

Raw Water and Finished Water Pipelines Conditional Use and Class II Design Review Land Use Application

Prepared for
Lake Oswego-Tigard Water Partnership
June 25, 2012



Prepared by
Eric Day, Senior Planner, City of Lake Oswego
Eric Eisemann, Principal, E² Land Use Planning

Contact List

APPLICANT

City of Lake Oswego
Lake Oswego/Tigard Water Partnership
4101 Kruse Way
West End Building
Lake Oswego, OR 97034
503.534.4238

Contact – Eric Day

OWNER

Oregon Parks and Recreation Department
725 Summer St. NE Suite C
Salem, OR 97301-1266

503.986.0718

Contact – Tim Wood, Director

SUBCONTRACTORS

Brown and Caldwell
6500 SW Macadam Blvd., Suite 200
Portland, OR 97239
503.244.7005

Contact – Jon Holland, PE

Kennedy/Jenks Consultants
200 SW Market Street, Suite 500
Portland, OR 97201
503.424.4016

Contact – Brad Moore, PE

E² Land Use Planning Services, LLC
Lucky Lager Building, Suite 201
215 W 4th Street
Vancouver, WA 98660
360.750.0038

Contact – Eric Eisemann, JD

David Evans and Associates, Inc.
2100 SW River Parkway
Portland, OR 97217
503.499.0572

Contact – Ethan Rosenthal

Table of Contents

CONTACT LIST	2
TABLE OF CONTENTS	3
I. PROPOSAL.....	4
Proposal: Raw Water and Finished Water Pipelines.....	4
The Lake Oswego-Tigard Water Supply Partnership.....	7
Location in West Linn	8
Description of RWP and FWP	9
Central Issues.....	9
II. ZONING	18
Single-family Residential Detached, R-10 (CDC 11).....	18
Single-Family Residential Attached And Detached/Duplex, R-4.5 (CDC 14)	21
General Commercial, GC (CDC 19).....	24
III. APPLICATION(S): CONDITIONAL USE AND DESIGN REVIEW.....	27
Conditional Uses (Cdc 60).....	27
Design Review (CDC 55)	57
Flood Management Area (CDC 27).....	72
Willamette And Tualatin River Protection (CDC 28).....	78
Erosion control (CDC 31)	91
Water Resource Area Protection (CDC 32).....	95
Stormwater Quality And Detention (CDC 33).....	105
Accessory Structures, Accessory Dwelling Units, And Accessory Uses (CDC 34)	106
Additional Yard Area Required; Exceptions To Yard Requirements; Storage In Yards; Projections Into Yards (CDC 38)	106
Building Height Limitations, Exceptions (CDC 40)	106
Clear Vision Areas (CDC 42).....	106
Fences (CDC 44).....	106
Off-Street Parking, Loading And Reservoir Areas (CDC 46)	106
Access, Egress And Circulation (CDC 48)	107
Signs (CDC 52).....	107
Signs (CDC 52).....	107
Landscaping (CDC 54)	107
Parks And Natural Area Design Review (CDC 56)	108
Procedures For Decision Making: Quasi-Judicial (CDC 99)	116
IV. CONCLUSION	118

I. Proposal

PROPOSAL: RAW WATER AND FINISHED WATER PIPELINES

The Applicant, the Lake Oswego-Tigard Water Supply Partnership (Partnership), proposes to construct a below-ground 42-inch-diameter raw water pipeline (RWP) and a 48-inch-diameter finished water pipeline (FWP). West Linn Community Development Code (CDC) 2.030 defines water transmission lines as a utility. Within the West Linn zoning districts through which the pipelines will pass, West Linn classifies the utility as a conditional use. Conditional uses are also subject to design review.

The purpose of this application is to secure approval for Conditional Use, Class II Design Review, and supplemental land use reviews for a RWP and FWP within the city of West Linn. The Applicant is not requesting variances from adopted West Linn land use regulations.

The Partnership submitted a land use application to the City of West Linn for conditional use and Class II design review approval for the Water Treatment Plant (WTP) in January 2012. (See West Linn File Number File No. CUP 12-02/DR 12-04.) On May 16, 2012, the West Linn Planning Commission granted the Partnership's request to suspend the proceedings on this application so that the Planning Commission could combine the review of the WTP and RWP/FWP land use applications. In July 2012, the Partnership will submit a guidance that integrates and discusses the significant elements of both the WTP and the RWP/FWP.

The proposed RWP/FWP is a critical water supply lifeline of local and regional importance. The current RWP/FWP, unseen and unnoticed, has provided a continuous supply of water for municipal drinking water purposes since it was constructed under Clackamas County jurisdiction in 1967. The pipelines have operated safely and efficiently for 45 years but are undersized to meet current and projected long-term needs and are vulnerable based on current knowledge of local seismic hazards.

The proposed pipeline upgrades will address these deficiencies and provide the following benefits to all of West Linn, the Robinwood Neighborhood, and immediate pipeline neighbors:

- **Essential community need met at substantial savings to West Linn ratepayers.** The RWP and FWP are part of a system of water facilities that fulfill an essential community need for Lake Oswego, Tigard, and West Linn. The pipelines are an integral part of a water system that will span four jurisdictions. The construction and operation of Lake Oswego's water treatment facility and RWP/FWP in 1967 created an opportunity for West Linn to secure a dependable source of water for emergency and nonemergency use at a very low cost relative to other options that would provide an equivalent benefit. In 1984, West Linn took advantage of that opportunity and worked with Lake Oswego to create and adopt an Intergovernmental Agreement (IGA) that allows Lake Oswego, West Linn, and the South Fork Water Board to share water in times of emergency or to facilitate maintenance of their respective water systems.

The 1984 agreement was updated in 2003, when West Linn and Lake Oswego partnered in the design, construction, and operation of an improved intertie and pump station. This mutually beneficial arrangement exists today, and West Linn and the Partnership are now in the process of updating this important agreement to reflect Tigard as a new partner to the IGA, and, more importantly, to reflect the significantly improved water system, that if constructed, will dramatically enhance the reliability and capacity of the existing intertie at significant cost savings to West Linn.

Specifically, construction of the proposed new and upsized RWP/FWP, in conjunction with an expansion and modernization of the WTP, would save West Linn ratepayers between **\$12.2 million and \$18.7 million** in avoided costs for high priority emergency supply capacity and reliability projects identified in West Linn's adopted 2008 Water System Master Plan (WSMP). And the RWP/FWP projects will save West Linn an additional **\$0.3 million** in avoided costs for high priority capital maintenance projects in the WSMP. These projects include:

- **Downsizing the Bolton Reservoir Replacement.** The smaller 4.0 million gallon (MG) tank recommended by the WSMP to address a “critical need given the age and condition of this facility” relies on improvements in capacity and reliability of the emergency supply connection with the Partnership. Compared to the 8.4 MG tank required without these improvements, and using the \$2 per gallon unit cost from the WSMP escalated by 11 percent to June 2012 dollars, the smaller tank results in **\$9.8 million** in savings to West Linn.
- **Expanding the West Linn Intertie Pump Station.** The WSMP envisioned a new intertie between Tigard and Portland's Washington County Supply Line to allow Tigard to receive emergency water from Portland, thereby freeing up emergency supply for West Linn through the intertie with the Partnership. As an alternative, the WSMP considered a redundant supply line from South Fork to West Linn. However, the Partnership's proposed facilities, constructed to 38 mgd capacity now rather than 32 mgd as initially planned, enable a simple expansion of the existing West Linn Intertie Pump Station to provide a fully redundant system with long-term capacity to meet West Linn's average day demand. The terms of this improved emergency supply from the Partnership will be incorporated in the updated IGA expected to be adopted by all parties in summer 2012. Escalating the WSMP costs for the Tigard intertie and the South Fork pipeline items by 11 percent to June 2012 dollars results in **\$2.4 million to \$8.9 million** in savings to West Linn.
- **Replacing asbestos cement water pipe in Mapleton Drive.** The WSMP calls for a \$345,000 annual investment over 20 years to complete replacement of the nearly 64,000 feet of asbestos cement (AC) pipe in West Linn's distribution network with new, larger, ductile iron pipe. Most of the AC pipe installed in the 1950's and 1960's has an estimated 50-year life, and has been failing in West Linn at an increased rate in recent years. Over 3,000 feet of AC cement pipe is located in Mapleton Drive and the Partnership is cooperating with the City of West Linn to jointly replace the entire line as part of the RWP/FWP construction work. Using unit costs from the WSMP, escalating to June 2012 dollars and allowing 10 percent for engineering, pipe replacement to be funded by the Partnership results in **\$314,000** in cost savings to West Linn.

Avoiding these significant short-term infrastructure costs directly benefits West Linn ratepayers today and can help West Linn fund its remaining substantial long-term water infrastructure needs in a more manageable way for the benefit of future ratepayers.

- **New pipeline addresses safety concerns.** The new RWP/FWP will provide significantly greater reliability than the existing RWP/FWP, including design to the highest seismic standard for an extraordinary earthquake with a 2,475-year return period. Equally important, the Applicant understands that the RWP and FWP project has raised serious concerns within the neighborhood about seismic stability, construction impacts, noise, safety, and other issues. The Applicant has evaluated these concerns, adjusted its program, and has provided supplemental material to this application, including a Seismic Evaluation, Construction Management Plan, Traffic Management Plan, Safe Operations Plan, and more. In many ways, these reports and plans exceed the formal

requirements of the land use permitting process, but the changes in design and practices will ultimately make this a better project and provide more robust protections for the citizens of West Linn.

- **Local water system and fire suppression improvements.** As noted above, the Partnership will participate in the design, financing, and construction of a new West Linn 8-inch ductile iron water line in Mapleton Drive, replacing the old 6-inch AC water line. The new line will replace a water main that has been identified to have a higher risk of failure and will ensure reliable water service to the neighborhood without the added financial burden on the residents of West Linn.

As a consequence of installing the replacement West Linn water line, the Partnership will replace and upgrade the existing fire hydrants along Mapleton Drive with modern hydrants and will install additional new hydrants, consistent with Tualatin Valley Fire & Rescue (TVF&R) spacing requirements, so that every house along the Mapleton Drive project route will be within 300 feet of a new fire hydrant.

- **Mary S. Young Park improvements.** The Partnership will fund **\$90,000** worth of much needed enhancements to Mary S. Young Park. The enhancement projects were identified and approved by the West Linn Parks Advisory Board and include invasive removal over 10 acres of parkland, trail improvements, access improvements to Cedar Island and ongoing support for volunteer restoration efforts.
- **Mapleton Drive pavement renewal.** The Partnership will restore Mapleton Drive pavement consistent with City of West Linn Public Works Standards. The pipeline trench will be patched and the remainder of the road will be overlaid, providing a solid base and a new surface that will perform well many years into the future. The estimated cost of this work is **\$125,000**.

In addition to these benefits, the new RWP/FWP design avoids environmental impacts and is supported by West Linn's adopted plans as well as regional planning groups, as described below.

- **Environmental impacts avoided.** The Partnership considered several alternative ways to bring the new RWP from Gladstone into West Linn and the existing Lake Oswego WTP. Many of the options were foreclosed, in part because the West Linn Municipal Charter prevents the use of City-owned parkland for the proposed use, absent an affirmative vote by local residents. Mary S. Young Park is one of the few parcels of land along the Willamette River that is not subject to this charter restriction. Federal regulators, through the Joint Permit Application (JPA) consultation process, expressed a strong desire for using the horizontal directional drill (HDD) method to bring the pipeline across the Willamette River rather than an open-cut trench along the riverbed. The HDD alternative, favored by state and federal regulators, allowed the Partnership to consider alternative ways to cross Mary S. Young Park, including using the HDD method beneath the entire park. Because the HDD method does not disturb the surface of the park, or the water resource and habitat values belowground, HDD completely avoids significant adverse environmental, physical, and social impacts to Mary S. Young Park.
- **RWP/FWP is supported by West Linn's adopted plans and regional plans.** The West Linn Comprehensive Plan and West Linn WSMP recognize the intrinsic benefits of enhancing the reliability and capacity of the emergency intertie between the Partnership and the West Linn water system. As noted above, the WSMP specifically relies on "development of reliable emergency supply capacity with the cities of Lake Oswego, Tigard, and others . . ." as part of its preferred solution to address storage and emergency supply deficiencies.

The RWP/FWP proposal is endorsed by the Regional Water Providers Consortium Board as being a "model of integrated water supply planning, as anticipated by the Regional Water Supply Plan of 2004." The ability of Lake Oswego to provide West Linn citizens with an emergency

source of finished water as recently as December 2011 and January 2012, when the South Fork Water Board intake structure was damaged, underscores the importance of upgrading the RWP and FWP. The Clackamas River Water Providers, a coalition of special water service districts and cities, of which West Linn is a member, also supports the project for the opportunities it will create to connect all four major drinking water sources in the region and, in doing so, facilitate the ability to move water around the region for environmental, emergency response, and economic benefits.

This application provides detailed plans and reports in response to the requirements of the conditional use and Class II design review requirements and environmental and supplemental standards and regulations. The Applicant has consistently met its burden in addressing each applicable criterion and demonstrates that the proposed RWP/FWP project either satisfies or, by means of conditions of approval, can satisfy all relevant applicable approval criteria.

THE LAKE OSWEGO-TIGARD WATER SUPPLY PARTNERSHIP

The Applicant is the Lake Oswego-Tigard Water Supply Partnership. The cities of Lake Oswego and Tigard formed the Partnership in 2008 to develop and deliver a reliable potable water supply for the two cities. Construction of the RWP/FWP in West Linn is a critical component of the Partnership's water delivery system, providing potable water to Lake Oswego and Tigard on a daily basis and supplemental water for West Linn in times of emergency.

Lake Oswego holds water rights on the Clackamas River and has relied on that source as its primary water supply for the past 40 years. Tigard receives interruptible supplies of water: Clackamas River water from Lake Oswego, Bull Run water from Portland, and Trask River water from the Tualatin Valley Water District. The capacity of the Partnership supply system will be 38 mgd following completion of this project. The main elements of the Partnership's proposed water supply system shown in Figure 1.0 include:

- River Intake Pumping Station (RIPS) on the Clackamas River
- RWP from the RIPS to the WTP
- Expansion of the existing WTP
- FWP from the WTP to Waluga Reservoir No. 2 (WR2) in Lake Oswego
- WR2
- Bonita Pumping Station (BPS) in Tigard to deliver water into Tigard's distribution system

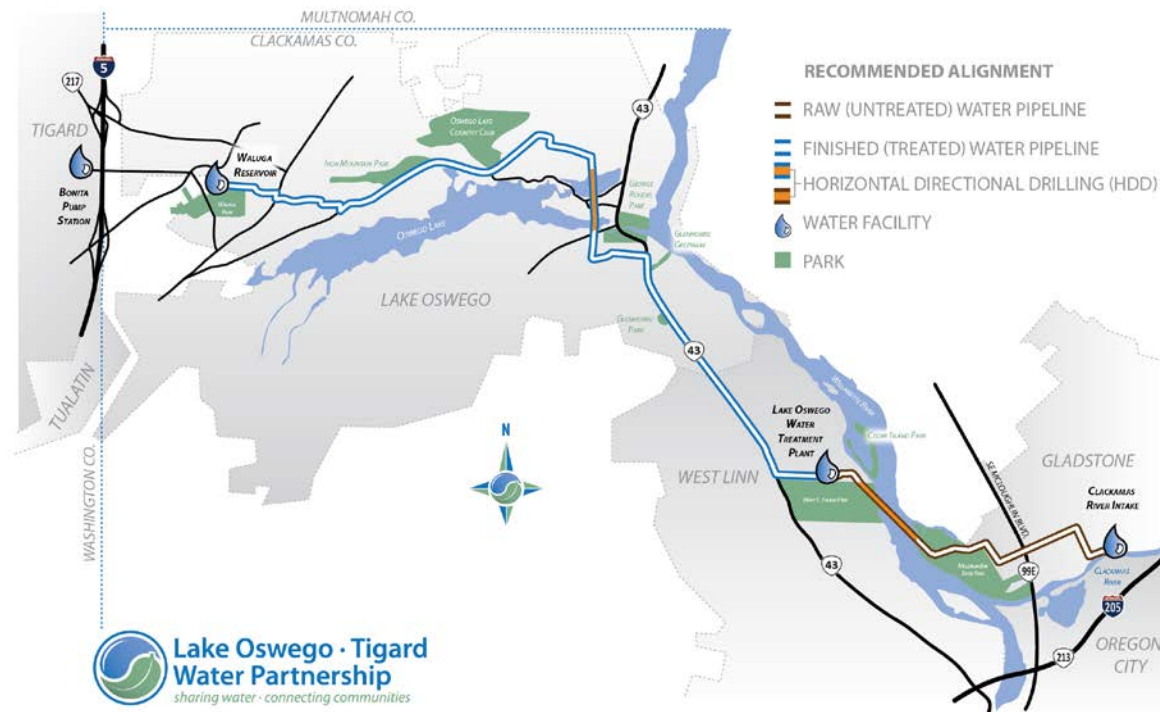


Figure 1.0. Lake Oswego-Tigard Water Supply Partnership Overview

LOCATION IN WEST LINN

The route of the RWP/FWP project within West Linn city limits is shown in Section 19, Figures 1A-32. The proposed RWP enters West Linn below Mary S. Young Park (Tax ID# 21E2400600) via HDD method. The RWP will be approximately 65 feet below the surface at the point of entry into the City of West Linn.

The RWP will then travel underground in a northwesterly direction into two parcels owned by the Oregon Parks and Recreation Department (OPRD) adjacent to the northern boundary of Mary S. Young Park. These parcels are identified as Tax ID#s 21E24AC00100 and 21E24AC00200, respectively. The OPRD does not consider these two parcels to be part of Mary S. Young Park. The HDD staging area is located on the northernmost parcel (Tax ID# 21E24AC00200). The HDD bore will end approximately 7 feet underground at this point and, thereafter, the remaining 155 feet of the RWP will be constructed, using an open trench method, westward through Lot 21E24AC00200 until it enters the Mapleton Drive right-of-way.

The RWP will follow the Mapleton Drive right-of-way westward to the WTP where it will deliver untreated Clackamas River water for treatment. The FWP will exit the WTP and follow the Mapleton Drive right-of-way westward to Oregon Highway 43 (Highway 43), also known as Pacific Highway and Willamette Boulevard. The FWP will continue within the Highway 43 right-of-way northerly into Lake Oswego.

DESCRIPTION OF RWP AND FWP

The Applicant proposes to use an HDD method to construct the RWP under the Willamette River. This HDD crossing will consist of a 42-inch-diameter steel pipe that is 3,800 linear feet long. The HDD crossing will begin in property owned by the OPRD at the southeast end of Mapleton Drive (adjacent to a West Linn Mapleton Sewage Pump Station) and will end in Meldrum Bar Park in Gladstone. Approximately 950 linear feet of the RWP HDD crossing alignment will be within the City of West Linn.

The RWP includes the construction of approximately 1,500 linear feet of 42-inch-diameter open-cut pipeline within the Mapleton Drive right-of-way. This segment of the RWP will begin at the southeast end of Mapleton Drive and will end at the WTP site on Mapleton Drive.

The FWP includes the construction of approximately 1,850 linear feet of 48-inch-diameter open-cut pipeline within the Mapleton Drive right-of-way. This segment of the FWP pipeline will begin at the WTP site on Mapleton Drive and will end at the intersection of Mapleton Drive and Highway 43. Construction activities for these portions of the RWP and FWP will be combined into one streamlined construction process on Mapleton Drive, consisting of 3,350 linear feet of open-cut pipeline installation.

The FWP also includes the construction of approximately 5,200 linear feet of 48-inch-diameter steel open-cut pipeline on Highway 43 within West Linn. This segment of the FWP will begin at the intersection of Mapleton Drive and Highway 43 and will continue north on Highway 43 to the West Linn city limits immediately north of Arbor Drive.

CENTRAL ISSUES

This section describes the core set of issues that are central to understanding the application, potential project-related impacts, and the successful mitigation of impacts.

Combined WTP and RWP/FWP Review

This local land use application involves two large underground pipelines. Earlier this year, the Partnership submitted a land use application for a substantial upgrade of the WTP in West Linn. During the public hearing process, members of the planning commission and the public suggested that the cumulative effects of the WTP and RWP/FWP projects should be considered simultaneously. The Partnership agreed with this conclusion. Consequently, the West Linn Planning Commission granted the Partnership's request and suspended review of the WTP application so that the Partnership could bring the RWP/FWP application forward while the WTP application was still under review. See Section 18, letter to Michael Babbitt from Edward J. Sullivan, dated May 16, 2012, temporarily suspending proceedings on the WTP.

In suspending the review of the WTP land use application, the Partnership agreed to three conditions:

- A. Consolidate the current WTP land use proceedings with the future RWP/FWP applications to allow the entire project to be reviewed concurrently.
- B. Because the City of West Linn needs a reliable emergency supply of water, the Partnership will work with the City of West Linn to discuss the terms of a new water intertie to serve West Linn's water needs.

C. Conduct further discussions with the affected neighborhood associations and individual neighbors.

The first of these three conditions is met by the submittal of this land use application. The Partnership is actively engaged in negotiations with West Linn officials regarding the maintenance and enhancement of a future reliable water supply for West Linn. We expect these discussions will conclude in early August and that shortly thereafter the three city councils will consider a new intergovernmental agreement to address West Linn's need.

During the summer of 2012, the Partnership will work with the affected neighbors, in a facilitated format, to discuss additional mitigation efforts to improve the project, particularly with respect to construction issues, with the intent of satisfying the concerns of those most affected. The City of West Linn has agreed to host a series of facilitated meetings between affected neighbors and the Partnership. West Linn retained Greg McKenzie to manage and facilitate the effort. The first of these planned sessions will be held on June 27, 2012. Additional community meetings have been scheduled in August.

This application pertains solely to the RWP/FWP. On or about July 20, 2012, the Partnership will submit the revised WTP application. An important feature of the revised WTP application will be detailed plans to address impacts, mitigation measures and benefits of the Partnership's proposed activities. In September, the Planning Commission will combine the applications into one hearing process and will decide the outcome of each application by separate vote.

The reviewer should bear in mind that while this application stands alone and addresses only underground pipelines, there will be a supplemental memorandum that addresses the cumulative effects of both Partnership-sponsored land use applications in West Linn.

Community Need and Neighborhood Benefit

Two central and related concerns raised during the recent Planning Commission hearings ask how the proposed RWP/FWP will fulfill a community need and whether the project provides specific benefits to the neighborhood.

The "need" question is directly related to the approval criteria in CDC 60, Conditional Use. The code requires every conditional use proposal to demonstrate how it will fulfill a community need. Community need is broadly expressed in the West Linn Comprehensive Plan policies and expanded on through the supporting documents, such as park, trail, water, and natural hazard plans. Relevant to the RWP/FWP request, the West Linn Comprehensive Plan and the West Linn WSMP state that provision of potable water is essential to the present population and over the 20-year planning horizon. A reliable supply of potable water for domestic, business, and public consumption and for fire suppression is a critical component of life in every community. Both the West Linn Comprehensive Plan and WSMP make it clear that enhancing the emergency water service intertie fed by the FWP fulfills an essential community-wide need.

The cities of West Linn, Lake Oswego, and Tigard are currently negotiating an IGA that will replace the current intertie agreement between West Linn and Lake Oswego. The Partnership is proposing to expand the production and transmission capacity of its water system. Consequently, West Linn residents will have a higher quality, more reliable source of emergency water for a longer period of time and at a substantial cost savings compared to other alternatives.

The proposed new and upsized RWP/FWP, in conjunction with an expansion and modernization of the WTP, would save West Linn ratepayers between **\$12.2 million and \$18.7 million** in avoided costs for high priority emergency supply capacity and reliability projects identified in West Linn's adopted WSMP by:

- **Downsizing the Bolton Reservoir Replacement.** The smaller 4.0 million gallon (MG) tank recommended by the WSMP to address a “critical need given the age and condition of this facility” relies on improvements in capacity and reliability of the emergency supply connection with the Partnership. Compared to the 8.4 MG tank required to address system-wide storage needs without these improvements, and using the \$2 per gallon unit cost from the WSMP escalated by 11 percent to June 2012 dollars, the smaller tank results in **\$9.8 million** in savings to West Linn.
- **Expanding the existing West Linn Emergency Intertie Pump Station.** The WSMP envisioned a new intertie between Tigard and Portland's Washington County Supply Line to allow Tigard to receive emergency water from Portland, thereby freeing up emergency supply for West Linn through the intertie with the Partnership and addressing West Linn's need for a more reliable and higher capacity emergency supply. As an alternative, a redundant supply line from South Fork to West Linn was also considered in the WSMP. However, the Partnership's proposed facilities, constructed to 38 mgd capacity now rather than 32 mgd as initially planned, in combination with a simple expansion of the existing West Linn Emergency Intertie Pump Station, will provide a fully redundant system with long-term capacity to meet West Linn's average day demand. Escalating the WSMP costs for the Tigard intertie and South Fork pipeline by 11 percent to June 2012 dollars results in **\$2.4 million to \$8.9 million** in savings to West Linn.

The question of whether the proposed FWP provides benefits commensurate to the impacts to the community and individual neighborhoods is a separate issue. Applicable West Linn planning documents do not address the issue of community benefit as directly. However, the Partnership recognizes that construction of the RWP/FWP project will have a significant impact on some West Linn neighborhoods. A few of the particular benefits that the RWP/FWP will provide the Robinwood Neighborhood are as follows:

- The Partnership will participate in the design, financing, and construction of a new West Linn 8-inch, ductile iron water line in Mapleton Drive, replacing the old 6-inch AC water line. The new line will replace a water main that has been identified to have a higher risk of failure and will ensure reliable water service to the neighborhood without the added financial burden to the residents of West Linn. The estimated value of the Partnership's contribution to this work is **\$314,000**.
- As a consequence of installing the replacement West Linn water line in Mapleton Drive, the Partnership will replace and upgrade the existing fire hydrants along Mapleton Drive with modern hydrants and will install additional new hydrants, consistent with TVF&R spacing requirements, so that every house along the Mapleton Drive project route will be within 300 feet of a new fire hydrant. This will bring the benefit of an upgraded emergency fire suppression service. In addition, each home will receive a new water service line and meter. These system improvements will reduce water loss and improve billing accuracy.
- The Partnership has agreed to fund much-needed enhancements to Mary S. Young Park. This agreement involves the OPRD as the property owner and the City of West Linn as manager of park resources. The West Linn Parks Advisory Board identified and approved the enhancement projects which include invasive plant removal (primarily English ivy and blackberry) over 10 acres of parkland, trail improvements, access improvements to Cedar Island, and on-going support for

volunteer restoration efforts. West Linn Park's staff identified a total funding need of **\$90,000**, and the Partnership will contribute this amount. See Section 18, letter from Ken Worcester to Tim Wood.

- The Partnership will restore Mapleton Drive pavement consistent with City of West Linn Public Works Standards. Street restoration will not change the width of Mapleton Drive or create new amenities or improvements, such as curbs and sidewalks, in keeping with neighborhood values. The contractors will resurface Mapleton Drive consistent with West Linn Public Works Standards. The Mapleton Drive restoration project, paid for by the Partnership, is valued at approximately **\$125,000**.
- It has been 45 years since the original RWP/FWP was constructed. Professional understanding of seismic risk hazards has grown over time, and technologies created in response to that understanding have changed significantly. The pipelines are designed using welded steel pipe to withstand an earthquake with a 2 percent probability of exceedance in 50 years. The construction materials and techniques proposed for the RWP/FWP are consistent with current standard practices for many innovative water utilities located in high seismic areas, such as the San Francisco Public Utility Commission and the Los Angeles Department of Water and Power.

Construction Management

Construction of the RWP/FWP will be lengthy, occasionally noisy, and inconvenient for residents and drivers. The Partnership also understands that construction activities raise legitimate concerns about public safety. The Partnership team met with Oregon Department of Transportation (ODOT), TVF&R, and West Linn staff to determine how public safety and convenience can be enhanced during the construction period. Consequently, the Partnership is committed to extraordinary construction management practices. For example:

- Construction workers will be bussed to the job site from a remote location, keeping additional cars from parking along Mapleton Drive and Kenthorpe Way.
- Access for emergency responders will be available at all times of the day and night.
- Pedestrian access and bicycle access will be provided around the work zones and to Mary S. Young Park at all times.
- The Partnership will implement the best management practices recommended by a certified acoustical engineer to minimize impacts from construction noise.
- The Partnership will consider providing temporary hotel accommodations to homeowners who live adjacent to the HDD staging area during peak noise periods, such as pullback.
- The partnership will institute a neighbor advisory committee. This will meet monthly to evaluate project progress and resolve problems as they arise.

Safety and Operations

The new RWP/FWP will provide significantly greater reliability, including resilience in an extraordinary earthquake, compared to the existing RWP/FWP. Equally important, the Applicant understands that the neighbors have serious concerns about RWP/FWP seismic stability, construction impacts, noise, safety, and other issues of concern. The Applicant has responded to these concerns by modifying and enhancing its construction management program. This proposal contains supplemental material discussing these safeguards, including a seismic evaluation, a

comprehensive construction management plan, a traffic management plan, a safe operations plan,

and more. These changes in design and practices make this a better project and provide robust protections for the citizens of West Linn.

Alternatives Analysis

State and federal regulations require a robust alternatives analysis. However, the primary land use codes used to evaluate this request - CDC 60, Conditional Use, CDC 55, Design Review - do not require a more narrowly focused alternatives analysis. The applicable environmental regulations - and CDC 27, Flood Management, CDC 28, Willamette Tualatin River Protection Area, and CDC 32, Water Resources Area Protection - require an applicant to consider reasonable alternatives that have the least significant adverse effect on the regulated natural resource.

In the case of the RWP, the Partnership must bring a raw water transmission line from the Clackamas River intake in Gladstone to the WTP in West Linn. Many of the route options the Partnership considered were foreclosed, in part because the West Linn Municipal Charter prevents the use of City-owned park land for utilities, absent an affirmative vote by the local residents. Mary S. Young Park is one of the few parcels of land along the Willamette River that is not subject to this charter restriction. Routes considered that did not cross city-owned park land, such as the Dillow Road alignment and the north Clackamas County alignment, would have resulted in more significant environmental impacts and more substantial construction impacts in West Linn.

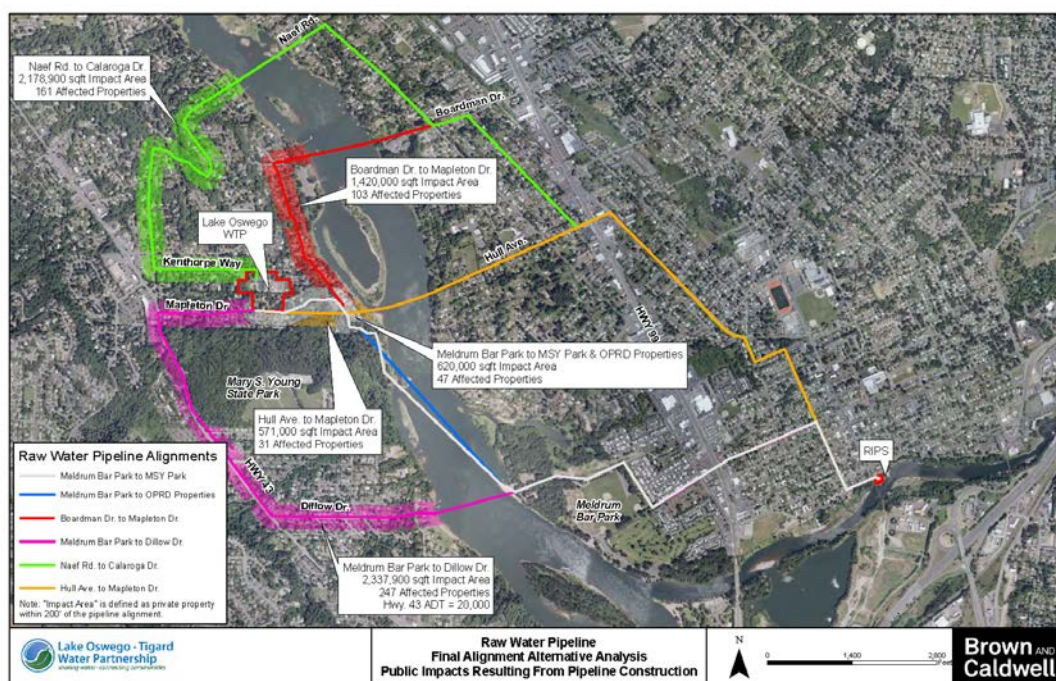


Figure 2.0. Alternative route analysis map

Federal regulators, through the JPA consultation process, expressed a strong desire for using the HDD method to bring the pipeline across the Willamette River rather than an open-cut trench along the riverbed. The HDD river crossing alternative allowed the Partnership to consider alternative ways to traverse Mary S. Young Park underground without disturbing the surface of the park. The HDD method does not disturb the surface of either Mary S. Young Park or the water resource and

habitat values below ground, completely avoiding adverse environmental, physical, and social impacts to the park.

In brief, the CDC does not require an alternatives analysis process similar to the JPA process. However, the JPA consultation process narrowed the options for building a pipeline in West Linn that will not disturb Mary S. Young Park or the natural resource values and functions that make the park the special place it is.

Concurrent State and Federal Agency Review

The RWP/FWP is part of a large multi-jurisdictional water system that stretches from Gladstone, under the Willamette River, through West Linn and Lake Oswego, and into Tigard. The project requires multiple land use and environmental reviews by many agencies and jurisdictions, and often the decisions imposed by those agencies affect several facilities.

State and federal regulators are currently considering the cumulative environmental and historic and cultural effects of the entire water system project through the JPA process, outside of the local land use process.

Code Interpretations

The West Linn CDC requires that the Planning Commission review major facilities through the lens of conditional use, design, environmental, and supplementary reviews. The RWP/FWP project is unique in that contractors will construct the pipe through both a trenchless HDD boring and an open-cut trench and surface restoration. The result is that there will be no permanent aboveground buildings or structures. Consequently, many CDC provisions do not apply, or apply obliquely, to a facility that has no permanent aboveground impacts and will not be visible.

The following points identify a few of the larger code/project interpretation issues.

- **Water Resource Area (WRA) Disturbance**

CDC 32 limits the amount of disturbance allowed in a WRA. The Applicant contends that using HDD construction methods well below a WRA is not a disturbance.

The West Linn CDC does not clearly define the term “disturbance”. However, in 2010 the West Linn Planning Director issued an interpretation of the word “disturb”.

Disturb: man-made changes to the existing physical status of the land, which are made in connection with development that would result in the destruction, damage, or removal of vegetation; or the compaction or contamination of the soil, not including stormwater run-off or the routine maintenance of the property consistent with CDC Chapter 32.

The operative terms within the definition relate to harm to vegetation, soil compaction, or contamination. The application contains a technical memorandum produced by David Evans and Associates (DEA) that evaluates the RWP project and its potential impact on vegetation, groundwater, wetlands, and soils in the light of the Planning Director’s guidance memorandum. See Section 6.

The HDD will be approximately 65 feet below grade when it travels under the ordinary high watermark of the Willamette River and approximately 7 feet below grade, the shallowest depth of the bore, when it meets the HDD staging area in the northern OPRD property—outside of all WRAs. The DEA memorandum concludes that the HDD boring for the RWP HDD phase of the project will have no significant impacts on the vegetation, soils, groundwater, or wetlands of

the WRAs in Mary S. Young Park or OPRD properties. Therefore, DEA concludes, in light of the Planning Director's interpretation, the RWP/FWP project will not disturb a regulated WRA.

■ **Habitat Conservation Area (HCA) Disturbance**

CDC 28 regulates HCAs. CDC 28.110.L.3 states:

For new underground utility facilities, no greater than 25 feet wide, and disturbance of no more than 200 linear feet of water quality resource area, or 20 percent of the total linear feet of water quality resource area, whichever is greater.

The HDD under Mary S. Young Park and the OPRD lots will occur under HCA and WRA lands. The HDD staging area and open-cut trench will occur only within an HCA. CDC 28.110.L.3 limits disturbance of the WRA to no more than 200 feet by 25 feet. However, because the HDD staging area and open-cut trench in the northern OPRD lot occurs within HCA and not WRA lands, CDC 28.110.L.3 does not apply to the project. The Applicant does address a similar limitation in CDC 32.050.F, and, consistent with that requirement, provides a revegetation plan in Section 5.

Code Waiver Requests

West Linn CDC 99.035.B provides:

- B. *The Planning Director may waive a specific requirement for information or a requirement to address a certain approval standard subject to the provisions of subsection C of this section provided:*
 - 1. *The Planning Director finds that specific information is not necessary to properly evaluate the application; or*
 - 2. *The Planning Director finds that a specific approval standard is not applicable to the application.*
- C. *Where a requirement is waived, the Planning Director shall cite in the staff report on the application the specific requirements waived and the reasons for the waiver. The decision of the Planning Director to waive the requirement is subject to review and denial by the approval authority or the appeal authority.*

The RWP/FWP proposal is to construct an underground pipeline within public rights-of-way and within property owned by OPRD. After construction, the entire project, like other underground water transmission lines, will not be perceptible from an aboveground vantage point. Therefore, unlike other conditional uses or buildings subject to design review, the RWP/FWP project will have no discernible impacts on adjoining properties.

The completed project have no surface impacts within the Mary S. Young Park or the southern OPRD lot; the HDD staging and open-cut areas within the northern OPRD lot will be completely restored as will the road surfaces disturbed within Mapleton Drive and Highway 43. Therefore, the project will not create any new impervious surfaces.

The RWP includes the construction of approximately 1,500 linear feet of 42-inch-diameter open-cut pipeline within the Mapleton Drive right-of-way. The FWP includes the construction of approximately 7,050 linear feet of 48-inch-diameter pipe. West Linn code asks that the site plan materials be prepared at a 1:30 scale. Consequently, at this scale, out-of-project-area details may not appear.

Therefore, the Applicant requests that the Planning Director waive the submittal requirements relating to the following CDC code sections:

- **Stormwater Management (CDC 33)**

The proposed RWP/FWP project will occur in an existing paved right-of-way, under Mary S. Young Park and within a portion of the two OPRD lots, and in an open-cut trench and HDD staging area in the northern OPRD lot. The RWP/FWP project will not create any new additional impervious surface areas in the Park or the OPRD lots, nor will it create any additional impervious surface areas within Mapleton Drive or Highway 43. See Section 17. After construction, the contractor will restore the pavement in the public right-of-way and will revegetate the open-cut trench and staging area in the northern OPRD lot.

Section 2.0041.B, West Linn Public Works Standards, Storm Water Detention and Treatment, provides an exemption from treatment, if the new development creates less than 500 square feet of new impervious surface, and exemption from detention, if the development creates less than 5,000 square feet of new impervious surface. Because the entire project will create less than 500 square feet of new impervious surface, the West Linn Public Works Standards exempts the project from further stormwater review. Therefore, the Applicant requests a waiver from the requirements of CDC 33.

- **Street Improvements**

CDC 54.030 requires that any change in width to a street right-of-way or street improvement shall, where feasible, include allowances for planting strips. CDC 54.030 also states that a public facility that causes a change in a public right-of-way or makes a street improvement shall comply with the street tree planting plan and standards in CDC 54.

The RWP/FWP project will not create any new aboveground structures outside of an existing paved right-of-way. The project will not widen a local street or state highway. The project will not improve any street by means of adding bicycle lanes, sidewalks, streetlights, curbs, stoplights, turn lanes, storm drains, or similar improvements. Mapleton Drive will receive a standard pavement overlay, consistent with West Linn Public Works Standards. ODOT has not requested any modifications to Highway 43 other than to repave the road surface consistent with ODOT standards. Therefore, because the Applicant will not widen or make new improvements to public streets, the project is not required to plant new street trees along Mapleton Drive or Highway 43.

- **Revegetation plan (CDC 54)**

There are no aboveground buildings or other structures, such as parking lots; fenced, mechanical units; or similar structures that need to be screened or buffered from adjacent uses or that need to be framed to complement views. Consequently, CDC 54 does not apply to the below-ground pipeline. Therefore the Applicant requests a waiver from the requirements of CDC 54.

- **Site Plan (CDC various)**

The Applicant is subject to multiple CDC chapters, including conditional use, design review, parks design review, and other chapters that require production of a site plan. See Section 22, Application Submittal Requirements Locator. The required application site plans are contained in Section 19.

West Linn CDC site plan requirements, such as CDC 55.120.G, usually require that the site plan show:

The location, dimensions, and setback distances of all:

1. Existing structures, improvements, and utility facilities on adjoining properties,

The combined length of the RWP/FWP project within West Linn is almost 3 miles long. The width of the project is wholly contained within the varying rights-of-way, the OPRD lots, and Mary S. Young Park. West Linn code asks that the site plan materials be prepared to a 1:30 scale. Consequently, at this scale, out-of-project-area details may not appear. Along the rights-of-way, the application figures illustrate streets, trees, utilities, property lines, tax lot information, and some existing structures. However, many structures are set back from the rights-of-way far enough that they do not appear at the 1:30 scale. Because most of the project will be within a paved right-of-way, and all of the project will be completely buried, the reasons to show the location, dimensions, and setbacks of structures and improvements on adjoining properties is not material to the application. Section 19, Figures 25, 28 and 32 refine the scale near the HDD staging area, and these figures provide greater detail.

For these reasons, the Applicant requests a waiver from the various site plan requirements that request the location, dimensions, and setback distances of all existing structures, improvements, and utility facilities on adjoining properties except for the HDD staging area.

II. Zoning

The proposed raw water pipeline/finished water pipeline (RWP/FWP) will cross underground through four zoning districts within West Linn as described in Table 1.1.

Table 1.1 West Linn Zoning Districts

Location	Zone	Overlay	Construction
Mary S. Young Park	Park	WRA and WTPA	HDD
OPRD lots	R-10	WRA and WTPA	HDD and open cut
Mapleton Drive	R-10	WRA	Open cut
Highway 43	R-10, R-4.5, and GC	WRA	Open cut

The proposed RWP/FWP satisfies the relevant zoning regulations of the City of West Linn Community Development Code (CDC), as addressed below. Relevant excerpts from the CDC are italicized.

SINGLE-FAMILY RESIDENTIAL DETACHED, R-10 (CDC 11)

PURPOSE (11.010)

The purpose of this zone is to provide for urban development at levels which relate to the site development limitations, proximity to commercial development and to public facilities and public transportation. This zone is intended to implement the Comprehensive Plan policies and locational criteria, and is applicable to areas designated as Low Density Residential on the Comprehensive Plan Map and Type I and Type II lands identified under the Buildable Lands Policy.

Applicant Response:

Although this Section is not an applicable criterion, the proposed RWP/FWP will provide direct urban level services to Lake Oswego and Tigard. In addition, consistent with West Linn adopted plans and policies, the FWP will provide for the continuation and enhancement of an IGA between Lake Oswego and West Linn that allows Lake Oswego to provide West Linn with a reliable source of emergency potable water. Beneficiaries of the water supply include the Robinwood Neighborhood and other low-density residential neighborhoods in West Linn. Therefore, the proposed pipeline is consistent with the purpose of CDC 11.010.

PROCEDURES AND APPROVAL PROCESS (11.020)

C. *A conditional use (CDC 11.060) is a use the approval of which is discretionary with the Planning Commission. The approval process and criteria for approval are set forth in Chapter 60 CDC, Conditional Uses. If a use is not listed as a conditional use, it may be held to be a similar unlisted use under the provisions of Chapter 80 CDC.*

Applicant Response:

The Applicant has applied for conditional use review and has addressed the conditional use approval criteria in CDC 60.

D. *The following code provisions may be applicable in certain situations:*

1. *Chapter 65 CDC, Non-conforming Uses Involving a Structure.*
2. *Chapter 66 CDC, Non-conforming Structures.*
3. *Chapter 67 CDC, Non-conforming Uses of Land.*
4. *Chapter 68 CDC, Non-conforming Lots, Lots of Record.*
5. *Chapter 75 CDC, Variance.*

Applicant Response:

The proposal does not involve nonconforming uses, structures, or lots, and the Applicant has not requested a variance. Therefore, CDC 11.020(D) does not apply.

CONDITIONAL USES (11.060)

The following are conditional uses which may be allowed in this zoning district subject to the provisions of Chapter 60 CDC, Conditional Uses.

9. *Utilities, major.*

Applicant Response:

The West Linn pre-application report classified the proposed RWP and FWP as a major utility; therefore, conditional use is required. The application addresses CDC 60 in full below.

DIMENSIONAL REQUIREMENTS, USES PERMITTED OUTRIGHT, AND USES PERMITTED UNDER PRESCRIBED CONDITIONS (11.070)

Except as may be otherwise provided by the provisions of this code, the following are the requirements for uses within this zone:

1. *The minimum lot size shall be 10,000 square feet for a single-family detached unit.*
2. *The minimum front lot line length or the minimum lot width at the front lot line shall be 35 feet.*
3. *The average minimum lot width shall be 50 feet.*
4. *The lot depth comprising non-Type I and II lands shall be less than two and one-half times the width, and more than an average depth of 90 feet. (See diagram below.)*
5. *The minimum yard dimensions or minimum building setback area from the lot line shall be:*
 - a. *For the front yard, 20 feet; except for steeply sloped lots where the provisions of CDC 41.010 shall apply; and as specified in CDC 26.040(D) for the Willamette Historic District.*

- b. *For an interior side yard, seven and one-half feet; except as specified in CDC 26.040(D) for the Willamette Historic District.*
- c. *For a side yard abutting a street, 15 feet.*
- d. *For a rear yard, 20 feet.*
- 6. *The maximum building height shall be 35 feet, except for steeply sloped lots in which case the provisions of Chapter 41 CDC shall apply.*
- 7. *The maximum lot coverage shall be 35 percent.*
- 8. *The minimum width of an accessway to a lot which does not abut a street or a flag lot shall be 15 feet.*
- 9. *The floor area ratio shall be 0.45. Type I and II lands shall not be counted toward lot area when determining allowable floor area ratio, except that a minimum floor area ratio of 0.30 shall be allowed regardless of the classification of lands within the property. That 30 percent shall be based upon the entire property including Type I and II lands. Existing residences in excess of this standard may be replaced to their prior dimensions when damaged without the requirement that the homeowner obtain a non-conforming structures permit under Chapter 66 CDC.*
- 10. *The sidewall provisions of Chapter 43 CDC shall apply.*

Applicant Response:

The proposal is for a buried water transmission line that will cross the R-10 zoning district through two single-family lots owned by the OPRD and the Mapleton Drive right-of-way. The right-of-way is publicly owned land and is not classified as a lot; therefore, the provisions of CDC 11.070, Dimensional Requirements, do not apply.

Single-family units are not proposed; therefore the 10,000-square-foot minimum lot size does not apply. Both lots exceed 35 feet in width and 50 feet in depth. No buildings or permanent aboveground structures are proposed; therefore, the yard setback, height, and maximum lot coverage standards do not apply. In the alternative, if these standards do apply, the project will not create any aboveground structures; therefore, the setback, height, and lot coverage standards are satisfied. No access ways, buildings with a floor-to-area ratio or sidewalks are proposed; therefore, CDC 11.070(8), (9), and (10) are satisfied.

DIMENSIONAL REQUIREMENTS, CONDITIONAL USES (11.080)

Except as may otherwise be established by this code, the appropriate lot size for a conditional use shall be determined by the approval authority at the time of consideration of the application based upon the criteria set forth in CDC 60.070(A) and (B).

Applicant Response:

The permanent RWP and FWP within the OPRD lots will be entirely underground, and all construction activity within the OPRD lots will be contained within the lot boundaries. In addition, proposed noise mitigation measures will occur within the OPRD lots or the Mapleton Drive right-of-way. See Section 11. Therefore, the OPRD lots are the appropriate size for the proposed conditional use. Mapleton Drive is a public right-of-way, not a lot; therefore, CDC 11.080 does not apply to the public right-of-way as a lot or, if it does, the rights-of-way are sizes appropriate for the underground pipe.

OTHER APPLICABLE DEVELOPMENT STANDARDS (11.090)

A. *The following standards apply to all development including permitted uses:*

1. *Chapter 34 CDC, Accessory Structures, Accessory Dwelling Units, and Accessory Uses.*
2. *Chapter 35 CDC, Temporary Structures and Uses.*
3. *Chapter 38 CDC, Additional Yard Area Required; Exceptions to Yard Requirements; Storage in Yards; Projections into Yards.*
4. *Chapter 40 CDC, Building Height Limitations, Exceptions.*
5. *Chapter 41 CDC, Structures on Steep Lots, Exceptions.*
6. *Chapter 42 CDC, Clear Vision Areas.*
7. *Chapter 44 CDC, Fences.*
8. *Chapter 46 CDC, Off-Street Parking, Loading and Reservoir Areas.*
9. *Chapter 48 CDC, Access, Egress and Circulation.*
10. *Chapter 52 CDC, Signs.*
11. *Chapter 54 CDC, Landscaping.*

Applicant Response:

The application below addresses the applicable CDC chapters identified above.

B. *The provisions of Chapter 55 CDC, Design Review, apply to all uses except detached single-family dwellings, residential homes and residential facilities. (Ord. 1590 § 1, 2009)*

Applicant Response:

The proposal is for a major utility, not a single-family detached dwelling, residential home, or residential facility; therefore, the application addresses the provisions of CDC 55, Design Review.

SINGLE-FAMILY RESIDENTIAL ATTACHED AND DETACHED/DUPLEX, R-4.5 (CDC 14)

PURPOSE (14.010)

The purpose of this zone is to provide for urban development at levels which relate to the site development limitations, proximity to commercial development and public facilities and public transportation, and to the surrounding development pattern. This zone is intended to carry out the intent of the Comprehensive Plan which is to provide for a choice in housing types, and is intended to implement the policies and locational criteria in the Comprehensive Plan for medium density residential housing.

Applicant Response:

Although this section is not a review criterion, the proposed RWP/FWP will provide direct urban level services to Lake Oswego and Tigard. In addition, consistent with West Linn adopted plans and policies, the FWP will provide for the continuation and enhancement of the IGA between Lake Oswego and West Linn, which allows Lake Oswego to provide West Linn with a reliable source of emergency potable water. Beneficiaries of the water supply include residents of the R-4.5 zone. Therefore, the proposed major utility is consistent with the purpose of CDC 14.010.

PROCEDURES AND APPROVAL PROCESS (14.020)

C. The approval of a conditional use (CDC 14.060) is discretionary with the Planning Commission. The approval process and criteria for approval are set forth in Chapter 60 CDC, Conditional Uses. If a use is not listed as a conditional use, it may be held to be a similar unlisted use under the provisions of Chapter 80 CDC.

Applicant Response:

The proposed RWP/FWP is a major utility; therefore, the application addresses CDC 60 below.

D. The following code provisions may be applicable in certain situations:

- 1. Chapter 65 CDC, Non-conforming Uses Involving a Structure.*
- 2. Chapter 66 CDC, Non-conforming Structures.*
- 3. Chapter 67 CDC, Non-conforming Uses of Land.*
- 4. Chapter 68 CDC, Non-conforming Lots, Lots of Record.*
- 5. Chapter 75 CDC, Variance.*

Applicant Response:

The proposal does not involve nonconforming uses, structures, or lots, and the Applicant has not requested a variance. Therefore, CDC 14.020(D) does not apply.

PERMITTED USES (14.030)**Applicant Response:**

The proposal is for a conditional use, not a permitted use.

ACCESSORY USES (14.040)

Accessory uses are allowed in this zone as provided by Chapter 34 CDC.

Applicant Response:

The proposal is for a conditional use, not an accessory use.

USES AND DEVELOPMENT PERMITTED UNDER PRESCRIBED CONDITIONS (14.050)**Applicant Response:**

The proposal is for a utility transmission line, a conditional use.

CONDITIONAL USES (14.060)

The following are conditional uses which may be allowed in this zoning district subject to the provisions of Chapter 60 CDC, Conditional Uses.

- 14. Utilities, major.*

Applicant Response:

Under West Linn code and confirmed during a pre-application report, the proposed RWP and FWP are utility transmission lines; therefore, conditional use is required. The application addresses CDC 60 in full below.

DIMENSIONAL REQUIREMENTS, USES PERMITTED OUTRIGHT, AND USES PERMITTED UNDER PRESCRIBED CONDITIONS (14.070)

Applicant Response:

The proposed activity within the R-4.5 zone will occur entirely within the Highway 43 right-of-way and not within any lots within the R-4.5 zone. Therefore, CDC 14.070 does not apply.

DIMENSIONAL REQUIREMENTS, CONDITIONAL USES (14.080)

Except as may otherwise be established by this code, the appropriate lot size for a conditional use shall be determined by the approval authority at the time of consideration of the application based upon the criteria set forth in CDC 60.070(A) and (B).

Applicant Response:

The proposed activity within the R-4.5 zone will occur entirely within the Highway 43 right-of-way and not within any lots within the R-4.5 zone. Therefore, CDC 14.080 does not apply.

OTHER APPLICABLE DEVELOPMENT STANDARDS (14.090)

A. The following standards apply to all development including permitted uses:

- 1. Chapter 34 CDC, Accessory Structures, Accessory Dwelling Units, and Accessory Uses.*
- 2. Chapter 35 CDC, Temporary Structures and Uses.*
- 3. Chapter 38 CDC, Additional Yard Area Required; Exceptions to Yard Requirements; Storage in Yards; Projections into Yards.*
- 4. Chapter 40 CDC, Building Height Limitations, Exceptions.*
- 5. Chapter 41 CDC, Structures on Steep Lots, Exceptions.*
- 6. Chapter 42 CDC, Clear Vision Areas.*
- 7. Chapter 44 CDC, Fences.*
- 8. Chapter 46 CDC, Off-Street Parking, Loading and Reservoir Areas.*
- 9. Chapter 48 CDC, Access, Egress and Circulation.*
- 10. Chapter 52 CDC, Signs.*
- 11. Chapter 54 CDC, Landscaping.*

Applicant Response:

Below, the application addresses the applicable CDC chapters described above.

- B. *The provisions of Chapter 55 CDC, Design Review, apply to all uses except detached single-family dwellings. (Ord. 1590 § 1, 2009)*

Applicant Response:

The proposal will not create any single-family dwelling; therefore, the application addresses the applicable Chapter 55 CDC, Design Review, below.

GENERAL COMMERCIAL, GC (CDC 19)

PURPOSE (19.010)

The purpose of this zone is to provide for the concentration of major retail goods and services at centers. The intent is to provide for the provision of a variety of goods and services and for comparison shopping, to accommodate new businesses and employment opportunities, to promote a suitable mix of commercial uses, to contribute to community identity and to assure that the commercial development is scaled to blend with nearby residential areas, and that the residential areas are protected from noise, glare of lights, traffic congestion and other possible adverse effects. This zone is intended to implement the policies and locational criteria set forth in the Comprehensive Plan.

Applicant Response:

Although not a review criterion, the proposed RWP/FWP will provide direct urban-level services to Lake Oswego and Tigard. In addition, consistent with West Linn adopted plans and policies, the FWP will provide for the continuation and enhancement of an IGA between Lake Oswego and West Linn, which allows Lake Oswego to provide West Linn with a reliable source of emergency potable water. Beneficiaries of the water supply include commercial users within the GC zone. Therefore, the proposed major utility is consistent with the purpose of CDC 19.010.

PROCEDURES AND APPROVAL PROCESS (19.020)

- C. *A conditional use, CDC 19.060, is a use the approval of which is discretionary with the Planning Commission. The approval process and criteria for approval are set forth in Chapter 60 CDC, Conditional Uses. If a use is not listed as a conditional use, it may be held to be a similar unlisted use under the provisions of Chapter 80 CDC.*

Applicant Response:

The proposed RWP/FWP is a major utility; therefore, the application addresses CDC 60 below.

- D. *The following code provisions may be applicable in certain situations:*
1. *Chapter 65 CDC, Non-conforming Uses Involving a Structure.*
 2. *Chapter 66 CDC, Non-conforming Structures.*
 3. *Chapter 67 CDC, Non-conforming Uses of Land.*
 4. *Chapter 68 CDC, Non-conforming Lots, Lots of Record.*
 5. *Chapter 75 CDC, Variance.*

Applicant Response:

The proposal does not involve non-conforming uses, structures, or lots, and the Applicant has not requested a variance. Therefore, CDC 19.020(D) does not apply.

PERMITTED USES (19.030)

Applicant Response:

The proposal is for a conditional use, not a permitted use.

ACCESSORY USES (19.040)

Accessory uses are allowed in this zone as provided by Chapter 34 CDC.

Applicant Response:

The proposal is for a conditional use, not an accessory use.

USES AND DEVELOPMENT PERMITTED UNDER PRESCRIBED CONDITIONS (19.050)

Applicant Response:

The proposal is for a conditional use, not a use permitted under prescribed conditions.

CONDITIONAL USES (19.060)

The following are conditional uses which may be allowed in this zone subject to the provisions of Chapter 60 CDC, Conditional Uses:

10. *Utilities, major.*

Applicant Response:

Under West Linn code and confirmed during in a pre-application report, the proposed RWP and FWP are utility transmission lines; therefore, conditional use is required. The application addresses CDC 60 in full below.

DIMENSIONAL REQUIREMENTS, USES PERMITTED OUTRIGHT, AND USES PERMITTED UNDER PRESCRIBED CONDITIONS (19.070)

Applicant Response:

The proposed activity within the GC zone will occur entirely within the Highway 43 right-of-way and not within any lots within the GC zone. Therefore, CDC 19.070 does not apply.

DIMENSIONAL REQUIREMENTS, CONDITIONAL USES (19.080)

Except as may otherwise be established by this code, the appropriate lot size for a conditional use shall be determined by the approval authority at the time of consideration of the application based upon the criteria set forth in CDC 60.070(A) and (B).

Applicant Response:

The proposed activity within the GC zone will occur entirely within the Highway 43 right-of-way and not within any lots within the GC zone. Therefore, CDC 19.080 does not apply.

OTHER APPLICABLE DEVELOPMENT STANDARDS (19.090)

A. The following standards apply to all development including permitted uses:

- 1. Chapter 34 CDC, Accessory Structures, Accessory Dwelling Units, and Accessory Uses.*
- 2. Chapter 35 CDC, Temporary Structures and Uses.*
- 3. Chapter 38 CDC, Additional Yard Area Required; Exceptions to Yard Requirements; Storage in Yards; Projections into Yards.*
- 4. Chapter 40 CDC, Building Height Limitations, Exceptions.*
- 5. Chapter 42 CDC, Clear Vision Areas.*
- 6. Chapter 44 CDC, Fences.*
- 7. Chapter 46 CDC, Off-Street Parking, Loading and Reservoir Areas.*
- 8. Chapter 48 CDC, Access, Egress and Circulation.*
- 9. Chapter 52 CDC, Signs.*
- 10. Chapter 54 CDC, Landscaping.*

Applicant Response:

The application discusses other applicable development standards below.

B. The provisions of Chapter 55 CDC, Design Review, apply to all uses except detached single-family dwellings. (Ord. 1590 § 1, 2009)

Applicant Response:

The proposal will not create any single-family dwelling; therefore, the application addresses the applicable Chapter 55 CDC, Design Review, below.

III. Application(s): Conditional Use and Design Review

The proposed construction of the raw water pipeline (RWP) and finished water pipeline (FWP) meets the relevant requirements of the City of West Linn Community Development Code (CDC) for conditional use and design review, as addressed below. Applicable excerpts from the CDC are italicized.

CONDITIONAL USES (CDC 60)

PURPOSE (60.010)

The purpose of this chapter is to provide standards and procedures under which conditional uses may be permitted, enlarged, or altered if the site is appropriate and if other conditions can be met.

Applicant Response:

Although the purpose section is not a review criterion, the Applicant will demonstrate that the proposed RWP/FWP project is consistent with the standards and procedures of CDC 60.

ADMINISTRATION AND APPROVAL PROCESS (60.030)

- A. Conditional use applications shall be decided by the Planning Commission in the manner set forth in CDC 99.060(B). A petition for review by the Council may be filed as provided by CDC 99.240(B).*
- B. All approved conditional use applications shall be subject to design review under the provisions of Chapter 55 CDC, and in the manner set forth in CDC 99.060(B).*

Applicant Response:

The application is provided for Planning Commission review. The Applicant addresses the requirements of CDC 55 later in this section.

TIME LIMIT ON A CONDITIONAL USE APPROVAL (60.040)

Approval of a conditional use that required a design review shall be subject to the time limitations set forth in CDC 55.040. Approval of a conditional use that did not require design review shall be void unless either the use is commenced or an extension is granted per CDC 99.325 within three years of the approval.

Applicant Response:

CDC 55.040 requires that *“If substantial construction has not occurred within three years from the date of approval of the development plan, the approved proposal will be void, unless an extension is granted under CDC 99.325.”*

The Applicant will undertake substantial construction within 3 years of final land use approval. Substantial construction, by CDC definition, occurs when: utilities have been installed to serve the project; approved grading has been undertaken representing at least 25 percent of all the required preliminary grading; foundation excavation has occurred; foundation or building construction has occurred; street improvements are being installed; or a major physical improvement, required as part of the approved permit, has clearly begun.

BUILDING PERMITS FOR AN APPROVED CONDITIONAL USE (60.050)

- A. Building permits for all or any portion of a conditional use shall be issued only on the basis of the conditional use plan and conditions as approved by the Planning Commission.*
- B. Any change in the conditional use plan or conditions of approval shall require a new application and hearing pursuant to the provisions set forth in this chapter and CDC 99.120(B).*

Applicant Response:

Prior to construction or site development, the Applicant shall submit final plans and permit requests consistent with the approved final land use decision.

APPLICATION (60.060)

- A. A conditional use application shall be initiated by the property owner or the owner's authorized agent.*
- B. A prerequisite to the filing of an application is a pre-application conference at which time the Director shall explain the requirements and provide the appropriate forms as specified in CDC 99.030(B) and (C).*
- C. A prerequisite to the filing of an application is a meeting with the respective City-recognized neighborhood association, per CDC 99.038, at which time the applicant will present his/her proposal and receive comments.*
- D. An application for a conditional use shall include the completed application form and:

 - 1. A narrative which addresses the approval criteria set forth in CDC 60.070 and which sustains the applicant's burden of proof; and*
 - 2. A site plan as provided by CDC 60.080.**

One original application form must be submitted. Three copies at the original scale and three copies reduced to 11 inches by 17 inches or smaller of all drawings and plans must be submitted. Three copies of all other items must be submitted. When the application submittal is determined to be complete, additional copies may be required as determined by the Planning Department.

- E. Names and addresses of all who are property owners of record within 300 feet of the site shall be determined by the Director.*
- F. The applicant shall pay the requisite fee.*

Applicant Response:

- A.** The Oregon Department of Transportation (ODOT) has jurisdiction over the Highway 43 right-of-way, and the City of West Linn has jurisdiction over the Mapleton Drive right-of-way. Both agencies have consented to the Partnership's request to file this land use application. The Oregon Parks and Recreation Department (OPRD) owns Mary S. Young Park and the two parcels identified as OPRD lots. The application contains a letter from the OPRD authorizing the City of Lake Oswego to submit the land use application for the properties owned by OPRD. See Section 1. Therefore, the application satisfies CDC 60.060(A).
- B.** The Applicant and West Linn representatives participated in a pre-application conference on January 5, 2012. See Section 3, City of West Linn Pre-application Conference Notes, dated January 24, 2012.
- C.** The Applicant conducted a neighborhood meeting, in compliance with CDC 99.038, on March 15, 2012, as required under CDC 60.060(C). See Section 14 for a complete discussion on the neighborhood coordination process.

- D. This application contains a narrative and a site plan in compliance with CDC 60.060(D). See Section 4 and 19. In addition, the Applicant has provided one original application form, three original scale sets of all drawings, and three copies reduced to 11 by 17 inches or smaller of all drawings and plans. The proposed uses are a RWP and FWP and related construction activities.
- E. The Director shall determine the names and addresses of all property owners of record within 300 feet of the site perimeter.
- F. Based upon the West Linn-provided pre-application conference notes, page 23, the land use review deposit required is \$22,751.85 which the Applicant paid.

APPROVAL STANDARDS AND CONDITIONS (60.070)

- A. *The Planning Commission shall approve, approve with conditions, or deny an application for a conditional use, except for a manufactured home subdivision in which case the approval standards and conditions shall be those specified in CDC 36.030, or to enlarge or alter a conditional use based on findings of fact with respect to each of the following criteria:*
 - 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.*

Applicant Response:

The pre-application conference notes provided the following list of potentially applicable Comprehensive Plan and supporting plan goals, policies, and action measures.

West Linn Comprehensive Plan

Applicant Response:

The pre-application conference notes provided the following list of potentially applicable Comprehensive Plan and supporting Plan goals, policies and action measures.

GOAL 1: CITIZEN INVOLVEMENT*Policies*

4. *Provide timely and adequate notice of proposed land use matters to the public to ensure that all citizens have an opportunity to be heard on issues and actions that affect them.*
5. *Communicate with citizens through a variety of print and broadcast media early in and throughout the decision-making process...*

Recommended Action Measures

4. *Provide informational materials that clearly describe opportunities and processes for citizen involvement in land use application and appeals processes.*

Applicant Response:

On March 15, 2012, consistent with CDC 99.038, the Applicant conducted a neighborhood meeting on the pipeline proposal at the Robinwood Station. Joel Komarek provided an overview of the proposal, and the public was provided ample opportunity to comment. See Section 14 for documentation and a synopsis of the meeting. In addition, the Partnership actively maintains a web site that provides details about the nature of the Partnership activities and encourages citizen comments and involvement. In the summer of 2012 the Partnership will participate in facilitated public meetings hosted by City of West Linn. Therefore, the Applicant's citizen involvement activities are consistent with Goal 1.

GOAL 2: LAND USE PLANNING*Residential Development**Policies*

8. *Protect residentially zoned areas from the negative impacts of commercial, civic, and mixed use development, and other potentially incompatible land uses.*
9. *Foster land use planning that emphasizes livability and carrying capacity.*

Applicant Response:

The residential policies pertain to the Robinwood Neighborhood and to the multi-family zone along Highway 43. The proposed use is a public utility which will be buried below the OPRD properties and the public rights-of-way. Consequently, the RWP and FWP, after construction, will be compatible with these land uses. However, because of the duration and intensity of pipeline construction activity, the Applicant has prepared a Construction Management Plan (see Section 10), which identifies potential impacts on residential uses and provides mitigation measures designed to limit those impacts.

The West Linn WSMP, which implements the West Linn Comprehensive Plan, recognizes the importance of improving the reliability and capacity of its emergency water supply from Lake Oswego. The preferred Solution Approach C recommends:

[D]eveloping a coordinated emergency supply plan that allows the City to fully meet its emergency supply capacity needs through the existing emergency supply connection from the City of Lake Oswego's water system in the Robinwood Neighborhood near Lake Oswego's water treatment plant. The City's existing emergency supply connection to Lake Oswego is interruptible and its delivery capacity is dependent on Lake Oswego's supply and demand conditions at the time of the City's need. Under peak use or high

demand conditions the actual capacity of this connection may approach zero as Lake Oswego's current maximum water demands are approaching the existing supply system's capacity.

The proposed RWP/FWP will replace a 45 year-old, seismically vulnerable water transmission main. The new pipelines will be manufactured of steel and each joint will be welded. The design, construction, and operation of the new pipelines will allow the pipelines to remain operational after the maximum credible earthquake event. This level of protection far exceeds that of the existing RWP/FWP. The ability to remain operational after such an event is critical to providing West Linn with a backup supply of drinking water if its seismically vulnerable transmission line suspended from the Abernethy Bridge fails.

The updated IGA under negotiation provides for increased emergency water capacity and defines the quantity of water available and the duration of its availability. The proposed RWP and FWP are critical to enhance the reliability of this emergency supply. Adoption of an updated IGA will provide West Linn greater certainty that the goals and policies of its Comprehensive Plan will be implemented by having water available when needed. Therefore, the proposed RWP and FWP are compatible with neighboring land use, will enhance livability, and are consistent with West Linn Goal 2, Policies 8 and 9.

Intergovernmental Coordination

Goals

- 1. Provide a coordinated approach to problems that transcend local government boundaries.*
- 2. Encourage and support other agencies to help implement the City's Comprehensive Plan.*

Policies

- 1. Maintain effective coordination with other local governments, special districts, state and federal agencies, Metro, the West Linn-Wilsonville School District, and other governmental and quasi-public organizations.*
- 2. Coordinate the City's plans and programs with affected governmental units in developing solutions to environmental quality problems, hazardous physical conditions, natural resource management programs, public facilities and services programs, transportation planning, annexation proceedings, and other municipal concerns with intergovernmental implications.*

Recommended action measures

Adopt inter-agency agreements between City government, School District, Chamber of Commerce, neighborhood associations, and other community institutions.

Applicant Response:

As described above, an important element of the West Linn Water Master Plan is a reliable emergency supply of potable water. The cities of West Linn and Lake Oswego currently maintain an IGA governing the use of the water supply intertie. Construction of the Partnership's proposed water treatment facility and transmission mains are critical to the continuing functionality and improved reliability of the emergency intertie. The proposal is endorsed by the Regional Water Providers Consortium Board as being a "model of integrated water supply planning, as anticipated by the Regional Water Supply Plan of 2004." See Section 18, letter the Regional Water Providers Consortium Board. Consequently, the proposed RWP and FWP are consistent with West Linn's

Goal 2 intergovernmental coordination policies. The proposal is also endorsed by the Clackamas River Water Providers, a coalition of special water supply districts and cities that rely on the Clackamas River for drinking water supply.

GOAL 5: OPEN SPACES, SCENIC AND HISTORIC AREAS, AND NATURAL RESOURCES

Scenic and Historic Areas

Scenic Environment Goal: Preserve and enhance scenic views and sites

Policies

1. *Promote site design standards for development that enhances the urban landscape and prevents or minimizes obscuring views enjoyed by the community.*
2. *Preserve prominent scenic views as seen from public streets, parks, and open spaces in a manner consistent with other goals and policies to protect natural resources.*

Applicant Response:

The Applicant has identified the Goal 5, Scenic Areas, within the project area as described in the draft West Linn Open Space Inventory, Map 3, dated February 2008. Those resources include: T-50, Mary S. Young Park; T-49, the eastern portions of the OPRD lots; E-16, along Mapleton Drive; and T-26 and E-111 along Highway 43. “E” resources are open-space areas with unique ID easements, and “T” resources are open-space areas with unique tax lots. See Section 19.

The project will not permanently disturb any identified Goal 5 scenic areas because after construction, the proposed RWP and FWP will be completely underground and not visible to the public. The identified Goal 5 resources are not located within a public right-of-way; consequently, because the Mapleton Drive and Highway 43 routes are fully within the paved rights-of-way, the project will not temporarily affect identified Goal 5 scenic areas. The pipeline route through T-50, in Mary S. Young Park, and the southern-most lot in T-49, in OPRD properties, is completely underground. The open cut portion of the project within the northern-most OPRD lot is outside the mapped T-49 open space resource. Consequently, the project will not disrupt any open space views onto or from these parcels. Therefore, the proposed RWP and FWP are consistent with Goal 5 Scenic Environment policies.

Natural Resources

Goals

1. *Encourage and assist in the preservation of permanent natural areas for fish and wildlife habitat in suitable, scientific/ecological areas.*
2. *Protect sensitive environmental features such as steep slopes, wetlands, and riparian lands, including their contributory watersheds.*
3. *Preserve trees in park lands, natural areas, and open space wherever possible.*

Applicant Response:

The RWP and FWP project route along Mapleton Drive and Highway 43 crosses several natural areas West Linn identifies as water resource areas (WRAs). Because the project route along these rights-of-way is fully contained within paved areas, the project will not adversely impact these WRAs. (West Linn regulated WRAs by means of CDC Chapter 32.)

Mary S. Young Park is classified as a WRA. However, the RWP will be a minimum of 30 feet beneath Mary S. Young Park and approximately 20 feet below the WRA on the southern OPRD property. The Applicant commissioned DEA, a reputable natural resource consulting firm, which, after extensive analysis, concluded that HDD construction below Mary S. Young Park and the OPRD WRAs, will not adversely disturb the water resource functions and values. See Section 6. The open-cut construction activity in the northern OPRD lot will occur upland of the identified WRA. Consequently, the RWP project will protect sensitive environmental features within the WRA, consistent with the intent of Goal 5, Natural Resources.

Within the northern OPRD lot, construction activity will occur within a treed area that the City of West Linn classifies as a Habitat Conservation Area (HCA). The Applicant prepared an arborist report (see Section 7), which identified trees greater than 5 inches diameter at breast height (DBH) within the full project area, including the OPRD-owned HCA. The report concluded that none of the trees within the project area meet the West Linn definition of a heritage tree. The Applicant will mitigate for the loss of trees within the OPRD-owned HCA and, as an additional benefit to the community and the neighborhood, will fund additional invasive species removal and tree planting activity within Mary S. Young Park.

Consequently, the proposal preserves trees in natural areas and in open space consistent with the West Linn CDC to satisfy Goal 5, Natural Resources, Goals 1, 2 and 3.

Policies

2. *Where appropriate, require the planting of trees as a condition of approval for any land development proposal, consistent with the City's street tree ordinance and recommendations of the City Arborist.*
3. *Provide buffer areas around heritage trees, significant trees, and tree clusters to ensure their preservation.*
4. *Require the areas containing tree clusters, significant trees, and native vegetation along natural drainage courses and waterways in areas of new development be maintained to the maximum extent possible to preserve habitats, prevent erosion, and maintain water quality.*
5. *Preserve important wildlife habitat by requiring clustered development or less dense zoning in areas with wetlands and riparian areas, natural drainageways, and significant trees and tree clusters.*
6. *Restore, enhance, and expand the existing habitats found along rivers and streams, including planting native trees to reduce water temperatures.*
7. *Enhance and expand vegetation, particularly native species, on hillsides and in natural areas to prevent erosion and improve wildlife habitat.*
8. *Require and enforce erosion control standards for new development.*
9. *Maintain and improve existing storm water detention and treatment standards to ensure that the impact of new development does not degrade water quality and wildlife habitat.*
10. *Manage open space, habitat, and ecological/scientific areas as identified in the West Linn Goal 5 inventory and protection plan in order to preserve their unique qualities.*
11. *Control activities and uses within the areas identified above to maintain ecological values, while providing for compatible recreational and educational activities.*
12. *Protect open space areas along hillsides and areas with potential erosion hazards through development controls and appropriate zoning.*
14. *Prohibit access by wheeled motorized vehicles onto the Willamette and Tualatin River beach areas except on public boat launch pads still in active use.*

17. *Work with other jurisdictions to coordinate efforts related to river planning.*
20. *Comply with the provisions of a State Goal 5 natural resources inventory.*

Applicant Response:

The Applicant prepared an arborist report (see Section 7), which identified trees greater than 5 inches DBH within the full project area, including the OPRD-owned HCA. The report concluded that none of the trees within the project area meet the West Linn definition of a heritage tree, significant tree, or significant tree cluster.

The Applicant's construction site and staging area is within the HCA overlay and subject compliance with CDC 32. The Applicant will mitigate for the loss of trees within the OPRD-owned HCA and will restore the habitat within the disturbed HCA construction site using native trees. The Applicant will fund additional tree planting activity within Mary S. Young Park.

The construction teams will implement and maintain erosion control practices within the HCA and along the entire project length, consistent with adopted West Linn Public Works Standards. Because post-construction structures and uses will be fully below ground, the Applicant will not create any additional stormwater control demand. No wheeled vehicles will be used during or after construction on the Willamette River beach. The proposal accurately identifies all Goal 5 natural resources within the project area.

Consequently, the proposal is consistent with Goal 5, Natural Resources, Policies 2-20.

Recommended Action Measures

2. *Promote and encourage cooperation with national programs that exist in West Linn such as the Audubon Society and national Wildlife Federation Backyard Wildlife Program.*
3. *Work with federal, state, and county agencies to establish nature trails and educational markers in significant natural areas.*
5. *Implement vegetation maintenance guidelines for wetlands and riparian areas.*
6. *Develop and implement a method for identifying areas with significant habitat value.*
7. *Develop and implement an educational program about the role of public and private riparian and other natural areas in providing fish and wildlife habitat.*
10. *Develop and incorporate a set of guidelines and habitat-friendly development practices into the City's Community Development Code and encourage their use for all development located within the Wildlife Habitat Areas Inventory identified in Figure 5-4 or any other lands with significant environmental constraints, such as tree clusters.*

Applicant Response:

The recommended actions apply to City of West Linn activities. None of the proposed project specific activities are inconsistent with the recommended West Linn action measures.

GOAL 6: AIR, WATER, AND LAND RESOURCES QUALITY

Water Quality

Goal: Maintain or improve the quality of West Linn's water resources

Policies

- 1. Require that new development be designed and constructed to prevent degradation of surface and groundwater quality by runoff.*
- 3. Recognize the City's responsibility for operating, planning, and regulating wastewater systems pursuant to the City's adopted Sanitary Sewer System Master Plan, which is a supporting document to the Comprehensive Plan, as well as agreements with the Clackamas County Water Environment Services Department.*
- 5. Where feasible, use open, naturally vegetated drainageways to reduce stormwater runoff and improve water quality.*
- 6. Meet the goals of Title 3 of the Metro Urban Growth Management Functional Plan.*
- 7. Require up-to-date erosion control plans for all construction and actively enforce applicable City codes and regulations.*

Applicant Response:

All of the RWP and FWP project uses will be fully below ground after construction and will not generate additional stormwater demand. The project is a water pipeline and will not generate any wastewater. The Applicant has prepared a stormwater and erosion control memorandum (see Section 13 and 14) and will comply with all city codes and regulations pertaining to erosion control during project construction. Consequently, the proposal is consistent with Goal 6, Water Quality, Polices 1, 3, 5, 6, and 7.

Recommended Action Measures

- 3. Support efforts by the National Marine Fisheries Service (NMFS) and other agencies to protect and restore habitat for threatened and endangered fish species.*
- 4. Develop and implement new ordinances to control erosion and to protect natural drainageways and wetlands from degradation.*
- 5. Develop and implement improved stormwater management requirements to enhance water quality.*
- 11. Encourage replacement of covered drainageways with open channels surrounded by natural vegetation.*

Applicant Response:

The recommended actions apply to City of West Linn activities. None of the proposed project specific activities are inconsistent with the recommended West Linn action measures. The project is consistent with West Linn's desire to support NMFS efforts to protect fish habitat because the HDD construction, supported by federal reviewers, completely avoids impact to fish habitat, unlike alternative open-cut technology.

Noise Control

Goal: Maintain and promote a quiet and healthful environment for the citizens of West Linn

Policies

2. *Require development proposals that are expected to generate noise to incorporate landscaping and other techniques to reduce noise impacts to levels compatible with surrounding land uses.*
3. *Require new commercial, industrial and public facilities to be designed and landscaped to meet Department of Environmental Quality (DEQ) and City noise standards.*
4. *As part of the land use application submittal for a noise generating use, require the applicant to include a statement from a licensed acoustical engineer, and, if necessary, from DEQ, declaring that all applicable standards can be met.*

Applicant Response:

The finished project is a buried pipeline. As such, the pipeline will not generate any noises audible aboveground. Consequently, the completed project will have no noise-related impact on the most sensitive receptors, residential uses during nighttime. Therefore, a declaration of compliance from the Oregon DEQ is unnecessary.

Noise from traffic on public roads and construction activities is exempt from the noise regulations. See OAR 340-035-0035(5). West Linn's Municipal Code restricts construction activity and noise to the hours between 7 a.m. to 7 p.m. Monday through Friday and 9 a.m. to 5 p.m. weekends and holidays (WLMC 5.487.2.d). Subsection 6 of Chapter 5.487 creates procedures for varying from the adopted hours of construction activity. Because ODOT has requested that construction work on Highway 43 be performed at night, the Applicant will apply for a noise variance consistent with West Linn Municipal Code 5.487.

The Applicant recognizes that construction activity will generate significant temporary noise levels during some construction activities and hours. Consequently, the Applicant hired Environ, a licensed acoustical engineering company, to evaluate all anticipated construction operations and potential noise sources and levels and to make recommendations to reduce or mitigate temporary noise impacts. See Section 11, Construction Noise Analysis. The Applicant proposes to implement the recommendations contained in the Environ memorandum.

GOAL 7: AREAS SUBJECT TO NATURAL DISASTERS AND HAZARDS

Goal: Protect life and property from flood, earthquake, other geological hazards, and terrorist threats or attacks.

Policies

1. *Require development and associated alterations to the surrounding land to be directed away from hazardous areas.*
2. *Restrict development except where design and construction techniques can mitigate adverse effects.*
3. *Require soils and geologic studies for development in hazardous areas.*
4. *Promote slope and soil stability and the use of natural drainageways in areas with landslide potential by retaining existing vegetation in those areas to the greatest extent possible.*
5. *Follow state and regional designations and construction standards regarding earthquake hazards.*
6. *Retain storage capacity of flood waters by protecting flood plains.*
7. *Prohibit any alteration to the landscape or development that would result in a rise in elevation of the 100-year flood plain.*

8. *Minimize impacts to natural vegetation within the flood plain by restricting development and related human activity.*
11. *Meet the goals of Title 3 of the Metro Urban Growth Management Functional Plan to protect floodplains and other hazard areas.*
12. *Refer to current seismic information during development review, including in the pre-application meeting, and when enacting new regulations governing the location of structures and land uses.*

Applicant Response:

The Applicant reviewed and consulted the West Linn Natural Hazards Mitigation Plan. East of Mapleton Drive, the City classifies the area as Zone B, Moderate Relative Earthquake Hazard. The West Linn Bolton Sewage Pump Station, a West Linn critical facility, is located within Zone B. The balance of the RWP and FWP alignment travels through an area classified as Zone A, High Relative Earthquake Hazard. Located within Zone A are: the Lake Oswego Water Treatment Plant (classified as a primary water source), the Lake Oswego Intertie Pump Station, Cedaroak Sewerage Pump Station, Cedaroak Primary School and Marylhurst University (classified as critical facilities). See Section 20, West Linn Earthquake Hazards Map, West Linn Natural Hazards Plan.

The City of West Linn has not diverted any of these critical facilities, including the new Bolton Fire Station, away from mapped earthquake hazard areas. Nor has West Linn diverted new residential development in the Robinwood Neighborhood away from high Relative Risk Earthquake Hazard areas. Rather, West Linn practice is to rely upon design and construction techniques to mitigate earthquake hazard risks.

The application contains a site-specific seismic risk analysis and geotechnical reports and recommendations. See Section 8. The reports, prepared by licensed engineers specializing in seismic analysis, design, and construction, underlie the proposed RWP and FWP design and construction.

Conservative construction materials and techniques have been selected to ensure that the pipelines will be able to withstand an earthquake with a 2 percent probability of exceedance in 50 years (2,475-year return interval) without any pipe leaks or ruptures. This level of earthquake is the standard, applicable to life-sustaining structures such as hospitals and emergency response facilities and is the highest earthquake standard accepted worldwide. This return interval includes consideration of the magnitude 9.0 Cascadia Subduction Zone megathrust event. The pipeline will be constructed using welded steel pipe with double-lap welds and will undergo extensive quality assurance and quality control measures to ensure proper construction. The construction materials and techniques proposed for the RWP and FWP are consistent with the current standard practice for many innovative water utilities located in high seismic areas such as the San Francisco Public Utility Commission and Los Angeles Department of Water and Power. The West Linn Natural Hazards Mitigation Plan, Map 16, does not identify any Oregon Department of Geology and Mineral Industries (DOGAMI) potential landslide areas along the project route. However, Map 16 identifies an area with slopes in excess of 25 percent along, but not directly within, the proposed route, the eastern end of Mapleton Drive. Within this steep slope area, the project will stay completely within the paved portion of Mapleton Drive; therefore, the project will retain all native vegetation within the right-of-way, consistent with Policy 4 above.

The HDD staging area is within an HCA and outside of a WRA. A small area along the eastern end of the HDD staging site is within the 100-year floodplain. HDD staging is temporary and after completion of this phase of construction the staging area will be revegetated. The completed project will be completely underground and will not result in a rise in elevation of the 100-year flood plain, nor will it reduce floodplain storage capacity.

Consequently, the proposal is consistent with Goal 7, Policies 1-12.

Recommended Action Measures

5. *Reduce soil erosion by inspecting construction sites, responding to complaints and enforcing City codes and policies.*
11. *Maintain and provide current earthquake information and Oregon Structural Specialty Code seismic requirements to developers and other interested citizens.*
12. *Assess potential seismic influences, damage potential, and possible corrective actions to City sewer and water systems, bridges, and other City facilities.*

Applicant Response:

The recommended actions apply to City of West Linn activities. None of the proposed project specific activities are inconsistent with the recommended West Linn action measures.

GOAL 8: PARKS AND RECREATION

Goals

3. *Assure the availability and the reasonable accessibility of recreational lands and facilities to all West Linn residents.*

Policies

8. *Require land divisions and major developments to set aside or dedicate land based on standards that provide for:*
 - *An area composed of developable lands that may provide active recreational space;*
 - *An adequate passive open space area to protect natural resources at the site and protect development from hazard areas; and,*
 - *A link between existing public-owned parks or open space areas and/ or public rights-of-way.*

Applicant Response:

The proposed RWP will travel beneath Mary S. Young Park; therefore, the RWP will not limit accessibility to recreational lands. In addition, the Applicant has prepared a Construction Management Plan (Section 10) and a Traffic Management and Pedestrian Circulation and Access Plan (Section 12), which provide pedestrians with continuous access to Mary S. Young Park from Mapleton Drive throughout the construction project. The project is a buried pipeline and does not involve land division or major development that creates additional demand on the West Linn park system. The proposal addresses and satisfies the applicable requirements of CDC 56, Parks and Natural Area Design Review. Consequently, dedication of additional park land is not necessary. Therefore, the proposal is consistent with Goal 8, Parks and Recreation.

GOAL 9: ECONOMIC DEVELOPMENT

Goals

2. *Encourage the retention and economic viability of existing business and industry*

Policies

5. *Maintain public facilities (specifically right-of-way improvements) in established commercial and industrial districts to promote economic activity.*
8. *Maximize the use of regional, state, and federal funding for infrastructure planning and development.*

Recommended Action Measures

6. *Identify and provide improvements for infrastructure needs to support appropriately located businesses.*

Applicant Response:

Access to a reliable public water supply is essential for business retention and growth. The proposal will allow the Partnership to provide the City of West Linn with a reliable source of emergency water for fire suppression, public health and sanitation, and continued economic activity even after a natural disaster. The Applicant has provided an inventory of all businesses along Highway 43 that will be impacted by the proposed construction schedule. See Section 12. The Construction Management Plan (Section 10) and Traffic Management Plan were designed to ensure that access to local businesses along Highway 43 will be provided during all daytime hours. In addition, the plans demonstrate how access will be provided into these business locations during nighttime construction hours. Therefore, the proposal is consistent with Goal 9, Economic Development.

GOAL 11: PUBLIC FACILITIES AND SERVICES

Goal: Require that essential public facilities and services (transportation, storm drainage, sewer, and water service) be in place before new development occurs and encourage the provision of other public facilities and services.

Policies

1. *Establish as the City's first priority, the maintenance of existing services and infrastructure in all areas within the existing City limits.*
5. *Where appropriate, monitor, coordinate with, and regulate the activities of the following as they affect existing and future residents and businesses:*
 - *Water supply*
 - *Fire and rescue protection*
6. *Encourage cooperation and coordination between all public service agencies to maximize the orderly and efficient development and provision of all services.*
9. *Allow the extension of water and sewer services outside the UGB only where a demonstrated health hazard exists, or for public facilities that serve West Linn.*
11. *Assure that costs for new infrastructure and the maintenance of existing infrastructure are borne by the respective users except when it is determined that improvements are of benefit to the whole community, or that a different financing mechanism is more appropriate.*
12. *Whenever feasible, utilize environmentally sensitive materials and construction techniques in public facilities and improvements.*

Applicant Response:

The proposal is an upgrade of the Lake Oswego water transmission system. A critical and resultant benefit of the construction of the proposed RWP is that it will provide a hardened, underground crossing of the Willamette River that can serve as a redundant supply line to West Linn's existing seismically vulnerable transmission main. With the new RWP and FWP in place, West Linn has a significantly improved and reliable source of water for emergencies, thereby avoiding an estimated **\$12.2 million to \$18.7 million** for projects identified by West Linn's WSMP required to address emergency supply capacity and reliability.

In addition, a redundant and reliable backup source of water enhances TVF&R's ability to provide emergency water pressure and supply within West Linn. The FWP intertie is an important element in the WSMP, and the Regional Water Providers Consortium Board supports the opportunities the RWP/FWP will create for connecting the major regional supply sources, consistent with their emergency response policy objectives and goals.

The FWP will supply the Lake Oswego and Tigard Urban Growth Boundaries (UGBs). Lake Oswego Comprehensive Plan policies prevent supply of Lake Oswego water to areas outside the UGB.

The cost of the Partnership projects will be borne by the residents of Lake Oswego and Tigard, not West Linn residents.

The projects are designed to avoid disturbances to Mary S. Young Park and to the WRA. Impacts within the HCA are limited in area. No heritage trees will be removed or damaged during the project. Impacts to WRAs along Mapleton Drive and Highway 43 will be avoided because all construction activity will occur within the paved rights-of-way. Consequently, the proposal is consistent with Goal 11, Policies 1-12.

Sewer System

Policies

1. *Coordinate sanitary sewer service to existing and future residents to allow for the most efficient provision of service within the City and subsequent expansion of the service area.*

Applicant Response:

The project route is designed to avoid impacts to the existing West Linn sewer collection system.

Water System

Goal: Provide municipal potable water service for public, commercial, and domestic uses within the city limits of West Linn.

Policies

2. *Coordinate water service to future users to allow for the most efficient provision of service within the City and projected subsequent expansion of the City limits within the Urban Growth Boundary as it existed in October 2002, calculated to serve a build out population not to exceed 31,000.*
3. *Require funding for the installation of new water storage and distribution facilities to be the responsibility of the property owners/developers or those receiving direct benefit from those facilities. Where appropriate, the City may participate in the development of those facilities to the extent that they benefit residents or businesses in addition to those directly involved, or if they improve the overall efficiency of the system.*

Applicant Response:

The proposal will allow the Partnership to provide a reliable source of emergency water to the City of West Linn today and into the future at great savings to West Linn relative to high priority projects identified in the WSMP. The specifics of this commitment will be detailed in an updated IGA between West Linn, Lake Oswego, Tigard, and South Fork Water Board, expected to be adopted by all parties in summer 2012. As a benefit to West Linn and the Robinwood Neighborhood, the Partnership will participate in the design and construction of a new 8-inch water line in Mapleton Drive to replace an undersized asbestos cement water line at the end of its useful life. Consequently, the proposal is consistent with Goal 11, Water System, Polices 2 and 3.

Recommended Action Measures

1. *...collaborate in future efforts to provide an adequate water supply and efficient and cost effective delivery system to the City's residents.*

Applicant Response:

The proposal will allow the Partnership and the City of West Linn to collaborate on the provision of an efficient, cost-effective, and reliable emergency water supply system capable of meeting West Linn's long-term average day demand. The West Linn water storage and supply system has numerous deficiencies and is vulnerable to failure as detailed in the WSMP. A recent example of the importance of emergency supply occurred in late December 2011. The South Fork Water Board's intake was damaged and West Linn residents and businesses relied on the Lake Oswego intertie for several weeks with no interruption or impact to potable water service. In addition, the Lake Oswego intertie backed up TVF&R's ability to maintain fire flow throughout the West Linn system. Without the Lake Oswego intertie, West Linn would have had to get by for several weeks with very little water.

The proposed RWP/FWP will enhance the capacity and reliability of the intertie by providing a fully redundant pipeline designed to a very high seismic standard, will meet a vital community-wide need for emergency supply, and will save West Linn residents an estimated **\$12.2 million to \$18.7 million** compared to WSMP projects related to emergency supply and storage.

Storm Drainage

Policies

2. *Require adequate maintenance of culverts and drainageways in coordination with property owners to ensure that the natural drainage system operates at maximum efficiency.*
3. *Protect downstream areas from increased storm water runoff by managing runoff from upstream development and impacts on adjacent natural drainageways and their associated vegetation.*
4. *Require that construction practices for all land development projects, private and public, be conducted in such a way as to avoid exposing cuts, grading areas, and trenches to stormwater so that soil erosion is minimized, and soil will not be washed into natural drainage areas.*
7. *Require that riparian vegetation along the streams and drainageways be maintained and preserved or re-established where necessary. In order to maintain or operate public facilities, selective cutting, trimming, and thinning will be allowed along waterways.*

Applicant Response:

This project is a water line that does not directly increase nonpoint source pollution after construction. The Applicant will adhere to adopted West Linn erosion prevention and sediment control best practices. The completed project will not increase impervious area. The trench excavated for pipe installation will be resurfaced to match existing surface conditions and grades. As such, there is no permanent change to existing grades/contours proposed with this project. Mapleton Drive and the HDD entry site on OPRD property will be restored to their original condition. No culverts or drainageways will be impacted during or after construction. Consequently, the proposal is consistent with Goal 11, Public Facilities and Services, Storm Drainage policies.

Recommended Action Measures

4. *Monitor all new developments and significant redevelopment activities to require that best management practices be employed and enforced to reduce discharges of storm water pollutants consistent with Section 303 of the Clean Water Act.*

Applicant Response:

The contractor shall employ best management practices during construction to reduce discharges of stormwater pollutants in West Linn waterways. The City of West Linn and the contractor shall monitor construction activity to ensure that best management practices are carried out.

Private Utilities and Telecommunications

Goals

1. *Coordinate land use planning for the City with private utility companies to assure the availability of services when needed.*
2. *Coordinate construction and maintenance of private utilities and public infrastructure to minimize disruption and improve efficiency and cost-effectiveness.*
3. *Ensure that utility companies:*
 - *Provide services as needed to all classes of customers*
 - *Provide preventative maintenance practices*
 - *Compensate the City for use of the public right-of-way*

Applicant Response:

The design team has identified all public and private utility and telecommunication facilities within the public rights-of-way and OPRD project area. See Section 19, Figures 15-32. The contractor shall be responsible for minimizing potential disruption of public and private utility services. The intertie will provide a reliable and vital supply of emergency potable water to West Linn. The Partnership will assist West Linn in the design and construction of a new 8-inch waterline to replace an aging asbestos cement water line in Mapleton Drive. Consequently, the proposal is consistent with Goal 11, Private Utilities and Telecommunications.

Policies

1. *Work closely with the appropriate utility and telecommunications companies to keep them informed of new developments and redevelopment. The City will likewise expect the private utility companies to report any changes in their plans or policies that could have an impact on the City or its Comprehensive Plan.*
3. *Encourage undergrounding of existing facilities.*
4. *Require utilities to remove abandoned facilities.*
6. *As part of franchise agreements, the City shall seek full and free access to the services being offered in the community.*

Applicant Response:

The RWP and FWP projects will be underground. The Applicant is working closely with the West Linn Public Works Department and private service providers, such as PGE, and will minimize impacts to existing public and private utility service. Consequently, the proposal is consistent with Goal 11, Private Utilities and Telecommunications, Policies 1, 3, 4, and 6.

GOAL 12: TRANSPORTATION

General Policies

1. *Protect the entire rights-of-way of existing City streets for present and future public use*
 - *Evaluate land development projects to determine possible adverse traffic impacts and to ensure that all new development contributes a fair share toward on-site and off-site transportation system improvement remedies.*
 - *Require infrastructure improvements to mitigate traffic impacts of the proposed development.*
2. *Design and construct transportation facilities to meet the requirements of the Americans with Disabilities Act.*

Applicant Response:

After construction of the underground pipelines is complete, Mapleton Drive and Highway 43 will be fully restored to public use. The Applicant has provided a Construction Management Plan (Section 10) and Traffic Control Plan (Section 12) to manage private site access, construction haul routes, traffic control, and 24-hour emergency access. The project will not result in the design and construction of a new transportation facility; however, the Applicant shall restore Mapleton Drive as directed by West Linn Public Works and Highway 43, consistent with ODOT design standards. Consequently, the proposal is consistent with Goal 12, Transportation, General Policies.

Streets

Policies

4. *Ensure that adequate access for emergency services vehicles is provided throughout the City.*
8. *Ensure that development brings adjacent road frontages to illumination levels that are identified with the CDC and City Engineering standards and specifications for street lighting.*

Action measures

Coordinate with the Oregon Department of Transportation in implementing the Oregon Highway 43 Conceptual Design Plan.

Applicant Response:

The Applicant conducted two meetings with representatives of TVF&R to review their proposed traffic management and emergency access plans. TVF&R has reviewed the Construction Management Plan and Traffic Management Plan and has expressed confidence in its ability to provide round-the-clock emergency access throughout West Linn and its service boundary. The TVF&R has offered the use of its Bolton Fire Station for meetings with the neighborhood and contractors that would provide TVF&R staff with ready access to the project contractors. In addition, the contractor will provide TVF&R stations with daily e-mail updates on construction activity so that TVF&R staff may respond quickly and reliably to emergency events throughout the neighborhood and its service district. TVF&R will also be invited to attend weekly construction coordination meetings with the contractor and construction management team. See Section 18, TVF&R Coordination.

The Applicant also met with ODOT representatives. ODOT has requested that all work on Highway 43 be conducted during the nighttime hours of 8 p.m. to 5 a.m. See Section 18, ODOT coordination. The Contractor shall restore Highway 43 to adopted ODOT standards.

No additional lighting is proposed along Mapleton Drive, consistent with the direction provided by West Linn staff. ODOT does not require any additional lighting along Highway 43.

Consequently, the proposal is consistent with Goal 12, Transportation, Streets.

Bicycles

Policies

- 3. Provide striped and signed bicycle lanes on all arterial and collector roadways consistent with the policies of the Transportation System Plan.*
- 5. Design new streets and retrofit older streets to enhance safety for bicyclists using the roadways.*

Action Measures

- 4. Coordinate with Clackamas County, ODOT, TriMet, metro and other jurisdictions and agencies to ensure that appropriate local and regional bikeway connections, for both on and off-road bikeways, are planned, constructed and maintained.*

Applicant Response:

The contractor shall provide bicycle access around the construction work area along Mapleton Drive and Highway 43 throughout the construction period. West Linn does not require the addition of bicycle lanes along Mapleton Drive. The contractor shall restore Highway 43 to ODOT specifications and will provide bicycle access, as required. Consequently, the proposal is consistent with Goal 12, Transportation, Bicycles.

Pedestrians

Policies

1. *Promote a comprehensive cohesive network of pedestrian paths, lanes and routes that accomplish the following objectives:*
 - *Connects the four commercial centers in Willamette, Bolton, Robinwood and Tanner Basin.*
 - *Provides connections to schools, recreation facilities, community centers, and transit facilities.*
 - *Use off-street pedestrian short-cut pathways to provide routes where physical constraints or existing development preclude the construction of streets with sidewalks.*
 - *Provide safe, secure and desirable walkway routes, with a preferred spacing of no more than 330 feet, between elements of the pedestrian network.*
 - *Eliminate gaps in the existing walkways network and provide pedestrian linkages between neighborhoods.*
2. *Employ a variety of methods to promote safe and convenient pedestrian access in addition to, or instead of, sidewalks in older developed areas of West Linn without sidewalks.*
3. *Pursue all available funding sources for pedestrian projects. Coordinate with Clackamas County, ODOT, the School District, Metro and other agencies to obtain funding to complete walkway network improvements.*
7. *The City will enforce regulations requiring developers to include pedestrian facilities and walkway connections within proposed developments and to adjacent land uses and rights-of-way in accordance with adopted policies and standards. Developer agreements for the provision of walkways will be implemented and enforced as needed.*

Applicant Response:

The project will install a pipeline within existing public rights-of-way. Currently, there are no sidewalks, pathways, or bicycle lanes along Mapleton Drive. During construction, the contractor shall ensure continuous pedestrian and bicycle access around the work zone along both Mapleton Drive and Highway 43 consistent with the Construction Management Plan and the Traffic Management Plan. The proposed plans will provide safe access around construction zones for both residential and commercial users. The Partnership will work continuously to facilitate safe access to schools throughout construction. Consequently, the proposal is consistent with Goal 12, Transportation, Pedestrians.

Freight and Goods Movement

Policies

2. *Discourage non-local freight trips on Highway 43 through West Linn; encourage local freight trips to be made during non-peak hours.*

Applicant Response:

The proposal is to construct an underground pipeline through a portion of Highway 43. After construction, the Highway will be returned to normal operations. The buried pipeline will have no effect upon local and nonlocal freight movement. ODOT has requested that construction activity along Highway 43 occur only between the hours of 8 p.m. and 5 a.m. A travel lane will always remain open. Consequently, the proposed construction activity will have no impact on local or nonlocal freight movement and is consistent with Goal 12, Transportation, Freight and Goods Movement.

GOAL 13: ENERGY CONSERVATION*Goals*

1. *Promote energy efficient provision of public facilities and services.*

Policies

6. *Encourage the use of energy-conscious design and materials in all public facilities.*
7. *Encourage the construction and maintenance of sidewalks and bike paths/ways to promote alternative modes of transportation.*

Applicant Response:

The Applicant will also help defray the cost of the design and construction of a new 8-inch water line in Mapleton Drive. Both actions are an efficient use of public infrastructure and will result in cost and energy savings for West Linn residents. The proposal will restore sidewalk use along Highway 43, as required by ODOT. In order to preserve the character of Mapleton Drive, West Linn prefers that the Applicant not install sidewalks along this residential street. This will result in construction and materials energy savings.

The pipeline alignment is the shortest feasible alignment between the Clackamas River RIPS and the WTP. The alignment avoids going higher in elevation than the WTP elevation. Therefore, the electrical energy required for pumping is minimized compared to other pipeline alignment alternatives. Mobilizing significant portions of the HDD pipe by floating pipe segments upriver reduces the truck trips for equipment mobilization, thereby reducing energy demand. Consequently, the proposal is consistent with Goal 13, Energy Conservation.

GOAL 14: URBANIZATION*Policies*

1. *Promote cooperation between the City, County, and regional agencies to ensure that urban development is coordinated with public facilities and services within the Urban Growth Boundary.*
6. *Oppose the formation of a new service district within the Urban Services Boundary and outside of the Urban Growth Boundary.*
9. *Ensure that new development pays for needed new infrastructure and impacts to existing infrastructure.*

Applicant Response:

The RWP/FWP project is consistent with the adopted West Linn Water System Master Plan. The Regional Water Supply Consortium Board has endorsed the project as being consistent with the regional water supply plan, and the Clackamas River Water Providers has endorsed the project as being in the best interests of interlocal cooperation among water suppliers using the Clackamas River and for watershed protection. The proposal will not result in the creation of a new service district outside of the UGB. The Partnership will bear the cost of the RWP/FWP project, not the City of West Linn. The Partnership will also help underwrite the design and construction of a new 8-inch water line in Mapleton Drive. Consequently, the proposal is consistent with Goal 14, Urbanization.

Recommended Action Measures

4. *Pursue intergovernmental agreements with adjoining jurisdictions to assure coordination of public facilities, services, and other land use planning issues.*

Applicant Response:

The City of West Linn and the Partnership are preparing an update to the existing IGA regarding the emergency water supply intertie.

GOAL 15: WILLAMETTE RIVER GREENWAY

Goals

1. *Protect and enhance the valuable natural resources provided by the Willamette River, its islands, shores and natural habitat.*
2. *Continue to improve public access and recreation opportunities along the Willamette River Greenway.*
3. *Promote the creation of a Willamette River Greenway trail paralleling the river through West Linn.*

Applicant Response:

CDC 32, Willamette and Tualatin River Protection (WTRP), implements Goal 15, Willamette River Greenway. The application addresses the applicable policies and regulations of CDC 32 below. Mary S. Young Park is within WTRP jurisdiction. In order to fully protect the valuable natural resources provided by the Willamette River, the Applicant proposed the HDD the pipeline route beneath under the Greenway. The result will be no disturbance of the River, its islands, shores and natural habitat. See Section 6, HDD Disturbance Evaluation Memorandum. Because the RWP will be fully underground, the project will not impair public access and recreation along the river. During HDD construction, the contractor will provide safe public access to the existing trails leading from Mapleton Drive to Mary S. Young Park. Consequently, the proposal is consistent with Goal 15, Willamette River Greenway.

Policies

4. *Require a conditional use permit for any intensification of uses, changes in use or developments within the Willamette River Greenway boundary except as otherwise provided by the Willamette River Greenway Zone, subject to the following:*
 - *Where feasible, provide the maximum landscaped area, open space, or vegetation between the activity and the river.*
 - *Where feasible, provide access to and along the river by appropriate legal means.*
6. *Require adequate public access to the river as part of the development of public land.*
7. *Preserve identified scenic qualities and views.*
8. *Protect the natural vegetative fringe along the river.*
10. *Require non-water related or dependent structures to be set back from the river in accordance with an established setback line in order to protect, maintain, and preserve the Willamette River Greenway.*

Applicant Response:

The land use application includes an application for a conditional use permit. Because the RWP will be constructed by HDD well below the surface of Mary S. Young Park, all accessways, open space, views, and vegetation will be fully preserved. The project will have no impact on the river's

vegetative fringe. During and after construction, the public will have full access to the Willamette River via ordinary and customary routes. Consequently, the RWP proposal is consistent with Goal 15, Willamette River Greenway, Policies 4, 6, 7, 8, and 10.

Recommended Action Measures

1. *Undertake efforts to make existing points of public access more accessible and usable through signing and maintenance.*

Applicant Response:

At all times the contractor shall maintain public access around the construction site to the trails leading from the end of Mapleton Drive and Mary S. Young Park.

Robinwood Neighborhood Plan

GOAL 1: WILLAMETTE DRIVE SHALL PROVIDE SUPERIOR TRANSPORTATION FACILITIES FOR ALL MODES OF TRANSPORTATION

Policies

- 1.1. *Provide continuous and wide transportation facilities on both sides of Willamette Drive.*
- 1.3. *Beautify the length of Willamette Drive with a comprehensive and consistent streetscape.*
- 1.4. *Provide a continuous bike lane along Willamette Drive.*

Applicant Response:

The Applicant consulted with representatives from ODOT. After construction, the project will have no impact on the continuity and width of transportation facilities along Willamette River Drive (Highway 43). During construction, consistent with ODOT directives, the contractor shall not work along Willamette Drive during daytime hours. During the required nighttime construction hours of 8 p.m. to 5 a.m., the contractor shall maintain pedestrian and bicycle access along at least one side of Willamette Drive. After construction, the contractor shall restore Willamette Drive consistent with ODOT standards and directives. Consequently, the proposed FWP project addresses the requirements of the Robinwood Neighborhood Plan, Goal 1, Policies 1.1, 1.3, and 1.4.

GOAL 3: PRESERVE THE CHARACTER OF EXISTING SINGLE-FAMILY RESIDENTIAL NEIGHBORHOODS IN ROBINWOOD:

Policies

- 3.3. *Provide appropriate pedestrian facilities along residential streets.*
- 3.4. *Implement green street concepts for residential streets.*
- 3.9. *Ensure that the Lake Oswego Water treatment Facility on Kenthorpe Drive remains compatible with the surrounding residential areas and provides benefits to Robinwood's residents as well as those of Lake Oswego.*

Applicant Response:

The Applicant has prepared a Construction Management Plan and a Traffic Management Plan that provide pedestrian access along Mapleton Drive and Highway 43 during the construction period. After construction, the RWP/FWP project will be fully belowground and will not adversely affect pedestrian facilities along either street. Consistent with the goals of the City and the neighborhood,

the project will not install full sidewalks along Mapleton Drive. The contractor shall repave Mapleton Drive and Highway 43 consistent with the requirements of the local and state regulatory bodies. The Lake Oswego WTP is the subject of a separate land use application.

The final FWP project will help maintain the character of the Robinwood Neighborhood because it will allow the continuation of a reliable source of emergency water that all residents benefit from. The intertie was used for several weeks as recently as late December 2011. In addition, the Partnership will participate in the design and construction of a new 8-inch water line down Mapleton Drive, which will allow West Linn to continue to meet the daily needs of Robinwood residents for many years to come. The Partnership will also update existing fire hydrants and provide additional fire hydrants as needed to meet TVF&R standards to enhance the ability of TVF&R to meet the fire suppression needs along Mapleton Drive. The new pipeline, hydrants, and water service lines and meters to each home will reduce water loss and improve seismic reliability and fire suppression capabilities.

Consequently, after construction, the RWP/FWP project will preserve and enhance the character of the Robinwood Neighborhood.

GOAL 4: PRESERVE AND MAINTAIN NATURAL AREAS WITHIN ROBINWOOD AND ALLOW PUBLIC ACCESS TO THEM WHERE APPROPRIATE.

Policies

- 4.1. Preserve natural riparian corridors through Robinwood and enhance their value as wildlife habitat.*
- 4.3. Properly maintain publicly-owned natural areas.*

Applicant Response:

Goal 5 riparian areas identified within the Robinwood Neighborhood that are also within the project area are T-49, T-50, and E-76. The RWP will be drilled under T-49 and T-50. Goal 5 Resource E-76 is a riparian area immediately north of Mapleton Drive. The Mapleton Drive project area will be fully contained in the paved right-of-way. Consequently, the RWP and FWP projects will not disturb these natural riparian corridors or their associative value as wildlife habitat. Mary S. Young Park and the two OPRD properties are publicly owned. The HDD will not disturb the surface of Mary S. Young Park or the southern OPRD lot. After construction, the contractor shall restore vegetation on the northern OPRD lot consistent with West Linn and OPRD standards. Consequently, the proposal preserves and maintains natural areas and continues to provide public access to those areas, consistent with Goal 4 of the Robinwood Neighborhood Plan.

GOAL 5: USE ROBINWOOD'S PARKS FOR THE BENEFIT AND ENJOYMENT OF THE NEIGHBORHOOD'S RESIDENTS.

Policies

- 5.2. Provide better access from Robinwood to Mary S. Young Park and its amenities.*

Applicant Response:

The contractor shall provide continuous pedestrian access to the trails leading into Mary S. Young Park throughout all phases of construction. Because the RWP will be buried underground, it will not impede public access into Mary S. Young Park.

GOAL 6: ENCOURAGE COOPERATION BETWEEN ROBINWOOD AND OTHER CITY NEIGHBORHOODS, ORGANIZATIONS, PUBLIC AGENCIES, AND COMMERCIAL PROPERTY OWNERS AND BUSINESSES.**Applicant Response:**

The Partnership conducted the required neighborhood coordination meeting in March 2012. The Partnership continues to reach out to Robinwood residents, seeking their suggestions for better project mitigation strategies. The Construction Management Plan provides suggestions for neighborhood coordination, including additional public meetings, direct outreach during construction, and coordination with TVF&R, the school district, TriMet, and ODOT. The Partnership realizes that it will never turn all opponents of the project into supporters; however, the Partnership believes that the coordination efforts it has undertaken to involve the broader community will help minimize construction impacts.

Transportation System Plan*Motor Vehicle Master Plan and Action Plan Projects*

- 24. *Highway 43/Cedar Oak Drive: realign shopping center driveway located to the southeast with intersection*
- 30. *Marylhurst to Hidden Springs: Highway 43 Concept Plan Improvements*
- 29. *North City Limit to Marylhurst: Highway 43 Concept Plan Improvements*
- 23. *Highway 43/Arbor Drive: Add left turn lanes on Highway 43*

Applicant Response:

The FWP proposal will not result in the permanent realignment or closure of any intersection or access drive. The finished FWP project, an underground pipeline, will not create any additional demand on Highway 43 mobility and safety. The Applicant's design team met with ODOT representatives and, as a consequence, will restore the street profile to the configuration that existed prior to construction. DKS, the Applicant's consulting traffic engineer, was the consulting traffic engineer on the Highway 43 consulting team. The proposed restoration will not impact West Linn's ability to implement the improvements envisioned in the Highway 43 Concept Plan.

Pedestrian Plan

- *Sidewalks on both sides of Willamette Drive from Cedar Oak to north City limits*
- *Sidewalks on both sides of Mapleton Drive along the entire length*
- *Proposed crossing with pedestrian refuge at Willamette Drive and Fairview Way*

Applicant Response:

The final project will not add any additional demand for pedestrian trips. During construction the contractor shall maintain pedestrian access along Highway 43 during the day as well as the nighttime work hours. After construction, the contractor shall restore the sidewalk to its present configuration.

Bicycle Plan

24. On-street bike lanes on Willamette Drive

Applicant Response:

The final project will not add any additional demand for bicycle trips. During construction, the contractor shall maintain bicycle access along Highway 43 during the day as well as the nighttime work hours. After construction, the contractor shall restore the street to its present configuration.

Transit Plan

3. Improve pedestrian connections to transit facilities

Applicant Response:

The final project will not add any additional demand for transit trips. During construction the contractor shall maintain access to transit stops, and, if necessary, temporarily relocate them out of the construction zone. After construction, the contractor shall restore access to transit facilities to preconstruction conditions.

Pipeline

West Linn should remain open to increased transmission through pipelines and utility ducts, particularly to carry communication cables needed to meet the increasing demand of technology. Any improvements that can enable residents to work and carry out business from their homes will help alleviate the demand on the city's road system.

Applicant Response:

The proposed RWP/FWP project is a pipeline project that will result in increased transmission of public water.

Water Master Plan

Applicant Response:

The City of West Linn's Water System Master Plan, prepared by Murray, Smith & Associates and adopted by the West Linn City Council in November 2008 (Resolution No. 08-44), identifies numerous existing system deficiencies and future needs as well as the required improvements and budget.

Table 8-6 in the WSMP summarizes more than \$33 million of maintenance and improvement projects and recommends annual funding at \$2.12 million per year for the next 10 years. These costs are in August 2008 dollars, which have increased 11 percent as of June 2012 per the Engineering News Record 20-City Construction Cost Index.

The highest priority capital improvement projects in the WSMP all depend on construction of the Partnership's proposed facilities and are summarized below.

- **Bolton Reservoir Replacement** – Construct a new 4.0 million gallon (MG) tank at a cost of \$8 million to address a “critical need given the age and condition of this facility,” per page 6-8 of the WSMP. The 4.0 MG size is less than half of the 8.4 MG tank, identified as Solution Approach A on page 6-8 of the WSMP, needed to address a system-wide storage deficit. For the

4.0 MG tank to be sufficient, improved capacity and reliability of the Lake Oswego Emergency Supply Connection, termed Solution Approach C, is required, as shown in Figure 6-1 of the WSMP.

- **Emergency Intertie Pump Station Expansion** – Install a third pump at a cost of \$75,000 to provide a firm capacity of 6 million gallons per day (mgd). This firm capacity is nearly 40 percent higher than West Linn’s average day water demand at buildout of 4.3 mgd, per Table 3-5 of the WSMP. The value of this project is contingent on “the City [West Linn] . . . coordinating with the cities of Lake Oswego and Tigard to facilitate development of system interconnections to ensure reliable emergency supplies through the use of broader regional resources,” per page 8-6 of the WSMP.
- **Tigard/Lake Oswego Intertie** – This project, known as Solution Approach C, is the preferred approach to addressing supply system reliability needs, per page ES-11 of the WSMP. It requires “developing a coordinated emergency supply plan that allows the City [West Linn] to fully meet its emergency supply capacity needs through the existing emergency supply connection from the City of Lake Oswego’s water system,” per page 6-9 of the WSMP, at a cost of \$2.2 million.

The WSMP also notes on page 6-9 the current limitations on this connection, stating, “the actual capacity of this connection may approach zero as Lake Oswego’s current maximum water demands are approaching the existing supply system’s capacity.”

The basis of the \$2.2 million cost, per page 6-9 of the WSMP, is a new intertie between Tigard and the City of Portland’s Washington County Supply Line (WCSL) that presumably could offset Tigard’s demand on Partnership capacity making it available to West Linn. The existing limited available capacity in the WCSL, however, renders this intertie option infeasible.

As an alternative to the WCSL intertie, the WSMP further notes on page 5-8 that “should the City [West Linn] be unable to achieve the goal of securing reliable emergency supplies, consideration of a parallel river crossing or other options should be re-evaluated.” The cost of this back-up supply transmission from the South Fork Water Board to West Linn, Solution Approach B, is \$8.0 million, per Figure 6-1 of the WSMP. This relatively low cost implies that the back-up transmission line is only for a new Willamette River crossing rather than for an entire redundant transmission line from the Division Street Pump Station in Oregon City to the Bolton Reservoir in West Linn.

The most significant capital maintenance project in the WSMP is described below.

- **Asbestos Cement Pipe Replacement** – This program requires a \$345,000 annual investment over 20 years to complete replacement of the nearly 64,000 feet of asbestos cement pipe in West Linn’s distribution network. Most of this pipe was installed in the 1950’s and 1960’s, has an estimated 50-year life, and has been failing in West Linn at an increased rate in recent years. See page 4-4 of the WSMP. Over 3,000 feet of asbestos cement pipe is located in Mapleton Drive.

Construction of the proposed new and upsized RWP/FWP, in conjunction with the proposed expansion and modernization of the WTP is consistent with the WSMP and offers between **\$12.2 and \$18.7 million** in savings to West Linn water ratepayers for high priority emergency supply capacity and reliability projects identified in the WSMP. And the RWP/FWP projects will save West Linn an additional **\$0.3 million** in avoided costs for high priority capital maintenance projects in the WSMP. These projects include:

- **Bolton Reservoir downsized** – The smaller 4.0 MG tank proposed in the WSMP, compared to the 8.4 MG tank required without improvements to the Lake Oswego Emergency Supply

Connection, at an assumed cost of \$2 per gallon and escalated by 11 percent to June 2012 dollars, results in **\$9.8 million** in savings to West Linn.

- **Expansion of existing West Linn Emergency Intertie Pump Station delivers benefits of Solution Approach C** – The Partnership’s proposed facilities, constructed to 38 mgd capacity now rather than 32 mgd as initially proposed, deliver the benefits of Solution Approach C by allowing an upgrade in the reliability and capacity of West Linn’s existing intertie pump station without the expense of a new intertie in Tigard or a new pipeline from South Fork. Escalating the WSMP costs for these items by 11 percent to June 2012 dollars results in **\$2.4 million to \$8.9 million** in cost savings to West Linn.

Specifics of the amount of water available to West Linn under various conditions and at various years in the future will be covered in an update to the existing IGA between Lake Oswego, West Linn, and South Fork. The updated IGA is expected to be adopted by all parties in late summer 2012.

- **Asbestos cement water pipe replaced on Mapleton Drive** – Using unit costs from the WSMP, escalating to June 2012 dollars and allowing 10 percent for engineering, pipe replacement to be funded by the Partnership results in **\$314,000** in cost savings to West Linn.

As detailed above, because the highest priority projects in the West Linn WSMP rely on the Partnership for enhanced reliability and capacity of its emergency supply, the proposal is consistent with the WSMP.

- B. *An approved conditional use or enlargement or alteration of an existing conditional use shall be subject to the development review provisions set forth in Chapter 55 CDC.*

Applicant Response:

The Applicant addresses the requirements of CDC 55 later in this section.

- C. *The Planning Commission may impose conditions on its approval of a conditional use which it finds are necessary to assure the use is compatible with other uses in the vicinity. These conditions may include, but are not limited to, the following:*
1. *Limiting the hours, days, place, and manner of operation.*
 2. *Requiring design features which minimize environmental impacts such as noise, vibration, air pollution, glare, odor, and dust.*
 3. *Requiring additional setback areas, lot area, or lot depth, or width.*
 4. *Limiting the building height, size or lot coverage, or location on the site.*
 5. *Designating the size, number, location and design of vehicle access points.*
 6. *Requiring street right-of-way to be dedicated and the street to be improved including all steps necessary to address future street improvements identified in the adopted Transportation System Plan.*
 7. *Requiring participation in making the intersection improvement or improvements identified in the Transportation System Plan when a traffic analysis (compiled as an element of a conditional use application for the property) indicates the application should contribute toward.*
 8. *Requiring landscaping, screening, drainage, and surfacing of parking and loading areas.*
 9. *Limiting the number, size, location, height, and lighting of signs.*
 10. *Limiting or setting standards for the location and intensity of outdoor lighting.*

11. *Requiring berming, screening, or landscaping and the establishment of standards for their installation and maintenance.*
12. *Requiring and designating the size, height, location, and materials for fences.*
13. *Requiring the protection and preservation of existing trees, soils, vegetation, watercourses, habitat areas, and drainage areas.*

Applicant Response:

The proposed use is an underground water transmission line that will be constructed within existing rights-of-way, two R-10 lots owned by the OPRD, and under Mary S. Young Park. No additional setbacks within the rights-of-way or Mary S. Young Park are necessary. The HDD work area on the northern OPRD lot is a temporary construction pit and staging area. There will be no aboveground features on this lot after construction. No new permanent roads, driveways, signs, fences, berms, lighting or other aboveground appurtenances are proposed. The Applicant shall preserve and protect existing trees, soils, vegetation, watercourses, habitat areas, and drainage areas by complying with the applicable requirements of CDC 27 (Flood Management), CDC 28 (WTRP), CDC 32 (Water Resource Area Protection) and CDC 56 (Parks Design). Consequently, the Applicant has concentrated on the areas of concern wherein conditions of approval may serve the community needs (i.e., on construction management and risk management).

D. Aggregate extraction uses shall also be subject to the provisions of ORS 541.605.

Applicant Response:

The proposal does not involve aggregate extraction subject to ORS 541; therefore, CDC 60.070.D is not applicable to this proposal.

SITE PLAN AND MAP (60.080)

- A. All site plans and maps shall include the name, address, and telephone number of the applicant, the scale of the site plan, north arrow, and a vicinity map.*
- B. The applicant shall submit a site plan drawn to an appropriate scale (in order of preference, one inch equals 10 feet to one inch equals 30 feet) which contains the following information...*
- C. The applicant shall submit the site plan on a map showing two-foot contours up to 20 percent grade and 10-foot contours on grades above 20 percent.*

Applicant Response:

Section 22 includes an application submittal requirements locator, which identifies the location within this application package of all required site plan information. The figure demonstrates that the proposed site plan is consistent with CDC 60.080, Site Plan and Map. See Section 19, Figures 15-32.

ADDITIONAL CRITERIA FOR TRANSPORTATION FACILITIES (TYPE II) (60.090)

- A. Construction, reconstruction, or widening of highways, roads, bridges or other transportation facilities that are (1) not designated in the adopted West Linn Transportation System Plan ("TSP") or (2) not designed and constructed as part of an approved, active, development order are allowed in all zoning districts subject to the conditional use and all other applicable provisions of the CDC and satisfaction of all of the following criteria:*

Applicant Response:

The proposed RWP/FWP project is a water transmission line, primarily drilled through or buried under public rights-of-way or public land. The project will not create any additional demand on the West Linn transportation system. The contractor shall restore Mapleton Drive and Highway 43 to local and state standards after construction. Therefore, consistent with direction from West Linn staff, CDC 60.090 does not apply to this application.

ADDITIONAL CRITERIA FOR SCHOOLS AND OTHER GOVERNMENT FACILITIES (60.100)

Schools and other government facilities that attract a regular and significant volume of users shall, to the greatest extent possible, be centrally located relative to the majority of the population that they will serve and be serviceable by sidewalks and bike routes/lanes. Police and fire stations shall meet these standards to the greatest extent possible but it is acknowledged that access to arterials remains a key locational determinant for those uses.

Applicant Response:

The RWP/FWP will be owned and operated by the Partnership. A publicly owned underground pipeline will not attract a regular and significant volume of users. Consequently, CDC 60.100 is not applicable to this low-volume trip generator.

Conditional Use Conclusion

The proposed RWP/FWP fulfills an essential community need. The proposed improvements to the RWP/FWP will enhance the Partnership's ability to provide safe drinking water from a reliable source. The project will replace a 45-year old supply system with a new system that meets and exceeds all applicable industry and life safety standards. The project is a critical lifeline to ensure the continued functionality and enhanced reliability of the existing emergency intertie pump station to provide West Linn water users with a safe and reliable source of emergency water service. The proposal is consistent with the West Linn Water System Master Plan and is supported by the Regional Water Providers Consortium Board and the Clackamas River Water Providers. West Linn and Oregon City are members of both of these water stewardship organizations.

- **Essential community need met at low cost to West Linn ratepayers.** The RWP and FWP are part of a system of water facilities that fulfill an essential community need for Lake Oswego, Tigard, and West Linn. Specifically, construction of the proposed new and upsized RWP/FWP, in conjunction with an expansion and modernization of the WTP would save West Linn ratepayers between **\$12.2 million and \$18.7 million** of avoided costs for backup supply of emergency water.
- **New pipeline addresses safety concerns.** The new RWP/FWP will provide significantly greater reliability, including resilience in an extraordinary earthquake, compared to the existing RWP/FWP.
- **Local water system and fire suppression improvements.** The Partnership will participate in the design, financing, and construction of a new West Linn 8-inch ductile iron water line in Mapleton Drive, replacing the old 6-inch asbestos cement water line, saving the City of West \$314,000 for work identified in West Linn's Transportation Master Plan.

- **Mary S. Young Park improvements.** The Partnership will fund **\$90,000** worth of much needed enhancements to Mary S. Young Park. The enhancement projects were identified and approved by the West Linn Parks Advisory Board and include invasive removal over 10 acres of parkland, trail improvements, access improvements to Cedar Island and on-going support for volunteer restoration efforts.
- **Mapleton Drive pavement renewal.** The contractors will restore Mapleton Drive pavement consistent with City of West Linn Public Works Standards. The contractors will resurface Mapleton Drive consistent with West Linn Public Works Standards; the Partnership will invest approximately **\$125,000** in this effort.
- **Environmental impacts avoided.** Because the HDD method does not disturb the surface of the park or the water resource and habitat values below-ground, HDD completely avoids significant adverse environmental, physical, and social impacts to Mary S. Young Park.
- **RWP/FWP is supported by West Linn's adopted plans and regional plans.** The West Linn Comprehensive Plan and West Linn Water System Master Plan recognize the intrinsic benefits of maintaining and enhancing the emergency intertie between the WTP and the West Linn water system. The ability of Lake Oswego to provide West Linn citizens with an emergency source of finished water as recently as December 2011-January 2012, when the South Fork Water Board intake structure was damaged, underscores the importance of upgrading the RWP and FWP.

Consequently, the proposed RWP/FWP use is consistent with both the intent and requirements of CDC 60, Conditional Use.

As detailed in this report and attachments, the Partnership recognizes that construction activities associated with the RWP/FWP project will temporarily disrupt the quiet quality of life enjoyed by residents of Mapleton Drive and will disrupt nighttime travel and access to some businesses along Highway 43. Consequently, this application provides several plans and reports detailing how the Partnership will minimize impacts on the community and the Robinwood Neighborhood. They include:

- seismic and geologic hazards reports
- a construction management plan
- a construction noise analysis
- a traffic management and pedestrian circulation access plan
- a safe operations plan

It is from these discussions that the Planning Commission may wish to formulate conditions of approval.

DESIGN REVIEW (CDC 55)

Applicant Response:

The City of West Linn classifies the RWP/FWP as a major utility subject to a conditional use permit. West Linn requires conditional uses, including major underground utilities, to address CDC 55, Design Review.

The proposed RWP/FWP project is a municipal water line that, when operational, will be fully underground at depths ranging from 65 feet to approximately 5 feet below grade. Other than manhole vaults and covers, none of the structure will be visible aboveground. The project will be constructed via an open cut trench in the paved portions of the Mapleton Drive and Highway 43 public rights-of-way or the northern OPRD lot, or it will be installed using trenchless HDD methods below grade.

Applying the facts of the RWP/FWP design to the requirements of CDC 55 is not a perfect exercise because there are no aboveground visual impacts associated with the permanent use.

PURPOSE AND INTENT – GENERAL (55.010)

The purpose of the design review provisions is to establish a process and standards for the review of development proposals in order to conserve and enhance the appearance of the City and to promote functional, safe, and innovative site development. Attention will be paid to the proposal's scale, layout and design, its compatibility with the surrounding natural environment, and the character of the surrounding neighborhood or area. The intent is to ensure that there is general compatibility between adjoining uses, that private and common outdoor space is provided, that vehicular access and circulation are safe, and that areas of public use are made aesthetically attractive and safe. Also of concern are the needs of persons with disabilities.

Multi-family, industrial, commercial, office, and public projects will comply with the Transportation Planning Rule (TPR). The TPR is a State requirement that jurisdictions must reduce reliance on the automobile by, in part, encouraging other modes of transportation such as transit, bicycles, and foot traffic, or through building orientation or location.

Applicant Response:

The first paragraph of this section is not an applicable criterion. After construction, the appearance of Mapleton Drive and Highway 43 will receive new overlays but the overall appearance of the streets will be what it is today, an urban street and state highway that offer varying degrees of automobile, bicycle, pedestrian, and Americans with Disabilities Act (ADA) accessibility. The appearance of Mary S. Young Park and the southern OPRD lot will not change because the contractor will construct the RWP underground using trenchless HDD methods. The area of the northern-most OPRD lot closest to Mapleton Drive will be the site of HDD construction staging and drilling operations. No heritage trees, significant trees, or significant tree clusters are located within the construction area. After construction, the Partnership will revegetate the northern OPRD lot area with native vegetation consistent with CDC 28. The project is not subject to the TPR. Consequently, the proposed underground RWP/FWP is not inconsistent with the purpose of CDC 55 and is not incompatible with other uses along the project area.

APPLICABILITY (55.020)

This chapter provides two levels of design review: Class I and Class II. Class I design review applies to land uses and activities that require only a minimal amount of review. Class II design review is reserved for land use and activities that require comprehensive review. Class I design review applies to the following land uses and activities...

Class II design review applies to all uses/activities except those uses/activities listed under Class I design review, and the exceptions of CDC 55.025...

Applicant Response:

The proposal does not fit within the uses/activities listed under Class I design review and thus is subject to Class II Design Review.

EXEMPTIONS (55.025)

The following activities are exempt from the provisions of this chapter:

Applicant Response:

The proposal is not exempt from Class II Design Review.

ADMINISTRATION AND APPROVAL PROCESS (55.030)

- A. A pre-application conference is required before submitting a development plan application for design review as provided by CDC 99.030(B).*
- B. The application shall be submitted by the record owner(s) of the property, authorized agent, or condemnor.*
- C. Action on the development plan application shall be as provided by Chapter 99CDC, Procedures for Decision-Making: Quasi-Judicial, and the following:

 - 1. The Planning Director for Class I design review applications, or Planning Commission for Class II design review applications, shall approve, approve with conditions, or deny the application based on findings related to the applicable criteria set forth in CDC 99.110 and this chapter.*
 - 2. A decision by the Planning Director may be reviewed by the City Council.**
- D. Substantial modifications made to the approved development plan will require reapplication (e.g., more or fewer lots, different architectural design, etc.)*

Applicant Response:

The Applicant and West Linn representatives participated in a pre-application conference on January 4, 2012, in compliance with CDC 55.030(A). OPRD owns Mary S. Young Park and the two lots immediately north of the park. The application package contains a written authorization from OPRD allowing the Partnership to file this land use application affecting OPRD-owned land. See Section 1. The City of West Linn controls the Mapleton Drive right-of-way and consented to the filing of the application during the pre-application conference review. The Applicant has communicated with ODOT which has responded with a requirement for nighttime construction on Highway 43, among other requests. See Section 18, ODOT Coordination.

This is a consolidated application for conditional use and Class II Design Review that is subject to review by the West Linn Planning Commission in a public hearing in compliance with CDC 55.030(C).

EXPIRATION OR EXTENSION OF APPROVAL (55.040)

If substantial construction has not occurred within three years from the date of approval of the development plan, the approved proposal will be void, unless an extension is granted under CDC 99.325.

Applicant Response:

The Applicant will undertake substantial construction within 3 years of final land use approval, or apply for an extension consistent with CDC 55.040. (Substantial construction, by CDC definition, occurs when utilities have been installed to serve the project; approved grading has been undertaken representing at least 25 percent of all the required preliminary grading; foundation excavation has occurred; foundation or building construction has occurred; street improvements are being installed; or a major physical improvement, required as part of the approved permit, has clearly begun.)

DESIGN REVIEW AMENDMENT TRIGGER (55.050)

Amendments to design review shall be required when 10 percent or more of the housing type changes (e.g., from single-family units to multi-family units) from the tentatively approved design review plan, or when there is more than a 10 percent change in the number of units, or when the layout of streets and lots significantly changes, or adjusting more than 20 percent of the building footprint or site plan, or significant changes to the architecture that modify the style, mass, or result in elimination of significant design features. Changes in color or materials would not require an amendment unless the colors were non-earth tones and the materials were of poorer quality (for example, going from tile roof to composition roofing) than originally approved. Changes to the project/site plan to meet conditions of approval or legislative changes shall not trigger an amendment.

Applicant Response:

CDC 55.050 applies to changes made to the proposal after the City approves the Class II design review proposal. Therefore, CDC 55.050 does not apply to the proposal, at this time.

STAGED OR PHASED DEVELOPMENT (55.060)

The applicant may elect to develop the site in stages. Staged development shall be subject to the provisions of CDC 99.125.

Applicant Response:

All proposed construction will occur between 2013 through 2015.

SUBMITTAL REQUIREMENTS (55.070)

A. The design review application shall be initiated by the property owner or the owner's agent, or condemnor.

Applicant Response:

OPRD owns Mary S. Young Park and the two lots immediately north of the park. The application package contains a written authorization from OPRD allowing the Partnership to file this land use application affecting OPRD-owned land. See Section 1. The City of West Linn owns the Mapleton Drive right-of-way and consented to the filing of the application during the pre-application conference review. The Applicant has communicated with ODOT which has responded with a requirement for nighttime construction on Highway 43, among other requests. See Section 18, ODOT Coordination.

B. A pre-application conference shall be a prerequisite to the filing of an application....

Applicant Response:

West Linn conducted a pre-application conference on January 5, 2012. The West Linn staff report for the pre-application conference is located in Section 3.

C. A prerequisite to the filing of an application for development proposals that include greater than 10 multi-family units or commercial/industrial buildings greater than 1,500 square feet in size, a four-lot or more planned unit development, a 10-lot or greater subdivision, or a zone change that requires a Comprehensive Plan amendment is a meeting with the respective City-recognized neighborhood association, per CDC 99.038, at which time the applicant will present their proposal and receive comments. Wireless communication facilities (WCF) shall also fulfill co-location protocol of CDC 57.090.

Applicant Response:

In addition to multiple meetings the Applicant conducted with the neighborhood over the past year, Lake Oswego conducted the required neighborhood coordination meeting with the Robinwood Neighborhood Association on March 15, 2012, in satisfaction of CDC 99.038. Section 14 includes a synopsis of the issues discussed during the required meeting. A recording of the meeting is included.

D. The applicant shall submit a completed application form and...

Applicant Response:

The application includes application forms, Section 1, and a matrix, Section 22, which identifies all submittal requirements and the location of the required materials in this application.

E. The applicant shall submit samples of all exterior building materials and colors in the case of new buildings or building remodeling.

Applicant Response:

The RWP and FWP are steel pipes. They will be completely underground and not visible to the public. Therefore, CDC 55.070.D does not apply.

F. The applicant shall pay the required fee.

Applicant Response:

The West Linn pre-application conference notes provided a fee estimate which the Partnership paid. See Section 2.

ADDITIONAL INFORMATION REQUIRED AND WAIVER OF REQUIREMENTS (55.085)

A. The Planning Director may require additional information as part of the application subject to the provisions of CDC 99.035(A).

Applicant Response:

The Planning Director requested a Construction Management Plan and a Traffic Management Plan which are provided in Sections 10 and 12, respectively.

- B. *The Planning Director may waive any requirements for the application subject to the provisions of CDC 99.035(B) and (C).*

Applicant Response:

The Applicant has requested waivers relating to site plan information. See Central Issues above.

APPROVAL STANDARDS – CLASS I DESIGN REVIEW (55.090)

The Planning Director shall make a finding with respect to the following criteria when approving, approving with conditions, or denying a Class I design review application:

Applicant Response:

The proposal is subject to Class II design standards.

APPROVAL STANDARDS – CLASS II DESIGN REVIEW (55.100)

The approval authority shall make findings with respect to the following criteria when approving, approving with conditions, or denying a Class II design review application.

A. *The provisions of the following chapters shall be met:*

1. *Chapter 33 CDC, Stormwater Quality and Detention.*
2. *Chapter 34 CDC, Accessory Structures, Accessory Dwelling Units, and Accessory Uses.*
3. *Chapter 38 CDC, Additional Yard Area Required; Exceptions to Yard Requirements; Storage in Yards; Projections into Yards.*
4. *Chapter 40 CDC, Building Height Limitations, Exceptions.*
5. *Chapter 42 CDC, Clear Vision Areas.*
6. *Chapter 44 CDC, Fences.*
7. *Chapter 46 CDC, Off-Street Parking, Loading and Reservoir Areas.*
8. *Chapter 48 CDC, Access, Egress and Circulation.*
9. *Chapter 52 CDC, Signs.*
10. *Chapter 54 CDC, Landscaping.*

Applicant Response:

The application addresses the applicable supplemental approval criteria.

B. *Relationship to the natural and physical environment.*

1. *The buildings and other site elements shall be designed and located so that all heritage trees, as defined in the municipal code, shall be saved. Diseased heritage trees, as determined by the City Arborist, may be removed at his/ her direction.*

Applicant Response:

The Applicant commissioned a tree assessment and protection plan, prepared by a certified arborist, Tree Care and Landscapes Unlimited. See Section 7. The project arborist and the West Linn arborist conducted a joint site visit. The project arborist identified 151 trees greater than 5 inches DBH

adjacent to the project alignment. There are no heritage trees within the project alignment. Therefore, the proposal is consistent with CDC 55.100B.1.

The arborist concluded that 112 of the identified trees are regulated by West Linn Ordinance 1542 and CDC 55. Nineteen of the regulated trees are proposed for removal. Thirty-one (20.5 percent) of the regulated trees meet the West Linn definition of a significant tree. The RWP/FWP project will not remove any significant trees. All trees impacted by the pipeline installation will be protected as if they are significant trees.

2. *All heritage trees, as defined in the municipal code, all trees and clusters of trees (“cluster” is defined as three or more trees with overlapping driplines; however, native oaks need not have an overlapping dripline) that are considered significant by the City Arborist, either individually or in consultation with certified arborists or similarly qualified professionals, based on accepted arboricultural standards including consideration of their size, type, location, health, long term survivability, and/or numbers, shall be protected pursuant to the criteria of subsections (B)(2)(a) through (f) of this section. In cases where there is a difference of opinion on the significance of a tree or tree cluster, the City Arborist’s findings shall prevail. It is important to acknowledge that all trees are not significant and, further, that this code section will not necessarily protect all trees deemed significant.*

Applicant Response:

The Applicant commissioned an arborist report, prepared by a certified arborist. See Section 7. The arborist concluded that the project will not impact any heritage trees, significant trees, or significant tree clusters.

- a. *Non-residential and residential projects on Type I and II lands shall protect all heritage trees and all significant trees and tree clusters by either the dedication of these areas or establishing tree conservation easements. Development of Type I and II lands shall require the careful layout of streets, driveways, building pads, lots, and utilities to avoid heritage trees and significant trees and tree clusters, and other natural resources pursuant to this code. The method for delineating the protected trees or tree clusters (“dripline + 10 feet”) is explained in subsection (B)(2)(b) of this section. Exemptions of subsections (B)(2)(c), (e), and (f) of this section shall apply.*

Applicant Response:

Type I lands have severe constraints that preclude the use of standard development techniques and technical criteria. Type I lands exist in the following areas:

- Slope: All lands with 35 percent or more slopes.*
- Drainage: All lands within the 100-year floodplain.*
- Geological hazard: All existing or known landslide areas.*

Type II lands have constraints that are sufficient to preclude most standard types of development. Constraints in these areas generally do not constitute a health or safety hazard, but require the use of non-standard technical design criteria. Type II lands exist in the following areas:

- Slope: All lands with slopes between 25 and 35 percent.*
- Drainage: All drainage courses.*
- Geology: All known mineral and aggregate deposits. See CDC 02, Definitions.*

Type I lands along the project alignment include the Willamette River floodplain, from approximately the end of Mapleton Drive eastward. There are no known or existing landslides, as classified by DOGAMI. See West Linn Natural Hazards Plan, Map 16.

Type II lands within the project alignment include the slope abutting the west end of Mapleton Drive, but outside of the project area, (see West Linn Natural Hazards Plan, Map 16) and several Goal 5 riparian areas, based upon drainage courses, along Mapleton Drive and Highway 43 (see West Linn Goal 5, Riparian Resources Map). The project alignment will not intersect any known mineral or aggregate deposits.

The Applicant commissioned an arborist report, prepared by a certified arborist. See Section 7. The arborist concluded that the project will not impact any heritage trees, significant trees, or significant tree clusters, regardless of whether the land is classified as Type I or Type II. Therefore, CDC 55.100.B.2.a does not apply.

- b. Non-residential and residential projects on non-Type I and II lands shall set aside up to 20 percent of the area to protect trees and tree clusters that are determined to be significant, plus any heritage trees. Therefore, in the event that the City Arborist determines that a significant tree cluster exists at a development site, then up to 20 percent of the non-Type I and II lands shall be devoted to the protection of those trees, either by dedication or easement. The exact percentage is determined by establishing the driplines of the trees or tree clusters that are to be protected. In order to protect the roots which typically extend further, an additional 10-foot measurement beyond the dripline shall be added. The square footage of the area inside this “dripline plus 10 feet” measurement shall be the basis for calculating the percentage (see figure below). The City Arborist will identify which tree(s) are to be protected. Development of non-Type I and II lands shall also require the careful layout of streets, driveways, building pads, lots, and utilities to avoid significant trees, tree clusters, heritage trees, and other natural resources pursuant to this code. Exemptions of subsections (B)(2)(c), (e), and (f) of this section shall apply. Please note that in the event that more than 20 percent of the non-Type I and II lands comprise significant trees or tree clusters, the developer shall not be required to save the excess trees, but is encouraged to do so.*

Applicant Response:

The Applicant commissioned an arborist report, prepared by a certified arborist. See Section 7. The arborist concluded that the project will not impact any heritage trees, significant trees, or significant tree clusters, regardless of whether the land is classified as Type I or Type II. Therefore, CDC 55.100.B.2.b does not apply.

- c. Where stubouts of streets occur on abutting properties, and the extension of those streets will mean the loss of significant trees, tree clusters, or heritage trees, it is understood that tree loss may be inevitable. In these cases, the objective shall be to minimize tree loss. These provisions shall also apply in those cases where access, per construction code standards, to a parcel is blocked by a row or screen of significant trees or tree clusters.*

Applicant Response:

The RWP/FWP proposal will not create or impact stubout streets; therefore CDC 55.100.b.2.c does not apply.

- d. For both non-residential and residential development, the layout shall achieve at least 70 percent of maximum density for the developable net area. The developable net area excludes all Type I and II lands and up to 20 percent of the remainder of the site for the purpose of protection of stands or clusters of trees as defined in subsection (B)(2) of this section.*

Applicant Response:

CDC 55.100.b.2.d applies to projects that create density. Density rules generally apply to residential development. The RWP/FWP proposal is for an underground major utility project. Therefore, CDC 55.100.B.2.d does not apply.

- e. For arterial and collector street projects, including Oregon Department of Transportation street improvements, the roads and graded areas shall avoid tree clusters where possible. Significant trees, tree clusters, and heritage tree loss may occur, however, but shall be minimized.*

Applicant Response:

West Linn classifies Mapleton Drive as a collector street. Highway 43 is an arterial. See Section 3, Pre-application notes. The project will be contained within the paved rights-of-way of both roads; therefore, the project will not impact any identified heritage trees, significant trees, or tree clusters.

- f. If the protection of significant tree(s) or tree clusters is to occur in an area of grading that is necessary for the development of street grades, per City construction codes, which will result in an adjustment in the grade of over or under two feet, which will then threaten the health of the tree(s), the applicant will submit evidence to the Planning Director that all reasonable alternative grading plans have been considered and cannot work. The applicant will then submit a mitigation plan to the City Arborist to compensate for the removal of the tree(s) on an "inch by inch" basis (e.g., a 48-inch Douglas fir could be replaced by 12 trees, each four-inch). The mix of tree sizes and types shall be approved by the City Arborist.*

Applicant Response:

The project will not involve any street grading; therefore CDC 55.100.B.2.f does not apply.

- 3. The topography and natural drainage shall be preserved to the greatest degree possible.*

Applicant Response:

The project will drill beneath Mary S. Young Park and the southern OPRD lot; therefore, the topography and drainage of these lands will be fully preserved. The HDD construction staging area and an open-cut trench will be located on the northern OPRD lot near Mapleton Drive. The open trench will be backfilled, and the entire staging area will be restored after construction with no change in site contours. The construction activity within paved rights-of-way will not require any grading, and the alignment will completely avoid impacts to natural drainage areas along Mapleton Drive and Highway 43. Therefore, the project will preserve the topography and natural drainage courses along the alignment to the greatest degree possible.

- 4. The structures shall not be located in areas subject to slumping and sliding. The Comprehensive Plan Background Report's Hazard Map, or updated material as available and as deemed acceptable by the Planning Director, shall be the basis for preliminary determination.*

Applicant Response:

The RWP and FWP are structures. The project alignment is located within either a moderate- or high-risk earthquake hazard area according to the West Linn Natural Hazards Plan. The Applicant commissioned a geotechnical report, which concluded that although the project alignment is within areas of earthquake hazards, so is most of West Linn. See Section 8 and 20.

5. *There shall be adequate distance between on-site buildings and on-site and off-site buildings on adjoining properties to provide for adequate light and air circulation and for fire protection.*

Applicant Response:

There are no buildings associated with this project. All structures will be located underground.

6. *Architecture.*

Applicant Response:

There are no buildings associated with this project. All structures will be located underground. Therefore, CDC 55.100.B.6, Architecture, does not apply.

7. *Transportation Planning Rule (TPR) compliance. The automobile shall be shifted from a dominant role, relative to other modes of transportation, by the following means:*

Applicant Response:

The project will not generate any additional demand on the West Linn transportation system. Therefore, compliance with the TPR is not required. Construction of the RWP/FWP project will have a temporary impact on traffic mobility along Mapleton Drive and Highway 43. For a discussion of how the Partnership and contractor will manage construction-related traffic concerns. See Sections 10 and 12.

- C. *Compatibility between adjoining uses, buffering, and screening.*

Applicant Response:

The entire project will be located belowground. The RWP and FWP structures will not be visible to the public or from adjoining uses. Therefore, the RWP and FWP use is fully buffered and screened from adjoining uses. CDC 55.100.C is satisfied.

- D. *Privacy and noise.*

1. *Structures which include residential dwelling units shall provide private outdoor areas for each ground floor unit which is screened from view from adjoining units.*
2. *Residential dwelling units shall be placed on the site in areas having minimal noise exposure to the extent possible. Natural-appearing sound barriers shall be used to lessen noise impacts where noise levels exceed the noise standards contained in West Linn Municipal Code Section 5.487.*
3. *Structures or on-site activity areas which generate noise, lights, or glare shall be buffered from adjoining residential uses in accordance with the standards in subsection C of this section where applicable.*

4. *Businesses or activities that can reasonably be expected to generate noise in excess of the noise standards contained in West Linn Municipal Code Section 5.487 shall undertake and submit appropriate noise studies and mitigate as necessary to comply with the code. (See CDC 55.110(B)(11) and 55.120(M).)*

If the decision-making authority reasonably believes a proposed use may generate noise exceeding the standards specified in the municipal code, then the authority may require the applicant to supply professional noise studies from time to time during the user's first year of operation to monitor compliance with City standards and permit requirements.

Applicant Response:

The proposed RWP/FWP use does not include a residential component. The underground use and activity will not generate any glare or dust or noise audible to nearby residents. Construction-related noise performed during prescribed days and hours is exempt noise from the noise requirements of West Linn Municipal Code 4.587. However, the Partnership understands and appreciates that construction-related noise is a serious concern and that the Partnership, acting through the contractor, has an obligation, using reasonable and effective means, to minimize construction-related noise.

Section 11 of this application package contains a construction noise analysis prepared by a licensed acoustical engineer, including recommendations. The Applicant will follow these recommendations.

E. *Private outdoor area.*

Applicant Response:

Subsection E applies to multi-family projects and does not apply to the RWP/FWP project.

- F. *Shared outdoor recreation areas. This section only applies to multi-family projects and projects with 10 or more duplexes or single-family attached dwellings on lots under 4,000 square feet. In those cases, shared outdoor recreation areas are calculated on the duplexes or single-family attached dwellings only. It also applies to qualifying PUDs under the provisions of CDC 24.170.*

Applicant Response:

Subsection F applies to multi-family or single-family projects and does not apply to this proposal.

- G. *Demarcation of public, semi-public, and private spaces. The structures and site improvements shall be designed so that public areas such as streets or public gathering places, semi-public areas, and private outdoor areas are clearly defined in order to establish persons having a right to be in the space, to provide for crime prevention, and to establish maintenance responsibility. These areas may be defined by:*

Applicant Response:

The proposal will not generate any aboveground site improvements; therefore Subsection G does not apply.

H. Public transit.

- 1. Provisions for public transit may be required where the site abuts an existing or planned public transit route.*

Applicant Response:

Highway 43 is a public transit route. The contractor shall preserve transit access during construction. However, the proposal does not generate any new demand for public transit; therefore Subsection H does not apply.

- I. Public facilities. An application may only be approved if adequate public facilities will be available to provide service to the property prior to occupancy.*

- 1. Streets. Sufficient right-of-way and slope easement shall be dedicated to accommodate all abutting streets to be improved to the City's Improvement Standards and Specifications. The City Engineer shall determine the appropriate level of street and traffic control improvements to be required, including any off-site street and traffic control improvements, based upon the transportation analysis submitted. The City Engineer's determination of developer obligation, the extent of road improvement and City's share, if any, of improvements and the timing of improvements shall be made based upon the City's systems development charge ordinance and capital improvement program, and the rough proportionality between the impact of the development and the street improvements....*

Applicant Response:

The project will occur within existing public rights-of-way. The project will not create a demand for new streets or access to streets. The contractor shall implement the recommendations of the Traffic Management Plan contained in Section 12. After construction, the contractor shall restore the Mapleton Drive and Highway 43 consistent with West Linn and ODOT standards and requirements.

- 2. Drainage. A registered civil engineer shall prepare a plan and statement which shall be supported by factual data that clearly shows that there will be no adverse impacts from increased intensity of runoff off site or the plan and statement shall identify all off-site impacts and measures to mitigate those impacts. The plan and statement shall, at a minimum, determine off-site impacts from a 25-year storm. The City Engineer shall adjust storm drainage facilities for applications which contain permeable parking surfaces based upon a quantitative analysis of the increased water retention and water quality characteristics of the permeable parking surface.*

Catch basins shall be installed and connected to pipelines leading to storm sewers or drainageways.

All plans will then be reviewed by the City Engineer.

Applicant Response:

Section 2.0041.B, Public Works Standards, Storm Water Detention, and Treatment provides an exemption from treatment if the new development creates less than 500 square feet of new impervious surface and exemption from detention if the development creates less than 5,000 square feet of new impervious surface. The proposed project activities will not create any new impervious surface area; therefore, the proposal is exempt from CDC 55.100.I.2.

3. *Municipal water. A registered civil engineer shall prepare a plan for the provision of water which demonstrates to the City Engineer's satisfaction the availability of sufficient volume, capacity, and pressure to serve the proposed development's domestic, commercial, and industrial fire flows. All plans will then be reviewed by the City Engineer.*

Applicant Response:

The proposal does not create any demand for West Linn municipal water service; therefore, Subsection 3 does not apply.

4. *Sanitary sewers. A registered civil engineer shall prepare a sewerage collection system plan which demonstrates sufficient on-site capacity to serve the proposed development. The City Engineer shall determine whether the existing City system has sufficient capacity to serve the development.*

Applicant Response:

The proposal does not create any demand for sanitary sewer service; therefore, Subsection 4 does not apply.

5. *Solid waste and recycling storage areas. Appropriately sized and located solid waste and recycling storage areas shall be provided. Metro standards shall be used.*

Applicant Response:

The proposal does not create any solid waste and recycling demand; therefore, Subsection 5 does not apply.

- J. *Crime prevention and safety/ defensible space.*

Applicant Response:

The entire project will be belowground; therefore, the project does not create crime-defensible spaces. Subsection J does not apply.

- K. *Provisions for persons with disabilities.*

1. *The needs of a person with a disability shall be provided for. Accessible routes shall be provided between all buildings and accessible site facilities. The accessible route shall be the most practical direct route between accessible building entries, accessible site facilities, and the accessible entry to the site. An accessible route shall connect to the public right-of-way and to at least one on-site or adjacent transit stop (if the area is served by transit). All facilities shall conform to, or exceed, the Americans with Disabilities Act (ADA) standards, including those included in the Uniform Building Code.*

Applicant Response:

The RWP and FWP will be underground and not accessible to the public. During construction, the contractor shall ensure that pedestrian access around the work zones and access to public transit shall be ADA-accessible.

L. Signs.

Applicant Response:

The RWP and FWP underground structures will not be signed. During construction the contractor shall provide typical direction signage for pedestrians and vehicles to ensure safe passage around and through work areas.

M. Utilities. The developer shall make necessary arrangements with utility companies or other persons or corporations affected for the installation of underground lines and facilities. Electrical lines and other wires, including but not limited to communication, street lighting, and cable television, shall be placed underground, as practical. The design standards of Tables 1 and 2 above, and of subsection 5.487 of the West Linn Municipal Code relative to existing high ambient noise levels shall apply to this section.

Applicant Response:

The RWP and FWP will require utility electrical power for corrosion-protection systems, and all related electrical lines will be placed underground.

N. Wireless communication facilities (WCFs). (This section only applicable to WCFs.)

Applicant Response:

The proposal does not include a WCF; therefore, Subsection N does not apply.

O. Refuse and recycling standards.

Applicant Response:

Operational use of the RWP and FWP will not generate refuse or recycling need; therefore, Subsection O does not apply.

SITE ANALYSIS (55.110)

The site analysis shall include...

Applicant Response:

The application includes an application submittal locator, Section 22, which identifies the location, within this land use application, of all required site analysis information. The figure demonstrates that the proposed site analysis is consistent with CDC 55.110, Site Analysis.

SITE PLAN (55.120)

The site plan shall be at the same scale as the site analysis (CDC 55.110) and shall show...

Applicant Response:

The application includes an application submittal locator, Section 22, which identifies the location, within this land use application, of all required site plan information. The figure demonstrates that the proposed site plans are consistent with CDC 55.110, Site Plan.

TRANSPORTATION ANALYSIS (55.125)

Certain development proposals required that a Traffic Impact Analysis (TIA) be provided which may result in modifications to the site plan or conditions of approval to address or minimize any adverse impacts created by the proposal. The purpose, applicability and standards of this analysis are found in CDC 85.170(B)(2).

Applicant Response:

The proposal does not involve a zone change or a plan amendment nor has ODOT opined that it has operational or safety concerns along a state highway because of this proposal. Therefore, a TIA is not required.

GRADING PLAN (55.130)

The grading and drainage plan shall be at the same scale as the site analysis (CDC55.110) and shall include the following:

- A. The location and extent to which grading will take place indicating general contour lines, slope ratios, slope stabilization proposals, and location and height of retaining walls, if proposed.*
- B. Plans and statements to demonstrate the ability of the project to meet Appendix 33 requirements of the Uniform Building Code.*
- C. A registered civil engineer shall prepare a plan and statement that shall be supported by factual data that clearly shows that there will be no adverse impacts from increased intensity of runoff off site, or the plan and statement shall identify all off-site impacts and measures to mitigate those impacts. The plan and statement shall, at a minimum, determine the off-site impacts from a 10-year storm.*
- D. Storm detention and treatment plans may be required.*
- E. Identification, information, including the name and address of the owner, developer, project designer, and the project engineer.*

Applicant Response:

Section 16 contains a grading technical memorandum that addresses CDC 55.130. The project will not permanently change existing grades/contours or create slope stabilization or retaining walls. Figures 15 through 25, prepared by Aaron Eder, P.E., licensed civil engineer in the State of Oregon, contain a statement ensuring compliance with Appendix 33 of the Uniform Building Code. Mapleton Drive and the HDD entry site on OPRD property will be restored to their original condition. As such, there is no permanent change to existing grades/contours proposed with this project, and there will be no adverse impacts from increased intensity of runoff from the site. The project will create no new impervious surfaces. West Linn Public Works Standard 2.0041 exempts projects that create less than 500 square feet of new impervious surface from West Linn stormwater regulations. Figures 15 through 27 currently have the owner's and engineer's identification information. There is no developer, and the project designer and project engineer are in this case the same. Therefore, the proposal satisfies the requirements of CDC 55.130, Grading Plan.

ARCHITECTURAL DRAWINGS (55.140)

This section does not apply to single-family residential subdivisions or partitions, or up to two duplexes or single-family attached dwellings.

Architectural drawings shall be submitted showing:

- A. Building elevations and sections tied to curb elevation;*
- B. Building materials: color and type;*
- C. The name of the architect or designer.*

Applicant Response:

The project is to construct an underground major utility. It will not create any buildings; therefore, CDC 55.140 does not apply.

LANDSCAPE PLAN (55.150)

This section does not apply to detached single-family residential subdivisions or partitions, or up to two duplexes or single-family attached dwellings.

A. The landscape plan shall be prepared and shall show the following:

- 1. Preliminary underground irrigation system.*
- 2. The location and height of fences and other buffering of screening materials.*
- 3. The location of terraces, decks, patios, shelters, and play areas.*
- 4. The location, size, and species of the existing and proposed plant materials.*
- 5. Building and pavement outlines.*

B. The landscape plan shall be accompanied by:

- 1. The erosion controls that will be used, if necessary.*
- 2. Planting schedule.*
- 3. Supplemental information as required by the Planning Director or City Arborist.*

Applicant Response:

The project will restore street surfaces and impacted rights-of-way. The restoration will include replanting damaged vegetation.

EXCEPTIONS TO UNDERLYING ZONE, YARD, PARKING, SIGN PROVISIONS, AND LANDSCAPING PROVISIONS (55.170)

A. The Planning Director may grant an exception to the dimensional building setback or yard requirements in the applicable zone based on findings that the approval will satisfy the following criteria:

Applicant Response:

The Applicant is not seeking any exemptions to the underlying standards.

MAINTENANCE (55.180)

All on-site improvements shall be the ongoing responsibility of the property owner or occupant.

Applicant Response:

The Partnership shall be responsible for the maintenance of the RWP/FWP structures.

SHARED OPEN SPACE (55.190)

Where the open space is designated on the plan as common open space, the following shall apply:

Applicant Response:

The project will not create any common open space subject to CDC 55.190.

ANNEXATION AND STREET LIGHTS (55.195)**Applicant Response:**

The proposal does not involve annexation; therefore, CDC 55.195 does not apply.

FLOOD MANAGEMENT AREA (CDC 27)**27.010 PURPOSE**

The purpose of this chapter is to create a Flood Management Area Overlay Zone in order to protect flood management areas that are identified on the flood management area map incorporated by reference as a part of this chapter. Flood management areas contain land identified by the Federal Insurance Administration in a scientific and engineering report entitled "The Flood Insurance Study for Clackamas County, Oregon, and incorporated areas," dated June 17, 2008, with accompanying Flood Insurance Maps; the area of inundation for the February 1996 flood based on data provided by Metro; and lands that have physical or documented evidence of flooding within recorded history. Flood management areas provide the following functions: protect life and property from dangers associated with flooding; flood storage, reduction of flood velocities, reduction of flood peak flows and reduction of wind and wave impacts; maintain water quality by reducing and sorting sediment loads, process chemical and organic wastes and reduce nutrients; recharge, store, and discharge groundwater; provide plant and animal habitat; and support riparian ecosystems.

Applicant Response:

Although this section is not a review criterion, the Applicant notes, the proposed RWP will traverse the West Linn Flood Management Overlay Zone within Mary S. Young Park, the two properties owned by the OPRD, and a portion of Mapleton Drive. The proposed route of the RWP will not be graded through the Flood Management Overlay Zone. See Section 15.

27.020 APPLICABILITY

A flood management area permit is required for all development in the Flood Management Area Overlay Zone. The standards that apply to flood management areas apply in addition to State or federal restrictions governing floodplains or flood hazard areas.

Applicant Response:

The purpose of this application is to request a flood management area permit.

27.030 EXEMPTIONS

This chapter does not apply to work necessary to protect, repair, or maintain existing public or private structures, utility facilities, roadways, driveways, accessory uses, and exterior improvements, or replace small public structures, utility facilities, or roadways in response to emergencies. Within 30 days after the work has been completed, the party responsible for the work shall initiate a flood management permit designed to analyze any changes effectuated during the emergency and mitigate adverse impacts.

Applicant Response:

The proposed construction is for a new raw water pipeline; therefore, the project is not eligible for the exemptions authorized under this subsection.

27.040 PROHIBITED USES

Prohibited uses in flood management areas include the following:

- A. *Any use prohibited in the base zone.*
- B. *Uncontained areas of hazardous materials as defined by the Oregon Department of Environmental Quality.*

Applicant Response:

The proposed RWP is classified as a major utility and is allowed in the base zone as a conditional use. The proposal does not involve uncontained hazardous materials. Therefore, the proposed RWP is not a prohibited use in either base zone.

27.045 CRITICAL FACILITIES

Construction of new critical facilities shall be, to the greatest extent possible, located outside the limits of the SFHA. Construction of new critical facilities shall only be permissible within the SFHA if no feasible alternative site is available. Critical facilities constructed within the SFHA shall have the lowest floor elevated three feet or to the height of the 500-year flood, whichever is higher. Access to and from the critical facility should also be protected to the height utilized above. Flood-proofing and sealing measures must be taken to ensure that toxic substances will not be displaced by or released into floodwaters. Access routes elevated to or above the level of the base flood elevation shall be provided to all critical facilities to the extent possible.

Applicant Response:

The proposed RWP is part of a linear critical facility that includes the RIPS, RWP, FWP and the WTP. The Willamette River is a floodway and floodplains about the river. There is no feasible way to bring water from the east side of the Willamette River to the west side of the river without crossing a SFHA. The Applicant considered three alternatives for crossing the SFHA: an open-trench cut, an aerial crossing, and HDD under the river. The open-cut method would cut a trench from the east side of the river to the west side, impacting both the floodway and floodplains. A pipeline could be suspended from a bridge over the river, thereby being “located outside the limits of the SFHA”; however, the design team determined that the aerial transmission line would not only be prohibitively expensive but that permanent supporting piers would need to be located within the floodplain as well as the river. The HDD method, while more expensive than open-cut construction, has the advantage of creating no water turbidity issues during construction. Because the HDD will be located below ground between 7 feet to 65 feet, the RWP will be located outside of the limits of the SFHA.

The HDD staging and open cut-trench located within the northern OPRD lot are just within the edge of the 100-year flood plain. See Section 15, Figure and Section 21. After construction, the open-cut trench will be backfilled and the ground surface of the open-cut trench and the HDD staging area will be re-vegetated. There will be no above-ground structures and no change in surface grade from present conditions. Section 6 contains a technical memorandum detailing why HDD will not result in any disturbance of affected soils, water, or plant resources.

The RWP does not have any “floors”; it is a steel pipe with welded joints and is impermeable. The pipe carries water from the Clackamas River, not “toxic substances”.

For these reasons, the proposed RWP is permissible within the SFHA.

27.050 APPLICATION

Applications for a flood management area permit must include the following:

- A. *A pre-application conference as a prerequisite to the filing of the application.*
- B. *An application initiated by the property owner, or the owner’s authorized agent, and accompanied by the appropriate fee.*
- C. *An application submittal that includes the completed application form and three copies of written responses addressing CDC 27.060, 27.070, 27.080 (if applicable), and 27.090 (if applicable), three copies of all maps and plans at the original scale, and three copies of all maps and plans reduced to a paper size not greater than 11 inches by 17 inches.*
- D. *A map of the parcel indicating the nature of the proposed alteration and its relationship to property zones, structures, trees, and any other pertinent features of the parcel.*
- E. *Information regarding the elevation of the site prior to development, the base flood elevation data for subdivisions (if applicable), and a description of water course alterations, if proposed.*
- F. *A topographic map of the site at contour intervals of five feet or less showing a delineation of the flood management area, which includes, but is not limited to, areas shown on the Flood Management Area map. The City Engineer or Building Official, as applicable, may, at his/ her discretion, require the map to be prepared by a registered land surveyor to ensure accuracy. A written narrative explaining the reason why the owner wishes to alter the floodplain shall accompany the site plan map.*
- G. *The elevation in relation to mean sea level, of the lowest floor (including basement) of all structures.*
- H. *The elevation in relation to mean sea level to which any structure has been flood-proofed (non-residential only).*

Applicant Response:

West Linn conducted a pre-application conference for the RWP/FWP project on January 5, 2012. The notes from the pre-application conference are included in Section 3. OPRD has consented to the use of their land for RWP purposes. The land use application contains narratives and figures fully responsive to the requirements of elements C-H of this subsection. See Section 19.

27.060 APPROVAL CRITERIA

The Planning Director shall make written findings with respect to the following criteria when approving, approving with conditions, or denying an application for development in flood management areas.

- A. *Development, excavation, and fill shall be performed in a manner to maintain or increase flood storage and conveyance capacity and not increase design flood elevations.*

- B. *No net fill increase in any floodplain is allowed. All fill placed in a floodplain shall be balanced with an equal amount of soil material removal. Excavation areas shall not exceed fill areas by more than 50 percent of the square footage. Any excavation below bankful stage shall not count toward compensating for fill.*
- C. *Excavation to balance a fill shall be located on the same parcel as the fill unless it is not reasonable or practicable to do so. In such cases, the excavation shall be located in the same drainage basin and as close as possible to the fill site, so long as the proposed excavation and fill will not increase flood impacts for surrounding properties as determined through hydrologic and hydraulic analysis.*
- D. *Minimum finished floor elevations must be at least one foot above the design flood height or highest flood of record, whichever is higher, for new habitable structures in the flood area.*
- E. *Temporary fills permitted during construction shall be removed.*
- F. *Prohibit encroachments, including fill, new construction, substantial improvements, and other development in floodways unless certification by a professional civil engineer licensed to practice in the State of Oregon is provided demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.*
- G. *All proposed improvements to the floodplain or floodway which might impact the flood-carrying capacity of the river shall be designed by a professional civil engineer licensed to practice in the State of Oregon.*
- H. *New culverts, stream crossings, and transportation projects shall be designed as balanced cut and fill projects or designed not to significantly raise the design flood elevation. Such projects shall be designed to minimize the area of fill in flood management areas and to minimize erosive velocities. Stream crossings shall be as close to perpendicular to the stream as practicable. Bridges shall be used instead of culverts wherever practicable.*
- I. *Excavation and fill required for the construction of detention facilities or structures, and other facilities, such as levees, specifically shall be designed to reduce or mitigate flood impacts and improve water quality. Levees shall not be used to create vacant buildable land.*
- J. *The applicant shall provide evidence that all necessary permits have been obtained from those federal, State, or local governmental agencies from which prior approval is required.*

Applicant Response:

The proposed RWP will be constructed completely below the Flood Management Overlay Zone using a trenchless HDD construction technique. The open-cut trench portion of the project will also be backfilled and belowground. No grading will occur within the Flood Management Overlay Zone. The proposed RWP will not alter the floodway in any way because it is fully belowground.

27.065 INTERPRETATION OF FLOOD BOUNDARIES

The Planning Director shall make interpretations, where needed, as to exact location of the boundaries of the flood hazard area (for example, where there appears to be a conflict between mapped boundaries and the actual filed condition). Any person contesting the location of the boundary may appeal the Planning Director's interpretation pursuant to CDC 01.060.

Applicant Response:

The application contains a figure identifying the location of the flood hazard that is based upon Federal Emergency Management Agency mapping.

27.070 CONSTRUCTION MATERIALS AND METHODS

- A. *All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage using methods and practices that minimize flood damage.*

- B. *Electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities shall be designed and/or otherwise elevated or located so as to prevent water from entering or accumulating within the components during conditions of flooding.*
- C. *New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.*
- D. *New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters.*
- E. *On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.*
- F. *All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure.*

Applicant Response:

The proposed RWP will be constructed entirely underground. The HDD construction techniques will not result in the temporary or permanent disturbance of any area within the flood hazard area.

27.080 RESIDENTIAL CONSTRUCTION

Applicant Response:

The proposal is to install a major public utility, not residential construction. Therefore, CDC 27.080 is not applicable.

27.090 NON-RESIDENTIAL CONSTRUCTION

New construction and substantial improvement of any commercial, industrial, or other non-residential structure shall either have the lowest floor, including basement, elevated to at least one foot above the level of the base flood elevation; or, together with attendant utility and sanitary facilities, shall:

- A. *Be flood-proofed so that below the base flood level the structure is watertight with walls impermeable to the passage of water;*
- B. *Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy;*
- C. *Be certified by a professional civil engineer licensed to practice in the State of Oregon that the design and methods of construction shall prevent seepage, collapse or cracking of basement walls, prevent buckling of basement floors, prevent backup of water from sewer lines, and have all openings located one foot above the base flood elevation. In addition, all protective features must operate automatically without human intervention;*
- D. *Non-residential construction that is elevated, but not flood-proofed (i.e., the foundation is not at least one foot above the 100-year flood elevation) shall also comply with the standards set forth in CDC 27.080. (Ord. 1522, 2005)*

Applicant Response:

The RWP will be constructed entirely below the flood hazard area. The steel walls of the RWP are impermeable and not subject to water infiltration. There will be no aboveground structures within the flood hazard area.

27.100 SUBDIVISION PROPOSAL

Applicant Response:

The proposal is for a major public utility, not a subdivision; therefore, this subsection is not applicable.

27.110 MANUFACTURED HOMES

Applicant Response:

The proposal is for a major public utility, not a manufactured home; therefore, this subsection is not applicable.

27.120 ALTERATION OF WATERCOURSES

- A. *The applicant shall meet the requirements of Chapter 28 CDC, Willamette and Tualatin River Protection, or Chapter 32 CDC, Water Resource Area Protection, as applicable, in addition to this chapter's requirements.*
- B. *A comparison by a professional civil engineer licensed to practice in the State of Oregon shall be made between the existing channel capacity and the proposed capacity and the changes assessed. The alteration or modification must maintain the carrying capacity of the watercourse and not increase the base flood elevation.*
- C. *The Planning Director shall notify adjacent communities and the State of Oregon Department of Land Conservation and Development prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration.*
- D. *The Planning Director shall require that maintenance be provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished.*
- E. *The Planning Director shall require that alterations of watercourses must allow fish passage and preserve fish habitat.*
- F. *The applicant shall submit a copy of a permit from the Oregon Division of State Lands and U.S. Army Corps of Engineers that allows the alteration, or states that it is exempt.*

Applicant Response:

The proposed RWP will be located below the flood hazard area at all times; therefore, the channel course and capacity will not be altered. HDD construction is the river crossing method which avoids significant adverse impacts to floodways and floodplains. The Applicant has demonstrated compliance with CDC 28 and 32.

27.130 VARIANCES

Applicant Response:

The Applicant is not requesting any variances to CDC 27; therefore, this section is not applicable.

27.140 ABROGATION AND GREATER RESTRICTIONS

This chapter must be complied with in addition to any other applicable code provision, ordinance, statute, easement, covenant, or deed restriction. It is not intended to repeal any existing restriction. If any provision of this chapter and any other code provision, ordinance, easement, covenant, or deed restriction conflict or overlay, the provision containing

the more stringent restriction shall prevail. All development within the Willamette River Greenway must comply with Chapter 28 CDC and all development within the Tualatin River Protection zone must comply with Chapter 28 CDC.

Applicant Response:

The Applicant addresses CDC 28 below.

WILLAMETTE AND TUALATIN RIVER PROTECTION (CDC 28)

PURPOSE (28.010)

The purposes of the Willamette and Tualatin River Protection Area are the following:

- A. Protect, conserve, enhance, and maintain the natural, scenic, historical, economic, and recreational qualities of lands along the Willamette and Tualatin Rivers.*
- B. Implement the policies of the West Linn Comprehensive Plan and the State of Oregon's Willamette River Greenway program.*
- C. Establish standards and requirements for the existing and future use of lands within the Willamette and Tualatin River Protection Areas.*
- D. Provide for the review of any intensification of use, change of use, or development within the Willamette and Tualatin River Protection Areas.*
- E. Encourage local stewardship of the Willamette and Tualatin River Protection Areas.*
- F. Protect, preserve and expand legal public use and access to and along the shoreline and river, while recognizing and preserving private property rights.*
- G. Create incentives to direct development to areas where it is most appropriate.*
- H. Protect and enhance riparian habitat for native flora, fish, and wildlife within the Willamette and Tualatin Rivers and along their banks.*

Applicant Response:

Although this section is not an applicable review criterion, the RWP/FWP project proposes minimum disturbance of the Willamette Tualatin River Protection (WTRP) area.

DEFINITIONS (28.020)

Repealed by Ord. 1604. (Ord. 1576, 2008)

APPLICABILITY (28.030)

- A. The Willamette and Tualatin River Protection Area is an overlay zone. The zone boundaries are identified on the City's zoning map, and include:*
 - 1. All land within the City of West Linn's Willamette River Greenway Area.*
 - 2. All land within 200 feet of the ordinary low water mark of the Tualatin River, and all land within the 100-year floodplain of the Tualatin River.*
 - 3. In addition to the Willamette Greenway and Tualatin River Protection Area boundaries, this chapter also relies on the HCA Map to delineate where development should or should not occur. Specifically, the intent is to keep out of, or minimize disturbance of, the habitat conservation areas (HCAs). Therefore, if all or any part, of a lot is in the Willamette Greenway and Tualatin River Protection Area boundaries, and there are*

HCA's on the lot, a Willamette and Tualatin River Protection Area permit shall be required unless the development proposal is exempt per CDC 28.040.

- B. *At the confluence of a stream or creek with either the Tualatin or Willamette River, the standards of this chapter shall apply only to those portions of the lot fronting the river. Meanwhile, development in those portions of the property facing or adjacent to the stream or creek shall meet the transition, setbacks and other provisions of Chapter 32 CDC, Water Resource Area Protection.*
- C. *All uses permitted under the provisions of the underlying base zone and within the Willamette and Tualatin River Protection Area zone are allowed in the manner prescribed by the base zone subject to applying for and obtaining a permit issued under the provisions of this chapter unless specifically exempted per CDC 28.040.*
- D. *The construction of a structure in the HCA or the expansion of a structure into the HCA when the new intrusion is closer to the protected water feature than the pre-existing structure.*

Applicant Response:

Mary S. Young Park and the two OPRD lots are located within the Willamette River Greenway area boundary. See http://westlinnmaps.com/WLIM_EX1109V1/default.aspx. Therefore, the project area within the Willamette River Greenway area is subject to review under CDC 28.

EXEMPTIONS/USES PERMITTED OUTRIGHT (28.040)

The following development activities do not require a permit under the provisions of this chapter. (Other permits may still be required.)

- AA. *Lands that are designated as an HCA only due to a forested canopy shall be exempted since trees are already protected in the municipal code and Chapters 55 and 85 CDC. Development of lands that are designated as HCA due to other variables such as wetlands, flood areas and steep slopes shall still be regulated by the provisions of this chapter and not exempted.*

Applicant Response:

The proposal does not qualify for exemption under CDC 28.040.AA because Mary S. Young Park and the two OPRD lots include HCA areas and are located within the Willamette River Greenway area.

PROHIBITED USES (28.050)

The following are prohibited...

Applicant Response:

The Applicant does not propose to construct a prohibited use.

ADMINISTRATION AND APPROVAL PROCESS (28.060)

An application for a protection area permit shall be processed pursuant to the provisions of Chapter 99 CDC, Procedures for Decision-Making: Quasi-Judicial.

Applicant Response:

The proposal combines conditional use, Class II design review, and WTRP compliance into a single, quasi-judicial proceeding.

PLANNING DIRECTOR VERIFICATION OF METRO HABITAT PROTECTION MAP BOUNDARIES (28.070)

- A. *The HCA Map is the basis for identifying and designating the habitat conservation areas in the City. A copy of the latest, updated HCA Map is on file at the City and is adopted by reference for use with this chapter. It is inevitable, given the large area that Metro's HCA Map covers, that there may be some errors. In cases where, for example, three properties share the same contours and the same natural features but the map shows the middle lot with an HCA designation on it, it is reasonable to question the accuracy of that HCA designation. Using tree overstory as the sole basis for HCA designation will also allow a change in designation since trees are already protected in the municipal code and Chapters 55 and 85 CDC.*
- B. *The Planning Director shall verify the appropriate HCA or non-HCA designation by site visits or consultations with Metro or by other means. Determination is based on whether the Metro criteria are met or whether the Metro designation was based solely on tree overstory in which case a redesignation is appropriate. In cases where the determination is that the map is incorrect, the Planning Director will make a written finding of this as well as the site conditions that led to that conclusion.*
- C. *Class B public notice, per Chapter 99 CDC, shall be required prior to issuance of the redesignation decision if it involves redesignation of the HCA boundary to allow the construction of, or addition to, a house.*
- D. *This determination and findings shall become part of the City record and part of the record for any associated land use application. The Planning Director shall also include in the record the revised map boundary. The Planning Director's determination and map revisions shall also be sent to Metro so that their map may be corrected as necessary.*
- E. *The Planning Director determination is appealable to the City Council per Chapter 99 CDC.*
- F. *Lands that are designated as an HCA only due to a forested overstory are exempt under CDC 28.040, Exemptions, since trees are already protected in the municipal code and Chapters 55 and 85 CDC. Similar exemptions apply to lands that exhibit no constraints.*

Applicant Response:

Section 5, Figure 3, depicts the location of the HCA within the project area. DEA compiled the map based upon the latest West Linn HCA and Metro mapping tools.

TIME LIMIT ON APPROVAL (28.080)

- A. *Approval of a protection area permit shall be void if:*
- 1. Substantial work (e.g., piling installation, etc.) is not completed within three years of the approval date, unless an extension is granted per CDC 99.325.*
 - 2. The site plan on which the approval is based is significantly modified or where actual construction deviates from the approved plans to the extent that it constitutes more than a minor modification as defined by this chapter. Any such change in the plan or conditions of approval shall require a new application and hearing pursuant to the provisions set forth in this chapter and Chapter 99 CDC.*

Applicant Response:

The Partnership will commence work in 2013 and will complete HDD and open-cut work within 1 year of entering the WTRP.

SUBMITTAL REQUIREMENTS: APPLICATION (28.090)

Applicant Response:

The application includes an application submittal locator, Section 22, which identifies the location, within this land use application, of all required site plan information. The figure demonstrates that the proposed site plans are consistent with CDC 28.080.

ADDITIONAL SUBMITTAL INFORMATION REQUIRED, WAIVER OF SUBMITTAL REQUIREMENTS (28.100)

- A. *The Planning Director may require additional information as a part of the application subject to the provisions of CDC 99.035(A).*
- B. *The Planning Director may waive any submittal requirement for the application subject to the provisions of CDC 99.035(B) and (C).*

Applicant Response:

The Applicant has requested waivers described in the Central Issues section of this narrative.

APPROVAL CRITERIA (28.110)

No application for development on property within the protection area shall be approved unless the decision-making authority finds that the following standards have been met or can be met by conditions of approval. The development shall comply with the following criteria as applicable:

- A. *Development: All sites.*
 1. *Sites shall first be reviewed using the HCA Map to determine if the site is buildable or what portion of the site is buildable. HCAs shall be verified by the Planning Director per CDC 28.070 and site visit. Also, "tree canopy only" HCAs shall not constitute a development limitation and may be exempted per CDC 28.070(A). The municipal code protection for trees and Chapters 55 and 85 CDC tree protection shall still apply.*
 2. *HCAs shall be avoided to the greatest degree possible and development activity shall instead be directed to the areas designated "Habitat and Impact Areas Not Designated as HCAs," consistent with subsection (A)(3) of this section.*
 3. *If the subject property contains no lands designated "Habitat and Impact Areas Not Designated as HCAs" and development within HCA land is the only option it shall be directed towards the low HCA areas first, then medium HCA areas and then to high HCA as the last choice. The goal is to, at best, avoid or, at least, minimize disturbance of the HCAs. (Water-dependent uses are exempt from this provision.)*
 4. *All development, including exempted activities of CDC 28.040, shall have approved erosion control measures per Chapter 31 CDC in place prior to site disturbance and be subject to the requirements of CDC 32.070 and 32.080 as deemed applicable by the Planning Director.*

Applicant Response:

The Applicant consulted the West Linn HCA map which applies to Mary S. Young Park and the two OPRD properties. These areas are classified as HCA "high". The HCA map is provided in Section 5. The construction staging area is located within the HCA overlay area not associated with WRAs, thereby avoiding these additional sensitive areas to the greatest extent possible. The

Applicant has prepared preliminary erosion control measures and will provide a final erosion control plan for West Linn review prior to site disturbance.

The contractors will drill under the Mary S. Young Park and the southern OPRD lot using HDD. The design team carefully located the HDD construction staging area and open-cut trench in the northern OPRD lot outside of a West Linn WRA, subject to regulation under CDC 32, but within HCA, subject to review under CDC 28. See Section 5, Figure 3 and Section 21.

The western portion of the northern OPRD lot is similar to the companion lot to the south (except for the area developed for the West Linn sewer pump station). The area closest to Mapleton Drive is relatively flat and tree-covered but drops off steeply toward the Willamette River. WRA-A, WRA-C, and WRA-D are located on the eastern end of the two parcels. See Section 5, Figures 2 and 3. Both parcels are within the Willamette River Greenway and contain 100-year floodplains. See Section 5 for a detailed discussion of the area.

B. Single-family or attached residential.

Applicant Response:

The OPRD lots are zoned R-10, but the project does not involve construction of residential units; therefore, CDC 28.110.B does not apply.

C. Setbacks from top of bank.

- 1. Development of single-family homes or attached housing on lands designated as "Habitat and Impact Areas Not Designated as HCAs" shall require a structural setback of 15 feet from any top of bank that represents the edge of the land designated as "Habitat and Impact Areas Not Designated as HCAs."*
- 2. At-grade water-permeable patios or decks within 30 inches of grade may encroach into that setback but must keep five feet from top of bank and cannot cantilever over the top of bank or into the five-foot setback area.*
- 3. For properties that lack a distinct top of bank the applicant shall identify the boundary of the area designated as "Habitat and Impact Areas Not Designated as HCAs" which is closest to the river. A structural setback of 15 feet is required from that boundary line. That 15-foot measurement extends from the boundary line away from the river. At-grade water-permeable patios or decks within 30 inches of grade may encroach into that setback 10 feet but must keep five feet from the boundary and cannot cantilever into the five-foot setback area. For vacant lots of record that comprise no lands with "Habitat and Impact Areas Not Designated as HCAs" designation or insufficient lands with those designations so that the above setbacks cannot be met, the house shall be set back as far from river as possible to accommodate house as part of the allowed 5,000 square feet of impermeable surfaces.*

Applicant Response:

Subsection C.1 and C.2 apply to residential construction, at-grade water-permeable patios or decks. The OPRD properties do not lack a distinct top-of-bank. HDD construction activity will be above the top-of-bank.

D. Development of lands designated for industrial, commercial, office, public and other non-residential uses.

1. *Development of lands designated for industrial, multi-family, mixed use, commercial, office, public and other non-single-family residential uses shall be permitted on the following land designations and in the following order of preference with “a” being the most appropriate for development and “d” being the least appropriate:*
 - a) *“Habitat and Impact Areas Not Designated as HCAs”*
 - b) *Low HCA*
 - c) *Moderate HCA*
 - d) *High HCA*

Applicant Response:

The OPRD properties are owned by a public agency but are designated residential use (R-10). Mary S. Young Park is designated park use and is classified as High HCA value.

2. *Developing HCA land.*
 - a. *Where non-HCA or areas designated as “Habitat and Impact Areas Not Designated as HCAs” are lacking or are in such limited supply as to render uses allowed by the underlying zone (e.g., general industrial) functionally impractical, the HCA may be utilized and built upon but shall emphasize “b” and “c” designations.*
 - b. *Where it is proposed that a “d” or high HCA classification be used, the property owner must demonstrate that the proposed use is clearly a water-dependent use. Proximity to the river for the purpose of views is not valid grounds. However, public interpretive facilities of historic facilities such as the government locks will be permitted as well as wildlife interpretive facilities and ADA-accessible platforms.*

Applicant Response:

Mary S. Young Park and the OPRD lots are classified as high HCA value. West Linn defines a water-dependent use as “any use that requires access to, or use of, the rivers.” CDC 0.2 Definitions A pipeline, such as the RWP, which draws water from the Clackamas River and must cross the Willamette River to reach its customer base, is a water-dependent use.

E. Hardship provisions and non-conforming structures.

Applicant Response:

There are no non-conforming structures within the HCA project area; therefore CDC 28.110.E does not apply.

F. Access and property rights.

1. *Private lands within the protection area shall be recognized and respected.*
2. *Where a legal public access to the river or elsewhere in the protection area exists, that legal public right shall be recognized and respected.*
3. *To construct a water-dependent structure such as a dock, ramp, or gangway shall require that all pre-existing legal public access or similar legal rights in the protection area be recognized and respected. Where pre-existing legal public access, such as below the OLW, is to be obstructed by, for example, a ramp, the applicant shall provide a reasonable alternate route around, over or under the obstruction. The alternate route shall be as direct as possible. The proposed route, to include appropriate height clearances under ramps/docks and*

specifications for safe passage over or around ramps and docks, shall be reviewed and approved by the Planning Director for adequacy.

4. *Any public or private water-dependent use or facility shall be within established DSL-authorized areas.*
5. *Legal access to, and along, the riverfront in single-family residential zoned areas shall be encouraged and pursued especially when there are reasonable expectations that a continuous trail system can be facilitated. The City recognizes the potential need for compensation where nexus and proportionality tests are not met. Fee simple ownership by the City shall be preferred. The trail should be dimensioned and designed appropriate to the terrain it traverses and the user group(s) it can reasonably expect to attract. The City shall be responsible for signing the trail and delineating the boundary between private and public lands or access easements.*

Applicant Response:

Mary S. Young Park and the two OPRD lots are publicly owned. Construction of the RWP will not impede the public right of access to the park because the contractor shall provide access around the construction work zones throughout the construction period.

- G. *Incentives to encourage access in industrial, multi-family, mixed use, commercial, office, public and non-single-family residential zoned areas.*

Applicant Response:

The Applicant is not seeking to use any of the incentives provided in CDC 28.110.G.

- H. *Partitions, subdivisions and incentives.*

Applicant Response:

The Applicant is not seeking a partition, subdivision, or other incentive provided for in CDC 28.110.H.

- I. *Docks and other water-dependent structures.*

1. *Once the preference rights area is established by DSL, the property owner identifies where the water-dependent use will be located within the authorized portion of the preference rights area. The water-dependent use should be centered or in the middle of the preference rights/ authorized area or meet the side yard setbacks of the underlying zone.

Private and public non-commercial docks are permitted where dredging is required so long as all applicable federal and State permits are obtained. Dredging is encouraged if deposits silt up under an existing dock. Dredging is seen as preferable to the construction of longer docks/ ramps.*
2. *Both joint and single use docks shall not extend into the water any further than necessary to provide four feet between the ship's keel or fixed propeller/ rudder and the bottom of the water at any time during the water's lowest point.*
3. *In no case except as provided in this section shall the ramp and dock extend more than 100 feet from OLW towards the center of the river or slough. In the case of L-shaped docks, the 100 feet shall be measured from the OLW to the furthest part of the dock closest to the center of the river.*
4. *Docks on sloughs and similar channels shall not extend more than 30 percent of the distance between two land masses at OHW, such as between the mainland and an island or peninsula, measured in a lineal manner at right angle to the dominant shoreline. In no way shall a dock impede existing public usage or block navigation of a channel.*

5. *Boat storage associated with a rail launch facility shall be located above the OHW, either vertically raised above the ordinary high water line or set back behind the OHW. Such boat storage structure will be natural wood colors or similar earth tones. Private railed launch facilities are permitted for individual boat owners. The onshore setback of the storage structure is equal distance on both sides as extended perpendicular to the thread of the stream, or seven and one-half feet, whichever is the greater setback.*
6. *The width of each deck section shall be no more than 12 feet wide.*
7. *For both single-user and joint-user docks, pilings shall not exceed a maximum height of eight feet above the 100-year flood elevation.*
8. *A single user non-commercial dock shall not exceed 400 square feet in deck area. The boat slip is not included in the calculation of this square footage limitation.*
9. *Private non-commercial boat houses are allowed but only if they are within 50 feet of OLV and/or in locations sufficiently screened from view so that they do not have a significant visual impact on views from adjacent and nearby homes. Building and roof colors shall be brown, gray, beige, natural or similar earth tones. Non-commercial boat houses shall not exceed 12 feet in height measured from the boat house deck level to the roof peak. The size of the boat house shall be sized to accommodate one boat only and shall not exceed a footprint greater than 500 square feet. Boatlifts are permitted within the boat house. The above provisions also apply to open-walled boat shelters with or without boatlifts.*

Applicant Response:

CDC 28.100.I pertains to boat docks and ramps. The Applicant does not propose to construct these features; therefore, CDC 28.110.I does not apply.

J. *Joint docks.*

Applicant Response:

The Applicant does not propose to construct a joint dock; therefore CDC 28.110.J does not apply.

K. *Non-conforming docks and other water-related structures.*

Applicant Response:

There are no non-conforming docks or other water-related structures in the project area; therefore, CDC 28.110.K does not apply.

L. *Roads, driveways, utilities, or passive use recreation facilities. Roads, driveways, utilities, public paths, or passive use recreation facilities may be built in those portions of HCAs that include wetlands, riparian areas, and water resource areas when no other practical alternative exists but shall use water-permeable materials unless City engineering standards do not allow that. Construction to the minimum dimensional standards for roads is required. Full mitigation and revegetation is required, with the applicant to submit a mitigation plan pursuant to CDC 32.070 and a revegetation plan pursuant to CDC 32.080. The maximum disturbance width for utility corridors is as follows:*

1. *For utility facility connections to utility facilities, no greater than 10 feet wide.*
2. *For upgrade of existing utility facilities, no greater than 15 feet wide.*
3. *For new underground utility facilities, no greater than 25 feet wide, and disturbance of no more than 200 linear feet of water quality resource area, or 20 percent of the total linear feet of water quality resource area, whichever is greater.*

Applicant Response:

The Applicant proposes to construct a public utility. The RWP will traverse from the east to the west bank of the Willamette River via a trenchless HDD underneath the riverbed, Mary S. Young Park, and the two OPRD properties. The proposed RWP enters the City of West Linn approximately 65 feet below Mary S. Young Park. The park has both HCA and WRA overlays. See Section 5, Figure 2. The top of the RWP rises to approximately 30 feet below grade where WRA-C ends - at the boundary between the southern and northern OPRD lots. See Section 6, Figure 2. Consequently, the HDD is between 65 and 30 feet below the HCA and WRA between the Willamette River and the northern OPRD lot and is between 30 feet and 7 feet deep in the HCA-only area in the northern OPRD lot.

The design team carefully selected the HDD staging area both to accommodate geometry requirements of the HDD alignment and because it does not include wetlands, riparian areas or water resource areas. Therefore, the HDD staging area and open-cut to Mapleton Drive are not subject to review under CDC 28.110.1.

All construction activity within Mary S. Young Park and the southern OPRD lot will be between 30 feet and 65 feet below the surface. Consequently, no surface disturbance, vegetation removal, or construction will occur within the southern OPRD lot or within Mary S. Young Park. Section 6 of the application includes a memorandum from DEA, which considers whether the proposed underground drilling will disturb the habitat values of Mary S. Young Park or the two OPRD lots. The report considers potential impacts to habitat values associated with vegetation, groundwater, wetlands, and soils. It is important to note that, based on Oregon Biodiversity Information Center 2010 database search and site visits by project ecologists, no sensitive or listed wildlife species are known to occur within or near the study area.

The technical memorandum concludes that there are no significant impacts of the RWP HDD project component that might be considered by the planning department as a “disturbance” in Mary S. Young Park or in the two OPRD properties.

Therefore, the proposal is consistent with CDC 28.110.1.

M. Structures. All buildings and structures in HCAs and riparian areas, including all exterior mechanical equipment, should be screened, colored, or surfaced so as to blend with the riparian environment. Surfaces shall be non-polished/reflective or at least expected to lose their luster within a year. In addition to the specific standards and criteria applicable to water-dependent uses (docks), all other provisions of this chapter shall apply to water dependent uses, and any structure shall be no larger than necessary to accommodate the use.

Applicant Response:

Subsection M applies to aboveground buildings and structures. The proposal does not include any permanent aboveground surfaces within the HCA. Therefore, CDC 28.110.M does not apply to the belowground RWP.

N. Water-permeable materials for hardscapes. The use of water-permeable materials for parking lots, driveways, patios, and paths as well as flow-through planters, box filters, bioswales and drought tolerant plants are strongly encouraged in all “a” and “b” land classifications and shall be required in all “c” and “d” land classifications. The only exception in the “c” and “d” classifications would be where it is demonstrated that water-permeable driveways/hardscapes could not structurally support the axle weight of vehicles or equipment/storage load using

those areas. Flow through planters, box filters, bioswales, drought tolerant plants and other measures of treating and/or detaining runoff would still be required in these areas.

Applicant Response:

The proposal does not include any permanent aboveground hardscapes, such as driveways, parking lots, patios, or planter boxes. The contractor shall restore the permeable gravel trail along the northern boundary of the OPRD site. Therefore, CDC 28.110.N does not apply.

O. Signs and graphics. No sign or graphic display inconsistent with the purposes of the protection area shall have a display surface oriented toward or visible from the Willamette or Tualatin River. A limited number of signs may be allowed to direct public access along legal routes in the protection area.

Applicant Response:

The proposal does not include any permanent signs or graphics; therefore, CDC 28.110.O does not apply.

P. Lighting. Lighting shall not be focused or oriented onto the surface of the river except as required by the Coast Guard. Lighting elsewhere in the protection area shall be the minimum necessary and shall not create off-site glare or be omni-directional. Screens and covers will be required.

Applicant Response:

The proposal does not include any permanent lighting. The Construction Management Plan discusses the need for nighttime lighting along Highway 43. CDC 28.110.P does not apply.

Q. Parking. Parking and unenclosed storage areas located within or adjacent to the protection area boundary shall be screened from the river in accordance with Chapter 46 CDC, Off-Street Parking, Loading and Reservoir Areas. The use of water-permeable material to construct the parking lot is either encouraged or required depending on HCA classification per CDC 28.110(N)(4).

Applicant Response:

The proposal does not include any permanent parking or enclosed storage areas; therefore, CDC 28.110.O does not apply.

R. Views. Significant views of the Willamette and Tualatin Rivers shall be protected as much as possible as seen from the following public viewpoints: Mary S. Young Park, Willamette Park, Cedar Oak Park, Burnside Park, Maddox Park, Cedar Island, the Oregon City Bridge, Willamette Park, and Fields Bridge Park.

Applicant Response:

The entire RWP will be underground and not visible from any public or private viewing area. Therefore, the proposal protects views of the Willamette River to the maximum extent possible.

S. Aggregate deposits. Extraction of aggregate deposits or dredging shall be conducted in a manner designed to minimize adverse effects on water quality, fish and wildlife, vegetation, bank stabilization, stream flow, visual quality, noise and safety, and to promote necessary reclamation.

Applicant Response:

The Partnership selected the least invasive practice possible - drilling under the resource at a depth ranging from 7 to 65 feet below grade. The proposal does not involve dredging or the extraction of aggregate. Therefore, the proposal is consistent with CDC 28.110.S.

T. *Changing the landscape/grading.*

1. *Existing predominant topographical features of the bank line and escarpment shall be preserved and maintained except for disturbance necessary for the construction or establishment of a water related or water dependent use. Measures necessary to reduce potential bank and escarpment erosion, landslides, or flood hazard conditions shall also be taken.*

Any construction to stabilize or protect the bank with rip rap, gabions, etc., shall only be allowed where there is clear evidence of erosion or similar hazard and shall be the minimum needed to stop that erosion or to avoid a specific and identifiable hazard. A geotechnical engineer's stamped report shall accompany the application with evidence to support the proposal.

2. *The applicant shall establish to the satisfaction of the approval authority that steps have been taken to minimize the impact of the proposal on the riparian environment (areas between the top of the bank and the low water mark of the river including lower terrace, beach and river edge).*
3. *The applicant shall demonstrate that stabilization measures shall not cause subsequent erosion or deposits on upstream or downstream properties.*
4. *Prior to any grading or development, that portion of the HCA that includes wetlands, creeks, riparian areas and water resource area shall be protected with an anchored chain link fence (or approved equivalent) at its perimeter and shall remain undisturbed except as specifically allowed by an approved Willamette and Tualatin River Protection and/or water resource area (WRA) permit. Such fencing shall be maintained until construction is complete. That portion of the HCA that includes wetlands, creeks, riparian areas and water resource area shall be identified with City-approved permanent markers at all boundary direction changes and at 30- to 50-foot intervals that clearly delineate the extent of the protected area.*
5. *Full erosion control measures shall be in place and approved by the City Engineer prior to any grading, development or site clearing.*

Applicant Response:

The project does not involve any site grading. The primary method of construction is trenchless HDD. However, HDD staging and open-cut trenching (with subsequent backfill and revegetation) is proposed for the HCA-only portion of the northern OPRD lot. The construction activity will preserve and maintain the top of bank and escarpment. The project avoids disturbance of riparian areas because the HDD will occur beneath the riparian areas of the Mary S. Young Ark and the OPRD lots. The proposal does not involve any bank stabilization activity and will not impact upstream or downstream properties. WRA-C is located approximately 1200 feet east of the HDD staging area. However, if requested as a condition of approval, the contractor will protect the boundary of WRA-C with the required, anchored chain link fence, which shall be maintained throughout the construction process. The Applicant has prepared a response to CDC 31, Erosion Control (Section13), and will prepare a final erosion control plan for City review and approval prior to site disturbance. Therefore, the proposal is consistent with CDC 28.110.T.

- U. *Protect riparian and adjacent vegetation. Vegetative ground cover and trees upon the site shall be preserved, conserved, and maintained according to the following provisions:*
1. *Riparian vegetation below OHW removed during development shall be replaced with indigenous vegetation, which shall be compatible with and enhance the riparian environment and approved by the approval authority as part of the application.*
 2. *Vegetative improvements to areas within the protection area may be required if the site is found to be in an unhealthy or disturbed state by the City Arborist or his designated expert. "Unhealthy or disturbed" includes those sites that have a combination of native trees, shrubs, and groundcover on less than 80 percent of the water resource area and less than 50 percent tree canopy coverage in the primary and secondary habitat conservation area to be preserved. "Vegetative improvements" will be documented by submitting a revegetation plan meeting CDC 28.160 criteria that will result in the primary and secondary habitat conservation area to be preserved having a combination of native trees, shrubs, and groundcover on more than 80 percent of its area, and more than 50 percent tree canopy coverage in its area. The vegetative improvements shall be guaranteed for survival for a minimum of two years. Once approved, the applicant is responsible for implementing the plan prior to final inspection.*
 3. *Tree cutting shall be prohibited in the protection area except that:*
 - a. *Diseased trees or trees in danger of falling may be removed with the City Arborist's approval; and*
 - b. *Tree cutting may be permitted in conjunction with those uses listed in CDC 28.030 with City Arborist approval; to the extent necessary to accommodate the listed uses;*
 - c. *Selective cutting in accordance with the Oregon Forest Practices Act, if applicable, shall be permitted with City Arborist approval within the area between the OHW and the greenway boundary provided the natural scenic qualities of the greenway are maintained.*

Applicant Response:

All construction activity will occur above the ordinary high water mark (OHW); therefore, construction activity will not remove vegetation below the OHW. The application includes an arborist report (Section 7). The report identified 36 regulated trees within the OPRD project area. Of this collection of trees, one is dead and 15 are classified as being in poor or very poor health. There are no heritage trees in the OPRD project area. The arborist identified three significant trees: 38-inch DBH big-leaf maple in poor condition and two Douglas firs (27 inch and 29 inch) nearby, but outside of the construction area; both trees are in good condition. The contractor shall protect the three significant trees. See Section 7, Appendix 1.

Tree cutting may be permitted in conjunction with those uses listed in CDC 28.030 with city arborist approval to the extent necessary to accommodate the listed uses. The RWP is a major utility, which is allowed in the R-10 zone, subject to conditional use review and approval, consistent with CDC 28.030.

The project proposes to remove 19 trees in the OPRD project area. None of the trees are heritage trees or are classified as significant. Eight of the nine trees are classified as being in poor to very poor condition.

The West Linn city arborist reviewed the Applicant's arborist report and concluded that his evaluation and the Applicant's evaluation of regulated trees and their respective health did not diverge significantly. (See e-mail from Michael Perkins to Nick Wobbrock, dated June 13, 2012, and appended to the arborist report in Section 7 and Section 18.) The Applicant's arborist report contains a detailed plan for protecting trees during the construction process. For these reasons, the proposal is consistent with CDC 28.110.U.

SITE PLAN (28.120)**Applicant Response:**

The application includes an application submittal locator, Section 22, which identifies the location, within this land use application, of all required site plan information. The figure demonstrates that the proposed site plans are consistent with CDC 28.130.

GRADING PLAN (28.130)

A. The grading plan shall be at the same scale as the site plan (CDC 28.120) and shall show:

- 1. The location and extent to which grading will take place indicating general contour lines, slope ratios, and slope stabilization proposals.*
- 2. The location of the proposed drainageways.*
- 3. All grading in the 100-year and 1996 floodplain areas and in areas at, or below, OHWM shall require a study by an accredited professional to demonstrate that the addition or removal of material including the addition of rip rap and other stabilization measures will not adversely impact the subject property plus upstream or downstream properties by causing erosion or deposits on those properties, particularly in the event of a flood.*
- 4. Show erosion control measures.*

Applicant Response:

The proposal does not involve any site grading. The contractor will cut an open trench from the HDD staging area westward to Mapleton Drive. The contractor shall comply with all applicable West Linn erosion control standards.

ARCHITECTURAL DRAWINGS (28.140)**Applicant Response:**

The RWP/FWP structures will be entirely underground; therefore, architectural drawings are not required.

LANDSCAPE PLAN (28.150)

A. The landscape plan shall be prepared per site plan standards (CDC 28.120) and in addition shall show:

- 1. The location, size and type of existing trees and location and type of vegetation to be removed and to be retained;*
- 2. The location and design of landscaped areas;*
- 3. The varieties and sizes of trees and materials to be planted;*
- 4. The location and height of fences and other buffering or screening materials; and*
- 5. The location, materials, dimensions and design of terraces, decks, patios, shelters, footpaths, retaining walls and play areas.*

B. Revegetation plan per CDC 32.080.

Applicant Response:

The project will not create any hardscapes in the HCA area; therefore, a landscape plan is not warranted. However, the Applicant has prepared a site revegetation plan consistent with CDC 32.080. See Section 5.

MITIGATION PLAN (28.160)

If any HCA is permanently disturbed as a result of the proposed development of any uses or structures, the applicant shall prepare and implement a revegetation and mitigation plan pursuant to the provisions of CDC 32.070 and 32.080.

Applicant Response:

The HDD staging area is within an HCA and the Willamette River Greenway but not within a WRA. The HDD staging and open-cut trench activity in the northern OPRD lot will be restored and revegetated after construction, consistent with West Linn standards. The proposal will not result in the permanent disturbance of the regulated HCA. Consequently, the application includes a revegetation plan in Section 5.

EROSION CONTROL (CDC 31)

PURPOSE (31.010)

The purpose of this chapter is to require erosion prevention measures and sediment control practices for all development in the City of West Linn during all phases of construction to prevent and restrict the discharge of sediments, and to require final permanent erosion prevention measures after development is completed.

Erosion prevention techniques shall be designed to protect soil particles from the force of water and wind so they will not be transported from the site. Sediment control measures shall be designed to capture soil particles after they have become dislodged by erosion and attempt to retain the soil particles on site.

Applicant Response:

The Applicant has prepared an erosion control memo in response to the requirements of CDC 31. Section 13.

APPLICABILITY (31.020)

This document applies to development that may cause visible or measurable erosion on any property within the City of West Linn. In instances where this chapter conflicts with other applicable City codes, the more restrictive provision shall apply.

Applicant Response:

The Applicant has prepared an erosion control memo in response to the requirements of CDC 31. Section 13. The plan, based on best management practices, complies with CDC 31.

PERMIT REQUIRED (31.030)

An erosion and sediment control permit is required prior to, or concurrently with, approval of development that may cause visible or measurable erosion. To obtain an erosion and sediment control permit, an Erosion and Sediment Control Plan shall be required. For areas within the Tualatin River Basin, the Erosion and Sediment Control Plan shall comply with the Oregon Administrative Rules relating to water quality in the Tualatin River Basin (OAR Chapter 340).

Applicant Response:

The contractor shall apply for an erosion and sediment control permit prior to site disturbance.

APPLICATION (31.040)

- A. An application shall be initiated by the property owner, or the owner's authorized agent, and shall be accompanied by the appropriate fee.*
- B. An application submittal shall include the completed application form and three copies of responses to the approval criteria, except for any plans which shall include three copies at the original scale and three copies reduced to a paper size not greater than 11 inches by 17 inches.*

Applicant Response:

The application is initiated by the Partnership and contains necessary authorization from OPRD. The Applicant has also consulted with the owners of the public rights-of-way within the project area, West Linn and ODOT. Section 1. The Partnership paid the required application fees. Section 2. The Partnership submitted the request on the required West Linn forms and provided the necessary number of copies.

- C. The Erosion and Sediment Control Plan shall follow the guidelines of the Erosion Prevention and Sediment Control Plans, Technical Guidance Handbook. (Clackamas County Department of Utilities, August 1994). The following information shall be submitted on the plan:*
- 1. The name, address, phone number, mobile phone number, and fax number of the site steward responsible for erosion control at the project site throughout project duration.*
 - 2. The name, address, and 24-hour contact number(s) of the designated emergency contact person.*
 - 3. A description of existing topography and soil characteristics described in the Clackamas County Soil Survey.*
 - 4. The applicant shall submit a plan drawn to an appropriate scale (in order of preference: one inch equals 10 feet to one inch equals 30 feet), which contains the following information:*
 - a. Existing and proposed contour lines at the following minimum intervals:*
 - 1) Two-foot intervals for slopes zero to 25 percent; and*
 - 2) Five- or 10-foot intervals for slopes in excess of 25 percent slope;*
 - b. Location of proposed stormwater facilities including cross-sections;*
 - c. The location of all existing natural features including, but not limited to, delineation of water quality resource areas (if applicable) and trees of a caliper greater than six inches in diameter at breast height (DBH).*
 - 5. Locations of all existing and proposed channels, swales, or drainage pipes which either convey off-site stormwater through, or route stormwater around, the construction area. Identify the nearest receiving stream.*

6. *Locations and detailed designs of all proposed erosion and sedimentation control facilities as required by Chapter 32 CDC.*
7. *Phasing of any proposed erosion and sedimentation control work clearly indicated on the plan. Include an activity schedule for each phase outlining specific best management practices for the duration of the project.*
8. *Details and notes on the site plan for mulching and revegetation. Also include detailed planting procedures, topsoil requirements, seed/plant specifications, and plant maintenance specifications.*

Applicant Response:

Section 13, Erosion Control and Sediment Prevention Plan, and Figures 15-28 prepared by Kennedy/Jenks Consultants respond to the submittal requirements of CDC 31.040.

APPLICATION FOR SINGLE-FAMILY HOMES (31.050)

Applicant Response:

The proposal does not involve single-family housing; therefore, CDC 31.050 does not apply.

APPROVAL CRITERIA (31.060)

The City Engineer or designee shall make a written finding, as applicable, with respect to the following criteria when approving, approving with conditions, or denying an erosion control permit.

- A. *The erosion and sediment control plan shall follow the guidelines of the Erosion Prevention and Sediment Control Plans, Technical Guidance Handbook (Clackamas County Department of Utilities, most current edition).*
- B. *All developments shall be designed to minimize the disturbance of natural topography, vegetation, and soils.*
- C. *Designs shall minimize cuts and fills.*
- D. *The plan shall prevent erosion by employing prevention practices such as non-disturbance, construction phasing, seeding and mulch covers.*
- E. *The plan shall be designed to allow no more than 10 percent cumulative increase in natural stream turbidities, as measured relative to a control point immediately upstream of the turbidity-causing activity. However, limited duration activities necessary to address an emergency or to accommodate essential dredging, construction, or other legitimate activities, and that cause the standard to be exceeded, may be authorized provided all practicable turbidity control techniques have been applied.*
- F. *The applicant shall actively manage and maintain erosion control measures and utilize techniques described in the permit to prevent erosion and control sediment during and following development. Erosion prevention and sediment control measures required by the permit shall remain in place until disturbed soil areas are permanently stabilized by landscaping, grass, approved mulch, or other permanent soil stabilizing measure.*
- G. *No mud, dirt, rock, or other debris shall be deposited upon a public street or any part of the public stormwater system, surface water system, water quality resource area, or any part of a private stormwater system or surface water system that drains or connects to the public stormwater or surface water system.*
- H. *Projects with a minimum development size of one acre, including subdivisions, apartments, commercial and industrial, shall meet the following requirements:*
 1. *The erosion prevention and sediment control plan is designed by a certified erosion control specialist; and*
 2. *The developer enters into an agreement with the City stating that in the event an erosion emergency occurs and is not repaired within 24 hours of the time the City notifies the developer, the City may hire a contractor or employ City staff to repair the erosion problem and bill the developer 125 percent of the cost to the City.*

Applicant Response:

- A.** The erosion and sediment control plan will follow the Water Environment Services *Erosion Prevention and Sediment Control – Planning and Design Manual*.
- B.** The project will not create any new impervious surface area nor will it permanently change existing topography. The contractor shall restore all temporary changes in ground surfaces, slopes, and contours to preconstruction conditions.
- C.** There are no cuts or fills proposed for this project.
- D.** The contractor shall use appropriate erosion prevention practices such as gravel construction entrances, sediment fence, biofilter bag inlet protection, seeding, and mulch covers as indicated in Figures 15 through 28.
- E.** To prevent stream turbidity, the contractor shall use appropriate erosion prevention practices such as gravel construction entrances, sediment fence, biofilter bag inlet protection, seeding, and mulch covers to minimize the increase in natural stream turbidities, as indicated in Figures 15 through 28.
- F.** The site steward responsible for erosion control at the project site throughout the project duration will actively manage and maintain erosion control measures and will use the techniques previously identified, measures that will remain in place until disturbed soil areas are permanently stabilized.
- G.** This subsection applies to subdivisions, apartments, and commercial and industrial areas 1 acre or larger. The RWP/FWP project is a linear pipeline and the 1-acre standard is not applicable. However, a certified erosion control specialist will design the project erosion prevention and sediment control plan.

EROSION AND SEDIMENT CONTROL DESIGN STANDARDS (31.070)

The following specific methods of soil erosion and sediment control shall be used during construction to control visible and measurable erosion. These methods shall be consistent with the Erosion Prevention and Sediment Control Plans, Technical Guidance Handbook (Clackamas County Department of Utilities, most current edition)....

Applicant Response:

See Section 13 for a description of how the proposed soil erosion and sediment control plan satisfies the requirements of CDC 31.070.A-H.

PENALTIES AND ENFORCEMENT (31.080)

The City is authorized to make inspections and take such actions as required to enforce the provisions of this document as outlined in CDC 106.040 and the City of West Linn Municipal Code. Failure to comply with any provision of this chapter or with any term of an erosion control permit shall be deemed a violation of this chapter and subject to enforcement action pursuant to applicable agency and City ordinance.

Applicant Response:

The Applicant acknowledges the City's right of inspection, enforcement, and penalty.

PROCEDURES AND APPROVAL PROCESS (31.090)

- A. An erosion control permit, subject to City approval, is a permit for which approval will be granted by the City Engineer or designee provided all conditions are satisfied; and*
- 1. The City Engineer or designee shall make the decision in the manner provided by CDC 99.060.*
 - 2. The decision may be appealed to the Planning Commission as prescribed by CDC 99.240(A).*

Applicant Response:

The Partnership or contractor shall apply for an erosion control permit prior to site disturbance.

WATER RESOURCE AREA PROTECTION (CDC 32)

PURPOSE AND INTENT (32.010)

This chapter has two primary purposes, which serve to accomplish different public policy objectives, but which have overlapping methods of meeting these purposes:

- A. Improve water quality and protect the functions and values of water resource areas that consist of protected water features and associated vegetated corridors. The functions and values of these areas include: providing a vegetated corridor to separate protected water features from development; maintaining or reducing stream temperatures; maintaining natural stream corridors; minimizing erosion, nutrient and pollutant loading into water; providing filtering, soil infiltration and natural water purification; and stabilizing slopes to prevent landslides contributing to sedimentation of water features.*
- B. Control and prevent flooding and erosion for the protection of public health and safety.*
- C. Protect and improve the following functions and values that contribute to fish and wildlife habitat in urban streamside areas:*
- 1. Microclimate and shade;*
 - 2. Stream flow moderation and water storage;*
 - 3. Bank stabilization, sediment, and pollution control;*
 - 4. Large wood recruitment and retention and channel dynamics; and*
 - 5. Retention of organic material sources.*
- D. Provide mitigation standards for the replacement of both water quality values and ecological functions and values lost through development adjacent to water resource areas.*
- E. Control and prevent water pollution for the protection of public health and safety, and comply with federal laws including the Federal Clean Water and Endangered Species Acts. (Ord. 1545, 2007)*

Applicant Response:

While this further clause is not an approval criterion, the proposed RWP/FWP will not disturb any known WRA. The pipeline will either cross over a WRA via an existing paved right-of-way, drill under a WRA to avoid any disturbance of the WRA functions and values, or avoid WRAs altogether. Therefore, the proposal is consistent with the purpose of CDC 32 because it will help to maintain healthy riparian area functions and values, avoid flooding and erosion, and control and prevent water pollution.

APPLICABILITY (32.020)

- A. This section applies to properties upon which a natural drainageway, wetland, riparian corridor, and/or associated transition and setback area, is located. For example, the subject property may be defined as one property that contains a wetland or creek plus an adjacent property of different ownership that includes the transition area or setback area.*
- B. The provisions of this chapter apply to all zones and uses within the City limits. No person, unless excepted by subsection C or D of this section, may clear, fill, build in, or alter existing water resource areas without having obtained a permit from the decision-making authority.*
- C. The provisions of this chapter shall apply to development proposals that have water resource areas within their project boundary. Therefore, the actual wetland, creek, open channel, or stream does not have to be on the subject property under review. This chapter shall not apply to designated enclosed storm drains that appear in the most recently adopted West Linn Surface Water Management Plan, unless the enclosed storm drain is opened as a result of the proposed development. The provisions shall also not apply to small manmade open roadside drainage swales in residential areas, even if such roadside swales are identified as open channels by the most recently adopted West Linn Surface Water Management Plan. The provisions of this chapter also do not apply to drainage ditches and open channel improvements created in the interior of individual residential lots that are not identified on the Surface Water Management Plan Map.*

Applicant Response:

CDC 32 applies to the 10 WRAs identified by DEA using the most recent West Linn mapping and database. See Section 5, Water Resource Area Protection, Figures 1 and 2. The WRAs are associated with the mapped significant riparian corridors along the project route, from WRA-1 (Mary S. Young Creek) in the south to WRA-10 (Arbor Creek) at the northern end of West Linn.

Within the WRAs associated with Mary S. Young Park and the two OPRD lots (WRA-1, -2, and -3) DEA has identified and mapped the following:

- WRA-A, an emergent wetland that runs from Mary S. Young Creek into the northern OPRD lot to the northern lot the park, WR-1, in the north.
- WRA-B, a wetland located south of the project area associated with Turkey Creek.
- WRA-C, located between WRA-A and the HDD staging and open-trench construction area.
- WRA-D, located between WRA-A and the Willamette River. See Section 5, Figure 2.

The HDD drill will pass under WRA-A, WRA-C, and WRA-D. The HDD staging area and the open-cut trench construction area on the northern OPRD lot is outside of all identified WRAs.

D. Exceptions. The following actions are excepted from the provisions of this chapter:

Applicant Response:

The proposed action does not qualify for any of the 11 enumerated exemptions.

PERMIT REQUIRED (32.025)

No person shall be permitted to fill, strip, install pipe, undertake construction, or in any way alter an existing water resource area without first obtaining a permit to do so from the decision-making authority, paying the requisite fee, and otherwise complying with all applicable provisions of this chapter. (Ord. 1545, 2007)

Applicant Response:

The Partnership is requesting permission consistent with CDC 32.

PROHIBITED USES (32.030)

Applicant Response:

The project is a conditional use in the underlying zone and not a prohibited use.

APPLICATION (32.040)

Applicant Response:

The application includes application forms, Section 1, and a matrix, Section 22, which identifies all submittal requirements and the location of the required materials in this application.

APPROVAL CRITERIA (32.050)

No application for development on property containing a water resource area shall be approved unless the decision-making authority finds that the following standards have been satisfied, or can be satisfied by conditions of approval.

A. Proposed development submittals shall identify all water resource areas on the project site. The most currently adopted Surface Water Management Plan shall be used as the basis for determining existence of drainageways. The exact location of drainageways identified in the Surface Water Management Plan, and drainageway classification (e.g., open channel vs. enclosed storm drains), may have to be verified in the field by the City Engineer. The Local Wetlands Inventory shall be used as the basis for determining existence of wetlands. The exact location of wetlands identified in the Local Wetlands Inventory on the subject property shall be verified in a wetlands delineation analysis prepared for the applicant by a certified wetlands specialist. The Riparian Corridor Inventory shall be used as the basis for determining existence of riparian corridors.

Applicant Response:

CDC 32 applies to the 10 WRAs, identified by DEA using the most recent West Linn mapping and database. See Section 5, Figures 1 and 2.

B. Proposed developments shall be so designed as to maintain the existing natural drainageways and utilize them as the primary method of stormwater conveyance through the project site unless the most recently adopted West Linn Surface Water Management Plan calls for alternate configurations (culverts, piping, etc.). Proposed development shall, particularly in the case of subdivisions, facilitate reasonable access to the drainageway for maintenance purposes.

Applicant Response:

Construction of the RWP will take place under WRA-1, -2 and -3, and within the existing paved right-of-way over WRA-4. Construction of the FWP will occur within the paved public rights-of-way over WRA-5 to WRA-10. Construction will not alter the natural drainageways.

- C. Development shall be conducted in a manner that will minimize adverse impact on water resource areas. Alternatives which avoid all adverse environmental impacts associated with the proposed action shall be considered first. For unavoidable adverse environmental impacts, alternatives that reduce or minimize these impacts shall be selected. If any portion of the water quality resource area is proposed to be permanently disturbed, the applicant shall prepare a mitigation plan as specified in CDC 32.070 designed to restore disturbed areas, either existing prior to development or disturbed as a result of the development project, to a healthy natural state.*

Applicant Response:

The proposed HDD and open-cut trench activities will avoid all WRAs in Mary S. Young Park and within the OPRD lots. Section 6 of the application contains a technical memorandum, prepared by ecologists from DEA, which demonstrates that the HDD that will occur between 65 feet to 7 feet below the park and the OPRD lots will not disturb the soils, wetlands, and vegetation associated with the nearby WRAs. The HDD staging area and open-cut from the staging area to Mapleton Drive does not cross a WRA. Therefore, consistent with CDC 32.050.C, the Applicant has selected an alternative that avoids all adverse environmental impacts to the WRAs associated with the park and the two OPRD lots.

West of Mary S. Young Park and the two OPRD lots, the RWP and FWP alignment will cross WRAs only within paved public rights-of-way and will not disturb any culverts, drainageways, or habitat. Therefore, the project will avoid all adverse environmental impacts to WRAs along Mapleton Drive and Highway 43.

The mitigation requirements of CDC 32.070 might not apply. However, because the HDD staging and open cut construction area within the northern OPRD lot is within an HCA, the application includes a revegetation plan, consistent with CDC 32.070.

For these reasons the proposal is consistent with CDC 32.050.C.

- D. Water resource areas shall be protected from development or encroachment by dedicating the land title deed to the City for public open space purposes if either: (1) a finding can be made that the dedication is roughly proportional to the impact of the development; or (2) the applicant chooses to dedicate these areas. Otherwise, these areas shall be preserved through a protective easement. Protective or conservation easements are not preferred because water resource areas protected by easements have been shown to be harder to manage and, thus, more susceptible to disturbance and damage. Required 15-foot-wide structural setback areas do not require preservation by easement or dedication.*

Applicant Response:

Because there will be no impacts during or after construction, dedication of land is not roughly proportional to the complete lack of impact.

E. The protected water resource area shall include the drainage channel, creek, wetlands, and the required setback and transition area. The setback and transition area shall be determined using the following table:

Table 32-1. Required Widths of Setback and Transition Area

Protected Water Feature Type (See Chapter 02 CDC, Definitions)	Slope Adjacent to Protected Water Feature	Starting Point for Measurements From Water Feature	Width of Setback and Transition Area on Each Side of the Water Feature
Wetland, Major Drainageway, Minor Drainageway	0%–25%	Edge of bankful flow or 2-year storm level Delineated edge of wetland	50 feet plus structural setback
Wetland, Major Drainageway, Minor Drainageway	≥ 25% to distinct top of ravine ¹	Edge of bankful flow or 2-year storm level Delineated edge of wetland	Distance from starting point of measurement to top of ravine ¹ (30 feet minimum), plus an additional 50-foot setback, plus structural setback
Wetland, Major Drainageway, Minor Drainageway	≥ 25% for more than 30 feet, and no distinct top of ravine for at least 150 feet	Edge of bankful flow or 2-year storm level Delineated edge of wetland	200 feet, plus structural setback
Riparian Corridor	Any	Edge of bankful flow or 2-year storm level	100 feet or the setback required under major and minor drainageway provisions, whichever is greater, plus structural setback
Formerly Closed Drainage Channel Reopened (see CDC32.050(N))	n/a	Edge of bankful flow or 2-year storm level	Variable: See CDC32.050(N)

¹Where the protected water feature is confined by a ravine or gully, the top of ravine is the location where the slope breaks at least 15 percent and the slope beyond the break remains less than 25 percent for at least 50 feet.

At least three slope measurements along the water feature, at no more than 100-foot increments, shall be made for each property for which development is proposed. Depending upon the width of the property, the width of the protected corridor will vary.

Applicant Response:

A setback is not required where the paved public right-of-way crosses over a WRA. Within the Mary S. Young Park and OPRD lot, the Applicant has identified the required 50-foot setback from the top of slope. See Section 5, Figure 2. Aboveground, temporary construction will take place approximately 150 feet upland from the outer edge of the required 50-foot setback.

- F. *Roads, driveways, utilities, or passive use recreation facilities may be built in and across water resource areas when no other practical alternative exists. Construction shall minimize impacts. Construction to the minimum dimensional standards for roads is required. Full mitigation and revegetation is required, with the applicant to submit a mitigation plan pursuant to CDC 32.070 and a revegetation plan pursuant to CDC 32.080. The maximum disturbance width for utility corridors is as follows:*
1. *For utility facility connections to utility facilities, no greater than 10 feet wide.*
 2. *For upgrade of existing utility facilities, no greater than 15 feet wide.*
 3. *For new underground utility facilities, no greater than 25 feet wide, and disturbance of no more than 200 linear feet of water quality resource area, or 20 percent of the total linear feet of water quality resource area, whichever is greater.*

Applicant Response:

West Linn classifies the RWP as a utility. The RWP will cross over WR-4 along Mapleton Drive. The FWP will cross under WR-5 along Mapleton Drive and WR-6-10 along Highway 43. In each case, the crossing will take place within the paved area of the respective right-of-way above the WRA. Although crossings vary, no crossing will occur within an area greater than 25 feet wide and 200 feet long.

Within Mary S. Young Park and the OPRD lots, the above ground staging and construction area will occur outside of a WRA and beyond the required WRA buffer. As mentioned above, the HDD pipeline will cross WRA-A, WRA-C, and WRA-D as the underground pipeline enters West Linn's jurisdiction.

Section 6 of the application includes a memorandum from DEA which considers whether the proposed HDD underground boring will disturb the habitat values of Mary S. Young Park or the two OPRD lots. The report considers potential impacts to habitat values associated with vegetation, groundwater, wetlands, and soils. It is important to note that, based on the Oregon Biodiversity Information Center 2010 database search and site visits by project ecologists, no sensitive or listed wildlife species are known to occur within or near the study area.

The memorandum concludes that there are no significant impacts of the HDD project component that might be considered as 'disturbance' in Mary S. Young Park or in the two OPRD properties.

Therefore, the proposal is consistent with CDC 32.050.F.

- G. *Prior to construction, the water resource area shall be protected with an anchored chain link fence (or approved equivalent) at its perimeter and shall remain undisturbed except as specifically allowed by an approved water resource area permit. Such fencing shall be maintained until construction is complete. The water resource area shall be identified with City-approved permanent markers at all boundary direction changes and at 30- to 50-foot intervals that clearly delineate the extent of the protected area.*

Applicant Response:

Although WRA-C buffer is approximately 150 feet east of the HDD staging and open-cut construction activity, if required as a condition of approval, the contractor shall install and maintain an anchored chain link fence at the perimeter of WRA-C to prevent any inadvertent impacts to the WRA.

H. *Paved trails, walkways, or bike paths shall be located at least 15 feet from the edge of a protected water feature except for approved crossings. All trails, walkways, and bike paths shall be constructed so as to minimize disturbance to existing native vegetation. All trails, walkways, and bike paths shall be constructed with a permeable material and utilize low impact development (LID) construction practices.*

Applicant Response:

There are no new trails, walkways, or bike paths proposed as part of the RWP/FWP project. The contractor shall restore all existing trails, walkways, or bike paths impacted by construction that are currently within the project area rights-of-way.

I. *Sound engineering principles regarding downstream impacts, soil stabilization, erosion control, and adequacy of improvements to accommodate the intended drainage through the drainage basin shall be used. Storm drainage shall not be diverted from its natural watercourse. Inter-basin transfers of storm drainage shall not be permitted.*

Applicant Response:

As described above, the contractor shall design, install, and maintain erosion control and sediment prevention measures consistent with CDC 31.

J. *Appropriate erosion control measures based on Chapter 31 CDC requirements shall be established throughout all phases of construction.*

Applicant Response:

As described above, the contractor shall design, install, and maintain erosion control and sediment prevention measures consistent with CDC 31.

K. *Vegetative improvements to areas within the water resource area may be required if the site is found to be in an unhealthy or disturbed state, or if portions of the site within the water resource area are disturbed during the development process. "Unhealthy or disturbed" includes those sites that have a combination of native trees, shrubs, and groundcover on less than 80 percent of the water resource area and less than 50 percent tree canopy coverage in the water resource area. Vegetative improvements will be documented by submitting a revegetation plan meeting CDC 32.080 criteria that will result in the water resource area having a combination of native trees, shrubs, and groundcover on more than 80 percent of its area, and more than 50 percent tree canopy coverage in its area. Where any existing vegetation is proposed to be permanently removed, or the original land contours disturbed, a mitigation plan meeting CDC 32.070 criteria shall also be submitted. Interim erosion control measures such as mulching shall be used to avoid erosion on bare areas. Upon approval of the mitigation plan, the applicant is responsible for implementing the plan during the next available planting season.*

Applicant Response:

The project will not disturb any WRA; therefore, vegetative improvements to the WRAs are not required. However, the Applicant will mitigate tree loss within the HCA-only area consistent with CDC 32.070 and the Applicant's arborist report found in Section 7.

L. *Structural setback area.*

Where a structural setback area is specifically required, development projects shall keep all foundation walls and footings at least 15 feet from the edge of the water resource area transition and setback area if this area is located in the front or rear yard of the lot, and seven and one-half feet from the edge of the water resource area transition and setback area if this area is located in the side yard of the lot. Structural elements may not be built on or cantilever over the setback area. Roof overhangs of up to three feet are permitted in the setback. Decks are permitted within the structural setback area.

Applicant Response:

No aboveground structures or foundation walls are proposed, and no structural footings are proposed within 15 feet of the edge of a WRA; therefore, Subsection L does not apply.

M. *Stormwater treatment facilities may only encroach a maximum of 25 feet into the outside boundary of the water resource area; and the area of encroachment must be replaced by adding an equal area to the water quality resource area on the subject property. Facilities that infiltrate stormwater on site, including the associated piping, may be placed at any point within the water resource area outside of the actual drainage course so long as the forest canopy and the areas within 10 feet of the driplines of significant trees are not disturbed. Only native vegetation may be planted in these facilities.*

Applicant Response:

The project will not create any new impervious surfaces. West Linn Public Works Standard, 2.0041.B, exempts projects that create less than 500 square feet of new impervious surface from meeting the City's stormwater standards.

N. *As part of any proposed land division or Class II design review application, any covered or piped drainageways identified on the Surface Water Quality Management Plan Map shall be opened, unless the City Engineer determines that such opening would negatively impact the affected storm drainage system and the water quality within that affected storm drainage system in a manner that could not be reasonably mitigated by the project's site design. The design of the reopened channel and associated transition area shall be considered on an individualized basis, based upon the following factors ...:*

1. *The ability of the reopened storm channel to safely carry storm drainage through the area.*
2. *Continuity with natural contours on adjacent properties.*
3. *Continuity of vegetation and habitat values on adjacent properties.*
4. *Erosion control.*
5. *Creation of filters to enhance water quality.*
6. *Provision of water temperature conducive to fish habitat.*
7. *Consideration of habitat and water quality goals of the most recently adopted West Linn Surface Water Management Plan.*
8. *Consistency with required site mitigation plans, if such plans are needed.*

The maximum required setback under any circumstance shall be the setback required as if the drainageway were already open.

Applicant Response:

The application is subject to Class II design review. WRA-4 through WRA-10 are covered by Mapleton Drive or Highway 43. The project will not disturb existing culverts. The city engineering comments in the pre-application conference notes identify several culverts along Mapleton Drive and require that if any culverts are impacted by construction, the Applicant shall replace the impacted culverts. Although the design proposal does not anticipate any culverts will be impacted by construction, in the event a culvert is damaged and the city engineer determines that it needs replacement, the Applicant shall do so.

O. The decision-making authority may approve a reduction in applicable front yard setbacks abutting a public street to a minimum of 15 feet and a reduction in applicable side yard setbacks abutting a public street to seven and one-half feet if the applicant demonstrates that the reduction is necessary to create a building envelope on an existing or proposed lot of at least 5,000 square feet.

Applicant Response:

The Applicant is not requesting a reduction in front yard setbacks.

P. Storm drainage channels not identified on the Surface Water Management Plan Map, but identified through the development review process, shall be subject to the same setbacks as equivalent mapped storm drainage channels. (Ord. 1545, 2007)

Applicant Response:

There are no known storm drainage channels in the project area not already identified.

SITE PLAN (32.060)

A. All site plans and maps shall include....

Applicant Response:

The application includes application forms, Section 1, and a matrix, Section 22, which identifies all submittal requirements and the location of the required materials in this application.

MITIGATION PLAN (32.070)

A mitigation plan shall be required if any portion of the water resource area is proposed to be permanently disturbed by development.

Applicant Response:

A mitigation plan is required if any portion of the WRA is proposed to be permanently disturbed by development. Because no permanent impacts will occur, a mitigation plan following CDC 32.070 was not be prepared. However, a revegetation plan was prepared in compliance with CDC 32.080.

REVEGETATION PLAN REQUIREMENTS (32.080)

Metro's Native Plant List is incorporated by reference as a part of this chapter, and all plants used in revegetation plans shall be plants found on the Metro Native Plant List. Performance standards for planting upland, riparian and wetland plants include the following:

- A. Native trees and shrubs will require temporary irrigation from June 15th to October 15th for the three years following planting.*
- B. Invasive non-native or noxious vegetation shall be removed within the area to be revegetated prior to planting.*
- C. Replacement trees must be at least one-half inch in caliper, measured at six inches above the ground level for field grown trees or above the soil line for container grown trees (the one-half inch minimum size may be an average caliper measure, recognizing that trees are not uniformly round) unless they are oak or madrone, which may be one-gallon size. Shrubs must be in at least a one-gallon container or the equivalent in ball and burlap and must be at least 12 inches in height.*
- D. Trees shall be planted between eight and 12 feet on center and shrubs shall be planted between four and five feet on center, or clustered in single species groups of no more than four plants, with each cluster planted between eight and 10 feet on center. When planting near existing trees, the dripline of the existing tree shall be the starting point for plant spacing requirements.*
- E. Shrubs must consist of at least two different species. If 10 trees or more are planted, then no more than 50 percent of the trees may be of the same species.*
- F. The responsible party shall provide an appropriate level of assurance documenting that 80 percent survival of the plants has been achieved after three years, and shall provide annual reports to the Planning Director on the status of the revegetation plan during the three-year period.*

Applicant Response:

The revegetation plan described in Section 5 responds to the required plan elements, as follows:

- A.** Temporary irrigation is proposed for the June 15 to October 15 time period for all plantings.
- B.** Invasive non-native or noxious vegetation will be removed from proposed revegetation areas.
- C.** Plantings will be sized to meet the above requirements but the species will be limited to those that are not injurious to utilities.
- D.** Planting densities will be spaced according to the above criteria. An exception to this is that tree and shrub plantings intended to occur under mature existing canopy may be placed within the dripline of existing trees as occurs under natural forest conditions.
- E.** The planting plan consists of a diverse mix of native tree and shrub species that meets and exceeds the above requirements (Section 6, Figure 5).
- F.** The project sponsors will fund 3 years of annual monitoring of post-plant-installation.

An annual monitoring technical memo, including recommendations and actions taken to rectify problem issues in order to achieve 80 percent survival of proposed planting quantities, will be provided to the Planning Director for each year of monitoring.

REDUCTION IN STANDARDS FOR HARDSHIP (32.090)

Applicant Response:

The Applicant is not requesting any reductions based on hardship.

PENALTIES (32.100)

Violation of any provision or requirement of this chapter or conditions of approval is a Class A infraction, and shall also constitute a public nuisance. Each day of violation constitutes a separate offense. In addition, the City retains the authority to require any water resource area which has been altered illegally to be reestablished to its natural condition, including replanting trees, shrubs, etc., and reseeding open areas at the owner's expense. In addition, the City Attorney may institute any necessary legal proceedings to enforce the provisions of this chapter, or cure any problems resulting from violations of this chapter.

Applicant Response:

The Applicant acknowledges the City's right of enforcement.

STORMWATER QUALITY AND DETENTION (CDC 33)

APPLICABILITY (33.020)

This chapter applies to all new development and redevelopment sites, as required by the City's Public Works Design Standards, except one- and two-family dwellings that do not involve a land division. (Ord. 1463, 2000)

Applicant Response:

The proposed RWP/FWP project will occur in existing paved right-of-way, under Mary S. Young Park and within a portion of the two OPRD lots, and in an open-cut trench and HDD staging area in the northern OPRD lot. After construction, the contractor will restore the pavement in the public right-of-way and will revegetate the open-cut trench and staging area in the northern OPRD lot. The project designers have determined that the project will not create any new impervious surfaces.

Section 2.0041.B, West Linn Public Works Standards, Storm Water Detention and Treatment, provides an exemption from treatment if the new development creates less than 500 square feet of new impervious surface and exemption from detention if the development creates less than 5,000 square feet of new impervious surface.¹

¹ City of West Linn Public Works Design Standards, Section Two, Storm Drain Requirements, 2.0041.B. "All development creating 500 sq. ft. or more of new impervious area will be required to provide treatment of the stormwater runoff from the new impervious area. For development or redevelopment creating more than 5,000 sq. ft. of new impervious area, treatment as well as detention will be required. Developers may mitigate impervious area by various means, as approved by the City Engineer, to reduce the new effective impervious area (EIA) below the thresholds listed above or to reduce facility size required for detention and/or treatment. Methods contained in the City of Portland Stormwater Manual, as modified by the City of West Linn, may be used in mitigation as approved by the City Engineer. Stormwater facilities must be aesthetically blended into surrounding landscaping to greatest possible extent."

Therefore, because the entire project will create less than 500 square feet of new impervious surface, the West Linn Public Works standard exempts the project from further stormwater review.

ACCESSORY STRUCTURES, ACCESSORY DWELLING UNITS, AND ACCESSORY USES (CDC 34)

Applicant Response:

No accessory uses, dwelling units, noise-producing accessory structures or uses, boat houses, docks, or setbacks associated with accessory structures or uses are proposed. Therefore CDC 34 does not apply.

ADDITIONAL YARD AREA REQUIRED; EXCEPTIONS TO YARD REQUIREMENTS; STORAGE IN YARDS; PROJECTIONS INTO YARDS (CDC 38)

Applicant Response:

The project will not create or seek additional yard area, exceptions to yard area, storage in yard area, or projections into yard area. Therefore, CDC 38, Yard Area, does not apply.

BUILDING HEIGHT LIMITATIONS, EXCEPTIONS (CDC 40)

(Repealed by Ord. 1604)

CLEAR VISION AREAS (CDC 42)

Applicant Response:

The completed project will be underground; therefore, CDC 42, Clear Vision Areas, does not apply.

FENCES (CDC 44)

Applicant Response:

The project will not install any permanent fences; therefore, CDC 44, Fencing, does not apply.

OFF-STREET PARKING, LOADING AND RESERVOIR AREAS (CDC 46)

Applicant Response:

The proposal is to construct an underground water transmission line primarily within the public right-of-way or public easements under public land. Access to the northern OPRD property is available on Mapleton Drive. Therefore, the Partnership does not propose to create any parking area. Consequently, CDC 46, Off-street Parking, Loading and Reservoir Areas, does not apply.

ACCESS, EGRESS AND CIRCULATION (CDC 48)

PURPOSE (48.010)

The purpose of this chapter is to ensure that efficient, safe, and well-directed vehicular, bicycle, and pedestrian access, circulation, and egress are designed into development proposals. Access management seeks to balance mobility, the need to provide efficient, safe and timely travel with the ability to allow access to individual properties. Proper implementation of access management techniques should guarantee reduced congestion, reduced accident rates, less need for roadway widening, conservation of energy, and reduced air pollution.

Applicant Response:

This purpose clause is not a review criterion. However, the project is construction of an underground pipeline and will not create any permanent demand for access, egress or circulation, subject to review under CDC 51. However, the Applicant has prepared and Construction Management Plan (Section 10) and a Traffic Management and Pedestrian Circulation Plan (Section 12) that ensure safe and reliable access around the construction work zones.

SIGNS (CDC 52)

Applicant Response:

No permanent signs are proposed; therefore, CDC 52, Signs, does not apply.

LANDSCAPING (CDC 54)

PURPOSE (54.010)

The purpose of this chapter is to provide for the design, selection, installation, and maintenance of landscaping. The landscaping is intended to provide an attractive natural balance to built areas, to reduce runoff, to provide shade, to screen or buffer uses, and to frame or complement views. The chapter also encourages the selection of plant materials that will provide long-term growth, a balance of year-round coverage and greenery, and a variety of species for a more healthy, disease-resistant plant inventory.

Applicant Response:

The Applicant is proposing to construct an underground pipeline with below grade vaults accessible from manholes in the paved street. The Applicant provided a revegetation plan for the HDD staging area and a tree protection plan for the entire pipeline alignment. There will be no aboveground buildings or other structures, such as parking lots, fences, mechanical units, or similar structures that need to be screened or buffered from adjacent uses or that need to be framed to complement views. Therefore, CDC 54 does not apply to the belowground pipeline.

54.030 PLANTING STRIPS FOR MODIFIED AND NEW STREETS

All proposed changes in width in a public street right-of-way or any proposed street improvement shall, where feasible, include allowances for planting strips. Plans and specifications for planting such areas shall be integrated into the general plan of street improvements. This chapter requires any multi-family, commercial, or public facility which causes change in public right-of-way or street improvement to comply with the street tree planting plan and standards.

Applicant Response:

CDC 54.030 requires that any change in width of a street right-of-way or street improvement shall, where feasible, include allowances for planting strips. CDC 54.030 also states that a public facility that causes a change in a public right-of-way or makes a street improvement shall comply with the street tree planting plan and standards in CDC 54.

The RWP/FWP project will not create any new aboveground structures outside of an existing paved right-of-way. Simply put, the proposal is to bury a pipeline in an existing paved right-of-way and, after construction, repave the street, consistent with the applicable public works standards for the street. The project will not widen a local street or state highway. The project will not improve any street by means of adding bicycle lanes, sidewalks, streetlights, curbs, stoplights, turn lanes, storm drains, or similar improvements. Mapleton Drive will receive a standard topcoat of pavement, consistent with West Linn Public Works Standards. ODOT has not requested any modifications to Highway 43 other than to repave the road surface consistent with ODOT standards.

Because the Applicant will not widen or make new improvements to public streets, CDC 54, Landscaping, and CDC 54.030 do not apply.

PARKS AND NATURAL AREA DESIGN REVIEW (CDC 56)

PURPOSE AND INTENT – GENERAL (56.010)

The purpose of the parks and natural area design review provisions is to establish a process and standards for the review of park and natural area development proposals to ensure that the intent of the Parks Master Plan is satisfied and the planned program needs of the different classes of parks and natural areas are respected and provided for. Attention will be paid to the proposal's scale, layout and design, its compatibility with the natural environment and the surrounding neighborhood. Compliance with the Transportation Planning Rule (TPR) will be encouraged but not to the point of diminution of, or adverse impacts on, the natural resource areas or the functionality of the park.

Applicant Response:

This purpose clause is not a review criterion. However, the proposal will construct a pipeline, between 30 to 65 feet under Mary S. Young Park by means of HDD construction. No permanent surface impacts will result from the development, except removal of 19 trees on two residential properties located north of the park. Revegetation of disturbed areas on these residential properties will occur consistent with CDC.

CATEGORIES OF PARKS AND NATURAL RESOURCE FACILITIES (56.015)

There are eight categories of park and natural resource facilities as established in the Parks Master Plan. The categories are:

1. *Active-oriented parks.*
2. *Passive-oriented parks.*
3. *Mini-parks.*
4. *Special use areas.*
5. *Linear parks/open space.*
6. *City beautification areas.*
7. *Pathways and trails.*
8. *Natural resource areas.*

Applicant Response:

The West Linn Park Master Plan (2007) classifies Mary S. Young Park as a multi-use park.

APPLICABILITY (56.020)

- A. *This chapter applies to the development of all new parks and natural resource areas. It also applies to changes including the introduction of new facilities and major repairs at existing parks and natural resource areas. No work, except as exempted in CDC 56.025, may take place in these parks and natural resource areas without first obtaining a permit through this chapter and through the appropriate decision-making body. Chapter 55 CDC, Design Review, shall not apply to park development or structures or facilities in parks. Unless specifically exempted by this chapter, all relevant CDC chapters shall apply.*
- B. *There are two classes of Park Design Review – Class I and Class II. Class I park design review applies to minor changes to park facilities. It is reasonable and appropriate that a simpler but more focused set of standards shall apply. Class II park design review applies to the development of any new park or significant changes to an existing park or natural area. The specific submittal standards and approval criteria are explained in CDC 56.070 through 56.100.*
- C. *Class I design review. The following is a non-exclusive list of Class I design review activities or facilities.*
- D. *Class II design review. The following is a non-exclusive list of Class II parks design review activities or facilities:*
 - 1. *Site preparation for and/or development of a new park or natural area....*

Applicant Response:

The pre-application notes state that the proposed RWP in Mary S. Young Park requires Class II park design review.

EXEMPTIONS (56.025)

The provisions of this chapter exempt the following activities from review:

Applicant Response:

The proposed underground RWP project does not qualify for an exemption under CDC 54.025.

ADMINISTRATION AND APPROVAL PROCESS (56.030)

- A. *A pre-application conference is required before submitting a development plan application for design review as provided by CDC 99.030(B).*
- B. *The application shall be submitted by the record owner(s) of the property, or authorized agent. For City applications, the City Manager shall submit the application.*
- C. *Action on the development plan application shall be as provided by Chapter 99 CDC, Procedures for Decision-Making: Quasi-Judicial, and the following:*
 - 1. *The Planning Director for Class I parks design review applications, or the Planning Commission for Class II parks design review applications, shall approve, approve with conditions, or deny the application based on findings related to the applicable criteria set forth in CDC 99.110 and this chapter.*
 - 2. *A decision by the Planning Director shall be reviewed by the City Council if the case is appealed.*

D. Significant changes to the approved development plan will require reapplication per CDC 56.050. "Significant changes" are defined as more than a 10 percent modification in the design or footprint of a structure or any design that brings the use (e.g., playing field, sidewalk, etc.) closer to a natural resource area or a neighboring home. Minor changes to the design or proposal that are mandated by new State, federal or local laws, engineering standards or building codes are not deemed significant.

Applicant Response:

The Partnership participated in a pre-application conference on January 5, 2012. OPRD has authorized the Partnership to submit this land use application. The Planning Commission will combine review of the Class II park design review with conditional use and design review in a public hearing.

EXPIRATION OR EXTENSION OF APPROVAL (56.040)

If substantial construction, as defined in Chapter 02 CDC, has not occurred within three years from the date of approval of the development plan, the approved proposal will be void unless an extension is granted under CDC 99.325. Phased improvements to a park or natural area, with clearly stated timeline, are permitted under the provisions of CDC 56.060. However, substantial construction of the final phased improvement must be begun within five years of the original approval date.

Applicant Response:

The Applicant shall commence work in 2013 and shall complete HDD under the park within 1 year.

DESIGN REVIEW AMENDMENT TRIGGER (56.050)

A. When significant changes are made to the approved development plan, then a reapplication to the appropriate decision-making authority shall be required. A non-exclusive list of examples of significant changes are as follows...

Applicant Response:

The Applicant acknowledges that significant changes to the approved plan may trigger additional review.

PHASED DEVELOPMENT (56.060)

The applicant may elect to develop the site in phases, also known as stages. The applicant shall delineate the boundaries of the phases on a map and provide a narrative that explains what improvements or facilities can be expected with each phase and when development for each phase is to be initiated. The decision-making authority must approve phased development with a clearly stated timeline for each phase, per the provisions of CDC 99.125. Once work on a phase is initiated by the approved timeline, it is not necessary that all the work of that phase be completed by the timeline date so long as reasonable progress is being made.

Applicant Response:

The HDD element of the project will be completed within a single time period.

SUBMITTAL REQUIREMENTS (56.070)

SUBMITTAL STANDARDS FOR CLASS I PARKS DESIGN REVIEW (56.075)

Applicant Response:

The application required is for Class II parks design review.

SUBMITTAL STANDARDS FOR CLASS II PARKS DESIGN REVIEW (56.080)

Applicant Response:

The application includes application forms, Section 1, and a matrix, Section 22, which identifies all submittal requirements and the location of the required materials in this application.

ADDITIONAL INFORMATION REQUIRED AND WAIVER OF REQUIREMENTS (56.085)

- A. *The Planning Director may require additional information as part of the application subject to the provisions of CDC 99.035(A).*
- B. *The Planning Director may waive any requirements for the application at the applicant's request, subject to the provisions of CDC 99.035(B) and (C).*

Applicant Response:

The Applicant has requested waivers described in the Central Issues section of this narrative.

APPROVAL STANDARDS – CLASS I DESIGN REVIEW (56.090)

Applicant Response:

Class II design review standards apply.

APPROVAL STANDARDS – CLASS II DESIGN REVIEW (56.100)

The approval authority shall make findings with respect to the following criteria when approving, approving with conditions, or denying a Class II parks design review application.

- A. *Park classification. The proposed park and park programs shall conform to, and agree with, the Parks Master Plan and the parks definitions of CDC 56.015. Reclassifying the purpose of a park and the programs shall require an amendment to the Parks Master Plan.*

Park facilities that are not discussed in the Parks Master Plan shall be classified using the criteria of CDC 56.015 and the Parks Master Plan. Once the classification is made, the approval criteria shall take into consideration those program needs and the standards for the specific park type and evaluate the application accordingly.

Applicant Response:

The West Linn Park Master Plan (2007) classifies Mary S. Young Park as a multi-use park.

- B. *Visual and physical accessibility. Many of the City's parks suffer from inadequate visibility, such as Sunburst Park and North Willamette Park, surrounded as they are by housing. Increased frontage on streets allows greater use of on-street parking and less park space being used for parking. The surrounding streets also provide transitions between on- and off-site activities as discussed in subsection (D)(1) of this section. Physical access is also facilitated by having good cognitive locations that can be safely accessed by bike paths and sidewalks. Improved visual access amplifies the investment and positive benefits of parks in that many people who do not stop the car and actually use the park derive emotional benefits by exposure to scenes of open space, trees, and grass fields in a world increasingly dominated by built environments.*

Applicant Response:

The proposal will construct a water pipeline under Mary S. Young Park at a depth ranging from 30 feet to 65 feet. The pipeline will be located in the general area of the existing Lake Oswego raw water pipeline and the West Linn sanitary sewer line. Therefore, the RWP will not degrade visual or physical accessibility.

C. *Relationship to the natural environment.*

1. *The buildings and other site elements shall be designed and located so that all heritage trees, as defined in the municipal code, shall be saved. Diseased heritage trees, as determined by the City Arborist, may be removed at the direction of the City Manager.*
2. *All heritage trees, as defined in the municipal code, and all trees and clusters of trees ("cluster" is defined as three or more trees with overlapping driplines; however, native oaks need not have an overlapping dripline) that are considered significant by the City Arborist, either individually or in consultation with certified arborists or similarly qualified professionals, based on accepted arboricultural standards including consideration of their size, type, location, health, long term survivability, and/or numbers, shall be protected pursuant to the criteria of CDC 55.100(B)(2). It is important to acknowledge that all trees are not significant.*
 - a. *Areas of the park that include non-Type I and II lands shall protect all heritage trees and all significant trees through the careful layout of streets, building pads, playing fields, and utilities. The method for delineating the protected trees or tree clusters ("dripline + 10 feet") is explained in CDC55.100(B)(2)(a) and in subsection (C)(2)(b) of this section.*
 - b. *Areas of the park that include Type I and II lands shall protect all heritage, significant and non-significant trees. Groundcover, bushes, etc., shall be protected and may only be disturbed to allow the construction of trails or accessing and repairing utilities. Exemptions permitted under CDC55.100(B)(2)(c) through (f) shall apply.*
3. *In the case of natural resource areas, the topography shall be preserved to the greatest degree possible. Conversely, in non-natural resource areas, it is recognized that in order to accommodate level playing fields in an active-oriented park, extensive grading may be required and the topography may be modified.*
4. *The structures shall not be located in areas subject to slumping and sliding. The Comprehensive Plan Background Report's Hazard Map, or updated material as available and as deemed acceptable by the Planning Director, shall be the basis for preliminary determination.*
5. *The park shall be designed in such a way as to take advantage of scenic views and vistas from the park site, as long as such views can be obtained without eliminating significant trees or other natural vegetated areas.*

Applicant Response:

The proposal will not result in the construction of any aboveground structure or building. The project will not result in the removal of any trees within Mary S. Young. The project area within the park is classified as resource land. However, the proposal will not result in the removal of any vegetation or alter the topography at all. The project area is, at the proposed depths, not subject to slumping or sliding. The RWP, being underground, will not compromise any scenic views or vistas. Therefore, the proposal is consistent with CDC 56.100.C.

D. Facility design and relationship to the human environment.

Applicant Response:

Subsection C pertains to architecture and aboveground structures and their relationship to human scale. The RWP is a belowground structure. Therefore, CDC 56.100D does not apply.

E. Transportation Planning Rule (TPR) compliance.

Applicant Response:

The RWP will not generate any additional trip demand and will not create any new streets. Therefore, the TPR is not applicable.

F. Compatibility between adjoining uses.

1. *On-site screening from view from adjoining properties of such things as service and storage areas shall be provided and the following factors will be considered in determining the adequacy of the type and extent of the screening:*
 - a. *What needs to be screened?*
 - b. *The direction from which it is needed.*
 - c. *How dense the screen needs to be.*
 - d. *Whether the viewer is stationary or mobile.*
 - e. *Whether the screening needs to be year-round.*
 - f. *Consideration shall be given to the proper screening of lights so that no off-site glare is produced.*
2. *Rooftop air-cooling and heating systems and other mechanical equipment shall be screened from view from adjoining properties.*

Applicant Response:

The RWP will be entirely underground and will not be visible from adjoining uses; therefore, screening is not required.

G. Crime prevention and safety/ defensible space.

Applicant Response:

Subsection J pertains to aboveground spaces and structures and how they must be designed to prevent crime and create defensible space. The RWP will be entirely underground; therefore, CDC 56.100.J does not apply.

*H. Public facilities.***Applicant Response:**

Subsection H pertains to streets and parking lots, not to an underground pipeline; therefore, Subsection H does not apply.

*I. Paths and trails.***Applicant Response:**

Subsection I pertains to the creation of paths and trails. The RWP will not create any new path or trail nor will it impede the creation or use of any future path or trail. Therefore, the proposal is consistent with CDC 56.1200.I.

- J. Provisions for persons with disabilities. The needs of a person with a disability shall be provided for. Accessible routes shall be provided between parking lot(s) and principal buildings and site facilities. The accessible route shall be the most practical direct route between accessible building entries, accessible site facilities, and the accessible entry to the site. All facilities shall conform to, or exceed, the Americans with Disabilities Act (ADA) standards, including those included in the Uniform Building Code.*

Applicant Response:

The RWP will be entirely underground. As stated above, the RWP will not create or obstruct any path or trail. Therefore, Subsection J does not apply.

- K. Miscellaneous criteria. Selected elements of the following chapters shall be met. It is not necessary to respond to all the submittal standards or approval criteria contained in these chapters, only those elements that are found to be applicable by the Planning Director at the pre-application conference pursuant to CDC 99.030(B) and (C):*

- 1. Chapter 33 CDC, Stormwater Quality and Detention.*
- 2. Chapter 34 CDC, Accessory Structures, Accessory Dwelling Units, and Accessory Uses.*
- 3. Chapter 38 CDC, Additional Yard Area Required; Exceptions to Yard Requirements; Storage in Yards; Projections into Yards.*
- 4. Chapter 40 CDC, Building Height Limitations, Exceptions.*
- 5. Chapter 42 CDC, Clear Vision Areas.*
- 6. Chapter 44 CDC, Fences.*
- 7. Chapter 46 CDC, Off-Street Parking, Loading and Reservoir Areas.*
- 8. Chapter 48 CDC, Access, Egress and Circulation.*
- 9. Chapter 52 CDC, Signs.*
- 10. Chapter 54 CDC, Landscaping. In addition, landscape plans shall incorporate plants which minimize irrigation needs without compromising recreational facilities or an attractive park environment. (Ord. 1604 §§ 55, 56, 2011)*

Applicant Response:

The pre-application conference report does not direct the Applicant to respond to the identified supplemental criteria, except for landscaping, as it relates to street widening or new improvements. The application responds to the selected criteria, as applicable in the context of conditional use and design review.

SITE ANALYSIS (56.110)

The site analysis shall include...

Applicant Response:

The application includes application forms, Section 1, and a matrix, Section 22, which identifies all submittal requirements and the location of the required materials in this application.

THE SITE PLAN (56.120)

The site plan shall be at the same scale as the site analysis (CDC 56.110) and shall show...

Applicant Response:

The application includes application forms, Section 1, and a matrix, Section 22, which identifies all submittal requirements and the location of the required materials in this application.

GRADING PLAN (56.130)

The grading and drainage plan shall be at the same scale as the site analysis (CDC56.110) and shall include the following...

Applicant Response:

The proposal is for an underground drill using trenchless HDD methods through Mary S. Young Park. No grading is proposed and no new impervious surfaces will be created. Therefore, a grading and drainage plan for work done in the park is not required.

ARCHITECTURAL DRAWINGS (56.140)

Architectural drawings shall be submitted showing:

- A. Building elevations and sections;*
- B. Building materials: color and type;*
- C. The name of the architect or designer.*

Applicant Response:

Section 56.100 pertains to architecture. The RWP is a belowground structure. Therefore, CDC 56.140 does not apply.

LANDSCAPE PLAN (56.150)

A. The landscape plan shall include the following:

- 1. Existing trees, shrubs, plants and groundcover that will be retained as well as an indication of those trees and landscaping that will be removed.*
- 2. Generalized landscape plan showing areas to be landscaped in the new park plan. Showing that an area will be planted with shrubs or evergreen groundcover is sufficient. (It is not necessary to provide plant detail; for example, five-gallon ferns at four feet on center, etc.)*
- 3. Statement that the landscaping will be irrigated.*

4. *The location of buffering or screening materials (e.g., fences).*
 5. *The location of playing fields (identify type of activity, if known), picnic shelters, play areas, etc.*
 6. *Building and pavement outlines.*
- B. *The landscape plan shall be accompanied by:*
1. *Planting schedule.*
 2. *Supplemental information as required by the Planning Director or City Arborist.*

Applicant Response:

The proposal will not result in the creation of any aboveground features or the removal of any vegetation or material from Mary S. Young Park. The surface of the park will be unchanged.

However, the Partnership, in consultation with the OPRD, has agreed to provide the City of West Linn with park enhancement assistance, valued at approximately **\$90,000**, which the City of West Linn may use to enhance the surface of Mary S. Young Park. See Section 18, letter from Ken Worcester to Tim Wood regarding potential benefits to Mary S. Young Park.

Therefore, a landscape plan is not necessary.

EXCEPTIONS TO UNDERLYING PARKING PROVISIONS (56.170)

The Planning Director may grant up to a 50 percent exception to the off-street parking dimensional and minimum number of space requirements in the applicable zone so long as one of the following criteria is met:

- A. *There is an opportunity for shared parking and there is written evidence that the property owners are willing to enter into a legal agreement; or*
- B. *Public transportation is available to the site reducing the standards and will not adversely affect adjoining uses, and there is a community interest in the preservation of particular natural feature(s) of the site which make it in the public interest to grant an exception to parking standards.*

Applicant Response:

The proposal will not result in the creation of any parking at Mary S. Young Park; therefore, an exception to the underlying parking provisions is not applicable.

PROCEDURES FOR DECISION MAKING: QUASI-JUDICIAL (CDC 99)

FEES (99.033)

The Council shall adopt a schedule of fees reasonably calculated to defray the expenses of the administrative process. The Council may establish either a set fee or a deposit system in which the applicant pays a deposit and the City determines the total administrative cost at the end of the process and refunds any unused amount of the deposit to the applicant. No additional deposit shall be required for additional costs that are incurred because the matter is referred to or called up by a higher decision-making authority. The Council shall charge no fees for City-initiated land use applications or appeals filed by a recognized neighborhood association pursuant to the provisions of CDC 99.240.

Applicant Response:

The Applicant has paid the required processing fees.

ADDITIONAL INFORMATION REQUIRED, WAIVER OF REQUIREMENTS AND REPORT REQUIRED (99.035)

- A. The Planning Director may require information in addition to that required by a specific chapter in the Community Development Code; provided that...*
- B. The Planning Director may waive a specific requirement for information or a requirement to address a certain approval standard subject to the provisions of subsection C of this section provided...*

Applicant Response:

The Applicant has requested waivers identified in the Central Issues section of this narrative.

NEIGHBORHOOD CONTACT REQUIRED FOR CERTAIN APPLICATIONS (99.038)

Prior to submittal of an application for any subdivision, conditional use permit, multi-family project, planned unit development, commercial, office, or industrial development of over 1,500 square feet, or a zone change that requires a Comprehensive Plan amendment, the applicant shall contact and discuss the proposed development with any affected neighborhood as provided in this section. Although not required for other or smaller projects, contact with neighbors is highly recommended. The Planning Director may require neighborhood contact pursuant to this section prior to the filing of an application for any other development permit if the Director deems neighborhood contact to be beneficial.

- A. Purpose. The purpose of neighborhood contact is to identify potential issues or conflicts regarding a proposed application so that they may be addressed prior to filing. This contact is intended to result in a better application and to expedite and lessen the expense of the review process by avoiding needless delays, appeals, remands, or denials. The City expects an applicant to take the reasonable concerns and recommendations of the neighborhood into consideration when preparing an application. The City expects the neighborhood association to work with the applicant to provide such input.*
- B. The applicant shall contact by letter all recognized neighborhood associations whose boundaries contain all or part of the site of the proposed development and all property owners within 500 feet of the site.*
- C. The letter shall be sent by certified mail, return receipt requested, to the president of the neighborhood association, and to one designee as submitted to the City by the neighborhood association, and shall be sent by regular mail to the other officers of the association and the property owners within 500 feet. If another neighborhood association boundary is located within the 500-foot notice radius, the letter shall be sent to that association's president, and to one designee as submitted to the City by the neighborhood association as well. The letter shall briefly describe the nature and location of the proposed development, and invite the association and interested persons to a meeting to discuss the proposal in more detail. The meeting shall be scheduled at the association's regularly scheduled monthly meeting, or at another time at the discretion of the association, and not less than 20 days from the date of mailing of the notice. If the meeting is scheduled as part of the association's regular monthly meeting, the letter shall explain that the proposal may not be the only topic of discussion on the meeting agenda. The letter shall encourage concerned citizens to contact their association president, or their association designee, with any questions that they may want to relay to the applicant.*

Neighborhood contact shall be initiated by the applicant by mailing the association president, and to one designee as submitted to the City by the neighborhood association, a letter, return receipt requested, formally requesting, within 60 days, a date and location to have their required neighborhood meeting. The 60 days shall be calculated from the date that the applicant mails this letter to the association. If the neighborhood association does not want to meet within the 60-day timeframe, or if there is no neighborhood association, the applicant may hold a public meeting during the evening after 6:00 p.m., or on the weekend no less than 20 days from the date of mailing of the notice. All meetings shall be held at a location open to the public within the boundaries of the association or at a

public facility within the City of West Linn. If the meeting is held at a business, it shall be posted at the time of the meeting as the meeting place and shall note that the meeting is open to the public and all interested persons may attend.

- D. *On the same date the letters described in subsections A through C of this section are mailed, the applicant shall provide and post notice on the property subject to the proposed application. The notice shall be posted at a location visible from the public right-of-way. If the site is not located adjacent to a through street, then an additional sign shall be posted on the nearest through street. The sign notice shall be at least 11 inches by 17 inches in size on durable material and in clear, legible writing. The notice shall state that the site may be subject to a proposed development (e.g., subdivision, variance, conditional use) and shall set forth the name of the applicant and a telephone number where the applicant can be reached for additional information. The site shall remain posted until the conclusion of the meeting.*
- E. *An application shall not be accepted as complete unless and until the applicant demonstrates compliance with this section by including with the application:*
1. *A copy of the certified letter to the neighborhood association with a copy of return receipt;*
 2. *A copy of the letter to officers of the association and to property owners within 500 feet, including an affidavit of mailing and a copy of the mailing list containing the names and addresses of such owners and residents;*
 3. *A copy of the required posted notice, along with an affidavit of posting;*
 4. *A copy of the minutes of the meetings, produced by the neighborhood association, which shall include a record of any verbal comments received, and copies of any written comments from property owners, residents, and neighborhood association members. If there are no minutes, the applicant may provide a summary of the meeting comments. The applicant shall also send a copy of the summary to the chair of the neighborhood association. The chair shall be allowed to supplement the summary with any additional comments regarding the content of the meeting, as long as such comments are filed before the record is closed;*
 5. *An audiotape of the meeting; and*
 6. *In the event that it is discovered by staff that the aforementioned procedures of this section were not followed, or that a review of the audio tape and meeting minutes show the applicant has made a material misrepresentation of the project at the neighborhood meeting, the application shall be deemed incomplete until the applicant demonstrates compliance with this section.*

Applicant Response:

The Applicant conducted the required neighborhood meeting on March 15, 2012. Documentation of that meeting, consistent with the requirements of CDC 99.038, is provided in Section 14.

IV. Conclusion

In conclusion, this application provides detailed plans and reports in response to the requirements of the conditional use and Class II design review requirements and environmental and supplemental standards and regulations. The Applicant has consistently met its burden in addressing each applicable criterion and demonstrates that the proposed RWP/FWP project either satisfies, or by means of conditions of approval, can satisfy, all relevant approval criteria.

Therefore, the Partnership asks the West Linn Planning Commission to approve this request for conditional use and Class II design review and supplemental permits.