

**CITY OF PORT ORFORD  
REGULAR SESSION OF THE COMMON COUNCIL  
THURSDAY, APRIL 20, 2023, AT 5:30 P.M.**

**Please join this meeting from your computer, tablet or smartphone.**

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United States (Toll Free): 1 (877) 309-2073

United States: 1 (646) 749-3129

**Access Code: 192-154-149**

**AGENDA**

1. Call to order/roll call
2. Additions to the Agenda
3. House Keeping Items
4. Presentations to the Council/Citizens –
5. Consent Calendar (pg. 3-22)
  - a. Approve Minutes of March 15<sup>th</sup> regular meeting
  - b. Approve Minutes of March 23<sup>rd</sup> special meeting
  - c. Curry Health Network Community Project Letter of Support
  - d. Tasty Kate’s Funky Town OLCC application
  - e. Joyce Spicer for Historic Preservation Commission application
  - f. Kathrine E. Sampsel for Parks & Rec Committee application
6. Citizen Concerns (Speak Only for Old & New Business Items on the Agenda)
7. Public Hearings (pg. 23-76)
  - a. Appeal of CUP 16-02/16-03 hearing
8. Departmental Reports – (pg. 77-81)
  - a. Public works
  - b. Administration
  - c. Finance
  - d. Planning
  - e. Liaison Reports
 

Fire District	TLT - Pogwizd	Watershed - Vileisis
Port – Cox	Parks - Tidey	Emergnecy Mgmt. - Burns/Ward
School District	Main Street – Burns	Police

9. Old Business

10. New Business (pg. 82-99)

- a. **RESOLUTION 2023-04: Water Resolution – Definition revisions**
- b. Janitorial Contract
- c. Liaison Reports
- d. Discussion on Scheduling/Agenda workshop
- e. Budget Officer appointment

11. Continuing Action Items

12. Considerations

- a. Citizens
- b. Staff
- c. Council
- d. Mayor

13. Future Meetings

Thursday, May 18<sup>th</sup> 2023; Regular Meeting In the Gable Chambers and Online at 5:30 pm

14. Adjourn

15. Executive Session: ORS 192.660(2)(a). To consider the employment of a public officer, employee, staff member, or individual agent. (CLOSED TO THE PUBLIC)

16. Executive Session: ORS 192.660(2)(f). To consider information or records that are exempt by law from public inspection. (CLOSED TO THE PUBLIC)

**PUBLIC:** When you join the meeting (5-10 min. prior to the meeting)

- **If you plan to speak/comment during the meeting (when permissible to do so), please announce your name and “how: you are joining the meeting (computer, phone, in person). Speak slowly and clearly so the organizer may “find” you and identify your “caller” location**
- **Please wait to be called on to speak, to avoid talking over someone**
- **When you are not speaking, please mute yourself (so the organizer doesn’t have to do this)**
- **Please limit side conversations and multitasking while you are in the meeting**
- **Be aware even if you are not on camera, sound can be heard over unmeted phones and will be distracting. And if you are on camera “absences” will be noticeable and distracting**
- **To minimize feedback noise, we will only have the meeting host, Mayor and one other speaker unmuted at any time during the meeting.**
- **Please be aware that if poor etiquette is being observed, it may be called out so you have an opportunity to fix the situation.**

Jessica Ginsburg

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From: Penny Suess <penny@net-gain.us>  
Sent: Wednesday, January 11, 2023 5:17 PM  
To: Jessica Ginsburg  
Subject: Appeal of Planning Commission Decision 1-10-23  
Attachments: Suess to Port Orford CC\_January 2023\_ERPD Appeal Form.pdf; 1-10-2023 PO Planning packet-pages-1,9.pdf; Suess to Port Orford CC Appeal of ERPD Time Extension Requests Appeal Narrative 2023.pdf; Port Orford to Suess re No Fee for ERPD Time Extension Appeal March 2020.pdf

From: Penny Suess penny@net-gain.us

Date: January 11, 2023

To: Jessica Ginsburg, City Administrator, City of Port Orford

I am hereby submitting my appeal to the Port Orford City Council of the decision to extend CUP 16-02 and CUP 16-03, as requested by Elk River Property Development LLC at the Port Orford Planning Commission meeting held on January 10, 2023.

Please respond via email that you have received this email with all four attachments, and were able to open all of them.

Attachments:

1. City of Port Orford Land Use Decision Appeal Request
2. Planning Commission Agenda for January 10, 2023, with the ERPD request for extension of its pipeline CUPs
3. Appeal Narrative and Testimony of Appellant before the Planning Commission
4. Statement of former City Administrator that no fee is required for this type of filing

CITY OF PORT ORFORD  
LAND USE DECISION APPEAL REQUEST

Type of Land Use Decision:

Planning Director \_\_\_\_\_  
Planning Commission X

FOR OFFICE USE ONLY

Date Received: \_\_\_\_\_  
Required Fee: \$ \_\_\_\_\_  
Fee Receipt #: \_\_\_\_\_

APPELLANT:

Name Penny Suess  
Address 834 Deady St., Port Orford, OR 97465  
P.O. Box 276 " " "  
Telephone (541) 332-3017 Fax ( ) \_\_\_\_\_

STANDING: I have standing to appeal this decision because (check each applicable reason):

- I am the applicant or agent of the applicant.
- I participated in the decision by providing written testimony which was admitted to the record of the hearing.
- I participated in the decision by providing oral testimony at the public hearing on this matter.
- I represent an agency that is affected by the decision and was notified of the pending decision and responded to the notice.

DECISION INFORMATION:

Application # CUP 16-02 + 16-03 Decision Date January 10, 2023  
Applicant Name(s) Elk River Property Development LLC  
Nature of Decision Extension of pipeline CUP 16-02 and 16-03

Subject Property: Assessor Map # \_\_\_\_\_ Tax Lot(s) \_\_\_\_\_

APPELLANT SIGNATURE: Penny Suess Date Jan. 11, 2023

} see attached  
A① and  
A②

NOTE: The required fee, in currency or negotiable instrument, must accompany this request in order for it to be accepted by the city as a valid appeal of this decision.

**PORT ORFORD PLANNING COMMISSION  
CITY COUNCIL CHAMBERS, PORT ORFORD CITY HALL  
HYBRID MEETING  
Tuesday, January 10, 2023  
4:00 PM**

How to Participate:  
Tue, January 10, 2023 4:00 PM

**Please join my meeting from your computer, tablet or smartphone.**

<https://global.gotomeeting.com/join/915224389>

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Access Code: 915-224-389

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1. Call to Order
2. Additions to the Agenda
3. Approval of Minutes: December 06 Meeting (Pg. 3-8)
4. Announcements and Communications
  - A. Chairperson/Assistant City Planner
5. Comments from the Public (Agenda Items only)
6. Public Hearing- None
7. Planning Matters-
  - i. Conditional Use Permit Extention 16-02 and 16-03 Approval (Pg. 9-10)
8. Other Business
  - A. Announcements and Communications:
    - i. City Planner Comments
    - ii. Planning Commission Comments
9. Public Considerations
10. Adjourn

Appeal Narrative of Penny Suess for Conditional Use Permits 16-02 and 16-03 (Elk River Property Development LLC.)

Following is my testimony before the Planning Commission on January 10, 2023, which raises two issues informing my appeal of the Planning Commission's approval of Elk River Property Development's pipeline CUP extension requests.

The first is that the applicant is only allowed a single one-year extension by the plain language of Port Orford Municipal Code, Section 17.32.060.

Second, the applicant has not engaged in "substantial construction," under the same provision. For those reasons, this current extension should not have been granted.

Thank you,

Penny Suess January 11, 2023

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Regarding the requested extension of CUP 16-02 and 16-03:

Where is the staff report or other guidance to commissioners? Three of the current members were not on the commission when this issue was last considered, in January 2022. Yet the packet does not even provide the citation from the Municipal Code that covers an extension to a Conditional Use Permit. Here it is:

Ch. 17. Sec. 32. Par. 060 Time limit on a permit for conditional use.

Authorization of a conditional use shall be void after one year or such lesser time as the authorization may specify unless substantial construction has taken place. However, the Planning Commission may extend authorization for an additional period not to exceed one year, upon written application to the Planning Commission. (Ord. 278 6.050, 1977)

The applicant has not stated any justification for this fifth extension request. No construction of the pipeline has taken place. No construction of the golf course it is proposed to serve has taken place. No substantial construction? Then the CUPs shall be void.

They claim that they are still working on their DEQ permit. Where is their proof? DEQ stated a year ago that they consider the issue dead for lack of work by the applicant. What has changed?

The Planning Commission may extend authorization of the pipeline CUP for no more than one year. I repeat, "may extend authorization," not shall, not must. It is within your discretion to refuse.

The applicant will say, but this was litigated at the Land Use Board of Appeals in 2020, and they said the city is given leniency in applying its own code.

Yes, and now, after seven years, it's time to uphold the plain meaning of the code, get tough, void the permits, and end the charade that has been acted out in this chamber so many, many times before.

Delivered orally on January 10, 2023

From: Penny Suess, 834 Deady St., Port Orford  
*penny@net-gain.us*

Date: April 13, 2023

To: Port Orford City Council, via Gary Milliman, City Administrator Pro Tem,  
 City of Port Orford (*gmilliman@portorford.org*)

Re: Appeal of Port Orford Planning Commission Extension of CUPs 2016-02 and 2016-03

To Mayor Cox and Members of the Council:

Following is the appellant's statement **in opposition to extending these conditional use permits** for a pump station and pipeline proposed to deliver recycled wastewater from the City of Port Orford's treatment facility to the proposed Pacific Gales Golf Course.

**Background:** The pipeline CUPs were granted to Elk River Property Development (ERPD) in 2017. One-year extensions were approved in 2018, 2019, 2020, and 2022. The Planning Commission's 2020 approval was appealed to the City Council, and the Council's decision to uphold was appealed to the Land Use Board of Appeals (LUBA). LUBA affirmed the Council's decision on a technicality in January 2021.

LUBA held, in essence, that Port Orford may interpret its Municipal Code as it pleases. The applicable language of POMC 17.32.060 (quoted in the notice of this hearing) is open to interpretation because multiple one-year extensions are not specifically prohibited. But neither are one-year extensions required, either by the POMC or the LUBA decision. **Port Orford may at its sole discretion refuse to extend these CUPs yet again.**

But restricting deliberations on this appeal to the few words in the Municipal Code regarding conditional use extensions is far from enough scrutiny. There are many additional factors that the Council must consider to arrive at its best decision.

**This 2023 extension is the fifth to be requested in the last six years, yet no construction has taken place** on either the pipeline or the golf course, and ERPD has failed to complete permitting for the application of wastewater on leased farmland north of the City. The Recycled Water Use Permit must itself go through a public hearing process before it is finalized. The Department of Environmental Quality (DEQ) has not indicated that the permit is ready for that step.

**Why has there been no construction?** After more than six years, it is fair to ask, Is there some undisclosed reason that ERPD cannot obtain the mandated DEQ permitting? If the golf course is no longer viable because recycled water for irrigation cannot be used, then no further pipeline CUP extensions can be granted.

**Is there no progress on construction because there is no investment funding?** Has the recycled water permit been slow-walked in order to divert attention from that fact? Who are the principals

in the golf course enterprise? Who are the major investors — if any? We know less about the supposed golf course backers than the City will be requiring of STR owners in the new STR regulations! It is reasonable to ask and receive a full explanation of all issues and circumstances before approving another time extension for a pipeline to serve a project that is apparently dead.

**Are all other approvals still in effect?** What about the ODOT permit? ODOT is currently constructing major Highway 101 improvements. In one alternative, this pipeline is proposed to be suspended from the highway bridge north of town. Has anything changed with ODOT planning or requirements in the last six years that would affect construction of the pipeline?

**Is ERPD's lease agreement for the Knapp farmland still in effect?** Has Port Orford ever seen the lease agreement? Is it on file?

**Has ERPD replaced the original pipeline engineer,** Stuntzner Engineering of Coos Bay, which no longer offers engineering services (per ERPD's extension request dated December 16, 2021)? What does that mean for the plans submitted? Who is the new engineer? Is it Civil West Engineering? If so, will that create a real or perceived conflict of interest, because of Port Orford's contract with Civil West for the design phase of our water system infrastructure upgrades?

**What about Port Orford's failing water and wastewater infrastructure?** So much has changed since 2016! Does the Council know if Port Orford could provide all of the treated water needed to fulfill its contractual obligations under the agreement with ERPD? Is the NPDES permit that authorizes a second sewer outfall to serve the golf course still in effect? If so, what has it cost the city to renew this permit regularly?

**Could the City spare public works staff to coordinate with the pipeline engineers on the project?** How much time, materials, and manpower would the City need to supply? What improvements or changes would be needed to the City's wastewater treatment plant? What if the pipeline or pump station construction coincided with the infrastructure improvements that would be undertaken if Port Orford receives the BRIC grant?

A wastewater pipeline leading miles offsite to a proposed golf course only ever made sense theoretically. On paper it may sound good, but practically there are too many unknowns. It's reckless for Port Orford to keep these conditional use permits wide open when the longterm effects on the City are not fully considered. Yet year after year, ERPD comes back and asks the City to continue to accept agreements that were negotiated long ago, without any real progress report or serious modifications that would be expected for such a complex project continuing over time.

**What are the liabilities for Port Orford** in allowing portions of this private pipeline to be built on land zoned 8-PF, which is "designed to identify and reserve publicly owned areas for the development of public facilities and service"? The City will at some point be required to accept ownership of the pump station and pipeline components within its boundaries. That's in the CUPs. But will the City be responsible for the entire length of the pipeline, through the UGB and then through all of the private land between the UGB and the proposed (but not yet permitted) irrigation facilities at the proposed golf course?



In case of a pipe failure, can ERPD be depended on to assume responsibility for damages, or will they default, leaving Port Orford on the hook? What if the pipeline is built, but the golf course is never built, or fails? Who is responsible? The CUPs state that Port Orford will accept ownership of pipeline components located in the City's 8-PF zone. But does this reflect an actual, legitimate public agreement, vetted and passed by the City Council? Where is such a document? Critical portions of the pipeline cross wetlands and Garrison Lake. This adds significant liability in case of leaks or failure. And of course, Garrison Lake is officially a secondary drinking water source for Port Orford.

**Curry County requires an initial fee of \$2,000** to accept and process a CUP application, then \$500 for each renewal. Has ERPD ever paid the city a cent for its permits? For its renewals? Why has Port Orford not collected appropriate fees to cover the costs for permits, staff time, and other expenses connected with administering these conditional uses? And with two CUP renewals requested, ERPD would owe two renewal fees.

**What is ERPD's bigger plan, and what Port Orford resources would be involved?** Does ERPD want to build a housing development in the Urban Growth Boundary (UGB)? Or on the Knapp Ranch? Or on the land around the old dump that they lease from the County? Will ERPD seek to use both of its pipeline routes, one to the proposed golf course with recycled water, and one with drinking water to the workforce housing (or condo development?) that it already has tentative approval for with Curry County? These are reasonable questions, and they should be asked. The City needs to reassess whether it can serve the golf course's water demands for irrigation — or any other reason.

I am concerned that this water infrastructure project, which is being “cherry-stemmed” into the UGB and beyond, will obligate Port Orford to development over which it has no control. Recent Curry County zoning changes that enable more intensive development may spur a kind of land rush outside the cities. Already, applicants are filing applications for short-term rentals in the City's northern UGB. Continuing this pipeline, or pipelines, leaves an opening for the project to expand into something well beyond the original application.

**It is obvious that there are many unresolved issues** with these extension requests. I urge Council to continue this hearing for 30 days and leave the record open for additional comment. You need this time to review all of the relevant documents (which you do not have in front of you), complete your due diligence, and justify your final decision to the water ratepayers and City taxpayers — the citizens of Port Orford.

**Building a golf course outside the City will not shower economic benefits on us**, yet this belief seems to be the basis for past extensions. It's time to be more skeptical of such claims.

Port Orford's future success cannot be based on wishing and hoping. Consider the facts and weigh them carefully. The City's sustainability depends on decisions this Council will make.

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## Elk River Property Development llc.

December 15, 2022

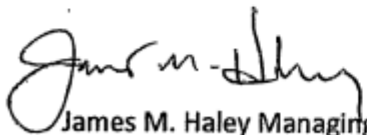
### **Re: Conditional Use Permits 16-02 & 16-03**

Dear, Chair Nieraeth and Planning commission members,

I am writing to request an additional extension of time for the land use contained in CUP 16-02 and 16-03 approved by the planning commission on 4/20/2017

The additional time is necessary as we work together with DEQ to move towards an eventual hearings process. Thank you for your continued support as we move forward with this project.

Sincerely,



James M. Haley Managing Partner  
Elk River Property Development llc.

# Elk River Property Development llc

February 7, 2023

Port Orford City Council  
555 W. 20<sup>th</sup> Street  
Port Orford, Oregon 97465

Re: Appeal of Conditional Use Permits 16-02/16-03

Dear Mayor and Councilors:

Please accept this letter on behalf of Elk River Property Development LLC stating our opposition to this appeal.

Just to be clear, Mrs. Suess's appeal is not about the pump station and pipeline, rather it is about trying to delay a golf course. The golf course has a vested permit as confirmed in LUBA decision OREGON COAST ALLIANCE, Petitioner, vs. CURRY COUNTY, Respondent, and ELK RIVER PROPERTY DEVELOPMENT LLC, Intervenor-Respondent. LUBA No. 2018-021.

Below are a few highlights on the timeline thus far:

In October of 2015 the City of Port Orford issued a request to DEQ for modification to their National Pollutant Discharge Elimination System (NPDES) permit allowing for a secondary outfall.

On August 3, 2016 a pre-application meeting took place at city hall to discuss what would eventually become CUP 16-02 & 16-03. On February 2, 2017 a public hearing was held a final order from the planning commission was completed on April 20<sup>th</sup> 2017. On May 4<sup>th</sup> 2017 that decision was appealed by the Oregon Coast Alliance to the City Council and a final order was issued June 16<sup>th</sup> 2017.

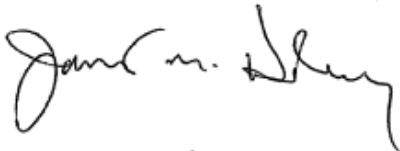
In the March 15, 2018 city council meeting, Councilor Auburn made a motion; "To provide the city's treated effluent to Elk River Property Development LLC for irrigation of the Pacific Gales Golf Course, at no cost to ERPD. With flow recommendations from future engineering work to maintain the current ocean outfall viability, and in turn, the ERPD will allow the City of Port Orford the ability to cross their property adjacent to the sewer treatment plant with water and sewer infrastructure at no cost to the city for the use of the property for the city's infrastructure. This motion also directs city staff to work with the engineers to move forward with a secondary outfall project, including the ability to accommodate all outfall, should the ocean outfall be no longer viable". This motion passed 4-3.

Mrs. Suess in 2020 appealed the Planning commission decision to the City Council and the City Councils decision to LUBA. We receive possibly the shortest decision ever written by LUBA contained in PENNY SUESS, Petitioner, vs. CITY OF PORT ORFORD, Respondent, and ELK RIVER PROPERTY DEVELOPMENT, LLC, Intervenor-Respondent. LUBA No. 2020-076.

Elk River Property Development LLC continues to have an active application before the Department of Environmental Quality (DEQ) this was confirmed by planning commission member Thelen. In the January planning commission meeting, Commissioner Thelen confirmed that he had a phone conversation with DEQ and they stated that the application was active and they were working with Elk River Property Development LLC. The two CUP's 16-02 and 16-03 have conditions attached to the permits. "Condition N: No work may commence in any way on any pipeline and pump station until until all local, County, and State permits are in hand." "Condition V: Any approved Conditional Use Permit shall be void after one year unless substantial construction has taken place as per Section 17.32.060 of the Zoning Ordinance. Any request to extend authorization shall be provided to the Planning Commission prior to the one year period.

Elk River Property Development LLC, for the reasons stated above, respectfully request that you affirm the decision of the planning commission and the prior decision of LUBA as we work to finalize the DEQ permit.

Sincerely,

A handwritten signature in black ink, appearing to read "James M. Haley". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

James M. Haley  
Managing Partner, Elk River Property Development llc.

## City of Port Orford – City Council Agenda Documentation Staff Report

**SUBJECT:** Public Hearing for appeal of Planning Commission approval of request for extension of CUP 16-02 and 16-03

**DATED:** April 11, 2023

**HEARING DATE:** April 20, 2023

**BACKGROUND:**

On January 10, 2023 the Planning Commission approved a request for an extension of CUP 16-20 and CUP 16-03 which were originally approved in April 2017 and granted yearly extensions thereafter. An appeal of that decision was received by the City.

**APPLICABLE CODE:**

Port Orford Municipal Code, Chapter 17.32, Conditional Uses, Section 17.32.060 Time On a Permit for Conditional Uses states the following:

*Authorization of a conditional use shall be void after one year or such lesser time as the authorization may specify unless substantial construction has taken place. However, the planning commission may extend the authorization for an additional period not to exceed one year, upon written application to the planning commission.*

One-year extensions have been granted for 2018-present to allow the permits to remain active and allow the applicant to continue to work through the permitting process at the state level.

Prior appeal of approved extensions have been litigated through the Land Use Board of Appeals in which it was ordered that the City was within its rights to interpret the code to allow multiple extensions of time on Conditional Use Permits under its present language.

The only issue before the Council at this hearing is whether to affirm the Planning Commission decision in approving the extension(s) or overturn the Planning Commission decision and deny the requested extension(s). Discussion of the underlying permit and the merits thereof are not appropriate as those subjects were handled at the hearing upon original approval. Any discussion had at this hearing should be relevant to the applicable code provision set out above.

In June 2020 the Council approved an extension of these permits based upon the following findings which are still applicable to the request. These findings were appealed to the Land Use Board of Appeals and the City's decision was upheld. These are the same issues the appellant has brought this appeal under now. In summary those findings are as follows:

1. The request for an extension was timely filed by the applicant for an extension of CUP 16-02 and CUP 16-03.

2. The City has the authority to interpret its code. The City’s interpretation of the applicable code section is that the City has the authority to grant extensions for the period of one year per extension. There is no limitation on the number of extensions which may be granted so long as the duration of each does not exceed one year.
3. The granting of extensions is not contingent on “substantial construction”. If “substantial construction” takes place, a request for an extension is unnecessary.
4. The City’s interpretation is consistent with the previous decisions in this matter granting multiple extensions for a period of one year each.

**FINDINGS:** The applicant has submitted draft Findings for Council consideration. The Council may adopt those findings in total, adopt them in partial or create their own findings relevant to the applicable criteria set out in POMC 17.32.060.

**POTENTIAL MOTION:**

“I move to (uphold/overturn) the Planning Commission decision to grant a one-year extension of CUP 16-02 and CUP 16-03 based upon the findings outlined (in this staff report/submitted by the applicant/as set out the by Council).”

**SUBMITTED BY:**

  
\_\_\_\_\_  
Shala M. Kudlac, City Attorney

The City Administrator Recommends that the City Council make a preliminary decision and direct staff to prepare findings for final action at the next meeting.

City Council Findings and Conclusion on Appeal by Penny Suess  
CUP 16-02 and 16-03  
Planning Commission Decision Date: January 10, 2023

Findings:

1. On January 10, 2023, the Port Orford Planning Commission approved a one-year extension of two CUPs authorizing pipelines to transport recycled water from the city's wastewater treatment plant to a planned golf course. The golf course was approved by the County; LUBA has found that the right to complete the golf course has vested.
2. The original approvals were in 2017, and previous similar one-year extensions have been approved by the City in successive years. The third request, filed in 2020, was appealed to the Land Use Board of Appeals, which affirmed the extension decision and, more importantly, confirmed that under the city code these CUPs may be extended one year at a time without limitation on the number of extensions. See *Suess v. City of Port Orford*, \_\_\_ Or LUBA \_\_\_ (No. 2020-076, Jan. 22, 2021).
3. The extension approved by the Planning Commission on January 10, 2023, has been appealed by Penny Suess to the City Council.
4. An appeal hearing before the City Council was properly noticed, assuming it is a land use decision of the City.
5. The appellant did not explain the basis for the appeal in connection with filing the appeal.
6. Under the code provisions that apply to this extension, the issue of whether to grant any particular one-year extension is completely within the discretion of the City. As explained in the LUBA decision, the code includes standards for determining when a project has started and no further extensions are needed. However, it does not state mandatory standards for an extension of time to start a project.
7. Construction has not started on this pipeline project as of this date. Therefore, another one-year extension is needed in order to keep the original CUP approvals active.
8. Based on developments to date, the City and the applicant expect that when the applicant's golf course north of the City is constructed, it will use the city's treated effluent for irrigation, and the irrigation water will be conveyed from the city treatment facility to the golf course via the pipeline approved by the City in these CUPs. The County has also approved a pipeline location on county land.
9. The original CUP approval at issue here includes Condition N, which requires DEQ permitting prior to the start of construction. Condition N says: "No work may commence in any way on any of the pipeline and pump station until all local, County and State permits are in hand."
10. DEQ approval is still needed. The applicant has an active application before the DEQ, as was confirmed with the DEQ by planning commission member Thelen. The DEQ is working with the applicant to finalize the exact footprint of the golf course lagoon size and location as well as the equipment package to be used to both deliver the effluent water to the lagoon and the equipment package to distribute that water. Once those plans are finalized the DEQ can conduct its health and safety review.



Conclusion:

Based on all of the above, the City Council concludes that another one-year extension of the CUPs is warranted and is in the interest of the City.

The appeal is denied; the decision of the Planning Commission is affirmed.

BEFORE THE PLANNING COMMISSION

CITY OF PORT ORFORD

In the matter of Planning Commission file )  
CUP 16-02 for conditional use approval to )  
develop a pump station and pipeline for )  
the purpose of carrying effluent to the )  
proposed Pacific Gales Golf Course, known )  
as. the "preferred route."

FINAL ORDER

Findings of Fact and Conditions

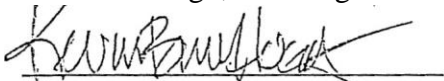
This matter came before the Planning Commission on an application by Elk River Property Development, LLC, seeking approval of a Conditional Use Permit to develop inside the city limits a pump station and pipeline for the purposes of transporting recycled wastewater from the city's wastewater treatment plant to the proposed Pacific Gales golf course. The Applicant was represented by Stuntzner Engineering & Forestry, LLC and the Law Office of Bill Kloos, PC.

Following procedures as required by City Ordinance and Oregon law, the Planning Commission voted to approve the application with conditions on March 14, 2017, and voted to approve the Findings and specific Conditions on April 11, 2017.

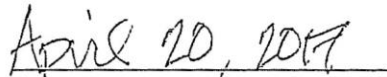
An appeal or ruling of the Planning Commission may be appealed to the City Council within 15 days after the Planning Commission has rendered its decision. Written notice of an appeal shall be filed within the fifteen-day period, and if the city council does not designate the action or ruling for hearing, the decision of the planning commission shall be final. Appeals are addressed in Section 17.08.040 of the Municipal Code, Title 17, Zoning. The date of decision by the Planning Commission is the date upon which this Final Order is signed, as set forth in Section 17.04.160.

NOW, THEREFORE, THE CITY OF PORT ORFORD PLANNING COMMISSION HEREBY ORDERS that Application File No. 16-02 is approved with conditions, based on the findings outlined in Exhibit "A" attached hereto and incorporated by reference.

Ifevin McHugh, Planning Chair

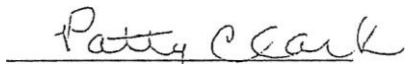


Name



Date

ATTEST:



Patty Clark, Planning Assistant

EXHIBET A

CITY OF PORT ORFORD PLANNING COMMISSION  
FINDINGS OF FACT, CONCLUSIONS AND CONDITIONS  
CUP 16-02: REQUEST FOR A CONDITIONAL USE PERMIT TO DEVELOP PUMP AND  
PIPELINE FOR PURPOSE OF DELIVERING RECYCLED WASTEWATER.

**APPLICANT'S PREFERRED ROUTE**

Property Location: T.33, R.15, S.05BD  
Tax Lots 1300 (municipal waste water facility) Tax  
Lot 1011 (effluent pump station) Recycled effluent  
line location:  
12<sup>th</sup> Street East to Idaho Street  
Idaho Street North to Madrona Street  
Madrona Street East to Hwy. 101  
Hwy. 101 North to Paradise Point Road (City Limits)  
Property Owners: City of Port Orford, Tax Lot 1300  
William Rebhahn, Tax Lot 1011

Applicant: William Rebhahn and Elk River Property Development, LLC

## SUMMARY OF PROPERTY AND APPLICATLON

The applicant requested approval for the development of a waste water effluent pump station and the installation of private pipeline that would transport recycled wastewater from the City of Port Orford treatment plant to the proposed Pacific Gales Golf Course.

The pump station will be developed on a private city lot (Tax Lot 1011) that is located directly adjacent to and north of the municipal treatment plant. The pipeline through the City will be installed primarily within public rights-of-way, with the exception of that portion extending from the pump station, through the privately owned lot, to the adjacent public right-of-way (12<sup>th</sup> Street). There will also be a feed line between the treatment plant and the pump station. The routing for the pipeline is attached as Exhibit "B" in the application, which is incorporated herein by reference.

As shown on the Applicant's site plan, the pump station will be sited at the rear portion of the private lot, directly adjacent to the City Waste Water facility on the south and adjacent to 12<sup>th</sup> Street on the north. Specific conditions of approval, described within this document regulate the landscaping, dimensions, and design characteristics of the facility.

The route of the pipeline crosses multiple zoning districts, each with its own set of allowed uses. The zones that will be crossed by the pipeline include the 8-PF zone (public facilities and parks); the I-R zone (residential zone); the 2-R zone (residential zone) and the 4-C zone (commercial zone), the 6-CD zone (controlled development) and the 5-1 zone (industrial). The approval standards are varied amongst these zoning districts. Each different zone is addressed below.

The applicant requested that the entire proposal be reviewed under the CUP standards, despite the lack of clarity in the code as to whether the underground portion of the development would be regulated as a CUP. Because specific elements of the proposal require review under the CUP standards (such as the pump station in the I-R zone) the applicant elected to subject all elements of the proposal, including the pipeline, to the CUP approval standards.

The development will be located inside of public right-of-way, except for where the pipeline will cross private property between the city's wastewater treatment plant and the public right-of-way.

### 1. APPLICABLE STANDARDS AND CRITERIA

As indicated in the notice of hearing, the application was reviewed under the following provisions of the City of Port Orford Municipal Code, Title 17 - Zoning:

Chapter 17.12.010, C, 5 - Conditional Uses Permitted (Utility facility, including substation of pumping station)

Chapter 17.12.020, C, 6 Conditional Uses Pennitted (Utility facility, including substation of pumping station or private generator)

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Chapter 17.12.030, C, 3 — Conditional Uses Pennitted (Utility facility, including substation of pumping station or private generator)

Chapter 17.12,040, B, 16 — Uses Permitted Outright (Utility facility, including substation or pumping station or private generator)

Chapter 17.12.050, C, 1 -- Conditional Uses Permitted (Public Utility facilities)

Chapter 17, 12.070, B, 3 — Uses Pennitted Outright (Public utilities and services)

Chapter 17.32 — Conditional Uses including Chapter 17.32.050 Additional standards governing conditional uses, Subsection A, Conditional Uses, Generally; D, 1-4 .

Chapter. 17.08 — Section 17,08.020 Enforcement; Section 17.08.030 Authorization of similar uses.

Because the development will cross multiple zoning districts, each with its own zoning regulations, this findings document will address the applicable standards for each zoning district separately.

Findings addressing approval standards in the Public Facilities and Parks zone (8-PF)

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 föllowing uses and their accessory uses are permitted outright:

3. Public utilities and services;

Findings: The pipeline will originate in the Public facilities, 8-PF zone. Public utilities and services, and their accessory uses are permitted outright uses in the 8-PF Zone. The portion of the pipeline that will connect the existing wastewater treatment plant to the applicant's pump system will be approximately 50 feet long. The applicant stated its intent that the portion of the pipeline to be built on the site of the city's wastewater treatment plant will become a component of the city's existing treatment plant, owned by the city, subject to approval of the City Council, In addition, the applicant has stated it will be responsible for all costs associated with the design, construction, and ongoing maintenance of this component that will be added to the treatment plant. The City Council has amended its wastewater treatment plant facilities plan to adopt a policy supportive of recycling the wastewater, and this connection between the treatment plant and the adjoining private property is necessary for the recycled wastewater to reach the privately owned pump facility and the rest of the pipeline.

The portion of the pipeline that will be added to the city's existing wastewater treatment plant is a use that is permitted outright 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 (A-PWA-ODOT), and approved by the City Engineer and/or the Oregon Department of Transportation depending upon jurisdiction. In addition, the Planning Commission has imposed a condition requiring the applicant to obtain an easement to allow access to the city's treatment plant property, and to any necessary connections to the City wastewater site and system.

The applicant has described the necessary improvements that will be developed in the 8-PF zone, and the applicant has stated its intent to have all decisions within this zone remain under the exclusive jurisdiction of the City of Port Orford, with no financial burden to the City.

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

#### Findings addressing approval standards in the Residential Zone (I-R)

##### 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:*

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

Findings: After the wastewater feed line leaves the municipal wastewater treatment plant, it will cross into the I-R zone and enter the private Tax Lot 1011. Approval of the application gives the applicants the rights to place the pipe and the pump station located on Tax Lot 1011. The pump station on Tax Lot 1011 will then charge the force-main that will cross the remainder of the lot before entering the public right of way along 12 St.

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 utility facilities.

The Planning Commission finds that the pipeline and pump station are of the same general type as uses specifically listed. There is no reference in the code to private pipelines. 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.

In light of some uncertainty as to whether the CUP criteria would apply to just the pump station, or to both the pump station and the pipeline, the applicant requested the Planning Commission to apply the CUP approval standards to the entire proposal, including the pump structure and the entire pipeline within the jurisdiction of the City of Pon Orford.

#### Findings addressing approval standards for conditional use permits

##### 17.32.010 Authorization to grant or deny conditional use.

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 conditional use and the use of adjacent properties.

This provision allows the Planning Commission to impose conditions on a proposed use in order to "protect the best interests of the surrounding property, the neighborhood or the city as a whole" in order to "minimize the conflict between the conditional use and the use of adjacent properties." The pump station will be insulated, fenced, landscaped, and constructed with materials that are compatible with and similar to materials utilized for standard residential development. The entire pipeline will be within the jurisdiction of the City of Port Orford, and entirely underground, so the development will not generate any conflicts with the uses on adjacent properties.

##### 17.32030 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 count [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 17.32040. 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 any one 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 ....5. 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 11207% 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.

#### 17.3240 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 0111)). (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.

Section 17.32. OSO 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.

Findings: The pump building will be the largest structure on tax lot 1011. The lot where the pump station is proposed to be located is currently undeveloped. When the pump structure is built, it will be the "principal structure" for the purposes of measuring setbacks. "

The applicant's materials show the shelter as having a minimum setback of 11.5 feet from the west property line. Under the two-thirds standard, that setback would permit a structure that is over 17 feet in height. The Planning Commission imposed a condition requiring that the pump station structure shall not exceed 17 feet in height.

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 property.

Findings: The only public access to the subject lot is provided exclusively from 12<sup>th</sup> Street to the north. Access to the building from 12<sup>th</sup> Street will require a permit from the city. As part of this application, the applicant is also requesting that the city permit the applicant to access the southerly portion of the property across the city's existing gravel road at the treatment plant. The access requested will require an easement, which will require approval of the City Council.

For a conditional use in a residential zone, the City has the authority to limit vehicle access and building openings within fifty (50) feet of residential property, if "the openings will cause glare or excessive noise or will otherwise adversely affect adjacent property." The Planning Commission provided conditions of approval in response to neighbors' concerns that noise would be generated by the pump station.

The applicant stated that entire facility will utilize standard residential lighting and will contain no equipment or structural elements that would cause excessive glare. By following the City's dark sky ordinance, the Planning Commission determined that light overflow to neighboring properties will not occur.

It is appropriate that the Planning Commission impose conditions of approval that will mitigate for any visual impact and noise impacts, including specific requirements for landscaping, fencing, and the appearance of the pump house structure.

Planning Commission members discussed effects of boring and trenching, and potential negative effects on the City's water infrastructure due to old asbestos concrete piping. It is appropriate that DEQ and the City Engineer be involved in any boring and trenching activities to assure that there are no negative effects on the City's water infrastructure or neighboring properties.

3. The city may require assurances to guarantee development in accordance with the standards established and conditions imposed in granting a conditional use.

Findings: The Planning Commission finds that it is appropriate that the City Council require Elk River Property Development to acquire a surety bond to protect the City infrastructure.

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.

Findings: The equipment that is utilized in conjunction with the booster pump can be contained totally within an enclosed and fully insulated structure that is constructed with materials similar to those uses in standard residential construction. The applicant has stated the construction will be insulated which will reduce noise, and that the pump house will be approximately 100 feet to the south of the 12<sup>th</sup> St. right of way.

2. The use shall be fenced and provided with landscaping.

Findings: The entire pump station facility will be fenced for security purposes and landscaped as required by the Planning Commission. The property is currently covered with vegetation that will be maintained in undeveloped areas. The pump station will be located approximately 100 feet from 12<sup>th</sup> Street with access provided by a 12-foot driveway. The Planning Commission imposed conditions of approval requiring specific landscaping requirements.

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.

Findings: The development is not a public utility facility, and the subject lot size exceeds the minimum lot size established for the applicable residential zone district so no waiver is necessary.

4. As far as possible, transmission towers, poles, overhead wires, pumping stations, and similar gear shall be so located, designed and installed as to minimize their conflict with scenic values.

Findings: The pumping station will be fenced and landscaped, as required. The applicant has agreed to paint the pump house in an earth-tone color and ensure that it is architecturally unobtrusive and shielded with landscaping. The pipeline will be placed underground so there will be no interference with scenic values. Where pipe installation disturbs the soil or pavement surface, right-of-ways will be brought up to city standards. By locating and installing the pipe almost entirely within the public right of way, the applicant will be using routes that are already dominated by pavement.

As noted in public testimony, one "scenic value" that could be impacted by the development is the pipeline's potential impact on tree roots. The applicant has agreed to follow best practices, as outlined by an Oregon State University Extension Bulletin, and it is appropriate to include an arborists report in order to place pipe below critical root zones, without impacting tree health.

- 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).

This standard is addressed below, in the section of the application that addresses the portion of the proposal that crosses through the controlled development zone.

#### Findings addressing approval standards in the Residential Zone (2-R)

##### 17.12.20 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:

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

Findings: After the pipeline travels east on 12 St., it will enter the 2-R residential zone, as shown on the applicant's-Exhibit "B." The list of uses that can be approved with Conditional Use Permit in the 2-R zone includes "Utility facility, including substation or pumping station or private generator." 17.12.020. No pump station is proposed for this zone, but the pipeline that will be placed is the same as what was discussed above, as allowed in the I-R zone, pursuant to <sup>0(C)(6)</sup>. Given that the applicant has requested the CUP standards be applied to both the pump house and the pipeline, and given that the applicable CUP standards are the same for both the 2-R zone and the I-R zone, the findings addressing the CUP approval standards that are provided above are hereby incorporated by reference.

Findings addressing approval standards in the Commercial Zone (4-C)

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 continuity 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: As the pipeline continues east along 12<sup>th</sup> St. and turns north along Idaho St., it crosses the Commercial Zone, as shown on the applicant's Exhibit "B". Chapter 17.12.030 of Port Orford's Municipal Code contains the regulations governing the 4-C zone. Section C.3 lists "Utility facility, including substation or pumping station or private generator" as uses that are conditionally permitted in this zone. No pump station is proposed for this zone, but the pipeline that will be placed is the same as what was discussed above, in regard to the R-1 and R-2 zones.

Because there are wetlands in the 4-C zone, the Planning Commission will require that the applicant communicate with the Department of State Lands to assure that any wetlands on the property are considered and to comply with any Department of State Lands requirements for wetlands.

Given that the applicant has requested the CUP standards be applied to both the pump house and the pipeline, and given that the applicable CUP standards are the same for both the I-R zone and the 4-C zone, the findings addressing the CUP approval standards that are provided above are hereby incorporated by reference.

Findings addressing approval standards in the Controlled development zone (6CD)

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.

Findings: As shown on the applicant's exhibit "B" the pipeline will continue north until it intersects with Hwy 101, and from there it will exit the commercial zone and cross over Mill Creek, which is subject to the Controlled Development zone.

This purpose statement is not itself an approval standard, but the approval standards are appropriately viewed in context of this purpose statement. The pipeline would cross through the CD zone within the Highway 101 right-of-way. The highway bridge already crosses through this zone and the 6" pipeline would be attached to the existing bridge structure. Because the pipeline will be suspended along the bridge and over the associated wetlands, the applicant has stated that no surface disruption will occur and there will be no degradation to the natural resource. The Planning Commission will require that the applicant communicate with the Department of State Lands to assure that any wetlands on the property are considered and to comply with any Department of State Lands requirements for wetlands.

The applicant is required to seek authorization from ODOT in order to place the pipeline in the State Highway right-of-way, and no construction authorized by this CUP approval may begin until the applicant has approval from ODOT to use the bridge.

- c. Conditional Uses Permitted In a 6-CD zone the following uses and their access01Y uses are permitted when authorized in accordance with Chapter 17.32:
1. Public utility facilities;

Findings: This zoning regulation allows public utility facilities, but is silent on private utility facilities. The applicant has requested that the private pipeline be allowed in the 6-CD on the basis that it is indistinguishable from a public pipeline. Port Orford zoning regulations allow a use to be approved when it is adequately similar to a use that is specifically listed. These provisions are found in the administrative provisions of the Port Orford Municipal Code, and they state:

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: The applicant has requested that Section 17.08.030 be used to authorize the pipeline to cross through the 6-CD zone, on the basis that the pipe is adequately similar to a public utility pipe.

This provision requires the city council to make the determination of similar uses, but the Port

Orford City Council has authorized the Planning Commission to process conditional uses under Chapter 17.32.030. In addition, the Port Orford City Council has the powers and duties of commission as set forth in ORS 227.090 and Chapter 2.16 of the municipal code. The Planning Commission agrees with the applicant that a private water pipe is similar to a public water pipe.

Because utility facilities are allowed in the CD zone only by conditional use permit, the CUP provisions from Section 17.32, which are discussed above, would apply to this portion of the development as well. The findings provided above that address the generally-applicable provisions of the CUP standards are incorporated here. In addition, the CUP provisions include standards that apply specifically in the CD zone.

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:

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 prepared 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" in its application 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. The applicant has explained that the pipeline would

"daylight" at the existing bridge footing, and that it would be attached to the bridge until it goes underground again at the far side. The applicant will be required to design and build its pipeline according to ODOT specifications.

- d. A revegetation plan or other methods of erosion control;

Findings: Because the proposal will not cause any vegetation to be removed, no re-vegetation plan is required. The applicant will comply with the City's erosion requirements,

- e. Proposed grading or fill plan;



Findings: The proposal requires no grading or fill. The pipeline will 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.

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 not involve any groundwater extraction. The Planning Commission members discussed effects of boring and trenching, and potential negative effects on the City's water infrastructure due to old asbestos concrete piping. It is appropriate for the Planning Commission to apply conditions to assure there are no negative effects on groundwater or City water infrastructure.

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

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

i. Visual impact is minimized,

Findings: The pipeline will be suspended along the bottom of the existing bridge and visual impacts will be minimized.

ii. Waterfront access is not impaired,

Findings: The pipeline will be suspended along the bottom of the existing bridge and no waterfront access will be impaired.

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

Findings: The pipeline shall be suspended from the bottom on an existing bridge and waterfront access will not be impaired.

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

Findings: The pipeline will be installed and maintained at the sole expense of the applicant.

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

Findings: The pipeline will be suspended from the bottom an existing bridge and it is appropriate that the applicant obtain all required permits related to. construction within a riparian zone. .

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 f01th in Section 17.32050 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 all State authorization to place the pipeline in the State Highway right-of-way to be maintained in the record with any approval of this application,

#### Industrial Zone (5-1)

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 designated 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. Because the pipeline is sufficiently similar to a public utility pipe, it is permitted in this portion of the development area.

#### Conclusion

With conditions attached hereto, Application # CUP 16-02 will comply with the requirements of all of the zones that it passes through within the City of Port Orford from its origin at the proposed pump station to its destination at the proposed Pacific Gales Golf Course.

Exhibit A  
**Port Orford Planning Commission**

Conditions of Approval CUP {16-02 and CUP #16-03

Public Hearing February 14, 2017, Continued to March 14, 2017;

Decision of March 14, 2017;

Approval of Findings and Conditions, April 11, 2017

- A. The use shall be provided with landscaping. Vegetation shall be planted and maintained on the site where the pump station is located to provide a sound buffer for nearby residential uses and to protect scenic values. This shall include Laurel surrounding the pump station site on three sides (not across the back), T33, R 15, Section 05BD, Tax Lot 1011, and along 12<sup>th</sup> Street, Laurel shall be of nursery stock with a 2 inch caliper and spaced every 4 feet. Three Pacific Madrone trees shall be planted within the lot to be located on the north, east and west sides of the property for infill between the pump station and the property lines.
  
- B. Prior to commencing construction, a maintenance easement shall be completed through Elk River Property Development (ERPD) and the City of Port Orford, The easement shall be filed with the County and City,
  
- C. Prior to commencing with the use, the property shall be fenced with a fence no less than 6 feet high.
  
- D. The pump station structure shall not exceed 17 feet in height.
  
- E. Prior to commencing construction, the applicant shall show compliance with Port Orford Municipal Code requirements Chapter 17, 17, Erosion Prevention and Sediment Control and Chapter 17.18, Storm and Surface Water Management,
  
- F. Prior to commencing construction, the applicant shall obtain an access permit from 12<sup>th</sup> Street,
  
- G. All equipment storage on site shall be contained within the enclosed pump station facility.
  
- H. Prior to commencing with the use, the applicant shall comply with all DEQ requirements for the pump station, pipeline and connections.

- I. The applicant shall comply with all requirements of the City of Port Orford Municipal Code and the City Engineer related to construction of The pump station, pipeline, connections and transfers to and from the City's Wastewater Treatment Plant.
- J. Any right-of-way, sidewalks or other publicly owned property that is displaced by pipeline construction shall be brought up to City standards as required by the City Engineer.
- K. Lighting shall comply with the Dark Sky Ordinance of the City of Port Orford Municipal code. In addition, all exterior lighting shall fall within a 45-degree angle pointing to the ground. No light shall spill onto neighboring properties.
- L. The pump station shall be finished in muted earth tone colors.
- M. Prior to construction, the applicant shall provide copies of all communications with the Department of State Lands (DSL) regarding wetlands that are on properties designated for the pump station and/or the pipeline. The City requires copies of all communications and any concerns.
- N. No work may commence in any way on any of the pipeline and pump station until all local, County and State permits are in hand.
- O. Construction of the pipeline route shall be completed in compliance With Oregon's Standard Specifications for Construction (A-PWA-ODOT), and approved by the City Engineer and/or the Oregon Department of Transportation in all zones, depending upon jurisdiction. The applicant shall 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.
- P. The applicant shall comply with all Federal, State and local requirements.
- Q. Transmission towers, poles, overhead wires, pumping stations and similar gear shall be located, designed and installed to minimize their conflict with scenic values.
- R. The applicant shall provide a copy of the City's Wastewater Plan amendment that provides the basis for private activity at the site and facility of the City's wastewater treatment plant to be maintained within the record of this application.
- S. The proposed pipeline that originates in the 8-PF zone shall only be constructed upon approval of the City Council.

- T. The applicant can only utilize one Conditional Use Permit, and that permit shall be for the installation of one pipe for the sole purpose of carrying treated effluent.
- U. The applicant shall comply with all of the Conditions imposed by the Planning Commission.
- V. Any approved Conditional Use Permit shall be void after one year unless substantial construction has taken place as per Section 17.32.060 of the Zoning Ordinance. Any request to extend authorization shall be provided to the Planning Commission prior to the one year period.
- W. The applicant shall provide a report by an engineering geologist to be reviewed by the city engineer accessing all potential impacts related to city infrastructure along the pipeline route.
- X. The applicant shall provide a surety bond during construction of the pipeline and for 12 months following the construction so as to protect the City's current infrastructure from damage during installation.
- Y. The applicant shall follow the recommendations of a professional arborist to minimize damage to established vegetation along the pipeline route and the recommendations made by the arborist be filed with the city.

END OF DOCUMENT

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BEFORE THE PLANNING COMMISSION  
CITY OF PORT ORFORD

In the matter of Planning Commission file )  
CUP 16-03 for conditional use approval to )  
develop a pump station and pipeline for )  
the purpose of carrying effluent to the )  
proposed Pacific Gales Golf Course )  
known as the "alternative route." )

FINAL ORDER  
Findings of Fact and Conditions

This matter came before the Planning Commission on an application by Elk River Property Development, LLC, seeking approval of a Conditional Use Permit to develop inside the city limits a pump station and pipeline for the purposes of transporting recycled wastewater from the city's wastewater treatment plant to the proposed Pacific Gales golf course. The Applicant was represented by Stuntzner Engineering & Forestry, LLC and the Law Office of Bill Kloos, PC.

Following procedures as required by City Ordinance and Oregon law, the Planning Commission voted to approve the application with conditions on March 14, 2017, and voted to approve the Findings and specific Conditions on April 11, 2017.

An appeal or ruling of the Planning Commission may be appealed to the City Council within 15 days after the Planning Commission has rendered its decision. Written notice of an appeal shall be filed within the fifteen-day period, and if the city council does not designate the action or ruling for hearing, the decision of the planning commission shall be final. Appeals are addressed in Section 17.08.040 of the Municipal Code, Title 17. Zoning. The date of decision by the Planning Commission is the date upon which this Final Order is signed, as set forth in Section 17.04.160.

**NOW, THEREFORE, THE CITY OF PORT ORFORD PLANNING COMMISSION HEREBY ORDERS** that Application File No. 16-03 is approved with conditions, based on the findings outlined in Exhibit "A" attached hereto and incorporated by reference.

Kevin McHugh, Planning Chair

Kevin McHugh  
Name

April 10, 2017  
Date

ATTEST:

Patty Clark  
Patty Clark, Planning Assistant

BEFORE THE PLANNING COMMISSION  
CITY OF PORT ORFORD

EXHIBIT A

CITY OF PORT ORFORD PLANNING COMMISSION  
FINDINGS OF FACT AND CONCLUSIONS  
CUP 16-03: REQUEST FOR A CONDITIONAL USE PERMIT TO DEVELOP PUMP  
AND PIPELINE FOR PURPOSE OF DELIVERING RECYCLED WASTEWATER.

APPLICANT'S ALTERNATIVE ROUTE

Property Location: T.33, R.15, S.05BD  
Tax Lots 1300 (municipal waste water facility)  
Tax Lot 1011 (effluent pump station)  
Recycled effluent line location:  
12<sup>th</sup> Street East to Idaho Street  
Idaho Street North to Madrona Street  
Under Hwy. 101 to Port Orford Loop Road  
North on Port Orford Loop Road to Mather Drive

Property Owners: City of Port Orford, Tax Lot 1300  
William Rebhahn, Tax Lot 1011

Applicant: William Rebhahn and Elk River Property Development, LLC



## I. SUMMARY OF PROPERTY AND APPLICATION

The applicant requested approval for the development of a waste water effluent pump station and the installation of private pipeline that would transport recycled wastewater from the City of Port Orford treatment plant to the proposed Pacific Gales Golf Course.

The pump station will be developed on a private city lot (Tax Lot 1011) that is located directly adjacent to and north of the municipal treatment plant. The pipeline through the City will be installed primarily within public rights-of-way, with the exception of that portion extending from the pump station, through the privately owned lot, to the adjacent public right-of-way (12<sup>th</sup> Street). There will also be a feed line between the treatment plant and the pump station. The routing for the pipeline is attached as Exhibit "B" in the application, which is incorporated herein by reference.

As shown on the Applicant's site plan, the pump station will be sited at the rear portion of the private lot, directly adjacent to the City Waste Water facility on the south and adjacent to 12<sup>th</sup> Street on the north. Specific conditions of approval, described within this document regulate the landscaping, dimensions, and design characteristics of the facility.

The route of the pipeline crosses multiple zoning districts, each with its own set of allowed uses. The zones that will be crossed by the pipeline include the 8-PF zone (public facilities and parks); the 1-R zone (residential zone); the 2-R zone (residential zone) and the 4-C zone (commercial zone), the 6-CD zone (controlled development) and the 5-I zone (industrial). The approval standards are varied amongst these zoning districts. Each different zone is addressed below.

The applicant requested that the entire proposal be reviewed under the CUP standards, despite the lack of clarity in the code as to whether the underground portion of the development would be regulated as a CUP. Because specific elements of the proposal require review under the CUP standards (such as the pump station in the 1-R zone) the applicant elected to subject all elements of the proposal, including the pipeline, to the CUP approval standards.

The development will be located inside of public right-of-way, except for where the pipeline will cross private property between the city's wastewater treatment plant and the public right-of-way.

## I. APPLICABLE STANDARDS AND CRITERIA

As indicated in the notice of hearing, the application was reviewed under the following provisions of the City of Port Orford Municipal Code, Title 17 - Zoning:

Chapter 17.12.010, C, 5 - Conditional Uses Permitted (Utility facility, including substation of pumping station)

Chapter 17.12.020, C, 6 Conditional Uses Permitted (Utility facility, including substation of pumping station or private generator)

Chapter 17.12.020, C, 4 – Conditional Uses Permitted (Public use facility or public utility including but not limited to fire stations; C, 6 (Utility facility, including substations of pumping station or private generator)

Chapter 17.12.030, C, 3 – Conditional Uses Permitted (Utility facility, including substation of pumping station or private generator)

Chapter 17.12.050, C, 1 – Conditional Uses Permitted (Public Utility facilities)

Chapter 17.32 – Conditional Uses including Chapter 17.32.050 – Additional standards governing conditional uses, Subsection A, Conditional Uses, Generally; D, 1-4

Chapter 17.08 – Section 17.08.020 Enforcement; Section 17.08.030 Authorization of similar uses.

Because the development will cross multiple zoning districts, each with its own zoning regulations, this findings document will address the applicable standards for each zoning district separately.

**Findings addressing approval standards in the Public Facilities and Parks zone (8-PF)**

*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 originate in the Public facilities, 8-PF zone. Public utilities and services, and their accessory uses are permitted outright uses in the 8-PF Zone. The portion of the pipeline that will connect the existing wastewater treatment plant to the applicant's pump system will be approximately 50 feet long. The applicant stated its intent that the portion of the pipeline to be built on the site of the city's wastewater treatment plant will become a component of the city's existing treatment plant, owned by the city, subject to approval of the City Council. In addition, the applicant has stated it will be responsible for all costs associated with the design, construction, and ongoing maintenance of this component that will be added to the treatment plant. The City Council has amended its wastewater treatment plant facilities plan to adopt a policy supportive of recycling the wastewater, and this connection between the treatment plant and the adjoining private property is necessary for the recycled wastewater to reach the privately-owned pump facility and the rest of the pipeline.

The portion of the pipeline that will be added to the city's existing wastewater treatment plant is a use that is permitted outright 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, the Planning Commission has imposed a condition requiring the applicant to obtain an easement to allow access to the city's treatment plant property, and to any necessary connections to the City wastewater site and system.

The applicant has described the necessary improvements that will be developed in the 8-PF zone, and the applicant has stated its intent to have all decisions within this zone remain under the exclusive jurisdiction of the City of Port Orford, with no financial burden to the City.

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

#### Findings addressing approval standards in the Residential Zone (1-R)

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

*A. Purpose of Classification. The 1-R zone is designed to be applied to residential areas where dwellings are appropriate.*

*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:*

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

**Findings:** After the wastewater feed line leaves the municipal wastewater treatment plant, it will cross into the 1-R zone and enter the private Tax Lot 1011. Approval of the application gives the applicants the rights to place the pipe and the pump station located on Tax Lot 1011. The pump station on Tax Lot 1011 will then charge the force-main that will cross the remainder of the lot before entering the public right of way along 12 St.

The pipeline will pass through the residential zone (1-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 utility facilities.

The Planning Commission finds that the pipeline and pump station are of the same general type as uses specifically listed. There is no reference in the code to private pipelines.

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.

In light of some uncertainty as to whether the CUP criteria would apply to just the pump station, or to both the pump station and the pipeline, the applicant requested the Planning Commission to apply the CUP approval standards to the entire proposal, including the pump structure and the entire pipeline within the jurisdiction of the City of Port Orford.

Findings addressing approval standards for conditional use permits

*17.32.010 Authorization to grant or deny conditional use.*

*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 conditional use and the use of adjacent properties.*

This provision allows the Planning Commission to impose conditions on a proposed use in order to “protect the best interests of the surrounding property, the neighborhood or the city as a whole” in order to “minimize the conflict between the conditional use and the use of adjacent properties.” The pump station will be insulated, fenced, landscaped, and constructed with materials that are compatible with and similar to materials utilized for standard residential development. The entire pipeline will be within the jurisdiction of the City of Port Orford, and entirely underground, so the development will not generate any conflicts with the uses on adjacent properties.

*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 or 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 count [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. 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 any one 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.....
5. 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.

*17.32.40 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.

*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.*

**Findings:** The pump building will be the largest structure on tax lot 1011. The lot where the pump station is proposed to be located is currently undeveloped. When the pump structure is built, it will be the "principal structure" for the purposes of measuring setbacks. "

The applicant's materials show the shelter as having a minimum setback of 11.5 feet from the west property line. Under the two-thirds standard, that setback would permit a structure that is over 17 feet in height. The Planning Commission imposed a condition requiring that the pump station structure shall not exceed 17 feet in height.

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 property.*

**Findings:** The only public access to the subject lot is provided exclusively from 12<sup>th</sup> Street to the north. Access to the building from 12<sup>th</sup> Street will require a permit from the city.

As part of this application, the applicant is also requesting that the city permit the applicant to access the southerly portion of the property across the city's existing gravel road at the treatment plant. The access requested will require an easement, which will require approval of the City Council.

For a conditional use in a residential zone, the City has the authority to limit vehicle access and building openings within fifty (50) feet of residential property, if "the openings will cause glare or excessive noise or will otherwise adversely affect adjacent property." The Planning Commission provided conditions of approval in response to neighbors' concerns that noise would be generated by the pump station.

The applicant stated that entire facility will utilize standard residential lighting and will contain no equipment or structural elements that would cause excessive glare. By following the City's dark sky ordinance, the Planning Commission determined that light overflow to neighboring properties will not occur.

It is appropriate that the Planning Commission impose conditions of approval that will mitigate for any visual impact and noise impacts, including specific requirements for landscaping, fencing, and the appearance of the pump house structure.

Planning Commission members discussed effects of boring and trenching, and potential negative effects on the City's water infrastructure due to old asbestos concrete piping. It is appropriate

that DEQ and the City Engineer be involved in any boring and trenching activities to assure that there are no negative effects on the City's water infrastructure or neighboring properties.

*3. The city may require assurances to guarantee development in accordance with the standards established and conditions imposed in granting a conditional use.*

**Findings:** The Planning Commission finds that it is appropriate that the City Council require Elk River Property Development to acquire a surety bond to protect the City infrastructure.

*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.*

**Findings:** The equipment that is utilized in conjunction with the booster pump can be contained totally within an enclosed and fully insulated structure that is constructed with materials similar to those uses in standard residential construction. The applicant has stated the construction will be insulated which will reduce noise, and that the pump house will be approximately 100 feet to the south of the 12<sup>th</sup> St. right of way.

*2. The use shall be fenced and provided with landscaping.*

**Findings:** The entire pump station facility will be fenced for security purposes and landscaped as required by the Planning Commission. The property is currently covered with vegetation that will be maintained in undeveloped areas. The pump station will be located approximately 100 feet from 12<sup>th</sup> Street with access provided by a 12 foot driveway. The Planning Commission imposed conditions of approval requiring specific landscaping requirements.

*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.*

**Findings:** The development is not a public utility facility, and the subject lot size exceeds the minimum lot size established for the applicable residential zone district so no waiver is necessary.

*4. As far as possible, transmission towers, poles, overhead wires, pumping stations, and similar gear shall be so located, designed and installed as to minimize their conflict with scenic values.*

**Findings:** The pumping station will be fenced and landscaped, as required. The applicant has agreed to paint the pump house a in an earth-tone color and ensure that it is architecturally unobtrusive and shielded with landscaping. The pipeline will be placed underground so there will be no interference with scenic values. Where pipe installation disturbs the soil or pavement



surface, right-of-ways will be brought up to city standards. By locating and installing the pipe almost entirely within the public right of way, the applicant will be using routes that are already dominated by pavement.

As noted in public testimony, one "scenic value" that could be impacted by the development is the pipeline's potential impact on tree roots. The applicant has agreed to follow best practices, as outlined by an Oregon State University Extension Bulletin, and it is appropriate to include an arborists report in order to place pipe below critical root zones, without impacting tree health.

#### Findings addressing approval standards in the Residential Zone (2-R)

##### *17.12.20 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:*

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

**Findings:** After the pipeline travels east on 12 St., it will enter the 2-R residential zone, as shown on the applicant's Exhibit "B." The list of uses that can be approved with Conditional Use Permit in the 2-R zone includes "Utility facility, including substation or pumping station or private generator." 17.12.020. No pump station is proposed for this zone, but the pipeline that will be placed is the same as what was discussed above, as allowed in the 1-R zone, pursuant to 17.12.010(C)(6). Given that the applicant has requested the CUP standards be applied to both the pump house and the pipeline, and given that the applicable CUP standards are the same for both the 2-R zone and the 1-R zone, the findings addressing the CUP approval standards that are provided above are hereby incorporated by reference.

#### Findings addressing approval standards in the Commercial Zone (4-C)

##### *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:** As the pipeline continues east along 12<sup>th</sup> St. and turns north along Idaho St., it crosses the Commercial Zone, as shown on the applicant's Exhibit "B". Chapter 17.12.030 of Port Orford's Municipal Code contains the regulations governing the 4-C zone. Section C.3 lists "Utility facility, including substation or pumping station or private generator" as uses that are conditionally permitted in this zone. No pump station is proposed for this zone, but the pipeline that will be placed is the same as what was discussed above, in regard to the R-1 and R-2 zones.

Because there are wetlands in the 4-C zone, the Planning Commission will require that the applicant communicate with the Department of State Lands to assure that any wetlands on the property are considered and to comply with any Department of State Lands requirements for wetlands.

Given that the applicant has requested the CUP standards be applied to both the pump house and the pipeline, and given that the applicable CUP standards are the same for both the I-R zone and the 4-C zone, the findings addressing the CUP approval standards that are provided above are hereby incorporated by reference.

### Conclusion

With conditions attached hereto, Application # CUP 16-03 will comply with the requirements of all of the zones that it passes through within the City of Port Orford from its origin at the proposed pump station to its destination at the proposed Pacific Gales Golf Course.

## Exhibit A

### Port Orford Planning Commission Conditions of Approval CUP #16-02 and CUP #16-03

Public Hearing February 14, 2017, Continued to March 14, 2017;  
Decision of March 14, 2017;  
Approval of Findings and Conditions, April 11, 2017

- A. The use shall be provided with landscaping. Vegetation shall be planted and maintained on the site where the pump station is located to provide a sound buffer for nearby residential uses and to protect scenic values. This shall include Laurel surrounding the pump station site on three sides (not across the back), T33, R15, Section 05BD, Tax Lot 1011, and along 12<sup>th</sup> Street. Laurel shall be of nursery stock with a 2 inch caliper and spaced every 4 feet. Three Pacific Madrone trees shall be planted within the lot to be located on the north, east and west sides of the property for infill between the pump station and the property lines.
- B. Prior to commencing construction, a maintenance easement shall be completed through Elk River Property Development (ERPD) and the City of Port Orford. The easement shall be filed with the County and City.
- C. Prior to commencing with the use, the property shall be fenced with a fence no less than 6 feet high.
- D. The pump station structure shall not exceed 17 feet in height.
- E. Prior to commencing construction, the applicant shall show compliance with Port Orford Municipal Code requirements Chapter 17.17, Erosion Prevention and Sediment Control and Chapter 17.18, Storm and Surface Water Management.
- F. Prior to commencing construction, the applicant shall obtain an access permit from 12<sup>th</sup> Street.
- G. All equipment storage on site shall be contained within the enclosed pump station facility.
- H. Prior to commencing with the use, the applicant shall comply with all DEQ requirements for the pump station, pipeline and connections.
- I. The applicant shall comply with all requirements of the City of Port Orford Municipal Code and the City Engineer related to construction of The pump station, pipeline, connections and transfer to and from the City's Wastewater Treatment Plant.
- J. Any right-of-way, sidewalks or other publicly owned property that is displaced by pipeline construction shall be brought up to City standards as required by the City Engineer.

## Exhibit A

- K. Lighting shall comply with the Dark Sky Ordinance of the City of Port Orford Municipal code. In addition, all exterior lighting shall fall within a 45-degree angle pointing to the ground. No light shall spill onto neighboring properties.
- L. The pump station shall be finished in muted earth tone colors.
- M. Prior to construction, the applicant shall provide copies of all communications with the Department of State Lands (DSL) regarding wetlands that are on properties designated for the pump station and/or the pipeline. The City requires copies of all communications and any concerns.
- N. No work may commence in any way on any of the pipeline and pump station until all local, County and State permits are in hand.
- O. Construction of the pipeline route shall 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 in all zones, depending upon jurisdiction. The applicant shall 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.
- P. The applicant shall comply with all Federal, State and local requirements.
- Q. Transmission towers, poles, overhead wires, pumping stations and similar gear shall be located, designed and installed to minimize their conflict with scenic values.
- R. The applicant shall provide a copy of the City's Wastewater Plan amendment that provides the basis for private activity at the site and facility of the City's wastewater treatment plant to be maintained within the record of this application.
- S. The proposed pipeline that originates in the 8-PF zone shall only be constructed upon approval of the City Council.
- T. The applicant can only utilize one Conditional Use Permit, and that permit shall be for the installation of one pipe for the sole purpose of carrying treated effluent.
- U. The applicant shall comply with all of the Conditions imposed by the Planning Commission.
- V. Any approved Conditional Use Permit shall be void after one year unless substantial construction has taken place as per Section 17.32.060 of the Zoning Ordinance. Any request to extend authorization shall be provided to the Planning Commission prior to the one year period.

**Exhibit A**

- W. The applicant shall provide a report by an engineering geologist to be reviewed by the city engineer accessing all potential impacts related to city infrastructure along the pipeline route.
- X. The applicant shall provide a surety bond during construction of the pipeline and for 12 months following the construction so as to protect the City's current infrastructure from damage during installation.
- Y. The applicant shall follow the recommendations of a professional arborist to minimize damage to established vegetation along the pipeline route and the recommendations made by the arborist be filed with the city.

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Port Orford City Hall  
555 W 20<sup>th</sup> Street  
Port Orford, OR 97465

April 12, 2023

Port Orford Common Council,

Thank you for the opportunity to respond on the extension of CUP 1602 and 16-03, relating to develop a pump station and pipeline for delivering recycled wastewater to the proposed Pacific Gales Golf Course.

I oppose the extension, the use of recycled water in the Elk River watershed and using Oregon General Funds for a private endeavor (SB 948) while the residents of Port Orford (myself included) are dealing with a critical water emergency.

I have not found any impact studies or information on how recycled wastewater runoff from the proposed Pacific Gales gold course will affect the Elk River. I find this negligent after reading many articles on the safety of recycled water. River water quality is essential to the health of our county. We are currently experiencing reduced returns on Salmon and Steelhead. What would leaching recycled wastewater and the chemicals used in maintaining golfing greens do to the Elk River and the already diminishing population of fish?

It is also negligent to be adding a golf course on our city water system when it is severely taxed in its capacity and cannot serve the taxpayers who live in the city boundaries. Where is a proposed bill from our representatives to secure funding for the required repairs and/or new wastewater system for the residents, or money to purchase land from logging companies to preserve a healthy watershed? I know I cannot be the only resident struggling to pay for the water to maintain a garden to grow food that I rely on. Why should a private golf course be rewarded with General Funds from the State when residents water is not guaranteed? Why are our Representatives David Brock-Smith and Court Boice not fighting for the needed sewer system upgrades for quality, reasonably priced water for the residents? It seems that we should be securing healthy water for the residents before anything else is added on to it.

In general, I oppose the proposed golf course. It was planned to rival the Bandon Dunes, which is only 25 miles away. The fees at Bandon Dunes discourage local working people to use their golf course. Is that the type of tourist business we want to support in Port Orford? With local issues like affordable housing, affordable water and limited services for the resident- what would it look like to cater to the upper middle class and wealthy tourist?

Do not extend the conditional use permit to support a golf course that locals would not be able to afford to use and does not benefit the City of Port Orford until the water emergency has been solved for its residents.

Thank you for this consideration.

Sincerely,

  
Michelle Hanna

2537 Port Orford Loop Road Box 952  
Port Orford, OR 97465

April 13, 2023

Dear Council Member,

We are writing to express concern over the proposed golf course development. We are new members of the community, recently having restored the historic McMullen house built in 1890. We also own the new bookstore in town, and have been excited to provide another outlet for community engagement and gathering in Port Orford.

We feel concerned about the environmental and cultural impact building a golf course could have on Port Orford. With a decaying water system, increased issues with drought, and concerns about the health of our rivers and ocean, it seems that allowing the development of a golf course would strain Port Orford's current resources, inevitably pollute the groundwater, and not add much culturally to the community.

We understand the concerns about bringing revenue to Port Orford, particularly in making sure working class individuals and families have the resources they need to thrive. We do not believe that building a golf course will have a positive impact on that segment of the population.

It seems better to invest in what is already here, to support the sustainable fisheries, and to think more creatively (with extensive community input) about what would best serve the needs of the people here, as well as the plants, animals and waterways that make this place so special and unique. It is so incredibly refreshing to have found a place that has resisted the temptation of big business—a place that is so concerned with the well-being of the people, the land, and the water. It would be such a tragedy to make a decision that could so easily derail these priorities.

We strongly oppose golf course development and hope that we can be part of finding other ways to make sure everyone lucky enough to live here can thrive and be well.

Thanks for listening,  
Elena T. Gardella  
Charlie J. Stephens (Sea Wolf Books owner)  
250 19th Street  
Port Orford, Oregon 97465

END OF SECTION