

NETARTS OCEANSIDE SANITARY DISTRICT (NOSD)
Public Works Design Standards

Standard Easement Forms

Appendix D

Note: Forms in this appendix are sample model documents only, included for convenience of reference by developers, and may not include all forms. The sample documents in this appendix are for general reference only, do not reference any particular property, and may not have the proper margins and spacing required by the County Clerk for recording.

The sample documents are subject to modification by the NOSD to address project specific conditions (*as may be required by the NOSD Superintendent, the NOSD District Engineer and/or the NOSD legal counsel*), as well as to reference and to attach the required easement legal description and exhibit map. The actual form (*for easements or agreements to the NOSD*) for signature & recording is to be prepared by the NOSD Engineer, with modifications and attachments as applicable.

Easement Procedure Summary.

- For easements to the NOSD (*or for private easements required by NOSD standards*), the easement legal description and to-scale exhibit map for the proposed easement shall be submitted to the NOSD for review and approval. Exhibit maps not drawn and plotted to scale, or not containing the information required under PWDS 1.12.b (*or required to accurately and unambiguously identify the easement boundary and/or the subject property*), will be returned for revision.
 - Per ORS 93.600, use of a tax lot number **as the ONLY means** to describe property is not legally adequate as a legal description of property for use in a recorded document (*similarly, use of an address only is insufficient as the sole legal description of property*).
- In conjunction with submittal of the legal descriptions and exhibit maps, the developer shall provide the NOSD with the following information (*if not included as part of the legal description or exhibit map*):
 - Legal name of owner-of-record of property on which the easement is located, and deed reference number for property containing the easement.
 - For easements located on land not owned by the developer, the amount or type of consideration provided by the developer for the easement (*or indicate that consideration is non-monetary*).
- Once approved, the NOSD will attach the legal description and exhibit map to the appropriate NOSD easement or agreement form (*modified by the NOSD as applicable based on specific project conditions and to reference the property in question and type of easement*), and it will be returned to the developer for to be signed/notarized by the property owner(s).
- Following signature by the property owner(s), the easement/agreement shall be returned to the NOSD to be signed/notarized by the NOSD.
- Offsite easements shall be recorded prior to issuance of an NOSD sewer permit.
- Onsite easements/agreements for projects without a new plat shall also be recorded prior to issuance of an NOSD sewer permit.
- A photocopy of recorded easement documents must be returned (*hard copy or email*) to the NOSD after recording (*ie. to the District Superintendent & to the NOSD District Engineer*).
- All recording costs shall be borne by the Developer.

-- Continued on next page --

Note regarding NOSD easements proposed to be created on/by a subdivision or partition plat, or in conjunction with a plat.

- Easements proposed in conjunction with a plat may be *(at the developer's option)* either (1) created on/by the final plat *(if the final plat has been prepared & reviewed prior to issuance of the NOSD sewer permit)*, or (2) created separately by recorded instrument and referenced on the final plat.
- ORS 92.050.9 prohibits requiring information or notes on a plat which *"is or may be subject to administrative change or variance"* unless authorized by the county surveyor. Under this requirement, terms and conditions of easements to the NOSD typically cannot be included on plats. Therefore, the NOSD requires that a separate easement or agreement document be recorded for any easement(s) to the NOSD which is proposed to be created by a plat, in order to formalize the terms and conditions of said easement(s)/agreement(s).
- The developer should be aware that any easements to the NOSD which are created on/by the plat will also require a separate easement document be recorded *(to formalize the terms of the NOSD easement)*, with the easement to be recorded in conjunction with the final plat or separately. In either case *(ie. whether created on/by a plat or created by separate instrument)*, a recorded easement document *(in a form acceptable to the NOSD)* must be recorded for any easements to the NOSD.
- Onsite easements/agreements *(within a plat boundary)* may either:
 - be recorded by the developer prior to issuance of an NOSD sewer permit, or
 - the original signed/notarized easement or agreement forms will be held by the NOSD until the plat is ready for recording, at which time they will be made available to the developer for recording. NOSD reserves the right to submit the signed notarized easement or agreement to the County for recording, if at any time the developer has failed to follow NOSD procedures, and the NOSD considers *(in its sole discretion)* that such recording is necessary to protect NOSD interests.

After recording, return to:
Netarts Oceanside Sanitary District
1755 Cape Meares Loop Rd. W.
Tillamook, OR 97141

Sample Form for Reference Only.

Actual form for signature & recording is to be prepared by the NOSD, with modifications and attachments as applicable.

**COVENANT FOR PERMANENT SEWER EASEMENT
& ACCESS EASEMENT**

WHEREAS, the owner of record of the Property referenced below is _____, hereinafter called "Owner" and "Grantor", and said Owner (or subsequent owner of the lot or property as noted below) shall be subject to a covenant that creates an easement in perpetuity as outlined herein, which is recorded against the Property referenced below.

The undersigned Owner and Grantor, for the mutual consideration as outlined herein, the receipt of which is hereby acknowledged, does hereby grant to the Netarts Oceanside Sanitary District, a duly organized sanitary district and municipal corporation, referred to herein as District, an exclusive and permanent right-of-way and easement to construct, reconstruct, operate and maintain sanitary sewer facilities and all necessary related facilities under and along the following described premises, including the right to utilize routes on and across the Grantor's property as required to access said easement, and subject to the conditions relating to unity of ownership and doctrine of merger as summarized herein:

Street Address: _____

Tax Lot: _____

Legal Description: See attached Legal Description labeled "Exhibit A" and map labeled "Exhibit B" (incorporated herein by reference)

- () Consideration for this covenant and grant consists wholly of value other than money, including the mutual promises and conditions contained herein, the receipt and sufficiency of which are hereby acknowledged.
- () Consideration for this covenant and grant consists of _____ dollars and other valuable consideration to Grantor paid by _____, as well as the mutual promises and conditions contained herein, the receipt and sufficiency of which are hereby acknowledged.

TO HAVE AND TO HOLD said easement and right-of-way unto said District, its successors and assigns.

This covenant and permanent right-of-way and easement in gross, shall include the right, privilege, and authority of the District to excavate for, and to construct, install, lay, operate, maintain and remove underground pipelines and/or cables with all appurtenances incident thereto or necessary thereafter, for the purpose of supplying public utility service under and across the said premises, together with the right of District to place, install, maintain, inspect, add to the number of and relocate pipelines and/or cables and necessary appurtenances and make excavations therefore from time to time, in, under and through the above described premises within said right-of-way, and to cut and remove from said right-of-way any trees and other obstructions which may endanger the safety or interfere with the use of said pipelines and/or cables or appurtenances attached to or connect therewith; and the right of ingress and egress to and over said described premise at any and all times for the purpose of patrolling the pipelines and/or cables, or repairing, renewing or adding to the number of pipelines and/or cables and appurtenances and for doing anything necessary, useful or convenient for the enjoyment of the easement hereby granted.

Upon the final acceptance of the installed system by the District, the District shall be responsible for all further restorations of the premises if at any time the District causes the utilities to be repaired or maintained. No fills, trees, permanent structures or improvements, including parallel fences or parallel overhead or underground utilities (ie. anything other than perpendicular crossings) shall be placed or constructed on the easement by the Grantor or the Grantor's heirs, assigns or successors in interest. Prohibited structures shall include decks, footings or overhanging portions of structures which are located outside of the easement. The Grantor agrees not to construct trenches, cuts or fills within or on the easement area without express written approval by the District, since this will interfere with the use of the easement for the purposes set forth herein. Fills will make the utilities less accessible for inspection and/or maintenance, and cuts may result in inadequate cover over said utilities, and either will result in access points (manholes, inlets, valve, cleanout or meter boxes, etc.) no longer being at the proper grade. Any such approval by the District (which approval may be granted or withheld at the District's sole discretion), shall be contingent on the Grantor performing all work required by the District in order to mitigate impacts due to such trenches, cuts or fills, including reconstructing or resetting the utilities and appurtenances as directed by the District, backfilling any trenches to District standards, all at the Grantor's expense. It is understood and agreed that District may remove (or require removal by the Grantor) any physical obstructions including buildings, overhangs, fences, trees, shrubbery or fill material, and abate any use of the easement if District finds that the physical obstruction or use will interfere with the District utility or District's ability to access, maintain or repair the utility, and that such removal or abatement may be completed (including if removal by Grantor is required) without recompense to the Grantor(s). Access gates acceptable to the District shall be installed in any cross fences which the District allows to be constructed across the easement, and locks on gates so approved shall comply with District requirements. The District acknowledges that Grantor may use the easement area for permitted parking and/or access.

With the exception of appurtenances which must be at or above grade, all utilities will be placed underground.

The District, upon each and every occasion that the same be repaired, maintained or removed shall restore the premise of the Grantor, by removing all debris and leaving the ground surface in a neat and presentable condition. Grass and topsoil shall be restored as near as possible to as good a condition as the same were prior to any repair or maintenance by the District.

Owner shall be responsible for maintenance and repair of any all-weather access lanes which are provided along (or to provide access to) NOSD utilities, in a manner and condition to allow the NOSD, its employees, agents, contractors, consultants and assigns to have vehicular access along said access lane at all times and during all seasons for the purpose of inspecting, maintaining or repairing NOSD utilities.

Legal Effect. This covenant and easement is binding upon and inures to the benefit of all heirs, successors and assigns of Grantor and District and runs with the land.

Unity of Ownership/Doctrine of Merger. In the event of a finding that the easement rights granted under this covenant and easement agreement would otherwise be extinguished or be of no effect due to unity of ownership (ie. common ownership at the time of easement creation) or under the doctrine of merger (ie. due to future common ownership of the dominant estate property and the servient estate property), the covenant and easement agreement entered into herein shall be considered as a "Covenant Creating an Springing Easement Effective upon Date of Sale", which will result in the easement as set forth above taking effect at such time as the dominant or servient estates (or portions thereof containing or affected by the easement) are transferred, sold or conveyed in a manner so as to be under separate ownership (ie. it is agreed that such extinguishment or merger due to common ownership shall not result in the extinguishment of this covenant and easement agreement). This covenant shall automatically create the subject easement upon the recording of a deed conveying either the dominant estate property or the servient estate

property (or portions thereof containing or affected by the easement) to another party, whether or not the easement is referenced in the deed. It is agreed that from and after the date that the easement thus becomes effective, the affected properties shall be subject to all terms and conditions contained herein.

Provision Applicable Law. This covenant and easement shall be governed by, and construed in accordance with the laws of the State of Oregon.

Waiver. Failure of either party at any time to require performance of any provision of this covenant and easement shall not limit the parties' right to enforce the provision, nor shall any waiver of any breach of any provision of this covenant and easement be a waiver of any succeeding breach of the provision or a waiver of the provision itself or any other provision.

Severability. The determination that one or more provisions of this covenant and easement is invalid, void or illegal or unenforceable shall not affect or invalidate the remainder of this covenant and easement.

Amendment or Modification. No amendment or modification of this covenant and easement shall be valid unless in writing and signed by all parties hereto. District may vacate this easement in accordance with state law and local ordinance. This easement will not be considered abandoned until District Board has declared (in writing) the easement abandoned and no longer in use by District.

As used herein, the term "shall" is considered a mandatory obligation, and synonymous with the phrase "has a duty to" when referring to a capable actor, and with the word "must" when referring to a requirement regarding an inanimate object or a status.

The individuals executing this Agreement warrant that they have full authority to execute this Agreement on behalf of the entity for whom they are acting herein.

WITNESS our hands and seals this _____ day of _____, 20__.

(Printed Name of Grantors)

(Signature of Grantors)

STATE OF OREGON)
) ss.
County of _____)

Note: Name of Owner/Grantor filled in below must match Owner name on page 1.

This instrument was acknowledged before me on _____, 20__, by _____, as _____ of _____ (owner/grantor).

(Notary Signature)
Notary Public for Oregon
My Commission Expires: _____

APPROVED:

NOSD District Superintendent

Date

This instrument was acknowledged before me on _____, 20__, by _____ as District Superintendent of the NOSD, Oregon.

(Notary Signature)
Notary Public for Oregon
My Commission Expires: _____

District Engineer (Initial) _____ (if modified)

After recording, return to:
Netarts Oceanside Sanitary District
1755 Cape Meares Loop Rd. W.
Tillamook, OR 97141

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Netarts Oceanside Sanitary District
1755 Cape Meares Loop Rd. W.
Tillamook, OR 97141

Sample Form for Reference Only.

Actual form for signature & recording is to be prepared by the NOSD, with modifications and attachments as applicable.

**PERMANENT ACCESS EASEMENT &
GREASE INTERCEPTOR VAULT MAINTENANCE AGREEMENT**

WHEREAS, the owner of record of the Property is _____, hereinafter called "Owner", and said Owner shall be subject to the maintenance provisions of this agreement;

WHEREAS, _____, hereinafter called "Developer", applied for (with concurrence from the Owner) and was granted sewer service," by the Netarts Oceanside Sanitary District (NOSD), Tillamook County, Oregon, hereinafter called "District," for property located as follows, hereinafter called "Property,":

Street Address: _____

Tax Lot: _____

Legal Description: Tract described in Deed Reference Number _____, Tillamook County Deed Records.

WHEREAS, the development & design standards require the Developer to construct a private exterior two-compartment grease interceptor vault, hereinafter called "Grease Interceptor";

WHEREAS, the District design standards require that the maintenance of the Grease Interceptor shall be the responsibility of the property Owner, and shall be assured through a recorded maintenance agreement;

WHEREAS, the District design standards require that the Grease Interceptor be located on private property, and as such needs to be provided with a general access easement to the District;

NOW, THEREFORE, Owner and the District agree as follows:

SECTION 1. Ownership of Grease Interceptor. The Grease Interceptor is a private facility owned and maintained by the property Owner noted above. Where there are multiple parties with ownership interest the property on which the Grease Interceptor is sited, the provisions of this agreement shall apply to all owners jointly and severally.

SECTION 2. Grant of Access Easement. The undersigned Owner does hereby grant to District, in gross, a permanent and non-exclusive right to access the Grease Interceptor location and all necessary related facilities above, upon and under the premises, along driveways, walkways or other areas that must be crossed between the public right-of-way and the Grease Interceptor location. The access rights shall include the right of the District, its employees, agents, contractors, consultants and assigns to have ingress and egress on the property at all times for the purpose of inspecting said Grease Interceptor, or for performing any maintenance or repair work determined to be necessary by the District in order to protect public or private property, as outlined under Section 4 below. However, such right to inspect and perform maintenance or repairs does not obligate the District to perform such inspections, maintenance or repairs. Consideration for this grant of easement consists wholly of value other than money, including the mutual promises and conditions contained herein, the receipt and sufficiency of which are hereby acknowledged.

SECTION 3. Cleaning & Maintenance Responsibilities. The Owner shall be responsible for the cleaning, maintenance, repair, replacement and upkeep of the Grease Interceptor, at the Owner's sole expense. It shall be the Owner's responsibility to demonstrate to the District upon request that the system is operating properly. Maintenance responsibilities shall include, but are not limited to, the following:

3.1 Inspection. All Grease Interceptor components (vault segments, inlets, outlets, control orifices, etc.) shall be inspected for proper operations and structural stability, at a minimum, annually.

- 3.2 Cleaning of Grease Interceptor. All grease and/or debris shall be removed from both compartments of the Grease Interceptor vault, as well as cleaned from inlet or outlet piping as required, to maintain the design function and capacity of the system (water shall be pumped from vault as required to accomplish this cleaning). The initial cleaning & maintenance interval shall not exceed every 3 months while the building is in use, unless the inspections above reveal a need for more frequent cleaning. After the end of the first year, if approved by NOSD based on the vault having adequate capacity, the cleaning & maintenance interval can be increased as appropriate, but shall not be cleaned and maintained less frequently than twice a year. If subsequent inspections reveal capacity problems, the Owner shall revert to the more frequent cleaning intervals.
- 3.3 Maintenance & Repair. Owner shall be responsible for maintenance, repair or replacement of any component that has been broken, damaged, altered, removed or other is not functioning as designed, including but limited to the vault, divider walls, inlet & outlet structures, access lids, etc. All access lids and risers shall be extended to finish grade and maintained in a watertight condition, and exclude any infiltration of groundwater or inflow of surface water.
- 3.4 Spill Prevention. Measures shall be exercised when cleaning the Grease Interceptor to avoid spillage of pumped grease, solids or liquids. Any spillage shall be completely cleaned up prior to the cleaning or maintenance crew leaving the site.
- 3.5 Prohibited Substances. No chemical, enzyme or bacterial agent shall be added to the Grease Interceptor which will cause the release of grease into the sewer system. Unless otherwise specifically required in writing by the Plumbing Official, no garbage grinders, food pulpers or toilets shall discharge to the Grease Interceptor.
- 3.4 Records and Reporting. The Owner shall maintain a record (in the form of a log book) of steps taken to abide by the obligation under this section. The log book shall be available for inspection by the District upon request. The log book shall catalog the action taken (cleaning, inspection and/or maintenance), who took it, date and time it was done, how it was done, and any problems encountered or follow-up action recommended. Copies of all receipts for cleaning and pumping of the Grease Interceptor must be retained by the Owner with the log book. The Owner shall send a letter to the District prior to December 15 of each year that provides proof of cleaning, inspection and maintenance, including copies of pumping contracts and/or receipts of work conducted by a hired service.

SECTION 4. Failure to Maintain.

- 4.1 If at any time the District determines, in the sole exercise of its discretion, that the Grease Interceptor is not properly cleaned, maintained and/or otherwise kept in good repair, the District shall give reasonable notice to the Owner that the Grease Interceptor needs to be cleaned, maintained and/or otherwise repaired (in the case of an emergency, the District may enter upon the property without notice to perform emergency maintenance or repairs in cases where the District, at its sole discretion, determines that it is necessary to protect public or private property). The notice shall provide a reasonable description of the problem with the Grease Interceptor, and the notice shall provide a reasonable time to correct the problem. Should the responsible parties fail to correct the specified problem, the District may enter upon the property to so correct the specified problem. Notice shall be effective to the Owner by the District's deposit of the notice into the regular United States mail, postage pre-paid, or delivery to the Owner's local place of business. However, this agreement does not expressly impose on the District a duty to so inspect, clean, repair or maintain the Grease Interceptor. Any surface restoration required due to access, inspection, maintenance or repairs thus performed by the District shall remain the responsibility of the Owner, whether or not the District chooses to complete such restoration in conjunction with the District's access, inspection, maintenance or repairs.
- 4.2 The Owner agrees and covenants (for themselves and their respective successors and assigns) that they will reimburse the District for its costs and expenses incurred in the process of cleaning, maintaining, and/or repairing the Grease Interceptor (including cleaning of downstream sewer system resulting from failure of the Grease Interceptor) within 30 days of written request by the District. Such written request for payment shall be effective to the Owner by the District's deposit of the notice into the regular United States mail, postage pre-paid, or delivery to the Owner's local place of business. The terms actual costs and expenses shall be liberally construed in favor of the District and shall include, but shall not be limited to, labor costs, tools and equipment costs, supply costs, and engineering and design costs, regardless whether the District uses its own personnel, tools, equipment and supplies, etc. to correct the matter. If the District initiates any

litigation or engages the services of legal counsel in order to enforce the provisions arising herein, the District shall be entitled to its damages and costs, including reasonable attorney's fees, regardless whether the District contracts with outside legal counsel or utilizes in-house legal counsel for the same. In the event that the costs and expenses are not timely paid, such costs and expenses shall be charged against the Property consistent with State and local regulations, and shall constitute a lien upon the Property until paid.

SECTION 5. Indemnification. The Owner agrees to indemnify and defend the District, its officers, agents and employees and hold them harmless against any and all liability, claims, damages or other costs or expenses related to failure of the Grease Interceptor, including any damage or injury incurred during inspection or maintenance of the Grease Interceptor, or due to the Owner's failure to maintain the Grease Interceptor, or failure to follow proper safety procedures during such inspection or maintenance.

SECTION 6. Recording of this agreement by Developer. Developer shall cause this agreement to be recorded in the deed records of Yamhill County, and a photocopy of the recorded document returned to the District.

SECTION 7. Other Provisions.

- 7.1 Legal Effect, Successors and Assigns. This Agreement shall run with the land and be binding on all parties having or acquiring from the Owner, or the Owner's successors, any right, title, or interest in the property or any part thereof, as well as their title, or interest in the property or any part thereof, as well as their heirs, successors, and assigns. They shall inure to the benefit of each present or future successor in interest of said property or any part thereof, or interest therein, and to the benefit of the District.
- 7.2 Provision Applicable Law. This Agreement shall be governed by, and construed in accordance with the laws of the State of Oregon.
- 7.3 Nonexclusivity of Rights & Remedies. The rights and remedies authorized to the District under this agreement are cumulative and are in addition to such other remedies as may be provided by law, equity, statute, ordinance or other source.
- 7.4 Waiver. Failure of either party at any time to require performance of any provision of this Agreement shall not limit the parties' right to enforce the provision, nor shall any waiver of any breach of any provision of this Agreement be a waiver of any succeeding breach of the provision or a waiver of the provision itself or any other provision.
- 7.5 Severability. The determination that one or more provisions of this Agreement is invalid, void or illegal or unenforceable shall not affect or invalidate the remainder of this Agreement.
- 7.6 Modification. No amendment or modification of this Agreement shall be valid unless in writing and signed by all parties hereto. District may, at their sole discretion, vacate this Agreement in accordance with state law and local ordinance.
- 7.7 As used herein, the term "shall" is considered a mandatory obligation, and synonymous with the phrase "has a duty to" when referring to a capable actor, and with the word "must" when referring to a requirement regarding an inanimate object or a status.

The individuals executing this Agreement warrant that they have full authority to execute this Agreement on behalf of the entity for whom they are acting herein.

WITNESS our hands and seals this _____ day of _____, 20__.

(Printed Name of Grantors)

(Signature of Grantors)

STATE OF OREGON)
) ss.
County of _____)

Note: Name of Owner/Grantor filled in below must match Owner name on page 1.

This instrument was acknowledged before me on _____, 20__, by _____, as _____ of _____.

(Notary Signature)
Notary Public for Oregon
My Commission Expires: _____

APPROVED:

NOSD District Superintendent

Date

This instrument was acknowledged before me on _____, 20__, by _____ as District Superintendent of the NOSD, Oregon.

(Notary Signature)
Notary Public for Oregon
My Commission Expires: _____

District Engineer (Initial) _____ (if modified)