

Memorandum

Date: April 9, 2012

To: File No. CUP-12-02/DR-12-04 (Lake Oswego Water Treatment Plant expansion)

From: Zach Pelz, Associate Planner

Subject: Supplemental public comments for April 6, 2012, staff report

On April 9, 2012, staff discovered that the printed version of the public comments (Exhibit PC-4) for the staff report for CUP-12-02/DR-12-04 inadvertently omitted some attachments that were submitted to staff via email since January 17, 2012. The electronic version of the staff report does not contain this omission. The following documents supplement the printed public comments received to-date and are summarized as follows:

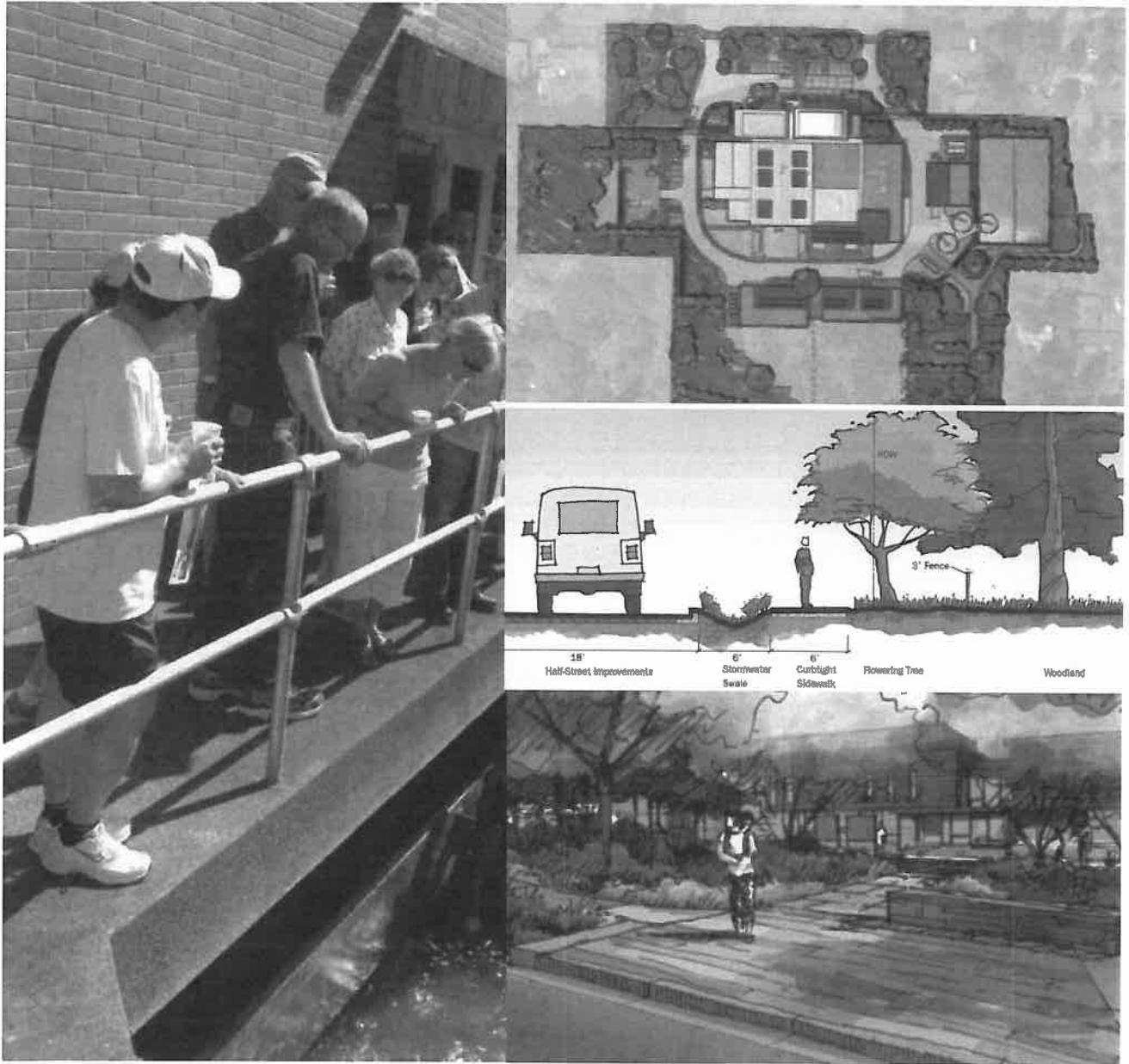
- Email submitted by Gary Hitesman, March 2, 2012
 - Page: Exhibit PC-4, 49
 - Attachment(s): Good Neighbor Plan, December 19, 2011; Hawks Prairie satellite water reclamation plant (photo); Legal Analysis from Pamela J. Beery
- Email submitted by Chris Kerr, February 9, 2012
 - Page: Exhibit PC-4, 141
 - Attachment: Memo from DJ Heffernan regarding review of Lake Oswego/Tigard Water Partnership Conditional Use
- Email submitted by Vicky and Pat Smith, January 26, 2012
 - Page: Exhibit PC-4, 162
 - Attachment: Responses to neighborhood questions
- Email submitted by Vicky and Pat Smith, January 25, 2012
 - Page: Exhibit PC-4, 198
 - Attachment: Pre-app questions
- Email submitted by Michael Perkins
 - Page: Exhibit PC-4, 243
 - Attachment: Incompleteness Determination



Memorandum

Exhibit PC-4, 49

Good Neighbor Plan Lake Oswego Tigard Water Partnership Water Treatment Plant



December 19, 2011

Lake Oswego Water Treatment Plant: Good Neighbor Plan

Purpose

Lake Oswego Tigard Water Partnership (Partnership) and Robinwood Neighborhood Association (RNA) have collaborated to develop a *Good Neighbor Plan* (Plan) that will guide facility and site design, construction, and operation for the Partnership's drinking water treatment plant in West Linn. The Plan reflects a good faith effort and commitment by both parties to ensure the water treatment plant will remain compatible with its surroundings and continue to be a good neighbor as the plant is modified and expanded for the future.

The Plan reflects a current understanding of future conditions and plans. As circumstances change, the Partnership and the RNA fully expect to update the Plan and make any changes needed to achieve the parties' shared goals.

Introduction

The City of Lake Oswego has operated a drinking water treatment plant in West Linn's Robinwood neighborhood since 1968. The site is zoned R-10 (residential). West Linn defines WTP use as "Utility, major", allowed in R-10 as a conditional use. In 1996, West Linn approved a conditional use and design review for WTP expansion, with 19 conditions of approval. Lake Oswego is in compliance with all 1996 approval conditions. Operating at its present location for over forty years, the plant has generally earned a reputation for being a good neighbor.

Now, the Partnership plans to upgrade and expand the treatment plant to meet Lake Oswego's and Tigard's current and future drinking water needs. The upgraded plant will supply both communities and will also continue to serve as West Linn's only source of emergency and backup drinking water supply. As the treatment plant expands, further steps must be taken to ensure the facility remains compatible with its neighbors and quiet setting.

The Partnership is committed to keeping water treatment plant neighbors informed and involved throughout the water treatment plant improvements. The project team has worked with plant neighbors, RNA, and the City of West Linn to develop the Plan.

The Plan ensures neighbors' interests are considered through the life of the project and beyond. The Plan includes guidelines for every phase: design, construction, ongoing operations, and communications.

The Planning Process

The Plan was developed over a twenty-month period (April 2010 to December 2011). The process included:

- Presentations and discussion at regular monthly meetings of the RNA
 - ✓ *Monthly between April 2010 – January 2012*
 - ✓ *April 16, 2011 Lake Oswego and Tigard Mayors meeting with Robinwood neighbors*
- Open houses and tours at the treatment plant
 - ✓ *June 24, 2010 Water Treatment process recommendation Open House*
 - ✓ *July 24, 2010 Water Treatment Plant Open House*
- Three planning workshops
 - ✓ *August 4, 2010 Maple Grove Plat property owners*
 - ✓ *October 27, 2010 First Good Neighbor Plan meeting*
 - ✓ *December 1, 2010 Second Good Neighbor Plan meeting*

- Two surveys of neighbors and property owners
 - ✓ *August 4 – October 8, 2010*
 - ✓ *December 1, 2010 – January 12, 2011*
- Robinwood NA tour of Wilsonville’s water treatment plant
 - ✓ *December 11, 2010*
- Consultations with the City of West Linn
 - ✓ *April 5, 2010 West Linn City Council presentation*
 - ✓ *May 4, 2010 West Linn, Gladstone, Tigard, Lake Oswego City Manager’s meeting presentation*
 - ✓ *September 15, 2010 West Linn Utility Advisory Board*
 - ✓ *August 25, 2011 West Linn Parks and Recreation Advisory Committee*
 - ✓ *December 12, 2011 West Linn Utility Advisory Board*
- Design team “backyard visits” with 14 treatment plant neighbors
 - ✓ *July 13, 2011 – August 21, 2011*
- Design open house
 - ✓ *October 27, 2011*
- Neighborhood meeting required by West Linn land use code
 - ✓ *November 10, 2011*

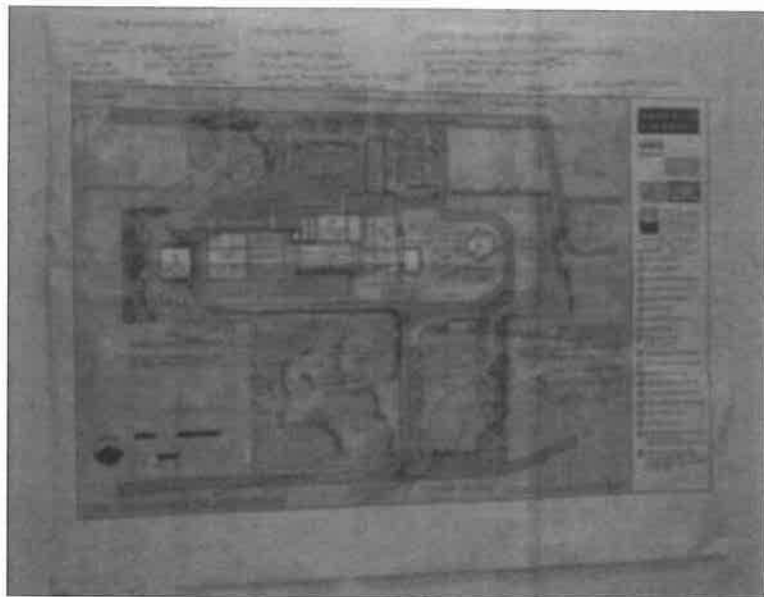
An RNA Subcommittee was formed in May 2011 to provide additional input to further the Plan.

The Partnership Oversight Committee reviewed specific requests by the Robinwood Neighborhood at its December 12, 2011 meeting. Mutually supported ideas have been incorporated into the plan.

Good Neighbor Plan Components

The next sections outline Plan recommendations for:

- ▢ Water Treatment Plant Design
 - Landscape / site design
 - Facility design
 - Access
- ▢ Off-site improvements
- ▢ Construction
- ▢ Ongoing operations
- ▢ Communications



Neighbors added their suggestions to enhance the water treatment plant site design.

Water Treatment Plant Design

The Water Treatment Plant will be upgraded and the capacity increased from 16 to 38 mgd (million gallons per day) utilizing Lake Oswego's maximum water rights from the Clackamas River.

The recommended plan is to reconfigure the plant and convert the treatment process from direct filtration to conventional treatment plus ozone. Other modifications include a new, larger clearwell (underground reservoir) and treated water pump station, mechanical process to handle solids, upgrades to chemical feed systems, miscellaneous improvements to existing buildings, a pathway and site re-landscaping.

The following recommendations supported by neighbors and the Partnership will be used by the water treatment plant design team to help create a facility that blends in with the neighborhood.

Landscape/Site Design

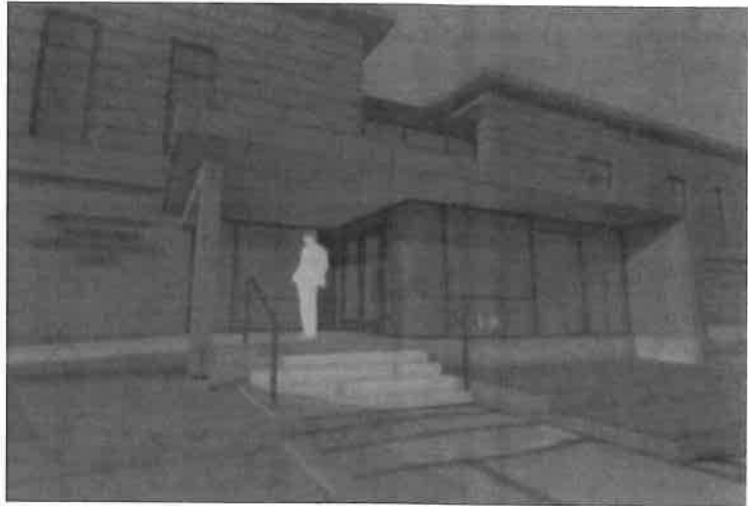
- Provide setbacks compatible with those for nearby neighborhood homes that meet West Linn zoning standards.
- Buffer the facilities from adjacent properties using appropriate manufactured or natural systems where suitable and possible.
- Mitigate lost tree canopy on site by removing invasive species and planting native trees and plants per the COWL Code requirements. For needed off-site mitigation, pay into the West Linn "Canopy Replacement Fund" so that that West Linn may determine the best location for replanting. Neighbors have expressed a desire for additional Trillium Creek mitigation within the neighborhood.
- Consider "green" features for the treatment plant:
 - ▢ Native vegetation to conserve water
 - ▢ Energy conserving pumps, lighting and electrical equipment
 - ▢ Solar collectors for renewable power generation
- Landscaping, fencing and walkways should be designed to fit the residential setting.



Landscaping will enhance the residential look and feel of the facility.

Facilities

- Locate taller process facilities in the central area of the site, away from homes, rather than near property setbacks and adjacent to homes.
- Design buildings visible from the neighborhood to have residential scale and appearance.
- Locate new clearwell, pump house and electrical building so that minimum setbacks between the new facilities and homes are exceeded.
- Design facilities to minimize off-site treatment plant noise and odors. Measure baseline noise level around the existing plant.
- Use low level lighting for water treatment plant facilities; prevent off-site glare and light trespass.
- Install fence with non-industrial appearance, designed to fit the neighborhood setting yet provide adequate security.



Residential scale and design features will make the treatment plant better fit the neighborhood setting.

Access

- Build a pedestrian path – buffered from adjacent property owners – that connects Mapleton Drive with Kenthorpe Way and meets West Linn development code standards.
- Install a half street improvement along the Water Treatment Plant frontage (Kenthorpe and Mapleton) frontage with "Green Street" treatment.
- Locate fence line to provide public access to a portion of the Mapleton Drive parcels.
- Every effort will be made to maintain vehicle access to driveways during construction and minimize any road closures. Periodically, it may be necessary to close a road or to provide a detour. When this occurs, advance warning will occur and signage or flaggers will guide drivers through detour routes. Access to homes for emergency vehicles will always be maintained.

Construction

Construction of the upgraded and expanded treatment plant is expected to take approximately twenty eight months. Mitigating the impacts of construction on treatment plant neighbors is a top concern of neighbors and a top priority for the Partnership in protecting neighborhood livability.

The contractor will be required to meet noise, erosion, emissions, dust, traffic and parking, work hours, site security and safety standards. The following construction mitigation measures identified by neighbors and Partnership will also be required of the contractor:

- Shut off idling equipment when not in use. Schedule noisier construction operations to limit their duration. Give advance notice to neighbors when noisy work will occur outside these times.
- A regular "Coffee with the Construction Manager" will be provided throughout construction as long as there is interest on the part of neighbors and others.
- All off road construction equipment operating on site will use ultra low sulfur diesel, be in good working order and will comply with current emissions standards as applicable to new and used off-road diesel equipment and fuel.

- As much as practicable, locate noise producing activities/equipment in central part of site, away from neighbors.
- All noise generating activities will conform to COWL, Oregon Department of Environmental Quality, and Occupational Safety and Health (OSHA) requirements. Noisy portable equipment, such as generators or compressors will be located as far from residential receptors as practicable. Perimeter, noise dampening fencing will be used to limit noise impacts where needed.
- Maintain vehicular, bicycle, pedestrian and emergency vehicle access to area homes throughout construction.
- Every effort will be made to load and unload equipment and materials on the Water Treatment Plant property during plant construction. In the event that materials need to be unloaded on residential streets, flaggers will be used to ensure that the safety of the travelling public is the highest priority.
- Ensure safe pedestrian, bicycle and vehicular school commute during the construction period.
- Provide off-street / off-site parking for construction workers during construction. Some on-site parking for construction supervisor, inspector and project management staff will be provided.
- Use visible ID badges or other methods to identify construction workers.
- Maintain pavement condition on Mapleton Drive and Kenthorpe Way, during and after construction.
- Require reduced speed limit for construction vehicles when traveling through residential neighborhoods if allowed by COWL standards.

The City of Lake Oswego will also:

- After a construction contractor is hired, identify all construction material staging areas, temporary offices and trailers and equipment and commuter parking areas, on and off the plant site for the RNA.
- Provide 24/7 construction hotline telephone number that provides access to report problems.
- Coordinate with the City of West Linn on construction of West Linn infrastructure projects during water project work to see if there are opportunities for West Linn to save money.
- Lake Oswego will repair or rebuild, if required, all streets that are damaged by Water Partnership projects to as good or better condition as prior to construction and according to COWL standards.
- Use informational signage and lights at Mapleton and Hwy 43 and Nixon intersections to indicate closures and other road conditions.
- Any street reconstruction or paving will meet COWL engineering standards for grading to meet surface water flows. The City of West Linn Engineering Department will review all plans for consistency with its requirements. If, at the time of paving, COWL would like to install additional surface water improvements, Lake Oswego will coordinate with them.
- Maintain landscape where visible to neighbors to a level appropriate to the location and type of landscaping.
- Report to Robinwood Neighborhood Association on construction activities as needed.

Ongoing Operations

Once construction is complete, the Partnership will continue to operate the treatment plant with a high level of sensitivity to its neighbors. The neighborhood and Partnership agree the following neighborhood requests will be incorporated into the plant's standards of operation.

- Minimize off-site treatment plant noise and odors.

- Allow controlled use of the Treatment Plant's future emergency access road by Kenthorpe Way neighbors in the event of an emergency that would block access for residents of this dead-end street.

Communications

Communications among the RNA, treatment plant neighbors and the Partnership team will occur throughout the plant upgrade and expansion project as well as after upgrades are completed. After the new treatment plant is on-line, plant staff will periodically communicate with neighbors and the RNA.

Lake Oswego's water treatment plant has an emergency response plan in place, and procedures are closely coordinated with the local emergency responders: Tualatin Valley Fire & Rescue and West Linn Police Department. Tualatin Valley Fire & Rescue inspects the plant facilities at least annually. In event of an emergency, communications with plant neighbors would be initiated by the noted emergency responders.

Full information on drinking water treatment chemicals used on-site is maintained at the treatment plant. Plant staff are available to answer neighbors' questions about these chemicals. The plant's drinking water disinfection process was converted years ago to use a sodium hypochlorite (bleach) solution. There is no use or storage of chlorine gas on-site.

The following communication strategies will be implemented by the WTP staff.

- Treatment plant staff continue to provide information and answer neighbors' questions about chemicals used and stored on-site, and transported through the neighborhood.
- Hazard analysis and hazard response plan for all chemicals at the plant to be shared with West Linn residents.
- Continued use of Tualatin Valley Fire and Rescue reverse 911 alert system.
- Update neighbors and the Robinwood Neighborhood Association on any changes in process chemicals or emergency procedures affecting neighbors.
- Hold an open house/tour at the treatment plant once or twice per year.
- Keep neighbors informed about the pertinent plant activities through community meetings, website and email updates, mailings and presentations at RNA meetings.

Learn More

For more information about the Lake Oswego Water Partnership or the Good Neighbor Plan for the Partnership's water treatment plant contact:

Jane Heisler, Communications
Director
City of Lake Oswego
503-697-6573 /
jheisler@ci.oswego.or.us

For information about the water treatment plant:
Kari Duncan, Water Treatment Plant
Manager
City of Lake Oswego
503-635-0393 /
kduncan@ci.oswego.or.us



A water treatment plant open house held in August 2010 was well attended by neighbors.





MEMORANDUM

TO: John Sonnen, West Linn Planning Director

FROM: Pamela J. Beery, Special Legal Counsel

SUBJECT: Legal Analysis: Proposed Lake Oswego-Tigard Water Partnership Project

DATE: December 19, 2011

BACKGROUND

As the City anticipates the filing of applications for land use review of a proposed water transmission facility and treatment plant expansion, questions have developed around what communications and contacts are appropriate at this time between staff, the City Council, and others that have an interest in the potential Lake Oswego/Tigard waterline extension. Additionally, Council will meet in work session this evening to hear a presentation from the project consultant team regarding the project. In particular, the purpose of the work session is to describe the proposed project and how the project might impact a shared intertie that West Linn and Lake Oswego share for emergency water service.

The purpose of this memorandum is to clarify two points:

1. First, we discuss the scope of appropriate communications during the pre-application and application periods, and specifically what constitutes an ex parte contact and what triggers the related concern of potential decision maker bias. The concern arises because the Council could be the hearing body to consider any appeal of a decision, and because of significant community interest in the project and the accompanying water treatment plant expansion.
2. Second, this memorandum addresses the appropriate scope for the work session and Council's role in the work session and related activities as the governing body ultimately responsible for water service in West Linn, as contrasted with Council's role as a potential land use appeal hearing body.

DISCUSSION

1. Council's land use decision-maker role

A. *Ex Parte Communications*

ORS 227.180(3) provides the statutory framework governing ex parte communications and contacts. An ex parte contact involves communication between a decision-maker and a party or other interested person regarding the subject matter of a land use matter *pending* before the decision-maker. *Carrigg v. City of Enterprise*, 48 Or. LUBA 328, 333 (2004) (emphasis added). Ex parte communications take many forms; emails, telephone calls, direct communications, meetings with the applicant or other parties, and attendance at neighborhood meetings among the many examples.

Technically, a communication is not an ex parte communication if there is no pending application awaiting approval. Directly on point here is *Richards-Kreitzberg v. Marion County*, 31 Or. LUBA 540 (1996), holding that where there was no application pending before the County, there could by definition be no ex parte contacts between an applicant and the decision maker. In this case, no application has been filed so the Mayor and Council cannot be said to be engaging in ex parte communications. However, as discussed more fully below, care needs to be taken to set clear parameters for Council activities and statements to avoid the concern of potential bias, and once an application is filed all communications must be made part of the hearing record.

Specifically, ORS 227.180(3)(a) requires that members of the decision-making body disclose "the substance of any written or oral ex parte communications *concerning the decision or action*" (emphasis added). The "decision or action" is the land use application before the decision-making body. *Claus v. City of Sherwood*, 62 Or LUBA 67 (2010). Thus, an ex parte contact cannot occur *unless* an application has been submitted to a decision-making body for a decision. In our view, the City should consider the application "submitted" as of the filing of the application with the Planning Department so that there is a clear delineation for these purposes.

As such, any communication that occurs between members of the West Linn City Council – ultimately the appeal body once a land use application is filed – and parties interested in the Lake Oswego-Tigard water project between now and when an application is filed are not ex parte communications by definition under applicable law.

Under ORS 227.180(3), once an application has been submitted, members of a governing body must disclose ex parte communications on the record when the matter comes before the Council,

and must allow an opportunity for rebuttal of any communications disclosed. The purpose of the ex parte contact statutes is to ensure that land use decisions are based on information or evidence the decision-makers receive within the public process and not based on information or evidence received outside the public process. *Carrigg v. City of Enterprise*, 48 Or. LUBA 328, 333 (2004) (citing *Opp v. City of Portland*, 38 Or. LUBA 251, 263-64, *aff'd* 171 Or. App. 417, 16 P3d 520 (2000)). As you learned in the recent *Bundy v. City of West Linn* case, placing the asserted ex parte communication in the record removes any argument that such communication was ex parte; this advice certainly carries forward throughout the proceedings on this project.¹

Finally, general expressions of support or opposition to a proposed development or other pending land use action are not ex parte contacts because they include no factual or legal assertions that bear on approval criteria or on any issue material to approval of the pending application that could possibly be rebutted. *Link v. City of Florence*, 58 Or LUBA 348 (2009) (dealing with review of annexation application). Nevertheless, as discussed more fully below, the Mayor and Council should be cautious about expressing any opinions in current and future discussions so as to avoid any the appearance of bias – a different legal requirement that also applies in land use decisions.

Following is a brief discussion of how ex parte communications should be handled, and some special rules concerning what constitutes an ex parte communication.

(1) Full Disclosure

Ex parte contacts are not in and of themselves unlawful. Ex parte contact does not render a decision unlawful so long as there is full disclosure. ORS 227.180(3). Such contacts are a problem only where the substance of the meeting is not disclosed during a public hearing and recorded as a part of the public record. This is an area that should be discussed carefully in the context of the present anticipated application. Council should be very clear on when an application is filed so that careful documentation can be maintained to avoid both legal and political concerns.

Disclosure must occur at the earliest possible time in the decision-making process. *Horizon Construction v. City of Newberg*, 114 Or. App. 249, 834 P.2d 523 (1992). There are two components to full disclosure: (1) placing the substance of the written or oral ex parte contact on the record and (2) a public announcement of the ex parte contact. ORS 227.180(3)(a) & (b). Both requirements are satisfied by disclosure at the initial public hearing; in the case of Council,

¹ LUBA No. 2010-089 (March 8, 2011).

this would be at the beginning of the appeal hearing. We plan to help guide Council through this process.

(2) Site Visits

A site visit is not an *ex parte* contact unless it involves communication between a decision maker and a party or other interested person. *Carrigg v. City of Enterprise*, 48 Or. LUBA 328 (2004). However, site visits do invoke procedural requirements of disclosure and an opportunity to rebut any evidence obtained from the site visit. *Id.* If a site visit is conducted and conversations take place between decision makers and applicants and/or opposition that relate to the applicable approval criteria and are then used in making the final decision, or give the appearance of playing into the final decision, the content of those conversations must be disclosed *Gordon v. Polk County*, 50 Or. LUBA 502 (2005). As such, any site visits (in this case, covering a broad area including Mary S. Young Park, several streets and neighborhoods) could trigger a due process concern if Council learns information that is not part of the hearing record. Again, this is a manageable risk; Council should feel free to be well acquainted with the areas to be impacted by this project, and should then be prepared to disclose any information learned outside of the hearing process.

(3) Communications with Staff and General Comments

Under ORS 227.180(4), communications with City staff are not considered *ex parte* contacts. However, City staff may not serve as a conduit for obtaining information outside of the public process unless that information is disclosed. In practice, decision makers may freely discuss issues and evidence with staff. Where an interested party requests staff to communicate with a decision maker or other evidence is obtained through staff, and the decision maker then relies on that evidence without disclosure (or it is not otherwise included as a part of the public record such as the staff report), an *ex parte* contact problem occurs. Because an *ex parte* contact is a procedural error, the party appealing a decision must show that the *ex parte* contact was prejudicial to a substantial interest of the party. In general, evidence that a relevant *ex parte* contact was not disclosed could be regarded as enough to require remand of a decision. Again, the important advice here is that all such communications must be disclosed during the hearing.

Although *ex parte* communications cannot by definition occur prior to an application being filed as discussed above, communications can occur during this pre-application period that have the potential of creating or giving the impression of bias on the part of the Mayor or a city councilor. This potential concern is the focus of the next area of discussion.

B. Bias

Bias occurs where a decision-maker prejudices an application and does not reach a decision by applying the relevant standards based on the evidence and arguments presented by an applicant. See *Oregon Entertainment Corp. v. City of Beaverton*, 38 Or. LUBA 440, 445, *aff'd* 172 Or. App. 361, 19 P3d 918 (2001) (citing *Spiering v. Yamhill County*, 25 Or. LUBA 695, 702 (1993)). Local quasi-judicial decision makers are not expected to be free of bias but they are expected to (1) put whatever bias they may have aside when deciding individual permit applications and (2) engage in necessary fact finding and attempt to interpret and apply the law to the facts so that the ultimate decision is a reflection of their view of the facts and law rather than a product of any positive or negative bias the decision maker may bring to the process. *Wal-Mart Stores, Inc. v. City of Central Point*, 49 Or. LUBA 697 (2005).

The Oregon Supreme Court has recognized that elected officials must balance their role as legislators actively pursuing a “particular view of the community’s interest,” while balancing their duties as adjudicators in quasi-judicial hearings. Those roles are present in this instance as discussed more fully below. *1000 Friends of Oregon v. Wasco County Court*, 304 Or. 76, 84-85, 742 P2d 39 (1987). An important piece of assessing bias requires an understanding of the distinction between *actual* bias and the *appearance* of bias.

(1) Actual Bias

Actual bias means prejudice or prejudgment of the parties or the case to such a degree that the decision maker is incapable of being persuaded by the facts to vote another way. This can include personal bias or prejudice, or an interest in the outcome.

The standard for determining actual bias is whether the decision maker “prejudged the application and did not reach a decision by applying relevant standards based on the evidence and argument presented [during quasi-judicial proceedings].” *Oregon Entertainment Corp. v. City of Beaverton*, 38 Or. LUBA 440, 445 (2000), *aff'd* 172 Or. App. 361, 19 P.3d 918 (2001). Actual bias strong enough to disqualify a decision maker must be demonstrated in a clear and unmistakable manner. *Reed v. Jackson County*, 2010 WL 2655117, LUBA No. 2009-136 (June 2, 2010). To establish bias, LUBA has generally required evidence of a strong emotional commitment by a decision maker to approve or to defeat an application for land use approval. *Catholic Diocese of Baker v. Crook County*, 60 Or LUBA 157 (2009).

The burden of proof that a party must satisfy to demonstrate prejudgment by a local decision maker is substantial, and actual bias is very rarely established. *Roberts et. al. v. Clatsop County*, 44 Or. LUBA 178 (2003), *see also Becklin v. Board of Examiners for Engineering and Land*

Surveying, 195 Or. App. 186 (2004). However, the objecting party need not demonstrate that a majority of the decision makers were influenced by the bias of one decision maker to warrant a remand; the bias of one City Councilor is enough. *Halvorson Mason Corp. v. City of Depoe Bay*, 39 Or. LUBA 702 (2001).

(2) Appearance of Bias

Appearance of bias will not generally invalidate a decision. *1000 Friends of Oregon v. Wasco County Court*, 304 Or. 76, 742 P.2d 39 (1987). However, the appearance of bias may call into question a decision maker's ultimate decision. *Gooley v. City of Mt. Angel*, 56 Or. LUBA 319, FN6 (2008). As such, generalized expressions of opinions are not bias. *Space Age Fuels v. City of Sherwood*, LUBA No. 2001-064 (2001). The main objective is to maintain public confidence in public processes. Therefore, it is good practice for decision-makers to disclose any comments, communications or information that may be viewed by others as indicative of bias.

Council should take great care not to express an opinion that indicates the ultimate outcome of the application has been pre-determined in any way in all communications with persons who have any interest in this project. Though the threshold for actually proving bias is high, the significant downside of needing to address asserted bias is well worth avoiding.

2. Council's role as policy making body

The second issue presented by the anticipated project arises from the dual roles that Council must play. In addition to hearing any appeal in the land use proceedings affecting this project, discussed above, the Council as governing body is expected to evaluate the project as to its relationship to and impact on West Linn's water system. In this capacity, Council is not determining whether the particular water line or treatment plant expansion is consistent with the City Development Code (which Council would do in the land use appeal); rather, Council is exercising its legitimate and important role as the elected policy body for the City.

Council should not be required to abrogate its role in determining how the proposed project may affect the City's water system simply because Council would also hear any land use appeal concerning components of the project and their compliance with applicable development code provisions. Council must exercise care -- as described fully above -- in exercising its policy role because we know it is likely one or more land use hearings lay ahead.

The purpose of the work session planned for this evening is to hear an overview of the project, and in particular to consider how the project might interface with the City's emergency water intertie with the City of Lake Oswego. The benefits of such a connection could result in

significant taxpayer savings and enhancement of West Linn's water system, and Council is responsible for evaluating those aspects of the project even though a land use appeal may subsequently occur. As noted above, Council may engage in its policy role and may later hear a land use appeal, provided Council members are not biased so that they are unable to give the land use appeal a full and fair review, and provided that any ex parte contacts are fully disclosed. The minutes of the work session could be included in the appeal hearing record for the project as one method of assuring that full disclosure occurs, as an example.

Oregon courts have long recognized the multiple roles played by governing bodies, especially those in cities and counties, and have upheld the quasi-judicial decisions made by those bodies in the face of legal challenge. For example, in *MacPherson v. Department of Administrative Services*, 340 Or. 117, 130 P.3d 308 (2006)², the Oregon Supreme Court held that:

“members [of local general-purpose governing bodies] are politically elected to positions that do not separate legislative from executive and judicial power on the state or federal model; characteristically they combine lawmaking with administration that is sometimes executive and sometimes adjudicative.” Citing *1000 Friends of Oregon v. Wasco Co. Court*, 304 Or. 76, 82, 742 P.2d 39 (1987), cert. denied 486 U.S. 1007, 108 S.Ct. 1733, 100 L.Ed.2d 197 (1988). and *Fasano v. Washington Co. Comm.*, 264 Or. 574, 580, 507 P.2d 23 (1973).

In *Beck v. City of Tillamook*, 113 Or.App. 660, 663, 833 P.2d 1327 (1992), the Oregon Court of Appeals also made this point in the context of the City's approval of a homeless shelter as a conditional use. Petitioners argued that the council was, in effect, the “sponsor” of the project that it authorized through the conditional use permit, because it had previously approved the project's application for a federal grant to provide funds for the project. In upholding the City Council's decision, the Court of Appeals stated:

“LUBA said in *Oatfield Ridge Residents Rights v. Clackamas Co.*, 14 Or. LUBA 766, 768 (1986): ‘Agency sponsorship of a project may or may not earn it the support of elected officials when they review it for conformance with land use requirements. The possibility that some may favor governmental programs does not disqualify the board for bias. The burden is on Petitioners to show clearly that the officials were incapable of making a decision on the basis of the evidence and argument.’ We agree.”

² At issue in this case was the question of whether the governing body that enacted legislation to implement Measure 37 could later hear specific adjudicative cases under the legislation.

December 19, 2011

Page 8

Conclusion and Recommendations:

As a legal matter, the Mayor and Council may continue to discuss the potential Lake Oswego/Tigard water project with staff, their Lake Oswego/Tigard counterparts, and other interested persons without engaging in ex parte communications so long as such communications occur *prior* to application submittal. Once an application has been filed for City approval, the Mayor and Council should avoid engaging in ex parte contacts. Such communications, even before the application is filed, should not be such that they create the appearance of bias, however, and care needs to be taken in that regard even now. Any actual bias will need to be handled by the affected Council member stepping down from participation in any appeal hearing; again here, we can help advise Council on how this should be done.

Council may have communications with staff, and the planned work session covering information about the anticipated project is appropriate and lawful.

We are happy to continue our advice and counsel as this matter moves forward and to provide whatever guidance staff and Council believe are appropriate.

cc: Honorable Mayor and Members of the City Council
Chris Jordan, City Manager

DEII
DEII



Memorandum

Exhibit PC-4, 141

MEMORANDUM

Daniel Heffernan Company

2525 NE Halsey Street
Portland, OR 97232

DATE: February 8, 2012
TO: Robinwood Neighborhood Association
FROM: DJ Heffernan
SUBJECT: Lake Oswego-Tigard Water Partnership
Conditional Use Application Review

This memorandum summarizes the result of my review of the Lake Oswego-Tigard Water Partnership's conditional use land use application to the City of West Linn (COWL). The application seeks approval from COWL for major alterations to the LOTWP's water treatment plant, which is located in West Linn. Per COWL development rules, the proposed expansion is a major public works improvement project and must be considered under a conditional use review process. Significant elements related to the redevelopment proposal include:

- More than doubling the WTP's capacity from 16 million gallons of treated water per day (MGD) to 38 MGD. Accomplishing this requires expanding the WTP footprint and building new WTP infrastructure on residential zoned properties fronting Mapleton Drive. that currently are not developed.
- Building new ingress to the WTP site from Mapleton Drive. One ingress would be retained after construction for emergency vehicle access and pedestrian/bicycle connectivity to Kenthorpe Way; the other ingress would be abandoned after construction.
- Reconstruction of most buildings currently on site with architectural treatments intended to fit with the residential character of the neighborhood. New parking, roads, and stormwater treatment facilities are planned. The proposed building elevations and setbacks are stated to meet allowances in the underlying zone.
- Significant landscaping alterations, including removal of significant trees, construction of perimeter fencing, and the addition of new lighting throughout the site.
- Constructing a new raw-water delivery line to supply untreated water to the plant and a new treated water delivery pipeline to convey treated water to customers in Lake Oswego and Tigard (not part of the CU application for the treatment plant).

Conditional Use Approval Process

COWL's conditional land use approval process involves a discretionary review proceeding that requires approval by the West Linn Planning Commission. Proceedings are outlined in West Linn Community Development Code (CDC) Chapter 60. The review and approval requirements are subjective by design and afford the Planning Commission considerable latitude for imposing conditions on development approval that differ from

what the applicant proposes. The city's discretion is acknowledged by the applicant in the application on page 42 in response to its submission request for compliance with CDC Chapter 55 – Design Review. Not only does COWL have discretion to determine compliance with these requirements but also with virtually every other part of the applicant's submission per its conditional use review criteria, which are as follows.

1. The site size and dimensions provide:
 - a. Adequate area for the needs of the proposed use; and
 - b. Adequate area for aesthetic design treatment to mitigate ANY possible adverse effect from the use on surrounding properties and uses.
2. The characteristics of the site are suitable for the proposed use considering size, shape, location, topography, and natural features.
3. The granting of the proposal will provide for a facility that is consistent with the overall needs of the community.
4. Adequate public facilities will be available to provide service to the property at the time of occupancy.
5. The applicable requirements of the zone are met, except as modified by this chapter.
6. The supplementary requirements set forth in Chapters 52 to 55 CDC, if applicable, are met.
7. The use will comply with the applicable policies of the Comprehensive Plan.

CDC Chapters 52 to 55 include special requirements for sidewalks, landscaping, signage, and design review. Chapter 55 in particular provides the Planning Commission discretionary authority to consider a host of aesthetic and environmental factors that are listed in the Category II approval criteria for Design Review, which are applicable to the project.

Application Review Notes

General Comments

- **Need** - The LOTWP application does not include any discussion for why this use is needed at this location. There is no discussion of alternative sites that may have been considered which could avoid redevelopment of this residential site for a non-residential use. The use is allowed conditionally in the underlying zone, but the fact that this utility infrastructure provides limited direct benefit to West Linn residents in general and Robinwood neighbors specifically draws into question why this use should be allowed here. Arguments that all the pipes lead here is specious because all of the supply and delivery pipelines need to be reconstructed to accommodate the larger volume of water the new plant will produce.
- **Plant Size** – The application does not explain why the plan is being sized to produce 6 MGD of finished water more than demand forecasts suggest are needed

to meet LOTWP's water delivery needs. Partnership minutes from October indicate that the extra 6 MGD can be purchased at minimal cost, but that seems insufficient justification for over sizing the plant. State land use planning requirements do not support building excessive public service capacity beyond what is planned for in long range public facility plans. If the extra capacity were pledged to West Linn unconditionally for some period of time so that COWL could rely on water purchases from the plant to meet its needs, that would provide rationale for asking that the plant be sized with 15% more capacity than is needed based on LOTWP's forecasts.

- **Natural Disaster and Site Hazards** – The application's geotechnical report is a draft document and should be amended to include the final report. The geo-tech report identifies site hazards from earthquakes and slides from the perspective of foundation design but the report does not address operation hazards to the area and the potential that a seismic event could trigger a significant release of water from the plant. The neighborhood has asked that the applicant be required to carry insurance to compensate property owners in the event of an operating failure. A risk analysis should be included in the application to address this concern.
- **Federal Security Design Impacts** – In the aftermath of 9/11, many public facilities are now subject to federal design guidelines that are intended to address public safety concerns. There is no discussion in the application if the proposed design is fully compliant with federal/state security rules and if not what may need to be altered with the presented design. This is important to neighbors who want to know what they will have to live with. For example, the perimeter fencing is a wooden cedar "good neighbor" fence intended to soften the project's visual impact. Aesthetic differences with this design aside, can LOTWP build this or will a more secure perimeter obstruction be required to secure state/federal security compliance?

Plant Design

- **Noise** - The application includes information that demonstrates ambient noise levels from the plant are likely to meet COWL requirements for noise levels associated with a conditional use. There are, however, unanswered questions re: noise impacts at specific locations where new infrastructure is proposed. For example, the applicant proposes locating a series of electrical transformers on the west side of the new clear-well. It does not appear this infrastructure will be below ground or in a building. Transformers are notoriously noisy; they produce a low-frequency buzz that is persistent at all times. The type of transformer can make a difference in noise levels produced and acoustic measures may be taken to reduce or minimize effects. This issue may impact property fronting Mapleton Drive immediately west of the plant in particular because they are nearest to the new transformers.
- **Emergency Power** – The applicant does not propose to build back-up emergency power generation on-site. Instead they propose to supply the site with redundant

power feeds from two separate PGE power-regulating stations. This should suffice to meet power needs if there is a local interruption at one sub-station but it would not meet power needs in the event of a regional power interruption. A more detailed explanation of the consequences for this design decision is needed, especially if part of the justification for the plant is its ability to supply water to West Linn on an emergency basis.

- **Pedestrian Connectivity** - The plant's frontage on both Mapleton Drive and Kenthorpe Way exceeds city standards that require construction of pedestrian/bicycle connections. The intent of the policy is to minimize out of direction travel for people that use these alternative travel modes. The applicant has proposed an emergency access on Mapleton Drive controlled with a gate that would have an opening to allow pedestrians and cyclists to use the access way. The access way would connect Mapleton Drive to Kenthorpe Way on the east side of the facility. The pathway, however, would stop at the end of Kenthorpe Way (i.e. the "L" extension of Kenthorpe Way that provides access to residential properties east of the plant). There is no pedestrian infrastructure on Kenthorpe Way. Two changes are recommended. The application does not discuss how the east-side connection fits in context with the city's trail plan or its suitability for linking "community destinations" within the neighborhood. The applicant should examine whether the proposed east-side connection is the best location for this connection rather than an access connection along the west-side of the WTP. The test should be how well a west vs. an east connection helps to reduce out of direction travel for people using alternative modes.

Second, the proposed east-side connection between Kenthorpe and Mapleton does not provide a safe continuous access connection through this area. The connecting improvement ends abruptly at the southern end of Kenthorpe Way (i.e. at the bottom of the "l" extension of Kenthorpe east of the WTP). Kenthorpe Way has no pedestrian infrastructure so users would in essence be dumped into the street on a cul-de-sac. The access improvements should be extended further north to Kenthorpe Way where it is orientated east-west. It is the applicant's choice whether this extension should occur within its property or constructed on other property to provide a shorter more direct connection. As proposed, the solution is inadequate.

Finally, COWL should consider if one alternative access connection between Mapleton and Kenthorpe is adequate in this location. While the WTP's Kenthorpe frontage is nearly 500' when observed in total the WTP property obstructs north-south connectivity for a distance of ~950'. This is more than three times the 300' standard established in the City's TSP for determining when alternative modal connectivity is necessary. The goal to improve local connectivity would be better served with access connections along the east and west sides of the plant.

- **Landscaping** – The proposed design will result in removal of 6 of 36 significant trees on site (~18%). The applicant proposes extensive landscape treatments to

mitigate this loss and to address code and aesthetic design requirements. The plan does not address the loss of habitat provided by the many “non-significant” trees that will be removed. Many of these trees were deemed not significant because they are considered in poor health with cavities. The loss of these “unhealthy” trees represents a significant loss of nesting habitat on the site that could and should be addressed through design features in order to mitigate the temporal loss of this habitat. The perimeter “good neighbor” fence appears to be a low-cost cedar slat and post design. Aesthetically, it is a thin brown wall. The plans do not show berms or other perimeter treatments that would reduce visual impacts and may also lessen noise impacts.

- **Lighting** – the new plant includes an extensive lighting plan. High efficiency lighting is not proposed. What is referenced is low-tech, low efficiency high-pressure sodium lighting for most areas within the site. It also is not clear how well the fixtures will be shielded to prevent glare and reflected light from stanchions and wall-mounted fixtures. Given the plant’s location in a residential neighborhood and the city’s adopted policies favoring sustainable design choices, the applicant’s lighting plan should be revisited to ensure high efficiency lighting is used and that light intrusion into the neighborhood meets the design guidelines in CDC 55. The plan does not address the ambient impact of the UV lighting placed above the treatment bays in the center of the site. What is the effect?

Construction

- **Truck Wash Station** - The applicant proposes vehicle wash stations at the site entrances on Kenthorpe Way but none are shown on Mapleton. Significant construction truck traffic will occur on Mapleton Drive and a wash-down facility is needed on that part of the site to reduce mud and other debris from leaving the site.
- **Construction Worker Parking** – plans show that construction workers will park on-site in an area planned to become future guest/visitor parking. It is not clear if this area is sufficient to meet parking needs for construction workers. There is not room either on Mapleton Drive or Kenthorpe Way for workers to park on the street. The application, if approved, should include a condition for the applicant to prepare a construction-parking plan that addresses this issue. The plan should designate an off-site parking area and provide bussing for workers that cannot be safely parked on-site. Limits on the number of cars that can be parked on-site during construction should be established.



Memorandum

Exhibit PC-4, 162

City of West Linn Project No. PA-11-34.

We have reviewed the Lake Oswego Tigard Water Partnerships' (LOT) Land Use Pre-Application Packet. We are submitting the following questions and comments for your consideration and we look forward to responses from the applicant and City of West Linn (COWL).

- 1) We understand that the City of Lake Oswego has received permission from Cliff Houck, Property Manager, Oregon Park and Recreation Department, to submit the application for the Mary S. Young Property... can you confirm that permission was also granted for the two State owned lots adjacent to Mary S. Young, *prior* to the pre-application meeting being set.
- 2) The exhibits do NOT show the existing Lake Oswego water transmission line or the COWL sewer pipeline, including their associated easements. Specific to Mary S. Young Park, these two older systems are in the same general area where the exhibit shows the new 48-inch transmission line is planned. Without these significant utilities shown, how will the State and the COWL accurately assess the long and short term impacts and how can the permanent and temporary easements be established for this proposed pipe?
- 3) Please have the applicant confirm whether HDD staging site is the entrance or exit point for the pipe, since the equipment and materials vary differently. We would expect the applicant should be asked to share the pictures they have, of similar scale HDD operations, with the COWL and the State so that they can appreciate the magnitude of area and equipment needed to accomplish this project.
- 4) The exhibit only shows a schematic area for the HDD staging site, we strongly suggest that a much more detailed map be required that shows not only the dimensions of the staging site that they are requesting, but also all the equipment anticipated to be staged there and the expected durations. Also we request the exhibit also shows how this equipment is brought to the HDD staging site, the material haul routes, and truck turn-a-round areas, pipe storage and other equipment requirements for this large scale operation within the limits of the Park as well as the adjacent to State owned lots.
- 5) Please confirm the average depth that the pipe will be installed in the Park.
- 6) Please confirm how much of the Park will be closed for this project and the expected duration of the closure. Will the neighborhood access from Mapleton Drive be maintained during the construction?
- 7) We understand the City has obtained a legal opinion that no City wide vote is needed to allow this project, since Mary S Young Park is technically owned by the State. However, on the City website and in the glossy brochure "Discover West Linn Parks, Facilities, Trails and Pathways", Mary S Young Park is featured as a City of West Linn Park. Please clarify the roles and responsibilities of the State, COWL and the applicant in public outreach about the upcoming project, proposed impacts and closures, constructions notices, coordination with annual events, etc.
- 8) We understand not all the necessary permits were obtained for the early geotechnical drilling performed by the applicant. Please clarify the roles and responsibilities of the State and COWL in identifying restriction and mitigation requirements in the sensitive areas and monitoring construction activities in the Park.
- 9) We understand that Park improvements may be requested/required as part of the permit approval. How will these improvements or "fee-in lieu" dollars be identified.

Comment [z1]: Email already forwarded to group

Comment [z2]: At time of application, the applicant will be required to show the location of all utilities and easements in the project vicinity.

Comment [z3]: Please direct this question to LOTWP

Comment [z4]: We appreciate your recommendations and anticipate the applicant's construction plan will include many of these details.

Comment [z5]: Please direct this question to LOTWP

Comment [z6]: Please direct this question to LOTWP

Comment [z7]: Mary S Young Park is owned by the State of Oregon. The City of West Linn's public notice procedures for quasi-judicial land use actions are outlined in Chapter 99 of the West Linn Community Development Code.

Comment [z8]: Any improvements that are requested of the applicant by the City must demonstrate a nexus and proportionality relating to the impact from the applicant's proposal. An application for the pipeline has not been submitted at this time.

- 10) Based on the geotechnical information, is water expected to be an issue in the trench excavation within Mary S. Young State Park? If so, how will the water and sediment from the dewatering operation be handled and will the settlement tank or pond locations be identified on the final application so all impacts can be assessed?
- 11) Based on the geotechnical information, is rock expected to be encountered in the trench excavation? If so, how will any blasting be allowed in the park or along the rest of the alignment? And if so, what pre-assessment of adjacent structures will be required?
- 12) Will the transmission lines in Mapleton Drive be cased? If not, what seismic event are the pipes designed for?
- 13) Per the language within the deed of the MSY property Parcel No. 21E24 00600; specifically, "Express Condition #2, states that the State will not cut or allow cutting of any trees for sale or commercial purposes. It appears that the open trench construction method for the installation of this 48-inch transmission line will require the cutting of trees. How will this be handled and does it put the park at risk of reversal to the previous owners?"
- 14) Please have the applicant provide a series of "Typical Cross Sections" for the transmission line along Mapleton Drive. Specifically showing; relative depth to top of pavement, relationship with existing utilities, proximity to the right-of-way and typical trench width.
- 15) For the approximately 400 LF on Mapleton Drive, where the applicant proposes installing both the raw and clean water 4-ft transmission lines, please have the applicant provide additional detail on how that will be accomplished, specific conditions they will require of the contractor and a cross section showing all relevant information.
- 16) Will the COWL be requiring a tree survey along Mapleton Drive, as part of the application, so that the number of impacted trees within and adjacent to the ROW can be accurately assessed? Depending on the location and depth of the transmission line in Mapleton, it appears that this construction has the potential to impact many dozen trees. How will this be mitigated?
- 17) Specific to Trillium and Heron Creeks at Mapleton Drive, please have the applicant provide exhibits that show the pipe relative to the bottom of the channel and the expected limits of construction in these areas.
- 18) Please confirm the COWL will require, as part of the CUP, specific construction related requirements that require the applicant to maintain one lane of traffic at all times on Mapleton Drive and that daily access to residents will also be maintained.
- 19) Many of the residents on Mapleton do NOT support the installation of sidewalks, due to the overall impact a fully developed street section would have along the frontages of many homes. We ask that the City and applicant actively engage the residents in the resolution of the resulting street section prior to approval of the application.
- 20) We also request that the residents of Mapleton Drive be involved in the improvements chosen for any identified, "fee in lieu" funds resulting from a reduced street section or other waivers granted by COWL prior to approval of the application. (e.g. additional tree replacement, additional screening)
- 21) Within West Linn, the project has been split into two separately permitted projects. We request that COWL require that approval of each permit be conditional upon the applicant receiving approval for the other permit.

Comment [z9]: Please direct this question to LOTWP

Comment [z10]: Please direct this question to LOTWP

Comment [z11]: Please direct this question to LOTWP

Comment [z12]: Please direct this question to LOTWP

Comment [z13]: We anticipate the applicant's application will include this information

Comment [z14]: Please direct this question to LOTWP

Comment [z15]: City Codes do not require one lane of traffic to be maintained at all times. We will however request from the applicant, the greatest possible accessibility along the proposed pipeline route.



Memorandum

Exhibit PC-4, 198

City of West Linn Project No. PA-11-34.

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Memorandum

Exhibit PC-4, 243



CITY OF West Linn

February 16, 2012

Eric Day
Senior Planner, City of Lake Oswego
4101 Kruse Way
Lake Oswego, OR 97035

Mr. Eric Day:

Thank you for submitting an application for a Conditional Use and Class II Design Review for a proposed expansion of the existing Lake Oswego Water Treatment Plant at 4260 Kenthorpe Way in West Linn. Conditional Use and Design Review applications are reviewed for consistency with applicable submittal standards in the West Linn Community Development Code (CDC) to ensure the application contains the information necessary to make a well-informed decision.

In addition to the submittal requirements listed in, and referenced by, CDC Chapters 11 (R-10 Zoning District), 55 (Class II Design Review) and 60 (Conditional Uses), CDC Section 99.035(A) authorizes the Planning Director to request additional information which may be deemed necessary to properly evaluate the proposal. Similarly, the Planning Director may waive a specific requirement for information where this information is not necessary to evaluate the application (99.035(B)(1)).

Staff has reviewed your submittal and finds the application **incomplete** per the above-referenced requirements. You have 180 days from the date of your application submittal, until July 15, 2012, to make this application complete. The following information is required to deem your application complete:

- Include a plan which describes the operation and maintenance of stormwater facilities (CDC 33.030(C))
- Please include a noise control plan. The application includes a noise study with recommendations from the acoustical engineer, however, there is no plan detailing the actions that will be implemented to mitigate noise impacts (CDC 55.120(H))
- Please include specifications and bumper guards/wheel stops, if any will be used in the proposed parking areas (46.030(H))

*The application includes reference to the future location of on-site signage. Absent a sign application, no decision regarding the location of future site signage will be permitted as part of this decision. Staff would recommend a condition of approval stating that the decision bears no relevance to the future location of on-site signage.

- Please include the area of pavement improvement on Kenthorpe Way and Mapleton Drive in plan view

Comment [z1]: Acoustic engineer makes recommendations to attenuate noise impacts. Applicant asserts that as City has no standards for the preparation of a noise control plan, implementation of the recommendations from the noise study suffice as a noise control plan.

Comment [z2]: The application does not include any request for signage location, according to the applicant.

Comment [z3]: The applicant's submittal includes a narrative response to the design of the right-of-way improvement with the expectation that they will work with the City to revise their plan. We discussed the possibility of allowing a narrower pavement width to accommodate a sidewalk and preserve the mature landscape buffer on Kenthorpe. Khol, is this okay with you?



CITY OF West Linn

- Include street improvement details with cross-section
- Include the location of street lighting in plan view

To facilitate staff's review of your proposal, we request the applicant provide the following additional information. Please understand that these items are not necessary to deem your application complete:

- Please include the sidewalk/pedestrian pathway improvement on the east side of the property in plan
- Include a description of hazardous materials transport?
- Please show the area of right-of-way dedication with dimensions in plan view
- Show the area of easements with dimensions in plan view
- Include storm drainage and other utility plans in the plan set, not just the
- Please include technical information on the Water Treatment Plant Process with information on how much solid waste will be produced and discharged
- A copy of the tree survey map needs to be included in the Arborist Report
- Please use a separate table for regulated and non-regulated trees
- Please address the following from the Tree Technical Manual:
 - o Written recommendations for the health and long-term welfare of trees, that will be followed during preconstruction, demolition, construction and post construction phases of the project. Recommendations include methods of avoiding injury, damage treatment and inspection schedule. Overall project schedule shall be referenced with these recommendations.
 - o Written recommendations for the maintenance of the trees for a minimum of two years after project completion.
- The application should include a map and language addressing the percentage of the area of significant tree canopy relative to the total area of non-Type I and II Lands on the site. The applicant's submittal currently calculates the entire saved canopy rather than the significant tree canopy.
- Plan leaves off some significant trees
- Please show trees and dripline plus 10-feet
- Plan must show a tree protection area that equals 20 percent of the

Thanks,

Sender Name
 Title
 Department

Comment [z4]: Narrative description of improvement included in submittal. Will submit plan when City decides optimal cross-section.

Comment [z5]: Applicant proposes to install no street lights. Applicant will request waiver from this.

Comment [z6]: Applicant's proposal does not include improvements here. Narrative response to pathway design.

Comment [z7]: This is included in the plan set. Section 16, Figure 2.

Comment [z8]: This will likely be determined once we have a clear understanding of street improvement requirements. Not a submittal requirement.

Comment [z9]: At the time of application submittal, no easements were anticipated. This will likely be determined when we have an idea of street improvement requirements

Comment [z10]: This is shown on the plan.

Comment [z11]: Code does not require?

Comment [m12]: Code does not require this, but I'd like to separate them if possible, just for clarity

Comment [z13]: Applicant indicated that tree report will be revised to include more detail. Is this a completeness item?

Comment [m14]: It is in the Tree Technical Manual so yes

Comment [z15]: Not required in the tree technical manual?

Comment [m16]: This is not required but I think will come up. In the past applicants have provided this info, although here because it will be a low # may cause more problems than solve

Comment [z17]: Outline is not shown on plan but is described in narrative. Is this sufficient?

Comment [m18]: Would like to see a shaded protection area on plans

Comment [z19]: Confusion over code interpretation here. Applicant proposes to submit technical memo to record expressing the effect of saving significant trees (increased noise impact on adjacent properties).