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June 24, 2024

Mayor and City Council
City of Port Orford
222 W. 20th Street
Port Orford, Oregon 97465

Re: Appeal of Planning Commission Denial of
Extension of Pipeline CUPs for Elk River Development, LLC
CUP 16-02 and 16-03

Dear Mayor and Councilors:

Please accept this filing as an appeal of the Planning Commission's June 10, 2024 denial of a one-year extension of the above city CUPs related to the applicant's proposal to land-apply treated city wastewater. This appeal is filed on behalf of the applicant, as required by the city code.

The Commission voted to deny the application on June 10. That decision was noticed by Shoji Planning, LLC on June 18. A copy of that notice is attached. Also attached is a copy of the January 3, 2024 application to the City for an extension.

It is important to note that whether to grant an extension is completely within the discretion of the City. The code does not state any standards for approving or denying an application for an extension.

The applicant has been making good progress toward constructing this project. The applicant can discuss the project in more detail at the hearing on this matter. Most importantly, the applicant has prepared, and forwarded to the City for its review, a draft Agreement that would formalize the relationship between the City and the applicant in undertaking this project. This Agreement is needed to move forward. Now that the City has retained legal counsel, the applicant expects that the Agreement can be finalized and signed.

One wrinkle in this proceeding is its relationship to the 2023 City Council decision to extend the CUPs. As explained in the enclosed 2024 application letter, we learned in December that the 2023 extension decision was never signed by the City. Thus, it never became a final, appealable decision. The 2023 approval by the City Council, on appeal by opponent Penny Suess, would have been to LUBA. Our January 3, 2024 extension application suggested that the City hold up on processing the 2024 application until the 2023 decision was reduced to writing, signed, and mailed to the parties. That would avoid a confusing situation that would arise if the City were making a decision on the 2024 application before the 2023 decision became final. The City followed that suggested procedure. Attached is a copy of the final decision on the 2023 extension.

City of Port Orford
June 24, 2024
Page 2

The attorney for ORCA suggested to the Planning Commission that there was no 2024 application filed and, therefore, there was nothing for the City to approval. The Planning Commission here did not address that issue. The Applicant is not addressing that argument here either because, frankly, we do not understand it. If ORCA wishes to press that theory again, we will address it here if it is stated with sufficient clarity to be addressed.

The applicant looks forward to the appeal hearing on this matter.

Sincerely,

Bill Kloos

Bill Kloos

Cc: client
Shoji Planning, LLC
Lori Cooper, City Attorney

Enclosures:

Notice of Planning Commission Decision, June 18, 2024.
Application for Extension, January 3, 2024.
City Decision approving 2023 extension application, March 8, 2024.

July 12, 2024

Mayor and City Council
City of Port Orford
222 W, 20th Street
Port Orford, Oregon 97465

Re: Progress on CUP 16-02 and 16-03

Dear Mayor and Councilors,

Thank you for the opportunity to provide input in the appeal of the Planning Commission's June 10, 2024 denial of CUP 16-02 and 16-03, and an update regarding progress made on the project, to-date.

Since approval in April 2017, progress on the project has been slower than anticipated for a variety of reasons. LUBA appeals, the change of engineering firms, personnel changes at the Department of Environmental Quality (DEQ), incomplete funding, my working out of state (6/2017 -9/2023), and Covid have all contributed to delays. I offer this not as an excuse, but as reasonable contributing factors for a project with a very small staff of 3.

Currently, the primary obstacles with moving forward with the DEQ permits are: 1) not having a contractual agreement between Elk River Property Development (ERPD) and the City of Port Orford for the treated wastewater, and 2) the DEQ needing more accurate engineering plans than we've been able to supply, without that agreement. Although the City Council passed a resolution to provide the city's treated effluent at no charge, this resolution is not a contract. We began working with the interim city administrator John Huttl in September 2023, and had several meetings, including one with our engineering firm (The Dyer Partnership) present. We submitted a draft agreement to this Council in January 2024, and due to City staffing issues, little action has occurred. Because the golf patrons will be walking/playing on the 'disposal site' and irrigation will be close to the cliff (beach), the DEQ, Oregon Health Authority (OHA), and Division of State Lands (DSL) need precise locations and engineered plans for the clubhouse, on-course restrooms, maintenance compound, irrigation reservoir, and the irrigation system. All three agencies have varying distances for required setbacks. We have been actively clearing gorse and Tan Oak since September of 2023 on the Knapp Ranch, and recently on our 12th Street parcel adjacent to the wastewater treatment plant, to be ready for surveying/engineering. As an aside, the Forest Service sent a thank you letter saying that our work in clearing Tan Oak has freed up \$325,000 to be used in other high priority areas to help eradicate Sudden Oak Death. A preliminary golf course routing has also been marked out across the site, although slight changes may still occur.

The Dyer Partnership is currently working on the irrigation reservoir design, which we intend to construct this fall, once permits are in hand. Actual golf course construction is scheduled to begin August 2025, and we are organizing our tasks to meet that date. According to the DEQ, reuse of

treated wastewater is the best practice for disposing of treated wastewater. ERPD would prefer to have treated effluent as part of our irrigation mix, as it is not only the right thing to do, but it will also help foster a positive good neighbor, public/private partnership with the City of Port Orford. If the CUP is extended, the Dyer Partnership will also finish the engineering/design of the pump station and pipeline, at our cost, in concert with the City of Port Orford engineering firm, and we will move forward with the DEQ permitting process.

“Progress” can be a subjective term. The work that we have accomplished over these years, especially this past year, including expenses incurred of around \$2,000,000, from our perspective equals substantial progress. Thank you for your consideration.

Respectfully,

Troy Russell, Project Manager

Elk River Property Development