

**Agenda**  
Shady Cove Regular City Council Meeting  
Thursday, October 7, 2021  
6 PM

<https://us02web.zoom.us/j/88289859911?pwd=NUZJM1FpRXgyMnZlbkpZVlkwMThUQT09>

Meeting ID: 882 8985 9911

Passcode: 407430

One tap mobile

+13462487799,,88289859911#,,,,\*407430# US (Houston)

+16699006833,,88289859911#,,,,\*407430# US (San Jose)

**I. Call to Order**

- A. Roll Call
- B. Pledge of Allegiance
- C. Announcements by Presiding Officer

- 1. This meeting is being digitally recorded.
- 2. The next regularly scheduled meeting of the City Council will be held on October 21 at 6 PM, both in Council Chambers and via Zoom.
- 3. The next regularly scheduled meeting of the Planning Commission is October 14 at 6 PM, both in Council Chambers and via Zoom.
- 4. The next meeting of the Parks and Rec Commission is not scheduled at this time.
- 5. The next meeting of the Emergency Management Commission is yet to be decided.
- 6. Public may comment on agenda items - Public must state name, address and standing to discuss an issue. Issues must have a City-wide impact and not be personal issues. Depending on number of comments and time constraints, Council may limit the amount of time to 3 minutes per speaker.
- 7. These meeting dates and times are subject to change.

**II. Public Hearing (pgs 4-81)**

Public Hearing to Consider a Request for an after the fact Floodplain Development Permit for a pedestrian bridge constructed in the Special Flood Hazard Area in the Low Density (R-1-20) zone (and associated Riparian Permit for ongoing vegetation control within the riparian protection corridor) for property located at 128 Penny Lane, Shady Cove Oregon. Said parcel is legally described as 34-1W-21AA, Tax Lot 2600 and is currently zoned R-1-20 (Low Density Residential).

- Read Public Hearing Open Statement.
- Jurisdiction Question.
- Conflict of Interest.
- Staff Comments. (Ryan Nolan)
- Proponent's Testimony/Council Questions.
- Opponent's Testimony/Council Questions.
- Final Staff Comments.
- Close/Continue Hearing.

**III. Public Hearing (pgs 82-94)**

Public Hearing to Consider an appeal of the Planning Commission Denial of a Request for a Variance to Section 154.200 requiring rear yard setbacks be at least 15 feet in the Low Density (R-1-20) zone for property located at 80 Mason Lane, Shady Cove Oregon. Said parcel is legally described as 34-1W-16DB, Tax Lot 903 and is currently zoned R-1-20 (Low Density Residential).

- Read Public Hearing Open Statement.
- Jurisdiction Question.
- Conflict of Interest.
- Staff Comments. (Ryan Nolan)
- Proponent's Testimony/Council Questions.
- Opponent's Testimony/Council Questions.
- Final Staff Comments.
- Close/Continue Hearing.

**IV. Public Comment on Agenda Items**

**V. Consent Agenda (pgs 95-100)**

- A. Bills Paid Report 8/24/21-9/7/21, \$ 18,621.30
- B. Bills Paid Report 9/8/21-9/29/21, \$ 20,843.96
- C. Minutes of 090221

**VI. Items Removed from Consent Agenda**

**VII. Staff Reports**

- A. Jackson County Deputy
- B. Fire Chief Winfrey, FD4
- C. Commissions/Committees
- D. City Administrator

**New Business**

- A. Appointments to Planning Commission (pgs 101-104)
- B. No Parking Street Designations (pgs 105-114)
- C. Public Safety Fee (pgs 115-134)
- D. SDC Time Limits (pgs 135-147)
- E. Weed Abatement Future Timelines (pg 148)
- F. Contract Bids
- G. Bridge Signing

**VIII. Old Business**

None

**IX. Written Communication**

**X. Public Comment on Non-Agenda Items**

**XI. Council Comments on Non-Agenda Items**

- A. Mayor Tarvin
- B. Councilor McGregor
- C. Councilor Nuckles
- D. Councilor Evertt

**Adjournment**

**CITY OF SHADY COVE  
PUBLIC HEARING OPENING  
STATEMENT/RULES OF CONDUCT  
CITY COUNCIL / QUASI-JUDICIAL HEARINGS**

We are holding a Public Hearing during this meeting. The Hearing will be digitally recorded.

This Hearing shall be conducted in accordance with the land use procedures required by the Shady Cove Comprehensive Plan and applicable ordinances, as well as those of the State of Oregon. The decision of the Council will be final, unless appealed to the Oregon State Land Use Board of Appeals.

For all hearings, the applicable criteria are listed on the printouts available on the table. These are the criteria that the Planning Commission had used in making a decision. All testimony and evidence must be directed toward these criteria or others as applicable in the Comprehensive Plan or land use regulation which the person testifying believes to be relevant to these hearing issues. When offering testimony, please relate your presentation to the listed criteria.

Failure to raise an issue accompanied by statements or evidence sufficient to afford the City Council and the applicants an opportunity to respond to the issue, shall preclude appeal to the Oregon State Land Use Board of Appeals based on that issue.

If additional documents or evidence are provided by any party, the Council may allow any party involved in the hearing a continuance of the hearing, or they may leave the record open, to allow the party a reasonable opportunity to respond.

Any participant may request, before conclusion of the evidentiary hearing, an opportunity to present any additional evidence or testimony. The Council shall grant the request by either continuing the public hearing—to a date, time and place certain, at least seven (7) days from the date of the initial evidentiary hearing—or by leaving the record open for at least seven (7) days for additional written evidence or testimony.

If the hearing is continued and new written evidence is submitted at the continued hearing, any person may request, prior to the conclusion of the continued hearing, that the record be left open for at least seven (7) days to submit additional written evidence or testimony in response to the new written evidence.

If the Council chooses to leave the record open rather than continue the hearing, any participant may file a written request to reopen the record to respond to any new evidence submitted while the record was left open. The applicant is allowed at least



seven (7) days, after the record is closed to all other parties, to submit final written arguments—but no new evidence—in support of the application.

For this hearing, the following procedures shall be followed:

- ♦ City staff will describe the proposal and summarize its proposed findings.
- ♦ The Applicant shall present evidence and argument demonstrating why the application should be approved.
- ♦ All **Proponents** may present evidence and argument.
- ♦ All **Opponents** may present evidence and argument.
- ♦ Due to the applicant's responsibility of demonstrating why the application should be approved, the applicant may respond to any opposing testimony, but no **new** evidence will be accepted, as there is no further opportunity for the opponents to speak.
- ♦ If the Council decides that all necessary evidence has been presented, the hearing will be closed. If the Council decides it needs more information, the hearing will be continued to a specified place, date and time.

Each person offering comments during this hearing must state his or her name and address, and place themselves into Question and Answer Mode. We wish to hear from everyone who is interested in the proposal. However, we request that you do not infringe on someone else's speaking time by repeating evidence already provided.

Because the applicant has the burden of demonstrating that the application should be approved, the applicant, including consultants, will be allowed fifteen (15) minutes to present their case. All other persons testifying in support shall have three (3) minutes. A group of opponents can select a spokesperson to speak for no longer than 15 minutes. All other persons testifying in opposition shall have three (3) minutes. The applicant will then have five (5) minutes for rebuttal. Any time spent answering questions from the Council will not be considered as part of the speaker's allotted time.



**Type III Staff Report**  
**Floodplain Development Permit/Riparian Application**  
**Pedestrian Bridge at 128 Penny Lane/  
Ongoing Vegetation Maintenance**

Date: September 22, 2021

Description of Property: 34-1W-21AA, Tax Lot 2600

Address: 128 Penny Lane, Shady Cove Oregon

Planning Application: FPA 21-02/Riparian Permit

Owner/ Applicant: Michael Kretzer

Proposal: Receive after the fact approval for the placement of a pedestrian bridge across a portion (branch arm) of the Rogue River, and riparian permit for ongoing vegetation maintenance.

Zoning: Low Density Residential R-1-20

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Public Hearing Date: October 7, 2021

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In accordance with Section 151.009 development within a Special Flood Hazard Area requires a permit prior to construction and any development requiring an engineering analysis shall be heard through a quasi-judicial land use hearing. Due to the length of time already spent handling this unpermitted development the City has elevated the review to the City Council for determination.

Chapter 151 of the City of Shady Cove Code of Ordinances outlines the requirements for development within the identified Special Flood Hazard Area. Similarly, Ordinance 279 adopted June 16<sup>th</sup>, 2016 outlines the City's Riparian Corridor Protection standards. According to the applicant a pedestrian bridge was placed across a small branch arm of the Rogue River at 128 Penny Lane. The applicant was not aware that permits were required for the bridge construction. The applicant has applied for an after the fact approval of a temporary pedestrian bridge, and ongoing vegetation maintenance within the Riparian Protection Corridor.

While Section 151.046 allows temporary encroachments in the floodway, there are very specific criteria by which the City can approve these temporary encroachments. The temporary encroachment must be for the purpose of a Capital Improvement Project, the encroachment is limited to the length of the development permit associated with the project, a flood warning system must be implemented to warn potentially affected downstream property owners, the applicant must accept liability for flood damage downstream in writing, and a professional engineer must provide a 'no-rise' analysis, an agreement to monitor the project and correct problems must be included, and the encroachment must comply with all provisions of the flood hazard reduction section of the code of ordinances.

The existing bridge does not meet any of these criteria, and all are required for approval.

Section 151.027 outlines what a complete application for development in the Special Flood Hazard should include. Section 151.046(A) requires an engineer analysis for any

development in the floodway. Section 151.047(A)(1) requires that any structure be properly anchored, while Section 151.048(A)(2) requires that construction materials be resistant to flood damage. The application additional information but not a complete engineer analysis yet. A complete application would include all information required in Section 151.027, 151.047, and 151.048.

In addition to the Flood Hazard Reduction Code Section, the bridge needs to be reviewed under the Riparian Protection Ordinance as well.

Section II(B) describes the riparian protection corridor as an area 75 feet upland from the top of bank. As the bridge is built from bank to bank of the small channel of the Rogue River it is within the Riparian Protection Corridor. Section III (B) states that private paths are allowed in the Riparian Protection Corridor. However, Section III (C) states that structures are prohibited unless they are replacement structures or include evidence that the final development provides increased riparian protection. This is not a replacement structure, and no evidence has been presented to describe the impact on riparian areas.

All applications, in accordance with Section IV (C) are to be referred to Oregon Department of Fish and Wildlife for recommendation. ODF&W have submitted tentative comments, but final comments will await final application materials.

The application asks for after the fact approval of a pedestrian bridge built in the special flood hazard area and riparian protection corridor. The application does not yet include engineering review to include a no rise analysis as required.

The applicant has also requested approval of area wide vegetation maintenance. Section III (B)(9) allows perimeter mowing and fire hazard prevention maintenance so long as the vegetation control is approved through an application.

Staff points out that the City Council may choose to approve the application if they feel that the criteria of Chapter 151 and Ordinance 279 are being met.

Staff suggests that a more appropriate choice for the City Council would be to continue the hearing to a specific date and time to allow the applicant time to prepare a complete application incorporating all requirements of Section 151.027, 151.046, 151.047, 151.048, and Section IV (A-C) of Ordinance 279.

The City Council could also choose to deny the application as it does not contain sufficient evidence to determine that the criteria of Chapter 151 or Ordinance 279 are met.

The decision of the City Council is the final decision of the City.

Respectfully submitted this 22<sup>nd</sup> day of September, 2021.



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Ryan Nolan, City Planner

Staff Report FPA 21-02

128 Penny Lane

09/22/2021

Date 4/20/21 Amount \$ 915,275.00 Check # 1871 FPA 21-02(R) Receipt # 27167

**City of Shady Cove** Riparian /  
**Floodplain Development Permit Application**

**OFFICE USE ONLY**

☐ No-Rise ☐ Attachments ☐ Special Conditions  
☐ Approved ☐ Denied

**Property Information (for office use only)**

Address: 97539  
128 Penny Ln, Shady Cove, Or

Map and Tax Lot #: 34-1W-21 AA 2600  
FIRM Panel:

**Applicant Information (property owner on current deed of record)**

First & Last Name: Mike Kretzer

Phone: 530 262-4700

Street Address: 128 Penny Ln.

Cell phone:

Mailing Address: Shady Cove Or. 97539

E-Mail: coolbybend@gmail.com

**Project Information**

Project Description (please be specific, attach pages if necessary):

See attached documentation

**Section A: Structural Development (check all that apply)**

Type of Structure	Type of Structural Activity
Residential (1 to 4 families)	New structure
Residential (more than 4 families)	Demolition of existing structure
Combined use (Residential and Non-residential)	Replacement of existing structure
Non-residential	Relocation of existing structure
Elevated	<input checked="" type="checkbox"/> Addition to existing structure
Floodproofed (attach certification)	Alteration to existing structure
Manufactured Home	Other:
Located on individual lot	
Located in manufactured home park	

**Section B: Other Development Activities (check all that apply)**

Clearing of trees, vegetation or debris	Grading
Connection to public utilities or services	Mining
Drainage improvement (including culvert work)	Paving
Dredging	Placement of fill material
Drilling	<input checked="" type="checkbox"/> Roadway or bridge construction
Fence or wall construction	Watercourse alteration (attach description)
Excavation (not related to a structured development listed in Section A)	
Other development not listed (specify)	

**Signature**

By signing below I agree to the terms and conditions of this permit and certify to the best of my knowledge the information contained in this application is true and accurate.

Michael Kretzer  
PRINTED name

[Signature]  
SIGNED name

4-13-2021  
Date

PRINTED name

SIGNED name

Date

\*If the value of an addition or alteration to a structure equals or exceeds 50% of the value of the structure before the addition or alteration, the entire structure must be treated as a substantially improved structure. A relocated structure must be treated as new construction.

Inspection - The Floodplain Manager is authorized by the jurisdiction and applicant to make all of the required inspections; in addition the floodplain manager shall have the authority to accept reports of inspections by approved agencies or individuals. Reports of such inspections shall be in writing. The floodplain manager is authorized to engage such expert opinion as deemed necessary to report upon unusual technical issues that arise.

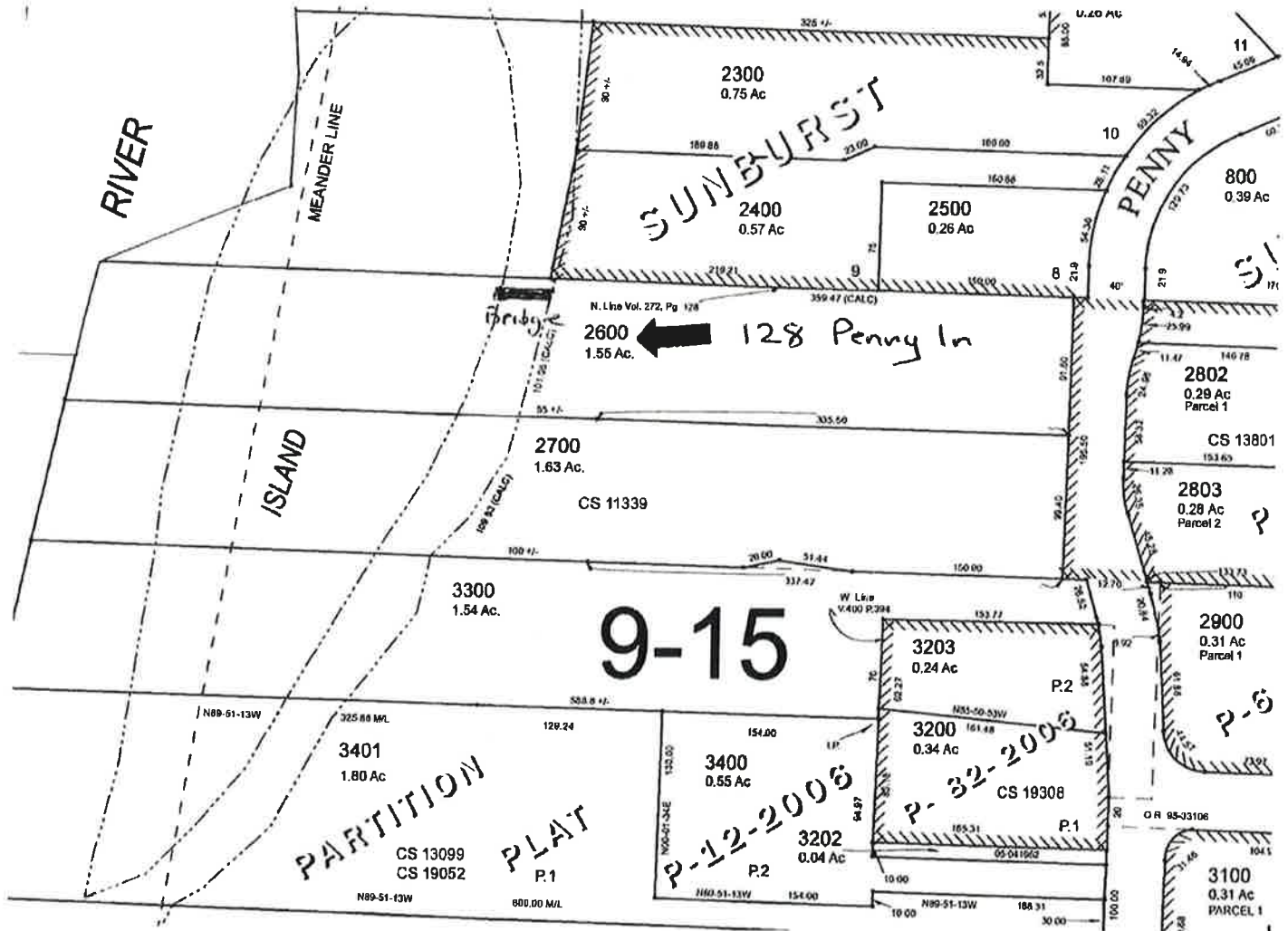
Expiration of permit - The permit issued shall become invalid unless the work authorized by such permit is commenced within 180 days after its issuance, or if the work authorized by such permit is suspended or abandoned for a period of 180 days after the time the work is commenced. The floodplain manager is authorized to grant one extension of time for a period of not more than 180 days. The extension shall be requested in writing and justifiable cause demonstrated.





**TICOR TITLE™**

**Map & Tax Lot: 34-1W-21-AA-02600**



**JACKSON COUNTY**  
1555 E. McAndrews Road, Ste. 100  
Medford, Oregon 97504  
P: 541-779-2811 F: 541-772-6079  
[or-tic-medfordtitle@ticortitle.com](mailto:or-tic-medfordtitle@ticortitle.com)

**JOSEPHINE COUNTY**  
744 NE 7th Street  
Grants Pass, Oregon 97526  
P: 541-476-1171 F: 541-476-1174  
[or-tic-grantspass@ticortitle.com](mailto:or-tic-grantspass@ticortitle.com)

This print is made solely for the purpose of assisting in locating the premises, and the Company assumes no liability for information printed on this map, including but not limited to zoning, variations (if any) in area, actual dimensions, and locations as determined by survey.

## **Project Description**

The property on 128 Penny Ln. Shady Cove, Or. is unique as are the three other properties downstream that are split off from the Rogue River by a small offshoot to create an island. See *attached site map*. This small offshoot can be difficult to cross depending on one's physical condition or the water level, flow speed, or the moss buildup on the rocks. Effectively we have Rogue River front property without reasonable access for the enjoyment of said property. My wife and I are in our late sixties now with bad knees and hips. Her mother lives with us four months out of the year. She is 89 and restricted to a wheelchair. Our next-door neighbors on site 2700, Carl and Peggy Wheeler are in the mid 70's with serious disabilities. They contributed apx 50% of the material costs so they could access the river. Another neighbor, Vietnam medical officer, Bill McClenahan, on site 2300 has lost over 1/3 of his foot to cancer and is now restricted to using a cane.

To mitigate this difficulty in access we needed a safe stable means to cross this waterway. Considerable thought went into the design of the bridge in question. First and foremost it could not in any way interfere with the natural flow of the river and had to allow for safe navigation of drift boats, rafts, or kayaks although it is rare that this minor split off is used for that purpose. It could not impact wildlife natural to the island. It would not be used to alter the natural habitat, i.e., vegetation, trees, ground. To mitigate against an extreme flood scenario

the bridge was constructed to be quickly disassembled, no more than three hours. It is built in sections that are easily dismantled with nothing more than a cordless drill. A section, as highlighted in the picture below, consists of four 2X6X5 deck boards attached to a 4X6X3 wide trust connected to ¼" cables attached to the bridge main cables. The dismantle process is as follows:

- Starting from the highlighted end of the bridge, remove deck boards from trust by removing the wood screws.
- Slide the trust back toward the next section. Note that trusts are clipped to the main cable and move freely after detaching them from the deck boards.
- Repeat this process until all deck boards are removed.
- Unclip the trusts from the main cables to be stored.
- Move the lower bridge main cables to the top eye bolt attachment. Disconnect the resistant cables and store. All main cables are now 4' above the bank well above a major flood event.
- To reassemble, reverse process.



This picture of the bridge was taken at high water level. There is apx 4' clearance at the lowest point. Note that the bridge does not interfere with the natural flow of the river despite its high level. Attempting to wade across the waterway at this level would be dangerous if not impossible.

### **Bridge specifications/design**

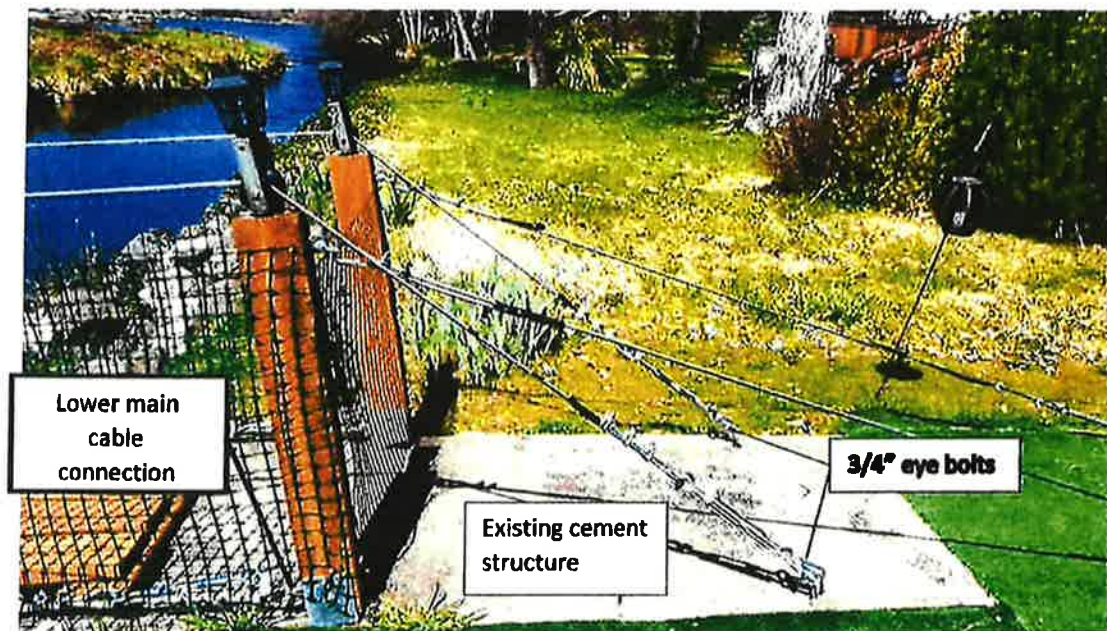
55' span

4 – ½" 6X19 cables rated at 15,000 lbs, 2 upper and 2 lower providing the bridge support.

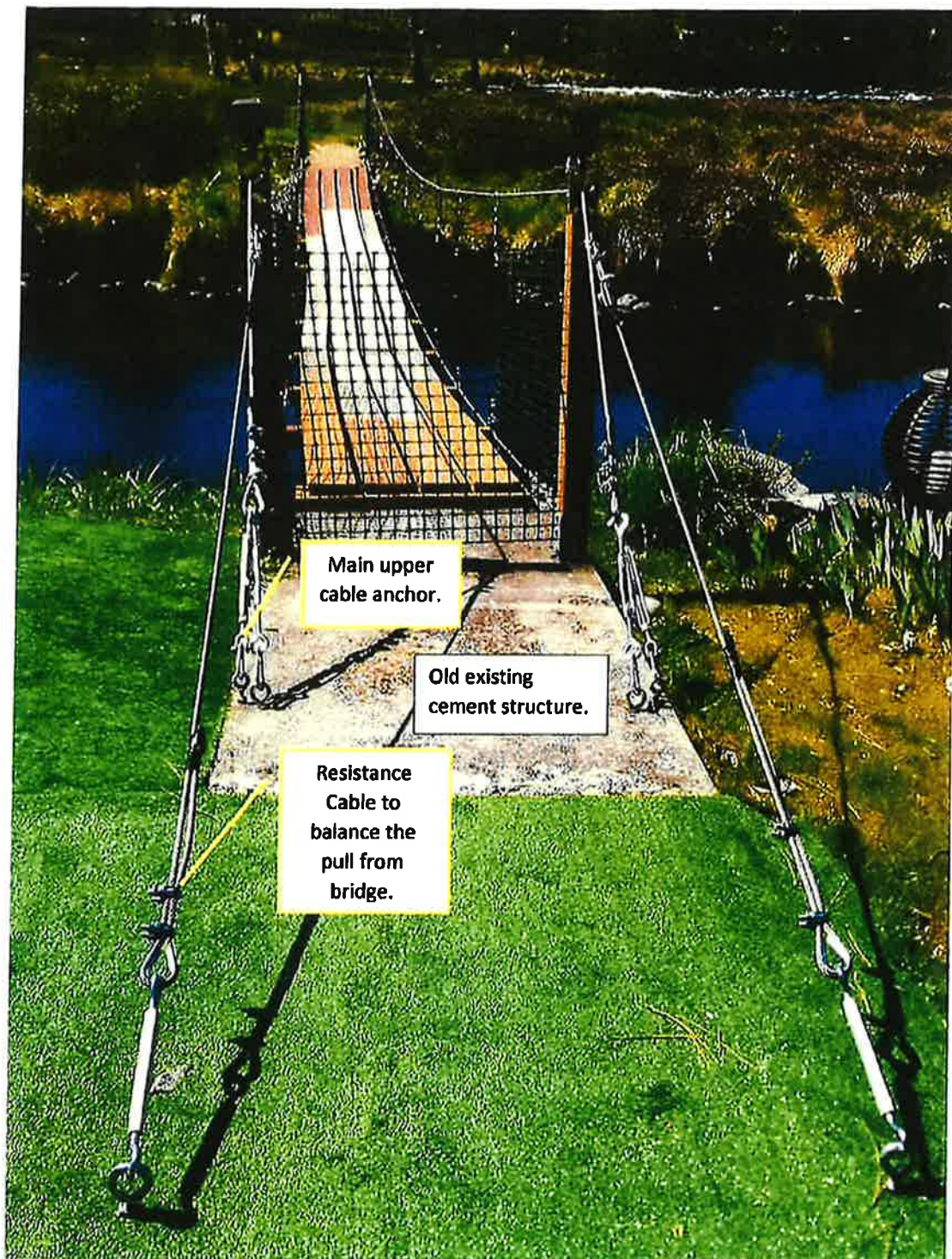
The 1/2" cables are attached to ¾" eyebolts using ¾" redundant turnbuckles (2 for each cable to improve safety). The cables are supported on the mainland side by 4X6 treated wood and 2" steel pipe filled with concrete on the island side. The 4X6 vertical structures are attached to an existing cement pad that is old. At least 25 to 30 years or more. This proved to be the logical place to erect the bridge to minimize any new fill on the bank. The 2" pipe structures are cemented on the island side. Apx. 180 lbs of cement per pipe anchor them in the ground. Another 1,500 lbs of cement serve as a cap to stabilize the pipes. These vertical structures have 1/2" cable as counter pull to the main cables to maintain bridge integrity and stability. Upper cables and counter pull cables on mainland side are attached to the existing cement pad using ¾" eyebolts cemented into the pad. The lower cables on the mainland side



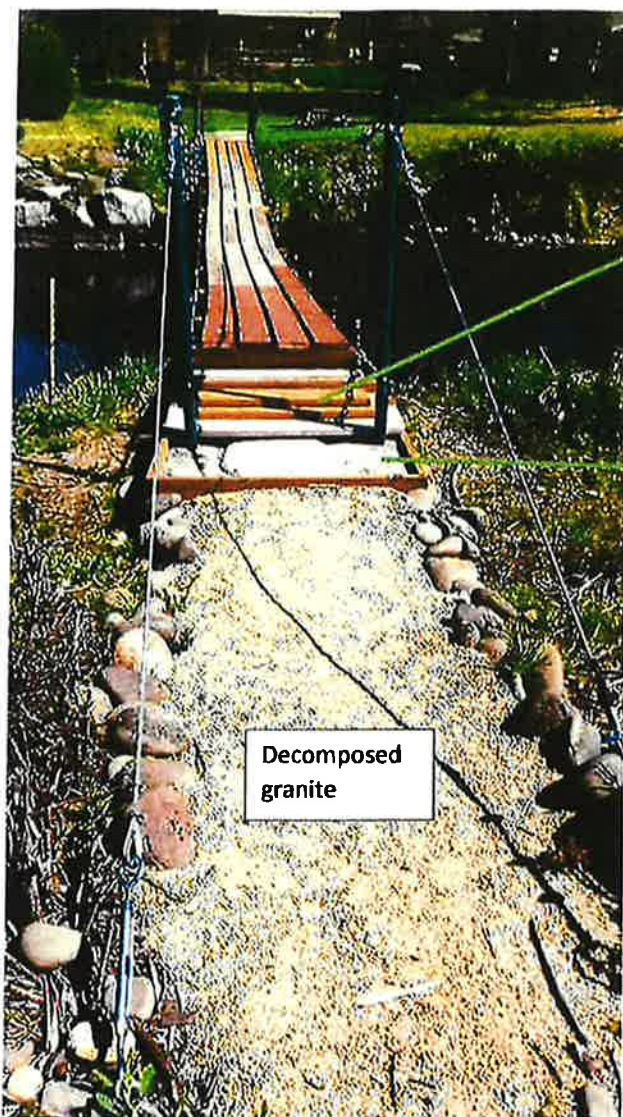
are attached to 4X6 structures as seen below. The counter cables on the island side are attached to  $\frac{3}{4}$ " eyebolts cemented into the ground.











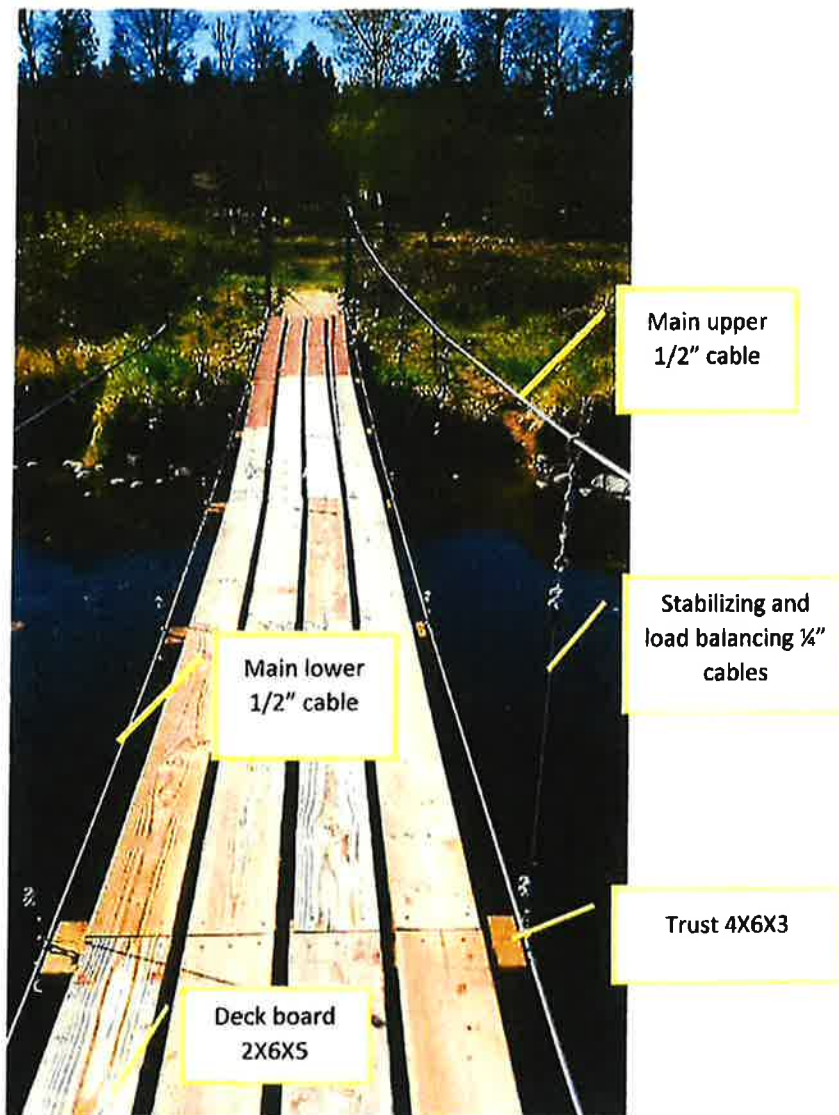
Tiered steps for  
handicap

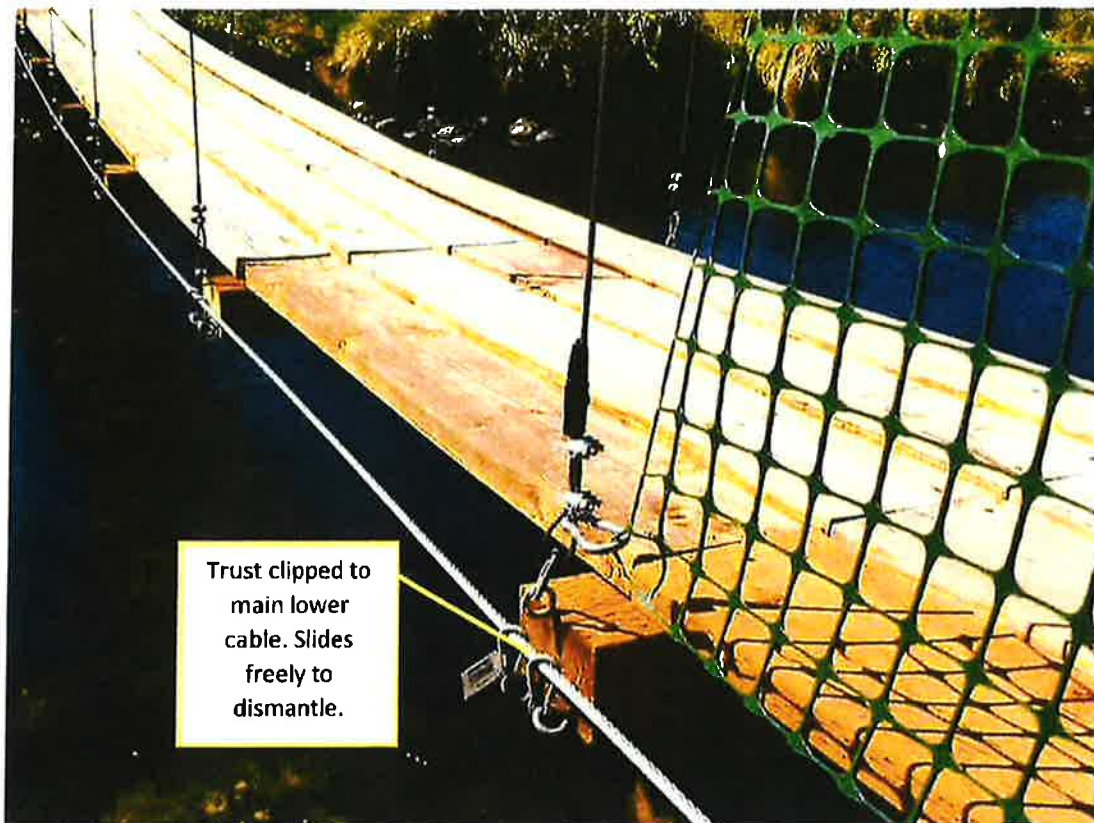
Bridge footing  
island side. Apx  
4X5 feet.

Decomposed  
granite

$\frac{1}{4}$ " cables are attached to each side of the trust which is in turn is attached to the upper main cable. This provides additional stability and balance of load while crossing.

Each trust is attached with clips to the lower cable to counter sway and balance the load. This creates a stable structure to cross despite physical handicap.





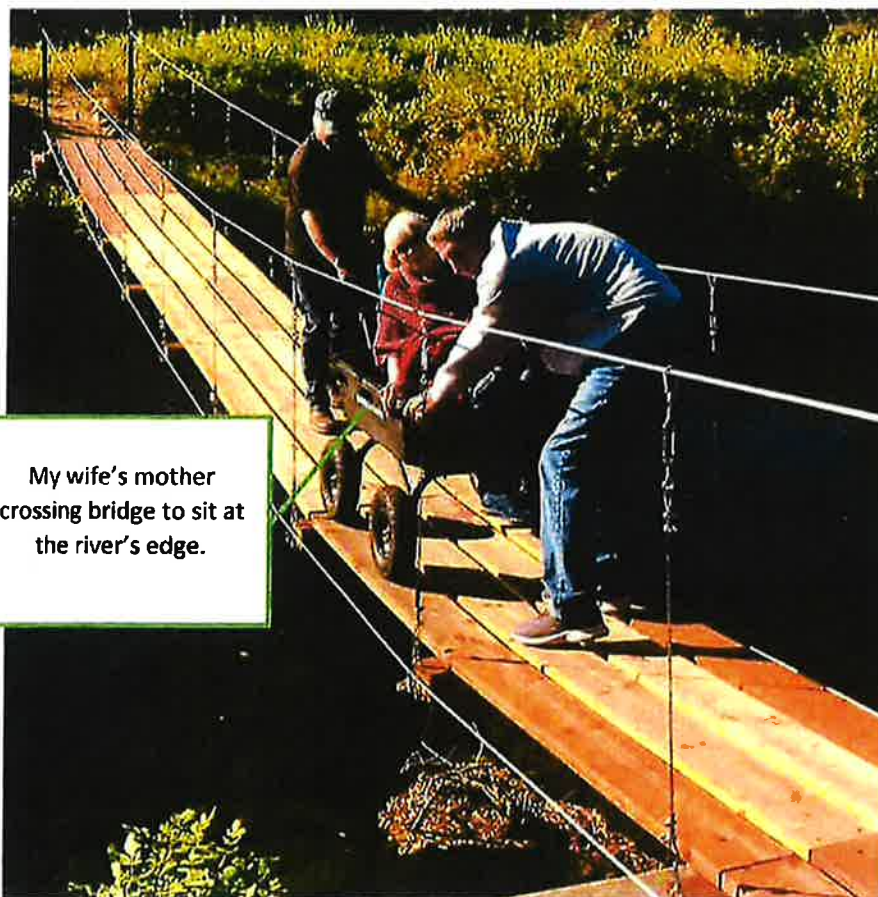
## Parts list

Materials	Qty
<b>Suspension cable construction</b>	
1/2" X 250', 6x19, IWRC Galvanized Wire Rope Reel	1
Wire Rope 1/4 Galvanized 1,400 lb (Qty - feet)	100
1/2" Heavy Duty Wire Rope Thimble	8
1/2" Drop Forged Wire Rope Clip	24
Jaw/Eye Turnbuckle - 5/8 x 9 in. size Hot Dip Galv. Working load limit: 3500 lbs.	8
1/2" X 6" Galvanized Shoulder Eyebolt	2
2" 8 foot galvanized pipe	
<b>Total for suspension cables</b>	



5/16" X 4-1/2" Galvanized Jaw & Eye Turnbuckle	20
1/4" Zinc Plated Copper Sleeve	20
Tyler Tool 30" Hand Swager	1
1/2" x 3-1/4" Hot Dipped Galvanized Screw Eye Bolt	18
3/16" - 1/4" Hot Dip Galvanized Fist Grip Clip	108
3/8" Cable x 3-1/2" Diameter Flat Mount Block	2
6 X 6 X 8 Treated posts	4
1/4 inch 670 Clevis Grab 3,150 lb	18
2x4 Treated lumber by linear foot	48
2 X 12 X 10 Treated	15
6 X 6 Post Anchor	4

## Testimonial to Bridge Strength and Stability



My wife's mother  
crossing bridge to sit at  
the river's edge.



### **Steps taken to comply with Special Hazard Flood Area –**

- Constructed to not be washed down stream in a flood event.
- Designed to allow free flow of high waters including flood conditions. See dismantling procedures.
- Monitored for debris snagging.

### **Steps taken to comply with Riparian Protection Regulations**

- No alteration or interference with the flow of the water.
- Leveraging existing infrastructure to minimize fill and removal of vegetation on the banks.
- Chose a location not providing natural shade to the water. The bridge is providing that shade that previously did not exist.
- In no way was any wildlife habitat displaced in bridge construction. The bridge has enhanced wild bird habitat including the King Fisher that uses it to fish.
- The mainland side of the bridge is sealed off to prevent critters such as feral cats, racoon, skunk, etc. not natural to the island environment from encroaching on wildlife on the island.
- Great care is being taken to preserve vegetation that protects wildlife species including fish, geese, turkeys, deer, and otters.



- Any disposable material carried on the island is carried off to assure it remains pristine. Materials that have washed up on the island when discovered are removed.
- No toxic materials such as pesticides are transported on this bridge.
- I take responsibility for the integrity, i.e., safety of the bridge including dismantling as required to assure it does not make a flood situation worse.
- I will dismantle the bridge in winter months when I am out of town as a precaution.

U.S. DEPARTMENT OF HOMELAND SECURITY  
Federal Emergency Management Agency  
National Flood Insurance Program

# ELEVATION CERTIFICATE

Important: Read the instructions on pages 1-9.

OMB No. 1660-0008  
Expires March 31, 2012

SECTION A - PROPERTY INFORMATION			
A1. Building Owner's Name <u>MARK RAINY</u>			
A2. Building Street Address (including Apt., Unit, Suite, and/or Bldg. No.) or P.O. Route and Box No. <u>128 PENNY LANE</u>			
City <u>SHADY COVE</u>	State <u>OR.</u>	ZIP Code <u>97539</u>	
A3. Property Description (Lot and Block Numbers, Tax Parcel Number, Legal Description, etc.) <u>TAX LOT NO. 341W 21AA - 2600</u>			
A4. Building Use (e.g., Residential, Non-Residential, Addition, Accessory, etc.) <u>RESIDENTIAL</u>			
A5. Latitude/Longitude: Lat. _____ Long. _____		Horizontal Datum: <input type="checkbox"/> NAD 1927 <input type="checkbox"/> NAD 1983	
A6. Attach at least 2 photographs of the building if the Certificate is being used to obtain flood insurance.			
A7. Building Diagram Number _____			
A8. For a building with a crawlspace or enclosure(s):		A9. For a building with an attached garage:	
a) Square footage of crawlspace or enclosure(s) _____ sq ft		a) Square footage of attached garage _____ sq ft	
b) No. of permanent flood openings in the crawlspace or enclosure(s) within 1.0 foot above adjacent grade _____		b) No. of permanent flood openings in the attached garage within 1.0 foot above adjacent grade _____	
c) Total net area of flood openings in A8.b _____ sq in		c) Total net area of flood openings in A9.b _____ sq in	
d) Engineered flood openings? <input type="checkbox"/> Yes <input type="checkbox"/> No		d) Engineered flood openings? <input type="checkbox"/> Yes <input type="checkbox"/> No	

SECTION B - FLOOD INSURANCE RATE MAP (FIRM) INFORMATION					
B1. NFIP Community Name & Community Number <u>SHADY COVE 410099</u>		B2. County Name <u>JACKSON</u>		B3. State <u>OREGON</u>	
B4. Map/Panel Number <u>0001</u>	B5. Suffix <u>B</u>	B6. FIRM Index Date <u>5-15-02</u>	B7. FIRM Panel Effective/Revised Date <u>9-30-80</u>	B8. Flood Zone(s) <u>A9</u>	B9. Base Flood Elevation(s) (Zone A0, use base flood depth) <u>1380.2</u>
B10. Indicate the source of the Base Flood Elevation (BFE) data or base flood depth entered in item B9. <input type="checkbox"/> FIS Profile <input checked="" type="checkbox"/> FIRM Community Determined <input type="checkbox"/> Other (Describe) _____					
B11. Indicate elevation datum used for BFE in item B9: <input checked="" type="checkbox"/> NGVD 1929 <input type="checkbox"/> NAVD 1986 <input type="checkbox"/> Other (Describe) _____					
B12. Is the building located in a Coastal Barrier Resources System (CBRS) area or Otherwise Protected Area (OPA)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Designation Date _____ <input type="checkbox"/> CBRS <input type="checkbox"/> OPA					

SECTION C - BUILDING ELEVATION INFORMATION (SURVEY REQUIRED)	
C1. Building elevations are based on: <input type="checkbox"/> Construction Drawings* <input type="checkbox"/> Building Under Construction* <input type="checkbox"/> Finished Construction *A new Elevation Certificate will be required when construction of the building is complete.	
C2. Elevations -- Zones A1-A30, AE, AH, A (with BFE), VE, V1-V30, V (with BFE), AR, AR/A, AR/AE, AR/A1-A30, AR/AH, AR/AO. Complete items C2.a-h below according to the building diagram specified in item A7. Use the same datum as the BFE. Benchmark Utilized <u>BM #1</u> Vertical Datum <u>FIRM = NGVD 1929</u> Conversion/Comments _____	
Check the measurement used.	
a) Top of bottom floor (including basement, crawlspace, or enclosure floor) _____	<input type="checkbox"/> feet <input type="checkbox"/> meters (Puerto Rico only)
b) Top of the next higher floor _____	<input type="checkbox"/> feet <input type="checkbox"/> meters (Puerto Rico only)
c) Bottom of the lowest horizontal structural member (V Zones only) _____	<input type="checkbox"/> feet <input type="checkbox"/> meters (Puerto Rico only)
d) Attached garage (top of slab) _____	<input type="checkbox"/> feet <input type="checkbox"/> meters (Puerto Rico only)
e) Lowest elevation of machinery or equipment servicing the building (Describe type of equipment and location in Comments) _____	<input type="checkbox"/> feet <input type="checkbox"/> meters (Puerto Rico only)
f) Lowest adjacent (finished) grade next to building (LAG) <u>1380.5</u>	<input checked="" type="checkbox"/> feet <input type="checkbox"/> meters (Puerto Rico only)
g) Highest adjacent (finished) grade next to building (HAG) <u>1382.0</u>	<input checked="" type="checkbox"/> feet <input type="checkbox"/> meters (Puerto Rico only)
h) Lowest adjacent grade at lowest elevation of deck or stairs, including structural support _____	<input type="checkbox"/> feet <input type="checkbox"/> meters (Puerto Rico only)

SECTION D - SURVEYOR, ENGINEER, OR ARCHITECT CERTIFICATION			
This certification is to be signed and sealed by a land surveyor, engineer, or architect authorized by law to certify elevation information. I certify that the information on this Certificate represents my best efforts to interpret the data available. I understand that any false statement may be punishable by fine or imprisonment under 18 U.S. Code, Section 1001.			
<input type="checkbox"/> Check here if comments are provided on back of form.		Were latitude and longitude in Section A provided by a licensed land surveyor? <input type="checkbox"/> Yes <input type="checkbox"/> No	
Certifier's Name <u>BARY D. KAISER</u>	License Number <u>LS #52923</u>	<div style="border: 2px solid black; padding: 5px; text-align: center;"> <b>REGISTERED PROFESSIONAL LAND SURVEYOR</b>  <b>HERE</b>  <u>Bary D. Kaiser</u>  <b>OREGON</b>  <b>JULY 15, 2003</b>  <b>BARY D. KAISER</b>  <b>No. 52923</b>  <b>EXP. 6-30-11</b> </div>	
Title <u>OWNER</u>	Company Name <u>KAISER SURVEYING</u>		
Address <u>19754 Hwy 62</u>	City <u>EAGLE POINT</u>		
State <u>OR.</u>	ZIP Code <u>97524</u>		
Signature <u>Bary D. Kaiser</u>	Date <u>9-8-10</u>	Telephone <u>541-878-3915</u>	

wlo-info@willamette.edu

To Oregon Land Use Board of Appeals

Date: 08/24/2021

To whom it may concern

I am a private citizen residing in the town of Shady Cove Oregon. I, along with other property owners, have a unique property issue with a side bar tributary breaking off the Rogue River creating an island that effectively cuts us off from the main Rogue River. It is my understanding from longtime residents here that was created in the flood of 1964. See **Exhibit 1**. Some of the landowners are handicap with no ability to wade through 50 feet of swift water over slime covered rocks. At 67 it is very difficult for me to cross this tributary. My wife cannot cross without assistance. My neighbors are far more seriously disabled. The wife is restricted to a wheelchair, her husband is suffering from a bacterial infection that restricts his right foot to a boot. Another neighbor, an ex-vet, has foot cancer. To mitigate this issue, we built a foot bridge on my property at 128 Penny Ln. The location was chosen due to an existing cement pad on the property at the edge of the tributary. This opened the island so that we could enjoy the beauty of the river and all its wildlife. See **Exhibit 2**.

At the time we were not familiar with the Riparian Protection Corridor act, Flood Plain Management, Fish and Wildlife, etc. On a conscious level I built the bridge to be as minimally invasive to the waterway and island as possible. We used an existing cement structure that has been there for years. On the island side we had to displace 28 cu. ft. of dirt and rocks to secure metal poles. A cement slab apx. 4' X 4' was placed around and over the poles to stabilize them. In doing so I did effectively remove a 25 sq. ft. patch of Himalayan blackberry, an invasive species. This is the only vegetation removed. That is important to note as this appears to be at the heart of the RPC complaint that will come in August. For more detailed construction methods of the footbridge see **Exhibit 4 – Response to city complaint**.

The city took exception to the bridge back in March of this year. By then it had been installed for nearly eight months. The city sent a letter on March 30<sup>th</sup> of notice of violation pointing to the Riparian Protection Corridor, FEMA flood plain, Fish and Game, Core of Engineers, etc. See **Exhibit 3**.

The letter was addressed to me so I contacted Ryan Nolan, City Planner, over the phone to get his opinion on how to proceed and to give him some background on why the bridge was built. At that time, he expressed his understanding and advised he felt we could navigate through the various agencies to authorize the bridge. He asked me to apply for an after the fact permit for the bridge and that he would get in touch with the various governing agencies for comment. I complied and sent a written response to address all of his concerns to the City of Shady Cove along with a completed application. Note, I did not apply the Riparian permit mentioned in the March 30 letter as I was following Ryan's verbal instructions. At the time I never made the connection between a Floodway Development permit and a Riparian permit. I suspect now that may have had something to do with the vegetation I removed on the island side. See **Exhibit 4**.

In early May of this year, I applied for a permit to build a simple 240 sq. ft. deck with stairs attached to our upstairs master bedroom. The rationale to build the deck is that we have no second floor exit in case of fire except for throwing a rope ladder out the window. Our contractor was informed that the city would not grant any further development permits until the bridge is permitted. I attempted to reach Ryan Nolan over the phone. He did not return my call so I wrote an email to him expressing our concern over holding the deck hostage while the bridge is under review. See **Exhibit 5**.

On May 11<sup>th</sup> I received a second letter from Ryan explaining the city ordinance blocking my permit. See **Exhibit 6**.

There are a few things interesting about this letter. The 1<sup>st</sup> is he makes no mention of the Riparian permit requirement. 2<sup>nd</sup> Ryan hints that footpaths, footbridges, etc can be permitted if permits have been acquired from Department of State lands, US. Army Corps of Engineers, Department of Fish and Wildlife. He then goes on to say he contacted DSL, Lauren Brown, and she has indicated the bridge should not be an issue if no part of the bridge was located down in the river channel, in other words, below what they define as typical high-water mark. Ryan then advises he will submit my application to the U.S Army Corps of Engineers and the Oregon Department of Fish and Wildlife for comment. *So far, I have received no feedback that any of these agencies were ever contacted or had any comment.* 3<sup>rd</sup>, Ryan raises the bar and tells me I will need a no-rise analysis from a qualified engineer. He doesn't provide any input on what engineering company they would accept. After repeated attempts via phone and through my contractor, we finally got a name of an engineer from Portland. That led me to contract out to RogueTech civil engineering to do the no-rise and help me navigate the other government agencies involved in the permitting process. This effort has been ongoing since July 12.

On August 5<sup>th</sup> we hired our usual crew to do routine pruning of our island property. This has been going on for the last 20 years based on testimony from previous property owners including the people we purchased the property from. The pruning is normally done in early August to mitigate against fire. The crew doing this work has been doing it for the past 10 years. Within an hour of the start of the pruning a sheriff shows up at my door. I was told they were sent by the city to advise me I was in violation of the Riparian Protection Corridor act. In reality I was in violation of the city's interpretation of the RPC. The sheriff advised me they had little knowledge of the RPC and wasn't sure what we were violating. The sheriff asked to observe the activity on the island. What they observed was our crew using a hedger and weed eater to prune mostly invasive vegetation. I was advised that I should go to city hall to sort this out which I did. Ryan Nolan had a letter of complaint already typed out in less than two hours of the start of the pruning. I mention that because most private citizen complaints take days to process. I was told I needed a permit to continue pruning on my property. I told Ryan I would look at the complaint. See **Exhibit 7**.

To summarize, I was told "concerned citizens" believed I removed vegetation in violation of the city's ordinance or their interpretation of the RPC act. This alarmed me because it was blatantly false. No vegetation or trees were removed. My next-door neighbor called me because the crew had left out of concern for the sheriff. I told him what the city had accused me of and why the

crew left. Mr. Wheeler decided to bring in his crew to prune his section of the island the next day. Again, the sheriff showed up at my home to advise the cities RPC ordinance was being violated. I advised the sheriff this activity is within our right to do as private property owners under the RPC act that governs the state. This pruning activity had been going on for many years. It was from the sheriff, obviously frustrated at the city for wasting valuable resource to what amounted to intimidation, that we learned who filed the complaint. It came from a sitting member of the city council. It turns out she lives across from the island. I realized then we had a problem and contacted the other property owners with a stake in island maintenance.

We, the property owners, wrote back to the city Aug. 12<sup>th</sup> explaining our rationale to not apply for a permit quoting directly from the states RPC act and expressed our concern that a city council member had filed the complaint. See **Exhibit 8**. That triggered an immediate response from the city via email on the Aug. 17<sup>th</sup>. See **Exhibit 10**. The opening paragraph is confusing and somewhat misleading. *"The City has been working with you for several months to attempt to address Floodplain Development and Riparian Corridor Protection issues related to placement of a bridge structure and vegetation alteration".* Notice how Ryan changes the original complaint. It's no longer vegetation removal, its vegetation alteration. Ryan states he has been working with us for several months. This is not true as evidence of his lack of follow up since the letter dated May 11. See **Exhibit 6**. In **exhibit 10** emailed to myself and Mark Degner, Ryan quotes the cities interpretation of the RPC in the Riparian Ordinance. Section "B" 1&2 threats to issue citations and fines. What is the city fining Mark and myself for? The ordinance talks about structures although his letter mentions the bridge. Very confusing. In (2) we are being threatened of being fined for each day the matter remains unresolved. We have till Aug 24<sup>th</sup> to submit an application for a permit or face daily fines.

What gets interesting here is that on Aug.13<sup>th</sup> RogueTech emailed the city planner, Ryan Nolan, to provide an update on the status of meeting the cities permitting requirements. Ryan Nolan wrote back on the Aug. 16<sup>th</sup> that he acknowledged RogueTech was "on it". See **Exhibit 9**.

I advised RogueTech of the cities intent to start issuing fines. RogueTech sent an email Aug. 19<sup>th</sup> to Ryan with a comprehensive status of progress toward meeting the cities requirements to permit the bridge and address Riparian vegetation issues in an attached letter. Most significant in this letter is RogueTech, after visiting my property to do a bridge survey on Aug. 15<sup>th</sup>, notes in their opinion no Riparian violations were evident. Further, they requested an on-site meeting with an ordinance officer to help RogueTech better understand the nature of the violations to best address them. No expertise from any agency has been sent to the property to assess the merits of the violations we are being accused of. The city chose to ignore RogueTech's letter and send a certified letter to myself and Mark which was a copy of the email, **exhibit 10**. Under duress we complied to apply for the permit to meet the Aug. 24 deadline and avoid daily fines. It should be noted the only option to check off that permit application applied to vegetation removal which was exactly what we did not want to do. Refer to the copy of the permit I submitted dated Aug. 24.

I have since learned that we not only have an issue with the city council and its city planner, I have a next-door neighbor that verbally assaulted me yelling that he sits on the planning

commission, and he is going to see to it that the f\*\*\*\*g bridge is ripped out and destroyed. I sent an email to Tom and Debby that were copied on the threatening email from Ryan to Mark and myself describing the incident. **See Exhibit 12.** Zero response as usual.

It goes without saying these past few months have caused my wife and I and the handicap landowners a great deal of anxiety and emotional distress. The Wheelers have verbally expressed considering moving away. It feels like the city has it out for us and no amount of logic or supporting data will prevent them from pushing their agenda. In an attempted to force the issue with the bridge permit I sent the email below to Ryan and copied RogueTech. Again, zero response. The level of unprofessionalism is astounding, and I will continue to document as we move forward.

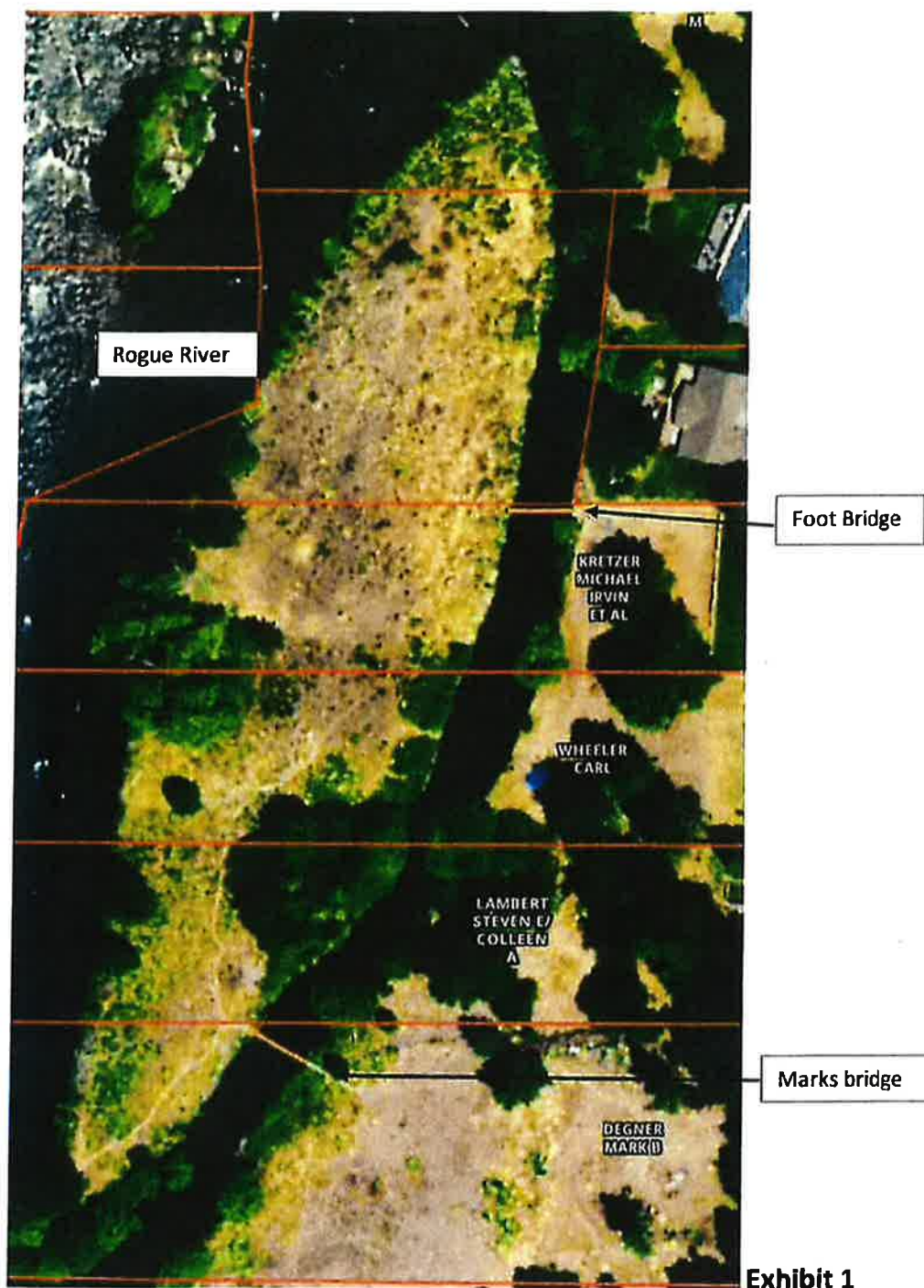
Mike Kretzer

3:40 PM  
(0  
minutes  
ago)

to Scott, Ryan

Received the certified letter that you intend to proceed with issuing citations despite the efforts by RogueTech to satisfy the city requirements. In light of that please advise what the appeal process is. What forms to submit, etc.

Mike Kretzer







**Exhibit 2**





Mayor  
Shan Farvin

Councilors  
Kathy Nickles  
Dick McGregor  
Tim Evert  
(Vacant)

March 30, 2021

Michael Irvin Kretzer

Re: Complaint regarding 128 Penny Lane

The purpose of this letter is to inform you of a complaint the City received regarding construction of a pedestrian bridge within the City's Identified Riparian Protection Corridor and the Federally Identified Floodway without a permit. Your property is identified as 128 Penny Lane, or more accurately as Map Number 34-1W-21 AA Tax Lot 2600.

In accordance with Ordinance 286 of the City of Shady Cove any work done in the riparian protection corridor requires a Riparian Permit, and construction of any type of structure within 75 feet of the bank of the river is generally prohibited.

In addition, Section 151 of the City's Code of Ordinances requires a Floodplain Development Permit prior to any work in a Floodway or Special Hazard Flood Area to ensure compliance with Federal hazard prevention standards. Section 151.046 requires that any structure placed in the Floodway obtain prior approval and include a report from a licensed Engineer demonstrating through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that such encroachment will not result in any increase in flood levels during the occurrence of the base flood discharge.

The pedestrian bridge constructed, or placed on your property appears to have been erected without proper permitting. In accordance with the City of Shady Cove Code of Ordinances the bridge would require both a Riparian and a Floodplain Development Permit

At this time the unpermitted bridge is considered a Zoning Violation. In order to comply with the City of Shady Cove Code of Ordinances you would need to submit an 'after the fact' Floodplain Development Application. The fee for the permit would be \$275. The application would need to include a 'No Rise' analysis from a licensed Engineer. Having looked at the location of the bridge it is likely that I will not be able to approve the application at a staff level as it is clearly within 75 feet of the river bank. However, you have the right to appeal any staff decision to the City Council. Appeals require an additional application and a \$300 filing fee.

In order to assist you I am attaching a blank Floodplain Development Application as well as the Riparian Ordinance and the Section of the Code that deals with development in the floodway. Please contact me if you have questions

Sincerely,

*Ryan Nolan*

Ryan Nolan  
City Planner  
541-423-1382, rnolan@rvcog.org

22451 Highway 82 ♦ PO Box 1210 ♦ Shady Cove OR 97539 ♦ (541) 878-2225 ♦ FAX: (541) 878-2228  
E-Mail: [clerk@shadycove.org](mailto:clerk@shadycove.org) ♦ Web Site: [www.shadycove.org](http://www.shadycove.org)

Exhibit 3

## **Exhibit 4**

### **Project Description**

The property on 128 Penny Ln. Shady Cove, Or. is unique as are the three other properties downstream that are split off from the Rogue River by a small offshoot to create an island. *See attached site map.* This small offshoot can be difficult to cross depending on one's physical condition or the water level, flow speed, or the moss buildup on the rocks. Effectively we have Rogue River front property without reasonable access for the enjoyment of said property. My wife and I are in our late sixties now with bad knees and hips. Her mother lives with us four months out of the year. She is 89 and restricted to a wheelchair. Our next-door neighbors on site 2700, Carl and Peggy Wheeler are in the mid 70's with serious disabilities. They contributed apx 50% of the material costs so they could access the river. Another neighbor, Vietnam medical officer, Bill McClenahan, on site 2300 has lost over 1/3 of his foot to cancer and is now restricted to using a cane.

To mitigate this difficulty in access we needed a safe stable means to cross this waterway. Considerable thought went into the design of the bridge in question. First and foremost it could not in any way interfere with the natural flow of the river and had to allow for safe navigation of drift boats, rafts, or kayaks although it is rare that this minor split off is used for that purpose. It could not impact wildlife natural to the island. It would not be used to alter the natural habitat, i.e., vegetation, trees, ground. To mitigate against an extreme flood scenario the bridge was constructed to be quickly disassembled, no more than three hours. It is built in sections that are easily dismantled with nothing more than a cordless drill. A section, as highlighted in the picture below, consists of four 2X6X5 deck boards attached to a 4X6X3 wide trust connected to 1/4" cables attached to the bridge main cables. The dismantle process is as follows:

- Starting from the highlighted end of the bridge, remove deck boards from trust by removing the wood screws.
- Slide the trust back toward the next section. Note that trusts are clipped to the main cable and move freely after detaching them from the deck boards.
- Repeat this process until all deck boards are removed.
- Unclip the trusts from the main cables to be stored.
- Move the lower bridge main cables to the top eye bolt attachment. Disconnect the resistant cables and store. All main cables are now 4' above the bank well above a major flood event.
- To reassemble, reverse process.



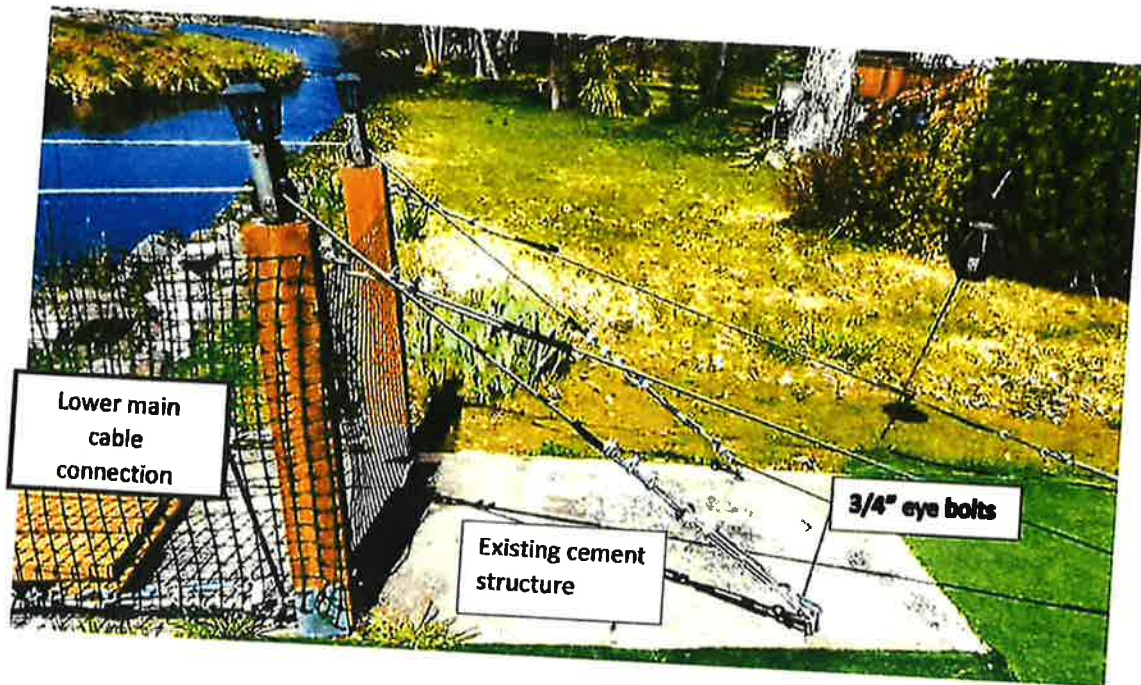
This picture of the bridge was taken at high water level. There is apx 4' clearance at the lowest point. Note that the bridge does not interfere with the natural flow of the river despite its high level. Attempting to wade across the waterway at this level would be dangerous if not impossible.

#### **Bridge specifications/design**

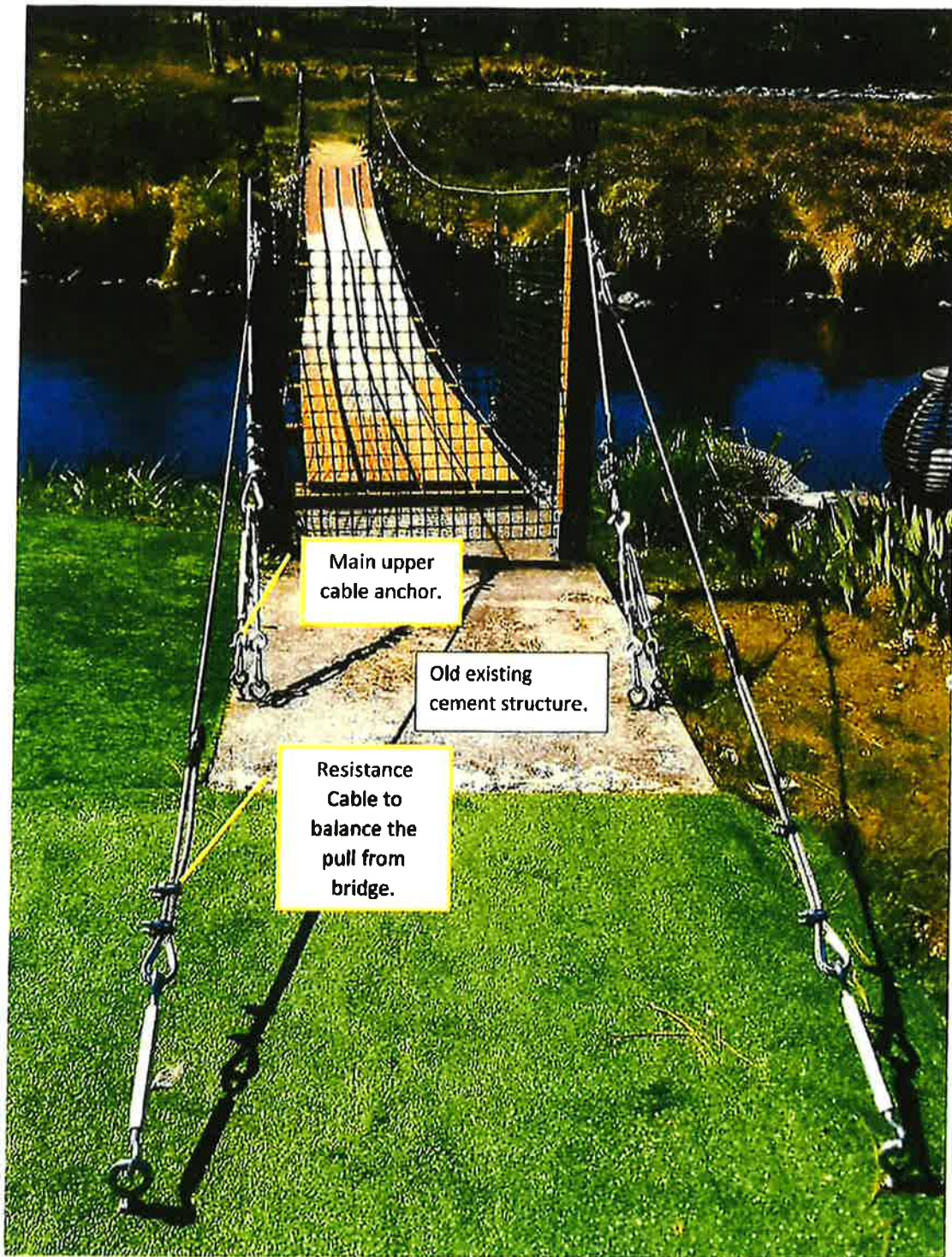
55' span

4 – ½" 6X19 cables rated at 15,000 lbs, 2 upper and 2 lower providing the bridge support.

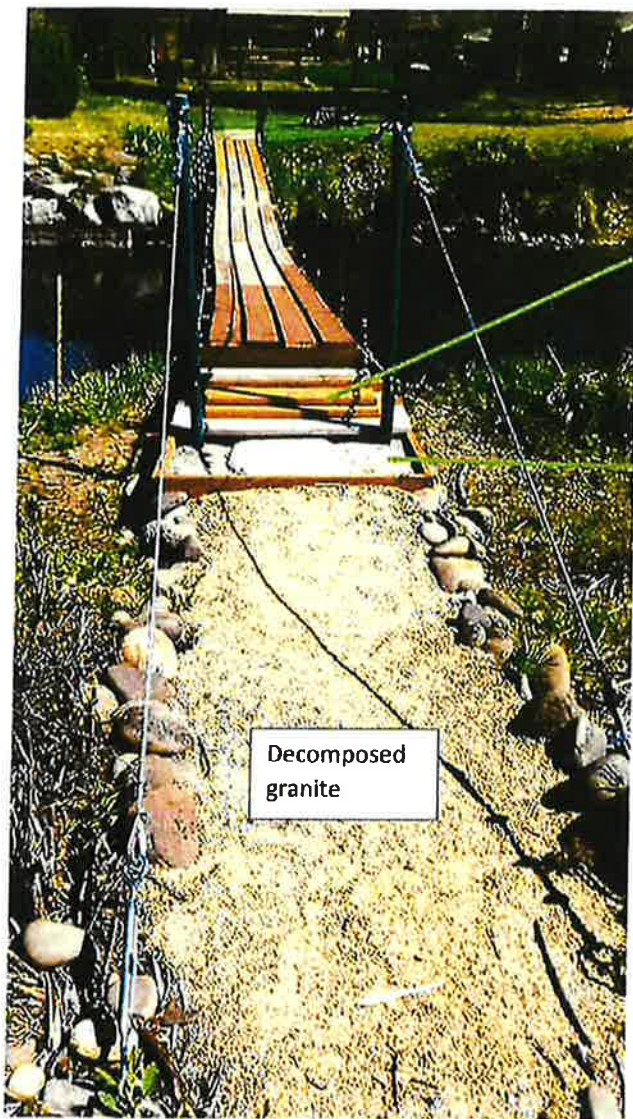
The 1/2" cables are attached to ¾" eyebolts using ¾" redundant turnbuckles (2 for each cable to improve safety). The cables are supported on the mainland side by 4X6 treated wood and 2" steel pipe filled with concrete on the island side. The 4X6 vertical structures are attached to an existing cement pad that is old. At least 25 to 30 years or more. This proved to be the logical place to erect the bridge to minimize any new fill on the bank. The 2" pipe structures are cemented on the island side. Apx. 180 lbs of cement per pipe anchor them in the ground. Another 1,500 lbs of cement serve as a cap to stabilize the pipes. These vertical structures have 1/2" cable as counter pull to the main cables to maintain bridge integrity and stability. Upper cables and counter pull cables on mainland side are attached to the existing cement pad using ¾" eyebolts cemented into the pad. The lower cables on the mainland side are attached to 4X6 structures as seen below. The counter cables on the island side are attached to ¾" eyebolts cemented into the ground.











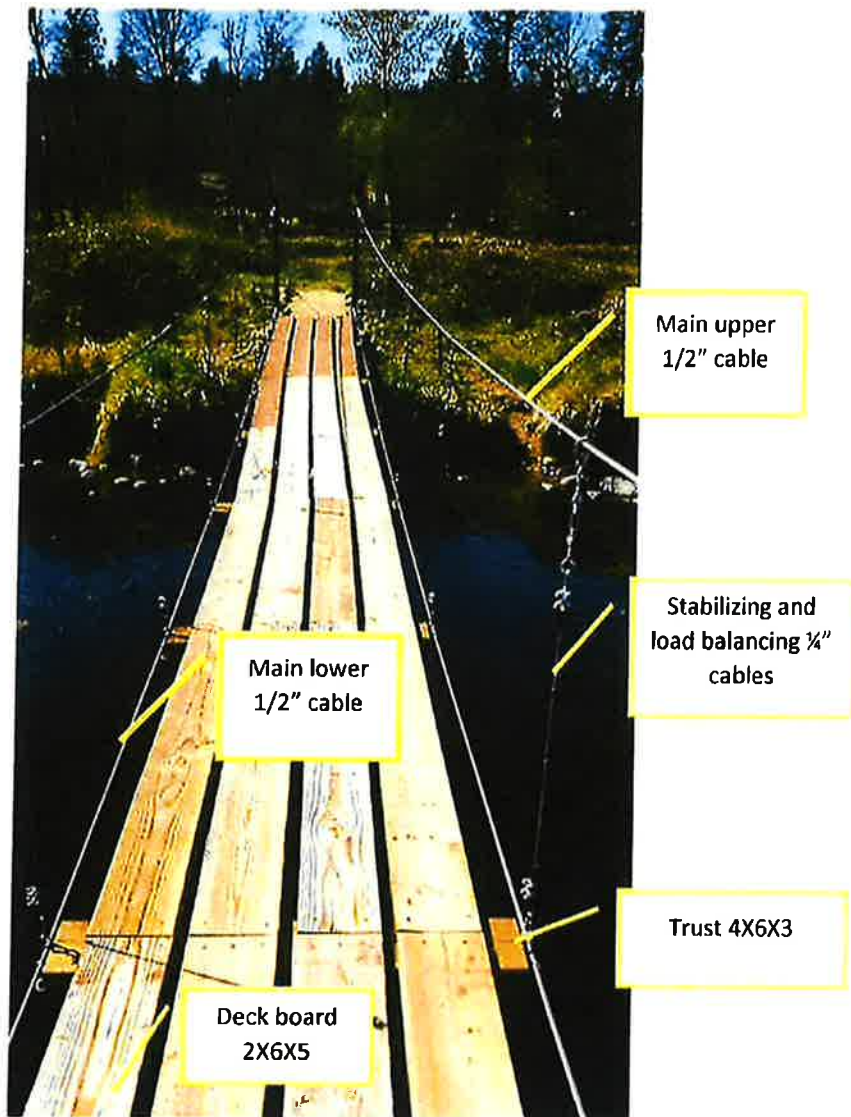
Tiered steps for  
handicap

Bridge footing  
island side. Apx  
4X5 feet.

Decomposed  
granite

1/4" cables are attached to each side of the trust which is in turn is attached to the upper main cable. This provides additional stability and balance of load while crossing.

Each trust is attached with clips to the lower cable to counter sway and balance the load. This creates a stable structure to cross despite physical handicap.





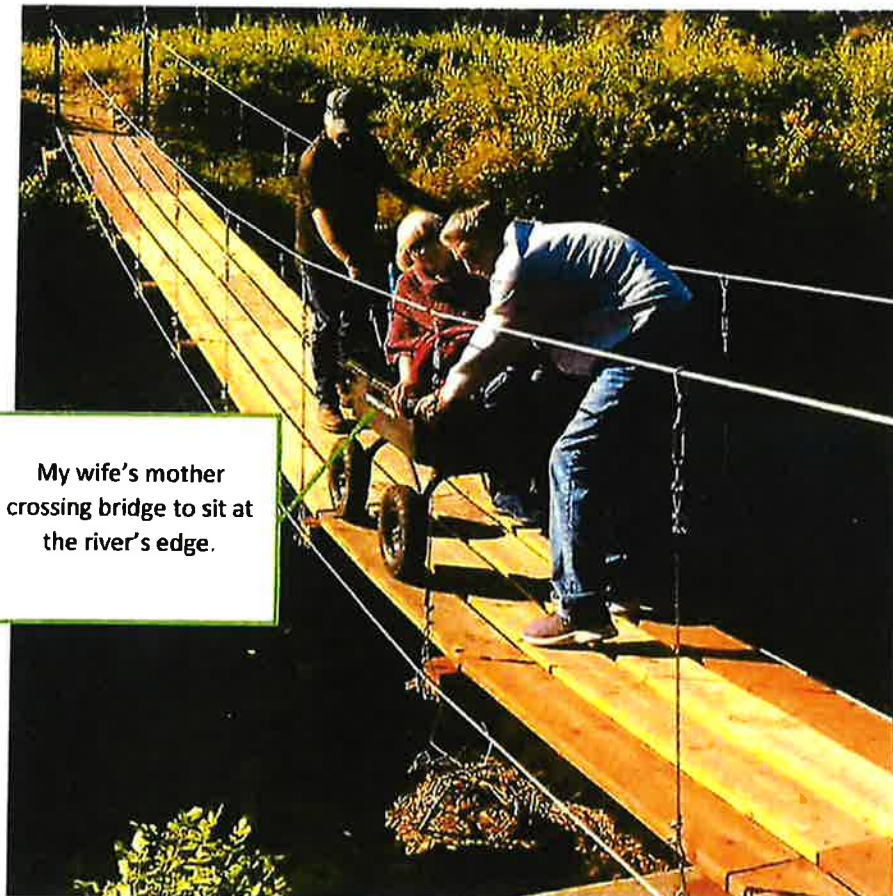
## Parts list

Materials	Qty
<b>Suspension cable construction</b>	
1/2" X 250', 6x19, IWRC Galvanized Wire Rope Reel	1
Wire Rope 1/4 Galvanized 1,400 lb (Qty - feet)	100
1/2" Heavy Duty Wire Rope Thimble	8
1/2" Drop Forged Wire Rope Clip	24
Jaw/Eye Turnbuckle - 5/8 x 9 in. size Hot Dip Galv. Working load limit: 3500 lbs.	8
1/2" X 6" Galvanized Shoulder Eyebolt	2
2" 8 foot galvanized pipe	
<b>Total for suspension cables</b>	

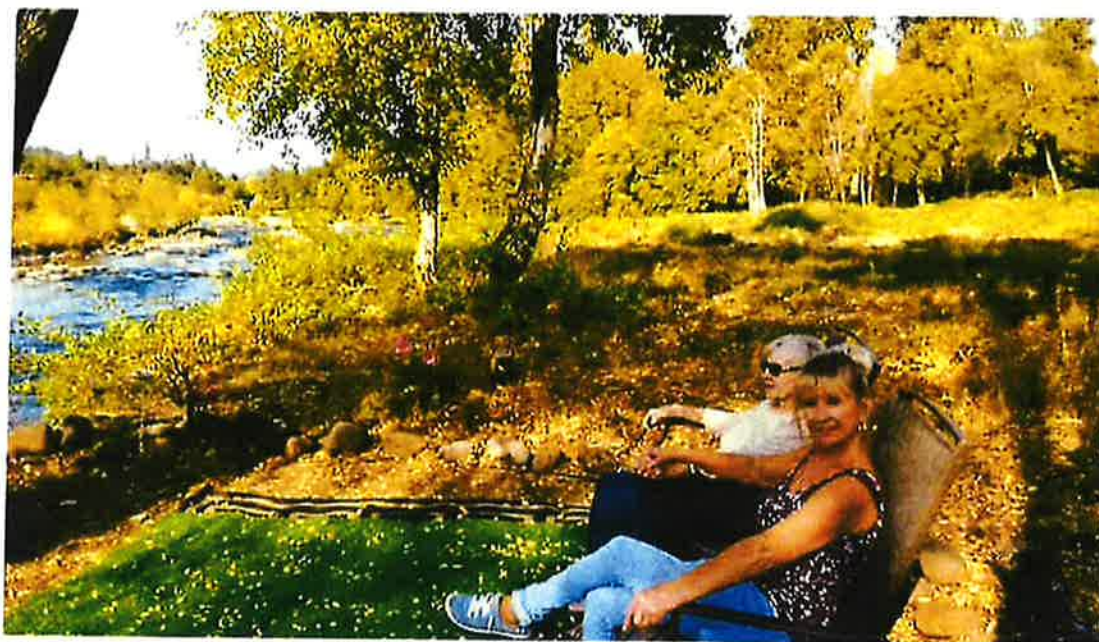


5/16" X 4-1/2" Galvanized Jaw & Eye Turnbuckle	20
1/4" Zinc Plated Copper Sleeve	20
Tyler Tool 30" Hand Swager	1
1/2" x 3-1/4" Hot Dipped Galvanized Screw Eye Bolt	18
3/16" - 1/4" Hot Dip Galvanized Fist Grip Clip	108
3/8" Cable x 3-1/2" Diameter Flat Mount Block	2
6 X 6 X 8 Treated posts	4
1/4 inch 670 Clevis Grab 3,150 lb	18
2x4 Treated lumber by linear foot	48
2 X 12 X 10 Treated	15
6 X 6 Post Anchor	4

## Testimonial to Bridge Strength and Stability



My wife's mother  
crossing bridge to sit at  
the river's edge.



This is place on our property is where we get most of our joy peace. The city is basically saying we have no right to this. If we can't swim or crawl across the tributary, then to bad. Taking this away will cause emotional distress and great financial loss.

**Steps taken to comply with Special Hazard Flood Area –**

- Constructed to not be washed down stream in a flood event.
- Designed to allow free flow of high waters including flood conditions. See dismantling procedures.
- Monitored for debris snagging.

**Steps taken to comply with Riparian Protection Regulations**

- No alteration or interference with the flow of the water.
- Leveraging existing infrastructure to minimize fill and removal of vegetation on the banks.
- Chose a location not providing natural shade to the water. The bridge is providing that shade that previously did not exist.
- In no way was any wildlife habitat displaced in bridge construction. The bridge has enhanced wild bird habitat including the King Fisher that uses it to fish.
- The mainland side of the bridge is sealed off to prevent critters such as feral cats, racoon, skunk, etc. not natural to the island environment from encroaching on wildlife on the island.
- Great care is being taken to preserve vegetation that protects wildlife species including fish, geese, turkeys, deer, and otters.
- Any disposable material carried on the island is carried off to assure it remains pristine. Materials that have washed up on the island when discovered are removed.
- No toxic materials such as pesticides are transported on this bridge.
- I take responsibility for the integrity, i.e., safety of the bridge including dismantling as required to assure it does not make a flood situation worse.

I will dismantle the bridge in winter months when I am out of town as a precaution.



## Exhibit 5

### Approval of Patio for 128 Penny Ln

Mike Kretzer <coolbybend@gmail.com>

Fri, May  
14, 3:39  
PM

to rnolan

To Mr. Ryan Nolan, City Planner

I left you a message Tuesday May 11 regarding the hold up of approval for an upstairs patio/deck. In that message I stressed the importance of the deck as it will provide us with an exit strategy in case of a fire or some other unforeseen disaster that would prevent us from making our way downstairs. This property has already experienced a fire that leveled the previous home seven years ago. It has taken us over a year to pull the resources together to make this happen. As I am sure you are aware construction materials are rising in cost daily. Every day we delay the construction this project risks costing more than we can afford thereby putting us at risk every day it's not completed.

My builder advised us that he talked to you directly about the patio permits. He was told by you there is this rule in Shady Cove that if there is an unsettled code violation no new permits can be approved on that property. Frankly its difficult to understand what one has to do with the other. I thought in our last conversation you felt there may be a path to a variance for the bridge given that it allows access to private property for the physically impaired who cannot navigate across the water way. If you are working on a possible solution to the bridge dilemma then it seems appropriate, we can go on with the critical construction of our upstairs patio.

Concerning the bridge, I am baffled as to why our bridge is under scrutiny while another bridge not 300 yards away has been constructed there for at least the last four years based on Google Earth photos. That bridge does interfere with navigation and has been known to snag debris from folks doing some trimming up stream. I have also heard of some upset rafters and kayakers that have had to pull out to get around it. That was a critical requirement I intended to avoid when I built my bridge.

I respectfully request that you grant approval for our patio deck while this business over the bridge is resolved.

Sincerely

Mike Kretzer

## Exhibit 6



Mayor  
Shari Tarvin

Councilors  
Kathy Nickles  
Dick McGregor  
Tim Everett  
(Vacant)

May 11, 2021

Michael Irvin Kretzer,

Re: Floodplain Development Permit Application, Pedestrian Bridge 128 Penny Lane

Thank you for your response regarding the construction of a pedestrian bridge within the City's Identified Riparian Protection Corridor and the Federally Identified Floodway without a permit. Your property is identified as 128 Penny Lane, or more accurately as Map Number 34-1W-21 AA Tax Lot 2600

In accordance with Ordinance 286 of the City of Shady Cove any work done in the riparian protection corridor requires a Riparian Permit, and construction of any type of structure within 75 feet of the bank of the river is generally prohibited. Section III(B) of the Ordinance does allow streets, roads, or private paths to be constructed so long as all applicable permits have been obtained from Department of State Lands and Army Corps of Engineers. All plans for development are also required to be submitted to Oregon Department of Fish and Wildlife for a habitat mitigation recommendation.

I have contacted Department of State Lands and Lauren Brown an enforcement officer there replied that the bridge (due to the construction style) would not require a DSL permit as long as no part of the bridge was located down in the river channel. I will be sending your application to U.S. Army Corps of Engineers and Oregon Department of Fish and Wildlife for comment. Pending comment from these two agencies the Riparian Corridor Protection Ordinance may permit your bridge construction to remain with potential habitat mitigation conditions. I will not be able to complete the permit review until I have a response from the U.S. Army Corps of Engineers and Oregon Department of Fish and Wildlife.

In addition, Section 151 of the City's Code of Ordinances requires a Floodplain Development Permit prior to any work in a Floodway or Special Hazard Flood Area to ensure compliance with Federal hazard prevention standards. Section 151.046 requires that any structure placed in the Floodway obtain prior approval and include a report from a licensed Engineer demonstrating through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that such encroachment will not result in any increase in flood levels during the occurrence of the base flood discharge.

While you have demonstrated the construction method of the bridge and the potential ease of removal, the Code of Ordinances clearly state that no construction may be permitted in the identified Floodway unless a registered engineer provides a 'No Rise' analysis, (Section 151.046 of the Shady Cove Code of Ordinances). I will not be able to approve the application without a registered engineers report indicating that the bridge will not result in any increase in flood levels during the occurrence of the base flood discharge.

At this time the unpermitted bridge is considered a Zoning Violation. Your response indicates your willingness to work with the City to correct the oversight. However, until the bridge construction is permitted or the bridge is removed no further development on your property will be permitted in accordance with Section 151.999 of the City of Shady Cove Code of Ordinances.



Mayor  
Shari Tarvin

Councilors  
Kathy Nuckles  
Dick McGregor  
Tom Everett  
(Vacant)

In order to approve the application I will need a "No Rise" analysis from a registered engineer. I will also be in contact with the U.S. Army Corps of Engineers to see if any additional permits will be required. I will also be reaching out to Oregon Fish and Wildlife to see if any riparian habitat mitigation will be required.

All applicants have the right to appeal any staff decision to the City Council. Appeals require an additional application and a \$300 filing fee.

Please contact me if you have questions.

Sincerely,

Ryan Nolan  
City Planner  
541-423-1382, [molan@rvcog.org](mailto:molan@rvcog.org)

## Exhibit 7



Mayor  
Shari Tarvin

Councilors  
Kathy Nuckles  
Dick McGregor  
Tim Evert  
[Vacant]

August 5, 2021

Michael Irvin Kretzer,

Re: Riparian Vegetation Removal

The purpose of this letter is to inform you of a complaint the City received regarding vegetation removal within the City's identified Riparian Protection Corridor without a permit. Your property is identified as 126 Penny Lane, or more accurately as Map Number 34-1W-21 AA Tax Lot 2600.

Concerned citizens have noted that it appears vegetation is being removed on your property. In accordance with Ordinance 286 of the City of Shady Cove any work done in the riparian protection corridor requires a Riparian Permit, this includes alteration of vegetation within 75 feet of the bank of the river. Any removal of vegetation within 75 feet of the river should cease immediately until an application has been approved.

I am attaching the full Riparian Protection Ordinance for your review as well as a permit application. The fee for a riparian permit (which may approve alteration of vegetation within 75 feet of the river) is \$275.

Any tree removal within the Riparian Protection Corridor requires a permit and requires replacement with an approved tree. Permits may also allow invasive species removal with a plan for restoration to include native plantings. Other vegetation alteration may also be permitted if the end result provides increased riparian protection (as reviewed by ODF&W).

Please review the attached Riparian Protection Ordinance and apply for a retroactive Riparian Permit to authorize any vegetation that has been removed, the City will require one tree be planted for every tree removed, and may require additional habitat mitigation if other vegetation has been removed.

Sincerely,

Ryan Nolan  
City Planner  
541-423-1382, [rnolan@rvcog.org](mailto:rnolan@rvcog.org)



## Exhibit 8

To the City of Shady Cove

Penny Lane property owners referenced assignees below have read the complaint filed on August 5, 2021 in reference to Riparian Vegetation Removal.

In paragraph 1 the accusation of vegetation removal is false if you define removal as permanently extracted, burned, or poisoned. No vegetation was removed or damaged as to compromise the vegetations health, longevity, and resource functions. This would include trees that were lightly pruned. As property owners we recognize the value of these plants, although primarily invasive (scotch broom, and variants of and Himalayan blackberries), they provide safe cover for nesting wild fowl and turkeys. Additionally, deer will have cover while birthing. All pruned vegetation grows back the following year generally thicker and healthier than the previous year. We suspect the reason of healthier growth is the pruning maintenance and the decomposing of the cuttings.

Looking over your city of Shady Cove Riparian Ordinance attachment under section III "Activities Within the Riparian Area pp (A) #2 states maintenance trimming of existing trees is permitted if the trimming maintenance is not so severe as to compromise the tree's health. We believe this interpretation of trees also translates to shrubs. Under "Allowed Activities" pp (B) # 9 states perimeter mowing and other cutting necessary for fire hazard prevention is allowed. Further, non-native vegetation is exempt from regulations against cutting, mowing, burning, or poisoning. Again, most of the vegetation pruned is invasive. Our primary reason for doing this pruning is to prevent the potential of wildfire that tends to strike in late September. As noted by the previous owner of 128 Penny lane, the trimming activity has been going on for at least 20+ years. It was started due to a fire on the island and to provide visibility for rafters and fishermen that needed rescue. A secondary rational is to have visibility to the primary river on our private property. Some property owners listed below are not able to get to the main river, so we rely on being able to enjoy it from the deck of our property.

Please note the attached letter from the city of Shady Cove dated May 11, 2021 addressed to William Beerman of 116 Penny In regarding pruning and a reference to tree removal. The second paragraph states "Maintenance pruning is permitted as long as it complies with the standards found in the Riparian Ordinance. As evidence by your response (photos sent by Mr. Beerman), a Riparian Permit is not required. This letter was signed by Ryan Nolan. The pruning we are doing is consistent with the pruning Mr. Beerman

routinely does. See attached photo.

It's the contention of property owner signees below that no violation has occurred. The city's request that we obtain permits for activities that are allowed under the city Riparian Ordinance and that have been ongoing for several years are inconsistent with enforcement in the past. That said we have it on good authority the source of this complaint came from Nuckles. Kathy Nuckles, who sits on the Shady Cove council, also lives across from the island. Leveraging the resources of the city board to send a sheriff to deliver a notice of violation could be interpreted as a conflict of interest or an attempt to weaponize the riparian protection corridor act. Unless the city intends to serve a citation of violation that we can address in court we request you cease sending the sheriff to our properties. If the city has a counter response, we the undersigned look forward to reviewing it.

Respectively

Michael Kretzer

---

Carl Wheeler

---

Mark Degner

**Exhibit 9**

**From:** Scott Ferre [mailto:[roguetechengineering@gmail.com](mailto:roguetechengineering@gmail.com)]  
**Sent:** Friday, August 13, 2021 1:49 PM  
**To:** Ryan Nolan  
**Subject:** 128 Penny Lane Footbridge

Hi Ryan,

I wanted to check in and update you on getting the footbridge at 128 Penny Lane permitted. I'm currently waiting for FEMA to provide the hydraulic model and data I need to perform the "No-Rise" analysis. I contacted the State Floodplain Manager as well and she is assisting me with getting the model and data. I've also contacted the Oregon Department of State Lands for a preliminary determination to see if any part of the bridge or anchors have disturbed ordinary high water and if so what the permit requirements will be. The ODSL Permit/Enforcement person, Lauren Brown, for Jackson County is out of the office until August 23rd. She's aware of the bridge and I'll be working with her when she returns.

Please let me know if there're any questions or other requirements the City needs or will need addressed to meet permitting requirements for the footbridge.

thanks!

v/r

-Scott

Scott Ferre, P.E., M. Eng  
RogueTech Civil Engineering, LLC  
Principal  
503-545-6000  
[roguetechengineering@gmail.com](mailto:roguetechengineering@gmail.com)  
[www.roguetechengineering.com](http://www.roguetechengineering.com)

On Mon, Aug 16, 2021 at 8:34 AM Ryan Nolan <[rnolan@rvcog.org](mailto:rnolan@rvcog.org)> wrote:

Scott,

Sounds like you're on it. I don't know if you've been requested to discuss riparian issues related to vegetation or not. You're engineering work is a requirement of the Flood Hazard section of the code, but there is also the riparian aspect. So, part of the review will be regarding Floodplain development

standards, and part will be regarding riparian protection. I think I sent you both sections of the code. Let me know if you need more information about the riparian part.

**Ryan Nolan, Principal Planner**

**Rogue Valley Council of Governments**

**541-423-1382**



Exhibit 10

**Riparian Issues off of Penny Lane  
Inbox**

Ryan Nolan

Aug 17, 2021,  
11:54 AM (4  
days ago)

to me, degnerm, Tom, Debby

**Mr. Kretzer and Mr. Degner,**

The City has been working with you for several months to attempt to address Floodplain Development and Riparian Corridor Protection issues related to placement of a bridge structure and vegetation alteration. If a riparian permit application is not received by August 24<sup>th</sup> citations will be issued by the City of Shady Cove. This is based on the following sections of the City's Riparian Ordinance:

**§ 151.999 PENALTY.**

(A) No structure or land shall hereafter be located, extended, converted or altered unless in full compliance with the terms of this chapter and other applicable regulations.

(B) Violation of the provisions of this chapter or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance or special exceptions shall constitute a misdemeanor.

(1) Any person who violates this chapter or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$500 or imprisoned for not more than 30 days, or both.

(2) Each day the violation continues shall be considered a separate offense.

(C) Nothing herein contained shall prevent the city from taking such other lawful actions as is necessary to prevent or remedy any violation.

(Ord. 259, passed 3-17-2011; Ord. 286, passed 12-7-2017)

In discussing the bridges and pathways as well as weed eater mowing along the river with ODF&W staff they have suggested that once they have applications to review they will be suggesting riparian mitigation that may include six trees from the approved tree list along the

side channel for each pedestrian bridge/pathway and one tree for every 64 square feet of area that has been mowed/weed wacked. If a long term plan for maintenance is proposed to include mowing in certain areas it may be approved provided that ODF & W review the proposal and provide mitigation conditions. Riparian permit applications should describe areas to be mowed or weed wacked in terms of square feet and shown on a landscape plan identifying location.

Ryan Nolan, Principal Planner

Rogue Valley Council of Governments

541-423-1382

Exhibit 11

**Re: 128 Penny Lane Footbridge  
Inbox**

Scott Ferre

Aug 19, 2021,  
6:27 PM (2  
days ago)

to Ryan, me

Hi Ryan,

I prepared the attached letter to provide a formal update and status of preparing City, Federal, and State permitting for the footbridge and any potential impacts to ordinary highwater and the riparian area. I'm waiting on FEMA and DSL for more information so to continue. In addition, as listed in the attached letter, I was hoping we could meet at the project site so I can be sure the City is aware of what has actually occurred on the property so I can be sure to prepare any required permits accurately. Also, we'd like to, and have in the attached letter, request relief from fines as we await the information we need to proceed with permit applications.

I understand Mr. Kretzer's footbridge has caused quite a bit of dissatisfaction from his neighbors and he is very interested in ensuring folks know he is taking the steps required to ensure the bridge and any impacts identified by the agency's involved are in or will be brought in compliance with applicable codes and regulations and all permitting requirements will be met. Both FEMA and DSL are being patient with this project and are busy and slowed down due to COVID19 impacts. I hope the local community in Shady Cove can offer the same patience for us as we get this done.

Thanks so much for your help, and please let me know when we can meet, or if there's another City employee I can meet and look at the property together, and if there's a formal process with the City to request relief from City fines that we need to pursue if the attached letter isn't sufficient.

V/r

-Scott

**Scott Ferre, P.E., M. Eng**

**RogueTech Civil Engineering, LLC**

**Principal**

**503-545-6000**

[roguetechengineering@gmail.com](mailto:roguetechengineering@gmail.com)

[www.roguetechengineering.com](http://www.roguetechengineering.com)





**Exhibit 11 attached letter**

Scott J. Ferree, P.E., M. Eng  
Principal/Owner

1056 Highlands DR  
Eagle Point, OR 97524  
503-545-6000

[scott@roguecivileng.com](mailto:scott@roguecivileng.com)  
[www.roguecivileng.com](http://www.roguecivileng.com)

City of Shady Cove  
P.O. Box 1210  
22451 Highway 62  
Shady Cove, OR 97539

August 19, 2021

Dear Mr. Nolan,

RogueTech Civil Engineering, LLC (RogueTech) was hired under agreement by the property owner of 128 Penny Lane, Mr. Mike Kretzer, on July 16, 2021 to prepare any required permit applications for the City and State/Federal agencies for an existing footbridge he installed over a side channel of the Rogue River that crosses his property. He has also requested assistance with permitting that may be required for managing vegetation on his property.

Mr. Kretzer was not aware of all the multi-agency permitting that can be required for development in a floodway, impacts that may occur below ordinary high water (OHW) and impacts that may occur to a riparian area until after he installed the footbridge and a neighboring property owner expressed concern to the City.

This letter is to update you on the current efforts RogueTech are actively working to prepare permit applications for the City of Shady Cove and any permit applications that may be required by the Federal Government and State of Oregon.

RogueTech contacted the Oregon Department of State Lands (DSL) on August 13<sup>th</sup>, 2021 to request permitting requirements for DSL, the Oregon Department of Fish and Wildlife (ODFW) and the United States Army Corps of Engineers (USACE) for any impacts that may have occurred that require permitting within their jurisdictions. The individual, Lauren Brown, from DSL, who is responsible for the area the foot bridge is located has been on leave and will be returning on August 23<sup>rd</sup>, 2021 and has assured me that she will contact us upon her return.

In addition, the City, per the Federal Emergency Management Agency's (FEMA) regulations, requires a floodway "No Rise Certification" for the trestlebridge. In order to complete a No Rise certification a qualified engineer registered in the State of Oregon must perform a hydrologic and hydraulic analysis. This analysis must be performed utilizing FEMA's digital hydraulic model and data that were used to determine the Base Flood Elevations (BFE) published in the revised January 19, 2018 Flood Insurance Study (FIS) for Jackson County, Oregon and Incorporated Areas, and as shown on the Flood Insurance Rate Map (FIRM) Map number 11020018711, Panel 1313.

However, the City, as the responsible Community to regulate the designated floodway through the subject property, does not maintain digital copies of the required FEMA hydraulic model and data. Therefore, RogueTech submitted a request to the State of Oregon Floodplain Manager on July 16, 2021 for digital copies of the FEMA model and data. It typically takes two to four weeks for FEMA to respond to this request and to provide digital copies of the model and data. Due to COVID-19 this process has encountered a delay. At this time, RogueTech has not yet received the model and necessary data from FEMA to perform the required No Rise Certification. For the above reasons, RogueTech has not been able to complete and submit any permit applications as timely as we had hoped to quickly assist Mr. Kretzer to obtain the required permits and to ensure the footbridge is in compliance with City, Federal, and State Codes and Regulations.

Mr. Kretzer informed me this week that he received a letter from the City indicating he may be fined by the City starting later this month if the City does not receive permit applications for the footbridge and vegetation management. However, it is typically a condition of City permit applications to include copies of approved State and Federal permits prior to the City reviewing and approving their own permits.

Currently, RogueTech is unable to apply for State and Federal permits until DSI provides guidance on their and the USACE and ODFW permit requirements and until RogueTech receives the necessary model and data from FEMA and performs and provide the No Rise Analysis certification required for the City's Floodplain Permit.

In addition, RogueTech has reviewed the City's Riparian Ordinance and also conducted a site visit and topographical survey of the footbridge and surrounding land on August 15, 2021. During the site visit it was apparent portions of vegetation in the vicinity of the foot bridge had been trimmed. It is of City

Ordinance interpretation by RogueTech that no riparian impacts have occurred due to the installation of the footbridge or vegetation trimming that would require a permit based on the City's Riparian Ordinance. Therefore, RogueTech would like to please request a meeting, preferably on site at the footbridge, with a City Ordinance Officer or other City employee with authority to review and approve permit applications to assist with identifying any impacts that would require a permit in accordance with the Riparian Ordinance. This information from the City will ensure RogueTech can properly prepare any required City permit applications. RogueTech is available to meet anytime between the hours of 7:00am and 6:00pm Monday through Saturday.

In summary, at this time there is not enough information from DSL, FEMA, and the City of Shady Cove to proceed with preparing and submitting any permit applications. It may take more than a month to receive a determination from DSL on permitting requirements from DSL, ODFW, and the USACE, and at this time there is not an available date of when FEMA will provide their model and data.

After RogueTech is able to get clarification from the City on permit requirements including those per the Riparian Ordinance, and after any required State and Federal permits are obtained, RogueTech will be able to submit all required City permit applications. If it is determined a permit is required for trimming vegetation in the vicinity of the footbridge, RogueTech will be able to submit this application sooner than the permit applications that may be required for the footbridge itself.

For the above Reasons, Mr. Kretzer, would like to please request relief from City fines due to the installation of the footbridge and vegetation trimming and from submitting City permit applications for the footbridge this month and to request an additional 6 months of relief to allow for a meeting between RogueTech and the City for permitting clarification, and to provide time for any required State and Federal permit applications to be prepared, submitted and approved.

Please contact Scott J. Ferre, P.E., with any questions or concerns at 503-545-6000 or email at: [rogue@rogue-tech.com](mailto:rogue@rogue-tech.com).

Very respectfully,

  
Mike Kretzer, Property Owner

  
Scott J. Ferre, P.E., Engineer

**Exhibit 12**

Mike Kretzer <coolbybend@gmail.com>

Aug 19, 2021,  
6:33 PM (4  
days ago)

to Ryan, Tom, Debby

I am reaching out to the planning department concerning the on-going efforts to navigate the appropriate agencies to obtain the necessary permits for a footbridge on my property. I am doing my due diligence working with a civil engineering company, RogueTech. You should have their current status on this effort on record. That said, I am very upset with a recent encounter with my neighbor John Ball. He says he sits on the planning commission, and he is going to see to it that my bridge is torn down. He was highly verbally abusive, apparently acting on a false claim that I may have brought COVID to the local Ace hdwr store where he works part time. The accusation is baseless hearsay and not true. In fact, no one in that store this last Sunday was wearing a mask except for me. I did that because I thought a mask mandate had gone into effect Friday. Regardless, I am being threatened by a sitting member of your planning commission that is bent on doing everything in his power to, as he put it, destroy the f\*\*\*g bridge. I am expecting a fair and objective review of all the effort that's on-going to meet the City of Shady Cove permitting requirements. These threats have caused myself and my wife a great deal of stress. It is completely inappropriate for any member of the council or planning commission to threaten a private citizen with leveraging any authority they may have. I hope you will follow up on this and execute the appropriate action to rescue John from any decisions concerning this bridge.

Mike Kretzer

Mike Kretzer <coolbybend@gmail.com>

Thu, Aug 19,  
10:50 PM (6  
days ago)

to Ryan



Looking at the efforts of RogueTech it is clear to me that RogueTech has done extensive analysis of the bridge impact and is continuing the effort to gather hard data. That said, who from the City of Shady Cove with engineering expertise or extensive knowledge of these violations has made the effort to do analysis to substantiate the accusations levied by the city? I have met with no one and RogueTech has expensed the same concern. I would implore the city to send their expertise to meet with my civil engineering consultant so that we can accurately respond to the city concerns.

Mike Kretzer

Mike Kretzer <coolbybend@gmail.com>

Tue, Aug 24,  
11:56 AM (23  
hours ago)

to Ryan, Scott

Mr. Nolan

I am submitting a permit application to do vegetation pruning. The only box I can check is "Clearing of trees, vegetation or debris". I have no intent to "clear" any kind of vegetation including trees. As I have stated very clearly, no vegetation or trees were ever removed. Wildlife is dependent on that vegetation from spring to mid-summer. To this day you have made no attempt to verify this accusation of vegetation removal with on-site review other than sending the sheriff to my house who observed two men with hedgers and weed eaters. I do have aerial photographs of before and after the pruning. They clearly prove no vegetation was removed. Under threat of citations I will submit the permit application to do routine pruning.

In this email you refer to the footbridge. The communication is not very clear here. Is the city denying my application submitted in April 2021? It sounds like you are but I received no official documentation to verify that. That is why I requested information on the appeal process. If you intend to deny my permit application for the bridge then I need to prepare for an appeal and other courses of action.

Mike Kretzer

Date

Amount \$

File #

Ck#

Receipt #

**City of Shady Cove****Floodplain Development Permit Application****OFFICE USE ONLY**
☐ No-Rise    ☐ Attachments    ☐ Special Conditions  
☐ Approved    ☐ Denied
**Property Information (for office use only)**

Address:

Map and Tax Lot #:

FIRM Panel:

**Applicant Information (property owner on current deed of record)**

First &amp; Last Name:

Mike Kretzer

Phone:

530 262-4700

Street Address:

128 Penny Ln.

Cell phone:

Mailing Address:

Shady Cove, Or 97539

E-Mail:

Coolbybend@gmail

**Project Information**

Project Description (please be specific, attach pages if necessary):

See attached

**Section A: Structural Development (check all that apply)**Type of Structure

- ☐ Residential (1 to 4 families)
- ☐ Residential (more than 4 families)
- ☐ Combined use (Residential and Non-residential)
- ☐ Non-residential
- ☐ Elevated
- ☐ Floodproofed (attach certification)
- ☐ Manufactured Home
- ☐ Located on individual lot
- ☐ Located in manufactured home park

Type of Structural Activity

- ☐ New structure
- ☐ Demolition of existing structure
- ☐ Replacement of existing structure
- ☐ Relocation of existing structure<sup>1</sup>
- ☐ Addition to existing structure<sup>1</sup>
- ☐ Alteration to existing structure<sup>1</sup>

Other:

**Section B: Other Development Activities (check all that apply)**

- ☒ Clearing of trees, vegetation or debris
- ☐ Connection to public utilities or services
- ☐ Drainage improvement (including culvert work)
- ☐ Dredging
- ☐ Drilling
- ☐ Fence or wall construction
- ☐ Excavation (not related to a structured development listed in Section A)
- ☐ Other development not listed (specify)
- ☐ Grading
- ☐ Mining
- ☐ Paving
- ☐ Placement of fill material
- ☐ Roadway or bridge construction
- ☐ Watercourse alteration (attach description)

**Signature**

By signing below I agree to the terms and conditions of this permit and certify to the best of my knowledge the information contained in this application is true and accurate.

Mike Kretzer

PRINTED name



SIGNED name

Aug. 24, 2021

Date

PRINTED name

SIGNED name

Date

<sup>1</sup>If the value of an addition or alteration to a structure equals or exceeds 50% of the value of the structure before the addition or alteration, the entire structure must be treated as a substantially improved structure. A relocated structure must be treated as new construction.

Inspection - The Floodplain Manager is authorized by the jurisdiction and applicant to make all of the required inspections; in addition the floodplain manager shall have the authority to accept reports of inspections by approved agencies or individuals. Reports of such inspections shall be in writing. The floodplain manager is authorized to engage such expert opinion as deemed necessary to report upon unusual technical issues that arise.

Expiration of permit - The permit issued shall become invalid unless the work authorized by such permit is commenced within 180 days after its issuance, or if the work authorized by such permit is suspended or abandoned for a period of 180 days after the time the work is commenced. The floodplain manager is authorized to grant one extension of time for a period of not more than 180 days. The extension shall be requested in writing and justifiable cause demonstrated.

### **Project Description**

I am requesting a permit to do island maintenance on the property referred to as Map No. 34-1W-21 AA Tax Lot 2600. This maintenance entails trimming or pruning of primarily invasive vegetation. The only box that comes close to this activity is the "Clearing of trees, vegetation, or debris. I have no desire or intent to clear any vegetation or trees as this protects wildlife in the spring through mid-summer. The trimming will not occur until early August. This is necessary to mitigate against fire that could endanger the property. This also opens visibility to the river from my property. As I have stated before this activity has been going on for at least the last 20 years.

### **Before pruning**





After pruning





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

From: SAMARIN Peter A \* ODFW [<mailto:Peter.A.SAMARIN@odfw.oregon.gov>]  
Sent: Thursday, September 16, 2021 9:16 AM  
To: [tcorrigan@shadycove.org](mailto:tcorrigan@shadycove.org); Ryan Nolan  
Subject: FW: Riparian Mitigation Rogue River

FYI-I was more specific on this recommendation and included the mainstem Rogue. Pete

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

From: SAMARIN Peter A \* ODFW  
Sent: Thursday, September 16, 2021 9:13 AM  
To: Scott Ferre <[roguetechengineering@gmail.com](mailto:roguetechengineering@gmail.com)>  
Subject: RE: Riparian Mitigation Rogue River

Got it. I recommended mitigation of 6 native trees to be planted at 8-10 foot intervals on the house side of the channel to mitigate for the permanent concrete, paths and bridge itself. However, if the applicants property extends to the main channel of the Rogue River ODFW would accept 3 trees planted along the Rogue River and 3 along the side channel on the bank closest to the house. Trees should be typical to the area and choices include but are not limited to alder, big leaf maple, cottonwood or further upland, ponderosa pine. A maintenance plan needs to be included which should include watering and replacing dead trees for 5 years to ensure 80% survival. A general map showing what is being planted where should also be included in the application. Pete

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

From: Scott Ferre <[roguetechengineering@gmail.com](mailto:roguetechengineering@gmail.com)>  
Sent: Thursday, September 16, 2021 8:56 AM  
To: SAMARIN Peter A \* ODFW <[Peter.A.SAMARIN@odfw.oregon.gov](mailto:Peter.A.SAMARIN@odfw.oregon.gov)>  
Subject: Re: Riparian Mitigation Rogue River

Hi Pete,

This is for 128 Penny Lane. I talked to Ryan Nolan and he said you made some recommendations but the City has not told us what they want us to do and asked that I contact you. Any chance you could please send the recommendations to me that you sent the City? Then I'll propose those recommendations in the riparian permit application to hopefully satisfy the City.

Thanks!

V/r

-Scott

Sent from my iPhone

> On Sep 16, 2021, at 8:36 AM, SAMARIN Peter A \* ODFW <[Peter.A.SAMARIN@odfw.oregon.gov](mailto:Peter.A.SAMARIN@odfw.oregon.gov)>  
wrote:

>

> Scott,

>

> It appears (according to the city) bridges were added at 128 and 130 Penny Lane. I provided recommended mitigation to the city at 128 Penny Ln. Is this project at 130? If so, I will need photos of the site that includes all areas where work was completed. After receiving those I can make a recommendation to the city as ODFW does not regulate this type of activity and only works in an advisory role for counties/municipalities. Thanks, Pete

>

> -----Original Message-----

> From: Scott Ferre <[roguetechengineering@gmail.com](mailto:roguetechengineering@gmail.com)>

> Sent: Wednesday, September 15, 2021 11:22 AM

> To: [peter.a.samarin@state.or.us](mailto:peter.a.samarin@state.or.us)

> Subject: Riparian Mitigation Rogue River

>

>

>

> Good Morning,

>

> I'm a civil engineer and have a client in Shady Cove that has constructed a foot bridge over a side channel of the Rogue River to access his private property on the other side of the channel. He has disturbed about 16 SF of riparian vegetation (black berries) with a concrete pad and installed about a 20' long 2' wide decomposed granite path from the bridge to an undisturbed area of the private island. We are submitting permits for floodplain development and riparian management and the City asked that I reach out to you to see if ODFW has any concerns or permitting/mitigation requirements. I can provide photos or would be happy to meet you onsite if needed. Thanks!

>

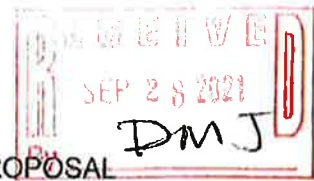
> V/r

>

> -Scott Ferre

> 503-545-6000

CITY OF SHADY COVE  
City Council



NOTIFICATION OF ADJACENT PROPERTY USE PROPOSAL

DESCRIPTION OF PROPERTY: 34-1W-21AA, Tax Lot 2600, located at 128 Penny Lane, Shady Cove  
PROPOSAL: FPDA 21-02. The request is for after the fact approval to construct a pedestrian bridge in the Special Flood Hazard Area and Riparian Setback as well as approval for a Riparian Protection Corridor vegetation maintenance plan.

DATE AND TIME OF MEETING: Thursday, October 7, 2021 at 6:00 p.m.

LOCATION: City Hall Council Chamber, 22451 Highway 62.

RESPONSE DATE: September 30, 2021

APPLICANT: Michael Kretzer, Scott Ferre

OWNER: Michael Kretzer

The purpose of this notice is to give nearby property owners and other interested people the opportunity to submit written comments about the application. You may also give oral testimony at the public hearing.

The City Council shall make a Type III decision after addressing all of the relevant approval criteria. Based upon the criteria and standards; the facts contained within the record; the evidence submitted and the testimony presented, the City Council shall grant a continuance of the public hearing, or they shall approve, approve with conditions, or deny the requested Floodplain Development Permit and Riparian Permit.

Failure to raise an issue at a hearing, in person or in writing, accompanied by statements or evidence sufficient to afford the decision maker and the applicant an opportunity to respond to the issue, shall preclude appeal to the Oregon State Land Use Board of Appeals based on that issue. All testimony and evidence must be directed towards the specific criteria.

A copy of the application, all documents and evidence submitted by the applicant, and applicable criteria and standards can be reviewed at City Hall at no cost, and copies will be provided at a reasonable cost. The Staff report will be available 7 days prior to the hearing. For more information please contact the Planning Department at City Hall, (541) 878-8204. Please mail comments to City of Shady Cove, PO Box 1210, Shady Cove, OR 97539. Public attendance is welcome.

**\*\* REVIEW AND COMMENT \*\***

- ☐ No adverse effect.  
☐ No comment.  
☒ It has adverse effects as stated below.

REMARKS: Allowing this request, for a property owner who knowingly constructed this bridge without a permit, and within the riparian setback, will detrimentally impair the city's ability to enforce any future riparian restrictions. This is a blatant violation of the City of Shady Cove's riparian ordinance, adopted in 2016, well before the current owner's purchase in 2019.

SIGNATURE: Jon Magill

PRINTED NAME(s): Jon Magill

STREET AND MAILING ADDRESS: 31 James Pl, PO Box 677, Shady Cove, OR 97539

"Notice to mortgagee, lien holder, vendor, or seller: The Shady Cove Zoning Ordinance requires that if you receive this notice it shall be promptly forwarded to the purchaser."

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Planning Department at (541) 878-8204. Notification 72 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to the meeting (28 CFR 35.102-35.104 ADA Title II).



CITY OF SHADY COVE  
City Council

NOTIFICATION OF ADJACENT PROPERTY USE PROPOSAL

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The City Council shall make a Type III decision after addressing all of the relevant approval criteria. Based upon the criteria and standards; the facts contained within the record; the evidence submitted and the testimony presented, the City Council shall grant a continuance of the public hearing, or they shall approve, approve with conditions, or deny the requested Floodplain Development Permit and Riparian Permit.

Failure to raise an issue at a hearing, in person or in writing, accompanied by statements or evidence sufficient to afford the decision maker and the applicant an opportunity to respond to the issue, shall preclude appeal to the Oregon State Land Use Board of Appeals based on that issue. All testimony and evidence must be directed towards the specific criteria.

A copy of the application, all documents and evidence submitted by the applicant, and applicable criteria and standards can be reviewed at City Hall at no cost, and copies will be provided at a reasonable cost. The Staff report will be available 7 days prior to the hearing. For more information please contact the Planning Department at City Hall, (541) 878-8204. Please mail comments to City of Shady Cove, PO Box 1210, Shady Cove, OR 97539. Public attendance is welcome.

**\*\* REVIEW AND COMMENT \*\***

- ☐ No adverse effect.  
☐ No comment.  
☒ It has adverse effects as stated below.

REMARKS: See next page

SIGNATURE: 

PRINTED NAME(S): Steve Nuckles

STREET AND MAILING ADDRESS: 33 James Place, Shady Cove, OR 97539

"Notice to mortgagee, lien holder, vendor, or seller: The Shady Cove Zoning Ordinance requires that if you receive this notice it shall be promptly forwarded to the purchaser."

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Planning Department at (541) 878-8204. Notification 72 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to the meeting (28 CFR 35.102-35.104 ADA Title II).

The City of Shady Cove has a code of Ordinances that all residents must respect. Building and Riparian ordinances are part of this code. When we bought our riverfront property in 2011, the realtor was very upfront in educating us on our responsibilities regarding these City and County ordinances. Being that Mr. Kretzer bought his home from the same realtor, I must believe that he too was given this information.

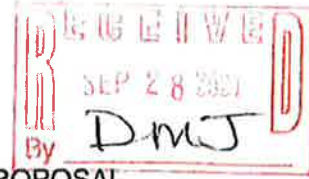
Regarding the bridge, I have 2 major concerns:

1. The bridge was built without any regard to the City's building and riparian ordinances. To sweep the bridge in after the fact, is wrong. If a structure is desired in the floodplain and/or riparian corridor, it must be approved and engineered properly BEFORE construction. If we let this slide, then our Ordinances are meaningless. We built a structure in the floodplain and spent months getting the proper approvals before any construction began. Shouldn't the rules apply to everyone?
2. As a kayaker and rafter, that bridge, in its current form, is a huge hazard. We and others do use that channel, and to now be required to navigate under a low, wooden structure is dangerous, especially when the water is high and swift. If this bridge is to be approved, it should be higher off the water and/or a permanent sign should be posted at the channel start warning rafters of the danger.

Regarding the Riparian Maintenance Plan, what Mr. Kretzer presents in his application, was NOT what I witnessed. During the heat of the day in August (extreme fire danger), his crew was clear cutting the vegetation all the way down the bank to the water. This was not trimming invasive species, it was whacking everything down to a few inches in height over a wide swath. In addition, to be doing this in August with gas powered tools is completely unacceptable. Weed abatement time is spring; not during extreme fire danger.



CITY OF SHADY COVE  
City Council



NOTIFICATION OF ADJACENT PROPERTY USE PROPOSAL

DESCRIPTION OF PROPERTY: 34-1W-21AA, Tax Lot 2600, located at 128 Penny Lane, Shady Cove  
PROPOSAL: FPDA 21-02. The request is for after the fact approval to construct a pedestrian bridge in the Special Flood Hazard Area and Riparian Setback as well as approval for a Riparian Protection Corridor vegetation maintenance plan.

DATE AND TIME OF MEETING: Thursday, October 7, 2021 at 6:00 p.m.

LOCATION: City Hall Council Chamber, 22451 Highway 62.

RESPONSE DATE: September 30, 2021

APPLICANT: Michael Kretzer, Scott Ferre

OWNER: Michael Kretzer

The purpose of this notice is to give nearby property owners and other interested people the opportunity to submit written comments about the application. You may also give oral testimony at the public hearing.

The City Council shall make a Type III decision after addressing all of the relevant approval criteria. Based upon the criteria and standards; the facts contained within the record; the evidence submitted and the testimony presented, the City Council shall grant a continuance of the public hearing, or they shall approve, approve with conditions, or deny the requested Floodplain Development Permit and Riparian Permit.

Failure to raise an issue at a hearing, in person or in writing, accompanied by statements or evidence sufficient to afford the decision maker and the applicant an opportunity to respond to the issue, shall preclude appeal to the Oregon State Land Use Board of Appeals based on that issue. All testimony and evidence must be directed towards the specific criteria.

A copy of the application, all documents and evidence submitted by the applicant, and applicable criteria and standards can be reviewed at City Hall at no cost, and copies will be provided at a reasonable cost. The Staff report will be available 7 days prior to the hearing. For more information please contact the Planning Department at City Hall, (541) 878-8204. Please mail comments to City of Shady Cove, PO Box 1210, Shady Cove, OR 97539. Public attendance is welcome.

**\*\* REVIEW AND COMMENT \*\***

- ☐ No adverse effect.  
☐ No comment.  
☒ It has adverse effects as stated below.

REMARKS: please see letter, videos and photos

SIGNATURE: Gina Ball

PRINTED NAME(S): Gina Ball

STREET AND MAILING ADDRESS: 120 Penny Ln. Shady Cove

"Notice to mortgagee, lien holder, vendor, or seller: The Shady Cove Zoning Ordinance requires that if you receive this notice it shall be promptly forwarded to the purchaser."

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Planning Department at (541) 878-8204. Notification 72 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to the meeting (28 CFR 35.102-35.104 ADA Title II).

To City Council,

Thank you for allowing me to voice my remarks regarding this hearing

The applicant has stated he did not know about the riparian ordinance violation and fines.

That is a false statement. My husband and I informed Mr Kretzer in 2019<sup>9/2020</sup> that he could not alter the riparian which is the rivers edge of 75ft to protect the wildlife and erosion of soil etc. The applicant stated " it was his property and that he can do what he wanted with it" we had also informed him of the possible fines of the violation and that he should ask the city first.

I noticed he was clearing the brush and digging the roots out and asked the applicant what he was doing? He told me "he had poured gasoline on the area to kill the plants to create an area to work" my husband also noticed Mr Kretzer was trying to pull the property marker out. My husband asked him to stop. It was difficult to pull and it remained in. See photos # 1,2,3

After clearing brush and roots the applicant poured cement and added poles. I noticed he was bringing more cement to the island and I had asked him if he was pouring more cement? The applicant stated he had to add more cement and back cables because the soil was too soft and giving way. I asked him to please not add anymore cement to the soil which was altering the land. The applicant continued.

We also informed the applicant that the river gets very high and the island will be covered with rushing water and possibly wash the structure away possibly causing damage. This information was disregarded. This channel is 30ft wide and not a creek or a stream. We have witnessed whole trees float down the river and very large branches float down the channel. It is definitely a flood zone area. See photos #4,5,6 dec 2015, see photos 7,8,9 from feb 2019, see video #1 from apr 2019

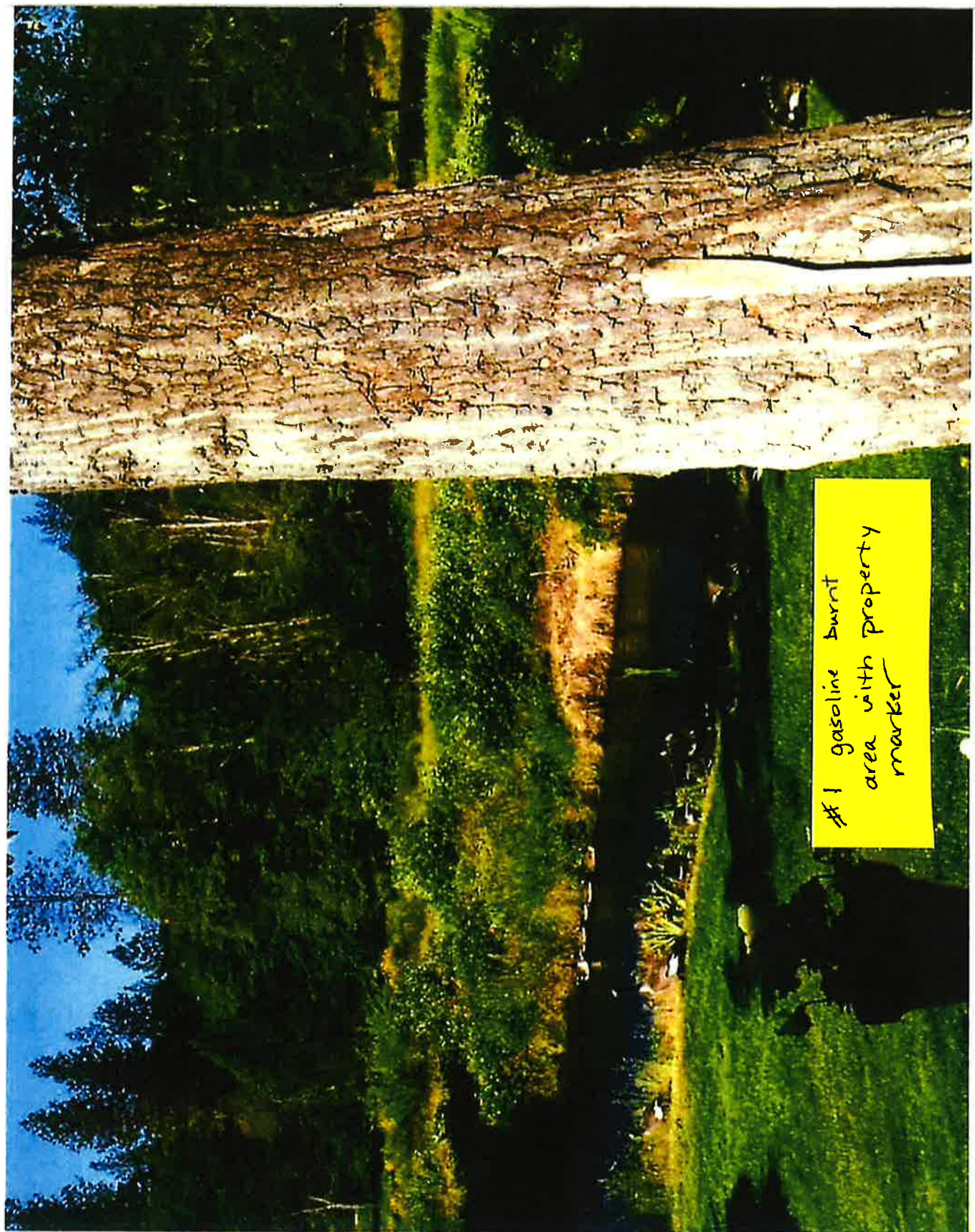
Rafters enjoy floating down the channel. We have witnessed some rafters having to duck under the structure to avoid hitting their heads. As you can see this island has a natural beauty of the Rogue River and it would be a definite adverse situation to let the structure remain. See photo #10 and video #2 rafter ducking

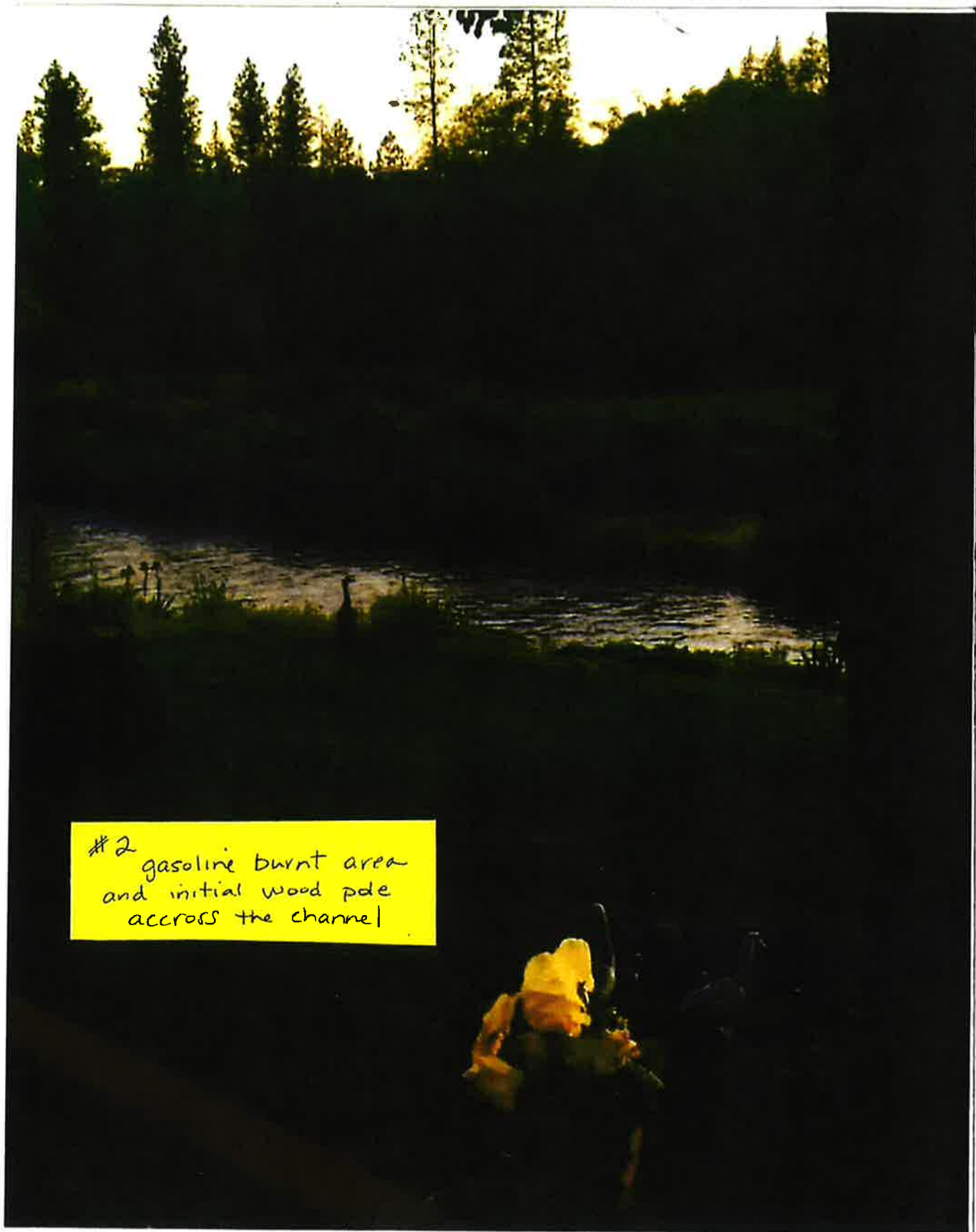
Also if you permit this structure what is to stop other home owners of building structures on the riparian? See photos pre structure #11,12,13

Thank you for allowing me to voice my remarks and add photos as it relates to this hearing.

Gina Ball *Gina Ball* 9.28.21

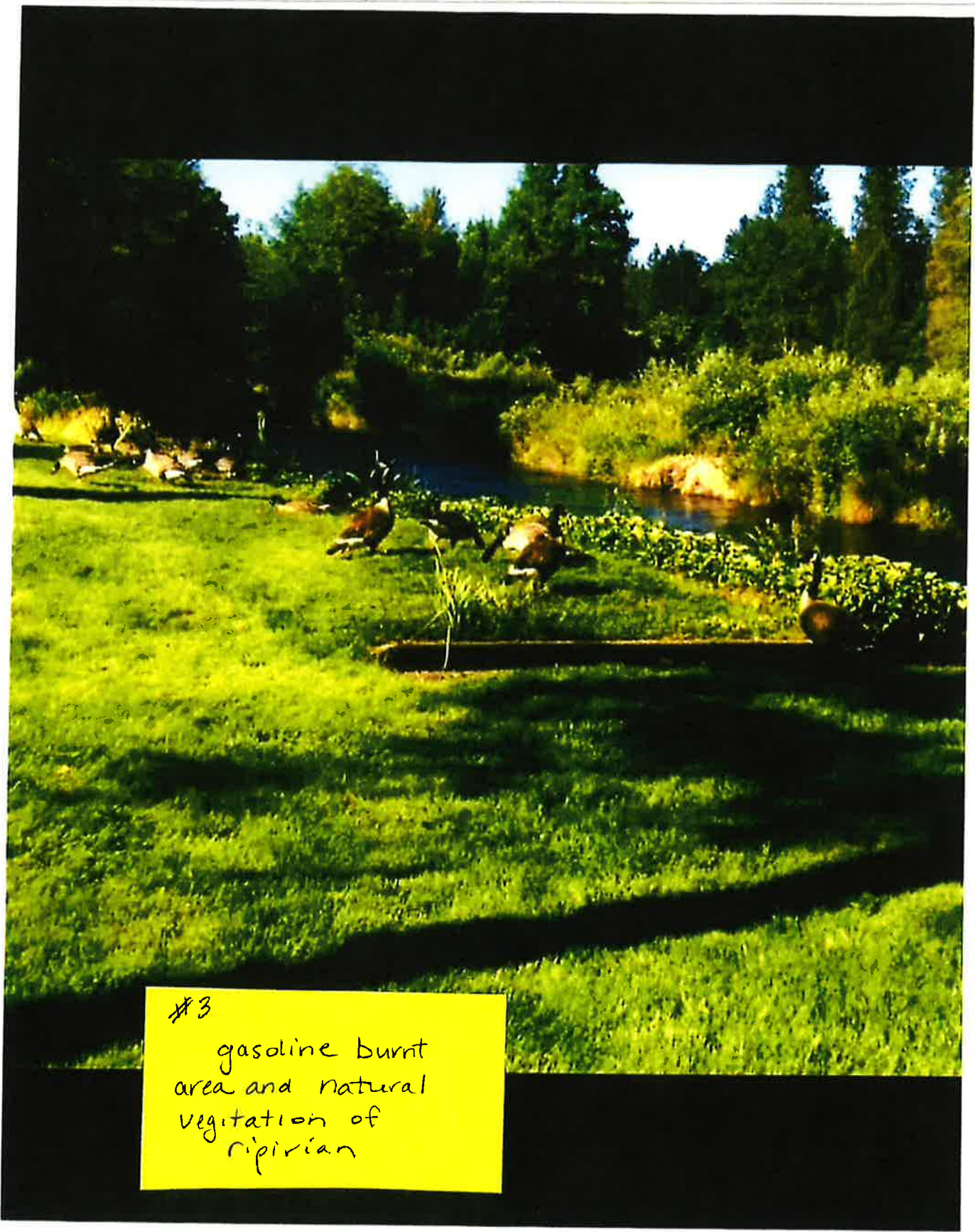






#2 gasoline burnt area  
and initial wood pole  
across the channel





#3

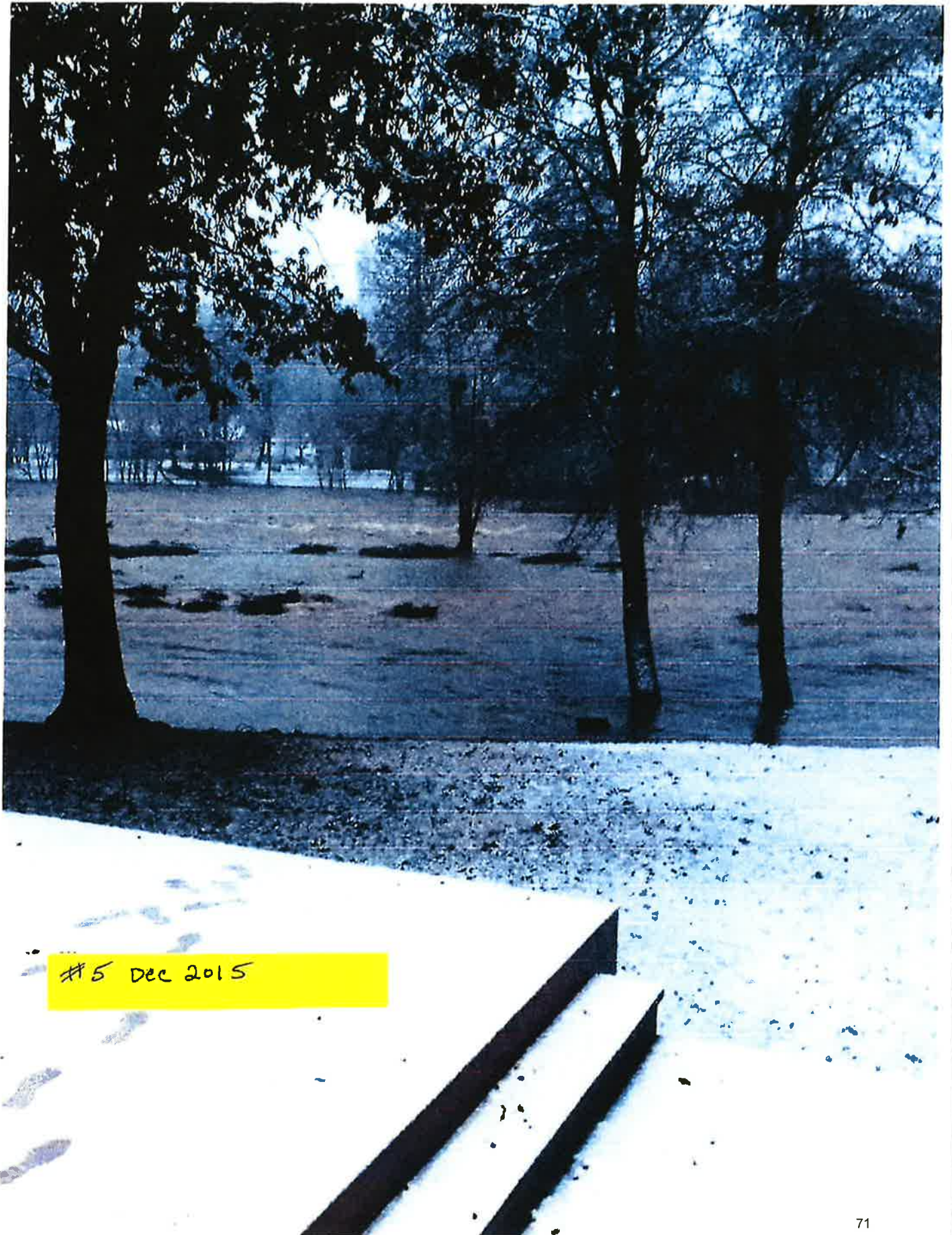
gasoline burnt  
area and natural  
vegetation of  
riparian





#4 island  
Dec 2015









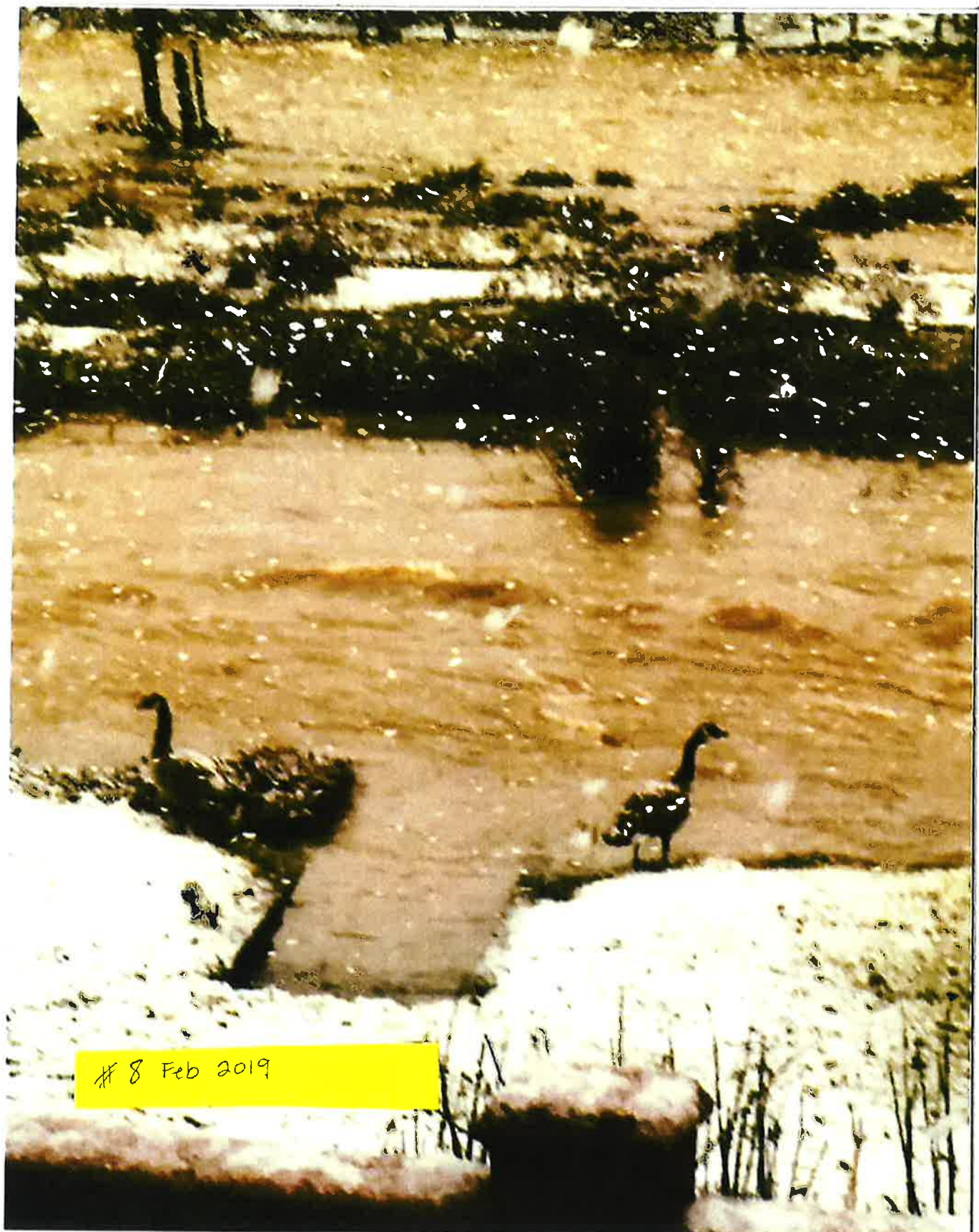
#6 Dec 2015  
Island Flooded



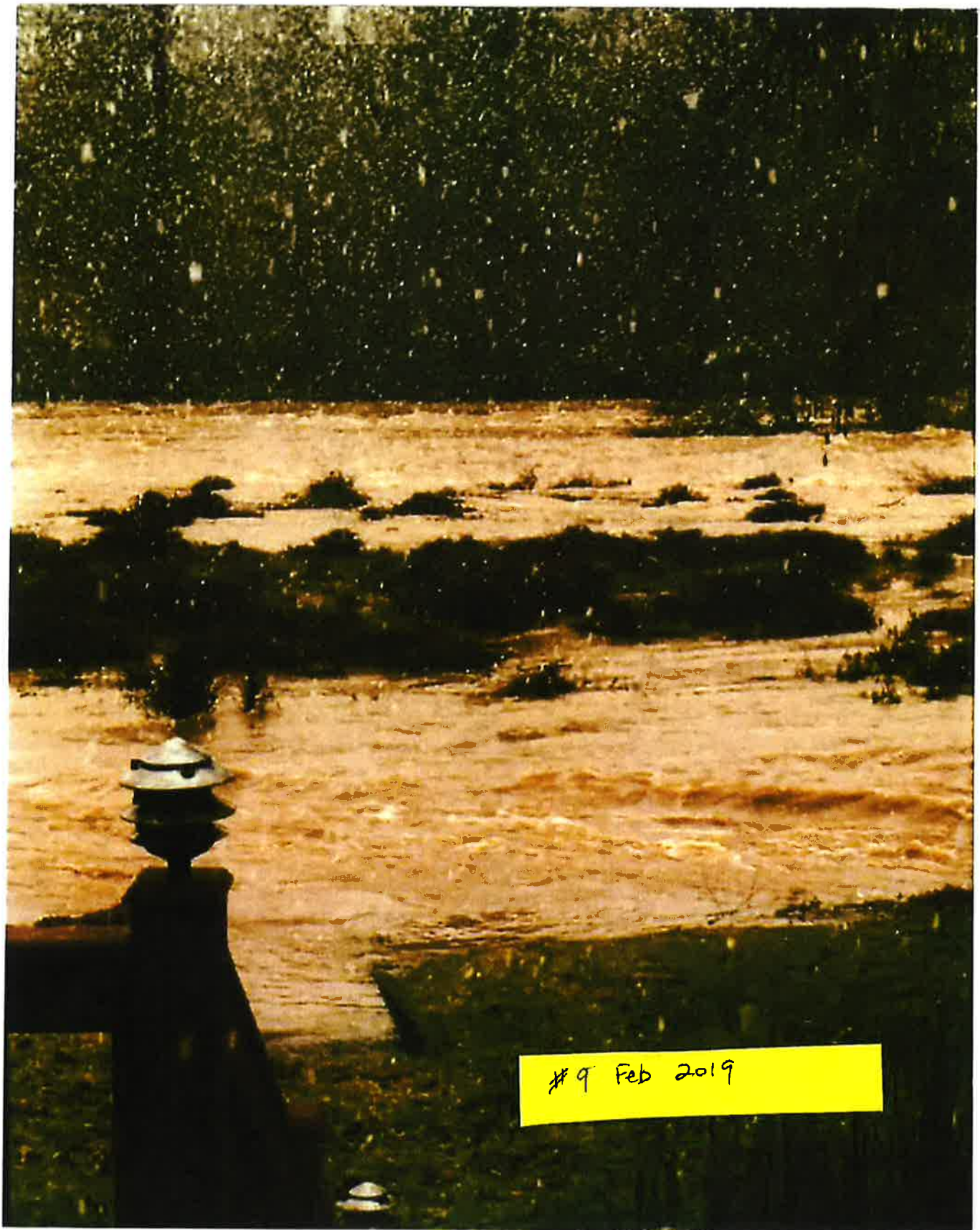


#7 Feb 2019

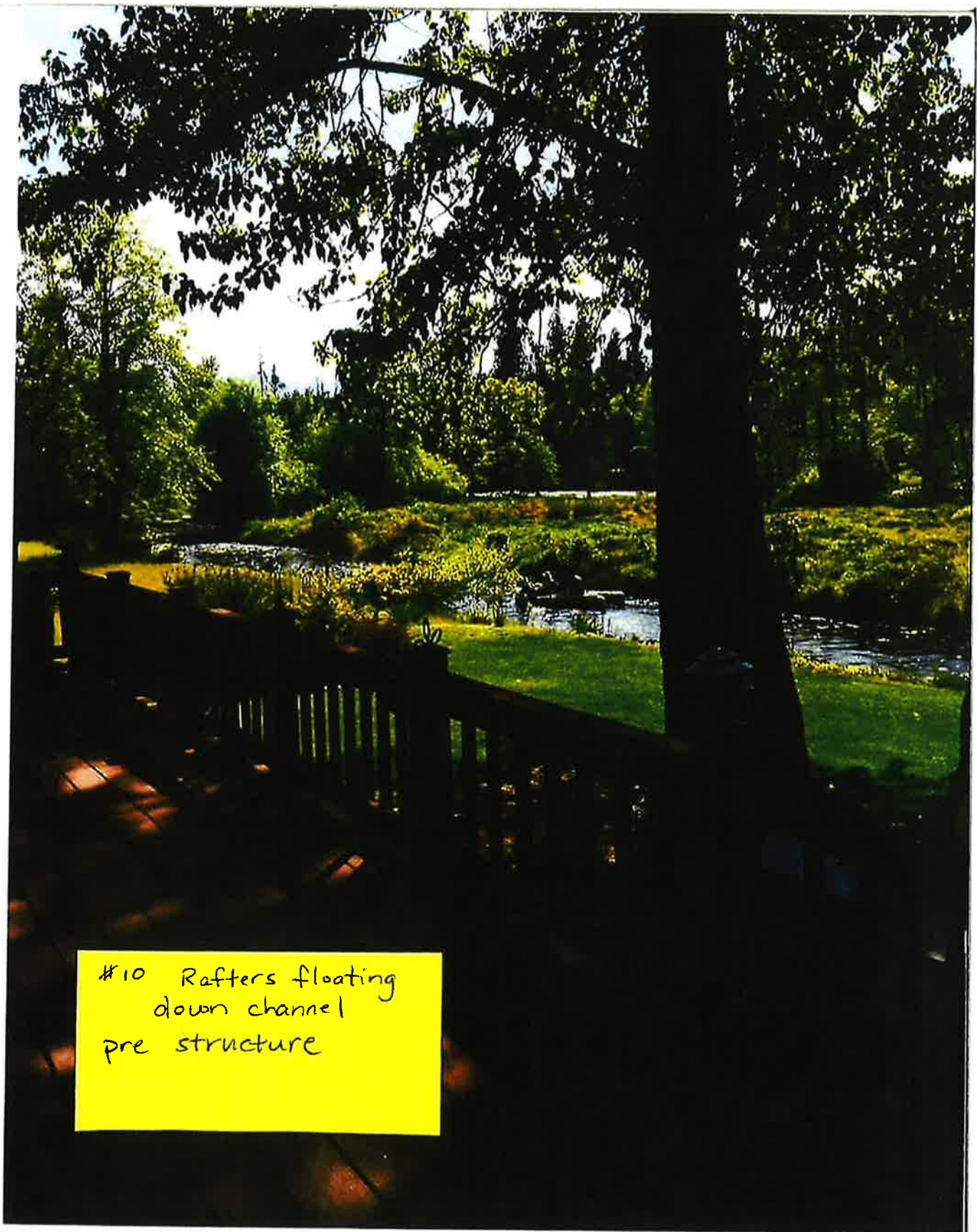






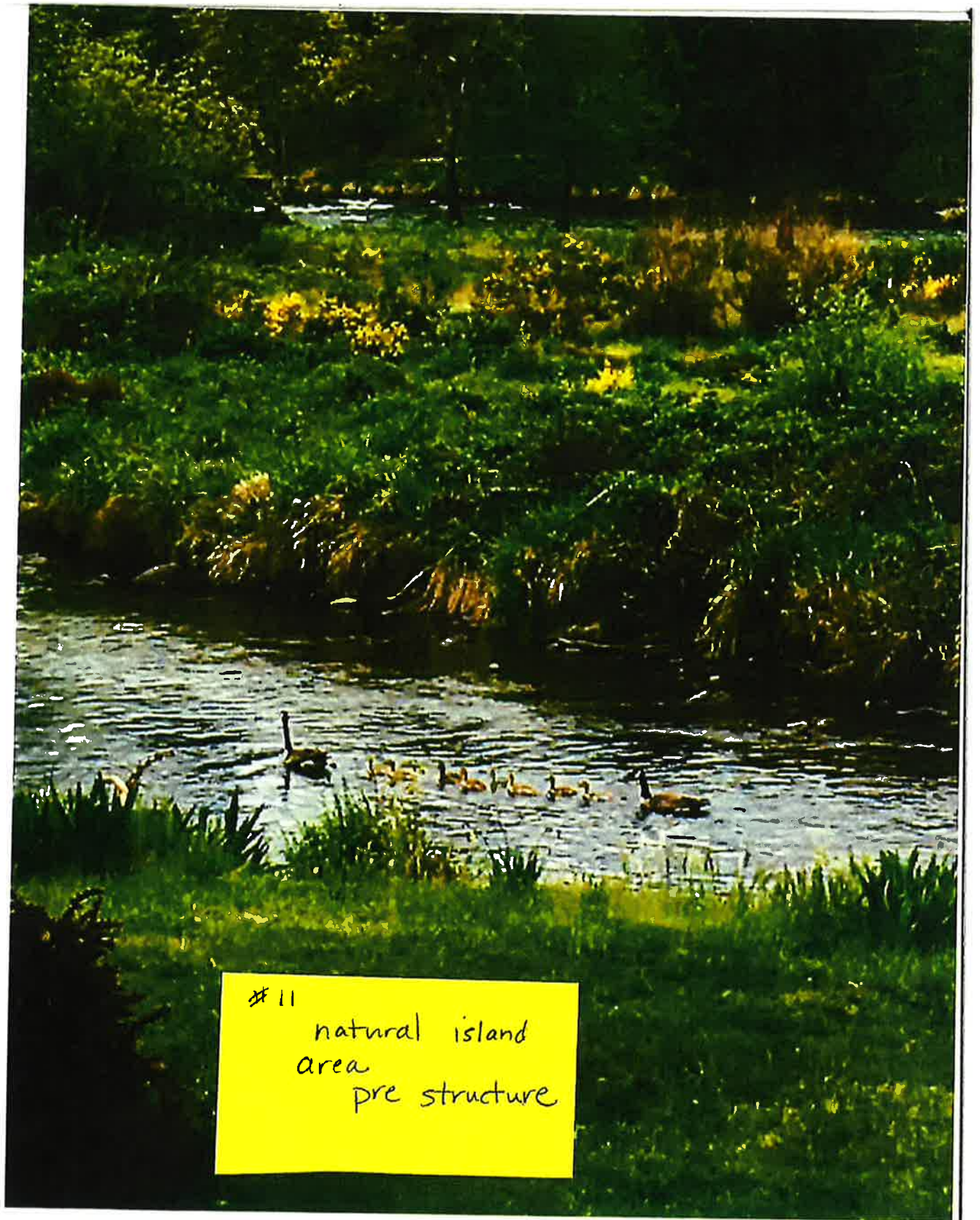






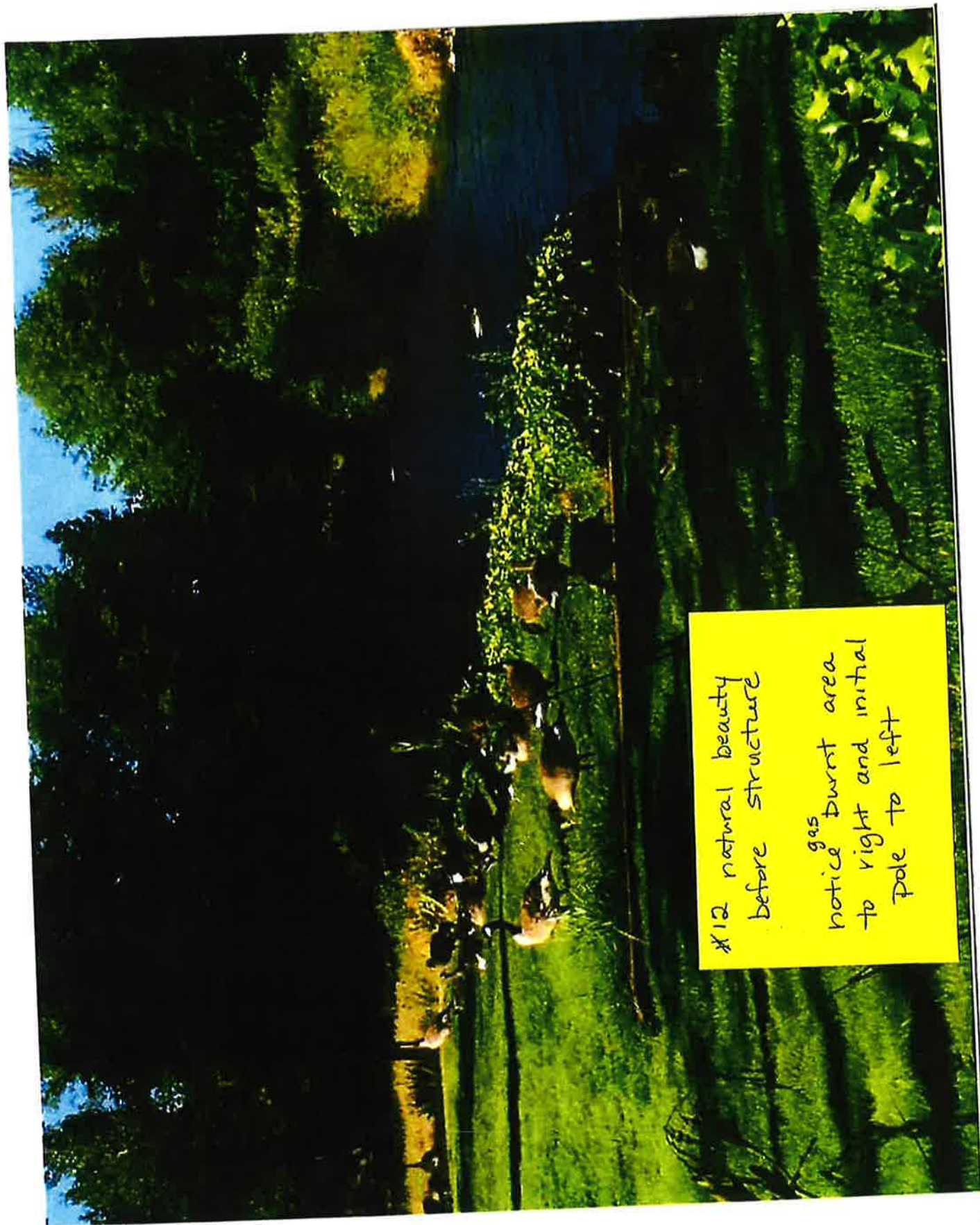
#10 Rafter floating  
down channel  
pre structure





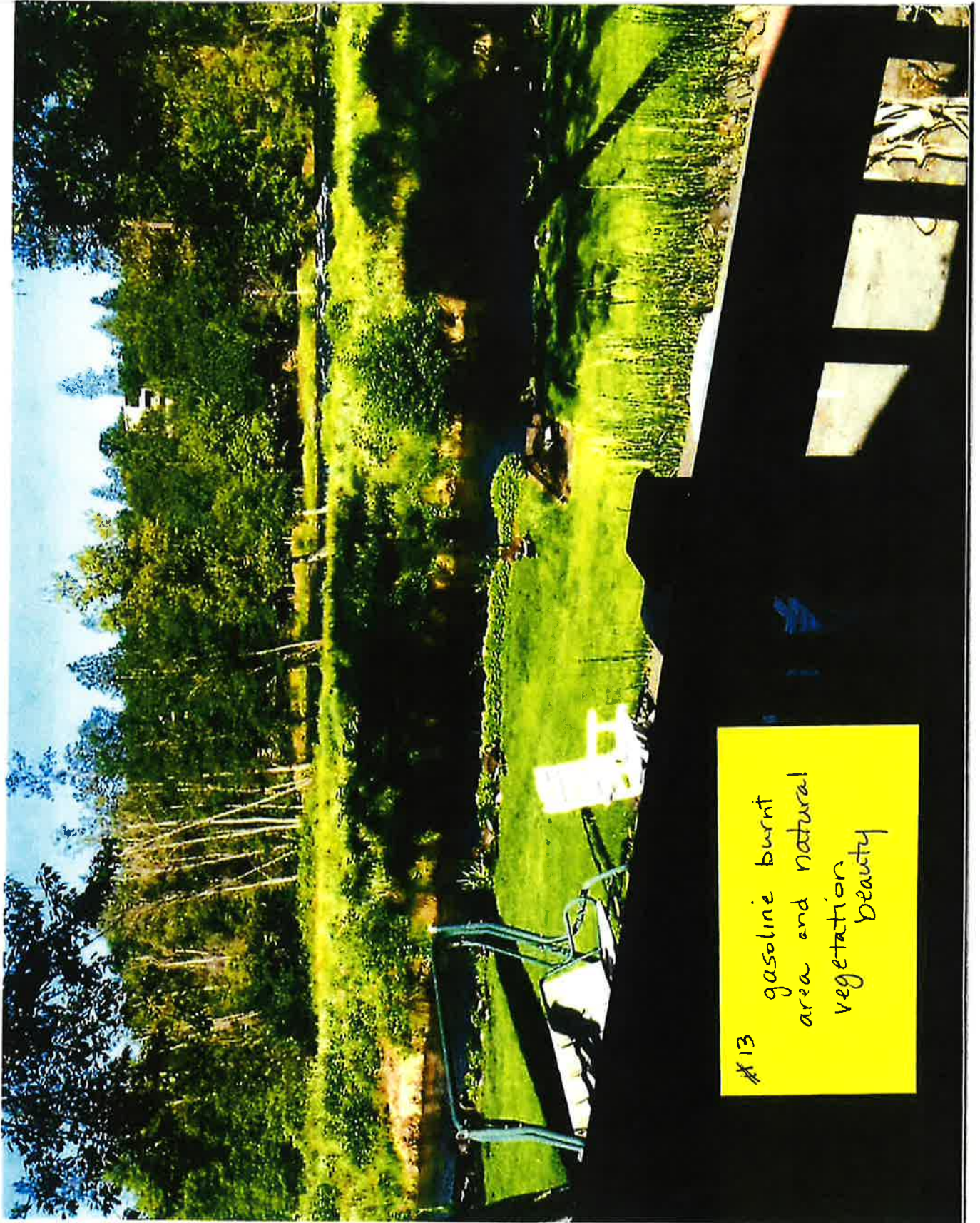
#11  
natural island  
area  
pre structure





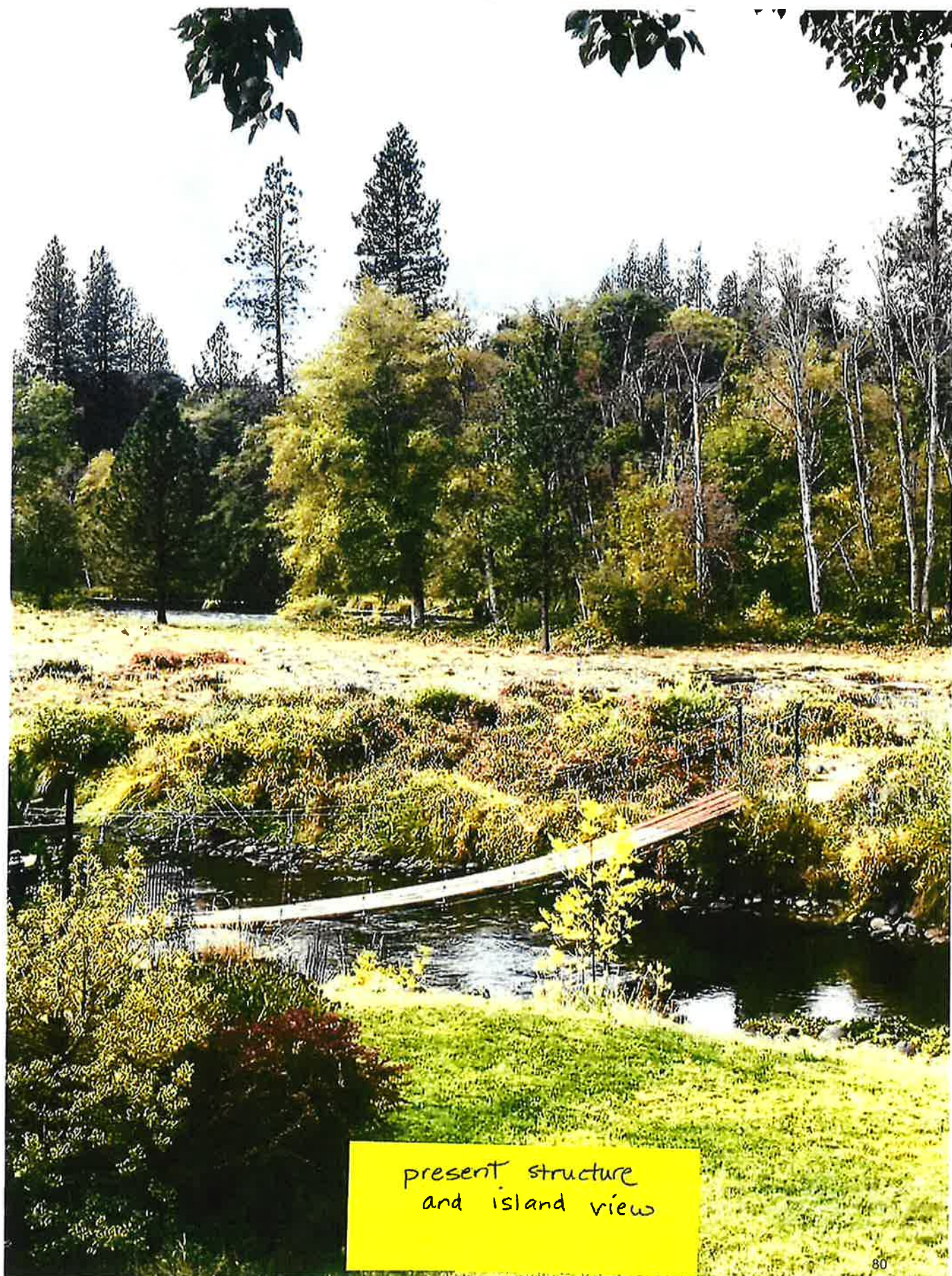
X12 natural beauty  
before structure  
notice <sup>gas</sup> burnt area  
to right and initial  
pole to left





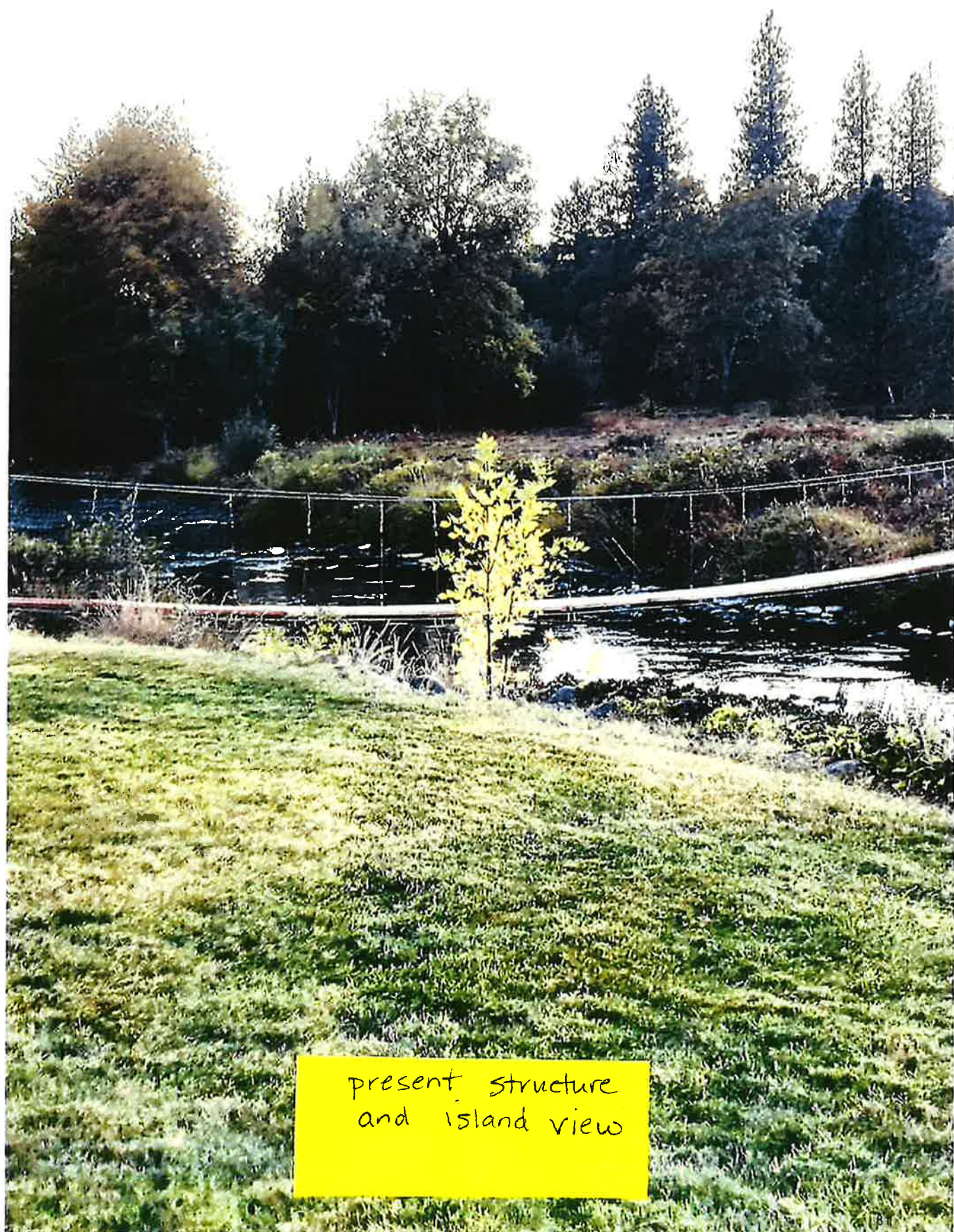
#13 gasoline burnt  
area and natural  
vegetation beauty





present structure  
and island view





present structure  
and island view



**Type III Staff Report  
Appeal of Planning Commission Variance Denial**

Date: September 22, 2021

Description of Property: 34-1W-16DB, Tax Lot 903

Address: 80 Mason Lane, Shady Cove Oregon

Planning Application: Appeal of VAR 21-01

Owner/ Applicant: Craig Whitmore

Proposal: Appeal Planning Commission Denial of a Variance to the standards of Section 154.200 to permit a reduced rear-yard setback, allowing an existing pergola structure to receive an after the fact building permit allowing it to remain while not meeting the required 15 feet from the rear property line.

Zoning: Low Density Residential R-1-20

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Public Hearing Date: October 7, 2021

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In accordance with Section 154.456 the City Council hears and decides all appeals of the Planning Commission.

In accordance with Section 154.379 and 154.419 the Planning Commission held a hearing to review the applicants request on August 26, 2021. The Planning Commission voted 2-1 to deny the request. The Planning Commission found that the hardship was self-imposed.

All class C variances shall be reviewed through a Type III review process as per §154.379, and subject to the criteria of Section 154.419.

The Planning Commission made a type III decision after addressing all of the relevant approval criteria and standards. Based upon the criteria and standards, the facts contained within the record, the evidence submitted and the testimony presented, the Planning Commission denied the requested application for a variance.

**Variance**

Class C variances may be granted if the applicant shows that, owing to the special and unusual circumstances related to the property, the literal application of the standards of the applicable land use district would create a hardship to development which is peculiar to the lot size and shape, topography, sensitive lands or other similar circumstances related to the property over which the applicant has no control and which are not applicable to other properties in the vicinity; except that, no variances to permitted uses shall be granted.

The city shall approve, approve with conditions or deny the application for a variance based on a finding that all of the following criteria are satisfied.



(a) The proposed variance will not be materially detrimental to the purposes of this chapter, to any other applicable policies and standards and to other properties in the same land use district or vicinity.

(b) A hardship to development exists which is peculiar to the lot size or shape, topography, sensitive lands or similar circumstances related to the property over which the applicant has no control and which are not applicable to other properties in the vicinity.

(c) The use proposed will be same as permitted under the applicable zoning district and city standards will be maintained to the greatest extent that is reasonably possible while permitting reasonable economic use of the land.

(d) Existing physical and natural systems, such as, but not limited to, traffic, drainage, natural resources and parks will not be adversely affected by any more than would occur if the development occurred as specified by city standards.

(e) The hardship is not self imposed.

(f) The variance requested is the minimum variance, which would alleviate the hardship. (SCCO§154.419)

Approval Criteria and Findings – Class C Variance (SCCO)§154.419

**The City shall approve, approve with conditions or deny the application for a variance based on a finding that all of the following criteria are satisfied.**

(A) The proposed variance will not be materially detrimental to the purposes of this chapter, to any other applicable policies and standards and to other properties in the same land use district or vicinity.

FINDING: Approval of the variance would allow a previously constructed pergola structure to remain on the property and receive an after the fact building permit even though it does not meet the required rear yard building setback. The structure has been built up to and potentially over an existing property line.

(B) A hardship to development exists which is peculiar to the lot size or shape, topography, sensitive lands or similar circumstances related to the property over which the applicant has no control and which are not applicable to other properties in the vicinity.

FINDING: The applicant apparently built a structure without permits prior to determining property lines. The City should evaluate whether a variance is appropriate for this structure. Could the structure be altered or moved to meet the required setback? While the applicant has created a hardship by building a structure too close to an existing property line, it doesn't appear that any pre-existing hardship exists associated to this lot.

(C) The use proposed will be same as permitted under the applicable zoning district and city standards will be maintained to the greatest extent that is reasonably possible while permitting reasonable economic use of the land.

FINDING: Accessory structures are permitted in the R-1 zoning district. The parcel already contains a home and several accessory structures. Lot coverage is limited to 40 percent of the property, permitting approximately 10,106 square feet of structural coverage. The sum of all existing approved structures (house, garage, shed) is 2,892 square feet (11%). As long as the RV cover, deck, and pergola are not more than 7,214 square feet they could be permitted based on lot coverage. The applicant shall provide

square footage information for the unapproved deck, pergola, and RV storage structures.

(D) Existing physical and natural systems, such as, but not limited to, traffic, drainage, natural resources and parks will not be adversely affected by (sic) any more than would occur if the development occurred as specified by city standards.

FINDING: The City should decide if this Variance would have or could have any negative impacts on the property adjacent to 80 Mason Lane. No specific physical or natural systems (other than potential fuel breaks between properties) appear to be impacted by this structure.

(E) The hardship is not self imposed.

FINDING: This hardship is clearly self-imposed. The applicant chose to build a structure across a property line without identifying property lines.

(F) The variance requested is the minimum variance, which would alleviate the hardship

FINDING: As the structure appears to be built across property lines this is the only possible request that would allow it to remain in place.

#### Conclusion

The proposed variance was denied by the City of Shady Cove Planning Commission. The Planning Commission found that the hardship was self imposed.

The request for appeal requires the review and discretion of the City Council to determine whether the Planning Commission decision was correct.

The City Council may affirm, reverse, or modify the decision of the planning commission. If the City Council chooses to reverse the decision they must make the findings prerequisite to the granting of a permit as prescribed by the appropriate chapter of the title. In other words, they must state how the Planning Commission erred, and how the applicant has met the criteria.

The decision before the Council is to determine whether the Planning Commission correctly reviewed the criteria for a variance related to the required rear yard setback in the Low Density Zones of the City. The required rear yard building setback is 15 feet. The applicant constructed a pergola structure across the rear property line.

In land use hearings the burden of proof lies with the applicant to prove that the request is warranted and meets the previously approved criteria of the City. In this case the applicant must prove to the City Council that the site has specific issues that warrant the request and that it is in the best interest of the City to allow the variance to the rear yard building setback standard of the Low Density Zone of the City.

The Council may affirm, reverse, or modify the Planning Commission denial of the Variance request seeking permission to acquire an after the fact building permit and allow the pergola structure to remain while exceeding the required rear yard building setback.



The Applicant's appeal letter request a stay of judgement, or a continuation of the hearing, as the applicant pursues corrective measures to address adjustment of the rear property line. The Council may choose to continue the hearing to a date certain. If the Council chooses to reverse the Planning Commission decision staff suggests including the following condition.

Conditions of Approval

- \_\_\_\_\_ 1. All necessary 'after the fact' City and County building permit approvals shall be obtained within 1 year or any structures built within the required building setbacks shall be removed.

The decision of the City Council is the final decision of the City.

Respectfully submitted this 22<sup>nd</sup> day of September, 2021.



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Ryan Nolan, City Planner

CITY OF SHADY COVE  
CLASS C  
VARIANCE APPLICATION  
SCMC §§154.415-154.420

APPLICATION NO. VAR 21-01 REC'D BY: D. Jermolov DATE: 7/16/21

FEE: Class C \$ 500.00 AMOUNT PAID: \$500.00 RECEIPT NO: 27181

PUBLIC NOTICE MAILING FEE: \$ 75.00

PROPERTY OWNERS: Craig Whitmore

PROPERTY STREET ADDRESS: 80 Mason Lane

MAP AND TAX LOT: Township 34, Range 1W Section 16DB Tax Lot 903

CURRENT ZONING: ~~RR-5~~ R-1-20 ADJACENT ZONING: RR-5, R-1-20

Variance §154.418
A Variance owing to the special and unusual circumstances related to the property
Literal application of the standards would create a hardship to development
Due to peculiar lot size and shape, topography, sensitive lands or other
applicant has no control, and not applicable to other properties in the vicinity
Hardship cannot be self-imposed and so variance to a permitted use will be granted

**SCMC § 154.418 CLASS C VARIANCE.**

Class C variances are reviewed using a Type III procedure as governed by SCMC §154.379

Application for variance must include the following:

1. If you are not the property owner an Owners Authorization must be submitted.
2. 2 copies of property plat map.
3. 2 copies of the plot plan indicating existing property lines and proposed use.
4. 1 copy of metes and bounds description of the property.
5. A narrative statement explaining how the application satisfies each and all of the relevant criteria and standards; the reason for the request, alternatives considered and why the subject standard cannot be met without a variance. The narrative statement must contain sufficient detail for review and decision-making; (see page 3)

Class C Variance Application page 2

6. 1 copy of recorded covenants, conditions or deed restrictions concerning the present use of this property, if any.

7. ~~4 set of pre-stamped and pre-addressed envelopes for all real property owners of record who will receive a notice of the application (within 200 feet of the subject site). The records of the County Department of Assessment and Taxation are the official records for determining ownership. The applicant shall demonstrate that the most current assessment records have been used to produce the notice list.~~

~~[Alternatively, the applicant may pay a fee for the city to prepare the public notice mailing.]~~

CERTIFICATION

I hereby certify that the information given above and attached hereto is true and correct, that I am the property owner (or have provided owners authorization) and that falsification of fact will result in invalidation of the application. Further, I understand any approval given is valid for the specific project only and is subject to all applicable laws, regulations and conditions.

APPLICANT'S SIGNATURE: Cy Titations DATE: 7-28-21

MAILING ADDRESS: 80 Mason Lane, Shady Cove, OR 97539

HOME PHONE 541-944-7738

CELL PHONE \_\_\_\_\_

**PURSUANT TO ORS 227, THIS APPLICATION IS CONSIDERED A COMPLETE APPLICATION WHEN REVIEWED, DATED, AND SIGNED BY THE CITY PLANNER OR HIS/HER DESIGNATE**

Complete RN Incomplete \_\_\_\_\_

Letter sent \_\_\_\_\_

Signature Ryan Nol Date 7/28/21

Class C Variance Application page 3

Criteria for approval- your narrative statement must address the following:

SCMC §154.419 - The city shall approve, approve with conditions or deny the application for a variance based on a finding that **all** of the following criteria are satisfied.

(a) The proposed variance will not be materially detrimental to the purposes of this chapter, to any other applicable policies and standards and to other properties in the same land use district or vicinity.

(b) A hardship to development exists which is peculiar to the lot size or shape, topography, sensitive lands or similar circumstances related to the property over which the applicant has no control and which are not applicable to other properties in the vicinity.

(c) The use proposed will be same as permitted under the applicable zoning district and city standards will be maintained to the greatest extent that is reasonably possible while permitting reasonable economic use of the land.

(d) Existing physical and natural systems, such as, but not limited to, traffic, drainage, natural resources and parks will not be adversely affected by any more than would occur if the development occurred as specified by city standards.

(e) The hardship is not self-imposed.

(f) The variance requested is the minimum variance, which would alleviate the hardship.

And an impact study per 154.379 (A) (d).

**State below the need for the variance:**

*Attach additional sheets as necessary*

The variance requested is required due to see attached letter of statement

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**Rogue Valley Office**  
130 O'Hare Parkway, Suite 102  
Medford, OR 97504  
541-326-4828

**Coos Bay Office**  
486 'E' Street  
Coos Bay, OR 97420  
541-266-8601

**Albany Office**  
937-3 Geary Street  
Albany, OR 97321  
541-223-5130

**Newport Office**  
609 SW Hurbert Street  
Newport, OR 97366  
541-264-7040

July 19, 2021

**Re: Class C Variance Application Request / Statement**

To Whom It May Concern:

The purpose for this letter is make a statement to accompany the Class C Variance application per City of Shady Cove Ordinance, 154.379(B)(2)(a). Mr. Craig Whitmore the owner of Tax Lot 903 is requesting a Class C variance for improvements made to his property in 2019. Mr. Whitmore is requesting a variance as certain improvements to his property were unintentionally constructed without benefit of permitting (See Exhibit A). Once notified by the County that these structures would need to be permitted. Mr. Whitmore engaged the services of Civil West Engineering Services to demonstrate that structures 1 & 2 below meet all of the structural requirements for permitting per Oregon Structural Specialty Code. Structural Reports have been furnished to Jackson County and The City of Shady Cove for verification. The two minor structures are further identified as follows:

(1) RV Carport



(2) Pergola



(3) The leanto shown to the right was removed in 2020 and will be reconstructed in accordance with City and County permits once a new retaining wall is constructed along easterly property line. Also of note at the easterly property is a recently approved lot line adjustment prepared by a licsened Land Surveyor. This lot line adjust was initiated at great expense to Mr. Whitmore and will accommodate the new leanto and the necessary property line set back requirements.



The outdoor pergola has been proven to be structurally permissible, however based on its physical location it does not meet the 15-foot setback from the rear property line as required by the City of Shady Cove. Additionally, there is a creek adjacent to the fireplace and pergola that guarantees no structures can be built in this location by the adjacent landowner.



Mr. Whitmore is a retired citizen of Shady Cove who is a valued and an upstanding member of the community. He has been a resident of Shady Cove for over 30 years without incident or violations. Mr. Whitmore is eager to get this behind him and move on to enjoying his home in peace. It was never Mr. Whitmore's intention to encroach on the 15 feet minimum setback as he did and will also provide a written letter from the adjacent owner that will state they have no issue with the improvements being within the minimum setback requirements. If this variance is not approved Mr. Whitmore would lose substantial value in his property and a great deal of his hard-earned money would have been wasted without any benefit to him or his wife. Mr. Whitmore humbly requests this variance be approved.

Respectfully,  
Civil West Engineering Services, Inc.

  
David C. Kung, P.E.

**BEFORE THE PLANNING COMMISSION  
OF THE CITY OF SHADY COVE  
COUNTY OF JACKSON, STATE OF OREGON**

IN THE MATTER OF CONSIDERATION OF AN       )  
APPLICATION FOR APPROVAL OF VAR 21-01       )  
REQUEST FOR VARIANCE                               )       **FINAL ORDER**

OWNER/APPLICANT: Craig Whitmore  
Address: 80 Mason Lane, Shady Cove, Oregon  
Planning Application: VAR 21-01

**RECITALS:**

- 1) An application for a variance to permit a reduced rear-yard setback, allowing an existing pergola structure to receive an after the fact building permit allowing it to remain while not meeting the required 15 feet from the rear property line. The property is located at 80 Mason Lane, Shady Cove, Oregon.  
  
The application was submitted and duly accepted by the City on July 16, 2021, and considered complete on July 28, 2021; and,
- 2) Subject property, described as tax lot 903 on Jackson County Assessor's Map no. 34-1W-16DB, and is zoned as Low Density Residential, R-1-20; and,
- 3) Chapter 154, §§154.418-154.420; and Procedures 154.379 of the Code of Ordinances of the City of Shady Cove govern Variances within the corporate limits of the City and requires that the Planning Commission make the final decision regarding the application; and,
- 4) The Shady Cove Planning Commission, after providing proper public notice, met in Public Hearing on August 26, 2021, to consider the application and receive testimony from the applicant, interested parties and staff. The staff recommendations, as submitted to the Planning Commission, are contained in reports which are part of the record and are specifically incorporated herein as though fully set forth; and,
- 5) On August 26, 2021, following the close of the public hearing, the Planning Commission deliberated on the record of the proceedings, after which a motion was made and duly seconded, to **deny the Variance due to the hardship being self-imposed**. The motion passed 2 – 1 on a roll call vote.

Page 1 of 2



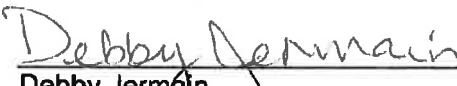
**ORDER:**

Based on the record of the public hearing on this matter, the Planning Commission concludes that the case for a Class C Variance has been refuted and is not in accordance with the requirements as listed in the Shady Cove Code of Ordinances §154.418 and 154.419, specifically the applicant has not shown how the hardship was not self-induced. Therefore, the Planning Commission **denies** the Variance application.

This FINAL ORDER for conditional approval is granted this 26th day of August 2021.

**ATTEST:**

  
Hank Hohenstein  
Planning Commission Chair

  
Debby Jermolyn,  
Planning Technician

Final Order mailed on August 31, 2021

**NOTICE**

The Planning Commission Order is the final decision of the City of Shady Cove on this application unless an appeal is made to the Shady Cove City Council. This decision may be appealed to the Shady Cove City Council by filing a notice of appeal, in writing, within 10 days of the date of decision. The notice of appeal shall set forth in detail the appellant's relationship to the property, how the decision will adversely affect the appellants, and the grounds upon which the appellant believes this decision is incorrect. Please contact the Shady Cove Planning Department for specific appeal information. The Planning Department is located at City Hall, 22451 Highway 62, PO Box 1210, Shady Cove, OR 97539, 541.878.8204.

**Civil West**

Engineering Services, Inc.  
[www.civilwest.com](http://www.civilwest.com)



**Rogue Valley Office**  
130 O'Hare Parkway, Suite 102  
Medford, OR 97504  
541-326-4828

**Albany Office**  
937-3 Geary Street  
Albany, OR 97321  
541-223-5130

**Coos Bay Office**  
486 'E' Street  
Coos Bay, OR 97420  
541-266-8601

**Newport Office**  
609 SW Hurbert Street  
Newport, OR 97366  
541-264-7040

September 3, 2021

**Re: Request for appeal of Planning Commission Decision for variance dated Thursday August 26, 2021**

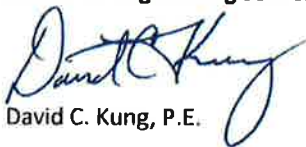
To Whom It May Concern:

Pursuant to Section 154.456 of the Shady Cove code Ordinances "Any Planning Commission decision may be appealed to the City Council". This letter has been emailed to both Debby Jermain City of Shady Cove and Ryan Nolan RVCOG within ten days of the planning commission's decision to deny Mr. Whitmore's request for a class "C" variance of setbacks.

It is apparent that Mr. Whitmore has a case for adverse possession as discussed in the planning Commission meeting, as the fence line he utilized as the apparent lines of occupation / existing property line have been at this particular location for more than 20 years and observed by both land owner's as the agreed upon property line. Thus, the hardship was not knowing self-imposed as both owners have utilized the existing fence line as the property line for many years and Mr. Whitmore believed he was fully within his rights to construct his improvements at the current location.

Mr. Whitmore's next step is to pursue a claim of adverse possession to acquire the land that will ultimately give the planning commission a much better platform to be able to make an informed decision in favor of Mr. Whitmore's request for variance. Therefore, Mr. Whitmore requests stay of the judgement with additional time to bring the successful adverse possession element to this decision for further review and approval.

Respectfully,  
**Civil West Engineering Services, Inc.**

  
David C. Kung, P.E.

Check Issue Date	Check	Payee	Description	Amount
08/27/2021	50061	Postmaster	Sewer Billing postage	352.23
09/07/2021	50062	Avista Corporation	Natural Gas 07/21-08/23/21	18.35
09/07/2021	50063	Canon Solutions America, Inc.	Copies 7/25-8/24	44.94
09/07/2021	50064	Cantel of Medford, Inc.	Parking Bumper W/Spikes	504.00
09/07/2021	50065	Carrington Mortgage Services	Refund 126102 COE 06/26/20 - 385 Flower St, Shady Cove	335.83
09/07/2021	50066	Caselle, Inc.	Annual Support, Maintenance and Upgrades	9,975.00
09/07/2021	50067	Celtic Circle, LLC	Shop Rent 09/21	865.00
09/07/2021	50068	City of Shady Cove - Utilities	22451 Hwy 62 08/21	46.00
09/07/2021	50068	City of Shady Cove - Utilities	2501 Indian Creek Rd 08/2021	45.00
09/07/2021	50068	City of Shady Cove - Utilities	1008 Celtic Cir 08/21	46.00
09/07/2021	50069	Confident Staffing, Inc.	M. Rowden 08/29/21	881.75
09/07/2021	50070	Crystal Fresh	City Hall water	40.00
09/07/2021	50070	Crystal Fresh	Shop bottled water 07/2021	12.00
09/07/2021	50071	David Christian	Radio 8/23-8/27	90.00
09/07/2021	50071	David Christian	Radio 08/30-09/03	90.00
09/07/2021	50072	Devon Stephenson	Refund - 1272.01 - COE 6/24/21 - 225 Williams Lane	81.16
09/07/2021	50073	James & Cheryl Mour	Refund 3016.01 - COE 7/12/21 - 105 Edgewood Park	172.92
09/07/2021	50074	JP Morgan Chase	Expedia-LOC Hotel, Tom C.	405.09
09/07/2021	50074	JP Morgan Chase	Beenverified-Background check	22.86
09/07/2021	50074	JP Morgan Chase	Lowe's-Rake,Rotor,sprinkler heads	140.30
09/07/2021	50074	JP Morgan Chase	Mac's Diner-Volunteer lunch	37.25
09/07/2021	50074	JP Morgan Chase	SAC Enterprises-Park movie	4.38
09/07/2021	50074	JP Morgan Chase	Costco-Batteries,dish soap	23.98
09/07/2021	50074	JP Morgan Chase	Costco-Trash bags,bathroom tissue, paper towels	124.73
09/07/2021	50075	KAS & Associates, Inc.	Cleveland St rdway design/Engineering	690.00
09/07/2021	50076	Mail Tribune	26 Week Subscription Acct #22469	129.74
09/07/2021	50077	Pacific Power	Aunt Carolines 07/22-08/23/2021	43.13
09/07/2021	50077	Pacific Power	City Hall 07/26-08/24	338.00
09/07/2021	50077	Pacific Power	Nork Lane 07/26-08/24	38.01
09/07/2021	50077	Pacific Power	Street lights 08/25/2021	640.97
09/07/2021	50078	Perfection Cleaning	City Hall office cleaning 08/2021	300.00
09/07/2021	50079	Pitney Bowes Global Financial	Lease Charges 06/30-09/29/21	144.93
09/07/2021	50080	Rajan Kumaran	Refund - 167302 - 295 Schoolhouse Lane	44.71
09/07/2021	50081	Robert & Sharon Van Arsdale	Refund 4016.02 - 529 Rogue Air Drive, Shady Cove	73.38
09/07/2021	50082	Sandy Fosenburg	Refund 1128.01 - COE 7/22/21 - 457 Hudspeth Lane	151.27
09/07/2021	50083	Shady Cove Hardware, LLC	Nails, screws, nuts and bolts	4.21
09/07/2021	50083	Shady Cove Hardware, LLC	Masking tape	11.98
09/07/2021	50083	Shady Cove Hardware, LLC	Metal Repair Tape	4.99
09/07/2021	50083	Shady Cove Hardware, LLC	Air Filter	9.98
09/07/2021	50084	Shari Tarvin	Training - Mill Casino Expense Reimbursement	288.00
09/07/2021	50085	Sorenson Ransom Ferguson & Clyde LLP	Audit - Sewer	122.50
09/07/2021	50086	Southern Oregon Sanitation	22451 Hwy 62 08/25/21	40.22
09/07/2021	50086	Southern Oregon Sanitation	490 Nork Ln 08-25-21	40.22
09/07/2021	50086	Southern Oregon Sanitation	2501 Indian Cr Rd 08/25/21	58.50
09/07/2021	50087	Steve Fosenburg	Refund 4526.02 - COE 06/29/21 - 25 Sowell Ct A/B Refund	138.66
09/07/2021	50087	Steve Fosenburg	4527.02 - COE 06/29/21 - 35 Sowell Ct A/B	138.66
09/07/2021	50088	TouchPoint Networks, LLC	Firewall 09/2021	31.00
09/07/2021	50089	Upper Rogue Independent	Planning Commission Pub Hearing	157.50
09/07/2021	50090	Winters Electric, LLC	Aunt Carolines Park - replaced two photo cells on gazebos	621.97
Grand Totals:				18,621.30

Check Issue Dates: 9/8/2021 - 9/29/2021

Sep 29, 2021 02:44PM

Check Issue Date	Check	Payee	Description	Amount
9/20/2021	50091	AT&T Mobility	Cell phones 09/01-09/30/21	166.53
9/20/2021	50092	Banner Bank	ShoutCheap	10.90
9/20/2021	50092	Banner Bank	Staples - Paper and Air duster	70.35
9/20/2021	50092	Banner Bank	Apple.com phone protection	2.99
9/20/2021	50092	Banner Bank	Apple.com phone protection	0.99
9/20/2021	50092	Banner Bank	Rackspace Council	65.98
9/20/2021	50092	Banner Bank	Rackspace Admin	39.58
9/20/2021	50092	Banner Bank	Rackspace Parks	13.19
9/20/2021	50092	Banner Bank	Rackspace Planning	13.19
9/20/2021	50092	Banner Bank	Bmatrix internet radio	59.99
9/20/2021	50092	Banner Bank	Amazon prime monthly	12.99
9/20/2021	50092	Banner Bank	Adobe Acro monthly	14.99
9/20/2021	50092	Banner Bank	Amazon Marketplace - Bathroom Fan	149.99
9/20/2021	50092	Banner Bank	Staples - Keurig water filter	9.97
9/20/2021	50093	Batteries Plus #208	Batteries-12V lead	35.99
9/20/2021	50094	Caico, Bruce & Cindy	Refund credit bal-COE 08/19/21	92.66
9/20/2021	50095	Canon Financial Services, Inc.	Contract 09/01-09/30/2021	203.82
9/20/2021	50096	CIS Trust	Life Insurance 10/2021	41.95
9/20/2021	50096	CIS Trust	Life Insurance LTD October 2021	66.39
9/20/2021	50097	Confident Staffing, Inc.	M. Rowden 09/12/21 Buyout	1,252.68
9/20/2021	50097	Confident Staffing, Inc.	M Rowden week of 8/29	881.75
9/20/2021	50098	David Christian	Radio 09/06-09/10	90.00
9/20/2021	50098	David Christian	Radio 09/13-09/17	90.00
9/20/2021	50099	Hunter Communications	Internet 10/01-10/31/21	598.56
9/20/2021	50100	KDP Certified Public Accountants LLP	Professional Service - RVSS Annexation	4,265.00
9/20/2021	50101	Project A, Inc.	Web hosting Sept	200.00
9/20/2021	50102	R. Rothmuller	Refund 22222 Hwy 62 - COE 6/2/21	872.33
9/20/2021	50103	River Hills Property Mgmt	Refund 192 Williams Lane - COE 6/30/2021	17.03
9/20/2021	50104	Void	(check didn't print correctly)	-
9/20/2021	50105	Void	(check didn't print correctly)	-
9/20/2021	50106	Void	(check didn't print correctly)	-
9/20/2021	50107	Robert/Susan Strong	Refund of Land Use Approval for Building Permit	10,675.00
9/20/2021	50108	Steve Lowery	Refund overpmt COE 04/29/21	200.00
9/20/2021	50109	WEEO - Carson	Gas/Diesel 08/31/21	111.75
9/29/2021	50110	Avista Corporation	Natural Gas 08/23/21 to 9/22/21	19.36
9/29/2021	50111	David Christian	Radio 09/20-09/23	90.00
9/29/2021	50112	Pacific Power	Aunt Carolines 08/23-09/22	40.11
9/29/2021	50113	Pitney Bowes Purchase Power	Postage Refill 8000-9090-0092-9849	19.26
9/29/2021	50114	Postmaster	Sewer Billing postage	348.69
Grand Totals:				20,843.96



City of Shady Cove  
**City Council Regular Meeting Minutes**  
Thursday, September 2, 2021, 6:00 PM  
Meeting was held via Zoom with members of Council being present at City Hall.

**I. CALL TO ORDER**

Mayor Tarvin called the Regular City Council Meeting to order at 6:00 PM

Council Present: Mayor Tarvin and Councilor Evertt, with Councilor McGregor and Councilor Nuckles via Zoom

Staff Present: Thomas J. Corrigan, City Administrator

The Pledge of Allegiance was recited.

**I.B. ANNOUNCEMENTS**

The Mayor made the announcements on the agenda.

**II. PUBLIC COMMENT ON AGENDA ITEMS**

No public comment.

**III. CONSENT AGENDA**

Items in Consent Agenda

- A. Bills Paid Report – 07/23/21-08/04/21 \$200,768.00
- B. Bills Paid Report - 08/05/21-08/23/21 - \$72,610.15
- C. Minutes of August 5, 2021

Motion to Accept Consent Agenda, Minutes from 8/5/21

Motion: Councilor Evertt    Second: Councilor McGregor

Motion Carried 4-0

**IV. ITEMS REMOVED FROM CONSENT AGENDA**

No items removed

**V. STAFF REPORTS**

Jackson County Deputy is not available.

Chief Winfrey, is not available

Chair Hohenstein – Planning Commission Chair – Planning Commission denied a variance request on 80 Mason Lane, cross street is Rogue River Drive. Request was a variance for violation of the setbacks. Property owner had built up against the fence line. Variance was denied 2-1. This will be appealed to the council. Two positions on the planning commission are open,

applications deadline extended to September 30, 2021. On Sept 9, 2021 discussion will be had to discuss City vision, citizen input will be needed.

Commissioner Glass – Emergency Management Commission – Active in the community to educate on signing up for Citizen alert and Oregon Alert systems. Emergency services fair scheduled for March 2022.

Tom Corrigan – City Administrator

Rental assistance is still open, online application link is on our website.

Oregon Water Resources department is encouraging residents to report on dry wells, link on Shady Cove website. City will be reporting on behalf of City Hall and the Library.

Fire District 5 gifted PPE to City with approval from Business Oregon.

Complaint procedure is to fill out a complaint form at City Hall. Form routed to City Administrator. CSO will receive complaint and respond, they will report findings to City. City will issue a letter to violator if warranted; violator has 14 days from the letter to resolve issue. Information in the complaint will be confidential unless it goes to court, then it becomes public information.

CSO's have been on vacation recently, Sgt is on administrative leave due to a shooting, and new Lieutenant and Sheriff has not responded to our emails. These communication issues need to be addressed as it hinders our response times to complaints.

City has submitted paperwork for properties that needed assistance with property clean up. Next step is to go to FEMA to ask for funding to affect this change. This will benefit citizens and property owners.

A feasibility study is in progress for infrastructure improvements, engineers are working on it. Engineers are behind due to Phoenix/Talent workload.

Complaint for fence issue on Brophy is being resolved. Slats on the fence have been removed, contractor will be out as soon as possible to move the fence to allow for good visibility.

A ditch on Williams was fitted with breakaway fluorescent poles.

Paint care day is on September 18<sup>th</sup>.

City Hall will be closed for Labor Day September 6<sup>th</sup>.

## **VI. NEW BUSINESS**

No new business

## **VII. OLD BUSINESS**

A: 2<sup>nd</sup> Reading Ordinance 298 – Right of Way procedure and Franchise fees for utilities.

Motion to Accept Ordinance 298, Establishing a right of way procedures and replacing new franchise agreements

Motion: Councilor Nuckles Second: Councilor Evertt

Motion Carried 4-0

B: Audit Update – Tax Certification still in effect. Issues: Revenue and accts relatable to sewer bill, special payments to RVSS, transfer of assets to RVSS, transfer of debt to RVSS, Recording receivable debt to be received from RVSS, entries will close out the operation fund for RVSS. Full report to be received by 9/15/2021

## **VIII. WRITTEN COMMENT**

No written comments.

## **IX. PUBLIC COMMENT ON NON-AGENDA ITEMS**

No public comments on non-agenda items

## **X. COUNCIL COMMENTS ON NON AGENDA ITEMS**

- A. Councilor Evertt – Wished his wife Happy Anniversary.
- B. Councilor McGregor – No comment.
- C. Councilor Nuckles – Information on holiday flags will be sent to City Administrator.  
Thank you to the volunteers for filling out required paperwork. Would like a sign in sheet for volunteer tracking at events. She is looking forward to the fifth member of the council to tackle important issues. Proposed that City Council have no second monthly meeting for September and October, only if a matter is pressing. Wish everyone a happy and safe Labor Day.
- D. Mayor Tarvin – All complaints go through Mr. Corrigan. Movie in the park is on 9/4/2021 at dusk, showing Pete's Dragon. Board Mountain Fire is 4.5 miles behind us is 100% lined, kept at 35 acres. Kudos to our fire district and ODF who knocked it down quickly. Have a safe holiday.

## **XI. ADJOURNMENT**

There being no further business before the Council, the Mayor adjourned the meeting at 7:15 PM.

Approved:

\_\_\_\_\_  
Shari Tarvin  
Mayor

Attest:

\_\_\_\_\_  
Thomas J. Corrigan  
City Administrator

**Council Vote:**

Mayor Tarvin  
Councilor McGregor  
Councilor Nuckles  
Councilor Evertt

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DRAFT





**CITY OF SHADY COVE**  
22451 Highway 62 • P.O. Box 1210 • Shady Cove, OR 97539  
Phone: 541.878.2225 • Fax: 541.878.2226

## APPLICATION FOR COMMISSION OR COMMITTEE

PLEASE PRINT

DATE: 9/9/2021 POSITION APPLIED FOR: PLANING

### APPLICANT INFORMATION

Name:	JAY TAYLOR		
Physical Address:	6532 ROGUE RIVER DR.		
City:	SHADY COVE	State:	OR
		Zip:	97539
Mailing Address:	SAME		
City:		State:	
		Zip:	
Home Phone:		Cell Phone:	541-218-3568
Email Address:	JAYCT53@YAHOO.COM		
Current Occupation:	RETIRED		
(If retired or unemployed, state your general or past profession.)			
How long have you lived in Shady Cove?	2 YRS		
How long have you lived in Jackson County?	2 YRS		
Are you available to attend both daytime and evening meetings when necessary?	YES		
Are you an employee of the City of Shady Cove, an occasional or potential contract employee, or do you have any other real or potential conflict of interest in working or serving in this capacity?			
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
If yes, please describe:			

### QUALIFICATIONS

I believe that I am qualified for and should be considered for the above position(s) for the following reasons (continue on next sheet if necessary):

CONTRACTOR FOR 35 YEARS. HOA BOARD  
PRESIDENT FOR 5 YEARS. GOOD COMMUNICATION  
SKILLS. LOVE SHADY COVE. PRESIDENT  
TOASTMASTERS

Qualifications continued (if necessary):

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Please use this space to summarize why you are applying for this position:

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Please use this space to add any additional information you would like to share:

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By signing this application, electronically or otherwise, I affirm that all information included is true and accurate to the best of my knowledge. I authorize the City of Shady Cove to publically review and discuss the information provided herein and to assist in responding to any questions asked which are relevant to this position.

Signature of applicant



Date

9/9/2021

**How to Submit:**

By email:

[TCorrigan@shadycove.org](mailto:TCorrigan@shadycove.org)

In person:

City of Shady Cove, City Hall, 22451 Highway 62. Monday through Friday, 8:00 AM to 5:00 PM

By mail:

P.O. Box 1210, Shady Cove, OR 97539

By fax:

541.878.2226

**Questions?**

Call City Hall at 541.878.2225 or send an email to the email as listed above.

**CITY OFFICE USE ONLY**

DATE RECEIVED

9-9-21

INITIALS

DMJ

*The City of Shady Cove is an Equal Opportunity Provider.*



**CITY OF SHADY COVE**  
22451 Highway 62 • P.O. Box 1210 • Shady Cove, OR 97539  
Phone: 541.878.2225 • Fax: 541.878.2226

**APPLICATION FOR COMMISSION OR COMMITTEE**

PLEASE PRINT

DATE: 9/14/2001 POSITION APPLIED FOR: Planning Commission

APPLICANT INFORMATION			
Name: <u>Stefania Willis</u>			
Physical Address: <u>6544 Rogue River Dr.</u>			
City: <u>Shady Cove</u>	State: <u>OR</u>	Zip: <u>97539</u>	
Mailing Address: <u>11</u>			
City:	State:	Zip: <u>97539</u>	
Home Phone:		Cell Phone: <u>541-973-0204</u>	
Email Address: <u>theCove34@gmail.com</u>			
Current Occupation: <small>(If retired or unemployed, state your general or past profession.)</small>			
How long have you lived in Shady Cove? <u>17 years</u>			
How long have you lived in Jackson County? <u>38 years</u>			
Are you available to attend both daytime and evening meetings when necessary? <u>yes</u>			
Are you an employee of the City of Shady Cove, an occasional or potential contract employee, or do you have any other real or potential conflict of interest in working or serving in this capacity? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
If yes, please describe:			

**QUALIFICATIONS**

I believe that I am qualified for and should be considered for the above position(s) for the following reasons  
*(continue on next sheet if necessary):*

I Have lived in Shady Cove off and on  
my whole life. I remember how it  
use to be and how all the commercial  
building we're occupied with thriving  
businesses. I feel like having a fresh  
face with ideas will be good for our  
community. I feel I should be considered

Qualifications continued (if necessary):

for this position Because like most people in our town I want the Best for it. I don't Have experience being on a planning Commission. But I am a go getter and ready to learn and be apart of this team

Please use this space to summarize why you are applying for this position:

I would like to learn why. Shady Cove lets the empty building stay empty. And why we can not get ahead of the Owners of these buildings I would like to get educated on the planning side of our town

Please use this space to add any additional information you would like to share:

I would love to see our town thrive like it use to. And have the empty buildings Occupied and not just sitting away Ranting with no or very little up keep.

By signing this application, electronically or otherwise, I affirm that all information included is true and accurate to the best of my knowledge. I authorize the City of Shady Cove to publically review and discuss the information provided herein and to assist in responding to any questions asked which are relevant to this position.

Signature of applicant

Shabane Willis

Date

8/14/21

**How to Submit:**

By email: admin@shadycove.net  
In person: City of Shady Cove, City Hall, 22451 Highway 62. Monday through Friday, 8:00 AM to 5:00 PM  
By mail: P.O. Box 1210, Shady Cove, OR 97539  
By fax: 541.878.2226

**Questions?**

Call City Hall at 541.878.2225 or send an email to Bonnie Picket as listed above.

**CITY OFFICE USE ONLY**

DATE RECEIVED

9-14-21

INITIALS

DMJ

*The City of Shady Cove is an Equal Opportunity Provider*



# LOCAL STREET NETWORK PLAN



**Adopted by Shady Cove City Council  
June 21, 2007**



This project is partially funded by a grant from the Transportation and Growth Management (TGM) Program, a joint program of the Oregon Department of Transportation and the Oregon Department of Land Conservation and Development. This TGM Grant is financed, in part, by federal Safe, Accountable, Flexible, and Efficient Transportation Equity Act – A Legacy for Users (SAFETEA-LU), local government, and the State of Oregon funds.

The contents of this document do not necessarily reflect views or policies of the State of Oregon.

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## **ACKNOWLEDGMENTS**

### **PROJECT MEMBERS**

#### **City Council:**

Ruth Keith, Mayor  
Alison Curtis  
Lois Holland  
Gary Hughes  
Bill Kyle

#### **Planning Commission:**

Shirley Williams, Chair  
Tom Borgen  
Leith Hayes  
Jack Stout  
Wanda Vairetta

#### **Technical Advisory Committee:**

Savannah Crawford, ODOT, Project Manager  
Dan Dorrell, ODOT  
Dale Petrsek, Jackson County Public Works  
Eric Niemeyer, Jackson County Public Works  
John Renz, DLCD  
Elise Smurzynski, City Administrator  
George Bostic, Shady Cove Public Works.  
Shirley Williams, Planning Commission  
Alison Curtis, City Council

#### **Citizen Advisory Committee:**

Donna Barrett  
Allen Blakemore  
Roger Hays  
Ron Holthusen  
Mike Malepsy  
Sid Peterson  
Olin Shanrock

#### **Consulting Engineer**

Anne Sylvester, P.E,  
Parametrix, Inc.

#### **City Staff:**

Elise Smurzynski, Administrator  
George Bostic, Public Works Director  
Gretchen Meloth  
Margaret Borgen

#### **Rogue Valley Council of Governments:**

Dick Converse  
Sue Casavan  
Matt Hermen  
Chris Olivier



## **CHAPTER 1**

### **EXECUTIVE SUMMARY**

Incorporated in 1972, Shady Cove is a relatively young city. While new streets must meet a prescribed set of standards, older streets predate even county road standards. As a result, Shady Cove has a large number of streets with variable right-of-way widths and surfaces, many being gravel roads in rights-of-way as narrow as 20 feet. Only a few areas have even a modified street grid pattern. Cul-de-sacs and unconnected streets provide access to most of the city.

The existing street system suffers primarily from a lack of connectivity. Many streets do not meet current construction standards, but because they serve few homes, pressure to improve the streets has been minimal. As traffic increases with growth, however, the problems of road maintenance and crowded intersections become more pronounced. This is most obvious at the Rogue River Drive/Highway 62 intersection.

Fortunately, Shady Cove has few environmental conditions that limit options for determining street improvements and connectivity, with the river being a significant exception. Most limitations stem from the existing land use pattern near the city center. Expansion of the Urban Growth Boundary (UGB) could serve to bypass some of the limitations.

Most parcels in Shady Cove are developed, but many are partially vacant. While residentially zoned parcels contain dwellings, the parcels are large enough to divide further. This is particularly true in the western portion of the city in the area served by Rogue River Drive. Several fully developed subdivisions exist in the area, but other areas contain lands that are significantly larger than the Comprehensive Plan residential designation allows. The street system in this area is very limited, with no grid system, and the lack of a coordinated municipal water system reduces opportunities to urbanize. The UGB amendment concentrated on opportunities to provide a municipal water system, but expansion of the urban growth boundary also provided opportunities to build north/south collectors where little residential development exists.

Shady Cove contracted with Parametrix, Inc. to assess the existing street network and evaluate potential projects. Objectives of the LSNP are as follows:

- Link the street connectivity to local land uses, to enhance accessibility to shopping, schools, residential areas, bike/pedestrian circulation areas and other community destinations.
- Create a LSNP to show all new proposed streets.
- Comply with the Transportation Planning Rule (TPR) and the Oregon Highway Plan (OHP) demonstrating needed connectivity.
- Provide a plan that provides opportunities for the use of bicycles, walking, and transit.
- Provide a plan that will lessen the impacts of local traffic on Highway 62 through downtown Shady Cove.

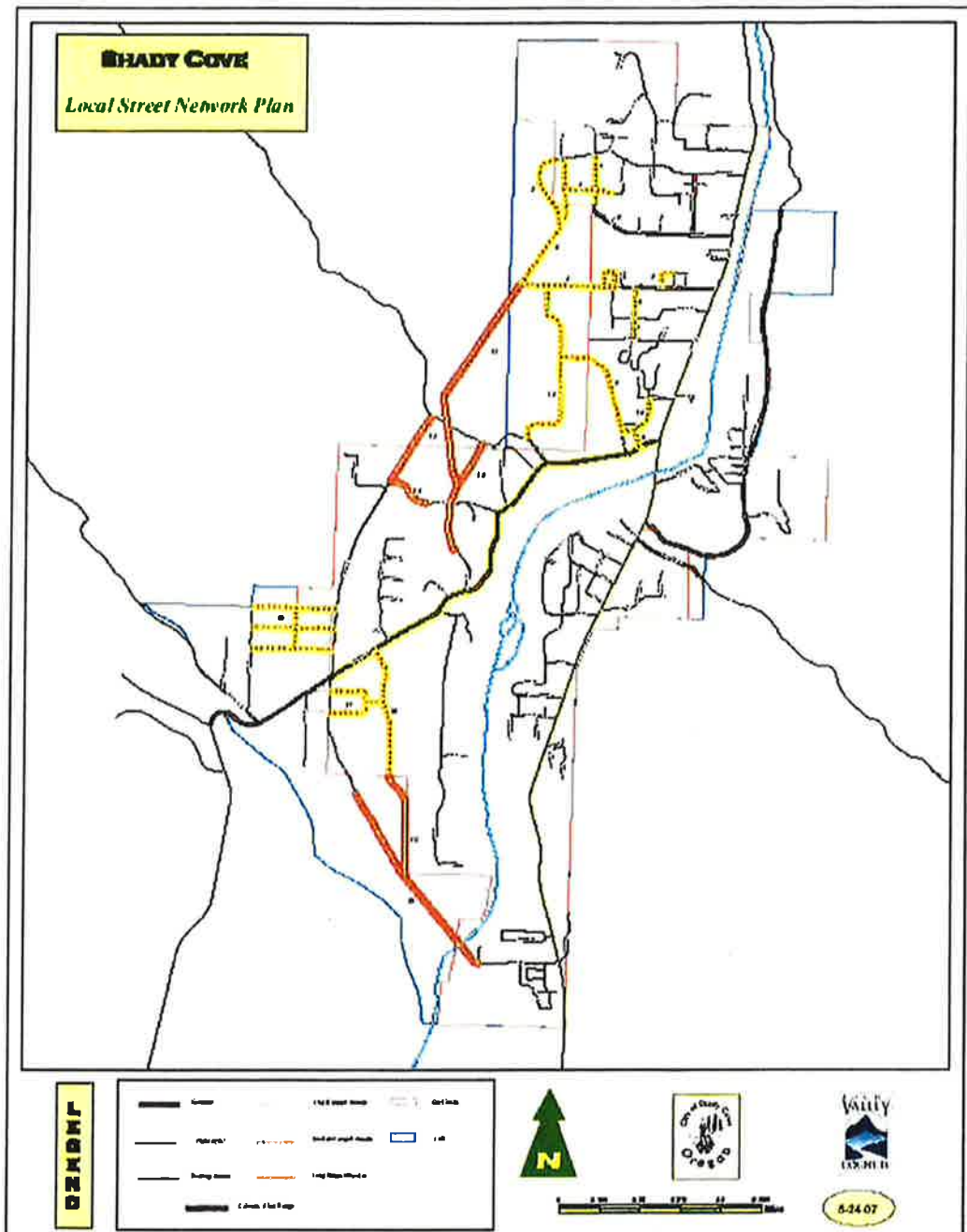
The selected preferred alternative centers on improvements to Rogue River Drive, a county road designated as a major collector. The greatest residential growth potential exists in areas served by the road, and its improvement will create safer access into the area. Topographic constraints influenced past construction, and will greatly increase improvement costs. For this reason, cost estimates break the road into three segments as described in the following table. Total costs for range-term projects exceed \$4.1million. See Map 1-1 for project locations.

**Table 1-1 Street Improvement Project Priority**

<p><b>Short Range: 0-10 years</b></p> <p>A. Project 9 - Connect Rogue River Drive and Chaparral Alternative Project 10 (\$133,000)</p> <p>B. Rogue River Drive to Sawyer Road (\$2,653,242) B1. Provide right-turn lane at intersection with Highway 62.</p> <p>C. Rogue River Drive from Sawyer Road to Walnut Lane (\$1,153,910)</p> <p>D. Rogue River Drive from Walnut Lane to Bond Road (\$1,235,715)</p>
<p><b>Medium Range: 10-20 years</b></p> <p>1. Cleveland Street Extension (\$544,000)</p> <p>2. Chevney Drive Extension (\$442,000)</p> <p>3. Kathleen Terrace Extension (501,000)</p> <p>4. New road on School District property -public project (\$1,189,000)</p> <p>5. Schoolhouse Lane extension (\$1,001,000)</p> <p>6. New road – Schoolhouse to Mallory (\$255,000)</p> <p>7. New road – Mallory to Williams - public project (\$177,000)</p> <p>8. Oak Ridge Drive (\$209,000)</p> <p>12. New Road – Schoolhouse extension to Sawyer (\$1,434,000)</p> <p>16. Local street grid west of Rogue Air (1,882,000)</p>
<p><b>Long Range (More than 20 years)</b></p> <p>11. New road- Schoolhouse Extension to Mason (\$1,813,000)</p> <p>13. New road – Sawyer to Rogue Air (\$729,000)</p> <p>14. New road – End of Mason to Rogue Air (\$356,000)</p> <p>15. Walnut Lane extension to Sawyer (\$966,000)</p> <p>17. Local street connection – Bond to Rogue River Drive (\$783,000)</p> <p>18. New road between Bond Road and Rene Drive (\$1,276,000)</p> <p>19. Bond Road extension across Rogue River (\$17,471,000)</p> <p>20. Improve Bond Road to collector status (\$826,000)</p>

Private developers will construct most of the medium range projects, with the exception of a road across the school district property and a connection from Mallory Drive to Williams Drive. The public projects exceed \$1.3 million.

Identified long-range projects generally occur on the western fringe of the city. The most expensive project is a bridge-crossing in the southern part of Shady Cove that would serve the western area. The Technical Advisory Committee (TAC) and Citizen Advisory Committee (CAC) found the cost of over \$17 million to exceed the financial capacity of the city, and relegated it to long-range status. As a result, several other projects supporting bridge construction also became long-range projects.



Map 1-1 Potential Street Connections

## CHAPTER 2 INTRODUCTION

The LSNP is not the first effort by Shady Cove to develop a transportation plan. The original Comprehensive Plan included a transportation element, but it was considered inadequate for a growing community. The City Council opted instead to prepare a Transportation System Plan, and appointed a CAC to prepare a new plan. The CAC drafted a Transportation System Plan as a complete revision of the Comprehensive Plan Element, but after public hearings where residents objected to provisions of the draft, the Council voted to reject the plan. Subsequently, the City received waiver from DLCD. The Comprehensive Plan will include the Local Street Network Plan as the Transportation Element.

The LSNP included several opportunities for public involvement. A TAC composed of agency representatives and a CAC participated in developing the draft plan. Both committees met several times beginning in September 2006 and concluding with a joint session in March 2007.

The City hosted an Open House on Tuesday, February 20, 2007. Approximately 25 persons attended, including staff. The purpose of the meeting was to provide an opportunity for area residents to learn about the local street network planning effort, to comment on proposed solutions, and to suggest additional projects.

Graphics at the open house included an outline of the LSNP project selection criteria, a map of the existing road system, a map of environmental conditions, and a map of proposed connections. Most of the public attention centered on the connections map, which was placed on a table where people could gather around. Staff described the current street issues in Shady Cove and described the projects that the Technical Advisory Committee and Citizen Advisory Committee had suggested.

Many of participants stated they were simply interested in the planning effort and wanted to see what was being proposed, some having remembered the controversial nature of the Transportation System Plan project in 1999. Several attended because they had received the invitation sent to owners of commercial businesses along Highway 62. Participants focused on the Rogue River Drive/Highway 62 intersection, and the effect that modifications could have on travel efficiency and safety. Concerns included the hazards created when drivers attempt to avoid congestion at the intersection by crossing private properties housing gas stations and day care centers.

Participants recommended one additional project to complete a western route from Rogue Air Drive to Cleveland Street to be located along the power line right-of-way.

Several participants asked for copies of the proposed projects map. Staff agreed to email electronic versions of the map, and informed those attending the open house that they would be notified of upcoming public meetings.

The City also used newsletters and newspaper articles to keep residents informed of



**the LSNP development process. Measure 56 also requires individual notice of the Planning Commission and City Council hearings to all residents who would be affected by plan**

TABLE 6.B.1 – Right-of-Way and Street Design Standards

Type of Street	Ave. Daily Tips (ADT)	Right of Way Width	Curb-to-Curb Pavement Width	Within Curb-to-Curb Area			Curb on both sides	Planting Strip on both sides	Sidewalks on both sides
				Motor Vehicle Travel Lanes	Bike Lane on both sides	On Street Parking			
Arterial Streets Boulevards: 2-Lane Boulevard	8,000 to 30,000 ADT	61'-87'	34'	11'	2 at 6" each	8' bays	6"	7'-8' <sup>1</sup>	6'-10' <sup>2</sup>
Avenue: 2-Lane Avenue	3,000 to 10,000 ADT	59'-86'	32'-33'	10'-10.5'	2 at 6" each	8' bays	6"	7'-8'	6'-10'
Collector Streets Residential	1,500 to 5,000 ADT				NA <sup>3</sup>				
No Parking		49'-51'	22'	11'		None	6"	8'	5'-6'
Parking One Side		50'-56'	25'-27'	9'-10'		7' lane	6"	7'-8'	5'-6'
Parking Both Sides		57'-63'	32'-34'	9'-10'		7' lanes	6"	7'-8'	5'-6'
Commercial:									
Parallel Parking One Side		55'-65'	28'	10'		8' lane	6"	7'-8'	6'-10'
Parallel Parking Both Sides		63'-73'	36'	10'		8' lanes	6"	7'-8'	6'-10'
Diagonal Parking One Side		65'-74'	37'	10'		Varies	6"	7'-8'	6'-10'
Diagonal Parking Both Sides		81'-91'	54'	10'		Varies	6"	7'-8'	6'-10'
Local Residential Streets <sup>4</sup>	Less than 1,500 ADT				NA				
Parking One Side		47'-51'	22'	15'		One 7'	6"	7'-8'	5'-6'
Parking Both Sides		50'-57'	25'-8'	11'-14' Queuing		Two 7' lanes	6"	7'-8'	5'-6'
Alleys	NA	16'-20'	12'-16' paved width, 1'-2' strips on both sides	NA	NA	none	none	none	none
Accessways & Multi-Use Paths	NA	10'-18'	6'-10' paved width, 2'-4' strips on both sides	NA	NA	none	none	none	none
Private Drives serving 2-6 lots	NA	NA	20'	NA	NA	NA	6"	None	None

<sup>1</sup> Hardscape planting strip with tree wells shall be used in commercial and mixed-use development areas (where on-street parking is provided);

<sup>2</sup> 5'-6'- Sidewalk shall be installed in residential areas, 8'-10' sidewalk shall be installed in commercial areas;

<sup>3</sup> Bike lanes are generally not needed on low volume (less than 3,000 ADT) and/or low travel speed (less than 25 mph) streets;

<sup>4</sup> Option for residential street with 22-feet of pavement width, and 4-foot wide sidewalks or pathways, separated from roadway by drainage swale (no curb).

[Sidewalks may not be required on some existing local streets when existing and future traffic volumes are low; e.g. less than 500 ADT, or 10 dwellings].

City of Shady Cove

Ordinance No. 242

**AN ORDINANCE OF THE CITY OF SHADY COVE, OREGON  
ESTABLISHING A PUBLIC SAFETY ACT AND IMPOSING A  
SURCHARGE FOR POLICE FUNDING.**

**Whereas**, the public safety of the City of Shady Cove, if not managed through a strong program of prevention and response, can deteriorate causing serious safety consequences as well as blight in residential and commercial areas of the City; and

**Whereas**, the City Council has concluded that assuring public safety, through a well functioning Police Department is a priority need; and

**Whereas**, the City Council has consistently set a goal of adequate funding for the Police Department and has held public discussion on this issue during Council meetings, in the City newsletter, and this discussion has been covered in electronic and print media; and

**Whereas**, the City Council finds the Public Safety Act and methodology of apportioning a surcharge is a reasonable and rational way to provide a functioning public safety system to help keep Shady Cove safe.

**THE COUNCIL OF THE CITY OF SHADY COVE ORDAINS AS  
FOLLOWS:**

**Public Safety Act**

The Public Safety Act, attached hereto as Exhibit A" is adopted as a means of providing adequate Police Department and public safety services throughout the City of Shady Cove.

**Severability**

In the event any section, subsection, paragraph, sentence or phrase of this Ordinance or any administrative policy adopted herein is determined by a court of competent jurisdiction to be invalid or unenforceable, the validity of the remainder of the Ordinance shall continue to be effective.

**Classification**

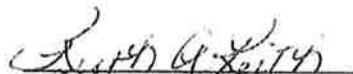
The fees and charges herein are not intended to be taxes, nor are they subject to the property tax limitations of Article XI, Section 11(b) of the Oregon Constitution.

City of Shady Cove  
Public Safety Act Ordinance No. 242  
April 5, 2007  
Page Two

**ADOPTED** by the City Council of the City of Shady Cove, this 19<sup>th</sup> day of April, 2007.

**Approved:**

**Attest:**

  
Ruth A. Keith  
Mayor

  
Margaret Borgen  
Deputy Recorder

**Council Vote:**

Councilor Curtis	Yes
Councilor Holland	Yes
Councilor Kyle	Yes
Councilor Hughes	Yes
Mayor Keith	Yes



## **Exhibit "A"**

### **PUBLIC SAFETY ACT**

- Section 1: Title**
- Section 2: Purpose and intent**
- Section 3: Definitions**
- Section 4: Imposition of public safety surcharge**
- Section 5: Dedication of funds**
- Section 6: Collection**
- Section 7: Program administration**
- Section 8: Appeal process**
- Section 9: Enforcement**

#### **Section 1: Title.**

Ordinance No. 242 shall be known as the Public Safety Act.

#### **Section 2: Purpose and Intent.**

1. The principal purpose of this Public Safety Act is to safeguard, facilitate and encourage the health, safety, and welfare of the citizens and businesses of the City. The Council also finds that a continuous and consistent Public Safety program provides a multitude of economic and social benefits to the public, including, but not limited to:
  - (a) Increased police protection;
  - (b) Prevention of crime;
  - (c) Enhanced protection of property;
  - (d) Improved response to disaster situations;
  - (e) Promotion of business and industry; and
  - (f) Promotion of community spirit and growth.

2. It is the intent of this act to provide a funding mechanism to help pay for the benefits conferred on city residents and businesses by the provision of an adequate program of public safety; and further to augment the Police Department to service levels desired by the public.
3. The structure of this Public Safety Act is intended to be a surcharge for service within the City limits. However, it is not intended to provide full funding for the Police Department. In the event that Public Safety surcharge revenues collected are insufficient to properly operate the Police Department, additional funding may be allocated by the City Council from other non-dedicated City funds provided, however, the City Council may direct the reimbursement to such other non-dedicated City funds if additional Public Safety surcharge revenues are collected.

**Section 3: Definitions.**

1. The following definitions shall apply unless the context clearly indicates or requires a different meaning.

<b>Developed Property.</b>	A parcel or portion of real property on which an improvement exists. Improvement on developed property includes, but is not limited to, buildings, parking lots, and outside storage.
<b>Non-Residential Unit.</b>	A use of property, which is primarily not for personal, domestic accommodation, such as a business or commercial enterprise. A non-residential structure which provides facilities for one or more businesses including, but not limited to, permanent provisions for access to the public, shall have each distinct business facility considered as a separate non-residential unit.
<b>Person.</b>	A natural person, unincorporated association; tenancy in common, partnership, corporation, limited liability company, cooperative, trust, any governmental agency, including the State of Oregon, but excluding the City of Shady Cove, and other entity in law or in fact. The singular includes the plural as the context requires.
<b>Public Safety Committee</b>	A Committee of at least three individuals, appointed by the City Council. The Committee is responsible for administering the appeal process under Section 8 of this Ordinance.

Residential Unit.	A residential structure, which provides complete living facilities for one or more persons including, but not limited to, permanent provisions for living, sleeping, and sanitation. A home business in a residential zone will be regarded only as a residential unit, not as a non-residential unit. An Ancillary Unit on a single-family parcel shall be considered as a separate residential unit. Multi-family residential property consisting of two or more dwelling units, condominium units or individual mobile home units will have each unit considered as a separate residential unit.
Responsible Party.	The person or persons owing the Public Safety surcharge.
Transient.	Any person who exercises use in a transient lodging facility by reason of concession, permit, right of access, license or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days.
Transient Lodging.	A hotel, motel, vacation rental, bed and breakfast or other unit that is designed for rental for temporary overnight human occupancy. A business which includes spaces designed for parking recreational vehicles during periods of human occupancy of those vehicles. Transient lodging which serves as a residential use in excess of thirty days shall be considered as a residential unit.
Undeveloped Property.	Land without building improvements.

**Section 4: Imposition of Public Safety Surcharge.**

1. There is hereby created a Public Safety surcharge to accomplish the above-stated purposes effective July 1, 2007.
2. The Public Safety surcharge is hereby established and shall be assessed as follows to each residential unit and to each non-residential unit on the basis of \$15 per unit per month. Billing shall be as a line item on the City's utility bill unless otherwise specified.

3. Except as the fees may be reduced or eliminated under as delineated in Section 8 of this Ordinance, the obligation to pay a Public Safety surcharge arises when a person responsible uses or otherwise benefits from Public Safety services. It is presumed that Public Safety services are used, and that a benefit arises, whenever the subject real property is a developed property.
4. All properties within the City limits shall be charged the Public Safety surcharge unless specified otherwise in this Ordinance.
5. Undeveloped properties shall be charged a Public Safety surcharge at the rate of one-half the residential rate.
6. It is the Council's intention to leave the surcharge unchanged and allow future development to provide for increases in revenues derived from the surcharge. Annually, as part of the budget review process, a determination shall be made by the City Council as to whether a modification in the surcharge would be appropriate or not. Modification to the surcharge shall be by ordinance. Modification shall include a review at least once every two years to allow for an adjustment based upon the Consumer Price Index.

#### **Section 5: Dedication of Funds.**

All Public Safety surcharge revenues derived shall be distinctly and clearly noted in both the revenue and expenditure sections of the City budget and shall be used exclusively for the improvement, maintenance, administration and operation of the Police Department and costs incidental thereto and for no other purpose in order to help provide for a safer, more effective and better functioning Public Safety program.

#### **Section 6: Collection.**

1. Public Safety surcharges shall be collected monthly. Statements for the surcharge shall be included as an additional item on the City monthly utility billing wherever feasible, unless otherwise specified.
2. Unless another person responsible has agreed in writing to pay, and a copy of that writing is filed with the City, the person responsible for paying the City's sewer utility charge is responsible for paying the Public Safety surcharge, if the property is located within the City limits.
3. In the event a property is not served by a sewer hook-up, or if sewer service is disconnected, the Public Safety surcharge shall be paid by the person having the right to occupy the property.



4. Upon request for sewer service, a building permit, or the occupancy of an unserviced building the property will automatically be subject to the Public Safety surcharge and billed at the appropriate rate.
5. At the time a building permit is issued, a previously undeveloped property will be subject to the Public Safety surcharge and billed at the appropriate rate.
6. The imposition of surcharges shall be calculated on the basis of the number of residential or nonresidential units supported, without regard to the number of sewer connections serving that property.
8. Late charges in the amount of \$5 per month shall be attached to any Public Safety surcharges not received within 30 days of billing.
9. Notwithstanding the above, if the Public Safety surcharge is not paid for a period of three months, the surcharge, with any attendant late fees shall be imposed on the responsible party.

#### **Section 7: Program Administration.**

1. Except as provided below, the City Administrator shall be responsible for the administration and collection of fees under this Ordinance.
2. The City Administrator is authorized and directed to review the operation of this Ordinance and, where appropriate, recommend changes thereto in the form of administrative procedures for adoption by the City Council by resolution. Such procedures if adopted by the Council shall be given full force and effect, and unless clearly inconsistent with this Ordinance shall apply uniformly throughout the City.

#### **Section 8: Appeal Process.**

1. A Public Safety surcharge may be appealed by any responsible person for change or relief in accordance with the following criteria.
  - (a) Any responsible party who disputes any interpretation given by the City as to property classification may appeal such interpretation. If the appeal is successful, relief will be granted by reassignment to a more appropriate billing category. In such instances, credit will be given for any overpayment, retroactive to the filing date of the appeal. Factors to be taken into consideration include, but are not limited to: availability of more accurate information; equity relative to billing classifications assigned to other developments of a similar nature; changed circumstances; and situations uniquely affecting the party filing the appeal.

- (b) Any responsible party may claim a financial hardship. The Public Safety Committee is authorized the discretion to determine financial hardship on a case-by-case situation or to establish guidelines for making such a determination. These guidelines will be effective upon approval by the City Council.
  - (c) During the appeal, payment of the fee shall be deferred.
- 2. Application for appeal shall state the reason for appeal, identifying any alleged error and be supported by documentation justifying the requested change or relief. The responsible person shall have the burden of proof to establish a change in the billing rate is appropriate.
- 3. The Public Safety Committee shall be responsible for determining appeals. If the Public Safety Committee decides information provided through the appeal process justifies a change, the Public Safety Committee may authorize this change (up or down) retroactive to the date the appeal was filed.
- 4. The Public Safety Committee shall make all reasonable attempts to mediate a resolution or otherwise resolve appeals utilizing available existing information, including supporting documentation filed with the appeal, within 30 days of the date the appeal was filed. If, however, more detailed site-specific information is necessary, the Public Safety Committee may request the applicant provide information.
- 5. In any event, the Public Safety Committee shall submit a report to the City Council within 90 days of the date the appeal was filed explaining the disposition of the appeal, along with the rationale and supporting documentation for the decision reached.
- 6. Decisions of the Public Safety Committee may be further appealed to the City Council, and shall be heard at a public meeting. Upon such further appeal, the City Council shall at its first regular meeting thereafter set a hearing date. The matter shall be heard solely upon the record. In no event shall a final decision be made later than 90 days after the matter was formally appealed to the City Council.
- 7. Appeals filed within 120 days of the date of imposition of the surcharge under this Ordinance shall not be subject to paying a filing fee. After this 120-day period, the initial filing fee for an appeal shall be \$50. An additional \$50 fee is required for further appeal to the City Council. These fees are fully refundable should the appellant adequately justify and secure the requested change or relief.

**Section 9: Enforcement.**

1. In the event funds received from City utility billings are inadequate to satisfy in full all of the sewer and Public Safety charges, credit shall be given first to the Public Safety surcharge and second to the sewer services charge.
2. In addition to other lawful enforcement procedures, the City may enforce the collection of charges required by this Ordinance by disconnection of sewer service to any premises where Public Safety surcharges are delinquent or unpaid.
3. Notwithstanding any provision herein to the contrary, the City may institute any necessary legal proceedings to enforce the provisions of this Ordinance, including but not limited to injunctive relief and collection of charges owing. The City's enforcement rights shall be cumulative.

## **City of Shady Cove**

Ordinance No. 264

### **AN ORDINANCE OF THE CITY OF SHADY COVE, OREGON ESTABLISHING A PUBLIC SAFETY ACT AND IMPOSING A SURCHARGE FOR POLICE FUNDING.**

**Whereas**, the public safety of the City of Shady Cove, if not managed through a strong program of prevention and response, can deteriorate causing serious safety consequences as well as blight in residential and commercial areas of the City; and

**Whereas**, the City Council has concluded that assuring public safety, through a well functioning Police Department is a priority need; and

**Whereas**, the City Council has consistently set a goal of adequate funding for the Police Department and has held public discussion on this issue during Council meetings, in the City newsletter, and this discussion has been covered in electronic and print media; and

**Whereas**, the City Council finds the Public Safety Act and methodology of apportioning a surcharge is a reasonable and rational way to provide a functioning public safety system to help keep Shady Cove safe.

### **THE COUNCIL OF THE CITY OF SHADY COVE ORDAINS AS FOLLOWS:**

#### **Public Safety Act**

The Public Safety Act, attached hereto as Exhibit A is adopted as a means of providing adequate Police Department and public safety services throughout the City of Shady Cove.

#### **Severability**

In the event any section, subsection, paragraph, sentence or phrase of this Ordinance of any administrative policy adopted herein is determined by a court of competent jurisdiction to be invalid or unenforceable, the validity of the remainder of the Ordinance shall continue to be effective.

#### **Classification**

The fees and charges herein are not intended to be taxes, nor are they subject to the property tax limitations of Article XI, Section 11(b) of the Oregon Constitution.



**Repeal:**

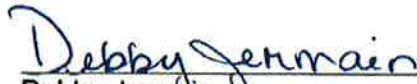
This ordinance does hereby repeal Ordinance 262.

**ADOPTED** by the City Council of the City of Shady Cove, this 21st day of June, 2012.

Approved:

Attest:

  
Ronald Holthusen  
Mayor

  
Debby Jermain  
Deputy Recorder

**Council vote:**

Councilor Hayes	Yes
Councilor Ulrich	Yes
Councilor Kyle	Absent
Councilor Hughes	Yes
Mayor Holthusen	Yes

Exhibit "A"

**PUBLIC SAFETY ACT**

- Section 1: Title
- Section 2: Purpose and intent
- Section 3: Definitions
- Section 4: Imposition of public safety surcharge
- Section 5: Dedication of funds
- Section 6: Collection
- Section 7: Program administration
- Section 8: Appeal process
- Section 9: Enforcement

**Section 1: Title.**

Ordinance No. 264 shall be known as the Public Safety Act.

**Section 2: Purpose and Intent.**

1. The principal purpose of this Public Safety Act is to safeguard, facilitate and encourage the health, safety, and welfare of the citizens and businesses of the City. The Council finds that a continuous and consistent Public Safety program provides important economic and social benefits to the public, including, but not limited to:
  - (a) Increased police protection;
  - (b) Prevention of crime;
  - (c) Enhanced protection of property;
  - (d) Improved response to disaster situations;
  - (e) Promotion of business and industry; and
  - (f) Promotion of community spirit and growth.

2. It is the intent of this act to provide a funding mechanism to help pay for the benefits conferred on city residents and businesses by the provision of an adequate program of public safety and to help augment the Police Department to service levels desired by the public.
3. The Public Safety Act is intended to be a surcharge for service within the City limits. However, it is not intended to provide full funding for the Police Department. In the event that Public Safety surcharge revenues collected are insufficient to properly operate the Police Department, additional funding may be allocated by the City Council from other non-dedicated City funds; provided, however, the City Council may direct the reimbursement to such other non-dedicated City funds if additional Public Safety surcharge revenues are collected.

### **Section 3: Definitions**

The following definitions shall apply unless the context clearly indicates or requires a different meaning.

<i>Accessory Dwelling Unit (ADU) or Ancillary Unit:</i>	A second dwelling unit created on a lot with a house, attached house, or manufactured home. The second unit is created auxiliary to, and is always smaller than the house, attached house, or manufactured home.
<i>Apartment House:</i>	Any building or portion thereof that contains three or more individual dwelling units, regardless of the ownership arrangement.
<i>Developed Property:</i>	A parcel or portion of real property on which one or more improvements exist. Improvements on developed property includes, but is not limited to, buildings, utilities infrastructure (whether operating or not), parking facilities, and outside storage of any kind or nature.
<i>Hotel/Motel:</i>	A part of a structure that is occupied or designed for occupancy by transients for lodging or sleeping, including a hotel, inn, tourist home or house, a bed and breakfast, motel studio hotel, bachelor hotel, lodging house, rooming house, dormitory, public or private club (that provides lodging), trailer or recreational vehicles providing transient housing.
<i>Mobile Home Park:</i>	Any lot on which two (2) or more mobile homes are located and being used for residential purposes, other than as an approved "guest house," and where the primary purpose of the property owner is to rent or lease the spaces and related

or necessary facilities to the owners or occupants of the mobile homes, or to offer same in exchange for trade of services. Each space within the mobile home park is determined to represent a unit for assessment of the surcharge.

**Non-Residential Unit.**

A use of property that is primarily not for personal, domestic accommodation, such as a business or commercial enterprise. A non-residential structure that provides facilities for one (1) or more businesses including, but not limited to, permanent provisions for access to the public, shall have each distinct business facility considered as a separate non-residential unit. The conducting of a business or businesses at two (2) or more locations shall, for the purposes of this chapter, be deemed to be separate businesses and each thereof shall be subject to the surcharge provided for in this chapter. If two or more differently classified but otherwise related businesses are carried on in the same premises by the same owners, then the business shall be considered one non-residential unit; provided however, any business activity leased under concession to or owned, wholly or in part, by a different person or persons on the same premises shall be considered a separate non-residential unit. In determining whether different activities on the same premises are related to the primary use within the meaning of this section, normal and ordinary customs and usages of businesses of like nature shall be considered. -A mobile business such as a food concession or a carnival shall be considered a non-residential unit, and shall be assessed a surcharge for each month during which the mobile business carries on business in the City of Shady Cove for one or more days during the month. Food concessions operated by non-profit organizations in conjunction with sports, recreation, entertainment or similar one-time or seasonal events shall not be considered a non-residential unit, provided any excess of earnings over expenses is used solely to benefit the non-profit organization.

In addition to a single unit charge per business, an additional surcharge shall be required based on the number of employees as reported in the Business License registration. Each increment of ten (10) employees shall constitute one (1) unit for the assessment of the surcharge. Business License registration shall be reviewed annually in March to determine if there have been any changes to the number of



employees. Adjustments shall be made as required to comply with this ordinance.

Person.	A natural person, unincorporated association; tenancy in common, partnership, corporation, limited liability company, cooperative, trust, any governmental agency, including the State of Oregon, but excluding the City of Shady Cove, and other entity in law or in fact. The singular includes the plural as the context requires.
Public Safety Committee	A Committee of at least three individuals, appointed by the City Council. The Committee is responsible for administering the appeal process under Section 8 of this Ordinance.
<i>Recreational Vehicle Park or Campground.</i>	An area designated to accommodate recreational vehicles and/or tent campers and provide related and needed facilities and services. <del>The surcharge assessed for such facilities shall be based on the number of spaces established for this purpose with each space equaling a unit for purposes of assessment of the surcharge.</del>
Residential Unit.	A residential structure that provides complete living facilities for one or more persons including, but not limited to, permanent provisions for living, sleeping, and sanitation. A home business in a residential zone will be regarded only as a residential unit, and not as a non-residential unit. An Ancillary Unit on a single-family parcel shall be considered as a separate residential unit for purposes of assessment of the surcharge. Multi-family residential property consisting of two or more dwelling units, condominium units or individual mobile home units will have each unit considered as a separate residential unit.
Responsible Party.	The person or persons owing the Public Safety surcharge. Two or more persons may be jointly and severally liable for payment of the surcharge.
Transient.	Any person who exercises use in a transient lodging facility by reason of concession, permit, right of access, license or other agreement for a period of <u>fewer than thirty (30)</u> consecutive calendar days <del>or less</del> , counting portions of calendar days as full days.

**Transient Lodging.** A hotel, motel, vacation rental, bed and breakfast or other unit that is designed for rental for temporary overnight human occupancy. A business ~~which that~~ includes spaces designed for parking recreational vehicles during periods of human occupancy of those vehicles for fewer than thirty (30) days. Transient lodging ~~which that~~ serves as a residential use in excess of thirty (30) or more days shall be considered as a residential unit and not transient lodging.

**Undeveloped Property.** Land without improvements.

**Section 4: Imposition of Public Safety Surcharge.**

1. There is hereby created a Public Safety surcharge to accomplish the purposes described in this ordinance.
2. There is hereby imposed upon the responsible party or parties for each developed property in the City limits a surcharge for fifteen dollars (\$15.00 per month) for each residential unit and each non-residential unit on that property. Billing shall be as a line item on the City's utility bill unless otherwise specified.
3. Except as the fees may be reduced or eliminated under as set forth in Section 8 of this Ordinance, the obligation to pay a Public Safety surcharge arises when a person responsible uses or otherwise benefits from Public Safety services. It is presumed that Public Safety services are used, and that a benefit arises, whenever the subject real property is a developed property.
4. All developed properties within the City limits, regardless of whether they are occupied or unoccupied, shall be charged the Public Safety surcharge unless specified otherwise in this Ordinance.
5. Undeveloped properties shall not be charged a Public Safety surcharge.
6. Annually, as part of the budget review process, a determination shall be made by the City Council as to whether a modification in the surcharge would be appropriate. Modification to the surcharge shall be by ordinance and fees shall be set by Resolution.  
  
Modification shall include a review at least once every two years to allow for an adjustment based upon the Consumer Price Index.
7. Although this ordinance refers to "units" as a basis for calculating surcharges, the surcharge does not in any way create an *in rem* obligation in respect of the property. Units instead serve merely as a basis for measurement to determine the total amount of the surcharge. The obligation to pay the surcharge is a personal obligation of the responsible party.

### **Section 5: Dedication of Funds.**

All Public Safety surcharge revenues derived shall be distinctly and clearly noted in both the revenue and expenditure sections of the City budget and shall be used exclusively for the improvement, maintenance, administration and operation of the Police Department and costs incidental thereto and for no other purpose in order to help provide for a safer, more effective and better functioning Public Safety program.

The surcharge paid and collected under this ordinance shall not be used for general or other governmental or proprietary purposes of the City, except that the City may pay for the equitable share of the cost of accounting, management and government that is attributable to the fund, which shall not exceed five percent (5%) of the gross revenues of the fund during any fiscal year.

### **Section 6: Collection.**

1. Public Safety surcharges shall be collected monthly. Statements for the surcharge shall be included as an additional item on the City monthly utility billing wherever feasible, unless otherwise specified.
2. Unless another person responsible has agreed in writing to pay, and a copy of that writing is filed with the City, the person responsible for paying the City's sewer utility charge is responsible for paying the Public Safety surcharge, if the property is located within the City limits.
3. In the event a property is not served by a sewer hook-up, or if sewer service is disconnected, the Public Safety surcharge shall be paid by the person having the right to occupy the property.
4. Upon request for sewer service, a building permit, or the occupancy of an unserved building the property will automatically be subject to the Public Safety surcharge and billed at the appropriate rate.
5. At the time a building permit is issued, a previously undeveloped property will be subject to the Public Safety surcharge and billed at the appropriate rate.
6. The imposition of surcharges shall be calculated on the basis of the number of residential or nonresidential units supported, without regard to the number of sewer connections serving that property, and without regard to whether the units are occupied or not occupied.
7. Late charges in the amount of \$5 per month shall be attached to any Public Safety surcharges not received within 30 days of billing.
8. Notwithstanding the above, if the Public Safety surcharge is not paid for a period of three months, the surcharge, with any attendant late fees shall be imposed on the responsible party.

9. The obligation to pay the Public Safety surcharge is personal to the responsible party. The City of Shady Cove will not assess a subsequent owner of a property for uncollected amounts due from a previous owner (or responsible party under a lease or rental agreement), and will not withhold utility services to a subsequent owner.

#### **Section 7: Program Administration.**

1. Except as provided below, the City Administrator shall be responsible for the administration and collection of fees under this Ordinance.
2. The City Administrator is authorized and directed to review the operation of this Ordinance and, where appropriate, recommend changes thereto in the form of administrative procedures for adoption by the City Council by resolution. Such procedures if adopted by the Council shall be given full force and effect, and unless clearly inconsistent with this Ordinance shall apply uniformly throughout the City.

#### **Section 8: Appeal Process.**

1. A Public Safety surcharge may be appealed for change or relief in accordance with the following criteria.
  - (a) Classification of Property. Any responsible party who disputes any interpretation given by the City as to property classification may appeal such interpretation. If the appeal is successful, appropriate relief will be granted. In such instances, reimbursement will be given for any overpayment, retroactive to the filing date of the appeal. Factors to be taken into consideration include, but are not limited to availability of more accurate information; equity relative to billing classifications assigned to other developments of a similar nature; changed circumstances; and situations uniquely affecting the party filing the appeal.
  - (b) Financial Hardship. Any responsible party may claim a financial hardship. The City will determine financial hardship based on established guidelines. Any relief will be secondary to all other financial resources available to the responsible party. To be presumptively eligible for relief, the responsible party's total household assets must not exceed fifteen thousand dollars (\$15,000.00), and the responsible party's gross household income must not be more than the Federal Poverty Level. The City may request verification of income from all parties living in the household, including, but not limited to W-2 employment wage forms, social security or pension income, nontaxable interest income, payroll stubs, and tax returns. The City may also request verification of assets, including, but not limited to



bank statements, mortgage statements, and other information useful to the City to determine net assets.

2. An application for appeal shall state the reason(s) for appeal, and must include supporting documentation to justify the requested change or relief. An application will not be deemed complete until all information requested by the City has been provided. During the appeal, payment of the fee shall be deferred.
3. Application for appeal shall state the reason for appeal, identifying any alleged error and be supported by documentation justifying the requested change or relief. The responsible person shall have the burden of proof to establish a change in the billing rate is appropriate.
4. The Public Safety Committee shall be responsible for determining appeals. If the Public Safety Committee decides information provided through the appeal process justifies a change, the Public Safety Committee may authorize this change (up or down) retroactive to the date the appeal was filed.
5. The Public Safety Committee shall make all reasonable attempts to mediate a resolution or otherwise resolve appeals utilizing available existing information, including supporting documentation filed with the appeal, within 30 days of the date the appeal was filed. If, however, more detailed site-specific information is necessary, the Public Safety Committee may request the applicant provide information.
6. In any event, the Public Safety Committee shall submit a report to the City Council within 90 days of the date the appeal was filed explaining the disposition of the appeal, along with the rationale and supporting documentation for the decision reached.
7. Decisions of the Public Safety Committee may be further appealed to the City Council, and shall be heard at a public meeting. Upon such further appeal, the City Council shall at its first regular meeting thereafter set a hearing date. The matter shall be heard solely upon the record. In no event shall a final decision be made later than 90 days after the matter was formally appealed to the City Council.
8. Appeals filed within 120 days of the date of imposition of the surcharge under this Ordinance shall not be subject to paying a filing fee. After this 120-day period, the initial filing fee for an appeal shall be \$50. An additional \$50 fee is required for further appeal to the City Council. These fees are fully refundable should the appellant adequately justify and secure the requested change or relief.

**Section 9: Enforcement.**

1. In the event funds received from City utility billings are inadequate to satisfy in full all of the sewer and Public Safety charges, credit shall be given first to the Public Safety surcharge and second to the sewer services charge.
2. In addition to other lawful enforcement procedures, the City may enforce the collection of charges required by this Ordinance by disconnection of sewer service to any premises where Public Safety surcharges are delinquent or unpaid.
3. Notwithstanding any provision herein to the contrary, the City may institute any necessary legal proceedings to enforce the provisions of this Ordinance, including but not limited to injunctive relief and collection of charges owing. The City's enforcement rights shall be cumulative.

City of Shady Cove

Ordinance No. 271

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHADY COVE  
ADOPTING SYSTEMS DEVELOPMENT CHARGES FOR THE CITY OF SHADY  
COVE, OREGON AND REPEALING ORDINANCE NOS. 209 AND 230**

**WHEREAS**, the City Council of the City of Shady Cove enacted, pursuant to the authority set forth in ORS 223.297 et. Seq., Ordinance No. 209, on 05/01/2003, and subsequently amended by Ordinance No. 230, on 06/02/2005, providing the overall City implementing policy and procedures for System Development Charges (SDC's); and

**WHEREAS**, the City Council of the City of Shady Cove desires to update and fully incorporate and consolidate policies and procedures relating to System Development Charges into one Ordinance;

**THE COUNCIL OF THE CITY OF SHADY COVE ORDAINS AS FOLLOWS:**

**35.01.01 Purpose**

The purpose of the system development charge is to impose a portion of the cost of capital improvements for parks, wastewater, flood control, and streets upon those developments and redevelopments that create the need for increase the demands on parks, wastewater, stormwater, and streets.

**35.01.02 Definitions**

The following definitions apply to Chapter 35.01 of this code:

- A. Capital Improvements – public facilities or assets used for the following systems:
  - a. Parks and recreation;
  - b. Wastewater collection, transmission, treatment, or disposal or any combination;
  - c. Drainage or flood control; or
  - d. Transportation.
- B. Contiguous – in a public way which abuts the parcel.
- C. Council – the city council of the City of Shady Cove, Oregon.
- D. Development – all improvements on a site, including buildings, other structures, parking and loading areas, landscaping, paved or graveled areas, and areas devoted to exterior display, storage or activities. Development includes redevelopment of property. Development includes improved open areas such as plazas and walkways, but does not include natural geologic forms or unimproved lands.

- E. Improvement Fee – a fee for costs associated with capital improvements to be constructed after the date the fee is adopted pursuant to §35.01.03.
- F. Owner – the owner or owners of record title or the purchaser or purchasers under a recorded land sales agreement, and other persons having an interest of record in the described real property.
- G. Parcel of Land – a lot, parcel, block or other tract of land that in accordance with city regulations is occupied or may be occupied by a structure or structures or other use, and that includes the yards and other open spaces required under the zoning, subdivision, or other development ordinances.
- H. Permittee – the person to whom a building permit, development permit, a permit or plan approval to connect to the sewer or water system, or right-of-way access permit is issued.
- I. Qualified Public Improvement – a capital improvement that is:
  - a. Required as a condition of development approval;
  - b. Identified in the plan adopted pursuant to §35.01.07; and either:
    - i. Not located on or contiguous to a parcel of land that is the subject of the development approval; or
    - ii. Located in whole or in part on or contiguous to property that is the subject of development approval and required to be built larger or with greater capacity than is necessary for the particular development project to which the improvement fee is related.
- J. Reimbursement Fee – a fee for costs associated with capital improvements constructed or under construction on the date the fee is adopted pursuant to §35.01.03, and for which the council determines capacity to exist.
- K. System Development Charge – a reimbursement fee, an improvement fee or a combination thereof assessed or collected at the time of increased usage of capital improvements, at the time of issuance of a development permit or building permit, or at the time of connection to the capital improvement. A system development charge does not include fees assessed or collected as part of a local improvement district or a charge in lieu of a local improvement district assessment, or the cost of complying with requirements or conditions imposed by a land use decision.

### **35.01.03 System Development Charge Established**

System development charges shall be established and may be revised by resolution of the council. The resolution shall set the amount of the charge, the type of permit to which the charge applies, and, if the charge applies to a geographic area smaller than the entire city, the geographic area subject to the charge.

### **35.01.04 Methodology**

The methodology used to establish or modify the reimbursement fee shall, where applicable, be based on the cost of then-existing facilities including without limitation

design, financing and construction costs, prior contributions by then-existing users, gifts or grants from federal or state government or private persons, the cost of the unused capacity of existing facilities, rate-making principals employed to finance publicly owned capital improvements, and other relevant factors identified by the council. The methodology shall promote the objective that future system users shall contribute no more than an equitable share of the cost of then-existing facilities.

The methodology used to establish or modify the improvement fee shall, where applicable, demonstrate consideration of the estimated cost of projected capital improvements needed to increase the capacity of the systems to which the fee is related. The methodology shall be calculated to obtain the cost of capital improvements for the projected need for available system capacity for future system users.

The methodology used to establish or modify the improvement fee or the reimbursement fee, or both, shall be contained in a resolution adopted by the council.

#### **35.01.05 Authorized Expenditures**

Reimbursement fees shall be applied only to capital improvements associated with the system for which the fees are assessed, including expenditures relating to repayment of indebtedness.

Improvement fees shall be spent only on capacity increasing capital improvements associated with the system for which the fee is assessed, including expenditures relating to repayment of future debt for the improvements. An increase in system capacity occurs if a capital improvement increases the level of performance or service provided by existing facilities or providing new facilities. The portion of the capital improvements funded by improvement fees must be related to demands created by current or projected development. A capital improvement being funded wholly or in part from revenues derived from the improvement fee shall be included in the plan adopted by the city pursuant to §35.01.07.

Notwithstanding other provisions of this section, system development charge revenues may be expended on the direct costs of complying with the provisions of this chapter, including the costs of developing system development charge methodologies and providing an annual accounting of system development expenditures.

#### **35.01.06 Expenditure Restrictions**

System development charges shall not be expended for costs associated with the construction of administrative office facilities that are more than an incidental part of other capital improvements.

System development charges shall not be expended for costs of the operation or routine maintenance of capital improvements.

#### **35.01.07 Improvement Plan**



Prior to the establishment of a system development charge, the council shall adopt a plan that includes a list of:

- A. The capital improvements that the council intends to fund in whole or in part with improvement fee revenues; and
- B. The estimated cost and time of construction of each improvement and the percentage of that cost eligible to be funded with improvement fee revenues; and
- C. A description of the process for modifying the plan.

In adopting this plan, the council may incorporate by reference all or a portion of any public facilities plan, master plan, capital improvements plan or similar plan that contains the information required by this section.

The council may modify such plan and list at any time. If a system development charge will be increased by a proposed modification to the list the council will:

- A. At least 30 days prior to adoption of the proposed modification, provide written notice to persons who have requested notice pursuant to §35.01.12; and
- B. Hold a public hearing if a written request for a hearing is received within seven days of the date of the proposed modification.

A change in the amount of a reimbursement fee or an improvement fee is not a modification of the system development charge if the change in amount is based on the periodic application of one of the construction cost indices published by the *Engineering News Record*.

### **35.01.08 Collection of Charge**

The system development charge is payable upon the issuance of:

- A. A building permit; or
- B. A development permit; or
- C. A development permit for development not requiring the issuance of a building permit; or
- D. A permit or approval to connect to the sewer system; or
- E. A right-of-way access permit.

If no building, development, or access permit is required, the system development charge is payable at the time the usage of the capital improvement is increased based on the changes in the use of the property unrelated to seasonal or ordinary fluctuations in usage.

If development is commenced or connection is made to the sewer system without an appropriate permit, the system development charge is immediately payable upon the earliest date that a permit was required.

The City Administrator shall collect the applicable system development charge from the permittee when a permit that allows building or development of a parcel is issued.

The City Administrator shall not issue such permit or allow such connection until the charge has been paid in full, or until a provision for installment payments has been made pursuant to §35.01.09, or unless an exemption is granted pursuant to §35.01.10.

### **35.01.09 Installment Payments**

When a system development charge is due and collectible, the owner of the parcel of land subject to the system development charge may apply for payment in 20 semiannual installments, to include interest on the unpaid balance, in accordance with ORS 223.208.

The City Administrator shall provide application forms for installment payments, which shall include a waiver of all rights to contest validity of the lien, except for the correction of computational errors.

An applicant for installment payments shall have the burden of demonstrating the applicant's authority to assent to the imposition of a lien on the parcel and that the property interest of the applicant is adequate to secure payment on the lien.

The City Administrator shall docket the lien in the lien docket. From that time the city shall have a lien upon the described parcel for the amount of the system development charge, together with interest on the unpaid balance at the rate established by the council. The lien shall be enforceable in the manner provided in ORS Chapter 223.

The City Administrator is authorized to cancel assessments of system development charges, without further council action, when the development approved by the building permit is not constructed and the building permit is cancelled.

For property that has been subject to a cancellation of assessment of system development charges, a new installment payment contract shall be subject to the code provisions applicable to system development charges and installment payment contracts on file on the date the new contract is received by the city.

### **35.01.10 Exemptions**

Structures and uses established and legally existing on or before the effective date of this chapter are exempt from a system development charge to the extent of the structure or use then existing and to the extent of the parcel of land as it is constituted on that date. Structures and uses affected by this subsection shall pay the sewer charges pursuant to the terms of this ordinance upon the receipt of a permit to connect to the sewer system.

Additions to single-family dwellings that do not constitute the addition of a dwelling unit, as defined by the State Uniform Building Code, are exempt from all portions of the system development charge.

An alteration, addition, replacement or change in use that does not increase the parcel's or structure's use of the capital improvements are exempt from all portions of the system development charge.

#### **35.01.11 Credits**

When a development occurs that is subject to a system development charge, the system development charge for the existing use, if applicable, shall be calculated and, if it is less than the system development charge for the use that will result from the development, the difference between the system development charge for the existing use and the system development charge for the proposed use shall be the system development charge. If the change in use results in the system development charge for the proposed use being less than the system development charge for the existing use, no system development charge shall be required. No refund or credit shall be given unless provided by another paragraph of this section.

A credit shall be given to the permittee for the cost of a qualified public improvement upon acceptance by the city of the public improvement. The credit shall not exceed the improvement fee even if the cost of the capital improvement exceeds the applicable improvement fee and shall only be for the improvement fee charged for the type of improvement being constructed.

If a qualified public improvement is located in whole or in part on or contiguous to the property that is the subject of the development approval and is required to be built larger or with greater capacity than is necessary for the particular development project, a credit shall be given for the cost of the portion of the improvement that exceeds the city's minimum standard facility size or capacity needed to serve the particular development project or property. The applicant shall have the burden of demonstrating that a particular improvement qualifies for credit under this paragraph. The request for credit shall be filed in writing no later than 60 days after acceptance of the improvement by the city. The city may deny the credit provided for in this paragraph if the city demonstrates that the application does not meet the requirements of this section or if the improvement for which credit is sought was not included in the improvement plan pursuant to §35.01.07.

When the construction of a qualified public improvement located in whole or in part or contiguous to the property that is the subject of development approval gives rise to a credit amount greater than the improvement fee that would otherwise be levied against the project, the credit in excess of the improvement fee for the original development project may be applied against improvement fees that accrue in subsequent phases of the original development project.

Notwithstanding the previous paragraphs of this section, when establishing a methodology for a system development charge, the city may provide for a credit against the improvement fee, reimbursement fee, or both, for capital improvements constructed as part of the development which reduce the development's demand upon existing capital improvements and/or the need for future capital improvements, or a credit based upon any other rationale the council finds reasonable.

Credits shall not be transferable from one development to another.

Credits shall not be transferable from one type of system development charge to another.

Credits shall be used within 10 years from the date the credit is given.

#### **35.01.12 Notice**

The city shall maintain a list of persons who have made a written request for notification prior to adoption or modification of a methodology for any system development charge. Written notice shall be mailed to persons on the list at least 90 days prior to the first hearing to establish or modify a system development charge. The methodology supporting the system development charge shall be available at least 60 days prior to the first hearing to adopt or amend a system development charge. The failure of a person on the list to receive a notice that was mailed does not invalidate the action of the city.

The city may periodically delete names from the list, but at least 30 days prior to removing a name from the list, the city must notify the person whose name is to be deleted that a new written request for notification is required if the person wishes to remain on the notification list.

#### **35.01.13 Segregation and Use of Revenue**

All funds derived from the system development charge described in this chapter are to be segregated by accounting practices from all funds of the city. Those system development charges collected under this chapter shall be used for no purpose other than set forth in §35.01.05.

The City Administrator shall provide the council with an annual accounting, by January 1 of each year, for system development charges showing the total amount of system development charge revenues collected for each type of facility and the projects funded from each account in the previous fiscal year. A list of the amount spent on each projected funded in whole or in part with system development charge revenues shall be included in the annual accounting.

#### **35.01.14 Refunds**

Refunds may be given by the City Administrator upon finding that there was a clerical error in the calculation of a system development charge.

Refunds shall not be allowed for failure to timely claim credit or for failure to timely seek an alternative system development charge rate calculation at the time of submission of an application for a building permit.

#### **35.01.15 Appeal Procedure**

A person challenging the propriety of an expenditure of system development charge revenues may appeal the decision or the expenditure to the city council by filing a

written request with the finance director describing with particularity the decision of the finance director and the expenditure from which the person appeals. An appeal of an expenditure must be filed within two years of the date of the alleged improper expenditure.

After providing notice to the appellant, the council shall determine whether the City Administrator's decision or the expenditure is in accordance with this chapter and the provisions of ORS 223.297 to 223.214 and may affirm, modify, or overrule the decisions. If the council determines that there has been an improper expenditure of system development charge revenues, the council shall direct that a sum equal to the misspent amount shall be deposited within one year to the credit of the account or fund from which it was spent. The decision of the council shall be reviewed only as provided in ORS 34.010 to 34.100, and not otherwise.

A legal action challenging the methodology adopted by the council under this chapter shall not be filed later than 60 days after adoption. A person shall contest the methodology used for calculating a system development charge only as provided in ORS 34.010 to 34.100 and not otherwise.

#### **35.01.16 Prohibited Connection**

No person may connect to the sewer system of the city unless the appropriate system development charge has been paid or the lien or installment payment method has been applied for and approved.

#### **35.01.17 Construction**

For the purposes of administration and enforcement of this chapter, unless otherwise stated in this chapter, the following rules of construction shall apply:

- A. In case of any difference of meaning or implication between the text of this chapter and any caption, illustration, summary table, or illustrative table, the text shall control.
- B. The word, "shall," is always mandatory and not discretionary; the word, "may," is permissive.
- C. Words used in the present tense shall include the future; and words used in the singular number shall include the plural and the singular, unless the context clearly indicates the contrary.
- D. The phrase, "used for," includes "arranged for," "designed for," "maintained for," or "occupied for."
- E. Where a regulation involves two or more connected items, provisions, or events:
  - a. "And" indicates that all the connected terms, conditions, provisions or events shall apply; and
  - b. "Or" indicates that the connected items, conditions, provisions, or events may singly or in any combination.



- F. The word, "includes," shall not limit a term to the specific example, but is intended to extend its meaning to all other instance of like kind or character.

### **35.01.18 Severability**


The provisions of this chapter are severable, and it is the intention to confer the whole or any part of the powers herein provided for. If any clause, section or provision of this chapter shall be declared unconstitutional or invalid for any reason or cause, the remaining portion of this chapter shall be in full force and effect and be valid as if such invalid portion thereof had not been incorporated herein. It is hereby declared to be the council's intent that this chapter would have been adopted had such an unconstitutional provision not been included herein.

### **35.01.18 Classification**

The council determines that any fee, rates or charges imposed by this chapter are not a tax subject to the property tax limitations of Article XI, section 11(b) of the Oregon Constitution.

**PASSED AND APPROVED** by the City Council of the City of Shady Cove this 21st day of May 2015.

Approved:

  
Tom Anderson  
Mayor

Attest:

  
Aaron Prunty  
City Administrator

### **Council Vote:**

Mayor Anderson	<u>Y</u>
Councilor Ulrich	<u>Absent</u>
Councilor Sanderson	<u>Y</u>
Councilor Burgess	<u>Y</u>
Councilor Mitchell	<u>Y</u>

City of Shady Cove

Resolution 19-11

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHADY COVE,  
OREGON, ESTABLISHING FEES AND CHARGES**

**Whereas**, it is the policy of the City of Shady Cove to require the recovery of certain City costs from fees and charges levied therefore in providing City services products and regulations; and

**THE CITY COUNCIL RESOLVES AS FOLLOWS:**

**SECTION 1: Fees Established**

Fees and charges for certain City services, products and regulations are established and set as enumerated in the attached Exhibit "A" incorporated by reference as though fully set forth herein.

**SECTION 2: Rates Note Enumerated**

Rates for any category, not enumerated in this Resolution, may, from time to time, beset by the City Council.

**SECTION 3: Resolutions Repealed**

All previous Fee Resolutions are hereby repealed.

**SECTION 4: Effective Date**

This Resolution shall be effective September 5, 2019

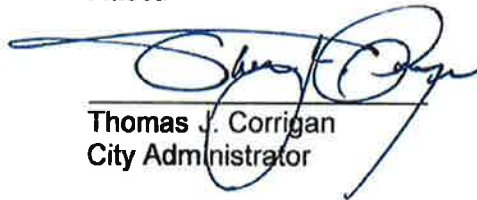
**Adopted** by the Shady Cove City Council this 5<sup>th</sup> day of September 2019

Approved:



Lena Richardson  
Mayor

Attest:



Thomas J. Corrigan  
City Administrator

**Council Vote:**

Mayor Richardson	<u>Y</u>
Councilor Mitchell	<u>Y</u>
Councilor McGregor	<u>Y</u>
Councilor Tarvin	<u>Absent</u>
Councilor Hohenstein	<u>Y</u>

Exhibit "A"  
**Attachment to City of Shady Cove Fee Resolution No. 19-11**  
Effective Date: September 5, 2019

<b>ADMINISTRATIVE FEE</b>		
Administrative Fee	\$45.00	Per hour, per person, after first 15 minutes.
Copies	\$0.30	Per page.
Copies	\$0.55	Per side for 11x17.
Audio Recording (CD)	\$5.00	Actual cost of CD and staff time to reproduce CD.
Returned Check Fee	\$30.00	Returned Check/ACH Fee.
<b>BUSINESS LICENSE</b>		
Business License	\$85.00	All business licenses. Businesses located in the City, out of City or Home Occupations, etc.
Duplicate Business License	\$10.00	
1 to 30 Day License	\$10.00	One per fiscal year.
License Late Fee	20%	If paid after August 1 a 20% (\$17.00) late fee will be assessed.
License Reinstatement Fee	\$25.00	
Prorated Business License	\$7.00/Month + Next Fiscal Yr.	For a new business beginning after Dec 31 through the end of the fiscal year + full rate of the next fiscal year.
<b>LIQUOR LICENSE</b>		
Change of Ownership	\$35.00	
Renewal	\$35.00	
Temporary/Special Event	\$35.00	
<b>TAXES AND FEES</b>		
Raft Rental Tax	\$3.00	Per raft rental (Ord. 199 & 232).
Transient Occupancy Tax	6%	(Ord. 140, 140-01, & 171)
<b>PLANNING FEES ***</b>		
Access Permit	\$200.00	Road access.
Ancillary - Up to 100 Sq. Ft.	\$75.00	Applies to small outdoor improvements ancillary to existing structures such as decks and stairs.
Appeal	\$300.00	
Conditional Use Permit	\$600.00	
Consulting, Legal and Professional Charges	Admin Fee	Plus \$45.00 per hour, per person after first 15 minutes.
Extensions	\$25.00	
Fence Permits (Non-Floodplain)	\$50.00	
(Floodplain)	\$250.00	
Final Plat	Half Original Fee	
Floodplain - Additional Inspections	\$150.00	
Floodplain Applications: Minor	\$275.00	Minor includes one inspection.
Floodplain Applications: Major	\$700.00	Includes up to three inspections.
Floodplain Minor File Review	\$150.00	No on site inspection.
Floodplain Minor File Review	\$75.00	Tree removal.

Lot Line Adjustment	\$300.00	
Land Partition Minor	\$600.00	No road creation.
Land Partition Major	\$1,200.00	Extension or creation of a road.
Other Inspection Services	Admin Fee	Plus \$45.00 per hour, per person after first 15 minutes.
Planned Unit Development	\$2,000.00	Plus \$50.00 per lot
Pre-Application Conference	\$400.00	\$100 Credit on land use approval application.
Revision to Prior Approval	Half Original Fee	
Sign Permit	\$50.00	Per property.
Land Use Approval	\$175.00	Plus any required engineering cost.
Site Development Review	\$175.00	Resident, Non Floodplain, Plus any required engineering cost.
Site Design Review	\$450.00	Resident, Floodplain & Commercial, Plus any required engineering cost.
Subdivision or Mobile Home Park	\$2,000.00	Plus \$50.00 per lot, Plus any required engineering cost.
Variance	\$500.00	Plus any required engineering cost.
Zone Change Application	\$1,500.00	Plus any required engineering cost.
Zone Change & Comp Plan Amendment	\$2,500.00	Plus any required engineering cost.
Zone Change & Annexation	\$3,000.00	Plus any required engineering cost.
<b>SYSTEM DEVELOPMENT CHARGES (SDC's)</b>		
Ordinance No. 271 & Resolution No. 15-18 - Single Family Residential/ EDU		
Parks: Single Family	\$1,500.00	Established by Resolution 19-04.
Storm Water: Single Family	\$1,500.00	Established by Resolution 19-04.
Transportation: Single Family	\$7,500.00	Established by Resolution 19-04.
<b>PUBLIC SAFETY</b>		
Driver License Reinstatement	\$20.00	
Public Safety Surcharge	\$18.00	Per month per unit. Residential & Non Residential. Excludes unimproved properties.
Public Safety Fee - Code Enforcement	\$3.00	Per month per unit. Residential & Non Residential. Excludes unimproved properties.
<b>SEWER MONTHLY RATES</b>		
Residential		
<b>EQUIVALENT DWELLING UNIT (EDU)</b>		
Single Family	\$44.00	
Multiple Family	\$44.00	Per Unit.
Mobile Home Park	\$44.00	Per Space.

<b>LODGING</b>		
Motel	\$46.00	Plus \$10.00 per unit (21.7% of EDU)*.
R.V. Park	\$46.00	Plus \$10.00 per unit (21.7% of EDU)*. If rented for more than 30 days the full EDU rate (\$46.00) applies.
<b>RESTAURANTS &amp; BARS</b>		
Restaurants & Bars	\$46.00	Plus \$1.75 per seat (3.8% of EDU)*
<b>OTHER COMMERCIAL</b>		
Car Wash	\$46.00	Per Stall.
Laundromat	\$46.00	Plus \$23.00 per washing machine (50% of EDU)*.
Business/Building with 1-5 employees	\$46.00	
Business/Building with 6 + employees	\$92.00	
<b>OTHER</b>		
Churches, Other Non-Profit	\$46.00	
Recreation Vehicle Dumping Station	\$92.00	
Service Outside the City	\$66.00	
School	\$46.00	Plus \$0.35 per student and employee (307)**.
Utility Billing Late Fee	1.5% or \$10.00	assessed monthly at 1.5% or \$10.00, whichever is more.
Utility Billing Collection Fee	25%	25% administrative fee added to all accounts turned over to collections.
Vacated Buildings Sewer Maintenance Fee	\$46.00	Full months only. (Commercial)
Vacated Buildings Sewer Maintenance Fee	\$44.00	Full months only. (Residential)
Lien Search	\$25.00	
<b>PARKS AND RIVERHOUSE FEES</b>		
TBD	TBD	
TBD	TBD	
TBD	TBD	
TBD	TBD	
*Percentage will be applied to any subsequent change in EDU rate.		
** Number of students and employees will be validated each year.		
***All Planning Fees may be subject to actual cost of such as; engineer, arborist, County, attorney , surveyor, etc.		



***NOXIOUS VEGETATION.*** The presence of vegetation on property or in the right-of-way of a street, alley or sidewalk abutting the property, anytime between May 15 and September 30 of any year, including:

- (1) Weeds or grass more than ten inches high;
- (2) Blackberry bushes that extend into a public thoroughfare or across a property line;
- (3) Poison oak or ivy; and
- (4) Vegetation that is a health hazard, a fire hazard or other hazard because it is near other combustibles, or a traffic hazard because it impairs the view of the public thoroughfare or otherwise makes use of the thoroughfare hazardous for pedestrians and/or vehicles.