Pre-Lotus Construction

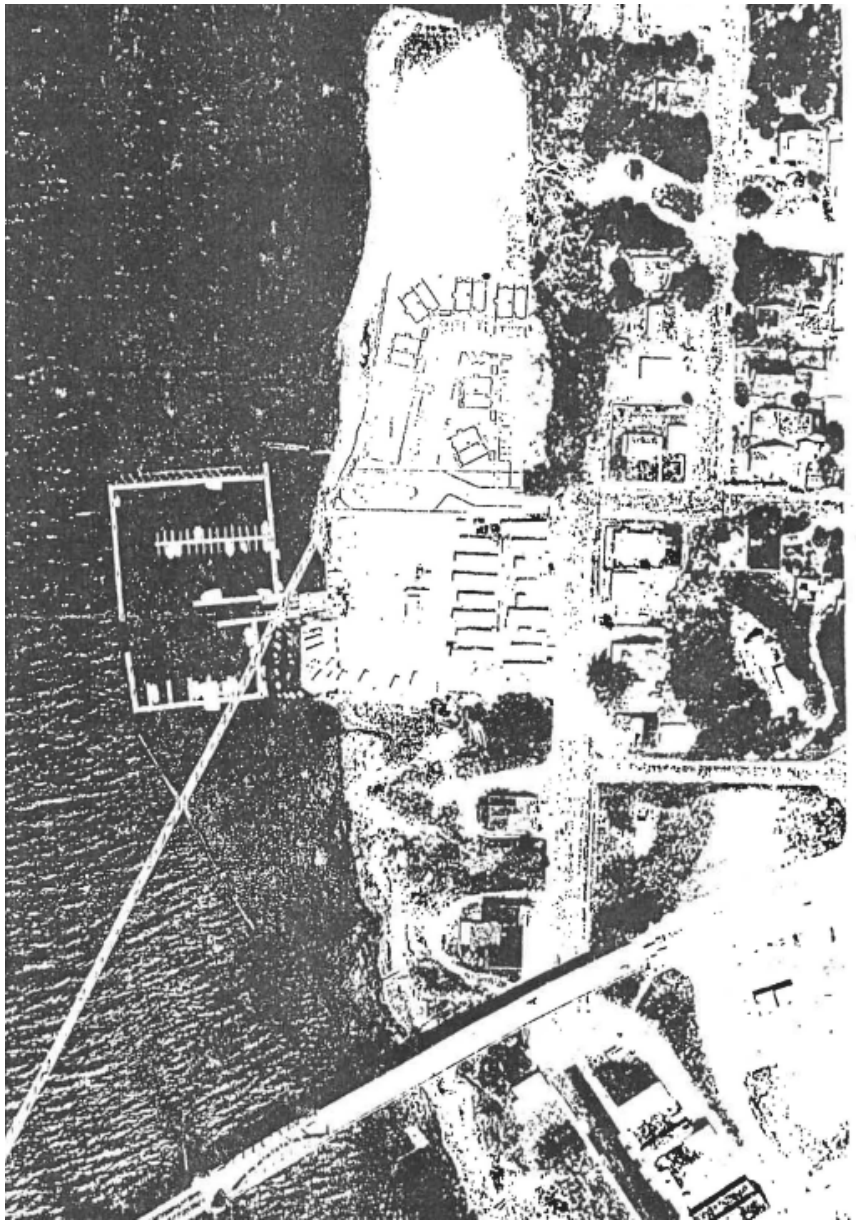
2015 River View

2012 Looking West

Pre-Lotus Aerial

2018 Looking West

2018 Parking Lot

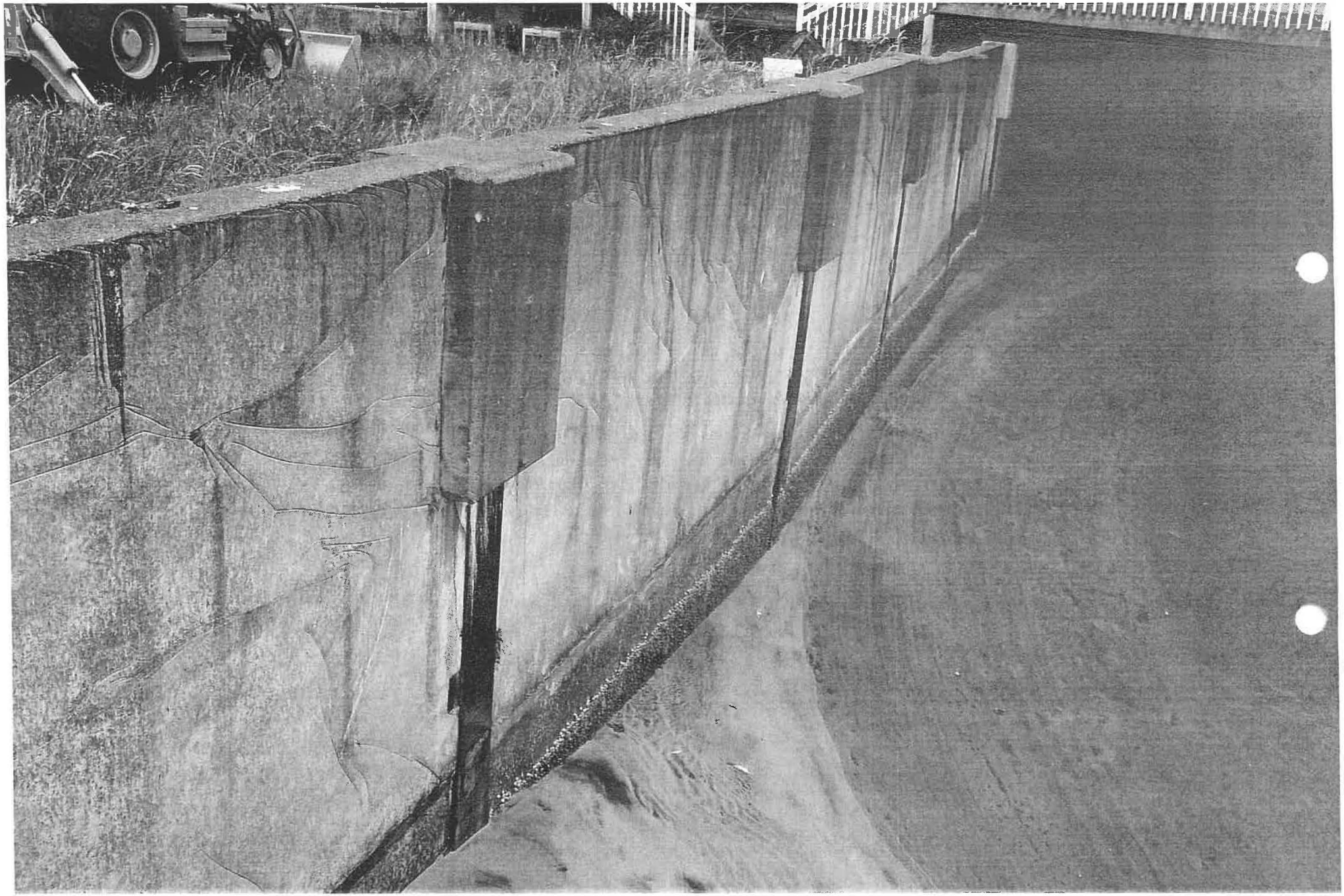


Item - 1
For the record 7/16/09

1

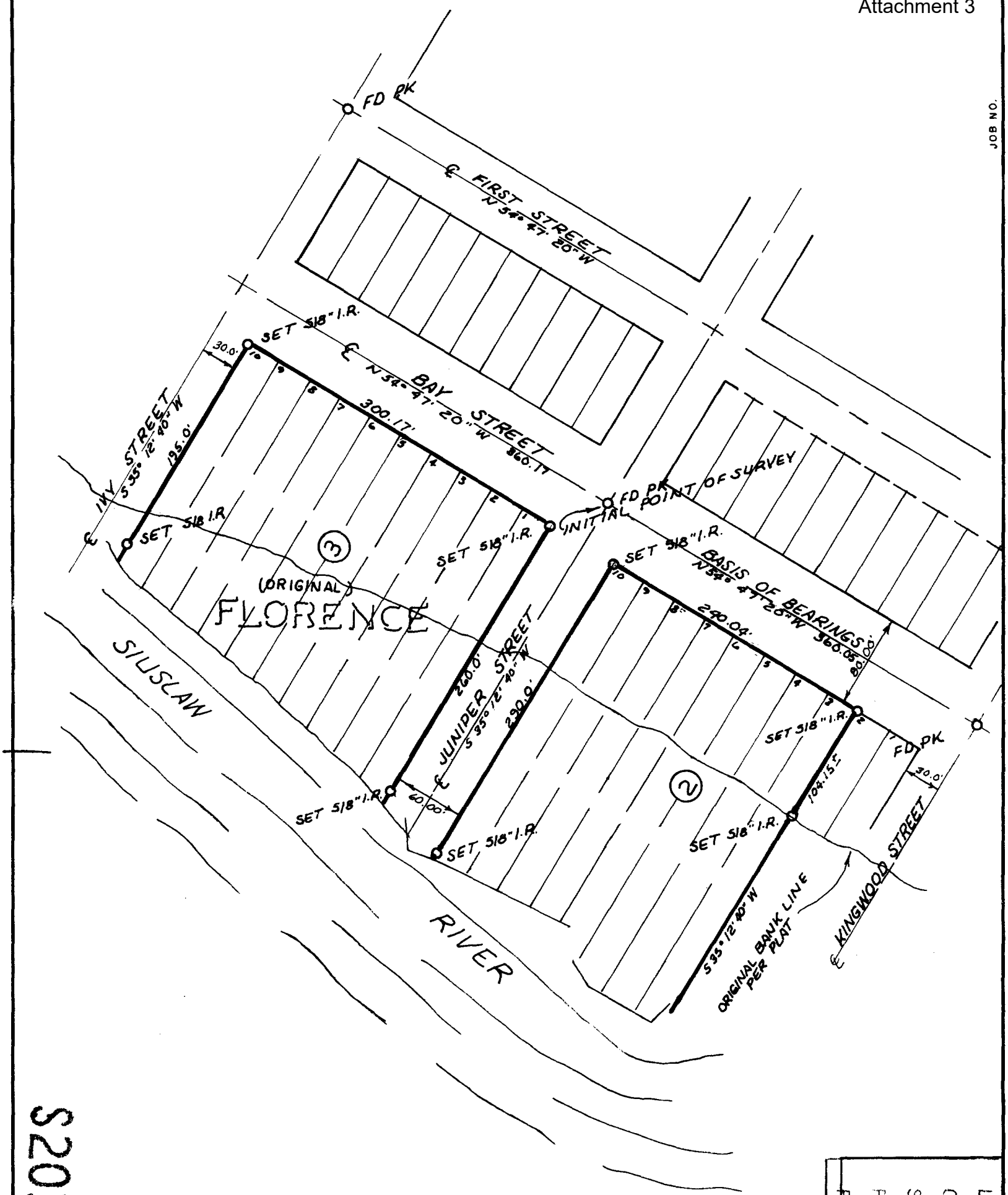
1950s - facing east

Item 1
For the record 7/16/07



Attachment 3

JOB NO.



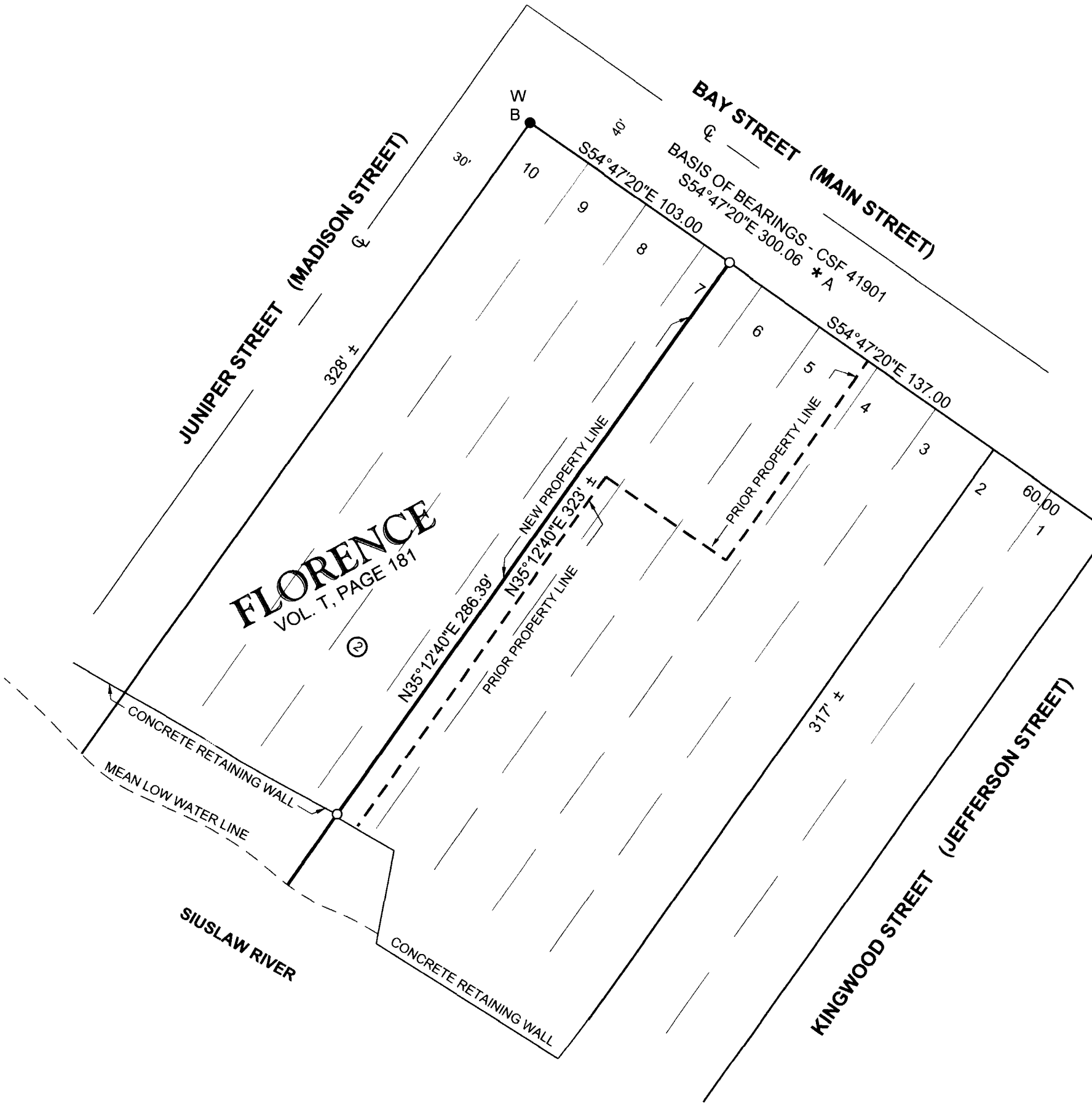
S20150

LEE C. PLANTS, PROFESSIONAL LAND SURVEYOR
54 CENTENNIAL LOOP, EUGENE, OREGON (503)686-9211
510 KINGWOOD STREET, FLORENCE, OREGON (503)997-8411

PROJECT	PROPERTY SURVEY
CLIENT	JIM REDDEN
LOCATION	NE 1/4, NW 1/4, SEC 34, T18S, R12W, W.M. LANE COUNTY, OREGON
DRAWN BY: AEF	JANUARY 1978

REGISTERED
PROFESSIONAL
LAND SURVEYOR
Eugene M Hobbe
EUGENE M. HOBBE

LANE COUNTY SURVEYORS
C. S. FILE NO. 21414
SURVEY RECORDED 2-8-78
FILE SIZE 8 1/2 x 14
FILING DATE 3-1-78
JOB NO. F76-094



NARRATIVE:
THE PURPOSE OF THIS SURVEY WAS TO MONUMENT PROPERTY LINE ADJUSTMENT AS SHOWN PER CITY OF FLORENCE APPROVAL NUMBER AR 10 04 LL 02. THE NEW LINE WAS ESTABLISHED AT THE DIRECTION OF THE OWNER. THIS SURVEY HOLDS MONUMENTS FOUND FROM CSF 21414.

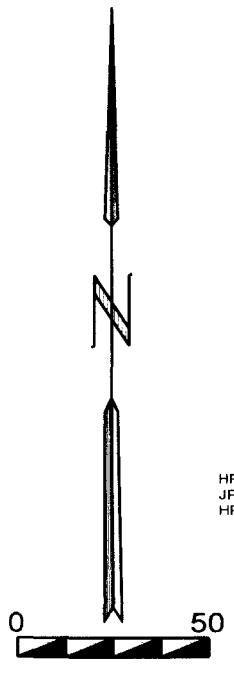
o	INDICATES 5/8" X 30" IRON ROD SET WITH YELLOW PLASTIC CAP MARKED "WOBBE ASSOC".
W ●	INDICATES 5/8" IRON ROD FOUND WITH YELLOW PLASTIC CAP MARKED "WOBBE ASSOC".
( )	INDICATES RECORD DATA.
*	INDICATES MEASURED DATA SAME AS RECORD.

EQUIPMENT USED: NIKON DTM - 521

SURVEY REFERENCES

A - CSF 41901

B - CSF 21414



HP DESIGNJET 500
JPC-4M2
HP C4844A

18-12-34-12, TL 8000 & 8100

JOB F09-36

REGISTERED
PROFESSIONAL
LAND SURVEYOR
Eugene M. Wobbe
OREGON
JULY 30, 1976
EUGENE M. WOBBE
1093
P.L.S. EXPIRATION DATE: 6-30-2012

DC2010\0936 PLA ROS.DC

WOBBE & ASSOCIATES, INC.
510 KINGWOOD ST./ P.O. BOX 3093
FLORENCE, OR 97439

PROPERTY LINE ADJUSTMENT SURVEY

OREGON PACIFIC BANKING CO.

NE 1/4, SEC. 34, T18S, R12W, W.M.
FLORENCE, LANE COUNTY, OREGON

JULY 12, 2010 | DRAWN: EMW

LANE COUNTY SURVEYORS OFFICE
C.S. FILE NO. 41906
FILING DATE 26 JULY '10
B

( ) INDICATES RECORD DATA THAT DIFFERS FROM SURVEY DATA.

YPC YELLOW PLASTIC CAP.

L&T SURVEY TACK IN LEAD IN CURBING

● INDICATES 5/8" X 30" IRON ROD SET WITH YELLOW PLASTIC CAP MARKED "WOBBE ASSOC".

⌀ INDICATES A COMPUTED POINT

o MONUMENTS FOUND AS NOTED

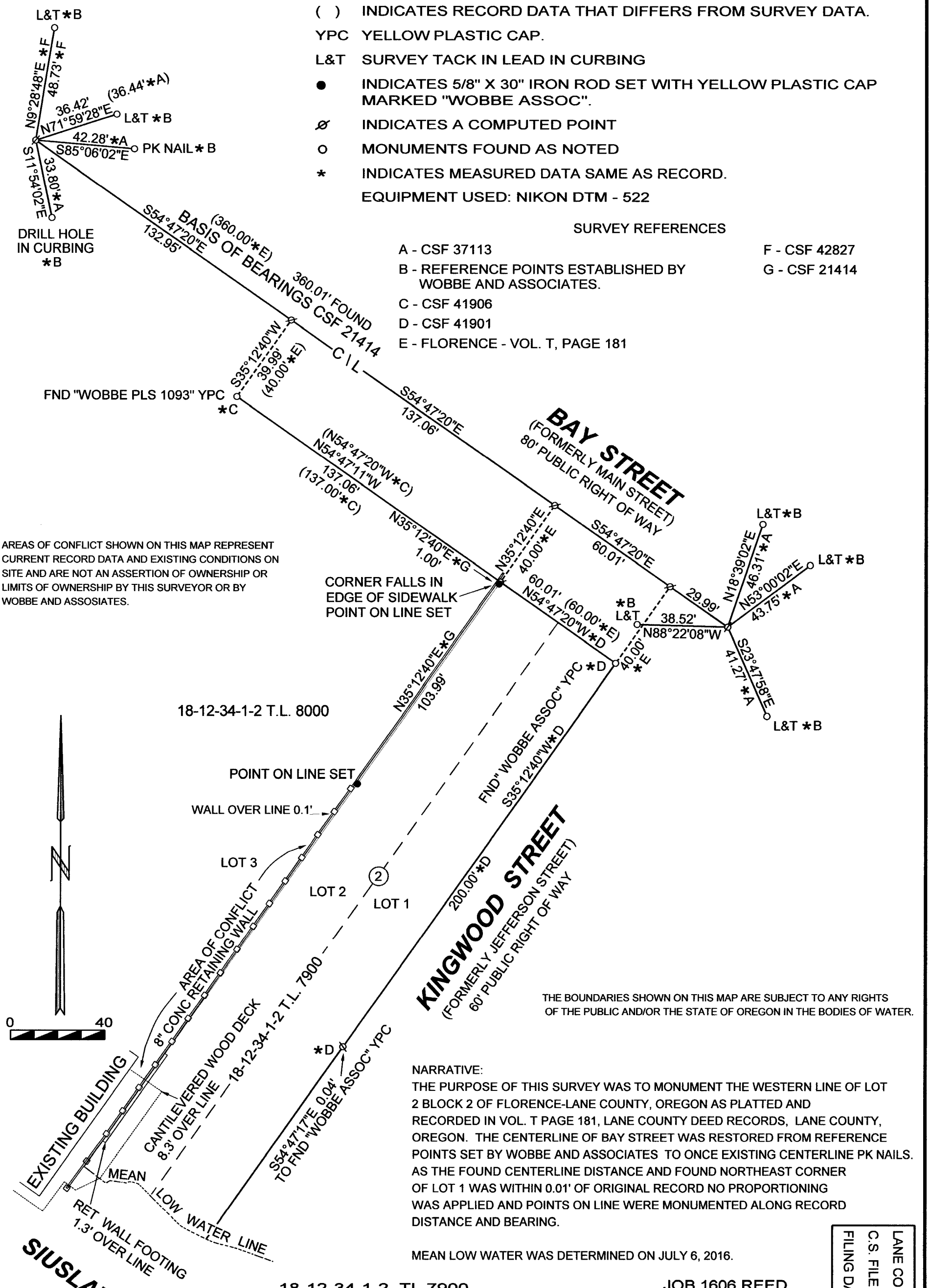
* INDICATES MEASURED DATA SAME AS RECORD.

EQUIPMENT USED: NIKON DTM - 522

SURVEY REFERENCES

A - CSF 37113
B - REFERENCE POINTS ESTABLISHED BY WOBBE AND ASSOCIATES.
C - CSF 41906
D - CSF 41901
E - FLORENCE - VOL. T, PAGE 181
F - CSF 42827
G - CSF 21414

AREAS OF CONFLICT SHOWN ON THIS MAP REPRESENT CURRENT RECORD DATA AND EXISTING CONDITIONS ON SITE AND ARE NOT AN ASSERTION OF OWNERSHIP OR LIMITS OF OWNERSHIP BY THIS SURVEYOR OR BY WOBBE AND ASSOSIATES.



THE BOUNDARIES SHOWN ON THIS MAP ARE SUBJECT TO ANY RIGHTS OF THE PUBLIC AND/OR THE STATE OF OREGON IN THE BODIES OF WATER.

NARRATIVE:
THE PURPOSE OF THIS SURVEY WAS TO MONUMENT THE WESTERN LINE OF LOT 2 BLOCK 2 OF FLORENCE-LANE COUNTY, OREGON AS PLATTED AND RECORDED IN VOL. T PAGE 181, LANE COUNTY DEED RECORDS, LANE COUNTY, OREGON. THE CENTERLINE OF BAY STREET WAS RESTORED FROM REFERENCE POINTS SET BY WOBBE AND ASSOCIATES TO ONCE EXISTING CENTERLINE PK NAILS. AS THE FOUND CENTERLINE DISTANCE AND FOUND NORTHEAST CORNER OF LOT 1 WAS WITHIN 0.01' OF ORIGINAL RECORD NO PROPORTIONING WAS APPLIED AND POINTS ON LINE WERE MONUMENTED ALONG RECORD DISTANCE AND BEARING.

MEAN LOW WATER WAS DETERMINED ON JULY 6, 2016.

18-12-34-1-2 TL 7900 JOB 1606 REED

REGISTERED PROFESSIONAL LAND SURVEYOR
OREGON
JULY 12, 2005
ANGUS MACMANUS
76653
P.L.S. EXPIRATION DATE: 12-31-2016

WOBBE & ASSOCIATES, INC.
510 KINGWOOD ST. / P.O. BOX 3093
FLORENCE, OR 97439

RECORD OF SURVEY FOR
KRIS REED
LOTS 1 AND 2 , BLOCK 2 OF FLORENCE-LANE COUNTY, OREGON
NW 1/4, NE 1/4, SEC. 34, T18S, R12W, W.M.
LANE COUNTY, OREGON

JULY 19, 2016 | DRAWN: AM

HP DESIGNJET 500
HP C4844A
PIXELLE RIJB24-36

LANE COUNTY SURVEYORS OFFICE
C.S. FILE NO. 43712
FILING DATE 8 Aug 16
B

CITY OF RHODODENDRONS
FLORENCE · · OREGON · · 1893

City of Florence

P.O. BOX 340
250 HIGHWAY 101 NORTH

PH. (503) 997-3436
FLORENCE, OREGON 97439

February 12, 1988

LAND USE BOARD OF APPEALS
100 High Street SE, Suite 220
Salem, OR 97310

Re: DELAY vs CITY OF FLORENCE
LUBA No. 88-003
CITY OF FLORENCE RESOLUTION
NO. 103 (A) Series 1987

Enclosed please find a supplemental record to material pertinent to the above appeal, which was inadvertently omitted from the original packet. Documents have been numbered to fit consecutively in order.

Also, please find enclosed an adopted ordinance, No. 3, Series 1988, which supplements the record as well.

True copies, together with a copy of this letter, are beiong mailed this date to each of the attorneys for the parties in interest.

Sincerely,

Laura Gillispie,
Planning Director

LG/amr
enclosures

cc: Johnson & Kloos
767 Willamette Street, Suite 203
Eugene, OR 97401

Herb Lomard
P.O. Box 10332
Eugene, OR 97440

City of Florence
P.O. BOX 340
250 HIGHWAY 101 NORTH
PH. (503) 997-3436
FLORENCE, OREGON 97439

January 26, 1988

LAND USE BOARD OF APPEALS
100 High Street SE, Suite 220
Salem, OR 97310

Re: DELAY vs CITY OF FLORENCE
LUBA No. 88-003
CITY OF FLORENCE RESOLUTION
No. 103 (A) Series 1987

Enclosed please find a certified true copy of the RECORD OF PROCEEDING UNDER REVIEW for filing in the above entitled matter.

True copies, together with a copy of this letter, are being mailed this date to each of the attorneys for the parties in interest.

Sincerely,

Laura Gillispie

Laura Gillispie,
Planning Director

LG/amr
encl.

cc: Johnson & Kloos
767 Willamette Street, Suite 203
Eugene, OR 97401

Herb Lombard
P.O. Box 10332
Eugene, OR 97440

City of Florence
P.O. BOX 340
250 HIGHWAY 101 NORTH
PH. (503) 997-3436
FLORENCE, OREGON 97439

STATE OF OREGON)
) ss
LANE COUNTY)

I hereby certify that the enclosed RECORD OF PROCEEDING UNDER REVIEW for filing in the matter of DELAY vs CITY of FLORENCE, LUBA No. 88-003 is a certified true copy.

Anne M. Rhodes, NOTARY PUBLIC

My Commission Expires 7-21-90

CERTIFIED TO BE A TRUE COPY
BY:

BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

JACK DELAY, THOMAS A. McCARVILLE, and the THREE-TEN PARTNERSHIP,	)	
Petitioners,	)	**LUBA No.** _____
v.	)	
CITY OF FLORENCE,	)	
Respondent.	)	

NOTICE OF INTENT TO APPEAL

I.

Notice is hereby given that Petitioners intend to appeal that land use decision of Respondent entitled "Resolution 103(A), Series 1987: **A Resolution Approving Applicant's (Hon-Shiou (Tony) Chiou) Proposal to Construct a Restaurant Partially Supported by Piling Within the Development Estuary District,"** including the conditional use permits, resource capability determination, and design review approval incorporated therein, which became final on December 22, 1987. The decision which involves the approval of the construction of a restaurant partially on shore and partially on pilings extending into the Siuslaw River just west of the Siuslaw Bay Bridge in Florence.

II.

Petitioners Jack Delay, Thomas A. McCarville, and the Three-Ten Partnership are represented by: Allen L. Johnson, Johnson & Kloos, Attorneys at Law, Suite 203, 767 Willamette, Eugene, OR 97401, (503) 687-1004.

Respondent City of Florence has, as its mailing address and telephone number:

Wilbur A. Ternyik, Mayor
Craig McMicken, City Manager
Jon E. Taylor, City Recorder/Finance Director
City Hall
250 Highway 101 North
P.O. Box 340
Florence, OR 97439
(503) 997-3436

Respondent City has as its special counsel in this matter:

Joseph J. Leahy
Harms, Harold, Leahy and Pace
223 North A Street, Suite D
Springfield, OR 97477
(503) 746-9621

III.

The applicant is

Hong-Shiou (Tony) Chiou
P.O. Box 117
Florence, OR 97439.

The applicant was represented in the proceeding below by

Herbert W. Lombard, Jr.
725 Country Club Road
P.O. Box 10332
Eugene, OR 97440.

Other persons mailed written notice of the land use decision by the City of Florence, as indicated by its records in this matter, include those persons listed on the attached Exhibit A, incorporated herein by this reference.

NOTICE:

Anyone designated in paragraph III of this Notice, including Exhibit A thereto, who desires to participate as a party in this case before the Land Use Board of Appeals must file with the

Board a Motion to Intervene in this proceeding as required by rule 661-10-050.

Allen L. Johnson OSB 73-153
Attorney for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that on January 7, 1988, I served a true and correct copy of this Notice of Intent to Appeal on Respondent City and all other persons listed in paragraphs II and III of this Notice pursuant to OAR 661-10-015(2) by first class mail.

Dated: January 7, 1988.

Allen L. Johnson

Exhibit A to Notice of Intent to Appeal

Jon Thompson
1976 East 31st
Florence, Oregon 97439

Art Koning
87784 Terrace
Florence, Oregon 97439

Jim Saul
111 West 7th
Eugene, Oregon 97401

Mike Evans
209 "Q" Street
Springfield, Oregon 97477

Three-Ten Partnership
101 East Brena Circle
Casa Grande, AZ

Tom Grove
83605 Manzanita
Florence, Oregon 97439

Bud Miles
08820 North Fork Road
Florence, Oregon 97439

Allen Johnson
767 Willamette Street #203
Eugene, Oregon 97401

Jack DeLay
2173 Essex Lane
Eugene, Oregon 97403

Herb Lombard
P.O. Box 10332
Eugene, Oregon 97440

Lyle Velure
525 Fair Oaks
Eugene, Oregon 97401

Robert Steen
5900-119th Ave. SE
Bellevue, WA 98006

Charles Dillon
88830 Shoreline Drive
Florence, Oregon 97439

Joe Leahy, Atty
223 No. "A" Street
Springfield, OR 97477

Roy Mayers
05546 So. Shore
Florence, Oregon 97439

Harley Berg
88609 Ocean View Drive
Florence, Oregon 97439

Tom Sneddon
4256 Spruce
Florence, Oregon 97439

Walter Rowe
Rt. Box 5750
Sutherlin, OR 97479

Ruth Bodmer
3352 Onyx Place
Eugene, Oregon 97405

TABLE OF CONTENTS OF RECORD

RESOLUTION 103 (A) SERIES 1987

A RESOLUTION APPROVING APPLICANT'S (HONG-SHIOU (TONY) CHIOU) PROPOSAL TO CONSTRUCT A RESTAURANT PARTIALLY SUPPORTED BY PILING WITHIN THE DEVELOPMENT ESTUARY DISTRICT

WHEREAS, a Conditional Use Permit was approved by the Florence Planning Commission in Public Hearing on October 6, 1987, and approval for modification to the original design was given by the Design Review Board in public meeting on October 6, 1987, and

WHEREAS, an appeal was filed with the City Recorder on October 21, 1987, and

WHEREAS, the Florence City Council did review the evidence in the record and hear testimony, in public hearing on December 8, 1987,

THEREFORE, BE IT RESOLVED, that the City Council finds, having heard testimony and having reviewed the record and findings & conclusions submitted by applicant, that approval of applicant's proposal is in the best interests of the public; and

FURTHER, BE IT RESOLVED, that the City Council hereby approves the development as submitted by applicant, based on applicants findings and conclusions and additions to these findings and conclusions by staff, in support of and in favor of the development; and

FURTHER, BE IT RESOLVED, that the Findings of Fact and Conclusions in support of this decision attached as Exhibit "A" and Exhibit "B" are hereby incorporated by reference and adopted in support of this decision.

PASSED BY THE FLORENCE CITY COUNCIL, this 22ND day of December, 1987.

APPROVED BY THE MAYOR, this 22ND day of December, 1987.

Wilbur Ternyik, MAYOR

ATTEST:

Jon Taylor, CITY RECORDER

EXHIBIT "B"
FINDINGS OF FACT

1. Add a new paragraph to page 7 under Allegations of Error paragraph 3A as follows:

> Title 10 of the Florence Code, the Zoning Ordinance, was developed at the same time and in conjunction with the Comprehensive Plan and Coastal Resources Management Plan. The purpose of the Code is to implement those Objectives and Policies contained in the Plans. The Code provisions were acknowledged by the Land Conservation and Development Commission as an integral component of the Florence Comprehensive Plan. Therfore, provisions of the Code are relied upon to carry out the more general plan language, and are depended upon as a refinement of the adopted Policies.

Also, add to the paragraph which starts:

> Residential uses are not outright permitted uses....
>
> As specified in Section 10-17, residential uses are not outright permitted uses...

2. Add a new paragraph to page 9 under Allegations of Error paragraph 3E as follows:

> A comparison between photographs shows that although some additional view blockage will occur from the restaurant placement, nearly one-half of the bridge is still visible from the condominium units.

3. Add a new paragraph to page 10 under Allegations of Error paragraph 3E as follows:

> Neither Plan Recommendations 10, 11, nor other Planned Policies or Code provisions were intended to provide each individual resident a view of the Siuslaw Bridge or other scenic attractions. It would be impossible to protect each individual property owners particular view. The condominium units were intentionally sited to provide a southwestern view of the river and dunes, not southeast toward the bridge. If a view of the bridge was intended from the condominiums, the units would logically have been oriented facing in a southeast direction toward the bridge. Moreover, had the view of the Siuslaw Bridge been the primary criterion in the siting of the condominium units a prudent person would have taken steps to acquire a view easement of the bridge. There is no evidence in the record to indicate that the view of the Siuslaw Bridge was a criterion in the siting of the condominium units. Indeed, the evidence indicates that the condominium units were constructed to take advantage of a southwesterly view of the river and sand dunes.

2

4. Add to page 10 under Allegations of Error paragraph 3H the following paragraph:

> The property is also presently in use as a marina, and recently supported a commercial marina which included an office for crab ring and boat rental, and sale of fishing gear, licenses, and grocery items. In addition, RV space rentals were part of the operation as well as mobile home space rental. As many as 12 mobile homes and 15 to 20 RV units were present on the site during most of the year.

5. Add to page 11 under Allegations of Error paragraph 4C the following sentence:

> It appears in reviewing successful restaurant operations, such as Mo's, and Surfside Restaurant at Driftwood Shores, close proximity to water promotes business success for the operation and thus promotes the Waterfront District as a whole.

EXHIBIT "A"

FLORENCE CITY COUNCIL

FINDINGS AND CONCLUSIONS IN SUPPORT OF FLORENCE PLANNING COMMISSION APPROVAL OF A CONDITIONAL USE PERMIT AND DENIAL OF AN APPEAL OF THE PLANNING COMMISSION ACTION TO ALLOW A RESTAURANT TO EXTEND INTO AN ESTUARY WITHIN A WATERFRONT, DEVELOPMENT ESTUARY, NATURAL RESOURCE CONSERVATION COMBINING DISTRICT. (WF/DE/NRC)

APPLICATION SUMMARY

Applicant Hong-Shiou (Tony) Chiou obtained approval for a Conditional Use Permit from the Florence Planning Commission on October 7, 1987 to construct a restaurant on Taxlots 8000 and 8001, Assessors Map 18-12-34.12 which would extend twenty feet beyond a concrete bulkhead into a Siuslaw River estuary. The Conditional Use Permit approval was appealed to the Florence City Council on Pctpber 21. 1987 by Jack Delay, Tom McCarville and the Three-Ten Partnership. A public hearing was held by the Florence City Council on December 8, 1987 and testimony was received from the applicant and appellants and their representatives as well as several individual citizens. The Council closed the public hearing and set a date of December 22, 1987 for deliberation and action.

STATEMENT OF CRITERIA AND STANDARDS:

Florence Comprehensive Plan

Florence Code:

Title 10-4	Conditional Uses
Title 10-1	Zoning Administration
Title 10-19-3	Estuary and Shorelands
Title 10-19-4	Natural Resources Conservation Combining District

FACTS RELIED UPON (FINDINGS):

1. The property subject to this application is identified as Taxlots 8000 and 8001, Assessors Map 18-12-34.12. It is adjacent to 1150 Bay Street, Florence, Oregon.

2. The owner of the property, and applicant, is Hong-Shiou (Tony) Chiou.

3. The property involved in this application is approximately 240 feet wide and 120 feet deep. Juniper Street with a 60 foot wide right of way abuts the West boundary. Bay Street with an 80 foot wide right of way abuts the North boundary. Kingwood Street with a 60 foot wide right of way is located 60 feet East of the property's East boundary.

4. The subject property is currently developed as an R.V. park and a marina extends from the property into the Siuslaw River.

5. Bay Bridge Condominium is located West of the subject property, across Juniper Street. The appellants Jack Delay and Thomas McCarville (Three-Ten Partnership) own units 13 and B-2 respectively within the condominium complex.

6. The subject property is zoned Waterfront (WF), Development Estuary (DE), Natural Resources Conservation Combining District (NRC).

7. The Waterfront District allows restaurants as a permitted use, Article 10-17-2.

8. The Development Estuary District allows the restaurant as a conditional use under the category of 'other uses which do not require dredging or filling (10-19-3-D-3). Applicable criteria are:

a. A public need is demonstrated.

b. The use will not irrevocably limit future use of the area for water dependent commercial, industrial or public facilities.

c. The use will have minimal impact on resources, as identified in the Florence Comprehensive Plan, in the area affected by the proposed use.

9. The Natural Resources Conservation Combining District allows the restaurant as a conditional use under Section 10-19-4-D-3 as a "use allowed conditionally or by special permit in the respective district or districts with which the /NRC district is combined . . ." The district requires review under the standards of Section 10-19-6 and application of the following standards:

a. All applicable criteria provided within the respective district with which the /NRC is combined are met.

b. The use will not adversely affect the resource use of adjacent designated timber and agricultural lands.

c. Surface, subsurface and aquifer waters are protected from pollution and sedimentation.

10. The proposed restaurant has undergone a Resource Capability Determination, as required by Code Section 10-19-6. The

Florence Planning Commission adopted findings of fact approving a use permit for the restaurant on October 6, 1987. Those findings of fact are attached as Exhibit 'B' and incorporated herein.

11. The Florence Planning Commission approved a Conditional Use Permit to allow the restaurant on October 6, 1987. Findings of fact supporting that approval are attached as Exhibit 'A' and incorporated herein.

12. The restaurant has undergone Design Review in accordance with Section 10-6-5 of the Code. Findings are included in Exhibit 'A'.

13. Restaurants are described as a water related use. (See Code Section 10-18)

14. There were no objections presented at the December 8, 1987 public hearing of inadequacies in notification of the hearing.

DISCUSSION AND CONCLUSIONS:

1. Section 10-17-2 of the Florence Code (Waterfront District) allows the restaurant as a permitted use.

2. Section 10-19-3-D of the Code (Development Estuary) allows the restaurant as a conditional use with the following affirmative findings:

a. A public need is demonstrated.

The purpose of Title 10, the zoning regulations, is "to establish a comprehensive zoning plan designed to protect and promote the public health, safety and welfare, and to provide the economic and social advantages which result from an orderly, planned use of land resources. Such regulations are designed to achieve the following objectives:

A. To fulfill the goals of Florence's Comprehensive Plan.

B. To advance the position of Florence as a regional center of commerce, industry, recreation and culture."

The Comprehensive Plan contains a Policy statement discussing the Bay Street Waterfront (pp 59) and the need to promote mixed uses, including restaurants, which will assist in the improvement of the Waterfront resource to the economic benefit of the City of Florence and its citizens."

The 'public need' for this project is demonstrated by its ability to achieve these Code objectives and Comprehensive Plan Policies.

The Planning Commission found the restaurant to be an esthetically appealing, well designed structure which would have no detrimental impact upon the environment and would compliment existing improvements within the area.

Testimony was received from several Florence businesspersons who stated that the restaurant would enhance Florence's position as a tourist/recreation center, and would promote other local businesses. There was no evidence presented to the contrary.

The Council finds that this restaurant development does fulfill a public need. That need is recited throughout the City Code and Comprehensive Plan documents as a public desire to upgrade the Waterfront District and to promote tourist and recreation based commerce for the economic benefit of the citizens of Florence.

Based on testimony received, the Council believes the restaurant will act as a draw to bring visitors to the Bay Street and Florence area and will fulfill a need for such facilities in the region. The restaurant will therefore fulfill a need for eating accommodations for visitors as well as a need for tourist drawing attractions for the benefit of local commerce.

b. The use will not irrevocably limit future use of the area for water dependent commercial, industrial or public facilities.

A water dependent facility already exists on this site in the form of a newly reconstructed marina. Although the restaurant will extend slightly into the estuary it will not affect the marina or its use. The restaurant will not otherwise limit water dependent facilities.

c. The use will have minimal impact on resources, as identified in the Florence Comprehensive Plan, in the area affected by the proposed use.

This criteria is addressed in detail within Exhibit 'B', the Resource Capability Determination. It states in summary, that the use does not represent a potential significant adverse impact on the estuarine resource based on the limited activity to be conducted and the lack of substantial marine life to be affected.

3. Section 10-19-4-D of the Code (Natural Resources Conservation) allows the restaurant as a conditional use with the following affirmative findings.

a. All applicable criteria provided within the respective district with which the /NRC is combined are met.

As discussed above, the use meets the standards and requirements of other applicable Code sections; specifically the Waterfront and Development Estuary Districts.

b. The use will not adversely affect the resource use of adjacent designated timber and agricultural lands.

The proposed use is in an urban setting where there are no adjacent existing timber or agricultural lands.

c. Surface, subsurface and aquifer waters are protected from pollution and sedimentation.

The use proposed will have no affect on subsurface or aquifer waters. Appropriate permits have been obtained for the placement of pilings in the estuary from the Army Corps of Engineers. (Permit No. 071-OYA-1-007451) The permit specifies conditions to assure the protection of surface water.

4. Section 10-4-1, Conditional Uses: The Council has reviewed and hereby affirms and adopts herein by reference those findings of fact set out by the Planning Commission approval of of the Conditional Use Permit. See Exhibit 'A' of this document.

5. Section 10-6, Design Review Standards, also apply to this use and were addressed by the Planning Commission within the Conditional Use Permit approval. Those findings are listed in Exhibit 'A' and are also affirmed by the Council.

6. Section 10-19-6, requires a Resource Capability Determination for conditional uses within the Development Estuary District. The Planning Commission evaluated the proposed use and adopted the findings attached as Exhibit 'B' in approving the use. The Council concurs with and adopts these Resource Capability Determination findings contained in Exhibit 'B'.

ALLEGATIONS OF ERROR

The Planning Commission's approval of the Conditional Use Permit was appealed to the Council alleging several errors in the Planning Commissions decision. The Council upholds the Planning Commission's decision with the following discussion and conclusions:

1. The appellant claims that the application made by Chiou was unauthorized because owners of the adjacent condominium did not consent to the application. The appellant indicates that the condominium owners have a claim of interest in the property based on a recorded declaration which states that the developer "proposes to transfer the marina" to the association.

The Council finds that the application was correctly filed by the owner of record. The application for Planning Commission review was filed by Hong-Shiou (Tony) Chiou. The appellant's declaration of covenants does not include any interest in the actual property purchased by Chiou and only implies that interest in the marina itself will be a future property of the condominium unit owners.

2. The appellant claims that notification for the Planning Commission hearing was inadequate and misleading. The appellant concludes that "because the City Council hears appeals only on the record, this matter must be sent back to the Planning [Commission] for rehearing after the issuance of proper notice."

The City Council hearing held on December 8, 1987 was de novo, providing all parties ample opportunity to present information and testimony on this matter.

In addition, the Council finds that the public notice is not misleading. It states plainly within the copy of the notice that the proposal was a conditional use application for a proposed restaurant "partially sited within Development Estuary Overlay District", adjacent to the described property. The map is included only to show the location of the described property, not as a site plan. The notice provides a source if more information is needed by anyone.

Adequate and timely notice was given. Notice was mailed to all property owners of record, including the appellants, Mr. Delay and Mr. McCarville, on September 24, 1987, (See Exhibit 'C', an affidavit by Ms. Rhodes). The public hearing date was October 6, 1987. City Code requires that notice of the public hearing be given by first class mail at least seven (7) days prior to the date of the public hearing. Not withstanding, a new notice was mailed on November 30, 1987 giving notice of the public hearing of this appeal on December 8, 1987. (See Exhibit 'D')

3A. The apellant alleges that a conflict exists with the Comprehensive Plan based on a recital from the Coastal Resources Management Plan which states that, in Management Unit F-1, "commercial or industrial uses are not considered appropriate due to the proximity of residential development." pp 18-19

The statement referenced by the appellant is found in a discussion section of the Coastal Resources Management Plan which is intended to describe Estuarine Management Units as established by the City. Although this document contains specific Policy statements, the statement recited does not have the weight of Policy. The statement does not prohibit commercial development, but merely indicates that commercial uses are 'not considered appropriate' in recognition of existing residential use and the lack of developable land. At that time the subject property supported a marina, a commercial marina office, crab ring and boat rental, sale of fishing gear and licenses, beer and soft drinks and groceries. An R.V. park still exists.

This discussion of the area is preliminary to the discussion on Estuarine Shorelands Management Unit 3.2 (Bay Bridge) which

includes the subject property. The discussion of MU 3.2 states that "although the estuary adjacent to this unit is designated development and there is an existing marina, the shoreland area is already committed to residential use. Commercial water-dependent and water-related uses will be permitted but it is expected that the area will remain primarily residential." (pp 55). By this plan statement it is clear that, at that time (1982), redevelopment of the commercial uses was not anticipated. While the statement concerning MU F-1 indicates that commercial uses may not be considered appropriate, the later statement pertaining to MU 3.2 makes it very clear that commercial uses will be permitted.

Specific Policies contained in the Florence Comprehensive Plan support the development of a restaurant in this location and clarify that such a uses are permitted by the plan.

Policy statements within the Plan pertaining to the waterfront (pp 59) calls for the promotion of commercial uses, including restaurants, in the Waterfront District.

Siuslaw Estuary and Shorelines Policy 10 (pp 25) states that water-related and non-related uses on pilings are allowed in Management Units on a conditional basis when the use is consistent with the resource capabilities and the purpose of the Management Unit. The restaurant has undergone appropriate analysis to determine that it is consistent with resource capabilities.

The zoning regulations are intended to carry out the Policies of the Comprehensive Plan and LCDC has acknowledged the Plan and found the Code consistent with those Policies.

Residential uses are not outright permitted uses in the Waterfront District, but are listed as a conditional use. Code Section 10-4-1 describes conditional use as follows:

All uses permitted conditionally are declared to be in possession of such unique and special characteristics as to make impractical their being included as outright uses in any of the various districts created by this Title. The authority for the location and operation of certain uses shall be subject to review by the Planning Commission and issuance of a Conditional Use Permit . The purpose of review shall be to determine the type of uses permitted in surrounding areas and for the further purpose of stipulating such conditions as may be reasonable, so that the basic purposes of this Title shall be served. (Ord. 625, 6-30-80; amd. Ord. 669, 5-17-82).

In other words, the assumption that this site was suitable for residential use is in error without review of the type of use and intensity of use as required by Conditional Use Permits, Code Section 10-4.

The proposed restaurant however, is an outright permitted use within the Waterfront District. A restaurant is a water-related use and as such has a higher priority within a Development Estuary Unit than a residential use. (See Code Section 10-18-3-B for water related uses).

3B. The appellant argues that the 1982 Management Plan requires that Shoreland uses be "compatible with existing development" and states that the restaurant is not compatible.

The plan recommendation recited as well as specific Plan Policies call for review of compatibility of proposed uses with existing neighboring uses as well with as environmental resources. Those Policies and recommendations are implemented by specific Code provisions:

10-4	Conditional Uses,
10-6	Design Review, and
10-19-6	Resource Capability Determination

Those reviews have been completed and the Council finds the use to be compatible with neighborhood improvements and environmental resources in accordance with the applicable criteria.

Generally, commercial uses within this Shorelands Unit are considered appropriate in that the underlaying Waterfront District allows the use outright, and because the surrounding uses are a mix of commercial, organizational, single family and multi-family uses. The Code states that the purpose of the Waterfront District "is intended to provide an area for mixed land uses that are appropriate along a riverfront", (Code Section 10-17-1: Waterfront District Purpose).

3C. The appellant alleges error in that the proposal violates Quality of Life Objective 3 of the Plan which is "to recognize the existing natural and architectural assets of the community and encourage development that enhances and is compatible with those assets."

The Council finds in the contrary. The Planning Commission, acting as Design Review Board, found that the proposed restaurant building was architecturally and esthetically pleasing, in conformity with Design Review criteria of Article 10-6. (See Exhibit 'A') The Council concurs with those findings.

3D. The appellant argues that Bay Bridge is a historic structure and must be analyzed under Quality of Life Objective 1 of the Plan.

The site is approximately 400 feet, (over one block) from the Siuslaw Highway 101 Bridge. The site has been in continued use as

a boat marina, marina office, crab ring and fishing equipment rental for at least 18 years. The fact that a restaurant would be erected here would not impact the bridge site.

3E. The appellant alleges a violation of Comprehensive Plan, Quality of Life Objective 11 because the restaurant will block their view of Bay Bridge. The appellant supplied photographs at the December 8, 1987 public hearing showing that the restaurant would block the view of portions of the bridge from various points near the condominium units.

The applicant provided an aerial photograph showing the site lines from the condominium units comparing the proposed location of the restaurant 20 feet South of the bulkhead and the already approved location which ends at the bulkhead. The applicant also showed the Southwest orientation of the condominium units facing the Siuslaw River and sand dunes. It was pointed out that the bridge is located Southeast of the condominiums at almost a 90 degree angle from the units' Southwest facing windows. The aerial photograph shows that the restaurant location will cause the blockage of view of approximately 200 feet of the 1600 foot long bridge.

The Council takes note of the Plan's Quality of Life recommendations 10 and 11 on page 8 which state as follows:

> 10. Important scenic views of the river, dunes, ocean and jetty area should be identified and protected. Scenic area designations should be considered only in those locations where visual qualities are found to be a community asset and there is a need to recognize and protect them, however.
>
> 11. Establishment of visual access corridors should be considered during the permit process for nonindustrial areas bordering the river and ocean, and when visual access is threatened by the cumulative effect of development.

The Council finds that both during Planning Commission consideration and Council review, visual access corridors have been considered as required by recommendation 11. However, public access corridors are provided by the 60 foot wide right of ways of Juniper Street and Kingwood Street. Also, while the restaurant will be located 20 feet Southerly from the bulkhead, its location at the Eastern most portion of the property provides more of a bridge view than had it been located at the Western boundary nearer the condominium units. The restaurant itself will offer a point of view of the bridge for hundreds of citizens.

Plan recommendation 10 states that important scenic views should be identified and protected when they are found to be a community asset. Neither of these recommendations nor other Code provisions require the City to maintain visual corridors for private individuals.

Aside from Code or Plan requirements, the Council finds that the restaurant location will have minimal impact on the residents of the condominium units. The view blockage will not be significantly greater than would occur from any development on the subject property, and may be less. Also, the units are oriented in a direction such that the bridge is not a primary view feature.

3F. The appellant states that the Plan's Citizens Involvement Policy 4 has been violated due to defective notice.

See Exhibit 'C' affidavit of service and Exhibit 'D' first public hearing notice. Adequate notice has been provided.

3G. The appellant alleges that land use Policy 7 of the Plan requires bonding for special improvements.

Land Use General Policy 7 states: "Performance Bonds may be required". Performance bonds were not required for this development because no public improvements were planned. The City, in its discretion, may require performance bonds for projects where public improvements are required as conditions of approval such as proposed subdivision or public street or utility extensions.

3H. The appellant argues that the decision violates Land Use Residential Policy 1 which calls for protection of residential areas from encroachment of incompatible uses.

The proposed use will not encroach upon a residential area. The condominium property is separated from Mr. Chiou's property by Juniper Street, a 60-foot wide right of way. The restaurant is proposed at the extreme Southeast corner of Chiou's lot, approximately 130 feet East of Juniper Street.

The property is presently in commercial use an an R.V. park. The Council finds that redevelopment for a restaurant use is not incompatible with residential use, especially condominium type residential development. It is a matter of fact that many large condominium developments include a restaurant, usually within the same structure if not immediately adjacent. Driftwood Shores Condominium at Heceta Beach is a good example of this residential restaurant combination, as is Salishan, South of Lincoln City.

4A. The appellant argues that the Planning Commission did not make a findings of 'public interest' as required by Code Section

10-1-3-D. This Code Section pertains to proposed zone changes or amendments, not to conditional use applications.

4B. The appellant states that the Planning Commission did not make adequate findings that "adequate land is available for uses which are permitted outright in the district where the conditional use is proposed". It is further alleged that the Fish and Wildlife service referral opposed the development.

In regard to adequate available land for permitted uses the Council finds that the findings of Exhibit 'A', item B-2 demonstrate the fact that this use will not reduce the working area of the marina and will not affect the availability of land for future water dependent uses because there is room available for permitted uses within the Overlay District and because this area is committed to marina operation. The pilings supporting the restaurant will not affect marina operation.

The Federal Fish and Wildlife Service letter does not oppose this extension. The statement was made "no significant impacts on fish and wildlife are expected to result from the proposed work". No recommendation was sought on type of use required from Fish and Wildlife, only impacts upon fish and wildlife.

The Oregon Department of Fish and Wildlife in a letter dated August 24, 1987 stated that there were no significant numbers of shellfish or other benthic organisms on the site.

The Council finds that while the Federal Fish and Wildlife Service gave a general policy statement to discourage such uses there was no basis given in either Fish and Wildlife referral that there would be any negative impacts whatsoever from the proposed use.

4C. The appellant states that there is no showing of public need as required by Code Section 10-19-3-D.

The Council has addressed this criterion in previous findings and found that a pubic need does exist. The proposed placement of the restaurant is perceived by the public as a very desirable amenity. The close proximity to the river is aesthetically pleasing. Examples are the successful Mo's restaurants in Newport, Lincoln City and Florence. Successful operation of commercial businesses is decidedly to the public's benefit and the continuing and increasing benefit of other businesses in the community.

The restaurant is a part of a development plan consisting of a motel complex. Placement of the restaurant 20 feet beyond the bulkhead provides for 4 to 6 additional parking spaces to serve the development and the area. Due to a shortage of parking in the area, the City strives to accommodate more parking for existing and future development as opportunities arise. Extension of the restaurant to prevent congested parking in the public right of way is therefore fulfilling a public need.

CONCLUSION:

The Florence City Council finds that, after holding a public hearing and reviewing the evidence presented, that the Planning Commission did not error in its approval of the Conditional Use Permit for Hong-Shiou (Tony) Chiou. The Council, therefore, denies the appeal of Jack Delay, Thomas McCarville and Three-Ten Partnership and reaffirms approval of the Conditional Use Permit based on the previous findings.

MATERIALS TO BE PART OF THE RECORD (EXHIBITS)

1. Florence Code, Title 10 - Zoning Regulations
2. City of Florence Comprehensive Plan, 1982
3. Coastal Resources Management Plan, 1982
4. Appellant Photographs and Plot Plans
5. Applilcant Aerial Photograph, 1=100' scale
6. Appellant Letter
7. Lyle Veloor
8. Staff Response

CITY OF FLORENCE

MINUTES

December 22, 1987

1. Call to Order/Roll Call:

The meeting was called to order at 7:38 p.m. by Mayor Wilbur Ternyik. Present were Councilor Ward, Councilor Jensen, Councilor Fraese, Councilor Smith and Mayor Ternyik, along with City Manager McMicken, City Recorder Taylor, Secretary Grover. Also present were Bill Calder, Janet Paulson and Bob Serra ror press and interested citizens.

2. Pledge of Allegiance:

Councilor Jensen led the Pledge of Allegiance.

3. Recognition of Visitors or Guests:

City Manager McMicken recognized there were former Mayors in the audience and other guests. He later introduced his wife, his two sons, and his daughter-in-law.

City Recorder/Finance Director Taylor introduced Verna Althouse as a new City employee in the Finance Department.

Public Works Superintendent Lanfear introduced Jim Clark as a new employee in the Public Works Department. He will be working with the street crew.

City Manager McMicken introduced Sue Ferris as a new employee in the Municipal Court office on a temporary hire basis, until that position can be filled.

4. Approval of the Minutes:

Councilor Smith moved for approval of the Minutes of the December 8, 1987 meeting, as written. Councilor Ward seconded the motion. By voice vote, all "aye", motion carried.

REPORTS AND CORRESPONDENCE

5. Report of Charter Review Committee filing a proposed new Charter for the City of Florence and recommending submission to the voters at the May, 1988 Primary Election.

Roger McCorkle, former Mayor of Florence from 1979 to 1983, presented the proposed new Charter to the City Council. He read the letter signed by the Charter Review Committee indicating the reasons a new Charter was prepared rather than amending the existing Charter.

He added that there are some changes in who can and cannot serve as Councilor, the idea of Councilor's term ending rather than running from a "safe seat" for Mayor, and a proposed limitation on how many years a person can serve on the Council. These changes do not currently exist. Other changes are for the purpose of protecting employees from coercion by either Council or City Manager's office, what to do in the cases of vacancies, what disqualifies an office holder from office, removal from the Council. Most of the changes simply bring the Charter into 1988 and its relationship with state provisions, and the changes that have occurred since the existing Charter was adopted in 1971.

Mayor Ternyik thanked the Charter Review Committee and said the Council would review the Charter and hopefully approve it.

AUDIENCE PARTICIPATION -

6. This is an opportunity for members of the audience to bring to the Council's attention any item not otherwise listed on the Agenda.

Darrell Conant, 1670 West 37th, Florence, is the owner of C.J. Sausages, a concession trailer. He stated that they had attended the vendor's meeting. He said he understood that the City Council was going to work out some kind of deal and let everyone know about it. He received a notice stating that he is a "transient merchant" and he resents that because he lives in Florence. He said that the notice says he has to have his business license okayed every year, and he thinks "the thing stinks". He has had a business license longer than some of the people on Bay Street. He did not like being singled out to have his license approved every year. He said that he had a $225 Health License that has to be purchased by the first of the year. He does not want to pay for the Lane County Health Department License if there is a chance he will not be approved to get a license here in Florence. He said he is trying to conduct a legal business. He has removed the sandwich signs and has not used them since he found out they were illegal.

City Manager McMicken said this was discussed in a staff meeting. Staff felt a report should be presented to Council at the January 12 meeting for the approval of transient merchant licenses, and Mr. Conant's business was caught in the middle. He stated that there were some merchants working out of mobile stands that

needed Council approval before licenses were issued. McMicken said he did not realize Mr. Conant needed the Health Department license before January 1.

Mr. Conant said he had to have his Health Department license paid for prior to January 1, or he would have to pay a penalty. He said it did not make any sense to purchase a Health Department license if the City was not going to issue him a business license. He has had a license since 1982 or '83. He said it did not seem fair that each year he would have to worry about whether he was going to get a license.

City Manager McMicken assured Mr. Conant that he was not being singled out. There has been a build-up of concern about vendors in the City and there has not yet been a conclusion of the subject by the City Council. Nine merchants who work out of mobile structures have been affected. There have been some questions raised about how they operate and where they are located. Decisions are based on the City Code.

Mayor Ternyik assured Mr. Conant that he would not be denied a business license.

City Manager McMicken said that the concern was about the locations of the transient merchants and the congestion around the merchants.

Mayor Ternyik again assured Mr. Conant that he would get his business license and the Council would review the locations of the vendors.

No one else in the audience wished to address the Council.

OLD BUSINESS

7. Chiou Appeal: Appeal on Conditional Use Permit granted by the Planning Commission for Bay bRidge Marina Project (Chiou) made by Jack DeLay, Thomas A. McCarville and Three-Ten Partnership.

Mayor Ternyik reminded the Council that Councilor Jensen had left the previous meeting and asked the attorneys if he could listen to the hearing on tape and take part in the discussion.

Councilor Jensen announced that he had listened to the tapes from the public hearing, he had read the Minutes of the December 8, 1987, meeting and he had examined the exhibits submitted in evidence. He has not had any contact with the parties involved with the presentation.

Mayor Ternyik also informed the Council that he had talked with each Councilor that would be voting, Councilor Fraese had disqualified herself, and each Councilor had stated that they had read the complete record, the Findings of Fact prepared by the attorneys and were prepared to take action at this time.

Councilor Ward made a motion for approval of the applicant's Findings upholding the Planning Commission's decision which satisfies the criteria for siting the structure as proposed by Mr. Chiou and adopting the Findings as prepared by staff. Councilor Smith seconded the motion. By roll call vote, all "aye", motion carried.

Mayor Ternyik informed the audience that Council had upheld the Planning Commission and turned down the appeal.

Councilor Ward moved for the adoption of Resolution 103 (A), Series 1987, a Resolution approving applicant Tony Chiou's proposal to construct a restaurant partially supported by piling within the Development Estuary District. Councilor Smith seconded the motion. By voice vote, all "aye", motion carried.

ANNUAL AUDIT

8. Audit for year ending June 30, 1987, filed by Rick Yecny of Davis, Yecny and McCulloch, CPA's.

Rick Yecny presented the audit to the Council. He pointed out that he would be to the work session on January 5 to present the detail of the audit report.

The annual audit is required by Oregon State Law. The audit was performed in accordance with the minimum of standards for audits of Oregon Municipal Corporations.

The audit financial statements are intended to be public documents and should be made available to any citizen that wishes to see them.

Generally, the City made significant progress in its financial position in 1987. It was aided by increased tax receipts, as 1987 was the first year of a three-year public safety levy. The City has established a separate Public Safety Tax Fund to account for the funds and to account for the spending.

The City Council approved dedicating sales of surplus property for the retirement of the Ninth Street bonds. There was an option exercised for $9,000 to sell five of the lots along Ninth Street for $76,000 if that option is exercised by mid-June of 1988. Yecny views this as a positive step towards relieving some of the bonded debt issue.

City Manager McMicken assured him it was scheduled for that meeting.

Mayor Ternyik wished staff a Merry Christmas and Happy New Year. He remarked that Council does appreciate staff.

Council adjourned at 9:05 p.m.

Wilbur E. Ternyik, MAYOR

ATTEST:

LuAnn Grover, SECRETARY

CITY OF FLORENCE

MINUTES

December 8, 1987

1. Call to Order/Roll Call:

The meeting was called to order at 7:30 p.m. by Mayor Wilbur Ternyik. Present were Councilor Ward, Councilor Jensen, Councilor Fraese, Councilor Smith and Mayor Ternyik, along with City Manager McMicken, City Recorder Taylor, Secretary Grover. Also present were Bill Calder, Bob Serra and Janet Paulsen ror press and interested citizens.

Councilor Jensen requested permission to be excused and that the Public Hearing decision be held over so that he could listen to the tapes and make comment. He stated that he was scheduled for a telephone conference call at 8:00 p.m. with Hawaii.

No objections were voiced.

2. Pledge of Allegiance:

Councilor Smith led the Pledge of Allegiance.

3. Recognition of Visitors or Guests:

Chief Mathieson introduced Scott Church, Police Lieutenant, Raymond Guterriez, Police Sergeant, and Janis K. Passenger, Police Dispatcher, as employees you can trust.

City Manager McMicken introduced Laura Gillispie, Planning Director/Building Inspector.

4. Approval of the Minutes:

Councilor Smith moved for approval of Minutes of the regular Council Meeting held November 24, 1987, and the Special Session held November 24, 1987, as written. Councilor Fraese seconded the motion. By voice vote, all "aye", motion carried.

AUDIENCE PARTICIPATION

5. This is an opportunity for members of the audience to bring to the Council's attention any item not otherwise listed on the Agenda.

No one wished to speak.

PUBLIC HEARING

6. Chiou Appeal: Appeal on Conditional Use Permit granted by the Planning Commission for Bay Bridge Marina Project (Chiou) made by Jack DeLay, Thomas A. McCarville and Three-Ten Partnership.

The Public Hearing opened at 7:38 p.m.

Mayor Ternyik asked for announcements of ex parte contact or conflicts of interest.

Councilor Fraese disqualified herself form voting on the issue because of a potential bias. She stated that her brother-in-law and sister-in-law were parties to a pending lawsuit on this issue.

Mayor Ternyik reminded the audience that there is one Councilor who will participate in the hearing after listening to the tapes.

Joe Leahy, Attorney with Harms, Harold, Leahy and Pace, a law firm in Springfield, represented the City, because Keith Martin had a conflict in this case. Mr. Leahy said that he had worked with the City Planner Laura Gillispie to work through the process and assist in the presentation of the appeal.

Mr. Leahy informed the audience of how the public hearing would be held. Participants needed to sign up to testify or submit evidence in this appeal and indicate if the presentation would be for the person who is appealing the Planning Commission approval of the project, or whether it is in support of the Chiou project itself. He also stated that if someone just wanted to add comments to also sign up.

The method of the procedure is that initially there would be a presentation of the staff report by Laura Gillispie, Planning Director. Then there would be testimony in favor of the proposed application. He said that would be handled primarily by the applicant's attorney, Herb Lombard. At the conclusion of the testimony in favor of the application, those people who are opposed to the project or in favor of the appeal would testify. That would be handled by Allen Johnson, attorney from Eugene. The staff would then summarize any technical things or concerns that arose in which members of the Council needed further staff input.

At the conclusion of the staff summary, the applicant, the person in favor of the project, would have the opportunity to rebut the

information that was presented that expressed concerns about the project or which was in favor of the appeal. If any new evidence is presented by the staff summary or by the rebuttal by the applicant, the Council should allow those in opposition to rebut the new evidence and have the opportunity to be heard.

He stated that everyone should feel that their concerns were listened to by the Council and were being weighed.

At the conclusion of the final testimony, his recommendation was to take a break and allow the attorneys the opportunity to talk to the Mayor about the process from there, and decide what seems to be the fairest and best method for proceeding to make a recommendation for the Council to consider.

Planning Director Gillispie distributed plans to the Council. She reported that this came before the Planning Commission the first time May 27, 1987. At that time, Mr Chiou received Planning Commission approval for a restaurant located directly abutting this sea wall that is on the property. He received approval to go ahead with the plans. After reviewing the plans, his new architects suggested that the restaurant go out further into the estuary. The marina is directly to the south and takes up the whole portion of the estuary in front of the property. The restaurant was projected to go 20 feet out from the bulkhead on 24 driven piling. It would be within the marina portion of the estuary but not directly impacting the marina.

At that time, he was given Planning Commission approval for this Conditional Use to put the piling in. An appeal was received from Jack DeLay and Thomas McCarville on allowing the piling in the estuary to its use.

The Council has received the appeal, a copy of Planning Director's rebuttal, and the supplemental statement on the appeal that was delivered at 5:00, December 8.

She summarized her position rebutting the appellant's statement. She pointed out the one thing the appeal said was that the application was not correctly filed. The application was filed correctly, according to City Code. She has affidavits to show that that was done. The notice, they felt, was misleading. She said the estuary portion was not shown in the picture that went along with the public notice, although the public notice itself stated that the use was going in the estuary.

She stated that was the normal way of doing this, however, she did rectify this by sending out a second notice for the meeting showing the use in the estuary.

The statement appellants objected to was the fact that Lane County Coastal Resource Management Plan states that residential

uses were considered appropriate for this area. Gillispie maintains that while residential is considered appropriate, commercial and industrial uses were not restricted from going there. They are allowed by the underlying land use, by the purpose of the estuary. The commercial use is appropriate, especially in the waterfront district. The purpose of the waterfront district is to provide mixed uses.

The meeting was well publicized.

Planning Commission did not require performance bonds on this project, because the application did not warrant them. Bonds are usually required when work is being done on a public improvements.

The appellants made a statement in their appeal regarding the use encroaching on residential development -- "land use residential policy one which states that existing and proposed residential areas shall be protected from encroachment of land uses." The use does not encroach, it is adjacent to the residential area, but not encroaching on residential area.

The Fish and Wildlife Service did not oppose piling in the river. Their statement on the piling says that they "...have reviewed the referenced public notice for permit to drive 24 wood piling to support a portion of a proposed restaurant. The proposed restaurant would extend approximately 25 feet over the Siuslaw River. These comments have been prepared under authority of, and in accordance with the provisions of the Fish and Wildlife Coordination Act and are consistent with the intent of the National Environmental Policy Act of 1969." Gillispie continued reading "...no significant impact on fish and wildlife are expected to result from the proposed work." She said they continued with "However, the restaurant is designed to overhang a portion of the public waterway..." and it is their policy to discourage such encroachment on public waters.

The use is an allowed use under the estuary section and it does comply with conditional use criteria.

Planning Director Gillispie then asked the Council if they had any questions. The Council answered to the negative.

Herb Lombard, an attorney from Eugene and Cottage Grove, Oregon, representing Mr. Chiou and Mr. Shang, the parties involved in the matter. The application, however, shows Mr. Chiou's name only, as he is the registered property owner at this time.

He wanted to discuss the background of the matter, for the purpose of putting it in the record. He stated that Mr. Hilborn has been involved in the matter and he is working with Mr. Hilborn at this time.

Mr. Chiou has been a resident of Florence for the past eight-and-a-half years. He lives here with his wife and two children. His brother-in-law, Mr. Shang, has been in Florence since 1981, as a member of this community.

This project started in February, 1986, when the purchase of the property was first undertaken. Since that time, it has been a dramatic development in this area.

The concept originally called for a marina, with a first-class restaurant and motel connected as an enhancement of the recreational and tourism theme in the City of Florence.

The marina was constructed commencing in March, 1987, and was completed to the point of being in operation for the fishing season in June. The marina was the first step because that was the concept by which the restaurant and motel be worked as one economic unit.

The first concept that was developed for the use of the property after the marina was that the restaurant be in the southwest corner, that would be the point closest to the condominiums that are the protestors. That design did not get beyond the concept stage, because Mr. Chiou directed that the restaurant be changed to the southeast corner, the part farthest away from the condominiums.

After that project met the criteria with the City of Florence, further considerations and in response to some of the questions that were being raised, about parking, further consideration was given to the project. One of the considerations was an enhancement of the project by way of the extension over the river, and the development of that as aesthetic enhancement. The opportunity for increased parking was also provided.

Mr. Lombard drew attention to the siting plan and noted that Mr. Chiou and his architect had located the area in a means to create as much insulation and buffer as possible for the adjoining condominium owners.

The further extension provided that it was necessary to come back to the Planning Commission and the Council. After the approval of the project was underway and the bids were outstanding and ready for signing, the appeal was filed.

Mr. Lombard said that Mr. Chiou had employed Mr. Mike Evans, who is a planning specialist. He then introduced Mr. Evans as the owner of Land Planning Consultants, a firm in Eugene. Mr. Evans has been in the planning business for fourteen years. He was with Lane County for six years as a planner, and for the last eight years has had his own business.

Mike Evans, 209 "Q" Street, Springfield, Oregon, discussed with the Council the items he thought were important for Council's consideration. He said that the Planning Commission had given approval for a Conditional Use Permit and the appellants were asking that the Council reconsider the Permit on the basis of certain allegations made in a letter provided to the Council and supplemented at this time.

He requested that the Council consider that in the letters presented, some of the allegations made are important allegations. They relate directly to the Comprehensive Plan or the Code criteria. Others are allegations that don't have any real bearing in land use action. They needed to be sorted out, and make the decision based on that criteria.

He said that Planning Director Gillispie had done a very adequate job in responding to the appellants in this matter. He thought she had justified the Planning Commission's decision very amply and shown on a basis of findings why that decision was correct.

One of the major issues is a potential conflict with the Comprehensive Plan. Mr. Johnson alleged that there is a conflict with the Comprehensive Plan in that this approval conflicts with a section of Management Unit I provision which says that "Commercial or industrial uses are not considered appropriate in this area due to the proximity of residential development."

Mr. Evans said that would appear to give an indication that commercial use in this area should be looked at. He requested that the Council listen carefully to the wording. It does not prohibit commercial uses, it says that they are not "considered appropriate". Mr. Evans said there are other sections of the Comprehensive Plan and the related zoning ordinance however, as Gillispie had indicated, that strongly suggest that commercial uses are appropriate in this area.

Any time there is an alleged conflict between provisions of the Comprehensive Plan, it is the right of the decision making body, in this case the City Council's right, to weigh out the two provisions in the Comprehensive Plan, make a decision on which segment of the Comprehensive Plan that the Council feels is appropriate. He indicated that they were asking that the Council find that the sections of the Comprehensive Plan that urge the promotion of commercial development be the section that they find in favor of, and against the appeal.

Mr. Evans informed the Council that on page 9 of the Comprehensive Plan of the Waterfront Plan Diagram specifically calls for the promotion of commercial uses in the Waterfront District. It specifically spells out "restaurants" as one of the uses that is to be permitted in the Waterfront District.

In another section of the Comprehensive Plan in the Siuslaw estuary and shorelines, Policy Number 10 states that "Water-related, non-dependent, non-related uses not requiring fill (those uses that are on pilings) are allowed in development management units (this is a management unit) on a conditional basis when the use is consistent with the resource capabilities of the area and the purpose of the management unit."

He is proposing that through the procedures that have been gone through with the development that the Planning Commission, through the various decisions that have been made, have found that this type of development is appropriate. It is compatible with the area. It is appropriate in this location and it does meet the requirements of the various sections of the Code.

Mr. Evans said that there are other sections of the Comprehensive Plan that do support the development. The sections dealing with economic development clearly state that the Florence Community is interested in economic development when that economic development can be found to be compatible with the environment and the proposed growth of the area.

Mr. Evans summarized the procedure that was gone through. He said the Comprehensive Plan is implemented by the Development Code, Article 10 carries out those objectives and those policies that are adopted in the Comprehensive Plan. As Planning Director Gillispie mentioned in her rebuttal, one of the reasons for the compliance of the Comprehensive Plan can be found is that when LCDC adopt the zoning ordinances as being sufficient to carry out the provisions of the Comprehensive Plan that shows a direct relationship between the Plan and the zoning ordinances. Then when you follow through the zoning ordinances, the proposed restaurant is in a Waterfront District. The Waterfront District does allow outright permitted use for the restaurant facility.

The restaurant is proposed in a Development Estuary District. In that particular district, commercial use (a restaurant) is allowed provided you go through the Conditional Use Permit process, which they are going through at the present time.

This District also requires a resource compatible determination under Article 10, 19-6-B of the Code. That determination has been undergone by the Planning Commission. Also, there is a Design Review required in the Conditional Use Section of the code and that procedure has been gone through. All of these things relate. Gillispie has shown that all of the procedures have been gone through, that all of the issues in all of the various steps have been dealt, and adequately addressed in her findings, he believes, in the rebuttal to the appellant.

Mr. Evans next addressed some points in Mr. Johnson's appeal.

One being that the Fish and Wildlife Service has raised an objection to the development. He did not believe that had been quoted entirely. He said that the letter stated specifically that there would be no significant impact on fish and wildlife, which would result from this proposed work. Relying on that information, the Planning Commission had approved this Permit, on the basis that there would be no adverse impact on the estuary.

Notification was sent to the State Department of Fish and Wildlife, and they indicated that no significant impact would occur on shellfish or other ethnic organisms in the area. He believed that it was adequate, based on both of those letters, to state that, in terms of the environmental impact and the procedures that had to be gone through for that review, this proposal is adequate to meet those objectives.

Mr. Johnson has also indicated that a public need must be demonstrated. Mr. Evans thought the public need had been discussed at length at the hearings, and in terms of the economic improvement this type of facility would bring to the area. He said he was not going to go into that. He thought there would be testimony related to the public need.

The last item he wanted to bring up is the "obstruction of view" situation. The appellants alleged there would be an obstruction of view and indicated that there are provisions in the Comprehensive Plan and/or Code which provide them a right to a certain vista of the bridge. Mr. Evans stated that it was his position that while it is not Mr. Chiou's intent to block anybody's view or degrade their property, that would not be the case. There was not a specific requirement in the Code or the Comprehensive Plan which would require that provision.

Mr. Allen had quoted two sections of the Comprehensive Plan relating to scenic views or vistas. One is on page 8 of the Comprehensive Plan under the Quality of Life. Recommendation No. 10 indicates that important scenic views of the river, dunes, ocean and jetty areas should be identified and protected. Scenic area designations should be considered only in those locations where visual qualities are found to be a community asset and there is a need to recognize and protect them.

Mr. Evans stated that certainly there are views of the river that are important to the community, and it is the obligation of the City to identify those views, and where necessary protect those views. Those views are to be protected for the general public, not to the individual homeowner or property owner. In this case, as staff pointed out, there are views protected in the right-of-ways of the streets, two sixty-foot street right-of-ways going down to the estuary and river which provide the view to the river which would protect that vista for the general public, as the recommendation requires.

Mr. Evans said that Mr. Allen also quoted "Establishment of visual access corridors should be considered during the permit process for non-industrial areas bordering the river and ocean and when visual access is threatened by cumulative effective development." Although that is quoted and relied upon to say that a view to the condominium owners is a matter of plain requirement, that is taken out of context. He proposed that when this procedure was undertaken at the Planning Commission level, this was taken into consideration. He pointed out that there are visual corridors which have been protected and there has been no impact on the public vista for this area. Notwithstanding, there is not a specific Code requirement that requires the Council to consider the view of the condominium owners. He pointed out that the restaurant itself is not a development that is going to have a major visual impact. Anything that is developed on the property could have some impact of their (condominium owners') view.

The condominiums are not oriented with a view toward the bridge. They are oriented in a southwest direction. The bridge itself is in a southeast direction. The condominiums have wing-walls on them so at least a majority of the units have restricted visibility off of either side.

The development that Chiou is proposing to project 20 feet beyond the current approval, will not substantially obstruct more of the bridge than what already will be obstructed by the development of the restaurant where it is now approved or some other development in the vicinity. In fact, if the restaurant were to be located in the west portion of the property, there would be substantially more of the area obstructed from view, than with the development as proposed now.

The intent of extending the restaurant 20 feet over the headwall is two-fold. One -- it makes a nice development. Secondly -- due to the difficulty in providing enough parking spaces for the restaurant and the proposed motel facility, four more parking spaces can be added by moving the restaurant out. They can also build the motel with an additional two to six units.

Mr. Evans said that he would answer questions in rebuttal later and ended by introducing Tom Grove.

Tom Grove, 83605 Manzanita, Dunes City, stated that he is president of the Oregon Pacific Banking Company in Florence. He believes that this is a very popular project in town. If this were to come up for a popular vote, he was sure it would be approved with a vast majority.

He wanted to address the area of the appeal regarding the character of Tony Chiou and what he means to the community. He stated that this community has had the privilege of having Tony Chiou and his family living here. He has shown what he can do with a business. He has run a business very successful, very ethically. His family is well liked in town and his children are an asset to the schools.

Mr. Grove quoted from the appeal "...appellants concur with the Fish and Wildlife Service. They have sought to work in good faith with the applicant, to achieve a solution that will work for everyone concerned. Instead, they are experiencing a pattern of promises, reassurances, surprises, and disappointments. They are deeply concerned ("I don't know who 'they' are") that this pattern will continue, and the city will be the next to pay the price." Mr. Grove stated that if that was the price to pay, the City has welcomed it with open arms, and they enjoyed the price. He stated that the City appreciates Tony being in the community.

Mr. Art Koning, 87784 Terrace View Drive, Florence, has been a supporter of the project all along. He was involved with a view problem in Lincoln City on some property that he holds jointly with his former partner's widow. This is a condominium and it has a view now that is going to be obstructed by a new building project down below it. They have been told that since they did not buy the property down below it, they don't have any right to talk about the view. That is the position arrived at in Lincoln City, and he thought it was the same here. The people did not buy the view. As pointed out earlier, the point of the view of the condominiums is south and west. It is not east. Sitting in the condo, and he has sat in the first one on the east upstairs, you cannot see the bridge. You have to go out on the porch to see it. He strongly urged that the project be approved, that it be started and moved along so that the City can enjoy the tourist season coming up with the new development.

Mr. Bud Miles, 08820 North Fork Road, Florence, stated that he wholeheartedly agrees with Mr. Grove and Mr. Koning. He believes that the project has been carried out with the utmost thought on everybody's needs for the area. He commends Tony and his family for wanting to invest the amount of money in this area and he is looking forward to eating in this beautiful facility. He thought it was something the City of Florence was going to enjoy and be proud of.

He thought the Planning Commission and Planning Director Gillispie had done their job real well and everything meets the criteria. It really upset him that two people seemed to be stopping the progress of Florence. He thought if they allowed this to happen in the future, would Florence die on the vine or would Florence progress and grow.

He is very much in support of the project and hoped the Council would find that way also.

Mr. Charles R. Dillon, 88830 Shoreline Drive, Florence, said that he was a local businessman with a couple of businesses in town and he has sat through some of the hearing with the Planning Commission. He reiterated from a personal experience and wanted to say how he felt. When you buy property, if someone does not buy the property that faces what you want to see, forget it. He said that he had paid a lot of extra money for an oceanview for his own home. Someone behind him put up a complaint that his roof was going to be too high and they could not see over it. It was found that if they wanted to pay for the view they could have had it.

He has been in the condominiums. The view of the bridge was important, but the condominiums faces the sand dunes and the river, not the bridge. He said that it looked like some absentee people did not respond properly to the legal announcements that were made. They were given due opportunity to come before the Commission and talk and did not show up. He thought this was a delaying tactic, one thing after another. He objected to this. He thought everything had been met that was necessary and he strongly recommended that the Council approve the project and get it on the road.

Mr. Harley Berg, 88609 Ocean View Loop, Florence, owner of Berg's Auto Mart, stated that he had spent a lot of money in the community and he believed in it. He thought Tony's project was a necessary thing for the development of the Bay Street area. He thought he had complied with all of the State, City, County laws. He did not see any reason why it should be denied. He thought it was a good project, and if people did not like it, let them buy it.

Mr. Roy Mayers, 05546 South Shore Drive, Florence, and is the owner of Mo's. He stated that even though Mr. Chiou's proposal for a restaurant was potentially a competition of an existing business, he is all for the economic development of Florence--Old Town being a very viable part of Florence. He thought they should do everything possible to build the area to the point where it was more conducive to tourism. He said they supported Tony Chiou's endeavor to build his motel, restaurant and marina.

Mr. Robert Steen, Bellevue, Washington. Mr. Steen drove to Florence for the hearing. He stated that he was the person most affected by the view. He owned the property at 1155 Bay Street, which is directly across the street from Mr. Chiou's project. Unless he goes to his second floor, he will not be able to see the river. He supports what Mr. Chiou was doing. He said the reason he purchased property in this town to eventually come here

to live was it was a small, progressive town. He has the potential to grow into a place where people want to come.

He stated he has been up and down the Oregon Coast and he chose Florence, because he thought it was a progressive community. He urged approval of the project.

Mr. Jon Thompson, 1976 East 31st Street, Florence, owns a small business on Bay Street. He said the Council has heard from a cross section of the community. He represents the struggling businessmen in the community. He is making an investment in a growing community that he is proud of. He thought Florence has come a long way. He felt he should apologize to Tony Chiou for what he has gone through. He felt that the community is holding back on something that is so good for the community.

Mr. Tom Sneddon, 4256 Spruce, Florence, has lived in Florence for 32 years, and feels that this project is very important for the community. The community needs a facility to take care of large groups of people. He hopes the Council will vote against the appeal and stay with the project.

Mayor Ternyik asked if anyone else wished to testify against the appeal and for the project. No one answered. He then asked for the appellants' spokesman.

Allen Johnson, with Johnson and Kloos, a law firm at Suite 203, 767 Williamette, Eugene, notified the Council that he would go last. Jack DeLay, who owned a condo unit and is a member of the Condominium Association, would give some background to the controversy. Jim Saul of Saul and Associates of Eugene will also testify. Mr. Saul is a former Senior Planner for the City of Eugene, and is now a planning consultant.

Mr. Jack DeLay, 2173 Essex Lane, Eugene, is a small businessman. He spends as much time as he can here in Florence. He was at the meeting to represent the interests of himself and Mr. McCarville, the original appellants in this matter, and as the chairperson of the Bay Bridge Owners' Association, which has joined the action with them.

He stated that it is clear from listening to the other people testifying that they see eye-to-eye. They are not opposing the project, per se. They were among the first that support it in this community. He then stated that the background he was going to give would show why they have taken the position they have.

Mr. DeLay handed out to the Council some drawings that he had prepared. He pointed out on the handout the point of land on which the restaurant was approved. They did not object to the development when it was in that location. He said that Kingwood dead-ended along the shoreline, and there was no real potential

for decent pedestrian amenities such as at the end of Juniper Street. He said that the neighborhood is going to change in character with alot of obstruction of vision. It is important to have the amenities for the pedestrians so they can get down and still have the view of the Bridge and up and down the river that they enjoy now.

There are three parties to the appeal -- Tom (McCarville) and Mr. DeLay, as individuals, and the Condo Association; the applicant; and also the condo developers. The condo developers have played a role in this over time also.

Basically, the appellants involvement started in the Spring of '86. The applicant and the developers approached the Association because the Association has the underlying right to the marine lease. Under public record and recorded documents and declarations with the State, this is well known to the condo developers and the applicant. As of January, 1992, or when the condominium development is completed (which will be 33 units), the underlying right is to be transferred to the Association, along with any improvements that are on top of it. The condo developers wanted to sell their land, the applicant wanted to develop a motel/restaurant.

The Association had a mini-debate -- how do we feel about this? The approach that the Association chose to take was the community has good plans, a Council, public debate, all the assets of any other community, so they felt the community could do a good job of determining how and what should be in that spot. But they had legitimate concerns in terms of sighting, noise isolation, lighting, access, ingress, egress, the kinds of things any neighbor would be concerned about. They also had existing right to the marina which would go into the future for the Association.

They decided they were willing to transfer their right to the marina to the applicant, in exchange for certain sight constraints and certain marina rights. The applicant indicated that that was fine by him. They were going to get the development in, it would be good for Old Town, good for Bay Street, and it would be done in a reasonable, sensitive way that was compatible with existing uses in that area. Mr. DeLay said that was where they started.

The condo developers and the applicant went into a purchase agreement. They agreed to have a written agreement on the rights among the three parties before they closed. They closed the deal without doing that. As a result, the Association and representatives of the Condo Association started dealing with the applicant and his attorneys to convert the agreement in a written, enforceable covenant or some other kind of agreement on the land. The Association did not have much success.

There was no objection raised to their concerns about keeping it back on the land, no objection to their concern about the lighting. There were no objections raised by the applicant. The Association was told it would be in the one corner. The Association acted in good faith.

The Association did not oppose the Planning Commission's decision because they were in favor of the project. They brought the appeal to consider whether or not the project should be moved off of private land into public land, in front of a public view, and blocking the condominium owners' view of the Bridge, to which the Association has the underlying marine lease, as of 1992.

Shortly after the original restaurant was approved and the condo developers were getting ready to develop their next set of units and the Association tried to get the written agreement, they went back to the original developers and told them they were not getting anywhere. The developers themselves spent a few months and a few thousand dollars trying to negotiate a deal, and get it taken care of and get it in writing. They had the same frustrating experience -- no progress. The developers can no longer sell condos. They stopped construction for over a month on the one that was under construction. Until the agreement is drawn, they cannot sell condos. Until it is resolved, the applicant is continuing to stand in the way of continued condo development.

He said that the Association feels it is inappropriate to build the project on public land, blocking one of the nicest views that exists in that part of Florence, blocking their view on top of their marine lease.

Mr. DeLay said there could be work on the project at the present if the applicant had been willing to compromise. He stated if the applicant had been willing to offer a compromise of moving the project back 15 feet, the Association would have considered it and probably agreed. He said that as of Monday, the applicant has been non-negotiable.

Mr. DeLay felt they had legitimate concerns. He said there were legitimate public concerns. He thought they could get on with the whole business if the restaurant is allowed to be built where it was going to be. Mr. DeLay stated, "Once it gets out of our hands, and we start going into the courts, and we start going into LUBA, and start going other places, we may end up with an outcome that none of us want."

Mr. Jim Saul, whose office is at 111 West 7th, Eugene, said he was going to give the Council some information that would help visualize the situation. Mr. Saul distributed pictures and drawings to the Council. He had taken excerpts from the plans and photographs. He said they asked an architect to look at the

The developers of the condominium project, which is currently half done and halted because of the controversy, made a great deal out of the view of the Bridge, whether it can be seen from a living room or from the common grounds, which the condo owners have, or whether they have to go out on the balcony to see it. It is still a valuable asset.

The brochure selling the condominium and the brochure promoting the community made a big deal out of the view. He then quoted from the brochure. It is an asset of the community, almost a signature of the community. A view that can be seen not only on public ways and public streets, but also from as many windows, balconies, front porches and lawns as possible. He said it is something worth preserving.

Mr. Johnson said that the Comprehensive Plan and land use regulations places emphasis on the aesthetic characteristics of Florence.

Mr. Evans discussed the issue of plan conformity. Mr. Johnson said the key problem with the analysis of Mr. Evans and staff is that it completely ignores the fact that in Oregon when you have something in the Comprehensive Plan that is very specific, that controls over anything else that is in the zoning ordinances. Mr. Johnson said there is language in the Comprehensive Plan that is specific about the condominiums and the small management unit; and about the relationship between commercial uses and this condominium unit. The fact is that in Oregon, when the Plan is acknowledged, maybe the State-wide goals drop out, but the Plan does not drop out. You cannot ignore the Plan and look at what the local and zoning ordinances provide.

Mr. Johnson said the Waterfront District did not apply because the restaurant would be in the estuary, and this use is prohibited in the estuary, off-shore, where this restaurant would extend. The fact that the City has a conditional use process which allows restaurants in this zone where the Comprehensive Plan does not prohibit them does not change the fact that it does prohibit them in the estuary.

That fact that there is a Design Review process which allows the City to resolve conflicts in other ways, where there is not a specific Plan provision, does not change the fact that there is a specific Plan provision here.

Mr. Evans has suggested that the Council ought to be able to interpret the way around the Plan provision by looking at more general Plan provisions talking about general economic development. Mr. Johnson pointed out that the idea has been rejected by the courts. The courts have decided that the more specific provisions have control over the more general provisions.

plans that were prepared and to give an approximation based on the plans, what the effect the proposed restaurant development would be in terms of blockage of views.

He said that the height of the restaurant above grade as defined in the City Code is 26'. That is technically the way the Code is applied, the actual peak of the restaurant is 36' above grade. The drawing submitted indicates the restaurant exceeds 25' feet into the estuary, from the bulkhead.

He said by moving the restaurant into the estuary allows for a 30' landscaped area in front of the restaurant, as well as the additional parking.

Mr. Saul then pointed out the effect of the restaurant development from the condominiums regarding the view. He also informed Council that the architect had been conservative in his estimates when preparing the photographs, so the photographs may understate the amount of blockage.

Mr. Allen Johnson with the law firm of Johnson and Kloos in Eugene was representing Mr. DeLay, Mr. McCarville and the Condominium Owners' Association. He stated that he wanted to emphasize that they were not talking about a question of restaurant or no restaurant. There was prior approval of the proposed restaurant as Mr. Chiou originally proposed it. The Association had no objection to the restaurant in that format.

If Mr. Chiou had so chosen he could be building that particular project now. The delay and expense now has to do with the fact that after approval was received, and without any consultation with the condo owners, he altered the plans, and came back for Design Review.

Mr. Johnson said it was an unfortunate fact that the notice was in a format that showed the area affected by the most recent approval as being an area that is up on the shore, and therefore, the people did not show up.

He said it was important that they were holding the public hearing at this time and that everyone leave with the feeling that they have been heard. He said that they would feel that they have been heard.

Mr. Johnson reviewed the points brought out in the staff report. The first one being obstruction of view. There is no question but that the view was important to the developers, the people who originally promoted the condominiums. The area to be occupied by the restaurant was originally to be occupied by condominium unit, but not to extend out past the bulkhead.

Mr. Johnson also said there was a conflict resolution mechanism in the Plan that said the Council resolves the conflicts in favor of the more specific situation. He also pointed out that Policy 1, Land Use - Siuslaw Estuary and Shoreland Elements says, "...Should any conflict exist between these general policies relating to the Siuslaw estuary and shorelands and those policies relating to specific management units, the policies relating to specific management units shall prevail."

He said there is not an ambiguity about what is required. He believes the courts or LUBA would say in this situation would be that attempt to interpret your way around clear and direct language would be a direct attempt to amend the Plan by interpretation.

He said the Council could avoid that problem by allowing the project to go forward as the original plans had it which keeps it out of the estuary where it is subject to that specific language.

Mr. Johnson referred to the supplement he had filed and pointed out that with the Waterfront District zoning analysis that this is not a Waterfront District but the Estuary Management Unit.

With respect to Design Review, it is true that a Design Review process was completed on the original project. The Association and appellants did not take part in that process. The Design Review is the most project and design specific element of the entire local land use process. It has to do with such things as the color of shingles, roof tiles, trim and location on the sight, landscaping, etc. When the building is moved, the project has been changed, as far as Design Review is concerned. A new Design Review is needed for the entire project. Mr. Johnson said there is not any evidence in the record from which you could make a determination that the criteria required by the Design Review process are met that required compatible, how the colors harmonize, how the building fits in.

Mr. Johnson said that they did not know what the color of the building would be or if there were conditions imposed to protect the neighbors, there was no evidence in the record at this time.

On the question of public views versus private view, Mr. Johnson thought that views are protected within the Plan through the general language and also the specific language.

He said that it is true that when you move into an area if someone puts a building up in front of you, and they have an out right permitted use and the zoning allows for that type of building, you cannot sue them for taking some kind of an implied easement. It is also true, in Oregon, that when a local government adopts a set of procedures, conditional use procedures, Design Review procedures intended to protect the

interests of neighbors, that they acquire an interest which, the courts have said, is a protected property interest. they have a right to have those things considered. They may not have a right to have you always resolve in their favor, but the interests of the neighbors have to be balanced against the interests of the developer.

Mr. Johnson said that the area involved was approximately 3,000 feet, not the 200 feet originally mentioned, because there is not only the piling but a piece on the west side.

On the question of public need and public benefit, Mr. Johnson pointed out, the applicant and the supporters were talking about the benefits that would be achieved by having the restaurant. He said this case was about the additional benefit or the additional public need to extend it out over the water. He said that he had not heard or seen anything that suggests that there is a public need to do that, or that the need is such, beyond four more parking spaces and two additional motel units, that amounts to a public need and amounts to the kind of public need that justifies blocking the view from Juniper Street and blocking the view from a substantial private development. He said that had not been demonstrated.

In conclusion, Mr. Johnson said the condominium residents that were involved in the appeal were not asking to prevent this development. They had not done anything to slow it down as long as they felt their interests were being accommodated, that they were being given the kind of information they needed, their intention is to work out an agreement with Mr. Chiou whereby his project can go forward and their interests can be protected.

Mr. Johnson said he felt the Council would be doing both them and the community, as well as Mr. Chiou, a real favor if the Council would do some balancing and strike a balance which allows both parties to feel that their interests are protected.

Mr. Walt Row, Route 1 Box 5750, Sutherland, Oregon, is a homeowner at the Bay Bridge Condominiums. He bought his place about three years ago, on the assumption that they would be in the center of a group of buildings facing the water and having an unobstructed view of the Bay Bridge. The members of the Homeowners Association knew that the marina was theirs and that the land adjacent to the marina, which is now being developed by Mr. Chiou was common property. On that land there would be two or three other building built as well, when the project was totally completed in 1992. Contrary to what has been said, the view to him, when he bought the condominium, was to be unobstructed. There was nothing in the way of it and there would be no high buildings, or any building at all, that would obstruct his view. He does have an east facing window from which he can see the Bay Bridge.

Mr. Row felt that the view would be interfered with by the restaurant now, but by going out into the estuary another 25' and 36' high, would compromise his view that much more.

Mr. Row said they bought their condominium so they could retire here in Florence. By buying into a condominium complex, they would have privacy and security. He felt the marina was the Homeowners' Association legally, but now Tony seems to have control over it.

Mr. Row felt the view was being compromised in such a way that it is no longer going to the be the view that they originally bought the property for.

Mayor Ternyik asked if anyone else wished to speak in favor of the appeal. No one wished to address the Council.

Planning Director Gillispie delivered the staff summary. She thought the obstruction of view was the appellants' main theme. In the original condominium plan, the Bay Bridge Condos were to extend not only the block they extend over now, but also the entire block that Mr. Chiou purchased, where there would have been three or four eight-plexes along the seawall where Tony intends to put his restaurant, or in the same general area. These eight-plexes would also block the view of the Bridge. She asked how much view of the Bridge the condominium owners were promised because the original intention was to build three story building over all of that property.

The pictures that appellants have submitted purported to show how the restaurant would block the view of the bridge. Ms. Gillispie pointed out that if you looked at the first picture showing how long the bridge actually is. From point "a" there is approximately three-fourths of the bridge in view, and from point "b", approximately one-half.

If the Coastal Resource Management Plan had actually meant to prohibit commercial use, they could have made that a stronger statement in the Plan. Commercial uses were not prohibited. The underlying use of that development district is commercial, water dependent uses, commercial and industrial.

Gillispie also said that when they did the Plan, all they had to do was bring the adjacent natural resource estuary area further down in front of the property to make it more committed to residential use, which they did not do. The language of the section is not clear. While it favors residential use, it does not prohibit commercial uses.

The actual height to the gabled roof is somewhere between 34 and 36 feet. The Zoning Code definition of building height calls for

the average height of a gabled roof as being the height of the building. This is the height between the eaves and the top of the roof. Maximum height in this zone, without a variance, is 28'. Mr. Chiou's building is 26', by this definition.

Planning Director Gillispie said that the Planning Commission is concerned about architectural and aesthetic appearance. One of the conditions that the Planning Commission made during the Design Review portion, of both this review and the first review, was that the architect would bring back the actual colors of the roof tile to see how they would blend in and be pleasing to others in the neighborhood. This is still a condition of the proposal.

Gillispie said that one notice that was sent out was returned with a note stating that they approved of Mr. Chiou's project and was signed by R.W. Allen.

City Manager McMicken also pointed out that the Council had received a letter from Ruth Bodman, dated December 5 and received in the City on December 7. The letter was read by the attorneys.

Mr. Evans then spoke in rebuttal. He said that he agreed with what Mr. Johnson had said in the right place. He said that if the City had a Comprehensive Plan that said you can not have commercial development in the MU district in the waterfront or in the estuary, he would agree that you could not approve a development in the district. He said that is not the situation here. This section was in the form of a discussion, not a policy. This discussion is a component of the Comprehensive Plan, not the Comprehensive Plan itself. Other policies in the Comprehensive Plan, not only those related to the economic development but those related to waterfront development, can be found to override this segment in the MU discussion. He disagreed with Mr. Johnson that that would be overturned in the courts. Mr. Evans said there is adequate information, that if the Council chooses that this development should go forward, he believes there are appropriate findings to support their approval, and he urged the Council to deny the appeal and go ahead with the approval of the development.

Mr. Evans rebutted that there is not clear and direct language in the Comprehensive Plan. Mr. Evans noted that it is interesting that both Mr. DeLay and Mr. Johnson said they are not against the development, just the location. Mr. Johnson's letter and his argument are directed toward the restaurant development, and why the restaurant should not occur. It is not related just to the location.

In regard to the testimony regarding the blockage of view, Mr. Evans said that should be kept in context. He said that from any point on the subject property or the adjacent property and no

matter what is put in there, there will be some blockage of view, depending on where you stand and where you take a picture. It is just a matter of what you are trying to portray with the pictures.

Mr. Evans submitted a photograph into the record showing the bridge area and the condominium development. He indicated that if there is no opposition to the restaurant as proposed, it does move the view line, but makes very little difference. There is an impact, but not the impact the appellants are saying.

This project has gone through a series of review procedures with the City. They believe it has met those, the Planning Commission took a lot of time and paid very careful attention to design criteria in the Code, and applied those to this development, and found that the design was appropriate.

He disagrees with Mr. Johnson's contention that the project has not been adequately reviewed.

Mr. Evans then ended by saying that one of the reason that it is important to get on with the project is so that construction can be commenced, if the Council finds in favor of continuing the project as proposed. The intent is to have it constructed by this tourist season.

Mr. Lombard stated that he would deal with the things that Mr. DeLay had said. Mr. Lombard said that if he did not address those issues, it would leave an impression that is totally incorrect.

He said there was some question in Mr. DeLay's statements about who he is representing. Mr. Lombard said the appeal was from Mr. DeLay in Eugene and Mr. McCarville from Casa Grande, Arizona. The Association is not a member of the appeal, at least not in the document he has.

The second item was regarding Mr. DeLay apparent frustration with the condominium developers, the people he bought from. Mr. Chiou is not the developer. Mr. Chiou is a party who bought next door to the condominiums. Mr. DeLay is frustrated, as is the man from Sutherland, because they thought that when they bought their unit, they were in the middle of a condominium development, and felt that by being within that spot, they had control over the entire area down there. That is not so. The property of Mr. Chiou was not part of what they bought, and they do not have any control on that property.

They are also frustrated about a marina problem. Mr. Lombard said that is not before the Council. He said that if the Council

wanted to act as judges on that, he was prepared to talk about that. The comments from Mr. DeLay were totally improper for this group.

Mr. Lombard said that he was also prepared to talk about who was not willing to negotiate. He said that he had spent the previous weekend working on this, at Mr. Chiou's direction. That, which they had started with on Friday as a given, was withdrawn on Monday. He is not willing to sit back while they (the applicant and Mr. Lombard) are accused of something incorrect or improper as to their motives in this matter.

He has the original document, which is the assignment of the marina rights, the marina rights have been assigned to Mr. Chiou by the owner of them, who was the developer. Mr. Lombard stated that if Mr. DeLay has some frustration with the developer, this was not the body to decide that. This is not before this group.

Mr. Lombard said that they have heard about the appellants' desire to tell them what colors to put on the building. He is sure that the City of Florence has some control on how development occurs. The City has all the control needed, the neighbors cannot control.

Mr. Lombard pointed out that only three out of thirteen of the condominium owners say they are offended by this obstruction of view.

Mr. Lombard closed by saying that two people (Chious) came to this community eight years ago and they are people every community in the State of Oregon would desire. Mr. Lombard said this is an incredible opportunity for the Florence community.

If the desire is community development, there is a time to end all of the hearing and delays and let the people do their things. Here is an opportunity for a City to let something happens for economic development.

Mr. Lombard said that the appellants are frustrated with the seller, they are not unhappy with the development, but they think they are entitled to see more of the bridge than they think they will see with the restaurant.

Mr. Leahy suggested that the Council ask Mr. Johnson if he had any new information that was presented to him in rebuttal that took him by surprise, that he has not had the opportunity to rebut, let him do that now.

Mr. Johnson said that he wanted to emphasize that the aerial photograph that Mr. Evans had, a major portion of the bridge is in the area affected by the restaurant.

He said that Mr. Lombard had suggested this was a selfish act by people who are trying to protect their views. Mr. Johnson thought it was a lot more than that. Mr. DeLay was trying to tell the Council that by the conduct in the past, when a proposal is presented which is sensitive to their concerns and when they are consulted with it in advance, they have not opposed this project. This hearing happened because there was a lack of consultation in the change of plans.

This delay has been caused by the applicant himself when he decided to do something more than with his original application. Mr. Johnson said the fastest way to get this back on track is to let Mr. Chiou go ahead with his building as originally designed, to follow the Comprehensive Plan, and simply put the controversy to an end.

Mayor Ternyik said that there would be a five minutes recess to converse with the attorneys. He stated that it was recognized that both sides, as well as the City had competent attorneys, and the Council is making as important decision on how Mr. Chiou would be able to proceed.

9:40 p.m. -- Recess --

Mayor Ternyik closed the public hearing at 9:53 p.m. He reminded the Council that the public meeting regarding this issue would continue on the 22. There will be no additional public testimony on this issue. The attorneys are requested to submit proposed findings by December 16, at 5:00 p.m. for the Council's consideration. After that consideration and review of the testimony, the Council will make a decision make on December 22.

Mayor Ternyik thanked everyone for coming and participating in the public hearing.

CITY MANAGERS REPORTS

The next items were taken from the Agenda out of order.

7. Whispering Pines Development: Request by Whispering Pines to trade property with City in plan to develop Greenwood Street between 9th and 11th.

City Manager McMicken explained that this was a request by the Kaufmann Corporation, who operate Whispering Pines and are interested in developing Greenwood Street between 9th and 11th. McMicken said they were intending to build FmHA houses on Greenwood. They would improve the street, replat and do some lot switch to face the house on Greenwood. As indicated, they would like the City-owned properties that front 9th Street. McMicken said that after discussing the matter, it was his and Planning

Mayor Ternyik questioned the payment to Hiatt Florist and Nursery, and the payment to National Photo Copy Co. with part of the payment being charged to Council. City Recorder Taylor told the Council that the Fire Department had ordered flowers when Shirley Long terminated and the charge to the Council was only a small part of the bill. It was for maintenance on the photocopy machine. Also the payment to Valley was to pay for the binder for Council Minutes.

Councilor Ward made a motion to raise the City Manager's salary with second by Councilor Fraese. By voice vote, all "aye", motion carried.

Adjournment: Council adjourned at 10:50 p.m.

Wilbur E. Ternyik, MAYOR

ATTEST:

LuAnn Grover, SECRETARY

Eugene, Or
Dec. 5, 1987

City of Florence
Florence, Or

Gentlemen:

Since I may not be able to attend the Dec. 8th meeting of the City Council I wish to cast my vote I am in favor of appealing the Conditional use permit of the proposed restaurant partially sited within the development estuary overlay adjacent to 1150 Bay St. Condominium applied for by Tony Chin

It seems to me that Tony has bought too small a parcel of land for his proposed large resort. Now he wishes to infringe on the rights of all his neighbors and on public land to achieve his goal.

At our Condo meeting in 1986 concerning Taking over the Marina rights that belonged to the Condo owners, Tony promised that his word was as good as his signature. He said he wanted to be a good neighbor and would build the restaurant on the east side of his property. This would protect the Condo owners from noise and lighting from a late night restaurant and would protect part of our view of the beautiful Bay Bridge. Tony is breaking his promise

The proposed restaurant on pilings would destroy the view, encroach on public land and also on the the policy of the Fish and Wildlife service for Estuary use

Sincerely
Ruth Bodmer B-1 Bay Bridge Condos

LAW OFFICES OF
JOHNSON & KLOOS
767 WILLAMETTE STREET, SUITE 203
EUGENE, OREGON 97401

LEN L. JOHNSON
BILL KLOOS

AREA CODE 503
TELEPHONE 687-1004

December 8, 1987

City Council
City of Florence
P.O. Box 340
250 Highway 101 North
Florence, Oregon 97439

Re: Supplemental Statement of Appellants
Chiou CUP Application

Dear Members of the Council:

This statement supplements the notice of appeal dated October 22, 1987, and responds to the staff report dated November 25, 1987.

Obstruction of View

We are submitting photographs taken from the condominium grounds, the units themselves, and from the public access at the end of Juniper Street, along with illustrations. The photographs and overlays show clearly that extension of the restaurant as proposed will substantially obstruct the view of the bridge from the individual units, from the common areas, and from the only public vantage point in the neighborhood, at the south end of Juniper Street.

The proposal would impair excellent views of a beautiful historic bridge. The staff's suggestion that a view cannot be impaired unless it is perfect to start with is both illogical and unrealistic.

Certainly, the developers of the Bay Bridge Condominiums thought a great deal of the view. They made it a main selling point in their sales brochure, which describes it as follows:

> "To the east, rising out of the morning and evening coastal mists is the imposing and geometrical shape of the Siuslaw Bridge on Highway 101, its curves and angles constantly altered by light and shadow."

This view is an important part of the reason appellant and other residents located in Florence. If the city is indifferent to such values, future potential residents will be well-advised to think twice before locating here.

Assignments of Error

1. **Authorization.** Appellants rely on their original statement.

2. **Notice.** Appellants rely on their original statement.

3-A. **Plan Conformity.** The staff report appears to be an argument with the plan, rather than an analysis of the plan conformity issue. The plan states unequivocally that commercial uses are inappropriate, and nothing in the staff report suggests that the plan provision is not applicable to this decision.

Further, staff quotes only part of the applicable plan provision, which states unequivocally that

> **"Commercial or industrial uses are not considered appropriate, due to the proximity of residential development."** CRMP, 1982, pp 18-19.

Staff leaves out the highly specific reference to "the proximity of residential development." The staff report also omits the plan's specific observation that the residential development protected by the above plan provision includes the "condominium development" which "has been approved and is being built in this Management Unit."

These omissions are especially significant because of another omission, Policy One of the Land Use - Siuslaw Estuary and Shorelands Element of Section VII of the Florence Comprehensive Plan. Policy One provides that

> "Should any conflicts exist between these general policies relating to the Siuslaw Estuary and Shorelands, and those policies relating to specific management units, the policies relating to the specific management units shall prevail." FCP p. 24.

What this means is that the specific prohibition of commercial uses in this Management Unit overrides the more general Policy permitting water-related uses on pilings as conditional uses when consistent with the resource capabilities of the area and the purposes of the management unit. This is assuming that the proposed conditional use is consistent with the purposes of the management unit, which it is not.

This proposal puts the entire project at risk. Plan provisions are enforceable not only through review by LUBA but also through direct enforcement of the City's plan by a circuit court, under state statute. See ORS 297.825(4)(a), enacted by the Oregon Laws, 1983,

chapter 827, section 30, which provides for circuit court enforcement of comprehensive plans as an exception to LUBA's exclusive jurisdiction.

3-B. **Waterfront District Zoning.** The staff report attempts to override the plan by a convoluted analysis of provisions of the zoning code. It can't be done. Even if the analysis made sense, which it doesn't, the plan would control. In Oregon, as staff well knows, comprehensive plan provisions prevail in case of conflict with zoning provisions.

The City's comprehensive plan recognizes and supports this concept of plan dominance, pointing out that general "land use designations are modified, in many cases, by overlay designations which are derived from specialized elements of the plan." FCP page 55. The plan notes that these overlay designations include

> "Estuary and estuarine shorelands management units designated in the Coastal Resources Management Plan and adopted as an element of this Plan." FCP page 55.

The plan could not be more clear.

In this case, a specific plan policy limits the kind of uses that can be permitted within this particular management unit, notwithstanding that more general zoning provisions might allow other uses in other management units. The City of Florence has chosen to protect the existing residential uses in this management unit against the encroachment of new commercial uses. At the time the plan was adopted, the site was destined for residential redevelopment as a further stage of the condominium, and that is the kind of future which the plan contemplates. If Mr. Chiou and the city want a different future for it, their remedy is a plan amendment.

3-C. **Design Review.** Design-review is a design-specific process. The Planning Commission's earlier approval of the design for an onshore facility approves a different project. The proposal does not comply with the Design Review Criteria set forth in Section 10-6-5. Specifically, it does not provide the "visual buffers" and "setbacks" called for in 10-6-5(A) necessary to assure "Architectural quality and esthetic appearance, including compatibility with adjacent buildings," required by 10-6-5(H), and necessary to protect the "general welfare," (10-6-5-K), and to "implement policies contained in the Florence Comprehensive Plan." 10-6-5(N). Specifically, the colored tiles, excessive height, and view blockage are design elements that violate these criteria. The appellants request conditions assuring that the lighting,

landscaping, and external decor are handled in subdued tones and an unobtrusive manner that is in character with the adjacent residential uses, as well as a condition protecting public and private views of the bridge.

3-D,E. **Blockage of Public and Private Views.** The staff acknowledges that visual access corridors are important, but says only that "code criteria does not require visual access corridors over private property." Design review standards, conditional use criteria, and plan policies described herein do require protection of public views and assurance of compatibility. Setbacks and conditions restricting placement of buildings on sites are normal and appropriate means of protecting these interests. The applicants have not cited and the staff report does not suggest any private interest in extension of the restaurant that outweighs the detriment that will result from blocking private views or from blocking the only public viewpoint in the area, at the end of Juniper Street. Further, the suggestion that a view over the public waters of the state involves private property is absurd. The applicant has no more right to build into the estuary than an ordinary Florence homeowner has to build out to the sidewalk. The whole purpose of conditional uses is to recognize that certain uses in certain places have "unique and special characteristics" that justify special restrictions such as those proposed by the appellants in this case. FZC 10-4-1.

The applicant would apparently like to see this project treated as an outright permitted use. It just isn't so. The law may be inconvenient, but, until it is changed, it must be respected.

3-H. **Compatibility.** The staff suggests that restaurants are automatically compatible with condominiums everywhere because they are sometimes provided in conjunction with condominiums. That is nonsense. Restaurants would be outright uses if city policy supported the staff position. City policy is not so simplistic. Restaurants are sometimes permitted in single-family residential areas too, but that doesn't make all restaurants compatible with all neighborhoods. This restaurant, as proposed, would be an obtrusive goliath that will destroy one of the primary selling points and amenities of this particular residential development. The findings will have to do more than say it isn't so.

4-A. **Zone and Plan Change Criteria.** This application requests a de facto plan and zone change, so the criteria are applicable.

4-B. **Area Affected.** The staff report now says that the area affected is not 200 feet, as previously stated, but 2000. The area is still understated by a about half. The drawings show an area of at least 3000-square feet of building and deck beyond the bulkheads.

The staff's description of the U.S. Fish and Wildlife Service position is simply inaccurate. The best refutation is the quote the Service's September 2 letter:

> "It is Fish and Wildlife Service policy to discourage encroachment on public waters for non-water dependent purposes. We, therefore, recommend that the applicant move the proposed restaurant back to the available upland area on the property."
>
> "It appears that the applicant is piecemealing development of this property. In addition to this permit application, there was a recent permit (March 24, 1987) for a marina expansion and we are aware of plans for a motel which will also occupy the same property. In the Service's view, these projects should be handled together."

We concur.

4-C. **Public Benefit.** No evidence has been offered and none is cited by staff to show that **extension** of the restaurant would create a public benefit. Its only benefit is private, in that it allows the builder to reserve more parking spaces and create a hill upon which to erect the restaurant in an attempt to circumvent height limitations.

4-D. **Need.** The staff quotes only a portion of the conditional use criteria set forth at Code Section 10-19-3-D, omitting the first and most important criterion, which requires that:

> "a. A public need is demonstrated."

There has been no showing of what the public need is, either for this restaurant or, more particularly, for the extension of this restaurant into an estuary and across the view of the bridge from the neighboring public access point at Juniper Street and the adjoining residential development.

Conclusion

This controversy calls for the exercise of some statesmanship. It is entirely possible to resolve this matter in a way that adequately serves everyone's interests.

It does not serve the interests of the city or the applicant to approve a flawed application, to ignore the clear requirements of the city's own land use regulations, or to refuse to accommodate the reasonable concerns of citizens those regulations are designed to protect.

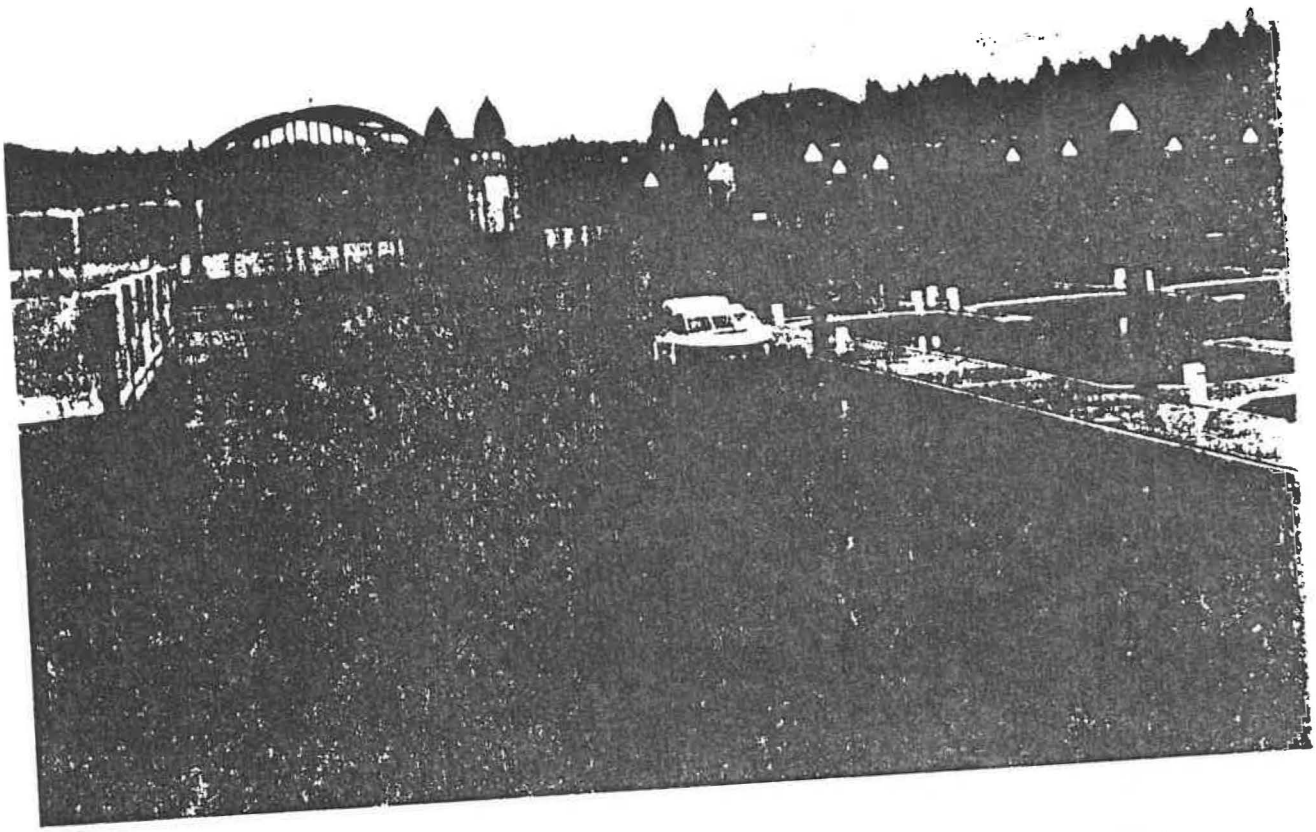
The condominium residents have sought all along to find a reasonable solution which balances the interests of all the parties. If the city enforces its laws and gives the appellants a fair shake, it will do everyone including the applicant, a real favor.

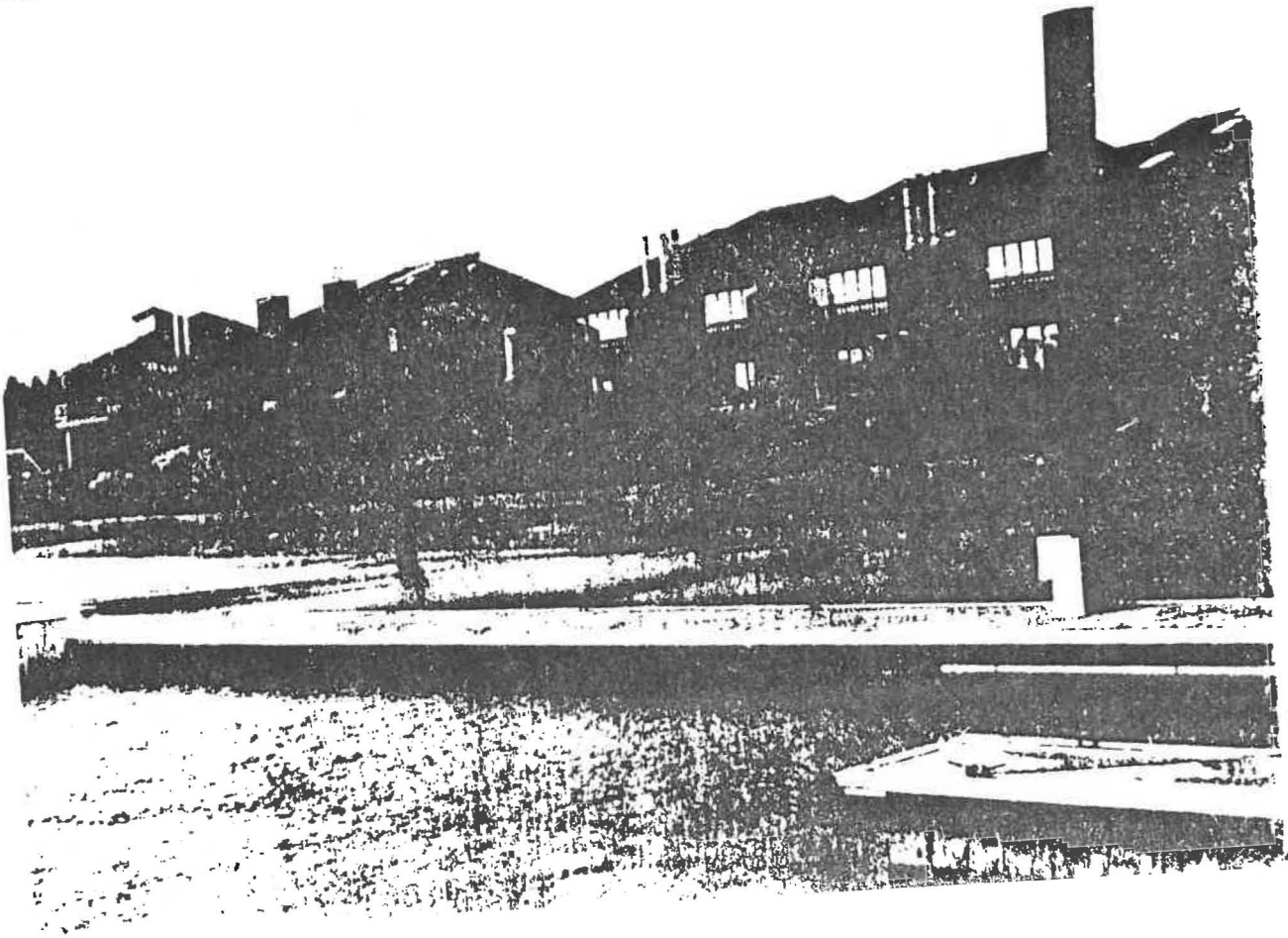
Respectfully submitted this 8th day of December, 1987.

JOHNSON & KLOOS
Attorneys at Law

Allen L. Johnson

ALJ/me
encs.
cc: Jack Delay
Tom McCarville
Joe Leahy
Herb Lombard





CHUCK BAILEY ARCHITECT AIA
1740 WILLAMETTE STREET, EUGENE, OREGON 97401 (503) 485-3315

8 DECEMBER 1987
MR. JACK DELAY
2173 ESSEX LANE
EUGENE, OREGON 97403

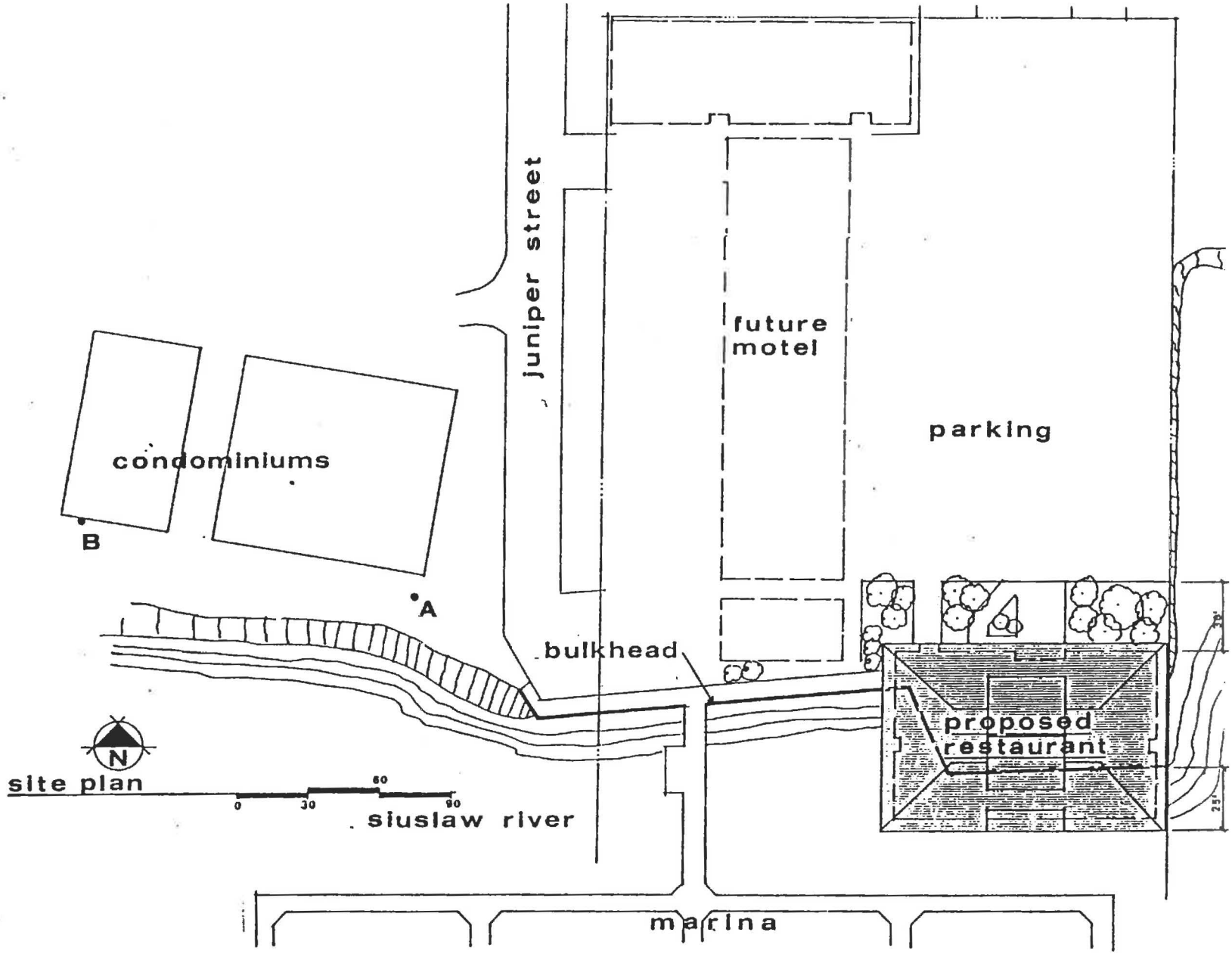
DEAR JACK:

ENCLOSED PLEASE FIND THE SITE SCHEMATICS AND PHOTO OVERLAYS WE HAVE PREPARED REGARDING THE PROPOSED RESTAURANT IN FLORENCE, OREGON.

WE USED THE SITE PLAN, AN AERIAL SITE PHOTOGRAPH, AND SITE PHOTOGRAPHS TO DETERMINE THE POTENTIAL VIEW BLOCKAGE THE RESTAURANT MIGHT IMPOSE FOR THE CONDOMINIUM OWNERS.

WE WANT TO CAUTION YOU THAT ON YOUR INSTRCUTIONS WE ATTEMPTED TO ERR TOWARDS THE CONSERVATIVE SIDE AND THE ACTUAL VISUAL IMPACT MAY BE WORSE THAN WE HAVE INDICATED.

THANKS,


juniper street
future motel
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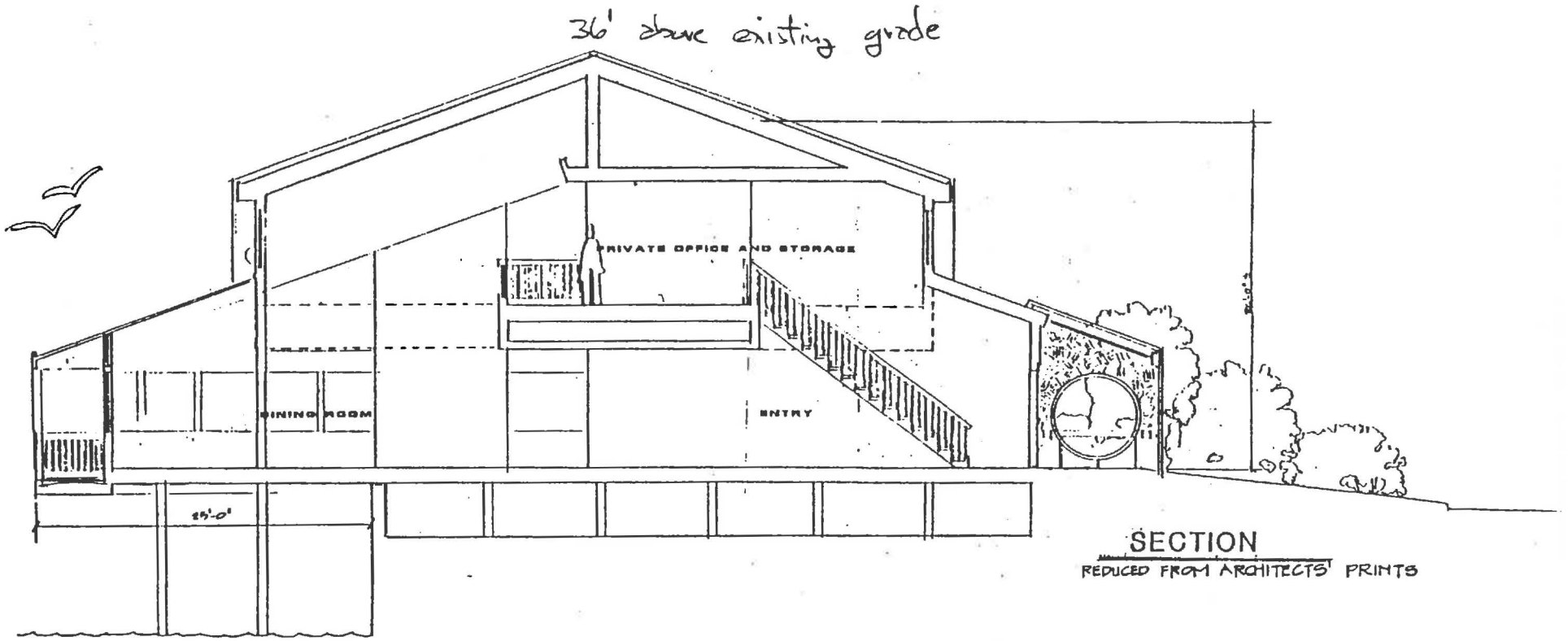
siuslaw river
marina



SECTION

REDUCED FROM ARCHITECTS' PRINTS

harlan/miller associates pc
375 park avenue, coos bay, oregon 97420

view from point A

view from point B

TO: Florence City Council

FROM: Laura Gillispie, Planning Director

DATE: November 25, 1987

SUBJECT: Appeal of Planning Commission approval of Chiou project. The following material is submitted for Council review in response to the documents filed by Allen Johnson, Attorney for appellant, Jack Delay and appellant Thomas A McCarville, representative of the Three-Ten Partnership.

BLOCKING OF VIEW:

Mr. Johnson contends on page 2 of his letter that the restaurant will block the view of the bridge from the appellant's condominium units.

It is a fact that only units abutting Juniper Street are afforded a view of the entire bridge at this time. The Bay Bridge Condominium buildings are oriented to the south-south west allowing each unit an unobstructed view of the Siuslaw River, the Dunal areas and wooded areas directly across on the south bank.

ALLEGED ASSIGNMENTS OF ERROR:

1. Application for Planning Commission review was correctly filed by Chiou. The appellant's declaration of covenants does not include any interest in the actual property purchased by Chiou and only implies that interest in the marina itself will be a future property of the condominium unit owners.

2. The notice is not misleading. It states plainly within the copy of the notice that the proposal was a Conditional Use application for a proposed restaurant "partially sited within Development Estuary Overlay District", adjacent to the described property. The map is included only to show the location of the described property, not as a site plan. The notice provides a source if more information is needed by anyone.

   Adequate and timely notice was given. Notice was mailed to all property owners of record, including Mr. Delay and Mr. McCarville, on September 24, 1987, (See Exhibit A, an affidavit by Ms. Rhodes). The public hearing date was October 6, 1987. City Code requires that notice of the public hearing be given by first class mail at least seven (7) days prior to the date of the public hearing. Not withstanding, a new notice was mailed on November 30, 1987 giving notice of the public hearing of this appeal on December 8, 1987. (See Exhibit "C").

3-A. Comprehensive Plan conformity was observed. While the Coastal Resources Management Plan stated that "Commercial or Industrial uses are not considered appropriate", the plan described the existing commercial marina, which also included on the site a commercial marina office, crab ring and boat rental, sale of fishing gear, fishing licenses, beer and some grocery items, as well as an RV Park. The marina office and RV Park are considered to be commercial uses. City Business License records show these uses have continued since December 16, 1969.

The residential use is not an outright permitted use in Waterfront, but is listed as a Conditional Use. Code Section 10-4-1 describes Conditional Use as follows:

> All uses permitted conditionally are declared to be in possession of such unique and special characteristics as to make impractical their being included as outright uses in any of the various districts crated by this Title. The authority for the location and operation of certain uses shall be subject to review by the Planning Commission and issuance of a Conditional Use Permit. The purpose of review shall be to determine the type of uses permitted in surrounding areas and for the further purpose of stipulating such conditions as may be reasonable, so that the basic purposes of this Title shall be served. (Ord. 625, 6-30-80; amd. Ord 669, 5-17-82).

In other words, the assumption that this site was suitable for residential use is in error without review of the type of use and intensity of use as required by Conditional Use Permits, Code Section 10-4.

The proposed restaurant is an outright permitted use within Waterfront District. A restaurant is a water-related use and as such has a higher priority within a Development Estuary unit than a residential use. (See Code Section 10-18-3-B for Water Related Uses).

B. Commercial uses within this Shorelands Unit are considered appropriate in that the underlying Waterfront District allows the use outright, and because the surrounding uses are a mix of commercial, organizational, single family and multi-family uses. The Code states that the purpose of the Waterfront District "is intended to provide an area for mixed land uses that are appropriate along a riverfront", (Code Section 10-17-1: Waterfront District Purpose).

C. The Planning Commission acting as Design Review Board found that the proposed restaurant building was architecturally and aesthetically pleasing, in conformity with Design Review

Criteria.

D. The site is approximately 400 feet, (over one block) from the Siuslaw Highway 101 Bridge. The site, as mentioned in 3-A above, has been in continued use as a boat marina, marina office, crab ring and fishing equipment rental for at least 18 years. The fact that a restaurant would be erected here would not impact the bridge site.

E. Visual access corridors are considered to be important and for this reason, public street right-of-ways are to be protected as visual access corridors and for public physical access to the river. Juniper Street right-of-way abuts this property on the west and Kingwood Street right-of-way is located 60 feet east of this property. Code criteria does not require visual access corridors over private property.

F. See Exhibit "A", Affidavit of Service and Exhibit "B" first Public Hearing Notice.

G. Land Use General Policy 7 states: "Performance Bonds <u>may</u> be required". Performance bonds were not required for this development because no public improvements were planned. The City, in its discretion, may require performance bonds for projects where public improvements are required as conditions of approval, such as proposed subdivisions or public street or utility extensions.

H. The proposed use will not encroach upon residential area. The Condominium property is separated from Mr. Chiou's property by Juniper Street, a 60-foor wide right-of-way. The restaurant is proposed for the extreme south-east corner of Chiou's lot, approximately 130 feet east of Juniper Street.

The property is presently in commercial use. Restaurant use is not incompatible with residential use, especially condominium type residential development. It is a matter of fact that many large condominium developments include a restaurant, usually within the same structure if not immediately adjacent. Driftwood Shores Condominium at Heceta Beach is a good example of this residential-restaurant combination, as is Salishan, south of Lincoln City.

4-A. Mr. Johnson's quote of Code Section 10-1-3-D is out of context. This Code section pertains to proposed zone changes or amendments, not to Conditional Use application.

B. Adequate available land for permitted uses: The Findings, Exhibit A, item B-2 demonstrates the fact that this use will not reduce the working area of the marina and will not affect the availability of land for future water dependent uses because there is room available for permitted uses

within the Overlay District and because this area is committed to marina operation. The pilings supporting the restaurant will not affect marina operation.

NOTE: A clerical error in this paragraph describes the pilings as supporting 200 sq. ft., instead of 2000 sq. ft. of building.

The Fish and Wildlife letter did not directly oppose this extension. The statement was made: "No significant impacts on fish and wildlife are expected to result from the proposed work". No recommendation was sought on type of use required from Fish & Wildlife.

C. Placement of a portion of this building within the Estuary is not detrimental to the public benefit. This type of placement is perceived by the public as a very desirable amenity. The close proximity to the river is aesthetically pleasing. Examples are the successful Mo's restaurants in Newport, Lincoln City and Florence. Successful operation of commercial businesses is decidedly to the public's benefit and the continuing and increasing benefit of other businesses in the community.

D. The use does meet the criteria of Code Section 10-19-3-D, Conditional Uses allowed:

1. Uses: (a) Flood and erosion control structures, including but not necessarily limited to jetties, seawalls, groins and bulkheads.

2. Uses: (a) Riprap and associated minor fills to protect manmade structures existing prior to October 7, 1977.

3. Uses: (a) Other uses which do not require dredging or filling.

Subsection 3 a) is applicable to this proposal for piling within the Estuary to support a portion of a restaurant.

Code Chapter 10-19 and other zoning provisions were found to be in conformity with the City's Comprehensive Plan when acknowledged by LCDC.

SUMMARY:

1. Application was correctly filed by the owner of record.

2. The notice is not misleading. The map was included to indicate this site location in relation to other properties, not as a site plan. Persons notified can then recognize the location in relation to their property.

The notice was mailed to property owners in a timely fashion.

3-A. The statement in the Lane County Coast Resource Management Plan that commercial or industrial uses were not considered appropriate disregards the purpose of the zoning district and the fact that residential uses are not permitted outright.

B. Commercial uses are considered appropriate. The purpose of Waterfront District is to provide for mixed uses appropriate to a riverfront. Restaurants are considered a water-related use.

C. The Planning Commission found the restaurant was architecturally compatible with adjacent buildings.

D. The site is over one block from the bridge right-of-way. The site is in commercial use. Future commercial use will not detrimentally impact the bridge.

E. Visual access to the river is provided by Kingwood and Juniper Street right-of-way. Visual access corridors are considered important but are limited to street right-of-way, and not required on private property by Planning Commission policy.

F. The meeting was well publicized and did provide opportunity for comment, both before and during the public hearing.

G. Performance bonds <u>may</u> be required. This development did not warrant this application.

H. The proposed use does not encroach upon residential area. It is solely within Waterfront District on a site under present commercial use, separated from residences by streets.

4-A. This requirement applies to zone changes, not Conditional Use application.

B. Adequate land is available and was discussed in Findings of Fact, Exhibit "A", item B-2.

The Fish and Wildlife Service did not oppose the piling, making the statement that no significant impacts would result from the proposed work.

C. The use is not detrimental to public interests.

D. The use is allowed under Code Section 10-19-3 and complies with Conditional Use General Criteria, Section 10-4-9.

EXHIBIT "A"

AFFIDAVIT OF SERVICE

I, Anne M. Rhodes, Planning Secretary for the City of Florence, Lane County, Oregon, hereby certify that I did personally mail from the U.S. Post Office at Florence, Oregon, Notice of Public Hearing of the Chiou Conditional Use Permit to abutting property owners of record within 300 feet of Tax Lot 8000 and 8001, Map No. 18-12-34-12 on September 24, 1987 for the Hearing date of October 6, 1987.

I received one of the notices, sent to Ronald C. & L.L. Hartley marked "Expired Order, Returned to Sender", which is a part of the file and shows the postage mark of September 24, 1987.

I further certify that on Monday, October 5, 1987, I received a telephone call from Mr. Jack Delay, stating that he had received a notice from us "some time last week" and that he had not opened it upon receiving it, that he had only just opened it and called at once to tell us that he had not received the notice in proper time to prepare for the meeting. I then forwarded the call to Laura Gillispie, Planning Director.

Dated: 11-20-87

Anne M. Rhodes, SECRETARY

EXHIBIT "B"

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN THAT A PUBLIC HEARING WILL BE HELD BY THE PLANNING COMMISSION OF THE CITY OF FLORENCE AT 7:30 O'CLOCK P.M., ON OCTOBER 6, 1987 IN THE COUNCIL CHAMBERS OF THE CITY HALL IN THE CITY OF FLORENCE, LANE COUNTY, OREGON, TO HEAR AND CONSIDER THE MATTER OF A CONDITIONAL USE APPLICATION FOR A PROPOSED RESTAURANT PARTIALLY SITED WITHIN DEVELOPMENT ESTUARY OVERLAY DISTRICT ADJACENT TO 1150 BAY STREET, 18-12-34-12 TAX LOTS 8100 AND 8000 AS APPLIED FOR BY HONG-SHIOU (TONY) CHIOU.

INFORMATION MAY BE OBTAINED, AND WRITTEN TESTIMONY SUBMITTED, TO THE PLANNING DEPARTMENT, CITY HALL, 250 HIGHWAY 101, P.O. BOX 340, FLORENCE, OREGON, 97439, NO LATER THAN 4:30 P.M., TUESDAY OCTOBER 6, 1987.

Laura Gillispie

LAURA GILLISPIE, PLANNING DIRECTOR

PUBLISH: SEPTEMBER 30, 1987

EXHIBIT "B" - PAGE 2

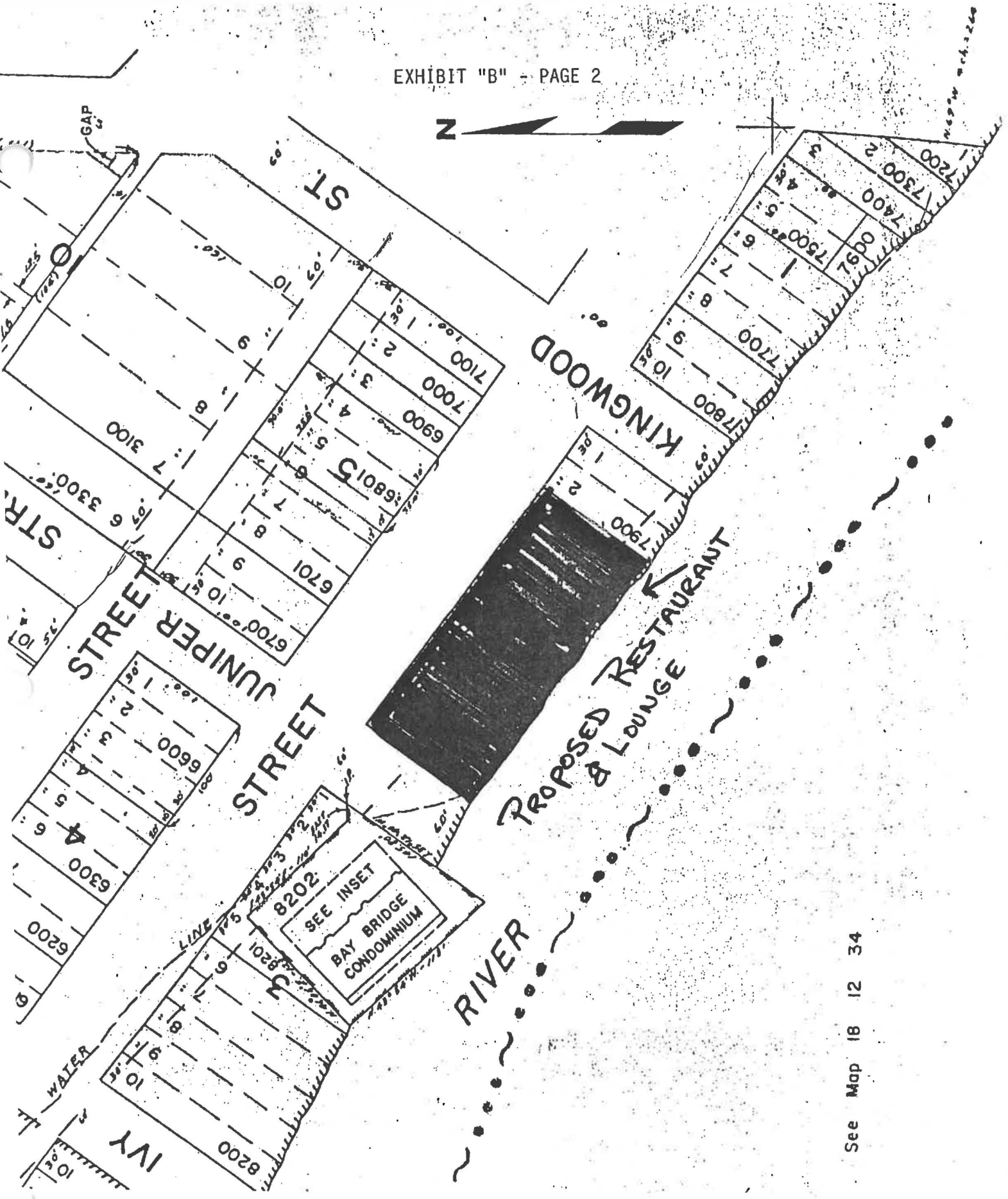


EXHIBIT "C"

AFFIDAVIT OF SERVICE

I, Anne M. Rhodes, Planning Secretary for the City of Florence, Lane County, Oregon, hereby certify that I did personally mail from the U.S. Post Office at Florence, Oregon, Notice of Public Hearing to hear and consider an appeal filed in the matter of a Conditional Use Permit for a proposed restaurant partially sited within Development Estuary Overlay District adjacentto 1150 Bay Street at Map 18-12-34-12 Tax Lots 8000 and 8100 as applied for by Hong-Shiou (Tony) Chiou, to be held on December 8, 1987 by the Florence City Council, in the Florence City Hall, 250 Highway 101, Florence, OR 97439.

I received one of the notices, sent to Ronald C. & L.L. Hartley marked "Expired Order, Returned to Sender", which is a part of the file and shows the postage mark of November 30, 1987.

Dated: 11-30-87

Anne M. Rhodes, Planning Secty.

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN THAT A PUBLIC HEARING WILL BE HELD BY THE CITY COUNCIL OF THE CITY OF FLORENCE, OREGON AT 7:30 O'CLOCK P.M., ON DECEMBER 8, 1987, IN THE COUNCIL CHAMBERS OF THE CITY HALL IN THE CITY OF FLORENCE, LANE COUNTY, OREGON, TO HEAR AND CONSIDER AN APPEAL FILED IN THE MATTER OF A CONDITIONAL USE PERMIT FOR A PROPOSED RESTAURANT PARTIALLY SITED WITHIN DEVELOPMENT ESTUARY OVERLAY DISTRICT ADJACENT TO 1150 BAY STREET, MAP 18-12-34-12 TAX LOTS 8000 AND 8100 AS APPLIED FOR BY HONG-SHIOU (TONY) CHIOU.

INFORMATION MAY BE OBTAINED, AND WRITTEN TESTIMONY SUBMITTED, TO THE PLANNING DEPARTMENT, CITY HALL, 250 HIGHWAY 101, P.O. BOX 340, FLORENCE, OREGON, 97439, NO LATER THAN 4:30 P.M., TUESDAY DECEMBER 8, 1987.

JON E. TAYLOR, CITY RECORDER

PUBLISH: 12-2-87

KINGWOOD
ST
JUNIPER
STREET
STREET
IVY
SITE OF PROPOSED RESTAURANT
8202
SEE INSET
BAY BRIDGE
CONDOMINIUM
RIVER
SIUSLAW
N
See Map 18 12 34

HARMS, HAROLD, LEAHY & PACE

EDWARD C. HARMS, JR.
TIMOTHY J. HAROLD
JOSEPH J LEAHY
ERWIN B. ISAMI PACE, JR.

ATTORNEYS AT LAW
SUITE D, 223 NORTH A
SPRINGFIELD, OREGON 97477

AREA CODE 503
TELEPHONE 746-9621

November 25, 1987

Allen Johnson
Johnson & Kloos
767 Willamette, Suite 203
Eugene, OR 97401

Herb Lombard
Lombard, Gardner, Honsowetz,
Brewer & Schons
725 Country Club Road
P.O. Box 10332
Eugene, OR 97440

Re: Appeal of the CUP for 1150 Bay Street (Chiou)

Gentlemen:

This office is assisting the City of Florence with respect to the above-referenced appeal. Apparently, Keith Martin had a conflict which necessitated the employment of other counsel.

I have had the opportunity to thoroughly review the file and discuss this Appeal with Laura Gillispie, Planning Director, City of Florence.

It is my understanding that there may be some potential for the settlement of this matter between the clients of Mr. Johnson who are appealing it and the client of Mr. Lombard who is the applicant.

Please let me know if settlement is achieved.

In the event that settlement is not achieved, the City of Florence, through Laura Gillispie, Planning Director, has asked that I convey to you her present intention to schedule this for a public hearing at 7:30 p.m. on Tuesday, December 8, 1987, before the Florence City Council. At this hearing the record before the Planning Commission will be presented to the City Council as well as any public testimony which is relevant to the approval of the conditional use permit.

Additional information may be derived from the Planning Department, Florence City Hall (Laura Gillispie, Planning Director) up until 4:30 p.m. on Tuesday, December 8, 1987. Additional written testimony or documentation may be submitted up until 4:30 p.m. on December 8, 1987 to the Planning Department, Florence City Hall.

This information is provided to you for your convenience and early planning. The City of Florence will be providing the appropriate notice required by the Florence City Code. Those notices will be placed in the mail on Monday, November 30, 1987. A public notice will also appear in the Florence newspaper.

If you have any questions regarding this matter, please feel free to telephone me or Laura Gillispie. The telephone number of Florence City Hall is: 997-3436.

Thank you for your attention to this matter and your anticipated courtesy and cooperation.

Sincerely,

HARMS, HAROLD, LEAHY & PACE

Joseph J Leahy

Joseph J. Leahy

JJL:pcl
cc: Laura Gillispie

Original Recd 10-21-87
3:41 P.M. by
City Recorder

LAW OFFICES OF
JOHNSON & KLOOS
767 WILLAMETTE STREET, SUITE 203
EUGENE, OREGON 97401

ALLEN L. JOHNSON
BILL KLOOS

AREA CODE 503
TELEPHONE 687-1004

October 22, 1987

City Council
Planning Director
City of Florence
P.O. Box 340
250 Highway 101 North
Florence, Oregon 97439

Re: Appeal of Planning Commission Approval
of Hong-Shiou (Tony) Chiou Conditional Use Permit
at 1150 Bay Street, October 7, 1987.

Dear Councilors and Planning Director:

I represent Jack Delay, Thomas A. McCarville, and the Three-Ten Partnership. Pursuant to Florence Code Section 10-1-1.4, my clients appeal to the City Council from the above decision of the Florence Planning Commission. They ask you to reverse the Planning Commission's decision outright or to send it back to the Planning Commission for rehearing following the issuance of proper notice.

Interests of Appellants

Jack Delay resides at 2173 Essex Lane, Eugene, Oregon 97403. He owns Condominium Unit 13 in Phase II of the Bay Bridge Condominium, and the interests in the common elements and adjacent marina that are described in the Condominium Declaration recorded January 16, 1980, in Reel 1050, Reception No. 8002518 of Lane County, Oregon, as affected by an amendment to said declaration recorded April 25, 1984, in Reel 1294, Reception No. 8417902, Lane County, Oregon Deeds and Records (documents attached).

Thomas A. McCarville resides at 101 East Brenda Circle, Casa Grande, Arizona 85222. As the Three-Ten Partnership, he and his spouse, Andrea McCarville, own Condominium Unit B-2 in Phase I of the Bay Bridge Condominium, and the interests in the common elements and adjacent marina that are described in the declaration and amended declaration described above.

The existing Bay Bridge Condominium complex is just west of the site of the proposed restaurant-motel complex, which occupies land originally intended to be occupied by later phases of the condominium. The locations of the existing buildings are circled in the attached photocopy of the sales brochure used in selling the units to Mr. Delay and the McCarvilles. The locations of the appellants' units are shown by their initials, and are within 300 feet of the subject property and proposed use.

The marina described in the declaration is shown conceptually in the foreground of the brochure drawing. The apparent location of the res-

taurant is noted.

The attached aerial photograph, vicinity map, and diagram show the locations of the proposed pilings, the approximate outlines of the restaurant, proposed motel, and parking area. They also show the approximate line of sight toward the scenic and historic Bay Bridge from the appellant's condominium and the public access at the south end of Juniper Street, which is between the existing condominium units and the proposed restaurant.

Construction of the proposed restaurant out over the estuary on the pilings as proposed would substantially block the view of the bridge from the appellants' condominium units and common areas, and from the adjacent public viewpoint at the end of Juniper Street. As the text, artist's rendering, and photograph of the bridge in the sales brochure show, the view of the bridge is a substantial element of the value and amenity of the appellants' condominiums. Indeed, the importance of the bridge view is reflected in the name of the condominium itself, **Bay Bridge Condominiums.**

The marina, also shown in the brochure, was also an important selling point and is an important element of the value of the appellants' interests that is impaired by the proposed project. Appellants have attached a copy of the declaration and amended declaration, spelling out their interest in the marina and in the overall design and amenities of the project area. Neither appellants, the homeowner's association, or other unit owners have transferred or released those rights, and any transfers or attempted transfers to the applicant of the underlying marine lease by the condominium developers remain subject to those rights, as acknowledged by the applicant's attorney in the attached letter to the homeowners dated March 3, 1986.

Assignments of Error

1. <u>Unauthorized application.</u>

   The application was not authorized by the homeowner's association, by the appellants, or by other individual homeowners in the condominium, all of whom hold the interests in the subject marina and lease reflected in the attached declaration and amended declaration. The appellants specifically withhold their consent for said application. The true nature and impact of the proposal was never disclosed to them or to the homeowners association and its members prior to the planning commission hearing. For example, it was never disclosed that the restaurant would be extended out into the estuary. The city's failure to require consent of all parties whose interests are shown of record exposes it to liability for the harm that results.

2. <u>Inadequate and misleading notice.</u>

   A copy of the notice mailed to appellants and other unit owners is

attached. It consists of two pages. The second page is a diagram purporting to show the affected area, shaded in. In fact, the proposed extension of the restaurant occupies no part of the shaded area, all of which is on shore and back out of the line of sight from the condominiums and the end of Juniper Street to the Bay Bridge. In fact, the proposed restaurant will be built on pilings occupying 2000 square feet (not 200 square feet as stated in the findings) of the estuary, and will itself extend 25 or more feet over the water from the bulkhead shown in the artist's rendering on the brochure and in the piling diagram submitted with the application. The notice depicts the relationship between the condominiums and the proposed restaurant in such a way as to mislead persons receiving the notice into believing that the proposed conditional use approval and subsequent construction would have substantially less impact upon them than will actually result. It misled the appellants into so believing and thereby diverted them from attending the planning commission hearing and presenting a well-developed case laying out the facts and policy considerations for denying the permit.

The notice was more specific than the posted and published notices, and also undoubtedly misled many other homeowners and affected persons. As a result, the conditional use permit is jurisdictionally defective and subject to collateral attack for a long time to come. Nyman v. City of Eugene, 286 Or 47, 593 P2d 515 (1979)(allowing attack on 1952 city order purporting to establish public right of way where owner had not received required notice). Misleading and inadequate notice violates the city code and state and federal constitutions as follows:

City Code Section 10-1-3(D): Public Hearing and Notice.

This section provides for a public hearing at which the Planning Commission

> ". . . [S]hall review pertinent evidence and testimony as to why or how the proposed change is consistent or inconsistent with and promotes the objectives of the Florence Comprehensive Plan and Zoning Ordinance and is or is not contrary to the public interest. The property owner who submits the application shall demonstrate to the Planning Commission that the requested change is consistent with the Comprehensive Plan and Zoning Ordinance and is not contrary to the public interest. The staff with the Planning Commission shall investigate the facts bearing upon the application and report all necessary information to assure that the action of each applicant is consistent with the intent of the Comprehensive Plan and Zoning Ordinance. Other interested persons may also testify with regard to an application.
>
> "1. Notice of public hearing for each application shall be given as follows:

" * * * * *

" d. Additional notice of the public hearing shall be given by first class mail, at least seven (7) days prior to the date of the public hearing, to all property owners within three hundred feet (300'), excluding rights of way, from the boundaries of the property or properties at issue. The notice shall be deemed served at the time it is deposited in the United States mail."

"b. For a * * * conditional use permit * * *, notice of public hearing shall be by one publication in a newspaper of general circulation in the City not more than 10 days prior to the date of hearing.

Oregon Revised Statutes 227.175(5)

ORS 227.175(5) provides that hearings on discretionary land use permits may be held "only after notice to the applicant and other interested persons."

Oregon Constitution

Article I, Section 10 of the Oregon Constitution guarantees a meaningful and open proceeding and the protection of reasonable procedural safeguards. It provides that

> "No court shall be secret, but justice shall be administered, openly and without purchase, completely and without delay, and every man shall have remedy by due course of law for injury done him in his person, property or reputation."

United States Constitution

Section 1 of the Fourteenth Amendment to the United States Constitution provides that no state shall "deprive any person of life, liberty, or property, without due process of law."

Under these provisions, misleading notice invalidates the proceeding. See the Nyman case above. In Clackamas County v. Emmert, 14 Or App 493, 497, 513 P2d 532 (1973), the Oregon Court Appeals held that a zoning ordinance which misled the reader would be invalid if it had not been properly reenacted by a subsequent ordinance. In Barrie v. Kitsap County, 527 P2d 1377 (Wash 1975), the Washington Supreme Court held that a planned unit development permit was void where "the notice was defective in that the plaintiffs and concerned citizens were in fact misled."

The court said that

> "Our holding that the notice in this case is deficient is mandated by the constitutional requirement calling for procedural due process of law. One of the basic touchstones of due process in any proceeding is notice reasonably calculated under all the circumstances to apprise affected parties of the pending action and afford them an opportunity to present their objections. Armstrong v. Manzo, 380 U.S. 545, 85 S. Ct. 1187, 14 L Ed 2d 62 (1965).

The same result occurred in a New York case where the notice of a proposed zone change incorrectly described the location and nature of the rezoning. Chase v. City of Glen Cove, 246 N.Y.S. 2d 975, 980 (1964).

The notices in this case were also constitutionally defective because city officials were on notice that the condominium owners are primarily nonresident, some of them, like appellant McCarville, living in distant states. Under the circumstances, locally published and posted notice is inadequate and the mailed notices were not mailed far enough in advance to give the homeowners time to adequately prepare, even if the notices had been accurate. See Mullane v. Central Hanover Bank and Trust Co. 339 U.S. 306 (1950), and the Fourteenth Due Process clause set forth above.

Because the City Council hears appeals only on the record, this matter must be sent back to the planning for rehearing after the issuance of proper notices.

3. Violation of Comprehensive Plan

Plan conformity is required by the City Code, Section 10-4-9(A), the plan itself, and state law. ORS 197.175(2)(d). The decision does not meet these requirements for a number of reasons.

The staff report/findings fail to set forth all applicable standards and criteria, including all applicable comprehensive plan provisions. In particular:

A. The Coastal Resources Management Plan, 1982, prohibits commercial uses such as that proposed. The Plan describes the subject site as a part of Management Unit (MU) F. It specifically notes that a condominium development is within the unit, and that the unit is mostly developed in single family homes. It specifically provides, for the estuary portion of the unit, which is the subject of this application, that "**Commercial or industrial uses are not considered appropriate, due to the proximity to residential development**." This provision is not addressed and it is clearly violated by the proposal, which is for an obviously commercial restaurant in the estuary. The record contains no evidence supporting a finding of compliance.

B. The 1982 Management Plan also provides that shoreland uses within MU F should be "compatible with existing development." This provision is violated by the proposal because it is inappropriate in scale, type, and location, as a commercial development in a residential area, because it encroaches on the marina and estuary, because it blocks the only public Bay Bridge viewpoint (the end of Juniper) in the area, because it obstructs the view of the bay and bridge from the neighboring residences. It is also incompatible because it changes the character of the neighborhood, taking up a public way for parking and increasing the prospects for the applicant's proposed future motel project. This plan provision is not addressed by the findings and compliance is not demonstrated by a preponderance of evidence in the record.

C. The proposal violates Quality of Life Objective 3 of the plan, which is

> "To recognize the existing natural and architectural assets of the community and encourage development that enhances and is compatible with those assets."

There are no findings on this policy, which is clearly violated by a proposal to block public and private views of the bay and Bay Bridge, to allow a restaurant to encroach upon the estuary, and to bring commercial development into a residential, marine, and recreational area.

D. There are no findings addressing Quality of Life Objective 1 of the plan, which provides that

> "When planning and management activities are likely to impact properties included or eligible for inclusion in the National Register of Historic Places, the State Historic Preservation Officer shall be consulted concerning action to avoid adverse impacts on the properties. Adverse impacts to those properties resulting from public and private actions will be avoided where possible."

The Bay Bridge is included or eligible for inclusion in the National Register. The State Office of Historic Preservation determined that the bridge is eligible for inclusion in the National Register on February 21, 1985. The determination was confirmed by the Keeper of the National Register on September 11, 1985. The record contains no findings or evidence that the State Historic Preservation Officer has been consulted or that it is not possible to avoid impairment of public and private views of the Bay Bridge resulting from the proposed project.

E. The proposal would violate Quality of Life Recommendation 11, which provides that

> "Establishment of visual access corridors should be considered

> during the permit process for nonindustrial areas bordering the river and ocean, and when visual access is threatened by the cumulative effect of development."

The proposed extension would block visual access as noted, and there are no findings showing consideration of the need to protect the existing visual access corridor to the Bay Bridge from the condominium and the end of Juniper Street.

F. The process violates the plan's Citizen Involvement Policy 4, which requires that "Official city meetings shall be well publicized and . . . provide opportunity for citizen comment." The defective notice described above steered interested persons away from the public process, rather than giving them meaningful notice and opportunity to participate.

G. The decision violates Land Use General Policy 7, which requires that "Performance bonds shall be required for any development where special conditions of development have been placed by the city." No bond has been required to enforce the parking condition imposed by the city.

H. The decision violates Land Use Residential Policy 1, which requires that

> "Existing and proposed residential areas shall be protected from encroachment of land uses with characteristics that are distinctly incompatible with residential development."

The proposal allows a commercial use, a restaurant, with major parking needs and heavy traffic, in a residential area. This is distinctly incompatible with the existing residential development.

4. <u>Zoning Ordinance Violations</u>

A. Public Interest. The evidence and findings fail to address or support a finding that the proposal is in the "public interest.," This finding is required by Code Section 10-1-3(D), which provides that

> "The property owner who submits the application shall demonstrate to the Planning Commission that the requested change is . . . not contrary to the public interest."

The proposed construction of a restaurant, deck, and related facilities within the estuary is incompatible with existing water-related uses, impairs public and private views of the bay and the historic Bay Bridge, and converts an area contemplated for residential use into a commercial area, contrary to the public interest as expressed in the plan.

B. The decision is unsupported by adequate findings or proof that "adequate land is available for uses which are permitted outright in the

district where the conditional use is approved." The record and findings do not show how much acreage or square footage is available, how that area is developed, what amount of space is needed for what permitted uses, or what amount of space is "adequate" given the current status of development in Florence.

Furthermore, the staff report/findings on this point are clearly inaccurate. The statement at pages 2-3 that "the portion of the restaurant proposed to extend within the DE Estuary District consists of pilings supporting 200 square feet of the building immediately abutting the bulkhead and within the area of the marina" is unsupported by substantial evidence. The staff report also states that the "restaurant will extend 20 feet over the water past the existing bulkhead, to be partially supported by 24 piling[s]." p. 1. The applicant's drawing does not show the restaurant, but it does show the pilings, and they cover an area closer to 2000 square feet. The area and dimensions of the restaurant as a whole and the area and dimensions of the extension are not clear. Although it is apparent that both the restaurant and the decking mentioned on page 4 will occupy substantially more than the 2000 square-foot rectangle occupied by the pilings, how much more is not discussed.

Please note that the September 2, 1987, letter from the U.S. Fish and Wildlife Service estimates that "the proposed restaurant would extend approximately 25 feet over the north bank" of the river.

It is important to note that, contrary to the implication of the findings, the Fish and Wildlife Service directly opposed the proposed extension, saying:

> **"It is Fish and Wildlife Service Policy to discourage encroachment on public waters for non-water dependent purposes. We, therefore, recommend that the applicant move the proposed restaurant back to the available upland area on the property."**
>
> **"It appears that the applicant is piecemealing the development of this property. In addition to this permit application, there was a recent permit (March 24, 1987) for a marina expansion and we are aware of plans for a motel which will also occupy the same property. In the Service's view, these projects should be handled together."**

The appellants concur with the Fish and Wildlife Service. They have sought to work in good faith with the applicant, to achieve a solution that will work for everyone concerned. Instead, they have experienced a pattern of promises, reassurances, surprises, and disappointments. They are deeply concerned that this pattern will continue, and that the city will be the next to pay the price.

C. The planning commission erred in finding that the approval will

result in "public benefit." The "public benefit" or detriment in question is not the overall benefit or detriment resulting from the establishment of a restaurant, but the benefit resulting from the extension of the restaurant into the Bay. There is no showing that any of the claimed benefits would not result if the Restaurant were built entirely on shore, where it would not have the adverse impacts identified above. Therefore the analysis is misleading and does not address the "public benefit" or detriment that would result from this particular land use decision.

D. The conclusion on page 5 that the use is conditionally allowed as a water related use within the Development Estuary District is incorrect, because the use is prohibited by the comprehensive plan in this management unit, and because it does not meet the general criteria of Code Sections 10-4-9 and 10-19-3. See discussion above.

5. Conclusion

The homeowners have notified city planning staff of their contractual interests and their concerns, and they note that the city code as well as common-law duties of care impose upon the city a legal duty to check into these concerns. Code Section 10-1-3-(D) provides that

"The staff with the Planning Commission shall investigate the facts bearing upon the application and report all necessary information to assure that the action of each applicant is consistent with the intent of the Comprehensive Plan and Zoning Ordinance."

Appellants' interests and concerns are not reported in the staff report, and there is no indication that any background checks on the contractual issues involving the marina were ever made. Appellants specifically request that the staff check with the Real Estate Division and State Land Board concerning (a), whether the condominium declaration or public report has ever been amended to reflect the assignment of the marine lease, and (b), whether the State Land Board has any record of release by the homeowners of their contractual interests.

Appellants request that the permit be denied and that the city council initiate a proceeding to comprehensively plan for the future of the proposed restaurant and motel site, as suggested by the Fish and Wildlife Service.

Appellants expect the City to remind the applicant that the city code provides that "No conditional use permit shall become effective until the fifteen-day appeals period, stipulated in Section 10-1-1.4 of this Title, has elapsed without an appeal being filed." Code Section 10-4-6. The permit is not effective and the developer may not build until this matter is resolved.

The appellants remain open to mediation and further negotiation towards a reasonable, speedy, and economic solution for everyone.

Respectfully submitted this 21st day of October, 1987.

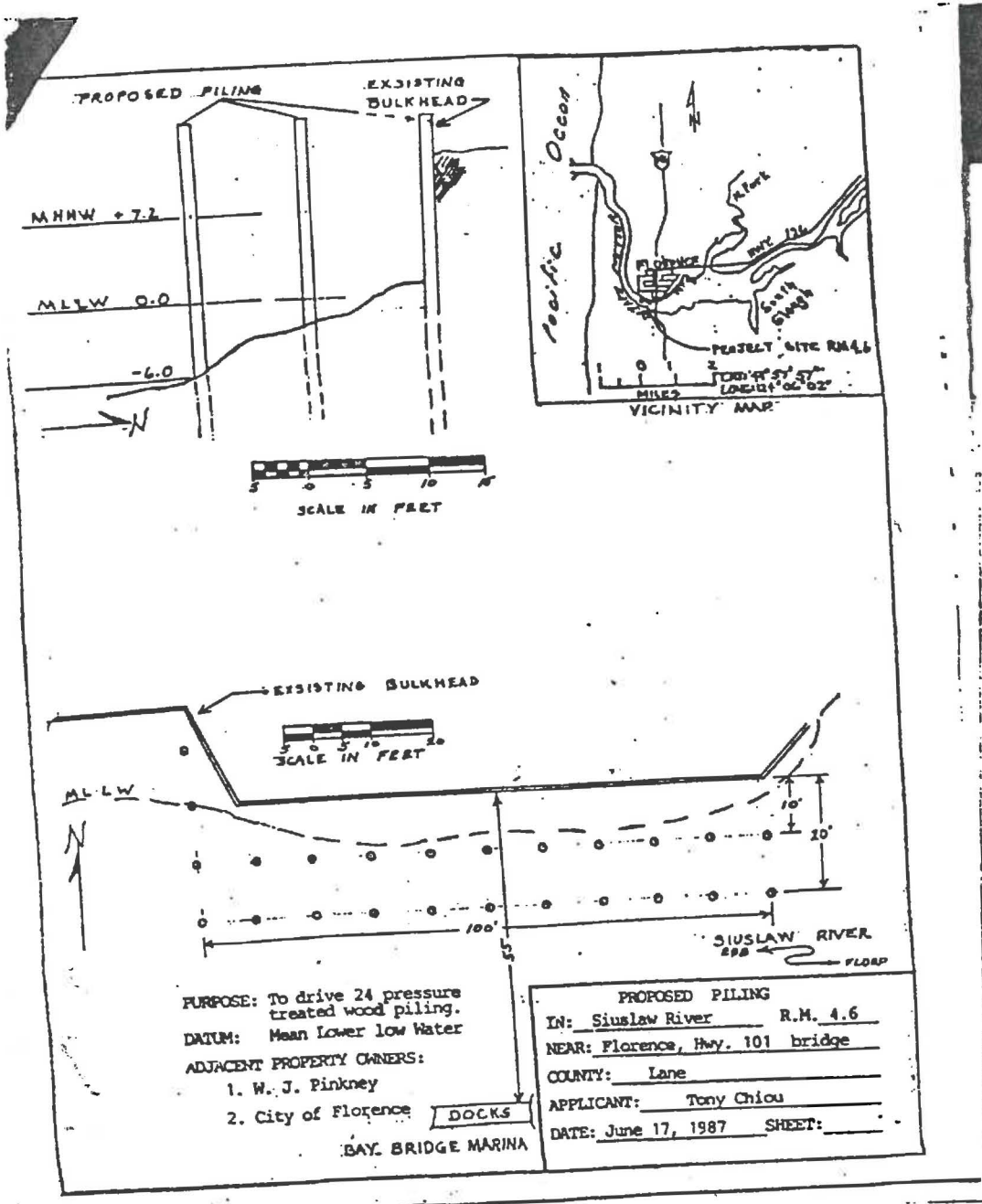
JOHNSON & KLOOS
Attorneys at Law

Allen L. Johnson

Jack Delay

ALJ/me

encs.
cc: Jack Delay
Tom McCarville
Keith Martin
Stan Potter
James C. Hilborn
Hong-Shiou Chiou



Using what implements and documents are available to me I have prepared these materials to give you a general idea of what the sight line will probably be from the lot unit past the proposed restaurant. Although I have seen no totally accurate rendition, the drawing on the left clearly shows that the 20 foot extension in pilings adds to the approximately 17' that the bulkhead juts out already in that area. I have assumed from planning commission documents the restaurant goes another 5 feet although I have not yet seen actual plans. The bulkhead itself was built on the outside of the old one so there is another foot or two extension from the old bulkhead already. I hope that this will be helpful to those of you who are not in a position to visit and make your own guestimations. I do not make any claim that it is accurate in an engineering sense but it is a good faith effort based on the materials at hand to get a rought idea of the potential magnitude of impact. It could actually turn out that the plot drawings from the developers or the old areal photo are somehow mismatched and part of one of the arches might be along the new sightline that will be created.

MAP ↘ LATER

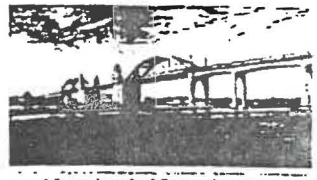
Bay Bridge Condominiums

Bay Bridge Condominiums offer you a lifestyle second to none for location, a beautiful natural environment and comfortable modern living. Imagine yourself viewing from your own private balcony a spectacular Oregon sunset; the colors ever changing behind a panoramic silhouette of restless sand dunes.

At your feet to the west, lies the northern gateway to the most breathtaking natural wonders on earth; the Oregon Dunes National Monument. Miles of shifting, mysterious hills of sand and shore pines, waving mounds of sea grass and wildlife in abundance stretch south to Coos Bay.

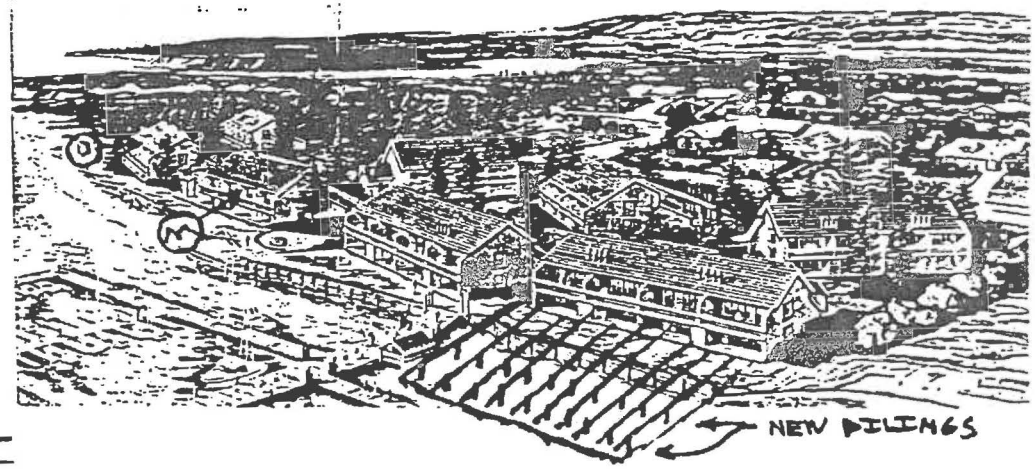
To the east, rising out of the morning and evening coastal mists is the imposing and geometrically intriguing shape of the Siuslaw Bridge on Highway 101; its curves and angles constantly altered by light and shadow.

Bay Bridge Condominiums are located at one of the choice spots on the Oregon coast, the Bay Bridge Marina in Old Town Florence, an area rich in historical significance and coastal Indian folklore; and still within walking distance to nearby shopping areas.



A Luxurious And Convenient Home

All Bay Bridge Condominium units are designed with your comfort in mind. Each spacious, luxury unit includes its own carport. Fireplaces enhance the interior decor and provide your dwelling with a true beach-home feeling. Excellent workmanship throughout makes your Bay Bridge Condominium one of superior quality, and as an added bonus your home will be adjacent to marina facilities.



NOTICE OF PUBLIC HEARING

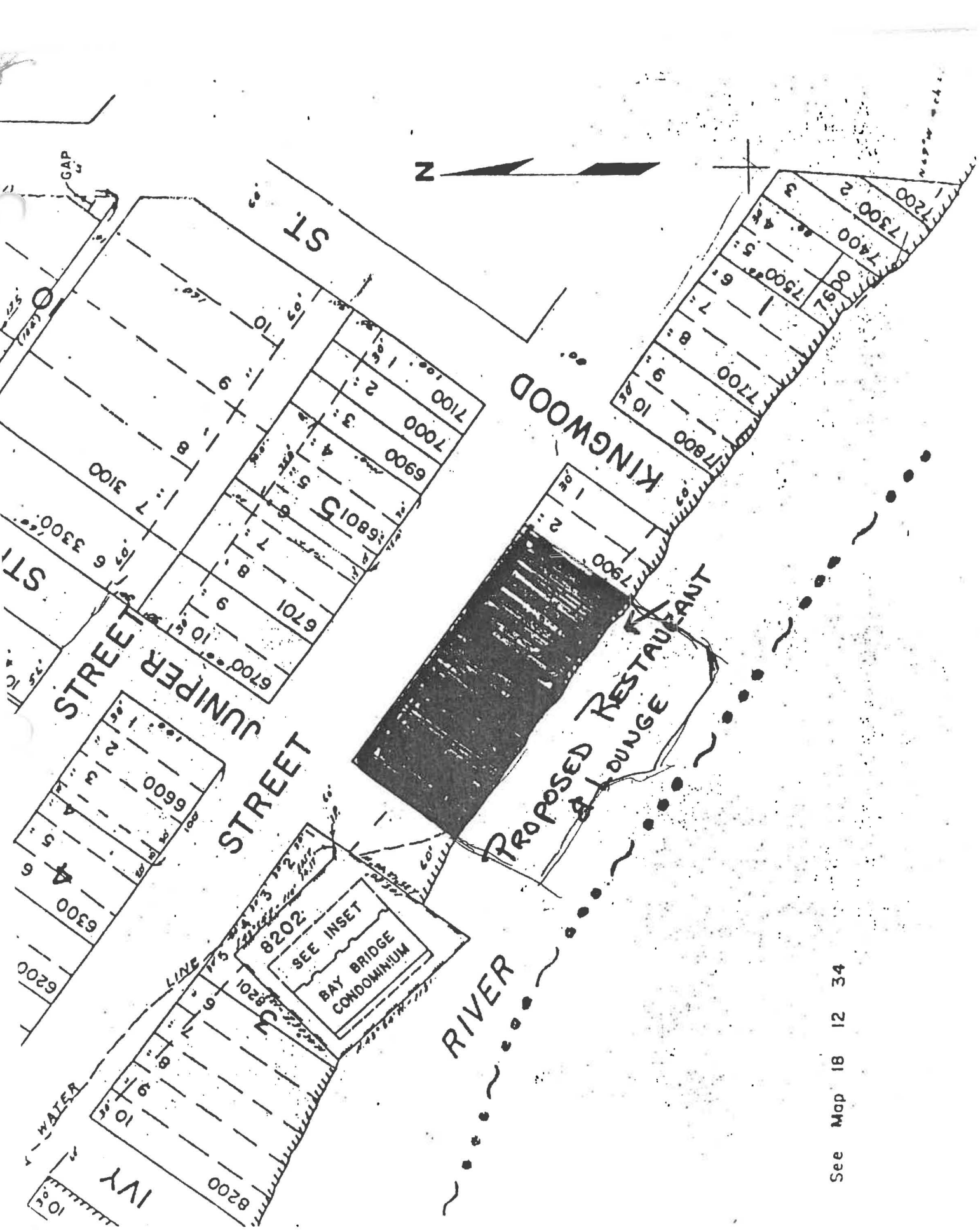
NOTICE IS HEREBY GIVEN THAT A PUBLIC HEARING WILL BE HELD BY THE PLANNING COMMISSION OF THE CITY OF FLORENCE AT 7:30 O'CLOCK P.M., ON OCTOBER 6, 1987 IN THE COUNCIL CHAMBERS OF THE CITY HALL IN THE CITY OF FLORENCE, LANE COUNTY, OREGON, TO HEAR AND CONSIDER THE MATTER OF A CONDITIONAL USE APPLICATION FOR A PROPOSED RESTAURANT PARTIALLY SITED WITHIN DEVELOPMENT ESTUARY OVERLAY DISTRICT ADJACENT TO 1150 BAY STREET, 18-12-34-12 TAX LOTS 8100 AND 8000 AS APPLIED FOR BY HONG-SHIOU (TONY) CHIOU.

INFORMATION MAY BE OBTAINED, AND WRITTEN TESTIMONY SUBMITTED, TO THE PLANNING DEPARTMENT, CITY HALL, 250 HIGHWAY 101, P.O. BOX 340, FLORENCE, OREGON, 97439, NO LATER THAN 4:30 P.M., TUESDAY OCTOBER 6, 1987.

Laura Gillispie

LAURA GILLISPIE, PLANNING DIRECTOR

PUBLISH: SEPTEMBER 30, 1987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KINGWOOD
JUNIPER STREET
STREET
PROPOSED RESTAURANT & LOUNGE
RIVER
SEE INSET
BAY BRIDGE CONDOMINIUM
8202
LINE
WATER
IVY
GAP
See Map 18 12 34

JIM HILBORN, P.C.
ATTORNEY AT LAW

EXHIBIT "5"

JIM HILBORN
1386 RHODODENDRON DRIVE
P.O. BOX 1834
FLORENCE, OREGON 97439
(503) 997-0404

March 3, 1986

Bay Bridge Homeowner's Association

Re: Sale of Adjoining Parcel; Marina use and rights

Dear Homeowner Representative:

I represent the new equitable owner of the parcel adjoining the Bay Bridge Condominiums parcel. Mr. Leo Stapleton and associates have recently agreed to terms with Mr. Falkenstein and his associates regarding the sale of the parcel. We expect to close the sale between April 15, 1986, and July 1, 1986.

As you undoubtedly are aware, the marina is located on Mr. Stapleton's parcel. As part of the negotiated terms, Mr. Stapleton has promised to observe your rights, as recorded in Lane County Deeds and Records, to the marina. We intend to honor this obligation fully and completely.

I doubt if any changes in the use of the property will occur within the next six months. We anticipate opening a restaurant in the existing building in the near future. Our long range plans, at this time, include opening an inn.

I will be happy to answer any questions you may have. It is probable Mr. Stapleton would like to formalize an agreement with your association regarding use of the marina by the first of April, 1986. Please advise me of your thoughts.

Sincerely yours,

Jim Hilborn

JCH/kdh
cc: Mr. Leo Stapleton
Mr. Dan Scarberry

1-16-80 R 1050

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DECLARATION SUBMITTING PHASE 1 OF BAY BRIDGE
TO OREGON UNIT OWNERSHIP LAW

THIS DECLARATION, pursuant to the provisions of the Oregon Unit Ownership Law, is made and executed this 5th day of December, 1979 by BAY BRIDGE DEVELOPMENT CO., an Oregon partnership, hereinafter called "Developer."

Developer proposes to create a condominium to be known as BAY BRIDGE, which will be located in Florence, Lane County, Oregon. The purpose of this declaration is to submit Phase 1 of Bay Bridge to the condominium form of ownership and use in the manner provided by the Oregon Unit Ownership Law.

NOW, THEREFORE, Developer does hereby declare and provide as follows:

K 5 • M-87126 4:045.50

1. DEFINITIONS. When used herein the following terms shall have the following meanings:

1.1 "Bylaws" means the Bylaws of the Association of Unit Owners of Bay Bridge adopted pursuant to Section 12 below as the same may be amended from time to time.

1.2 "Developer" means Bay Bridge Development Co., an Oregon partnership, and its successors and assigns.

1.3 "Plans" means the plat or site plan and floor plans of Phase 1 of Bay Bridge, recorded simultaneously with the recording of this declaration.

1.4 Incorporation by Reference. Except as otherwise provided in this declaration, each of the terms defined in ORS 91.500, a part of the Oregon Unit Ownership Law, shall have

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the meanings set forth in such section.

2. PROPERTY SUBMITTED. The property submitted to the Oregon Unit Ownership Law hereunder is held by Developer and conveyed by it in fee simple estate. The land submitted hereunder, being Phase 1 of Bay Bridge, is located in Florence, Lane County, Oregon, and is more particularly described in Exhibit A attached hereto. Such property includes the land so described, all buildings, improvements and structures thereon, all easements, rights and appurtenances belonging thereto and all personal property used in connection therewith.

3. NAME. The name by which the property submitted hereunder shall be known is "Bay Bridge."

4. UNITS.

4.1 General Description of Buildings. Phase 1 contains 1 building of nine dwelling units. The dwelling unit building is 2-1/2 stories without basement The building is of concrete masonry, concrete and wood frame.

4.2 General Description, Location and Designation of Units. Phase 1 consists of a total of 9 units. The dimensions, designation and location of each unit in Phase 1 is shown in the plans filed simultaneously herewith and made a part of this declaration as if fully set forth herein. The approximate area of each unit is shown on Exhibit B, attached hereto and made a part hereof.

4.3 Boundaries of Units. Each unit shall be bounded by the interior surfaces of its perimeter and bearing

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walls, floors, ceilings, windows and window frames, doors and door frames, and trim, and shall include both the interior surfaces so described and the air space so encompassed. In addition, each unit shall include the outlet of any utility service lines, including water, sewerage, electricity, and ventilating ducts, within the unit, but shall not include any part of such lines or ducts themselves.

5. GENERAL COMMON ELEMENTS. Each unit will be entitled to an undivided percentage ownership interest in the common elements determined by the ratio by which the approximate area of the particular unit bears to the total approximate area of all units combined, as is more particularly described in section 14.4 below. The general common elements consist of the following:

5.1 The land, pathways, driveways, fences, grounds, carport structures and parking areas, except parking spaces within carports bearing the number of a unit as shown on the plans, which are designated as limited common elements by Section 6 below.

5.2 Pipes, ducts, flues, chutes, conduits, wires and other utility installations to their outlets.

5.3 Roofs, foundations, bearing walls, perimeter walls, beams, columns and girders to the interior surfaces thereof.

5.4 The exterior surfaces of porches and decks.

5.5 All other elements of the buildings and the

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property necessary or convenient to their existence, maintenance and safety, or normally in common use, except as may be expressly designated herein as part of a unit or a limited common element.

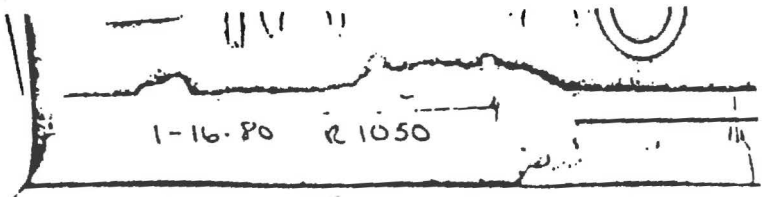
6. LIMITED COMMON ELEMENTS. The following shall constitute limited common elements, the use of which shall be restricted to the units to which they pertain:

6.1 All porches and decks, except for the outside exterior surfaces thereof, each of which shall pertain to the unit which it adjoins.

6.2 Parking spaces within carport structures, each of which shall pertain to the unit whose number it bears in the Plans.

6.3 Storage areas on entry porches, decks and carports, each of which shall pertain to the unit which the specific porch or deck adjoins, or to which the adjoining parking space pertains in the case of storage areas in carports.

7. USE OF PROPERTY. Each unit is to be used for residential or lodging purposes, except that one unit may be used for activities relating to the sale or rental of other units in the Condominiums. Additional limitations on use are contained in the Bylaws of the Association of Unit Owners of Bay Bridge filed herewith and the rules and regulations adopted pursuant to such bylaws. Each unit owner shall be bound by each of the terms, conditions, limitations and provisions contained in such documents.



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8. COMMON PROFITS AND EXPENSES; VOTING.

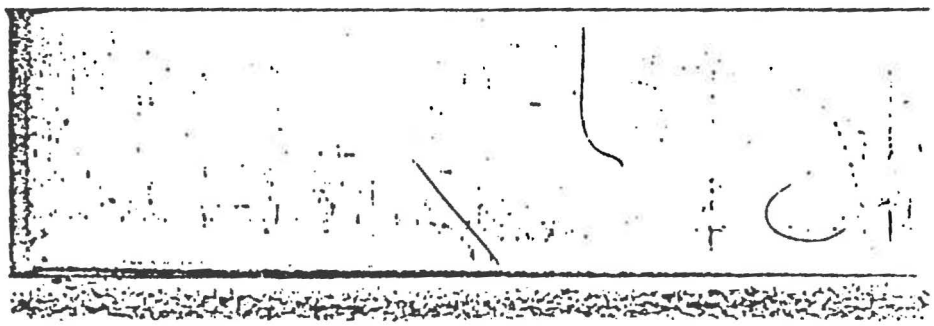
8.1 The common profits derived from and the common expenses of the common elements and other common expenses and profits as so declared in the bylaws or this declaration shall be distributed and charged to the owner of each unit according to the percentage of undivided interest of such unit in the common elements.

8.2 Each unit owner shall be entitled a vote in the affairs of the association of unit owners equal to his percentage of undivided interest in the common elements for each unit owned by him.

9. EASEMENTS, ETC. The association of unit owners shall have the authority, pursuant to ORS 91.527, to grant easements, rights of way, licenses and other similar interests affecting the common elements.

10. SERVICE OF PROCESS. The name of the person to receive service of process in cases provided in subsection (1) of ORS 91.578 is STAN G. POTTER and his place of business within Lane County, Oregon, is 975 Oak Street, Eugene, Oregon 97401.

11. ENCROACHMENTS. If any portion of the common elements now encroaches upon any unit, or if any unit now encroaches upon any other unit or upon any portion of the common elements, as a result of the construction of any building, or if any such encroachment shall occur hereafter as a result of settling or shifting of any building, a valid easement for the encroachment and for the maintenance of the same so long as the building



stands, shall exist. In the event any building, unit, adjoining unit, or adjoining common element, shall be partially or totally destroyed as a result of fire or other casualty or as a result of condemnation or eminent domain proceedings, and then rebuilt, encroachments of parts of the common elements upon any unit or of any unit upon any other unit or upon any portion of the common elements, due to such rebuilding, shall be permitted, and valid easements for such encroachments and the maintenance thereof shall exist so long as the building shall stand.

12. APPROVAL BY MORTGAGEES. In addition to any other approvals required by the Oregon Unit Ownership Law, this declaration or the bylaws of the association of unit owners, the prior written approval of all holders of first mortgages or beneficiaries of first deeds of trust of units in the condominium must be obtained for the following:

12.1. The removal of the property from unit ownership, except when such removal is by operation of ORS 91.587(2) in the case of substantial loss to the units and common elements;

12.2. The partition or subdivision of any unit or of the common elements;

12.3. A change in the percentage interests in the common elements of the unit owners, except when such change is by virtue of the annexation of additional phases as provided in Section 14 below; or

12.4. Any amendment to this Section 12.

13. ADOPTION OF BYLAWS, APPOINTMENT OF INTERIM BOARD, AND

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DESIGNATION OF MANAGER. Upon the execution and the filing of this declaration, the Developer shall adopt bylaws for the Association of Unit Owners of Bay Bridge, which bylaws are to be filed simultaneously herewith. At the same time, Developer will appoint an interim board of directors of the association, which directors shall serve until their successors have been elected as provided in the bylaws. Such interim board of directors may appoint a manager or managing agent for the condominium on behalf of the association of unit owners, and such manager or managing agent shall have the complete authority to assume full control and responsibility for the management, operation and maintenance of the condominium from the date of its formation at the expense of the association.

14. PLAN OF DEVELOPMENT. The condominium may be developed in up to 8 phases. By filing this declaration, Developer hereby submits Phase 1 to the condominium form of ownership. Developer reserves the right to add 7 additional phases to the condominium and to annex such additional phases by filing supplements to this declaration pursuant to ORS 91.518.

14.1. Maximum Number of Units. Upon completion of the development, if all phases are developed, there would be a total of not more than 66 units in the condominium.

14.2. Election Not to Proceed. In order to limit the condominium to fewer than eight phases, Developer may file a declaration in the Records of Deeds of Lane County, Oregon, by January 1, 1983, so stating. In any case, no additional

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phase may be added more than seven years after the filing of this declaration.

14.3. Additional Common Elements. Developer does not propose to include in Phases 2, 3, 4, 5, 6, 7, or 8 any common elements which would substantially increase the proportionate amount of the common expenses payable by owners of units in Phase 1.

14.4. Percentage Interest in Common Elements. The minimum allocation of undivided interest in the common elements of units in Phase 1 will change if additional phases are annexed to the condominium. A chart showing the minimum allocation of undivided interest in the common elements of each unit upon the filing of this declaration and after the annexation of eight phases is attached hereto as Exhibit C.

14.5. Marina. The developer currently leases from the State of Oregon submerged and submersible land immediately adjacent to the condominium upon which is a marina and related facilities and equipment ("marina") owned by the developer. The developer proposes to transfer the marina and the lease to the Association after which the Association will own and be responsible for the maintenance and operation of the marina. Therefore, within 30 days after adjournment of the first organizational meeting of the Association the developer will transfer the lease (provided consent to the transfer can be obtained from the State of Oregon) and ownership of the

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marina to the Association. The marina shall thereafter be the property of and be operated by the Association in the manner specified in the Bylaws and expenses and profits from its operation will be common expenses and profits allocated to each unit in accordance with each unit's percentage interest in the common elements.

15. VOTING RIGHTS. A unit owner shall have voting rights equal to the owner's unit's allocation of undivided interest in the common elements as stated in sections 5 and 14.4 of this declaration.

16. AMENDMENT. An amendment of this declaration shall not be effective unless it is approved by not less than 75 percent of the unit owners, nor may any amendment change the allocation of undivided interest in the common elements, liability for common expenses, right to common profits or voting rights of any unit unless such amendment has been approved by the owners of the affected units.

IN WITNESS WHEREOF, Developer has caused this declaration to be executed the day and year first above written.

BAY BRIDGE DEVELOPMENT CO.,
an Oregon partnership

By Gerald R Young, Partner

By Harry Falkenstein, Partner

By [illegible], Partner

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EXHIBIT A

TO DECLARATION SUBMITTING PHASE 1
OF THE BAY BRIDGE CONDOMINIUMS TO OREGON UNIT OWNERSHIP LAW

Beginning at the Initial Point which is marked by a 2" x 36" galvanized iron pipe driven 6" below the surface of the ground, said Initial Point being South 35° 12' 40" West, 124.20 feet from the Northeast corner of Lot 1, Block 3, FLORENCE, as platted and recorded in Book "T", Page 181, Lane County Oregon Deed Records, said point also being a point on the Westerly margin of Juniper Street; thence along said Westerly margin South 35° 12' 40" West, 145.80 feet to the right bank of the Siuslaw River, said point being reference by a 5/8 inch iron rod bearing North 35° 12' 40" East, 10.00 feet; thence along the said right bank Northwesterly 148 feet, more or less, to a point being South 6.03, feet and West 179.07 feet from said Initial Point; thence North 46° 06' 00" East, 123.00 feet; thence South 43° 54' 00" East, 110.00 feet; thence East 14.17 feet to the Initial Point of Beginning, in Lane County, Oregon.

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EXHIBIT B

TO DECLARATION SUBMITTING PHASE 1
OF THE BAY BRIDGE CONDOMINIUMS TO OREGON UNIT OWNERSHIP LAW

UNIT TYPES

UNIT COMPOSITION	SQ. FT.
2 BR A-1	1,119
2 BR A-2	1,104
2 BR B-1	1,539
2 BR B-2	1,592
1 BR C	761

PHASE I

UNIT NO.	TYPE
1	1 BR C
2	2 BR B-1
3	2 BR A-2
4	2 BR B-2
5	2 BR A-2
6	2 BR B-2
7	2 BR A-2
8	2 BR B-1
9	2 BR A-1

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EXHIBIT C

TO DECLARATION SUBMITTING PHASE 1
OF THE BAY BRIDGE CONDOMINIUMS TO OREGON UNIT OWNERSHIP LAW

Minimum Allocation of Undivided Interest in Common Elements of Each Unit in Phase 1 and Upon Completion of Development If All Phases Developed.

Unit	Phase 1	Phase 8 Not Less Than:
1	6.65%	.92%
2	13.44%	1.86%
3	9.64%	1.33%
4	13.89%	1.92%
5	9.63%	1.33%
6	13.90%	1.92%
7	9.64%	1.33%
8	13.44%	1.86%
9	9.77%	1.35%

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State of Oregon, County of Lane — ss

I, D.M. Penfield, Director of the Department of General Services, in and for the said County, do hereby certify that the within instrument was received for record at

80-73347

'80 JAN 16 10:37

Ref 1050R

Lane County OFFICIAL Records

D.M. Penfield, Director of the Department of General Services

By [signature] Deputy

Fee

MAR 28 1984 1290R

8411538

SUPPLEMENTAL DECLARATION
PHASE 2 OF BAY BRIDGE

This Supplemental Declaration, made pursuant to the provisions of ORS 94.047 of the Oregon Condominium Act ("Act"), is made and executed this 22nd day of February, 1984, by BAY BRIDGE DEVELOPMENT CO., an Oregon partnership, hereinafter called "Developer." Developer created the condominium known as BAY BRIDGE, located in Florence, Lane County, Oregon, by filing and recording a Declaration of Unit Ownership on January 16, 1980, Reel 1050R, Reception No. 8002518, Lane County Official Records, along with related documents required by law for creation of the condominium form of ownership. The purpose of this Supplemental Declaration is to submit Phase 2 of Bay Bridge to the condominium form of ownership and use in the manner provided by ORS 94.047 and related provisions of the Act.

Developer does hereby declare and provide as follows:

1. Incorporation by Reference. Except as hereafter modified or restated with respect to Phase 2 of Bay Bridge, the provisions of the Declaration Submitting Phase 1 of Bay Bridge to Oregon Unit Ownership Law (the "Declaration") are hereby incorporated in this Supplemental Declaration by this reference, and made applicable to Phase 2.

2. Property Submitted. The real property submitted to the Act hereunder as Phase 2 of Bay Bridge, held by Developer in fee simple, is located in Florence, Lane County, Oregon and is more particularly described in Exhibit A attached hereto. Such real property includes the land described and all buildings, improvements and structures thereon, together with all easements, rights and appurtenances belonging thereto and all personal property used in connection therewith.

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3. Units.

3.1. General Description of Building. Phase 2 contains one building of four dwelling units. The dwelling unit building is two and one-half stories without basement. The building is constructed of concrete masonry, concrete and wood frame.

3.2. General Description, Location and Designation of Units. Phase 2 consists of a total of four units. The dimensions, designation and location of each unit in Phase 2 is shown in the Plans filed simultaneously herewith and made a part of this Supplemental Declaration as if fully

set forth herein. The approximate area of each unit in Phase 2 is shown on Exhibit B attached hereto and made a part hereof.

3.3. Boundaries of Units. Each unit shall be bounded by the interior surfaces of its perimeter and bearing walls, floors, ceilings, windows and window frames, doors and door frames, and trim, and shall include both the interior surfaces so described and the air space so encompassed. In addition, each unit shall include the outlet of any utility service lines, including water, sewage, electricity, and ventilating ducts within the unit, but shall not include any part of such lines or ducts themselves.

4. General Common Elements. Each unit owner in Phase 2 will be entitled to an undivided percentage ownership of the common elements of Bay Bridge. The percentage ownership interest will be equal to the ratio which the approximate area of the particular owner's unit in square feet bears to the total approximate area of all units in Bay Bridge combined. As additional phases of Bay Bridge are completed, the percentage ownership interest of each unit owner in the common elements will decrease. The minimum allocation of percentage ownership interest to each unit owner upon completion of all phases of Bay Bridge is described in Section 8 below, by reference to Exhibit C attached hereto. The general common elements consist of the following:

4.1. The land, pathways, driveways, fences, grounds, carport structures, and parking areas except parking spaces within carports bearing the number of a unit as shown on the Plans, which are designated as limited common elements in Section 5 below.

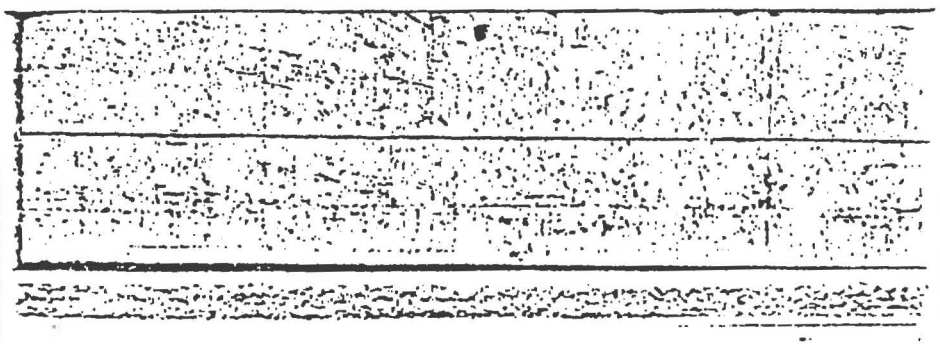
4.2. Pipes, ducts, flues, chutes, conduits, wires and other utility installations to their outlets.

4.3. Roofs, foundations, bearing walls, perimeter walls, beams, columns, and girders to the interior surfaces thereof.

4.4. The exterior surfaces with porches and decks.

4.5. All other elements of the buildings and property necessary or convenient to their existence, maintenance and safety, or normally in common use, except as may be expressly designated herein as part of a unit or a limited common element.

5. Limited Common Elements. The following shall constitute



limited common elements, use of which shall be restricted to the units to which they pertain:

5.1. All porches and decks, except for the outside exterior surfaces thereof, each of which shall pertain to the unit which it adjoins as shown in the Plans.

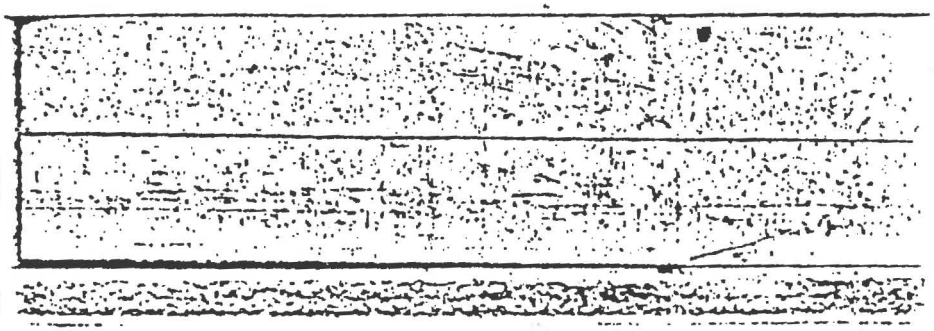
5.2. Parking spaces within carport structures, each of which shall pertain to the unit whose number it bears in the Plans.

5.3. Storage areas on entry porches and carports, each of which shall pertain to the unit whose number is shown on the Plans, except for those storage areas designated S-A and S-B on the Plans. Storage area S-A shall initially pertain to Units 10 and 11 equally, and Storage area S-B shall initially pertain to Units 12 and 13 equally. Upon the filing of a supplemental declaration submitting Phase 3 or a subsequent phase of Bay Bridge, storage spaces S-A and S-B shall pertain to units designated therein, and Unit 10, 11, 12 and 13 shall be divested of the storage areas designated S-A and S-B.

6. Use of Property. Each unit in Phase 2 is to be used for residential or lodging purposes. Additional limitations on use are contained in the Bylaws of the Association of Unit Owners of Bay Bridge, as amended from time to time and on file with the Oregon Real Estate Division, and the rules and regulations adopted pursuant to such Bylaws. Each unit owner shall be bound by each of the terms, conditions, limitations and provisions contained in such documents.

7. Plan of Development. By filing this Supplemental Declaration, Developer hereby submits Phase 2 of Bay Bridge to the condominium form of ownership. Developer reserves the right to add additional phases to the condominium and to annex such additional phases by filing supplemental declarations pursuant to ORS 94.047.

8. Additional Common Elements. Developer does not propose to include in subsequent phases any common elements which would substantially increase the proportionate amount of the common expenses payable by owners of units in Phases 1 or 2 of Bay Bridge. However, the minimum allocation to the unit owners of undivided percentage ownership interests in the common elements would change if additional phases are annexed to the condominium. The minimum allocation of undivided percentage ownership interests in the common elements of each unit upon the filing of this Supplemental Declaration and after the annexation of subsequent phases is shown on Exhibit C attached hereto and incorporated herein.



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IN WITNESS WHEREOF, Developer has caused this Supplemental Declaration to be executed on the day and year first written above.

BAY BRIDGE DEVELOPMENT CO.,
an Oregon partnership

By _____
Partner

By _____
Partner

By _____
Partner

The foregoing Supplemental Declaration is approved pursuant to ORS 94.036 this 27th day of March, 1984.

MORELLA LARSEN
Real Estate Commissioner

By _____

_____
William D. Bain, Lane County Assessor

Supplemental Declaration - 4

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8411538

STATE OF OREGON)
) ss.
County of Lane)

On this 22nd day of February, 1984, before me, the undersigned, a Notary Public in and for the County and State, personally appeared the within named Jerry R. Laing; known to me to be one of the partners in the partnership of Bay Bridge Development Co., and the identical individual described in and who executed the within instrument and acknowledged to me he executed the same freely and voluntarily.

Brenda Knapp
Notary Public for Oregon
My Commission Expires: 8/21/87

STATE OF OREGON)
) ss.
County of Lane)

On this 22nd day of February, 1984, before me the undersigned, a Notary Public in and for the County and State, personally appeared the within named Henry J. Falkenstein; known to me to be one of the partners in the partnership of Bay Bridge Development Co., and the identical individual described in and who executed the within instrument and acknowledged to me he executed the same freely and voluntarily.

Brenda Knapp
Notary Public for Oregon
My Commission Expires: 8/21/87

STATE OF OREGON)
) ss.
County of Lane)

On this 22nd day of February, 1984, before me the undersigned, a Notary Public in and for the County and State, personally appeared the within named James O. Redden; known to me to be one of the partners in the partnership of Bay Bridge Development Co., and the identical individual described in and who executed the within instrument and acknowledged to me he executed the same freely and voluntarily.

Brenda Knapp
Notary Public for Oregon
My Commission Expires: 8/21/87

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Exhibit A

Description:

Beginning at the most Northerly corner of Phase 1, BAY BRIDGE, AN OREGON CONDOMINIUM, as platted and recorded in File 73, Slide 344, Lane County Oregon Plat Records, thence North 43° 54' 00" West 81.42 feet; thence South 46° 06' 00" West 66.00 feet; thence South 43° 54' 00" East 3.00 feet; thence South 46° 06' 00" West 52 feet to the right bank of the Siuslaw River; thence Southeasterly along the said right bank of the Siuslaw River 79.5 feet more or less to the most Easterly corner of said Phase 1, thence along the Northwesterly line of said Phase 1 North 46° 06' 00" East 123.0 feet to the point of beginning, in Lane County, Oregon.

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8411538

EXHIBIT B

Unit No.	Type	Approx. Square Footage
10	One-Bedroom	790
11	One-Bdrm., loft	894
12	Two-Bedroom	1,018
13	Two-Bdrm., loft	1,339

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Exhibit C

TO SUPPLEMENTAL DECLARATION SUBMITTING PHASE 2
OF THE SAY BRIDGE CONDOMINIUMS TO OREGON UNIT OWNERSHIP LAW

Allocation of Undivided Interest in Common Elements of Each Unit in Phase 1 and 2 Upon Annexation of Phase 2 and Minimum Allocation of Undivided Interest in Common Elements of Each Unit in Phases 1 and 2 Upon Completion and Annexation of Entire Development if All Phases Developed.

UNIT	COMPLETION OF PHASES 1 & 2	COMPLETION OF DEVELOPMENT, NOT LESS THAN
1	4.91%	.92%
2	9.93%	1.86%
3	7.13%	1.33%
4	10.27%	1.92%
5	7.13%	1.33%
6	10.27%	1.92%
7	7.13%	1.33%
8	9.93%	1.86%
9	7.22%	1.35%
10	5.10%	.96%
11	5.77%	1.08%
12	6.57%	1.23%
13	8.64%	1.62%

8411538

State of Oregon, County of Lane ss.
I, the County Clerk, in and for the said County, do hereby certify that the within instrument was received for record at
28 MAR 84 [illegible]
and recorded in book/reel 1290R
Lane County Official Records.
Lane County Clerk
By [illegible] Deputy
$ [illegible]

APR 25 1984 1294R

8417902

AMENDMENT TO DECLARATION
OF
UNIT OWNERSHIP
OF
BAY BRIDGE
November 10, 1983

[illegible] 04/25/84 REC 20.00

On January 16, 1980, Bay Bridge Development Co., an Oregon partnership ("Developer"), recorded in Lane County Official Records, Lane County, Oregon, a Declaration pursuant to then-existing ORS 91.505 by which Developer submitted certain real property in Florence, Oregon, to the condominium form of ownership as Phase I of the condominium known as Bay Bridge. Developer now desires to amend the Declaration pursuant to Section 16 thereof and ORS 94.059 as follows.

1. Section 14, "Plan of Development," is amended in its entirety and restated to read as follows:

"14. PLAN OF DEVELOPMENT. The condominium may be developed in multiple phases, not to exceed fifteen (15). By filing this declaration, Developer hereby submits Phase I to the condominium form of ownership. Developer reserves the right to add additional phases to the condominium and to annex such additional phases by filing supplements to this declaration pursuant to ORS 94.047."

2. Section 14.2 "Election Not to Proceed," is amended and restated by amending the last sentence thereof to read as follows:

"In any case, no additional phase may be added after January 16, 1992."

3. Section 14.5, "Marina," is amended in its entirety and restated to read as follows:

"14.5. Marina. The developer currently leases from the State of Oregon submerged and submersible land immediately adjacent to the condominium upon which is a marina and related facilities and equipment ("marina") owned by the developer. The developer proposes to transfer the marina (subject to the requirement that the condition of the marina be maintained at or better than that as of November 1, 1983) and the lease to the Association after which the Association will own and be responsible for the maintenance and operation of the marina. Transfer will be undertaken (provided consent to the transfer can be obtained from the State of Oregon) within 30 days after completion of 33 units of the condominium or upon completion of the Bay Bridge development with fewer than 33 units, whichever event occurs first. Until

APR 25 1984 1294R

84117902

such time, developer will continue to operate the marina and provide each unit owner with one moorage space on a first-come, first-served basis.

"14.5.1. The Bay Bridge development shall be deemed completed with fewer than 33 units on the earlier of (1) filing in the real property records of Lane County, Oregon, by the developer of an "election not to proceed" declaring the development to be completed or (2) expiration of the twelve-year period described in Section 14.2.

"14.5.2. After transfer, the marina shall be the property of and be operated by the Association in the manner specified in the Bylaws."

APR 25 1984 1294 R

84117902

I, Harold R Laing, and I, Mary K Summerville being the Chairman and the Secretary, respectively of the Association of Unit Owners of Bay Bridge, certify that the foregoing amendments to the Declaration of Unit Ownership of Bay Bridge were approved and adopted by the unit owners of the Association in accordance with the provisions of the Declaration and ORS Chapter 94.

DATED: 2-27-84.

Harold R Laing
Chairman

Mary K Summerville
Secretary

STATE OF OREGON)
) ss.
County of Lane)

Personally appeared Harold R. Laing and Mary K. Summerville who, being duly sworn did say that the former is the Chairman and the latter is the Secretary of the Association of Unit Owners of Bay Bridge, and that the foregoing certification was signed on behalf of said Association by authority granted in the Bylaws; and each of them acknowledged said certification to be his voluntary act and deed.

Before me:

Notary Public for Oregon
My commission expires: 4-19-85

DEVELOPER

BAY BRIDGE DEVELOPMENT CO.,
an Oregon partnership

By Harold R Laing
General Partner

By Ronald L. Williamson
General Partner

By Hans J. Follestad
General Partner

By James Rasor
General Partner

APR 25 1984 1294R

8-117902

STATE OF OREGON)
) ss:
County of Lane)

Personally appeared Henry J. Falkenstein, James O. Redden, and Jerry R. Laing who, being duly sworn did say that they are general partners of Bay Bridge Development Co., and that the foregoing Amendment to Declaration was signed on behalf of Bay Bridge Development Co. by authority granted in a duly recorded Power of Attorney; and each of them acknowledged his signature to be his voluntary act and deed.

Before me: Brenda Knapp
Notary Public for Oregon
My Commission Expires: 6/21/87

The foregoing Declaration Amendment is approved pursuant to ORS 94.036 this 20th day of April, 1984.

MORELLA LARSEN
Real Estate Commissioner
By Barbara Kalk

State of Oregon,
County of Lane ss.

I, the County Clerk, in and for the said County, do hereby certify that the within instrument was received for record at
8 APR 84 11: 35

Book 1294R
Lane County OFFICIAL Records.
Lane County Clerk

By: [signature]

8-117902

FLORENCE PLANNING COMMISSION
MINUTES
OCTOBER 6, 1987

1. CALL TO ORDER/ROLL CALL:

Chairman Sneddon called the meeting to order at 7:30 p.m. with Commissioners Dillon, Stone, Wilson and Balfour in attendance. Also present were Planning Director Gillispie, Secretary Rhodes, press and interested citizens. Absent by arrangement, were Commissioners Nelson and Pearson.

2. APPROVAL OF MINUTES:

Minutes of September 15, 1987

The minutes were approved as submitted.

3. PLANNING COMMISSION:

PUBLIC HEARING
Resolution 87-10-6-31
Petition to vacate 23rd Street
between Highway 101 and Redwood
Richard Stanfill

Chairman Sneddon opened the public hearing at 7:32 p.m. and asked for ex-parte contact or conflict of interest. Hearing none, he asked for staff report.

Planning Director Gillispie explained that this is an application by Richard Stanfill, abutting property owner for vacation of 23rd Street from Highway 101 to Redwood Street. The method for vacation comes under ORS 271.010 to 271.030 and requires Council action. The Planning Commission reviews the request for recommendation to the Council. The application meets criteria listed within the Findings of Fact, staff has reviewed the application and recommends approval. The right of way is 60' wide and the City will retain a 38' easement for water and sewer lines located within the right of way.

Richard Stanfill, 83530 Highway 101 South: Applicant stated he had purchased the property known as "Surf Mobile Homes" about a year ago in order to afilliate it with his Lakeshore Myrtlewood business south of town. He noted that due to the Highway Widening Project a good deal of cleanup has been done and he intends to develop the property as a whole rather than on two sides of 23rd Street leaving an island in the middle. He hopes to put in a lazer carving business which will be quite a tourist attraction. In pursuing this vacation he stated that he had met with the neighbors and they don't want the street to go through, therefore he is speaking on their behalf as well. He wishes to work with the City, not to get rich quick, but to develop a show

piece area of land.

Under staff summary, Planning Director Gillispie noted that one communication from John Moler and Theron Jenkins had been received in favor of the vacation.

Chairman Sneddon, hearing no further testimony either for or against the proposal, closed the public hearing at 7:38 p.m.

Under discussion, Commissioners were in favor of the proposal.

Commissioner Wilson moved for acceptance of Resolution 87-10-6-31 with 2nd by Commissioner Balfour, by voice vote all "aye", motion carried.

PUBLIC HEARING
Resolution 87-10-6-32
Conditional Use Permit
To Allow Piling For A
Water Related Use
Hong-Shiou (Tony) Chiou

Chairman Sneddon opened the public hearing at 7:41 p.m. and asked for ex-parte contact or conflict of interest. Chairman Sneddon declared ex-parte contact having discussion with Mr. Chiou the previous week and declared it would have no influence on his decision this evening. He asked for objections either from the Commission or audience. Hearing none he asked for staff report.

Planning Director Gillispie reported that this project came before the Planning Commission on 5-27-87. Since then, Mr. Chiou has changed design teams and the site of the restaurant. The site now is southward 20' into the Estuary over the marina on 24 piling, just south of the bulkhead. Under City Code, a Conditional Use application is to be presented and reviewed for all non-water dependent uses. This use is water related. The Federal and State Departments of Fish and Wildlife have sent favorable letters noting that there is no significant influence on the estuary, the Division of Sate Lands and Corps of Engineers have stated that this is not a new use of pilings. Notice was sent to all abutting property owners within 300'.

She went on to report that she had communication from Mr. Jack Delay of Essex Lane, Eugene by telephone today, stating that he is a director of the Bay Bridge Condominiums and that he had not had sufficient time to call a meeting of the owners to make a presentation. She consulted the City Attorney following that call and he feels adequate time was given since notices were mailed on 9-24-87.

Chairman Sneddon asked for citizen testimony in favor of the project.

The applicant had no statement.

Rev. Henry Bacher, 3449 Myrtle Loop: Stated he has no vested interest in the project and testified that he is in favor of the project and that we should give some consideration to Mr. Chiou in this matter. He feels it is a very nice plan and will help to make the City grow.

James Scott, 1089 1st Street: Stated he is in favor of the restaurant, but feels it should have come in as a unified proposal. As an adjacent property owner it would have been nice to be presented with the whole plan. He feels it could have been done in a better way.

Chairman Sneddon asked for citizens opposed to the project. Hearing none, he asked for staff summary.

Planning Director Gillispie stated that the Findings indicate, in the final conclusion, based on analysis of resources and negligible impacts, the use should be permitted and that the pilings have no adverse impact on the Estuary.

The public hearing was closed at 7:55 p.m.

Following very minor discussion, Commissioner Wilson moved to accept Planning Commission Resolution 87-10-6-32 allowing Conditional Use Permit for pilings, second by Commissioner Balfour. By roll call vote, Balfour "aye", Dillon "aye", Stone "aye", Wilson "aye", Sneddon "aye", motion carried.

4. DESIGN REVIEW BOARD:

Resolution 87-10-6-33
Site Modification For
Restaurant in Waterfront/
Natural Resources Combining
Shorelands District
Hong-Shiou (Tony) Chiou

Planning Director Gillispie reported that the restaurant site plan has been changed to extend over the bulkhead 20' in the area closest to the bulkhead not used for boats. This will give more parking area, and more substantial landscaping. There will be a viewing area from three sides, East/West and South. The shape is almost entirely the same as the first proposal, with a tile roof, stucco or arch paneling and terra cotta tile. The front faces North. The architect indicates a height of 26' from the average height of the front of the building to the average height of the highest gable. The Planning Commission reviewed the Findings having to do with Conservation District and approved them earlier this year. This project complies with Comprehensive Plan which allows uses to protrude into the Estuary. The restaurant is allowed outright in Waterfront, public facilities are adequate as is circulation for traffic. They show 88 spaces for parking north of the restaurant. At the meeting in May the Planning Commission said they needed 50 spaces. This area is larger than

before, however it is in waiting area and kitchen and does not require more parking. One condition of the project is that the parking needs of the marina be accommodated on this property until such time as the adjacent leased property shown on the site plan is improved as a parking lot.

Under discussion, it was brought out that the final height of the building is 32', about the same as the condominiums, that the proposal tonight is only the restaurant, not the motel. Further discussion was held concerning the color of the tile roof, with Commissioner Stone indicating that previously, both Commissioner Nelson and Pearson, who are absent tonight, had indicated they wished to see the color prior to construction.

Von Miller, Architect with Harlan/Miller, Coos Bay: Stated that his firm became involved in this project about a month ago. The last projects they were involved in in Florence were Oregon Pacific Bank, the high school and most recently the remodel of McKay's Market. He noted that they have stayed pretty much within the volumes and roof lines. They felt they should look at the total development to verify where they were going to meet the requirements of the site and that is why the 88 unit motel is being shown at this time, but not in great detail. They moved the restaurant over the water to relate to the marina and increase the landscape area, also to increase the parking (8 spaces in 20'). The total development is the same throughout, of first quality materials, concrete structure up to deck level using excellent materials, vinyl windows outside with terra cota which is water resistant, low maintenance, durable and color fast. There will be a broad overhang 5' with reduced area under the eaves to protect the building from elements. The building is the same height, perhaps just a little less than the condominiums. The floor will be at 11 1/2' to 12' so as to be over the flood elevation. It is proposed that the tile roof will be the same as that on McKays, blue/grey, they are also investigting ceramic tile. The perimeter has a broad band to cover caps of dark brown, terra cota wainscoat of natural color and accent stripes and the eaves of glazed tile with detail work, textured panels above will be beige. There will be a skylight at the entry, foyer and a portion of the dining room. There will be decking on 3 sides which comes back down to grade. The entry will include heavy landscaping and water. There will be no spanish type tile of red color.

Chairman Sneddon stated that he would like to see a condition in the Resolution that a final landscape plan be brought back to the Commission, also if the color scheme should deviate from that outlined here tonight, it be brought back for Design Review Board approval.

Commissioner Wilson moved to accept Resolution 87-10-6-33 with the condition that a landscape plan be brought back for approval and if a major deviation in color scheme is made, that it also be brought back, second by Commissioner Dillon. By roll call vote,

Dillon "aye", Stone "aye", Wilson "aye", Balfour "aye", Sneddon "aye", motion carried.

5. REPORTS:

Planning Director

Planning Director Gillispie showed Commissioners an area in the Urban Service Area that will probably be coming before them for concurrence of a zone change for Marvin Ryall.

1. Expiration of Terms
   a. Mark Balfour - 1-88
   b. Al Pearson - 1-88

Commissioners are encouraged to re-apply for appointment, and advertisements will be made for applicants.

Commissioners

No reports.

6. ADJOURNMENT:

The meeting was adjourned at 8:34 p.m.

Robert Sneddon, CHAIRMAN
FLORENCE PLANNING COMMISSION

ATTEST:

Anne M. Rhodes, SECRETARY

PLANNING COMMISSION
RESOLUTION NO. 87-10-6-32

IN THE MATTER OF) Proposal: Conditional Use Permit - To Allow
A CONDITIONAL USE) Piling Within Development Estuary District
PERMIT WITHIN THE) For A Water Related Use
DEVELOPMENT ESTUARY) Location: 1150 Bay Street
OVERLAY DISTRICT) Applicant: Hong-Shiou (Tony) Chiou

WHEREAS, application was made by Hong-Shiou (Tony) Chiou to construct a restaurant at 1150 Bay Street, Map No. 18-12-34-12, Tax Lots 8000 and 8100, in the Waterfront/Natural Resources Combining Shorelands/Development Estuary District (WF/NRC/DE), and

WHEREAS, such application requires Conditional Use Approval by the City of Florence Planning Commission, City Code 10-19-3-D, 10-4-1, and

WHEREAS, the Planning Commission met in public hearing on October 6, 1987, to consider the application and after consideration of evidence in the record and testimony presented determined that approval of the request is in the best interest of the public,

THE PLANNNG COMMISSION finds, based on the attached Findings of Fact and staff recommendation that granting this Conditional Use is in the best interests of the public, with the following condition:

> That parking needs of the marina be accommodated on this property until such time as the adjacent leased property shown on the site plan is improved as a parking lot.

NOW, THEREFORE, BE IT RESOLVED, that the proposal is approved and that the Findings of Fact attached as Exhibit "A", and "B", and support documents "C", "D", "E", "F" and "G" are hereby incorporated by reference and adopted in support of this decision.

PASSED BY THE FLORENCE PLANNING COMMISSION, this 6th day of October, 1987.

Robert Sneddon, CHAIRMAN
FLORENCE PLANNING COMMISSION

DESIGN REVIEW BOARD
RESOLUTION NO. 87-10-6-33

IN THE MATTER OF)	Proposal: Modification of Site Location for
MODIFICATION OF)	Restaurant
DESIGN REVIEW)	Location: 1150 Bay Street
APPROVAL)	Applicant: Hong-Shiou (Tony) Chiou

WHEREAS, application was made by Hong-Shiou (Tony) Chiou to construct a restaurant at 1150 Bay Street, Map No. 18-12-34-12, Tax Lots 8000 and 8100, in the Waterfront/Natural Resources Combining Shorelands/Development Estuary District (WF/NRC/DE), and

WHEREAS, such application requires review by the City of Florence Planning Commission, as the Design Review Board, City Code 10-4-1, and 10-6-3-B, and

WHEREAS, the Design Review Board met in public meeting on October 6, 1987, to consider the application and after consideration of evidence in the record and testimony presented determined that approval of the request is in the best interest of the public,

THE DESIGN REVIEW BOARD finds, based on the attached Findings of Fact and staff recommendation that granting this approval of this proposal is in the best interests of the public, with the following conditions:

That parking needs of the marina be accommodated on this property until such time as the adjacent leased property shown on the site plan is improved as a parking lot.

That a final landscape plan be brought back to the Design Review Board.

If there is any deviation on color scheme as outlined by the Architect, it must be brought back for approval.

NOW, THEREFORE, BE IT RESOLVED, that the proposal is approved and that the Findings of Fact attached as Exhibit "A", and "B", and support documents "C", "D", "E", "F" and "G" are hereby incorporated by reference and adopted in support of this decision.

PASSED BY THE FLORENCE DESIGN REVIEW BOARD, this 6th day of October, 1987.

Robert Sneddon, CHAIRMAN
FLORENCE PLANNING COMMISSION

EXHIBIT "A"
FINDINGS OF FACT

PROPOSAL: CONDITIONAL USE APPLICATION - MODIFICATION OF SITE LOCATION FOR A RESTAURANT

LOCATION: 1150 BAY STREET, MAP 18-12-34-12 TL 8000 & 8001

ZONING: WATERFRONT/NATURAL RESOURCES COMBINING SHORELANDS/DEVELOPMENT ESTUARY DISTRICT (WF/NRC/DE)

APPLICANT: HONG-SHIOU (TONY) CHIOU

PROPOSAL DESCRIPTION:

This project received Planning Commission/Design Review approval on May 27, 1987. The proposal comes back before the Planning Commission at this time because the site and the square footage of the restaurant have changed, resulting in a modification of the building exterior design. The site modification requires Conditional Use review as a water related use partially within the Estuary.

The site plan submitted with this application shows that the restaurant will extend 20 feet over the water past the existing bulkhead, to be partially supported by 24 piling. All the piling will be driven within the confines of the existing marina. Because the piling are to go in the Estuary, a Conditional Use Permit is required by Code Section 10-19-3-D.

The site plan also shows the probable location of the motel planned as a future development phase as well as the leased parking area that will be used when the motel phase is completed. This phase is not under consideration at this time but is shown solely as additional information for future phases of development.

Existing conditions within 300 feet of this proposal:

Bay Bridge Condominiums, a residential development is adjacent to this property to the northwest. Until the recent sale of the marina by the Condominium, this group had intended to build condominiums on this marina property as well. The area west of the condominiums is tidelands. There is residential property north of the marina site as well as a commercial building at the corner of Kingwood and Bay, formerly occupied by the Cable TV Management, now retail shops. Directly east of the marina is a vacant lot and tidelands. Beyond this is street right of way, the American Legion hall, a vacant lot and then Florence Welding and Machine Shop, an industrial use. Northeast of the marina, property across Bay street is a vacant lot suitable for

commercial uses, and Dairy Queen Restaurant. Uses within the river include piling and commercial fishing boat tie ups south of the Florence Welding Shop and managed by the shop. The existing rebuilt marina for sports boat use owned by the applicant is south of the marina property. This property has been used for years for RV's and campers in conjunction with the marina. This RV camp use will be discontinued when restaurant and motel development occurs.

The applicant's property lies within the Natural Resources Conservation Combining Overlay District (NRC). Findings for this district were approved at an earlier meeting by the Planning Commission in the original Design Review Approval of this proposed restaurant. Findings concerning the Development Estuary (DE) Overlay District concerning this proposal are presented in this document, under applicable code requirements. The DE Overlay Zone boundaries are discussed in Exhibit "B" attached.

APPLICABLE CODE REQUIREMENTS:

A. Code Section 10-19-3-D, Development Estuary (DE), Conditional Uses, allows non-water dependent uses as a Conditional use within this district, subject to procedures and conditions of Chapter 4 of this Title. Restaurants are defined as a water related use in Code Section 10-18-3-B.

B. Code Section 10-4-9 Conditional Use General Criteria relevant to this proposal:

1. Florence Comprehensive Plan conformity:

Policies contained in the Land Use - Siuslaw Estuary and Shorelands Element of Section VII support non water dependent uses on pilings in Development Estuary Management Units, consistent with resource capabilities of the area and purpose of the MU.

Exhibit "B" contains a resource capability determination and describes the DE District purpose. Code Section 10-19-3-A, Development Estuary, purpose, states that uses that are not water dependent which do not damage the overall integrity of the Estuarine Resources and values should be considered in the District.

2. Adequate land availability:

The proposed restaurant is allowed outright within the Waterfront District, and by special review, within the NRC Shorelands District. The portion of the restaurant proposed to extend within DE Estuary District consists of pilings supporting 2000 square feet of the building

immediately abutting the bulkhead and within the area of the marina. The DE designation is placed on that portion of the Estuary abutting Siuslaw Pacific Marina property as well as the downtown area abutting Waterfront District and Marine District, approximately 6800 lineal feet of river shore. The primary uses within this area are commercial and public marinas, docks, facilities for commercial fishing boats and boat ramps. This site is occupied by Bay Bridge Marina. The piling for the restaurant will not reduce the working area of the marina and will not affect the availability of land for future water dependent uses.

3. Public facility adequacy:

The property is served by a 6" water main and an 8" sewer main in Bay Street. The street is improved. The applicant will provide all necessary on site water and sewer facilities. Storm drainage from improved parking areas and roof drainage will be handled to prevent detrimental effect to surface, subsurface and aquifer waters.

4. Adequacy of vehicular and pedestrian access to the site, including access by emergency vehicles necessary to protect public health and safety.

The property abuts Bay Street, an improved street over an 80 foot wide right of way. Access to the restaurant site is a 25 foot wide driveway from Bay Street. Access is adequate.

5. Special criteria for uses within the DE District includes:

a). Within the Estuary, a water dependent use, this commercial marina will continue to operate. The area occupied by building pilings is approximately 3% of the marina area, adjacent to the bulkhead, in an area of the marina not occupied by marina facilities except for one ramp from the shore to the marina floats. For these reasons this proposed use will not limit future use of the area for commercial water dependent use.

b). Public benefit. The development of this property will have beneficial effect on other businesses in the community. Considerable private funds have been expended on properties in the Old Town area. The recent reconstruction of the Bay Bridge Marina on the subject property was the first phase in developing from a minimally developed to a highly developed property to further enhance the City's tourist oriented commercial

area. Regional employment figures show that many local persons benefit from the tourist industry either through product sales or services. During the recent recession, while most wood products workers where affected by lack of work or less work hours, the local tourist industry sales figures were improving. No figures are available on public use of the sports boat marina facilities at this time, but it is expected to have substantial use. Because tourism is an important part of the City's economy, a substantial public benefit is expected from this project.

c). The use will have minimal impact on resources, as identified in the Florence Comprehensive Plan, in the area affected by the proposed use, because available information indicates there are no significant biological areas at this site. In addition, the proposed 24 pilings is a very minor installation and will not result in influencing water circulation and flushing patterns except in the immediate area of the piling. No significant adverse impacts will occur to water quality or aquatic life forms as a result of the installed piling, according to State and Federal Fish and Wildlife Agency reports.

C. Code Sections 10-4-10, Conditional Use General Conditions and 10-6-5, Design Review, General Criteria, relevant to this proposal:

1. Architectural quality and aesthetic appearance, including compatibility with adjacent buildings.

General configuration of the building will be as approved by the Planning Commission.

The building exterior is to be terra cotta and stucco architectural panels with two bands of glazed tile. Decks will extend along the south side and partially along the west and east sides of the building. The building entrance faces north. The roof will be tile and of the same general slope as previously proposed and approved.

Adjacent buildings to the west are the Bay Bridge Condominiums. These buildings are of frame construction with wood shingled exterior. North across Bay Street are single family residences of wood frame construction in an older architectural style, and a commercial building, flat roofed, with T-1-11 siding. To the east, the American Legion Hall and the Florence Welding buildings are not architecturally significant.

2. Code Section 10-1-4, Building Height.

   Building height of a pitched or hip roof is defined as "the vertical distance from the average finished grade at the front of a building to the average height of the highest gable of a pitch or hip roof." The architect shows the building height as 26 feet. Allowable height is 28 feet.

3. Parking, Dimensions, Surfacing and On-Site Traffic Circulation.

   Parking requirements for the proposed restaurant have not changed from the 50 spaces previously approved. 88 spaces are shown on the site plan in that area immediately north of the building. Dimension of the parking spaces and back-up room are not included, however, the 65 feet dimension shown will accommodate two rows of cars with sufficient back-up room. The required number of spaces will be paved and striped.

   Parking for existing uses (the marina) can be accommodated on the west portion of this property until the future motel is developed.

4. Outdoor lighting is not shown on the plan but will be adequate for the parking area.

ANALYSIS AND CONCLUSION:

The Resource Capability Determination shows that the proposed use will not represent a significant adverse impact or reduction of significant biological habitat within the Estuary.

The proposed use is conditionally allowed as a water related use with the Development Estuary District as it meets the general criteria of Code Sections 10-4-9 and 10-19-3.

The Planning Commission finds that the proposed use is consistent with the resource capabilities of the Development Estuary MU and complies with City of Florence Comprehensive Plan Policies concerning Estuarine Development, and finds that the use is consistent with Conditional Use criteria of Chapter 4 of Title 10 of City Code.

Based on the Findings of Fact contained in Exhibits A & B, the Planning Commission/Design Review Board approves the restaurant as proposed with the condition that parking needs of the marina be accommodated on this property until such time as the adjacent leased property shown on the site plan is improved as a parking lot.

EXHIBIT "B"
RESOURCE CAPABILITY DETERMINATION
FINDINGS OF FACT

PROPOSAL: TO PLACE PILING TO PARTIALLY SUPPORT A PORTION OF PROPOSED RESTAURANT.

LOCATION: ADJACENT TO 1150 BAY STREET, MAP 18-12-34-12 TL 8000 & 8001

ZONING: WATERFRONT/DEVELOPMENT ESTUARY/NATURAL RESOURCES CONSERVATION COMBINING DISTRICT (WF/DE/NRC)

APPLICANT: HONG-SHIOU (TONY) CHIOU

PROPERTY DESCRIPTION:

The applicant proposes to extend a portion of his proposed restaurant over the Siuslaw River, by means of 24 driven piling. The piling are to be driven within a dredged area that forms a recently reconstructed marina.

The proposed piling are to be placed within an area designated as Development Estuary (DE, as shown in the 1982 Coastal Resources Management Plan and regulated by City Code Section 10-19-3.

Specific area description and designation:

The Coastal Resources Management Plan, 1982 describes this site as a part of Management Unit (MU) F, shown on Map #2, specifically MUF.1, which starts approximately one half mile down river from the Highway 101 bridge to the western boundary of Tax Lot 7900, Map 18-12-34-12.

The rationale for this designation was:

1. Area includes Bay Bridge Marina.

2. Shorelands are developed in urban uses.

3. This MU contains no significant biological areas as shown in the Coastal Resources Inventory (Wilsey & Ham, 1979).

Resource uses conditionally permitted within this MU include:

1. Permitted uses allowed in Natural and Conservation MU's.

2. Water related uses not requiring fill.

3. Non-water dependent, non-water related uses not

requiring fill.

4. Water dependent uses requiring fill.

5. In water disposal of dredged material under certain conditions.

A. SPECIFIC CODE REQUIREMENTS:

Purpose: The primary purpose of the Development Estuary District (DE) is to provide for navigational needs and public, commercial and industrial water dependent uses which require an estuarine location. Uses which are not water dependent which do not damage the overall integrity or estuarine resources and values should be considered, provided they do not conflict with the primary purpose of the District. Code Section 10-19-3 Development Estuary District (DE), Subsection 10-19-3-D Conditional Uses, lists this use as 3, other uses which do not require dredging or filling.

A resource capability determination is required for conditional uses within DE Districts.

B. CODE SECTION 10-19-6 CONTAINS PROVISIONS FOR THE RESOURCE CAPABILITY DETERMINATION.

Resource Capability Determination: Special uses or conditional uses in the Natural Estuary (NE), Conservation Estuary (CE), and Development Estuary (DE), Districts are allowed only if determined to meet the resource capability and purpose of the management unit in which the use or activity occurs.

1. Definition of Resource Capability: Resource Capability is defined as the degree to which the natural resource can be physically, chemically or biologically altered, or otherwise assimilate an external use and still function to achieve the purpose of the zone in which it is located.

2. Identification of Resources and Impacts:

   a. Information on the resources present. Sources include: Lane County Coastal Resources Inventory, and environmental impact statements for the Siuslaw River, by staff and Federal agencies.

Lane County Coastal Resources Inventory shows that no significant biological areas are present on this site. The Wilsey & Ham, 1978 study showed no important biological habitat, species or feeding areas here. There is eel grass

and tidal area approximately 500 feet west in the vicinity of Ivy Street pump station.

Information received from the Oregon State Department of Fish and Wildlife District fish biologist (see attached letter of 8-24-87) indicates that the area is a sand substrata with no significant numbers of shellfish or other benthic organisms on the site that will be impacted by the piling installation.

b. Information on impacts to be expected if the proposed use or activity is carried out. This is not intended to be a full impact assessment as specified in subsection 10-19-6-C, but a presentation of the major effects on water circulation and flushing patterns, water quality significant adverse impacts which may occur, and impacts on the aquatic and shoreland life forms.

Both the State Department of Fish and Wildlife and the Fish and Wildlife Service, Department of the Interior (Exhibits C & D) state that no significant impacts on benthic organisms or fish and wildlife are expected to result from the proposed installation work or from the proposed use.

Effects on water circulation and flushing patterns will be very minor and limited to the immediate area, since this piling will be within the area already committed to marina use where new piling have been driven. Refer to Exhibit E & F, Corps of Engineers site plans, showing the marina plan and the location of this proposed piling.

Permanent shading is not anticipated to be a problem. In fact, the piling and permanent shaded area may act as a sanctuary for some marine species and enhance this rather barren area of the river.

3. Resource Capability Determination: Information on resources present and impacts to be expected will be evaluated as part of the special use permit procedure, based on the requirement that the estuary can still function to achieve the purpose of the zone in which the activity will be located.

This proposed project will not adversely impact the Estuary to a measurable degree. This determination is based on information from the Lane County Coastal Resource Inventory (Wilsey & Ham, 1978), on information provided by the Fish and Wildlife Service, Dept. of Interior and by the Department of Fish and Wildlife, State of Oregon.

Information from all sources agree that a) the site contains no significant biological habitat, b) the installation of piling will not adversely impact the biological habitat or any benthic or marine species, and c) the use through permanent shading, will not adversely impact the biological habitat of all estuarine life. While shading a portion of the area will slow the growth of some marine life, the piling and shaded area will become habitat to some species preferring a sheltered space.

4. Resource Capability Findings: Based on analysis of resources and impacts, the following finding is concluded in approving the use permit:

   The proposed use of activity does not represent a potential significant adverse impact or reduction of significant fish and wildlife habitats or essential properties of the estuarine resource. It is consistent with the resource capabilities of the management unit and corresponding zoning district.

EXHIBIT C

VICTOR ATIYEH
GOVERNOR

Department of Fish and Wildlife

NORTHWEST REGION

ROUTE 5, BOX 325, CORVALLIS, OREGON 97330-9446 PHONE 757-4186

August 24, 1987

Marge Akers
Division of State Lands
1600 State Street
Salem, OR 97310

Dear Marge:

This letter is relative to Corps Public Notice No. 071-OYA-1-007451 - Hong-Shiou (Tony) Chiou.

Mr. Chiou is applying for a permit to drive 24 piling adjacent to a proposed restaurant on the Bay Bridge Marina site, just west of the Highway 101 Bridge on the Siuslaw River. Part of the restaurant, primarily an exterior deck will be supported by the piling.

The piling will be placed in a previously dredged area that has a sand substrate. We have found no significant numbers of shellfish or other benthic organisms on the site that will be impacted by the piling installation. We also do not anticipate a problem with permanently shading this area with the deck.

Although not directly water related this construction is in an area zoned commercial. Mo's restaurant, which is placed entirely on piling is located just two blocks east. The restaurant is part of the Bay Bridge Marina, which is water related, so we do not object to issuance of the permit provided proper precautions are made to prevent any pollutants from entering the estuary.

Give me a call if you have any questions.

Sincerely,

Jerry MacLeod
District Fish Biologist
(997-7366)

EXHIBIT D

******start of document********

Fish and Wildlife Service
Portland Field Office
727 NE 24th Avenue
Portland, OR 97232

September 2, 1987

Colonel Gary R. Lord, District Engineer
Portland District, Corps of Engineers
P. O. Box 2946
Portland, Oregon 97208

Re: 071-OYA-1-007451
Siuslaw River - Piling
Hong-Shiou Chiou
August 12, 1987

Dear Colonel Lord:

We have reviewed the referenced public notice for a permit to drive 24 wood pilings to support a portion of a proposed restaurant. The proposed restaurant would extend approximately 25 feet over the north bank of the Siuslaw River, at river mile 4.6 in Florence, Oregon. These comments have been prepared under the authority of and in accordance with the provisions of the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 et seq.) and are consistent with the intent of the National Environmental Policy Act of 1969.

No significant impacts on fish and wildlife are expected to result from the proposed work. However, the restaurant is designed to overhang a portion of a public waterway. It is Fish and Wildlife Service policy to discourage enroachment on public waters for non-water dependent purposes. We, therefore, recommend that the applicant move the proposed restaurant back to the available upland area on the property.

It appears that the applicant is piecemealing the development of this property. In addition to this permit application, there was a recent permit (March 24, 1987) for a marina expansion and we are aware of plans for a motel which will also occupy the same property. In the Service's view, these projects should be handled together.

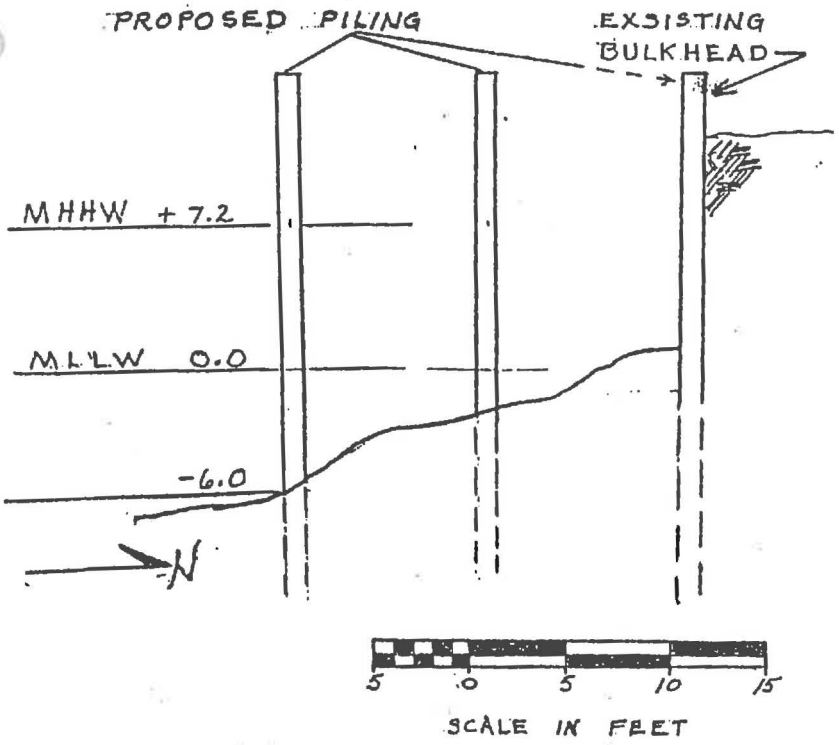
The above views and recommendations constitute the report of the Department of the Interior on the subject public notice.

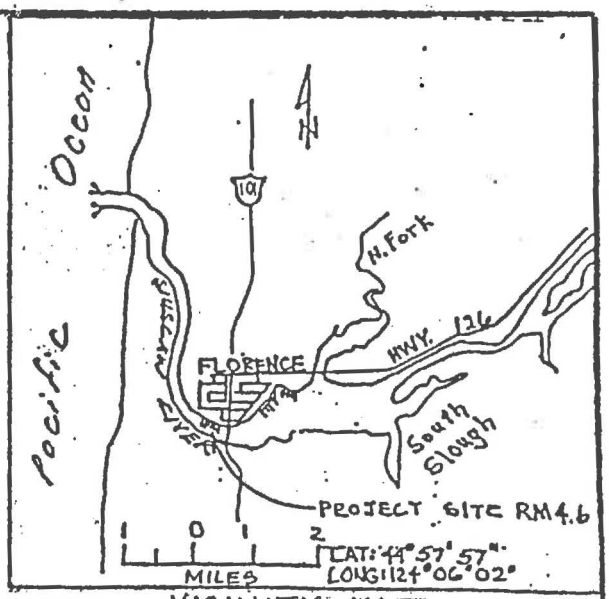
Sincerely yours,

Roger E. Forderstrasse
for Russell D. Peterson
Field Supervisor
Acting for U.S. Department of the Interior Coordinator

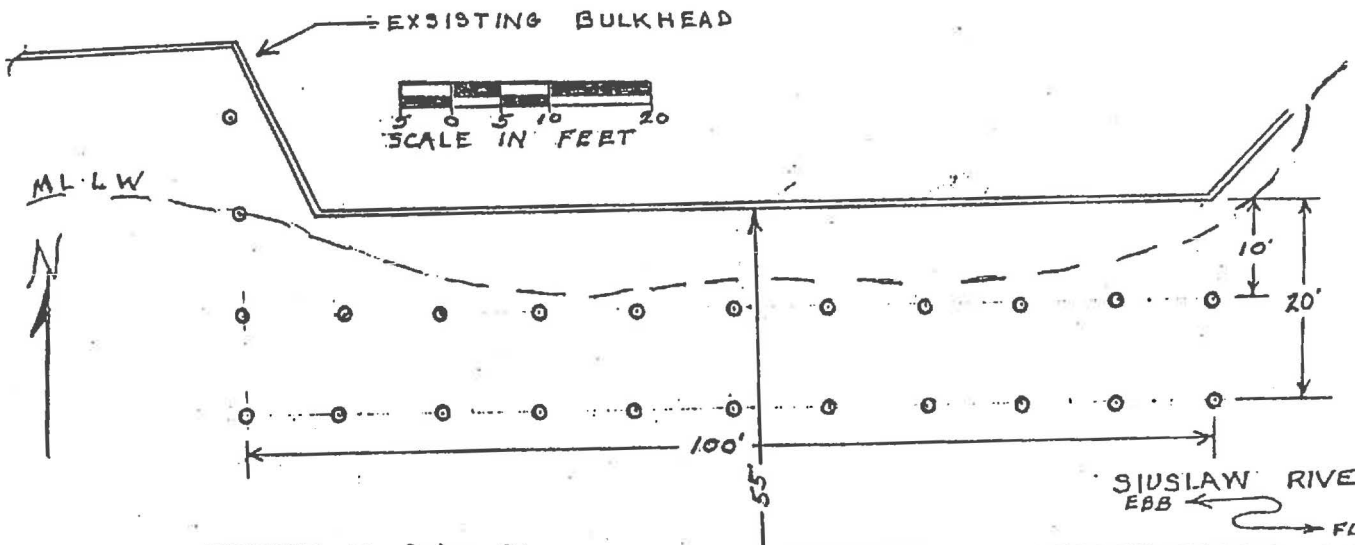
7451.KI.lg.09/02/87

EXHIBIT E





VICINITY MAP



PURPOSE: To drive 24 pressure treated wood piling.

DATUM: Mean Lower low Water

ADJACENT PROPERTY OWNERS:

1. W. J. Pinkney
2. City of Florence

DOCKS

BAY BRIDGE MARINA

PROPOSED PILING

IN: Siuslaw River R.M. 4.6

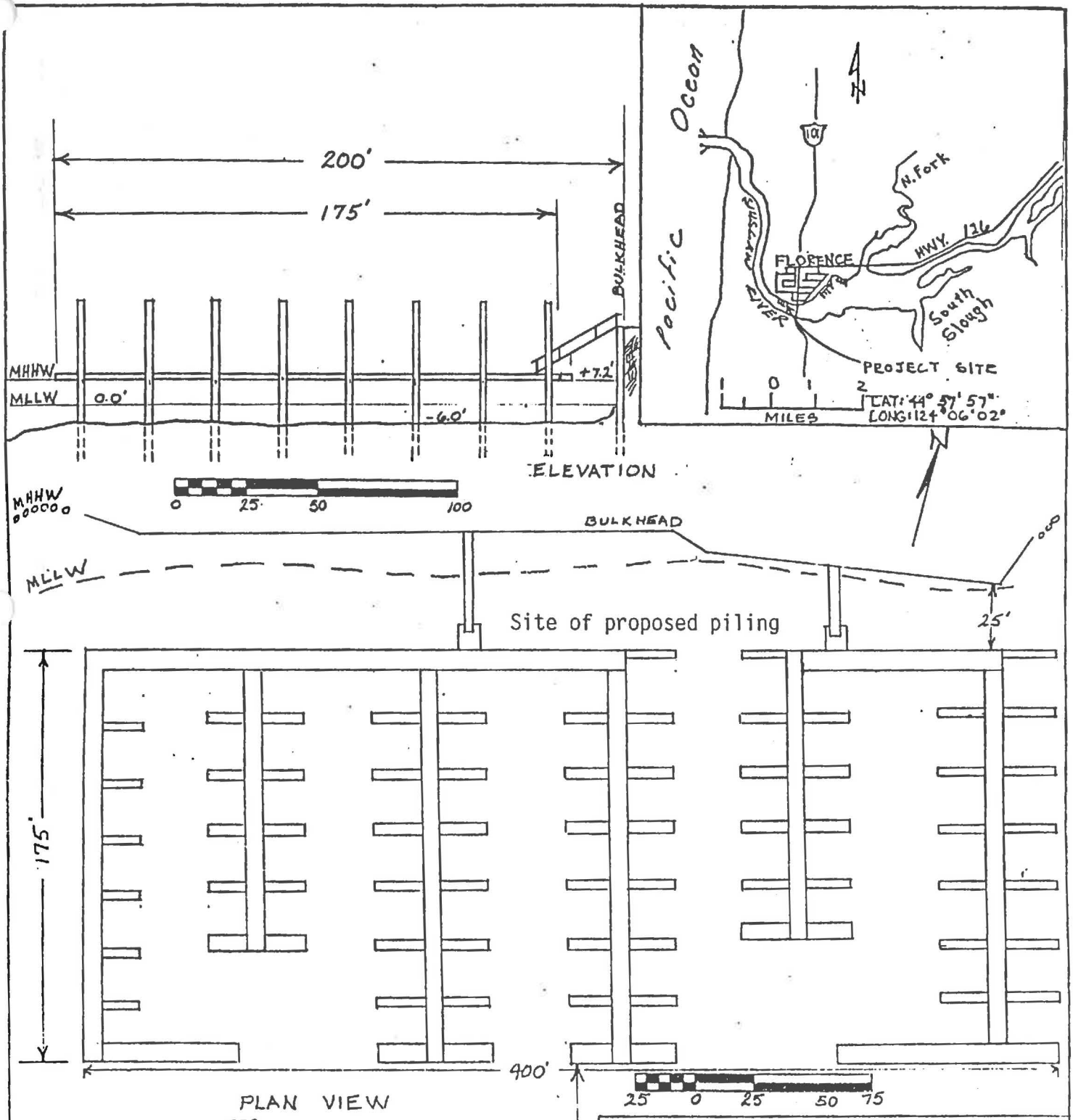
NEAR: Florence, Hwy. 101 bridge

COUNTY: Lane

APPLICANT: Tony Chiou

DATE: June 17, 1987 SHEET:

EXHIBIT F



PURPOSE: Marina Rehabilitation
Datum: Mean Lower Low Water

ADJACENT PROPERTY OWNERS:
1. W.J. Pinkney
2. City of Florence

MARINA REHABILITATION
IN: Siuslaw River R.M. 4.6
NEAR: Florence, hwy. 101 bridge
COUNTY Lane
APPLICANT Tony Chiou
DATE 9 March 1987 SHEET 1 of 3

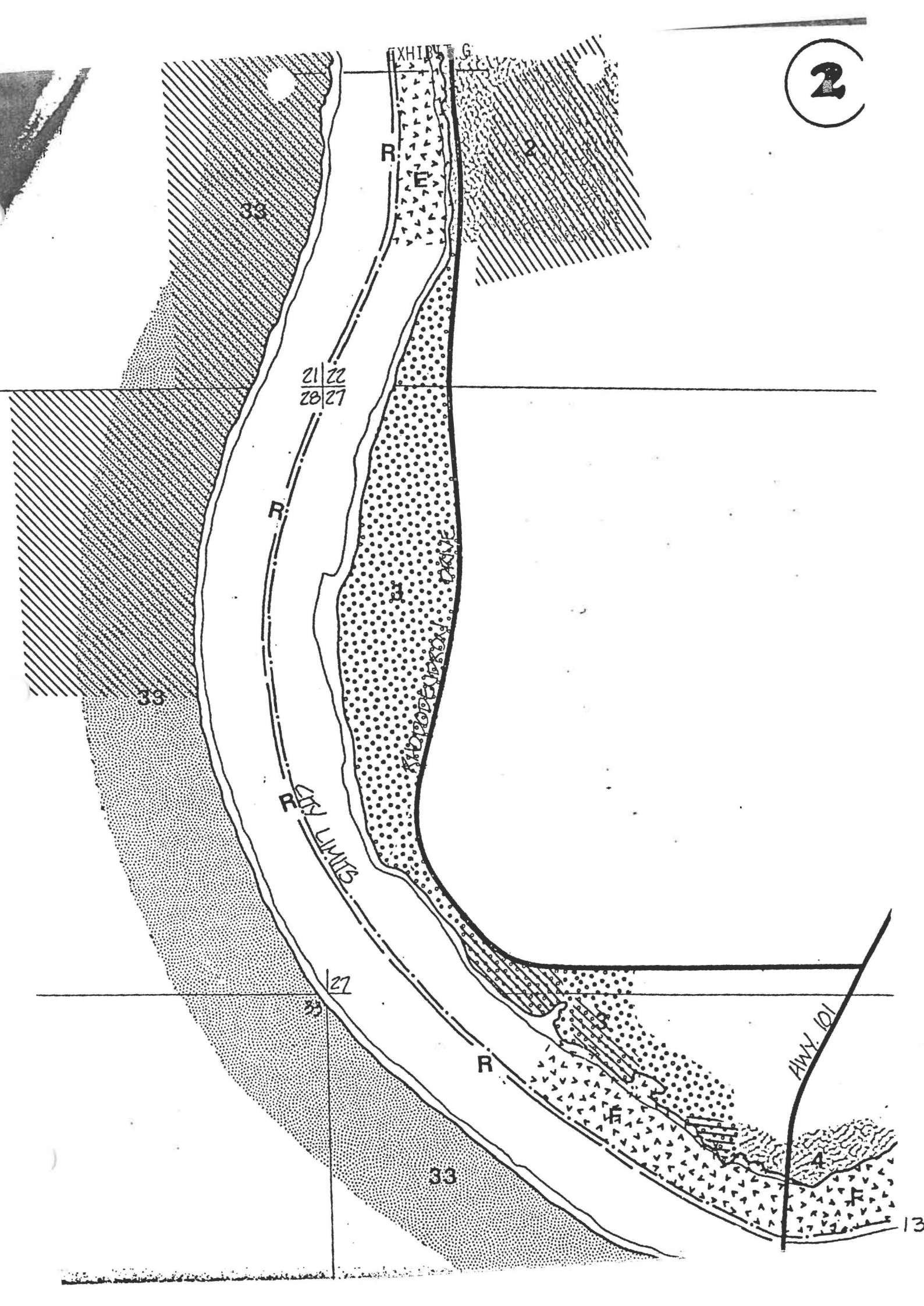


EXHIBIT G
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EXH AA

BEFORE THE CITY COUNCIL OF THE CITY OF FLORENCE

IN THE MATTER OF THE APPLICATION OF HONG-SHIOU (TONY) CHIOU FOR A CONDITIONAL USE PERMIT TO DRIVE PILINGS AND CONSTRUCT A RESTAURANT AT 1150 BAY STREET.	)))))	**FINDINGS AND FINAL ORDER SUSTAINING APPEAL**

WHEREAS, application was made by Hong-Shiou (Tony) Chiou to construct a restaurant at 1150 Bay Street, Map No. 18-12-34-12, Tax Lots 8000 and 8100, in the Waterfront/Natural Resources Combining Shorelands/Development Estuary District (WF/NRC/DE) of the City of Florence; and

WHEREAS, the proposed use requires conditional use and design review approval pursuant to City Code 10-19-3-D; and

WHEREAS, the Florence Planning Commission met in public hearing on October 6, 1987, to consider the application, and, after consideration of evidence in the record and testimony presented, approved the application with the following condition:

> That parking needs of the marina be accommodated on this property until such time as the adjacent leased property shown on the site plan is improved as a parking lot;

and

WHEREAS, an appeal was filed on October 21, 1987, by Jack Delay, Thomas A. McCarville, and the Three-Ten Partnership, pursuant to Florence Code Section 10-1-4; and

WHEREAS, the City Council on December 8, 1987, conducted a de novo hearing on the application, upon further and more detailed written and published notice as required by the City Code; and

WHEREAS, after consideration of the record before the Planning Commission together with the statement of appeal and supplemental appeal, a supplemental staff report, and written, oral, and graphic evidence presented at the public hearing on December 8, and after deliberation on December 22, 1987, on proposed findings submitted by the parties, the City Council determined that the application does not meet all applicable standards, policies, and criteria,

NOW, THEREFORE, BE IT RESOLVED, that the appeal is sustained and the application is denied based upon the facts and reasons set forth below:

FINDINGS

Jack Delay resides at 2173 Essex Lane, Eugene, Oregon 97403. He owns Condominium Unit 13 in Phase II of the Bay Bridge Condominium, and the interests in the common elements and adjacent marina that are described in the Condominium Declaration recorded January 16, 1980, in Reel 1050, Reception No. 8002518 of Lane County, Oregon, as affected by an amendment to said declaration recorded April 25, 1984, in Reel 1294, Reception No. 8417902, Lane County, Oregon Deeds and Records.

Thomas A. McCarville resides at 101 East Brenda Circle, Casa Grande, Arizona 85222. As the Three-Ten Partnership, he and his spouse, Andrea McCarville, own Condominium Unit B-2 in Phase I of the Bay Bridge Condominium, and the interests in the common elements and adjacent marina that are described in the declaration and amended declaration described above.

Appellants were entitled to receive written notice under the city code.

The proposal calls for constructing a large restaurant and parking area, with the restaurant situated partially on a landscaped mound of fill behind a bulkhead, and extending partially over the water on pilings set in the estuary south of the bulkhead. The proposed restaurant and the condominiums are shown correctly in the attached site plan submitted by the applicant. The restaurant building will extend approximately 20 feet over the estuary from the main bulkhead, with decking extending it several feet further. The southwestern portion of the restaurant and decking will extend over 40 feet over the water, bringing the total area within the estuary to over 3000 square feet.

The site plan also shows the probable location of a motel planned by the applicant s a future development phase, as well as the leased parking area that will be used when the motel phase is completed.

The south end of Juniper Street, shown in the site plan, is the only public viewing point on the north bank of the Siuslaw west of the bridge from which the Bay Bridge can be seen.

The proposed restaurant and motel occupy land which was originally to be a phase of the neighboring Bay Bridge Condominiums. The applicant purchased the property from the condominium developers.

There is residential property north of the marina site as well as a commercial building at the corner of Kingwood and Bay, formerly occupied by the Cable TV Management, now retail shops. Directly east of the marina is a vacant lot and tidelands. Beyond this is street right of way, the American Legion hall, a vacant lot and then Florence Welding and Machine Shop, an industrial use. Northeast of the marina property across Bay Street is a vacant lot and a Dairy Queen Restaurant. The restaurant looks out over a rebuilt marina for sport boat use.

The shoreland portion of the applicant's property lies within the Natural Resources Conservation Combining Overlay District (NRC). The portion of the

restaurant extending past the bulkhead is within the Development Estuary (DE) Overlay District.

The existing Bay Bridge Condominium complex is just west of the site of the proposed restaurant-motel complex, which occupies land originally intended to be occupied by later phases of the condominium. The locations of the existing buildings are circled in a photocopy of the sales brochure used in selling the units to Mr. Delay and the McCarvilles. The locations of the appellants' units are shown by their initials, and are within 300 feet of the subject property and proposed use.

The marina described in the declaration is shown conceptually in the foreground of the brochure drawing. The apparent location of the restaurant is noted.

Photographs and diagrams submitted by both parties at the hearing show that the construction of the restaurant and its extension over the water into the Estuary zone would substantially impair existing views of the historic Siuslaw Bay Bridge from the Bay Bridge Condominium units and grounds, as well as from the public access at the south end of Juniper Street, which is between the existing condominium units and the proposed restaurant.

REASONS FOR DENIAL

Based upon the facts set forth above and in the following analysis, the Council finds that the application should be denied. Because all applicable criteria must be satisfied, and because the application must be denied if any essential criterion is not satisfied, not all issues raised are addressed here. The Council does note that Appellants agree that the notice problem identified in the second assignment of error has been cured by the holding of a new hearing, upon proper notice, at the city council level.

VIOLATION OF COMPREHENSIVE PLAN

This assignment is sustained. Plan conformity is required by the City Code, Section 10-4-9(A), the plan itself, and state law. ORS 197.175(2)(d). The decision does not meet these requirements for a number of reasons.

A. The Coastal Resources Management Plan, 1982, prohibits commercial uses such as that proposed. The Plan describes the subject site as a part of Management Unit (MU) F. It specifically notes that a condominium development is within the unit, and that the unit is mostly developed in single family homes. It specifically provides, for the estuary portion of the unit, which is the subject of this application, that

> "<u>Commercial or industrial uses are not considered appropriate, due to the proximity to residential development</u>." CRMP, 1982, pp 18-19.

This provision is clearly violated by the proposal, which is for an obviously commercial restaurant in the estuary. More general plan and zone designations allowing a wider variety of uses in general districts must give way to this specific prohibition. This is specifically recognized by the plan. Policy One of the Land Use - Siuslaw Estuary and Shorelands Element of Section VII of the Florence Comprehensive Plan provides that

> "Should any conflicts exist between these general policies relating to the Siuslaw Estuary and Shorelands, and those policies relating to specific management units, the policies relating to the specific management units shall prevail." FCP p. 24.

This means that the specific prohibition of commercial uses in this Management Unit overrides the more general Policy permitting water-related uses on pilings as conditional uses when consistent with the resource capabilities of the area and the purposes of the management unit. This would be the case even if proposed conditional use were consistent with the purposes of the management unit, which it is not.

In Oregon, the plan is the controlling document. The City's comprehensive plan recognizes and supports this concept of plan dominance, pointing out that general "land use designations are modified, in many cases, by overlay designations which are derived from specialized elements of the plan." FCP page 55. The plan notes that these overlay designations include

> "Estuary and estuarine shorelands management units designated in the Coastal Resources Management Plan and adopted as an element of this Plan." FCP page 55.

The plan could not be more clear.

In this case, a specific plan policy limits the kind of uses that can be permitted within this particular management unit, notwithstanding that more general zoning provisions might allow other uses in other management units. The City of Florence has chosen to protect the existing residential uses in this management unit against the encroachment of new commercial uses. At the time the plan was adopted, the site was destined for residential redevelopment as a further stage of the condominium, and that is the kind of future which the plan contemplates.

B. The 1982 Management Plan also provides that shoreland uses within MU F should be "<u>compatible with existing development</u>." This provision is violated by the proposal because it is inappropriate in scale, type, and location, as a commercial development in a residential area, because it encroaches on the marina and estuary, because it blocks the only public Bay Bridge viewpoint (the end of

Juniper) in the area, because it obstructs the view of the bay and bridge from the neighboring residences. It is also incompatible because it changes the character of the neighborhood, taking up a public way for parking and increasing the prospects for the applicant's proposed future motel project.

C. The proposal violates Quality of Life Objective 3 of the plan, which is

> "To recognize the existing natural and architectural assets of the community and encourage development that enhances and is compatible with those assets."

This policy is clearly violated by a proposal to block public and private views of the bay and Bay Bridge, to allow a restaurant to encroach upon the estuary, and to bring commercial development into a residential, marine, and recreational area.

D. The proposal violates Quality of Life Objective 1 of the plan, which provides that

> "When planning and management activities are likely to impact properties included or eligible for inclusion in the National Register of Historic Places, the State Historic Preservation Officer shall be consulted concerning action to avoid adverse impacts on the properties. Adverse impacts to those properties resulting from public and private actions will be avoided where possible."

The Bay Bridge is included or eligible for inclusion in the National Register. The State Office of Historic Preservation determined that the bridge is eligible for inclusion in the National Register on February 21, 1985. The determination was confirmed by the Keeper of the National Register on September 11, 1985. The record contains no findings or evidence that the State Historic Preservation Officer has been consulted or that it is not possible to avoid impairment of public and private views of the Bay Bridge resulting from the proposed project.

E. The proposed violates Quality of Life Recommendation 11, which provides that

> "Establishment of visual access corridors should be considered during the permit process for nonindustrial areas bordering the river and ocean, and when visual access is threatened by the cumulative effect of development."

The proposed extension would block visual access as noted, and would destroy existing visual access to the Bay Bridge from the condominium and the end of Juniper Street.

F. The proposal violates Land Use Residential Policy 1, which requires that

> "Existing and proposed residential areas shall be protected from encroachment of land uses with characteristics that are distinctly incompatible with residential development."

The proposal allows a commercial use, a restaurant, with major parking needs and heavy traffic, in a residential area. This is distinctly incompatible with the existing residential development.

VIOLATION OF IMPLEMENTING ORDINANCES

Need. This project is governed by Code Section 10-19-3-D, which requires that:

> "a. A public need is demonstrated."

There has been no definition of "need" and no showing of what the public need is in the context of that definition, either for this restaurant or, more particularly, for the extension of this restaurant into an estuary and across the view of the bridge from the neighboring public access point at Juniper Street and the adjoining residential development. All that has been discussed is an alleged "demand" for commercial development and a "need" for such development somewhere in town. The "need" in question must be a public need to extend the subject restaurant into the estuary, not a need for the restaurant itself. No such need has been shown.

Design Review. Design-review is a design-specific process. The Planning Commission's earlier approval of the design for an onshore facility approves a different project. The proposal does not comply with the Design Review Criteria set forth in Section 10-6-5. Specifically, it does not provide the "visual buffers" and "setbacks" called for in 10-6-5(A) necessary to assure "Architectural quality and esthetic appearance, including compatibility with adjacent buildings," required by 10-6-5(H), and necessary to protect the "general welfare," (10-6-5-K), and to "implement policies contained in the Florence Comprehensive Plan." 10-6-5(N). Specifically, the colored tiles, excessive height, and view blockage are design elements that violate these criteria. The city is unable, for lack of information to assess whether the design review criteria are satisfied.[1]

---

[1] In the event that their appeal is denied, the appellants request clear, definite, and enforceable conditions assuring that the lighting, landscaping, and external decor are handled in subdued tones and an unobtrusive manner that is in character with the adjacent residential uses, as well as conditions protecting public and private views of the bridge.

Compatibility. Design review standards, conditional use criteria, and plan policies described herein do require protection of public views and assurance of compatibility as required by the plan policies and design review standards identified above. The proposal would introduce a nonresidential, nonwater-realated use into a residential/recreational estuary setting. The design does not assure compatiblity with adjacent buildings or uses, because it would impair the residential and recreational utility of those buildings by blocking the view from them with a large commercial structure of uncertain appearance. Setbacks and conditions restricting placement of buildings on sites are normal and appropriate means of protecting these interests. The applicants have not identified any private interest in extension of the restaurant that outweighs the detriment that will result from blocking private views or from blocking the only public viewpoint in the area, at the end of Juniper Street. The whole purpose of conditional uses is to recognize that certain uses in certain places have "unique and special characteristics" that justify special restrictions such as those proposed by the appellants in this case. FZC 10-4-1.

Although restaurants are sometimes provided in conjunction with condominiums, they are not automatically compatible with such residential uses. Restaurants are sometimes permitted in single-family residential areas too, but that doesn't make all restaurants compatible with all neighborhoods. This restaurant, as proposed, would destroy one of the primary amenities of this particular residential neighborhood.

For the above reasons, the City sustains the appeal and denies the requested conditional use application.

PASSED BY THE FLORENCE CITY COUNCIL this _____ day of December, 1987.

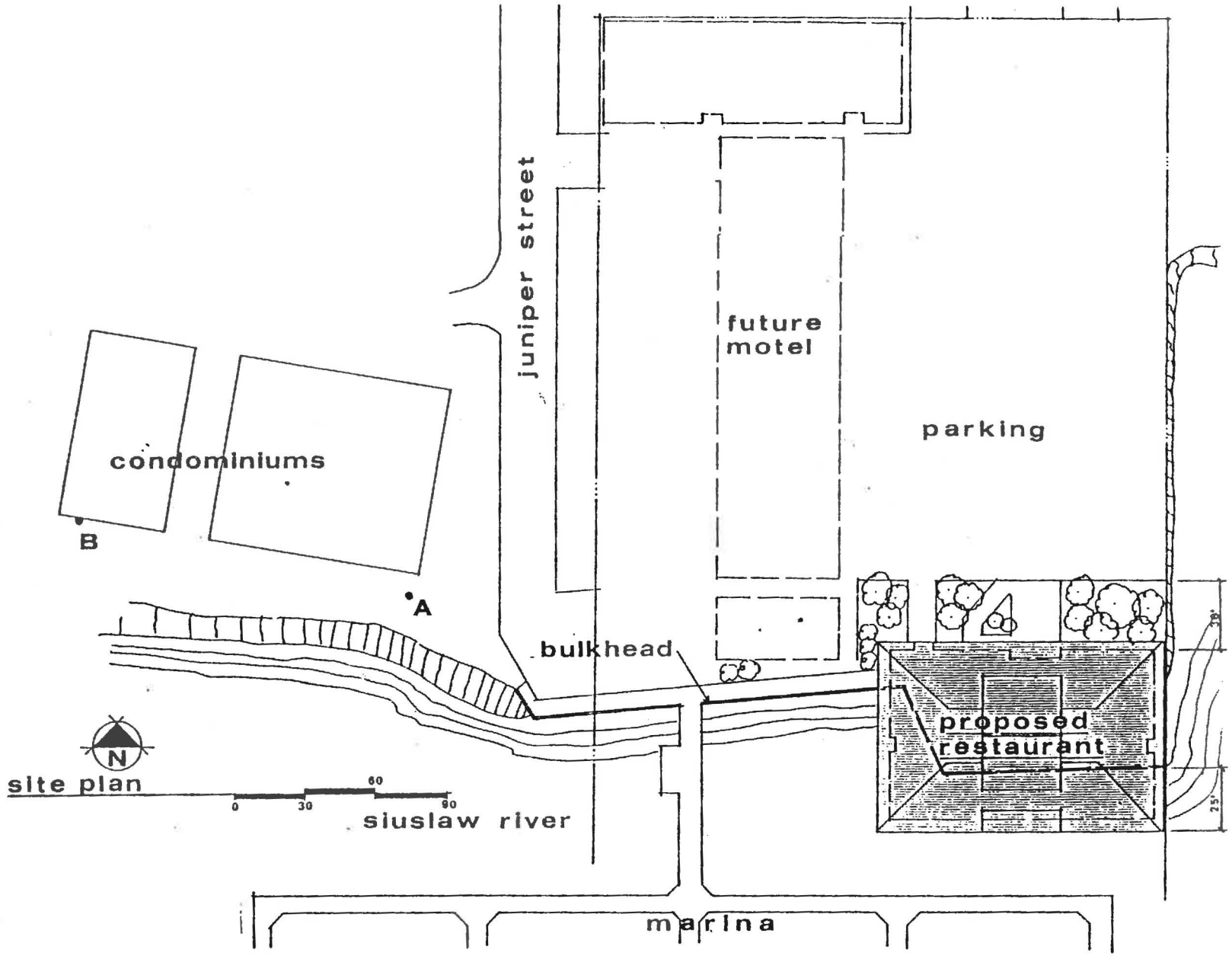
_____

Wilbur Ternyik, Mayor

Ayes:

Nays:

Abstentions:


juniper street
future motel
parking
condominiums
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A
bulkhead
proposed restaurant
N
site plan
0
30
60
90
siuslaw river
marina
30'
25'

ORDINANCE NO. 3 SERIES 1988

AN ORDINANCE AMENDING TITLE 10, CHAPTER 19 OF THE FLORENCE CITY CODE RELATING TO ESTUARY AND SHORELANDS CONDITIONAL USE CRITERIA AND DECLARING AN EMERGENCY

THE CITY OF FLORENCE ORDAINS AS FOLLOWS:

Section 1. Subsection 10-19-1-C-3 Natural Estuary District (NE) Conditional Uses, criteria are hereby amended to read and provide:

3. Uses:

a. Riprap and associated minor fills.

Criteria and Conditions:

a. The use is required to protect man-made structures existing prior to October 7, 1977 or critical wildlife habitat in adjacent shorelands areas as identified in the Florence Comprehensive Plan, public or private roads, bridges, or railways, or public access.

Section 2. Subsection 10-19-2-D-3 Conservation Estuary District (CE) Conditional Uses, criteria are hereby amended to read and provide:

3. Uses:

a. Boat launching ramps.

b. Public beaches requiring estuarine modification.

c. Minor dredging to improve navigability.

Criteria and Conditions:

a. No estuarine location is required.

b. No alternative locations exist which are designated as "development" in the Florence Comprehensive Plan.

c. Adverse impacts on resources are minimized. These resources are as identified in the Florence Comprehensive Plan.

d. No alternative shoreland location exists for the portions of the use requiring fill.

e. Dredge or fill is permitted only where consistent with resource capabilities of the area and the purposes of the management unit.

4. Uses:

a. Bridge crossing support structures.

Criteria:

a. An estuarine location is required.

b. No alternative locations exist which are designated as "development" in the Florence Comprehensive Plan.

c. Adverse impacts on identified resources are minimized. These resources are as identified in the Florence Comprehensive Plan.

d. Other requirements of this section are met.

5. Uses:

a. Erosion control structure, including, but not necessarily limited to seawalls, bulkheads, groins and jetties.

Criteria:

a. An estuarine location is required.

b. No alternative locations exist which are designated as "development" in the Florence Comprehensive Plan.

c. Adverse impacts on resources are minimized. These resources are as identified in the Florence Comprehensive Plan.

d. No alternative shoreland locations exist for the portions of the use requiring fill.

e. The use being protected is water dependent, a structure existing prior to October 7, 1977, public or private roads, bridges or railways, or public access ways.

f. Adverse impacts on water currents, erosions and accretion patterns are minimized as much as feasible.

g. Nonstructural solutions are inadequate to protect the use.

6. Uses:

a. Active estuarine restoration, involving dredge or fill.

Criteria:

a. Adverse impacts on identified estuarine resources are minimized.

7. Uses:

a. Riprap and associated minor fills to protect pre-existing structures or specified values.

Criteria:

a. The use is required to protect man made structures existing prior to October 7, 1977 or critical wildlife habitat in adjacent shorelands as identified in the Florence Comprehensive Plan, public or private roads, bridges,or railways, or public access.

b. Natural bank stabilization measures are inadequate.

8. Uses:

a. Recreational use marinas requiring dredge or fill.

b. Agriculture requiring dredge and/or fill.

Criteria and Conditions:

a. An estuarine location is required.

b. No alternative locations exist which are designated as "development" in the Florence Comprehensive Plan.

c. Adverse impacts on resources are minimized. These resources are as identified in the Florence Comprehensive Plan.

d. No alternative shoreland locations exist for the portions of the use requiring fill.

e. The use is consistent with the resource capabilities of the area and the purposes of the management unit.

E. Additional criteria required for projects involving dredging or fill: Any use or activity permitted herein which requires dredging or filling of the estuary must meet the following criteria:

1. The use is water-dependent, except where criteria of ORS 541.625(4) are met.

2. An estuarine location is required.

3. No alternative upland locations exist.

Section 3. Subsection 10-19-3, Development Estuary District (DE), Conditional Uses criteria are hereby amended to read and provide:

1. Uses:

Flood and erosion control structure, including, but not necessarily limited to, jetties, seawalls, groins and bulkheads.

Criteria and Conditions:

a. The criteria require for projects involving dredge or fill herein are met.

b. The structures are deigned and sited to minimize erosion and man-induced sedimentation in adjacent areas.

c. The structures are designed and sited to minimize adverse impacts on water currents, water quality and fish and wildlife habitat.

d. The use or uses to be protected by the proposed structures are water-dependent, public or private roads, bridges, or railways, or public access.

2. Uses:

Riprap and associated minor fills to protect man made structures existing prior to October 7, 1977, public or private roads, bridges or railways, or public access.

Criteria and Conditions:

a. Natural bank stabilization measures are inadequate.

3. Uses:

Other uses which do not require dredging or filling.

Criteria:

a. The use will not irrevocably limit future use of the area for water dependent commercial, industrial or public facilities.

b. The use will have minimal impact on resources, as identified in the Florence Comprehensive Plan, in the area affected by the proposed use.

4. Uses:

a. Low intensity recreation which is water-dependent.

b. Scientific and educational observation.

c. Active estuarine restoration.

d. Aquaculture.

e. Communication facilities.

f. Bridge crossing support structures.

Criteria and Conditions:

a. The criteria specified herein are met for any use or activity requiring dredge or fill.

5. Uses:

a. Any uses specified hereinabove which involve dredging or filling of the estuary, except those listed in paragraph C herein which are reviewed administratively.

Criteria:

a. The criteria required for projects involving dredge or fill in subsection E herein.

E. Additional criteria required for projects involving dredging or fill: Any use or activity permitted hereinabove which requires dredging or filling of the estuary must meet the following criteria:

1. The use is water-dependent, except where criteria of ORS 541.625(4) are met.

2. An estuarine location is required.

3. No alternative upland locations exist.

4. Adverse impacts on identified estuarine values are minimized.

5. Mitigation requirements of ORS 541.605 to 541.695 are met.

Section 4. Subsection 10-19-5, Shorelands Mixed Development District, (MD), Conditional Use Criteria, is amended to read and provide:

1. Uses:

a. Artificial bank stabilization.

Criteria:

a. Natural erosion processes are threatening structures existing as of October 7, 1977, or is required to protect a water-dependent use, public or private roads, bridges or railways, or public access.

b. Natural bank stabilization methods are deemed unfeasible or less appropriate.

Section 5. That the matters contained herein concern the public health, welfare and safety and therefore, an emergency is hereby declared to exist, and this Ordinance shall become effective immediately upon its passage by the Council and approval by the Mayor.

ADOPTED BY THE FLORENCE CITY COUNCIL, this 9th day of February 1988.

AYES: 5
NAYS: 0
ABSTAIN: 0
ABSENT: 0

APPROVED BY THE MAYOR, this 9th day of February, 1988.

Wilbur Ternyik, MAYOR

ATTEST:

Jon Taylor, CITY RECORDER

Jacob Foutz

From: Frank Armendariz <f.armendariz@icloud.com>
Sent: Friday, January 3, 2025 6:17 PM
To: Planning Department
Subject: 1150 Bay Street

Follow Up Flag: Follow up
Flag Status: Flagged

Frank Armendariz
1285 8th Street
Florence Oregon 97439

Dear Planning Commission Members,
Happy New Years & thank you for your consideration.

Regarding RESOLUTION PC 24 29 CPA 01 & PC 24 41 TA 02 - 1150 Bay St. COMP Plan & Zone Change.

Although in a general way, I see the need for additional housing opportunities in Florence. I also see several downsides and better alternatives, that I believe require your consideration. Before the matter of 1150 Bay Street is passed on to the City Council.

First I would ask the Commissioners to recommend to the Council. To maintain the current zoning as commercial. Also to consider that the space at 1150 Bay Street would be better suited to advance the entire communities goal of sustainability and economic opportunity for all of its citizens.
That I believe would be far better served by the development of a pedestrian friendly space. Built to accommodate additional retail shops, eateries and possibly a food cart pavilion. Designed in a manner that would forever grant the public's access to the riverbank and the view of what is a public asset and community resources. The Siuslaw River and Siuslaw River Bridge.

Of which I am certain committee members are fully aware.... that the Bat St. property is the only location from where the view of the Siuslaw River Bridge. Considered to be one of the most beautiful and iconic bridges on the Oregon coast. Is fully visible from the west side of Highway 101.

A "view" that should be preserved for not only the citizens of Florence. But could also serve as an enticement to the 31.5 million other people that annually travel from all over the world. Visiting the Oregon coast, to stop/shop/and eat in Florence....

Or, require a plan that would allow for both. The development of private homes but ensures public access to the river bank and the view of the public resources that are now visible.

Commissioners, it would not only be a shame, but also not in the best interest of most of the citizens of Florence. To lock that view scape up behind what essentially would be the privatization of a public asset. Which is the view of the Siuslaw River and the beautiful Siuslaw River Bridge.

Sincerely,
Frank Armendariz
Who guides on the rivers of the great state of Oregon...

Planning Board 12/30/24
City of Florence Oregon
re:24 29 CPA 01

We are owners of Bay Bridge condo #3 and wish to bring to your attention:

1) As shown on the photograph attached to the mailed notice, the zoning change would allow development INTO the river well past the shoreline. If this is anything but a wharf with no structures, that and the development upto the shore will impact the view north from my unit (and most if not all others in the existing Bay Bridge complex). One of the points of sale for a Bay Bridge condo unit was that you can see the Bay Bridge.
2) No noise restrictions are outlined for the development zoning
3) The lights from the South side of the development should be equal to or less than the existing light pollution .
4) The decor of the development should fit in with “Old Town” and minimally conflict with the adjacent large condo décor.

With the above details considered and with a quality construction on that site, I believe property values might be enhanced for us all. Please try to ensure that this project doesn't decrease property values in our area.

Stewart Brown
Gail Altimari-Brown

1060 Bay St #3
Florence , OR 97439