutes (96 cycles per day) and the 5 fps recurring surge velocity results in a Fatigue Life of about 11 years. On the other hand, IGN 4-37-02, "Design Against Surge and Fatigue Conditions for Thermoplastic Pipes", can be used to show that under the same conditions, **an HDPE DR17 pipe has a fatigue life of 10,000,000 cycles or in excess of 100 years.** This striking difference is due to HDPE's toughness and fatigue resistance.

Q. 18 What is the life expectancy of HDPE pipe in water applications? Many installations of HDPE pipe in water applications are already reaching 50 years of successful service. **The polyethylene pipe industry estimates a service life for HDPE pipe to conservatively be 50-100 years.** This relates to savings in replacement costs for generations to come.

Q. 22 What is the maximum water pressure rating for HDPE pipe? The maximum rating depends on several factors, the material designation code from which the pipe is made, the DR of the pipe, and the design operating temperature of the application. Refer to the tables below for sample ratings and allowable pressures: The following table gives the Pressure Class per AWWA C901-08, the Pressure Rating and Allowable Total Pressure During Surge for PE4710 pipe at 80o F. Sample Pipe Dimension Ratio (DR) Pressure Class Pressure Rating Allowable Total Pressure During Recurring Surge Allowable Total Pressure During Occasional Surge DR 9 250 psi 250 psi 375 psi 500 psi DR 11 200 psi 200 psi 300 psi 400 psi DR 17 125 psi 125 psi 185 psi 250 psi The following table gives the Pressure Class per AWWA C901-08 and AWWA C906-07, the Pressure Rating and Allowable Total Pressure During for PE3608 pipe at 80o F. Sample Pipe Dimension Ratio (DR) Pressure Class Pressure Rating Allowable Total Pressure During Recurring Surge Allowable Total Pressure During Occasional Surge DR 9 200 psi 200 psi 300 psi 400 psi DR 11 160 psi 160 psi 240 psi 320 psi DR 17 100 psi 100 psi 150 psi 200 psi Q. 23 What is the safe peak pressure (surge plus pumping) for HDPE pipe? AWWA C901 defines two types of surge pressure, recurring and occasional. **The safe peak pressure or allowed total pressure for HDPE pipe is 1.5 times the pipe's pressure rating for recurring surge, and 2.0 times the pipe's pressure rating for occasional surge.** For instance a DR 11 PE 4710 has a pressure rating of 200 psig at 80o F and can safely handle total pressure during recurring surge of 300 psig and total pressure during an occasional surge of 400 psig. Refer to the answer under Q. 22 for additional data.

Q. 26 How does HDPE pipe's capacity for recurring surge pressures (fatigue) compare to other pipes? HDPE has exceptional capacity for handling recurring surge pressures. For example, in AWWA standards recurring surge pressure must be subtracted from PVC pipe's Pressure Class whereas PE has resistance up to 150% of its Pressure Class. Marshall and Brogden report on the cyclical fatigue strength of PVC and HDPE and their report shows, at a cyclical stress range of 10 MPa (1450 psi) some PVC pipes failed at approximately 400,000 cycles whereas **HDPE pipe reaches 10,000,000 million cycles before failure.**

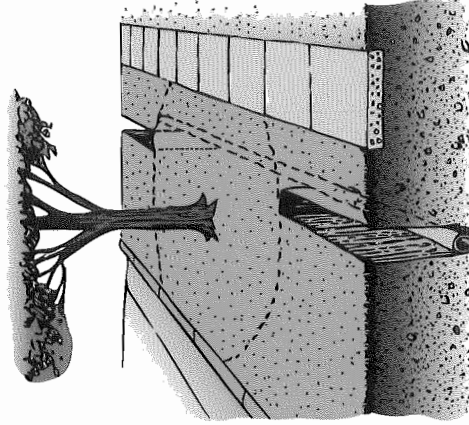
Q. 33 How are HDPE pipe segments joined and connected? HDPE pipe is easily and dependably joined using the standardized butt-fusion procedure. In this process matching ends of the pipes to be joined are aligned and heated with standard tools until the surfaces have become molten. When engaged under moderate pressure, the melt faces flow together forming a monolithic, homogeneous joint that, as the material cools, yields **joints that are as strong as or stronger than the pipe itself.**

- Plan grade changes well in advance of construction using the appropriate method to prevent injury to desirable trees.
- Use retaining walls or terraces to avoid excessive soil loss in the area of greatest root growth.
- Spread mulch over the exposed root area when possible to help prevent soil erosion, reduce moisture loss, and keep soil temperatures lower.
- Provide supplementary water when rainfall is less than 1 inch per week.
- Prune roots to prepare the tree for root loss due to grade lowering. Root pruning is best left to an experienced professional who can take into account the variables necessary to reduce the stress of the pruning to the tree.

ingly; such realignments are not the responsibility of the construction crew.

BMPs for trenching include the following:

- Protect the trunks of high-value trees from scraping and gouging to a height of at least 8 feet.
- Keep equipment and excavated backfill on the side furthest from the tree, not against the trunk.
- Place excavated backfill on a plastic or canvas tarp outside the CRZ.
- Prune away jagged roots back to the trench wall closest to the tree. Use a handheld pruner or pruning saw to make sharp, clean cuts.



Proposed trench through a critical root zone. Adapted with permission by the City of Chattanooga.

### Trenching

Trenching is a standard way to install utilities.

**It is best to entirely avoid trenching through the CRZ** (see figure); such practice could severely destabilize a tree, as well as adversely affect its health through loss of roots. Workers performing such operations should understand that 85% of the mass of a tree's root system is located within the CRZ and that most of a

tree's roots are within the top 18 inches of soil. Tunneling beneath the root zone will prevent loss of critical root mass if underground utilities must unavoidably be placed within the CRZ.

A decision must be made as to where best to locate utility trenches. Planners and designers must be made aware that trenches may not cross a CRZ and design alternate alignments accord-

# PUMPS & SYSTEMS

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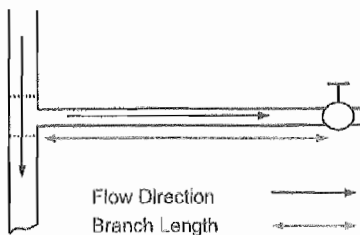
## Water Hammer (Part Two): Causes and Variables

by Joe Evans, Ph.D

Last month we used a hypothetical example to illustrate the onset and effects of water hammer. This month we will investigate its major causes and gain an even better perspective on the variables that contribute to its intensity.

### Valve Closure and Opening

One of the primary causes of water hammer is the abrupt closure of a valve. Figure 1 shows a main pipeline with a branch circuit that is fed by a "Tee." At the end of the branch is a valve. The black arrows show the flow direction in the primary and branch lines, and the blue arrow is the length of the branch line. As in last month's example, the valve acts as the primary barrier, but this time the secondary barrier is the "Tee."



If water is flowing in the branch line and the valve is closed quickly, a shock wave will develop. Its inception follows the same sequence of events in our hypothetical example. One small difference is that some of the intensity of the waves will be lost in the "Tee" as it is open to the main pipeline on either side. Still, a significant portion will be reflected back toward the valve.

A major difference in this example is that we have some control over the valve closure time (in our hypothetical example the valves closed at nearly the speed of light). As you will see, closure time has a significant effect on the inception and intensity of water hammer. Two other variables, flow velocity and pipeline length, are also major factors. The equation  $P = 0.07 (VL / t)$  shows the relationship of these three variables and their effect.  $P$  is the additional pressure generated by the shock wave,  $V$  is the flow velocity in ft/sec,  $L$  is the pipe length between the barriers in feet and  $t$  is the valve closing time in seconds. 0.07 is a derived constant.

Advertisement

The additional pressure created by the shock wave is directly proportional to flow velocity and pipeline length and inversely proportional to closure time. In other words, higher values of V and/or L will increase pressure while higher values of t will result in a decreased pressure. Table 1 shows the results from this equation when using differing velocities, pipe lengths and closure times. The V values are 5- and 10-ft/sec, L values are 100- and 1000-ft, and t values are 1 and 2 seconds. Two of the variables are constant in each example.

$P = 0.07 (5 \times 100) \quad t = 35$	$P = 0.07 (5 \times 100) \quad t = 17.5$
$P = 0.07 (10 \times 100) \quad t = 70$	$P = 0.07 (10 \times 100) \quad t = 35$
$P = 0.07 (5 \times 1000) \quad t = 350$	$P = 0.07 (5 \times 1000) \quad t = 175$
$P = 0.07 (10 \times 1000) \quad t = 700$	$P = 0.07 (10 \times 1000) \quad t = 350$

Both columns of the table illustrate the proportional influence of velocity and length—pressure increases as they increase. The lower values in the right hand column illustrate the inverse relationship of time; these pressures are half those in the left hand column because the closure time has doubled. The value of L is often fixed and depends upon the application, but we can exercise substantial control over the other two variables. By doing so, we can eliminate or greatly reduce water hammer's effect.

I mentioned earlier that pipe diameter and the elasticity of its material also influence the pressure generated. Larger diameters and more elastic materials absorb some of the intensity of the shock waves and therefore reduce the pressure generated. Several pipe manufacturers publish curves or tables that show the potential water hammer pressure increase for various pipe diameters and materials.

Suppose that the branch line valve is closed. If it is opened quickly the effect is similar to that of quick closing. When the valve is opened quickly, the branch line sees an immediate drop in pressure, and incoming water from the main line accelerates the previously static column. As friction and other factors restrict its flow, the forward portion of the column can act as the initial barrier and give rise to water hammer. Usually its effect is much smaller than that of valve closure and is often referred to as a "surge." Still, under certain conditions, this surge can be damaging.

Last month, I mentioned that water hammer's effects can be more significant in low pressure systems. The additional pressure generated by a shock wave is proportional to the length of the pipe and velocity of the water flowing in it and is completely independent of its operating pressure. Therefore, the shock wave created in a 1,000-ft pipe flowing at 5-fps will be the same whether the operating pressure is 50-psi or 200-psi. The difference is the ratio of shock pressure to design pressure can be significantly higher in the low pressure system, therefore the potential for damage will also be greater.

### Pump Starts and Stops

In many large pumping systems, it is normal procedure to start a pump against a closed discharge valve. Once the pump is running at full speed, the valve is opened slowly. Flow is initiated and then increases to its maximum as the valve continues to open. This procedure is reversed when a pump

is stopped. Starting and stopping against a valve that is opened or closed slowly will inhibit the initiation of water hammer.

Depending upon the installation, the discharge valve may be operated manually or by some automatic mechanism. One of the shortcomings of manually operated valves occurs during a power outage. When a pump motor loses power, the reduction in pump speed and flow from its discharge occur rapidly. The resulting change of kinetic energy to that of pressure can produce water hammer waves in the discharge line. As the water column reverses direction, the impeller will also begin to accelerate backward. When it reaches its maximum reverse speed, backward flow is reduced and an additional pressure surge is created.

In most pressure boost applications, a "spring loaded" check valve is installed at or near the pump discharge and remains closed when the pump is idle. When the pump is started, flow does not begin until the pressure it generates exceeds the pressure on the downstream side of the closed valve. If the downstream pressure is not allowed to decrease below a certain minimum, flow increases slowly and water hammer inception is avoided or reduced significantly.

When the pump stops, an unexpected event occurs—a quick closing valve actually inhibits, rather than initiates, water hammer! In this particular instance, the spring provides quick closure of the valve, which prevents the water column from changing direction due to the higher downstream pressure. Even though flow changes abruptly, pressure remains relatively constant throughout the downstream column. If a standard check valve was installed, the water column would accelerate backward, slam the check closed and initiate a shock wave.

Today, VFD control is used in many applications to eliminate the inception of water hammer during pump starts and stops. This technique, known as soft start and stop, is accomplished by ramping the motor speed up or down over a period of seconds. This allows the flow velocity to increase or decrease much more slowly than it would during across the line starts and stops.

## Water Column Separation and Closure

So far, our discussion of water hammer has dealt with single phase systems. In these systems, water remains in a single state (liquid in our examples) regardless of the changes in the hydraulic conditions. The shock waves generated by single phase systems are due to an abrupt change in flow and the resulting transformation of kinetic energy.

The water hammer generated by water column separation and closure is a two phase process. In a two phase system, water changes state and can exist both as a liquid and a vapor within the same confined volume. This phase change can take place whenever the pressure in a pipeline is reduced to that of the vapor pressure of the water. When a pressure drop occurs, the water column can become separated, in one or more locations, by a pocket of water vapor. When the pressure rises above the vapor pressure, the column rejoins or closes and can create a high pressure wave. Water column separation, by itself, can cause problems in very large diameter or thin wall pipes (which can collapse), but water hammer during closure is the more common problem.

Water column separation can occur when a pump is stopped and the water column reverses direction or in condensate lines where high temperatures can mitigate the need for a large pressure drop. Although both forms can be extremely damaging, condensate lines tend to be far more dangerous. The shock waves generated by column closure can travel in opposite directions, and if they hit secondary barriers they can be redirected back toward one another. It would not be unusual for these reflected waves to increase in intensity when they collide. This is certainly the case with



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p: 262.367.5000 | 800.356.6686

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February 27, 2017

Mr. James Haley

Elk River Property Development LLC.

7011 Farnam St

Omaha, Ne 68132

Dear James,

Pursuant to our discussions regarding the noise level of the proposed transfer station for your project I am providing the following information.

We propose a Watertronics Model HCBV-1-15-460-3 transfer pump station in a sound attenuated (standard residential construction with insulation) enclosure. The system will operate at less than 40 DB measured at a distance of 10'. The system conforms to the requirements of the Oregon DEQ noise restrictions for a residential installation.

Regards,

*Rick Reinders*

President



Phone: 262-367-5000 ext. 1208

[Rick.Reinders@watertronics.com](mailto:Rick.Reinders@watertronics.com)



Exhibit y

RECEIVED  
FEB 28 2017  
BY: PC 4:19 pm

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**Attorney at Law**

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February 28, 2017

Via Email

Kevin McHugh, Chair  
[kbmchugh@southwestoregon.net](mailto:kbmchugh@southwestoregon.net)  
[patty@portorford.org](mailto:patty@portorford.org)  
City of Port Orford Planning Commission  
PO Box 310  
Port Orford, OR 97465

Re: ORCA Responsive Comments, Application No. PO CUP 16-02 and 16-03

On behalf of Oregon Coast Alliance, please accept these supplemental comments on both application nos. PO CUP 16-02 and 16-03.

The applicant submitted two exhibits, a copy of a presentation that was made Ocean Police Advisory Council and communications with ODOT. The applicant alleges that the Council recommended to “reduc[ing] local pollutant inputs that exacerbate ocean acidification and hypoxia.” This submission is not related to any approval criteria, and, therefore, it should be ignored. Again, as ORCA noted previously, the City itself should find its own beneficial uses for the effluent, rather than assume the applicant’s liability at the expense of the public and Port Orford taxpayers.

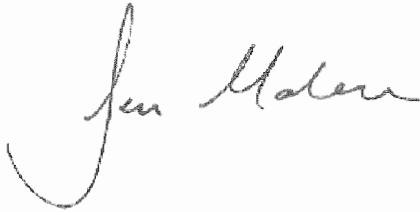
The applicant submitted communications with ODOT regarding the “waterline that potentially could be placed in Highway 101.” This represents a basic misunderstanding, which is that what is being transmitted via the pipeline would be effluent, and there is no provision for doing so. Regardless of that misunderstanding, the ODOT materials also include an example of the application that will be required to attach the pipeline to Highway 101. That application contains numerous obligations that would clearly be placed upon the City, demonstrating further that the City’s liability will not be limited, the applicant’s statements to the contrary.



Finally, the applicants' submissions provide only the sketchiest amount of information necessary for so serious a matter as an effluent pipeline, especially as it is proposed to pass in the vicinity of Garrison Lake, a secondary water supply for Port Orford. The applicant provided no engineering materials and not even basic, standard information needed by decision-makers, such as details about aboveground and underground line segments, pipeline material and construction methodology. An application cannot be approved that has insufficient information for decision-makers to make their decision according to the criteria that apply to the application.

For the above reasons and for those reasons provided in prior testimony, ORCA respectfully requests that the City deny both applications.

Sincerely,

A handwritten signature in cursive script that reads "Sean T. Malone". The signature is written in black ink and is positioned below the word "Sincerely,".

Sean T. Malone  
Attorney for ORCA

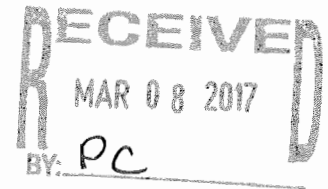
Cc:  
Client

LAW OFFICE OF BILL KLOOS, PC

OREGON LAND USE LAW

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March 7, 2017

Port Orford Planning Commission  
555 W. 20th St  
PO Box 310  
Port Orford, OR 97465Submitted via email to: Terrie Richards [trichards@portorford.org](mailto:trichards@portorford.org)  
Shala Kudlac [bandonlaw@gmail.com](mailto:bandonlaw@gmail.com)Re: CUP 16-02 and CUP 16-03 for pump and pipeline to deliver recycled effluent  
Applicant's supplemental testimony for "open record" period

Dear Members of the Planning Commission:

This letter is submitted on behalf of the Elk River Property Development, LLC, the applicant for two CUPs requesting approval to develop a pump house and pipeline that would deliver recycled wastewater to the Pacific Gales Golf Course, where it would be used for irrigation.

This letter responds to the legal and policy issues that were raised at the February 14<sup>th</sup> hearing, and it also responds to the issues raised in subsequent written submittals.

Because this letter contains comprehensive responses to every legal issue that has been raised in this proceeding, it is long. Before getting bogged down in the details, please consider the following basic points:

- The city's wastewater is currently being discharged into the ocean.
- The city's treatment plant currently has a single discharge point. If the existing discharge point were to malfunction today, there would be no backup method of disposing of the wastewater.
- The applicant is proposing to use the city's wastewater for irrigation on the Pacific Gales golf course. Using the city's recycled wastewater would reduce demand for water rights from other sources, such as the Elk River or groundwater sources.
- The recycled wastewater would be stored in a reservoir at the golf course, before being used to water the golf course. The combination of reservoir storage and soil-filtration would lead to significant improvements in water quality, compared to the current practice of pumping the wastewater directly from the treatment plant to the ocean.
- The net results of the proposal would be: (1) an environmental improvement over the current practice of discharging the wastewater into the ocean, (2) the creation of a secondary outlet for the treatment plant, so the city won't be reliant on a single outlet, and (3) the development of a golf course that will bring employment and tax-base to the area.
- The Planning Commission is primarily tasked with reviewing the proposed physical developments, according to approval standards in the zoning code. The City Council will ultimately make the policy decision of whether and how to provide the water. The County will make the decision of whether to approve the pipeline proposed in county lands. ODOT will make the decision of whether the pipeline can be attached to the Hwy

101 bridge. DEQ will make the decision of whether to approve the use of the recycled wastewater to irrigate the golf course. If the Planning Commission feels that it is necessary, it can approve the application with the condition that physical development cannot begin until the applicant has all of the other permits it needs to have and use the water.

In the rest of this letter, we will respond to the issues that have been raised in the testimony from the hearing and written materials.

### **Response to the points raised in the written comments of Commissioner Roorbach**

During the hearing on February 14<sup>th</sup>, Commissioner Roorbach provided his analysis of the application in written format. The applicant is grateful for these comments, as it provides the opportunity to clarify some essential points. The following portion of this letter responds to the issues raised in Commissioner Roorbach's letter.

The applicant addressed the "additional standards" at Section 17.32.050.

Commissioner Roorbach's letter quotes the applicant as having asserted that "the *Additional Standards governing conditional uses* in Section 17.32.050 therefore do not apply." Please let us clarify that the language quoted by Commissioner Roorbach comes from the Staff Report, not from the applicant.

The applicant's materials (for both the "preferred route" and the "alternative route") have addressed the additional standards at Section 17.32.050. The applicant's materials explained which of these additional standards are not relevant to the proposal (such as standards pertaining to schools or churches) and which of the standards have been met by the proposal (such as standards pertaining to "Communications Transmitter, Receiver, Antenna or Tower, Utility Station, Substation, or Wind Generator."). It is possible that Planning Staff intended this statement to mean that the additional standards found at Section 17.32.050 that are not relevant to the proposed use do not apply. The applicant would agree with that. Ultimately, the applicant may need to rely on Planning Staff to clarify what was meant in the Staff Report.

Regarding the "Alternate Route," the pipeline would be placed underground, under the public right-of-way, similar to the placement of other utilities, not elevated above any wetlands.

Commissioner Roorbach's letter also states that the application neglected to mention that the pipeline would cross above a wetland "near the south end of the Port Loop Rd." It further states this crossing of the wetland is "not even mentioned in the pipeline application." Some additional clarification is needed here. The proposed "alternative route" would entirely avoid wetlands, and the pipeline would not be elevated above ground. The pipeline for the "alternative route" is proposed to be placed under the existing road, within the boundaries of the public right-of-way, using a "horizontal boring" technique. The roads are devoid of wetlands. The whole reason for proposing the "alternative route" was to have a route that completely avoids the Controlled Development zone. The "alternative route" is longer and will be more expensive to build than the "preferred route," but it was selected because it is uncomplicated, from a regulatory perspective.

In terms of how the pipeline is proposed to be installed, it is no different than other utility facilities that are commonly placed underground, such as cable lines, telephone lines or water lines.

The applicant does not dispute that the pipeline, if it is attached to the Hwy 101 bridge, could be viewed as part of a “structure.”

Commissioner Roorbach’s letter states:

“[...] our staff reports that there is no definition of what constitutes “a structure” in the City Zoning Code. The applicant apparently uses this point to say a pipeline attached to a bridge is *not* a structure and is not subject to various additional provisions of the City Zoning Code.”

That does not perfectly capture the applicant’s view of this matter. The application materials recognized that the existing bridge is a “structure.” For example, Page 10 of the application for “preferred route” states:

“The highway bridge already crosses through this zone and the proposed 6" HDPE pipeline would be attached to the existing bridge structure.”

In order to be thorough, the applicant addressed all of the standards at 17.12.050 that pertain to structures, even though it’s not clear if the proposal to attach a pipeline to an existing bridge would constitute the development of a new “structure” in the Controlled Development zone, or if it simply places a pipe on an existing structure. Regardless, the applicant does not argue that it should be exempt from these standards. It has addressed the standards accordingly.

The applicant will address the issue of security under the bridge in the way that ODOT instructs it to do so.

Commissioner Roorbach raises concern with homeless camps that may exist under the Hwy 101 bridge. Ultimately, the bridge and the right-of-way are owned by ODOT, and any improvements that the applicant places on the bridge will be done in a manner specified by ODOT. If ODOT believes that fences may be appropriate under the bridge, the applicant would be open to that possibility. It appears more likely that the pipeline will be protected and secured by placing the HDPE pipeline inside a metal pipe “sleeve” where the pipeline passes through the ground at the bridge footings. Because this is ODOT property, the design of the pipeline in this location will be subject to ODOT design standards.

The record contains no statement from ODOT as to the repair schedule of the bridge.

Commissioner Roorbach observed that the application materials do not include any information as to when the Hwy 101 bridge may need to be upgraded, and whether it would interrupt the service of the pipeline. It is true that this information has not been submitted into the record. However, if the bridge is ever upgraded, the applicant will work with ODOT to maintain service, and to schedule any service interruptions that may be necessary. In this sense, an interruption of service will be less disruptive for the proposed pipeline than it would be for other utility facilities that are commonly suspended from bridges, such as communication and electrical cables. If communication or electrical cables were ever interrupted, the people who rely on those facilities

would be immediately impacted. The golf course, on the other hand, would be able to continue to operate for an extended period of time by drawing down the water stored in its reservoir. Likewise, if service is ever interrupted, the city will still have its ocean outfall system to use as a means of disposing of its wastewater.

The applicant will maintain the facility for as long as it is in operation.

Commissioner Roorbach's letter states that he learned the applicant was only willing to provide a one year warranty for the project, and that there "will be no *initial* cost to the taxpayer." It is not clear where this information came from, but it did not come from the applicant. The following statement from page 15 of the Staff Report is accurate:

"The proposed pipeline will be installed and maintained at the sole expense of the applicant. There will be no initial or recurring cost to the public."

There is no sunset date when the applicant will no longer be responsible for the maintenance of its pipeline. The applicant will own the pipeline, just as the cable company owns and maintains the cable utilities it places in the public right of way. The applicant will be obligated to maintain what it owns. In addition, the applicant has expressed a willingness to be responsible for the costs of maintaining the approximately 50 foot section of pipe that would need to be added to the city's treatment plant, in order to make the connection between the existing discharge pipe and the applicant's proposed pipe.

The pipeline is not a cherry stem into the UGB

Commissioner Roorbach's letter expressed concern about a potential "cherry stemmed water infrastructure projected extending into the UGB." The proposal is for a private pipeline carrying recycled wastewater, to be used for irrigation at the Pacific Gales golf course. This is not drinking water. The water will only be permitted to be used at the site of the golf course, pursuant to the DEQ permit necessary for using recycled wastewater. Because this water is recycled wastewater, and not drinking water, the pipeline will not provide water service for other uses inside, or outside the UGB.

### **Response to the points raised by Christine Roney**

The applicant appreciates the letter submitted by Mrs. Roney, which raises concerns about possible noise impacts from the pump house, and possible impacts to tree health from the pipeline installation.

The materials the applicant submitted on February 28, 2017 include noise estimates from Watertronics, a designer and vendor of pump systems. That evidence concludes that the proposed pump (with an approximately 15 horsepower electric motor) would generate roughly 40 DbA at a 10' distance from the proposed insulated pump house structure. For reference, background ambient noise, measured at approximately 10' from the existing pump station at Coast Guard Hill Rd, was measured at 43 DbA, as shown in the picture in the applicant's submittal. In other words, the proposed pump would blend into the existing background ambient noise. The applicant expects that site conditions, such as existing vegetation and topography, will further shield the adjacent properties from any noise impacts. The applicant is very

committed to being a good neighbor, and it proposes to insulate the pump house in order to contain pump noise to the maximum extent practicable.

Mrs. Roney also asks about how the pipeline construction could impact tree health. This is a reasonable concern, as open trenching can be disruptive to tree roots. However, the applicant is proposing to use horizontal boring to place the pipe underneath the vital roots of the trees. In addition, the pipe will be placed primarily under improved road surfaces, where trees are less likely to have extended their roots in the first place, due to lack of soil moisture under impervious surfaces.

On February 28, 2017, the applicant submitted an excerpt from a bulletin from The Oregon State University extension service called "Tree Protection on Construction and Development Sites". This bulletin states "most of a tree's roots are within the top 18 inches of soil," and it recommends tunneling (or boring, as we are calling it here) as opposed to trenching. The image in the bulletin shows the recommended "best practices" of ending a trench at the edge of a tree's critical root zone, and then boring the portion of the line that extends underneath the tree. The applicant will meet or exceed the best practices, as outlined in the OSU bulletin above, in any area where trees are located close to the pipeline.

Mrs. Roney also expresses concerns about potential costs to the city that might be associated with this proposal. As explained above, in the response to Commissioner Roorbach's questions, the applicant is proposing to pay for all costs associated with development and ongoing maintenance of the pipeline.

#### **Response to the points raised by Dana Gurnee**

The applicant reviewed the letter submitted by Mr. Gurnee, and appreciates the opportunity to respond to his concerns.

Mr. Gurnee proposes that all of the conditions of approval proposed by the staff should be imposed. As noted elsewhere, the applicant does not oppose staff's recommended conditions. The applicant has proposed additional conditions that will provide all parties with clarity about how the proposed development will proceed.

Mr. Gurnee also requests that the Port Orford Planning Commission be involved in the county's review of the land use decision for the portion of the pipeline that will be proposed in the county. The city and the county have entered into a joint management agreement that requires a joint city/county decision-making process for certain uses proposed in the area between the city limits and the UGB. Specifically, the JMA applies to development proposals within the UGB that require the city to extend urban services. In such situations, it establishes a framework for the city and county to collaborate on land use decisions. The JMA is not part of the record of evidence in this hearing, but it is a component of local law, so the Planning Commission may take official notice of it.

The current application proposes a pipeline to deliver recycled wastewater for irrigation, which is not an urban facility. Because the irrigation pipeline would not be an extension of urban services into the UGB, the JMA does not apply. The county, therefore, has land use authority to regulate the portions of this pipeline that would be developed outside of the city, just as the city has authority to regulate the portions of the pipeline inside the city limits. However, despite the fact

that the county has exclusive purview over the portion of the development that is proposed in county lands, the county land use proceeding will be open to the public, so members of the Port Orford Planning Commission, and city residents of Port Orford, will be welcome to participate in the County's public hearing.

Mr. Gurnee also raised concerns about possible impacts to tree health. Please see the applicant's response to Christine Roney's letter, above.

Mr. Gurnee also refers to Port Orford's dark sky ordinance. The applicant understands that the dark sky ordinance applies to all new construction in Port Orford, and the applicant intends to comply with it.

### **Response to the points raised by Anne Vileisis and Tim Palmer**

The applicant appreciates the letter submitted by Anne Vileisis and Tim Palmer, as it raises thoughtful questions that deserve to be considered as part of this process.

Mrs. Vileisis and Mr. Palmer are concerned that the application that the Planning Commission is considering does not include the portion of the pipeline that would extend between the city limits and the golf course. As noted above, the portion of the development proposed for the county lands will be reviewed under county zoning regulations. There will be a separate land use application and proceeding at the county level for the pipeline in this area. It would not be appropriate to apply City of Port Orford zoning regulations in regard to a development proposed in the county, any more than it would be appropriate to have the county convene a hearing and apply its zoning standards for a proposed development inside the city limits.

Mrs. Vileisis and Mr. Palmer also question the proposal of having the City own the roughly 50-foot long portion of pipe that would connect the wastewater treatment plant and the private pumphouse. They suggest that this connection is not specified in the City Council's recent amendment to the wastewater facilities plan, which adopted a policy supportive of recycling the wastewater currently being discharged into the ocean. The City Council's amendment to the facilities plan would be meaningless without some connection between the treatment plant and the proposed pipeline. It would be impossible to put that water to use if there wasn't a way to get it out of the city's treatment plant. The applicant recognizes that a connection will need to be established between the city's existing facility and the proposed private pipeline, and it has proposed to pay for it, including ongoing maintenance costs.

Mrs. Vileisis and Mr. Palmer raise a number of detailed questions about costs and potential financial risks to the city. The City Council has not yet made any decision as to whether it will provide recycled wastewater to the applicant, or under what terms. Currently, the Planning Commission is merely tasked with reviewing the proposed physical development that would be necessary to move the water, in the event that the City Council and the applicant enter into an agreement for the provision of recycled wastewater. If the Planning Commission wishes, it can impose a condition of approval that prevents the physical developments proposed here from being built until the applicant and the City Council reach such an agreement.

Mrs. Vileisis and Mr. Palmer ask if the pump house and pipeline are public, private, or a mix. The entire facility will be privately owned, except for the roughly 50-foot long connection that is

proposed to be developed on the city's property where the wastewater treatment plant is located. The applicant is proposing to pay for the construction and ongoing maintenance of that portion.

Mrs. Vileisis and Mr. Palmer state that a portion of the pipeline will cross over wetlands that drain into Garrison Lake, and they raise concerns about leak prevention and leak monitoring. The proposal is to use HDPE pipe, which is more resilient than any other pipe material. The water being carried in the pipe will have been treated to a level where it is safe to water grass with and play golf on. The risk of having this water leak out of the pipe and into Garrison Lake is exceedingly low, and it has been treated to the point where a leak would not impact Garrison Lake's suitability as a backup water source. A much greater threat to the quality of Garrison Lake is the steel pipe currently attached to the Arizona Street bridge, which is transporting raw sewage to the wastewater treatment plant.

Mrs. Vileisis and Mr. Palmer propose a number of recommendations. The applicant's responses are as follows:

1. The Port Orford CUP criteria should be applied to the portion of the development that will be developed inside Port Orford's jurisdiction. The county's approval criteria should be applied to the portion of the development that is proposed to be developed in the county.
2. The applicant accepts the proposal to make the city approval contingent on gaining approval from the county. The applicant has no desire to build half a pipeline, so it would wait for approval from both bodies before initiating construction, even without this condition.
3. As noted above, the City/County JMA for the area inside the UGB applies only to extension of urban services, not for an irrigation pipeline carrying recycled wastewater.
4. As noted above, the county will provide a hearing and will issue a land use decision for the portion of the pipeline outside of the city limits
5. The applicant believes the conditions proposed by the staff report are reasonable.
6. Recommendations 6, 7 and 8 have been addressed above.

### **Response to the points raised by Laurie Prouty**

The applicant appreciates the email submitted by Mrs. Prouty, and believes the following answers should address her concerns.

The first question regards noise impacts associated with the pump facility. Please see the applicant's response to this issue, above, as it was raised in the letter from Christine Roney.

Mrs. Prouty also raises concerns about the relative impacts of applying the recycled wastewater to the golf course, where it will run off into the river, as compared to the city's current practice of piping it directly into the ocean.

Any time that someone uses recycled wastewater in Oregon, state law requires them to obtain a "recycled wastewater use permit," or "RWUP" from the Oregon Department of Environmental Quality. In the current proposal, the treated water will be taken from the discharge point of the city's treatment plant (in the same condition that it is currently piped into the ocean) and then passed through a chlorine injection station, which provides just enough chlorine to prevent



bacteria from colonizing the water in the pipe. At that point, the water is delivered to a reservoir at the golf course, where exposure to sun and air allow the trace amount of chlorine to dissipate naturally. Subsequently, the water is taken from the pond and sprayed onto the golf course, where any trace nutrients in the water (such as nitrogen and potassium) are taken up by the growing grass. Ultimately, most of the water will be transferred through the grass into the air through evapotranspiration.

The county land use approval for the golf course requires the applicant to monitor soil moisture and to apply no more water than is necessary for the grass, in order to minimize erosion. This means that very, very little water will be percolating into the soil. The small amount of water that does percolate into the ground, will encounter natural soil microbes that will finish the job of purifying the water. Any water that does run off of the golf course (such as heavy rainfall) will follow the natural drainage patterns to the south, not toward the Elk River to the north. The applicant's land use approval from the county includes water treatment facilities and bioswales where natural runoff accumulates. Accordingly, the use of this highly-treated wastewater does not endanger surface waters.

#### **Response to the points raised by Sara Lovendahl**

The applicant reviewed the letter from Mrs. Lovendahl, and appreciates the opportunity to respond to her concerns. Some of her concerns have been expressed by others, such as Commissioner Roorbach's questions about the ODOT approval necessary for using the Hwy 101 bridge. Rather than repeating itself, the applicant refers the Planning Commission to the portions of this letter that address those concerns.

The horizontal boring technique is the preferred method in urban settings, because it will result in the least amount of soil disturbance, and it allows the pipe to be placed underneath preexisting underground utility facilities, without having to expose them and work around them.

Mrs. Lovendahl expresses concerns that the boring equipment will be so heavy as to damage the streets. In making this point, Mrs. Lovendahl includes a quotation attributed to the Department of Environmental Protection, which recommends that "owners of surface rights seek legal advice and negotiate with drilling companies for location of access roads and drilling equipment and a reasonable price for damages." The applicant was confused by this quote, as there is no agency called the Department of Environmental Protection in Oregon. The applicant searched the internet for Mrs. Lovendahl's quote, and it appears to originate from a website called "shalestuff.com," which pertains to Marcellus Shale gas development in the northeast and Appalachian areas of the United States. To be clear, the irrigation pipeline that the applicant proposes *is not* the type or scale of pipeline used in the natural gas industry. The boring equipment that will be used to place this 6" HDPE pipe is not heavy enough to damage the streets. For any surface disruption that is necessary (such as the sites where the boring originates) the applicant has already committed to restoring all surfaces to their pre-construction condition.

Mrs. Lovendahl also expresses concerns with waste products (such as soil, water and "drill cuttings") that might result from the process of installing the pipeline. Unlike open trenching, which displaces large quantities of soil, and unlike the natural gas "fracking" that Mrs. Lovendahl appears to have in mind, the proposed horizontal boring creates very small quantities

of spoils – only the amount necessary to make room underground for a 6” HDPE pipe. All material byproduct from the construction process will be captured and trucked offsite according to applicable regulations and industry best practices; none will be left at the construction site, and none will be allowed to enter local waterways.

Mrs. Lovendahl questions why the applicant is pursuing two applications. The simple answer is that one of the applications involves a more straightforward approval process, because it avoids the Controlled Development zone in the vicinity of the Hwy 101 bridge, but it also involves a longer route. The shorter, more direct route requires an interpretation from the City Council that the proposed private utility can be placed in the zone where the Hwy 101 bridge is located. The applicant hopes the Planning Commission will approve both, with a condition of approval that only one of the pipelines may be built.

### **Response to the points raised by Penny Suess**

The letter from Mrs. Suess raises concerns with wetlands. No wetlands will be impacted by the proposal, as the pipeline will be placed inside public right-of-way, either under the paved surface, or under the graded and graveled shoulder, depending on the location.

Mrs. Suess also raises concerns about the relationship between the current CUP application with the city, and the permits required by DEQ. First, it is crucial to understand that these permits govern different things. The permit that the Planning Commission is reviewing concerns the physical construction of a pump and pipeline system.

The Planning Commission is not being asked to make any decision about how much water the applicant can use from the city’s wastewater treatment plant. The Port Orford City Council will make that policy decision. This application also does not ask the Planning Commission to make any decision as to whether the applicant can use this water to irrigate the golf course. DEQ controls the permit process that will make that decision.

The question that the Planning Commission is currently considering is narrow. It is being asked if the proposed pump house and pipeline development is consistent with zoning regulations, and if it will be compatible with adjacent properties.

Mrs. Suess is absolutely correct that the applicant requires approval from DEQ, but it’s important to understand the different roles that the DEQ permits and city CUP permits play. The applicant has been working with DEQ to obtain the WPCF permit and RWUP permits for over a year. DEQ can’t finalize those permits until the local land use decisions are in place. Getting the city’s approval to develop the pipeline in the city, and getting the county’s approval to develop the pipeline in the county, will both be essential elements of the DEQ permits.

Mrs. Suess’ letter presents an impossible “chicken or egg” scenario when she proposes that the city’s permit should not be issued until it has “all necessary permits for transporting, storing, and land application of effluent.” The correct sequence, according to DEQ’s procedures, is for the applicant to obtain local approvals, before DEQ issues its permits. Nonetheless, regardless of which permit comes first, the applicant will need to obtain permits from all of the relevant authorities (city, county, ODOT, DEQ) before anything actually gets built. It is appropriate to impose conditions of approval that no construction can take place on the pipeline development until the full suite of permits has been obtained.

**Response to the points raised by Oregon Coast Alliance letter from February 14<sup>th</sup>, 2017.**

The following points address the arguments raised by ORCA's letter submitted at the Planning Commission testimony.

The city is perfectly capable of adopting consistent findings.

The letter from ORCA expressed concern that the city will have a hard time adopting consistent findings if the city approves the applications for both the preferred route and the alternative route. ORCA underestimates the city's ability to run its own land use process. If the city were to approve both applications, the separate approvals would certainly include conditions. One of the conditions would likely require the applicant to obtain the additional permits necessary before any construction on either pipeline is begun. If the Planning Commission approves both applications, it is likely that a second condition of approval would state that only one of the two routes may be built. That alone would resolve any discrepancies between the findings for the two alternative applications.

The proposed use is not a "public utility."

ORCA's letter states that the applicant "oscillates between characterizing itself as a private and public utility." That statement is not correct. The applicant has proposed that the roughly 50-foot section of pipeline that would need to be located at the city's wastewater treatment plant should be a component of the treatment plant, and be owned by the city. The applicant has explained the similarities between a privately-owned pipe and a publicly-owned pipe, for purposes of addressing the approval standards in the Controlled Development zone. However, the applicant has *never* said the pipeline and pump it proposes to develop would be a public utility.

The applicant has been consistent in describing the proposal as a "private utility" or simply a "utility facility," consistent with how those terms are used in Port Orford's zoning regulations. For instance, POMC 17.12.010(C)(6) includes, in its list of uses that may be approved by CUP in the 1-R and 2-R districts, the following:

"Utility facility, including substation or pumping station or private generator."

There is no doubt that the proposal includes a "pumping station." A pumping station is one of the "utility facilities" that is specifically listed as being allowed under this standard. Under the code's description of "utility facility," a pumping station could be public or private. Aside from "utility facility," there is no other use category in the Port Orford zoning code that describes the proposal. The applicant addressed this issue at page 4 of its application, where it stated:

"The proposed pipeline is most accurately called a "private supply line," but that term does not appear in the Port Orford zoning regulations. The proposed pipeline also fits within the broader category of "utility facility," as that term is used in context with the other terms in the zoning regulations, such as: "including substation or pumping station or private generator." As a private utility, the pipeline it is similar to a privately-owned telecom cable, which is a type of utility regularly placed inside public rights of way."

However, ORCA has cooked up a bizarre argument, asserting that anything labeled as a “utility” falls within the statutes that apply to the Public Utility Commission of Oregon. The statute that ORCA cites is completely inapplicable to the current question of interpreting local code.<sup>1</sup>

ORS 757.005 uses the term “public utilities” in a completely different context than the “utility facilities” that are regulated by Port Orford’s code. No one in his or her right mind would think that the pipeline that is proposed here is the type of “public utility” regulated by the Oregon Public Utilities Commission. Accordingly, no one would reasonably think that the statutes governing the PUC have any relevance to the current application.

By citing this irrelevant statute, ORCA misrepresents the applicant’s proposal. To clear things up, the following list touches on the portions of the application where the difference between public and private utility facilities came up.

- At pages 2 and 3, of the “preferred route” application, and at pages 3 and 4 of the “alternative route” application, where the applicant discusses the 8-PF Public Facilities and Parks zone, the applicant notes that the zone allows “public utilities and services.” This is the zone where the city’s wastewater treatment plant is located. In order to tie into the city’s existing pump system, a pipe must cross a portion of the exiting wastewater treatment plant, for a distance of approximately 50 feet. Without some sort of connection between the city’s existing treatment plant and the proposed private pipeline, there is no way to get treated wastewater off of the city property and into the private pipeline. The application proposes that this roughly 50-foot long length of pipe should be city-owned, so that way it will be a part of the “public utility” that already exists at this location. The applicant proposes to design it and build it to the city specifications, and will agree to maintain it for as long as the facility exists, but the city itself would own the pipe that would be placed on city-owned property.
- On page 8, for both the “preferred route” application, and the “alternative route” application, in regard to a standard that establishes minimum lot sizes, and that also allows for the minimum lot size to be waived for public utilities, the applicant clarifies that its privately-owned pump house and pipeline are not public utilities. The applicant states: “the proposed use is not for a public utility.”
- On page 11 of the “preferred route” application, in regard to the uses allowed in the CD Controlled Development zone, the applicant states, “The proposed pipeline is a private utility facility.” Public utilities are conditionally allowed in this zone, and the applicant explains that the proposed private utility is adequately similar to the allowed public utility that it could be permitted under the “authorization of similar uses” code provision. The applicant’s position is that its private pipeline is *similar in nature* to a publicly-owned pipeline. The applicant has never stated that it proposes a public pipeline.

Therefore, ORCA got it wrong when it said the applicant has characterized its proposal as a public facility. ORCA’s irrelevant argument, based on statutes that apply to the Oregon Public Utilities Commission, appears primarily intended to spread misinformation and to confuse the discussion.

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<sup>1</sup> ORCA also cited to a statute that doesn’t exist. The correct citation for the statute ORCA intended to cite is ORS 757.005, not 727.005.

The proposal does not increase potential liability for the city

ORCA's letter states that any pipe on publicly-owned land would expose the city to increased liability "in the event of pipe failure." What ORCA fails to appreciate is that the city's current situation, where it is relying solely on its existing ocean outfall pipe, exposes the city to greater overall liability than it would face if the secondary discharge system was approved. Simply by switching from a system with only one point of discharge to a system with a "backup" avenue for discharging its wastewater will reduce the city's liability, compared to the risks it currently faces. The real question of liability is what would happen if a winter storm disabled the city's existing system for ocean outfall, and if it had no means of disposing of its wastewater. The proposed addition of a secondary discharge pipe includes the applicant's commitment to be responsible for the costs of maintaining that second pipe.

ORCA has missed the forest for the trees on this one. They seem to think it would be better for the city to remain exclusively reliant on a single-discharge system, rather than develop a secondary discharge that would include a maintenance obligation from the developer. The application narrative provides the following:

"Although all proposed improvements located in the 8-PF zone will be dedicated to the City, maintenance and repair of those improvements will also be at the sole expense of Elk River Property Development. In other words, there will be no financial burden to the City of Port Orford as a result of the transport of recycled effluent to the golf course."

If this wasn't clear from the beginning, let us clarify it now: the applicant is proposing that it will be responsible for maintaining all of the infrastructure that it is proposing to be added to the city wastewater treatment plant, for so long as that infrastructure remains in operation. That is a significant reduction in liability for the city, compared to the city's current status.

ORCA's proposal that the city should retain the wastewater for public uses is an exercise in wishful thinking.

ORCA proposes that, instead of providing the recycled wastewater to a private use, where it could be used for environmentally sustainable irrigation, the wastewater should be retained for public use.

When people talk about "retention" of wastewater and storm water, the term means impounding the water; bottling it up. Is ORCA seriously proposing that the city should develop holding tanks to retain all of its wastewater until some public use can be found for it? If so, ORCA has lost touch with reality. On average, the treatment plant discharges roughly 100,000 gallons per day. This amounts to approximately 100 acre-feet per year. If the city were to retain its water, as proposed by ORCA, it would require a tank the size of a football field and 100 feet deep, just to store one year's wastewater.

Currently, there are no proposals for public uses of the water on the horizon. The city would be bottling up its recycled wastewater for an indefinite period, waiting for a potential public use that doesn't exist yet. However, if the city wanted to irrigate publicly-owned lands in the future, there will be enough water to go around. The city would need to get its own DEQ permits to use the recycled wastewater, just as the applicant has been in the process of doing, but there would

water available to the city. While the City Council has not yet decided how much of the wastewater that is currently being piped into the ocean could be redirected to the golf course, the applicant has flexibility in the amount of wastewater that it can handle at the golf course.

Perhaps ORCA was just being sloppy with its choice of words when it proposed that the city “retain” its wastewater. Perhaps ORCA intended to use the term “retain” to simply mean “retain the status quo,” and continue dumping the wastewater into the ocean. If that’s the way that ORCA uses the term “retain,” it really means “just keep polluting the ocean with it, instead of allowing it to undergo additional water quality improvements in the golf course’s holding ponds and soil filtration.”

Perhaps ORCA is not aware of the environmental impacts associated with ocean discharges of wastewater. In a previous submittal, the applicant included a copy of a presentation that was made to the Ocean Policy Advisory Council, which is legislatively-mandated marine policy advisory body to the Governor of Oregon. The presentation was made by the West Coast Ocean Acidification and Hypoxia Science Panel, which is a technical body established in partnership between the California Ocean Protection Council and the Oregon Governor’s Office. The very first recommendation that was made by this panel was to reduce local pollutant inputs that exacerbate ocean acidification and hypoxia.

Here, the city of Port Orford is being presented with the opportunity to divert its wastewater from the ocean, and to see it used it for sustainable irrigation. The single best thing that could be done for the nearshore fish and shellfish populations (and the fishing and tourism industries that depend on those populations) would be to divert local sources of pollution out of the ocean. Somehow, an environmental organization has the nerve to suggest that the city should continue to dump the wastewater into the ocean. The irony here would be humorous, if it weren’t so tragic. With friends like ORCA, the environment doesn’t need enemies.

The applicant looks forward to landscaping the facility in the way that best suits the neighborhood.

ORCA faults the applicant for proposing landscaping only “where necessary.” Apparently, ORCA didn’t bother to review the proposed site plan that was submitted with the application, showing lodgepole pine at 8-foot spacing along the new fence, or the portion of the site plan that said “existing vegetation to remain outside of disturbance.”

Because the property where the pump house will be located is currently heavily vegetated, the applicant was hoping the public hearing process would lead to a discussion as to how much new landscaping should be provided, especially when it seems silly to remove existing vegetation simply to make room for replacement landscaping. The residents of this neighborhood are the ones who will be closest to the proposed pump house, and the applicant highly values input on this subject from neighbors. ORCA, on the other hand, doesn’t live on this street and isn’t directly impacted by the landscaping decisions made for the proposal.

The applicant is willing to accept reasonable conditions of approval to ensure that the neighbors are satisfied with the appearance of the pump house facility. The applicant proposes to retain the existing vegetation, except to add the pines in the perimeter around the pump house facility. The

applicant proposes conditions that require the perennial landscaping to remain in healthy condition, and that require trees to be replaced, if any trees do not survive.

Approval from ODOT is still necessary

ORCA is correct that ODOT will need to review and approve any pipe that might be attached to the Hwy 101 bridge. ODOT has its own process for reviewing applications of this nature, and its own approval standards. The applicant has been in contact with ODOT, and has begun this process. It should be fairly obvious that, if ODOT does not approve the pipeline to be attached to the bridge, the pipeline cannot be developed on this route, regardless of whether the city has approved the CUP. If the Planning Commission wanted to be extra-thorough on this point, it could approve the application for the proposed route with the express condition that ODOT must approve it as well before construction can begin.

The information provided in the application is complete

ORCA complains that the application requesting development approval inside the city should have included more information about the portion of the pipeline outside of the city. ORCA states that the city needs to be “[...] aware of where the remaining portions of the pipeline will be located, and whether the uses are even permitted on the property where the effluent pipeline will end.”

ORCA is confused. The county has land use jurisdiction over land outside of the city limits. The portion of the pipeline that will be developed in the county will be subject to county review procedures.

As noted above, there is a joint management agreement between the City of Port Orford and Curry County, governing certain uses outside of the city limits and inside of the UGB. It applies to development proposals within the UGB that require the city to extend urban services. The JMA doesn't apply here because the irrigation pipeline is not an urban service.

The proposed pipeline is not an urban facility.

ORCA argues that the proposed pipeline is an urban use that cannot be extended across the UGB without an exception to certain statewide planning goals. Again, ORCA is confused.

The question of whether the proposed pipeline and use of recycled wastewater can be used to irrigate a golf course on farmland in the county is a question for the county and for DEQ. The question that is currently before the Port Orford Planning Commission is simply if the proposed pump and pipeline (which will be built underground) comply with the approval standards for the city zones and the city CUP process.

In addition, and more to ORCA's point, an irrigation pipeline is not an urban facility, under the statewide planning goals that ORCA cites. Goal 11 applies to the extension of drinking water and sewage collection facilities.

Goal 11 defines “water system” as “a system for the provision of piped water for human consumption subject to regulation under ORS 448.119 to 448.285.” OAR 660-015-0000(11). The proposed pipeline for recycled wastewater is not for human consumption.

The Goal 11 rule defines “sewer system” as “a system that serves more than one lot or parcel, or more than one condominium unit or more than one unit within a planned unit development, and includes pipelines or conduits, pump stations, force mains, and all other structures, devices, appurtenances and facilities used for treating or disposing of sewage or for collecting or conducting sewage to an ultimate point for treatment and disposal.” 660-011-0060(1)(f). The proposed pipeline for recycled wastewater will not be treating, disposing, collecting or conducting sewage. Once sewage has been treated, it is no longer sewage – it becomes recycled wastewater.

Therefore, the proposed pipeline will provide neither water service nor sewer service to the golf course, and will not be one of the “urban facilities” governed by Goal 11.

### **Response to the points raised by Oregon Coast Alliance letter from February 21, 2017**

#### Most of ORCA’s second letter was already covered in the response to the first letter.

ORCA submitted three letters in total, but the second two are largely derivative of the first one. In the letter from February 21, 2017, ORCA discusses issues originally raised by Commissioner Roorbach’s written comments, such as the question of whether the Hwy 101 bridge is a “structure” (it is, and the applicant has never argued otherwise) and whether ODOT approval necessary (it is, and the applicant recognizes the Planning Commission decision for the “preferred route” application must be contingent on ODOT’s approval.)

In its second letter, ORCA continues to cite a non-existent statute<sup>2</sup> for its argument that the laws governing the Oregon Public Utility Commission have some bearing on the question of whether the proposed pipeline qualifies as a “Utility facility, including substation or pumping station or private generator,” as that term is used in Port Orford Municipal Code Section 17.12.010(C)(6). It should be abundantly obvious that, as the term is used in local zoning regulations, it has nothing to do with public utilities regulated by the PUC.

#### ORCA’s citation to ORS 273.761 gets that statute backwards.

ORCA’s second letter includes one argument that we haven’t seen before – a citation to ORS 273.761. ORCA says the statute requires the applicant to obtain from the state a 25-foot easement on each side of the pipeline.

ORCA clearly hasn’t read ORS 273.761. It applies to pipelines constructed over “submersible, swamp or school lands.” Those types of lands are defined by statute, and they are all, by definition, owned by the state. The proposed pipeline doesn’t cross any of these types of state-owned land, so ORCA’s statute doesn’t apply to this application.<sup>3</sup>

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<sup>2</sup> As noted above, ORCA cites ORS 727.005, which doesn’t exist. ORCA presumably intends to refer to ORS 757.005.

<sup>3</sup> “Submersible lands” are the state-owned lands between ordinary high water line and ordinary low water line of navigable waters. ORS 274.005(8).

“Swamp lands” are state-owned lands whose title was transferred from the federal government to the states in the 1800s, in order to facilitate draining and reclamation of said lands. See ORS 273.251(5).

“School lands” are state-owned lands that are publicly held for the purpose of generating revenues to fund public schools. See ORS 273.251(4).



But here's the best part – the statute that ORCA cites doesn't require a pipeline developer to obtain an easement from the state, *it grants an easement to the pipeline developer!* It does the exact opposite of what ORCA says it does. It says: "A right of way for construction of a [ditch or pipe ...] is granted for a distance of 25 feet on each side..." It is an affirmative statutory grant of a construction right of way, in order to facilitate the construction of the ditch or pipeline.

By now it has become clear that ORCA is improvising its legal arguments on the fly, without doing the basic research to back those arguments up. ORCA is wasting the Planning Commission's time.

### **Response to the points raised by Oregon Coast Alliance letter from February 28, 2017**

ORCA's third letter raises no new issues that haven't been addressed previously, except it argues that the Planning Commission shouldn't consider the evidence that the applicant submitted on the topic of local sources of discharge exacerbating ocean acidification and hypoxia.

The irony has been noted before, but here's the environmental organization that wants the Planning Commission to consider every conceivable bad thing that might happen from the proposal, while at the same time arguing that the Planning Commission should not consider clear evidence of the proposal's environmental benefits.

The applicant can only wonder as to what ORCA thinks it is accomplishing when it advocates for the continued discharge of wastewater into the ocean, as opposed to seeing it used for sustainable irrigation.

### **Conclusion**

The applicant appreciates the thoughtful questions and concerns raised in the testimony from residents of Port Orford. The applicant believes its responses and proposals for additional conditions of approval are adequate to address the concerns regarding noise, esthetics, and tree preservation. It bears repeating that the applicant will do whatever it takes to be a good neighbor in developing and operating this proposed pump house and pipeline. On the other hand, the half-baked comments from ORCA show that ORCA does not take this process seriously. Accordingly, ORCA's testimony should be given the appropriate weight by the Planning Commission.

For the reasons explained above, and for the reasons explained in the staff report, the applicant requests the Planning Commission to approve the applications for the pump house and pipelines discussed in the "Preferred Route" and the "Alternative Route," with the conditions of approval discussed in the staff report, and with the additional conditions proposed above.

Sincerely,



Nick Klingensmith

cc: clients

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